420

Confidential

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.
_____/

CASE NO: CA 03-5045 AI

FILED
Dec 10 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY _____
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

APPENDIX VOLUME 2
MS & CPH DEPOSITION EXHIBITS

NOT A CERTIFIED COPY

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5132
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

011775

854

VOLUME 1

Pleadings:

May 8, 2003 Compl.

June 25, 2003 Answer, *MSSF v. MAFCO*, No. 2003CA005165, (15th Jud. Dist. Fla.)

Sept. 2, 2003 CPH's Resp. to MS's 1st Set of Interrogs.

Sept. 24, 2003 CPH's Resp. to MS's 1st Set of Reqs. for Admiss.

Oct. 13, 2003 CPH's Resp. to MS's 2d Set of Interrogs.

Mar. 17, 2004 CPH's Resp. to MS's 2d Set of Reqs. for Admiss.

Aug. 11, 2004 Order

MS Exhibits:

MS 9 (March 19, 1998 Comfort Letter)

MS 39 (March 19, 1998 Sunbeam Press Release)

MS 41 (March 18, 1998 January and February Sunbeam Consolidated Net Sales Actuals and March Net Sales thru March 17, 1998)

MS 58 (Apr. 3, 1998 Fax from Fannin to Strong, et. al. with Sunbeam Press Release)

MS 75 (March 30, 1998 Wachtell Chronology)

MS 78 (Nov. 15, 1997 Synergy List)

MS 80 (Laser Corporation Key Assumptions)

MS 81 (Feb. 6, 1998 Project Laser Proposed Summary Transaction Terms)

MS 83 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 84 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

MS 85 (Feb. 1998 Discussion Materials)

MS 88 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

MS 93 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"))

MS 104 (Dec. 8, 1997 Sunbeam/Coleman Comparisons)

MS 105 (Dec. 10, 1997 Sunbeam/Coleman Comparisons)

MS 106 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 107 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 112 (Feb. 25, 1998 CSFB Draft Materials Prepared for the Board of Directors)

NOT A CERTIFIED COPY

011776

MS 115 (May 11, 1998 "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00 Range Before Charges, 1999 EPS in $2.00 Range")

MS 117 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement"))

MS 118 (Feb. 27, 1998 Coleman Board of Directors Meeting Minutes)

MS 119 (Jan. 2, 2004 CPH's Resp. to Andersen's Mot. to Compel Prod. of Docs. Re The Coleman Co. ¶ 7 *CPH v. Arthur Andersen*, No. 01-06062AN (15th Jud. Dist. Fla.))

VOLUME 2

MS Exhibits:

MS 133 (Feb. 4, 1998 Confidentiality Agreement)

MS 134 (Feb. 23, 1998 Confidentiality Agreement)

MS 138 (Feb. 6, 1998, "Did Al Show His Hand Too Soon?," PaineWebber)

MS 165 (Dec. 11, 1997 Sunbeam Quarterly Earnings Comparison)

MS 166 (March 19, 1998 Offering Memorandum)

MS 169 (Dec. 10, 1997 Engagement Letter)

MS 172 (Feb. 27, 1997 CPH Consent of Directors)

MS 204 (Jan 29, 1998 Analyst Report)

MS 206 (Jan. 29, 1998 "Sunbeam Posts Profit Below Forecasts, A Stumble That Sends Stock Down 9.5%)

MS 208 (March 6, 1998 Sunbeam 10-K Annual Report for 1997)

MS 211 (March 19, 1988 Bloomberg Report)

MS 215 (March 20, 1998 "Sunbeam Shares Drop on Expected Shortfall in Sales")

MS 220 (Apr. 3, 1998 Paine Webber Analyst Report)

MS 224 (Dec. 15, 1997 Dunlap Employment Contract)

MS 230 (Feb. 25, 1998 CSFB Investment Banking Committee Memo)

MS 237 (March 2, 1998 Press Release)

MS 241 (May 15, 1997 Coleman Escrow Corporation Offering Memorandum)

MS 243 (March 20, 1998 Ernst & Young Comfort Letter)

MS 244 (June 14, 1998 Schedule 13D, MAFCO Holdings Inc.)

MS 251 (March 23, 1998 1997 Coleman Form 10K Annual Report)

MS 278 (March 29, 1998 Registration Rights Agreement between Sunbeam Corporation and Coleman (Parent) Holdings, Inc.)

NOT A CERTIFIED COPY

011777

MS 279 (Dec. 6, 1999 Notice of Merger)

MS 282 (Nov. 25, 1998 Sunbeam Form 10Q/A)

MS 288 (June 21, 2000 "Ron Perelman," CigarAficianado.com)

MS 289 (Feb. 6, 2001 Voluntary Petition, *In re Sunbeam*, 01-40291 (Bankr. S.D.N.Y.))

MS 338 (June 26, 1998 Sunbeam Update for Bank Lenders)

MS 340 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 374 (May 7, 1998 Wachtell letter)

MS 398 (Apr. 17, 1998 "Coleman's Levin profits by selling stock after sale to Sunbeam")

MS 423 (Feb. 27, 1998 CLN Holdings Unanimous Written Consent of the Board of Directors)

MS 424 (Feb. 27, 1998 Coleman Worldwide Corporation Consent of Directors in Lieu of Board of Directors' Meeting)

MS 431 (*Mean Business: How I Save Bad Companies and Make Good Companies Great*)

MS 440 (March 3, 1998 Index of Information)

MS 442 (Aug. 2, 2000 Levin Tr.)

MS 520 (March 30, 1998 Credit Agreement)

MS 521 (Apr. 6, 1998 Sunbeam Proxy Statement)

MS 522 (June 25, 1998 "Sunbeam Delays SEC Filing Related to Debentures")

MS 523 (June 15, 1998 "Sunbeam Board Terminates Al Dunlap as Chairman and CEO")

CPH Exhibits:

CPH 70 (Sept. 5, 1997 Engagement Letter)

CPH 133 (March 20, 1998 Leveraged Finance Committee Memo)

VOLUME 3

Depositions:

Jan. 15, 2004 Bornstein Dep.

Aug. 27, 2004 Burchill Dep.

Oct. 8, 2004 Clark Dep.

June 24,2004 Drapkin Dep.

July 8, 2004 Duffy Dep.

Sept. 28, 2004 Emmerich Dep.

Aug. 4, 2004 Engelman Dep.

NOT A CERTIFIED COPY

011778

Nov. 22, 2004 Freed Dep.

Feb. 13, 2004 Fuchs Dep.

Nov. 19, 2004 Gittis Dep.

June 4, 1999 Harlow Tr., *In re Sunbeam*, No. HO-3433 (SEC)

Dec. 1-2, 2004 Levin Dep.

June 18, 2004 Lurie Dep.

Nov. 2-3, 2004 Maher Dep.

VOLUME 4

Depositions:

Sept. 14, 2004 Moran Dep.

Aug. 30-Sept. 1, 2004 Nesbitt Dep.

Apr. 27, 2004 Page Dep.

Nov. 17-18, 2004 Perelman Dep.

Nov. 23, 2004 Porat Dep.

Nov. 16, 2004 Rankin Dep.

July 8, 2004 Salig Dep.

June 25, 2004 Schwartz Dep.

June 8 & July 28, 2004 Shapiro Dep.

July 7, 2004 Slotkin Dep.

May 12, 2004 Slovin Dep.

Feb. 24, 2004 Smith Dep.

May 25, 2004 Stack Dep.

Dec. 4, 2003 Strong Dep.

Sept. 15, 2003 Tyree Dep.

NOT A CERTIFIED COPY

011779

Coleman

The COLEMAN COMPANY, INC.

February 4, 1998

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

Gentlemen:

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

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

NOT A CERTIFIED COPY

0117821

MS 133
5-12-01 WDB

1/4/98

02/04/98 00:54 DAVID C FANNIN + 9212723597 NO.837 002
02/04/98 10:06 NO.016 002

CONFIDENTIAL
SASMF 17741
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0642925
16div-019023

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

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

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

NOT A CERTIFIED COPY

011783

02/04/98 08:54 DAVID C FANNIN → 9121273535397 NO.837 P03
02/04/98 10:05 NO.016 P04

CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
SASMF 17742
CPH0642926
16div-019024

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

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

NOT ACTUAL SIZE

011784

02/04/98 08:55 DAVID C FANNIN - 9212723597 NO 837 D04
02/04/98 10:06 NO.016 D05

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

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

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

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

011785

NOT A CERTIFIED COPY

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

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

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

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

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

011786

2/4/98

NOT A CERTIFIED COPY

DAVID C FANNIN → 9121273535397 09:56 02/04/98
NO.857 P06
NO.016 P07
10:06 36 02 '98

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

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

011787

2/4/98

NOT ACCEPTED

02/04/98 09:56 DAVID C FANNIN - 9212727535597 NO.837 007
02/04/98 10:01 NO.816 008

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

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

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

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

NOT A CERTIFIED COPY

011788

02/04/98 10:06 NO.816 009
02/04/98 00:57 DOUID C FANNIN → 9121273S1597 NO.837 008

CONFIDENTIAL
SASMF 17747
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0642931
16div-019029

an inconvenient forum.

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

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

Very truly yours,

THE COLEMAN COMPANY, INC.

By: _____
Name: Paul Shapiro
Title: SVP

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

SUNBEAM CORPORATION

By: _____
David C. Fannin
Executive Vice President &
General Counsel

NOT A CERTIFIED COPY

011789

1/4/98

02/04/98 00:58 DAVID C FANNIN → 9212727535597 NO.837 P09
02/04/98 10:06 NO.815 P10

CONFIDENTIAL

SASMF 17748

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0642932

16div-019030

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

February 23, 1998

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

Gentlemen:

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

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

NOT A CERTIFIED COPY

011791

CP 039437
CONFIDENTIAL

MS 134B
5-1204 WDB

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

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

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

NOT A CERTIFIED COPY

011792

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

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

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

NOT A CERTIFIED COPY

011793

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

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

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

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

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

NOT A CERTIFIED COPY

011794

Representative or employee of the Company.

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

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

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

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

NOT A CERTIFIED COPY

011795

CP 039441
CONFIDENTIAL

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

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

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

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

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

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

NOT A CERTIFIED COPY

011796

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

Very truly yours,

SUNBEAM CORPORATION

By:_____
Name:
Title:

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

THE COLEMAN COMPANY, INC.

By:_____

NOT A CERTIFIED COPY

011797

CP 039443
CONFIDENTIAL

Household Products

PaineWebber

Sunbeam

Did Al show his hand too soon?

Buy

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

Investment opinion

We continue to closely monitor Sunbeam's aggressive balance sheet management as well as the attainability of the company's international goals. While Sunbeam dismisses its high inventory and receivables levels as necessary "evils" to support its aggressive growth goals, we note that its strategy leaves little margin for error in an industry that oftentimes faces errors outside of its control (weather, economic cycles). On the international front, we have always modeled for slower growth than Sunbeam has internally modeled for, but we no longer believe there is much, if any, upside to our more conservative stance. We are also bothered by the departure of Dixon Thayer, VP of Sunbeam's International business, only one year into the international ramp-up. Thayer's as well as some other departures at the VP level have been attributed to the company's ongoing refinement. We find the timing to be a little suspect. While some "warning signs" persist and some others have cropped up, we believe this has already been reflected in Sunbeam's stock price, down nearly 25% since it reported its third quarter 1997 earnings in late October. At present, Sunbeam needs some new, positive news to stop its steady decline. This could come in the form of an acquisition announcement, as Chairman Al Dunlap has made it clear he intends to close an acquisition in the first half of 1998. At 19.0x our 1998 estimate of $1.95, we believe there is limited downside in Sunbeam shares at this point and the consummation of an accretive transaction could give the shares a much-needed boost.

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

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

February 6, 1998
SOC0206 AS

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

NOT A CERTIFIED COPY

011799

MS 138
5-12-04 WDS

MF 02957

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1327714

16div-019038

Table 1

Fourth quarter snapshot

Dollars in millions, except per share data

	Income Statement					
	Year-over-Year Comparison			Sequential Comparison		
	4Q97	4Q96	Pct. Change	4Q97	3Q97	Pct. Change
Net Sales	338.1	268.9	25.7%	338.1	289.0	17.0%
Cost of Goods Sold	238.7	217.0	10.0%	238.7	200.2	19.2%
Gross Profit	99.4	51.9	91.5%	99.4	88.8	11.9%
SG&A Expenses	32.7	51.6	(36.6%)	32.7	33.9	(3.5%)
Operating Expenses	32.7	51.6	(36.6%)	32.7	33.9	(3.5%)
Operating Income	66.7	0.3	22133.3%	66.7	54.9	21.5%
Interest expense and other, net	4.1	4.0	2.5%	4.1	1.5	173.3%
Total Other	4.1	4.0	2.5%	4.1	1.5	173.3%
Pretax Income	62.6	(3.7)		62.6	53.4	
Taxes	20.9	(1.5)		20.9	18.9	
Net Income Cont. Opers.	41.7	(2.2)	NM	41.7	34.5	20.9%
Earning (loss) from discont. oper. net	0.0	(11.9)		0.0	0.0	
Net Income	$41.7	($14.1)		$41.7	$34.5	
EPS Cont. Opers.-prlm. (PW est. was $0.48)	$0.47	($0.03)	NM	$0.47	$0.39	21.0%
Avg. Com. Shs.-diluted	88.4	84.1	5.1%	88.4	88.2	0.2%

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

Source: PaineWebber Inc. and company reports.

	Balance Sheet					
	Versus Year-ended 1996			Sequential Comparison		
	4Q97	1996	Pct. Change	4Q97	3Q97	Pct. Change
ASSETS						
Current assets:						
Cash & equivalents	52.4	11.5	355.7%	52.4	22.8	129.8%
Receivables, net	295.5	213.4	38.5%	295.5	309.1	-4.4%
Inventories	256.2	162.3	57.9%	256.2	290.9	-11.9%
Net assets of discontinued ops.	0.0	102.8	-100.0%	0.0	2.9	-100.0%
Deferred income taxes	36.7	93.7	-60.8%	36.7	56.8	-35.4%
Prepaid exp. & other current assets	17.2	40.4	-57.4%	17.2	10.0	72.0%
Total current assets	658.0	624.1	5.4%	658.0	692.5	-5.0%
PP&E, net	240.9	220.1	9.5%	240.9	229.2	5.1%
Trademarks and tradenames, net	194.4	200.3	-2.9%	194.4	195.9	-0.8%
Other assets	27.0	28.2	-4.3%	27.0	27.5	-1.8%
	1,120.3	1,072.7	4.4%	1,120.3	1,145.1	-2.2%
LIABILITIES & SHAREHOLDERS' EQUITY						
Current liabilities:						
Short-term & curr. portion of LT debt	0.0	0.9	-100.0%	0.0	0.7	-100.0%
Accounts payable	105.6	107.3	-1.6%	105.6	132.7	-20.4%
Restructuring accrual	10.9	63.8	-82.9%	10.9	20.1	-45.8%
Other current liabilities	81.6	99.5	-18.0%	81.6	92.5	-11.8%
Total current liabilities	198.1	271.5	-27.0%	198.1	246.0	-19.5%
Long-term debt	194.6	201.1	-3.2%	194.6	199.9	-2.7%
Deferred income taxes	54.6	52.3	4.4%	54.6	55.9	-2.3%
Non-operating and other LT liabilities	141.1	152.5	-7.5%	141.1	145.5	-3.0%
Shareholders' equity	531.9	395.3	34.6%	531.9	497.8	6.9%
	1,120.3	1,072.7	4.4%	1,120.3	1,145.1	-2.2%

Source: PaineWebber Inc. and company reports.

NOT A CERTIFIED COPY

0011800

Fourth quarter EPS hits low end of range

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

Sales strong, led by grills

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

20% operating margin—almost there

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

What about Phase III?

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

NOT A CERTIFIED COPY

011801

CONT 854

PaineWebber

Table 2

Sunbeam quarterly income statement

Dollars in millions, except per share data

	1996A	Q197A	Q297A	Q397A	Q497A	1997A	Q198E	Q298E	Q398E	Q498E	1998E	1999E
Net sales:												
U.S.	$804.2	$201.5	$230.1	$229.0	$268.1	$928.7	$227.4	$294.6	$262.5	$313.2	$1,097.7	$1,222.0
% growth						15.5%	12.9%	28.0%	14.6%	16.8%	18.2%	11.3%
International	180.0	52.0	57.5	60.0	70.0	239.5	65.0	80.0	96.0	112.0	353.0	500.0
% growth						33.1%	25.0%	39.1%	60.0%	60.0%	47.4%	41.7%
Total sales	$984.3	$253.5	$287.6	$289.0	$338.1	$1,168.2	$292.4	$374.6	$358.5	$425.2	$1,450.7	$1,722.0
% y-o-y sales growth	*-3.2%*	*10.3%*	*13.3%*	*24.7%*	*25.7%*	*18.7%*	*15.4%*	*30.2%*	*24.1%*	*25.8%*	*24.2%*	*18.7%*
% of annual sales	100.0%	21.7%	24.6%	24.7%	28.9%	100.0%	20.2%	25.8%	24.7%	29.3%	100.0%	100.0%
Cost of goods sold	808.3	185.7	213.1	200.2	238.7	837.7	204.7	258.4	240.2	289.1	992.5	1162.4
Gross profit	176.0	67.8	74.5	88.8	99.4	330.5	87.7	116.1	118.3	136.1	458.2	559.7
% margin	*17.9%*	*26.7%*	*25.9%*	*30.7%*	*29.4%*	*28.3%*	*30.0%*	*31.0%*	*33.0%*	*32.0%*	*31.6%*	*32.5 %*
SG&A expenses	171.7	33.0	31.6	33.9	32.7	131.2	40.9	50.6	44.8	46.8	183.1	215.3
	17.4%	*13.0%*	*11.0%*	*11.7%*	*9.7%*	*11.2%*	*14.0%*	*13.5%*	*12.5%*	*11.0%*	*12.6%*	*12.5 %*
Operating profit	$4.3	$34.8	$42.9	$54.9	$66.7	$199.3	$46.8	$65.5	$73.5	$89.3	$275.1	$344.4
% margin	*0.4%*	*13.7%*	*14.9%*	*19.0%*	*19.7%*	*17.1%*	*16.0%*	*17.5%*	*20.5%*	*21.0%*	*19.0%*	*20.0 %*
Interest expense (income)	17.3	2.0	3.0	2.8	4.6	12.4	2.0	3.0	3.0	4.0	12.0	8.0
Other expense (income), net	0	0.1	-0.5	-1.3	-0.5	-2.2	-0.5	-0.5	-0.5	-0.5	-2.0	-2.0
Pretax income	-13.0	32.7	40.4	53.4	62.6	189.1	45.3	63.0	71.0	85.8	265.1	338.4
% margin	*-1.3%*	*12.9%*	*14.1%*	*18.5%*	*18.5%*	*16.2%*	*15.5%*	*16.8%*	*19.8%*	*20.2%*	*18.3%*	*19.7 %*
Income tax	-4.5	12.1	14.2	18.9	20.9	66.1	15.9	22.1	24.8	30.0	92.8	116.8
% tax rate	*34.7%*	*37.0%*	*35.1%*	*35.4%*	*33.4%*	*34.9%*	*35.0%*	*35.0%*	*35.0%*	*35.0%*	*35.0%*	*34.5 %*
Net income (continuing operations)	-8.5	$20.6	$26.2	$34.5	$41.7	$123.0	$29.4	$41.0	$46.1	$55.8	$172.3	$221.7
% margin	*-0.9%*	*8.1%*	*9.1%*	*11.9%*	*12.3%*	*10.5%*	*10.1%*	*10.9%*	*12.9%*	*13.1%*	*11.9%*	*12.9 %*
Extraordinary items:												
Restructuring	-100.8											
Special charges	-87.8											
Earnings from discontinued operations	0.8	-13.7										
Loss on sale of discontinued operations	-32.4											
Total net income	-228.7	6.9	26.2	34.5	41.7	109.3	29.4	41.0	46.1	55.8	172.3	221.7
EPS (continuing operations)	-$0.10	$0.24	$0.30	$0.39	$0.47	$1.41	$0.33	$0.46	$0.52	$0.63	$1.95	$2.50
EPS (reported)	-$2.76					*Growth*	*40.5%*	*54.6%*	*33.3%*	*33.6%*	*38.5%*	*28.6%*
Shares outstanding	82.9	87.0	87.5	88.2	88.4	87.5	88.5	88.5	88.5	88.5	88.5	88.5

Source: PaineWebber Inc. estimates and company reports.

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

* Numbers may not foot precisely to management's commentary due to estimated allocation of outlet sales (around 1% of Q3 sales and 2% of sales in Q4) and rounding.

Source: PaineWebber Inc. estimates and company reports.

META CERTIFIED COPY

011802

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

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

Valuation

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

Table 3
Consumer non-durable companies' valuations

Company	2/4 Close	98E*	99E*	98 P/E	99 P/E
Black & Decker	$48 5/8	$2.6 5	$3.26	18.3x	14.9x
Fortune Brands	$38 1/8	$1.7 0	$1.98	22.4x	19.3x
Newell	$42 1/16	$2.0 9	$2.38	20.1x	17.7x
Rubbermaid	$24 ¾	$1.1 8	$1.49	21.0x	16.6x
			Mean	20.5x	17.1x
Sunbeam	$37		$1.95	$2.50	19.0x	14.8x

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

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

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

Risks

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

Additional information is available upon request.

Prices of companies mentioned as of 2/4/98:
Black & Decker[1] BDK $48 5/8
Clorox[1] CLX $78 1/2
Honeywell[1] HON $73 1/4
Maytag[1] MYG $40 1/4
Newell NWL $42 1/16
Rubbermaid RBD $24 3/4
Sunbeam[2] SOC $37
Tupperware TUP $26 7/16
Whirlpool[1] WHR $59 7/8

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

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

NOT A CERTIFIED COPY

011803

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

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

Table 4

Frequently mentioned Sunbeam targets that have recently announced restructurings

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

Source: Company press releases and reports.

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

Table 5

Relative stock price performance at announcement dates

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

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

Table 6

Relative Valuation

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

* First Call mean estimates as of February 5, 1998.

\# PaineWebber Inc. estimates.

NOT A CERTIFIED COPY

011804

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

	1994	1995	Q196	Q296	Q396	Q496	1996	Q197	Q297	Q397	Q497	1997	4Q CHG.
CLOROX	50.4	63.2	69.7	73.9	76.3	76.2	74.6	75.9	74.2	71.5	73.2	73.5	-3.0
BRITA	50.4	63.2	69.7	73.9	76.3	76.2	74.6	75.9	74.2	71.5	73.2	73.5	-3.0
RECOVERY ENGINEERING		1.8	3.0	3.1	2.8	7.8	4.6	5.0	9.0	12.2	15.1	10.9	7.3
PUR		1.8	3.0	3.1	2.8	7.8	4.6	5.0	9.0	12.2	14.2	10.6	6.4
PUR PLUS (a)											0.8	0.3	0.8
TELEDYNE WATER PIK	26.4	19.8	15.5	13.4	12.1	9.4	12.1	11.2	8.7	8.5	5.1	8.0	-4.3
TELEDYNE INSTA PURE	16.6	11.9	7.9	6.7	6.1	5.3	6.3	6.1	5.4	5.2	3.1	4.8	-2.2
TELEDYNE WATER PIK	9.0	5.2	4.0	2.9	2.7	2.0	2.8	3.0	2.2	2.2	1.5	2.2	-0.5
TELEDYNE WATERPIK POUR THRU		1.5	2.8	3.2	2.6	1.7	2.5	1.7	0.8	0.7	0.3	0.8	-1.4
INSTAPURE R 40	0.8	1.0	0.8	0.7	0.6	0.4	0.6	0.4	0.3	0.3	0.1	0.2	-0.3
TELEDYNE WATER PIK WATER FRESH		0.3											
OMNI CORP	11.5	8.4	7.0	6.1	6.1	4.0	5.5	4.5	4.2	4.2	2.8	3.8	-1.2
OMNI	10.2	7.6	6.5	5.7	5.8	3.7	5.2	4.3	4.0	4.2	2.7	3.7	-1.0
OMNI TOTAL II	1.3	0.9	0.5	0.4	0.3	0.3	0.3	0.2	0.2	0.1		0.1	-0.3
HONEYWELL											1.6	0.5	1.6
HONEYWELL (a)											1.6	0.5	1.6
HEALTH O METER (CULLIGAN JV)						0.4	0.1	0.4	1.4	1.2	0.8	1.0	0.4
HEALTH O METER						0.4	0.1	0.4	1.4	1.2	0.8	1.0	0.4
RUBBERMAID									0.2	0.7	0.6	0.4	0.6
RUBBERMAID (a)									0.2	0.7	0.6	0.4	0.6
AMETEK/PLYMOUTH PRODS DIV (CULLIGAN)								1.0	0.8	0.5	0.3	0.6	-0.3
KLEEN PLUS (a)								1.0	0.8	0.5	0.3	0.1	0.3
POLLENEX CORP	3.8	2.9	2.5	1.9	1.5	1.2	1.6	1.1	0.7	0.4	0.3	0.6	-0.9
POLLENEX	3.8	2.9	2.5	1.9	1.5	1.2	1.6	1.1	0.7	0.4	0.3	0.6	-0.9
INNOVA PURE WATER	2.0	2.6	2.0	1.4	1.0	0.5	1.1	0.5	0.4	0.4	0.2	0.4	-0.3
INNOVA CLEARWATER CHOICE	0.4	1.0	0.9	0.6	0.5	0.3	0.5	0.3	0.3	0.2	0.1	0.2	-0.2
INNOVA	1.6	1.5	1.2	0.7	0.5	0.2	0.5	0.2	0.2	0.1	0.1	0.1	-0.1
TOTAL CATEGORY ($ SIZE)	$34.2	$55.8	$17.8	$23.5	$26.0	$36.0	$103.4	$32.3	$37.6	$40.4	$50.4	$160.9	39.7%
FOOD	22.6	22.0	18.5	21.1	21.7	15.7	18.9	21.2	20.3	21.8	18.9	20.4	3.2
DRUG	12.9	17.8	17.7	14.1	15.7	19.8	17.1	16.9	15.5	14.4	17.7	16.2	-2.1
MASS	64.5	60.2	63.8	64.9	62.7	64.5	64.0	61.9	64.2	63.7	63.3	63.4	-1.2

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

NOT A CERTIFIED COPY

011805

Table 8

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

	1994	1995	Q196	Q296	Q396	Q496	1996	Q197	Q297	Q397	Q497	1997	4Q CHG.
INNOVA PURE WATER	4.79	4.11	4.02	4.10	4.04	4.02	4.05	4.00	3.99	4.16	4.17	4.07	3.8%
INNOVA CLEARWATER CHOICE	3.03	2.99	3.05	3.05	3.12	3.17	3.09	3.22	3.26	3.29	3.37	3.27	6.3%
INNOVA	5.69	5.33	5.16	5.81	5.78	6.33	5.61	6.49	6.36	7.06	7.14	6.68	12.8%
OMNI CORP	7.86	7.59	7.48	7.74	7.39	7.89	7.62	7.83	7.75	7.52	7.32	7.60	-7.2%
OMNI	7.08	6.85	7.03	7.31	7.04	7.40	7.19	7.52	7.49	7.40	7.28	7.42	-1.6%
OMNI TOTAL II	98.33	97.07	107.81	107.68	108.46	107.79	107.92	105.58	96.85	85.78	46.37	91.61	-57.0%
POLLENEX CORP	8.24	8.49	8.50	8.75	8.64	9.20	8.76	8.45	8.45	7.66	7.71	8.18	-16.2%
POLLENEX	8.24	8.49	8.50	8.75	8.64	9.20	8.76	8.45	8.45	7.66	7.71	8.18	-16.2%
TELEDYNE WATER PIK	10.82	10.20	9.74	9.55	9.38	9.06	9.41	9.30	8.99	9.11	8.82	9.07	-2.6%
TELEDYNE WATER PIK POUR THRU		8.97	7.86	8.07	7.76	7.84	7.89	7.11	6.16	6.16	6.22	6.54	-20.6%
TELEDYNE INSTA PURE	9.45	9.11	6.74	8.70	6.54	8.20	8.52	8.42	8.27	8.48	8.00	8.31	-2.5%
TELEDYNE WATER PIK	13.93	13.31	13.08	13.09	12.98	12.69	12.95	13.60	13.19	12.51	12.35	12.92	-2.6%
INSTAPURE R 40	21.12	28.87	32.53	30.45	30.76	22.28	28.42	22.05	20.10	15.63	13.10	18.23	-41.2%
TELEDYNE WATER PIK WATER FRESH		5.93											
HONEYWELL											10.37	10.37	
HONEYWELL (a)											10.37	10.37	
HEALTH O METER (CULLIGAN JV)						19.72	19.72	18.40	17.59	12.90	10.93	13.89	-44.6%
HEALTH O METER						19.72	19.72	18.40	17.59	12.90	10.93	13.89	-44.6%
RUBBERMAID									15.95	12.28	11.57	12.34	
RUBBERMAID (a)									15.95	12.28	11.57	12.34	
CLOROX	11.81	12.01	11.98	13.25	13.56	14.38	13.48	13.37	13.53	13.55	14.43	13.77	0.3%
BRITA	11.81	12.01	11.98	13.25	13.56	14.38	13.48	13.37	13.53	13.55	14.43	13.77	0.3%
AMETEK/PLYMOUTH PRODS DIV (CULLIGAN)								19.53	18.46	16.34	14.89	17.60	
KLEEN PLUS (a)								19.53	18.46	16.34	14.89	17.60	
RECOVERY ENGINEERING		34.16	31.14	29.64	27.76	28.19	28.63	23.11	20.05	20.57	23.72	21.94	-15.6%
PUR		34.16	31.14	29.64	27.76	28.19	28.63	23.11	20.05	20.57	23.32	21.76	-17.3%
PUR PLUS (a)											33.49	33.49	
CATEGORY AVERAGE	10.46	10.59	10.79	11.84	12.07	13.42	12.19	12.43	12.77	12.90	14.16	13.14	5.5%
FOOD	9.81	9.87	9.67	10.45	11.19	11.51	10.80	11.56	11.93	12.27	12.95	12.22	12.5%
DRUG	12.91	13.45	12.59	13.41	14.16	16.05	14.37	14.89	14.42	14.46	15.94	15.02	-0.7%
MASS	10.31	10.22	10.72	12.05	11.95	13.29	12.17	12.20	12.71	12.82	14.11	13.03	6.2%

(a) New product.

Source: Information Resources Inc. and PaineWebber estimates.

NOT A CERTIFIED COPY

February 6, 1998

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

The information contained herein is based on sources we believe to be reliable but its accuracy is not guaranteed. PaineWebber Incorporated and/or Mitchell Hutchins Asset Management Inc., affiliated companies and/or their officers, directors, employees or stockholders may at times have a position, including an arbitrage or option position, in the securities described herein and may sell to or buy them from customers. These companies may from time to time act as a consultant to a company being reported upon.
Copyright © 1998 by PaineWebber Incorporated, all rights reserved

011806

MF 02964

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM QUARTERLY EARNINGS COMPARISON

	Q1/96	Q2/96	Q3/96	Q4/96	Q1/97	Q2/97	Q3/97 ESTIMATE	Q4/97 ESTIMATE
Net Sales: US	NA	NA	NA	NA	201,500	230,100	229,000	266,700
International	NA	NA	NA	NA	52,000	57,500	60,000	72,000
Total	229,700	253,900	231,800	268,900	253,500	287,600	289,000	338,700
Cost of Goods Sold	181,600	206,700	203,000	217,000	185,700	213,100	200,200	233,700
Gross Profit	48,100	47,200	28,800	51,900	67,800	74,500	88,800	105,000
S,G&A	32,600	38,000	49,500	53,700	32,600	31,600	33,900	38,600
Operating Income	15,500	9,200	-20,700	-1,800	35,200	42,900	54,900	66,400
Qtr Revenues as % of Annual Sales	23.3%	25.8%	23.5%	27.3%	21.7%	24.6%	24.7%	29.0%
Rev Increase vs Prior Year Quarter					10.4%	13.3%	24.7%	26.0%
Rev Increase vs Prior Quarter		10.5%	-8.7%	16.0%	-5.7%	13.5%	0.5%	17.2%
Gross Profit Margin	20.9%	18.6%	12.4%	19.3%	26.7%	25.9%	30.7%	31.0%
S,G&A Expense	14.2%	15.0%	21.4%	20.0%	12.9%	11.0%	11.7%	11.4%
Operating Income %	6.7%	3.6%	-8.9%	-0.7%	13.9%	14.9%	19.0%	19.6%
Receivables	266,700	228,749	194,559	213,438	296,716	252,045	309,095	
Inventories	310,100	327,093	330,213	162,252	148,011	208,374	290,876	
Accounts Payable	125,300	104,225	70,072	107,319	100,648	136,489	132,686	
Net	451,500	451,617	454,700	268,371	344,079	323,930	467,285	

4th Quarter Issues:

* Jump in inventories supposedly relates to finished goods that SOC plans to ship in Oct/Nov.
* Also supposedly a result of initiatives to improve "on-time and complete" delivery record.
* Note that restructuring accrual balance at September was $20.1M vs $43.7M at year-end 96.
* Uptick in 3rd quarter receivables supposedly relates to 1/2 of quarter sales being shipped in September.
  - 77% of 3rd quarter sales were on net 60 days or better, 75% of September's sales were on net-30.
* Another concern has been international pipeline filling.

NOT A CERTIFIED COPY

MS 165 pre 8/31/07

CPH 1426297

808110

CP 038207
CONFIDENTIAL

16div-019046

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CASH VS. STOCK COMPARISON-NO COST SAVINGS

Pro Forma Income Statement:	ALL STOCK $26.00	ALL CASH $26.00
Sunbeam Pretax Income	275,700	275,700
Coleman Pretax Income	96,500	96,500
Less Incremental Goodwill	-28,505	-28,505
Less Incremental Interest Expense	0	-128,485
Pretax Income	343,695	215,210
Less Income Taxes	133,992	87,738
Net Income Before Cost Savings	209,703	127,473
EPS	$1.73	$1.49
(Dilution)/Accretion	-$0.32	-$0.56

NOT A CERTIFIED COPY

CPH 1426298

608110

CP 038208
CONFIDENTIAL

16div-019047

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

4:56 PM
12/10/97

	Sunbeam	Coleman
Stock Price	$39.00	$15.25
Shares Outstanding	85,471	53,424
Market Value	3,333,369	814,716
Plus Net Debt	177,712	469,550
Enterprise Value	3,511,081	1,284,266

	Sunbeam			Coleman			Using Sunbeam Margins
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Revenues	984,300	1,185,100	1,473,900	1,220,200	1,152,500	1,267,800	1,267,800
Cost of Goods Sold	808,300	840,400	1,016,000	884,500	805,800	862,100	873,930
Gross Profit	176,000	344,700	457,900	335,700	346,900	405,700	393,870
Operating Expenses	173,800	139,300	172,200	261,500	249,500	259,200	148,121
Operating Income	2,200	205,400	285,700	74,200	97,400	146,500	245,750
Amortization	0	0	0	10,500	11,500	12,000	12,000
Interest Expense	13,600	8,500	5,800	38,700	41,500	38,000	38,000
Other Expense	1,600	-1,200	4,200	1,200	0	0	0
Pretax Income	-13,000	198,100	275,700	23,800	44,400	96,500	195,750
Taxes	-4,800	70,500	102,300	10,800	14,300	35,900	72,823
Net Income	-8,200	127,600	173,400	13,000	30,100	60,600	122,927
Depreciation and Amortization	47,429	57,000	65,000	36,400	40,000	44,000	44,000
EBITDA	49,629	262,400	350,700	100,100	125,900	178,500	277,750
Less Capital Expenditures	75,336	58,000	71,000	34,300	26,000	40,000	40,000
EBITDA - Capital Expenditures	-25,707	204,400	279,700	65,800	99,900	138,500	237,750

	Sunbeam Multiples			Coleman Multiples			
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Enterprise Value/Revenues	3.6	3.0	2.4	1.1	1.1	1.0	1.0
Enterprise Value/EBITDA	70.7	13.4	10.0	12.8	10.2	7.2	4.6
Enterprise Value/EBITDA - Capex	NM	17.2	12.6	19.5	12.9	9.3	5.4
Enterprise Value/Operating Income	NM	17.1	12.3	17.3	13.2	8.8	5.2
Market Value/Net Income	NM	26.1	19.2	62.7	27.1	13.4	6.6

NOT A CERTIFIED COPY

CPH 426299

018110

CP 038209
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

	Sunbeam Margins			Coleman Margins		
	1996	1997E	1998E	1996	1997E	1998E
Gross Profit	17.9%	29.1%	31.1%	27.5%	30.1%	32.0%
Operating Expenses	17.7%	11.8%	11.7%	21.4%	21.6%	20.4%
Operating Income	0.2%	17.3%	19.4%	6.1%	8.5%	11.6%
EBITDA	5.0%	22.1%	23.8%	8.2%	10.9%	14.1%
EBITDA - Capex	-2.6%	17.2%	19.0%	5.4%	8.7%	10.9%
Other Data:						
Employees	12,000	6,000		7,000		
Manufacturing Plants	26	9		16		

NOT A CERTIFIED COPY

CPH 1426300

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Sunbeam Data:

Current Price	$39.00	
Shares Outstanding	85,471	
Market Value	3,333,369	
Net Debt	177,712	
Enterprise Value	3,511,081	
1998E EPS	$2.05	Goldman Est.
P/E Multiple	19.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	12.3	

Coleman Data:

Current Price	$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	30,137	32,876	35,616	38,356	41,095
Pro Forma SOC Shares	115,608	118,347	121,087	123,827	126,566
Pro Forma SOC Equity Value	4,508,697	4,615,545	4,722,393	4,829,241	4,936,089
M & F % Ownership	21.5%	22.9%	24.3%	25.6%	26.8%
Pro Forma SOC Enterprise Value	5,155,959	5,262,807	5,369,655	5,476,503	5,583,351
Pro Forma EPS:					
1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
PF (Dilution) With Cost Savings of: 40,000	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
PF (Dilution) With Cost Savings of: 60,000	$0.14	$0.07	$0.00	-$0.07	-$0.13

Pro Forma EPS Excluding Goodwill:

1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	$0.11	$0.06	$0.02	-$0.03	-$0.07
PF (Dilution) With Cost Savings of: 40,000	$0.34	$0.28	$0.23	$0.18	$0.13
PF (Dilution) With Cost Savings of: 60,000	$0.45	$0.39	$0.33	$0.28	$0.23

NOT A CERTIFIED COPY

CPH 1426301

218110

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share		$22.00	$24.00	$26.00	$28.00	$30.00
Pro Forma Enterprise Value/EBITDA - Capex Multiples:						
Current EV/1998 EBITDA - Capex		12.6	12.6	12.6	12.6	12.6
Pro Forma Multiple Without Cost Savings		12.3	12.6	12.8	13.1	13.4
Pro Forma Multiple With Savings	40,000	11.3	11.5	11.7	12.0	12.2
Pro Forma Multiple With Savings	60,000	10.8	11.0	11.2	11.5	11.7

NOT A CERTIFIED COPY

CPH 1426302

CP 038212
CONFIDENTIAL

16div-019051

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
			Without Cost Savings		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	133,992	133,992	133,992	133,992	133,992
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	$1.86	$1.79	$1.73	$1.67	$1.61
(Dilution)/Accretion	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
EPS Before Goodwill	$2.16	$2.11	$2.07	$2.02	$1.98
(Dilution)/Accretion	$0.11	$0.06	$0.02	-$0.03	-$0.07
			With Cost Savings of: 40,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	148,392	148,392	148,392	148,392	148,392
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	$2.08	$2.01	$1.94	$1.88	$1.82
(Dilution)/Accretion	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
EPS Before Goodwill	$2.39	$2.33	$2.28	$2.23	$2.18
(Dilution)/Accretion	$0.34	$0.28	$0.23	$0.18	$0.13
			With Cost Savings of: 60,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	155,592	155,592	155,592	155,592	155,592
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	$2.19	$2.12	$2.05	$1.98	$1.92
(Dilution)/Accretion	$0.14	$0.07	-$0.00	-$0.07	-$0.13
EPS Before Goodwill	$2.50	$2.44	$2.38	$2.33	$2.28

NOT A CERTIFIED COPY

CPH 1426303

CP 038213
CONFIDENTIAL

16div-019052

OFFERING MEMORANDUM

STRICTLY CONFIDENTIAL

$2,014,000,000

Sunbeam.

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED DEBENTURES DUE 2018

The Debentures are convertible at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock, $0.01 par value (the "Common Stock"), at a conversion rate of 6.575 shares per $1,000 principal amount at maturity. The conversion rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment in certain events. See "Description of Debentures—Conversion of Debentures." The Company's Common Stock is listed on the New York Stock Exchange under the symbol "SOC." The reported last sale price of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape on March 19, 1998 was $45 5/16 per share.

The Debentures are being issued at an original price of $372.43 per $1,000 principal amount at maturity (the "Issue Price"), which represents an original issue discount of 62.757% from the principal amount thereof payable at maturity (the "Original Issue Discount"). The Issue Price represents a yield to maturity of 5.0% per annum (computed on a semi-annual bond equivalent basis).

Prior to March 25, 2003, the Debentures are not redeemable at the option of the Company. On or after such date, the Debentures are redeemable on at least 30 days' notice at the option of the Company, in whole or in part at any time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."

The Debentures may be purchased by the Company, at the option of the holder, as of March 25, 2003, March 25, 2008 and March 25, 2013 for purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. Subject to certain conditions, the Company may elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder." The Debentures may also be redeemed at the option of the holder if there is a Fundamental Change (as defined) at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances as described herein. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change." The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions (as defined), the Bank Financing (as defined), the offering of the Debentures and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the total indebtedness and other liabilities of the Company's subsidiaries would have been approximately $731 million.

The Debentures are eligible for trading in Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") Market.

SEE "RISK FACTORS" BEGINNING ON PAGE 12 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY PROSPECTIVE PURCHASERS.

THE DEBENTURES AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THE DEBENTURES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. ACCORDINGLY, THE DEBENTURES MAY BE OFFERED AND SOLD ONLY TO (i) "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A AND (ii) A LIMITED NUMBER OF OTHER INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT, PRIOR TO THEIR PURCHASE OF THE DEBENTURES, DELIVER TO THE INITIAL PURCHASER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. FOR A DESCRIPTION OF CERTAIN RESTRICTIONS ON RESALE OR TRANSFER, SEE "TRANSFER RESTRICTIONS."

PRICE 37.243% AND ACCRUED ORIGINAL ISSUE DISCOUNT, IF ANY

The Company has granted Morgan Stanley & Co. Incorporated (the "Initial Purchaser") an option to purchase up to an additional $302,100,000 aggregate principal amount at maturity of Debentures to cover over-allotments, if any. See "Plan of Distribution."

The Debentures are offered, subject to prior sale, when, as and if accepted by the Initial Purchaser and subject to approval of certain legal matters by Davis Polk & Wardwell, counsel for the Initial Purchaser. It is expected that delivery of the Debentures will be made on or about March 25, 1998 at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in immediately available funds.

MORGAN STANLEY DEAN WITTER

March 19, 1998

NOT CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MS 166
5-12-04 WDB

MF 01732

16div-019053
CPH 1326487

RISK FACTORS

An investment in the Debentures offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors, in addition to the other information set forth in this Offering Memorandum, in connection with an investment in the Debentures offered hereby.

Substantial Leverage; Ability to Service Indebtedness. Following the Acquisitions, the Bank Financing and the Offering, the Company will be highly leveraged, with indebtedness that is very substantial in relation to its shareholders' equity. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997, the Company's aggregate outstanding indebtedness would have been $2,044 million and the Company's shareholders' equity would have been $1,278 million. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not restrict the ability of the Company to incur additional Indebtedness. See "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "The Acquisitions," "Description of Other Indebtedness" and "Description of Debentures."

The Company's high degree of leverage could have important consequences to holders of the Debentures, including but not limited to the following: (i) the Company's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired in the future; (ii) a substantial portion of the Company's cash flow from operations must be dedicated to the payment of principal and interest on its indebtedness, thereby reducing the funds available to the Company for its operations and other purposes; (iii) the Company may be substantially more leveraged than certain of its competitors, which may place the Company at a competitive disadvantage; (iv) the Company may be hindered in its ability to adjust rapidly to changing market conditions; and (v) the Company's substantial degree of leverage could make it more vulnerable in the event of a downturn in general economic conditions or its business.

The Company's ability to repay or to refinance its obligations with respect to its indebtedness will depend on its future financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to financial, business and other factors, many of which are beyond the Company's control. These factors could include operating difficulties, increased operating costs, product pricing pressures, the response of competitors, and delays in implementing strategic projects. The Company's ability to meet its debt service and other obligations will depend in significant part on the extent to which the Company can implement its business strategy and successfully integrate the Acquisitions. There can be no assurance that the Company will be able to implement its strategy fully, that the anticipated results of its strategy will be realized or that the Acquisitions will be successfully integrated.

If the Company's cash flow and capital resources are insufficient to fund its debt service obligations, the Company may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital, or to refinance or restructure its debt. There can be no assurance that the Company's cash flow and capital resources will be sufficient for payment of principal of, and premium, if any, and interest on, its indebtedness in the future, or that any such alternative measures would be successful or would permit the Company to meet its scheduled debt service obligations. In addition, because the Company's obligations under the New Credit Facility will bear interest at floating rates, an increase in interest rates could adversely affect, among other things, the Company's ability to meet its debt service obligations.

Holding Company Structure; Subordination. The Debentures will be exclusively the obligations of Sunbeam Corporation and not of any of its subsidiaries. The Company is a holding company that conducts substantially all of its operations through its subsidiaries. As a holding company, the Company holds no significant assets other than its investments in and advances to its subsidiaries. The Company is, therefore, dependent upon its receipt of sufficient funds from its subsidiaries to meet its own obligations, including its obligation to pay the accreted value of the Debentures upon maturity or earlier redemption or repurchase. The ability of the Company's subsidiaries to pay dividends or to make other payments or advances to the Company will depend on the operating results of its subsidiaries and any restrictions on paying such dividends or making such payments as may be applicable to such subsidiaries, including those expected to be contained in the New Credit Facility.

NOT A CERTIFIED COPY

0118117

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01743

16div-019054
CPH 1326498

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share amounts)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Net sales	$1,168,182	$ 984,236	$1,016,883
Cost of goods sold	837,683	900,573	809,130
Selling, general and administrative expense	131,056	214,029	137,508
Restructuring, impairment and other costs	—	154,869	—
Operating earnings (loss)	199,443	(285,235)	70,245
Interest expense	11,381	13,588	9,437
Other (income) expense, net	(1,218)	3,738	173
Earnings (loss) from continuing operations before income taxes	189,280	(302,561)	60,635
Income taxes (benefit):			
Current	8,369	(28,062)	(2,105)
Deferred	57,783	(77,828)	25,146
	66,152	(105,890)	23,041
Earnings (loss) from continuing operations	123,128	(196,671)	37,594
Earnings from discontinued operations, net of taxes	—	839	12,917
Loss on sale of discontinued operations, net of taxes	(13,713)	(32,430)	—
Net earnings (loss)	$ 109,415	$(228,262)	$ 50,511
Earnings (loss) per share of common stock from continuing operations:			
Basic	$ 1.45	$ (2.37)	$ 0.46
Diluted	1.41	(2.37)	0.45
Net earnings (loss) per share of common stock:			
Basic	$ 1.29	$ (2.75)	$ 0.62
Diluted	1.25	(2.75)	0.61
Weighted average common shares outstanding:			
Basic	84,945	82,925	81,626
Diluted	87,542	82,925	82,819

NOT A CERTIFIED COPY

011318

See Notes to Consolidated Financial Statements.

MF 01806

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CRR1026361 16div-019055

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	December 28, 1997	December 29, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$ 52,378	$ 11,526
Receivables, net	295,550	213,438
Inventories	256,180	162,252
Net assets of discontinued operations and other assets held for sale	—	102,847
Deferred income taxes	36,706	93,689
Prepaid expenses and other current assets	17,191	40,411
Total current assets	658,005	624,163
Property, plant and equipment, net	240,897	220,088
Trademarks and trade names, net	194,372	200,262
Other assets	27,010	28,196
	$1,120,284	$1,072,709
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$ 668	$ 921
Accounts payable	105,580	107,319
Restructuring accrual	10,938	63,834
Other current liabilities	80,913	99,509
Total current liabilities	198,099	271,583
Long-term debt	194,580	201,115
Other long-term liabilities	141,109	152,451
Deferred income taxes	54,559	52,308
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (issued 89,984,425 and 88,441,479 shares)	900	884
Paid-in capital	483,384	447,948
Retained earnings	141,134	35,118
Other	(30,436)	(25,310)
	594,982	458,640
Treasury stock, at cost (4,454,394 and 4,478,814 shares)	(63,045)	(63,388)
Total shareholders' equity	531,937	395,252
	$1,120,284	$1,072,709

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Dollars in thousands, except per share amounts)

	Common Stock	Paid-in Capital	Retained Earnings	Other (Note 2)	Treasury Stock
Balance at January 1, 1995	$932	$461,876	$285,990	$(20,118)	$(174,070)
Net earnings	—	—	50,511	—	—
Common dividends ($.04 per share)	—	—	(3,268)	—	—
Exercise of stock options	20	17,013	—	—	—
Amortization of unearned compensation	—	—	—	582	—
Retirement of treasury shares	(74)	(37,103)	(66,535)	—	103,712
Purchase of common stock for treasury	—	—	—	—	(13,091)
Minimum pension liability	—	—	—	(199)	—
Translation adjustments	—	—	—	(5,145)	—
Balance at December 31, 1995	878	441,786	266,698	(24,880)	(83,449)
Net loss	—	—	(228,262)	—	—
Common dividends ($.04 per share)	—	—	(3,318)	—	—
Exercise of stock options	6	7,313	—	—	—
Grant of restricted stock	—	(1,120)	—	(14,346)	15,466
Amortization of unearned compensation	—	—	—	7,707	—
Minimum pension liability	—	—	—	4,963	—
Retirement and sale of treasury shares	—	(31)	—	—	4,595
Translation adjustments	—	—	—	1,246	—
Balance at December 29, 1996	884	447,948	35,118	(25,310)	(63,388)
Net earnings	—	—	109,415	—	—
Common dividends ($.04 per share)	—	—	(3,399)	—	—
Exercise of stock options	16	34,680	—	—	—
Amortization of unearned compensation	—	—	—	5,322	—
Minimum pension liability	—	—	—	(9,709)	—
Other stock issuances	—	756	—	—	343
Translation adjustments	—	—	—	(739)	—
Balance at December 28, 1997	$900	$483,384	$141,134	$(30,436)	$ (63,045)

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

011820

MF 01808

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CP16dv019057

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Operating activities:			
Net earnings (loss)	$ 109,415	$ (228,262)	$ 50,511
Adjustments to reconcile net earnings (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	38,577	47,429	44,174
Restructuring, impairment and other costs	—	154,869	—
Other non-cash special charges	—	128,800	—
Loss on sale of discontinued operations, net of taxes	13,713	32,430	—
Deferred income taxes	57,783	(77,828)	25,146
Increase (decrease) in cash from changes in working capital:			
Receivables, net	(84,576)	(13,829)	(4,499)
Inventories	(100,810)	(11,651)	(4,874)
Accounts payable	(1,585)	14,735	9,245
Restructuring accrual	(43,378)	—	—
Prepaid expenses and other current assets and liabilities	(9,004)	2,737	(8,821)
Income taxes payable	52,844	(21,942)	(18,452)
Payment of other long-term and non-operating liabilities	(14,682)	(27,089)	(21,719)
Other, net	(26,546)	13,764	10,805
Net cash provided by (used in) operating activities	(8,249)	14,163	81,516
Investing activities:			
Capital expenditures	(58,258)	(75,336)	(140,053)
Decrease in investments restricted for plant construction	—	—	45,755
Proceeds from sale of divested operations and other assets	90,982	—	—
Purchase of businesses	—	—	(13,053)
Other, net	—	(860)	—
Net cash provided by (used in) investing activities	32,724	(76,196)	(107,351)
Financing activities:			
Net borrowings under revolving credit facility	5,000	30,000	40,000
Issuance of long-term debt	—	11,500	—
Payments of debt obligations	(12,157)	(1,794)	(5,417)
Proceeds from exercise of stock options	26,613	4,684	9,818
Purchase of common stock for treasury	—	—	(13,091)
Sale of treasury stock	—	4,578	—
Payments of dividends on common stock	(3,399)	(3,318)	(3,268)
Other financing activities	320	(364)	(264)
Net cash provided by financing activities	16,377	45,286	27,778
Net increase (decrease) in cash and cash equivalents	40,852	(16,747)	1,943
Cash and cash equivalents at beginning of year	11,526	28,273	26,330
Cash and cash equivalents at end of year	$ 52,378	$ 11,526	$ 28,273

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam® and Oster® brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

Approximately 79% of total Company sales are generated in the United States. The remaining sales are generated primarily in Latin America, Mexico, Canada, Europe and Asia.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

The Company's fiscal year ends on the Sunday nearest December 31. Fiscal years 1997, 1996 and 1995 ended on December 28, 1997, December 29, 1996, and December 31, 1995 respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, reserves for product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Latin America and Canada. Approximately 36% of the Company's sales in 1997 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 28, 1997. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if the trends of retail consolidation continue.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1. Operations and Significant Accounting Policies—(Continued)

Inventories

Inventories are stated at the lower of cost or market with cost being determined principally by the first-in, first-out method.

Property, Plant and Equipment

Property, plant and equipment is stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	20 to 40 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, *Accounting for the Impairment of Long-lived Assets and for Long-lived Assets to Be Disposed Of.* See Notes 8 and 9 for a discussion of asset impairment charges in 1996.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1997 and 1996 amounted to $12.3 million and $14.0 million respectively, of which $.9 million and $.4 million respectively, was capitalized into the construction cost of the long-term assets.

Amortization Periods

Trademarks and trade names are being amortized on a straight-line basis over 40 years.

Revenue Recognition

The Company recognizes revenues from product sales principally at the time of shipment to customers. In limited circumstances, at the customers request the Company may sell seasonal product on a bill and hold basis provided that the goods are completed, packaged and ready for shipment, such goods are segregated and the risks of ownership and legal title have passed to the customer. The amount of such bill and hold sales at December 29, 1997 was approximately 3% of consolidated revenues.

Net sales is comprised of gross sales less provisions for expected customer returns, discounts, promotional allowances and cooperative advertising.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

NOT A CERTIFIED COPY

011823

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019060
CPH 1326566

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

Media advertising costs included in "Selling, General and Administrative Expense," are expensed as incurred. Co-operative advertising costs are expensed ratably over the year in relation to revenues.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in highly inflationary environments, are translated into U.S. dollars at year-end exchange rates, with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary environments, (Venezuela and Mexico) inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in "Other (income) expense, net" on the Accompanying Consolidated Statements of Operations.

Stock-Based Compensation Plans

SFAS No. 123, *Accounting for Stock-Based Compensation* allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 5 herein. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Earnings Per Share of Common Stock

In 1997, the Company adopted SFAS No. 128, *Earnings Per Share*. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options and restricted stock discussed in Note 5). The Company's reported primary earnings per share for 1995 has been restated to comply with the requirements of SFAS No. 128. SFAS No. 128 had no impact on the Company's reported loss per share for 1996 and no impact on the diluted earnings per share reported in 1995. The effect of this accounting change on previously reported earnings per share (EPS) for 1995 was as follows:

Earnings per share from continuing operations	
Primary EPS as reported	$0.45
Effect of SFAS No. 128	0.01
Basic EPS as restated	0.46
Earnings per share	
Primary EPS as reported	$0.61
Effect of SFAS No. 128	0.01
Basic EPS as restated	0.62

NOT A CERTIFIED COPY

011824

MF 01812
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div 019061

1. Operations and Significant Accounting Policies—(Continued)

Reclassification

Certain prior year amounts have been reclassified to conform with the 1997 presentation.

New Accounting Standards

In June 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 130, *Reporting Comprehensive Income*. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required. The Company is in the process of determining its preferred format. The adoption of SFAS No. 130 will have no impact on the Company's consolidated results of operations, financial position or cash flows.

In June 1997, the FASB issued SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

2. Shareholders' Equity

The Company has 200,000,000 shares of $.01 par value common stock authorized. At December 28, 1997 there were 9,404,068 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

In June 1995, the Company retired 7,376,395 shares of common stock held in treasury, and such shares were returned to the status of authorized but unissued shares. As a result, $103.7 million assigned to treasury stock has been eliminated with a corresponding decrease to common stock, paid-in capital and retained earnings. In 1995, the Company repurchased 905,600 shares of its common stock at a total cost of $13.1 million.

In July 1996, the Company sold 321,786 shares of common stock for total proceeds of approximately $4.4 million, and granted 1,100,000 shares of restricted stock in connection with the employment of a new Chairman and Chief Executive Officer and certain other officers of the Company. Compensation expense attributable to the restricted stock awards is being amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, is equally over two years from the date of grant and in the case of the remaining restricted shares, is equally over three years from the dates of grant).

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. Refer to Note 14 for additional information regarding the new employment contracts, including the acceleration of vesting of restricted stock grants discussed above.

NOT A CERTIFIED COPY

011825

MF 01813

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CMS 1326068

16div-019062

2. Shareholders' Equity—(Continued)

Information regarding other changes in shareholders' equity is summarized below (in thousands):

	Currency Translation Adjsutments	Minimum Pension Liability	Unearned Compensation	Total
Balance at January 1, 1995	$ (8,212)	$(10,927)	$ (979)	$(20,118)
Amortization of unearned compensation	—	—	582	582
Increase in minimum pension liability (net of tax of $127)	—	(199)	—	(199)
Translation adjustments	(5,145)	—	—	(5,145)
Balance at December 31, 1995	(13,357)	(11,126)	(397)	(24,880)
Grant of restricted stock	—	—	(14,346)	(14,346)
Amortization of unearned compensation	—	—	7,707	7,707
Decrease in minimum pension liability (net of tax of $2,672)	—	4,963	—	4,963
Translation adjustments	1,246	—	—	1,246
Balance at December 29, 1996	(12,111)	(6,163)	(7,036)	(25,310)
Amortization of unearned compensation	—	—	5,322	5,322
Increase in minimum pension liability (net of tax of $5,228)	—	(9,709)	—	(9,709)
Translation adjustments	(739)	—	—	(739)
Balance at December 28, 1997	$(12,850)	$(15,872)	$(1,714)	$(30,436)

3. Credit Facilities and Long-Term Debt

In 1994, the Mississippi Business Finance Corporation ("MBFC") issued $75 million of 7.85% Industrial Development Revenue Notes (the "Notes") maturing serially in eleven equal annual installments beginning June 1999 to certain institutional investors through a private placement. The MBFC loaned the proceeds of the Notes to a subsidiary of the Company under a non-recourse loan agreement (the "Hattiesburg Loan") restricting the use of such funds to the acquisition, design, construction and equipping of the Hattiesburg, Mississippi manufacturing and distribution center. The Notes are guaranteed by the Company and the Hattiesburg Loan is secured by the Hattiesburg facility.

In September 1996 (as subsequently amended), the Company entered into a $500 million syndicated unsecured five year revolving credit facility (the "Credit Agreement") which replaced a previous credit facility of $500 million. In July 1997, the Company reduced the amount of available borrowings under the facility to $250 million. Under the Credit Agreement, the Company can borrow under a competitive bid option, or at a spread above LIBOR (currently .5%) or at a bank base rate. In addition, the Company pays an annual facility fee (currently .25%). The Credit Agreement contains certain financial covenants.

During 1997, the Company repaid $12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

The aggregate annual principal payments on long-term debt, excluding amounts outstanding under the Credit Agreement, due in each of the years 1998-2002, are $.7 million, $7.5 million, $7.6 million, $7.6 million and $7.7 million, respectively.

NOT A CERTIFIED COPY

62-81810

MF 01814

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div019063

3. Credit Facilities and Long-Term Debt—(Continued)

Long-term debt at the end of each fiscal year consists of the following (in thousands):

	1997	1996
Revolving credit facility, weighted average interest rate of 5.99% and 5.60% for 1997, and for 1996, respectively	$110,000	$105,000
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	75,000	75,000
Other long-term borrowings, due through 2012, weighted average interest rate of 3.92% and 4.95%, at December 28, 1997 and December 29, 1996, respectively	10,248	22,036
	$195,248	$202,036

In December 1997, the Company entered into a revolving trade accounts receivable securitization program to sell without recourse, through a wholly-owned subsidiary, certain trade accounts receivable. The maximum amount of receivables that can be sold through this program is $70 million. At December 28, 1997, the Company had received approximately $59 million from the sale of trade accounts receivable. The proceeds from the sale were used to reduce borrowings under the Company's revolving credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled $.2 million during 1997, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables.

4. Financial Instruments

Fair Value of Financial Instruments

The carrying amounts of the Company's financial instruments as of December 28, 1997 approximate market values based upon the following methods and assumptions:

Cash and Cash Equivalents—The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt—The carrying value of the Company's various debt outstanding as of December 28, 1997 approximates market. The fair value of the Company's fixed rate debt is estimated using discounted cash flow analysis, based upon the market yield of public debt securities of comparable credit quality and maturity. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements.

Letters of Credit—The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. The contract amounts of the letters of credit approximate their fair value.

Derivative Financial Instruments

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. The use of derivatives did not have a material impact on the Company's results of operations in 1997, 1996 and 1995. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01815

16div-019064

CPH 1326570

4. Financial Instruments—(Continued)

will vary with changes in interest and/or foreign exchange rates, the difference between the carrying value and fair value of such contracts at December 29, 1996 and December 31, 1995 is not considered to be material, either individually or in the aggregate. The Company had no derivative financial instruments outstanding at December 28, 1997. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions.

As of December 28, 1996, $10.0 million of the Company's outstanding floating rate debt was subject to interest rate swap agreements.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option contracts to hedge anticipated transactions. The option contracts typically expire within one year. Any realized gains on options are not deferred but are recognized in income in the period when the hedged exposure is recognized. The Company purchased options with a notional value of $16.6 million in 1997, $18.2 million in 1996 and $11.7 million in 1995. Options with notional value of $17.9 million, $25.4 million and $3.2 million expired in 1997, 1996 and 1995, respectively. The Company held purchased option contracts with a notional value of $1.4 million at December 29, 1996.

5. Employee Stock Options and Awards

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 11,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. See Note 2 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a new Chairman and Chief Executive Officer and certain other executive officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, are exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding are exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the plan were accelerated as further described in Note 14.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net earnings (loss) and diluted earnings (loss) per share would have been reduced to the pro forma amounts indicated below (in thousands except per share amounts):

	1997	1996	1995
Net earnings/(loss)			
As reported	$109,415	$(228,262)	$50,511
Pro forma	$ 94,887	$(238,186)	$49,731
Diluted earnings/(loss) per share			
As reported	$ 1.25	$ (2.75)	$ 0.61
Pro forma	$ 1.08	$ (2.87)	$ 0.60

NOT A CERTIFIED COPY

011828

MF 01816

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019065

CPH 1326571

5. Employee Stock Options and Awards—(Continued)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	1997	1996	1995
Expected volatility	34.19%	36.78%	36.78%
Risk-free interest rate	6.36%	6.34%	6.34%
Dividend yield	.1%	.1%	.1%
Expected life	6 years	5 years	5 years

A summary of the status of the Company's outstanding stock options as of December 28, 1997, December 29, 1996 and December 31, 1995, and changes during the years ending on those dates is presented below:

	1997		1996		1995	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Plan Options						
Outstanding at beginning of year	6,271,837	$19.43	4,610,387	$16.67	5,230,221	$14.85
Granted	3,105,263	32.40	4,061,450	20.39	1,928,500	18.61
Exercised	(1,549,196)	17.20	(622,994)	7.51	(1,142,348)	6.32
Canceled	(1,173,836)	21.10	(1,777,006)	18.64	(1,405,986)	21.06
Outstanding at end of year	6,654,068	25.61	6,271,837	19.43	4,610,387	16.67
Options exercisable at year-end	1,547,198	$19.13	1,655,450	$16.13	1,539,836	$11.47
Weighted-average fair value of options granted during the year	$ 15.46		$ 14.76		$ 8.28	
Options Outside Plan						
Outstanding at beginning of year	2,750,000	$12.43	692,500	$16.70	750,000	$16.70
Granted	—		3,000,000	12.65	—	—
Exercised			—		(57,500)	16.70
Canceled	—		(942,500)	16.27	—	—
Outstanding at end of year	2,750,000	12.43	2,750,000	12.43	692,500	16.70
Options exercisable at year-end	1,750,000	$12.35	833,333	$12.25	505,000	$16.70
Weighted-average fair value of options granted during the year	$ —		$ 5.99		$ —	

NOT ACERTIFIED COPY

MF 01817
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CP-0126572
16div-019066

5. Employee Stock Options and Awards—(Continued)

The following table summarizes information about stock options outstanding at December 28, 1997:

Range of Exercise Prices	Options Outstanding		
	Number Outstanding at 12/28/97	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
$ 5.00 to $14.99	3,514,556	8.2	$12.50
$15.00 to $19.99	485,240	7.4	16.30
$20.00 to $24.99	2,090,187	8.2	22.39
$25.00 to $29.99	1,786,007	9.0	25.99
$30.00 to $34.99	448,468	9.3	32.01
$35.00 to $39.99	336,820	9.5	38.77
$40.00 to $44.99	680,290	9.7	42.99
$45.00 and over	62,500	9.7	46.22
$ 5.00 to $49.71	9,404,068	8.5	$21.76

Range of Exercise Prices	Options Exercisable	
	Number Exercisable at 12/28/97	Weighted-Average Exercise Price
$ 5.00 to $14.99	2,108,255	$12.08
$15.00 to $19.99	219,466	16.50
$20.00 to $24.99	842,601	22.27
$25.00 and over	126,876	26.41
$ 5.00 to $27.36	3,297,198	$15.54

6. Employee Benefit Plans

Retirement Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Therefore no credit in the pension formula is given for service or compensation after that date. However, employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries.

The funded status of the Company's U.S. defined benefit pension plans at the end of each fiscal year follows (in thousands):

	1997	1996
Actuarial present value of benefit obligations:		
Vested	$126,941	$122,379
Non-vested	288	375
Accumulated benefit obligations	127,229	122,754
Plan assets at fair value	116,485	116,522
Accumulated benefit obligations in excess of plan assets	10,744	6,232
Unrecognized net loss	(25,192)	(19,537)
Additional minimum liability	25,192	10,255
Pension liability (prepaid) recognized on the balance sheet	$ 10,744	$ (3,050)

NOT A CERTIFIED COPY

01130

MF 01818

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CP11326573

16div 019067

6. Employee Benefit Plans—(Continued)

Net periodic pension cost for the Company's U.S. defined benefit pension plans for each fiscal year include the following components (in thousands):

	1997	1996	1995
Service cost-benefits earned during the period	$ 157	$ 411	$ 331
Interest cost-accumulated benefit obligations	8,970	9,071	10,620
Actual return on plan assets	(12,511)	(816)	(20,985)
Net amortization and deferral	4,338	(7,518)	11,332
Net periodic pension cost	$ 954	$ 1,148	$ 1,298
Assumptions:			
Discount rate	7.25%	7.75%	7.25%
Long-term rate of return on assets	7.25%	7.75%	9.50%

The Company funds its pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds and cash equivalents.

The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

Other Postretirement Benefits

The Company provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

Effective July 1993, various amendments to the Company's postretirement benefits program were adopted. The amendments included increases in retiree contribution levels for certain retiree groups and the discontinuation of medical and/or life insurance coverage for certain retirees who qualify for Medicare. These amendments resulted in an unrecognized reduction in prior service cost which is being amortized over future years.

The following table presents the funded status reconciled with the amounts recognized in the Company's consolidated balance sheet at the end of each fiscal year (in thousands):

	1997	1996
Accumulated postretirement benefit obligation	$14,220	$14,555
Plan assets	—	—
Accumulated postretirement benefit obligation in excess of plan assets	14,220	14,555
Unrecognized reduction in prior service cost	15,934	18,877
Unrecognized net gain	240	95
Accrued postretirement benefit obligation recognized on the balance sheet	$30,394	$33,527

Net periodic postretirement benefit cost for each fiscal year includes the following components (in thousands):

	1997	1996
Interest cost	$ 983	$ 1,042
Amortization of reduction in prior service cost	(2,943)	(2,943)
Net periodic postretirement benefit credit	$(1,960)	$(1,901)

NOT A CERTIFIED COPY

MF 01819
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019068

6. Employee Benefit Plans—(Continued)

The assumed health care cost trend rate used in measuring the accumulated postretirement benefit obligation is 8.8% for 1998 and is assumed to decrease gradually to 6% by 2003 and remain at that level thereafter. A one percentage point increase in the assumed health care cost trend rate for each year would increase the accumulated postretirement benefit obligation as of December 28, 1997 and the net periodic postretirement benefit cost for 1997 by approximately 8%. The weighted average discount rate used in determining the accumulated postretirement benefit obligation was 7.25% at December 28, 1997 and December 29, 1996.

Defined Contribution Plans

The Company sponsors defined contribution profit sharing plans covering eligible employees. Company contributions to these plans include employer matching contributions as well as discretionary profit sharing contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided $1.8 million in 1997, $1.7 million in 1996 and $4.1 million in 1995 for its defined contribution plans.

7. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	1997	1996
Receivables:		
Trade	$305,219	$227,043
Sundry	7,794	2,412
	313,013	229,455
Valuations allowances	(17,463)	(16,017)
	$295,550	$213,438
Inventories:		
Finished goods	$142,976	$ 84,813
Work in process	26,237	25,167
Raw materials and supplies	86,967	52,272
	$256,180	$162,252
Property, plant and equipment:		
Land	$ 1,793	$ 2,524
Buildings and improvements	98,054	95,619
Machinery and equipment	245,824	258,199
	345,671	356,342
Accumulated depreciation and amortization	(104,774)	(136,254)
	$240,897	$220,088
Trademarks and trade names:		
Gross	$237,095	$245,307
Accumulated amortization	(42,723)	(45,045)
	$194,372	$200,262

NOT A CERTIFIED COPY
011832
MF 01820
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1226575
16div-019069

7. Supplementary Financial Statement Data—(Continued)

Inventory and property, plant and equipment in 1996 exclude assets of discontinued operations and other assets held for sale.

	1997	1996
Other current liabilities:		
Payrolls, commissions and employee benefits	$ 14,051	$ 18,536
Advertising and sales promotion	27,524	23,816
Product warranty	24,154	23,883
Other	15,184	33,274
	$ 80,913	$ 99,509
Other long-term liabilities:		
Accrued postretirement benefit obligation	$ 30,394	$ 33,527
Accrued pension	10,744	—
Other	99,971	118,924
	$141,109	$152,451

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	1997	1996	1995
Other (income) expense, net:			
Interest income	$ (1,555)	$(1,255)	$(3,657)
Other	337	4,993	3,830
	$ (1,218)	$ 3,738	$ 173
Advertising and sales promotion	$ 56,448	$71,524	$57,274
Cash paid (received) during the period for:			
Interest (net of capitalization)	$ 13,058	$13,397	$12,555
Income taxes (net of refunds)	$(44,508)	$ (540)	$13,936

Non-cash Transactions

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a $5 million capital lease obligation in 1996.

8. Restructuring, Impairment and Other Costs

In November 1996, the Company announced the details of its restructuring and growth plan. The cost reduction phase of the plan included the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and stock keeping units ("SKU's"). The Company also announced plans to divest several lines of business which it determined are not core for Sunbeam (see Note 9).

In connection with the restructuring plan, the Company consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters in Delray Beach, Florida and outsourced certain back-office activities resulting in a 50% reduction in total back-office/administrative headcount. Overall, the restructuring plan calls for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of non-core business operations and the elimination of approximately 2,800 other positions. The Company completed the major phases of the restructuring plan by January 1997.

In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is

NOT A CERTIFIED COPY
01-1833
MF 01821
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019070
CPH 1326576

8. Restructuring, Impairment and Other Costs—(Continued)

allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKU's and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Note 12) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million. During the first quarter of 1997, upon completion of the sale, the Company provided for additional losses on the disposal of the furniture business of $13.7 million, net of applicable income tax benefits as a result of lower than anticipated sales proceeds.

Amounts included in Restructuring, Impairment and Other Costs in 1996 in the accompanying Consolidated Statement of Operations include cash items such as severance and other employee costs of $43.0 million, lease obligations and other exit costs associated with facility closures of $12.6 million, $7.5 million of start-up costs on back-office outsourcing initiatives and other costs related to the implementation of the restructuring and growth plan. Non-cash Restructuring, Impairment and Other Costs in 1996 include $91.8 million related to asset write-downs to net realizable value for disposals of excess facilities and equipment and non-core product lines, write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives and intangible, packaging and other asset write-downs related to exited product lines and SKU reductions. The following table sets forth the details and the cumulative activity in the restructuring accrual as of December 28, 1997 (in millions):

	Accrual Balance at December 29, 1996	Cash Reductions	Non-Cash Reductions	Accrual Balance at December 28, 1997
Severance and other employee costs	$36.9	$18.6	$9.5	$ 8.8
Closure and consolidation of facilities and related exit costs	26.9	24.8	—	2.1
Total	$63.8	$43.4	$9.5	$10.9

9. Discontinued Operations and Other Assets Held For Sale

As part of the restructuring plan and redefinition of its core businesses, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. which was completed on March 17, 1997. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received $69 million in cash. The Company retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date.

In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of $32.4 million in 1996, net of applicable income tax benefits and an additional loss of $13.7 million, net of applicable income tax benefits in the first quarter of 1997 as a result of lower than anticipated sales proceeds. Earnings from the discontinued furniture business were $.8 million in 1996 and $12.9 million in 1995, net of applicable income taxes of $.5 million and $7.9 million, respectively. Earnings from the discontinued furniture business in 1997 were not material. Revenues for the discontinued furniture business were $51.6 million in 1997, $227.5 million in 1996 and $185.6 million in 1995. These revenues are not included in net sales as reported in the accompanying Consolidated Statements of Operations.

In addition to the furniture business divestiture, the Company also completed the sale of other non-core product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor® and Borg® scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring, Impairment and Other Costs in 1996 in the Consolidated Statements of Operations as described in Note 8.

NOT A CERTIFIED COPY

01-1834

MF 01822

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326577

16div-019071

10. Income Taxes

Earnings (loss) from continuing operations before income taxes for each fiscal year is summarized as follows (in thousands):

	1997	1996	1995
Domestic	$167,822	$(285,011)	$54,646
Foreign	21,458	(17,550)	5,989
	$189,280	$(302,561)	$60,635

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	1997	1996	1995
Current:			
Federal	$ 3,420	$ (28,567)	$(1,329)
State	3,266	(202)	(1,402)
Foreign	1,683	707	626
	8,369	(28,062)	(2,105)
Deferred:			
Federal	49,513	(65,833)	23,127
State	3,962	(11,050)	1,962
Foreign	4,308	(945)	57
	57,783	(77,828)	25,146
	$66,152	$(105,890)	$23,041

A reconciliation of income tax expense with the expected income tax computed by applying the federal statutory income tax rate to earnings (loss) from continuing operations before income taxes for each fiscal year is as follows (in thousands):

	1997	1996	1995
Income tax computed at the federal statutory tax rate	$66,248	$(105,896)	$21,222
State and local taxes (net of federal benefit)	4,698	(7,313)	364
Foreign earnings and dividends taxed at other rates	(3,611)	5,967	419
Other, net	(1,183)	1,352	1,036
	$66,152	$(105,890)	$23,041

The major components of the Company's net current deferred tax asset and net long-term deferred tax liability at the end of each fiscal year are as follows (in thousands):

	1997		1996	
	Current Deferred Tax Asset	Long-term Deferred Tax Liability	Current Deferred Tax Asset	Long-term Deferred Tax Liability
Operating reserves and accruals	$11,721	$ 29,966	$60,307	$ 28,447
Book/tax basis difference in trademarks and trade names	—	(70,881)	—	(72,587)
Book/tax basis difference in other assets	11,937	(22,645)	19,276	(13,406)
Reserves for non-operating assets and non-operating liabilities	3,062	21,849	8,905	24,043
Other	9,986	(12,848)	5,201	(18,805)
	$36,706	$(54,599)	$93,689	$(52,308)

NOT A CERTIFIED COPY

01835

MF 01823

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326578

16div-019072

10. Income Taxes—(Continued)

Deferred U.S. income taxes are not provided on the undistributed earnings of foreign subsidiaries, since such earnings are considered to be permanently reinvested. At December 28, 1997, the cumulative amount of undistributed earnings of foreign subsidiaries on which U.S. federal income taxes have not been provided was approximately $51.5 million. Determination of the amount of unrecognized deferred U.S. income tax liability is not practical because of the complexities associated with its hypothetical calculation; however, unrecognized foreign tax credit carryovers would be available to reduce some portion of the U.S. liability.

11. Customer and Geographic Data

Classes of products which contributed more than 10% to consolidated sales were outdoor home use durable products and indoor home use durable products. Sales of outdoor home use durable products amounted to $325.8 million in 1997, $256.9 million in 1996 and $269.0 million in 1995. Sales of indoor home use durable products were $769.6 million in 1997, $680.7 million in 1996 and $688.3 million in 1995.

The Company's largest customer accounted for approximately 21% of consolidated net sales in 1997 and 19% in 1996 and 1995.

The Company's operations are conducted in the United States and international markets, principally in Latin America, Canada and Mexico. Information about the Company's domestic and international operations for each fiscal year is as follows (in thousands):

	1997	1996	1995
Net sales:			
Domestic	$ 927,660	$ 800,969	$ 829,423
International (includes U.S. export sales)	240,522	183,267	187,460
	$1,168,182	$ 984,236	$1,016,883
Operating earnings (loss):			
Domestic	$ 175,858	$ (244,477)	$ 70,423
International (includes U.S. export sales)	53,641	(5,022)	24,301
	229,499	(249,499)	94,724
Unallocated expenses and eliminations	(30,056)	(35,736)	(24,479)
	$ 199,443	$ (285,235)	$ 70,245
Identifiable assets:			
Domestic	$ 923,527	$ 781,788	$1,040,591
International	131,359	73,430	67,563
	1,054,886	855,218	1,108,154
Corporate assets	65,398	217,491	50,530
	$1,120,284	$1,072,709	$1,158,684

Unallocated expenses and eliminations include corporate administrative expenses, intangible amortization, certain pension and postretirement benefit costs or credits, and eliminations of intercompany income and expense. Identifiable assets are those used directly in the operations, and exclude non-operating corporate and deferred tax assets. Sales between geographic areas are not material and are made primarily at cost plus a markup.

NOT A CERTIFIED COPY
0011836
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
MF 01824
16div-019073
CPH 1326579

12. Commitments and Contingencies

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations. As of December 28, 1997, the Company had been identified as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund law and two sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant. Substantially all of these sites relate to divested operations of the Company.

The Company currently is engaged in active remediation activities at nine sites, four of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. In addition, the Company is engaged in environmental remediation activities at a site in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing a plan for remediation of this site; which remediation is expected to be substantially completed during 1998.

The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. As of December 28, 1997, the amount of such reserves was less than 5% of the Company's total liabilities as set forth in the consolidated financial statements. Liability under the Superfund law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRP's at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRP's established with respect to such sites. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 28, 1997. In connection with the Company's restructuring plan, in the fourth quarter of 1996 a comprehensive review of all environmental exposures was performed, and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. As a result, the Company recorded additional environmental reserves of approximately $9.0 million in the fourth quarter of 1996. The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to $7.4 million in 1997, $8.0 million for 1996 and $8.6 million for 1995. The minimum future rentals due under noncancelable operating leases as of December 28, 1997 aggregated $30.9 million. The amounts payable in each of the years 1998-2002 and thereafter are $4.8 million, $4.6 million, $4.2 million, $3.9 million, $3.4 million and $10.0 million, respectively.

NOT A CERTIFIED COPY

011837

MF 01825
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326580
16div-019074

12. Commitments and Contingencies—(Continued)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately $19.0 million at December 28, 1997, and the corresponding receivables from the third parties, are not included in the consolidated balance sheets since these transactions occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Letters of credit aggregating $28.6 million were outstanding as of December 28, 1997.

Litigation

The Company is involved in various lawsuits arising from time to time in the ordinary course of business and/or related to divested operations of the Company. The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of litigation matters, based upon periodic reviews of all cases.

The Company believes, based on existing information, that anticipated probable costs of litigation matters have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Product Liability Matters

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1997 was comprised of a self-insurance retention of $1 million per occurrence.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a materially adverse effect on the financial position or results of operations of the Company.

NOT A CERTIFIED COPY

0118838

MF 01826

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

GRU 132658

16div-019075

13. Unaudited Quarterly Financial Data

FISCAL 1997(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	$253.5	$287.6	$289.0	$338.1
Gross profit	67.7	74.5	88.8	99.5
Operating earnings	34.7	43.0	54.9	66.8
Earnings from continuing operations	20.6	26.2	34.6	41.7
Basic earnings per share from continuing operations	$ .24	$ .31	$ .41	$ .49
Diluted earnings per share from continuing operations	.24	.30	.39	.47
Earning from discontinued operations, net of taxes	—	—	—	—
Loss on sale of discontinued operations, net of taxes	(13.7)	—	—	—
Net earnings	6.8	26.2	34.6	41.8
Basic earnings per share(c)	.08	.31	.41	.49
Diluted earnings per share(c)	.08	.30	.39	.47
Market price for common stock				
—high	$ 34½	$ 40¾	$ 45¾	$ 50⁷⁄₁₆
—low	24⅝	29¾	35⅜	37
Dividends paid	$ .01	$ .01	$ .01	$ .01

FISCAL 1996(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	$229.7	$253.9	$231.8	$268.8
Gross profit (loss)	48.1	47.2	28.8	(40.5)
Operating earnings (loss)	15.5	9.2	(20.7)	(289.2)(b)
Earnings (loss) from continuing operations	6.7	2.8	(15.8)	(190.4)
Basic earnings (loss) per share from continuing operations	$ .08	$ .03	$ (.19)	$ (2.29)
Diluted earnings (loss) from continuing operations	.08	.03	(.19)	(2.29)
Earnings (loss) from discontinued operations, net of taxes	10.7	4.4	(2.3)	(12.0)
Loss on sale of discontinued operations, net of taxes	—	—	—	(32.4)
Net earnings (loss)	17.4	7.2	(18.1)	(234.8)
Basic earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Diluted earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Market price for common stock				
—high	$ 19¾	$ 17⅛	$ 24¾	$ 29½
—low	15⅛	13½	12¼	22¼
Dividends paid	$ .01	$ .01	$ .01	$ .01

(a) Each quarter consists of a 13-week period.
(b) Refer to Notes 8 and 9 regarding the Company's 1996 restructuring and growth plan.
(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share.*

14. Subsequent Events

New Employment Agreements

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

NOT A CERTIFIED COPY
0011839
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
MF 01827
16div-019076
CPH 1326582

14. Subsequent Events—(Continued)

The new employment agreement for the Company's Chairman provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5. In addition, the new employment agreement with the Chairman and Chief Executive Officer provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other senior officers provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately $30.0 million.

Pending Acquisitions

On March 2, 1998, the Company announced the signing of three definitive agreements to acquire The Coleman Company, Inc., Signature Brands USA, Inc. and First Alert, Inc. Completion of the acquisitions, which is expected in the second quarter of 1998, is contingent on customary conditions, including regulatory approvals, and acquisition financings. Each of the acquisitions will be accounted for under the purchase method, whereby the purchase price will be allocated to the underlying assets acquired and liabilities assumed based upon their estimated fair values.

The acquisition of The Coleman Company, Inc., the global leader in outdoor recreational and hardware products is valued at approximately $2.0 billion, consisting of the Company's common stock valued at approximately $811 million, cash of approximately $260 million and assumed debt. Shareholders of The Coleman Company, Inc. will receive $6.44 in cash and .5677 shares of the Company's stock for each share of Coleman stock.

The acquisition of Signature Brands USA, Inc., the North American leader in coffeemakers marketed under the Mr. Coffee® brand and a leader in consumer health products marketed under the Health o Meter® brand is valued at approximately $250 million, consisting of cash of $8.25 per share of Signature Brand common stock and the assumption of existing debt.

The acquisition of First Alert, Inc., the worldwide leader in residential safety equipment, including smoke detectors and carbon monoxide detectors is valued at approximately $175 million, consisting of cash of $5.25 per share of First Alert common stock and the assumption of existing debt.

The Company plans on refinancing all or substantially all of the assumed debt of the acquired companies concurrent with the transactions closings.

NOT A CERTIFIED COPY

0118140

MF 01828
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019077
CPH 1326583

REPORT OF INDEPENDENT AUDITORS

The Board of Directors and Stockholder
CLN Holdings Inc.

We have audited the accompanying consolidated balance sheets of CLN Holdings Inc. and subsidiaries as of December 31, 1997 and 1996, and the related consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of CLN Holdings Inc. and subsidiaries at December 31, 1997 and 1996, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles.

/s/ Ernst & Young LLP

Wichita, Kansas
February 18, 1998

NOT A CERTIFIED COPY

MF 01829

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CFTC 16div 019078

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	December 31, 1997	December 31, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$ 13,031	$ 17,299
Short term investments in escrow	6,331	—
Accounts receivable, less allowance of $8,930 in 1997 and $11,512 in 1996	154,279	182,418
Notes receivable	25,477	27,524
Inventories	236,327	287,502
Deferred tax assets	26,378	40,466
Prepaid assets and other	21,437	14,943
Total current assets	483,260	570,152
Property, plant and equipment, net	175,494	199,182
Intangible assets related to businesses acquired, net	338,989	349,761
Note receivable—affiliate	35,395	54,739
Deferred tax assets and other	64,731	34,441
	$1,097,869	$1,208,275
LIABILITIES AND STOCKHOLDER'S DEFICIT		
Current liabilities:		
Current portion of long-term debt	$ 3,026	$ 747
Short-term borrowings	64,207	33,935
Accounts payable	91,846	98,628
Accounts payable—affiliates	2,825	278
Accrued expenses	94,858	113,040
Total current liabilities	256,762	246,628
Long-term debt	980,447	999,794
Income taxes payable—affiliate	13,317	18,528
Other liabilities	60,606	76,173
Minority interest	43,386	45,088
Commitments and contingencies		
Stockholder's deficit:		
Common stock, par value $1.00 per share; 1,000 shares issued and outstanding	1	1
Capital deficiency	(131,860)	(117,963)
Accumulated deficit	(114,740)	(62,594)
Currency translation adjustment	(9,287)	2,856
Minimum pension liability adjustment	(763)	(236)
Total stockholder's deficit	(256,649)	(177,936)
	$1,097,869	$1,208,275

See Notes to Consolidated Financial Statements

NOT A CERTIFIED COPY

011342

MF 01830

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CLN 396-03579

16dv-019079

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands)

	Year Ended December 31,		
	1997	1996	1995
Net revenues	$1,154,294	$1,220,216	$933,574
Cost of sales	840,331	928,497	649,427
Gross profit	313,963	291,719	284,147
Selling, general and administrative expenses	266,635	292,012	175,036
Asset impairment charge	—	—	12,289
Interest expense, net	90,886	75,120	57,830
Amortization of goodwill and deferred charges	14,704	12,304	9,558
Other expense (income), net	1,867	(1,604)	283
(Loss) earnings before income taxes, minority interest and extraordinary item	(60,129)	(86,113)	29,151
Income tax (benefit) expense	(24,162)	(23,766)	11,701
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Minority interest in (loss) earnings of Coleman	(446)	(7,262)	6,696
(Loss) earnings before extraordinary item	(36,907)	(56,957)	10,754
Extraordinary loss on early extinguishment of debt, net of income tax benefit of $9,391 in 1997, $846 in 1996, and $503 in 1995	(15,239)	(1,244)	(787)
Net (loss) earnings	$ (52,146)	$ (58,201)	$ 9,967

NOT A CERTIFIED COPY

See Notes to Consolidated Financial Statements

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01831

16div-019080

CPH 1326586

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT

(In thousands, except share data)

	Common Stock					
	Number of Shares	Amount	Capital Deficiency	Accumulated Deficit	Currency Translation Adjustment	Minimum Pension Liability
Balance at December 31, 1994	1,000	1	(112,669)	(3,300)	970	—
Net earnings	—	—	—	9,967	—	—
Currency translation adjustment	—	—	—	—	(617)	—
Net distributions	—	—	(1,005)	(6,667)	—	—
Balance at December 31, 1995	1,000	1	(113,674)	—	353	—
Net loss	—	—	—	(58,201)	—	—
Currency translation adjustment	—	—	—	—	2,503	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(236)
Net distributions	—	—	(4,289)	(4,393)	—	—
Balance at December 31, 1996	1,000	1	(117,963)	(62,594)	2,856	(236)
Net loss	—	—	—	(52,146)	—	—
Currency translation adjustment	—	—	—	—	(12,143)	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(527)
Net distributions	—	—	(13,897)	—	—	—
Balance at December 31, 1997	1,000	$ 1	$(131,860)	$(114,740)	$(9,287)	$ (763)

NOT A CERTIFIED COPY

011844

See Notes to Consolidated Financial Statements

MF 01832

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326587

16div-019081

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	1997	1996	1995
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net (loss) earnings	$(52,146)	$(58,201)	$ 9,967
Adjustments to reconcile net (loss) earnings to net cash flows from operating activities:			
Depreciation and amortization	41,343	38,189	28,335
Non-cash tax sharing agreement (benefit) provision	(23,980)	(4,376)	7,562
Minority interest in (loss) earnings of Coleman	(446)	(7,262)	6,696
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Interest accretion	53,581	36,404	33,288
Non-cash gain on LYONs conversion	—	(2,755)	—
Non-cash restructuring and other charges	17,325	48,269	12,289
Extraordinary loss on early extinguishment of debt	24,630	2,090	1,290
Change in assets and liabilities:			
Increase in short term investments in escrow	(6,331)	—	—
Decrease (increase) in receivables	3,952	976	(37,833)
Decrease (increase) in inventories	35,250	(42,402)	(49,396)
Increase (decrease) in accounts payable	1,226	(12,308)	13,825
Other, net	(25,962)	(5,972)	(16,682)
Net cash provided (used) by operating activities	121,974	52,725	(626)
	69,828	(5,476)	9,341
CASH FLOWS FROM INVESTING ACTIVITIES:			
Capital expenditures	(26,973)	(41,334)	(29,053)
Purchases of businesses, net of cash acquired	(14,300)	(161,875)	(33,385)
Decrease (increase) in note receivable—affiliate	19,344	(4,054)	(6,742)
Proceeds from sale of fixed assets	5,728	2,924	928
Net cash used by investing activities	(16,201)	(204,339)	(68,252)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net change in short-term borrowings	37,071	(11,043)	3,106
Net payments of revolving credit agreement borrowings	(91,498)	(2,779)	(61,289)
Proceeds from issuance of long-term debt	470,007	235,000	200,000
Repayment of long-term debt	(455,339)	(6,778)	(74,782)
Debt issuance and refinancing costs	(16,516)	(3,902)	(3,569)
Purchases of Company common stock	—	(2,329)	(4,086)
Proceeds from stock options exercised including tax benefits	2,585	2,192	4,520
Contributions from parent	284	331	488
Net cash (used) provided by financing activities	(53,406)	210,692	64,388
Effect of exchange rate changes on cash	(4,489)	4,357	(1,731)
Net (decrease) increase in cash and cash equivalents	(4,268)	5,234	3,746
Cash and cash equivalents at beginning of the year	17,299	12,065	8,319
Cash and cash equivalents at end of the year	$ 13,031	$ 17,299	$ 12,065

See Notes to Consolidated Financial Statements

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01833

16div-019082
CPH 1326588

CLN HOLDINGS INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share data)

1. Significant Accounting Policies

Background:

CLN Holdings Inc. (formerly known as Coleman Escrow Corp. ("CLN Holdings")), is a holding company formed in May 1997 in connection with the offering of Senior Secured First Priority Discount Notes due 2001 (the "Old First Priority Notes") and Senior Secured Second Priority Discount Notes due 2001 (the "Old Second Priority Notes" and together with the Old First Priority Notes, the "Old Escrow Notes") to hold all of the outstanding shares of capital stock of Coleman Holdings Inc. ("Coleman Holdings"). Coleman Holdings was a holding company formed in July 1993 in connection with the offering of Senior Secured Discount Notes due 1998 (the "Holdings Notes") to hold all of the outstanding shares of capital stock of Coleman Worldwide Corporation ("Coleman Worldwide"). On July 15, 1997, Coleman Holdings was merged into CLN Holdings. Coleman Worldwide is a holding company formed in March 1993 in connection with the offering of Liquid Yield Option™ Notes due 2013 (the "LYONs"™). Coleman Worldwide also holds 44,067,520 shares of the common stock of The Coleman Company, Inc. ("Coleman" or the "Company") which represents approximately 82% of the outstanding Coleman common stock as of December 31, 1997. CLN Holdings and Coleman Worldwide are holding companies with no business operations of their own. In connection with an initial public offering ("IPO"), Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of New Coleman Holdings Inc. ("Holdings") an indirect wholly-owned subsidiary of Mafco Holdings Inc. ("Mafco"). Holdings (then named The Coleman Company, Inc.) was acquired in 1989 by MacAndrews & Forbes Holdings Inc. ("MacAndrews Holdings", and together with Mafco, "MacAndrews & Forbes"), a corporation wholly owned through Mafco by Ronald O. Perelman. Coleman is a subsidiary of Coleman Worldwide Corporation which is an indirect wholly-owned subsidiary of Holdings. In March 1992, the Company completed an IPO of its common stock.

Principles of Consolidation:

The consolidated financial statements include the accounts of CLN Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions.

Cash and Cash Equivalents:

All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents. The Company's cash equivalents consist primarily of investments in money market funds and commercial paper. The Company's cash equivalents are generally held until maturity and are carried at cost, which approximates fair value.

Inventories:

Inventories are stated at the lower of cost or market. Cost is determined by the first-in, first-out method.

Property, Plant and Equipment:

Property, plant and equipment is recorded at cost and depreciated on a straight-line basis over the estimated useful lives of such assets as follows: land improvements, 5 to 25 years; buildings and building improvements, 7 to 45 years; and machinery and equipment, 3 to 15 years. Leasehold improvements are amortized over their estimated useful lives or the terms of the leases, whichever is shorter. Repairs and maintenance are charged to operations as incurred, and significant expenditures for additions and improvements are capitalized.

NOT A CERTIFIED COPY

01846

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01834

16div-019083
CPH 1326589

1. Significant Accounting Policies—(Continued)

Intangible Assets:

Intangible assets primarily represent goodwill which is being amortized on a straight-line basis over periods not in excess of 40 years. The carrying amount of goodwill is reviewed if facts and circumstances suggest it may be impaired. If this review indicates goodwill will not be recoverable over the remaining amortization period, as determined based on the estimated undiscounted cash flows of the entity acquired, the carrying amount of the goodwill is reduced to estimated fair value based on market value or discounted cash flows, as appropriate. Accumulated amortization aggregated $48,148 and $39,520 at December 31, 1997 and 1996, respectively.

Revenue Recognition:

The Company recognizes revenues at the time title passes to the customer. Net revenues comprise gross revenues less provisions for estimated customer returns and allowances.

Research and Development:

Research and development expenditures are expensed as incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were $11,871, $11,082, and $6,548, respectively.

Advertising and Promotion Expense:

Production costs of future media advertising are deferred until the advertising occurs. All other advertising and promotion costs are expensed when incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were $53,408, $58,823, and $37,544, respectively.

Insurance Programs:

The Company obtains insurance coverage for catastrophic exposures as well as those risks required to be insured by law or contract. It is the policy of the Company to retain a significant portion of certain losses related primarily to workers' compensation, employee health benefits, physical loss and property, and product and vehicle liability. Provisions for losses expected under these programs are recorded based upon the Company's estimates of the aggregate liability for claims incurred.

Foreign Currency Translation:

Assets and liabilities of foreign operations are generally translated into United States dollars at the rates of exchange in effect at the balance sheet date. Income and expense items are generally translated at the weighted average exchange rates prevailing during each period presented. Gains and losses resulting from foreign currency transactions are included in the results of operations. Gains and losses resulting from translation of financial statements of foreign subsidiaries and branches operating in non-highly inflationary economies are recorded as a component of stockholder's equity. Foreign subsidiaries and branches operating in highly inflationary economies translate nonmonetary assets and liabilities at historical rates and include translation adjustments in the results of operations.

Derivative Financial Instruments:

The Company uses derivative financial instruments to reduce interest rate and foreign exchange exposures. The Company maintains a control environment which includes policies and procedures for risk assessment and for the approval, reporting and monitoring of derivative financial instrument activities. The Company does not hold or issue derivative financial instruments for trading purposes.

NOT A CERTIFIED COPY

011847

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01835

16div-019084
CPH 1326590

1. Significant Accounting Policies—(Continued)

Amounts to be received or paid under interest rate swap and cap contracts designated as hedges are recognized over the life of the contracts as adjustments to interest expense. Gains and losses on terminations of interest rate swap and cap contracts designated as hedges are deferred and amortized as adjustments to interest expense over the remaining life of the terminated contracts. Unrealized gains and losses on outstanding interest rate contracts designated as hedges are not recognized.

Foreign currency forward contracts are marked to market and gains and losses on foreign currency forward contracts to hedge firm foreign currency commitments are deferred and accounted for as part of the related foreign currency transaction. Gains and losses on all other forward contracts to hedge third-party and intercompany transactions are recorded in operations as foreign exchange gains and losses. Gains and losses on purchased foreign currency option contracts are deferred and recognized as adjustments to cost of sales upon the sale of the related inventory to the third-party customers.

Credit Risk:

Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of trade receivables and derivative financial instruments. Credit risk on trade receivables is minimized as a result of the large and diversified nature of the Company's worldwide customer base. Although the Company has one significant customer (See Note 15), there have been no credit losses related to this customer. With respect to its derivative contracts, the Company is also subject to credit risk of non-performance by counterparties and its maximum potential loss may exceed the amount recognized in the financial statements. The Company controls its exposure to credit risk through credit approvals, credit limits and monitoring procedures. Collateral is generally not required for the Company's financial instruments.

Fair Value of Financial Instruments:

The following methods and assumptions were used by CLN Holdings in estimating its fair value disclosures for financial instruments:

Cash and cash equivalents: The carrying amount reported in the balance sheet for cash and cash equivalents approximates its fair value.

Long- and short-term debt: The carrying amounts of CLN Holdings' borrowings under its foreign bank lines of credit, revolving credit agreement and other variable rate debt approximate their fair value. The fair value of the Company's senior notes issues (see Note 9) are estimated using discounted cash flow analysis based on the Company's estimated current borrowing rate for similar types of borrowing arrangements. The fair value of the publicly traded LYONs debt and Escrow Notes is based on quoted market prices.

Foreign currency exchange contracts: The fair values of CLN Holdings' foreign currency contracts are estimated based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

The carrying amounts and fair values of CLN Holdings' financial instruments are as follows:

	December 31, 1997		December 31, 1996	
	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)
Cash and cash equivalents	$ 13,031	$ 13,031	$ 17,299	$ 17,299
Short-term debt	(64,207)	(64,207)	(33,935)	(33,935)
Long-term debt excluding capital leases	(983,173)	(929,157)	(999,947)	(972,821)
Foreign currency exchange contracts	128	128	940	1,629

NOT A CERTIFIED COPY

01848

MF 01836

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019085

CPH1326591

1. Significant Accounting Policies—(Continued)

Stock-Based Compensation:

Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation," encourages, but does not require companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has chosen to account for stock-based compensation plans using the intrinsic value method prescribed in Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the quoted market price of Coleman's stock at the date of the grant over the amount an employee must pay to acquire the stock.

Reclassifications:

Certain prior year amounts in the financial statements have been reclassified to conform to the current year presentation.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from those estimates.

Recently Issued Accounting Standards:

In June 1997, the Financial Accounting Standards Board (the "FASB") issued SFAS No. 130 "Reporting Comprehensive Income". SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required.

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information". SFAS No. 131 establishes standards for the way public business enterprises report information about operating segments in annual financial statements and requires those enterprises report selected information about operating segments in interim financial reports. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

In February 1998, the FASB issued SFAS No. 132, "Employers' Disclosures about Pensions and Other Postretirement Benefits". SFAS No. 132 revises employers' disclosures about pension and other postretirement benefits to the extent practicable. It also requires additional information on changes in the benefit obligations and fair value of plan assets and eliminates certain other disclosures. SFAS No. 132 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

CLN Holdings has not yet determined the impact of adoption of these standards; however, the adoption of these standards will have no impact on CLN Holdings' consolidated results of operations, financial position or cash flows.

2. Acquisitions and Divestitures

On November 2, 1994, the Company purchased substantially all the assets of Eastpak, Inc. and all the capital stock of M.G. Industries, Inc. (collectively, "Eastpak"), a leading designer, manufacturer and distributor of

NOT A CERTIFIED COPY

MF 01837

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPN1326392 16div 019086

2. Acquisitions and Divestitures—(Continued)

branded daypacks, sports bags and related products. The Company also entered into an agreement with the predecessor owner of Eastpak to make additional payments based upon the achievement of certain annual sales levels of Eastpak products and other products substantially similar to the Eastpak products during the years ended December 31, 1995, 1996, and 1997. A total of $23,000 was earned by the predecessor owner of Eastpak under the terms of this agreement. This amount has been recorded as additional goodwill.

During 1995, the Company purchased all of the outstanding shares of capital stock of Sierra Corporation of Fort Smith, Inc., a manufacturer of portable outdoor and recreational folding furniture and accessories, and substantially all of the assets of Active Technologies, Inc. ("ATI"), a manufacturer of technologically advanced lightweight generators and battery charging equipment. The aggregate purchase price for these acquisitions was $19,516 including fees and expenses. These acquisitions were accounted for using the purchase method of accounting. The purchase price and expenses associated with these acquisitions exceeded the fair value of net assets acquired by $11,186 and the excess has been assigned to goodwill and is being amortized over 20 to 30 years on the straight-line method. In connection with the ATI purchase, the Company may also be required to make payments to the predecessor owner of ATI of up to $18,750 based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1997, the amounts recorded, as additional goodwill, under the terms of this agreement have been immaterial. The results of operations of these companies on a pro forma basis as if their acquisitions had occurred at the beginning of 1995 individually and in the aggregate were not significant to CLN Holdings.

On January 2, 1996, the Company purchased substantially all the assets and assumed certain liabilities of Seatt Corporation ("Seatt"), a leading designer, manufacturer and distributor of safety and security related electronic products for residential and commercial applications. The Seatt acquisition, which was accounted for under the purchase method, was completed for approximately $65,300 including fees and expenses. The results of operations of Seatt have been included in the consolidated financial statements from the date of acquisition. In connection with the purchase price allocation of the Seatt acquisition, the Company recorded goodwill of approximately $38,800. The Company is amortizing this amount over 40 years on the straight-line method.

On February 18, 1998, the Company announced an agreement was signed for the sale of Coleman Safety & Security Products, Inc., the successor to Seatt, to Ranco Incorporated, a U.S. subsidiary of Siebe plc, a United Kingdom diversified engineering group. The sale price is approximately $105,000 and is subject to adjustment upon closing which is expected to occur by the end of March 1998. Net assets of Coleman Safety & Security at December 31, 1997 were approximately $73,000.

On February 28, 1996, the Company purchased approximately 70% of the outstanding shares of Application des Gaz, S.A. ("ADG" or "Camping Gaz"), a leading manufacturer and distributor of camping appliances in Europe. The Company completed the necessary steps to acquire the remaining 30% of the outstanding shares during the second quarter of 1996. The cost of acquiring all the shares of ADG was approximately $100,000 including fees and expenses.

The acquisition of Camping Gaz was accounted for under the purchase method. In connection with the final allocation of purchase price to the fair values of assets acquired and liabilities assumed, the Company recorded goodwill of approximately $78,900, which is being amortized over 40 years on the straight-line method. At acquisition, the Company recognized liabilities in the amount of $21,898 representing severance and other termination benefits for certain production and administrative employees of Camping Gaz. As of December 31, 1997, the Company had paid termination costs of approximately $13,350 and anticipates all remaining termination costs will be paid during 1998.

The Company has included the results of operations of Camping Gaz in the consolidated financial statements from March 1, 1996, the date on which the Company obtained control of Camping Gaz, and has recognized minority interest related to the remaining shares for the period March 1, 1996 through June 30, 1996.

NOT A CERTIFIED COPY

CSC 18

MF 01838

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CH0826503

16div-019087

2. Acquisitions and Divestitures—(Continued)

The following summarized, unaudited pro forma results of operations of CLN Holdings for the years ended December 31, 1996 and 1995 assume the acquisition of Seatt and the acquisition of all the outstanding shares of Camping Gaz occurred as of the beginning of the respective periods. The pro forma results include certain adjustments, primarily reflecting increased amortization and interest expense and a lower income tax provision, and are not necessarily indicative of what the results of operations would have been had the Seatt and Camping Gaz acquisitions occurred at the beginning of the respective periods. Moreover, the pro forma information is not intended to be indicative of future results of operations.

	Year Ended December 31,	
	1996	1997
Net revenues	$1,246,370	$1,193,295
(Loss) earnings before extraordinary item	(57,091)	9,996
Net (loss) earnings	(58,335)	9,209

3. Restructuring and Other Charges

During 1997, the Company recorded restructuring charges of $32,791 and certain other charges of $3,628, collectively, (the "1997 Restructuring Charges") and related tax benefits of $13,918. The Company reflected $19,493 of the 1997 Restructuring Charges in cost of sales and reflected $16,926 in selling, general and administrative ("SG&A") expenses. The 1997 Restructuring charges of $36,419 consisted of (i) $15,735 to exit various low margin products, including pressure washers, (ii) $14,943 to close and relocate certain administrative and sales offices, and (iii) $5,741 to close several manufacturing facilities. Most of these activities were substantially complete as of December 31, 1997, and remaining actions are expected to be completed in 1998.

During 1996, the Company recorded restructuring charges of $66,202 and certain other charges of $7,998 (collectively, the "1996 Restructuring Charges") and related net tax benefits of $21,684. The Company reflected $44,005 of the 1996 Restructuring Charges in cost of sales and $30,195 in SG&A. The pre-tax restructuring charges of $66,202 consisted of (i) $29,067 to integrate Camping Gaz and Coleman operations into a global recreation products business, (ii) $19,000 to exit the low end electric pressure washer business, (iii) $14,135 to exit a portion of the Company's battery powered light business and (iv) $4,000 to settle certain litigation with respect to the battery-powered light business. The charges to integrate the Camping Gaz and Coleman operations reflect primarily the cost to dispose of duplicate manufacturing, distribution and administrative facilities and the related severance costs, which actions were substantially completed in 1997 and are expected to be fully completed in 1998. The low end pressure washer and battery powered light businesses were exited by discontinuing the manufacturing and distribution of these products in 1997. The other pre-tax charges of $7,998 related primarily to certain asset write-offs. These charges were incurred in the Company's normal course of business, although the amounts involved were higher than similar charges the Company had recorded in prior years. The provision for income taxes included $21,684 of tax benefits resulting from these restructuring and other charges, net of an increase in the valuation reserve related to certain foreign deferred tax assets and other foreign tax charges totaling $5,595.

NOT A CERTIFIED COPY

MF 01839
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div.019088

3. Restructuring and Other Charges—(Continued)

The components of the combined 1997 Restructuring Charges and 1996 Restructuring Charges and an analysis of the amounts charged against the reserve are outlined in the following table:

	1996 Original Reserve	Charges During Year Ended 12/31/96	Balance at 12/31/96	1997 Additional Reserves	Charges During Year Ended 12/31/97	Balance at 12/31/97
Impairment of fixed assets	$10,012	$ (1,789)	$ 8,223	$ 6,449	$ (6,530)	$ 8,142
Inventory and other asset impairments	38,257	(25,875)	12,382	10,961	(14,966)	8,377
Termination costs	2,018	(1,633)	385	12,146	(9,729)	2,802
Idle facilities, relocation and other exit costs	23,913	(12,429)	11,484	6,863	(9,656)	8,691
	$74,200	$(41,726)	$32,474	$36,419	$40,881	$28,012

The termination costs recognized in 1996 related to approximately 200 employees and the 1997 termination costs related to approximately 525 employees. As of December 31, 1997, $11,362 of termination costs were paid on behalf of the approximately 700 employees who were terminated as of that date.

During 1995, the Company recognized an asset impairment charge of $12,289 related to its Brazilian operations. The Brazilian operations had not performed to the Company's expectations since acquisition of this business in April of 1994, and in the fourth quarter of 1995, the Company initiated actions to reduce the operating losses in Brazil. These actions included replacing management, increasing prices, downsizing the manufacturing operations and reducing SG&A and other expenses. Because of these actions, the Company performed an impairment review and concluded recognition of an asset impairment charge was appropriate. The basis of the fair values used in the computation of the charge were appraisals for property and equipment and estimated discounted cash flows for goodwill. The charge has been included in the statement of operations under the caption "Asset Impairment Charge".

4. Inventories

Inventories consisted of the following:

	December 31, 1997	December 31, 1996
Raw material and supplies	$ 59,406	$ 82,399
Work-in-process	7,813	12,878
Finished goods	169,108	192,225
	$236,327	$287,502

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01840

CPT1326595

16div 019089

011852

5. Property, Plant and Equipment, Net

	December 31, 1997	December 31, 1996
Property, plant and equipment, net consisted of the following:		
Land and land improvements	$ 7,700	$ 8,772
Buildings and building improvements	79,101	78,760
Machinery and equipment	192,650	194,714
Construction-in-progress	10,076	15,519
	289,527	297,765
Accumulated depreciation	(114,033)	(98,583)
	$175,494	$199,182

Depreciation expense was $26,956, $25,770, and $19,142 for the years ended December 31, 1997, 1996 and 1995, respectively.

6. Accrued Expenses

Accrued expenses consisted of the following:

	December 31, 1997	December 31, 1996
Compensation and related benefits	$ 20,385	$ 29,331
Other	74,473	83,709
	$ 94,858	$113,040

7. Other Liabilities

Other liabilities consisted of the following:

	December 31, 1997	December 31, 1996
Pensions and other postretirement benefits	$ 49,121	$ 52,229
Other	11,485	23,944
	$ 60,606	$ 76,173

8. Short-Term Borrowings

The Company maintained short-term bank lines of credit at December 31, 1997 and 1996 aggregating approximately $115,249, and $119,101, respectively, of which approximately $64,207 and $33,935 were outstanding at December 31, 1997 and 1996, respectively. The weighted average interest rate on amounts borrowed under these short-term lines was approximately 2.7% and 2.4% at December 31, 1997 and 1996, respectively.

Outstanding letters of credit aggregated approximately $37,208 and $32,897 at December 31, 1997 and 1996, respectively.

NOT A CERTIFIED COPY

MF 01841

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPR 132696

16div-019090

9. Long-Term Debt

Long-term debt consisted of the following:

	December 31,	
	1997	1996
7.26% Senior Notes due 2007 (a)	$200,000	$ 200,000
7.10% Senior Notes due 2006 (b)	85,000	85,000
7.25% Senior Notes due 2008 (c)	75,000	75,000
Revolving credit facility (d)	52,127	146,350
Term loan (d)	64,894	73,478
Senior Secured Discount Exchange Notes due 2001 (e)	503,171	—
Liquid Yield Option(TM)Notes due 2013 (f)	2,503	174,594
Series B Senior Secured Discount Notes due 1998 (g)	—	242,334
Other	778	3,785
	983,473	1,000,541
Less current portion	3,026	747
	$980,447	$ 999,794

(a) On August 8, 1995, the Company completed a private placement issuance and sale of $200,000 aggregate principal amount of 7.26% Senior Notes due 2007 (the "2007 Notes"). Interest on the 2007 Notes is payable semiannually, and the principal is payable in annual installments of $40,000 each commencing August 8, 2003, with a final installment payment of $40,000 due on August 8, 2007. If there is a default, the interest rate will be the greater of (i) 9.26% or (ii) 2.0% above the prime interest rate.

The 2007 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(b) On June 13, 1996, the Company completed a private placement issuance and sale of $85,000 aggregate principal amount of 7.10% Senior Notes due 2006 (the "2006 Notes"). Interest on the 2006 Notes is payable semiannually, and the principal is payable in annual installments of $12,143 each commencing June 13, 2000, with a final installment payment of $12,143 due on June 13, 2006. If there is a default, the interest rate will be the greater of (i) 9.10% or (ii) 2.0% above the prime interest rate.

The 2006 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(c) On June 13, 1996, the Company completed a private placement issuance and sale of $75,000 aggregate principal amount of 7.25% Senior Notes due 2008 (the "2008 Notes"). Interest on the 2008 Notes is payable semiannually, and the principal is payable in annual installments of $15,000 each commencing June 13, 2004, with a final installment payment of $15,000 due on June 13, 2008. If there is a default, the interest rate will be the greater of (i) 9.25% or (ii) 2.0% above the prime interest rate.

NOT A CERTIFIED COPY

MF 01842

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CFTC v. Wilshire et al. 16-cv-07091

0115154

9. Long-Term Debt—(Continued)

The 2008 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(d) In April 1996, the Company amended its credit agreement to: a) provide a term loan of French Franc 385,125 ($64,894 at December 31, 1997 exchange rates) (the "Term Loan"), b) provide a $275,000 unsecured revolving credit facility line (the "Credit Facility"), c) allow for the Camping Gaz acquisition and d) extend the maturity of the credit agreement (as amended, the "Company Credit Agreement"). In connection with the Company recording the restructuring and other charges as discussed in Note 3 and lower than expected operating results, the Company further amended the Company Credit Agreement in October 1996 and again in March 1997.

The Company Credit Agreement is available to the Company until April 30, 2001. The outstanding loans under the Company Credit Agreement bear interest at either of the following rates, as selected by the Company from time to time: (i) the higher of the agent's base lending rate or the federal funds rate plus .50% or (ii) the London Inter-Bank Offered Rate ("LIBOR") plus a margin ranging from .25% to 2.125% based on the Company's financial performance. If there is a default, the interest rate otherwise in effect will be increased by 2% per annum. The Company Credit Agreement also bears an overall facility fee ranging from .15% to .375% based on the Company's financial performance.

In addition, the Company Credit Agreement provides, subject to certain exceptions, for the net cash proceeds from disposition of assets other than in the ordinary course of business, to be used to prepay any outstanding Term Loan balances with any remaining excess net cash proceeds to be applied to outstanding borrowings under the Credit Facility with a corresponding reduction in the overall amount of the Credit Facility line.

The Company Credit Agreement contains various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios, levels of consolidated net worth and profits, and certain other provisions limiting the incurrence of additional debt, purchase or redemption of the Company's common stock, issuance of preferred stock of the Company, and also prohibits the Company from paying any dividends until on or after January 1, 1999 and limits the amount of dividends the Company may pay thereafter. The Company Credit Agreement also contains an event of default upon a change of control of the Company (as defined in the Company Credit Agreement) and other customary events of default. In addition, substantially all of the shares of the Company's common stock owned by Coleman Worldwide are pledged to secure indebtedness of Coleman Worldwide and of its parent, CLN Holdings Inc. The indentures governing this indebtedness contain various covenants including a covenant placing certain limitations on the Company's indebtedness.

(e) On May 20, 1997, CLN Holdings issued approximately $600,475 in principal amount at maturity of Old First Priority Notes and approximately $131,560 in principal amount at maturity of Old Second Priority Notes resulting in aggregate net proceeds of approximately $455,257 in a private placement offering. The Old First Priority Notes and Old Second Priority Notes were issued at a discount from their principal amount at maturity to yield 11 1/8% and 12 7/8%, respectively, per annum calculated from May 20, 1997. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old First Priority Notes for Senior Secured First Priority Discount Exchange Notes due 2001 (the "First Priority Notes") and to exchange the Old Second Priority Notes for Senior Secured Second Priority Discount Exchange Notes due 2001 (the "Second Priority Notes" and together with the First Priority Notes, the "Escrow Notes"). The indenture governing the Escrow Notes (the "Indenture") requires, subject to certain

NOT A CERTIFIED COPY
01855
MF 01843
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CRH 1326598
16div-019092

9. Long-Term Debt—(Continued)

exceptions, that the retirement of the remaining outstanding LYONs be consummated no later than June 10, 1998. The Indenture requires CLN Holdings to hold, directly or indirectly, a majority of the voting power of the Company at all times, unless and until CLN Holdings exercises its right to substitute U.S. Government obligations for all of the pledged collateral. The Indenture, to which Coleman is not a party, also contains certain covenants that, among other things, generally prohibit the incurrence of additional debt by CLN Holdings and the issuance of additional debt and the issuance of preferred stock by Coleman Worldwide, and limit (i) the incurrence of additional debt and the issuance of preferred stock by the Company, (ii) the payment of dividends on the capital stock of CLN Holdings and its subsidiaries and the redemption or repurchase of the capital stock of CLN Holdings, (iii) the sale of assets and subsidiary stock, (iv) transactions with affiliates, (v) the creation of liens on the assets of CLN Holdings and Coleman Worldwide, and (vi) consolidations, mergers and transfers of all or substantially all of CLN Holdings' assets. The foregoing limitations and prohibitions, however, are subject to a number of qualifications. The Escrow Notes also contain customary events of defaults and a put right by the holders at a price specified in the Indenture in the event of a change of control of CLN Holdings (as defined in the Indenture).

Approximately $262,194 of the net proceeds of the Escrow Notes were contributed to Coleman Holdings, then a subsidiary of CLN Holdings, and used by it to redeem, on July 15, 1997, the Discount Notes (as defined below). Coleman Holdings recorded an extraordinary loss of $4,300, net of tax benefits of $2,315, relating to the excess of the redemption price over the accreted value of the Discount Notes and the write-off of deferred charges related to the Discount Notes. Approximately $191,278 of the net proceeds of the Escrow Notes were contributed to Coleman Worldwide and used by it to accept for exchange, $554,053 aggregate principal amount at maturity of LYONs, including redemption fees and expenses. Coleman Worldwide recorded an extraordinary loss of $10,939, net of tax benefits of $7,076, relating to the excess of the exchange offer price over the accreted value of the LYONs, the write-off of deferred charges related to the LYONs exchanged and redemption fees and expenses. The $7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. The Escrow Notes are secured by a pledge of all the shares of common stock of Coleman Worldwide and guaranteed pursuant to a non-recourse guaranty of Coleman Worldwide (the "Guaranty"), which Guaranty is currently secured by a pledge of 36,374,666 shares of Company common stock and will be secured by the shares currently securing the LYONs upon their redemption.

(f) On May 27, 1993, Coleman Worldwide issued and sold $500,000 principal amount at maturity of LYONs in an underwritten public offering. On June 7, 1993, an additional $75,000 principal amount at maturity of LYONs was sold upon exercise of the underwriter's overallotment option. During 1997, Coleman Worldwide redeemed $554,053 principal amount at maturity of LYONs as described above. The $7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. There are no periodic payments of interest on the LYONs. The aggregate principal amount of the LYONs represents a yield to maturity of 7.25% per annum (computed on a semi-annual bond equivalent basis) calculated from May 27, 1993. Coleman Worldwide plans to redeem the remaining $7,500 aggregate principal amount at maturity of LYONs no later than May 27, 1998 with the remaining proceeds from the issuance of the Escrow Notes which are being held in escrow. The LYONs, to which the Company is not a party, provide that it is an Additional Purchase Right Event (as defined below) if, among other things, the amount of debt incurred by the Company exceeds certain limitations. The Indenture governing the LYONs, to which the Company is not a party, provides the holders of LYONs with the option to require Coleman Worldwide to purchase the LYONs at a price specified in the Indenture after the occurrence of certain events ("Additional Purchase Right Events"). Additional Purchase Right Events occur, among other things, upon the Company's Consolidated Debt Ratio (as defined) exceeding 0.75 to 1.0 or the

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01844

16div-019093

CPH 1326599

9. Long-Term Debt—(Continued)

Consolidated Net Worth (as defined) of Coleman Worldwide as of the end of any fiscal quarter being less than a specified amount which is $70,000 at December 31, 1997.

(g) On July 22, 1993, Coleman Holdings issued and sold $281,281 principal amount at maturity of Old Notes in a private placement offering. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old Notes for Series B Senior Secured Discount Notes (the "Discount Notes"). During 1997, Coleman Holdings redeemed the Discount Notes as described above.

The aggregate scheduled amounts of long-term debt maturities in the years 1998 through 2002 are $3,026, $78, $12,207 $632,376, and $12,159, respectively.

10. Derivative Financial Instruments

The Company periodically enters into a variety of foreign currency exchange contracts to reduce its foreign currency exposure resulting primarily from firm commitments, intercompany foreign sales transactions expected to occur within the next twelve months, and intercompany accounts receivable and payable.

At December 31, 1997 and December 31, 1996, the Company did not have any outstanding foreign currency exchange contracts related to firm commitments.

During the fourth quarter of 1995, the Company elected to adopt the provisions of the Emerging Issues Task Force Issue No. 95-2, "Determination of What Constitutes a Firm Commitment for Foreign Currency Transactions Not Involving a Third Party" ("EITF 95-2") which narrowed the scope of intercompany foreign currency commitments eligible to be hedged for financial reporting purposes. As a result of this change, the Company increased net income by $3,796 in the fourth quarter of 1995. Prior to the adoption of EITF 95-2, the gains and losses associated with these contracts were accounted for under the deferral method. At December 31, 1997, the Company did not have any outstanding foreign currency forward contracts related to intercompany foreign sales transactions. At December 31, 1996, the Company had forward exchange contracts to sell $8,500 in Canadian dollars maturing on February 28, 1997, for which the Company has recognized a net gain of $40 as a component of cost of sales.

At December 31, 1997, the Company did not have any outstanding option contracts. At December 31, 1996, the Company had outstanding option contracts for the sale of Japanese yen at fixed exchange rates totaling $20,038 for specified periods of time which expired during 1997. Net unrealized gains deferred at December 31, 1996 were $653.

With respect to intercompany accounts receivable and payable, at December 31, 1997, the Company had foreign currency forward contracts to sell $1,580 in foreign currencies, which contracts matured in February 1998, and had deferred a net gain of $128. At December 31, 1996, the Company had foreign currency forward contracts to sell $26,623 and to buy $3,898 in foreign currencies, which contracts matured at various dates in 1997, and had deferred a net gain of $185.

At December 31, 1997, $25,000 of the Company's outstanding long-term debt was subject to an interest rate swap agreement and $25,000 of the Company's outstanding long-term debt was subject to an interest rate cap. Under the interest rate swap agreement, the Company pays the counterparty interest at a fixed rate of 6.115%, and the counterparty pays the Company interest at a variable rate equal to the three month LIBOR for a seven-year period commencing January 2, 1996. The agreement is with a major financial institution which is expected to fully perform under the terms of the agreement, thereby mitigating the credit risk from the transaction. The interest rate cap agreement entitles the Company to receive from a major financial institution the amount, if any, by which the Company's interest payments on $25,000 of its variable rate debt exceed 7.35%. The $509 premium

NOT A CERTIFIED COPY

MF 01845

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPSC 16div 019094

10. Derivative Financial Instruments—(Continued)

paid for this interest rate cap agreement is included in other assets and was amortized to interest expense over the three-year term of the cap, which commenced January 3, 1995.

11. Taxes

CLN Holdings is included in the consolidated federal and certain consolidated state income tax returns of Mafco and/or its affiliates. CLN Holdings and Mafco and subsidiaries provide taxes as if they were a separate taxpayer. CLN Holdings will pay to Mafco amounts equal to the taxes that CLN Holdings would otherwise have to pay if it were to file separate tax returns for itself. To the extent that CLN Holdings is entitled to a tax benefit from Mafco as a result of its tax losses, such amounts are recorded as a reduction in the provision for income taxes and a distribution to its parent. During 1997 and 1996, respectively, CLN Holdings recorded a benefit of $18,769 and $9,013 for income taxes, and similar amounts were recorded as distributions to its parent. Coleman Worldwide and Mafco are parties to a tax sharing agreement (the "Tax Sharing Agreement"), pursuant to which Coleman Worldwide is required to pay to Mafco amounts equal to the taxes Coleman Worldwide would otherwise have to pay if it were to file separate consolidated federal, state or local income tax returns including only itself and its domestic subsidiaries. Pursuant to the LYONs indenture agreement, at any time the LYONs are outstanding, the amounts Coleman Worldwide would be required to pay to Mafco under the Tax Sharing Agreement, together with any remaining funds paid to Coleman Worldwide by the Company under the tax sharing agreement between Coleman Worldwide and the Company, may not be paid as tax sharing payments, but Coleman Worldwide may advance such funds to Mafco as long as the aggregate amount of such advances at any time does not exceed the issue price plus accrued OID of the LYONs. Such advances are evidenced by noninterest bearing unsecured demand promissory notes (the "Mafco Demand Notes") from Mafco in the amount of $35,395 at December 31, 1997. Following the redemption or retirement in full of the LYONs, expected to occur no later than May 27, 1998, the Mafco Demand Notes shall be canceled automatically without further action of any person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Notes. As a result of the restriction on the payment of the tax sharing amounts, income taxes provided pursuant to the Tax Sharing Agreement are reflected as a non-cash charge. For all periods presented, federal and state income taxes are provided as if Coleman Worldwide filed its own income tax returns. The accompanying consolidated balance sheet includes approximately $13,317 and $18,528 of federal and state income taxes payable to Mafco pursuant to the Tax Sharing Agreement at December 31, 1997 and 1996, respectively.

For financial reporting purposes, (loss) earnings before income taxes, minority interest and extraordinary item include the following components:

	Year Ended December 31,		
	1997	1996	1995
(Loss) earnings before income taxes, minority interest and extraordinary item:			
Domestic	$(67,881)	$(65,344)	$ 43,585
Foreign	7,752	(20,769)	(14,434)
	$(60,129)	$(86,113)	$ 29,151

NOT A CERTIFIED COPY

011838

MF 01846

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH1326801 16div 019095

11. Taxes—(Continued)

Significant components of the provision for income tax (benefit) expense were as follow:

	Year Ended December 31,		
	1997	1996	1995
Current:			
Federal	$(21,194)	$(12,945)	$ 6,360
State	—	(937)	3,102
Foreign	1,485	3,454	3,853
Total current	(19,709)	(10,428)	13,315
Deferred:			
Federal	(538)	(10,686)	(3,104)
State	(1,890)	(2,178)	(725)
Foreign	(2,025)	(474)	2,215
Total deferred	(4,453)	(13,338)	(1,614)
	$(24,162)	$(23,766)	$11,701

The effective tax rate on (loss) earnings before income taxes, minority interest and extraordinary item varies from the current statutory federal income tax rate as follows:

	Year Ended December 31,		
	1997	1996	1995
(Benefit) provision at statutory rate	(35.0)%	(35.0)%	35.0%
State taxes, net	(2.0)	(3.2)	4.0
Nondeductible amortization	4.1	3.0	6.8
Foreign operations	(7.0)	2.6	(0.4)
Valuation allowance	3.9	4.1	—
Change in tax rates	(2.2)	—	—
Puerto Rico operations	(1.4)	0.2	(5.7)
Other, net	(0.6)	0.7	0.4
Effective tax rate (benefit) provision	(40.2)%	(27.6)%	40.1%

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of CLN Holdings' deferred tax liabilities and assets are as follows:

	Year Ended December 31,	
	1997	1996
Deferred tax assets:		
Postretirement benefits other than pensions	$12,964	$12,370
Reserves for self-insurance and warranty costs	4,898	6,678
Pension liabilities	7,377	8,828
Inventory	6,626	8,245
Net operating loss carryforwards	73,628	47,013
Other, net	12,728	24,026
Total deferred tax assets	118,221	107,160
Valuation allowance	(39,990)	(39,639)
Net deferred tax assets	78,231	67,521
Deferred tax liabilities:		
Depreciation	19,872	18,248
Other, net	8,405	7,675
Total deferred tax liabilities	28,277	25,923
Net deferred tax assets	$49,954	$41,598

NOT A CERTIFIED COPY

011859

MF 01847

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CLN 026012

16dv-029096

11. Taxes—(Continued)

The deferred tax account balance at December 31, 1997 differs from the account balance at December 31, 1996 due primarily to the 1997 deferred tax provision, the tax effects of the foreign exchange gain recorded as a component of stockholder's equity, the tax effects of adjustments related to the finalization of the purchase accounting related to the acquisition of Camping Gaz and the deferred tax asset recorded related to the acquisitions in 1997 of inactive companies which were recorded as a capital contribution (see Note 12).

During 1997, CLN Holdings increased the valuation allowance related to certain foreign deferred tax assets due to uncertainties over realization. At December 31, 1997, CLN Holdings had net operating loss carryforwards ("NOL's") of approximately $107,229 for certain foreign income tax purposes. These NOL's expire beginning in 1998.

CLN Holdings has not provided for taxes on undistributed foreign earnings of approximately $20,860 at December 31, 1997, as CLN Holdings intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its hypothetical calculation.

12. Related Party Transactions

Capital Contributions

As of March 31, 1997, the Company purchased an inactive subsidiary from an affiliate for net cash consideration of $1,031, including transaction costs. The Company expects to realize certain foreign tax benefits from this transaction in future years. Under certain circumstances, a portion of these tax benefits will be payable to the affiliate to the extent such tax benefits are realized by the Company. During the fourth quarter of 1997, the Company purchased an inactive subsidiary from an affiliate in a transaction in which the Company expects to realize certain foreign tax benefits in future years and for which the Company agreed to pay 50% of those realized benefits to the affiliate. The Company has recorded a liability to the affiliate in the amount of $219 which represents 50% of the estimated amount of future tax benefits. The Company has accounted for these transactions in a manner similar to a pooling-of-interests due to the Mafco Holdings Inc. common control over each of the parties involved in the transactions. The $2,799 excess value of estimated realizable tax benefits acquired over the total acquisition costs have been accounted for as a capital contribution.

Insurance Programs

The Company participates in certain of Holdings' insurance programs, including health and life insurance, workers compensation, and liability insurance. The Company's expense represents its expected costs for self-insured retentions and premiums for excess coverage insurance. The expense was $13,339, $13,923 and $9,875 for the years ended December 31, 1997, 1996 and 1995, respectively.

Services Agreement

From time to time, Coleman purchases, at negotiated rates, specialized accounting and other services provided by an affiliate. Coleman also provides, at negotiated rates, services to an affiliate. The net expense for such services was $394 during 1997 and was immaterial in prior years.

Management Agreement

The Company provided management services to certain affiliates pursuant to a management agreement through June 30, 1995. The consolidated financial statements reflect the management fees as a reduction in selling, general and administration expenses. For the year ended December 31, 1995, management fees earned by the Company were $2,400.

NOT A CERTIFIED COPY

011860

MF 01848
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH1326003
16div 019097

12. Related Party Transactions—(Continued)

Licensing Agreement

During 1997, the Company engaged an affiliate of MacAndrews & Forbes to provide licensing services. The Company recorded expenses of $650 related to these services in 1997.

Other

In 1996, the Company entered into an agreement with an affiliate in which the Company realized approximately $1,800 of net tax benefits associated with certain foreign tax net operating loss carryforwards that had not previously been recognized.

The Company purchases and sells products from and to certain affiliates. These amounts are not, in the aggregate, material.

The Company subleases six thousand square feet of office space in New York City from an affiliate pursuant to a month-to-month occupancy memorandum (the "Lease") entered into during 1997. The rent paid by the Company during the year ended December 31, 1997 pursuant to the Lease was $158.

During 1997, Coleman used an airplane owned by a corporation of which a director of Coleman is a stockholder, for which Coleman paid approximately $158.

13. Employee Benefit Plans

Pension Plans

Holdings maintains pension and other retirement plans in various forms covering employees of the Company who meet eligibility requirements. The U.S. salaried retirement plan is a non-contributory defined benefit plan and provides benefits based on a formula of each participant's final average pay and years of service. The U.S. hourly pension plan is a non-contributory defined benefit plan and contains a flat benefit formula. The salaried and hourly plans provide reduced benefits for early retirement and the salaried plan takes into account offsets for Social Security benefits. The Company's policy is to contribute annually the minimum amount required pursuant to the Employee Retirement Income Security Act, as amended. Under certain circumstances, the Company may make additional contributions to the pension plans up to the maximum deductible amounts for income tax purposes.

NOT A CERTIFIED COPY

MF 01849

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CRR 18368

16cv-019098

13. Employee Benefit Plans—(Continued)

Holdings also has an unfunded excess benefit plan covering certain of the Company's U.S. employees whose benefits under the plans described above are limited by provisions of the Internal Revenue Code. The following table reconciles the funded status of the pension plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31, 1997	December 31, 1996
Actuarial present value of benefit obligation:		
Accumulated benefit obligation, including vested benefits of $24,296 and $18,686	$(27,843)	$(21,933)
Projected benefit obligation for service rendered to date	$(43,246)	$(37,092)
Plan assets at fair value	23,102	16,197
Projected benefit obligation in excess of plan assets	(20,144)	(20,895)
Unrecognized prior service cost	130	50
Unrecognized net loss	6,259	7,999
Accrued pension cost	(13,755)	(12,846)
Amount reflected as an intangible asset	(143)	(288)
Amount reflected as minimum pension liability adjustment	(1,526)	(470)
Amount reflected as pension liability	$(15,424)	$(13,604)

The weighted-average discount rate used in determining the actuarial present value of the projected benefit obligation was 7.5% as of December 31, 1997 and 1996. The rate of increase in future compensation levels reflected in such determination was 5% as of December 31, 1997 and 1996. The expected long-term rate of return on assets was 9% as of December 31, 1997, 1996 and 1995. Plan assets consist primarily of common stock, mutual funds and fixed income securities stated at fair market value, and cash equivalents stated at cost, which approximates fair market value. Unrecognized items are being recognized over the estimated remaining service lives of active employees.

Net pension expense includes the following components:

	Year Ended December 31, 1997	1996	1995
Service cost-benefits attributed to service during the year	$3,081	$3,098	$2,125
Interest cost on projected benefit obligation	2,813	2,442	2,004
Curtailment loss	972	—	—
Actual return on plan assets	(2,908)	(1,490)	(1,347)
Net amortization and deferrals	1,537	844	834
Net pension expense	$5,495	$4,894	$3,616

Net pension expense for the year ended December 31, 1997 includes $972 curtailment loss associated with certain executive officer changes during the year.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
MF 01850
16div-019099
CPH 1326605

13. Employee Benefit Plans—(Continued)

Savings Plan:

Holdings maintains an employee savings plan under Section 401(k) of the Internal Revenue Code. This plan covers substantially all of the Company's full-time U.S. employees and allows employees to contribute up to 10% of their salary to the plan. The Company matches, at a 34% rate, employee contributions of up to 6% of their salary. Amounts charged to expense for matching contributions were $1,401, $1,314, and $1,165 for the years ended December 31, 1997, 1996 and 1995, respectively.

Retiree Health Care and Life Insurance:

The Company, through Holdings, provides certain unfunded health and life insurance benefits for certain retired employees. Approximately 55% of the Company's U.S. employees may become eligible for these benefits if they reach retirement age while working for the Company.

The following table reconciles the funded status of the Company's allocable portion of Holdings' postretirement benefit plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31,	
	1997	1996
Accumulated postretirement benefit obligation:		
Retirees	$ (6,852)	$ (6,682)
Fully eligible active plan participants	(3,308)	(3,015)
Other active plan participants	(10,322)	(10,664)
Total accumulated postretirement benefit obligation	(20,482)	(20,361)
Unrecognized transition benefit	(3,707)	(3,973)
Unrecognized prior service cost	(404)	(492)
Unrecognized net gain	(2,415)	(976)
Net postretirement benefit liability	$(27,008)	$(25,802)

Net periodic postretirement benefit expense includes the following components:

	Year Ended December 31,		
	1997	1996	1995
Service cost-benefits attributed to service during the year	$ 927	$1,044	$ 756
Interest cost on accumulated postretirement benefit obligation	1,453	1,454	1,352
Amortization of transition benefit and other net gains	(358)	(354)	(455)
Net periodic postretirement benefit expense	$2,022	$2,144	$1,653

The discount rate used in determining the accumulated postretirement benefit obligation ("APBO") was 7.5% as of December 31, 1997 and 1996. At December 31, 1997, the assumed health care cost trend rate used in measuring the APBO was 7.5% starting in 1998 then gradually decreasing to 5% by the year 2003 and remaining at that level thereafter. The health care cost trend rate assumption has a significant effect on the pamount of the obligation and periodic benefit expense reported. An increase in the assumed health care cost trend rates by 1% in each year would increase the APBO as of December 31, 1997 by approximately 19% and the service and interest cost components of net periodic postretirement benefit expense by approximately 22%.

NOT A CERTIFIED COPY
MF 01851
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPR 132600
16div-019100

13. Employee Benefit Plans—(Continued)

Stock Option Plans:

The Company adopted The Coleman Company, Inc. 1992 Stock Option Plan (the "1992 Stock Option Plan") in 1992. During 1993, the shareholders approved the 1993 Stock Option Plan (the "1993 Stock Option Plan") and during 1996, the shareholders approved The Coleman Company, Inc. 1996 Stock Option Plan (the "1996 Stock Option Plan"). Under the terms of the 1992 Stock Option Plan, the 1993 Stock Option Plan and the 1996 Stock Option Plan (collectively the "Stock Option Plans"), incentive stock options ("ISOs"), non-qualified stock options ("NQSOs") and stock appreciation rights may be granted to key employees of the Company and any of its affiliates from time to time. Stock options have been granted under the Stock Option Plans with vesting terms and maximum terms of approximately five years and ten years, respectively. The aggregate number of shares of common stock as to which options and rights may be granted under the Stock Option Plans may not exceed 4,700,000.

The following table summarizes the stock option transactions under the Stock Option Plans:

	1997		1996		1995	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Outstanding—January 1,	3,017,630	$15.84	2,572,930	$15.25	2,310,888	$14.03
Granted:						
at market price	2,081,000	14.77	294,000	19.73	637,000	17.89
above market price	75,000	15.00	381,000	15.00	—	—
Exercised	(220,750)	11.42	(154,890)	12.17	(325,748)	12.09
Forfeited	(1,605,330)	16.49	(75,410)	14.19	(49,210)	13.14
Outstanding—December 31,	3,347,550	15.14	3,017,630	15.84	2,572,930	15.25
Exercisable—December 31,	927,000	14.02	513,440	13.25	413,526	12.84
Weighted-average fair value of options granted during the year:						
at market price	$ 7.43		$ 6.62		$ 7.13	
above market price	$ 5.28		$ 3.21		$ —	

The following table summarizes information concerning currently outstanding and exercisable options at December 31, 1997:

Options Outstanding			Options Exercisable		
Range of Exercise Prices	Number Outstanding	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$12.25-$13.82	543,030	5.26 years	$12.96	425,230	$12.79
$13.83-$14.00	878,500	9.29	14.00	181,250	14.0
$14.01-$16.12	806,520	6.66	15.38	226,020	15.2
$16.13-$20.38	1,119,500	9.20	16.92	94,500	16.6
$12.25-$20.38	3,347,550	7.97	15.14	927,000	14.0

NOT A CERTIFIED COPY

MF 01852
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div 019101
CPH1326607

13. Employee Benefit Plans—(Continued)

As described in Note 1, the Company follows APB Opinion No. 25 in accounting for stock compensation arrangements. Pro forma financial information regarding net income and earnings per share has been determined as if the Company had accounted for its employee stock options under the fair value method of SFAS No. 123. The fair value of ISOs and NQSOs granted during 1997, 1996 and 1995 were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions: risk-free interest rates of 6.53%, 6.11% and 5.91 % for 1997, 1996 and 1995, respectively, dividend yield of 0.0%, volatility of the expected market price of the Company's common stock of 31.3%, 20.2% and 30.8% for 1997, 1996 and 1995, respectively, and a weighted-average expected life of the option of 7.7, 5.5 and 5.5 years for 1997, 1996 and 1995, respectively.

SFAS No. 123 requires the use of option valuation models, one of which is the Black-Scholes model, that were not developed for use valuing ISOs or NQSOs. Further, these option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. In management's opinion, based on the above, the existing models do not necessarily provide a reliable single measure of the fair value of its ISOs or NQSOs.

The following summarized, unaudited pro forma results of operations assume the estimated fair value of the ISOs and NQSOs granted during the years ended December 31, 1997, 1996 and 1995 is amortized to expense over the ISOs' and NQSOs' vesting period. SFAS No. 123 does not require disclosure of the effect of any grants of stock based compensation prior to 1995 and, therefore, the pro forma effect of SFAS No. 123 on net earnings is not representative of the pro forma effect on net earnings in future years.

	Year Ended December 31,		
	1997	1996	1995
Pro forma net (loss) earnings	$(55,045)	$(58,918)	$9,742

14. Commitments and Contingencies

Leases:

The Company leases manufacturing, administrative and sales facilities and various types of equipment under operating lease agreements expiring through 2007. Rental expense was $15,620, $14,164, and $11,526 for the years ended December 31, 1997, 1996 and 1995, respectively. Minimum rental commitments under all noncancellable operating leases with remaining lease terms in excess of one year from December 31, 1997, aggregated $31,506; such commitments for each of the five years subsequent to December 31, 1997 are $7,571, $6,683, $4,622, $2,848, and $3,560, respectively, and $6,222 thereafter.

The Company leases its former corporate office building in Denver, Colorado under agreements which give the Company the right, subject to certain qualifications, to renew or terminate the lease, or purchase the property. Upon termination, the Company has guaranteed the lessor certain residual values.

Environmental Matters:

Gilbert and Mosley Site. As a result of investigations undertaken in 1986, the Kansas Department of Health and Environment ("KDHE") discovered that groundwater in the downtown Wichita area (the "Gilbert and Mosley Site") was contaminated with volatile organic chemicals ("VOCs"). Coleman occupied a facility within the boundaries of the Gilbert and Mosley Site. Subsequent investigations in the area, including investigations in November 1988 by Coleman, indicated the groundwater beneath the Coleman property is contaminated with VOCs. Coleman is in the process of remediating the contamination on its property.

The City of Wichita has entered into a voluntary agreement with KDHE in which the City agreed to investigate and then remediate contamination in the Gilbert and Mosley Site. Coleman has entered into an agreement with KDHE in which Coleman agreed to perform a similar study for the Coleman property and to implement remedial activities at its property. In addition, Coleman entered into an agreement with the City of

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01853

16div-019102

CPH 1326608

01-1365

14. Commitments and Contingencies—(Continued)

Wichita in which Coleman agreed to fund its proportionate share of the City's study and remediation of the Gilbert and Mosley site.

Maize Site. Coleman has undertaken a soil and groundwater investigation at its facility in Maize, Kansas (the "Maize Site"). Results indicate that limited VOC contamination is present in the groundwater under and to the southeast of the facility. The data has been reported to the KDHE, and Coleman has entered into an agreement with KDHE to implement appropriate remedial actions. The remediation system has been installed, and Coleman is in the process of remediating the contaminated groundwater.

Northeast Site. In 1990, Coleman undertook a soil and groundwater investigation of its facility in northeast Wichita (the "Northeast Site"). Results indicated the presence of VOCs in the groundwater and soils. Although some of the contamination may be a result of Coleman's operations at the facility, the data also indicated that contamination was migrating onto the Coleman property from up gradient sources. Coleman reported the initial results of its study to KDHE. Coleman has also provided copies of all data to the United States Environmental Protection Agency (the "EPA"), at its request. The EPA has not initiated any actions against the Company with respect to the Northeast Site. An agreement has been entered into with KDHE to undertake additional investigatory activities, and an interim remediation system has been installed.

The Company has not been named as a potentially responsible party ("PRP") by the EPA nor does it have joint and several liability with any other PRP for remediation at any of the above sites.

The Company has adopted an environmental policy designed to ensure the Company operates in full compliance with applicable environmental regulations and, where appropriate, the Company's own internal standards. Coleman has also undertaken an environmental compliance audit program. The Company makes expenditures it believes are necessary to comply with environmental management practices. Environmental expenditures that relate to current operations are expensed or capitalized as appropriate and were not significant in 1997 and are not expected to be significant in the foreseeable future. The Company accrues for losses associated with environmental remediation obligations when such losses are probable and reasonably estimable. Accruals for estimated losses from environmental remediation obligations generally are recognized no later than completion of the remedial feasibility study. Such accruals are adjusted as further information develops or circumstances change. Costs of future expenditures for environmental remediation obligations are not discounted to their present value. Recoveries of environmental remediation costs from other parties are recognized as assets when their receipt is deemed probable.

While it is possible the Company reserves may change in the near term, the Company believes the reserves established for environmental matters are adequate. This belief is based on estimates provided by the state governmental authorities referred to above, results of environmental investigations of the groundwater and soils at the manufacturing facilities operated by Coleman conducted by independent consultants specializing in environmental investigations and remediation and estimates provided by such independent consultants, together with estimates provided by Coleman's environmental engineering staff.

Other:

The Company and Holdings are involved in various claims and legal actions arising in the ordinary course of business. The Company believes the ultimate disposition of these matters is not expected to have a material adverse effect on CLN Holdings' consolidated financial condition or results of operations. The Company has entered into a cross-indemnification agreement with Holdings pursuant to which it will indemnify Holdings against all liabilities related to businesses transferred to the Company, and Holdings will indemnify the Company against all liabilities of Holdings other than liabilities related to the businesses transferred to the Company.

The Company is party to a license agreement which requires payments of minimum guaranteed royalties aggregating to $11,778 at December 31, 1997; such commitments for each of the five years remaining under the agreement subsequent to December 31, 1997 are $1,040, $1,745, $2,434, $3,010 and $3,549, respectively.

NOT A CERTIFIED COPY

011866

MF 01854

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

GRU-320609

16div-019103

15. Significant Customers

The Company's U.S. and Canadian operations have one significant customer which accounted for approximately 13%, 15%, and 19% of net revenues in the years ended December 31, 1997, 1996 and 1995, respectively.

16. Cash Flow Reporting

CLN Holdings uses the indirect method to report cash flows from operating activities. Interest paid was $42,217, $37,608, and $23,976 and net income taxes paid were $3,206, $2,857, and $4,606 for the years ended December 31, 1997, 1996 and 1995, respectively. Certain non-cash transactions relating to acquisitions, the issuance of long-term debt and income taxes have been reported in Notes 2, 9 and 11.

17. Geographic Segments

CLN Holdings, through the Company, designs, manufactures and markets a wide variety of multiuse products and accessories, which are primarily marketed through independent retail markets for outdoor recreation and hardware consumers. CLN Holdings, through the Company, is a leading manufacturer and marketer of brand name consumer products for the camping and related outdoor recreation markets in the United States, Canada, Europe, and Japan.

Operating profit, as indicated below, represents net revenues less operating expenses and amortization of goodwill. Generally, sales between geographic areas are made at cost plus a share of operating profit. Identifiable assets are those used by each geographic segment. Corporate assets are principally cash, certain property and equipment, income tax refunds receivable—affiliate, and deferred charges.

Information related to CLN Holdings' geographic segments is as follows:

	Year Ended December 31,		
	1997	1996	1995
Net revenues:			
Domestic—U.S.	$ 855,365	$ 916,260	$716,018
—Export	78,120	91,125	90,434
Europe	217,863	168,780	52,233
Other foreign	167,119	219,350	169,836
Eliminations	(164,173)	(175,299)	(94,947)
	$1,154,294	$1,220,216	$933,574
Operating profit:			
Domestic (a)	$ 34,754	$ 19,915	$120,915
Europe (b)	1,299	(17,505)	(3,241)
Other foreign (c)	26,384	4,027	(10,540)
	62,437	6,437	107,134
Corporate expenses (d)	(31,680)	(17,430)	(20,153)
Interest expense	(90,886)	(75,120)	(57,830)
(Loss) earnings before income taxes, minority interest and extraordinary item	$ (60,129)	$ (86,113)	$ 29,151
Identifiable assets:			
Domestic	$ 681,325	$ 782,373	$696,681
Europe	216,816	247,412	70,478
Other foreign	91,192	83,033	59,107
Corporate	108,536	95,457	83,194
	$1,097,869	$1,208,275	$909,460

(a) Includes restructuring and other charges of $21,025 in 1997 and $49,257 in 1996.
(b) Includes restructuring and other charges of $114 in 1997 and $20,002 in 1996.
(c) Includes restructuring and other charges of $4,151 in 1997 and $4,941 in 1996; and $12,289 of asset impairment charges in 1995.
(d) Includes restructuring and other charges of $11,129 in 1997.

NOT A CERTIFIED COPY

01-1967

MF 01855

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019104
CPH 1326610

18. Quarterly Financial Summaries (Unaudited)

Summarized quarterly financial data for 1997 and 1996 are as follows:

	Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
1997				
Net revenues	$295,464	$383,514	$252,434	$222,882
Gross profit (a)	81,042	101,913	69,867	61,141
Loss before extraordinary item (a)	(5,959)	(350)	(16,530)	(14,068)
Net loss (a)	(5,959)	(11,279)	(20,830)	(14,078)
1996				
Net revenues	$273,560	$452,654	$269,607	$224,395
Gross profit (a)	80,966	137,538	39,894	33,321
Earnings (loss) before extraordinary item (a)	8,180	17,337	(46,325)	(36,149)
Net earnings (loss) (a)	7,598	16,680	(46,330)	(36,149)

(a) Includes restructuring and other charges (credits) as follows:

1997				
Gross profit	$ (425)	$ 11,402	$ 9,010	$ (314)
Earnings before extraordinary item	2,435	11,547	9,433	(914)
Net earnings	2,435	11,547	9,433	(914)
1996				
Gross profit	—	—	33,567	10,438
Earnings before extraordinary item	—	—	44,495	8,021
Net earnings	—	—	44,495	8,021

19. Impact of Year 2000 (Unaudited)

Some of the Company's older computer programs were written using two digits rather than four to represent the applicable year. As a result, those computer programs recognize a date represented by "00" as the year 1900 rather than the year 2000. This situation, known as the "Year 2000" issue, could cause a system failure or miscalculations causing disruptions of operations, including, among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

Based on ongoing assessments of the Company's operations, the Company has determined it will be required to modify or replace portions of its computer software so the computer systems will function properly with respect to dates in the year 2000 and thereafter. The Company believes that, in most instances, with minor modifications to existing software, the Year 2000 issue will not pose significant operational problems for its computer systems. The Company has identified one location with significant Year 2000 software issues. Failure to complete a timely conversion of this location to a Year 2000 compliant system could have a material impact on the operations of the Company; however, the Company has begun to replace the software at this location, and such replacement software is expected to be installed prior to December 31, 1999.

The Company has initiated formal communications with some of its significant suppliers and large customers to determine the extent to which the Company's interface systems are vulnerable to those third parties' failure to remediate their own Year 2000 issues. There can be no guarantee that the systems of other companies on which the Company's systems rely will be timely converted and would not have an adverse effect on the Company's systems.

In 1996, the Company began a project to select and install a Company-wide enterprise resource computer software system designed to improve operational efficiency. The selected system is Year 2000 compliant and complete installation of this software system is expected to take three years. The cost of the purchase of the

NOT A CERTIFIED COPY

01868

19. Impact of Year 2000 (Unaudited)—(Continued)

software and installation costs is expected to range from $20,000 to $25,000. The Company will capitalize a significant portion of these costs and does not believe the costs of this project will have a significant impact on the Company's financial condition or results of operations.

The costs of the project and the date on which the Company believes it will be Year 2000 compliant are based on management's best estimates, which were derived utilizing numerous assumptions of future events, including the continued availability of certain resources, third party modification plans and other factors. However, there can be no guarantee that these estimates will be achieved and actual results could differ materially from those anticipated. Specific factors that might cause such material differences include, but are not limited to, the availability and cost of personnel trained in this area, the ability to locate and correct all relevant computer codes, and similar uncertainties.

20. Subsequent Event (Unaudited)

On February 27, 1998, the Company, Sunbeam Corporation ("Sunbeam"), and a wholly owned subsidiary of Sunbeam ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement") providing that, among other things, Merger Sub will be merged (the "Coleman Merger") with the Company. Pursuant to the Coleman Merger Agreement, each share of the Company's Common Stock, issued and outstanding immediately prior to the effective time of the Coleman Merger (other than certain shares) will be converted into the right to receive (a) 0.5677 shares of Sunbeam common stock, with cash paid in lieu of fractional shares, and (b) $6.44 in cash, without interest.

Coincident with the execution of the Coleman Merger Agreement, CLN Holdings and Coleman (Parent) Holdings Inc., the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (the "Holdings merger Agreement" and with the "Coleman Merger Agreement", collectively the "Merger Agreements"), with Sunbeam and a wholly owned subsidiary of Sunbeam ("Laser Merger Sub"). The Holdings Merger Agreement provides that, among other things, Laser Merger Sub will be merged (the "Holdings Merger") with CLN Holdings. Pursuant to the Holdings Merger Agreement, the shares of CLN Holdings' common stock issued and outstanding immediately prior to the effective time of the Holdings Merger (other than certain shares) will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam's common stock and $159,957 in cash, without interest.

Following consummation of the Holdings Merger, CLN Holdings will be a direct wholly-owned subsidiary of Sunbeam. Following consummation of the Coleman Merger, the Company will be an indirect wholly-owned subsidiary of Sunbeam.

The Holdings Merger is subject to the expiration of antitrust waiting periods and certain other customary conditions. The Coleman Merger Agreement is subject to consummation of the Holdings Merger. These transactions will constitute a change in control as defined in the Company Credit Agreement, the Lyons and the Escrow Notes. Per the terms of the Merger Agreements, certain arrangements with related parties may be altered or terminated. In addition, outstanding, unvested stock Company options immediately vest upon consummation of the Holdings Merger.

NOT A CERTIFIED COPY

MF 01857

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CBH 132061

16civ-019106

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Signature Brands USA, Inc. and Subsidiary:

We have audited the accompanying consolidated balance sheets of Signature Brands USA, Inc. and subsidiary (formerly Health o meter Products, Inc.) as of September 28, 1997 and September 29, 1996, and the related consolidated statements of operations, stockholders' equity, and cash flows in the years ended September 28, 1997, September 29, 1996 and October 1, 1995. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Signature Brands USA, Inc. and subsidiary as of September 28, 1997 and September 29, 1996, and the results of their operations and their cash flows for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, in conformity with generally accepted accounting principles.

KPMG Peat Marwick LLP

December 9, 1997,
except as to
paragraph 6 of
Note 8, which is
as of December 24, 1997
Cleveland, Ohio

NOT A CERTIFIED COPY

011870

MF 01858

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div 019107

CPH 1326613

CREDIT SUISSE FIRST BOSTON

CREDIT SUISSE FIRST BOSTON CORPORATION

Eleven Madison Avenue
New York, NY 10010-3629

Telephone 212 325 2000

December 10, 1997

The Coleman Company, Inc.
625 Madison Avenue
New York, NY 10022

Attention: Jerry W. Levin
Chairman and Chief Executive Officer

Ladies and Gentlemen:

This letter agreement confirms our understanding that The Coleman Company, Inc. (the "Company" or "you") has engaged Credit Suisse First Boston Corporation and its affiliates, successors and assigns, as appropriate ("CSFB" or "we"), to act as its exclusive financial advisor with respect to the evaluation of a proposed Transaction (as defined below) with a company we have code-named Laser ("Laser").

As part of our engagement, we will, if appropriate and if requested:

(a) assist you in analyzing and evaluating the business, operations and financial position of the Company;

(b) assist you in evaluating any proposal which is received from Laser;

(c) assist you in structuring and negotiating any proposed Transaction with Laser;

(d) be available at your request to meet with your Board of Directors to discuss the proposed Transaction and its financial implications; and

(e) render an opinion as to the fairness from a financial point of view to the Company's stockholders (other than Coleman (Parent) Holdings Inc. and its affiliates) of the consideration to be received in any proposed Transaction.

In connection with CSFB's engagement, the Company will furnish CSFB with all information concerning the Company which CSFB reasonably deems appropriate and will provide CSFB with access to the Company's officers, directors, employees, accountants, counsel and other representatives (collectively, the "Representatives"), it being understood that CSFB will rely solely upon such information supplied by the Company and its Representatives without assuming any responsibility for independent investigation or verification thereof. All non-public information concerning the Company which is given to CSFB will be used solely in the course of the performance of our services hereunder and will be treated confidentially by us for so long as it remains non-public. Except as

NOT A CERTIFIED COPY

011872

MS 169
5-12-04

CP 012044
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402232

otherwise required by law, CSFB will not disclose this information to a third party without the consent of the Company.

As compensation for our services hereunder, the Company agrees to pay CSFB as follows:

(1) a financial advisory fee of $250,000, payable upon execution of this agreement (the "Financial Advisory Fee");

(2) a transaction fee of $3,750,000 (the "Transaction Fee") payable upon the consummation of the Transaction; and

(3) reimbursement of all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its legal counsel, if any, and any other advisor retained by CSFB (it being understood that the retention of any such advisor, other than legal counsel, will be made with the prior approval of the Company), resulting from or arising out of this engagement.

All fees and expenses payable hereunder are net of all applicable withholding and similar taxes (but not of income or any similar taxes).

For purposes of this agreement, the term "Transaction" shall be defined to include, in any transaction involving Laser or any affiliate of Laser; the disposition (whether in one or a series of transactions) of all or a substantial amount of the assets or the capital stock of the Company, as well as any merger, recapitalization, restructuring or liquidation of the Company by the current owners, a third party or any combination thereof, or any other form of disposition which results in the effective sale of the principal business or operations of the Company by the current owners or an effective change of control of the Company's ownership.

If we are requested to render an opinion, the nature and scope of our analysis as well as the form and substance of our opinion shall be such as we deem appropriate. If requested by you, our opinion shall be delivered in writing.

No advice or opinion rendered by CSFB, whether formal or informal, may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to without our prior written consent. In addition, CSFB may not be otherwise referred to without its prior written consent. If requested by CSFB, the Company shall include a mutually acceptable reference to CSFB in any press release or other public announcement made by the Company regarding the matters described in this letter.

Since CSFB will be acting on behalf of the Company in connection with its engagement hereunder, the Company has entered into a separate letter agreement, dated the date hereof, providing for the indemnification by the Company of CSFB and certain related persons and entities.

80520050/2

NOT A CERTIFIED COPY

CSFB's engagement hereunder may be terminated at any time, with or without cause, by either CSFB or the Company upon ten days' prior written notice thereof to the other party; provided, however, that in the event of any termination of CSFB's engagement hereunder, CSFB will continue to be entitled to its full Transaction Fee provided for herein in the event that at any time prior to the expiration of two years after any such termination the Company consummates, or enters into an agreement providing for a Transaction and such Transaction is subsequently consummated; and provided, further, that no termination of CSFB's engagement hereunder shall affect the Company's obligations to pay the Financial Advisory Fee, other fees and expenses to the extent provided for herein, and to indemnify CSFB and certain related persons and entities as provided in the separate letter agreement referred to above.

In connection with this engagement, CSFB is acting as an independent contractor and not in any other capacity, with duties owing solely to the Company. All aspects of the relationship created by this agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable to contracts made and to be performed therein.

We are delighted to accept this engagement and look forward to working with you on this assignment. Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this agreement.

Very truly yours,

CREDIT SUISSE FIRST BOSTON CORPORATION

By: _____
Name: Gordon A. Rich
Title: Managing Director

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

THE COLEMAN COMPANY INC.

By: _____
Name: ~~Jerry W. Levin~~ Paul Stuffle
Title: ~~Chairman and Chief Executive Officer~~ EVP

NOT A CERTIFIED COPY

011874

805200603

TO: Credit Suisse First Boston Corporation
Eleven Madison Avenue
New York, New York 10010-3629

December 10, 1997

In connection with your engagement (the "engagement") to advise and assist us with the matters described in our engagement letter dated December 10, 1997, we agree to indemnify and hold harmless CREDIT SUISSE FIRST BOSTON CORPORATION ("CSFB" or "you") and its affiliates, the respective directors, officers, partners, agents and employees of CSFB and its affiliates, and each other person, if any, controlling CSFB or any of its affiliates (collectively, "Indemnified Persons"), from and against, and we agree that no Indemnified Person shall have any liability to us or our owners, parents, affiliates, security holders or creditors for, any losses, claims, damages or liabilities (including actions or proceedings in respect thereof) (collectively "Losses") (A) related to or arising out of (i) our actions or failures to act (including statements or omissions made, or information provided, by us or our agents) or (ii) actions or failures to act by an Indemnified Person with our consent or in reliance on our actions or failures to act, or (B) otherwise related to or arising out of the engagement or your performance thereof, except that this clause (B) shall not apply to any Losses that are finally judicially determined to have resulted primarily from your bad faith or gross negligence. If such indemnification is for any reason not available or insufficient to hold you harmless, we agree to contribute to the Losses involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by us and by you with respect to the engagement or, if such allocation is judicially determined unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of us on the one hand and of you on the other hand; provided, however, that, to the extent permitted by applicable law, the Indemnified Persons shall not be responsible for amounts which in the aggregate are in excess of the amount of all fees actually received by you from us in connection with the engagement. Relative benefits to us, on the one hand, and you, on the other hand, with respect to the engagement shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid or received or proposed to be received by us or our security holders, as the case may be, pursuant to the transaction(s), whether or not consummated, contemplated by the engagement bears to (ii) all fees actually received by you in connection with the engagement.

We will reimburse each Indemnified Person for all expenses (including without limitation reasonable fees and disbursements of counsel and expenses incurred in connection with preparing for and responding to third party subpoenas) as they are incurred by such Indemnified Person in connection with investigating, preparing for or defending any action, claim, investigation, inquiry, arbitration or other proceeding ("Action") referred to above (or enforcing this agreement or any related engagement agreement), whether or not in connection with pending or threatened litigation in which any Indemnified Person is a party, and whether or not such Action is initiated or brought by you . We further agree that we will not settle or compromise or consent to the entry of any judgment in any pending or threatened Action in respect of which indemnification may be sought hereunder (whether or not an Indemnified Person is a party therein) unless we have given you reasonable prior written notice thereof and used all reasonable efforts, after consultation with you, to obtain an unconditional release of each Indemnified Person from all liability arising therefrom. In the event we are considering entering into one or a series of transactions involving a merger or other business combination or a dissolution or liquidation of all or a significant portion of our assets, we shall promptly notify you in writing. If requested by CSFB, we shall then establish alternative means of providing for our obligations set forth herein on terms and conditions reasonably satisfactory to CSFB.

If multiple claims are brought against you in any Action with respect to at least one of which indemnification is permitted under applicable law and provided for under this agreement, we agree that any judgment, arbitration award or other monetary award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for. Our obligations hereunder shall be in addition to any rights that any Indemnified Person may have at common law or otherwise. Solely for the purpose of enforcing this agreement, we hereby consent to personal jurisdiction and to service and venue in any court in which any claim which is subject to this agreement is brought by or against any Indemnified Person. We acknowledge that in connection with the engagement you are acting as an independent contractor with duties owing solely to us. YOU HEREBY AGREE, AND WE HEREBY AGREE ON OUR OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF OUR SECURITY HOLDERS, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION ARISING OUT OF THE ENGAGEMENT, YOUR PERFORMANCE THEREOF OR THIS AGREEMENT.

The provisions of this agreement shall apply to the engagement (including related activities prior to the date hereof) and any modification thereof and shall remain in full force and effect regardless of the completion or termination of the engagement. This agreement and any other agreements relating to the engagement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles.

Very truly yours,
THE COLEMAN COMPANY, INC.

By: ~~John W. Lovin~~ ERIC SHAFIRO
Title: ~~Chairman and Chief Executive Officer~~ AVP

Accepted and agreed to as of the date hereof:

CREDIT SUISSE FIRST BOSTON CORPORATION

By:
Gordon A. Rich
Title: Managing Director

NOT A CERTIFIED COPY

011875

80520060/4

COLEMAN (PARENT) HOLDINGS INC.

CONSENT OF DIRECTORS IN LIEU OF BOARD OF DIRECTORS' MEETING

The undersigned, being all of the directors of Coleman (Parent) Holdings Inc., a Delaware corporation (the "Corporation"), do hereby consent without a Board of Directors' meeting, pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, to the adoption of the attached resolutions.

DATED as of the 27 day of February, 1998.

Ronald O. Perelman

Howard Gittis

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MS 172
11/17/04

RESOLUTIONS OF THE BOARD OF DIRECTORS
COLEMAN (PARENT) HOLDINGS INC.
APPROVING PROPOSED MERGER TRANSACTIONS
AND RELATED AGREEMENTS

February 27, 1998

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

WHEREAS, in the Holdings Merger, the shares of the Common Stock, par value $1.00 per share, of Holdings ("Holdings Common Stock") issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of the common stock, par value $.01 per share, of Laser ("Laser Common Stock"), and $159,956,756 in cash, without interest thereon, and each share of the common stock of Laser Merger Sub issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $1.00 per share, of the surviving corporation in the Holdings Merger; and

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

WHEREAS, in the Coleman Merger, each share of the Common Stock, par value $0.01 per share, of Coleman ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by Coleman, Laser or any subsidiary of Coleman and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Laser Common Stock, with cash paid in lieu of fractional shares, and (B) $6.44 in cash, without interest thereon, and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $.01 per share, of the surviving corporation in the Coleman Merger; and

WHEREAS, it will be a condition to Holdings' consummation of the Holdings Merger that Laser and have entered into a Registration Rights Agreement (the

NOT A CERTIFIED COPY

0118178

"Registration Rights Agreement") relating to the registration of the shares of Laser Common Stock issuable to the Corporation in the Holdings Merger; and

WHEREAS, the Board of Directors of Holdings has authorized, approved and adopted the Holdings Merger Agreement in all respects and recommended that the Corporation as the sole stockholder of Holdings approve the Holdings Merger Agreement; and

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

NOW, THEREFORE, BE IT:

Approval of Holdings Merger and Holdings Merger Agreement

RESOLVED, that the Holdings Merger is advisable and fair to and in the best interests of the Corporation and its stockholder and that the disposition of the Holdings Common Stock held by the Corporation in the Holdings Merger is expedient and in the best interests of the Corporation; and

RESOLVED, that any officer of the Corporation be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, to vote, consent or otherwise act with respect to the shares of Holdings Common Stock entitled to vote, consent or act, including by written consent and without a meeting, to authorize and approve the Holdings Merger Agreement; and

RESOLVED, that the Board of Directors does hereby recommend that the sole stockholder of the Corporation adopt a resolution authorizing the foregoing; and

General

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

NOT A CERTIFIED COPY

011879

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

resolutions, which will thereupon be deemed to be adopted by the Board of Directors with the same force and effect as if originally set forth herein; and

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

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

NOT A CERTIFIED COPY

0118080

CP 041913
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1429977

16div-019115

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

PW PW PW PW PW PaineWebber PW PW PW PW PW

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

Date: 29-JAN-98

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

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

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

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

Dividend Yield	0.1%
Secular EPS Growth Rate	20%

KEY POINTS

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

NOT A CERTIFIED COPY

011082

MS 204
DDV

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

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

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

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

NOT A CERTIFIED COPY

-- Solid momentum through 1H98 fueled by a new grill line-up and enhanced grill facility as well as its "Air & Water" offerings from the "secret room."
-- Comparisons to get tougher in 2H98, but likely to be clouded by Base III (or perhaps smaller acquisition).
-- Real potential for another round of meteoric stock price appreciation comes if Sunbeam can make a strategic acquisition, using Sunbeam stock as currency, at a modest premium that doesn't already factor in all of the cost-cutting potential. (a smaller cash/debt deal could also drive some less meteoric appreciation).
-- Patient Sunbeam investors may get two (or more) "Chainsaw" turnarounds for the price of one.

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

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

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

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

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

RISKS

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

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

The information contained herein is based on sources we believe to be reliable, but its accuracy is not guaranteed. PaineWebber Incorporated and/or Mitchell Hutchins Asset Management Inc., affiliated companies and/or their officers, directors, employees or stockholders may at times have a position, including an arbitrage or option position,

NOT A CERTIFIED COPY

011884

in the securities described herein and may sell or buy them to or from customers. These companies may from time to time act as a consultant to a company being reported upon. Copyright (1997 by PaineWebber Incorporated, all rights reserved

More information available upon request
First Call Corporation - all rights reserved. 617/345-2500

END OF NOTE

NOT A CERTIFIED COPY

THE WALL STREET JOURNAL.

Thursday, January 29, 1998 page A6

Sunbeam Posts Profit Below Forecasts, A Stumble That Sends Stock Down 9.5%

By Jacqueline Bueno
And Rick Brooks
Staff Reporters of The Wall Street Journal

Sunbeam Corp. reported fourth-quarter earnings that fell slightly short of analysts' expectations. It was the company's first stumble with investors since Albert Dunlap was brought in to turn around the consumer-products and appliance maker, and Sunbeam's shares fell 9.5% on the earnings news.

Under new accounting standards that went into effect late last year, companies must report per-share earnings in two redefined ways, diluted and basic.

The Delray Beach, Fla., company said fourth-quarter earnings were $41.7 million, or 47 cents a share on a diluted basis, or net divided by common shares outstanding plus potential common shares from securities such as options and convertible securities. That compared with a loss of $234.7 million, or $2.83 a diluted share, a year earlier. Basic per-share earnings, or net divided by shares outstanding, amounted to 49 cents a share, compared with a loss of $2.83 a share. Revenue for the quarter increased 26% to 338.1 million from $268.9 million.

Reactions of Analysts

The earnings, however, fell short of analysts' expectations of 50 cents a share for the quarter, according to First Call Corp. Several analysts lowered their 1998 and 1999 earnings estimates, saying the company's earnings won't accelerate as fast as had been expected. In composite trading on the New York Stock Exchange yesterday, the stock closed at $37.625, down $3.9375.

"People bought this stock because of Al Dunlap's proven ability" as a turnaround engineer, said Scott Graham, an analyst for CIBC Oppenheimer in New York. He said Sunbeam's failure to meet analysts' expectations marked the first time that Mr. Dunlap didn't deliver what he promised. "All of a sudden we've got a dent in the armor," Mr. Graham said.

Still, he said, he sees no problems with the company's fundamentals. "They're doing all the right things," he said.

The company, which has been undergoing a restructuring since Mr. Dunlap took over as chairman less than two years ago, blamed the shortfall on sales of its electric blankets. Sales of the blankets were about $15 million less than what the company had expected, Mr. Dunlap said yesterday during a conference call with analysts. Weather in the Northeast wasn't as cold as the company would like, Mr. Dunlap said, and the company didn't have enough inventory of the king- and queen-size blankets to meet demand in some markets.

However, he said, the company has taken steps to correct the problem by increasing inventories.

Sunbeam also blamed the shutdown of a facility in Missouri that manufactures grills. The amortization costs related to that shutdown were greater than expected, a spokesman said.

Separately, Mr. Dunlap yesterday reasserted the company's plans to complete a major merger during the first half of 1998. Sunbeam has been looking for a company to acquire, or to be acquired by, for more than six months.

Mr. Dunlap said the list of possible merger partners has been shortened but a final candidate hasn't been identified.

For the year, the company reported earnings of $109.4 million, or $1.25 a diluted share, compared with a loss in 1996 of $228.3 million, or $2.75 a diluted share. Basic earnings were $1.29 a share. Annual revenue in 1997 increased 19% to $1.17 billion.

NOT CERTIFIED COPY

0113187

MS 206
7-8-04 H

MF 02411

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1327166

16div-019120

TO: Distribution
FROM: Marc Shiffman

Distribution
Jerry W. Levin
Karen Clark
Jim Conroy
Donald Drapkin
Irwin Engelman
Howard Gittis
Steve Isko
Bob Knibb
Will Nesbitt
Joe Page
Paul Shapiro
Greg Woodland

NOT A CERTIFIED COPY

011888

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

[x] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 28, 1997

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

FOR THE TRANSITION PERIOD FROM_____TO_____.

COMMISSION FILE NUMBER 0001-000052

[SUNBEAM LOGO]

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	25-1638266
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)
1615 S. CONGRESS AVENUE, SUITE 200	
DELRAY BEACH, FLORIDA	33445
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)

(561) 243-2100
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

TITLE OF EACH CLASS:	NAME OF EACH EXCHANGE ON WHICH REGISTERED:
COMMON STOCK, $0.01 PAR VALUE	NEW YORK STOCK EXCHANGE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT: NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [x] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [x]

The aggregate market value of all classes of the registrant's voting stock held by non-affiliates as of February 27, 1998 was approximately $2,801,018,606.

NOT A CERTIFIED COPY

011890

CP 040733
CONFIDENTIAL

MS 208
5-12-04 WDB

EMPLOYEES

The Company currently has approximately 3,300 full-time domestic employees and 4,200 international employees. None of the Company's domestic full-time workforce has union representation. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

SEASONALITY

On a consolidated basis, Sunbeam sales do not exhibit substantial seasonality. However, sales of outdoor cooking products are strongest in the first half of the year, while sales of appliances and personal care and comfort products are strongest in the second half of the year. In addition, sales of a number of the Company's products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. During 1997, the Company initiated early buy programs for highly seasonal products such as grills and warming blankets in order to more levelize production and distribution activities.

RAW MATERIALS

The raw materials used in the manufacture of the Company's products are available from numerous suppliers in quantities sufficient to meet normal requirements. The Company's primary raw materials include aluminum, steel, resin, copper, and corrugated cardboard for cartons.

ENVIRONMENTAL MATTERS

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sale of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1997, the Company had been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at nine (9) sites, four (4) of which are among the Environmental Sites referred to above, and five (5) of which have not been designated as Superfund sites under federal or state law.

NOT CERTIFIED COPY

CP 040740
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019123

consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results. In addition, the extended credit terms provided by the Company in connection with its "early buy" program increase the Company's risk of collection of accounts receivable.

/bullet/ The Company operates in a highly competitive environment with numerous competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated goals. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ The Company currently manufactures approximately 70% of its products. One of the Company's goals for 1998 is to source approximately 50% of the Company's parts and/or products from third parties. The Company's ability to realize sales and operating profits at anticipated levels is dependent upon its ability to timely manufacture, source and deliver products which may be sold for a profit. Labor difficulties, delays in delivery or pricing of raw materials and/or sourced products, scheduling and transportation difficulties, management dislocations and delays in development and manufacture of new products can negatively affect operating profits. Although the Company will use its best efforts to select suppliers for sourced product which are reliable and dependable, the Company's planned increase in the percentage of sourced products will decrease the Company's immediate control of product and, if such suppliers fail to deliver products as anticipated, could have an adverse effect on future financial performance, which effect could be material.

/bullet/ As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits, product recall actions and/or by higher than anticipated rates of warranty returns or other returns of goods.

/bullet/ The Company expects to substantially increase the amount of business conducted by it outside North America. If the Company fails to achieve anticipated market penetration in areas of the world into which the Company currently expects to expand its sales, such event is likely to have an adverse effect on the Company's future financial performance, which effect could be material. Expansion of the Company's sales in foreign markets depends upon many factors, including the states of economies in foreign countries, the strength of consumer demand in those countries for products which the Company sells (or expects to sell in those markets), the strength of competition from other global consumer products companies and other factors which may negatively affect the Company's anticipated performance in those markets. Although the recent financial instability in Asia has not currently had any material impact on the Company, if such conditions continue and/or worsen, they could negatively impact the Company's ability to achieve anticipated sales growth in such countries, the effect of which could be material to the Company's future financial performance.

/bullet/ The Company currently manufactures some products and has sales in such economies as those of Mexico and Venezuela, both of which economies have been unstable or hyperinflationary in recent years. The economies of other foreign countries important to the Company's expansion plans, including other countries in Latin America and Asia, could suffer similar instability in the future. Such factors as currency devaluations, new tariffs, changes in monetary policies, inflation, governmental instability and similar matters could negatively affect the Company's anticipated performance in foreign markets. Although the Company plans to take advantage of recent economic and currency fluctuations in certain Asian countries by increasing the Company's purchases of products from such countries at lower prices, there is no guarantee that such purchasing advantage will be fulfilled or will fully overcome any lost sales opportunities in those same countries. As a result, the economic conditions discussed above or any of these circumstances could have an adverse effect on future financial performance, which effect could be material.

/bullet/ A significant portion of the cost of goods manufactured by the Company in North America is the cost of raw materials and/or components. The Company has implemented changes in its purchasing

NOT A CERTIFIED COPY

011892

CP 040742
CONFIDENTIAL

function which have enabled the Company to purchase materials more efficiently and economically than it has in the past. The future success of the Company's purchasing initiatives may be affected by many factors beyond the Company's control, such as commodity pricing generally and higher prices for the specific materials required by the Company. Although there are numerous suppliers available for the materials and components sourced by the Company, any unanticipated change in suppliers could be disruptive and costly to the Company. In addition, the Company's future initiatives to reduce the cost of materials simply may not achieve savings in amounts comparable to those previously obtained by the Company. A significant failure by the Company to maintain material costs as anticipated would likely have an adverse effect on anticipated future financial performance, which effect could be material.

/bullet/ The Company anticipates realizing price increases from time to time for certain of its products. The Company operates in a highly competitive industry, and its ability to realize price increases may be limited due to competitive pressures. If there is a material failure to realize anticipated price increases, margins likely will be lower than anticipated by the Company, and this will likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ The Company anticipates that it will be able to more rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its more aggressive schedules for future product development. Failure to develop and manufacture new products in the amounts and with the quality anticipated or a failure to reduce the cycle time for new product introductions would likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ Sales of certain of the Company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the year. For instance, the Company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by moderate temperatures in the northern states. The Company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an "early buy" program; such a program shifts certain of the weather related risks of negative sales impact for such seasonal products to later months of the season and, as result, could have a negative impact on future financial performance.

/bullet/ The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary computer systems. Failure of any of these third party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

/bullet/ The Company's profitability may be negatively impacted by underabsorption of manufacturing costs resulting from underutilization of manufacturing capacity if the Company's sales growth is less than anticipated.

NOT A CERTIFIED COPY

011693

CP 040743
CONFIDENTIAL

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

YEAR ENDED DECEMBER 28, 1997 COMPARED TO THE YEAR ENDED DECEMBER 29, 1996

In November 1996, the Company initiated a major restructuring and growth plan designed to substantially reduce its cost structure and grow the business in order to restore higher levels of profitability for the Company. By July 1997, the Company completed the major phases of the restructuring plan. The $225.0 million of annualized cost savings anticipated from the restructuring results primarily from the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities (including a reduction in the number of production facilities from 26 to 8 and warehouses from 61 to 18), the elimination of over 6,000 positions (including 3,300 from the divestiture of non-core businesses described below and approximately 2,800 other positions), the centralization of the Company's procurement function and re-negotiation of supply contracts resulting in procurement savings for raw materials, components and sourced finished products and the reduction of the Company's product offerings and stock keeping units ("SKU's"). The restructuring and growth plan also included a redefinition of the Company's core product categories and the elimination of those businesses and product lines that did not fit the core categories. Sunbeam's core product categories are Appliances, Health at Home, Personal Care and Comfort, Outdoor Cooking and Away From Home. Product categories and businesses determined to be non-core were divested in 1997, including the Company's furniture business and its time and temperature, decorative bedding and Counselor/registered trademark/ and Borg/registered trademark/ scale product lines. In addition, the Company sold its textile mill in Biddeford, Maine in 1997.

Net sales from continuing operations for 1997 were $1,168.2 million, an increase of $183.9 million or 18.7% over 1996. Net sales on a normalized basis, after excluding divested product lines which are not classified as discontinued operations (time and temperature products, decorative bedding and Counselor/registered trademark/ and Borg/registered trademark/ branded scales), increased 22.4% during the year.

Global sales, on a normalized basis, increased during 1997 in all five of the Company's product categories primarily from new product introductions, improved distribution (particularly with the Company's top ten customers), international geographic expansion and improved price realization for certain products. Global sales growth on a normalized basis exceeded 25% in the Appliance, Outdoor Cooking and Away From Home categories with sales increases of 26.8%, 27.2% and 28.6%, respectively. Sales in the Health at Home category increased 10.7% on a normalized basis and sales in the Personal Care and Comfort category increased 3.4% during 1997.

The Company's Appliance category sales increases were driven by new products, such as re-designed blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers. Sales of Outdoor Cooking products increased in 1997 after three straight years of declines as a result of increased merchandising and advertising programs, new distribution and the introduction of an entirely new line of grills and accessories for the 1998 season that began to ship in the fourth quarter of 1997 under a new "early buy" marketing program that included among other things, extended credit terms with due dates in the second quarter of 1998. The Company sold approximately $50.0 million of Outdoor Cooking Products under this program in the fourth quarter of 1997. The early buy program for Outdoor Cooking products is designed to improve customer service levels and production efficiencies with more level seasonal production and distribution activities that have historically peaked in the first half of each year and to drive additional retail sell-through of Outdoor Cooking products by reducing the likelihood of retail stock-outs during the important first and second quarter 1998 selling season.

Sales of Personal Care and Comfort products were up over 30% through September 1997, but suffered during the fourth quarter as a result of lower than expected retail sell through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. The Company anticipates shifting to a more

NOT A CERTIFIED COPY

011894

CP 040747
CONFIDENTIAL

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheets of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 29, 1996 and December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
January 28, 1998, except with respect
to the matters discussed in Note 14,
as to which the date is March 2, 1998.

NOT A CERTIFIED COPY

011395

CP 040758
CONFIDENTIAL

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES—(CONTINUED)

ADVERTISING COSTS

Media advertising costs included in "Selling, General and Administrative Expense," are expensed as incurred. Co-operative advertising costs are expensed ratably over the year in relation to revenues.

FOREIGN CURRENCY TRANSLATION

The assets and liabilities of subsidiaries, other than those operating in highly inflationary environments, are translated into U.S. dollars at year-end exchange rates, with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary environments, (Venezuela and Mexico) inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in "Other (income) expense, net" on the Accompanying Consolidated Statements of Operations.

STOCK-BASED COMPENSATION PLANS

SFAS No. 123, ACCOUNTING FOR STOCK-BASED COMPENSATION allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under Accounting Principles Board ("APB") Opinion No. 25, ACCOUNTING FOR STOCK ISSUED TO EMPLOYEES, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 5 herein. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

NOT A CERTIFIED COPY

011896

CP 040766
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1428864

16div-019128

Sunbeam Warns 1st-Qtr Sales May Be Below Estimates (Update5)

(Updates stock prices in 3rd and 5th paragraphs, adds comment from marketing consultant in 14th, 15th paragraphs.)

Delray Beach, Florida, March 19 (Bloomberg) -- Sunbeam Corp. warned first-quarter sales may be less than expected because retailers ordered fewer appliances and other products, sending the company's shares down 9.4 percent.

The maker of Sunbeam toasters and Oster blenders said sales may be less than analyst forecasts of $285 million to $295 million, but higher than the year-ago's $253.4 million. The company didn't discuss the effect of lower sales on earnings.

Sunbeam said the shortfall, if any, will be because some major retail customers are keeping inventory low to cut warehouse and distribution costs. The shortfall would mark the second consecutive quarter that Chairman Al Dunlap, known more for cutting costs than boosting sales, was caught by surprise.

''Everyone is suspicious because the company was also short last quarter and that these guys aren't effective managers of a growing concern,'' said Joe Kinnison, an analyst with American Express Financial, who said he's using the opportunity to buy more Sunbeam stock.

The shares of the Delray Beach, Florida-based company fell 4 11/16 to 45 3/8 in trading of 5.5 million. Earlier, the stock hit 45 1/4. It was the 20th most active stock in U.S. markets.

Annual Sales

The company said that sales of its products remain strong and that it is ''highly confident about the overall sales outlook'' for its products this year.

The company didn't provide additional details, and officials weren't immediately available to comment.

Sunbeam is expected to earn 32 cents a share in the first quarter, according to the average estimate of five analysts surveyed by IBES International Inc.

''The overall retail environment has been weak,'' which likely led to retailers cutting orders, said David Leibowitz, an analyst with Burnham Securities Inc., which doesn't disclose its rating on the stock. Customers ''are interested in three things: sale, markdown and closeout.''

Justin Maurer, an analyst with McDonald & Co. who rates the stock as ''aggressive buy,'' said any shortfall may be slight and that the company raised the possibility because of disclosure issues from a planned offering of convertible bonds as it finances three acquisitions.

''They are erring on the side of conservatism,'' he said. ''They would not have made this statement otherwise.''

Copyright (C) 1998 Bloomberg, L.P.

NOT A CERTIFIED COPY

011898

CONFIDENTIAL

MS 211

CP 02548

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div019129

Money manager Kinnison said he also expects the shortfall to be small and that he's not concerned because Dunlap has senior managers who have shown they are experienced at boosting sales.

Earlier Surprise

It's not the first time the company has been surprised by developments at its major retailers.

In the fourth quarter, Sunbeam sales were less than expected because of weak sales of electric blankets. The company couldn't produce enough of its hottest-selling king-size and queen-size electric blankets, while sales of other blankets fell short of forecasts because of unseasonably warm weather.

Retailers have delayed orders of seasonal items like Sunbeam's blankets and electric and gas grills because sales are so hard to predict, said C. Britt Beemer, an Orlando, Florida-based marketing consultant.

''Sunbeam sells product categories that are extremely seasonal in nature,'' making it especially vulnerable to retailers' efforts to keep inventories low, he said.

Sunbeam didn't identify retailers cutting orders. Its largest customer, Wal-Mart Stores Inc., accounted for 21 percent of sales last year.

Earlier this month, Sunbeam agreed to buy Coleman Co. and the makers of Mr. Coffee machines and First Alert smoke alarms for a total of $2.6 billion, as Dunlap tries to duplicate his strategy of cutting costs at poorly performing companies with well-known brands.

Dunlap cut 6,000 jobs, has shuttered more than three dozen plants and made the home-appliances maker consistently profitable since taking over in July 1996.

--Steve Matthews in Atlanta (404) 526-9553 with reporting by Wes Conard in Princeton through the Princeton newsroom (609) 279-4000/gam/rec/rjb

Story illustration: To graph the recent stock performance of Sunbeam, type SOC US <Equity> GP. For an earnings summary of Sunbeam, type SOC US <Equity> ERN.

Company news:
SOC US <Equity> CN Sunbeam
ALRT US <Equity> CN First Alert
SIGB US <Equity> CN Signature
CLN US <Equity> CN Coleman
WMT US <Equity> CN Wal-Mart

Industry news:
NI HOU Household products

Regional news:
NI US U.S.
NI FL Florida

News by category:
NI ERN Earnings news
NI MNA Mergers

Copyright (C) 1998 Bloomberg, L.P.

NOT A CERTIFIED COPY

011899

CONFIDENTIAL

CP 02549

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019130

CPH1392707

The Wall Street Journal
Copyright (c) 1998, Dow Jones & Company, Inc.

Friday, March 20, 1998

Sunbeam Shares Drop on Expected Shortfall in Sales

By Greg Jaffe
Staff Reporter of The Wall Street Journal

Sunbeam Corp. shares dropped 9.4% after the maker of small appliances said sales for the first quarter might fall below analysts' expectations.

News of the expected sales shortfall marks the second recent stumble for the Delray Beach, Fla., company and its chief executive, Albert J. Dunlap, known for his harsh turnaround tactics. Just three months ago, Sunbeam's stock fell after the company reported fourth-quarter earnings that trailed estimates.

Analysts had expected sales of $285 million to $295 million for the current quarter, compared with $253 million in the year-earlier quarter.

The company did say that its sales remain strong and will exceed the year- earlier first-quarter revenue.

While Sunbeam's announcement didn't discuss the company's earnings outlook, analysts said the sales disappointment is bound to affect profit. Sunbeam officials didn't return calls seeking comment.

"The company has made promises that they haven't delivered on, and that is certainly being factored into the stock today," said R. Scott Graham, an analyst for CIBC Oppenheimer in New York.

Shares of Sunbeam fell $4.6875 to $45.375 in composite trading on the New York Stock Exchange.

In a release yesterday, Sunbeam blamed the possible shortfall on retailers that have been reining in inventories in recent weeks.

On Jan. 28, Sunbeam's shares fell 9.5% on news of disappointing quarterly earnings, an announcement that knocked investor confidence in Mr. Dunlap, a turnaround artist known for his slash-and-burn corporate restructurings.

Those doubts quickly faded as Sunbeam's stock rebounded in the following weeks, but with yesterday's warning about sales, analysts are again wondering how significant the announcement is for Sunbeam. "Things are good [at Sunbeam], but not where we thought they would be," Mr. Graham said.

Those analysts who see the shortfall as a mere blip say that company plans to roll out two new products -- an air filter and a water filter -- in the second quarter.

Moreover, Sunbeam's recent proposed acquisitions of Coleman Co. as well as of the makers of First Alert smoke alarms and Mr. Coffee machines for $1.8 billion plus the assumption of $700 million in debt provide Mr. Dunlap with the opportunity to continue to do what he does best: cut the dead wood out of manufacturers with established but underperforming brand names.

"For me the focus is on 1999 and the cost savings to be achieved from the companies Sunbeam has acquired," said Justin Maurer, an analyst with McDonald & Co. Investments in Cleveland.

---- INDEX REFERENCES ----

COMPANY (TICKER): SUNBEAM CORP. (SOC)

NEWS SUBJECT: Stock Market News (STK)

MARKET SECTOR: Consumer Cyclical (CYC)

INDUSTRY: Home Furnishings & Appliances; Household Appliances; Other Home Furnishings (HMF HPL OMF)

REGION: Florida; North America; United States; Southern U.S. (FL NME US USS)

LAYOUT CODES: Small Majors (SMJ)

Word Count: 402

3/20/98 WSJ B8

Copr. © West 1998 No Claim to Orig. U.S. Govt. Works

REDACTED - PRIVILEGED

NOT A CERTIFIED COPY

011901

MS 215
5/20/04 WB

CP 018961
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1409192
16div-019131

END OF DOCUMENT

NOT A CERTIFIED COPY

011902

Copr. © West 1998 No Claim to Orig. U.S. Govt. Works

PWR 10:05 SUNBEAM: DOWNGRADE TO NEUTRAL FROM BUY--4/3/98

Andrew Shore (212)713-2452
Rating=3 (SOC)
Closing Price=$34 3/8
Current FY EPS EST=$1.55-1.60
Next FY EPS EST=$2.20-2.25
FY End=December
4/6/98
Q1 WARNING; KEY PERSONNEL DEPARTURES
MARKET CAPITALIZATION ($ MM)

	LTM	PF 1998*
Stock Price	$34.375	$34.375
Shares Outstanding	85.2	108.0
Total Equity Value	$2,928.8	$3,712.5
Plus: Debt, MI & Preferred	194.6	1,600
Less: Cash & Equiv.	-52.4	-
Total Enterprise Value	$3,071.0	$5,312.5

MARKET VALUATION

	LTM
TEV MULTIPLES	SOC
TEV/LTM Sales	2.42x
TEV/LTM EBITDA	12.9x
P/E MULTIPLES	
Price/CY 1998 EPS	21.8x
Price/CY 1999 EPS	15.4x

*Assumes acquisitions completed, 19.4mm new shares issued. $1.6B pro-forma debt

	Annual Sales ($MM)	EPS Q1	Q2	Q3	Q4	YR	STREET
YEAR	$1,168.2	$0.24	$0.30	$0.39	$0.47	$1.41A	$1.41A
FYE 12/31/98E	$2,500	0.25				$1.55-1.60E	
FYE 12/31/99E	$3,100					$2.20-2.25E	

Dividend Yield 0.1% Secular EPS Growth Rate 10-15%

KEY POINTS

1. Busy Friday: April 3 was a busy day at Sunbeam with our downgrade, earnings warnings, key firings, departures and promotions all culminating in a nearly 25% drop in the stock price.
2. Earnings Warning: Key event of the day. Sales expected to be down 5% versus Q197. No specific earnings guidance given except that the company will report a loss after over $0.40 cents of one-time charges. This doesn't say much since Street consensus for the quarter prior to the announcement was $0.31 (excluding one-time charges). We are lowering our Q198 estimate $0.06 to $0.25, which compares to $0.24 in the year-ago period.
3. Core Business in Trouble: The weakness in Q1 confirms our worst fears about the slowdown in Sunbeam's core business. We still believe the company will derive accretion from its three recent acquisitions, but this accretion will come off a lower base from its core business.
4. Key Departures: The "fall guy" for the Q1 shortfall was Don Uzzi,

NOT A CERTIFIED COPY

011904

MS 220
5-12-04

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1267964
16div-019133

Sunbeam's #3 executive with the official title of EVP of Worldwide Consumer Products. Uzzi was the guy "minding the ship" while Sunbeam's #1 and #2 Al Dunlap and Russ Kersh were out in search of shareholder value enhancing acquisitions. Also, Rich Goudis, VP of Investor Relations and Corporate Planning, a well respected Sunbeam representative with a good rapport with the Street resigned to become VP of Finance at Rexall Sundown.

5. Reducing Estimates: We are taking our estimates for the growth in Sunbeam's core business down from roughly 20% to 10% in 1998 and 1999 and as a result we are reducing our 1998 EPS estimate to $1.55-1.60 from $1.90 and our 1999 estimate to $2.20-$2.25 from $2.75.

6. Maintain Neutral: Believe Sunbeam is fairly valued at 15-16x our new 1999 EPS estimate as management will now need some time to restore credibility with the core business weakening.

RECAP OF FRIDAY'S EVENTS

Friday, April 3, was a very busy day at Sunbeam. We downgraded the stock to a 3 (neutral) from a 1 (buy) prior to the market's open as we wished to take a more cautious stance after learning of the departure of two key and well-respected Sunbeam representatives, Don Uzzi EVP of Worldwide Consumer Products and Rich Goudis, VP of Investor Relations and Corporate Planning. In addition, we have learned of grill production problems, the closing of the grill plant for a week and an overshipment of grills to Wal-Mart estimated at $30-40 million. This was just the beginning of a very hectic day for Sunbeam investors, which featured six press releases, a conference call and a 11 3/16 point drop in Sunbeam shares to a closing price of $34 3/8. The main event of the day was the company's 11:00am press release warning that first quarter sales and earnings would be below expectations.

EARNINGS WARNING

The timing of Sunbeam's Q198 earnings warning could not have been much worse. Just two weeks earlier (March 19), Sunbeam issued a press release indicating that sales would fall short of Street expectations ($285-295mm) but would still be above Q197 ($253mm). No mention was made of earnings. Sunbeam's "spin" following this release was that they would never have issued the warning if not for the pending completion of its convertible bond deal and such a release was suggested by their lawyers since orders for $285 million had not yet been booked. In the days following the release, some hope still remained that Sunbeam might make up the sales shortfall before the quarter closed as grills are often shipped three days after orders are received and re-orders historically have been back-end loaded in March. Friday's release dispelled those hopes and then some as sales will not only be below plan, but below last year's first quarter sales. Sales are now expected to be 5% below last year's level as a result of suspected "managing down" of inventories by retailers and anticipated grill re-orders in late March that never materialized. Again, no guidance for EPS excluding one-time charges was given. The company did report that the first quarter will include over $0.40 of one-time charges related to compensation expenses, debt retirement charges and acquisition costs. We are reducing our Q1 EPS estimate $0.06 to $0.25, assuming $240 million of sales and a 15%

NOT A CERTIFIED COPY

011905

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

operating margin for the quarter. The company earned $0.24 in Q197 with $253 million of sales and a 13.7% operating margin.

DOWN QUARTER EVEN WITH AN EASY COMPARISON

The first quarter sales weakness is even more disturbing because it compares against a first quarter of 1997 that Sunbeam management a year-ago described as full of glitches. Sunbeam's Q197 was plagued by computer problems, which management estimated cost them $10-15 million in lost sales, and a self-described "weak grill line-up," with an inefficient grill manufacturing facility and less than favorable contracts with retailers, all the work of the pre-Dunlap management team. With the computer problems since resolved, a brand new grill line-up and a restructured grill facility, many believed Sunbeam's Q198 would be a "slam-dunk." In fact, after the company released its Q497 results we believed its Q198 guidance was rather cautious. It now appears that building skepticism that Sunbeam was employing aggressive sales tactics in late 1997, which would rob 1998 of precious sales growth was on the mark. We now believe that with Sunbeam's core business down in the face of easy comparisons, this problem will not quickly resolve itself as comparisons will only get more difficult throughout 1998. Core business weakness will likely be masked on the top-line by the three recently acquired businesses beginning in Q298, but the bottom line will likely suffer as we expect the acquired businesses will be dilutive to the overall margin structure until the restructuring of these businesses is completed in early 1999.

CORE BUSINESS IS IN TROUBLE

We are cutting our sales growth estimates for the core Sunbeam business (excluding the acquisitions) to 10% per year from around 20% due to the announced sales shortfall. While, on the surface, this may appear to be a drastic reduction, we were always a little wary of our previous rate of growth but hoped any shortfall would be made up for on the bottom line by better than expected cost savings from the integration of the acquired businesses. While we still believe Sunbeam may realize more than the $150 million of cost savings they have identified in integrating the acquired businesses, our core sales growth skepticism has been amplified by the magnitude of the first quarter's weakness. In fact, with Sunbeam's easiest quarter from a comparison standpoint (Q198) now expected to be down, we believe 10% sales growth for Sunbeam in 1998 may be generous since going forward they will be going up against 13% sales growth in Q297, 25% growth in Q397 and 26% growth in Q497. We are sticking with the $150 million of cost savings from the acquisitions and believe any upside will provide a cushion if our 10% core Sunbeam sales growth proves to be too generous.

KEY FIRING, RESIGNATION AND PROMOTIONS

Detailed below is a quick summary of executive changes at Sunbeam announced on Friday and a brief comment on the changes.

Executive	Action Taken	Comment
Don Uzzi	Terminated (was EVP Consumer Products)	Part of "decisive action" taken by management in response to the Q1 shortfall. Hired in January 1997, Uzzi had an extensive consumer

NOT A CERTIFIED COPY

011906

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1267966
16div-019135

		packaged goods background from Quaker Oats, Pepsi and Procter & Gamble. Uzzi was one of Sunbeam's four executive officers, often referred to as the key "operations" manager, who brought a consumer packaged goods mentality to the consumer durables arena.
Rich Goudis	Resigned position as VP Investor Relations and Corporate Planning.	Well respected by the Street with a role beyond IR. Left to take a VP Finance position at Rexall Sundown. Departure leaves a communication gap between Sunbeam and Street. IR related calls temporarily being directed to Russ Kersh.
Russ Kersch	Current CFO and Vice Chairman assumes additional role of interim Head of Outdoor Leisure.	As if he wasn't already busy enough, Dunlap's long time #2 man will head to Wichita temporarily to run/restructure Coleman while the search for a full time Head if Outdoor Leisure continues.
Lee Griffin	VP if Sales promoted to President of Household Products (replaces Uzzi.)	President & CEO of Scott Paper Limited (Canada) while Dunlap was at Scott. Over 30 years of experience in the consumer products industry.
Franz Schmid	President of Sunbeam Latin America promoted to VP Sunbeam Intl.	Replaced Dixon Thayer, who was with Dunlap at Scott. Thayer's Departure was made public in Dec. Scmid is a 15 year employee of Sunbeam.
Janet Kelly	Associate Gen. Counsel promoted to VP and General Counsel.	Associate General Counsel since 1995. Former Gen. Counsel, David Fannin continues as EVP and Chief Legal Counsel.

Overall, the above chart clearly indicates that there are a lot of changes going on at Sunbeam at a time when credibility with the Street is being called to question. Results will speak louder than words for Sunbeam in the coming quarters and key company executives have their work cut out for them.

REDUCING ESTIMATES

The reduction in our earnings estimates stem primarily from our slowing of Sunbeam's core sales growth to 10% a year from 20% per year in 1998 and 1999. Our rationale for this reduction is detailed in point

NOT A CERTIFIED COPY

011907

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

4 above. Given the anticipated core slowdown, we have also shaved a point off of our EBITA margin assumption for the combined businesses (Sunbeam, Coleman, Signature, First Alert) in both 1998 and 1999 to 15-15.5% in 1998 and 17-17.5% in 1999. We are using EBITA since we still need further guidance on how much amortization Sunbeam will take on as a result of its acquisitions. Our preliminary 1998 and 1999 EPS estimates are now $1.55-1.60 and $2.20-2.25, respectively. We should note that these are preliminary numbers, as we have received no further guidance from the company and we still need clarification of goodwill treatment resulting from purchase accounting and pro-forma interest expense resulting from the company's new $2 billion credit facility (also announced 4/3/98) and other acquisition related balance sheet changes. While we have slowed Sunbeam's core growth rate, any slowdown will not be glaringly evident after the first quarter as Sunbeam's acquisitions will begin to be reflected in operations in the second quarter. Thus, sales growth well over 100% should be reported in the coming quarters, meaning it will be crucial to separate core growth from reported growth to get a feel for the overall health of the Sunbeam business.

MAINTAIN NEUTRAL

At present, we do not believe Sunbeam's 11+ point drop on Friday signals a major buying opportunity. More important than the adjustments to earnings that are likely to come over the next few days is the valuation adjustment that we expect Sunbeam shares will continue to experience. Friday's announcement dispels previous perceptions (perceptions we once shared) that Al Dunlap is above the weather related problems, retailer inventory adjustments and long replacement cycles that plague the inherently difficult to predict consumer durables industry. We believe it will take a couple of quarters for Sunbeam management to work through inventory levels at retail that may be a little heavy due to aggressive sales tactics employed in the second half of 1997 while they continue to "get their hands around" the acquired businesses. Once the company gets through this transition period perhaps it can head on a more sustainable, less aggressive growth path, which may be bolstered along the way with some new acquisitions. With the sustainability of "Dunlapesque" turnarounds now being questioned more than ever, we believe a lower multiple will be placed on restructuring/acquisition related earnings power. The market multiple we and others were once looking to place on Sunbeam earnings now appears to be too generous. Prior to the recent acquisitions, following the release of the company's fourth quarter results (which underwhelmed many investors), questions regarding Sunbeam's growth potential were building and at $37, Sunbeam traded at around 15 times our then 1999 EPS estimate of $2.50. With questions now back and more skeptics than ever, we believe Sunbeam may settle at around this 15-16x multiple for a while. Even if we have been too harsh in slashing our 1999 numbers, a 15 multiple on $2.50 would still only take the stock to $37, not very compelling upside for "bottom-feeders." Accordingly, we reiterate our neutral 3) rating. For some multiple perspective regarding consumer durables companies, please refer to the table below.

Company	4/3/98 Price	1998 P/E##	1999 P/E##

NOT A CERTIFIED COPY

011908

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Black & Decker*	$54.063	20.8x	16.7x
Maytag*	52.188	20.0x	17.6x
Newell	48.000	22.9x	20.2x
Rubbermaid#	29.438	25.6x	20.3x
Tupperware	26.313	15.9x	13.9x
Whirlpool*	66.125	16.4x	14.4x
	Mean	20.3x	17.2x
Sunbeam#**	$34.375	21.8x	15.4x
S&P 500#	1122.7	23.2x	22.3x

##Based on First Call EPS estimates.
#Based on PaineWebber EPS estimates.
*A subsidiary of PaineWebber Incorporated acts as a specialist that makes a market in this security. At any given time the specialist may have a position, either long or short, in the security, and as a result of the associated specialist's function as a market maker, such a specialist may be on the opposite side of orders executed on the floor of a national securities exchange.
**PaineWebber Incorporated has acted in an investment banking capacity for this company.
The information contained herein is based on sources we believe to be reliable, but its accuracy is not guaranteed. PaineWebber Incorporated and/or Mitchell Hutchins Asset Management Inc., affiliated companies and/or their officers, directors, employees or stockholders may at times have a position, including an arbitrage or option position, in the securities described herein and may sell or buy them to or from customers. These companies may from time to time act as a consultant to a company being reported upon. Copyright (1998 by PaineWebber Incorporated, all rights reserved
More information available upon request
-0- (PWR) Apr/06/98 10:05

NOT A CERTIFIED COPY

011909

MEMORANDUM

DATE: December 15, 1997

TO: Ronald O. Perelman
Howard Gittis
James Maher

FROM: Will Nesbitt

RE: Dunlap Employment Contract

Please find below a summary of the terms of Al Dunlap's contract, which was executed on July 18, 1996. I have attached a copy of the contract for your files.

Term:	Three years ending July 17, 1999 with one-year renewal periods until July, 2001.
Base Salary:	$1,000,000 (Dunlap does not participate in the company's incentive compensation program.
Stock Grant:	One-time grant of 1,000,000 shares, one-third of which vested on July 18, 1996 and the remaining two-thirds of which vested on the first and second anniversaries. **Assuming vesting, these shares are worth $38.5M at the current price of $38.50.**
Equity Purchases:	Dunlap purchased 244,898 shares at $12.25/share on July 18, 1996. On February 13, 1997, Dunlap purchased an additional 80,000 shares at $25.00 per share. **Dunlap's paper profit on the above purchases is $7.5M.**
Option Grant:	2,500,000 options at $12.25, one-third of which vested on July 18, 1996 and the remaining two-thirds of which on the first and second anniversaries. **Assuming all vested and unvested options could be exercised today, Dunlap's would receive $65.6M.**
Change of Control:	Dunlap Options and Restricted Shares will vest in full upon the occurrence of any of the following events: ■ Any "person" becomes a beneficial owner of 25% or more of the voting stock. ■ Majority of board of directors consists of individuals other than incumbent directors.

NOT A CERTIFIED COPY

011911

- The company adopts a plan of liquidation without Dunlap's consent.
- All or substantially all of the assets are disposed of pursuant to a merger or other transaction.

Termination for Good Reason:

To the extent the company terminates Dunlap's employment other than for cause, or if he terminates his employment for Good Reason, then Dunlap is entitled to a lump sum equal to his salary through 1999, vesting of options and restricted shares, plus benefits for three years following termination. Dunlap may terminate his employment for Good Reason upon the occurrence of any of the following events:

- Change in title, duties, or location (Broward County, Florida).
- Reduction in base salary, fringe benefits.
- Change in control.
- Any material breach of the agreement by the company.

Excess Parachute Payments:

Dunlap is entitled to a gross up with respect to any excise tax applicable under the code to excess parachute payments.

NOT A CERTIFIED COPY

019112

CP 039828
CONFIDENTIAL

CREDIT SUISSE FIRST BOSTON
Inter-Office Memorandum

To: Investment Banking Committee

From: Gordon A. Rich
Robert J. Duffy
Steven K. Geller (Document Retention)
Ramesh Chakrapani

Date: February 25, 1998

Subject: Proposed sale of The Coleman Company, Inc. to Sunbeam Corporation

The purpose of this memorandum is to apprise the Committee of our work in connection with the proposed two-step sale of The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"). Credit Suisse First Boston has been asked to provide a fairness opinion to Coleman's Board of Directors as early as February 25, 1998, in connection with the proposed sale to Sunbeam.

1. Description of the Transaction

Credit Suisse First Boston is acting as financial advisor to Coleman in connection with its proposed sale to Sunbeam (the "Transaction"). Coleman, listed on the New York Stock Exchange, is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets. Approximately 82% (44,067,520) of the outstanding Coleman common shares are held through an indirect wholly-owned subsidiary ("Holdco") of Mafco Holdings Inc. ("Mafco") which is controlled by Ronald O. Perelman.

Sunbeam and Coleman propose to enter into an agreement whereby, at closing, Sunbeam will (a) in exchange for Sunbeam stock and cash purchase Holdco which has as its primary asset its shares of Coleman and as its primary liability $525 million of zero-coupon debt against which its shares of Coleman are pledged, and (b) offer the public shareholders Sunbeam stock and cash in a second-step merger. The proposed transaction is expected to be taxable to the public shareholders of Coleman and tax-free to Holdco.

Summary of Transaction Consideration

SHAREHOLDER	SHARES EXCHANGED	CONSIDERATION
Mafco	44.1 million	• Assumption of $525 million of zero coupon debt for 19.2 million CLN shares
		• $6.44 in cash and 0.5677 SOC shares for each of 24.8 million CLN shares
Public	9.4 million	• $6.44 in cash and 0.5677 SOC shares for each of 9.4 million CLN shares

NOT A CERTIFIED COPY

011911

CONFIDENTIAL
CSFBC 0001550

MS 230
7-8-04

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121260

2. *Question to the Committee*

Is the consideration of $6.44 in cash plus 0.5677 Sunbeam common shares fair to Coleman shareholders from a financial point of view?

3. *Summary Conclusions and Recommendations to the Committee*

Based on the analysis of the value of Coleman common shares and the value of the securities to be issued by Sunbeam pursuant to the transaction, the consideration is fair to Coleman shareholders (other than Holdco) from a financial point of view.

I. At a current Sunbeam trading price of $40.63 (2/24/98), the implied consideration of $29.50 (value of $6.44 cash and 0.5677 Sunbeam shares) is (i) above Coleman's valuation range of $21.31-$28.35 per share; (ii) at a 42.6% premium to Coleman's current trading price and 52-week high of $20.69 (2/24/98); and (iii) at a 136.0% premium to Coleman's 52-week low of $12.50 (1/27/98).

II. The transaction on a pro forma basis is 5.3% accretive to Sunbeam in 1998 and 6.2% in 1999 assuming pre-tax synergies of $100 million in 1998 and $100 million in 1999.

III. The Sunbeam offer is supported by the respective contributions of Sunbeam and Coleman as shown in section 9 of the memorandum.

4. *Transaction Summary*

The per share consideration being offered by Sunbeam represents the following premiums and multiples.

	SUNBEAM PRICE				
	$36.00	$38.00	$40.00	$42.00	$44.00
Value of 0.5677 SOC Shares	20.44	21.57	22.71	23.84	24.98
Value of Cash Component	6.44	6.44	6.44	6.44	6.44
Implied Offer Price per Coleman share	$26.88	$28.01	$29.15	$30.28	$31.42
Premium to Pre-Announcement average Coleman trading price:					
1 day ($20.69 on 2/24/98)	29.9%	35.4%	40.9%	46.4%	51.9%
3 months ($15.20)	76.9	84.3	91.8	99.3	106.8
1 year ($15.63)	72.0	79.3	86.5	93.8	101.1
2 years ($16.68)	61.2	68.0	74.8	81.6	88.4
IPO Price ($9.75 on 2/26/92)(1)	175.7%	187.3%	199.0%	210.6%	222.2%
12 month high ($20.69 on 2/24/98)	29.9	35.4	40.9	46.4	51.9
12 month low ($12.50 on 1/27/98)	115.0	124.1	133.2	142.3	151.4
Implied Equity Value(2)	$1,484	$1,527	$1,569	$1,612	$1,655
Implied Enterprise Value(3)	1,924	1,967	2,010	2,052	2,095
Multiple of:					
1997P/1998E EBITDA(4)	19.4x/11.7x	19.9x/12.0x	20.3x/12.3x	20.7x/12.5x	21.2x/12.8x
1997P/1998E P/E(5)	61.1x/22.8x	63.7x/23.8x	66.2x/24.8x	68.8x/25.7x	71.4x/26.7x

(1) $19.50 IPO price adjusted for a 2-for-1 stock split in 1996.
(2) Offer price multiplied by (34.2 million common shares plus 3.3 million options), plus $525 million of assumed zero-coupon, less $50.3 million of estimated options proceeds.
(3) Equals equity value plus net debt of $440.2 million (including $90 million of estimated after-tax proceeds from the sale of Safety & Security Products, Inc.).
(4) Coleman 1997P EBITDA and 1998E EBITDA based on Coleman management estimates, excluding Safety & Security Products Inc.
(5) 1998E P/E based on E.P.S. projection of $1.18 provided by Coleman management.

03/30/98 10:36 AM 80600059.nyw/2

CONFIDENTIAL
CSFBC 0001551

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

5. Coleman Valuation Summary

(Dollars in Millions)

VALUATION METHODOLOGY	ENTERPRISE VALUE REFERENCE RANGE	MULTIPLE OF 1997P/1998E SALES	EBITDA	EBIT
Comparable Companies	$1,150.0 – $1,600.0	1.1x – 1.5x 1.0 – 1.4	11.6x – 16.2x 7.0 – 9.8	18.3x – 25.5x 9.4 – 13.1
Comparable Acquisitions	$1,600.0 – $2,000.0	1.5x – 1.9x 1.4 – 1.7	16.2x – 20.2x 9.8 – 12.2	25.5x – 31.8x 13.1 – 16.4
Discounted Cash Flows	$1,797.3 – $2,071.7	1.7x – 1.9x 1.5 – 1.8	18.2x – 20.9x 11.0 – 12.6	28.6x – 33.0x 14.8 – 17.0
Credit Suisse First Boston Reference Range	**$1,600.0 – $2,000.0**	1.5x – 1.9x 1.4 – 1.7	16.2x – 20.2x 9.8 – 12.2	25.5x – 31.8x 13.1 – 16.4
Less Net Debt (1)	440.2 – 440.2			
Implied Equity Value	**$1,159.8 – $1,559.8**			
Plus Options Proceeds	$50.3 – $50.3			
Shares (MM) (2)	56.8 – 56.8			
Implied Price per Share	$21.31 – $28.35			
Premium to Pre-Announcement Price (3)	*3.0% – 37.1%*			

(1) 1997 estimated year-end net debt of $440.2 million based on Coleman management estimates including an estimated $90 million of after-tax proceeds from the sale of Safety & Security Products Inc.
(2) 53.5 million common shares plus 3.3 million options at an average exercise price of $15.1447 per share as of 12/31/97 per Coleman management estimates.
(3) Pre-announcement price of $20.69 as of 2/24/98.

Coleman

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s.

The Company participates in two primary markets, outdoor recreation and hardware.

Outdoor Recreation: The Company's principal products include a comprehensive line of lanterns and stoves for recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products for recreational use. These products are distributed predominantly through mass merchandisers, sporting goods chains and outdoor specialty stores.

Hardware: The Company's principal products include portable generators, portable and stationary air compressors and pressure washers. On February 18, 1998, the Company announced its intention to sell its Safety & Security Products Inc. division, a maker of smoke alarms, carbon monoxide detectors and thermostats, to Siebe Plc for $105 million.

1997 Restructuring. Coleman restructured its operations in 1997 to reduce costs, improve operating efficiency, and divest non-strategic businesses. The Company eliminated 1,000 positions, eliminated 25% of SKUs (with an expected target of 33%) and enhanced working capital management. The Company took a $36 million restructuring charge of which $16 million will be non-cash.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC0001552

011916

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121262

16div-019143

In arriving at the above values for Coleman, we have considered discounted cash flows, comparable companies and comparable acquisitions analyses.

a. Discounted Cash Flows Analysis

Our discounted cash flows analysis is based on management projections for 1998 to 2001 and estimates developed in conjunction with Coleman management for 2002 and beyond (the "Coleman Base Case"). We have used a discount rate range of 10.0% - 11.0% based on Coleman's WACC and terminal EBITDA multiples of 9.5x-10.5x applied to 2007E EBITDA.

Summary DCF Valuation
(Dollars in Millions)

SCENARIO	DISCOUNT RATE	PV OF UNLEV. FCF	TERMINAL MULTIPLE	PV OF TERMINAL VALUE	NET DEBT	TOTAL EQUITY VALUE	EQUITY VALUE PER SHARE[1]
Coleman Base Case	10.0%	$676	10.5x	$1,396	$440	$1,632	$29.62
	11.0%	$644	9.5x	$1,154	$440	$1,357	$24.78

(1) Equals (Total Equity Value plus $50.3 million estimated options proceeds) ÷ (53.5 million shares and 3.3 million options outstanding).

Coleman Financial Summary
(Dollars in Millions)

	1995[1]	1996[1]	1997P[2]	1998E	1999E	2000E
Coleman Base Case						
Sales	$934	$1,220	$1,066	$1,163	$1,280	$1,408
Growth	*NM*	*NM*	*NM*	*9.1%*	*10.0%*	*10.0%*
EBITDA	$128	$99	$99	164	184	206
% Margin	*13.7%*	*8.1%*	*9.3%*	*14.1%*	*14.4%*	*14.6%*
EBIT	$102	$63	$63	$122	$142	$165
% Margin	*10.9%*	*5.1%*	*5.9%*	*10.5%*	*11.1%*	*11.7%*

(1) Based on Coleman management estimates before restructuring and extraordinary charges, but including operational performance of Safety & Security Products Inc.
(2) Based on Coleman management estimates, excluding the operational performance of Safety & Security Products Inc.

b. Comparable Companies Analysis

We have considered the trading multiples of comparable companies in the consumer products industry. The appropriate universe of comparables for Coleman were determined based on a variety of comparability parameters including product mix, customer base, distribution channels and financial and equity market parameters. Coleman trades at a discount to many of its peers due to its sensitivity to weather conditions. Our reference range of $1,150 million - $1,600 million represents 7.0x - 9.8x 1998E Coleman Base Case EBITDA.

NOT A CERTIFIED COPY

Comparable Companies

(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	$3,682.7	$3,825.7	2.6x	11.6x	13.8x	20.4x
Coleman	1,124.5	1,564.7	1.3	9.6	12.8	17.5[1]
Huffy Corp.	189.4	274.2	0.4	6.4	14.5	15.6
Russell Corp.	993.3	1,503.7	1.2	7.3	11.4	15.8
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated based on Coleman management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.
Note: Sales, EBITDA, EBIT and E.P.S. estimates for the comparable companies are based on equity research reports.

c. *Comparable Acquisitions Analysis*

The comparable acquisitions analysis examined acquisition activity in the consumer products industry. Our comparable acquisition reference range of $1,600 million - $2,000 million represents 9.8x - 12.2x 1998E Coleman Base Case EBITDA. We have relied on 1998 EBITDA because it represents a more normalized level of profitability based on the restructuring that the Company undertook in 1997 to eliminate costs. This value range is within the multiple range for comparable acquisitions.

Comparable Acquisitions

(Currency in Millions)

DATE	ACQUIROR/ TARGET	DESCRIPTION	ENTERPRISE VALUE	ENTERPRISE VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBIT
9/96	Gillette Co./ Duracell International	Manufactures alkaline batteries.	$7,862.7	3.3x	14.2x	17.3x
9/96	Rubbermaid Inc./ Graco Children's Products, Inc.	Manufactures plastic toys.	320.0	1.2	NA	NA
8/96	Kohlberg Kravis Roberts & Co./ E&S Holding Corporation (Evenflo & Spalding Holding Corporation)	Manufactures sporting goods and juvenile products.	1,078.4	1.5	12.7	16.8
1/96	Brunswick Corporation/ Nelson/Weather-Rite	Manufactures camping gear.	120.0	1.2	NA	12.5
12/95	American Brands, Inc./ Cobra Golf Inc. II	Manufactures golf equipment.	673.8	3.7	11.9	12.3
2/95	Bell Sports Corporation/ American Recreation Company	Manufactures bicycles and batteries.	150.2	1.0	10.6	11.7
12/94	Sogedim of Belgium/ Adidas Int'l Hldg.	Manufactures athletic footware.	DM1,380.0	0.4	10.4	15.3

NOT A CERTIFIED COPY

011918

CONFIDENTIAL
CSFBC 0001554

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121264

16div-019145

6. *Sunbeam Valuation Summary*

(Dollars in Millions)

VALUATION METHODOLOGY	ENTERPRISE VALUE REFERENCE RANGE	MULTIPLE OF 1997P/1998E(4) SALES	EBITDA	EBIT
Comparable Companies	$3,400.0 – $4,200.0	2.9x – 3.6x	14.3x – 17.6x	17.1x – 21.1x
		2.3 – 2.9	10.4 – 12.8	12.3 – 15.1
Comparable Acquisitions	$3,250.0 – $4,000.0	2.8x – 3.4x	13.7x – 16.8x	16.3x – 20.1x
		2.2 – 2.7	9.9 – 12.2	11.7 – 14.4
Discounted Cash Flows				
Long-Term Strategic Plan	$4,312.0 – $4,885.7	3.7x – 4.2x	18.1x – 20.5x	21.6x – 24.5x
		3.0 – 3.3	13.1 – 14.9	15.5 – 17.6
Base Case	$3,812.9 – $4,326.4	3.3x – 3.7x	16.0x – 18.2x	19.1x – 21.7x
		2.6 – 3.0	11.6 – 13.2	13.7 – 15.6
Credit Suisse First Boston Reference Range	**$3,500.0 – $4,250.0**	**3.0x – 3.6x**	**14.7x – 17.9x**	**17.6x – 21.3x**
		2.4 – 2.9	10.7 – 12.9	12.6 – 15.3
Less Net Debt (1)	143.0 – 143.0			
Implied Equity Value	$3,357.0 – $4,107.0			
Plus Options Proceeds	156.0 – 156.0			
Shares (MM) (2)	94.5 – 94.5			
Implied Price per Share	$37.18 – $45.11			
Premium to Pre-Announcement Price(3)	*(8.5)% – 11.1%*			

(1) 1997 estimated year-end net debt of $143 million based on Sunbeam management estimates.
(2) 85.5 million shares as of the Form 10Q dated 9/30/97, plus 9.0 million options at an average exercise price of $17.30 per share as of the Form 10K dated 12/31/96.
(3) Pre-announcement price of $40.63 as of 2/24/98.
(4) Multiples based on Sunbeam Base Case projections.

Sunbeam

Sunbeam is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer goods through mass market and other distributors in the United States and throughout the world. The Company also sells its products to commercial end users such as hotels and other institutions.

The Company's product categories are: (i) *Appliances* (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers) (ii) *Health Care* (vaporizers, humidifiers, air cleaners, massagers, hot and cold packs, blood pressure monitors and scales) (iii) *Personal Care and Comfort* (shower massagers, hair clippers and trimmers, electric warming blankets and throws) (iv) *Outdoor Cooking* (electric, gas and charcoal grills and grill accessories) and (v) *Away From Home* (clippers and related products for the professional and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care and comfort products, professional clippers and related products and grills) in all countries other than the United States.

In arriving at the above values for Sunbeam, we have considered discounted cash flows, comparable companies and comparable acquisitions analyses.

NOT A CERTIFIED COPY

011919

CONFIDENTIAL
CSFBC 0001555

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121265

16div-019146

a. Discounted Cash Flows Analysis

Our discounted cash flows analysis is based on two cases: (i) a set of projections based on management forecasts for 1998-2000 and 7.5% growth thereafter (the "Long-Term Strategic Plan Case"); and (ii) an alternative set of projections based on equity analyst projections for Sunbeam that assume lower revenue growth in the 1998-2000 period and 10.0% growth thereafter (the "Sunbeam Base Case"). The DCF uses a discount rate of 11.0% to 12.0% based on Sunbeam's WACC and terminal EBITDA multiples of 9.5x and 10.5x applied to 2002E EBITDA.

Summary DCF Valuation
(Dollars in Millions)

SCENARIO	DISCOUNT RATE	PV OF UNLEV. FCF	TERMINAL MULTIPLE	PV OF TERMINAL VALUE	NET DEBT	TOTAL EQUITY VALUE	EQUITY VALUE PER SHARE (1)
Long-Term Strategic Plan Case	11.0%	$796	10.5x	$4,090	$143	$4,743	$51.84
	12.0%	$774	9.5x	$3,538	$143	$4,169	$45.77
Sunbeam Base Case	11.0%	$659	10.5x	$3,668	$143	$4,183	$45.92
	12.0%	$640	9.5x	$3,173	$143	$3,670	$40.49

(1) Equals (Total Equity Value plus $156.0 million estimated options proceeds) ÷ (85.5 million shares plus 9.0 million options outstanding).

Financial Summary
(Dollars in Millions)

	1996	1997	1998E	1999E	2000E
Long-Term Strategic Plan Case					
Sales	$984	$1,168	$1,600	$2,000	$2,400
% Growth	*(3.2)%*	*18.7%*	*37.0%*	*25.0*	*20.0%*
EBITDA	48	238	372	471	568
% Margin	*4.9%*	*20.4%*	*23.3%*	*23.6%*	*23.7%*
EBIT	1	199	318	400	485
% Margin	*0.1%*	*17.1%*	*19.9%*	*20.0%*	*20.2%*
Sunbeam Base Case					
Sales	$984	$1,168	$1,460	$1,800	$2,070
% Growth	*(3.2)%*	*18.7%*	*25.0%*	*23.3%*	*15.0%*
EBITDA	48	238	329	423	487
% Margin	*4.9%*	*20.4%*	*22.5%*	*23.5%*	*23.5%*
EBIT	1	199	277	360	414
% Margin	*0.1%*	*17.1%*	*19.0%*	*20.0%*	*20.0%*

Note: Historicals as of Sunbeam management estimates, excluding non-recurring items.

b. Comparable Companies Analysis

We have considered the trading multiples of comparable companies in the consumer products industry. The appropriate universe of comparables for Sunbeam were determined based on a variety of comparability parameters including product mix, customer base, distribution channels and financial and equity market parameters. Our reference range of $3,400-$4,200 million represents 10.4x-12.8x 1998E Sunbeam Base Case EBITDA.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC0001556

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019147

Comparable Companies
(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	$3,682.7	$3,825.7	2.6x	11.6x	13.8x	20.4x
Coleman	1,124.5	1,564.7	1.3	9.6	12.8	17.5(1)
Tupperware Corporation	1,643.5	1,903.8	1.6	8.6	12.4	15.9
Whirlpool Corporation	4,906.5	6,887.5	0.8	7.5	12.4	16.1
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated based on Coleman management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.
Note: Sales, EBITDA, EBIT and E.P.S. estimates for the comparable companies are based on equity research reports.

c. Comparable Acquisitions Analysis

The comparable acquisitions analysis examined acquisition activity in the consumer products industry. Our comparable acquisition reference range of $3,250 million - $4,000 million represents 9.9x-12.2x 1998E Sunbeam Base Case EBITDA.

Comparable Acquisitions
(Currency in Millions)

DATE	ACQUIROR/ TARGET	DESCRIPTION	ENTERPRISE VALUE	ENTERPRISE VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBIT
9/97	Goodman Holding Company/ Raytheon Appliance Group	Manufactures home appliances, HVAC and commercial cooking equipment.	$750.0	0.5x	5.5x	10.1x
9/96	Gillette Co./ Duracell International	Manufactures alkaline batteries.	7,862.7	3.3	14.2	17.3
9/96	Rubbermaid Inc./ Graco Children's Products, Inc.	Manufactures plastic toys.	320.0	1.2	NA	NA
8/96	Kohlberg Kravis Roberts & Co./ E&S Holding Corporation (Evenflo & Spalding Holding Corporation)	Manufactures sporting goods and juvenile products.	1,078.4	1.5	12.7	16.8
2/96	Honeywell/ Duracraft Corp.	Manufactures household products.	266.9	1.6	13.9	16.5
9/95	Manitowoc Co./ Shannon Group	Manufactures commercial refrigerators, freezers and related products.	126.0	1.0	8.7	13.3
12/94	Berisford International plc/ Welbilt Corp.	Manufactures and wholesales food service equipment and heating and air conditioning products; wholesales household appliances.	481.2	1.0	8.3	10.0
1/94	Health O'Meter Products/ Mr. Coffee, Inc.	Manufactures electric drip coffee makers.	163.8	0.9	8.4	11.2

NOT A CERTIFIED COPY

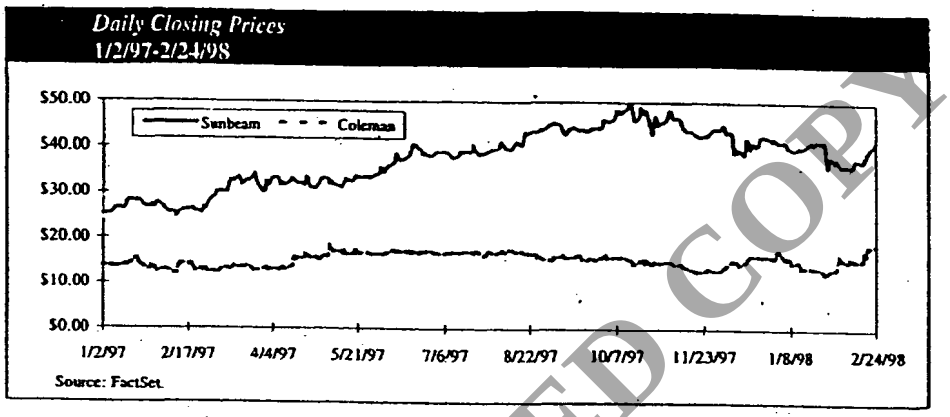
011921

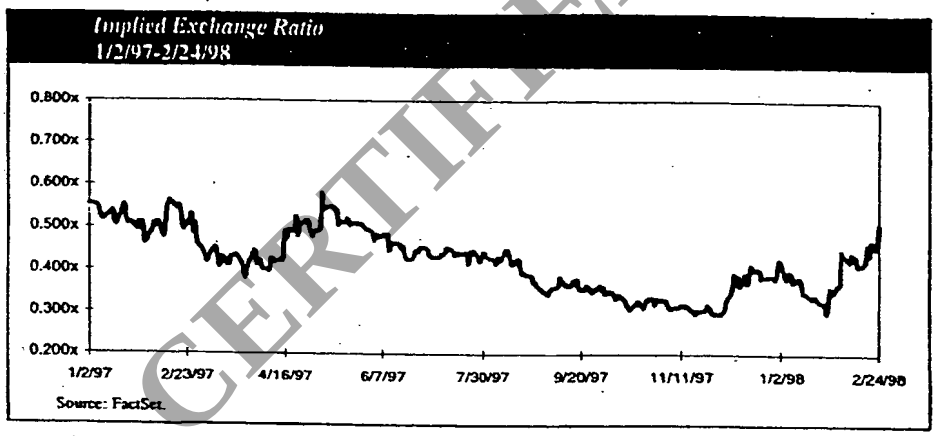
CONFIDENTIAL
CSFBC 0001557

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

7. *Historical Trading Relationship*

The exchange ratio of 0.5677 Sunbeam shares and $6.44 in cash (or an implied exchange ratio of 0.7262, based upon a $40.63 closing price of Sunbeam as of 2/24/98) for each Coleman share (other than shares held by Holdco) exceeds the implied exchange ratios based on historical trading relationships.





NOT A CERTIFIED COPY

011922

CONFIDENTIAL
CSFBC 0001558

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

8. Merger Consequences Analysis Summary

This analysis was prepared based on Sunbeam Base Case and Coleman Base Case forecasts. It assumes that:

- Fair market value of zero coupon assumed by Sunbeam for approximately 19.2 million Coleman shares; zero coupon written-up to approximately $582 million.
- Remaining Coleman shareholders receive 0.5677 Sunbeam shares and $6.44 in cash for each Coleman share.
- $100 million of annual pre-tax synergies, estimated by the managements of Coleman and Sunbeam, achieved in 1998 and 1999.

Pro-Forma Financial Consequences
(Dollars in Millions)

	1998E[1]	1999E[1]
Combined Operating Statistics		
Sales	$2,645	$3,080
EBITDA	596	707
Stand Alone EPS	$1.99	$2.58
Pro Forma EPS	2.09	2.74
% Accretion/(Dilution)	5.3%	6.2%
Credit Statistics		
EBITDA/Interest	6.0x	8.3x
Net Debt/EBITDA	2.1	1.4

(1) Based on Sunbeam Base Case and Coleman Base Case projections.

Synergies

Coleman management has estimated that the combination with Sunbeam could create up to $150 million of cost savings and revenue synergies. Revenue synergies (approximately 25% of the total) would be created primarily by using the Coleman distribution network to sell Sunbeam products and through savings on licensing. Cost synergies (approximately 75% of the total) would occur through the elimination of the corporate staff, consolidated sales forces, consolidated headquarters, and consolidated sourcing and logistics.

Sunbeam management expects to estimate $100 million of cost savings in their public announcement of the deal. The pro forma analysis assumes $100 million of annual cost savings including 1998 which is presented on a pro forma basis.

NOT A CERTIFIED COPY

0011923

CONFIDENTIAL
CSFBC 0001559

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

9. Relative Contribution Analysis

The relative contribution analysis examines the percentage contribution, on a pro-forma basis, of the two companies to the combined entity and the resultant implied exchange ratios. Due to the higher leverage ratio at Coleman, net income percentages are the most relevant.

(Dollars in Millions)

	1997P		1998E	
	SUNBEAM	COLEMAN	SUNBEAM	COLEMAN
Sales	$1,168	$1,066	$1,460	$1,163
EBITDA	238	99	329	164
Net Income	124	22	180	63
Relative Contribution				
Sales	52.3%	47.7%	55.7%	44.3%
EBITDA	70.6	29.4	66.7	33.3
Net Income	84.1	15.9	74.2	25.8
Implied Exchange Ratio				
Sales	1.502x		1.311x	
EBITDA	0.685		0.821	
Net Income	0.311		0.575	
Implied Share Price (1)				
Sales	$61.01		$53.27	
EBITDA	27.81		33.34	
Net Income	12.66		23.34	

(1) Based on Sunbeam price of $40.63.
Note: Operating results as of Sunbeam and Coleman management estimates.

10. Advisors

Credit Suisse First Boston is acting as financial advisor and Wachtell, Lipton, Rosen & Katz is acting as counsel to Coleman in connection with this transaction. Shearman & Sterling is acting as counsel to Credit Suisse First Boston. Morgan Stanley Dean Witter Discover & Co. is acting as financial advisor and Skadden, Arps, Slate, Meagher & Flom is acting as counsel to Sunbeam.

11. Credit Suisse First Boston's Relationship and Fees

Credit Suisse First Boston has a long-standing relationship with Mafco, Coleman's controlling shareholder, and its shareholder, Ronald O. Perelman, having advised Mafco on a variety of financing and strategic advisory transactions. Notable transactions involving Mafco on which Credit Suisse First Boston has had a lead role include the initial public offering of the Revlon Group (wherein Credit Suisse First Boston acted as joint global coordinator); several lead-managed debt and equity financings for Coleman; a financial advisory assignment in the summer of 1997 in which Mafco, advised by Credit Suisse First Boston, made a final round bid on a property in a transaction that was eventually consummated by another party; and most recently, in January 1998, a lead-managed debt offering as part of Mafco's acquisition of a controlling stake and recapitalization of Panavision Inc. CSFB has a signed engagement letter with Coleman relating to the Transaction. Pursuant to the letter, CSFB will receive a fee of $4,000,000 payable upon completion of the Transaction.

NOT CERTIFIED COPY

011924

CONFIDENTIAL
CSFBC 0001560

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121270

16div-019151

12. Due Diligence

Credit Suisse First Boston has had a long relationship with Coleman. It participated in the initial public offering of the Company in 1992 and several financings since then. In connection with this transaction, the Credit Suisse First Boston team has met several times with Coleman senior management (primarily Jerry Levin, the CEO, and Joe Page, the CFO) to discuss the Company's historical and financial results.

Credit Suisse First Boston also met with Sunbeam senior management on February 23, 1998 and February 24, 1998 to discuss Sunbeam's strategic plan and 1997 results. Credit Suisse First Boston attendees were Robert Duffy and Steven Geller.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001561

011925

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM ACQUIRES THREE PUBLICLY TRADED CONSUMER PRODUCTS COMPANIES: COLEMAN, SIGNATURE BRANDS AND FIRST ALERT

*****Al Dunlap Signs New Three Year Contract*****

Delray Beach, FL, March 2, 1998 – Sunbeam Corporation (NYSE: SOC) initiated an aggressive expansion strategy today with the announcement of the acquisitions of three separate market leading durable consumer product companies. These transactions will enhance shareholder value by nearly tripling the Company's annual revenues, expanding its geographic presence, complementing its existing product lines and leveraging operational synergies. The three transactions will total approximately $2.5 billion and will be meaningfully accretive to Sunbeam's earnings within twelve months. The transactions are subject to regulatory approvals and other customary conditions and are expected to close within the next two months.

The Coleman Company, Inc. (NYSE: CLN), with 1997 revenues of $1.1 billion is the global leader in outdoor recreation and hardware products with powerful brands such as Coleman®, Powermate®, Camping Gaz® and Eastpak®. The Company, based in Wichita, KS, operates 17 manufacturing facilities and employs approximately 6,000 people around the world. The transaction is valued at approximately $2.0 billion, consisting of approximately $815 million in Sunbeam stock and the balance in debt financing. Shareholders of The Coleman Company, Inc. will receive $6.44 in cash and 0.5677 shares of Sunbeam stock for each share of Coleman stock.

Signature Brands USA, Inc. (NASDAQ: SIGB), with 1997 revenues of $279 million, is the North American leader in coffee makers marketed under the Mr. Coffee® brand name and is a leader in consumer health products marketed under the Health o meter® brand. The Company, based in Glenwillow, OH, operates two manufacturing facilities and employs approximately 1,000 people. The transaction is valued at approximately $250 million consisting of a cash tender offer of $8.25 per SIGB share and the assumption of existing debt.

First Alert, Inc. (NASDAQ: ALRT) with 1997 revenues of $187 million, is the worldwide leader in residential safety equipment, including smoke and carbon monoxide detectors. The Company, which is based in Aurora, IL, operates two manufacturing facilities and employs approximately 2,100 people. The transaction is valued at approximately $175 million consisting of a cash tender offer of $5.25 per ALRT share and the assumption of existing debt.

Albert J. Dunlap, Sunbeam's chairman and chief executive officer stated, "The successful turnaround of Sunbeam, including the dramatic improvement of the underlying business, has provided us with a solid platform for profitable growth. These three separate transactions

-more-

NOT A CERTIFIED COPY

011927

MS 237
5-12-04 WDB

represent the next phase of our plan to create value for Sunbeam's shareholders. We looked at various alternatives to increase shareholder value. Ultimately we decided there is phenomenal value to be created in assuming the leadership role in consolidating the industries in which we compete. These acquisitions enable us to accelerate our growth rate by expanding our geographic presence, entering new product lines and leveraging the strength of dominant brand names such as Coleman®, Camping Gaz®, Eastpak®, First Alert®, Mr. Coffee®, and Health o meter®, along with Sunbeam®, Oster® and Grillmaster®."

Mr. Dunlap added, "Our strategy is to become the global leader in the durable consumer products industry through continued internal growth augmented by further strategic acquisitions of high quality consumer brands. Our proven track record coupled with our financial strength will enable us to successfully execute this strategy."

The Company anticipates initial synergies of approximately $150 million which will result in a substantial EPS accretion in 1999. A one time charge is expected in 1998 in order to restructure and consolidate these three companies into Sunbeam.

Additionally, the Company announced that Chairman and Chief Executive Officer Albert J. Dunlap, along with Executive Vice Presidents Russell A. Kersh and David C. Fannin have all renewed their commitment to the Company by signing new three year employment contracts. Mr. Kersh was named to the new position of vice chairman of Sunbeam. Mr. Dunlap stated, "I am eager to continue to create tremendous value for our shareholders by building the leading durable consumer products company in the world. This new employment agreement will put to rest any rumors that I would leave the Company."

"This is a fantastic situation for all Sunbeam shareholders giving them the opportunity to participate in the wealth that Al Dunlap and his team are building," said Ronald O. Perelman, who will become Sunbeam's second largest shareholder after the transaction. "Coleman will thrive as part of Sunbeam's unbeatable family of brands," added Mr. Perelman.

Michael Price, president and chief executive officer of Franklin Mutual Series Fund, Sunbeam's largest shareholder, praised the transactions and new contracts. "With the simultaneous acquisitions of these three publicly traded companies, Sunbeam is launching into a bold new phase as the consolidator in its industries," Mr. Price said. "Utilizing Al's unique ability to restructure and reposition companies, the opportunities for operating synergies and incremental sales growth is substantial. Al's renewed commitment indicates to me that the best is yet to come for Sunbeam and its shareholders," Mr. Price added.

-more-

NOT A CERTIFIED COPY

Morgan Stanley & Co. Incorporated acted as financial advisor to Sunbeam in all three of the aforementioned transactions.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam® and Oster® brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

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

The Company will conduct a conference call on Monday, March 2, 1998 at 2:00 p.m. EST.
The call in number is (312) 470-0142.
Password: Sunbeam

Please contact:

Media:

Mari Hope
Hill & Knowlton
212-885-0306

Investors:

Rich Goudis
Sunbeam Corporation
561-243-2142

NOT A CERTIFIED COPY

OFFERING MEMORANDUM CONFIDENTIAL

$732,035,000

Coleman Escrow Corp.

$600,475,000 Senior Secured First Priority Discount Notes due 2001
$131,560,000 Senior Secured Second Priority Discount Notes due 2001

The Issue Price of each of the Senior Secured First Priority Discount Notes due 2001 (the "First Priority Notes") will be $649.49 per $1,000 principal amount at maturity (64.949% of principal amount at maturity), and the Issue Price of each of the Senior Secured Second Priority Discount Notes due 2001 (the "Second Priority Notes" and, together with the First Priority Notes, the "Notes") will be $608.12 per $1,000 principal amount at maturity (60.812% of principal amount at maturity). Except as set forth herein, there will be no periodic payments of interest on the Notes. The Notes will mature on May 15, 2001. The Issue Price of (i) each First Priority Note represents a yield to maturity of 11⅛% per annum and (ii) each Second Priority Note represents a yield to maturity of 12⅛% per annum, in each case, computed on a semiannual bond equivalent basis, calculated from May 20, 1997.

The Notes are being offered (the "Offering") by Coleman Escrow Corp. (the "Issuer") to fund (i) the redemption of $281,281,000 aggregate principal amount at maturity of Senior Secured Discount Notes due 1998 (the "Coleman Holdings Notes") of Coleman Holdings Inc., a wholly owned subsidiary of the Issuer ("Coleman Holdings"), and (ii) the retirement, including through redemption or any earlier exchanges, of $561,553,000 outstanding aggregate principal amount at maturity of Liquid Yield Option™ Notes due 2013 (the "LYONs"™) of Coleman Worldwide Corporation, a wholly owned subsidiary of Coleman Holdings ("Coleman Worldwide"), which LYONs are exchangeable for shares of common stock, par value $.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc. ("Coleman" or the "Company"). The redemption of the Coleman Holdings Notes (the "Coleman Holdings Notes Redemption") is expected to occur on or about July 15, 1997. Following the Coleman Holdings Notes Redemption, Coleman Holdings expects to be merged with and into the Issuer (the "Coleman Holdings Merger"), and the Issuer will directly own all of the shares of capital stock of Coleman Worldwide and indirectly own through Coleman Worldwide the 26,000,000 shares (representing approximately 48.7% of shares outstanding) of Coleman Common Stock that are currently pledged to secure the Coleman Holdings Notes. The retirement of the LYONs is expected to occur in a series of transactions, including an exchange offer by Coleman Worldwide and the subsequent redemption by Coleman Worldwide on May 27, 1998 of all LYONs then outstanding (such transactions collectively referred to herein as the "LYONs Retirement").

(Continued on following page)

See "Risk Factors" beginning on page 20 for a discussion of certain factors that should be considered by prospective purchasers in evaluating an investment in the Notes.

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, UNLESS SO REGISTERED, THE NOTES MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. ACCORDINGLY, THE NOTES OFFERED HEREBY ARE BEING OFFERED AND SOLD ONLY TO "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN RELIANCE ON THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144A, AND TO A LIMITED NUMBER OF INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A) (1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT EXECUTE AND DELIVER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. PROSPECTIVE PURCHASERS ARE HEREBY NOTIFIED THAT SELLERS OF THE NOTES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A. FOR CERTAIN RESTRICTIONS ON RESALES, SEE "NOTICE TO INVESTORS."

	Principal Amount at Maturity	Price to Investors(1)	Discounts to Initial Purchasers(2)	Proceeds to Issuer(1)(3)
Per First Priority Note	100%	64.949%	1.624%	63.325%
Total	$600,475,000	$390,002,508	$9,750,063	$380,252,445
Per Second Priority Note	100%	60.812%	1.520%	59.292%
Total	$131,560,000	$80,004,267	$2,000,107	$78,004,160

(1) Plus accrued Original Issue Discount (as defined herein), if any, from the date of issuance.
(2) The Issuer has agreed to indemnify the Initial Purchasers against certain liabilities under the Securities Act. See "Plan of Distribution."
(3) Before deducting expenses estimated at $3,000,000 payable by the Issuer.

The Notes are being offered by Bear, Stearns & Co. Inc., Chase Securities Inc. and Credit Suisse First Boston Corporation (the "Initial Purchasers"), subject to prior sale, when, as and if delivered to and accepted by the Initial Purchasers, subject to certain other conditions. The Initial Purchasers reserve the right to withdraw, cancel or modify such offer and to reject orders in whole or in part. It is expected that delivery of the Notes will be made against payment therefor in New York, New York, on or about May 20, 1997, in book-entry form through the facilities of The Depository Trust Company.

Bear, Stearns & Co. Inc.

Chase Securities Inc.

Credit Suisse First Boston

The date of this Offering Memorandum is May 15, 1997.

NOT A SECURITIES COPY

011931

MS 241
5-12-04 WDB

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1107884
16div-019156

(Continued from previous page)

Following the LYONs Retirement, the Issuer expects to be merged with and into Coleman Worldwide (the "Coleman Worldwide Merger"), and Coleman Worldwide, as successor to the Issuer, will continue to own the 16,394,810 shares (representing approximately 30.7% of shares outstanding) of Coleman Common Stock currently pledged to secure the LYONs, the 26,000,000 shares of Coleman Common Stock currently pledged to secure the Coleman Holdings Notes and the 1,672,710 shares (representing approximately 3.2% of shares outstanding) of Coleman Common Stock not currently pledged, of which 522,710 shares are currently available to be pledged to secure the Notes, less any shares of Coleman Common Stock delivered upon exchange of the LYONs (the "Delivered Shares").

Concurrently with the closing of the Offering, the Issuer will deposit the net proceeds of the Offering (the "Escrowed Funds") with an escrow agent (the "Escrow Agent"), and the Escrowed Funds will be temporarily invested in Treasury Securities and other Permitted Investments (as such terms are defined herein). The Escrowed Funds will be used by the Issuer to make capital contributions from time to time to Coleman Holdings and Coleman Worldwide (the "Capital Contributions"), which Capital Contributions will be used to fund the Coleman Holdings Notes Redemption and the LYONs Retirement.

The Notes will be redeemable at the option of the Issuer, in whole or in part, at any time on and after May 15, 2000 at the redemption prices set forth herein on the date of redemption. Notwithstanding the foregoing, the Issuer will have the option to redeem the Notes at any time in whole at a redemption price equal to the Accreted Value (as defined herein) on the date of redemption plus the Applicable Premium (as defined herein). Upon a Change of Control (as defined herein), subject to certain conditions, each holder of the Notes will have the right to require the Issuer to repurchase all or a portion of such holder's Notes at a price equal to the Put Amount (as defined herein) on the date of repurchase.

The Notes will be senior secured obligations of the Issuer and will rank *pari passu* in right of payment with all future senior indebtedness of the Issuer, if any, and senior to all future subordinated indebtedness of the Issuer, if any. The Notes will be (i) upon consummation of the Offering and prior to the Coleman Holdings Merger, secured by a pledge of all of the shares of capital stock of Coleman Holdings, (ii) upon consummation of the Offering, guaranteed on a non-recourse basis by Coleman Worldwide (the "Coleman Worldwide Non-Recourse Guaranty"), which Coleman Worldwide Non-Recourse Guaranty will initially be secured by a pledge of 522,710 shares of Coleman Common Stock that are currently available to be pledged and, simultaneously with the Coleman Holdings Notes Redemption, also secured by a pledge of the 26,000,000 shares of Coleman Common Stock currently pledged to secure the Coleman Holdings Notes, and (iii) simultaneously with the Coleman Holdings Notes Redemption, secured by a pledge of all of the shares of capital stock of Coleman Worldwide. In addition, simultaneously with any release of Escrowed Funds from time to time in connection with the LYONs Retirement, the Coleman Worldwide Non-Recourse Guaranty will also be secured by the shares of Coleman Common Stock for which such exchanged LYONs are exchangeable that are released from the pledge to secure any exchanged LYONs. Upon consummation of the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will be secured by a pledge of 44,067,520 shares of Coleman Common Stock, less any Delivered Shares. The First Priority Notes will rank senior in right of payment to the Second Priority Notes with respect to any collateral securing the Notes and the Coleman Worldwide Non-Recourse Guaranty. See "Risk Factors—Control by Holders of First Priority Notes." On May 15, 1997, the last reported sale price of the Coleman Common Stock on the New York Stock Exchange (the "NYSE") was $16¾ per share.

Upon consummation of the Offering, the only outstanding indebtedness of the Issuer will be the Notes, and all of the Issuer's consolidated liabilities (other than the Notes and certain liabilities incurred in connection with the Offering) will be liabilities of its subsidiaries. The Issuer is a holding company and therefore the Notes will be effectively subordinated to all existing and future indebtedness and other liabilities of the Issuer's subsidiaries. The Indenture will generally prohibit the incurrence of additional debt by the Issuer and will limit the incurrence of additional debt and the issuance of preferred stock by the Issuer's subsidiaries. As of March 31, 1997, after giving pro forma effect to the Offering, the Capital Contributions, the Coleman Holdings Notes Redemption and the LYONs Retirement, the outstanding indebtedness and other liabilities of such subsidiaries would have been approximately $970.9 million. Prior to the Coleman Holdings Notes Redemption and the LYONs Retirement, the Notes will also be effectively subordinated to the Coleman Holdings Notes and the LYONs, respectively. See "Description of the Notes."

For a discussion of certain federal income tax consequences to holders of Notes, see "Certain U.S. Federal Income Tax Considerations." It is expected that the Notes will be eligible for trading in the Private Offerings, Resales and Trading through Automated Linkages (PORTAL) market.

NOT A PRINTED COPY

011632

MORGAN STANLEY CONFIDENTIAL 0022992

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1107885

16div-019157

ERNST & YOUNG LLP

750 NationsBank Financial Center
100 North Broadway
Wichita, Kansas 67202

March 20, 1998

CLN Holdings, Inc.
and
Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Dear Sirs:

We have audited the consolidated balance sheets of CLN Holdings, Inc. and subsidiaries (the Company) as of December 31, 1997 and 1996, and the consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997, included in the Offering Memorandum for $2,014,000,000 of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the Debentures) to be issued by Sunbeam Corporation. Our report with respect thereto is included in the Offering Memorandum dated March 19, 1998 (the Offering Memorandum).

This letter is being furnished in reliance upon your representation to us that:

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

In connection with the Offering Memorandum:

1. We are independent auditors with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations thereunder.

NOT A CERTIFIED COPY

011934

LG. 6/8/04

MS 243

MORGAN STANLEY CONFIDENTIAL 0000456

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1084899
16div-019158

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 1997. The purpose (and therefore the scope) of our audits was to enable us to express our opinion on the consolidated financial statements as of December 31, 1997 and 1996, and for each of the three years in the period ended December 31, 1997, but not on the financial statements for any interim period within these years. Therefore, we are unable to and do not express any opinion on the financial position, results of operations, or cash flows as of any other date or for any period subsequent to December 31, 1997.

4. For purposes of this letter we have obtained a summary of topics discussed during the 1998 meetings of the Board of Directors of the Company, for which minutes have not been approved.

5. The Company's officials have advised us that no financial statements as of any date or for any period subsequent to December 31, 1997 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after December 31, 1997 have, of necessity, been even more limited than those with respect to the periods referred to in 3. above. We have inquired of Company officials who have responsibility for financial and accounting matters as to whether: (i) at March 18, 1998 there was any increase in long-term debt or any decrease in net current assets of the Company as compared with the amounts shown on the December 31, 1997, audited balance sheet included in the Offering Memorandum, or (ii) for the period from January 1, 1998, to March 18, 1998, there was any decrease, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or increase in net loss. On the basis of these inquiries and our summary of the minutes as described in 3. above, nothing came to our attention that caused us to believe that there was any such increase or decrease, except for approximately $60 million additional long term borrowing under the revolving credit facility and in all other instances for increases or decreases which the Offering Memorandum discloses have occurred or may occur.

6. At your request, we have read the items identified by you on the attached copies of certain pages of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

   A Compared the dollar amounts to the amounts in the audited consolidated financial statements described in the introductory paragraph of this letter to the extent such amounts are included in or can be derived from such statements and found them to be in agreement.

   B Compared the dollar and other amounts not derived directly from the audited consolidated financial statements, or that could not be compared directly to the

NOT A CERTIFIED COPY

01-1935

Company's accounting records, to amounts in analyses prepared by the Company from its accounting records and found them to be in agreement. In addition, proved the arithmetic accuracy of analyses prepared by the Company.

C Proved the arithmetic accuracy of the percentages or amounts based on the data in the above-mentioned financial statements, accounting records, and analyses.

7. Our audits of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter were comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For neither the periods referred to therein nor any other period did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above and, accordingly, we do not express an opinion thereon.

8. It should be understood that we make no representations as to questions of legal interpretation or as to the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the information identified in 6. above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations as to the adequacy of disclosure or as to whether any material facts have been omitted.

9. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to for any purpose, including but not limited to the purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Ernst & Young LLP

NOT A CERTIFIED COPY

011936

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Sunbeam Corporation
(Name of Issuer)

Common Stock, par value $0.01 per share
(Title of Class of Securities)

867071 10 2
(CUSIP Number)

Barry F. Schwartz
Mafco Holdings Inc.
35 East 62nd Street
New York, New York 10021
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

June 14, 1998
(Date of Event Which Requires Filing of This Statement)

NOT A CERTIFIED COPY

011938

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(b)(3) or (4), check the following box: ☐.

MS 244
11/12/01

CP 013508
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1403698
16div-019161

SCHEDULE 13D

CUSIP No. 867071 10 2	Page 2 of 10

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON **RONALD O. PERELMAN**	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) ☐ (b) ☐
3	**SEC USE ONLY**	☐
4	SOURCE OF FUNDS **OO**	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)	☐
6	CITIZENSHIP OR PLACE ORGANIZATION **UNITED STATES**	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7 SOLE VOTING POWER **283,850**	
	8 SHARED VOTING POWER **14,099,749**	
	9 SOLE DISPOSITIVE POWER **283,500**	
	10 SHARED DISPOSITIVE POWER **14,099,749**	
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON **14,383,599**	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES	☐
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) **14.2%**	
14	TYPE OF REPORTING PERSON **IN**	

NOT A CERTIFIED COPY

011939

CP 013509
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1403699
16div-019162

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON **MAFCO HOLDINGS INC.**		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP		(a) ☐ (b) ☐
3	**SEC USE ONLY**		☐
4	SOURCE OF FUNDS **OO**		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)		☐
6	CITIZENSHIP OR PLACE ORGANIZATION **DELAWARE**		
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER **-0-**	
	8	SHARED VOTING POWER **14,099,749**	
	9	SOLE DISPOSITIVE POWER **-0-**	
	10	SHARED DISPOSITIVE POWER **14,099,749**	
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON **14,099,749**		
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES		☐
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) **14.0%**		
14	TYPE OF REPORTING PERSON **CO**		

NOT A CERTIFIED COPY

011940

CP 013510
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1403700
16div-019163

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON **COLEMAN (PARENT) HOLDINGS INC.**		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP		(a) ☐ (b) ☐
3	**SEC USE ONLY**		☐
4	SOURCE OF FUNDS **OO**		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)		☐
6	CITIZENSHIP OR PLACE ORGANIZATION **DELAWARE**		
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER **-0-**	
	8	SHARED VOTING POWER **14,099,749**	
	9	SOLE DISPOSITIVE POWER **-0-**	
	10	SHARED DISPOSITIVE POWER **14,099,749**	
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON **14,099,749**		
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES		☐
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) **14.0%**		
14	TYPE OF REPORTING PERSON **CO**		

NOT A CERTIFIED COPY

011941

CP 013611
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1403701
16div-019164

ITEM 1 Security and Issuer.

This Statement on Schedule 13D (this "Schedule 13D") amends the Statement on Schedule 13G filed on April 8, 1998 (the "Schedule 13G") with respect to the Common Stock, par value $0.01 per share (the "Shares"), of Sunbeam Corporation ("Sunbeam"). The principal executive offices of Sunbeam are located at 1615 South Congress Avenue, Delray Beach, Florida 33445.

ITEM 2 Identity and Background.

This Schedule 13D is being filed by Ronald O. Perelman, Mafco Holdings Inc., a Delaware corporation ("Mafco Holdings"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings") and an indirect wholly owned subsidiary of Mafco Holdings. (Together, Mr. Perelman, Mafco Holdings and Parent Holdings are referred to as the "Reporting Persons.").

Mr. Perelman has been Chairman of the Board and Chief Executive Officer of Mafco Holdings and various of its affiliates since 1980. Mr. Perelman also is Chairman of the Board of Revlon, Inc. ("Revlon") and Meridian Sports Incorporated and is the Chairman of the Executive Committee of the Boards of Directors of Consolidated Cigar Holdings Inc., M&F Worldwide Corp. and Panavision Inc. ("Panavision"). The principal business address of Mr. Perelman is 35 East 62nd Street, New York, New York 10021. Mr. Perelman is a United States citizen.

Mafco Holdings is a diversified holding company with interests in several industries. Through its 83% ownership of Revlon, Mafco Holdings is engaged in the cosmetics and skin care, fragrance and personal care products business. Mafco Holdings also owns 72% of Panavision, a supplier of film camera systems to the motion picture and television industries, and 65% of Meridian Sports, a manufacturer and marketer of ski boats. Mafco Holdings, through its 64% beneficial ownership of Consolidated Cigar Holdings Inc., is engaged in the manufacture and distribution of cigars and pipe tobacco. Mafco Holdings also owns 39% of M&F Worldwide (assuming conversion of certain preferred stock) which is in the business of processing licorice and other flavors. Mafco Holdings also is in the financial services business through its 80% ownership of California Federal Bank. The principal executive offices of Mafco Holdings are located at 35 East 62nd Street, New York, New York 10021. All of the capital stock of Mafco Holdings is owned by Mr. Perelman.

Parent Holdings is a holding company whose only significant asset is the Sunbeam Shares it holds. The principal executive offices of Parent Holdings are 5900 North Andrews Avenue, Suite 700, Fort Lauderdale, Florida 33309.

Neither this Schedule 13D nor anything contained herein shall be construed as an admission that Mafco Holdings or Parent Holdings constitutes a "person" for any purposes other than Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

NOT A CERTIFIED COPY

011942

CP 013512
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019165

The name, business address, present principal occupation or employment and citizenship of each director and executive officer of Mafco Holdings and Parent Holdings is set forth in Schedule I hereto and is incorporated herein by reference.

During the last five years, none of the Reporting Persons have, and to their knowledge none of the persons listed on Schedule I hereto have, (i) been convicted in a criminal proceedings (excluding traffic violations or similar misdemeanors) or (ii) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

ITEM 3 Source and Amount of Funds or Other Consideration.

The response to Item 3 of the Schedule 13G is incorporated by reference.

ITEM 4 Purpose of Transaction.

The Coleman-Sunbeam Merger

On February 27, 1998, Parent Holdings and CLN Holdings Inc. ("CLN Holdings"), a Delaware corporation and direct wholly owned subsidiary of Parent Holdings, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Sunbeam and Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("Merger Sub"), providing for, among other things, upon satisfaction or waiver of the conditions thereto, the merger (the "Merger") of Merger Sub with CLN Holdings. The Merger and related transactions are described in the Amended Current Report on Form 8-K/A filed by CLN Holdings on March 4, 1998. On March 30, 1998 the Merger was consummated. Upon consummation of the Merger, among other things, all shares of common stock of CLN Holdings were converted into 14,099,749 Shares and cash. The Schedule 13G was filed because Mafco Holdings and Parent Holdings may be deemed to beneficially own the aforementioned 14,099,749 Shares by virtue of the consummation of the Merger.

Pursuant to the Merger Agreement, upon consummation of the Merger, options (the "Options") to purchase 500,000 shares of common stock of The Coleman Company, Inc. ("Coleman"), which Options were granted during 1997 to Mr. Perelman under certain of Coleman's stock option plans, became immediately exercisable. Pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998, among Sunbeam, Camper Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Sunbeam ("Camper"), and Coleman, pursuant to which Coleman will merge (the "Coleman Merger") with Camper and become a wholly owned subsidiary of Sunbeam, each share of the common stock of Coleman acquired pursuant to the exercise of such Options and outstanding as of the consummation of the Coleman Merger will be converted into the right to receive $6.44 in cash and .5677 Shares. Any Options unexercised as of the consummation of the Coleman Merger will be canceled, and, in settlement therefor, the holders of such Options will be paid cash in an amount equal to the product of (i) the

NOT A CERTIFIED COPY

011943

CP 013513
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019166

total number of shares of common stock of Coleman subject to such Options and (ii) the excess of $27.50 over the exercise price per share of such common stock subject to such Options, less any applicable withholding taxes.

The Schedule 13G reported and this Schedule 13D reflects Mr. Perelman's ownership of the Options to acquire 283,850 Shares that were converted in the Coleman Merger from the Options to acquire 500,000 shares of common stock of Coleman. Pursuant to Rule 13d-4, Mafco Holdings and Parent Holdings expressly disclaim beneficial ownership of such 283,850 Shares and declare that the filing of the Schedule 13G and this Schedule 13D shall not be construed as an admission that either of them is, for purposes of Section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, the beneficial owner of any of such Shares.

Dismissal of Sunbeam's Chief Executive Officer

On June 15, 1998, Sunbeam announced that its Board of Directors had removed Albert J. Dunlap from his position as Sunbeam's Chairman and Chief Executive Officer. The Board appointed as Chairman Peter A. Langerman, Senior Vice President and Chief Operating Office of Franklin Mutual Advisers, Inc. ("Mutual Series"). Mr. Langerman has been a director of Sunbeam since 1990 and served as Chairman of the Board of Sunbeam from May 22, 1996 until July 18, 1996. The Board also announced the appointment of Jerry W. Levin as Chief Executive Officer of Sunbeam. Mr. Levin was Chairman of the Board of Revlon and is Executive Vice President of Mafco Holdings and certain of its affiliates. Sunbeam also announced that its Board would be expanded to include three additional directors, including one additional designee of Mutual Series, Mr. Levin and Howard Gittis, Vice Chairman of the Board of Mafco Holdings and certain of its affiliates.

In connection with the announcement by Sunbeam on June 15, 1998 described above, the Reporting Persons had discussions with representatives of Sunbeam and of Mutual Series with respect to Sunbeam and the matters described in the prior paragraph.

Other Matters

The Reporting Persons acquired and continue to hold the Shares reported herein for investment purposes. In this connection, the Reporting Persons expect to monitor their investment in Sunbeam closely and will continuously assess, analyze and evaluate current and anticipated future performance and trading prices for the Shares, Sunbeam's business, financial condition, capital structure, markets, results of operations and prospects, general economic, financial market and industry conditions, future actions of Sunbeam and its management, the securities markets in general and those for Sunbeam's securities in particular, other developments and other investment opportunities, through, among other means, analysis of documentation on and discussions with knowledgeable industry and market observers and with representatives of Sunbeam and its other shareholders, including, in particular, with members of Sunbeam's Board of Directors and management (including Messrs. Gittis and Levin, who can be expected to actively influence the management and affairs of Sunbeam in their capacities as directors and an officer of Sunbeam). In this respect, and depending on such assessments, and based on, among

NOT A CERTIFIED COPY

0011914

CP 013514
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH-1403704
16div-019167

other reasons, the matters set forth herein, and other factors that each of the Reporting Persons may deem material to its investment decision, the Reporting Persons retain the right to change their investment intent, to propose one or more possible extraordinary transactions (including, without limitation of the nature specified in clauses (b) through (j) of Item 4 of Schedule 13D of the Securities Act of 1933, as amended) with respect to Sunbeam, to offer suggestions as to the management of Sunbeam, its strategies and operating plans, various financial and operational aspects of Sunbeam's business or other matters of interest or concern to the Reporting Persons. In addition, one or more of the Reporting Persons may determine to sell all or a portion of the Shares that they now own or hereafter may acquire on the open market or in private transactions, to acquire additional Shares or other Sunbeam securities from time to time in the open market or in private transactions. Such actions, and any action of the nature referred to in the preceding sentences, will depend upon a variety of factors, including, without limitation, current and anticipated future performance and trading prices for the Shares, the business, financial condition, capital structure, markets, results of operations and prospects of Sunbeam, general economic, financial market and industry conditions, future actions of Sunbeam and its management, the securities markets in general and those for Sunbeam's securities in particular, and other developments and other investment opportunities.

Except as set forth in this Schedule 13D, the Reporting Persons have no present plans or proposals that relate to or that would result in any of the actions specified in clauses (a) through (j) of Item 4 of Schedule 13D of the Securities Act of 1933, as amended.

ITEM 5 Interest in Securities of the Issuer.

Neither the Reporting Persons nor any of the persons listed on Schedule I hereto beneficially owns any Shares other than as set forth herein.

(a) See items 5-8 on pages 2, 3 and 4 with respect to each respective Reporting Person.

(b) See items 5-8 on pages 2, 3 and 4 with respect to each respective Reporting Person.

(c) Except as described in Item 4 hereof, no transactions in the Shares were effected by the Reporting Persons or, to their knowledge, any of the persons listed on Schedule I hereto, since the filing of the Schedule 13G.

(d) Each of the Reporting Persons affirms that no person other than the Reporting Persons have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Shares owned by such Reporting Persons.

(e) Not applicable.

ITEM 6 Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

The 14,099,749 Shares received by Parent Holdings in the Merger, as well as the capital stock of the intermediary holding companies affiliated with Mafco Holdings, are or may be from time to time pledged to secure certain obligations.

NOT A CERTIFIED COPY

011945

CP 013515
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

GPH 1408705

16div-019168

Except as set forth in the Schedule 13G and this Schedule 13D, to the knowledge of the Reporting Persons, there are no other contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 or listed on Schedule I hereto, and between such persons and any person with respect to any securities of the Issuer, including but not limited to, transfer or voting of any of the securities of the Issuer, joint ventures, loan or option arrangements, puts or calls, guarantees or profits, division of profits or loss, or the giving or withholding of proxies, or a pledge or contingency the occurrence of which would give another person voting power over the securities of the Issuer.

ITEM 7 Material to be Filed as Exhibits.

2.1 Agreement and Plan of Merger, dated as of February 27, 1998, by among Sunbeam Corporation, Camper Acquisition Corp. and The Coleman Company, Inc. (incorporated by reference to the Amended Current Report on Form 8-K/A filed by The Coleman Company, Inc. on March 5, 1998).

10.1 Agreement and Plan of Merger, dated as of February 27, 1998, by among Sunbeam Corporation, Camper Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. (incorporated by reference to the Amended Current Report on Form 8-K/A filed by The Coleman Company, Inc. on March 5, 1998).

99.1 Joint Filing Agreement (incorporated by reference to the Schedule 13G filed by the Reporting Persons on April 8, 1998).

NOT A CERTIFIED COPY

011946

CP 013516
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019169

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated as of June 16, 1998

MAFCO HOLDINGS INC.

By: _____
Name: Glenn P. Dickes
Title: Senior Vice President

NOT A CERTIFIED COPY

CP 013517
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CBH 1403707
16div-019170

SCHEDULE I

The name, present principal occupation and business address of each director and executive officer of Mafco Holdings Inc. and Coleman (Parent) Holdings Inc. are set forth below. All directors and executive officers listed on this Schedule I are United States citizens.

Mafco Holdings Inc.
35 East 62nd Street
New York, New York 10021

Name	Present Principal Occupation or Employment
Ronald O. Perelman	Director, Chairman of the Board and Chief Executive Officer
Donald Drapkin	Director and Vice Chairman
Irwin Engelman	Executive Vice President and Chief Financial Officer
Howard Gittis	Director and Vice Chairman
James R. Maher	Director and President
Barry F. Schwartz	Executive Vice President and General Counsel

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite 700
Fort Lauderdale, Florida 33309

Name and Address	Present Principal Occupation or Employment
Ronald O. Perelman	Director, Chairman of the Board
Howard Gittis	Director and Vice Chairman
Irwin Engelman	Executive Vice President and Chief Financial Officer
Barry F. Schwartz	Executive Vice President and General Counsel

NOT A CERTIFIED COPY

011948

F-15

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

FORM 10-K

[X] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended December 31, 1997

or

[ ] Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from to
Commission file Number 1-988

THE COLEMAN COMPANY, INC.
(Exact name of registrant as specified in its charter)

Delaware	13-3639257
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
2111 E 37th Street North, Wichita, Kansas	67219
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: 316-832-2700
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, $.01 par value	New York Stock Exchange
Same Class	The Pacific Stock Exchange (unlisted trading privileges)
Same Class	Midwest Stock Exchange (unlisted trading privileges)

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ✓ Yes ___ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [✓]

The aggregate market value of the voting stock of the registrant held by non-affiliates, based upon the closing sale price of the common stock on March 3, 1998, was approximately $307,672,838.

As of March 3, 1998, there were 53,610,950 shares of the registrant's common stock outstanding, of which 44,067,520 shares were held by an indirect wholly-owned subsidiary of Mafco Holdings Inc.

Exhibit Index at pages 39 through 45.

AA199850
Confidential Treatment requested
By Arthur Andersen LLP

NOT A CERTIFIED COPY

MS 251
6/24/04

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094469

16div-019172

PART I

Item 1. BUSINESS

Overview

The Coleman Company, Inc. ("Coleman" or the "Company") is a leading manufacturer and marketer of consumer products for outdoor recreation and home hardware use on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s. The Company believes its strong market position is attributable primarily to its well-recognized trademarks, particularly the Coleman brand name, broad product line, product quality and innovation, and marketing, distribution and manufacturing expertise.

The Company has two primary classes of products, outdoor recreation and hardware. The Company's principal outdoor recreation products include a comprehensive line of lanterns and stoves, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, daypacks, adventure travel gear, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products. The Company's principal hardware products include portable generators, portable and stationary air compressors, and safety and security products such as smoke alarms, carbon monoxide detectors and thermostats. The Company has entered into a Stock Purchase Agreement dated as of February 18, 1998 (the "CSS Sale Agreement") with Ranco Incorporated of Delaware ("Ranco") and Siebe plc, the parent of Ranco, for the sale of Coleman Safety & Security Products, Inc. ("CSS"), which manufactures such safety and security products. The Company's products, which are mostly used for outdoor recreation, home improvement projects, and emergency preparedness, are distributed predominantly through mass merchandisers, home centers and other retail outlets.

Background

Coleman is a subsidiary of Coleman Worldwide Corporation ("Coleman Worldwide"). Coleman Worldwide is an indirect wholly-owned subsidiary of CLN Holdings Inc. ("CLN Holdings"), an indirect wholly-owned subsidiary of New Coleman Holdings Inc. ("Holdings"), an indirect wholly-owned subsidiary of MacAndrews & Forbes Holdings Inc. ("MacAndrews Holdings"), a corporation wholly owned through Mafco Holdings Inc. ("Mafco" and, together with MacAndrews Holdings, "MacAndrews & Forbes") by Ronald O. Perelman. Coleman Worldwide owns 44,067,520 shares of the common stock of Coleman which represented approximately 82% of the outstanding Coleman common stock as of December 31, 1997.

On February 27, 1998, CLN Holdings and Coleman (Parent) Holdings Inc., the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (the "CLN Holdings Merger Agreement") with Sunbeam Corporation ("Sunbeam") and a wholly-owned subsidiary of Sunbeam ("Laser Merger Sub"). The CLN Holdings Merger Agreement provides that, among other things, Laser Merger Sub will be merged (the "CLN Holdings Merger") with CLN Holdings. Pursuant to the CLN Holdings Merger Agreement, the shares of CLN Holdings' common stock issued and outstanding immediately prior to the effective time of the CLN Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam's common stock and $159,957,756 in cash, without interest. In addition, the outstanding $732.0 million principal amount at maturity of Senior Secured Discount Exchange Notes due 2001 (the "Escrow Notes") of CLN Holdings will remain an obligation of CLN Holdings following the CLN Holdings Merger.

Coincident with the execution of the CLN Holdings Merger Agreement, the Company, Sunbeam and a wholly-owned subsidiary of Sunbeam ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement" and with the CLN Holdings Merger Agreement, collectively the "Merger Agreements"), providing that, among other things, Merger Sub will be merged (the "Coleman Merger") with the Company. Pursuant to the Coleman Merger Agreement, each share of the Company's common stock issued and

AA199852
Confidential Treatment requested
By Arthur Andersen LLP

NOT A CERTIFIED COPY

011951

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094471

16div-019173

Item 6. SELECTED FINANCIAL DATA

The selected financial data for the years presented in the table below have been derived from the Consolidated Financial Statements. The selected financial data should be read in conjunction with the Consolidated Financial Statements and the notes thereto included elsewhere in this Form 10-K Annual Report.

	(In thousands, except per share data) Year Ended December 31,				
	1997	1996	1995	1994	1993
Statements of Operations Data:					
Net revenues	$1,154,294	$1,220,216	$ 933,574	$ 751,580	$ 575,415
Cost of sales (a)	840,331	928,497	649,427	535,710	400,052
Gross profit	313,963	291,719	284,147	215,870	175,363
Selling, general and administrative expenses (a)	266,283	291,669	174,688	128,466	102,038
Asset impairment charge (b)	--	--	12,289	--	--
Restructuring expense (c)	--	--	--	18,456	--
Interest expense, net	40,852	38,727	24,545	13,374	7,706
Amortization of goodwill and deferred charges	11,338	10,473	7,745	6,209	5,330
Other expense, net	1,867	1,151	334	1,138	746
(Loss) earnings before income taxes, minority interest and extraordinary item	(6,377)	(50,301)	64,546	48,227	59,543
Income tax (benefit) expense (a)	(5,227)	(10,927)	24,479	14,747	24,569
Minority interest	1,386	1,872	--	--	--
(Loss) earnings before extraordinary item	(2,536)	(41,246)	40,067	33,480	34,974
Extraordinary loss on early extinguishment of debt, net of income taxes	--	(647)	(787)	(677)	--
Net (loss) earnings	$ (2,536)	$ (41,893)	$ 39,280	$ 32,803	$ 34,974
Basic (loss) earnings per common share	$ (0.05)	$ (0.79)	$ 0.74	$ 0.61	$ 0.65
Weighted average common shares outstanding	53,344	53,197	53,226	53,436	53,909

	December 31,				
	1997	1996	1995	1994	1993
Balance Sheet Data:					
Total assets	$1,041,764	$1,160,086	$ 844,487	$ 712,265	$ 526,706
Long-term debt (including current portions)	477,799	583,613	355,257	291,175	168,858
Total stockholders' equity	240,469	252,945	292,342	253,363	228,104

(a) The Company recorded restructuring and certain other charges totaling $22,501 and $52,516, net of tax for the years ended December 31, 1997 and 1996, respectively. Cost of sales includes pre-tax charges of $19,673 and $44,005; selling, general and administrative expenses include pre-tax charges of $16,746 and $30,195; and the provision for income tax benefit includes $13,918 and $21,684 of net tax benefits in the years ended December 31, 1997 and 1996, each respectively, resulting from these charges.

(b) Asset impairment charge reflects primarily the non-recurring charge taken in connection with the adoption of FAS 121.

(c) Restructuring expense reflects primarily the non-recurring charge taken in connection with the German Restructuring which includes severance costs, commitments to third parties and write-downs of leasehold improvements and other assets to estimated realizable values.

NOT A CERTIFIED COPY

011552

AA199862
Confidential Treatment requested
By Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094481

16div-019174

Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for certain forward-looking statements. The forward-looking statements contained in this Form 10-K are subject to certain risks and uncertainties. Actual results could differ materially from current expectations. Among the factors that could affect the Company's actual results and could cause results to differ from those contained in the forward-looking statements are (i) unanticipated costs or delays in developing new products, (ii) a decrease in the public's interest in camping and related activities, (iii) economic softness in Japan, Korea, and other Asian countries, (iv) weather conditions which are adverse to the specific businesses of the Company, (v) significant adverse market or economic conditions which negatively affect demand for the Company's products, (vi) disruptions or delays resulting from the transactions contemplated by the Merger Agreements with Sunbeam for the acquisition of CLN Holdings and the Company, and (vii) changes in operating philosophy following the consummation of the CLN Holdings Merger and the Company Merger. Other factors could also cause actual results to vary materially from the future results covered in such forward-looking statements.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See the consolidated financial statements listed in the accompanying List of Financial Statements and Schedules on Page F-1 herein. Information required by schedules called for under Regulation S-X is either not applicable or is included in the consolidated financial statements or notes thereto.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

PART III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS

Directors

The name, age, present principal occupation or employment, five year employment history, selected biographical information, and period of service as a director of the Company of each of the current directors of the Company are set forth below.

Ronald O. Perelman, age 55, a director of the Company since 1989, has been Chairman of the Board and Chief Executive Officer of Mafco, MacAndrews Holdings and various of their affiliates since 1980. Mr. Perelman is also Chairman of the Executive Committee of the Board of Consolidated Cigar Holdings Inc. ("Cigar Holdings"), M&F Worldwide Corporation, and Revlon, Inc. ("Revlon") and Chairman of the Board of Meridian Sports Incorporated ("Meridian"). Mr. Perelman is also a director of the following corporations which file reports pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"): California Federal Bank, A Federal Savings Bank ("Cal Fed"), Cigar Holdings, CLN Holdings Inc. ("CLN Holdings"), Coleman Worldwide Corporation ("Coleman Worldwide"), First Nationwide Holdings Inc., First Nationwide (Parent) Holdings Inc., Meridian, M&F Worldwide Corporation, Revlon Consumer Products Corporation ("Revlon Products"), Revlon, and REV Holdings Inc. ("REV Holdings"). (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc., and Marvel Entertainment Group, Inc. ("Marvel"), of which Mr. Perelman was then a director, and Marvel III Holdings Inc., of which Mr. Perelman is a director, and several of the subsidiaries of Marvel filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Donald G. Drapkin, age 50, a director of the Company since 1989, has been a director and Vice Chairman of Mafco and various of its affiliates since 1987. Mr. Drapkin was a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom in New York for more than five years prior to March 1987. Mr. Drapkin is also a director

AA199870
Confidential Treatment requested
By Arthur Andersen LLP

NOT CERTIFIED COPY

01195

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094489
16div-019175

of the following corporations which file reports pursuant to the Exchange Act: Alogos Pharmaceutical Corporation, Black Rock Asset Investors, Cardio Technologies, Inc., Coleman Worldwide, The Cosmetic Center, Inc., Genta, Inc., Playboy Enterprises, Inc., Revlon, Revlon Products, VIMRx Pharmaceuticals Inc., and Weider Nutrition International, Inc. (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc., and Marvel, of which Mr. Drapkin was then a director, and Marvel III Holdings Inc., of which Mr. Drapkin is a director, and several of the subsidiaries of Marvel filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Frank Gifford, age 67, has been a director of the Company since 1997. Mr. Gifford has been a commentator with ABC Sports since 1971. (On December 27, 1996, Marvel, of which Mr. Gifford was a director, and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

Lawrence M. Jones, age 66, has been a director of the Company since 1989. Mr. Jones was Chairman and Chief Executive Officer of the Company from October 1990 to December 1993 and has been associated with the Company for more than 36 years, including serving as President and Chief Executive Officer from July 1989 to September 1990. Prior to rejoining the Company in 1989, Mr. Jones was Vice Chairman and Chief Financial Officer of Fleming Companies, Inc. (a distributor of food products, health and beauty items) from December 1987 to June 1989. Mr. Jones presently serves as director of Union Pacific Resources, and was a director of Fourth Financial Corporation until January 1996, of Fleming Companies, Inc. until December 1996, and of Prince Sports Group, Inc. until March 1997. Mr. Jones also served as Chairman of Rollerblade, Inc. from February 1996 to April 1997.

Ann D. Jordan, age 63, has been a director of the Company since June 1997. Ms. Jordan is a consultant and a director of Johnson & Johnson, Automatic Data Processing, Inc., The Travelers Corporation, and Salant Corporation. Ms. Jordan also serves on the Board of Directors of the National Symphony Orchestra, Sloan Kettering Memorial Medical Center, Child Welfare League, Sasha Bruce Youthworks, University of Chicago, Spellman College, The John F. Kennedy Center for the Performing Arts and the SEC Consumer Affairs Advisory Commission. She was formerly a Field Work Associate Professor at the School of Social Service Administration of the University of Chicago and served as Director of the Department of Social Services for the University of Chicago Medical Center.

Jerry W. Levin, age 53, has been Chairman and Chief Executive officer of the Company since February 1997, and a past Chairman of the Company from 1989 to 1991, and a director since 1989. Mr. Levin has been Chairman of the Board of Revlon and of Revlon Products since their respective formations in 1992 and Chairman of the Board of The Cosmetic Center, Inc. since April 1997. Mr. Levin served as Chief Executive Officer of Revlon and of Revlon Products from 1992 until January 1997, and President of Revlon and of Revlon Products from their respective formations in 1992 to November 1995. Mr. Levin has been Executive Vice President of MacAndrews Holdings since March 1989. For 15 years prior to joining MacAndrews Holdings, he held various senior positions with The Pillsbury Company ("Pillsbury"). Mr. Levin is a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Worldwide, The Cosmetic Center, Inc., Ecolab Inc., U.S. Bancorp Inc., Meridian, Revlon, Revlon Products, and REV Holdings.

John A. Moran, age 65, has been a director of the Company since July 1996. Mr. Moran currently serves as Chairman of Rutherford-Moran Oil Corporation. From 1967, Mr. Moran was affiliated with Dyson-Kissner-Moran Corporation, a private holding company, serving in various executive positions including Chairman of the Board, President and Chief Executive Officer, and Executive Vice President. He is a director of Bessemer Securities Corporation. He is a member and former Chairman of the National Advisory Council of the University of Utah, as well as a member of World Presidents Organization, the Chief Executives Organization and The Foreign Policy Association. He is a former director of the United Nations Association and trustee of the Brooklyn Museum.

NOT A CERTIFIED COPY

011954

AA199871
Confidential Treatment requested
By Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094490

16div-019176

James D. Robinson, age 62, has been a director of the Company since June 1997. Mr. Robinson is Chairman and Chief Executive Officer of RRE Investors, LLC, a private venture investment firm, and Chairman of Violy, Byorum & Partners Holdings, LLC, a private firm specializing in financial advisory and investment banking activities in Latin America. He previously served as Chairman, and Chief Executive Officer of the American Express Company from 1977 to 1993. Mr Robinson is a director of Bristol-Myers Squibb Company, Cambridge Technology Partners, Inc., The Coca-Cola Company, First Data Corporation and Union Pacific Corporation.

Bruce Slovin, age 62, a director of the Company since February 1993, has been President of MacAndrews Holdings and various of its affiliates since 1980. Mr. Slovin is also a director of the following corporations which file reports pursuant to the Exchange Act: Cantel Industries, Inc., Coleman Worldwide, Continental Health Affiliates, Inc., Infu-Tech, Inc., Meridian, and M&F Worldwide Corporation.

William H. Spoor, age 75, has been a director of the Company since May 1992. Mr. Spoor retired in September 1985 as Chairman and Chief Executive Officer of Pillsbury after 14 years in that position and 36 years with Pillsbury. He returned to Pillsbury as Chairman of the Executive Committee in September 1987, and resumed as Chairman, Chief Executive Officer and President of Pillsbury in March 1988, from which he retired in August 1988. Mr. Spoor now serves as Chairman Emeritus of Pillsbury, and is in the business of personal investments. He is a director of L & L Holdings and Inner City Tennis.

Compensation of Directors

Directors who are not currently receiving compensation as employees of the Company or any of its affiliates are paid an annual $25,000 retainer fee and are reimbursed for reasonable out-of-pocket expenses incurred in connection with Company business. In addition, such directors receive a fee of $1,000 for each meeting of the Board of Directors or any committee meeting they attend.

Executive Officers

The following table sets forth certain information as of March 3, 1998, concerning the executive officers of the Company. All executive officers serve at the pleasure of the Board of Directors.

Name	Age	Position
Jerry W. Levin	53	Chairman of the Board, and Chief Executive Officer
Mark Goldman	43	Executive Vice President (Chairman - Eastpak)
Patrick McEvoy	47	Executive Vice President (President - Coleman Safety & Security Products)
Joseph P. Page	44	Executive Vice President and Chief Financial Officer
David A. Ramon	42	Executive Vice President (President - Outdoor Recreation Group)
Paul E. Shapiro	56	Executive Vice President and General Counsel
David K. Stearns	50	Executive Vice President (President - Coleman Powermate)
James L. Rasmus	45	Senior Vice President - Human Resources
Karen Clark	37	Vice President - Finance

The following sets forth the position with the Company and selected biographical information for the executive officers of the Company who are not directors.

Mark Goldman has been Executive Vice President since April 1995 and President of Eastpak since 1978. He joined Eastpak in 1976.

AA199872
Confidential Treatment requested
By Arthur Andersen LLP

NOT A CERTIFIED COPY

011955

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0094491
16div-019177

REGISTRATION RIGHTS AGREEMENT

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

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

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

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

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

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

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

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

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

NOT ACERTIFIED COPY

011957

MS 278
Am 11/3/04

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

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

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

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

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

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

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

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

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

The term "Laser Common Stock" shall mean common stock, par value $.01 per share, of Laser.

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

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

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

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

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

NOT A CERTIFIED COPY

011958

MORGAN STANLEY CONFIDENTIAL 0009135
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019179

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

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

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

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

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

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

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

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

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 *Required Registration.*

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

NOT A CERTIFIED COPY

011959

MORGAN STANLEY CONFIDENTIAL 0009136
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-013180

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

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

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

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

Section 2.2 *Holdback Agreement.*

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

Section 2.3 *Blackout Provisions.*

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

NOT A CERTIFIED COPY

011960

MORGAN STANLEY CONFIDENTIAL 0009137
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
GPH-1004231
16civ-013181

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

Section 2.4 *Registration Procedures.*

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

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

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

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

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

NOT A CERTIFIED COPY

011961

MORGAN STANLEY CONFIDENTIAL 0009138
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1094222
16div-019182

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

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

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

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

NOT A CERTIFIED COPY

0011962

MORGAN STANLEY CONFIDENTIAL 0009139
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16civ-0192-183

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

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

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

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

NOT A CERTIFIED COPY

011963

MORGAN STANLEY CONFIDENTIAL 0009140
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16civ-019184

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

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

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

NOT A CERTIFIED COPY

0119164

MORGAN STANLEY CONFIDENTIAL 0009141
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
SDNY_GM_00012265
16div-019185

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

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

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

Section 2.5 *Registration Expenses.*

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

NOT A CERTIFIED COPY

011965

MORGAN STANLEY CONFIDENTIAL 0009142
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CRH_1084286
16div-013186

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

Section 2.6 *Indemnification.*

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

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the

NOT A CERTIFIED COPY

011966

MORGAN STANLEY CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to delivery a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice*. Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions*. In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from

NOT A CERTIFIED COPY

0011967

MORGAN STANLEY CONFIDENTIAL 0009144
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019188

the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

NOT A CERTIFIED COPY

011968

MORGAN STANLEY CONFIDENTIAL 0009145
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16civ-019489

(a) pursuant to Rule 144;

(b) pursuant to the Shelf Registration Statement; or

(c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

NOT A CERTIFIED COPY

011969

MORGAN STANLEY CONFIDENTIAL 0009146
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
SPH-1094330
16div-019190

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in con-

NOT A CERTIFIED COPY

011970

MORGAN STANLEY CONFIDENTIAL 0009147
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-019191

nection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations. Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be re-

NOT A CERTIFIED COPY

011971

MORGAN STANLEY CONFIDENTIAL 0009148
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16civ-04992

moved by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

0111972

MORGAN STANLEY CONFIDENTIAL 0009149
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
GPH-1094238
16civ-019193

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name: Russell A. Kersh
Title: Vice Chairman and Chief Financial officer

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

011973

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

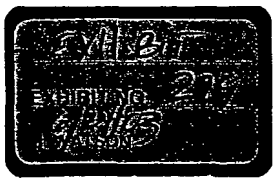
COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Glenn P. Dickes
Title: Vice President

NOT A CERTIFIED COPY

011974

MORGAN STANLEY CONFIDENTIAL 0009151
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1094235
16div-019195



THE COLEMAN COMPANY, INC.
NOTICE OF MERGER
AND APPRAISAL RIGHTS
AND INFORMATION STATEMENT

SUNBEAM CORPORATION
PROSPECTUS

On or about January 6, 2000, Coleman plans to merge with a subsidiary of Sunbeam Corporation. Under the February 1998 agreement relating to the merger, you will receive $6.44 in cash and 0.5677 of a share of Sunbeam common stock for each share of Coleman common stock you own when the merger is completed. In addition, under a court-approved litigation settlement, you will receive warrants each entitling you to purchase one Sunbeam share at a cash price of $7 per share until August 24, 2003. You will receive 0.381 of a warrant for each share of Coleman common stock you own when the merger is completed (assuming no further increase in the number of outstanding Coleman shares).

As a result of the merger, Coleman will become a wholly owned subsidiary of Sunbeam. A copy of the merger agreement is attached as Annex I at the back of this document. **You are urged to read the merger agreement carefully as it is the legal document that governs the merger.**

The merger was approved by Coleman's board of directors and majority stockholder, a subsidiary of MacAndrews & Forbes Holdings Inc., on February 27, 1998. **As a result, no further action by you or any other stockholder of Coleman is required to complete the merger.**

At the same time that Coleman's board and majority stockholder approved the merger, Sunbeam agreed to acquire indirectly about 81% of the then outstanding Coleman common stock from the MacAndrews & Forbes subsidiary. That transaction was completed on March 30, 1998, and Sunbeam now owns indirectly about 79% of the outstanding Coleman common stock. As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

Instead of receiving cash, Sunbeam stock and warrants upon completion of the merger, you have the right to dissent from the merger and have the fair value of your Coleman shares appraised by a court and paid to you in cash. These appraisal rights are granted to you by Delaware law and were not affected by the litigation settlement. **In order to pursue your appraisal rights, you must submit a written demand to Coleman on or before December 27, 1999 and satisfy the other requirements outlined in the attached document.**

Sunbeam common stock trades on the New York Stock Exchange under the symbol "SOC." Coleman common stock trades on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange under the symbol "CLN."

This document contains important information about the merger, Coleman, Sunbeam, your Delaware law appraisal rights and the litigation settlement, including the terms of the warrants you will receive. This document is the prospectus of Sunbeam for the common stock to be issued in the merger and the common stock to be issued when the warrants are exercised. As required by Delaware law, this document also is Coleman's notice to you of your appraisal rights.

You should read this entire document carefully, including the Annexes which are found at the back of the document and the documents referred to under the caption "WHERE YOU CAN FIND MORE INFORMATION" beginning on page 155 which tells you where you can find additional information about Coleman and Sunbeam.

NOT A CERTIFIED COPY

011976

Coleman to Sunbeam. This note was pledged by Sunbeam to its lenders as security for Sunbeam's obligations under its bank credit facility.

In connection with the April 15, 1999 amendment to Sunbeam's bank credit facility, the Coleman note was revised to, among other things:

- lower the interest rate,
- make the note payable on April 15, 2000 rather than on demand,
- add customary representations, warranties, covenants and events of default, and
- provide that an event of default under Sunbeam's bank credit facility would constitute an event of default under the Coleman note.

As security for the revised Coleman note, Coleman pledged:

- substantially all of its domestic assets, other than real property,
- 66% of its ownership interests in its direct foreign subsidiaries and in its domestic holding companies for its foreign subsidiaries (but not the assets of these subsidiaries), and
- all of its ownership interests in its other direct domestic subsidiaries (but not the assets of these subsidiaries).

The revised Coleman note had an unpaid principal balance of $303.2 million on September 30, 1999. Sunbeam pledged the revised Coleman note as security for Sunbeam's obligations to its lending banks under its bank credit facility and assigned to these lending banks the security pledged by Coleman for the revised Coleman note. Coleman also gave the lending banks a direct pledge of the assets securing the revised Coleman note to secure the obligations under Sunbeam's bank credit facility, subject to a cap equal to the balance due from time to time on the revised Coleman note. The revision of the Coleman note and the pledge of Coleman's assets were approved on behalf of Coleman by A. Whitman Marchand, Coleman's only disinterested director, acting as a duly authorized independent committee of the Coleman board of directors.

Under Sunbeam's bank credit facility, an event of default will occur if this document is not declared effective by the SEC on or before January 10, 2000, if the merger is not completed within 25 business days after the effectiveness of this document or if Sunbeam has to pay more than $87.5 million in cash (excluding expenses) to complete the merger (including any amounts paid with respect to appraisal rights). An event of default of this kind would also constitute an event of default under the Coleman note, and Sunbeam's lenders would be entitled to foreclose on the Coleman note and the Coleman assets pledged as security for the Coleman note. The Coleman note, by its terms, will not be affected by the merger and will remain outstanding. For more information concerning Sunbeam's bank credit facility, including the aggregate amount of borrowings outstanding thereunder, the amount available for future borrowings and the maturity date, see "SOURCE AND AMOUNT OF FUNDS AND OTHER CONSIDERATION" beginning on page 64. See also "MATERIAL CONTACTS BETWEEN COLEMAN AND SUNBEAM AND ITS AFFILIATES—Financial Transactions Between Coleman and Sunbeam" beginning on page 68.

M&F Transaction. In the M&F Transaction, which was completed on March 30, 1998, Sunbeam acquired indirectly about 81% of the then outstanding Coleman common stock (reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction). As a result of a purchase by Sunbeam of shares of a newly created series of Coleman voting preferred stock in July 1999, Sunbeam now has the right to exercise just over 80% of the total voting power of Coleman's outstanding capital stock.

In the M&F Transaction, a subsidiary of MacAndrews & Forbes received 14,099,749 shares of Sunbeam common stock, which represent about 14% of the currently outstanding Sunbeam common stock, and about $160 million in cash. In addition, in connection with the M&F Transaction, Sunbeam assumed about $1,016 million in debt of Coleman and its parent corporations, including $497 million of indebtedness of Coleman.

Immediately following the M&F Transaction, all the directors of Coleman resigned, the number of directors constituting the Coleman board of directors was fixed at five, and five designees of Sunbeam were

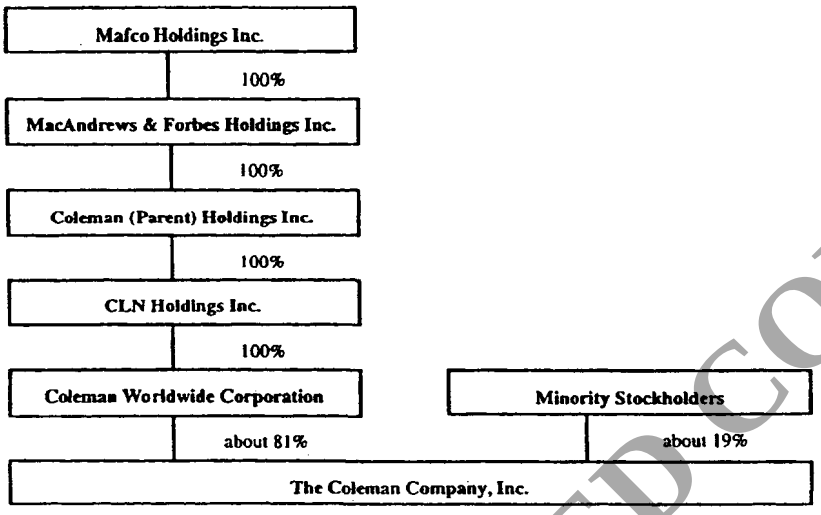
NOT A CERTIFIED COPY

011977

CP 008121
CONFIDENTIAL

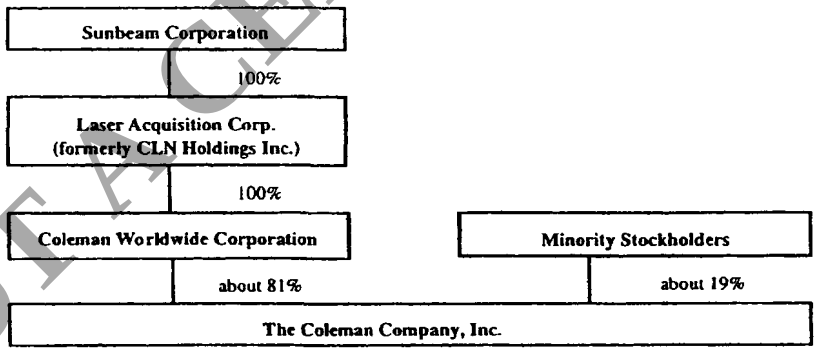
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Ownership Structure Before the M&F Transaction



In the M&F Transaction, which was completed on March 30, 1998, CLN Holdings merged with Laser Acquisition Corp., a subsidiary of Sunbeam, and Sunbeam, through its then indirect ownership of Coleman Worldwide, became the owner of MacAndrews & Forbes' shares of Coleman common stock. In exchange for the Coleman shares, Coleman (Parent) Holdings received 14,099,749 shares of Sunbeam common stock and $159,956,756 in cash. In addition, in the M&F Transaction, Sunbeam assumed about $1,016 million in debt of Coleman and its parent corporations, including $497 million of indebtedness of Coleman.

Ownership Structure After the M&F Transaction



Sunbeam's ownership interest in Coleman was reduced to about 79% as a result of the exercise of Coleman employee stock options immediately following the M&F Transaction. On July 12, 1999, Sunbeam acquired 3,000,000 shares of a newly created series of Coleman voting preferred stock. These shares, together with the shares of Coleman common stock acquired by Sunbeam in the M&F Transaction, enable Sunbeam to exercise just over 80% of the total voting power of Coleman's outstanding capital stock. Following the completion of the M&F Transaction, Coleman (Parent) Holdings remained a wholly owned subsidiary of MacAndrews & Forbes.

NOT A CERTIFIED COPY

011978

CP 008179
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1398338
16div-019198

Downloaded By: Mirta Adams

Company: SUNBEAM CORP/FL/
Form Type: 10-Q/A SEC File #: 001-00052
Description:
File Date: 11/25/98
State of Incorporation: DE
Fiscal Year End: 12/29
CIK: 0000003662
SIC: 2390
IRS Identifying Number: 251638266

Business Address
2381 EXECUTIVE CENTER DR
SUITE 200
BOCA RATON, FL 33431
(561) 912-4100

Mailing Address
2381 EXECURIVE CENTER DR
SUITE 200
BOCA RATON, FL 33431

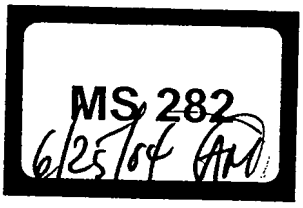
NOT A CERTIFIED COPY

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC New York, NY Chicago, IL
Los Angeles, CA Miami, FL Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
http://www.gsionline.com

011980



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q/A

[X] Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the period ended March 31, 1998

OR

[ ] Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File No. 1-52

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	25-1638266
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)
1615 SOUTH CONGRESS AVENUE SUITE 200 DELRAY BEACH, FLORIDA (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	33445 (ZIP CODE)

(561) 243-2100
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

NOT APPLICABLE
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes [ ] No [X]

On November 4, 1998 there were 100,857,462 shares of the registrant's Common Stock ($.01 par value) outstanding.

NOT A CERTIFIED COPY

0 1 1 9 8 1

SUNBEAM CORPORATION AND SUBSIDIARIES

QUARTERLY REPORT
ON FORM 10-Q/A

TABLE OF CONTENTS

		PAGE
PART I.	FINANCIAL INFORMATION	
	Item 1. Financial Statements	
	Condensed Consolidated Statements of Operations (Unaudited) for the three months ended March 30, 1997 and March 31, 1998	2
	Condensed Consolidated Balance Sheets as of December 28, 1997 and March 31, 1998 (Unaudited)	3
	Condensed Consolidated Statements of Cash Flows (Unaudited) for the three months ended March 30, 1997 and March 31, 1998	4
	Notes to Condensed Consolidated Financial Statements (Unaudited)	5
	Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	10
PART II.	OTHER INFORMATION	
	Item 1. Legal Proceedings	14
	Item 6. Exhibits and Reports on Form 8-K	15
SIGNATURES		16

NOT A CERTIFIED COPY

011982

16div-019201

PART I. FINANCIAL INFORMATION

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
	As restated, see Note 8	As restated, see Note 8
	(Unaudited)	
Net sales	$ 247,601	$ 252,488
Cost of goods sold	213,828	194,237
Selling, general and administrative expense	71,139	41,195
Operating (loss) earnings	(37,366)	17,056
Interest expense	5,073	1,993
Other expense, net	3,165	77
(Loss) earnings from continuing operations before income taxes and extraordinary charge	(45,604)	14,986
Income tax (benefit) provision:		
Current	327	(1,052)
Deferred	(449)	7,011
	(122)	5,959
(Loss) earnings from continuing operations	(45,482)	9,027
Loss from discontinued operations, net of taxes	--	(13,713)
Extraordinary charge from early extinguishment of debt, net of taxes (Note 3)	(8,624)	--
Net loss	$ (54,106)	$ (4,686)
Earnings per share:		
(Loss) earnings from continuing operations:		
Basic	$ (0.53)	$ 0.11
Diluted	(0.53)	0.10
Loss from discontinued operations:		
Basic	--	(0.17)
Diluted	--	(0.15)
Extraordinary charge:		
Basic	(0.10)	--
Diluted	(0.10)	--
Net loss:		
Basic	$ (0.63)	$ (0.06)
Diluted	$ (0.63)	$ (0.05)
Weighted average common shares outstanding:		
Basic	86,390	84,187
Dilutive	86,390	86,135
Dividends declared per share of common stock	$ .01	$ .01

See Notes to Condensed Consolidated Financial Statements.

NOT A CERTIFIED COPY

0119383

16div-019202

SUNBEAM CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

	MARCH 31, 1998	DECEMBER 28, 1997
	As restated, see Note 8 (Unaudited)	As restated, see Note 8
ASSETS		
Current assets:		
Cash and cash equivalents	$ 193,543	$ 52,298
Receivables, net	500,671	228,460
Inventories	617,091	304,900
Prepaid expenses, deferred income taxes and other current assets	74,855	16,584
Total current assets	1,386,160	602,242
Property, plant and equipment, net	412,096	249,524
Trademarks, trade names, goodwill and other, net	1,556,909	207,162
	$ 3,355,165	$ 1,058,928
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$ 62,139	$ 668
Accounts payable	204,456	108,374
Other current liabilities	218,554	124,085
Total current liabilities	485,149	233,127
Long-term debt	1,637,820	194,580
Other long-term liabilities	216,240	159,142
Minority interest	55,191	--
Commitments and Contingencies (Note 10)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	--	--
Common stock (issued 100,824,578 and 89,984,425 shares)	1,008	900
Additional paid-in capital	966,631	479,200
Retained earnings	34,829	89,801
Accumulated other comprehensive loss	(32,878)	(33,063)
Other shareholders' equity	(8,825)	(1,714)
	960,765	535,124
Treasury stock, at cost (4,454,394 shares in 1997)	--	(63,045)
Total shareholders' equity	960,765	472,079
	$ 3,355,165	$ 1,058,928

See Notes to Condensed Consolidated Financial Statements.

NOT A CERTIFIED COPY

011984

16div-019203

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
	As restated, see Note 8	As restated, see Note 8
	(Unaudited)	
OPERATING ACTIVITIES:		
Net loss	$ (54,106)	$ (4,686)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	11,940	10,813
Deferred income taxes	(449)	7,011
Extraordinary charge from early extinguishment of debt	8,624	--
Non-cash compensation charges	24,290	--
Loss on sale of discontinued operations, net of taxes	--	13,713
Changes in working capital and other, net of acquisition	(125,025)	(49,449)
Net cash used in operating activities	(134,726)	(22,598)
INVESTING ACTIVITIES:		
Capital expenditures	(19,480)	(10,916)
Acquisition of Coleman, including acquisition costs, net of cash acquired	(160,612)	--
Proceeds from sale of divested operations and other assets	--	70,404
Net cash (used in) provided by investing activities	(180,092)	59,488
FINANCING ACTIVITIES:		
Issuance of convertible subordinated debentures, net of financing fees	729,622	--
Payments of debt obligations, including prepayment penalties	(266,672)	(26,322)
Other debt financing fees	(25,075)	--
Proceeds from exercise of stock options	19,045	8,866
Other, net	(857)	(545)
Net cash provided by (used in) financing activities	456,063	(18,001)
Net increase in cash and cash equivalents	141,245	18,889
Cash and cash equivalents at beginning of period	52,298	11,526
Cash and cash equivalents at end of period	$ 193,543	$ 30,415

See Notes to Condensed Consolidated Financial Statements.

NOT A CERTIFIED COPY

011935

16div-019204

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION

ORGANIZATION

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam(R) and Oster(R) brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

As further described in Note 2, on March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"). Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman(R) brand name since the 1920's.

PRESENTATION OF FISCAL PERIODS

To standardize the fiscal period ends of the Company and its acquired entities, as further described in Notes 2 and 10, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. Accordingly, quarterly reporting will follow the calendar quarters. Excluding the impact of the Coleman acquisition which occurred on March 30, 1998, the impact of this change in fiscal periods on net sales for the first quarter of 1998 was to increase sales by approximately $4 million and the impact on operating results for the quarter was to increase earnings by approximately $0.2 million.

BASIS OF PRESENTATION

The Condensed Consolidated Balance Sheet of the Company as of March 31, 1998 and the Condensed Consolidated Statements of Operations and Cash Flows for the three months ended March 31, 1998 and March 30, 1997 are unaudited. The unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions of Form 10-Q and Rule 10-01 of Regulation S-X. The December 28, 1997 Condensed Consolidated Balance Sheet was derived from the Company's Annual Report on Form 10-K/A for the year ended December 28, 1997. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1997 Annual Report on Form 10-K/A. In the opinion of management, the unaudited condensed consolidated financial statements furnished herein include all adjustments (consisting of only recurring adjustments) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year.

RESTATEMENT

On June 30, 1998, the Company announced that the Audit Committee of the Board of Directors was initiating a review into the accuracy of prior financial statements. The Audit Committee's review has since been completed and, as a result of its findings, the Company has restated its previously issued financial statements for 1996, 1997 and the first quarter of 1998. (See Note 8).

NOT CERTIFIED COPY

0011986

16div-019205

1. OPERATIONS AND BASIS OF PRESENTATION - (CONTINUED)

BASIC AND DILUTED LOSS PER COMMON SHARE

In 1997, the Company adopted SFAS No. 128, EARNINGS PER SHARE. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock outstanding. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options, restricted stock and the Zero Coupon Convertible Senior Subordinated Debentures).

For the first quarter of 1998, 4,758,565 shares related to stock options, (58,065) shares related to restricted stock and 13,150,000 shares related to the conversion feature of the Zero Coupon Convertible Senior Subordinated Debentures were not included in the diluted average common shares outstanding, as the effect would have been antidilutive. For the first quarter of 1997, the dilutive effect of 2,174,154 equivalent shares and (225,915) equivalent shares related to restricted stock were used in determining the dilutive average shares outstanding. SFAS No. 128 requires the use of dilutive potential common shares in the determination of diluted earnings per share if an entity reports earnings from continuing operations. Given Sunbeam's Loss from Discontinued Operations in the first quarter of 1997, the use of dilutive potential common shares in the determination of the diluted per share loss from discontinued operations and net loss per share is antidilutive. (See Note 10.)

NEW ACCOUNTING STANDARDS

In June 1997, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997 and will be presented in the Company's Annual Report on Form 10-K for the year ending December 31, 1998. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE ("SOP 98-1"). SOP 98-1 requires computer software costs associated with internal use software to be expensed as incurred until certain capitalization criteria are met. The Company will adopt SOP 98-1 on January 1, 1999. Adoption of this Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations, although actual charges incurred may be material due to Year 2000 issues.

See Note 10 for new accounting standards issued subsequent to March 31, 1998.

2. ACQUISITION

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of Coleman from a subsidiary of MacAndrews & Forbes Holdings, Inc. ("M&F"), in exchange for 14,099,749 shares of the Company's common stock and approximately $160 million in cash as well as the assumption of $1,016 million in debt. The value of the common stock issued at the date of acquisition ($524 million) was derived by using the average ending stock price as reported by the New York Stock Exchange Composite Tape for the day before and day of the public announcement of the acquisition discounted by 15% due to the restrictive nature of the securities. (See Note 10.)

NOT A CERTIFIED COPY

011987

16div-019206

2. ACQUISITION - (CONTINUED)

The Coleman acquisition was accounted for under the purchase method of accounting; and accordingly, the results of operations of Coleman for March 30 and March 31, 1998 are included in the accompanying Condensed Consolidated Statement of Operations. The purchase price of Coleman has been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market value at the date of acquisition. The preliminary fair value of tangible assets acquired was approximately $747 million (of which $27 million was cash) and approximately $1,331 million of liabilities were assumed. The excess of purchase price over net tangible assets acquired of $1,270 million has been classified as goodwill and is being amortized on a straight-line basis over 40 years. The allocation of purchase price for the acquisition of Coleman will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive .5677 shares of the Company's common stock and $6.44 in cash for each share of Coleman common stock outstanding. In addition, unexercised options under Coleman's stock option plans will be cashed out at a price per share equal to the difference between $27.50 and the exercise price of such options. The Company expects to issue approximately 6.7 million shares of common stock and expend approximately $87 million in cash to complete the Coleman acquisition. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. The acquisition of the remaining outstanding shares of Coleman will be accounted for under the purchase method of accounting on the date of consummation. Minority interest in the results from Coleman's operations for March 30 and 31, 1998, is reflected in Other Expense, net in the Condensed Consolidated Statement of Operations for the three months ended March 31, 1998. (See Note 10.)

The following unaudited pro forma financial information for the Company gives effect to the Coleman acquisition as if it had occurred at the beginning of 1998. These pro forma results have been prepared for informational purposes only and do not purport to be indicative of the results of operations which actually would have occurred had the acquisition been consummated on the date indicated, or which may result in the future. The unaudited pro forma results follow (in millions, except per share data):

	THREE MONTHS ENDED MARCH 31, 1998	MARCH 30, 1997
Net sales (a)	$ 477.3	$ 548.0
Loss before extraordinary charge (a), (b), (c)	(64.7)	(4.8)
Basic and diluted loss per share before extraordinary items (d)	(0.65)	(0.05)

(a) Adjusted to remove sales of $14.8 million and loss before extraordinary charge of $0.8 million from Coleman operations for March 30 and 31, 1998 included in Sunbeam's results.

(b) Coleman's loss before extraordinary items has been adjusted to exclude the following one time after tax benefits and charges: (i) a $15.8 million gain from the sale of Coleman Safety and Security Products, Inc., (ii) $7.1 million of costs incurred by Coleman associated with the Company's acquisition of Coleman, (iii) the write off of $2.1 million of capitalized costs associated with the installation of new software which will be abandoned as a result of the acquisition by the Company, (iv) $1.3 million of costs to terminate a license agreement with a former affiliate of Coleman, and (v) the write off of $1.7 million of unrealized deferred tax assets as a result of the change of control of Coleman.

(c) In 1998 and 1997, respectively, after tax interest expense was increased $11.5 million and $9.8 million, and goodwill amortization, after tax, was increased $5.5 million in each year to reflect the pro forma effect of the acquisition occurring at the beginning of the period. In addition, the minority shareholder percentage was adjusted to reflect the change in the portion of Coleman held by minority shareholders following the transaction. The minority interest in Coleman's losses from continuing operations was adjusted by $0.6 million in 1998 and $0.4 million in 1997 to reflect both the change in the proportion of the ownership of Coleman held by minority shareholders and the effects of the pro forma adjustments.

(d) The shares outstanding were adjusted in each period to reflect the pro forma effect of the shares issued in the Coleman acquisition being outstanding from the beginning of the period.

NOT A CERTIFIED COPY

011988

16div-019207

3. CREDIT FACILITIES, LONG-TERM DEBT AND FINANCIAL INSTRUMENTS

In order to finance the acquisitions described in Notes 2 and 10, and refinance substantially all of the indebtedness of the Company and its acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately $2,014 million principal amount at maturity) in March 1998, which resulted in approximately $730 million of net proceeds and, (ii) entered into a revolving and term credit facility ("New Credit Facility"). (See Note 10.)

The Debentures are exchangeable for shares of the Company's common stock at an initial conversion rate of 6.575 shares for each $1,000 principal amount at maturity of the Debentures, subject to adjustment upon occurrence of certain events. (See Note 10.)

The New Credit Facility provided for an aggregate borrowings of up to $1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to $400 million, maturing March 31, 2005; (ii) an $800 million term loan maturing on March 31, 2005, and (iii) a $500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. The New Credit Facility contains certain covenants, including limitations on the ability of the Company and its subsidiaries to engage in certain transactions and the requirement to maintain certain financial covenants and ratios. (See Note 10.)

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time will vary with changes in interest and/or foreign exchange rates, the differences between the carrying value and fair value of such contracts at March 31, 1998 and March 30, 1997 were not considered to be material, either individually or in the aggregate. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions. At March 31, 1998, the Company held an interest rate swap agreement with a notional value of $25.0 million to exchange floating rate interest for a fixed rate of 6.115%. (See Note 10.)

In March 1998, the Company prepaid a $75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of $8.6 million ($0.10 per share) in the first quarter of 1998.

In December 1997, the Company entered into a receivables securitization program under which the Company has received approximately $34.8 million from the sale of trade accounts receivable in the first quarter of 1998. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled $0.6 million during the first quarter of 1998. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables.

NOT A CERTIFIED COPY

0011989

16div-019208

4. COMPREHENSIVE INCOME

The Company adopted SFAS No. 130, REPORTING COMPREHENSIVE INCOME, effective January 1, 1998. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in financial statements. The components of the Company's comprehensive loss are as follows (in thousands):

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
Net loss	$(54,106)	$ (4,686)
Foreign currency translation adjustment, net of taxes	183	(186)
Comprehensive loss	$(53,923)	$ (4,872)

5. SUPPLEMENTAL FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each period is as follows (in thousands):

	MARCH 31, 1998	DECEMBER 28, 1997
Receivables:		
Trade	$ 521,755	$ 250,699
Sundry	17,134	7,794
	538,889	258,493
Valuation allowance	(38,218)	(30,033)
	$ 500,671	$ 228,460
Inventories:		
Finished goods	$ 426,590	$ 193,864
Work in process	52,728	25,679
Raw materials and supplies	137,773	85,357
	$ 617,091	$ 304,900

(See Note 10 regarding asset valuation/impairment in the remainder of 1998.)

The Supplementary Statement of Cash Flows data is as follows (in thousands):

	THREE MONTHS ENDED	
	MARCH 31, 1998	MARCH 30, 1997
Cash paid during the period for:		
Interest	$ 5,442	$ 1,103
Income taxes (refunds)	$ 381	$(11,920)

NOT A CERTIFIED COPY

011990

16div-019209

6. RESTRUCTURING AND ASSET IMPAIRMENT

At December 28, 1997, the Company, before consideration of the Coleman acquisition, had $5.2 million in liabilities accrued related to a 1996 restructuring plan. The majority of these liabilities related to facility closures and related exit costs. In the first quarter of 1998, this liability was reduced by $0.5 million as a result of cash expenditures.

The restated restructuring reserve details and activity as of and for the quarter ended March 30, 1997 are as follows (in millions):

	RESERVE BALANCE AT DECEMBER 29, 1996	CASH REDUCTIONS	NON-CASH REDUCTIONS	ACCRUAL BALANCE AT MARCH 30, 1997
Severance and other employee costs	$ 19.1	$ 3.2	$ --	$ 15.9
Closure and consolidation of facilities and related exit costs	32.6	1.4	1.3	29.9
Total	51.7	$ 4.6	$ 1.3	$ 45.8

7. DISCONTINUED OPERATIONS

The Company's discontinued furniture business, which was sold in March 1997, had revenues of $51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received $69.0 million in cash, retained approximately $50.0 million in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of $22.5 million pre-tax.

NOT A CERTIFIED COPY

011991

16div-019210

8. RESTATEMENT

Subsequent to the issuance of the Company's condensed consolidated financial statements for the three months ended March 31, 1998, it was determined that for the years ended December 29, 1996 and December 28, 1997 and the three months ended March 31, 1998, certain revenue was improperly recognized (principally "bill and hold" and guaranteed sales transactions), certain costs and allowances were not accrued or were improperly recorded (principally allowances for returns, cooperative advertising, and customer charge-backs as well as deductions and reserves for product liability and warranty expense) and certain costs were inappropriately included in, and subsequently charged to, restructuring, asset impairment and other costs within the Consolidated Statements of Operations. As a result, the consolidated financial statements as of December 28, 1997 and December 29, 1996 and for the years then ended were restated and a Form 10-K/A was filed with the Securities and Exchange Commission on November 12, 1998. The accompanying condensed consolidated financial statements as of March 31, 1998 and March 30, 1997 and for the three months then ended, present restated results.

A summary of the effects of the restatement for the three months ended March 31, 1998 and March 30, 1997 follows (in thousands, except per share data):

Condensed Consolidated Statements of Operations

(Unaudited)

	THREE MONTHS ENDED			
	MARCH 31, 1998		MARCH 30, 1997	
	As Previously Reported	As Restated	As Previously Reported	As Restated
Net sales	$ 244,296	$ 247,601	$ 253,450	$ 252,488
Cost of goods sold	211,459	213,828	185,698	194,237
Selling, general and administrative expense	68,841	71,139	33,009	41,195
Operating (loss) earnings	(36,004)	(37,366)	34,743	17,056
Interest expense	5,072	5,073	1,993	1,993
Other expense, net	2,367	3,165	113	77
(Loss) earnings from continuing operations before income taxes and extraordinary charge	(43,443)	(45,604)	32,637	14,986
Income tax (benefit) provision	(4,458)	(122)	12,076	5,959
(Loss) earnings from continuing operations	(38,985)	(45,482)	20,561	9,027
Loss from discontinued operations, net of taxes	--	--	(13,713)	(13,713)
Extraordinary charge from early extinguishment of debt	(5,608)	(8,624)	--	--
Net (loss) earnings	$ (44,593)	$ (54,106)	$ 6,848	$ (4,686)
Earnings per share:				
(Loss) earnings from continuing operations:				
Basic	$ (0.45)	$ (0.53)	$ 0.24	$ 0.11
Diluted	(0.45)	(0.53)	0.24	0.10
Loss from discontinued operations:				
Basic	--	--	(0.16)	(0.17)
Diluted	--	--	(0.16)	(0.15)
Extraordinary item:				
Basic	(0.07)	(0.10)	--	--
Diluted	(0.07)	(0.10)	--	--
Net (loss) earning:				
Basic	$ (0.52)	$ (0.63)	$ 0.08	$ (0.06)
Diluted	$ (0.52)	$ (0.63)	$ 0.08	$ (0.05)

NOT A CERTIFIED COPY

011992

16div-019211

8. RESTATEMENT - (CONTINUED)

Condensed Consolidated Balance Sheets
(Unaudited)

	AS OF MARCH 31, 1998		AS OF MARCH 30, 1997	
	As Previously Reported	As Restated	As Previously Reported	As Restated
ASSETS				
Cash and cash equivalents	$ 193,543	$ 193,543	$ 30,415	$ 30,415
Receivables, net	562,294	500,671	296,716	289,509
Inventories	575,109	617,091	148,011	148,011
Prepaid expenses, deferred income taxes and other current assets	107,692	74,855	134,512	128,359
Total current assets	1,438,638	1,386,160	609,654	596,294
Property, plant and equipment, net	403,179	412,096	217,453	226,627
Trademarks, trade names, goodwill and other, net	1,601,605	1,556,909	226,048	226,048
Total assets	$ 3,443,422	$ 3,355,165	$ 1,053,155	$ 1,048,969
LIABILITIES AND SHAREHOLDERS' EQUITY				
Short-term debt and current portion of long-term debt	$ 62,139	$ 62,139	$ 848	$ 848
Accounts payable	205,217	204,456	100,648	98,262
Other current liabilities	179,373	218,554	158,658	145,614
Total current liabilities	446,729	485,149	260,154	244,724
Long-term debt	1,637,820	1,637,820	175,235	175,235
Other long-term liabilities	269,334	216,240	204,606	207,603
Minority interest	55,191	55,191	--	--
Shareholders' equity:				
Common stock	1,008	1,008	892	892
Additional paid-in capital	975,778	966,631	458,690	458,690
Retained earnings	95,675	34,829	41,125	49,372
Accumulated other comprehensive loss	(29,288)	(32,878)	(18,460)	(18,460)
Other shareholders' equity	(8,825)	(8,825)	(5,699)	(5,699)
Treasury stock	--	--	(63,388)	(63,388)
Total shareholders' equity	1,034,348	960,765	413,160	421,407
Total liabilities and shareholders' equity	$ 3,443,422	$ 3,355,165	$ 1,053,155	$ 1,048,969

NOT A CERTIFIED COPY

011993

16div-019212

9. NEW EMPLOYMENT AGREEMENTS

On February 20, 1998 the Company entered into new three-year employment agreements with its then Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

The new employment agreement for the Company's then Chairman provided for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement. In addition, the new employment agreement with the then Chairman and Chief Executive Officer provided for income tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other then senior officers provided for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provided for income tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related income tax gross-ups was recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups was amortized to expense beginning in the first quarter of 1998 with amortization to continue over the period in which the restrictions lapse. Total compensation expense recognized in the first quarter of 1998 related to these items was approximately $31 million. (See Note 10.)

10. SUBSEQUENT EVENTS

SENIOR MANAGEMENT CHANGES

On June 15, 1998, the Company's Board of Directors announced the removal of the then Chairman and Chief Executive Officer and subsequently announced the removal or resignation of other senior officers, including the Company's then Chief Financial Officer. In connection with the removal or resignation of the senior officers and the termination of their restricted stock grants, the unamortized portion of the deferred compensation expense attributable to the restricted stock grants will be reversed and compensation expense of approximately $0.9 million recognized in the first quarter of 1998 for unvested restricted stock grants will be reversed into income in the second and third quarters of 1998. Other costs related to the resignations and terminations will be recognized, as appropriate, in 1998. The Company and certain of its former officers are in disagreement as to the Company's obligations to these individuals under prior employment agreements and arising from their terminations. The Board of Directors has installed a new Chief Executive Officer and senior management team.

NOT A CERTIFIED COPY

011994

16div-019213

10. SUBSEQUENT EVENTS - (CONTINUED)

COLEMAN ACQUISITION

On August 12, 1998, the Company announced that, following investigation and negotiation conducted by a Special Committee of the Board consisting of four outside directors not affiliated with M&F, the Company had entered into a settlement agreement with a subsidiary of M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the Coleman acquisition and M&F agreed to provide certain management personnel and assistance to the Company in exchange for the issuance to the M&F subsidiary of five-year warrants to purchase up to 23 million shares of the Company's common stock at an exercise price of $7.00 per share, subject to anti-dilution provisions. The financial statement impact of the settlement, which will be material in amount, will be recorded in the third quarter of 1998. (See Litigation, below.)

OTHER ACQUISITIONS

On April 6, 1998, the Company completed the cash acquisitions of First Alert, Inc. ("First Alert"), a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands USA, Inc. ("Signature Brands"), a leading manufacturer of a comprehensive line of consumer and professional products. The First Alert and the Signature Brands acquisitions were valued at approximately $178 million and $253 million, respectively, including the assumption of debt. These acquisitions will be accounted for by the purchase method of accounting and the results of operations of the acquired entities will be included in the Company's Consolidated Statement of Operations from the respective acquisition dates.

DEBENTURES, NEW CREDIT FACILITY AND FINANCIAL INSTRUMENTS

The Company was required to file a registration statement with the Securities and Exchange Commission to register the Debentures by June 23, 1998, which registration statement has not been filed. From June 23, 1998 until the day on which the registration statement is filed and declared effective, the Company is required to pay to the Debenture holders cash liquidated damages accruing, for each day during such period, at a rate per annum equal to 0.25% during the first 90 days and 0.50% thereafter multiplied by the total of the issue price of the Debentures plus the original issue discount thereon on such day. The Company made its first payment of approximately $525,000 to the Debenture holders on September 25, 1998.

At June 30, 1998, the Company was not in compliance with the financial covenants and ratios required under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Borrowings under the New Credit Facility are secured by certain of the Company's assets, including its stock interest in Coleman and certain other subsidiaries and certain of the Company's tangible and intangible personal property. Pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. Concurrent with each of these amendments, interest margin was increased. The margin continues to increase monthly through March 1999 to a maximum of 400 basis points over LIBOR. At September 30, 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to $1,698 million in total, of which approximately $1,453 million was outstanding and approximately $245 million was available. In addition, the Company's cash balance available for debt repayment at September 30, 1998 was approximately $43 million.

NOT A CERTIFIED COPY

0011995

16div-019214

10. SUBSEQUENT EVENTS - (CONTINUED)

The Company is working closely with its bank lenders and hopes to reach agreement with the bank lenders on a further amendment to the New Credit Facility containing revised financial covenants which the bank lenders and the Company find mutually acceptable. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all outstanding borrowing under the New Credit Facility.

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. In the second quarter of 1998, the Company entered into two swap transactions in a notional amount of $150 million each, in connection with the New Credit Facility. The swap agreements are contracts to exchange floating rate for fixed interest payments periodically over the life of the agreements without the exchange of the underlying notional principal amounts. The swaps expire in June 2001 and 2003 and have strike rates of 5.75% and 5.58%, respectively. The notional amounts of the agreements do not represent the amount of exposure to credit loss.

As a result of repayment of certain indebtedness assumed in the Coleman acquisition, the Company will recognize an extraordinary charge of approximately $104 million in the second quarter of 1998.

SEC INVESTIGATION

By letter dated June 17, 1998, the staff of the Division of Enforcement of the SEC advised the Company that it was conducting an informal inquiry into the Company's accounting policies and procedures and requested that the Company produce certain documents. On July 2, 1998, the SEC issued a Formal Order of Private Investigation, designating officers to take testimony and pursuant to which a subpoena duces tecum was served on the Company requiring the production of certain documents. On November 4, 1998, another SEC subpoena duces tecum requiring the production of further documents was received by the Company. The Company has provided numerous documents to the SEC staff and continues to cooperate fully with the SEC staff. The Company cannot predict the term of such investigation or its potential outcome.

LITIGATION

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U. S. District Court for the Southern District of Florida against the Company and certain of its present and former officers and directors alleging violations of the federal securities laws as discussed below (the "Consolidated Federal Actions"). Since that date, approximately fifteen similar class actions have been filed in the same Court. One of the lawsuits also names as defendant Arthur Andersen LLP, the Company's independent accountants for the period covered by the lawsuit.

NOT A CERTIFIED COPY

0011996

16div-019215

10. SUBSEQUENT EVENTS - (CONTINUED)

The complaints in the Consolidated Federal Actions allege to varying degrees that the defendants (i) failed to disclose that the Company pre-sold approximately $50 million of products pursuant to its "early buy" marketing program in an effort to boost its 1997 sales and net income figures and (ii) made material misrepresentations regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company stock long enough for the Company to complete a $2 billion debt financing (supported with stock incentives) necessary to complete the acquisitions of Coleman, Signature Brands and First Alert, and for the individual defendants to enter into lucrative long-term employment agreements with the Company. Each complaint alleges two counts of securities fraud; one count against all defendants and one count against the individual defendants.

On June 16, 1998, the Court entered an Order consolidating all such filed and all such subsequently filed class actions and providing time periods for the filing of a Consolidated Amended Complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel (the "Smith Plaintiffs' Group"). This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith". On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On September 29, 1998, the Smith Plaintiffs' Group filed its memorandum in opposition to this objection.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and certain of its present and former officers and directors. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options to three of its officers and directors on or about February 2, 1998 at an exercise price of $36.85. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on the board of directors of the Company. On October 22, 1998, the plaintiff amended the complaint against all but one of the defendants named in the original complaint. The amended complaint no longer challenges the stock options, but instead alleges that the individual defendants breached their fiduciary duties by failing to have in place adequate accounting and sales controls, which failure caused the inaccurate reporting of financial information to the public, thereby causing an artificial inflation of the Company's financial statements and stock price.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against the Company and certain of the Company's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. All of the plaintiffs are represented by the same Delaware counsel and have agreed to consolidate the class actions. These actions allege, in essence, that the existing exchange ratio for the proposed merger between the Company and Coleman is no longer fair to Coleman shareholders as a result of the recent decline in the market value of the Company stock. On October 21, 1998, the Company announced that it had entered into a Memorandum of Understanding to settle, subject to court approval, certain class actions brought by shareholders of Coleman challenging the proposed Coleman Merger. Under the terms of the proposed settlement, the Company will issue to the Coleman public shareholders five-year warrants to purchase 4.98 million shares of the Company's common stock at $7.00 per share. These warrants will generally have the same terms as the warrants previously issued to a subsidiary of M&F and will be issued when the Coleman Merger is consummated, which is now expected to be in the first quarter of 1999. There can be no assurance that the Court will approve the settlement as proposed.

NOT A CERTIFIED COPY

011997

16div-019216

10. SUBSEQUENT EVENTS - (CONTINUED)

During the months of August and October 1998, purported class and derivative actions were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U. S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement with M&F whereby M&F released the Company from any claims it may have had arising out of the Company's acquisition of its interest in Coleman and agreed to provide management support to the Company (the "Settlement Agreement"). Pursuant to the Settlement Agreement, M&F was granted five-year warrants to purchase an additional 23 million shares of the Company's common stock at an exercise price of $7.00 per share. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirements.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action has been removed to the U.S. District Court for the Southern District of Texas and the Company has filed a motion to transfer this case to the Southern District of Florida, the forum for the Consolidated Federal Actions. Plaintiffs have moved to remand the case to Texas state court.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Company's Debentures in the U.S. District Court of the Southern District of Florida against the Company and its prior Chief Executive Officer and Chief Financial Officer, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The Company is seeking to consolidate this lawsuit with the other Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgments would likely have a material adverse effect on the Company's financial position, results of operations and cash flows.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly cancelled by American. The Company has moved to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending; American is opposing such motion. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement against the Company in any of the foregoing actions could have a material adverse impact on the Company's financial position, results of operations and cash flow.

NOT A CERTIFIED COPY

011998

16div-019217

10. SUBSEQUENT EVENTS - (CONTINUED)

The Company and its subsidiaries are also involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations of the Predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company.

ASSET IMPAIRMENT, INVENTORY RESERVES AND RELATED LIABILITIES

In 1998, as a result of decisions to outsource a substantial number of products previously made by the Company, certain facilities and equipment will either no longer be used or will be used in a significantly different manner. Accordingly, certain assets recorded at March 31, 1998 will be written down in future periods to reflect the fair market value of items held for disposition or to reflect impairment for items where the future utility is altered by the sourcing change. Personnel at the Mexico City manufacturing plant were notified in the second quarter of 1998 that the plant is scheduled for closure at year-end 1998. Accordingly, a liability related to plant closure will be recorded in the second quarter. As certain inventories built in 1997 and the first quarter of 1998 in anticipation of 1998 sales volumes exceed the actual requirements, it will be necessary to dispose of some portions of excess inventories at amounts less than cost. The Company is also in the process of assessing the expected future performance of its business operations and the impact of this assessment on the valuation of assets in the business. This assessment is expected to be completed in the fourth quarter.

NEW ACCOUNTING STANDARDS

In April 1998, the AICPA issued Statement of Position 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES ("SOP 98-5"). SOP 98-5 requires all costs associated with pre-opening, pre-operating and organization activities to be expensed as incurred. The Company will adopt SOP 98-5 beginning January 1, 1999. Adoption of the Statement is not expected to have a material impact on the Company's consolidated financial position or results of operations.

In June 1998, the FASB issued SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES for fiscal years beginning after June 15, 1999. SFAS No. 133 requires the recognition of all derivatives in the Consolidated Balance Sheet as either assets or liabilities measured at fair value. The Company will adopt SFAS No. 133 effective for the 2000 calendar year end. The Company has not yet determined the impact SFAS No. 133 will have on its financial position or results of operations when such statement is adopted.

NOT A CERTIFIED COPY

011999

16div-019218

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

On June 30, 1998, the Company announced that the Audit Committee of the Board of Directors was initiating a review into the accuracy of prior financial statements. The Audit Committee's review has since been completed and, as a result of its findings, the Company has restated its previously issued consolidated financial statements for 1996 and 1997 and the first quarters of 1998 and 1997 (see Note 8 to the accompanying condensed consolidated financial statements and the Company's Annual Report on Form 10-K/A for the year ended December 28, 1997). The following discussion should be read in conjunction with the accompanying condensed consolidated financial statements as of and for the three months ended March 31, 1998 and March 30, 1997.

OVERVIEW

On March 30, 1998, the Company, through a wholly-owned subsidiary, acquired approximately 81% of the total number of then outstanding shares of common stock of The Coleman Company, Inc. ("Coleman"), in exchange for 14,099,749 shares of the Company's common stock and approximately $160 million in cash as well as the assumption of $1,016 million in debt. The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately $87 million in cash. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. (See Note 10 to the condensed consolidated financial statements and Part II, Item 1. "Legal Proceedings"). Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically under the Coleman /registered trademark/ brand name since the 1920's.

The Coleman acquisition was recorded under the purchase method of accounting; and accordingly, the results of operations of Coleman for March 30 and 31, 1998 are included in the accompanying Condensed Consolidated Statement of Operations. The purchase price of Coleman has been allocated to individual assets acquired and liabilities assumed based on preliminary estimates of fair market value at the date of acquisition. The allocation of purchase price for the acquisition of Coleman will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial change in goodwill and other intangible assets.

To standardize the fiscal period ends of the Company, Coleman and two companies acquired after March 31, 1998, effective with its 1998 fiscal year, the Company has changed its fiscal year end from the Sunday nearest December 31 to a calendar year. (See Notes 1 and 10 to the condensed consolidated financial statements.)

THREE MONTHS ENDED MARCH 31, 1998 COMPARED TO THREE MONTHS ENDED MARCH 30, 1997

Net sales is comprised of gross sales less provisions for estimated customer returns, discounts, promotional allowances, cooperative advertising allowances and costs incurred by the Company to ship product to customers. Net sales for the three months ended March 31, 1998 were $247.6 million, a decrease of $4.9 million or 2% versus the three months ended March 30, 1997. After excluding: (i) $14.8 million of Coleman's sales for March 30 and 31, 1998, (ii) approximately $4 million in 1998 sales resulting from the change in year end described above, (iii) $4.2 million from 1997 sales relating to divested product lines which are not classified as discontinued operations (time and temperature products and Counselor /registered trademark/ and Borg /registered trademark/ branded scales), and (iv) $13.7 million from 1997 sales of discontinued inventory which resulted primarily from the reduction of SKU's as part of the 1996 restructuring plan and for which the inventory carrying value was substantially equivalent to the sales value, net sales on an adjusted basis ("Adjusted Sales") reflected a 2% decrease from the first quarter of 1997.

NOT A CERTIFIED COPY

012000

Overall, product sales were adversely impacted by price discounting and approximately $13 million of higher provisions for estimated returns, costs to ship products to customers, rebates and other customer allowances.

Domestic Adjusted Sales declined approximately $10 million from the first quarter of 1997. Outdoor Cooking category sales accounted for the majority of this decline. During 1997, the Company lost a significant portion of its Outdoor Cooking products distribution, including the majority of its grill accessory products distribution. As compared with the first quarter of 1997, the Outdoor Cooking products sales decline was also attributed to a lower than anticipated retail sell-through during the early stages of the 1998 retail selling season. Based on the sales levels achieved in the first quarter of 1998, distribution losses and retail inventory levels for Outdoor Cooking products, and a significant sales decline experienced subsequent to the first quarter as compared with the same period in the prior year, sales for the remainder of 1998 will be significantly lower as compared to the prior year. Adjusted Sales for Appliance category products increased approximately $7 million but were offset by declines in other product categories, primarily Away From Home products.

International sales, which represented 26% of Adjusted Sales in the first quarter of 1998, grew approximately 16% over the first quarter of 1997's Adjusted Sales. This sales growth was attributed to improved distribution, new product sales and increased retail inventory levels in Latin America, including Mexico and Venezuela, offset by declines in sales of Outdoor Cooking products in Europe and Canada.

Excluding $4.1 million of gross margin generated from the inclusion of the Coleman operations for two days in the first quarter of 1998 and approximately $0.6 million in gross margin from the change in the fiscal period, gross margin declined to $29.1 million, or 12.7% of Adjusted Sales in 1998 versus $58.3 million, or 24.8% of Adjusted Sales for the same period a year ago. The margin erosion was due to lower price realization and higher costs of customer allowances, rebates and similar incentives in 1998, coupled with a higher product return reserve and an adverse product sales mix in 1998. The adverse product sales mix was due in part to the loss of a majority of the grill accessory products distribution. Accessories generate significantly better margins than the average margins on sales of grills. During the first quarter of each year, grill and grill accessory sales are traditionally a higher portion of overall sales in the period than during other quarters of the year.

NOT A CERTIFIED COPY

012001

CONT #854

16div-019220

Due to the level of Outdoor Cooking products sales in the first quarter and the levels of retail inventories for these products, the Company began the season-end ramp down of production at the Neosho Outdoor Cooking products facility earlier than previously planned. As a result, operating results for the 1998 grill season will be adversely impacted due to unabsorbed fixed factory overhead during the second and third quarters and higher inventory carrying costs.

Excluding the effect of: (i) $3.7 million of selling, general and administrative ("SG&A") charges from Coleman, (ii) approximately $0.8 million of SG&A expenses in 1998 from the change in the fiscal period, (iii) a $3.0 million benefit in the first quarter of 1998 and a $0.5 million benefit in the first quarter of 1997 from the reversal of reserves no longer required, (iv) $31.2 million of charges recorded in 1998 related to compensation for former executives, and (v) $4.1 million of restructuring related charges recorded in 1997, SG&A expenses were 2% higher in 1998 than 1997. Higher distribution and warehousing costs due to increased levels of inventory were primarily responsible for the increase in costs between years.

Operating results for the first quarters of 1998 and 1997, on a comparable basis as described above, were a loss of $9.4 million in 1998 and a profit of $20.7 million in 1997. On the same basis, operating margins as a percent of Adjusted Sales decreased to a loss of 4.1% from a profit of 8.8% in the prior year. This change resulted from the factors discussed above.

Interest expense increased from $2.0 million in the first quarter of 1997 to $5.1 million in the first quarter of 1998 primarily related to higher borrowing levels in 1998 for the acquisitions and increased working capital. (See Note 3 to the condensed consolidated financial statements.)

Other expense, net of $3.2 million in 1998 and $0.1 million in 1997 primarily represents foreign exchange losses. Losses in both years arose from Sunbeam's operations in Mexico. In addition, the 1998 losses were impacted by Sunbeam's operations in Venezuela and Coleman's operations in Japan.

The effective income tax rate was 0.3% in the first quarter of 1998, as compared to 39.8% in the first quarter of 1997. The 1998 rate is lower than the statutory federal rate principally as a result of a valuation allowance for deferred tax assets provided in 1998. The 1997 rate was higher than the federal statutory income tax rate primarily due to state and local taxes plus the effect of foreign earnings taxed at other rates.

The Company's loss per share from continuing operations in the first quarter of 1998, excluding: (i) Coleman's results for March 30 and 31, 1998, (ii) the effect of the change in fiscal periods, (iii) the reversals of reserves no longer required in each year's first quarter, (iv) the restructuring related charges in 1997, and (v) the 1998 charge related to management compensation was a loss of $0.20 per share versus earnings per share from continuing operations in the first quarter of 1997 of $0.13 per share. Due to increased inventory positions at certain customers from sales in 1997 and the first quarter of 1998, as well as increased inventory positions at the Company, sales and operating income will be materially affected during the remainder of 1998. In addition, 1998 results will be impacted materially by charges related to, among other items, a change in management, changes in business operations resulting in part from acquisitions in 1998, interest costs associated with higher debt levels, costs associated with litigation and asset impairment costs, as well as costs related to Year 2000 issues. (See "Liquidity and Capital Resources", below, and Note 10 to the condensed consolidated financial statements.)

In March 1998, the Company prepaid a $75.0 million 7.85% industrial revenue bond related to its Hattiesburg facility originally due in 2009. In connection with the early extinguishment of this debt, the Company recognized an extraordinary charge of $8.6 million ($0.10 per share) in the first quarter of 1998.

The Company's discontinued furniture business, which was sold in March

NOT A CERTIFIED COPY

0012002

1997, had revenues of $51.6 million in the first quarter of 1997 prior to the sale and nominal earnings. As a result of the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment), the Company received $69.0 million in cash, retained approximately $50.0 million in accounts receivable and retained certain liabilities. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of $22.5 million pre-tax.

FOREIGN OPERATIONS

Approximately 90% of the Company's business is conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales, primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1998 and 1997 and Mexico reverted to a hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Mexico is not expected to be hyperinflationary at some point in 1998.

While Sunbeam's revenues generated in Asia have traditionally not been significant, economic instability in this region is expected to have a negative effect on Coleman's earnings. It is anticipated that sales in and exports to this region will continue to decline so long as the economic environment remains unsettled. It is not anticipated that this impact will be materially adverse to the Company's results of operations taken as a whole.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1998 and 1997. (See Note 3 to the condensed consolidated financial statements.)

NOT A CERTIFIED COPY

012003

16div-019222

SEASONALITY

On a consolidated basis, the Company's sales have not traditionally exhibited substantial seasonality; however, sales have been strongest during the fourth quarter of the calendar year. Additionally, sales of Outdoor Cooking products are strongest in the first half of the year, while sales of Appliances and Personal Care and Comfort products are strongest in the second half of the year. Furthermore, sales of a number of the Company's traditional products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. After considering the seasonality of the acquired entities, the Company's consolidated sales are not expected to exhibit substantial seasonality; however, sales are expected to be strongest during the second quarter of the calendar year. Additionally, sales of many products sold by Coleman may be impacted by unseasonable weather conditions.

LIQUIDITY AND CAPITAL RESOURCES

In order to finance the acquisition of Coleman in the first quarter of 1998 and the anticipated acquisitions of First Alert, Inc. ("First Alert") and Signature Brands USA, Inc. ("Signature Brands") and to refinance substantially all of the indebtedness of the Company and the acquired entities, the Company consummated: (i) an offering (the "Offering") of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures") at a yield to maturity of 5% (approximately $2,014 million principal amount at maturity) in March 1998, which resulted in approximately $730 million of net proceeds and, (ii) entered into a revolving and term credit facility ("New Credit Facility"). (See Note 10.)

The New Credit Facility provided for an aggregate borrowings of up to $1.7 billion pursuant to: (i) a revolving credit facility in an aggregate principal amount of up to $400 million, maturing March 31, 2005; (ii) an $800 million term loan maturing on March 31, 2005, and (iii) a $500 million term loan maturing September 30, 2006. Interest accrues at a rate selected at the Company's option of: (i) the London Interbank Offered Rate ("LIBOR") plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items or, (ii) the base rate of the administrative agent (generally the higher of the prime commercial lending rate of the administrative agent or the Federal Funds Rate plus 1/2 of 1%), plus an agreed upon interest margin which varies depending upon the Company's leverage ratio, as defined, and other items. (See Notes 3 and 10 to the condensed consolidated financial statements.)

As of March 31, 1998, the Company had cash and cash equivalents of $193.5 million, working capital excluding cash and cash equivalents of $707.5 million and total debt of $1.7 billion. Cash used in operating activities during the first quarter of 1998 was $134.7 million compared to $22.6 million in the first quarter of 1997. This increase is primarily attributable to lower earnings before non-cash charges and an increased investment in working capital. The majority of the increase in working capital is a result of higher inventory and receivables levels in 1998. Inventories increased $312.2 million from December 28, 1997, of which $246.3 million related to Coleman and $65.9 million related to Sunbeam's household and grill products. Receivables increased $272.2 million from December 28, 1997, with $215.1 million due to the Coleman acquisition and $57.1 million from Sunbeam's historical operating units. Extended dating terms contributed to the increase in Sunbeam's receivables. Cash used in operating activities for the 1998 first quarter reflects proceeds of $34.8 million from the Company's revolving trade accounts receivable securitization program entered into in December 1997. The Company expects to continue to use the securitization program to finance a portion of its accounts receivable. The Company anticipates that cash used in operating activities will increase in the second and third quarters of 1998, principally from losses incurred in operations and increases in inventory. As certain inventories built in 1997 and the first quarter of 1998 in anticipation of 1998 sales volumes exceed the actual requirements, it will be necessary to dispose of some portions of excess inventories at amounts less than cost.

Cash used in investing activities in the first quarter of 1998 reflects $160.6 million for the acquisition of approximately 81% of Coleman. In the first quarter of 1997, cash provided by investing activities reflected $70.4 million

NOT A CERTIFIED COPY

012004

in proceeds from the sales of divested operations. Capital spending totaled $19.5 million in 1998 and was primarily for capacity expansion initiatives primarily at the Neosho grill manufacturing facility, and equipment and tooling for new products. Capital spending in 1997 was $10.9 million and was primarily attributable to manufacturing capacity expansion and equipment to manufacture new products. The new product capital spending in 1998 principally related to the Appliance category and included costs related to water and air filtration products, blenders, standmixers and irons. The Company anticipates 1998 capital spending to be approximately 5% of sales, primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by financing activities totaled $456.1 million in the first quarter of 1998 and reflects net proceeds from the Debentures of $729.6 million, the cancellation and repayment of all outstanding balances under the Company's $250 million September 1996 revolving credit facility, the repayment of certain Coleman debt and the early extinguishment of the $75.0 million Hattiesburg bond. In addition, cash provided by financing activities is net of $25.1 million of financing fees related to the Company's $1.7 billion New Credit Facility and $19.0 million of proceeds from the exercise of stock options. (See Note 3 to the condensed consolidated financial statements.)

In April 1998, the Company drew from the term loans under the New Credit Facility to fund the acquisitions of Signature Brands and First Alert as further described in Note 10 to the condensed consolidated financial statements and to refinance certain debt of the acquired companies. The Company drew an additional $550 million of term loans and $50 million of revolving loans in May 1998 to finance the prepayment of certain debt assumed in connection with the Coleman acquisition. In connection with these debt refinancings, the Company expects to record an extraordinary charge of approximately $104 million in the second quarter of 1998.

At June 30, 1998, the Company was not in compliance with the covenants and ratios under the New Credit Facility. The Company and its lenders entered into an agreement dated June 30, 1998, which provided that compliance with the covenants would be waived through December 31, 1998. Subsequently, pursuant to an amendment dated October 19, 1998, the Company is not required to comply with the original financial covenants and ratios under the New Credit Facility until April 10, 1999, but will be required to comply with an earnings before interest, taxes, depreciation and amortization covenant, the amounts of which are to be determined, beginning February 1999. At September 30, 1998, following the scheduled repayment of a portion of the term loan, the New Credit Facility was reduced to $1,698 million in total, of which approximately $1,453 million was outstanding and approximately $245 million was available. In addition, the Company's cash balance available for debt repayment at September 30, 1998 was approximately $43 million.

NOT A CERTIFIED COPY

012005

16div-019224

The Company is working closely with its bank lenders and hopes to reach agreement with the bank lenders on a further amendment to the New Credit Facility containing revised financial covenants which the bank lenders and the Company find mutually acceptable. There can be no assurance that such an amendment, or a further waiver of the existing financial covenants, will be entered into with the bank lenders by April 10, 1999. The failure to obtain such an amendment or further waiver would result in violation of the existing covenants, which would permit the bank lenders to accelerate the maturity of all outstanding borrowing under the New Credit Facility.

The Company expects to acquire the remaining equity interest in Coleman pursuant to a merger transaction in which the existing Coleman minority shareholders will receive approximately 6.7 million shares of common stock and approximately $87 million in cash. In addition, as a result of litigation related to the merger consideration, the Company has entered into a memorandum of understanding (subject to court approval) pursuant to which the holders of the remaining equity interest in Coleman will also receive five-year warrants to purchase 4.98 million shares of Sunbeam common stock at $7.00 per share. There can be no assurance that the court will approve the settlement as proposed. Although there can be no assurance, it is anticipated the Coleman merger will occur in the first quarter of fiscal 1999. (See Note 10 to the condensed consolidated financial statements.)

The Company believes its borrowing capacity under the New Credit Agreement, cash flow from the combined operations of the Company and its acquired companies, existing cash and cash equivalent balances, and its receivable securitization program will be sufficient to support working capital needs, capital spending, and debt service for the foreseeable future. However, if the Company is unable to satisfactorily amend the financial covenants and ratio requirements of the New Credit Facility or obtain a further waiver of the existing covenants and ratio requirements prior to April 10, 1999, the Company expects it would, at that time, be in default of the requirements under the New Credit Facility and, as noted above, the lenders could then require the repayment of all amounts then outstanding under the New Credit Facility.

NEW ACCOUNTING STANDARDS

See Notes 1 and 10 to the Company's condensed consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 131, DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION, SFAS No. 133, ACCOUNTING FOR DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES, Statement of Position ("SOP") 98-1, ACCOUNTING FOR THE COSTS OF COMPUTER SOFTWARE DEVELOPED OR OBTAINED FOR INTERNAL USE and SOP 98-5, REPORTING ON THE COSTS OF START-UP ACTIVITIES, which are required to be adopted for periods beginning after December 15, 1997. The adoption of these standards is not expected to have a material effect on the Company's consolidated results of operations, financial position, or cash flows, although actual charges incurred may be material due to Year 2000 issues, as discussed below.

YEAR 2000

The Company is in the process of assessing the impact of the Year 2000 on its operations, including the Coleman, First Alert and Signature Brands companies which were acquired by the Company in the spring of 1998. The Company established a Year 2000 Program Management Office in the third quarter of 1998 to conduct such assessment with assistance from three consulting firms. The Company's assessment encompasses the Company's information technology functions along with the impact of the effects of noncompliance by its vendors, service providers, customers, and financial institutions. Additionally, the Company is assessing the impact of noncompliance of embedded microprocessors in its products as well as equipment, such as security and telephone systems and controls for lighting, heating/ventilation, and facility access.

The Company relies on its information technology functions to perform many tasks that are critical to its operations. Significant transactions that could be impacted by Year 2000 noncompliance include, among others, purchases of materials, production management, order entry and fulfillment, and payroll processing. Systems and applications that have been identified by the Company to date as not currently Year 2000 compliant and which are critical to the Company's operations include its financial software systems, which process the order entry, purchasing, production management, general ledger, accounts receivable, and accounts payable functions, and critical applications in the Company's manufacturing and distribution facilities, such as the warehouse management application. The Company plans to complete corrective work with respect to the Company's systems by the second quarter of 1999 with final testing and implementation of such systems occurring in the third quarter of 1999. Management believes that, although there are significant systems that will need to be modified or replaced, the Company's information systems environment will be made Year 2000 compliant prior to January 1, 2000. The Company's failure to timely complete such corrective work could have a material adverse impact on the Company. The Company is not able to estimate possible lost profits arising from such failure.

NOT A CERTIFIED COPY

012006

16div-019225

The Company is in the process of contacting its vendors and suppliers of products and services to determine their Year 2000 readiness and plans. This review includes third party providers to whom the Company has outsourced the processing of its cash receipt and cash disbursement transactions. The Company plans to complete this review during the fourth quarter of 1998. The failure of certain of these third party suppliers to become Year 2000 compliant could have a material adverse impact on the Company.

The Company's preliminary assessment of the total costs to address and remedy Year 2000 issues, including costs for the acquired companies, is at least $50 million. This estimate includes the costs of software and hardware modifications and replacements and fees to third party consultants, but excludes internal resources. The Company expects these expenditures to be financed through operating cash flows or borrowings, as applicable. Through March 31, 1998, the Company had expended less than $1 million related to new systems and remediation to address Year 2000 issues, of which the majority was for software licenses and was therefore recorded as capital expenditures. Of the remaining estimated expenditures, it is anticipated that approximately 25% will be incurred by year-end 1998, with the remainder in 1999. A significant portion of these expenditures will enhance the Company's operating systems in addition to resolving the Year 2000 issues. As the Company completes its assessment of the Year 2000 issues, the actual expenditures incurred or to be incurred may differ materially from the amounts shown above.

After completing the assessment of the Year 2000 on its operations, the Company plans to establish a contingency plan for addressing any effects of the Year 2000 on its operations, whether due to noncompliance of the Company's systems or those of third parties. The Company expects to complete such contingency plan by September 30, 1999; such contingency plan will address alternative processes, such as manual procedures to replace those processed by noncompliant systems, potential alternative service providers, and plans to address compliance issues as they arise. Subject to the nature of the systems and applications which are not made Year 2000 compliant, the impact of such non-compliance on the Company's operations could be material if appropriate contingency plans cannot be developed prior to January 1, 2000.

SUBSEQUENT EVENTS

See Note 10 of Notes to the condensed consolidated financial statements for information relating to, among other matters, a change in management, litigation and anticipated asset impairment, inventory reserves and related liabilities.

RESTATEMENT OF RESULTS OF OPERATIONS FOR THE THREE MONTHS ENDED MARCH 30, 1997 COMPARED TO THE THREE MONTHS ENDED MARCH 31, 1996

The results of operations previously reported for the three months ended March 30, 1997 as compared with the three months ended March 31, 1996 generally understated the level of expenses incurred in 1997. Gross margin was previously reported to have improved 5.8 percentage points from the level achieved in 1996. After restatement, the gross margin improvement was 2.2 percentage points. Operating income was previously reported to have improved $19.2 million or 123.9% from 1996's first quarter to the first quarter of 1997. After reflecting the results of the restatement, operating earnings were $17.1 million for the first quarter of 1997, an improvement of $1.5 million or 9.9% from the prior year. On November 12, 1998, the Company filed a Form 10-K/A setting forth its restated financial statements for December 28, 1997 and December 29, 1996, and the fiscal years then ended. Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal years 1997 and 1998 as well as 1996 and 1995 are contained therein. (See Note 8 to the condensed consolidated financial statements.)

NOT A CERTIFIED COPY

012007

16div-019226

CAUTIONARY STATEMENTS

Certain statements in this Quarterly Report on Form 10-Q/A may constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, as the same may be amended from time to time (herein the "Act") and in releases made by the Securities and Exchange Commission ("SEC") from time to time. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. When used in this Quarterly Report on Form 10-Q/A, the word "estimate," "project," "intend," "expect" and similar expressions, when used in connection with the Company, including its management, are intended to identify forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. These Cautionary Statements are being made pursuant to the Act, with the intention of obtaining the benefits of the "Safe Harbor" provisions of the Act. The Company cautions investors that any forward-looking statements made by the Company are not guarantees of future performance. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements with respect to the Company include, but are not limited to risks associated with (i) high leverage, (ii) Sunbeam's ability to enter into an amendment to its credit agreement containing financial covenants which it and its bank lenders find mutually acceptable, or to continue to obtain waivers from its bank lenders with respect to its compliance with the existing covenants contained in such agreement, and to continue to have access to its revolving credit facility, (iii) Sunbeam's ability to integrate the recently acquired Coleman, Signature Brands and First Alert companies and expenses associated with such integration, (iv) Sunbeam's sourcing of products from international vendors, including the ability to select reliable vendors and to avoid delays in shipments, (v) Sunbeam's ability to maintain and increase market share for its products at anticipated margins, (vi) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a satisfactory level of customer service, (vii) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws, (viii) access to foreign markets together with foreign economic conditions, including currency fluctuations, (ix) uncertainty as to the effect of competition in existing and potential future lines of business, (x) fluctuations in the cost and availability of raw materials and/or products, (xi) changes in the availability and relative costs of labor, (xii) effectiveness of advertising and marketing programs, (xiii) economic uncertainty in Japan, Korea and other Asian countries, as well as in Mexico, Venezuela, and other Latin American countries, (xiv) product quality, including excess warranty costs, product liability expenses and costs of product recalls, (xv) weather conditions which can have an unfavorable impact upon sales of Sunbeam's products, (xvi) the numerous lawsuits against the Company and the SEC investigation into the Company's accounting practices and policies, and uncertainty regarding the Company's available coverage on its directors' and officers' liability insurance, (xvii) the possibility of a recession in the United States or other countries resulting in a decrease in consumer demands for the Company's products, and (xviii) failure of the Company and/or its suppliers of goods or services to timely complete the remediation of computer systems to effectively process Year 2000 information. Other factors and assumptions not included in the foregoing may cause the Company's actual results to materially differ from those projected. The Company assumes no obligation to update any forward-looking statements or these Cautionary Statements to reflect actual results or changes in other factors affecting such forward-looking statements.

NOT A CERTIFIED COPY

012008

16div-019227

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On April 23, 1998, two class action lawsuits were filed on behalf of purchasers of the Company's common stock in the U. S. District Court for the Southern District of Florida against the Company and certain of its present and former officers and directors alleging violations of the federal securities laws as discussed below (the "Consolidated Federal Actions"). Since that date, approximately fifteen similar class actions have been filed in the same Court. One of the lawsuits also names as defendant Arthur Andersen LLP, the Company's independent accountants.

The complaints in the Consolidated Federal Actions allege to varying degrees that the defendants (i) failed to disclose that the Company pre-sold approximately $50 million of products pursuant to its "early buy" marketing program in an effort to boost its 1997 sales and net income figures and (ii) made material misrepresentations regarding the Company's business operations, future prospects and anticipated earnings per share, in an effort to artificially inflate the price of the Company stock long enough for the Company to complete a $2 billion debt financing (supported with stock incentives) necessary to complete the acquisitions of Coleman, Signature Brands and First Alert, and for the individual defendants to enter into lucrative long-term employment agreements with the Company. Each complaint alleges two counts of securities fraud; one count against all defendants and one count against the individual defendants.

On June 16, 1998, the Court entered an Order consolidating all such filed and all such subsequently filed class actions and providing time periods for the filing of a Consolidated Amended Complaint and defendants' response thereto. On June 22, 1998, two groups of plaintiffs made motions to be appointed lead plaintiffs and to have their selection of counsel approved as lead counsel. On July 20, 1998, the Court entered an Order appointing lead plaintiffs and lead counsel (the "Smith Plaintiffs' Group"). This Order also stated that it "shall apply to all subsequently filed actions which are consolidated herewith". On August 28, 1998, plaintiffs in one of the subsequently filed actions filed an objection to having their action consolidated pursuant to the June 16, 1998 Order, arguing that the class period in their action differs from the class periods in the originally filed consolidated actions. On September 29, 1998, the Smith Plaintiffs' Group filed its memorandum in opposition to this objection.

On April 7, 1998, a purported derivative action was filed in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida against the Company and certain of its present and former officers and directors. The action alleged that the individual defendants breached their fiduciary duties and wasted corporate assets when the Company granted stock options to three of its officers and directors on or about February 2, 1998 at an exercise price of $36.85. On June 25, 1998, all defendants filed a motion to dismiss the complaint for failure to make a presuit demand on the board of directors of the Company. On October 22, 1998, plaintiff filed an amended complaint against all but one of the defendants named in the original complaint. The amended complaint no longer challenges the stock options, but instead alleges that the individual defendants breached their fiduciary duties by failing to have in place adequate accounting and sales controls, which failure caused the inaccurate reporting of financial information to the public, thereby causing an artificial inflation of the Company's financial statements and stock price.

On June 25, 1998, four purported class actions were filed in the Court of Chancery of the State of Delaware in New Castle County by minority shareholders of Coleman against the Company and certain of the Company's present and former officers and directors. An additional class action was filed on August 10, 1998, against the same parties. All of the plaintiffs are represented by the same Delaware counsel and have agreed to consolidate the class actions. These actions allege, in essence, that the existing exchange ratio for the proposed merger between the Company and Coleman is no longer fair to Coleman shareholders as a

NOT A CERTIFIED COPY

01 2009

result of the recent decline in the market value of the Company stock. On or about October 21, 1998, the parties signed a memorandum of understanding to settle these class actions, subject to court approval.

During the months of August and October 1998, purported class and derivative actions were filed in the Court of Chancery of the State of Delaware in New Castle County and in the U. S. District Court for the Southern District of Florida by shareholders of the Company against the Company, M&F and certain of the Company's present and former directors. These complaints allege that the defendants breached their fiduciary duties when the Company entered into a settlement agreement whereby M&F released the Company from any claims it may have had arising out of the Company's acquisition of its interest in Coleman and agreed to provide management support to the Company (the "Settlement Agreement"). Pursuant to the Settlement Agreement, a M&F subsidiary was granted five-year warrants to purchase up to an additional 23 million shares of the Company's common stock at an exercise price of $7.00 per share. These complaints also allege that the rights of the public shareholders have been compromised, as the settlement would normally require shareholder approval under the rules and regulations of the New York Stock Exchange ("NYSE"). The Audit Committee of the Company's board determined that obtaining such shareholder approval would have seriously jeopardized the financial viability of the Company which is an allowable exception to the NYSE shareholder approval requirement. An amended complaint has been filed on this action.

On September 16, 1998, an action was filed in the 56th Judicial District Court of Galveston County, Texas alleging various claims in violation of the Texas Securities Act and Texas Business and Commercial Code as well as common law fraud as a result of the Company's alleged misstatements and omissions regarding the Company's financial condition and prospects during a period beginning May 1, 1998 and ending June 16, 1998, in which the plaintiffs engaged in transactions in the Company's stock. The Company is the only named defendant in this action. The complaint requests recovery of compensatory damages, punitive damages and expenses in an unspecified amount. This action has been removed to the U.S. District Court for the Southern District of Texas and the Company has filed a motion to transfer this case to the Southern District of Florida, the forum for the Consolidated Federal Actions. Plaintiffs have moved to remand the case to Texas state court.

On October 30, 1998, a class action lawsuit was filed on behalf of certain purchasers of the Company's Debentures in the U.S. District Court of the Southern District of Florida against the Company and its prior Chief Executive Officer and Chief Financial Officer, alleging violations of the federal securities laws and common law fraud. The complaint alleges that the Company's offering memorandum used for the marketing of the Debentures

NOT A CERTIFIED COPY

012010

16div-019229

contained false and misleading information regarding the Company's financial position and that the defendants engaged in a plan to inflate the Company's earnings for the purpose of defrauding the plaintiffs and others. The Company is seeking to consolidate this lawsuit with the other Consolidated Federal Actions.

The Company intends to vigorously defend each of the foregoing lawsuits, but cannot predict the outcome and is not currently able to evaluate the likelihood of the Company's success in each case or the range of potential loss. However, if the foregoing actions were determined adversely to the Company, such judgments would likely have a material adverse effect on the Company's financial position, results of operations and cash flow.

On July 2, 1998, the American Insurance Company ("American") filed suit against the Company in the U.S. District Court for the Southern District of New York requesting a declaratory judgment of the court that the directors' and officers' liability insurance policy for excess coverage issued by American was invalid and/or had been properly cancelled by American. The Company has moved to transfer such action to the federal district court in which the Consolidated Federal Actions are currently pending; American is opposing such motion. On October 20, 1998, an action was filed by Federal Insurance Company in the U.S. District Court for the Middle District of Florida requesting the same relief as that requested by American in the previously filed action as to additional coverage levels under the Company's directors' and officers' liability insurance policy. The Company intends to pursue recovery from all of its insurers if damages are awarded against the Company or its indemnified officers and/or directors under any of the foregoing actions. The Company's failure to obtain such insurance recoveries following an adverse judgement against the Company in any of the lawsuits referred to above could have a material adverse effect on the Company's financial position, results of operations and cash flow.

The Company and its subsidiaries are also involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these routine matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company.

NOT A CERTIFIED COPY

012011

16div-019230

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits*

3	Bylaws of Sunbeam Corporation, as amended.
10.a	Credit Agreement dated as of March 30, 1998, among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank America National Trust and Savings Association and First Union National Bank.
10.b	First Amendment to Credit Agreement dated as of May 8, 1998, among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., Bank America National Trust and Savings Association and First Union National Bank.
10.c	Indenture, dated as of March 25, 1998, by and among the Company and Bank of New York, as Trustee, with respect to the Zero Coupon Convertible Senior Subordinated Debentures due 2018.
10.d	Registration Rights Agreement dated March 25, 1998, by and among the Company and Morgan Stanley & Co., Inc., with respect to the Zero Coupon Convertible Senior Subordinated Debentures due 2018.
27	Financial Data Schedule, submitted electronically to the Securities and Exchange Commission for information only and not filed.
99.a	Press Release dated May 11, 1998, regarding first quarter 1998 earning and restructure of the Sunbeam acquired companies.

* All of the foregoing Exhibits were filed with the Company's report on Form 10-Q for the first quarter of 1998.

(b) Reports on Form 8-K

The Company filed Reports on Form 8-K on April 13, 1998 as amended by Form 8-K/A filed on May 11, 1998.

NOT A CERTIFIED COPY

210212

16div-019231

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SUNBEAM CORPORATION

BY: /S/ BOBBY G. JENKINS

Bobby G. Jenkins
Executive Vice President, and
Chief Financial Officer
(Principal Financial Officer)

Dated: November 25, 1998

NOT A CERTIFIED COPY

012013

16div-019232

EXHIBIT INDEX

EXHIBIT	DESCRIPTION
27	Financial Data Schedule

NOT A CERTIFIED COPY

012014

16div-019233

EXQUISITE SAVINGS. aficionado CUBA
GIVE SUBSCRIP TO CIGA AFICION
Jun 21, 2004
Sign in | E-mail | Site Map
go!
cigar aficionado home

SIGN IN
WHAT'S NEW
FORUMS
CIGAR RATINGS
CIGAR INSIDER
ONLINE NEWSLETTER
RETAILERS
PEOPLE
RESTAURANTS
CIGAR STARS
THE LIBRARY
TRAVEL
DRINKS
THE GOOD LIFE
EVENTS
SPORTS/GAMING
SUBSCRIBE
ADVANCED SEARCH
BACK ISSUES
HELP
click here COHI
Online Advertising Info
Please sign in

Ron Perelman

Ron Perelman is one of the wealthiest men in America. In 15 years, he has taken a modest investment in a jewelry company, Cohen Hatfield Industries, and built a powerful portfolio of companies with combined revenues of about $7.8 billion. *Forbes* estimates his personal fortune at $4.5 billion.

The story of Perelman's rise to the top of the corporate world parallels the extraordinary economic expansion of the 1980s. He built his fortune by buying and building companies, unlike corporate raiders who merely bought and sold companies during that period.

Perleman's holding company, MacAndrews & Forbes, has a portfolio that includes Revlon (comestics and personal-care products), Marvel Entertainment (youth marketing, including Toy Biz, Fleer trading cards and Marvel comic books), the Coleman Company (outdoor recreation equipment), New World Communications Group (television broadcasting, production and distribution), Mafco Worldwide (flavors), Meridian Sports (water sports, including Boston Whaler boats), First Nationwide Bank (multistate banking), National Health Laboratories (clinical diagnostic-testing laboratories) and Consolidated Cigar Corporation (cigars).

Today, Perelman's efforts are focused on building a television-broadcasting empire. He is mentioned in the same breath as Rupert Murdoch, Ted Turner and Time Warner. Because of Murdoch's $500 million investment in Perelman's television stations, which are now affiliated with Murdoch's Fox Network, Perelman is even seen as a potential competitor against the big three networks: NBC, ABC and CBS. At the same time, he has used his investment in Marvel Entertainment to build a portfolio of marketable "action characters" similar to the Walt Disney Company model of animated characters.

NOT A CERTIFIED COPY
012016
MS 288
6/24/04

Throughout this extraordinary period of success, Perelman has remained one of the least-known businessmen in the country. He has frequently been photographed at society events (holding an ever present cigar), but has never before given a one-on-one, question-and-answer interview.

In this wide-ranging session with *Cigar Aficionado* Editor and Publisher Marvin R. Shanken, Perelman discusses his love of cigars and his investment in Consolidated Cigar Corporation, as well as how he has built his business. He shares his own major disappointment, the acquisition that got away--Gillette. Perelman also talks for the first time about his relationship with investment banker Michael Milken and about his firm belief that there's nothing wrong with making money.

Perelman: This is my first interview.

Shanken: Ever?

Perelman: Yes.

Shanken: In *New York* magazine it said you rarely give interviews.

Perelman: This is the first one. I've given background before, but never a Q&A.

Shanken: All the stories I've read about you have a lot of information, but they're never in first person. I'm flattered and honored.

Perelman: It's a pleasure to be here. I've always been afraid of the press. My point of view is that the press could never do me any good, just a lot of harm. And as a result, I just tried to avoid the press. Then we got to a point where that was impossible. I've finally come out of the closet a bit.

Shanken: Let's get right into the interview. It's very unusual for someone to buy a company, sell the company and then buy the same company back, as is the case with Consolidated Cigar Corporation. It's particularly novel when we're talking about a product like a cigar, which is so personal to you. Could you tell us why you acquired Consolidated, why you then sold it and why you decided to buy it back?

Perelman: It's actually very simple. We first saw the company when Gulf & Western owned it. I had negotiated with Charlie Bludhorn and Martin Davis. We reached all the economic points of agreement, but the deal fell apart on technical issues, such as the representations and warranties that we had wanted from Gulf & Western, and that they were reluctant to give. [Consolidated] then ended up being sold in a management buyout. This management group ran into some real personality issues among themselves and ended up in serious litigation, with [Consolidated] suffering because of the lack of a focused manager. I reached out to one of the management group to see whether they'd be interested in selling.

NOT A CERTIFIED COPY

012017

16div-019235

Of course they said yes, and we very quickly negotiated a transaction.

Shanken: Did you want to buy Consolidated because it was a business that held a lot of potential for growth or was it because it was a cigar company?

Perelman: I have stayed away from buying companies that I don't think I'd enjoy owning. That's from the point of view of having a product that I think makes people happy or a product that does some good or a product that is just fun and interesting to own and operate. And Consolidated Cigar fit all that. It's a company that I thought had an enormous amount of potential but also had a product that I thought brought people a lot of pleasure. It's also a product that I've got some identification with because I'm such a strong smoker. We bought it, and Theo Folz, who is currently the chief executive officer, was wooed away from another company to join us, and he's done a fabulous job. Then it reached the point where I thought that from a financial point of view we were offered a very attractive price for the company, and I agreed to sell it.

Shanken: Was it for sale?

Perelman: No, it wasn't for sale.

Shanken: An investor came to you and said we'd like to buy your cigar company?

Perelman: The LBO funds were very flush with capital, they needed to do transactions, and they were paying up for transactions. And from a financial point of view, the deal was an interesting transaction. But I still really liked the company and really liked the product, so that when I heard that they wanted to sell it again out of the LBO fund, we approached them and said we have serious interest, and in very short order, we negotiated a transaction and bought it back.

Shanken: When you bought it back, you paid a substantially higher price.

Perelman: Yes.

Shanken: You sold Consolidated at what you thought was a very high price in 1984. And then you bought it back at a price well above what you sold it for? According to published reports, you paid $118 millionfor it in 1984 and sold it for $138 million in 1988 and then reacquired it for $188 million in 1993.

Perelman: Theo did a fabulous job in the two years that he ran it for the LBO fund, and it was worth more when we bought it back than it was when we sold it. So it still was a very interesting financial transaction for us to buy it back. I'm glad to be back in the business. I love the business.

NOT A CERTIFIED COPY

012018

16div-019236

Shanken: How do you decide which companies you are interested in buying?

Perelman: There's a financial profile for the companies that we'll buy and won't buy. They've got to be stable cash-flow generators, they've got to be non-capital-intensive cash-flow generators, they've got to be nonfashion and nonfad and non-high-tech. And other than these two categories--fashion and high-tech--we'll look at anything. I look with more interest at companies that excite me with their product line.

Shanken: You say nonfashion and non-high-tech. Isn't Revlon fashion?

Perelman: No. It might be in a given year. In a certain season, certain fashion colors--that this year reds are more popular than the pinks--but we just change the blend a little bit. Cosmetics are a product that has been around for thousands of years and will be around for thousands of years in the future, and you know, besides a slight variation in color, there's really no shape difference or length difference.

Shanken: In terms of Consolidated, it seems as though the repurchase in 1992 was perfectly timed to go with the cigar renaissance. Maybe you didn't know it six months before, but it was very clear six months later that there was something exciting going on in the cigar market. What is your outlook for the future of cigar smoking, given the social climate and the antismoking restrictions and regulations that seem to be spreading across America?

Perelman: We're very optimistic about consumption in the long term. The baby boomers have shown a real interest in smoking cigars. You now have real public cigar smokers--celebrities, sports figures, movie personalities and the like--so that there is sort of an endorsement by the celebrities of cigar smoking and the pleasures associated with it. There are more smokers now than, say, five years ago, but of course consumption is way down from its peak.

Shanken: But are you concerned about owning a business in an industry that has so much negative pressure and restrictions from government? It's not cigarettes, but cigars still suffer from the same smoking restrictions.

Perelman: It's less pressure from government than it is social pressure as to where cigar smoking is permitted and socially acceptable. But I think even that is changing a bit. I think restaurants that previously would not allow cigar smoking are now becoming more lenient. If they allow cigarettes, they'll allow cigars in the same smoking section. And I think that gradually the public is getting more used to and more accepting of cigar smoking in public restaurants and other facilities. We are very optimistic on cigar usage and consumption.

NOT A CERTIFIED COPY

012019

Shanken: Earlier, you said you like companies with stable cash flows that don't need a lot of additional investment on the part of the buyer. But you bought a company that today, due to sharply increased sales,has a very significant back-order situation: it is not able to produce and ship enough cigars to meet retail orders or the demand in the marketplace. Do you have plans to expand your facilities and your manufacturing personnel? What has your directive been to Consolidated to handle this happy problem?

Perelman: We are looking at expanding our facilities both in physical size and capacity vis-à-vis the workforce. But that is a slower process because skilled hand laborers are required, and it is not something that can be taught overnight. But, clearly, we are committed to filling the demand as it continues, we hope, to increase. The managers will do whatever they think is necessary to run the business efficiently. If it means counting a higher level of income to support a higher level of sales, they would just do that routinely.

Shanken: Have you discussed with Consolidated's management new brands, new approaches, new marketing? Consolidated is the largest producer of cigars in America, both in the midprice, as well as...

Perelman: Mass market.

Shanken: Right. And you have a number of different brands . Has there been a reexamination of investment for advertising or for marketing? So far, you've concentrated on only a few of your brands. Are there any plans at this point to become more aggressive given the strong U.S. market for cigars?

Perelman: I don't think so. I think we've got brands that have been established for many years, particularly the old Cuba brands. On the mass-market and premium-mass level, we are coming out with some new products; but on the premium level, we're just going to be consistent supporters of our existing brands, and unless an acquisition of an existing brand comes along, we're just going to support our existing brands.

Shanken: What are the sales of Consolidated?

Perelman: Around $130 million. In 1994, premium cigar units [from the Dominican Republic, Honduras and Mexico] sold were 40 million and mass-market cigar units were 900 million.

Shanken: Do you recall what it was 10 years ago when you originally bought it?

Perelman: It was around, I would guess, $85 million to $100 million, something like that.

NOT A CERTIFIED COPY

012020

16div-019238

Shanken: And now it's $130 million. Is the level of profitability greater?

Perelman: Much greater.

Shanken: Consolidated owns a number of prestigious Cuban brand names--like H. Upmann, Montecristo and Por Larrañaga. How do you plan to take advantage of these trademarks when the trade embargo with Cuba is lifted?

Perelman: I think when that happens--and it's probably more likely than ever to happen in the next five years--we'll have to see what opportunities exist for us to take advantage with regard to Cuba.

Shanken: Well, do you plan to establish operations in Cuba when the embargo's lifted?

Perelman: I think we'll wait and see what the world looks like then. You know, clearly, when Cuba opens up, there's going to be a market for Cuban cigars, and we are going to want to be a player in that market. If you look at the pricing of a Cuban cigar currently sold in Europe and the Far East, it's a $15-plus cigar. The likelihood of it replacing the current $5 to $6 premium product in the United States is not great. But there will be a segment that will pay the price to buy a Cuban cigar. But those cigars will have to be blended in and layered on top of the existing pricing structure and the existing products available. We'll have to see what the opportunities are then. It won't happen overnight.

Shanken: Isn't it every cigar lover's fantasy--like a wine lover's to have a château and a vineyard in Bordeaux--to have a factory, a business in Cuba?

Perelman: If you're asking me whether I'd ultimately like to be there, absolutely. But we'll have to see what the opportunities are at the time.

Shanken: But it almost doesn't even have to be a sound business judgment.

Perelman: Yes, it does.

Shanken: On Route 29 in Napa Valley there are over 200 wineries of which probably 50 wineries were uneconomic from day one. All the wineries were built in the last 15 years without any regard to investment or business reality. Rich people came in, they wanted to have a winery, they wanted to build a château. They'll never make a profit. The standing wine-industry joke is: Do you know how to make a small fortune in wine? Start with a large one.

Perelman: We've been very disciplined in staying away from nonfinancial, ego-gratification-type businesses.

NOT A CERTIFIED COPY

012021

16div-019239

Shanken: Just this one time, Ron?

Perelman: OK. If the right opportunity comes along, it might be interesting. And we'll look at it anyway.

Shanken: What kind of cigars do you smoke?

Perelman: They [Consolidated Cigar] actually do an H. Upmann for me at about a 38 ring gauge, a long, narrow cigar that I love.

Shanken: Is that the only cigar you smoke?

Perelman: I'm smoking one of yours now, which is great. I'm going to come back here once a week and smoke cigars.

Shanken: When you sold Consolidated did you continue to smoke H. Upmann?

Perelman: No. I wasn't getting the product then. I was smoking Davidoff, a little bit of Cohiba. But our cigars coming out of the Dominican now are very close to--if not as good as--the Cuban product that I was getting.

Shanken: Have you ever visited Cuba?

Perelman: No. I've been scheduled to visit and unfortunately had business conflicts, but I am very anxious to go down. Absolutely.

Shanken: Do you recall how you first got interested in cigars? Did your father smoke cigars? Did your grandfather?

Perelman: I remember specifically. I was about 26 years old, and I was at a meeting with about 12 people, and the meeting was dragging and dragging and dragging. Across the table from me was one of our lawyers, who pulled out a cigar, and I'd never thought about smoking, but it looked like he was enjoying it to such a great extent that I wanted to try one. So I had one that day, and from that day on, I have smoked cigars.

Shanken: Had you smoked cigarettes before then?

Perelman: No.

Shanken: Who was the lawyer? He deserves recognition.

Perelman: Laddie Montague.

Shanken: Your father has never smoked cigars?

Perelman: No.

NOT A CERTIFIED COPY

011202

Shanken: Has he ever commented on your smoking cigars?

Perelman: No.

Shanken: Why do you think people like you and me and all the Cigar Aficionado readers out there have been drawn to cigars? What is the pleasure? What is the factor that makes us so passionate?

Perelman: I think it gives real pleasure. It gives me a sense of relaxation that almost nothing else does--except maybe a glass of wine. It gives me a real sense of being able to have a moment of luxury in the middle of whatever I'm doing.

Shanken: Tell me, because the people reading this magazine have the same frustrations as you do. Do you steer clear of restaurants that don't welcome your cigar? Or do restaurants accommodate you because you're Ron Perelman?

Perelman: No. I think I pretty much gravitate toward restaurants that allow cigar smoking, partly because it's so important to me to smoke, particularly after dinner. But from a purely financial point of view, if somebody is not going to support my business, I'm certainly not going to support their business. I think that today, most of the good restaurants, particularly in New York, do allow smoking.

Shanken: What are some of your favorites where you know you're welcome to smoke?

Perelman: '21' Club, Le Cirque, Coco Pazzo, Harry's. They're mostly restaurants that have an old New York flair, like '21,' or a heavy European clientele who have been and continue to be strong cigar smokers.

Shanken: I assume when you travel outside the United States it's a nonissue.

Perelman: It's a nonissue. The biggest problem is in California because there nobody smokes. No place.

Shanken: So what do you do?

Perelman: I don't smoke.

Shanken: Maybe it's time to buy a restaurant in California.

Perelman: The laws there are stronger for smoking sections and prohibition than anyplace else. There is a real animosity toward smokers amongst the patrons.

NOT A CERTIFIED COPY

01/2023

16div-019241

Shanken: The crime is that there are more serious and sophisticated and knowledgeable cigar aficionados in L.A. than maybe anywhere else in America. I mean they really love their cigars, and for these people to have so few places to go, has to be frustrating.

Perelman: There are cigar dinners. But it's probably the most health-conscious community in America.

Shanken: Let's move on. You've looked at many different industries, and by owning Revlon, among others, you must be an experienced judge of consumer advertising. Is the cigar industry's advertising of premium cigars up to par?

Perelman: No. I think it's very boring. I think it's much too laid back. I think that it's not of the new generation of smokers yet. I think that will come. Now with the resurgence of interest, I think just by definition you're going to get a better quality marketing program, including advertising. But that has not yet appeared.

Shanken: The big impetus for the cigar industry is young guys in their 20s and early 30s who've entered the market for the first time. They represent a huge opportunity. And on a much smaller scale, women. It doesn't seem like anyone has gone after those markets, each of which may represent a big marketing opportunity. Why is that?

Perelman: I think you're right. I think the younger smokers will start to be viewed much more seriously by the manufacturers. Women are still very rare. It's sometimes used today by a woman as a device to show that she's hip or liberated or a worldly person. The industry has tried for years to induce and entice women to smoke, and it hasn't worked.

Shanken: Let me move to a few other subjects. The recent creation of New World Communications attracted a significant investment from another significant media player, Rupert Murdoch. The deal has catapulted you into being a major player in the media world. How do you envision the television-broadcasting world changing? What do you see for the future? How did you create, almost overnight, this major television business?

Perelman: We were presented with a transaction a little over a year ago to buy the old SCI stations, which was our first station group. It was a very intriguing financial acquisition. There were seven stations, top 20 markets. It was Detroit, Atlanta, San Diego, Boston, Milwaukee, Cleveland and Tampa. Good markets. We were able to buy those at a price of slightly less than six times cash flow. It was a very good financial transaction. We had never put on our screen that one of our top industries to go into was TV broadcasting. But that transaction made such enormous sense that we entered the industry. We then decided once we were in it to be really in it. We contracted to buy two other station

NOT A CERTIFIED COPY

012024

16div-019242

groups, the old GACC (Great American Communications Company) and Argyle Communications stations. On a parallel track, we had several years ago purchased a small television producer called New World Entertainment. And putting the two together made enormous financial sense to both companies, in that we had a captive market for the production of our product. Out of the blue comes Rupert, who wants to increase his affiliation base, and we were able to do a transaction that allows us a 10-year affiliation agreement with Fox.

Shanken: Fox had just gotten the NFL?

Perelman: Right. The fact that CBS lost the NFL, and the fact that Fox got the NFL were important to us. We got an investment of somewhere around $500 million and, at the same time and probably more important than either of those two, we got programming clearances--not commitments, clearances--on the Fox-owned-and-operated stations. So that we now have, between our o&o's [owned and operated] and the Fox o&o's, about a 45 percent carry of our product. We have a station base now that allows us to clear 45 percent of the country from day one, which was as important as any of the other two elements in the transaction.

Shanken: Murdoch came to you with this proposal?

Perelman: The proposal came about at a meeting between Bill Bevins, who runs New World, and Murdoch.

Shanken: You were able to get fresh capital so that on a market-value capitalized basis, it put the value of the business at a much higher level.

Perelman: It was a good move for everybody. And that's the best kind of deal: when both players leading the transaction are happy that it's a fair transaction.

Shanken: And how did it come about that you then acquired the production business of Brandon Tartikoff?

Perelman: I thought that he was a known talent--he is a brilliant TV programmer. He had left two corporate positions--one at NBC and one at Paramount--to set up his own entrepreneurial company. We came along at a crucial point for him when he was at a crossroads of whether to continue his own business or affiliate with a larger company. It was a perfect marriage of facilities and talent. And he's a fabulous guy.

Shanken: Of course there's the Marvel Comics situation, too. I can't imagine that when you bought Marvel you had any idea what a score that was going to be.

NOT CERTIFIED COPY

012025

16div-019243

Perelman: That's correct.

Shanken: Having said that, you now have those comic-book characters who are available to you in terms of producing movies and other programming. You almost could be a mini-Disney.

Perelman: Right. It is a mini-Disney in terms of intellectual property. We are a developer of characters just as Disney is. Disney 's got much more highly recognized characters and "softer" characters, whereas our characters are termed as action heroes. But at Marvel we are now in the creation and marketing of characters. The comic-book business--which was 95 percent of the business when we bought Marvel--today represents about 15 percent of the business.

Shanken: There was a significant piece in The Wall Street Journal four years ago where you were labeled a corporate raider. But it has really come down to the fact that you are a business builder, which is far different from a raider. You started in business with your father many years ago. Do you feel that the experiences with your father were in large part your MBA program?

Perelman: My experiences and education in working with and for my father were probably the most valuable that I've done and certainly at least as valuable, if not more so, than an actual MBA that I got in 1966. We had a unique working relationship. He allowed me--even forced me--to take on responsibility and authority at a very young age, far beyond what I thought was my capacity. So that very early on I got a lot of experience in dealing in the operations of businesses. And I grew up operating businesses. I left the family business in 1979 over an issue that I really wanted to start out on my own. It caused some tension initially, which we subsequently removed. But my experiences and education in working at the family business were absolutely critical in the development of my capacity.

Shanken: Your father is alive today?

Perelman: Yes.

Shanken: He must be very proud of you.

Perelman: You'll have to ask him.

Shanken: What and when was your first real break? I am sure that whatever it was, it had high risk.

Perelman: The core was a company called Cohen Hatfield Industries that I purchased control of in 1979. It was a low-risk transaction. It was then in the wholesale and retail jewelry business. And I bought 40 percent of the stock from one seller. It was an American Stock Exchange-listed

NOT A CERTIFIED COPY

012026

16div-019244

company, and I bought it at, I think it was 35 percent of stated book value, and stated book value was understated by about 40 percent because gold and diamonds had started a real run-up at that time. The point was to get out of the jewelry business and use those proceeds to invest in a business that I felt more comfortable with. Our first large transaction after Cohen Hatfield was MacAndrews & Forbes.

Shanken: How big was the jewelry company at the time?

Perelman: Sales of under $50 million, $40 million or $50 million. I bought my 40 percent for about $1.5 million.

Shanken: That isn't bad.

Perelman: And that allowed us to take the next step of buying MacAndrews & Forbes, which was a New York Stock Exchange company, and their two businesses, plus cash--they had just gotten out of the textile and fiber business, and they had about $15 million in cash. They were in the chocolate business. They were the largest independent manufacturer, other than Hershey, of chocolate for food manufacturers, and they were in the licorice business, being the largest supplier of licorice extract to the tobacco industry.

Shanken: And how big was that company?

Perelman: They did probably $120 million. We then sold off the chocolate business.

Shanken: You bought all of MacAndrews & Forbes?

Perelman: We bought the whole company. It was a public company. We did a public tender.

Shanken: And what did it cost to buy the company?

Perelman: About $45 million to $50 million. We then sold off the chocolate business for the $45 million that we had paid for the whole thing. We were left with the licorice business. But if you look at 80 percent of the transactions that we've done, except for synergistic transactions within existing companies, they were companies that had several unique operations with a core business that we wanted to keep, and other unique or separate businesses that we wanted to exit from.

Shanken: How did you finance the MacAndrews & Forbes acquisition, since that was your first big purchase?

Perelman: We did it with funding from the banks, primarily Chase and First National Bank of Boston, and then found ourselves in a position to quickly repay that because of the sale of the chocolate business. We

NOT A CERTIFIED COPY

012027

16div-019245

effectively ended up owning the flavors business for nothing.

Shanken: So Technicolor came after that?

Perelman: And Technicolor had the same profile. We paid $125 million for Technicolor. It was clear that their theatrical film processing/videocassette business was a business we wanted to consider a core business and build on. It had four or five peripheral businesses that we wanted to immediately exit from. And we got about half our purchase price back with the sale of peripheral businesses, and we were left with a core business that we could grow. We took that business from a $5 million cash-flow generator when we bought it to just under a $100 million cash-flow generator when we sold it.

Shanken: When you bought Revlon, what year was that?

Perelman: '86.

Shanken: From the media coverage at the time, it seemed that the Revlon purchase ended up forcing you to dig in and get involved with the nuts and bolts of the company right down to the local plants and so forth. Did you know going in that this was going to be such a complicated high-risk investment?

Perelman: Well, it was neither complicated nor high risk. It was a highly visible investment. It was a highly thought-out transaction. It was probably the largest entrepreneurially managed hostile takeover to date in 1986. And as such it got an enormous amount of press attention. But the profile of the company was exactly what I had described earlier. Revlon was a company that had several pieces, some of which we clearly wanted to sell immediately, some of which we wanted to hold for a longer period of time, and some we wanted to hold forever. And the piece that we were most attracted to was the cosmetics piece.

Shanken: So there was never a time when you stayed up all night, saying what the hell have I got myself into?

Perelman: No.

Shanken: So a lot of the press reports were false?

Perelman: I'm not saying that everything went as I had planned, but there was never a point where I said to myself, why did I get myself into this?

Shanken: I'm aware of many of your investments. They all seem to be very successful. What was your biggest failure?

Perelman: Hmmm.

NOT A CERTIFIED COPY

012028

16div-019246

Shanken: Have you had any failures?

Perelman: Well, I think Revlon has been the most difficult company for us to manage. I think that we fixed it early on in 1986 when we bought it. Then we did not pay enough attention to it for a while, and it suffered from that.

Shanken: How can you not pay attention to a business doing $2 billion or $3 billion?

Perelman: Because we started paying attention to other things. We were at the same time doing a series of other transactions. We had bought a bank in Texas, which required a lot of our time and attention. Over the last two years, we've gotten Revlon to the point where it's better than ever, and I am very happy with that. I am very proud of that.

Shanken: When you bought Revlon, what was its cash flow? What is its cash flow today?

Perelman: Cash flow was about $15 million in 1984, 1994 cash flow was around $200 million and 1995 significantly higher than that. There's been a very good job done in the business of Revlon.

Shanken: Is there any one company that you get more involved in the day-to-day managing, or at this point are you pretty much an overseer of all the businesses?

Perelman: I divide my time close to equally among them all. Every month we have in-depth management meetings on the operations of each of the units. Depending on the company, I'll either get daily or weekly or, in some cases, monthly numbers. But today the businesses have been in our portfolio long enough that we've got a shorthand with operating management of those companies. They know what to be sensitive to and what surprises they want to alert me to, so that they're not surprises. They understand their businesses very well.

Shanken: It's fair to say, at this point, that each business, is run by a...

Perelman: Each of our businesses is run by an independent decentralized manager.

Shanken: With a strong leader.

Perelman: With a very strong manager.

Shanken: I want to go back to this corporate-raider image. Obviously, the title was in vogue, so that anyone who bought a business was a corporate raider. Is there any particular reason why they threw you into the pot with all the others if you have basically stayed with the

NOT A CERTIFIED COPY

012029

businesses that you've acquired?

Perelman: At the time I think that anyone doing a hostile deal--Revlon clearly was a hostile transaction--was termed a "raider." And we got sort of locked into that, into that timing.

Shanken: There were a few deals that you ended up walking away from or that they paid you off or bought your stock back. Were there any deals that you didn't conclude that you regret?

Perelman: There is only one deal that fell into that category of walking away from it. In others we were overbid. But there was only one transaction where we sold the stock back to the company. That was Gillette. And that was probably the deal that was the biggest disappointment.

Shanken: Because it got away or because you really believed that this was a business you could grow?

Perelman: I think it was a transaction that had fabulous potential as evidenced by the fact of what it's done. And a transaction that we desperately wanted to get accomplished and...

Shanken: Who blocked you? What happened?

Perelman: It was a New York Stock Exchange company. What happened was very interesting. We had made this tender for Gillette. The company was very aggressive in fighting to remain independent and there came a point.... The fighting didn't bother me. There came a point when their investment banker, Eric Gleacher from Morgan Stanley, who had been our investment banker in Revlon, came up to me on a Sunday morning and said they will sell a blocking preferred [a block of stock that makes it more difficult to put together a controlling percentage of stock] at 20 percent to another corporate institution. We didn't hear the name at that time. It turned out to be Ralston Purina, and we were faced on that Sunday with the prospect of fighting two corporate establishments and a different kind of capital structure. With Ralston having a 20 percent blocking preferred, that made it appear very difficult for us to get that transaction completed. During the day on Sunday I agreed to sell our stock to Ralston. Gillette came back to us in the middle of the night and said they were unable to finalize their agreement with Ralston, and would we sell the stock to [Gillette] that night? And they'll sell the stock to Ralston the next day. And I agreed to do that. Probably one of the worst decisions I've ever made. And the rest is history. They never did the deal with Ralston and remained independent.

Shanken: How big an investment was it that you sold to them?

Perelman: In dollars, probably $800 million.

NOT A CERTIFIED COPY

012030

16div-019248

Shanken: And did you make a profit on the sale?

Perelman: Yes.

Shanken: A substantial profit?

Perelman: I don't remember what it was. It was in excess of $50 million.

Shanken: What was it? They wanted to remain independent, or they didn't want Ron Perelman?

Perelman: I think they wanted to remain independent. I think that who took them out of their independent status was far less significant than...

Shanken: Who did?

Perelman: Nobody did. They never did the deal with Ralston Purina, and they just started performing up to the levels that we thought all along they could perform at and they ultimately did a deal with Warren Buffett. They did a preferred with Warren Buffett, who gave them the money to pay back the banks for the stock they bought from us, and then they took Buffett out. A brilliant deal for Buffett.

Shanken: At what point did you start doing business with Drexel? Early on?

Perelman: Definitely. Probably 1980.

Shanken: And Drexel was...Michael Milken?

Perelman: It was a whole group of people.

Shanken: You knew Milken intimately. Did the man get a bum rap, or did the man get what he deserved? What do you think about this whole chapter in American business history?

Perelman: I can speak only from my personal knowledge. He's brilliant. He's sensitive. He's caring. He's a unique individual. During the entire time that we did business together. It was for a period of six or seven years, and never was there a suggestion or hint of doing anything that was improper. Not just illegal, improper. I mean, legality never entered into it. So with us, there was never even a hint of any impropriety. I think that Michael's biggest problem was that he created a product that allowed for capital availability to a whole segment of the business community that did not have that kind of capital availability before.

Shanken: Companies were at the mercy of the commercial bank, and all of a sudden with junk bonds they had access to new and more flexible financing?

NOT A CERTIFIED COPY

012031

16div-019249

Perelman: Resources beyond anybody's wildest imagination. And I think that this in and of itself concerned a lot of people. It concerned corporate America; I think it concerned some of the political structure, and I think there was a great fear over the product and, in turn, of Michael. I think that brought about a lot of the concern and the antagonism toward Michael and toward the product.

Shanken: I'm sure from time to time you have thought about Michael Milken, and I would assume that as any friend you feel a certain amount of sadness that he spent the past few years in prison and now he's very sick. Is there a moral to this story?

Perelman: I don't know, you tell me. I think your observation of this is the same as pretty much anybody else's. I think there was a change of times. I think that the '80s were very different than the '90s, and I think looking back at them we wonder how we did some of the things we did in the '80s, how we bought some of the things we bought on a personal consumption level. It was a different time than now. I don't know if there's a moral here. I think there's a shift in attitudes and values.

Shanken: Is it that had he not been as great a success as he was, perhaps no one would have bothered to put him out of business and lock him away?

Perelman: I think there's probably a lot to that. I think there was a lot of fear created about what was going on in the country, and in large part, the fears were focused on Michael and the product that he created. He became sort of the symbol of the '80s.

Shanken: On the flip side, you can ask yourself: Should one man make a billion and a half dollars a year, and his brother a half billion?

Perelman: But America is not about legislating economic success. I mean, you might tax it, but don't legislate against it. This country has been built in large measure by the entrepreneurs who came out with either a concept, or an idea, or a product or a way of doing business.

Shanken: As far as I know, Ron Perelman is untainted. But you're up there, and people want to take shots at a guy who's successful, visible. Do you think sometimes that somebody's going to want to get you?

Perelman: I think that we've been very diligent about making sure that what we do is not only legally correct and morally correct but has the appearance of both. I think that early on I recognized that we would be doing business in arenas that were new to me. And as such, I surrounded myself with a lot of talent--legal talent, financial talent--to make sure that everything we did, was and looked and smelled proper and correct. And I think that's been very important to us in the past and will continue to be important to us in the future.

NOT A CERTIFIED COPY

012032

Shanken: One of the things I read about also is that you have this small group of associates who not only are bright, but you are all great friends. As the story goes, you have breakfast together every day, you have lunch together every day. When you and I had lunch last month, you brought two of them along. Who are these people and what are their roles in this senior management group?

Perelman: Well, the first senior executive that joined the company was Bruce Slovin, who had been the second most senior guy at Hanson Industries--a Harvard-educated lawyer. He started out and continues to be primarily associated with acquisitions. Then, probably my longest and dearest and closest friend in the world, Howard Gittis, who was my lawyer when I was in Philadelphia. He was the managing partner of Wolf, Block, Schorr and Solis-Cohen and was considering a change of career about 10 years ago. And I said if you're going to change your career, there's only one career path that you're going to be on, and he joined us. He's the senior administrative officer. And then Donald Drapkin, who had been our partner at Skadden Arps, likewise reached a point where he was thinking about a change of career, and I made the same speech to him that I made to Gittis and he joined us at that time, and he's basically our in-house strategic thinker. He's our in-house investment banker.

Shanken: Are you like brothers?

Perelman: In a lot of ways, we are. We have been very fortunate to have within the enterprise a unique relationship.

Shanken: You are very lucky then. What do you say to yourself when you think about what you've accomplished in your career? Your career isn't over?

Perelman: I hope not. I try not to think about it in that kind of way. I think I've been enormously fortunate. I am a great believer that you don't do everything on your own, that there's in fact a plan, a grand plan, and I try to minimize the amount of time that any of us spend thinking about the job that's been done in the past, whether it was the best we could have done or not. Just concentrate on what we're doing today and what we'll do in the future. I can appreciate you asking the question, but I don't think about it.

Shanken: But there have to be moments of weakness. There are perhaps a dozen people in the world today who have achieved what you have achieved, pretty much on your own.

Perelman: Yes. With a group of intelligent, well-experienced individuals as part of the team.

Shanken: But you are the team leader. If you were a failure, the failure

NOT A CERTIFIED COPY

12033

16div-019251

would not be passed on. I mean if you screwed up, you're the one, not the guys around you.

Perelman: Absolutely right.

Shanken: So, there has to be a moment when you have to take enormous pride and satisfaction.

Perelman: Very rare. I guess I don't think about the scope of it that seriously, and I guess I put it in context with what I'd like to see us doing over the next several years. But what we've done in the past doesn't take on any importance to me. From a distance you might think that it would. I really don't think about it in the context of what we've done in the past or pat ourselves on the back or take great satisfaction. I mean...

Shanken: So what you're saying is that the job is not done yet.

Perelman: It's just beginning.

CONSOLIDATED CIGAR'S BRANDS PORTFOLIO

Premium Hand-rolled: H. Upmann, Te-Amo, Santa Damiana, La Corona Vintage Selection, Henry Clay, Primo del Rey and Don Diego

Machine-made: Antonio y Cleopatra, Dutch Masters, Muriel, Roitan, Muriel Sweet, Super Value Little Cigars, Supre Sweet, Rustlers, Backwoods, Ben Franklin, La Corona, Masters Collection, Super Value Pipe Tobacco Cigars and Harvesters

Manufactured for Lane Limited: Dunhill Aged Cigars, Montecruz, Royal Jamaica, Onyx and Tresado

Return to the Cigar Stars page

Sign in | What's New | Forums | Cigar Ratings | Retailers | Restaurants | People | Cigar Stars
The Library | Travel | Drinks | The Good Life | Events | Sports / Gaming | Subscribe | Back Issues

Copyright ©2004 Cigar Aficionado. All Rights Reserved.
If you're concerned about privacy, click here.

NOT A CERTIFIED COPY

012034

16div-019252

(Official Form 1) (9/97)

FORM B1 | **United States Bankruptcy Court**
Southern District of New York 13877 | **Voluntary Petition**

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
SUNBEAM CORPORATION	
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): See Annexed Exhibit 1	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): 01-40291
Soc. Sec./Tax I.D. No. (if more than one, state all): Tax I.D. No. 25-1638266	Soc. Sec./Tax I.D. No. (if more than one, state all): BK JUDGE GONZALEZ
Street Address of Debtor (No. & Street, City, State & Zip Code): 2381 Executive Center Drive Boca Raton, FL 33431	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: Palm Beach County	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

NOT A CERTIFIED COPY

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)
- ☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☒ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)
- ☐ Individual(s)
- ☒ Corporation
- ☐ Partnership
- ☐ Other_____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)
- ☐ Chapter 7
- ☒ Chapter 11
- ☐ Chapter 13
- ☐ Chapter 9
- ☐ Chapter 12
- ☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)
- ☐ Consumer/Non-Business
- ☒ Business

Chapter 11 Small Business (Check all boxes that apply)
- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)
- ☒ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)
- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☒ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors (consolidated with affiliates)	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☐	☐	☐	☐	☒

Estimated Assets (consolidated with affiliates)	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☒

Estimated Debts (consolidated with affiliates)	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☒

NYZ\976713\01\KXMX01!.DOC\76570.0003

012036

MS 289
16div-019253

(Official Form 1) (9/97)

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s): **Sunbeam Corporation**	FORM B1, Page 2

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed: N/A	Case Number: N/A	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor: N/A	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (If not represented by attorney)

_____
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X Bobby G. Jenkins
Signature of Authorized Individual

Bobby G. Jenkins
Printed Name of Authorized Individual

Executive Vice President and Chief Financial Officer of Sunbeam Corporation
Title of Authorized Individual

February 6, 2001
Date

Signature of Attorney

X Marc Puntus
Signature of Attorney for Debtor(s)

Harvey R. Miller, Esq.
Marc D. Puntus, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000

February 6, 2001
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

_____
Printed Name of Bankruptcy Petition Preparer

_____
Social Security Number

_____
Address

_____
Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

_____
Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☒ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

NOT A CERTIFIED COPY

012037

file

From: Charles Francavilla on 06/26/98 10:55 AM CDT

To: Michael Murray@BOFA, Jeremy Fair@BOFA, John Shannahan@BOFA
cc: Deirdre B. Doyle@BOFA, Keith Barnish@BOFA, Steven Sterling@BOFA, Harold Husby@BOFA, Thomas Biaggi@BOFA, Peter Wheelock@BOFA, Sally Swift@BOFA, James O'Keane@BOFA
Subject: Update on Sunbeam

Yesterday the banks met with Sunbeam senior management and MacAndrews & Forbes to discuss the latest developments as well as covenant relief from the banks. In attendance were Jerry Levin, new CEO, Paul Sarvino, Chief Admin Officer, and from M&F-Howard Gittis, Irwin Engelman, and Todd Slotkin. The banks had their counsel Davis Polk and the company had Skadden in attendance. BofA had myself, Steve Sterling-Syndications and Tom Biaggi-SAG, in attendance.

First- Jerry Levin updated everyone on their latest findings in the company now that they have been on the job for 10 days in Florida. Additional disturbing findings are now becoming clear:

- It is a virtual certainty in management's view that the 1997 audited financial statements will have to be re-stated due to accounting irregularities. Recall that Arthur Anderson gave a clean unqualified opinion on the Sunbeam 1997 statements and again supported that decision to the Board last week. Now however both new management and Arthur Anderson are finding things which are material which make the 1997 statements probably erroneous. For example, it appears that at least $165mm in sales accounted for as 1997 sales were in fact either 1996 sales or 1998 sales. Yes it appears the misleading statements started as early as late 1996 when Dunlap took over and some late 1996 sales were shown as 1997 while the associated expenses were left in '96. Again this was done at the end of 97 but in reverse.

- Arthur Anderson has said to M&F that they were " lied to in a fraudulent fashion by management"

- Because now Arthur Anderson will not consent to allow their 1997 opinion to be used in the planned S-3 filing (to register the existing zero coupon convertibles) that filing is being delayed. Note- this does not result in any default on the zeros but does cause a $5,000 per day penalty for late filing of the registration statement.

- Deloitte will do another audit of 1997 and an opinion and likely restated 1997 would come out around October 15th.

- New management will probably have a handle on the situation at the company and be able to forecast future income statements by August 10. At this point the business in 1999 looks more like a $ 2.5 billion sales and $ 325 to $350mm Ebitda business rather than Dunlap's 1998 of $ 2.8 billion sales and $ 460mm Ebitda. However given all the problems and accounting issues, 1998 numbers will be severely down. While Jerry Levin has now hired back most of the Coleman people that were fired or walked out the door in April, Coleman's business was significantly hurt for two months but is now OK according to management and M&F.

The Bank negotiation: we have an oral deal but first here is some background:
The company needs covenant relief and access to the remaining $270mm available under the $ 1.7 b bank facility. The banks have said ok but have insisted on getting now the stock of Coleman which is pledged to us but not in our possession and therefore not perfected. The Board and Howard Gittis have said no to the Coleman stock because they do not want to give us a valuable asset for a 45-day covenant waivar (the original deal on the table) and run the risk that if things don't look good in two months we take the collateral and accelerate. M&F bluntly stated that unless we gave a longer and stronger indication of support that they will have access to credit during this transition, that they would i) pull Jerry Levin back to Revlon and ii) M&F would walk and we can have a legal fight over who gets Coleman. After the banks talked amongst themselves it was clear we all preferred to be fully covered by collateral. Today, we have $ 1.4 b in bank loans and we have partial collateral. We felt we would rather have $ 1.7 b in loans and be fully secured. The banks and the company and its board have verbally agreed to the following:

- company gets full access to the revolver until December 31 (i.e- no conditions to borrowings) plus no financial tests until then.
- in return we get the stock of Coleman and security in all the material hard assets (except Coleman)
- we are still discussing pricing changes

Rationale:
* this support from the banks gives the market and the trade a positive signal. The trade is likely to move against the company somewhat even with this but less so if we only gave a 45 day waiver.
* we and the management think there is value in the company once it fixes the mess left by the Dunlap management. Even with the stock price at $ 10 per share (down from $50), the enterprise value of the company is $ 3.3 billion, compared to senior secured debt of $ 1.5

NOT CERTIFIED COPY

MS 338
8/4/04 W

billion. $ 2.5 b in sales and $ 325 ebitda also confirms about a $ 3 billion valuation. Again we would rather be fully secured with a little more in outstandings and prevent the trade from over reacting

BACRR rating. DCA, SAG and the Credit Manager in Atlanta all view this as a Bacrr- 5 with this information although a cash forecast due to us in the first week of July would confirm this view. The expectation would be to restructure the loan between August and October once we get real numbers to work with. A syndication is not likely until after the restatement of 1997 by Deloitte. We should plan on no syndication until December or January. Our view is with the loan covered by collateral and enterprise value 2:1 the risk rating will probably stay a 5. But if by end of August the future cash flows forecast are materially less than $ 300mm BofA should prepare for the potential of a Substandard rating before the Oct 15 new audit.

NOT A CERTIFIED COPY

012040

NOT A CERTIFIED COPY

MORGAN STANLEY & CO.
Incorporated

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

TO: ADAM EMMERICH DATE: _____

COMPANY: _____ PHONE: _____

FAX: 212-403-2274

FROM: JOEY WEBER PHONE: _____

PAGES: _____ (Including Cover Sheet)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL:

COMMENTS:

IMPORTANT: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If the reader of this message is not the intended recipient, or the person responsible for delivering the message to the intended recipient, you are hereby notified that any copying or distribution of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and destroy this communication. Thank you.

012042

01-26-98\1:42 PM\PG1

CONFIDENTIAL

MS 340
Ame 11/3/04

PROJECT LASER

Proposed Summary Transaction Terms

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

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

Acquisition of Holding Company

Form of Consideration:
- LASER Common Stock or LASER Common Stock and LASER Convertible Preferred Stock

Consideration Package Choice:
- MAFCO Affiliates will have the right, 30 days prior to closing, to elect to receive either of Consideration Package I or Consideration Package II

Consideration Package I:

A. LASER Common Stock to MAFCO Affiliates[1]
- 18,503,379 LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

Consideration Package II:

A. LASER Common Stock to MAFCO Affiliates[1]
- 10,376,107 LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

B. LASER Convertible Preferred Shares to MAFCO Affiliates[1]
- $300,000,000 Liquidation Value
- Fixed number of Convertible Preferred Shares, based on stated liquidation value per share
- $27.50 CAMPER Common Stock equivalent price
- See LASER Convertible Preferred Shares (Current Market Indicative Terms)

"Assumption" of Holding Company Debt:
- "Assumption" of CAMPER Holding Company Debt
- $524.4MM of Discount Notes to be "assumed" by LASER, approximate accreted value as of the date of closing
- All Early Redemption cost "assumed" by LASER

LASER Convertible Preferred Shares (Current Indicative Market Terms):
- 4.0% Coupon
- $48.125 Conversion Price (25% Conversion Premium over current LASER price) ✓ NO
- 10 year maturity
- One vote per share

Collars:
- None

Walkaway Rights:
- None

Tax Treatment:
- Expected to be tax free

Closing Conditions:
- Satisfaction of all merger conditions (other than purchase of CAMPER Holding Company), including LASER and CAMPER Shareholder Votes

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

F13\102838\02-20-98\S:24 PM\PG1

012043

NOT A CERTIFIED COPY

PROJECT LASER

Proposed Summary Transaction Terms

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

Expected Closing:
- 2Q98

Shareholder Lockup:
- MAFCO Affiliates agree to hold LASER Common Shares for one year after combination

Due Diligence:
- Execution of the Agreements upon completion of satisfactory due diligence

Miscellaneous:
- CAMPER Holding Company to vote its CAMPER shares in favor of the transaction
- No Shop clause with no fiduciary out
- Termination of affiliate (MAFCO) transactions

Acquisition of Publicly Held CAMPER Shares

Form of Transaction:
- Reverse subsidiary merger of newly formed, wholly-owned subsidiary of CAMPER Holding Company into CAMPER

Form of Consideration:
- LASER Common Stock[2]

Consideration:

A. LASER Common Stock to Public Shareholders[1]
- 7,977,818 LASER Common Shares issued to Public Shareholders
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

B. CAMPER Common Shares held by CAMPER Holding Company to remain outstanding

Collars:
- None

Walkaway Rights:
- None

Termination Fee:
- $60MM payable to LASER by CAMPER if deal not consummated for any reason other than failure to obtain LASER shareholder approval or other LASER breach
  - Termination fee calculated as 3% of aggregate value

Accounting Treatment:
- Purchase

Tax Treatment:
- Expected to be tax free

Closing Conditions:
- CAMPER and LASER shareholder votes
- Redemption of LYONS/Completion of CAMPER Escrow Corp./CAMPER Holding Company merger
- Receipt of regulatory approvals
- Other customary conditions

Expected Closing:
- 2Q98

[2] Need to address issue of potential disparate treatment

NOT A CERTIFIED COPY

PROJECT LASER

Pricing Mechanism Overview

Transaction pricing assumes the following steps:

I. Assumed CAMPER Holding Company debt balance of $500,000,000 is offset by a portion of the existing Holding Company stock position in CAMPER at an assumed $26.00 per CAMPER share valuation. The economic cancellation of the existing CAMPER Holding Company debt reduces the CAMPER Holding Company's CAMPER stock ownership position by 19,230,769 shares ($500,000,000/$26.00=19,230,769 shares)

II. Each remaining CAMPER share owned by CAMPER Holding Company (44,067,520[1]-19,230,769=24,836,751 shares) as well as all CAMPER shares help by public shareholders (10,708,480[1] shares) are valued at 0.7450 LASER Common Shares, at an approximate implied value of $28.68 per CAMPER share as of February 19,1998. MAFCO Affiliates to receive 18,503,379 LASER Common Shares (24,836,751*0.7450=18,503,379). Public shareholders to receive 7,977,818 LASER Common Shares (10,708,480[1]*0.7450=7,977,818)

III. MAFCO Affiliates have the right, 30 days prior to closing, to elect to take $300,000,000 (at a $27.50 per CAMPER share exchange ratio) or 10,909,091 CAMPER Shares ($300,000,000/$27.50=10,909,091 shares) equivalent of the net consideration for CAMPER Holding Company's CAMPER shares in the form of LASER Convertible Preferred Shares. In this case, the remaining 13,927,660 CAMPER shares (24,836,751-10,909,091=13,927,660 shares) held by CAMPER Holding Company will be exchanged for 10,376,107 LASER Common Shares at the .7450 exchange ratio

See Exhibit A

Will - other holding company obligations?

012015

[1] Exact number of shares subject to due diligence

F:\3\1028\38\02-20-98\5:34 PM\03

NOT A CERTIFIED COPY

PROJECT LASER

Exhibit A: Transaction Pricing Calculations

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

(a) Subject to due diligence

NOT A CERTIFIED COPY

Received Feb 20 08:10PM (01:44) on RightFax line [2] for 'COACE', M.S. N.Y. WORKSRV2 printed CDA3EDE3A46943 on Feb 20 08:12PM * Page 005 02/20/98 FRI 21:13 FAX 212 761 0503 36TH FL.

16div-019261

WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE GEWERTZ
BERNARD W. NUSSBAUM
RICHARD D. KATCHER
DOUGLAS S. LIEBHAFSKY
STEVEN M. BARNA
CHARLES T. MEDERRICK
CHAIM J. FORTGANG
PETER C. CANELLOS
MICHAEL W. SCHWARTZ
ALLAN A. MARTIN
BARRY A. BRYER
LAWRENCE B. PEDOWITZ
ROBERT B. MAZUR
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
DAVID M. EINHORN
KENNETH B. FORREST
MEYER G. KOPLOW
THEODORE N. MIRVIS
EDWARD D. HERLIHY
RICHARD D. FEINTUCH
DANIEL A. NEFF
ERIC M. ROTH
WARREN R. STERN
ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
PAUL K. ROWE
MICHAEL B. BENNER
MARC WOLINSKY

DAVID GRUENSTEIN
PATRICIA A. VLAHAKIS
STEPHEN G. GELLMAN
SETH A. KAPLAN
BARBARA ROBBINS
STEVEN A. ROSENBLUM
PAMELA S. SEYMON
STEPHANIE J. SELIGMAN
ERIC S. ROBINSON
ELLIOTT V. STEIN
JOHN F. SAVARESE
SCOTT K. CHARLES
ANDREW C. HOUSTON
PHILIP MINDLIN
DAVID S. NEILL
JODI J. SCHWARTZ
ADAM O. EMMERICH
CRAIG M. WASSERMAN
ADAM D. CHINN
GEORGE T. CONWAY III
RALPH M. LEVENE
RICHARD G. MASON
KAREN G. KRUEGER
DOUGLAS K. MAYER
DAVID M. SILK
ROBIN PANOVKA
DAVID A. KATZ
MITCHELL S. PRESSER
ILENE KNABLE GOTTS
JEFFREY R. BOFFA
DAVID M. MURPHY
JEFFREY M. WINTNER

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

227 WEST MONROE STREET
CHICAGO, ILLINOIS 60606
TELEPHONE: (312) 236-8080
FACSIMILE: (312) 236-8596

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)

COUNSEL

WILLIAM T. ALLEN*
LAWRENCE P. KING
PETER D. MCKENNA
NORMAN REDLICH
JOHN M. RICHMAN
LEONARD M. ROSEN
AMY R. WOLF

MICHAEL S. RATZKE
DEBORAH L. PAUL
TREVOR S. NORWITZ
TONI P. REAMER
STEVEN M. ABRAMOWITZ
BRADLEY A. ROBINS
STUART C. BERMAN
YOCHEVED COHEN
BEN M. GERMANA
DAVID R. LURIE
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEPHEN R. BLACKLOCKS
DAVID C. BRYAN
STEVEN A. COHEN
ERIC L. PRESS
GAVIN D. SOLOTAR
ADRIENNE ATKINSON
JUDITH G. FEDERBUSH
LAWRENCE GERSCHWER
DAVID C. KARP
BARBARA S. KOHL
MIRIAM P. LONGCHAMP
HOWARD A. MERCELRAMP III
EDWARD A. STELZER
ELIZABETH K. STEPP
KEITH N. WOFFORD
MARC D. ASHLEY
JOSHUA R. CAMMAKER
SETH GARDNER
MARK GORDON
BARRY R. KLEINER
JOSEPH D. LARSON
LAWRENCE S. MAKOW
THAO P. MATLOCK
JEANNEMARIE O'BRIEN
MELANIE L. ORNORN
JARED M. RUSMAN
EUGENE R. STEIN
SHEENA WRIGHT
LARA ADAMSONS
SCOTT L. BLACK
JAMES COLE, JR.
STEPHEN R. DIPRIMA
DAVID L. ELSBERG
DOUGLAS C. FREEMAN
NANCY B. GREENBAUM
SALIL KUMAR
FRANK L. MILLER
ARRIE R. PARK
JULIUS R. SCHWARZ
ALEXANDER SHAKNES
KEVIN P. SHEEHAN
SARAH E. STRASSER
GARY M. SWIDLER
WAYNE W. YU
NICOLE E. CLARK
BRUCE N. GOLDBERGER
JEFFREY B. GOLDEN
RICHARD B. HARDEGREE
MICHAEL F. MASLANSKY

*OF DELAWARE BAR ONLY

May 7, 1998

VIA TELECOPIER AND FEDERAL EXPRESS

Susie Youn, Esq.
Staff Attorney
Division of Enforcement
United States Securities and
Exchange Commission
Central Regional Office
1801 California St., Suite 4800
Denver, Colorado 80202-2648

Re: Trading in the Securities of Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (MD-1200)

Dear Ms. Youn:

This letter supplements the information voluntarily provided to you on behalf of The Coleman Company, Inc. ("Coleman" or the "Company") on March 30, 1998 in response to your request for certain information relating to the March 2, 1998 announcement concerning Sunbeam Corporation and Coleman.

1. The chronology set forth in Exhibit A to the March 30 letter should be supplemented as follows:

NOT A CERTIFIED COPY

012048

MS 374
Rec'd 12/2/04

(i) the following entry should be added for November 6, 1997:

> Representatives of Morgan Stanley (which, from time to time advises MacAndrews on a variety of business and financial matters), met with James R. Maher of MacAndrews to discuss potential business opportunities. Among the business opportunities identified by Morgan Stanley was the potential acquisition of Sunbeam by MacAndrews. Mr. Maher advised the Morgan Stanley representatives that MacAndrews was not interested in such a transaction.

(ii) Mr. Gittis should be included among the individuals identified as attending the February 18, 1998 meeting.

2. The list of individuals set forth in Exhibit B to the March 30 letter should be supplemented in the following respect:

(i) John W. Behringer, Esq. and Sean O'Brien, Esq., both of Fitzpatrick, Cella, Harper & Scinto, should be added to the list.

As noted in my letter to you of March 30, the information provided herewith represents a reconstruction of events and was compiled based upon a reasonable review of the documents in the possession of Coleman and reasonable inquiries made by Coleman of its personnel and certain of its legal and other advisors and representatives. The information is based in substantial part on the recollection of the individuals involved, as may of the events leading up to the March 2 announcement were not documented. Therefore, it is possible that further supplementation, correction, and/or modification by the Company may be needed in the future.

We request confidential treatment for this letter and the information contained herein pursuant to 18 U.S.C. § 1905, 17 C.F.R. § 200.83, and other applicable laws and regulations and further request that it not be made part of any public record and not be disclosed to any person.

The information contained in this letter is maintained in confidence and is not available to competitors or other parties. In addition, the information has been provided voluntarily in connection with the above-referenced inquiry. We believe that the disclosure of this information could have adverse affects on our client's competitive position and/or would constitute an unwarranted invasion of personal privacy. Accordingly, such information is exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(6) and (b)(7), and disclosure is prohibited pursuant to 18 U.S.C. § 1905.

NOT A CERTIFIED COPY

012049

If any person (including any government employee who is not an employee of the Securities and Exchange Commission) should request an opportunity to inspect or copy this letter, we request that we be immediately notified of any such request, be furnished with a copy of all documents pertaining to such requests (including, but not limited to, the request itself or any agency determinations with respect to such request) and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. If the Securities and Exchange Commission is not satisfied that the information set forth in this letter is exempt (or protected) from disclosure pursuant to the Freedom of Information Act, we stand ready to supply further particulars, and we would request in such event a hearing on this claim of exemption.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any such whatsoever which are made by or at the direction of any employee of the Securities and Exchange Commission (or any other governmental agency) which incorporate, include or relate to any of the confidential information contained in this letter.

If you have any questions about the foregoing, please contact the undersigned at 212-403-1000.

Very truly yours,

Paul K. Rowe

cc: Freedom of Information Act Officer
Joram C. Salig, Esq.
Steven R. Isko, Esq.

NOT A CERTIFIED COPY

012050

BN Coleman's Levin Profits by Selling Stock After Sale to Sunbeam
Apr 17 1998 12:56

Coleman's Levin Profits by Selling Stock After Sale to Sunbeam

Washington, April 17 (Bloomberg) -- Jerry Levin, the former head of Coleman Co., had better luck than his boss Ronald Perelman when profiting from the company's proposed sale to Sunbeam Corp.

Coleman shares were flying high right after Sunbeam announced on March 2 that it would buy the company for about $2 billion in cash, stock and assumed debt. Levin exercised options to buy Coleman stock at a discount several days later and sold the shares for a $7.4 million profit.

On March 19, however, Sunbeam warned that its sales may not meet expectations -- news that sent both Sunbeam and Coleman shares into a nose-dive.

``I have always said it is better to be lucky than smart,'' Levin said in an interview.

Perelman, who held an 82.8 percent stake in Coleman, wasn't as fortunate. The 14.1 million Sunbeam shares that Perelman got for his Coleman stake on March 30 are now worth about $410 million -- down 36 percent from the $643 million they were worth when the acquisition was announced.

Bloomberg-all rights reserved. Frankfurt:69-920410 Hong Kong:2-977-6000 London:171-330-7500 New York:212-318-2000
Princeton:609-279-3000 Singapore:226-3000 Sydney:2-9777-8666 Tokyo:3-3201-8900 Sao Paulo:11-3048-4500
G133-331-1 17-Apr-98 13:28:24

NOT A CERTIFIED COPY

MS 398

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 240470

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019265
CPH0475169

Coleman shares rose 9/16 in recent trading to 22 11/16. They reached a high of 35 9/16 on March 4. Sunbeam shares rose 1 1/16 to 29 3/16, but still are far below a March 4 high of 53.

Perelman controls businesses such as Consolidated Cigar Holdings Inc. and Revlon Inc. through a series of holding companies. Levin, an executive vice president at the holding companies, helped Perelman run the businesses as chairman at Revlon and at Coleman, a Wichita, Kansas, manufacturer of tents and camping gear.

Levin sought to cut costs at Coleman by closing four plants and trimming the company's workforce. Albert Dunlap, the chairman of Sunbeam, said Coleman and two other simultaneous acquisitions -- Signature Brands USA Inc. and First Alert Inc. -- have strong brand names that haven't been marketed well.

``They still had a lot of work left to be done at Coleman,'' said Beth Burnson, an analyst at ABN Amro Inc. in Chicago. Levin left Coleman but remains chairman of Revlon.

Under the terms of the acquisition, Sunbeam agreed to buy each Coleman share for $6.44 in cash plus 0.5677 of a Sunbeam share. Sunbeam also assumed debt of about $440 million. The stock portion of the acquisition was worth about $25.90 at March 2.

As part of the agreement, Sunbeam said it would pay Perelman and Levin for their Coleman options. As a result, Levin would

Bloomberg-all rights reserved. Frankfurt:69-920410 Hong Kong:2-977-6000 London:171-330-7500 New York:212-318-2000
Princeton:609-279-3000 Singapore:226-3000 Sydney:2-9777-8666 Tokyo:3-3201-8900 Sao Paulo:11-3048-4500
G133-331-1 17-Apr-98 13:28:25

NOT A CERTIFIED COPY

012053

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 240471

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019266
CPH0475170

have received cash even if he didn't exercise the options and sell the Coleman shares. It's questionable, however, whether he would have gotten as much if he'd taken that route.

Sunbeam agreed to pay for Perelman's options at an assumed stock price of $27.50 a share, minus the exercise price, according to a regulatory filing. Though the terms of Levin's agreement weren't disclosed, if he got the same rate his options would each have been worth between $13.50 and $15.25 in cash.

Instead of taking that alternative, Levin exercised the options and bought 350,000 Coleman common shares at $12.25 to $14.00 each, according to documents filed with the Securities and Exchange Commission. He sold the stock in the open market at $33.97 to $34.89 a share between March 6 and March 9 -- making a profit of about $20 or more per share.

When asked why he sold the stock, Levin confirmed that he would have received cash even if he held onto the options. However, Levin also noted that he is no longer working at Coleman.

``I tend to invest only in things I'm involved in,'' Levin said.

--Miles Weiss in Washington (202) 624-1879/bd

Bloomberg-all rights reserved. Frankfurt:69-920410 Hong Kong:2-977-6000 London:171-330-7500 New York:212-318-2000
Princeton:609-279-3000 Singapore:226-3000 Sydney:2-9777-8666 Tokyo:3-3201-8900 Sao Paulo:11-3048-4500
G133-331-1 17-Apr-98 13:28:26

NOT A CERTIFIED COPY

012054

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 240472

16div-019267
CPH0475171

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Story 1 / 20: 99 <GO> for list of story options.

Story Illustration: to chart the recent performance of Coleman shares, type: CLN US <Equity> GPO D.

Company News:
CLN US <Equity> Coleman
SOC US <Equity> Sunbeam
DES, BQ, CN

Industry News:
NI REC Recreation
NI HOU Consumer products

Regional News:
NI KS Kansas
NI FL Florida
NI US U.S.

News by Category:
NI FILINGS SEC filings
NI IBS Insider transactions

People in the News:
WHO Jerry Levin
WHO Ronald Perelman

TNI HOU IBS for insider transactions by other executives in the consumer products industry.
-0- (BN) Apr/17/ 98 12:56
ä

Bloomberg-all rights reserved. Frankfurt:69-920410 Hong Kong:2-977-6000 London:171-330-7500 New York:212-318-2000
Princeton:609-279-3000 Singapore:226-3000 Sydney:2-9777-8666 Tokyo:3-3201-8900 Sao Paulo:11-3048-4500
G133-331-1 17-Apr-98 13:28:26

NOT A CERTIFIED COPY

012055

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CLN HOLDINGS INC.

UNANIMOUS WRITTEN CONSENT OF THE
BOARD OF DIRECTORS

The undersigned, being all of the members of the Board of Directors of CLN Holdings Inc., a Delaware corporation (the "Corporation"), in lieu of a meeting, do hereby consent, pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, to the adoption of the resolutions attached hereto as Exhibit A, taking or authorizing the actions specified therein.

This consent may be executed in counterparts and all so executed shall constitute one consent, notwithstanding that all of the member of the Board of Directors are not signatories to the original or the same counterpart.

Dated as of February 27, 1998

Ronald O. Perelman

Howard Gittis

NOT A CERTIFIED COPY

0012057

MS 423
11/27/09

RESOLUTIONS OF THE BOARD OF DIRECTORS
CLN HOLDINGS INC.
APPROVING PROPOSED MERGER TRANSACTIONS
AND RELATED AGREEMENTS

February 27, 1998

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

WHEREAS, in the Holdings Merger, the shares of the Corporation Common Stock, par value $1.00 per share ("Holdings Common Stock"), issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of Laser common stock, par value $.01 per share ("Laser Common Stock") and $159,956,756 in cash, without interest thereon, and each share of Laser Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $1.00 per share, of the surviving corporation in the Holdings Merger; and

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

WHEREAS, in the Coleman Merger, each share of Coleman Common Stock, par value $0.01 per share ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by Coleman, Laser or any subsidiary of Coleman and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Laser Common Stock, with cash paid in lieu of fractional shares, and (B) $6.44 in cash, without interest thereon, and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $.01 per share, of the surviving corporation in the Coleman Merger; and

WHEREAS, upon careful consideration of the information presented by management of the Corporation and the Corporation's other advisers, and after full discussion of those matters which the Board of Directors believes are necessary or

NOT A CERTIFIED COPY

012058

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

appropriate to enable it to evaluate and reach an informed decision regarding the fairness and advisability of the Holdings Merger and the respective transactions contemplated thereby, including the Coleman Merger, the Board of Directors has determined that it is advisable and in the best interests of the Corporation and its stockholders to approve the Holdings Merger Agreement and the consummation of each of the transactions contemplated by such agreement, including the Coleman Merger.

NOW, THEREFORE, BE IT:

Approval of Holdings Merger and Holdings Merger Agreement

RESOLVED, that the Holdings Merger is advisable and fair to and in the best interests of the Corporation and its stockholder; and

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

RESOLVED, that the Board of Directors does hereby recommend that the sole stockholder of the Corporation approve the Holdings Merger Agreement, as the same may be executed and acknowledged on its behalf by its officers; and that the Corporation perform its obligations in accordance with the Holdings Merger Agreement and the other instruments and agreements contemplated thereby; and

Registration Rights Agreement

RESOLVED, that the form of Registration Rights Agreement, by and between Parent Holdings and Laser, the terms of which have been presented to the Board of Directors, and which will be entered into immediately prior to consummation of the Coleman Merger, is hereby approved and authorized, and any officer be, and each of them individually hereby is, authorized to execute and delivery the Registration Rights Agreement, in the name and on behalf of the Corporation, with such changes therein and modifications thereof as such officer executing the Registration Rights Agreement shall have approved, such approval to be conclusively evidenced by such execution; and

Delaware Business Combination Statute

RESOLVED, that the Holdings Merger and the transactions contemplated by the Holdings Merger Agreement , including the Coleman Merger, are hereby approved for

NOT A CERTIFIED COPY

012059

CP 012784
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402973
16div-019271

purposes of Section 203 of the Delaware General Corporation Law (the "DGCL"), which transactions may result in Laser, Laser Merger Sub or Coleman Merger Sub becoming an "interested stockholder" within the meaning of paragraph (a)(2) of Section 203 of the DGCL and by any other similar laws that may be deemed applicable to the Corporation; and

Securities and Exchange Commission Filings

RESOLVED, that in order for the Corporation to comply with all applicable requirements of the Securities Act of 1933, as amended, and all rules and regulations thereunder (the "Securities Act"), the Securities Exchange Act of 1934, as amended, and all rules and regulations thereunder (the "Exchange Act"), the New York Stock Exchange (the "NYSE"), any officer of the Corporation be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, with the assistance of counsel, to prepare, execute, deliver and file with the Securities and Exchange Commission (the "SEC"), the NYSE or other relevant body any and all reports, statements, documents and information required to be filed (the "SEC Filings") by the Corporation pursuant to the Securities Act, the Exchange Act and the rules of the NYSE; and

RESOLVED, that any officer of the Corporation be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, to (i) appear before and respond to inquiries of officials of the SEC and the NYSE in connection with the SEC Filings; (ii) pay any fees and expenses incurred in connection with the preparation and filing of the SEC Filings and (iii) take such other actions in connection with the SEC Filings as the officer or officers taking the same shall deem necessary, appropriate or advisable; and

Engagements

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

Actions by Subsidiaries

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

NOT A CERTIFIED COPY

012060

CP 012785
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402974
16div-019272

may be necessary or advisable in connection with and in furtherance of the Holdings Merger Agreement and the transactions contemplated thereby, including the Coleman Merger; and

Regulatory Filings

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

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

Certificate of Merger

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

Payment of Necessary Fees

RESOLVED, that any officer of the Corporation be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, to pay all fees incurred by the Corporation in connection with the transactions, including,

NOT A CERTIFIED COPY

012061

CP 012786
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402975
16div-019273

without limitation, fees and expenses of the Corporation's financial advisors, fees and expenses of the Corporation's legal counsel, filing fees and printing expenses, and to make all payments as they, or any of them individually, shall determine to be necessary or appropriate, such payment to be conclusive evidence of their determination; and

Litigation

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

Expenses

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

General

RESOLVED, that any officer of the Corporation or any person or persons authorized in writing by any of them be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, to enter into, execute, deliver and perform any and all agreements, amendments, consents, certificates, instruments, documents, notices, requests, directions, approvals, instructions, reports, schedules, statements, information and other communications as any of such officers or such other authorized persons may determine to be required by, or otherwise necessary, advisable or appropriate in connection with, the Holdings Merger or contemplated in connection with the matters authorized in this and the preceding resolutions, and to make any filings pursuant to federal, state and foreign laws and to take all other actions that any of such officers or such other authorized persons may determine to be necessary, desirable, appropriate or advisable in order to comply with the applicable laws and regulations of any jurisdiction (domestic or foreign), or otherwise to effectuate and carry out the purposes of the foregoing resolutions and to permit the transactions contemplated thereby to be consummated lawfully, and to take any and all such other actions, including, without limitation, filings with the SEC, the National Association of Securities Dealers or other entities, as any of such officers or such other authorized persons may determine to be necessary, advisable or appropriate in connection with any of the foregoing or for the purpose of otherwise carrying into effect the purposes of this and the preceding resolutions, such determination conclusively to be evidenced by such entry, execution, delivery, performance, or the taking of such action, by and of such officers or such other authorized persons; and

NOT A CERTIFIED COPY

012062

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

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

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

NOT A CERTIFIED COPY

012063

CP 012788
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

COLEMAN WORLDWIDE CORPORATION

CONSENT OF DIRECTORS IN LIEU OF BOARD OF DIRECTORS' MEETING

The undersigned, being all of the directors of Coleman Worldwide Corporation, a Delaware corporation (the "Corporation"), do hereby consent without a Board of Directors' meeting, pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, to the adoption of the attached resolutions.

DATED as of the 27th day of February, 1998.

Ronald O. Perelman

Howard Gittis

NOT A CERTIFIED COPY

012065

MS 424
Ann 11/17/04

CP 012789
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402978
16div-019276

RESOLUTIONS OF THE BOARD OF DIRECTORS
COLEMAN WORLDWIDE CORPORATION
APPROVING PROPOSED MERGER TRANSACTIONS
AND RELATED AGREEMENTS

February 27, 1998

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

WHEREAS, in the Holdings Merger, the shares of the Common Stock, par value $1.00 per share, of Holdings ("Holdings Common Stock") issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of the common stock, par value $.01 per share, of Laser ("Laser Common Stock"), and $159,956,756 in cash, without interest thereon, and each share of the common stock of Laser Merger Sub issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $1.00 per share, of the surviving corporation in the Holdings Merger; and

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

WHEREAS, in the Coleman Merger, each share of the Common Stock, par value $0.01 per share, of Coleman ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by Coleman, Laser or any subsidiary of Coleman and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Laser Common Stock, with cash paid in lieu of fractional shares, and (B) $6.44 in cash, without interest thereon, and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $.01 per share, of the surviving corporation in the Coleman Merger; and

WHEREAS, the Board of Directors of Holdings has authorized, approved and adopted the Holdings Merger Agreement in all respects and recommended that the sole

NOT A CERTIFIED COPY

012096

CP 012790
CONFIDENTIAL

stockholder of Holdings approve the Holdings Merger Agreement and the transactions contemplated thereby, including the Coleman Merger; and

WHEREAS, the Board of Directors of Coleman has authorized, approved and adopted the Coleman Merger Agreement in all respects and recommended that the stockholders of Coleman approve the Coleman Merger Agreement; and

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

NOW, THEREFORE, BE IT:

Approval of Coleman Merger and Coleman Merger Agreement

RESOLVED, that the Coleman Merger is advisable and fair to and in the best interests of the Corporation and its stockholder and that the disposition of the Coleman Common Stock held by the Corporation in the Coleman Merger is expedient and in the best interests of the Corporation; and

RESOLVED, that any officer of the Corporation be, and each of them individually hereby is, authorized, in the name and on behalf of the Corporation, to vote, consent or otherwise act with respect to the shares of Coleman Common Stock entitled to vote, consent or act, including by written consent and without a meeting, to authorize and approve the Coleman Merger Agreement; and

RESOLVED, that the Board of Directors does hereby recommend that the sole stockholder of the Corporation adopt a resolution authorizing the foregoing; and

General

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

NOT A CERTIFIED COPY

012067

resolutions, which will thereupon be deemed to be adopted by the Board of Directors with the same force and effect as if originally set forth herein; and

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

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

NOT A CERTIFIED COPY

012068

CP 012792
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402981
16div-019279

WRITTEN CONSENT AND APPROVAL

OF STOCKHOLDER

OF

THE COLEMAN COMPANY, INC.

The undersigned, Coleman Worldwide Corporation, a Delaware corporation and the beneficial owner of 44,067,520 shares (representing approximately 84%) of the issued and outstanding shares of capital stock of The Coleman Company, Inc., a Delaware corporation ("Coleman"), the votes of which shares represent not less than the minimum number of votes that would be necessary to authorize or take the actions taken hereby at a meeting at which all shares entitled to vote thereon were present and voted, hereby waives any and all notice of a special meeting of stockholders, and acting in lieu of a meeting pursuant to applicable law, including pursuant to Section 228 of the General Corporation Law of the State of Delaware, and pursuant to the Certificate of Incorporation and the By-laws of Coleman, as amended, does hereby consent to, adopt, and approve the following:

> That all of the resolutions adopted by the Board of Directors of Coleman at a meeting duly held on February 27, 1998, and all of the transactions and matters contemplated and authorized thereby are hereby approved and adopted in all respects.

Dated as of the 27th day of February, 1998.

COLEMAN WORLDWIDE CORPORATION
as stockholder of
The Coleman Company, Inc.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

012069

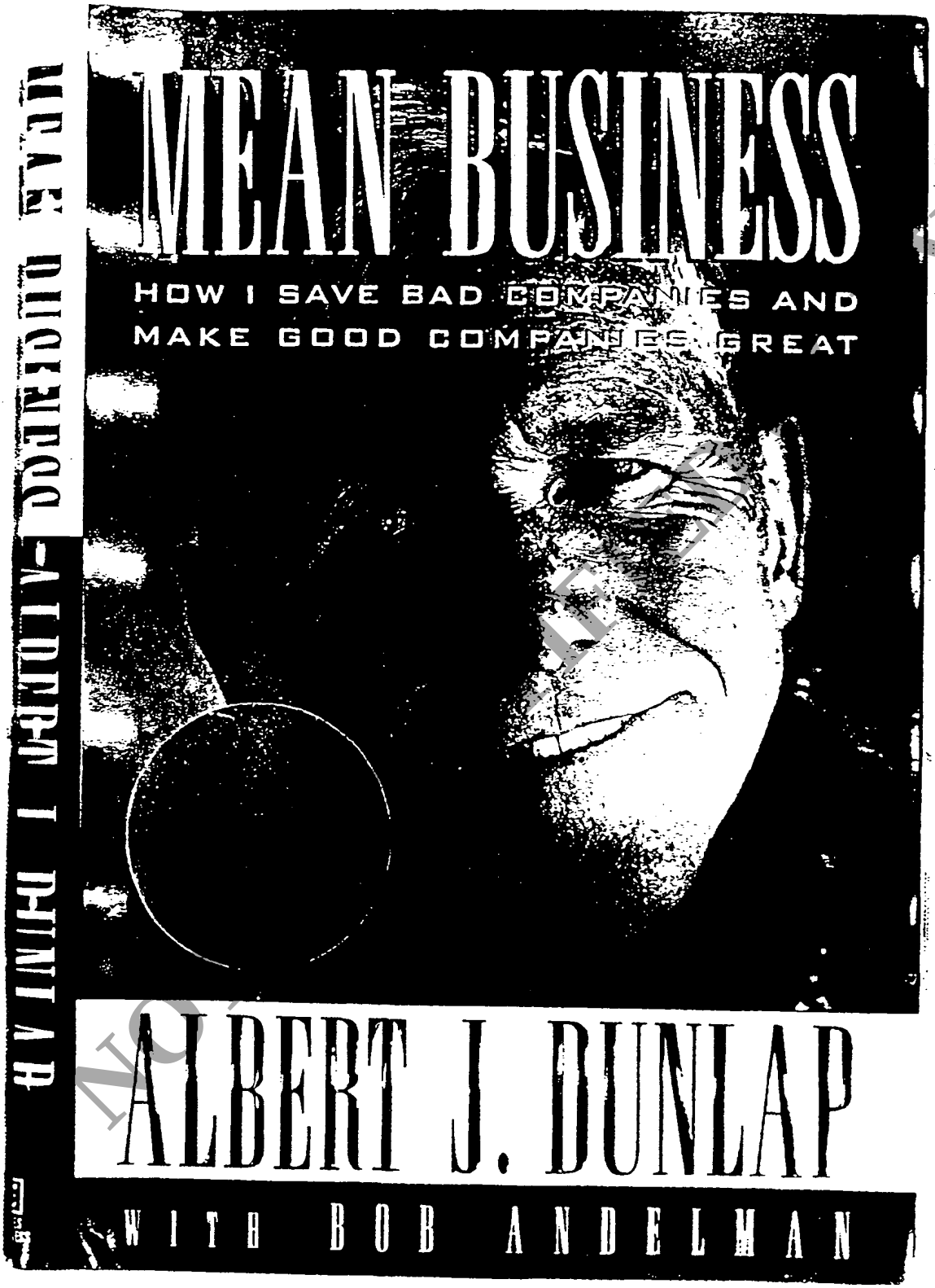


EXHIBIT
MS 431
PENGAD 800-631-6989
Jun 11/17/04

NOT CONFIDENTIAL

012071

CONFIDENTIAL
HK SOC 02083

FP1

U.S.A. $25.00
Canada $35.00

Dunlap (dun-lap) v [after Albert J. Dunlap (1937–)]
1. To turn a company around at lightning speed 2. To focus on the best; eliminate what is not the best. 3. To protect and enhance shareholder value.

Mean Business is Al Dunlap's specific battle-tested program for business success. It's all based on his incredible track record of injecting new life into tired companies, best exemplified by the dramatic turnaround he quarterbacked at Scott Paper.

When Dunlap became chairman and CEO in April 1994, Scott was in woeful shape: a $277 million loss in 1993, on credit watch for excessive debt, a stock that had been comatose for seven years. In a mere nineteen months, Scott had record earnings, the stock had increased in value by $6.5 billion (over 200 percent), and Dunlap merged Scott with Kimberly Clark in a stock swap that valued Scott at $9 billion and created the second largest consumer-products company in the United States.

Mean Business provides the inside story behind the strategic thinking that guided Dunlap's quest to once again make Scott a world-class competitor:

- The growth strategy that took it from a money loser to a lean, highly profitable operation
- The vision that reshaped Scott from a commodity paper producer into a consumer-products company
- The complete revamping of Scott's U.S. and global marketing strategy
- The transformation of the board of directors into an entrepreneurial team in which shareholder interests came first
- The unique way the Scott story was communicated to Wall Street, investment banks, and mutual funds

Mean Business provides invaluable lessons for everyone struggling to meet the tough, competitive challenges of today's business world. It combines Al Dunlap's colorful personal history —his working-class background, employment and friendship with people like Sir James Goldsmith,

(continued on back flap)

NOT A CERTIFIED COPY

012072

CONFIDENTIAL
HK SOC 02084

(continued from front flap)

his views on why too many executives think of themselves as corporate royalty, and his provocative ideas on management and leadership. His "Four Simple Rules"—how to evaluate and choose a management team, get the lowest costs, focus the business, and develop a real strategy—can be used to great effect and profit by any manager.

About the Authors

Albert J. Dunlap grew up in Hoboken, New Jersey, the son of a union steward. He graduated from West Point and after completing his military service began a thirty-five-year career in business that took him to seventeen states, Europe, and Australia. He has held important positions at many companies, including Sterling Pulp and Paper, American Can, Lily Tulip, Diamond International, Crown-Zellerbach, Consolidated Press Holdings of Australia, and Scott Paper. He lives in Boca Raton, Florida, with his wife, Judy.

Bob Andelman writes the popular *Mr. Media* column distributed by Universal Press Syndicate. He is a five-time Florida Magazine Association award winner for investigative reporting and is a contributor to both *Business Week* and *Newsweek*. He lives in St. Petersburg, Florida, with his wife, Mimi.

Jacket design by Fernando Galeano
Front jacket photo by Brian Smith/Outline
Back jacket photos by Charles Harrington/
Cornell University

Times Books, New York, N.Y. 10022
http://www.randomhouse.com/
Printed in U.S.A. 10/96
©1996 Random House, Inc.

92837
UPC
7 29617 02500 7

NOT A CERTIFIED COPY

0120073

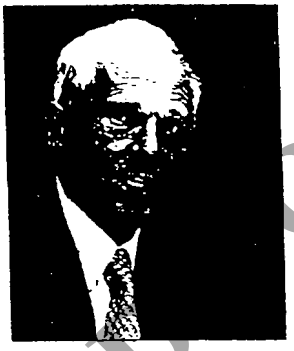
CONFIDENTIAL
HK SOC 02085

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019283
CPH 1289144

PRAISE FOR

MEAN BUSINESS



"If you think the dead can't come back to life, read *Mean Business*. Al Dunlap took a sleepy, non-competitive company and turned it into a world-class performer. He not only shook up an entire company but an entire industry as well. Dunlap is corporate America's ultimate change agent."

—ALAN C. GREENBERG, chairman of the board of the Bear Stearns Companies, Inc., and author of *Memos from the Chairman*

"Al Dunlap has sparked a revolution on the American corporate scene. He is the nation's leading CEO advocate of shareholder rights. And, more importantly, he has turned traditional managerial theory on its head by demonstrating that you can entrepreneurialize the large-scale public corporation."

—CHARLES ELSON, professor of law, Stetson University College of Law

"Lively, funny and provocative. No one feels neutral about Al Dunlap—you either love his ideas about running a business or hate them. Read *Mean Business* and find out what he's all about."

—RONALD PERELMAN, chairman of Revlon and New World Communications Group

"Al Dunlap has shown time and time again how to inject new life and renewed purpose into companies that have lost their way. *Mean Business* distills the invaluable ideas he has developed and successfully implemented. It provides important lessons which everyone in business—from those just starting out to the most senior executives—could benefit."

—JOSEPH FLOM, Skadden, Arps, Slate, Meagher & Flom

ISBN 0-8129-2837-7
EAN 9 780812 928372 52500

MEAN BUSINESS · AL DUNLAP

012074

CONFIDENTIAL
HK SOC 02086

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019284
CPH 1289145

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

ONE RODNEY SQUARE
P.O. BOX 636
WILMINGTON, DELAWARE 19899-0636

TELEPHONE NO.: (302) 651-3000
FACSIMILE NO.: (302) 651-3001

FACSIMILE TRANSMITTAL SHEET

FROM: Richard L. Easton
DIRECT DIAL: (302) 651-3040
DIRECT FACSIMILE:

DATE: Mar. 3, 1998
FLOOR/OFFICE NO.:
REFERENCE NUMBER: 54510

THIS FACSIMILE IS INTENDED ONLY FOR USE OF THE ADDRESSEE(S) NAMED HEREIN AND MAY CONTAIN LEGALLY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ADDRESS ABOVE VIA THE LOCAL POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US.

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

1. NAME: John Tyree
   CITY: New York
   FACSIMILE NO.: (212) 761-0260
   FIRM: Morgan Stanley
   TELEPHONE NO.: (212) 761-7738

2. NAME: Alan Dean
   CITY: New York
   FACSIMILE NO.: (212) 450-4990
   FIRM: Davis Polk
   TELEPHONE NO.: (212) 450-4126

TOTAL NUMBER OF PAGES INCLUDING COVER(S): 21

MESSAGE: Attached is the index to the information we have on Sunbeam. The documents themselves have been sent to Todd Freed in our New York Office. Please coordinate with him to arrange for the review. His phone number is 735-3714.

copies for Heather + Dinsmore

012076

MS 440

NOT A CERTIFIED COPY

March 3, 1998

PROJECT LASER
List of Documents

A. Corporate Records of the Company and its Material Subsidiaries

1. Certificates of Incorporation and By-Laws and any amendments:

   a. Sunbeam Corporation- Certificate of Incorporation and By-Laws.

   b. Sunbeam Americas Holdings Limited- Certificate of Incorporation and By-Laws.

   c. GHI, Inc.- Certificate of Incorporation and By-Laws.

   d. Sunbeam Products, Inc.- Certificate of Incorporation and By-Laws.

   e. OP II, Inc. - Certificate of Incorporation and By-Laws.

   f. DDG I, Inc. - Certificate of Incorporation and By-Laws.

2. Minute Books for Boards of Directors and any Committees of the Boards of Directors:

   a. Sunbeam Corporation- Minutes of the Board of Directors from September 28, 1990 to Present. (See Binders)

   b. Sunbeam Americas Holdings Limited - Minutes of the Board of Directors from September 28, 1990 to Present.

   c. GHI, Inc. - Minutes of the Board of Directors from September 16, 1992 to Present (including predecessor).

   d. Sunbeam Products, Inc. - Minutes of the Board of Directors from September 28, 1990 to Present.

   e. OP II, Inc. - Minutes of Board of Directors from September 28, 1990 to Present (including predecessor).

   f. DDG I, Inc. - Minutes of Board of Directors from September 28, 1990 to Present (including predecessor).

NOT A CERTIFIED COPY

012077

March 3, 1998

g. Sunbeam Corporation - Minutes of the Executive Committee of the Board of Directors from July 22, 1993 to the Present.

h. Sunbeam Corporation - Minutes of the Audit Committee of the Board of Directors from March 15, 1993 to Present.

i. Sunbeam Corporation - Minutes of the Compensation Committee of the Board of Directors from December 17, 1993 to Present.

j. Sunbeam Corporation - Minutes of the Equity Team Plan Committee of the Board of Directors from March 29, 1993 until date of merger into Compensation Committee (May 16, 1995).

k. Sunbeam Corporation - Minutes of the Special Compensation Committee of the Board of Directors from March 4, 1994 to date of merger into Compensation Committee (May 16, 1995).

l. Minutes of Benefits Committee Meeting from February 6, 1995 through July 29, 1997.

3. Annual reports, proxy statements and other communications with stockholders for the past three years for the Company:

a. Sunbeam Corporation Annual Reports for 1992 through 1996.

b. Sunbeam Corporation Proxy Statement for June 11, 1997 Annual Meeting.

c. Sunbeam Proxy Statement for September 27, 1996 Special Meeting of Shareholders.

d. Sunbeam Corporation Proxy Statement for July 2, 1996 Annual Meeting.

e. Sunbeam Corporation Proxy Statement for May 16, 1995 Annual Meeting of Shareholders.

f. Sunbeam Corporation Proxy Statement for May 17, 1994 Annual Meeting of Shareholders.

g. Sunbeam Corporation Proxy Statement for May 28, 1993 Annual Meeting of Shareholders.

NOT A CERTIFIED COPY

012078

March 3, 1998

4. List of jurisdictions where qualified to do business:

   a. Sunbeam Corporation.

   b. Sunbeam Products, Inc.

5. Organizational/corporate chart showing all subsidiaries and their ownership.

6. All asset or stock purchase and other agreements pursuant to which the assets and businesses of the Company and its subsidiaries were acquired, including schedules and exhibits thereto:

   a. Asset Purchase Agreement dated as of September 28, 1990 by and between Allegheny International, Inc. and Sunbeam-Oster Company, Inc. (See Bound Volumes (I- XII))

   b. Asset Purchase Agreement closing on December 3, 1991 by and between Charmglow Industries, Inc. and Montey Corporation. (See Bound Volume)

   c. Asset Purchase Agreement dated December 18, 1992 by and between Arkla, Inc., Arkla Products Company and Sunbeam Corporation. (See Bound Volumes I and II)

   d. Asset Purchase Agreement dated as of March 18, 1993 by and between Devilbiss Health Care, Inc. and Sunbeam Corporation. (See Bound Volume)

   e. Asset Purchase Agreement dated as of October 27, 1993 among Newell Co., Counselor Borg Scale Company and Sunbeam Corporation. (See Bound Volume)

   f. Asset Sale of Time and Temperature, March 3, 1997. (See Bound Volume)

   g. Asset Sale of Furniture Business, March 17, 1997. (See Bound Volume)

   h. Asset Sale of Biddeford Textile Operations, May 9, 1997. (See Bound Volume)

NOT A CERTIFIED COPY

012079

March 3, 1998

7. Copies of SEC filings since the IPO (i.e., since August 25, 1992), including 10-Ks, 10-Qs, etc.:

a. Sunbeam Corporation Forms 10-K for 1992 through 1996, with exhibits.

b. Sunbeam Corporation Forms 10-Q for 1992 to present, with exhibits

c. Forms 11-K for the Sunbeam Corporation Savings and Profit Sharing Plan for the years ended 1995 and 1996.

d. Forms 11-K for the Sunbeam-Oster Company, Inc. 401 (k) Savings and Profit Sharing Plan for the years ended 1993 and 1994.

e. Form 8-A of Sunbeam-Oster Company, Inc. dated July 24, 1992.

f. Form S-8 of Sunbeam-Oster Company, Inc. filed on September 15, 1993 (Schipke Equity Award Agreement).

g. Form S-8 of Sunbeam-Oster Company, Inc. filed on April 26, 1993 (Equity Team Plan).

h. Form S-8 of Sunbeam Corporation filed on February 7, 1997 (Registration of Dunlap and Kersh shares).

i. August 25, 1992 Public Offering of 20,000,000 Shares of the Company's Common Stock. (See Bound Volumes I & II)

j. April 5, 1994 Public Offering of 10,000,000 Shares of the Company's Common Stock. (See Bound Volume)

k. November 23, 1994 and December 8, 1994 Public Offering of 10,711,300 Shares of the Company's Common Stock. (See Bound Volumes I and II)

l. Forms 8-K

November 12, 1996 — January 29, 1996
July 24, 1996 — June 19, 1995
July 19, 1996 — March 1, 1994
March 22, 1996

NOT A CERTIFIED COPY

0120080

March 3, 1998

m. Amended Listing Application to the New York Stock Exchange.

n. Form S-8 of Sunbeam-Oster Company, Inc. filed on September 6, 1994 (Amended and Restated Equity Team Plan).

o. Settlement Agreement dated July 22, 1993 among Sunbeam-Oster Company, Inc., Sunbeam-Oster Equities, L.P., Japonica Partners, L.P., et al. (Kazarian Settlement). (See Bound Volume)

p. Form S-8 of Sunbeam-Oster Company, Inc. dated December 22, 1994 (401(k) Savings and Profit Sharing Plan).

B. Documents Related to Debt:

1. Loan agreements, indentures and other debt instruments

a. June 1, 1994, Private Placement of $75,000,000 Mississippi Business Finance Corporation Industrial Development Guaranteed Revenue Notes (Sunbeam Corporation Project), Hattiesburg, Mississippi. (See Bound Volume)

b. Credit Agreement dated as of September 16, 1996, with First and Second Amendments thereto among Sunbeam Corporation and the lenders listed therein. (See Bound Volume)

c. $6,500,000 Forrest County, Mississippi Loan Agreement due December 1, 2015 with an interest rate of 2%. (See Bound Volume)

d. Lease Agreement dated June 27, 1996, by and between Wayne County Economic Development District and Sunbeam Products, Inc. See Item I.1.j. below.

C. Material Agreements.

1. Leases with respect to any principal properties used by the Company See Item I. hereof.

2. Agreements for the purchase of new material and/or components estimated to be in excess of $5 million per annum.

NOT A CERTIFIED COPY

180210

3. Agreements for sourced products for the top ten in terms of Sunbeam sales volume.

4. Licenses to Sunbeam(R) from Third Parties:

   a. Trademark License Agreement with NBA Properties, Inc., dated August 1, 1997.

   b. Trademark License Agreement with Hasbro, dated July 1, 1996.

   c. Trademark License Agreement with American Medical Association, dated August 5, 1997.

   d. Trademark License Agreement with Samsonite Corporation, dated November 20, 1995.

   e. Trademark License Agreement dated May 5, 1992 with Association of Home Appliance Manufacturers.

   f. Trademark License Agreement dated March 1, 1994 with Supima Association of America.

5. Licenses by Sunbeam to Third Parties:

   a. Trademark License Agreement with Signature Brands, Inc., dated June 5, 1997, and related Settlement Agreement and Release.

   b. Trademark License Agreement with Springfield Precision Instruments, dated March 3, 1997. See Bound Volume at A.6.f.

   c. Trademark License Agreement with Sunlite Casual Furniture, Inc., dated March 17, 1997. See Bound Volume at A.6.

   d. Trademark License Agreement dated September 29, 1994 with Rubbermaid Office Products, Inc.

6. International distributor, sales representative, licensing, joint manufacturing and similar agency agreements. (See Binder)

7. Outsourcing Agreements. (See Binder)

NOT A CERTIFIED COPY

012082

8. Insurance policies – See Schedule of Insurance prepared by Sedgwick Insurance Group. Coverages include:

General Liability ($1 million self insured retention)
Automobile Liability
Workers Compensation
International Liability
Non-owned Aircraft
Umbrella Liability
Commercial Property
Ocean Marine Cargo
Worldwide Crime
Directors & Officers Liability
Fiduciary Liability

9. Stockholder agreements, stock and securities purchase agreements, voting trust agreements, first refusal arrangements, agreements in principle as to proposed mergers, acquisitions or sales of assets:

a. Agreement dated July 22, 1993 by and among Sunbeam Corporation, Sunbeam-Oster Equities, L.P., S-O Equities Holding L.P., S-O Equities Holding Company, Japonica Partners, L.P. and certain other individuals and entities listed therein. See Sunbeam Corporation's Quarterly Report on Form 10-Q for the quarter ended July 4, 1993, which is set forth at Item A.7.b. hereof.

10. Contracts, agreements and arrangements with affiliates; guarantees, etc.:

a. Tax Sharing Agreement dated as of October 31, 1990 by and among Sunbeam-Oster Company, Inc., Sunbeam Americas Holdings Limited, O/S J.V. Holding, Inc., NMGM, Inc. and certain subsidiaries.

b. License Agreement dated as of October 1, 1992 between OP II, Inc. (formerly known as Owl Investments, Inc.) and Sunbeam Products, Inc. (formerly known as Sunbeam Corporation), as amended.

c. Service Agreement dated December 21, 1994 between Sunbeam Corporation and Sunbeam Services, Inc.

NOT A CERTIFIED COPY

012083

March 3, 1998

d. Sales and Distribution Agreement effective as of October 1, 1993 between Sunbeam Corporation and Sunbeam Corporation (Canada) Limited and Amendment.

e. Commission Agreement dated October 1, 1993, between Sunbeam Corporation and Sunbeam Corporation (Canada) Limited and Amendment to Commission Agreement dated January 2, 1995.

f. Trademark Licensing Agreement dated January 3, 1994, between Sunbeam Corporation and Sunbeam Mexicana, S.A. de C.V.

g. License Agreement dated January 1, 1995, between Sunbeam Products, Inc. and Sunbeam Corporation (Canada) Limited.

11. Any agreement restricting the Company's ability to do business

a. See Item C5 hereof.

b. Sale of Sunbeam Corporation Limited, Sunbeam New Zealand Limited, Sunbeam Corporation (New Zealand) and Victa (U.K.) Ltd. (March 25, 1987) (See Bound Volume)

c. Deed dated November 30, 1988 among Sunbeam Electric (Holdings) Limited, Sunbeam Holdings, Inc., Sunbeam Corporation, Dalcroza Limited, Victa UK Holdings Limited, Orestes Nominees Limited, Reil Corporation, Berrow PTY Limited and Chantaine Limited.

12. Other Material Agreements:

a. Joint Development Agreement dated June 8, 1994 for joint iron development with Sunbeam Victa (Australia)

b. Inducement Agreement and PILOT Agreement regarding Hattiesburg, MS manufacturing and distribution facility.

D. Financial Information

See Financial Information Binder

NOT A CERTIFIED COPY

0120814

March 3, 1998

E. Employees and Consultants

1. Policy and procedure manual and any other corporate policies.

   a. Employment Policies.

   b. Equal Employment Opportunity.

   c. Leaves of Absence.

   d. Vacation Policy.

   e. Holiday Schedule.

   f. Severance Policy.

   g. Code of Ethical Behavior.

2. Organizational charts for the Company.

3. List of key employees and consultants, role of each and prior business history; chart showing age, job classification and seniority.

4. Listing of 10 highest paid employees (other than Operating Committee) and their responsibilities.

5. Information on confidentiality or noncompetition agreements to which key employees and consultants may be parties from prior employment; parachute agreements.

   a. None, except for Employment Agreements with Operating Committee and Jack Dailey and except as set forth in the Equity Team Plan.

   b. See Equity Team Plan.

6. All board and/or management perquisites or arrangements, contracts or loans between the Company and management (directors and executive officers), consultants, stockholders or affiliates and any arrangements between management, consultants, stockholders or affiliates and entities with which any have a relationship

NOT A CERTIFIED COPY

0112085

March 3, 1998

None

7. Employee Agreements

a. Material employment and agency agreements.

i. Employment Agreement dated July 18, 1996 between the Company and Albert J. Dunlap.

ii. Employment Agreement dated July 22, 1996 between the Company and Russell Kersh.

iii. Employment Agreement dated July 29, 1996 between the Company and David C. Fannin

iv. Employment Agreement dated July 24, 1996 between the Company and John Dailey

v. Employment Agreement dated January 1, 1997 between the Company and Donald R. Uzzi.

b. Collective bargaining agreements; brief description of bargaining history with each union; identify major issues in grievance or arbitration process.

None in United States; Foreign Agreements (Mexico (3 plans) and Venezuela enclosed).

c. Pensions, savings, bonus, profit-sharing, stock option, deferred compensation and similar employee benefit plans; information on life/health arrangements for active and retired; information showing compliance and funded status (IRS, PBGC and DOL filings, etc.)

i. Sunbeam Corporation 401(k) Plan. (See Binder)

ii. Sunbeam Executive Benefit Replacement Plan.

iii. Amended and Restated Sunbeam Equity Team Plan.

iv. Pension Plan for Employees of Sunbeam-Oster Company, Inc. (See Binder)

NOT A CERTIFIED COPY

012086

March 3, 1998

v. Forms 5500 for years 1994 and 1995. (See Binder)

vi. Department of Labor Audit of Sunbeam Americas Holdings Pension Plan.

vii. PBGC Reviews of Allegheny International, Inc. Salaried and Hourly Consolidated Retirement Plan and Other Pension Plans.

viii. Sunbeam Americas Holdings Limited Salaried Employees Benefits Fund Trust.

ix. Sunbeam Americas Holdings Limited Master Pension Trust.

x. Summary Plan Descriptions (SPDs).

xi. Thermco Systems, Inc. Employees' Pension Plan.

xii. Pension Plan for Hourly Employees of Sunbeam-Oster Company, Inc. at the Nacogdoches, Texas, Waynesboro, Georgia and Linton, Indiana Plants.

xiii. Pension Plan for Hourly Employees of Sunbeam-Oster Company, Inc. at the Portland, Tennessee Plant.

xiv. Sunbeam-Oster Company, Inc. Consolidated Retirement Plan. (See Binder)

xv. IRS Review of Form 5500s for 1992.

xvi. IRS Review of Form 5500s for 1991.

xvii. Stock Purchase Plan.

d. Notices/petitions from labor organizations - None

e. Correspondence with labor organizations - None

NOT A CERTIFIED COPY

012087

f. Employee programs involving loans to employees; relocation policies; severance practices

Relocation Management Agreement, dated October 22, 1996.

Relocation Assistance Policy for Employees.

g. Listing of all option holders with number of options owned and strike price

h. Severance agreements and any agreements related to a change of control of the Company

i. See Employment Agreements at Item E7. hereof.

ii. Severance Arrangement regarding Change of Control.

8. Reports of the Company's consulting actuaries for years ended 1993 through 1996. (See Binders)

9. Employment or workplace claims (including worker's compensation) or deficiency reports by state or federal regulatory agencies (e.g. DOL, EEOC, NLRB, OSHA, PBGC, EPA); compliance with Immigration laws

a. Employment Claims and Litigation.

b. Workers' Compensation Information.

c. Employer Information Reports EEO-1s.

d. Investigation by OFCCP

10. Copies of any studies of the cost of potential rationalizations, including any related actuarial analysis - to Be Discussed with Counsel.

11. RFP for New Group Insurance Coverages.

NOT A CERTIFIED COPY

012038

March 3, 1998

F. Patent, Trademark and Copyright Matters

1. List and brief description of all patents, patent applications, copyrights and copyright applications, trademarks, computer software, etc. of the Company; licenses held by the Company to use the rights of others or granted to others to use rights of the Company

   a. List of Patents and Patent Applications.

   b. List of Trademarks.

   c. List of Copyrights and Copyright Applications.

      i. None.

   d. List of Company-Owned Software

      i. The Company has developed and owns the right to certain modifications to the JD Edwards software utilized by it.

   e. Licenses to third parties for auto shutoff iron technology

      i. License Agreement, dated February 17, 1995.. between Sunbeam Corporation and Philips Electronics North America Corporation.

      ii. Agreement dated July 2, 1986 between Sunbeam Corporation and Rowenta-Werke Gmbh.

      iii. License Agreement dated January 17, 1994 between Sunbeam Products, Inc., Sunbeam Australia and Salton-Maxim Housewares.

      iv. License Agreement dated November 21, 1988 between Sunbeam and Matsushita Electric Industrial Co., Inc.

   f. License Agreement with Virotherm Laboratories, Ltd.

   g. Patent License Agreement with Dr. Robert Hamburger dated May 29, 1997 for allergen detector technology.

NOT A CERTIFIED COPY

012089

March 3, 1998

2. Copies or summaries of any claims that the Company's products, processes or trademarks infringe upon the rights of others, or that others are infringing upon the Company's rights. See Item H.1.a. below.

G. Other Licenses and Permits

1. Copies or summaries of governmental licenses and permits required to operate the business as currently operated, and description of any potential loss of a permit or license upon change in control of the Company

H. Litigation, Contingencies and Other Legal Matters

1. a. Summaries of all pending litigation having exposure of $500,000 or more/Product Liability Cases having exposure of $250,000 or more

b. Copies of all attorney's audit letter responses for the period 1994 to the present.

c. List of Litigation Reserves for All Matters (excluding Product Liability).

d. Summary of Environmental Matters with Reserves Over $500,000.

e. List of Reserves for Environmental Matters.

f. Consent Order dated September 4, 1985 between Sunbeam Products, Inc. and the Federal Trade Commission regarding Air Cleaners.

g. Discussion of CPSC matters -- See 1.a. above.

h. Discussion of Product Liability reserves

I. Real Property and Environmental Matters (See Property Listings Binders)

1. List of leased realty and corresponding leases:

a. Bay Springs, Mississippi (Plant 1).
b. Brownsville, Texas.
c. Del Rio, Texas.
d. Fort Lauderdale, Florida (Corporate) [Subleased; two separate Subleases].

NOT A CERTIFIED COPY

012090

March 3, 1998

e. Hattiesburg, Mississippi (49 North - Old Plant).
f. McMinnville, Tennessee.
g. Neosho, Missouri.
h. Schaumburg, Illinois (Corporate/International) [Subleased].
i. Schaumburg, Illinois (Household) [Subleased].
j. Waynesboro, Mississippi.
k. Mexico City, Mexico (Warehouse).
l. Mississaugua, Ontario, Canada [Subleased].
m. Milton Keynes, England.
n. Toronto, Canada.
o. Baraboo, Wisconsin [Subleased].
p. Nashville, TN [Subleased].
q. Frankfurt, Germany
r. New York Showroom [Subleased].

2. List of owned real estate

a. #601, Lombardy Hotel, New York, New York (Conveyance Pending)

b. Biddeford, Maine (Plant 1) [Leased - See binder on sale of Biddeford Textile Company].

c. Hattiesburg, Mississippi (AMDC)

d. Neosho, Missouri.

e. Portland, Tennessee (Sale Pending).

f. Acuna, Mexico.

g. Barquisimeto, Venezuela.

h. Matamoros, Mexico.

i. Mexico City, Mexico.

j. Callao, Peru.

k. Bally, PA

3. List of Outlet Store Locations (See Property Listings Binders)

NOT A CERTIFIED COPY

012091

4. Environmental Matters

a. Environmental Permits. (See Binder)

b. True Temper Corporation (Eliskim, Inc.) - South Carolina Department of Health and Environmental Control Anderson, South Carolina Facility, Administrative Consent Order 85-09-S (2/13/85)

c. Bally Engineered Structures, Inc. - U.S. EPA Bally, Pennsylvania Facility, Administrative Order by Consent No. III-87-2-DC (01/23/87)

d. Woodshaft, Inc. - Mississippi Department of Environmental Quality, Amory, Mississippi Facility, Agreed Order No. 1588-89 (05/30/89)

e. Chemetron Corporation and Temrac, Inc. - U.S. EPA Liquid Disposal, Inc. Site, Shelby, Michigan, Consent Decree - U.S. v. Reitzloff, et al. (12/1/89)

f. Eliskim, Inc. - South Carolina Department of Health and Environmental Control, Anderson, South Carolina, Facility Consent Order (3/8/90)

g. Chemetron Corporation - U.S. EPA Summit National Services Site, Deerfield, Ohio, Administrative Order on Consent No. V-W-88-C-125 (07/20/90)

h. Sunbeam-Oster Company, Inc. and Temrac, Inc. - U.S. EPA, Bally, Pennsylvania, Facility, Consent Decree - U.S. v. Temrac, et al. (07/16/91)

i. Chemetron Corporation - State of Ohio Summit National Services Site, Deerfield, Ohio Consent Decree - Ohio v. Georgeoff, et al. (08/09/91)

j. Woodshaft, Inc. - Mississippi Department of Environmental Quality Amory, Mississippi, Facility Agreed Order No. 2106-91(10/01/91)

NOT A CERTIFIED COPY

012092

March 3, 1998

k. Eliskim, Inc. - South Carolina Department of Health and Environmental Control, Anderson, South Carolina, Facility, Consent Order No. 91-61-SW (10/28/91; amended 2/24/93)

l. Eliskim, Inc. - U.S. EPA, Anderson, South Carolina, Facility, Settlement Agreement - Permit Appeal No. 89-36 (07/02/92)

m. Sunbeam Appliance Company - State of Illinois, Qu Voe Chemical/Refinery Products Site, Schiller Park, Illinois, Partial Consent Decree - Illinois v. Qu VoeChemical Industries (07/24/86)

n. Chemetron Corporation - U.S. EPA, Organic Chemicals, Inc. Site, Grandville, Michigan, Administrative Order on Consent No. V-W-92-C-149 (03/13/92)

o. Allegheny International, Inc. - Pennsylvania Department of Environmental Resources Reedsville, Pennsylvania, (former Kilgore Facility), Administrative Order (12/12/90)

p. Chemetron Corporation - U.S. EPA Thomas Solvent Property, Muskegon, Michigan, Unilateral Administrative Order No. V-W-91-C-088 (02/19/91)

q. Chemetron Investments, Inc. - U.S. EPA, Thermo Chem Site, Muskegon, Michigan, Unilateral Administrative Order (05/06/92)

r. Woodshaft, Inc. - Mississippi Department of Environmental Quality, Amory, Mississippi, Facility Order No. 1856-90 (08/22/90; amended 5/10/93)

s. Woodshaft, Inc. - Mississippi Department of Environmental Quality, Amory, Mississippi, Facility Order No. 1732-90 (03/09/90)

t. Woodshaft, Inc. - Mississippi Department of Natural Resources, Amory, Mississippi Facility Order No. 1549-89 (03/27/89)

u. Sunbeam Outdoor Products Group - Missouri Department of Natural Resources, Neosho, Missouri, Facility Settlement Agreement (01/12/93)

NOT A CERTIFIED COPY

012093

March 3, 1998

v. Chemetron Investments, Inc. - U.S. EPA, Berlin and Farro Liquid Incineration, Inc. Site, Swartz Creek, Michigan, Consent Decree - U.S. and State of Michigan v. Berlin and Farro Liquid Incineration, Inc., et al. (04/01/93)

w. Chemetron Investments, Inc. - State of Michigan, Berlin and Farro Liquid Incineration, Inc. Site, Swartz Creek, Michigan, Consent Decree for De Minimis Settlement - U.S. and State of Michigan v. Berlin and Farro Liquid Incineration, Inc. et al. (08/25/93)

x. Sunbeam Corporation - Louisiana Department of Environmental Quality, Coushatta, Louisiana, Facility Amended Administrative Order No. GE-O-93-0001A (08/1/93)

y. Sunbeam-Oster Company, Inc. - U.S. EPA, Enterprise Recovery Systems, Inc. Site, Byhalia, Mississippi, Administrative Order on Consent for Removal Action Docket No. 93-43-C (EPA Region V) (09/27/93)

z. Chemetron Investments, Inc. - U.S. EPA and State of Texas, Bio-Ecology Systems Superfund Site, Grand Prairie, Texas, Consent Decree - U.S. v. Wallace, et al. (07/23/94)

aa. Chemetron Investments, Inc. - U.S. EPA, Thermo Chem Site, Muskegon, Michigan, Amendment to Administrative Order for Remedial Design and Remedial Action (10/12/94)

bb. Woodshaft, Inc. - Mississippi Department of Environmental Quality, Amory, Mississippi, Facility Agreed Order No. 2944-94 (11/02/94)

cc. Sunbeam Corporation - U.S. EPA, American Chemical Services Site, Griffith, Indiana, Administrative Order on Consent No. V-W-94-C-255 (11/07/94)

dd. Chemetron Investments, Inc. - State of Michigan, Hartley & Hartley Site, Kawkawlin, Michigan, Settlement Agreement for Cost Recovery Claims of the State of Michigan (02/07/95)

ee. Chemetron Investments, Inc. - U.S. EPA, Maxey Flats Site, Morehead, Kentucky, Consent Decree (02/23/95)

NOT A CERTIFIED COPY

012094

March 3, 1998

ff. Temrac Company, Inc. - U.S. EPA, Thermo Chem Site Muskegon, Michigan, Administrative Order on Consent, De Minimis Settlement (08/24/94)

gg. Sunbeam Products, Inc. - U.S. EPA, I.J. Stephens Farm Site, Newton County, Missouri, Administrative Order on Consent for Removal Response Activities and Reimbursement of Response Costs (09/28/95)

hh. Chemetron Investments, Inc. - U.S. EPA, Doepke Holliday Superfund Site Johnson County, Kansas, Consent Decree (5/20/96)

ii. Nuclear Regulatory License No. SUB-1357 - Chemetron Corporation, Newburgh Heights, OH

jj. Consent Decree Between McGean-Rohco, Inc. and Chemetron Corporation regarding remediation of Newburgh Heights, OH.

kk. Eliskim, Inc. - U.S. EPA, True Temper Sports Site, Geneva, Ohio, Administrative Order by Consent (01/22/97)

ll. Integrated Specialties, Inc. - U.S. EPA and State of California, Stringfellow Acid Pits Site, Riverside County, CA, Consent Decree (4/25/97)

mm. Sunbeam Corporation - U.S. EPA EPCRA Sec. 313 (Form R) Enforcement Proceedings

5. Agreement and Mutual Release dated as of February 18, 1994 by and between Chemetron Corporation and McGean Rohco, Inc.

6. Sunbeam Corporation Environmental Compliance Policy.

7. Draft Phase I Environmental Due Diligence Assessment Report, dated February 1995, and Draft Environmental Compliance Audit Report, dated February 1995, both prepared by ENSR Consulting and Engineering for the McMinnville, TN facility.

8. Draft Phase I Environmental Due Diligence Assessment Report, dated February 1995, and Draft Environmental Compliance Audit Report, dated February 1995, both prepared by ENSR Consulting and Engineering for the Neosho, MO facility.

NOT A CERTIFIED COPY

012095

March 3, 1998

9. Draft Phase I Environmental Due Diligence Assessment Report, dated February 1995, and Draft Environmental Compliance Audit Report, dated February 1995, prepared by ENSR Consulting and Engineering for the Waynesboro, MS facility.

J. Operations and Facilities

1. Facilities (See Binder)

K. Descriptions of manufacturing facilities worldwide. (See Binder)

NOT A CERTIFIED COPY

012096

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF THE ARBITRATION BETWEEN
Re: 32 160 00088 99
ALBERT J. DUNLAP
-AND-
SUNBEAM CORPORATION

ADMINISTRATOR: Charles K. Natho

IN THE MATTER OF ARBITRATION BETWEEN
Re: 32 160 00091 99
RUSSELL A. KERSH
-AND-
SUNBEAM CORPORATION

ADMINISTRATOR: Charles K. Natho

DEPOSITION OF JERRY LEVIN
Wednesday, August 2, 2000
2255 Glades Road, Suite 419 Atrium
Boca Raton, Florida 33431
10:00 - 4:32 p.m.

APPEARANCES:
On behalf of the Petitioners:
PRYOR, CASHMAN, SHERMAN & FLYNN, LLP
By: DONALD S. ZAKARIN, ESQUIRE
On behalf of the Respondent:
GREENBERG TRAURIG, P.A.
By: MARK F. BIDEAU, ESQUIRE
LORIE M. GLEIM, ESQUIRE

INDEX

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
MR. LEVIN				
BY MR. ZAKARIN				

EXHIBITS

NUMBER	PAGE
Claimant's Ex. No. 1	19
Claimant's Ex. No. 2	25
Claimant's Ex. No. 3	25
Claimant's Ex. No. 4	28
Claimant's Ex. No. 5	44
Claimant's Ex. No. 6	48
Claimant's Ex. No. 7	72
Claimant's Ex. No. 8	75
Claimant's Ex. No. 9	146

PROCEEDINGS

Thereupon,

JERRY LEVIN,

being by the undersigned Notary Public first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

BY MR. ZAKARIN:

Q. State your name for the record, please.
A. Jerry W. Levin, L-E-V-I-N.
Q. Mr. Levin, what is your current address?
A. 17027 Brookwood Drive, Boca Raton, Florida.
Q. And how long have you lived there?
A. Approximately two years.
Q. That is an owned home or a rented home?
A. Owned.
Q. Okay. And where did you live prior to that?
A. 15 East 70th Street, New York, New York.
Q. How long had you lived in New York?
A. Approximately ten years.
Q. Do you maintain that home in New York still?
A. Yes.
Q. Do you also have a home in New Mexico?
A. No.
Q. Did you ever?

A. No.
Q. Do you have a vacation home someplace?
A. Yes.
Q. Where?
A. I have one in Minneapolis, Minnesota and one in Tucson, Arizona.
Q. Have you ever maintained a residence in Golden, Colorado?
A. No.
Q. Have you ever maintained a residence in Wichita, Kansas?
A. I had a rental apartment there.
Q. And for how long did you have a rental apartment there?
A. Approximately two years.
Q. Was that during your first tenure at Coleman?
A. Yes.
Q. That would be sometime in the time around 1989 to 1991?
A. Correct.
Q. Why don't you give me your basic employment history, if you would -- let's back up for a second.
Do you have any post-graduate education?
A. Yeah.

NOT CERTIFIED COPY

012098

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PENGAD 800-631-6989 MorganStanley 442 DK 12.1.04

CPH 1012825

16div-019306

Page 81

I'm including Coleman.
A. Yes, weather is -- certainly in the blanket business that affects it. The weather can be a factor in the outdoor grill business, but it has not really affected Sunbeam up until this point while I have been there. I mean, been tracking.
Q. Weather is a factor in the sense of either cold or rainy weather in delaying the outdoor grilling season?
A. That's right.
Q. Coleman is now in grills also, isn't it, outdoor gas grills?
A. Sunbeam is producing Coleman branded outdoor gas grills and there are licenses between Coleman and Sunbeam.
Q. Sunbeam is also producing its own grills?
A. Yes.
Q. Under its own name?
A. Yes.
Q. And the Sunbeam outlet stores have been consolidated with Coleman's outlet stores?
A. The part of Sunbeam's plan was -- before I got there was to consolidate the Sunbeam and Coleman stores into one kind of store that sold both companies' products. It made absolutely no sense

Page 82

because of the retailing concept. And we separated them back out again and have liquidated essentially all of the Sunbeam stores because they're in terrible locations and the concepts didn't make sense. So all that's left today is the Coleman outlet business.
Q. All the Sunbeam stores were in terrible locations?
A. They were notorious for taking the cheapest space in the outlet mall.
Q. So they may have been at the same outlets as the sort of Camp Coleman stores, but not in as favorable location?
A. In some cases they were and they definitely were not in as good a location. We always went for "A" locations and they literally went for the lowest cost location they could find in the mall.
Q. Does your brother have anything to do with the Camp Coleman outlet stores?
A. He did.
Q. He doesn't any longer?
A. No.
Q. When did he cease having anything to do with it?
A. He was fired by Russ Kersh when he was -- sometime between the merger and when I arrived.

Page 83

Q. Okay. Did you bring him back?
A. No.
Q. After the sale of Coleman to Sunbeam was announced, you exercised your Coleman options. didn't you?
A. That is correct, to the extent I was able to.
Q. Weren't there any provisions for change of control in your contract at Coleman that would have accelerated all your options?
A. I had certain options that had been vested and I sold those -- vested options -- exercised those and sold the stock immediately after the announcement. There were other options that did not become vested until change of control took place, and I sold those immediately after the change of control took place.
Q. Okay. So you exercised -- those that you had, you already exercised, you sold the stock; those that were vested upon the change and control, you exercised immediately and sold all that stock, correct?
A. I actually exercised and sold the stock that was vested at the same time. I did not own that stock. It was all under option.
Q. Okay. At the end of the day you had no

Page 84

Coleman or Sunbeam stock; isn't that right?
A. That's correct.
Q. You had cash?
A. Cash.
Q. Do you recall approximately what that was, your profit on that sale? You don't have to give me an exact number, just a range.
A. I had 500,000 shares.
Q. Stock prices was around 20, wasn't it?
A. My options were lower. My options were probably in the $12 range. I really don't recall.
Q. Okay. Several million dollars, at least?
A. It was profitable; yes.
Q. I don't have a problem with people making a profit.
Do you recall meeting with Al Dunlap and Russ Kersh at MacAndrews and Forbes' offices in or about May of 1998?
A. Yes.
Q. And do you recall Mr. Perelman being there?
A. Yes.
Q. And do you recall Mr. Nezbeth being there?
A. No.
Q. Do you recall who was there besides you, Mr. Perelman, Mr. Dunlap and Mr. Kersh?

NOT CERTIFIED COPY

****

CREDIT AGREEMENT

Dated as of March 30, 1998

among

SUNBEAM CORPORATION,

The SUBSIDIARY BORROWERS referred to herein,

The LENDERS party hereto,

MORGAN STANLEY SENIOR FUNDING, INC.,
as Syndication Agent

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
as Documentation Agent

and

FIRST UNION NATIONAL BANK,
as Administrative Agent

MORGAN STANLEY SENIOR FUNDING, INC.,
as Arranger

****

NOT A CERTIFIED COPY

012101

MS 520

MORGAN STANLEY CONFIDENTIAL

0007544

16div-019308

Schedule 2.01

Commitments

Lender	Revolving Commitment	Tranche A Term Commitment	Tranche B Term Commitment
Morgan Stanley Senior Funding, Inc.	$240,000,000	$360,000,000	$ 200.000.000
Bank of America National Trust and Savings Association	$180,000,000	$270,000,000	$ 150.000.000
First Union National Bank	$180,000,000	$270,000,000	$ 150.000.000
Total	$ 600,000,000	$900,000,000	$500.000.000

NOT A CERTIFIED COPY

012102

MORGAN STANLEY CONFIDENTIAL

0007647 16div-019309

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1092732

-----BEGIN PRIVACY-ENHANCED MESSAGE-----
Proc-Type: 2001,MIC-CLEAR
Originator-Name: webmaster@www.sec.gov
Originator-Key-Asymmetric:
MFgwCgYEVQgBAQICAf8DSgAwRwJAW2sNKK9AVtBzYZmr6aGjlWyK3XmZv3dTINen
TWSM7vrzLADbmYQaionwg5sDW3P6oaM5D3tdezXMm7z1T+B+twIDAQAB
MIC-Info: RSA-MD5,RSA,
VBPTj7vmKUX09rwwGRIEQ6iE7SYQgHFTGW14U1DHnYIJHGTirx7Qkwnoh+GIaRc5
HhAFTPOKBZEDQbW9VKdBEA==

<SEC-DOCUMENT>0000950172-98-000338.txt : 19980407
<SEC-HEADER>0000950172-98-000338.hdr.sgml : 19980407
ACCESSION NUMBER: 0000950172-98-000338
CONFORMED SUBMISSION TYPE: DEF 14A
PUBLIC DOCUMENT COUNT: 1
CONFORMED PERIOD OF REPORT: 19980512
FILED AS OF DATE: 19980406
SROS: NONE

FILER:

COMPANY DATA:
COMPANY CONFORMED NAME: SUNBEAM CORP/FL/
CENTRAL INDEX KEY: 0000003662
STANDARD INDUSTRIAL CLASSIFICATION: ELECTRIC HOUSEWARES & FANS [3634]
IRS NUMBER: 251638266
STATE OF INCORPORATION: DE
FISCAL YEAR END: 1229

FILING VALUES:
FORM TYPE: DEF 14A
SEC ACT:
SEC FILE NUMBER: 001-00052
FILM NUMBER: 98588431

BUSINESS ADDRESS:
STREET 1: 1615 SOUTH CONGRESS AVENUE
STREET 2: SUITE 200
CITY: DELRAY BEACH
STATE: FL
ZIP: 33445
BUSINESS PHONE: 3057672100

MAIL ADDRESS:
STREET 1: 1615 SOUTH CONGRESS AVENUE
STREET 2: SUITE 200
CITY: DELRAY BEACH
STATE: FL
ZIP: 33445

FORMER COMPANY:
FORMER CONFORMED NAME: SUNBEAM OSTER COMPANY INC /DE/
DATE OF NAME CHANGE: 19931210
</SEC-HEADER>
<DOCUMENT>
<TYPE>DEF 14A
<SEQUENCE>1
<TEXT>

NOT A CERTIFIED COPY

012104

MS 521

SCHEDULE 14A
(RULE 14A-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION
PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the registrant [X]
Filed by a party other than the registrant [ ]

Check the appropriate box:

<TABLE>
<S> <C>
[ ] Preliminary Proxy Statement [ ] Confidential for use of the commission only (as permitted by Rule 14a-6(e)(2))
[X] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12
</TABLE>

SUNBEAM CORPORATION
(Name of Registrant as Specified in Its Charter)

Payment of filing fee (Check the appropriate box):

[X] No fee required.

[ ] Fee computed on the table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transactions apply:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[ ] Fee paid previously with preliminary materials:

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, Schedule or Registration Statement no.:

NOT A CERTIFIED COPY

0012105

(3) Filing Party:

(4) Date Filed:

APPENDIX A

AMENDED AND RESTATED

SUNBEAM CORPORATION

STOCK OPTION PLAN

1. Purpose.

The purpose of the Sunbeam Corporation Stock Option Plan is to provide incentives for selected executives, key employees, Outside Directors and Designated Others to promote the financial success and progress of Sunbeam Corporation. Capitalized terms used throughout this Plan shall have the meanings ascribed to them in Section 16 hereof.

2. Stock Subject to the Plan.

(a) Subject to the provisions of this Section and Section 9, the maximum number of shares of Stock that may be issued under the Plan is 16,500,000 shares, to be allocated as follows:

(i) 16,300,000 shares may be issued in connection with the grant of Options pursuant to Section 3; and

(ii) 200,000 shares may be issued in connection with the grant of Restricted Stock Awards pursuant to Section 3.

Such shares may be either authorized but unissued shares or treasury shares.

(b) The number of shares subject to an Option or a Restricted Stock Award that has been granted under the Plan shall no longer be charged against the limitation provided in Section 2(a), and may again be made subject to Options or Restricted Stock Awards, as the case may be, to the extent that Options expire unexercised or are terminated, surrendered or canceled before exercise or Restricted Stock Awards are forfeited, terminated, surrendered or canceled due to a Participant's termination of employment or service as an Outside Director or for any other reason.

3. Grants of Options and Restricted Stock Awards.

(a) Subject to the provisions of the Plan, the Committee may at any time, or from time to time, grant Options to officers, key employees, Outside Directors of the Company (or its subsidiaries) and Designated Others.

(b) Subject to the provisions of the Plan, the Committee may at any time, or from time to time, grant shares of Stock which are

NOT A CERTIFIED COPY

012106

subject to the Restrictions set forth in Section 4(b) ("Restricted Stock") to officers, key employees and Outside Directors of the Company (or its subsidiaries) and Designated Others.

(c) The Committee shall cause shares of Restricted Stock to be issued to each Outside Director immediately and automatically upon his or her election, re-election or appointment as a Director of the Company. If such Outside Director is elected at an Annual Meeting of the Shareholders of the Company (the "Annual Meeting"), the number of shares of Restricted Stock to be issued shall be 1,500. The number of shares of Restricted Stock to be issued to an Outside Director who is elected or appointed at any time other than at an Annual Meeting shall be 1,500 multiplied by a fraction, the numerator of which shall be the number of days after the date of such election to and including the date of the next Annual Meeting (which for such purpose shall be assumed to be the next May 15) and the denominator of which shall be 365; provided, however, (i) that in the case of an Outside Director elected to the Board for the first time during the period beginning August 1, 1996 and ending December 31, 1996, the number of such shares shall not be prorated, and each such Outside Director shall receive 1,500 shares for the period of his service between the date of his election and the date of the next Annual Meeting (assumed to be May 15, 1997); and (ii) that each incumbent Outside Director, elected prior to August 1, 1996, shall receive that number of shares of Restricted Stock which results from applying to 1,500 such shares the proration formula provided above, using for such calculation the period from August 6, 1996 until and including the date of the next Annual Meeting (assumed to be May 15, 1997).

(d) Deleted.

(e) Each Option shall be evidenced by a Stock Option Agreement, and each Restricted Stock Award shall be evidenced by a Restricted Stock Award Agreement, each in a form approved by the Committee or by a Company officer designated by the Committee.

(f) Notwithstanding any other provision of the Plan, no person shall be granted Options for more than 250,000 shares of Stock or Restricted Stock Awards for more than 25,000 shares of Stock in any single fiscal year of the Company.

4. Terms and Conditions.

(a) Options.

(i) An Option shall entitle the Participant who holds it to exercise the Option on and subject to the terms, conditions and restrictions of the Plan (as the Plan may be amended from time to time) and such additional terms, conditions and restrictions as may be imposed by the Committee at the time of grant.

(ii) Unless otherwise specified by the Committee, the term of each Option granted prior to May 15, 1996 (herein the "1996 Amendment Date") and which is In-the-Money as of the 1996 Amendment Date shall commence on the date of

NOT A CERTIFIED COPY

012107

grant of the Option and shall expire at the close of business on the earlier of (A) the tenth anniversary of the date of grant or (B) the 45th day following the termination of the Participant's employment with, or service as director of, the Company (or a subsidiary). Unless otherwise specified by the Committee, the term of each Option granted on or after the 1996 Amendment Date and the term of each Option granted prior to the 1996 Amendment Date which is Out- of-the-Money as of the 1996 Amendment Date, shall commence on the Grant Date of the Option and shall expire at the close of business on the earliest of (A) the tenth anniversary of the Grant Date; or (B) the third anniversary of the date of termination of the Participant's employment with, or service as a director of, the Company (or a subsidiary), in the case of retirement or termination by the Company without Cause; or (C) 90 days after the date of termination of employment in the case of resignation, voluntary departure or termination by the Company with Cause; or (D) in the case of a Designated Other, the date specified in the Stock Option Agreement. Notwithstanding the foregoing sentence, Participants who are subject to Section 16(b) of the Exchange Act shall have until the earlier of (A) the tenth anniversary of the Grant Date; or (B) the third anniversary of the date of termination of their employment with, or service as a director of the Company, regardless of the cause, within which to exercise Options which are granted on or after the 1996 Amendment Date and Options which are Out-of-the-Money as of the 1996 Amendment Date; provided, however, that no such Option may be exercised by any such person during the period beginning on the date of termination and ending on the six month anniversary of the date of termination.

(iii) All Restrictions shall lapse with respect to the Restricted Stock subject to a Restricted Stock Award made to an Outside Director pursuant to Section 3(c) hereof immediately and automatically upon the Director's acceptance of election or appointment as a Director of the Company, as evidenced in such manner as may be established by the Committee. Unless otherwise specified by the Committee (which is empowered to provide different vesting schedules with respect to any grant of Options or Restricted Stock), all other Options granted under the Plan (from and after July 18, 1996) shall become exercisable with respect to one-third of the shares subject to the Option beginning on the first anniversary of the Grant Date and as to an additional one-third on each of the second and third anniversaries of the Grant Date (each twelve month period ending on an anniversary of a Grant Date being referred to herein as an "Option Year"), provided in each case that the Participant shall have remained an employee or a director of the Company (or a subsidiary), or in the case of a Designated Other, shall have remained in the position set forth in the Stock Option Agreement, continuously since the Grant Date. Notwithstanding the foregoing, during the remaining term of any options (if not already so exercisable) : (A) if a Participant's employment or service as a director,

NOT A CERTIFIED COPY

012108

or in the case of a Designated Other, the period of service as defined in the Stock Option Agreement, terminates due to death, all Options held by the Participant at death shall become immediately exercisable in full; (B) upon a Change in Control, all Options held by such Participant who is then an employee or director of the Company (or a subsidiary) shall become immediately exercisable in full; and (C) in the event that the exercisability of an Option accelerates due to a Change in Control, Participants who are subject to Section 16(b) of the Exchange Act may not sell the shares acquired upon such accelerated exercise within six months of the Grant Date of such Option.

(iv) Except to the extent permitted by Rule 16b-3 or its successor, Options shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of, except by will or the laws of descent and distribution, pursuant to a qualified domestic relations order ("QDRO") as defined in the Code or ERISA (or the rules thereunder) or as otherwise set forth in this Section 4(a)(iv). Each Option shall be exercisable during the lifetime of a Participant only by the Participant to whom it was granted, and after the Participant's death only by the Participant's estate or legal representative. To the extent exercisable, an Option may be exercised in whole at any time, or in part from time to time, during the term of the Option.

(v) Any Option may be converted, modified, forfeited or canceled, prospectively or retroactively, in whole or in part, by the Committee in its sole discretion; provided, however, that no such action shall adversely affect the rights of any Participant under any Option granted prior to such action without his consent. Except as may be otherwise provided in an Agreement, the Committee may, in its sole discretion, in whole or in part, waive any restrictions or conditions applicable to, or accelerate the vesting of, any Option.

(b) Stock Awards.

(i) Upon the grant of a Restricted Stock Award, a stock certificate representing a number of shares of Stock equal to the number of shares of Restricted Stock granted to a Participant shall be registered in the Participant's name but shall be held in custody by the Company for the Participant's account. The Participant shall generally have the rights and privileges of a stockholder as to such Restricted Stock, including the right to vote such Restricted Stock, except that the following restrictions (the "Restrictions") shall apply: (A) the Participant shall not be entitled to delivery of the certificate until the Restricted Period (set forth in paragraph (iii) below) applicable to such Restricted Stock has expired or terminated and until any other conditions prescribed by the Committee are satisfied; (B) none of the Restricted Stock may be sold, transferred, assigned, pledged, or otherwise encumbered or disposed of during the Restricted Period applicable to such Restricted Stock and prior to

NOT A CERTIFIED COPY

012109

the satisfaction of any other conditions prescribed by the Committee; and (C) shares of Restricted Stock shall be forfeited and all rights of the Participant to such Restricted Stock shall terminate without further obligation on the part of the Company unless the Participant has (1) remained an employee or a director of the Company (or a subsidiary) until the expiration or termination of the Restricted Period applicable to such Restricted Stock (or in the case of a Designated Other, the duration specified in the Restricted Stock Award Agreement) and (2) satisfied any other conditions prescribed by the Committee applicable to such Restricted Stock. At the discretion of the Committee, cash and stock dividends with respect to the Restricted Stock may be either currently paid or withheld by the Company for the Participant's account. Cash dividends so withheld by the Committee shall not be subject to forfeiture. Upon the forfeiture of any shares of Restricted Stock, such forfeited Restricted Stock shall be transferred to the Company without further action by the Participant. The Participant shall have the same rights and privileges, and be subject to the Restrictions, with respect to any shares or other property received pursuant to Section 9.

(ii) Upon the expiration or termination of the Restricted Period with respect to shares of Restricted Stock and the satisfaction of any other conditions prescribed by the Committee, the Restrictions applicable to such Restricted Stock shall lapse and a stock certificate for the number of shares of Stock with respect to which the Restricted Period has lapsed shall be delivered, free of all restrictions, except any that may be imposed by law, to the Participant or the Participant's beneficiary or estate, as the case may be. The Company shall not be required to deliver any fractional share of Stock but will pay, in lieu thereof, the Fair Market Value (determined as of the date the Restricted Period expires or terminates) of such fractional share to the Participant or the Participant's beneficiary or estate, as the case may be. No payment will be required from the Participant upon the issuance or delivery of any shares of Stock under this paragraph, except that any amount necessary to satisfy applicable federal, state or local tax requirements shall be withheld or paid promptly upon notification of the amount due and prior to or concurrently with the issuance or delivery of a certificate representing such shares.

(iii) Unless otherwise specified by the Committee at the time of the award and included in the Restricted Stock Award Agreement, the Restrictions shall also lapse with respect to one-third of the Restricted Stock subject to all other Restricted Stock Awards on each of the first through the third anniversaries of the Grant Date, provided in each case that the Participant shall have remained an employee or a director of the Company (or a subsidiary) continuously since the date of grant (or in the case of a Designated Other, shall have complied with the terms and conditions of the Restricted Stock Award Agreement). Notwithstanding the foregoing: (A) if a Participant's

NOT A CERTIFIED COPY

012110

employment or service as a director, or in the case of a Designated Other, the period defined in the Restricted Stock Award Agreement, terminates due to death, the Restrictions shall lapse with respect to all Restricted Stock Awards held by the Participant at death (if not already so lapsed); (B) upon a Change in Control, the Restrictions shall lapse with respect to all Restricted Stock Awards held by such Participant who is an employee or director of the Company (or a subsidiary) (if not already so lapsed); and (C) in the event of an accelerated lapse of Restrictions due to a Change in Control, Participants who are subject to Section 16(b) of the Exchange Act may not sell the shares of Stock whose Restrictions have so lapsed within six months of the Grant Date of the Restricted Stock Award pursuant to which such Stock was received. The "Restricted Period" as to any shares constituting part of a Restricted Stock Award shall be the period of time commencing with the Grant Date of a Restricted Stock Award and ending with the date on which the Restrictions lapse with respect to any such shares, or any portion thereof.

(c) In the event that the acceleration of (i) the exercisability of an Option or (ii) the lapse of Restrictions relating to Restricted Stock upon a Change in Control and a Change in Status results in excise tax pursuant to Section 4999 of the Code, or any successor or similar provision thereto, or comparable state or local tax laws, the Company shall pay to the Participant such additional compensation as is necessary (after taking into account all Federal, state and local income and excise taxes payable by the Participant as a result of the receipt of such compensation) to place the Participant in the same after-tax position he would have been in had no such excise tax (or any interest or penalties thereon) been paid or incurred. The amount of such payment shall be determined by the independent accounting firm serving as the Company's outside auditor immediately prior to the Change in Control.

5. Exercise of Options.

(a) The Exercise Price of the shares purchasable under an Option shall be the Fair Market Value per share on the Grant Date of such Option, subject to subsequent adjustment pursuant to the provisions of Section 9.

(b) Options shall be considered exercised (herein the "Exercise Date") on the date written notice, in such form as the Committee may prescribe, is received by the Option Plan Administrator of the Company, advising of the exercise of an Option and either transmitting payment of the total Exercise Price for the number of shares of Stock involved or electing one of the alternative payment procedures set forth in Section 5(c) below.

(c) The Exercise Price shall be paid in cash (including cash obtained through a margin loan on the shares as to which the Option is being exercised) or (and provided (x) the use of the following procedure by a Participant would comply with safeguards established by the Committee designed to avoid

NOT A CERTIFIED COPY

012111

"short-swing" profits to the Participant under Section 16(b) of the Exchange Act, and (y) does not otherwise violate any applicable laws) through (i) a broker-assisted cashless exercise program established by the Committee, based on the actual proceeds from the sale of share of Stock; or (ii) in shares of Stock, valued on the basis of the closing market price of the Stock on the Exercise Date.

(d) Subject to the provisions of Section 6 and the other provisions of the Plan, the Stock Option Agreement and the Option, the Company shall issue shares of Stock in the Participant's name as soon as practicable (but in no event later than 30 days) after the Exercise Date. The Participant shall not be deemed to be a holder of any shares pursuant to an Option, and shall not have any rights as a stockholder in connection with such shares, until the date of transfer of shares of Stock to the Participant. The Company shall have no liability of any nature whatsoever to any Participant by reason of any change in the market price of the Stock during the period of time between the Exercise Date and the date on which any shares of Stock resulting from the exercise are issued or sold.

6. Restrictions.

(a) Notwithstanding any other provision of the Plan, an Option or Restricted Stock Award to the contrary, no Option shall be exercised, and the Company shall not be obligated to issue or transfer shares of Stock under any Option or Restricted Stock Award, until the Company shall have received such assurances as the Company may reasonably request from its counsel that the exercise of the Option and the issuance and transfer of shares pursuant to the Option or Restricted Stock Award will not violate the Securities Act of 1933, as amended, or any other applicable Federal or state laws. In connection with any such issuance or transfer, the Participant shall, if requested by the Company, give assurances satisfactory to counsel to the Company, in respect of the Participant's investment intent or such other matters as counsel to the Company may deem necessary or desirable to assure compliance with all applicable legal requirements.

(b) No provisions of the Plan or any Option or Restricted Stock Award shall be interpreted or construed to obligate the Company to register any Stock under Federal or state law.

(c) The Company and the Committee reserve the right to investigate at any time the circumstances surrounding any exercise of Options, including any investigation regarding whether a Participant is in compliance with the provisions of Section 13 hereof (or has threatened or is reasonably believed to intend to violate the provisions of Section 13 hereof), and the Company and the Committee shall have no liability or responsibility to any Participant for any alleged damage sustained by the Participant by reason of any delay in the implementation of an Option exercise during the pendency of any such investigation, whether by reason of any change in the market price of the Stock or otherwise.

(d) Notwithstanding any other provision hereof, the Committee shall have the right at any time to deny or delay a Participant's

NOT A CERTIFIED COPY

012112

exercise of Options if such Participant is reasonably believed by the Committee (i) to be engaged in material conduct adversely affecting the Company or (ii) to be contemplating such conduct, unless and until the Committee shall have received reasonable assurance that the Participant is not engaged in, and is not contemplating, such material conduct adverse to the interests of the Company.

(e) Participants are and at all times shall remain subject to the trading window policies adopted by the Company from time to time throughout the period of time during which they may exercise Options or sell Restricted Stock granted pursuant to the Plan. Participants may request at any time a copy of any calendar of scheduled open windows by contacting the Option Plan Administrator.

7. Fair Market Value.

(a) During any period that the Company's Stock is Actively Traded, Fair Market Value shall be equal to the average selling price of a share of Stock on the exchange or national market system on which the Stock is traded, on the date of grant of an option to acquire Stock pursuant to the Plan, or pursuant to such other method as the Committee may reasonably specify for determining the Stock's Fair Market Value.

(b) During any period during which the Company's Stock is not Actively Traded, Fair Market Value shall be determined by the Committee.

8. Term.

This Amended and Restated Plan shall be effective as of the date set forth on the first page hereof. No Option or Restricted Stock Award shall be granted under the Plan after February 12, 2006, but the Plan shall continue in effect thereafter with respect to any previously granted Options and Restricted Stock Awards that remain outstanding and the duration of any such grant or award shall not be affected by the expiration of the Plan.

9. Adjustments.

In the event that any recapitalization, or reclassification, split-up or consolidation of shares of Stock shall be effected, or the outstanding shares of Stock shall, in connection with a merger or consolidation of the Company or a transaction or series of related transactions that results in the sale of all or substantially all of the Company's assets, be exchanged for a different number or class of shares of stock or other securities or property of the Company or any other Person, or a record date or dates for determination of holders of Stock entitled to receive a dividend payable in stock or a liquidating dividend (or series of dividends) shall occur, equitable and proportional adjustments aimed at preventing the inequitable enlargement or dilution of any rights hereunder shall be made to (i) the number and class of shares or other securities or property that may be issued or transferred pursuant to the Plan and any outstanding Options and Restricted Stock Awards and (ii) the Exercise Price to be paid per share under any outstanding Options; provided, however, that in the event of a merger or consolidation of the Company, or similar transaction pursuant to which the outstanding Stock is exchanged for

NOT A CERTIFIED COPY

012113

cash or other property, the unexercised Options shall thereafter be exercisable for, and the Restricted Stock Awards shall entitle the Participant to receive, the cash or other property which an Option or Restricted Stock Award holder, as the case may be, would have been entitled to receive had the Options been exercised, or the Restrictions relating to the Restricted Stock Award lapsed, immediately prior to the record date for such merger, consolidation or similar transaction except to the extent that provision is made in writing in connection with such transaction for (1) the assumption of the Options by, or the substitution for the Options of new options covering the stock of, a successor acquiring corporation, in each case providing terms no less favorable to the holder of such Options than would an assumption or substitution described in Treasury Regulation ss.1.425- 1(a) that would not constitute a "modification" for purposes of Code ss.424(a), and (2) the substitution for Restricted Stock Awards of stock of a successor or acquiring corporation having terms no less favorable to the holder thereof than the terms of the Restricted Stock Award in effect before such transaction.

10. Administration.

(a) The Plan shall be administered by the Committee. The Committee shall, subject to the provisions of the Plan, have full power and authority to administer the Plan, to select the Participants in the Plan, and, except for grants and awards which are automatically made to Outside Directors as provided pursuant to Section 3 of the Plan, to determine the number of shares to be made subject to each Option and Restricted Stock Award and all terms and conditions of each Option and Restricted Stock Award. The Committee shall have the power to interpret the Plan and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee shall be final and binding upon all Participants, the Company and all other interested persons, absent a determination by a court of competent jurisdiction that the Committee has acted in bad faith or has engaged in reckless or willful misconduct.

(b) Members of the Committee and the Board and officers administering this Plan shall be fully protected in taking actions under the Plan or in relying upon the advice of counsel and shall incur no liability except for bad faith, recklessness or willful misconduct in the performance of their duties.

(c) Except as required by Rule 16b-3 with respect to grants of Options to individuals who are subject to Section 16 of the Exchange Act, or as otherwise required for compliance with Rule 16b-3 or other applicable law, the Committee may delegate all or any part of its authority under the Plan to an employee, employees or committee of employees.

(d) To the extent the Committee deems it necessary, appropriate or desirable to comply with foreign law or practices and to further the purpose of the Plan, the Committee may, without amending this Plan, establish special rules applicable to Options granted to Participants who are foreign nationals, are employed outside the United States, or both, including rules

NOT A CERTIFIED COPY

012114

that differ from those set forth in the Plan, and grant Options to such Participants in accordance with those rules.

(e) Determinations by the Committee under the Plan relating to the form, amount and terms and conditions of grants and awards need not be uniform, and may be made selectively among persons who receive or are eligible to receive grants and awards under the Plan, whether or not such persons are similarly situated.

11. General Provisions.

(a) Nothing in this Plan or in any instrument executed pursuant hereto shall confer upon any Person any right to continue in the employment or other service of the Company (or any subsidiary), or shall affect the right of the Company (or any subsidiary) to terminate the employment or other service of any person at any time with or without Cause.

(b) The Company may make appropriate provisions for the withholding of any taxes which the Company determines it is required to withhold in connection with any Option or Restricted Stock Award including, at the request of a Participant and provided that it does not violate any applicable laws, the payment of such withholding taxes through a broker-assisted sale of a sufficient number of shares underlying the Option or subject to the Restricted Stock Award or by delivery to the Company of shares of Stock previously owned by the Participant, in either case having an actual sale price equal to the amount of such taxes. Notwithstanding the foregoing, a Participant whose transactions in Stock are subject to Section 16(b) of the Exchange Act may make a share withholding election only if it complies with safeguards established by the Committee designed to avoid "short swing" profits to the Participant under Section 16(b) of the Exchange Act. The certificates evidencing a Restricted Stock Award made to an Outside Director pursuant to Section 3(c) hereof shall be automatically reduced by 28% to provide for the estimated Federal income tax payment obligation of the Outside Director, or by such other higher percentage as may be required by law to be withheld, with the Company remitting to the appropriate tax authorities the fair market value of the Restricted Stock Award for which the certificates are not so delivered.

(c) By accepting any benefits under the Plan, each Participant, and each Person claiming under or through the Participant, shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, all provisions of the Plan. Each Participant hereby further agrees that amendments and modifications to the Plan, which may be adopted from time to time by the Committee and/or the Board of the Corporation (as set forth in Section 12 hereof), shall be binding upon such Participant and upon all Options or Restricted Stock which the Participant may hold, including (with retroactive effect) Options or Restricted Stock previously granted to the Participant, except to the extent set forth in Section 12 hereof.

(d) With respect to Participants subject to Section 16 of the Exchange Act, transactions under the Plan are intended to comply with all applicable provisions of Rule 16b-3 or its

NOT A CERTIFIED COPY

012115

successor. To the extent any provision the Plan or action by the Plan administrators fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee.

(e) A Participant shall have no rights as a stockholder of the Company with respect to any Shares to be issued upon exercise of an Option until such Participant has exercised such Option and becomes a holder of such Shares.

12. Amendments; Modification and Termination.

This Plan may be amended or modified by the Committee, with ratification by the Board, or terminated by the Board, at any time and in any respect, except that no amendment shall be made without the approval of the shareholders of the Company if shareholder approval would be required by Rule 16b-3 under the Exchange Act or any other law or rule of any governmental authority, stock exchange or other self-regulatory organization to which the Company is subject. No such amendment, modification or termination shall have effect to reduce the number of shares as to which any Option or Restricted Stock Award previously has been granted to a Participant; to extend the vesting schedule with respect to any Option or Restricted Stock Award or to extend the period of non-competition or confidentiality as set forth in Section 13 hereof. In the event of the passage of any law, rule or regulation or a determination by any regulatory agency or court, requiring an adverse change in the Company's accounting or tax treatment relating to the Plan, the Committee shall have the right to modify the terms of outstanding Options and Restricted Stock Awards to the extent necessary to avoid the adverse consequences of such change.

13. Confidentiality and Non-Competition; Conduct Not in the Interest of the Corporation.

By accepting Options or Restricted Stock Awards under the Plan and as a condition to the exercise of Options and the enjoyment of any of the benefits of the Plan, each Participant agrees as follows:

(a) Confidentiality -- During the period of each Participant's employment or service as a director with the Company (or the Participant's engaging in any other activity with or for the Company) and for a two year period thereafter, each Participant shall treat and safeguard as confidential and secret all Confidential Information received by such Participant at any time. Without the prior written consent of the Company, except as required by law, such Participant will not disclose or reveal any Confidential Information to any third party whatsoever or use the same in any manner except in connection with the businesses of the Company and its subsidiaries. In the event that a Participant is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose (i) any Confidential Information or (ii) any information relating to his opinion, judgment or recommendations concerning the Company or its subsidiaries as developed from the Confidential Information, Participant will provide the Company with prompt written notice of any such request or requirement so that the Company may seek an appropriate protective order or waive compliance with the

NOT A CERTIFIED COPY

012116

provisions contained herein. If, failing the entry of a protective order or the receipt of a waiver hereunder, Participant is, in the reasonable opinion of his counsel, compelled to disclose Confidential Information, Participant shall disclose only that portion of the Confidential Information which his counsel advises that he is compelled to disclose and will exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.

(b) Non-Competition -- During the period of employment with the Company or its subsidiaries of any Participant (other than a director) compensated at a rate (including bonuses) in excess of $75,000 per year in cash compensation from his employment with the Company or any of its subsidiaries (determined as of the most recently completed fiscal year of the Company), and, for a two-year period thereafter (the "Non-Compete Period"), each such Participant shall not, without prior written consent of the Committee, do, directly or indirectly, any of the following:

(1) own, manage, control or participate in the ownership, management, or control of, or be employed or engaged by or otherwise affiliated or associated with, any other corporation, partnership, proprietorship, firm, association or other business entity, or otherwise engage in any business which competes with the business of the Company or any of its subsidiaries (as such business is conducted during the term of such Participant's employment with the Company or its subsidiaries) in the geographical regions in which such business is conducted; provided, however, that the ownership of a maximum of one percent of the outstanding stock of any publicly traded corporation shall not violate this covenant; or

(2) employ, solicit for employment or assist in employing or soliciting for employment any present, former or future employee, officer or agent of the Company or any of its subsidiaries.

In the event any court of competent jurisdiction should determine that the foregoing covenant of non-competition is not enforceable because of the extent of the geographical area or the duration thereof, then the Company and the affected Participant hereby petition such court to modify the foregoing covenant to the extent, but only to the extent, necessary to create a covenant which is enforceable in the opinion of such court, with the intention of the parties that the Company shall be afforded the maximum enforceable covenant of non-competition which may be available under the circumstances and applicable law.

(c) Each Participant acknowledges that remedies at law for any breach by him of this section 13 may be inadequate and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, each Participant acknowledges that upon his violation of any provision of this Section 13, the Company will be entitled to immediate injunctive relief and may obtain an order restraining any threatened or future breach. Each Participant further

NOT A CERTIFIED COPY

012117

agrees, subject to the proviso at the end of this sentence, that if he violates any provision of this Section 13, he shall immediately forfeit any rights and benefits under this Plan and shall return to the Company any unexercised Options and forfeit the rights under any Restricted Stock Awards and shall return any shares of Stock held by such Participant received upon exercise of any Option or the lapse of the Restrictions relating to Restricted Stock Awards granted hereunder, together with any proceeds from sales of any shares of Stock received upon exercise of such Options or the lapse of Restrictions of such Restricted Stock Awards; provided, however, that upon violation of subsection (b) of this Section, the forfeiture and return provisions contained in this sentence shall apply only to Options which have become exercisable, and Restricted Stock, the Restrictions with respect to which have lapsed, and in any such case the proceeds of sales therefrom, during the two year period immediately prior to termination of the Participant's employment. Nothing in this Section 13 will be deemed to limit, in any way, the remedies at law or in equity of the Company, for a breach by Participant of any of the provisions of this Section 13.

(d) Each Participant agrees to provide written notice of the provisions of this Section 13 to any future employer of Participant, and the Company expressly reserves the right to provide such notice to the Participant's future employer(s).

(e) If any provision or part of any provision of this Section 13 is held for any reason to be unenforceable, (i) the remainder of this Section 13 shall nevertheless remain in full force and effect and (ii) such provision or part shall be deemed to be amended in such manner as to render such provision enforceable.

14. Governing Law.

The validity, construction and effect of the Plan and any rules relating to the Plan shall be determined in accordance with the laws of the State of Delaware and applicable Federal law.

15. Arbitration.

The Company and each Participant hereby agree that in the event of any dispute or controversy arising with respect to the Plan, any Stock Option Agreement, the exercise of any Option (or the disallowance of any exercise at any time, for any reason) or any other matter relating to Options or Restricted Stock Awards, then such dispute or controversy shall be submitted by the parties to mandatory and binding arbitration before a panel of arbitrators appointed by the American Arbitration Association ("AAA"), each of whom shall be knowledgeable in matters of securities in general and, if possible, the administration of stock option programs similar to the Plan. The arbitration proceedings shall be conducted in whichever of the following cities is closest to the work location of the affected Participant: Delray Beach, Florida; New York, New York; Kansas City, Missouri; Jackson, Mississippi; or Atlanta, Georgia. The decision of the Company as to which city is closest to the work location of the Participant shall be conclusive and binding, except for manifest error. The decision of the arbitrators shall be rendered in writing, shall be promptly rendered after a hearing on the matter and shall be final, conclusive and binding and may be incorporated in

NOT A CERTIFIED COPY

012118

a final judgment rendered by any court of competent jurisdiction.

Notwithstanding the foregoing, nothing contained herein shall preclude the Company from seeking injunctive or other relief from any court of competent jurisdiction to enforce the provisions of Section 13 hereof.

16. Definitions.

The following terms, when used in the Plan, shall have the meanings set forth below:

Actively Traded: Trading of Company Stock on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System in an average weekly volume that equals at least 0.20% of the then outstanding Company Stock for each of at least four weeks in a row.

Beneficial Owner: With respect to any securities of the Company, any Person who is a beneficial owner of such securities as defined in rule 13d-3 under the Exchange Act. The Committee may from time to time adopt interpretations or pronouncements as to who shall be deemed to be Beneficial Owners of the Company's outstanding voting securities as of a given date, which interpretation shall be final and binding on all Participants, the Company and all other interested Persons.

Board: The Board of Directors of the Company.

Cause: Any cause stated in an employment agreement between the Company and the Participant and/or material violations of employment agreements or the terms of this Plan, acts of dishonesty with respect to the Company, insubordination, divulging confidential information about the Company, interference with the relationship between the Company and any supplier, client, customer, similar person, or performance of any act or omission which the Committee, in its sole discretion, deems to be sufficiently injurious to the interest of the Company to constitute cause.

Change in Control: The occurrence of any of the following: (i) a merger or consolidation to which the Company is a party if the individuals and entities who were stockholders of the Company immediately prior to the effective date of such merger or consolidation are Beneficial Owners of less than 50% of the total combined voting power for election of directors of the surviving corporation following the effective date of such merger or consolidation; or (ii) any Person becomes the Beneficial Owner in the aggregate of securities of the Company representing 50% or more of the total combined voting power of the Company's then issued and outstanding securities unless such Person (or a Person owned directly or indirectly by such Person) was the Beneficial Owner, directly or indirectly, as of the Grant Date applicable to the affected Participant, of more than 50% of the Company's voting securities outstanding as of such Grant Date; or (iii) the sale of all or substantially all of the assets of the Company to any person or entity that is not a wholly-owned subsidiary of the Company; or (iv) the stockholders of the Company approve any plan or proposal for the liquidation of the Company.

NOT A CERTIFIED COPY

012119

Code: Internal Revenue Code of 1986, as amended.

Committee: A committee designated by the Board consisting of not less than two members of the Board who are "non-employee directors" as defined in Rule 16b-3 under the Exchange Act, to administer the Plan.

Company: Sunbeam Corporation (formerly known as Sunbeam-Oster Company, Inc.)

Confidential Information: Any information not generally known to the public, including, without limiting the generality of the foregoing, any customer lists, supplier lists, trade secrets, invention, formulas, methods or processes, whether or not patented or patentable, channels of distribution, business plans, pricing policies and records, financial information of any sort and inventory records of the Company or any affiliate (and such other information normally understood to be confidential or otherwise designated as such in writing by the Company or its subsidiaries). It is not necessary, however, that any information be formally designated as "confidential" if it falls within any of the foregoing categories and is not generally known to the public.

Designated Other: Any consultant, advisor, contractor or agent of the Company or its subsidiaries, who is not an employee, officer or Outside Director of the Company and who is granted Options or a Restricted Stock Award pursuant to this Plan.

Effective Date: January 1, 1991; Amended and Restated as of May 15, 1996.

ERISA: Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

Exchange Act: The Securities Exchange Act of 1934, as amended.

Exercise Price: The Exercise Price of shares purchasable upon exercise of an Option, as determined pursuant to the terms of Section 5(a).

Fair Market Value: The fair market value of a share of Stock, as determined pursuant to the terms of Section 7.

Grant Date: The date as of which the Committee (or such other committee of the Board of Directors of the Company as shall be empowered to grant Options or to make awards of Restricted Stock) shall grant Options or Restricted Stock, as the case may be, to a Participant under the Plan, as so designated by such Committee.

In-the-Money: Options to acquire Stock are considered to be "in-the-money" if the exercise price of the Option is less than the current market price of the Stock.

Next Option Increment: This term shall have the meaning ascribed to it in Section 4(a)(iii).

Option: An option, granted under the Plan, to purchase shares

NOT A CERTIFIED COPY

012120

of Stock at the Exercise Price. Options granted under the Plan shall not be incentive stock options pursuant to Section 422 of the Code.

Option Year: This term shall have the meaning ascribed to it in Section 4(a)(iii).

Out-of-the-Money: Options to acquire Stock are considered to be "out-of-the- money" if the exercise price is equal to or greater than the current market price of the Stock.

Outside Director: A director of the Company who is not either: (i) an officer or employee of the Company, or (ii) a Beneficial Owner of, or an officer or employee of any Person which is a direct or indirect Beneficial Owner of, more than 10% of the outstanding Stock.

Participant: An officer, employee, Outside Director of the Company (or a subsidiary of the Company) or Designated Other who is granted an Option or a Restricted Stock Award under the Plan by the Committee. Upon the death of a Participant, the "Participant" shall be deemed to mean the Participant's estate or legal representative.

Person: Any individual, corporation, partnership, association, company, trust, joint venture or other organization or entity or group of associated persons or entities acting in concert. As used herein, references to the male gender shall include the female gender or the neuter, as applicable.

Plan: The Sunbeam Corporation Stock Option Plan herein set forth, as it may be amended from time to time.

Restricted Period: This term shall have the meaning ascribed to it in Section 4(b)(iii).

Restricted Stock: Shares of Stock granted pursuant to Section 3(b) or (c) of the Plan.

Restricted Stock Award: The grant of Shares of Restricted Stock to a Participant pursuant to Section 3(b) or 3(c) of the Plan.

Restricted Stock Award Agreement: The agreement described in Section 3(e).

Restrictions: The restrictions described in Section 4(b) relating to Restricted Stock.

"Shares" or "Stock": The Common Stock, $0.01 par value per share, of the Company, or such other class of securities as may be applicable pursuant to the provisions of Section 9.

Stock Option Agreement: The agreement described in Section 3(e).

NOT A CERTIFIED COPY

012121

16div-019327

FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 12, 1998

The undersigned, a holder of shares of common stock, par value $.01 per share (the "Common Stock"), of Sunbeam Corporation (the "Company"), acting with respect to all shares of Common Stock held by the undersigned, hereby appoints Gary Mask and Janet E. Kelley, and each of them, as proxies of the undersigned, with full power of substitution to represent and to vote such shares of Common Stock, with like effect as if the undersigned were personally present and voting at the Annual Meeting of Stockholders of the Company to be held on May 12, 1998, and at any adjournments, postponements, or rescheduling thereof. Any and all proxies heretofore given are hereby revoked.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE "FOR" ALL OF THE FOLLOWING PROPOSALS.

1. To elect the following seven Directors of the Company for a term of one year: Albert J. Dunlap, Charles M. Elson, Russell A. Kersh, Howard G. Kristol, Peter A. Langerman, William T. Rutter and Faith Whittlesey (for terms to expire at the 1999 Annual Meeting) (Proposal No. 1).

   |_| FOR all nominees |_| WITHHOLD AUTHORITY for all nominees Authority withheld for the following nominee(s) only: (Write the name(s) of such nominee(s) in the space provided below)

   _____

2. To approve the grant of stock options to Albert J. Dunlap, the Company's Chairman and Chief Executive Officer, contained in his Employment Agreement with the Company (Proposal No. 2).

   |_| FOR |_| AGAINST |_| ABSTAIN

3. To approve the grant of stock options to Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer, contained in his Employment Agreement with the Company (Proposal No. 3).

   |_| FOR |_| AGAINST |_| ABSTAIN

4. To approve the grant of stock options to David C. Fannin, the Company's Executive Vice President, Secretary and General Counsel, contained in his Employment Agreement with the Company (Proposal No. 4).

   |_| FOR |_| AGAINST |_| ABSTAIN

5. To approve an amendment to the Company's Restated Certificate of Incorporation to increase the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares (Proposal No. 5).

   |_| FOR |_| AGAINST |_| ABSTAIN

6. To approve amendments to the Amended and Restated Sunbeam Corporation Stock Option Plan to increase the number of shares of Common Stock with respect to which awards may be granted to 16,500,000 shares from 11,500,000 shares (Proposal No. 6).

   _ _ _

NOT A CERTIFIED COPY

0121122

|_| FOR |_| AGAINST |_| ABSTAIN

7. To transact such other business as may properly come before the meeting or any adjournment thereof, including matters incident to the conduct of the Annual Meeting.

WHEN PROPERLY EXECUTED, THE SHARES REPRESENTED BY THIS PROXY WILL BE VOTED AS DIRECTED BY THE UNDERSIGNED. IF NO INSTRUCTIONS ARE SPECIFIED, THE UNDERSIGNED'S VOTE WILL BE CAST "FOR" PROPOSALS 1, 2, 3, 4, 5 AND 6 AND IN THE DISCRETION OF THE PROXIES AS TO SUCH OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE ANNUAL MEETING OR AT ANY AND ALL POSTPONEMENTS OR ADJOURNMENTS THEREOF. AT THE PRESENT TIME, THE BOARD OF DIRECTORS KNOWS OF NO OTHER BUSINESS TO BE PRESENTED AT THE ANNUAL MEETING.

The undersigned stockholder may revoke this proxy at any time before it is voted by delivering to the Secretary of Sunbeam either a written revocation of the proxy or a duly executed proxy bearing a later date, or by appearing at the Annual Meeting and voting the shares subject to the proxy by written ballot. IMPORTANT: Please sign exactly as name appears below. Each joint owner shall sign. Executors, administrators, trustees, etc. should give full title as such. If signor is a corporation, please give full corporate name by duly authorized officer. If a partnership, name by authorized person.

DATED: _____ , 1998

_____
(Signature)

_____
(Signature if Jointly Held)

THE ABOVE-SIGNED ACKNOWLEDGES RECEIPT OF THE NOTICE OF ANNUAL MEETING OF STOCKHOLDERS AND THE PROXY STATEMENT FURNISHED THEREWITH.

PLEASE SIGN, DATE AND RETURN THIS PROXY CARD PROMPTLY USING THE ENCLOSED ENVELOPE.

NOT A CERTIFIED COPY

012123

SUNBEAM CORPORATION
SUITE 200, 1615 SOUTH CONGRESS AVE.
DELRAY BEACH, FLORIDA 33445

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD MAY 12, 1998

To The Stockholders of Sunbeam Corporation:

Notice is hereby given to the stockholders of Sunbeam Corporation, a Delaware corporation (the "Company"), that the 1998 Annual Meeting of Stockholders of the Company (the "Annual Meeting") will be held at the Hilton, 100 Fairway Drive, Deerfield Beach, Florida 33441 on Tuesday, May

12, 1998, at 9:00 a.m. (local time), for the following purposes:

1. To elect the following seven (7) Directors of the Company for a term of one year: Albert J. Dunlap, Charles M. Elson, Russell A. Kersh, Howard G. Kristol, Peter A. Langerman, William T. Rutter and Faith Whittlesey (for terms to expire at the 1999 Annual Meeting) (Proposal No. 1); and

2. To approve the grant of stock options to Albert J. Dunlap, the Company's Chairman and Chief Executive Officer, contained in his Employment Agreement with the Company (Proposal No. 2); and

3. To approve the grant of stock options to Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer, contained in his Employment Agreement with the Company (Proposal No. 3); and

4. To approve the grant of stock options to David C. Fannin, the Company's Executive Vice President, Secretary and General Counsel, contained in his Employment Agreement with the Company (Proposal No. 4); and

5. To approve an amendment to the Company's Restated Certificate of Incorporation increasing the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares (Proposal No. 5); and

6. To approve amendments to the Amended and Restated Sunbeam Corporation Stock Option Plan to increase the number of shares of Common Stock with respect to which awards may be granted to 16,500,000 shares from 11,500,000 shares (Proposal No. 6).

7. To transact such other business as may properly come before the Annual Meeting or any adjournment thereof, including matters incident to the conduct of the Annual Meeting.

The close of business on March 30, 1998, has been fixed as the record date for the determination of the stockholders of the Company entitled to notice of and to vote at the Annual Meeting, and only stockholders of record at that time will be entitled to notice of and to vote at the Annual Meeting and at any postponement or adjournment thereof.

Stockholders who do not expect to attend the Annual Meeting in person are urged to sign, date and promptly return the proxy card that is enclosed herewith.

By Order of the Board of Directors.

David C. Fannin
Secretary

April 6, 1998

NOT A CERTIFIED COPY

012124

SUNBEAM CORPORATION
PROXY STATEMENT

ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 12, 1998

This Proxy Statement is being furnished in connection with the

solicitation by the Board of Directors and management of Sunbeam Corporation, a Delaware corporation (the "Company" or "Sunbeam"), of proxies for use at the Annual Meeting of Stockholders of the Company (the "Annual Meeting") to be held at the Hilton, 100 Fairway Drive, Deerfield Beach, Florida 33441 on Tuesday, May 12, 1998, at 9:00 a.m. (local time), and at any and all postponements or adjournments thereof, for the purposes set forth in the accompanying Notice of Annual Meeting. This Proxy Statement, Notice of Annual Meeting and accompanying proxy card are first being mailed to stockholders on or about April 6, 1998.

VOTING SECURITIES

As of the close of business on March 30, 1998, the date fixed by the Company's Board of Directors (the "Board of Directors") as the record date for determining the stockholders of the Company entitled to receive notice of, and to vote at, the Annual Meeting or any postponements or adjournments thereof, the Company had outstanding 100,811,194 shares of common stock, par value $.01 per share (the "Common Stock"). Each share of Common Stock entitles the holder thereof to one vote on each matter to be considered at the Annual Meeting. The presence at the Annual Meeting, in person or by proxy, of a majority of the issued and outstanding shares of Common Stock entitled to vote will constitute a quorum. All abstentions and broker non-votes will be counted as shares that are present and entitled to vote for purposes of determining the presence of a quorum at the Annual Meeting.

The election of Directors of the Company will require the affirmative vote of a plurality of the votes cast on the proposal. In tabulating the vote, votes which are withheld with respect to a nominee and broker non-votes will be disregarded and will have no effect on the outcome of such vote.

Approval of each of the proposals to approve the grants of stock options to Albert J. Dunlap, Russell A. Kersh and David C. Fannin contained in their respective Employment Agreements with the Company will require the affirmative vote of the holders of a majority of the votes cast on each such proposal, provided that the total number of votes cast on each such proposal represents over 50% of the number of votes entitled to be cast on such proposal. In determining whether each proposal has received the requisite number of affirmative votes, abstentions and broker non-votes will be disregarded and will have no effect on the outcome of the vote.

Approval of the proposal to amend the Company's Restated Certificate of Incorporation to increase the total number of authorized shares of Common Stock to 500,000,000 from 200,000,000 will require the affirmative vote of the holders of a majority of the outstanding shares of Common Stock. In determining whether the proposal has received the requisite number of affirmative votes, abstentions and broker non-votes will have the same effect as a vote against the proposal.

Approval of the proposal to amend the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Option Plan") to increase the number of shares of Common Stock with respect to which awards may be granted to 16,500,000 shares from 11,500,000 shares will require the affirmative vote of the holders of a majority of the votes cast on the proposal, provided that the total number of votes cast on such proposal represents over 50% of the number of votes entitled to be cast on such proposal. In determining whether the proposal has received the requisite number of affirmative votes, abstentions and broker non-votes will be disregarded and will have

NOT A CERTIFIED COPY

0121125

no effect on the outcome of the vote.

If the accompanying proxy card is properly signed and returned to the Company, the shares of Common Stock represented thereby will be voted as specified therein. If no specification is made, the shares will be voted in accordance with the recommendations of the Board of Directors. The proxy may, nevertheless, be revoked prior to its exercise by delivering written notice of revocation to the Secretary of the Company, by executing a later dated proxy or by attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not in itself constitute a revocation of a proxy.

PROPOSAL 1 -- TO ELECT THE FOLLOWING SEVEN (7) DIRECTORS OF THE COMPANY FOR A TERM OF ONE YEAR: ALBERT J. DUNLAP, CHARLES M. ELSON, RUSSELL A. KERSH, HOWARD G. KRISTOL, PETER A. LANGERMAN, WILLIAM T. RUTTER AND FAITH WHITTLESEY

The Company's By-Laws provide that the Board of Directors will consist of not less than three nor more than twelve persons as fixed from time to time by a vote of a majority of the entire Board of Directors. At its meeting held on February 3, 1998, the Board of Directors established the number of Directors of the Company for the upcoming year at seven. At the Annual Meeting, Directors of the Company will be elected to serve one year terms expiring at the 1999 Annual Meeting or until their successors are elected and have been qualified. The Board of Directors has no reason to believe that any of the nominees will not serve if elected, but if any of them should become unavailable to serve as a Director of the Company, and if the Board of Directors designates a substitute nominee, the persons named as proxies will vote for the substitute nominee designated by the Board of Directors.

The names of the nominees, their principal occupations and the year in which each Director of the Company initially joined the Board of Directors are set forth below.

ALBERT J. DUNLAP, age 60, has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

CHARLES M. ELSON, age 38, has been a Director of the Company since his appointment to the Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and the Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October 1997.

RUSSELL A. KERSH, age 44, has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to

NOT A CERTIFIED COPY

012126

May 1994.

HOWARD G. KRISTOL, age 60, has been a Director of the Company since his appointment on August 6, 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.

PETER A. LANGERMAN, age 42, has been a Director of the Company since 1990 and served as the Chairman of the Board of Directors from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997.

WILLIAM T. RUTTER, age 67, has been a Director of the Company since his appointment on April 8, 1997. Mr. Rutter is Senior Vice President/Managing Director, Private Banking of First Union National Bank of Florida, a position he has held since 1986.

FAITH WHITTLESEY, age 59, has been a Director of the Company since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc. (a publishing and printing company).

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE
"FOR" THE ELECTION OF SUCH NOMINEES
AS DIRECTORS OF THE COMPANY

DIRECTORS' COMPENSATION

Pursuant to the Option Plan, each Director of the Company who is not an employee of the Company or an affiliate of the Funds Group (as defined herein under the caption "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS"), the Company's largest stockholder ("Outside Directors"), is automatically granted 1,500 shares of restricted stock upon his or her initial election or appointment to the Board of Directors and upon each subsequent re-election to the Board of Directors (prorated in case of an election or appointment at any time other than at an annual meeting of stockholders). Such restricted stock vests immediately upon the Director's acceptance of his or her election or appointment.

Outside Directors do not receive any other fees, but are reimbursed for all ordinary and necessary out-of-pocket expenses incurred by them in attending meetings of the Board of Directors or its Committees.

Each Outside Director is expected to acquire with his or her own funds (and may purchase from the Company at fair market value on the date of purchase), and thereafter to maintain ownership of, a minimum of 2,000 shares of Common Stock. Such purchase is expected to be made as soon as practicable following each Outside Director's first election or appointment. In compliance with this requirement, each of the Company's Outside Directors, Messrs. Elson, Kristol and Rutter and Ms. Whittlesey,

NOT A CERTIFIED COPY

0121127

has purchased 6,000, 6,000, 2,000 and 2,390 shares of Common Stock, respectively.

COMMITTEES OF THE BOARD OF DIRECTORS; BOARD OF DIRECTORS AND COMMITTEE MEETINGS

During 1997, the Board of Directors held five meetings. As permitted by the By-Laws of the Company, the Company has several standing committees, including an Audit Committee, an Executive Committee and a Compensation Committee. The Executive Committee also serves as the Nominating Committee.

The Executive Committee of the Board of Directors currently consists of Messrs. Dunlap (Chairman), Langerman, Kristol and Kersh. The Executive Committee has the authority to act in place of the Board of Directors on all matters which would otherwise come before the Board of Directors, except for such matters which are required by law or by the Company's Restated Certificate of Incorporation or By-Laws to be acted upon exclusively by the Board of Directors. In 1997, the Executive Committee met twice (once in its capacity as the Nominating Committee) and acted by unanimous written consent four times. The Executive Committee, in its capacity as the Nominating Committee, will not consider recommendations by stockholders for nominees for election as Directors of the Company, except for recommendations made by the Funds Group. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."

The Audit Committee of the Board of Directors currently consists of Messrs. Rutter (Chairman), Elson and Kristol. The Audit Committee's primary responsibilities are to review the Company's financial statements and accounting controls, to recommend the appointment of the Company's independent auditors and to review the overall scope of the audit. The Audit Committee met twice during 1997.

Compensation issues are the responsibility of the Compensation Committee, consisting of Directors Langerman (Chairman), Elson and Whittlesey. The Compensation Committee is responsible for establishing the general compensation policies of the Company and specific compensation levels for its executive officers and administering the Option Plan and incentive compensation plan. In 1997, the Compensation Committee met three times and acted by unanimous written consent once.

Each of the Company's incumbent Directors attended (either in person or by telephone) at least 75% of the aggregate number of meetings of the Board of Directors held during 1997 and at least 75% of the aggregate number of meetings held during that time period by the respective Committee(s) of which such Director was a member.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table sets forth information as of March 30, 1998, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding shares of Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

NOT A CERTIFIED COPY

012128

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP	PERCENTAGE OF COMMON STOCK
Franklin Mutual Series Fund Inc., including:	17,541,398(1)	17.4%
Mutual Shares Fund	11,260,174(1)	11.2%
Mutual Qualified Fund	4,800,554(1)	4.8%
Franklin Mutual Advisers, Inc.	17,541,398(1)	17.4%
Franklin Resources, Inc. Charles B. Johnson Rupert H. Johnson, Jr.	17,541,398(1)	17.4%
AXA Assurances I.A.R.D. Mutuelle	8,598,784(2)	8.5%
including: AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle, AXA-UAP and The Equitable Companies Incorporated		
Albert J. Dunlap	5,241,564(3)	5.0%
Ronald O. Perelman	14,099,749(4)	14.0%

(1) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Advisers, Inc. is 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole stockholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal stockholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock. Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock. Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson and Rupert H. Johnson, Jr. each disclaim beneficial ownership of these shares.

NOT A CERTIFIED COPY

0012129

(2) Information reflected in this table and the notes thereto with respect to AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the "Mutuelles AXA Group"), AXA-UAP ("AXA-UAP") and the Equitable Companies Incorporated ("Equitable") is derived from the Schedule 13G/A, dated February 17, 1998, filed jointly by the Mutuelles AXA Group, AXA-UAP and Equitable. In the aggregate, Mutuelles AXA Group, AXA-UAP and Equitable own 8,598,784 shares of Common Stock. The members of the Mutuelles AXA Group, AXA-UAP and Equitable each have sole voting power over 5,670,794 of such shares, shared voting power over 1,373,600 such shares, sole dispositive power over 8,591,384 such shares and shared dispositive power over 7,400 such shares. The address of AXA Assurances I.A.R.D. Mutuelle and AXA Assurances Vie Mutuelle is 21 rue de Chateaudun, 75009 Paris, France. The address of Alpha Assurances Vie Mutuelle is 100-101 Terrasse Boieldieu, 92042 Paris La Defense, France. The address of AXA Courtage Assurance Mutuelle is 26, rue Louis le Grand, 75002 Paris, France. The address of AXA-UAP is 23, avenue Matignon, 75008 Paris, France. The address of The Equitable Companies, Inc. is 1290 Avenue of the Americas, New York, N.Y. 10104.

(3) See "SECURITY OWNERSHIP OF MANAGEMENT."

(4) Represents shares of Common Stock received by Coleman (Parent) Holdings Inc. ("Parent Holdings") in connection with the merger of Laser Acquisition Corp., a wholly owned subsidiary of the Company ("LAC"), with and into CLN Holdings Inc., a wholly owned subsidiary of Parent Holdings ("CLN Holdings"), pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998, among the Company, LAC, CLN Holdings and Parent Holdings. The address of Parent Holdings is 2111 E. 37th Street North, Wichita, Kansas 67219. Ronald O. Perelman is the indirect beneficial owner of all of the outstanding capital stock of Parent Holdings. Accordingly, Mr. Perelman may be deemed to be the beneficial owner of all of the shares of Common Stock owned by Parent Holdings. Mr. Perelman's address is 35 E. 62nd Street, New York, New York 10021.

NOT A CERTIFIED COPY

SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of March 30, 1998, of Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director of the Company; (2) each of the Named Executives, as defined herein under the caption "EXECUTIVE COMPENSATION"; and (3) the Directors and current executive officers of the Company as a group.

012130

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP(1)(2)	PERCENTAGE OF COMMON STOCK (2)
DIRECTORS		
Albert J. Dunlap	5,241,564 (7)	5.0%
Charles M. Elson	9,000 (4)	*

Russell A. Kersh	1,045,400 (3)	1.0%
Howard G. Kristol	9,000 (4)(6)	*
Peter A. Langerman	0 (5)	0
William T. Rutter	3,500 (4)	*
Faith Whittlesey	5,390 (4)	*
NAMED EXECUTIVE OFFICERS		
David C. Fannin	371,433 (3)	*
Donald R. Uzzi	116,666	*
Lee Griffith	60,543	*
All Directors and current executive officers as a group (9 persons)	6,801,953 (8)	6.4%

* Less than one percent.

(1) All Directors and Named Executive Officers have the sole power to vote and to dispose of the shares of Common Stock listed above except as follows: (i) Mr. Dunlap holds 1,491,564 of the listed shares jointly with his wife; (ii) 151,600 shares listed as owned by Mr. Kersh are held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary (the power to vote and to dispose of such shares is held by Howard G. Kristol, Trustee of such Trust), and Mr. Kersh holds 5,000 of the listed shares jointly with his spouse; (iii) Mr. Fannin holds 20,433 shares of stock jointly with his wife; and (iv) 5,000 of the shares listed as owned by Mr. Griffith are owned by Mr. Griffith's wife and minor children.

(2) Includes shares which Directors and Named Executives have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days). Includes 3,750,000, 781,250, 328,500, 116,666 and 50,000 shares which may be acquired by Messrs. Dunlap, Kersh, Fannin, Uzzi and Griffith, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table.

(3) Includes 112,500 and 22,500 shares of restricted stock held by Messrs. Kersh and Fannin, respectively.

(4) Includes shares of restricted stock granted to each of Directors Elson, Kristol, Rutter and Whittlesey upon their respective elections, appointments and subsequent reelections to the Board of Directors, all of which shares were immediately vested. See "Directors' Compensation" above.

(5) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS."

(6) Does not include shares owned by the Russell A. Kersh Irrevocable Trust (of which Mr. Kristol serves as Trustee) as to which Mr. Kristol disclaims beneficial ownership.

(7) See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN

NOT A CERTIFIED COPY

0121131

CONTROL ARRANGEMENTS" and "REPORT OF THE COMPENSATION COMMITTEE ON EXECUTIVE COMPENSATION -- Compensation of the Chief Executive Officer."

(8) Includes shares which all current executive officers and Directors of the Company have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

EXECUTIVE COMPENSATION

SUMMARY COMPENSATION TABLE

The following table sets forth for the fiscal years ended December 28, 1997, December 29, 1996 and December 31, 1995, the compensation for services rendered to the Company in all capacities of those persons who, during 1997, (i) served as chief executive officer (the "CEO") of the Company and (ii) were the four most highly compensated executive officers of the Company, other than the CEO, as of the Company's fiscal year end (collectively with the CEO, the "Named Executives"). Each of Messrs. Dunlap, Kersh, Uzzi and Griffith joined the Company during 1996. As of February 1, 1998, the Company entered into new three-year Employment Agreements with each of Messrs. Dunlap, Kersh and Fannin. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS." Mr. Uzzi's position as an officer and an employee of the Company was terminated effective April 1, 1998. On April 3, 1998, Mr. Griffith was named President of the Company's Household Products Division.

<TABLE>
<CAPTION>

		Annual Compensation			Long Term Compen Awards	
Name and principal position	Year	Salary ($)	Bonus ($)	Other Annual Compensation	Restricted Stock($)(1)	Se Un Op SAR
<S>	<C>	<C>	<C>	<C>	<C>	<
Albert J. Dunlap,	1997	1,115,385(3)	0	282,888(4)	0	
CEO and Chairman	1996	507,054(3)	0	63,850(4)	12,500,000	2
Russell Kersh,	1997	425,000	0	35,681(6)		
Vice Chairman and Chief Financial Officer	1996	190,384	125,000(5)	240,598(6)	1,812,500	
David C. Fannin,	1997	313,233	0	4,730(7)	0	
EVP, General Counsel	1996	272,112	0	0	191,250	
	1995	222,917	51,271	0	0	
Donald Uzzi,	1997	400,000	0	54,787(8)	0	
EVP,Consumer Products Worldwide	1996	94,904	0	100,456(8)	0	

NOT A CERTIFIED COPY

0121132

Lee Griffith,	1997	251,353	0	10,008(9)	0
Vice President	1996	82,372	0	50,000(9)	0
Sales					

</TABLE>

(1) Represents the value of restricted stock awards to Messrs. Dunlap, Kersh and Fannin of 1,000,000, 100,000 and 10,000 shares, respectively (based on the closing market price of $ 12 1/2, $18 1/8 and $19 1/8 per share as of the respective grant dates of July 18, 22 and 29, 1996). With respect to Mr. Dunlap's shares of restricted stock, one-third of such shares vested as of the grant date and an additional one-third vested on the first anniversary of the grant date; of the remaining 333,334 shares of restricted stock, 133,334 were cancelled as of February 20, 1998 and the remaining 200,000 shares of restricted stock vested as of February 20, 1998. The shares of restricted stock held by Messrs. Kersh and Fannin have vested with respect to one-third of the shares of restricted stock on the first anniversary of the grant date; of the remaining shares of restricted stock, 40% were cancelled as of February 20, 1998 (i.e., 26,664 shares and 2,666 shares, respectively) and the remaining shares of restricted stock vested as of February 20, 1998. At December 26, 1997, the value of the shares of restricted stock held by each of Messrs. Dunlap, Kersh and Fannin was $14,187,528, $2,837,514, and $283,764, respectively (based on the market price of $42 9/16 per share on December 26, 1997). Dividends are paid on all such shares of restricted stock.

(2) The Company adopted an Executive Benefit Replacement Plan (the "Replacement Plan") in 1994 to restore the amount of benefits payable to certain highly compensated employees of the Company who would otherwise be subject to certain limitations on the amount of benefits payable under the Company's 401(k) Savings and Profit Sharing Plan (the "401(k) Plan"). Amounts of All Other Compensation represent the amounts accrued for all Named Executives in 1997 under the Company's Executive Benefit Replacement Plan (including the Company's profit sharing allocation).

(3) Includes $115,385 and $51,923 paid in 1997 and 1996, respectively, in lieu of vacation in accordance with Mr. Dunlap's Employment Agreement.

(4) Includes $14,355 and $17,250 for the value of a Company provided automobile in 1997 and 1996, respectively, $115,665 and $27,345 as reimbursement for taxes paid on the value of such automobile and other Company provided benefits (including reimbursement for financial planning services, health and dental care premiums and reimbursement for membership in a country club) in 1997 and 1996, respectively, and $41,348 as reimbursement for financial planning services in 1997.

(5) One time bonus payable pursuant to Mr. Kersh's prior Employment Agreement.

(6) For 1997, includes $14,628 as reimbursement for taxes paid on the value of Company provided benefits and other Company provided benefits, including $18,921 reimbursement for financial planning services. For 1996, includes a discount on the purchase of stock from the Company in the amount of $239,800.

NOT A CERTIFIED COPY

012133

(7) For 1997, includes $1,922 as reimbursement for taxes paid on the value of Company provided benefits, as well as other Company provided benefits.

(8) For 1997, includes $50,000 with respect to sale of Mr. Uzzi's home and $3,419 as reimbursement (on a grossed-up basis) for tax preparation services, as well as other Company provided benefits. For 1996, includes $100,000 paid in a lump sum in lieu of reimbursement for moving expenses, as well as other Company provided benefits.

(9) For 1997, includes $4,108 as reimbursement for taxes paid on the value of Company provided benefits and $5,900 reimbursement for financial planning services, as well as other Company provided benefits. For 1996, represents reimbursement of relocation services.

OPTION/SAR GRANTS IN LAST FISCAL YEAR

The following table sets forth information with respect to options to purchase shares of Common Stock granted to Donald R. Uzzi during 1997 pursuant to the Option Plan. No other Named Executive received a grant of options in 1997.

<TABLE>
<CAPTION>

Name	Number of Securities Underlying Options/ SARs Granted	% of Total Options/ SARs Granted to Employees in Fiscal Year	Exercise or Base Price ($/Sh)	Expiration Date	Potential Rea Value at Assu Rates of Stoc Appreciation Term(2) 5%($)
<S>	<C>	<C>	<C>	<C>	<C>
Donald R. Uzzi	100,000(1)	3.22%	$25.54	1/1/2007	1,606,197

</TABLE>

(1) These options had a term of ten years and were scheduled to become exercisable over three years in equal annual increments commencing on the first anniversary of the grant date. In accordance with the terms of the Option Plan, upon Mr. Uzzi's termination as an officer and an employee of the Company effective April 1, 1998, all then unvested stock options held by Mr. Uzzi were forfeited and expired.

(2) The dollar amounts are the result of calculations at the 5% and 10% growth rates set by the Securities and Exchange Commission; the rates are not intended to be a forecast of future stock price appreciation. A zero stock price growth will result in zero gain.

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR
AND FISCAL YEAR-END OPTION/SAR VALUES

The following table sets forth information with respect to option exercises occurring during 1997 and the number of options held by the Named

NOT A CERTIFIED COPY

012134

Executives at the Company's fiscal year end.

<TABLE>
<CAPTION>

Name	Shares Acquired on Exercise	Value Realized	No. of Securities Underlying Unexercised Options Held at December 28, 1997 Exercisable	Unexercisable	Value In Dec Exercisab
<S>	<C>	<C>	<C>	<C>	<C>
Albert J. Dunlap, CEO	0	0	1,666,667	833,333	50,520,81
Russell A. Kersh	0	0	166,666	333,334	4,717,06
David C. Fannin	0	0	87,000	113,000	2,169,61
Donald R. Uzzi	0	0	83,333	266,667(2)	1,615,20
Lee Griffith	0	0	50,000	100,000	1,101,62

</TABLE>

(1) Based on the difference between the exercise price of the options and the closing price on the New York Stock Exchange of the Common Stock on December 26, 1997 ($42 9/16).

(2) Pursuant to the terms of the Option Plan, upon Mr. Uzzi's termination as an officer and an employee of the Company effective April 1, 1998, 233,334 of these options were forfeited and expired.

EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS

EMPLOYMENT AGREEMENT WITH MR. DUNLAP

As of February 1, 1998, the Company entered into an Employment Agreement with Mr. Dunlap (the "Dunlap Agreement") pursuant to which the Company has agreed to continue to employ Mr. Dunlap as Chairman of the Board of Directors and Chief Executive Officer, and Mr. Dunlap has agreed to serve in such capacities, for a period of three years ending January 31, 2001, and for successive one-year renewal periods unless advance notice of termination is given by either party by no later than August 1 of the immediately preceding year. The Dunlap Agreement is not renewable beyond January 31, 2003. This Dunlap Agreement replaces and supersedes Mr. Dunlap's prior Employment Agreement.

Compensation

Under the Dunlap Agreement, Mr. Dunlap will be paid a base salary at an annual rate of $2,000,000. The Company may increase Mr. Dunlap's base salary, but may not reduce it after any such increase. Mr. Dunlap is eligible to participate in the other benefit plans available generally to employees or other senior executives of the Company. However, he is not eligible to participate in any incentive plan of the Company. The Company also provides Mr. Dunlap with various perquisites on a grossed-up basis.

Prior Equity Grants

NOT A CERTIFIED COPY

012135

Under the Dunlap Agreement, all of Mr. Dunlap's then outstanding options, which were granted under Mr. Dunlap's prior Employment Agreement, vested as of February 20, 1998; 40% of Mr. Dunlap's shares of restricted stock were cancelled as of such date, and all of Mr. Dunlap's remaining shares of restricted stock vested as of such date. The Company will reimburse Mr. Dunlap on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted stock.

Certain Equity Grants

Mr. Dunlap received a grant as of February 1, 1998 of 300,000 shares of Common Stock. Mr. Dunlap also received a grant effective as of February 1, 1998 of options to purchase 3,750,000 shares of Common Stock at a price of $36.85 per share (the "Dunlap Options"), which grant is subject to approval of the Company's stockholders at the Annual Meeting. See "PROPOSAL 2." The term of the Dunlap Options is ten years, and they will vest with respect to one-third of the shares subject thereto on the grant date and an additional one-third on each of the first and second anniversaries of the grant date. Upon the occurrence of a Change in Control of the Company (as defined below), the Dunlap Options will vest in full.

Termination and Change in Control Provisions

The Company may terminate Mr. Dunlap's employment under the Dunlap Agreement at any time, or due to his disability, or for Cause. As defined in the Dunlap Agreement, "Cause" means (i) willful failure substantially to perform Mr. Dunlap's duties under the Dunlap Agreement, except if such failure results from disability, or (ii) his conviction for a felony (or a plea of guilty or nolo contendere thereto). Mr. Dunlap may terminate his employment under the Dunlap Agreement at any time. In addition, he may terminate his employment for Good Reason by notifying the Company within 90 days after any of the following events occurring without his consent, unless remedied by the Company within 30 days after receiving such notice:

(i) any change in Mr. Dunlap's title as Chairman of the Board of Directors and Chief Executive Officer or his removal from, or the failure to re-elect him to, such positions;

(ii) any assignment of duties materially inconsistent with his positions or any material limitation of his powers as contemplated by the Dunlap Agreement;

(iii) any requirement that Mr. Dunlap be based without his consent anywhere other than at the Company's principal executive office in Palm Beach or Broward County, Florida;

(iv) any reduction in Mr. Dunlap's base salary;

(v) any failure to continue in effect any fringe benefit plan in effect at the date of the Dunlap Agreement or to provide Mr. Dunlap equivalent benefits;

(vi) the failure of the Company to maintain Mr. Dunlap's status as a Director of the Company while he serves as Chief Executive Officer;

(vii) the failure of the Company to have three individuals (or their successors) designated by Mr. Dunlap elected and reelected as Directors of the Company;

NOT A CERTIFIED COPY

0121136

(viii) a Change in Control of the Company; or

(ix) any other material breach of the agreement by the Company.

As defined in the Dunlap Agreement, a "Change in Control" means the occurrence of any one of the following events:

(i) any "person" as such term is used in Sections 3(a)(9) and 13(d) of the Securities Exchange Act of 1934, as amended (the "Act"), becomes a "beneficial owner," as such term is used in Rule 13d-3 promulgated under that Act, of 25% or more of the voting stock of the Company;

(ii) the majority of the Board of Directors consists of individuals other than Incumbent Directors (which term means the members of the Board of Directors on the date of the Dunlap Agreement and any individuals designated by Mr. Dunlap; provided that any person becoming a Director of the Company subsequent to such date whose election or nomination for election was supported by two-thirds of the Directors of the Company who then comprised the Incumbent Directors is considered to be an Incumbent Director);

(iii) the Company, without Mr. Dunlap's consent, adopts any plan of liquidation providing for the distribution of all or substantially all of its assets; or

(iv) all or substantially all of the assets or business of the Company are disposed of pursuant to a merger, consolidation or other transaction (unless the persons who were stockholders of the Company immediately prior to such merger, consolidation or other transaction beneficially own, directly or indirectly, in substantially the same proportion as they owned the voting stock of the Company, all of the voting stock or other ownership interests of the entity or entities, if any, that succeed to the business of the Company).

The Dunlap Agreement provides that, if the Company terminates Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason, (i) he will receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the period ending January 31, 2001, or any then applicable renewal period, (ii) the Dunlap Options will become fully vested, and he will be entitled to exercise the Dunlap Options (as well as previously granted options) for the balance of their original ten-year term, and (iii) he will be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, for three years after termination, or to receive substantially equivalent benefits.

The Dunlap Agreement provides that, if the Company terminates Mr. Dunlap's employment for Cause or if he terminates his employment other than for Good Reason, all obligations (other than accrued obligations) of the Company will cease, except that Mr. Dunlap will be able to exercise the Dunlap Options (as well as previously granted options) which are exercisable on the date of termination within 90 days, if the termination is for Cause, and within one year, if it is by Mr. Dunlap without Good Reason.

The Dunlap Agreement provides that, if Mr. Dunlap's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death the Dunlap Options (as well as previously granted options) which are then exercisable

NOT A CERTIFIED COPY

0121137

or which would have become exercisable within one year after the date of death. If his employment is terminated due to disability, Mr. Dunlap will be entitled to exercise within three years all Dunlap Options (as well as previously granted options) which are then exercisable or which would have become exercisable within one year after the date of termination.

In addition, the Dunlap Agreement provides that Mr. Dunlap will be entitled to receive a gross-up with respect to any excise tax applicable under the Internal Revenue Code of 1986, as amended (the "Code"), to "excess parachute payments."

EMPLOYMENT AGREEMENTS WITH MESSRS. KERSH AND FANNIN

The Company entered into Employment Agreements with each of Messrs. Kersh and Fannin as of February 1, 1998. Messrs. Kersh and Fannin are referred to herein as the "Executives." The Employment Agreements with Messrs. Kersh and Fannin have a term ending on January 31, 2001. The Employment Agreements with Messrs. Kersh and Fannin replace and supersede their respective prior Employment Agreements with the Company.

Compensation

Under their respective Employment Agreements, Messrs. Kersh and Fannin will each be paid a base salary at annual rates of $875,000 and $595,000, respectively. These base salaries will not be increased during the terms of the Agreements. The Executives will also be eligible to participate in those benefit plans available generally to employees or other senior executives of the Company. However, the Executives will not be eligible to participate in any cash incentive (i.e., bonus) plan of the Company.

Prior Equity Grants

Under their respective Employment Agreements, all of Mr. Kersh's then outstanding options, which were granted under Mr. Kersh's prior Employment Agreement, and all of Mr. Fannin's then outstanding options vested as of February 20, 1998; 40% of each of Mr. Kersh's and Mr. Fannin's shares of restricted stock were cancelled as of such date, and all of Mr. Kersh's and Mr. Fannin's remaining shares of restricted stock vested as of such date. The Company will reimburse Messrs. Kersh and Fannin on a grossed-up basis with respect to any income tax assessed in connection with the vesting of such shares of restricted stock.

Certain Equity Grants

Under their respective Employment Agreements, as of February 1, 1998, Messrs. Kersh and Fannin each received a grant of 150,000 and 30,000 shares of restricted stock (the "Executive Restricted Shares"), respectively. Such Executive Restricted Shares will vest in four equal installments on each of February 20, 1998 and the first, second and third anniversaries of February 1, 1998. Messrs. Kersh and Fannin also received grants, effective as of February 1, 1998, of options to purchase 1,125,000 and 750,000 shares of Common Stock, respectively, at a price of $36.85 per share, subject to approval by the Company's stockholders at the Annual Meeting. These options will vest in four equal installments on the grant

NOT A CERTIFIED COPY

0121138

date and the first, second and third anniversaries of February 1, 1998. See "PROPOSAL 3" and "PROPOSAL 4."

Termination and Change in Control Provisions

The Company may terminate an Executive's employment under his Employment Agreement at any time, or due to the Executive's disability, or for Cause (as defined above). Each Executive may terminate his employment under his respective Employment Agreement at any time. In addition, he may terminate his employment for Good Reason (as defined above) by notifying the Company within 90 days after any of the following events occurring without his consent, unless remedied by the Company within 30 days after receiving such notice:

(i) any assignment of duties materially inconsistent with his positions or any material limitation of his powers as contemplated by such Executive's Employment Agreement;

(ii) any removal of the Executive from, or any failure to reelect the Executive to, the executive officer position specified in such Executive's Employment Agreement; or

(iii) any other material breach of such Executive's Employment Agreement by the Company.

Each Executive's Employment Agreement provides that, if the Company terminates the Executive's employment other than for Cause and not due to his disability, or if the Executive terminates his employment for Good Reason or following a Change in Control (as defined above), (i) such Executive will receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable to him through the end of the employment term, (ii) the options (and Executive Restricted Shares, in the case of Messrs. Kersh and Fannin) granted to such Executive will become fully vested, and the Executive will be entitled to exercise his options (including previously granted options) for the balance of their original ten-year term, and (iii) the Executive will be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, through the end of the employment term, or to receive substantially equivalent benefits.

Each Executive's Employment Agreement provides that if the Company terminates the Executive's employment for Cause or if the Executive terminates his employment other than for Good Reason or following a Change in Control, all obligations (other than accrued obligations) of the Company will cease, except that such Executive will be able to exercise any options (including previously granted options) granted to him which are exercisable on the date of termination or within 90 days thereof, if the termination is for Cause, and within one year thereof, if the termination is by the Executive other than for Good Reason or following a Change in Control.

Each Executive's Employment Agreement provides that, if such Executive's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death any options granted to such Executive which are then exercisable or which would have become exercisable within one year after the date of death and, further, the portion of then unvested Executive Restricted Shares, if any, held by such Executive equal to the total number of such unvested Executive Restricted Shares multiplied by a fraction, the numerator of which is 36 minus the number of months remaining in the three

NOT A CERTIFIED COPY

012139

years of the Executive's employment term and the denominator of which is 36, will become vested as of the date of death. If an Executive's employment is terminated due to disability, he will be entitled to exercise within three years all options granted to him (including previously granted options) which are then exercisable or which would have become exercisable within one year after the date of termination and a portion of the Executive Restricted Shares, if any, held by such Executive, determined in accordance with the procedure described in the immediately preceding sentence, will become vested as of the Executive's date of termination.

In addition, each Executive's Employment Agreement provides that the Executive will be entitled to receive a gross-up with respect to any excise tax applicable under the Code to "excess parachute payments."

REPORT OF THE COMPENSATION COMMITTEE ON EXECUTIVE COMPENSATION

The Company's executive compensation policy and administration of its various compensation plans are the responsibility of the Compensation Committee of the Board of Directors. The Compensation Committee is responsible for establishing the general compensation policies of the Company and administering the Option Plan. The Compensation Committee reviews and/or approves specific compensation levels for the Company's senior officers and other key operating and corporate management personnel (collectively the "executive officers" or singularly an "executive officer").

EXECUTIVE OFFICER COMPENSATION

Philosophy

It is the philosophy of the Company that executive compensation be directly linked to the interests of the Company's stockholders and therefore to financial objectives that the Company believes are primary determinants of long-term stockholder value. The Compensation Committee's objectives in administering the Company's executive compensation plans are to ensure that pay levels and incentive compensation are: (1) properly linked to stockholder value, (2) are competitive in attracting, retaining and motivating the best personnel and (3) are simple in design and easily understood. The compensation plan for the Company's executive officers emphasizes the importance of stock options as providing a direct correlation between executive compensation and stockholder interests. In addition to an emphasis on stock options, the Company pays competitive base salaries, bonuses linked directly to overall Company performance and periodic additional grants of stock options pursuant to the Option Plan. The stock option element of compensation, together with the Company's stock purchase plan (described below) and its use of Common Stock as matching contributions and profit sharing contributions to the 401(k) Plan are all intended to encourage ownership and retention of Company stock by all employees, and especially executive officers. This provides executive officers and other employees with the opportunity to build, through the achievement of financial goals that benefit all stockholders, a meaningful ownership stake in the Company.

The Company's most senior officers, including the Operating Committee consisting of Messrs. Dunlap, Kersh and Fannin, are excluded from the Company's programs of base compensation increases and bonuses. Their sole incentive beyond base salary is based upon substantial grants of stock options, ownership of stock and increases in stockholder value. These

NOT A CERTIFIED COPY

011140

persons are heavily dependent upon an increase in the share price of the Common Stock to realize the potential of their compensation packages.

Financial Criteria

For other officers of the Company, the most substantial motivator also is increasing stockholder value, as all officers are heavily dependent upon significant option grants for ultimate realization of their compensation goals. In addition, however, each officer (other than the Company's most senior officers, including the Operating Committee, who are ineligible to participate in the Bonus Plan) also is a participant in the Sunbeam Bonus Plan (the "Bonus Plan"). Under the Bonus Plan, certain employees and officers are eligible to receive bonuses based upon two factors: (1) Company performance as measured by earnings per share ("EPS") and (2) individual performance against quantifiable measurement criteria established with each such officer. Company performance must reach targeted levels or no bonuses will be paid to any officer. If Company performance is achieved, then individual achievement of measurement criteria will determine the amount of any bonus payable to an officer for 1998.

Overall, the Company's compensation philosophy de-emphasizes base salary and increases in base salary, and places a greater emphasis upon incentive compensation in the form of stock appreciation and incentive performance bonus compensation. This places a greater percentage of compensation "at risk" and in line with the Company's stockholders. Base salaries for the Company's executives, many of whom were hired in 1996 after the employment of Mr. Dunlap, were established based in large part upon their salaries at prior positions. The Company does not attempt to match executive compensation to the compensation levels at those companies which are included in the Company's self-constructed stockholder return peer group. See "STOCKHOLDER RETURN PERFORMANCE PRESENTATION" for a description of the Company's stockholder return peer group.

For 1997/98, the Company awarded substantial salary increases only in connection with changes in responsibility; minor salary increases were made in a very small number of cases.

The Compensation Committee adopted the Bonus Plan in 1997 in order to motivate the Company's key employees to increase stockholder wealth by maximizing earnings per share of the Common Stock, which the Compensation Committee believes is the key driver in determining share value. In addition to officers (other than the Company's most senior officers, including the Operating Committee, who are ineligible to participate in the Bonus Plan) all salaried employees of the Company are eligible to participate in the Bonus Plan.

The Bonus Plan's design provides that during each fiscal year, the Operating Committee of the Company will recommend to the Compensation Committee a minimum level of performance (measured by EPS of the Common Stock for such year), below which no Bonus Plan participant shall receive any bonus. At the minimum level of acceptable Company EPS performance, Bonus Plan participants will be eligible to receive up to 75% of their individual bonus target (a percentage of base salary in the case of management and professional employees and a flat dollar amount in the case of administrative employees). At another, higher level of EPS performance,

NOT A CERTIFIED COPY

012141

participants will be entitled to receive up to 100% of their individual bonus target. At even higher levels of EPS performance ("stretch targets"), participants may receive up to 200% of their individual bonus target. The Bonus Plan also provides for percentage gradations between these key milestones, so that a bonus recipient may receive varying percentages of his or her bonus targets between 75% and 200%.

While the Company must achieve the prescribed EPS performance levels before any Bonus Plan participant is eligible to receive any bonus, this does not guarantee that a participant necessarily will receive a bonus. In order to receive a bonus, a participant must achieve at least four individual performance goals established with the concurrence of his or her supervisor. These performance goals are oriented towards quantitative objectives, such as cost savings or earnings enhancement.

The Compensation Committee believes that this combination of requiring a minimum overall Company performance, measured by EPS performance requirements before any bonuses are paid, coupled with individual goals which are quantitative in nature and calculated to increase productivity, reduce costs or otherwise enhance profitability of the Company, assures that the Company's compensation system, especially the performance bonus program, aligns the interests of the Company's officers and other employees with the interests of its stockholders.

For the Company's fiscal year ended December 28, 1997, the Company paid a total of $2,242,615 to employees under the Bonus Plan.

Extension of Options to all Company Employees; Stock Ownership Plan; 401(k) Plan Changes

Since the Company's change in senior management in July 1996, the Company's compensation philosophy for all employees, not just officers, has broadened to include greater participation by Company employees at all levels in the stock option and stock ownership programs of the Company. Effective January 1, 1997, the Company broadened the Option Plan to provide for the grant of options to all levels of Company employees, including factory workers in the Company's U. S. facilities, U.S. clerical personnel and others who had not previously been participants in the Option Plan.

In addition, on January 1, 1997, the Company instituted a stock purchase program for all U.S. employees of the Company. This plan permits employees to designate a portion of each paycheck for deposit into a stock purchase account. Once each month, the administrator of the plan uses funds in the stock purchase account to purchase shares of Common Stock in the open market. Participants in this plan do not pay any commissions to the plan administrator with respect to the purchase of these shares. Participants otherwise receive no discount or other incentive for participation in the plan.

The Company also, as of January 1, 1997, instituted changes in the 401(k) Plan to provide that all Company matching contributions are to be made in shares of Common Stock and that any profit sharing contributions also are to be made in shares of Common Stock. For the fiscal year ended December 28, 1997, the Company made a profit sharing contribution under the 401(k) Plan for hourly employees only in the amount of approximately $600,000.

Discussion of Amendments to the Option Plan

During 1997, the Board of Directors approved amendments to the Option

NOT A CERTIFIED COPY

012142

Plan at meetings held in April and October. In April, the Board approved amendments to delete the requirement that a "Change in Status" occur in connection with a "Change in Control", as respectively defined in the Option Plan, in order to accelerate the vesting of a participant's options and to change the default vesting schedule for all options from five years to three years. In October 1997, the Board of Directors amended the Option Plan to change the name of the Option Plan to the Amended and Restated Sunbeam Corporation Stock Option Plan and to provide that the "Fair Market Value" for all option grants will be the average selling price of a share of Common Stock on the exchange or national market system on which the Common Stock is traded, on the date of grant of an option to acquire Common Stock pursuant to the Option Plan.

In 1998, the Board of Directors approved, subject to approval of the Company's stockholders at the Annual Meeting, a further amendment to the Option Plan to increase the number of shares of Common Stock which may be issued under the Option Plan to 16,500,000 shares from 11,500,000 shares. See "PROPOSAL 6."

Compliance with Certain Tax Laws

Section 162(m) of the Internal Revenue Code limits to $1,000,000 the Company's federal income tax deduction for compensation paid in any year to its CEO and each of its four highest paid executive officers, to the extent that such compensation is not "performance based" compensation within the meaning of Section 162(m). Mr. Dunlap's base compensation has been increased to $2,000,000 per year under the Dunlap Agreement. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND, CHANGE IN CONTROL ARRANGEMENTS Employment Agreement with Mr. Dunlap." The Company will not be able to deduct such base compensation paid in excess of $1,000,000. The Company does not anticipate that bonus payments will be made to Mr. Dunlap (the sole executive officer whose compensation is anticipated to exceed $1,000,000). The Company's award of options (both pursuant to the Option Plan and as approved by the stockholders) is expected to qualify as "performance based" compensation pursuant to Section 162(m). The vesting of the respective awards of shares of restricted stock to Messrs. Dunlap and Kersh is expected to exceed the $1,000,000 compensation level (together with their base salaries) and will not be deductible by the Company to the extent in excess of $1,000,000.

COMPENSATION OF CHIEF EXECUTIVE OFFICER

As of February 1, 1998, the Company entered into the Dunlap Agreement with Albert J. Dunlap, the Company's Chairman and Chief Executive Officer. The terms of the Dunlap Agreement were negotiated with and approved by the Compensation Committee and the Board of Directors. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS - - Employment Agreement with Mr. Dunlap." At Mr. Dunlap's request, Mr. Dunlap's compensation package is heavily oriented towards stock based compensation. Mr. Dunlap will receive a base salary of $2,000,000 per year for each year of the employment agreement but is not eligible for any bonus payment. Mr. Dunlap's potential increases in compensation will result from increases in the value of his stock investment in the Company. Mr. Dunlap holds 1,166,666 shares of Common Stock which were granted to him by the Company and options to acquire up to 6,250,000 shares of Common Stock (of which 3,750,000 are vested, and the remaining 2,500,000 will vest in equal increments on each of the first and second anniversary dates of the effective date of the Dunlap Agreement).

NOT A CERTIFIED COPY

012143

The foregoing report is furnished by the Compensation Committee of the Board of Directors and the members of the Committee.

COMPENSATION COMMITTEE

Peter Langerman, Chairman
Charles Elson
Faith Whittlesey

STOCKHOLDER RETURN PERFORMANCE PRESENTATION

The following graph compares the cumulative total stockholder return on the Company's Common Stock for the period from December 31, 1992 through December 28, 1997, with the cumulative total return of the Standard and Poors Composite-500 Stock Index and a Company constructed index of peer companies. The graph also presents the value of the Common Stock on the date of Mr. Dunlap's employment with the Company. Included in the Company constructed peer group index are Rubbermaid Incorporated, Newell Co. and The Gillette Company, Inc. all of which are engaged in retail sales of consumer goods. The graph assumes that the value of the investment in Common Stock was $100 on December 31, 1992, and that all dividends were reinvested quarterly.

COMPARISON OF TOTAL RETURN SINCE DECEMBER 31, 1992 OF SUNBEAM CORPORATION COMMON STOCK, S&P 500, AND PEER GROUP COMPANIES

[GRAPH APPEARS HERE]

Measurement Period (Fiscal Year Covered)	Sunbeam Corporation	Peer Group	S&P 500
12/31/92	$100	$100	$100
12/31/93	$126	$106	$110
12/30/94	$148	$121	$112
12/29/95	$88	$155	$154
7/18/96	$72	$180	$162
12/31/96	$147	$214	$189
12/31/97	$244	$277	$252

PROPOSAL 2 -- APPROVAL OF STOCK OPTION GRANT TO ALBERT J. DUNLAP, THE COMPANY'S CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONTAINED IN HIS EMPLOYMENT AGREEMENT WITH THE COMPANY

As of February 1, 1998, the Company entered into the Dunlap Agreement, which provides for, among other things, a new three-year term of employment for Mr. Dunlap, the Company's Chairman and Chief Executive Officer. The Board of Directors is requesting stockholder approval of the provisions of the Dunlap Agreement which provide for a grant of stock options to Mr. Dunlap. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS."

The Dunlap Agreement provides that, subject to approval by the Company's stockholders at the Annual Meeting, Mr. Dunlap received a grant effective as of February 1, 1998 of options to purchase 3,750,000 shares of

NOT A CERTIFIED COPY

0121144

Common Stock at a price of $36.85 per share (the "Dunlap Options"). The term of the Dunlap Options is ten years, and they will vest with respect to one-third of the shares subject thereto on the grant date and with respect to an additional one-third on each of the first and second anniversaries of the grant date.

The Dunlap Agreement further provides that (i) upon the occurrence of a Change in Control, the Dunlap Options will become fully vested and Mr. Dunlap will be entitled to exercise the Dunlap Options for the balance of the original ten-year term, (ii) if the Company terminates Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason, the Dunlap Options will become fully vested and he will be entitled to exercise the Dunlap Options for the balance of the original ten-year term, (iii) if the Company terminates Mr. Dunlap's employment for Cause, he will be able to exercise the Dunlap Options which are exercisable on the date of termination within 90 days of the date of termination and if he terminates his employment other than for Good Reason, he will be able to exercise the Dunlap Options which are exercisable on the date of termination within one year of the date of termination, (iv) if Mr. Dunlap's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death the Dunlap Options which are then exercisable or which would have become exercisable within one year after the date of death, and (v) if his employment is terminated due to disability, he will be entitled to exercise within three years all Dunlap Options which are then exercisable or which would have become exercisable within one year after the date of termination. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS" for definitions of all capitalized terms not otherwise defined herein.

If the stockholders of the Company do not approve the grant of the Dunlap Options to Mr. Dunlap, the Company and Mr. Dunlap have agreed to negotiate in good faith mutually acceptable alternative compensation arrangements. The terms and conditions of any such alternative compensation arrangements have not been determined. Failure to approve the grant of the Dunlap Options to Mr. Dunlap will not affect any other provisions of the Dunlap Agreement. However, if the stockholders of the Company do not approve the grant of the Dunlap Options to Mr. Dunlap, Mr. Dunlap may elect to terminate his employment for Good Reason.

Approval of this proposal to approve the grant of the Dunlap Options to Mr. Dunlap contained in his Employment Agreement with the Company will require the affirmative vote of the holders of a majority of the votes cast on the proposal, provided that the total number of votes cast represents over 50% of the number of votes entitled to be cast on this proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" APPROVAL OF THE STOCK OPTION GRANT TO ALBERT J. DUNLAP

PROPOSAL 3 -- APPROVAL OF STOCK OPTION GRANT TO RUSSELL A. KERSH, THE COMPANY'S VICE CHAIRMAN AND CHIEF FINANCIAL OFFICER, CONTAINED IN HIS EMPLOYMENT AGREEMENT WITH THE COMPANY

As of February 1, 1998, the Company entered into a new three-year Employment Agreement (the "Kersh Agreement") with Russell A. Kersh. The Board of Directors is requesting stockholder approval of the provisions of the Kersh Agreement which provide for a grant of stock options to Mr. Kersh. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS."

NOT ACCEPTED COPY

012145

The Kersh Agreement provides that, subject to approval by the Company's stockholders at the Annual Meeting, Mr. Kersh received a grant effective as of February 1, 1998 of options to purchase 1,125,000 shares of Common Stock at a price of $36.85 per share (the "Kersh Options"). The term of the Kersh Options is ten years, and they will vest with respect to one-fourth of the shares subject thereto on the grant date and with respect to an additional one-fourth on each of the first, second and third anniversaries of the grant date.

The Kersh Agreement further provides that (i) upon the occurrence of a Change in Control, the Kersh Options will become fully vested and Mr. Kersh will be entitled to exercise the Kersh Options for the balance of the original ten-year term, (ii) if the Company terminates Mr. Kersh's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason, the Kersh Options will become fully vested and he will be entitled to exercise the Kersh Options for the balance of the original ten-year term, (iii) if the Company terminates Mr. Kersh's employment for Cause, he will be able to exercise the Kersh Options which are exercisable on the date of termination within 90 days of the date of termination and if he terminates his employment other than for Good Reason, he will be able to exercise the Kersh Options which are exercisable on the date of termination within one year of the date of termination, (iv) if Mr. Kersh's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death the Kersh Options which are then exercisable or which would have become exercisable within one year after the date of death, and (v) if his employment is terminated due to disability, he will be entitled to exercise within three years all Kersh Options which are then exercisable or which would have become exercisable within one year after the date of termination. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS" for definitions of all capitalized terms not otherwise defined herein.

If the stockholders of the Company do not approve the grant of the Kersh Options to Mr. Kersh, the Company and Mr. Kersh have agreed to negotiate in good faith mutually acceptable alternative compensation arrangements. The terms and conditions of any such alternative compensation arrangements have not been determined. Failure to approve the grant of the Kersh Options to Mr. Kersh will not affect any other provisions of the Kersh Agreement. However, if the stockholders of the Company do not approve the grant of the Kersh Options to Mr. Kersh, Mr. Kersh may elect to terminate his employment for Good Reason.

Approval of this proposal to approve the grant of the Kersh Options to Mr. Kersh contained in his Employment Agreement with the Company will require the affirmative vote of the holders of a majority of the votes cast on the proposal, provided that the total number of votes cast represents over 50% of the number of votes entitled to be cast on this proposal.

NOT A CERTIFIED COPY

012146

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" APPROVAL OF THE STOCK OPTION GRANT TO RUSSELL A. KERSH

PROPOSAL 4 -- APPROVAL OF STOCK OPTION GRANT TO DAVID C. FANNIN, THE COMPANY'S EXECUTIVE VICE PRESIDENT, SECRETARY AND GENERAL COUNSEL, CONTAINED IN HIS EMPLOYMENT AGREEMENT WITH THE COMPANY

As of February 1, 1998, the Company entered into a new three-year

Employment Agreement (the "Fannin Agreement") with David C. Fannin. The Board of Directors is requesting stockholder approval of the provisions of the Fannin Agreement which provide for a grant of stock options to Mr. Fannin. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS."

The Fannin Agreement provides that, subject to approval by the Company's stockholders at the Annual Meeting, Mr. Fannin received a grant effective as of Februrary 1, 1998 of options to purchase 750,000 shares of Common Stock at a price of $36.85 per share (the "Fannin Options"). The term of the Fannin Options is ten years, and they will vest with respect to one-fourth of the shares subject thereto on the grant date and an additional one-fourth on each of the first, second and third anniversaries of the grant date.

The Fannin Agreement further provides that (i) upon the occurrence of a Change in Control, the Fannin Options will become fully vested and Mr. Fannin will be entitled to exercise the Fannin Options for the balance of the original ten-year term, (ii) if the Company terminates Mr. Fannin's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason, the Fannin Options will become fully vested and he will be entitled to exercise the Fannin Options for the balance of the original ten-year term, (iii) if the Company terminates Mr. Fannin's employment for Cause, he will be able to exercise the Fannin Options which are exercisable on the date of termination within 90 days of the date of termination and if he terminates his employment other than for Good Reason, he will be able to exercise the Fannin Options which are exercisable on the date of termination within one year of the date of termination, (iv) if Mr. Fannin's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death the Fannin Options which are then exercisable or which would have become exercisable within one year after the date of death, and (v) if his employment is terminated due to disability, he will be entitled to exercise within three years all Fannin Options which are then exercisable or which would have become exercisable within one year after the date of termination. See "EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS" for definitions of all capitalized terms not otherwise defined herein.

If the stockholders of the Company do not approve the grant of the Fannin Options to Mr. Fannin, the Company and Mr. Fannin have agreed to negotiate in good faith mutually acceptable alternative compensation arrangements. The terms and conditions of any such alternative compensation arrangements have not been determined. Failure to approve the grant of the Fannin Options to Mr. Fannin will not affect any other provisions of the Fannin Agreement. However, if the stockholders of the Company do not approve the grant of the Fannin Options to Mr. Fannin, Mr. Fannin may elect to terminate his employment for Good Reason.

Approval of this proposal to approve the grant of the Fannin Options to Mr. Fannin contained in his Employment Agreement with the Company will require the affirmative vote of the holders of a majority of the votes cast on the proposal, provided that the total number of votes cast represents over 50% of the number of votes entitled to be cast on this proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" APPROVAL OF THE STOCK OPTION GRANT TO DAVID C. FANNIN

CERTAIN FEDERAL INCOME TAX CONSEQUENCES

NOT A CERTIFIED COPY

012147

No income will result to Messrs. Dunlap, Kersh or Fannin upon the grants of stock options discussed above. Upon the exercise of such a stock option, the amount by which the fair market value of the shares on the date of exercise exceeds the option price would be taxed to the individual exercising such stock option as ordinary compensation income.

Section 162(m) of the Code disallows a publicly-held company's deductions for compensation exceeding $1,000,000 per year for certain executives. However, compensation which constitutes "performance based compensation" approved by the Company's stockholders is excluded from the above limitation. The stock option grants have been designed to enable the stock options described above to qualify as performance based compensation if the stock option grants are approved by the Company's stockholders. Accordingly, upon the exercise of a stock option, the Company will be entitled to a deduction in the amount equal to the compensation income to the employee.

The preceding discussion is based upon the Code as presently in effect, which is subject to change, and does not purport to be a complete description of the federal income tax aspects of stock options.

PROPOSAL 5 -- AMENDMENT TO THE COMPANY'S RESTATED CERTIFICATE OF INCORPORATION INCREASING THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK TO 500,000,000 FROM 200,000,000

The Company's Board of Directors has approved an amendment to the Company's Restated Certificate of Incorporation to increase the authorized number of shares of Common Stock to 500,000,000 from 200,000,000. As of March 30, 1998, there were 100,811,194 shares of Common Stock outstanding and no shares of Common Stock were held in the Company's treasury. As of March 30, 1998, an aggregate of 14,591,250 shares of Common Stock were issuable upon the exercise of outstanding stock options, and an aggregate of 5,625,000 shares of Common Stock were issuable upon the exercise of stock options granted to Messrs. Dunlap, Kersh and Fannin pursuant to their respective Employment Agreements with the Company. On March 2, 1998, the Company publicly announced that it had agreed to acquire The Coleman Company, Inc. ("Coleman"), the world's leading manufacturer and marketer of outdoor recreational products. In connection with such acquisition, the Company has issued 14,099,749 shares of Common Stock (including all of the Company's treasury shares), and will be required to issue up to an additional 7,211,823 shares of Common Stock. In addition, the Company recently completed an offering of $2,014 million principal amount of Zero Coupon Convertible Senior Subordinated Debentures due 2018 which are currently convertible into an aggregate of 15,228,358 shares of Common Stock. After giving effect to such issuances, as well as to the issuance of shares of Common Stock pursuant to the exercise of (i) currently outstanding options to acquire shares of Common Stock under the Option Plan, (ii) options to acquire shares of Common Stock granted to Messrs. Dunlap, Kersh and Fannin pursuant to their respective Employment Agreements (if approved by the Company's stockholders at the Annual Meeting) and (iii) future options available to be granted as a result of the proposed amendments to the Option Plan (if approved by the Company's stockholders at the Annual Meeting), the Company would have 51,532,375 shares of Common Stock available for future issuances, or less than the total number of shares that would be outstanding after giving effect to all such issuances.

The Board of Directors believes that the number of shares of the

NOT A CERTIFIED COPY

012148

Company's authorized Common Stock should be increased in order to maintain shares which are available from time to time as needed for corporate purposes approved by the Board of Directors. Such corporate purposes could include the acquisition by the Company of other companies or assets, the raising of additional capital through public offerings, the declaration of stock splits or stock dividends and the issuance of stock under the Option Plan and other employee benefit plans. Except as set forth above, the Company has not entered into any agreement or plan, and has no present plans, for the issuance of the additional shares of Common Stock, but desires to have such shares available for future issuances as the need may arise without the delay which would be incident to approval of any such issuance in the future for any specific transaction.

If the proposed amendment is approved, the additional shares could be issued by the Board of Directors without further vote or approval of the stockholders. The Company's stockholders do not and will not have pre-emptive rights to acquire any additional shares of Common Stock that may be approved for issuance.

The adoption of this proposal for the increase in the number of authorized shares of Common Stock might have the effect of discouraging an attempt to remove incumbent management or gain control of the Company, even if such activities were perceived by stockholders of the Company to be favorable to them. The additional authorized shares could be used to dilute the stock ownership of persons seeking to obtain control of the Company. The proposed increase in authorized capital is not designed to have an anti-takeover effect, to dilute the stock ownership of any person seeking to obtain control of the Company nor are there any plans to privately place any of the shares to be added to the authorized capital by the proposed amendments.

Approval of this proposal to amend the Company's Restated Certificate of Incorporation to increase the total number of authorized shares of Common Stock to 500,000,000 from 200,000,000 will require the affirmative vote of the holders of a majority of the outstanding shares of Common Stock, abstentions and broker non-votes will be counted and have the same effect as a vote against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" THE PROPOSAL TO AMEND THE CERTIFICATE OF INCORPORATION

PROPOSAL 6 -- AMENDMENTS TO THE AMENDED AND RESTATED SUNBEAM CORPORATION STOCK OPTION PLAN TO INCREASE THE NUMBER OF SHARES OF COMMON STOCK WITH RESPECT TO WHICH AWARDS MAY BE GRANTED TO 16,500,000 SHARES FROM 11,500,000 SHARES

The Company currently maintains the Option Plan, which originally became effective on January 1, 1991, and which has since been amended by the Board of Directors and by action of the stockholders of the Company. The Board of Directors proposes to further amend the Option Plan to increase the number of shares of Common Stock which may be issued under the Option Plan to 16,500,000 shares from 11,500,000 shares (the "1998 Amendment"). A copy of the Option Plan, as proposed to be amended, is attached hereto as Appendix A and reference is made to the Appendix for a complete statement of the Option Plan.

THE OPTION PLAN

NOT A CERTIFIED COPY

012149

The Option Plan is used by the Company to attract, retain and motivate executive, management and other employees by providing them with an ownership interest in the Company. Under the Option Plan, participants selected by the Committee, are eligible for grants of options to acquire shares of Common Stock and awards of shares of restricted Common Stock which, when granted, are subject to forfeiture and may not be transferred by the participants. No person may be granted options under the Option Plan for more than 250,000 shares of Common Stock, or more than 25,000 shares of restricted stock, in any fiscal year of the Company.

The Option Plan is administered by the Compensation Committee, consisting of Directors Langerman, Elson and Whittlesey. The Compensation Committee has authority, subject to the terms of the Option Plan, to determine: (i) when and to whom to make grants under the Option Plan (but no option or stock award may be granted later than December 31, 2006); (ii) the number of shares of Common Stock to be covered by such grants; (iii) the types and terms of options; and (iv) the exercise price of the shares of Common Stock covered by options. The Compensation Committee also has the authority to prescribe, amend and rescind rules and regulations governing the Option Plan. In determining grants under the Option Plan, the Compensation Committee considers, among other things, the number of shares available for grant and the performance of individual candidates. Directors of the Company, executive officers, members of management, other key employees and all full time employees are eligible to participate. The Option Plan may generally be amended by the Board of Directors, except as described below with respect to certain matters which must be submitted to a vote of the stockholders.

Options granted under the terms of the Option Plan are non-qualified stock options. The term of each option commences on the date of grant and expires at the close of business on the earlier of the (i) the tenth anniversary of the date of grant or (ii) the 45th day following the termination of the optionee's employment with the Company. If an optionee's employment terminates due to death, all options held by the participant at death become immediately exercisable in full, and upon a "Change in Control" of the Company (as defined in the Option Plan), all options held by optionees who are then employed by the Company become immediately exercisable in full. The exercise price of, and the number of shares covered by, each option is subject to adjustment to reflect stock dividends, stock splits, other recapitalizations, reclassifications or other changes affecting the number or kind of outstanding shares.

The exercise price of an option may be paid in cash or, with the consent of the Committee, in shares of stock based on the fair market value on the date of exercise and on terms and conditions to be determined by the Company. This "cashless exercise" may be effectuated in one of two ways. First, the Option Plan permits the Compensation Committee to allow an Option Plan participant to pay the exercise price in shares of stock of the Company. Second, the Option Plan permits a "cashless exercise" of an option and payment of withholding taxes through a broker-assisted transaction. In a broker-assisted exercise, a broker advances the funds necessary for the optionee to exercise the option and then immediately sells a sufficient number of shares acquired upon the exercise to fund the exercise price, broker fees and, if the participant elects, the optionee's income tax withholding liability.

The Option Plan also permits grants of restricted stock to the participants. The Option Plan provides that, subject to the Compensation Committee's discretion to provide otherwise, the forfeiture and restrictive provisions lapse with respect to one-seventh of the shares of restricted

NOT A CERTIFIED COPY

012150

stock granted on each of the first through the seventh anniversaries of the date of grant provided that such provisions would also lapse upon a Change in Control, if the participant is an employee or Director of the Company at the time of such a Change in Control.

Options are not transferable. Each option is exercisable during the lifetime of an optionee only by the optionee to whom it was granted, and after the optionee's death only by the optionee's estate or legal representative.

Inasmuch as the Compensation Committee determines, in its discretion (subject to the limitation described above), the employees to whom options and shares of restricted stock will be granted and the number of shares subject to such options and the number of such shares of restricted stock, future grants to be made under the Option Plan are not determinable. The number of stock options granted under the Option Plan in the aggregate during the 1997 fiscal year were as follows: all then current executive officers as a group (consisting of 12 persons), 287,500 shares; all nonemployee Directors as a group, none; and all employees as a group (consisting of 3,738 persons), 3,109,463 shares.

FEDERAL INCOME TAX CONSEQUENCES OF THE OPTION PLAN

The tax consequences of non-qualified options and restricted stock awards are complex. The description of tax consequences set forth below is necessarily general in nature and does not purport to be complete. Moreover, statutory provisions are subject to change, as are their interpretations, and their application may vary in individual circumstances. Finally, the tax consequences under applicable state and local income tax laws may not be the same as under the federal income tax laws.

Non-Qualified Stock Options ("NQSOs")

There will be no federal income tax consequences to the participants or the Company on the grant of a NQSO. On the exercise of a NQSO, the participant will have taxable ordinary income equal to the excess of the fair market value of the shares of Common Stock received on the exercise date over the option price of the shares. Generally, the Company will be entitled to a federal income tax deduction in an amount equal to such excess. Any ordinary income realized by a participant upon exercise of a NQSO will increase his tax basis in the Common Stock acquired by exercise of the NQSO. Upon the sale of Common Stock acquired by exercise of a NQSO, participants realize long-term or short-term capital gain or loss depending upon their holding period for such stock.

A participant who surrenders shares of Common Stock in payment of the exercise price of a NQSO will not recognize gain or loss on his surrender of such shares. The number of shares received equal to the number of shares surrendered will have the same tax basis and capital gains holding period as the shares surrendered. The balance of the shares received will have a tax basis equal to their fair market value on the date of exercise (representing the amount of recognized ordinary income to the recipient), and the capital gains holding period will begin on the date of exercise.

Restricted Stock

Under the Code, a participant normally will not realize taxable

NOT A CERTIFIED COPY

012151

income and the Company will not be entitled to a deduction upon the grant of shares of restricted stock. When the shares are no longer subject to a substantial risk of forfeiture (as defined in the Code) or become transferrable, the participant will realize taxable ordinary income generally in an amount equal to the fair market value of such number of shares of Common Stock at that time, and the Company will be entitled to a deduction in the same amount. However, if a participant makes an election under Section 83(b) of the Code, the participant will recognize ordinary income in the year the shares of restricted stock are awarded in an amount equal to the fair market value of the shares of restricted stock at the date of grant, determined without regard to the restrictions. Generally, in that event, the Company will be entitled to a tax deduction in such year in the same amount, and any gain or loss realized by the participant upon the subsequent disposition of Common Stock will be capital gain or loss and will not result in any further deduction to the Company.

Parachute Payments

The exercise of any portion of an option or the lapse of restrictions relating to shares of restricted stock that is accelerated, as a result of a Change in Control or a similar event, may cause payments with respect to such accelerated options or accelerated lapse of restrictions to be treated as "parachute payments" as defined in the Code. Any such parachute payments may be non-deductible to the Company in whole or in part for federal income tax purposes and may subject the employee to a non-deductible 20% federal excise tax on all or a portion of such payment in addition to other taxes ordinarily payable. In the event that the acceleration of the exercisability of options or the lapse of restrictions relating to shares of restricted stock results in an excise tax, the Option Plan currently provides that the Company will pay the participant additional compensation necessary to place the participant in the same after-tax position he would have been in had no such excise tax been paid or incurred. Such additional compensation would be non-deductible to the Company for federal income tax purposes.

REASONS FOR THE 1998 AMENDMENT TO THE OPTION PLAN; RECOMMENDATION OF THE BOARD OF DIRECTORS

The Board of Directors has given due consideration to the Option Plan and has determined that adoption of the 1998 Amendment is in the best interest of the Company. The Company in recent years has used the Option Plan as a means of retaining and compensating employees. The Company believes that the ability to use the Option Plan to attract and retain key personnel has been essential to the growth of the Company. The purpose of the 1998 Amendment is to expand the ability of the Company to reward the services of experienced key personnel, including Directors of the Company, by the provision of economic incentives in the form of stock options and restricted stock and to ensure that the federal income tax deduction otherwise available to the Company with respect to the Option Plan will continue.

On March 30, 1998, the Company acquired an 82.4% interest in Coleman. In addition, on April 3, 1998, the Company acquired a controlling interest in each of First Alert, Inc. ("First Alert"), a leading manufacturer of smoke and carbon monoxide detectors, and Signature Brands USA, Inc. ("Signature Brands"), a leading manufacturer of consumer and professional products pursuant to cash tender offers for each company's outstanding shares. The Company plans to complete its acquisitions of the remaining publicly held shares of each of Coleman, First Alert and Signature Brands

NOT A CERTIFIED COPY

012152

pursuant to merger transactions expected to be completed in the second quarter. In light of these transactions, the Company's need to provide appropriate incentives to its employees is even more pronounced. The integration of the operations of Coleman, First Alert and Signature Brands will be dependent upon the retention of certain key management. The Option Plan, as amended, will allow the Company sufficient flexibility to attract and retain key personnel and will facilitate the smooth and efficient integration of the newly acquired businesses.

Approval of the 1998 Amendment to the Option Plan will require the affirmative vote of the holders of a majority of the votes cast on the proposal, provided that the total number of votes cast on such proposal represents over 50% of the number of votes entitled to be cast on such proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" APPROVAL OF THE 1998 AMENDMENT TO THE SUNBEAM CORPORATION AMENDED AND RESTATED STOCK OPTION PLAN

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

During 1997, the Company employed the law firm of Reboul, MacMurray, Hewitt, Maynard and Kristol, of which Director Kristol is a partner. The fees paid by the Company to Reboul, MacMurray, Hewitt, Maynard and Kristol during 1997 did not exceed 5% of the firm's gross revenues for the last full fiscal year.

OTHER MATTERS

As of the date of this Proxy Statement, the Board of Directors knows of no business that will be presented for consideration at the Annual Meeting other than that which has been referred to above. Proxies in the enclosed form will be voted in respect of any other business that is properly brought before the Annual Meeting in accordance with the judgment of the person or persons voting the proxies.

The Company is not aware of any substantial interest, direct or indirect, by holders of Common Stock or otherwise, of any officer, Director, Director nominee or associate of the foregoing persons in any matter to be acted on, as described herein, other than elections to offices.

NOT A CERTIFIED COPY

0121153

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires the Company's Directors, executive officers and persons who own more than 10% of a registered class of the Company's equity securities to file certain reports regarding ownership of the Company's Common Stock with the SEC and the New York Stock Exchange. These insiders are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms they file. To the Company's knowledge, based solely on a review of the copies of the Section 16(a) forms furnished to the Company during fiscal 1997, or written representations from certain reporting persons that no Forms 5 were required for those persons, all Section 16(a) filing

requirements applicable to the Company's officers, Directors and beneficial owners of more than 10% of the outstanding shares of Common Stock were filed on a timely basis.

INDEPENDENT AUDITORS

The firm of Arthur Andersen, LLP has been retained by the Company as independent auditors to audit the financial statements of the Company. Representatives of Arthur Andersen, LLP will be present at the Annual Meeting and will be afforded the opportunity to make a statement if they desire to do so and to respond to appropriate questions.

COST OF SOLICITATION

This solicitation is made on behalf of the Company. The cost of soliciting proxies has been or will be borne by the Company. Solicitation will be made by mail, and may be made personally or by telephone by officers and other employees of the Company who will not receive additional compensation for such solicitation. In addition, arrangements will be made with brokerage houses and other custodians, nominees and fiduciaries to send proxies and proxy materials to their principals, and the Company may reimburse them for any attendant expenses.

1999 STOCKHOLDER PROPOSALS

Any stockholder proposal intended to be presented for consideration at the 1999 Annual Meeting of Stockholders and to be included in the Company's Proxy Statement for that meeting must be received by the Secretary at the Company's corporate office, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445, on or before January 12, 1999.

COPIES OF FORM 10-K

The Company will provide a copy of the Company's Annual Report on Form 10-K, including the financial statements and financial statement schedules contained therein, to any stockholder upon request. Requests should be sent to the Vice President, Investor Relations, for the Company, at 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 - Telephone: (561) 243-2100.

NOT A CERTIFIED COPY

012154

</TEXT>
</DOCUMENT>
</SEC-DOCUMENT>
-----END PRIVACY-ENHANCED MESSAGE-----

Sunbeam.

Contacts: *Investment Community*
Marc R. Shiffman
Sunbeam Corporation
(561) 243-2142

Media
George Sard/Maureen Bailey
Sard Verbinnen & Co.
(212) 687-8080

SUNBEAM DELAYS SEC FILING RELATING TO DEBENTURES

Company in Talks With Lenders on Covenant Waivers

Delray Beach, FL, June 25, 1998 – Sunbeam Corporation (NYSE: SOC) announced that it is delaying filing with the Securities and Exchange Commission a registration statement for its previously issued Zero Coupon Convertible Senior Subordinated Debentures due 2018 for resale by the holders thereof. The delay is necessary to enable the Company to continue its review of certain issues regarding Sunbeam's 1997 financial statements. Arthur Andersen LLP, the Company's auditor, notified the Company yesterday that it will not provide its consent to the inclusion in the registration statement of its opinion on the 1997 financial statements, pending completion of the review.

Sunbeam confirmed news reports that the SEC has informed the Company of an informal inquiry into Sunbeam's accounting policies and practices and has requested various documents. Sunbeam intends to cooperate with the SEC.

Delay in filing the registration statement covering the Debentures will not constitute a default. The Company will be required to pay a small charge to the Debenture holders for each day the filing is delayed past June 23, 1998.

Sunbeam also said that it is continuing talks with bank lenders concerning a waiver of certain financial covenant measurements in its bank credit agreement. The covenants would normally require Sunbeam to meet certain financial tests at the end of each quarter. The Company will not meet these tests as of June 30, 1998 because of its anticipated loss for the second quarter. Sunbeam is seeking the waiver to give its new management time to complete a full review of Sunbeam's businesses and develop a new operating plan.

NOT A CERTIFIED COPY

012156

- more -

MS 522

CONFIDENTIAL

SASMP-Litiv-079861

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0642890

The three lenders are Morgan Stanley Senior Funding, Bank of America and First Union. The credit agreement provides for an $800 million 7-year term loan, a $500 million 8.5-year term loan and a $400 million 7-year revolving credit facility. Sunbeam currently has approximately $1.4 billion in outstanding debt and approximately $300 million of availability under the credit agreement.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of consumer products under such world-class brands as Sunbeam(R), Oster(R), Grillmaster(R), Coleman(R), Mr. Coffee(R)), First Alert(R), Powermate(R), Health o meter(R), Eastpak(R) and Campingaz(R).

Cautionary Statement

Certain statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of Sunbeam to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to: (i) risks associated with leverage, including cost increases due to rising interest rates; (ii) risks associated with Sunbeam's ability to continue its strategy of growth through acquisitions; (iii) risks associated with Sunbeam's ability to successfully integrate all of its recent acquisitions; (iv) risks associated with Sunbeam's ability to increase revenues by leveraging sales of Sunbeam's Signature Brands and First Alert's products through Coleman's existing distribution channels, and by leveraging sales of Coleman's Signature Brands' and First Alert's products, through Sunbeam's existing distribution channels, particularly in foreign markets; (v) risks associated with Sunbeam's ability to realize the anticipated costs savings of its restructuring program, including the timing thereof; (vi) risks associated with Sunbeam's ability to implement its planned divestitures, including the amount of the net proceeds to be realized and the timing thereof; (vii) Sunbeam's ability to make effect acquisitions in the future and to successfully integrate newly acquired businesses into existing operations and the risks associated with such newly acquired businesses; (viii) Sunbeam's ability to maintain and increase market share for its products at anticipated margins; (ix) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a high level of customer service; (x) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws; (xi) access to foreign markets together with foreign economic conditions, including currency fluctuations; (xii) uncertainty as to the effect of competition in existing and potential future lines of business; (xiii) fluctuations in the cost and availability of raw materials and/or products in relation to historical levels; (xiv) changes in the availability and relative costs of labor; (xv) effectiveness of advertising and marketing programs; (xvi) the effect of, or changes in, general economic conditions; (xvii) economic uncertainty in Japan, Korea and other Asian countries, as well as Mexico, Venezuela and other Latin American countries; and (xviii) weather conditions that are adverse to the specific businesses of Sunbeam. Other factors and assumptions not identified above were also involved in the derivation of these forward-looking statements, and the failure of such other assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. Sunbeam assumes no obligation to update these forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

###

NOT A CERTIFIED COPY

012157

Sunbeam

Contacts:
Investors
Ronald Richter
Sunbeam Corporation
561-243-2142

Media
Maureen Bailey(561-243-2092) or George Sard(212-687-8080)
Sard Verbinnen & Co.

SUNBEAM BOARD TERMINATES AL DUNLAP AS CHAIRMAN AND CEO

OUTSIDE DIRECTOR PETER LANGERMAN NAMED CHAIRMAN; FORMER COLEMAN CEO JERRY LEVIN TO BE NAMED CEO

FRANKLIN MUTUAL SERIES FUND TO APPOINT AN ADDITIONAL DIRECTOR;

MACANDREWS & FORBES TO APPOINT TWO DIRECTORS

SUNBEAM NO LONGER EXPECTS TO ACHIEVE MAY 11 FORECASTS

Delray Beach, FL, (June 15, 1998) -- Sunbeam Corporation (NYSE.SOC) announced today that its Board of Directors has removed Albert J Dunlap from his position as Sunbeam's Chairman and Chief Executive Officer.

Peter A. Langerman, a Sunbeam outside director since 1992, has been named Chairman of the Board. Langerman, 43, is Chief Operating Officer of Franklin Mutual Advisers, Inc., investment advisor to Franklin Mutual Series Fund Inc., Sunbeam' largest shareholder with approximately 17% equity ownership.

Jerry W. Levin will be named Chief Executive Officer of Sunbeam. Levin, 54, is an Executive Vice President of MacAndrews & Forbes Holdings and former Chairman and CEO

NOT A CERTIFIED COPY

012159

EXHIBIT
298

MS 523

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

of Revlon Inc and The Coleman Co Sunbeam's three senior operating executives will continue to run their respective businesses, reporting to Levin. They are Lee Griffith, President of the Household Products Division; Frank Feraco, President of the Outdoor Leisure Division; and Franz Schmid, who runs Sunbeam's international business.

Sunbeam will expand its Board of Directors to include an additional designee of Franklin Mutual Series Fund and two designees of MacAndrews & Forbes, Sunbeam's second largest shareholder with approximately 13% equity ownership. MacAndrews & Forbes designees will be Levin and Howard Gittis, Vice Chairman of MacAndrews & Forbes Langerman said, "The outside directors have unanimously taken this decisive action because we have lost confidence in Mr. Dunlap's leadership. This action did not result from any concern about the Company's 1997 audited financial statements. Arthur Andersen LLP, Sunbeam's auditor, has assured the Board that Sunbeam's audited financial statements are accurate in all material respects. However, Sunbeam has continued to incur operating loses in the second quarter of 1998 and the Board no longer expects the Company to achieve the earnings and other forecasts announced on May 11, 1998. The Board continues to believe Sunbeam's businesses are fundamentally sound and expects the Company will be successful under new leadership."

Levin said, "Sunbeam has world-class brands and strong leadership positions across a broad range of product lines. I believe the Company has the right strategy, and my job is to develop a realistic operating plan that takes full advantage of Sunbeam's potential. I have already begun working with the Board and operating management to reexamine every aspect of the business -- from research and development to manufacturing, distribution, marketing and

NOT A CERTIFIED COPY

012160

16div-019364
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1039048

customer service We are going to develop, produce and market our products as efficiently as possible while capitalizing on a broad range of new product opportunities."

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of consumer products under the following world class brand names: Sunbeam®, Oster®, Grillmaster®, Coleman®, Mr. Coffee®, First Alert®, Powermate®, East Pak®, Health o meter® and Camping Gaz®

INVESTOR/ANALYST/PRESS CALL

Peter Langerman and Jerry Levin will conduct a call for investors, analysts and the press starting at 9:00 a.m. Eastern time. The dial-in number is 877/200-3133 in the U.S. and 212-346-6394 for overseas callers.

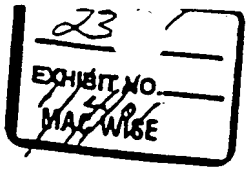
Cautionary Statements

Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward-looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's filings with the Securities and Exchange Commission.

NOT A CERTIFIED COPY

0121611

16div-019365
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1039049



MORGAN STANLEY

MORGAN STANLEY & CO.
INCORPORATED
ONE FINANCIAL PLACE
440 SOUTH LA SALLE STREET
CHICAGO, IL 60605
(312) 706-4000

September 5, 1997

NOT A CERTIFIED COPY

PERSONAL AND CONFIDENTIAL

CPH 70
DEP. EX. NO.
FOR ID., AS OF CB 12/4/03

Mr. Albert J. Dunlap
Chairman and Chief Executive Officer
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445

Dear Al:

Pursuant to our recent discussions, I am pleased to confirm the arrangements under which Morgan Stanley & Co. Incorporated ("Morgan Stanley") is engaged by Sunbeam Corporation ("Sunbeam") in connection with the proposed sale or merger of Sunbeam (the "Company") to or with another corporation (a "Sale Transaction"), and/or the possible acquisition of one or more entities (an "Acquisition Transaction").

During the term of our engagement we will provide you with financial advice and assistance in connection with these transactions, including advice and assistance with respect to defining objectives, performing valuation analysis, and structuring, planning and negotiating the transaction. We also will provide, as and when requested by you, an opinion to the Company's Board of Directors as to the fairness from a financial point of view of a Sale Transaction or an Acquisition Transaction to the Company's shareholders.

If a Sale Transaction is consummated, we will charge a "Sale Transaction Fee" of 0.425% of the Sale Transaction's Aggregate Value. The "Aggregate Value" of the Sale Transaction shall be the value of the consideration paid for the Company's common equity (or, in the case of a sale of assets, the consideration paid for such assets), plus the value of any debt, capital lease, and preferred stock obligations of the Company assumed, retired, or defeased in connection with the Sale Transaction. Any amounts to be paid by the buyer contingent upon future events shall be estimated for purposes of the Sale Transaction Fee calculation at an expected value mutually agreeable to you and to us at the time of closing, except that amounts held in escrow shall be deemed paid at closing.

01-21164

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 237825

The full Sale Transaction Fee in connection with a completed Sale Transaction will become payable and is to be paid by Sunbeam when control of 50% or more of the Company's common stock changes hands. Nevertheless, our advisory efforts pursuant to this letter will continue after control is obtained to assist you with a second step merger or similar transaction.

Any advice or opinions provided by Morgan Stanley may not be disclosed or referred to publicly or to any third party except in accordance with our prior written consent. Notwithstanding the foregoing, advice and opinions given by Morgan Stanley to the Company's Board of Directors may be disclosed in any disclosure document provided to the Company's shareholders that is required by the federal securities laws, provided that any such disclosure shall be reasonably satisfactory to Morgan Stanley and its counsel.

In the event the Company enters into a definitive agreement providing for a Sale Transaction, we will charge an "Exposure Fee" of $3,000,000. The Exposure Fee is intended to compensate us for publicly associating Morgan Stanley's name as a financial advisor with the Sale Transaction, for Morgan Stanley's contribution to the parties' reaching an agreement, or both. The Exposure Fee will be credited against the Sale Transaction Fee.

If an Acquisition Transaction is consummated, we will charge an Acquisition Transaction Fee calculated as a percentage of the Aggregate Value (as previously defined) of the Acquisition Transaction as follows:

Aggregate Value of Acquisition Transaction ($MM)	Acquisition Transaction Fee Percentage
$ 500	0.875%
1,000	0.540
1,500	0.510
2,000	0.480
3,000	0.450
Greater than 3,000	0.425

For an Acquisition Transaction in which the Aggregate Value is between two values shown in the above fee schedule, the Acquisition Transaction Fee Percentage applicable is determined by interpolation between the two nearest Acquisition Transaction Fee Percentages.

In the event the Company enters into a definitive agreement providing for an Acquisition Transaction, we will charge an Acquisition Exposure Fee equal to 25% of the estimated Acquisition Transaction Fee. The Acquisition Exposure Fee paid will be credited against the Acquisition Transaction Fee.

If the Company issues non-cash consideration in an Acquisition Transaction or receives non-cash consideration in a Sale Transaction, for purposes of computing the Acquisition Transaction Fee or the Sale Transaction Fee, non-cash consideration shall be valued as

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

16div-019367

follows: (x) publicly traded securities shall be valued at the average of their closing prices (as reported in The Wall Street Journal) for the ten trading days prior to the closing of a transaction and (y) any other non-cash consideration shall be valued at the fair market value thereof as determined in good faith by mutual agreement of the Company and Morgan Stanley

If, in connection with this assignment, Sunbeam effects a repurchase of or a public sale or private placement of equity, preferred or debt securities or Sunbeam effects real estate financings, asset or property sales, and Sunbeam requires investment banking services in connection therewith, Sunbeam agrees to offer to retain Morgan Stanley on mutually agreeable terms to assist it with such transaction. In addition, if in connection with this assignment, Sunbeam effects any interest rate, equity-related or currency hedges or currency conversions, including but not limited to currency transactions on a spot, forward or option basis, Sunbeam agrees to offer to retain Morgan Stanley on mutually agreeable terms to assist it with such transaction.

In addition to our fee for professional services, we will separately bill our documented out-of-pocket expenses as incurred, not to exceed $250,000 per transaction payable at the conclusion of each transaction. Generally these expenses include travel costs, document production and other expenses of this type. The reasonable fees of outside counsel and other professional advisors, should they be engaged with your consent, will be billed as incurred and are not subject to the $250,000 limit per transaction.

Morgan Stanley will act under this letter agreement as an independent contractor with duties solely to Sunbeam. Because we will be acting on your behalf in this capacity, it is our practice to receive indemnification. A copy of our standard indemnity form is attached to this letter.

Please note that Morgan Stanley is a full service securities firm engaged in securities trading and brokerage activities, as well as providing investment banking, financing, and financial advisory services. In the ordinary course of our trading, brokerage, and financing activities, Morgan Stanley or its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for our own account or the accounts of customers, in debt or equity securities or senior loans of Sunbeam or any other company that may be involved in this transaction.

The term of our engagement under this letter shall commence on the date hereof and continue for 12 months after the date hereof, unless extended by mutual consent. Our services hereunder may be terminated with or without cause by you or by us at any time and without liability or continuing obligation to you or to us (except for any compensation earned and expenses incurred by us to the date of termination or date of expiration and except, in the case of termination by you or expiration of our engagement, for our right to fees pursuant to this letter for any transactions effected within one year of such termination or expiration of our engagement) and provided that the indemnity provisions will remain operative regardless of any such termination.

Morgan Stanley and Sunbeam (on its own behalf and, to the extent permitted by law, on behalf of its shareholders) each waives any right to trial by jury in any action, claim, suit or

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

16div-019368

proceeding with respect to Morgan Stanley's engagement as financial advisor or its role in connection herewith.

If the terms of our engagement as set forth in this letter are satisfactory, kindly sign the enclosed copy of this letter and indemnification form and return them to us.

We look forward to working with Sunbeam on this very important assignment.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: _____
William H. Strong
Managing Director

Accepted:

SUNBEAM CORPORATION

By: _____

Title: _____

Date: 9-11-97

Enclosure

NOT A CERTIFIED COPY

012167

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Gentlemen:

This letter will confirm that we have engaged Morgan Stanley & Co. Incorporated to advise and assist us in connection with the matters referred to in our letter agreements dated September 5, 1997 (the "Engagement Letter"). In consideration of your agreement to act on our behalf in connection with such matters, we agree to indemnify and hold harmless you and your affiliates and your and their respective officers, directors, employees and agents and each other person, if any, controlling you or any of your affiliates (you and each such other person being an "Indemnified Person") from and against any losses, claims, damages or liabilities related to, arising out of or in connection with the engagement (the "Engagement") under the Engagement Letter, and will reimburse each Indemnified Person for all expenses (including fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing or defending any action, claim, suit, investigation or proceeding related to, arising out of or in connection with the Engagement, whether or not pending or threatened and whether or not any Indemnified Person is a party. We will not, however, be responsible for any losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the bad faith or gross negligence of any Indemnified Person. We also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to us for or in connection with the Engagement except for any such liability for losses, claims, damages or liabilities incurred by us that are finally judicially determined to have resulted from the bad faith or gross negligence of such Indemnified Person.

RIDER

We will not, without your prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claims, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes a release of each Indemnified Person from any liabilities arising out of such action, claim, suit or proceeding. No Indemnified Person seeking indemnification, reimbursement or contribution under this agreement will, without our prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding referred to in the preceding paragraph.

If the indemnification provided for in the first paragraph of this agreement is judicially determined to be unavailable (other than in accordance with the terms hereof) to an Indemnified Person in respect of any losses, claims, damages or liabilities referred to herein, then, in lieu of indemnifying such Indemnified Person hereunder, we shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (and expenses relating thereto) (i) in such proportion as is appropriate to reflect the relative benefits to you, on the one hand, and us, on the other hand, of the Engagement or (ii) if the allocation provided by clause (i) above is not available, in such proportion as is appropriate to reflect not only the relative benefits referred to in such clause (i) but also the relative fault of each of you and us, as well as any other relevant equitable considerations; provided, however, in no event shall your aggregate contribution to the amount paid or payable exceed the aggregate amount of fees actually received by you under the Engagement Letter. For the purposes of this agreement, the relative benefits to us and you of the Engagement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid or received or contemplated to be received by us or our stockholders, as the case may be, in the transaction or transactions that are the subject of the Engagement, whether or not any such transaction is consummated, bears to (b) the fees paid or to be paid to you under the Engagement Letter.

The provisions of this agreement shall apply to the Engagement and any modification thereof and shall remain in full force and effect regardless of any termination or the completion of your services under the Engagement Letter.

This agreement and the Engagement Letter shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed in and to be performed in that state.

Very truly yours,
SUNBEAM CORPORATION

By _____
David C. Fannin
Executive Vice President
General Counsel

Accepted:

MORGAN STANLEY & CO. INCORPORATED

By _____

Date: September 5, 1997

9/9

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 237829

NOT A CERTIFIED COPY

Rider to Indemnification Agreement with Sunbeam Corporation

We shall be entitled to participate at our own expense in the defense of any Action brought to enforce any claim or liability of any Indemnified Person resulting from any such Action and, if we so elect, we shall be entitled to assume the defense of such Action at our expense, including the employment of counsel (in which case we shall not thereafter be responsible for the fees, costs and expenses of any separate counsel retained by an Indemnified Person); provided, however, that such counsel shall be satisfactory to an Indemnified Person in the exercise of its reasonable judgment. Notwithstanding the foregoing, an Indemnified Person shall have the right to employ separate counsel in the defense of an Action, and we shall bear the reasonable fees, costs and expenses of such separate counsel if (a) the use of counsel chosen by us to represent the Indemnified Person would present such counsel with a conflict of interest; (b) the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them; (c) we shall not have employed counsel satisfactory to the Indemnified Person in the exercise of the Indemnified Person's reasonable judgment to represent the Indemnified Person, within a reasonable time after notice of the institution of such Action; or (d) we authorize the Indemnified Person to employ separate counsel at our expense. In no event shall we be responsible hereunder for the fees and expenses of more than one counsel for any Indemnified Person in connection with an Action in the same jurisdiction.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

Our Original Copy
Simon

MORGAN STANLEY *INTEROFFICE MEMORANDUM*

- Business
- Environmental
- Accounting
- Legal

TO: The Leveraged Finance Committee **DATE:** March 20, 1998

FROM:

CFD - Chicago		MARD		Leveraged Finance		ECMS	
WHStrong	3-726-4400	RWKitts	x4822	BSmith	x2660	RMPorat	x5430
ABSavarie	3-726-4412	JBStynes	x7772	MHart	x1052	WBHarris	x5462
		AJFuchs	x6094	RGilbert	x2677	JHWoodworth	x5464
		GKYoo	x7937	TBurchill	x2924	SSPrasad	x5468
		JDWebber	x4570	ISeth	x1286		
		TChang	x8571				
		LRafii	x8179				

Equity Research		CSG		Credit		High Yield Research	
AJConway	x6394	WHWright	x7922	CMWhelan	x4241	JFoley	x1598
JDormer	x6293	JDTyree	x7738	JCKunreuther	x4981	KEltrich	x1575
		JGroeller	x7314				
		BDerito	x4303				
		SBoone	x4941				

SUBJECT: **SUNBEAM CORP. – $2.0 BILLION SENIOR SECURED CREDIT FACILITIES**

I. BACKGROUND

Sunbeam Corp. ("SOC", NYSE) is a leading worldwide manufacturer of a wide range of household and specialty brand name consumer products. As of March 6, 1998, the Company had an equity market value of $4.4Bn. Morgan Stanley became involved with Sunbeam through the relationship between Bill Strong and Al Dunlap. Bill Strong first met Al Dunlap in 1986 when Al Dunlap worked for Sir James Goldsmith. Bill Strong has been involved with three transactions for Al Dunlap and Sir James Goldsmith. The last transaction was a $275MM Regulation S sale of Newmont Mining common stock in 1993 successfully executed by Morgan Stanley. The Firm began soliciting a strategic relationship with Al Dunlap in April 1997 and was retained as sole strategic advisor to Sunbeam in early September 1997. Since that time, we have been exploring various strategic alternatives for the Company, with the active participation of Sunbeam's management team. Such advisory reviews have included potential acquisitions, a sellside process for the Company and the recently announced buyside transactions. As a consequence of these projects, the Firm has developed strong relationships with both the CEO and senior management at the Company. Furthermore, Andrew Conway expects to initiate equity research.

II. THE TRANSACTION

Morgan Stanley is advising the Company in its pending acquisitions of Coleman, Signature Brands and First Alert with a total $2.5Bn in aggregate value, including assumption of $1.6Bn in debt at the three entities. The Sunbeam common stock price has risen by $8.31 per share, from $41.75 to $50.06 (a 20% increase) since the transactions were announced. To finance these acquisitions, Sunbeam has asked Morgan Stanley to underwrite $2.0Bn in Senior Secured Credit

adding in $312.5

F1815727303-38-88E34 PPG1

CPH EXHIBIT 133
FOR I.D. 1-22-04

MORGAN STANLEY CONFIDENTIAL 0059244

NOT A CERTIFIED COPY

Facilities and to sole-manage a $500MM Zero Coupon Convertible Subordinated Debenture (plus a $75MM greenshoe) to be issued pursuant to Rule 144A. These financings, combined with the $888MM Sunbeam equity being provided to the seller of Coleman (MAFCO and minority shareholders), complete the financing of the acquisition. Morgan Stanley has signed a "Highly Confident" letter in reference to the financing of these acquisitions.

The proposed Senior Secured Credit Facilities will be structured as follows:

($ in millions)

Tranche	Amount	Tenure	LIBOR Spread at Close
Revolving Credit	$ 500	7 years	1.25%
Term Loan A	1,000	7 years	1.25%
Term Loan B	500	8 ½ years	1.75%
	$ 2,000		

While Morgan Stanley seeks the Committee's approval to underwrite the entire $2.0 billion amount of the Facilities, Morgan Stanley Senior Funding (MSSF) has already approached Bank of America and First Union, two of Sunbeam's relationship lenders, and has asked each of them to underwrite 30% of the Facilities. B&A and First Union are still in the process of gaining internal credit approvals. The anticipated senior-most credit rating for the pro forma Sunbeam is expected to be [BB/Ba2]. Due to the accelerated timing of the transaction, it is MSSF's intention to first close the acquisitions at the end of March, and then syndicate its position. On a pro forma basis, Bank Debt to EBITDA is 3.97x, Total Debt to EBITDA is 5.14x and EBITDA to Cash Interest is 3.54x.

The convertible transaction was launched on Thursday, March 12, to be priced on Thursday, March 19 and closed on Tuesday, March 24 in advance of the closing of the Coleman, Signature and First Alert acquisitions. MS believes Sunbeam's rating on this security would be B+/B1, pro forma and as adjusted for the acquisition strategy and financing plan as described above, although we do not believe that the security will be rated until several weeks after pricing.

We are asking the Committee to approve underwriting 2.0Bn in Senior Secured Credit Facilities.

Expected Economics

($ in Millions)

Arrangement Fee	$2.0Bn @ [0.125% - 0.25%]	=	$ 2.5	-	$ 5.0
Net Underwriting Fee	$2.0Bn x 40% x [0.375% - 0.50%]	=	$ 3.0	-	$ 4.0
			$ 5.5	-	$ 9.0

0121172

NOT A CERTIFIED COPY

16div-019373

III. ACQUISITION STRUCTURE

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

Structure

The transaction will be financed with $2.0Bn of Bank Debt, $888MM in Sunbeam common equity (issued to MAFCO (Ron Perelman) as part of Coleman purchase) and $500MM in Zero Coupon Convertible debt. The Bank Debt will consist of $1.5Bn in term debt and a $500MM revolver (only about $100MM drawn down initially). The transactions will be structured as follows:

- Coleman Acquisition: The transaction, valued at $2,114MM aggregate value, will be consummated in two steps (i) acquisition of Coleman Holdings (owner of 82.4% of Coleman Operating Co. stock) from MAFCO affiliates and (ii) minority repurchase of Operating Co. public shareholders
  - The shares issued to MAFCO (14.1MM shares, $589MM) will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months. The minority shareholders will also receive the same mix of 21% cash and 79% stock. This acquisition is expected to close on March 30.
- Signature Brands Acquisition: Cash acquisition of all outstanding stock of Signature Brands by Sunbeam resulting in aggregate value of $249MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998
- First Alert Acquisition: Cash acquisition of all outstanding stock of First Alert by Sunbeam resulting in aggregate value of $175MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998

NOT A CERTIFIED COPY

012173

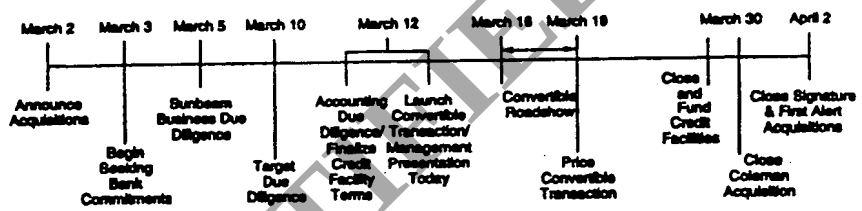
MORGAN STANLEY
CONFIDENTIAL
0059246

16div-019374

SOURCES ($MM)	Amount	% of Total
Cash	$6.3	0.2%
Bank Debt	1,611.4	53.6
Zero Coupon Convertible	500.0	16.6
Equity	887.9	29.5
TOTAL	$3,005.6	100.0%

USES ($MM)	Amount	% of Total
Purchase Equity		
Purchase Coleman Equity	$1,108.4	36.9%
Purchase First Alert Equity	137.9	4.6
Purchase Signature Brands Equity	94.2	3.1
Total Equity Purchased	1,340.4	44.6
Option (Proceeds) Costs	24.7	0.8
Assumption of Debt		
Redeem Coleman Debt	1,061.6	35.3
Redeem First Alert Debt	45.5	1.5
Redeem Signature Brands Debt	173.8	5.8
Total Assumed Debt	1,280.9	42.6
Refinance Sunbeam Debt	317.0	10.5
Transaction Fees	42.5	1.4
TOTAL	$3,005.6	100.0%

Transaction Timeline



IV. DUE DILIGENCE

Morgan Stanley's M&A group has been working closely with Sunbeam for almost one year, and was appointed Sunbeam's sole strategic advisor in September 1997. In that regard, the M&A group has gained an extremely sound knowledge of the Company.

The Financing and Execution teams conducted their first due diligence session at Sunbeam's headquarters in Delray Beach, Florida on March 4, 1998. Representatives from MSSF, Client Services Group, Credit and Corporate Finance, met with Sunbeam's Director of Strategic Planning, Treasurer and Legal Counsel (or participated via conference call.) Also in attendance were representatives from Bank of America, First Union, and Davis Polk (Lender's Counsel).

Subsequently, the above mentioned groups have participated in due diligence conference calls with management teams from Coleman, Signature Brands and First Alert.

In addition, a due diligence team visited the Coleman facilities in Wichita, Kansas on March 12. Another tentative due diligence trip is planned for Signature Brands and First Alert site visits.

NOT A CERTIFIED COPY

012174

MORGAN STANLEY
CONFIDENTIAL
0059247

16div-019375

Additionally, comprehensive accounting due diligence was conducted with Sunbeam's and all the targets' auditors, on March 12.

V. COMPANY OVERVIEW

General

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

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

Sunbeam - 1997 Sales Breakdown
($ in MM)

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

NOT A CERTIFIED COPY

012175

MORGAN STANLEY
CONFIDENTIAL
0059248

16div-019376

Sunbeam - Selected Financials ($ in MM)	Actual		
	1995	1996	1997
Sales	**$1,016.9**	**$984.2**	**$1,168.2**
% Growth		*-3.2%*	*18.7%*
Cost of Goods Sold	809.1	808.3	837.7
% of Sales	*79.6%*	*82.1%*	*71.7%*
Gross Profit	207.8	176.0	330.5
% of Sales	*20.4%*	*17.9%*	*28.3%*
SG&A Expense	137.5	173.6	131.1
% of Sales	*13.5%*	*17.6%*	*11.2%*
Advertising & Promotion	0.0	0.0	0.0
% of Sales	*0.0%*	*0.0%*	*0.0%*
Research & Development	0.0	0.0	0.0
% of Sales	*0.0%*	*0.0%*	*0.0%*
Operating Income	**70.2**	**2.3**	**199.4**
% of Sales	*6.9%*	*0.2%*	*17.1%*
% Growth		*-96.7%*	*8445.1%*
Goodwill Amortization	0.0	0.0	0.0
Other Expense/(Income)	0.2	1.6	(1.2)
% Margin	*0.0%*	*0.2%*	*-0.1%*
EBIT	70.1	0.7	200.7
% Margin	*6.9%*	*0.1%*	*17.2%*
Depreciation & Amortization	47.4	47.4	38.6
EBITDA	117.5	48.1	239.3
	11.6%	4.9%	20.5%

Audited? ↓

Major Restructuring

Business Divisions

Kitchen Devices

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

NOT A CERTIFIED COPY

012176

MORGAN STANLEY
CONFIDENTIAL
0059249

16div-019377

Health at Home Devices

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

Personal Care and Comfort Devices

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

Outdoor Cooking Devices

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

Professional Care Devices

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

Restructuring

In the fall of 1996, after several years of disappointing results, Sunbeam announced a major restructuring and growth plan under newly appointed chairman Albert Dunlap. The restructuring portion of the plan has been substantially completed with only the final "refinement" stage remaining. It included the redefinition of Sunbeam's core products, divestiture of non-core businesses, hiring a new management team, closing of warehouses and consolidation of headquarters, elimination of production facilities, and a large reduction in unprofitable products. The actions led to a reduction of approximately half the work force (about 6,000 jobs). Cost reductions are expected to result in annual savings of $225MM, most of which were already realized in 1997.

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

NOT A CERTIFIED COPY

0121177

MORGAN STANLEY
CONFIDENTIAL
0059250

Pre-Acquisition Strategy/Goals

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

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

Following the acquisition, the Company is going to pursue a strategy focused on the consolidation of the consumer durables sector. With the significant number of underperforming companies in this sector (Black & Decker, Rubbermaid, etc.), the Company believes it will have a significant opportunity to make additional future acquisitions.

NOT A CERTIFIED COPY

012178

F1\A1\57273\03-28-98\234 PVP06

MORGAN STANLEY
CONFIDENTIAL
0059251

VI. SUMMARY OF TERMS AND CONDITIONS

Borrower:	Sunbeam Corporation and its successors.
Syndication Agent & Arranger:	Morgan Stanley Senior Funding, Inc. ("MSSF")
Purpose:	To provide part of the financing required to consummate the Acquisition, to refinance certain existing indebtedness, to pay related fees and expenses, and to finance ongoing working capital, permitted acquisitions and other general requirements of the Borrower.
Types and Amounts of Senior Facilities:	**Revolving Credit Facility:** $500,000,000 **Term Loan A Facility:** $1,000,000,000 **Term Loan B Facility:** $500,000,000
Final Maturity:	Seven years from the Initial Closing Date.
Amortization:	**Revolving Credit Facility:** The revolving credit loans shall be repaid in full upon, and all letters of credit shall expire thirty days prior to, Final Maturity. **Term Loan A Facilities:** Amortized in quarterly installments to be determined. **Term Loan B Facilities:** Nominal amortization in years 1-7 with the balance amortizing in year 8½.
Availability:	Revolving Credit facility drawings may be made at anytime during life of Facility. Term loans A and B are allowed multiple drawings on the relevant Closing Dates.
Interest Margins:	Term Loan A: L+125 Term Loan B: L+175
Default Interest:	2.00% per annum in excess of the rate (including the applicable interest margin).
Mandatory Prepayments:	Shall include the net proceeds of all asset sales, the issuance of additional debt and 75% of Excess Cash Flow. equity
Letter of Credit Fees:	The applicable margin for LIBOR loans, less the fronting fee payment to the issuing bank. L A ~ D
Security:	The Senior Facilities will be secured by perfected first priority (i) pledges of the stock of the Borrower's direct and indirect subsidiaries, and security interests in all obligations owned to the Borrower from any of its direct of indirect subsidiaries, whether outstanding on the Initial Closing Date or made thereafter, and (ii) security interests in and liens upon substantially all other assets now or hereafter owned by the Borrower.
Guarantees:	The Senior Facilities will be guaranteed, on a joint and several basis, by all of the Borrower's direct and indirect subsidiaries.
Conditions Precedent:	To include receipt of cash proceeds of (i) $500MM from issuance of Convertible Debentures and (ii) at least $811.5MM in common equity securities as partial consideration for Coleman
Covenants:	Customary and appropriate affirmative and negative covenants, including but not limited to financial covenants related to maximum leverage, minimum interest coverage and minimum fixed charge coverage. Other covenants will include limitations on restricted payments, liens, merger and acquisitions, capex asset sales, dividends, indebtedness, and transaction with affiliates.

NOT A CERTIFIED COPY

0012179

MORGAN STANLEY
CONFIDENTIAL
0059252

16div-019380

VII. THE TARGETS

Coleman ("CLN")

- Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. Its products have been sold domestically and internationally under the *Coleman* brand name since 1920s. Coleman attributes its market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise

- *Outdoor Recreation:* This business segment includes lanterns and stoves, fuel, coolers and jugs, recreational soft goods, outdoor furniture, electric lights, spas and camping accessories. Products sell under the *Coleman* and *Camping Gaz* brand names in a highly competitive market

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

Coleman - 1997 Sales Breakdown
($ in MM)

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

Coleman - Selected Financial Information
($ in MM)

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

2,120 ÷ 99 = 21.9x

2,120 ÷ 212 = 10.0x

012180

NOT A CERTIFIED COPY

F1B\1572?3\03-98-98\6:34 PPG10

MORGAN STANLEY
CONFIDENTIAL
0059253

Signature Brands ("SIGB")

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

- *Consumer Products:* This division includes coffeemakers, hot and iced teamakers, coffee filters, replacement decanters and accessories and consumer scales under the *Mr. Coffee* and *Health O'Meter* trademarks

- *Professional Products:* This business segment includes professional scales (medical, office, food) and commercial coffee brewers. Products are sold under the *Pelouze* and *Health O'Meter* trademarks

Signature Brands - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Consumer Products	$ 236.0	*85.6%*	Worldwide	$ 275.7	*100.0%*
Professional Products	39.7	*14.4*			
Total	$ 275.7	*100.0%*	Total	$ 275.7	*100.0%*

Signature Brands - Selected Financial Information
($ in MM)

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

268
2.31
8.6x

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0059254

16div-019382

First Alert ("ALRT")

- First Alert manufactures and markets a broad range of residential safety products. It distributes its products through leading retailers mainly under the *Sentinel* premium brand name and the complementary *Family Gard* value brand name. Products are also distributed through electrical wholesalers under the *BRK* brand name for sale to professional contractors

- *Smoke Detectors:* This segment includes smoke detectors for residential application. Products are sold under the *First Alert, Family Gard* and *BRK* brand names and hold the #1 market share (75%) with American Sensor, Fymetics/Kidde and Coleman being the main competitors

- *Carbon Monoxide Detectors:* This segment includes carbon monoxide detectors with biometrics sensor sold under the *First Alert* and *Family Gard* brand names. The company holds #1 market position (49%) with Nighthawk (Kidde), American Sensor and Jameson as main competitors

- *Fire Extinguishers:* This segment includes fire extinguishers for use in kitchen, garage, workshop, auto and boat. Products are sold under the *Sure Grip* brand name and hold #2 market share (31%) behind Kidde (63%)

- Other manufacturing activities include miscellaneous product lines, including #4 market position in flashlights

First Alert - 1997 Sales Breakdown
($ in MM)

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

NOT A CERTIFIED COPY

012182

MORGAN STANLEY
CONFIDENTIAL
0059255

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

183.4

VIII. SUMMARY OF PROJECTIONS AND ASSUMPTIONS

- The financial projections that appear below are based on a Morgan Stanley Financing Base Case. The MS Base Case was developed by significantly reducing revenue growth rates and synergy assumptions that were provided in an original Management Case.
- The Sales CAGR 1996-01 was reduced from almost 14% in the Management Case, to 9.4% on the MS Base Case.
- Synergies were also reduced on the MS Base Case, to $60.0MM in Year 1 (a 40% reduction from the Management Case) and to $150.0MM in the years thereafter (approximately 23% reduction from the Management Case).
- An MS Downside Case has also been presented in the Appendix. This case assumes Sales CAGR 1996-01 reduced to 4.4%, and assumes no synergies.

NOT A CERTIFIED COPY

0121183

MORGAN STANLEY
CONFIDENTIAL
0059256

16div-019384

Pro Forma Capitalization (PF 1997)

($ in millions)

	Amount	%
Existing Long-Term Debt	$86.9	2.5%
Revolver	111.4	3.2
Term Loans	1,500.0	43.3
Zero Coupon Convertible Debt	500.0	14.4
Total Debt	2,198.4	63.5
Minority Interest	1.2	0.0
Common Equity	1,262.8	36.5
Total Equity	1,264.0	36.5
Total Capitalization	$3,462.4	100.0%

	Actual Pro Forma		Projected Pro Forma					
Income Statement Data	1996	1997	1998	1999	2000	2001	2002	2003
Sales	$2,682.7	$2,700.1	$3,041.3	$3,403.8	$3,739.9	$4,051.6	$4,390.7	$4,644.1
% Growth		*0.6%*	*12.6%*	*11.9%*	*9.9%*	*8.3%*	*8.4%*	*5.8%*
Cost of Goods Sold(1)	2,036.0	1,930.2	2,130.0	2,347.5	2,571.7	2,776.1	3,007.2	3,181.6
% of Sales	*75.9%*	*71.5%*	*70.0%*	*69.0%*	*68.8%*	*68.5%*	*68.5%*	*68.5%*
Gross Profit	646.8	769.9	911.3	1,056.3	1,168.2	1,275.5	1,383.5	1,462.5
% of Sales	*24.1%*	*28.5%*	*30.0%*	*31.0%*	*31.2%*	*31.5%*	*31.5%*	*31.5%*
Operating Income	**80.0**	**293.1**	**377.1**	**473.8**	**536.6**	**597.4**	**655.2**	**693.7**
% of Sales	*3.0%*	*10.9%*	*12.4%*	*13.9%*	*14.3%*	*14.7%*	*14.9%*	*14.9%*
% of Growth		*266.5%*	*28.7%*	*25.6%*	*13.3%*	*11.3%*	*9.7%*	*5.9%*
Pre-tax Synergies	**(60.0)**	**(60.0)**	**(60.0)**	**(150.0)**	**(150.0)**	**(150.0)**	**(150.0)**	**(150.0)**
% of Sales	*2.2%*	*2.2%*	*2.0%*	*4.4%*	*4.0%*	*3.7%*	*3.4%*	*3.2%*
EBIT	**75.4**	**290.1**	**375.6**	**562.3**	**625.1**	**685.9**	**744.6**	**783.1**
% of Sales	*2.8%*	*10.7%*	*12.4%*	*16.3%*	*16.7%*	*16.9%*	*17.0%*	*16.9%*
Depreciation & Amortization	139.7	138.0	146.6	174.1	194.6	220.3	250.4	265.8
EBITDA	**215.1**	**428.1**	**522.2**	**736.5**	**819.8**	**906.3**	**995.0**	**1,048.9**
Net Interest	144.2	142.2	143.4	134.7	116.5	95.0	68.7	8.1
Net Income	**($65.0)**	**$74.5**	**$130.4**	**$257.4**	**$318.1**	**$363.6**	**$418.8**	**$483.2**
% of Sales	*-2.4%*	*2.8%*	*4.3%*	*7.6%*	*8.3%*	*9.0%*	*9.5%*	*10.4%*

	Actual	Pro Forma	Projections					
Balance Sheet Data	1996	1997	1998	1999	2000	2001	2002	2003
ASSETS (selected accounts)								
Accounts Receivable	295.6	605.2	674.9	736.7	809.5	876.9	950.3	1,005.2
Inventories	256.2	653.0	645.5	690.5	756.4	816.5	884.5	935.8
Net Property, Plant and Equipment	240.9	325.6	358.6	384.5	409.2	430.2	444.8	454.3
Trademarks & Tradenames	194.4	194.4	186.5	178.7	170.8	163.0	155.1	147.2
Total Assets	1,120.3	4,225.9	4,296.1	4,374.7	4,482.9	4,575.2	4,676.9	4,884.3
LIABILITIES + EQUITY (selected accounts)								
Accounts Payable	105.6	233.5	257.7	284.0	311.1	335.8	363.8	384.9
Existing Long Term Debt	194.6	86.9	65.0	0.0	0.0	0.0	0.0	0.0
New Bank Debt	NA	1,611.4	1,611.4	1,407.8	1,114.4	752.0	333.7	0.0
Zero Coupon Con.	0.0	500.0	525.3	551.9	579.8	609.2	0.0	0.0
Total Debt	194.6	2,198.4	2,201.7	1,959.8	1,694.3	1,361.2	333.7	0.0
Common Equity	531.9	1,262.8	1,233.5	1,472.1	1,777.4	2,136.2	3,190.2	3,668.6

NOT A CERTIFIED COPY

0121814

MORGAN STANLEY
CONFIDENTIAL
0059257

16div-019385

	PF 1997[2]	1998	1999	2000	2001	2002	2003
Credit Statistics							
Synergies							
Synergies Realized (p/t)	-	$60.0	$150.0	$150.0	$150.0	$150.0	$150.0
% of Pro Forma Revenue	-	2.0%	4.4%	4.0%	3.7%	3.4%	3.2%
Credit Statistics[1]							
Cash Interest Expense							
EBITDA/Interest	3.54x	4.34x	6.68x	9.03	13.36x	24.82x	83.83x
(EBITDA-CapEx)/Interest	2.75	3.43	5.50	7.38	10.84	19.94	67.35
Total Interest Expense							
EBITDA/Interest	2.93x	3.59x	5.38x	6.90x	9.33x	14.03x	83.83x
(EBIDTDA-CapEx)/Interest	2.28	2.83	4.43	5.65	7.56	11.27	67.35
Total Fixed Charges							
EBITDA/(Interest+Pref. Divs. [Pre-Tax])	2.93x	3.59x	5.38x	6.90x	9.33x	14.03x	83.83x
(EBITDA-CapEx)/(Interest+Pref. Divs. [Pre-Tax])	2.28	2.83	4.43	5.65	7.56	11.27	67.35
Leverage							
Senior Debt/EBITDA	3.97x	3.21x	1.91x	1.36x	0.83x	0.34x	0.00x
Total Debt (Excl. Pref.)/EBITDA	5.14	4.22	2.66	2.07	1.50	0.34	0.00
Senior Debt/Book Cap.	49.1%	48.8%	41.0%	32.1%	21.5%	9.5%	0.0%
Total Debt (Include. All Pref)/Book Cap.	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%
Total Debt (Excl. Pref.)/Book Cap.	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%
Funds Flow from Operations / Total Debt (Excl. Pref.)	13.4%	7.3%	23.9%	32.2%	46.2%	215.2%	N.M.
Cumulative Free Cash Flow	-	$22.0	$283.0	$576.4	$938.9	$1,357.2	$1,840.6
% of PF Bank Debt Outstanding:	100.0%	100.0%	87.4%	69.2%	46.7%	20.7%	0.0
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.
Rev/Net PP&E	8.29x	8.48x	8.85x	9.14x	9.42x	9.87x	10.22

Notes: (1) Pro Forma 1997 includes $60MM in pre-tax synergies.
(2) Pro Forma 1997 includes pro forma 1997 operating statistics, pro forma interest expense assuming no debt paydown, and pro forma BOY/BOY 1998 capitalization.
(3) Pro Forma 1997 includes pro forma 1997 operating statistics, pro forma interest expense assuming no debt paydown, andpro forma BOY/BOY 1998 capitalization.

6-1/ Bar
1 Bar Lo

NOT A CERTIFIED COPY

012185

F19\15727303-88-6F8:34 PFG18

MORGAN STANLEY
CONFIDENTIAL
0059258

Coleman Synergies Rationale –$118MM

- Outsource or move the crew machine plant to main Wichita plant
- Consider closing or downsizing the Lyon plant
- Sell the gas cylinder operation
- Move all of coolers to Texas plant
- Close one sleeping bag plant
- Sell Powermate
- Rationalize product line. Review the value of furniture, boats, shoes
- Rationalize SKUs, especially the accessories
- Create a central customer service center for the combined company
- Create a shared service center for the combined company
- Leverage purchasing power of the whole company — presently little has been done to purchase centrally
- Leverage trucking for the combined company
- Reduce inventories by improving manufacturing supply chain
- COGS savings opportunity is $54 million (Materials @ $29 million), Labor @8 million, and overhead @ $17 million)
- SGA savings opportunity is $68 million (Corporate & International @ $11 million, Sales and marketing @$36 million, and other @$17 million)

First Alert Synergies Rationale –$19MM

- Eliminate domestic and international sales/marketing groups and sales representatives organization and use Sunbeam current sales force for a savings of 60 FTEs and $2.8M in commissions
- Shared services and management in administration functions for a savings of 15 FTEs
- Combine Test & QA engineering organization within new company for a savings of 30 FTEs (50% HQ, 50% Juarez)
- Rationale non-core product lines (safes, night lights, etc.)
- Eliminate Aurora distribution network be integrating into Sunbeam network
- Move Fire Extinguisher manufacturing out of Aurora – Hattiesburg or Mexico
- Consolidate injection molding operations of First Alert and Sunbeam or outsource
- Leverage additional purchasing volume between two companies
- Reduce material shortages on the shortages on the shop four
- Improve inventory turns – currently 2
- Balance manufacturing lines – capacity improvements
- Quality is questionable – returns 1.8% of sales $3.3 million
- SF&A potential opportunity is $11.1 million ($3.1 million in people and $8 million in controllables)
- CGS potential opportunity is $8.3 million ($3.6 million in people and $8.3 million in direct materials purchase price)

Signature Brands Synergies Rationale –$25-30MM

- Close the Cleveland facility
- Move the coffee maker assembly to Hattiesburg
- Source the injection molded parts from Hattiesburg
- Outsource the coffee filter manufacturing
- Rationalize SKUs – especially the scales
- Create a central customer service center and a shared service center for the combined company
- Leverage purchasing power of the combined company – little has been done to purchase centrally
- Leverage trucking for the entire company for $1 million in annual savings
- Reduce inventories by improving manufacturing supply chain
- Estimated staff reduction of about 200 FTEs for $9 million savings
- Estimated controllable expense reduction opportunity of $9 million
- Halt implementation of JBA software project ($.05 - $1.0 remaining to be spent)

NOT A CERTIFIED COPY

012186

P19157273A03-08-05/6:34 PPG16

MORGAN STANLEY
CONFIDENTIAL
0059259

IX. EQUITY VALUATION

- As of February 27, 1998, Sunbeam shares were trading at $41.75 per share (a market capitalization of over $3.6 billion) and were valued at the low end of its comparable range.
  - 20.9x 1998 median I/B/E/S estimate of $2.00 (versus 22.4x for comparables)
  - 15.2x 1999 median I/B/E/S estimate of $2.75 (versus 19.2x for comparables)
- After the transaction announcement, Sunbeam's share price has experienced an increase of $8.31, rising from $41.75 to $50.06, a 20% increase.
- The Company's current trading levels are warranted given the level of expected synergies ($150MM, pre-tax) and investors' confidence in Sunbeam's management team and proven ability to turn around companies and leverage undervalued brand names.
- Investors also view there to be other, significant acquisition opportunities for Sunbeam to capitalize on in its new role as an industry consolidator
- Investors focus on the 1999 P/E multiple (the first full year of ownership and of full cost savings) and currently price Sunbeam at a discount reflecting execution risk for the integration

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

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

NOT A CERTIFIED COPY

012187

MORGAN STANLEY
CONFIDENTIAL
0059260

16div-019388

X. INVESTMENT CONSIDERATIONS

- Sunbeam

  - **SUCCESSFUL RESTRUCTURING; CREATION OF A GROWTH COMPANY**
    - During 1997, Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth, with operating margins reaching 20% in 4Q 97, up from 0.2% before the turnaround
    - The Company exited all of its non-core businesses, closed 18 factories, 43 warehouses and 5 headquarters, reduced employment by 50% and significantly reduced its number of SKUs offered (by about 80%)
    - The Company added 25 international distribution/licensing agreements which added $35MM in revenue, introduced 89 new products (35 U.S., 54 international) which added $150MM in revenue
    - Significant expansion of distribution with key retailers such as WalMart, KMart, Target, Costco and Home Depot
    - The Company improved capacity utilization to 75% in 1997 (50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing process
    - New product development time was decreased to 6 months from over 2 years (e.g., AllergySmart)
    - Sunbeam gained market share in every product category in 1997

  - **EXPERIENCED AND COMMITTED MANAGEMENT TEAM**
    - Al Dunlap has brought in an experienced management team with a history in similar turnaround situations
    - Management incentive systems, including the newly signed management employment agreements, are designed to ensure commitment to the turnaround process
    - Market has strongly endorsed the turnaround and acquisitions through strong stock price appreciation, which is expected to continue as the recent acquisitions are integrated

  - **CONSERVATIVELY ESTIMATED SYNERGIES OF $150MM FROM COMBINATION**
    - Substantial Functional Redundancies/Cost Savings
      - Sales and Marketing
      - Finance and Administration Management
      - Information Systems
      - Consumer Research
      - Product Development

NOT A CERTIFIED COPY

012188

MORGAN STANLEY
CONFIDENTIAL
0059261

16div-019389

- Operational Functional Redundancies
  - Distribution & Warehousing
  - Operations Management
  - Procurement Savings
  - Quality/Inspection
- The combined company sales will also benefit from dual branding of product lines as well as complementary strengths in specific European, Asian and emerging markets

- **Unmatched Market Share Strength**
  - In addition to the creation of a strong, international growth platform, these three acquisitions greatly enhance Sunbeam's already robust market positions.

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

- **The Coleman Acquisition**
  - **STRONG, ESTABLISHED BRAND EQUITY VALUE**
    - Near 40% market share in industry, nearest competitor has only 10%
    - Untapped strength in the *Coleman* brand name
    - Increased leverage over distribution channels
  - **OPPORTUNITY TO STREAMLINE OPERATIONS AND UTILIZE EXPERTISE IN COST CUTTING**
    - Current businesses are operating efficiently, however, operational redundancies will result in the potential to realize substantial synergies and improve margins
    - Capacity available at current facilities to absorb significant production responsibilities of Coleman

NOT A CERTIFIED COPY

012189

MORGAN STANLEY
CONFIDENTIAL
0059262

- Coleman has grown rapidly through acquisitions without associated operations rationalization, leaving significant opportunity for business re-engineering

– **CONSOLIDATION OF OUTDOOR RECREATIONAL PRESENCE**

- Combination results in less seasonal product mix in outdoor segment
- Acquired brands expected to maintain sales levels during economic downturns
- Increased critical mass for major innovation and advertising initiatives

- **The Signature Brands Acquisition**

– **ACCELERATED GROWTH IN REVENUES AND EARNINGS**

- This product line acquisition will be easily assimilated into the Sunbeam system, allowing for immediate recognition of significant synergies
- Strong brand names will complement existing brands and remove major competitors in certain areas (*Health o Meter*)
- Strong parent will be able to strengthen relationship with major retailers and help to gain additional shelf space

– **COMMITMENT TO NEW STRATEGIC PLAN**

- The transaction proves the willingness by Sunbeam to make fold-in acquisitions
- Will lead to additional attractive acquisition opportunities

- **The First Alert Acquisition**

– **ENHANCES EXISTING PORTFOLIO OF HOME DEVICES PRODUCTS**

- Strengthens the home/kitchen device segment by capitalizing on complementary distribution channels
- Strong brand recognition and #1 market share in smoke alarms and carbon monoxide alarms
- Long-term relationship with major retailers

– **SIGNIFICANT GROWTH POTENTIAL OF HOME SAFETY MARKET**

- Strong momentum in alarms replacement with $850MM untapped retail market for replacing existing 10-year old alarms

– **OPPORTUNITY FOR BUSINESS RE-ENGINEERING AND COST CUTTING**

- Unsatisfactory performance mainly due to manufacturing inefficiency, poor customer service and shipping delays
- Sunbeam's experience in streamlining operations opens up significant re-engineering and cost cutting opportunities
- Redundancies in business model create the opportunity to realize significant potential synergies
- Better purchasing power to improve margins
- Strong parent to build relationships with major retailers and gain additional shelf space

NOT A CERTIFIED COPY

0121190

MORGAN STANLEY
CONFIDENTIAL
0059263

- **Pro Forma Sunbeam**
  - **EXTREMELY STRONG CREDIT PROFILE OF COMBINED COMPANY**
    - Pro forma for the acquisitions, Sunbeam will generate 1998 revenues of over $3 billion and EBITDA of $522 million.
    - Total Debt to EBITDA PF1997 is 5.14x, while Senior Leverage is only 3.97x. Senior Leverage drops to 1.36x within three years of the transaction.
    - Cash Interest Coverage is 3.5x for PF1997, and is 2.75x (subtracting CapEx from EBITDA).
    - Senior Debt to Book Capitalization never exceeds 49% and the Company will generate approximately $2.4 billion in cumulative free cash flow over the life of the bank debt. The loans all amortize comfortably over six years.

NOT A CERTIFIED COPY

012191

MORGAN STANLEY
CONFIDENTIAL
0059264

XI. POTENTIAL INVESTOR CONCERNS

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

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

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

- **Fourth Quarter Earnings**

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

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

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

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

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

NOT A CERTIFIED COPY

F1B1S7Z73A03-28-98/8:34 PVP022

MORGAN STANLEY
CONFIDENTIAL
0059265

16div-019393

- **Ability to Attain Synergies**

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

  Response: Morgan Stanley and Coopers & Lybrand (special acquisition consultants to Sunbeam) have had extensive discussions with the management of Coleman, Signature Brands and First Alert, as well as the Sunbeam management regarding the potential synergies. Following these discussions and the subsequent due diligence performed prior to the announcement of these transactions, the Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately $150MM by the end of 1999 due to 10 years experience. They, in fact, have stated that it is not unlikely that they could achieve even greater synergies in a shorter period of time. In addition, while Andrew Conway has modeled $150MM in synergies in 1998, he feels that there could be upside to this figure.

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

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

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

APPENDICES

1. Projected Financials
2. Comparable Company Analysis
3. Summary Business Overview
4. Sunbeam Annotated Price Graph
5. Pro Forma Fold-Out

NOT A CERTIFIED COPY

0121193

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

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____/

FILED
Dec 10 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

MEMORANDUM IN SUPPORT OF MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUMMARY JUDGMENT

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Christopher Landau
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th St. N.W., Suite 1200
Washington, DC 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1615 M St., N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

NOT A CERTIFIED COPY

012165

455

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF FACTS 3

A. Ronald O. Perelman is a Sophisticated Investor who Surrounded Himself with Sophisticated Advisors 3

B. Perelman And Sunbeam Were Adversaries Across The Negotiating Table 4

C. CPH Expressly Disclaims Reliance, and Performs No Due Diligence Before Signing the Merger Agreement 6

D. Sunbeam and MAFCO Reach Agreement on Price and Negotiate Definitive Agreements 7

E. The February 23, 1998 Meeting at Morgan Stanley to Hear Sunbeam's "Long Range Strategic Business Plan" 7

F. The Merger Agreements — The Integration Clauses And CPH's Access To Sunbeam 8

G. From Signing To Closing: Sunbeam Makes Disclosures, CPH Looks Away 10

H. Morgan Stanley Purchases Sunbeam's Debentures and Lends $680 Million To Sunbeam 11

I. Dunlap is Fired, Levin Takes Control, Arthur Andersen Withdraws Its Opinions, and Sunbeam Files for Bankruptcy 12

LEGAL STANDARD 12

ARGUMENT 13

I. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT (NEGLIGENT MISREPRESENTATION) 13

II. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT (FRAUDULENT MISREPRESENTATION) 17

A. CPH Has Not Presented Any Evidence Of Justifiable Reliance As A Matter Of Law 18

NOT A CERTIFIED COPY

012196

B. CPH Has Not Presented Any Evidence Of Scienter Or Intent To Defraud As A Matter Of Law. 22

III. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT II OF THE COMPLAINT (AIDING AND ABETTING FRAUD)....25

A. CPH Has Not Presented Any Evidence That Morgan Stanley Had Actual Knowledge That Sunbeam Engaged In Fraud....26

B. CPH Has Not Presented Any Evidence That Morgan Stanley Provided Substantial Assistance To Sunbeam In Effectuating Its Alleged Fraud....30

IV. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT III OF THE COMPLAINT (CONSPIRACY)....32

CONCLUSION....33

NOT A CERTIFIED COPY

0121197

TABLE OF AUTHORITIES

Page(s)

Cases

Abrahami v. UPC Constr. Co.,
638 N.Y.S.2d 11 (App. Div. 1996) 17, 20, 21

Aerovias Nacionales de Colombia, S.A. v. Tellez,
596 So. 2d 1193 (Fla. 3d DCA 1992) 12

Allerton v. State Dept. of Ins.,
635 So. 2d 36 (Fla. 1st DCA 1994) 27

American Protein Corp. v. AB Volvo,
844 F.2d 56 (2d Cir. 1988) 15

Armstrong v. McAlpin,
699 F.2d 79 (2d Cir. 1983) 25

Bryant v. Shands Teaching Hosp. & Clinics, Inc.,
479 So. 2d 165 (Fla. 1st DCA 1985) 29

Chemical Bank of Rochester v. Haskell,
432 N.Y.S.2d 478 (N.Y. 1980) 29

Cromer Fin. Ltd. v. Berger,
137 F. Supp. 2d 452 (S.D.N.Y. 2001),
aff'd mem., 2003 WL 22717684 (2d Cir. Nov. 17, 2003) 26, 30

Duncan v. Pencer,
No. 94 Civ. 0321, 1996 WL 19043 (S.D.N.Y. Jan 18, 1996) 24

Dyncorp v. GTE Corp.,
215 F. Supp. 2d 308 (S.D.N.Y. 2002) 14, 22

Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.,
195 F. Supp. 2d 551 (S.D.N.Y. 2002) 22

Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.,
375 F.3d 168 (2nd Cir. 2004) 15

Filler v. Hanvit Bank,
339 F. Supp. 2d 553 (S.D.N.Y. 2004) 26, 28, 29

Fort Myers Dev. Corp. v. J.W. McWilliams Co.,
122 So. 264 (Fla. 1929) 27

NOT A CERTIFIED COPY

012198

Friedman v. Arizona World Nurseries Ltd. P'ship,
730 F. Supp. 521 (S.D.N.Y. 1990),
aff'd, 927 F.2d 595 (2d Cir. 1991) 23

Gabriel Capital, L.P. v. NatWest Fin., Inc.,
94 F. Supp. 2d 491 (S.D.N.Y. 2000) 32

Giannacopoulos v. Credit Suisse,
37 F. Supp. 2d 626 (S.D.N.Y. 1999) 14, 19

Heard v. City of New York,
623 N.E.2d 541 (N.Y. 1993) 15

IIT v. Cornfeld,
619 F.2d 909 (2d Cir. 1980) 26

In re AHT Corp.,
292 B.R. 734 (S.D.N.Y. 2003) 14, 27

In re Philip Servs. Corp. Sec. Litig.,
No. 98 Civ. 0835, 2004 WL 1152501 (S.D.N.Y. May 24, 2004) 24

Kalnit v. Eichler,
99 F. Supp. 2d 327 (S.D.N.Y. 2000),
aff'd, 264 F.3d 131 (2d Cir. 2001) 24

King v. George Schonberg & Co.,
650 N.Y.S.2d 107 (App. Div. 1996) 30, 31

Kolbeck v. LIT Am., Inc.,
939 F. Supp. 240 (S.D.N.Y. 1996) 26

Marine Midland Bank v. Palm Beach Moorings, Inc.,
403 N.Y.S.2d 15 (App. Div. 1978) 16

Nye & Nissen v. United States,
336 U.S. 613 (1949) 32

Palm Beach County v. Trinity Indus.,
661 So. 2d 942 (Fla. 4th DCA 1995) 13

Peoples Gas Sys., Inc. v. Acme Gas Corp.,
689 So. 2d 292 (Fla. 3d DCA 1997) 29

Poe & Assoc., Inc. v. Estate of Vogler,
559 So. 2d 1235 (Fla. 3d DCA 1990) 13

NOT A CERTIFIED COPY

012199

Primavera Familienstiftung v. Askin,
173 F.R.D. 115 (S.D.N.Y.1997) 27

Raimi v. Furlong,
702 So. 2d 1273 (Fla. 3d DCA 1997) 32

Rotterdam Ventures, Inc. v. Ernst & Young LLP,
752 N.Y.S.2d 746 (App. Div. 2002) 19

Ryan v. Hunton & Williams,
No. 99-CV-5938, 2000 WL 1375265 (E.D.N.Y. Sept. 20, 2000) 30

Schlaifer Nance & Co. v. Estate of Andy Warhol,
119 F.3d 91 (2d Cir. 1997) 19

Schumaker v. Mather,
133 N.Y. 590, 30 N.E. 755 (1892) 18

Shields v. Citytrust Bancorp, Inc.,
25 F.3d 1124 (2d Cir. 1994) 23, 24, 25

Simon v. Celebration Co.,
883 So. 2d 826 (Fla. 5th DCA 2004) 17

St. Paul Fire & Marine Ins. Co. v. Health Fielding Ins. Broking Ltd.,
976 F. Supp. 198 (S.D.N.Y. 1996) 15, 16

Steed Fin. LDC v. Laser Advisers, Inc.,
258 F. Supp. 2d 272 (S.D.N.Y. 2003) 26

Stolow v. Greg Manning Auctions Inc.,
258 F. Supp. 2d 236 (S.D.N.Y. 2003) 25

Strauss v. Sillin,
393 So. 2d 1205 (Fla. 2d DCA 1981) 12

Struna v. Wolf,
484 N.Y.S.2d 392 (Sup. Ct. 1985) 14

THC Holdings Corp. v. Chinn,
No. 95 Civ. 4422, 1998 WL 50202 (S.D.N.Y. Feb. 6, 1998) 23

Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc.,
92 F.3d 1110 (11th Cir. 1996) 26

UniCredito Italiano SPA v. JPMorgan Chase Bank,
288 F. Supp. 2d 485 (S.D.N.Y. 2003) 15

NOT A CERTIFIED COPY

012200

United Safety of Am., Inc. v. Consolidated Edison Co.,
623 N.Y.S.2d 591 (App. Div. 1995) 14, 15

UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney,
733 N.Y.S.2d 385 (App. Div. 2001) 18

Wallis v. South Fla. Sav. Bank,
574 So. 2d 1108 (Fla. 2d DCA 1990) 27

Wassall v. Payne,
682 So. 2d 678 (Fla. 1st DCA 1996) 27

WIT Holding Corp. v. Klein,
724 N.Y.S.2d 66 (App. Div. 2001) 16

Rules

Restatement (Second) of Torts § 525 17

William H. Kuehnle, *Secondary Liability Under The Federal Securities Laws — Aiding and Abetting, Conspiracy, Controlling Person, and Agency: Common-Law Principles and The Statutory Scheme*, 14 J. Corp. L. 313 (1988) 33

Other Authorities

Fla. R. Civ. P. 1.510 ..... 12, 13

NOT A CERTIFIED COPY

012201

CONT #855

The plaintiff in this action, Coleman (Parent) Holdings Inc. ("CPH"), is a holding company within the financial empire of Ronald O. Perelman ("Perelman"), a well advised and sophisticated businessman who buys and sells companies in deals involving billions of dollars. In 1997, Perelman became enamored with Al Dunlap, then one of the darlings of the business world. Perelman was convinced that Dunlap represented "the future."

In 1998, Perelman agreed to sell his stock in The Coleman Company, Inc., which was performing poorly and deeply in debt, to Dunlap's Sunbeam Corporation. As consideration, Perelman received cash (about $160 million), Sunbeam's assumption of Perelman's and Coleman's debt (about $1 billion), and over 14.1 million shares of Sunbeam stock (valued at some $600 million). The inclusion of stock in the mix of consideration was not an accident; Perelman demanded as much Sunbeam stock as he could get because he believed there was more "upside" in Dunlap than in cash.

Perelman was represented in the Coleman transaction not only by his own internal deal makers, but also by the investment bank of Credit Suisse First Boston ("CSFB"), the law firm of Wachtell Lipton Rosen Katz LLP, and the accounting firm of Ernst & Young LLP. Notwithstanding this brain trust, there is no genuine issue of material fact that, before taking Sunbeam stock as partial consideration for the Coleman sale:

- Perelman's due diligence team never looked at or even asked to see Sunbeam's ***interim financial statements*** for the first three months of 1998.
- Perelman's due diligence team did not even read Sunbeam's 1997 Annual Report until ***after*** the closing of the merger, nearly 30 days after its public dissemination.
- Perelman's due diligence team's investigation of Sunbeam consisted of a single one-hour meeting, on February 23, 1998, with Sunbeam's senior management.
- Perelman's representative at the February 23 meeting, Jerry W. Levin, was told by Sunbeam that Sunbeam's 1998 sales were slow, and Levin concluded and told Perelman that Sunbeam's three year business plan was "quite a stretch" and probably "not achievable."

NOT A CERTIFIED COPY

012202

- Perelman's due diligence team never made any inquiry of Sunbeam, its financial advisors, or its auditors about Sunbeam's first quarter financial performance after Sunbeam issued its March 19, 1998 press release, warning the market of a possible shortfall in sales.

Perelman, however, is now seeking to eliminate his risk from the Coleman deal by converting Morgan Stanley, ***Sunbeam's*** financial advisor on that deal, into his insurer. According to the complaint, Perelman entered into this $2 billion deal in reliance on statements by Morgan Stanley, and thus Morgan Stanley is liable to Perelman's shell holding company, CPH, for (1) negligent misrepresentation, (2) fraudulent misrepresentation, (3) aiding and abetting fraud, and (4) conspiracy.

While it is understandable that Perelman is looking for a "deep pocket" from which to recoup his losses in the wake of Sunbeam's collapse, his efforts to recover from Morgan Stanley are both unprecedented and baseless. As a matter of elementary New York commercial law (which this Court has already ruled govern CPH's negligent and fraudulent misrepresentation claims), a plaintiff cannot establish negligent misrepresentation unless he enjoys a special relationship of trust or confidence with the defendant, and cannot establish fraudulent misrepresentation if he did not justifiably rely on the defendant's alleged misrepresentation. Here, there is no genuine issue of material fact that: (1) Perelman was not in a special relationship of trust or confidence with Morgan Stanley, the financial advisor to his negotiating counterpart; and (2) Perelman, a highly sophisticated businessman advised by his own experts and with just as much access to Sunbeam information as Morgan Stanley, could not have justifiably relied on any alleged misrepresentation by Morgan Stanley. And Perelman's aiding and abetting and conspiracy claims (which are really the same thing) also fail, because Perelman has not come forth with any evidence that Morgan Stanley had actual knowledge of, or substantially furthered, Sunbeam's alleged fraud.

NOT A CERTIFIED COPY

012203

In the final analysis, this is a straightforward case. Perelman's real quarrel is with Sunbeam, not Morgan Stanley, and Sunbeam's bankruptcy does not give him a license to go after Morgan Stanley. Perelman agreed that all the representations and warranties on which he relied in this transaction were contained in the contract, and was so eager to unload Coleman that he did not carry out even minimal due diligence with respect to Sunbeam before accepting hundreds of millions of dollars worth of Sunbeam stock. Under these circumstances, he cannot justifiably have relied on any statements by Morgan Stanley as a matter of law. Indeed, if ***this*** plaintiff can dispense with due diligence in a $2 billion deal, and simply assert reliance on alleged misrepresentations or omissions by third parties, then ***any*** plaintiff can do so, and the law would reward the reckless. Because well-settled doctrines of New York commercial law firmly and sensibly reject this approach, this Court should enter summary judgment in Morgan Stanley's favor.

STATEMENT OF FACTS

A. Ronald O. Perelman Sophisticated Investor Who Surrounded Himself With Sophisticated Advisors

Perelman has an M.B.A. from the Wharton School of Economics, and is in the business of buying and selling companies for billions of dollars. (Findings ¶¶ 1, 20-24)[1] He operates through a complex system of holding companies, the most prominent of which is MacAndrews and Forbes Holdings Inc. ("MAFCO"). (Findings ¶¶ 3-9) In the 1990s, MAFCO owned a majority interest in a variety of companies, including Revlon, Inc. (cosmetics), Consolidated Cigars Holdings Inc. (cigars and pipe tobacco), Panavision Inc. (motion picture cameras), Scientific Games (games), Allied Security, M & F Worldwide Corp. (licorice and other

[1] The citations to "Findings ¶" throughout this memorandum are to Morgan Stanley's "Proposed Findings of Fact and Conclusions of Law," which was filed separately with the Court, along with an appendix of supporting materials.

NOT A CERTIFIED COPY

012204

flavorings), California Federal Bank (financial services), Marvel Entertainment, Meridian Sports Incorporated (ski boots), and Coleman (camping equipment). (Findings ¶ 21) In this action, no fewer than five holding companies separate Coleman from Perelman. (Findings ¶¶ 3-4, 6-9) But Perelman makes all the final decisions and is in complete control of his corporate empire. (Findings ¶¶ 1, 184)

Perelman surrounds himself with an army of sophisticated advisors who include lawyers, investment bankers, and workout specialists. (Findings ¶¶ 26-33) Indeed, one of Perelman's closest advisors on the Coleman transaction was Jerry W. Levin, who twice ran Coleman (and in between ran Revlon, Inc.). Levin, who has an M.B.A. from the University of Chicago Business School, is a "specialist in consumer branded products" whose "forte" is "execut[ing] turnarounds at consumer branded products companies" like Sunbeam. (Findings ¶ 27) As discussed below, Perelman received Levin's frank judgments about Sunbeam and Dunlap on more than one occasion. (Findings ¶¶ 67-68, 180-184) Thus, Perelman was at least on notice that taking Sunbeam stock as part of the consideration for Coleman was not a risk-free venture. (Findings ¶¶ 180-184) As Howard Gittis, second-in-charge at MAFCO, put it, "Ronald" saw more "upside" in Sunbeam stock than cash, which is why Ronald is "richer than me." (Findings ¶ 99)

B. Perelman And Sunbeam Were Adversaries Across The Negotiating Table

Sunbeam retained Morgan Stanley in September 1997 to act as its investment banker in connection with either the sale of Sunbeam or the acquisition of other companies. (Findings ¶ 17) Sunbeam's independent auditor was Arthur Andersen, a firm that stood by Sunbeam's financial statements and Andersen unqualified opinions on those statements until late June 1998. (Findings ¶ 327) Sunbeam also retained the law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), which specializes in corporate mergers and acquisitions. (Findings ¶ 43)

NOT A CERTIFIED COPY

012205

Through the efforts of Michael Price, a substantial stockholder in Sunbeam, Dunlap and Perelman agreed to meet at Perelman's mansion in Palm Beach on December 18, 1997. (Findings ¶¶ 69, 87) This not Perelman's first meeting with Dunlap: well before negotiations started over the sale of Coleman to Sunbeam, Perelman and Dunlap had met, and Perelman had even asked Dunlap to join Coleman's board. (Findings ¶¶ 61-62) Perelman was so impressed by Dunlap that he asked Levin why he could not achieve the same results Dunlap was achieving at Sunbeam. (Findings ¶¶ 63-65) When Levin expressed skepticism about the financial returns Dunlap had reported to Perelman, he immediately telephoned Dunlap from the limousine and personally requested that Dunlap fax Sunbeam's interim financial statements to New York for Levin to review. (Findings ¶¶ 66-67) After Levin reviewed Sunbeam's interim financial statements, Levin told Perelman that he, Levin, "did not know based on my own experiences how to do what [Dunlap] is doing" and that "[i]f … Perelman, want[ed] somebody to try [Dunlap's approach]" he should "find somebody else because this is not in my business skill base." (Findings ¶¶ 67-68)

In preparation for the December 18 meeting, Perelman had his in-house analyst analyze a Coleman-Sunbeam merger, and Dunlap's contracts with Sunbeam. (Findings ¶¶ 73-86) Morgan Stanley did not provide any information used in this analysis or even see it. (Findings ¶¶ 74, 76)

CSFB, Perelman's outside financial advisor on the Coleman deal, also analyzed a combination without any information from Morgan Stanley. (Findings ¶¶ 85-86) CSFB requested and received a fee of $4 million plus expenses to serve as the investment banker for CPH. (Findings ¶ 35) Perelman also had retained his own legal counsel, Wachtell, Lipton, Rosen & Katz LLP to represent MAFCO in the course of the negotiations and closing of the Coleman transaction. (Findings ¶¶ 37, 105) Perelman also had his own accounting firm, Ernst

NOT A CERTIFIED COPY

012206

& Young LLP, which also was Coleman's independent auditor. (Findings ¶¶ 39-40) MAFCO had no contractual or other relationship with Morgan Stanley. (Findings ¶ 43)

Prepared by his advisors, Perelman met with Dunlap on December 18, 1997. The meeting ended with epithets and Dunlap storming out of the meeting. (Findings ¶¶ 87, 89-92) Morgan Stanley had no involvement in setting up the meeting or "finding Coleman." (Findings ¶ 88) By all accounts, the negotiations were dead in the water until they restarted about a month later. (Findings ¶ 93)

C. CPH Expressly Disclaims Reliance, And Performs No Due Diligence Before Signing The Merger Agreement

To facilitate the exchange of information between Coleman and Sunbeam, on or about February 4, 1998, Paul E. Shapiro, the General Counsel and an Executive Vice President of Coleman, signed and sent a Confidentiality Agreement to Sunbeam. (Findings ¶¶ 106, 108) David C. Fannin, the Executive Vice President and General Counsel of Sunbeam, executed the Confidentiality Agreement as of February 4, 1998. (Findings ¶ 108) On or about February 23, 1998, Sunbeam and Coleman entered into a second Confidentiality Agreement. (Findings ¶ 111) These Confidentiality Agreements are specifically identified and referenced in both the CLN Merger Agreement and the Coleman Merger Agreement. (Findings ¶¶ 108, 111, 112)

Pursuant to these Confidentiality Agreements, CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including Morgan Stanley, would not have any liability to CPH by virtue of CPH's use of the information — so-called "Evaluation Materials" — supplied to it by Sunbeam and its representatives, including Morgan Stanley, while the parties were negotiating Sunbeam's purchase of Coleman. (Findings ¶ 114) In the Confidentiality Agreements, which are customary in negotiations for mergers and acquisitions, CPH also agreed that Sunbeam and its representatives, ***including Morgan Stanley,*** did not make any

NOT A CERTIFIED COPY

012207

representations or warranties about the accuracy or completeness of the information that they supplied to CPH. (Findings ¶¶ 107, 109, 113, 115)

D. Sunbeam and MAFCO Reach Agreement on Price and Negotiate Definitive Agreements

The parties resumed negotiations in late January 1998. (Findings ¶ 96) Perelman rejected Sunbeam's January 23 and February 6 offers. (Findings ¶¶ 103, 124, 126) The parties also agreed ***not*** to perform any due diligence of the other until the parties had an agreement in principle. (Findings ¶ 123)

On or about February 20, 1998, the parties were close enough to a deal that Perelman summoned his inner circle to New York. (Findings ¶ 133) Then, with the Confidentiality Agreements in place, Sunbeam and CPH engaged in due diligence over a mere four days — from February 23 to February 27, 1998, with each party represented by its own advisors. During this due diligence, Perelman's representatives had direct access to Sunbeam management. (Findings ¶ 135)

E. The February 23, 1998 Meeting at Morgan Stanley to Hear Sunbeam's "Long Range Strategic Business Plan"

On February 23, 1998, representatives of Sunbeam, MAFCO, Coleman, CSFB, and Morgan Stanley met for about an hour at Morgan Stanley's offices in New York. (Findings ¶ 162) Sunbeam's Chief Financial Officer, Russell Kersh—not Morgan Stanley—made a presentation. Levin, who attended the presentation because he was Perelman's expert in consumer branded products, wrote that Sunbeam said that "Jan Feb Slow." (Findings ¶¶ 164, 168-169) He also wrote that Sunbeam's earnings were "$1.99," not the $2.20 asserted the presentation. (Findings ¶ 171)

Leaving the meeting and in the elevator ride to the lobby, Levin told Perelman's chief negotiator (Maher) and his analyst (Nesbitt) the following conclusions: Sunbeam's business plan

NOT A CERTIFIED COPY

012208

for the next three years was "quite a stretch," and Levin did not think it was "achievable." (Findings ¶ 180) Levin repeated his opinions the next morning to Perelman and his inner circle at Perelman's townhouse in Manhattan. (Findings ¶ 181)

When Perelman and Sunbeam ultimately reached an agreement in principle concerning Sunbeam's purchase of Perelman's interest in Coleman, Perelman's own financial advisor, CSFB — not Morgan Stanley — expressed the opinion to the Coleman board (on which Perelman sat) that the transaction was fair to Coleman's shareholders from a financial point of view. The board approved the transaction without any advice or counsel from Morgan Stanley. (Findings ¶¶ 191, 196, 197) Levin's opinions, however, were never disclosed the Coleman board. (Findings ¶¶ 189, 194)

F. The Merger Agreements — The Integration Clauses And CPH's Access To Sunbeam

On February 27, 1998, MAFCO and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp. ("Laser" was the code word for Sunbeam), CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"). (Findings ¶ 198-200, 201)

On February 27, Coleman and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Company Merger Agreement"). (Findings ¶ 195)

Both the CLN Merger Agreement and the Coleman Merger Agreement contain extensive representations and warranties among the parties. (Findings ¶ 207) The respective parties each bargained for the representations and warranties that were material to them. (Findings ¶¶ 204, 207, 211-212) Neither the CLN Merger Agreement nor the Coleman Merger Agreement contains any representations or warranties concerning Sunbeam's performance compared to the

NOT A CERTIFIED COPY

012209

expectations of "Wall Street analysts" on a quarterly or annual basis, the "turnaround" of Sunbeam since 1996, or any increase in revenues, sales, profits, or earnings. (Findings ¶ 209)

In addition, CLN Merger Agreement contains a clear integration clause that states that the Agreement is the entire agreement and understanding between the parties and "supersedes all prior agreements and understandings, oral or written." (Findings ¶ 210) The Coleman Merger Agreement also contains an integration clause that states that the Agreement is the entire agreement and understanding and "supersedes all prior agreements and understandings, both written and oral." (Findings ¶¶ 208, 210)

The CLN Merger Agreement gave CPH complete access to Sunbeam's books, records, personnel, and facilities. (Findings ¶ 214) Specifically, the Agreement required Sunbeam to provide CPH and all of its "financial advisors, legal counsel, accountants consultants and other representatives" with "full access … to all of [Sunbeam's] books, records, properties, plants and personnel." (Findings ¶ 214) The Coleman Merger Agreement likewise required Sunbeam to provide Coleman and all of its "financial advisors, legal counsel, accountants, consultants and other representatives" with "full access … to all of [Sunbeam's] books, records, properties, plants and personnel." (Findings ¶ 215)

The Coleman Merger Agreement provided for an exchange of comfort letters from Sunbeam and CPH's respective auditors. (Findings ¶ 282) Similarly, the registration rights agreements for Perelman's Sunbeam shares provides for a comfort letter from Sunbeam's auditor, Arthur Andersen. (Findings ¶ 283) As a sophisticated party, CPH was aware of the general content of comfort letters (Findings ¶ 282), which are simply a means of providing summary financial statement information since the date of the last audited financial statement at issue, here year end 1997. (Findings ¶¶ 281-282)

NOT A CERTIFIED COPY

012210

G. From Signing To Closing: Sunbeam Makes Disclosures, CPH Looks Away

On March 6, 1998, Sunbeam filed and published its Form 10-K Annual Report for 1997. (Findings ¶ 240) Sunbeam disclosed that it engaged in "bill-and-hold" revenue recognition for certain sales amounting to 3 percent of Sunbeam's consolidated revenues. (Findings ¶ 240) Sunbeam's 1997 Annual Report also disclosed that in 1997 Sunbeam had created an "early buy" program for highly seasonal products such as grills, that the early buy program would shift certain sales risks to later periods, and that grills had begun to ship in the fourth quarter of 1997 under the program. (Findings ¶ 241)

On March 18, 1998, Morgan Stanley learned that Sunbeam might not meet Wall Street expectations for the first quarter of 1998. (Findings ¶ 245) After investigating the matter, which included multiple telephone conferences with Sunbeam's management and its counsel, as a well as a review of sales buildup information, Morgan Stanley ***insisted*** on March 19, 1998 that Sunbeam issue a press release stating that its sales for the first quarter of 1998 might miss the range of Wall Street analysts' estimates. (Findings ¶¶ 246-248) Morgan Stanley did not draft the press release. (Findings ¶ 250) And Morgan Stanley did not issue the press release. (Findings ¶ 249)

The press release caused Sunbeam's stock to fall precipitiously. (Findings ¶¶ 253-254) And analysts did raise questions about Sunbeam, which Perelman knew of and considered. (Findings ¶¶ 256, 265) Yet inexplicably, ***Perelman and his advisors never requested copies of Sunbeam's interim financial statements for 1998 nor the Andersen comfort letter that summarized the interim statements for January and February 1998***. (Findings ¶¶ 263, 273-275) Perelman and his advisors assert that Levin spoke to Sunbeam or Morgan Stanley. (Findings ¶¶ 257, 260) But Levin himself testified that he never spoke to anyone at Morgan

NOT A CERTIFIED COPY

012211

Stanley or Sunbeam about the March 19 Press Release because it was "***not his problem***." (Findings ¶ 261)

The evidence is simply undisputed that from the signing of the merger agreements to the closing, Perelman and his representatives failed to exercise their contractual rights under the two merger agreements to examine Sunbeam's books, records, financial statements, facilities, results of operations, and business plans. (Findings ¶¶ 220-225)

H. Morgan Stanley Purchases Sunbeam's Debentures And Lends $680 Million To Sunbeam

Morgan Stanley underwrote $2.014 billion of Sunbeam's debentures. (Findings ¶ 276) Morgan Stanley did this ***after*** it learned of and investigated the potential for a first quarter sales shortfall, ***after*** Sunbeam issued the March 19 press release, and ***after*** Morgan Stanley received the Andersen comfort letter summarizing Sunbeam's interim financial information. (Findings ¶¶ 245-249)

Morgan Stanley Senior Funding, Inc. loaned Sunbeam $680 million ***after*** it learned of and investigated the potential for a first quarter sales shortfall, ***after*** Sunbeam issued the March 19 press release, and ***after*** Morgan Stanley received the Andersen comfort letter summarizing Sunbeam's interim financial information for January and February. (Findings ¶¶ 299-300) Two other banks also loaned Sunbeam over a billion dollars at the same time. These loans ended up being the largest claims in Sunbeam's bankruptcy proceeding. (Findings ¶ 332)

On April 3, 1998, Sunbeam announced its first quarter 1998 results, which were slightly below (5 percent) its first quarter of 1997 results. (Findings ¶ 310) Perelman never called Sunbeam or Morgan Stanley about the announcement. (Findings ¶¶ 312-314) Indeed, even as Sunbeam was about to meet with analysts on May 11 to go over its results in detail, Perelman was so supportive of Dunlap and Sunbeam that he gave Dunlap MAFCO proxy to vote 14.1

NOT A CERTIFIED COPY

012212

million shares of Sunbeam stock at Sunbeam's May 12, 1998 annual meeting. (Findings ¶¶ 316-322)

I. Dunlap Is Fired, Levin Takes Control, Arthur Andersen Withdraws Its Opinions, And Sunbeam Files For Bankruptcy

In June 1998, the Sunbeam board fired Dunlap and Kersh. (Findings ¶ 326) Levin, who was back at MAFCO, was hired to run Sunbeam, which he continues to do today under the company's new name American Household, Inc. (Findings ¶ 326) Later in June, Arthur Andersen withdrew its unqualified opinions on Sunbeam's financial statements. (Findings ¶ 327) Sunbeam eventually filed for bankruptcy in 2001. (Findings ¶ 331)

LEGAL STANDARD

Although this Court has determined that New York substantive law governs CPH's claims of negligent and fraudulent misrepresentation, Florida law still governs the ***procedure*** this Court must follow in considering this motion for summary judgment. *See Aerovias Nacionales de Colombia, S.A. v. Tellez*, 596 So. 2d 1193, 1195 (Fla. 3d DCA 1992) ("[T]he law of the forum, *i.e.*, Florida law, governs on procedural matters."); *Strauss v. Sillin*, 393 So. 2d 1205, 1206 (Fla. 2d DCA 1981) ("In conflict of laws situations, matters of procedure are generally resolved by the law of the state in which the action has been instituted.").

Florida Rule of Civil Procedure 1.510 requires summary judgment to be rendered when, as here, the pleadings and other matters of record show "there is no genuine issue as to any material fact," thus entitling the moving party to judgment as a matter of law. Fla. R. Civ. P. 1.510(c); *see also Poe & Assoc., Inc. v. Estate of Vogler*, 559 So. 2d 1235, 1236 (Fla. 3d DCA 1990) (when the material facts are undisputed, summary judgment is appropriate). As discussed below, the material facts in this case are undisputed, and thus the case is ripe for determination

NOT A CERTIFIED COPY

012213

by summary judgment. *See Palm Beach County v. Trinity Indus.*, 661 So. 2d 942, 944 (Fla. 4th DCA 1995).

Alternatively, the Court should enter an order pursuant to Rule 1.510(d) finding the facts that exist without substantial controversy.

ARGUMENT

I. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT (NEGLIGENT MISREPRESENTATION)

This Court's order that New York substantive law governs CPH's negligent misrepresentation claim effectively disposes of that claim. As the Court held, well-settled New York law "circumscribes a tight[] circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher" Aug. 11, 2004 Order at 4 (citing cases). There is no record evidence that CPH shared such a relationship with Morgan Stanley in this transaction. Indeed, any suggestion that such a relationship existed is fanciful, given that Morgan Stanley sat across the negotiating table from CPH as Sunbeam's financial advisor in this arm's length transaction. Accordingly, Morgan Stanley is entitled to summary judgment on count IV of the complaint.

CPH's negligent misrepresentation claim alleges that "Morgan Stanley negotiated directly with CPH" concerning the Coleman sale, and, in the course of those negotiations, "Morgan Stanley ***failed to use reasonable care*** in providing CPH with truthful and accurate information concerning Sunbeam's 1996 and 1997 financial performance, Sunbeam's business operations, the value of Sunbeam's stock, and Sunbeam's first quarter 1998 performance." Compl. ¶ 94 (emphasis added).

The fundamental problem for CPH is that, as a matter of well-settled New York law, a plaintiff can establish a claim for negligent misrepresentation ***only*** if he enjoyed a "special

NOT A CERTIFIED COPY

012214

relationship of trust or confidence" with the defendant. *Dyncorp v. GTE Corp.*, 215 F. Supp. 2d 308, 329 (S.D.N.Y. 2002) (internal quotations omitted); *see also Giannacopoulos v. Credit Suisse*, 37 F. Supp. 2d 626, 631 (S.D.N.Y. 1999) ("[B]efore a party may recover in tort for pecuniary loss sustained as a result of another's negligent misrepresentations there must be a showing that there was either actual privity of contract between the parties or a relationship so close as to approach that of privity.") (internal quotations omitted). That requirement reflects the fact that New York law does not impose any general free-floating duty for persons to "impart correct information" to others. *United Safety of Am., Inc. v. Consolidated Edison Co.*, 623 N.Y.S.2d 591, 593 (App. Div. 1995). Accordingly, persons who rely on information provided by others generally do so at their own peril, and — if the information turns out to be wrong — cannot sue on the theory that the defendant breached a duty to exercise "reasonable care" in imparting the information.

Needless to say, the predicate "special relationship of trust and confidence" necessary for CPH to escape New York's common sense rule of self-reliance "generally does ***not*** exist between sophisticated business entities entering into arms-length business transactions." *Dyncorp*, 215 F. Supp. 2d at 329 (emphasis added). Indeed, courts have repeatedly recognized that the relationship of negotiating adversaries in a business transaction is the very "***antithesis*** of a relationship of special trust and confidence." *In re AHT Corp.*, 292 B.R. 734, 747 (S.D.N.Y. 2003) (emphasis added); *Struna v. Wolf*, 484 N.Y.S.2d 392, 397 (Sup. Ct. 1985) ("[P]laintiff was acting at arm's length in attempting to achieve a sale .... This relationship between the parties thus appears to be the very ***antithesis*** of the 'special relationship' ordinarily required which would support holding the defendant to a higher duty of care than is otherwise required.") (emphasis added); *see also United Safety*, 623 N.Y.S. 2d at 593 ("A simple arm's length business

NOT A CERTIFIED COPY

012215

... relationship is not enough."); *American Protein Corp. v. AB Volvo*, 844 F.2d 56, 64 (2d Cir. 1988) ("Since [the plaintiff] alleges nothing more than ordinary arm's length negotiations, its negligent misrepresentation claim fails as a matter of law."); *St. Paul Fire & Marine Ins. Co. v. Health Fielding Ins. Broking Ltd.*, 976 F. Supp. 198, 203 (S.D.N.Y. 1996) ("Something more than the trust and reliance between an ordinary buyer and seller must be established.").

Here, CPH has not even ***alleged*** that it was in a "special relationship of trust or confidence" with Morgan Stanley, and for good reason: such an allegation would not pass the straight-face test. Morgan Stanley was ***Sunbeam***'s financial advisor in this arm's length business transaction, and was sitting ***across the negotiating table*** from CPH, which had its own team of world-class legal and financial advisors. Under these circumstances, CPH simply cannot establish that Morgan Stanley had a duty to exercise "reasonable care" in making statements to CPH, and the narrow "special relationship of trust and confidence" exception does not apply as a matter of law.[2]

This case is thus similar to *WIT Holding Corp. v. Klein*, 724 N.Y.S.2d 66 (App. Div. 2001). The dispute there arose out of an agreement by the plaintiff, WIT Holding (WIT), to

---

[2] Although this exception has been extended to cases "where a person 'wholly without knowledge seeks assurances from one with ***exclusive*** knowledge,'" *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.*, 375 F.3d 168, 189 (2nd Cir. 2004) (quoting *Heard v. City of New York*, 623 N.E.2d 541, 546 (N.Y. 1993)) (emphasis added), that situation is not remotely applicable here, where CPH and its expert team of legal and financial advisors had unfettered access to Sunbeam information, and Morgan Stanley had no "exclusive" knowledge or expertise unavailable to CPH. *See supra* at section I.A, (CPH hired expert advisors and the Merger Agreements granted CPH's experts full access to Sunbeam's "books, records, properties, plants, and personnel"); *see also, e.g., UniCredito Italiano SPA v. JPMorgan Chase Bank*, 288 F. Supp. 2d 485, 500-01 (S.D.N.Y. 2003) (plaintiffs could not assert the exclusive knowledge exception because Enron "covenanted in the relevant agreements to provide access to its books and records" and because plaintiffs "were themselves sophisticated financial institutions"); *Marine Midland Bank v. Palm Beach Moorings, Inc.*, 403 N.Y.S.2d 15, 17 (App. Div. 1978) (refusing to apply the exception where "an experienced business man, assuming a controlling

NOT A CERTIFIED COPY

012216

purchase a stock interest in First Providence Financial Group (FPFG). WIT alleged that during the course of negotiations, defendant Klein — a longtime social acquaintance of WIT's top corporate officers who had even worked directly with WIT's president on a prior joint project — wrongfully induced WIT to enter into the purchase agreement by negligently misleading the company about FPFG's ownership structure and its financial and regulatory status "in order to benefit himself and … FPFG." *Id.* at 67-68. The court dismissed WIT's claims that Klein and his co-defendants had both breached a fiduciary duty and made actionably negligent misrepresentations, explaining:

> Under these circumstances, where the parties were involved in an arms-length business transaction involving the transfer of stocks, and where all were sophisticated business people, the plaintiff's cause of action to recover damages for breach of fiduciary duty should have been dismissed. … [Likewise, because a] claim alleging negligent misrepresentation must also be based on some special relationship which implies a close degree of trust between the plaintiff and the defendant … the [trial court] erred in failing to dismiss this cause of action as well.

Id. at 68.

This Court should have no more trouble dispensing with CPH's negligent misrepresentation claim than New York's Appellate Division had dispatching WIT's. When, as here, "no triable issue of fact as to the 'special relationship' element exists, summary judgment on the negligent misrepresentation claim is appropriate." *St. Paul*, 976 F. Supp. at 204. Under settled New York law, Morgan Stanley is entitled to summary judgment on count IV of the complaint.[3]

NOT A CERTIFIED COPY

012217

---

interest in a corporation and incurring heavy financial obligations, did so on the basis of verbal assurances given to him by the seller and a bank official.").

[3] For reasons discussed at greater length below, *see infra* at section II. A, CPH could not prevail on this claim even if it did enjoy a special relationship with Morgan Stanley, because it has failed to prove the remaining elements of a negligent misrepresentation claim, in particular justifiable reliance.

II. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT (FRAUDULENT MISREPRESENTATION)

CPH's fraudulent misrepresentation claim fares no better than its negligent misrepresentation claim. In New York, "it is well-settled that in order to demonstrate fraud, plaintiffs must establish: [1] the misrepresentation of a material fact; [2] knowledge by the party making the misrepresentation that it was false when made; [3] justifiable reliance upon the statement; and [4] damages." *Abrahami v. UPC Constr. Co.*, 638 N.Y.S.2d 11, 13 (App. Div. 1996); *see also Simon v. Celebration Co.*, 883 So. 2d 826, 832 (Fla. 5th DCA 2004); *Restatement (Second) of Torts* § 525 ("One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation."). What makes New York law special is that a sophisticated plaintiff like CPH thus cannot establish justifiable reliance on an allegedly fraudulent statement ***as a matter of law*** if it failed to avail itself of access to information that would have disproved that statement. *See* Aug. 11, 2004 Order at 5 (noting that "there is a fundamental distinction between New York and Florida which could be outcome determinative" on this specific point).

There is no question that CPH, a sophisticated entity represented by a team of the Nation's most sophisticated legal and financial advisors, had unfettered access to all of Sunbeam's books and records, including Sunbeam's interim financial statements. But for reasons known only to Perelman and his advisors, Perelman's due diligence team never looked at Sunbeam's books and records. CPH thus cannot establish justifiable reliance on any statements by Morgan Stanley as a matter of law, and Morgan Stanley is entitled to summary judgment on the fraudulent misrepresentation claim. Moreover, CPH also cannot establish that Morgan

NOT A CERTIFIED COPY

012218

Stanley, Sunbeam's largest creditor following the Coleman transaction, acted with scienter; *i.e.*, with an intent to deceive Perelman.

A. CPH Has Not Presented Any Evidence Of Justifiable Reliance As A Matter Of Law

CPH's fraud claim fails, first and foremost, because CPH cannot remotely establish justifiable reliance on any allegedly fraudulent statements by Morgan Stanley regarding Sunbeam, when CPH had full access to Sunbeam's financial records, but failed to avail itself of such access. As this Court explained in its choice of law order, "[u]nder New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient 'has the means available to him of knowing, by the exercise of ordinary intelligence, the truth ....'" Aug. 11, 2004 Order at 5 (quoting *Schumaker v. Mather*, 133 N.Y. 590, 30 N.E. 755, 757 (1892)).

When, as here, the plaintiff is a sophisticated business, it cannot claim justifiable reliance on the statements of its negotiating counterpart when it failed to conduct its own investigation into the matter. "[A] sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations." *Id.* (citing *UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386 (App. Div. 2001)) ("As a matter of law, a sophisticated plaintiff cannot establish that it entered into an arm's length transaction in justifiable reliance on an alleged misrepresentation if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of other parties."); *see also Rotterdam Ventures, Inc. v. Ernst & Young LLP*, 752 N.Y.S.2d 746, 749 (App. Div. 2002) (holding that a sophisticated party who "plainly had both access to the relevant ... financial statements and the wherewithal through [its] own financial advisors" to ascertain the financial condition of that company, is presumed as a matter of law to have had the "means to ascertain the truth of the alleged representations"); *Schlaifer Nance & Co. v. Estate of*

NOT A CERTIFIED COPY

012219

Andy Warhol, 119 F.3d 91, 98 (2d Cir. 1997) ("[I]f the plaintiff has the means of knowing, by the exercise of ordinary intelligence, the truth, or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations. The parties involved in this litigation are not widows or orphans.") (internal quotations omitted); *Giannacopoulos*, 37 F. Supp. 2d at 632 ("A party claiming fraudulent inducement to invest in a business must show that he or she made an independent inquiry into the available information, especially where the party is a sophisticated businessman like [the plaintiff]."). Whatever Morgan Stanley said or did not say about Sunbeam, in other words, is legally irrelevant if CPH ***itself*** failed to conduct due diligence regarding Sunbeam.

That straightforward point, as this Court anticipated in its choice-of-law ruling, is indeed "outcome determinative" here. Aug. 11, 2004 Order at 5. Perelman is a sophisticated businessman. He had the right, the motive, and the time to conduct due diligence of Sunbeam before accepting 14.1 million shares of Sunbeam stock worth approximately $600 million.

First, the Merger Agreements specifically gave CPH and Coleman their "financial advisors, legal counsel, accountants consultants and other representatives ... full access ... to all of [Sunbeam's] books, records, properties, plants and personnel." (Findings ¶ 214-215) CPH was represented at all times by expert financial advisors from the CSFB, and by expert attorneys from the firm of Wachtell Lipton. CPH therefore had the same access to Sunbeam, if not more, than Morgan Stanley, to discover any accounting irregularities or other issues that might affect the value of Sunbeam's stock.

Second, Perelman had the motive to look. On January 29, 1998 Sunbeam reported that its fourth quarter 1997 earnings missed Wall Street expectations, causing Sunbeam's stock to fall

NOT A CERTIFIED COPY

012220

over 9% in one day. (Findings ¶ 116) On February 23, Levin and the other MAFCO advisors, including CSFB, were told Sunbeam's first quarter 1998 sales were "slow." Moreover, Levin concluded that Sunbeam's three-year business plan (1998-2000) was quite a stretch and probably not achievable. Levin told Perelman and his closest advisors his opinions on February 23 (Findings ¶ 180) and again on February 24 (Findings ¶ 181). Finally, on March 19, Sunbeam issued the press release, which said to the world there could be a problem with the first quarter. Sunbeam's stock dropped again. This time almost 10 percent. (Findings ¶ 253)

Third, Perelman had the time and the resources to look. Between February 23 and March 30, 1998, Perelman and his team of advisors had five weeks to ask for and look at Sunbeam's interim financial statements. The deal was negotiated and inked in four days; surely Perelman could have found four days to look at Sunbeam's financial statements.

In sum, CPH never exercised its right to inspect or sought to independently verify the financial representations it now claims were fraudulent. (Findings ¶¶ 220-235, 261-270, 273-275) That was because Perelman was so eager to do the deal with Dunlap, which relieved CPH of a debt-ridden company, that Perelman threw ordinary caution and prudence to the winds. Perelman cannot now try to blame Morgan Stanley for his failure to conduct due diligence of Sunbeam.

Abrahami v. UPC Construction Co., 638 N.Y.S.2d 11 (App. Div. 1996) is closely on point. The plaintiffs there asserted that the defendant company repeatedly misrepresented its present financial status and "excellent business prospects" in a series of face-to-face meetings organized for purposes of securing capital investment from the plaintiffs. *Id.* at 12. In particular, plaintiffs alleged that balance sheets and financial statements prepared by defendant's accountants and furnished to plaintiffs during these meetings overstated defendant's receivables,

NOT A CERTIFIED COPY

012221

understated its liabilities, and misrepresented its fixed assets, thereby leading plaintiffs to invest a substantial sum of money in reliance on a fraudulently optimistic picture of defendant's present and future financial status. *Id.* at 12-13. The *Abrahami* court, however, flatly rejected this attempt to rely on financial representations made by the plaintiff's counterparty in an arms-length transaction:

> Plaintiffs, who are all sophisticated businessmen, had a duty to exercise ordinary diligence and conduct an independent appraisal of the risk they were assuming. Where a party has means available to him for discovering, by the exercise of ordinary intelligence, the true nature of a transaction he is about to enter into, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations.

Id. at 14 (internal quotations & citation omitted).

This point is particularly compelling here for two distinct but interrelated reasons. *First*, the parties executed the confidentiality agreements that provided that neither party could rely on the others Evaluation Materials. (Findings ¶¶ 108, 110-111, 114). Moreover, neither party made any representations or warranties in the Evaluation Materials. (Findings ¶ 115) Each side was obligated to do its own due diligence. Billion dollar deals in New York are not left to the vagaries of who said what to who. The deal is put in writing.

Second, the Merger Agreements contained extensive representations and warranties between CPH and Coleman, on the one hand, and Sunbeam, on the other. (Findings ¶ 207) And the parties (through the Merger Agreements' Integration Clause) specifically disclaimed reliance on any representations and warranties other than those in the Agreements. (Findings ¶ 208-209) This express contractual disclaimer of reliance underscores that any alleged reliance by CPH on Morgan Stanley's statements is unjustifiable as a matter of New York law. "Sophisticated parties to major transactions cannot avoid their disclaimers by complaining that they received less than all information, for they could have negotiated for fuller information or more complete

NOT A CERTIFIED COPY

012222

warranties." *Dyncorp*, 215 F. Supp. 2d at 322; *see also Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.*, 195 F. Supp. 2d 551 (S.D.N.Y. 2002) ("Under New York law, where a party specifically disclaims reliance upon a particular representation in a contract, that party cannot, in a subsequent action for common law fraud, claim it was fraudulently induced to enter into the contract by the very representation it has disclaimed reliance upon.") (internal quotations omitted).

Accordingly, CPH cannot establish justifiable reliance, and therefore cannot establish fraudulent misrepresentation under New York law. Morgan Stanley is thus entitled to summary judgment on that claim.

B. CPH Has Not Presented Any Evidence Of Scienter Or Intent To Defraud As A Matter Of Law.

Finally, CPH's fraudulent misrepresentation also fails for the separate and independent reason that CPH has failed to establish any evidence of scienter, or intent to defraud Perelman. Because fraud is an intentional tort, a fraud plaintiff must establish that the defendant knew that the challenged statements were false, and made them with intent to deceive. *See, e.g.*, *Dyncorp*, 215 F. Supp. 2d at 318. Here, CPH has failed to present any evidence that Morgan Stanley made the challenged statements with scienter.

CPH tries to satisfy the scienter requirement by drawing the inference that Morgan Stanley had the intent to commit fraud because it had the motive to (i) retain Sunbeam as a client and (ii) collect roughly $30 million in investment banking and underwriting fees for this deal. Compl. ¶¶ 31, 66, 73. But if retention of a client and collection of normal fees were enough to satisfy the scienter requirement of a fraudulent misrepresentation claim as a matter of law, then that requirement would be rendered a nullity — and the floodgates would be opened to a wave of

NOT A CERTIFIED COPY

012223

frivolous fraud claims based on ordinary economic motive. That, however, is not the law of New York.

Under settled New York law generic allegations of motive are ***not*** enough to establish scienter. Recognizing the seriousness of fraud-based allegations, New York courts have been careful to require ***more*** than simply an ordinary economic interest: "In looking for a sufficient allegation of motive, [courts] assume that the defendant is acting in his or her informed economic self-interest." *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1130 (2d Cir. 1994).

Here the only allegations of scienter are the ordinary economic motives of ***any*** financial services firm. *See* Compl. ¶ 31 ("Morgan Stanley knew that if it failed to deliver a major transaction, Morgan Stanley would not be compensated for the extensive work it had performed for Sunbeam"); *Id.* ¶ 66 (alleging that "[e]verything … depended on closing the Coleman acquisition" because "if the transaction did not close, Morgan Stanley would not be paid its $10.28 million fee for the Coleman acquisition or its $22.5 million fee for underwriting the [Note Offering]"). These allegations do not constitute scienter under New York law. *See, e.g.*, *THC Holdings Corp. v. Chinn,* No. 95 Civ. 4422, 1998 WL 50202, at *9 (S.D.N.Y. Feb. 6, 1998) ("A mere allegation that defendant was in a position to receive normal compensation for professional services rendered is not sufficient to support a showing of motive in the fraud scienter analysis.") (citing *inter alia*, *Friedman v. Arizona World Nurseries Ltd. P'ship*, 730 F. Supp. 521, 532 (S.D.N.Y. 1990) (dismissing fraud-based claim on ground that incentive of receiving fee for professional services is insufficient to allege scienter), *aff'd*, 927 F.2d 595 (2d Cir. 1991)); *In re Philip Servs. Corp. Sec. Litig.,* No. 98 Civ. 0835, 2004 WL 1152501, at *5 (S.D.N.Y. May 24, 2004) ("[A] generalized economic interest in professional fees is insufficient to establish an accounting firm's motive to commit fraud.").

NOT A CERTIFIED COPY

012224

CPH's allegations of scienter are not merely legally deficient, however. For even if the Court were to accept all of the complaint's allegations as well-pleaded, it would ***defy economic reason*** for Morgan Stanley to have knowingly participated in Sunbeam's fraud. *First*, if Morgan Stanley was participating in the alleged fraud, why did Morgan Stanley insist that Sunbeam issue a press release on March 30? There is no issue of fact that but for Morgan Stanley, Sunbeam would not have issued any press release before the closing on March 30, 1998.

Second, the Court would have to ***abandon all economic reason*** to believe that Morgan Stanley risked its own professional reputation, knowingly permitted its affiliate to loan and lose hundreds of millions of dollars, knowingly ripped off its most valued clients and institutional investors, and exposed itself to massive civil liability, ***all*** for the supposed purpose of retaining a single client and collecting investment banking and underwriting fees for a single transaction.

The economic irrationality of CPH's scienter allegations provide an additional, independent ground for dismissing its fraud claim. *See, e.g.*, *Kalnit v. Eichler*, 99 F. Supp. 2d 327, 343 (S.D.N.Y. 2000) ("[W]here plaintiff's view of the facts defies economic reason … it does not yield a reasonable inference of fraudulent intent.") (internal quotations & citation omitted), *aff'd,* 264 F.3d 131 (2d Cir. 2001); *see also Duncan v. Pencer*, No. 94 Civ. 0321, 1996 WL 19043, at *10 (S.D.N.Y. Jan 18, 1996) (dismissing fraud-based claim on grounds that it is "economically irrational" to assume that accounting firm "would knowingly condone a client's fraud in order to preserve a fee that, at best, is an infinitesimal percentage of its annual revenues") (citing *Shields*, 25 F.3d at 1130); *In re Philip*, 2004 WL 1152501, at *5 ("Notwithstanding the financial importance of the [relevant] account to [a particular] office, it strains reason that [the defendant] would jeopardize its reputation, subject itself to civil and/or

NOT A CERTIFIED COPY

012225

criminal liability, and risk substantial financial penalties simply because it wanted to keep [the entity that paid the fees] as a client.").

Indeed, CPH's far-fetched theory of scienter rings especially hollow given CPH's allegations that Morgan Stanley and Sunbeam ***knew*** the fraud would be revealed shortly after "the Coleman transaction closed at the end of March 1998." Compl. ¶ 58; *see id.* ¶ 65. Again the Court would have to abandon economic reason and common sense to believe that Morgan Stanley knowingly persuaded its clients to invest hundreds of millions of dollars in Sunbeam and allowed its affiliate to invest $680 million in Sunbeam the day after the Coleman acquisition closed, all the while purportedly knowing that the fraud would be revealed within days of the closing. *See, e.g., Shields*, 25 F.3d at 1130 (affirming dismissal of fraud-based claim for lack of scienter and noting that "[i]t is hard to see what benefits accrue from a short term respite from an inevitable day of reckoning"). In sum, while the Court can reasonably conclude that Morgan Stanley made a bad business decision loaning money to Sunbeam, a bad business decision is not fraud.

III. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT II OF THE COMPLAINT (AIDING AND ABETTING FRAUD).

CPH alleges that Morgan Stanley is liable for "aiding and abetting" Sunbeam's fraud, but this claim fails too. To prevail on its aiding and abetting claim, CPH must demonstrate not only the existence of a primary fraud, but also (1) Morgan Stanley's ***actual knowledge*** of that underlying fraud; and (2) Morgan Stanley's ***substantial assistance*** in the commission of that fraud. *See, e.g., Stolow v. Greg Manning Auctions Inc.*, 258 F. Supp. 2d 236, 250 (S.D.N.Y. 2003) (citing *Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983)); *IIT v. Cornfeld*, 619 F.2d 909, 923 (2d Cir. 1980); *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001),

NOT A CERTIFIED COPY

012226

aff'd mem., 2003 WL 22717684 (2d Cir. Nov. 17, 2003).[4] Yet beyond the purely conclusory allegations contained in the complaint, there is no evidence that Morgan Stanley had ***actual knowledge*** of Sunbeam's fraudulent conduct or that Morgan Stanley provided ***substantial assistance*** to Sunbeam in effectuating it. Accordingly, Morgan Stanley is entitled to summary judgment on this claim as well.

A. CPH Has Not Presented Any Evidence That Morgan Stanley Had Actual Knowledge That Sunbeam Engaged In Fraud.

Actual knowledge of fraud — not ***likely*** knowledge, ***imputable*** knowledge, or ***constructive*** knowledge — is a necessary element of a claim for aiding and abetting fraud. *See, e.g.*, *Filler v. Hanvit Bank*, 339 F. Supp. 2d 553, 557 (S.D.N.Y. 2004) ("[T]o state an aiding and abetting claim, the complaint must allege facts which show that the defendant had ***actual*** knowledge of the underlying fraud. ... Constructive knowledge of the primary fraud — the possession of information that would cause a person exercising reasonable care and diligence to become aware of the fraud — is ***not*** sufficient to support an aiding and abetting claim.") (emphasis added); *Steed Fin. LDC v. Laser Advisers, Inc.*, 258 F. Supp. 2d 272, 282 (S.D.N.Y. 2003) ("[A]ctual knowledge is required to impose liability on an aider and abettor under New York law.") (internal quotations omitted); *Kolbeck v. LIT Am., Inc.*, 939 F. Supp. 240, 246 (S.D.N.Y. 1996) ("New York common law, which controls the analysis here, has not adopted a

NOT A CERTIFIED COPY

012227

[4] In the Court's choice-of-law order, the Court declined to determine whether Florida or New York law applied to this count of CPH's complaint. *See* Aug. 11, 2004 Order at 11. Morgan Stanley continues to maintain that New York law applies across the board to all of CPH's claims. *See, e.g., Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc.*, 92 F.3d 1110 (11th Cir. 1996). There is virtually no case law in Florida on aiding and abetting fraud, which suggests no such claim exists under Florida law.

constructive knowledge standard for imposing aiding and abetting liability. Rather, New York courts and federal courts in this district, have required actual knowledge.").[5]

Despite ample opportunity to develop a factual basis for its claim that Morgan Stanley aided and abetted Sunbeam's allegedly fraudulent conduct, CPH's cause remains moored in unsupported conjecture about what Morgan Stanley (in CPH's various formulations such as the "three step plan") did not want to know, could have known, should have known, or assertedly must have known from (1) its due diligence work with Sunbeam and (2) the interim financial information Morgan Stanley received from Sunbeam's auditors about Sunbeam's sales for January and February 1998. *See, e.g.*, Sept. 21, 2004 Coleman (Parent) Holdings Inc.'s Motion to Amend its Complaint to Seek Punitive Damages at 9-13 ["Motion to Amend"].[6] This kind of conclusorily, inferential (and, as explained below, entirely equivocal) reasoning has soundly been rejected by courts considering the "actual knowledge" requirement in evaluating similar aiding and abetting claims.

NOT A CERTIFIED COPY

[5] *See, e.g.*, *Wassall v. Payne*, 682 So. 2d 678, 680-81 (Fla. 1st DCA 1996) (recognizing the existence of an "actual knowledge" requirement in fraud); *Wallis v. South Fla. Sav. Bank*, 574 So. 2d 1108, 1111 (Fla. 2d DCA 1990) (Altenbernd, J., concurring) (same); *Allerton v. State Dept. of Ins.*, 635 So. 2d 36, 38 (Fla. 1st DCA 1994) (recognizing a claim for aiding and abetting breach of a fiduciary duty based on defendant's "substantially assisting, contributing to and furthering the accomplishment of the breach[]"); *Fort Myers Dev. Corp. v. J.W. McWilliams Co.*, 122 So. 264 (Fla. 1929) (requiring "knowledge," "concurrence," and "participation" to prove a cause for aiding and abetting fraudulent promoters of corporations). Given the dearth of Florida authority and the fact that New York's aiding and abetting law is so well-developed, Morgan Stanley herein focuses on the pertinent New York authorities.

[6] CPH's insistence that Morgan Stanley may have been interested in generating an ongoing revenue stream from its relationship with Sunbeam is utterly irrelevant to the claim at hand. "'Ordinary economic motives are insufficient to support the scienter element of an aiding and abetting claim.'" *AHT*, 292 B.R. at 746 (quoting *Primavera Familienstiftung v. Askin*, 173 F.R.D. 115, 127 (S.D.N.Y.1997)).

012228

Consider *Filler v. Hanvit Bank*, *supra*, which arose from the November 2000 collapse of Lernout & Hauspie Speech Products N.V. (L&H Belgium) shortly after a merger in which Dragon's shareholders received L&H Belgium stock in exchange for Dragon's consolidation into an L&H subsidiary (L&H Korea). The plaintiffs there alleged that, through a series of sham transactions carried out in concert with L&H Korea and their subsequent assurances to accountant KPMG that those transactions were legitimate, the defendant banks aided and abetted L&H Belgium by enabling the parent company to fraudulently misrepresent its revenues and earnings, and thus to defraud its investors — whom the banks allegedly knew would rely on L&H Belgium's financial statements and the corresponding assurances from KPMG in bringing the Dragon merger to fruition. 339 F. Supp. 2d at 555-56.

Seeking to establish proof of the defendants' actual knowledge of L&H Belgium's fraudulent conduct, plaintiffs alleged that the banks knew:

- that L&H Korea's financial statements were consolidated with L&H Belgium's financial statements, and that L&H Belgium was a publicly held company which issued public releases of its financial statements upon which prospective investors would rely;
- that as L&H Korea's bankers, defendants would have received L&H Belgium's financial statements and press releases, and therefore would have been aware of the effects of their activities on the parent company's public disclosures; and
- that defendants knew that the purpose of the KPMG audit was to prepare L&H Belgium's financial statements and public disclosures.

Id. at 558.

Notwithstanding these allegations and additional documentary evidence proffered in support of the plaintiffs' allegations, *see id.* at 558-59, the court rejected the plaintiffs' aiding and abetting claim as a matter of law:

> These allegations demonstrate, at best, that defendants ***should have known*** the impact of the factoring agreements and the false confirmations on L&H Belgium's financial statements. They do

NOT A CERTIFIED COPY

012229

> not support an inference that defendants ***actually knew*** that L&H Belgium was attempting to defraud its investors. From defendants' perspective, L&H Belgium could have been the victim or unwitting conduit of L&H Korea's fraud as easily as it could have been the perpetrator of a fraud upon others.

Id. at 558 (emphasis added). Of course, that is precisely the case here. For all of CPH's assertions regarding what Morgan Stanley ***could*** or ***should*** have known, CPH has adduced no evidence concerning what Morgan Stanley ***actually*** knew. In fact, the precious little evidence CPH has presented to prop up its own inferential chain of wrongdoing actually supports the conclusion that Morgan Stanley was "the victim or unwitting conduit of [Sunbeam's] fraud." *Id.* Indeed, there is **no** record evidence that Morgan Stanley did or said anything "improper" before February 23, 1998. (Findings ¶¶ 98, 125, 182) All of the testimony is to the contrary.

At bottom, and as a matter of well-settled law, CPH's naked assertions and equivocal inferences fail to establish a genuine issue of material fact regarding whether Morgan Stanley ***actually*** knew of Sunbeam's allegedly fraudulent conduct. *See Peoples Gas Sys., Inc. v. Acme Gas Corp.*, 689 So. 2d 292, 299 (Fla. 3d DCA 1997) ("[B]are self-serving assertions ... are insufficient to defeat a summary judgment."); *Bryant v. Shands Teaching Hosp. & Clinics, Inc.*, 479 So. 2d 165, 168 (Fla. 1st DCA 1985) ("[A] summary judgment motion supported by appropriate proof may not rely on bare, conclusory assertions found in the pleadings to create an issue and thus avoid summary judgment.").[7] Morgan Stanley is thus entitled to summary judgment on this claim too.

NOT A CERTIFIED COPY

012230

[7] In addition, courts have reached this same conclusion in assessing the actual knowledge component of the holder in due course doctrine. *See, e.g., Chemical Bank of Rochester v. Haskell*, 432 N.Y.S.2d 478, 481-82 (N.Y. 1980).

B. CPH Has Not Presented Any Evidence That Morgan Stanley Provided Substantial Assistance To Sunbeam In Effectuating Its Alleged Fraud.

Even if CPH could demonstrate that Morgan Stanley had actual knowledge of Sunbeam's fraudulent conduct — which it cannot — Morgan Stanley would still be entitled to summary judgment on this count because CPH has filed to adduce any evidence that that Morgan Stanley provided ***substantial assistance*** to Sunbeam in carrying out its alleged fraud.

Under well-established law, substantial assistance exists only "where a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed." *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) (internal quotations omitted). Of crucial importance, such "[s]ubstantial assistance requires the plaintiff to [demonstrate] that the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated. ... 'But-for' causation is insufficient; aider and abettor liability requires the injury to be a direct or reasonably foreseeable result of the conduct." *Id.* Finally, "[i]naction is actionable participation only when the defendant owes a fiduciary duty directly to the plaintiff." *Id.* (internal quotations omitted); *see also Ryan v. Hunton & Williams*, No. 99-CV-5938, 2000 WL 1375265, at *10 (E.D.N.Y. Sept. 20, 2000) ("[A] defendant may provide substantial assistance by failing to act only when it was required to act. ... Absent a confidential or fiduciary relationship between the plaintiff and the aider and abettor, the inaction of the latter does not constitute substantial assistance warranting aider and abettor liability."); *King v. George Schonberg & Co.*, 650 N.Y.S.2d 107, 108 (App. Div. 1996) ("[I]n the absence of a confidential or fiduciary relationship between plaintiff and [defendant] giving rise to a duty of disclosure, the silence of the [defendant] did not amount to the substantial assistance that is a required element of aider or abettor liability.").

NOT A CERTIFIED COPY

012231

There is no record evidence that Morgan Stanley's conduct constituted "substantial assistance" under the stringent standards outlined above. As an initial matter, the overwhelming majority of Morgan Stanley's alleged efforts to further Sunbeam's fraud involved "sins" of omission rather than commission — such as its "st[an]d[ing] by in affirmation" and mere "presence" at the February 23 meeting and March 1998 road shows (Motion to Amend at 8 & 16), supposed failure to disclose to CPH the questions raised by Sunbeam's auditors regarding Sunbeam's revenue recognition procedures *id.* at 10, and potential first quarter 1998 earnings expectations shortfall, (*id.* at 11-13), and the alleged decision not to conduct further research prior to the deal closing, (*id.* at 19). But these omissions cannot possibly constitute "substantial assistance" because Morgan Stanley and CPH did not share anything resembling the kind of confidential or fiduciary relationship that would have given rise to a duty of disclosure. *See supra* at section I; *see also, e.g.*, *King*, 650 N.Y.S.2d at 108.

Morgan Stanley's putative affirmative acts in furtherance of Sunbeam's fraudulent conduct are similarly insufficient to constitute substantial assistance under well-settled law. Simply put, there is no record evidence to establish the requisite causal connection between Morgan Stanley's supposed provision of false information to CPH during the course of negotiations and the injuries CPH asserts because Perelman had exactly the same access as Morgan Stanley, to Sunbeam's "books, records, properties, plants, and personnel." (Findings ¶¶ 214-215) Likewise, Perelman had at his disposal his own army of legal and financial experts to comb through those records to independently assess Sunbeam's financial status. (Findings ¶¶ 26-41) Perelman is responsible for his own losses because he believed in Dunlap, thought there was more upside in Sunbeam stock than cash, refused to listen to his own advisors, and decided he did not need to "view the property" before he bought it.

NOT A CERTIFIED COPY

012232

IV. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT III OF THE COMPLAINT (CONSPIRACY).

Finally, Morgan Stanley is entitled to summary judgment on CPH's conspiracy claim. The acts alleged with respect to that claim are identical to the acts alleged with respect to the aiding and abetting claim, *compare* Compl. ¶ 91 *with* Compl. ¶ 87, which is presumably why this Court noted in its choice-of-law order that "[i]t is unclear … how, if at all, the two claims differ." Aug. 11, 2004 Order at 12. In substance, they do not differ: CPH's conspiracy claim is just another way of phrasing the aiding and abetting claim, and fails for similar reasons.

To prevail on its conspiracy claim under New York law, CPH would have to prove, among other things, that Morgan Stanley entered into an agreement with Sunbeam to defraud CPH. *See, e.g., Gabriel Capital, L.P. v. NatWest Fin., Inc.*, 94 F. Supp. 2d 491, 511 (S.D.N.Y. 2000) (noting that "a claim of civil conspiracy requires," *inter alia*, "an agreement between the conspirator and the wrongdoer") (internal quotations omitted); *see also Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997) (same requirement under Florida law).

Once again, Morgan Stanley is entitled to summary judgment, because CPH has no record evidence of an ***actual*** agreement between Morgan Stanley and Sunbeam to defraud CPH. Indeed, if anything, the ***actual agreement*** requirement of conspiracy law is even stricter than the ***actual knowledge*** requirement of aiding and abetting law. For although the plaintiff in both claims must prove that the defendant actually knew of an intended offense, a party can knowingly act to further an offense (and thus be liable for aiding and abetting it) ***without*** actually having agreed to commit that offense. *See, e.g., Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949). Accordingly, as one commentator has noted, conspiracy "is used less commonly than aiding and abetting as a basis for liability" in securities-related cases. William H. Kuehnle, *Secondary Liability Under The Federal Securities Laws — Aiding and Abetting, Conspiracy,*

NOT A CERTIFIED COPY

012233

Controlling Person, and Agency: Common-Law Principles and The Statutory Scheme, 14 J. Corp. L. 313, 343 (1988) ("The less frequent use of conspiracy liability probably is caused by the fact that conspiracy liability, unlike aiding and abetting liability, requires a showing of agreement among the participants jointly to pursue a line of conduct or to pursue a particular result.").

Given that CPH has plainly failed to create a genuine dispute whether Morgan Stanley actually knew that Sunbeam had engaged in fraud, it cannot possibly have created a such a dispute over whether Morgan Stanley ***agreed*** to further that fraud. In light of CPH's failure to offer adequate evidence of an actual agreement between Morgan Stanley and Sunbeam, Morgan Stanley is entitled to summary judgment on this claim too.

CONCLUSION

CPH is nothing but a two director shell company, the directors of which are Perelman and Gittis. They both knew Levin's opinions about Sunbeam. Sunbeam's sales were "slow" in January and February. Sunbeam's three-year business plan was "quite a stretch"; and the plan was probably "not achievable." Perelman gambled because he thought there was more upside on Sunbeam stock than cash. If Perelman wanted to know how Sunbeam was doing in the first quarter of 1998, all he had to do was ask for Sunbeam's interim financial statements. He knew how to ask Dunlap in 1997 when calling from his limousine to impress Levin with Dunlap's new business model. If Perelman could call from his limousine, he could have called from his townhouse in Manhattan after February 23. He did not and that should be the end of this case.

NOT A CERTIFIED COPY

01223 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Christopher Landau
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th St. N.W., Suite 1200
Washington, DC 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M St. N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Iánnø, Jr.
Florida Bar # 655351

NOT A CERTIFIED COPY

012235

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

012236

425

Confidential

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,
Defendant.
_____/

CASE NO: CA 03-5045 AI

FILED
Dec 10 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

APPENDIX VOLUME 1
PLEADINGS & MS DEPOSITION EXHIBITS

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5132
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

NOT A CERTIFIED COPY

012237

45e

VOLUME 1

Pleadings:

May 8, 2003 Compl.

June 25, 2003 Answer, *MSSF v. MAFCO*, No. 2003CA005165, (15th Jud. Dist. Fla.)

Sept. 2, 2003 CPH's Resp. to MS's 1st Set of Interrogs.

Sept. 24, 2003 CPH's Resp. to MS's 1st Set of Reqs. for Admiss.

Oct. 13, 2003 CPH's Resp. to MS's 2d Set of Interrogs.

Mar. 17, 2004 CPH's Resp. to MS's 2d Set of Reqs. for Admiss.

Aug. 11, 2004 Order

MS Exhibits:

MS 9 (March 19, 1998 Comfort Letter)

MS 39 (March 19, 1998 Sunbeam Press Release)

MS 41 (March 18, 1998 January and February Sunbeam Consolidated Net Sales Actuals and March Net Sales thru March 17, 1998)

MS 58 (Apr. 3, 1998 Fax from Fannin to Strong, et. al. with Sunbeam Press Release)

MS 75 (March 30, 1998 Wachtell Chronology)

MS 78 (Nov. 15, 1997 Synergy List)

MS 80 (Laser Corporation Key Assumptions)

MS 81 (Feb. 6, 1998 Project Laser Proposed Summary Transaction Terms)

MS 83 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 84 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

MS 85 (Feb. 1998 Discussion Materials)

MS 88 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

MS 93 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"))

MS 104 (Dec. 8, 1997 Sunbeam/Coleman Comparisons)

MS 105 (Dec. 10, 1997 Sunbeam/Coleman Comparisons)

MS 106 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 107 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 112 (Feb. 25, 1998 CSFB Draft Materials Prepared for the Board of Directors)

NOT A CERTIFIED COPY

012238

MS 115 (May 11, 1998 "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00 Range Before Charges, 1999 EPS in $2.00 Range")

MS 117 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement"))

MS 118 (Feb. 27, 1998 Coleman Board of Directors Meeting Minutes)

MS 119 (Jan. 2, 2004 CPH's Resp. to Andersen's Mot. to Compel Prod. of Docs. Re The Coleman Co. ¶ 7 *CPH v. Arthur Andersen*, No. 01-06062AN (15th Jud. Dist. Fla.))

VOLUME 2

MS Exhibits:

MS 133 (Feb. 4, 1998 Confidentiality Agreement)

MS 134 (Feb. 23, 1998 Confidentiality Agreement)

MS 138 (Feb. 6, 1998, "Did Al Show His Hand Too Soon?," PaineWebber)

MS 165 (Dec. 11, 1997 Sunbeam Quarterly Earnings Comparison)

MS 166 (March 19, 1998 Offering Memorandum)

MS 169 (Dec. 10, 1997 Engagement Letter)

MS 172 (Feb. 27, 1997 CPH Consent of Directors)

MS 204 (Jan 29, 1998 Analyst Report)

MS 206 (Jan. 29, 1998 "Sunbeam Posts Profit Below Forecasts, A Stumble That Sends Stock Down 9.5%)

MS 208 (March 6, 1998 Sunbeam 10-K Annual Report for 1997)

MS 211 (March 19, 1988 Bloomberg Report)

MS 215 (March 20, 1998 "Sunbeam Shares Drop on Expected Shortfall in Sales")

MS 220 (Apr. 3, 1998 Paine Webber Analyst Report)

MS 224 (Dec. 15, 1997 Dunlap Employment Contract)

MS 230 (Feb. 25, 1998 CSFB Investment Banking Committee Memo)

MS 237 (March 2, 1998 Press Release)

MS 241 (May 15, 1997 Coleman Escrow Corporation Offering Memorandum)

MS 243 (March 20, 1998 Ernst & Young Comfort Letter)

MS 244 (June 14, 1998 Schedule 13D, MAFCO Holdings Inc.)

MS 251 (March 23, 1998 1997 Coleman Form 10K Annual Report)

MS 278 (March 29, 1998 Registration Rights Agreement between Sunbeam Corporation and Coleman (Parent) Holdings, Inc.)

NOT A CERTIFIED COPY

012239

MS 279 (Dec. 6, 1999 Notice of Merger)

MS 282 (Nov. 25, 1998 Sunbeam Form 10Q/A)

MS 288 (June 21, 2000 "Ron Perelman," CigarAficianado.com)

MS 289 (Feb. 6, 2001 Voluntary Petition, *In re Sunbeam*, 01-40291 (Bankr. S.D.N.Y.))

MS 338 (June 26, 1998 Sunbeam Update for Bank Lenders)

MS 340 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 374 (May 7, 1998 Wachtell letter)

MS 398 (Apr. 17, 1998 "Coleman's Levin profits by selling stock after sale to Sunbeam")

MS 423 (Feb. 27, 1998 CLN Holdings Unanimous Written Consent of the Board of Directors)

MS 424 (Feb. 27, 1998 Coleman Worldwide Corporation Consent of Directors in Lieu of Board of Directors' Meeting)

MS 431 (*Mean Business: How I Save Bad Companies and Make Good Companies Great*)

MS 440 (March 3, 1998 Index of Information)

MS 442 (Aug. 2, 2000 Levin Tr.)

MS 520 (March 30, 1998 Credit Agreement)

MS 521 (Apr. 6, 1998 Sunbeam Proxy Statement)

MS 522 (June 25, 1998 "Sunbeam Delays SEC Filing Related to Debentures")

MS 523 (June 15, 1998 "Sunbeam Board Terminates Al Dunlap as Chairman and CEO")

CPH Exhibits:

CPH 70 (Sept. 5, 1997 Engagement Letter)

CPH 133 (March 20, 1998 Leveraged Finance Committee Memo)

VOLUME 3

Depositions:

Jan. 15, 2004 Bornstein Dep.

Aug. 27, 2004 Burchill Dep.

Oct. 8, 2004 Clark Dep.

June 24,2004 Drapkin Dep.

July 8, 2004 Duffy Dep.

Sept. 28, 2004 Emmerich Dep.

Aug. 4, 2004 Engelman Dep.

NOT A CERTIFIED COPY

012240

Nov. 22, 2004 Freed Dep.

Feb. 13, 2004 Fuchs Dep.

Nov. 19, 2004 Gittis Dep.

June 4, 1999 Harlow Tr., *In re Sunbeam*, No. HO-3433 (SEC)

Dec. 1-2, 2004 Levin Dep.

June 18, 2004 Lurie Dep.

Nov. 2-3, 2004 Maher Dep.

VOLUME 4

Depositions:

Sept. 14, 2004 Moran Dep.

Aug. 30-Sept. 1, 2004 Nesbitt Dep.

Apr. 27, 2004 Page Dep.

Nov. 17-18, 2004 Perelman Dep.

Nov. 23, 2004 Porat Dep.

Nov. 16, 2004 Rankin Dep.

July 8, 2004 Salig Dep.

June 25, 2004 Schwartz Dep.

June 8 & July 28, 2004 Shapiro Dep.

July 7, 2004 Slotkin Dep.

May 12, 2004 Slovin Dep.

Feb. 24, 2004 Smith Dep.

May 25, 2004 Stack Dep.

Dec. 4, 2003 Strong Dep.

Sept. 15, 2003 Tyree Dep.

NOT A CERTIFIED COPY

012241

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

COLEMAN (PARENT) HOLDINGS INC.,	2003 CA 005045 AI
Plaintiff,	Case No. _____
v.	JURY TRIAL DEMANDED
MORGAN STANLEY & CO., INC.,	
Defendant.	

DOROTHY H. WI...
CLERK OF CIRCUIT ...
CIRCUIT CIVIL DIVISION
MAY 08 2003
COPY / ORIGINAL
RECEIVED FOR FILING

COMPLAINT

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") alleges the following against Morgan Stanley & Co., Inc. ("Morgan Stanley"):

NATURE OF THE ACTION

1. This action arises from Morgan Stanley's participation in a massive fraud centered on Florida-based Sunbeam Corporation ("Sunbeam"). As a direct result of that fraud, CPH was induced to accept 14.1 million shares of Sunbeam stock when CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam on March 30, 1998. Morgan Stanley misrepresented Sunbeam's financial condition and assisted Sunbeam's CEO, Albert Dunlap, in concealing Sunbeam's true financial condition so that Sunbeam could complete the purchase of Coleman on March 30, 1998.

2. In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its

NOT A CERTIFIED COPY

012244

problems with Sunbeam's first quarter 1998 sales in order to close transactions that should have been stopped before CPH and others were swindled.

4. CPH brings this action to recover for the losses it has suffered as a result of Morgan Stanley's active participation in successfully defrauding CPH. CPH's Complaint consists of four counts: Fraudulent Misrepresentation (Count I); Aiding and Abetting (Count II); Conspiracy (Count III); and Negligent Misrepresentation (Count IV).

5. CPH seeks compensatory damages for Morgan Stanley's wrongful conduct. Using Morgan Stanley's own valuation of Coleman, CPH has lost at least $485 million. In addition, CPH reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. §768.72 to assert claims for an additional recovery of punitive damages in excess of $1.5 billion.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to Fla. Stat. § 26.012(2)(a). This Court has jurisdiction over Morgan Stanley pursuant to Fla. Stat. § 48.193.

7. Venue is proper in this district pursuant to Fla. Stat. § 47.051.

PARTIES AND OTHER KEY PARTICIPANTS

8. Plaintiff Coleman (Parent) Holdings Inc. ("CPH") directly or indirectly owned 44,067,520 shares — or approximately 82% — of Coleman prior to the transactions at issue. On March 30, 1998, Sunbeam acquired CPH's interest in Coleman. Sunbeam paid for the Coleman shares with 14.1 million shares of Sunbeam common stock and other consideration.

9. Defendant Morgan Stanley & Co., Inc. ("Morgan Stanley") is a highly sophisticated investment banking firm that provides a wide range of financial and securities services.

NOT A CERTIFIED COPY

012215

Among other things, Morgan Stanley provides advice on mergers and acquisitions and raises capital in the equity and debt markets. Morgan Stanley served as Sunbeam's investment banker and as the underwriter of securities issued by Sunbeam in connection with the events at issue herein.

10. Sunbeam Corporation ("Sunbeam") was a publicly-traded company headquartered in Delray Beach, Florida. Sunbeam designed and manufactured small household appliances and outdoor consumer products, which it marketed under the Sunbeam and Oster brand names. Sunbeam filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code in February 2001.

11. Albert Dunlap ("Dunlap") was the Chief Executive Officer of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors. In May 2001, the United States Securities and Exchange Commission ("SEC") filed a civil injunctive suit in Miami, Florida against Dunlap based on Dunlap's fraudulent and illegal conduct at Sunbeam. In September 2002, Dunlap consented to the entry of a judgment against him in that action. The judgment, among other things, imposed a civil fine and permanently barred Dunlap from serving as an officer or director of a public company. Dunlap still resides in Boca Raton, Florida.

12. Russell Kersh ("Kersh") was the Executive Vice President of Sunbeam from July 1996 until June 1998 when he was terminated by Sunbeam's Board of Directors. In May 2001, the SEC filed a civil injunctive suit in Miami, Florida against Kersh based on Kersh's fraudulent and illegal conduct at Sunbeam. In September 2002, Kersh consented to the entry of a judgment against him in that action. The judgment, among other things, imposed a civil fine and permanently barred Kersh from serving as an officer or director of a public company. Upon information and belief, Kersh still resides in Boca Raton, Florida.

NOT A CERTIFIED COPY

012246

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

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

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

D. CPH expressly reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for punitive damages in excess of $1.5 billion as allowed by law.

JURY DEMAND

Plaintiff demands a trial by jury on all claims.

Dated: May 8, 2003

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

NOT A CERTIFIED COPY

012247

16div-019445

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

MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff, v. MACANDREWS & FORBES HOLDINGS INC., and COLEMAN (PARENT) HOLDINGS INC., Defendants.	Case No. 2003 CA 005165 AG Judge Elizabeth I. Maass

COPY / ORIGINAL
RECEIVED FOR FILING
JUN 25 2003
DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

NOTICE OF FILING

PLEASE TAKE NOTICE that Defendants MacAndrews & Forbes Holdings Inc. and Coleman (Parent) Holdings Inc. hereby give notice of filing their Answer to plaintiff's Complaint.

Dated: June 25, 2003

John Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
Tel.: (561) 686-6300
Fax: (561) 478-0754

NOT A CERTIFIED COPY

012249

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

MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff, v, MACANDREWS & FORBES HOLDINGS INC., and COLEMAN (PARENT) HOLDINGS INC., Defendants.	Case No. 2003 CA 005165 AG Judge Elizabeth I. Maass

COPY / ORIGINAL
RECEIVED FOR FILING
JUN 25 2003
DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

ANSWER

Defendants MacAndrews & Forbes Holdings Inc. ("Mafco") and Coleman (Parent) Holdings Inc. ("CPH"), pursuant to Florida Rule of Civil Procedure 1.140, hereby answer the Complaint of Morgan Stanley Senior Funding, Inc. ("MSSF") as follows:

1. Defendants deny the allegations of paragraph 1, except that Defendants admit that: (1) Sunbeam Corporation ("Sunbeam") acquired CPH's interest in the Coleman Company, Inc. ("Coleman") in a transaction that closed in March 1998; (2) MSSF commenced this action against Mafco and CPH; and (3) Sunbeam filed a voluntary petition for bankruptcy in February 2001.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3, except that Defendants admit that: (1) Sunbeam sought loans from MSSF and other financial institutions, including First Union National Bank ("First Union") and Bank of America National Trust ("Bank of America"); and (2) MSSF, First Union, and Bank of America loaned money to Sunbeam pursuant to a credit agreement dated as of March 30, 1998.

NOT A CERTIFIED COPY

012250

4. Defendants deny the allegations of paragraph 4, except that Defendants admit that: (1) on February 6, 2001, Sunbeam and several of its subsidiaries filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York; (2) MSSF's loan to Sunbeam was discharged in accordance with the reorganization plan approved by the bankruptcy court; and (3) as part of Sunbeam's reorganization plan, MSSF received approximately 40% of 98.5% of the shares of common stock in the post-bankruptcy Sunbeam and $100 million in secured notes.

5. Defendants deny the allegations of paragraph 5.

6. Defendants deny the allegations of paragraph 6, except that Defendants admit that: (1) MSSF is a company organized and existing under the laws of the State of Delaware with its principal place of business in New York; and (2) Sunbeam entered into a credit agreement with MSSF, among others, dated as of March 30, 1998, pursuant to which Sunbeam borrowed funds from MSSF.

7. Defendants deny the allegations of paragraph 7, except that Defendants admit that: (1) Mafco, from time to time, has invested in various companies; (2) Mafco indirectly owns an interest in Revlon, Inc., which is an international consumer cosmetics company; (3) Mafco indirectly owns CPH, which in turn directly or indirectly owned approximately 82% of the common stock of Coleman prior to March 30, 1998; and (4) Mafco is a Delaware corporation with its principal place of business in New York.

8. Defendants deny the allegations of paragraph 8, except that Defendants admit that: (1) prior to March 30, 1998, CPH directly or indirectly owned 44,067,520 shares, which

NOT A CERTIFIED COPY

012251

amounted to approximately 82% of Coleman; and (2) Mafco indirectly owns CPH, which is a Delaware corporation with its principal place of business in New York.

9. Defendants admit the allegations of paragraph 9, except that Defendants state that Sunbeam acquired CPH's interest in Coleman.

10. Defendants deny the allegations of paragraph 10, except that Defendants admit that: (1) Sunbeam acquired CPH's interest in Coleman in a transaction that closed in March 1998; (2) American Household, Inc., formerly known as Sunbeam Corporation, through its operating subsidiaries and affiliates, manufacturers, markets, and distributes durable household and outdoor leisure consumer products through mass-market and other consumer channels; (3) Sunbeam was a Delaware corporation at the time of the February 1998 transaction with CPH; (4) on February 6, 2001, Sunbeam and several of its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York; and (5) Sunbeam has emerged from bankruptcy and now operates under the name American Household, Inc.

11. Defendants admit the allegations of paragraph 11.

12. Defendants do not contest the subject matter jurisdiction of this Court, although Defendants deny that MSSF has any claim against them for more than $15,000 or otherwise.

13. Defendant CPH does not contest this Court's personal jurisdiction over it. Defendant Mafco denies that this Court has personal jurisdiction over it. Defendants otherwise deny the allegations of paragraph 13.

NOT A CERTIFIED COPY

0122252

NINTH AFFIRMATIVE DEFENSE

Assuming, solely for the purpose of pleading this defense, that plaintiff sustained any legally cognizable damages, MSSF assumed the risk of incurring those damages.

TENTH AFFIRMATIVE DEFENSE

Assuming, solely for the purposes of pleading this defense, that plaintiff sustained any legally cognizable damages, MSSF has failed to take reasonable steps to mitigate such damages.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to add further additional defenses after receiving information from MSSF or third parties through discovery.

WHEREFORE, Defendants deny Plaintiff's prayer for relief and pray that Plaintiff's Complaint be dismissed with prejudice, with costs and attorneys' fees taxed to MSSF. The Defendants demand a trial by jury.

Dated: June 25, 2003

MACANDREWS & FORBES HOLDINGS INC.
AND COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Their Attorneys

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd
West Palm Beach, Florida 33409
(561) 686-6300

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

NOT A CERTIFIED COPY

012253

16div-019450

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and Federal Express to all counsel of record listed below on this 25th day of June, 2003.

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401
Tel.: (561) 659-7070
Fax: (561) 659-7368

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett H. McGurk
KIRKLAND & ELLIS
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200

John Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
Tel.: (561) 686-6300

NOT A CERTIFIED COPY

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff,	)	Case No. 2003 CA 005045 AI
v.	)	Judge Elizabeth T. Maass
MORGAN STANLEY & CO., INC., Defendant.	)	**CONFIDENTIAL - FILE UNDER SEAL**

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") First Set of Interrogatories as follows:

INITIAL OBJECTIONS

1. CPH objects to Defendant's First Set of Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 3, 4, 5, 6, 7, and 8 to the extent that they purport to impose upon CPH obligations that are not required under Florida law. CPH will comply with the applicable rules and law.

2. CPH objects to defendant's interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule.

NOT A CERTIFIED COPY

012256

MORGAN STANLEY CONFIDENTIAL 0003921-0003930
MORGAN STANLEY CONFIDENTIAL 0001923-0001931
MORGAN STANLEY CONFIDENTIAL 0003348-0003363
MORGAN STANLEY CONFIDENTIAL 0003332-0003347
MORGAN STANLEY CONFIDENTIAL 0003364-0003381
MORGAN STANLEY CONFIDENTIAL 0019287-0019313
MORGAN STANLEY CONFIDENTIAL 0001792-0001818
MORGAN STANLEY CONFIDENTIAL 0003315-0003331
MORGAN STANLEY CONFIDENTIAL 0004673-0004702
MORGAN STANLEY CONFIDENTIAL 0001050-0001077
MORGAN STANLEY CONFIDENTIAL 0005453-0005469
MORGAN STANLEY CONFIDENTIAL 0021232-0021259
MORGAN STANLEY CONFIDENTIAL 0019524-0019529

and the depositions that CPH produced to Morgan Stanley on August 14, 2003.

Plaintiff's investigation continues.

INTERROGATORY NO. 2: Identify all Advisors and state, with respect to each, the nature of the services they performed in connection with the Coleman Transaction.

RESPONSE: CPH objects to the definition of "Coleman Transaction" because Morgan Stanley's definition mischaracterizes the transaction that closed on March 30, 1998. CPH will construe the term "Coleman Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"). Subject to and without waiving the foregoing Initial Objections and consistent with its interpretation of the term "Coleman Transaction," CPH responds that the following third parties provided advice and/or assistance to CPH in connection with the transaction by which CPH transferred its interest in Coleman to Sunbeam:

ADVISOR	NATURE OF SERVICES
Credit Suisse First Boston	Financial Advisor
Wachtell, Lipton, Rosen & Katz	Legal Advisor

INTERROGATORY NO. 3: Identify with particularity all misrepresentations by MS & Co. that CPH intends to rely upon at trial and state, with respect to each such statement, the date and time the representation was made; the document, setting or circumstances in which the representation was

NOT A CERTIFIED COPY

012257

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on behalf of Coleman (Parent) Holdings Inc., I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES, and to the best of my knowledge and belief the responses contained therein are true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 2nd day of September, 2003.

Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, ~~19~~ 2005

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I, Deirdre E. Connell, hereby certify that a true and correct copy of the foregoing **COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF INTERROGATORIES** has been served upon the parties listed below via Facsimile and Federal Express on this 2nd day of September, 2003.

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

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

DEIRDRE E. CONNELL

Document Number: 956144

NOT A CERTIFIED COPY

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff, v. MORGAN STANLEY & CO., INC., Defendant.	Case No. 2003 CA 005045 AI Judge Elizabeth T. Maass

NOT A CERTIFIED COPY

CPH'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S FIRST SET OF REQUESTS FOR ADMISSION

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Florida Rules of Civil Procedure 1.370, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") First Set of Request for Admission ("Requests for Admission") dated August 18, 2003:

012261

INITIAL OBJECTIONS

1. CPH objects to the definition of "Transaction" because Morgan Stanley's definition mischaracterizes the transaction that closed on March 30, 1998 and because the definition is vague and ambiguous to the extent it includes "all related communications, agreements, and transactions." CPH will construe the term "Transaction" to mean the transaction by which CPH transferred its interest in The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam").

2. CPH objects to the definition of "Coleman" to the extent that it includes CPH. CPH will construe the term "Coleman" to mean The Coleman Company, Inc.

SEP-24-2003 16:55 JENNER AND BLOCK 312 527 0484 P.02

3. CPH objects to the Requests for Admission on the basis that many of them are duplicative and constitute an unnecessary waste of time.

4. CPH objects to the Requests for Admission on the basis that they are abusive and vexatious. Many of the Requests for Admission concern factual allegations peculiarly within the possession of Morgan Stanley or third parties, which could be confirmed with less expense and burden on the parties through more traditional techniques of discovery.

5. CPH responds to Morgan Stanley's Requests for Admission without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of the Responses and Objections set forth below.

NOT A CERTIFIED COPY

RESPONSES AND FURTHER OBJECTIONS

1. The parties to this action are headquartered in New York.

RESPONSE: CPH admits that its principal place of business is in New York and also admits that Morgan Stanley has its principal place of business in New York, along with offices in Florida, including: West Palm Beach, Palm Beach, North Palm Beach, Delray Beach, Boca Raton, Coral Gables, Orlando, Miami, Aventura, Hallandale, Plantation, Fort Lauderdale, Coral Springs, Stuart, Naples, Winter Park, Eustis, Deland, Winter Haven, Ocala, Gainesville, St. Augustine, Ponte Vedra Beach, Jacksonville, Tampa, Clearwater, St. Petersburg, Port Richey, Ormand Beach, Tallahassee, Venice, Punta Gorda, Sarasota, Bradenton, Cape Coral, Melbourne, Port St. Lucie, Vero Beach, Indialantic, and Pensacola.

012292

2. The parties to this action maintain their principal place of business in New York.

16div-019457
SEP-24-2003 16:55 JENNER AND BLOCK 312 527 0484 P.03

RESPONSE: Denied.

250. The press conference following the March 19, 1998 press release was held in New York.

RESPONSE: CPH objects to this request as vague and ambiguous because it does not identify a specific date or subject matter for the press conference. Several press conferences have taken place since March 19, 1998. Subject to and without waiving this objection, CPH states that it has made a reasonable inquiry into the document in its possession. That inquiry did not indicate a press conference held on or about March 19, 1998. CPH lacks knowledge or information sufficient to answer this request and therefore denies this request.

251. On March 30, 1998, the Transaction closed in New York.

RESPONSE: Consistent with CPH's interpretation of the term "Transaction," admitted.

252. On March 31, 1998, the Bank Facility closed in New York.

RESPONSE: Admitted.

253. At the time of the Transaction, Sunbeam was listed on the New York Stock Exchange.

RESPONSE: Consistent with CPH's interpretation of the term "Transaction," admitted.

254. At the time of the Transaction, Coleman was listed on the New York Stock Exchange.

RESPONSE: Consistent with CPH's interpretation of the term "Transaction," admitted.

NOT A CERTIFIED COPY

012263

16div-019458
SEP-24-2003 17:52 JENNER AND BLOCK 312 527 0484 P.71/78

269. On July 10, 1998, the Special Committee of the Board of Directors of Sunbeam held an organizational meeting at the offices of Reboul, MacMurray, Hewitt, Maynard & Kristol at 45 Rockefeller Plaza in New York to discuss the negotiations between Sunbeam and its lenders.

RESPONSE: Admitted.

270. On July 28, 1998, the Special Committee of the Board of Directors of Sunbeam met at the offices of Reboul, MacMurray, Hewitt, Maynard & Kristol at 45 Rockefeller Plaza in New York to discuss the status of the ongoing fact investigation at Sunbeam.

RESPONSE: Admitted.

271. On February 6, 2001, Sunbeam filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York.

RESPONSE: Admitted.

272. The adversary proceedings against Sunbeam were instituted in New York.

RESPONSE: CPH has made a reasonable inquiry into the documents in its possession and has reviewed the docket sheet for the Bankruptcy Petition filed by Sunbeam on February 6, 2001 in the United States Bankruptcy Court for the Southern District of New York. Neither of these inquiries indicated that adversary proceedings have been instituted against Sunbeam. CPH lacks information or knowledge sufficient to answer this request and therefore denies this request. Answering further, CPH states that more than 20 lawsuits concerning Sunbeam's fraudulent accounting practices have been filed in or transferred to Florida state and federal courts, including:

a. *Bird v. Sunbeam Corporation, et al.*, No. 98-8258 (S.D. Fla.)

b. *Frankel v. Sunbeam Corporation, et al.*, No. 98-8310 (S.D. Fla.)

c. *Lionelli v. Sunbeam Corporation, et al.*, No.98-8323 (S.D. Fla.)

d. *Goldberg v. Dunlap, et al.*, No. 98-8260 (S.D. Fla.)

NOT A CERTIFIED COPY

012264

16div-019459
SEP-24-2003 17:53 JENNER AND BLOCK 312 527 0484 P.75/78

x. *Krim v. Dunlap, et al.*, No. 983168-AD (15th Jud. Cir. Fla.)

y. *Sunbeam Corp. v. PricewaterhouseCoopers LLP*, No. 00-5444-AN (15th Jud. Cir. Fla.);

z. *Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP and Philip Harlow*, No. CA 01-6062-AN (15th Jud. Cir.);

273. The U.S. Attorney for the Southern District of New York led the U.S. Department of Justice investigation into Sunbeam's business practices.

RESPONSE: Admitted.

Dated: September 24, 2003

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Deirdre E. Connell
Denise Kirkowski Bowler
JENNER & BLOCK, LLC
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

012265

16div-019460
SEP-24-2003 17:54 JENNER AND BLOCK 312 527 0484 P.77/78

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been furnished by U.S. Mail and facsimile to the following counsel of record on this 24th day of September, 2003:

Joseph Ianno, Jr.
CARLTON FIELDS
222 Lake View Avenue, Suite 1400
West Palm Beach, FL 33401
Tel.: (561) 659-7070
Fax: (561) 659-7368

Thomas A. Clare
KIRKLAND & ELLIS
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200

Deirdre Connell
Deirdre E. Connell

NOT A CERTIFIED COPY

012266

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

COLEMAN (PARENT) HOLDINGS INC.,	)	
Plaintiff,	)	Case No. 2003 CA 005045 AI
v.	)	Judge Elizabeth T. Maass
MORGAN STANLEY & CO., INC.,	)	**CONFIDENTIAL - FILE UNDER SEAL**
Defendant.	)	

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO., INCORPORATED'S SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by and through its attorneys, and pursuant to Florida Rules of Civil Procedure 1.280, 1.340, and 1.350, hereby responds and objects to Morgan Stanley & Co., Incorporated's ("Morgan Stanley") Second Set of Interrogatories ("Interrogatories") and Second Request for Production of Documents ("Request for Production") dated September 4, 2003:

INITIAL OBJECTIONS

1. CPH objects to Defendant's Interrogatories and Request for Production, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order. For example, CPH will not comply with Instructions Nos. 1, 2, 3, 4, 5, 6, and 11 to the extent that they purport to impose upon CPH obligations that are not required under Florida law. CPH will comply with the applicable rules and law.

NOT A CERTIFIED COPY

012268

CPH denied this request because, as CPH admitted, on March 2, 1998, Sunbeam issued a press release from Sunbeam's headquarters in Delray Beach, Florida announcing the Transaction.

244. MSSF planned the Bank Facility to finance the Transaction in New York.

CPH denied this request because, as CPH admitted, MSSF did some work on the Bank Facility in New York, but also did some work in Florida.

245. MSSF prepared and disseminated the preliminary and final offering memorandum for the Bank Facility in New York.

CPH denied this request because MSSF did not prepare and disseminate a preliminary and final offering memorandum for the Bank Facility.

246. On March 17, 1998, Sunbeam and MS & Co. held a "road show" for potential Sunbeam investors in New York.

CPH denied this request because Sunbeam and Morgan Stanley did not hold a "road show" for potential Sunbeam investors in New York on March 17, 1998.

249. On March 19, 1998, the Note Offering closed in New York.

CPH denied this request because the Note Offering did not close in New York on March 19, 1998. Rather, the Note Offering closed in New York on March 25, 1998.

259. No meetings between MSSF and CPH took place in Florida.

CPH denied this request because MSSF and CPH did meet in Florida.

260. No meetings between MSSF and MAFCO took place in Florida.

CPH denied this request because MSSF and Mafco did meet in Florida.

266. On June 9, 1998, the Special Committee of the Board of Directors of Sunbeam met in New York to discuss the June 8, 1998 article in Barrons concerning Sunbeam's accounting practices.

NOT A CERTIFIED COPY

012269

To the extent that Morgan Stanley seeks the identification of communications regarding the underlying Transaction alleged in the Complaint, CPH refers to its response to Interrogatory No. 4 herein.

RESPONSES TO DOCUMENT REQUEST AND FURTHER OBJECTIONS

DOCUMENT REQUEST NO. 1: All documents referred to in responding to these Interrogatories that have not already been produced.

RESPONSE: Subject to and without waiving the foregoing Initial Objections, Mafco and CPH are unaware of any documents responsive to this Request.

Dated: October 13, 2003

As to Objections:

By: Deirdre Connell
One of Its Attorneys

SEARCY DENNEY SCAROLA BARNHART
& SHIPLEY P.A.
John Scarola
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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

ATTORNEYS FOR COLEMAN (PARENT) HOLDINGS INC.

NOT A CERTIFIED COPY

012270

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE TO MORGAN STANLEY & CO. INCORPORATED'S SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS, and to the best of my knowledge and belief the responses contained therein are true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 13th day of October, 2003.

Notary Public

DEBBIE HERNANDEZ
Notary Public, State of New York
No. 01HE5021255
Qualified in Queens County
Certificate Filed in New York County
Commission Expires December 13, 2005

NOT A CERTIFIED COPY

012271

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

CASE NO. CA 03-5045 AI

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

vs.

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

CASE NO. CA 03-5165 AI

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

vs.

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

CPH'S RESPONSE TO MORGAN STANLEY & CO., INC.'S SECOND SET OF REQUESTS FOR ADMISSION

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, hereby responds and objects to Morgan Stanley & Co. Incorporated's ("Morgan Stanley") Second Set of Requests for Admission ("Requests for Admission") dated February 16, 2004:

INITIAL OBJECTIONS

1. CPH objects to the definition of "CPH" as ambiguous and overly broad. CPH will construe the term "CPH" to mean Coleman (Parent) Holdings Inc.

2. CPH objects to the definition of "MAFCO" as ambiguous and overly broad. CPH will construe the term "MAFCO" to mean MacAndrews & Forbes Holdings Inc.

NOT A CERTIFIED COPY

012273

3. MAFCO retained Credit Suisse First Boston as its exclusive financial advisor for the Coleman Transaction.

RESPONSE: Denied. Answering further, CPH states that MAFCO is the indirect owner of CPH, and prior to the completion of the Coleman Transaction, CPH owned 82% of the shares of Coleman, which retained Credit Suisse First Boston to act as a financial advisor for the Coleman Transaction.

4. Credit Suisse First Boston had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

5. Credit Suisse First Boston had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, CPH did not retain Credit Suisse First Boston in connection with the Coleman Transaction. CPH further states that Credit Suisse First Boston did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did and therefore denies this request.

6. CPH retained Wachtell, Lipton, Rosen & Katz as its legal advisor for the Coleman Transaction.

NOT A CERTIFIED COPY

012274

RESPONSE: Admitted.

7. Coleman retained Wachtell, Lipton, Rosen & Katz as its legal advisor for the Coleman Transaction.

RESPONSE: Admitted.

8. MAFCO retained Wachtell, Lipton, Rosen & Katz as its legal advisor in the Coleman Transaction.

RESPONSE: Admitted.

9. Wachtell, Lipton, Rosen & Katz had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect Accounting Irregularities at Sunbeam.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that Wachtell, Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did. In all other respects, this request is denied.

10. Wachtell, Lipton, Rosen & Katz had the ability in 1997 and 1998 to conduct a due-diligence investigation sufficient to detect the falsity of the misrepresentations alleged in the Complaint.

RESPONSE: CPH objects to this request as an incomplete hypothetical with unstated assumptions. Answering further, it is not customary for lawyers to conduct "due diligence" of the type conducted by investment bankers, such as Morgan Stanley. CPH further states that

NOT A CERTIFIED COPY

012275

March 19 drafts of the Arthur Andersen comfort letter; (b) there has been testimony in this case that drafts of the comfort letter were sent to Morgan Stanley prior to March 19, 1998; and (c) Morgan Stanley's counsel have prepared a chronology in which they reveal that Morgan Stanley's counsel had the draft comfort letter no later than March 18, 1998.

Dated: March 17, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

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

John Scarola
SEARCY DENNY SCAROLA
BARNHART& SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1042502

NOT A CERTIFIED COPY

012276

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

CASE NO. CA 03-5045 AI

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

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

CASE NO. CA 03-5165 AI

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

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

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR APPLICATION OF NEW YORK LAW

THIS CAUSE came before the Court June 28, 2004 on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law, with all parties well represented by counsel.

I. Introduction

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

NOT A CERTIFIED COPY

012278

In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF"), and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

CPH's Complaint alleges claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and seeks damages of at least $485 million.

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

II. Analysis

A. An overview

MS & Co. and MSSF (together "Morgan Stanley"), filed their Motion for Application of New York Law ("Motion"). The Motion seeks a determination that New York substantive law controls all claims in these consolidated cases.

Florida's choice of law rules govern the conflict of laws analysis. Hoffman v. Ouellette, 798 So. 2d 42 (Fla. 4th DCA 2001). A conflict of laws analysis involves a three step process. First, the court must consider whether there are potentially outcome determinative differences between the substantive laws alleged to apply. See Tune v. Philip Morris, Inc., 766 So. 2d 350 (Fla. 2d DCA 2000), rev. den. 786 So. 2d 1188 (Fla. 2001). If there are, the Court must next determine the choice of law rule to be applied for the type of

NOT A CERTIFIED COPY

012279

claim alleged. Finally, the court must apply the appropriate choice of law rule. Hoffman.

The parties agree that Florida applies the "significant relationship" test in tort cases. The parties disagree on whether there are potentially outcome determinative differences in New York and Florida substantive law and, if there are, which state's law prevails on application of the conflicts principles. Choice of law is made on an issue by issue basis. Crowell v. Clay Hayden Trucking Lines, Inc., 700 So. 2d 120 (Fla. 2d DCA 1997), rev. den. 705 So. 2d 569 (Fla. 1998). To resolve the dispute, then, the Court must determine whether there are material differences between New York and Florida law on each issue and, if there are, apply the appropriate conflicts principles to determine the controlling substantive law on each contested issue.

B. Step One - New York v. Florida Law

(i) Negligent Misrepresentation

Morgan Stanley contends that New York law requires Coleman to prove that it had a "special relationship" with Coleman before it can bring a claim for negligent misrepresentation. Coleman contends that the "special relationship" requirement in the New York case law is merely a term of art that designates the same group of potential recipients of misrepresentations who have a cause of action as in Florida.

Florida has adopted §552 of the Restatement (Second) of Torts as a statement of the elements for a negligent misrepresentation claim:

> Information Negligently Supplied for the Guidance of Others.
>
> (1) One who, in the course of his business, profession or employment, or in any other transaction is which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

NOT A CERTIFIED COPY

012280

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

See Gilchrist Timber Co. v. ITT Rayonier, Inc., 696 So. 2d 334, 337 (Fla. 1997). Thus, in Florida, one who has a pecuniary interest in a transaction is liable if he negligently supplies incorrect information for the benefit or guidance of another who justifiably relies on it.

New York, however, circumscribes a tighter circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher. See American Protein Corp. v. AB Volvo, 844 F. 2d 56 (2d Cir. 1988), cert. den. 488 U.S. 852 (1988); DynCorp v. GTE Corporation, 215 F. Supp. 2d 308 (S.D.N.Y. 2002); Citibank, N.A. v. Itochu International, Inc., 2003 WL 1797847 (S.D.N.Y. 2003); Fleet Bank v. Pine Knoll Corp., 736 N.Y.S. 2d 737 (A.D. 3 Dept. 2002); St. Paul Fire and Marine Insurance Co. v. Health Fielding Insurance Brokerage, Ltd., 976 F. Supp. 198 (S.D.N.Y. 1996). The difference between Florida and New York law is material, and may be outcome determinative: the parties dispute whether MS & Co. held or acquired a position of trust or confidence over CPH, and whether MAFCO and CPH held or acquired a position of trust or confidence over MSSF.

(ii) Fraudulent Misrepresentation

Morgan Stanley contends that New York law prevents a recipient of a fraudulent misrepresentation from bringing a claim if it is a "sophisticated party" with access to information which, if checked, would have allowed it to determine the representation was inaccurate. CPH maintains that New York law is merely a specific application of the

NOT A CERTIFIED COPY

012281

general rule that a misrepresentation is not actionable unless reliance on it was reasonable, and that it is unreasonable for a sophisticated party in an arms' length commercial transaction to rely on information provided by its opponent that could have been verified.

Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient "has the means available to him of knowing, by the exercise of ordinary intelligence, the truth . . ." See Schumaker v. Mather, 133 N.Y. 590; 30 N.E. 755, 757 (1892). Thus, a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations. UST Private Equity Investors Fund v. Salomon Smith Barney, 733 N.Y.S. 2d 385, 288 A.D. 2d 87 (N.Y. App. Div. 2001).

In contrast, in Florida a recipient of a fraudulent misrepresentation may rely on it unless he knows it is false or its falsity is obvious, even if it had the means to verify the representation's accuracy. See Besett v. Basnett, 389 So. 2d 995 (Fla. 1980); M/I Schottenstein Homes, Inc. v. Azam, 813 So. 2d 91 (Fla. 2002); Sheer v. Jenkins, 629 So. 2d 1033 (Fla. 4th DCA 1993).

Clearly, there is a fundamental distinction on this point between New York and Florida which could be outcome determinative. MS & Co. claims CPH had access to information which would have allowed it to test the allegedly false representations but CPH failed to do its due diligence. MAFCO and CPH claim that MSSF had access to information that would have allowed MSSF to test the synergy representations, but MSSF failed to do its due diligence. If true, a jury could find reliance that is reasonable under Florida law to be unreasonable under New York law.

C. Step Two - Choice of Law Rule

(i) Applicable Rule

Florida has adopted the Restatement (Second) of Conflict of Laws' significant relationships test. See Bishop v. Florida Specialty Paint Company, 389 So. 2d 999 (Fla. 1980). Section 145 states the general principles with respect to tort. Section 148 states the choice of law principles for fraud and misrepresentation. Counsel agree section 148 applies.

NOT A CERTIFIED COPY

012282

See Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc., 92 F. 3d 1110 (11th Cir. 1996).

(ii) Procedure

The Court was unable to find any cases specifically delineating the procedure to be used for a judicial choice of law determination prior to trial. However, because application of the significant relationships test is fact-dependent, the Court concludes that a pre-trial determination is controlled by the summary judgment rule, Rule 1.510, Fla. R. Civ. P. First, the Court is unaware of any other procedural vehicle that would permit a pre-trial determination of facts. Second, it appears that when summary judgment has been used by the trial courts, the appellate courts have reviewed the orders without comment on the procedure employed. See, e.g., Rush v. Joyner, 540 So. 2d 266 (Fla. 4th DCA 1989); Bishop.

(iii) The Undisputed Facts

The following facts are undisputed:

1. CPH is a wholly owned subsidiary of MAFCO. Before the transaction with Sunbeam in March 1998, CPH was a holding company with an 82% interest in Coleman. CPH is a Delaware corporation with its principal place of business in New York City, New York.

2. MS & Co. is an investment banking firm providing financial and securities services. MS & Co. is a Delaware corporation with its principal place of business in New York City, New York.

3. CPH retained the investment bank of Credit Suisse First Boston ("CSFB") to serve as its financial advisor on the Sunbeam transaction. CSFB is a global investment bank with offices in New York. CPH worked with CSFB personnel in the New York office on the Sunbeam deal.

4. MS & Co. served as Sunbeam's financial advisor during the negotiations that led to the Coleman acquisition. MS & Co.'s contract with Sunbeam was governed by New York law.

5. New York counsel represented CPH, MS & Co., and MSSF during the course of the negotiations and closing of the Sunbeam transaction.

NOT A CERTIFIED COPY

012283

6. CPH retained the accounting firm of Ernst & Young, a national accounting firm with offices in New York. CPH worked with accountants in the New York office on the Coleman deal.

7. MSSF is a financial services company that provides credit services to its clients. MSSF is a Delaware corporation with its principal place of business in New York .

8. MAFCO relied on New York-based personnel at CSFB for financial services; on Wachtell, Lipton Rosen & Katz, a New York based law firm, for legal advice; and on Ernst & Young for accounting services.

9. There were numerous telephone calls between MS & Co. personnel and Sunbeam personnel in Florida concerning MS & Co.'s retention; its work for Sunbeam; and the Coleman transaction.

10. MS & Co. personnel met with Sunbeam personnel in Florida several times to discuss MS & Co.'s retention as Sunbeam's financial advisor, strategy, potential acquisition candidates, and merger issues.

11. On or about September 23 and 24, 1997; October 29, 1997; and March 4 and 5, 1998, MS & Co. personnel conducted due diligence at Sunbeam's Florida offices.

12. MS & Co. corresponded with Sunbeam at its Florida offices on a variety of issues dealing with its representation of Sunbeam and the merger.

13. On or about December 18, 1997, representatives of Sunbeam and MAFCO met in Florida to discuss a potential transaction involving Sunbeam and Coleman.

14. On or about February 3, 1998, Sunbeam personnel met with an Arthur Andersen representative at Sunbeam's Florida offices in connection with the Coleman transaction.

15. On March 5, 1998, MS & Co. personnel attended a drafting session in Florida in connection with the subordinated debenture offering.

16. On or about March 12, 1998, MS & Co. personnel conducted an accounting due diligence conference call with Arthur Andersen personnel in Florida regarding Sunbeam's financial circumstances.

17. The March 19, 1998 press release was publicly issued from Sunbeam's headquarters

NOT A CERTIFIED COPY

012284

in Delray Beach, Florida; was drafted by Sunbeam's lawyers at the New York offices of Skadden Arps; was reviewed by MS & Co. in New York; and was received by CPH in New York.

18. The statements by Lawrence Bornstein of Arthur Andersen concerning Sunbeam's earnings shortfalls took place at the offices of Global Financial Press in New York.

19. Any representations that MAFCO and CPH made to MSSF at the December 12, 1997 and January 29, 1998 meetings were made and received in New York.

20. On February 4, 1998, Coleman sent Sunbeam a proposed Confidentiality Agreement in connection with the proposed merger. Sunbeam executed the Confidentiality Agreement. The Confidentiality Agreement provided that New York law applies to it.

21. On February 27, 1998, Sunbeam and CPH's boards of directors met in New York and approved the merger agreement. MS & Co. made a presentation to Sunbeam's Board of Directors at the meeting in New York and provided a "fairness opinion" prior to the Board's approval of the transaction.

22. Sunbeam and CPH signed the merger agreement later that day in New York.

23. The merger agreement specified that the acquisition would close in New York and that all share certificates and other consideration would be exchanged by the parties at the closing in New York.

24. Written notice of changes in circumstances having a material adverse effect was to be delivered to CPH's wholly owned subsidiary in Fort Lauderdale, Florida. No notice was received.

25. On March 29, 1998, Sunbeam and CPH entered into a Registration Rights Agreement which provided for the registration by Sunbeam of 14,099,749 shares of Sunbeam common stock that were issued to a wholly owned subsidiary of CPH. The Registration Rights Agreement provided that it was governed by New York law without regard to New York conflicts of law principles.

26. The Sunbeam transaction closed on March 30, 1998 in New York.

27. CPH tendered its shares of Coleman to Sunbeam in New York. At the time of the transaction, Coleman was a public company traded on the New York Stock Exchange.

NOT A CERTIFIED COPY

012285

28. CPH accepted shares of Sunbeam stock in New York. At the time of the transaction, Sunbeam was a public company traded on the New York Stock Exchange.

29. The Sunbeam financing transactions were closed in New York on March 31, 1998.

30. MSSF loaned Sunbeam $680 million in New York in part to be used for the Coleman deal.

D. *Step Three - Application of the Law to the Facts*

(i) Negligent Misrepresentation - CPH v. MS & Co.

Restatement (Second) of Conflict of Laws §148 (1971) provides:

> §148. Fraud and Misrepresentation
>
> (1) When the plaintiff has suffered pecuniary harm on account of his reliance on the defendant's false representations and when the plaintiff's action in reliance took place in the state where the false representations were made and received, the local law of this state determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied.
>
> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, as may be present in the particular case in determining the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties:
>
> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
>
> (b) the place where the plaintiff received the representation,
>
> (c) the place where the defendant made the representations,
>
> (d) the domicil, residence, nationality, place of incorporation and place of business of the parties,

NOT A CERTIFIED COPY

012286

(e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and

(f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

MS & Co. argues that subsection (1) applies; CPH argues that subsection (2) applies. The correct answer is unclear, since subsection (1) applies only if the false statements were both made and received in the same state, and subsection (2) applies if reliance occurs in whole or in part in a different state that where the representation was made. §148 does not state a rule where the place of reliance and representation are the same, but different from the place where the representation was received.

The representations were received in New York. The actionable part of CPH's reliance occurred in New York, where the contract was entered into and closed. Finally, it is undisputed that the representations relied on in Count I of CPH's Complaint were made in New York. Consequently, New York law controls unless Florida has a more significant relationship under the principles stated in section 6 of the Restatement. It does not. While Florida's public policy provides broader protection for the recipients of false information in commercial transactions, which creates greater incentives for parties to take reasonable care that their representations are correct, that interest is not paramount to New York's, under the principles outlined in section 6. Instead, certainty and predictability in commercial transactions require that New York law apply.

Even if the choice of laws was not dictated by subsection (1), application of subsection (2) would lead to the same result: CPH relied on the statements in New York; it received the representations in New York; the representations were made in New York; the parties are domiciled in New York; and CPH was required to perform in New York.

(ii) Negligent Misrepresentation: MSSF v. MAFCO and CPH

MSSF's claims against MAFCO and CPH are centered on two meetings where MSSF alleges MAFCO and CPH gave inflated synergy projections, on December 12, 1997, and

NOT A CERTIFIED COPY

012287

January 29, 1998. Both were face to face meetings in New York. Consequently, the allegedly false synergy projections were made, received, and relied on in New York. Florida does not have a more significant relationship to the particular issue--the group of people to which MSSF owed a duty--under the principles listed in section 6. Consequently, New York law governs whether MSSF owed a duty to MAFCO and CPH.

(iii) Fraudulent Misrepresentation: CPH v. MS & Co.

As outlined above, section 148 (1) of the Restatement dictates the application of New York law to determine whether reliance on a fraudulent misstatement is justified. Florida does not have a more significant relationship to this issue than New York, based on application of the principles outlined in section 6 of the Restatement. Though Florida has a strong public policy dictating that "(a) person guilty of fraudulent misrepresentation should not be permitted to hide behind the doctrine of caveat emptor," that interest does not override New York's. Besset at 997. Certainty and predictability require that the standards of due diligence governing sophisticated New York domiciled corporations entering into a commercial transaction in New York be governed by New York law.

(iv) Fraudulent Misrepresentation: MSSF v. MAFCO and CPH

Section 148 (1) of the Restatement dictates the application of New York law to determine the due diligence required to find reliance on a false statement reasonable. Application of section 6's principles does not dictate a different result.

(v) Conspiracy and Aiding and Abetting-CPH v. MS & Co.

The Court is unable to apply section 148's principles or conclude whether Florida or New York has the more significant relationship to CPH's aiding and abetting fraud and conspiracy claims, found at Counts II and III of its Complaint.

Both counts claim that MS & Co. actively worked with Sunbeam personnel to manipulate Sunbeam's finances to make it appear that Sunbeam had successfully rebounded from poor performance; to conceal and misrepresent Sunbeam's true financial condition to entice a potential purchaser or investor; and to provide CPH, both through MS & Co. and by materials it scripted for Sunbeam, false and inaccurate financial information to persuade

NOT A CERTIFIED COPY

012288

CPH to agree to, then consummate, a merger with Sunbeam.

It is unclear to the Court how, if at all, the two claims differ. However, if MS & Co. were found liable based on allegations of its participation with Sunbeam personnel in an elaborate fraud, then it would be liable for the entire fraud. See Hoch v. Rissman, Weisberg, Barrett, 742 So. 2d 451 (Fla. 5th DCA 1999), rev. den. 760 So. 2d 948 (Fla. 2000); Ford v. Rowland, 562 So. 2d 731 (Fla. 5th DCA 1990), rev. den. 574 So. 2d 141 (1990); Nicholson v. Kellin, 481 So. 2d 931 (Fla. 5th DCA 1985). Further, MS & Co. could be liable for Sunbeam's actions prior to its retention if it joined with Sunbeam to perpetuate a fraud with knowledge of its general purpose and scope. See James v. Nationsbank Trust Co. (Florida), N.A., 639 So. 2d 1031 (Fla. 5th DCA 1994). The fraud alleged is largely Florida based, and the location of its ultimate victim incidental. Florida has a strong public policy in favor of protecting the recipients of fraudulent misrepresentations. Besset. That policy is more clearly implicated if CPH is able to prove that MS & Co. was an actor in a Florida-based fraud. The allegations of conspiracy are disputed, precluding summary judgment at this juncture on the choice of law issue.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law is Granted, in part. As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 17 day of August, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

NOT A CERTIFIED COPY

01228982

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

NOT A CERTIFIED COPY

012290

ARTHUR ANDERSEN

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4133

March 19, 1998

Morgan Stanley & Co., Inc.
1585 Broadway
New York, New York 10036-8293

Gentlemen:

We have audited the consolidated balance sheets of Sunbeam Corporation and subsidiaries (the "Company") as of December 28, 1997 and December 29, 1996 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997 included in the offering memorandum for the $2,014,000,000 Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018; our report with respect thereto is also included in the offering memorandum. The offering memorandum dated March 19, 1998 is herein referred to as the Offering Memorandum.

This letter is being furnished in reliance upon your representation to us that –

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

NOT A CERTIFIED COPY

EXHIBIT
MORGAN STANLEY
9-ID
10/29/03 KS

0122693

In connection with the Offering Memorandum—

1. We are independent certified public accountants with respect to the Company under rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations.

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 28, 1997; although we have conducted an audit for the fiscal year ended December 28, 1997, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 28, 1997, and for the fiscal year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the financial position, results of operations or cash flows as of any date or for any period subsequent to December 28, 1997.

4. For purposes of this letter, we have read the minutes of meetings of the Board of Directors of the Company and its subsidiaries as set forth in the minute books at March 16, 1998, except for the meetings of the Board of Directors which took place on February 3, 1998 and February 28, 1998, for which we have read the agendas. Officials of the Company have advised us that these constitute a complete record of minutes of all such meetings through March 16, 1998. We have carried out other procedures to March 16, 1998, as follows (our work did not extend to the period from March 17, 1998, to March 19, 1998, inclusive):

   a. With respect to the period from December 29, 1997 to February 1, 1998, we have

      (i) Read the unaudited consolidated financial statements of the Company and its subsidiaries for the period from December 29, 1997 to February 1, 1998 furnished us by the Company, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to February 1, 1998, were available. The financial information for the period from December 29, 1997 to February 1, 1998 is incomplete in that it omits the statements of cash flows and other disclosures.

      (ii) Inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated

NOT A CERTIFIED COPY

012294

financial statements referred to in a(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the Offering Memorandum.

The foregoing procedures do not constitute an audit conducted in accordance with generally accepted auditing standards. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that –

   a. At February 1, 1998, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated net current assets or consolidated shareholders' equity of the Company as compared with amounts shown in the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum, except as follows (in thousands):

	December 28, 1997	February 1, 1998
Long-term debt	$ 194,580	$ 219,449
Shareholders' Equity	531,937	525,913

   b. For the period from December 29, 1997, to February 1, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in net income (loss), except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows (in thousands):

	The Period	
	December 30, 1996 Through February 2, 1997	December 29, 1997 through February 1, 1998
Net sales	$ 72,945	$ 28,984
Net income (loss)	4,786	(9,510)

NOT A CERTIFIED COPY

6. As mentioned in 4(a), Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to February 1, 1998, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after February 1, 1998 have been, of necessity, even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether (a) at March 16, 1998, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or shareholders' equity of the consolidated companies as compared with amounts shown on the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum; or (b) for the period from December 29, 1997, to March 16, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the amount of net income. On the basis of these inquiries and our reading of the minutes and meeting agendas described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows:

   a. Between December 29, 1997 and March 16, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased from $194,580,000 to $299,580,000 as a result of drawings on the Company's credit facility and (iii) consolidated shareholders' equity has decreased primarily because of net losses during the period offset, in part, by contributions received for stock option exercises.

   b. For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997. Additionally, the decrease in consolidated net sales during the period as compared to the corresponding period of the preceding year results, in part, from a non-recurring sale in January 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the Company's November 1996 restructuring. Net income decreased primarily due to the aforementioned sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers.

NOT A CERTIFIED COPY

c. Although the Company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to $143,499,000 for the corresponding period of the preceding year.

7. At your request, we have –

a. Read the unaudited pro forma condensed consolidated balance sheet as of December 28, 1997, and the unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 28, 1997 included in the Offering Memorandum.

b. Inquired of certain officials of the Company who have responsibility for financial and accounting matters about –

(i) The basis for their determination of the pro forma adjustments, and

(ii) Whether the unaudited pro forma condensed consolidated financial statements referred to in 7a comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

c. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. The foregoing procedures would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representation about the sufficiency of such procedures for your purposes.

NOT A CERTIFIED COPY

ARTHUR ANDERSEN

8. Nothing came to our attention as a result of the procedures specified in paragraph 7, however, that caused us to believe that the unaudited pro forma condensed consolidated financial statements referred to in 7a included in the Offering Memorandum do not comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements. Had we performed additional procedures or had we made an examination of the pro forma condensed consolidated financial statements, other matters might have come to our attention that would have been reported to you.

9. Our audit of the consolidated financial statements for periods referred to in the introductory paragraph of this letter was comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

10. We compared the information included under the heading "Selected Historical Financial Data" with the requirements of item 301 of Regulation S-K. We also inquired of certain officials of the Company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of item 301 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 301 of Regulation S-K.

11. For purposes of this letter, we have also read the items identified by you on the attached copy of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

✓ Compared to corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

A Recomputed from corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

NOT A CERTIFIED COPY

012298

ARTHUR ANDERSEN

- Compared to, or recomputed from, amounts included in an unaudited schedule or report prepared by the Company, which we were informed by officers of the Company responsible for accounting matters, were derived from the accounting records of the Company, and found them to be in agreement. We confirmed the mathematical accuracy of the schedule or report and found it to be mathematically accurate. We make no representations regarding the completeness or accuracy of the Company's assumptions underlying such schedule or report.

- Compared to, or recomputed from, the accounting records of the Company and noted agreement.

- Compared to, or recomputed from, corresponding amounts appearing in the Company's unaudited proforma condensed combined financial statements included in the Offering Memorandum and found them to be in agreement.

12. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of amounts reflected in the Offering Memorandum. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

13. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Arthur Andersen L.L.P.

NOT CERTIFIED COPY

012269

Sunbeam.

(SUNBEAM)(SOC) Sunbeam States First Quarter Revenues May Be Lower than Street Estimates

DELRAY BEACH Fla.--March 19, 1998--Sunbeam Corporation (NYSE:SOC) said today that is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam(R) and Oster(R) brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995.

Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

CONTACT: Richard Goudis
516/243-2100

NOT A CERTIFIED COPY

1230

EXHIBIT
MS-39
RWB 1-14-04

EXHIBIT
6/6
ANR 4/13/00

Ruth fax 212- 761-0539
Alan 212 450-4990
David 212 735-3597

January Consolidated Net Sales Actual	29.0	72M 2 Months
February Consolidated Net Sales Actual	43.0	
March International Net Sales thru 3/15/98(1)	6.9	15 days
March International Net Sales Forecast 3/16/98 thru 3/29/98 (1)	39.5	15 days
March Domestic Net Sales thru 3/17/98 (2)	22.7	
March Domestic Open Orders @ 3/17/98 Net Sales (2)	27.6	
	168.7	

Potential Orders

Home Depot	14.8
Menard's	11.7
WalMart	9.4
Sears	7.5
Costco	4.0
Service	3.3
Lowes	2.7
KMart	2.5
PHD	2.3
Hills	2.3
QVC	2.2
Caldor	2.1
M-Bloc	2.0
Target	1.7
Ward's	1.4
Scotty's	1.1
Rose's	0.8
Bradlees	0.8
AAFES	0.7
Ames	0.7
Pergament	0.6
Amer Drug	0.5
BJ's	0.5
Other	10.4
	86.0

Prob Sears down

86.0 ?

Sustain	254.7	0.5%	% range
Low	267.0	5.3%	
High	293.0	15.6%	
Plan Q1'97	253.5		

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

NOT A CERTIFIED COPY

2365
EXHIBIT NO.
MAC WISE

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

EXHIBIT
MS - 41
MWR 1-14-04

Sunbeam

LEGAL DEPARTMENT FACSIMILE

EXTREMELY CONFIDENTIAL-ATTORNEY/CLIENT COMMUNICATION

DELIVER TO ADDRESSEES IMMEDIATELY

TRANSMIT TO	FACSIMILE NUMBER	TELEPHONE NUMBER
William Strong	(312) 706-4728	(312) 706-4400
James Stynes	(212) 761-0523	(212) 761-7772
Robert Kitts	(212) 761-0501 (alt.)	(212) 761-4822
John Tyree	(212) 761-0358	(212) 761-7738
cc:		
Fin Fogg	(212) 735-3597	(212) 735-3900
Rich Easton	(302) 651-3001	(302) 651-3040

NUMBER OF PAGES (INCLUDING COVER PAGE): 5

FROM: David C. Fannin

DATE: April 3, 1998

MESSAGE

We are issuing a press release shortly, copy attached. We have been working on this since yesterday and have only just completed it. Given the rumors flying around in the markets, we feel we must get it out as quickly as possible, but I wanted to give you a heads up. On the issue of Rich Goudis, we learned at 8 a.m. this morning that Rich is leaving to take a position as VP Finance for Rexall Sundown, based nearby. It is a promotion move for Rich and the parting is entirely amicable. We wish him well.

This confidential facsimile transmission is intended only for the individual named as addressee above. If you receive this facsimile transmission in error, please do not read it but instead call collect (561) 243-2125. We will then provide you with further instructions. If this transmission is incomplete or illegible, please call us at (561) 243-2125 or send facsimile to (561) 243-2191. Thank you for your cooperation.

Sunbeam Corporation * 1615 South Congress Avenue * 2nd Floor * Delray Beach, FL 33445

NOT A CERTIFIED COPY

0123305

EXHIBIT
MS-58
RWB 1-15-04

04/02/98 23:23 DAVID C FANNIN → 302 651 3001 NO.895 001

FOR IMMEDIATE RELEASE

SUNBEAM CORPORATION LOWERS FIRST QUARTER SALES AND EARNINGS EXPECTATIONS; NAMES LEE GRIFFITH PRESIDENT OF HOUSEHOLD PRODUCTS BUSINESS

Delray Beach, FL, (April 3, 1997) -- Sunbeam Corporation (NYSE:SOC) previously disclosed on March 19 that first quarter results could be below analysts' estimates. The Company stated today that it now expects first quarter sales to be somewhat below 1997 levels. Sales are expected to be approximately 5% below last year's first quarter. Due to the reduced level of sales, significant one time charges and costs associated with the Company's acquisitions of The Coleman Company, Signature Brands USA, Inc. and First Alert, Inc., the Company expects to show a loss for the quarter.

Al Dunlap, Sunbeam's Chairman and CEO, stated, "Our first quarter started slowly this year after an excellent Holiday Season; however, we fully expected our grill sales, especially reorder business late in the quarter, to meet a level which was not realized. Grill reorder business can be difficult to forecast, as the demand may come late in the first quarter or in the second quarter. In addition, we believe retailers are continuing to manage down their inventories, although retail sales reports are encouraging. We were offered opportunities to sell additional product at margins which we felt were unacceptable, and we rejected that business. We felt it was more important to preserve the integrity of our brands and not to sacrifice the future of our business for short term results. We had an excellent March and had expected until the very end of the quarter that we could exceed last year's results."

Mr. Dunlap added, "While there are reasons for our sales shortfall in the quarter, we clearly are not satisfied with this performance and have taken decisive action to deal with the

NOT A CERTIFIED COPY

012306

04/02/98 23:23 DAVID C FANNIN → 202 651 3001 NO.899 D02

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0639324
16div-019493

situation."

"First, Don Uzzi, who was EVP Consumer Products, has been terminated. We determined that we needed new leadership in the management of our business units. We are pleased to announce that Lee Griffith, who has most recently served as Vice President of Sales for Sunbeam Corporation, has been named President of our Household Products Division. Lee formerly served as Chairman, President & CEO of Scott Paper Limited (Canada) and has over 30 years of experience in the consumer products industry. Lee is a very high quality executive who has run all aspects of a business, and he obviously is extremely familiar with Sunbeam's household products, distribution and customers. Lee is eager to assume these new responsibilities and is hard at work on refining the organization of our Household Products business."

"In addition, we have accelerated a search process which we had initiated when we first determined to pursue a strategy of growth through acquisitions and consolidation of our industry. We are recruiting a very senior executive with broad based experience in running all aspects of the business, with full profit and loss responsibility, to serve as President of our Outdoor Leisure business, which will include both the Coleman core business and Sunbeam's outdoor cooking business. We are building a strong organization below these two senior positions and already have identified good executives at the companies we are acquiring who will contribute to the future success of the combined companies. Our search is nearing its final stages, and we look forward to announcing the results in the near future."

"Over the past three months, Russ Kersh and I have been working virtually full time on the process of acquiring three new businesses and making plans for the consolidation of those businesses into Sunbeam. We have focused on this activity because we believe it is extremely

NOT A CERTIFIED COPY

012307

P03 NO.899 23:24 DAVID C FANNIN → 302 651 3001

important to the long term success of our business. Russ and I will be much more actively involved in the day to day operations of the businesses, especially the newly acquired Coleman business, while we are intensively engaged in consolidating the businesses. In particular, Russ will serve as interim head of the outdoor leisure business and will spend a considerable amount of time in Wichita until we name a President of that division."

Mr. Dunlap added, "The real importance of 1998 is as a year of consolidation and restructuring of the businesses we recently acquired in order to position Sunbeam to emerge in 1999 as a powerful house of global brands, including Sunbeam(R), Oster(R), Coleman(R), Mr. Coffee(R), First Alert(R), East Pak(R), Powermate(R) and many others. We believe in the fundamentals of our business and our consolidation strategy, although it is not unusual to have growing pains from time to time. We will get the cost structure right at the recently acquired companies, and, with our recently announced strategy of moving from 70/30 to 50/50 outsourcing, we see even more opportunities for cost improvement."

Mr. Dunlap concluded, "I want to stress that getting the right cost structure is only the first step in the process of building a powerful global business. The key assets being acquired by Sunbeam are powerful brands, which with our already highly recognized Sunbeam and Oster brands, will afford us the opportunity for tremendous growth around the globe."

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Form

NOT A CERTIFIED COPY

012308

04/02/98 23:24 DAVID C FANNIN → 302 651 3001 NO. 899 D04

10-K for the period ended December 28, 1997, filed with the Securities and Exchange Commission.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name consumer products. The Company's Sunbeam® and Oster® brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

# # #

Contact: Russell Kersh
Sunbeam Corporation
(561) 243-2100

NOT A CERTIFIED COPY

0123091

005 NO.899 DAVID C FANNIN → 302 651 3001 23:24

MS

DEPOSITION
EXHIBIT # 70
FOR ID TRN
4-8-04

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

227 WEST MONROE STREET
CHICAGO, ILLINOIS 60606
TELEPHONE: (312) 236-8080
FACSIMILE: (312) 236-8595

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)

COUNSEL

WILLIAM T. ALLEN*
LAWRENCE P. KING
PETER D. McKENNA
NORMAN REDLICH
JOHN M. RICHMAN
LEONARD M. ROSEN
AMY R. WOLF

MICHAEL S. KATZKE
DEBORAH L. PAUL
TREVOR S. NORWITZ
TONI P. REAMER
STEVEN M. ABRAMOWITZ
BRADLEY A. ROBINS
STUART C. BERMAN
YOCHEVED COHEN
BEN M. GERMANA
DAVID R. LURIE
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEPHEN R. BLACKLOCKS
DAVID C. BRYAN
STEVEN A. COHEN
ERIC L. PRESS
GAVIN D. SOLOTAR
ADRIENNE ATKINSON
JUDITH G. FEDERBUSH
LAWRENCE GERSCHWER
DAVID C. KARP
BARBARA S. KOHL
MIRIAM P. LONGCHAMP
HOWARD A. MERGELKAMP III
EDWARD A. STELZER
ELIZABETH K. STEPP
KEITH M. WOFFORD
MARC D. ASHLEY
JOSHUA R. CAMMAKER
SETH GARDNER
MARK GORDON
BARRY R. KLEINER
JOSEPH D. LARSON
LAWRENCE S. MARROW
THAO P. MATLOCK
JEANNEMARIE O'BRIEN
MELANIE L. OXHORN
JARED M. RUSMAN
EUGENE P. STEIN
SHEENA WRIGHT
LARA ADAMSONS
SCOTT L. BLACK
JAMES COLE, JR.
STEPHEN R. DiPRIMA
DAVID L. ELSBERG
DOUGLAS C. FREEMAN
NANCY B. GREENBAUM
SALIL KUMAR
FRANK L. MILLER
ARRIE P. PARK
JULIUS R. SCHWARZ
ALEXANDER SHARNES
KEVIN P. SHEEHAN
SARAH E. STRASSER
GARY M. SWIDLER
WAYNE W. YU
NICOLE E. CLARK
BRUCE N. GOLDBERGER
JEFFREY B. GOLDEN
RICHARD B. HARDEGREE
MICHAEL F. MASLANSKY

* OF DELAWARE BAR ONLY

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE GEWERTZ
LEONARD W. NUSSBAUM
RICHARD D. KATCHER
DOUGLAS S. LIEBHAFSKY
STEVEN M. BARNA
CHARLES T. MCDERRICK
CHAIM J. FORTGANG
PETER C. CANELLOS
MICHAEL W. SCHWARTZ
ALLAN A. MARTIN
BARRY A. BRYER
LAWRENCE B. PEDOWITZ
ROBERT B. MAZUR
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
DAVID M. EINHORN
KENNETH B. FORREST
MEYER G. KOPLOW
THEODORE N. MIRVIS
EDWARD D. HERLIHY
RICHARD D. FEINTUCH
DANIEL A. NEFF
ERIC M. ROTH
WARREN R. STERN
ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
PAUL K. ROWE
MICHAEL B. BENNER
MARC WOLINSKY
DAVID GRUENSTEIN
PATRICIA A. VLAHAKIS
STEPHEN G. GELLMAN
SETH A. KAPLAN
BARBARA ROBBINS
STEVEN A. ROSENBLUM
PAMELA S. SEYMON
STEPHANIE J. SELIGMAN
ERIC S. ROBINSON
ELLIOTT V. STEIN
JOHN F. SAVARESE
SCOTT K. CHARLES
ANDREW C. HOUSTON
PHILIP MINDLIN
DAVID S. NEILL
JODI J. SCHWARTZ
ADAM O. EMMERICH
CRAIG M. WASSERMAN
ADAM D. CHINN
GEORGE T. CONWAY III
RALPH M. LEVENE
RICHARD G. MASON
KAREN G. KRUEGER
DOUGLAS K. MAYER
DAVID M. SILK
ROBIN PANOVKA
DAVID A. KATZ
MITCHELL S. PRESSER
ILENE KNABLE GOTTS
JEFFREY A. BOFFA
DAVID M. MURPHY
JEFFREY M. WINTNER

March 30, 1998

VIA TELECOPIER AND FEDERAL EXPRESS

Susie Youn, Esq.
Staff Attorney
Division of Enforcement
United States Securities and
Exchange Commission
Central Regional Office -
1801 California St., Suite 4800
Denver, Colorado 80202-2648

Re: Trading in the Securities of Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (MD-1200)

Dear Ms. Youn:

We are counsel to The Coleman Company, Inc. ("Coleman" or the "Company"). This letter is in response to your letter of March 3, 1998, requesting that Coleman voluntarily provide to the Commission certain information relating to the March 2, 1998 announcement concerning Sunbeam Corporation and Coleman.

The information herein and provided herewith represents a reconstruction of events and was compiled based upon a reasonable review of the documents in the possession of Coleman and reasonable inquiries made by Coleman of its personnel and certain of its legal and other advisors and representatives. The information is based in substantial part on the recollection of the individuals involved, as many of the events leading up to the March 2

NOT ACERTIFIED COPY

0123111

CP 011337
CONFIDENTIAL

announcement were not documented. In addition, although the Company of course seeks to provide the SEC with accurate information, the information included herein and provided herewith was collected on an expedited basis and it is possible that supplementation, correction and/or modification by the Company may be needed in the future.

A chronology of events leading up to the March 2, 1998 announcement is attached hereto as Exhibit A. A list of individuals known to Coleman who had knowledge of a potential transaction between Coleman and Sunbeam prior to the March 2 announcement (other than those already identified in the Chronology) is attached hereto as Exhibit B. In response to your request for the identity of persons from whom the Company received inquiries regarding the acquisition prior to the March 2 announcement:

(i) during a February 27, 1998 telephone conversation between Jerry W. Levin, the Chairman of Coleman, and Timothy B. Horne, the Chief Executive Officer of the Charbroil Division of W.C. Bradley Co., Mr. Horne told Mr. Levin he had heard rumors that Coleman was contemplating a transaction with Sunbeam. Mr. Levin did not respond.

(ii) Marc Shiffman, the person principally responsible for investor relations at Coleman, received several calls from buy- and sell-side analysts, equity holders and bondholders in February 1998, particularly following the February 19 release of Coleman's financial results. During the course of some of those discussions, inquiries were made of Mr. Shiffman regarding the possibility of a transaction with Sunbeam. Mr. Shiffman, who at that time was not aware that any discussion had taken place between Coleman and Sunbeam, does not recall which specific individuals made such inquiries. Mr. Schiffman responded to all such inquiries by stating that it is Coleman's policy not to comment on rumors.

The materials attached hereto bear Bates numbers COLEMAN 00001-COLEMAN 00007, and are marked "confidential." We request confidential treatment for this letter and the accompanying materials pursuant to 18 U.S.C. § 1905, 17 C.F.R. § 200.83, and other applicable laws and regulations and further request that these materials not be made part of any public record and not be disclosed to any person.

The information contained in this letter and the accompanying materials is maintained in confidence and is not available to competitors or other parties. In addition, the information has been provided voluntarily in connection with the above-referenced inquiry. We believe that the disclosure of this information could have adverse affects on our client's competitive position and/or would constitute an unwarranted invasion of personal privacy. Accordingly, such documents are exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(6) and (b)(7), and disclosure is prohibited pursuant to 18 U.S.C. § 1905.

If any person (including any government employee who is not an employee of the Securities and Exchange Commission) should request an opportunity to inspect or copy this

NOT A CERTIFIED COPY

012312

letter or the accompanying materials, we request that we be immediately notified of any such request, be furnished with a copy of all documents pertaining to such requests (including, but not limited to, the request itself or any agency determinations with respect to such request) and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. If the Securities and Exchange Commission is not satisfied that the information set forth in this letter and the accompanying materials is exempt (or protected) from disclosure pursuant to the Freedom of Information Act, we stand ready to supply further particulars, and we would request in such event a hearing on this claim of exemption.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any such whatsoever which are made by or at the direction of any employee of the Securities and Exchange Commission (or any other governmental agency) which incorporate, include or relate to any of the confidential information contained in this letter or the accompanying materials.

If you have any questions about the foregoing, please contact the undersigned at 212-403-1000.

Very truly yours,

Paul K. Rowe

cc: Freedom of Information Act Officer
Joram C. Salig, Esq.
Steven R. Isko, Esq.

NOT A CERTIFIED COPY

Exhibit A

Early Dec. 1997	Albert J. Dunlap (Chairman and Chief Executive Officer, Sunbeam), called Ronald O. Perelman (Chairman and Chief Executive Officer of Mafco Holdings Inc. ("MacAndrews"), indirectly the largest stockholder of The Coleman Company ("Coleman"), with an interest of in excess of 80%, and a director of Coleman) to talk about a possible transaction involving Sunbeam and Coleman.
Dec. 12, 1997	Jerry Levin (Chairman, Coleman), Paul E. Shapiro (Executive Vice President and General Counsel, Coleman) and Joseph P. Page (Executive Vice President and Chief Financial Officer, Coleman) gave a presentation to David C. Fannin (Executive Vice President, General Counsel and Secretary, Sunbeam Corporation ("Sunbeam")), Russell A. Kersch (Vice Chairman and Chief Financial Officer, Sunbeam) and Peter A. Langerman (a director of Sunbeam) on Coleman's business and potential synergies that could result from a combination of Sunbeam and Coleman. Later that day, Mr. Perelman met with Howard Gittis (Vice Chairman of MacAndrews), James R. Maher (also of MacAndrews), Gordon Rich (of Credit Suisse First Boston ("CSFB")) and Mr. Levin and discussed a potential transaction involving Coleman and Sunbeam. Coleman retained CSFB to act as financial advisor in connection with a potential transaction between Sunbeam and Coleman.
Dec. 16, 1997	Messrs. Perelman, Maher, Gittis, Levin and Shapiro, and William G. Nesbitt and Norman J. Ginstling (both of MacAndrews), Donald G. Drapkin (a director of Coleman and an officer of MacAndrews) and Gordon Rich, Robert Duffy and Stephen Geller (all from CSFB) met and discussed a potential transaction involving Coleman and Sunbeam.
Dec. 17, 1997	Messrs. Perelman, Maher, Gittis, Shapiro, Nesbitt, Drapkin, Rich, Duffy and Geller met and discussed a potential transaction involving Coleman and Sunbeam.

NOT A CERTIFIED COPY

Dec. 18, 1997	Messrs. Perelman, Dunlap and Michael Price (President of Franklin Mutual Advisors, Inc., the largest holder of Sunbeam stock) met in Florida to discuss a potential transaction between Coleman and Sunbeam. Mr. Dunlap indicated an interest in acquiring Coleman in a transaction valued in the range of $18-22 per Coleman share. Mr. Perelman advised Mr. Dunlap that the price was too low and indicated that he would not be prepared to support a transaction at that price.
Week of Dec. 22, 1997	Mr. Price called Mr. Gittis and indicated that Sunbeam might be willing to consider a transaction valued as high as $25 per Coleman share. Mr. Gittis indicated that a proposal at that level would not be of interest.
Early Jan.1998	William Reid (a Managing Director of Morgan Stanley, Sunbeam's financial advisor) called Mr. Perelman and advised him that Sunbeam still had interest in a potential transaction with Coleman. Mr. Reid further advised Mr. Perelman that Sunbeam would consider a proposal that involved the payment by Sunbeam of both cash and stock, and that Sunbeam might be prepared to make an offer valued in excess of $25 per share. Mr. Perelman advised Mr. Reid that he would be willing to discuss supporting a transaction at $30 per share.
Jan. 23, 1998	Mr. Nesbitt met with James B. Stynes, Alexandre J. Fuchs and Tyrone Chang (each from Morgan Stanley) to discuss a potential transaction involving Sunbeam and Coleman.
Jan. 28, 1998	Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton") is retained as special counsel to Coleman.
Jan. 29, 1998	Barry F. Schwartz of MacAndrews telephoned Wachtell Lipton to indicate that a form of confidentiality agreement to be proposed to Sunbeam in connection with the provision of confidential information to Sunbeam will be faxed to Wachtell Lipton for review. Joram C. Salig of MacAndrews faxed the confidentiality agreement to Wachtell Lipton and Paul Shapiro, General Counsel of Coleman, for their respective review. Messrs. Stynes, Fuchs, Chang, Fannin and Kersch met with Messrs. Levin, Page, Shapiro, Maher, Nesbitt and Rich discussed potential synergies that could be created by a combination of Coleman and Sunbeam. They further discussed how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal.

NOT A CERTIFIED COPY

0123115

Feb. 4, 1998	Sunbeam entered into a confidentiality agreement with Coleman.
Feb. 6, 1998	Messrs. Stynes, Fuchs, Chang and Robert Kitts of Morgan Stanley met with Messrs. Maher, Nesbitt, Rich and Duffy in New York. The representatives of Morgan Stanley made a presentation reflecting a transaction in which Coleman would be acquired by Sunbeam for consideration of .6017 Sunbeam shares per Coleman share (which was approximately $22 per share), plus warrants that Morgan Stanley valued at $4 per share. Mr. Maher indicated that MacAndrews would not be prepared to support such a proposal and advised Morgan Stanley that only an all-stock transaction that valued Coleman's stock at $30 per share, or an amount slightly lower than $30 per share if the transaction involved a combination of stock and cash, would be of interest.
Feb. 13, 1998	Messrs. Stynes and Kitts called Mr. Maher and said they were making a "best and final" proposal of .65116 shares of Sunbeam stock per share of Coleman (which was approximately $24.50 per share). Mr. Maher again indicated that the proposal was not of interest.
Feb. 18, 1998	During a telephone conversation between Messrs. Maher and Kitts, Mr. Kitts invited a counter-proposal.
Feb. 19, 1998	Following discussion among Messrs. Perelman and Maher, Mr. Maher conveyed to Mr. Kitts by telephone that management and MacAndrews would be willing to recommend a proposal of .789 Sunbeam shares per Coleman share (which was approximately $30 per share). Mr. Kitts called Mr. Maher later that day and proposed .711 Sunbeam shares per share of Coleman stock (which was approximately $26.90 per share). Mr. Maher indicated that he believed that Coleman would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock per share of Coleman stock (which was approximately $28.20 per share).
Feb. 23, 1998	Messrs. Nesbitt, Page, Levin, Shapiro, Duffy and Geller met with Messrs. Stynes, Fuchs and Richard Goudis (Vice President, Finance and Investor Relations of Sunbeam) in New York to conduct due diligence. Later that day, Messrs. Maher, Nesbitt, Duffy and Chuck Ward (of CSFB) met to discuss the potential transaction.

NOT A CERTIFIED COPY

0123316

That night, Messrs. Nesbitt, Shapiro, Levin, Page, Maher, Duffy and Steven R. Isko (Vice President - Legal of Coleman) and Messrs. Fannin, Kersch, Kitts, Stynes, Fuchs, Chang and Goudis met at Morgan Stanley's offices. Sunbeam made a presentation regarding its 1998 operating projections.

Feb. 24-27, 1998

Coleman and Sunbeam, and their respective advisors, negotiated the structure of the transaction, conducted due diligence, and drafted the necessary documentation.

Feb. 24, 1998

Mr. Levin called the Coleman directors and advised them of the proposed transaction, described the principal terms of the deal, and notified them of a board meeting to be held the following day. Mr. Levin reached all of the directors except Lawrence M. Jones.

Representatives of Coopers & Lybrand visited Coleman's headquarters in Wichita, Kansas on behalf of Sunbeam in order to tour the Wichita plant facility. They were accompanied by Messrs. David Ramone and Joseph Nold, two senior Coleman executives.

Feb. 25, 1998

By February 25, the negotiations had resulted in a proposed transaction in which each share of Coleman common stock would be converted into the right to receive (A) 0.6258 shares of Sunbeam common stock and (B) $4.40 in cash. The Board of Directors of Coleman met. The meeting was attended by directors Jerry W. Levin, Donald G. Drapkin, Frank Gifford, Ann D. Jordan, John A. Moran (by telephone), Ronald O. Perelman, Bruce Slovin and William H. Spoor (by telephone); representatives of Coleman (Joseph P. Page, Paul E. Shapiro and Steven R. Isko); representatives of MacAndrews (Howard Gittis, Barry F. Schwartz, James R. Maher, William G. Nesbitt); representatives of Wachtell Lipton (Adam O. Emmerich, Paul K. Rowe, Michael S. Katzke); and representatives of CSFB (Gordon Rich, Robert Duffy). Directors Lawrence M. Jones and James D. Robinson III did not attend the meeting. Messrs. Levin and Maher and the outside advisers advised the Board of the history of the negotiations, the structure of the transaction, and various legal and financial issues regarding the proposal. The meeting adjourned with the expectation that the directors would meet again on February 27, 1998 to discuss the transaction further.

NOT A CERTIFIED COPY

012317

Feb. 27, 1998	The Board of Directors of Coleman met to consider the proposed transaction. The meeting was attended by directors Levin, Drapkin, Gifford, Jones, Jordon, Moran (by telephone), Perelman, Robinson, Slovin, Spoor (by telephone); representatives of Coleman (Messrs. Page, Shapiro, Isko); representatives of MacAndrews (Messrs. Gittis, Maher and Nesbitt); representatives of Wachtell Lipton (Messrs. Emmerich, Rowe and Katzke); and representatives of CSFB (Messrs. Rich and Duffy). The directors were updated on the status of the transaction, and were advised that that transaction contemplated that each share of Coleman common stock would be converted into the right to receive (A) 0.5677 shares of Sunbeam common stock and (B) $6.44 in cash. The Board heard presentations from Mr. Levin and the outside advisers regarding the structure and terms of the transaction and related financial and legal matters, and the Board approved the transaction.
Feb. 28, 1998	Coleman and Sunbeam executed a final agreement early Saturday morning.
March 2, 1998	Coleman and Sunbeam publicly announced the transaction prior to the opening of the securities markets.

NOT A CERTIFIED COPY

012318

Exhibit B

In addition to the individuals identified in the Chronology, the following individuals were aware of a potential transaction involving Coleman and Sunbeam prior to the public announcement on March 2, 1998:

MacAndrews & Forbes

Lenny Ajzenman
Lorelei Joy Borland
James T. Conroy
Glenn P. Dickes
Jaymie A. Durnan
Irwin Engelman
Steven L. Fasman
Norman J. Ginstling
Richard E. Halperin
J. Eric Hanson
Anthony J. Ian
Robert I. Knibb
Gary L. Leshko
Paul G. Savas
Marvin Schaffer
Todd J. Slotkin
A. Ernst Toth
John Winkel
Laurence Winoker
Gregory J. Woodland

The Coleman Company

Karen C. Clark
James Rasmus
Cynthia Rosel

Credit Suisse First Boston

Ramesh Chakrapani

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Wachtell, Lipton, Rosen & Katz

Andrew R. Brownstein
Michael H. Byowitz
Peter C. Canellos
Steven A. Cohen
David M. Einhorn
Ilene Knable Gotts
Michael W. Jahnke
Karen G. Krueger
Martin Lipton
Frank L. Miller
Deborah L. Paul

Robinson, Lerer & Montgomery

Linda Gosden Robinson
Walter Montgomery
Jim Badenhausen
Mary Ann Dunnell
John Franklin
John Quirk
Carey Monserrate
Deborah Bohac
Julie Lougee
Jennifer Kipe

NOT A CERTIFIED COPY

012320

MS
DEPOSITION
EXHIBIT # 78
FOR ID TRN
4-8-99

REDACTED

Sunbeam.

LEGAL DEPARTMENT FACSIMILE

FACSIMILE COVER PAGE

EXTREMELY CONFIDENTIAL COMMUNICATION/FOR THE ADDRESSEES ONLY

DELIVER TO ADDRESSEES IMMEDIATELY

TRANSMIT TO	FACSIMILE NUMBER	TELEPHONE NUMBER
William Strong	(312) 706-4728	(312) 706-4400
James Stynes	(212) 761-0523	(212) 761-7772
Robert Kitts	(212) 761-0501 (alt.)	(212) 761-4822

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

FROM: David C. Fannin
561-243-2125/ Fax 243-2191

DATE: December 15, 1997

MESSAGE

As discussed with Jim Stynes, here is a one page list of "issues" which C provided to us at our meeting on Friday. These are identified synergies and cost savings in putting the two companies together. There is nothing in here for factory consolidation, whereas we see great opportunity there. My notes reflect that the corporate and international staff are provided on a "fee" basis by the holding company (obviously there is not a totally pure "savings" there as the functions have to exist, and we are not that long on management talent). Items 6 and 7 reflect using the existing C network to sell S products in Japan and Europe. Item 10 assumes closing headquarters functions in Boston, Omaha and Wichita. C has major systems problems and have budgeted $20 million to fix it. We can almost certainly do it for less. Time is more of a factor here than money. We will talk at 1:10 p.m. today. Russ and I will call Jim's number.

This confidential facsimile transmission is intended only for the individual named as addressee above. If you receive this facsimile transmission in error, please do not read it but instead call collect (561) 243-2125. We will then provide you with further instructions. If this transmission is incomplete or illegible, please call us at (561) 243-2125 or send facsimile to (561) 243-2191. Thank you for your cooperation.

Sunbeam Corporation * 1615 South Congress Avenue * 2nd Floor * Delray Beach, FL 33445

MORGAN STANLEY
CONFIDENTIAL
0026587

SB 088523
Confidential Treatment
Under FOIA Requested

NOT A CERTIFIED COPY

012322

16div-019507

1. TRANSFER BBQ LICENSE / Char Broil		
$75 M SALES @ 20%	=	$15M
LOST ROYALTIES		2M
		$13M
2. SYNERGIES RE CG BBQ / Euro Sales		
$15M SALES @ 10%	=	$ 1.5M
3. CORPORATE STAFF [allocate to the businesses]		$15M
4. INTERNATIONAL GROUP STAFF [Save]		$ 2M
5. LATIN AMERICA STAFF		$ 2M
6. C EUROPE NETWORK SELLS S PRODUCTS		
Do 100 in Euro. $100M SALES @ 20%	=	$20M
7. C JAPAN NETWORK SELLS S PRODUCTS		
Do 100 in Japan $25M SALES @ 20%	=	$ 5M
8. FACTORY OUTLET STAFF		$ 1M
9. S CATALYTIC APPLIANCE LINE		
$10M SALES @ 20%	=	$ 2M
10.CONSOLIDATE DIVISION HQ TO DBF		
• EASTPAK – Boston		$ 3M
• POWERMATE – Omaha		$ 5M
• COR – Wichita		$25M
11.CONSOLIDATE DOMESTIC SALESFORCES		$20M
12.ELIMINATE $20M ORACLE EXPENSE (3 YEAR IMPACT) → Have Lotus well on systems.		$ 6.5M
13.ADDITIONAL $25M WRITEOFFS (3 YEAR IMPACT)		$ 8.5M
14.GLOBAL SOURCING RAW MATERIALS		$10M
15.CONSOLIDATION LOGISTICS & WAREHOUSING		$10M
TOTAL IDEAS		$150.5M OPERATING INCOME

Keep Hale, eliminate.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0026588

SB 088524
Confidential Treatment
Under FOIA Requested

012323

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION
EXHIBIT # 80
FOR ID TRN
Y-8-04

LASER CORPORATION

Key Assumptions

Laser Specific

- Laser earnings projections based on I/B/E/S dated 1/21/98
  - 1998E EPS of $2.01 per share ($171.8MM net income)
  - Long-term earnings growth of 20.0% thereafter
  - Implies 1999E EPS of $2.41 per share ($206.2MM net income)
- Laser stock issue price of $41.000 as of market close 1/21/98
- Forward marginal tax rate of 38%

Camper Specific

- Camper earnings projections based on modified CS First Boston report 11/18/97
  - 1998E sales of $1,191.3MM
  - Old goodwill amortization of $11.0MM in 1998 held constant thereafter
  - 1998E operating income of $117.4MM (includes existing goodwill amortization of $11MM)
  - 1998E income from continuing operations of $57.9MM
  - 1998E EPS of $1.08 per share (based on 53.425MM shares)
- Camper long-term earnings growth of 17.5% based on I//B/E/S dated 1/21/98
- Current Camper stock price of $13.94 as of market close 1/21/98

Transaction Specific

- Assumes a 100% stock-financed transaction with purchase accounting
- Non-tax-deductible goodwill amortized over 40 years
- Base case synergies of $75.0MM (6.3% of 1998E Camper sales)
  - $50.0MM of synergies realized in 1998; $75.0MM realized thereafter
  - No impact on earnings from cost of savings
- Transaction costs financed with excess cash at 3.5%

NOT A CERTIFIED COPY

CPH 1426289

012325

16div-019509

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Summary Information

($MM, except per share data)

ACQUIROR: Laser (1)

	EPS	P/E
1998E	$2.01	20.4x
1999P	$2.41	17.0x
2000P	$2.89	
2001P	$3.47	
2002P	$4.17	

I/B/E/S Growth Rate: 20.0%

TARGET: Camper (2)

	EPS	P/E
1998E	$1.08	12.9x
1999P	$1.27	10.9x
2000P	$1.50	
2001P	$1.76	
2002P	$2.07	

I/B/E/S Growth Rate: 17.5%

	Laser (1)	Camper (2)	Total (3)	Contribution % (Laser/Camper)
1998E Sales	$1,576.5	$1,191.3	$2,767.8	57%/43%
1998E EBITDA	385.4	160.4	545.8	71%/29%
1998E EBIT	320.4	117.4	437.8	73%/27%
1998E Net Income	171.8	57.9	229.7	75%/25%
1998 Synergies (p/t)	--	50.0	50.0	
EBIT Margin	20.3%	9.9%	15.8%	
EBIT Margin w/ Syn:	--	14.1%	17.6%	

vs. 178.4 in CSFB report.

vs. 154.4 in CSFB.

Camper Financial Estimates

	1998E	1999P	2000P
Sales			
CSFB Adj.	$1,191.3	--	--
EBITDA			
CSFB Adj.	$160.4	--	--
EBIT			
CSFB Adj.	$117.4	--	--
EPS			
CSFB Adj.	$1.08	$1.27	$1.50
I/B/E/S	0.99	1.16	1.37

NOT A CERTIFIED COPY

CP 038200
CONFIDENTIAL

Notes: (1) Laser EPS estimates represent I/B/E/S median figures from 1/21/98; Other operating figures from Oppenheimer research dated 10/22/97; stock price as of 1/21/98.
(2) Laser financial estimates represent adjusted CSFB figures from 11/18/97 report and company estimates; stock price as of 1/21/98.
(3) Does not include accounting adjustments related to acquisition.

012326

MORGAN STANLEY

CPH 1426290

16div-019510

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Camper Valuation Matrix

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Cur. (3)	1.TM High	1.TM Low	Equity Value/ FY Earnings 1.12M	1997E (4)	1998E (4)	Aggregate Value/ 1.12M Sales	1.12M EBITDA	1.12M EBIT	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT
		Camper Stat. (adj. CSFB)		$13.94	$19.13	$11.50	$6.0	$26.6	$57.9	$1,155.8	$91.0	$52.3	$1,152.5	$123.9	$83.9	$1,191.3	$160.4	$117.4
0.4146 x	$17.00	$911.7	$1,382.9	22.0 %	(11.1)%	47.8 %	N.M. x	34.3 x	15.7 x	1.2 x	15.2 x	26.5 x	1.2 x	11.2 x	16.5 x	1.2 x	8.6 x	11.8 x
0.4207	17.25	925.8	1,397.0	23.8	(9.8)	50.0	N.M.	34.8	16.0	1.2	15.4	26.7	1.2	11.3	16.7	1.2	8.7	11.9
0.4268	17.50	939.9	1,411.1	25.6	(8.5)	52.2	N.M.	35.3	16.2	1.2	15.5	27.0	1.2	11.4	16.8	1.2	8.8	12.0
0.4329	17.75	954.1	1,425.2	27.4	(7.2)	54.3	N.M.	35.9	16.5	1.2	15.7	27.3	1.2	11.5	17.0	1.2	8.9	12.1
0.4390	18.00	968.2	1,439.3	29.1	(5.9)	56.5	N.M.	36.4	16.7	1.2	15.8	27.5	1.2	11.6	17.2	1.2	9.0	12.3
0.4451	18.25	982.3	1,453.4	30.9	(4.6)	58.7	N.M.	36.9	17.0	1.3	16.0	27.8	1.3	11.7	17.3	1.2	9.1	12.4
0.4512	18.50	996.4	1,467.5	32.7	(3.3)	60.9	N.M.	37.5	17.2	1.3	16.1	28.1	1.3	11.8	17.5	1.2	9.1	12.5
0.4573	18.75	1,010.5	1,481.6	34.5	(2.0)	63.0	N.M.	38.0	17.5	1.3	16.3	28.4	1.3	12.0	17.7	1.2	9.2	12.6
0.4634	19.00	1,024.6	1,495.7	36.3	(0.7)	65.2	N.M.	38.5	17.7	1.3	16.4	28.6	1.3	12.1	17.8	1.3	9.3	12.7
0.4695	19.25	1,038.7	1,509.9	38.1	0.7	67.4	N.M.	39.0	17.9	1.3	16.6	28.9	1.3	12.2	18.0	1.3	9.4	12.9
0.4756	19.50	1,052.8	1,524.0	39.9	2.0	69.6	N.M.	39.6	18.2	1.3	16.8	29.2	1.3	12.3	18.2	1.3	9.5	13.0
0.4817	19.75	1,066.9	1,538.1	41.7	3.3	71.7	N.M.	40.1	18.4	1.3	16.9	29.4	1.3	12.4	18.3	1.3	9.6	13.1
0.4878	20.00	1,081.1	1,552.2	43.5	4.6	73.9	N.M.	40.6	18.7	1.3	17.1	29.7	1.3	12.5	18.5	1.3	9.7	13.2
0.4939	20.25	1,095.2	1,566.3	45.3	5.9	76.1	N.M.	41.2	18.9	1.4	17.2	30.0	1.4	12.6	18.7	1.3	9.8	13.3
0.5000	20.50	1,109.3	1,580.4	47.1	7.2	78.3	N.M.	41.7	19.2	1.4	17.4	30.2	1.4	12.8	18.8	1.3	9.9	13.5
0.5061	20.75	1,123.4	1,594.5	48.9	8.5	80.4	N.M.	42.2	19.4	1.4	17.5	30.5	1.4	12.9	19.0	1.3	9.9	13.6
0.5122	21.00	1,137.5	1,608.6	50.7	9.8	82.6	N.M.	42.8	19.6	1.4	17.7	30.8	1.4	13.0	19.2	1.4	10.0	13.7
0.5183	21.25	1,151.6	1,622.7	52.5	11.1	84.8	N.M.	43.3	19.9	1.4	17.8	31.1	1.4	13.1	19.3	1.4	10.1	13.8
0.5244	21.50	1,165.7	1,636.9	54.3	12.4	87.0	N.M.	43.8	20.1	1.4	18.0	31.3	1.4	13.2	19.5	1.4	10.2	13.9
0.5305	21.75	1,179.8	1,651.0	56.1	13.7	89.1	N.M.	44.4	20.4	1.4	18.1	31.6	1.4	13.3	19.7	1.4	10.3	14.1
0.5366	22.00	1,193.9	1,665.1	57.8	15.0	91.3	N.M.	44.9	20.6	1.4	18.3	31.9	1.4	13.4	19.8	1.4	10.4	14.2
0.5427	22.25	1,208.0	1,679.2	59.6	16.3	93.5	N.M.	45.4	20.9	1.5	18.5	32.1	1.5	13.6	20.0	1.4	10.5	14.3
0.5488	22.50	1,222.2	1,693.3	61.4	17.6	95.7	N.M.	45.9	21.1	1.5	18.6	32.4	1.5	13.7	20.2	1.4	10.6	14.4
0.5549	22.75	1,236.3	1,707.4	63.2	19.0	97.8	N.M.	46.5	21.4	1.5	18.8	32.7	1.5	13.8	20.4	1.4	10.6	14.5
0.5610	23.00	1,250.4	1,721.5	65.0	20.3	100.0	N.M.	47.0	21.6	1.5	18.9	32.9	1.5	13.9	20.5	1.4	10.7	14.7
0.5671	23.25	1,264.5	1,735.6	66.8	21.6	102.2	N.M.	47.5	21.8	1.5	19.1	33.2	1.5	14.0	20.7	1.5	10.8	14.8
0.5732	23.50	1,278.6	1,749.7	68.6	22.9	104.3	N.M.	48.1	22.1	1.5	19.2	33.5	1.5	14.1	20.9	1.5	10.9	14.9
0.5793	23.75	1,292.7	1,763.8	70.4	24.2	106.5	N.M.	48.6	22.3	1.5	19.4	33.8	1.5	14.2	21.0	1.5	11.0	15.0
0.5854	24.00	1,306.8	1,778.0	72.2	25.5	108.7	N.M.	49.1	22.6	1.5	19.5	34.0	1.5	14.3	21.2	1.5	11.1	15.1

Notes (1) Based on 56.4 MM common shares outstanding on 9/30/97 from the 9/30/97 10-Q and 3.0 MM options outstanding with an average exercise price of $15.84, on 12/31/96 from the 12/31/96 10-K

(2) Includes Preferred Stock of 30 MM and Total Debt of $401 MM less Cash of $10 MM

(3) Based on the closing share prices on 1/21/98

(4) Estimates from adjusted CSFB equity report dated 11/18/97 on Camper

NOT A CERTIFIED COPY

CP 038201
CONFIDENTIAL

CPH 1426291

16div-019511

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Potential Share Price Analysis - Purchase

($MM, except per share data)

Laser acquires Camper With Synergies

Morgan's Key Analysis

Potential Pricing Matrix - $50.0MM 1998 Synergies and $75.0MM 1999 Synergies

Price / Premium:	$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Pro Forma EPS:	$2.17	$2.70	$2.13	$2.66	$2.09	$2.61	$2.05	$2.57	$2.02	$2.53
1998 P/E Assumed: 12.9 x	$27.89		$27.39		$26.90		$26.43		$25.96	
P/E Blend (Camper/Laser): 100%/0%										
15.0 x 72%/28%	$32.53		$31.95		$31.38		$30.82		$30.28	
15.5 x 65%/35%	$33.62		$33.01		$32.43		$31.85		$31.29	
16.0 x 58%/42%	$34.70		$34.08		$33.47		$32.88		$32.30	
16.5 x 52%/48%	$35.79		$35.14		$34.52		$33.91		$33.31	
17.0 x 45%/55%	$36.87		$36.21		$35.56		$34.93		$34.32	
17.5 x 38%/62%	$37.95		$37.27		$36.61		$35.96		$35.33	
18.0 x 32%/68%	$39.04		$38.34		$37.66		$36.99		$36.34	
18.5 x 25%/75%	$40.12		$39.40		$38.70		$38.02		$37.35	
19.0 x 19%/81%	$41.21		$40.47		$39.75		$39.04		$38.35	
19.5 x 12%/88%	$42.29		$41.53		$40.79		$40.07		$39.36	
20.0 x 5%/95%	$43.38		$42.60		$41.84		$41.10		$40.37	
20.4 x 0%/100%	$44.24		$43.45		$42.67		$41.92		$41.18	

Note: (1) Assumes a current Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

CP 038202
CONFIDENTIAL

MORGAN STANLEY

012328

CPH 1426292

16div-019512

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Synergy and Price Analysis - Purchase

($MM, except per share data)

Laser acquires Camper With Synergies

100% Stock Purchase Analysis - Accretion / (Dilution) (1)

Price/(Premium)		$17.00 / 22.8%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
Implied Exch. Ratio		0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
	Year:	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed	$0.0	-0.3%	0.2%	-2.2%	-1.6%	-4.1%	-3.4%	-5.9%	-5.1%	-7.7%	-6.8%	-9.4%	-8.4%	-11.1%	-10.0%	-12.7%	-11.6%
(% of CLN LTM Sales)	0.0%																
	$10.0	2.6%	2.6%	0.6%	0.7%	-1.3%	-1.1%	-3.1%	-2.8%	-4.9%	-4.5%	-6.7%	-6.2%	-8.4%	-7.8%	-10.1%	-9.4%
	0.9%																
	$20.0	5.4%	5.0%	3.4%	3.1%	1.5%	1.3%	-0.4%	-0.5%	-2.2%	-2.2%	-4.0%	-3.9%	-5.7%	-5.6%	-7.5%	-7.2%
	1.7%																
	$30.0	8.3%	7.3%	6.3%	5.4%	4.3%	3.6%	2.4%	1.8%	0.5%	0.0%	-1.3%	-1.7%	-3.1%	-3.4%	-4.8%	-5.0%
	2.6%																
	$40.0	11.1%	9.7%	9.1%	7.8%	7.1%	5.9%	5.1%	4.1%	3.2%	2.3%	1.4%	0.6%	-0.4%	-1.1%	-2.2%	-2.8%
	3.5%																
	$50.0	14.0%	12.1%	11.9%	10.2%	9.9%	8.3%	7.9%	6.4%	6.0%	4.6%	4.1%	2.8%	2.2%	1.1%	0.4%	-0.6%
	4.3%																
	$60.0	16.9%	14.5%	14.7%	12.5%	12.7%	10.6%	10.7%	8.7%	8.7%	6.8%	6.8%	5.1%	4.9%	3.3%	3.1%	1.6%
	5.2%																
	$70.0	19.7%	16.9%	17.6%	14.9%	15.5%	12.9%	13.4%	11.0%	11.4%	9.1%	9.5%	7.3%	7.6%	5.5%	5.7%	3.8%
	6.1%																
	$80.0	22.6%	19.3%	20.4%	17.2%	18.3%	15.2%	16.2%	13.3%	14.1%	11.4%	12.2%	9.5%	10.2%	7.7%	8.3%	6.0%
	6.9%																

Note. (1) Assumes a current Camper stock price of $13.94 and a Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

CP 038203
CONFIDENTIAL

012329

MORGAN STANLEY

CPH 1426293

16div-019513

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Synergy and Price Analysis - Pooling

($MM, except per share data)

Laser acquires Casper With Synergies

Irrelevant

100% Stock Pooling Analysis - Accretion / (Dilution) (1)

Price/(Premium):	$17.00 / 22.0%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
Implied Exch. Ratio:	0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
Year:	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed $0.0 (% of CY'98 Sales) 0.0%	6.0%	5.4%	4.7%	4.1%	3.4%	2.8%	2.1%	1.5%	0.8%	0.3%	-0.4%	-0.9%	-1.6%	-2.1%	-2.7%	-3.2%
$10.0 0.9%	8.9%	7.8%	7.5%	6.5%	6.1%	5.1%	4.8%	3.8%	3.6%	2.6%	2.3%	1.3%	1.1%	0.1%	-0.1%	-1.1%
$20.0 1.7%	11.7%	10.2%	10.3%	8.8%	8.9%	7.5%	7.6%	6.1%	6.3%	4.8%	5.0%	3.6%	3.8%	2.3%	2.5%	1.1%
$30.0 2.6%	14.6%	12.6%	13.1%	11.2%	11.7%	9.8%	10.4%	8.4%	9.0%	7.1%	7.7%	5.8%	6.4%	4.6%	5.2%	3.3%
$40.0 3.5%	17.5%	15.0%	16.0%	13.5%	14.5%	12.1%	13.1%	10.7%	11.7%	9.4%	10.4%	8.1%	9.1%	6.8%	7.8%	5.5%
$50.0 4.3%	20.3%	17.4%	18.8%	15.9%	17.3%	14.4%	15.9%	13.0%	14.5%	11.7%	13.1%	10.3%	11.7%	9.0%	10.4%	7.7%
$60.0 5.2%	23.2%	19.8%	21.6%	18.2%	20.1%	16.8%	18.6%	15.3%	17.2%	13.9%	15.8%	12.6%	14.4%	11.2%	13.0%	9.9%
$70.0 6.1%	26.1%	22.2%	24.5%	20.6%	22.9%	19.1%	21.4%	17.6%	19.9%	16.2%	18.5%	14.8%	17.1%	13.4%	15.7%	12.1%
$80.0 6.9%	28.9%	24.5%	27.3%	23.0%	25.7%	21.4%	24.1%	19.9%	22.6%	18.5%	21.2%	17.0%	19.7%	15.6%	18.3%	14.3%

NOT A CERTIFIED COPY

Note (1) Assumes a current Casper stock price of $13.94 and a Laser stock issue price of $41.00.

012330

CPH 1426294

16div-019514

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Jan 23, 1998 9:41

PRELIMINARY DRAFT

LASER CORPORATION

Transaction Structure Analysis

($MM, except per share data)

Laser acquires Camper With Synergie '98 $50.0MM; $75.0MM after

100% Stock

Offer Price Per Share:		$16.000	$17.000	$18.000	$19.000	$20.000	$21.000	$22.000	$23.000	$24.000
Premium to Market ($13.938)		14.8 %	22.0 %	29.1 %	36.3 %	43.5 %	50.7 %	57.8 %	65.0 %	72.2 %
Exchange Ratio		0.3902 x	0.4146 x	0.4390 x	0.4634 x	0.4878 x	0.5122 x	0.5366 x	0.5610 x	0.5854 x
1998E P/E Paid		14.8 x	15.7 x	16.6 x	17.5 x	18.5 x	19.4 x	20.3 x	21.2 x	22.1 x
Equity Value		$855.3	$911.7	$968.2	$1,024.6	$1,081.1	$1,137.5	$1,193.9	$1,250.4	$1,306.8
Aggregate Value		1,324.8	1,381.3	1,437.7	1,494.2	1,550.6	1,607.0	1,663.5	1,719.9	1,776.4
Earnings Accretion (Dilution)	Laser Statistic									
CY1998E	$2.01	16.1 %	14.0 %	11.9 %	9.9 %	7.9 %	6.0 %	4.1 %	2.2 %	0.4 %
CY1999E	2.41	20.2 %	18.1 %	16.1 %	14.1 %	12.1 %	10.3 %	8.4 %	6.6 %	4.9 %
CY2000E	2.89	17.4 %	15.4 %	13.5 %	11.7 %	9.8 %	8.1 %	6.3 %	4.7 %	3.0 %
CY2001E	3.47	15.0 %	13.1 %	11.3 %	9.6 %	7.9 %	6.2 %	4.6 %	3.0 %	1.4 %
CY2002E	4.17	12.9 %	11.2 %	9.4 %	7.8 %	6.1 %	4.5 %	3.0 %	1.5 %	(0.0)%
1998 - 2002 CAGR	*20.0%*	*18.8 %*	*18.9 %*	*19.0 %*	*19.1 %*	*19.1 %*	*19.2 %*	*19.3 %*	*19.4 %*	*19.5 %*
Pro Forma Indicated DPS		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
% Change to Camper Dividend		1.7 %	1.7 %	1.8 %	1.8 %	1.8 %	1.9 %	1.9 %	1.9 %	2.0 %
Laser Payout Ratio	2.0 %									
Breakeven Analysis: 1998E		$0	$0	$0	$0	$0	$0	$0	$0	$0
Incr. Pre-Tax Synergies		0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %
% of Combined Sales		17.6 x	17.9 x	18.2 x	18.6 x	18.9 x	19.2 x	19.6 x	20.0 x	20.3 x
Breakeven P/E Multiple										
Pro Forma Credit Analysis:										
Total Debt / Adj. Book Cap.	28.7 %	33.4 %	32.5 %	31.7 %	30.9 %	30.1 %	29.4 %	28.7 %	28.0 %	27.4 %
EBIT / Gross Interest Exp.	19.6 x	4.6 x	4.5 x	4.5 x	4.5 x	4.4 x	4.4 x	4.4 x	4.3 x	4.3 x
Op. Cash Flow / Total Debt	32.8 %	21.0 %	21.0 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %
Primary Shares Issued (MM):	85.3	20.9	22.2	23.6	25.0	26.4	27.7	29.1	30.5	31.9
% Pre-existing		24.4 %	26.0 %	27.6 %	29.2 %	30.8 %	32.5 %	34.1 %	35.7 %	37.3 %
% Acquiree Interest		19.6 %	20.6 %	21.6 %	22.6 %	23.6 %	24.5 %	25.4 %	26.3 %	27.2 %
Pro Forma Cap. (MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,410	1,466	1,522	1,579	1,635	1,692	1,748	1,805
Adj. Book Cap.	$698	$2,033	$2,090	$2,146	$2,203	$2,259	$2,315	$2,372	$2,428	$2,485
Accounting:										
Goodwill Created		930.5	986.9	1,043.3	1,099.8	1,156.2	1,212.7	1,269.1	1,325.6	1,382.0
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions

Includes '98 Synergies of $50.0MM
Issue Price Per Share: $41.00
1998E P/E Issue Price: 20.4 x

Incl. Syn. % of Target Sales: 6.3%
LTM Target EBIT Margin: 4.5%
Holding Co. Debt Assumed: $0.0

Cost of Debt: 8.0%
Goodwill Amortized Over 40 Years
Goodwill Not Tax Deductible

Camper Primary Shares (000): 53425
Camper Options (000)*: 3018
* Ex. Price: $15.84

CP 038205
CONFIDENTIAL

MORGAN STANLEY

012331

NOT A CERTIFIED COPY

CPH 1426295

16div-019515

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Jan 23, 1998 9:35

PRELIMINARY DRAFT

LASER CORPORATION

Pro Forma Merger Analysis

($MM, except per share data)

Laser acquires Camper With Synergies

Transaction Structure

Offer Terms		Consideration and Other		Cost of Capital		Accounting and Tax	
Price per Share	$20.000	Cash	0.0%	Cost of Cash (p/t)	3.5%	Accounting: Purchase (No Step-Up)	
Prem. to Mkt. ($13.94)	43.5%	Preferred Stock	0.0%	Cost of Debt (p/t)	8.0%	Goodwill Amortized Over 40 Years	
1998E P/E Paid	18.5 x	Common Stock	100.0%	Issue Price	$41.000	Goodwill Not Tax Deductible	
Equity Value	$1,081.1	Fees & Expenses (a/t)	$5.1	1998E P/E	20.4 x	Price/L12M Book	4.4 x
Aggregate Value	1,550.6	Excess Cash Used	$8.2	Exchange Ratio	0.4878 x	Marginal Tax Rate	38.0%

Pro Forma EPS Analysis

	1998	1999	Projected 2000	2001	2002	5 Year CAGR
Earnings Per Share						
Camper	$1.08	$1.27	$1.50	$1.76	$2.07	17.5%
Laser	$2.01	$2.41	$2.89	$3.47	$4.17	20.0%
Combined	2.17	2.70	3.18	3.75	4.42	19.1%
Accretion (Dilution)	7.9%	12.1%	9.8%	7.9%	6.1%	
Synergies Assumed (p/t)	$50.0	$75.0	$75.0	$75.0	$75.0	
Breakeven Analysis *						
Incr. Pre-Tax Synergies	$0.0	$0.0	$0.0	$0.0	$0.0	
Breakeven P/E Multiple	18.9 x	15.2 x	12.9 x	10.9 x		
Breakeven Year	NM					

* After any synergies assumed above.

Pro Forma Capitalization

	Combined		Laser		Camper	
Capital Structure						
Total Debt	$680.1	30.1%	$200.6	28.7%	$479.4	65.8%
Preferred Equity	0.0	0.0%	0.0	0.0%	0.0	0.0%
Common Equity	1,578.9	69.9%	497.8	71.3%	248.8	34.2%
Total Capitalization	$2,258.9	100.0%	$698.4	100.0%	$728.3	100.0%
Cash (Includes Excess Cash)	$24.5		$22.8		$9.9	
L12M Credit Ratios						
EBIT / Gross Interest Exp.	4.4 x		19.6 x		1.3 x	
Operating Cash Flow / Total Debt	20.9%		32.8%		9.6%	
EBIT Margin	9.5%		11.8%		4.5%	
Shares Outstanding (000)	Primary	111,838	Primary	85,471	Primary	53,425
	% Camper owned	*23.6%*	*% Issued*	*30.8%*	Fully-Diluted	56,442

CP 038208
CONFIDENTIAL

012332

MORGAN STANLEY

NOT A CERTIFIED COPY

CPH 1426296

16div-019516

DEPOSITION
EXHIBIT # 8
FOR ID TRN
4-8-04

PROJECT LASER

Proposed Summary Transaction Terms

Description:	• LASER acquires CAMPER (Operating company) Common Stock
Form of Consideration:	• LASER Common Stock and LASER Common Stock Warrants
Consideration:	A. LASER Common Stock [1] – 0.6017 LASER Common Shares per CAMPER Share [2] – Fixed Exchange Ratio – Implied price of $22.00 per CAMPER Share – 32.654MM LASER Common Shares issued – $1,193.9MM B. LASER Common Stock Warrants [1] – 0.1500 LASER Common Stock Warrants per CAMPER Share – 8.14MM LASER Common Stock Warrants issued – Fixed Exchange Ratio
LASER Common Stock Warrants:	• Warrants to buy LASER Common Stock at $50.00 with a 4-year maturity
Collars:	• None
Walkaway Rights:	• None
Termination Fee:	• $75MM paid to LASER by CAMPER if transaction terminated by CAMPER or CAMPER receives higher bid from third party • 4% of Aggregate Value
Board Representation:	• CAMPER receives one seat on the New LASER Board
Accounting Treatment:	• Purchase
Closing Conditions:	• LASER and CAMPER Shareholder Votes
Expected Closing:	• 2Q98
Shareholder Lockup	• RP agrees to hold shares for one year after combination • No-shop clause
Due Diligence:	• Execution of the Agreement upon satisfactory completion of due diligence.
Debt Refinancing:	• No cost to refinance existing CAMPER bank debt
Miscellaneous:	• No assumption of any holding company level debt. • Termination of affiliate (MAFCO) transactions

CP 033711
CONFIDENTIAL

[1] Calculated using the treasury shares method and assumes cashless exercise of options; assumes 53.425MM primary shares outstanding from the 9/30/97 10-Q and 3.018MM options outstanding at an average exercise price of $15.84 from the 12/31/96 10-K and options proceeds of $47.8MM resulting in treasury method shares outstanding of 54.269MM (2.173MM Camper shares repurchased at $22.00); fully diluted shares are 56.442MM shares.
[2] Assumes a Laser stock price of $36.563 as of 2/5/98.

F13\10273\02-06-98\Q:12 PM\PG1

MORGAN STANLEY

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

0123314

16div-019517

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Overview of Warrant Instruments

- Allows holders to participate in the potential upside of the company while limiting the downside risk
  - CAMPER shareholders have the opportunity to benefit from the incremental synergies of the combination
- Provides significant value if the full assessment of the synergies is realized
  - Returns to warrant holders increase as greater operational improvements are achieved
  - AD will continue to be focused on creating shareholder value; currently owns over 1 million shares
- Out-of-the-money options send a strong signal to the market about management's belief in the prospect of the combined company
- Warrant holders have the opportunity to reap the benefits from future acquisitions
  - Accretive transactions will continue to boost the stock price
  - Restructuring and consolidation of acquired companies will give rise to cost savings which will further increase earnings
- Four year maturity allows ample time to implement restructuring programs and extract synergies
- LASER is committed to realizing the full value of the combination
  - AD to sign a three-year employment agreement
- Warrants deliver value to CAMPER shareholders with minimum negative impact on short-term accretion

NOT A CERTIFIED COPY

CPH 1421815

012335

16div-019518

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Warrants Pricing and Consideration Analysis

Camper: Camper Mgmt. Case - 100% Stock Purchase

Camper Assumptions	1998	1999	2000	2001	2002	2003	2004	2005	2006
Sales	$1,196.3	$1,315.9	$1,447.5	$1,592.3	$1,751.5	$1,926.7	$2,119.3	$2,331.3	$2,564.4
% Growth	-	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*
EBITDA	160.4	190.0	215.5	238.1	262.1	288.4	317.3	349.1	384.1
% Margin	*13.4%*	*14.4%*	*14.9%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*
Operating Income	137.7	166.5	189.5	199.3	219.3	241.2	265.3	291.8	321.0
% Margin	*11.5%*	*12.6%*	*13.1%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*
Net Income	64.0	86.2	104.5	114.5	131.7	150.2	169.2	189.3	211.4
% Margin	*5.3%*	*6.6%*	*7.2%*	*7.2%*	*7.5%*	*7.8%*	*8.0%*	*8.1%*	*8.2%*
Potential Synergies (P/T)	65.3	130.5	130.5	130.5	130.5	130.5	130.5	130.5	130.5

Projected Pro Forma Stock Price	1998	1999	2000	2001	2002	2003	2004	2005	2006
Pro Forma Net Income	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7
Pro Forma Basic Shares (MM) (Bef. Warrants)	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1
Net Shares Issued From New Warrants (MM) (1)	0.0	1.7	2.6	3.3	4.0	4.0	4.0	4.0	4.0
Diluted Shares Outstanding (MM)	118.1	119.8	120.7	121.5	122.1	122.1	122.1	122.1	122.1
Diluted E.P.S. (Cashless Exercise)	$2.18	$3.18	$3.74	$4.30	$4.97	$5.73	$6.53	$7.36	$8.20
Matured?	No	No	No	No	No	Yes	Yes	Yes	Yes
Forward P/E	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x
Implied Beginning of Year Laser Stock Price	$39.80	$58.10	$68.42	$78.53	$90.88	$104.67	$119.29	$134.49	$149.85
Average Laser Stock Price	$48.95	$63.26	$73.48	$84.71	$97.78	$111.98	$126.89	$142.16	$149.83

Projected Value of Consideration to Camper (2)

	Today Stand Alone	At Closing							
Stock	$22.00	$29.45	$38.06	$44.22	$50.97	$58.83	$67.38	$76.35	$85.54	$90.15
Warrants	0.00	0.00	1.99	3.52	5.21	7.17	9.30	11.53	13.82	14.97
Total	$22.00	$29.45	$40.05	$47.74	$56.18	$66.00	$76.68	$87.88	$99.36	$105.13

Warrant Value (3):

Cost of Equity Capital	13.2%	Stock Price @ Maturity	$97.78	Present Value per Warrant	$29.09
Discount Factor	1.6425	Strike Price	50.00	Warrant Exch. Ratio	0.1500 x
		Gain on Exercise	$47.78		
Value of Warrant per Camper Share	$4.36				

Note: (1) Assumes exercise of warrants in particular year shown: impact of warrants exercised does not accumulate year to year; assumes constant impact after maturity date.
(2) Pro forma value of consideration today calculated utilizing a pro forma 1998 EPS and a current Laser forward P/E multiple adjusted by the exchange ratio; value of consideration at closing calculated utilizing an average stock price from pro forma B.O.Y. 1998 and B.O.Y. 1999 to best approximate pro forma Laser stock price at time of closing adjusted by the exchange ratio; value of consideration thereafter calculated from average stock price of the year adjusted by the exchange ratio.
(3) Using an average stock price in 2001 to approximate a June 30 maturity date.

NOT A CERTIFIED COPY

CP 033713
CONFIDENTIAL

MORGAN STANLEY

012336

CPH 1421816

16div-019519

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Pro Forma Income Statements

Laser: I/B/E/S Case; Camper: Camper Mgmt. Case - Base Case Synergies of $130.5MM - With Warrants

	Actual Pro Forma		Projected Pro Forma									CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	1998-1	2001E-6
Sales	$2,204.4	$2,314.7	$2,643.9	$3,152.5	$3,622.5	$4,179.8	$4,833.1	$5,535.2	$6,272.7	$7,028.7	$7,783.1		
% Growth		*5.0%*	*14.2%*	*19.2%*	*14.9%*	*15.4%*	*15.6%*	*14.5%*	*13.3%*	*12.1%*	*10.7%*	14.4%	10.3%
Cost of Goods Sold	1,692.8	1,643.3	1,795.2	2,124.7	2,436.3	2,822.1	3,264.8	3,740.5	4,240.0	4,751.8	5,262.1		
% of Sales	*76.8%*	*71.0%*	*67.9%*	*67.4%*	*67.3%*	*67.5%*	*67.6%*	*67.6%*	*67.6%*	*67.6%*	*67.6%*	69.6%	67.6%
Gross Profit	511.7	671.4	848.7	1,027.8	1,186.2	1,357.7	1,568.3	1,794.7	2,032.7	2,276.9	2,521.0		
% of Sales	*23.2%*	*29.0%*	*32.1%*	*32.6%*	*32.7%*	*32.5%*	*32.4%*	*32.4%*	*32.4%*	*32.4%*	*32.4%*	30.4%	32.4%
SG&A Expense	365.2	316.4	353.3	415.8	475.7	546.2	628.6	717.3	810.8	907.0	1,003.8		
% of Sales	*16.6%*	*13.7%*	*13.4%*	*13.2%*	*13.1%*	*13.1%*	*13.0%*	*13.0%*	*12.9%*	*12.9%*	*12.9%*	13.8%	13.0%
Advertising & Promotion	58.8	55.3	59.8	65.8	72.4	79.6	87.6	96.3	106.9	116.3	128.2		
% of Sales	*2.7%*	*2.4%*	*2.3%*	*2.1%*	*2.0%*	*1.9%*	*1.8%*	*1.7%*	*1.7%*	*1.7%*	*1.6%*	2.2%	1.7%
Research & Development	11.1	10.4	11.3	12.4	13.7	15.0	16.5	18.2	20.0	22.0	24.2		
% of Sales	*0.5%*	*0.4%*	*0.4%*	*0.4%*	*0.4%*	*0.4%*	*0.3%*	*0.3%*	*0.3%*	*0.3%*	*0.3%*	0.4%	0.3%
Operating Income	76.5	289.3	424.4	533.8	624.5	716.8	835.6	962.9	1,096.0	1,231.5	1,364.8		
% of Sales	*3.5%*	*12.5%*	*16.1%*	*16.9%*	*17.2%*	*17.1%*	*17.3%*	*17.4%*	*17.5%*	*17.5%*	*17.5%*	13.9%	17.4%
% Growth		*278.0%*	*46.7%*	*25.8%*	*17.0%*	*14.8%*	*16.6%*	*15.2%*	*13.8%*	*12.3%*	*10.8%*	48.0%	13.8%
Net New Goodwill Amortization	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8		
Old Goodwill Amortization	10.5	11.5	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0		
Financing Fee Amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.0		
Advisory Fees Amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8		
Other Expense/(Income)	2.8	2.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		
% of Sales	*0.1%*	*0.1%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*	0.1%	0.0%
Pre-Tax Synergies	0.0	0.0	(65.3)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)		
% of Sales	*0.0%*	*0.0%*	*2.5%*	*4.1%*	*3.6%*	*3.1%*	*2.7%*	*2.4%*	*2.1%*	*1.9%*	*1.7%*		
EBIT	37.9	250.5	452.3	627.0	717.7	810.0	928.8	1,056.1	1,189.2	1,325.3	1,459.5		
% of Sales	*1.7%*	*10.8%*	*17.1%*	*19.9%*	*19.8%*	*19.4%*	*19.2%*	*19.1%*	*19.0%*	*18.9%*	*18.8%*	14.8%	19.0%
Depreciation & Amortization	109.1	103.9	114.9	132.5	150.3	171.8	197.9	227.2	259.5	294.3	330.2		
EBITDA	147.0	354.4	567.3	759.5	868.0	981.9	1,126.7	1,283.3	1,448.7	1,619.6	1,789.7		
Net Interest	(44.4)	(44.4)	(37.5)	(22.0)	(3.5)	(13.0)	(24.2)	(38.6)	(55.7)	(75.8)	(99.2)		
Earnings Before Taxes	(6.5)	206.1	414.8	605.0	714.3	822.0	953.0	1,094.7	1,244.9	1,401.1	1,558.7		
Tax Provision	10.0	84.7	157.6	224.2	262.4	300.1	346.0	395.6	448.1	502.8	558.0		
Effective Tax Rate	*-154.0%*	*41.1%*	*38.0%*	*37.1%*	*36.7%*	*36.5%*	*36.3%*	*36.1%*	*36.0%*	*35.9%*	*35.8%*		
Marginal Tax Rate	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	*38.0%*	38.0%	38.0%
Net Income	($16.5)	$121.4	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7		
% of Sales	*-0.7%*	*5.2%*	*9.7%*	*12.1%*	*12.5%*	*12.5%*	*12.6%*	*12.6%*	*12.7%*	*12.8%*	*12.9%*	8.5%	12.7%
Minority Interest	1.9	1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	($18.4)	$119.9	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7		
% of Sales	*-0.8%*	*5.2%*	*9.7%*	*12.1%*	*12.5%*	*12.5%*	*12.6%*	*12.6%*	*12.7%*	*12.8%*	*12.9%*	8.5%	12.7%
% Growth		*-752.4%*	*114.5%*	*48.1%*	*18.6%*	*15.5%*	*16.3%*	*15.2%*	*14.0%*	*12.7%*	*11.4%*	NM	0.6%
Basic E.P.S.	($0.16)	$1.01	$2.18	$3.22	$3.83	$4.42	$5.14	$5.92	$6.74	$7.60	$8.47		
Accretion/(Dilution)	*--*	*--*	*8.9%*	*22.6%*	*21.3%*	*14.7%*	*13.1%*	*10.4%*	*8.4%*	*7.2%*	*6.4%*		
% Growth		*-752.4%*	*114.5%*	*48.1%*	*18.6%*	*15.5%*	*16.3%*	*15.2%*	*14.0%*	*12.7%*	*11.4%*	NM	13.9%
Wtd Ave Shares Outstanding	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1		
Diluted E.P.S. (Cashless Ex.)	--	--	$2.18	$3.18	$3.74	$4.30	$4.97	$5.73	$6.53	$7.36	$8.20		
Accretion/(Dilution)	*--*	*--*	*8.9%*	*20.8%*	*16.6%*	*13.5%*	*9.4%*	*6.8%*	*4.9%*	*3.7%*	*2.9%*		
Primary Shares Outstanding	--	--	118.1	119.8	120.7	121.5	122.1	122.1	122.1	122.1	122.1		
F.D. E.P.S. (No Treas.)	($0.15)	$0.95	$2.04	$3.02	$3.58	$4.13	$4.81	$5.54	$6.31	$7.11	$7.93		
F.D. Shares Outstanding	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3		

NOT A CERTIFIED COPY

CP 033714
CONFIDENTIAL

MORGAN STANLEY

CPH 1421817

012337

16div-019520

DEPOSITION
EXHIBIT # 83
FOR ID TRN

10/15/97

- DRAFT -

PROJECT LASER

Proposed Summary Transaction Terms

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

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

Acquisition of Holding Company

Form of Consideration:
- LASER Common Stock or LASER Common Stock and LASER Convertible Preferred Stock

Consideration Package Choice:
- MAFCO Affiliates will have the right, 30 days prior to closing, to elect to receive either of Consideration Package I or Consideration Package II

Consideration Package I:

A. LASER Common Stock to MAFCO Affiliates[1]
- **18,503,379** LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

Consideration Package II:

A. LASER Common Stock to MAFCO Affiliates[1]
- **10,376,107** LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

B. LASER Convertible Preferred Shares to MAFCO Affiliates[1]
- **$300,000,000** Liquidation Value
- Fixed number of Convertible Preferred Shares, based on stated liquidation value per share
- $27.50 CAMPER Common Stock equivalent price
- See LASER Convertible Preferred Shares (Current Market Indicative Terms)

"Assumption" of Holding Company Debt:
- "Assumption" of CAMPER Holding Company Debt
  - $524.4MM of Discount Notes to be "assumed" by LASER, approximate accreted value as of the date of closing
  - All Early Redemption cost "assumed" by LASER

LASER Convertible Preferred Shares (Current Indicative Market Terms):
- 4.0% Coupon
- $48.125 Conversion Price (25% Conversion Premium over current LASER price)
- 10 year maturity
- One vote per share

Collars:
- None

Walkaway Rights:
- None

Tax Treatment:
- Expected to be tax free

Closing Conditions:
- Satisfaction of all merger conditions (other than purchase of CAMPER Holding Company), including LASER and CAMPER Shareholder Votes

firm Tony

3. 348,010 ?

$ 15.14 ?

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

NOT A CERTIFIED COPY

-DRAFT-

PROJECT LASER

Proposed Summary Transaction Terms

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

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

Acquisition of Publicly Held CAMPER Shares

Form of Transaction:	• Reverse subsidiary merger of newly formed, wholly-owned subsidiary of CAMPER Holding Company into CAMPER
Form of Consideration:	• LASER Common Stock[2]
Consideration:	A. LASER Common Stock to Public Shareholders[1] – 7,977,818 LASER Common Shares issued to Public Shareholders – Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share B. CAMPER Common Shares held by CAMPER Holding Company to remain outstanding
Collars:	• None
Walkaway Rights:	• None
Termination Fee:	• $60MM payable to LASER by CAMPER if deal not consummated for any reason other than failure to obtain LASER shareholder approval or other LASER breach – Termination fee calculated as 3% of aggregate value
Accounting Treatment:	• Purchase
Tax Treatment:	• Expected to be tax free
Closing Conditions:	• CAMPER and LASER shareholder votes • Redemption of LYONS/Completion of CAMPER Escrow Corp./CAMPER Holding Company merger • Receipt of regulatory approvals • Other customary conditions
Expected Closing:	• 2Q98

[2] Need to address issue of potential disparate treatment

NOT A CERTIFIED COPY

012340

-DRAFT-

-DRAFT-

PROJECT LASER

Pricing Mechanism Overview

Transaction pricing assumes the following steps:

I. Assumed CAMPER Holding Company debt balance of $500,000,000 is offset by a portion of the existing Holding Company stock position in CAMPER at an assumed $26.00 per CAMPER share valuation. The economic cancellation of the existing CAMPER Holding Company debt reduces the CAMPER Holding Company's CAMPER stock ownership position by 19,230,769 shares ($500,000,000/$26.00=19,230,769 shares)

II. Each remaining CAMPER share owned by CAMPER Holding Company (44,067,520[1]-19,230,769=24,836,751 shares) as well as all CAMPER shares help by public shareholders (10,708,480[1] shares) are valued at 0.7450 LASER Common Shares, at an approximate implied value of $28.68 per CAMPER share as of February 19,1998. MAFCO Affiliates to receive 18,503,379 LASER Common Shares (24,836,751*0.7450=18,503,379). Public shareholders to receive 7,977,818 LASER Common Shares (10,708,480[1]*0.7450=7,977,818)

III. MAFCO Affiliates have the right, 30 days prior to closing, to elect to take $300,000,000 (at a $27.50 per CAMPER share exchange ratio) or 10,909,091 CAMPER Shares ($300,000,000/$27.50=10,909,091 shares) equivalent of the net consideration for CAMPER Holding Company's CAMPER shares in the form of LASER Convertible Preferred Shares. In this case, the remaining 13,927,660 CAMPER shares (24,836,751-10,909,091=13,927,660 shares) held by CAMPER Holding Company will be exchanged for 10,376,107 LASER Common Shares at the .7450 exchange ratio

See Exhibit A

NOT A CERTIFIED COPY

012311

[1] Exact number of shares subject to due diligence

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

- DRAFT -

PROJECT LASER

Exhibit A: Transaction Pricing Calculations

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

(a) Subject to due diligence

NOT A CERTIFIED COPY

- DRAFT -

CP 039157
CONFIDENTIAL

012342

CPH 1427253

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

MF 00001

CPH 1324756

AS
DEPOSITION
EXHIBIT # 84
FOR ID TRN
4-8-04

NOT A CERTIFIED COPY

Sunbeam®

Long Range Strategic Plan

012344

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00002
CPH 1324757

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1. Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.).

2. Strengthen Sunbeam and Oster brands globally.

3. Continually introduce innovative and highly differentiated products globally.

4. Optimize worldwide supply chain.

5. Achieve industry leadership in customer service.

NOT A CERTIFIED COPY

012345

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00003
CPH 1324758

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

NOT A CERTIFIED COPY

1) *Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.)*

- Leverage our brand halo to further strengthen our image and reputation with the consumer, customer and investor, worldwide.
- Develop comprehensive Go-To-Market plans to drive worldwide activity.
- Sharpen international market focus to Latin America, Mexico, Venezuela, Japan, UK and Canada and tailor product bundles to the individual markets.
- Continue to be the consumer's first choice for innovative and differentiated solutions in both the value and premium segments of our core businesses.
- Deliver product to market better and faster than the competition.

016246

16div-019527

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00004
CPH 1324759

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

NOT A CERTIFIED COPY

2) Strengthen Sunbeam and Oster brands globally..

- Position and differentiate the Sunbeam and Oster brands globally with targeted marketing and advertising.

- Improve competitive positioning through core business focus on the consumer and technology:

  Sunbeam - Value and Innovation segments
  Oster - Quality and Performance segments

- Leverage Oster brand recognition in Latin America.

- Explore licensing opportunities. - need head of licensing

012347

16div-019528

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

3) *Continually introduce innovative and highly differentiated products globally.*

- Continue to develop highly differentiated products.
- Focus development resources on "Home Runs" (e.g., air and water). +5-10 million revenue cutoff
- Respond to and meet consumer needs better than the competition.
- Explore alternative uses for proprietary technology (i.e., utilize PTC wire technology to enter the heated carpet market).
- Continue to enhance the product development process and turn around.

NOT A CERTIFIED COPY

CONFIDENTIAL MF 00005 CPH 1324760

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

4) Optimize worldwide supply chain.

- Shift make versus buy mix from 70/30 to 50/50.
- Balance proximity of supplier, plant and customer locations to minimize logistical requirements and associated costs and accelerate delivery.
- Exploit cost savings opportunities associated with Asia Pacific economies via joint ventures and acquisitions.
- Simplify and standardize processes and practices.

NOT A CERTIFIED COPY

CONFIDENTIAL MF 00006 CPH 1324761

16div-019530

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00007
CPH 1324762

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

5) Achieve industry leadership in customer service.

- Define and monitor customer satisfaction from forecasting to invoicing through Project Full Time.
- Fill distribution voids and achieve new product sell-in leveraging Full Time performance.
- Achieve preferred supplier status with joint partnering and 98% on time and in full shipments to key customers.
- Implement systems to track and resolve total quality issues incorporating ISO 9000 requirements.

NOT A CERTIFIED COPY

012350

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 000008
CPH 1324763

Sunbeam APPLIANCES

Strategic Headlines

1. Strengthen Sunbeam and Oster trademarks globally.

2. Continually introduce a constant stream of consumer-driven new products concentrated in three focus areas:
   - Blending and Mixing
   - Smart Cooking
   - Everyday Best

#1 or #2 in each category BVO

3. Broaden distribution with existing customers.

307, 6M

M.S.

$MM	1997	1998	1999	2000
U.S. Sales	288	356	430	480
% Increase	16%	24%	21%	12%

012351

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00009
CPH 132476

Sunbeam. HEALTH AT HOME

Strategic Headlines

1. Leverage Sunbeam brand equity to become the category expert.

2. Expand the business to healthy environment (i.e., air and water) and home safety (e.g., emergency carbon monoxide or smoke notification, security alarms, first aid monitoring.)

3. Fill distribution voids and extend product seasons.

4. Use Air & Water to launch our core Health at Home product lines globally.

$MM	1997	1998	1999	2000
U.S. Sales	93	189	240	300
% Increase	7%	103%	27%	25%

012352

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00010
CPH 1324765

Sunbeam. PERSONAL CARE & COMFORT - Bedding

Strategic Headlines

1. Advance technology advantage with continuous development of new wire technology (lower EMF) and electronic controls (solid state controls).

2. Launch new products that address consumer's safety concerns and provide heating comfort in places other than the bedroom.

3. Globalize the business focusing on high potential countries.

4. Increase household penetration by introducing new packaging and promoting the "Blanket with a Brain" concept.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00011
CPH 1324766

Sunbeam. PERSONAL CARE & COMFORT - Clippers and Other Personal Care

Strategic Headlines

1. Grow household penetration by focusing on high potential targets:
   - large and low income families
   - teens
   - African Americans
2. Introduce new products with better performance than the competition.
3. Grow business globally.
4. Enter new personal care categories leveraging our Sunbeam and Oster brand names.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

16div-019535

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00012
CPH 1324767

Sunbeam. OUTDOOR COOKING

Strategic Headlines

1. Continue to entrench GrillMaster as the dominant worldwide brand of grills and accessories/replacement parts.
2. Achieve category growth by promoting grilling in high-growth, high-profit segments. Address category negatives/barriers.
3. Dramatically increase the profit importance of GrillMaster and Outdoor Cooking to Sunbeam and the trade.
4. Develop outdoor cooking business globally, focusing on countries with high disposable income and high meat consumption.

NOT A CERTIFIED COPY

$MM	1997	1998	1999	2000
U.S. Sales	297	341	390	420
% Increase	25%	15%	14%	8%

012355

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. OTHER CHANNELS

Strategic Headlines

1. Away From Home
   - Bundle existing products to effectively grow lodging.
   - Expand beyond lodging into commercial food service.

2. Outlet Stores
   - Continue to expand in "A" locations.
   - Continue to serve as more profitable alternative channel for excess inventory.

$MM	1997	1998	1999	2000
U.S. Sales	65	111	135	150
% Increase	55%	71%	20%	15%

012356

NOT A CERTIFIED COPY

CONFIDENTIAL MF 00013 CPH 1324768

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam INTERNATIONAL

Strategic Headlines

1. Focus on high growth areas where we can leverage Sunbeam and Oster brand names, such as Latin America, Canada, Southeast Asia.

2. Tailor product bundles to the individual markets (i.e., pick and choose product lines in the rest of the world).

3. Continue to develop license and distributor arrangements.

25 new ones last year 50% sales (loaded)

4. Minimize capital investment.

5. Globalize core business successes (i.e., blenders, clippers and blankets).

$MM	1997	1998	1999	2000
Int'l. Sales	240	360	529	734
% Increase	25%	50%	47%	39%

012357

NOT A CERTIFIED COPY

CONFIDENTIAL MF 00014 CPH 1324769

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam CHANGING COMPETITIVE DYNAMICS

- Reinvestable Returns Differentiates the Winners from the Losers.
  - Market Leaders are those who will invest in the business (i.e., New Products, Advertising, Working Capital).
    - Philips
    - KitchenAid
    - Sunbeam
    - Braun
    - Krups
    - Hamilton Beach / Proctor Silex
  - Other Companies will not remain competitive
    - Rival
    - National Presto
    - Mr. Coffee
    - Health O'Meter
    - Black & Decker
    - West Bend
- Sunbeam Maintains a Unique Global Position
  - No global competitor
  - No competitor in more than one category in the U.S./Abroad
  - Two strong global brands

NOT A CERTIFIED COPY

CONFIDENTIAL MF 00015 CPH 1324770

012358

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00016
CPH 1324771

Sunbeam LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 331 28%	$ 511 32%	$ 640 32%	$ 773 32%
Selling, General and Administrative Expenses	$ 131 11%	$ 193 12%	$ 240 12%	$ 288 12%
Operating Profit	$ 200 17%	$ 318 20%	$ 400 20%	$ 485 20%
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 190	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

NOT ACERTIFIED COPY

012359

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00017
CPH 1324772

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED BALANCE SHEET

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Cash and Cash Equivalents	$ 52	$ 229	$ 396	$ 633
Receivables,Net	$ 296	$ 328	$ 400	$ 460
Inventories, Net	$ 256	$ 264	$ 309	$ 351
Other Current Assets	$ 54	$ 34	$ 39	$ 51
Total Current Assets	$ 658	$ 855	$ 1,144	$ 1,495
Property, Plant and Equipment, Net	$ 241	$ 274	$ 310	$ 355
Goodwill and Trademarks & Other	$ 221	$ 215	$ 208	$ 200
Total assets	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Current Liabilities	$ 198	$ 213	$ 252	$ 295
Long Term Debt	$ 195	$ 195	$ 195	$ 195
Other Long Term Liabilities	$ 195	$ 199	$ 221	$ 249
Shareholders Equity	$ 532	$ 737	$ 994	$ 1,311
Total Liabilities and Shareholders Equity	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Net Debt	$ 143	$ (34)	$ (201)	$ (438)

going from 25% to 20% despite increased unit sales

735 m unused in 1998 10m left

NOT A CERTIFIED COPY

012360

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00018
CPH 1324773

Sunbeam.

LONG RANGE STRATEGIC OBJECTIVES - NET SALES GROWTH ANALYSIS

	Long Range Strategic Plan		
	1998	1999	2000
Base Net Sales	$ 1,168	$ 1,600	$ 2,000
Domestic			
New Products	227	165	145
New and Existing Channels	65	51	30
Price	20	15	20
Total Domestic	312	231	195
International			
New Products	50	70	80
New Geography and Franchise Growth	70	99	125
Total International	120	169	205
Net Sales Plan	$ 1,600	2,000	$2,400

NOT A CERTIFIED COPY

198210
012361

16div-019542

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

MF 00019

CPH 1324774

Sunbeam.

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED STATEMENT OF CASH FLOW

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Income, Continuing	$124	$199	$252	$308
Depreciation and amortization	$39	$54	$71	$83
Deferred Income Taxes	$58	$0	$5	$15
Change in Working Capital	($237)	($7)	($73)	($61)
Cash Flow from Operations	($16)	$246	$255	$345
Proceeds from Asset Sales	$91	$0	$0	$0
Capital Expenditures	($58)	($81)	($100)	($120)
Dividends	($3)	($3)	($3)	($3)
Proceeds from Exercised Options	$27	$15	$15	$15
Cash Flow before Debt Repayment	$41	$177	$167	$237
Net Debt	$143	($34)	($201)	($438)

NOT A CERTIFIED COPY

012362

16div-019543

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MS
DEPOSITION
EXHIBIT # 85
FOR ID TRN
4-8-04

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Discussion Materials

February 1998

CP 020984
CONFIDENTIAL

MORGAN STANLEY

012364

F:\1\9\3\9\3\1\02-22-98\11:24 PM\PG0

CPH 1411216

16div-019544

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Table of Contents

SECTION I EXECUTIVE SUMMARY

SECTION II OVERVIEW OF SUNBEAM CORPORATION

Tab A Products & Markets Summary

SECTION III FUTURE GROWTH OPPORTUNITIES

Tab B New Product Initiatives
Tab C International Expansion
Tab D Channel Management
Tab E Marketing, Licensing and Merchandising

APPENDIX

NOT A CERTIFIED COPY

CP 020985
CONFIDENTIAL

012365

F1319393102-22-98111:24 PVPG0

16div-019545

NOT A CERTIFIED COPY

012355

CP 020986
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

EXECUTIVE SUMMARY

NOT A CERTIFIED COPY

CP 020887
CONFIDENTIAL

MORGAN STANLEY

F1\89393 1\09-14-97\4:30 P\PG0 012367

CPH 1411219

16div-019547

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Investment Rationale

- Sunbeam represents an **attractive growth story** and investment opportunity
  - **Market share leadership** in all product segments (#1 in gas grills, electric blankets, and clippers; #1, 2 or 3 in appliances and healthcare products depending on product category)
  - Aggressive penetration of **new product markets, channels and geography**
  - *Sunbeam* and *Oster* are well recognized, **leading consumer brand names**, with 96% and 92% awareness respectively
- Sunbeam has undergone a **profound transformation** since the arrival of new management in July 1996
  - Unprofitable businesses have been divested, costs have been removed and the organization has been restructured to maximize available resources
  - The Company has remade itself into a **branded consumer devices company**
  - Renewed **focus** on profitability and growth
- Tremendous **intrinsic value** in the Company
  - Growth and profitability that **out-pace the nearest competitors**
    - Key initiatives include international expansion, new product innovation and growth through existing channels
  - Very strong, well-known brands, both domestically and abroad
  - **Strong management team** that is opportunistic but disciplined
- Valuable opportunity to penetrate and become a global market leader of branded consumer devices
  - Leverage Sunbeam's existing international channel relationships and agreements

NOT A CERTIFIED COPY

CP 020988
CONFIDENTIAL

CPH 1411220

131964661O1-28-98112 23 AIPG1

012368

16div-019548

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Business Overview

Sunbeam

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

Note: (1) Segment sales % estimated from PaineWebber research dated 7/28/97; 1997 sales breakdown from company and does not add to 100% due to outlet sales.
(2) 1997 sales includes the away-from-home category.

F:\BGI\13563\12-1-98\4:30P

012369

CP 020989
CONFIDENTIAL

MORGAN STANLEY

NOT A CERTIFIED COPY

CPH 1411221

16div-019549

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Summary Descriptive Sheet

($MM, except per share amounts)

DESCRIPTION OF BUSINESS:

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

RECENT EVENTS:

October 24, 1997 - The Company announced it has hired Morgan Stanley to explore strategic alternatives

October 23, 1997 - The Company reported positive 3Q earnings of $0.39, exceeding Street estimates by a penny

October 8, 1997 - The Company announced the introduction of its new FreshSource water filtration system and AllergySmart air filtration system The two products are expected to contribute $100 MM in 1998 sales.

June 25, 1997 - The Company announced the completion of five additional international distribution/ marketing agreements signed during the second quarter of 1997. This brings the total to 21 since Dunlap joined

June 17, 1997 - The Company entered into a partnership arrangement with United Family Communications for exclusive pan-regional advertising on Casa Club TV, the only network entirely dedicated to the home in Latin America

May 13, 1997 - The Company said it completed the sale of its Biddeford, Maine textile factory to an investment group

SELECTED INFORMATION:

State of Incorp	Delaware
Headquarters	Delray Beach, FL
Stock Symbol	SOC
Listing	NYSE
Fiscal Year End	December 28

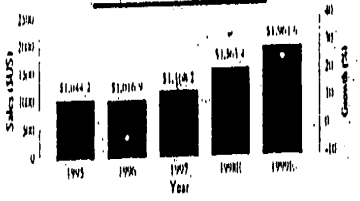
SEGMENT SALES BREAKDOWN:

Industry (Estimated)			Geographic		
Kitchen Devices	$455 6	39 0%	Domestic	$801 0	81 4%
Health at Home	116 8	10 0%	International	183 3	18 6%
Pers Care & Comfort	222 0	19 0%			
Outdoor Cooking	303 7	26 0%			
Professional Care	70 1	6 0%			
Total	$1,168 2	100 0%	Total	$984 2	100 0%

SELECTED FINANCIAL INFORMATION:

	Fiscal Years Ended December 28,			3 Yr	Estimates (2)	
	1995	1996	1997	C.O.R	1998E	1999E
Revenues (1)	$1,016 9	$984 2	$1,168 2	5.8%	$1,563 4	$1,961 6
% Change		-3.2%	18.7%		33.8%	25.5%
EBITDA (1)	114.2	48 2	238 0	44.3%	384 9	482 7
% Margin	11.2%	4.9%	20.4%		24.6%	24.6%
EBIT (1)	70 1	0.7	199 4	14 6%	319 9	404 7
% Margin	6.9%	0.1%	17.1%		20.5%	20.6%
Net Income (1)	27 6	(8 2)	123 1	N A	199 4	253 2
% Margin	2.7%	-0.8%	10.5%		12.8%	12.9%
Capital Expenditures	94 3	75 3	58 3	N A.	78 0	95 0

Historical and Projected Sales



SELECTED MARKET INFORMATION:

Stock Price (2/2/98)	$37 063
LTM Low / High	23 875/50 438
10-year High (10/24/97)	50 438
Shares Outstanding (MM)	84 900
Dividend	$0 04
Dividend Payout	2 8%
Dividend Yield	0 1%

SELECTED VALUATION PARAMETERS:

	1998E		E.P.S.	P/E.
Adj Mkt Cap./Sales (3)	167 7%	1998E (5)	$2.10	17 6 x
Adj Mkt Cap / EBIT (3)	8.1 x	1999E (5)	2 65	14 0
Adj Mkt Cap / EBITDA (3)	6 8			
		Proj 5 Yr Growth (5)	20%	
Market/Book (4)	2 8	1998E P/E to Growth	0.7 x	
Discount to LTM High	(26.5)%			
Discount to 10-year High	(26.5)			

FULLY DILUTED OWNERSHIP:

Significant Shareholdings (6):	
Total Insider Holdings	3 8%
Franklin Mutual	19 2%
Alliance Capital Management	11 0%
Columbia Management	5.5%
Other Institutional Ownership	41 9%
Other	18 6%
	100.0%

D&O Holdings (6):	
Chinn, CEO	
Albert J. Dunlap (8)	2 4%
Other	1 4%
Total D&O Holdings	3 8%
ESOP	0 0%
Total Insider Holdings	3 8%

CAPITALIZATION:

	Book Capitalization at 12/28/97		Market Capitalization at 2/2/98	
	Amount	%	Amount	%
Short-Term Debt	$0.0	100 0%	$0.0	100 0%
Long-Term Debt	$194 6	14.8%	$194.6	5 8%
Preferred Stock	0 0	0.0%	0 0	0 0%
Shareholders Equity	1,120.3	85 2%	3,146 6	94.2%
Total Capitalization (7)	$1,314 9	100.0%	$3,341.2	100 0%
Cash and Cash Equivalents			$52.4	
Adjusted Market Capitalization (3)			$3,288 8	

SELECTED CREDIT STATISTICS:

LTM EBIT / Net Interest	19.5 x
LTM EBITDA / Net Interest	33 3
Total Debt / LTM EBITDA	0 8
Senior Debt Ratings	
- Moody's	NA
- S&P	NA

Notes:

(1) Sales, EBIT, EBITDA and Net Income are for continuing operations before any extraordinary or non-recurring items, and cumulative effect of accounting changes
(2) Estimates from Oppenheimer research report dated December 11, 1997 on Sunbeam Corporation
(3) Adj Market Cap consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents.
(4) Based on a closing market price of $37 063 per share on 2/2/98 and 84.9 MM shares outstanding on 12/28/97
(5) Oppenheimer earnings estimate as of 1/28/98, Long-term growth from I/B/E/S dated 2/2/98.
(6) Based on information from proxy dated 4/16/97; Institutional ownership from Technimetrics run dated 9/11/97.
(7) Total Capitalization excludes short-term debt

NOT A CERTIFIED COPY

CP 020990
CONFIDENTIAL

012370

CPH 1414277

16div-019550

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Company Strengths

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

NOT A CERTIFIED COPY

CP 020991
CONFIDENTIAL

012371

F13\94073\10-06-97\7:07 PM\PG2

CPH 1411923

16div-019551

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

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

Cost Related

- Majority of the **restructuring plan completed** in the first quarter of 1997
  - Expected to result in cost savings of $225MM, of which 75% are expected to be realized in 1997 and the balance in 1998
- **Facility consolidation** finished
  - Of 26 factories, eight remain (four in the US, three in Mexico and one in Venezuela)
  - Reduced the number of warehouses from 61 to 18
  - Consolidated the number of headquarter locations from six to one
- **Workforce** reduction to 6,000 from 12,000 employees
  - 3,000 positions related to businesses sold
- Eliminate **88% of its Stock Keeping Units** (SKUs)
  - From 12,500 items (of which 4,500 were furniture products) to about 2,000
  - Elimination of product variations, not product lines; simplified ongoing business
- **Divested** non-core businesses
  - Furniture, decorative bedding, time and temperature lines, gas logs & heaters and Biddeford, Maine textile mill sold; *Counselor* and *Borg* scales brands exclusively licensed to Signature Brands

Growth Related

- Implemented and integrated **new systems and processes** for all core business functions (e.g., new J.D. Edwards systems, product development, *Demand Solutions* forecasting, controllers, accounting, etc.)
- Redesigned concurrent **product development cycle** from 2.5 years to 6 months
  - Plans to introduce 30 new products a year over the next several years
- Initiated "Project Full Time" to improve **customer service**
  - Opportunity to further increase sales by eliminating supplier hedging, filling voids and being invited into new categories
  - Channel management expected to contribute $200 MM in revenue by 1999
- Selectively targeting **international markets** for growth opportunities
- Initiated extensive consumer and market research
  - Identify opportunities by addressing consumer issues and needs
- Revamped **advertising campaign**
  - Award winning advertising and marketing campaign

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Summary of Recent Analyst Estimates

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

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

NOT A CERTIFIED COPY

CP 020993
CONFIDENTIAL

MORGAN STANLEY

012373

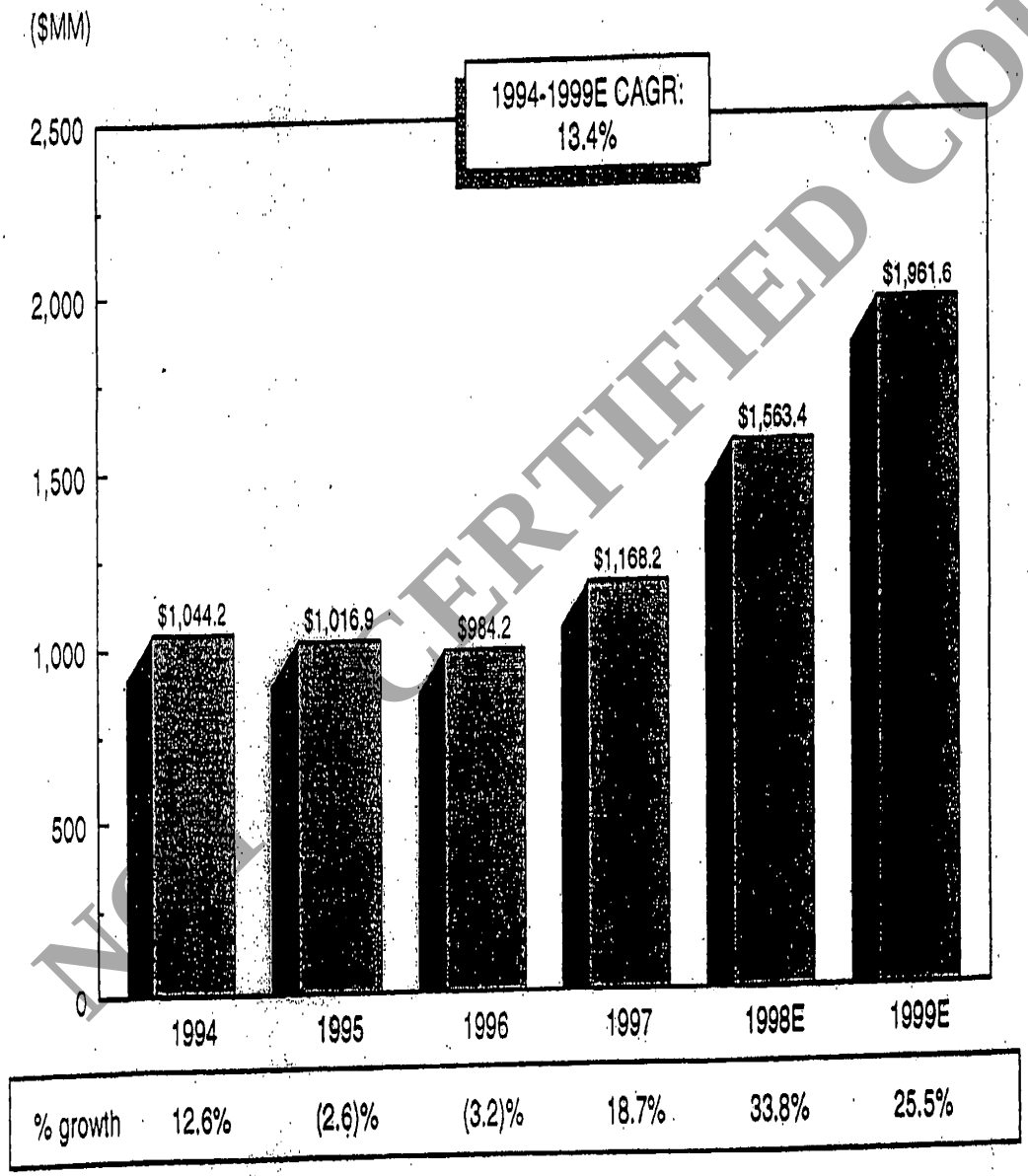
F13\95944\02-03-98\1-59 P\PG1

16div-019553

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Consolidated Net Sales, 1994-1998E (1)



% growth	12.6%	(2.6)%	(3.2)%	18.7%	33.8%	25.5%

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

NOT CERTIFIED COPY

CP 020994
CONFIDENTIAL

F180\13583\12-3-98\11:16A

MORGAN STANLEY

012374

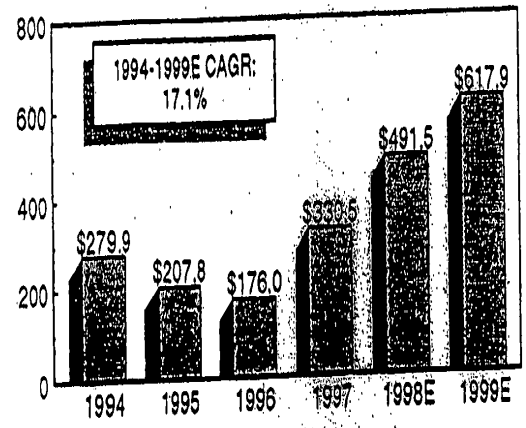
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

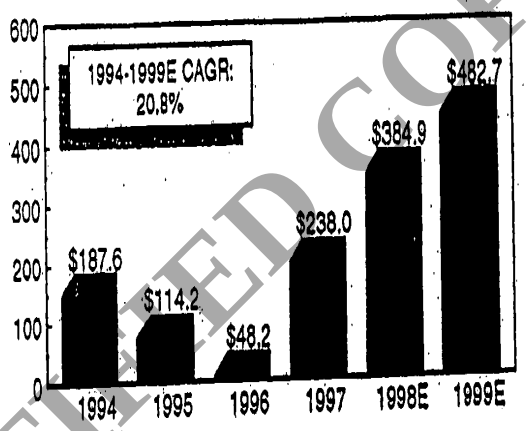
Consolidated Profitability Statistics [1][2]

($ MM) **Gross Profit**



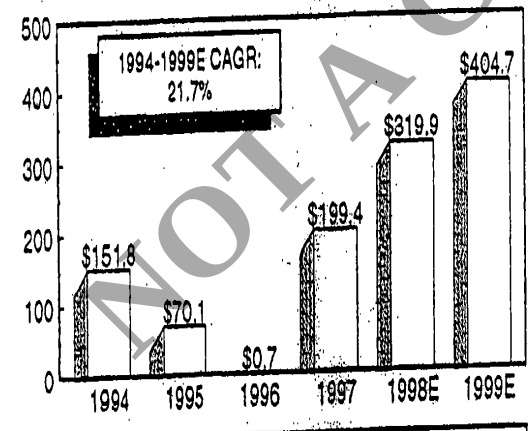
	1994	1995	1996	1997	1998E	1999E
% Margin	26.8%	20.4%	17.9%	28.3%	31.4%	31.5%

($ MM) **EBITDA**



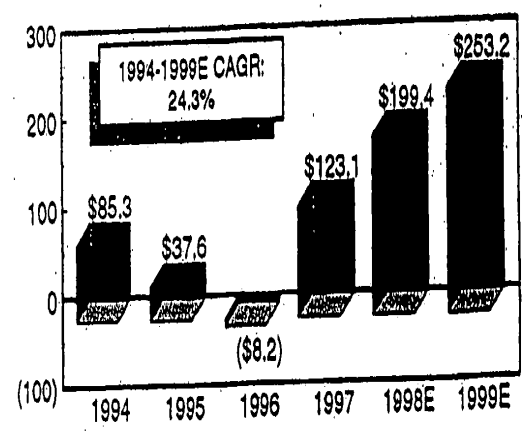
	1994	1995	1996	1997	1998E	1999E
% Margin	18.0%	11.2%	4.9%	20.4%	24.6%	24.6%

($ MM) **EBIT**



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

($ MM) **Net Income**



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

Notes: (1) Projections from Oppenheimer research dated December 11, 1997.
(2) Data excludes any one-time or extraordinary charges.

F1&3\113503\2-3-98\11:16A

012375

CP 020985
CONFIDENTIAL

MORGAN STANLEY

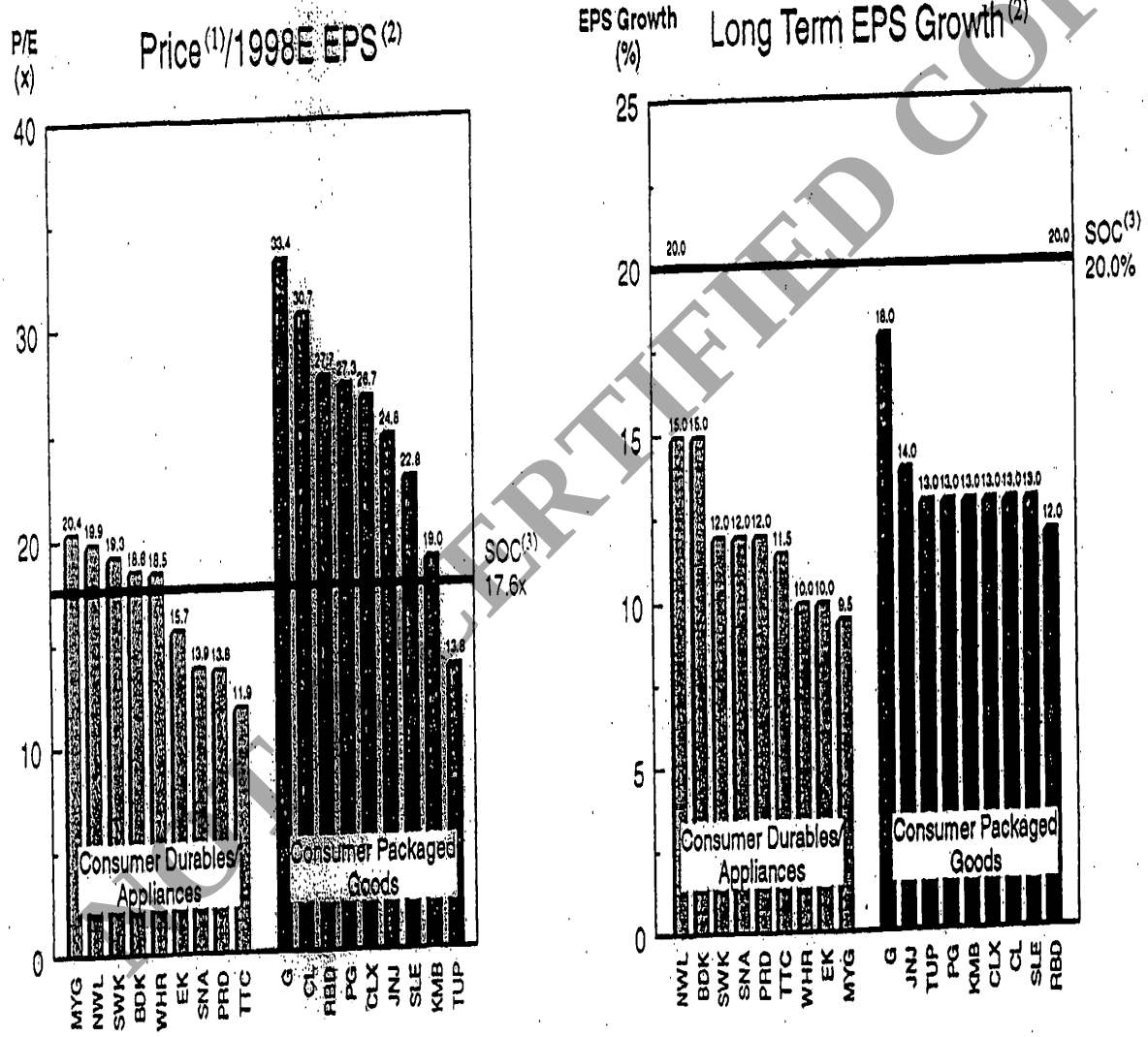
NOT A CERTIFIED COPY

16div-019555

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Trading Statistics of Selected Consumer Products Companies



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

CP 020986
CONFIDENTIAL

NOT CERTIFIED COPY

F:\BG\1434\05\2-3-98\10:28A

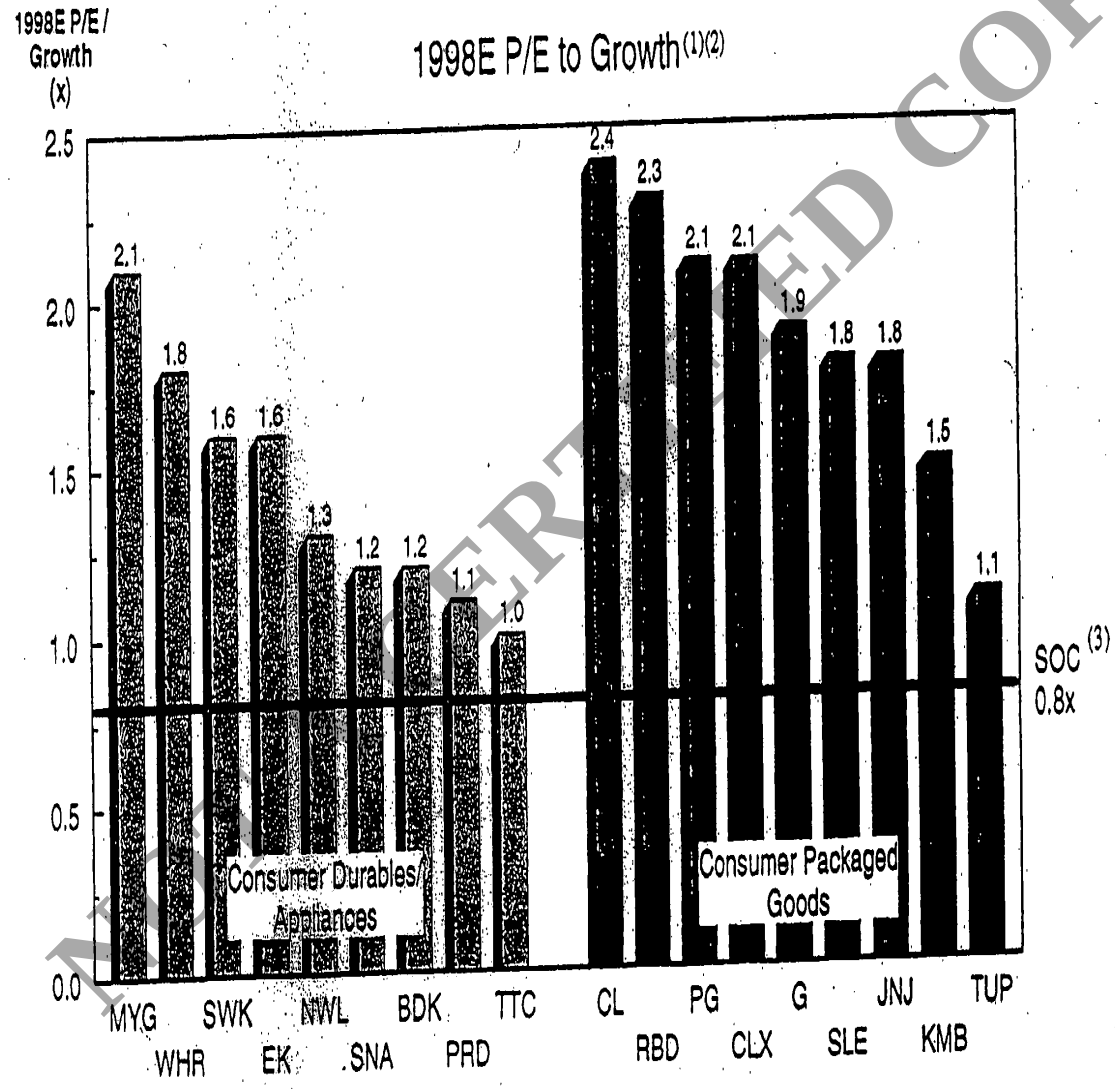
012376

MORGAN STANLEY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Trading Statistics of Selected Consumer Products Companies



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

CP 020997
CONFIDENTIAL

F:\BG\11434052-3-98\10:28A

012377

MORGAN STANLEY

16div-019557

CPH 1411228

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Business Overview

Sunbeam: Preeminent Branded Consumer Devices Company

NOT A CERTIFIED COPY

What is a branded consumer device?

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

Key success factors

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

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Stated Growth Objectives

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

NOT A CERTIFIED COPY

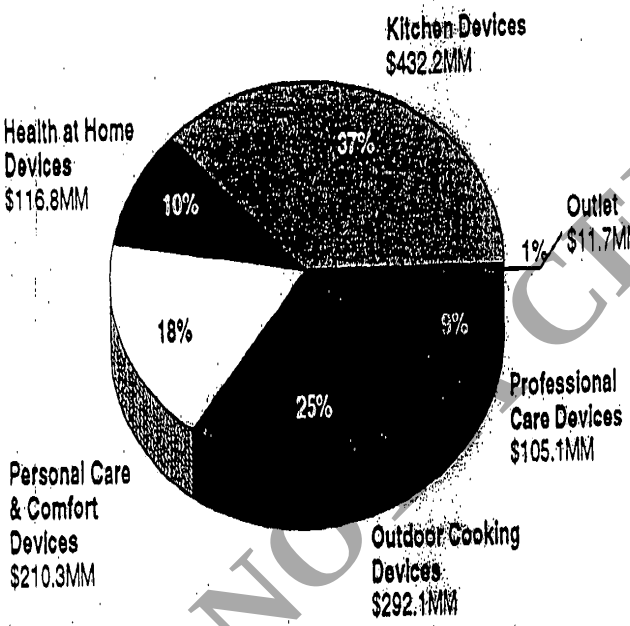
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

1997E Dollar Share by Segment

Sunbeam: Preeminent Branded Consumer Devices Company

Broad presence in a number of categories



Total 1997 Sales: $1,168.2MM

No single true competitor for Sunbeam across all product lines

Kitchen Devices

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

Health at Home Devices

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

Personal Care & Comfort Devices

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

Outdoor Cooking Devices

- Charbroil/Thermos
- Weber
- Fiesta

Professional Care Devices

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

NOT CERTIFIED COPY

CP 021000
CONFIDENTIAL

F1B3\13665\2-1-98.B:05P

012380

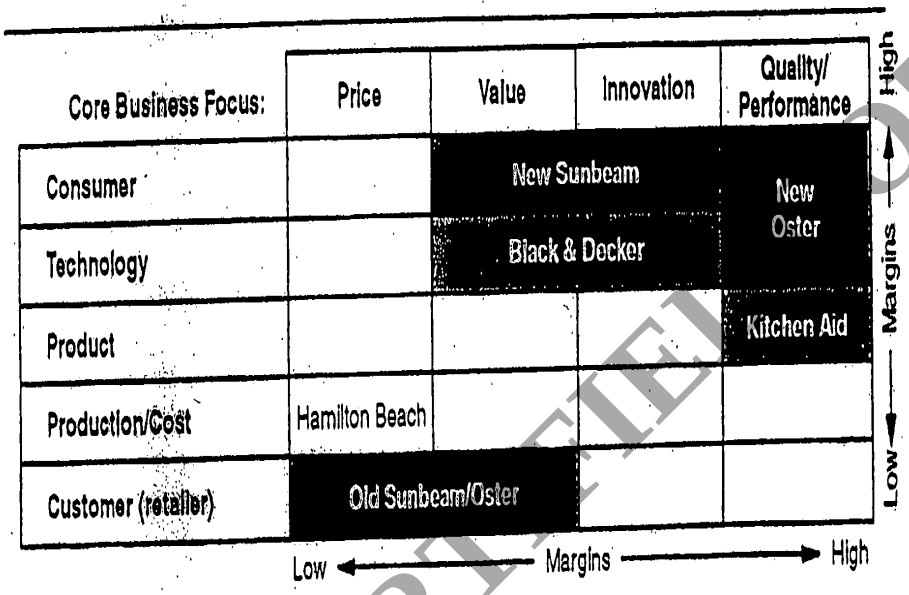
MORGAN STANLEY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Repositioning of *Sunbeam* and *Oster* Brand Names

Relative Competitive Position



New Positioning Direction

Sunbeam

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

Oster

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

CP 021001
CONFIDENTIAL

F19\1\136950\10-1-97\3:50A

012381

MORGAN STANLEY

NOT A CERTIFIED COPY

CPH 1411233

16div-019561

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Future Growth Opportunities

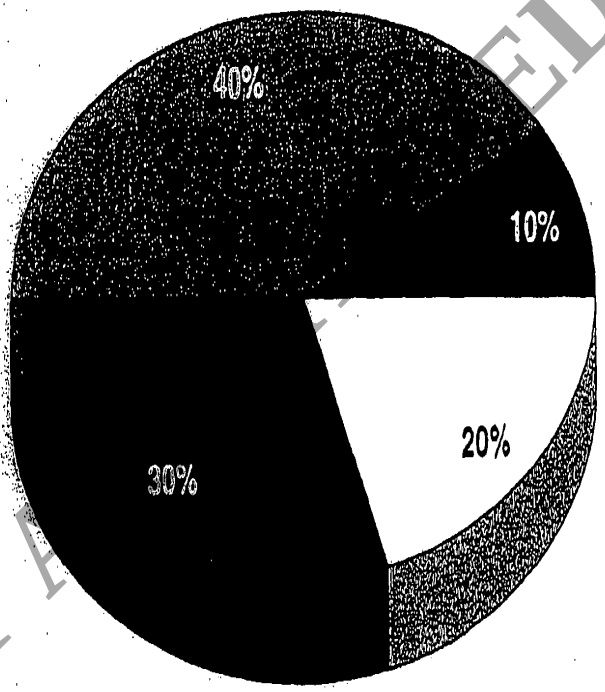
Where will growth come from?

International Growth: +$400MM

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

Core Growth: +$100MM

- 3% industry growth from core products



New Products: +$300MM

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

Channel Management: +$200MM

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

Total 1996-1999E
Revenue Growth: $1 Billion

NOT A CERTIFIED COPY

CPH 1411234

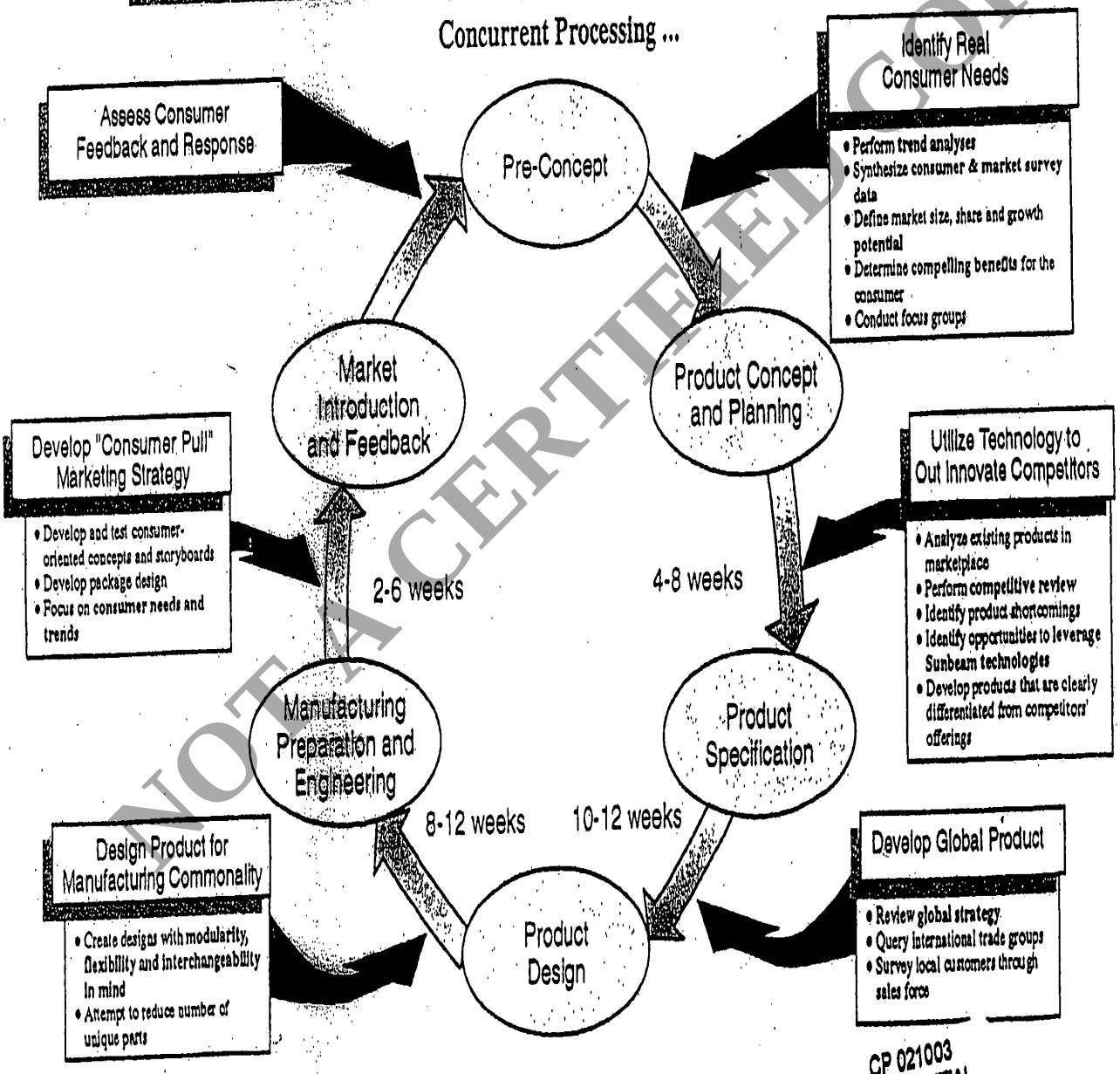
16div-019562

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Redesigned New Products Development Process



NOT A CERTIFIED COPY

CP 021003
CONFIDENTIAL

CPH 1411235

16div-019563

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Recent and Planned Product Introductions

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

1Q'97 | 2Q'97 | 3Q'97 | 4Q'97 | ...

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

CP 021004
CONFIDENTIAL

NOT A CERTIFIED COPY

F18Q\135953\10-1-97@:50A

* Denotes non-Cannibalizing products

MORGAN STANLEY

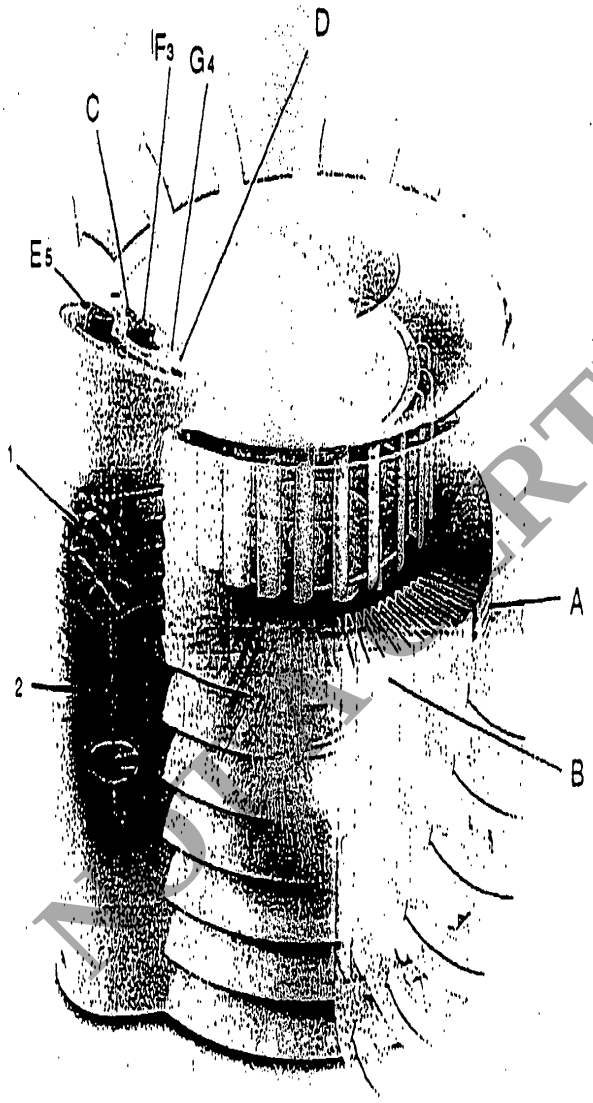
CPH 1411236

16div-019564

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

*Allergy*smart Air Cleaner with Allergen Detector



HOW IT WORKS

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

FEATURES

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

CP 021005
CONFIDENTIAL

NOT CERTIFIED COPY

F1BG\13752\6\10-8-97\4:42P

012385

MORGAN STANLEY

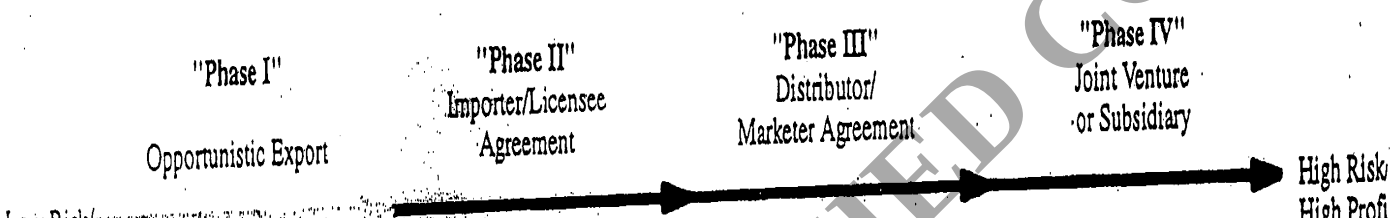
CPH 1411237

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Market Penetration Strategy



- No long term commitment to area
- Lowest risk, lowest margin; does not involve local partner
- Start to establish brand name

- Quick and low risk method to gain international exposure and intelligence
- Escalate operational commitment
- Involves third party

- Target select areas/companies for distribution agreement
- Moderate level of operational exposure to area
- Majority of risk passed on to a local distributor
- Stringent distribution agreements may include minimum sales clauses

- High degree of operational exposure and commitment to area
- Must be confident of area's growth viability
- Must meet "pay as you go" financial standards

Eastern Europe
Middle East

South Africa
Greater China
Argentina

Continental Europe
South East Asia
Brazil

Canada
Mexico
Venezuela
Australia
United Kingdom

Japan

NOT A CERTIFIED COPY

CP 021006
CONFIDENTIAL

F18311358539-20-974:09P

012386

MORGAN STANLEY

CPH 1411238

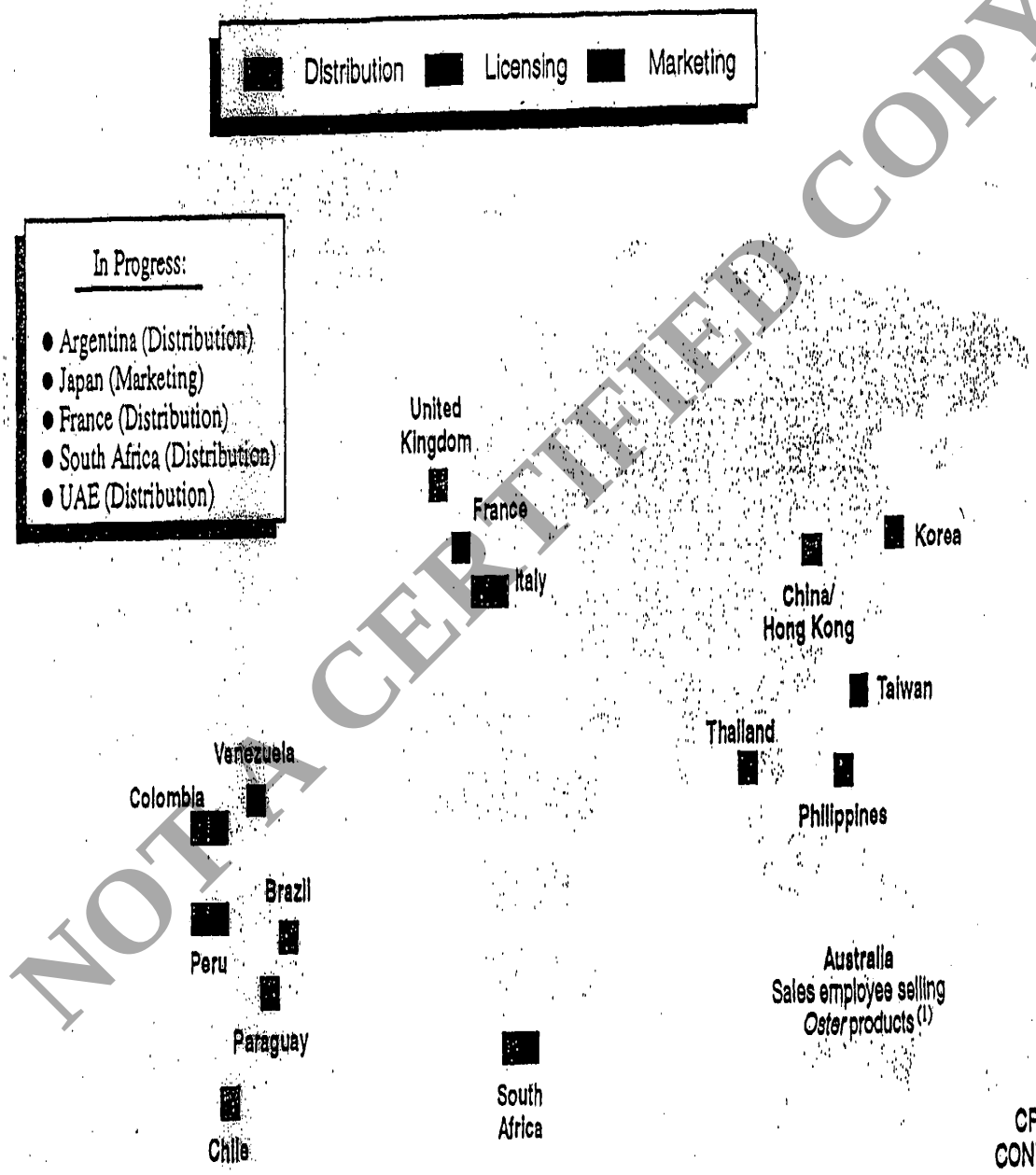
16div-019566

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

1997 International Expansion Initiatives - Global Agreements



NOT A CERTIFIED COPY

CP 021007
CONFIDENTIAL

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

F18G\1359S\10-1-97\3:50A

012387

MORGAN STANLEY

CPH 1411239

16div-019567

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Operational Improvement Potential

"Project Full Time"

Enormous Potential to Increase Market Share and Sales Through Service Improvements

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

NOT A CERTIFIED COPY

CP 021008
CONFIDENTIAL

CPH 1411240

P:\BG\135983\10-22-97\6:17P

012388

MORGAN STANLEY

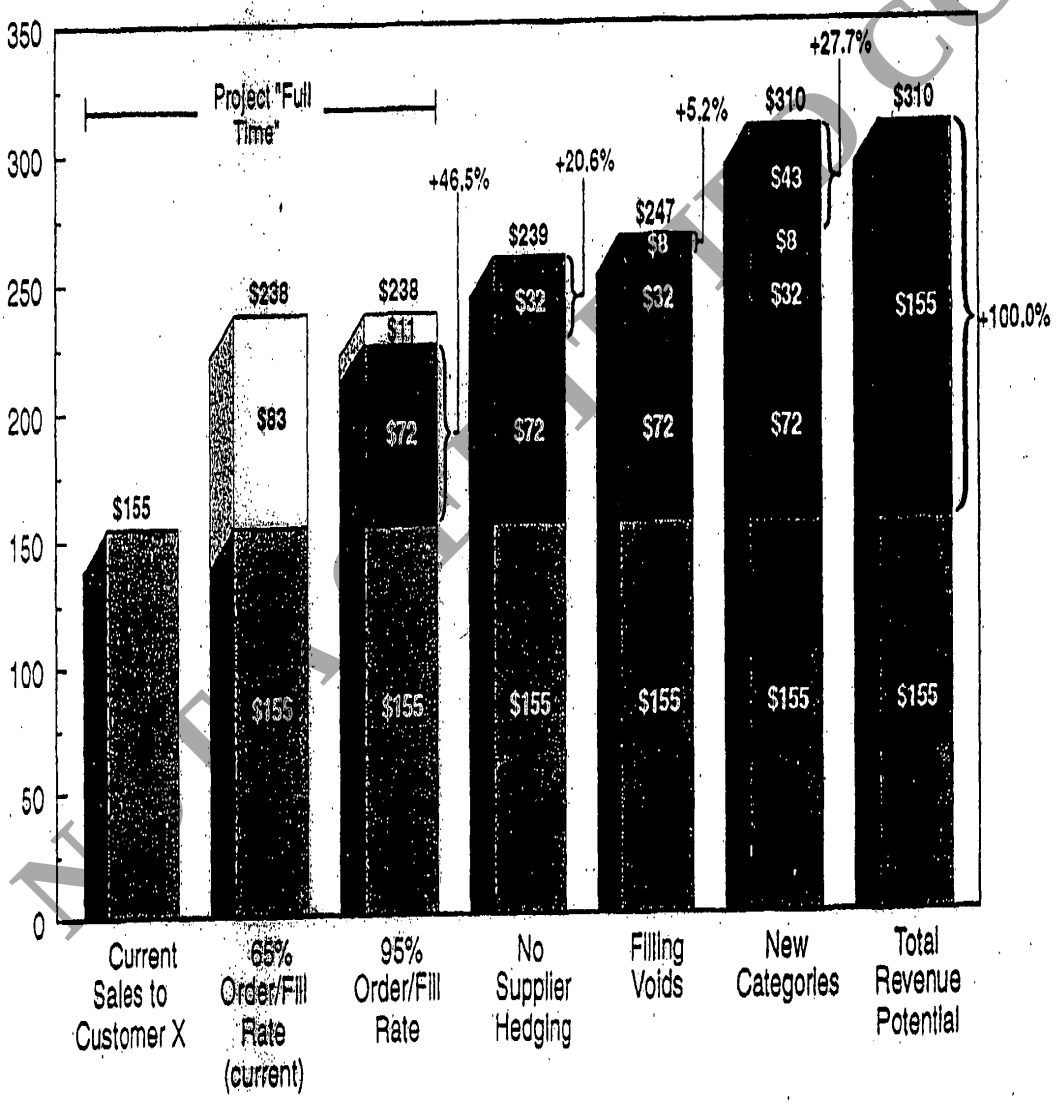
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Channel Management

Case Study - Revenue Potential

Significant Potential to Grow Revenues Through Existing Channels



UNAUTHORIZED COPY

CP 021009
CONFIDENTIAL

F:\BGI\135953\10-1-97\3:50A

012389

MORGAN STANLEY

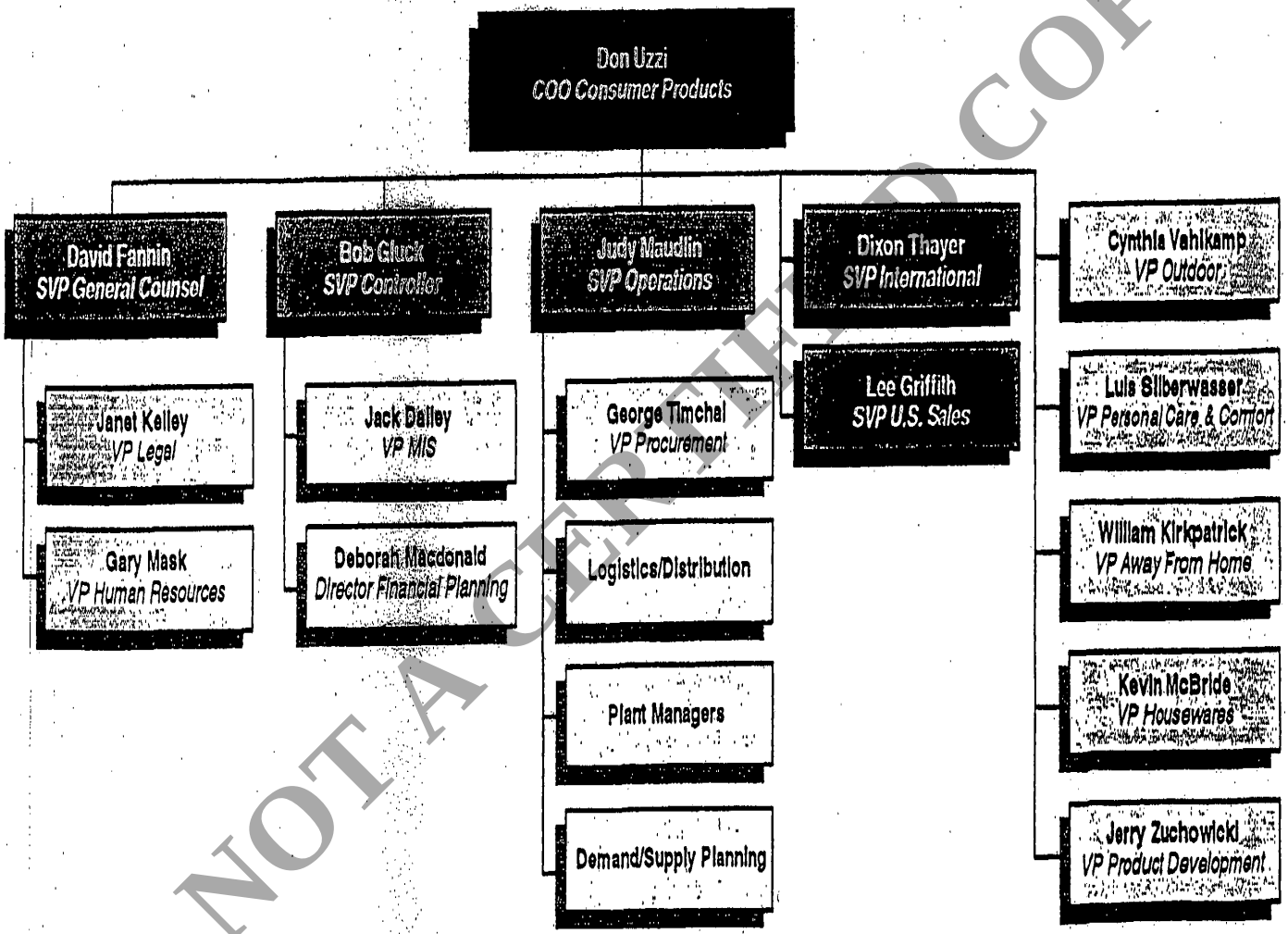
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Worldwide Organization Chart Post Merger



NOT A CERTIFIED COPY

CP 021010
CONFIDENTIAL

F18G\137839\10-18-97\3:10P

012390

MORGAN STANLEY

CDH 1411242

16div-019570

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Global Trends and Opportunities

	Trend	Implications & Opportunities	Sunbeam Solutions
Consumer Trends	Aging of the western population • 53% of Americans over 45 by 2000 • 50% of Europeans over 50 by 2000	• Focus on length and quality of life issues ·Monitoring & maintenance; at-home care • Distinct needs (e.g., small kitchens; leftover storage; unique diet) • Age sensitive product design • Familiarity and trust of known brands • Homebound	• Sunbeam for seniors ·Easy to operate; address specific needs • Health at home products which provide monitoring and therapy • Target marketing of trusted *Sunbeam* and *Oster* brands to seniors • Alternate channels with shop at home accessibility
	Increasingly youthful population in developing economies • Average age in Latin America is 19 years old • One billion people worldwide are 10-19 years old • Average age in China is 20 years old and declining	• Pursuit of Western lifestyle ·Fast food; rock&roll; blue jeans; Hollywood; the Internet • More aware of current trends/media savvy • Combining of cultural influences (new food fads and cuisines)	• Expansion of brands globally ·Export product innovation; leverage strength of Oster in Latin America • Ethnic cuisine food preparation systems • Direct consumer access
	Sensitivity to health and sanitation issues • 80% of U.S. consumers have great confidence in own ability to care for themselves • Only 53% have great confidence in doctors	• Focus on air & water quality ·U.S. bottled water per capita (1983 = 3gal., 1994 = 10 gal.) • Health & fitness regimens shifting to home ·Home fitness machines are a $2Bn+ business • Consumers searching for healthier food preparation ·Rotisserie cooking and roasting	• Home water filtration • Home air filtration • Personal diagnostics providing monitoring, measurement, therapy • Healthy food preparation systems (e.g., rotisseries, steamers, grills, etc.)
	Increasing demands on time • 60% of U.S. women are now working outside the home • 62% of kids under 13 prepare at least one meal themselves weekly • 70% of adults feel "stressed" during the average day	• A need for appliances that "think for you" • Products that eliminate hassles & time-consuming work • Increased self-sufficiency for children • Combination appliances	• "Smart" products ·Blanket With a Brain, Custom Blend Coffee Maker, 3-Way Auto-Off Steam Master • Sunbeam Logic™ • "Less hassle" innovations ·Cordless clippers, combination coffee grinder/brewer, pre-assembled grills • Functioning and safe appliances for children
	The home as a sanctuary • 68% of people say home is "only place I can unwind" • Americans now spend 90% of their time indoors (EPA) • Home becoming a last refuge (24% U.S. H.H. own alarm; only 14% in 1990)	• 30-50% of U.S. homes and offices have damp conditions, encouraging buildup of pollutants • 50 million Americans suffer from allergies; 64% of doctors recommend air cleaners for allergies • Air cleaners growing at 12% CAGR; only 10% of U.S. homes own one • Water filters growing at 10% CAGR; only 15% of U.S. homes own one	• Expand health at home ·Broadened product line; differentiated technologies • Broadly penetrate new channels broadly • Test retail impact ·Joint advertising with retailers
Channel Trends	Retailer consolidation & globalization ·Largest retailers getting bigger, more efficient and global ·Five largest retailers account for $208B in 1995 sales, up from $120B in 1980 & competition is intensifying ·WalMart sales outside the U.S. up from $2MM in 1989 to $12Bn projected for 1997	• Retailers consolidating suppliers creating increased leverage • Growth in category management partnerships • Global consumers and global customers • Global growth opportunities for global suppliers • Emphasis on supplier efficiency	• Build strong global brands (*Sunbeam* and *Oster*) -- consumer pull strategy ·Global advertising agency partnership; 2-brand strategy; global products • International expansion (licensing, distribution and selling) ·Partner with retailer expansion supported by category focus and structure ·Alternate channel access to diversify portfolio ·Partner with key retailers on new categories (e.g., fans, microwaves) ·Fix and focus on supply chain management opportunities
	Growth & scale of alternative channels ·Home shopping now accounts for 28% of total U.S. retail sales ·Manufacturer outlet store growth (+27% CAGR past 5 yrs.) ·Worldwide catalog sales $100 Bn in 1996 (projected to $200 Bn in 2006) ·Away from home ($4 Bn business with 4% growth per year)	• Opportunity to balance/diversify the customer mix • Can't afford to miss the emerging market trends • Requires non-traditional marketing & sales processes • Some opportunity to keep more of the available margin • Opportunity to flatten seasonality	• "Shop@Home" market access strategy ·Direct marketing; door to door; Internet; catalog; own catalog in 30 million boxes/year; TV/Infomercial; outbound telemarketing • Away from home strategy • Outlet store strategy

F1RQ0136049.0119-25-975:20A

MORGAN STANLEY

NOT A CERTIFIED COPY

CP 021011
CONFIDENTIAL

012391

16div-019571

CPH 141243

NOT A CERTIFIED COPY

012392

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

OVERVIEW OF SUNBEAM CORPORATION

NOT A CERTIFIED COPY

CP 021013
CONFIDENTIAL

012393

CPH 1411245

NOT A CERTIFIED COPY

012394

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PRODUCTS & MARKETS SUMMARY

NOT A CERTIFIED COPY

CP 021015
CONFIDENTIAL

F:\1\93\93111\0-01-97\8:37 AM\PG3

012395

MORGAN STANLEY

CPH 1411247

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Summary of Recent Analyst Commentary

(continued)

NOT A CERTIFIED COPY

International Opportunities:

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

New Channels/Distribution:

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

Advertising:

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

CP 021016
CONFIDENTIAL

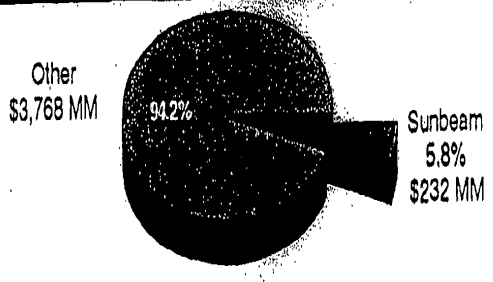
CPH 1411248

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Overview of the Kitchen Devices Industry

1996 North American Market



Total Sales: $4,000 MM

Growth Opportunities

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

Industry

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

Competition

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

Consumer Image

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

Channel

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

Source: Industry trade magazines

NOT A CERTIFIED COPY

CPH 141249

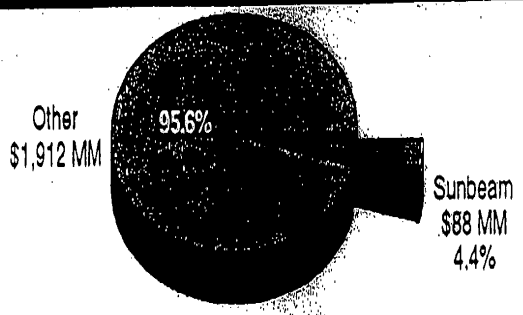
16div-019577

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Overview of the Health at Home Devices Industry

1996 North American Market



Total Sales: $2,000 million

Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

F1803\13583A\10-1-97@2:56A

Source: Industry trade magazines.

012398

NOT A CERTIFIED COPY

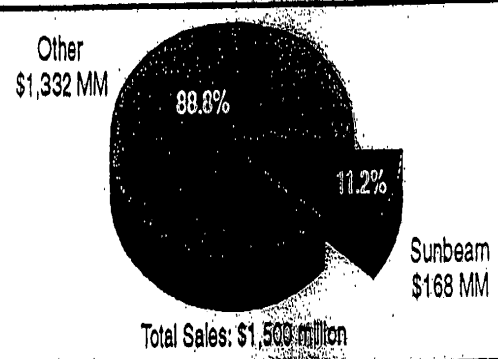
CPH 1411250

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Overview of the Personal Care & Comfort Devices Industry

1996 North American Market



Total Sales: $1,500 million

Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines.

NOT A CERTIFIED COPY

012299

CPH 1411251

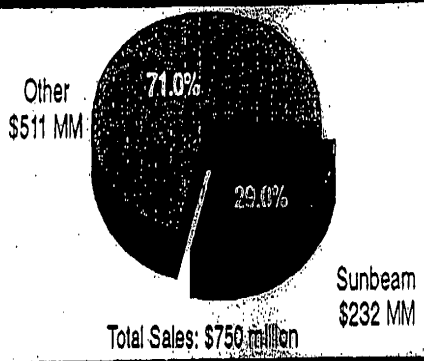
16div-019579

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Overview of the Outdoor Cooking Devices Industry

1996 North American Market



Total Sales: $750 million

Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines

NOT A CERTIFIED COPY

CP 021020
CONFIDENTIAL

CPH 1411252

16div-019580

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the

NOT A CERTIFIED COPY

0012501

856 COMTS

Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

Section 6.2 Other Actions. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

Section 6.3 Advice of Changes. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.4 Conduct of Business of Merger Sub. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

Section 6.5 Section 14(f) Notice. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

NOT A CERTIFIED COPY

0012602

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

Section 7.2 Access and Information; Confidentiality. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

Section 7.3 Comfort Letters.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to

NOT A CERTIFIED COPY

012503

Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

Section 7.4 Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 7.5 Affiliates. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form, that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

Section 7.6 HSR Act; Competition Laws. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of

NOT A CERTIFIED COPY

012604

all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

Section 7.7 Employee Matters.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for the purposes of certain of such Company Plans and certain of such other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

NOT A CERTIFIED COPY

012605

MORGAN STANLEY CONFIDENTIAL 0008045

16div-019585

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of $27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

Section 7.8 Continuance of Existing Indemnification Rights.

(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is

NOT A CERTIFIED COPY

012605

now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably

NOT A CERTIFIED COPY

012507

acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

Section 7.9 Expenses. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 7.10 Public Announcements. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

Section 7.11 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with, and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such

NOT A CERTIFIED COPY

012508

party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger. The respective obligations of each party to effect the Company Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

Section 9.3 Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not

NOT A CERTIFIED COPY

012609

MORGAN STANLEY CONFIDENTIAL 0008049

16div-019589

following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company Effective Time.

Section 10.2 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

NOT A CERTIFIED COPY

with a copy to:

Skadden, Arps, Slate, Meagher
& Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 10.3 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.4 Entire Agreement; No Third-Party Beneficiary. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

Section 10.5 Interpretation. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008051

16div-019591

provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

Section 10.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

Section 10.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.8 Disclosure Schedules. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

Section 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

Section 10.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in

NOT A CERTIFIED COPY

0012612

MORGAN STANLEY CONFIDENTIAL 0008052

16div-019592

accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

Section 10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 10.12 Certain Terms. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

012613

MORGAN STANLEY CONFIDENTIAL 0008053

16div-019593

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name: Russell A. Kersch
Title: Executive Vice President

CAMPER ACQUISITION CORP.

By: _____
Name: Russell A. Kersch
Title:

THE COLEMAN COMPANY, INC.

By: _____
Name: Paul E. Shapiro
Title: EVP

NOT A CERTIFIED COPY

012514

NOT A CERTIFIED COPY

012615

THE COLEMAN COMPANY, INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, and among Sunbeam Corporation ("Laser"), The Coleman Company, Inc. (the "Company") and Camper Acquisition Corp. ("Merger Sub"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

NOT A CERTIFIED COPY

012616

SCHEDULE 4.4

Subsidiaries

(As of Jan. 19, 1998)

Application des Gaz, S.A.
Bafiges S.A.
CC Outlet, Inc.
Camping Gaz (Gb) Limited
Camping Gaz (India) Pvt. Ltd.
Camping Gaz AG
Camping Gaz GmbH
Camping Gaz International Hellas Sarl
Camping Gaz K.K.
Camping Gaz Philippines, Inc.
Camping Gaz S.r.l.
The Canadian Coleman Company, Limited
Coleman Asia Offices, Ltd.
Coleman do Brasil Ltda
Coleman (Deutschland) GmbH
Coleman Japan Co., Ltd.
Coleman Manufacturing de Mexico, S.A. de C.V.
Coleman Powermate Compressors, Inc.
Coleman Safety & Security Products, Inc.
Coleman International
Coleman SVB S.r.l.
Coleman U.K. Holdings Limited
Coleman Venture Capital, Inc.
Eastpak Manufacturing Corporation
General Archery Industries, Inc.
Kansas Acquisition Corp.
Nippon Coleman, Inc.
Productos Coleman, S.A.
River View Corporation of Barling, Inc.
Taymar Gas Limited
Woodcraft Equipment Company
Australian Coleman, Inc.
Beacon Exports, Inc.
Camping Gaz (Brazil)
Camping Gaz (Hong Kong)
Camping Gaz (Poland)
Camping Gaz Cs, Spol, S.r.l.
Camping Gaz International
Camping Gaz International (Portugal) Ltda
Camping Gaz Kft
Camping Gaz Senegal
Campiran S.A.
Coleman Argentina, Inc.
Coleman Europe
Coleman Country, Ltd.
Coleman Holland B.V.
Coleman Lifestyles K.K.
Coleman Mexico S.A. de C.V.
Coleman Powermate, Inc.
Coleman SARL
Coleman Spas, Inc.
Coleman Taymar Limited
Coleman U.K. PLC
Eastpak Corporation
Epigas International Limited
Jasan Products Ltd.
Neves Caria & Ca Ltda
Pearson Holdings, Inc.
PT Camping Gaz
Sierra Corporation of Fort Smith
Tsana Internacional, S.A.

NOT A CERTIFIED COPY

012617

SCHEDULE 4.5

Consents and Approvals: No Violations

1. The Company's Amended and Restated Credit Agreement

2. LYONs

3. Senior Secured First Priority Discount Notes due 2001;
   Senior Secured Second Priority Discount Notes due 2001;
   Senior Secured First Priority Discount Exchange Notes due 2001;
   Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings

4. Company Stock Option Plans

5. Employment, Severance and Retention Agreements with the following executives:

Jerry Levin	Paul Shapiro	Frank Cancelloni
Björn Blomberg	Anthony Lenders	Robert Rosenzweig
Harlan Gardner	Steven Isko	Patrick McEvoy
David Stearns	George Mileusnic	David Yuen
Michael Hammes	Larry Sanford	Fritz van der Bergh
Frederick Fritz	Pietro Perrone	James Reilly
Robert Carter	Brian Althoff	Ron Lazarus
Randy Johnson	Steven Volante	Glen Moore
Steve Kaplan	Robert Ring	Kent Crudup

6. Insurance policies including but not limited to General Liability, Automobile, Umbrella Liability and Excess Liability, and Workers' Compensation policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings Inc. ("Mafco Holdings") with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements ("Self-Insured Arrangements")

NOT A CERTIFIED COPY

012618

SCHEDULE 4.7

Absence of Certain Changes or Events

1. Increase in base salaries for Company employees effective as of March 1, 1998
2. Authorization of payments of discretionary bonuses under the Company's Management Incentive Plan for 1997
3. Executive Severance Policy
4. Setting of 1998 Targets under the Management Incentive Plan
5. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
6. Stock Purchase Agreement (the "Stock Purchase Agreement"), dated February 18, 1998, by and among the Company, Ranco Incorporated of Delaware ("Ranco") and Siebe PLC ("Siebe"), for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

NOT A CERTIFIED COPY

012619

SCHEDULE 4.8

Litigation

None

NOT A CERTIFIED COPY

012620

SCHEDULE 4.10

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings consolidated federal income tax return for the years 1989 and 1990

NOT A CERTIFIED COPY

012621

SCHEDULE 4.13

ERISA

4.13(c)

1. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
2. The Special Medical Plan
3. The Basic Medical Plan
4. The Regular Medical Plan

4.13(f)

1. 1996 Stock Option Plan
2. Executive Severance Policy
3. Employment, Severance and Retention Agreements (see Schedule 4.13(c))
4. Certain foreign jurisdictions may provide for special severance payments

NOT A CERTIFIED COPY

012622

SCHEDULE 4.15

Intellectual Property

None

NOT A CERTIFIED COPY

012623

SCHEDULE 4.16

Contracts

1. Hedging Agreement with Koch Industries
2. Amended and Restated License Agreement dated as of January 1, 1998 between the Company and The Timberland Company
3. Open Purchase Order with Wespak Corporation for cardboard coolers
4. Agreements with Ernst & Young and Oracle Corporation for update of software system
5. Agreement between the Company and AT&T Corporation dated April 3, 1996, as amended
6. Agreement dated as of September 7, 1997 between the Company and Wolverine World Wide Inc.
7. Agreement dated as of April 4, 1994 between the Company and Char-Broil, a division of W.C. Bradley Corporation
8. Stock Purchase Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe, for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

NOT A CERTIFIED COPY

0126214

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety & Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto

2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out of certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act

3. The Company may take all actions necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure

4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement

5. Increase base salaries for Company employees effective as of March 1, 1998

6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997

7. Mafco Demand Note will be cancelled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

NOT A CERTIFIED COPY

.0126625

SCHEDULE 7.7

Employee Matters

7.7(b)

Years of Service	Period of Base Salary
0 - 5	6 weeks
5 - 10	3 months
over 10	6 months

7.7(c)

Joe Tesoriero

Robin Esterson

Bobby Jenkins

Marc Shiffman

Joseph Page

Gwen Wisler

NOT A CERTIFIED COPY

012626

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

Directors in Attendance:

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

Others in Attendance:

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

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

NOT ACERTIFIED COPY

012628

MS 118
5-12-04

CONFIDENTIAL SASMF 08881
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634065
16div-019607

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

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

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

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

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

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

012529

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 08882

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634066

16div-019608

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

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

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

WHEREAS, in the Holdings Merger, the shares of Holdings Common Stock, par value $1.00 per share ("Holdings Common Stock"), issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam common stock, par value $.01 per share ("Sunbeam Common Stock"), and $159,956,756 in cash, without interest thereon; and each share of Laser Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $1.00 per share, of the surviving corporation in the Holdings Merger; and

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

WHEREAS, in the Coleman Merger, each share of the Company's Common Stock, par value $0.01 per share ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by the Company, Sunbeam or any subsidiary of the Company and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Sunbeam Common Stock, with cash paid in lieu of fractional shares, and (B) $6.44 in cash, without interest thereon; and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $.01 per share, of the surviving Company in the Coleman Merger; and

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

NOT A CERTIFIED COPY

012630

CONFIDENTIAL

SASMF 08883

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634067

16div-019609

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

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

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

NOW, THEREFORE, BE IT:

Approval of Coleman Merger and Coleman Merger Agreement

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

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

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

NOT A CERTIFIED COPY

012531

CONFIDENTIAL SASMF 08884

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634068

16div-019610

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

Delaware Business Combination Statute

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

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

Adoption of Executive Severance Policy

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

Increases In Target Bonus

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

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

NOT A CERTIFIED COPY

012532

CONFIDENTIAL

SASMF 08885

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634069

16div-019611

Approval of Certain Employment Arrangements

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

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

Securities and Exchange Commission Filings

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

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

NOT A CERTIFIED COPY

012533

CONFIDENTIAL SASMF 08886

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634070

16div-019612

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

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

Engagements

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

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

Actions by Subsidiaries

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

NOT A CERTIFIED COPY

012634

CONFIDENTIAL
SASMF 08887
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0634071
16div-019613

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

Regulatory Filings

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

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

Certificate of Merger

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

Delisting of Coleman Common Stock from the NYSE

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

NOT A CERTIFIED COPY

012935

CONFIDENTIAL

SASMF 08888

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634072

16div-019614

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

Payment of Necessary Fees

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

Litigation

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

Expenses

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

General

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

NOT A CERTIFIED COPY

01259336

CONFIDENTIAL SASMF 08889

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634073

16div-019615

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

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

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

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

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

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

NOT A CERTIFIED COPY

012937

CONFIDENTIAL

SASMF 08890

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634074

16div-019616

of the Sunbeam meeting.

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

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

Secretary

NOT A CERTIFIED COPY

012538

CONFIDENTIAL

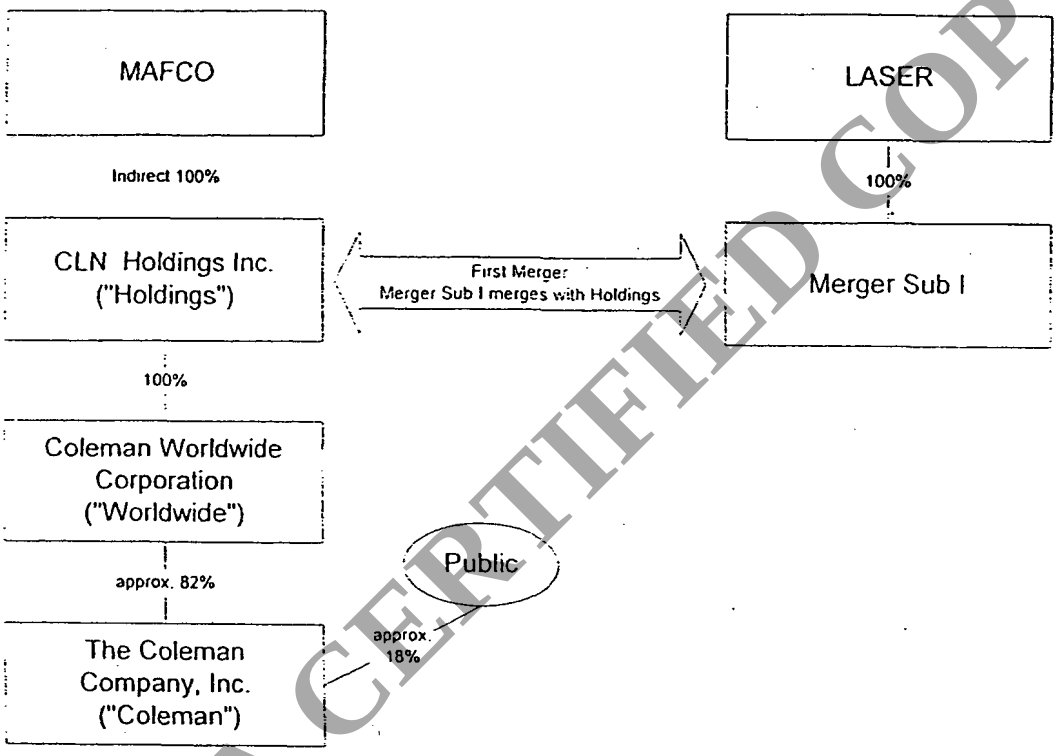
SASMF 08891

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634075

16div-019617

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



PRE-TRANSACTION STRUCTURE:

MAFCO owns Coleman Holding Companies, and indirectly 82% of Coleman

Public owns 18% of Coleman

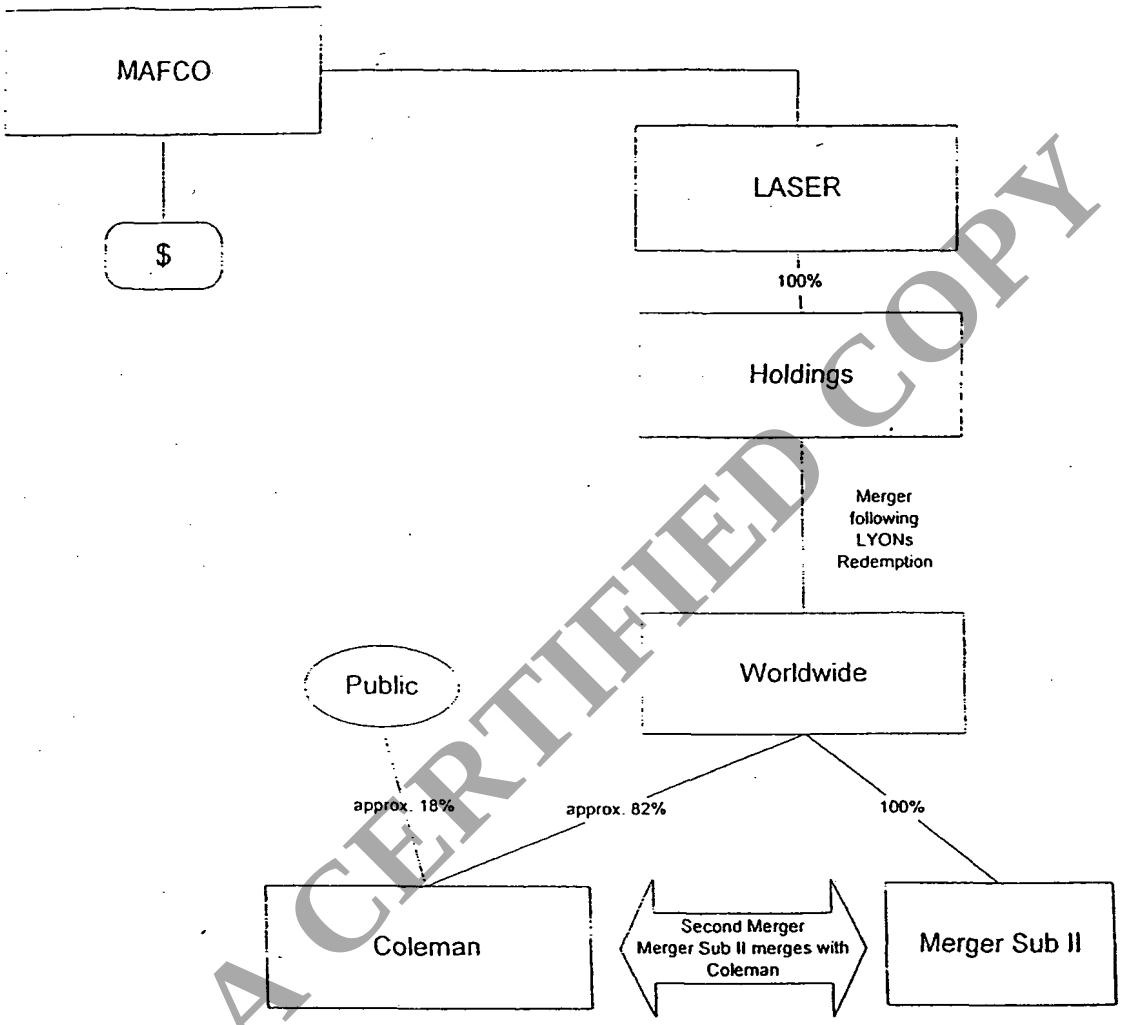
Laser forms Merger Sub I to acquire CLN Holdings

NOT A CERTIFIED COPY

012639

STRICTLY CONFIDENTIAL
FEBRUARY 26, 1998

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER FIRST MERGER:

MAFCO receives Laser stock and cash for Holdings shares

Laser owns Coleman Holdings chain

Public continues to own 18% of Coleman

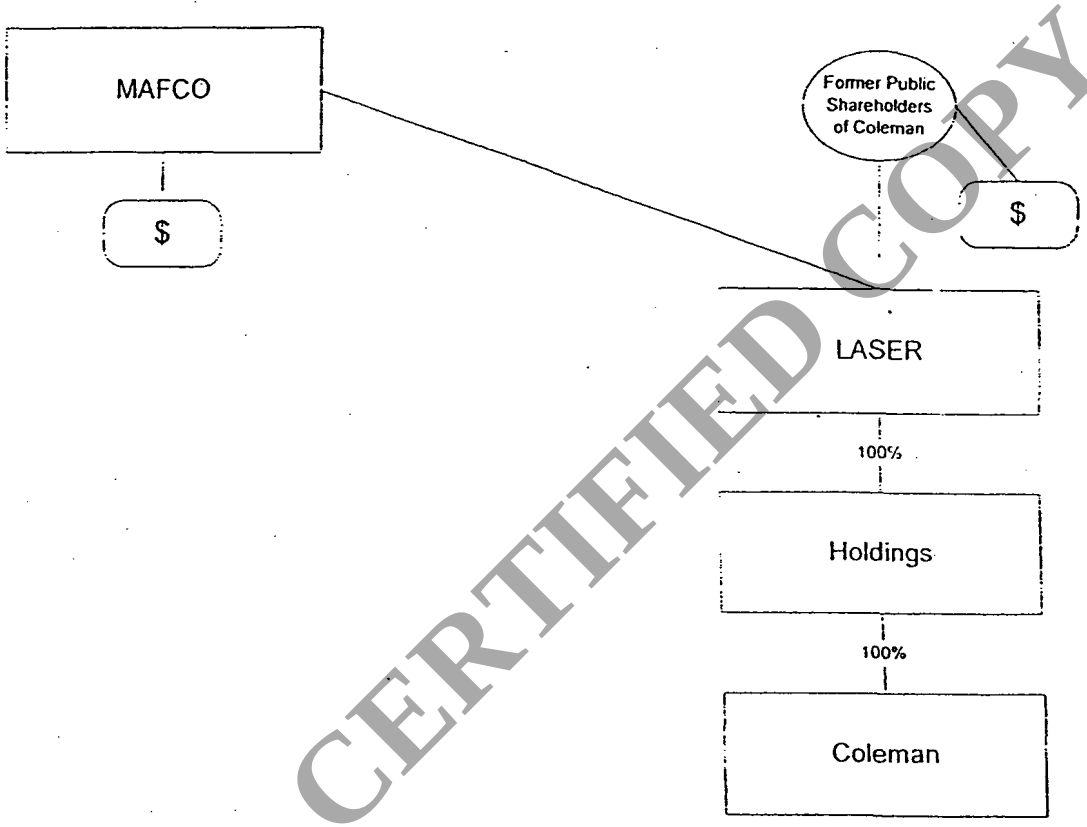
LYONs redeemed; Worldwide merges with Holdings

Merger Sub II formed for second merger

NOT A CERTIFIED COPY

012540

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER SECOND MERGER:

Public receives Laser stock and cash for Coleman shares in the second merger

Coleman 100% owned by Laser

NOT A CERTIFIED COPY

012641

SUMMARY OF PROPOSED TRANSACTION DOCUMENTS

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

NOT A CERTIFIED COPY

012642

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

NOT A CERTIFIED COPY

012643

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

NOT A CERTIFIED COPY

012644

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Preliminary Financial Terms of Transaction

Terms	Description
Form of Transaction	"Two Step" Merger
Approximate Consideration Per CLN Share	
Public	• 0.5677 SOC shares and $6.44 in cash for each CLN share (Taxable)
MacAndrews Consideration	Sell control of Coleman Worldwide (44.1mm CLN shares) in exchange for: • Assumption of First and Second Priority Notes ($496 million of accreted value 11/15/97; $525 million of accreted value 5/15/98) • 14.1 million SOC shares and $160 million in cash (Tax Free)

NOT A CERTIFIED COPY

CREDIT SUISSE | FIRST BOSTON

W:\library\00500021.ny#1

019645

CONFIDENTIAL SASMF 08898 CPH0634082

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Key Transaction Multiples

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

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

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

NOT CERTIFIED COPY

CREDIT SUISSE | FIRST BOSTON

W:\library\80580021.ppw/2

CONFIDENTIAL SASMF 08899 CPH0634083

016216

16div-019625

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

CLN Transaction Multiples

Valuation Sensitivity of SOC Proposal

(Dollars in Millions)

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

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

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 08900 CPH0634084

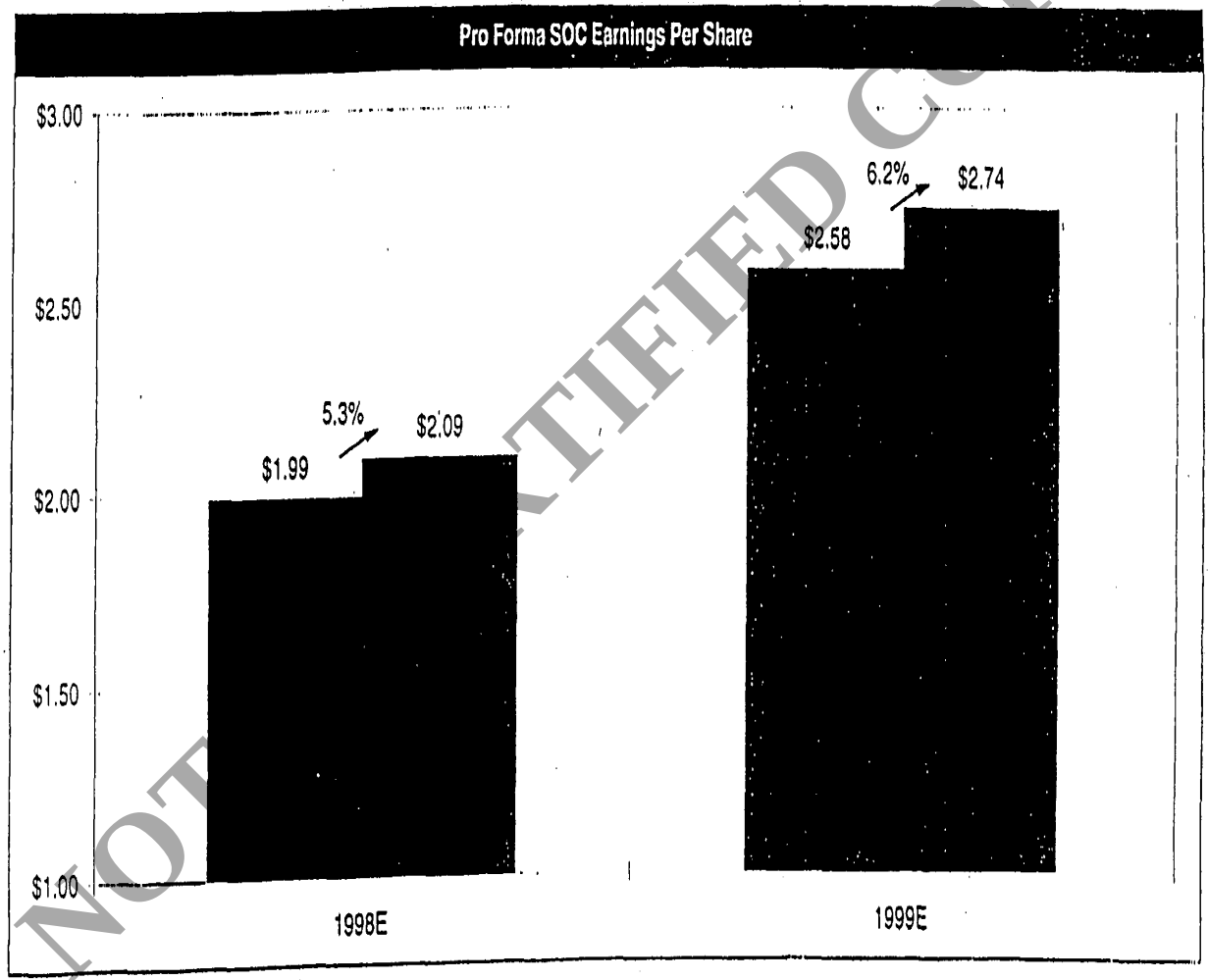
L19210

16div-019626

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
SASMF 08901
CPH0634085

The Coleman Company, Inc.

Pro Forma Analysis



Note: Excludes one-time restructuring charges.

NOT CERTIFIED COPY

CREDIT SUISSE | FIRST BOSTON

819210

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, v. ARTHUR ANDERSEN LLP and PHILLIP E. HARLOW, Defendants.	Case No.: CA 01-06062AN Judge Stephen A. Rapp

COLEMAN (PARENT) HOLDINGS' RESPONSE TO ANDERSEN'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATED TO THE COLEMAN COMPANY

Plaintiff Coleman (Parent) Holdings, Inc. ("Coleman Parent") hereby opposes defendant Arthur Andersen's Motion to Compel Production of Documents Related to The Coleman Company. In support of its opposition, Coleman Parent states as follows:

1. Coleman Parent is the former owner of over 80% of the shares of The Coleman Company. In early 1998, Sunbeam Corporation negotiated with Coleman Parent and The Coleman Company for the purchase of The Coleman Company. In connection with this acquisition, Sunbeam conducted due diligence regarding The Coleman Company's business and financial condition. Arthur Andersen provided assistance to Sunbeam in this due diligence process, along with Sunbeam's investment bankers (Morgan Stanley) and outside counsel (Skadden Arps). The negotiations culminated in February 1998 with Sunbeam agreeing to purchase The Coleman Company in an acquisition valued by Sunbeam and Andersen at approximately $2.0 billion, consisting of $260 million in cash, Sunbeam stock valued at $811 million, and the assumption of debt for the remainder.

NOT A CERTIFIED COPY

012650

MS 119
5-12-04 WDB

2. On March 30, 1998, in the first phase of the acquisition, Sunbeam purchased Coleman Parent's 80% share block in exchange for cash, assumed debt, and Sunbeam stock with a fair market value of over $600 million, based on the publicly traded market price on that date. In going forward with the transaction, Coleman Parent relied on defendants' issuance of audit opinions certifying Sunbeam's 1996 and 1997 financial statements. Not long after the deal closed, however, it became clear that Sunbeam's financial statements were false and misleading, and Arthur Andersen announced that those opinions could not be relied upon and would have to be restated. The market value of Coleman Parent's Sunbeam stock received as part of the purchase price plummeted and has never recovered.

3. In this action, Coleman Parent has sued Andersen and its audit partner Philip Harlow for issuing the false and misleading Sunbeam financial statements. Thus, this action solely concerns the financial statements of Sunbeam, and has nothing to do with the operations or financial statements of The Coleman Company. Indeed, it should be noted that Coleman Parent settled its claims against Sunbeam in 1998, and in connection with that settlement, Sunbeam never raised (and fully released) any claim that The Coleman Company's financial statements were inaccurate or misleading in any manner.

4. In this motion, however, Andersen seeks an order from this Court compelling the production of documents in response to 22 of the 95 separate document requests included in its first document request. Andersen's blunderbuss motion asserts that these 22 requests seek documents that supposedly relate to The Coleman Company's "value and operations." (AA Mtn. ¶ 2.) Andersen claims it needs discovery on The Coleman Company's "value" as of March 30, 1998 (when Sunbeam acquired it) because this "value" purportedly is relevant to an "out-of-pocket" calculation of Coleman Parent's damages, which is "one of the

NOT A CERTIFIED COPY

012651

measures of damages" available for Coleman Parent's fraud and negligent misrepresentation claims. (AA Mtn. ¶¶ 3, 4.) The other measure of damages available to Coleman Parent here, of course, is the "benefit of the bargain" rule. *See, e.g., Nordyne, Inc. v. Florida Mobile Home Supply, Inc.*, 624 So. 2d 1283, 1286-87 (Fla. 1st DCA 1993); *Colandrea v. Johansen* v. 632 So. 2d 284-85 (Fla. 2nd DCA 1994); *Duffy v. Spreroni*, 580 So. 2d 862, 863-64 (Fla. 3rd DCA 1991).

5. Under the benefit-of-the-bargain rule, The Coleman Company's purported "value" is plainly irrelevant, and Andersen does not and cannot contend otherwise. But at this point there is no need for the Court to decide which rule applies, because in this particular case the same result will be reached under either rule. On the one hand, under the out-of-pocket loss rule, Coleman Parent is entitled to recover the difference between the purchase price it paid for the Sunbeam shares and the actual value of the property acquired. That calculation is easy here because the purchase price was set by Sunbeam in the negotiations, and was independently valued by the financial markets -- a valuation in excess of $600 million which Andersen itself incorporated in footnote 14 to its 1997 Sunbeam audit report. On the other hand, under the benefit-of-the-bargain rule, Coleman Parent is entitled to recover the difference between the actual value of the Sunbeam shares and the value of the shares as represented by Sunbeam. That calculation also is simplified by the valuation set by the transaction and the public markets.

6. Coleman Parent is not claiming that Sunbeam represented that its shares would be worth *more* than the publicly traded market price on the date the contract was signed. Rather, Coleman Parent claims it was defrauded because the publicly traded market price for Sunbeam shares had been artificially inflated by Andersen's fraud and plummeted once the fraud was disclosed. Thus, the "actual value" of the Sunbeam shares received by Coleman Parent is the

NOT A CERTIFIED COPY

012652

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1315401

16div-019630

same regardless of which damages rule applies: the market value after the fraud was revealed. Likewise, the number used for comparison -- either the "purchase price" paid by Coleman Parent or the value of the shares as represented by Sunbeam -- also remains the same: the public market value of the Sunbeam stock at the time of the transaction. Under either rule, Coleman Parent's damages are easily measured by the drop in Sunbeam's stock price when the financial markets became aware of the truth about Sunbeam's financial performance, which had been hidden by Andersen's certification of Sunbeam's false financial statements.

7. Andersen essentially contends that the out-of-pocket loss rule requires the parties to perform an entire valuation or appraisal of The Coleman Company as of the date of the transaction, with the jury apparently to decide what that value was. That would make no sense. This case involves a transaction negotiated at arms' length by two large, sophisticated, and publicly traded corporations. Each side was represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Andersen for Sunbeam, and CS First Boston and Wachtell Lipton for The Coleman Company. Sunbeam conducted due diligence of The Coleman Company just like any third-party buyer would do. In the end, Sunbeam agreed to pay a total of $2.0 billion for The Coleman Company, including Sunbeam stock valued by Sunbeam and Andersen at $811 million. This was an arms' length, fair market "valuation" of The Coleman Company. The "purchase price" for the Sunbeam shares acquired by Coleman Parent as partial payment for its 80% share block was fixed by Sunbeam and confirmed by Andersen to be in excess of $600 million.

8. There is no plausible basis to permit Andersen to attack the purchase price negotiated by the parties to the transaction in February 1998. But that is precisely what Andersen seeks to do here. Andersen essentially contends that it should be free to ignore the purchase price

NOT A CERTIFIED COPY

012953

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1315402

16div-019631

and valuation of The Coleman Company which all the parties agreed upon (including Andersen, which stated that same valuation in the 1997 audit report at issue in this case). Andersen seeks to conduct the equivalent of another due diligence investigation of The Coleman Company, as if it was a buyer other than Sunbeam, in order to try to establish a different value than the one fixed by the purchase agreements and the public market for Sunbeam shares. What this all boils down to is that Andersen contends that Sunbeam simply agreed to pay too much for The Coleman Company, and that Coleman Parent got more than it deserved even if the $600+ million in Sunbeam shares it acquired were rendered worthless as a result of Andersen's fraud. But there is no basis in law or fact for defendants -- who were not even parties to the transaction -- to contest the price that was actually negotiated. This Court should reject out of hand this blatant diversionary tactic by Andersen, which would greatly expand and prolong both discovery and trial.

9. Andersen, which has already paid $110 million to settle the claims asserted against it by certain of the other Sunbeam shareholders, and Harlow, who is the subject of an SEC enforcement action for his conduct as Sunbeam's auditor, understandably and desperately want to turn this suit into a case about The Coleman Company rather than Sunbeam. Andersen and Harlow would have this Court believe that this is a fraud action by defendants on behalf of Sunbeam against Coleman Parent. It is not. Andersen's motion is nothing more than a transparent effort to delay the course of this case and to dramatically increase its complexity. By doing so, Andersen and Harlow hope to make this case much more expensive for Coleman Parent and also to delay their day of reckoning.

10. Moreover, even if The Coleman Company's value were at issue, the discovery sought by Andersen goes well beyond any reasonable bounds. Pursuant to this motion

NOT A CERTIFIED COPY

012654

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

to compel, Andersen seeks this Court's approval for discovery concerning virtually *all aspects* of The Coleman Company's business (as well as Coleman Parent's) *going back to 1989*, for the purported purpose of determining the "value" of The Coleman Company in 1998. Even if that issue were relevant, Andersen's discovery requests are not tailored in any way to meet that objective. No investor interested in the value of The Coleman Company in 1998 would have any interest in the documents defendants seek to discover. Andersen's purpose, however, is not to discover evidence of The Coleman Company's value. Its main objective is to bog discovery down into an expensive frolic and detour concerning events that happened more than 10 years ago at The Coleman Company -- not at Sunbeam.

11. Furthermore, while Andersen attempts to disguise its true purpose by couching its motion as an effort to obtain necessary damages discovery, it has not even attempted to demonstrate how the 22 document requests that are the subject of its motion to compel are relevant to the issue of The Coleman Company's value.[1] Indeed, review of the 22 document requests that are the subject of Andersen's motion reveals Andersen's overbroad requests are not reasonably calculated to obtain discovery concerning the valuation issue, even if that issue were a proper subject for discovery. If for no other reason, Andersen's motion should be denied because the document requests at issue here are so overbroad (both as to subject matter and time) that they necessarily encompass matters having nothing to do with The Coleman Company's value. Examples of Andersen's everything-but-the-kitchen-sink approach include:

[1]Indeed, Andersen has not even clearly identified the document requests at issue in this motion. Instead, Andersen has stated that it is moving to compel production of documents related to the "value and/or operations of The Coleman Company (including Nos. 9, 10, 13, 15, 16, 18, 20, 22, 23, 25, 27, 29, 32(a)-(c), 40, 41, 44, 50, 53, 62, 80, 82, and 93)." (AA Mtn. ¶ 2; emphasis added.) If Andersen believes that there are other requests related to Coleman's value, it has not identified them, and those requests thus cannot be the subject of this motion to compel.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-019633

NOT A CERTIFIED COPY

012655

- Request No. 13, which seeks documents relating to all Board of Director's meetings dating back to January 1, 1989, not only for plaintiff Coleman Parent but also for various affiliates, including Mafco Holdings, Inc., Coleman Worldwide Corporation, CLN Holdings Inc., New Coleman Holdings Inc., MacAndrews & Forbes Holdings Inc., and without any limitation as to subject matter. Documents responsive to that broad request encompass the numerous other companies besides The Coleman Company, Inc. that have operated under the MacAndrews & Forbes umbrella, none of which is at issue here.

- Request No. 16, which seeks documents discussing whether any public disclosure should be made regarding any aspect of The Coleman Company's financial or business results, prospects, forecasts, or projections.

- Request Nos. 18, 20, and 25, which seek all documents concerning any financial analysts' or news media reports, press releases, or news articles concerning The Coleman Company dating back to 1989.

- Request No. 53, which seeks documents regarding analyses of how Sunbeam would pay for the debt it took on in acquiring The Coleman Company. That request concerns Sunbeam, not The Coleman Company.

- Request No. 62, which seeks all documents relating to the consolidation of Sunbeam and The Coleman Company, First Alert, and/or Signature Brands. Andersen has made no effort to show how those documents might relate to The Coleman Company's value prior to the acquisition in March 1998.

- Request No. 82, which seeks all files maintained by 11 individuals concerning The Coleman Company dating back to 1989. That request is not limited to documents relating to valuation.

- Twenty-one of the 22 document requests Andersen identified seek documents dating back to January 1, 1989 and up to the present -- even though Andersen takes the position that the relevant date for The Coleman Company's value is March 1998. (AA Mtn. ¶ 11.) Andersen neither cites authority nor explains why it is necessary to obtain documents from 1989 through 2001 to conduct an appropriate valuation of The Coleman Company as of March 30, 1998.

In contrast to its insistence on these irrelevant categories, Andersen fails to mention that Coleman Parent already agreed to produce (and has produced) its documents relating to all the matters raised in the Complaint.

12. It is not the responsibility of this Court (or the plaintiff) to rewrite Andersen's overbroad requests. Andersen's failure to show how each of the documents it seeks to

NOT A CERTIFIED COPY

012655

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH 1315405

16div-019634

compel relates to The Coleman Company's value is, by itself, sufficient grounds to deny its motion. *See, e.g., National Convenience Stores, Inc. v. Embrey*, 375 So. 2d 358, 359 (Fla. 4th DCA 1979) (quashing an order compelling discovery where there was no showing that all the information sought would be relevant to the pending lawsuit); *McMillan v. McGill*, 584 So. 2d 185 (Fla. 2nd DCA 1991) (quashing an order compelling discovery where the party seeking discovery had not shown that "the requested discovery was either relevant or likely to lead to the relevant discovery").

13. Where a movant cannot show that "all of the information sought by the challenged" discovery request "is or would be relevant," the motion to compel should be denied. *National Convenience Stores*, 375 So. 2d at 359. *See also FDIC v. Balkany*, 564 So. 2d 580, 581 (Fla. 3d DCA 1990) (quashing order compelling discovery of files unrelated to the transaction at issue even though they might contain relevant documents). Indeed, considering the burden that would be involved in hearing argument on and considering each of Andersen's document requests -- a burden exacerbated by Andersen's failure to provide support for its requests -- the Court need not wade through each document request before denying Andersen's motion. *Slatnick v. Leadership Housing Sys. of Florida, Inc.*, 368 So. 2d 78, 80 (Fla. 4th DCA 1979) (trial court need not consider the merits of each discovery request separately when it would be burdensome to do so).

14. Andersen and Harlow also contend that documents relating to The Coleman Company's value are relevant to their *in pari delicto* defense. The case law, including cases cited by defendants, makes clear that the doctrine is rarely applied and applies only to bar recovery by a "co-perpetrator" in the same fraudulent scheme. *See Kulla v. E.F. Hutton & Co.*, 426 So. 2d 1055, 1057 (Fla. 3rd DCA 1983) (cited AA Mtn. ¶ 9). Coleman Parent, of course, was

NOT A CERTIFIED COPY

012657

by no means a "co-perpetrator" in the fraud that Andersen and Harlow perpetrated on it and The Coleman Company. Here, the meritless allegations defendants make against Coleman Parent in paragraph 8 of its motion describe a wholly-separate (and groundless) scheme that is irrelevant to Andersen's and Harlow's roles in auditing and certifying financial statements that falsely depicted to Coleman Parent and the market that Sunbeam was in the midst of an impressive financial turnaround. Thus an *in pari delicto* defense cannot be the basis for Andersen's broad requests for documents relating to The Coleman Company's operations or value.

WHEREFORE, for all the reasons stated herein, Coleman Parent respectfully requests that this Court deny Andersen's Motion to Compel Production of Documents Related to The Coleman Company.

Dated: January 2, 2002

COLEMAN (PARENT) HOLDINGS, INC.

By: _____
One of Its Attorneys

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 686-6300

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Matthew M. Neumeier
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

693630

NOT A CERTIFIED COPY

0126658

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1315407

16div-019636

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all counsel on the attached list on this 2ND day of JANUARY, 2002.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorneys for Plaintiffs'

NOT A CERTIFIED COPY

012659

COLEMAN VS. ANDERSEN ET AL
Case No.: CA 01-06062 AN

COUNSEL LIST

Philip S. Beck, Esquire
Bartlit Beck Herman Palenchar & Scott
54 West Hubbard Street
Suite 300
Chicago, IL 60610

Hank Jackson, Esquire
Holland & Knight
P.O. Box 3208
West Palm Beach, FL 33402-3208

Eliot Lauer, Esquire
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178

NOT A CERTIFIED COPY

012660

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1315409

16div-019638

NOT A CERTIFIED COPY

199210

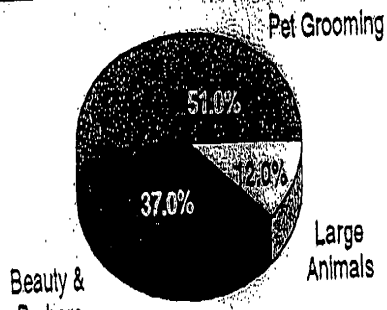
#Cont 8&10

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Overview of the Professional Care Devices Industry

1996 North American Market



Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines.

NOT A CERTIFIED COPY

CP 021021
CONFIDENTIAL

MORGAN STANLEY

F18G\135834\10-1-97\2156A

CPH 141253

10/210

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Future Growth Opportunities

Key Initiatives

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

NOT A CERTIFIED COPY

CP 021022
CONFIDENTIAL

CPH 1411254

16div-019641

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Summary of Recent Analyst Commentary

(continued)

NOT A CERTIFIED COPY

New Product Introductions:

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

"Project Full Time":

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

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Segment Trends & Strategies Overview (1)

	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	• *Mixmaster* • *Sunbeam* • *Oster* • *Osterizer*	• *Health at Home*	• *Cuddle-Up* • *Oster*	• *Sunbeam* • *Grillmaster*	• *Oster*
Market Position	• #1, 2 or 3 depending on product category	• #1, 2 or 3 in most categories	• #1 in electric blankets • #1 in clippers	• #1 in gas grills	• #1 in clippers
Major Competitors	• Black & Decker • Hamilton Beach/Proctor Silex (Nacco) • KitchenAid (Whirlpool)	• Duracraft • Braun (Gillette) • Health O'Meter	• Wahl • Andis • Teledyne	• Charbroil • Thermos • Weber	• Wahl • Andis
Distribution	• Mass merchandisers • Department stores • Specialty stores	• Mass merchants • Drug stores	• Mass merchants • Drug stores	• Mass merchants • Hardware/Home centers	• Mass merchants • Drug stores • Specialty stores • Professional distributors
Trends	• Time pressure demands convenience and speed • Need for speed, simplicity and reliability of use • Sensitivity to health and sanitation • Need for healthy food preparation appliances • Broadening taste profiles • Need for more ethnic food processing products • Emphasis on leisure and value • Opportunity to make cooking "fun" • Develop products for all types of cooks	• Health conscious lifestyle • Heightened consumer interest in health related products • Aging population • Growing market for health related products • Value consciousness • Drives business to mass merchant channels where Sunbeam has strong presence • Home as a sanctuary/Self-care • *Sunbeam* brand has strong equity in the home vs. other lesser known medical brands	• Healthy lifestyle • Opportunity to improve personal appearance and "slow down" the aging process • "Do-It-Yourself"/Value • Need to save time and money • Self-indulgence • Desire to pamper oneself and relax • Time crunch • Opportunity for professional quality and service with at-home convenience	• Time shortage • Leads to more gas grilling, meal simplification and speed-scratch cooking • Home as a sanctuary • People are spending more time at home with family and friends • Baby Boomer demographics • Creates shopping behavior favoring cost/quality/convenience combination and trade-up from charcoal to gas	• Quality/Durability • Product usage is expected to be 7 to 10 years • Ergonomics/Styling • Comfortable grip and unique styling • Ease of use/Speed • Power to cut healthy hair growth without stowing
Strategies	• Reposition and differentiate the *Sunbeam* and *Oster* trademarks • Expand the strategic breadth of product line through a consistent stream of new products built off consumer needs • Become the perceived category leader for innovation by key customers • Rapidly expand innovation abroad, specifically in Latin America and Asia	• Establish *Sunbeam* as the premiere brand in health at home market by owning consumer on numerous fronts • Deepen Sunbeam's consumer relevance through a consistent stream of new and enhanced benefit-driven products • Immediately fill brand leadership void in air and water purification • Establish a defensible category leader position on numerous channel fronts • Export "health at home" concept to Latin America, Asia, Europe	• Immediately establish Sunbeam as a leading competitor in personal care appliances through a dual branding strategy • Establish a broad and highly differentiated product line • Export personal care innovations on a global basis	• Establish *Grillmaster from Sunbeam* as the dominant worldwide brand of gas grills and accessories • Grow category by redefining "Grilling" as "Outdoor Cooking" • Dramatically increase the profit importance of *Grillmaster* and "Outdoor Cooking" to the trade • Establish worldwide design and technology network to maximize product innovation	• Immediately expand leadership in all business segments by better meeting professional need for consistency and speed • Extend *Oster* quality professional heritage into broadened product line for barbers, stylists and groomers
1997 Net Sales: (1)	$432.2MM 37%	$116.8MM 10%	$210.3MM 18%	$292.1MM 25%	$105.1MM 9%

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

F18G\13604\2-2-98\5:19A

MORGAN STANLEY

NOT A CERTIFIED COPY

CP 021024
CONFIDENTIAL

012104

CPH 1411256

16div-019643

NOT A CERTIFIED COPY

012405

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

FUTURE GROWTH OPPORTUNITIES

NOT A CERTIFIED COPY

CP 021026
CONFIDENTIAL

CPH 1411258

F13\93931109-14-97\4:30 P\PG8

012406

MORGAN STANLEY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Stated Growth Objectives

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

NOT A CERTIFIED COPY

CP 021027
CONFIDENTIAL

CPH 1411259

F13\9407\3102-03-9812:34 PIPG3

012107

16div-019646

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Global Environment Trends

NOT A CERTIFIED COPY

Consumerism

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

Brands

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

Globalization

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

Consolidation

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

Shopping Channels

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

CP 021028
CONFIDENTIAL

F1BG\\135953.10-1-97@:50A

012408

MORGAN STANLEY

16div-019647

B

NOT A CERTIFIED COPY

60,210

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NEW PRODUCT INITIATIVES

NOT A CERTIFIED COPY

CP 021030
CONFIDENTIAL

F1319393 1110-01-97/8:37 A1PG6

012410

MORGAN STANLEY

CPH 1411262

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Focus on Accelerated New Product Development

NOT A CERTIFIED COPY

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

CP 021031
CONFIDENTIAL

CPH 1411263

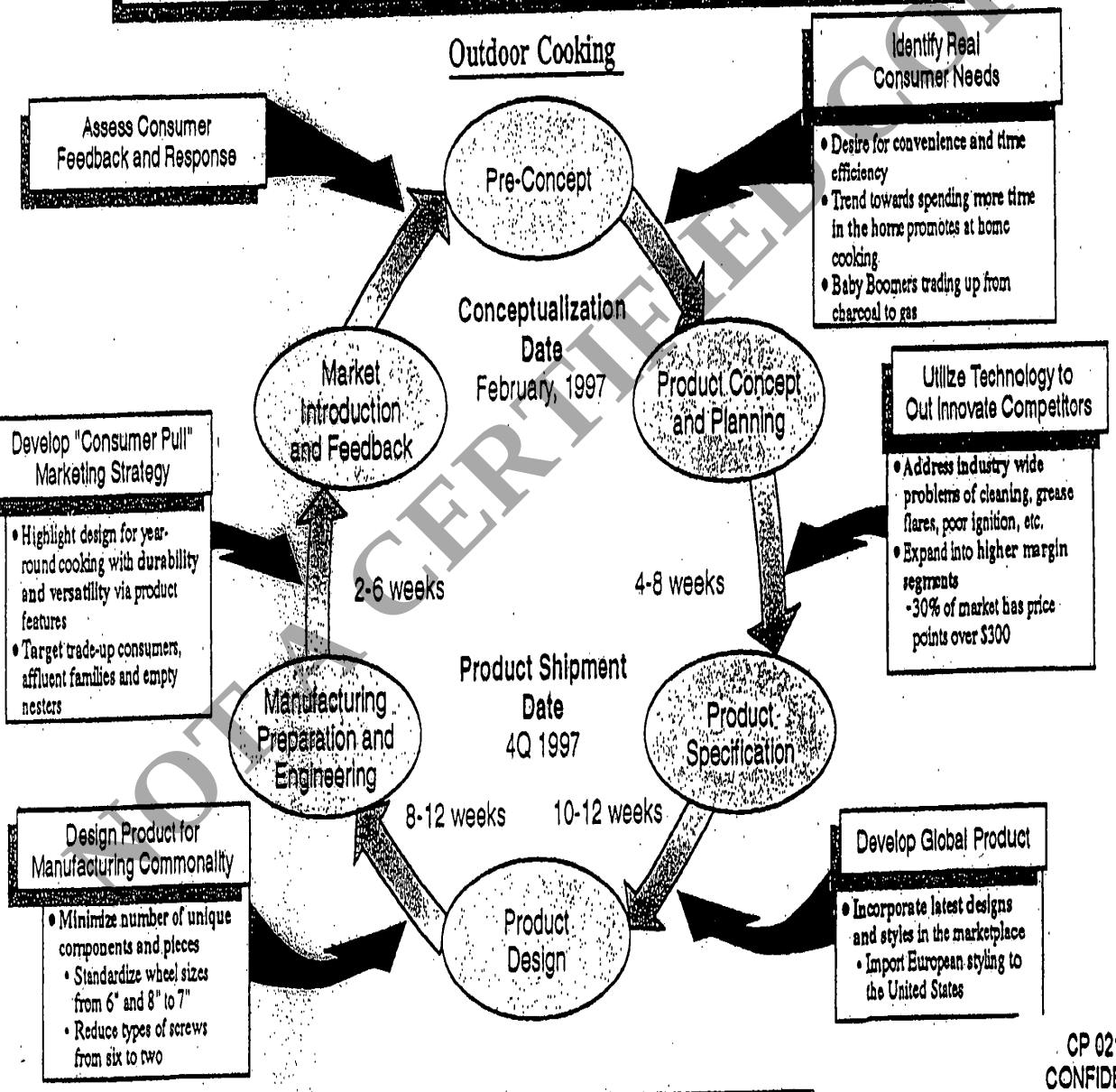
16div-019650

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products



Expected incremental revenue in the first year: $53 MM

NOT A CERTIFIED COPY

CP 021032
CONFIDENTIAL

CPH 1411264

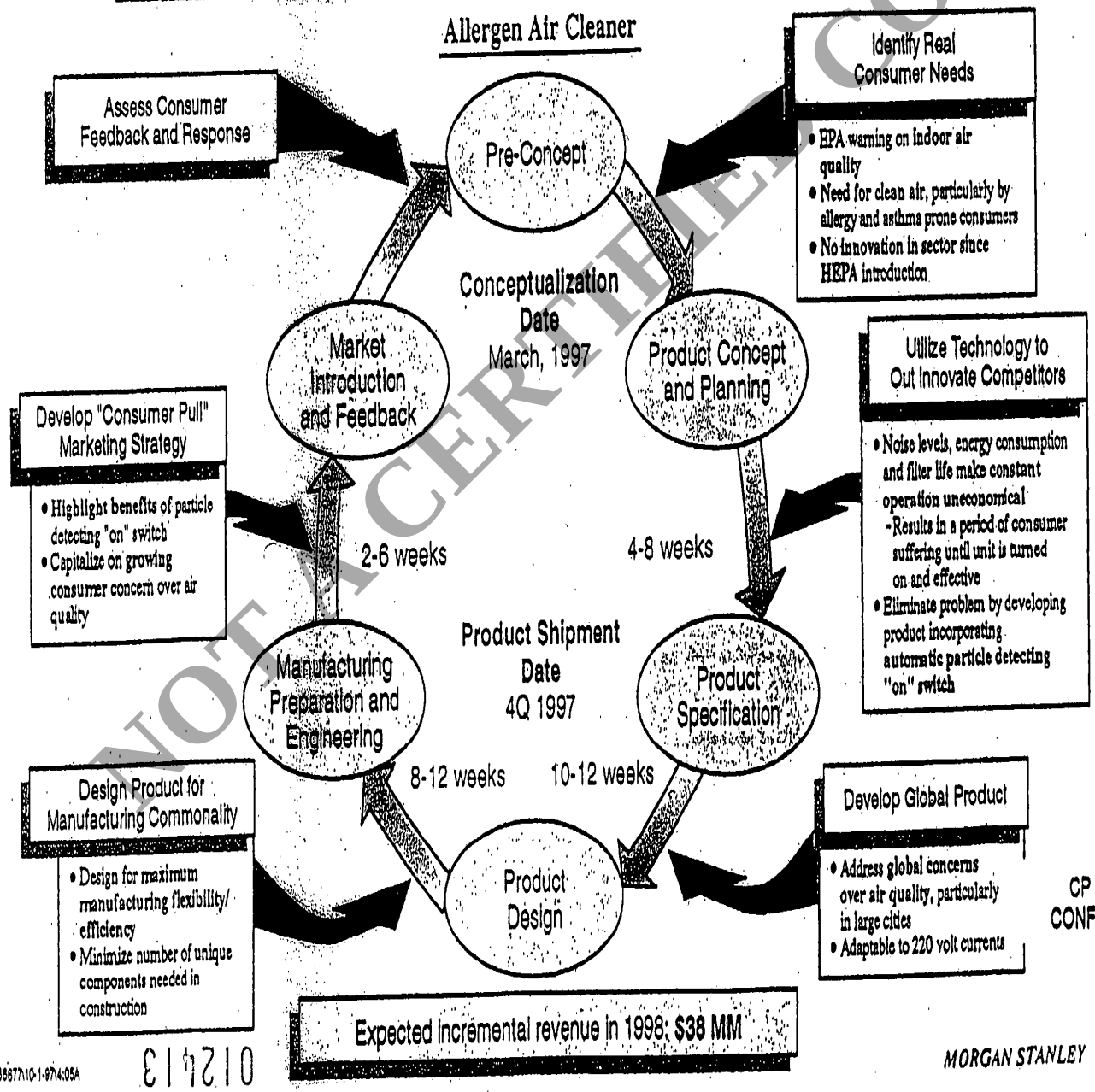
16div-019651

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products



Expected incremental revenue in 1998: $38 MM

CP 021033
CONFIDENTIAL

NOT A CERTIFIED COPY

P18G\136877\10-1-97\4:05A

0124 13

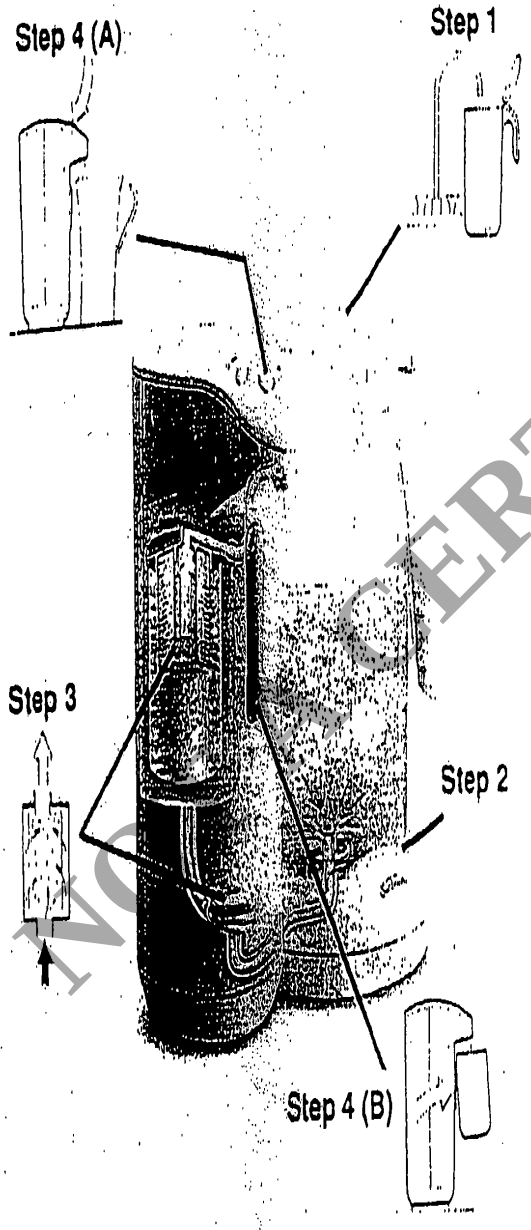
MORGAN STANLEY

CDU 144265

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Freshsource+. Water Purifier



HOW IT WORKS

1. Fill reservoir with cold tap water
2. Replace reservoir on base
3. A powerful motor and pump force water through a micro-fine filter, reducing chemicals and microorganisms

4(A). Volume dispensing

4(B). Glass at a time

CP 021034
CONFIDENTIAL

NOT A CERTIFIED COPY

P10C\13732610-6-97\4:42P

011214

MORGAN STANLEY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Analyst Reaction to New Air and Water Products

- "We, like SOC management, believe that both of Sunbeam's new products have **"home run" potential.** The products are **timely, innovative** and **margin enhancing, a perfect complement to the new Sunbeam portfolio**...These products should help to **deliver the 20% top-line growth** we are modeling for in 1998." *(PaineWebber - 10/9/97)*

- "In our view, [Sunbeam's] entries in the water and air purification markets lend **significant credibility to Sunbeam's new product strategy**, offer **demonstrable value-added** for consumers, and increase our confidence in estimated 20% plus sales growth and management's targeted 20% operating margin through 1999." *(Goldman Sachs - 10/9/97)*

- "Sunbeam has added visibility to its new product sales goals with [the new product] launches. It is **tapping into consumers' desires for clean water and air** in their homes. Each product **introduces new technology** into the small electric-market and Freshsource **effectively creates a new category**...Our estimates seem destined to increase again." *(Oppenheimer - 10/8/97)*

- "Consumer **response is very strong** for [AllergySmart's] **feature/benefit/value proposition.** These products are positioned to grow the market as well as to establish a leading position for Sunbeam." *(Goldman Sachs - 10/9/97)*

- "Both products have **global applications, high long term growth potential**, and fit well within Sunbeam's Health at Home business." *(Bear Stearns - 10/9/97)*

- "The AllergySmart is a unique **launch, introducing proprietary laser technology.**" *(PaineWebber - 10/9/97)*

- "While other water purification products are on the market today, there is **no product that purifies water with FreshSource's effectiveness and speed.**" *(Oppenheimer - 10/8/97)*

NOT A CERTIFIED COPY

CP 021035
CONFIDENTIAL

CPH 1411267

16div-019654

C

NOT A CERTIFIED COPY

9112110

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

INTERNATIONAL EXPANSION

NOT A CERTIFIED COPY

CP 021037
CONFIDENTIAL

012417

F13\93931\09-15-97\10:59 A\PG7

MORGAN STANLEY

16div-019656

CPH 141269

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Opportunities

Enormous Upside Potential for International Growth

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

Strengths

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

Opportunities

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

NOT A CERTIFIED COPY

CP 021038
CONFIDENTIAL

F1803\1359\53\10-1-97\3:50A

811210

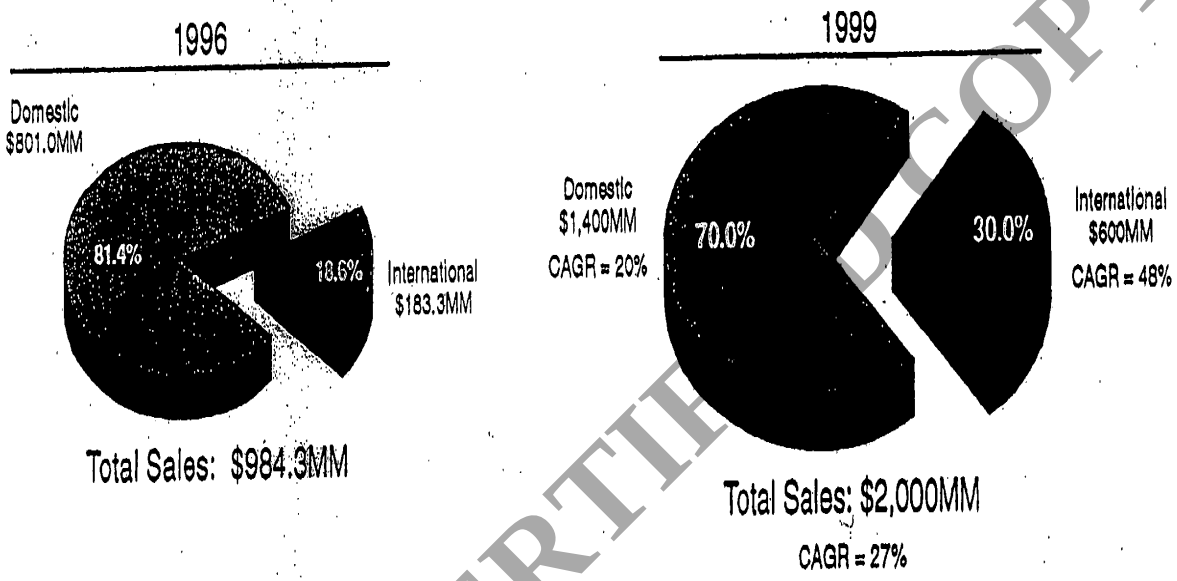
CPH 1411270

16div-019657

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Strategies



- Three key sources of growth:
  - -Expansion of existing franchise
  - -New product introduction
  - -Geographic expansion
- Reorganize product development and salesforce to maximize global opportunities
  - -Global perspective on product development
  - -Support global category marketing
  - -Uniform global brand development and advertising
- Profit center mentality (vs. investment mentality)
  - -Focus on bottom line growth as well as top line growth
  - -International operations already at 20% operating margins
- Target situations that offer the greatest potential risk-adjusted returns based on:
  - -Ease of entry
  - -Existing relationships
  - -Tangible opportunitites
  - -Distinct product differentiation
- Capitalize on strong brand equity overseas

CP 021039
CONFIDENTIAL

NOT A CERTIFIED COPY

16div-019658

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

International Growth Strategies

Expansion of Existing Franchise

NOT A CERTIFIED COPY

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

CP 021040
CONFIDENTIAL

CPH 1411272

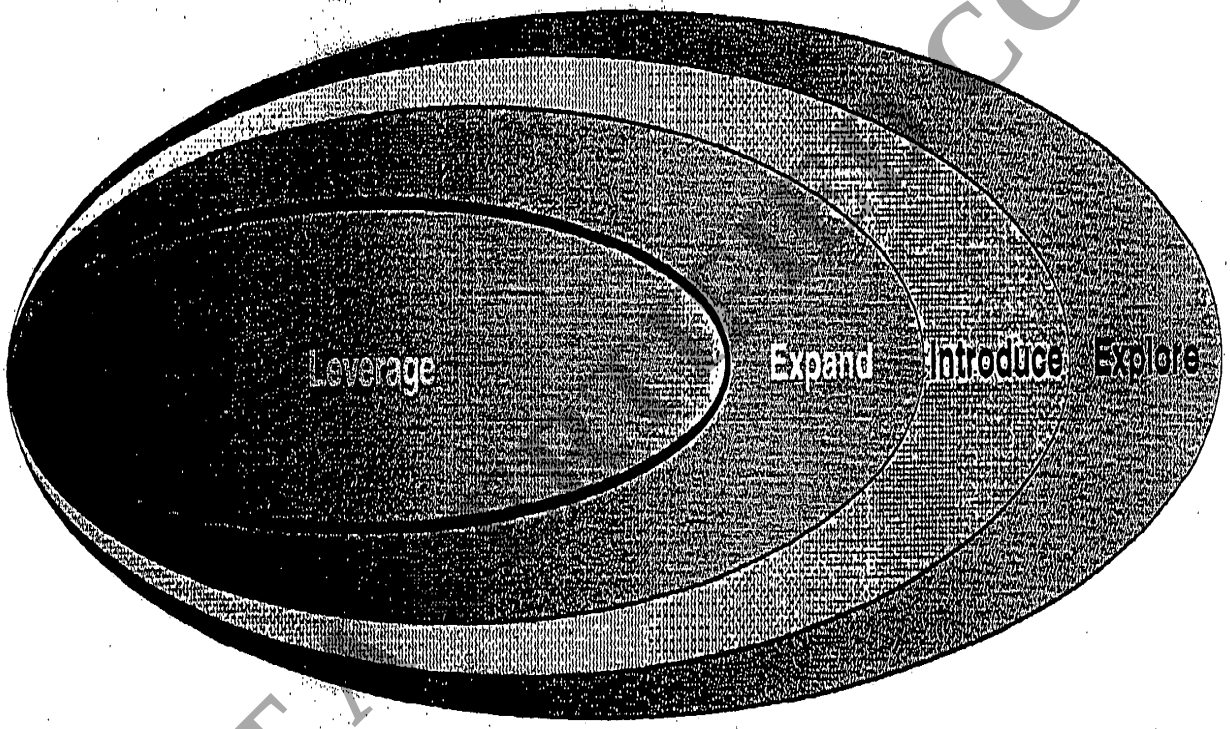
16div-019659

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Geographic Expansion



NOT A CERTIFIED COPY

	Leverage	Expand	Introduce	Explore
Strategy:	• Build from currently existing Sunbeam strongholds - Continue to grow Sunbeam sales and brand recognition • Leverage strong base to expand sales growth - Geographical expansion to surrounding areas - Channel expansion within region	• Targeted expansion into key growth markets with tangible opportunities • Leverage strong Latin American position to penetrate Brazil and Argentina • Expand key Asian markets (Japan, Korea and Taiwan) through strong relationships and product distinctiveness	• Initiate business opportunistically in regions with specific situations • Introduce Sunbeam brands and stimulate brand awareness • Need flexibility to enter and exit markets quickly as situations change • "Pay as you go" risk management and financial standards	• Explore other possibilities for future geographic expansion • Typically areas presenting higher risk but also higher growth potential • Enter only if there are valid distribution/product opportunities that meet financial standards
Regions:	• Central America • Chile • Colombia • Ecuador • Mexico • Peru • Venezuela • Canada	• Argentina • Brazil • Australia • Hong Kong • Japan • Korea • Taiwan • Spain • South Africa	• China • New Zealand • Germany • Italy • Middle East	• Poland • Russia • Scandinavia • India • Indonesia • Malaysia

F:\BGI\125963\10-1-97\3:50A

CP 021041
CONFIDENTIAL

MORGAN STANLEY

16div-019660

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Specific Global Opportunities and Market Potential

NOT A CERTIFIED COPY

Canada

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

Europe

- Strengthen leadership position in professional clippers
  - Cordless products; low heat products; elite blade
- Launch electric blanket business (low EMF PTC technology)
- Regenerate significant gas grill business
- Selectively launch distinctive high margin new appliances (e.g., rotisserie, air filter with allergen detector, slow cooker)
- Opportunistically export to Middle East, Eastern Europe and South Africa

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

Key Products
Blankets
Clippers
Grills

Asia

- Launch electric blankets, water filtration and beehive blenders (chrome line) in:
  - Japan
  - Taiwan
  - Korea
  - Australia/New Zealand
- Opportunistically export to:
  - Greater China
  - Philippines
  - Indo China

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

Key Products
Blenders
Water Filtration
Air Filtration
Clippers
Blankets

Latin America

- Broaden existing strong leadership position in core markets (Mexico, Venezuela, Central America, Peru, Equador, Colombia)
  - Air & water business launches (health at home)
  - New grills "Samba" series
- Regenerate market leadership position in blenders (remain the best)
- Launch business in Brazil and Argentina
  - Air, water, blenders, and unique small appliances (rotisserie, etc.)

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

Key Products
Blenders
Arepa Maker
Water Filtration
Grills
Clippers

CP 021042
CONFIDENTIAL

CPH 1411274

F16Q\1359S3\10-22-97\6:17P

221210

MORGAN STANLEY

16div-019661

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam International New Product Initiatives

NOT A CERTIFIED COPY

- Introduce **54 new products** representing **$26MM in revenue in 1997**
  - -Introduce **new 220 volt** products aggressively
  - -Introduce distinctive **existing U.S. products** (Blanket with a Brain, Beehive Blender, etc.)
  - -Introduce new globally designed products and categories **simultaneously** to the United States (clippers, air, water and grills)

- All new product development initiatives have a **global perspective**
  - -Maximize **ethnicity value** of new products
    - Sandwich maker adaptation to **Arepa** maker in Venezuela
    - Slow cooker with paddle adaptation to **Polenta** maker in Italy
  - -Maximize total potential market

- Emphasize distinctive Sunbeam **technologies and product differentiation**
  - -All-metal drive/higher output motors on blenders and mixers
  - -PTC wire in blankets and carpets
  - -Titanium coated clipper blades
  - -Air cleaner utilizing laser technology
  - -Power water filtration

- Capitalize on **strong brand equity**
  - -Strong demand for **U.S. brands in Asia**
    - Retail and consumer familiarity via exposure to the U.S. marketplace
    - WalMart's "Made in America" brand focus expanded into China (electric blankets)
  - -*Oster* well entrenched as the **premium brand in Latin America** (higher brand awareness than *Pepsi*)

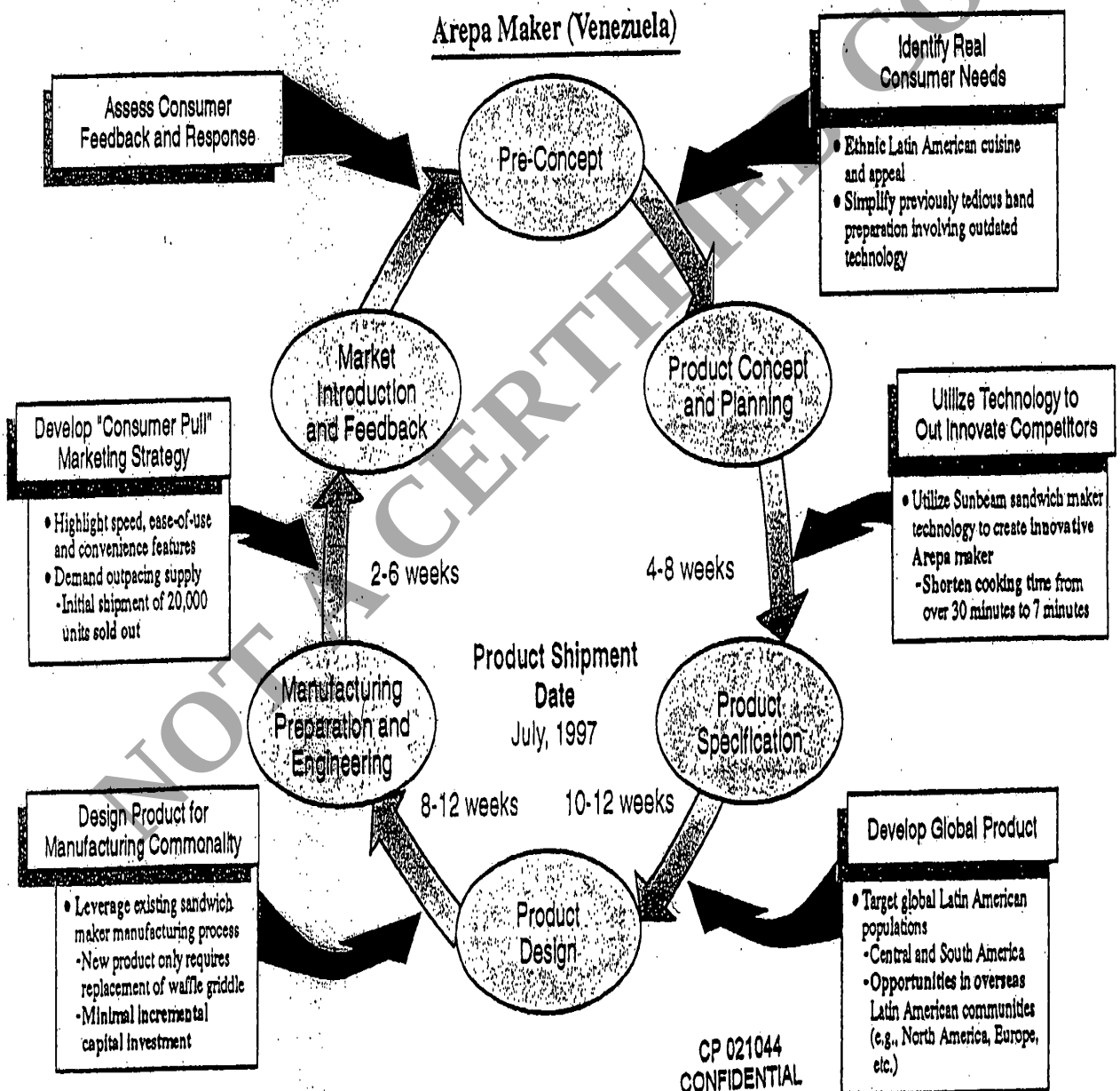
CP 021043
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Innovative International New Product Development



NOT A CERTIFIED COPY

CP 021044
CONFIDENTIAL

16div-019663

D

NOT A CERTIFIED COPY

01/21/25

012426

CHANNEL MANAGEMENT

NOT A CERTIFIED COPY

CP 021046
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

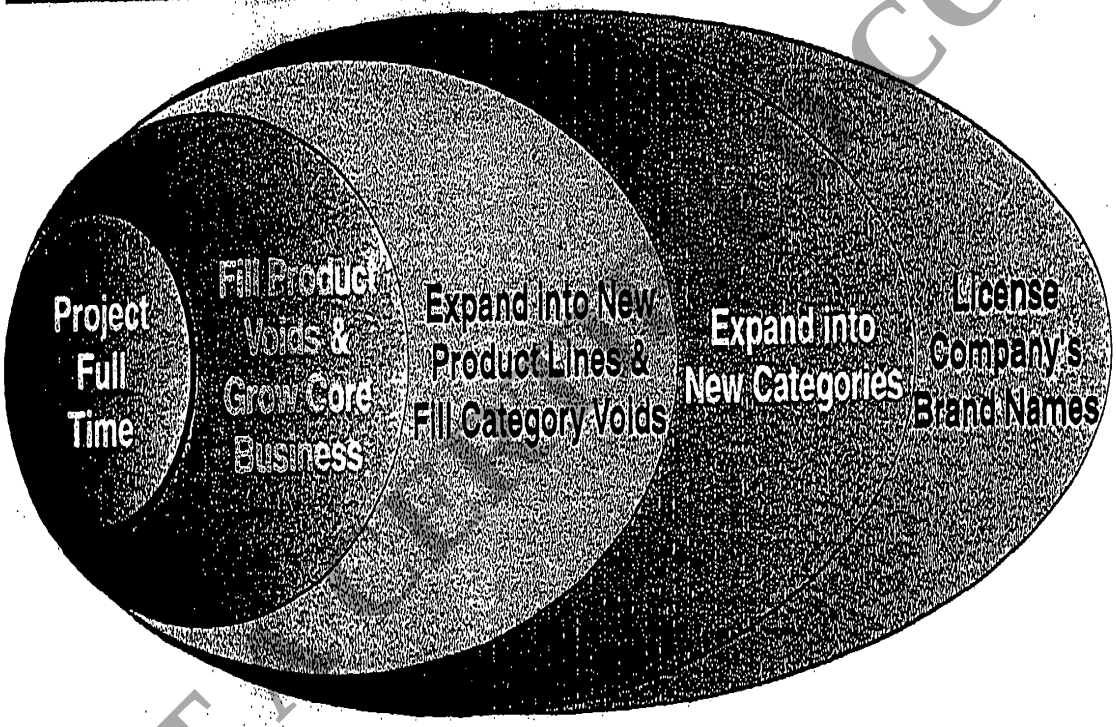
F13\9393\109-26-97\11:28 AP9

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Improve Customer Service to Catalyze Channel and Category Growth



NOT A COPY

Concurrent Profit Maximization Opportunities

Price Realization

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

Mitigate Business Seasonality

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

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Filling Product Voids

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

NOT A CERTIFIED COPY

CP 021048
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Channel Management - Filling Product Voids

Opportunities to Expand Breadth and Depth of Product Line

	Current Sunbeam Distribution	Sunbeam Product Lines	Customer X Product Lines	Customer X Product Line Size ($MM)	Sunbeam Share/ Potential Share Penetration (%)	Sunbeam Share/ Potential Share Revenue ($MM)	Total Opportunity ($MM)
Blenders	●	●	●	$45.0	35% / 50%	$15.8 / $22.5	
Stand Mixers	●	●	●	20.0	20% / 35%	4.0 / 7.0	
Breadmakers	●	●	●	10.0	50% / 65%	5.0 / 6.5	
Rotisserie	●	●	●	5.0	50% / 65%	2.5 / 3.3	
Irons and Steamers	●	●	●	60.0	30% / 45%	17.5 / 27.0	
Hand Mixers	●	●	●	10.0	15% / 30%	1.5 / 3.0	+$25.0
Can Openers		●	●	$10.0	-- / 15%	-- / $1.5	
Coffee Makers		●	●	50.0	-- / 15%	-- / 7.5	
Toasters		●	●	20.0	-- / 15%	-- / 3.0	
Waffle Makers		●	●	5.0	-- / 15%	-- / 0.8	
Vegetable Steamers		●	●	60.0	-- / 15%	-- / 0.9	
Toaster Ovens		●	●	12.0	-- / 15%	-- / 1.8	
Frying Pans		●	●	5.0	-- / 15%	-- / 0.8	
Food Processors		●	●	5.0	-- / 15%	-- / 0.8	
Rice Cookers/Steamers		●	●	N.A.	-- / 15%	N.A.	
Indoor Grills		●	●	3.0	-- / 15%	-- / 0.5	
Juice Extractors		●	●	N.A.	-- / 15%	N.A.	
Citrus Juices		●	●	N.A.	-- / 15%	N.A.	
Ice Crusher		●	●	N.A.	-- / 15%	N.A.	
Tea/Hot Beverage Maker		●	●	N.A.	-- / 15%	N.A.	
Electric Woks		●	●	N.A.	-- / 15%	N.A.	
Crock Pots/Slow Cookers		●	●	N.A.	-- / 15%	N.A.	+$17.6
Deep Fryers		●	●				
Meat Slicer			●	N.A.	-- / --	N.A.	
Electric Knives			●	N.A.	-- / --	N.A.	
Pasta Maker			●	N.A.	-- / --	N.A.	
Meat Grinders			●	N.A.	-- / --	N.A.	
Kitchen Gadgets			●	N.A.	-- / --	N.A.	
Electric Knife Sharpener			●	N.A.	-- / --	N.A.	N.A.
							+$42.6

NOT A CERTIFIED COPY

CP 021049
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Filling Category Voids

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

NOT A CERTIFIED COPY

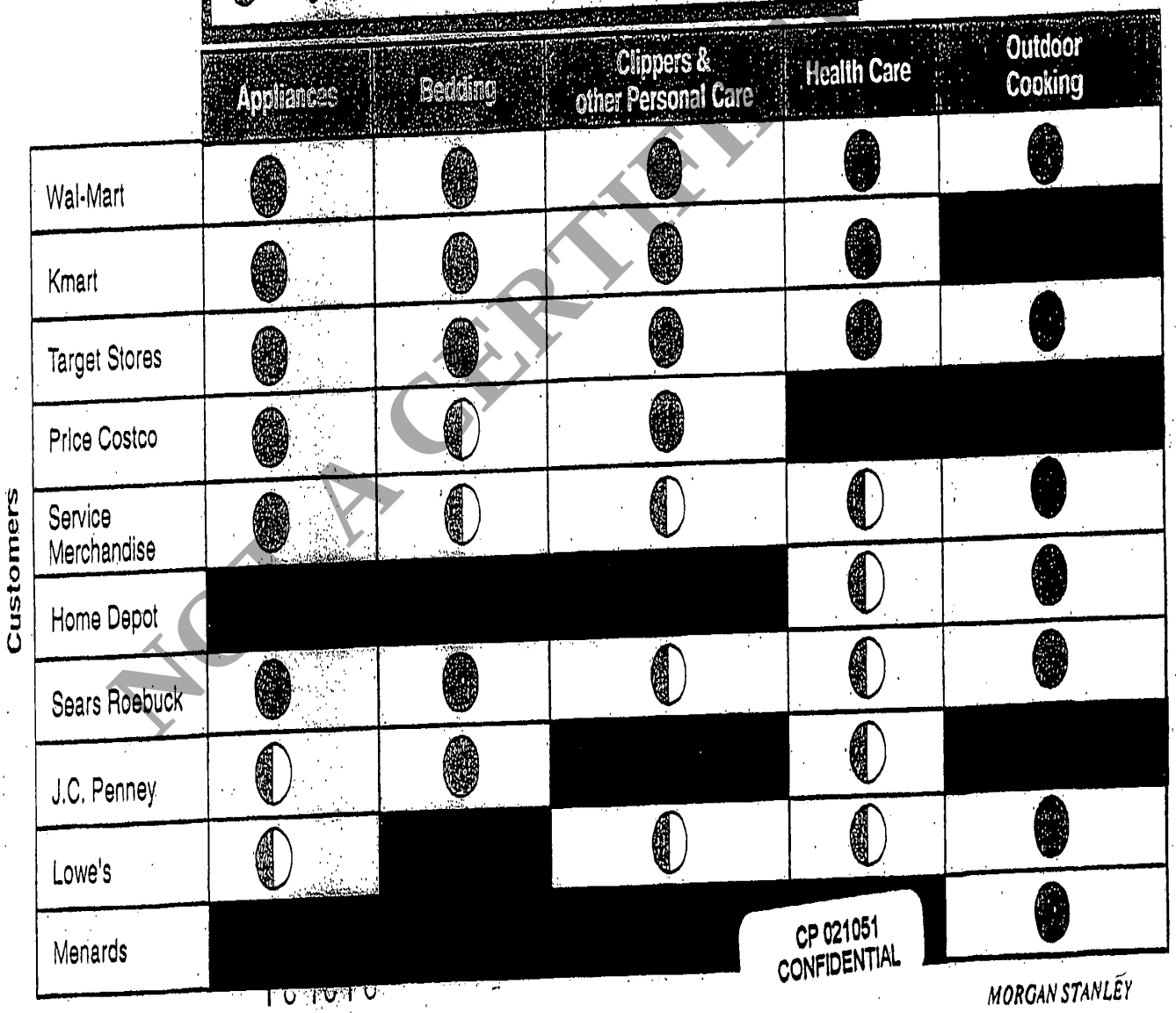
CP 021050
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Channel Management / Filling Category Voids

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



NOT A CERTIFIED COPY

CP 021051
CONFIDENTIAL

MORGAN STANLEY

F18Q113583X10-1-97J3:50A

16div-019670

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Sunbeam Other Operating Initiatives

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

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

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

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

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

NOT A CERTIFIED COPY

CP 021052
CONFIDENTIAL

CPH 1411284

F18G\13685206-28-97A:09P

16div-019671

NOT A CERTIFIED COPY

E

012133

CP 021053
CONFIDENTIAL

16div-019672

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MARKETING, LICENSING AND MERCHANDISING

NOT A CERTIFIED COPY

CP 021054
CONFIDENTIAL

F1319939311O6-15:07:10:59-A\PG9

012434

MORGAN STANLEY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Advertising and Brand Management

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

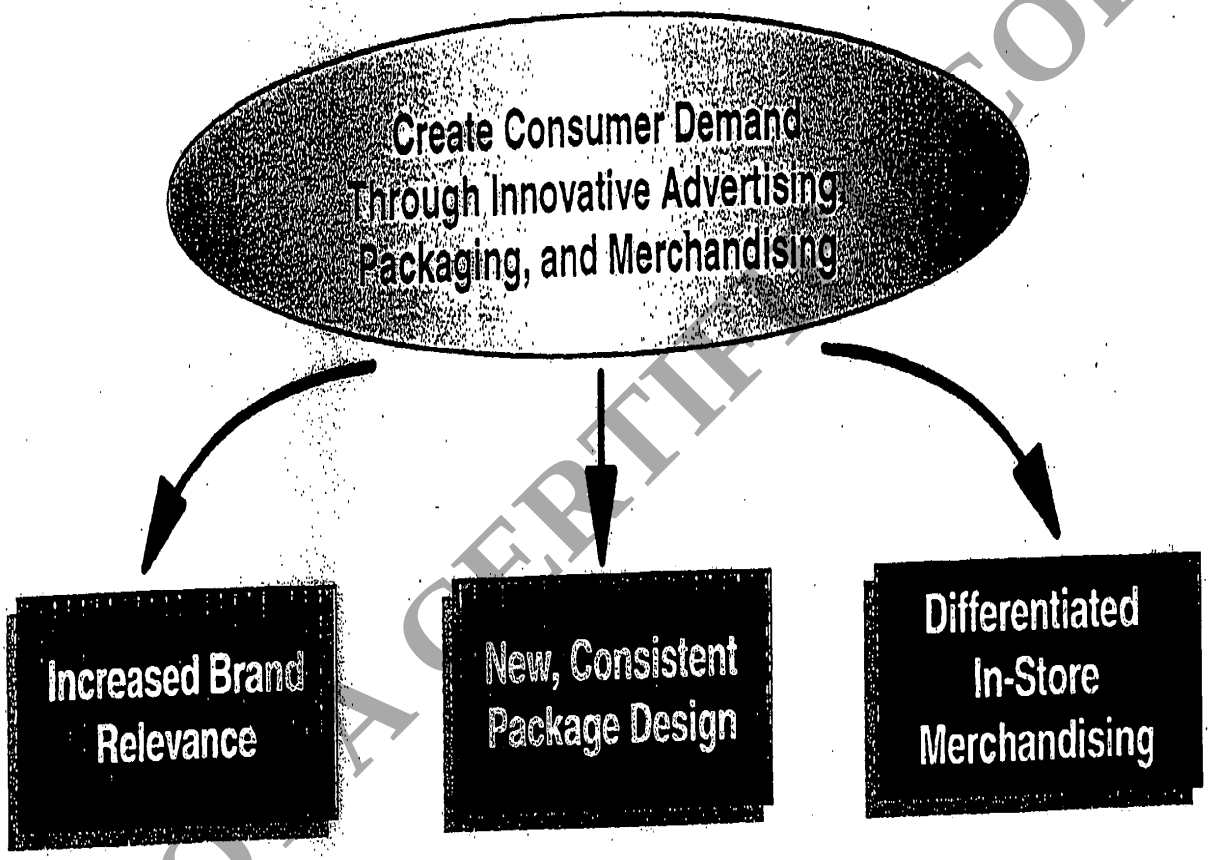
NOT A CERTIFIED COPY

CP 021055
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Advertising Opportunity
Repositioning the *Sunbeam* Brands



NOT A CERTIFIED COPY

CP 021056
CONFIDENTIAL

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

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

The New *Sunbeam* Brand

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

- When asked "What is the brand for you," consumers identified *Sunbeam* as #2 (second to *Black & Decker*) among the top 5 brands in its peer group, a jump from the #4 position

- USA Today's annual "What's In, What's Out" identified *Sunbeam* as "in" and *Black & Decker* as "out"

- *Sunbeam* was rated a top 10 favorite household brand according to a September 1997 HFN survey; brands such as *Braun*, *Cuisinart*, *Rival*, and *Toastmaster* did not even make the top 50

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Consumer Brand Ratings

Consumers Asked, "What Brand Is for Me?"

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

NOT A CERTIFIED COPY

CP 021058
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

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

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

NOT A CERTIFIED COPY

CP 021059
CONFIDENTIAL

F18G\135853\9-28-97\4:09P

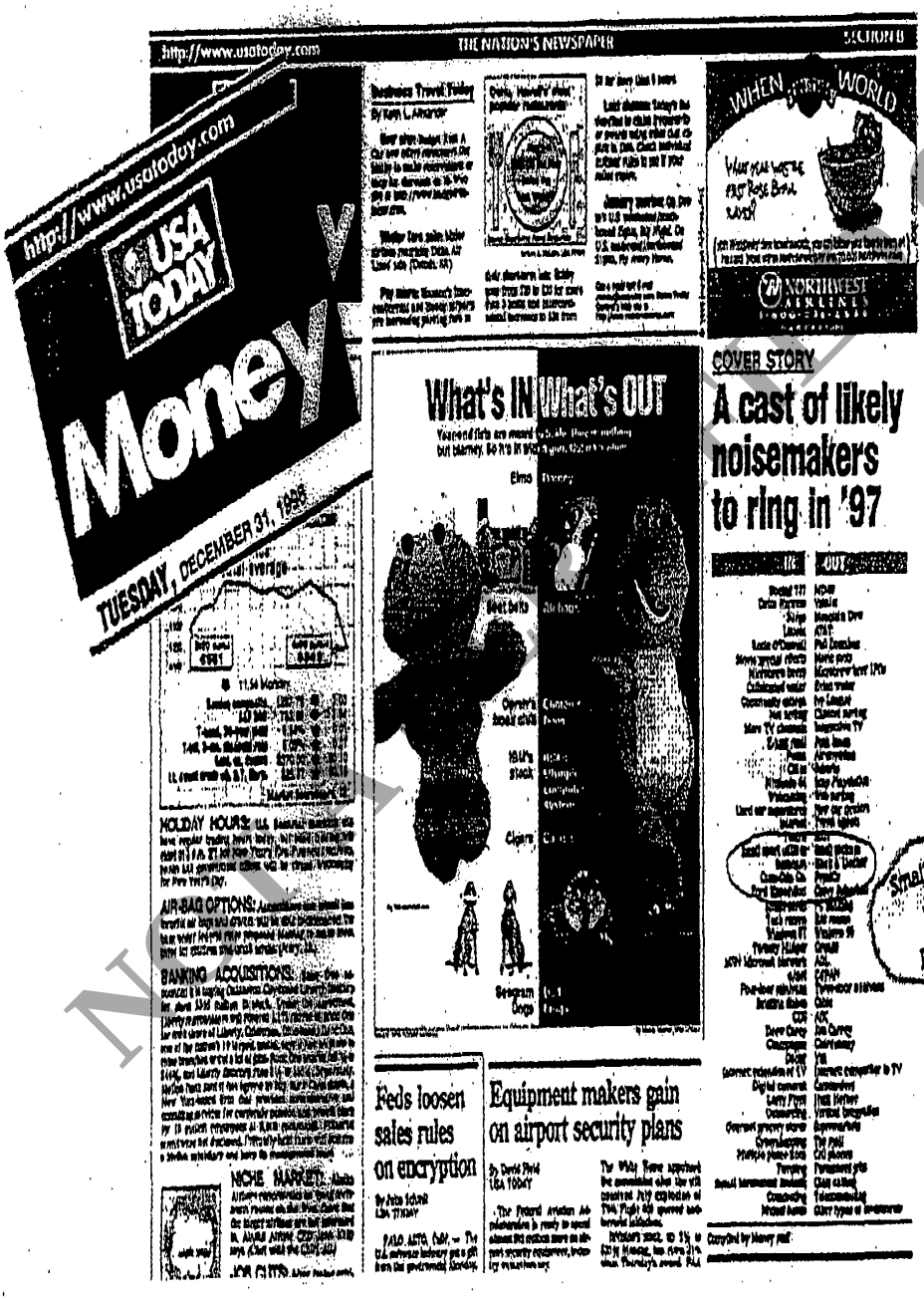
012139

16div-019678

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

"What's In, What's Out"



http://www.usatoday.com

USA TODAY

Money

TUESDAY, DECEMBER 31, 1996

THE NATION'S NEWSPAPER

SECTION B

Business Travel Today

WHEN IN THE WORLD

What was with the big bow, Lassie?

NORTHWEST AIRLINES

COVER STORY

A cast of likely noisemakers to ring in '97

What's IN What's OUT

Beef belts

Cigars

Shotgun Dogs

IN	OUT
Retail TV	HDMI
Data Warren	Yahoo
Sprint	Amazon.com
Lucent	AT&T
Louis d'Oucault	Phil Donahue
Movie special effects	Home porn
Nintendo 64	Microsoft Word 97a
Cholesterol relief	Drug Vitamin
Community colleges	Ivy League
Text writing	Classical writing
New TV channels	Magazines TV
E-mail mail	Real Mail
Pepsi	Mercedes
Coke	Volvo
Nintendo 64	Sony PlayStation
Videotaping	Live sporting
Used car salesmen	Tour car dealers
Journal	Travel agents
Small sport utilities	Small pickups
Sunbeam	Black & Decker
Coca-Cola Co.	PepsiCo
Ford Expedition	Chevy Suburban
Pagers	Cellular phones
Mainframes	Minicomputers
Word rooms	Bit rooms
Windows 95	Windows 3.1
Thirsty Mutant	Orbitz
MSN Microsoft Network	AOL
AT&T	CDMA
Free-floor workplace	Traditional offices
Intuitive Sales	Cold
CDR	AOL
Dave Carey	Joe Camel
Chautauqua	Chautauqua
Digital	Fax
Internet connection to TV	Internet computer to TV
Digital cameras	Camcorders
Larry Flynt	Hugh Hefner
Outsourcing	Virtual companies
Overseas grocery stores	Supermarkets
Overbooking	Dot Com
Multiple piano lines	CD players
Tanning	Permanent tan
Small homestead festivals	Class reunions
Couponing	Telemarketing
Mutual funds	Other types of investments

Compiled by Money staff

Feds loosen sales rules on encryption

By Anita Schmit
USA TODAY

PALO ALTO, Calif. — The U.S. software industry got a gift from the government Monday.

Equipment makers gain on airport security plans

By David Pitt
USA TODAY

The Federal Aviation Administration is ready to spend almost $50 million more on airport security equipment, beefing up explosives sniffers.

The White House appointed the commission after the still-unsolved July explosion of TWA Flight 800 spurred new terrorist jitters.

HOLIDAY HOURS:

AIR-BAG OPTIONS:

BANKING ACQUISITIONS:

NICHE MARKETS:

Small sport utilities Sunbeam Coca-Cola Co. Ford Expedition

Small pickups Black & Decker PepsiCo Chevy Suburban

NOT FOR PUBLIC COPY

CP 021060
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Marketing, Licensing and Merchandising Opportunities

NOT A CERTIFIED COPY

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

CP 021061
CONFIDENTIAL

F:\39447\110-07-97\8:13 PM 03

16div-019680

Appendix

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

APPENDIX

NOT A CERTIFIED COPY

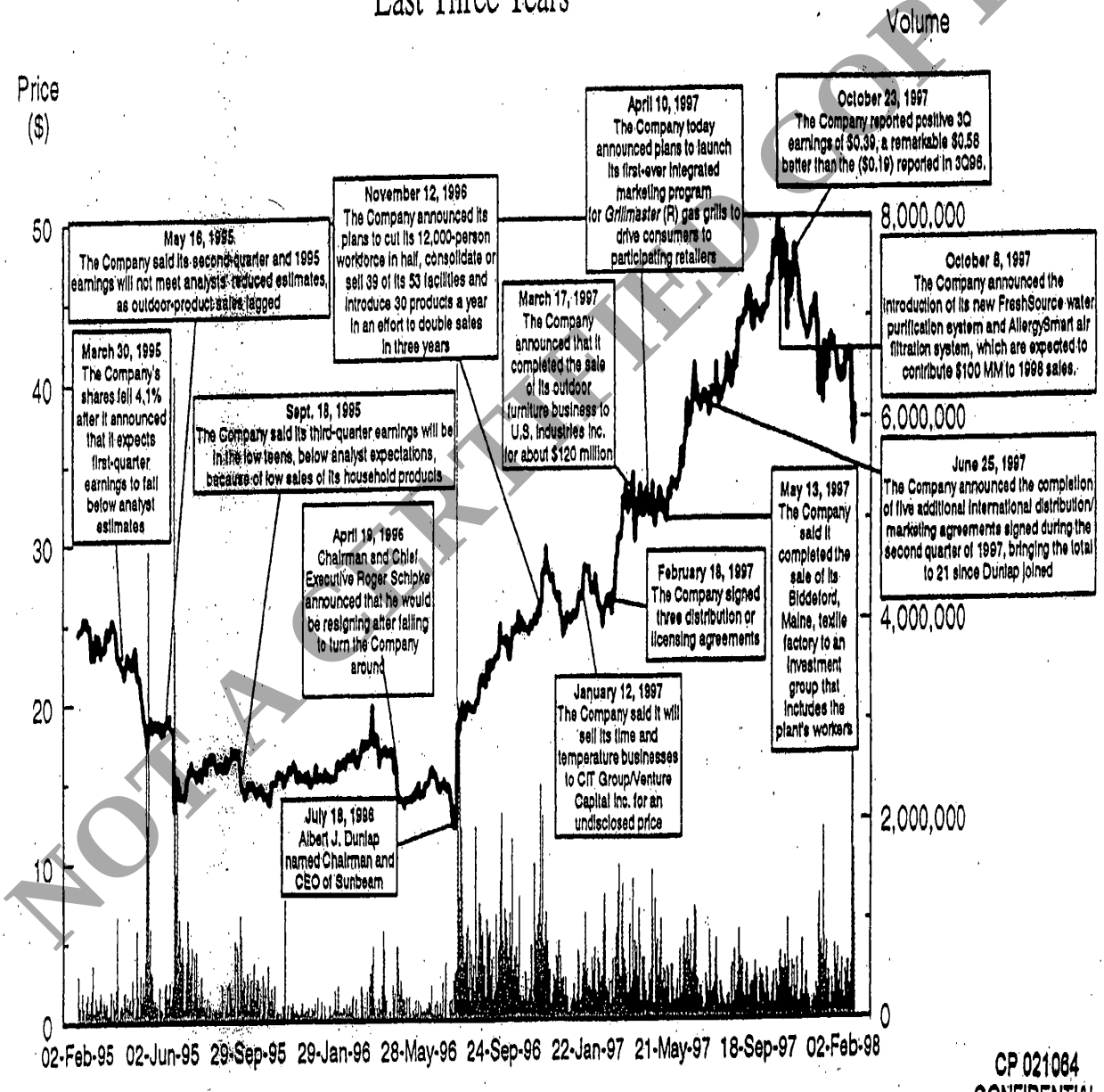
CP 021063
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Annotated Closing Share Price and Volume Analysis

Last Three Years



NOT A CERTIFIED COPY

CP 021084
CONFIDENTIAL

MORGAN STANLEY

F18Q113553402-3-98110:49A

012444

16div-019683

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Directors and Officers

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

NOT ACERTIFIED COPY

CP 021065
CONFIDENTIAL

Notes: (1) Common shares and options exercisable within 60 days, including those held beneficially, disclosed in the 4/17/97 proxy statement.
(2) Includes 666,667 and 100,000 restricted shares held by Messrs. Dunlap and Kersh respectively.

F13\94115\12-03-97\7:34 PM\PG1

547210

16div-019684

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

I:\bdg\sumstat\soc_spe.wk4

SUNBEAM CORPORATION

Analysis of Shareholdings

(000s)

	Holdings	%
Institutions (1)		
Franklin Mutual Advisers, Inc.	17,541	19.2%
Alliance Capital Management L.P.	10,080	11.0%
Columbia Management Company	5,050	5.5%
Fred Alger Management Inc.	2,643	2.9%
Fidelity Management & Research Co.	2,353	2.6%
TIAA-CREF Investment Management I	2,170	2.4%
Alex. Brown Investment Management	2,095	2.3%
Wells Fargo Bank, N.A.	1,552	1.7%
Columbus Circle Investors	1,540	1.7%
New York State Common Retirement Fi	1,489	1.6%
Strong Capital Management, Inc.	1,258	1.4%
Husic Capital Management	1,215	1.3%
Top 12 Institutions	48,987	53.6%
Other Institutions (148 in total)	21,925	24.0%
Total Institutions (160 in total)	70,912	77.6%

	Holdings	%
Insiders (2)		
Albert J. Dunlap (Chairman & CEO)	2,158	2.4%
Russell A. Kersh (EVP - Finance & Admin.)	307	0.3%
David C. Fannin (EVP - General Counsel)	69	0.1%
Other Directors & Executive Officers	978	1.1%
Total Insider Holdings	3,513	3.8%
Other Holdings	10,741	11.7%
Total Common Shares Outstanding (3)	85,166	93.1%
Options Outstanding (12/31/96)	6,272	
Fully Diluted Shares Outstanding	91,437	100.0%

NOT A CERTIFIED COPY

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

CP 021068
CONFIDENTIAL

012146

16div-019685

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

L:\BDG\LASER\SELLSIDE\GRAPHS\COMPS XLS]Sheet1 2/2/98 10:39

SUNBEAM CORPORATION

Market Statistics for Selected Comparable Companies

($mm, except per share data)		LTM Price		Market Value		EPS [2] Calendar			P/E Calendar			CY98 PE/	CY99 PE/	Proj. 5 yr. EPS
Company	Price [1]	High	Low	Equity	Aggregate [2]	LTM	1998E	1999E	LTM	1998E	1999E	Growth	Growth	rowth [4]
Consumer Durables/Appliances														
Black & Decker	$49.25	$50.13	$29.63	$4,669.3	$6,524.0	$2.25	$2.65	$3.25	21.9 x	18.6 x	15.2	1.2 x	1.0	15.0 %
Snap-On	39.56	46.31	35.25	2,408.7	2,622.9	2.38	2.84	3.18	16.6	13.9	12.4	1.2	1.0	12.0
Stanley Works	46.25	47.38	35.50	4,128.7	4,393.3	2.04	2.40	2.75	22.7	19.3	16.8	1.6	1.4	12.0
Toro	38.56	46.31	33.00	467.2	754.9	2.90	3.25	3.57	13.3	11.9	10.8	1.0	0.9	11.5
Newell Companies	41.81	43.81	32.13	6,654.6	8,081.8	1.77	2.10	2.38	23.6	19.9	17.6	1.3	1.2	15.0
Maytag	38.75	39.25	20.00	3,680.3	4,391.2	1.62	1.90	2.28	23.9	20.4	17.0	2.1	1.8	9.5
Polaroid	41.31	60.31	36.25	1,854.5	2,479.5	2.25	3.00	3.75	18.4	13.8	11.0	1.1	0.9	12.0
Eastman Kodak	65.25	94.75	53.31	21,199.8	22,290.3	3.93	4.15	4.82	16.6	15.7	13.5	1.6	1.4	10.0
Whirlpool	58.19	69.50	45.25	4,364.7	7,565.7	2.90	3.15	4.15	20.1	18.5	14.0	1.8	1.4	10.0
					Median:				20.1 x	18.5 x	14.0 x	1.3 x	1.2 x	12.0 %
					Mean:				19.7	16.9	14.3	1.5	1.2	11.9
Consumer Packaged Goods														
Rubbermaid	$25.75	$30.50	$22.88	$3,857.2	$4,197.4	$0.81	0.93	1.18	31.8 x	27.7 x	21.8 x	2.3 x	1.8	12.0 %
Gillette	100.19	106.38	72.00	56,112.7	58,270.7	2.43	3.00	3.55	41.2	33.4	28.2	1.9	1.6	18.0
Tupperware	26.00	49.38	22.50	1,586.3	1,803.7	2.27	1.88	1.79	11.5	13.8	14.5	1.1	1.1	13.0
Procter & Gamble	79.50	83.44	56.63	106,847.4	109,042.4	2.53	2.91	3.28	31.4	27.3	24.2	2.1	1.9	13.0
Clorox	78.13	80.38	55.00	8,073.0	9,115.5	2.50	2.93	3.30	31.3	26.7	23.7	2.1	1.8	13.0
Kimberly-Clark	54.19	56.88	43.25	29,661.8	31,865.2	2.43	2.85	3.25	22.3	19.0	16.7	1.5	1.3	13.0
Johnson & Johnson	68.81	69.44	51.13	92,461.6	91,741.7	2.42	2.78	3.15	28.4	24.8	21.8	1.8	1.6	14.0
Colgate-Palmolive	74.50	78.69	46.81	22,037.6	24,997.7	2.36	2.43	2.77	31.6	30.7	26.9	2.4	2.1	13.0
Sara Lee	54.56	59.94	38.50	26,188.3	29,345.3	2.02	2.40	2.72	27.0	22.8	20.1	1.8	1.5	13.0
					Median:				31.3 x	26.7 x	21.8 x	1.9 x	1.6 x	13.0 %
					Mean:				28.5	25.1	22.0	1.9	1.6	13.6
Sunbeam (5)	$37.06	$50.44	$24.63	$3,167.5	$3,345.3	$0.80	$2.10	$2.65	N.M. x	17.6 x	14.0 x	0.9 x	0.7	20.0 %

Notes:

(1) Closing prices as of 2/2/98. High and low represent the latest 52 week figures

(2) Aggregate value equals market value of equity plus short-term debt, long-term debt, minority interests and any capital leases and underfunded pensions, as appropriate

(3) IBES median EPS estimates as of 2/2/98 and calendarized to December 31st for 1998 and 1999

(4) IBES median long-term growth estimates as of 2/2/98

(5) 1998E from Oppenheimer research dated 1/28/97; 1999E and long term growth estimates based on median of IBES median long-term growth estimates as of 2/2/98.

NOT A CERTIFIED COPY

CP 021087
CONFIDENTIAL

L99210

MORGAN STANLEY

16div-019686

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Franklin Mutual Advisers, Inc.	Growth	n/a	0	17,541,398	19.2%	19.2%	6/30/97
Alliance Capital Management L.P.	Growth, Value	173.7	(421,000)	10,080,299	11.0%	30.2%	6/30/97
Columbia Management Company	Growth, Value	18.5	1,010,600	5,049,500	5.5%	35.7%	6/30/97
Fred Alger Management Inc.	Index	6.8	784,100	2,643,415	2.9%	38.6%	6/30/97
Fidelity Management & Research Co.	Growth, Value, Income	433.8	(4,195,000)	2,352,800	2.6%	41.2%	6/30/97
TIAA-CREF Investment Management Inc.	Growth, Index	63.3	(508,400)	2,169,900	2.4%	43.6%	6/30/97
Alex. Brown Investment Management	Growth	2.9	586,600	2,094,800	2.3%	45.9%	6/30/97
Wells Fargo Bank, N.A.	Index	n/a	91,077	1,552,169	1.7%	47.6%	6/30/97
Columbus Circle Investors	Growth	14.1	(52,700)	1,540,100	1.7%	49.2%	6/30/97
New York State Common Retirement Fd.	Index	n/a	(272,000)	1,489,100	1.6%	50.9%	3/31/97
Strong Capital Management, Inc.	Growth, Value	21.8	1,221,200	1,258,150	1.4%	52.2%	6/30/97
Husic Capital Management	Growth	4.1	737,500	1,215,400	1.3%	53.6%	6/30/97
Brown Brothers Harriman & Co.(Asset)	Growth	n/a	(199,539)	1,122,583	1.2%	54.8%	6/30/97
Valenzuela Capital Management, Inc.	Growth	0.5	211,700	1,098,000	1.2%	56.0%	6/30/97
ARCO Investment Management Co.	Growth	n/a	180,000	1,070,000	1.2%	57.2%	6/30/97
Duncan-Hurst Capital Management	Growth	2.9	482,460	915,760	1.0%	58.2%	6/30/97
Smith Barney Investment Advisors	Growth, Value	13.0	140,510	876,637	1.0%	59.1%	6/30/97
Sloate, Weisman, Murray & Co., Inc.	Value	1.2	(27,450)	877,055	1.0%	60.1%	6/30/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	(28,002)	750,122	0.8%	60.9%	6/30/97
Nicholas-Applegate Capital Mgmt.	Growth	32.0	245,449	738,749	0.8%	61.7%	6/30/97
California Public Employees Rtmnt.	Growth	n/a	0	723,800	0.8%	62.5%	6/30/97
Founders Asset Management, Inc.	Growth, Value	4.3	90,175	677,325	0.7%	63.3%	6/30/97
Neuberger & Berman, LLC	Value, Growth	42.9	(134,534)	632,630	0.7%	63.9%	6/30/97
Dean Witter InterCapital Inc.	Growth, Value	2.6	597,000	597,000	0.7%	64.6%	6/30/97
Cadence Capital Management	Growth	3.0	570,300	570,300	0.6%	65.2%	6/30/97
Chancellor LGT Asset Management, Inc	Growth, Value, Index	n/a	(378,200)	555,100	0.6%	65.8%	6/30/97
Bankers Trust Company (Invt. Mgmt.)	Index, Growth, Value	n/a	(172,752)	526,700	0.6%	66.4%	6/30/97
General Electric Investment Corp.	Growth, Value	n/a	5,000	516,800	0.6%	67.0%	6/30/97
California State Teachers Retirement	Index	n/a	181,371	498,294	0.5%	67.5%	6/30/97
CoreStates Bank, N.A. (PA)	Income	n/a	(62,075)	473,575	0.5%	68.0%	6/30/97
SBC Warburg Inc.	n/a	n/a	442,500	442,500	0.5%	68.5%	6/30/97
Eagle Asset Management, Inc.	Growth, Value	2.5	35,140	414,575	0.5%	69.0%	6/30/97
N.Y. State Teachers' Retirement	Index	n/a	58,500	362,900	0.4%	69.4%	3/31/97
Marvin & Palmer Associates, Inc.	Value	3.3	0	357,600	0.4%	69.8%	6/30/97
Perpetual plc	n/a	n/a	340,000	340,000	0.4%	70.1%	5/31/97
Top 35 Institutions			1,559,522	64,127,036	70.1%		
Remaining 125 Institutions			161,497	6,785,183	7.4%		
Total Institutional Holdings			1,721,019	70,912,219	77.6%		
Other Holdings				20,525,127	22.4%		
Total Fully Diluted Shares Outstanding				91,437,346	100.0%		

Summary of Latest 13F Reports
20 Institutions increased holdings, of which 4 were new investors or first time filers
12 Institutions decreased holdings, of which 0 eliminated their positions
3 Institutions held their positions.

Index funds representing 16.4% of Total Institutional Shares Outstanding.

NOT A CERTIFIED COPY

CP 021068
CONFIDENTIAL

MORGAN STANLEY

012148

CONFIDENTIAL 444309

DEPOSITION
EXHIBIT # 88
FOR ID TRN
4/8/04

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
THE COLEMAN COMPANY, INC.
Held on Wednesday, February 25, 1998 at 4:00 p.m. (EST)
35 East 62nd Street, New York, New York

Directors in Attendance:

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

Absent:
Lawrence M. Jones
James D. Robinson III

Others in Attendance:

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

Chairman Levin called the meeting to order at 4:00 p.m. and asked Mr. Isko to act as Secretary of the meeting. Mr. Levin thanked everyone for attending and introduced the participants from Wachtell, Lipton, Rosen & Katz, ("Wachtell") the Company's special counsel, and Credit Suisse First Boston ("First Boston"), the Company's financial advisors.

F:\Staples Inbox\Admyr\1998mtg\225min2

NOT A CERTIFIED COPY

012150

The first order of business was a brief overview by Mr. Levin of the Company's results for the fourth quarter and full year 1997, and an outlook for near term prospects.

The next item of business was an overview by Mr. Levin of a proposed transaction whereby the Company would be merged with Sunbeam Corporation ("Sunbeam"). Mr. Levin stated that the Company had been in discussions with Sunbeam with respect to a potential transaction whereby the Company would be merged with Sunbeam and holders of the Company's common stock would receive Sunbeam common stock and cash with a total value of $27.50 per Company share. Mr. Levin stated that the proposed transaction is structured to put Sunbeam in control as quickly as possible in order to reduce disruption to the Company's business. Mr. Levin then provided an overview of the information provided by Sunbeam as to their current intentions with regard to divestiture of certain business units of the Company and potential restructurings of remaining facilities. Mr. Levin also reviewed certain employee-protection provisions which the Company is requesting as part of the proposed transaction, including the severance policies, acceleration of options and formalizing pre-existing agreements with certain officers.

Mr. Levin then asked Mr. James Maher to review with the Board the history of the proposed transaction with Sunbeam. Mr. Maher reviewed the history of the proposed transaction, including both the course of discussion between the Company and Sunbeam and an inquiry made by the Company to what the Company believed was the most likely potential bidder, which bidder was not interested. Following Mr. Maher's review, the directors asked numerous questions regarding the proposed transaction and a discussion ensued among the directors.

Following the directors' questions and discussion, Mr. Levin then introduced Mr. Adam Emmerich of Wachtell. Mr. Emmerich described the overall structure of the proposed transaction, the timing for the consummation of the proposed acquisition of the Company by Sunbeam, and the principal filings with the Securities and Exchange Commission (the "SEC") that would be required in connection with the proposed transaction and the timing of those filings. Utilizing a chart he handed out at the meeting (a copy of which is attached to these minutes), Mr. Emmerich then described in detail the structure of the proposed transaction, including the merger of CLN Holdings Inc., a subsidiary of MacAndrews & Forbes Holdings Inc. ("M&F") which owns approximately 82.4% of the Company's common stock in the first step of the transaction, and the merger of the Company and the exchange of its common stock held by the public in the second step of the transaction. Mr. Emmerich described the consideration payable in each step of the transaction, noting that, after a reduction to account for the debt at CLN Holdings, the aggregate consideration payable to M&F for shares of CLN Holdings in the first step of the transaction was based on the same proportions of consideration

NOT A CERTIFIED COPY

0124-51

in cash and Sunbeam common stock payable to the public in the second step of the transaction. Mr. Emmerich also described the tax treatment of the two steps of the transaction, indicating that the receipt of consideration by the Company's public stockholders would generally be taxable while the receipt of consideration by M&F for shares of CLN Holdings in the first step would not be taxable.

Mr. Emmerich then reviewed the contemplated conditions to closing, including that there would be very few conditions, which is typical of acquisitions of public companies. Mr. Emmerich stated that once the acquisition of CLN Holdings was consummated, there would be virtually no conditions to the obligations of Sunbeam to close the second step of the transaction.

The directors then asked numerous questions regarding the consideration being paid, the structure of the transaction, and the other terms of the transaction, and a discussion ensued.

Following the discussion, Mr. Emmerich stated that the Board needed to consider two distinct matters in connection with the acquisition of the Company: (i) approving the merger agreement between Sunbeam and the Company and (ii) approving the first step of the transaction (the acquisition of CLN Holdings) under Section 203 of the Delaware General Corporation law. Mr. Emmerich stated that both decisions by the Board should be governed by the "business judgment rule" under Delaware law.

Mr. Emmerich reviewed with the Board the requirements of the "duty of care" and "duty of loyalty," identifying certain facts the Board should consider, including that both M&F and the Company's public stockholders will receive consideration for the Company's common stock in the same mix of cash and stock and based upon the same valuation, management's activities to maximize the consideration to all of the Company's shareholders and that there is a tremendous risk of damage to the Company's business in conducting a more extended or extensive sale process without any indication that another bidder would emerge. Mr. Emmerich noted for the Board as part of its consideration that both Wachtell and First Boston have in the past been engaged by affiliates of the Company, including M&F and its subsidiaries.

Mr. Emmerich stated that in light of the fact that the preponderance of the economic investment of the Company's stockholders in Coleman will become an equity stake in Sunbeam following the consummation of the transaction, and that, at such time, there will exist no controlling stockholder of Sunbeam, the proposed transaction is not a "sale" within the meaning of Revlon v MacAndrews & Forbes, which doctrine Mr. Emmerich described for the Board. Mr. Emmerich stated that the Company's stockholders, as stockholders of Sunbeam, may be able to obtain another control premium with respect to their Sunbeam common stock, and that this is an unusually favorable transaction in that the public stockholders of the Company would not only

NOT A CERTIFIED COPY

012452

CONFIDENTIAL SASMF 08874
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634058
16div-019690

receive a premium for their Coleman shares but would also obtain the benefits of becoming stockholders in Sunbeam, a public company which has no controlling stockholder, thereby offering the possibility of sharing in another control premium in the future.

Following Mr. Emmerich's presentation the Board asked questions and a discussion ensued.

Mr. Levin thanked Mr. Emmerich for his presentation and then introduced Mr. Gordon Rich of First Boston. Mr. Rich reviewed with the Board each page of the presentation prepared by First Boston, a copy of which was distributed to the directors and is attached to these minutes. Mr. Rich began with an overview of the financial terms of the proposed transactions, including the proposed exchange ratio in the second step of .6258 Sunbeam shares for each share of the Company's common stock, cash consideration in the second step of $14.40 per share (together representing a premium of 44.2% to the Company's stock price on the previous day), and aggregate consideration in the first step of the transaction of approximately 15.6 million shares of Sunbeam common stock and approximately $106 million in cash. Mr. Rich then reviewed the value of the proposed transaction as it relates to various financial indicia, including historical stock trading prices and earnings, the value to the Company's stockholders as the price of Sunbeam stock increased or decreased, and the two-year trading history of Sunbeam stock. Mr. Rich stated that since Mr. Dunlap became Chief Executive Officer of Sunbeam, Sunbeam's stock price has approximately doubled.

Mr. Rich then reviewed the implied exchange ratio of the proposed transaction and stated that it was higher than the exchange ratio implied by the two companies' historical stock market price.

Mr. Rich then reviewed with the Board the section of the First Boston presentation on Valuation Methodologies, and reviewed with the Board the three methods prepared by First Boston: Discounted Cash Flow Analysis, Comparable Company Analysis and Comparable Acquisition Analysis. In reviewing the Discounted Cash Flow Analysis, Mr. Rich noted that First Boston used the Company's 1998 estimates on earnings before interest, taxes, depreciation and amortization ("EBITDA"), which shows a significant increase over 1997 results, and is higher than the Company's best results in any year. Mr. Rich stated that although First Boston did not discount the 1998 EBITDA forecasts, another buyer would likely discount such estimates, resulting in a lower discounted cash flow range of values than those presented by First Boston.

Mr. Rich stated that the price being paid for the Company's common stock would be within or exceed the range of values for the Company's common stock implied by the three valuation methodologies.

NOT A CERTIFIED COPY

012153

CONFIDENTIAL SASMF 08875
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634059
16div-019691

Mr. Rich then provided a brief overview of Sunbeam, including Wall Street estimates for Sunbeam's stock price and then reviewed a summary of the Discounted Cash Flow Analysis. Comparable Company Analysis and Comparable Acquisition Analysis for Sunbeam. Based on such analysis, Mr. Rich stated that it was First Boston's conclusion that Sunbeam's stock was fairly valued at today's market price (approximately $41 per share). Mr. Rich then reviewed a Contribution Analysis demonstrating that, based on contribution to earnings, the Company's stockholders should receive 16% of the outstanding Sunbeam shares after the acquisition of Coleman, whereas the terms of the transaction provide that they will receive approximately 30%.

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

Mr. Levin explained that a decision from the directors with respect to the transaction was not required at today's meeting, and that significant issues remained to be negotiated. Mr. Levin indicated that the Board would meet again to consider the final terms of the transaction.

Mr. Levin thanked Mr. Rich for his presentation and stated that the next item was the approval of the 1997 bonus payments. Mr. Levin stated that the bonuses under the Management Incentive Plan were conditioned on the Company achieving a certain minimum earnings per share. The earnings per share condition was the only condition that had not been satisfied and if the condition were absent, bonuses would have been earned under the Management Incentive Plan. Therefore, in light of the progress made by the Company during 1997 to restructure its operations and in consideration of the Company's financial performance during 1997, management recommends that a bonus be paid based on the amounts that would have been earned absent the condition of a minimum earnings per share.

Upon a motion made and duly seconded, the Board adopted management's recommendation with respect to the 1997 bonuses and adopted the following resolutions:

1997 Bonus Payments

WHEREAS, one condition to the payment of amounts under the Company's Management Incentive Plan has not been satisfied for 1997; and

WHEREAS, but for such condition, certain payments would have been earned under the Company's Management Incentive Plan;

NOW THEREFORE, BE IT RESOLVED, that in light of the progress made by the Company during 1997 to restructure its operations, and in consideration of the financial performance of the Company during 1997, the payments to employees of the Company of

NOT A CERTIFIED COPY

012454

CONFIDENTIAL SASMF 08876
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634060
16div-019692

discretionary bonus as described to this Board are hereby approved and adopted in all respects.

General

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized and empowered in the name and on behalf of the Company, to (i) take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered, and where necessary or appropriate, file or cause to be filed with the appropriate governmental authorities, all such other instruments and documents, including but not limited to all certificates, contracts, bonds, agreements, documents, instruments, receipts or other papers, (ii) incur and pay or cause to paid all fees and expenses and (iii) engage such persons as such officer shall in his judgment determine to be necessary or appropriate to carry out fully the intent and purposes of the foregoing resolutions and each of the transactions contemplated thereby; and further

RESOLVED, that all actions previously taken by any director, officer, employee or agent of the Company in connection with or related to the matters set forth in or reasonably contemplated or implied by the foregoing resolutions be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company.

Mr. Levin then stated that the next Board meeting would be held on Friday, February 27, 1998 at 9:30 a.m. (EST). Mr. Levin stated that Messrs. Rich and Emmerich and members of management would be available to answer any questions any of the directors may have and provide any additional materials a director may want.

At 5:30 p.m., the meeting was adjourned.

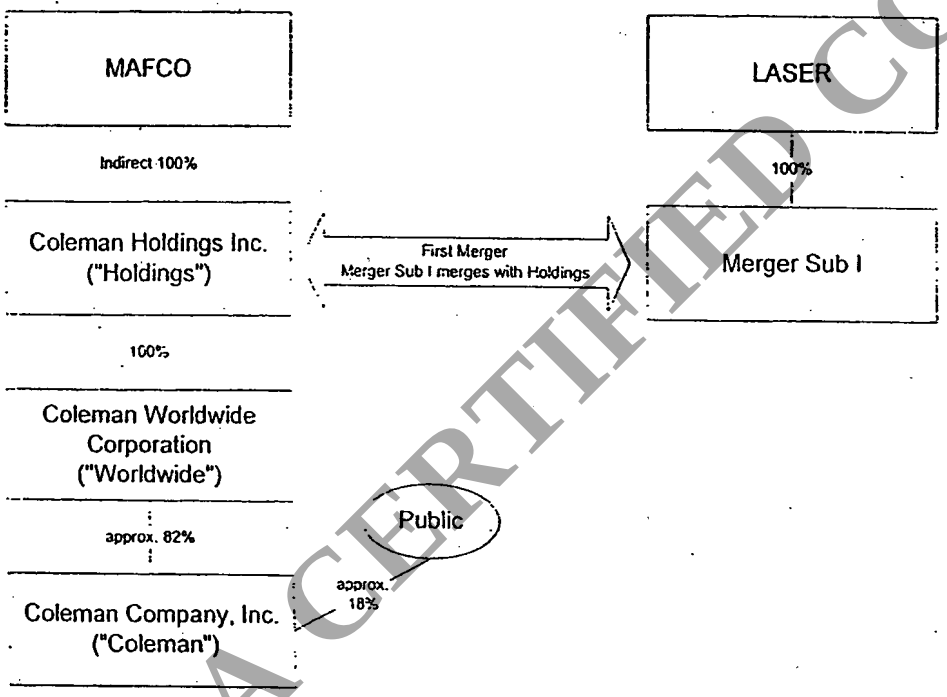
Secretary

NOT A CERTIFIED COPY

012455

CONFIDENTIAL SASMF 08877
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634061
16div-019693

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



PRE-TRANSACTION STRUCTURE:

MAFCO owns Coleman Holding Companies, and idirectly 82% of Coleman

Public owns 18% of Coleman

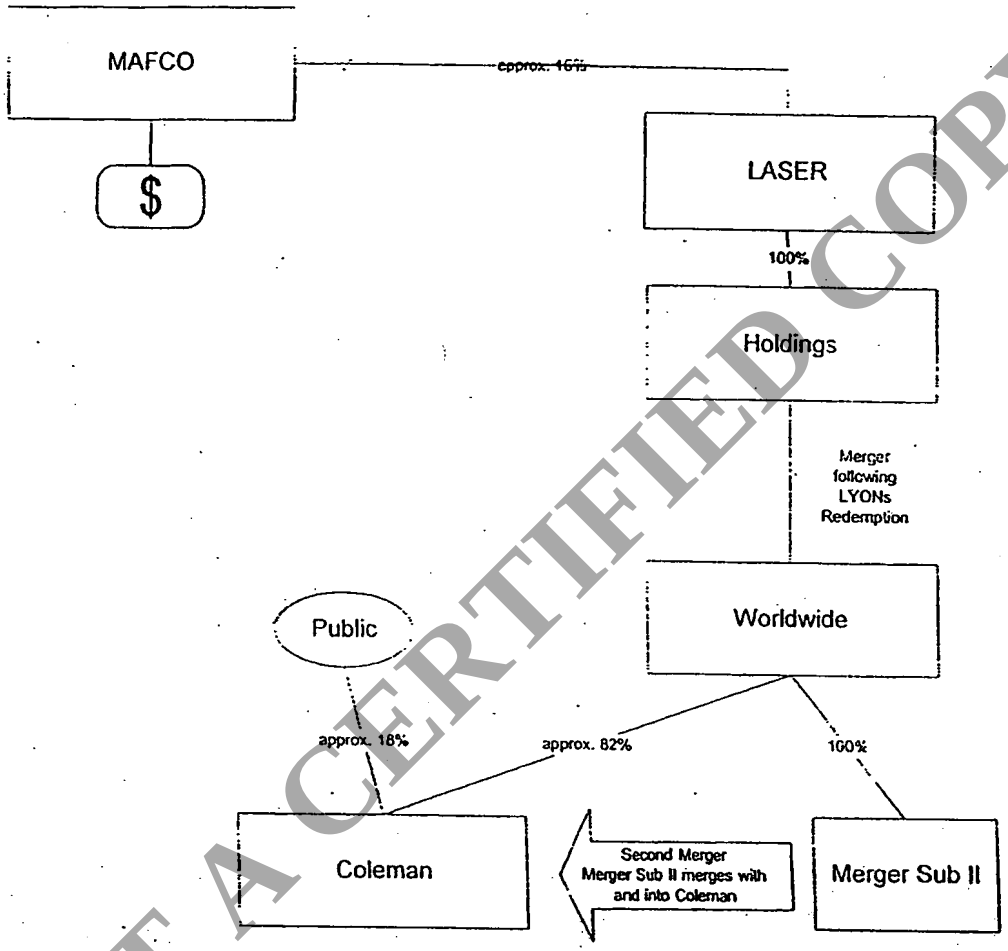
Laser forms Merger Sub I to acquire Coleman Holdings

STRICTLY CONFIDENTIAL
FEBRUARY 25, 1998

NOT A CERTIFIED COPY

012456

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER FIRST MERGER:

MAFCO receives Laser stock and cash for Holdings shares

Laser owns Coleman Holdings chain

Public continues to own 18% OF Coleman

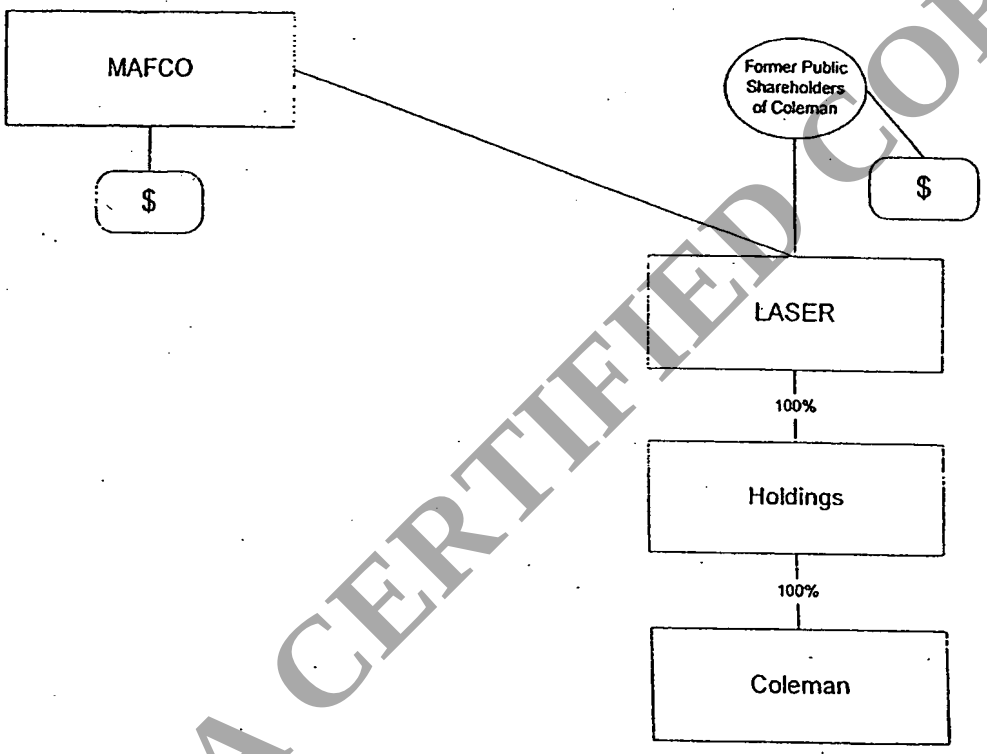
LYONs redeemed; Worldwide mergers with Holdings

Merger Sub II formed for second merger

NOT A CERTIFIED COPY

012157

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER SECOND MERGER:

Public receives Laser stock and cash for Coleman shares in the second merger

Coleman 100% owned by Laser

NOT A CERTIFIED COPY

012458

MS
DEPOSITION
EXHIBIT # 93
FOR ID TRN
4-8-04

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

LASER ACQUISITION CORP.

CLN HOLDINGS INC.

and

COLEMAN (PARENT) HOLDINGS INC.

Dated as of

February 27, 1998

NOT A CERTIFIED COPY

012460

TABLE OF CONTENTS

PAGE

ARTICLE I
DEFINITIONS AND TERMS

Section 1.1. Certain Definitions 1
Section 1.2 Other Terms 7

ARTICLE II
THE HOLDINGS MERGER

Section 2.1 The Holdings Merger 7
Section 2.2 Closing 7
Section 2.3 Effective Time of the Holdings Merger 7
Section 2.4 Certificate of Incorporation 7
Section 2.5 By-Laws 7
Section 2.6 Directors 8
Section 2.7 Officers 8
Section 2.8 Holdings Merger Election 8

ARTICLE III
CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock 8
Section 3.2 Exchange of Certificates 9

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Section 4.1 Organization and Qualification 9
Section 4.2 Capitalization 9
Section 4.3 Authority Relative to this Agreement and the Registration Rights Agreement 10
Section 4.4 No Business Activities of Holdings and Worldwide 10
Section 4.5 Consents and Approvals; No Violations 11
Section 4.6 No Litigation 11
Section 4.7 SEC Reports 11
Section 4.8 Acquisition of Shares for Investment 12
Section 4.9 Taxes 12
Section 4.10 Affiliate Agreements 13

NOT A CERTIFIED COPY

012461

PAGE

Section 4.11 Brokers 13
Section 4.12 LYONs Escrow Fund 14

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER

Section 5.1 Laser Merger Sub 14
Section 5.2 Authority Relative to this Agreement 14
Section 5.3 Consents and Approvals; No Violations 15
Section 5.4 Acquisition of Shares for Investment 15

ARTICLE VI
COVENANTS

Section 6.1 Conduct of Business 15
Section 6.2 Reasonable Best Efforts 17
Section 6.3 Consents 17
Section 6.4 HSR Notification 18
Section 6.5 LYONs Refund 18
Section 6.6 Listing Application 18
Section 6.7 Access to Information; Confidentiality 18
Section 6.8 Advice of Changes 19
Section 6.9 Affiliate Agreements; Intercompany Accounts 19
Section 6.10 Registration Rights Agreement 19

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1 Sales of Laser Shares 19
Section 7.2 Restrictive Legend 20

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Holdings Merger 20
Section 8.2 Conditions to Obligation of Holdings to Effect the Holdings Merger 21
Section 8.3 Conditions to Obligation of Laser to Effect the Holdings Merger 22

ARTICLE IX
TAX MATTERS

Section 9.1 Taxes 22

NOT A CERTIFIED COPY

012162

16div-019699

PAGE

Section 9.2 Tax Returns 24
Section 9.3 Tax Claims 25
Section 9.4 Assistance and Cooperation 26
Section 9.5 Adjustment to Merger Consideration 27
Section 9.6 Survival of Obligations 27
Section 9.7 Reorganization 27
Section 9.8 Tax Sharing Agreements 27
Section 9.9 Information 27

ARTICLE X
INDEMNIFICATION; SURVIVAL

Section 10.1 Parent Holdings' Agreement to Indemnify 27
Section 10.2 Conditions of Indemnification With Respect to Third-Party Claims 28
Section 10.3 Survival of Representations; Covenants 29

ARTICLE XI
TERMINATION

Section 11.1 Termination 29
Section 11.2 Effect of Termination 30

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices 30
Section 12.2 Amendment 31
Section 12.3 Extension; Waiver 31
Section 12.4 Assignment 31
Section 12.5 Entire Agreement 31
Section 12.6 Parties in Interest 31
Section 12.7 Expenses 31
Section 12.8 Governing Law 32
Section 12.9 Counterparts 32
Section 12.10 Headings 32
Section 12.11 Further Assurances 32
Section 12.12 Specific Performance 32
Section 12.13 Certain Terms 32
Section 12.14 Interpretation 32

NOT A CERTIFIED COPY

012163

MORGAN STANLEY CONFIDENTIAL 0007950

16div-019700

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among Sunbeam Corporation, a Delaware corporation ("Laser"), Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser ("Laser Merger Sub"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc. ("Holdings"), a Delaware corporation and a wholly owned subsidiary of Parent Holdings.

WHEREAS, the Boards of Directors of Laser, Laser Merger Sub, Parent Holdings and Holdings deem it advisable and in the best interests of their respective stockholders that Laser Merger Sub merge with and into Holdings (the "Holdings Merger"), and such Boards of Directors have approved the Holdings Merger upon the terms and conditions set forth herein;

WHEREAS, Parent Holdings, as the sole stockholder of Holdings, and Laser, as the sole stockholder of Laser Merger Sub, have approved this Agreement and the transactions contemplated hereby;

WHEREAS, at the Closing (as hereinafter defined), Laser and Parent Holdings shall enter into a registration rights agreement (the "Registration Rights Agreement") relating to the registration of the Laser Shares (as hereinafter defined) issuable to Parent Holdings in the Holdings Merger, in the form of Exhibit A hereto;

WHEREAS, for United States federal income tax purposes, it is intended that the Holdings Merger provided for herein shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a plan of reorganization; and

WHEREAS, Laser, Laser Merger Sub and Holdings desire to make certain representations, warranties, covenants and agreements in connection with the Holdings Merger and also to prescribe certain conditions to the Holdings Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1. Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"1998 Notes" shall have the meaning set forth in Section 4.4(a) hereof.

NOT A CERTIFIED COPY

012154

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall have the meaning set forth in Section 4.10 hereof.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in the City of New York are authorized or obligated by law or executive order to close.

"Cash Payment" shall have the meaning set forth in Section 3.1(a) hereof.

"Certificate of Incorporation" shall have the meaning set forth in Section 2.4 hereof.

"Certificate of Merger" shall have the meaning set forth in Section 2.3 hereof.

"Closing" shall mean the closing of the transactions contemplated by this Agreement, as provided for in Section 2.2 hereof.

"Closing Date" shall have the meaning set forth in Section 2.2 hereof.

"Code" shall have the meaning set forth in the recitals hereof.

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

"Company Common Stock" shall mean the common stock, par value $.01 per share, of the Company.

"Company Merger" shall mean the consummation of the merger contemplated by the Company Merger Agreement.

"Company Merger Agreement" shall mean the Agreement and Plan of Merger among Laser, Merger Sub, and the Company, dated as of the date hereof.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

NOT A CERTIFIED COPY

012165

16div-019702

"Confidentiality Agreements" shall have the meaning set forth in Section 6.7 hereof.

"Consents" shall mean any consent, approval, waiver, authorization or permit of, or to make any filing with or notification to, any Governmental Entity or third party.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract or other agreement or other instrument or obligation.

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"Damages" shall have the meaning set forth in Section 10.1(a) hereof.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Filed Holdings SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Filed Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Holdings" shall have the meaning set forth in the recitals hereof.

"Holdings Common Stock" shall mean the common stock, par value $1.00, of Holdings.

"Holdings Disclosure Schedule" shall mean the disclosure schedule being delivered by Holdings concurrently with the execution of this Agreement.

"Holdings Effective Time" shall have the meaning set forth in Section 2.3 hereof.

"Holdings Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Holdings and its subsidiaries, taken as a whole.

"Holdings Merger" shall have the meaning set forth in the recitals hereof.

"Holdings SEC Reports" shall have the meaning set forth in Section 4.7(a) hereof.

NOT A CERTIFIED COPY

012166

16div-019703

"Holdings Shares" shall have the meaning set forth in Section 4.2(a).

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person that is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (d) all liabilities secured by any Lien (as hereinafter defined) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (e) all direct or indirect guarantees of any of the foregoing for the benefit of another Person.

"Indemnifying Party" shall have the meaning set forth in Section 9.2(c) hereof.

"Indenture" shall mean the Indenture between Holdings, as successor to Coleman Escrow Corp., and First Trust National Association dated May 20, 1997 relating to the Notes.

"IRS" shall mean the Internal Revenue Service of the United States.

"Laser" shall have the meaning set forth in the recitals hereof.

"Laser Common Stock" shall mean the common stock, par value $.01 per share, of Laser.

"Laser Designees" shall have the meaning set forth in Section 8.3(d) hereof.

"Laser Group" shall have the meaning set forth in Section 10.1(a) hereof.

"Laser Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Laser and its subsidiaries, taken as a whole.

"Laser Merger Sub" shall have the meaning set forth in the recitals hereof.

"Laser Merger Sub Common Stock" shall mean common stock, par value $.01 per share, of Laser Merger Sub.

"Laser Shares" shall have the meaning set forth in the first clause of Section 3.1 hereof.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

NOT A CERTIFIED COPY

012467

MORGAN STANLEY CONFIDENTIAL 0007954

16div-019704

"Liens" shall mean any lien, security interest, mortgage, pledge, charge or similar encumbrance.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"LYONs Escrow Fund" shall mean the funds held in the escrow account established in connection with the redemption and exchange of the LYONs.

"Mafco Demand Note" shall mean the demand note issued by an Affiliate of Parent Holdings, and held by Worldwide on the date hereof, in connection with the Tax Sharing Arrangement among certain Affiliates of Parent Holdings.

"Merger Consideration" shall have the meaning set forth in Section 3.1(a)(i) hereof.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"Notes" shall mean the Senior Secured First Priority Discount Notes due 2001, Senior Secured Second Priority Discount Notes due 2001, Senior Secured First Priority Discount Exchange Notes due 2001, and Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings, as successor to Coleman Escrow Corp.

"NYSE" shall mean the New York Stock Exchange, Inc.

"Parent Holdings" shall have the meaning set forth in the recitals hereof.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Pre-Closing Period" shall mean any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to end on and include the Closing Date.

"Post-Closing Period" shall mean any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to begin after the Closing Date.

"Registration Rights Agreement" shall have the meaning set forth in the recitals hereof.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Straddle Period" shall mean any taxable year or period beginning before and ending after the Closing Date.

NOT A CERTIFIED COPY

012168

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning set forth in Section 2.1 hereof.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean:

(i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"Tax Claim" shall have the meaning set forth in Section 9.3(b) hereof.

"Tax Proceeding" shall have the meaning set forth in Section 9.3(a) hereof.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" shall mean any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"Termination Date" shall have the meaning set forth in Section 11.1(b) hereof.

"Third-Party Claims" shall have the meaning set forth in Section 10.2 hereof.

"Transfer" shall have the meaning set forth in Section 7.1 hereof.

"Treasury Regulations" shall mean the regulations promulgated by the Treasury Department with respect to the Code.

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

NOT A CERTIFIED COPY

0012469

"Worldwide Common Stock" shall mean the common stock, par value $1.00 per share, of Worldwide.

"Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Worldwide Shares" shall have the meaning set forth in Section 4.2(b).

Section 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

ARTICLE II

THE HOLDINGS MERGER

Section 2.1. The Holdings Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Holdings Effective Time (as defined in Section 2.3 hereof), Laser Merger Sub shall be merged with and into Holdings. Following the Holdings Effective Time, Holdings shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Laser Merger Sub shall cease. The Holdings Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2. Closing. The closing of the Holdings Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which (subject to satisfaction or waiver of the conditions set forth in Article VIII) shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3. Effective Time of the Holdings Merger. The Holdings Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Holdings Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4. Certificate of Incorporation. From and after the Holdings Effective Time, the certificate of incorporation of Holdings as in effect at the Holdings Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by the DGCL and the Certificate of Incorporation.

Section 2.5. By-Laws. From and after the Holdings Effective Time, the by-laws of Laser Merger Sub as in effect at the Holdings Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation of the Surviving Corporation and the terms thereof.

NOT CERTIFIED COPY

012170

Section 2.6. Directors. The directors of Laser Merger Sub at the Holdings Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by Law.

Section 2.7. Officers. The officers of Laser Merger Sub at the Holdings Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

Section 2.8. Holdings Merger Election. Notwithstanding the foregoing, at any time prior to the Holdings Effective Time, Holdings may elect, in its sole discretion, upon notice to Laser, to effectuate the Holdings Merger such that Holdings will be merged with and into Laser Merger Sub, with Laser Merger Sub as the "Surviving Corporation" for all purposes hereunder. In such event, the parties hereto shall execute an appropriate amendment to this Agreement to reflect the foregoing.

ARTICLE III

CONVERSION OF SHARES

Section 3.1. Effect on Capital Stock. At the Holdings Effective Time, by virtue of the Holdings Merger and without any action on the part of any holder thereof:

(a) Conversion of Holdings Common Stock.

(i) The Holdings Shares shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (the "Laser Shares") and (B) $159,956,756 in cash, without interest thereon (the "Cash Payment" and, together with the Laser Shares, the "Merger Consideration").

(ii) If, prior to the Holdings Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the number of Laser Shares to be issued pursuant to Section 3.1(a)(i) hereof shall be adjusted appropriately or (B) pay an extraordinary dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the Cash Payment shall be adjusted appropriately, such that the aggregate amount of cash, or if a dividend shall have been paid in other property, cash and other property, shall be equal to that which would have been received had the dividend been paid following the Holdings Effective Time at a time when the Laser Shares were already issued to and the Cash Payment made to Parent Holdings.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007958

16div-019708

(iii) The shares of Holdings Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and Parent Holdings, as the holder thereof, shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(b) Conversion of Laser Merger Sub Common Stock. Each share of Laser Merger Sub Common Stock issued and outstanding immediately prior to the Holdings Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, par value $1.00 per share, of the Surviving Corporation.

(i) Exchange of Certificates. At the Closing, Parent Holdings shall surrender certificates representing the Holdings Shares, and Laser shall deliver or cause to be delivered to Parent Holdings a duly executed stock certificate or stock certificates representing the Laser Shares, and the Cash Payment, in immediately available funds by wire transfer to an account specified in writing by Parent Holdings at least one day prior to the Closing Date. In connection with the delivery by Laser of the Laser Shares, Laser shall utilize all shares of Laser Common Stock held by Laser as treasury shares before issuing any authorized but unissued shares of Laser Common Stock.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Holdings and Parent Holdings hereby represent and warrant to Laser as follows:

Section 4.1. Organization and Qualification.

(a) Each of Holdings and Worldwide is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted.

Section 4.2. Capitalization.

(a) The authorized capital stock of Holdings consists of 1,000 shares of Holdings Common Stock (the "Holdings Shares"), all of which are issued and outstanding and beneficially owned by Parent Holdings. All of the issued and outstanding shares of Holdings Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Holdings issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Holdings to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

(b) The authorized capital stock of Worldwide consists of 1,000 shares of Worldwide Common Stock (the "Worldwide Shares"), all of which are issued and outstanding and beneficially owned by Holdings, free and clear of all Liens, other than the pledge in connec-

NOT A CERTIFIED COPY

012172

tion with the Notes. All of the issued and outstanding shares of Worldwide Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Worldwide issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Worldwide to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 4.3. Authority Relative to this Agreement and the Registration Rights Agreement. Each of Holdings and Parent Holdings has the requisite corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of Holdings and Parent Holdings, and no other corporate action on the part of Holdings or Parent Holdings (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof and thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each of Parent Holdings and Holdings and, assuming that it constitutes a valid and binding agreement of Laser and Laser Sub, constitutes the valid and binding obligation of Parent Holdings and Holdings enforceable against Parent Holdings and Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought. Prior to the Holdings Effective Time, the Registration Rights Agreement will have been duly executed and delivered by Parent Holdings and, assuming that it constitutes the valid and binding agreement of Laser, will constitute the valid and binding obligation of Parent Holdings enforceable against Parent Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 4.4. No Business Activities of Holdings and Worldwide.

(a) Since its formation, Holdings has engaged in no business activities or operations, other than in connection with holding the Worldwide Shares and the stock of its predecessor corporation and in connection with the Senior Secured Discount Notes due 1998 of Holdings and the Series B Senior Secured Discount Notes due 1998 of Holdings (collectively, the "1998 Notes") and the Notes. Holdings has no material assets other than Worldwide Common Stock, and has no liabilities other than under the Notes and other de minimis liabilities. Worldwide is the beneficial owner of 44,067,520 shares of Company Common Stock, free and clear of all Liens, other than the pledge pursuant to the LYONs and the Notes.

NOT A CERTIFIED COPY

012473

MORGAN STANLEY CONFIDENTIAL 0007960

16div-019710

(b) Since its formation, Worldwide has engaged in no business activities or operations, other than in connection with holding shares of Company Common Stock and in connection with the 1998 Notes, the Notes and the LYONs. Worldwide has no material assets other than the Company Common Stock (other than, as of the date hereof, the Mafco Demand Note and the LYONs Escrow Fund), and has no liabilities other than under the LYONs, the Notes and other de minimis liabilities.

Section 4.5. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any Governmental Entity is necessary for the consummation by Parent Holdings or Holdings of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate (i) have a Holdings Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Except as set forth on Section 4.5 of the Holdings Disclosure Schedule, neither the execution and delivery of this Agreement by Parent Holdings or Holdings, nor the consummation by Parent Holdings or Holdings of the transactions contemplated hereby, nor compliance by Parent Holdings or Holdings with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Parent Holdings, Holdings or Worldwide; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Parent Holdings, Holdings or Worldwide is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Holdings, Parent Holdings or Worldwide or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Holdings Material Adverse Effect.

Section 4.6. No Litigation. As of the date hereof, there is no suit, action, proceeding or investigation pending against or affecting Holdings or Worldwide.

Section 4.7. SEC Reports.

(a) Holdings has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Holdings SEC Reports"). As of their respective dates, the Holdings SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Holdings SEC Report has been revised, amended or superseded by a later Filed Holdings SEC Report, none of the Filed Holdings SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which

NOT A CERTIFIED COPY

012474

16div-019711

they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Holdings SEC Reports filed and publicly available prior to the date of this Agreement (as revised, amended or superseded by the Holdings SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Holdings SEC Reports."

(b) Worldwide has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Worldwide SEC Reports"). As of their respective dates, the Worldwide SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Worldwide SEC Report has been revised, amended or superseded by a later Filed Worldwide SEC Report, none of the Filed Worldwide SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Worldwide SEC Reports."

Section 4.8. Acquisition of Shares for Investment. Parent Holdings is not acquiring the Laser Shares with any present intention of distributing or selling any of such Laser Shares in violation of federal or state securities laws.

Section 4.9. Taxes.

(a) Except as would not have a Holdings Material Adverse Effect or as set forth on Section 4.9 of the Holdings Disclosure Schedule:

(i) Each of Holdings and Worldwide (A) has filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (B) has paid all Taxes due by it;

(ii) There are no outstanding waivers in writing or comparable consents regarding the application of any statute of limitations in respect of Taxes of Holdings or Worldwide;

(iii) There is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of Holdings or Worldwide and to the best of Holdings' knowledge, no basis exists therefor;

NOT A CERTIFIED COPY

012175

16div-019712

(iv) There are no Liens for Taxes upon the assets of Holdings or Worldwide except Liens relating to current Taxes not yet due;

(v) All Taxes which Holdings or Worldwide are required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered on the books of Holdings in accordance with GAAP; and

(vi) No power of attorney which is currently in force has been granted by or with respect to Holdings or Worldwide with respect to any matter relating to Taxes.

(b) Except as would not have a Holdings Material Adverse Effect, Holdings and its subsidiaries have previously delivered or made available to Laser (and its representatives) complete and accurate copies of:

(i) all audit reports, letter rulings, technical advice memoranda relating to United States federal, state, local and foreign Taxes due from or with respect to Holdings or its subsidiaries;

(ii) United States federal Tax Returns (to the extent that such Tax Returns relate to Holdings and its subsidiaries), and those state, local or foreign Tax Returns filed by (or on behalf of) Holdings or any of its subsidiaries (to the extent that such Tax Returns relate to Holdings and its subsidiaries) (including, in each case, workpapers related to such Tax Returns);

(iii) any closing agreements entered into by Holdings or any of its subsidiaries with any taxing authority, in each case existing on the date hereof; and

(iv) any Tax Sharing Arrangements and Tax indemnity arrangements to which Holdings or any of its subsidiaries was a party at any time prior to the Closing Date. Holdings and its subsidiaries will deliver or make available to Laser (and its representatives) all similar materials for all matters arising after the date hereof.

Section 4.10. Affiliate Agreements. Section 4.10 of the Holdings Disclosure Schedule sets forth a true and complete list of all agreements, Contracts, arrangements, payables, obligations and understandings between Holdings or any of its subsidiaries, on the one hand, and Parent Holdings or any of its Affiliates (other than Holdings or its subsidiaries), on the other hand (the "Affiliate Agreements").

Section 4.11. Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the Company's financial advisor, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by

NOT A CERTIFIED COPY

012176

MORGAN STANLEY CONFIDENTIAL 0007963

16div-019713

this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates.

Section 4.12. LYONs Escrow Fund. The LYONs Escrow Fund is sufficient to fund the redemption, exchange or other retirement in full of the LYONs and related expenses.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER

Laser hereby makes the same representations and warranties to Parent Holdings and Holdings as the representations and warranties made by Laser to the Company in the Company Merger Agreement, and also represents and warrants to Parent Holdings and Holdings as follows:

Section 5.1. Laser Merger Sub. Laser Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Laser Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Laser Merger Sub consists of 1,000 shares of Laser Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and free of preemptive rights and are owned by Laser. Except as set forth above there are no shares of capital stock of Laser Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Laser Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.2. Authority Relative to this Agreement. Each of Laser and Laser Merger Sub has the corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby, thereby and by the Company Merger Agreement, have been duly authorized by all necessary corporate action on the part of Laser and Laser Merger Sub and no other corporate action on the part of Laser or Laser Merger Sub (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof or thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Laser and Laser Merger Sub and constitutes the valid and binding obligation of Laser and Laser Merger Sub, assuming it is the valid and binding obligation of Parent Holdings and Holdings, enforceable against Laser and Laser Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefore may be brought. Prior to the Holdings Effective Time, the Registra-

NOT A CERTIFIED COPY

16div-019714

tion Rights Agreement will have been duly executed and delivered by Laser and, assuming that it constitutes the valid and binding agreement of Parent Holdings, will constitute the valid and binding obligation of Laser enforceable against Laser in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 5.3. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser and Laser Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser and Laser Merger Sub nor the consummation by Laser and Laser Merger Sub of the transactions contemplated hereby, nor compliance by Laser and Laser Merger Sub with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Laser Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Laser or Laser Merger Sub is a party or by which either of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Laser Merger Sub or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.4. Acquisition of Shares for Investment. Laser is acquiring the Holdings Shares for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

ARTICLE VI

COVENANTS

Section 6.1. Conduct of Business. Except as expressly permitted by this Agreement or with the prior written consent of Laser, during the period from the date of this Agreement to the Holdings Effective Time, Holdings shall and shall cause Worldwide to conduct its business only in the ordinary course consistent with past practice, except that Holdings and Worldwide shall be permitted (but not required) to (i) effect the merger of Worldwide with

NOT A CERTIFIED COPY

012178

Holdings, and (ii) take all action necessary in connection with the redemption or exchange of the LYONs and payment of any amounts thereunder and distribution to Parent Holdings from the LYONs Escrow Fund of any excess thereof. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement, during the period from the date of this Agreement through the Holdings Effective Time, Holdings shall not and shall cause Worldwide not to, without the prior written consent of Laser:

(a) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any class or series of its capital stock, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;

(b) settle or compromise any Tax liability or agree to any adjustment of any Tax attribute or make any election with respect to its Taxes other than in the ordinary course of business;

(c) amend its certificate of incorporation or by-laws;

(d) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets or securities of, or by any other manner, any corporation, partnership or other entity;

(e) create, incur, assume or guarantee any Indebtedness;

(f) except as otherwise required by Law or GAAP, change any of the accounting or Tax principles, practices or methods used by Holdings or Worldwide or fail to maintain the accounts, books and records of Holdings or Worldwide in the usual, regular and ordinary manner on a basis consistently applied;

(g) make any payments, loans, advances or other distributions to, or enter into any transaction, agreement or arrangement with, any of its Affiliates, officers, directors, or stockholders or it or its Affiliates or any associates or family members of any of the foregoing, or make any changes in or modify any of the Affiliate Agreements, other than in the ordinary course of business consistent with past practice or as required by the Affiliate Agreements, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;

(h) adjust, split, combine, subdivide or reclassify any shares of its capital stock;

(i) issue, sell, deliver, transfer, repurchase, redeem, acquire or pledge or authorize or propose the issuance, sale, delivery, transfer, repurchase, redemption, acquisition or pledge of shares of capital stock of any class or series, or any securities (other than the LYONs) convertible into capital stock of any class or series, or grant or enter into any rights, warrants, options, agreements or commitments with respect to the issuance of such capital stock or convertible securities;

NOT A CERTIFIED COPY

012179

(j) take any action that would make any representation or warranty of Parent Holdings or Holdings contained in this Agreement untrue or incorrect in any material respect and which could reasonably be expected to prevent the satisfaction of any condition to closing set forth in Article VIII hereof or otherwise prevent or materially delay the consummation of the transactions contemplated by this Agreement; or

(k) enter into any agreement or commitment to take any of the foregoing actions.

Section 6.2. Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto agrees to, and Holdings agrees to cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the Company Merger Agreement, as applicable, as promptly as practicable (including satisfaction, but not waiver, of the conditions set forth in Article VIII hereof and Article VIII of the Company Merger Agreement).

(b) Laser shall perform all of its obligations under the Company Merger Agreement in accordance with their terms.

Section 6.3. Consents.

(a) Without limiting the generality of Section 6.2(a) hereof, each of the parties hereto shall, and Holdings shall and shall cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to obtain all Consents of all Governmental Entities and, to the extent that the failure to obtain such Consents would have a Holdings Material Adverse Effect or a Laser Material Adverse Effect, as applicable, all third parties necessary in connection with the consummation of the transactions contemplated by this Agreement and the Company Merger Agreement prior to the Holdings Effective Time. Notwithstanding the foregoing, none of the parties hereto nor Worldwide nor the Company or any of its subsidiaries shall have any obligation to pay any fee to any third party (other than filing or similar fees payable to Governmental Entities) for the purpose of obtaining any Consent or any costs and expenses of any third party resulting from the process of obtaining such Consents. Each of the parties hereto shall make or cause to be made all filings and submissions under laws and regulations applicable to it as may be required for the consummation of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity which requires, or to consent to any order, decree or judgment which requires, such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007967

16div-019717

Section 6.4. HSR Notification. As soon as reasonably practicable, Laser and Parent Holdings shall make, or cause to be made, all filings and submissions under the HSR Act and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 6.7 hereof, Parent Holdings will furnish to Laser and Laser will furnish to Parent Holdings, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 6.7 hereof, Parent Holdings will provide Laser, and Laser will provide Parent Holdings, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Entity or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. Parent Holdings and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in any discussions with any Governmental Entity on a joint basis.

Section 6.5. LYONs Refund. Promptly following redemption, exchange or other retirement in full of the LYONs, Laser shall cause to be paid to Parent Holdings all amounts remaining in the LYONs Escrow Fund by wire transfer of immediately available funds to an account(s) designated in writing by Parent Holdings. Until the making of such payment, Laser shall cause Holdings and Worldwide to comply with all of their obligations under the Indenture relating to the LYONs, the Indenture and the related Escrow Agreement, shall not take any action to amend such indenture or agreement in any manner adverse to Parent Holdings and shall use reasonable best efforts to take action to cause the redemption or retirement in full of the LYONs as promptly as practicable. Promptly following the Holdings Effective Time, at the request of Parent Holdings, Laser shall cause Holdings and Worldwide to give the escrow agent under such Escrow Agreement irrevocable written notice of the assignment of all right, title and interest in and to any such amounts to and for the benefit of Parent Holdings, on which notice Parent Holdings may rely. Following the redemption or retirement in full of the LYONs, the Mafco Demand Note shall be canceled automatically without the further action of any Person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Note.

Section 6.6. Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Holdings Merger, and shall use its reasonable best efforts to obtain as promptly as practicable approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 6.7. Access to Information; Confidentiality. Holdings and Laser shall each afford, and Holdings shall cause Worldwide, the Company and each of its subsidiaries to afford, to the other and to the other's financial advisors, legal counsel, accountants consultants and other representatives full access at all reasonable times throughout the period prior to the Holdings Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each

NOT A CERTIFIED COPY

16div-019718

report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 6.7 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Holdings Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998 (the "Confidentiality Agreements").

Section 6.8. Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of Holdings, a Holdings Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.9. Affiliate Agreements; Intercompany Accounts. Parent Holdings and Holdings shall cause all intercompany accounts to be settled, and all Affiliate Agreements to be treated, as set forth in Section 4.10 of the Holdings Disclosure Schedule.

Section 6.10. Registration Rights Agreement. Immediately prior to the Holdings Effective Time, Parent Holdings and Laser shall execute and deliver the Registration Rights Agreement.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1. Sales of Laser Shares. Parent Holdings agrees not to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer (other than, in any such case, in connection with a pledge to secure *bona fide* indebtedness or other obligations) (collectively, "Transfer"), any Laser Shares received pursuant to the terms hereof as consideration for the Holdings Merger, other than to one of its Affiliates who agrees in writing to be bound by the terms of this Section 7.1, for a period of nine (9) months from and after the Holdings Effective Time, except that Parent Holdings may Transfer (A) from and after the date that is three (3) months following the Holdings Effective Time, twenty-five percent (25%) of the total number of the Laser Shares, and (B) from and after the date that is six (6) months following the

NOT A CERTIFIED COPY

01213

MORGAN STANLEY CONFIDENTIAL 0007969

16div-019719

Holdings Effective Time, an additional twenty-five percent (25%) of the total number of the Laser Shares (such that a total of fifty percent (50%) of the total number of the Laser Shares shall be Transferable from and after the date that is six (6) months following the Holdings Effective Time).

Section 7.2. Restrictive Legend. Pursuant to Section 7.1 hereof, each certificate representing the Laser Shares received by Parent Holdings shall be stamped or otherwise imprinted with the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER CONTAINED IN THE AGREEMENT AND PLAN OF MERGER DATED AS OF FEBRUARY 27, 1998 AMONG SUNBEAM CORPORATION, LASER ACQUISITION CORP., CLN HOLDINGS INC., AND COLEMAN (PARENT) HOLDINGS INC. AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED, OR OTHERWISE DISPOSED OF OR TRANSFERRED (OTHER THAN, IN ANY SUCH CASE, IN CONNECTION WITH A PLEDGE TO SECURE *BONA FIDE* INDEBTEDNESS OR OTHER OBLIGATIONS) ("TRANSFERRED") EXCEPT AS PERMITTED BY THE TERMS THEREOF. THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, AND THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES, EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (B) PURSUANT TO RULE 144 UNDER THE ACT, OR (C) UPON RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE ACT.

Upon request of Parent Holdings, Laser shall cause to be issued certificates representing such Laser Shares as to which the restrictions set forth herein are no longer applicable without such legend .

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1. Conditions to Each Party's Obligation to Effect the Holdings Merger. The respective obligations of each party to effect the Holdings Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following conditions:

NOT A CERTIFIED COPY

01 21 33

MORGAN STANLEY CONFIDENTIAL 0007970

16div-019720

(a) Any waiting period applicable to the consummation of the Holdings Merger under the HSR Act shall have expired or been terminated.

(b) All of the Laser Shares shall have been previously approved for listing on the NYSE, subject only to official notice of issuance, if required.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of this Agreement or the Holdings Merger shall have been issued and remain in effect.

(d) All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity, which the failure to obtain, make or occur would have the effect of making this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby illegal.

Section 8.2. Conditions to Obligation of Holdings to Effect the Holdings Merger. The obligation of Holdings to effect the Holdings Merger shall be subject to the satisfaction by Laser or waiver by Holdings or Parent Holdings, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions:

(a) The representations and warranties of Laser in this Agreement and the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Laser in this Agreement and the Company Merger Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made on the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Laser Material Adverse Effect.

(b) Laser shall have performed in all material respects all obligations required to be performed by it under this Agreement or under the Company Merger Agreement at or prior to the Closing Date.

(c) Except as disclosed in the Filed Laser SEC Reports, since the date of the most recent audited financial statements included in the Filed Laser SEC Reports, there shall not have been any event, change or development which individually or in the aggregate has had or reasonably would be expected to have a Laser Material Adverse Effect or would impair the ability of Laser to consummate the transactions contemplated by this Agreement or to satisfy its obligations hereunder.

(d) The Registration Rights Agreement shall have been duly executed and delivered by each of the parties thereto.

NOT A CERTIFIED COPY

0112134

16div-019721

Section 8.3. Conditions to Obligation of Laser to Effect the Holdings Merger. The obligation of Laser to effect the Holdings Merger shall be subject to the satisfaction by Holdings and Parent Holdings or waiver by Laser, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions, unless:

(a) The representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made at and as of the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Holdings Material Adverse Effect or Company Material Adverse Effect (as defined in the Company Merger Agreement), as the case may be.

(b) Parent Holdings and Holdings shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date.

(c) The Company shall have performed in all material respects those obligations required to be performed by it under the Company Merger Agreement on or prior to the Closing Date.

(d) Up to six (6) individuals designated by Laser (the "Laser Designees") shall have been duly elected members of the Board of Directors of the Company and all other members of such Board shall have resigned, all effective as of the later of (i) the Closing and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice (as defined in the Company Merger Agreement) shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance with the Company Merger Agreement.

ARTICLE IX

TAX MATTERS

Section 9.1. Taxes.

(a) Parent Holdings shall indemnify and hold Laser and Laser's subsidiaries and Affiliates harmless from and against the following:

(i) any liability for Taxes of any member of the "affiliated group" (within the meaning of Section 1504(a) of the Code) (except for the Company and its subsidiaries) of which Mafco Holdings Inc. (or any predecessor or successor) is the

NOT A CERTIFIED COPY

012485

MORGAN STANLEY CONFIDENTIAL 0007972

16div-019722

common parent that arises under the provisions of Treasury Regulation Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law; and

(ii) except to the extent provided in Section 9.1(b)(iii), any liability for Taxes (other than Taxes that arise under the provisions of Treasury Regulatory Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law) imposed on Holdings or Worldwide or for which Holdings or Worldwide may otherwise be liable for any Pre-Closing Period (including, without limitation, any Taxes resulting from Holdings or Worldwide ceasing to be a member of the "affiliated group" of which Mafco Holdings Inc. (or any successor) is the common parent, any income Taxes that arise in the Holdings Merger, and any Taxes imposed on Holdings or Worldwide as a result of any transaction effected between (and including) the date hereof and the Closing Date).

(b) Laser shall indemnify and hold Parent Holdings and its Affiliates harmless from and against the following:

(i) Taxes imposed on Holdings or Worldwide for any Post-Closing Period;

(ii) except to the extent provided in Section 9.1(a)(i), any liability for Taxes of the Company and any of its subsidiaries; and

(iii) any liability for Taxes resulting from transactions or actions taken by Holdings or Worldwide on the Closing Date but after the Holdings Effective Time, except for transactions or actions undertaken in the ordinary course of business.

(c) To the extent permitted by law or administrative practice, (i) the taxable year of Holdings or Worldwide which includes the Closing Date shall be treated as closing on (and including) the Closing Date and (ii) all transactions not in the ordinary course of business occurring after the Holdings Effective Time shall be reported on Laser's consolidated United States federal income Tax Return to the extent permitted by Treasury Regulation Section 1.1502-76(b)(1)(ii)(B) and shall be similarly reported on other Tax Returns of Laser or its Affiliates to the extent permitted by Law. For purposes of paragraphs (a) and (b)(i), where it is necessary to apportion between Parent Holdings and Laser the Tax liability of an entity for a Straddle Period (which is not treated under the immediately preceding sentence as closing on the Closing Date), such liability shall be apportioned between the period deemed to end at the close of the Closing Date and the period deemed to begin at the beginning of the day following the Closing Date on the basis of an interim closing of the books, except that Taxes (such as real property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(d) For purposes of Sections 9.1(a) and (b), whenever it is necessary to allocate an item of income, gain, deduction, loss or credit to either a taxable year or period that is not part of a Straddle Period and that ends on or before the Closing Date or a taxable year or period

NOT A CERTIFIED COPY

01 2485

that is not part of a Straddle Period and that begins after the Closing Date, such allocation shall be made consistent with the Law.

(e) Any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on Holdings or any of its subsidiaries arising out of or in connection with the transactions contemplated by this Agreement shall be borne by the party primarily obligated for such Tax under applicable Law, and each party shall indemnify the other party for any such Tax for which it is so liable.

(f) (i) Except as set forth in Section 9.1(f)(iii), Laser shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute (including, without limitation, any net operating loss, investment Tax credit, foreign Tax credit, or other credit or deduction) of (x) the Company or any of its subsidiaries and (y) for a Post-Closing Period, Holdings or Worldwide. If Parent Holdings or any of its Affiliates or subsidiaries receives any refund of Tax to which Laser is entitled pursuant to this Section 9.1(f)(i) or utilizes any Tax attribute to which Laser is entitled pursuant to this Section 9.1(f)(i), Parent Holdings shall promptly notify Laser and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(ii) Except as set forth in Section 9.1(f)(iii), Parent Holdings shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute of Holdings or Worldwide for a Pre-Closing Period. If Laser or any of its Affiliates or subsidiaries receives any refund of Tax to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii) or utilizes any Tax attribute to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii), Laser shall promptly notify Parent Holdings and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(iii) No payment shall be made in respect of a Tax deduction, Tax credit or other Tax benefit pursuant to this Section 9.1(f) in duplication of payments previously made in respect of the same Tax deduction, Tax credit or other Tax benefit.

(g) Any indemnity payment required under this Article IX as a result of an adjustment shall be paid seven (7) days after a "determination" within the meaning of Section 1313(a) of the Code. Any payment required to be made under this Article IX by one party to the other party that is not made on or before the date specified in this Article IX shall bear interest after such date at the rate specified in Code Section 6621(a)(2) for underpayments.

Section 9.2. Tax Returns. (a) Parent Holdings shall file or cause to be filed when due (i) all Tax Returns that are required to be filed on or before the Closing Date by or with respect to Holdings or any of its subsidiaries and (ii) all consolidated, combined or unitary Tax Returns that are required to be filed by or with respect to Parent Holdings or any entity that will be its Affiliate after the Holdings Merger, on the one hand, and Holdings or any of its subsidiaries, on the other hand, for taxable years or periods that include or precede the Closing Date. Parent Holdings shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. In the case of Tax Returns described in clause (ii) above, Laser shall pay Parent Holdings no later

NOT A CERTIFIED COPY

012187

than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX (or Parent Holdings shall pay Laser on such date the excess, if any, of any estimated Tax payments by the Company or any of its subsidiaries, relating to the period covered by such Tax Return, over the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX). Holdings and its subsidiaries shall cooperate in the preparation of any Tax Returns for which Parent Holdings has filing responsibility hereunder. Such cooperation shall include, but not be limited to, furnishing in a timely manner return preparation packages in the form and of the quality provided prior to the Holdings Merger. Such packages shall be prepared in good faith in a manner consistent with past practice.

(b) Laser shall file or cause to be filed when due all other Tax Returns that are required to be filed by or with respect to Holdings or any of its subsidiaries. Laser shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. Parent Holdings shall pay Laser no later than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Parent Holdings is liable pursuant to this Article IX.

(c) The party with filing responsibility under this Section 9.2 for a Tax Return shall, 20 days prior to the due date (including extensions) of such Tax Return, present to the other party (the "Indemnifying Party") for the approval (which approval shall not be unreasonably withheld) of the Indemnifying Party the portion, if any, of the Tax Return reflecting solely the items and positions for which the Indemnifying Party is liable pursuant to this Article IX.

(d) From and after the date hereof, Parent Holdings and each of its Affiliates shall not amend any Tax Return with respect to Taxes for which Laser or any of its Affiliates is liable pursuant to this Agreement, without the written consent of Laser, which consent shall not be unreasonably withheld.

(e) From and after the date hereof, any payment (including any estimated payment) in respect of Taxes pursuant to a Tax Sharing Arrangement that includes Holdings or any of its subsidiaries shall be reduced by any payment that would be owed by the other party pursuant to a Tax Sharing Arrangement.

Section 9.3. Tax Claims.

(a) In the case of any Tax audit, examination or judicial or administrative proceeding (a "Tax Proceeding") relating to a combined, consolidated or unitary Tax Return that includes Mafco Holdings Inc. (or any predecessor or successor thereto), Laser shall be entitled to control the portion of the Tax Proceeding, if any, relating solely to items for which Laser is liable pursuant to this Agreement, and Parent Holdings shall be entitled to control every other portion of the Tax Proceeding; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld. Parent Holdings shall be entitled to control the Pre-Closing Period portion of a Tax Proceeding relating to a Straddle Period Tax Return, or a Tax

NOT ACCEPTED COPY

012188

MORGAN STANLEY CONFIDENTIAL 0007975

16div-019725

Return for a Pre-Closing Period ending before the Closing Date. of Holdings or Worldwide; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld.

(b) Parent Holdings or Laser, as the case may be, shall promptly notify the other party in writing of any tax claim that could result in liability of the other party under this Agreement (a "Tax Claim"). With respect to any Tax Claim, the party controlling the Tax Proceeding with respect thereto shall (i) not make any submission to any taxing authority without offering the other party the opportunity to review it, (ii) keep the other party informed as to the progress of such Tax Claim, (iii) provide the other party with any information that it receives in connection with the Tax Proceeding, (iv) permit the other party to participate (at its own expense) in all conferences, meetings or proceedings with any taxing authority in which the indemnified Tax Claim is or may be a subject, and (v) permit the other party to participate (at its own expense) in all court appearances in which the indemnified Tax Claim is or may be a subject. With respect to any Tax Claim, the party not controlling the Tax Proceeding with respect thereto shall not take any action or make any representations in connection with such Tax Claim with respect to issues affecting the other party's indemnity hereunder. With respect to any Tax Claim relating to a Pre-Closing Period for which Laser is or may be liable pursuant to this Agreement, Parent Holdings or any of its Affiliates shall either file (or cause to be filed) submissions at Laser's direction or appoint (or cause to be appointed) Laser or its authorized representatives as additional authorized representatives entitled to communicate fully with the Internal Revenue Service or the appropriate state, local or foreign taxing authority with respect to such Tax Claim.

(c) Nothing contained in this Section 9.3 shall be construed as limiting any party's right to indemnification under Section 9.1.

Section 9.4. Assistance and Cooperation. After the Closing Date, each of Parent Holdings and Laser shall (and shall cause their respective Affiliates to):

(a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 9.1(e) (relating to sales, transfer and similar Taxes);

(b) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 9.2;

(c) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of Holdings and each of its subsidiaries;

(d) make available to the other and to any taxing authority as reasonably requested in connection with any Tax Return described in Section 9.4(b) or any proceeding described in Section 9.4(c), all information relating to any Taxes or any Tax Returns of Holdings

NOT A CERTIFIED COPY

0121489

and each of its subsidiaries, including, without limitation, records, returns, schedules, documents, work papers or other relevant materials;

(e) provide timely notice to the other in writing of any Tax audits or assessments of Holdings and each of its subsidiaries that are pending or proposed in writing for taxable periods for which the other may have a liability under this Article IX; and

(f) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period.

Section 9.5. Adjustment to Merger Consideration. For all Tax purposes, any payment by Laser or Parent Holdings under this Agreement will be an adjustment to the Merger Consideration.

Section 9.6. Survival of Obligations. Notwithstanding anything to the contrary in this Agreement, and notwithstanding Article X of this Agreement, the obligations of the parties set forth in this Article IX shall be unconditional and absolute and shall remain in effect until 90 days after the expiration of the applicable statute of limitations.

Section 9.7. Reorganization. Laser shall not, and shall not permit any of its subsidiaries or Affiliates to, take any action that could prevent the Holdings Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Laser and Parent Holdings shall treat, and shall cause their respective Affiliates to treat, the Holdings Merger as a reorganization for all Tax and reporting purposes.

Section 9.8. Tax Sharing Agreements. All rights and obligations of Parent Holdings (and the entities that will be its Affiliates after the Holdings Effective Time) pursuant to any of the Tax Sharing Arrangements or any Tax indemnity arrangements involving Holdings or any of its subsidiaries will terminate on the Closing Date.

Section 9.9. Information. Notwithstanding any other provision of this Agreement or the Company Merger Agreement, neither Laser nor any of its Affiliates nor any other Person shall have any right to receive or obtain any information relating to Taxes of Parent Holdings or any of its Affiliates other than information relating solely to Holdings or any of its subsidiaries.

ARTICLE X

INDEMNIFICATION; SURVIVAL

Section 10.1. Parent Holdings' Agreement to Indemnify.

(a) Subject to the terms and conditions of this Article X, from and after the Closing Date, Parent Holdings shall indemnify, defend and hold harmless Laser and its subsidiaries (including after the Closing Date, the Company and its subsidiaries) and each of their re-

012490

NOT A CERTIFIED COPY

spective successors and permitted assigns, directors, officers, employees, representatives, agents, Affiliates and associates (collectively, the "Laser Group") from and against any and all losses, liabilities, expenses (including reasonable attorneys' fees), claims and damages (collectively, "Damages") asserted against, resulting to, imposed upon or suffered by the Laser Group, or any one of them, arising out of or related to any liability or obligation of Holdings or Worldwide existing on or prior to the Closing Date other than any such liability or obligation (i) arising in connection with the Notes, the LYONs and the 1998 Notes, (ii) which is also a liability or obligation of the Company or its subsidiaries (on a joint basis or otherwise), or (iii) which relates to the conduct, operations or activities of the Company or its subsidiaries.

(b) If there are any conflicts between the provisions of this Section 10.1 and Section 9.3 with respect to Tax Claims, the provisions of Section 9.3 shall control.

(c) Any payment by Parent Holdings under Article IX or this Section 10.1 will be an adjustment to the Merger Consideration.

(d) Anything in this Agreement to the contrary notwithstanding, the liability of Parent Holdings to indemnify the Laser Group pursuant to this Section 10.1 against any Damages sustained by reason of any Laser Claim shall be limited to Laser Claims as to which the Laser Group has given Parent Holdings written notice, setting forth in reasonable detail the basis for such Laser Claim, on or prior to the fourth (4th) anniversary of the Closing Date.

Section 10.2. Conditions of Indemnification With Respect to Third-Party Claims. The obligations and liabilities of Parent Holdings with respect to Laser Claims for Damages which arise or result from claims made by third parties ("Third-Party Claims") shall be subject to the following conditions:

(a) The Laser Group shall give Parent Holdings prompt notice of any such Third-Party Claim, and Parent Holdings shall have the right to undertake the defense thereof by representatives chosen by it; provided, however, that failure to provide prompt notice shall not affect Parent Holdings' obligations hereunder except to the extent that Parent Holdings is actually prejudiced by such failure;

(b) If Parent Holdings undertakes the defense of any such Third-Party Claim, the Laser Group shall, to the best of its ability, assist Parent Holdings, at the expense of Parent Holdings, in the defense of such Third-Party Claim, and shall promptly send to Parent Holdings, at the expense of Parent Holdings, copies of any documents received by the Laser Group which relate to such Third-Party Claim;

(c) If Parent Holdings, within a reasonable time after notice of any such Third-Party Claim, fails to defend the member(s) of the Laser Group against which such Third-Party Claim has been asserted, the Laser Group shall (upon further notice to Seller) have the right to undertake the defense, compromise or settlement of such Third-Party Claim on behalf of and for the account and risk of Parent Holdings, subject to the right of Parent Holdings to assume the defense of such Third-Party Claim at any time prior to settlement, compromise or final determination thereof; and

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007978

16div-019728

(d) Anything in this Article X to the contrary notwithstanding, (i) if there is a reasonable probability that a Third-Party Claim may materially and adversely affect the Laser Group other than as a result of money damages or other money payments, the Laser Group shall have the right, at its own cost and expense, to defend, compromise or settle such Third-Party Claim, and shall by doing so release Parent Holdings from any liability to provide indemnification with respect to such Third-Party Claim; and (ii) Parent Holdings shall not, without the written consent of the Laser Group, settle or compromise any Third-Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Laser Group a release from all liability with respect to such Third-Party Claim.

Section 10.3. Survival of Representations; Covenants. The representations and warranties in this Agreement shall terminate upon and not survive the Closing Date. This Section 10.3 shall not limit any covenant or agreement of the parties contained herein which by its terms contemplates performance after the Holdings Effective Time.

ARTICLE XI

TERMINATION

Section 11.1. Termination. This Agreement may be terminated at any time prior to the Holdings Effective Time:

(a) by mutual written agreement of Laser and Holdings;

(b) by either Laser or Holdings if the Holdings Merger shall not have been consummated on or before August 31, 1998 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date;

(c) by either Laser or Holdings if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable;

(d) by either Laser or Holdings in the event of a breach by the other party or any of its subsidiaries (including, in the case of Holdings, the Company and its subsidiaries) of any representation, warranty, covenant or other agreement contained in this Agreement or the Company Merger Agreement, as applicable, which would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.3(a) hereof or Section 8.1 thereof, as applicable, and is not capable of being cured (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement).

NOT A CERTIFIED COPY

0012192

MORGAN STANLEY CONFIDENTIAL 0007979

16div-019729

Section 11.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1 hereof, this Agreement shall forthwith become void, provided that the last sentence of Section 6.7 and Article XII shall continue, and there shall be no liability on the part of any of the parties, nothing herein shall relieve any party from liability for any willful breach hereof.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

If to Holdings:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Fax: (954) 772-3352
Attention: General Counsel

with copies to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Fax: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

If to Laser:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Fax: (561) 243-2191
Attention: David Fannin, Esq.

NOT A CERTIFIED COPY

012193

MORGAN STANLEY CONFIDENTIAL 0007980

16div-019730

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Fax: (302) 651-3001
Attention: Richard L. Easton, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 12.2. Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time before the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the Parties.

Section 12.3. Extension; Waiver. At any time before the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 12.4. Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

Section 12.5. Entire Agreement. This Agreement (including all Schedules and Exhibits hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which will remain in full force and effect for the term provided for therein.

Section 12.6. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Laser, Holdings, Worldwide, their respective subsidiaries or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 12.7. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

NOT A CERTIFIED COPY

0012494

Section 12.8. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, its rules of conflict of laws notwithstanding.

Section 12.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Section 12.10. Headings. The heading references herein and in the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 12.11. Further Assurances. From time to time after the Closing Date, at the request of the other party hereto and at the expense of the party so requesting, Holdings and Laser shall execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate the transactions contemplated hereby.

Section 12.12. Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other party hereto irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, the other party hereto shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance.

Section 12.13. Certain Terms. As used herein: (i) the term "material adverse effect" (including as used in any definition) with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement and the Company Merger Agreement and (b) affecting in the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of Holdings" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

Section 12.14. Interpretation. When a reference is made to this Agreement to an Article or Section, such reference shall be to an Article or Section of, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument

NOT A CERTIFIED COPY

012195

MORGAN STANLEY CONFIDENTIAL 0007982

16div-019732

that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

012496

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

SUNBEAM CORPORATION

By: _____
Name: Russell A. Kersch
Title: Executive Vice President

LASER ACQUISITION CORP.

By: _____
Name: Russell A. Kersch
Title:

CLN HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

01/21/98

CLN HOLDINGS INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, among Sunbeam Corporation ("Laser"), Laser Acquisition Corp. ("Merger Sub"), CLN Holdings Inc. ("Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted hereon for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

NOT A CERTIFIED COPY

012499

16div-019736

SCHEDULE 4.5

Consents and Approvals; No Violations

1. LYONs
2. The Notes
3. Consent to the transaction is required under an agreement between Parent Holdings and a third party which consent will be obtained prior to the Closing Date

NOT A CERTIFIED COPY

SCHEDULE 4.9

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings Inc. ("Mafco Holdings") consolidated federal income tax return for the years 1989 and 1990

2. Waiver through December 31, 1998 of the Statute of Limitations for the Mafco Holdings federal income tax consolidated group for the years 1991, 1992 and 1993

NOT A CERTIFIED COPY

012501

SCHEDULE 4.10

List of Agreements with Affiliates	Post-Closing
1. Lease dated as of 7/1/97 between Revlon Consumer Products Corporation and The Coleman Company, Inc.	Survives by its terms
2. Reimbursement Agreement, dated as of February 26, 1992, between The Coleman Company, Inc. and MacAndrews & Forbes Holdings Inc.	Does not survive
3. Reimbursement Agreement dated as of May 27, 1993 between Worldwide and MacAndrews & Forbes Holdings Inc.	Does not survive
4. Reimbursement Agreement dated as of July 22, 1993 between CLN Holdings Inc. (as successor by merger to Coleman Holdings Inc.) and MacAndrews & Forbes Holdings Inc.	Does not survive
5. Tax Sharing Agreement V, dated as of May 27, 1993, among Mafco Holdings, Worldwide, The Coleman Company, Inc., and certain subsidiaries of The Coleman Company, Inc.	Terminates with respect to Mafco Holdings
6. Tax Sharing Agreement VI, dated as of May 27, 1993, between Mafco Holdings and Worldwide	Terminates with respect to Mafco Holdings
7. Cross-Indemnification Agreement, dated as of February 26, 1992, among New Coleman Holdings Inc., Coleman Finance Holdings Inc., The Coleman Company, Inc. and certain subsidiaries of New Coleman Holdings Inc. and The Coleman Company, Inc.	Survives by its terms
8. Executive Employees Deferred Compensation Plan (May 29, 1984)	Transferred to Coleman
9. The New Coleman Company, Inc. Retirement Plan for Salaried Employees (Amended and Restated as of July 1, 1989)	Transferred to Coleman
10. The New Coleman Company, Inc. Retirement Trust Agreement for Salaried Employees (December 28, 1989)	Transferred to Coleman

NOT A CERTIFIED COPY

012502

11.	The Coleman Company, Inc. Excess Benefit Plan	Transferred to Coleman
12.	The Coleman Company, Inc. Special Retirement Plan (effective October 1, 1993)	Transferred to Coleman
13.	The Coleman Retirement Incentive Savings Plan (Effective as of January 1, 1990)	Transferred to Coleman
14.	Coleman Monthly Salaried Retirement Incentive Savings Plan (Effective as of January 1, 1996)	Transferred to Coleman
15.	Licensing Agreement with Revlon Consumer Products Corporation	Survives by its terms
16.	Pension Plan for Hourly Employees sponsored by New Coleman Holdings Inc.	Transferred to Coleman
17.	The Special Medical Plan, The Basic Medical, The Regular Medical Plan	Transferred to Coleman
18.	Insurance policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements ("Self-Insured Arrangements")	To the extent any Insurance Policies benefit the Company, they shall be retained; to the extent the Company has obligations to pay amounts or post a letter-of-credit pursuant to the Self-Insured Arrangements, the Company shall perform such obligations
19.	Agreement with Tarlow Advertising	Terminates
20.	Stock Purchase Agreement, dated as of August 5, 1997, by and among Revlon K.K. ("Revlon") and the Company, and Transfer Agreement, dated as of March 31, 1997, by and among Revlon Consumer Products Corporation and the Company	Revlon or its affiliates remain entitled to certain tax benefits

NOT A CERTIFIED COPY

012503

21.	Stock Purchase Agreement, dated as of December 12, 1997, between New Coleman Holdings, Inc. and the Company	New Coleman Holdings Inc. remains entitled to certain tax benefits
22.	Welfare plans, such as medical, sponsored by New Coleman Holdings or Mafco Holdings	Transferred to Coleman
23.	Mafco Demand Note held by Worldwide in connection with advances made for the payment of taxes by Worldwide	Canceled automatically and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998
24.	The Coleman Company, Inc. provides certain data processing services for Mafco Holdings and certain of its subsidiaries and is paid a fee for such services	Services terminated on or prior to the closing
25.	The Coleman Company, Inc. assists in the management of certain liabilities and obligations of New Coleman Holdings Inc. generally related to liabilities relating to divested operations of New Coleman Holdings Inc.	Services terminated on or prior to the closing

All amounts owed pursuant to agreements or arrangements with affiliates shall be paid in the ordinary course and in accordance with the applicable agreement or arrangement except in the case of the Mafco Demand Note, which shall be canceled automatically and of no further force or effect upon the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998.

NOT A CERTIFIED COPY

012504

16div-019741

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto

2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act

3. The Company may take all action necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure

4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement

5. Increase base salaries for Company employees effective as of March 1, 1998

6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997

7. Mafco Demand Note will be canceled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

NOT A CERTIFIED COPY

012505

NOT A CERTIFIED COPY

012506

Exhibit A

REGISTRATION RIGHTS AGREEMENT

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

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

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

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

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

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

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

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

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

NOT A CERTIFIED COPY

012507

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

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

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

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

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

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

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

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

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

The term "Laser Common Stock" shall mean common stock, par value $.01 per share, of Laser.

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

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

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

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

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

NOT A CERTIFIED COPY

012508

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

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

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

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

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

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

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

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

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 *Required Registration.*

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

NOT A CERTIFIED COPY

012509

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

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

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

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

Section 2.2 *Holdback Agreement.*

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

Section 2.3 *Blackout Provisions.*

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

NOT A CERTIFIED COPY

012510

16div-019747

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

Section 2.4 *Registration Procedures.*

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

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

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

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

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

NOT A CERTIFIED COPY

012511

16div-019748

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

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

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

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

NOT A CERTIFIED COPY

012512

16div-019749

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

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

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

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

NOT A CERTIFIED COPY

0125 13

16div-019750

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

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

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

NOT CERTIFIED COPY

0125114

16div-019751

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

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

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

Section 2.5 *Registration Expenses.*

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

NOT A CERTIFIED COPY

0125115

16div-019752

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

Section 2.6 *Indemnification.*

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

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents

NOT A CERTIFIED COPY

0012516

MORGAN STANLEY CONFIDENTIAL 0008003

16div-019753

and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to delivery a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice.* Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions.* In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense

NOT A CERTIFIED COPY

0125117

thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

NOT A CERTIFIED COPY

012518

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

(a) pursuant to Rule 144;

(b) pursuant to the Shelf Registration Statement; or

(c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt

NOT A CERTIFIED COPY

012519

16div-019756

requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

NOT A CERTIFIED COPY

012520

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008008

16div-019758

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

0125522

MORGAN STANLEY CONFIDENTIAL 0008009

16div-019759

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By:_____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By:_____
Name:
Title:

NOT A CERTIFIED COPY

012523

MORGAN STANLEY CONFIDENTIAL 0008010

16div-019760

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc. SUNBEAM/COLEMAN COMPARISON 2:13 PM 12/8/97

	Sunbeam	Coleman
Stock Price	$43.13	$15.25
Shares Outstanding	85,471	53,424
Market Value	3,685,937	814,716
Plus Net Debt	177,712	469,550
Enterprise Value	3,863,649	1,284,266

Sunbeam				Coleman			Using Sunbeam Margins
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Revenues	984,300	1,185,100	1,473,900	1,220,200	1,152,500	1,267,800	1,267,800
Cost of Goods Sold	808,300	840,400	1,016,000	884,500	805,600	862,100	873,930
Gross Profit	176,000	344,700	457,900	335,700	346,900	405,700	393,870
Operating Expenses	173,800	139,300	172,200	261,500	249,500	269,200	148,121
Operating Income	2,200	205,400	285,700	74,200	97,400	136,500	245,750
Amortization	0	0	0	10,500	11,500	12,000	12,000
Interest Expense	13,800	8,500	5,800	38,700	41,500	38,000	38,000
Other Expense	1,800	-1,200	4,200	1,200	0	0	0
Pretax Income	-13,000	198,100	275,700	23,800	44,400	86,500	195,750
Taxes	-4,800	70,500	102,300	10,800	14,300	35,900	72,823
Net Income	-8,200	127,600	173,400	13,000	30,100	60,600	122,927
Depreciation and Amortization	47,429	57,000	65,000	36,400	40,000	44,000	44,000
EBITDA	49,629	262,400	350,700	100,100	125,900	178,500	277,750
Less Capital Expenditures	75,336	58,000	71,000	34,300	26,000	40,000	40,000
EBITDA - Capital Expenditures	-25,707	204,400	279,700	65,800	99,900	138,500	237,750

Sunbeam Multiples				Coleman Multiples			
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Enterprise Value/Revenues	3.9	3.3	2.6	1.1	1.1	1.0	1.0
Enterprise Value/EBITDA	77.9	14.7	11.0	12.8	10.2	7.2	4.6
Enterprise Value/EBITDA - Capex	NM	18.9	13.8	19.5	12.9	9.3	5.4
Enterprise Value/Operating Income	NM	18.8	13.5	17.3	13.2	8.8	5.2
Market Value/Net Income	NM	28.9	21.3	62.7	27.1	13.4	6.6

NOT A CERTIFIED COPY

EXHIBIT MS 104

CPH2000144

012525

16div-019761

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

	Sunbeam Margins			Coleman Margins		
	1996	1997E	1998E	1996	1997E	1998E
Gross Profit	17.9%	29.1%	31.1%	27.5%	30.1%	32.0%
Operating Expenses	17.7%	11.8%	11.7%	21.4%	21.6%	20.4%
Operating Income	0.2%	17.3%	19.4%	6.1%	8.5%	11.6%
EBITDA	5.0%	22.1%	23.8%	8.2%	10.9%	14.1%
EBITDA - Capex	-2.6%	17.2%	19.0%	5.4%	8.7%	10.9%
Other Data:						
Employees	12,000	6,000		7,000		
Manufacturing Plants	26	9		16		

NOT A CERTIFIED COPY

CPH2000145

012525

16div-019762

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Sunbeam Data:

Current Price	$43.13	
Shares Outstanding	85,471	
Market Value	3,685,937	
Net Debt	177,712	
Enterprise Value	3,863,649	
1998E EPS	$2.05	Goldman Est.
P/E Multiple	21.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	13.5	

Coleman Data:

Current Price	$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	27,254	29,732	32,209	34,687	37,165
Pro Forma SOC Shares	112,725	115,203	117,680	120,158	122,636
Pro Forma SOC Equity Value	4,961,265	4,968,113	5,074,991	5,181,809	5,288,657
M & F % Ownership	19.9%	21.3%	22.6%	23.8%	25.0%
Pro Forma SOC Enterprise Value	5,508,527	5,615,375	5,722,223	5,829,071	5,935,919

Pro Forma EPS:

1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-$0.14	-$0.21	-$0.27	-$0.33	-$0.38
PF (Dilution) With Cost Savings of: 40,000	$0.08	$0.02	-$0.05	-$0.11	-$0.17
PF (Dilution) With Cost Savings of: 60,000	$0.20	$0.13	$0.06	-$0.01	-$0.07

Pro Forma EPS Excluding Goodwill:

1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	$0.17	$0.12	$0.06	$0.03	-$0.01
PF (Dilution) With Cost Savings of: 40,000	$0.40	$0.34	$0.29	$0.25	$0.20
PF (Dilution) With Cost Savings of: 60,000	$0.51	$0.46	$0.40	$0.35	$0.30

NOT A CERTIFIED COPY

CPH2000146

012527

16div-019763

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share		$22.00	$24.00	$26.00	$28.00	$30.00
Pro Forma Enterprise Value/EBITDA - Capex Multiples:						
Current EV/1998 EBITDA - Capex		13.6	13.8	13.8	13.8	13.8
Pro Forma Multiple Without Cost Savings		13.2	13.4	13.7	13.9	14.2
Pro Forma Multiple With Savings	40,000	12.0	12.3	12.5	12.7	13.0
Pro Forma Multiple With Savings	60,000	11.5	11.7	12.0	12.2	12.4

NOT A CERTIFIED COPY

CPH2000147

012528

16div-019764

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
	Without Cost Savings				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	133,992	133,992	133,992	133,992	133,992
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	$1.91	$1.84	$1.78	$1.72	$1.67
(Dilution)/Accretion	-$0.14	-$0.21	-$0.27	-$0.33	-$0.38
EPS Before Goodwill	$2.22	$2.17	$2.13	$2.08	$2.04
(Dilution)/Accretion	$0.17	$0.12	$0.08	$0.03	-$0.01
	With Cost Savings of: 40,000				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	148,392	148,392	148,392	148,392	148,392
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	$2.13	$2.07	$2.00	$1.94	$1.88
(Dilution)/Accretion	$0.08	$0.02	-$0.05	-$0.11	-$0.17
EPS Before Goodwill	$2.45	$2.39	$2.34	$2.30	$2.25
(Dilution)/Accretion	$0.40	$0.34	$0.29	$0.25	$0.20
	With Cost Savings of: 60,000				
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	155,592	155,592	155,592	155,592	155,592
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	$2.25	$2.18	$2.11	$2.04	$1.98
(Dilution)/Accretion	$0.20	$0.13	$0.06	-$0.01	-$0.07
EPS Before Goodwill	$2.56	$2.51	$2.45	$2.40	$2.35

NOT A CERTIFIED COPY

CPH2000148

012529

16div-019765

- Sunbeam -

McKelvey -

fee not waived.

agenda - MS - get as much as possible

FU + BofA → ~~[redacted]~~ bully MS -

covenant relief okay

→ don't try to extend - ~~bk~~ a read

banks not doing anything

0125530

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

4:56 PM
12/10/97

	Sunbeam	Coleman
Stock Price	$39.00	$15.25
Shares Outstanding	85.471	53.424
Market Value	3,333,369	814,716
Plus Net Debt	177.712	469.550
Enterprise Value	3,511,081	1,284,266

	Sunbeam			Coleman			Using Sunbeam Margins
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Revenues	984,300	1,185,100	1,473,900	1,220,200	1,152,500	1,267,800	1,267,800
Cost of Goods Sold	808.300	840.400	1,016.000	884.500	805.600	862.100	873.930
Gross Profit	176,000	344,700	457,900	335,700	346,900	405,700	393,870
Operating Expenses	173.800	139.300	172.200	261.500	249.500	259.200	148.121
Operating Income	2,200	205,400	285,700	74,200	97,400	146,500	245,750
Amortization	0	0	0	10,500	11,500	12,000	12,000
Interest Expense	13,600	8,500	5,800	38,700	41,500	38,000	38,000
Other Expense	1.600	-1.200	4.200	1.200	0	0	0
Pretax Income	-13,000	198,100	275,700	23,800	44,400	96,500	195,750
Taxes	-4.800	70.500	102.300	10.800	14.300	35.900	72.823
Net Income	-8,200	127,600	173,400	13,000	30,100	60,600	122,927
Depreciation and Amortization	47.429	57.000	65.000	36.400	40.000	44.000	44.000
EBITDA	49,629	262,400	350,700	100,100	125,900	178,500	277,750
Less Capital Expenditures	75.336	58.000	71.000	34.300	26.000	40.000	40.000
EBITDA - Capital Expenditures	-25,707	204,400	279,700	65,800	99,900	138,500	237,750

	Sunbeam Multiples			Coleman Multiples			
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Enterprise Value/Revenues	3.6	3.0	2.4	1.1	1.1	1.0	1.0
Enterprise Value/EBITDA	70.7	13.4	10.0	12.8	10.2	7.2	4.6
Enterprise Value/EBITDA - Capex	NM	17.2	12.6	19.5	12.9	9.3	5.4
Enterprise Value/Operating Income	NM	17.1	12.3	17.3	13.2	8.8	5.2
Market Value/Net Income	NM	26.1	19.2	62.7	27.1	13.4	6.6

EXHIBIT
MS 105

NOT A CERTIFIED COPY

CPH 1426299

012532

16div-019767

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

	Sunbeam Margins			Coleman Margins		
	1996	1997E	1998E	1996	1997E	1998E
Gross Profit	17.9%	29.1%	31.1%	27.5%	30.1%	32.0%
Operating Expenses	17.7%	11.8%	11.7%	21.4%	21.6%	20.4%
Operating Income	0.2%	17.3%	19.4%	6.1%	8.5%	11.6%
EBITDA	5.0%	22.1%	23.8%	8.2%	10.9%	14.1%
EBITDA - Capex	-2.6%	17.2%	19.0%	5.4%	8.7%	10.9%
Other Data:						
Employees	12,000	6,000		7,000		
Manufacturing Plants	26	9		16		

NOT A CERTIFIED COPY

CPH 142630

CP 038210
CONFIDENTIAL

012533

16div-019768

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Sunbeam Data:

Current Price	$39.00	
Shares Outstanding	85,471	
Market Value	3,333,369	
Net Debt	177,712	
Enterprise Value	3,511,081	
1998E EPS	$2.05	Goldman Est.
P/E Multiple	19.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	12.3	

Coleman Data:

Current Price	$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	30,137	32,876	35,616	38,356	41,095
Pro Forma SOC Shares	115,608	118,347	121,087	123,827	126,566
Pro Forma SOC Equity Value	4,508,697	4,615,545	4,722,393	4,829,241	4,936,089
M & F % Ownership	21.5%	22.9%	24.3%	25.6%	26.8%
Pro Forma SOC Enterprise Value	5,155,959	5,262,807	5,369,655	5,476,503	5,583,351
Pro Forma EPS:					
1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
PF (Dilution) With Cost Savings of: 40,000	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
PF (Dilution) With Cost Savings of: 60,000	$0.14	$0.07	$0.00	-$0.07	-$0.13
Pro Forma EPS Excluding Goodwill:					
1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	$0.11	$0.06	$0.02	-$0.03	-$0.07
PF (Dilution) With Cost Savings of: 40,000	$0.34	$0.28	$0.23	$0.18	$0.13
PF (Dilution) With Cost Savings of: 60,000	$0.45	$0.39	$0.33	$0.28	$0.23

NOT A CERTIFIED COPY

CP 038211
CONFIDENTIAL

CPH 1426301

012534

16div-019769

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share		$22.00	$24.00	$26.00	$28.00	$30.00
Pro Forma Enterprise Value/EBITDA - Capex Multiples:						
Current EV/1998 EBITDA - Capex		12.6	12.6	12.6	12.6	12.6
Pro Forma Multiple Without Cost Savings		12.3	12.6	12.8	13.1	13.4
Pro Forma Multiple With Savings	40,000	11.3	11.5	11.7	12.0	12.2
Pro Forma Multiple With Savings	60,000	10.8	11.0	11.2	11.5	11.7

NOT A CERTIFIED COPY

CPH 1426302

012535

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
			Without Cost Savings		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	133,992	133,992	133,992	133,992	133,992
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	$1.86	$1.79	$1.73	$1.67	$1.61
(Dilution)/Accretion	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
EPS Before Goodwill	$2.16	$2.11	$2.07	$2.02	$1.98
(Dilution)/Accretion	$0.11	$0.06	$0.02	-$0.03	-$0.07
			With Cost Savings of: 40,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	148,392	148,392	148,392	148,392	148,392
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	$2.08	$2.01	$1.94	$1.88	$1.82
(Dilution)/Accretion	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
EPS Before Goodwill	$2.39	$2.33	$2.28	$2.23	$2.18
(Dilution)/Accretion	$0.34	$0.28	$0.23	$0.18	$0.13
			With Cost Savings of: 60,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	155,592	155,592	155,592	155,592	155,592
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	$2.19	$2.12	$2.05	$1.98	$1.92
(Dilution)/Accretion	$0.14	$0.07	-$0.00	-$0.07	-$0.13
EPS Before Goodwill	$2.50	$2.44	$2.38	$2.33	$2.28

NOT A CERTIFIED COPY

CP 038213
CONFIDENTIAL

CPH 1426303

012536

16div-019771

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES ASSUMING COST SAVINGS OF: 100,000

Acquisition Price	$25.00	$25.00	$25.00	$27.50	$27.50	$27.50	$30.00	$30.00	$30.00
% Cash	0%	50%	100%	0%	50%	100%	0%	50%	100%
Pro Forma Combined Data:									
1998 EPS Accretion/(Dilution)	$0.29	$0.32	$0.35	$0.20	$0.21	$0.23	$0.12	$0.11	$0.11
1998 EPS+Goodwill Acc/(Dil)	$0.59	$0.67	$0.77	$0.52	$0.59	$0.68	$0.45	$0.51	$0.60
1998E PF EBITDA Multiple(1)	8.8x	8.8x	8.8x	9.0x	9.0x	9.0x	9.3x	9.3x	9.3x
1998E PF EBITA Multiple (2)	10.4x	10.4x	10.4x	10.7x	10.7x	10.7x	10.9x	10.9x	10.9x
Pro Forma Mkt Value	4,904,014	4,236,214	3,568,414	5,037,574	4,302,994	3,568,414	5,171,134	4,369,774	3,568,414
Pro Forma Net Debt	701,417	1,369,217	2,037,017	705,423	1,440,003	2,174,583	709,430	1,510,790	2,312,150
Pro Forma Enterprise Value	5,605,431	5,605,431	5,605,431	5,742,998	5,742,998	5,742,998	5,880,564	5,880,564	5,880,564
M & F % Ownership	22.5%	13.0%	0.0%	24.1%	14.1%	0.0%	25.6%	15.1%	0.0%
Coleman Acquisition Statistics:									
Acquisition Enterprise Value	1,859,305	1,859,305	1,859,305	1,996,871	1,996,871	1,996,871	2,134,438	2,134,438	2,134,438
1998E EBITDA Multiple	10.1x	10.1x	10.1x	10.9x	10.9x	10.9x	11.6x	11.6x	11.6x
EBITDA Mult. with 50% of Cost Savings to Coleman	7.9x	7.9x	7.9x	8.5x	8.5x	8.5x	9.1x	9.1x	9.1x

(1) Sunbeam 1998E EBITDA multiple is 10.7x. Pro forma multiple is based on current Sunbeam price.
(2) Sunbeam 1998E EBITA multiple is 13.1x.

EXHIBIT MS 106

NOT A CERTIFIED COPY

CP 037827
CONFIDENTIAL

CPH 1425922

012538

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:50 AM
1/26/98

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	523,705
Pro Forma Debt	701,417
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,113
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	31,990
Pro Forma Shares	117,461
Pro Forma SOC Mkt Valu	4,904,014
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	22.5%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,165,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	6,113	56,113
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	70,117	312,617
Income Taxes	70,500	14,300	38,700	123,500
Net Income	127,600	30,100	31,418	189,118
Shares Outstanding	85,471	53,424		117,461
EPS	$1.49	$0.56		$1.61
EPS Plus Goodwill	$1.49	$0.78		$1.91
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	100,000	634,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	76,731	502,431
5,800	38,000	12,313	56,113
4,200	0	0	4,200
275,700	102,000	64,417	442,117
102,300	35,900	31,272	169,472
173,400	66,100	33,145	272,645
85,471	53,424		117,461
$2.03	$1.24		$2.32
$2.03	$1.46		$2.62
10.7x	10.1x		8.8x
13.1x	12.2x		10.4x

NOT A CERTIFIED COPY

CP 037828
CONFIDENTIAL

CPH 1425923

012539

16div-019773

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,191,505
Pro Forma Debt	1,369,217
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	109,537
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	15,995
Pro Forma Shares	101,466
Pro Forma SOC Mkt Valu	4,236,214
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	13.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	59,537	109,537
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	16,693	259,193
Income Taxes	70,500	14,300	19,734	104,534
Net Income	127,600	30,100	-3,041	154,659
Shares Outstanding	85,471	53,424		101,466
EPS	$1.49	$0.56		$1.52
EPS Plus Goodwill	$1.49	$0.78		$1.87
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	100,000	634,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	76,731	502,431
5,800	38,000	65,737	109,537
4,200	0	0	4,200
275,700	102,000	10,993	388,693
102,300	35,900	12,307	150,507
173,400	66,100	-1,313	238,187
85,471	53,424		101,466
$2.03	$1.24		$2.35
$2.03	$1.46		$2.70
10.7x	10.1x		8.8x
13.1x	12.2x		10.4x

NOT A CERTIFIED COPY

CP 037829
CONFIDENTIAL

CPH 1425924

012540

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,859,305
Pro Forma Debt	2,037,017
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	162,961
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,186,100	1,152,500	0	2,337,600
EBITDA	282,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	112,961	162,961
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-36,731	205,769
Income Taxes	70,500	14,300	769	85,569
Net Income	127,600	30,100	-37,499	120,201
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.41
EPS Plus Goodwill	$1.49	$0.78		$1.82
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	100,000	634,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	76,731	502,431
5,800	38,000	119,161	162,961
4,200	0	0	4,200
275,700	102,000	-42,431	335,269
102,300	35,900	-6,659	131,541
173,400	66,100	-35,772	203,728
85,471	53,424		85,471
$2.03	$1.24		$2.38
$2.03	$1.46		$2.80
10.7x	10.1x		8.8x
13.1x	12.2x		10.4x

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

CP 037830
CONFIDENTIAL

CPH 1425925

012541

16div-019775

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	527,711
Pro Forma Debt	705,423
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,434
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued In Deal	35,189
Pro Forma Shares	120,660
Pro Forma SOC Mkt Valu	5,037,574
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	24.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	6,434	56,434
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	66,458	308,958
Income Taxes	70,500	14,300	38,586	123,388
Net Income	127,600	30,100	27,872	185,572
Shares Outstanding	85,471	53,424		120,660
EPS	$1.49	$0.56		$1.54
EPS Plus Goodwill	$1.49	$0.78		$1.86
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	18.2x	20.5x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	12,634	56,434
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	60,758	438,458
Income Taxes	102,300	35,900	31,158	169,358
Net Income	173,400	66,100	29,599	269,099
Shares Outstanding	85,471	53,424		120,660
EPS	$2.03	$1.24		$2.23
EPS Plus Goodwill	$2.03	$1.46		$2.55
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT A CERTIFIED COPY

CP 037831
CONFIDENTIAL

CPH 1425926

012542

16div-019776

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50

COST SAVINGS: 100,000
% CASH 50.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,262,291
Pro Forma Debt	1,440,003
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	115,200
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	17,595
Pro Forma Shares	103,066
Pro Forma SOC Mkt Valu	4,302,994
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	14.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	65,200	115,200
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	7,691	250,191
Income Taxes	70,500	14,300	17,724	102,524
Net Income	127,600	30,100	-10,033	147,667
Shares Outstanding	85,471	53,424		103,066
EPS	$1.49	$0.56		$1.43
EPS Plus Goodwill	$1.49	$0.78		$1.81
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	18.2x	20.5x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	71,400	115,200
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	1,991	379,691
Income Taxes	102,300	35,900	10,296	148,496
Net Income	173,400	66,100	-8,305	231,195
Shares Outstanding	85,471	53,424		103,066
EPS	$2.03	$1.24		$2.24
EPS Plus Goodwill	$2.03	$1.46		$2.62
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT A CERTIFIED COPY

CP 037832
CONFIDENTIAL

CPH 1425927

012543

16div-019777

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,996,871
Pro Forma Debt	2,174,583
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	173,967
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	123,967	173,967
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-51,075	191,425
Income Taxes	70,500	14,300	-3,138	81,662
Net Income	127,600	30,100	-47,937	109,763
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.28
EPS Plus Goodwill	$1.49	$0.78		$1.74
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	18.2x	20.5x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	130,167	173,967
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-56,775	320,925
Income Taxes	102,300	35,900	-10,566	127,634
Net Income	173,400	66,100	-46,209	193,291
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.26
EPS Plus Goodwill	$2.03	$1.46		$2.71
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT A CERTIFIED COPY

CP 037833
CONFIDENTIAL

CPH 1425928

012514

16div-019778

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	531,718
Pro Forma Debt	709,430
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,754
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	38,389
Pro Forma Shares	123,860
Pro Forma SOC Mkt Valu	5,171,134
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	25.6%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	6,754	56,754
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	62,798	305,298
Income Taxes	70,500	14,300	38,472	123,272
Net Income	127,600	30,100	24,326	182,026
Shares Outstanding	85,471	53,424		123,860
EPS	$1.49	$0.56		$1.47
EPS Plus Goodwill	$1.49	$0.78		$1.81
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	100,000	634,700
65,000	32,000	0	97,000
0	12,000	29,947	41,947
285,700	140,000	70,053	495,753
5,800	38,000	12,954	56,754
4,200	0	0	4,200
275,700	102,000	57,098	434,798
102,300	35,900	31,045	169,245
173,400	66,100	26,054	265,554
85,471	53,424		123,860
$2.03	$1.24		$2.14
$2.03	$1.46		$2.48
10.7x	11.6x		9.3x
13.1x	14.0x		10.9x

NOT A CERTIFIED COPY

CP 037834
CONFIDENTIAL

CPH 1425929

012545

16div-019779

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,333,078
Pro Forma Debt	1,510,790
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	120,863
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	18,194
Pro Forma Shares	104,665
Pro Forma SOC Mkt Valu	4,369,774
Pro Forma SOC Ent. Valu	5,880,584
Pro Forma M&F Ownershi	15.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	70,863	120,863
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-1,311	241,189
Income Taxes	70,500	14,300	15,714	100,514
Net Income	127,600	30,100	-17,024	140,676
Shares Outstanding	85,471	53,424		104,665
EPS	$1.49	$0.56		$1.34
EPS Plus Goodwill	$1.49	$0.78		$1.74
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	70,053	495,753
Interest Expense	5,800	38,000	77,063	120,863
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-7,011	370,689
Income Taxes	102,300	35,900	8,286	146,486
Net Income	173,400	66,100	-15,297	224,203
Shares Outstanding	85,471	53,424		104,665
EPS	$2.03	$1.24		$2.14
EPS Plus Goodwill	$2.03	$1.46		$2.54
EBITDA Multiple	10.7x	11.6x		9.3x
EBITA Multiple	13.1x	14.0x		10.9x

NOT A CERTIFIED COPY

CP 037835
CONFIDENTIAL

CPH 1425930

012546

16div-019780

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	2,134,438
Pro Forma Debt	2,312,150
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	184,972
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	282,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	134,972	184,972
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-65,419	177,081
Income Taxes	70,500	14,300	-7,045	77,755
Net Income	127,600	30,100	-58,374	99,326
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.16
EPS Plus Goodwill	$1.49	$0.78		$1.65
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	100,000	634,700
	65,000	32,000	0	97,000
	0	12,000	29,947	41,947
	285,700	140,000	70,053	495,753
	5,800	38,000	141,172	184,972
	4,200	0	0	4,200
	275,700	102,000	-71,119	306,581
	102,300	35,900	-14,473	123,727
	173,400	66,100	-56,647	182,853
	85,471	53,424		85,471
	$2.03	$1.24		$2.14
	$2.03	$1.46		$2.63
	10.7x	11.6x		9.3x
	13.1x	14.0x		10.9x

NOT A CERTIFIED COPY

CP 037836
CONFIDENTIAL

CPH 1425931

012547

16div-019781

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES ASSUMING COST SAVINGS OF: 150,000

Acquisition Price	$25.00	$25.00	$25.00	$27.50	$27.50	$27.50	$30.00	$30.00	$30.00
% Cash	0%	50%	100%	0%	50%	100%	0%	50%	100%
Pro Forma Combined Data:									
1998 EPS Accretion/(Dilution)	$0.57	$0.64	$0.73	$0.47	$0.53	$0.61	$0.38	$0.42	$0.49
1998 EPS+Goodwill Acc/(Dil)	$0.87	$0.98	$1.14	$0.79	$0.90	$1.06	$0.71	$0.82	$0.98
1998E PF EBITDA Multiple(1)	8.2x	8.2x	8.2x	8.4x	8.4x	8.4x	8.6x	8.6x	8.6x
1998E PF EBITA Multiple (2)	9.5x	9.5x	9.5x	9.8x	9.8x	9.8x	10.0x	10.0x	10.0x
Pro Forma Mkt Value	4,904,014	4,236,214	3,568,414	5,037,574	4,302,994	3,568,414	5,171,134	4,368,774	3,568,414
Pro Forma Net Debt	701,417	1,369,217	2,037,017	705,423	1,440,003	2,174,583	709,430	1,510,790	2,312,150
Pro Forma Enterprise Value	5,605,431	5,605,431	5,605,431	5,742,998	5,742,998	5,742,998	5,880,564	5,880,564	5,880,564
M & F % Ownership	22.5%	13.0%	0.0%	24.1%	14.1%	0.0%	25.6%	15.1%	0.0%
Coleman Acquisition Statistics:									
Acquisition Enterprise Value	1,859,305	1,859,305	1,859,305	1,996,871	1,996,871	1,996,871	2,134,438	2,134,438	2,134,438
1998E EBITDA Multiple	10.1x	10.1x	10.1x	10.9x	10.9x	10.9x	11.6x	11.6x	11.6x
EBITDA Mult. with 50% of Cost Savings to Coleman	7.2x	7.2x	7.2x	7.7x	7.7x	7.7x	8.2x	8.2x	8.2x

(1) Sunbeam 1998E EBITDA multiple is 10.7x. Pro forma multiple is based on current Sunbeam price.
(2) Sunbeam 1998E EBITA multiple is 13.1x.

NOT A CERTIFIED COPY

EXHIBIT
MS 107

CPH2000086

012549

16div-019782

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 150,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	523,705
Pro Forma Debt	701,417
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,113
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	31,990
Pro Forma Shares	117,461
Pro Forma SOC Mkt Valu	4,904,014
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	22.5%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	6,113	56,113
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	120,117	362,617
Income Taxes	70,500	14,300	56,450	141,250
Net Income	127,600	30,100	63,668	221,368
Shares Outstanding	85,471	53,424		117,461
EPS	$1.49	$0.56		$1.88
EPS Plus Goodwill	$1.49	$0.78		$2.18
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	16.2x	19.1x		12.4x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	126,731	552,431
5,800	38,000	12,313	56,113
4,200	0	0	4,200
275,700	102,000	114,417	492,117
102,300	35,900	49,022	187,222
173,400	66,100	65,395	304,895
85,471	53,424		117,461
$2.03	$1.24		$2.60
$2.03	$1.46		$2.90
10.7x	10.1x		8.2x
13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

012550

CPH2000087

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,191,505
Pro Forma Debt	1,369,217
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	109,537
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	15,995
Pro Forma Shares	101,466
Pro Forma SOC Mkt Valu	4,236,214
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	13.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	59,537	109,537
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	66,693	309,193
Income Taxes	70,500	14,300	37,484	122,284
Net Income	127,600	30,100	29,209	186,909
Shares Outstanding	85,471	53,424		101,466
EPS	$1.49	$0.56		$1.84
EPS Plus Goodwill	$1.49	$0.78		$2.19
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	18.2x	19.1x		12.4x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	126,731	552,431
5,800	38,000	65,737	109,537
4,200	0	0	4,200
275,700	102,000	60,993	438,693
102,300	35,900	30,057	168,257
173,400	66,100	30,937	270,437
85,471	53,424		101,466
$2.03	$1.24		$2.67
$2.03	$1.46		$3.01
10.7x	10.1x		8.2x
13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

CPH2000088

012551

16div-019784

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nechit

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $25.00

COST SAVINGS: 150,000
% CASH 100.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,859,305
Pro Forma Debt	2,037,017
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	162,961
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	112,961	162,961
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	13,269	255,769
Income Taxes	70,500	14,300	18,519	103,319
Net Income	127,600	30,100	-5,249	152,451
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.78
EPS Plus Goodwill	$1.49	$0.78		$2.20
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	18.2x	19.1x		12.4x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	23,269	35,269
285,700	140,000	126,731	552,431
5,800	38,000	119,161	162,961
4,200	0	0	4,200
275,700	102,000	7,569	385,269
102,300	35,900	11,091	149,291
173,400	66,100	-3,522	235,978
85,471	53,424		85,471
$2.03	$1.24		$2.76
$2.03	$1.46		$3.17
10.7x	10.1x		8.2x
13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

CPH2000089

012552

16div-019785

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $27.50

COST SAVINGS: 150,000
% CASH 0.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	527,711
Pro Forma Debt	705,423
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,434
Goodwill Created	1,644,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	35,189
Pro Forma Shares	120,660
Pro Forma SOC Mkt Valu	5,037,574
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	24.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	8,500	41,500	6,434	56,434
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	116,458	358,958
Income Taxes	70,500	14,300	56,336	141,136
Net Income	127,600	30,100	60,122	217,822
Shares Outstanding	85,471	53,424		120,660
EPS	$1.49	$0.56		$1.81
EPS Plus Goodwill	$1.49	$0.78		$2.13
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	18.2x	20.5x		12.7x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	26,608	38,608
285,700	140,000	123,392	549,092
5,800	38,000	12,634	56,434
4,200	0	0	4,200
275,700	102,000	110,758	488,458
102,300	35,900	48,908	187,108
173,400	66,100	61,849	301,349
85,471	53,424		120,660
$2.03	$1.24		$2.50
$2.03	$1.46		$2.82
10.7x	10.9x		8.4x
13.1x	13.1x		9.8x

NOT A CERTIFIED COPY

CPH2000090

012553

16div-019786

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,262,291
Pro Forma Debt	1,440,003
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	115,200
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	17,595
Pro Forma Shares	103,066
Pro Forma SOC Mkt Valu	4,302,994
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	14.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	8,500	41,500	65,200	115,200
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	57,691	300,191
Income Taxes	70,500	14,300	35,474	120,274
Net Income	127,600	30,100	22,217	179,917
Shares Outstanding	85,471	53,424		103,066
EPS	$1.49	$0.56		$1.75
EPS Plus Goodwill	$1.49	$0.78		$2.12
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	18.2x	20.6x		12.7x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	150,000	684,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	123,392	549,092
Interest Expense	5,800	38,000	71,400	115,200
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	51,991	429,691
Income Taxes	102,300	35,900	28,046	166,246
Net Income	173,400	66,100	23,945	263,445
Shares Outstanding	85,471	53,424		103,066
EPS	$2.03	$1.24		$2.56
EPS Plus Goodwill	$2.03	$1.46		$2.93
EBITDA Multiple	10.7x	10.9x		8.4x
EBITA Multiple	13.1x	13.1x		9.8x

NOT A CERTIFIED COPY

CPH2000091

012554

16div-019787

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 150,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,996,871
Pro Forma Debt	2,174,583
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	173,967
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	8,500	41,500	123,967	173,967
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-1,075	241,425
Income Taxes	70,500	14,300	14,612	99,412
Net Income	127,600	30,100	-15,687	142,013
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.66
EPS Plus Goodwill	$1.49	$0.78		$2.11
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	18.2x	20.5x		12.7x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	26,608	38,608
285,700	140,000	123,392	549,092
5,800	38,000	130,167	173,967
4,200	0	0	4,200
275,700	102,000	-6,775	370,925
102,300	35,900	7,184	145,384
173,400	66,100	-13,959	225,541
85,471	53,424		85,471
$2.03	$1.24		$2.64
$2.03	$1.46		$3.09
10.7x	10.9x		8.4x
13.1x	13.1x		9.8x

NOT A CERTIFIED COPY

CPH2000092

012555

16div-019788

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 150,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	531,718
Pro Forma Debt	709,430
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,754
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	38,389
Pro Forma Shares	123,860
Pro Forma SOC Mkt Valu	5,171,134
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	25.6%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	6,754	56,754
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	112,798	355,298
Income Taxes	70,500	14,300	56,222	141,022
Net Income	127,600	30,100	56,576	214,276
Shares Outstanding	85,471	53,424		123,860
EPS	$1.49	$0.56		$1.73
EPS Plus Goodwill	$1.49	$0.78		$2.07
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	18.2x	21.9x		13.0x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	29,947	41,947
	285,700	140,000	120,053	545,753
	5,800	38,000	12,954	56,754
	4,200	0	0	4,200
	275,700	102,000	107,098	484,798
	102,300	35,900	48,795	186,995
	173,400	66,100	58,304	297,804
	85,471	53,424		123,860
	$2.03	$1.24		$2.40
	$2.03	$1.46		$2.74
	10.7x	11.6x		8.6x
	13.1x	14.0x		10.0x

NOT A CERTIFIED COPY

CPH2000093

012556

16div-019789

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,333,078
Pro Forma Debt	1,510,790
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	120,863
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	19,194
Pro Forma Shares	104,665
Pro Forma SOC Mkt Valu	4,369,774
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	15.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	70,863	120,863
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	48,689	291,189
Income Taxes	70,500	14,300	33,464	118,264
Net Income	127,600	30,100	15,226	172,926
Shares Outstanding	85,471	53,424		104,665
EPS	$1.49	$0.56		$1.65
EPS Plus Goodwill	$1.49	$0.78		$2.05
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	18.2x	21.9x		13.0x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	150,000	684,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	120,053	545,753
Interest Expense	5,800	38,000	77,063	120,863
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	42,989	420,689
Income Taxes	102,300	35,900	26,036	164,236
Net Income	173,400	66,100	16,953	256,453
Shares Outstanding	85,471	53,424		104,665
EPS	$2.03	$1.24		$2.45
EPS Plus Goodwill	$2.03	$1.46		$2.85
EBITDA Multiple	10.7x	11.6x		8.6x
EBITA Multiple	13.1x	14.0x		10.0x

NOT A CERTIFIED COPY

CPH2000094

012557

16div-019790

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $30.00

COST SAVINGS: 150,000
% CASH 100.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	2,134,438
Pro Forma Debt	2,312,150
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	184,972
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	134,972	184,972
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-15,419	227,081
Income Taxes	70,500	14,300	10,705	95,505
Net Income	127,600	30,100	-26,124	131,576
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.54
EPS Plus Goodwill	$1.49	$0.78		$2.03
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	18.2x	21.9x		13.0x

1998E Pro Forma Income Statement

Sunbeam	Coleman	Adjustments	Combined
1,473,900	1,267,800	0	2,741,700
350,700	184,000	150,000	684,700
65,000	32,000	0	97,000
0	12,000	29,947	41,947
285,700	140,000	120,053	545,753
5,800	38,000	141,172	184,972
4,200	0	0	4,200
275,700	102,000	-21,119	356,581
102,300	35,900	3,277	141,477
173,400	66,100	-24,397	215,103
85,471	53,424		85,471
$2.03	$1.24		$2.52
$2.03	$1.46		$3.01
10.7x	11.6x		8.6x
13.1x	14.0x		10.0x

NOT A CERTIFIED COPY

CPH2000095

012558

16div-019791

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

EXHIBIT
MS 112

February 25, 1998

CONFIDENTIAL

Draft Materials Prepared for the Board of Directors

The Coleman Company, Inc.

NOT A CERTIFIED COPY

CP 011053
CONFIDENTIAL

EXHIBIT 7

CPH 1401219

012560

16div-019792

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Discounted Cash Flow Analysis – SOC

Operating Assumptions
(Dollars in Millions)

	1996	1997	1998E	1999E	2000E	2001E	2002E
Base Case[1]							
Revenue	$984.2	$1,168.2	$1,460.0	$1,800.0	$2,070.0	$2,277.0	$2,504.7
EBITDA	48.1	238.0	328.5	423.0	486.5	535.1	588.6
EBIT	0.7	199.4	277.4	360.0	414.0	455.4	500.9
Unlevered Free Cash Flow	NA	NA	107.3	147.5	190.8	230.8	253.9
Long-Term Strategic Plan[2]							
Revenue	$984.2	$1,168.2	$1,600.0	$2,000.0	$2,400.0	$2,580.0	$2,773.5
EBITDA	48.1	238.0	372.0	471.0	568.0	610.6	656.4
EBIT	0.7	199.4	318.0	400.0	485.0	521.4	560.6
Unlevered Free Cash Flow	NA	NA	172.7	158.0	217.3	272.1	292.5

Present Value Matrix
(Dollars in Millions, Except Per Share)

DISCOUNT RATE		2002E EBITDA MULTIPLE 9.5X	10.5X
Base Case[1]			
11.0%	Per Share[2]	$42.23	$45.92
12.0%	Per Share[2]	$40.49	$44.02
Long-Term Strategic Plan[2]			
11.0%	Per Share[3]	$47.72	$51.84
12.0%	Per Share[3]	$45.77	$49.71

(1) Projections developed in conjunction with CLN management based on equity analyst research.
(2) SOC Management Projections for 1998 to 2000 and estimates for 2001 and 2002.
(3) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).

NOT A CERTIFIED COPY

CP 011067
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

W:\library\80520086.nyw/14

195210

CPH 1401233

16div-019793

Sunbeam.

Contacts: *Investment Community*
Ronald Richter
Sunbeam Corporation
(561) 243-2142

Media
Maureen Bailey
Sard Verbinnen & Co.
(212) 687-8080

Sunbeam Corporation
1615 S. Congress Ave., Suite 200
Delray Beach, Florida 33445
561 243 2100 Fax 561 243 2218

SUNBEAM REPORTS 1ST QUARTER RESULTS;
EXPECTS 1998 EPS IN $1.00 RANGE BEFORE CHARGES, 1999 EPS IN $2.00 RANGE

OUTLINES COMPREHENSIVE GROWTH PLAN BUILDING ON SIX #1 BRANDS
Will Increase International Sales, Accelerate New Products, Create Teams For Six Largest Customers, Use Single Global Ad Agency To Leverage $160 Million Marketing Budget

Expects $265 Million In New Revenues From Integration Plan And New Products;
Sets Goals For Top Line Growth of 10-12%, Margins of 15-18%, EPS Growth of 15-20%

Expects Cost Savings Of $250 Million From Integration Plan and Outsourcing;
Plans To Divest Coleman's East Pak Unit, Compressor and Hot Tub Businesses

---

DELRAY BEACH, FL, May 11, 1998 – Sunbeam Corporation (NYSE: SOC) today reported results for the first quarter ended March 31, 1998, and announced a comprehensive growth plan designed to take full advantage of Sunbeam's strategic opportunities.

First Quarter Results

Revenues for the first quarter of 1998 were $244.3 million, compared with $253.5 million in the first quarter of 1997. Before one-time charges of $36.8 million for early retirement of debt and compensation expense relating to new three-year employment agreements with Sunbeam's top three executives, there was a net loss from continuing operations of $7.8 million in the 1998 quarter versus net income from continuing operations of $20.6 million in the year-ago quarter. After the one-time charges of $.43 per share, the loss per share was $0.52 in the 1998 quarter compared with earnings per share of $0.08 in the 1997 period.

Domestic sales, representing 74% of total revenues (excluding Coleman) in the 1998 quarter, declined 15.4% from the 1997 quarter due to lower price realization and unit volume declines. Most of the domestic sales decline was in outdoor cooking products due to lower than anticipated retail sell-through of these products. International sales, representing 26% of total revenues during the first quarter, grew 14.0% over the first quarter of 1997. This sales growth was driven primarily by improved distribution and new product sales in Latin America, partially offset by lower sales of outdoor cooking products in Europe and Canada. The gross margin for the first quarter of 1998 decreased 13.3 percentage points to 13.4%, primarily due to margin erosion in the appliance, health at home and outdoor cooking categories.

NOT A CERTIFIED COPY

0125563

MORGAN STANLEY
CONFIDENTIAL
0063805

EXHIBIT
MS 115

Earnings Expectations

Based on the growth and restructuring initiatives being announced today, including the anticipated synergies and associated cost savings, Sunbeam currently expects full-year 1998 earnings in the range of approximately $1.00 per share, excluding one-time costs to integrate Coleman, First Alert and Signature Brands into Sunbeam and to close two of Sunbeam's Mexican facilities. These one-time costs are expected to total approximately $280 million pre-tax, including cash costs of approximately $150 million pre-tax. Sunbeam also expects to take an extraordinary cash charge of approximately $100 million pre-tax in the second quarter of 1998 for early retirement of existing Coleman debt. Based on the growth and restructuring initiatives, including the anticipated synergies and associated cost savings, Sunbeam currently expects 1999 earnings in the range of approximately $2.00 per share. From this 1999 base, Sunbeam's goal for earnings per share growth in future years is now in the range of 15-20%.

Growth Plans

Based on the growth and restructuring initiatives, Sunbeam has set new long-term goals for annual revenue growth of 10-12% and operating margins of 15-18%. Top-line growth is expected to be driven by global expansion of six power brands -- Sunbeam®, Oster®, Coleman®, Mr. Coffee®, First Alert®, and Grillmaster®, all of which are already #1 in market share in their respective primary product categories. Sunbeam expects the integration of its three recent acquisitions and planned new products to generate at least $265 million in incremental annual revenues. These new revenues are expected to come from leveraging complementary international distribution strengths, domestic sales synergies and accelerated new product development.

For example, Coleman has a strong existing distribution system in Europe and Asia which can increase sales of Sunbeam®, Mr. Coffee®, and First Alert® products, while Sunbeam has a strong existing distribution system in Latin America which can increase sales of Coleman®, Mr. Coffee®, and First Alert® products. Sunbeam is also establishing dedicated, multifunctional teams to serve each of its six largest customers, which together currently represent a total of approximately $1 billion in annual revenues to Sunbeam. Sunbeam also plans to use a single global advertising agency for all of its products to maximize the effectiveness of its $160 million in current annual marketing support spending in driving the growth of its power brands on a worldwide basis, and will immediately solicit proposals from qualified agencies.

NOT A CERTIFIED COPY

012564

MORGAN STANLEY
CONFIDENTIAL
0063806

Cost Savings

Sunbeam also expects incremental annual cost savings of approximately $250 million from integrating the three acquisitions, closing two Sunbeam factories in Mexico (which have 2,800 employees), and outsourcing production of certain components and finished goods. These cost savings, which are expected to be fully realized by mid-1999, will come from combining four companies into a single streamlined organization and adoption of Sunbeam's outsourcing strategy.

Specific actions include reducing headcount by approximately 2,300 in addition to the Mexican factory closings; combining 10 existing headquarters in the four companies into one new headquarters in Boca Raton, Florida; consolidating 23 multi-purpose factories into 15 plants focused on related products; and consolidating from 47 to 14 warehouses and from 35 to 15 sales offices. Sunbeam also plans to divest three Coleman businesses with a total of 1,300 employees that do not fit its strategic focus: the East Pak(R) backpack division and the compressor and hot tub businesses. Morgan Stanley Dean Witter & Co. has been retained for the divestitures, which are expected to generate aggregate pre-tax proceeds of $250-350 million based on preliminary estimates. Upon completion of these divestitures, integration of the three recent acquisitions, and planned hiring, Sunbeam expects to have a total work force of approximately 9,500 people.

The eight factories expected to be closed, either through consolidation into other factories or outsourcing, are:

Location	Company	Products Made
Acuna, Mexico	Sunbeam	Appliances
Mexico City, Mexico	Sunbeam	Appliances
Costa Rica	Coleman	Components
Maize, Kansas	Coleman	Machine shop
Pocola, Oklahoma	Coleman	Furniture
Cedar City, Utah	Coleman	Sleeping bags
Aurora, Illinois	First Alert	Fire extinguishers
Cleveland, Ohio	Signature Brands	Coffee makers

Chairman's Outlook

"Sunbeam has taken aggressive steps to address the issues that led to unacceptable financial performance in the first quarter of 1998 after strong growth in 1997. The Sunbeam turnaround is real, and we now have the right organizational structure in place to take full advantage of our power brands and unique strategic position in durable household and outdoor leisure products," said Al Dunlap, Chairman and Chief Executive Officer. "Sunbeam's new organization is largely complete. So far in 1998, we have made 47 senior hires from the outside, added 8 executives from the three acquired companies to our management team as Vice Presidents or Directors and many more in other key positions. We plan two dozen more senior recruits this year as we complete the infrastructure to support long-term growth and industry consolidation. Our commitment to create shareholder value is

NOT A CERTIFIED COPY

012565

MORGAN STANLEY
CONFIDENTIAL
0063807

undiminished, but 1998 will be a transitional year as we complete the simultaneous integration of Coleman, First Alert and Signature Brands into Sunbeam while strengthening our marketing, customer service and new product development capabilities. We see enormous opportunities for sustained growth in the U.S. and overseas and a return to strong financial performance in 1999 and beyond that will reward our shareholders."

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand-name consumer products through its Sunbeam, Coleman, First Alert and Signature Brands subsidiaries under the following world-class brands: Sunbeam(R), Oster(R), Grillmaster(R), Coleman(R), Mr. Coffee(R) First Alert(R), Powermate(R), Health o meter(R), and Camping Gaz(R).

Cautionary Statements

Certain statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of Sunbeam to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. When used in this press release, the words "estimate," "project," "intend," "expect" and similar expressions are intended to identify forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous important assumptions and other factors that could cause actual results to differ materially from those in the forward-looking statements. These important assumptions and factors include, but are not limited to: (i) risks associated with leverage, including cost increases due to rising interest rates; (ii) risks associated with Sunbeam's ability to continue its strategy of growth through acquisitions; (iii) risks associated with Sunbeam's ability to successfully integrate all of its recent acquisitions; (iv) risks associated with Sunbeam's ability to increase revenues by leveraging sales of Sunbeam, Signature Brands and First Alert products through Coleman's existing distribution channels, and by leveraging sales of Coleman, Signature Brands and First Alert products through Sunbeam's existing distribution channels, particularly in foreign markets; (v) risks associated with Sunbeam's ability to realize the anticipated cost savings of its restructuring program, including the timing thereof; (vi) risks associated with Sunbeam's ability to implement its planned divestitures, including the amount of the net proceeds to be realized and the timing thereof; (vii) Sunbeam's ability to make effective acquisitions in the future and to successfully integrate newly acquired businesses into existing operations and the risks associated with such newly acquired businesses; (viii) Sunbeam's ability to maintain and increase market share for its products at anticipated margins; (ix) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a high level of customer service; (x) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws; (xi) access to foreign markets together with foreign economic conditions, including currency fluctuations; (xii) uncertainty as to the effect of competition in existing and potential future lines of business; (xiii) fluctuations in the cost and availability of raw materials and/or products in relation to historical levels; (xiv) changes in the availability and relative costs of labor; (xv) effectiveness of advertising and marketing programs; (xvi) the effect of, or changes in, general economic conditions; (xvii) economic uncertainty in Japan, Korea and other Asian countries, as well as Mexico, Venezuela and other Latin American countries; (xviii) weather conditions that are adverse to the specific businesses of Sunbeam; and (xix) risks related to product quality, including excess warranty costs, product liability expense, and costs of possible product recall. Other factors and assumptions not identified above, including those contained in the cautionary statements in Sunbeam's report on Form 10-K filed in March, 1998, and its report on Form 10-Q to be filed not later than May 15, 1998, were also involved in the derivation of these forward-looking statements, and the failure of such other assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. Sunbeam assumes no obligation to update these forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

###

NOT A CERTIFIED COPY

012569

MORGAN STANLEY
CONFIDENTIAL
0063808

16div-019797

Sunbeam Corporation and Subsidiaries

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in millions, except EPS)

	Three Months Ended	
	March 31, 1998	March 30, 1997
Net sales	$244.3	$253.5
Cost of goods sold	211.5	185.7
Gross profit	32.8	67.8
Selling, general & administrative expense	68.8 (a)	33.0
Operating earnings (loss)	(36.0)	34.8
Interest expense and other, net	7.4	2.1
Earnings (loss) from continuing operations before income taxes	(43.4)	32.7
Income taxes (benefit)	(4.4)	12.1
Earnings (loss) from continuing operations	(39.0)	20.6
Extraordinary charge for early retirement of debt, net of taxes	(5.6)	-
Loss from discontinued operations, net of taxes	-	(13.7)
Net earnings (loss)	($44.6)	$6.9
Basic and diluted earnings (loss) per share from continuing operations:	($0.45)	$0.24
Basic and diluted earnings (loss) per share:	($0.52)	$0.08
Basic and diluted weighted average common shares outstanding:	86.4	87.0

(a) Includes special compensation charge of $31.2 or $.36 per share

NOT A CERTIFIED COPY

012567

MORGAN STANLEY
CONFIDENTIAL
0063809

Sunbeam Corporation and Subsidiaries

CONDENSED CONSOLIDATED BALANCE SHEETS
(in millions)

	March 31, 1998	December 28, 1997
ASSETS		
Current assets:		
Cash and cash equivalents	$193.5	$52.4
Receivables, net	562.3	295.5
Inventories	575.1	256.2
Deferred income taxes	70.7	36.7
Prepaid expenses and other current assets	37.0	17.2
Total current assets	1,438.6	658.0
Property, plant and equipment, net	403.2	240.9
Trademarks and trade names, net	192.9	194.3
Goodwill	1,324.9	24.8
Other assets, including deferred financing costs	83.8	2.2
	$3,443.4	$1,120.2
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	62.1	0.7
Accounts payable	205.2	105.6
Other current liabilities	179.4	91.8
Total current liabilities	446.7	198.1
Long-term debt	1,637.8	194.5
Deferred income taxes	79.7	54.6
Other long-term liabilities	189.7	141.1
Minority interest	55.2	-
Shareholders' equity	1,034.3	531.9
	$3,443.4	$1,120.2

NOT A CERTIFIED COPY

012568

MORGAN STANLEY
CONFIDENTIAL
0063810

16div-019799

Sunbeam Corporation and Subsidiaries

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW

(in millions)

	Three Months Ended	
	March 31, 1998	March 30, 1997
OPERATING ACTIVITIES		
Net earnings (loss)	($44.6)	$6.9
Depreciation and amortization	11.4	10.5
Deferred income taxes	(4.8)	13.1
Extraordinary charge on early extinguishment of debt, net of taxes	5.6	-
Loss on sale of discontinued operations, net of taxes	-	13.7
Non-cash special compensation charges	24.3	-
Changes in working capital and other, including restructuring spending	(135.8)	(66.9)
	(143.9)	(22.7)
INVESTING ACTIVITIES		
Acquisition of CLN Holdings, net of cash acquired	(160.6)	-
Proceeds from sale of divested operations and other assets	-	70.4
Capital expenditures	(10.5)	(10.8)
	(171.1)	59.6
FINANCING ACTIVITIES		
Issuance of convertible subordinated debentures, net of financing fees	729.6	-
Payment of debt obligations, including prepayment penalties	(266.7)	(26.3)
Other debt financing fees	(25.1)	-
Proceeds from exercise of stock options	19.0	8.9
Other	(0.7)	(0.6)
	456.1	(18.0)
Net increase in cash and cash equivalents	141.1	18.9
Cash and cash equivalents, beginning of period	52.4	11.5
Cash and cash equivalents, end of period	$193.5	$30.4

NOT A CERTIFIED COPY

012569

MORGAN STANLEY
CONFIDENTIAL
0063811

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

CAMPER ACQUISITION CORP.

and

THE COLEMAN COMPANY, INC.

Dated as of

February 27, 1998

NOT A CERTIFIED COPY

012571

MS 117
5-12-04 WDF

TABLE OF CONTENTS

		PAGE
	ARTICLE I	
	DEFINITIONS	
Section 1.1	Definitions	1
	ARTICLE II	
	THE COMPANY MERGER	
Section 2.1.	The Company Merger	7
Section 2.2	Closing	7
Section 2.3	Company Effective Time of the Company Merger	7
Section 2.4	Certificate of Incorporation	7
Section 2.5	By-Laws	7
Section 2.6	Directors	8
Section 2.7	Officers	8
	ARTICLE III	
	CONVERSION OF SHARES	
Section 3.1.	Effect on Capital Stock	8
Section 3.2	Exchange of Certificates Representing Shares	9
Section 3.3	Dividends; Transfer Taxes	10
Section 3.4	No Fractional Shares	11
Section 3.5	Termination of Exchange Fund	11
Section 3.6	Investment of Exchange Fund	11
Section 3.7	Closing of Company Transfer Books	11
Section 3.8	Dissenting Shares	11
	ARTICLE IV	
	REPRESENTATIONS AND WARRANTIES OF THE COMPANY	
Section 4.1	Organization	12
Section 4.2	Capitalization	12
Section 4.3	Subsidiaries	13
Section 4.4	Authority Relative to this Agreement	13
Section 4.5	Consents and Approvals; No Violations	14
Section 4.6	Reports and Financial Statements	14
Section 4.7	Absence of Certain Changes or Events	15
Section 4.8	Litigation	16
Section 4.9	Information in Disclosure Documents and Registration Statement	17

NOT A CERTIFIED COPY

012572

		PAGE
Section 4.10	Taxes	17
Section 4.11	Compliance with Applicable Law	18
Section 4.12	Labor Matters	18
Section 4.13	ERISA Compliance	18
Section 4.14	Environmental Matters	20
Section 4.15	Intellectual Property	20
Section 4.16	Contracts	20
Section 4.17	Opinion of Financial Advisor	21
Section 4.18	Takeover Statute	21
Section 4.19	Brokers	21

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Section 5.1	Organization	21
Section 5.2	Capitalization	22
Section 5.3	Merger Sub	22
Section 5.4	Authority Relative to this Agreement	22
Section 5.5	Consents and Approvals; No Violations	23
Section 5.6	Reports and Financial Statements	23
Section 5.7	Absence of Certain Changes or Events	24
Section 5.8	Litigation	24
Section 5.9	Information in Disclosure Documents and Registration Statement	24
Section 5.10	Taxes	25
Section 5.11	Compliance with Applicable Law	25
Section 5.12	Brokers	25

ARTICLE VI
COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1	Conduct of Business by the Company	26
Section 6.2	Other Actions	28
Section 6.3	Advice of Changes	28
Section 6.4	Conduct of Business of Merger Sub	28
Section 6.5	The Section 14(f) Notice	28

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1	Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice	29
Section 7.2	Access and Information; Confidentiality	29

NOT A CERTIFIED COPY

012573

		PAGE
Section 7.3	Comfort Letters	29
Section 7.4	Listing Application	30
Section 7.5	Affiliates	30
Section 7.6	HSR Act; Competition Laws	30
Section 7.7	Employee Matters	31
Section 7.8	Continuance of Existing Indemnification Rights	32
Section 7.9	Expenses	34
Section 7.10	Public Announcements	34
Section 7.11	Reasonable Best Efforts	34

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1	Conditions to Each Party's Obligation to Effect the Company Merger	35

ARTICLE IX
TERMINATION, AMENDMENT AND WAIVER

Section 9.1	Termination	35
Section 9.2	Effect of Termination	35
Section 9.3	Amendment	35
Section 9.4	Extension; Waiver	36

ARTICLE IX
GENERAL PROVISIONS

Section 10.1	No Survival of Representations and Warranties	36
Section 10.2	Notices	36
Section 10.3	Descriptive Headings	37
Section 10.4	Entire Agreement; No Third-Party Beneficiary	37
Section 10.5	Interpretation	37
Section 10.6	Severability	38
Section 10.7	Assignment	38
Section 10.8	Disclosure Schedules	38
Section 10.6	Governing Law	38
Sectoin 10.10	Specific Performance	38
Section 10.11	Counterparts	39
Section 10.12	Certain Terms	39

NOT A CERTIFIED COPY

012574

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. ("Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY, INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by"

NOT A CERTIFIED COPY

012575

and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commonly Controlled Entity" shall have the meaning ascribed to it in Section 4.13(a).

"Company Balance Sheet Date" shall have the meaning ascribed to it in Section 4.6(c).

"Company Business Personnel" shall have the meaning ascribed to it in Section 4.12.

"Company Common Stock" shall mean the common stock, par value $.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

"Company Material Adverse Effect" shall have the meaning ascribed to it in Section 4.1.

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

NOT A CERTIFIED COPY

012576

"Company Preferred Stock" shall mean the preferred stock, par value $.01 per share, of the Company.

"Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section 7.5.

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise

NOT A CERTIFIED COPY

012577

relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

NOT A CERTIFIED COPY

012578

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value $.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value $.01 per share, of Laser.

"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value $.01 per share, of Merger Sub.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

NOT A CERTIFIED COPY

012579

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Per Share Merger Consideration" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company

NOT A CERTIFIED COPY

or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

ARTICLE II

THE COMPANY MERGER

Section 2.1 The Company Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2 Closing. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3 Company Effective Time of the Company Merger. The Company Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4 Certificate of Incorporation. From and after the Company Effective Time, the certificate of incorporation of the Company as in effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

Section 2.5 By-Laws. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

NOT A CERTIFIED COPY

012531

MORGAN STANLEY CONFIDENTIAL 0008021

16div-019811

Section 2.6 Directors. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

Section 2.7 Officers. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) $6.44 in cash, without interest thereon (the consideration referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be

NOT A CERTIFIED COPY

012582

issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

Section 3.2 Exchange of Certificates Representing Shares.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the

NOT A CERTIFIED COPY

0012583

certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

Section 3.3 Dividends; Transfer Taxes. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

NOT A CERTIFIED COPY

4351 0121

MORGAN STANLEY CONFIDENTIAL 0008024

16div-019814

Section 3.4 No Fractional Shares. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

Section 3.5 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

Section 3.6 Investment of Exchange Fund. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

Section 3.7 Closing of Company Transfer Books. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

Section 3.8 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company

NOT A CERTIFIED COPY

0125535

MORGAN STANLEY CONFIDENTIAL 0008025

16div-019815

Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

Section 4.2 Capitalization. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued,

NOT A CERTIFIED COPY

0012595

fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

Section 4.3 Subsidiaries. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

Section 4.4 Authority Relative to this Agreement. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions

NOT A CERTIFIED COPY

0 1 2 5 3 7

MORGAN STANLEY CONFIDENTIAL 0008027

16div-019817

contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

Section 4.6 Reports and Financial Statements.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

NOT A CERTIFIED COPY

0012538

16div-019818

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

NOT A CERTIFIED COPY

0-2130-3

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

(xi) agreed to do any of the foregoing.

Section 4.8 Litigation. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its

NOT A CERTIFIED COPY

0012553

subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 4.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.10 Taxes. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the

NOT A CERTIFIED COPY

01259

MORGAN STANLEY CONFIDENTIAL 0008031

16div-019821

assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

Section 4.11 Compliance with Applicable Law. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

Section 4.12 Labor Matters. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

Section 4.13 ERISA Compliance.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material

NOT A CERTIFIED COPY

0012392

employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability; which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

NOT A CERTIFIED COPY

012593

Section 4.14 Environmental Matters.

(a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental Permits") and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.

(b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.

(c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.

(d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.

(e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

Section 4.15 Intellectual Property. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

Section 4.16 Contracts. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by

NOT A CERTIFIED COPY

0012534

any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

Section 4.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

Section 4.18 Takeover Statute. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

Section 4.19 Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Organization. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

NOT A CERTIFIED COPY

0125395

Section 5.2 Capitalization. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

Section 5.3 Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.4 Authority Relative to this Agreement. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of

NOT A CERTIFIED COPY

0012336

MORGAN STANLEY CONFIDENTIAL 0008036

16div-019826

equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

Section 5.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.6 Reports and Financial Statements.

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted

NOT A CERTIFIED COPY

012597

MORGAN STANLEY CONFIDENTIAL 0008037

16div-019827

by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

Section 5.8 Litigation. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 5.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

NOT A CERTIFIED COPY

16div-019828

The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

Section 5.10 Taxes.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

Section 5.11 Compliance with Applicable Law. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

Section 5.12 Brokers. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

NOT A CERTIFIED COPY

0-2559

ARTICLE VI

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

NOT A CERTIFIED COPY

01230

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

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

CASE NO: CA 03-5045 AI

FILED
Dec 10 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

NOT A CERTIFIED COPY

012552

457

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES v

TABLE OF PLAYERS vii

UNDISPUTED FACTS 1

I. THE PLAINTIFF AND THE HOLDING COMPANIES CONTROLLED BY RONALD O. PERELMAN 1

A. Ronald O. Perelman 1

B. The Holding Companies Controlled by Perelman 2

C. The Coleman Company, Inc. Holding Company Structure 3

D. Perelman's Holding Companies Are Form over Substance 4

II. MORGAN STANLEY & CO. INCORPORATED 5

III. PERELMAN IS A SOPHISTICATED BUSINESSMAN OPERATING THROUGH A COMPLEX NETWORK OF HOLDING COMPANIES 7

A. MAFCO Is in the Business of Doing "Deals" 7

B. Perelman's In-House Brains Trust 9

C. Perelman Uses Investment Bankers to Advise Him on Mergers and Acquisitions 12

D. Perelman Uses Sophisticated Legal Advisors to Advise Him on Mergers and Acquisitions 13

E. Perelman Uses Sophisticated Accounting Advisors to Advise Him on Mergers and Acquisitions 14

F. The Sunbeam-Coleman Merger Transaction Was an Arm's-Length Transaction 15

IV. THE COLEMAN COMPANY, INC. 16

A. Perelman Acquires Coleman in 1989 16

B. Perelman Steadily Increases the Debt of Coleman. 17

C. A Debt-Ridden Coleman Underperforms in 1997 17

NOT A CERTIFIED COPY

012553

Page

D. Perelman Leverages His Investment in Coleman to Issue $732 million in Debt and Pledges Coleman Shares as Collateral 18

V. PERELMAN MEETS DUNLAP AND SEES THE "FUTURE" 20

VI. IN LATE 1997 MICHAEL PRICE INITIATES DISCUSSIONS BETWEEN SUNBEAM AND PERELMAN 22

A. Michael Price Asks Perelman to Meet Dunlap 22

B. Perelman Prepares to Meet Dunlap and MAFCO Does Its Own Analysis of a Sunbeam-Coleman Transaction 23

C. Perelman Does an Analysis of Dunlap's Employment Contract with Sunbeam 25

D. CSFB's December 1997 Analysis of a Sunbeam-Coleman Merger Transaction 26

E. Dunlap and Perelman Meet at Perelman's Mansion in Palm Beach on December 18, 1997 26

VII. PERELMAN AND SUNBEAM RESTART DISCUSSIONS ABOUT COLEMAN 28

A. Perelman Rejects Sunbeam's January 23, 1998 Offer 28

B. MAFCO Retains Wachtell to Represent Coleman and to Prepare Confidentiality Agreements 31

C. Sunbeam Stock Tumbles after It Announces Lower than Projected Profits for the 4th Quarter of 1997 34

D. Perelman and Sunbeam Agree to *Defer* Due Diligence until Sunbeam Makes an Acceptable Offer 35

E. Perelman Rejects Sunbeam's February 6, 1998 Proposal 36

VIII. PERELMAN AGREES TO SELL COLEMAN TO SUNBEAM FOR $27.50 PER SHARE 37

IX. MAFCO PERFORMS VIRTUALLY NO DUE DILIGENCE OF SUNBEAM BEFORE THE EXECUTION OF THE MERGER AGREEMENT 39

A. The MAFCO Due Diligence Team Is Leaderless 39

B. Maher Does No Due Diligence of Sunbeam 42

C. CSFB Does No Due Diligence of Sunbeam 43

NOT A CERTIFIED COPY

012654

Page

D. Wachtell Does No Due Diligence of Sunbeam....44

E. Ernst & Young Does No Due Diligence of Sunbeam....45

X. SUNBEAM DISCLOSES TO MAFCO THAT SUNBEAM'S JANUARY AND FEBRUARY 1998 SALES ARE "SLOW"....46

A. MAFCO Representatives Hear Sunbeam's Plans for the Next Three Years....46

B. Sunbeam Alerts MAFCO that Sunbeam's Sales are "Slow"....47

C. In the Elevator, Levin Tells Maher and Nesbitt that Sunbeam's Plans Are "Quite a Stretch" and Not Achievable....50

XI. PERELMAN AND HIS HOLDING COMPANIES APPROVE THE MERGER AGREEMENTS....53

A. Perelman and the Coleman Board Meet on February 25, 1998....53

B. Perelman and the Coleman Board Meet Again on February 27, 1998....55

C. Perelman and Gittis Approve the Merger....57

XII. THE PARTIES EXECUTE THE MERGER AGREEMENTS AS OF FRIDAY, FEBRUARY 27, 1998....58

A. CLN Holdings Merger Agreement Is Approved by Perelman and Gittis....58

B. The Coleman Merger Agreement Is Approved by Coleman's Board....59

C. MAFCO Gains Full and Complete Access to Sunbeam's Books and Records....61

XIII. FROM SIGNING TO THE MARCH 19 PRESS RELEASE — SUNBEAM MAKES DISCLOSURES AND CPH LOOKS AWAY....62

A. MAFCO Elects Not to Inspect Sunbeam's Books and Records....62

B. MAFCO Insiders Bail Out of Coleman Stock as Soon as the Merger Is Publicly Announced....66

C. MAFCO Elects Not to Read Sunbeam's 1997 Annual Report on Form 10-K....67

XIV. MORGAN STANLEY FIRST LEARNS OF SUNBEAM'S FIRST QUARTER SALES AND INSISTS THAT SUNBEAM ISSUE THE MARCH 19 PRESS RELEASE....68

A. Morgan Stanley Learns of a Possible Sales Shortfall....68

NOT A CERTIFIED COPY

012565

Page

B. The March 19, 1998 Press Release 69

C. Perelman Asks No Questions of Sunbeam Following The March 19, 1998 Press Release 71

XV. THE SUNBEAM DEBENTURE OFFERING 76

A. The Debenture Offering Memorandum 76

B. The Comfort Letters 77

C. MAFCO Does Not Request Copies of Either the Ernst & Young or Arthur Andersen Comfort Letters 79

D. Morgan Stanley Closes the Debenture Offering on March 25, 1998 81

XVI. MORGAN STANLEY SENIOR FUNDING CLOSES THE CREDIT FACILITY 81

XVII. PERELMAN AND SUNBEAM CLOSE ON THE CLN MERGER AGREEMENT ON MARCH 30, 1998 83

XVIII. SUNBEAM'S APRIL 3, 1998 PRESS RELEASE ANNOUNCES ITS FIRST QUARTER 1998 RESULTS 83

XIX. PERELMAN GIVES DUNLAP MAFCO'S PROXY FOR 14,099,749 SHARES OF SUNBEAM STOCK 85

XX. SUNBEAM ANNOUNCES ITS FIRST QUARTER RESULTS ON MAY 11, 1998 86

XXI. BURDENED BY DEBT, SUNBEAM SLIDES INTO BANKRUPTCY 86

CONCLUSIONS OF LAW 88

NOT A CERTIFIED COPY

012665

TABLE OF AUTHORITIES

Page(s)

Cases

Abrahami v. UPC Constr. Co., Inc.,
638 N.Y.S.2d 11 (App. Div. 1996) 99

Allerton v. State Dep't of Ins.,
635 So. 2d 36 (Fla. 1st DCA 1994) 100

American Protein Corp. v. AB Volvo,
844 F.2d 56 (2d Cir. 1988) 98

Cromer Fin. Ltd. v. Berger,
137 F. Supp. 2d 452 (S.D.N.Y. 2001),
aff'd mem., 2003 WL 22717684 (2d Cir. Nov. 17, 2003) 100

Dyncorp v. GTE Corp.,
215 F. Supp. 2d 308 (S.D.N.Y. 2002) 98

Federal Ins. Co. v. Mercer,
237 So. 2d 243 (Fla. 4th DCA 1970) 11

Filler v. Hanvit Bank,
339 F. Supp. 2d 553 (S.D.N.Y. 2004) 100

Friedman v. Arizona World Nurseries Ltd. P'ship,
730 F. Supp. 521 (S.D.N.Y. 1990),
aff'd, 927 F.2d 595 (2d Cir. 1991) 99

Gabriel Capital, L.P. v. NatWest Fin., Inc.,
94 F. Supp. 2d 491 (S.D.N.Y. 2000) 101

In re Philip Servs. Corp. Sec. Litig.,
No. 98 Civ. 0835 2004 WL 1152501 (S.D.N.Y. May 24, 2004) 100

Raimi v. Furlong,
702 So. 2d 1273 (Fla. 3d DCA 1997) 101

Rotterdam Ventures, Inc. v. Ernst & Young LLP,
752 N.Y.S.2d 746 (App. Div. 2002) 99

Schlaifer Nance & Co. v. Estate of Andy Warhol,
119 F.3d 91 (2d Cir. 1997) 99

Stolow v. Greg Manning Auctions Inc.,
258 F. Supp. 2d 236 (S.D.N.Y. 2003) 100

NOT A CERTIFIED COPY

012597

Page(s)

THC Holdings Corp. v. Chinn,
No. 95 Civ. 4422, 1998 WL 50202 (S.D.N.Y. Feb. 6, 1998) 99

UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney,
733 N.Y.S.2d 385 (App. Div. 2001) 99

Wassall v. Payne,
682 So. 2d 678 (Fla. 1st DCA 1996) 100

WIT Holding Corp. v. Klein,
724 N.Y.S.2d 66 (App. Div. 2001) 98

Rules

Fla. R. Civ. P. 1.510 authors' cmt. (1967) 11

Fla. R. Civ. P. 1.510(d) 11

NOT A CERTIFIED COPY

012668

TABLE OF PLAYERS

Player	Position at the time of the Transaction
Perelman & His Holding Companies	
Ronald O. Perelman	Chairman of MacAndrews & Forbes; owned or controlled all companies within the MacAndrews & Forbes structure
Howard Gittis	Vice Chairman and Chief Administrative Officer of MacAndrews & Forbes and its various holding companies
Donald Drapkin	Vice Chairman of MacAndrews & Forbes and its various holding companies
Bruce Slovin	President of MAFCO Holdings Inc. and Coleman (Parent) Holdings Inc., and Director of The Coleman Company Inc.
James Maher	President of MacAndrews & Forbes
William Nesbitt	Senior Vice President of MacAndrews & Forbes
Barry Schwartz	Executive Vice President and General Counsel of MacAndrews & Forbes and its various holding companies
Glenn Dickes	Senior Vice President – Law of MacAndrews & Forbes
Joram Salig	Vice President – Law of MacAndrews & Forbes
Irwin Engelman	Executive Vice President and Chief Financial Officer of MacAndrews & Forbes
Todd Slotkin	Senior Vice President – Finance of MacAndrews & Forbes

NOT A CERTIFIED COPY

012669

The Coleman Company Inc.	
Jerry W. Levin	Chief Executive Officer of The Coleman Company Inc.
Paul Shapiro	General Counsel of The Coleman Company Inc.
Joseph Page	Chief Financial Officer of The Coleman Company Inc.
Karen Clark	Vice President – Finance of The Coleman Company Inc.

Credit Suisse First Boston	
Gordon Rich	Managing Director of Mergers & Acquisitions at Credit Suisse First Boston
Robert Duffy	Vice President in Mergers & Acquisitions at Credit Suisse First Boston

Wachtell Lipton Rosen Katz, LLP	
Adam Emmerich	Partner and lead outside counsel for MacAndrews & Forbes and its holding companies

Morgan Stanley & Co. Incorporated	
William Reid	Managing Director of Morgan Stanley's Global Financial Sponsor Group
William Strong	Managing Director and Vice Chairman of Morgan Stanley's Investment Banking Division
Ruth Porat	Managing Director of Morgan Stanley's Equity Capital Markets

NOT A CERTIFIED COPY

012670

John Tyree	Associate in Morgan Stanley's Client Services Group
Thomas Burchill	Vice President of Morgan Stanley

Sunbeam's Major Shareholder	
Michael Price	Chairman of Mutual Series Fund, a major shareholder of Sunbeam Corporation

Sunbeam Corporation	
Al Dunlap	Chairman and Chief Executive Officer of Sunbeam Corporation
Russell Kersh	Chief Financial Officer of Sunbeam Corporation
Donald Uzzi	Executive Vice President-Worldwide Consumer Products of Sunbeam Corporation
Robert Gluck	Vice President, Corporate Finance of Sunbeam Corporation
David Fannin	Executive Vice President and General Counsel of Sunbeam Corporation

Arthur Andersen	
Lawrence Bornstein	Experience Manager on Sunbeam Audit Team for Arthur Andersen
Phillip Harlow	Engagement Partner on Sunbeam Audit Team for Arthur Andersen
William Pruitt	Concurring Partner on Sunbeam Audit Team for Arthur Andersen

NOT A CERTIFIED COPY

012671

Skadden Arps Meagher Flom, LLP	
Blaine "Finn" Fogg	Partner and lead outside counsel for Sunbeam Corporation

NOT A CERTIFIED COPY

012672

Morgan Stanley & Co. Incorporated, pursuant to rule 1.510 of the Florida Rules of Civil Procedure and the Court's order of October 14, 2004, hereby submits these proposed Findings of Fact and Conclusions of Law in support of its Motion for Summary Judgment on all counts of the plaintiff's complaint. To the extent the Court does not grant the motion in full, Morgan Stanley requests that the Court enter an order pursuant to rule 1.510(d) finding the facts "that exist without substantial controversy" and further ordering that such facts shall be "deemed established" in all further proceedings in this matter. Fla. R. Civ. P. 1.510(d); *see also* Fla. R. Civ. P. 1.510 authors' cmt. (1967) ("The Court is obliged to make the order provided for by paragraph (d) of this rule. The entire rule is mandatory. . . . The order must specify the facts which are not controverted. Upon the trial the order is used to indicate the facts which are established and as to which no proof is necessary."); *Federal Ins. Co. v. Mercer*, 237 So. 2d 243, 246 (Fla. 4th DCA 1970) ("Where the court in ruling on a motion for summary judgment enters an order specifying that certain material facts exist without substantial controversy . . . the Florida Rules of Civil Procedure require that on trial of the action the facts so specified shall be deemed established and the trial shall be conducted accordingly.").

NOT A CERTIFIED COPY

UNDISPUTED FACTS

I. THE PLAINTIFF AND THE HOLDING COMPANIES CONTROLLED BY RONALD O. PERELMAN

A. Ronald O. Perelman

1. Ronald O. Perelman is an individual residing in New York, New York. He holds an MBA from the Wharton School at the University of Pennsylvania. He is a sophisticated businessman who owns and controls hundreds of companies through a complex series of holding companies.

   a. Nov. 17-18, 2004 Perelman Dep. at 7:10-8:6, 10:14-11:1, 37:16-18, 49:25-50:25

0126773

b. May 12, 2004 Slovin Dep. at 67:17-68:2

c. Nov. 19, 2004 Gittis Dep. at 24:18-21

2. Perelman, through his 100 percent ownership of his holding companies, owned over 82 percent of the common stock of The Coleman Company, Inc. ("Coleman") before the merger with Sunbeam Corporation ("Sunbeam").

a. Nov. 2-3, 2004 Maher Dep. at 256:4-7

b. Perelman Dep. at 21:19-22:3, 33:24-34:5

c. June 25, 2003 Answer ¶ 8, *MSSF v. MAFCO*, No. 2003CA005165, (15th Jud. Dist. Fla.)

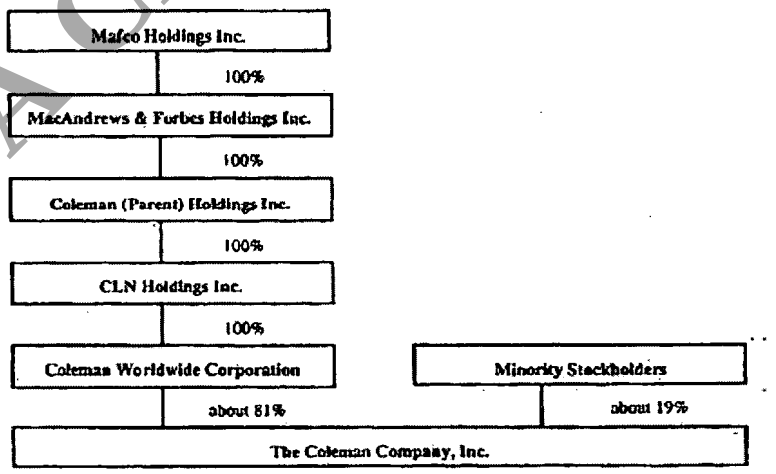
B. The Holding Companies Controlled by Perelman

3. The top company in Perelman's holding company structure is Mafco Holdings Inc. Perelman is the sole shareholder of Mafco Holdings Inc.

a. Gittis Dep. at 25:8-12

b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

Ownership Structure Before the M&F Transaction



c. June 8 & July 28, 2004 Shapiro Dep. at 318:25-319:25

d. June 25, 2004 Schwartz Dep. at 49:10-19 ("Q: Is that [a chart on page 69 of MS 279] a correct representation of the structure of the holding of The

NOT A CERTIFIED COPY

0125714

> Coleman Company, Inc. immediately before the closing of the CLN merger on March 30, 1998? A: It is.")

4. Mafco Holdings Inc. owned 100 percent of the common stock of MacAndrews & Forbes Holdings Inc. ("MAFCO"), the next holding company in Perelman's structure.

   a. Gittis Dep. at 25:16-20

   b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

5. Howard Gittis is the vice-chairman of the board and chief administrative officer of MAFCO. He testified that Perelman's holding company structure eventually splits into lines of holding companies for each operating company, including Coleman. As Gittis described the business,

> A. Once you go down below MacAndrews & Forbes Group, each of the operating businesses go off into a series of companies, so that you don't mix the candy money with the beer money.
>
> That is, Coleman stays in its own line, no cross collateral, no obligation for any debt of, say, Revlon, which has its own line.
>
> And then the banks, which had their own line.
>
> And then the cigar company, when that was there, had its own line.

   a. Gittis Dep. at 25:21-27:16

C. The Coleman Company, Inc. Holding Company Structure

6. The top holding company within the Coleman structure was Coleman (Parent) Holdings Inc. ("CPH"), the plaintiff in this action. CPH is a Delaware corporation with its principal place of business at 35 E. 62nd Street, New York, New York. Perelman and Gittis were the two directors of CPH at the time of the merger transaction with Sunbeam.

   a. Gittis Dep. at 28:3-8

   b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

NOT A CERTIFIED COPY

012675

c. MS 172 (Feb. 27, 1997 CPH Consent of Directors)

d. Perelman Dep. at 79:22-81-8

7. CLN Holdings Inc., formerly known as Coleman Escrow Corporation, was the next holding company and was 100 percent owned by CPH. Perelman and Gittis were the sole directors of this holding company.

a. Schwartz Dep. at 50:21-51:4 77:10-15

b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

8. Coleman Worldwide Corporation was owned 100 percent by CLN Holdings Inc. and held 82 percent of the common stock of Coleman.

a. Schwartz Dep. at 67:3-7

b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

9. Coleman was a public operating company trading on the New York Stock Exchange under the symbol CLN. The business of Coleman was the manufacture and marketing of consumer products for outdoor recreation and home hardware.

a. Gittis Dep. at 28:19-25

b. MS 279 at 69 (Dec. 6, 1999 Notice of Merger)

c. MS 251 at 3 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

D. Perelman's Holding Companies Are Form over Substance

10. Donald Drapkin, the vice chairman and member of the board of directors of MAFCO, as well as a director of Coleman, testified that "there are lots of holdings [sic] companies" under Perelman's control, and "I have trouble keeping the names [of the holding companies] straight."

a. June 24, 2004 Drapkin Dep. at 7:25-8:7, 16:7-14

b. *See* Perelman Dep. at 35:11-14

NOT A CERTIFIED COPY

012676

c. *See* Maher Dep. at 255:24-256:3

11. Bruce Slovin was the president of CPH and a member of the board of directors of Coleman. Slovin "do[es] not recall" what his "general job description as the president of Coleman (Parent) Holdings Inc. [was] in 1998," at the time of the transaction with Sunbeam.

a. Slovin Dep. at 66:25-67:16, 73:6-9

b. Perelman Dep. at 22:21-23:1

12. Perelman, chairman of the board and 100 percent owner of MAFCO and, through it, 100 percent owner of CPH, testified that he was "not sure" if he was a director of CPH.

a. Perelman Dep. at 22:21-23:1

13. Gittis testified that there are "hundreds of companies" within MacAndrews & Forbes' holding company structure and Perelman himself did not "know the intermediate holding company structure … between MacAndrews & Forbes and the Coleman Company …."

a. Gittis Dep. at 24:18-21

b. Perelman Dep. at 34:6-14

14. William Nesbitt, senior vice president of MAFCO, explained that separating Coleman and MAFCO is a "distinction without a difference."

a. Aug. 31-Sept. 1, 2004 Nesbitt Dep. at 154:21-155:3

II. MORGAN STANLEY & CO. INCORPORATED

15. The defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), is a Delaware corporation with its principal place of business in New York, New York. Morgan Stanley is an investment banking firm that provides a wide range of financial and securities services, including underwriting the sale of both equity and debt securities.

a. May 8, 2003 Compl. ¶ 9.

b. Sept. 24, 2003 CPH Resp. to MS's 1st Set of Reqs. for Admiss., Resp. 1 ("CPH Resp. 1st RFA")

NOT A CERTIFIED COPY

012677

16. Investment bankers and underwriters are not auditors. They do not perform the function of auditors. Sunbeam had its own external auditor, Arthur Andersen. Similarly, Coleman had its own auditor, Ernst & Young LLP.

a. Nesbitt Dep. at 78:4-10

b. Aug. 27, 2004 Burchill Dep. at 90:5-15, 94:7-13

c. MS 208 at F-2 (March 6, 1998 Sunbeam Form 10-K Annual Report for 1997)

17. On September 11, 1997, Sunbeam retained Morgan Stanley to act as its investment banker and to assist with either the sale of Sunbeam or its acquisition of other companies.

a. CPH 70 (Sept. 5, 1997 Engagement Letter)

b. Dec. 4, 2003 Strong Dep. at 87:16-88:20

18. Morgan Stanley served as the underwriter for Sunbeam's issuance of Zero Coupon Convertible Senior Subordinated Debentures ("Debentures"). By virtue of its position as underwriter, Morgan Stanley agreed to be the direct purchaser of the Debentures. CPH did not purchase any of the Debentures.

a. MS 166 at 1 (March 19, 1998 Offering Memorandum)

b. Shapiro Dep. at 95:13-15

c. Sept. 15, 2003 Tyree Dep. at 150:10-18

d. Slovin Dep. at 238:5-12

19. Morgan Stanley Senior Funding, Inc. ("MSSF") is a financial services company that provides credit services to its clients. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York. In 1998 MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and

NOT A CERTIFIED COPY

012578

two smaller competitors. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions.

a. MS 520 (March 30, 1998 Credit Agreement)

b. June 25, 2003 Answer ¶ 6, *MSSF v. MAFCO*, No. 2003CA005165, (15th Jud. Dist. Fla.)

III. PERELMAN IS A SOPHISTICATED BUSINESSMAN OPERATING THROUGH A COMPLEX NETWORK OF HOLDING COMPANIES

A. MAFCO Is in the Business of Doing "Deals"

20. MAFCO is a holding company whose business purpose is the "buy[ing] and sell[ing] [of] companies."

a. Drapkin Dep. at 22:4-10

b. *See* Drapkin Dep. at 42:10-43:5 (Drapkin did not dispute the following statement made in MS 240: "If it was only about having enough money to live, [Perelman] would have stopped a long time ago. But this is what we do. We do deals, big deals, little deals, deals.'")

c. *See* Schwartz Dep. at 157:21-23 ("Q. In fact, one of businesses in a broader sense is that you do deals? A. Indeed we do.")

21. Since 1987, MAFCO has bought or sold as many as fifty public and private companies and currently owns at least seven operating companies. These operating companies include Revlon, Inc. (cosmetics), Consolidated Cigar Holding Inc. (tobacco), Panavision (motion picture camera systems), Scientific Games (games), California Federal Bank (financial services), Allied Security (protective services), M&F Worldwide (licorice and other flavoring), and AM General (automobiles). Additionally, in the past, MAFCO has owned Marvel Entertainment, New World, Technicolor, and Meridian Sports.

a. Drapkin Dep. at 34:6-35:9

b. Perelman Dep. at 49:25-50:19

NOT A CERTIFIED COPY

012679

c. MS 244 at 5 (June 14, 1998 Schedule 13D, MAFCO Holdings Inc.)

22. Perelman, in buying and selling public and private companies through stock acquisitions or otherwise, has participated in transactions that have involved billions of dollars.

a. Gittis Dep. at 18:18-23

23. Perelman, operating through MAFCO and the companies it controls, has issued billions of dollars of debt securities, such as debentures.

a. Gittis Dep. at 18:11-17

b. MS 241 at 1 (May 15, 1997 Coleman Escrow Corporation Offering Memorandum)

c. Nesbitt Dep. at 33:10-22

24. Perelman, operating through MAFCO, is a financially sophisticated individual with extensive merger and acquisition experience. Indeed, Slovin testified:

> Q. Do you agree with Mr. Drapkin's statement that: "This is what we do, we do big deals, little deals, deals"?
>
> A. Yes, we were very active in mergers and acquisitions of all types.
>
> Q. And this was true in 1998, as well; correct?
>
> A. Yes, we were very active.
>
> Q. And when you did deals, you customarily retained advisors to assist you in the deals; correct?
>
> A. The large deals, yes.
>
> Q. ...And when you did -- the Coleman deal was a large deal; was it not?
>
> A. Yes.
>
> Q $2 billion, roughly?
>
> A. Yes.

NOT A CERTIFIED COPY

012680

a. Slovin Dep. at 93:4-21; *see* Slovin Dep. at 131:18-22 ("Q. Taken as a group, the inner circle [of MAFCO], would you categorize them as a smart intelligent group of businessmen? A. Yes."), *see also* Slovin Dep. at 22:2-23, 94:2-23

b. MS 119 (Jan. 2, 2004 CPH Resp. to Andersen's Mot. to Compel Prod. of Docs. Re The Coleman Co. ¶ 7 *CPH v. Arthur Andersen*, No. 01-06062AN (15th Jud. Dist. Fla.))

c. Slovin Dep. at 19:8-21

d. Aug. 4, 2004 Engelman Dep. at 36:16-23

e. Maher Dep. at 33:18-34:15, 37:9-12

f. July 7, 2004 Slotkin Dep. at 32:19-33:4 ("A: [MAFCO] makes an investment in assets, it builds assets and holds them for a variety of length of period of time, and it sometime monetizes either part of the asset or sells all of the asset.")

25. Perelman himself is a "sophisticated businessman" who "over the course of [his] business career [has] hired sophisticated advisers," including both in-house and outside lawyers and investment bankers, "to help [him]."

a. Perelman Dep. at 37:16-18, 37:23-38:2; *see* Perelman Dep. at 38:13-39:21

b. *See* Gittis Dep. at 15:16-16:3 ("In your - 20-some years of working for Mr. Perelman, do you think he is a sophisticated businessman? A. Yes. Q. Do you think he is a sophisticated investor in companies? A. Yes. Q. Sophisticated in analyzing mergers and acquisitions transactions? A. I think so. Q. Sophisticated in issuing debt securities? A. Yes.")

B. Perelman's In-House Brains Trust

26. Gittis has been involved in every deal Perelman has conducted and characterizes himself as the number-two man in MAFCO and Perelman's right-hand man. Prior to working at MAFCO, Gittis practiced law for 25 years until 1985. Gittis is licensed to practice law in Pennsylvania and Florida. He is currently the vice chairman and chief administrative officer of MAFCO.

a. Gittis Dep. at 6:18-19, 9:1-17, 15:5-8, 16:6-18

NOT A CERTIFIED COPY

012681

27. Jerry W. Levin was the president, chief executive officer, and chairman of the Coleman Company at the time of the Sunbeam-Coleman merger. In fact, Levin twice served as the senior executive at Coleman, from 1989 to 1991 and 1997 to 1998, both times at the request of Perelman. In between his two stints as top executive at Coleman, Levin was chief executive officer at Revlon, another of Perelman's companies. Levin, who has an MBA from the University of Chicago Business School, is a "specialist in consumer branded products" whose "forte" is "execut[ing] turnarounds at consumer branded products companies" like Sunbeam.

a. Dec. 1 & 2, 2004 Levin Dep. at 63:11-24; *see* Levin Dep. at 14:23-16:23, 58:12-59:19

28. Donald Drapkin, the vice chairman of MAFCO, served as Perelman's "in-house strategic thinker" and "in-house investment banker." Drapkin graduated from Columbia Law School and worked at Cravath, Swaine & Moore until 1977, when he joined Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"). While at Skadden, Drapkin specialized in mergers and acquisitions. He left Skadden to join MAFCO in January 1987.

a. Drapkin Dep. at 7:21-24, 39:22-40:13; *see* Drapkin Dep. at 10:20-11:14, 11:23-12:10, 13:12-14:7

b. MS 288 (June 21, 2000 "Ron Perelman," CigarAficianado.com)

29. James Maher, the president of MAFCO and, according to Perelman, the individual who was "the head negotiator for MacAndrews & Forbes in the Coleman-Sunbeam transaction," was "a sophisticated individual in financial transactions." After Maher received his MBA from Columbia in June 1976, he worked for First Boston Corporation in the investment banking department. Maher was the head of investment banking and oversaw all issues related to underwriting at First Boston. In 1992, Maher went to work at National Health Labs as the CEO. Later, in 1995, he worked at MAFCO Consolidated Group, Inc., another of Perelman's holding companies.

NOT A CERTIFIED COPY

012682

a. Perelman Dep. at 57:11-17, *see* Perelman Dep. at 46:16-24, 199:5-17

b. Maher Dep. at 11:12-13:3, 34:5-15; *see* Maher Dep. 16:17-17:19, 18:20-19:5, 20:4-12, 40:22-41:10, 43:23-45:2

c. *See* Gittis Dep. at 33:10-19, 35:22-36:1

d. *See* Schwartz Dep. at 92:20-93:1

30. Barry Schwartz is executive vice president and general counsel of both MAFCO and CPH. Schwartz has a law degree from Georgetown University and is licensed to practice law in Illinois, Pennsylvania, and New York. Before joining MAFCO in 1989, Schwartz practiced law for 15 years and was a partner in the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen LLP, the same firm at which Gittis worked before joining MAFCO. According to Perelman, Schwartz was a "good business lawyer" and served as his "in-house legal adviser in connection with the [Sunbeam-Coleman] transaction."

a. Perelman Dep. at 38:21-39:10, 201:1-11

b. *See* Schwartz Dep. at 7:24-8:1, 13:4-20, 43:13-46:6

31. William Nesbitt, senior vice president of MAFCO, served as an in-house analyst for MAFCO. After Nesbitt graduated from Duke University in 1984 with an economics degree, he was a financial analyst at First Boston Corporation in mergers and acquisitions. In 1988 Nesbitt received his MBA from Harvard Business School. Nesbitt is "a financial analyst of some intelligence, he is a bright kid, and he worked mostly with Jimmy Maher" on the Sunbeam-Coleman transaction.

a. Slovin Dep. at 146:15-21

b. Nesbitt Dep. at 11:12-12:5

c. Perelman Dep. at 41:24-42:1

32. Todd J. Slotkin is executive vice president and chief financial officer of MAFCO. At the time of the Sunbeam-Coleman transaction, Slotkin was a senior vice president at

NOT A CERTIFIED COPY

012683

MAFCO. After receiving his MBA from Cornell Business School in 1974, Slotkin went to work for Citibank, where he eventually became head of Citibank's leveraged buyout division and a senior managing director. In 1992, he left Citibank to join MAFCO, where he was responsible for "arrang[ing] financing for acquisitions and divestitures and refinancings for Mr. Perelman's companies."

a. Slotkin Dep. at 17:5-24; *see* Slotkin Dep. at 7:3-10, 12:25-14:2, 14:17-22, 15:10-17

33. Irwin Engleman, a lawyer and accountant by training, was executive vice president and chief financial officer of MAFCO from 1992 to 1999 before becoming vice chairman and chief administrative officer at Revlon. In addition to MAFCO and Revlon, Engleman has served as a senior executive at corporations such as Xerox, General Foods, CitiTrust, and GAF Corporation.

a. Engelman Dep. at 18:6-18, 22:7-25:9, 26:2-18

C. Perelman Uses Investment Bankers to Advise Him on Mergers and Acquisitions

34. Over the past twenty years, MAFCO has used investment bankers to advise it "[i]n almost every transaction" in which MAFCO has been involved.

a. Gittis Dep. at 19:14-20

35. When Sunbeam approached Perelman with the idea of purchasing Coleman, Perelman contacted the investment bank of Credit Suisse First Boston ("CSFB") to "provide[] advice and/or assistance to CPH in connection with the transaction" with Sunbeam. CSFB also was retained by the Coleman Company, Inc. to serve as its "exclusive financial advisor with respect to the evaluation of a proposed Transaction" with Sunbeam. CSFB requested and received a fee of $4 million plus expenses to serve as the investment banker for Coleman.

a. MS 169 (Dec. 10, 1997 Engagement Letter)

NOT A CERTIFIED COPY

0125814

b. *See* Shapiro Dep. 97:13-98:7

c. "CPH responds that the following third parties provided advice and/or assistance to CPH in connection with the transaction by which CPH transferred its interest in Coleman to Sunbeam:

ADVISOR	NATURE OF SERVICES
Credit Suisse First Boston	Financial Advisor
Wachtell, Lipton, Rosen & Katz	Legal Advisor"

Sept. 2, 2003 CPH Resp. to MS's 1st Set of Interrogs., Interrog. 2

d. *See* July 8, 2004 Duffy Dep. at 80:16-81:2

e. *See* MS 93 §§ 1.1, 4.11 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"))

f. *See* Schwartz Dep. at 25:6-26:6

g. *See* Aug. 11, 2004 Order on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding Inc.'s Motion for Application of New York Law at 6 ("Aug. 11, 2004 Order")

h. *See* Slovin Dep. at 24:16-25:4; 179:2-5

36. At the time it served as Coleman's "exclusive financial advisor," CSFB was a "sophisticated financial advisor."

a. Maher Dep. at 35:7-13

D. Perelman Uses Sophisticated Legal Advisors to Advise Him on Mergers and Acquisitions

37. On January 28, 1998, Wachtell, Lipton, Rosen & Katz ("Wachtell") was retained by Barry Schwartz, MAFCO's executive vice president and general counsel, to provide legal counsel to MAFCO, CPH, and Coleman regarding a potential transaction with Sunbeam. Schwartz was neither an officer nor a director of Coleman.

a. MS 75 (March 30, 1998 Wachtell Chronology)

b. Mar. 17, 2004 CPH Resp. to MS's 2d Set of Reqs. for Admiss., Resp. 6-8

c. Maher Dep. at 230:8-25

NOT A CERTIFIED COPY

012685

d. Schwartz Dep. at 34:3-10 ("Q. … did you have any involvement in retaining the law firm of Wachtell, Lipton? A. Yes. Q. What was your involvement? A. I retained them."); Schwartz Dep. at 106:4-10

e. MS 251 at 21-23 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

f. Slovin Dep. at 24:6-15

38. At the time it served as legal counsel for MAFCO, CPH, and Coleman, Wachtell was "a law firm that was sophisticated … in mergers and acquisitions … ."

a. Maher Dep. at 36:12-17

b. *See* Schwartz Dep. at 33:10-23

E. Perelman Uses Sophisticated Accounting Advisors to Advise Him on Mergers and Acquisitions

39. Either directly or through Coleman, Perelman "had access from an accounting standpoint to [the] auditors Ernst & Young" in connection with the Sunbeam-Coleman transaction.

a. Drapkin Dep. at 103:14-17

b. *See* Perelman Dep. at 71:8-16

c. *See* Slovin Dep. at 25:5-11

d. *See* Gittis Dep. at 22:22-23:15

40. MAFCO has audited financial statements. The statements were audited by Ernst & Young or Peat Marwick in 1997 and 1998.

a. Perelman Dep. at 74:8-23

41. According to Maher, Joe Page, the chief financial officer of Coleman, would have given Ernst & Young instructions on the due diligence investigation of Sunbeam.

a. Maher Dep. at 327:25-328:6

b. *But see* Page Dep. at 100:8-24

NOT A CERTIFIED COPY

012686

F. The Sunbeam-Coleman Merger Transaction Was an Arm's-Length Transaction

42. The Sunbeam-Coleman merger transaction was an arm's-length transaction between two large and sophisticated companies, each advised by sophisticated in-house and outside lawyers, investment bankers, and accountants.

a. Maher Dep. at 36:24-37:12, 230:19-25

b. Nesbitt Dep. at 60:7-23

c. Perelman Dep. at 55:16-20

d. Slovin Dep. at 22:2-23

43. Schwartz confirmed this in his deposition:

> Q. Do you know Mr. Scarola?
>
> A. Yes, I do.
>
> Q. Is he an attorney retained by Coleman (Parent) Holdings in the matter that Coleman (Parent) Holdings brought against Arthur Anderson LLP and Phillip E. Harlow?
>
> A. He was.
>
> Q. He was authorized to speak on behalf of Coleman (Parent) Holdings in court?
>
> A He was.
>
> Q. Focus please beginning with the third sentence starting with "this case," do you see that? [CPH 1315402.]
>
> A. Yes, sir.
>
> Q. That sentence reads as follows:
>
> "This case involves a transaction negotiated at arm's length by two large sophisticated and publicly traded corporations. Each side was represented by prominent highly paid advisors, Morgan Stanley, Skadden, Arps and Arthur

NOT A CERTIFIED COPY

012687

> Anderson for Sunbeam and CS First Boston by Wachtell, Lipton. Sunbeam conducted due diligence just like any third-party buyer would do."
>
> Based on your positions in the MacAndrews & Forbes companies, are those true statements?

A. Yes, they are true statements.

a. Schwartz Dep. at 32:20-33:23

IV. THE COLEMAN COMPANY, INC.

A. Perelman Acquires Coleman in 1989

44. The original Coleman company was founded in 1901. For many years Coleman was a closely held and privately owned corporation. Coleman was "a leading manufacturer and marketer of consumer products for outdoor recreation and home hardware use on a global basis."

a. MS 251 at 3 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

45. In 1989, Perelman, through a holding company, purchased 100 percent of the privately held common stock of Coleman for approximately $455 million. Perelman outbid the younger members of the Coleman family who were trying to do a leveraged buyout of the company.

a. Perelman Dep. at 235:17-25

46. About the same time, Perelman hired Levin to run Coleman. Levin was brought in to restructure Coleman and build up its core businesses. Levin left in April of 1991 to run Revlon Inc., another of Perelman's companies.

a. Levin Dep. at 14:20-16:9, 58:12-59:19

47. In 1992, Perelman, through his holding company, made a public offering of a small percentage of Coleman's common stock. Perelman raised $125.7 million (9,670,000 shares of Coleman stock at $13 per share), but retained over 80 percent of the common stock, thus ensuring his control.

NOT A CERTIFIED COPY

012588

a. Perelman Dep. at 236:1-17

B. Perelman Steadily Increases the Debt of Coleman.

48. With Levin out, Coleman began taking on debt. In 1993 Coleman's long-term debt was $168,858,000.

a. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

49. Within a year, Coleman had increased its long-term debt to $291,175,000, and by 1995, long-term debt had risen to $355,257,000.

a. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

50. Coleman saw the high-water mark of long-term debt in 1996, reporting $583,613,000 in debt — a 350 percent increase over 1993 amounts.

a. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

51. By 1997, Coleman's long-term debt was at $477,799,000, up over 250 percent from the $168,858,000 it was carrying in 1993.

a. Oct. 8, 2004 Clark Dep. at 71:1-9

b. Perelman 249:15-250:4

c. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

C. A Debt-Ridden Coleman Underperforms in 1997

52. Despite having shown a net profit of $39 million in 1995, Coleman reported net sales of almost $42 million the following year in 1996.

a. Perelman Dep. at 244:1-24

b. Clark Dep. at 67:11-18

c. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

NOT A CERTIFIED COPY

012689

53. Faced with poor performance by Coleman and its management team, Perelman tapped Jerry Levin to return to Coleman as chief executive officer in February 1997, with the objective of making Coleman "profitable and sustainable."

a. Clark Dep. at 70:8-17

b. *See* Perelman 248:6-15

54. Showing some signs of financial improvement, Coleman reported a net loss of $2,536,000 in 1997.

a. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

55. Despite the marginal improvements in 1997, Coleman's stock price fell from a high of $26 per share in 1996 to a high of only $19-1/8 in 1997. Indeed, during the fourth quarter of 1997, Coleman's common stock traded between only $16-13/16 and $12-3/8.

a. Perelman Dep. at 246:20-247:9

b. MS 251 at 13 (March 23, 1998 1997 Coleman Form 10-K Annual Report)

56. Karen Clark, vice president of finance for Coleman, testified that the restructuring of Coleman was not expected to be complete until 2002, and that the very earliest the restructuring could be completed was sometime in 2000.

a. Clark Dep. at 81:6-13

57. Upon learning of the impending transaction, Clark was "surprise[d]" that Coleman "was selling so quickly" and "selling at for what appeared to be such a high premium."

a. Clark Dep. at 62:11-16

D. Perelman Leverages His Investment in Coleman to Issue $732 million in Debt and Pledges Coleman Shares as Collateral

58. In May 1997, Perelman utilized his investment in Coleman stock to generate cash. Through Coleman Escrow Corporation (later renamed CLN Holdings Inc.), Perelman ultimately issued $732,035,000 in Senior Secured Priority Discount Notes due 2001 and Senior Secured

NOT A CERTIFIED COPY

012590

First Priority Discount Notes due 2001 (collectively, "the Notes"). Perelman pledged his 44,067,520 shares of Coleman as collateral for the Notes.

a. MS 241 at 2 (May 15, 1997 Coleman Escrow Offering Memorandum)

59. As of the end of 1997, CLN Holdings Inc. was carrying $980,447,00 of long-term debt (including the Notes) and had pledged all of its shares of Coleman stock to secure portions of that debt.

a. MS 166 at F-27, F-39-41 (March 19, 1998 Offering Memorandum)

60. As of March 30, 1998, MAFCO had pledged all of the Coleman stock to support the holding companies' indebtedness and the indebtedness of MAFCO under two bank agreements, a revolving credit agreement, and a term credit agreement.

a. Engelman Dep. at 119:23-120:23

b. Slotkin Dep. at 119:22-25 (Todd Slotkin was the self-described "architect of all the MAFCO Finance [sic] business transactions.")

c. Slotkin Dep. at 116:15-23 ("Now, was The Coleman Company stock, the 82.4 percent of the stock, was it, at the time of the signing of the merger agreements, February 27th, 1998, was that stock pledged to any of the lending institutions under the term credit agreement or the revolving credit agreement identified as MS 300 and 301? A: I believe so.")

d. Slotkin Dep. at 159:4-11 ("Q: Were there any major assets of MAFCO Holdings Inc. through its subsidiary Holdings that had not been pledged against existing debt as of the first quarter of 1998? .... A: All of the material assets were pledged.")

e. Slotkin Dep. at 160:8-19 ("Q: Did the pledge of the Sunbeam common stock, the approximately 14.1 million shares that we identified on Schedule 1, I believe, of Exhibit MS 303 -- excuse me, 302, did that have the effect of increasing the banks' or the lenders' security under the two credit agreements, MS 300 and 301? ... A: It replaced the security. Q: Which security did it replace? A: Coleman.")

NOT A CERTIFIED COPY

012691

V. PERELMAN MEETS DUNLAP AND SEES THE "FUTURE"

61. In 1997, "Mr. Perelman and [Jerry Levin] made a trip to Boca Raton[, Florida] to meet with Bernie Marcus of Home Depot." While on that trip, Perelman met with Albert Dunlap, the CEO of Sunbeam.

a. Levin Dep. at 96:13-20

62. Perelman had met Dunlap on several occasions in 1997 and had spoken with Dunlap about "possibly coming on the board of Coleman."

a. Perelman Dep. at 250:11-21; *see* Perelman Dep. at 252:5-15, 275:14-21

63. At the time, "Dunlap [was] currently the most admired and respected CEO in America" and "Wall Street's absolute darling." In addition to being "admired and respected," Dunlap was "a true great celebrity CEO at that point."

a. Levin Dep. at 104:4-24

64. Indeed, Perelman himself contributed to Dunlap's burgeoning celebrity by providing a jacket blurb for Dunlap's 1996 bestseller, *Mean Business: How I Save Bad Companies and Make Good Companies Great*, in which Perelman described Dunlap as "lively, funny and provocative" and encouraged readers to "find out what he's all about."

a. Perelman Dep. at 252:23-253:25

b. MS 431 (*Mean Business: How I Save Bad Companies and Make Good Companies Great*)

65. The morning after Perelman's meeting with Dunlap in Florida, while Perelman and Levin were driving to the airport to return to New York, Levin inquired about the meeting with Dunlap and was told "the guy [Dunlap] is doing a tremendous job [at Sunbeam] has extraordinary financial returns." Perelman further told Levin that "he couldn't understand why [Levin] couldn't produce profitability [at Coleman] like Dunlap was doing at Sunbeam."

NOT A CERTIFIED COPY

01295292

a. Perelman Dep. at 41:24-42:1

66. When Levin expressed skepticism about the financial returns Dunlap had reported to Perelman, Perelman immediately telephoned Dunlap from the car and personally requested that Dunlap fax a copy of Sunbeam's ***interim financial statements*** to New York for Levin to review.[1]

a. Levin Dep. at 98:11-102:7

67. A review of the Sunbeam interim financial statements that Dunlap provided at Perelman's request convinced Levin that Dunlap's plans for Sunbeam were "a business model that I was unfamiliar with." Indeed, Levin — a man whose "forte" was turning around underperforming branded consumer products companies like Sunbeam — "did not understand how [Dunlap's] model would be successful over the long term."

a. Levin Dep. at 102:18-103:1; *see* Levin Dep. at 63:11-24

68. Levin informed Perelman that he, Levin, "did not know based on my own experiences how to do what [Dunlap] is doing" and that "[i]f . . . Perelman, want[ed] somebody to try [Dunlap's approach]" he should "find somebody else because this is not in my business skill base."

a. Levin Dep. 104:4-15

NOT A CERTIFIED COPY

012593

[1] Interim financial statements are unaudited financial statements, usually maintained on a month-to-month basis, that eventually form the basis for audited quarterly and annual financial statements. *See* Levin Dep. at 43:19-24; Maher Dep. at 46:23-47:17.

VI. IN LATE 1997 MICHAEL PRICE INITIATES DISCUSSIONS BETWEEN SUNBEAM AND PERELMAN

A. Michael Price Asks Perelman to Meet Dunlap

69. Michael Price — chairman of Mutual Benefit Shares, a mutual fund which owned a "ton" of Sunbeam stock in 1997 — called Howard Gittis in late November or early December to discuss the potential acquisition of Coleman by Sunbeam.[2]

a. Nesbitt Dep. at 59:23-60:6

b. Perelman Dep. at 197:1-5, 273:17-274:4, 296:24-297:8

c. Gittis Dep. at 64:19-25, 69:4-17

d. Schwartz Dep. at 102:20-103:6

70. Price told Gittis that Dunlap had a significant interest in seeing Sunbeam acquire Coleman and would like to do the deal very quickly. Gittis told Price that "Coleman is in the early stages of its turnaround, its stock market price is not going to reflect what [Perelman] consider[ed] to be its real intrinsic value," and indicated that any meeting regarding a Sunbeam-Coleman transaction should not occur for six months to a year.

a. Gittis Dep. at 68:6-24

71. There was no mention of Morgan Stanley during the initial call between Gittis and Price. As Gittis put it, "[t]his was all Al."

a. Gittis Dep. at 68:25-69:3

72. As a result of Price's efforts, a meeting was arranged on December 18, 1997 at Perelman's mansion in Palm Beach. Present at the meeting were Dunlap, Price, Gittis, and Perelman.

NOT A CERTIFIED COPY

012594

[2] Representatives from MAFCO apparently met with Morgan Stanley on November 6, 1997 to discuss, among other things, a potential sale of *Sunbeam to MAFCO*. Maher Dep. at 147:3-149:6; MS 374 at 2 (May 7, 1998 Wachtell letter).

a. Perelman Dep. at 273:24-274:4

b. Gittis Dep. at 12:17-25

B. Perelman Prepares to Meet Dunlap and MAFCO Does Its Own Analysis of a Sunbeam-Coleman Transaction

73. On or about December 8 and 10, 1997, MAFCO prepared its own internal analyses of the financial consequences of a merger transaction with Sunbeam. Nesbitt, an analyst by trade, was the "primary person" at MAFCO who "conducted the numerical analyses of the [Sunbeam] transaction."

a. Nesbitt Dep. at 50:17-23

b. *See* Maher Dep. at 164:4-11

c. *See* MS 104, 105 (Dec. 8 & 10, 1997 Sunbeam/Coleman Comparisons)

d. *See* Nesbitt Dep. at 25:6-26:6, 170:22-171:5

74. Nesbitt based his numerical assumptions for Coleman on information he received internally from Coleman. In addition, he turned to public sources for information about Sunbeam, like Sunbeam's Securities Exchange Commission filings and estimates created by financial analysts at Goldman Sachs, not Morgan Stanley.

a. Nesbitt Dep. at 52:9-22, 124:25-125:20, 130:9-131:16; 132:22-133:10

75. Under Nesbitt's models, the potential transaction between Coleman and Sunbeam would consist of an all stock deal because Perelman wanted as much Sunbeam stock as he could get. Perelman did not want cash.

a. Nesbitt Dep. at 167:19-22

b. MS 104, 105 (Dec. 8 & 10, 1997 Sunbeam/Coleman Comparisons)

c. *Infra* ¶¶ 99-100

NOT A CERTIFIED COPY

012695

76. Nesbitt, upon consultation with Maher, placed the value of Coleman somewhere along a range of $22 to $30 per share. Nesbitt did not share any of his numerical analyses of the potential transaction with Morgan Stanley or Sunbeam.

a. Nesbitt Dep. at 51:10-12, 51:17-20, 215:24-216:10

b. *See* MS 104, 105 (Dec. 8 & 10, 1997 Sunbeam/Coleman Comparisons)

77. On December 11, 1997, Nesbitt prepared a spreadsheet reflecting Sunbeam's third quarter 1997 performance against the prior year's third quarter and estimating Sunbeam's fourth quarter 1997 performance against the prior year's fourth quarter. Nesbitt identified several "items that jumped out" about Sunbeam's quarter and noted these concerns in a footnote. Nesbitt identified that one "concern has been international pipeline filling."

a. Nesbitt Dep. at 226:3-19; *see* Nesbitt Dep. at 221:13-222:1, 224:21-24, 232:2-6

b. *See* MS 165 (Dec. 11, 1997 Sunbeam Quarterly Earnings Comparison)

78. Nesbitt also concluded that the "[u]ptick in [Sunbeam's] third quarter receivables supposedly relates to one half of the quarter sales being shipped in September." He testified that the impetus for his footnote about the "uptick" in receivables was his awareness that financial analysts covering Sunbeam had reported that one half of Sunbeam's sales for the entire third quarter of 1997 arose in the final month of the quarter.

a. Nesbitt Dep. at 227:3-7; 228:7-13

b. *See* MS 165 (Dec. 11, 1997 Sunbeam Quarterly Earnings Comparison)

79. Nesbitt circulated his December 11, 1997 analysis of Sunbeam to the "operating management team" of Coleman — including Levin — for their "judgment as to whether this was an issue or not and to follow up." The "operating guys at Coleman" never expressed that the

NOT A CERTIFIED COPY

012696

footnotes to his December 11, 1997 analysis were of any concern to them, and he did not recall a need for further investigation by MAFCO.

a. Nesbitt Dep. at 233:15-234:5, 234:24-235:22

80. On December 12, 1997, Perelman, Maher, and Gittis met with Gordon Rich of CSFB and Levin to discuss a potential transaction with Sunbeam. There were no Morgan Stanley representatives at the meeting.

a. Maher Dep. at 187:18-25, 189:8-14

81. That same day, Coleman executives (Levin, Shapiro, and Page) gave Sunbeam representatives (Russell Kersh, David Fannin, and Peter A. Langerman) a presentation on Coleman's business and the potential "synergies that could result from a combination of Sunbeam and Coleman." Morgan Stanley did not attend the meeting.

a. MS 75 (March 30, 1998 Wachtell Chronology)

b. *See* MS 78 (Dec. 15, 1997 Synergy List)

c. *See* April 27, 2004 Page Dep. at 169:1-170:8

82. As of the December 12, 1997 meeting, MAFCO had not received any documents from Morgan Stanley about a potential acquisition of Coleman by Sunbeam.

a. Maher Dep. at 191:11-16

C. Perelman Does an Analysis of Dunlap's Employment Contract with Sunbeam

83. On December 15, 1997, Nesbitt prepared a memorandum detailing the compensation structure of Dunlap's employment contract with Sunbeam and circulated this memorandum to Perelman, Gittis, and Maher.

a. Nesbitt Dep. at 257:14-258:2

b. MS 224 (Dec. 15, 1997 Dunlap Employment Contract)

NOT A CERTIFIED COPY

012697

84. Nesbitt prepared the December 15, 1997 memorandum to gauge Dunlap's "economic incentives" and concluded that Dunlap's employment contract created "the incentive to increase the stock price" of Sunbeam. Perelman did not recall why the memo was prepared. Perelman, Gittis, and Maher agreed with Nesbitt's conclusion.

a. Nesbitt Dep. at 258:6-25, 260:8-15

b. MS 224 (Dec. 15, 1997 Dunlap Employment Contract)

c. Perelman Dep. at 300:6-302:7 (Perelman opined that Gittis thought Dunlap "was looking for a job" at the upcoming December 18 meeting.)

D. CSFB's December 1997 Analysis of a Sunbeam-Coleman Merger Transaction

85. Gittis requested that CSFB prepare an analysis of analyst reports on Sunbeam in advance of the December 18, 1997 meeting between Perelman, Price, Gittis, and Dunlap.

a. Gittis Dep. at 89:8-15

86. On December 16, 1997, representatives of MAFCO met with representatives of CSFB to discuss a possible transaction between Coleman and Sunbeam and to prepare for the December 18, 1997 meeting.

a. Maher Dep. at 194:6-195:8

E. Dunlap and Perelman Meet at Perelman's Mansion in Palm Beach on December 18, 1997

87. At the behest of Michael Price, Perelman and Gittis met with Dunlap and Price at Perelman's Florida home on December 18, 1997 to discuss Sunbeam acquiring Coleman.

a. Engelman Dep. at 48:17-49:6

b. Perelman Dep. at 298:8-13

c. Gittis Dep. at 74:23-75:20

88. Morgan Stanley did not have any role in laying the groundwork for the December 18, 1997 meeting and did not attend the meeting.

NOT A CERTIFIED COPY

012698

a. Perelman Dep. at 341:1-23

b. Gittis Dep. at 76:9-12

89. At the December 18, 1997 meeting, Dunlap expressed to Perelman and Gittis that he wanted Sunbeam to acquire Coleman and believed that the "deal cri[ed] out to be done."

a. Gittis Dep. at 76:14-18, 79:6-10

90. Gittis informed Dunlap that MAFCO had "asked CSFB to calculate out one thing for [him], which is what price can Sunbeam pay depending upon the amount of synergies that we would agree might be available. Without us being dilutive to Sunbeam. And that is 30 bucks a share. And I have zero interest in selling for less than that."

a. Gittis Dep. at 78:4-16

91. Dunlap was visibly upset by Gittis' proposal and proceeded to shout and use scatological terms about the offer, Coleman, and Gittis. During the meeting, Dunlap told Gittis and Perelman that they didn't know what they were doing, and that he was a fabulous manager who would save Coleman. At one point, Gittis had to calm Dunlap down, warning him that he looked as if he would have a heart attack. Dunlap responded that he was fine and that it was *he* who would give *them* a heart attack. Perelman responded by laughing at Dunlap.

a. Gittis Dep. at 81:1-83:20

b. Perelman Dep. at 338:6-340:11

92. The December 18, 1997 meeting ended with Dunlap cursing and storming out of the meeting.

a. Perelman Dep. at 335:18-20, 341:24-342:16

b. Gittis Dep. at 83:8-17

93. Following Dunlap's blow-up at the December 18, 1997 meeting, the prospect of a transaction between Sunbeam and Coleman was, in the view of Perelman, "dead in the water."

NOT A CERTIFIED COPY

012699

a. Perelman Dep. at 350:6-13

b. Gittis Dep. at 95:10-19

c. *See* Maher Dep. at 201:9-12 (describing the prospects of a deal between Sunbeam and Coleman as "dead and gone" in the wake of the December 18, 1998 meeting)

94. Levin learned of the outcome of the December 18 meeting and concluded the deal was dead. He had no further involvement in the negotiations that he can recall until February 20, 1998.

a. Levin Dep. at 30:14-20, 151:4-21

VII. PERELMAN AND SUNBEAM RESTART DISCUSSIONS ABOUT COLEMAN

A. Perelman Rejects Sunbeam's January 23, 1998 Offer

95. In late December, and after the meeting in Palm Beach at Perelman's mansion, Price contacted Gittis to apologize for Dunlap's behavior at Perelman's home. Price also told Gittis that Sunbeam would be willing to consider a transaction valued as high as $25 per Coleman share, but Gittis indicated that such a proposal would not be of interest to MAFCO.

a. Maher Dep. at 204:5-205:6

96. In mid to late January 1998, William Reid of Morgan Stanley called Perelman and told him that Sunbeam was still interested in a transaction with Coleman.

a. Perelman Dep. at 116:11-24, 353:14-23

b. Maher Dep. at 207:18-208:6, 234:19-235:6

c. Gittis Dep. at 85:8-19

97. Perelman could not recall "anyone at either Coleman or MacAndrews & Forbes having any communications with Morgan Stanley about a Coleman-Sunbeam transaction" prior to Reid's telephone call. The telephone call from Reid is the only direct conversation Perelman

NOT A CERTIFIED COPY

012700

can recall ever having with any Morgan Stanley representative in connection with the Sunbeam-Coleman transaction before the closing of the transaction on March 30, 1998.

a. Perelman Dep. at 353:7-12; *see* Perelman Dep. at 94:8-95:15, 116:11-19

98. Gittis testified that Reid's call was not improper: "[I]t was perfectly appropriate for [Morgan Stanley] to call Ronald or to call me, or to have some of the younger guys call Maher. There was no problem at all with that. And they were trying to get a deal done. It is their job."

a. Gittis Dep. at 85:20-86:16

99. Perelman believed that there was more "upside" in taking Sunbeam stock rather than cash.

> Q. Did you [Gittis] ever suggest to him [Perelman] that he should not do that, that he should take cash?
>
> A. That is irrelevant. That is why he is richer than me. I would always take cash, but he is far more bullish than I am.
>
> Q. Do you remember Mr. Levin, were you ever present when Mr. Levin said words to the effect that he, Mr. Perelman, should take as cash and not stock?
>
> A. I don't recall that. At least, it was not in my presence.
>
> Q. I take it, given the 1998 markets being what they were, there was more upside in stock than in cash?
>
> A. Ronald certainly believed so.

a. Gittis Dep. at 127:25-128:14

100. Perelman therefore instructed his negotiators to negotiate a transaction structure with Sunbeam that provided consideration in the form of Sunbeam stock, and to seek a deal where Sunbeam stock was 100 percent of the consideration that MAFCO would receive. Indeed,

NOT A CERTIFIED COPY

012701

Perelman would have taken 100 percent stock if he could have done so without delaying the deal.

a. Gittis Dep. at 125:25-126:6, 127:20-22, 128:11-14

b. Perelman Dep. at 363:16-18

101. On January 23, 1998, following Reid's telephone call, representatives from Morgan Stanley met with Nesbitt to discuss a potential transaction between Coleman and Sunbeam. At the meeting, Morgan Stanley gave Nesbitt a document (MS 80) entitled "Laser Corporation Key Assumptions." Nesbitt testified that he did not view anything in the document provided by Morgan Stanley on January 23, 1998 to be a "misrepresentation of a fact." Morgan Stanley conveyed Sunbeam's offer to purchase Coleman in exchange for Sunbeam stock. Nesbitt listened to the offer, but he had no authority to negotiate a transaction. Nobody within MAFCO had authority to negotiate a particular price for the transaction unless Perelman had approved that price.

a. Maher Dep. at 225:3-15

b. Nesbitt Dep. at 294:23-295:3, 297:4-298:10, 298:16-299:3, 307:20-308:7

c. Gittis Dep. at 124:23-125:16

d. MS 80 (Laser Corporation Key Assumptions)

102. Nesbitt understood that the projections Morgan Stanley presented regarding Sunbeam's EBITDA[3] came from I/B/E/S ("Institutional Brokers Estimates Service"), a reporting service that provides combined analyst projections. I/B/E/S estimates are "[u]niversally used in the investment banking profession."

a. Nesbitt Dep. at 302:23-303:16

[3] EBITDA stands for "earnings before interest, taxes, depreciation, and amortization."

NOT A CERTIFIED COPY

012702

b. Maher Dep. 221:16-222:3

103. Although he was the head negotiator for MAFCO, Maher did not have the power to approve any deal on behalf of MAFCO regarding the potential transaction. Maher informed Morgan Stanley that the January 23, 1998 offer was unacceptable.

a. Gittis Dep. at 97:20-98:4

b. Maher Dep. at 225:18-226:5

104. Shortly after the January 23, 1998 meeting, Nesbitt created two additional spreadsheets analyzing the financial consequences of a transaction with Sunbeam. These spreadsheets, MS 106 and 107, were not based on information provided by Morgan Stanley at the January 23, 1998 meeting.

a. Nesbitt Dep. at 317:16-318:10, 325:21-326:9

b. Maher Dep. at 164:4-15, 170:12-21

c. MS 106 & 107 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

B. MAFCO Retains Wachtell to Represent Coleman and to Prepare Confidentiality Agreements

105. On January 28, 1998, Barry Schwartz, MAFCO's executive vice president and general counsel, retained Wachtell to represent MAFCO, CPH, and Coleman in the discussions with Sunbeam.

a. Schwartz Dep. at 34:3-20

b. MS 75 (March 30, 1998 Wachtell Chronology)

106. On January 29, 1998, Schwartz called Wachtell and informed them that a form of the "confidentiality agreement" to be proposed to Sunbeam would be faxed to them for their review. On the same day, Joram Salig, an in-house MAFCO attorney, prepared a confidentiality agreement and faxed it to Paul E. Shapiro, then general counsel of Coleman, and Wachtell.

a. Schwartz Dep. at 109:16-110:1

NOT A CERTIFIED COPY

012703

b. MS 75 (March 30, 1998 Wachtell Chronology)

c. July 8, 2004 Salig Dep. at 78:10-23

107. According to Maher (and others), it was customary for "parties in a transaction being negotiated such as the Coleman-Sunbeam transaction to exchange confidentiality agreements."

a. Maher Dep. at 239:8-13

b. *See* Slovin Dep. at 151:11-17, 154:6-13

c. *See* Salig Dep. at 53:12-54:17

108. To facilitate the exchange of information between CPH and Sunbeam, on or about February 4, 1998, Shapiro signed and sent a confidentiality agreement to Sunbeam. David C. Fannin, the executive vice president and general counsel of Sunbeam, executed the confidentiality agreement as of February 4, 1998. The confidentiality agreement is specifically referenced in the parties' merger agreements.

a. MS 133 (Feb. 4, 1998 Confidentiality Agreement)

b. MS 93 §§ 6.7, 11.2 (CLN Merger Agreement)

c. MS 117 §§ 7.2, 9.2 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement"))

d. Aug. 11, 2004 Order at 8

e. Shapiro Dep. at 75:6-21, 100:15-101:12, 103:21-104:7

109. Schwartz, who was ultimately responsible for all in-house legal matters for MAFCO and its holding companies, agrees that the term "financial advisor" in the February 4, 1998 confidentiality agreement includes Coleman's investment banking firm, CSFB.

a. Schwartz Dep. at 115:18-116:8, 122:15-24

NOT A CERTIFIED COPY

012704

110. The February 4, 1998 confidentiality agreement contains a provision whereby Sunbeam "understand[s] that, except as may otherwise be agreed in writing, neither the Company [Coleman], nor its Representatives, make any representation or warranty as to the accuracy or completeness of the Evaluation Material."

a. Schwartz Dep. at 123:7-21

b. MS 133 at 4 (Feb. 4, 1998 Confidentiality Agreement)

111. On or about February 23, 1998, Sunbeam and Coleman entered into a second confidentiality agreement. This confidentiality agreement complemented the February 4, 1998 confidentiality agreement. The confidentiality agreement is specifically referenced in the parties' merger agreements.

a. MS 134 (Feb. 23, 1998 Confidentiality Agreement)

b. MS 93 §§ 6.7, 11.2 (CLN Merger Agreement)

c. MS 117 §§ 7.2, 9.2 (Coleman Merger Agreement)

d. Slovin Dep. at 156:15-157:7

112. Schwartz, executive vice president and general counsel of MAFCO, testified that the Merger Agreement that he signed on behalf of CPH and CLN Holdings Inc. "referenced two confidentiality agreements."

a. Schwartz Dep. at 131:18-133:4

113. Schwartz testified that there was nothing unusual about the "various terms and conditions in these confidentiality agreements."

a. Schwartz Dep. at 139:18-140:11

114. Pursuant to these Confidentiality Agreements, CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including Morgan Stanley, would not have any liability to CPH by virtue of CPH's use of the information supplied to it by Sunbeam and its

NOT A CERTIFIED COPY

012705

representatives, including Morgan Stanley, while the parties were negotiating Sunbeam's purchase of Coleman.

a. MS 133 at 4 (Feb. 4, 1998 Confidentiality Agreement)

b. MS 134 at 4 (Feb. 23, 1998 Confidentiality Agreement)

115. In the Confidentiality Agreements, CPH also agreed that Sunbeam and its representatives, including Morgan Stanley, did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH.

a. MS 133 at 4 (Feb. 4, 1998 Confidentiality Agreement)

b. MS 134 at 4 (Feb. 23, 1998 Confidentiality Agreement)

C. Sunbeam Stock Tumbles after It Announces Lower than Projected Profits for the 4th Quarter of 1997

116. On January 29, 1998, an article appeared in the Wall Street Journal entitled, "Sunbeam Posts Profits Below Forecast, A Stumble That Sends Stock Down 9.5%." MAFCO was aware of the article.

a. Maher Dep. at 241:2-18

b. Nesbitt Dep. at 338:18-339:15

c. MS 206 (Jan. 29, 1998 "Sunbeam Posts Profit Below Forecasts, A Stumble That Sends Stock Down 9.5")

117. MAFCO continued to receive news clippings regarding the performance of various companies, including Sunbeam, in January 1998.

a. Engelman Dep. at 38:11-39:22

b. Perelman Dep. at 183:23-184:23

118. Following the January 29, 1998 Wall Street Journal article, Nesbitt, the primary internal analyst for MAFCO, did not contact any financial analysts who followed Sunbeam.

NOT A CERTIFIED COPY

012706

Nesbitt did, however, review analyst reports revised in the wake of Sunbeam's announcement of fourth quarter 1997 results. He also participated in a conference call conducted by Dunlap.

a. Nesbitt Dep. at 15:24-16:5, 339:24-340:18

119. Andrew Shore, an analyst at PaineWebber and acquaintance of Levin, covered Sunbeam. Shore reported on or about January 29, 1998 that "Sunbeam has been and continues to be a very risky story"; that Sunbeam's "EPS growth target of 40 percent in 1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in [the second half of 1997]"; and that Sunbeam "is employing a risky strategy to capture a larger share of the grill market."

a. MS 204 (Jan 29, 1998 Analyst Report)

b. *See* Perelman Dep. at 446:11-447:21

c. *See* Levin Dep. at 122:14-16

120. On February 6, 1998, Shore issued another report that noted Sunbeam's "aggressive balance sheet management" and "high inventory and receivable levels" and stated that "some 'warning signs' persist."

a. MS 138 (Feb. 6, 1998, "Did Al Show His Hand Too Soon?" PaineWebber)

b. Perelman Dep. at 448:5-449:21

121. Perelman was aware that PaineWebber was reporting "warning signs" at Sunbeam.

a. Perelman Dep. at 449:16-21

D. Perelman and Sunbeam Agree to *Defer* Due Diligence until Sunbeam Makes an Acceptable Offer

122. On January 29, 1998, representatives from Sunbeam, Coleman, MAFCO, Morgan Stanley, and CSFB met in New York to discuss potential synergies that would result from a

NOT A CERTIFIED COPY

012707

combination of Coleman and Sunbeam and to set a time frame for due diligence. This was the first meeting between representatives of Sunbeam and Coleman since December 12, 1997.

a. Maher Dep. at 232:6-233:10

b. MS 75 (March 30, 1998 Wachtell Chronology)

c. Page Dep. at 166:16-20, 169:1-170:8

123. At the January 29, 1998 meeting, the parties agreed that "the specific due diligence relating to interaction between representatives of Sunbeam and Coleman would take place after an acceptable proposal was on the table."

a. Maher Dep. at 237:13-238:12

E. Perelman Rejects Sunbeam's February 6, 1998 Proposal

124. On February 6, 1998, James Stynes, Alexandre Fuchs, Tyrone Chang, and Robert Kitts of Morgan Stanley met with Maher, Nesbitt, and Gordon Rich and Robert Duffy of CSFB. At that meeting, the Morgan Stanley representatives made a presentation reflecting a proposed transaction in which Coleman would be acquired by Sunbeam for consideration of .6017 Sunbeam shares per Coleman share (which was approximately $22 per share) plus warrants that Morgan Stanley valued at $4 per share.

a. Maher Dep. at 242:6-243:11

b. MS 75 (March 30, 1998 Wachtell Chronology)

125. Nesbitt does not believe that there were any misrepresentations in the document (MS 81) Morgan Stanley gave Nesbitt as part of its presentation at the February 6, 1998 meeting.

a. Nesbitt Dep. at 347:21-352:11

b. MS 81 (Feb. 6, 1998 Project Laser Proposed Summary Transaction Terms)

126. Maher told Morgan Stanley that MAFCO would not be prepared to support the proposed transaction and "advised Morgan Stanley that only an *all-stock transaction* that valued

NOT A CERTIFIED COPY

012708

Coleman stock at $30 a share or an amount slightly lower than $30 a share if the transaction involved cash and stock would be of interest."

a. Maher Dep. at 243:3-11 (emphasis added)

b. *See* MS 75 (March 30, 1998 Wachtell Chronology)

127. Also at the February 6, 1998 meeting, James Maher suggested that, as part of an eventual Sunbeam-Coleman transaction, Sunbeam assume Coleman Worldwide's and CLN Holdings' indebtedness, which was approximately $519,000,000 as of December 31, 1997.[4]

a. Maher Dep. at 252:12-253:14

b. MS 279 at 11 (Dec. 6, 1999 Notice of Merger)

c. MS 166 at F-27, 29 (March 19, 1998 Offering Memorandum)

VIII. PERELMAN AGREES TO SELL COLEMAN TO SUNBEAM FOR $27.50 PER SHARE

128. On February 13, 1998, Morgan Stanley representatives contacted Maher and proposed what was termed Sunbeam's best and final proposal, offering .65116 shares of Sunbeam stock per share of Coleman, which was approximately $24.50 per share, but Maher indicated that the proposal was not of interest. Maher then flew back to Aspen, Colorado on the afternoon of February 13, 1998.

a. Maher Dep. at 263:13-264:4, 272:8-273:16

b. MS 75 (March 30, 1998 Wachtell Chronology)

129. Maher returned to New York from Aspen on February 18, 1998, and on that day was contacted by Kitts of Morgan Stanley, who invited MAFCO to make a counterproposal to Sunbeam.

a. Maher Dep. at 276:5-277:16

[4] The figure for CLN Holdings' and Coleman Worldwide's debt does not include Coleman's debt, which was $477,779,000 as of December 31, 1997. *Supra* at ¶ 51.

NOT A CERTIFIED COPY

012709

130. On February 19, 1998, Maher, having consulted with Perelman, made a counterproposal to Kitts of .789 shares of Sunbeam per Coleman share, or $30 per share.

a. Maher Dep. at 280:7-281:16; 297:24-298:6

131. Kitts responded to Maher's counterproposal on February 19, 1998, offering an exchange rate of .711 Sunbeam shares per Coleman share, or $26.90. Maher informed Kitts that Coleman "would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock which was approximately $28.20 per share." Maher then flew to Aspen, Colorado, where he spent the weekend skiing before returning to New York on February 22, 1998.

a. Maher Dep. at 283:7-285:2, 297:24-298:6

132. On February 20, 1998, MAFCO received documents entitled Project Laser Proposed Summary Transaction Terms, which contained two consideration packages for the proposed transaction between Sunbeam and Coleman. This document (MS 83) "formed the basis for further negotiations and those negotiations ultimately led to an execution of the merger agreement" between Coleman and Sunbeam.

a. Maher Dep. at 291:11-296:19; *see* Maher Dep. at 286:10-287:11

b. *See* MS 83 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

c. *See* Nesbitt Dep. at 353:12-19

d. *See also* MS 340 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

e. *See also* Maher Dep. at 297:14-24

133. On or about February 20, 1998, Gittis returned to New York from vacation and received an update on the negotiations undertaken in his absence. Similarly, on February 20, 1998, Levin, while in Puerto Rico, received a call from either Perelman or Gittis and was told to

NOT A CERTIFIED COPY

012710

return to New York because Perelman had agreed to sell Coleman to Sunbeam. This was Levin's first involvement with the Sunbeam negotiations since December 1997.

a. Gittis Dep. at 97:20-98:7, 100:9-24

b. Levin Dep. at 30:5-31:1

134. The deal was signed one week later.

a. MS 93 (CLN Merger Agreement)

b. MS 117 (Coleman Merger Agreement)

IX. MAFCO PERFORMS VIRTUALLY NO DUE DILIGENCE OF SUNBEAM BEFORE THE EXECUTION OF THE MERGER AGREEMENT

135. With the Confidentiality Agreements in place, Sunbeam and MAFCO engaged in due diligence between February 23 to February 27, 1998, with each party represented by its own advisors. During this due diligence MAFCO had direct access to Sunbeam's management.

a. MS 75 (March 30, 1998 Wachtell Chronology)

b. Schwartz Dep. at 105:14-106:7

c. Maher Dep. at 320:14-25 (Between February 24 and February 27, 1998 "Coleman and Sunbeam and their respective advisers negotiated the structure of the transaction, conducted due diligence and drafted the necessary documentation.")

A. The MAFCO Due Diligence Team Is Leaderless

136. It was unclear who at MAFCO was responsible for conducting due diligence of Sunbeam. Even the most basic tasks, such as reviewing Sunbeam's financial statement for the year ending December 27, 1997, were neglected. More importantly, no one even asked for, let alone reviewed, Sunbeam's ***interim financial statements*** for January 1998, February 1998, and March 1998 prior to the Closing on March 30, 1998.

a. *Infra* ¶¶ 137-160

NOT A CERTIFIED COPY

012711

137. Engelman said MAFCO's due diligence leaders were Maher and Schwartz: "Q: [D]id you ever learn who on behalf of MacAndrews & Forbes has been responsible for due diligence of Sunbeam corporation in connection with the acquisition? A: It would have been Jim Maher and to some extent Barry Schwartz."

a. Engelman Dep. at 60:4-11

138. Schwartz, however, denied that he had any responsibility for due diligence: "Q: Did you going forward from the date of January 28th have any responsibility for the due diligence on the seller's side? A: I did not participate in any of the due diligence on our side of the transaction, no." Schwartz testified that "Maher was sort of leading the change."

a. Schwartz Dep. at 141:5-10, 141:16-17

139. Gittis said Maher and Levin were responsible for due diligence: "Now, turning to the Coleman Sunbeam transaction, the negotiations, externally --was Mr. Maher, in your view, the head negotiator? A. Mr. Maher and Mr. Levin. Q. Mr. Levin on behalf of Coleman? A. Mr. Levin on behalf of the Coleman Company Inc. Mr. Maher on behalf of the various Coleman holding companies and the MacAndrews companies."

a. Gittis Dep. at 33:10-19

140. Nesbitt said it was Maher: "I think it is fair to say that Mr. Maher was responsible for coordinating the transaction generally which included due diligence."

a. Nesbitt Dep. at 479:11-14

141. But Maher ***denied*** he had responsibility for due diligence: "Q: Did you [James Maher] have overall responsibility for monitoring the due diligence? A: No."

a. Maher Dep. at 324:19-22

142. Maher, in turn, pointed the finger at Levin, Joe Page (Coleman's Chief Financial Officer), and Coleman's accountants (Ernst & Young LLP): "Q: [L]et me ask you whether

NOT A CERTIFIED COPY

012712

there was a person on behalf of MacAndrews & Forbes that had overall responsibility for this due diligence that was conducted between February 24 and February 27, 1998? A: I would say the laboring oar was, from a business standpoint, was Jerry Levin and Joe Page and their accountants [Ernst & Young]. Obviously from a legal standpoint it was Wachtell, Lipton and First Boston was involved with both the legal and financial, business due diligence."

a. Maher Dep. at 324:5-18

143. Page's testimony, however, reveals that he considered his due diligence responsibilities to be somewhat more limited:

> Q. Were you involved with or responsible for conducting any due diligence on Sunbeam prior to the acquisition?
>
> A. No.
>
> Q. Did you work with any of Coleman's outside advisors who were tasked with doing due diligence on Sunbeam?
>
> A. No.
>
> Q. Did you perform an evaluation of the deal for Coleman?
>
> A. No.
>
> Q. Do you know who, if anyone, did perform such evaluation?
>
> A. I don't have a direct recollection of anybody performing that that I would have known. If it would have been done, it would have been done by MacAndrews & Forbes staff.

a. Page Dep. at 100:8-24

144. Levin, the individual Maher identified as taking the "laboring oar" on due diligence, testified that his due diligence responsibilities consisted of "review[ing] Sunbeam's business plan and long term strategy" and "going to the [February 23, 1998] meeting."

NOT A CERTIFIED COPY

012713

a. Levin Dep. at 81:19-82:7

145. Levin had no responsibility for due diligence of Sunbeam after the signing of the merger agreements. Indeed, Levin testified that he "was out of the company completely" following the signing of the merger agreements.

a. Levin 46:16-23, 83:6-10

B. Maher Does No Due Diligence of Sunbeam

146. Maher was capable of performing due diligence in connection with a merger such as the Sunbeam-Coleman merger.

a. Maher Dep. at 36:1-5

147. Maher ***did not review*** the Sunbeam 10-K for 1997 — which contained Sunbeam's audited financial statements for the year ending December 27, 1997 — before the closing of the merger agreements.

a. Maher Dep. at 27:21-28:1

148. Maher ***did not read*** the March 19, 1998 Offering Memorandum (MS 166) for the Sunbeam debentures underwritten by Morgan Stanley in connection with the Sunbeam-Coleman transaction.

a. Maher Dep. at 29:5-13

149. Maher ***did not read or even request*** copies of Sunbeam's 1998 interim financial statements before the closing on March 30, 1998.

a. Maher Dep. at 388:13-389:13

150. MAFCO was aware that Sunbeam maintained a room of material (a so-called, data room) that contained a collection of documents that might be required for due diligence. Nesbitt testified that he never visited this room, and did not know if anyone from the Coleman team actually visited the room.

NOT A CERTIFIED COPY

012714

a. Nesbitt Dep. at 482:12-483:4

b. Nov. 22, 2004 Freed Dep. at 68:19-70:13

c. MS 440 (March 3, 1998 Index of Information)

d. *See* Schwartz Dep. at 174:20-175:2 ("Q. Sunbeam maintained a room of materials concerning their business operations at the Skadden, Arps law firm. Are you aware of anyone from the Coleman side going over to the Skadden, Arps firm to look at the materials that had been assembled about Sunbeam and its business? A. I'm not aware.")

C. CSFB Does No Due Diligence of Sunbeam

151. CSFB, the exclusive financial advisor to MAFCO, CPH, and Coleman, was capable of performing due diligence in connection with a merger such as the Sunbeam-Coleman merger in 1998.

a. Maher Dep. at 35:20-25

152. CSFB was instructed by MAFCO "to do their normal due diligence that they would conduct in a transaction like this."

a. Maher Dep. at 329:9-17

153. Among its responsibilities, CSFB was assigned the task of reviewing Sunbeam's audited and ***unaudited*** financial statements. CSFB, however, ***never asked for or reviewed*** Sunbeam's unaudited interim financial statements for January, February or March 1998.

a. Nesbitt Dep. at 482:1-7

b. Duffy Dep. at 247:3-254:11

154. Perelman testified that he was not aware of anyone from CSFB who "review[ed] any unaudited financial statements such as interim financial statements of Sunbeam" for any period in 1998.

a. Perelman Dep. at 390:14-19

NOT A CERTIFIED COPY

012715

155. In a February 25, 1998 internal memorandum to the CSFB Investment Banking Committee, Gordon Rich, Steven Duffy, Robert Geller, Ramesh Chakrapani — the CSFB personnel who worked on the Sunbeam-Coleman transaction — described the extent of CSFB's "normal due diligence" which did not include reviewing Sunbeam's interim financial statements for any period in 1998:

> ***12. Due Diligence***
>
> CSFB has had a long relationship with Coleman. It participated in the initial public offering of the Company in 1992 and several financings since then. In connection with this transaction, the CSFB team has met several times with Coleman senior management (primarily Jerry Levin, the CEO, and Joe Page, the CFO) to discuss the Company's historical and financial results.
>
> CSFB also met with Sunbeam senior management on February 23, 1998 and February 24, 1998 to discuss Sunbeam's strategic plan and 1997 results. CSFB attendees were Robert Duffy and Steven Geller.

a. MS 230 at 11 (Feb. 25, 1998 CSFB Investment Banking Committee Memo)

b. *See* Duffy Dep. at 210:1-17, 220:4-23

D. Wachtell Does No Due Diligence of Sunbeam

156. The law firm of Wachtell, Lipton, Rosen & Katz, the legal advisor to MAFCO, CPH, and Coleman, was capable of performing due diligence in connection with a transaction like the Sunbeam-Coleman merger in 1998.

a. Maher Dep. at 36:12-17

b. Mar. 17, 2004 CPH Resp. to MS's 2d Set of Reqs. for Admiss., Resp. 6-8

157. MAFCO instructed Wachtell to perform "the normal drill" with respect to due diligence on the Sunbeam-Coleman transaction.

a. Maher Dep. at 327:18-24

NOT A CERTIFIED COPY

012716

158. Adam Emmerich, MAFCO's "primary point of contact" at Wachtell, could not recall doing ***any*** due diligence between the date Wachtell was retained and the date the merger agreements were signed.

a. Sept. 28, 2004 Emmerich Dep. at 107:14-108:15

b. Schwartz Dep. at 92:12-19

E. Ernst & Young Does No Due Diligence of Sunbeam

159. In conducting due diligence, both MAFCO and Morgan Stanley relied upon the financial statements of Sunbeam as audited by Arthur Andersen.

a. Jun. 16, 2004 Yoo Dep. at 32:3-23[5]

b. Engelman Dep. at 100:25-101:11 ("Q:...you would rely on an audited financial statement, would you not, sir....A: Yes. And, as a matter of fact, I think that MacAndrews & Forbes did rely upon that. Q: And would the same would be true for the 1997 audited financial statements of Sunbeam by Arthur Andersen, correct? A: Yes.")

c. Slovin Dep. at 290:8-9

160. Maher testified that an accounting due diligence by Ernst & Young would have been done under the direction of Joe Page, Coleman's CFO. Page testified that he did not know of any such due diligence.

a. Maher Dep. at 324:5-18

b. Page Dep. at 100:8-24

NOT A CERTIFIED COPY

012717

[5] Eugene Yoo was an associate in the Mergers & Acquisitions group for Morgan Stanley at the time of the Sunbeam Transaction.

X. SUNBEAM DISCLOSES TO MAFCO THAT SUNBEAM'S JANUARY AND FEBRUARY 1998 SALES ARE "SLOW"

A. MAFCO Representatives Hear Sunbeam's Plans for the Next Three Years

161. On February 23, 1998, a series of three meetings were held regarding the potential transaction between Coleman and Sunbeam. At the first meeting, representatives of MAFCO, Coleman, Morgan Stanley, and CSFB met to conduct due diligence ***on Coleman***.

a. Maher Dep. at 300:1-301:11

b. Nesbitt Dep. at 366:6-14

c. MS 75 (March 30, 1998 Wachtell Chronology)

162. At the second February 23, 1998 meeting, representatives from MAFCO met with CSFB "to discuss the status of the transaction" between Coleman and Sunbeam.

a. Maher Dep. at 301:17-302:1

b. *See* Nesbitt Dep. at 369:19-22

163. The third and final meeting on February 23, 1998 took place at the offices of Morgan Stanley and was attended by Nesbitt, Shapiro, and Maher of MAFCO; Isko, Fannin, Goudis, and Kersh of Sunbeam; Levin and Page from Coleman; Duffy of CSFB; and Messrs. Chang, Kitts, Fuchs, and Stynes of Morgan Stanley. The meeting lasted for "at least an hour."

a. Levin Dep. at 182:22-183:3

b. Maher Dep. at 300:7-16, 302:12-18

c. Nesbitt Dep. at 47:25-48:4, 192:13-16

d. MS 75 (March 30, 1998 Wachtell Chronology)

164. Levin attended the third meeting because he was, in his own words, "probably in the best position to evaluate [Sunbeam's] business plans from our group."

a. Levin Dep. at 182:22-183:12.

NOT A CERTIFIED COPY

012718

165. At the third meeting, Russell Kersh, chief financial officer of Sunbeam, gave a presentation using overheads of a document entitled "Sunbeam Strategic Long Range Plan," which summarized in bullet-point fashion Sunbeam's ***projections*** for 1998 through 2000, as well as other information about Sunbeam.

a. Maher Dep. at 300:7-16

b. Nesbitt Dep. at 371:24-372:7

c. MS 84 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

d. Levin Dep. at 47:16-48:8

166. Levin "understood that the financial matters that were presented [by Kersh] were projections three years into the future."

a. Levin Dep. at 189:10-13

167. Morgan Stanley did not make a presentation at the third February 23, 1998 meeting.

a. Nesbitt Dep. at 380:20-24 ("I don't believe that there was a presentation by anyone from Morgan Stanley.")

b. Page Dep. at 100:1-7

c. Levin Dep. at 185:3-8

B. Sunbeam Alerts MAFCO that Sunbeam's Sales are "Slow"

168. Attendees at the third February 23, 1998 meeting received a hard copy version of Kersh's presentation. Levin made notations on his copy of the document. MS 84 is Levin's copy of the "Long Range Plan" with his handwritten notes.

a. Perelman Dep. at 369:14-370:8

b. Levin Dep. at 182:22-183:21

c. MS 84 at CPH 1324771 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

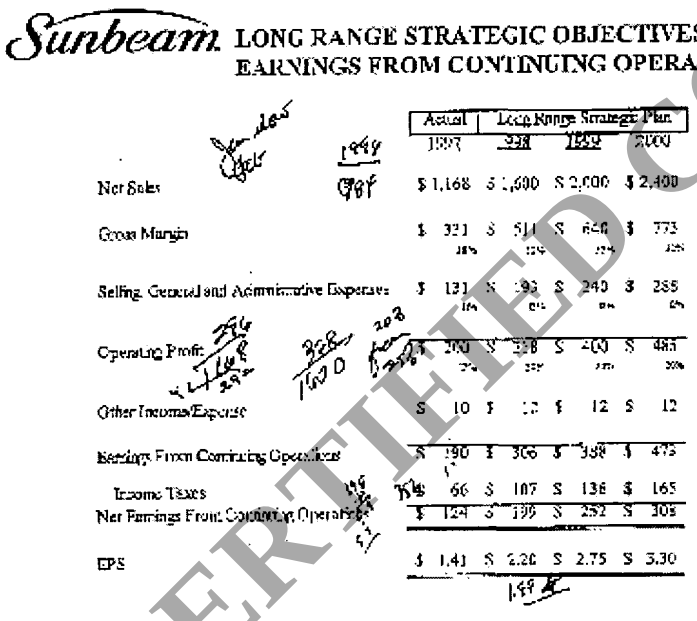
NOT A CERTIFIED COPY

012719

169. Specifically, in the section of the presentation that covered Sunbeam's net sales in 1998, Levin made the notation "Jan Feb Slow," as set forth below.

a. Perelman Dep. at 370:9-21

b. Levin Dep at 229:5-230:18



Sunbeam LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 321	$ 511	$ 640	$ 773
Selling, General and Administrative Expenses	$ 131	$ 193	$ 240	$ 288
Operating Profit	$ 190	$ 318	$ 400	$ 485
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 180	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

c. MS 84 at CPH 1324771 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

170. Between February 23, 1998 and the March 30, 1998 closing, Levin does not know of anyone at MAFCO or Coleman, including himself, who asked Sunbeam for "detailed information on Sunbeam's net sales for any period in the first quarter of 1998."

a. Levin Dep. at 231:4-232:1

171. Levin further noted that that Sunbeam's estimated earnings per share for 1998 would be "$1.99" rather than the $2.20 that was indicated in the text of the document.

a. Levin Dep at 234:25-236:14

NOT A CERTIFIED COPY

012720

b. MS 84 at CPH 1324771 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

172. At the meeting, Sunbeam also provided a packet of information entitled "Sunbeam Corporation Discussion Materials February 1998." Levin, Coleman's expert on consumer products for MAFCO, said he never saw the documents.

a. Levin Dep. at 259:9-25

b. Gittis Dep. at 47:13-48:8

c. MS 85 (Feb. 1998 Discussion Materials)

173. These Discussion Materials are Evaluation Materials as defined in the Confidentiality Agreements. The financial information contained in MS 85 regarding Sunbeam came from various public sources, including an Oppenheimer research report. Gittis testified that he was "sure" that MAFCO already possessed the Oppenheimer research report cited by Morgan Stanley in the "Sunbeam Corporation Discussion Materials February 1998" packet.

a. Gittis Dep. at 140:8-21

b. *See* MS 85 at CPH 1411226 (Feb. 1998 Discussion Materials)

174. Gittis did not participate in the third February 23, 1998 meeting, but he testified that he reviewed the materials distributed at the meeting that same day.

a. Gittis Dep. at 134:4-14, 136:8-159:8

175. Gittis did not ask CSFB to investigate any of the statements in the "Sunbeam Corporation Discussion Materials February 1998." Nor did Gittis know if anyone on the MAFCO team investigated any of the statements about Sunbeam made in the "Sunbeam Corporation Discussion Materials February 1998."

a. Gittis Dep. at 158:19-159:8

NOT A CERTIFIED COPY

012721

176. Maher was asked if he could recall "any specific question ever asked of Morgan Stanley at the February 23 meeting [about] whether Sunbeam would meet its net sales objectives for the first quarter of 1998." Maher did not recall any such question.

a. Maher Dep. at 310:12-17

177. Maher was asked if he could recall "any question asked of Morgan Stanley at the February 23 meeting [about] whether Sunbeam would meet its earnings per share estimates of $2.20 for the first quarter of 1998." Maher did not recall any such question.

a. Maher Dep. at 310:18-22, 312:7-12

178. Maher was asked whether "anyone ask[ed] Morgan Stanley at the [February 23, 1998] meeting whether Sunbeam would meet its long term strategic plan net sales goals." Maher testified that no one posed such a question to Morgan Stanley.

a. Maher Dep. at 311:15-19

179. Maher could not recall anyone at the meeting asking Sunbeam for a copy of Sunbeam's interim financial statements for the month of January 1998.

a. Maher Dep. at 312:18-313:2

C. In the Elevator, Levin Tells Maher and Nesbitt that Sunbeam's Plans Are "Quite a Stretch" and Not Achievable

180. Levin left the February 23, 1998 meeting with Maher and Nesbitt and rode down in the elevator with them. In the elevator, Levin told them both that Sunbeam's projections were "quite a stretch" and not achievable.

> Q. Was there any further discussion that evening, outside of the presence of Sunbeam or Morgan Stanley, about the materials in Exhibit 84?
>
> MR. MARKOWSKI: Objection to the form.
>
> A. Yes.
>
> Q. There was? Did you say Yes?

NOT A CERTIFIED COPY

0127122

A. Yes.

Q. Where did that discussion take place?

A. Between the conference room we were in and reaching the lobby of the Morgan Stanley building.

Q. Do you recall the discussion?

A. I recall some of it.

Q. What do you recall?

A. I voiced an opinion.

Q. What was your opinion? Who did you voice the opinion to from -- while you were traveling from the Morgan Stanley conference room to the lobby of the building?

A. The MacAndrews & Forbes people.

Q. What did you tell them?

A. That I thought the sales in that, and net income expectations of the long-range plan were quite a stretch and I did not think they were achievable.

a. Levin Dep. at 256:2-257:4

181. Levin reiterated his opinion the next morning to Perelman, Gittis, and Maher:

Q. Between the evening of February 23rd, 1998 and the conclusion of the meeting that we have been going over, discussing Morgan Stanley Exhibit 84 and the actual execution of the merger agreements, as of February 27th, 1998, did you have any discussions with anyone at MacAndrews & Forbes or Coleman about Morgan Stanley Exhibit 84?

MR. BIDEAU: Other than the elevator --

Q. Other than the elevator conversation, yes.

A. Probably.

Q. Did you have any specific recollection of those conversations, as you sit here today?

NOT A CERTIFIED COPY

012723

A. Not specific, no.

Q. Do you have any general recollection of discussions of the, of Morgan Stanley Exhibit 84, of --

A. That was the presentation?

Q. Yes, sir. From the conclusion of the presentation up to the signing of the merger agreements on February 27th.

A. Yes.

Q. What is your general recollection?

A. That I felt the strategic plan, as presented, was a stretch, unlikely to be achieved, but that I thought it was reasonable that they would achieve growth and earnings in line with whatever, where Wall Street was, which was considerably below the strategic plan at that point.

And I did not have any particular thoughts, one way or the other, as to whether the stock was valued high or low, as a result.

Q. Who did you have these discussions with?

A. I am sure I had them with Mr. Perelman and Mr. Gittis and associates.

Q. Would Mr. Maher be within that group?

A. Yes, sir.

Q. Would Mr. Nesbitt be in that group?

A. He may or may not have been in attendance.

Q. Where did these discussions take place, if you remember?

A. They -- almost certainly took place the next morning. Assuming that was not the Friday night -- I don't -- February 23rd?

Q. It was a Monday, I believe.

NOT A CERTIFIED COPY

012724

A. I am almost certain they took place the next morning, either at breakfast at the townhouse or after breakfast at the townhouse -- the MacAndrews & Forbes headquarters, I should say.

Q. And the townhouse, and the headquarters are virtually within 100 yards of each other; correct?

A. It is a lot closer.

a. Levin Dep. at 260:9-262:19

182. Nesbitt did not believe that Morgan Stanley intended to misrepresent any information presented at the third February 23, 1998 meeting.

a. Nesbitt Dep. at 384:15-23 (Q: Do you think there was anything that Morgan Stanley misrepresented on February 23, 1998 that they knew at that time was a misrepresentation? A: At this point, February 23, based on information that I am aware of, that I had been shown through discovery with Mr. Markowski [Counsel for CPH], I am not aware at this point that there was an intent to misrepresent.")

183. Following the third February 23, 1998 meeting where MAFCO was informed that sales were "slow," Nesbitt did not speak with any financial analysts who followed Sunbeam.

a. Nesbitt Dep. at 15:24-16:5.

184. Following the February 23, 1998 meeting, Levin informed both Perelman ("the final decision maker") and Gittis (his "right hand") that Sunbeam was experiencing slow sales in 1998.

a. Perelman Dep. at 369:14-370:21

b. Gittis Dep. at 101:21-102:2

XI. PERELMAN AND HIS HOLDING COMPANIES APPROVE THE MERGER AGREEMENTS

A. Perelman and the Coleman Board Meet on February 25, 1998

185. The CLN Merger Agreement between Sunbeam and Coleman was first presented to the full Coleman board of directors at a board meeting on February 25, 1998, ***only 2 days*** after

NOT A CERTIFIED COPY

012725

Sunbeam and Coleman began their due diligence of each other. The meeting lasted about 90 minutes.

a. Maher Dep. at 29:20-30:4

b. MS 88 at 2 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

c. Drapkin Dep. at 46:6-14 ("Q: When do you recall the first time the board of directors of the Coleman Company was advised of a transaction with Sunbeam Corporation? A: Do you mean the entire board sitting en masse? Q: Yes, the board of directors. A: Then I would have to say that was probably this meeting.")

d. Slovin Dep. at 141:11-19 ("Q. Is it fair to say that the first substantive presentation, if you will, as opposed to a conversation that you had about the [Sunbeam-Coleman] transaction that becomes the merger, was at the board meeting of February 25th? A. For myself. Q. Yes, sir. A. Yes, for myself."); Slovin Dep. at 17:11-18:19

186. At the February 25, 1998 board meeting Levin made a presentation to the board, telling them the transaction was "structured to put Sunbeam in control as quickly as possible in order to reduce disruption to [Coleman's] business."

a. *See* MS 88 at 2 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

b. Levin Dep. at 269:17-270:12

187. At the February 25, 1998 meeting, Maher made a presentation to the board about the history of the negotiations between Sunbeam and MAFCO. Maher reported that there were no other bidders interested in Coleman.

a. Maher Dep. at 30:5-12

188. At the February 25, 1998 meeting, CSFB made a presentation to the Coleman board regarding the proposed transaction. CSFB advised the board that Sunbeam was paying a 44.2 percent premium over Coleman's stock based on the closing price of Coleman's stock on February 24.

NOT A CERTIFIED COPY

012726

a. Drapkin Dep. at 51:9-20

b. Perelman Dep. at 68:7-18

c. Slovin Dep. at 181:18-25

d. *See* MS 88 at 4 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

189. Although Maher, Levin, Pereleman, Nesbitt, and Gittis attended the board meeting, no one told the board about Sunbeam's slow sales in early 1998 or Levin's opinion that Sunbeam's "Strategic Long Term Plan" was "quite a stretch" and "probably not achievable."

a. MS 88 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

b. Levin Dep. at 256:20-257:4

190. There were no Morgan Stanley representatives at the February 25, 1998 meeting of the Coleman board of directors.

a. Drapkin Dep. at 51:25-52:2

191. Morgan Stanley made no presentation at the February 25, 1998 meeting, nor were any materials prepared by Morgan Stanley distributed to the attendees at that meeting.

a. Drapkin Dep. at 51:21-24

b. Emmerich Dep. at 156:22-25

B. Perelman and the Coleman Board Meet Again on February 27, 1998

192. The Coleman board met again to consider the proposed merger with Sunbeam on February 27, 1998.

a. Maher Dep. at 31:5-11

b. Drapkin Dep. at 53:15-54:18

193. At the February 27, 1998 meeting, CSFB, the exclusive financial adviser to MAFCO, made a presentation to the Coleman board. CSFB opined that the proposed transaction was fair. In reaching its opinion, CSFB did not rely on Sunbeam's Long Range Strategic Plan

NOT A CERTIFIED COPY

012727

(MS 84) or the Discussion Materials (MS 85). Instead, CSFB presented its models and evaluations, which were based on analysts' models of Sunbeam.

a. Maher Dep. at 32:1-22

b. Slovin Dep. at 28:5-29:14; 159:4-10, 181:18-25, 182:8-13

c. Duffy Dep. at 173:21-174:11, 188:17-189:14, 196:19-197:10, 198:16-199:9

d. MS 112 at 14001233 (Feb. 25, 1998 CSFB Draft Materials Prepared for the Board of Directors)

e. MS 118 at 2 (Feb. 27, 1998 Coleman Board of Directors Meeting Minutes)

f. Shapiro Dep. at 73:11-74:15

194. As was the case on February 25, 1998, Perelman, Maher, Levin, Gittis, and CSFB were all present at the meeting. No one told the board about Sunbeam's slow sales in early 1998 or Levin's opinions about Sunbeam's Long Term Plan.

a. MS 118 (Feb. 27, 1998 Coleman Board of Directors Meeting Minutes)

b. Perelman Dep. at 287:3-288:5

c. Levin Dep. at 275:2-7

195. The Coleman board voted to approve the merger agreement between Sunbeam and Coleman at the February 27, 1998 board meeting.

a. Maher Dep. at 31:5-19

b. Drapkin Dep. at 54:16-18

196. No Morgan Stanley representative attended the February 27, 1998 meeting.

a. Drapkin Dep. at 54:10-12

b. Perelman Dep. at 78:3-13

c. Maher Dep. at 31:23-32:1

NOT A CERTIFIED COPY

012728

197. No materials prepared by Morgan Stanley were handed out to the board members at the February 27, 1998 meeting.

a. Drapkin Dep. at 54:13-15

C. Perelman and Gittis Approve the Merger

198. On February 27, 1998, Perelman and Gittis, in their capacities as directors of CPH, signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc.

a. Gittis Dep. at 52:9-24

b. Perelman Dep. at 80:22-81:8

c. MS 172 (Feb. 27, 1998 CPH Consent of Directors)

199. On February 27, 1998, Perelman and Gittis, in their capacities as directors of Coleman Worldwide Corporation, signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc.

a. Gittis Dep. at 57:11-58:12

b. Perelman Dep. at 97:5-98:8

c. MS 424 (Feb. 27, 1998 Coleman Worldwide Corporation Consent of Directors in Lieu of Board of Directors' Meeting)

200. On February 27, 1998, Perelman and Gittis, in their capacities as directors of CLN Holdings Inc., signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement").

a. Gittis Dep. at 50:21-51:24

b. Perelman Dep. at 88:22-89:11

NOT A CERTIFIED COPY

0012729

c. MS 423 (Feb. 27, 1998 CLN Holdings Unanimous Written Consent of the Board of Directors)

XII. THE PARTIES EXECUTE THE MERGER AGREEMENTS AS OF FRIDAY, FEBRUARY 27, 1998

A. CLN Holdings Merger Agreement Is Approved by Perelman and Gittis

201. As of February 27, 1998, CPH and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc., and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"). Pursuant to this CLN Merger Agreement Sunbeam acquired CPH's approximately 82 percent interest in Coleman.

a. MS 93 (CLN Merger Agreement)

b. MS 118 (Feb. 27, 1998 Coleman Board of Directors Minutes)

c. Shapiro Dep. at 74:6-75:25

d. Aug. 11, 2004 Order at 6, 8

202. Schwartz signed the CLN Merger Agreement on behalf of CPH in his capacity as executive vice president and general counsel of CPH.

a. Schwartz Dep. at 25:15-26:15, 27:8-15

203. Schwartz also signed the CLN Merger Agreement of behalf of CLN Holdings Inc. in his capacity as executive vice president and general counsel of CLN Holdings Inc.

a. Schwartz Dep. at 25:15-26:6, 27:8-15

204. Schwartz testified that he was "certain at the time when [he] signed this document on behalf of those two entities [that] any issues that we had with respect to the document had been resolved."

a. Schwartz Dep. at 27:20-28:8

205. Morgan Stanley was not a party to the CLN Merger Agreement

a. Schwartz Dep. at 205:9-11

NOT A CERTIFIED COPY

012730

B. The Coleman Merger Agreement Is Approved by Coleman's Board

206. On February 27, 1998, Coleman and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement").

a. MS 117 (Coleman Merger Agreement)

b. Aug. 11, 2004 Order at 8

207. Both the CLN Merger Agreement (MS 93) and the Coleman Merger Agreement (MS 117) contain extensive representations and warranties between CPH and Coleman on the one hand and Sunbeam on the other. The respective parties each bargained for the representations and warranties that were material to them.

a. MS 93 §§ 4.1-4.12, 5.1-5.4 (CLN Merger Agreement)

b. MS 117 §§ 4.1-4.19, 5.1-5.12 (Coleman Merger Agreement)

c. Maher Dep. at 343:22-344:16

208. The parties to the Merger Agreements agreed that "there were no other representations and warranties other than [those] set forth in the definitive documents that [the parties] signed."

a. Maher Dep. at 344:17-345:6

b. *See* MS 93 § 12.5 (CLN Merger Agreement)

c. *See* MS 117 § 10.4 (Coleman Merger Agreement)

209. Neither the CLN Merger Agreement nor the Coleman Merger Agreement contain any representations or warranties concerning (i) Sunbeam's performance against the expectations of "Wall Street analysts" on a quarterly or annual basis; (ii) the "turnaround" of Sunbeam since 1996; or (iii) any increase in revenues, sales, profits, or earnings.

a. MS 93 §§ 4.1-4.12, 5.1-5.4 (CLN Merger Agreement)

NOT A CERTIFIED COPY

012731

b. MS 117 §§ 4.1-4.19, 5.1-5.12 (Coleman Merger Agreement)

210. The CLN Merger Agreement contains an integration clause that states that the Agreement is the entire agreement and understanding between CPH and Sunbeam and "supersedes all prior agreements and understandings, oral or written."

a. MS 93 § 12.5 (CLN Merger Agreement)

211. Schwartz, who signed the CLN Merger Agreement on behalf of CPH and CLN Holdings Inc., testified that he was not aware of any other representations or warranties after February 27, 1998 beyond those already contained in Article 5 of the CLN Merger Agreement. Schwartz also testified that he was not aware of any amendments or modifications to the CLN Merger Agreement prior to the closing on March 30, 1998.

a. Schwartz Dep. at 179:25-180:9

212. Schwartz also testified that he was not aware of any contractual arrangements between MAFCO and Morgan Stanley with regard to the Sunbeam transaction or any representations or warranties by Morgan Stanley to any MAFCO or Coleman entity with regard to the Sunbeam transaction.

a. Schwartz Dep. at 180:10-21, 180:25-181:6

213. The Coleman Merger Agreement also contains an integration clause that states that the Agreement is the entire agreement and understanding and "supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which shall remain in full force and effect for the term provided therein."

a. MS 93 § 12.5 (CLN Merger Agreement)

b. MS 117 § 10.4 (Coleman Merger Agreement) (stating that the Merger Agreement "supersedes all prior agreements and understandings, both oral or written")

NOT A CERTIFIED COPY

012732

C. MAFCO Gains Full and Complete Access to Sunbeam's Books and Records

214. The CLN Merger Agreement gave CPH access to Sunbeam's books, records, personnel, and facilities. Specifically, the Agreement required Sunbeam to provide CPH and all of its "financial advisors, legal counsel, accountants, consultants and other representatives [with] full access … to all of [Sunbeam's] books, records, properties, plants and personnel."

a. MS 93 § 6.7 (CLN Merger Agreement)

215. The Coleman Merger Agreement likewise required Sunbeam to provide Coleman and all of its "financial advisors, legal counsel, accountants, consultants and other representatives [with] full access … to all of [Sunbeam's] books, records, properties, plants and personnel."

a. MS 117 § 7.2 (Coleman Merger Agreement)

b. *See* Slovin Dep. at 46:2-13

216. Gittis testified that it was "absolutely" important that the people signing the Coleman Merger Agreement and the CLN Merger Agreement understand what was contained in the agreements.

a. Gittis Dep. at 162:10-15

217. Maher, the president of MAFCO and its head negotiator on the Sunbeam-Coleman transaction, "didn't read the final version of the [merger] agreement."

a. Maher Dep. at 343:16-17

218. Slovin, the president of both MAFCO and CPH and a Coleman board member, "[does not] recall reading any specific page [of the merger agreement] . . . in February 1998" or at any time "after [the] board voted to approve the merger."

a. Slovin Dep. at 14:20-15:16

NOT A CERTIFIED COPY

012733

XIII. FROM SIGNING TO THE MARCH 19 PRESS RELEASE — SUNBEAM MAKES DISCLOSURES AND CPH LOOKS AWAY

A. MAFCO Elects Not to Inspect Sunbeam's Books and Records

219. Gittis testified that both MAFCO and Sunbeam had an "opportunity to do whatever due diligence they chose to do before signing the documents and, indeed, closing the transaction."

a. Gittis Dep. at 163:1-6

220. Although both merger agreements explicitly gave CPH full access to Sunbeam's books and records, Perelman was not aware of "anyone from MAFCO or its subsidiary companies [who] had examined the books and records of Sunbeam after the signing of the merger agreements and before the closing on March 30."

a. Perelman Dep. at 124:5-20

221. Gittis, the number two man at MAFCO, did not know of any due diligence conducted by the MAFCO team after the third February 23, 1998 meeting and before the closing on March 30, 1998.

a. Gittis Dep. at 116:2-14

222. Levin, the top Coleman executive and Perelman's expert on consumer products companies, did not know of any due diligence done by the MAFCO or Coleman teams between February 23, 1998 and the closing on March 30, 1998.

a. Levin Dep. at 365:13-369:5

223. Maher was not aware of "any request by the MacAndrews and Forbes due diligence team directed to either Sunbeam or its accountants to examine Sunbeam's books and records, properties, [and] copies of any documents filed with the federal or state securities authorities pursuant to Section 6.7 of MS 93 [CLN Merger Agreement]."

NOT A CERTIFIED COPY

0127134

a. Maher Dep. at 416:5-13

224. Maher was not aware of "any request by Coleman pursuant to … section 7.2 [of the Coleman Merger Agreement] made to either Sunbeam or its accountants or its legal counsel or its financial advisers for access to books and records relating to properties, plants, personnel, business operations, et cetera."

a. Maher Dep. at 417:3-20

225. Levin could not recall any request by Coleman between February 27 and March 30, 1998 "to inspect the books and records of Sunbeam corporation pursuant to" the merger agreements.

a. Levin Dep. at 42:20-25

226. Maher could not recall having any communications with anyone at Morgan Stanley about the Sunbeam-Coleman transaction between February 28, 1998 and the closing of the transaction on March 30, 1998.

a. Maher Dep. at 350:4-9

227. Maher could not recall Levin, Page, Nesbitt, or anyone from CSFB having any communications with anyone at Morgan Stanley about the Sunbeam-Coleman transaction from February 28, 1998 until the closing of the transaction on March 30, 1998.

a. Maher Dep. at 350:10-351:2

228. Levin could not recall attending "any face-to-face meetings with Morgan Stanley employees after the merger agreements were signed and up to the date of closing [on] March 30, 1998."

a. Levin Dep. at 36:23-37:2

229. Drapkin, the vice chairman of MAFCO and a board member of both CPH and Coleman, had no face-to-face meetings or conference calls with anyone at Morgan Stanley

NOT A CERTIFIED COPY

012735

between the signing of the merger agreements and the closing on March 30, 1998. He also could not recall receiving any correspondence from Morgan Stanley between the signing of the merger agreements and the closing.

a. Drapkin Dep. at 104:5-11, 106:17-22, 111:1-11

230. Slovin, president of both MAFCO and CPH and a Coleman board member, did not attend any meetings with, participate in any conference calls with, or receive any documents from Morgan Stanley concerning the Sunbeam-Coleman merger between the Coleman board's approval of the merger and the closing of the transaction.

a. Slovin Dep. at 35:25-38:2

231. Schwartz, who had ultimate responsibility for in-house legal matters at MAFCO and its holding companies, did not have any meetings, correspondence, or conference calls with Morgan Stanley between signing the CLN Merger Agreement and the closing.

a. Schwartz Dep. at 40:16-42:17

232. Barry Schwartz, who had ultimate responsibility for in-house legal matters at MAFCO and its holding companies, was not aware of anyone on the MAFCO side of the transaction:

- interviewing middle management at Sunbeam regarding its operations or financial performance;
- visiting any Sunbeam plants to evaluate the inventory of Sunbeam products;
- contacting Sunbeam's major customers about Sunbeam;
- contacting any analysts who followed Sunbeam; or
- interviewing anyone at Arthur Andersen, Sunbeam's outside auditors, regarding Sunbeam's financial performance.

a. Schwartz Dep. at 150:11-152:11

b. Jan. 15, 2004 Bornstein Dep. at 195:3-8

NOT A CERTIFIED COPY

012736

233. Lawrence Bornstein, the audit manager on the Arthur Andersen engagement with Sunbeam, testified that he was not aware of:

- any due diligence conducted by MAFCO or its representatives as part of the transaction;
- any in-person meetings between MAFCO or its representatives and Arthur Andersen as part of the transaction;
- any telephone conferences between MAFCO or its representatives and Arthur Andersen as part of the transaction;
- any due diligence by CSFB of Sunbeam;
- any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's disclosures about "bill and hold" sales made in Sunbeam's annual report for the year 1997;
- any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's "bill and hold" sales in first quarter 1998;
- any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's disclosures about the "Early Buy Program" made in Sunbeam's annual report for the year 1997;
- any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's "Early Buy Program" in first quarter 1998; or
- any accounting due diligence call with MAFCO.

a. Bornstein Dep. at 194:24-200:5

234. In sum, Bornstein testified he was "surprised" by the lack of inquiry from MAFCO regarding Sunbeam.

a. Bornstein Dep. at 200:2-5

235. Gittis believed that Levin contacted Sunbeam's customers, but was unable to recall if the contact occurred before or after the closing on March 30, 1998. In fact, such contact occurred ***after*** the closing.

a. Gittis Dep. at 123:21-124:1

NOT A CERTIFIED COPY

01127137

b. Levin Dep. at 349:18-350:20

236. On March 2, 1998, the merger between Coleman and Sunbeam was announced. Perelman stated that "[t]his is a fantastic situation for all Sunbeam shareholders giving them the opportunity to participate in the wealth that Al Dunlap and his team are building. Coleman will thrive as part of Sunbeam's unbeatable family of brands."

a. MS 237 (March 2, 1998 Press Release)

b. Perelman Dep. at 397:21-398:22

B. MAFCO Insiders Bail Out of Coleman Stock as Soon as the Merger Is Publicly Announced

237. Levin testified that a "particular point[] of interest" for him in the transaction was that the "management [of the Coleman Company] not be put in a position of having to hold Sunbeam stock or options unless they voluntarily chose to do so." Levin further testified that he "didn't want to wind up in a situation where . . . most of my wealth would be tied up in Sunbeam stock options. It was just something I did not want to do. . . . I did not want Sunbeam stock."

a. Levin Dep. at 88:11-89:16

238. Accordingly, Levin advocated for and received a provision that allowed Coleman insiders to exercise any Coleman options they had and "receive no less than $27.50 in price" for those options. Levin himself exercised options on about 500,000 shares of Coleman stock at about $12 per share and sold them for about $34 per share.

a. Levin Dep. at 89:17-90:13, 133:18-134:11

b. MS 442 at 83:8-84:13 (Aug. 2, 2000 Levin Tr.)

c. MS 398 (Apr. 17, 1998 "Coleman's Levin profits by selling stock after sale to Sunbeam")

NOT A CERTIFIED COPY

012738

239. Soon thereafter, and before the March 30, 1998 closing date, at least two other inside directors of Coleman, Bruce Slovin and Donald Drapkin, sold their shares of Coleman stock. Slovin sold 52,600 shares and sold Drapkin 20,000 shares at around $32 per share.

a. Drapkin Dep. at 182:7-183:18

b. Slovin Dep. at 80:9-16, 82:2-24

C. MAFCO Elects Not to Read Sunbeam's 1997 Annual Report on Form 10-K

240. On March 6, 1998, Sunbeam filed with the SEC Sunbeam's Form 10-K annual report for 1997. In its Annual Report, Sunbeam disclosed that it engaged in "bill-and-hold" revenue recognition for certain sales amounting to 3 percent of Sunbeam's consolidated revenues.

a. MS 208 at F-8 (March 6, 1998 Sunbeam Form 10-K Annual Report for 1997)

241. Sunbeam's 1997 annual report also disclosed that in 1997 Sunbeam had created an "early buy" program for highly seasonal products such as grills. Sunbeam explained that the early buy program would help levelize grill sales, which typically occurred in the first half of the year. Sunbeam also disclosed that the early buy program would shift certain sales risks to later periods and that grills had begun to ship in the fourth quarter of 1997 under the program.

a. MS 208 at 6, 8, 9, 14 (March 6, 1998 Sunbeam 10-K Annual Report for 1997)

242. Gittis did not see Sunbeam's annual report on form 10-K for the year 1997 before the closing on March 30, 1998.

a. Gittis Dep. at 171:12-15

243. Levin does not recall reading a copy of Sunbeam's annual report on form 10-K for the year 1997 before closing on the Sunbeam-Coleman transaction on March 30, 1998. At the time the annual report was released, Levin was in Tucson, Arizona at his vacation home.

NOT A CERTIFIED COPY

012739

Q. Before the actual closing of the Sunbeam transaction on March 30, 1998, did you obtain a copy of Sunbeam's 1997 annual report on Form 10-K that was filed with the SEC on or about March 6, 1998?

A. Before the closing?

Q. The closing on March 30, 1998.

A. I don't recall doing so.

Q. At that time, March of 1998, if I recall your testimony correctly, you were in Tucson, Arizona at your vacation home; is that correct?

A. That's correct.

a. Levin Dep. at 48:15-49:2

244. Maher did not see or read Sunbeam's 1997 annual report before the closing on March 30, 1998.

a. Maher Dep. at 403:10-13

XIV. MORGAN STANLEY FIRST LEARNS OF SUNBEAM'S FIRST QUARTER SALES AND INSISTS THAT SUNBEAM ISSUE THE MARCH 19 PRESS RELEASE

A. Morgan Stanley Learns of a Possible Sales Shortfall

245. On March 18, 1998, Ruth Porat of Morgan Stanley learned that Sunbeam's first quarter 1998 sales were not as strong as expected. She promptly brought this concern to the attention of other Morgan Stanley employees working on the Sunbeam transaction.

a. Nov. 23, 2004 Porat Dep. at 147:12-20

b. June 4, 1999 Harlow Tr. at 236, *In re Sunbeam*, No. HO-3433 (SEC)

c. Strong Dep. at 305:23-306:16

246. On March 18, 1998, Morgan Stanley and its counsel participated in several conference calls with Sunbeam's management and Sunbeam's outside counsel regarding Sunbeam's sales in the first quarter of 1998.

NOT A CERTIFIED COPY

012740

a. Porat Dep. at 169:21-170:10, 174:10-175:13, 178:20-179:8

247. In the afternoon, Sunbeam management faxed a build-up of first quarter sales to Morgan Stanley for discussion. Morgan Stanley then participated in a conference call with Sunbeam's management, including David Fannin, Russell Kersh, and Donald Uzzi, as well as attorneys from Davis Polk and Skadden Arps. During this call, Sunbeam walked through the build-up of Sunbeam's sales and projections and assured Morgan Stanley that Sunbeam would make its expected numbers.

a. Porat Dep. at 169:21-170:10, 174:10-175:13, 176:21-177:17, 178:20-179:8

b. MS 41 (March 18, 1998 January and February Sunbeam Consolidated Net Sales Actuals and March Net Sales thru March 17, 1998)

c. June 18, 2004 Lurie Dep. at 111:5-13[6]

248. Despite Sunbeam's assurances, Morgan Stanley demanded that Sunbeam issue a press release alerting investors that Sunbeam may not make its expected numbers in the first quarter.

a. Porat Dep. at 186:20-187:8

b. Strong Dep. at 58:4-8

B. The March 19, 1998 Press Release

249. On March 19, 1998, Sunbeam issued a press release stating that its sales for the first quarter of 1998 might be lower than the range of Wall Street analysts' estimates.

a. MS 39 (March 19, 1998 Sunbeam Press Release)

b. Perelman Dep. at 126:21-127:22

c. Aug. 11, 2004 Order at 7-8

250. The press release was drafted by Sunbeam and its attorneys at Skadden Arps.

[6] CPH 16 is the same document as MS 41.

NOT A CERTIFIED COPY

012741

a. May 25, 2004 Stack Dep. at 158:19-22

251. Perelman saw the press release "at the time it was issued or right about the time it was issued."

a. Perelman Dep. at 128:22-25

252. Although he was skiing in Aspen, Colorado at the time, Maher saw the press release issued by Sunbeam "[s]omewhere on that day [March 19, 1998] or thereafter."

a. Maher Dep. 356:20-23

253. Gittis recalled that Sunbeam's stock dropped nearly 10 percent following the March 19, 1998 press release, but testified that he "would have taken the Sunbeam stock at that price" and that the sudden change in value "did not bother" him.

a. Gittis Dep. at 110:4-19

b. Drapkin Dep. at 123:17-21

254. Under the terms of the CLN Merger Agreement, Perelman was to receive 14,099,749 shares of Sunbeam common stock. Sunbeam's stock fell $4-11/16 on March 19, 1998 and was the 20th most active stock on the NYSE. On paper, Perelman lost over $66,000,000 dollars.

a. MS 39 (March 19, 1998 Sunbeam Press Release)

b. MS 211 (March 19, 1988 Bloomberg Report)

c. MS 93 § 3.1(a)(i) (CLN Merger Agreement)

255. Schwartz testified that he considered the information in the March 19, 1998 press release to be "material," but he believed that the stock's value rebounded "after the analysts wrote their reports about the significance of … what's in this press release."

a. Schwartz Dep. at 184:16-20, 185:3-11

NOT A CERTIFIED COPY

012742

C. Perelman Asks No Questions of Sunbeam Following The March 19, 1998 Press Release

256. According to Perelman, the March 19, 1998 Sunbeam press release "point[ed] up some issues that ha[d] to be addressed."

a. Perelman Dep. at 133:18-21

257. Perelman testified that he does not recall making any inquiries regarding the March 19, 1998 press release but that "[he] would ***imagine*** that [he] would have asked either [James] Maher and/or Jerry Levin" to "make inquiry about the March 19 press release."

a. Perelman Dep. at 130:15-131:10 (emphasis added)

258. Schwartz did not ask anyone at Sunbeam for more specific information about its sales during the first quarter of 1998 after receiving the March 19, 1998 press release.

a. Schwartz Dep. at 185:14-19

259. Nesbitt testified that he understood the March 19, 1998 press release to be "an indication that [Sunbeam] might not meet their results."

a. Nesbitt Dep. at 434:8-9

260. Maher, who was skiing in Aspen, Colorado at the time of the March 19 press release, "believe[s] that [Jerry] Levin talked to [Sunbeam]" about the March 19, 1998 press release.

a. Maher Dep. at 357:19-25

261. Levin testified that he took no action to inquire of Sunbeam about the March 19 press release because it was "not [his] problem."

> Q. Am I correct, sir, that following the issuance of the press release and your learning of the release, that you really did not take any action as a result of the press release because you did not view it as your problem?

NOT A CERTIFIED COPY

012743

MR. BIDEAU: Objection to the form.

A. Well, if you took it at its face, there was no problem. I just thought it was odd.

Q. My question was, sir: As a result of -- I will withdraw the question.

My question to you was, sir: Following your receipt of the press release, am I correct that you took no action with regard to the press release, either individually or on behalf of MacAndrews & Forbes, because you did not view it as your problem?

MR. BIDEAU: Objection. He just answered that exact question.

MR. BEMIS: The objection is asked and answered.

MR. BIDEAU: That was the objection, you are right. It was asked and answered.

MR. BEMIS: He may answer again.

MR. MARKOWSKI: Objection to the form.

A. I continued to consider anything that could happen that could affect Coleman Company and its shareholders to be my problem; so, the answer to your question is No.

Q. Sir, let me ask you if you were asked the following questions and gave the following answers in your deposition, I believe in 2001. For the record, we previously marked that as Exhibit 443.

* * *

Q. Sir, were you asked the following questions and did you give the following answers, under oath, in your deposition on June 20th, 2001, beginning at line 19, page 33:

Q. Mr. Levin, I have handed you a printout of a press release that was issued by Sunbeam on March 19th, 1998, and I invite you to read it -- but, in particular, the first two sentences relate to sales, the possibility

NOT A CERTIFIED COPY

012744

that sales would fall below Wall Street estimates. And it says, 'But net sales are expected to exceed 1997 first quarter net sales of 253.4 million.

A. Yes.

Q. Do you see that language?

A. Yes.

Q. Now, do you recall that the Coleman acquisition occurred at, I think it was March 30th or 31st of 1998?

A. I believe it was March 30th.

Q. Does this help refresh your recollection about whether or not you saw this press release before the acquisition was closed?

A. Yes. I did see this before the acquisition closed.

Q. After you saw this press release, did you undertake any actions in response to the press release?

A. No, I -- I viewed this as not my problem at the time."

Q. Were you asked those questions and did you give those answers under oath in 2001?

A. Yes.

a. Levin Dep. at 315:4-318:11

262. Maher does not know whether "anyone on the MacAndrews & Forbes due diligence team call[ed] [Sunbeam CEO] Mr. [Albert] Dunlap and ask him about the statements that were being attributed to him in connection with the March 19 press release."

a. Maher Dep. at 359:4-9

263. Maher never saw — and neither he nor anyone else on the MAFCO due diligence team ever requested from Sunbeam or its auditor, Arthur Andersen — a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998.

NOT A CERTIFIED COPY

0174549

a. Maher Dep. at 359:10-360:7

b. Gittis Dep. at 104:6-15, 105:5-10

c. Bornstein Dep. at 196:9-197:3

264. Perelman could not recall "any communication by anyone at MacAndrews & Forbes or its subsidiary companies with Morgan Stanley about the March 19 press release."

a. Perelman Dep. at 134:22-135:7.

265. Though Perelman believed that "there was a point in talking to the analysts and getting their input" regarding Sunbeam, he could not supply the name of "a single analyst that anyone at MacAndrews & Forbes spoke to before March 30, 1998 about their thoughts, that is the analyst thoughts on Sunbeam."

a. Perelman Dep. at 191:10-192:9

b. *See* Levin Dep. at 124:4-12 ("Q. At any point before the closing on March 30, 1998, did you speak to Mr. [Andrew] Shore [an analyst at PaineWebber who had issued several cautionary reports regarding Sunbeam] about Sunbeam? A. No. A. Are you aware of anyone at MacAndrews & Forbes or Coleman or any of their advisors speaking to Andrew Shore about Sunbeam before the closing? A. I'm not aware of any.")

266. Perelman was not aware of "anyone from CSFB," MAFCO'S exclusive financial advisor on the transaction, "making any inquiry of Sunbeam about the subject matter of the March 19 press release."

a. Perelman Dep. at 141:4-12

267. Following the issuance of the March 19, 1998 press release, Nesbitt did not contact any financial analysts who followed Sunbeam.

a. Nesbitt Dep. at 15:24-16:5

268. Perelman was not aware of "anyone from CSFB," MAFCO's exclusive financial advisor, "making any inquiry of Morgan Stanley" about the March 19, 1998 press release.

NOT A CERTIFIED COPY

a. Perelman Dep. at 141:13-16

269. Schwartz was not aware if anyone on the Coleman side of the transaction asked Morgan Stanley any questions about the March 19, 1998 press release or Sunbeam's sales after March 19, 1998.

a. Schwartz Dep. at 187:9-15, 188:11-16

270. Robert Duffy of CSFB, MAFCO's exclusive financial advisor, testified that the March 19, 1998 press release was "bad news that had caused [Sunbeam] stock to drop." Duffy, however, could not recall anyone at CSFB undertaking "any additional inquiry" as a result of the press release.

a. Duffy Dep. at 249:8-250:9, 250:15-251:15

271. On March 20, 1998, an article in the Wall Street Journal about Sunbeam's press release stated: "While Sunbeam's announcement didn't discuss the company's earnings outlook, analysts said the sales disappointment is bound to affect profit[s]."

a. MS 215 (March 20, 1998 "Sunbeam Shares Drop on Expected Shortfall in Sales")

272. Slovin, president of CPH and a Coleman board member, acknowledged that, "if you read the Wall Street Journal on March 20, 1998, you knew at least by that date, ten days before the closing [of the Sunbeam-Coleman transaction], that not only had there been a downturn in [Sunbeam's] sales but [also] that [the downturn] was bound to affect the company's profits."

a. Slovin Dep. at 260:2-9

273. Despite receiving the March 19, 1998 press release, CPH failed to exercise its contractual rights under the CLN Merger Agreement and Coleman Merger Agreement to

NOT A CERTIFIED COPY

012747

examine Sunbeam's books, records, financial statements, facilities, results of operations, and business plans ("Sunbeam Information").

a. Nesbitt Dep. at 437:11-439:4, 441:2-8

274. At no time prior to the closing on March 30, 1998 "did anyone on the MacAndrews & Forbes due diligence team even request of Sunbeam either directly or through its [Sunbeam's] accountants, Arthur Andersen, a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998."

a. Maher Dep. at 359:25-360:7

b. *See* Nesbitt Dep. at 437:11-24

c. *See* Bornstein Dep. at 196:24-197:3

d. *See* Perelman Dep. at 390:14-19

e. *See* Duffy Dep. at 323:7-19

275. As far as Nesbitt was aware, "no one from MacAndrews & Forbes had any communications with Arthur Andersen, Sunbeam's certified public accountants."

a. Nesbitt Dep. at 449:7-12

b. *See* Bornstein Dep. at 194:20-197:3, 197:21-198:8

XV. THE SUNBEAM DEBENTURE OFFERING

A. The Debenture Offering Memorandum

276. MS 166 is a true and correct copy of the offering memorandum for Sunbeam's offering of $2.014 billion of Zero Coupon Convertible Subordinated Debentures Due 2018.

a. Shapiro Dep. at 95:11-15

277. The offering memorandum for the Sunbeam debentures included Sunbeam's audited financial statements for 1997, Coleman's audited financial statements for 1997, and CLN Holdings Inc.'s financial statements for 1997, which is customary in such an offering.

NOT A CERTIFIED COPY

012748

a. MS 166 at F3-F55 (March 19, 1998 Offering Memorandum)

b. Maher Dep. 367:21-368:2

278. Sunbeam's audited financial statements for 1997 — and therefore, by extension, the Sunbeam debenture offering memorandum — included references to Sunbeam's "early buy" program and to "bill-and-hold" sales.

a. Maher Dep. at 395:11-396:11, 400:15-24

b. MS 166 at 12, F-8 (March 19, 1998 Offering Memorandum)

c. MS 208 at 6, 8, 9, 14 (March 6, 1998 Sunbeam 10-K Annual Report for 1997)

279. Maher testified that he "doesn't think" he ever saw the Sunbeam debenture offering memorandum.

a. Maher Dep. at 369:7-11

280. Maher acknowledged that, had he read the offering memorandum, he would have been aware of Sunbeam's early buy program and its practice of using "bill-and-hold" sales.

a. Maher Dep. at 395:11-396:23, 400:15-24

B. The Comfort Letters

281. It is customary for the underwriter of an offering of securities to obtain "comfort letters" from the offering company's outside auditor to "provide comfort" to the underwriter with regard to the period of time between the company's last audited financial statement and the offering memorandum. Comfort letters summarize interim financial information since the issuer's last audited financial statement.

a. Maher Dep. at 370:24-371:11

b. *See* Drapkin Dep. at 137:20-138:17

NOT A CERTIFIED COPY

012749

282. The Coleman Merger Agreement provided for an exchange of Comfort Letters from Sunbeam and CPH's respective auditors. As a sophisticated party, CPH was aware of the general content of Comfort Letters.

a. MS 117 § 7.3 (Coleman Merger Agreement)

b. Drapkin Dep. at 137:20-142:22, 144:7-145:17

c. Shapiro Dep. at 151:24-153:8

283. Similarly, the registration rights agreement for Perelman's 14.1 million shares of Sunbeam stock (Exhibit A to the CLN Merger Agreement) included a provision entitling Perelman to a comfort letter from Sunbeam's auditors.

a. MS 278 at § 2.4(a)(12) (March 29, 1998 Registration Rights Agreement between Sunbeam Corporation and Coleman (Parent) Holdings, Inc.)

b. Gittis Dep. at 55:23-56:18

284. In connection with the offering memorandum for the Sunbeam debentures, the Coleman Company's auditors, Ernst & Young, provided a comfort letter to Morgan Stanley.

a. MS 243 (March 20, 1998 Ernst & Young Comfort Letter)

285. On March 20, 1998, Arthur Andersen provided a comfort letter, dated as of March 19, 1998, to Morgan Stanley indicating that through February 1, 1998, Sunbeam's net sales were approximately half of what they were in the first two months of the first quarter of the proceeding year.

a. Bornstein Dep. at 52:7-53:15

b. MS 9 (March 19, 1998 Comfort Letter)

NOT A CERTIFIED COPY

012750

C. MAFCO Does Not Request Copies of Either the Ernst & Young or Arthur Andersen Comfort Letters

286. Maher never requested and has not seen the comfort letter (MS 243) provided by Coleman's auditors, Ernst & Young, to Morgan Stanley in connection with the offering of Sunbeam debentures, although a copy of the letter is addressed to CLN Holdings, Inc.

a. Maher Dep. at 372:7-15

b. MS 243 (March 20, 1998 Ernst & Young Comfort Letter)

287. Perelman was not aware of anyone at MAFCO who made any request of Coleman for a copy of the comfort letter that was provided to Morgan Stanley by Coleman's auditors, Ernst & Young.

a. Perelman Dep. at 423:11-16

288. Perelman was not aware of anyone at MAFCO who made any request of Sunbeam for a copy of the comfort letter that was provided to Morgan Stanley by Sunbeam's auditors, Arthur Andersen.

a. Perelman Dep. at 423:1-9

289. Maher is not aware of anyone on the MAFCO due diligence team who, following the March 19, 1998 press release, requested the contents of the comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the offering of Sunbeam debentures.

a. Maher Dep. at 373:13-15, 387:3-22

290. Drapkin, the vice chairman of MacAndrews & Forbes Holdings and the in-house investment banker for Perelman's companies, does not recall anyone at any of Perelman's companies asking Morgan Stanley if Morgan Stanley received a comfort letter from Arthur Andersen in connection with debenture offering.

a. Drapkin Dep. at 141:14-142:22, 152:21-153:6

NOT A CERTIFIED COPY

012751

291. Gittis is not aware of anyone on the MAFCO due diligence team who, following the March 19, 1998 press release, requested the contents of the comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the offering of Sunbeam debentures.

a. Gittis Dep. at 112:6-20

292. Emmerich, CPH's lead outside lawyer on the Sunbeam-Coleman transaction, was not aware of any request by anyone at MAFCO for a comfort letter from Sunbeam.

a. Emmerich Dep. at 199:10-200:8

293. Maher did not ask Ernst & Young, the auditors on the MAFCO due diligence team for the Sunbeam-Coleman transaction, to make any inquiries of Arthur Andersen about Arthur Andersen's comfort letter to Morgan Stanley in connection with the debenture offering.

a. Maher Dep. at 378:6-12

294. CPH did not request from Morgan Stanley any comfort letters or other documents or information that Morgan Stanley had obtained in the course of Morgan Stanley's due diligence as an underwriter for the Debentures.

a. Drapkin Dep. at 141:14-142:22

b. Schwartz Dep. at 228:14-229:11

c. Slovin Dep. at 51:25-52:11

d. Sept. 14, 2004 Moran Dep. at 103:22-104:10[7]

e. Nesbitt Dep. at 437:11-440:16

295. "Q. What I understand you just to have said is if you had known what was in the comfort letters today you would not have done the transaction? A. Absolutely not."

a. Perelman Dep. at 291:10-14

[7] John Moran, at the time of the transaction, was a member of the Board of Directors of The Coleman Company.

NOT A CERTIFIED COPY

012752

b. *See* Gittis Dep. at 163:10-17 ("Q: Now, earlier you told me that had you known the information that was in the Arthur Andersen comfort letter that was issued to Morgan Stanley in connection with the issuance of the debentures, that had you known that information, you would not have proceeded with the transaction; correct? A. That is correct.")

296. "Q. ... If you had seen the comfort letter before March 30, 1998 it is your statement that you would have known what was happening at Sunbeam; is that right? A. It is my statement that I would not have closed [the transaction]."

a. Perelman Dep. at 517:21-518:1

D. Morgan Stanley Closes the Debenture Offering on March 25, 1998

297. The Debenture offering closed in New York on March 25, 1998.

a. Oct. 13, 2003 CPH Resp. to MS's 2d Set of Interrogs., Interrog. 5

298. None of Perelman's companies purchased any of the Debentures issued by Sunbeam and underwritten by Morgan Stanley in March 1998.

a. Maher Dep. at 365:22-366:11

b. Nesbitt Dep. at 429:13-18

c. Perelman Dep. at 406:17-24

d. Schwartz Dep. at 146:8-12

XVI. MORGAN STANLEY SENIOR FUNDING CLOSES THE CREDIT FACILITY

299. In addition to its issuance of the Debentures, Sunbeam further financed the acquisition of Coleman and two other companies through a credit facility with Morgan Stanley Senior Funding ("MSSF"), First Union, and Bank of America.

a. MS 520 (March 30, 1998 Credit Agreement)

300. Pursuant to this credit facility, MSSF agreed to loan Sunbeam $680 million. MSSF determined that it would extend this facility and closed upon the facility after Morgan Stanley performed its due diligence and after Sunbeam issued its March 19, 1998 press release.

NOT A CERTIFIED COPY

0127753

a. MS 520 (March 30, 1998 Credit Agreement)

b. Feb. 13, 2004 Fuchs Dep. at 187:15-188:4

c. MS 39 (March 19, 1998 Sunbeam Press Release)

d. CPH 133 (March 20, 1998 Leveraged Finance Committee Memo)

e. Nov. 16, 2004 Rankin Dep. at 34:6-16

f. Aug. 11, 2004 Order at 9

301. Additionally, Bank of America and First Union each loaned Sunbeam $510 million under the credit facility.

a. MS 520 (March 30, 1998 Credit Agreement)

302. MSSF, pursuant to its policy and practice, intended to retain a significant portion of the credit facility, even if or after the bank loan was syndicated.

a. Feb. 24, 2004 Smith Dep. at 139:18-140:7

b. Burchill Dep. at 91:7-16

303. Gittis testified that Sunbeam was driving Morgan Stanley to complete the deal and that Morgan Stanley liked the financing markets around the time the deal closed.

a. Gittis Dep. at 99:3-17

304. Gittis testified that it was not unusual to arrange the closing of a deal during a time where the financial markets were favorable to the financing of the deal and that "February is historically a good time to finance" the debentures and bank loans that were necessary for the Sunbeam transaction.

a. Gittis Dep. at 99:8-25

305. Levin was unconcerned with the financial markets and testified that he wanted the transaction to close quickly because "once the Coleman Company employees realized that we

NOT A CERTIFIED COPY

0127514

were willing to sell the company to Dunlap, it would have been hard to restore the morale [and] the trade relations."

a. Levin Dep. at 85:25-86:14

XVII. PERELMAN AND SUNBEAM CLOSE ON THE CLN MERGER AGREEMENT ON MARCH 30, 1998

306. On March 30, 1998, Sunbeam and Coleman closed the Sunbeam transaction in New York.

a. CPH Resp. 1st RFA, Resp. 251

307. In exchange for his shares of Coleman, Perelman received 14,099,749 shares of Sunbeam stock and $159,956,756 in cash.

a. MS 279 at 11 (Dec. 6, 1999 Notice of Merger)

308. Sunbeam also assumed and repaid $1.016 billion in indebtedness of Coleman and its parent, CLN Holdings Inc. This figure represented $519 million of debt carried by CLN Holdings Inc. and the $497 million of debt carried by Coleman at the time of the closing.

a. MS 279 at 11 (Dec. 6, 1999 Notice of Merger)

309. As an integral part of the transaction, Sunbeam assumed or defeased the $980,447,000 of long-term debt of CLN Holdings Inc. and its subsidiaries, which included CPH.

a. Slotkin Dep. at 173:15-174:11

b. Drapkin Dep. at 83:5-15

c. Perelman Dep. at 237:9-18

XVIII. SUNBEAM'S APRIL 3, 1998 PRESS RELEASE ANNOUNCES ITS FIRST QUARTER 1998 RESULTS

310. On April 3, 1998, Sunbeam issued a press release announcing that it expected sales for the first quarter of 1998 to be 5 percent below those of the first quarter of 1997 and that the company would post a loss for the quarter.

NOT A CERTIFIED COPY

012755

a. MS 58 (Apr. 3, 1998 Fax from Fannin to Strong, et. al. with Sunbeam Press Release)

b. Perelman Dep. at 460:14-461:24

c. Gittis Dep. at 174:4-17

311. Sunbeam's stock dropped nearly 25 percent on April 3, 1998 following the issuance of the press release.

a. Perelman Dep. at 461:14-24

b. MS 220 (Apr. 3, 1998 PaineWebber Analyst Report)

c. Slovin Dep. at 285:10-286:10

312. Following the April 3, 1998 press release, Perelman made no attempt "to communicate directly with Sunbeam to obtain additional information about … Sunbeam's results for the first quarter of 1998." Perelman "[did]n't think that [it] [was] his place" to "confront or tell [his] people to confront" Dunlap, Kersh, or Morgan Stanley.

a. Perelman Dep. at 465:21-466:5, 476:17-478:6

313. Perelman is not "aware of anyone associated in any way with MacAndrews & Forbes who contacted anyone at Sunbeam about the April 3 press release."

a. Perelman Dep. at 468:24-469:10

314. Perelman could not recall anyone associated with MAFCO or any of its affiliates, including Coleman, who contacted Morgan Stanley about the April 3 press release.

a. Perelman Dep. at 469:4-10

b. Gittis Dep. at 179:2-7

315. Gittis contacted Michael Price following the April 3, 1998 press release. Price assured Gittis that everything was going to be fine and that Donald Uzzi, Sunbeam's executive vice president of consumer products, had misled Dunlap but that Dunlap would be able to correct the problem.

NOT A CERTIFIED COPY

012756

a. Gittis Dep. at 174:4-175:17, 177:4-12

XIX. PERELMAN GIVES DUNLAP MAFCO'S PROXY FOR 14,099,749 SHARES OF SUNBEAM STOCK

316. Sunbeam scheduled a meeting with analysts on May 11, 1998 to present Sunbeam's results of operations for the first quarter of 1998. In advance of this meeting, as well as Sunbeam's annual stockholders meeting on May 12, 1998, representatives of Sunbeam and Perelman scheduled a meeting at MAFCO's offices in New York.

a. MS 521 (Apr. 6, 1998 Sunbeam Proxy Statement)

b. Levin Dep. at 106:8-107:2

317. On May 7 or 8, 1998, there was a meeting at MAFCO's offices among Perelman, Gittis, Schwartz, Levin, Dunlap, and Fannin to discuss "what was going on at Sunbeam." Perelman and Gittis were "concerned" about what was transpiring at Sunbeam.

a. Levin Dep. at 106:8-107:15, 113:17-114:13

318. At the meeting, Dunlap led the attendees through a presentation he planned to give to Wall Street analysts on May 11, 1998.

a. Levin Dep. at 116:6-11

319. At the conclusion of Dunlap's presentation, Levin inquired about Sunbeam being "discontinued from a large part of [its] grill sales and grill accessories at Wal-Mart" and Dunlap responded by "proceed[ing] to scream at the top of his voice as to what an incompetent [Levin] was."

a. Levin Dep. at 116:21-117:5

320. After Dunlap finished haranguing Levin, Levin repeated his question about Sunbeam's grill sales to Wal-Mart and Dunlap again flew into a rage — so much so that

NOT A CERTIFIED COPY

012757

attendees at the meeting "actually were concerned about his physical well-being because he was so out of control."

a. Levin Dep. at 120:7-21

321. When Dunlap failed to answer Levin's question, David Fannin, Sunbeam's general counsel, confirmed that Sunbeam's grill sales to Wal-Mart had diminished. Levin had learned this news before the meeting with Dunlap when he, Levin, contacted individuals at Wal-Mart who informed him of the lost grill sales.

a. Levin Dep. at 120:22-121:20

322. Nevertheless, at the end of the meeting, MacAndrews & Forbes "sign[ed] their proxy in favor of Sunbeam's management." Dunlap then walked out of the meeting.

a. Levin Dep. at 124:19-125:5

XX. SUNBEAM ANNOUNCES ITS FIRST QUARTER RESULTS ON MAY 11, 1998

323. On May 11, 1998, Sunbeam reported its first quarter 1998 results.

a. MS 115 (May 11, 1998 "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00 Range Before Charges, 1999 EPS in $2.00 Range")

b. Perelman Dep. at 506:15-507:5

324. On May 15, 1998, Sunbeam issued its 10-Q for the first quarter of 1998. Sunbeam reported that its first quarter sales for 1998 were $244,296,000, versus $253,450,000 in the first quarter of 1997. These figures were eventually restated to be $247,601,000 (1998) versus $252,488,000 (1997).

a. Nesbitt Dep. at 456:17-25

b. MS 282 at 2 (Nov. 25, 1998 Sunbeam Form 10Q/A)

XXI. BURDENED BY DEBT, SUNBEAM SLIDES INTO BANKRUPTCY

325. Following the closing of the financing, the merger transaction, and the release of Sunbeam's first quarter 1998 results, Arthur Andersen repeatedly assured Sunbeam and its board

NOT A CERTIFIED COPY

012758

that the audited financial statements for 1997 and 1998 were "accurate in all material respects." In June of 1998, however, those assurances began to unravel.

a. Engelman Dep. at 73:20-74:12

326. On June 15, 1998, Sunbeam's board of directors unanimously voted to terminate Dunlap because it had "lost confidence in Dunlap's leadership," and brought in Jerry Levin to run Sunbeam.

a. MS 523 (June 15, 1998 "Sunbeam Board Terminates Al Dunlap as Chairman and CEO")

327. In the same press release in which it announced Dunlap's termination, the Sunbeam board stated that Andersen had provided assurances as to the accuracy of Sunbeam's audited financial statements. A mere ten days later, however, Andersen withdrew its audit opinion.

a. Engelman Dep. at 78:8-14

b. MS 522 (June 25, 1998 "Sunbeam Delays SEC Filing Related to Debentures")

328. In withdrawing its opinion on Sunbeam's audited financial statements, Arthur Andersen indicated that they were "lied to in a fraudulent fashion by management."

a. Engelman Dep. at 82:21-83:6

b. MS 338 (June 26, 1998 Sunbeam Update for Bank Lenders)

329. Arthur Andersen did not claim that Morgan Stanley had lied to them in any way.

a. Engelman Dep. at 83:7-11, 85:22-86:3 ("Q: Did anyone in the course of this meeting say that Morgan Stanley was responsible for Sunbeam booking sales in 1997 that should have been booked in 1996? A: Again I can't refer specifically to this meeting, but I do not recall anybody making those statements about Morgan Stanley.")

330. As a result of Andersen's withdrawal of its audit opinion, Sunbeam ultimately was forced to restate its financial results.

NOT A CERTIFIED COPY

012759

a. MS 282 (Nov. 25, 1998 Sunbeam Form 10Q/A)

331. On February 6, 2001, Sunbeam filed for bankruptcy in the United States District Court for the Southern District of New York, ending three years of declining shareholder value.

a. MS 289 (Feb. 6, 2001 Voluntary Petition, *In re Sunbeam*, 01-40291 (Bankr. S.D.N.Y.))

b. CPH Resp. 1st RFA, Resp. 271

c. Levin Dep. at 308:20-22

332. Morgan Stanley Senior Funding Inc. was the single largest creditor in Sunbeam's bankruptcy proceeding, with a valid claim for approximately $664,000,000.

a. Levin Dep. at 308:11-14, 309:13-310:6

NOT A CERTIFIED COPY

CONCLUSIONS OF LAW

1. As this Court has already determined, CPH's negligent misrepresentation claim is governed by New York law. *See* Aug. 11, 2004 Order, at 11.

2. Under New York law, a plaintiff cannot establish liability for negligent misrepresentation without establishing, among other things, that the challenged information was imparted in the context of a "special relationship of confidence or trust" with the defendant. *See, e.g., American Protein Corp. v. AB Volvo*, 844 F.2d 56, 64 (2d Cir. 1988); *Dyncorp v. GTE Corp.*, 215 F. Supp. 2d 308, 329 (S.D.N.Y. 2002); *WIT Holding Corp. v. Klein*, 724 N.Y.S.2d 66, 68 (App. Div. 2001).

3. Here, CPH has not produced any evidence that the challenged information was imparted in the context of a "special relationship of confidence or trust" with Morgan Stanley, which sat across the negotiating table from CPH as the financial advisor to CPH's counterpart Sunbeam.

012760

4. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's negligent misrepresentation claim.

5. As this Court has already determined, CPH's fraudulent misrepresentation claim is governed by New York law. See Aug. 11, 2004 Order, at 11.

6. Under settled New York law, a sophisticated plaintiff cannot establish liability for fraudulent misrepresentation with respect to the purchase of securities without establishing, among other things, that it conducted its own due diligence into the company whose securities were being purchased. *See, e.g., Schlaifer Nance & Co. v. Estate of Andy Warhol*, 119 F.3d 91, 98 (2d Cir. 1997); *Rotterdam Ventures, Inc. v. Ernst & Young LLP*, 752 N.Y.S.2d 746, 749 (App. Div. 2002); *UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386 (App. Div. 2001); *Abrahami v. UPC Constr. Co., Inc.*, 638 N.Y.S.2d 11, 14 (App. Div. 1996).

7. Here, it is undisputed that CPH is a sophisticated plaintiff, and CPH has produced no evidence that it conducted its own due diligence into Sunbeam, despite express warnings from its own team regarding Sunbeam's financial health and the credibility of Sunbeam's financial statements.

8. In addition, under settled New York law, fraudulent misrepresentation is an intentional tort, so a party seeking to establish such a claim must establish scienter, *i.e.*, intent to deceive. As a matter of law, a plaintiff cannot establish scienter by alleging that the defendant was motivated by ordinary economic motives, such as the desire to receive reasonable and ordinary compensation for its services. *See, e.g., THC Holdings Corp. v. Chinn*, No. 95 Civ. 4422, 1998 WL 50202, *9 (S.D.N.Y. Feb. 6, 1998); *Friedman v. Arizona World Nurseries Ltd. P'ship*, 730 F. Supp. 521, 532-33 (S.D.N.Y. 1990), *aff'd*, 927 F.2d 595 (2d Cir. 1991); *In re*

NOT A CERTIFIED COPY

012761

Philip Servs. Corp. Sec. Litig., No. 98 Civ. 0835 2004 WL 1152501, at *5 (S.D.N.Y. May 24, 2004).

9. Here, CPH has produced no evidence that Morgan Stanley acted with scienter beyond simply alleging that Morgan Stanley was motivated by ordinary economic motives, such as the desire to receive reasonable and ordinary compensation for its services.

10. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's fraudulent misrepresentation claim.

11. Under settled New York law, a plaintiff cannot establish liability for aiding and abetting fraud without establishing, among other things, that the defendant (1) had actual knowledge of the underlying fraud, and (2) provided substantial assistance in the commission of that fraud. *See, e.g., Stolow v. Greg Manning Auctions Inc.*, 258 F. Supp. 2d 236, 250 (S.D.N.Y. 2003); *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001), *aff'd mem.*, 2003 WL 22717684 (2d Cir. Nov. 17, 2003); *Filler v. Hanvit Bank*, 339 F. Supp. 2d 553, 557 (S.D.N.Y. 2004); *see also Wassall v. Payne*, 682 So. 2d 678, 681 (Fla. 1st DCA 1996); *Allerton v. State Dep't of Ins.*, 635 So. 2d 36, 38 (Fla. 1st DCA 1994).

12. Here, CPH has not produced any evidence that Morgan Stanley had actual knowledge of the underlying Sunbeam fraud (which involving Sunbeam's accounting), or provided substantial assistance in the commission of that fraud. To the contrary, Morgan Stanley itself was a victim of that fraud, and lost hundreds of millions of dollars in connection with Sunbeam.

13. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's aiding and abetting claim.

NOT A CERTIFIED COPY

012762

14. Under New York law, however, a plaintiff cannot establish liability for conspiracy to defraud without establishing, among other things, that the defendant actually entered into an agreement with another to commit fraud. *See, e.g., Gabriel Capital, L.P. v. NatWest Fin., Inc.*, 94 F. Supp. 2d 491, 511 (S.D.N.Y. 2000); *see also Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997).

15. Here, CPH has not produced any evidence that Morgan Stanley entered into an actual agreement with Sunbeam to commit fraud.

16. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's conspiracy claim.

NOT A CERTIFIED COPY

0127763

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 10th day of December, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
for Joseph Ianno, Jr.
Florida Bar # 655351

NOT A CERTIFIED COPY

012764

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

012765

Confidential 435

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

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

CASE NO: CA 03-5045 AI

FILED
DEC 10 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

APPENDIX VOLUME 3
DEPOSITION TESTIMONY

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5132
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: December 10, 2004

NOT A CERTIFIED COPY

012765

458

VOLUME 1

Pleadings:

May 8, 2003 Compl.

June 25, 2003 Answer, *MSSF v. MAFCO*, No. 2003CA005165, (15th Jud. Dist. Fla.)

Sept. 2, 2003 CPH's Resp. to MS's 1st Set of Interrogs.

Sept. 24, 2003 CPH's Resp. to MS's 1st Set of Reqs. for Admiss.

Oct. 13, 2003 CPH's Resp. to MS's 2d Set of Interrogs.

Mar. 17, 2004 CPH's Resp. to MS's 2d Set of Reqs. for Admiss.

Aug. 11, 2004 Order

MS Exhibits:

MS 9 (March 19, 1998 Comfort Letter)

MS 39 (March 19, 1998 Sunbeam Press Release)

MS 41 (March 18, 1998 January and February Sunbeam Consolidated Net Sales Actuals and March Net Sales thru March 17, 1998)

MS 58 (Apr. 3, 1998 Fax from Fannin to Strong, et. al. with Sunbeam Press Release)

MS 75 (March 30, 1998 Wachtell Chronology)

MS 78 (Nov. 15, 1997 Synergy List)

MS 80 (Laser Corporation Key Assumptions)

MS 81 (Feb. 6, 1998 Project Laser Proposed Summary Transaction Terms)

MS 83 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 84 (Feb. 23, 1998 Sunbeam Long Range Strategic Plan)

MS 85 (Feb. 1998 Discussion Materials)

MS 88 (Feb. 25, 1998 Coleman Board of Directors Meeting Minutes)

MS 93 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"))

MS 104 (Dec. 8, 1997 Sunbeam/Coleman Comparisons)

MS 105 (Dec. 10, 1997 Sunbeam/Coleman Comparisons)

MS 106 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 107 (Jan. 26, 1998 Sunbeam/Coleman Comparison)

MS 112 (Feb. 25, 1998 CSFB Draft Materials Prepared for the Board of Directors)

NOT A CERTIFIED COPY

012767

MS 115 (May 11, 1998 "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00 Range Before Charges, 1999 EPS in $2.00 Range")

MS 117 (Feb. 27, 1998 Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement"))

MS 118 (Feb. 27, 1998 Coleman Board of Directors Meeting Minutes)

MS 119 (Jan. 2, 2004 CPH's Resp. to Andersen's Mot. to Compel Prod. of Docs. Re The Coleman Co. ¶ 7 *CPH v. Arthur Andersen*, No. 01-06062AN (15th Jud. Dist. Fla.))

VOLUME 2

MS Exhibits:

MS 133 (Feb. 4, 1998 Confidentiality Agreement)

MS 134 (Feb. 23, 1998 Confidentiality Agreement)

MS 138 (Feb. 6, 1998, "Did Al Show His Hand Too Soon?," PaineWebber)

MS 165 (Dec. 11, 1997 Sunbeam Quarterly Earnings Comparison)

MS 166 (March 19, 1998 Offering Memorandum)

MS 169 (Dec. 10, 1997 Engagement Letter)

MS 172 (Feb. 27, 1997 CPH Consent of Directors)

MS 204 (Jan 29, 1998 Analyst Report)

MS 206 (Jan. 29, 1998 "Sunbeam Posts Profit Below Forecasts, A Stumble That Sends Stock Down 9.5%)

MS 208 (March 6, 1998 Sunbeam 10-K Annual Report for 1997)

MS 211 (March 19, 1988 Bloomberg Report)

MS 215 (March 20, 1998 "Sunbeam Shares Drop on Expected Shortfall in Sales")

MS 220 (Apr. 3, 1998 Paine Webber Analyst Report)

MS 224 (Dec. 15, 1997 Dunlap Employment Contract)

MS 230 (Feb. 25, 1998 CSFB Investment Banking Committee Memo)

MS 237 (March 2, 1998 Press Release)

MS 241 (May 15, 1997 Coleman Escrow Corporation Offering Memorandum)

MS 243 (March 20, 1998 Ernst & Young Comfort Letter)

MS 244 (June 14, 1998 Schedule 13D, MAFCO Holdings Inc.)

MS 251 (March 23, 1998 1997 Coleman Form 10K Annual Report)

MS 278 (March 29, 1998 Registration Rights Agreement between Sunbeam Corporation and Coleman (Parent) Holdings, Inc.)

NOT A CERTIFIED COPY

012768

MS 279 (Dec. 6, 1999 Notice of Merger)

MS 282 (Nov. 25, 1998 Sunbeam Form 10Q/A)

MS 288 (June 21, 2000 "Ron Perelman," CigarAficianado.com)

MS 289 (Feb. 6, 2001 Voluntary Petition, *In re Sunbeam*, 01-40291 (Bankr. S.D.N.Y.))

MS 338 (June 26, 1998 Sunbeam Update for Bank Lenders)

MS 340 (Feb. 20, 1998 Project Laser, Proposed Summary Transaction Terms)

MS 374 (May 7, 1998 Wachtell letter)

MS 398 (Apr. 17, 1998 "Coleman's Levin profits by selling stock after sale to Sunbeam")

MS 423 (Feb. 27, 1998 CLN Holdings Unanimous Written Consent of the Board of Directors)

MS 424 (Feb. 27, 1998 Coleman Worldwide Corporation Consent of Directors in Lieu of Board of Directors' Meeting)

MS 431 (*Mean Business: How I Save Bad Companies and Make Good Companies Great*)

MS 440 (March 3, 1998 Index of Information)

MS 442 (Aug. 2, 2000 Levin Tr.)

MS 520 (March 30, 1998 Credit Agreement)

MS 521 (Apr. 6, 1998 Sunbeam Proxy Statement)

MS 522 (June 25, 1998 "Sunbeam Delays SEC Filing Related to Debentures")

MS 523 (June 15, 1998 "Sunbeam Board Terminates Al Dunlap as Chairman and CEO")

CPH Exhibits:

CPH 70 (Sept. 5, 1997 Engagement Letter)

CPH 133 (March 20, 1998 Leveraged Finance Committee Memo)

VOLUME 3

Depositions:

Jan. 15, 2004 Bornstein Dep.

Aug. 27, 2004 Burchill Dep.

Oct. 8, 2004 Clark Dep.

June 24,2004 Drapkin Dep.

July 8, 2004 Duffy Dep.

Sept. 28, 2004 Emmerich Dep.

Aug. 4, 2004 Engelman Dep.

NOT A CERTIFIED COPY

012769

Nov. 22, 2004 Freed Dep.

Feb. 13, 2004 Fuchs Dep.

Nov. 19, 2004 Gittis Dep.

June 4, 1999 Harlow Tr., *In re Sunbeam*, No. HO-3433 (SEC)

Dec. 1-2, 2004 Levin Dep.

June 18, 2004 Lurie Dep.

Nov. 2-3, 2004 Maher Dep.

VOLUME 4

Depositions:

Sept. 14, 2004 Moran Dep.

Aug. 30-Sept. 1, 2004 Nesbitt Dep.

Apr. 27, 2004 Page Dep.

Nov. 17-18, 2004 Perelman Dep.

Nov. 23, 2004 Porat Dep.

Nov. 16, 2004 Rankin Dep.

July 8, 2004 Salig Dep.

June 25, 2004 Schwartz Dep.

June 8 & July 28, 2004 Shapiro Dep.

July 7, 2004 Slotkin Dep.

May 12, 2004 Slovin Dep.

Feb. 24, 2004 Smith Dep.

May 25, 2004 Stack Dep.

Dec. 4, 2003 Strong Dep.

Sept. 15, 2003 Tyree Dep.

NOT A CERTIFIED COPY

012770

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-vs-

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

DEPOSITION OF LAWRENCE ALAN BORNSTEIN

(Videotaped)

VOLUME I

Thursday, January 15, 2004
9:05 - 1:42 p.m.

2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

NOT A CERTIFIED COPY

Reported By:
Rachel W. Bridge, RMR, CRR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office
Phone: 800.330.6952
561.659.4155

COPY 012772

accomplishments at Sunbeam?

A. I thought there was a possibility that he was, yes.

Q. And that was your belief in the first quarter of 1998, correct?

A. Yes.

Q. Mr. Bornstein, let me show you what we've previously marked as CPH Exhibit Number 17. It's a document on Arthur Andersen stationery bearing Bates numbers MS375 through 381.

If you could take a moment, my first question is going to be whether you can identify that document for me.

A. Yeah, this is a copy of a, a copy of the comfort letter.

Q. And it's a letter dated March 19, 1998, correct?

A. Yes.

Q. And it's from Arthur Andersen to Morgan Stanley & Company, Inc.?

A. Yes.

Q. And it's signed Arthur Andersen LLP, correct?

A. Yes. I believe it's my handwriting.

Q. You believe you signed the name Arthur Andersen LLP to the letter?

NOT A CERTIFIED COPY

012273

A. This was signed about five o'clock in the morning on the 19th, I believe, the night of the pricing of the bonds, the following subsequent a.m.

Q. So that process I think from prior testimony started on the 19th, if it was 5:00 a.m., it would have been 5:00 a.m. on the 20th?

A. 20th, I believe.

Q. Even though the letter is dated the 19th, correct?

A. Yes.

Q. Were you authorized to sign this letter on behalf of Morgan Stanley -- excuse me, I misspoke.

Were you authorized to sign this letter on behalf of Arthur Andersen?

A. Yes, I was.

Q. And who provided you with that authorization?

A. Phil Harlow.

Q. And Mr. Harlow was the engagement partner, as you've previously testified, correct?

A. Yes.

Q. And the letter is addressed to Morgan Stanley.

Do you know if the letter was delivered to Morgan Stanley?

A. Yes, it was.

NOT A CERTIFIED COPY

012774

be conducting due diligence?

A. Not that I'm aware of, no.

Q. Were you ever informed by any source that Morgan Stanley had been tasked to perform due diligence on behalf of Coleman and its corporate parent?

A. No.

Q. Did you receive any instructions from Sunbeam about any inquiries that you might get from Coleman (Parent) Holdings and its corporate parent?

A. No.

Q. Did anybody ever tell you in words or in substance not to provide Coleman (Parent) Holdings and its corporate parent with any information that they requested?

A. No.

Q. Did anybody ever instruct you to channel all information for Coleman (Parent) Holdings through Morgan Stanley?

A. No.

Q. Do you have a recollection of any inquiry that you received that you understood to be made on behalf of Coleman (Parent) Holdings?

A. No.

Q. Are you aware of any due diligence that was performed by Coleman (Parent) Holdings or its

NOT A CERTIFIED COPY

012775

representatives as part of the acquisition transaction?

A. No.

Q. You were not part of any in-person meetings with Coleman (Parent) Holdings or any of its representatives for that purpose?

A. No.

Q. Any telephone conferences?

A. No.

Q. Were you ever asked to participate in an accounting due diligence call with Coleman (Parent) Holdings like the one that Morgan Stanley had conducted that you participated in?

A. Not that I recall.

Q. Were you aware that Coleman (Parent) Holdings was, and Coleman were being represented in the transaction by Credit Suisse First Boston as their investment advisor?

A. No.

Q. Did you have any dealings with CSFB during the first quarter of 1998?

A. No.

Q. Did you receive any inquiries from CSFB during the first quarter of 1998 about Sunbeam or its financial performance?

A. No.

NOT A CERTIFIED COPY

012776

Q. Are you aware of any inquiries that Andersen received, even if you were not personally involved, from anybody representing Coleman (Parent) Holdings?

A. Not that I'm aware of.

Q. Are you aware of any inquiries from Coleman (Parent) Holdings on the subject of Sunbeam's bill and hold sales?

A. No.

Q. Are you aware of any inquiries from anyone representing Coleman (Parent) Holdings about the bill and hold disclosures that were in Sunbeam's 1997 10K?

A. No.

Q. Or whether Sunbeam was engaged in bill and hold sales in the first quarter of 1998?

A. No.

Q. Or Sunbeam's Early Buy program?

A. No.

Q. Or the Early Buy program disclosures that were in the 1997 10K?

A. No.

Q. Or the impact of Sunbeam's Early Buy program on Sunbeam's first quarter 1998 sales?

A. No.

Q. Or Sunbeam's quarter-to-date sales in the first quarter of 1998?

NOT A CERTIFIED COPY

12777

A. No.

Q. At any point in time?

A. No.

Q. Are you aware of any inquiries from anyone representing Coleman (Parent) Holdings after the March 19, 1998, press release about Sunbeam's first quarter performance?

A. Can you repeat the question?

(Thereupon, a portion of the record was read by the reporter.)

THE WITNESS: No, not until after Mr. Dunlap was terminated.

BY MR. CLARE:

Q. When you say not until after Mr. Dunlap was terminated, it was at that point that a new management team was installed?

A. Yes.

Q. And then inquiries were made by the new management team?

A. Yes.

Q. But limiting ourselves to the first quarter of 1998 and inquiries that may have been received from Coleman (Parent) Holdings during the first quarter of 1998, are you aware from any source of any inquiries that were made by Coleman (Parent) Holdings or any of

NOT A CERTIFIED COPY

01278

its representatives after the March 19, '98 press release?

A. No.

Q. So no inquiries between March 19, 1998, and the end of the first quarter?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: Not that I'm aware of, no.

BY MR. CLARE:

Q. Are you aware that on April 3rd, 1998, Sunbeam announced that its first quarter 1998 sales were, had fallen short of the first quarter 1997? Were you generally aware of that?

A. I believe it was the second press release. I don't remember specifically what it said.

Q. But you're aware that shortly after the first quarter, Sunbeam issued a press release like the one I just described?

A. Yes.

Q. Were you aware of any inquiries from Coleman (Parent) Holdings or anyone representing Coleman(Parent)Holdings after that April 3rd, 1998 press release?

MR. MARKOWSKI: I want to make sure we're clear here. You've been focusing on inquiries of

NOT A CERTIFIED COPY

012779

Andersen. Are you broadening the question now?

MR. CLARE: No. Any inquiries that Mr. Bornstein is aware of, made to anyone, but specifically within his knowledge.

MR. MARKOWSKI: So an inquiry to anyone, not specifically to Arthur Andersen?

MR. CLARE: Correct.

THE WITNESS: I'm not aware of anything.

BY MR. CLARE:

Q. In 1998, the first quarter, as you prepared to assist Sunbeam with these acquisition transactions, did you have an expectation that Coleman or its corporate parent might want it ask questions of Arthur Andersen?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: I thought it was possible, yes.

BY MR. CLARE:

Q. So that thought did occur to you back in the first quarter of 1998?

A. Yes.

Q. And you testified that you're not aware of any inquiries that were made to Andersen and certainly not to you from Coleman (Parent) Holdings or its corporate parent?

NOT A CERTIFIED COPY

012780

A. Yes.

Q. In the first quarter of 1998, did you, were you surprised by the lack of inquiry from Coleman (Parent) Holdings or its corporate parent?

A. I'd say yes.

Q. And did you form an opinion about the quality of due diligence done by Coleman (Parent) Holdings on Sunbeam in the first quarter of 1998?

MR. MARKOWSKI: Objection, lack of foundation.

THE WITNESS: I wasn't aware of any that they did, so if you want to repeat the question, I don't know if I answered it.

BY MR. CLARE:

Q. Sure. You were surprised that they didn't do any due diligence, to your knowledge?

MR. MARKOWSKI: Object to the form of the question. Mischaracterizes his answer.

THE WITNESS: Yes.

BY MR. CLARE:

Q. If there had been inquiries that were made by Coleman (Parent) Holdings or any of its representatives to Sunbeam -- strike that, withdrawn.

If there had been any inquiries made by Coleman (Parent) Holdings or any of its representatives

NOT A CERTIFIED COPY

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

COLEMAN(PARENT)HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
No. CA 03-5165 AI

VIDEOTAPED DEPOSITION OF
THOMAS F. BURCHILL
New York, New York
Friday, August 27, 2004

Reported by:
Jane Watson
JOB NO. 163614

NOT A CERTIFIED COPY

012783

COPY

Go ahead.

MS. PAULE-CARRES: Let me rephrase the question.

BY MS. PAULE-CARRES:

Q. Are you familiar with the role of an independent auditor?

A. I am.

Q. Can you please explain what that is.

A. The role of an independent auditor is as an audit -- as an auditing firm to fact check the financial statements and results of a company.

Q. Was Morgan Stanley an independent auditor?

A. No, it was not.

Q. Is due diligence the same as performing an audit of the financial numbers?

A. It is not.

Q. Do you know whether publicly traded companies -- do you know whether Sunbeam had an independent auditor reviewing its financials?

A. I wasn't aware with respect to the Sunbeam transaction whether or not an independent auditor had been hired. It was my assumption that Sunbeam had an auditor, as all public

NOT A CERTIFIED COPY

012784

companies do -- I believe are required to have.

Q. And do you recall providing testimony regarding the syndication of the loan -- of the loan to Sunbeam?

A. Only that I didn't recall the syndication, yes.

Q. In general, in your experience at Morgan Stanley, does Morgan Stanley syndicate 100 percent of a loan?

A. In my experience, Morgan Stanley never syndicated 100 percent of a syndicated loan, primarily for the reason that no lending institution would partake in a loan that was fully syndicated out. As a general matter, participating lenders want to know that the lead underwriter has a holding portion of the loan and --

MS. PAULE-CARRES: Thank you. I have no further questions.

A. -- that was our practice.

MR. JOHNSON: Okay. Naturally, that leads to one more follow-up for me. At least one more.

FURTHER EXAMINATION BY

MR. JOHNSON:

NOT A CERTIFIED COPY

012785

auditors to comment on the attainability of projections?

A. To the extent that synergies, "synergies" as an original term, would be part of projections, we would ask them their view on that as a general matter.

Q. Do you understand auditors to have different expertise than investment bankers?

A. Yes.

Q. And how would you contrast those areas of expertise?

A. Auditors check facts and investment bankers in general assess markets.

Q. When you say "assess markets," what do you mean by that?

A. The appetite of certain investors to invest in certain securities.

Q. And so that involves a read of the current situation and an assessment of the future likely situation.

Is that fair to say?

A. Repeat the question.

Q. Sure. It was a bad question. Let me strike it and give you another one.

What I'm trying to understand is your

NOT A CERTIFIED COPY

012786

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

ORIGINAL

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF KAREN C. CLARK
Los Angeles, California
Friday, October 8, 2004
CONFIDENTIAL

Reported by:
REBECCA CORRAL
CSR No. 7021
Job No. 903095

NOT A CERTIFIED COPY

A Again, I don't remember specifics, but my gut reaction is that it was somewhere in like the high 20's or low 30's; is that right? You have the facts.

Q It is lower. It is much higher than that.

11:14 Did you share your surprise at both the acquisition and the price of the acquisition with anyone at the Coleman Company?

A Yes.

Q With whom?

11:14 A Joe Page.

Q And what did you say to Mr. Page on this subject matter?

A I don't recall the specifics of the conversation, but the context of it was that it was

11:15 surprising it was selling so quickly and surprising it was selling for what appeared to be such a high premium.

Q What did, if anything, did Mr. Page say in response to your surprise?

A I believe he concurred.

11:15 Q He was surprised?

A Yes.

Q On both points?

A Yes.

Q That is, both the timing and the price?

11:15 A Yes.

NOT A CERTIFIED COPY

012788

Q Now, this document reflects combined data for 1996 and 1997; right, as well as other periods?

A Correct.

Q So let's turn to the highlights of Coleman's financial data on page 13 of the Form 10-K for 1997. Tell me when you are there again.

A I am there.

Q All right. Just want to ask you a couple questions about what the situation was when you arrived on June of 1997.

According to the document that you signed and filed with the Securities and Exchange Commission, M.S. 251, Coleman had a net loss in 1996 of $4,893,000; is that right?

A Yes.

Q And that was in contrast to a profit of $39,280,000 in 1995; right?

A Correct.

Q Now, if I understood you correctly, you were one of the people who were brought in along with Mr. Levin to assist in a turnaround of the company, that is, the Coleman Company; right?

A Correct.

Q And now, as part of your job to turn around Coleman, what specific tasks were assigned to you as

NOT A CERTIFIED COPY

EXHIBIT 12789

Q I hope so.
A It is a feature.
Q Now, did you have any specific role in creating the turnaround or restructuring plan for the Coleman Company?
A Just supporting the business units, it was a business plan.
Q Who was in charge of the Coleman -- at the Coleman Company when you arrived in June of 1997 for the
11:25 business restructuring plan for the Coleman Company?
A Jerry Levin.
Q And Mr. Levin, was it his charge, as you understood it, that he was to turn around the company and reverse the type of results that the company had in
11:25 1996 losing almost $42 million?
A It was his objective to make it a profitable and sustainable, solid business.
Q Now, as I read page 13, the selected financial data, which is in Morgan Stanley 251, for 1997, the
11:26 company, that is, the Coleman Company, lost $2,536,000; correct?
A Correct.
Q And if I -- looking down further to balance sheet data, do you see the heading Long Term Debt?
11:26 A Yes.

NOT A CERTIFIED COPY

12790

Q Now, if I look at -- am I reading this correctly, in 1993, Coleman's long term debt was only $168,858,000; is that correct?

A Correct.

11:26 Q By 1997, Coleman's long term debt had swollen -- strike swollen. Increased to $477,799,000; is that correct?

A The debt had increased, as had other numbers in the business at that point.

11:27 Q Well, let me look at -- what is stockholders equity under balance sheet data, what does that mean?

A It is the source of the assets that came from stockholders or the interest of stockholders.

Q Well, am I correct that the total interest of

11:27 stockholders, that had increased from $228,104,000 in 1993 to $240,469,000 in 1997?

A Correct.

Q Now, when you went through this restructuring of the Coleman Company while you were there in 1997 and

11:28 up -- well, withdrawn.

Did the restructuring, was it ongoing at the time of the acquisition by Sunbeam in March of 1998?

A Yes.

Q So it was a work in progress at the Coleman

11:28 Company; right?

NOT A CERTIFIED COPY

012791

underlying fundamentals, such as enhancing a product offering, building better relationships with the channel, building more success with the channel, reducing costs, improving systems, front to back building a better business.

11:43

Q You know, from front to back, how much longer did you expect the restructuring to take, assuming there had not been a merger between Coleman and Sunbeam?

A When I was hired, I was told the expectation was approximately five years, really, no less than three, and potentially longer, but I had set my expectations around a horizon of approximately five years.

11:43

Q And the acquisition was announced approximately eight months after you joined the company, if you joined on June 30, 1997; right?

A That's right.

MR. BEMIS: If you could set aside Morgan Stanley Exhibit 251.

11:43

THE WITNESS: Is this a good time for a break?

MR. BEMIS: It sure is, ma'am. You are very gracious to go as long as you did. Ten minutes, is that enough for you?

THE WITNESS: That would be great.

11:44

MR. BEMIS: Okay. Off the record, please.

NOT A CERTIFIED COPY

0012792

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

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

No. CA 03-5045 AI

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

No. CA 03-5165 AI

ORIGINAL

CORRECTED

VIDEOTAPED DEPOSITION OF
DONALD G. DRAPKIN
New York, New York
Thursday, June 24, 2004

Reported by:
Jane Watson
JOB NO. 161016

NOT A CERTIFIED COPY

0127914

sense of listed, publicly accessible?

THE WITNESS: It's publicly accessible.

MR. MARMER: Okay.

THE WITNESS: Yes.

A. 201-767-5650.

BY MR. BEMIS:

Q. Are you married today?

A. Yes, sir.

Q. Do you live at that address with your wife?

A. Yes, sir.

Q. How long have you been there?

A. I think it's going on 20 years.

Q. Any present intention to move?

A. No.

Q. Who do you work for today?

A. MacAndrews & Forbes -- I think it's Holdings. The ultimate parent company of MacAndrews & Forbes.

Q. And how long have you been employed by MacAndrews & Forbes Holdings? There's an S on the end I think.

A. Since January 1, 1987.

Q. What is your title at MacAndrews &

NOT A CERTIFIED COPY

012795

Forbes Holdings, Inc. today?

A. Vice chairman.

Q. Do you hold any other titles?

A. Not that I'm aware, no.

Q. Are you a director of MacAndrews & Forbes Holdings?

A. I believe so, yes.

Q. And what is the office address for MacAndrews & Forbes Holdings?

A. 35 East 62nd Street, New York, New York 10021.

Q. And do you have an office telephone number there, sir?

A. Yes, I do.

Q. And what is it?

A. (212) 572-8440.

Q. You understand that you are being videotaped today?

A. Yes, sir.

Q. And do you understand that the videotape can be played to the jury in the trial of this action?

A. Yes, sir.

Q. And did you have an opportunity to consult with Mr. Marmer before your deposition

NOT A CERTIFIED COPY

0127796

A. No.

Q. Do you have any residences -- let me withdraw that question.

Do you have a residence in Florida?

A. No.

Q. Have you had since 1997?

A. No.

Q. You have a driver's license, right?

A. Yes, sir.

Q. And is it a New Jersey driver's license?

A. Yes.

Q. Are you registered to vote in New Jersey?

A. Yes, sir.

Q. I don't know if you pay state taxes there. I assume you do. Do you pay state income taxes in New Jersey?

A. Unfortunately.

Q. I note from looking at your background that you did graduate from Columbia Law School; is that right?

A. Yes, sir.

Q. About 1971?

A. Yes, sir.

NOT A CERTIFIED COPY

012797

Q. Are you admitted to practice as a lawyer today in any state?

A. Yes, sir.

Q. Which states?

A. The State of New York.

Q. Any other states, sir?

A. Not to my knowledge.

Q. When did you begin --

A. I might have been years ago. I don't recall whether I kept up.

Q. When did you begin -- strike that.

When were you first admitted to practice in New York?

A. I believe it was 1971.

Q. And have you been continuously licensed to practice in New York since 1971?

A. Yes, sir.

Q. I've done a little bit of background checking on you just to speed things along. And I want to ask you a couple of questions about your background before we get to some more substantive matters.

When you graduated from law school and passed the bar exam, did you go to work for a law firm?

NOT A CERTIFIED COPY

012798

A. Yes, sir.
Q. Which one?
A. Cravath, Swaine & Moore.
Q. And how long were you with Cravath?
A. Until January 1, 1977.
Q. Then did you go to Skadden, Arps?
A. Yes, I did.
Q. How long -- what years were you there?
A. Until January 1, 1987.
Q. Did you have an area of practice that you specialized in as an associate at Cravath?
A. Cravath has a rotation system. So as an associate, I worked in, as I recall, three different areas.
Q. What were the areas that you worked in at Cravath?
A. My first rotation was what I would call general corporate work, representing public companies mostly and doing underwritings.
My second rotation was for another corporate partner who did mostly company work rather than -- and deals rather than public offerings.
And my third rotation was for a

NOT A CERTIFIED COPY

012799

gentleman named Dick Simmons who was a Chemical Bank partner. And I did mostly Chemical Bank work.

(Discussion off the record.)

BY MR. BEMIS:

Q. Would you -- thank you for your patience. I'm sorry for the interruption.

Would you characterize the work that you did at Cravath generally being in the corporate field?

A. Yes.

Q. You then spent a number of years, it looks like 10 years if I count it correctly, at Skadden, Arps?

A. That's correct.

Q. When you left there, were you a partner?

A. Yes.

Q. Did you have an area of specialization when you worked at Skadden?

A. Yes.

Q. What was that, sir?

A. Corporate law.

Q. Any particular area of corporate law that you concentrated in?

NOT A CERTIFIED COPY

012800

A. I suppose one could say mergers and acquisitions.
Q. Did you do public offerings?
A. On occasion.
Q. Were you involved in mergers and acquisitions that involved underwritings?
A. On occasion.
Q. Have you ever worked on -- withdrawn.
When you left Skadden -- Skadden, Arps in I believe you said January 1st of -- was it 1987?
A. Correct.
Q. Is that when you went to work for MacAndrews & Forbes Holdings, Inc.?
A. Correct.
Q. And have you -- you've been there continuously ever since; is that right?
A. Yes.
Q. Do you hold -- MacAndrews & Forbes Holdings, Inc. is owned a hundred percent by another company called Mafco, Inc.; is it not?
A. I actually am not exactly sure what the ultimate name -- as I said before, the ultimate name of the parent holding company. There may be. I would defer to my colleague,

NOT A CERTIFIED COPY

012801

CONT #858

A. Yes, sir.

Q. My understanding is that you worked for the entity that is shown on this page as MacAndrews & Forbes Holdings, Inc.; is that correct?

A. Yes.

Q. Are you familiar with a company called Mafco Holdings, Inc.?

A. I know the name.

Q. That's all you know is the name?

A. I may be a director of it. We have lots -- as you can see from this, there are lots of holdings companies, and I have trouble keeping the names straight.

Q. Well, for the record, this document is dated -- and it's on page ii if you want -- December 6, 1999. And you can set that aside for the moment and I may come back to it later.

Now, in addition to your position with MacAndrews and Forbes Holdings, Inc., do you hold any position in a company called MacAndrews & Forbes Group, Inc.?

A. I may be -- I may be a director of MacAndrews & Forbes Group, Inc. My employment is with MacAndrews & Forbes Holdings, Inc. I'm

NOT A CERTIFIED COPY

012802

A. Excuse me one second.

(Discussion off the record.)

BY MR. BEMIS:

Q. Turning back to the companies that are most closely involved with, I think, this case, you've told us about MacAndrews & Forbes Holding, Inc. What is the business of that company?

A. We own a number of companies, and we buy and sell companies.

Q. It's a holding company, isn't it?

A. Yes, sir.

Q. And when you say you buy and sell companies, would this be in the nature of doing merger and acquisition transactions as you described in your legal practice?

A. In some sense.

Q. And has that been the business, as you've just described it for us, of MacAndrews & Forbes Holding since you went to work there in 1987?

A. Yes.

Q. Does it have any business that it operates today?

A. Lots. As I said, our business is

NOT A CERTIFIED COPY

012803

Q. Tell me what's your best --
A. I don't remember the dates we owned and sold Technicolor, is it before or after 1987. We had lots of smaller companies, bigger companies. I just don't remember.
Q. I appreciate you don't remember an exact number. And qualify the number in any way that you want. Give the jury your best estimate since 1987 of how many companies MacAndrews & Forbes Holdings, Inc. has bought and sold.
MR. MARMER: Objection; asked and answered.
Subject to my objection, the witness may answer again.
A. I don't have a good number. It's more than one and less than 50.
BY MR. BEMIS:
Q. Have some of these been public companies?
A. Yes, sir.
Q. And some of them private companies?
A. Yes, sir.
Q. And is this true on both the buy and the sell side, that is you've bought public companies?

NOT A CERTIFIED COPY

012804

A. Yes, sir.
Q. And you've sold public companies?
A. Yes, sir.
Q. And MacAndrews & Forbes has bought private companies?
A. Yes, sir.
Q. And MacAndrews & Forbes, while you were there, has sold private companies?
A. Yes, sir.
Q. While you were at MacAndrews & Forbes, has that company or any of its subsidiaries issued debt securities, that is instruments that would qualify as securities under the 1933 Act?
A. Yes, sir.
Q. How many times?
A. I don't know.
Q. One of them you recalled was the LYONs, right?
A. Yes, sir.
Q. Do you recall any others?
A. Yes, sir.
Q. What others?
A. I mean, we do debt financing all the time. So almost every company we have either has

NOT A CERTIFIED COPY

012805

A. I did the merger, so I actually remember it.

Q. When was it?

A. '82.

Q. Let me turn to the -- ask you a couple of questions about -- well, withdrawn.

MR. BEMIS: Could you mark this as 288 please, Miss Reporter.

(MS Exhibit 288, Cigar Afficionado article on Ron Perelman, marked for identification, as of this date.)

BY MR. BEMIS:

Q. Do you have Exhibit MS 288 in front of you?

A. Yes, sir.

Q. If you turn to Page 18 of 19, there's a second paragraph. And I'd like to direct your attention there, please. You'll see it begins "Perelman."

Are you there?

A. Yes, sir.

Q. You can read the whole paragraph if you like, but I'd like you to direct your attention to the remarks attributed to Mr. Perelman in this article. It states "and

NOT A CERTIFIED COPY

012806

then Donald Drapkin, who's been our partner -- I mispronounced your name. I'm sorry. "Who had been our partner at Skadden, Arps, likewise reached a point where he was thinking about a change of career. And I made the same speech to him that I made to Gittis, and he joined us at that time. He's basically our in-house strategic thinker. He's our in-house investment banker.".

Do you see that?

A. Yes.

Q. Is than an accurate statement of your position at MacAndrews & Forbes Holdings, Inc.?

A. Yes.

Q. You can set that aside.

Have you ever been referred to as Mr. Perelman's alter ego?

A. I don't know.

Q. Let me show you a document previously marked as MS 240 (handing).

MR. BEMIS: It's been previously marked, Miss Reporter.

BY MR. BEMIS:

Q. Do you have MS 240 in front of you?

A. Yes, sir.

Q. Have you seen this article before

NOT A CERTIFIED COPY

012807

together a real Entertainment," and it continues over onto the next page.

A. Uh-huh.

Q. And the paragraph that begins "but Perelman," directly below there. Would you look at that, please --

A. Yes. Yes, sir.

Q. And tell me when you are done reading the paragraph.

Did you make those statements that are attributable to you, sir: "Just because he's done ten deals or 20 deals or 30 deals that have been spectacular," says Donald Drapkin, Perelman's alter ego and MacAndrews & Forbes, "doesn't mean he should slow down or stop. If it was only about having enough money to live, he would have stopped a long time ago. But this is what we do. We do deals, big deals, little deals, deals."

Did you say that, sir?

A. I have no reason to doubt it, but I don't recall.

Q. Is it an accurate statement about what you do at MacAndrews & Forbes Holdings, Inc.?

NOT A CERTIFIED COPY

012808

MR. MARMER: Object to the form.

Q. As of this time in 1993 when this article was attributed to you?

MR. MARMER: Same objection.

A. It was certainly part of what we did.

Q. You can set that aside.

Now you attended the -- withdrawn. I would like to now move forward to 1998, and to the February board meetings of the Coleman Company Inc. at which time the merger transaction that's the subject matter of this litigation was considered by the Coleman Company, Inc. board of directors. Are you with me timewise now?

A. Uh-huh.

Q. You have to answer yes or no?

A. Okay.

Q. Now, there were at least two meetings of the board of directors in February of '98 of Coleman Company Inc. Do you recall that?

A. Yes.

Q. Perhaps to put this in context and move it a little quicker, the dates that we've identified are February 25th and February 27, 1998. Does that square with your recollection?

A. Yes, sir.

NOT A CERTIFIED COPY

012809

first time?

A. (Indicating.)

Q. You have to answer yes or no.

A. I do not recall whether it was the first time.

Q. When do you recall the first time the board of directors of the Coleman Company was advised of a transaction with Sunbeam Corporation?

A. Do you mean the entire board sitting en masse?

Q. Yes, the board of directors.

A. Then I would have to say that was probably this meeting.

Q. Did you know about it before this meeting?

A. Yes.

Q. When did you first learn of a potential transaction whereby the Coleman company would be merged with Sunbeam?

A. It has been discussed on and off for a number of months. I can't give you the exact dates.

Q. Did you learn in your capacity as an officer and director of MacAndrews and Forbes

NOT A CERTIFIED COPY

012810

rude, and I'm not trying to be rude to you, it's probably best if we just do question and answer. If he wants to ask you a question later, I'd rather do it that way.

A. I'm just trying to be accurate.

Q. I appreciate that. And, again, I'm not trying to be rude. As you might know, there's forms we have to go through.

At the February 25th meeting of the board of directors of the Coleman Company, Inc., were there any presentations at that meeting by investment bankers?

A. I recall that Credit Suisse First Boston had a book, a handout which would have been typical.

Q. Typical of what?

A. Any deal.

Q. That the investment bankers would prepare some type of handout for the board?

A. Yes, sir.

Q. Did -- was anything handed out at the board of directors meeting on February 25th that had been prepared by Morgan Stanley?

A. Not that I recall.

Q. Was there any representative of

NOT A CERTIFIED COPY

012811

Morgan Stanley at the meeting?

A. Not that I recall.

Q. Was the February 25th board meeting the first time that the independent members of the board of directors were told of a potential transaction between Sunbeam and the Coleman Company?

A. The same answer that I gave you before.

Q. You don't know?

A. That there was a chronology floating around that was -- prepared more contemporaneously, that would have more accurate information than my recollection.

Q. And, again, you did see this chronology during your deposition preparation?

A. Again, I saw a chronology. The one that you handed me did not look familiar to me.

MR. BEMIS: Miss Reporter, would you mark this as 173, please.

(MS Exhibit 173,"Project Laser" chronology, marked for identification, as of this date.)

BY MR. BEMIS:

Q. Do you have exhibit MS 173 in front

NOT A CERTIFIED COPY

012812

of you?

A. Yes, sir.

Q. Is this the chronology that you looked at?

A. No.

Q. Okay. You can hand that back to me.

Do you recall what this chronology looked like at all; how many pages for example? Did it have a heading on it or anything at all?

A. I don't recall a heading. It had smaller type. And it was in a different -- it didn't have a letter. Maybe it's the same one as you showed me, but without the letter.

Q. Without the letter.

Let me go forward now to the second board meeting at which we, I think, placed it February 27, 1998. Do you recall that meeting?

A. Yes, sir.

Q. And you did attend that as a director, correct?

A. Yes, sir.

Q. And you -- that was the meeting that the board of directors voted -- withdrawn. On February 27th, the Coleman board did vote in favor of the merger, correct?

NOT A CERTIFIED COPY

012813

A. Yes, sir.

Q. Was there any -- was there a presentation by an investment banking firm at that meeting?

A. I believe Credit Suisse First Boston was at that meeting.

Q. And did Credit Suisse First Boston make a presentation to the board members?

A. I believe so.

Q. Did anyone from Morgan Stanley attend the meeting?

A. No, sir.

Q. Were there any documents handed out to the directors from Morgan Stanley?

A. No, sir.

Q. Did the board of directors vote unanimously for the transaction?

A. Yes, sir.

Q. Were any of the board members to your knowledge told how to vote?

A. I don't understand the question.

Q. Just that. Did they exercise -- let me try it this way. Did they exercise their own independent business judgment or were they given instructions how to vote?

NOT A CERTIFIED COPY

012814

1998 merger agreement, not necessarily the Coleman agreement but the CLN merger agreement with Sunbeam, the holdings agreement --

A. Got it.

Q. Am I correct that Sunbeam assumed the debt of CLN Holdings Inc. as of the date of the closing?

A. CLN Holdings and its subsidiaries.

Q. And its subsidiaries.

A. That's correct.

Q. As of at least December 31, 1997, the amount of that outstanding debt, according to the certified financial statements, is 980,000,447 -- excuse me, $980,000,447; is that right?

A. Yes.

Q. In addition to the assumed debt, whatever the final figure was as of the date of the closing on March 30th of 1998 -- you would agree with me that was the date of the closing, March 30, 1998?

A. Yes, sir.

Q. Was there any, to your knowledge, material adjustment upward or downward in the amount of CLN Holdings Inc.'s consolidated debt as reflected on the financial statements?

NOT A CERTIFIED COPY

012815

Q. So in connection --
A. My only hesitation by the way is whether it was called E&Y in those days or some other name.
Q. Fair enough.
In connection with the merger transaction, the Coleman Company and CLN Holdings investment banking advice from Credit Suisse First Boston; is that right?
A. Yeah.
Q. And it had legal advice from the Wachtell, Lipton firm, correct?
A. Correct, yeah.
Q. And it had access from an accounting standpoint to its auditors Ernst & Young, correct?
A. Certainly.
Q. And Ernst & Young had been the auditors for the Coleman Company for a number of years preceding the closing of the merger agreement on March 30, 1998, correct?
A. I don't think we changed auditors. I think that's correct.
Q. After the merger -- after the merger agreements were signed, and up to the -- which is

NOT A CERTIFIED COPY

012816

-- we'll use February 28, 1998 and up through the closing on March 30th, did you ever have any communications with anyone about -- let me withdraw the question and start over again.

Between the date of the signing of the merger agreements, which are in the record as MS 93 and MS 117, and the date of the closing, which the first agreement is March 30, 1998, did you have any face-to-face meetings with anyone at Morgan Stanley?

A. I don't think so.

Q. How about after the closing on March 30, 1998 and say up to July 31, 1998, did you have any meetings with anyone from Morgan Stanley?

A. With regards to the Coleman transaction?

Q. Yes, sir. Not just a casual meeting some place. I realize you may have run into them on the street in your business or --

A. Or they may have pitched us on something.

Q. Let's focus on the Coleman transaction.

A. I don't believe so.

NOT A CERTIFIED COPY

012817

that's an assumption. And I did see that prosecutes release.

Q. Can we refer to that as the March 19th press release going forward just for simplicity?

A. We can refer to it anything you like.

Q. I'd like to do it that way, so that's what we'll do.

Other than the March 19th press release, did you see anything -- strike that. Did you receive indirectly from any other source documents that you associated with Morgan Stanley?

A. Not that I can recall.

Q. Let me ask you the same questions about the correspondence from Morgan Stanley.

After the signing of the merger agreements dated as of February 28, 1998 and the closing on March 30th, did you receive any correspondence from anyone from Morgan Stanley concerning the Sunbeam transaction?

A. Not that I recall.

Q. After the closing on March 30, 1998, and through, say, July 1st of 1998, did you receive any correspondence from anyone from

NOT A CERTIFIED COPY

012818

At any time between the approval of the merger agreements, which were dated as of February 28, 1998, and the closing on March 30th, did you have any face-to-face meetings or conference calls for example with anyone from Morgan Stanley Senior Funding about the Coleman acquisition?

A. I didn't have any contact with respect to the Coleman deal with anybody from Morgan Stanley or any related entity about this deal that I can recall any of this time.

Q. And "any of this time frame," that would be, say, February 27th through the date I asked you earlier, which would be July 8th?

A. Correct.

Q. Before the signing of the document, as of February 20, 1998 do you remember having any conversations with anyone from Morgan Stanley Senior Funding? And in that I will include telephone conferences, electronic conferences, anything of that nature.

A. I'd answer that by saying I don't recall having any contact with anyone from Morgan Stanley. I have no idea what Morgan Stanley Senior Funding is. With respect to Coleman.

NOT A CERTIFIED COPY

012819

MS 36m which is what I started to do when we got distracted.

MR. BEMIS: Miss Reporter, that was previously marked. And I think that was Mr. Slovin's deposition.

BY MR. BEMIS:

Q. Do you have MS 36 in front of you?

A. Sure.

Q. Tell me when you're done looking at it, and I'll just have a couple of questions for you.

A. Yeah. I'm reading it.

Q. Okay.

Did you see a copy of this article from The New York Times dated March 20, 1998?

A. I don't know.

Q. Do you recall, even if you didn't see this article, that the price of the Sunbeam common stock did fall in trading 9.4 percent following the March 19th press release?

A. Yes, sir.

Q. And, now, going back to MS 93, which is the merger agreement, I think we previously established that part of the consideration that the MacAndrews group was going to receive was

NOT A CERTIFIED COPY

012820

talking about -- concerning going back to Sunbeam and asking for an adjustment in the price based on the drop of the price of the stock?

A. I don't think I was at the firm during those two weeks.

Q. So you answer is you're not aware of any such conversation?

A. Correct.

Q. In the Coleman/Sunbeam merger, did you know that Sunbeam was raising some of the money that it needed to complete the acquisition through a zero coupon debenture offering that was being underwritten by Morgan Stanley?

A. Yes.

Q. And I showed you earlier the offering memorandum which is -- and I'll show it to you one more time, MS 166. Did you tell me that you had not seen the offering memorandum?

A. That's correct.

Q. In connection with an underwriting of this size, which is at least on its face $2,014,000,00, that's face value not issue price because these were issued discount, would it be in your experience as both an attorney and as the in-house investment banker for Mr. Perelman's

NOT A CERTIFIED COPY

012821

companies, for the underwriter to obtain from the auditors of Sunbeam a comfort letter?

A. Yes.

Q. And would it be customary in your experience as both an attorney and as the in-house investment banker for Mr. Perelman's companies, for Sunbeam to direct its auditors to provide such a comfort letter?

A. Yes.

Q. Would it be in your experience as a lawyer and as the investment banker in-house for Mr. Perelman's companies for Morgan Stanley to request a comfort letter at the time not only of purchasing, in this case the debentures, but the actual effective date if you will of the offering memoranda, a bring down letter?

A. Yes.

Q. And in your experience both as a lawyer and as the in-house investment banker for Mr. Perelman's companies, would it be your judgment that the reason that one would obtain such a comfort letter would be for the auditors to establish at least in part their due diligence defense under Section 11 of the 1933 Securities Act?

NOT A CERTIFIED COPY

012822

MR. MARMER: Just a moment. May I have the question read back.

(Record read.)

MR. BEMIS: Thank you for having it reread because I misspoke. Let me do it again.

BY MR. BEMIS:

Q. Would it be your experience, sir, both as an attorney and as the in-house investment banker for Mr. Perelman's company that the reason the underwriter, here Morgan Stanley, would obtain a comfort letter from Sunbeam's auditors, here Arthur Andersen, would be for Morgan Stanley to establish a due diligence defense under Section 11 of the 1933 Federal Securities Act?

A. No.

Q. What would it be for?

A. They call it a cold comfort letter because it does not act as a defense in its entirety from liability for failure to find things you should have otherwise known.

Q. Without quarreling with you --

A. I mean, there are all kinds of public policy arguments I used to hear when I was a

NOT A CERTIFIED COPY

012823

young lawyer, but you probably know this better than I do.

Q. Without quarreling with you whether it's an absolute or nonabsolute defense because I wasn't trying to suggest one way or the other, would it be your judgment that an underwriter in a case such as this Morgan Stanley, underwriting zero coupon debentures issued by Sunbeam, that the underwriter would seek to obtain a comfort letter from, in this case Sunbeam's auditors, Arthur Andersen, to attempt to establish to whatever degree is legally permissible a due diligence defense under Section 11 of the 1933 Securities Act?

A. You're tying it to Section 11. I think that underwriters ask for a due diligence letter, for a cold comfort letter from the accountants in a prudent exercise of their due diligence, without giving you a legal conclusion as to the legal reasons they ask for.

Q. Do you know why comfort letters refer to the underwriter's obligations and duties under the 1933 Act when they write such comfort letters?

A. Because the underwriters have such

NOT A CERTIFIED COPY

012824

duties.

Q. Under the '33 Act?

A. Under the '33 Act and case law, yes.

Q. And Section 11 of the '33 Act?

A. Section 11, Section 10 (b) (5), Section 7, Section 5. Do you want me to continue? Section 3.

Q. Let me show you -- did you -- strike that.

To your knowledge, did anyone at the MacAndrews group in connection with the Sunbeam/ Coleman transaction request a copy of the -- let me withdraw the question.

To your knowledge, did anyone in the MacAndrews group make inquiry of Sunbeam whether or not Arthur Anderson had provided Morgan Stanley with a comfort letter in connection with the underwriting of the zero coupon debentures?

A. I personally have no knowledge.

Q. Do you know whether anyone from the MacAndrews group in connection with the Sunbeam/ Coleman transaction asked Morgan Stanley as opposed to Sunbeam whether Morgan Stanley had received a comfort letter from Arthur Andersen in connection with the underwriting of the two

NOT A CERTIFIED COPY

012825

billion 14 million face amount of zero coupon debentures that we've been discussing?

A. I was not personally working on it, so I have no idea.

Q. Even if you weren't personally working on it, did you ever hear of such a thing?

A. In connection with the Sunbeam deal, no.

Q. Did you ever hear, and again in chitchat or when you were discussing things on the telephone, if you happened to be skiing or what have you during this period of March 19th, whether anyone in the MacAndrews group such as Mr. Maher, Mr. Perelman or Nesbitt or Gittis, whomever was involved in the transaction, asked Arthur Andersen whether they had provided a comfort letter to Morgan Stanley in connection with the underwriting of the two billion 14 million zero coupon subordinated debentures issued in connection with the Sunbeam/ Coleman merger?

A. No.

Q. Let me show you what's been marked as MS 9.

Do you have MS 9 in front of you,

NOT A CERTIFIED COPY

012826

A. That's what it purports to be.

Q. Do you have any reason to believe it's not?

A. No.

Q. Is this letter in any way -- strike that.

In your view as a person who's done many deals and been involved in underwriting and is the in-house investment banker, if you will, for Mr. Perelman, is this letter in the customary form of comfort letters?

A. Seems to be.

Q. And in your experience, sir, are you familiar at least if not as an expert, but just in your practice with the form of comfort letters as articulated by the accounting profession?

A. Yes, sir.

Q. And are they generally set forth in a statement of auditing standards?

A. Uh-huh. Yes, yes.

Q. And codified in sometimes what we refer to as the statement of auditing standards with an AU number followed there behind?

A. Correct.

Q. Have you read those standards at any

NOT A CERTIFIED COPY

012827

time in your career?

A. Certainly.

Q. Would you agree with me, sir, that one of the matters that a comfort letter in the circumstance of this case, where there is an underwriting that is approximately 90 days after the date of the last certified financial statements would cover a negative assurance on sales from the period of the last audited financial statement to the date of the request?

A. It would be quite common. But please let me add, I am not an accountant. I never went to business school. I took accounting for lawyers and that was the extent of it. I have practiced in the area for many years, but I do not hold myself out as an expert in the matters and intricacies of accounting.

Q. If you'll look at paragraph 5 (b), please. It's on page 3.

A. I see it.

Q. That paragraph, 5 (b), would that be in your view -- I recognize you're not claiming to be an expert, but a customary paragraph of negative assurance with regard to sales for the period following the last audited period?

NOT A CERTIFIED COPY

012828

they had an affirmative obligation not only to the Laser people, but to the public to correct the March 19th press release, and indeed to tell the bond buyers there was something amiss. I don't know if that answers your question, but.

Remember, this is substantially worse than it was just a few days before.

Q. We'll get to the question of how substantially worse in a minute, but the focus in my next question is the notice provision, which you've been referring to under section 6.8.

My understanding is from your testimony that the MacAndrews side of the transaction, referenced by MS 93, did not receive from Laser a notice of a "laser material adverse effect"; is that correct?

A. Not to my knowledge.

Q. And it's my understanding that to your knowledge, that no one, not withstanding from -- excuse me. Withdrawn.

My understanding of your testimony is at least to your knowledge, and I understand you didn't work on the deal yourself personally, that you're not aware of anyone on the MacAndrews side of the transaction, notwithstanding the March

NOT A CERTIFIED COPY

012829

19th press release, making any inquiry of either Sunbeam, Arthur Andersen or Morgan Stanley as to whether Morgan Stanley had received a comfort letter, and B, the contents of the comfort letter?

A. I am not aware.

Q. Are you aware of the MacAndrews group purchasing any of the zero coupon convertible senior subordinated debentures that were underwritten by Morgan Stanley pursuant to MS 166?

A. No, sir.

Q. In connection with the Coleman merger and that's MS 117 -- you might pull that out, that merger agreement, sir.

A. Sure.

Q. There is a -- withdrawn. You can set that aside for right now.

Let me show you what's been marked as MS 166, which is a letter from Ernst & Young, L.L.P. to Morgan Stanley, 243.

Do you have in front of you MS 243?

A. Yes, sir.

Q. Have you seen this letter before which is addressed to CLN Holdings and Morgan

NOT A CERTIFIED COPY

012830

A. That is my recollection.
Q. In your understanding, what does that mean as a board of director of the Coleman Company?
A. That what I as a Coleman shareholder was receiving for my stock was fair.
Q. Did you have any Coleman stock?
A. Yes, I did.
Q. How many shares did you have at the time of the board meeting?
A. My recollection is I had about 20,000 shares, and my kids had about 10.
Q. Following the announcement of the merger transaction, which I think the record will show is March 2nd -- I think that's right, it's March 2nd or 3rd -- did you sell your Coleman stock?
A. I sold it sometime in there, yes.
Q. You sold it sometime before the closing --
A. Yes, I did.
Q. -- on March 30th?
A. Yes.
Q. Did you also sell your children's shares?

NOT A CERTIFIED COPY

012831

A. I actually don't know that. I didn't go back to look to see -- when I was looking at the proxy that you gave me, it showed that my kids had 10,000 shares. I only remembered my 20. I would have filed a form 4, so the record would show whether or not I sold the kids shares. I just don't have any recollection whatsoever. But I would have if I knew they were there.

Q. You sold your shares before the March 19th press release?

A. Yes, sir.

Q. Are you aware of other directors of -- strike that.

Do you know what the term inside director means, don't you?

A. Sure.

Q. You were an inside director?

A. Yes.

Q. Mr. Slovin has testified that he sold 53,300 shares of his stock immediately after the announcement of the Coleman merger. Are you aware of any other inside directors selling their Coleman stock immediately after the announcement?

A. I wasn't even aware that Bruce did. I think subsequent to these lawsuits I heard Jerry

NOT A CERTIFIED COPY

012832

C O N F I D E N T I A L

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

COLEMAN (PARENT) HOLDINGS INC., Plaintiff, vs. MORGAN STANLEY & CO., INC., Defendant.	CA 03-5045 AI
MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff, vs. MACANDREWS & FORBES HOLDINGS, INC., Defendant.	CA 03-5165 AI

VIDEOTAPED DEPOSITION OF ROBERT DUFFY
New York, New York
Thursday, July 8, 2004

ORIGINAL

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 162108

NOT A CERTIFIED COPY

0128334

11:28:04 A. The Jim -- the Maher, Perelman, the
11:28:08 MacAndrews folks who were negotiating the deal.
11:28:10 Q. So, when you refer to the deal team,
11:28:12 that would be the in-house MacAndrews people?
11:28:12 A. Yeah.
11:28:14 Q. And you were supporting them in their
11:28:18 function as the -- in the negotiation?
11:28:18 A. Yes. They were the -- they were
11:28:22 the -- they were the client -- you know, they
11:28:24 were Coleman's management.
11:28:26 Q. Was this the first time that CSFB had
11:28:32 been asked to work on a possible sale of Coleman?
11:28:34 A. I don't know.
11:28:36 Q. It was the first time --
11:28:54 A. It was the first time I had, yes.
11:28:56 Q. I'm going to hand you what's
11:29:00 previously been marked as Morgan Stanley
11:29:22 Exhibit 169. It's a December 10, 1997 letter
11:29:30 addressed to the Coleman Company, Inc. from
11:29:32 Credit Suisse First Boston dated December 10,
11:29:34 1997.
11:29:36 Have you seen this document before?
11:29:38 A. Yes.
11:29:40 Q. Is this the engagement letter between
11:29:44 CSFB and the Coleman Company for the acquisition

NOT A CERTIFIED COPY

012935

transaction?

A. I think so.

Q. Were you involved in preparing this retention letter?

A. I think so.

Q. And do you recognize the signature on page 3 of the letter as Mr. Rich on behalf of CSFB?

A. Yeah.

Q. Is this a standard form, CSFB retention letter?

A. Parts of it, yes.

Q. Is there any part of it that is not --

A. Well --

Q. -- or is different?

A. Well, for each engagement, what you put in will be different.

Q. So, when you --

A. And the fee would be different, obviously.

Q. Just so I understand your testimony, this specific role that CSFB is going to perform or being asked to perform will vary depending on the engagement?

A. Yes.

NOT A CERTIFIED COPY

012336

13:24:44 asked you to look at, midway through the
13:24:48 paragraph, there's a sentence that says,
13:24:50 "Mr. Rich then reviewed the value of the
13:24:52 proposed transaction as it relates to various
13:24:56 financial indicia including historical stock
13:24:58 trading prices and earnings, the value to the
13:25:02 company stockholders as the price of Sunbeam
13:25:04 stock increased or decreased."
13:25:04 Do you see that?
13:25:06 A. Yes.
13:25:10 Q. Do you recall Mr. Rich presenting a
13:25:14 sensitivity analysis to the Coleman board as it
13:25:18 related to the price of Sunbeam stock?
13:25:20 A. I don't recall it, but, you know,
13:25:24 seeing it here, I don't find it surprising if
13:25:26 that's what he did.
13:25:26 Q. Is that because there would be a
13:25:30 standard presentation to make when looking at a
13:25:32 stock transaction?
13:25:44 A. Yes.
13:25:46 Q. I'm going to hand you what's been
13:25:56 marked as Morgan Stanley Exhibit 112. It's a
13:26:04 document -- it says, "February 25, 1998 draft
materials prepared for the board of directors of
Coleman Company."

NOT A CERTIFIED COPY

012837

13:26:10 1 And I'm going to use this in tandem
13:26:12 2 with the board minutes to hopefully guide some of
13:26:18 3 our questioning for the next little while.
13:26:18 4 A. Um-hum.
13:26:22 5 Q. Have you seen this document before,
13:26:24 6 Morgan Stanley Exhibit 112?
13:26:24 7 A. Yeah.
13:26:24 8 Q. Do you recall that this was the form
13:26:26 9 of the presentation that was made by Mr. Rich to
13:26:28 10 the board of directors?
13:26:30 11 A. I assume so, yeah.
13:26:36 12 Q. I'd like you to look at page 3 of the
13:26:38 13 presentation, which is the fourth page of the
13:26:40 14 document. --
13:26:40 15 A. Yes.
13:26:44 16 Q. -- Bates No. CP 011056.
13:26:48 17 And it --
13:26:50 18 A. I'm sorry. Which --
13:26:52 19 Q. It's the page bearing the title "CLN
13:26:54 20 Transaction Multiples"?
13:26:56 21 A. Okay.
13:26:58 22 Q. And the -- there's a table there with
13:27:02 23 the heading "Valuation Sensitivity of SOC
13:27:02 24 Proposal."
13:27:02 25 A. Yes.

NOT A CERTIFIED COPY

011238

13:42:20 it would have been in cooperation with them.
13:42:30 Q. Okay. Let me get you to turn to page
13:42:34 12 of the presentation. It's entitled, "Overview
13:42:40 From Sunbeam."
13:42:40 A. Yes.
13:42:44 Q. Under the business overview section --
13:42:44 A. Um-hum.
13:42:46 Q. -- where did that information come
13:42:50 from?
13:42:52 A. I -- I don't recall. I would think it
13:42:54 came from the public financials.
13:42:56 Q. From Sunbeam's public financials?
13:43:00 A. Probably from the 10-K.
13:43:02 Q. The same is true for the '97 revenue
13:43:04 breakdown box?
13:43:06 A. I would believe so.
13:43:10 Q. And under the financial summary, it
13:43:12 provides actual numbers for '96 and '97 and then
13:43:14 estimates for '98 and '99.
13:43:14 A. Yes.
13:43:16 Q. And those are -- the estimates for '98
13:43:20 and '99 are sourced to Wall Street estimates?
13:43:24 A. Yes.
13:43:26 Q. Why were they sourced to Wall Street
13:43:30 estimates as opposed to the estimates that had

NOT A CERTIFIED COPY

13:43:34 1 been provided by Sunbeam management?
13:43:36 2 A. I can't remember now, but I would
13:43:38 3 imagine because that was what was in the public
13:43:42 4 domain. And so I think the fact that we had two
13:43:46 5 sets of forecasts, we wanted to show the board
13:43:48 6 what the -- what the public thought the numbers
13:43:50 7 were first and then talk about what Sunbeam
13:43:54 8 management thought the numbers were.
13:44:00 9 Q. The Wall Street estimates were analyst
13:44:04 10 estimates that were out on the street at the
13:44:04 11 time?
13:44:06 12 A. I believe so, yes. Or they were,
13:44:08 13 probably, based on analyst estimates, if it
13:44:14 14 wasn't one specific analyst.
13:44:18 15 Q. If you turn to the next page, there's
13:44:20 16 a summary of the valuation -- the different
13:44:20 17 methods?
13:44:20 18 A. Yes.
13:44:26 19 Q. And it summarizes CSFB's valuation of
13:44:30 20 Sunbeam under different valuation methodologies:
13:44:32 21 Discounted cash flow, comparable company and
13:44:34 22 comparable acquisitions.
13:44:38 23 The discounted cash flow analysis is
13:44:40 24 broken down into two different ones, long-term
13:44:44 25 strategic plan and then the base case.

NOT A CERTIFIED COPY

analysis, where it was only done -- discounted cash flow analysis was only done on the strategic plan?

A. No. But, I mean, what probably happened is we probably did the strategic plan and then did the base case, developed that after. I mean, so I don't know that we ever presented it that way. But, I mean, our own internal workings would have required us to do the strategic plan first.

Q. Did anyone from Coleman or MacAndrews & Forbes ever say, in words or substance, that the projections and estimates in the long-term strategic plan were too aggressive or optimistic?

A. I don't remember.

Q. Was that ever expressed by anyone internally at CSFB?

A. I don't remember.

Q. The base case on page 14 of Exhibit 112 is footnoted to footnote No. 1.

A. Yes.

Q. It says, "Projections developed in conjunction with CLN management based on equity analyst research."

A. Right.

NOT A CERTIFIED COPY

13:52:20 Q. Do you see that?
13:52:20 A. Yes.
13:52:22 Q. And CLN is the --
13:52:24 A. Coleman.
13:52:26 Q. -- stock ticker for Coleman?
13:52:26 A. Yes, it is.
13:52:26 Q. So, the projections that are identified here in the base case were developed jointly between CSFB and Coleman management?
13:52:34 A. Yes.
13:52:34 Q. Who from Coleman management participated in developing those projections?
13:52:44 A. I can't recall, but, you know, I would have expected it was -- I mean, well, what -- I think we probably dealt with Mr. Nesbitt, and he would have dealt with Mr. Levin. Or we would have done it on the call. I don't recall. Or Mr. Page is the other person.
13:53:04 Q. So, it could have been Mr. Nesbitt or Page or Levin who would have been involved in those discussions?
13:53:10 A. Right.
13:53:12 Q. But, as you sit here today, you don't recall specific discussions with any of them about the development of the base case?

NOT A CERTIFIED COPY

13:53:16 A. No.
13:53:20 Q. What is the reference to "equity
13:53:22 analyst research" there? Do you know what
13:53:26 research was used in developing the base case?
13:53:28 A. No. I don't know what specific
13:53:30 research. I would have thought we had research
13:53:34 reports on Sunbeam and we used those to help
13:53:38 frame the base case forecast.
13:53:40 Q. Did you think that the equity analyst
13:53:44 research reports that you had were an appropriate
13:53:48 source to consult for information about Sunbeam?
13:53:50 A. Yes.
13:53:52 Q. Is that a customary source of
13:53:56 information of -- for public companies?
13:53:58 A. Yes. I mean, yes.
13:54:02 Q. Now, the base case projections are
13:54:06 across-the-board more conservative than the
13:54:10 long-term strategic plan; is that correct?
13:54:10 A. Yes.
13:54:18 Q. And that was a conscious decision that
13:54:20 was made that the base case would be a downward
13:54:22 revision of the strategic plan as opposed to an
13:54:22 increase?
13:54:24 A. Yes.
13:54:26 Q. So, it was a belief that the base case

NOT A CERTIFIED COPY

that needed to be presented to the board would be lower than the strategic plan case?

A. I think it was -- I don't think -- I don't think we needed -- we felt we needed to show a lower case. We just wanted to show a case that we thought more accurately reflected what the public was seeing and, maybe, calling it more less aggressive than the Sunbeam base case -- or the Sunbeam strategic plan.

Q. Was there a view that the Sunbeam strategic plan was aggressive?

A. I can't recall. I mean, I use that to compare the -- describe the comparison of the numbers.

Q. Was the base case done as a top-down analysis from the strategic plan or was it built from the ground up?

MR. BRODY: Object to the form.

A. It was -- it was -- it was built from sort of 1997 forward. If that's -- I don't think it was built as a -- I don't remember it being built as, let's say, take 20 percent off the strategic plan, if that's the meaning of your question.

Q. Yeah. When that analysis was

NOT A CERTIFIED COPY

15:28:20 Q. I'd like you to pull back out Morgan
15:28:22 Stanley Exhibit 230, which is the investment
15:28:26 banking memo. I handed that to you earlier.
15:28:30 A. Yeah.
15:28:32 Q. Morgan Stanley Exhibit 230, which we
15:28:34 identified for the record earlier, is also dated
15:28:38 February 25th, 1998. It's the same date as the
15:28:40 board meeting that we were just looking at.
15:28:42 A. Um-hum.
15:28:46 Q. Was this document created -- "this
15:28:48 document" meaning Morgan Stanley Exhibit 230 --
15:28:52 created before or after the board meeting?
15:28:56 A. I believe it was done before, but
15:29:00 I'm -- I would have thought it was done before.
15:29:02 Q. Did you have a role in putting this
15:29:04 document, Morgan Stanley Exhibit 230, together?
15:29:06 A. Yes.
15:29:08 Q. And what role did you play and what
15:29:10 role did the other authors play in putting this
15:29:12 together?
15:29:14 A. I would think -- well, I can't recall
15:29:18 specifics, but I would think that myself and
15:29:22 Mr. Geller were the primary authors. Mr. Rich
15:29:26 would have reviewed it. And Ramesh would have
15:29:28 been helpful in putting the analysis and

NOT A CERTIFIED COPY

15:39:10 in any way, about other deals or transactions
15:39:16 that CSFB had worked on for MacAndrews & Forbes?
15:39:20 A. No.
15:39:30 Q. If you look at the next page, item 12
15:39:32 describes the due diligence that was done on the
15:39:32 transaction.
15:39:34 A. Yes.
15:39:38 Q. It lists meetings with Sunbeam senior
15:39:40 management on February 23rd and February 24th to
15:39:44 discuss Sunbeam's strategic plan and 1997
15:39:44 results.
15:39:46 Do you see that?
15:39:48 A. Yes, I do.
15:39:50 Q. What, if anything, do you recall
15:39:52 discussing with Sunbeam senior management about
15:39:54 its 1997 results?
15:39:58 A. Nothing specifically. I don't recall
15:40:10 the discussions.
15:40:12 Q. Did anyone on the investment banking
15:40:16 committee suggest, in words or substance, that
15:40:20 Coleman should not accept Sunbeam stock as part
15:40:22 of the consideration?
15:40:40 A. I don't believe so.
15:40:42 Q. Mr. Duffy, I'm handing you what's been
15:40:54 marked as Morgan Stanley Exhibit 113.

NOT A CERTIFIED COPY

you had done at CSFB?

A. I'm not sure where it all came from.

Q. At the time in 1998, did you have an understanding of what a comfort letter was?

A. I don't recall.

Q. Do you understand that -- generally, that comfort letters include information updating the financial information about a company from the date of the last audit?

MR. BRODY: Object to form.

MR. PARADISE: Objection.

A. Well, I don't know.

Q. Do you have an understanding that comfort letters, generally, provide negative assurances from auditors regarding -- the unaudited financials of the company?

MR. BRODY: Objection.

A. I think I -- I'm not sure exactly, but I think I agree with you.

Q. Okay. Do you recall any discussion about comfort letters in connection with the work you did on the Coleman transaction?

A. No.

Q. Did you make any requests of Sunbeam for comfort letters that Sunbeam had obtained

NOT A CERTIFIED COPY

16:14:30 1 from its auditors Arthur Andersen?
16:14:32 2 A. No. That's not normally something the
16:14:36 3 investment bank would get.
16:14:40 4 Q. Do -- I guess my question is more --
16:14:42 5 A. Did we, no.
16:14:46 6 Q. -- did -- did you have any role in
16:14:50 7 obtaining from Coleman's auditors, Ernst & Young,
16:14:52 8 comfort letters to provide to Sunbeam?
16:14:54 9 A. I don't -- no.
16:14:56 10 Q. And same answer, is that something
16:14:58 11 that you would not, as an investment banker,
16:14:58 12 generally be involved in?
16:15:04 13 A. That's correct.
16:15:08 14 Q. As part of the examination of the CSFB
16:15:14 15 fairness opinion, did you or anyone else review
16:15:20 16 the merger agreement to determine what, if any,
16:15:24 17 rights to additional information Coleman had?
16:15:28 18 A. No. That's -- that -- that's not
16:15:32 19 something that would go to the fairness of the
16:15:36 20 transaction.
16:15:40 21 Q. Did anyone from Coleman or MacAndrews
16:15:44 22 & Forbes contact you or anyone from CSFB, to your
16:15:48 23 knowledge, during the time period between the
16:15:50 24 date of the merger agreement and the date of the
16:15:50 25 closing?

NOT A CERTIFIED COPY

16:15:58 A. Just in general.
16:16:00 Q. On -- specifically, to do additional
16:16:02 work on the Coleman transaction?
16:16:24 A. I don't think so. I don't recall.
16:16:28 Q. Mr. Duffy, I'm handing you what's been
16:16:56 marked as Morgan Stanley Exhibit 11.
(Brief interruption.)
16:16:58 Q. Mr. Duffy, I've handed you what's been
16:17:02 marked as Morgan Stanley Exhibit 11. It's a
16:17:06 press release issued by Sunbeam on March 19,
16:17:06 1998.
16:17:10 Do you recall having seen or heard
16:17:12 about this press release during the March 1998
16:17:16 time period?
16:17:20 A. Not specifically. I don't remember.
16:17:22 I remember there was bad news, but I don't
16:17:24 remember what it was regarding, so --
16:17:26 Q. You remember it was bad news in the
16:17:30 time period between the execution of the merger
16:17:30 agreement and the closing?
16:17:30 A. Yes.
16:17:32 Q. And it was that bad news that had
16:17:36 caused the stock to drop?
16:17:36 A. I believe so, yes.
16:17:38 Q. And it was the decline in the stock

NOT A CERTIFIED COPY

price that had caused CSFB to reexamine its fairness opinion?

A. Yes.

Q. Do you have any recollection, having now seen the March 19th press release, about any additional inquiry that was done internally at CSFB about the reason for the sales -- the stock price decline?

A. No.

Q. Did you have any discussions with Coleman or MacAndrews & Forbes about the March 19, 1998 press release?

A. I don't remember. Very well could have, but I don't remember.

Q. As you sit here today, do you remember a discussion -- any discussion with Coleman or MacAndrews & Forbes about the March 19, 1998 press release?

A. No.

Q. Do you recall Coleman or MacAndrews & Forbes contacting you or others at CSFB about the press release?

A. No.

Q. Did Coleman or MacAndrews & Forbes ask CSFB to conduct any inquiry of Sunbeam about the

NOT A CERTIFIED COPY

012850

sales figures identified here in the March 19 press release?

A. I don't think so.

Q. Did Coleman or MacAndrews & Forbes ask CSFB to make any inquiry of Morgan Stanley after the March 19, '98 press release?

A. I don't think so.

Q. Having seen the March 19, '98 press release, did you or others at CSFB contact -- make any effort to contact Sunbeam to obtain additional information about the reasons for the sales shortfall identified here?

MR. BRODY: Object to the form of the question. Mischaracterizes.

A. Yeah, I don't think so, is the answer.

Q. Did CSFB, as part of its examination of its fairness opinion, go back and look at how these sales numbers reflected in the March 19, '98 press release compared to the strategic plan presented by Sunbeam during the negotiations?

A. We could have. I just don't remember specifically doing that.

Q. Or how these sales numbers would compare to the --

A. Base case.

NOT A CERTIFIED COPY

16:21:02 Q. -- base case?
16:21:08 A. I don't remember if we did that.
16:21:10 Q. Did you or others at CSFB share the
16:21:18 results or the conclusion of leaving the fairness
16:21:20 opinion alone with Coleman or MacAndrews &
16:21:22 Forbes?
16:21:22 A. Well, I don't know that we ever told
16:21:26 them that there was a question around the
16:21:28 opinion. So, I mean, we gave them the opinion
16:21:32 and we let it go be published, so -- the
16:21:32 conclusion was shared. I don't know they
16:21:34 realized there was a question before the
16:21:36 conclusion.
16:21:38 Q. They certainly didn't raise the
16:21:42 question with you about whether CSFB would stand
16:21:46 behind its fairness opinion in light of the
16:21:48 March 19th press release?
16:21:50 A. I don't think so. I mean, I don't
16:21:54 remember them asking the question.
16:21:56 Q. And quite apart from whether they were
16:21:58 aware of your inquiry or not --
16:21:58 A. Right.
16:22:00 Q. -- you didn't affirmatively go to
16:22:04 Coleman or MacAndrews & Forbes and say, in words
16:22:06 or substance, we've taken a look at this again

NOT A CERTIFIED COPY

16:22:10 and we're still fine with our fairness opinion;
16:22:12 you don't recall having done that?
16:22:16 A. I don't recall that.
16:22:22 Q. Did you make any effort to speak with
16:22:28 Sunbeam's auditors as part of the -- your inquiry
16:22:30 after the March 19, '98 press release?
16:22:32 A. No.
16:22:34 Q. Or anyone at Sunbeam's in-house
16:22:36 accounting team?
16:22:36 A. No.
16:22:38 Q. Or Sunbeam's in-house audit team?
16:22:40 A. No.
16:22:40 Q. Did you talk with any research
16:22:44 analysts as part of that inquiry?
16:22:46 A. I don't know if we did.
16:22:48 Q. Did you make any inquiry of any of
16:22:50 Sunbeam's customers?
16:22:50 A. No.
16:22:52 Q. Did you make a visit to Sunbeam's
16:22:54 headquarters?
16:22:56 A. No.
16:22:58 Q. Or visit any of Sunbeam's
16:22:58 manufacturing facilities?
16:23:04 A. No.
16:23:08 Q. Did you or anyone else from CSFB

NOT A CERTIFIED COPY

Q120259

16:23:12 attend the closing of the merger transaction?
16:23:16 A. I did not. I doubt anyone else did.
16:23:22 Q. Did you have any discussions after the
16:23:28 date of the merger agreement with Morgan Stanley
16:23:30 relating to Coleman or Sunbeam?
16:23:32 A. Say that again.
16:23:32 Q. After the date of the merger
16:23:36 agreement, February 27, 1998, did you have any
16:23:38 discussions with anyone at Morgan Stanley about
16:23:42 Coleman or Sunbeam?
16:23:50 A. I don't remember having any.
16:24:00 Q. Did you or others at CSFB perform any
16:24:04 work in valuing the consideration that MacAndrews
16:24:10 & Forbes received?
16:24:12 A. I think we did the exercise of
16:24:22 applying the exchange ratio to the share price to
16:24:26 see what the deal was worth, if that's what you
16:24:28 mean by valuation.
16:24:32 Q. Did you or others at CSFB do any
16:24:38 analysis or work to value the Sunbeam shares that
16:24:42 MacAndrews & Forbes received as part of the
16:24:44 consideration?
16:24:48 A. Again, I think it depends what you
16:24:50 mean by valuation. We took the price of the
16:24:54 Sunbeam shares and multiplied it by the exchange

NOT A CERTIFIED COPY

EXAMINATION BY
MR. CLARE:

Q. Mr. Duffy, Mr. Brody has shown you in his examination several documents from the March 1998 time period.

A. Yes.

Q. Did reviewing any of those documents refresh your recollection about any request that you or others at CSFB made to Sunbeam or Morgan Stanley for sales information in March of 1998?

A. No.

Q. Are you aware of any such request being made by CSFB?

A. No.

Q. Are you aware of any such request being made by Coleman?

A. No.

Q. Or MacAndrews & Forbes?

A. No.

Q. Mr. Brody asked you some questions about the extent of due diligence that CSFB performed in connection with rendering its fairness opinion. Do you recall that testimony?

A. Yes.

Q. In March and February of 1998, did

NOT A CERTIFIED COPY

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

----------X

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------X

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

----------X

ORIGINAL

VIDEOTAPED DEPOSITION OF ADAM O. EMMERICH

New York, New York

Tuesday, September 28, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 165040

NOT A CERTIFIED COPY

012857

transaction, conducted due diligence, and drafted the necessary documentation."

Do you see that?

A. Yes.

Q. All right. Focusing now on the period immediately before February 23rd, we go backwards now from February 23rd, do you recall any due diligence being conducted on the Sunbeam/Coleman transaction by any of the parties?

Again, this is before February 23rd, 1998.

A. I don't recall.

Q. Now, your firm had only, of course, been involved in the matter since approximately January 28th of 1998; correct?

A. Yes.

Q. Now, a very limited question now, with regard just to your firm. Do you recall your firm conducting any legal due diligence between the period you were retained and February 23rd, 1998.

A. I don't recall.

Q. Now, let's focus now on February

NOT A CERTIFIED COPY

012858

23rd going forward --

A. Mm-hmm.

Q. -- and through the 27th of February.

Are we clear now --

A. Yes.

Q. -- the period we are going to talk about, those four days right now --

A. Yes.

Q. -- and that's all. All right, focusing on those four days.

Did your firm conduct any legal due diligence during that four-day period when due diligence was supposedly ongoing?

A. I don't recall.

Q. Are you aware of any accounting due diligence being conducted by the MacAndrews & Forbes side of the transaction between February 23rd and February 28th?

A. I am not aware, one way or the other.

Q. Are you aware of any business issue due diligence being conducted by the MacAndrews & Forbes side of the

NOT A CERTIFIED COPY

012859

Do you see that?

A. Yes.

Q. Do you recall any of the questions that were asked by the directors about Mr. Rich's presentation on behalf of Credit Suisse First Boston?

A. No.

Q. Do you recall any of the discussion that ensued amongst the directors and Credit Suisse First Boston following Mr. Rich's presentation?

A. I don't.

Q. Is there -- without now trying to identify a particular speaker, do you recall any person who addressed the board or any board member who asked a question making any reference whatsoever during the February 25th, 1998 board meeting to Morgan Stanley?

A. I don't recall, one way or the other.

Q. Obviously -- excuse me. No one from Morgan Stanley spoke at the meeting; right?

A. No.

NOT A CERTIFIED COPY

012860

it again.

In the context of this transaction --

A. Yes.

Q. -- between the signing of the merger agreement, MS 93 --

A. Yes.

Q. -- and the closing --

A. Yes.

Q. -- are you aware of any request by -- by the MacAndrews & Forbes side of the transaction to Sunbeam to have its accountants, Arthur Andersen, provide the MacAndrews & Forbes letter -- MacAndrews & Forbes side of the transaction a comfort letter with respect to Sunbeam's most-recent audited financial statements which have been filed with the Securities and Exchange Commission.

A. I could answer "Yes" or "No".

The comfort letter contemplated by Section 7.3 B to come from --

Q. Don't worry about 7.3 B now, I am just talking about a comfort letter in general.

NOT A CERTIFIED COPY

012861

A. Nothing to do with the agreement.

Q. It doesn't have to be referenced to the agreement, just asking for a comfort letter from Sunbeam to obtain it from its auditors, are you aware of any such request.

A. No.

MR. FORREST: If you are going to move along, it might not be a bad time for a break. We have been going for about an hour-and-a-half.

MR. BEMIS: Okay, why don't we take a break, and then I think we can finish up in the next session.

MR. FORREST: Terrific.

THE WITNESS: Great.

THE LEGAL VIDEO SPECIALIST: Going off the record the time is 2:40 p.m.

(Recess taken.)

THE LEGAL VIDEO SPECIALIST: Returning to the record, the time is 2:55 p.m., this marks the beginning of tape number three.

NOT A CERTIFIED COPY

012862

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant(s).

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants(s)

VIDEOTAPED DEPOSITION OF IRWIN ENGELMAN
New York, New York
Wednesday, August 4, 2004

Reported by:
JOAN WARNOCK
JOB NO. 163377

ORIGINAL

012864

NOT A CERTIFIED COPY

question, but is the apartment in your name so if someone asks you the bell man would know?

A. It's owned jointly by my wife abdomen me.

Q. You're an attorney correct?

A. Yes.

Q. Are you still licensed to practice in New York?

A. Yes.

Q. When did you graduate from law school and where?

A. I was graduated from Brooklyn law school having attended night school and that was in June of 1961.

Q. You're also a certified public accountant correct?

A. That's correct.

Q. And what jurisdictions are you licensed as a certified public accountant?

A. In the State of New Jersey that's where my license is.

Q. Are you licensed in New York?

A. No.

Q. Have you ever been?

NOT A CERTIFIED COPY

012865

called Becker & Becker Associates, Inc., a design consulting firm in New York City located just a block from here. And I was there for only one year. And then I left to join Xerox then the rest of your background check probably cuts in.

Q. Would that be about 1966 you went to Xerox?

A. No. Yes 1966 is correct.

Q. And how long were you there?

A. Twelve years.

Q. Until 1978?

A. Correct.

Q. What did you do there?

A. Well I had a number of jobs. I started sort of on an entry level even though I had so many years of experience and during the next eight years I had jobs of increasing responsibility so that eight years later in 1974 approximately, I had the number two financial job in the company, and then I moved into general management. I became vice president and general manager of the northeast region of Xerox, which was one fist of the country. I had that job for two

NOT A CERTIFIED COPY

012866

years. That was located in headquarters was in White Plains, New York. And then moved back to Rochester to take the position of vice president of rep prographics, which was a matrix management assignment. I had worldwide responsibility for the product line. And I was in that job for three years. And at in 1970 eight I left Xerox for another job.

Q. Did you join singer company?

A. That's correct.

Q. And how long were you with singer?

A. I was there for three years from 1978 to 1981 as vice president or executive vice president and chief manage officer.

Q. And then after that did you go to General Foods?

A. That's correct.

Q. Were you there from about 1981 to 1987?

A. That's correct.

Q. And what was your last position there?

A. .

Q. General Foods?

NOT A CERTIFIED COPY

012867

A. Executive vice president and chief financial officer.
Q. Then after that did you go to the Blackstone group?
A. That's correct.
Q. What was your position there when you left?
A. I was executive vice president.
Q. Were you also the chief financial officer?
A. No.
Q. And were you there until 1988?
A. That's correct.
Q. And after that did you go to city trust bank Corp. Inc.
A. That's correct.
Q. What were your what was your position there when you withdrawn?
Q. Were you there until 1990?
A. Correct.
Q. What was your last position there?
A. I was president and chief operating officer. I was also a director.
Q. And following your employment at CitiTrust, did you go to GAF Corporation?

NOT A CERTIFIED COPY

012868

A. That's correct.
Q. And how long were you there?
A. Two years.
Q. 1990 to 1991?
A. To 1992.
Q. '92. What was your final position there?
A. I was executive vice president and chief financial officer.
Q. Now, when you left GAF corporation, did you then join MacAndrews & Forbes?
A. That's correct.
Q. That would be MacAndrews & Forbes Holdings, Inc., the company?
A. That's correct.
Q. Is that the company that issued your paycheck and told until you left?
A. I believe so I believe so.
Q. I'm just going to refer to MacAndrews & Forbes Holdings, Inc., as MacAndrews & Forbes. Is that all right?
A. That's fine.
Q. There are a number of companies that have similar names, and that's the one that's short for that one.

NOT A CERTIFIED COPY

012869

A. Okay.

Q. Okay. As long as we're on the same page. What was your starting title at MacAndrews & Forbes?

A. Executive vice president and chief financial officer.

Q. And did you serve in that position continuously until 1998?

A. I think it was until 1999.

Q. Is that was it in 1999 that you made the move over to Revlon as you've described it?

A. That's correct.

Q. And I would ask you could you tell me once again what were your what your title was at Revlon?

A. I was vice chairman and chief administrative officer.

Q. During the period you were at MacAndrews & Forbes 1992 through 1999, did you also serve as the executive vice president and chief financial officer of other companies affiliated with MacAndrews & Forbes?

A. Yes.

NOT A CERTIFIED COPY

012870

Q. Fair enough but to the entities that he was controller for that would be his responsibility?
A. That's correct.
Q. Did the Coleman company have its own controller?
A. Yes.
Q. And who was the controller for the Coleman company in 1997 and 1998?
A. I don't recall.
Q. But whoever it was he would have reported to Mr. Page; is that correct?
A. That's correct.
Q. Do you know Bruce Slovin?
A. Yes.
Q. Bruce -- excuse me. Mr. Slovin. I apologize. Mr. Slovin was deposed earlier in the case and described in general terms one of the businesses of the MacAndrews as deals, doing deals. Would you agree with that?
MR. BRODY: Object to form.
Q. You can answer.
A. I think so.
Q. As chief financial officer and again during the period you were there 1992

NOT A CERTIFIED COPY

012871

separately with you?
A. I think basically I did nothing.
Q. One of the witnesses Mr. Shapiro, Paul Shapiro, you know Paul, Mr. Shapiro?
A. Yes.
Q. Was he one of your peers?
A. No.
Q. He was below you in the --
A. He was in the operating companies.
Q. In the operating companies. Mr. Shapiro said in the last session of his deposition that there was a clipping service of some kind that he couldn't remember the name that reported and the freak see of which I don't think he testified to but it reported on press if you will or analysts reports on companies that Mr. Perelman had an interest in either directly or through public ownership. Are you familiar with that service?
A. Yes. I recall receiving clippings on a regular basis.
Q. These clippings that you received on a regular basis, were they of companies that Mr. Perelman or his affiliated companies

NOT A CERTIFIED COPY

012872

had an interest in?

A. Not necessarily.

Q. Were they be companies that you were following?

A. It could be something broader. It might be relevant news rather than just company news. So there were things that we were interested in which would have included companies that we were interested in, either our own or others.

Q. How frequently were the clippings distributed within the organization?

A. I think daily.

Q. Did you --

A. I'm not sure of that, but I think so.

Q. And I didn't mean to interrupt you. Did you receive the clippings while you were the executive vice president and chief financial officer, that is during the whole time you were there?

A. Yes.

Q. Do you know the name of the company?

A. No.

NOT A CERTIFIED COPY

012873

Q. Did you participate in any of the negotiations in?

Q. Were you aware of a meeting that took place in Palm Beach at Mr. Perelman's home at which Mr. Perelman and Mr. Albert Dunlap had exchanged pleasantries concerning a possible transaction?

A. It's a nice way to phrase it. I became aware after the meeting had occurred. I think Michael Price was also there.

Q. I think that's correct. Did you hear about this at the breakfast meeting?

A. I'm not sure I can't identify exactly what I where I heard is it.

Q. What did you hear about that meeting?

A. I heard that there was discussions I believed of MacAndrews & Forbes or Coleman acquiring Sunbeam, that there was a price difference in terms of what we would be willing to pay versus what Al Dunlap wanted as a price and that the meeting was disrupted by Dunlap becoming very emotional and raising his voice and stalking out of the room and that those discussions ended as a result of

NOT A CERTIFIED COPY

012874

his display of temper. And it was decided not to pursue the matter any longer.

Q. And in matter being as you understood it Coleman's acquisition of Sunbeam?

A. That's the way I understood it.

Q. Let me ask you to focus now on 1998 after the holidays. Did you become aware that there were new discussions or follow-up discussions about some possible business combination between Coleman and Sunbeam?

A. Yes, I became aware of that.

Q. And how did that happen?

MR. BRODY: How did he become aware.

Q. Yes how did you become aware?

A. Again I'm not sure how that was communicated to me.

Q. Did you participate in any of the discussions at all?

A. No.

Q. Business discussions?

A. With?

Q. With either your people that is MacAndrews & Forbes or representatives of

NOT A CERTIFIED COPY

012875

were generated in the course of the due diligence?

A. I don't believe so.

Q. In the course of your work with the banks or the restatement investigation in 1998, did you ever learn who on behalf of MacAndrews & Forbes had been responsible for due diligence of Sunbeam corporation in connection with the acquisition?

A. It would have been Jim Maher and to some extent Barry Schwartz.

Q. Did Mr. Maher have any involvement with the restatement investigation?

A. Not that I recall.

Q. Did Mr. Shorts Barry shorts?

A. Yes.

Q. What was his involvement with the restatement investigation?

A. He would he was responsible for providing legal advice with regard to SEC matters. He had a functional responsibility for Paul Shapiro, who became the general counsel for Sunbeam.

Q. Was your first involvement in terms of face to face meetings outside of

NOT A CERTIFIED COPY

0128876

Barron's article, because it's readable. It's not in those long columns. Take a look at it and I'll ask you if you've seen this article before. For the record it's dated June 61998.

A. I don't recall this article.

Q. Put you recall you did read some article about in Barron's about Sunbeam before the bank meetings correct?

A. I read a lot about this subject, but saying it's Barron's and on what date is something I can't be specific about.

Q. All right. You can hand that back. Thank you, sir. Directing your attention now back to MS 336 and the bullet point beginning with the SEC, then there is an indented bullet point beginning Arthur Andersen. Do you see that?

A. Yes.

Q. The bullet reads quote Arthur Andersen continues to assure the board that Sunbeam's audited financial statements are accurate in all material respects. This assurance has now been made three times over the past ten days, close quote. Do you see

NOT A CERTIFIED COPY

012877

that bullet point?

A. Yes.

Q. Was that said at the meeting, one of the meetings?

A. Yes. At some meetings I attended Arthur Andersen's position was stated.

Q. And was it as stated in the bullet point that the financial statements of Sunbeam as audited are accurate in all material respects?

A. I recall that's what they were saying.

Q. The document continues, if we go down to the bullet points after the paragraph beginning "Levin then reported his findings," the second bullet point refers to the management team meeting with Coopers & Lybrand for three to five hours. Do you see that sentence?

A. Yes.

Q. And there is a reference to a study which is said to be fictional. Do you see that?

A. Yes.

Q. Did someone at the meeting with the

NOT A CERTIFIED COPY

012878

question.

Q. No, I mean as a result of all of the meetings --

A. Right.

Q. -- we've been talking about during this time period starting in June.

A. Right.

Q. And Arthur Andersen was tasked with this responsibility only after it withdrew its repeated assurances to you and Mr. Gittis and others that the Arthur Andersen statements could be relied upon in all material respects correct?

A. That's correct.

Q. And then Arthur Andersen was going forward now from the June meetings eventually terminated as auditor for the financial statements of Sunbeam that were for the period ending in the calendar year 1999 correct?

A. Would you repeat that question.

Q. Yes. Going forward, Arthur Andersen was fired and they were replaced by Deloitte & Touche to do the 1999 Sunbeam financial statement audits; isn't that

NOT A CERTIFIED COPY

012879

Q. Sir, directing your attention to Morgan Stanley Exhibit 3 three eight, there is a reference to a meeting that took place the day before June 26th 1998, which would be June 25th my math. Do you recall attending that meeting based on the list of attendees in the first paragraph of this exhibit?

A. I do not recall this meeting specifically.

Q. Again, is do you recall the general substance of this meeting as running together with the other meetings during these couple of weeks in June?

A. Yes.

Q. There is one person in the attendee list, Paul Sarvino, S-a-r-v-i-n-o, chief admin officer. Do you recognize that man as being Mr. Shapiro in all likelihood?

A. I hadn't thought of that but that could be the case should be the case.

Q. Now, according to the second bullet in this memorandum Arthur Andersen said at the meeting that they were lied quote lied to in a fraudulent fashion by management close quote. Do you see that?

NOT A CERTIFIED COPY

012880

A. Yes.

Q. Do you recall Arthur Andersen saying that they had been lied to by Sunbeam's management?

A. I think I heard that from them at some point during this period.

Q. Did Arthur Andersen ever say in any of the meetings that you were called to that Morgan Stanley lied to Arthur Andersen about anything?

A. I do not recall their saying that.

Q. By the time of this meeting, that is June 26th, had Arthur Andersen told Sunbeam that they, "they," that is, Arthur Andersen, would not consent to the use of their audits in either the filing necessary for the registration statement for the zero coupon debentures or the Sunbeam stock issued in connection with the second step of the Coleman Sunbeam merger?

A. I do not recall the dates specifically, put around this time Arthur Andersen withdrew their consent for the use of the statement financial statements for those purposes.

NOT A CERTIFIED COPY

012881

period close quote. Do you recall Mr. Levin making statements to that effect?

A. During this period I think he would have been making statements to that effect.

Q. Those statements are also attributed -- or findings, excuse me, are also attributed to Arthur Andersen. Did Arthur Andersen make statements were written or oral, to that effect during this same period.

A. I don't recall this.

Q. Do you recall anyone making any statements that Morgan Stanley was responsible for Sunbeam booking statements in 1997 that should have been booked in 1996?

A. I don't understand your question. They don't book statements.

Q. That is, Morgan Stanley doesn't book statements. Or excuse me. I said statements. Thank you very much. Let me try again.

Did anyone in the course of this meeting say that Morgan Stanley was responsible for Sunbeam booking sales in 1997 that should have been booked in 1996?

NOT A CERTIFIED COPY

012882

A. Again I can't refer specifically to this meeting, but I do not recall anybody making those statements about Morgan Stanley.

Q. Did anyone in the course of these meetings, recognizing, again, the meetings tend to run together now, did anyone say that Morgan Stanley was responsible for Sunbeam booking sales in 1998 that should have been booked in 1997?

A. I think you want to ask that question in reverse.

Q. So do I.

A. In 1997.

Q. So do I. Let me try it again. Withdrawn. As soon as it came out, I knew it was wrong. Did anyone in the course of these meetings you've been describing with the banks say that Morgan Stanley was responsible for Sunbeam booking sales in 1997 that should have been booked in 1998?

A. Again, the answer, I don't recall anyone saying that Morgan Stanley caused that.

Q. We've looked now at three exhibits Morgan Stanley's 336 through 338. Which

NOT A CERTIFIED COPY

012883

by withdrawn?

Q. The statements that are being restated here 1996 that was a statement that was audited by a public accounting firm, that is Arthur Andersen correct?

A. That's correct.

Q. And Arthur Andersen in 1996 prior to the restatement, gave Sunbeam an unqualified opinion; correct?

A. Correct.

Q. Otherwise known as a clean opinion in the trade?

A. Right.

Q. In 1997 Sunbeam being a public company, its financial statements were also audited by Arthur Andersen; correct?

A. Correct.

Q. And as I understand it, Arthur Andersen gave an unqualified opinion in 1997 to Sunbeam's financial statements; right?

A. Initially.

Q. Initially. Again, initially, as we say, a clean statement; correct?

A. Correct.

Q. One that you as a businessman --

NOT A CERTIFIED COPY

012884

you would rely on an audited financial statement, would you not, sir, a company like Arthur Andersen?

A. Yes. And, as a matter of fact, I think that MacAndrews & Forbes did rely upon that.

Q. And would the the same would be true for the 1997 audited financial statements of Sunbeam by Arthur Andersen; correct?

A. Yes.

Q. And with regard to the 1998 financial statements of Sunbeam, Arthur Andersen performed certain examination of those statements for the first quarter of 1998; correct?

A. Limited.

Q. But they're not an audited during the quarter, are they?

A. That's correct.

Q. They do what is known as the profession as limited procedures; correct?

A. Correct.

Q. And those limited procedures do not amount to an audit, do they?

NOT A CERTIFIED COPY

012885

knowledge of the books and records of the MacAndrews & Forbes, could the information be researched and obtained?

A. Yes.

Q. Are you familiar with a company by the name of Coleman Safety & Security?

A. I don't recall that.

Q. Then you won't recall whether it was sold?

A. No. Coleman had a company that was competitive with first alert. That may have been the name of that.

Q. Did that company get sold at some point?

A. I don't recall.

Q. ?

Q. At any point up to March 30th 1998, March 30th 1998, are you aware of any notices formal or informal by the banks of defaults pursuant to the terms of either MS 300 or 301 the two credit agreements?

A. No.

Q. As of March 30th 1998, had the common stock of the Coleman company Inc. that was owned by Mr. Perelman's companies and I

NOT A CERTIFIED COPY

012086

think the actual own certificate Coleman Worldwide Corporation but if I'm mistaken it was owned by one of the subsidiaries of affiliated companies do you know if that stock was pledge today cure any indid he tellness of any of Mr. Perelman's companies?

A. I can't be certain about this, but my offhand reaction is that I think it was the holding companies' stock that was pledged rather than the operating company.

Q. And by that you mean the holding company whichever holding company held the stock of the Coleman Company, Inc?

A. That's right.

Q. Is it your recollection that all of the holding company stock was pledge today secure indebtedness of one or more of Mr. Perelman's companies?

A. As I recall, there was a pledge of the holding company stock in support of some of their indebtedness, and the pal of the secondary pledge in support the bank agreements.

Q. What is called the net residual value of the pledge; is that correct?

NOT A CERTIFIED COPY

012887

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
----------x
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
-against-
MORGAN STANLEY & CO., INC.,
Defendant.
Case No.: CA 03-5045 AI
----------x

NOT A CERTIFIED COPY

CONFIDENTIAL DEPOSITION OF
TODD FREED
New York, New York
November 22, 2004

REPORTED BY:
LINDA SALZMAN
JOB NO.: 167692

CONFIDENTIAL
COPY

0126695

interaction he had on the Sunbeam account.

Q. Can you identify any Skadden lawyers involved in drafting the March 19th press release?

A. I don't have a recollection whether Skadden was involved in the actual drafting of the press release.

MR. JOHNSON: Let's go off the record.

(Discussion off the record.)

MR. JOHNSON: I've got no further questions.

MR. BEMIS: I have a couple of questions. May I proceed?

MR. MALLOY: Go ahead.

MR. BEMIS: Thank you.

EXAMINATION BY

MR. BEMIS:

Q. Mr. Freed, was there a data room at Skadden Arps in connection with the Sunbeam transaction?

A. I don't remember if there was or not.

Q. Let me show you what's been marked as Morgan Stanley Exhibit 440.

NOT A CERTIFIED COPY

012890

Miss Reporter, would you please initial and date the bottom of the exhibit for me.

(Defendant's Exhibit 440, facsimile transmittal sheet, marked for identification, as of this date.)

Q. Mr. Freed, do you have in front of you Morgan Stanley Exhibit 440?

A. Yes, I do.

Q. Is that a Skadden Arps facsimile transmittal sheet?

A. Yes, it is.

Q. And does it bear the date of March 3, 1998?

A. Yes, it does.

Q. Who is Richard L. Easton?

A. He's a partner in our Wilmington, Delaware office.

Q. Was he a partner in the Wilmington, Delaware office on March 3, 1998?

A. Yes, he was.

Q. And did you work with him in connection with the Sunbeam transaction?

A. I did not work with him on this transaction in any direct line of reporting.

NOT A CERTIFIED COPY

012891

Q. But he was working on the transaction, that is, Mr. Easton?

A. To my knowledge, he was working on the M&A aspects of the transaction.

Q. For the jury would you read in the message that appears on the first page of the document?

A. Attached is the index to the information we have on Sunbeam. The documents themselves have been sent to Todd Freed in our New York office. Please coordinate with him to arrange for the review. His phone number is 735-3714.

Q. Was there another Todd Freed in the Skadden office in New York?

A. To my knowledge, no.

Q. Is that your phone that's on there?

A. Yes, it is.

Q. At some point in time did you receive from Mr. Easton or someone working with him the documents that I referred to in this facsimile?

A. I don't have any particular recollection whether I received them or not.

Q. Look at the summary of documents

NOT A CERTIFIED COPY

012892

COPY

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

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs.

MORGAN STANLEY & CO, INC.,

Defendant.

February 13, 2004
9:35 a.m.

VIDEOTAPED DEPOSITION OF

ALEXANDRE FUCHS

Reported by: David Henry
Job Number: 157146

NOT A CERTIFIED COPY

012894

Fuchs

All three transactions were described and defined in some manner of engagement letter or fee letter or commission arrangements between Morgan Stanley and the company pursuant to the description of all three different transactions, and I would agree with you that a calculation which is made here describes the compensation to Morgan Stanley as per all three of the different engagements and all three of these different fee or commission structures to be that number. I didn't produce those, so I can't tell you. That would be what I read here.

Q. Do you know how much money Morgan Stanley collected in connection with any of its work relating to Project Laser?

A. I have no idea, but if I were to volunteer something, I would say that the firm lost many times that over on the debt agreement.

Q. How do you know that?

A. Because I believe that the committed amount of capital that the firm put into financing at that portion of this

NOT A CERTIFIED COPY

012895

and the associate transaction was in the neighborhood of $680 million and I'm not sure that the recovery value was very high.

Q. And the recovery value represents equity in Sunbeam, is that correct?

A. I don't know.

Q. You don't know what the collateral was for Morgan Stanley's loan?

A. No, I wasn't privy to the specifics, but I think that's part of the public record, it's been pretty well documented, that whatever the residual value of what was distributed to the creditors compares palely to the amount committed.

Q. Do you have any idea what the difference between Morgan Stanley's current ownership of Sunbeam is worth as compared to the amount of its loan to Sunbeam?

MR. CLARE: Objection, foundation.

A. I do not know.

Q. Can you even say with any factual basis that Morgan Stanley's ownership interest in Sunbeam is worth less than the

NOT A CERTIFIED COPY

012896

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

ORIGINAL

VIDEOTAPED DEPOSITION
OF HOWARD GITTIS
New York, New York
Friday, November 19, 2004

NOT A CERTIFIED COPY

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167570

017098

Q. Are you represented by Mr. Solovy here this morning?

A. Mr. Solovy, Mr. Marmer and Ms. Connell.

Q. Where do you live today?

A. I live in New York, 760 Park Avenue.

Q. How long have you lived there?

A. Since about 1987.

Q. So, you lived at that address during the Coleman Sunbeam transaction?

A. I did.

Q. Are you working today?

A. I am.

Q. Where do you work?

A. I work at MacAndrews & Forbes.

Q. What is your current position there today?

A. I am the vice-chairman and chief administrative officer.

Q. Do you hold any other positions with any companies owned or controlled directly or indirectly by MacAndrews & Forbes?

A. Oh, I am sure I am an officer and/or director of dozens of companies.

Q. Do you report directly to Mr. Ronald

NOT A CERTIFIED COPY

012899

Q. My understanding is that you are a lawyer, but you don't practice; is that correct?

A. That is correct. I practiced law actively for about 25 years. I left the active practice of law in 1985.

Q. May I ask: Are you still licensed to practice?

A. I am licensed to practice in Pennsylvania and in Florida, although I believe that I have inactive status in both locations.

Q. You have never practiced law, I take it, then, when you worked for MacAndrews & Forbes?

A. No. That was the condition upon which I joined Mr. Perelman.

Q. Your position is as a businessman within the company?

A. That is correct.

Q. I take it you did some preparation for your deposition; is that correct?

A. Yes.

Q. When did you do that?

A. Um, I spent about an hour last night

NOT A CERTIFIED COPY

012900

misspeak when you said 1990?

A. Yes. 1998.

Q. Was that a presentation where Mr. Russell Kersh spoke?

A. I was not physically present at the meeting. I simply received the materials thereafter.

Q. So, when you said a presentation Morgan Stanley made, you don't know whether Morgan Stanley actually made a presentation, because you weren't there; right?

A. But I was told that they did.

Q. But as to your own personal knowledge?

A. I was not in the room.

Q. You weren't in the room.

In fact, my understanding is that, and you can correct me now -- if I am wrong, we will shortcut some of the questioning -- is that your involvement in this transaction began sometime in November or December of 1997, with some meetings with Michael Price and Mr. Mr. Dunlap and Mr. Perelman; is that correct, in general?

A. That is correct.

NOT A CERTIFIED COPY

012901

A. That was '85. Ten years later.
Q. You have been working for Mr. Perelman almost 20 years now?
A. That is correct.
Q. And you are, as I understand it, by your title you are the number 2 man at MacAndrews & Forbes; is that correct?
A. That is correct.
Q. Are you still active in the business?
A. Oh, very active.
Q. You go to work every day?
A. I go to work every day.
Q. Love every minute of it?
A. Love it.
Q. In your -- 20-some years of working for Mr. Perelman, do you think he is a sophisticated businessman?
A. Yes.
Q. Do you think he is a sophisticated investor in companies?
A. Yes.
Q. Sophisticated in analyzing mergers and acquisitions transactions?
A. I think so.

NOT A CERTIFIED COPY

012902

Q. Sophisticated in issuing debt securities?

A. Yes.

Q. In the twenty-some-odd years that you have been working -- - withdrawn.

Would you characterize yourself as Mr. Perelman's right-hand man? Not to offend left-handers here.

A. I am left-handed.

Q. I wasn't sure.

A. No. It is a fair characterization. Our offices are right next to each other. They have been since I have gotten here.

Q. You have been involved in, I take it, many of the major transactions by Mr. Perelman?

A. I think I have been involved in all of them.

Q. Revlon, for example?

A. Oh, yes.

Q. Marvel?

A. Yes.

Q. Panavision?

A. Yes.

Q. Coleman?

NOT A CERTIFIED COPY

012903

And I think we have done, since I have been here, something like 36 or 38 transactions.

Q. I was going to add, Consolidated Cigar?

A. Right.

Q. You bought and sold that company?

A. Bought it once, sold it, bought it back and then sold it. In the intervening time, the second time we also took it public.

Q. Would it be fair to say that, on the debt side, in terms of debt that has been issued by companies owned or controlled directly or indirectly by Mr. Perelman, that they have issued billions of dollars of debt over the years?

A. Oh, yes.

Q. Would it be fair to say that in materials of companies that Mr. Perelman has purchased, either through stock acquisitions or otherwise, that those transactions have involved billions of dollars?

A. Absolutely.

Q. In these -- well, would you call these sophisticated transactions, like the

NOT A CERTIFIED COPY

012904

Consolidated Cigar and Revlon and Gibraltar, First Nationwide, these are sophisticated transactions?

MR. SOLOVY: Objection to the form of the question.

Q. You can answer.

A. Some are more sophisticated than others, but they are -- you know, some of the financings are sophisticated, you know, and you know, we learned as we went along, you know. We started out as two little guys in Philadelphia, and then we learned a little bit as we went through the transactions.

Q. In the transactions that you have told the jury about, over the past 20 or so years, have you, on occasion, used investment bankers to advise you?

A. Yes.

Q. Is that a frequent occurrence?

A. In almost every transaction.

Q. Who are some of the investment bankers that you have worked with on your side of the table?

A. Morgan Stanley. Goldman, Sachs. Credit Suisse First Boston.

NOT A CERTIFIED COPY

012905

Q. I mean, the people that you worked with.

A. Yes.

Q. You did not hire unsophisticated people?

A. I would hope not, no.

Q. In addition to investment bankers and law firms, as you have described it, in these deals that you have done over the past 20 years with Mr. Perelman, have you had occasion to use accounting firms to assist you in your work?

A. Um, we don't use accounting firms very much in connection with doing a transaction.

But each of the companies, either before or after, are represented by one of the, I guess it is a Big Four now. It used to be the Big Six or Big Seven.

Q. It was Eight once.

A. It was Eight once.

Q. Okay. Does MacAndrews & Forbes have, today, does it have an outside accounting firm that it uses to audit its books?

NOT A CERTIFIED COPY

012906

A. Yes.
Q. Who is that?
A. Ernst & Young.
Q. And Ernst & Young was the Coleman Company's auditors at the time of the Sunbeam transaction, Coleman transaction; correct?
A. Yes, but that was -- that was not as a result of anything that we had done. I think they were there before.
Q. And Ernst & Young today would be -- strike that. Would Ernst & Young today, in your view, be one of the Big Four or Five, however they are described?
A. Certainly one of the Big Four, I would say.
Q. Does MacAndrews & Forbes do filings with the Securities & Exchange Commission?
A. Sure.
When you say MacAndrews & Forbes, there are various levels of MacAndrews & Forbes.
Q. I want to make sure that I get the right one. Was it MacAndrews & Forbes Holdings Inc. that does the filing?
A. No. No. No. It depends on where

NOT A CERTIFIED COPY

012007

public debt is issued. We have no public securities coming out of MacAndrews, except for a company called MacAndrews & Forbes Worldwide, which is a separate public company that does securities act filings on its own.

It has public shareholders, and -- I don't know whether it still has public debt. I should know, since I am its chairman.

Then there is Mafco Holdings, which is the top company, and I don't think that does filings, because I don't think there is any public debt left there. But as you come down the chain from Mafco to MacAndrews & Forbes Holdings to MacAndrews & Forbes Group, wherever, at any time during the 20 years there is public debt issued at that level they become a filer.

Q. Do you know the holding company structure, as you sit here today?

A. I know it as well as anybody can. There are hundreds of companies.

Q. I don't want to go through all of the 100. Now that I have the person who -- I think knows it probably as well as I think I may know it, as best I can piece it together,

NOT A CERTIFIED COPY

012908

I would like to ask you a few questions.

A. Sure, right.

Q. See if I get it right.

Mr. Perelman sits at the top; correct?

A. Yes, he owns 100 percent of the securities of the ultimate holding company.

Q. The ultimate holding company, is it Mafco Holdings Inc.?

A. It is either Mafco Holdings Inc., or Mafco Finance. I am not quite sure what the name is now. One or the other.

Q. There is no comma between Holdings and Inc.; right?

A. Right.

Q. And then after Mafco Holdings Inc., or Mafco Finance, whichever it is, directly below that is MacAndrews & Forbes Holdings, Inc.; correct?

A. That is correct.

Q. And now, for our purposes, given the Coleman side of the transaction, directly below MacAndrews & Forbes Holdings, Inc. was Coleman (Parent) Holdings Inc.; is that correct?

NOT A CERTIFIED COPY

012909

A. No. There should be -- there should be a company called MacAndrews & Forbes Group in there before that.

Q. All right. That's one I did not know where it was. MacAndrews & Forbes Group Inc.; is that what it is?

A. I don't really know.

Q. Okay. But it is below MacAndrews & Forbes Holdings Inc.?

A. Below Holdings and before the chains that hold the operating businesses.

Q. The MacAndrews & Forbes Group Company, that is a holding company; correct?

A. Yes.

Q. And the legal name, as best you can remember, is MacAndrews & Forbes Group, Inc.?

A. I think that is right.

Q. Now, working now down, going, if we had Coleman in the transaction, we would go to Coleman (Parent) Holdings?

A. Once you go down below MacAndrews & Forbes Group, each of the operating businesses go off into a series of companies, so that you don't mix the candy money with the beer money.

That is, Coleman stays in its own

NOT A CERTIFIED COPY

012910

line, no cross collateral, no obligation for any debt of, say, Revlon, which has its own line.

And then the banks, which had their own line.

And then the cigar company, when that was there, had its own line.

So, there are a variety of companies that come down, and all of the operating, and this is the strategy that we had from the beginning, which is all of the operating businesses are kept pure. They may have their own holding companies up and down the line, but they are not touched by any of the other operating businesses.

They always remain by themselves.

Q. So, absent credit agreements or finance agreements of some kind that provide some type of cross-collateralization upstream, there are no obligations amongst the different operating companies?

A. That is a fair comment.

Q. With regard to -- let's focus on the operating group on the Coleman side, real quickly, and go down the list, and I think we

NOT A CERTIFIED COPY

012911

are done with this.

A. No problem.

Q. Directly below MacAndrews & Forbes Group, the ultimate holding company for the Coleman group was Coleman (Parent) Holdings?

A. I think that is right.

Q. Inc.? Correct?

A. I am pretty sure that is right.

Q. Directly below that was a company called CLN Holdings Inc.; correct?

A. I don't know.

Q. Now, below that I have seen reference to a company called Coleman Worldwide Corp. and also, I think, in a former life known as Coleman Escrow Corporation; does that sound right to you?

A. That is well beyond my canon at this point.

Q. But at the very bottom of the chain was the Coleman Company, Inc., the operating company?

A. Right, that was a publicly owned company, which we owned approximately 82 percent of up through that chain, and which had its own debt issuance capacity.

NOT A CERTIFIED COPY

012912

fraud that you were aware of?
A. No.
Q. Did you have any information, at the time of the closing of the Sunbeam Coleman transaction, that Arthur Andersen was going to, only months later, announce that the public could no longer rely on its opinions in regard to Sunbeam's financial statements?
A. Of course not.
Q. Now, turning to the Coleman Sunbeam transaction, the negotiations, externally -- was Mr. Maher, in your view, the head negotiator?
A. Mr. Maher and Mr. Levin.
Q. Mr. Levin on behalf of Coleman?
A. Mr. Levin on behalf of the Coleman Company Inc. Mr. Maher on behalf of the various Coleman holding companies and the MacAndrews companies.
Q. How long have you known Mr. Maher?
A. Oh, probably 25 years.
Q. Did you work with Mr. Maher when he was an investment banker at First Boston?
A. I met him when I was there, but I don't recall working with him on a

NOT A CERTIFIED COPY

012913

retire. He made enough money. So, we were looking around for someone to take that position, and Maher became available. We hired Maher for that.

Q. He became the president of MacAndrews & Forbes Holdings, Inc.; is that correct?

A. That is correct

Q. He stay until about year 2000; is that your recollection?

A. I know he left us sometime after this transaction.

Um, I don't know if it was 2000, 2001, sometime like that.

Q. When Mr. Maher left, was, did he leave for any reasons related to the Sunbeam Coleman transaction?

A. No. No. He wanted to do something else.

Q. Did you like working with Mr. Maher?

A. Yes.

Q. Do you think he was a sophisticated investment banker?

A. Yes.

Q. Sophisticated businessman?

NOT A CERTIFIED COPY

012914

A. Yes.
Q. You attended the February 25th -- withdrawn.
There are two board meetings of the Coleman Company, and they were held by record dates that we now know of February 25th and February 27th of 1998.
Did you attend those two meetings?
A. Yes.
Q. You attended as an observer, I take it?
A. Well, I guess you could call me an observer of the public company, but also I was attending because I was going to sign resolutions authorizing the transactions; so, I thought it was one of the easiest ways to listen.
Q. I would like to show you the minutes of the February 25th, 1998 board meeting and just ask you a couple questions about that.
A. All right.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 88.
What I would like you to do is look at this document to whatever extent you would

NOT A CERTIFIED COPY

012915

I then met with our people to get them completely debriefed upon that, and there was -- then I said go ahead, take this matter to the boards.

Q. Other than the -- the presentation -- I want to show you what I think is the documents that you are referring to that you said you received.

You can hand that back to me. The documents that you received and you have been describing as this presentation by Morgan Stanley and Sunbeam.

First, I am going to hand you what has been marked as Morgan Stanley Exhibit 84.

A. Thank you.

Q. Excuse me. Exhibit 85. I misspoke.

Do you have that exhibit in front of you?

A. I have in front of me an exhibit that has been marked as 85.

Q. My question, next, would be: Is this the Morgan Stanley document that you said you received after the Morgan Stanley Sunbeam presentation, that you did not --

A. I have to look at it.

NOT A CERTIFIED COPY

012916

Q. Yes, sir.

A. Because the copy I saw had a beautiful blue Morgan Stanley cover on it.

(Pause.)

A. I believe this is the document that I saw, or there may have been an earlier related version of this, but this contained essentially this information.

Q. Let me ask you to set that aside for now. We will come back to it.

A. Sure.

Q. And we will just collect that up for now and, at a later point, we will talk about it in a little bit more detail.

A. No problem.

Q. There was also a document I think you said you saw from Sunbeam, and I want to show you a document now and ask you if that is the Sunbeam document that you were referring to. MS 84, please.

By the way, was it Mr. Levin that gave you Morgan Stanley 85?

A. No. I think it was either Mr. Nesbitt or Mr. Maher.

Q. Maher.

NOT A CERTIFIED COPY

012917

Q. Did you ever discuss with Mr. Levin the presentation by Sunbeam that was, that is set forth in, on hard copy, if you will, in Morgan Stanley Exhibit 84?

A. I am sure I did.

Q. We will come back to these a little bit later.

Now, at the -- at or about the time of the second board meeting, had you already, had you reviewed the final contracts that were being drafted by the attorneys?

A. I don't recall whether I had seen the final drafts or not yet, but others who were working with me did.

Q. Did you review the final drafts of the contracts before they were signed?

A. Um, before I signed -- before I signed the document, I reviewed it. Did I see the final drafts that, of -- I am not sure if I did or not.

Q. Let me show you what has been marked as MS 421. That is a February 27th, 1998 CLN Holdings Inc. resolution.

If I misspoke, the Exhibit Number is 423, not 421.

NOT A CERTIFIED COPY

012918

(Pause.)

Q. Mr. Gittis, have you read the document, Exhibit 423?

A. I am looking through it. Yes.

(Pause.)

MR. SOLOVY: Just so the record is clear, there is no question pending; correct?

MR. BEMIS: He asked to read the document.

THE WITNESS: I was waiting for you. Okay.

Q. Now we are communicating better.

A. Right.

Q. Is that your signature on page 1 of the document?

A. It is.

Q. And did you sign this document on or about the date it bears, February 27th, 1998?

A. Probably sometime thereafter -- probably just as they were getting everything ready for a closing or signing, you know, I was signing, just before that. Dated as of February 27th; so, that is my best guess.

Q. Okay. I apologize for interrupting

NOT A CERTIFIED COPY

012919

you.

A. That is okay.

Q. From your past testimony my understanding is that you read documents before you sign them; correct?

A. Oh, yes.

Q. You can hand that back to me.

A. All right.

Q. I will hand you what was marked as Exhibit 172 in a previous deposition. I have handed you Exhibit 172, sir, and when you are finished looking at it, I will ask you a couple questions.

A. Go ahead.

Q. Is that your signature that appears on page 1?

A. Yes.

Q. As was like in the case that I just showed you, Morgan Stanley 123, did you sign it as of February 27th, 1998?

A. Yes.

Q. Did you read it before you signed it?

A. Sure.

Q. You can hand it back to me. That is

NOT A CERTIFIED COPY

012920

A. Yes.
Q. What is it?
A. It is a letter given by an accounting firm to the issuer of securities, giving them comfort that as of the time of the issuance of the securities, certain, what events have transpired since the filing of the last certified financials.
Q. To state it another way, it covers a time period from the last, the date of the last certified financials up to a date stated on the letter; correct?
A. Yes. The date while, the date when you are going to issue securities.
Q. The issuance of this registration rights agreement was a condition precedent to the closing of the CLN merger agreement; correct?
A. I am sure it was, yes.
Q. Indeed, if you will go back, and I will ask you to take a look at Exhibit 172 --
A. Yes.
Q. Which exhibit is the consent of the directors in lieu of a meeting of Coleman (Parent) Holdings. And on the first page the

NOT A CERTIFIED COPY

012921

execution of the registration rights agreement, Exhibit 278, is the condition precedent to the closing of the merger; correct?

A. Sure. Taking unregistered securities --

THE REPORTER: I did not hear.

A. We were getting unregistered securities. You want to get the securities registered within a certain time period. That is the purpose of a registration rights agreement.

Q. In the case of the registration rights agreement and obtaining a comfort letter, Sunbeam is the issuer of the securities; correct?

A. Sunbeam is the issuer of the securities.

Q. And the comfort letter that was referred to in the registration rights agreement would come from Sunbeam's auditor; correct?

A. From Sunbeam's auditor -- yes.

Q. Arthur Andersen.

A. Arthur Andersen.

NOT A CERTIFIED COPY

012922

MR. BEMIS: Let's take a recess and get some papers organized and refiled and we will move on to the next topic.

THE VIDEOGRAPHER: The time is 10:53 a.m., and we are going off the video record.

(Recess.)

THE VIDEOGRAPHER: Stand by. The time is 11:04 a.m., and we are back on the video record.

Q. Let me hand you, sir, what has been previously marked as Morgan Stanley Exhibit 424.

This is entitled "Coleman Worldwide Corporation consent of directors in lieu of board of directors meeting."

Do you have that in front of you, sir?

A. Aha. I do.

Q. Please take a minute and look at it and I just have a couple of quick questions about it.

(Pause.)

A. Yes.

Q. The first question, sir, is: Is

NOT A CERTIFIED COPY

012923

that your signature that appears on the first page?

A. It is.

Q. Did you sign it on, as of, excuse me, February 27th, 1998?

A. Sure.

Q. Did you read it before you signed it?

A. Yes.

Q. Was it signed in connection with the Coleman Sunbeam transaction?

A. Yes.

Q. You can hand it back to me. Thank you very much.

Let me show you now what has been marked as Morgan Stanley Exhibit 93.

A. All right.

Q. Do you have that exhibit in front of you?

A. I do.

Q. For the record, that is the agreement and plan of merger among Sunbeam Corporation, Laser Acquisition Corporation, CLN Holdings Inc. and Coleman (Parent) Holdings, Inc.

NOT A CERTIFIED COPY

012924

happened at the luncheon?

A. It was a non-event, the luncheon, just telling him he had done a deal.

Q. Did Mr. Perelman -- Mr. Perelman testified yesterday or the day before, I can't remember -- at this point I don't remember which of the two days it was -- at some point he discussed with Mr. Dunlap whether he would have an interest in being on the board of directors of the Coleman Company. Did he ever discuss that subject with you?

A. No. That would not have been a fruitful subject with me.

Q. Why not?

A. I thought that Dunlap was very aggressive, um -- and not someone that I thought was, would have been a great board member.

Q. There does come a time, again in the fall of 1997, when you meet Mr. Dunlap again; is that correct?

A. That is correct.

Q. And did you meet him in connection with an introduction by Michael Price?

A. Yes.

NOT A CERTIFIED COPY

012925

A. He laughed.
Q. Did you have any further talks with Mr. Price that involved Mr. Dunlap?
A. I did.
Q. What happened next?
A. Price called me shortly thereafter, and said that Dunlap had a significant interest in seeing Sunbeam acquire Coleman, and I said look Mike, you know, Coleman is in the early stages of its turnaround, its stock market price is not going to reflect what we consider to be its real intrinsic value.

So, it is sort of silly to have that kind of a meeting now, wait six or nine months or a year when you will see that the market price will have begun to reflect what the real value is and, you know, you can talk to us then.

He said, no, no, Al is hell-bent on doing it very quickly, he wants to do this right way.
Q. He said that Al Dunlap was bent on doing it?
A. Yes.
Q. Did he mention in this conversation

NOT A CERTIFIED COPY

0012926

at all Morgan Stanley?

A. No. He did not mention Morgan Stanley. This was all Al.

Q. So, at this time when Michael Price called, are we in, sometime in late November of 1997?

A. No. It is late November. It could have been the first week of December, but sometime in that time frame.

Q. And at this time was Mr. Price still the fund manager for the mutual fund that you described?

A. Yes. And they owned a ton of Sunbeam shares.

Q. When you refer to "a ton," does that translate into more than 1 percent?

A. Yes.

Q. So, Mr. Price, obviously, had some financial interest in the performance of Sunbeam stock?

A. Oh, sure.

Q. And he was interested, I would take it, in having it go up, rather than go down?

A. He certainly was.

Q. So, how was this conversation with

NOT A CERTIFIED COPY

012927

A. This is Mr. Price. I said Mike, what's going to happen, we are going to have a meeting, nothing is going to happen for two weeks anyway, we will all 2be away, you are going to be away, too.

He said, no. No. We have to have a meeting. So, Ronald was going to fly down to Palm Beach en route to St. Bart's on the Thursday of that weekend. I was not scheduled to leave with some kids and grand kids until Friday.

I finally said, all right, I will talk to Ronald. Look, Ronald, I will fly down with you and then the plane will take my kids and grandkids down the next day. He said okay, so, we will meet with them.

Q. You flew down to Palm Beach?

A. I flew down with Ronald that afternoon on his plane. My plane stayed back and took my grandkids down the next day. We met at Ronald's house about 5:30. That's what I told --

Q. Now we are at the December 18th meeting at Mr. Perelman's house; correct?

A. That is correct; about 5:30 in the

NOT A CERTIFIED COPY

012928

evening. Exactly.

Q. Was there any communication between you and Mr. Dunlap before the meeting on December 18th at Mr. Perelman's house about the meeting, or was it all conducted through Mr. Price?

A. All through Mr. Price.

Q. Mr. Price is acting kind of like an intermediary between the two parties to set up the meeting?

A. The principal shareholder of Sunbeam, yes. That is the role in which he was acting.

Q. Okay. The principal shareholder through his mutual funds?

A. Right.

Q. So, all right, we are at 5:30, December 18th, the doorbell rings.

A. And in comes Mr. Price and Mr. Dunlap.

Q. What happens next?

A. We had some Coca-Cola or -- a glass of iced tea or coffee. If they wanted anything stronger, if they wanted coffee, they could have had it. We went into Mr. Coleman's

NOT A CERTIFIED COPY

012929

library and Mr. Dunlap began to extol the virtues of everything that he had done at Sunbeam -- the company is doing great, making money hand over fist. He had taken 26 factories down to eight, some such number. He cut, fired 7,000 people.

I never heard of such stuff, but he was really flying.

Q. Nobody from Morgan Stanley was at this meeting?

A. No. It is just the four of us. And so.

Q. Go ahead.

A. Listen -- so.

I want to buy Coleman, I want to have Sunbeam buy Coleman.

Q. This is Mr. Dunlap talking?

A. Dunlap.

Ronald said to him what I had said to Mike Price, look Al, it is all very interesting, but I have zero interest in selling Coleman at this stage.

The stock market price is not reflective of the true value of the company. I have great confidence in the management team

NOT A CERTIFIED COPY

0012930

So --

Q. I am sorry, go ahead.

A. So, I said to him -- look, Al, this is not a conversation I want to have with you, but I am going to tell you, I have taken a look at your company, the analyst reports, I have looked at mine, I asked CSFB to calculate out one thing for me, which is what price can Sunbeam pay depending upon the amount of synergies that we would agree might be available.

Without us being dilutive to Sunbeam. And that is 30 bucks a share.

And I have zero interest in selling for less than that. And I either thought that -- you know -- an attack on, you know, Dunlap's manhood or something, he went, you know, yelling and screaming, and his face was red, we want to do a share-for-share exchange.

All of a sudden I said Al, what's the sense of having this meeting, we told Mike five times now that we have no interest in selling this business at this stage.

So, why would you even come in and

NOT A CERTIFIED COPY

01293I

talk to us about that. That is another transaction. You know, I hope you enjoy your Christmas holiday, and we will see you in a year or so.

Q. What did Mr. Dunlap say?

A. Oh, no, Mr. Dunlap started screaming, no, this is a deal that cries out to be done, Morgan has looked all over, Morgan determined who should be our next acquisition. You are our favorite candidate.

You are the only one we want to do this merger with.

Morgan is prepared to finance it, and on and on and on. And his face was getting redder and redder.

I said, Al, please, this is only a business transaction. It is not going to change your style of living and certainly not going to change ours. You know, there is no rush.

I mean, you are going to have a heart attack, calm down. I was really worried.

He started pointing his finger at me, I don't get heart attacks, I give heart

NOT A CERTIFIED COPY

012532

Q. Mr. Byrne describes --

THE VIDEOGRAPHER: Your microphone.

Q. Mr. Byrne describes some portion of the meeting and, and he attributes to Mr. Dunlap the statement, Ron you are a pig. You know your company is a piece of shit, you will never see it worth $30 a share in your lifetime, it is only worth 20 bucks, and that is an early Christmas present. Was something like that said?

A. No, he would never have called Ronald a pig. He did not lose that much control. Actually, Ronald and I always thought that he hadn't really lost control, this was just part of his act. This is, you know, the Rambo act.

Q. Did Mr. Dunlap say words to the effect, during the discussions on price, well fuck you, screw you, you guys don't know what you are talking about?

A. He did use certain scatologic terms.

Q. Did Mr. Perelman reply "fuck you"?

A. No.

Q. He would never use a term like that?

A. Ronald doesn't talk like that.

NOT A CERTIFIED COPY

012933

Q. Did Mr. Dunlap shout at the meeting?
A. Oh, yes. He was very exercised.
Q. Did Mr. Dunlap say words to the effect, quote, I am going to save this company for you, I am going to do for -- ah, do what I did at Scott and Sunbeam, I am going to cut all of the costs out? Did he say words like that?
A. Oh, yes. He said words like that.
Q. Then, you are attributed as saying look Al, don't get yourself so excited, you are going to have a heart attack here?
A. That is absolutely accurate.
Q. And then Mr. Dunlap is reported to have said, which I think is consistent with what you said, "I don't get heart attacks, I give heart attacks and I am going to give you a heart attack"?
A. Right. That happened. You don't forget that.
Q. And then you are attributed as saying to Mr. Dunlap, calm down, this is only business, whether we make this deal or not, Ron is not going to be any more or less rich and I am not going to be any more or less

NOT A CERTIFIED COPY

012934

rich, I am not going to change -- it is not going to change any of our lives, I don't think it is going to change yours. I know it is not going to change Mike's.

Was something like that said?

A. Something like that I would have said, yes.

Q. Then Dunlap screamed, according to Mr. Byrne, fuck you guys, you will never make a deal, I told you Perelman, you should never listen to lawyers.

A. That means me.

Q. I think it means you.

A. Yes. He said something like that.

Q. Then Dunlap is reported to have stormed out of the house. Did he do that?

A. Well, stormed out. He left.

Q. In a hurry?

A. He did not finish his coke, I will put it that way.

Q. And as he was walking out, did he shout, words to the effect, fuck you and fuck your company?

A. No. I don't remember that.

Q. Did you come to the conclusion --

NOT A CERTIFIED COPY

012935

Ronald's birthday is, it is January 1st. He was the first child born on January 1st.

And historically, for 20-some years, we spent his birthday together. So, I flew over from Palm Beach to St. Bart's for his birthday party, which we celebrated, no discussion of Mr. Dunlap or Mr. Price.

Q. So, what is the next thing that you remember happening in connection with the Coleman Sunbeam transaction after this meeting with Mr. Dunlap in Palm Beach?

A. Morgan Stanley called Maher, and again, I don't remember whether it was Kitts or Reid -- and Bill Reid called Ronald, that I do know, saying look, this is really silly, these two companies should be together, we worked on this for months. You know, Al gets carried away, let's leave Al out of this. Let's see if we can't get this back on track.

Q. Did you consider there being anything improper about Morgan Stanley speaking to -- to MacAndrews & Forbes again about whether negotiations could be restarted?

A. Not at all.

Q. Or discussions?

NOT A CERTIFIED COPY

012936

A. Morgan Stanley has been a bank of ours for years. You know, we have had very good relations with them. There was no problem at all in their calling us like that.

Bill Reid was the guy in charge of our account at Morgan Stanley at that time -- he succeeded Eric Gleacher and Joe Perella. There were a series of guys at Morgan.

He was trying to get us to buy Gucci, it was a company that we looked at.

And so, it was perfectly appropriate for them to call Ronald or to call me, or to have some of the younger guys call Maher. There was no problem at all with that.

And they were trying to get a deal done. It is their job.

Q. Mr. Perelman said, in his deposition, that he did speak to Mr. Reid sometime in January, approximately, January. Were you on that call?

A. No.

Q. Did you hear about the call?

A. Yes. He told me right away.

Q. To the best you can recall -- it is years later, I understand -- what did

NOT A CERTIFIED COPY

012937

in, sometime in the mid-1997, as best I can tell. And he said they pumped him up now, not that they can sell the company, but that he ought to be buying. And they are willing to use their balance sheet to finance.

And that's why Morgan Stanley is doing this and not me.

Q. Did you say that in advance of the meeting on December 18th, that there had been at least some analysis of analysts reports on Sunbeam by CSFB?

A. Sure.

Q. Who had requested that work be done by CSFB?

A. Me.

Q. You?

A. Aha.

Q. In 1997, let's take the month of December, were there analysts that were following Sunbeam?

A. Oh, sure.

Q. About how many?

A. I don't remember now, but at least half a dozen.

Q. Were they analysts at houses,

NOT A CERTIFIED COPY

012938

record.

Q. Following the December 18th meeting and moving up all the way to the call that Mr. Perelman received, as he testified from Mr. Reid, I take it you had really no involvement in any discussions in that kind of gap period; is that correct?

A. No. There were no discussions during that gap period.

Q. I think the description I used yesterday with Mr. Perelman was, as of December 18th, the matter was dead in the water, as far as he was concerned; is that fair?

A. I think it never started, it was pretty close to being dead in the water.

Q. If it ever got started, it got turned off?

A. Yes.

Q. Moving now into January, as a result of Mr. Reid's call, or if it was someone else who called Mr. Maher, it is not clear -- did discussions resume?

A. Yes. Mr. Maher then resumed discussions with Morgan. And from that

NOT A CERTIFIED COPY

012939

team, which was Jerry Levin, Joe Paige, Bobby Jenkins and Paul Shapiro. He is a Philadelphia Shapiro.

Q. Shapiro.

All right.

All right. So, on the MacAndrews & Forbes team we have Mr. Maher and Mr. Nesbitt and then --

A. And Glen Dickes overseeing the legal aspect.

Q. Then we have Mr. Dickes and Mr. Levin and Mr. Paige down the Coleman side of the transaction?

A. Levin, Paige, Jenkins, Shapiro.

Q. Do you know what due diligence was done by Mr. Nesbitt and Mr. Maher with regard to Sunbeam?

A. I couldn't tell you now. Whatever they thought was necessary.

Q. Were you following the due diligence -- well, I will put it this way. Was the Sunbeam Coleman deal your deal or Mr. Maher's deal?

A. It was not my deal, it was Mr. Maher's deal, but Mr. Maher did not have

NOT A CERTIFIED COPY

012940

the power to sign anything and I did. So, I would not get back, I did not get back into this until probably February, right after I got back from vacation.

Q. When did you get back from vacation?

A. I don't remember now, but around the 20th, probably.

Q. Then the deal closes, like, within a week.

A. Right.

Q. Did you consider it --

Well, withdrawn.

Was that a fast, was it a fast deal?

A. Very fast. And that was driven by Morgan. They wanted to do this very quickly.

Q. Did someone tell you that Morgan wanted to do the deal fast or Sunbeam wanted to do the deal fast?

A. I know Sunbeam did, but I was told that Morgan wanted to do it fast, too.

Q. Did someone from Morgan Stanley tell you that?

A. No. It was one of our guys repeating what Morgan Stanley told them.

Q. Who was that who told you that?

NOT A CERTIFIED COPY

012941

A. I think it was either Nesbitt or Maher.

Q. What did Mr. Nesbitt or Mr. Maher tell you?

A. That Sunbeam was driving Morgan to get it done then and Morgan liked the financing markets then.

Q. So, Sunbeam was driving Morgan Stanley and Morgan Stanley thought the financing markets were time for this transaction?

A. Yes. We do that all the time. It was not unusual. You know, when you catch good financing markets, particularly in a transaction this size, you don't want to lose your market. February is historically a good time to finance this kind of paper.

Q. When -- the paper here we are talking about are the almost two point, I think it is -- 014 billion dollars worth of the debentures that were eventually issued?

A. Well, there was, the zero convert, which was the face of about two billion dollars, and then there was the bank loans, which were about a billion 7.

NOT A CERTIFIED COPY

Q. Thank you, you are right. There was a second component. That is what we are talking about, the financing?

A. Yes.

Q. All of that financing is interest rate-sensitive; right?

A. Sure.

Q. Did you -- well, withdrawn.

What is the first thing that you did when you got back from vacation, I think you said about February 20th, 1998, that relates to the Coleman Sunbeam transaction?

A. I got Maher and Nesbitt in my office, and I said, asked them where we were.

You know, tell me what is being done, where are the documents, where are Jerry and his team in connection with their due diligence. How is our business doing.

I think I talked to Jerry, probably to Paul about that.

Paul was my better contact inside Coleman than was Jerry. I talked to Paul a lot about it. Gave it to a partner of -- worked for me a long time.

Q. This is Mr. Shapiro?

NOT A CERTIFIED COPY

012943

A. Yes. So, then, I said well, look, you better get Morgan and Sunbeam in to take you through one last time, take us, Dickes is telling me that the contract is going to be signed by the end of February.

I want to get one final run-through, where you guys tell me that you are satisfied.

And that led to the meeting which took place sometime after the 20th of February and before the 27th.

The result of that meeting was delivery to me of these Morgan Stanley books.

My question then was, did anything come up at the meeting that would lead you to conclude that the Morgan Stanley book was inaccurate.

He said, no, to the contrary, everybody is extolling the virtues of this company and what is going to happen and how great it is going to be. And I said Okay.

Q. Mr. Perelman testified yesterday that Mr. Levin told Mr. Perelman, that at least for the month of January Sunbeam's sales were soft.

Were you told that by Mr. Nesbitt or

NOT A CERTIFIED COPY

012944

Mr. Maher?

A. Yes.

Q. So, both Mr. Nesbitt and Mr. Maher told you that fact?

A. Well, one or the other, and it could have been Mr. Levin said that January sales were slow.

But that February was okay.

And they were going to make the quarter. The estimate for the quarter was very high.

Q. So, did you --

A. Not unusual in the consumer products company, a slow January, by the way.

Q. So, having, looking at -- I will show you now MS 84, which, I think, is, is one of the documents that we talked about earlier. I said that we will come back to it, and we will.

A. All right.

Q. I have handed you Morgan Stanley Exhibit 84, and you have that in front of you; correct?

A. Aha.

Q. If you will turn to the page, and I

NOT A CERTIFIED COPY

012945

happen in the future, what was going to be the result by the end of March?

A. March 31st. But by -- February 23rd, most businesses, you know, what's going to happen by March 31st.

Q. At any point in time before the closing, did anyone from MacAndrews & Forbes' due diligence team, whether it be Mr. Levin's group or Mr. Nesbitt, Maher, ask for interim financial statements of Sunbeam for the month of January to see how slow they were?

A. I don't think so. I don't know if they did.

Q. You did not do that?

A. No.

Q. If anyone should have done it, it should have been Mr. Maher; right?

MR. SOLOVY: Objection to the form of the question.

A. It was not particularly relevant. If they are going to make the quarter, they are going to make the quarter.

Q. I asked you about January. At any point, up to the closing, did anyone from the MacAndrews & Forbes due diligence team ask

NOT A CERTIFIED COPY

012946

Sunbeam for its February interim financial statements?

A. No, I did not even know if they had them.

Q. Up to the point of closing, which the record will show is March 30th, 1998, did anyone on the MacAndrews & Forbes due diligence team ask Sunbeam for its interim financial statements for any month in 1998?

A. Not that I know of.

Q. Did they ask for an update foreclosing on where Sunbeam was for its sales for the first quarter of 1998?

A. Sure.

Q. Who asked?

A. I am sure Mr. Nesbitt did, because I asked him. Because, on March 18th they put this statement out, saying they are not going to make what The Street was projecting they are going to make for the first quarter. They were going to make more than last year.

Q. So, you --

A. That is not in terms of earnings, but it is in terms of sales. I see this press release, said -- well, Nesbitt, what's going

NOT A CERTIFIED COPY

012947

A. After the press release was issued. The press release did not raise a lot of hackles in anybody's mind.

Q. Do you know what the market did after the press release was issued on March 19th?

A. Yes, the market went off a few points.

Q. It went off almost 10 percent; didn't it?

A. Yeah, but it had been up so high, that is all right. That value of Sunbeam, when it went off the 10 percent, that was okay with me.

Q. It was okay when the market dropped 10 percent?

A. That was okay with me. I would have taken the Sunbeam stock at that price. That did not bother me.

You know, the stock was worth 43, 44, that is a good price of Sunbeam.

If you take a look at the transaction and you calculate out, you know what that would have meant to us, take it 14-million-0 shares, that was a nice price.

NOT A CERTIFIED COPY

012948

Q. In connection with issuing debt, after, you are familiar with the underwriter receiving comfort letters from the auditors; correct?

A. Yes.

Q. At any point after the March 19th press release, did anyone on the MacAndrews & Forbes due diligence team request from Morgan Stanley a copy of the comfort letters that it would have received in connection with the underwriting?

A. No. Because I wouldn't believe that they had received the comfort letters which we discovered later in the Arthur Andersen litigation that anybody would have closed that -- or would have permitted us to close that transaction.

Q. I take it your answer is that you made no such request?

A. No such request.

Q. Comfort letters, the comfort letters that were received by Morgan Stanley just weren't from Arthur Andersen, they were also a comfort letter from the Coleman Company; correct?

NOT A CERTIFIED COPY

012949

BY MR. BEMIS:

Q. Other than the meeting in February, the meeting that you, that Mr. Nesbitt and Mr. Maher apparently attended and collected the Exhibit MS 84 that you had in front of you and the other document, Morgan Stanley Exhibit 85 we looked at earlier, can you describe for the jury any other due diligence that the MacAndrews & Forbes team did after February 23rd -- which is, by the way, the date of that meeting, February 23rd --

A. Right.

Q. -- up to closing.

A. Not that I know of.

Q. Where were you on the date of the closing, which was, again, March 30th, 1998?

A. I have not the slightest idea.

Q. You remembered where you were on vacation. I thought you might remember --

A. No.

Q. Sometimes we remember those things.

A. No.

Q. Did you ever review any of the financial modeling that Mr. Nesbitt did in connection with the Sunbeam Coleman

NOT A CERTIFIED COPY

012950

Q. Okay.
A. You notice the one you showed me previously, assumed -- ah -- synergies of 100,000,000. This one assumes synergies of 150. As I told you, Mr. Dunlap told me it was going to be 250, but we were not as bullish as he was.
Q. Okay. You can hand that back to me, and we are all done with that.
A. Aha.
Q. Thank you.
Are you aware of any interviews of Sunbeam's customers such as a Walmart or a K Mart, during the due diligence that was conducted by the MacAndrews & Forbes team before the closing?
A. No. That would have been done by the Coleman team themselves. Jerry Levin is the one that would have the contact with those customers.
Q. Are you aware of Mr. Levin making any contacts with Sunbeam's customers as part of the due diligence?
A. I know he made contact with the customers. Whether it was before or after

NOT A CERTIFIED COPY

012951

closing, I don't know.

Q. In advance of the -- before the closing on March 30th, are you aware of any meetings by the MacAndrews & Forbes due diligence teams with analysts that were following Sunbeam?

A. I don't think so.

Q. I said meetings. I would ask you the same question with regard to just conversations on whether they be face-to-face or on the telephone.

A. I don't know the answer to that, because I know Jerry, for instance, had a very good relationship with Andy Shore.

Q. That is Jerry Levin?

A. Yes. And whether he talked to Andy or not, I don't know.

Q. Did you --

A. Jerry also had a good relationship with Conney Maneatty, who, I think, was covering them, as well. I don't know the answer to that.

Q. Was there a procedure by which Mr. Perelman was kept advised of the status of the negotiations between Sunbeam and Coleman

NOT A CERTIFIED COPY

012952

prior to the closing?

A. Well, if he doesn't sign off on price, no one else can. So, he is, has to be aware of price, and he would be aware of the terms -- that is, how much cash, how much stock. He has the final say on that, not me.

And he would be advised -- that you have to understand, we are a very small organization, and he walks the halls, you know; so, it is my office or Maher's office or Jerry had an office up on the 5th floor. It is only a five-story building.

Ronald was there and out of everybody's office, but nobody had authority to negotiate that price if he did not give them.

Q. What about the structure of the transaction? Did anyone have authority to negotiate the structure, other than Mr. Perelman?

A. He wouldn't negotiate it himself. He would instruct his negotiators as to what he was willing do, and it was their job to negotiate then with Morgan.

Q. Did you receive from Mr. Perelman

NOT A CERTIFIED COPY

012953

any instructions, that you can remember, about the structure of the consideration that he wanted in the transaction?

A. He wanted stock.

Q. All stock, if he could get it?

A. Yes. Aha.

Q. Did he tell you why he wanted all stock?

A. He believed Morgan.

Q. He believed Morgan.

Did he believe in Sunbeam?

A. Well --

Q. Did he tell you that he believed in Sunbeam?

A. He believed in what Morgan told him about Sunbeam.

Q. Did he believe in Mr. Dunlap?

A. Look, Dunlap had a great record up to that point. It is hard to argue with the record. He did not implode until far after that, until this deal.

Q. Why did the transaction then eventually result in not all stock -- that is, some cash and some assumption of debt?

A. Because Morgan wanted to close the

NOT A CERTIFIED COPY

012954

deal right away. They couldn't give us more than 19.8 percent of the stock without going and, without getting New York Stock Exchange approval, which requires time, and they did not want to take the time. That's what set the cap on the stock that we could get.

Q. You say Morgan wanted to close. Did Sunbeam, in your understanding, want to close to the client --

A. Sure. I said that before, absolutely. They both wanted to close right away. They did not want to go to the Stock Exchange, which would have taken time. So, that put the cap on the amount of stock that we could get.

Q. It was that issue that caused Mr. Perelman to take less than 100 percent stock?

A. Yes.

Q. If he could have taken 100 percent stock, he would have?

A. He would have.

Q. Did you ever encourage -- strike that.

Did you ever suggest to him that he

NOT A CERTIFIED COPY

012955

should not do that, that he should take cash?

A. That is irrelevant. That is why he is richer than me. I would always take cash, but he is far more bullish than I am.

Q. Do you remember Mr. Levin, were you ever present when Mr. Levin said words to the effect that he, Mr. Perelman, should take as cash and not stock?

A. I don't recall that. At least, it was not in my presence.

Q. I take it, given the 1998 markets being what they were, there was more upside in stock than in cash?

A. Ronald certainly believed so.

MR. BEMIS: Let's break for lunch.

MR. SOLOVY: Sure.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: The time is 12:29 p.m. and we are going off the video record.

(Luncheon recess: 12:29 p.m.)

NOT A CERTIFIED COPY

012956

Q. Now -- this is the time -- you have a copy over there.

I will put this one back.

What I would like you to do -- my understanding is that, from your prior testimony today, is that you did receive a copy of this document from either Mr. Maher or Mr. Nesbitt, following the meeting that we have been talking about, which the record will establish was February 23rd. Am I correct?

A. That is correct.

Q. And that you reviewed this document sometime thereafter; is that correct?

A. That same day.

Q. Okay. Or did you get it -- did you get it on -- in the evening or during a normal business day?

A. I don't remember.

Q. Okay. Whatever day it was, you received it is when you reviewed it?

A. Yes.

Q. I would like you to just walk through the document with me, and you will have to use page numbers.

A. Sure. Okay.

NOT A CERTIFIED COPY

012957

Is there something funny? If you would look, again, at MS 85, there is going to be page numbers in the lower-right-hand corner. CPH page numbers.

A. Yes.

Q. Those are the numbers that we will be referring to.

Looking at each page of the document, one page at a time, would you tell me which of those pages you read and relied upon and that you believed Morgan Stanley knew, in February of 1993, were false?

A. Okay, let's start with page 224, that is the CPH number.

Q. If you give me a chance, I will get there.

A. Okay.

Q. I am there.

MR. SOLOVY: Let's see what page that is. Where are you reading the numbers from?

THE WITNESS: The side here. Right on the side here.

MR. SOLOVY: I see. 224. Sorry.

A. The majority of the restructuring

NOT A CERTIFIED COPY

012958

plan was completed in the first quarter of 1997.

And I expected the resultant cost savings to be 225 million, of which 75 percent are -- expected to be realized in 1997 and the balance in 1998.

I relied upon that. I expected it to be true.

I found out later that it was not true.

Q. May I ask you: Do you have any facts to support a statement that Morgan Stanley believed that statement to be false in February of 1998?

A. Well, if they did not, they should have known. They had been working on this company for nine months at this point.

Q. Other than what -- sorry?

A. If they did not know that, they did not know anything. When they present this to me, I expect them to believe that it is true.

They had to know this was not true. They had to know that.

Q. Do you have any facts, other than what you think they should have known, that

NOT A CERTIFIED COPY

012959

would tell you that they knew it was false?
A. No.
Q. Please continue.
A. Page 226.
Q. Yes, sir.
A. The consolidated net sales number for 1997.
Projections for '98 and '99.
I relied upon. Morgan Stanley certainly by the time of um, the comfort letters knew that was inaccurate, and couldn't be met.
Q. Before you move on, the figures for 1997 -- may I ask you -- that you referred to, those figures are footnoted as being taken from Sunbeam's annual report; correct?
A. Right.
Q. Do you have any facts that you can tell the jury that would support a conclusion that Morgan Stanley knew in February of 1998 that the sales figures in Sunbeam's audited 1997 financial statements were incorrect?
A. Well, they did not have the audited statements yet. Because this was, the earliest, February, they did not have the

NOT A CERTIFIED COPY

012960

audited statement yet, I don't think. For 1997. Then they had to know they were false.

Q. How is it that, what facts do you base that upon?

A. Because once we got into the numbers, as they had, spending months doing, and they had to reset all these, all these numbers were changed.

Q. When were they changed?

A. They were changed by the year 2000. It took us that long to get a financial statement here.

Q. Wasn't it in late 1998 when Arthur Anderson -- when the restatement was done?

A. The restatement was done in '98, but they wouldn't issue a certified financial statement then.

Q. Wasn't it, was it not until -- excuse me. When did Arthur Andersen withdraw its opinion on the 1997 financial statements?

A. Sometime mid June.

Q. Of 1998?

A. Of 1998.

Q. When did Arthur Andersen withdraw its opinion on anything related to the 1996

NOT A CERTIFIED COPY

012961

financial statements of Sunbeam?
A. Sometime subsequent.
Q. In June of 1998, right?
A. Sometime subsequent.
Q. Sometime subsequent to February 23rd, 1998?
A. Absolutely.
Q. With regard to the projections going forward that you mentioned, those are also footnoted as being projections from Oppenheimer, an Oppenheimer research report; correct?
A. Yeah, that doesn't excuse them. They were -- are being presented to me by Morgan Stanley as being accurate.
Q. Did you ask anyone from Morgan Stanley or the MacAndrews & Forbes' team to see the Oppenheimer research report?
A. No. I am sure we had that.
Q. You are sure you had it?
A. I am sure we had it.
Q. Would you continue for me, please.
A. The consolidated profitability statistics, as shown on page 227, which shows net income in '97 of 123 million, in '98 of

NOT A CERTIFIED COPY

012962

199 million -- and in '99 of 253 million.

Q. Notes to those figures say they are based on projections from Oppenheimer Research, which you said you had; correct?

A. Right, and they excluded any one time for extraordinary charges.

Q. Would you please continue.

A. Page 231. Stated growth objectives of Sunbeam.

To double without acquisition, '96 sales of 984 million, to two billion by 1999, implying compound average growth at about 27 percent.

Q. Which is what it says?

A. That's what it says; right. But Morgan Stanley should have known that was impossible to obtain.

Q. And did you understand objectives to be something to be achieved in the future when you read this?

A. Sure.

Q. Did you ask Morgan Stanley any questions about the figures that appear on this page, 231?

A. I know Mr. Levin did.

NOT A CERTIFIED COPY

012963

Q. Mr. Levin did.

A. Tripling international sales from 185 million to about 600 million in '99, compound annual growth rate of about 48 percent.

Q. Again, that was an objective through the year 1999?

A. That is an objective through the year 1999, but when Morgan Stanley presented it to you, they are adopting that thing. This is what we are going to get done.

Q. You read this stated growth objectives as a representation by Morgan Stanley that in 1999 Sunbeam would be able to achieve these results?

A. If Morgan Stanley thought that they were false, they would not have presented these, or they shouldn't have presented them.

Q. Go ahead, please continue to the next page, sir, that you -- that, as you worked through document.

A. Page 234, the future growth opportunities.

Again, dealing with very significant international growth -- the same number, 185

NOT A CERTIFIED COPY

012964

million to 600 million.

Then they said they were going to introduce 30 new products a year -- shortening the product development time to six months, from two-and-a-half years, generating an additional $300,000,000.

Morgan Stanley had to have known that they weren't, did not have that many products on the board, you can't generate those products that fast enough.

Q. Do you know that Morgan Stanley knew that or are you just assuming that they had to know that?

A. I am assuming that they had to know that.

Q. Okay. Please continue.

(Pause.)

A. Then there is a whole page on the allergy smart air cleaner, page 237, which we thought -- we thought it was going to be a great product.

Q. Who was that telling you that?

A. Morgan and Sunbeam.

And certainly by June they knew this product was a failure. I don't know if they

NOT A CERTIFIED COPY

012565

knew it in February. I can't say that they did.

Q. We are talking the year 1998 when you said February and June; correct?

A. Yes.

Q. Okay. Please continue.

A. Then --

Q. Before we move on, if I can interrupt you one second. Have you, in your many years of business experience, ever known to have a company develop a product that they felt was going to be a big success and turned out to be a failure?

A. Oh, sure. But they were so sure about this one, of all of the 30 new products, this one and one other were the ones that they were relying on.

Q. Do you think that Ford was sure about the Edsel when it marketed it?

MR. SOLOVY: Objection to the form of the question.

A. Probably was.

Q. You can answer.

You did.

And you may continue.

NOT A CERTIFIED COPY

012966

MR. SOLOVY: Did you buy any Edsel stock?

MR. BEMIS: I was too young, Mr. Solovy.

MR. SOLOVY: Me, too.

A. Then the operational improvement which we thought had been accomplished because they told us it had been.

Q. What page are you on, sir?

A. Page 240.

Q. Let me get there. Give we one second. I am there. Page 240.

A. Yes.

Essentially, what they are saying to you on this page is that we have now cleaned up our service operation so that we are gaining market share and we will do that because we are, you know, fulfilling our orders, you know, efficiently and on timely.

Q. Do you have any basis to know that any of these service improvements in the potentials here, that Morgan Stanley knew that they were false on February 23rd?

A. By April, by April we knew that they were false, because they were screwing up the

NOT A CERTIFIED COPY

012967

Coleman part of it.

We did not find out there was, that they were screwing up the Sunbeam part of it until June, when we got there.

Q. So, as of February, at least, 1998, you don't have any basis to say that Morgan Stanley knew that these statements were false?

A. When you say that -- what I am saying to you is, if Morgan Stanley, after being there for nine months, did not know this, they weren't doing their job right.

Q. Would you please continue.

A. Then the channel management case, I did not really pay a lot of attention to that.

Q. That was on page 241; right?

A. Yes. The worldwide organization post chart, post merger, looked okay to us. We did not know very many of these people.

Then, when we got there, you know, half of these people were gone.

Q. When you say when you got there, you mean in June of -- excuse me.

A. By April, Uzzi, who is the chief operating officer, he was gone by April. Fannin, you know, he is ratting out, you know,

NOT A CERTIFIED COPY

012968

senior management, Dunlap and Kersh, by June.

Q. Mr. Fannin never left the company?

A. He left.

Q. Not during this time period?

A. No. He left the company subsequently.

Q. After June?

A. After June. By June he is already telling them that there is a gigantic fraud going on.

Q. Let's focus on the period February. Was this chart, as you knew it, accurate in February of 1998?

A. I don't know. I am not sure that Debbie McDonald was still there. She left right around then.

Q. Do you have any facts to support, just as an example, the conclusion that Morgan Stanley knew Mr. Uzzi would be terminated on or about April 3rd, 1998?

A. Yes. I think so, because, you know, when they got the comfort letter, the person they talked with, Morgan Stanley talked with was Uzzi. And then, thereafter, when they talked with Dunlap and Kersh, they blamed all

NOT A CERTIFIED COPY

012969

this on Uzzi and they were going to fire him.
Q. Could I ask you to, please, refer back to February, that is the question.
A. February 23rd, no.
Q. As of February 23rd, 1998, you don't have any basis to say that Morgan Stanley knew Mr. Uzzi was going to be fired in April; correct?
A. No. It was not until March.
Q. Okay. You can continue.
A. Summary of recent analysts commentary.
Q. What page is that, sir?
A. Page 248.
Q. I am --
A. Something about the sign-in agreement with Nuskin to help distribute its fresh source water product in Asia. The source being CIBC Oppenheimer, CSFB Oppenheimer may have said that. I can't believe that Morgan Stanley did not know that that had happened and wasn't.
Q. It is quoted as being a source from CSFB?
A. Slightly right. You can't excuse

NOT A CERTIFIED COPY

what you are presenting to us by saying it is a source of somebody else and I don't know, and I don't know anything about it. That is not what I expect from Morgan Stanley or any other investment bank.

Q. Did you ask CSFB, your investment bank, to check this representation?

A. I did not have to, because Morgan Stanley is presenting it to us. Do you think that they are going to lie to us?

Q. You did not ask CSFB, then, to investigate this statement?

A. I did not.

Q. Okay.

A. "Sunbeam has 20 signed distribution and license agreements so far in 1997. By expanding into new SKUs in Latin America, the company can leverage the Oster brand into new revenue streams."

This is nonsense, nonsense. It was not true.

It is true -- that was right.

Q. This statement that you read is in quotation marks, and the source is given; correct?

NOT A CERTIFIED COPY

A. Exactly. Again, it is Oppenheimer, but what does that have to do with it; it is Morgan Stanley giving it to us. If it was not true, they shouldn't have given it to us.

Q. Again, you did not ask your investment banker, CSFB, to investigate this statement?

A. I did not.

Q. Neither did anyone on the MacAndrews & Forbes team, to your knowledge?

A. Not to my knowledge.

Q. Please continue.

A. One of my favorites, "Sunbeam overview of the outdoor cooking devices industry."

Q. What page are you on?

A. I am on page 252.

Q. Okay. What about that?

A. They are talking about the grill business. Gas, charcoal, electric grill.

And they are telling you about all of the growth opportunities. Okay.

Q. Yes, the opportunities.

A. Right. And what they are saying here is, these are the opportunities that this

NOT A CERTIFIED COPY

012972

great Sunbeam company has. They did not tell you that Sunbeam had been thrown out of either Home Depot or Walmart, I don't remember now, in the accessories business, in the most profitable part of the grill business.

Q. When did that happen?

A. Before February 23rd. The Morgan community did not bother to tell us that.

Q. Are you telling me that you know that Morgan Stanley knew that?

A. If they did not know, they should have known.

Q. Go ahead.

A. Also, when we got there in June we got an anonymous tip to go down and look in June, sometime after we sent our people down there in June of 1998 to the Tulsa air -- a little airport in Tulsa, we found a million square feet of rented space by Sunbeam filled to the gills with grills.

Q. Had this been reported in Sunbeam's annual report audited by Arthur Andersen?

A. No. And sure wasn't told to us by Morgan Stanley, either.

Q. Do you have any facts to support a

NOT A CERTIFIED COPY

012973

statement that Morgan Stanley knew about this warehouse in February, in Tulsa, that you received information on by way of an anonymous tip?

A. No.

Q. Did you ever hear that Morgan Stanley received an anonymous tip to go look at this warehouse in Tulsa?

A. I don't know whether they did or not.

Q. Please continue. Is there anything else on this page, 252?

A. Well, that was enough for the grill business.

Q. Okay. Please continue.

A. Then they go through a whole series of summaries -- analysts; commentary. The reason they are telling you that is that they are vouching for it. They are not telling you this is what all of the analysts are saying but it is false, we have been here for nine months.

Q. So, you were on page 255?

A. I was going through all of those pages, with respect to the analysts'

NOT A CERTIFIED COPY

012974

commentaries.

Q. Let me make sure that I get those.

A. 255, 254. 255 is the best one.

Q. 255.

A. Yes.

Q. Okay. Please continue. You last stopped on page 255. You should go forward.

A. 259 is just repeating what they had said before. I already commented on that.

263, again, talking about shortening the product development frame from two and a half years to six months. Again, about the, open air, purification and grill business. 30 distinct products a year. Launching.

Again, not attributed to any analysts, but this is what Morgan Stanley said.

Q. These are under the heading, if you will, "new product initiatives"?

A. That's right. And they continued to go.

Q. Please turn to, give me the next page that you find --

A. 266, the water fresh source water purifier. This was a hot new product,

NOT A CERTIFIED COPY

012975

according to Morgan Stanley. The only problem is that it did not work. It did not work.

Q. Where did Morgan Stanley tell you that the product did or did not work? When did --

A. Well, they certainly represented it to us on February 23rd, that this was a hot new product.

Q. You weren't there on February 23rd; so, are you just talking about what's in this document?

A. Yeah. Of course. Why do you think they put it in the document for? They did not put it in the document because it was a failure.

Q. What else, sir?

A. They go through the international expansion again.

Page 270, "management goal tripled international sales from 185 million to 600 million."

Q. That is stated as a goal; correct?

A. Stated as a goal.

Q. Okay. You may continue.

A. Morgan Stanley -- they knew, or

NOT A CERTIFIED COPY

012976

should have known, they were incapable of doing that.

Q. Please continue.

A. If you look at page 274, you see what their opportunities were for growth, particularly in Asia. They go from 3 million in '96 to 150 million in 1999. Morgan Stanley knew, or should have known, that they were not capable of doing that.

Q. Again, these are -- what you are referring to are projections of what are described as global opportunities and market potential; correct?

A. Right.

Q. All right. Please go forward from page 274.

A. This whole series of pages which deal with the channel management opportunities, what they are doing here is saying look, here is how we can manage these channels, improve -- improve our sales and profitability.

We certainly thought that was a worthwhile objective and thought it was possible to have happened. Someone who had

NOT A CERTIFIED COPY

012977

been servicing this company for nine months should have known that they were nowhere in trying to get that project completed.

Q. You were referring to pages 79 --

A. Right, up through 82.

Q. -- through 82.

A. Then, page 293, the marketing licensing and merchandising opportunities.

And the point that licensing presents an immediate profit opportunity. Everyone agrees with that.

They should have known, or did know that, at that point, Sunbeam had virtually no licensing projects going forward.

Q. That is under the heading "Make Versus License Decisions."

A. Yes.

Q. Please continue.

A. I think that is it. Thank you.

Q. Thank you, sir, for taking the time to do that for me. Get that assembled.

Two of the products that you pointed out for us, one was the, I want to call it the air cleaner, but I think it is the air filtration system?

NOT A CERTIFIED COPY

012978

A. Air purifier.
Q. Air purifier. Did you, at any point during the due diligence, see one of those units?
A. I did not.
Q. Do you know if anyone did on your --
A. Yes, I am sure the Coleman people did.
Q. When you say you are sure, do you know that they did?
A. They told me that they did.
Q. Who told you that?
A. Now, I can't remember which one of them.
Q. Did they tell you that it wouldn't work?
A. No.
Q. The other device that you identified was, I think, a water purification system?
A. Right.
Q. Did you see that device?
A. No.
Q. Did you ask to see it?
A. No.
Q. Are you, did anyone on the

NOT A CERTIFIED COPY

012979

MacAndrews & Forbes team of due diligence see the device?

A. I am sure the Coleman people saw that, probably --

Q. Sorry.

A. Pretty sure.

Q. You are sure that they did. Did someone tell you that they did?

A. Yes.

Q. Who was that?

A. I can't remember.

Q. Did the person who saw it and told you that they saw it tell you that it wouldn't work?

A. No.

Q. Did they tell you it worked?

A. We just presumed that it worked. The question was would it sell.

Q. Okay. Of all of the pages that you identified, and I wrote them down as you went through -- and I will list them out for you, and I don't expect you to follow through if you don't want to -- you listed CPH 1411. 224. And then 226, 227, and 231. 234, 237, 240. 242. 248. 252.

NOT A CERTIFIED COPY

012980

255. 259. 263. 266. 270. 274. 279 through 282, and 293 -- did you ask CSFB to perform any investigation of the matters set forth on those pages?

A. No.

Q. Did anyone on the due diligence team of MacAndrews & Forbes?

A. I don't know.

Q. That would be Mr. Maher, would know that?

A. Maher and Mr. Nesbitt, or the Coleman people.

Q. Okay. Let me set this aside.

A. All right.

Q. In the final contracts which I will hand to you, which are Morgan Stanley 193 and 117, did you review, at least in draft form, those contracts before you approved them?

A. At some point, yes.

Q. Each of those contracts, which I will refer to as the merger agreements, contains representations and warranties; correct?

A. Sure.

Q. Those were negotiated by the parties

NOT A CERTIFIED COPY

012981

is valuable. Whatever the parties negotiated in terms of representations and warranties were reviewed by you; correct?

A. I am sure I read them, yes.

Q. When you read them, you read them with the idea that someone from MacAndrews & Forbes was going to sign the document; correct?

A. Sure.

Q. And being a transaction in the billions of dollars of value, it was an important matter for you and for the people signing the document to understand what was in it; correct?

A. Absolutely.

Q. And it was a negotiated document; was it not?

A. Of course.

Q. And at least in the negotiations you both had lawyers who reviewed the documents before they were signed; correct?

A. Sure.

Q. You both had investment bankers before the documents were signed; correct?

A. Absolutely.

NOT A CERTIFIED COPY

012982

Q. And you both had -- that is, both companies had an opportunity to do whatever due diligence they chose to do before signing the documents and, indeed, closing the transaction; correct?

A. Right.

Q. Why don't you hand me those back. We are all done with those.

(Pause.)

Q. Now, earlier you told me that had you known the information that was in the Arthur Andersen comfort letter that was issued to Morgan Stanley in connection with the issuance of the debentures, that had you known that information, you would not have proceeded with the transaction; correct?

A. That is correct.

Q. I take it that means you would have terminated the transaction?

A. Yes.

Q. Okay. Did you see the 10-Q that Sunbeam filed in May of 1998, which set forth the actuals of both sales and income or loss numbers for the first quarter of 1998?

A. I don't recall now whether I did or

NOT A CERTIFIED COPY

012983

approximating where it was before?
A. Sure.
Q. The announcement --
MR. SOLOVY: Objection to the form of the question.
A. That is exactly what I would have expected.
MR. SOLOVY: Objection to the form of the question.
Q. Where was Coleman -- withdrawn. I am done with that.
Did you see Sunbeam's annual report on form 10K for the year 1997 before the closing?
A. No.
Q. Did you see the offering memorandum for the debentures that Morgan Stanley underwrote in connection with the transaction?
A. I did.
Q. Did you read it?
A. I paged through it, I really just looked at financials.
Q. You, of course -- well, let me ask you. Do you read the footnotes to the financial statements?

NOT A CERTIFIED COPY

012984

announcing its first quarter 1998 results; did you see that?

A. I did.

Q. Let me show you what has been marked as Morgan Stanley Exhibit 58.

There you are, sir. I hand you Morgan Stanley Exhibit 58. Please take a moment and let me know when you are finished. I don't have a lot of detailed questions about it. Read it to the extent that you wish.

A. Okay.

Q. Did you see a copy of this press release at or about April 3rd, '97?

A. Shortly afterwards.

Q. Could you tell us the circumstances as to how you came to see it.

A. Somebody brought it to my desk.

Q. What happened then?

A. I was, to say the least, very much annoyed. I felt we had been misled. I felt that they had to know this before April 3rd.

Q. Now, who is the who?

A. Morgan Stanley and Sunbeam.

Q. Okay.

A. That, I had not seen a comfort

NOT A CERTIFIED COPY

012985

letter at this point. That, in my view, when they issued the March 19th release, it had to have been false. I called Mike Price and took his head off.

And Mike said to me, look Howard, I don't -- you know, don't worry about it, they are going to make the year.

You know, I don't know what you are complaining about.

I said, what I am complaining about is, it is my choice to make, if I want to run a risk, I am a big boy, I can run a risk, but i want to have the facts.

I don't know who had the facts.

Why are you so sure?

I said, why did they fire Uzzi? Uzzi was the guy running the place.

Q. This is Michael Price at the mutual fund?

A. Yes, he is the largest shareholder besides us -- he is a larger shareholder than we are.

Q. What else did Mr. Price say to you?

A. He said he would look into it.

Q. Did he get back to you?

NOT A CERTIFIED COPY

012986

Mr. Price?

A. Yes. He was Mr. Price's lead designee on the board.

Q. So, now, you, MacAndrews & Forbes and Mr. Price's Mutual Funds, they are the two largest shareholder of Sunbeam?

A. Right.

Q. You are communicating with each other about these matters?

A. Yes. Came in to see me, look, you know, ah, Al is the greatest, he will pull this together. Uzzi misled him.

I said, it is outrageous, I don't understand how you guys can say that to me.

You knew so little about this business.

Where is Morgan Stanley now? They just sold -- sold the damn, you know, zero coupon A debentures, I would not want to be in their position.

Q. You wouldn't want to be in Morgan Stanley's position, to say anything false --

A. Absolutely not. Let me tell you something, the customers were going to be all over them, just as I am all over them. If

NOT A CERTIFIED COPY

A. Sure was.

Q. Did you, at any point after April 3rd and up to the firing of Mr. Dunlap, did you call anyone at Morgan Stanley and say, what happened, why didn't you tell us; anything like that?

A. No.

Q. Did you write any letters to them saying we are upset about this, you misled us, what happened; anything like that?

A. No.

Q. Did anyone at MacAndrews & Forbes?

A. No. First, we had to -- first, we had to explore what had happened. We were on the outside. It was not until after we got there in June that we began to learn some of the facts. We get there in June.

We learn some of the facts, and we have three potential defendants, Sunbeam, officers and directors, Arthur Andersen, Morgan Stanley.

At first, the first thing I want to do is, give me back my company, okay.

It is very simple, guys.

I will give you back your stock,

NOT A CERTIFIED COPY

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

COPY

In the Matter of:)
) File No. HO-3433
SUNBEAM CORPORATION)

WITNESS: Phillip E. Harlow

PAGES: 171 through 311

PLACE: Room 1C10
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

DATE: Wednesday, June 9, 1999

The above-entitled matter came on for hearing, pursuant to notice, at 9:50 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

ALEX LIPMAN, ESQ.
DEBORAH HEILIZER, ESQ.
KYRA C. ARMSTRONG, ESQ.
RAYMOND J. HAMM
Division of Enforcement
450 Fifth Street, N.W.
Washington, D.C. 20549
(202) 942-4794

On behalf of the Witness:

JOSEPH B. HAYNES, ESQ.
ROBERT R. AMBLER, JR., ESQ.
King & Spalding
191 Peachtree Street
Atlanta, GA 30303-1763
(404) 572-4600

GEORGE VRANA
Arthur Andersen, LLP
225 North Michigan Avenue
Chicago, IL 60601-7600
(312) 507-4023

NOT A CERTIFIED COPY

686210

Original 858

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-020149
CPH 1199697

that was put out that day was sufficient and that there was no need for additional disclosures in documents to be filed with the SEC.

Q When did the idea of putting out the press release spring up?

A I don't know precisely when it sprung up. But I believe that it was a result of Arthur Andersen's discussions with the underwriters and the draft of the comfort letter indicating that there was a decline in sales in 1998 as compared to 1997. I believe that was the genesis of top management and counsel of putting out some type of press release.

Q When was the first time that Arthur Andersen discussed this information with the underwriters?

A I cannot precisely answer with a date, but it was very close. And by close, I mean within several days of the point in time the press release was put out on the 19th or 20th.

Q Realizing that you don't know the specific date right now when you say several days, more like seven or more like three?

A More like three. More like two.

Q Was Arthur Andersen involved in any discussions relating to the content of the press release?

A Arthur Andersen was not consulted on the content of

NOT A CERTIFIED COPY

012990

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

IN THE CIRCUIT COURT

OF THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, vs. MORGAN STANLEY & CO. INCORPORATED, Defendant.	No. 03 CA-005045 A1

DEPOSITION OF JERRY W. LEVIN

New York, New York

Wednesday, December 1, 2004

Reported by:
ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 167827

ORIGINAL

NOT A CERTIFIED COPY

012992

A. I am confident there was a hard copy the second half of 1998 and we somehow re-created the first half. It could have been a hard copy.

Q. Other than the calendar now that you have described for us, did you keep any other form of calendar for either 1997 or 1998?

A. No.

Q. Have you ever been asked to produce your calendar in any of the Sunbeam litigation that you can remember?

A. I don't recall.

Q. I want to ask you a couple of background questions about your employment, not where you worked 20 years ago right now, so just the jury understands who you are in case you testify by videotape here. Let me focus first on the Coleman Company.

The Coleman Company was headquartered in Wichita, Kansas; right?

A. Yes.

Q. You were employed there twice as I understand it; is that correct?

A. Prior to Sunbeam, twice.

NOT A CERTIFIED COPY

012993

Q. When was the first time that you were employed at the Coleman Company in Wichita?

A. In April of 1989.

Q. How long did you work there before you left?

A. Two years.

Q. So you left about 1991?

A. In April of 1991.

Q. During your first tour at Coleman, what was your position with the company?

A. Chairman of the holding company.

Q. When you refer to chairman of the holding company, what is the name of that holding company?

A. I believe it was Coleman Holding Company.

Q. That held all of the stock of Coleman -- the Coleman Company, Inc.?

A. I believe so.

Q. Then Coleman Holding Company was owned by another holding company; correct?

A. I'm not sure which one of the holding companies was affiliated with

NOT A CERTIFIED COPY

012994

MacAndrews & Forbes.

Q. Ultimately, these holding companies that were affiliated with MacAndrews & Forbes were owned by Ronald O. Perelman; correct?

A. Yes.

Q. Did Mr. Perelman hire you to go to work at the Coleman Company?

A. Yes.

Q. Then you had a second tour of duty at the Coleman Company starting in 1997?

A. Yes.

Q. February?

A. Yes.

Q. How long did you stay with the Coleman Company on this second tour?

A. Until we closed the sale of the Coleman Company to Sunbeam.

Q. That was in March 30, 1998 as the record will show. Did you resign at that point?

A. Yes.

Q. Let me show you a document we'll mark as Morgan Stanley Exhibit 445 which I

NOT A CERTIFIED COPY

012995

will put it to you again with all the confusion. Do you want me to ask you again?

A. Yes.

Q. Was Mr. Maher in the room when you were there during the negotiations?

MR. BIDEAU: Objection to the form of the question.

A. I wasn't there during the negotiations other than at the very end, approximately February 20th to the 27th. Through that time period, Mr. Maher was in the room when I was there.

Q. Is it fair to say that your participation in the negotiations from your perspective began in earnest on, say, February 20th, which is the date you just used, 1998?

A. It was approximately February 20th.

Q. Because, as I recall, you were in Puerto Rico and got a phone call and were asked to come back to New York and you got that phone call directly from Mr. Perelman; is that right?

NOT A CERTIFIED COPY

012996

A. That's correct.

Q. After February 20th, 1998, the negotiation moved very quickly and concluded on February 27, 1998; correct?

MR. MARKOWSKI: Objection to the form.

A. That sounds reasonably accurate.

Q. Again, just to put this in place for the jury, you did attend the board of directors meetings of the Coleman Company, Inc. where the merger was considered by the full board; correct?

A. Yes.

Q. You did attend the February 25 meeting where the merger was first disclosed to the full board; correct?

MR. MARKOWSKI: Objection to the form.

A. I don't think it's fair to say that was the first time the board was informed about the merger.

Q. I'm speaking of the full board. So if there was any confusion let me try again.

When was the full board of

NOT A CERTIFIED COPY

012997

A. I do not recall hiring a special accounting advisor.
Q. Did the Coleman Company have an outside accounting firm conducting its audits, for example, at that time?
A. Yes.
Q. Who was that?
A. I don't recall.
Q. How about Ernst & Young; does that sound familiar?
A. It could well have been.
Q. At any point in time, did the board of directors of the Coleman Company retain Morgan Stanley or any of its affiliates to perform services in connection with the Sunbeam/Coleman merger?
A. No.
Q. At any point in time, did the Coleman Company make any payments to Morgan Stanley in connection with the Sunbeam/Coleman merger?
A. I'm unaware of any.
Q. Did you have any face-to-face meetings with Morgan Stanley employees after the merger agreements were signed and

NOT A CERTIFIED COPY

012998

up to the date of closing, March 30, 1998?

A. Not that I recall.

Q. Did you have any -- I will use the word conference call or telephone calls, if you like, with Morgan Stanley concerning the Sunbeam/Coleman acquisition after the signing of the merger documents on February 27 and up to the closing on March 30, 1998?

A. I can't speak to the specific date but the only incident that I can recall is when the company asked us to make a presentation to the proposed bank's syndicate. They were trying to syndicate the loan and asked us to lead them through our plans. I believe that call was led by Morgan Stanley.

Q. When you say our plans, you are referring to the Coleman Company's plans?

A. Coleman Company's plans.

Q. Would this be the 1998 strategic plan for Coleman you looked at in preparation for your deposition?

A. Yes and no.

Q. What's the no part?

NOT A CERTIFIED COPY

012999

Q. Sure. Between February 27, 1998 and up to the date of closing which is March 30, 1998, Coleman upon request was was to be given access of the books and records of Sunbeam Corporation pursuant to the merger agreement; correct?

MR. MARKOWSKI: Objection to form.

MR. BIDEAU: Same objection.

A. Could you just repeat that for me?

Q. Sure. After the signing of the merger agreement and up until the time of the closing, the Coleman Company upon request had access pursuant to this provision to the books and records of Sunbeam Corporation?

MR. MARKOWSKI: Same objection.

A. It appears as long as the times were reasonable that is true.

Q. To your knowledge, between February 27 and March 30, did the Coleman Company make a request to inspect the books and records of Sunbeam Corporation pursuant to this provision, section 7.2?

A. I don't recall.

NOT A CERTIFIED COPY

013000

Q. Would it be fair to say, sir -- first of all, you've operated a number of public companies; right?

A. Yes.

Q. Public companies file or prepare or have prepared annual financial statements which are audited by their accountants; correct?

A. Yes.

Q. They also, that is public companies such as you have managed, they have prepared quarterly financial statements that are filed with the Securities and Exchange Commission; correct?

A. Yes.

Q. So-called 10-Q filings; right?

A. Yes.

Q. And in the companies that you have managed, do those companies also maintain monthly financial statements, sometimes called interim financial statements, that lead to the issuance of quarterly and then annual statements?

MR. BIDEAU: Objection.

NOT A CERTIFIED COPY

013001

CONT #858

A. As I said, I was in Tucson and I'm unaware of what happened.

Q. Are you aware of any request by MacAndrews & Forbes even if you didn't participate in it directly, are aware of any request by MacAndrews & Forbes to view at any point up to the point up to the time of closing, March 30, 1998, the interim financial statements of Sunbeam for the month of January 1998?

A. I don't know.

Q. Are you aware of any such request by MacAndrews & Forbes to see the February 1998 Sunbeam interim financial statements?

A. I'm unaware of any.

Q. Are you aware of MacAndrews & Forbes requesting, even if you didn't participate in this directly, Sunbeam's interim financial statements for any portion of March of 1998?

A. I was out of the company completely by the time those financials were available.

Q. When you managed your public companies such as the Coleman Company, I

NOT A CERTIFIED COPY

013002

think you said Revlon as well; correct?

A. Yes.

Q. As the president of the company, did you review on a monthly basis your company's interim financial statements?

A. Yes.

Q. Do you know how to read them?

A. I think so.

Q. Do you know Mr. Perelman pretty well?

A. From a business perspective. I've worked for him for a long time.

Q. From a business perspective, do you think Mr. Perelman knows how to read an interim financial statement?

A. I believe so.

Q. Do you think he knew how to do that in 1998?

A. I believe so.

Q. Before the closing on March 30, 1998, the Coleman Company filed its annual Form 10-K with the Securities and Exchange Commission for the year 1997; correct?

A. It should have.

Q. You signed that document, did you

NOT A CERTIFIED COPY

013003

not, as the president and chief executive officer of the company?

A. I don't recall if I signed that document or not but I'm aware of it.

Q. Before the actual closing of the Sunbeam/Coleman transaction, did you obtain a copy of Sunbeam's 1997 annual report on Form 10-K filed with the SEC and the record will show on or about February 26, 1998?

A. Yes.

MR. MARKOWSKI: Objection to the form. I think you misspoke.

MR. BEMIS: I did. Thank you.

Let me re-ask the question. Thank you.

Q. Before the actual closing of the Sunbeam transaction on March 30, 1998, did you obtain a copy of Sunbeam's 1997 annual report on Form 10-K that was filed with the SEC on or about March 6, 1998?

A. Before the closing?

Q. The closing on March 30, 1998.

A. I don't recall doing so.

Q. At that time, March of 1998, if I recall your testimony correctly, you were in Tucson, Arizona at your vacation home;

NOT A CERTIFIED COPY

013004

is that correct?

A. That's correct.

Q. You had effectively left day-to-day operations of the Coleman Company at the request I think you said of Mr. Kersh; is that right?

A. Dunlap and Kersh.

Q. Mr. Dunlap and Mr. Kersh. Thank you.

We touched a little bit on these preliminary matters of your employment with Mr. Perelman's companies. I would like to get just a little more detail on your background for the jury so they can understand what's going to come in the rest of your testimony.

You first went to work, as I understand it, with Texas Instruments after you got your MBA; is that right?

A. That's correct.

Q. How long were you with them?

A. Approximately four years.

Q. What did you do there?

A. Starting as a financial analyst, my last position was to manage the treasury

NOT A CERTIFIED COPY

of the Coleman leaving the core company?
A. Yes.
Q. And using the proceeds of the sale then to pay off the debt incurred in order to acquire the Coleman Company; correct?
A. Yes.
Q. And that's what you did?
A. Yes.
Q. Successfully?
A. Yes.
Q. You then leave the Coleman Company and go on to -- is it Revlon Corp., is that where you went first?
A. I don't recall. It was private at the time I went and then he took it public. I can't remember which Revlon it was but it was all of the Revlon operations.
Q. What was your position at Revlon?
A. My first position was president and chief operating officer.
Q. How long were you the president and chief operating officer of Revlon?
A. I don't recall the sequence.

NOT A CERTIFIED COPY

013006

Q. Did you eventually become the chief executive officer of Revlon?

A. Yes.

Q. Did that include all of its subsidiary operating companies?

A. Yes.

Q. So you also would have been chief executive officer of Revlon Consumer Products?

A. Yes.

Q. How long were the chief executive officer of the Revlon entities?

A. I don't recall when I became chief executive officer but I believe it was about two years -- maybe it was a year and a half after I joined Revlon I became chief executive officer and I was at Revlon from April of 1991 until I joined Coleman in very early 1997.

Q. During this period of April 1991 until the time that you joined the Coleman Company, did Mr. Perelman or his affiliated entities own an interest in Revlon?

A. Yes.

Q. What interest did they own? All

NOT A CERTIFIED COPY

013007

the only two companies in Mr. Perelman's group of companies that you worked with the Coleman operating company and the Revlon operating companies?

A. As broadly defined. There was partially owned subsidiaries here and there but yes.

Q. Do you consider yourself an operations guy?

A. Not particularly.

Q. What do you consider to be your forte as a businessman now that you are 60 years old and you have described your career for us; what is your forte?

A. I have an ability to put teams together that can execute turnarounds of branded consumer product companies.

Q. Would you consider yourself a specialist in consumer branded products?

A. It's one of my strengths.

Q. In 1998 at the time of the merger, did you consider Sunbeam to be a consumer branded products company?

A. Yes.

Q. And Sunbeam had as of 1998, had

NOT A CERTIFIED COPY

013008

me.

(Discussion off the record.)

THE VIDEOGRAPHER: We're now going off the record. The time is 11:49 a.m.

(Recess taken.)

THE VIDEOGRAPHER: We're now going on the record. The time is 12:07 p.m.

BY MR. BEMIS:

Q. In your role as you've described it in the negotiations on behalf of Coleman, did you report directly to Mr. Perelman?

MR. MARKOWSKI: Objection to the form.

A. I reported to the board of directors for which Mr. Perelman was not a member.

Q. Did you have any responsibility on behalf of Coleman for due diligence of Sunbeam before the signing of the merger agreements?

A. Yes.

Q. What was your responsibility?

A. They asked me to review Sunbeam's

NOT A CERTIFIED COPY

013009

business plan and long term strategy.

Q. Who is they? You said, "They asked me."

A. I don't recall. I just wound up going to the meeting as part of the due diligence. I don't know specifically who asked me.

Q. Is this meeting you referred to a meeting that took place after you returned from Puerto Rico?

A. Yes.

Q. Where Mr. Kersh made a presentation using overhead slides?

A. I know their investor relations, Rich Goudis, being at the presentation, it was probably Mr. Kersh that made the rest of it, I don't remember.

Q. Let me show you a document that's been marked as MS 84. I don't want to cover it right now but I want to see if that's the strategic plan or business plan that you were looking at.

A. Yes.

Q. Is that your handwriting that appears on the document?

NOT A CERTIFIED COPY

013010

A. Yes, it is.

Q. Keep it in front of you right now because we'll get back to it later.

MR. BEMIS: And when I do, I will give you a copy.

Q. Did you have any responsibility for due diligence of Sunbeam after the signing of the merger agreements? I think you said you went to Tucson.

A. No, I did not.

Q. Did anyone at the Coleman Company have due diligence responsibilities after February 28 or was it a matter that was handled by MacAndrews & Forbes?

MR. MARKOWSKI: Objection to the form.

A. I don't know of any that Coleman did.

Q. During the negotiations on behalf -- to the extent they were being conducted on behalf of MacAndrews & Forbes, was it your understanding that Mr. Perelman was taking the final responsibility on the terms of the transaction for MacAndrews & Forbes' side?

NOT A CERTIFIED COPY

013011

directors.

Q. Did you work at all with James Maher during the negotiations?

A. Slightly.

Q. How would you describe the slightly?

A. There were a few issues that were important to the company that I wanted to make sure were attended to.

Q. What were those issues?

A. I felt it was very important that if we were going to do this, we did it with great certainty and very fast.

Q. What do you mean by great certainty?

A. I thought it would be destructive to the value of the company to have announced a transaction with Mr. Dunlap and Sunbeam and then not consummated. I felt it would have done damage to the company from a shareholders' perspective.

Q. What did you mean by quickly?

A. As fast as they could possibly do it.

Q. Why did you want to do the

NOT A CERTIFIED COPY

0130I2

transaction with Sunbeam as fast as they could possibly do it?

A. Mr. Dunlap had a unique reputation and quite a different management style than I had, different philosophies, and once the Coleman Company employees realized that we were willing to sell the company to Dunlap, it would have been hard to restore the morale, the trade relations, many implications which bothered me and since it was a public company and public data available to us, I didn't see any reason not to do a very fast, public kind of transaction.

Q. Was your view that the transaction should be done quickly a view that was also held by MacAndrews & Forbes at least to the extent that you were aware of their views?

MR. MARKOWSKI: Object to lack of foundation.

A. I don't know. All I know is all parties agreed that it was in everybody's interest to do this very fast.

Q. That includes the people at

NOT A CERTIFIED COPY

013013

drafting of the merger agreements on behalf the Coleman Company?

A. Personally, no.

Q. What do you mean by personally no?

A. I read them before they were released to the other side. They were drafted by the attorneys. It was a fairly straightforward document. I don't remember if I had any edits or not.

Q. During the course of the negotiations, were there any particular points of interest that you focused on during the negotiations?

A. There were two points. One was the speed, which I mentioned, and the other is that management not be put in a position of having to hold Sunbeam stock or options unless they voluntarily chose to do so.

Q. What do you mean by that?

A. Well, most of the transaction value to me and to the Coleman team, and the options ran very deep, was in the form of stock options and I didn't want to wind up in a situation where I would not have

NOT A CERTIFIED COPY

013014

control of the business, Mr. Dunlap would, and most of my personal net worth would be tied up in Sunbeam stock options. It was just something I did not want to do.

Q. Did you want Sunbeam stock as opposed to cash in the transaction, you personally?

A. Well, Sunbeam stock I could have sold right away. There wouldn't be a particular problem. In fact --

Q. You could have if it was registered but it wasn't registered stock --

A. Anything that was not saleable I did not want. I did not want Sunbeam stock.

Q. Were you one of the negotiators on the Coleman side that crafted the agreements and allowed the Coleman option holders to cash out, if you would, at a price of $27.50 per share of their Coleman stock?

A. I didn't draft it.

Q. I understand you didn't do the drafting.

NOT A CERTIFIED COPY

013015

A. But I looked to make sure it worked to my satisfaction.
Q. Were you an advocate of that on behalf of the Coleman option holders?
A. Yes.
Q. Explain that provision to the jury, please.
A. As I recall, it gave the ability for a Coleman option holder to exercise the options immediately to be fully vested and receive no less than 27.50 in price.
Q. That was cash price?
A. In cash price, yes.
Q. Did the public shareholders have that option?
A. None of the public shareholders had options. It wasn't an issue.
Q. That was a very bad question.
Was there any provision in the merger agreements with respect to the public shareholders that gave them, even though they didn't have an option, options, stock options, the right to receive in lieu of Sunbeam stock a cash payment of 27.50 per share?

NOT A CERTIFIED COPY

013016

A. I don't remember if I was at Revlon or Coleman at that time.

Q. At this time was it your understanding that Mr. Dunlap was then with Sunbeam?

A. I believe so.

Q. Did you pass along any of your feelings about Mr. Dunlap to anyone at MacAndrews & Forbes?

A. Yes.

Q. To whom?

A. Mr. Perelman.

Q. When did you tell Mr. Perelman about your observations about Mr. Dunlap?

A. It would have been in 1997.

Q. Why do you pinpoint that year?

A. Mr. Perelman and I made a trip to Boca Raton to meet with Bernie Marcus of Home Depot and that evening he went to have cocktails with Al Dunlap.

THE VIDEOGRAPHER: Excuse me, 10 minutes now, counselors.

MR. BEMIS: Let's switch the tape.

THE VIDEOGRAPHER: We're now going off the record. The time is 12:27 p.m.

NOT A CERTIFIED COPY

013017

him how cocktails went.

Q. What did Mr. Perelman say?

A. Great.

Q. Anything else?

A. That the guy is doing a tremendous job and has extraordinary financial returns and he couldn't understand why I couldn't produce profitability like Dunlap was doing at Sunbeam.

Q. What did you say to Mr. Perelman, if anything?

A. I said, "I assume you're talking about profits he's projecting, not profits he's actually made." Perelman said, "No, he's actually doing it. "I said I find that incredible. Mr. Perelman called Mr. Dunlap and asked him to fax to his New York office a set of the financials.

Q. The conversation that you are relating between you and Mr. Perelman was in the car on the way to the airport?

A. That's correct.

Q. Did you tell Mr. Perelman about your experience with Mr. Dunlap at the

NOT A CERTIFIED COPY

013018

Merrill Lynch conference?

A. No.

Q. Did you tell Mr. Perelman your impressions of Mr. Dunlap based on your one meeting with him at the Merrill Lynch conference?

A. I don't recall doing so. This was several months later, if my memory serves me right.

Q. Can you recall anything else about the conversation that you and Mr. Perelman had in the car on the way to the airport following the cocktail session between Mr. Dunlap and Mr. Perelman in Boca Raton?

A. I think I generally described what I recall.

Q. My understanding is that when you and Mr. Perelman return -- you and Mr. Perelman were obviously on your way back to New York; is that fair?

A. Yes.

Q. At some point your understanding is that Mr. Perelman asked Mr. Dunlap for some financial statements; is that right?

NOT A CERTIFIED COPY

013019

A. While we were in the car.
Q. Mr. Perelman made a phone call from the car?
A. Yes.
Q. Did he speak directly to Mr. Dunlap, to your knowledge?
A. He did.
Q. Were you able to hear the conversation?
A. No.
Q. Just one side of it, Mr. Perelman?
A. Yes.
Q. What do you recall Mr. Perelman asking of Mr. Dunlap?
A. He essentially said I'm here with Jerry Levin, I would like for him to see more of what you are doing, could you send us a copy of your financials so he could look at it.
Q. When you got back to New York were the financials there in New York in Mr. Perelman's office?
A. Yes.
Q. They were Sunbeam's financials I

NOT A CERTIFIED COPY

013020

take it?
A. Yes.
Q. Were these public financial statements or interim financial statements? What were they?
A. I believe it was a combination thereof.
Q. Both their interim statements as well as what was publicly on file?
A. I don't recall specifically but I believe it was a very current look at his business.
Q. At the time you looked at the public materials, were these audited financial statements?
A. I had not looked at that point at any public materials outside of what Mr. Dunlap might have provided me, whatever he sent.
Q. The financial statements that you looked at, did they include financial statements that had been filed with the Securities and Exchange Commission?
A. I don't think so. This was probably towards the end of the first

NOT A CERTIFIED COPY

013021

quarter of 1997, I suspect what I was given was a combination of actuals for early 1997 and projections for the rest of the year.

Q. When you use the term actuals, you mean interim financial statements as of a particular date?

A. Yes.

Q. Did Mr. Perelman personally give you these financial statements from Sunbeam?

A. Either he or his secretary handed them to me.

Q. Did you look at them?

A. Yes.

Q. Did you analyze them to the best of your ability?

A. Yes.

Q. Did you reach any opinions about the financial statements when you reviewed them?

A. Yes.

Q. What?

A. That it was a business model that I was unfamiliar with, that I did not understand how that business model would be

NOT A CERTIFIED COPY

013022

effective over the long term.

Q. Could you please tell us what the business model was that you observed in reviewing the financial statements?

A. There did not appear to be enough investment in sales or research and development or consumer communication to sustain a business in mature industries at a remarkably high growth rate and still be very profitable at the same time.

Q. When you say remarkably high growth rate, what do you mean by that?

A. I believe the company was growing double digits, perhaps 20 percent per annum at that point.

Q. When you expressed this growth at 20 percent, is this net sales or --

A. Sales.

Q. Did you speak to Mr. Perelman about your review and analysis of the Sunbeam financial statements sent to Mr. Perelman by Mr. Dunlap?

A. Yes.

Q. How soon after you did your review did you speak to Mr. Perelman?

NOT A CERTIFIED COPY

013023

A. The next morning.
Q. In New York in Mafco's offices?
A. Yes.
Q. What did you say to Mr. Perelman and what did he say to you?
A. That recognizing that Al Dunlap is currently the most admired and respected CEO in America, he's Wall Street's absolute darling, I did not know based on my own experiences how to do what he is doing. If you, Mr. Perelman, want somebody to try, find somebody else because this is not in my business skill base. I'm just a relic of the past if this is what is working out there today.
Q. What do you mean that Mr. Dunlap was the darling of Wall Street?
A. He was one of the lead commentators on CNBC, he was written up the best CEO of America by himself and the others, the analysts that run his stock price up very favorable reports. He was considered a true great celebrity CEO at that point.
Q. What did Mr. Perelman say in

NOT A CERTIFIED COPY

013024

in the summer of 1997, would that be fair?
A. I think it would have been earlier because it would be unlikely that Bernie Marcus would be in the Boca house in the summer.
Q. Too hot?
A. Yes.
Q. Did you ever meet Mr. Dunlap after the Merrill Lynch conference?
A. Once.
Q. Was this in Mr. Perelman's offices?
A. Yes.
Q. When did you meet him?
A. It was the Friday before his analyst conference when he was going to straighten out Wall Street on the issues that were beginning to surround Sunbeam. I believe that was towards the end of April, early May of '98 but I'm sure you would have a record of it.
Q. If the analyst conference was on or about May 11, 1998, where would that put the conversation with Mr. Perelman?
A. If it was May 11, then I think I

NOT A CERTIFIED COPY

013025

would have met in his office at May 7 or 8 or something like that.

Q. How is it you came to be at this meeting in Mr. Perelman's office where Mr. Dunlap was present right before the analyst meeting in May 1998?

A. Either Mr. Perelman or one of the other MacAndrews officers had called me about a week to two weeks before that and said they were getting concerned about what was going on at Sunbeam and they were trying to get this meeting together with Mr. Dunlap, would I do some independent research as to what was going on in the company.

Q. You said it was Mr. Perelman or someone else in the MacAndrews office who called you. Do you know who the other person is?

A. It was almost certainly either Mr. Gittis or Mr. Perelman, I don't recall which one.

Q. By the time that you met with Mr. Dunlap and Mr. Perelman, had you done the investigation that you had been asked

NOT A CERTIFIED COPY

013026

Do you know anyone else in the MacAndrews & Forbes company as of, say, 1998 who had the initials jwl?

A. No.

Q. Anyone at Coleman who had those initials?

A. No.

Q. At least as of April 14, 1998, I think you told us earlier you --

(Witness and counsel confer.)

A. Pardon?

Q. I think you told us earlier that in April of 1998 you were still working for MacAndrews & Forbes without any specific responsibilities; is that fair?

A. Yes.

Q. Going back now to the meeting that you had in Mr. Perelman's with Mr. Dunlap in May of 1998, I think you said, according to my notes here, that Mr. Perelman was concerned about his investment in Sunbeam at this time?

A. Yes.

Q. Was this the first time that Mr. Perelman had expressed that concern to

NOT A CERTIFIED COPY

013027

you?

A. As I said, I don't remember whether Mr. Gittis or Mr. Perelman called me but it was the first time that I became aware that they were concerned.

Q. Whether it be Mr. Perelman or Mr. Gittis, do you recall what they said about their concern over Sunbeam at this time?

MR. MARKOWSKI: Objection to the form.

A. I don't recall the specifics, I just remember they were concerned.

Q. Did you have any role in inviting Mr. Dunlap to come to MacAndrews & Forbes' offices?

A. No.

Q. Who invited you to attend?

A. Either Mr. Gittis or Mr. Perelman.

Q. Who was present at the meeting at MacAndrews & Forbes' offices when Mr. Dunlap was there; and I know you were there, who else was there?

A. I believe David Fannin who was

NOT A CERTIFIED COPY

013028

companies owned approximately 13 percent of Sunbeam?

A. I don't recall.

Q. But it was a substantial amount?

A. It was an important vote.

Q. What happened after Mr. Dunlap started the meeting with that question?

A. They said, "Oh, we'll get to that." And then Mr. Dunlap proceeded to take us through a draft copy of his presentation to the analysts.

Q. What happened next?

A. Well, he finished the presentation and then he asked if there were any questions.

Q. And?

A. I asked him a question.

Q. Did you ask him a question about Wal-Mart?

A. Yes.

Q. What was the question?

A. "I understand that you've been discontinued from a large part of your grill sales and grill accessories at Wal-Mart."

NOT A CERTIFIED COPY

013029

Q. What did he say?

A. He didn't say anything for a long pause and then proceeded to scream at the top of his voice as to what an incompetent I was.

Q. Can you be any more specific about the terms in which he expressed your incompetence?

A. Worst manager he's ever encountered, Coleman was not what we represented to him, they were off 30 million dollars in sales versus the forecast, several other unflattering comments none of which, in my opinion, were true. The ones that could easily be determined by -- anything there was data for in terms of his that we were off on sales was definitely not true other than it disturbed the marketplace some and I did not -- I still do not feel I am as incompetent as Al Dunlap.

Q. Did he tell you, "Go fuck yourself," in so many words?

A. That would be an extremely polite way of putting what he said.

NOT A CERTIFIED COPY

013030

what happened at the May 11 meeting, the meeting in anticipation of the analysts' conference?

A. I think he really -- I don't recall if that was covered, I just don't remember.

Q. What if anything did you say or do as Mr. Dunlap was expressing his views on your management style and capabilities?

A. I said, "Okay, if that's the way you feel about it, fine, but did you or did you not lose distribution at Wal-Mart?"

Q. Did he answer eventually?

A. Then he got really mad and we actually were concerned about his physical well-being because he was so out of control but he didn't answer the question and finally David Fannin said, "Yes, we did lose three distribution centers," which was a small fraction of what had actually happened.

Q. Did you find out when this happened, this loss of the distribution centers at Wal-Mart? At some point in time did you find out when did it happen?

NOT A CERTIFIED COPY

013031

A. Oh, I knew before I went into the meeting.

Q. When did it happen?

A. It happened, must have been sometime in February, March and it was obviously shocking to me to learn about this because one of the feature presentations of Sunbeam and why it was such a great company was the grill business and this had never been disclosed.

Q. How did you learn about this at whatever point in time you did learn about it?

A. Wal-Mart told me.

Q. Who was it at Wal-Mart that told you this?

A. I don't recall. I talked to a number of people but they made it quite clear as to what happened and how angry they were.

Q. They were angry at Sunbeam?

A. This was a punishment. This was done as a punishment.

Q. What happened next after Mr. Fannin made his statements about the

NOT A CERTIFIED COPY

013032

situation at Wal-Mart?

A. I dropped the subject as it was ludicrous to continue that course of action and then there was one additional question asked as to whether Mr. Dunlap felt Andrew Shore would attend the analyst meeting.

Q. What was the response?

A. He got about as angry as in the second phase and proceeded to make many unflattering comments about Andrew Shore.

Q. Andrew Shore was at this time an analyst for PaineWebber; correct?

A. Yes.

Q. You knew Mr. Shore I think you said; right?

A. Yes.

Q. Had you spoken to Andrew Shore by the time of this meeting about Sunbeam?

A. Yes.

Q. When did you speak to Mr. Shore?

A. It would have been within the two-week period before the meeting.

Q. The two-week period before the analyst meeting, May 1998?

A. Yes.

NOT A CERTIFIED COPY

0013033

the request given to you by Mr. Perelman or Mr. Gittis; right?

A. Yes.

Q. At any point before the closing on March 30, 1998, did you speak to Mr. Shore about Sunbeam?

A. No.

Q. Are you aware of anyone at MacAndrews & Forbes or Coleman or any of their advisors speaking to Andrew Shore about Sunbeam before the closing?

A. I'm not aware of any.

Q. What happened next at the meeting following Mr. Dunlap's remarks about Andrew Shore?

A. He stopped and said, "Well, got to go. Can I have my proxy statement?" And somebody signed it and he left.

Q. So at the end of the meeting MacAndrews & Forbes did execute a proxy statement in favor of Sunbeam's management; correct?

A. I guess it's not a proxy statement, they signed their proxy.

Q. Just so the record is clear since

NOT A CERTIFIED COPY

013034

I asked a poor question: At end of the meeting, it's your recollection that MacAndrews & Forbes did sign their proxy in favor of Sunbeam's management?

A. Yes.

Q. And then the meeting was adjourned?

A. Yes.

Q. Did you ever meet Mr. Dunlap again?

A. No.

MR. BEMIS: Why don't we break for lunch.

THE VIDEOGRAPHER: We're now going off the record. The time is 1:04 p.m.

(Time noted: 1:04 p.m.)

NOT A CERTIFIED COPY

0130035

got a phone call saying they had agreed in principal.

Q. February 19, that's when you were in Puerto Rico and came back to New York; right?

A. Yes.

MR. BEMIS: Ms. Reporter, would you mark as Morgan Stanley 442 a transcript of a deposition of Mr. Levin in the Russell Kersh and Sunbeam Corporation arbitration proceeding and that transcript is dated August 2, 2000.

(Morgan Stanley Exhibit 442, deposition transcript of Mr. Levin dated August 2, 2000, marked for identification, as of this date.)

Q. Do you have Exhibit Morgan Stanley 442 in front of you, sir?

A. Yes.

Q. Did you give a deposition in this arbitration proceeding on or about August 2, 2000?

A. Apparently, yes.

Q. As I recall, you said at one

NOT A CERTIFIED COPY

013036

point you read your transcript after the proceedings that you gave testimony in and you made corrections or changes as appropriate; am I right in that?

A. Yes.

Q. Is Exhibit Morgan Stanley 442 a copy of your deposition transcript in the arbitration proceeding?

A. I would have to go through the entire document to be completely positive but it appears to be.

Q. If it turns out it is not, your counsel can let us know.

Sir, did you tell Mr. Perelman at one of the instances in which you talked about cash or stock, did you tell him in the strongest possible terms not to take any stock of Sunbeam?

A. I don't recall exactly how I phrased it but I did feel strongly about it.

Q. Sir, if you will turn to page 112 of your deposition transcript we've marked as Exhibit MS 442. Tell me when you're there.

NOT A CERTIFIED COPY

0133037

prepared by Mr. William Nesbitt?

A. I don't recall seeing any.

Q. You can hand that back to me.

What's the next thing that you remember happening in connection with the transaction following your meeting on December 12, 1997 with the Sunbeam personnel in which the synergies ideas were discussed, along with other matters as you've told us?

A. Well, I had reported back to me that meeting with Dunlap to try to work out a transaction was a disaster, that Mr. Perelman wanted $30 a share, that was his price, and Dunlap was somewhere in the low 20s, I can't recall exactly what it was, and that it was dead.

Q. The meeting that was a disaster, this is the meeting at Mr. Perelman's home or Mr. Gittis' home in Palm Beach; correct?

A. Yes.

Q. There comes a point in time when the Coleman Company retains Credit Suisse First Boston as its investment banker; correct?

NOT A CERTIFIED COPY

013038

Q. Then you don't know how long it lasted I take it?
A. Correct.
Q. There is then, if you turn the page, a second meeting identified between Messrs. or among Messrs. Nesbitt, Shapiro, Levin, Page, Maher, Duffy, Steven Isko, Messrs. Fannin, Kersh, Kitts, Stynes, Fuchs, Chang and Goudis at Morgan Stanley office. Do you see that?
A. Yes.
Q. Do you recall this meeting?
A. Yes. I also recall that I was introduced to Mr. Goudis for the first time at this meeting so there's a fair chance that I was not at that earlier meeting.
Q. Is that the earlier meeting on the date of the 23rd?
A. Yes.
Q. That may explain why you don't remember it then.
Look at MS 84 which you should now have in front of you. Let's start at the beginning. How long did this meeting last at Morgan Stanley's offices that

NOT A CERTIFIED COPY

0130039

evening of February 23?

A. I don't recall but it was at least an hour.

Q. How is it that you came to attend the meeting?

A. I was probably in the best position to evaluate their business plans from our group.

Q. When you say their business plan, you mean Sunbeam's business plan?

A. Yes. That's Sunbeam's long range strategic plan.

Q. The handwriting in MS 84 is entirely your handwriting; correct?

A. As far as I had a chance to look through this document, yes.

MR. BIDEAU: Why don't you go through and see if there's anything that doesn't look like yours.

A. All of the markings on this exhibit are mine.

Q. Did Mr. Goudis speak at this meeting on February 23?

A. Yes.

Q. Did Mr. Kersh speak?

NOT A CERTIFIED COPY

013040

was the first time I met him or if he was participating in some other way.

Q. Was there any presentation by Morgan Stanley at the February 23 evening meeting?

MR. BIDEAU: Objection to the form.

A. I don't recall any.

Q. Did you know the Morgan Stanley representatives who were at the meeting; Mr. Fuchs, for example, did you know him?

A. No.

Q. Had you ever met him before?

A. I'm not very good at remembering names or faces. Nobody comes to mind as somebody I knew.

Q. So we can put this all down at one time: Did you know Mr. Stynes?

A. No.

Q. To your knowledge, you had never met him before either?

A. Correct.

Q. Did you know Mr. Kitts?

A. No.

Q. So as you sit here today, to the

NOT A CERTIFIED COPY

013041

forward projection; correct?
A. Yes.
Q. Was that true for all of the long range strategic objectives as you understood the presentation was covering this three-year period?
A. It was true for all the financials that were presented. I can't speak to each individual business activity.
Q. But you understood that the financial matters that were presented were projections three years into the future?
A. Yes.
Q. You've done projections into the future for your business plans; have you not?
A. Yes.
Q. Have you ever missed your targets on your business plans?
A. Both ways.
Q. Up and down?
A. Yes.
Q. You don't have a crystal ball; do you?
A. No.

NOT A CERTIFIED COPY

013042

A. Yes.

Q. What does that number represent?

A. I must have asked what their net sales were in 1996.

Q. And then you have -- right above net sales you have Jan slow Feb; is that correct?

A. Yes.

Q. What did you mean by that?

A. Well, I must have asked them or they volunteered that January was a slow month in sales, not unusual for a company in these businesses, January should be -- December or January should be their smallest month. So it doesn't mean that much when you're off somewhat in January. I wrote something about February, I really don't recall what the comment was.

Q. Did someone ask a question about January or February sales or did Mr. Kersh or Mr. Goudis volunteer the information?

A. I don't remember.

Q. When the information from either Mr. Goudis or Mr. Kersh, as the case may be, was given about Jan, Feb slow, did

NOT A CERTIFIED COPY

013043

anyone ask for further information after the meeting from Sunbeam?

MR. MARKOWSKI: Objection to the form. You misstated the --

MR. BIDEAU: Right.

MR. BEMIS: I will withdraw the question.

Q. At the meeting itself, when there was either a statement or a question asked about sales in January and it was reported as you wrote, slow, did anyone at the meeting ask for additional information from Sunbeam?

A. I might have asked them about February right at that point and my reference might mean January and February were both slow and I didn't write it down, I just don't recall.

Q. Let's leave the meeting on the 23rd. Between the evening of February 23 and the signing of the merger agreements as of February 27, to your knowledge, did anyone at MacAndrews & Forbes request any information from Sunbeam on what its actual January and February sales were to date?

NOT A CERTIFIED COPY

013044

A. In the four-day period?
Q. Yes, sir, in the four-day period.
A. I don't recall.
Q. Up to the time of the closing of the transaction, March 30, 1998, did anyone at MacAndrews & Forbes, to your knowledge, ask Sunbeam for detailed information on what it's sales were, net sales were for the first quarter of 1998 or any period --
A. They didn't have to, they made a disclosure as to their sales at that point.
Q. Focus on my question. We'll get to what you are talking about later.
Did anyone from MacAndrews & Forbes, to your knowledge, specifically ask Sunbeam after the February 23 meeting and before the closing on March 30, 1998 for detailed information on Sunbeam's net sales for any period in the first quarter of 1998?
A. I don't know of any.
Q. Did anyone from Coleman ask Sunbeam for the same information at any time before the closing on March 30, 1998?
A. I'm unaware of anybody doing

NOT A CERTIFIED COPY

013045

that.

Q. Let's move down the page to operating profit. You have some writing that appears to the right. It looks like you did some division and then -- I think I know where it comes from but could you explain it to us please?

A. I'm glad you know where it comes from because I was having trouble deciphering with my own computations.

Q. I think the 1168 comes from actual sales in 1997. You divide it by 4 to arrive at a per sales by quarter. That's your testimony, not mine.

A. I don't know why I would have been looking at the quarters because they would have to have seasonal variation. I just don't know what I was trying to accomplish.

Q. Could you now move to the right of your first block of handwriting and read that into the record? It looks like --

A. It says 328 divided by a billion 6 and then there's a note 20 percent from 25 percent.

NOT A CERTIFIED COPY

013046

I want to know how many times they turned their receivables and my conclusion was they were making very significant improvements in their plan and receivable collections despite an increase in international sales.

Q. Did you conclude that was a good thing or bad thing?

A. It would be great if they could do it. My question was was that reasonable.

Q. Did you ask anyone whether it was reasonable at the meeting?

A. I think this was something I was just doing off to the side.

Q. So I take it you weren't actually listening, you were actually doing some calculations while the presentation was ongoing; weren't you?

A. Apparently.

Q. In the line that appears above earnings per share, EPS, it reads, "Net earnings from continuing operations." Do you see that?

A. Yes.

NOT A CERTIFIED COPY

013047

Q. You have some figures written there. What are those figures and what do they represent?

A. I seem to be saying something about the earnings growth rate is 35 percent but -- something like that. I was probably trying to evaluate how fast the earnings per share were growing.

Q. Below the earnings per share line it looks like you have written 1.99 and then there's something in writing after that. Can you read that into the record for us?

A. Yes. It's 1.99 street.

Q. Was that the street estimate for earnings?

A. Yes. That was really what I was trying to focus on because long range plans are long range plans and I did, as you noted, have some skepticism. I was trying to see if the street estimates are reasonable and I thought that was much more reasonable than the long range plan.

Q. The street estimates were much more reasonable?

NOT A CERTIFIED COPY

013048

A. Yes.
Q. Tell the jury what a street estimate is.
A. It's either the average or the median of the analysts who cover the company's estimates for earnings per share. In this case, for 1998.
Q. Is this something in your business, consumer products as you've described it, that you follow and pay attention to?
A. Not since we're private.
Q. When you were public?
A. Yes.
Q. When you were at Sunbeam and public, running the company before the bankruptcy, did you pay attention to this, street estimates?
A. Yes. Not with the intensity one would normally because of the circumstances.
Q. One more -- you've got about 7 minutes before five. You want to leave now or you --
A. We'll do one more page.

NOT A CERTIFIED COPY

013049

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

CONTINUED VIDEOTAPED
DEPOSITION OF JERRY LEVIN
New York, New York
Thursday, December 2, 2004

NOT A CERTIFIED COPY

013050

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167610

ORIGINAL

Q. Okay.

Was there any further discussion that evening, outside of the presence of Sunbeam or Morgan Stanley, about the materials in Exhibit 84?

MR. MARKOWSKI: Objection to the form.

A. Yes.

Q. There was? Did you say Yes?

A. Yes.

Q. Where did that discussion take place?

A. Between the conference room we were in and reaching the lobby of the Morgan Stanley building.

Q. Do you recall the discussion?

A. I recall some of it.

Q. What do you recall?

A. I voiced an opinion.

Q. What was your opinion? Who did you voice the opinion to from -- while you were traveling from the Morgan Stanley conference room to the lobby of the building?

A. The MacAndrews & Forbes people.

Q. What did you tell them?

NOT A CERTIFIED COPY

013051

A. That I thought the sales in that, and net income expectations of the long-range plan were quite a stretch and I did not think they were achievable.

Q. What did -- withdrawn. Was there any -- withdrawn.

Who were you speaking to when you expressed this opinion?

A. I recall Jim Maher, in particular, and Will Nesbitt.

Q. Anyone else in the, either from MacAndrews & Forbes or CSFB?

A. I don't know if anyone from CSFB was present when I made that comment.

Q. Did Mr. Maher respond to your opinion?

A. Yes.

Q. What did he say?

A. He asked what I thought was realistic.

Q. What did you say?

A. Things more along the line of the Wall Street expectations.

Q. Did he respond to that?

A. No.

NOT A CERTIFIED COPY

013052

Q. Everybody went home, as you recall it?

A. I did.

Q. Okay. Now, at the meeting, were there other materials available for discussion or review by those who were there?

A. I don't recall. It was too long ago.

Q. Let me show you a document that was, that has been marked as Morgan Stanley Exhibit 85.

A. Thank you.

(Witness and counsel confer.)

Q. Do you have Morgan Stanley Exhibit 85 in front of you?

A. Yes.

Q. Now, have you seen this document before?

A. I don't recall seeing this.

Q. Please take as much time as you would like to look at it, and if you tell me you don't recall seeing it, I will not ask you any questions about it.

A. You can stop right there. I don't recall seeing this.

NOT A CERTIFIED COPY

013053

Q. Would you hand Morgan Stanley Exhibit 85 back to me, please.

Thank you.

The meeting that we have been discussing with Morgan Stanley, Exhibit 84, it is on the evening of February 23rd, 1998. By all accounts from other witnesses, it was -- between that evening -- withdrawn.

Between the evening of February 23rd, 1998 and the conclusion of the meeting that we have been going over, discussing Morgan Stanley Exhibit 84 and the actual execution of the merger agreements, as of February 27th, 1998, did you have any discussions with anyone at MacAndrews & Forbes or Coleman about Morgan Stanley Exhibit 84?

MR. BIDEAU: Other than the elevator --

Q. Other than the elevator conversation, yes.

A. Probably.

Q. Did you have any specific recollection of those conversations, as you sit here today?

A. Not specific, no.

NOT A CERTIFIED COPY

013054

Q. Do you have any general recollection of discussions of the, of Morgan Stanley Exhibit 84, of --

A. That was the presentation?

Q. Yes, sir. From the conclusion of the presentation up to the signing of the merger agreements on February 27th.

A. Yes.

Q. What is your general recollection?

A. That I felt the strategic plan, as presented, was a stretch, unlikely to be achieved, but that I thought it was reasonable that they would achieve growth and earnings in line with whatever, where Wall Street was, which was considerably below the strategic plan at that point.

And I did not have any particular thoughts, one way or the other, as to whether the stock was valued high or low, as a result.

Q. Who did you have these discussions with?

A. I am sure I had them with Mr. Perelman and Mr. Gittis and associates.

Q. Would Mr. Maher be within that group?

NOT A CERTIFIED COPY

013055

A. Yes, sir.
Q. Would Mr. Nesbitt be in that group?
A. He may or may not have been in attendance.
Q. Where did these discussions take place, if you remember?
A. They -- almost certainly took place the next morning. Assuming that was not the Friday night -- I don't -- February 23rd?
Q. It was a Monday, I believe.
A. I am almost certain they took place the next morning, either at breakfast at the townhouse or after breakfast at the townhouse -- the MacAndrews & Forbes headquarters, I should say.
Q. And the townhouse, and the headquarters are virtually within 100 yards of each other; correct?
A. It is a lot closer.
Q. A lot closer than that, actually.
Do you remember, as you sit here today, the reaction of Mr. Perelman, for example, to your opinion about the strategic projections of Sunbeam in MS 84?
A. No. I don't recall anything

NOT A CERTIFIED COPY

013056

MR. MARKOWSKI: It looks like it is inadvertently attached.

MR. BIDEAU: The witness has the numbers that you just read. I think we just had one that was misassembled. Sorry about that.

Q. Do you have Morgan Stanley Exhibit 88 in front of you?

A. Yes.

Q. You did attend the meeting and made a presentation; right?

A. Yes.

Q. Could you tell us what the general outline of your presentation was to the board of directors at that meeting on February 25th, 1998?

A. Well, according to the minutes, I talked about how the company was doing --

Q. That is Coleman; correct?

A. Coleman & Company.

And how we did in the fourth quarter and how 1997 had finished and gave a perspective on how we, in 1998, how 1998 was shaping up, as we were then starting the camping season, the heaviest part of our year.

NOT A CERTIFIED COPY

013057

And I went down to discuss the transaction whereby Coleman would be merged with Sunbeam and described the terms of the transaction, stated that it was structured, the transaction was structured to put Sunbeam in control as quickly as possible through -- to reduce disruption to the company's business. And talked about Sunbeam's current plans, what businesses they keep and what they would sell, and then talked about some employee protection provisions which we wanted our board to implement.

Q. Did you -- withdrawn.

What did you tell the board about how Coleman finished in 1997?

A. I don't recall.

Q. At this point in time, February 25th, 1998, the record will show you had, the company had not filed -- that is, Coleman had not yet filed its 10K, which, I believe, was filed on March 18th, if my memory serves me correctly.

Did you give the board full year-end results at the February 25th meeting?

A. It would have been as best we could

NOT A CERTIFIED COPY

013058

A. I don't recall.
Q. Did you tell the board your opinion that you had reached about Sunbeam's strategic plan set forth in Morgan Stanley Exhibit 84, that it was -- I think you used the term "a stretch" -- did you tell them that?
A. I don't recall.
Q. Did you tell the board why the transaction was being structured to put Sunbeam in control as quickly as possible?
A. Yes.
Q. What did you tell them?
A. To repeat what I said yesterday, because of Mr. Dunlap's reputation as taking out many, many employees, I felt, as soon as it was known that Sunbeam was taking over Coleman, there would be considerable employee moral issues for the company, and it was a predicate that could extend into our trade relations.
Q. Did anyone from the board of directors express a disagreement with your view that the transaction should be consummated as quickly as possible?
A. I don't recall anyone disagreeing.

NOT A CERTIFIED COPY

013059

that Morgan Stanley and Wachovia had some roles in it, but I did not know whether they were taking any of the participation, and what their debt role was.

Q. Did you know, by the time of the bankruptcy, that Morgan Stanley Senior Funding had loaned money to Sunbeam in connection with the transaction?

A. I became quite familiar with that fact, yes.

Q. In fact, when Morgan Stanley Senior Funding was the largest creditor in the bankruptcy proceeding; was it not?

A. Yes.

Q. Do you remember what the size of Morgan Stanley's claim was in the bankruptcy proceeding?

A. It would be approximately 40 percent of 1 billion-650, or something like that.

Q. The date of the bankruptcy filing was what?

A. February, '01.

Q. One second.

Using your figures, because I can't lay my hand right on the Morgan Stanley claim

NOT A CERTIFIED COPY

013960

at the moment -- you said it was approximately 40 percent of $1.6 billion?

A. It was slightly over 1.6, but I believe the 40 percent is correct.

Q. Okay. So that, if my math is correct, that is about $480,000,000, if your figures are correct; right? Actually it is more than that.

A. I don't think it is correct.

Q. My math is wrong. It is actually closer to 664 --

A. That sounds letter.

Q. I was multiplying it by 3 and not 4. So, Morgan Stanley Senior Funding filed a claim for approximately $664,000,000 in the bankruptcy, as you recall it; correct?

MR. MARKOWSKI: Objection to the form.

Q. You can answer.

A. On the secured debt.

Q. Unsecured --

On the secured debt --

THE REPORTER: Unsecured?

THE WITNESS: No.

A. On the secured debt.

NOT A CERTIFIED COPY

0130611

Q. Was the Morgan Stanley claim on the secured debt allowed in the bankruptcy proceeding?

A. I am not sure what "allowed" means.

Q. Recognized as being a valid claim.

A. I believe so.

Q. Based on your participation in negotiations of the acquisition, as you described it, and as limited as you described it, and your stewardship of Sunbeam Corporation after you became president, can you think of any reason why Morgan Stanley would have loaned in excess of $664,000,000 to Sunbeam to participate in this massive fraud that you described earlier?

MR. MARKOWSKI: Objection to the form. Lack of foundation.

MR. BIDEAU: Objection to the form.

A. Yes.

Q. What is that reason?

A. The loan syndication failed.

Q. Is that the only reason?

A. I do not believe Morgan Stanley had any intent of taking but a small fraction of that and anticipated taking substantial fees

NOT A CERTIFIED COPY

Q. Am I correct, sir, that you did not do --

Withdrawn.

Am I correct, sir, that following the issuance of the press release and your learning of the release, that you really did not take any action as a result of the press release because you did not view it as your problem?

MR. BIDEAU: Objection to the form.

A. Well, if you took it at its face, there was no problem. I just thought it was odd.

Q. My question was, sir: As a result of -- I will withdraw the question.

My question to you was, sir: Following your receipt of the press release, am I correct that you took no action with regard to the press release, either individually or on behalf of MacAndrews & Forbes, because you did not view it as your problem?

MR. BIDEAU: Objection. He just answered that exact question.

MR. BEMIS: The objection is asked

NOT A CERTIFIED COPY

0130063

and answered.

MR. BIDEAU: That was the objection, you are right. It was asked and answered.

MR. BEMIS: He may answer again.

MR. MARKOWSKI: Objection to the form.

A. I continued to consider anything that could happen that could affect Coleman Company and its shareholders to be my problem; so, the answer to your question is No.

Q. Sir, let me ask you if you were asked the following questions and gave the following answers in your deposition, I believe in 2001. For the record, we previously marked that as Exhibit 443.

MR. BIDEAU: You may want to put your microphone back on.

MR. BEMIS: I will. Thank you.

MR. BIDEAU: I just noticed the videographer going -- (indicating).

Q. Turn to page 33. Tell me when you are there.

A. Okay.

Q. Sir, were you asked the following

NOT A CERTIFIED COPY

0130641

questions and did you give the following answers, under oath, in your deposition on June 20th, 2001, beginning at line 19, page 33:

"Question: Mr. Levin, I have handed you a printout of a press release that was issued by Sunbeam on March 19th, 1998, and I invite you to read it -- but, in particular, the first two sentences relate to sales, the possibility that sales would fall below Wall Street estimates. And it says, 'But net sales are expected to exceed 1997 first quarter net sales of 253.4 million.'

"Answer: Yes.

"Question: Do you see that language?

"Answer: Yes.

"Question: Now, do you recall that the Coleman acquisition occurred at, I think it was March 30th or 31st of 1998?

"Answer: I believe it was March 30th.

"Question: Does this help refresh your recollection about whether or not you saw this press release before the

NOT A CERTIFIED COPY

013065

acquisition was closed?

"Answer: Yes. I did see this before the acquisition closed.

"Question: After you saw this press release, did you undertake any actions in response to the press release?

"Answer: No, I -- I viewed this as not my problem at the time."

Were you asked those questions and did you give those answers under oath in 2001?

A. Yes.

MR. MARKOWSKI: Objection to the form.

(Witness and counsel confer.)

Q. Following the issuance of the press release, my understanding is that you did not take any steps at anybody's direction to contact Sunbeam; correct?

A. Not -- not to the best of my recollection.

Q. You did not take any steps, following the issuance of the March 19th press release, to contact Arthur Andersen, Sunbeam's auditors; correct?

A. Correct.

NOT A CERTIFIED COPY

013066

to what was going on.

Q. When you say "what was going on," what do you mean by that?

A. In general, what was happening with the company.

Q. Are you aware -- withdrawn.

When you say "the company," you mean Sunbeam; correct?

A. There is only one left at this point, yes. Sunbeam.

Q. Before your assignment in April, as you have described it for us, are you aware of anyone at MacAndrews & Forbes contacting any of Sunbeam's customers, such as K-Mart, Target or Walmart?

A. I would have found that odd, had they done it.

Q. You would have found that odd in the due diligence process, for MacAndrews & Forbes to have made contact with those customers?

A. They would have asked me to do it.

Q. You did not do it, because you weren't asked?

A. I was not asked until sometime mid-April.

NOT A CERTIFIED COPY

013067

Q. Just so we are clear, before the closing of the merger transaction on March 30th, 1998, no one at MacAndrews & Forbes asked you to contact any of Sunbeam's customers, such as Walmart, Target or K-Mart to see what the status of their relationship was with Sunbeam?

A. That would have been disastrous and probably illegal.

Q. We will deal with the illegality to someone else and we will leave the disaster to someone else. My question is: You did not do it because you weren't asked; is that fair?

A. I wouldn't have done it if I was asked, and it would have been totally inappropriate.

Q. You weren't asked and you did not do it?

A. No, they would not ask me to do something inappropriate like that.

Q. Before the closing on March 30th, 1998, of the merger transaction, you also never spoke to any analysts that were following Sunbeam; is that correct?

A. Yes.

NOT A CERTIFIED COPY

013068

review in connection with a possible acquisition?

A. I don't know.

Q. In the period after the execution of the merger agreements, February, as of February 27th, 1998, let's go all the way up now to April 30th, 1998, the closing, are you --

MR. BIDEAU: You mean, March 30th? You said April 30th.

MR. BEMIS: I did. I apologize, I will try again.

Q. In the period after the execution of the merger agreements, which are dated as of February 27th, 1998, and going forward to March 30th, 1998, the date of the actual closing, are you aware of anyone at MacAndrews & Forbes going to any Sunbeam plant, facility or office, to do any due diligence of their method of operation?

A. I am unaware of any.

Q. In fact, didn't you tell me that you were told that you were not even to go to work at Coleman following the February, the February 28th execution of the merger

NOT A CERTIFIED COPY

013069

agreements; isn't that right?
A. That is correct.
Q. And you did what you were told, you did not even go to work; right?
A. I attempted to help them, but they rejected every offer.
Q. Well, so, you knew at least that as of February, as of the time that they rejected every offer, that Sunbeam was going to reject any help that you were prepared to offer them, to integrate the two companies; you knew that, right?
A. Yes.
Q. And are you aware of any investigation by CSFB between February 28th, 1998 and March 30th, 1998, of Sunbeam's offices, manufacturing facilities, warehouses, retail outlets, anything like that?
A. I am unaware of any.
Q. Are you aware of MacAndrews & Forbes' or Coleman's, if that be the case, attorneys, after February 28th, and up through March 30th, doing any investigation of Sunbeam's facilities, its plants, its warehouses, its retail outlets, anything like

NOT A CERTIFIED COPY

013070

that, doing any type of investigation?

A. I am unaware of any.

Q. From the beginning of the first discussions with Mr. Dunlap and Sunbeam, about the acquisition of Coleman, all the way up to the date of the closing on March 30th, 1998, are you aware of any MacAndrews & Forbes employee or person representing them, whether it be an investment banker or an accountant, or an attorney, going and visiting any of Sunbeam's manufacturing facilities?

A. I am unaware of any.

Q. Are you aware of anyone in that group investigating or going to visit, if you will, any of Sunbeam's retail outlet facilities, as you have described them?

A. Other than myself, I am unaware of any.

Q. Are you aware of any MacAndrews & Forbes person going to visit either -- the home office of Sunbeam in Boca Raton?

A. It was in Delray, Florida.

Q. Sorry. Delray, Florida.

A. I am unaware of any.

Q. What did MacAndrews & Forbes do as

NOT A CERTIFIED COPY

013071

due diligence up to March 30th, 1998, other than attend the February 23rd, 1998 meeting that you have described, that you have described to us and that we went over looking at MS 84? What else did they do?

A. They assumed that the public filings were accurate.

Q. Anything else?

A. I know they went through contracts.

I know they looked at, I believe they went through the accountants' work papers. I believe they acted responsibly and in a way that is very appropriate for public companies that are trying to put together a transaction under the veil of secrecy and confidentiality. I find no fault with what they did.

Q. Without asking you to opine on fault, as I understand it, all you can tell me that MacAndrews & Forbes did by way of due diligence is look at public filings, perhaps look at the work papers of Arthur Andersen, but you don't know that, one way or the other, for sure; correct?

A. Correct.

NOT A CERTIFIED COPY

0130172

Q. And attending a meeting on February 23rd, 1998, that's all; isn't that right?

A. From my perspective, and my recollection, and I don't remember specifically what was done, that is correct.

Q. After your report to the MacAndrews & Forbes team, as you have described it, did they give you any further assignment to do any -- I will withdraw the question.

After your report to the MacAndrews & Forbes people following your April investigation, did you get any further assignment from MacAndrews & Forbes to do anything further with regard to Sunbeam?

A. Yes.

Q. What was that?

A. I don't know how it came about.

But they -- it was either the board or Michael Price or Al Dunlap, but they had all agreed that Al Dunlap needed a successor, and they asked if I would help or if I had any ideas on the search, as I knew the industry reasonably well and the kind of people that they would be looking at.

Q. Was this at the time of the board

NOT A CERTIFIED COPY

013073

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

COLEMAN(PARENT)HOLDINGS, INC.,

Plaintiff, No. CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, No. CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

013075

VIDEOTAPED DEPOSITION OF JAMES M. LURIE
New York, New York
Friday, June 18, 2004

Reported by:
Jane Watson
JOB NO. 161083

COPY

NOT A CERTIFIED COPY

Lurie

you. I don't recall what we thought, what I knew back then of what the expectations on the street for the first quarter of 1998 were.

Q. I want to show you what's been marked previously as Exhibit 16, Mr. Lurie, Exhibit 16, the document that you mentioned that was discussed during the March 18th phone call.

A. This looks like the document. It seems to be the document, but I don't recall specifically today what was on the document. But this does look like something we would have looked at.

Q. And do you see the handwriting in the upper right corner: "Ruth," "Alan," "David"?

A. "Ruth," "Alan," "David," okay.

Q. Do you know who those are?

A. Ruth, I presume, is Ruth Porat. Allen, I presume, is Alan Dean. Because that's his phone number. And David -- I'm not sure who David is.

You're not going to tell me?

Q. It's David Fanin.

A. Okay.

Q. What did you understand this document

NOT A CERTIFIED COPY

013076

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

----------x

ORIGINAL

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

JAMES ROBERT MAHER

New York, New York

Tuesday, November 2, 2004

NOT A CERTIFIED COPY

013078

Reported by: Steven Neil Cohen, RPR

Job No. 166728

A. I remember seeing documents that included --

MR. MARKOWSKI: Hold on.

The only question is whether you can remember anything that refreshed your recollection.

MR. BEMIS: That isn't the question at this time. If you have an objection make an objection, don't instruct.

MR. MARKOWSKI: That is how I interpret the question. That is what I will permit him to answer. If the question is for anything other than that I instruct him not to answer.

MR. BEMIS: You are instructing the witness not to answer?

MR. MARKOWSKI: If the question is anything other than what documents he can recall that refreshed his recollection I am instructing him not to answer, yes. Is that the question or is it something else?

MR. BEMIS: If you were listening to the question he responded he

NOT A CERTIFIED COPY

013079

couldn't remember specifically what documents he looked at that did not re -- that did refresh his recollection so I asked him what he recalled non-specifically.

MR. MARKOWSKI: That refreshed his recollection?

MR. BEMIS: Yes. You interrupted without an objection.

MR. MARKOWSKI: I want to make it clear to the witness that the question focuses on documents that refreshed his recollection.

MR. BEMIS: I am sure you had an opportunity to prepare the witness. Let's ask the witness to respond to the question please.

BY MR. BEMIS:

Q. What documents did you look at that you cannot -- that you do not specifically remember today that refreshed your recollection?

MR. MARKOWSKI: I am going to object to the form of the question.

THE WITNESS: I don't understand

NOT A CERTIFIED COPY

013080

the question.

BY MR. BEMIS:

Q. What is it you don't understand, sir?

A. What documents did I look at that non-specifically refreshed my recollection?

Q. Let's try again.

You looked at documents over the past year, right?

A. Yes.

Q. I asked you what documents you looked at that refreshed your recollection.

You said you can't remember anything specifically, right?

A. Right.

Q. What do you remember non-specifically that you looked at over the past year?

MR. MARKOWSKI: I am going to object to the form of the question. Are you asking about documents that refreshed his recollection because you keep omitting that from your question?

MR. BEMIS: Yes.

BY MR. BEMIS:

NOT A CERTIFIED COPY

0130081

at all?

A. No.

Q. Any mental condition that would affect your memory?

A. Only being 54.

Q. I am older than you and my memory is pretty good.

Any reason to tell the jury why your memory would be faulty here today?

A. No.

Q. Tell the jury a little bit about your background starting with where you went to school, your education.

A. I went to undergraduate school -- is that where you want to start?

Q. Let's start at college.

A. I went to Boston College, graduated in 1971, worked for several years after that, went to Columbia Business School, graduated in 19 -- June of 1976, went to work for First Boston in the investment banking department.

Q. Let me stop you right there before we jump ahead to your employment history.

NOT A CERTIFIED COPY

013082

When you graduated from Boston College what degree did you get?

A. A BS, I think.

Q. Then you went on and got an MBA from Columbia?

A. Yes.

Q. Master's of Business Administration?

A. That's correct.

Q. You later went to work shortly -- let's start with after you got your MBA degree. Where did you first go to work?

A. First Boston.

Q. That is the same First Boston that you were referring to in your earlier testimony about documents that reviewed but at least after the merger with Credit Suisse?

A. That is correct.

Q. Let me ask you a couple of questions before we get into some of the substance of your involvement with the Coleman transaction.

In 1995 you were employed by MacAndrews & Forbes Holdings Inc., is that

NOT A CERTIFIED COPY

013033

right?
A. In 1995?
Q. Right.
A. No.
Q. When did you start?
A. The first time I was employed by MacAndrews & Forbes Inc. was 19 -- sometime in 1998.
Q. What was --
A. I could be wrong about a year here.
Q. You did eventually have the title of president of MacAndrews & Forbes Holdings Inc., didn't you?
A. Yes.
Q. When were you the president?
A. I think 1998, 1999, 2000, somewhere in there. I don't remember the exact dates.
Q. Did you have a position with one of Mr. Perelman's companies before 1998?
A. Yes.
Q. What was that?
A. One of his companies. It was a public company called MAFCO Consolidated

NOT A CERTIFIED COPY

013084

Group Inc.

Q. When did you go to work for MAFCO Consolidated Group Inc.?

A. I think it was the summer of 1995, I believe.

Q. Was that your -- withdrawn.

Was that your first position with one of Mr. Perelman's companies?

A. What do you mean by "one of Mr. Perelman's companies?"

Q. One of the companies that he owns directly or indirectly?

A. What do you mean by "directly or indirectly?"

Q. Through one of his holding companies.

A. What does that mean?

Q. Answer -- if you can't answer the question tell me you are not going to answer the question.

A. I will answer the question. I want to know what you are asking me.

Q. What is confusing you?

A. Directly or indirectly. Does that mean 1 percent, 20 percent, 50

NOT A CERTIFIED COPY

0130085

percent?

Q. Any one of those numbers you like.

A. Well, I went to work in 1992 for National Health Labs as CEO. Mr. Perelman owned, I believe, 25 percent, approximately, of that company at that point in time.

Q. Was that the first company that Mr. Perelman owned directly or indirectly that you worked for?

A. Yes.

Q. Then in 1995 as I understand it your next position was with MAFCO Consolidated Group Inc.?

A. That's correct.

Q. What -- then you moved up to being president of MacAndrews & Forbes Holdings Inc. in 1998, right?

A. That's correct.

Q. How long were you --

A. I just don't remember exact dates; a couple of years.

Q. I understand.

When did you leave MAFCO

NOT A CERTIFIED COPY

013086

negotiations leading up to the merger agreement.

BY MR. BEMIS:

Q. Okay. The other people that were heavily involved were Mr. Levin, you said?

A. Yes.

Q. And then Mr. Perelman who gave the final approval to enter into the merger transaction subject to board approval?

A. He didn't give an approval to enter into it. He gave an approval that it could be taken to the board.

Q. Did Mr. Perelman approve the merger agreements that were submitted to the board?

A. I don't know -- I don't recall whether he voted on that or not.

Q. Do you recall that he was present at the board meetings?

A. Yes, he was.

Q. Did you review, that is, personally, the Sunbeam 10-K for the year 1997 before the closing of the Coleman-Sunbeam transaction?

A. I don't recall seeing it, no. I

NOT A CERTIFIED COPY

013087

don't recall.

Q. Did you assign anyone within MacAndrews & Forbes working with you to review the Sunbeam 10-K for the period ending in 1997 before the closing of the merger agreements?

A. I don't recall assigning anybody, no.

The general responsibility for the financials of Sunbeam was allied with the financial department at Coleman largely which was -- the chief financial officer was Joe Page, I believe, at that time.

Q. Did you assign -- withdrawn.

Did someone to your knowledge assign Joe Page to review the Sunbeam 10-K?

A. I don't know.

Q. Did you review the offering memorandum -- withdrawn.

You recall, don't you, sir, that there were debentures issued by Sunbeam in connection with the merger?

A. Yes.

Q. That they were underwritten by Morgan Stanley?

NOT A CERTIFIED COPY

A. I do.
Q. You recall there was an offering memorandum?
A. Yes.
Q. Did you read the offering memorandum for the Sunbeam debentures issued in connection with the Coleman transaction?
A. I don't specifically recall reading it, no.
Q. Do you recall ever reading it as you sit here today?
A. No.
Q. Did you assign anyone from MacAndrews & Forbes the responsibility for reading the offering memorandum for the Sunbeam debentures before the closing on March 30, 1998 of the Coleman transaction?
A. No.
Q. To also put this in perspective for the jury you did attend the February 25, 1998 board meeting of the Coleman company, correct?
A. February 25. I don't remember the exact date. Maybe you can help me.

NOT A CERTIFIED COPY

013089

Q. That would be the first of the two meetings when the merger agreement was presented.

A. Yes.

Q. You made a presentation to the board about the history of the negotiations, didn't you?

A. I did.

Q. You made that presentation in your capacity as a representative of MacAndrews & Forbes, correct?

A. Yes.

Q. You also -- this was the first time, by the way, February 25, 1998, that the board as a board of directors of Coleman had been advised of the negotiations with Sunbeam; isn't that right?

A. I don't know when the board was advised of the negotiations. I don't know whether they were advised prior to that or not.

Q. As you sit here today you personally are not aware of any specific meetings before February 25, 1998 of the

NOT A CERTIFIED COPY

board of Coleman at which the board was advised of the ongoing discussions; is that fair?

A. Yes.

Q. You also attended, just so, again, for the jury's benefit, the February 27 board of directors meeting of Coleman at which the board actually voted to proceed with the merger agreement with Sunbeam, correct?

A. Yes.

Q. Again, you attended on behalf of MacAndrews & Forbes, correct?

A. Yes.

Q. When you attended the board meetings, and, by the way, it was the board of directors of Coleman that approved the merger agreement, correct?

A. I believe so.

Q. The -- did you tell the board of directors how to vote?

A. No.

Q. Did Mr. Perelman to your knowledge?

A. No.

NOT A CERTIFIED COPY

01309

Q. You mentioned earlier that you saw some presentation materials that were prepared by Credit Suisse First Boston, correct?

A. Yes.

Q. Credit Suisse First Boston, so the jury understands, was the financial adviser to the Coleman board?

A. That's correct.

Q. The exclusive financial adviser, correct?

A. I think so, yes.

Q. As the exclusive financial adviser it actually made a presentation to the board of directors at the February 27 meeting, correct?

A. Yes.

Q. It opined, that is, Credit Suisse First Boston, that the transaction was fair, correct?

A. With all the words that go around that, yes.

Q. Morgan Stanley didn't make any presentations to the board of directors of the Coleman company, did it?

NOT A CERTIFIED COPY

013092

A. Not to my knowledge.

Q. In addition to the -- in addition to the presentation by Credit Suisse First Boston at the board of directors, this would be February 27, were there presentations by the legal advisers to the Coleman company?

A. I am sure there were. I am sure the merger agreement was presented, at least outlined.

Q. Did the Coleman company have its own legal advisers in the merger transaction, that is, separate and apart from Sunbeam's legal advisers?

A. Yes.

Q. Who was that?

A. Wachtell, Lipton, I believe.

Q. Did you -- is MacAndrews & Forbes Holding Inc. in your view a sophisticated company in financial transactions?

A. Yes.

Q. Would you agree that Mr. Perelman is a sophisticated individual in financial transactions?

A. Yes.

NOT A CERTIFIED COPY

013093

Q. Are you?
A. Most days.
Q. Most days?
A. Yes.
Q. Did you consider yourself a sophisticated person in financial transactions in 1998 on the day the transaction was approved by the Coleman board?
A. Yes.
Q. Did you consider yourself a sophisticated person in financial transactions on March 30, 1998 when the transaction closed?
A. Yes.
Q. Do you consider -- did you consider Credit Suisse First Boston -- by the way, you worked for Credit Suisse First Boston when it was First Boston, right?
A. Yes.
Q. Going back before --
A. Even before it was Credit Suisse First Boston too.
Q. As well as when it was Credit Suisse First Boston?

NOT A CERTIFIED COPY

013094

A. That is a good question. It may have been. There are parts of it that were certainly Credit Suisse First Boston at that time.

Q. We won't worry about when the combination took place yet.

When the Credit Suisse First Boston made its presentation to the Coleman boards in connection with the merger was Credit Suisse First Boston in your view a sophisticated financial adviser to the company.

A. Yes.

Q. It was an investment banking firm?

A. Yes.

Q. High standing in the financial community in New York?

A. Yes.

Q. Did you consider Credit Suisse First Boston in 1998 to be capable of performing due diligence in connection with a merger such as the Coleman-Sunbeam merger?

A. Yes.

NOT A CERTIFIED COPY

013095

Q. Did you consider yourself capable of doing due diligence in connection with a transaction like the Coleman-Sunbeam merger in 1998?

A. Yes.

Q. Did you consider Mr. Perelman capable of doing due diligence in connection with a transaction like the Coleman-Sunbeam merger in 1998?

A. Capable of doing it, yes.

Q. Yes.

Did you consider the law firm of Wachtell, Lipton to be a law firm that was sophisticated from a corporate side in mergers and acquisition transactions in 1998?

A. Yes.

Q. Did you consider them to not only be capable but to have an outstanding reputation in that area in the New York financial markets?

A. I understood them to be capable.

Q. Did you have any -- strike that.

Did you consider the Coleman-Sunbeam merger transaction to be an

NOT A CERTIFIED COPY

013096

arms length transaction?
A. Yes.
Q. Would you agree with me that Mr. Perelman's company and -- Mr. Perelman's companies, if you will, and Sunbeam are both -- were both at that time large companies?
A. Yes.
Q. Both companies, Sunbeam and Mr. Perelman's companies, were both sophisticated in terms of their businesses?
A. Yes.
Q. Sunbeam -- Coleman had at that time an audit firm, did it not?
A. I am sure it did.
Q. Ernst & Young?
A. I don't recall.
Q. Do you know who Ernst & Young is?
A. Yes.
Q. You knew who they were in 1998?
A. Yes.
Q. Would you consider them to be a sophisticated accounting firm?
A. Yes.
Q. Sophisticated in public

NOT A CERTIFIED COPY

013097

Would you tell the jury what "underwriting" is?

A. When a company sells securities in the public markets it sells them first to a securities firm, i.e., an underwriter.

The underwriter owns them for a brief period of time and then distributes them to "the public."

By "underwriting" I mean they actually own the security for a, some people would say a nanosecond, but a brief period of time.

Q. In simple terms, the underwriter actually buys in -- a firm underwriting will buy the underlying securities whether it be debt or equity and then it will resell them, as you put it, to the public over a period of time, whether it be a nanosecond or two nanoseconds?

A. That is correct. That is a fair description.

Q. You told me that you started in 1976 with First Boston as you described it.

What was your first position there?

NOT A CERTIFIED COPY

A. I was an associate.

Q. How long did you work for First Boston?

A. Until 1992.

Q. When you left in 1992 what was your position within First Boston?

A. I was head of investment banking.

Q. Were you with First Boston continuously from 1976 to 1992?

A. Yes.

Q. When you started as an associate is that pretty much the bottom of the investment banking rung?

A. It was then.

Q. I take it when you left as head of the investment banking division that was quite a promotion within the company over the years, is that fair?

A. There is a significant difference between associate and head of investment banking, yes.

Q. When you were head of investment banking in 1992 you had by that time I take it done many mergers and acquisition transactions?

NOT A CERTIFIED COPY

responsibility for that division within First Boston?

A. Well, there are -- without complicating the issue, the people who do the underwriting, who go out and contact the companies, do the due diligence and take the companies on road shows, are the people that -- that I was responsible for.

There are capital markets people and trading people who are in another part of the firm which are responsible for the actual sale of the securities.

I was not responsible for that part of the business which would be typical of any investment banking firm.

Q. I apologize for interrupting you.

Were you one of the people who would approve an underwriting by First Boston?

A. Approve? There are various approval processes within the firm so you have to be more specific.

Q. Let's take an example. In the Sunbeam transaction when the debentures were eventually underwritten by Morgan

NOT A CERTIFIED COPY

013100

Stanley someone had to approve Morgan Stanley putting its capital out on the debenture underwriting.

Did you have that type of role as the head of the investment banking division?

A. Typically in an investment banking firm taking on a new client would require approval of an investment banking committee.

That investment banking committee reported to me and at various times during my career I sat on that investment banking committee.

That committee was responsible for approving, doing business with a client, not responsible for the capital commitment.

The capital commitment was the responsibility of the capital markets division of the company.

Q. If you --

A. Now --

Q. I interrupted again.

A. As head of investment banking, if

NOT A CERTIFIED COPY

013101

there were issues with any underwriting I would certainly be aware of it.

Q. As the head of the investment banking division and in the role as you have explained it with regard to underwriting, I take it you became familiar with financial statements?

A. Ask that question again.

Q. In your role as head of the investment banking division and on the committee reviewing underwritings you became familiar with reading financial statements of companies, right?

A. I don't think the two are related. I became -- I did during the course of my career at First Boston I became familiar with financial statements.

Q. You -- that would --

A. I mean it had nothing to do with my role as head of investment banking.

Q. As part of your role as head of the investment banking division you did read financial statements of companies that you were involved with as an investment banker, right?

NOT A CERTIFIED COPY

013102

You used the financial statements of the company?

MR. MARKOWSKI: Object to the form of the question.

MR. BEMIS: Let me withdraw the question and ask you again.

THE WITNESS: I am not trying to be difficult.

BY MR. BEMIS:

Q. I understand. Let's try to move on.

You know what an audited financial statement is of a public company?

A. I do.

Q. You have seen those over many of the years of your career, correct?

A. Yes.

Q. You know how to read them?

A. I do.

Q. You know how to read the footnotes?

A. I do.

Q. You are also familiar as a result of your work in the investment banking community with public filings that

NOT A CERTIFIED COPY

013103

companies do like an annual report on a form 10-K?

A. I do.

Q. You are also familiar with the reports that companies file, public companies, on a quarterly basis like a form 10-Q, right?

A. Yes.

Q. You are also familiar with the maintenance of interim financial statements by companies, aren't you?

A. Yes.

Q. Is it your experience that most public companies that file quarterly statements maintain interim financial statements?

A. Yes.

Q. At least in 1998, at the time that you were negotiating the Sunbeam-Coleman transaction, you knew that Sunbeam filed public -- filed financial statements with its public filings, correct?

A. I did.

Q. It filed audited statements for

NOT A CERTIFIED COPY

013104

Do you have that in front of you?

A. I do.

Q. This is a document that supplements another document for the record previously marked as Morgan Stanley Exhibit 75.

If you will look at the second page, Wachtell, Lipton's attorney, Paul K. Rowe, writes, "There should be an entry for November 6, 1997."

Do you see that entry?

A. Yes.

Q. Would you please read it to yourself and tell me when you are done?

A. I have.

Q. Does that entry by -- refresh your recollection in any way when you first met with Sunbeam representatives about a possible acquisition of Coleman?

A. It does. It says we met with Morgan Stanley on a variety of matters. It wasn't just a Sunbeam meeting so that would make it more consistent.

I couldn't remember an event where it was just Sunbeam.

NOT A CERTIFIED COPY

013105

Q. This entry as I see it on November 6 is -- refers to general business opportunities or potential business opportunities but it specifically refers to an acquisition of Sunbeam by MacAndrews.

Do you see that?

A. Yes.

Q. You earlier had said that you thought your first communication with Sunbeam was about a possible purchase of Sunbeam by MacAndrews & Forbes; is that correct?

A. Yes.

Q. Do you believe this -- based on your recollection of events and having now looked at this document, do you believe November 6, 1997 was the first time you had such a meeting with representatives of Sunbeam about a buy or sell transaction?

A. No.

Q. You think there was something before November?

A. I do.

Q. In any event, sometime between November 6, 1997 and the meeting at

NOT A CERTIFIED COPY

013106

Mr. Perelman's house in Palm Beach the transaction discussions, to the extent we can call them that, had shifted to Sunbeam making a purchase of the -- of Coleman; is that correct?

A. Yes.

Q. In between November 6, 1997 and the meeting at Mr. Perelman's home in Palm Beach you gave Mr. Nesbitt certain instructions, did you not, to do some analysis of a combination of Sunbeam and Coleman?

A. There was an analysis done. I don't know whether I gave him instructions or Perelman did or Gittis or somebody else. I don't recall.

Q. Mr. Nesbitt would not have done such a modeling analysis on his own, would he?

A. No. I think that sort of covered the waterfront; Perelman, myself or Gittis, probably, or Levin.

Q. You can hand 408 back to me and I will put that away and get that out of your way.

NOT A CERTIFIED COPY

0131107

produced something. I am not sure or we may have just worked off of the documents. I don't recall.

Q. Is it fair to say during the course of the negotiations that MacAndrews & Forbes was preparing its own internal analyses of the financial consequences of a transaction with Sunbeam?

A. Well, you have an example that you just showed me, sure.

The answer is, yes.

Q. When you said the answer is, yes, you were referring to Morgan Stanleys 104 and 105 that we just looked at, right?

A. Yes.

Q. Let me show you two other exhibits.

I will start with Morgan Stanley Exhibit 106 previously marked at Mr. Nesbitt's deposition.

MR. BEMIS: Mr. Markowski, could you hand it to the witness?

Thank you.

BY MR. BEMIS:

Q. Would you please look at Exhibit

NOT A CERTIFIED COPY

013108

Q. As you sit here today can you tell the jury whether you discussed it with Mr. Nesbitt?

A. I cannot tell you definitively that I discussed it with him.

Q. Did you provide a copy of MS 107 to anyone at Morgan Stanley?

A. Not that I recall.

Q. Did you provide a copy of Exhibit MS 107 to anyone at Sunbeam?

A. Not that I recall.

Q. Sir, we have looked at four spreadsheets prepared by Mr. Nesbitt and they are Exhibits MS 104 through 107 and you have 107 in front of you, correct?

A. Yes.

Q. With regard to all four of these exhibits --

A. The two early ones and these two later ones in early December, late January?

Q. Correct.

With regard to those four exhibits, MS 104 through 107, do you have any recollection as you sit here today of discussing them with Mr. Nesbitt?

NOT A CERTIFIED COPY

013109

A. Yes.
Q. Turn to December 12, 1997. Are you there?
A. Yes.
Q. Did you attend the first meeting that is referred to in that -- in the chronology?
A. On the 12th?
Q. On the 12th of December.
A. No.
Q. It says later in the day there was a meeting?
A. I think that is what I was referring to before.
Q. That is the meeting you are referring to?
A. Yes.
Q. So the record is clear, going down the chronology in MS 75 under December 12 there is a meeting later in that day where Mr. Perelman, Mr. Gittis, yourself, Mr. Rich of Credit Suisse First Boston and Mr. Levin had a discussion about a potential transaction; is that right?
A. That sounds right.

NOT A CERTIFIED COPY

013110

Q. Do you remember anything that Mr. Perelman said?

A. No.

Q. Did you discuss anything about Morgan Stanley at the meeting?

A. Not that I recall.

Q. To your knowledge -- withdrawn.

The chronology does not show Morgan Stanley attending the meeting on December 12 that preceded your meeting with Mr. Perelman, Mr. Gittis and Mr. Levin, if I have everyone properly attending; is that right?

A. I think that is right.

Q. As of this point in time, December 12, when you met with Mr. Perelman, et cetera, as we described, had you been provided with any documents by Morgan Stanley?

I should qualify that by saying regarding an acquisition of Coleman by Sunbeam, not the other way around.

A. We were provided with documents by Morgan Stanley about Sunbeam prior to the 12th.

NOT A CERTIFIED COPY

013111

You have told us there was a meeting earlier which we think was about November 6 of 1997 where there were discussions of MacAndrews purchasing Sunbeam?

A. Yes.

Q. That was rejected, was it not, by MacAndrews?

A. Yes. It had been rejected before because it had been brought up before.

Q. Up to December 12 had you received any documents from Morgan Stanley about a potential transaction where Sunbeam would acquire Coleman whether for stock or cash or some combination?

A. I don't believe so.

Q. When you met with Mr. Perelman on December 12 and Credit Suisse First Boston did you discuss any of the work that Mr. Nesbitt had done to -- by that time as reflected in Exhibits Morgan Stanley 104 and 105?

A. I don't recall.

Q. Is the next thing -- withdrawn.

Was the document that is attached

NOT A CERTIFIED COPY

013112

Q. Do you know why Mr. Nesbitt would have been looking for information about Mr. Dunlap's contract with Sunbeam?

A. I don't actually.

Q. You can hand that back to me.

If you look at MS 75 again which is the chronology -- I hope you have it still out there -- there is a reference to a meeting with CSFB on that date, December 16, 1997.

Do you see that?

A. Yes.

Q. You are identified as attending that meeting. Do you see that?

A. I do.

Q. Did you attend the meeting?

A. I assume so.

Q. Do you have any recollection as you sit here today of attending a meeting?

A. Well, I can't tell you if it was on that specific date but I do remember having this cast of characters together at some point in time in December.

Q. What was the reason why these characters gathered at this time?

NOT A CERTIFIED COPY

013113

A. To discuss a possible transaction between Coleman and Sunbeam. I think there was -- there was a meeting scheduled between Perelman, Gittis and Dunlap for that weekend.

Q. Was this meeting in anticipation of that meeting?

A. I believe so.

Q. That was a terrible question.

Was the meeting on December 16 in anticipation of the meeting that was upcoming between Mr. Perelman and Mr. Dunlap in Palm Beach?

A. I believe so.

Q. Was there a discussion at this meeting, that is, December 16, concerning a price that Mr. Perelman would seek to obtain for his company's interest in Coleman?

A. There may have been but I don't recall it.

Q. As of the meeting that took place at Mr. Perelman's home which we believe is December 18, 1997, you had not received any documents from Morgan Stanley with regard

NOT A CERTIFIED COPY

0131114

Mr. Perelman and Mr. Dunlap which ended up in Mr. Dunlap storming out of the meeting as you put it?

A. I think my recollection is the best way to describe it is, that was interesting, let's move on, that is over.

Any transaction with Sunbeam was dead and gone.

Q. As of December 18, as you put it, things were dead and done?

A. I said dead and gone but dead and done works too.

Q. I note that in the chronology for December 18 the transaction price range that Mr. Dunlap indicated was 18 to $22 per share.

Do you see that on your copy of MS 75?

A. Yes, I did see that, yes.

Q. According to MacAndrews' attorneys, Wachtell, Lipton, they told the Securities and Exchange Commission that Mr. Perelman advised Mr. Dunlap that the price was too low and he would not be prepared to support a transaction at that

NOT A CERTIFIED COPY

013115

and said Sunbeam was still interested in doing a transaction and I guess the net result of that was that they set up a meeting.

Q. There is an entry on the chronology and by McAndrews' counsel that Mr. Price called Mr. Gittis to indicate that Sunbeam might be willing to consider a transaction valued as high as $25 per Coleman share. Mr. Gittis indicated that a proposal at that level would not be of interest.

Do you see that?

A. Yes.

Q. Did you know about that call?

A. In advance of the call?

Q. Well, we could ask that but I was actually thinking about after the call took place.

A. At some point in time after the call took place I knew about that, yes.

Q. Did Mr. Gittis tell you about that?

A. I frankly don't know who told me about it, Gittis or Perelman.

NOT A CERTIFIED COPY

013116

Q. Somebody told you?
A. Somebody, yes.
Q. What they told you was Sunbeam was willing to go as high as $25 a share; is that right?
A. That is what it says here.
Q. You were on your way to Aspen, as I recall, on December 22, according to your calendar?
A. Is that what my calendar says, the 22nd?
Q. Yes. That is what you told me earlier today.
A. On the 22nd?
Q. On the 22nd. I don't know whether you were in the plane on the 22nd but that is what you told me.
A. Whatever my calendar says is probably right.
Q. Let me get MS 86 out again and make sure we don't have that wrong.
Do you have a copy of your calendar still in front of you or did I pick it up?
A. I think you picked it up.

NOT A CERTIFIED COPY

013117

phone call, is something happens in early January and the parties have some further discussions; is that right?

A. Yes.

Q. Up to January of 1998 had MacAndrews & Forbes done any due diligence concerning Sunbeam other than what we have been through; for example, Mr. Nesbitt's spreadsheets, the discussion materials from -- that we saw from Credit Suisse First Boston, I think, in Morgan Stanley 76; anything else?

A. Well, I don't know what Jerry and Joe Page were doing at that point in time. I think once we got to the 18th I am sure there was nothing done after that until we got into January.

Q. We get to January. What is it that you recall happening in January to restart the parties' discussions about a possible business combination?

A. Well, I am reading a chronology again which I have no reason to dispute.

Reid called Perelman and said they would have an interest in doing a

NOT A CERTIFIED COPY

013118

transaction in excess of, as it says here, in excess of $25 that would involve both cash and stock.

Q. Setting aside the chronology.

A. I remember that happening sometime in early January.

The next thing that happened is -- I don't know how the transition came from that. I don't remember the transition but there was a meeting where Morgan Stanley came by, to MacAndrews & Forbes, I think it was, I don't know whether Kitts was there, Stynes was there, I think Kitts was there, and they made a presentation about a transaction that -- they gave us some documents and I think if I recall that was a transaction that again was -- I think it was all stock and it was at a price that -- I don't remember the price but it was not acceptable and I think before they left the meeting we told them that it wasn't acceptable.

Q. Let me go back to Mr. Reid's phone call which at least according to the chronology was January 18.

NOT A CERTIFIED COPY

013119

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

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

ORIGINAL

JAMES ROBERT MAHER

New York, New York

Wednesday, November 3, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 166520

NOT A CERTIFIED COPY

013120

Q. Do you have MS 175 in front of you?
A. I do.
Q. Have you seen this document before?
A. I don't remember -- I don't specifically recall it but it looks like the type of document that Morgan Stanley would have put together at that time.
Q. On the first page, the first page where it refers to Laser specific, do you see the first bullet point which reads, Laser earnings projections based on I/B/E/S dated 1/21/98?
A. Yes.
Q. Would you tell the jury what I/B/E/S is?
A. I think it is a compilation of analysts' estimates.
Q. Is it short for Institutional Brokers Estimate System?
A. It may well be.
Q. Have you used this source before?
A. Yes. It is sort of universally used.

NOT A CERTIFIED COPY

0131121

Q. Universally used in the investment banking profession?
A. Yes.
Q. Is it -- in 1998 was it a compilation, if you will, of estimates by various institutions?
A. Excuse me one second.
MR. MARKOWSKI: Stop that.
THE VIDEOGRAPHER: Going off the record. The time is 9:06.
(Discussion off the record)
THE VIDEOGRAPHER: We are back on the record. The time is 9:06.
BY MR. BEMIS:
Q. The question that was pending was were the I/B/E/S estimates in 1998, the date of the document you are looking at, a compilation of estimates by various institutional brokers about earnings of corporations?
A. Yes.
Q. If you look to the right side of the first page of MS 175 you see under the Camper specific heading a bullet which reads as follows: "Camper earning

NOT A CERTIFIED COPY

013122

meeting and it says so in the chronology so I have no reason to dispute that.

Q. What do you recall about the meeting regardless at this point of the source from whom you heard it?

A. I don't recall saying anything about the meeting but I do recall the first meeting after the Bill Reid called where Morgan Stanley came and I didn't look closely enough at the sheet to tell you what it says but it was my understanding they came with an all-stock offer at a price that was less than Reid had indicated. It didn't involve any cash. And that is my recollection.

I don't know if that is what that says.

Q. What is the next thing that you remember happening following this offer as you have just described it?

A. I don't know if it is the next thing that happened but the next thing that relates to this transaction was I think Morgan Stanley was told -- I told them, somebody told them that whatever they

NOT A CERTIFIED COPY

013123

proposed was unacceptable.

Q. Whatever proposal followed Mr. Reid's phone call was unacceptable; is that fair?

A. Yes.

Q. Did you at that point -- did at that point MacAndrews & Forbes make a counterproposal?

A. There was a counterproposal eventually made. I think it was -- I think it was as to the form of the transaction.

There needed to be cash in the transaction and it needed to be a higher price. I don't think -- I don't think there was a price indicated at that time.

Q. I am going to hand you back real quickly Morgan Stanley 175 and if you look under Transaction Specific on the first page, do you see that heading?

A. Yes.

Q. It does state in the first bullet, assumes 100 percent stock finance transaction with purchase accounting.

A. Yes.

Q. Do you see that?

NOT A CERTIFIED COPY

013124

Q. You, as you sit here today, have no specific recollection of what happened at this meeting?

A. No.

Q. You may set -- hold on to your calendar. Keep that in front of you but you may set it aside for the time being.

If you look at the chronology, Morgan Stanley Exhibit 75, you will see there is a reference to a -- the retention of Wachtell, Lipton; do you see that?

A. I do, on the 28th.

Q. Yes, sir. Were you at all involved in that decision?

A. I think -- I mean, I am sure I was aware of the decision. There may have been some discussion about it. I was certainly aware of it.

Q. By January 28 MacAndrews & Forbes either directly or through Coleman had retained both an investment banker and a law firm as part of the negotiations over a possible Coleman transaction; is that fair to say?

A. That is fair to say.

NOT A CERTIFIED COPY

0131125

third entry.

A. Where does it say MacAndrews & Forbes offices?

Q. I think that comes out of another exhibit which is Morgan Stanley 279.

I tell you what. Without setting where the meeting was did you attend the meeting that is shown for January 29?

A. I remember a meeting of this sort of magnitude, this cast of characters, taking place around that period of time to discuss synergies, yes.

Q. Where did that meeting take place as you recall it?

A. I think it may have been at Revlon's office.

Q. At Revlon's offices?

A. I think so.

Q. Where are Revlon's offices?

A. 625 Madison, but I think there is a reference in my calendar, 11th page, Nesbitt, 625 Madison, on the 29th.

Q. Did you attend the entire meeting?

A. I think so.

NOT A CERTIFIED COPY

013126

Q. As of the January -- what was the basic subject matter of the January 29 meeting?

A. Well, it says in the chronology, to discuss potential synergies which would be a combination of Coleman and Sunbeam.

Q. At that meeting, as of the -- sorry.

A. As well as setting a time frame for due diligence.

Q. I take it as of January 29 at least there had been no due diligence done by either side, on your side of the transaction?

MR. MARKOWSKI: Object to the form of the question. I think it mischaracterizes the witness' prior testimony.

THE WITNESS: I wouldn't characterize it that way. There had been work being done all along. When we went back and Nesbitt had done work, I am sure First Boston had done work in preparation for the December meeting. I think there was a period of time when

NOT A CERTIFIED COPY

0131127

probably nothing was done. Prior to the 29th meeting I would imagine that work was being done again by a combination of First Boston, Nesbitt, Levin, Page.

BY MR. BEMIS:

Q. You have told me the -- you have told me some of the work that was done before the meeting with Mr. Dunlap in Palm Beach on December 18. We covered that yesterday, right?

A. We covered that I believe yesterday.

Q. Then I believe you told me that following the meeting on December 18 at Mr. Perelman's home matters broke down; is that right?

A. That is correct.

Q. There was no further discussions, no further investigation or due diligence, if you will, up until the time the parties next met following Mr. Reid's call in the week of January 18; is that fair?

A. I don't know when Reid's call was. Again -- I don't know we established

NOT A CERTIFIED COPY

013128

when Reid's call was.

Q. The public filings say it was on January 22. That was Exhibit MS 79 that we looked at yesterday.

I don't want to quarrel --

A. Okay. I will say the 22nd.

Q. Following the 22nd, following the 22nd we know, you told me, there was a meeting apparently between at least Mr. Nesbitt and certain representatives of Morgan Stanley, correct?

A. Yes.

Q. Between the 23rd and this meeting on the 29th what due diligence had been done by MacAndrews & Forbes concerning a transaction with Sunbeam and Coleman?

A. As I just stated, you asked me a question whether -- you said, I think you said, no due diligence had been done prior to the 29th.

Q. Forget what my other question was. Let's focus on the question I asked you right now.

Between the 23rd of January and the meeting on January 29th what due

NOT A CERTIFIED COPY

013129

Q. Were there discussions at the January 29 meeting among those who attended it about how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal?

A. That is what it says in the chronology. I have no reason to dispute it.

Q. So the due diligence was to proceed once Sunbeam made an acceptable proposal; is that correct?

A. Not necessarily.

Q. What was the agreement reached at the January 29 meeting?

A. The due diligence of -- the specific due diligence relating to interaction between representatives of Sunbeam and Coleman would take place after an acceptable proposal was on the table.

It doesn't mean that Levin wasn't doing work, due diligence work. It doesn't mean that Nesbitt wasn't doing it, it doesn't mean that First Boston wasn't doing it in the interim.

Q. Do you know that they were?

NOT A CERTIFIED COPY

0131130

A. I don't know that they weren't.
Q. Do you know that they were is my question.
Do you have personal knowledge of them, the people you have identified, doing this work?
A. Well, Levin was certainly doing work on the -- on synergies which is certainly part of the due diligence effort.
Q. Anything else?
A. Not that I can think of at the moment.
Q. Let's move forward and there is a reference to Sunbeam entering into a confidentiality agreement with Coleman on or about February 4, 1998.
Do you see that entry?
A. Yes.
Q. Have you seen the confidentiality agreement?
A. I don't recall.
Q. Let me show you a copy of what has been identified as the confidentiality agreement and ask you to please take a moment and look at it.

NOT A CERTIFIED COPY

013131

I have handed the witness what has been marked as MS 133.

Have you had an opportunity to look at MS 133?

A. I have, yes.

Q. Have you ever seen it before?

A. I don't recall seeing it, no.

Q. In your experience as an investment banker is it customary for parties in a transaction being negotiated such as the Coleman-Sunbeam transaction to exchange confidentiality agreements?

A. Generally.

Q. You can hand that back to me.

By the time of the exchange of the confidentiality agreements had you learned of Sunbeam's results for the fourth quarter of 1997?

MR. MARKOWSKI: Object, lack of foundation, mischaracterizes the record. There has been no testimony that there was in fact an exchange of confidentiality agreements.

BY MR. BEMIS:

Q. Let me rephrase the question.

NOT A CERTIFIED COPY

013132

Q. I did.

Let me ask the question again.

Having looked at the document at least as of February 4 were you aware of the reported earnings for Sunbeam for its fourth quarter of 1997 as set forth in MS 206?

A. I imagine I would have been. I don't have a recollection of being specifically informed but I would imagine I would have seen this.

Q. Would you have seen it as part of the clipping service that you received?

A. I would have seen it by reason of the Wall Street Journal article.

Q. You read the Wall Street Journal regularly?

A. Pretty much.

Q. You can hand that back to me.

At the January 29 meeting that we discussed before we turned to the confidentiality agreement was the earnings shortfall reported in MS 206 discussed among the parties at that meeting?

A. I don't recall it being

NOT A CERTIFIED COPY

0131133

discussed.

Q. What is the next thing that you recall in the negotiations following the January 29, 1998 -- excuse me. Let me withdraw that.

What is the next event you recall occurring in the negotiations between Sunbeam and Coleman and their representatives after the January 29, 1998 meeting which you believe took place at Revlon's offices?

A. Well, I have in front of me the chronology from Wachtell, Lipton.

Q. Does that assist you in your testimony looking at that chronology?

A. Yes. MS 75?

Q. Yes.

A. It says there was a meeting attended by Morgan Stanley, Mr. Nesbitt, myself and Mr. Rich, Mr. Duffy of First Boston, and it says that they made a presentation reflecting a transaction which Coleman would be acquired by Sunbeam for .6017 Sunbeam shares per Coleman shares which was approximately $22 a share plus

NOT A CERTIFIED COPY

0131314

warrants that Morgan Stanley valued at $4 per share.

Apparently I indicated that MacAndrews would not be prepared to support such a proposal and advised Morgan Stanley that only an all-stock transaction that valued Coleman stock at $30 a share or an amount slightly lower than $30 a share if the transaction involved cash and stock would be of interest.

It sounds right to me.

Q. As of February 6 the parties hadn't reached an agreement. You were still at a proposal counterproposal stage, correct?

A. Yes.

Q. Is it fair to say that this meeting on February 6 as described in MS 75 was the first time that MacAndrews & Forbes had made a counteroffer as opposed to simply rejecting an offer made by Sunbeam?

A. I think that's correct but I also, as I pointed out earlier, it depends how you characterize counteroffer.

I think our counter -- with a

NOT A CERTIFIED COPY

013135

A. No, not that I recall.

Q. Was Sunbeam the only party that was in the negotiations or even preliminary discussions, if you will, with MacAndrews & Forbes concerning a purchase or some form of business combination with Coleman?

A. Yes, I think that is right.

I am just going to grab some coffee.

Q. At the February 26 meeting, excuse me -- withdrawn.

At the February 6, 1998 meeting we have been discussing was there a discussion at that meeting of Sunbeam assuming as part of a transaction Coleman Worldwide and CLN Holdings' indebtedness?

A. I think that may have occurred at that meeting, yes. I think there was a discussion. I am not sure if it was in that meeting or a later meeting but it was --

Q. Who raised that as a potential point of the structure of a transaction?

A. I think I did.

Q. Did you do that on your own or

NOT A CERTIFIED COPY

013136

was that an instruction you received from Mr. Perelman?

A. I wouldn't have done it on my own, no.

Q. What was the amount of the indebtedness of Coleman Worldwide and CLN Holdings that you were discussing being assumed by Sunbeam as part of the Coleman-Sunbeam transaction should it go forward?

A. I don't remember.

Q. Was it in the hundreds of millions of dollars?

A. Yes, it was.

Q. Was it indeed over a billion dollars?

MR. MARKOWSKI: Object.

THE WITNESS: I don't know what the number was. I am sure you know what the number is. Tell me what it is.

BY MR. BEMIS:

Q. I am not trying to be contentious with you, sir. You don't assume that I know anything right now. If you can answer

NOT A CERTIFIED COPY

013137

Q. Was CLN Holdings a holding company as opposed to an operating company?

A. I am telling you I don't remember the exact structure so --

Q. I didn't ask you the exact structure.

A. These are the companies that -- are you asking me the companies that owned -- are those the companies that owned the stock of Coleman on behalf of MacAndrews & Forbes in the short form?

Q. In short form that is where we are going, yes.

My first question is: Was CLN Holdings a holding company and not an operating company?

MR. MARKOWSKI: I think what Mr. Maher says is he doesn't remember the exact names of the companies.

THE WITNESS: CLN could be a public entity. I don't know which it is. That is my issue.

BY MR. BEMIS:

Q. Did MacAndrews & Forbes, I am going to pick your words, ultimately own

NOT A CERTIFIED COPY

013138

the Coleman common stock, the 82 percent that is attributed to Mr. Perelman?

A. Yes.

Q. It did. Mr. Perelman owned this stock indirectly if you will through a series of holding companies, correct?

A. I believe that is correct.

Q. The debt that you were speaking of assuming was debt of the holding companies within the chain running from Coleman up to ultimately Mr. Perelman's ownership, correct?

A. Yes.

Q. Let me show you -- I only have one extra copy of this exhibit. I am sorry.

I am going to hand you what has been previously marked as Morgan Stanley 108. Do you have that exhibit in front of you?

A. I do.

Q. Mr. Nesbitt testified in his deposition that he prepared this document.

Did -- have you seen the document before?

NOT A CERTIFIED COPY

0131139

Q. How do you obtain those figures?
A. I frankly don't know.
Q. You leave that to the analysts?
A. I call Mr. Nesbitt.
Q. Fair enough.
A. I think you can get them on the internet.
Q. You think the I/B/E/S figures are on the internet?
A. I think so.
Q. Let's set this document aside, MS 108, for now. You can hand it back to me.
Let's try to move forward now from February 6 and let me ask you, was there a response to your counterproposal at the February 6 meeting when you rejected the offer that Sunbeam made that we just reviewed of all cash -- excuse me, all stock and warrants and an implied value of $22 per share?
A. I have the chronology again in front of me.
It says on February 13 Stynes and Kitts called me saying they were making their best and final proposal of .65116

NOT A CERTIFIED COPY

013140

shares of Sunbeam stock which was approximately 24.50.

I apparently indicated it was of no interest.

Q. Going back to the meeting on February 6, did you at that meeting receive a document from Morgan Stanley?

A. Which meeting? Sorry.

Q. The meeting of February 6, the one we were talking about.

A. I don't recall a specific document but I would be surprised if there wasn't one.

Q. Let me show you what has been marked as Exhibit 81 in an earlier deposition.

This, sir, is the exact same document that was attached to Exhibit 108, Mr. Nesbitt's collection of documents.

I would ask you first to take a look at it. I just have a couple of quick questions.

A. Okay.

Q. Do you have the document in front of you?

NOT A CERTIFIED COPY

013141

BY MR. BEMIS:

Q. Mr. Maher, when we broke we were going to turn to the February 13 conference call.

First of all, my understanding is on February 13 you were in Aspen, is that correct, based on your calendar, MS 86?

A. Well, according to my calendar on February 13 I left for Aspen in the afternoon.

Q. Did you take the conference call before or after you left?

A. I am not sure. I don't think it would have been -- it must have been before I left because once I was in the air I wouldn't have taken it.

Q. The reference on February 13, breakfast at 36 East 63rd Street, is a reference to breakfast at Mr. Perelman's townhouse; is that correct?

A. That's correct.

Q. Did the conference call come in at the townhouse or did you take the call at the office?

A. Was it a conference call or a

NOT A CERTIFIED COPY

013142

meeting? I just don't recall.

Q. I don't see a meeting on your calendar on the 13th. Do you?

A. I don't.

Q. All right.

Setting aside --

A. I don't see a conference call either.

Q. That's correct. I don't either.

So setting aside whether it was a conference call or a meeting, this was a communication between the parties which was a response to what had been essentially rejected and the counterproposal of February 6, right?

A. Yes.

Q. Were there any documents that were used in the conference call or the meeting if that is what happened?

A. I don't recall.

Q. Let me show you MS 82.

Let me see if I can see one that is easier for you to read.

I will show you what has been marked as MS 82 at an earlier deposition

NOT A CERTIFIED COPY

013143

changing of the closing date from the second quarter of 1998 as we saw in the earlier documentation?

A. Not that I recall.

Q. What is the next thing that you recall happening after the February 13 call or meeting at which time you rejected the proposal put forth at that time?

A. Once again, referring to the Wachtell, Lipton chronology, MS 75, it appears that Kitts and I had a conversation on the 18th of February which I have no reason to dispute in which he invited a counterproposal.

Q. At this time on February 18 you were back in your office having returned from Aspen, right?

A. According to my calendar I was back in New York, yes.

Q. Were there any documents exchanged in relationship to this telephone call on February 18 -- withdrawn.

In connection with the February 18 telephone call between yourself and Mr. Kitts was there -- were there documents

NOT A CERTIFIED COPY

0131144

exchanged by the parties?

A. Not that I recall.

Q. This again was just a verbal back and forth between the two on various terms?

A. I don't think it is a verbal back and forth on various terms. That is not what the chronology suggests.

Q. Perhaps then I misspoke. Let me try again.

On the telephone call on the 18th was all that was discussed a -- an invitation to MacAndrews & Forbes to make a counterproposal to the offer made on February 13, 1998?

A. I don't know that that is all that was discussed.

Q. Can you -- having read the chronology can you now recall anything else that was discussed?

A. No.

Q. Did Mr. Kitts, to your knowledge -- strike that.

As you sit here today can you recall Mr. Kitts putting any specifics on an invited -- an uninvited counterproposal?

NOT A CERTIFIED COPY

013145

enough. I will not quarrel about something like that. I don't think it is significant either. Let me go back and ask the question in a slightly different way.

BY MR. BEMIS:

Q. After Mr. Kitts spoke to you on February 18 you did have a discussion with Mr. Perelman about Mr. Kitts' call, correct?

A. Yes.

Q. There is a counterproposal that is relayed to Mr. Kitts on February 19, 1998, right?

A. Yes.

Q. That counterproposal was a proposal that was given to you by Mr. Perelman, right?

A. Not necessarily.

Q. What do you mean by that?

A. I don't know whether it was a proposal that Mr. Perelman suggested or a proposal that I suggested that he agreed to or a proposal that somebody else in the room may have suggested that he agreed to

NOT A CERTIFIED COPY

013146

that I delivered, or I am sure there are other permutations.

Q. In any event, Mr. Perelman approved the proposal?

A. I believe that to be the case.

Q. The next thing that happened after Mr. Perelman approves the proposal is that you transmit the proposal to Mr. Kitts; is that right?

A. That sounds correct.

Q. Your proposal which is 7.89 Sunbeam shares per Coleman share which is stated in MS 75 to be $30 per share, does that seem correct, the figures that are in there?

A. It seems correct, yes.

Q. This was an all-stock offer, correct?

A. I think so.

Q. Did the offer include assumption of holding company debt such as we discussed earlier for the debt of Coleman Worldwide and CLN Holdings Inc.?

A. I am not sure.

Q. What was the closing date on this

NOT A CERTIFIED COPY

013147

counterproposal?

A. I don't know what his response was when I gave him the counterproposal.

Q. He didn't immediately accept it, did he?

A. No.

Q. Indeed, is what happened that Mr. Kitts called you later on the same day, that is February 19, and made another proposal?

A. According to the chronology that sounds correct.

Q. The counterproposal was a proposal of 7.11 Sunbeam shares per Coleman share which according to the chronology had a valuation of about $26.90 per Coleman share.

A. Did you say 7.11?

Q. I said .711 I thought. Maybe I did. I did say -- let me ask you the question. Thank you for catching that.

The counterproposal that Mr. Kitts provided was an exchange of .711 Sunbeam shares per Coleman share which according to the chronology had a valuation

NOT A CERTIFIED COPY

013148

of $26.90 per Coleman share; is that correct?

A. Yes.

Q. To the best of your recollection as you sit here today are the figures, those figures, accurate in terms at least of the counterproposal that was given to you?

A. It sounds more or less correct.

Q. Did you -- when Mr. Kitts called you to make this further counterproposal on February 19 were there any documents exchanged in connection with this counterproposal?

A. Not that I recall.

Q. Did you tell Mr. Kitts at the time you received this counterproposal that Coleman would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock which was approximately $28.20 per share?

A. I don't recall whether that was in that same conversation or in a subsequent conversation but it seems to me correct, somewhere either in that

NOT A CERTIFIED COPY

013149

conversation or a subsequent conversation I responded.

Q. Having, at this point, on February 19, you having made this proposal to Mr. Kitts as to what Coleman would be prepared to consider as an exchange ratio of .745 shares, how did Mr. Kitts respond?

A. I don't recall.

Q. Was there any discussion at this point where you make this last proposal on February 19 of assumption of holding company debt of the MacAndrews & Forbes companies?

A. I think at this point in time that was part of the transaction, I think. I am not 100 percent sure but I think.

Q. Was the closing date still the second quarter of 1998 as we looked at earlier?

A. I don't recall.

Q. Let's move forward.

Did Mr. Perelman, by the way, give you the authority to tell Mr. Kitts that Coleman would be prepared to consider the exchange ratio of .745 shares?

NOT A CERTIFIED COPY

013150

A. I don't recall having specific authority but I don't also believe that I would have offered it without either understanding that he was prepared to accept it or having been told specifically that he would accept it.

Q. Let me hand to you now what has been marked previously as Morgan Stanley Exhibit 83.

I have handed you a copy of Morgan Stanley Exhibit 83 and you have that in front of you, correct?

A. Yes.

Q. I will tell you that some of the handwriting on this document is Mr. Nesbitt's by his testimony. I don't represent that all of it is but some of it is.

Did you receive a copy of MS 83?

MR. MARKOWSKI: Are you including the handwriting in your question at this point or just the document?

MR. BEMIS: No, just the document. I am not quarreling over when the handwriting was put on. Did

NOT A CERTIFIED COPY

0131151

he get a copy of the document with or without the handwriting.

THE WITNESS: This looks somewhat familiar to me.

BY MR. BEMIS:

Q. This document bears a date, it is on the very bottom of the document, in the left-hand side, it is on the so-called footer line. You will see it is 022098.

Do you see that?

A. I do.

Q. Does this document in terms of the consideration package, if you will, represent the terms that you counterproposed to Mr. Kitts on February 19?

A. I don't think so but I am not 100 percent sure of that because there are two packages here.

Q. Can we focus on package 1 first? I realize there are two. I note that the exchange ratio on package 1 is .7450, correct?

A. Yes.

Q. That is what you proposed on

NOT A CERTIFIED COPY

013152

wouldn't have discussed it with Perelman, Gittis, Levin, Wachtell, Lipton, First Boston.

Q. When you had -- were there any issues that arose in your discussions with Wachtell, Lipton, First Boston or Mr. Perelman or Mr. Gittis?

A. I don't recall. I don't recall exactly what issues arose out of this.

Q. Okay.

Does this document though, MS 83, form the basis for your further negotiations with Sunbeam or its representatives that leads to the execution of the merger agreements?

A. It formed the basis for further negotiations and those negotiations ultimately led to an execution of the merger agreement.

Q. You can hand that back to me. Thank you very much.

Let me hand you what has previously been marked as Morgan Stanley Exhibit 340.

I will take one second and see if

NOT A CERTIFIED COPY

013153

we marked this exhibit. We might not have.

I misspoke, this exhibit has not been marked and I would ask the court reporter to mark this copy as Morgan Stanley Exhibit 340.

(Morgan Stanley Exhibit 340 marked for identification)

BY MR. BEMIS:

Q. Do you have Exhibit MS 340 in front of you?

A. I do.

Q. The first two pages following the fax cover sheet do have some handwriting on it.

Is any of that handwriting yours?

A. I don't believe so.

Q. Do you know whose it is?

A. I don't.

Q. Did you have any -- did you have any discussions with anyone where the items which are marked "no" in the margin were discussed?

A. I may have. I have specifically "no" next to a preferred share 48-1/8 conversion price, 25 percent premium over

NOT A CERTIFIED COPY

013154

current Laser price.

It says "no" next to it in the column. I don't recall why that says no.

Q. If you turn to page 2 to the right of the heading Shareholder Lockup there is "no" and I think that means registration rights, is that what that means?

A. Probably a reasonable interpretation. It says REGRTS.

Q. That would refer to --

A. I would believe registration rights.

Q. Rather than a lockup of the shares they would be subject to some form of registration rights agreement, correct?

A. It would be the norm.

Q. That would be the norm?

A. Yes.

Q. Going down the page under the heading Acquisition of Publicly Held Camper Shares, there is a termination fee and there is -- to the right it is written, no.

Do you remember discussing that issue with anyone?

NOT A CERTIFIED COPY

0131155

A. I am sure I was involved in discussions about every one of these items but I don't recall it specifically.

Q. Again, the -- I don't see any no or any writing next -- withdrawn.

The expected closing is still shown here as being second quarter of 1998, correct?

A. Yes. Well, it is in two places. It looks like it contemplates two closings.

Q. That ultimately is the form of the transaction that takes place that is a two-step transaction and there are to be indeed two closings, correct?

A. That is my recollection, yes.

Q. On the third page which is entitled Project Laser Pricing Mechanism Overview --

MR. MARKOWSKI: I think that may be the fourth page.

MR. BEMIS: Is it the fourth page on that one? You are correct. It is the fourth page. Thank you.

BY MR. BEMIS:

Q. Item number 1 refers to assumed

NOT A CERTIFIED COPY

013156

Camper holding company debt of 500 million dollars and then it being offset by a portion of the existing holding company stock position in Camper and then at an assumed 26 per camper share valuation.

Do you see that?

A. I do, yes.

Q. Can you tell the jury what that refers to?

A. It is -- it looks to me to be a calculation where the holding company debt is valued at $26 per Camper share held by MacAndrews & Forbes.

Q. There is writing at the bottom that reads -- I think I am reading this correctly -- "Will - other holding company obligations."

Do you see that writing?

A. I do.

Q. Is that your writing?

A. I don't believe so.

Q. Do you know whose it is?

A. No.

Q. On the final page of the document which is transaction pricing calculations,

NOT A CERTIFIED COPY

013157

we have first deal assumptions at the top and it, below the price per Laser share the exchange ratio of .745. That again is what you proposed in your call on February 19, 1998, right?

A. That is correct.

Q. Then there are some basic debt assumptions there, correct? One of them is $500 million?

A. There is the line, debt assumption, assumed face amount -- face value, $500 million."

Q. That is debt of the Coleman Company, Inc., correct?

A. It doesn't say that here but I assume that is correct.

Q. You can set that -- you can set this document aside for right now. You can hand it back to me. Thank you.

Would you agree with me that from February 19 through the execution of the documents on February 28 things moved pretty quickly?

A. I would -- I guess I would characterize it differently. I think

NOT A CERTIFIED COPY

013158

things moved as they would in a normal transaction of this size.

Q. It would be normal in a transaction of this size -- let me step back.

On February 20 did you have a deal -- withdrawn.

On February 19 after you spoke to Mr. Kitts, did you have a deal?

A. Sometime after I spoke to Mr. Kitts we had a rough deal. I don't know when he came back to me and acknowledged what we had.

Q. After you received the February 20, 1998 document that we just went through that was MS 340 did you have a deal?

A. No, because -- I don't think we had a deal. I think we were clearly in the ballpark because the economic value of that transaction was starting to be close to what we were talking about but I don't think we had a final deal at that point in time because I know it changed after that.

Q. You went to -- am I correct that you were in Aspen between February 19 and

NOT A CERTIFIED COPY

013159

February 22 skiing, is that correct, looking at your calendar?

A. February 19?

Q. Through the 22nd.

A. I left on the night of Thursday, the 19th, and spent the weekend in Aspen.

Q. Did you do any negotiations over the weekend in Aspen about this transaction with Sunbeam?

A. I may well have.

Q. Do you have any specific recollection of doing so such that you could tell that to the jury under oath?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: Yes. I think I recall having discussions with Kitts before and after taking off from -- taking off on Thursday evening and I think they continued into Friday and they may have continued all weekend. I don't specifically recall them continuing all weekend but I certainly recall having a discussion or discussions with Kitts on Thursday

NOT A CERTIFIED COPY

0131160

Apparently on the 23rd there was a meeting at some point in time during the day between Nesbitt, Page, Levin, Shapiro, Duffy and Geller with representatives of, it looks like, Morgan Stanley to conduct due diligence.

Later that day there were meetings with -- I met with, it looks like, the First Boston people and then that evening there was a meeting at Morgan Stanley which included Nesbitt, Shapiro, Levin, Page, Maher, Duffy, Steven Isko and Fannin and Kersh, Kitts, Stynes, Fuchs, Chang and Goudis at Morgan Stanley where Sunbeam made a presentation regarding its business and its outlook.

Q. Could I ask you to focus on the first meeting on February 23? You are not shown as attending the first meeting which is identified in MS 75 which you read a moment ago.

Do you see that meeting?

A. On the 23rd?

Q. Yes, sir.

A. I do.

NOT A CERTIFIED COPY

0131161

Q. There is a specific reference to conduct due diligence. Do you see that?

A. Yes.

Q. Do you know what due diligence was done at this meeting on February 23, 1998?

A. I think this meeting was Morgan Stanley's due diligence regarding Sunbeam.

Q. Regarding Sunbeam or regarding Coleman?

A. Regarding Coleman, excuse me.

Q. So then you don't attend this meeting, right? You are not shown as being there.

A. I didn't attend it, nor does my calendar suggest that I did.

Q. Later in the day you have -- you have a meeting with, it looks like, CSFB personnel; is that correct?

A. Yes.

Q. What was the subject matter of that meeting on February 23, 1998 among CSFB personnel and yourself?

A. I can only -- I don't recall specifically. I would think it was to

NOT A CERTIFIED COPY

0113162

discuss the status of the transaction.

Q. When you are discussing -- withdrawn.

Can you recall anything specific about the status of the transaction that you discussed?

A. No.

Q. Then you attend this meeting on February 23 in the evening; is that correct?

A. Yes.

Q. Your calendar refers to a 5:45 p.m. meeting at Morgan Stanley and that is, for the record, on MS 86.

Is that the meeting you attended?

A. Yes. I don't know if it is at 5:30. That is what my calendar says. 5:45.

Q. You said there -- earlier you told me there was a presentation at that meeting by Mr. Fannin and Mr. Kersh. Do you recall that?

A. Yes.

Q. They presented a -- strike that.

What did -- what did Mr. Fannin

NOT A CERTIFIED COPY

0131163

A. I don't recall. I don't recall who asked any questions.

Q. Other than this question to Mr. Stynes do you recall any other questions asked of anyone on behalf of -- withdrawn.

Other than this question addressed to Mr. Stynes do you recall any other questions addressed to Morgan Stanley?

A. Not specifically, no.

Q. Do you recall any specific question ever asked of Morgan Stanley at the February 23 meeting whether Sunbeam would meet its net sales objectives for the first quarter of 1998?

A. No.

Q. Do you recall any question asked of Morgan Stanley at the February 23rd meeting whether Sunbeam would meet its earnings per share estimates for the first quarter of 1998?

A. What was -- go back one question.

Q. What -- do you recall any question asked of Morgan Stanley at the

NOT A CERTIFIED COPY

013164

February 23 meeting whether Sunbeam would meets its earnings per share estimates for the first quarter of 1998?

MR. MARKOWSKI: I think he asked for the prior question.

BY MR. BEMIS:

Q. Do you recall any specific question ever asked of Morgan Stanley at the February 23 meeting whether Sunbeam would meet its net sales objectives for the first quarter of 1998?

A. No. I said, no. No to the second question also.

Q. Okay.

Did anyone ask Morgan Stanley at the meeting whether Sunbeam would meet its long term strategic plan net sales goals for 1998?

A. No.

Q. Did -- I would ask you.

A. I don't recall anybody asking.

Q. I am sorry. I didn't mean to interrupt you.

Did anyone at the February 23 meeting ask anyone at Morgan Stanley

NOT A CERTIFIED COPY

013165

whether Sunbeam would meet its long range strategic plan net sales goals for 1999?

A. Not that I recall.

Q. The same question for the year 2000.

A. Not that I recall.

Q. With regard to earnings per share, did anyone ask Morgan Stanley at the meeting whether Sunbeam would meet its earnings per share projection for 1998 of $2.20 as set forth in this document?

A. Not that I recall.

Q. I would ask you the same question for the periods 1999 and 2000 which have the respective earning per share figures of $2.75 and $3.30.

A. Not that I recall.

Q. Did anyone ask -- did anyone ask at the February 23rd meeting whether Sunbeam had interim financial statements for the month of January 1998?

A. Not that I recall.

Q. Did anyone at the February 23 meeting ask Sunbeam to provide MacAndrews & Forbes copies of their interim financial

NOT A CERTIFIED COPY

013166

statements for January 1998?

A. Not that I recall.

Q. As part of the -- there is a discussion on page CPH, and then the last two digits, 60. If you would turn there please?

A. Okay.

Q. In the left-hand margin -- by the way, this handwriting has been previously identified to be, at least in the belief of one person, Mr. Jerry Levin's handwriting.

Are you familiar with Mr. Levin's handwriting?

A. No, I am not.

Q. Anyway, we will set that issue aside.

Turn to the left-hand column on that page where it is written, dumped 10 million blankets, Japan and China fourth Q.

Do you see that?

A. Yes.

Q. Do you recall Mr. Kersh or anyone else discussing Sunbeam dumping 10 million blankets in Japan and China in the fourth quarter?

NOT A CERTIFIED COPY

013167

the meeting of February 23?

A. For some reason I think there was a Morgan Stanley presentation on -- either on Sunbeam or the combined entity. I just remember something. I don't know whether it was at that meeting or a later meeting or an earlier meeting.

Q. Did you see it in your deposition preparation?

A. I don't recall seeing it, no.

Q. Did you keep a copy of the document from Morgan Stanley?

A. I doubt it.

Q. According to the chronology, we will go back to MS 75, between February 24 and the 27th, 1998, Coleman and Sunbeam and their respective advisers negotiated the structure of the transaction, conducted due diligence and drafted the necessary documentation. Do you see that?

A. I do.

Q. Is that an accurate statement of what happened during that period?

A. I think that is an accurate statement.

NOT A CERTIFIED COPY

013168

Lipton.

Q. It is going to include Wachtell, Lipton and also Credit Suisse First Boston on your side and your accountants.

Let's start with the due diligence kind of in general terms and let me ask you whether there was a person on behalf of MacAndrews & Forbes that had overall responsibility for this due diligence that was conducted between February 24 and February 27, 1998.

A. I would say the laboring oar was, from a business standpoint, was Jerry Levin and Joe Page and their accountants.

Obviously from a legal standpoint it was Wachtell, Lipton and First Boston was involved with both the legal and financial, business due diligence.

Q. Did you have overall responsibility for monitoring the due diligence?

A. No.

Q. Did you have overall responsibility -- I will use a different term -- coordinating the due diligence?

NOT A CERTIFIED COPY

013169

a phone call.

THE VIDEOGRAPHER: Going off the record.

The time is 12:00 p.m.

(Recess)

THE VIDEOGRAPHER: We are back on the record. The time is 12:12.

BY MR. BEMIS:

Q. Mr. Maher, did you give any instructions to Credit Suisse First Boston as to what due diligence they should do in this period between February 24 and February 27, 1998?

A. Other than to do -- none that I recall specifically other than to do their normal due diligence that they would conduct in a transaction like this.

Q. Did you give any instructions to your law firm, Wachtell, Lipton as to what due diligence they should do in this period between February 24 through February 27, 1998?

A. Nothing that I recall specifically; the normal drill.

Q. Did you give your, Coleman's,

NOT A CERTIFIED COPY

0131170

accounting firm -- did you give Coleman's accounting firm, Ernst & Young, any instructions as to the accounting due diligence they should?

A. No. I am sure Page did. I wouldn't have.

Q. With regard to -- with regard to MacAndrews & Forbes internally now excluding your outside advisers was there any person inside MacAndrews & Forbes who was tasked with doing any form of due diligence?

A. I think Will was doing due diligence working with all of the parties, I believe. Will Nesbitt.

Q. Right. I knew who you were talking about.

To your knowledge did any of the group that you have described as conducting the due diligence, CSFB, Wachtell, Lipton, Mr. Nesbitt and the accounting firm of Ernst & Young, did they during this period of due diligence, February 24 through February 27, did they conduct any interviews of any Sunbeam employees about

NOT A CERTIFIED COPY

0131171

Sunbeam's financial performance in the first quarter of 1998?

A. I don't know.

Q. Again, this same group of people?

A. Other than the interviews that occurred at the meeting that took place at Morgan Stanley on the 23rd, there was a pretty thorough vetting of Sunbeam's performance at that meeting with the management of Sunbeam.

Q. Anything other than the February 23 meeting that you are aware of?

A. No.

Q. Are you aware of any of the -- your due diligence team interviewing Sunbeam middle management during the due diligence period?

A. I believe that Levin and Page, Shapiro made a number of visitis to different locations.

I can't tell you where they went or what they did but I would imagine in the course of that they talked to a number of middle managers.

Q. Recognizing --

NOT A CERTIFIED COPY

013172

Q. You negotiate those between the parties?
A. Yes.
Q. And then you reduce them to writing in the contracts?
A. That's right.
Q. The contracts -- they did, in your case there were no other warranties and representations other than what the parties specifically sat down and agreed to?
MR. MARKOWSKI: I object to the form of the question. Mr. Maher said he never read the final versions of the agreement.
THE WITNESS: I didn't read the final version of the agreement.
BY MR. BEMIS:
Q. You read the summaries of the agreements, right, sir?
A. What is your question?
Q. Sir, you -- my question was the contracts that were executed in this case contained representations and warranties by the parties, correct?

NOT A CERTIFIED COPY

0131173

A. Yes.
Q. They were representations by Sunbeam on the one hand, right?
A. I believe so.
Q. And there were representations by Coleman in one of the documents, correct?
A. I believe so.
Q. And representations by CLN Holdings, one the parties to the contract, in the first step of the merger, right?
A. Different, but, yes.
Q. In your, those representations and warranties were all placed in writing after the parties completed their negotiations, correct?
A. Yes.
Q. And in customary fashion the parties in those agreements agreed there were no other representations and warranties other than set forth in the definitive documents that they signed?
MR. MARKOWSKI: Object to the lack of foundation.
THE WITNESS: I don't know that for a fact. If it says it, if you want

NOT A CERTIFIED COPY

013174

to tell me that it says it, then it says it.

BY MR. BEMIS:

Q. You would agree with me if it says that, right?

A. Yes.

Q. If the merger agreements say there are no other warranties and representations other than set forth in those documents you would agree that is an accurate statement?

MR. MARKOWSKI: Objection.

THE WITNESS: Yes.

MR. BEMIS: You will be laughing a different tune later.

BY MR. BEMIS:

Q. Hand that document back to me.

Let's go forward from February 27, 1998.

You told us that you did appear at the board meeting of the Coleman Company, correct?

A. That's correct.

Q. You made a presentation at that time?

NOT A CERTIFIED COPY

0131175

on February 28, as of February 27.

I want to go forward from that date with you.

After February 28 did you have, up until the time of closing which I believe is March 30, 1998, did you, Mr. Maher, have any communications with anyone at Morgan Stanley about Sunbeam-Coleman?

A. Not that I recall.

Q. Are you aware of Mr. -- are you aware of Mr. Levin having any communications with anyone at Morgan Stanley between February 28, 1998 and the closing on March 30, 1998?

A. No.

Q. Mr. Perelman?

A. Not that I am aware of.

Q. Mr. Page?

A. Not that I am aware of.

Q. Mr. Nesbitt?

A. Not that I am aware of.

Q. Are you aware of anyone at Credit Suisse First Boston having any communications with anyone at Morgan Stanley about the Sunbeam transaction

NOT A CERTIFIED COPY

013176

between February 28 and March 30, 1998?

A. Not that I am aware of.

Q. After March -- strike that.

After February 28 and continuing up to the closing which is again March 30, 1998 did MacAndrews & Forbes' due diligence team do any further due diligence on Sunbeam?

MR. MARKOWSKI: Would you read the question back for me please?

(Record read)

THE WITNESS: Other than -- it is my understanding that during that period of time I think there was a number of meetings that involved, I believe, Page and Levin in terms of what the future operations of the company are, would be and how the company was going to be operated. I don't know whether that qualifies for further due diligence under your definition or not but I think those discussions, ongoing discussions, were taking place as to synergies and putting the businesses together and

NOT A CERTIFIED COPY

013177

it occurred, do you?

A. No.

Q. Did you hear from some source what Mr. Kersh said to Mr. Levin?

A. It is my understanding that he was reassuring as to the prospects of the company.

Q. Did someone -- did you hear from some source what Mr. Kersh said to Mr. Levin?

A. No.

Q. Did you ever speak -- strike that.

To this day have you ever spoken to Mr. Levin and asked him whether he spoke to Mr. Kersh?

A. No.

Q. Following the issuance of the March 19 press release -- strike that.

Did you see the March 19 press release on or about that time, March 19?

A. Somewhere around there, yes; somewhere on that day or thereafter.

Q. You were in Aspen between March 14 and March 28, 1998, weren't you?

NOT A CERTIFIED COPY

0113178

A. That's correct.

Q. So how did you find out about the press release in Aspen while you were skiing in Aspen?

A. I don't recall.

Q. While you were skiing in Aspen did you give any instructions to your due diligence team as to any followup they should do with respect to the press release?

A. I didn't have a due diligence team.

Q. MacAndrews & Forbes had a due diligence team, didn't they?

A. Yes.

Q. That is what I am referring to. I think I have been trying to be consistent with that. I will rephrase the question.

Did the MacAndrews & Forbes' due diligence team do anything about the March 19 press release by way of further investigation after it was issued and while you were skiing in Aspen?

A. Well, as I told you I believe that Levin talked to Kersh.

NOT A CERTIFIED COPY

0131179

hearing this in the hallways or wherever at MacAndrews & Forbes -- Mr. Dunlap was making these statements.

Did anyone on the MacAndrews & Forbes' due diligence team call Mr. Dunlap and ask him about the statements that were being attributed to him in connection with the March 19 press release?

A. I don't know.

Q. Did anyone on the MacAndrews & Forbes' due diligence team after the issuance of the March 19 press release ask Sunbeam for copies of their interim financial statements for the first quarter of 1998 to the extent they existed on that date?

A. I don't know.

Q. Did you ever up to the time of closing as a representative of MacAndrews & Forbes ever see an interim financial statement of Sunbeam for the first quarter or any portion of it 1998?

A. No, I didn't see that until after the closing.

Q. At any time up to the closing on

NOT A CERTIFIED COPY

013180

March 30, 1998 did anyone on the MacAndrews & Forbes' due diligence team even request of Sunbeam either directly or through its accountants, Arthur Andersen, a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998?

A. Not that I am aware of.

MR. BEMIS: Why don't we break for lunch?

THE VIDEOGRAPHER: Going off the record. The time is 12:33.

(Luncheon recess: 12:33)

NOT A CERTIFIED COPY

0131181

Q. You don't know?
A. I don't know.
Q. You can hand it back to me.
I asked you earlier whether you had ever seen the offering memorandum and -- withdrawn.
I asked you yesterday whether you had ever seen the offering memorandum for the debentures. You testified yesterday you had not and yet I thought I heard you say a few moments ago you may have seen a red herring?
A. I may have.
Q. You don't know one way or another?
A. No.
Q. The red herring is not the final offering memorandum, correct?
A. No, it is not.
Q. Did you -- strike that.
Did anyone -- withdrawn.
Did MacAndrews & Forbes through any entity that you are aware of purchase any of the debentures issued by Sunbeam in March of 1998 and underwritten by Morgan

NOT A CERTIFIED COPY

013182

Stanley in connection with the Sunbeam-Coleman transaction?

A. I don't know.

Q. You don't know of any?

A. I don't know of any.

Q. You didn't buy any, did you, personally?

A. Personally, no.

Q. You didn't buy any on behalf of Mr. Perelman's companies, did you?

A. No. I already answered that.

Q. Let me show you what has been marked as -- before I show you this document, stepping back to the underwriting, did you see any of the documents executed between Morgan Stanley and Sunbeam in connection with the underwriting such as a notes purchase agreement, underwriting agreement?

A. I doubt it.

Q. When you have done, you have done -- strike that.

Your firm, at least when you worked with them, First Boston, did underwritings; you told me that, right?

NOT A CERTIFIED COPY

013183

A. Yes.

Q. You are familiar and have seen underwriting agreements, correct?

A. Yes.

Q. For securities that are subject to the 1933 Securities Act you are familiar with the due diligence defense of underwriters, are you not?

A. It has been a long time so refresh my memory.

Q. As an underwriter you understand that under section 33 of the 1933 Act, that underwriters are absolutely liable for statements in an underwriting memorandum absent the availability of due diligence.

Do you recall that from your many years in investment banking?

A. I told you, most of my time was on the M&A side of the business, merger and acquisition, but that sounds correct.

Q. In connection with underwritings that you are familiar with it is customary, is it not, to include the financial statements of the offering company in the offering memorandum as certified by the

NOT A CERTIFIED COPY

0131184

auditors, correct?

A. Yes.

Q. Are you familiar -- are you familiar with the term "comfort letters?"

A. Yes.

Q. You have seen them before?

A. Yes.

Q. Is it not indeed customary in the case of an underwriting for securities such as was done in the Sunbeam transaction by virtue of the debentures to obtain comfort letters from the auditors in connection with the offering memorandum?

A. Yes.

Q. I am going to ask you to take a look at Morgan Stanley 166 which is the offering memorandum that has previously been identified by other witnesses.

MR. MARKOWSKI: Do you have a copy I can use?

MR. BEMIS: Sure.

BY MR. BEMIS:

Q. Let me withdraw that question and start over again.

I have handed you what has

NOT A CERTIFIED COPY

013185

previously been marked as MS 166 which is the offering memorandum for the Sunbeam zero coupon convertible senior subordinated debentures 2018.

Do you have that in front of you?

A. I do.

Q. My understanding is that you did not see -- you have not seen this offering memorandum before, right?

A. I told you I wasn't sure. I don't think I have.

Q. In connection with the offering memorandum, Coleman's financial statements are attached to this, to this document as are Sunbeam's financial statements?

A. Okay.

Q. Did you have -- did you have any role in having Ernst & Young provide its consent to have its financial statements included in the offering memorandum?

A. No.

Q. In connection with -- in connection with the offering memorandum for the debentures were you aware that Morgan Stanley would in the ordinary course have

NOT A CERTIFIED COPY

0131186

received comfort letters from the auditors whose financial statements as certified by them are included in the offering memorandum?

A. The question --

Q. Let me rephrase the question.

A. I think I know what you are asking.

Q. In connection with the inclusion of the financial statements in the offering memorandum for Coleman which, for example, are in here, is it customary for the --

A. And for Sunbeam.

Q. And for Sunbeam.

A. And the other companies.

Q. First Alert and Signature Brands to have their auditors provide comfort letters with respect to the financial statements included in the offering memorandum?

A. Yes.

Q. Am I correct, sir, that -- let me try again.

Am I correct, sir, that a comfort letter in this case which -- we are dealing

NOT A CERTIFIED COPY

013187

with a period mid first quarter, would provide certain comfort to the underwriter with regard to the period since the last audited financial statement included in the offering memorandum?

A. Comfort or discomfort, yes.

Q. Comfort or discomfort?

A. Yes.

Q. For example, nothing has come to you attention except that?

A. Something along those lines.

Q. You are familiar with that?

A. Yes.

Q. In connection with the offering memorandum for the zero coupons bonds, the Coleman Company's auditors, Ernst & Young, did provide a comfort letter to Morgan Stanley.

Have you seen that letter?

A. The Coleman?

Q. Yes.

A. No.

Q. Did you --

MR. MARKOWSKI: Sorry. Could you read the question back please?

NOT A CERTIFIED COPY

013188

MR. BEMIS: In connection with the offering memorandum for the zero coupon bonds the -- I misspoke. I will rephrase the question. I called them bonds rather than debentures.

BY MR. BEMIS:

Q. In connection with the offering memorandum for the zero coupon debentures Ernst & Young did provide a comfort letter to Morgan Stanley. Have you seen that letter?

A. I did not.

Q. Have you ever asked to see that letter at any time?

A. No.

Q. In connection with the offering memorandum for the zero coupon debentures the auditors for Sunbeam, Arthur Andersen, provided a comfort letter to Morgan Stanley. Have you ever seen that letter?

A. Yes.

Q. When did you first see it?

A. I can't tell you when I first saw it. It was sometime after -- after -- after -- year -- years later. It may have

NOT A CERTIFIED COPY

0131189

been in connection with the, or during the period of time after the, let's call it, the collapse of Sunbeam.

Q. Is it fair to say, sir, that MacAndrews & Forbes did not, until sometime after March 30, 1998, the date of the closing, request from either Sunbeam or Arthur Andersen, for that matter, a copy of the comfort letter provided by Arthur Andersen in connection with the debenture offering?

A. I don't know that for a fact.

Q. Did you request a copy of the Arthur Andersen comfort letter?

A. I did not.

Q. Did you request anyone at MacAndrews & Forbes on the due diligence team to request a copy of the audit comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the debenture offering?

A. I did not but I must tell you I took a fair amount of comfort that Morgan Stanley, having released this release and knowing they had a comfort letter from the

NOT A CERTIFIED COPY

013190

(Record read)

BY MR. BEMIS:

Q. Did you want to say anything else?

A. No.

Q. Did you ask the auditors on your due diligence team which was Ernst & Young to make any inquiries of Arthur Andersen about Arthur Andersen's comfort letter issued to Morgan Stanley by Arthur Andersen in connection with the debenture offer?

A. Did not.

Q. Are you aware of anyone on the MacAndrews & Forbes' due diligence team making such a request through Ernst & Young?

A. I am not.

Q. Did you get -- did you get, and if I asked you this I apologize, but did you, that is, MacAndrews & Forbes, get a copy of the Ernst & Young comfort letter that was sent to Morgan Stanley?

A. I don't know. Obviously you are including Coleman in that?

Q. Yes, I am.

NOT A CERTIFIED COPY

0131191

MR. MARKOWSKI: I gave it to you.
BY MR. BEMIS:
Q. At any time following the issuance of the March 19 press release are you aware of anyone at MacAndrews & Forbes on the due diligence team asking Sunbeam for the contents of the Arthur Andersen comfort letter that was issued in connection with the debentures?
A. I think you asked me that question already.
Q. I may have and I apologize if I did. I just want to make sure I close this out and we will go on.
A. No.
Q. Are you aware after March 19 of anyone on the MacAndrews & Forbes' due diligence team asking Morgan Stanley for the contents of the comfort letter provided to Morgan Stanley in connection with the debenture offer?
A. I am not.
Q. Are you aware of anyone on behalf of the MacAndrews & Forbes' due diligence team after March 19 asking anyone at Arthur

NOT A CERTIFIED COPY

0131192

Andersen about the contents of the comfort letter issued in connection with the offering of the debentures?

A. I am not.

Q. You knew on behalf of MacAndrews & Forbes that at least as of the closing, March 30, that Sunbeam would have interim financial statements for a period of approximately three months as of the date of closing, is that right?

A. I am not sure I understand the question you are asking.

Q. Let me try again. If you don't understand it it wouldn't do any good to have you answer it.

At the time of the closing, you, Mr. Maher --

A. Yes.

Q. -- your history of investment banking and being sophisticated financially as you are knew that Sunbeam had interim financial statements as of March 30, 1998, interim financial statements?

A. Quarterly statements?

Q. Actually they would be monthly

NOT A CERTIFIED COPY

0013193

statements which would get eventually wrapped into quarterly statements.

You knew they had interim financial statements, that is, Sunbeam?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: I knew they would have quarterly statements. I didn't know for a fact they had monthly statements.

BY MR. BEMIS:

Q. Did you ever ask them?

A. I don't recall asking them, no.

Q. Did anyone on the --

A. I think you asked that question before.

Q. I probably did.

Did anyone on behalf of the MacAndrews & Forbes' due diligence team ask anyone on the Sunbeam side of the transaction whether Sunbeam had monthly interim financial statements?

A. I don't know.

Q. Have you ever heard that Sunbeam engaged in what the accountants call bill

NOT A CERTIFIED COPY

0131194

offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors in addition to other information set forth in this offering memorandum in connection with an investment in the debentures offered hereby."

Standard language.

Q. Just boilerplate in your view?

A. Yes.

Q. Turn to page 16 and tell me when you are there.

A. I am there.

Q. There is a caption for seasonality, do you see that?

A. Yes.

Q. Would you read that section into the record for the jury please?

A. "Sales of certain of the company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the years. For instance, company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by

NOT A CERTIFIED COPY

013195

moderate temperatures in the northern states. The company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an early buy program. Such a program shifts certain of the weather-related risks of negative sales impact for such seasonal products to later months of the season and as a result could have a negative impact on future financial performance."

Q. Had you read the offering memorandum you would have been aware of this information at the time of the closing on March 30, 1998, correct?

A. I would have been aware of what?

Q. The language you just read to the jury.

A. If I had read the memorandum I would have been aware of what?

Q. The language you just read to the jury.

A. Yes.

Q. Was there any discussion at the February 23 meeting of the extent of

NOT A CERTIFIED COPY

0131196

Q. Are you all done?
A. Yes.
Q. As of March 30, 1998 had you read the offering memorandum you would have known that at least according to Arthur Andersen approximately 3 percent of Sunbeam's consolidated revenues were the product of sales on a bill and hold basis, wouldn't you?
MR. MARKOWSKI: Object to the reference of this being Arthur Andersen's statement.
BY MR. BEMIS:
Q. I will rephrase the question.
If you had read the offering memorandum as of March 30, 1998 you would have known that in footnote 1 of Sunbeam's financial statements it was disclosed that for the year 1997 approximately 3 percent of Sunbeam's consolidated revenues were the product of sales on a bill and hold basis, wouldn't you?
A. Anybody who read that statement would know that.
Q. Thank you very much. You can

NOT A CERTIFIED COPY

013197

A. I presume so, yes.
Q. Do you know what year you looked at?
A. Probably 1997. Before what date?
Q. Before the closing on December 30, 1998.
A. December 30, 1998?
Q. I misspoke. March 30, 1998. Let me ask the question again.
Before March 30, 1998 did you look at Sunbeam's form 10-K for the year 1997? Earlier you testified did you not.
A. I don't recall looking at it.
Q. Look at page 6 under the heading Seasonality and tell me when you are there.
A. I am there.
Q. Do you see the underlining that appears on page 6 which bears the Bates number CPH1428836? Do you see it?
A. Yes.
Q. Would you read it into the record for the jury please?
A. "During 1997 the company initiated early buy programs for highly seasonal products such as grills and

NOT A CERTIFIED COPY

013198

filings. That is all.

Q. Okay. I hear your point.

Would you answer my question?

A. Which is?

Q. Are you aware of any request by the MacAndrews & Forbes' due diligence team directed to either Sunbeam or its accountants to examine Sunbeam's books and records, properties, personnel, copies of any documents filed with the federal or state securities authorities pursuant to Section 6.7 of MS 93?

A. No.

Q. Can you hand that back to me?

I have handed you what has previously been marked as MS 117, the agreement and plan of merger among Sunbeam Corporation, Camper Acquisition Corporation and the Coleman Company, Inc. dated as of February 27, 1998.

Do you have that in front of you?

A. I do.

Q. Please turn to Section 7.26, the document on page 29, entitled Access and Information; Confidentiality.

NOT A CERTIFIED COPY

0131199

Tell me when you are there.

A. I am there.

Q. Are you aware of any request by Coleman pursuant to this Section 7.2 made to either Sunbeam or its accountants or its legal counsel or its financial advisers for access to books and records relating to Sunbeam and, in particular, books and records relating to properties, plants, personnel, business operations, et cetera?

A. I am not but as we talked about earlier today after signing the merger agreement there was a -- it is my understanding that management of Sunbeam and management of Coleman started to spend a lot of time together so information of this nature quite naturally I think was passed back and forth during that period of time. I don't have any firsthand knowledge of it.

Q. You can hand it back to me.

My understanding of the meetings you were talking about were meetings in connection with the proposed combination of the companies and how they would be

NOT A CERTIFIED COPY

013200

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

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

CASE NO. CA 03-5045 AI

FILED
Dec 23 2004
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSE IN OPPOSITION TO MORGAN STANLEY'S MOTION FOR SUMMARY JUDGMENT

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

05510

495

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 2

A. The Initiation Of The Sunbeam Fraud By The Dunlap Management Team 2

B. Morgan Stanley Joins Sunbeam's Team 4

C. Morgan Stanley Cannot Find A Buyer For Sunbeam And Changes Strategy 8

D. Morgan Stanley And Sunbeam Meet With CPH Representatives And CPH Considers A Potential Transaction With Sunbeam 10

E. The February 23, 1998 Session And CPH's Follow Up Due-Diligence 13

F. CPH Agrees To Sell Its Coleman Stock To Sunbeam 16

G. Morgan Stanley Obtains More And More Confirmation Of The Sunbeam Fraud 18

H. The March 19 Press Release 21

I. Sunbeam's Outside Auditor Cries Foul on March 19, 1998 27

J. The More Morgan Stanley Learns, The Less Morgan Stanley Says 29

ARGUMENT 33

I. Morgan Stanley's Summary Judgment Motion Should Be Denied At The Threshold Because It Is Based Entirely On The Erroneous Legal Assumption That The Moving Party Can Prevail On A Summary Judgment Motion Merely By Asserting That The Plaintiff Has No Evidence To Support Its Claims 35

II. Morgan Stanley's Individual Attacks On CPH's Claims Are Insufficient To Warrant Summary Judgment In Morgan Stanley's Favor 37

A. CPH's Negligent Misrepresentation Claim Should Be Allowed To Proceed To Trial 37

1. Morgan Stanley Has Failed To Demonstrate Conclusively The Non-Existence Of A Special Relationship Between The Parties 37

2. The Question Of Whether A Special Relationship Exists Almost Invariably Involves Issues Of Fact Precluding Summary Judgment 38

NOT A CERTIFIED COPY

016331

3. The Record Contains Ample Evidence Of A Special Relationship Between The Parties 40

a. Morgan Stanley And CPH Had A Longstanding Prior Relationship 40

b. Morgan Stanley Had Extensive Contacts With CPH During The Sunbeam Transaction 43

B. CPH's Fraudulent Misrepresentation Claim Should Be Allowed To Proceed To Trial 46

1. A Triable Issue Of Fact Exists Concerning CPH's Justifiable Reliance 46

a. Morgan Stanley Has Failed To Carry Its Burden Of Establishing The Non-Existence Of CPH's Reliance....46

b. Whether CPH Justifiably Relied On Morgan Stanley's Representations Is A Fact-Intensive Inquiry That Cannot Be Resolved On Summary Judgment....47

c. CPH Conducted A Reasonable Investigation Into Sunbeam's Finances....48

d. CPH Did Not Have A Duty to Inquire Into Or Discover Material Adverse Changes 52

e. The Fact That CPH's Reliance Was Justified Is Confirmed By The Testimony Of Morgan Stanley's Senior Executives....53

f. CPH's Expert Further Explains Why CPH's Reliance Was Reasonable 54

g. The Fraud Was Peculiarly Within The Knowledge Of Morgan Stanley....54

h. Morgan Stanley's Additional Arguments Also Lack Merit 57

2. A Triable Issue Of Fact Exists On Morgan Stanley's Scienter Or Intent To Defraud 63

C. CPH's Aiding And Abetting Fraud Claim Should Be Allowed To Proceed To Trial 67

1. Florida Law Applies To CPH's Aiding And Abetting Claim....67

NOT A CERTIFIED COPY

013392

16div-020360

a. Because Morgan Stanley Has Failed To Identify An Outcome-Determinative Conflict Between Florida And New York Law, Florida Law Controls CPH's Aiding and Abetting Claim 68

b. Even Assuming That There Is A Conflict Between New York And Florida Law, Under This Court's Choice of Law Order Read In Light Of The Facts Developed Since The Order, Florida Law Governs CPH's Aiding and Abetting Claim 69

c. Even Assuming That It Is Necessary To Proceed Further With A Formal Choice Of Law Analysis, Under The *Restatement*, Florida Law Plainly Controls 75

2. Under Florida Law — Or, For That Matter, New York Law — Morgan Stanley's Substantive Attacks On CPH's Aiding And Abetting Claim Are Baseless 75

a. A Triable Issue Of Fact Exists On Whether Morgan Stanley Had Actual Knowledge That Sunbeam Engaged in Fraud 75

b. A Triable Issue Of Fact Exists On Whether Morgan Stanley Provided Substantial Assistance To Sunbeam In Effectuating Its Fraud 80

D. CPH's Conspiracy Claim Should Be Allowed To Proceed To Trial 82

1. As A Threshold Matter, Florida Law Applies To This Claim, For The Same Reasons It Applies To CPH's Aiding And Abetting Claim 82

2. Morgan Stanley Is Not Entitled To Summary Judgment On CPH's Conspiracy Claim 83

CONCLUSION 85

NOT A CERTIFIED COPY

013393

16div-020361

TABLE OF AUTHORITIES

Cases

Page

AES Corp. v. Dow Chemical Co., 325 F.3d 174 (3d Cir. 2003) 63

AFA Protective System, Inc. v. American Telegraph & Telegraph Co., Inc., 442 N.E.2d 1268 (N.Y. 1982) 38

Abrahami v. UPC Construction Co., Inc., 638 N.Y.S.2d 11 (N.Y. App. 1996) 60

In re Adler, Coleman Clearing Corp., 247 B.R. 51 (Bankr. S.D.N.Y. 1999) 46

Alepgo Corp. v. Puzin, 114 So. 2d 645 (Fla. 3d DCA 1959) 64

Alexander v. Evans, 1993 WL 427409 (S.D.N.Y. 1993) 58

American Protein Corp. v. AB Volvo, 844 F.2d 56 (2d Cir. 1988) 40

Amiot v. Ames, 693 A.2d 675 (Vt. 1997) 70

Armstrong v. McAlpin, 699 F.2d 79 (2d Cir. 1983) 82

Baker v. United Serv. Automobile Association, 661 So. 2d 128 (Fla. 1st DCA 1995) 64

Ben Soep Co. v. Highgate Hall of Orange County, Inc., 535 N.Y.S.2d 1018 (N.Y. Sup. Ct. 1988) 77

Besset v. Basnett, 389 So. 2d 995 (Fla. 1980) 74

BF Capital Mgmt. v. Askin Capital Mgmt., 957 F. Supp. 1308 (S.D.N.Y. 1997) 82

Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla. 1980 73

Board of Trustees of the Internal Improvement Trust Fund v. Florida Utilities Co., 599 So. 2d 1356 (Fla. 1st DCA 1992) 34

Borden, Inc. v. Spoor Behrins Campbell & Young, Inc., 828 F. Supp. 216 (S.D.N.Y. 1993) 83, 84

Bryant v. Shands Teaching Hospital & Clinics, Inc., 479 So. 2d 165 (Fla. 4th DCA 1985) 76

Cewnick Fund v. Castle, 1993 WL 88243 (S.D.N.Y. 1993) 39

NOT A CERTIFIED COPY

0133914

Chance v. E.I. Du Pont De Nemours & Co., 57 F.R.D. 165 (E.D.N.Y. 1972) 70

Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2d DCA 1996) 33

Cohan v. Sicular, 625 N.Y.S.2d 278 (N.Y. App. Div. 1995) 62

Cohen v. Cravit Estate Buyers, Inc., 843 So. 2d 989 (Fla. 4th DCA 2003) 64, 77

Collins v. Collins, 36 So. 2d 417 (Fla. 1948) 69

Coltec Indus. v. Zurich Insur. Co., 2004 WL 413304 (N.D. Ill. 2004) 69, 70

Coolite Corp. v. American Cyanamid Co., 52 A.D.2d 486 (N.Y. App. Div. 1976) 39, 40

Country World, Inc. v. Imperial Frozen Foods Co., 589 N.Y.S.2d 81 (N.Y. App. Div. 1992) 47

CPC International Inc. v. McKesson Corp., 514 N.E.2d 116 (N.Y. 1987) 80

Credit Alliance Corp. v. Arthur Andersen & Co, 483 N.E.2d 110 (N.Y. 1985) 45

Crigger v. Fahnestock & Co., 2003 WL 22170607 (S.D.N.Y. 2003) 48, 52

Crowell v. Clay Hyder Trucking Lines, Inc., , 700 So. 2d 120 (Fla. 2d DCA 1997) 69

Czarnecki v. Roller, 726 F.Supp. 832 (S.D. Fla. 1989) 84

Daeda v. Blue Cross & Blue Shield of Florida, 698 So. 2d 617 (Fla. 2d DCA 1999) 33

Danann Realty Corp. v. Harris, 5 N.Y.2d 317 (N.Y. 1959) 55

Dean v. Gold Coast Theatres, Inc., 156 So. 2d 546 (Fla. 2d DCA 1963) 77

Delta Holdings, Inc. v. National Distillers & Chem. Corp., 1988 WL 36330 (S.D.N.Y. 1988) 39

Department of Revenue v. Rudd, 545 So. 2d 369 (Fla. 1st DCA 1989) 77

DIMON Inc. v. Folium, Inc., 48 F. Supp. 2d 359 (S.D.N.Y. 1999) 39, 43, 58, 63

Diodato v. Eastchester Development Corp., 489 N.Y.S.2d 293 (N.Y. App. Div. 1985) 62

Doehla v. Wathne Limited, Inc., 1999 WL 566311 (S.D.N.Y. 1999) 47

Donofrio v. Matassini, 503 So. 2d 1278 (Fla. 2d DCA 1987) 83

Filler v. Hanvit Bank, 339 F. Supp. 2d 553 (S.D.N.Y. 2004) 80

NOT A CERTIFIED COPY

0133395

16div-020363

Five G's Car Sales, Inc. v. Florida Department of Law Enforcement, 581 So. 2d 212 (Fla. 3d DCA 1991) 36

Gabriel Capital, L.P. v. NationalWest Finance, Inc., 94 F. Supp. 2d 491 (S.D.N.Y. 2000) 68

Giannacopoulos v. Credit Suisse, 37 F. Supp. 2d 626 (S.D.N.Y. 1999) 60

Gordon P. Getty Family Trust, 1998 WL 148425 (S.D.N.Y. 1998) 40, 42

Green v. CSX Transport, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993) 36

Gruber v. Victor, 1996 WL 492991 (S.D.N.Y. 1996) 38

Grumman Aerospace Corp. v. Rice, 605 N.Y.S.2d 305 (N.Y. App. Div. 1993) 64

Gustafson v. Jensen, 515 So. 2d 1298 (Fla. 3d DCA 1987) 69

Hermes v. Anton, 300 So. 2d 46 (Fla. 3d DCA 1974) 64

Hervey v Alfonso, 650 So. 2d 644 (Fla. 2d DCA 1995) 33

Hinote v. Brigman, 33 So. 303 (Fla. 1902) 17, 61

Holl v. Talcott, 191 So. 2d 40 (Fla. 1966) 1, 33, 36, 38, 64, 81

Houbigant, Inc. v. Deloitte & Touche *LLP*, 753 N.Y.S.2d 493 (N.Y. App. Div. 2003) 68, 77

Household Commercial Fin. Servs., Inc. v. Schottenstein, 1991 WL 111206 (N.D. Ill. 1991) 52

Hy Cite Corp. v. Badbusinessbureau.com, L.L.C., 297 F.Supp.2d 1154 (W.D. Wis. 2004) 74, 75

IIT v. Cornfeld, 619 F.2d 909 (2d Cir. 1980) 82

JP Morgan Chase Bank v. Winnick, 2004 WL 1418197 (S.D.N.Y. 2004) 47, 48, 55

Keywell Corp. v. Weinstein, 33 F.3d 159 (2d Cir. 1994) 59

Khosrow Maleki, P.A. v. M.A. Hajianpour, M.D., P.A., 771 So. 2d 628 (Fla. 4th DCA 2000) 33, 34

Kimmell v. Schaefer, 675 N.E.2d 450 (N.Y. 1996) 39, 40

Long Island Sav. Bank, F.S.B. v. Bigman, 1991 WL 144224 (E.D.N.Y. 1991) 46

NOT A CERTIFIED COPY

0133396

Mallis v. Bankers Trust Co., 615 F.2d 68 (2d Cir. 1980) 47, 55

Manufacturers Hanover Trust Co. v. Yanakas, 7 F.3d 310 (2d Cir. 1993) 62

Morse v. Swank, Inc., 459 F. Supp. 660 (S.D.N.Y. 1978) 40

Nakano v. Jamie Sadock, Inc., 2000 WL 1010825 (S.D.N.Y. 2000) 48, 51

Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So.2 d 1138 (Fla. 2d DCA 2000) 34

Novotny v. Estate of Dantone, 848 So. 2d 398 (Fla. 4th DCA 2003) 34

Ossining Union Free Sch. District v. Andersen LaRocca Andersen, 539 N.E.2d 91 (N.Y. 1989) 45

Pearce v. Knepper, 53 N.Y.S.2d 845 (N.Y. Sup. Ct. 1945) 63

Peltz v. Mountleigh Holdings, 1998 WL 148425 (S.D.N.Y. 1998) 48

Peoples Gas System, Inc. v. Acme Gas Corp., 689 So. 2d 292 (Fla. 3d DCA 1997) 76

Polycast Technology Corp. v. Uniroyal, Inc., 792 F. Supp. 244 (S.D.N.Y. 1992).....39, 43

Primavera Familienstifung v. Askin, 130 F. Supp. 2d 450 (S.D.N.Y. 2001) 48

Prudential Insurance Co. v. Dewey, Ballantine, Bushby, Palmer & Wood, 605 N.E.2d 318 (N.Y. 1992) 45

In re Rickel & Associates, Inc, 272 B.R. 74 (Bankr. S.D.N.Y. 2002) 39

Robinson v. Kalmanson, 882 So. 2d 1086 (Fla. 5th DCA 2004).....38, 64

Rotterdam Ventures, Inc. v. Ernst & Young LLP, 752 N.Y.S.2d 746 (N.Y. App. Div. 2002) 60

Rubley v. Keene Corp., 480 So. 2d 675 (Fla. 1st DCA 1985) 33

SEC v. Lybrand, 200 F. Supp. 2d 384 (S.D.N.Y. 2002) 77

Schlaifer Nance & Co. v. Estate of Warhol, 119 F.3d 91 (2d Cir. 1997) 47, 59

Schumaker v. Mather, 30 N.E. 755 (N.Y. 1892) 55

State v. Welch-Richards, 618 N.Y.S.2d 923 (N.Y. App. Div. 1994) 64

Strong & Trowbridge Co. v. H. Baars & Co., 54 So. 92 (Fla. 1910) 17, 61

NOT A CERTIFIED COPY

013397

Suez Equity Investment, L.P. v. Toronto-Dominion Bank, 250 F.3d 87 (2d Cir. 2001) 39

Tew v. Chase Manhattan Bank, N.A., 728 F. Supp. 1551 (S.D. Fla. 1990).....68, 76, 81

Tune v. Philip Morris Inc., 766 So. 2d 350 (Fla. 2d DCA 2000) 69

UniCredito Italiano SPA v. JP Morgan Chase Bank, 288 F. Supp. 2d 485 (S.D.N.Y. 2003) 68

UST Private Equity Investment Fund, Inc. v. Salomon Smith Barney, 733 N.Y.S.2d 385 (N.Y. App. Div. 2001) 60

Visingardi v. Tirone, 193 So. 2d 601 (Fla. 1967) 1, 34, 36

WIT Holding Corp. v. Klein, 724 N.Y.S.2d 66 (N.Y. App. Div. 2001) 42

Williams v. City of Lake City, 62 So. 2d 732 (Fla. 1953) 34, 38, 45, 85

Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977) 1

Statute and Rule

15 U.S.C. § 78m 12

Fla. R. Civ. P. 1.510 33

Miscellaneous

Fla. Jur. 2d, *Summary Judgment and Judgment on the Pleadings*, § 50 34

11 Fla. Jur. *Contracts* § 100 (2004).....17

William H. Kuehnle, Secondary Liability Under the Federal Securities Laws —*Aiding and Abetting, Conspiracy, Controlling Person, and Agency: Common-Law Principles and the Statutory Scheme*, 14 J.Corp.L. 313, 346 (1988) 83, 84

60A N.Y. Jur. 2d, *Fraud and Deceit* § 227 (2001) 62

Restatement (Second) of Conflicts of Law § 6 75

Restatement (Second) of Conflicts of Law § 148 .....73, 74, 75

J. Weinstein & M. Berger, *Weinstein's Evidence* § 104[08], at 104-98 n.8 (1982) 69

NOT A CERTIFIED COPY

013398

INTRODUCTION

Morgan Stanley has filed a motion for summary judgment in which it asks this Court to accept as undisputed more than 300 purported facts and conclusions of law — a request that, by itself, exposes just how inappropriate this case is for summary judgment treatment. Then, in its memorandum of law, Morgan Stanley argues over and over again that it is entitled to summary judgment because "CPH has not presented any evidence" of essential elements of its claims. *See, e.g.*, MS Mem. 13, 15, 18, 22, 26, 30, 32. In doing so, Morgan Stanley ignores that, under Florida law, the defendant moving for summary judgment must show conclusively that the plaintiff has no claim. The plaintiff is not required to make any showing unless and until the defendant has proved the non-existence of a material fact. *See, e.g.*, *Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1967) (rejecting defendant's contention that it is entitled to summary judgment if the plaintiff fails to "come forward with sufficient . . . support for each and every fact which he must establish in order to prevail" concluding while defendant "correctly state[s] the burden of the plaintiff at trial," defendant misstates "his burden as the party opposing a motion for summary judgment"); *see also Holl v. Talcott*, 191 So. 2d 40, 47-48 (Fla. 1966) (party moving for summary judgment meets its burden either by "showing conclusively that he is not guilty of the negligence charged against him" or "by showing conclusively that the plaintiff is unable to present requisite proof of the negligence charged"); *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29, 31 (Fla. 1977) ("Unless a [defendant] can show unequivocally that there was no negligence, or that plaintiff's negligence was the sole proximate cause of the injury, courts will not be disposed to granting a summary judgment in its favor.").

Morgan Stanley does not even attempt to meet its stringent summary judgment burden, and as shown below, Morgan Stanley cannot do so. Thus, the applicable law — as well as the

NOT A CERTIFIED COPY

013999

material facts that Morgan Stanley studiously ignores — establish that triable issues of fact remain on each and every one of CPH's claims.

STATEMENT OF FACTS

A. The Initiation Of The Sunbeam Fraud By The Dunlap Management Team.

The backdrop for this lawsuit is the massive Florida-based fraud that occurred at Sunbeam Corporation during the tenure of its former Chief Executive Officer, Albert Dunlap. The fraud resulted in hundreds of millions of dollars of damage to CPH, as the value of Sunbeam stock it received dropped from more than $50 per share to 0.

The existence of the Florida-based fraud involving Sunbeam is a matter of public record and resulted in the termination of top Sunbeam executives, a restatement of Sunbeam's financial statements from the fourth quarter of 1996 to the first quarter of 1998, Sunbeam's bankruptcy, and numerous lawsuits filed here in Florida. CPH App. 4 (CPH Ex. 21); CPH App. 5 (CPH Ex. 22 at 1); CPH App. 6 (Denkhaus Dep. at 69-73); CPH App. 7, 8 (Levin Dep. at 76-77, 398-99).[1]

Morgan Stanley's own litigation against Arthur Andersen (pending before Judge Miller) is centered around "Andersen and Sunbeam's Fraudulent Scheme." (CPH App. 68 (Morgan Stanley Amended Complaint ¶ 30)). As Morgan Stanley admits in its complaint (CPH App. 68 (Amended Complaint ¶ 30)):

> Unbeknownst to the public and to Plaintiffs, Sunbeam's new senior management embarked upon a scheme designed to misrepresent Sunbeam's financial condition. Sunbeam's subsequent November 1998 restatement of its 1996 and 1997 financial statements revealed the plan that Sunbeam's management had adopted and Andersen facilitated. In 1996, Sunbeam's management, with Andersen's knowing assistance, caused Sunbeam to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, management caused Sunbeam dramatically to overstate its earnings. When 1997 operating earnings were eventually corrected and restated, they were $95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

[1] "CPH App." refers to the multi-volume Appendix that accompanies this brief.

NOT A CERTIFIED COPY

013500

In a hearing before this Court on its motion for judgment on the pleadings, Morgan Stanley further conceded that "as a matter of record," "Sunbeam had misstatements," and CPH therefore would not "need to prove that." CPH App. 2 (12/12/03 Tr. 26). And, in its summary judgment papers, Morgan Stanley repeatedly refers to the fraud of Sunbeam. *See* MS Mem. 24 (referring to "Sunbeam's fraud"); *id.* at 26 (referring to "Sunbeam's fraudulent conduct"); MS Mot. for S.J. ¶ 3 (referring to Morgan Stanley as "a victim of that fraud"). Although Morgan Stanley's purported lack of knowledge is certainly disputed, the Sunbeam fraud is not. A summary of that undisputed fraud follows.

On July 18, 1996, after several quarters of poor financial performance, Sunbeam's Board hired Dunlap — at the time a heralded turnaround specialist and the "darling" of Wall Street (CPH App. 117 (Fogg Dep. at 31-32)) — to increase Sunbeam's sales and profits, which would lead to an increase in the value of Sunbeam shares. But Dunlap (and a number of hand-picked, long-time associates such as Russell Kersh, whom Dunlap installed as Sunbeam's Chief Financial Officer), devised a strategy to create the illusion rather than the reality of a turnaround, in order to artificially inflate Sunbeam stock. Initially, Dunlap overstated Sunbeam's existing financial problems so that Sunbeam appeared to be in worse shape in 1996 than it really was.

Then, Dunlap overstated Sunbeam's 1997 revenues and earnings in order to create the illusion of dramatic improvement over 1996 results. Dunlap employed various techniques, including "bill-and-hold" sales and "channel stuffing." Phony "bill-and-hold" sales allowed Dunlap to make Sunbeam look successful by recognizing revenues from supposed sales, even though customers had not actually paid for or taken delivery of goods and were not obligated to do so. "Channel stuffing" involved a practice of accelerating sales that otherwise would have occurred in a later period, sometimes by offering steep discounts or other extraordinary customer inducements. Channel stuffing, therefore, has two future side effects: The profits on the sales

NOT A CERTIFIED COPY

013901

16div-020369

were drastically reduced or eliminated, and sales that otherwise would have been realized in later periods were moved into 1997. Dunlap also made Sunbeam appear more successful than it really was by reaching into the "cookie jar," reversing inflated reserves, and recording $35 million as income. These practices created the appearance that 1997 was strong, while assuring that 1998 would bring an end to the illusion. CPH App. 130 (expert report of Douglas R. Emery describing the Sunbeam fraud).

B. Morgan Stanley Joins Sunbeam's Team.

Because Sunbeam's 1997 "turnaround" was an illusion, Dunlap needed an investment banker to help him sell Sunbeam during a time when Dunlap could realize the value of the artificial inflation of Sunbeam's stock. Despite hot competition from Mark Davis, another investment banker who had worked for Dunlap in the past in connection with the sale of Scott Paper, Morgan Stanley won the Sunbeam engagement. CPH App. 10 (Gittis Dep. at 61-63); CPH App. 11 (Kitts Dep. at 41). Morgan Stanley landed the engagement in September 1997, after doing months of uncompensated work studying Sunbeam, which started in April 1997. CPH App. 9 (Strong Dep. at 51-54); CPH App. 11 (Kitts Dep. at 35-36); CPH App. 103 (CPH Ex. 70).

Morgan Stanley's William Strong headed up the Sunbeam matter. CPH App. 9 (Strong Dep. at 27-28); CPH App. 12 (Smith Dep. at 129-30). Strong had joined Morgan Stanley in 1993 as a senior executive, responsible for the firm's corporate finance activities in Chicago, Houston, Los Angeles, San Francisco, and Toronto. CPH App. 9 (Strong Dep. at 6). The marching orders that Morgan Stanley management gave Strong in his very first evaluation were clear: "He should personally generate more revenue in 1994." CPH App. 15 (CPH Ex. 371 at MS 85418). Strong's 1995 evaluations show that senior Morgan Stanley executives had continued to press Strong to bring in more business. Robert Scott, who served as head of the

NOT A CERTIFIED COPY

013902

firm's corporate finance and investment banking business, made it clear that he had been unimpressed with what he had seen of Strong's ability to generate fees (CPH App. 16 (CPH Ex. 372 at MS 85424)):

> Revenue input: Bill covers a lot of territory; I wonder how productive he really is. 1996: What should Bill's focus be in 1996? More on productivity and client business.

Strong got the message and understood precisely what he needed to do to advance his career at Morgan Stanley — he had to bring in fees — and he was prepared to do what was required to demonstrate his "rainmaking" capabilities. In his personal assessment of 1996, Strong boasted that he had had his "most productive year since joining the Firm in 1993" and that his "personal revenue production by the end of the fiscal year will have increased for the fourth straight year to a total exceeding $70 million . . . ." CPH App. 13 (CPH Ex. 373 at MS 85438).

But at the same time that Morgan Stanley was exhorting Strong to generate fees, senior Morgan Stanley executives became increasingly aware that Strong's methods were too aggressive. Robert Scott noted in Strong's 1996 evaluation (CPH App. 13 (CPH Ex. 373 at MS 85440)):

> While Bill is bright, his judgment is sometimes flawed. He is so focused on his own agenda that he can lose perspective. He has the ability to steamroll colleagues while accomplishing his goals.

Kirsten Feldman, one of Strong's Managing Director colleagues, similarly observed of Strong (CPH App. 13 (CPH Ex. 373 at MS 85440)):

> Judgment is usually very good (unless he is trying [to] promote a specific outcome).

Richard Kaufmann, another senior Morgan Stanley executive, cautioned that those reporting to Strong were "afraid of Bill's reaction" because of his competitiveness. CPH App. 13 (CPH Ex. 373 at MS 85441).

NOT A CERTIFIED COPY

013903

In 1997, Tarek Abdel-Meguid, then the deputy head of Morgan Stanley's corporate finance division, concluded that Strong's desire to capture fees clouded his judgment (CPH App. 17 (CPH Ex. 374 at MS 85461)):

> Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to, if not over, the line.

Abdel-Meguid continued (CPH App. 17 (CPH Ex. 374 at MS 85462)):

> Bill continues to suffer the consequences of less than a straightforward approach. Gives people, including me, the impression that he is not completely upfront. This needs to improve; there are numerous approaches to me from very credible people on this issue.

Another of Morgan Stanley's most senior executives, Joseph Perella, had come to a similar assessment of Strong's credibility (CPH App. 17 (CPH Ex. 374 at MS 85461)):

> The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard.

Although Strong continued to deliver greater and greater fees — over $100 million in 1998 alone — Strong's success came at a price. CPH App. 18 (CPH Ex. 375 at MS 85474). In 1998, Abdel-Meguid acknowledged Strong's success in generating the fees, but continued to express his discomfort with the means of Strong's ends (CPH App. 18 (CPH Ex. 375 at 85477)):

> [Strong] is highly focused on money making opportunities, sometimes to a fault.

Reiterating the same views he had expressed in 1997, Abdel-Meguid carefully repeated his warnings about Strong (CPH App. 18 (CPH Ex. 375 at 85480-81)):

> Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are very close to, if not over, the line. I continue to hear comments about his greater general concern for his own people/business unit, relative to the Firm's best interest.
> . . . .
>
> Bill continues to suffer the consequences of less than a straight-forward approach. Gives people, including me, the impression that he is not completely up front.

NOT A CERTIFIED COPY

013904

Echoing the comments of Strong's superiors and colleagues, an investment banker who worked for Strong stated (CPH App. 18 (CPH Ex. 375 at MS 85485)):

> Uses information selectively — often times does not disclose information which I may view important or will disclose some information on a subject, but not all.

These concerns, voiced by multiple persons consistently over time, led Morgan Stanley management in 1998 to expressly identify "Development Needs" for Strong (CPH App. 18 (CPH Ex. 375 at MS 85492)):

> Overly commercial. Can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to if not over the line.
> . . . .
>
> Communication: Although he has made progress (and is acutely aware of the concerns), he continues to suffer the consequences of less than a straightforward approach. Some colleagues feel he gives people the impression that he is not completely upfront and uses information selectively. Often times does not disclose information which others may view as important or will disclose some information on a subject, but not all. Also there is the perception that he does not properly balance the issues of his people/his region with the best overall interests of the Firm.

Strong's 1997 self-assessment touted his success in bringing in significant fees — aided in no small part by his expectation of a lucrative Sunbeam fee (CPH App. 17 (CPH Ex. 374 at MS 85455, emphasis added)):

> My personal Firm revenue has been $70 million, $73 million and will exceed $90 million for 1995, 1996 and 1997 respectively. Further, my personal backlog going into fiscal 1998 has never been higher. Highlights from that backlog include the sale of Sunbeam (market capitalization $3.7 billion, signed engagement letter with success fees above fee scale) . . . .

Senior Morgan Stanley executives were on clear notice that Strong's ambition and desire for fees had become a serious problem. But Morgan Stanley put its own desire to bring in those fees above its concern about Strong's judgment, and entrusted Strong to handle the Sunbeam transaction. CPH App. 9 (Strong Dep. at 27-38); CPH App. 12 (Smith Dep. at 129-30); CPH App. 110 (Webber Dep. at 27).

NOT A CERTIFIED COPY

013905

Throughout 1997, after landing the Sunbeam engagement, Strong and Morgan Stanley immersed themselves in the details of Sunbeam's business and financial performance, with over a dozen Morgan Stanley personnel visiting Sunbeam's Florida headquarters to study Sunbeam and perform the due-diligence required of investment bankers. CPH App. 19 (CPH Ex. 37); CPH App. 12 (Smith Dep. at 91); CPH App. 20 (Tyree Dep. at 575-81); CPH App. 21 (CPH Ex. 84); CPH App. 11 (Kitts Dep. at 16-19); CPH App. 22 (CPH Ex. 172); CPH App. 23 (Rafii Dep. at 106-08); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 26 (Yoo Dep. at 83-88); CPH App. 27 (CPH Ex. 245). During that time, Strong personally spoke with Dunlap and/or Kersh in Florida between 50 and 100 times. CPH App. 9 (Strong Dep. at 53-54). It is inconceivable that Morgan Stanley could have had such deep involvement and not known at an early date that Sunbeam's turnaround story was an illusion. CPH App. 8 (Levin Dep. at 403-04); CPH App. 28 (Nesbitt Dep. at 415-16).

C. Morgan Stanley Cannot Find A Buyer For Sunbeam And Changes Strategy.

Although Sunbeam and Morgan Stanley jointly set out to find a buyer for Sunbeam, they found none, CPH App. 9 (Strong Dep. at 28-30); CPH App. 26 (Yoo Dep. at 218-19), much to Dunlap's disappointment. CPH App. 9 (Strong Dep. at 84-85). So Morgan Stanley changed its strategy and convinced Sunbeam to look for a company that could be acquired with Sunbeam stock. CPH App. 9 (Strong Dep. at 94-97).

Morgan Stanley and Sunbeam zeroed in on Coleman as a possible acquisition target and contacted CPH. CPH App. 30 (MS 75 at CPH 1041528-29); CPH App. 31 (Defendant's Answer ¶ 36). Morgan Stanley contends in its brief that CPH was eager to unload Coleman and have Sunbeam assume $1 billion in Coleman debt. *See* MS Mem. 1. In addition to ignoring that Morgan Stanley approached CPH about Coleman, not the other way around, Morgan Stanley's brief ignores its own research analyst reports concerning Coleman. In her late 1997 report,

NOT A CERTIFIED COPY

013906

Morgan Stanley research analyst Karen Eltrich touted the escrow notes issued by Coleman that Morgan Stanley purchased for its own account and praised Coleman's prospects and the success that Jerry Levin, Coleman's Chief Executive Officer, was having in enhancing Coleman's performance. CPH App. 119 (CPH Ex. 272); CPH App. 120 (Eltrich Dep. at 66, 76-78).

In wooing CPH, Morgan Stanley exploited the fact that it had been CPH's investment banker on almost two-dozen transactions, dating back to 1985. CPH App. 32 (Perelman Dep. at 222); CPH App. 10 (Gittis Dep. at 86); *see also* CPH App. 33 (Plaintiff's Responses and Objections to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogatories at 2-4 listing 23 transactions back to 1985). And as late as the first part of 1998, Morgan Stanley was using its relationship with CPH executives in an attempt to sell Gucci. CPH App. 32 (Perelman Dep. at 215-17).

CPH executives and Morgan Stanley had developed a "very close" working relationship. CPH App. 34 (Perelman Dep. at 352); CPH App. 10 (Gittis Dep. at 86 ("we have had very good relations with [Morgan Stanley]")). That close relationship was due in part to William Reid, a managing director at Morgan Stanley, who was the "primary contact." CPH App. 34 (Perelman Dep. at 352); CPH App. 28 (Nesbitt Dep. at 288 (describing Reid as the "relationship banker at Morgan Stanley")); CPH App. 9 (Strong Dep. at 180 (acknowledging that Reid had a relationship with CPH executives)); *see also* CPH App. 11 (Kitts Dep. at 83); CPH App. 10 (Gittis Dep. at 86). In his capacity as CPH's Morgan Stanley contact, Reid frequently pitched business ideas to CPH executives. CPH App. 35 (Nesbitt Dep. at 115); CPH App. 32 (Perelman Dep. at 221); CPH App. 10 (Gittis Dep. at 86); CPH App. 12 (Smith Dep. at 134-35). MAFCO Chief Executive Officer Ronald Perelman and MAFCO Senior Vice-President William Nesbitt, both of whom had worked with Reid personally, had developed a strong working relationship with him and held him in high regard. CPH App. 34 (Perelman Dep. at 352 (Reid was "very

NOT A CERTIFIED COPY

013907

smart," "very nice," and a "very good guy")); CPH App. 35 (Nesbitt Dep. at 114 (Nesbitt knew Reid "quite well")).

D. Morgan Stanley And Sunbeam Meet With CPH Representatives And CPH Considers A Potential Transaction With Sunbeam.

Once Sunbeam set its sights on Coleman, Sunbeam sought to complete the acquisition of Coleman from CPH as quickly as possible. CPH App. 26 (Yoo Dep. at 218-19); CPH App. 36 (CPH Ex. 229); CPH App. 132 (CPH 324558); CPH App. 133 (CPH 586-87); CPH App. 134 (CPH 466948-49). The negotiations that led to Sunbeam's acquisition of CPH's Coleman shares were not the first negotiations between CPH and Sunbeam. Before those negotiations, on November 6, 1997, Morgan Stanley had given a presentation to CPH representatives concerning the possible sale of Sunbeam, but CPH was not interested. CPH App. 39 (Maher Dep. 133, 144-45); CPH App. 138 (CPH 379 at SASMF 17231).

Shortly after that November 1997 meeting, at which Morgan Stanley unsuccessfully sought to sell Sunbeam, the parties shifted their attention to Sunbeam's interest in purchasing Coleman. Sunbeam, assisted by Morgan Stanley, held face-to-face meetings with CPH representatives in December 1997 and February 1998, meetings at which Sunbeam was falsely portrayed as a "turnaround" success. CPH App. 32 (Perelman Dep. at 196-99, 273-74, 308); CPH App. 7 (Levin Dep. at 182-87); CPH App. 30 (MS Ex. 75 at CPH 1401528-31); CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238); CPH App. 38 (CPH Ex. 316).

On December 18, 1997, after Morgan Stanley prepped Sunbeam executives and had spoken with CPH representatives on December 11, 15, and 16 (CPH App. 135 (CPH Ex. 222); CPH App. 123 at MSC 44558-59, a meeting of representatives of CPH and Sunbeam took place in Palm Beach. But the meeting ended suddenly when Dunlap stormed out after Perelman rejected his stock offer to buy Coleman at a low price. CPH App. 34 (Perelman Dep. at 342). Morgan Stanley's Reid was thereafter used by Morgan Stanley to revive the talks by reaching

NOT A CERTIFIED COPY

013908

out to Perelman personally in January 1998. CPH App. 34 (Perelman Dep. at 353-54); CPH App. 10 (Gittis Dep. at 85). Reid called Perelman and told him that Sunbeam was still very interested in doing a transaction with Coleman. Perelman told Reid that Sunbeam and Coleman had not agreed on a price in earlier negotiations, but Reid assured Perelman that we can "come together on price." CPH App. 34 (Perelman Dep. at 353-54). As a result of Reid's call, CPH representatives reopened talks with Sunbeam. CPH App. 34 (Perelman Dep. at 354). Reid continued to facilitate general communications between Sunbeam and Coleman during the progress of the Sunbeam transaction. CPH App. 40 (Duffy Dep. at 123).

Beginning in December 1997, CPH prepared a number of financial analyses evaluating the consequences of a potential merger of Coleman and Sunbeam. CPH App. 35 (Nesbitt Dep. at 117); CPH App. 41 (MS Ex. 104); CPH App. 42 (MS Ex. 105); CPH App. 43 (Ex. 106); CPH App. 44 (MS Ex. 107). Credit Suisse First Boston ("CSFB"), Coleman's investment advisor, assembled a set of materials for Coleman's review, including Sunbeam's 10-Q for the period ending September 1997, Sunbeam's 1996 10-K, and various research analyst reports. CPH App. 45 (MS Ex. 76). CSFB also prepared an analysis of Coleman's value, concluding that Coleman was worth between $24.78 and $38.94 per share. CPH App. 46 (CPH Ex. 236).

As Sunbeam was a public company, CPH and analysts at CSFB reviewed publicly available information on Sunbeam, including SEC filings and analyst reports. CPH App. 47 (Shapiro Dep. at 131); CPH App. 28 (Nesbitt Dep. at 276-78); CPH App. 49 (Geller Dep. at 31); CPH App. 40 (Duffy Dep. at 32); CPH App. 7 (Levin Dep. at 69, 100-02, 159-62). Indeed, this is basically the same type of due-diligence examination of Sunbeam conducted by Christopher Whelan, the employee in Morgan Stanley's credit department responsible for assessing the credit risks associated with the loan to Sunbeam. CPH App. 113 (Whelan Dep. at 60-62 (Whelan testifying that Morgan Stanley relied on public filings, financial statements, and information

NOT A CERTIFIED COPY

013909

16div-020377

provided by management)). Given that Sunbeam and Coleman were publicly traded companies that had a duty to disclose all material facts to the public, 15 U.S.C. § 78m, and CPH was relying on the information provided by Sunbeam and Morgan Stanley, neither party reviewed the other's non-public books and records. CPH App. 47 (Shapiro Dep. at 132-33). Paul Shapiro, the former General Counsel of Coleman, noted that because CPH was becoming a minority investor in a public company, he did not believe that CPH "had a reason to request any access." CPH App. 47 (Shapiro Dep. at 130).

After Morgan Stanley's Reid revived the negotiations in his January 1998 conversation with Perelman, Morgan Stanley took responsibility for the negotiations and discussions with CPH regarding the terms of the transaction and the condition of Sunbeam. For example, on January 23, 1998, January 29, 1998, and February 6, 1998, representatives of CPH met with representatives of Morgan Stanley to discuss a transaction involving Coleman and Sunbeam. CPH App. 123 (CPH Ex. 169); CPH App. 138 (CPH Ex. 379). And on February 3, 13, 16, and 19, 1998, representatives from Morgan Stanley and CPH participated in a series of conference calls regarding the terms of the transaction. CPH App. 123 (CPH Ex. 169); CPH App. 138 (CPH Ex. 379).

In early 1998, CPH made a number of inquiries of Sunbeam regarding Sunbeam's financial status since the end of the 1997 calendar year and what Sunbeam's future "growth plan" looked like. CPH App. 47 (Shapiro Dep. at 134). These inquiries were responded to in a series of due-diligence meetings held on February 23-24, 1998. CPH App. 47 (Shapiro Dep. at 134); CPH App. 28 (Nesbitt Dep. at 366-68). CPH executives sought these meetings to confirm that Sunbeam's business and financial plan were in line with analysts' expectations. CPH App. 10 (Gittis Dep. at 100-01).

NOT A CERTIFIED COPY

013910

E. The February 23, 1998 Session And CPH's Follow Up Due-Diligence.

On February 23, 1998, Morgan Stanley and representatives from CPH and Sunbeam met at Morgan Stanley's offices. Morgan Stanley gave CPH an 85-page book — with the Morgan Stanley logo on the cover and on every page — that it had created. CPH App. 29 (CPH Ex. 9); CPH App. 38 (CPH Ex. 316 at MSC 27062-63); CPH App. 34 (Perelman Dep. at 367-69); CPH App. 26 (Yoo Dep. at 114). Morgan Stanley's book promoted Sunbeam's supposed turnaround and projections that Sunbeam's extraordinary growth in sales and earnings would continue through 1998 and beyond. CPH App. 29 (CPH Ex. 9 at CP 026290). Morgan Stanley's book also adopted research analysts' views of Sunbeam's results and accomplishments. CPH App. 29 (CPH Ex. 9 at CP 026295). CPH and Coleman representatives also received a second document at the February 23 meeting entitled "Sunbeam Long Range Strategic Plan." CPH App. 37 (CPH Ex. 238).

At the February 23 meeting, Morgan Stanley introduced Sunbeam's presentation and also fielded questions from CPH representatives. CPH App. 48 (Maher Dep. at 308-09). CPH was falsely assured that: (a) Sunbeam would meet or exceed Wall Street's expectations for its first quarter 1998 earnings; (b) analysts' favorable earnings estimates of $1.90 to $2.15 per share were low; (c) Sunbeam's plan to earn $2.20 per share for 1998 was easily achievable and probably low; and (d) Sunbeam had a strong management team. CPH App. 37 (CPH Ex. 238). CPH responded by making a number of inquiries related to Sunbeam's financial margins, new products, international markets, and grilling business. CPH App. 7, 8 (Levin Dep. at 182-242, 252-55); CPH App. 50 (Shapiro Dep. at 285-86); CPH App. 51 (Page Dep. at 211). The Morgan Stanley book laid out detailed information on each of these subjects. CPH App. 29 (CPH Ex. 9).

CPH also asked a number of questions about Sunbeam's first quarter 1998 earnings and whether Sunbeam still was on track to make its year-end earnings. CPH App. 48 (Maher Dep. at

NOT A CERTIFIED COPY

01391I

16div-020379

305, 316 ("there was a substantial amount of discussion about the first quarter")); CPH App. 35 (Nesbitt Dep. at 187 (questions were asked "related to how is [Sunbeam's] performance today, how is it going relative to analyst expectations . . . are you going to meet your numbers for the remainder of the year")). In response to these inquiries, Sunbeam management, with the imprimatur of Morgan Stanley, represented that "Sunbeam was going to make their numbers." CPH App. 35 (Nesbitt Dep. at 187); *see also* CPH App. 48 (Maher Dep. at 306 ("Mr. Kersh in no uncertain terms said that not only was he going to make 'what the Street's forecast was,' but they were going to make their budget in the first quarter and for the year.")). Based on these assurances, CPH representatives left the meeting having been assured that business was "going very well." CPH App. 35 (Nesbitt Dep. at 190). The fact that Sunbeam had Morgan Stanley's imprimatur is significant because, as two of Morgan Stanley's senior executives have testified in this case, investors are entitled to believe that Morgan Stanley associates itself only with quality companies, and Morgan Stanley understands that investors rely on Morgan Stanley's involvement in making their investment decisions. *See* CPH App. 114 (Perella Dep. at 125-26); CPH App. 115 (Porat Dep. at 297-98); *accord* CPH App. 122 (Slovin Dep. at 291-92 (Bruce Slovin, a Coleman Board member at the time of the transaction, testifying that he relied on Morgan Stanley's representations due to its reputation)); *see also* Section II.B below.

In its summary judgment brief, on the issue of Sunbeam's earnings, Morgan Stanley repeatedly states that Jerry Levin made some handwritten notes on the February 23 meeting materials to the effect "that Sunbeam said that 'Jan Feb Slow.'" *See* MS Mem. 7; *see also* MS Mem. 33. That is incorrect. Levin's notes actually read, "Jan Slow" and below that, the word "Feb" appears by itself. CPH App. 52 (MS 84 at MF 00016). In addressing the note at his deposition, Levin testified that he "must have asked them or they volunteered that January was a slow month." As for the "Feb" reference, Levin testified that he was not sure why he wrote it.

NOT A CERTIFIED COPY

013912

CPH App. 7 (Levin Dep. at 229-30). Perelman testified that Levin reported to him after the meeting that January sales were "slow," February sales were "fine," and that the statements by Morgan Stanley and Sunbeam were "bullish." CPH App. 34 (Perelman Dep. at 372-73); *see also* CPH App. 10 (Gittis Dep. at 102).

Morgan Stanley's own documents and witness testimony debunk Morgan Stanley's suggestion that all were on early notice of Sunbeam's poor performance. The Morgan Stanley deal team, including Strong and the Morgan Stanley participants in the February 23 meeting, prepared a March 10, 1998 memorandum to the Equity Commitment Committee to obtain approval to underwrite the debenture offering that contains no reference to any sales slowdown in either January or February of 1998. CPH App. 126 (CPH Ex. 129); CPH App. 74 (Porat Dep. at 245-50). Indeed, Ruth Porat, the Managing Director of Morgan Stanley's equity capital markets who was heavily involved in the debenture offering and conceded that it was important to the debenture offering that Sunbeam "hit its numbers," testified that the first time she heard Sunbeam's sales were slow was on March 18. CPH App. 74 (Porat Dep. at 96, 147). Consistent with this testimony, other participants in the February 23 meeting do not recall any comments about Sunbeam's first quarter sales being slow. CPH App. 48 (Maher Dep. at 305); CPH App. 35 (Nesbitt Dep. at 188-89); CPH App. 40 (Duffy Dep. at 151); CPH App. 49 (Geller Dep. at 111-12).

Following the February 23 meeting, CPH representatives conducted additional due-diligence, including discussions with Sunbeam on the company's "future operations," CPH App. 48 (Maher Dep. at 351), and inquiries about outstanding litigation, environmental matters, and business operations. CPH App. 50 (Shapiro Dep. at 298-99). Additionally, on February 24, CSFB met again with Sunbeam senior management to discuss Sunbeam's strategic plan and 1997 results. CPH App. 125 (MS Ex. 230).

NOT A CERTIFIED COPY

013913

On February 25 and 27, using the long-range strategic plan numbers of Sunbeam that were provided to Coleman and CPH at the February 23 meeting at Morgan Stanley, CSFB made presentations to the Coleman Board of Directors that analyzed the proposed transaction. CPH representatives attended the meeting. CPH App. 53 (CPH Ex. 239); CPH App. 54 (MS Ex. 112); CPH App. 55 (MS Ex. 88); CPH App. 56 (MS Ex. 113). CPH representatives also reviewed CSFB's fairness opinion of the transaction, issued on February 27. CPH App. 57 (MS Ex. 120).

F. CPH Agrees To Sell Its Coleman Stock To Sunbeam.

Taken in by the Sunbeam and Morgan Stanley misrepresentations, on February 27, 1998, CPH entered into a written agreement with Sunbeam to sell its 82 percent stake in Coleman for 14 million shares of Sunbeam stock plus additional consideration and entered into a written agreement with Sunbeam. CPH App. 95 (MS Ex. 93). At the same time, Morgan Stanley made a presentation to the Sunbeam Board, opining that the consideration paid by Sunbeam was fair as the Coleman shares were worth as much as $53.24. CPH App. 139 (CPH Ex. 89 at MSC 83981).

Despite Morgan Stanley's suggestions to the contrary (MS Mem. 6), the February 27 written agreement with Sunbeam is the only agreement into which CPH entered. Morgan Stanley repeatedly refers (*e.g.*, MS Mem. 6-7, 21) to two Confidentiality Agreements dated February 4 and 23, 1998, agreements that contain provisions stating that no reliance is being placed on evaluation materials that are being supplied under the agreements, but Morgan Stanley ignores that CPH is not a party to either agreement — Coleman, not CPH, is a party. *See* MS Ex. 133, MS Ex. 134 (both exhibits are included in Morgan Stanley's Appendix of documents). Moreover, with regard to the February 23 Confidentiality Agreement, it is of no force and effect even as to Coleman because Coleman never signed the document and thus never became bound by it. *See* MS Ex. 134 at 7 (showing a blank signature line under the words "Confirmed and agreed to").

NOT A CERTIFIED COPY

013914

Indeed, the draft of the February 23 Confidentiality Agreement that Morgan Stanley has produced was not even signed by Sunbeam, nor had Sunbeam filled in the identity of the individual to whom Coleman's requests for information should be addressed. *See* MS Ex. 134 at 4, 7. Because the February 23 draft Confidentiality Agreement never was finalized or signed, it is not binding on Coleman — and certainly not on CPH, which is not identified as a party in the February 23 draft Confidentiality Agreement, or in the signed February 4 Confidentiality Agreement either. *See Hinote v. Brigman*, 33 So. 303, 305-06 (Fla. 1902) (where a "party neither had nor signified such an intention to close the contract until it was fully expressed in a written instrument and attested by signatures, then he will not be bound until the signatures are affixed"); *see also Strong & Trowbridge Co. v. H. Baars & Co.*, 54 So. 92, 95 (Fla. 1910); 11 Fla. Jur. *Contracts* § 100 (2004).

The February 27 Merger Agreement — the only agreement into which CPH entered — contains no non-reliance provision. Quite the opposite: the agreement incorporates representations that the financials are accurate (CPH App. 95 (MS Ex. 93 at MS 7964, Article V); CPH App. 58 (MS 117)), that there have been no material adverse changes, and that Sunbeam has the duty to advise CPH of any material adverse changes (CPH App. 95 (MS Ex. 93 at MS 7969)):

> Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser [defined in the Recitals as Sunbeam] shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event . . . having [a] . . . Material Adverse Effect [defined at Page 3 of the Merger Agreement as a material adverse effect on the business, or results of operation or financial condition of Holdings and its subsidiaries, taken as a whole] . . . .

NOT A CERTIFIED COPY

013915

When the transaction was announced on March 2, Morgan Stanley assisted Sunbeam in crafting a positive message about Sunbeam's business to the public and CPH, to keep the turnaround illusion alive until after the closing. Specifically, Morgan Stanley worked with the public relations firm of Hill & Knowlton, to assure investors that Sunbeam's bullish revenue and earnings projections for 1998 and beyond would be achieved. CPH App. 11 (Kitts Dep. at 109-15); CPH App. 59 (CPH Ex. 140); CPH App. 60 (CPH Ex. 141): CPH App. 61 (CPH Ex. 142); CPH App. 62 (CPH Ex. 143).

G. Morgan Stanley Obtains More And More Confirmation Of The Sunbeam Fraud.

It is inconceivable that Morgan Stanley could have been involved in its due-diligence with Sunbeam since April 1997 and not have known at some early date that Sunbeam's turnaround story was an illusion. But whatever it may have known sooner, Morgan Stanley was put on written notice of Sunbeam's phony turnaround story by mid-March 1998, when it was advised by Sunbeam's own outside auditors that Sunbeam was on a disaster course and received devastating information from senior Sunbeam management showing that Sunbeam sales had collapsed in the first 2½ months of 1998.

On March 12, 1998, Sunbeam's auditors warned Morgan Stanley during an accounting due-diligence telephone conference that Sunbeam had engaged in aggressive revenue recognition practices in 1997. Morgan Stanley learned, among other things, that Sunbeam was conducting aggressive bill-and-hold transactions and that certain sales were made with a 100 percent right of return. CPH App. 63 (Bornstein Dep. at 104-06); CPH App. 64 (CPH Ex. 123); CPH App. 65 (CPH Ex. 31); CPH App. 66 (CPH Ex. 32). Morgan Stanley admits that these revenue recognition practices "raised clear red flags" regarding all of Sunbeam's revenue recognition decisions. CPH App. 68 (Amended Complaint ¶ 84).

NOT A CERTIFIED COPY

013916

Lawrence Bornstein, a senior audit manager for Sunbeam's outside accountants who participated in the telephone conference, testified that he was surprised Morgan Stanley never asked him the single most important question that should have been discussed on the call: How is Sunbeam doing? CPH App. 63 (Bornstein Dep. at 183). It is clear that Morgan Stanley was hoping to avoid creating a record that it was on notice that the Sunbeam story was a fraud.

Sometime before March 19, Morgan Stanley and its attorneys had received written proof, in the form of a "comfort" letter prepared by Sunbeam's outside auditors, that Sunbeam's purported turnaround was a sham, that Sunbeam's projected 1998 performance promoted by Sunbeam and Morgan Stanley was unattainable, and that Sunbeam already was in the midst of a disastrous collapse in sales and earnings. CPH App. 69 (CPH Ex. 17 at MS 379); CPH App. 70 (CPH Ex. 24); CPH App. 71 (CPH Ex. 344); CPH App. 72 (Dean Dep. at 132-33). The letter warned Morgan Stanley that Sunbeam's actual January and February 1998 net sales of $71 million were less than 25 percent of Wall Street's first quarter expectations of $285 to $295 million, and were just half of the $143.5 million in net sales Sunbeam had made in the first two months of 1997. The auditor's letter also disclosed that the primary reason for the collapse in Sunbeam's net sales was that Sunbeam had "accelerated" sales that would have been received in the first quarter of 1998 into the fourth quarter of 1997. CPH App. 69 (CPH Ex. 17 at MS 378). Morgan Stanley's attorneys have testified that the comfort letter would have been provided to Morgan Stanley, but would not have been made available to anyone else because comfort letters customarily are provided only to the underwriter (which Morgan Stanley was in this transaction). CPH App. 73 (Lurie Dep. at 172-73).

Also on March 18, during the debenture offering "road show" that was part of Morgan Stanley's effort to sell $2 billion face value in Sunbeam debentures to fund the acquisition, Ruth Porat of Morgan Stanley was advised by a senior Sunbeam executive that Sunbeam's first

NOT A CERTIFIED COPY

015917

quarter 1998 performance may be falling below Wall Street analyst expectations and Sunbeam's internal sales plan. CPH App. 20 (Tyree Dep. at 346-47); CPH App. 9 (Strong Dep. at 264-66, 286-93, 298-302); CPH App. 74 (Porat Dep. at 147).

With the comfort letter in its law firm's hands and with the "heads up" given to Porat earlier that day, Morgan Stanley principals, led by Strong and Porat, called "all hands" conferences on March 18, at which they confirmed with Sunbeam the truth of the comfort letter's description of Sunbeam's sales collapse — in fact learning that the situation was even worse — and discussed issuing a press release. CPH App. 74 (Porat Dep. at 154-58); CPH App. 75, 20 (Tyree Dep. at 237-48, 359-71); CPH App. 9 (Strong Dep. at 264-66, 286-93, 298-302); CPH App. 76 (CPH Ex. 16); CPH App. 72 (Dean Dep. at 132-33).

During these conferences, Morgan Stanley received a sales chart from Donald Uzzi, Sunbeam's Executive Vice President of Consumer Products, detailing the severity of the sales crisis and showing that matters were even worse than shown in the comfort letter. CPH App. 76 (CPH Ex. 16); CPH App. 74 (Porat Dep. at 176-79). This document revealed that Sunbeam's average daily sales for the first 18 days in March were a mere $1.6 million, and that Sunbeam somehow needed to sell $151.8 million in products — an average of $13.8 million per day — simply to match 1997 first quarter sales. CPH App. 76 (CPH Ex. 16); CPH App. 75 (Tyree Dep. at 232-35). In order to reach analysts' estimates of $285 to $295 million in net sales, Sunbeam somehow needed to sell $183.4 to $193.4 million in products — an average of $16.7 to $17.5 million per day. *Id.* The Uzzi sales chart contains no indication of how Sunbeam could even hope to achieve $285 to $295 million in net sales. CPH App. 117 (Fogg Dep. at 112). The chart did purport to show how Sunbeam might barely match its 1997 net sales of $253.4 million, but to do so, Sunbeam had to obtain and close more than $125.5 million of "potential orders" or "forecasted" orders in 11 days. CPH App. 76 (CPH Ex. 16); CPH App. 117 (Fogg Dep. at 112-

NOT A CERTIFIED COPY

01393 18

16). It thus became clear, as one of Morgan Stanley's lawyers admitted, that Sunbeam's first quarter 1998 sales certainly would be lower than Wall Street analysts had expected. CPH App. 77 (Stack Dep. at 123, 147-48). Indeed, Porat feared Sunbeam might not meet analysts' estimates, yet she did not receive any assurance that Sunbeam had ever accomplished $180 million in sales in the last 11 days of any prior quarter. CPH App. 74 (Porat Dep. at 184-85).

Morgan Stanley was now confronted with two documents showing that Sunbeam was only days from the close of the first quarter with disastrous sales and earnings. CPH App. 12 (Smith Dep. at 156-69 (Bram Smith, an official at Morgan Stanley, confirming that he knew of the January-February 1998 sales shortfall and the reasons for it before the issuance of the March 19 press release)). Morgan Stanley faced a critical dilemma: continue the cover-up long enough to close the transaction and public debt offering and collect massive fees, or reveal the problems to CPH and the investing public, which at a minimum would delay the transaction, and risk losing all its fees.

H. The March 19 Press Release.

Despite knowing that the collapse of Sunbeam's first quarter was caused primarily by its acceleration of 1998 sales into 1997, and having no assurance that Sunbeam could find $185 million in "potential" net sales in the next 11 days, Morgan Stanley elected to help draft a false and misleading press release. CPH App. 137 (CPH Ex. 13); CPH App. 115 (Porat Dep. at 189-190). The press release, issued on March 19, 1998, represented to the public and CPH that Sunbeam might still achieve $285 to $295 million in net sales for the first quarter and that, in any event, sales were expected to exceed first quarter 1997 sales of $253.4 million. CPH App. 79 (CPH Ex. 14). Significantly, the press release gave no warning whatsoever that there was any possibility that Sunbeam might fall short of Wall Street expectations for its first quarter net earnings. Contrary to the statement in the auditor's comfort letter that the reason for the sales

NOT A CERTIFIED COPY

013919

collapse was the acceleration of sales into the fourth quarter of 1997, the press release falsely blamed the shortfall from analysts' estimates, "if any," on retailer inventory management and order patterns, not Sunbeam's acceleration of sales into the fourth quarter of 1997 (CPH App. 79 (CPH Ex. 14)):

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

See also CPH App. 63 (Bornstein Dep. at 62-65); CPH App. 74 (Porat Dep. at 187-190, 203); CPH 72 (Dean Dep. at 123-24, 132-33).

The March 19, 1998 press release contained at least 5 lies: 3 affirmative misrepresentations and 2 misstatements of omission. The misrepresentations: (1) it was "possible" Sunbeam might not achieve sales of $285 to $295 million — a misrepresentation because Sunbeam had no plan to achieve that level of sales and Morgan Stanley knew it; (2) Sunbeam would exceed 1997 first quarter net sales of $253.4 million — a misrepresentation because with 11 days to go, Sunbeam was more than $150 million short of that figure; and (3) the shortfall from analysts' estimates, "if any," would be caused by retailers' order patterns and those orders would come in later in the year — a misrepresentation because the actual reason, which Morgan Stanley knew, was that Sunbeam had "accelerated" those 1998 sales to make 1997 look better than it actually was. The misstatements of omission: (4) the actual sales numbers for January, February, and the first half of March were not included, leaving investors unable to see the complete collapse of Sunbeam's sales performance; and (5) most significant of all, nothing was said about earnings, creating the implication that Sunbeam was still on track to

NOT A CERTIFIED COPY

013920

hit the earnings expectations of Wall Street analysts and creating the clear implication that Sunbeam would come very close to the $285 to $295 million in expected net sales. Morgan Stanley had certain knowledge that Sunbeam had experienced a substantial loss rather than expected profits, but allowed the press release to imply falsely that there was no cause for concern about earnings.

R. Bram Smith, one of the Morgan Stanley investment bankers who worked on the Sunbeam deal, was asked at his deposition whether he knew, based on the facts he was aware of at the time, that the press release was misleading. Incapable of responding, Mr. Smith answered with a "no comment" and abruptly left the room with counsel while the question was still pending (CPH App. 12 (Smith Dep. at 183-84)):

> Q: Did you think the press release adequately disclosed the information that Morgan Stanley was aware of relating to Sunbeam's first quarter 1998 performance when you read it?
>
> [MR. CLARE]: Objection to foundation. Go ahead, you can answer.
>
> A: That is up to Sunbeam, that is their statement, have no opinion.
>
> Q: My question to you, sir, is do you think this press release adequately disclosed the information, let me start with you, that you were aware of relating to the status of Sunbeam's first quarter 1998 performance?
>
> A: Why don't you repeat your question again.
>
> Q: Did you think the Sunbeam March 19, 1998 press release —
>
> A: This thing?
>
> Q: Correct — fairly disclosed the information that you, Bram Smith, were aware of on March 19, 1998 concerning the status of Sunbeam's first quarter 1998 performance?
>
> A: I think I want to take a break. I'll answer that later.
>
> Q: No, you have to answer the question before you take a break.
>
> A: No comment then.

NOT A CERTIFIED COPY

013921

Over the objections of CPH's counsel, Mr. Smith then exited with Morgan Stanley's counsel, returned with counsel 10 minutes later, and offered a series of nonresponsive answers to CPH's questions (CPH App. 12 (Smith Dep. at 184-85)):

Q: Are you prepared to answer my question, Mr. Smith?

THE WITNESS: Please repeat it.

(Record read.)

THE WITNESS: And what did I say before?

(Record read.)

A: So I said I had no opinion.

Q: Is it your testimony, sir, that you have no opinion concerning whether the March 19, 1998 press release fairly disclosed the information concerning Sunbeam's first quarter 1998 performance that you personally were aware of?

A: Yes.

Q: The press release contains no statement whatsoever that Sunbeam sales in January and February were below to any extent the sales in January and February of 1997, correct?

A: Yup.

The March 19 press release was the product of a series of conference calls involving senior Morgan Stanley personnel and Sunbeam's outside law firm the previous day that had lasted late into the evening. CPH App. 71 (CPH Ex. 344); CPH App. 78 (CPH Ex. 384 at SASMF 19682). Indeed, Sunbeam's senior lawyer on the deal, Blaine Fogg, recorded 8.5 hours on March 18 solely to handling what he described as "The First Quarter Problem." CPH App. 78 (CPH Ex. 384 at SASMF 19682); CPH App. 118 (Fogg Dep. at 154). Morgan Stanley, Sunbeam, and their lawyers engaged in a "heated" discussion about "the level of detail" that should be included in the press release. CPH App. 72 (Dean Dep. at 123-24, 132). As more persons were brought into the circle about the revelations Morgan Stanley had received, it

NOT A CERTIFIED COPY

013922

became clear, as one of Morgan Stanley's lawyers admitted, that Sunbeam's first quarter 1998 sales certainly would be lower than what Wall Street expected. CPH App. 77 (Stack Dep. at 123, 147-48). Morgan Stanley and Sunbeam were advised by another of Morgan Stanley's own lawyers that a forthright disclosure would be to include Sunbeam's actual sales figures for January and February 1998. That advice was "soundly rejected." CPH App. 72 (Dean Dep. at 132-33).

The participants in the discussion knew that Dunlap "was very concerned about doing anything that would throw a monkey wrench into this deal, and he thought the press release might do that." CPH App. 118 (Fogg Dep. at 315-16). It was understood that the more negative (and therefore candid) the press release, the greater the risk a disclosure would blow up the Coleman deal. CPH App. 118 (Fogg Dep. at 333). It was important to Morgan Stanley that Sunbeam continue to hit its numbers with the pending debenture offering, and that a decline in Sunbeam's stock price meant that the debenture offering would become more expensive for the company. (CPH App. 74 (Porat Dep. at 96, 216). Sunbeam's lawyer has acknowledged that if Morgan Stanley was not satisfied with the language in the press release, Morgan Stanley could simply have declined to price the debentures the next day. CPH App. 118 (Fogg Dep. at 344). Morgan Stanley was clearly in the driver's seat with respect to what was disclosed about Sunbeam's first quarter collapse. CPH App. 118 (Fogg Dep. at 344).

William Wright, the head of Morgan Stanley's execution team on the deal, testified that Morgan Stanley was obligated to seek input from the auditors to assess "the accuracy and completeness of the press release." CPH App. 80 (Wright Dep. at 92). But Sunbeam and Morgan Stanley never sought the views of Sunbeam's outside auditors, who did not know about the press release until after it was issued. In fact, the auditors could not believe they were not consulted — as they typically would be — for their view on the accuracy of a release involving

NOT A CERTIFIED COPY

013923

financial issues such as this. CPH App. 63 (Bornstein Dep. at 62-64); CPH App. 81 (Pastrana Dep. at 93, 167); CPH App. 82 (Pruitt Dep. at 21).

Upon reading the March 19, 1998 press release, CPH representatives met to discuss its contents. CPH App. 50 (Shapiro Dep. 333-34). CPH representatives also conducted their own independent research following the issuance of the press release. William Nesbitt testified that he "canvassed the institutional research community" to see what "the response was to this release." CPH App. 28 (Nesbitt Dep. at 439).

Morgan Stanley suggests that the March 19 press release should have raised red flags. *See* MS Mem. 10. But Christopher Whelan, the employee in Morgan Stanley's credit department responsible for the Sunbeam loan, saw nothing in the press release that would raise red flags for him. CPH App. 113 (Whelan Dep. at 96-98). And neither did the analysts following Sunbeam, who reiterated their "buy" or "strong buy" ratings of the company. CPH App. 89 (CPH 1241513-14 ("we think the timing of the pricing of the convertible deal so close to the end of the quarter, coupled with orders now on the books prompted the company's press release")); CPH App. 90 (CPH 1039208 (the "cautious comment was driven by Sunbeam's legal staff" on the eve of pricing debentures)); CPH App. 91 (CPH 1059641 ("Continue to recommend purchase of SOC")). The price of Sunbeam stock following the issuance of the press release fell from $50 to $45.375, but CPH did not view that dip in price as a problem, because the price of Sunbeam stock still was well above the $41.75 price on the day CPH signed the Merger Agreement. CPH App. 127 (CPH Ex. 241); CPH App. 10 (Gittis Dep. at 110). Analysts also believed that the decline in Sunbeam's stock price was "unwarranted," and an overreaction to the information contained in the press release. CPH App. 89 (CPH 1241513). Indeed, despite the press release, the debenture offering was increased from its initial target of $500 million to $750

NOT A CERTIFIED COPY

013924

million due to investor interest. CPH App. 12 (Smith Dep. at 223-24); CPH App. 129 (Harris Dep. at 104); CPH App. 74 (Porat Dep. at 130).

Morgan Stanley helped to disseminate the press release in the middle of a series of road show presentations it organized to attract investors for the debenture offering it was underwriting to raise the cash needed to close the transaction. During the road show presentation after the issuance of the press release, Morgan Stanley stood with Sunbeam as Sunbeam reassured investors and financial analysts that the lawyers made them issue the press release because of the debt offering, but that Sunbeam's "sales at retail are strong" and that Sunbeam was on track with its outlook for 1998. CPH App. 101 (CPH Ex. 75 at SB 18225). Morgan Stanley stood with Sunbeam as CPH and other investors were specifically reassured that the press release was no cause for alarm because Sunbeam was on track to meet expectations. CPH App. 97 (Drapkin Dep. at 126). Morgan Stanley stood with Sunbeam as Sunbeam reassured its investors that it issued the press release only because the lawyers insisted, not because of any problem with the business at Sunbeam. CPH App. 48 (Maher Dep. at 358) (Dunlap was telling analysts that the press release was distributed "at the behest of the lawyers and that things were really okay")).

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

Morgan Stanley's efforts to conceal Sunbeam's first quarter collapse and the true reasons for it raised the ire of Lawrence Bornstein, one of Sunbeam's senior outside audit managers, who was stunned to hear that Sunbeam had issued a press release assuring the public that it would exceed first quarter 1997 sales of $253.4 million. CPH App. 63 (Bornstein Dep. at 65-66, 217). After reviewing the March 18 Uzzi sales chart, which included Sunbeam's results for the first two weeks of March, Bornstein felt that Sunbeam's statements in the March 19 press release were even more aggressive than he originally thought based on the sales results in January and February. CPH App. 63 (Bornstein Dep. at 85); CPH App. 105 (CPH Ex. 121).

NOT A CERTIFIED COPY

013925

On March 19, while Morgan Stanley was making final revisions to the debenture offering memorandum at the printer, Bornstein objected to the inclusion of the press release in the memorandum and confronted John Tyree of Morgan Stanley with his skepticism that Sunbeam could exceed first quarter 1997 sales of $253.4 million. CPH App. 63 (Bornstein Dep. at 75). Bornstein told Tyree: "I've done basic math, that they have done a million dollars in sales a day for the first 72 days and now they have to do — whatever it was, 12 to $15 million in sales for the next — . . . let's say 17 days, whatever the numbers were, and that I was very skeptical, that I remember saying to him that I don't think this company's turned around." Bornstein then warned Tyree: "You better hope to God that they do, because if not, you're all going to get sued." CPH App. 63 (Bornstein Dep. at 81, emphasis added).

Bornstein also told Tyree at the printer that he was going to send auditors to Sunbeam's shipping docks at midnight on the last day of the quarter, towards the end of March 1998, to ensure that Sunbeam accurately accounted for sales. CPH App. 63 (Bornstein Dep. at 82); CPH App. 106 (CPH Ex. 118); CPH App. 107 (CPH Ex. 119). Bornstein was concerned that Sunbeam might record as first quarter sales products that were not shipped until after the first quarter had closed. CPH App. 63 (Bornstein Dep. at 10-17). Bornstein testified that this cut-off review was unusual and required a "huge amount of effort." CPH App. 63 (Bornstein Dep. at 30).

Bornstein, understandably concerned that Morgan Stanley would not remember the confrontation accurately, memorialized his statements to Tyree in a March 31, 1998 memorandum to the file. CPH App. 63 (Bornstein Dep. at 94-96); CPH App. 102 (CPH Ex. 114). The time records of Adrian Dietz, a Sunbeam attorney who was at the printer that evening, corroborate Bornstein's account by confirming that the press release was discussed at the printer. CPH App. 78 (CPH Ex. 384 at SASMF 19679). So does the deposition testimony of Philip

NOT A CERTIFIED COPY

013926

Harlow, another auditor of Sunbeam, who confirmed that there were "heated discussions" at the printer about the disclosures in the press release. CPH App. 121 (Harlow Dep. at 50-53). Tyree does not deny that Bornstein objected to including the press release in the offering memorandum, but claims that he does not recall any other detail of his conversation with Bornstein. CPH App. 75 (Tyree Dep. at 225-26). Mark Brockelman, Bornstein's assistant, reviewed Bornstein's March 31, 1998 memorandum in March or April 1998, and concluded that Bornstein's recollections were correct insofar as they related to events that Brockelman witnessed. Brockelman confirmed that Tyree was very upset with Bornstein and referred to Bornstein using derogatory terms outside his presence. CPH App. 109 (Brockelman Dep. at 41, 48-50).

Sunbeam's first quarter, historically determined on a 13-week basis, normally would have ended on March 29, but Sunbeam was so desperate to record sales in the first quarter of 1998 that it shifted to a calendar quarter to enable it to add two extra days of additional sales. By doing so, Sunbeam was able to include not only its own sales from March 30-31, but also Coleman sales from March 30-31, following the closing on CPH's sale of Coleman stock to Sunbeam — thereby inflating the numbers and obscuring the true picture of Sunbeam's performance. CPH App. 63 (Bornstein Dep. at 21-22).

J. The More Morgan Stanley Learns, The Less Morgan Stanley Says.

After the March 19 press release was issued, Morgan Stanley made final preparations to close the Coleman acquisition. Morgan Stanley's agenda for a bring-down due-diligence conference call, which was to be conducted just before the March 25 debenture closing, had included an inquiry into Sunbeam's "[t]op and bottom line outlook for first quarter, first half and the year." CPH App. 83 (CPH Ex. 33). On March 20 — the day after Bornstein confronted Tyree about the press release — the document was edited, Ruth Porat's name was added to the list of authors, and Morgan Stanley's planned inquiry into Sunbeam's second quarter was

NOT A CERTIFIED COPY

013927

tellingly dropped from the agenda. CPH App. 84 (CPH Ex. 34). That inquiry remained deleted on the March 23 agenda. CPH App. 85 (CPH Ex. 35). No Morgan Stanley witness has been able to explain the deletion of this item from the agenda, although Sunbeam undoubtedly would attempt to address its first quarter disaster by stealing sales from the second quarter, a fact that Morgan Stanley chose to ignore. And at the same time, no Morgan Stanley witness can identify any specific step taken by Morgan Stanley to track Sunbeam's actual sales between March 19 and the deal closing. CPH App. 20 (Tyree Dep. at 530-31); CPH App. 9 (Strong Dep. at 245-46); CPH App. 87 (Hart Dep. at 248); CPH App. 12 (Smith Dep. at 229-30). In light of Morgan Stanley's knowledge of the sales crisis, it is plain that Morgan Stanley consciously decided not to ask specific questions the answers to which it already knew, answers that would throw a further "monkey wrench" into an already ugly situation.

Meanwhile, a committee of senior Morgan Stanley officials met on March 20, 1998 to approve Morgan Stanley's providing a loan to Sunbeam necessary to complete the acquisition of CPH's Coleman stock. During the meeting, William Strong took primary responsibility for advocating that the underwriting — without which the Coleman transaction with CPH could not occur — should be approved. CPH App. 12 (Smith Dep. at 101); CPH App. 87 (Hart Dep. at 224-25); CPH App. 86 (CPH Ex. 76).

Strong's role at the Morgan Stanley committee meeting is very significant. When called upon to do so, Strong vouched for his client, Sunbeam, at that March 20, 1998 meeting. CPH App. 120 (Eltrich Dep. at 162-63). Strong had a vested personal interest in closing the deal. Just weeks earlier, Morgan Stanley management had told Strong that he needed to bring in $90 million or more in fees in 1998 — $20 million higher than the target Strong had hoped the firm would set for him. CPH App. 17 (CPH Ex. 374 at MS 85457, MS 854717). The Sunbeam deal would provide Strong with more than $40 million in fee credits. CPH App. 93 (CPH Ex. 146 at

NOT A CERTIFIED COPY

013928

MS 80328). Strong, known by senior Morgan Stanley personnel to be "overly aggressive" and "highly focused on moneymaking opportunities, sometimes to a fault," advocated that the deal go forward despite his knowledge of Sunbeam's disastrous actual results, so that he could make his own personal numbers for fee generation. Morgan Stanley's senior managers, knowing of Strong's tendencies, voted the deal forward so that Morgan Stanley could make its $40-plus million fee. CPH App. 12 (Smith Dep. at 203); *see also* CPH App. 93 (CPH Ex. 146 at MS 80328). Indeed, one member of that committee, Abdel-Meguid, had specifically criticized Strong's "less than straightforward approach." CPH App. 17 (CPH Ex. 374 at MS 85462).

Bram Smith's handwritten notes on the presentation materials circulated for the March 20 finance committee meeting confirm that these high-level Morgan Stanley executives discussed both Sunbeam's sales crisis and the fees Morgan Stanley would receive if the transactions closed. CPH App. 86 (CPH Ex. 76); CPH App. 12 (Smith Dep. at 203-04). Smith's notes on the front page of the document indicate that the finance committee discussed Wall Street's estimates of $285 to $295 million in net sales, and the words "112.5 short" appear with "Don Uzzi — VP Sales" [*sic*] above and next to the Street estimates. CPH App. 86 (CPH Ex. 76). A few pages later, Smith makes handwritten notations concerning Morgan Stanley's arrangement fee and net underwriting fees for the debenture offering. CPH App. 86 (CPH Ex. 76 at MSC 25831). These Morgan Stanley senior executives, cognizant of the sales crisis and aware of Strong's reputation for aggressively pursuing fees and not being "completely up front," shirked another opportunity to communicate the truth to investors.

Instead, Morgan Stanley's senior management discussed how they could quickly transfer nearly the entire loan to other lenders to reduce Morgan Stanley's exposure. CPH App. 12 (Smith Dep. at 211-12); *see also* CPH App. 128 (Rankin Dep. at 18-20 (Morgan Stanley subordinate of Bram Smith testifying that the expected timeframe for syndicating the loan was

NOT A CERTIFIED COPY

013929

two to three months)). Morgan Stanley's plan was to transfer all but $50 million of the loan (or even more, if it was "lucky," according to Smith) to other lenders by the end of May 1998. CPH App. 12 (Smith Dep at 211-12).

On March 25, 1998, Sunbeam's outside auditors delivered yet another letter to Morgan Stanley with more bad news. The auditors reported that as of March 1, 1998, Sunbeam was experiencing a net loss of almost $11 million in the first quarter of 1998 (excluding one-time charges). That was significantly below Wall Street analysts' expectations, which had been lowered slightly in the wake of the March 19, 1998 press release, but still were expecting a profit ranging from $24 to $27 million (excluding one-time charges). CPH App. 88 (CPH Ex. 112); CPH App. 91 (CPH 1059641); CPH App. 111 (CPH 1393269). In order to meet those expectations, Sunbeam was required to reverse its $11 million loss and somehow realize $35 million or more in the remaining days of March — an absurd possibility.

Neither Morgan Stanley nor Sunbeam warned any investor in Sunbeam, including CPH, of these sales or earnings shortfalls. Indeed, the assurances that Sunbeam and Morgan Stanley gave CPH caused no alarm at CPH or with Wall Street analysts, who reiterated their "buy" or "strong buy" ratings of Sunbeam. CPH App. 89 (CPH 1241513); CPH App. 90 (CPH 1039208); CPH App. 91 (CPH 1059641).

Also on March 25, which is the day the debenture offering closed, Morgan Stanley sat idly by as Sunbeam issued another press release announcing the successful closing of the debenture offering, a press release that included bullish statements about Sunbeam's condition while failing to make any statement concerning Sunbeam's sales or earnings collapse. CPH App. 92 (CPH Ex. 380); CPH App. 74 (Porat Dep. at 273-76). Despite this knowledge, and despite having spent many late night hours in heated discussions concerning the contents of the March 19 press release, Morgan Stanley never followed up with Sunbeam to ensure that

NOT A CERTIFIED COPY

013930

Sunbeam had achieved the $125.5 million in "projected" and "forecasted" sales needed just to meet first quarter 1997 sales. CPH App. 74 (Porat Dep. at 254-62); CPH App. 20 (Tyree Dep. at 530-31); CPH App. 9 (Strong Dep. at 245-46); CPH App. 87 (Hart Dep. at 248); CPH App. 12 (Smith Dep. at 229-30). Morgan Stanley chose instead to close a massive, $2 billion face amount issuance of Sunbeam debt securities to the public and Sunbeam's purchase from CPH of its controlling interest in Coleman. By keeping silent, Morgan Stanley could and did reap its fees — which were projected to be in excess of $40 million. CPH App. 93 (CPH Ex. 146); *see also* CPH App. 94 (11/19/04 Morgan Stanley Written Response to Rule 1.310 Topics).

ARGUMENT

Morgan Stanley concedes that Florida law governs the procedure that this Court must follow in considering Morgan Stanley's motion. *See* MS Mem. 12. Summary judgment therefore is appropriate only when the pleadings, depositions, answers to interrogatories, admissions, and supporting affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510. When a defendant in a tort action moves for summary judgment, it bears the burden of proving "conclusively" either that it is not liable for the tort of which it is accused or that the plaintiff is unable to prove the tort. *See Holl*, 191 So. 2d at 47-48; *accord Khosrow Maleki, P.A. v. M.A. Hajianpour, M.D., P.A.*, 771 So. 2d 628, 630 (Fla. 4th DCA 2000). Before the nonmoving party is required to show the existence of a genuine issue of material fact, "it must first be determined that the movant has successfully met his burden of proving a negative, i.e., the non-existence of a genuine issue of material fact." *See Holl*, 191 So. 2d at 43; *accord Daeda v. Blue Cross & Blue Shield of Florida*, 698 So. 2d 617, 617 (Fla. 2d DCA 1999); *Christian v. Overstreet Paving Co.*, 679 So. 2d 839, 840 (Fla. 2d DCA 1996); *Hervey v Alfonso*, 650 So. 2d 644, 645-46 (Fla. 2d DCA 1995); *Rubley v. Keene Corp.*, 480 So. 2d 675, 676 (Fla. 1st DCA 1985).

NOT A CERTIFIED COPY

013931

As stated in 49 Fla. Jur. 2d, *Summary Judgment and Judgment on the Pleadings,* § 50, the movant's summary judgment burden is "heavy":

> [I]f the record reflects the existence of any genuine issue of material fact, or the possibility of any such issue, or if the record raises even the slightest doubt that such an issue might exist, summary judgment for the movant is improper. . . . Indeed, the burden on the movant is not simply to show that the facts support his or her theory of the case, but rather to demonstrate that the facts show that the party moved against cannot prevail, and until the movant does so it is not necessary for the nonmoving party to produce evidence to establish his or her case, as it would be at trial. Accordingly, where a defendant moves for summary judgment, since it is his or her burden to establish the absence of any genuine issue of material fact, the trial court improperly shifts the burden of proof by requiring the plaintiff to establish a prima facie case supporting his or her cause of action in order to avoid the summary judgment. . . . The burden on a party moving for summary judgment is greater than the burden which a plaintiff must carry at trial, since a plaintiff may prevail at trial on the basis of a mere preponderance of the evidence, whereas a party moving for summary judgment must show conclusively that no material issues remain for trial. The burden is satisfied only when the movant clearly establishes what the true factual picture is, and thereby removes any serious doubt as to the existence of any genuine issue of fact.

See also Visingardi v. Tirone, 193 So. 2d 601, 604 (Fla. 1967) ("the burden of a party moving for summary judgment is greater, not less, than that of the plaintiff at the trial. The plaintiff may prevail on the basis of a mere preponderance of the evidence. However, the party moving for summary judgment must show conclusively that no material issues remain for trial."); *accord Board of Trustees of the Internal Improvement Trust Fund v. Florida Utils. Co.*, 599 So. 2d 1356, 1359 (Fla. 1st DCA 1992).

All inferences, moreover, are drawn in favor of the nonmoving party. *See Hajianpour*, 771 So. 2d at 630; *Novotny v. Estate of Dantone*, 848 So. 2d 398, 400 (Fla. 4th DCA 2003). Summary judgment must be denied if the record "raises even the slightest doubt that an issue might exist." *Williams v. City of Lake City*, 62 So. 2d 732, 733 (Fla. 1953); *Nard, Inc. v. DeVito Contracting & Supply, Inc.*, 769 So. 2d 1138, 1140 (Fla. 2d DCA 2000).

NOT A CERTIFIED COPY

0139932

Under these standards, which Morgan Stanley has ignored in its brief, Morgan Stanley has not come close to meeting its burden of demonstrating its entitlement to summary judgment.

I. Morgan Stanley's Summary Judgment Motion Should Be Denied At The Threshold Because It Is Based Entirely On The Erroneous Legal Assumption That The Moving Party Can Prevail On A Summary Judgment Motion Merely By Asserting That The Plaintiff Has No Evidence To Support Its Claims.

This Court should deny Morgan Stanley's motion in its entirety, without considering any of Morgan Stanley's arguments on the merits, because every one of those arguments is predicated on a summary judgment standard that is directly contrary to Florida law. Morgan Stanley's arguments all are based on the legal assumption that Morgan Stanley can prevail simply by pointing to essential elements of CPH's claims and asserting that CPH has no evidence to support them. *See, e.g.,* MS Mem. 13 (arguing entitlement to summary judgment on CPH's negligent misrepresentation claim because "[t]here is no record evidence that CPH shared such a [special] relationship with Morgan Stanley in this transaction"); *id.* at 15 (making same argument based on the assertion that "CPH has not even ***alleged*** that it was in a 'special relationship of trust or confidence' with Morgan Stanley"; emphasis in original); *id.* at 18 (arguing entitlement to summary judgment on CPH's fraudulent misrepresentation claim because "CPH has not presented any evidence of justifiable reliance as a matter of law"); *id.* at 22 (making same argument based on assertion that "CPH has not presented any evidence of scienter or intent to defraud as a matter of law"); *id.* at 26 (arguing entitlement to summary judgment on CPH's aiding-and-abetting claim because "CPH has not presented any evidence that Morgan Stanley had actual knowledge that Sunbeam engaged in fraud"); *id.* at 30 (making same argument based on assertion that "CPH has not presented any evidence that Morgan Stanley provided substantial assistance to Sunbeam in effectuating its alleged fraud"); *id.* at 32 (arguing that "Morgan Stanley is entitled to summary judgment" on CPH's conspiracy claim "because

NOT A CERTIFIED COPY

013933

CPH has no record evidence on ***actual*** agreement between Morgan Stanley and Sunbeam to defraud CPH") (emphasis in original).

Morgan Stanley has the burden exactly backwards. The burden is on Morgan Stanley, not CPH, to show "conclusively that [it] is not guilty" of the torts it is accused of committing or to "show conclusively that [CPH] is unable to present requisite proof" of its charges against Morgan Stanley. *See Holl*, 191 So. 2d at 47-48. In assuming otherwise, Morgan Stanley is making the same mistake made in the *Visingardi* case by the defendant, who argued that summary judgment must be granted if the plaintiff fails to "come forward with sufficient, substantial, competent, evidentiary support for each and every fact which [it] must establish" and if the plaintiff fails "to show by expert testimony that defendant had departed from the requisite standard of care." *See Visingardi*, 193 So. 2d at 605. The Florida Supreme Court rejected defendant's argument, observing that "[b]oth passages [just quoted] correctly state the burden of the plaintiff at trial; both are inaccurate as to his burden as the party opposing a motion for summary judgment." *Id.* The Supreme Court concluded that "the burden of the party moving for summary judgment is greater, not less, than that of the plaintiff at the trial. The plaintiff may prevail on the basis of a mere preponderance of the evidence. However, the party moving for summary judgment must show conclusively that no material issues remain for trial." *Id.* at 604 (emphasis added); *see also Green v. CSX Transp., Inc.*, 626 So. 2d 974, 975 (Fla. 1st DCA 1993) (confirming that Florida has not adopted the federal summary judgment standard, which is the one utilized by Morgan Stanley, under which the party seeking summary judgment need only identify the opposing party's failure to make a showing of an essential element on which the party would bear the burden of proof at trial); *Five G's Car Sales, Inc. v. Florida Dep't of Law Enforcement*, 581 So. 2d 212, 212 (Fla. 3d DCA 1991) (same).

NOT A CERTIFIED COPY

0139314

In sum, because Morgan Stanley's summary judgment motion is predicated entirely on the erroneous assumption that CPH bears the initial burden of coming forward with evidence supporting essential elements of its claims, this Court need read no further: Summary judgment should be denied without any consideration of Morgan Stanley's individual arguments.

II. Morgan Stanley's Individual Attacks On CPH's Claims Are Insufficient To Warrant Summary Judgment In Morgan Stanley's Favor.

Morgan Stanley's arguments fail for the additional reason that they are contrary to the applicable law and the material facts. CPH's claims of negligent misrepresentation, fraudulent misrepresentation, aiding-and-abetting fraud, and conspiracy to commit fraud therefore should be allowed to proceed to trial.

A. CPH's Negligent Misrepresentation Claim Should Be Allowed To Proceed To Trial.

Morgan Stanley begins its attack on CPH's claims by contending that it is entitled to summary judgment on CPH's negligent misrepresentation claim because "[t]here is no record evidence that CPH shared a relationship with Morgan Stanley in this transaction," and because such a contention "would not pass the straight-face test," inasmuch as Morgan Stanley was sitting across the negotiating table from CPH. *See* MS Mem. 13, 15. Morgan Stanley's argument is baseless for three reasons: (1) Morgan Stanley has failed to establish as a matter of law the non-existence of a special relationship between the parties; (2) courts applying New York law almost uniformly consider the existence of a special relationship to present issues of fact that cannot be resolved on summary judgment; and (3) there is ample factual support for the existence of a special relationship in this case in any event.

1. Morgan Stanley Has Failed To Demonstrate Conclusively The Non-Existence Of A Special Relationship Between The Parties.

Although Morgan Stanley's argument assumes that CPH bears the burden of coming forward with record evidence of a special relationship (MS Mem. 13), as shown above, Morgan

NOT A CERTIFIED COPY

013935

Stanley actually is required to establish conclusively the non-existence of such a relationship. *See, e.g., Holl*, 191 So. 2d at 43 ("it must first be determined that the movant has successfully met his burden of proving a negative, i.e., the non-existence of a genuine issue of material fact," and "[h]e must prove this negative conclusively," before a plaintiff must come forward with proof of a genuine issue of material fact); *see also Robinson v. Kalmanson*, 882 So. 2d 1086, 1088 (Fla. 5th DCA 2004) (reversing grant of summary judgment on fraud claim because the movant "failed to demonstrate the non-existence of [the non-movant's] reliance").

Here, other than to present generalized arguments about CPH's so-called "sophistication" and about the fact that Morgan Stanley sat across the negotiating table from CPH, Morgan Stanley has not addressed the existence or non-existence of a special relationship between the parties. Morgan Stanley's generalized assertions fall far short of proving the negative — conclusively — that no special relationship existed between CPH and Morgan Stanley. That is reason enough to deny Morgan Stanley's motion. *See City of Lake City*, 62 So. 2d at 733 (summary judgment must be denied if the record "raises even the slightest doubt that an issue might exist").

2. The Question Of Whether A Special Relationship Exists Almost Invariably Involves Issues of Fact Precluding Summary Judgment.

New York courts almost uniformly consider the special relationship question to be one of fact that must be left for trial. *See, e.g., AFA Protective Sys., Inc. v. American Tel. & Tel. Co., Inc.*, 442 N.E.2d 1268, 1269 (N.Y. 1982) (affirming denial of summary judgment on negligent misrepresentation claim because "the issue of whether a 'special relationship' exists sufficient to make out a cause of action for negligent misrepresentation should also be left to the finder of fact"); *Gruber v. Victor*, 1996 WL 492991, at *18 (S.D.N.Y. 1996) ("[C]ourts that have found, applying New York law, that no special relationship existed have typically done so, not at the pleading stage, but after trial, on the basis that plaintiffs have failed to carry their evidentiary

NOT A CERTIFIED COPY

013936

burden."); *Kimmell v. Schaefer*, 675 N.E.2d 450, 454 (N.Y. 1996) ("Whether the nature and caliber of the relationship between the parties is such that the injured party's reliance on a negligent misrepresentation is justified generally raises an issue of fact"); *Suez Equity Inv., L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 104 (2d Cir. 2001) (denying motion to dismiss negligent misrepresentation claim brought under New York law because "a determination of whether a special relationship exists is essentially a factual inquiry"); *Cewnick Fund v. Castle,* 1993 WL 88243, at *10 (S.D.N.Y. 1993) (denying summary judgment on negligent misrepresentation claim brought under New York law because whether a special relationship exists is a "genuine issue of material fact"); *DIMON Inc. v. Folium, Inc.*, 48 F. Supp. 2d 359, 373 (S.D.N.Y. 1999) (special relationship inquiry under New York law is a matter "for case-by-case analysis").

The fact that CPH is a so-called sophisticated investor that sat across the negotiating table from Morgan Stanley makes no difference: The special relationship test remains a fact-bound inquiry that is not amenable to adjudication as a matter of law. *See, e.g., Delta Holdings, Inc. v. National Distillers & Chem. Corp.*, 1988 WL 36330, at *9 (S.D.N.Y. 1988) ("While the complaint describes a commercial relationship, the Court cannot conclude that the relationship could not have been 'special' [as a matter of New York law]. This determination must await the development of all of the facts at trial."); *In re Rickel & Assocs., Inc*, 272 B.R. 74, 102-03 (Bankr. S.D.N.Y. 2002) ("a special relationship [under New York law] may be found in an arms-length commercial transaction"); *DIMON Inc.*, 48 F. Supp. 2d at 373 (denying motion to dismiss negligent misrepresentation claim under New York law where buyer and seller engaged in lengthy negotiations prior to the acquisition); *Polycast Technology Corp. v. Uniroyal, Inc.*, 792 F. Supp. 244, 269-70 (S.D.N.Y. 1992) (denying motion to dismiss negligent representation claim under New York law where buyer and seller had an extended negotiation period); *Coolite*

NOT A CERTIFIED COPY

013937

Corp. v. American Cyanamid Co., 52 A.D.2d 486, 488 (N.Y. App. Div. 1976) ("Although the distributorship agreement refers to the parties as vendor and seller, there is merit to the contention that a special relationship existed").

Thus, despite the fact that CPH is a so-called sophisticated party and that the parties were on opposite sides of the negotiating table, whether a special relationship existed between them inherently involves issues of fact that are not amenable to disposition as a matter of law.

3. The Record Contains Ample Evidence Of A Special Relationship Between The Parties.

There is ample evidence — all ignored by Morgan Stanley — of a special relationship between CPH and Morgan Stanley. New York courts generally require that the relationship between the parties have a closer degree of "confidence and trust" than an ordinary relationship between a buyer and seller. *See Kimmell v. Schaefer*, 675 N.E.2d 450, 454 (N.Y. 1996); *see also American Protein Corp. v. AB Volvo,* 844 F.2d 56, 63-64 (2d Cir. 1988) (applying New York law). Here, given Morgan Stanley's prior relationship with CPH and its continuing contacts with CPH throughout the transaction at issue, at a minimum there exists a jury question as to whether a special relationship existed between CPH and Morgan Stanley.

a. Morgan Stanley And CPH Had A Longstanding Prior Relationship.

Morgan Stanley's prior dealings with CPH created a relationship of trust and confidence that continued to exist at the time of the Sunbeam transaction. New York courts routinely consider the existence of a prior relationship as important to the special relationship inquiry. *See, e.g., Gordon P. Getty Family Trust v. Peltz,* 1998 WL 148425, at *8 (S.D.N.Y. 1998) (denying summary judgment on negligent misrepresentation claim under New York law where the parties in an arms-length transaction had prior relationship); *Morse v. Swank, Inc.*, 459 F. Supp. 660, 668 (S.D.N.Y. 1978) (denying summary judgment on negligent misrepresentation

NOT A CERTIFIED COPY

013938

claim under New York law as to one of several defendants in part because parties' prior relationship may support the "inference of an 'intimate relationship' that would invoke more rigorous obligations").

Morgan Stanley and CPH were far from strangers prior to the Sunbeam transaction; Morgan Stanley had been the investment banker for CPH's executives for years, having worked with the CPH executives on about two-dozen transactions dating back to 1985. CPH App. 32 (Perelman Dep. at 222); CPH App. 10 (Gittis Dep. at 86); *see also* CPH App. 33 (Plaintiff's Responses and Objections to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogatories, at 2-4 listing 23 transactions). Indeed, in early 1998, Morgan Stanley was using its prior relationship with CPH's executives in an effort to sell Gucci. CPH App. 32 (Perelman Dep. at 215-17).

Over almost two decades, the parties had developed a "very close" working relationship. CPH App. 34 (Perelman Dep. at 352); CPH App. 10 (Gittis Dep. at 86 (we had "very good relations with [Morgan Stanley]")). That was due in part to William Reid, a managing director at Morgan Stanley, who was CPH's "primary contact" at Morgan Stanley. CPH App. 34 (Perelman Dep. at 352); *see also* CPH App. 28 (Nesbitt Dep. at 288 (describing Reid as CPH's "relationship banker at Morgan Stanley")); CPH App. 10 (Gittis Dep. at 86). William Strong, the Morgan Stanley managing director who ran the Sunbeam engagement, admitted that he was aware that Reid had a relationship with CPH. CPH App. 9 (Strong Dep. at 180); *accord* CPH App. 11 (Kitts Dep. at 83).

In his capacity as CPH's Morgan Stanley contact, Reid frequently pitched business ideas to CPH. CPH App. 35 (Nesbitt Dep. at 115); CPH App. 32 (Perelman Dep. at 221); CPH App. 10 (Gittis Dep. at 86). Perelman and Nesbitt, both of whom had worked with Reid personally, had developed a strong working relationship with him and held him in high regard. CPH App. 34 (Perelman Dep. at 352 (Reid was "very smart," "very nice," and a "very good guy")); CPH

NOT A CERTIFIED COPY

013939

App. 35 (Nesbitt Dep. at 114 (Nesbitt knew Reid "quite well")).

Reid went on to play a key role in Sunbeam's acquisition of Coleman. At a time when the transaction appeared to be dead, following the December 18, 1997 meeting between Dunlap and CPH representatives at which Dunlap stormed out (CPH App. 34 (Perelman Dep. at 350)), Morgan Stanley decided to use Reid to personally reach out to Perelman. After the December meeting, Reid spoke directly to Perelman in January 1998 to revive the negotiations. CPH App. 34 (Perelman Dep. at 353); CPH App. 10 (Gittis Dep. at 85). Reid advised Perelman that Sunbeam still was very interested in a transaction with Coleman. Perelman told Reid that Sunbeam and Coleman had not agreed on a price in earlier negotiations but Reid assured Perelman that "we can come together on price." CPH App. 34 (Perelman Dep. at 353-54). After that discussion with Reid, CPH representatives reopened talks with Sunbeam. CPH App. 34 (Perelman Dep. at 354). Thereafter, Reid continued to facilitate general communications between Sunbeam and Coleman. CPH App. 40 (Duffy Dep. at 123).

Thus, Morgan Stanley's extensive prior dealings with CPH over the years — and especially the working relationship between Reid and CPH — created a relationship of "trust and confidence" between the two parties that existed prior to the Sunbeam transaction. *See Gordon P. Getty Family Trust*, 1998 WL 148425, at *8 (denying summary judgment on negligent misrepresentation claim under New York law, in case involving arms-length transaction, where parties had prior relationship).[2]

NOT A CERTIFIED COPY

013940

[2] In urging the contrary conclusion, Morgan Stanley relies heavily on the decision in *WIT Holding Corp. v. Klein*, 724 N.Y.S.2d 66 (N.Y. App. Div. 2001), insisting that this case is "similar" to *WIT*. *See* MS Mem. 16. In fact, there is no similarity. The court in *WIT* found that no special relationship existed because the parties were mere "business acquaintances" who had socialized on a number of occasions and who once had worked on the same project while they were at different brokerage firms. *See* 724 N.Y.S.2d at 68. Here, as shown above, Morgan Stanley had a sustained and longstanding business relationship prior to the time that Morgan Stanley approached CPH about the potential acquisition of Coleman.

b. Morgan Stanley Had Extensive Contacts With CPH During The Sunbeam Transaction.

Morgan Stanley had extensive contacts with CPH throughout the course of the Sunbeam transaction. New York courts often measure a special relationship by the extent of the contacts between the parties during the subject transaction. *See, e.g., DIMON Inc.*, 48 F. Supp. 2d at 373 (denying motion to dismiss negligent misrepresentation claim where buyer and seller engaged in lengthy negotiations prior to the acquisition); *Polycast Technology Corp.*, 792 F. Supp. at 244 (denying motion to dismiss negligent representation claim where buyer and seller had an extended negotiation period).

First, Morgan Stanley initiated contact with CPH. Shortly after Morgan Stanley began serving as Sunbeam's investment banker in April 1997, Morgan Stanley set out to find a way to help Sunbeam cash in on the inflated price of its stock. Morgan Stanley initially tried to search for buyers for Sunbeam, but when it could not identify a purchaser, Morgan Stanley recommended that Sunbeam consider acquiring other companies and use its stock as part of the consideration. CPH App. 9 (Strong Dep. at 94-97). Morgan Stanley soon identified Coleman as a potential acquisition candidate and contacted CPH representatives to discuss a potential acquisition. CPH App. 31 (Defendant's Answer ¶ 36).

Second, Morgan Stanley thereafter had repeated direct contacts with CPH representatives. In November 1997, Morgan Stanley gave a presentation to CPH representatives concerning a possible transaction involving the sale of Sunbeam, and Morgan Stanley had contacts with CPH representatives on December 11, 15, and 16 in advance of the meeting between Sunbeam and CPH executives at Perelman's Palm Beach home on December 18, 1997. CPH App. 39 (Maher Dep. 133, 144-45); CPH App. 123 at MSC 44558-59. And in January 1998, as discussed above, Morgan Stanley's Reid contacted Perelman and revived the acquisition talks. CPH App. 34 (Perelman Dep. at 353-54).

NOT A CERTIFIED COPY

FILED

After Reid revived the negotiations, Morgan Stanley and CPH participated in a series of meetings and discussions regarding the terms of the transaction and the condition of Sunbeam. For example, on January 23, 1998, January 29, 1998, and February 6, 1998, representatives of CPH met with representatives of Morgan Stanley to discuss a transaction involving Coleman and Sunbeam. CPH App. 123 (CPH Ex. 169); CPH App. 138 (CPH Ex. 379). And on February 3, 13, 16, and 19, 1998, representatives from Morgan Stanley and CPH participated in a series of conference calls regarding the terms of the transaction. CPH App. 123 (CPH Ex. 169); CPH App. 138 (CPH Ex. 379).

Further, on February 23, 1998, Morgan Stanley participated with Sunbeam in a face-to-face presentation to CPH representatives at Morgan Stanley's offices on the proposed transaction with Sunbeam. CPH App. 34 (Perelman Dep. at 367-69); CPH App. 7 (Levin Dep. at 182-87); CPH App. 30 (MS Ex. 75 at CPH 1401528-31). Morgan Stanley introduced Sunbeam's presentation and fielded questions from CPH representatives. CPH App. 48 (Maher Dep. at 308-09). During the February 23 meeting, CPH also asked a number of questions about Sunbeam's first quarter 1998 earnings, and whether Sunbeam was on track to make its yearly earnings. CPH App. 48 (Maher Dep. at 305, 316 ("there was a substantial amount of discussion about the first quarter")); CPH App. 35 (Nesbitt Dep. at 187 (questions were asked "related to how is [Sunbeam's] performance today, how is it going relative to analyst expectations . . . are you going to meet your numbers for the remainder of the year")). In response to these inquiries, Sunbeam management, with the imprimatur of Morgan Stanley, represented that "Sunbeam was going to make their numbers." CPH App. 35 (Nesbitt Dep. at 187); CPH App. 48 (Maher Dep. at 306 ("Mr. Kersh in no uncertain terms said that not only was he going to make 'what the Street's forecast was,' but they were going to make their budget in the first quarter and for the year.")). Based on these representations, CPH representatives left the meeting having been told

NOT A CERTIFIED COPY

013942

that business was "going very well." CPH App. 35 (Nesbitt Dep. at 190).

Third, Morgan Stanley prepared a document on which CPH relied. In its capacity as Sunbeam's investment banker, Morgan Stanley prepared an 85-page book with its logo on the cover and on every page, a hard copy of which was handed to CPH during the February 23, 1998 meeting. CPH App. 37 (CPH Ex. 238). The book promoted Sunbeam's supposed turnaround and projections for continued growth in sales and earnings in the near term and beyond. Thus, this is not a situation in which Morgan Stanley did not know that CPH would rely on Morgan Stanley, as Morgan Stanley had a prior relationship and had significant contacts with CPH throughout the Sunbeam transaction. A special relationship between the parties clearly could be found by the jury to exist in these circumstances. *See, e.g., Credit Alliance Corp. v. Arthur Andersen & Co*, 483 N.E.2d 110, 118 (N.Y. 1985) (a professional owes a duty of care to a party with whom it is not in privity if (1) the defendant was aware that its representation would be used for a particular purpose; (2) the defendant intended that a known party would rely thereon in furtherance of that purpose; and (3) there was some conduct on the part of the defendant linking it to that party, evincing the defendant's understanding of that party's reliance).[3] *Id.* At a minimum, because it cannot conceivably be concluded that the lack of a special relationship has been established beyond "the slightest doubt," summary judgment is inappropriate. *See City of Lake City*, 62 So. 2d at 733.

NOT A CERTIFIED COPY

0139443

---

[3] Although the *Credit Alliance* rule developed in the context of accountant liability for negligently prepared reports, it has been applied in cases involving other professions. *See, e.g., Ossining Union Free Sch. Dist. v. Andersen LaRocca Andersen*, 539 N.E.2d 91, 95 (N.Y. 1989) (applying the requirement in a negligent misrepresentation claim against engineering consultants); *Prudential Ins. Co. v. Dewey, Ballantine, Bushby, Palmer & Wood*, 605 N.E.2d 318, 320-21 (N.Y. 1992) (applying the requirement in a negligent misrepresentation claim against attorneys).

B. CPH's Fraudulent Misrepresentation Claim Should Be Allowed To Proceed To Trial.

Morgan Stanley next attacks CPH's fraudulent misrepresentation claim, asserting an entitlement to summary judgment on that claim for two reasons: (1) "CPH has not presented any evidence of justifiable reliance as a matter of law;" and (2) "CPH has not presented any evidence of scienter or intent to defraud as a matter of law." *See* MS Mem. 17-25. Neither of these contentions has any merit.

1. A Triable Issue Of Fact Exists Concerning CPH's Justifiable Reliance.

Morgan Stanley contends that it is entitled to summary judgment on CPH's fraud claim because CPH cannot show that it exercised due-diligence in connection with the transaction at issue, and thus, "cannot remotely establish justifiable reliance on any allegedly fraudulent statements by Morgan Stanley regarding Sunbeam." *See* MS Mem. 18. Morgan Stanley's argument is baseless for multiple reasons.[4]

a. Morgan Stanley Has Failed To Carry Its Burden Of Establishing The Non-Existence Of CPH's Reliance.

In making its justifiable reliance argument, once again, Morgan Stanley ignores relevant summary judgment standards. Under those standards, it is Morgan Stanley's burden to establish the non-existence of CPH's reliance on Morgan Stanley, and it is Morgan Stanley's burden to do so conclusively. *See Robinson*, 882 So. 2d at 1088 (observing that "the moving party has the burden to prove conclusively the non-existence of any genuine issue of material fact" and holding that because the movant "failed to demonstrate the non-existence of [the non-movant's]

NOT A CERTIFIED COPY

0139444

[4] This Court has concluded that there is a due-diligence requirement with respect to fraud claims under New York law — a conclusion with which CPH respectfully disagrees. *See, e.g., Long Island Sav. Bank, F.S.B. v. Bigman*, 1991 WL 144224, at *6 (E.D.N.Y. 1991) (the negligence of a plaintiff is no defense to intentional fraud); *In re Adler, Coleman Clearing Corp.*, 247 B.R. 51, 123 (Bankr. S.D.N.Y. 1999). As is demonstrated below, however, Morgan Stanley is not entitled to summary judgment even assuming the existence of a due-diligence requirement.

reliance, we must reverse [the grant of summary judgment]"). Morgan Stanley has failed to acknowledge its burden and has failed to meet it — which is reason enough to reject its argument.

b. Whether CPH Justifiably Relied On Morgan Stanley's Representations Is A Fact-Intensive Inquiry That Cannot Be Resolved On Summary Judgment.

Whether a party's reliance on an alleged misrepresentation is justified generally is a fact-bound inquiry that is inappropriate for adjudication as a matter of law. *See, e.g., Schlaifer Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997) ("The question of what constitutes reasonable reliance is always nettlesome because it is so fact-intensive."); *Doehla v. Wathne Limited, Inc.*, 1999 WL 566311, at *10 (S.D.N.Y. 1999) ("Whether or not reliance on alleged misrepresentations is reasonable in the context of a particular case is intensely fact-specific."); *Country World, Inc. v. Imperial Frozen Foods Co.*, 589 N.Y.S.2d 81, 82 (N.Y. App. Div. 1992) ("In a fraud action, whether a party could have ascertained the facts with reasonable diligence so as to negate justifiable reliance is a factual question.") (citations omitted).

Similarly, determining whether the reliance of a "sophisticated" party is justified and determining the level of due-diligence that is required involve equally fact-intensive inquiries that are not subject to the type of bright-line rule advanced by Morgan Stanley. *See JP Morgan Chase Bank v. Winnick*, 2004 WL 1418197, at *10 (S.D.N.Y. 2004) (New York law "takes a contextual view, focusing on the level of sophistication of the parties, the relationship between them, and the information available at the time of the operative decision."); *see also Mallis v. Bankers Trust Co.*, 615 F.2d 68, 79-80 (2d Cir. 1980) (holding that jury instruction requiring sophisticated plaintiffs to establish due-diligence as a separate element of fraud claim was reversible error).

Just this year, a New York federal district court applying New York law denied a

NOT A CERTIFIED COPY

013945

16div-020413

defendant's motion for summary judgment on a plaintiff's fraud claim, holding that it could not "say as a matter of law that the Banks' reliance was unreasonable (or unjustified) because a sophisticated lender could have protected itself by making reasonable inquiries." *Winnick*, 2004 WL 1418197, at *17. The court in *Winnick* held that although the party was sophisticated and had unfettered access to defendants' records and analyst reports, whether that party's reliance was justified was still "a factual question inappropriate for summary adjudication." *Id.*; *see also Peltz v. Mountleigh Holdings*, 1998 WL 148425, at *6 (S.D.N.Y. 1998) (refusing to grant summary judgment on fraud claim where a sophisticated party had limited time to verify defendant's representations before closing); *Primavera Familienstifung v. Askin,* 130 F. Supp. 2d 450, 500 (S.D.N.Y. 2001) ("while it is certainly relevant that the Investors were sophisticated, and this increases their burden at trial, it cannot be said as a matter of law that on this basis they cannot show justifiable reliance").

Thus, even taking CPH's sophistication into account, the issue of whether CPH conducted adequate due-diligence in this case calls for a factual inquiry that is plainly inappropriate for adjudication as a matter of law. *See Nakano v. Jamie Sadock, Inc.*, 2000 WL 1010825, at *3 (S.D.N.Y. 2000) (holding that the adequacy of plaintiff's investigation to verify defendant's representation that it had "extensive experience" was an issue for the jury); *Crigger v. Fahnestock & Co.*, 2003 WL 22170607, at *8 (S.D.N.Y. 2003) ("Whether plaintiffs engaged in enough due-diligence relative to their net worths and the resources potentially at their disposal to satisfy their burden is a question of fact for a jury to decide.").

c. CPH Conducted A Reasonable Investigation Into Sunbeam's Finances.

To the extent that a sophisticated party has a duty to conduct an investigation to claim justifiable reliance, the record plainly reveals that CPH conducted an appropriate review into Sunbeam's finances, contrary to Morgan Stanley's assertion. Beginning in December 1997,

NOT A CERTIFIED COPY

013946

CPH prepared several financial analyses evaluating the consequences of a potential merger of Coleman and Sunbeam. *See, e.g.*, CPH App. 35 (Nesbitt Dep. at 117); CPH App. 41 (MS Ex. 104); CPH App. 42 (MS Ex. 105); CPH App. 43 (MS Ex. 106); CPH App. 44 (MS Ex. 107). CSFB, Coleman's investment advisor, assembled a set of materials for Coleman's review — including Sunbeam's 10-Q for the period ending September 1997, Sunbeam's 1996 10-K, and various research reports. CPH App. 45 (MS Ex. 76). CSFB also prepared an analysis of Coleman's value. CPH App. 46 (CPH Ex. 236).

In early 1998, CPH made several inquiries of Sunbeam regarding Sunbeam's financial status since the end of the 1997 calendar year, and what Sunbeam's future "growth plan" looked like. CPH App. 47 (Shapiro Dep. at 134). These inquiries were responded to in a series of due-diligence meetings held on February 23, 1998. CPH App. 47 (Shapiro Dep. at 134); CPH App. 28 (Nesbitt Dep. at 366-68). CPH executives required these meetings to assure themselves that Sunbeam's business and financial plan appeared in line with analysts' expectations. CPH App. 10 (Gittis Dep. at 100-01).

On February 23, 1998, Morgan Stanley personnel and Sunbeam representatives held face-to-face discussions with representatives from CPH. At this meeting, CPH received hard copies of a presentation entitled "Sunbeam Corporation Discussion Materials," which had Morgan Stanley's logo on the cover and on each page, and a presentation entitled "Sunbeam's Long Range Strategic Plan." CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238). CPH made several inquiries related to Sunbeam's financial margins, new products, international markets, and grilling business. CPH App. 7, 8 (Levin Dep. at 182-242, 252-55); CPH App. 50 (Shapiro Dep. at 285); CPH App. 51 (Page Dep. at 211).

At the February 23 meeting, CPH asked questions about Sunbeam's first quarter 1998 earnings and whether Sunbeam was still on track to make its yearly earnings. CPH App. 48

NOT A CERTIFIED COPY

013547

(Maher Dep. at 305, 316 ("there was a substantial amount of discussion about the first quarter")); CPH App. 35 (Nesbitt Dep. at 187 (questions were asked "related to how is [Sunbeam's] performance today, how is it going relative to analyst expectations . . . are you going to meet your numbers for the remainder of the year")). In response to these direct inquiries, Sunbeam senior management — with the imprimatur of Morgan Stanley, which had been representing Sunbeam for months — represented that "Sunbeam was going to make their numbers." CPH App. 35 (Nesbitt Dep. at 187); *see also* CPH App. 48 (Maher Dep. at 306 ("Mr. Kersh in no uncertain terms said that not only was he going to make 'what the Street's forecast was,' but they were going to make their budget in the first quarter and for the year.")); *accord* CPH App. 50 (Shapiro Dep. at 388). Based on these representations, CPH representatives left the meeting having been told that business was "going very well." CPH pp. 35 (Nesbitt Dep. at 190).[5]

CPH representatives continued to conduct due-diligence after the February 23, 1998 meeting — due-diligence that included discussions with Sunbeam on the "future operations" of the company, CPH App. 48 (Maher Dep. at 351), and inquiries about outstanding litigation, environmental matters, and business operations. CPH App. 50 (Shapiro Dep. at 298-99). On February 24, CSFB met with Sunbeam senior management to discuss Sunbeam's strategic plan and 1997 results. CPH App. 125 (MS Ex. 230). And on February 25 and 27, CSFB made presentations to the Coleman Board of Directors. CPH App. 53 (CPH Ex. 239); CPH App. 54 (MS Ex. 112); CPH App. 55 (MS Ex. 88); CPH App. 56 (MS Ex. 113). CPH representatives also reviewed the fairness opinion that CSFB issued on February 27. CPH App. 57 (MS Ex. 120). CSFB, based on all of the information it had obtained, advised the Coleman Board that, in its opinion, Sunbeam's shares were being priced fairly by the market. CPH App. 57 (MS

NOT A CERTIFIED COPY

013948

---

[5] As shown above, Morgan Stanley's assertion that Jerry Levin made handwritten notes at the February 23 meeting stating "Jan Feb Slow" is incorrect. His notes stated "Jan Slow," and then below that, "Feb." CPH App. 52 (MS 84 at MF 00016).

Ex. 120). Nesbitt later attended the New York debenture road show to monitor Sunbeam's business and financial condition in March. CPH App. 28 (Nesbitt Dep. at 425-29, 483-85).

Upon receipt of the March 19, 1998 press release, *see* CPH App. 79 (CPH Ex. 14), CPH representatives reviewed the release and discussed its contents. CPH App. 50 (Shapiro Dep. 333-34). CPH representatives further conducted their own independent research following the press release. William Nesbitt testified that he "canvassed the institutional research community" to see what "the response was to this release." CPH App. 28 (Nesbitt Dep. at 433).

CPH was hardly alone in not being disturbed with the press release. The purchasers of the $750 million in debentures used to fund the transaction obviously were not upset and neither were the analysts following Sunbeam. The analysts reiterated their "buy" or "strong buy" ratings of the company. CPH App. 89 (CPH 1241513); CPH App. 90 (CPH 1039208); CPH App. 91 (CPH 105964). And Morgan Stanley's own representative from its credit department saw no cause for concern in the March 19 press release. CPH App. (Whelan Dep. at 96-98).

Based on the above facts, it cannot possibly be concluded as a matter of law that CPH failed to conduct a reasonable inquiry into Sunbeam's financial status, including its first quarter earnings for 1998. That there might have been other measures that CPH supposedly could have taken to ferret out the fact that the press release issued on the eve of the $2 billion face value debenture offering was a "bold face" lie (CPH App. 48 (Maher Dep. at 376)) does not change that result, despite CPH's sophistication, as is illustrated by the decision in *Nakano v. Jamie Sadock, Inc.*, 2000 WL 1010825 (S.D.N.Y. 2000). In that case, even though the defendant moving for summary judgment had proposed several measures that a sophisticated party "could and should have taken — but failed to take" to verify the representation, the court nevertheless refused to grant summary judgment, where plaintiffs had offered evidence that they had made "affirmative efforts to protect themselves from misrepresentations." *Id.* at *2-3. Similarly, in

NOT A CERTIFIED COPY

013949

Crigger v. Fahnestock & Co., Inc., 2003 WL 22170607 (S.D.N.Y. 2003), the court refused to hold that investors' reliance was unjustified as a matter of law where it was undisputed that the investors had "engage[d] in some investigation," including computer research, making inquiries, and demanding certain documents. *Id.* at *8. The same result is required here.

d. CPH Did Not Have A Duty To Inquire Into Or Discover Material Adverse Changes.

Another reason why issues of fact remain concerning the adequacy of CPH's investigation is that CPH had taken prudent steps to protect itself from material adverse changes at Sunbeam. The Merger Agreement contained an express provision making Sunbeam responsible for advising CPH of material adverse changes (CPH App. 95 (MS Ex. 93 at MS 7969)):

> Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser [defined in the Recitals as Sunbeam] shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event . . . having [a] . . . Material Adverse Effect [defined at Page 3 of the Merger Agreement as a material adverse effect on the business, or results of operation or financial condition of Holdings and its subsidiaries, taken as a whole] . . . .

This provision further precludes an adjudication as a matter of law of the factual issues surrounding CPH's justifiable reliance — including the level of diligence that was due. *See. e.g., Household Commercial Fin. Servs., Inc. v. Schottenstein*, 1991 WL 111206, at *1 (N.D. Ill. 1991) (question of justifiable reliance was for the jury where plaintiff had conducted an independent investigation of defendant's financial condition and had "insisted on a 'no material adverse change' provision in the loan agreement").

NOT A CERTIFIED COPY

013950

e. The Fact That CPH's Reliance Was Justified Is Confirmed By The Testimony Of Morgan Stanley's Senior Executives.

CPH was justified in relying on Morgan Stanley's vouching for Sunbeam, as the deposition testimony of two senior executives of Morgan Stanley confirms. Joseph Perella, currently the Vice-Chairman of Morgan Stanley and a senior executive who evaluated Strong in the relevant time period, testified that Morgan Stanley expects and understands that institutional investors "believe that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies" (CPH App. 114 (Perella Dep. at 125-26)):

> Q: Do you — do you agree, sir, that if Morgan Stanley has its name on a deal, investors will assume it's something of quality?
>
> MR. YANNUCCI: Object to the relevance.
>
> A: I think that our firm has very high standards. We have a motto here, first class business in a first class way. We have a tremendous system of checks and balances, a process that people have to go through to vet things, to get things done. For example, in the — in the case of the — let's say the bubble, the Internet, Mary was always of the opinion that 90 percent of the companies were going to fail, that you'd only remember who was number one or two, and you'd forget all the rest of the companies. Because she was the leading analyst, everyone wanted her imprimatur. And so I think consistent with, you know, the standards of the firm, we tried to pick firms to work for that we thought were winners in that particular era. Secondly, institutional investors I think believe that we have higher standards or let's say the highest standards on Wall Street, and I think they believe that if we — they believe that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies. I think — and you heard me make the statement 500,000 e-mails later no one has been asked to leave our firm from the research department or the investment banking division. In all of the scandals that have rocked Wall Street, and Elliot Spitzer's investigation for the last I don't know how many years, 500,000 e-mails later our name is not on Adelphia, it's not on Enron, it's not on WorldCom, it's not on Global Crossing, okay? So they're — all those, Tyco, Quest. And that I think has a lot to do with the fact that a lot of these companies that were at least 50 percent of business model, and the rest, Omnicom, have passed a very rigorous test to get through the Morgan Stanley system, and when people know you have that kind of rigorous test, a lot of times they don't even have [*sic*] ask you to even go through it; they go somewhere else. And it wasn't because we couldn't have done business with these companies. We wanted to. So, you know, you ask me about what Schlock, Inc. means. It's —

NOT A CERTIFIED COPY

0139951

it's — it's something we don't like to be associated with. We like to be associated with first class companies and do business in a first class way, and try every day to — to live to that standard.

Ruth Porat, another senior executive of Morgan Stanley, concurred with a statement attributed to Perella in a magazine article to the effect that investors are entitled to assume that a company is not a "schlock" company if Morgan Stanley puts its name on the underwriting. (CPH App. 115 (Porat Dep. at 297-98)):

Q: I'll read a couple of sentences to you, ma'am. It reads, quote, "Morgan Stanley could have made more money by being less selective, but Meeker and her colleagues say that big-money investors tend to rely on the firm's seal of approval." Quote, "If Morgan Stanley has its name on it, investors assume it's better than Schlock Incorporated," close quote, "Joe Perella, the head of Morgan's Corporate Finance Department, mused." Do you see that statement?

A: I do.

Q: Do you agree with Mr. — the quote attributed to Mr. Perella?

MR. CLARE: I object to the form of the question.

A: I agree that if Morgan Stanley has its name on it, investors assume it's better than Schlock Incorporated.

Q: That's your personal feeling, correct?

A: Yes.

See also CPH App. 74 (Porat Dep. at 19-21).

In light of the deposition testimony of Morgan Stanley's own senior executives, Morgan Stanley is in no position to argue that CPH's reliance was unjustified, let alone that it was unjustified as a matter of law.

f. CPH's Expert Further Explains Why CPH's Reliance Was Reasonable.

CPH's expert, William N. Horton, confirmed the reasonableness of CPH's reliance upon Morgan Stanley. CPH App. 131. In his report, Horton concludes that Coleman acted in a reasonable and customary manner in relying upon Sunbeam and Morgan Stanley's public and

NOT A CERTIFIED COPY

013952

private disclosures and Morgan Stanley's obligations to notify them of any material adverse change in Sunbeam's business prior to closing on the merger. CPH App. 131 (Horton Report at 7-19). Horton's expert opinion confirms further that summary judgment is inappropriate.

g. The Fraud Was Peculiarly Within The Knowledge Of Morgan Stanley.

Even if CPH's investigation of Sunbeam were somehow deemed inadequate, under New York law a plaintiff is not precluded from claiming justifiable reliance when a representation relates to matters "peculiarly within the defendant's knowledge." *Mallis*, 615 F.2d at 80; *Schumaker v. Mather*, 30 N.E. 755, 757 (N.Y. 1892); *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 322 (N.Y. 1959); *Winnick*, 2000 WL 1418197, at *14. Here, Morgan Stanley undoubtedly had knowledge of Sunbeam's financial health throughout the duration of the transaction that was not shared with CPH. Beginning in April 1997, Morgan Stanley conducted extensive due-diligence on Sunbeam, sending more than a dozen representatives to Sunbeam's headquarters to study every facet of the business. CPH App. 19 (CPH Ex. 37); CPH App. 12 (Smith Dep. at 91); CPH App. 20 (Tyree Dep. at 575-81); CPH App. 21 (CPH Ex. 84); CPH App. 11 (Kitts Dep. at 16-19); CPH App. 22 (CPH Ex. 172); CPH App. 23 (Rafii Dep. at 106-08); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 26 (Yoo Dep. at 83-88); CPH App. 27 (CPH Ex. 245). During that time, Strong personally spoke with Dunlap and/or Kersh in Florida between 50 and 100 times. CPH App. 9 (Strong Dep. at 53-54).

On March 12, 1998, just one week before the issuance of the March 19 press release, Morgan Stanley received a warning from Sunbeam's auditors that Sunbeam had engaged in aggressive revenue recognition practices, with a robust bill-and-hold strategy and many sales that included a 100% right of return. CPH App. 63 (Bornstein Dep. at 104-06); CPH App. 64 (CPH Ex. 123). On March 18, Morgan Stanley and its attorneys received a letter from Sunbeam's outside auditors precisely detailing Sunbeam's massive sales shortfall in the first quarter of 1998

NOT A CERTIFIED COPY

013953

and the primary cause. The letter, which disclosed facts diametrically opposed to the beliefs of the financial community concerning Sunbeam, proved false all the representations made at the February 23, 1998 face-to-face meeting, all the representations made in the written presentations Morgan Stanley had given to CPH, and all the representations made at other meetings about Sunbeam's turnaround and projected growth. CPH App. 70 (CPH Ex. 24); CPH App. 69 (CPH Ex. 17); CPH App. 71 (CPH Ex. 344). Morgan Stanley admits it received a signed copy of the letter no later than March 19, 1998. CPH App. 68 (Amended Complaint ¶ 97). Morgan Stanley also had in its possession Mr. Uzzi's sales chart showing Morgan Stanley that Sunbeam had only $101.6 million in net sales as of March 18, 1998. CPH App. 76 (CPH Ex. 16). On March 25, days before the Coleman transaction closed, Arthur Andersen sent Morgan Stanley a "bring down" comfort letter revealing that Sunbeam's situation had deteriorated even further. Morgan Stanley now knew that Sunbeam was experiencing a net loss of $11 million in the first quarter of 1998, excluding one-time charges, when Wall Street was expecting Sunbeam to achieve profits of close to $30 million in the first quarter. CPH App. 88 (CPH Ex. 112 at CPH 129615); CPH App. 72 (Dean Dep. at 177); CPH App. 73 (Lurie Dep. at 170-72).[6]

Moreover, as the underwriter on the Sunbeam deal, Morgan Stanley inherently had special access to information about Sunbeam, and CPH took comfort in the fact that Morgan Stanley was underwriting the transaction and would receive a comfort letter. CPH App. 48 (Maher Dep. at 373-74). The underwriter's special access, and the public's right to rely on the underwriter, was recently reemphasized by the United States District Court for the Southern District of New York in the December 15, 2004 decision in *In re Worldcom, Inc. Securities Litigation* (CPH App. 112 (Decision at 121-22, emphasis added)):

NOT A CERTIFIED COPY

013954

---

[6] One of Morgan Stanley's attorneys at Davis Polk stated that, as a matter of general practice, comfort letters would not be shared with anyone other than the underwriter (which Morgan Stanley was) on the transaction. CPH App. 73 (Lurie Dep. at 172-73).

> Underwriters perform a different function from auditors. They have special access to information about an issuer at a critical time in the issuer's corporate life, at a time it is seeking to raise capital. The public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed. Acting with the degree of diligence that applies to a prudent man when managing his own property, underwriters should ask those questions and seek those answers that are appropriate in the circumstances. They are not being asked to duplicate the work of auditors, but to conduct a reasonable investigation. If their initial investigation leads them to question the accuracy of financial reporting, then the existence of an audit or a comfort letter will not excuse the failure to follow through with a subsequent investigation of the matter. If red flags arise from a reasonable investigation, underwriters will have to make sufficient inquiry to satisfy themselves as to the accuracy of the financial statements, and if unsatisfied, they must demand disclosure, withdraw from the underwriting process, or bear the risk of liability.

Thus, Morgan Stanley had a wealth of information about Sunbeam's true financial condition that was not available to CPH. That is yet another reason to reject Morgan Stanley's argument.

h. Morgan Stanley's Additional Arguments Also Lack Merit.

Morgan Stanley raises several additional contentions concerning its supposed entitlement to summary judgment on the justifiable reliance issue, but none of those arguments withstands scrutiny.

First, Morgan Stanley argues that CPH's reliance was unjustified as a matter of law because CPH did not exercise its contractual right to inspect Sunbeam's financial records. *See* MS Mem. 19. Morgan Stanley's assertion lacks merit. Although the level of a plaintiff's access to particular records is relevant to a justifiable reliance inquiry, an unexercised right to inspect records alone does not render reliance unjustified. *Winnick*, 2004 WL 1418197, at *14. The *Winnick* court expressly rejected a defendant's argument that justifiable reliance was "impossible" where a sophisticated plaintiff had "bargained for the right to examine . . . books and records but failed to exercise that right." *Id.* Dismissing that argument, the court held that "there is no such bright line rule, even where sophisticated entities are concerned." *Id.*

NOT A CERTIFIED COPY

013955

Under Morgan Stanley's reasoning, whenever "a party bargains for a right which, if exercised, might provide the means to discover a concealed falsehood, it must exercise that right in every instance or risk extinguishing its remedies." *Id.* As the *Winnick* court found, however, such a rule would be "unrealistic." *Id.* And not surprisingly, such a rule has not been adopted by courts applying New York law. *See, e.g, DIMON Inc.*, 48 F. Supp. 2d at 369, 372 (denying motion to dismiss plaintiff's fraud claim despite plaintiff's complete access to defendant's records and "theoretical discoverability" of the alleged fraud because of the "difficulty of conducting a sufficiently intensive review" to uncover the fraud); *Alexander v. Evans*, 1993 WL 427409, at *17 (S.D.N.Y. 1993) (refusing to grant summary judgment on plaintiff's fraud claim because "the reliance requirement was not designed to shield perpetrators of fraud by forcing investors to conduct exhaustive research every time they invest money, lest the seller be manipulative or deceptive").

Accordingly, a right to inspect the books is a right that routinely remains unexercised in a transaction involving two public companies, such as the transaction at issue in this case. As Sunbeam was a public company, analysts at CSFB reviewed publicly available information on Sunbeam, including SEC filings and analyst reports. *See, e.g.,* CPH App. 47 (Shapiro Dep. at 131); CPH App. 28 (Nesbitt Dep. at 276-78); CPH App. 49 (Geller Dep. at 31); CPH App. 40 (Duffy Dep. at 32). But as Paul Shapiro testified, "[i]t was never contemplated that we would, for example, go in and do an audit. . . . [I]t would have been simply impossible. This was not like buying a small company that wasn't public. We didn't treat it as such." CPH App. 47 (Shapiro Dep. at 132). In fact, neither party exercised its right to review the other's books "as opposed to what [was] publicly reported." CPH App. 47 (Shapiro Dep. at 132-33). Shapiro further testified that "we would never have asked for that kind of access, nor do I believe the other side asked for it of us." CPH App. 47 (Shapiro Dep. at 132).

NOT A CERTIFIED COPY

013956

That the right to inspect records plainly is not dispositive is confirmed by the testimony of Christopher Whelan, the employee from Morgan Stanley's credit department responsible for the Sunbeam loan. At his deposition, when asked about what due-diligence he performed, Whelan testified that he relied on basically the same type of information on which CPH relied without performing anything like the internal audit that Morgan Stanley contends was necessary (CPH App. 113 (Whelan Dep. at 60)):

> Q: In connection with your credit due diligence with respect to Sunbeam, what sources of information did you utilize?
>
> A: We relied on the public filings of Sunbeam and the financial statements of the companies that they were acquiring. We relied on information provided to us by Sunbeam management and also management of the target companies. And I don't recall specifics; however, in a situation like this, I probably used some fixed income research reports on some other consumer products companies that we researched — reports, rating agency reports. That is probably it.

In light of Whelan's testimony, Morgan Stanley is in no position to challenge the due-diligence inquiry of CPH.

Second, Morgan Stanley exaggerates the standard that New York employs for determining whether a party is required to inquire into the veracity of a representation. *See* MS Mem. 18-20. New York courts do not impose a duty to inquire as a matter of law when a plaintiff first hears the slightest hint of falsehood, but only when that plaintiff has been "placed on guard or practically faced with the facts." *Keywell Corp. v. Weinstein*, 33 F.3d 159, 164 (2d Cir. 1994).

The cases cited by Morgan Stanley generally are not to the contrary and uniformly are distinguishable in material respects. *See, e.g., Schlaifer Nance & Co.*, 119 F.3d at 98 (sophisticated party's reliance on representation that seller had exclusive control over all Warhol pieces was unjustified as a matter of law where the language of the agreement explicitly contradicted this representation, and the notes of plaintiffs' own attorneys and plaintiffs' own

NOT A CERTIFIED COPY

013957

testimony revealed that plaintiff was on notice); *Abrahami v. UPC Constr. Co., Inc.*, 638 N.Y.S.2d 11, 14 (N.Y. App. 1996) (investors' reliance on company's representations that it had "excellent business prospects" was unjustified as a matter of law where plaintiff conducted no investigation after receiving notice that company had reported a sum of only "$54 of cash on hand"); *UST Private Equity Inv. Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386-87 (N.Y. App. Div. 2001) (plaintiffs could not establish reliance where (1) they had not alleged "that defendants' access to the relevant information was superior" to plaintiffs' or "that defendants otherwise knew, or recklessly disregarded the likelihood, that [the corporation] was concealing material information from plaintiffs," and (2) the president of one of the institutional plaintiffs conducted a due-diligence inquiry, and during that inquiry, obtained a document referring to the very documents that would have alerted plaintiffs to the conditions that they claim were misrepresented); *Rotterdam Ventures, Inc. v. Ernst & Young LLP*, 752 N.Y.S.2d 746, 748-49 (N.Y. App. Div. 2002) (affirming dismissal of fraud complaint because "plaintiffs [had] not alleged any facts suggesting that defendant was aware of the alleged problems associated with the foregoing transactions" and because one of the plaintiffs was a member of the board of directors of the corporation whose financial condition was misrepresented and therefore had the capacity to determine the corporation's financial viability); *Giannacopoulos v. Credit Suisse*, 37 F. Supp. 2d 626, 632 (S.D.N.Y. 1999) (plaintiff failed to show reliance where plaintiff had access to information that would have exposed the fraud; under federal summary judgment standards, the plaintiff-nonmovant had the burden "to produce concrete evidence sufficient to establish a genuine unresolved material issue of material fact").

Third, Morgan Stanley contends that CPH disclaimed reliance on any misrepresentation by Morgan Stanley in provisions of several Confidentiality and Merger Agreements. *See* MS Mem. 21. At the threshold, despite Morgan Stanley's suggestions to the contrary, the

NOT A CERTIFIED COPY

013558

February 27 Merger Agreement with Sunbeam is the only agreement into which CPH entered. Morgan Stanley repeatedly refers (*e.g.*, MS Mem. 6-7, 21) to two Confidentiality Agreements dated February 4 and 23, 1998, agreements that contain provisions stating that no reliance is being placed on evaluation materials that are being supplied under the agreements, but Morgan Stanley ignores that CPH is not a party to either agreement — Coleman, not CPH, is a party. *See* MS Ex. 133, MS Ex. 134 (both exhibits are included in Morgan Stanley's Appendix of documents). Moreover, with regard to the February 23 Confidentiality Agreement, it is of no force and effect even as to Coleman because Coleman never signed the document and thus never became bound by it. *See* MS Ex. 134 at 7 (showing a blank signature line under the words "Confirmed and agreed to").

Indeed, the draft of the February 23 Confidentiality Agreement that Morgan Stanley has produced was not even signed by Sunbeam, nor had Sunbeam filled in the identity of the individual to whom Coleman's requests for information should be addressed. *See* MS Ex. 134 at 4, 7. Because the February 23 draft Confidentiality Agreement never was finalized or signed, it is not binding on Coleman — and certainly not on CPH, which is not identified as a party in the February 23 draft Confidentiality Agreement, or in the signed February 4 Confidentiality Agreement either. *See Hinote v. Brigman*, 33 So. 303, 305-06 (Fla. 1902) (where a "party neither had nor signified such an intention to close the contract until it was fully expressed in a written instrument and attested by signatures, then he will not be bound until the signatures are affixed"); *see also Strong & Trowbridge Co. v. H. Baars & Co.*, 54 So. 92, 95 (Fla. 1910); 11 Fla. Jur. *Contracts* § 100 (2004).

With respect to the February 27 Merger Agreement — the only agreement into which CPH entered — the provision cited by Morgan Stanley (MS Mem. 21) in that agreement states as follows (CPH App. 95 (MS Ex. 93 at 7981)):

NOT A CERTIFIED COPY

013959

> Entire Agreement. This Agreement (including all Schedules and Exhibits) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which will remain in full force and effect for the term provided for therein.

Morgan Stanley's contention that CPH disclaimed reliance on Morgan Stanley's fraudulent statements through this integration clause is baseless for several reasons.

A threshold problem with Morgan Stanley's invocation of the integration clause in the Merger Agreement is that Morgan Stanley is not a party to the February 27 Merger Agreement. The parties are Sunbeam, CPH, Laser Acquisition Corp., and CLN Holdings Inc. CPH App. 95 (MS Ex. 93). That is fatal because a person or entity that is not a party to a contract cannot invoke the clauses that it contains in order to escape liability for fraud. *See Cohan v. Sicular*, 625 N.Y.S.2d 278, 280 (N.Y. App. Div. 1995) (in refusing to dismiss fraud claim against brokers, court rejected brokers' invocation of integration clause in contract "since they were not parties to the real estate contract"); *Diodato v. Eastchester Dev. Corp.*, 489 N.Y.S.2d 293, 294 (N.Y. App. Div. 1985) ("the purported disclaimer would not inure to the benefit of defendant . . . as he was not a party to the contract").

Morgan Stanley's reliance argument also does not withstand scrutiny because, on its face, the integration clause at issue merely says that there is no other agreement between the parties other than what they have put down in writing in their contract. The law is settled that such clauses do not immunize even the parties to the contract (which, again, Morgan Stanley was not) from claims of fraud or fraud in the inducement. *See, e.g., Mfrs. Hanover Trust Co. v. Yanakas*, 7 F.3d 310, 315 (2d Cir. 1993) (under New York law, "a general merger clause is ineffective, however, to preclude parol evidence that a party was induced to enter into the contract by means of fraud"); 60A N.Y. Jur. 2d, *Fraud and Deceit* § 227 (2001) ("It is well established that a general or 'boiler plate' merger clause in a written contract is ineffective to preclude judicial

NOT A CERTIFIED COPY

013960

inquiry into specific allegations of fraud").

Morgan Stanley's attempt to find refuge in the integration clause is unavailing for the additional reason that a party cannot enter into a contract that would relieve it of the consequences of its fraud. *See Pearce v. Knepper*, 53 N.Y.S.2d 845, 846 (N.Y. Sup. Ct. 1945) ("no contract could ever be entered into which would relieve a party thereto from the consequences of his fraud or bad faith"); *see also AES Corp. v. Dow Chem. Co.*, 325 F.3d 174, 179 (3d Cir. 2003) (under federal law, a nonreliance clause can never bar a Rule 10b-5 claim as a matter of law). Further, Morgan Stanley cannot escape responsibility for its fraud because the integration clause predates many of the misrepresentations for which Morgan Stanley is responsible. Specifically, the Merger Agreement is dated February 27, 1998, but the evidence shows that Morgan Stanley's fraudulent conduct continued long past that date.

And finally, the existence of a contractual disclaimer is not dispositive, but is merely part of the overall mix of facts to consider in determining what diligence is due. *See, e.g., DIMON Inc.*, 48 F. Supp. 2d at 369 ("the fundamental question is whether the difficulty of conducting a sufficiently intensive review, given the information otherwise available, was so great that reliance upon the defendants' representations was reasonable notwithstanding the disclaimer").

In sum, for numerous reasons, CPH's reliance cannot be held as a matter of law to have been unjustified.

2. A Triable Issue Of Fact Exists On Morgan Stanley's Scienter Or Intent To Defraud.

Morgan Stanley's second and last attack on CPH's fraud claim is that CPH supposedly has no evidence of scienter or intent to defraud because (1) CPH supposedly alleges only that Morgan Stanley had the ordinary economic interest of receiving compensation for the work it was doing, and (2) the idea that Morgan Stanley was attempting to engage in fraud defies economic reason. *See* MS Mem. 22-24. Those contentions — which are lifted virtually

NOT A CERTIFIED COPY

013961

16div-020429

verbatim from Morgan Stanley's unsuccessful motion for judgment on the pleadings — are insufficient to support judgment as a matter of law.

First, Morgan Stanley again ignores that it is not CPH's initial burden to present evidence of intent. It is Morgan Stanley's burden to "prove the negative" — that is, prove the non-existence of material facts concerning intent. *See Holl*, 191 So. 2d at 43. This it has not done.

Second, Morgan Stanley ignores that questions of intent are for the trier of fact and are especially ill-suited for summary judgment treatment. *See, e.g., Cohen v. Cravit Estate Buyers, Inc.*, 843 So. 2d 989, 991 (Fla. 4th DCA 2003) ("In fraud cases, summary judgment is rarely proper as the issue so frequently turns on the axis of the circumstances surrounding the complete transaction, including circumstantial evidence of intent and knowledge."); *Robinson*, 882 So. 2d at 1088 ("Generally, the issue of fraud is not a proper subject for summary judgment."); *Baker v. United Serv. Automobile Ass'n*, 661 So. 2d 128, 132 (Fla. 1st DCA 1995) ("A litigant has a right to trial where there is the slightest doubt as to the facts in a fraud case."); *Hermes v. Anton*, 300 So. 2d 46, 47 (Fla. 3d DCA 1974) ("Generally, the issue of fraud is not a proper subject of a summary judgment. Fraud is a subtle thing requiring a full explanation of the facts and circumstances of the alleged wrong to determine if they collectively constitute a fraud."); *Alepgo Corp. v. Puzin*, 114 So. 2d 645, 647 (Fla. 3d DCA 1959) ("Since the full context is necessary for the determination, it is seldom that one can determine the presence or absence of fraud without trial."); *State v. Welch-Richards*, 618 N.Y.S.2d 923, 924 (N.Y. App. Div. 1994) (denying defendant's summary judgment motion: "questions concerning a party's subjective belief or intent are best resolved by the trier of fact"); *Grumman Aerospace Corp. v. Rice*, 605 N.Y.S.2d 305, 306 (N.Y. App. Div. 1993) (denying defendant's summary judgment motion: "The determination of . . . intent is ordinarily a question of fact which cannot be resolved on a motion for summary judgment").

NOT A CERTIFIED COPY

013962

Third, with respect to Morgan Stanley's contention that all that it had to gain from its fraud was "ordinary" compensation for the services it was rendering (MS Mem. 23), Morgan Stanley ignores the material facts of record. There was nothing "ordinary" about Morgan Stanley's compensation. Morgan Stanley believed that it stood to reap more than $40 million in fees from the Sunbeam transaction — and the retention letter provided that Morgan Stanley would be receiving fees above scale if Morgan Stanley's work was a success. CPH App. 93 (CPH Ex. 146); CPH App. 17 (CPH Ex. 374 at 85455) (Strong's self-evaluation noting that he "signed engagement letter with success fees above fee scale"). In addition, Morgan Stanley had won the Sunbeam engagement away from a long-time investment banker of Dunlap's, Mark Davis (CPH App. 11 (Kitts Dep. at 41); CPH App. 10 (Gittis Dep. at 61-63)), after dozens of Morgan Stanley employees had performed months of uncompensated work on Sunbeam from April to September 1997. CPH App. 9 (Strong Dep. at 51-54); CPH App. 11 (Kitts Dep. at 35-36); CPH App. 103 (CPH Ex. 70). It is hardly "ordinary" to have an army of employees perform months of work for free. Finally, as William Strong's evaluations demonstrate, he had been exhorted by his superiors to generate fees — $90 million or more in 1998 alone — and he was more than willing to undertake extraordinary measures in order to do so, even stepping "very close to, if not over, the line." CPH App. 15 (CPH Ex. 371 at MSC 85418); CPH App. 16 (CPH Ex. 372 at MSC 85424); CPH App. 17 (CPH Ex. 374 at MSC 85461-62); CPH App. 18 (CPH Ex. 375 at MSC 85477). Thus, this is far from a case involving a mere "ordinary" desire to receive "ordinary" compensation.

Fourth, with respect to Morgan Stanley's assertion that CPH's fraud claim defies economic reason, CPH certainly agrees that defrauding one's customers is not a proper business strategy. But from time to time businesses — including Morgan Stanley — do indeed cheat their own customers and others. The courts hold them accountable for their wrongdoing when they

NOT A CERTIFIED COPY

013963

do. With respect to Morgan Stanley's related contention that CPH's theory makes no sense because Morgan Stanley's sister company (MSSF) loaned and lost millions of dollars, the short answer is that it is an unfortunate matter of public record that banks do indeed lend money to companies that the banks know are misrepresenting their true financial conditions. Just recently, two of the nation's largest banks — J.P. Morgan Chase and Citigroup — were the subject of criminal and regulatory charges due to their knowing participation in Enron's fraud on its shareholders. Despite the fact that both banks made massive loans to Enron, and ended up as two of the biggest creditors in the Enron bankruptcy, the SEC and U.S. Attorney in Manhattan both accused the banks of assisting Enron in misrepresenting its true financial condition for years — and the banks ended up paying approximately $300 million in fines and penalties to resolve the matter. *See* Kurt Eichenwald and Riva D. Atlas, *2 Banks Settle Accusations They Aided in Enron Fraud*, N.Y. Times, July 29, 2003, at A1 (available at www.lexis.com); Floyd Norris, *A Warning Shot to Banks on Role in Others' Fraud*, N.Y. Times, July 29, 2003, at C1 (available at www.lexis.com).

Even more recently, a federal judge approved Citigroup Inc.'s $2.58 billion settlement with investors for its role in the WorldCom debacle. *See* Mitchell Pacelli, *Citigroup's WorldCom Payment is Finalized at $2.58 billion*, Wall St. J, Nov. 8, 2004, at C5 (available on WESTLAW at 2004 WL-WSJ 98740760). Thus, although it might not be wise or right for banks to lend money to corporations to assist in a fraud on shareholders, the reality is that banks too often have done so to earn massive fees.

Morgan Stanley's argument also ignores that: (a) Morgan Stanley expected that MSSF would syndicate most or all of the loan promptly after completing the transaction (CPH App. 12 (Smith Dep. at 139-40, 251)); (b) MSSF enjoyed an economic cushion against the risk resulting from Sunbeam's fraud because of the Sunbeam-issued $750 million of debentures that were

NOT A CERTIFIED COPY

013364

16div-020432

subordinated to MSSF's loan (CPH App. 12 (Smith Dep. at 87-88)); and (c) as a secured lender, MSSF had far less risk than the parties (such as CPH) that received Sunbeam's common stock. MSSF was playing with fire and ultimately got burned when the fraud was exposed when Dunlap suddenly was terminated, but it certainly does not follow from that fact that Morgan Stanley is entitled to summary judgment.

In sum, notwithstanding Morgan Stanley's invitation to this Court to resolve the inherently fact-bound issues of reliance and scienter as a matter of law, the applicable law and the relevant facts preclude that result.

C. CPH's Aiding And Abetting Fraud Claim Should Be Allowed To Proceed To Trial.

Morgan Stanley's next attack is on CPH's aiding-and-abetting claim, but for the reasons set forth below, that attack also cannot withstand scrutiny.

1. Florida Law Applies To CPH's Aiding And Abetting Claim.

Before addressing the substance of Morgan Stanley's arguments, a threshold issue needs to be addressed, because this Court's choice-of-law Order reserved judgment on what law applies to CPH's aiding-and-abetting and conspiracy claims. CPH App. 96 (Choice of Law Order at 6). In its Order, this Court identified a "three-step process" for making a choice-of-law determinations: "First, the court must consider whether there are potentially outcome-determinative differences between the substantive laws alleged to apply." *Id.* at 2. Second, if outcome-determinative conflicts are identified, "the Court must next determine the choice-of-law to be applied for the type of claim alleged." *Id.* "Finally, the court must apply the appropriate choice-of-law rules." *Id.* Application of this three-step analysis leads to the conclusion that Florida law controls CPH's aiding-and-abetting claim.

NOT A CERTIFIED COPY

0135

a. Because Morgan Stanley Has Failed To Identify An Outcome-Determinative Conflict Between Florida And New York Law, Florida Law Controls CPH's Aiding and Abetting Claim.

Step one of the choice-of-law analysis is dispositive because Morgan Stanley has failed to identify outcome-determinative differences — or any differences for that matter — between New York law and Florida law with respect to aiding-and-abetting claims. Indeed, in footnote 5 on page 27 of its memorandum, Morgan Stanley cites a number of Florida cases as being in accord with New York cases.

In fact, with respect to aiding-and-abetting claims, New York and Florida law are basically the same. Under New York law, "[t]he elements of a claim for aiding-and-abetting fraud are: '(1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abbetor; and (3) substantial assistance by the aider and abettor in achievement of the fraud.'" *UniCredito Italiano SPA v. JP Morgan Chase Bank*, 288 F. Supp. 2d 485, 502 (S.D.N.Y. 2003) (quoting *Gabriel Capital, L.P. v. NatWest Fin., Inc.*, 94 F. Supp. 2d 491, 511 (S.D.N.Y. 2000)); *accord Houbigant, Inc. v. Deloitte & Touche LLP*, 753 N.Y.S.2d 493, 500 (N.Y. App. Div. 2003). In Florida, the same elements are required: "(1) a fraud committed by [the primary violator], (2) [defendant's] knowledge of the fraud, and (3) [defendant's] knowing rendition of substantial assistance." *Tew v. Chase Manhattan Bank, N.A.*, 728 F. Supp. 1551, 1568 (S.D. Fla. 1990).

Because Florida law is basically the same as New York law, this Court need not address the choice-of-law issue any further: Under this Court's choice-of-law Order, and under settled choice-of-law principles, Florida law applies when no conflict has been demonstrated. *See also* CPH App. 108 (Court's Order holding that Florida law applies to CPH's punitive damages claim because Morgan Stanley failed to demonstrate any outcome-determinative differences);

NOT A CERTIFIED COPY

0113965

Gustafson v. Jensen, 515 So. 2d 1298, 1300 (Fla. 3d DCA 1987); *Collins v. Collins*, 36 So. 2d 417, 417 (Fla. 1948).

b. Even Assuming That There Is A Conflict Between New York And Florida Law, Under This Court's Choice of Law Order Read In Light Of The Facts Developed Since The Order, Florida Law Governs CPH's Aiding and Abetting Claim.

Although deferring resolution of the remaining choice-of-law issues, the Court indicated in its Order that CPH's aiding-and-abetting and conspiracy claims would be most sensibly governed by Florida law if the evidence connects Morgan Stanley to Sunbeam's Florida-based fraud. CPH App. 96 (Choice of Law Order at 12). As the Court explained, in contrast to CPH's direct claims of fraud and misrepresentation, CPH's claims of aiding-and-abetting and conspiracy all concern Morgan Stanley's participation in the overarching Sunbeam fraud, which "is largely Florida based." *Id.*

The further factual development contemplated by the Court in its choice-of-law Order has now occurred and the remaining choice-of-law issues are ripe for resolution. Indeed, as the Court has recognized, *see* CPH App. 96 (Choice of Law Order at 6), Florida courts regularly decide choice-of-law issues on summary judgment because determining the governing law is a necessary predicate for the proper resolution of a summary judgment motion. *See, e.g.*, *Tune v. Philip Morris Inc.*, 766 So. 2d 350, 352 (Fla. 2d DCA 2000) (reviewing trial court's resolution of choice-of-law issues at summary judgment stage); *Crowell v. Clay Hyder Trucking Lines, Inc.*, 700 So. 2d 120, 122 (Fla. 2d DCA 1997) (same).[7]

NOT A CERTIFIED COPY

013967

[7] Although the Court suggested that a choice-of-law analysis is "controlled by the summary judgment rule," CPH App. 96 (Choice of Law Order at 6), resolution of the remaining choice-of-law issues is appropriate even if this Court determines that certain facts remain disputed. Courts regularly resolve choice-of-law issues before all factual disputes have been resolved, because it is the trial court's responsibility to make preliminary factual findings to determine which state's substantive law applies. *See, e.g.*, J. Weinstein & M. Berger, *Weinstein's Evidence* § 104[08], at 104-98 n.8 (1982) ("[I]n most circumstances the judge should determine the facts on which choice-of-law depends."); *Coltec Indus. v. Zurich Insur. Co.*, 2004

The facts that have been developed demonstrate that Morgan Stanley worked hand-in-hand with Florida-based Sunbeam personnel to lie about Sunbeam's business and financial performance to defraud CPH and potential investors, and thus, the requisite connection to the Florida-based Sunbeam fraud has been established. As the record reflects, throughout 1997, Sunbeam management fraudulently overstated revenues and earnings — through techniques such as improper "bill-and-hold" sales and "channel stuffing" — to create the illusion of a dramatic improvement over artificially low 1996 results. CPH App. 4 (CPH Ex. 21); CPH App. 5 (CPH Ex. 22); CPH App. 6 (Denkhaus Dep. at 69-73); CPH App. 7, 8 (Levin Dep. at 76-77, 398-99). Indeed, Morgan Stanley itself conceded the Sunbeam fraud in its own Florida complaint against Arthur Andersen, in which Morgan Stanley described in detail "Andersen and Sunbeam's Fraudulent Scheme." CPH App. 1 (Morgan Stanley Complaint ¶ 30); *see also* CPH App. 2 (12/12/03 Tr. at 26 (counsel for Morgan Stanley stating that the Sunbeam fraud is "a matter of record")).

Morgan Stanley joined Sunbeam's fraud by agreeing to assist Sunbeam in finding a potential buyer of Sunbeam. CPH App. 9 (Strong Dep. at 28). The purpose of finding a buyer for Sunbeam (or later, an acquisition target) was directly related to the Sunbeam fraud: Sunbeam sought to acquire another company — such as Coleman — in order to realize the value of the artificial increase in Sunbeam's counterfeit stock created by a phony turnaround story, as well as to conceal that fraud after the fact. Moreover, Sunbeam needed Morgan Stanley to find an

---

WL 413304, at *4 (N.D. Ill. 2004) ("The court, not the jury, is responsible for making any factual determinations necessary to resolve the choice-of-law issue based on a preponderance of the evidence standard."); *Chance v. E.I. Du Pont De Nemours & Co.*, 57 F.R.D. 165, 168 (E.D.N.Y. 1972) (explaining that "the question of what the substantive law is must normally be resolved by the judge because he must determine if plaintiff has established a prima facie case and he must tell the jury what the issues of fact are that they must decide as determined by applicable law."). Indeed, the preliminary fact-finding necessary to resolve threshold choice-of-law issues is no different than the fact-finding that is required to determine other preliminary matters — such as personal and subject-matter jurisdiction, venue, and the admissibility of evidence. *See, e.g.*, *Chance*, 57 F.R.D. at 169; *Amiot v. Ames*, 693 A.2d 675, 679-80 (Vt. 1997).

NOT A CERTIFIED COPY

8953-10

16div-020436

interested party as quickly as possible, and certainly before Sunbeam's 1998 results were reported publicly. CPH App. 26 (Yoo Dep. at 218-19); CPH App. 36 (CPH Ex. 229). To accomplish this mission, Sunbeam handpicked William Strong, a senior managing director of Morgan Stanley who knew Albert Dunlap and Russell Kersh. CPH App. 9 (Strong Dep. at 27-29, 34-35). Morgan Stanley permitted Strong to handle the Sunbeam account, despite knowing that it had placed Strong under great pressure to generate revenues and Strong was known to operate with a lack of truth and candor — even when dealing with his colleagues at Morgan Stanley. CPH App. 15 (CPH Ex. 371); CPH App. 16 (CPH Ex. 372); CPH App. 13 (CPH Ex. 373); CPH App. 17 (CPH App. 374); CPH App. 18 (CPH Ex. 375).

To accomplish this critical stage of Sunbeam's fraud, Morgan Stanley and Sunbeam personnel worked hand-in-hand — largely in Florida — to design a strategy to entice potential investors. For example, beginning in April 1997 and continuing into 1998, more than a dozen Morgan Stanley personnel repeatedly visited Sunbeam's headquarters in Delray Beach to study Sunbeam and conduct the due-diligence required of investment bankers. CPH App. 19 (CPH Ex. 37); CPH App. 12 (Smith Dep. at 91); CPH App. 20 (Tyree Dep. at 575-76); CPH App. 21 (CPH Ex. 84); CPH App. 11 (Kitts Dep. at 16-19); CPH App. 22 (CPH Ex. 172); CPH App. 23 (Rafii Dep. at 106-08); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 26 (Yoo Dep. at 83-88); CPH App. 27 (CPH Ex. 245). Indeed, Morgan Stanley's Strong has admitted that he had between 50 and 100 conversations with Sunbeam principals in Florida throughout that time period. CPH App. 9 (Strong Dep. at 53-54).

When Morgan Stanley and Sunbeam were unable to find a buyer for Sunbeam, Morgan Stanley decided to look for a company that it could acquire with Sunbeam's fraudulently inflated stock. CPH App. 9 (Strong Dep. at 94-97). Once Morgan Stanley identified Coleman as a potential acquisition target, Morgan Stanley prepared Sunbeam executives for a meeting with

NOT A CERTIFIED COPY

0139369

CPH principals on December 18, 1997 at the Palm Beach home of Ronald Perelman, to discuss a potential transaction between Sunbeam and Coleman. CPH App. 32 (Perelman Dep. at 116, 133, 196-99, 273-74, 308); CPH App. 135 (CPH Ex. 222). The December 1997 Florida meeting was a precursor to Morgan Stanley's face-to-face meeting with CPH on February 23, 1998, at which Morgan Stanley and Sunbeam falsely portrayed Sunbeam as a turnaround success. CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238).

Once CPH agreed to the merger in late February 1998, Sunbeam and Morgan Stanley continued to use Florida as the base of operations for accomplishing their fraud by making final preparations for consummating the transaction between Coleman and Sunbeam at the end of March 1998. Morgan Stanley personnel traveled to Florida during that time period to meet with Sunbeam in connection with the Coleman transaction. CPH App. 19 (CPH Ex. 37); CPH App. 86 (CPH Ex. 76 at MS 25833). Sunbeam's Florida-based auditors conducted an accounting due-diligence conference call from Florida on March 12, 1998, during which they expressly warned Morgan Stanley about Sunbeam's aggressive revenue recognition practices. CPH App. 63 (Bornstein Dep. at 100-06); CPH App. 64 (CPH Ex. 123). Moreover, Sunbeam's auditors sent Morgan Stanley a comfort letter from Andersen's Florida office, which demonstrated the falsity of representations that Sunbeam and Morgan Stanley had been making about Sunbeam's business and financial condition. CPH App. 69 (CPH Ex. 17); CPH App. 88 (CPH Ex. 112). In addition, on March 18, 1998, Sunbeam personnel in Florida sent Morgan Stanley information about Sunbeam's disastrous first-quarter sales figures, CPH App. 76 (CPH Ex. 16), and participated with Morgan Stanley in conference calls that same day concerning this topic. CPH App. 9 (Strong Dep. at 258-62, 286-93). And Morgan Stanley effectively controlled the content of the March 19 press release that Sunbeam issued from its Delray Beach offices because Morgan Stanley could have simply declined to proceed with the debenture offering on March 19.

NOT A CERTIFIED COPY

0113970

CPH App. 118 (Fogg Dep. at 344).

As the Court's choice-of-law Order contemplated, the developed record evidence plainly demonstrates that with respect to CPH's aiding-and-abetting claim, Morgan Stanley was a key player in accomplishing the underlying Florida-based Sunbeam fraud. CPH App. 96 (Choice of Law Order at 12). Florida law therefore governs that claim.

c. Even Assuming That It Is Necessary To Proceed Further With A Formal Choice Of Law Analysis, Under The *Restatement*, Florida Law Plainly Controls.

Even assuming that it is necessary to proceed to the second and third steps identified in this Court's choice-of-law Order — identifying the applicable choice-of-law rule and then applying it — Florida law clearly governs CPH's aiding-and-abetting claim. As this Court has explained, assuming that a conflict exists, Florida courts apply the "significant relationship test" of the *Restatement (Second) of Conflicts of Laws*. CPH App. 96 (Choice of Law Order at 5). *See Bishop v. Florida Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980). In particular, Section 148 of the *Restatement* applies here because the claims at issue concern fraud and misrepresentation. CPH App. 96 (Choice of Law Order at 5-6). Section 148 contains two subsections, and the Court has explained that Section 148(2) applies where (as here) two states are involved — one where most of the reliance occurred (*i.e.*, New York), and one where most of the fraudulent conduct occurred (*i.e.*, Florida). CPH App. 96 (Choice of Law Order at 10).[8]

---

[8] The choice-of-law issues presented here are fundamentally different from those addressed in the Court's choice-of-law Order, which applied Section 148(1), because the underlying fraud upon which CPH's aiding-and-abetting and conspiracy claims are based is Sunbeam's unquestionably Florida-based fraud. As a result, Section 148(2) applies, because the acts of reliance and the fraud occurred in two different states. In any event, even under a Section 148(1) analysis, which applies when the acts of reliance and fraud occurred in the same state, Florida law governs. Given that Florida was the epicenter of the Sunbeam fraud that underlies CPH's aiding-and-abetting and conspiracy claims, Florida's policy interests are at their utmost. That 30 cases related to the Sunbeam fraud have been litigated in Florida further confirms Florida's paramount interest in this dispute. *See Restatement (Second) Conflicts of Laws* § 6 (listing factors relevant to a Section 148(1) analysis).

NOT A CERTIFIED COPY

0139711

Under Section 148(2), the Court must assess which state has the "most significant relationship to the occurrence and the parties," considering, among other things, where the plaintiff acted in reliance, where the plaintiff received the representations, where the defendant made the representations, and the location of the parties. *Restatement (Second) Conflicts of Laws* § 148(2). Application of Section 148(2)'s factors clearly demonstrates that Florida law applies.

- *Where the plaintiff acted in reliance.* Although CPH certainly engaged in some acts of reliance in New York and elsewhere (urged on by the participants in the Florida-based fraud), CPH also acted in reliance in Florida, where under the express terms of the Merger Agreement it was to have received notice of a material adverse change. CPH App. 95 (MS Ex. 93 at 7969). Moreover, this factor is not particularly significant to the analysis where, as here, the harm at issue is pecuniary harm to a nationwide corporation: Such harm is "far more difficult to locate than when the damages consist of physical injury to persons or to tangible things." *Restatement (Second) Conflicts of Laws* § 148, cmt. c.

- *Where the plaintiff received the representations.* With respect to CPH's fraud and misrepresentation claims, the Court determined that Morgan Stanley's specific representations to CPH were received primarily in New York. In stark contrast, with respect to CPH's aiding-and-abetting and conspiracy claims, there is a much wider universe of representations at issue. For example, the critical face-to-face meeting between CPH and Sunbeam on December 18, 1997 — at which CPH was lured into Sunbeam's fraudulent trap — occurred in Palm Beach, Florida.

- *Where the defendant made the representations.* Unlike CPH's fraud and misrepresentation claims, the aiding-and-abetting and conspiracy claims implicate not only Morgan Stanley's actions, but also the actions of Sunbeam and other co-conspirators. And it is clear that the entire Sunbeam fraud — and the great bulk of fraudulent representations made to CPH — emanated directly from Florida. As the Court has explained, Florida's "strong public policy in favor of protecting the recipients of fraudulent misrepresentations" is "clearly implicated" to the extent that Morgan Stanley "was an actor in a Florida-based fraud." CPH App. 96 (Choice of Law Order at 12, citing *Besset v. Basnett*, 389 So. 2d 995, 997 (Fla. 1980)). Accordingly, this factor strongly weighs in favor of applying Florida law. Indeed, given the substantiality of Florida's connection to the genesis and execution of the fraudulent scheme, this factor should be dispositive.

- *The domicile, nationality, place of incorporation and place of business of the parties.* Florida is listed in a 1998 SEC filing as the principal place of business of CPH during the relevant time period (CPH App. 124 (CPH0626469)), New York was the principal place of Morgan Stanley, and Delaware is the state where both entities are incorporated. So this factor is not very significant. *See Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1166-67 (W.D. Wis.

NOT A CERTIFIED COPY

013972

2004) (because "'[a] corporation does not suffer harm in a particular geographic location in the same sense that an individual does,'" the court "agree[d] with the majority of courts that merely identifying the plaintiff's principal place of business is not enough without more to show that the plaintiff has suffered the brunt of an injury in the state").[9]

Thus, because Florida has the most significant relationship to the indisputably Florida-based Sunbeam fraud — a fraud that has given rise to the filing of 30 lawsuits in this state, including Morgan Stanley's own pending action against Andersen — Florida law governs CPH's aiding-and-abetting claim.

2. Under Florida Law — Or, For That Matter, New York Law — Morgan Stanley's Substantive Attacks On CPH's Aiding And Abetting Claim Are Baseless.

Morgan Stanley attacks CPH's aiding-and-abetting claim on two grounds: (1) "CPH has not presented any evidence that Morgan Stanley had actual knowledge that Sunbeam engaged in fraud"; and (2) "CPH has not presented any evidence that Morgan Stanley provided substantial assistance to Sunbeam in effectuating its alleged fraud." *See* MS Mem. 26, 30. Those arguments are without merit — no matter what law applies.

a. A Triable Issue Of Fact Exists On Whether Morgan Stanley Had Actual Knowledge That Sunbeam Engaged in Fraud.

Morgan Stanley asserts that CPH must show that Morgan Stanley had actual (not just constructive) knowledge of the Sunbeam fraud and that CPH has not come forward with evidence of that actual knowledge. *See* MS Mem. 26-29. Morgan Stanley's argument that it is entitled to summary judgment based on this contention is without merit for four reasons.

First, as before, Morgan Stanley ignores that it bears the initial burden of proving that it

[9] Neither of the remaining two Section 148(2) factors weighs in favor of New York or Florida law, given the intangible nature of the transactions at issue. *See* Restatement (Second) Conflicts of Laws § 148(2)(e) ("the place where a tangible thing which is the subject of the transaction between the parties was situated at the time"); *id.* § 148(2)(f) ("the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.").

NOT A CERTIFIED COPY

0139973

16div-020441

had no knowledge of the underlying fraud and that CPH cannot prove otherwise. *See Holl*, 191 So. 2d at 47-48. Morgan Stanley's summary judgment argument is conspicuously silent on this important issue.

Morgan Stanley asserts that CPH has relied on "naked assertions and equivocal inferences" to support its claim, and cites two Florida summary judgment cases supposedly holding that such assertions are insufficient. *See* MS Mem. 29. Morgan Stanley, however, misstates what those Florida cases held concerning the parties' respective burdens on a motion for summary judgment. Both cases hold that the movant must present conclusive evidence that there is no genuine issue for trial before the nonmovant has to present anything. *See Peoples Gas Sys., Inc. v. Acme Gas Corp.*, 689 So. 2d 292, 299 (Fla. 3d DCA 1997) (in finding that the "bare self-serving assertions made by Peoples Gas" were insufficient to defeat summary judgment, Appellate Court observed that "the record conclusively refutes Peoples Gas' assertions."); *Bryant v. Shands Teaching Hosp. & Clinics, Inc.*, 479 So. 2d 165, 168 (Fla. 4th DCA 1985) (observing that "[i]t is well-recognized that the non-moving party faced with a summary judgment motion supported by appropriate proof may not rely on bare, conclusory allegations" and finding that "appellants provided no evidence contrary to the affidavit" provided by the movants; emphasis added). Here, Morgan Stanley has not come forward with any showing of a lack of a genuine issue of fact on the question of its knowledge.

Second, Morgan Stanley ignores that summary judgment on a claim of aiding-and-abetting fraud — as with all fraud claims — is strongly disfavored because "issues such as fraud, intent, and knowledge lend themselves to trial, rather than summary judgment." *Tew*, 728 F. Supp. at 1555. That is so because "[t]hese matters can often only be proved by reliance upon circumstantial evidence except in the rare case where there is uncontraverted proof of a 'smoking gun.'" *Id.* Thus, the preference is for "a reasonable fact finder . . . to hear all the evidence,

NOT A CERTIFIED COPY

0139714

weigh it and draw all reasonable inferences therefrom." *Id.*; *see also Cohen*, 843 So. 2d at 991 ("In fraud cases, summary judgment is rarely proper as the issue so frequently turns on the axis of the circumstances surrounding the complete transaction, including circumstantial evidence of intent and knowledge."); *Department of Revenue v. Rudd*, 545 So. 2d 369, 372 (Fla. 1st DCA 1989) ("'A litigant has a right to trial where there is the slightest doubt as to the facts' in a fraud case"); quoting *Dean v. Gold Coast Theatres, Inc.*, 156 So. 2d 546 (Fla. 2d DCA 1963)) (emphasis in original).

Third, Morgan Stanley asserts that it is not appropriate to consider what is "likely" or to engage in "inferential" reasoning in determining whether Morgan Stanley had actual knowledge. *See* MS Mem. 26-27. But the law holds otherwise. Indeed, because a party's knowledge is "most likely to be within the sole knowledge of the defendant and least amenable to direct proof," *Houbigant*, 753 N.Y.2d at 498, it is well established that both circumstantial and direct evidence can be used to prove actual knowledge. *See, e.g., SEC v. Lybrand*, 200 F. Supp. 2d 384, 400 (S.D.N.Y. 2002) (discussing "ample circumstantial evidence that could give rise to an inference of actual knowledge"). Morgan Stanley apparently confuses proof of actual knowledge by circumstantial evidence, which is the standard practice, with the concept of constructive knowledge. The concepts, however, plainly are different. *See, e.g., Ben Soep Co. v. Highgate Hall of Orange County, Inc.*, 535 N.Y.S.2d 1018, 1021 (N.Y. Sup. Ct. 1988) (discussing the need to "make clear the distinction between constructive knowledge and circumstantial evidence of facts, from which a trier of fact may conclude that one possessed actual knowledge").

Here, the evidence of record and the reasonable inferences drawn from the evidence establish Morgan Stanley's actual knowledge of the Sunbeam fraud. Morgan Stanley was intimately acquainted with Sunbeam and its financial records throughout 1997 and 1998, and it is

NOT A CERTIFIED COPY

013975

inconceivable that Morgan Stanley could have had such deep involvement and not known at some early date that Sunbeam's turnaround story was an illusion. CPH App. 86 (CPH Ex. 76 at 4) (Leverage Finance Committee memo stating that "Morgan Stanley's M&A group has been working closely with Sunbeam for almost one year . . . The M&A group has gained extremely sound knowledge of the Company"). CPH App. 8 (Levin Dep. at 403-04); CPH App. 28 (Nesbitt Dep. at 415-16). Indeed, Morgan Stanley spent months studying Sunbeam and conducting due-diligence starting in April 1997, during which time more than a dozen Morgan Stanley personnel visited Sunbeam's headquarters to examine Sunbeam's books and files. CPH App. 19 (CPH Ex. 37); CPH App. 12 (Smith Dep. at 91); CPH App. 20 (Tyree Dep. at 575-81); CPH App. 21 (CPH Ex. 84); CPH App. 11 (Kitts Dep. at 16-19); CPH App. 22 (CPH Ex. 172); CPH App. 23 (Rafii Dep. at 106-08); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 26 (Yoo Dep. at 83-88); CPH App. 27 (CPH Ex. 245). Strong personally spoke with Dunlap and/or Kersh in Florida between 50 and 100 times in this same period. CPH App. 9 (Strong Dep. at 53-54).

Although Morgan Stanley likely knew about the underlying fraud at an early date, at the very latest, the undisputed facts establish that Morgan Stanley knew about Sunbeam's fraud by mid-March 1998. At that point, Morgan Stanley was warned by Sunbeam's own outside auditors, during a March 12, 1998 accounting due-diligence conference call, that Sunbeam was engaged in aggressive revenue recognition practices to obscure Sunbeam's actual performance. CPH App. 63 (Bornstein Dep. at 104-06); CPH App. 64 (CPH Ex. 123). Morgan Stanley has admitted that such practices "raised clear red flags." CPH App. 68 (Amended Complaint ¶ 84). And by March 18, 1998, Morgan Stanley had received written proof, in the form of a comfort letter prepared by Sunbeam's auditors, that the 1998 numbers promoted by Sunbeam and Morgan Stanley were false and that Sunbeam was actually in the midst of a disastrous collapse.

NOT A CERTIFIED COPY

0139176

CPH App. 76 (CPH Ex. 16); CPH 69 (CPH Ex. 17); CPH App. 70 (CPH Ex. 24); CPH App. 98 (CPH Ex. 110); CPH App. 71 (CPH Ex. 344); CPH App. 72 (Dean Dep. at 132-33). This information in Morgan Stanley's possession made it indisputably clear that Sunbeam's 1997 results were artificially inflated and an illusion, that the illusion could not be sustained, and that the Sunbeam turnaround story was a sham. Indeed, based on this turn of events, Morgan Stanley principals were alarmed enough to hold an "all hands" conference on March 18, 1998, at which they confirmed with Sunbeam the truth of the comfort letter's description of Sunbeam's sales collapse. CPH App. 75, 20 (Tyree Dep. at 237-48, 359-71); CPH App. 9 (Strong Dep. at 264-66, 286-93, 298-302); CPH App. 74 (Porat Dep. at 154-58); CPH App. 76 (CPH Ex. 16).

What is more, as Morgan Stanley made its final preparations to close the Coleman deal, it obtained even more detail about Sunbeam's dismal condition, but nevertheless continued to forge ahead with the transaction. For example, Morgan Stanley planned a "bring down" due-diligence call that was to take place days before the March 30, 1998 closing, but deliberately dropped from the meeting's agenda a planned inquiry into what to expect from Sunbeam's second quarter. CPH App. 83 (CPH Ex. 33); CPH App. 84 (CPH Ex. 34); CPH App. 85 (CPH Ex. 35). Morgan Stanley's alteration of the agenda shows that Morgan Stanley purposely avoided a discussion of Sunbeam's second quarter because it knew that Sunbeam would try to accelerate second quarter sales to obscure its first quarter collapse. Then, at a March 20, 1998 meeting, the Morgan Stanley finance committee approved the underwriting of the loan to Sunbeam necessary to complete the transaction with CPH. The finance committee did so despite expressly discussing Sunbeam's sales crisis, because they also discussed the massive fees that Morgan Stanley stood to gain, and Strong was there to push the deal through. CPH App. 86 (CPH Ex. 76); CPH App. 12 (Smith Dep. at 199-204). And on March 25, 1998 — the day that Morgan Stanley closed a debenture offering raising $750 million from public investors —

NOT A CERTIFIED COPY

013977

Sunbeam's outside auditors sent yet another comfort letter to Morgan Stanley that left no doubt about Sunbeam's fiscal crisis. CPH App. 88 (CPH Ex. 112). Rather than disclose these facts to investors or to the public, Morgan Stanley sat idly by as Sunbeam issued a press release on March 25 announcing the closing and touting Sunbeam's prospects in glowing terms. CPH App. 92 (CPH Ex. 380).

Fourth, Morgan Stanley devotes a page and a half of its brief (MS Mem. 28-29) to the decision in *Filler v. Hanvit Bank*, 339 F. Supp. 2d 553 (S.D.N.Y. 2004), but Morgan Stanley's reasons for doing so are a mystery. *See* MS Mem. 28-29. Even putting aside the fact that *Filler* applies New York law, instead of Florida law, it plainly is inapposite because the underlying fraud involved an entirely separate company and wholly different actions from the transaction in which the defendant was involved. *Filler*, 330 F. Supp. 2d at 557-59. It is therefore no wonder that the court found no evidence of defendant's actual knowledge of the underlying fraud. More to the point here is *CPC International Inc. v. McKesson Corp.*, 514 N.E.2d 116 (N.Y. 1987), which held that Morgan Stanley could be found liable for aiding-and-abetting and conspiracy because Morgan Stanley was alleged to have known of and agreed to participate in a fraud that originated with another party. *Id.* at 124. That is the case here as well.

Thus, there is substantial record evidence that Morgan Stanley actually knew about the Sunbeam fraud. In these circumstances, one cannot conclude that Morgan Stanley's entitlement to summary judgment is "beyond doubt," as the governing summary judgment standard requires. *See City of Lake City*, 62 So. 2d at 733.

b. A Triable Issue Of Fact Exists On Whether Morgan Stanley Provided Substantial Assistance To Sunbeam In Effectuating Its Fraud.

Morgan Stanley's last attack on CPH's aiding-and-abetting claim is that "CPH has not presented any evidence that Morgan Stanley provided substantial assistance" in connection with

NOT A CERTIFIED COPY

013578

16div-020446

the Sunbeam fraud. *See* MS Mem. 30-31. This argument, like Morgan Stanley's other contentions, lacks merit for multiple reasons.

First, as shown above, the governing summary judgment standard requires Morgan Stanley to prove the negative — that it did not provide substantial assistance and that CPH cannot prove otherwise. *See Holl*, 191 So. 2d at 47-48. Once again, instead of addressing what it did and did not do, Morgan Stanley points the finger at CPH — and contends that "Perelman is responsible for his own losses." *See* MS Mem. 31. Such evasiveness by Morgan Stanley may be viewed by it as necessary, in light of Morgan Stanley's actual involvement and substantial assistance in the Sunbeam fraud, but it certainly is not sufficient to overcome the governing summary judgment standard.

Second, strong evidence exists that Morgan Stanley gave "substantial assistance" to Sunbeam to ensure the accomplishment of the Sunbeam fraud. *Tew*, 728 F. Supp. at 1569 (substantial assistance is established by demonstrating that a party "acted affirmatively or failed to disclose with the purpose of furthering the fraud"). Morgan Stanley's substantial assistance included the following:

- Throughout 1997 and the beginning of 1998, Morgan Stanley worked hand-in-hand with Sunbeam, to accomplish Sunbeam's fraud. CPH App. 19 (CPH Ex. 37); CPH App. 21 (CPH Ex. 84); CPH App. 22 (CPH Ex. 172); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 27 (CPH Ex. 245); CPH App. 99 (CPH Ex. 255); CPH App. 9 (Strong Dep. at 47-48, 153-54).

- Morgan Stanley assisted Sunbeam in targeting CPH as a potential acquisition and in convincing CPH, through a series of face-to-face meetings and other contacts, to consummate the transaction with Sunbeam. CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238).

- Even after Morgan Stanley plainly was aware of the fraud at Sunbeam, Morgan Stanley assisted Sunbeam in preparing and disseminating the false and misleading press release on March 19, 1998. CPH App. 79 (CPH Ex. 14); CPH App. 72 (Dean Dep. at 123-24, 132-33); CPH App. 74 (Porat Dep. 187-190, 203).

- Morgan Stanley's affiliate provided the funding that Sunbeam required in order to close the Coleman acquisition and conceal Sunbeam's dire financial situation.

NOT A CERTIFIED COPY

013979

CPH App. 12 (Smith Dep. at 197-203); CPH App. 87 (Hart Dep. at 222-25); CPH App. 86 (CPH Ex. 76).

- Morgan Stanley lured individuals into investing in the debentures that were necessary to fund Sunbeam's acquisition of CPH and realize the objective of the fraudulent scheme. CPH App. 63 (Bornstein Dep. at 75-82); CPH App. 100 (CPH Ex. 10); CPH App. 101 (CPH Ex. 75); CPH App. 102 (CPH Ex. 114).

Thus, record evidence plainly shows that Morgan Stanley rendered substantial assistance to Sunbeam.[10]

In sum, CPH's aiding-and-abetting fraud claim is more than sufficient to survive summary judgment.

D. CPH's Conspiracy Claim Should Be Allowed To Proceed To Trial.

Morgan Stanley's last attack is on CPH's conspiracy claim. That attack, as is demonstrated below, likewise lacks merit.

1. As A Threshold Matter, Florida Law Applies To This Claim, For The Same Reasons It Applies To CPH's Aiding And Abetting Claim.

For all the reasons set forth above in connection with CPH's aiding-and-abetting claim, *see* Section II.C.1, Florida law applies to CPH's conspiracy claim. Indeed, given that Morgan Stanley concedes that the requirements under Florida law for such a claim are the "same" as those under New York law (MS Mem. 32), this Court's choice-of-law Order dictates that Florida

---

[10] Morgan Stanley suggests that "inaction" constitutes substantial assistance only when a fiduciary duty is owed to the plaintiff. *See* MS Mem. 30. Morgan Stanley's argument is inapposite because CPH is not relying on Morgan Stanley's "inaction" to show substantial assistance, but rather, is relying on evidence that Morgan Stanley assisted Sunbeam's fraud through a wide variety of affirmative acts. Moreover, Morgan Stanley misstates New York law in claiming that the existence of a fiduciary duty is required for inaction to constitute substantial assistance. New York courts long have explained that "inaction" may constitute substantial assistance "in the absence of some independent duty" so long as the defendant has "a conscious and specific motivation for not acting." *IIT v. Cornfeld*, 619 F.2d 909, 927 (2d Cir. 1980) (Friendly, J.); *see also BF Capital Mgmt. v. Askin Capital Mgmt.*, 957 F. Supp. 1308, 1328 (S.D.N.Y. 1997) (citing *Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983)) (explaining that "even in the absence of a duty to act or disclose information, inaction on the alleged aider and abettor's part can provide a basis for liability where the inaction was 'designed intentionally to aid the primary fraud'").

NOT A CERTIFIED COPY

013980

16div-020448

law must apply. *See* CPH App. 96 (Choice of Law Order at 3). As for the rest of the choice-of-law analysis, because Morgan Stanley asserts that "CPH's conspiracy claim is just another way of phrasing the aiding-and-abetting claim" (MS Mem. 32), the identical choice-of-law analysis and conclusion apply: Florida law governs CPH's conspiracy claim.

2. Morgan Stanley Is Not Entitled To Summary Judgment On CPH's Conspiracy Claim.

In its one-and-a-half-page attack on CPH's conspiracy claim, Morgan Stanley contends that it is entitled to summary judgment because "CPH has no record evidence of an actual agreement between Morgan Stanley and Sunbeam to defraud CPH." *See* MS Mem. at 32. That contention fails for two reasons.

First, as with every other argument made by Morgan Stanley, this argument misapprehends who bears the burden of proof on a summary judgment motion. It is not CPH's burden to come forward with evidence of an actual agreement. Morgan Stanley instead must "prov[e] a negative, *i.e.*, the non-existence of a genuine issue of material fact." *Holl*, 191 So. 2d at 43. Morgan Stanley "must prove this negative conclusively," *id.*, but clearly, Morgan Stanley has not done so.

Second, contrary to Morgan Stanley's contention, there is ample evidence from which the trier of fact can conclude that there was an actual agreement between Morgan Stanley and Sunbeam to engage in fraud. In this regard, however, it is not necessary to present direct evidence of the conspiracy: "The existence of a conspiracy and an individual's participation may be inferred from circumstantial evidence." *Donofrio v. Matassini*, 503 So. 2d 1278, 1281 (Fla. 2d DCA 1987); *see also Borden, Inc. v. Spoor Behrins Campbell & Young, Inc.*, 828 F. Supp. 216, 225 (S.D.N.Y. 1993) (explaining that "direct proof of a conspiracy is seldom available, and therefore an illicit agreement may be shown via circumstantial evidence"). One of Morgan Stanley's own authorities recognizes this point. *See* William H. Kuehnle, *Secondary Liability*

NOT A CERTIFIED COPY

013981

Under the Federal Securities Laws — Aiding and Abetting, Conspiracy, Controlling Person, and Agency: Common-Law Principles and the Statutory Scheme, 14 J. Corp. L. 313, 346 (1988) ("An express agreement need not be proven; and the agreement can be shown by circumstantial evidence, including a showing that the conspirators conformed their conduct to an arrangement or understanding."). Thus, a jury may infer the existence of a conspiracy (and the requisite agreement) based on, among other things, "the relationship of the parties, proximity and time and place of the acts, and the duration of the actors' joint activity." *Borden*, 828 F. Supp. at 225; *see also Czarnecki v. Roller*, 726 F. Supp. 832, 840-41 (S.D. Fla. 1989) (denying summary judgment on a conspiracy claim under Florida law because it was "open to the trier of fact to infer" that the alleged co-conspirator and the underlying tortfeaser had "reached an understanding" to defraud the plaintiff, based on meetings between the defendants, and in light of the defendant's "clear motive in not disrupting a deal which was about to be consummated and which would have allowed [the defendants] to pocket a sizeable brokerage fee").

Here, under these standards, a jury question clearly exists on CPH's conspiracy claim. CPH has substantial evidence from which the jury could infer an agreement between Morgan Stanley and Sunbeam to accomplish a common fraudulent objective. For example, there is substantial evidence that: (a) Morgan Stanley and Sunbeam agreed on and jointly presented written materials to CPH at the February 23, 1998 meeting (CPH App. 29 (CPH Ex. 9)); (2) Morgan Stanley and Sunbeam agreed to issue the false misleading March 19, 1998 press release (CPH App. 74 (Porat Dep. 187-90, 203); CPH 72 (Dean Dep. at 123-24, 132-33)); (b) Morgan Stanley and Sunbeam agreed to incorporate and republish the false March 19, 1998 press release into the offering documents for the sale of $2 billion face value in debentures (CPH App. 100 (CPH Ex. 10 at CP33176); CPH App. 63 (Bornstein Dep. at 75-82)); (c) Morgan Stanley and Sunbeam agreed to participate in the road-show presentation for the debentures during which

NOT A CERTIFIED COPY

013982

false information was provided to investors and analysts (CPH App. 101 (CPH Ex. 75); CPH App. 115 (Porat Dep. at 237-47)); and (d) Morgan Stanley and Sunbeam agreed that Morgan Stanley would provide the financing required to close the Coleman transaction (CPH App. 12 (Smith Dep. at 197-203); CPH App. 87 (Hart Dep. at 222-25); CPH App. 86 (CPH Ex. 76)). This evidence, in addition to Morgan Stanley's initial agreement to work with Sunbeam toward a common goal that led to the Coleman transaction, constitute strong evidence of an actual agreement between Morgan Stanley and Sunbeam to accomplish a common tortious objective. In these circumstances, under applicable summary judgment standards, it cannot be said that Morgan Stanley has established its entitlement to summary judgment beyond the "slightest doubt." *See City of Lake City*, 62 So. 2d at 733.

CONCLUSION

Morgan Stanley's motion for summary judgment should be denied.

Dated: December 23, 2004

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1189186

NOT A CERTIFIED COPY

013983

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Overnight Courier and the 12 volume Appendix is being furnished by Overnight Courier to all counsel on the attached list on this 23rd day of Dec., 2004.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

NOT A CERTIFIED COPY

0139844

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

NOT A CERTIFIED COPY

013985

414

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

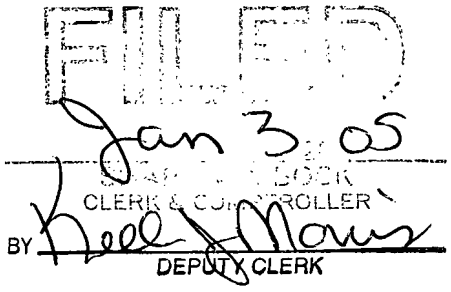
MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

Filed Under Seal — Subject To Confidentiality Order

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

VOLUME 1
(EXHIBITS 1-6)



NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

01415 6

TABLE OF CONTENTS
VOLUME 1

	TAB
Complaint (*Morgan Stanley & Co. Inc., et. al. v. Arthur Andersen LLP, et. al.*)	1
Hearing Transcript, Dated December 12, 2003	2
MS Ex. 338	3
CPH Ex. 21	4
CPH Ex. 22	5
Donald Denkhaus Deposition Transcript	6

NOT A CERTIFIED COPY

011157

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

MORGAN STANLEY & CO. INCORPORATED, MORGAN STANLEY SENIOR FUNDING, INC., and MORGAN STANLEY,

Plaintiffs,

vs.

ARTHUR ANDERSEN LLP (a United States partnership); ANDERSEN WORLDWIDE, SOCIÉTÉ COOPÉRATIVE (a Swiss cooperative); ARTHUR ANDERSEN & CO. (a Canadian company); ARTHUR ANDERSEN & CO. (a Hong Kong company); RUIZ, URQUIZA Y CIA, S.C. (a Mexican company); PIERNAVIEJA, PORTA, CACHAFEIRO & AVOCADOS (a Venezuela company); ARTHUR ANDERSEN (a United Kingdom company); PHILLIP E. HARLOW; WILLIAM PRUITT; and DONALD DENKHAUS.

Defendants.

50 2004 CA 002257 XXXX MB

AA

CASE NO.

Jury Trial Demanded

DOROTHY H. WIEKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

MAR 1 2004

COPY / ORIGINAL
RECEIVED FOR FILING

NOT A CERTIFIED COPY

COMPLAINT

In March 1998, Morgan Stanley & Co. Incorporated, Morgan Stanley Senior Funding, Inc., and Morgan Stanley (collectively, "Morgan Stanley") — in direct reliance on certified financial statements audited by the Arthur Andersen defendants ("Andersen")[1] — underwrote a multi-million dollar offering of convertible notes and provided a $680 million loan to Sunbeam

[1] Defendants Arthur Andersen LLP; Andersen Worldwide, Société Coopérative (a Swiss cooperative); Arthur Andersen & Co. (a Canadian company); Arthur Andersen & Co. (a Hong Kong company); Ruiz, Urquiza y Cia, S.C. (a Mexican Company); Piernavieja, Porta, Cachafeiro & Avocados (a Venezuela company); Arthur Andersen (a United Kingdom company), Phillip E. Harlow, William Pruitt, and Donald Denkhaus are hereinafter collectively referred to as "Andersen." Unless otherwise stated, allegations made against "Andersen" are made against each of these defendants jointly and severally.

16div-020456

Corporation, Inc., in connection with Sunbeam's acquisition of three companies. As Sunbeam's subsequent restatement of its financial results showed, the financial statements that Andersen certified grossly misrepresented Sunbeam's true financial condition. Andersen had full knowledge of these misstatements, and it intended that Morgan Stanley would rely on its unqualified audit opinions. Morgan Stanley — as a direct consequence of Andersen's deceit — has lost hundreds of millions of dollars. Accordingly, Morgan Stanley brings this action against Andersen and alleges the following:

Nature of Action

1. In March 1998, Sunbeam acquired The Coleman Company, Inc. ("Coleman") and two smaller companies. In order to finance this acquisition, Morgan Stanley underwrote a $750 million offering of convertible notes, and it also directly provided Sunbeam with an additional $680 million in secured financing.

2. In serving as an underwriter and in agreeing to extend the loan, Morgan Stanley relied on Sunbeam's financial statements, which had been audited and certified by Andersen, as well as Andersen's continued opinions about Sunbeam's financial condition. The Sunbeam financial statements painted a picture of Sunbeam as a company in the midst of an extraordinary financial turnaround.

3. In reality, unbeknownst to Morgan Stanley, Sunbeam's "turnaround" was an illusion. As became apparent in the summer of 1998 and as confirmed by Sunbeam's subsequent restatement of its financial results, the 1996 and 1997 statements that Andersen had certified — and upon which Morgan Stanley had relied — did not conform with generally accepted accounting principles ("GAAP"). Andersen, with full knowledge of the material misstatements

NOT A CERTIFIED COPY

011160

16div-020457

contained in Sunbeam's financial reports, issued unqualified audit opinions for both 1996 and 1997. In so doing, it failed to perform its audit in accordance with generally accepted auditing standards ("GAAS").

4. As Andersen knew, the statements that it audited and certified were replete with accounting improprieties. As a consequence, Sunbeam's true financial condition was misstated by millions of dollars. In November 1998, when it restated its 1996 and 1997 financial results, Sunbeam revealed that, in 1996, it had overstated its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, Sunbeam dramatically overstated its earnings. When 1997 operating earnings were eventually corrected and restated, they were $95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

5. Andersen's fraud ultimately forced Sunbeam and several of its subsidiaries to seek relief under Chapter 11 of the Bankruptcy Code in February 2001. As part of the bankruptcy court-approved reorganization plan, Morgan Stanley's $680 million loan to Sunbeam was discharged in full, and Morgan Stanley received Sunbeam stock valued at a small fraction of the original loan. In addition, as a result of Andersen's actions, the convertible notes issued by Sunbeam and held by Morgan Stanley had been rendered substantially less valuable.

6. As the Securities and Exchange Commission ("SEC") subsequently determined, in auditing and certifying Sunbeam's financial statements, Andersen completely disregarded its professional and legal obligations. It certified Sunbeam financial statements that it knew grossly mischaracterized the company's true financial condition. It ignored its duty to maintain

NOT A CERTIFIED COPY

0114161

16div-020458

independence from its client, Sunbeam. It did so with full knowledge that Morgan Stanley would be harmed immensely by Andersen's deception.

7. By this complaint, Morgan Stanley seeks compensatory damages of several hundreds of millions of dollars. In addition, Morgan Stanley reserves the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for an additional recovery of punitive damages in excess of $1.2 billion as allowed by law.

THE PARTIES AND OTHER RELEVANT ENTITIES

8. Plaintiff Morgan Stanley & Co. Incorporated ("MS & Co.") is a financial services firm that engages in underwriting, investment banking, financial advisory services, securities sales and trading, and research. In late 1997 and early 1998, MS & Co. assisted Sunbeam in identifying potential acquisition targets and served as Sunbeam's financial advisor with respect to certain aspects of Sunbeam's acquisitions of Coleman, Signature Brands USA, Inc. and First Alert, Inc. MS & Co. also served as the underwriter of a $750 million offering of convertible notes that Sunbeam used to finance these acquisitions. MS & Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

9. Plaintiff Morgan Stanley Senior Funding, Inc. ("MSSF") is a company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide a loan to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

NOT A CERTIFIED COPY

011462

10. Plaintiff Morgan Stanley is a financial services company. It owns 100 percent of the stock of both MS & Co. and MSSF. Morgan Stanley is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York. In this complaint, the term "Morgan Stanley" is used collectively to describe both Morgan Stanley and its two wholly-owned subsidiaries, MS & Co. and MSSF.

11. Defendant Andersen Worldwide, Société Coopérative Switzerland was a partnership organized under the Swiss Federal Code of Obligations. Its partners included more than 2,000 individuals from 390 offices in 84 countries. Various individuals who were partners of Andersen-Worldwide participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. Andersen-Worldwide and Andersen-US dictated the policies and procedures to be used within Andersen throughout the world.

12. Defendant Arthur Andersen & Co. ("Andersen-Canada") was part of Andersen-Worldwide. Andersen-Canada participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits.

13. Defendant Arthur Andersen & Co. ("Andersen-Hong-Kong") was part of Andersen-Worldwide. Andersen-Hong Kong participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits.

14. Defendant Ruiz, Urquiza y Cia, S.C. ("Andersen-Mexico") was part of Andersen-Worldwide. Andersen-Mexico participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits.

15. Defendant Piernavieja, Porta, Cachafeiro & Avocados ("Andersen-Venezuela") was part of Andersen-Worldwide. Andersen-Venezuela participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits.

NOT A CERTIFIED COPY

0114163

16div-020460

16. Defendant Arthur Andersen ("Andersen-UK") was part of Andersen-Worldwide. Andersen-UK participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits.

17. Defendant Arthur Andersen LLP ("Andersen-US") was part of Andersen-Worldwide. Andersen-US is a partnership formed under the laws of the State of Illinois. Once one of the world's largest accounting firms, almost all of its partners have left the firm. Andersen-US participated in and coordinated the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. In addition, Andersen-US partners and employees provided consulting services to Sunbeam as part of due diligence work performed in conjunction with Sunbeam's acquisition of Coleman, as well as on other projects.

18. Defendant Phillip E. Harlow was a partner at Andersen-US and was also a partner of Andersen-Worldwide. He served as the engagement partner on the audits of Sunbeam's financial statements from 1993 to 1998. As engagement partner, Harlow had primary responsibility for supervising the 1996 and 1997 audits of Sunbeam, including overseeing the activities with respect to the Sunbeam work performed by numerous persons at Andersen. Harlow also participated as a member of Sunbeam's due diligence team in connection with Sunbeam's acquisition of Coleman.

19. Defendant William Pruitt at all times material hereto was a partner of both Andersen-US and Andersen-Worldwide. He served as the concurring partner on the Sunbeam audits for at least 1996 and 1997.

20. Defendant Donald Denkhaus at all times material hereto was a partner of both Andersen-US and Andersen-Worldwide. Denkhaus served as the engagement partner on the

NOT A CERTIFIED COPY

011194

Sunbeam's ultimate restatement of its financial statements, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region.

21. The Coleman Company, Inc. was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman was a Delaware corporation, with its principal place of business in Kansas. Prior to March 30, 1998, Coleman (Parent) Holdings Inc. ("Coleman-Parent") owned 44,067,520 shares (or approximately 82 percent) of Coleman. Coleman-Parent is a Delaware corporation, with its principal place of business in New York and is a wholly-owned subsidiary of MacAndrews and Forbes Holdings, Inc. ("MAFCO"). MAFCO is a global investment firm owned and operated by financier Ronald O. Perelman. Through its various subsidiaries and affiliates, MAFCO owns and/or controls a number of multi-billion dollar global corporations, including Revlon, Inc., the international consumer cosmetics company. MAFCO is a Delaware corporation, with its principal place of business in New York.

22. Sunbeam Corporation through its operating subsidiaries and affiliates, manufactured, marketed, and distributed durable household and outdoor leisure consumer products through mass-market and other consumer channels. In 1998, Sunbeam purchased Coleman-Parent's controlling interest in Coleman for $2.2 billion. On February 6, 2001, Sunbeam and several of its affiliates filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Sunbeam has since emerged from bankruptcy and now operates under the name American Household.

NOT A CERTIFIED COPY

011465

JURISDICTION AND VENUE

23. This Court has jurisdiction over the subject matter of this action pursuant to Fla. Stat. § 26.012(2)(a) because Plaintiff seeks damages in excess of $15,000 exclusive of interest, costs and attorneys' fees. This Court has jurisdiction over Andersen-US, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, and Andersen-UK pursuant to Fla. Stat. §§ 48.193(1)(a) and (f), (2) and/or (5).

24. This Court has personal jurisdiction over Andersen pursuant to Fla. Stat. § 48.193(2) because Andersen engaged in substantial business activities in the State of Florida. Additionally, this Court has personal jurisdiction over Andersen pursuant to Fla. Stat. § 48.193(1)(a) because the cause of action arises out of Andersen's activities in the State.

25. Venue is proper in this Court pursuant to Fla. Stat. §§ 47.011 and 47.021 because, when the actionable conduct described herein occurred, Andersen maintained an office with more than 30 employees and partners in West Palm Beach and therefore resided in Palm Beach County.

FACTUAL BACKGROUND

Andersen and Sunbeam's Fraudulent Scheme

26. In July 1996, to address its growing financial difficulties, Sunbeam hired Albert Dunlap as Chairman and Chief Executive Officer. Dunlap was a well-known "turnaround" specialist who had a history of brief tenures at other companies. He was nicknamed "Chainsaw Al" because of his practice of cutting staff and closing plants to achieve quick turnaround results.

27. Immediately after joining Sunbeam, Dunlap replaced almost all of top management with his own selections, hiring Russell A. Kersh (Chief Financial Officer); Donald R. Uzzi (Vice President, Marketing and Product Development, and later Executive Vice

NOT A CERTIFIED COPY

0114166

President, Consumer Products Worldwide); Lee B. Griffith (Vice President, Sales); and Robert J. Gluck (Principal Accounting Officer).

28. Immediately after he was hired, Dunlap publicly predicted that, as a result of the Company's restructuring, Sunbeam would attain significant increases in its margins and sales.

29. Unbeknownst to the public and to Morgan Stanley, senior management established an overly dismal financial backdrop against which the company's performance in 1997 would be measured. Management decided to accomplish this task by recording improper expenses and taking unjustified accounting write-offs in their 1996 financial statements. In order to convince the public that their 1996 losses were real, however, Sunbeam needed an outside auditor to validate their financial reports.

30. Andersen stood ready to assist Sunbeam in its scheme. Andersen had a significant stake in retaining Sunbeam, a long-time major client. The company generated substantial income for Andersen, paying over $1 million in fees for its 1995 audit alone. Andersen also hoped to continue to receive lucrative consulting assignments from Sunbeam. Moreover, being dropped by a high-profile client such as Sunbeam would have been a severe blow to Andersen's reputation. Indeed, Andersen was so eager to keep Sunbeam as its client that it agreed to a 30 percent reduction in its 1996 audit fees.

31. After Dunlap assumed control of Sunbeam, Andersen had reason to fear that its relationship with Sunbeam was in jeopardy. Phillip Harlow, the Andersen engagement partner, knew that Dunlap had employed Coopers & Lybrand, one of Andersen's major competitors, as a financial consultant and independent auditor in past turnaround assignments. In fact, Dunlap had already engaged Coopers & Lybrand to assist in planning Sunbeam's massive restructuring.

NOT A CERTIFIED COPY

014167

32. Ultimately, Andersen's desire to retain a valuable client overrode any sense of duty or professionalism, and it capitulated to Sunbeam's demand that it sanction the improper accounting treatments used by the company's senior management.

Andersen's Worldwide Operations

33. Andersen operated through a global network of international offices, branches and subsidiaries of the U.S. partnership, a structure called the Andersen Worldwide Organization. The Andersen network worked as "one firm" and maintained this "one firm" identity through a variety of mechanisms. Partners (or equivalents) in its various branches were also partners of Andersen-Worldwide, resulting in a global partnership of more than 2,000 individuals from 390 offices in 84 different countries. In addition to overlapping partners, Andersen-Worldwide and Andersen-US shared officers in common. Moreover, Andersen-Worldwide set uniform professional standards for all its offices and required its international offices to agree to be bound by those professional standards and principles. Andersen-Worldwide coordinated the sharing of costs and allocation of revenues and profits among its partners and its offices around the world. Andersen-Worldwide operated under a worldwide tax structure. In addition, Andersen-Worldwide handled all borrowing on behalf of its international offices and maintained those offices' financial records, payroll, and employee health benefits plans. All of Andersen's offices also shared global computer operations and training facilities.

34. Andersen applied the "one firm" approach in its work with Sunbeam. Top partners responsible for the Sunbeam audits and restatement were partners of both Andersen-US and Andersen-Worldwide, including the engagement partner on the Sunbeam audits, Phillip Harlow; the concurring partner on those audits, William Pruitt; and the engagement partner on the Sunbeam restatement, Donald Denkhaus.

NOT A CERTIFIED COPY

0114168

35. In addition, various international offices of Andersen-Worldwide did substantial work for Sunbeam. Sunbeam was a multinational corporation with operations in Canada, Mexico, Venezuela, Hong Kong, and Europe. The engagements required the participation of auditors from each of those countries and numerous American cities. Harlow, on behalf of both Andersen-US and Andersen-Worldwide, developed work plans that he circulated to Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, and Andersen-UK. Those offices worked together with Harlow and others to complete the tasks outlined in the plan and sent their work product to Harlow for inclusion in an Andersen-Worldwide Management Letter.

The Fraudulent 1996 Financial Statements

36. In 1996, after Dunlap took control of Sunbeam, Andersen permitted Sunbeam management to employ numerous accounting practices that — as Sunbeam's restatement of its 1996 financial statements and an SEC investigation later showed — did not comply with GAAP.

37. Among other things, Sunbeam's 1996 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts No. 2, §§ 58-97; Accounting Principles Board ("APB") Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

NOT A CERTIFIED COPY

011169

16div-020466

38. Among the accounting frauds that Andersen knowingly allowed was the artificial inflation of Sunbeam's reserves. Because the reserves were charged as an expense against income, this accounting practice allowed Sunbeam to overstate the 1996 loss against which its 1997 financial results would be compared.

39. For example, Sunbeam created a $338 million reserve for "restructuring" charges. As the November 1998 restatement made clear, included in these charges were costs of redesigning product packaging; costs of relocating employees and equipment; bonuses to be paid to employees who were told that they were being laid off but were asked to stay on temporarily; advertising expenses; and certain consulting fees. Because these items benefited future activities, GAAP did not permit them to be classified as restructuring charges. Andersen also permitted Sunbeam to violate GAAP by creating a $12 million reserve for a lawsuit alleging that Sunbeam was liable for cleanup costs associated with a hazardous waste site, even though Sunbeam's estimated liability was, at best, half that amount.

40. Andersen also permitted Sunbeam improperly to write down its household products inventory in 1996. In connection with the restructuring, Sunbeam had decided to eliminate half of Sunbeam's product lines and to liquidate its inventory of those product lines. Although only half of Sunbeam's product lines were eliminated, Andersen allowed Sunbeam to apply, at year-end 1996, the special accounting treatment that it had accorded the eliminated lines to its entire inventory of household products. As a result, as the November 1998 financial restatement later showed, Sunbeam understated the balance sheet value of its inventory at year-end 1996 by approximately $2 million and overstated its 1996 loss by the same amount.

41. Andersen also allowed management improperly to recognize, as a 1996 expense, $2.3 million in 1997 advertising expenses and related costs. In addition, Andersen permitted

NOT A CERTIFIED COPY

0114170

Sunbeam to manipulate its 1996 liabilities for "cooperative advertising." It was Sunbeam's practice to fund a portion of its retailers' costs of running local promotions. As required by GAAP, Sunbeam accrued its estimated liabilities for this expense. At year-end 1996, Sunbeam set its cooperative advertising accrual at an inflated value of $21.8 million. According to the November 1998 restatement, this accrual was improper under GAAP because it was approximately 25 percent higher than the prior year's accrual amount, without a proportional increase in sales providing a basis for the increase. Ultimately, as the November 1998 restatement showed, $5.8 million of that excessive accrual was used (without disclosure) to inflate Sunbeam's 1997 income.

Andersen's 1996 Unqualified Audit Opinion

42. In the course of auditing Sunbeam's 1996 financial statements, Andersen became aware of these improper accounting practices. Indeed, it questioned a Sunbeam employee about the restructuring reserves and was told that the reserve included "everything but the kitchen sink." Harlow, the Andersen engagement partner, raised the issues with Kersh and Gluck and proposed that Sunbeam reverse certain of its improper entries. But when Kersh and Gluck rejected these proposals, Andersen backed down.

43. In March 1997, Andersen issued an unqualified audit opinion regarding Sunbeam's 1996 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1996 Form 10-K filed with the SEC. Despite its knowledge of the many improper accounting practices that Sunbeam's management had employed, Andersen's opinion stated:

> We conducted our audits in accordance with generally accepted auditing standards.
>
> Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements

NOT A CERTIFIED COPY

01411

> are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996, and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles.

44. Andersen also knowingly provided false descriptions of certain of Sunbeam's specific accounting practices. For example, it characterized Sunbeam's treatment of its restructuring charges in Note 2 to the audited 1996 consolidated financial statements as follows:

> In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKUs and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Notes 12 and 13) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million.

In fact, however, Andersen knew that Sunbeam had improperly inflated its restructuring costs by millions of dollars.

45. Andersen's 1996 audit violated GAAS because, among other things, Andersen failed (1) to perform the audits with an attitude of professional skepticism as required by the Statement on Auditing Standards ("SAS") No. 53; (2) to conclude that there was a significant

NOT A CERTIFIED COPY

011172

risk that Sunbeam management would intentionally distort the company's financial statements, in violation of American Institute of Certified Public Accountants Professional Standards, AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

46. In addition, in conducting the 1996 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact, and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); and (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative of matters that could affect their use, understanding, and interpretation, in violation of SAS No. 69 (AU §§ 411.04(b) and (c)).

47. In all, the 1996 financial statements audited by Andersen were materially false and misleading and overstated Sunbeam's operating losses for 1996 by at least $40 million. Moreover, Andersen's unqualified audit opinion was false in at least two material respects. First, the financial statements that Andersen audited did not "fairly" present Sunbeam's financial

NOT A CERTIFIED COPY

011173

position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

The Fraudulent 1997 Financial Statements

48. The accounting frauds in which Andersen permitted Sunbeam to engage in 1997 were aimed at inflating the company's earnings. To accomplish this — as the November 1998 restatement and an SEC investigation subsequently showed — Andersen allowed Sunbeam to record fraudulent sales, to account improperly for one-time events, and improperly to use "cookie-jar" reserves, all in violation of GAAP.

49. Among other things, Sunbeam's 1997 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, FASB Statement of Financial Accounting Concepts No. 2, §§ 58-97; APB Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

50. According to the November 1998 restatement, one of the revenue inflation tactics permitted by Andersen in 1997 was Sunbeam's improper accounting for "bill-and-hold" sales. A bill-and-hold sale occurs when a seller bills a customer for a purchase while retaining the merchandise for later delivery. During 1997, Dunlap's management team offered financial incentives to various customers to purchase products. Under GAAP, revenue under bill-and-hold transactions may be recognized only if, among others things, the buyer — not the seller — requests a sale on that basis. As Andersen subsequently learned in the course of its 1997 audit, the purported bill-and-hold customers had not requested that treatment, and, in numerous cases, the risks of ownership and legal title were never passed to the customer. According to the

NOT A CERTIFIED COPY

011174

November 1998 restatement, Sunbeam added more than $29 million to Sunbeam's 1997 sales and $4.5 million to income by improperly accounting for these transactions.

51. Another income-boosting tactic that Andersen sanctioned was Sunbeam's improper use of its inflated 1996 reserves, which the November 1998 restatement later showed artificially increased the company's 1997 income by almost $5 million. Andersen also let Sunbeam improperly treat $19 million that it received from the sale of discounted and obsolete inventory as ordinary income. Although the recognition of that revenue was permitted under GAAP, Sunbeam was required to disclose that revenue as a non-recurring event. Sunbeam failed to do so, again with Andersen's blessing.

52. In addition, Andersen allowed Sunbeam's Hong Kong and Canadian subsidiaries to book sales that violated applicable accounting principles because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated. The November 1998 restatement showed that, on Andersen's watch, Sunbeam's Hong Kong subsidiary improperly recorded sales revenue of $8.6 million from various sales made during the fourth quarter of 1997.

53. Andersen also permitted Sunbeam to employ several improper accounting tricks with respect to its Mexican subsidiary. According to the November 1998 restatement, that subsidiary engaged in $900,000 in bill-and-hold transactions in 1997 that should not have been recognized as income until 1998. In addition, the subsidiary's inventory was overvalued by $2 million, and the financial statements for Sunbeam's Mexico operations failed to include $3 million expense for the profit sharing obligations of that business. According to the November 1998 restatement, Sunbeam's Venezuela subsidiary also improperly valued its inventory.

54. As a result of these and other improper accounting devices, in 1997, Sunbeam reported $186 million in income, much of which was, according to the November 1998 restatement, improper under GAAP. In all, the overstatements included over $90 million of

NOT A CERTIFIED COPY

011175

improper net income, including approximately $10 million from a sham sale of inventory to a contractor, approximately $4.5 million from non-GAAP bill-and-hold sales, approximately $35 million in income derived from the use of non-GAAP reserves and accruals taken at year-end 1996 and approximately $6 million from improper revenue recognition.

Sunbeam's Purchase of Coleman

55. Toward the end of 1997, Sunbeam's senior management initiated an effort to sell the company. Sunbeam engaged Morgan Stanley to advise it with respect to the possible sale of its core businesses and/or the initiation of one or more major acquisitions. Ultimately, Coleman, Signature Brands USA, Inc. and First Alert, Inc. were identified as three companies interested in being acquired by Sunbeam.

56. On January 28, 1998, Sunbeam announced its financial results for 1997, reporting total revenues of $1.168 billion, and total earnings from continuing operations of $189 million (or $1.41 per share). Sunbeam's announcement coincided with Andersen's purported completion of the field work for its audit of Sunbeam's 1997 financial statements, although Andersen's work in fact continued for more than a month.

57. On February 3, 1998, Harlow met with key officers of Sunbeam to discuss the acquisition of Coleman and its financial impact on Sunbeam. By that time, as a result of reviewing Sunbeam's 1997 financial statements in the course of its audit, Andersen knew that Sunbeam's 1997 results were false.

58. On February 20, 1998, Andersen agreed to act as a Sunbeam financial advisor and perform financial due diligence in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands, further compromising its duty as an auditor to maintain its independence from its client. In agreeing to undertake that assignment, Andersen became an active member of the team working to assist Sunbeam in its acquisitions. Andersen employees who worked on Sunbeam's audit also served as members of Sunbeam's due diligence team in connection with Sunbeam's acquisition of Coleman.

NOT A CERTIFIED COPY

01411176

59. On February 27, 1998, Sunbeam's Board of Directors met in New York to discuss Sunbeam's possible purchase of Coleman. During the February 27, 1998 meeting, Morgan Stanley provided Sunbeam's Board of Directors with a written "fairness" opinion regarding the fair acquisition price of Coleman. The opinion made clear that, even in the context of issuing a fairness opinion on the Coleman acquisition price, Morgan Stanley had relied upon Andersen's representations regarding Sunbeam's financial health. The fairness opinion explicitly stated that Morgan Stanley had reviewed "certain publicly available financial statements and other information" of Sunbeam. The opinion advised that Morgan Stanley had "assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion."

60. The Sunbeam Board of Directors approved the Coleman acquisition. That same day, Coleman-Parent — the 82 percent shareholder of Coleman — agreed to sell Coleman to Sunbeam for a purchase price of $2.2 billion. Sunbeam agreed to provide Coleman-Parent with $160 million in cash, to assume $584 million in Coleman-related debt, and to provide Coleman-Parent with 14,099,749 shares of Sunbeam stock. Sunbeam also agreed to purchase Signature Brands and First Alert for approximately $300 million.

Andersen's 1997 Unqualified Audit Opinion

61. In the first week of March 1998, shortly after the agreement for Sunbeam's purchase of Coleman was signed, but before the transaction closed, Andersen rendered an unqualified audit opinion for Sunbeam's 1997 financial statements. With Andersen's express consent, management included that opinion in Sunbeam's 1997 Form 10-K filed with the SEC on March 6, 1998.

62. Andersen was well aware of the potential for fraud in Sunbeam's 1997 books, including the risk that Sunbeam management would attempt to claim profits and revenue on transactions before the earnings process was completed. Harlow specifically advised Andersen's foreign offices (including Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico,

NOT A CERTIFIED COPY

011177

Andersen-Venezuela and Andersen-UK), for example, that Dunlap had made promises to the public regarding earnings-per-share to be attained in 1997, and that management had a vested interest in achieving the promised earnings levels because management's primary form of compensation was based on the company's stock price. Harlow also noted the presence of the possibility of a third-party purchase of the company's stock or assets.

63. In the course of its audit of Sunbeam's 1997 financial records, Andersen learned Harlow's concerns were well founded. It discovered that Sunbeam had improperly accounted for certain bill-and-hold sales, had misused its reserves, and had overvalued its inventories. Andersen discussed these problems with Sunbeam's senior management and proposed that Sunbeam reverse these improper entries. But Sunbeam's senior management refused to do so. Rather than insisting that the adjustments be made, Andersen permitted the entries.

64. Once again, Andersen gave Sunbeam a clean bill of financial health. In its opinion concerning Sunbeam's 1997 financial statements, Andersen stated:

> We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . , present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

65. In fact, Andersen's 1997 audit violated GAAS because, among other things, Andersen had failed (1) to perform the audits with an attitude of professional skepticism as

NOT A CERTIFIED COPY

0114178

required by SAS No. 53; (2) to reach a conclusion that there existed a significant risk of intentional distortion of financial statements by Sunbeam management, in violation of AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

66. In addition, in conducting the 1997 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative of matters that could affect their use, understanding and interpretation, in violation of SAS No. 69 (AU §§ 411.04(b) and (c)); and (5) failed to report that a change in the application of accounting principles in Sunbeam's 1997 financial statements had materially affected their comparability with the financial statements for prior periods, especially 1996, due to a different treatment of sales and reserves in those periods, in violation of SAS Nos. 1 and 43 (AU § 420.02).

NOT A CERTIFIED COPY

014179

67. In all, the 1997 financial statements audited by Andersen reported operating income of $186 million — an overstatement of at least 50 percent. Like its 1996 unqualified audit opinion, Andersen's 1997 opinion was false in two material respects. First, the financial statements Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

Morgan Stanley's Reliance on Andersen's Unqualified Audit Opinions

68. After it agreed to acquire Coleman, First Alert, and Signature Brands, Sunbeam needed to raise approximately $2.3 billion to refinance existing debt and to fund these acquisitions. To accomplish these financing objectives, Sunbeam's management elected to issue $500 million in subordinated convertible notes (an amount later increased to $750 million) (the "Convertible Note Offering") and enter into a new $2 billion senior credit agreement (later reduced to $1.7 billion) with secured lenders (the "Bank Facility"). Morgan Stanley served as the lead underwriter for the Convertible Note Offering and as the Syndication Agent for the Bank Facility. Morgan Stanley also coordinated the Bank Facility with First Union and Bank of America, Sunbeam's other secured lenders.

69. Andersen knew of these proposed financing arrangements. Specifically, Andersen knew that the Coleman and other acquisitions would not close unless Sunbeam secured the financing necessary to cover the acquisition prices. Moreover, Andersen knew that Morgan Stanley was a principal participant in the Bank Facility, and that Morgan Stanley would be relying on the representations Andersen made regarding Sunbeam's financial condition. Indeed, Andersen knew that documents issued in connection with the Convertible Note Offering clearly stated that "[Sunbeam] is currently negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. *The New Credit Facility is being arranged by an affiliate of [Morgan Stanley].*"

NOT A CERTIFIED COPY

0141180

70. In addition to its knowledge of Morgan Stanley's role in Sunbeam's acquisitions, Andersen had many reasons to know that Morgan Stanley would rely on Sunbeam's audited financial statements. To begin with, Andersen, in its substantial experience working on multi-billion dollar mergers and acquisitions, understood that Sunbeam's lenders and underwriters would rely on an auditor's certification of Sunbeam's financial condition. As would any lender engaged in a deal of this scale, Morgan Stanley looked to the financial statements provided by Sunbeam and audited by Andersen to evaluate annual cash flow and to assess Sunbeam's ability, following the acquisition, to promptly and comfortably pay interest and ultimately pay back the loan. Indeed, reasonable and professional lenders such as Morgan Stanley, Bank of America, and First Union would not have loaned over $1 billion dollars to any person or entity without strong assurance that their money would be returned.

71. Not only was Andersen aware that any prudent business in Morgan Stanley's position *would* rely on Andersen's financial statements, but Andersen also knew that Morgan Stanley *was* specifically relying on Andersen's certifications. Indeed, Andersen *itself* had expressly represented to Morgan Stanley that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. On March 19, 1998, Andersen sent Morgan Stanley a "comfort" letter stating that, in Andersen's opinion, "the consolidated financial statements [for 1996 and 1997] audited by [Andersen] and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the [Securities Act of 1933] and the related published rules and regulations." In a follow-up letter dated March 25, 1998, Andersen reaffirmed its previous representation.

72. In addition, Andersen participated in meetings and telephone calls in which it represented to Morgan Stanley that Sunbeam's audited financial statements were accurate.

73. Andersen also knew that Morgan Stanley had stated in a February 27, 1998 "fairness" letter that Morgan Stanley presented to Sunbeam's Board of Directors that Morgan

NOT A CERTIFIED COPY

018181

Stanley had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements.

74. In addition, Andersen knew that Sunbeam had expressly represented, in loan negotiations with Morgan Stanley, that Andersen's audit opinions were accurate. Specifically, Andersen knew that, in the Sunbeam-Morgan Stanley credit agreement, Sunbeam warranted that it had provided Morgan Stanley with accurate information regarding Sunbeam's consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. According to Sunbeam, its financial statements — certified by Andersen — "present[ed] fairly, in all material respects, the financial position and results of operations and cash flows . . . in accordance with GAAP."

75. Similarly, Andersen knew that, in connection with the Convertible Note Offering, Sunbeam had included its 1996 and 1997 audited financial statements in its March 19, 1998 offering memorandum and had represented to Morgan Stanley that its audited financial statements were reliable.

76. Andersen also knew that, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam had represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate and not misleading, and that they would continue to be accurate and not misleading as of the transaction's closing date. Sunbeam further represented that its audited financial statements were prepared in accordance with GAAP, and that at the time of the closing of the transaction, that representation would continue to be true and correct.

77. Significantly, although it knew that Morgan Stanley had based multi-million dollar financing decisions on its representations, Andersen did not tell Morgan Stanley of the accounting concerns that it had raised with Sunbeam management in the course of its 1996 and 1997 audits or that Sunbeam's financial statements had not been fairly stated in 1996 and 1997.

78. On March 25, 1998, the $750 million Convertible Note Offering closed.

NOT A CERTIFIED COPY

011182

79. Sunbeam closed its acquisition of Coleman on March 30, 1998. On that date, Sunbeam, through a wholly owned subsidiary, acquired approximately 81 percent of the then-outstanding shares of Coleman common stock. These shares were acquired by Sunbeam in exchange for 14,099,749 shares of Sunbeam's common stock and approximately $160,000,000 in cash. In addition, Sunbeam assumed or repaid approximately $1,016,000,000 in debt belonging to Coleman and Coleman-Parent. Included in the repaid debt portion of the transaction was an immediate cash payment by Sunbeam to Coleman-Parent of $590 million.

80. Morgan Stanley and Sunbeam closed the Bank Facility on March 31, 1998. In accordance with the terms of the Bank Facility, Morgan Stanley — unaware of the falsity of Sunbeam's financial statements and Andersen's audit reports — loaned Sunbeam $680 million in immediately available funds to be used for the acquisitions. First Union, which served as the Administrative Agent for the Bank Facility, loaned Sunbeam an additional $510 million. Bank of America, which served as the Documentation Agent for the Bank Facility, loaned Sunbeam an additional $510 million.

81. As Andersen knew, Morgan Stanley had relied on Sunbeam's report of $186 million in income in deciding to underwrite the Convertible Note Offering and to loan Sunbeam $680 million. Moreover, Andersen knew that the Sunbeam-Morgan Stanley credit agreement provided that a condition precedent to Morgan Stanley's obligations under the agreement was the absence of any event, change, or development that would have a material adverse effect on the business, results of operation, or financial condition of Sunbeam. Andersen knew that an additional condition precedent to Morgan Stanley's obligations was the absence of any material misrepresentation or omissions in Sunbeam's SEC filings, including Andersen's 1996 and 1997 audit reports in the Form 10-Ks.

82. But for Andersen's fraud and its failure to issue qualified or adverse reports exposing the falsity of Sunbeam's financial statements, Morgan Stanley would have had notice of an adverse material change affecting Sunbeam before funding, and of a material misstatement

NOT A CERTIFIED COPY

011183

16div-020480

in Sunbeam's SEC filings. Not only would Morgan Stanley never have agreed to underwrite the Convertible Note Offering, but Morgan Stanley's obligation to loan Sunbeam $680 million also would have been discharged by the failure of conditions precedent to its obligations under the credit agreement. Andersen's fraud directly caused the extensive losses that Morgan Stanley suffered.

Andersen's Improper Accounting and Misrepresentations Are Revealed

83. In an April 3, 1998 conference call with securities analysts, Sunbeam revealed that sales for the first quarter of 1998 were 5 percent below reported sales for the same period of the prior year.

84. On April 22, 1998, a class of Sunbeam shareholders sued Sunbeam and its senior officers in the United States District Court for the Southern District of Florida, alleging that the company had violated the securities laws by issuing materially false and misleading statements regarding Sunbeam's financial condition. Andersen was subsequently added as a defendant in this lawsuit.

85. On June 8, 1998, an article was published in Barron's that raised serious questions regarding Sunbeam's apparent success under Dunlap, suggesting that it was the result of "accounting gimmickry." On June 15, 1998, Sunbeam's Board announced that it had removed Dunlap as Chairman and CEO. On June 17, 1998, Sunbeam received a letter from the SEC informing it that the SEC had initiated an investigation into the company.

86. Andersen continued to stand behind its fraudulent audit opinions. On June 15, 1998, Andersen allowed Sunbeam's Board of Directors to assert that Andersen had "assured the Board that Sunbeam's audited financial statements [were] accurate in all material respects." It was not until June 25, 1998 — when Andersen withheld its consent for use of its 1997 audit opinion in a registration statement that was to have been filed with the SEC — that Andersen gave any hint that its unqualified audit opinions were unreliable.

NOT A CERTIFIED COPY

0141184

87. On June 30, 1998, Sunbeam announced that the Audit Committee of its Board of Directors would conduct an inquiry into the accuracy of its 1997 financial statements. The Audit Committee subsequently retained Deloitte & Touche LLP to assist in the review, in addition to Andersen. Sunbeam stated that "pending the completion of the review, its 1997 financial statements and the report of Arthur Andersen LLP should not be relied upon." Sunbeam added that the review "could result in a restatement of the 1997 financial statements and the first quarter 1998 Form 10-Q."

88. On August 6, 1998, Sunbeam announced that its Audit Committee had determined that Sunbeam would be required to restate its audited financial statements for 1997 and possibly for 1996, as well as its unaudited financial statements for the first quarter of 1998. On October 20, 1998, Sunbeam and Andersen announced a restatement of its 1996 and 1997 financial statements.

89. Holders of the convertible notes sued Sunbeam on October 30, 1998, and Andersen was later named as a defendant in that suit.

90. On November 12, 1998, Sunbeam released its restated 1996 and 1997 financial results, again audited by Andersen. The restated 1996 financial statements reported operating losses for 1996 that were approximately $40 million less than originally reported, losses from continuing operations that were approximately $26 million less than previously reported and net losses that were approximately $20 million less than previously reported.

91. For 1997, the restated financial statements reported operating earnings that were approximately $95 million less than originally reported, earnings from continuing operations that were approximately $70 million less than previously reported and net earnings that were approximately $70 million less than previously reported. The new operating income figure for 1997 was approximately half the amount that Andersen had previously certified.

Sunbeam Declares Bankruptcy

NOT A CERTIFIED COPY

011185

16div-020482

92. On February 6, 2001, as a direct result of the deceit that Andersen had facilitated, Sunbeam and several of its subsidiaries were forced to seek relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. As part of the bankruptcy court-approved reorganization plan, Morgan Stanley's $680 million loan to Sunbeam was discharged in full, and Morgan Stanley received Sunbeam stock valued at a fraction of the original loan. In addition, as a result of Andersen's actions, the convertible notes issued by Sunbeam and held by Morgan Stanley had been rendered substantially less valuable.

Subsequent Censure of Andersen's Conduct

93. Both courts and regulators have scrutinized Andersen's facilitation of Sunbeam's fraud. In their judgments against the firm and Harlow, they have denounced Andersen's conduct.

94. In December 1999, for example, the federal court presiding over the Sunbeam shareholders' class action lawsuit refused to dismiss the claims against Andersen. The court concluded that the class plaintiffs had alleged sufficient facts "to demonstrate that Arthur Andersen had acted with severe recklessness in issuing its misleading [1997] Unqualified Audit Opinion." *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1344 (S.D. Fla. 1999). Andersen subsequently settled this lawsuit in 2001 for $110 million.

95. On May 15, 2001, the SEC filed a civil action in the United States District Court for the Southern District of Florida against five former Sunbeam officers and Harlow, Andersen's engagement partner.

96. In January 2003, the SEC settled its charges with Harlow. In its settlement order, it made numerous factual findings regarding Harlow and Andersen's improper conduct. It concluded that Harlow had proposed, on many occasions, adjustments to rectify Sunbeam's false financial statements. After management refused to make these adjustments, Harlow improperly acceded to that decision. *In re Phillip E. Harlow*, Rel. No. 34-47261, 2003 WL 169818, at **1-3 (SEC Release Jan. 27, 2003).

NOT A CERTIFIED COPY

0141186

16div-020483

97. The SEC's assessment of Harlow's conduct was damning. Among many other things, it concluded that Harlow (1) "failed to exercise professional skepticism when performing audit procedures and gathering and analyzing audit evidence"; (2) "accepted uncorroborated representations of Sunbeam's management in lieu of performing appropriate audit procedures"; (3) "failed to exercise due professional care in performing the audit and preparing the audit report"; (4) "failed to perform sufficient audit procedures to determine whether the financial statements were in conformity with GAAP," even after he had "identified a number of audit risks and accounting issues associated with the Sunbeam engagement"; and (5) "failed to obtain sufficient competent evidential matters through inspection, observation, inquiries, and confirmation to afford a reasonable basis for an audit opinion." *Id.* at *4. Based on these factual findings, the Commission concluded that the 1996 and 1997 financial statements that Harlow had audited were not in conformity with GAAP, and the audit was not performed in accordance with GAAS. *Id.* (citing AU §§ 410, 411, 508.07).

98. Other participants in the Coleman acquisition have also sued Andersen for its fraudulent conduct. On July 1, 2001, Coleman-Parent sued Andersen for fraudulent misrepresentation, fraudulent inducement to contract, and negligent misrepresentation. Andersen subsequently agreed to settle that dispute for an undisclosed amount.

COUNT I

Fraudulent Misrepresentation

99. Paragraphs 1 through 98 are repeated and realleged as if set forth herein.

100. Andersen consented to the publication of its audit reports to the public and business world by permitting Sunbeam to include them in Sunbeam's SEC filings. Given that publication, Andersen knew and intended that the public — including Morgan Stanley — would rely on Andersen's representations.

101. Andersen knew of Morgan Stanley's role in Sunbeam's acquisitions. Andersen also knew that Morgan Stanley would rely and had relied upon Andersen's 1996 and 1997

NOT A CERTIFIED COPY

0141187

unqualified audit opinions for the particular purpose of determining whether to underwrite the Convertible Note Offering and to provide Sunbeam with a loan for $680 million. Andersen itself invited Morgan Stanley to rely on its unqualified audit opinions, expressly representing to Morgan Stanley, in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. Moreover, Andersen knew that Morgan Stanley had provided Sunbeam's Board of Directors with a "fairness" letter expressly stating that Morgan Stanley had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements.

102. Andersen also knew of Sunbeam's proposed financing arrangements, and it participated in meetings and telephone calls in which it represented to Morgan Stanley that Sunbeam's audited financial statements were accurate.

103. In addition, Andersen knew that Sunbeam had expressly represented, in loan negotiations with Morgan Stanley, that Andersen's audit opinions were accurate and that, in the Sunbeam-Morgan Stanley credit agreement, Sunbeam had warranted that it had provided Morgan Stanley with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Similarly, Andersen knew that, in connection with the Convertible Note Offering, Sunbeam had included its 1996 and 1997 audited financial statements in its March 19, 1998 offering memorandum and had represented to Morgan Stanley that its audited financial statements were reliable.

104. Andersen also knew that, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam had represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date.

105. Andersen knew that Sunbeam's financial statements were replete with accounting irregularities and that the information in Sunbeam's 1996 and 1997 financial statements was

NOT A CERTIFIED COPY

01418

materially false and misleading. Those material misrepresentations included, among other things, overstatements of (a) Sunbeam's 1996 operating losses by approximately $40 million; (b) its 1996 losses from continuing operations by approximately $26 million; (c) its 1996 net losses by approximately $20 million; (d) its 1997 operating earnings by approximately $95 million; (e) its 1997 earnings from continuing operations by over $70 million; (f) its 1997 net earnings by approximately $70 million; and (g) its 1997 operating income figure by approximately 50 percent.

106. In addition, Andersen knew that its 1996 and 1997 unqualified audit opinions were materially false and misleading. Andersen knew that it had falsely stated, among other things, that (a) Sunbeam's financial statements fairly presented the financial position of Sunbeam during 1996 and 1997; (b) Sunbeam's financial statements fairly presented the results of Sunbeam's operations and cash flows during 1996 and 1997; (c) Sunbeam's financial statements conformed with GAAP; and (d) its audits of Sunbeam were conducted in accordance with GAAS.

107. Although Andersen knew that Morgan Stanley would rely and had relied on its false statements, it did not inform Morgan Stanley that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

108. Andersen made its materially false representations regarding its unqualified audit opinions and the accuracy of Sunbeam's financial statements with the intent to deceive Morgan Stanley.

109. Andersen knew that the false information that it had provided to Morgan Stanley, and its intentional failure to correct the misrepresentations contained in Sunbeam's financial statements, would be critical to Morgan Stanley's decision to participate in the financing of Sunbeam's acquisitions. But for Andersen's fraudulent representations, Morgan Stanley would

NOT A CERTIFIED COPY

0114189

not have underwritten the Convertible Note Offering, nor would it have loaned Sunbeam $680 million.

110. As a direct result of Andersen's fraud, Morgan Stanley has suffered hundreds of millions of dollars in damages.

COUNT II
Fraudulent Inducement To Contract
(Conspiracy and Concerted Action)

111. Paragraphs 1 through 110 are repeated and realleged as if set forth herein.

112. Sunbeam's 1996 and 1997 financial statements contained false statements of material fact. Those material misrepresentations included, among other things, overstatements of (a) Sunbeam's 1996 operating losses by approximately $40 million; (b) its 1996 losses from continuing operations by approximately $26 million; (c) its 1996 net losses by approximately $20 million; (d) its 1997 operating earnings by approximately $95 million; (e) its 1997 earnings from continuing operations by over $70 million; (f) its 1997 net earnings by approximately $70 million; and (g) its 1997 operating income figure by approximately 50 percent.

113. Andersen knew that its 1996 and 1997 unqualified audit opinions were materially false and misleading. Andersen knew that it had falsely stated, among other things, that (a) Sunbeam's financial statements fairly presented the financial position of Sunbeam during 1996 and 1997; (b) Sunbeam's financial statements fairly presented the results of Sunbeam's operations and cash flows during 1996 and 1997; (c) Sunbeam's financial statements conformed with GAAP; and (d) its audits of Sunbeam were conducted in accordance with GAAS.

114. Both Sunbeam and Andersen knew that their representations regarding Sunbeam's 1996 and 1997 financial statements were false when made and/or made these representations with reckless disregard as to their truth.

115. Andersen, Harlow, Dunlap, Kersh, and other senior Sunbeam executives acted in concert and wrongfully conspired to create the appearance that Sunbeam was performing at a high level in order artificially to inflate the stock price of Sunbeam and make it attractive for a

NOT A CERTIFIED COPY

0114190

sale to another company. Andersen explicitly or implicitly by acquiescence agreed to become part of that conspiracy and committed overt acts in furtherance of its fraudulent scheme in order to retain Sunbeam as a client.

116. In furtherance of that conspiracy, Dunlap and the other Sunbeam executives decided to acquire Coleman, First Alert, and Signature Brands. In furtherance of that scheme, in March 1998, Andersen committed the overt acts of issuing Andersen's false and misleading unqualified audit opinion with respect to Sunbeam's 1997 financial statements and of consenting to its publication to the SEC as part of Sunbeam's Form 10-K filing on March 6, 1998.

117. To induce Morgan Stanley into underwriting the Convertible Note Offering and to loan Sunbeam $680 million to finance its acquisition of Coleman, First Alert, and Signature Brands, Andersen and Sunbeam represented to Morgan Stanley that Sunbeam's audited financial statements and Andersen's audit opinions were accurate and not misleading. Andersen invited Morgan Stanley to rely on its unqualified audit opinions, expressly representing to Morgan Stanley, in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. Both Andersen and Sunbeam management knew that Morgan Stanley had provided Sunbeam's Board of Directors with a "fairness" letter expressly stating that Morgan Stanley had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements.

118. In connection with the Convertible Note Offering and the Bank Facility, Andersen and Sunbeam participated in meetings and telephone calls in which they represented to Morgan Stanley that Sunbeam's audited financial statements were accurate.

119. In addition, Sunbeam expressly represented, in loan negotiations with Morgan Stanley, that Andersen's audit opinions were accurate. It further warranted, in the Sunbeam-Morgan Stanley credit agreement, that it had provided Morgan Stanley with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Likewise, in connection with the Convertible Note Offering,

NOT A CERTIFIED COPY

011191

16div-020488

Sunbeam included its 1996 and 1997 audited financial statements in its March 19, 1998 offering memorandum and represented to Morgan Stanley that its audited financial statements were reliable.

120. Also, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date.

121. Andersen knew that its audit opinion would be used by Sunbeam to induce Morgan Stanley to underwrite the Convertible Note Offering and to induce Morgan Stanley to loan Sunbeam $680 million to finance Sunbeam's acquisition of a controlling stake in Coleman. Andersen's audit report furthered the conspiracy between Andersen and Sunbeam by actively perpetuating the illusion that Sunbeam was a financially healthy company, which helped to support the company's artificially inflated stock price. In doing so, Andersen committed the tortious act of fraudulent inducement in concert with Dunlap and the other Sunbeam executives pursuant to a common design.

122. In reasonable and justifiable reliance on Andersen's and Sunbeam's representations that Sunbeam's financial statements and Andersen's audit reports were accurate and truthful, Morgan Stanley agreed to underwrite the Convertible Note Offering, and Morgan Stanley agreed to loan Sunbeam $680 million to finance Sunbeam's acquisition of Coleman.

123. As a direct result of this conspiracy of fraudulent inducement, Morgan Stanley has suffered hundreds of millions of dollars in damages.

COUNT III

Aiding and Abetting Fraud

124. Paragraphs 1 through 123 are repeated and alleged as if set forth herein.

NOT A CERTIFIED COPY

011192

125. Sunbeam's 1996 and 1997 financial statements contained false statements of material fact. Those material misrepresentations included, among other things, overstatements of (a) Sunbeam's 1996 operating losses by approximately $40 million; (b) its 1996 losses from continuing operations by approximately $26 million; (c) its 1996 net losses by approximately $20 million; (d) its 1997 operating earnings by approximately $95 million; (e) its 1997 earnings from continuing operations by over $70 million; (f) its 1997 net earnings by approximately $70 million; and (g) its 1997 operating income figure by approximately 50 percent.

126. Andersen's 1996 and 1997 unqualified audit opinions were materially false and misleading. Andersen falsely stated, among other things, that (a) Sunbeam's financial statements fairly presented the financial position of Sunbeam during 1996 and 1997; (b) Sunbeam's financial statements fairly presented the results of Sunbeam's operations and cash flows during 1996 and 1997; (c) Sunbeam's financial statements conformed with GAAP; and (d) its audits of Sunbeam were conducted in accordance with GAAS.

127. To induce Morgan Stanley into underwriting the Convertible Note Offering and to loan Sunbeam $680 million to finance its acquisition of Coleman, First Alert, and Signature Brands, Sunbeam represented to Morgan Stanley in loan negotiations that Sunbeam's audited financial statements were accurate and not misleading. In addition, in the Sunbeam-Morgan Stanley credit agreement, Sunbeam warranted that it had provided Morgan Stanley with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Likewise, in connection with the Convertible Note Offering, Sunbeam included its 1996 and 1997 audited financial statements in its March 19, 1998 offering memorandum and represented to Morgan Stanley that its audited financial statements were reliable.

128. Also, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam expressly represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared

NOT A CERTIFIED COPY

0141193

in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date.

129. Sunbeam knew that its representations regarding its 1996 and 1997 financial statements were materially false when made and/or made these representations with reckless disregard as to their truth. In addition, Sunbeam knew that Andersen's 1996 and 1997 unqualified audit opinions were materially false and misleading.

130. Sunbeam knew that Morgan Stanley would rely on its representations in determining whether to act as Sunbeam's underwriter and to loan Sunbeam $680 million to finance its acquisitions. Although Sunbeam knew that Morgan Stanley would rely and had relied on its false statements, it did not inform Morgan Stanley that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

131. Sunbeam made its materially false representations regarding its financial statements and Andersen's unqualified audit opinions with the intent to deceive Morgan Stanley and to induce Morgan Stanley to participate in the financing of Sunbeam's acquisitions.

132. Sunbeam knew that the false information that it had provided to Morgan Stanley, and its intentional failure to correct the misrepresentations contained in Sunbeam's financial statements, would be critical to Morgan Stanley's decision to participate in the financing of Sunbeam's acquisitions. But for Sunbeam's fraudulent representations, Morgan Stanley would not have underwritten the Convertible Note Offering, nor would it have loaned Sunbeam $680 million.

133. Andersen knowingly and substantially assisted Sunbeam in its fraud. Andersen itself expressly represented to Morgan Stanley, in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. In addition, Andersen participated in meetings and telephone calls in which it represented to Morgan Stanley that Sunbeam's audited financial statements were

NOT A CERTIFIED COPY

01419

16div-020491

accurate. Moreover, Andersen knew that Morgan Stanley had provided Sunbeam's Board of Directors with a "fairness" letter expressly stating that Morgan Stanley had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements. Andersen did not tell Morgan Stanley of the accounting concerns that it had raised with Sunbeam management in the course of its 1996 and 1997 audits.

134. As a direct result of Sunbeam's fraud, aided and abetted by Andersen, Morgan Stanley has suffered hundreds of millions of dollars in damages.

WHEREFORE, plaintiffs Morgan Stanley demand judgment against Andersen-Worldwide, Andersen-US, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, Andersen-UK, Harlow, Pruitt, and Denkhaus, jointly and severally, as follows:

A. Compensatory damages in an amount to be determined at trial;

B. Attorneys' fees and costs incurred in this and related litigation;

C. Pre-judgment interest; and

D. All other relief this Court may deem just and appropriate.

Plaintiffs expressly reserve the right to seek leave to amend its complaint pursuant to Fla. Stat. § 768.72 to assert claims for punitive damages in excess of $1.2 billion as allowed by law.

NOT A CERTIFIED COPY

011195

JURY DEMAND

Plaintiffs request a trial by jury on any and all issues raised by this Complaint that are triable of right by a jury.

March 1, 2004

D. Culver Smith III
Florida Bar No. 105933
of
D. CULVER SMITH III, P.A.
Suite 401, Northbridge Center
515 North Flagler Drive
West Palm Beach, FL 33401
Tel: (561) 833-3772
Fax: (561) 833-3485

with
Michael K. Kellogg
Mark C. Hansen
James M. Webster
Rebecca A. Beynon
of
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel for Plaintiffs

NOT A CERTIFIED COPY

011196

16div-020493

0001

IN THE CIRCUIT COURT OF THE ... TEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 2003-CA-005045 AI

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

- - -

TRANSCRIPT OF THE PROCEEDINGS BEFORE THE HONORABLE ELIZABETH MAASS

- - -

West Palm Beach, Florida
December 12, 2003
8:27 a.m. - 9:45 a.m.

0002

APPEARANCES:

SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
Counsel for the Plaintiff
BY: JACK SCAROLA, ESQUIRE

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P.A.
Esperante
222 Lakeview Avenue, Suite 1400
West Palm Beach, Florida 33401-6149
Counsel for the Defendant
BY: JOSEPH IANNO, JR., ESQUIRE

KIRKLAND AND ELLIS
655 15th Street N.W., Suite 1200
Washington, D.C. 20005
Counsel for the Defendant
BY: THOMAS D. YANNUCCI, ESQUIRE
THOMAS A. CLARE, ESQUIRE

JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611-7603
Co-Counsel for the Plaintiff
BY: JEROLD S. SOLOVY, ESQUIRE
JEFFREY A. SHAW, ESQUIRE
RONALD L. MARMER, ESQUIRE

0003

BE IT REMEMBERED that the foregoing proceedings were had before the HONORABLE ELIZABETH MAASS, in the Palm Beach County Courthouse, West Palm Beach, Florida, on December 12, 2003, starting at 8:27 a.m., with appearances as hereinabove noted, to wit:

- - - -

THE COURT: This is Coleman and Morgan Stanley. It's really defendant's motion for judgment on the pleadings.

Where did we want to start? Do we want to do the forum non conveniens aspect first, or do we want to do motion for judgment on the pleadings?

MR. YANNUCCI: Your Honor, I'm Tom Yannucci representing Morgan Stanley, and I would like to start with the forum non conveniens motion.

THE COURT: That's fine.

The only other thing, in looking at the items yesterday, I got a wonderful notebook with all the cases cited in your reply attached to your response to the motion. I didn't get your reply. In calling down to the clerk's office this morning, they have just found it and are currently docketing it and are bringing it up.

Do you happen to have another copy of it?

0004

MR. IANNO: Judge, there should have been a separate notebook with the pleadings, the entire set of pleadings, the original motion to dismiss --

THE COURT: Oh, I'm sorry, it is in here. Great. Okay. I was thinking, because I had a whole different notebook, it's after all the letters. Okay. Fine.

MR. IANNO: It should be at tab 6.

THE COURT: Yep. Okay. Great. Thank you very much.

MR. YANNUCCI: Your Honor, it's so good, if you want to take a few minutes to read it, I'm happy to wait.

THE COURT: That's okay. I mean, I was happy to get through your initial one and Mr. Scarola's reply.

Go ahead. What did you want to say in support of the motion to dismiss for forum non conveniens?

MR. YANNUCCI: Good morning, Your Honor. First of all, I want to thank you for giving us this opportunity to burden you with all this paper. It's an important issue though to us.

What I'd like to do, Your Honor, is talk

NOT A CERTIFIED COPY

0005

about two issues at this juncture, and then if it's okay, we'll just come back on judgment on the pleadings, if that's all right with you.

THE COURT: Sure.

MR. YANNUCCI: I would like to start with, actually, the choice of law, because I think that's something you have to resolve even with regard to forum non conveniens motion, because that's one of the public factors.

THE COURT: That's one of the thing I would look at. What's -- Okay.

So we're talking about choice of laws only as it impacts forum non conveniens, not as it impacts a motion for judgment on the pleadings?

MR. YANNUCCI: At this juncture, when I come back, that's what we do, depending on how you want to proceed.

If we're talking about the judgment on pleadings, we brief that under New York law.

THE COURT: Right.

MR. YANNUCCI: If you agree with that, I'd be happy to argue it, but I don't need to go into the judgment on pleadings now, but you would have to decide which substantive law applies to the judgment on pleadings in terms of whether it

0006

states a cause of action. At least that's our view.

THE COURT: Okay.

MR. YANNUCCI: But at this point, I want to talk about the choice of law, because it's also certainly relevant for forum non conveniens.

Your Honor, I did put together some materials I'd like to hand out to you, and I've given a copy to counsel, if I may.

Thank you.

THE COURT: Thanks.

MR. SCAROLA: Your Honor, may I raise a procedural issue?

THE COURT: Yes, sir.

MR. SCAROLA: The documents that have just been handed to Your Honor, the package that Your Honor was just handed, was handed to us as we walked into this courtroom.

Your Honor established a briefing schedule and required that briefs be filed at a given time. I have not had an opportunity to look at this yet, but I note just from the table of contents that this submission does something that the defendants failed to do and were obliged to do in support of this motion, particularly with regard to the

0007

conflicts of laws issue.

When we get to the argument on that point, one of the contentions of the plaintiff is that it is the defendant's burden to establish that there is a material difference between the law of the foreign jurisdiction sought to be applied and Florida law, and in the absence of carrying that burden, the case law is clear that Your Honor is not obliged to engage in a conflicts of law analysis unless and until they demonstrate a material difference with regard to specific issues between, in this case, New York law and Florida law.

For the very first time, because all of their prior submissions are absolutely silent on that issue, for the very first time, we walk in this morning and are presented with a document which purports to analyze the differences between New York and Florida law.

I really believe that that's entirely inappropriate, it's contrary to Your Honor's order, and I would ask the Court to preclude the defendants from submitting this document, I would ask the Court to disregard this document, and I would ask the Court to confine both the argument

0008

and the Court's determinations to the submissions previously made in accordance with Your Honor's order.

THE COURT: Okay. Is what you're most objecting to what's found at tab 4 of this notebook?

MR. YANNUCCI: Yes, Your Honor, I think that's the one that goes to the point that was just made.

MR. SCAROLA: I will tell Your Honor that the only thing that caught my attention immediately was tab 4 and the chart that is presented purporting to demonstrate differences between New York and Florida law. I don't know what else is in here, because I haven't had an opportunity to look at it.

So I object to the entire submission. I don't understand why, in light of the extraordinary volume of material that was prepared in accordance with Your Honor's order, we get this kind of submission on the morning of this very important hearing. I think it's entirely unfair, and it ought to be completely disregarded.

MR. YANNUCCI: Your Honor, could I be heard on this?

NOT A CERTIFIED COPY

0009

THE COURT: Sure.

MR. YANNUCCI: First of all, this is not the first time that we've actually addressed the differences between New York law and Florida law. In fact, in the opening motion, we specifically cite with regard to the negligent misrepresentation claim, we analyze under New York law you have to prove there's a fiduciary relationship in order to even state that cause of action, which is not the case in Florida. We noted that in our opening brief. It's also not the case that it's our burden to prove there's a difference. If the Court concludes that there's no difference, it's known as a false conflict, if you were to conclude that. You don't have to go on and do that. It's not our burden to prove that there's a difference, but we did in our opening memorandum.

Now, with regard to giving this to you, it's my understanding this has happened in prior arguments before this Court. These are simply charts and tables to present information to you, and I would say this is consistent with their position. They don't want you to know certain things about what's going on in the record.

0010

THE COURT: Let me ask you -- I would agree, looking again quickly at what you just handed me, some of these are just a different format to arguments that's already been made. And I need to go back and look at the file, and during this motion, I don't recall, at least in what I read, any discussion of material differences between Florida and New York law.

Is that accurate?

MR. YANNUCCI: Well, again, Your Honor, first of all --

THE COURT: In the submissions I specifically read today.

MR. YANNUCCI: And I understand you don't have the benefit of the reply brief. We talk about it there.

THE COURT: I do have it now. Tell me where in the reply brief you bring up that point.

MR. YANNUCCI: Let me get the reply brief.

THE COURT: Thanks.

MR. YANNUCCI: Your Honor, for instance, if you would turn to page 40 of the reply brief.

THE COURT: Yes, sir.

MR. YANNUCCI: We talk about the fact that there is requirement that there be a relationship

0011

of trust or a special relationship under New York law in order to maintain that cause of action.

And looking specifically at page 41, Your Honor --

THE COURT: But --

MR. YANNUCCI: Well, I see in the footnote we talk about courts in Florida recognize about accountant's liability, we're talking about the differences there. I don't know if we specifically said -- I'll have to take a look at it, but we talk about the fact that Florida law doesn't require that relationship, but we point out that New York has it as a requirement, and therefore, they would fail to state a cause of action.

THE COURT: I think that's a little bit different than saying that these are the differences between the two laws.

MR. YANNUCCI: Well, Your Honor --

THE COURT: I'll be honest with you. For a forum non conveniens analysis, having read what I have read about Florida law and New York law on these points, you know, absent some amazing argument, I don't see it as a major issue in resolving the forum non conveniens motion.

0012

So I guess the way it would stand is if I find, after doing my analysis, it is a determinative issue, I would give both sides maybe an additional opportunity to brief that issue, but, you know, frankly, New York law, Florida law, once that determination is made, I just don't see that as a major factor in determining where is the appropriate place to have the case heard.

MR. SCAROLA: I understand --

MR. YANNUCCI: Your Honor, the restatement factors, by the way, it does not require that you demonstrate that. It does require that you show the factors that they determine about where representations were made, where the injury occurred.

THE COURT: I understand. Right now we're talking about forum non conveniens --

MR. YANNUCCI: Yes, Your Honor.

THE COURT: -- not conflict of laws questions or anything else.

So if that becomes a determinative factor, Mr. Scarola, I will give you the chance to respond in writing.

MR. SCAROLA: Thank you.

Do I understand then that at least for

NOT A CERTIFIED COPY

0013

purposes of this hearing, Your Honor, this submission this morning will be stricken and that there will be no consideration of the entirely new authorities that are presented in this brief?

THE COURT: No, because it doesn't affect sort of what the authority is. And, for instance, the fact that he gave me a copy of the restatement that was cited or a copy of the rule that was cited --

MR. SCAROLA: I have no problem, Your Honor, with --

THE COURT: Nine and ten, were those provided previously?

MR. YANNUCCI: In ten, Your Honor?

THE COURT: Nine and ten. I don't remember seeing those.

MR. YANNUCCI: These were part of our reply brief, Your Honor.

THE COURT: They were? Okay.

MR. YANNUCCI: And we briefed it and discussed it in our reply brief.

THE COURT: Okay.

MR. SCAROLA: Your Honor, my specific concern, at least at this point, is in Section 4, Your Honor will see a chart that reflects

0014

differences between Florida and New York law.

THE COURT: Right.

MR. SCAROLA: There is included on that chart reference to cases that have never previously been cited.

THE COURT: That's fine.

MR. SCAROLA: And when we get to the judgment on the pleadings issue, if there is a contention that there is some material difference between New York and Florida law which would require a judgment on the pleadings pursuant to New York law based upon record citations that have never previously been given to us, based upon cases cited that have never previously been given to us, when Your Honor knows from the stack of documents you received the number of cases that we have reviewed and analyzed to be prepared for this morning, it would be entirely unfair to permit the opposing party to come in this morning and to obtain any advantage as a consequence of attempting to rely on authorities that they never gave us notice of.

THE COURT: Okay. What I will tell you all then is if any part of my analysis turns out to turn on what's at tab 4 of this submission, I will

0015

give plaintiffs a chance to respond in writing.

MR. SCAROLA: Thank you, Your Honor.

THE COURT: Why don't we continue.

MR. YANNUCCI: Thank you, Your Honor.

I was just going to note that I was given a case this morning by Mr. Scarola that he said he might use that we were never given notice of either.

I would just like to get into the argument, Your Honor --

THE COURT: I agree.

MR. YANNUCCI: -- and let you decide what's pertinent to your decision. And I would like to start with choice of law if I might, which is a relevant factor.

THE COURT: Sure.

MR. YANNUCCI: And to do that, Your Honor, as you know, there was some debate, if you read at least the first two briefs, about which section of restatement 148, one or two, applies. And I would submit to you, it doesn't really matter, because whether you use one or two or Section 6 of the restatement, essentially, you look at the forum that has the greatest connection with the underlying controversy.

0016

This is a tort case. This is a fraud, misrepresentation, aiding and abetting and conspiracy. And there's no dispute among the parties that that means Section 148 would govern. And what we did in order to move it ahead and not stand on whether it's one or two, particularly since I don't think it changes the outcome, under tab one of what I handed up to you is simply a repetition of those six factors in the left column, and then on the right column, we put the facts that demonstrate on the record that's in front of you, not declaration, but on the record that's already in front of you, the things that you're supposed to look at to make this decision, and all of them uniformly point to the fact that New York is the center of where this occurred.

THE COURT: Wait. I'm sorry. When you say the record in front of me, what specifically are you referring to?

MR. YANNUCCI: I'm referring to admissions, request for admissions that were entered, the answer to the Complaint, the answers to interrogatories. These are all things they admit for purpose of forum non conveniens motion, page 37, that you are entitled to look at.

NOT A CERTIFIED COPY

CONT #960

0017

They make an argument in their brief that somehow we've done something wrong by attaching declarations.

Now, that may be true with regard to a judgment on the pleadings; not that we did it wrong, but we're not going to rely on those for that motion. But for forum non conveniens, we have every right, and the Supreme Court of Florida and the 11th Circuit said you're supposed to inquire about where the representations were made, you shouldn't blind yourself to what's in the Complaint.

As we point out in our reply brief, Your Honor, there are a number of courts who have said that would only reward a plaintiff who pleads a Complaint, but leaves out location of events and citizenship of the party, which happened here. They don't tell you in this case that CPH is headquarters in New York.

Now, they did tell Judge Rapp in a case brought against Arthur Andersen, which you're familiar with -- and that's at tab 3. And we cite cases that say you can certainly take judicial notice of pleadings in this courthouse. But in that tab, tab 3, in front of Judge Rapp in an

0018

Amended Complaint filed in March of '02, if you look at the parties on page 2, paragraph 16, they admit that they are headquartered in New York.

In the Complaint before you, they don't make any statement about that. Why? Because it's almost fatal to their case here where what the choice of law should be.

If we go back and look at these six factors, Your Honor, the first one is the place or places where the plaintiff acted in reliance upon our alleged misrepresentations. And the only place they indicate that there was a meeting face to face with my client and them is at paragraph 39 of their Complaint, which is a meeting in February in New York City. They admitted that in discovery. There's no dispute.

The next factor is where did the plaintiff receive the representations. Well, same thing. They acted in reliance in New York, because that's where they signed the contract. They entered into a merger agreement to sell the Coleman shares and take back Sunbeam shares.

So there's no dispute that the core allegation, the gravamen of this Complaint is this is a deal where they said they were tricked into

0019

doing a deal to give up their shares of Coleman for bad shares in Sunbeam.

THE COURT: Right.

MR. YANNUCCI: They talk about being fraudulently induced. Where was that contract negotiated; New York. Where was it signed; New York. Where was it performed; New York.

This has all been admitted either in answers to interrogatories or spelled out in the merger agreement, Your Honor. Even if it was a judgment on pleadings, the merger agreement says this merger will close the offices of Skadden & Arps in March, and it did, on March 30 in New York City.

There were no meetings in Florida between my client and CPH. And the reason for that is because CPH is just across the street from Manhattan, just across town in Manhattan from where Morgan Stanley is. That's where the meetings occurred.

So if you look at these factors that they say, under 142, you should look at where did they rely, and the courts say reliance means where did you act on the information. They signed the agreement.

That's their theory of the case, they got

0020

duped into doing the deal. Where did they receive the representations; in New York. That's where the meetings occurred with Sunbeam; sometimes with us, sometimes with Sunbeam, that's where they all occurred.

Where did we make those representations? Again, not in dispute. And that's what I have in this right-hand column, and these are record cites. There's no affidavits in this. I could, that's permissible, but I didn't want to make it an issue.

And then you look at domicile, that's D, Your Honor, the fourth one down; residence, nationality, or place of incorporation.

Again, they have already told Judge Rapp that they were headquartered in New York. And we also attached, you saw further on, an affidavit with the general counsel of MAFCO filed in the Alabama case where they stated their headquarters are in New York and that's where they have the files and all the witnesses.

And that, by the way, Your Honor, was a case where they were sued for fraud in Alabama by an Alabama plaintiff, and they successfully transferred that case to New York City, it was a

NOT A CERTIFIED COPY

01202

0021

fraud case involving a commercial transaction, because that's where they said their investment banks were, the underwriters were, and that's where their employees were, and they prevailed on that. And that general counsel was the same general counsel as CPH, the party that signed the merger agreement in this case.

So it's extraordinary that they would ask for a transfer in Alabama in a fraud case involving a commercial transaction and say they're headquartered in New York, but say in this case -- they don't even tell you where they're headquartered in the Complaint. So that's undisputed.

THE COURT: Okay.

MR. YANNUCCI: And in a restatement, when you know that a party's headquarters is in one state and they rely on a representation or act on a fraud representation in that state, that more or less ends the inquiry as well. That's comment J at 148-2.

E, the place where a tangible thing which is the subject of the transaction, these are shares, Your Honor, they were traded on the New York Stock Exchange, and they tendered their shares in

0022

New York City at the closing.

F, the place where the plaintiff is to render performance. Once again, that occurred in New York. It's the same thing; they tendered their shares and they took the Sunbeam shares in New York City.

So if you look at the relevant facts that pertain to their allegations against us, the fraud claim, it's all New York. You have two New York parties who were advised by New York law firms with each of them having their own investment advisors. We were retained by Sunbeam. They hired; that is, the plaintiff here, CSFB, and they were represented by Wachtell, Lipton, they had accountants out of New York looking at this transaction. Everything points to New York. And those are the relevant facts, Your Honor, and that's why we went through that.

THE COURT: Let's assume for the purposes of the motion to dismiss on the forum non conveniens ground that I were to determine New York substantive law applied. What else would you want to argue?

MR. YANNUCCI: Well, if that's the case, Your Honor, then I would just point out that that

0023

itself, under the Kinney case, the Supreme Court case of Florida in Kinney, they say that alone is a basis for you in your discretion to transfer the case under forum non conveniens.

THE COURT: Right.

MR. YANNUCCI: And I think that's critical. I don't know if you've had a chance to look at the Kinney case, but in that case, the Supreme Court expresses its concerns that Florida has fallen behind other jurisdictions and does not grant forum non conveniens as much as it should given the great burden on Florida courts, and Florida courts should not be asked to resolve disputes among parties who are out of state, which is what you have in front of you.

THE COURT: Okay.

MR. YANNUCCI: So I think that's a critical factor.

But not wanting to stand just on that proposition, I would ask you to take a look at where the convenience of the parties and the witnesses takes you, which is the first of the private factors.

If you would look at tab 6, Your Honor, all I've done here is simply take those four factors

0024

again which are not in dispute on the left-hand column. As you can see, factors 1 and 4, there's no dispute among the parties, which is highly significant, because that means there is an adequate alternate forum in New York, just like we don't contest in asking for a transfer under forum non conveniens or dismissal that this court lacks venue. Venue here is proper, and you have personal jurisdiction, but we think it would be more convenient to have the case tried there.

So it's highly significant, but there's no issue here that New York would be an adequate alternate forum. So it leaves you these two factors, 2 and 3, which is what's the private interest factor, and that has to do with where the parties are, where the witnesses are, and then the public factors, you go back to choice of law and will Florida law predominate. That's why that is so significant.

What I've done, Your Honor, in number 7 is simply list from the answers to the interrogatories the witnesses that Coleman, CPH, has identified have knowledge of the facts in this case. And you can see you start at the very stop with the parties, there's 50 Morgan Stanley

NOT A CERTIFIED COPY

01-4203

0025

witnesses in New York they say ... their answers to our interrogatories have knowledge.

THE COURT: What would be the response to sort of the argument that just listing the numbers of witnesses is really not determinative, that sort of the core of plaintiff's Complaint is an accounting scandal, and that's where most of the discovery is going to be directed, and that's based in Florida?

MR. YANNUCCI: Well, I think in this case, the core -- I don't know that they're going to allege that the core of the case against us is an accounting scam.

THE COURT: No, but that's sort of the genesis that there was this, you know, concerted attempt to overstate earnings and then to dump --

MR. YANNUCCI: But, Your Honor, one of the key issues in this case would be what do they know about that and what steps do they take in due diligence.

THE COURT: Sure.

MR. YANNUCCI: And that's in New York. They had their own accountants who were to review the books. What did they do? Those are in New York. Those are just as important. In fact, I would say

0026

they're more important, Your Honor, because it's not really --

THE COURT: Except they're parties.

MR. YANNUCCI: Well, no, not those third parties, not Ernst & Young, who were their advisors, and that's who advised them on looking at the financial statements that were in fact in error.

I would say they're more important, Your Honor, because it's not in dispute that Sunbeam had misstatements. That's now been determined as a matter of record through the bankruptcy and elsewhere. The SEC investigated that transaction and found that the financial statements were in fact misleading. So I don't think they need to prove that.

THE COURT: So you're willing to stipulate to that?

MR. YANNUCCI: Well, I think it's a matter of record.

THE COURT: That wasn't the question.

MR. YANNUCCI: Am I willing to stipulate? Well, I'd have to go back and see exactly what the findings are. I don't think that has anything to do with us.

0027

I would note for the record, because I do want to certainly state on the record before you that we vigorously contest the allegations against us. And I'll just state for the record, when the SEC closed its exhaustive investigation, it found that we were mislead by Mr. Oozy (phonetic) on the sales projections, the very sales projections we're --

THE COURT: That may be, but I don't know that that's an issue.

MR. YANNUCCI: What I'm saying, Your Honor, is --

THE COURT: There are bunches of allegations about things Sunbeam did. Are you willing to concede that Sunbeam did those things and that your defense is simply that you didn't know?

MR. YANNUCCI: I think I'd have to go back and see exactly which allegation you're talking about, but I don't think we're going to contest that there were determinations made that Sunbeam's financial statements had errors. And I think in fact we'll be pointing out that we didn't do the auditing and we're not responsible for that.

So going to your question, I don't think the availability of Arthur Andersen should drive or

0028

that Florida should host this case.

First of all, New York has the same provisions Florida does for out-of-state depositions. This man they're talking about, Bornstein, has been deposed in New York. He went to New York to be deposed, and he has New York counsel. And the statement he supposedly would testify to that he told Morgan Stanley at a printing press about the fact that these sales projections were off, that occurred in New York.

So I don't even think if you look at Mr. Bornstein that drives the analysis. So I think if you look at that, Your Honor, it's not just the numbers, you're right about that.

If you look at the core witnesses, they don't get to decide who are the key witnesses. There's several important witnesses in this case, and a lot of them we'll have with the parties, Coleman, and certainly from Morgan Stanley, but also these third parties like Wachtell. As you know, we do argue they had ample opportunity to verify or do due diligence, and that's one of the factors under New York law that's relevant to whether or not they were defrauded.

And so we want to talk to all those third

NOT A CERTIFIED COPY

01420

0029

parties. And there's 83 of tho[illegible] our Honor, that they identify. There are these 15, we're not denying that, but as you can see in the footnote, many of them have New York counsel, they've been deposed in New York, and they can have a videotape trial deposition if that's necessary.

So I don't think the balance of hardship there favors them versus of us. I think we would be disadvantaged if the case is down here and we want to call all these third parties. There's 83 of those.

THE COURT: Okay.

MR. YANNUCCI: So I would say that at least as much cuts in our favor as it does theirs. But even if you were to find, as you know, that there's equipoise in the private interest, then you look at the public interest, and the primary thing you look at is would Florida law predominate.

So if we're under the assumption that New York law would apply, that would tell you that this court should not be burdened trying a case between two New York parties over a contract that was signed and executed and performed in New York applying New York law makes no sense. In fact,

0030

that's precisely the concern cited by the Supreme Court in Kinney. That's the kind of case that should be dismissed under forum non conveniens.

Again, there's no prejudice to the plaintiffs, and they've admitted that New York would be adequate, And it's certainly our right to come in and raise as we did properly. We have 60 days under Rule 061 to state this, and we did immediately.

So I think if you look at the private factors, the fact that both parties are in New York, and the overwhelming majority of witnesses they say have knowledge are in New York, we shouldn't be bound by their characterization that the witnesses in Florida who were deposed in New York and have counsel in New York are the most important witnesses.

THE COURT: Okay.

MR. YANNUCCI: Also, Your Honor, just in terms of the meetings that occurred, again, they all took place in New York, and I think the documents are there, and that's going to be very important.

So I think if you apply the traditional analysis, this case would certainly argue that it

0031

ought to be dismissed for forum non conveniens. If this case isn't, it would be hard to imagine a case that would be.

And again, I think the Alabama case is relevant. It doesn't bind them, I'm not arguing that, but their general counsel signed an affidavit in that case saying I'm being sued for fraud in Alabama by an Alabama plaintiff, but it all took place in New York, that's where the accountants are, that's where the underwriters are, that's where we keep our offices, and they prevailed and the case was transferred. I think that's highly informative to you as to what their position is in fact on each of those inquiries.

So for those reasons, Your Honor, I would say that it should be dismissed.

Let me just turn briefly to their arguments in response.

THE COURT: Sure.

MR. YANNUCCI: Because I think those are, with all due respect, a series of red herrings. The first is, they said they're entitled to a presumption, page 20, that you shouldn't disturb their choice of forum, but as this court knows and the Supreme Court of Florida has held many times,

0032

you're not entitled to a presumption if you're a foreign plaintiff. And again, that's a matter of record. They're entitled to no presumption whatsoever.

Second, they give you a string cite citing all these cases that have been filed in Florida involving Sunbeam. And again, Your Honor, this has been one of the themes I think. It's very important to us as you decide this issue, Sunbeam is not in this case; they're not a party, they're not involved, and in all those cases they cite, Sunbeam was a defendant or there was a Florida party -- a Florida resident was a party. That distinguishes them from this case. Now, 17 of those 24 cases were consolidated, they were in the Southern District of Florida, by the MDL panel, and they were stayed by the bankruptcy, which took place in the Southern District of New York.

Sunbeam, the whole apparatus, with all the problems, all the resolutions, was done out of a bankruptcy proceeding in front of Judge Gonzalez in the Southern District of New York. So even if you look at Sunbeam, where were those claims adjudicated, there's been no trial in Florida that's gone to verdict to vindicate the rights of

NOT A CERTIFIED COPY

0033

Florida consumers as they sug[illegible] that they want to protect those interests. And that's the next red herring. They didn't buy any debentures. They don't have any standing to bring claims on behalf -- So I don't know why that's relevant to the motion in front of you.

The next one is, they cited a series of contacts. And we again don't dispute that there were phone calls made and faxes sent. Of course, that cuts both ways. I mean, there were calls from New York and to New York. Each state obviously had phone calls and faxes, but the meetings, the representations, the reliance, the execution and the performance of the contract was all in New York. None of that occurred here.

THE COURT: Okay.

MR. YANNUCCI: So I think that you don't count contacts, and Florida courts have specifically said you don't just add them up, that's for personal jurisdiction, which we're not contesting.

THE COURT: Right.

MR. YANNUCCI: The next one is that our sister company filed, in essence, a counterclaim, Your Honor. As we stated in our brief, we did

0034

that because we didn't want to run up to New York and file a claim after they filed here first and then be running back and forth to New York and saying we want a discovery ruling on this and they come to you and we have disputes. We think they should be heard together, wherever. And that's why we brought it here.

And there's nothing inconsistent with bringing what is in essence a counterclaim and then seeking dismissal for forum non conveniens. In fact, under the rule, you get 60 days to brings that motion for dismissal under the doctrine of forum non conveniens, and that would often be after the time for filing a counterclaim.

We could simply assign a claim from senior funding to Morgan Stanley itself, and it would be a counterclaim. In any event, we did offer, and we will stipulate again today on the record that we will take whatever steps necessary to dismiss that case, non-suit it or make it part of a transfer under forum non conveniens.

There's no significance to it. The fact that we filed it here, and we admit that you have venue over that case, just like you do over the first case, is the baseline that is always present under

0035

Rule 061. You're required to accept the fact that personal jurisdiction and venue are proper in the host court. So nothing is added. There's no significance to that fact that we filed a counterclaim.

THE COURT: Okay.

MR. YANNUCCI: I just wanted to make sure that I covered that, because they make a big deal about it.

THE COURT: You have just another few minutes on this motion, and then we need to give plaintiffs a chance to respond.

MR. YANNUCCI: Then I guess that's the last one I had, Your Honor. I just want to make sure I addressed at least in my opening comments their points.

If I could just have one second on this issue.

THE COURT: Sure.

MR. YANNUCCI: I think I did cover them all. Thank you so much for your time.

THE COURT: Thank you.

What's the response?

MR. SCAROLA: Thank you, Your Honor. Your Honor, Jack Scarola on behalf of

0036

plaintiff, Coleman (Parent) Holding Company, and I would just like to introduce you to those who are accompanying me today. This is Mr. Jerold Solovy, Jack Shaw, Ron Marmer and Steve Fasman.

THE COURT: Good morning.

MR. SCAROLA: Your Honor, with the Court's permission, it is our contention that this is indeed an appropriate and convenient forum for these actions. And we'll skip --

THE COURT: Did you bring this with you, or did you do this this morning?

MR. SCAROLA: I brought it with me. I did it last night.

THE COURT: I didn't know how you got it into this courtroom.

MR. YANNUCCI: And, Your Honor, I'll just note that I haven't seen it, but I'm not going to object.

THE COURT: We appreciate that for the record.

Go ahead.

MR. SCAROLA: Your Honor, with regard to the forum non conveniens issues, this court I think has already recognized in the comments that Your Honor has made that this claim is part of

NOT A CERTIFIED COPY

011206

0037

a far broader set of circumstances than are presented in this individual case.

There is absolutely no doubt whatsoever that had the role of Morgan Stanley been known as of the time that we litigated against Arthur Andersen here in Florida and Morgan Stanley was named as the co-defendant that it is in that litigation, there would have been no way that Morgan Stanley could have avoided defending that claim in Florida.

It is extremely important that the Court recognize that Florida indeed has the most significant relationship to a fraudulent scheme conceived in Florida by a Florida corporation headquartered in Florida. The fraud was executed in Florida by implementing business strategies and accounting practices designed to artificially inflate the value of Sunbeam stock, which was then to be used as the counterfeit currency with which Sunbeam was going to purchase CPH's interest in the Coleman Company, and Morgan Stanley was an active and knowing participant in that Florida-based fraud.

Those are the allegations in the Complaint. The Complaint clearly sets out that what Morgan

0038

Stanley did with respect to Coleman (Parent) Holding Company was to assist in a fraud perpetrated by Sunbeam and that they were a knowing and active participant in the perpetration of that fraud.

Kinney Systems, both sides agree, defines the Court's analysis of these forum non conveniens issues. And contrary to the position taken by the defendants in this case, there is indeed a strong presumption in favor of the forum selected by the plaintiff.

The cases that are cited by the defendants which are contrary to that assertion are cases in which the plaintiff is not simply an out-of-state domestic corporation; every one of those cases is a case in which the plaintiff is an out-of-country foreign corporation or foreign individual. Every one of those cases involves a circumstance where a non-U.S. resident is attempting to utilize the services of the courts in the United States to resolve controversies with a focus that is outside the United States.

I can go through those and talk about them in detail individually, but if Your Honor takes a look at them, I think you're going to recognize

0039

that each of those authorities involves foreign corporations, not simply non-Florida corporations.

THE COURT: Kinney was '96?

MR. YANNUCCI: Yes, Your Honor.

THE COURT: What was the portion of the rule that includes the presumption; was that there in Kinney or not?

MR. SCAROLA: It is referenced in Kinney, Your Honor, and it is referenced as part of the second factor that Kinney defines where Kinney expressly states that there is a presumption for the plaintiff's choice of forum.

THE COURT: Okay.

MR. SCAROLA: We agree that of the four factors that Kinney describes, two of them are not contested, one and four are not contested, so the Court's focus needs to be on weighing the relevant factors of private interest initially, and only if those relevant factors of private interest are in equipoise does Your Honor go to an examination of the public interest factors.

Both parties cite the Court to the Woods case, which is a Fourth DCA decision in 1999, and it specifically identifies the manner in which the private interests are to be examined under the

0040

Kinney criteria. And what it says is that these are the relevant factors with respect to this case in terms of the manner in which the private interests are to be determined.

It's significant to remember that it is the defendant's burden to establish the inconvenience of the Florida forum in conducting this analysis.

We agree that this Court is permitted to go outside the pleadings to make that determination; the filing of declarations, affidavits, the filing of evidence with respect to this issue is permitted. And once the Court has before it all of the evidence, recognizing that it's the defendant's burden, this is what Your Honor's got to do; you've got to determine the ease of access to sources of proof, the ability to compel attendance of unwilling witnesses, the cost of obtaining willing witnesses and all other practical problems impacting on ease, expediency and expense of the trial.

There are other factors that are mentioned in Woods that just don't have any relevance here. Those are the ones that are relevant here.

And then again, only if the defendant has established through the presentation of evidence

NOT A CERTIFIED COPY

01420 7

0041

to the Court that these private interests are either substantially outweighed in favor of a transfer or are in equipoise does Your Honor look at the public interests. And it is our position that the defendant has failed to prove any relevant factor by virtue of what has been submitted in this case.

Private interests. Morgan Stanley voluntarily selected Florida as a forum in which to sue Coleman (Parent) Holding Company on claims involving common facts with those on which Coleman (Parent) Holding bases its claims against Morgan Stanley. It's a judicial concession that Florida is an appropriate and convenient forum.

They didn't have to file the MSSF case here in Florida, but they did. And when they filed that case in Florida, they said the following: "This court has personal jurisdiction over defendants pursuant to Florida Statute 48.193(2), because defendants engaged in substantial business activities in the State of Florida. Additionally, this court has personal jurisdiction," et cetera.

Your Honor will recall, they moved for an enlargement of time to respond to the Complaint and establish a briefing schedule in this case.

0042

And in this case they said that the Coleman (Parent) action and the MSSF action are companion cases pursuant to Local Rule 2.009. Both cases involve the same series of financial transactions, involve a common set of operative facts and will require the Court to consider and resolve in the context of the motion to dismiss substantially similar legal issues.

They're saying these are the same cases. And they stood before Your Honor this morning and said all we need to do, and apparently they must have the ability to do this, is to assign the Morgan Stanley senior funding case to Morgan Stanley, and then they'll make it a counterclaim in this action.

So they voluntarily selected this forum to bring an action arising out of exactly the same circumstances, and I suggest that it is entirely inconsistent to subsequently stand before Your Honor and say it is inconvenient and unjust for us to be in this court when they chose voluntarily to be in this court with regard to the same set of circumstances.

If we move beyond that and look at the Woods factors, let's look first at ease of access to

0043

sources of proof. The vast majority of documents in this very document-intensive case have already been exchanged between the parties in the context of this Florida action, and they have been exchanged conveniently, expeditiously and inexpensively, because most of them are already reduced to electronic image.

The suggestion that has been made without any support in terms of evidence in the argument presented to the Court that somehow there is a significant burden involved in discovering documents because they're all in New York simply is wrong and is not supported by any evidence by the party with the burden to prove that there is somehow a problem of accessing sources of proof in this case. They're the ones with the burden of establishing it, and they have nothing in anything before this court to suggest that it will be difficult to access proof in the State of Florida, and they can't present anything, because the access to the proof has already occurred.

The second factor is the ability to compel attendance of unwilling witnesses, not the inability to compel attendance of a long list of people who may have had something at some point in

0044

time to do with some action that remotely relates to this lawsuit.

Now, I'm sure when they compiled the numbers of 50 members of this law firm or 50 employees of this law firm and 30 employees of that law firm, we've gotten the count of every paralegal and every clerk and every secretary who ever walked past the file cabinet in which documents relating to this case were contained.

That doesn't satisfy the defendant's burden of proof. They must come forward and demonstrate that the people whose names they've listed, including the 22 who were identified in their response or their motion, have material and relevant evidence.

We did that in terms of the 16 people whose names we listed. We identified the nature of the role that they played in connection with this litigation.

So all that Your Honor has before you right now upon which to make a determination about the ability to compel the attendance of unwilling witnesses is the plaintiff's assertion that there are 16 people who are extremely important, central to the focus of this case, which is the

NOT A CERTIFIED COPY

011208

0045

Florida-based fraud whose pe. .al attendance cannot be compelled because they are non-parties and they reside in Florida. If this case were to be transferred to New York, their personal attendance at trial could not be compelled, and the suggestion that taking a deposition in Florida for presentation in New York is an adequate substitute, I'm sure Your Honor recognizes is simply not well-taken.

The next point is the cost of obtaining willing witnesses. There just isn't anything before the Court upon which the Court could demonstrate -- could say, yes, defendants, you have carried your burden, you have proven to me that it is inconvenient for you to be here in Florida because it's going to cost you more to be here in Florida; absolutely nothing.

The last point is, all other practical problems created by the plaintiff's forum selection and solved by a change; expense, inconvenience, whatever else it may be, and again, there is absolutely nothing in this record, nothing upon which the Court could make a determination that it is any cheaper, any more expeditious to be litigating this case in New York

0046

than it would be to litigating in Florida. And I'm sure Your Honor can envision the substantial delay that would be involved simply by virtue of after the length of time this case has been pending in Florida, attempting at this point to transfer it to New York.

The Florida activities on the part of Morgan Stanley are chronicled and detailed in the submissions that we have made to the Court, not because we have somehow confused the difference between jurisdictional contacts and forum non conveniens issues; that's not why they're there. The reason why they are there is to demonstrate, one, Florida's interest in this case, and secondly, the fact that Florida is where relevant elements of proof are available in this case. We have presented those matters to Your Honor so that you recognize the fact that this is indeed a Florida fraud that we're talking about.

Morgan Stanley's active and knowing participation in the Sunbeam fraud included substantial Florida activities, and you've been told there were no Florida meetings. Well, that's just not true. Meetings between Morgan Stanley and Sunbeam in Florida occurred on at least 11

0047

separate dates. Morgan Stanley came here to meet with Sunbeam and participated in their fraud with a physical presence in this state. In excess of 100 telephone contacts were exchanged between Morgan Stanley and Sunbeam's Florida executives and agents. Countless relevant electronic and mail contacts with Morgan Stanley occurred into and out of the State of Florida.

Why are these things important? Sure, Morgan Stanley may have been in New York, but the individual who was receiving those phone calls at the other end of the line, the individual who's receiving the mail, the individual transmitting those communications is in Florida. That's where that proof needs to be accessed.

THE COURT: We're going to do about five more minutes on this.

MR. SCAROLA: Thank you.

THE COURT: Because I want to make sure we have time for the other motion.

MR. SCAROLA: Morgan Stanley arranged the initial meeting between Sunbeam and Coleman (Parent) Holding regarding the Coleman sale right here in Florida. That's where that meeting took place.

0048

The joint preparation and issuance from Florida with Sunbeam of the March 1998 fraudulent press release which was referenced repeatedly in the submissions to the Court, the joint issuance with Sunbeam of the subordinated debenture offering to finance the fraudulently-induced purchase and sale, and that was jointly drafted in Florida by Morgan Stanley and Sunbeam, and finally, the solicitation in Florida of Florida investors to finance the fraudulently-induced purchase and sale by Coleman (Parent) Holding.

If we get to the public interest, and I suggest that because of the complete absence of any offer of proof to satisfy the private interest requirements, if we ever get there, there are at least 24 prior cases which have been litigated in Florida state and federal courts arising out of the Sunbeam fraud in which Morgan Stanley was an active and knowing participant. That in and of itself, in spite of the arguments that have been made by opposing counsel, is a clear indication of the focus of this course of conduct in the State of Florida.

And we have cited to the Court PAFCO, which stands for the proposition that litigation of

NOT A CERTIFIED COPY

011209

0049

related claims in the same tribunal is favored in order to avoid inconsistent results.

And finally, Florida has a great public interest in assuring that its corporate and individual citizens who engage in fraudulent conduct causing injury both within and outside Florida together with those who aid, abet, counsel, hire or otherwise procure the commission of those frauds, those who conspire with Florida corporate and individual citizens to do injury both inside and outside Florida, that those persons are held accountable. And Florida has an interest in making sure that the victims of Florida perpetrators of fraud aided by out-of-state perpetrators of those Florida frauds are justly compensated, and it has a further interest in making sure that that kind of conduct is deterred.

On the basis of those arguments, Your Honor, it is our position that this issue is very clear. Jurisdiction is conceded, there is no jurisdictional issue. The issue is whether Florida is or is not a convenient forum. In order to demonstrate that it's not, the defendant must come forward with proof. They have failed to do

0050

that. Your Honor is obliged under the circumstances to deny the motion to dismiss on the basis of forum non conveniens.

THE COURT: Thank you.

What did you want to respond, sir?

MR. YANNUCCI: Just a few points, Your Honor. Thank you.

I would just say that with regard to the fact that Sunbeam is based in Florida, of course, which is a matter of record, that's akin to what was going on in Trumpet Vine matter, the 11th Circuit case where Del Monte was the company in question. They're a Florida-based corporation that was part of the transaction that was alleged to be fraudulent between two other parties, one of which was a Florida resident, the counter-plaintiff that was a declaratory judgment. But the plaintiff in that case was Florida-based, and the 11th Circuit said, applying Florida choice of law principles, that even though some of the reliances occurred in Florida, the injury in part occurred in Florida, the fact that the contract that was in question that gave rise to the claim that they had been not given their benefit of the bargain was in New York required them -- that's a choice of law case -- to

0051

apply New York law.

Now, turning to these balancing tests, in terms of the burden or the presumption, what I see in Kinney is a cite from a federal court case talking about generally the plaintiff's choice of forum should not be disturbed. That's a block quote from a U.S. Supreme Court case saying we don't contest that's generally the rule, but I'm not aware of any case where Florida has allowed an out-of-state plaintiff to enjoy that presumption.

In fact, one of our cases we cite --

THE COURT: Can I see Kinney again? I don't have my cases here.

MR. YANNUCCI: Yes. Sure, Your Honor.

THE COURT: Thanks.

I'm sorry. Go ahead.

MR. YANNUCCI: Well, I was just going to say, one of the cases we cite involved a Missouri foreign plaintiff where the case was dismissed, along with maybe a foreign corporation or one that's outside the U.S., but that's not the test. I don't think an Oklahoma plaintiff is entitled to have deference to a selection, and they don't cite a case that says an out-of-state plaintiff gets the presumption.

0052

So I believe that just like the case in Trumpet Vine where you actually have a Florida party, New York law would apply, and I think that's the relevant factor.

Kinney says that if you decide that New York law applies, that alone could be the basis for granting a motion for forum non conveniens. And Kinney says this concern that Florida is too hostile for the motions for forum non conveniens is creating a huge problem.

If this case goes forward, I can assure you that a lot of parties in New York would be very interested in coming to Florida, realizing that two New York parties can litigate a New York contract in Florida.

THE COURT: I guess that I need to maybe look a little bit more about civil procedure, but the rule we're operating on was first adopted after Kinney, and the rule itself has the presumption.

MR. YANNUCCI: But, Your Honor, the courts have later said it doesn't apply to a -- the rule doesn't say an out of state --

THE COURT: It just says --

MR. YANNUCCI: I think you have to look at whether or not -- That's why it makes all the

NOT A CERTIFIED COPY

01210

0053

difference in the world is it a Fl...a plaintiff.
THE COURT: Do you have a case that would suggest that although the rule says under A2, "In fact, the trial court finds that although limited factors of private interests favor the alternate forum, when in the balance, a strong presumption against disturbing plaintiff's initial forum choice," is there a case construing that language of the rule to say except when plaintiff is an out-of-state party?
MR. YANNUCCI: Well, Your Honor, all I know is the cases that say -- I don't know if they tie it to that rule, but they talk about the fact that an out-of-state or a foreign plaintiff is not entitled to that presumption.
THE COURT: But do they postdate the adoption of this rule in '96 is my question.
MR. YANNUCCI: I'd have to look, Your Honor. I don't know.
THE COURT: And do they cite to this language in the rule and say although the rule says there's a presumption, somehow it's disregarded for an out-of-state plaintiff?
MR. YANNUCCI: Well, I don't know, Your Honor.

0054

The case I'm looking at, I'm told, Your Honor, is a case called Mursia Investments vs. Industria, and that's 847 So.2d 1064. That's a June 11th, 2003 decision, so it's certainly applying the rule. And that case does find --
THE COURT: Does it cite the portion of the rule that creates the presumption saying somehow it doesn't apply in this context, or does it just go back to Kinney?
MR. YANNUCCI: Well, it certainly would be after the rule's adopted, but it just goes back to Kinney, and it's citing cases like Ciba-Geigy that we cited in our brief, Your Honor, and so forth, so no, I don't think it addresses that.
THE COURT: I would need to go back and look at that.
MR. YANNUCCI: Yes, I would, too, Your Honor.
But I would submit to Your Honor the fact that there's a general proposition that a plaintiff's choice of forum must not be disturbed I think requires you to look at, well, who was the plaintiff. If it's a Florida plaintiff, I think that would be significant. And we don't dispute when it's a Florida plaintiff that you would typically have the presumption certainly can be

0055

overcome, but all I've seen so far is the Florida courts have said if you're an out-of-state or foreign plaintiff -- I'm not sure it's true that they're always international companies, and I certainly didn't see that in terms of the policy arguments that were being made by Kinney. The Supreme Court said they were concerned that out of Florida, parties would come to Florida and start taxing the court system here to resolve these disputes.
THE COURT: Okay. Again, I need to go back and look, because I'm not sure if Kinney is good law once they went and adopted the rule.
MR. IANNO: I think Mr. Yannucci can address that now, Your Honor. If you look at tab 5 of the handout.
THE COURT: I have a rule here with the commentary.
MR. IANNO: If you look at the first paragraph of the commentary.
MR. YANNUCCI: Yes.
THE COURT: I understand that, but it still strikes me if they were trying to limit the presumption, they shouldn't have said that in the rule. That just strikes me as odd. I can go back

0056

and look at it.
Let me take another advisement. We probably need to take time for your motion for judgment on the pleadings.
What did you want to say in support of that? And why don't we first probably address plaintiff's argument that it is not apparent from the face of the Complaint that New York substantive law would apply.
MR. YANNUCCI: Well, I think on a situation like this, Your Honor, you have to -- That's why I think we briefed the choice of law issue, because I think you have to decide, even for purposes of a motion to dismiss, you have to decide if you're going to apply New York or Florida law.
We didn't want to burden you with more pages and separately brief those same arguments under Florida law. I think we could prevail on those counts, and I just think New York law is so much more developed in that regard.
THE COURT: Let me ask you this.
Do you have anything to tie me to that on a motion for judgment on the pleadings I can look outside the pleadings themselves to make a choice of law decision?

NOT A CERTIFIED COPY

0057

MR. YANNUCCI: Well, I th... that you can make a choice of law decision for whatever purpose, whether it be forum non conveniens or decide a motion like this or a motion for summary judgment, and the courts are clear that you can look at these factors. You're directed to under the restatement. So yes, there's ample authority that you can go outside the Complaint.

THE COURT: Do you have anything that would suggest on a motion for judgment on the pleadings I can look outside the pleadings for the purpose of the choice of law?

MR. YANNUCCI: Your Honor, I believe that you can, but I'll have to go back and look at whether or not you can go outside the pleadings to decide what law you're going to apply on a motion to dismiss.

THE COURT: On the motion for judgment on the pleadings.

MR. YANNUCCI: Otherwise, what would you decide to use as -- how would you go about deciding what substantive law applies? There's clearly a dispute here.

THE COURT: I don't know if you can do a summary judgment on that issue. I was looking at

0058

the summary judgment rule to see if you can even do that or how you -- I understand the practical problem you're raising. I would just have to think procedurally how you get to a choice of law.

MR. YANNUCCI: Well, again, I regret the fact that we weren't able to get the reply brief in front of you, but we address this. We even talk about the courts, they're federal courts, Your Honor, the District of Maine case that goes into some length of saying this is really a problem if on the pleading, the Complaint, the plaintiff leaves out relevant facts, such as place of residence, where the meetings occurred, and that just rewards someone to artfully plead around the factors on the restatement. They kind of use it as a roadmap to leave all those things out. And we know that, again, because in other Complaints even in this courthouse, they do make those representations. So they admit where they're headquartered.

So I think you can and you must look at that, because you have to make a choice of law determination at some point in this case.

You know, when we asked before -- My understanding is early on in the case we asked you

0059

to decide this early on, and you said, no, you want to do it in the context of a fuller record when there were several issues --

THE COURT: Or something, right.

MR. YANNUCCI: Yes, of course.

THE COURT: Some procedural vehicle.

MR. YANNUCCI: And I think in a judgment on the pleadings in Florida, we're entitled to make that motion, and you'll have to decide which law applies. And I think in doing that, you should --

THE COURT: Let me ask you this.

What if I were to make a determination for purposes of this motion that New York substantive law applied; would that then be binding?

You tell me the procedural vehicle under which that decision is ultimately made.

MR. YANNUCCI: Well, I think it's ultimately made as part of your duties in terms of resolving the issues. You have, under conflicts analysis or Florida choice of laws --

THE COURT: True, but can I make it at trial after I've heard all the evidence?

MR. YANNUCCI: No, I think you make it at this juncture when it's presented to you in the first instance that you have to resolve in this

0060

case a motion for judgment on the pleadings.

THE COURT: So you're saying we would make the determination at this juncture on that issue and it would be binding for the remainder of the case no matter what evidence is revealed at trial?

MR. YANNUCCI: Well, I suppose if you found out that they really -- If you found there were facts at trial that went to the core of that selection, I mean, I'm not going to ask you to do something that would be absurd. I would of course note again, Your Honor, that the sister case against Andersen which involves a Florida party, Harlow, they've agreed at least in terms of the settlement agreement New York law will apply. I mean, it would be a bizarre result to have that case governed by New York law when there's a fourth party and then apply here --

THE COURT: You know, when people make a determination that New York law is going to apply to a settlement agreement, I don't, quite honestly, think that's a lot of probative value of whether it would otherwise apply.

MR. YANNUCCI: Well, I doubt if Mr. Harlow asked for that. I agree, Your Honor, it is not the underlying controversy.

NOT A CERTIFIED COPY

0142 12

0061

THE COURT: Right.
MR. YANNUCCI: It is a settlement agreement, will they pay the money or will they not.
THE COURT: And people who are in that contract can choose any law they want to apply.
MR. YANNUCCI: But to your question --
THE COURT: It's just a way of inserting other terms.
MR. YANNUCCI: Your questions I think under conflicts analysis, I believe Trumpet Vine, I'll go back and look at this point, I think Trumpet Vine was in the context of a summary judgment motion, and therefore, that would tell you in advance of trial, and the 11th Circuit affirmed the lower court's application of choice of law principles to applying New York law.
THE COURT: Well, they're suggesting that maybe it's an issue you can reach -- I mean, that's why I was looking at the summary judgment rule, to see if you could reach something that's a finding of law predicated on facts, and I guess you can.
MR. YANNUCCI: But if you don't, Your Honor, the result would be that you can't move for a judgment on the pleadings where there's a dispute

0062

over choice of law, and that wouldn't make sense.
THE COURT: Well, it sort of does if the backup is you move for summary judgment, and then you have record evidence that would support the choice of law.
MR. YANNUCCI: If you needed that, but again, I think -- Again, the parties agreed that 148 controls, and you've got the record evidence on every one of those six factors.
For choice of law principles, I don't know what else you would learn about that.
By the way, again, when you were told about --
THE COURT: So what you're saying is you want to convert a portion of your motion for judgment on the pleadings that alleges choice of law into a motion for summary judgment on that point?
MR. YANNUCCI: I will do that, but I don't believe I have to, Your Honor, with all due respect.
I think if I bring a motion for judgment on the pleadings, you have to decide it, and I think you have to make an analysis of what law applies where it's not agreed to by the parties. So I don't think I should be denied the right for that

0063

ruling because you don't want to make a ruling on choice of law. I don't know that it would be binding. If you concluded later on there was some fundamental change in your decision, what led you to decide New York law applies, well then, of course I think you have the authority to make a change.
THE COURT: Okay.
Does plaintiff contest sort of this procedural assertion or not?
MR. SCAROLA: I am not sure what the this refers to, Your Honor.
THE COURT: This meaning defendant's contention that it can present record evidence to support a choice of law decision in support of a motion for judgment on the pleadings.
MR. SCAROLA: Yes, we do contest that.
A motion for judgment on the pleadings is confined strictly to consideration of the well-pled allegations in the Complaint. The case law is clear that it is the equivalent in terms of the standards to be applied to a motion to dismiss.
THE COURT: Let me ask you this.
Would plaintiff agree that a choice of law

0064

decision could be reached at a motion for summary judgment?
MR. SCAROLA: Absolutely.
THE COURT: Okay.
MR. SCAROLA: Absolutely.
I think that that is an entirely different standard. Consideration of matters outside the pleadings is completely appropriate and required, and the fact that a preliminary determination is made that on the pleadings Florida law applies would not preclude the Court from making a determination on the basis of later-presented evidence that in fact as to a particular issue, law in some other foreign jurisdiction applies, because the cases are clear that the choice of law determination is made on an issue-by-issue basis.
THE COURT: Do you have any law that would suggest I can make a choice of law determination in a motion for judgment on the pleadings by reaching outside the pleadings themselves?
MR. YANNUCCI: Your Honor, I don't know that we have a particular case in that regard.
THE COURT: Okay. In all honesty, my gut is that you can't.
MR. YANNUCCI: Well, but again, Your Honor,

NOT A CERTIFIED COPY

0065

that would mean in a case like this where there's a dispute, you're effectively always going to be denied.

THE COURT: No. It would strike me that the procedure is that you bring it as a motion for summary judgment.

MR. MCGURK: Your Honor?

THE COURT: I'm sorry. Yes, sir?

MR. MCGURK: I would just direct you to our reply brief. There's a very recent case from the District of Maine that explains the very problem. It says, plaintiff should not be able to plead around governing law by leaving out relevant circumstances --

THE COURT: I understand that, but --

MR. MCGURK: -- and it explains the procedure.

THE COURT: Do you have a copy of the case for me?

MR. YANNUCCI: The District of Maine case. It's a federal case, Your Honor.

THE COURT: No, I understand.

MR. YANNUCCI: I understand what you're raising with us, but I guess --

THE COURT: I thought there was a

0066

representation that was in a summer judgment. I want to look at the procedural posture of it. Thanks.

MR. YANNUCCI: It's out of Maine, Your Honor.

THE COURT: I'm not saying I wouldn't be persuaded by it.

MR. YANNUCCI: I understand why you may be reluctant to do it on judgment on the pleadings, but even on judgment on the pleadings, you have to decide which law to you test the judgment on the pleadings on.

THE COURT: Assuming I can. I mean, that's assuming I can. Assuming I can make that determination, yes.

In all honesty, I don't know if I can make that determination based on the allegations in the Complaint. And if I don't know which state's law applies --

First of all, did we find a copy of the Maine case? Let's start there.

MR. IANNO: They're pulling it, Your Honor, but it's cited on page 12.

MR. YANNUCCI: Page 12 of our reply brief. And it says --

THE COURT: I'm sorry, page 12?

0067

MR. YANNUCCI: Page 12 of our reply brief, Your Honor.

THE COURT: Right. I'll get that, but I still would like to see the case itself.

MR. IANNO: He's pulling that right now, Your Honor.

THE COURT: And where is it cited; in the footnote?

MR. YANNUCCI: No. It's in the block quote, Your Honor?

THE COURT: Oh, I'm sorry.

MR. YANNUCCI: The italicized language suggests that this is clearly a motion to dismiss as opposed to summary judgment.

My concern, Your Honor, I know you've heard this, but this more or less rewards a plaintiff who leaves out critical facts that would --

THE COURT: Give me a second to read this, okay?

MR. YANNUCCI: All right.

THE COURT: Thanks.

Nobody has a copy of Federal Rule 12B, do they?

MR. YANNUCCI: 4B, Your Honor?

THE COURT: 12B.

0068

MR. IANNO: I do know that it is very similar to 1.140.

MR. YANNUCCI: Is it 12B(6), Your Honor?

THE COURT: Yes, 12B(6).

MR. YANNUCCI: Well, 12B(6), as you know, is the demurer of failure to state a claim.

THE COURT: I just would like to see the exact rule.

MR. YANNUCCI: Sure.

THE COURT: Nobody's got a copy of it?

MR. IANNO: No.

THE COURT: Let me check my office one second to see if I can get a copy.

(Recess taken from 9:36 a.m. to 9:38 a.m.)

THE COURT: I got it. Thanks. Have a seat.

It is substantially the same; well, except that the rule also says if on a motion asserting the defense number 6, which is failure to state a cause of action, to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.

MR. YANNUCCI: But, Your Honor, I don't think

NOT A CERTIFIED COPY

011214

0069

that has to do with factors for choice of law.
THE COURT: Well, it sort of -- I'll be honest with you, I don't think this issue is reached on a motion for judgment on the pleadings. I think choice of law needs to be reached on a motion for summary judgment.
MR. YANNUCCI: Can I just offer one more suggestion on this particular point?
THE COURT: Sure.
MR. YANNUCCI: If that's the case, then I'm wondering why Florida is taking a fairly bold step of carving out the final judgment rule, the right to have an interlocutory appeal on the issue of forum non conveniens. I understand about choice of law, but --
THE COURT: That's why I was drawing the distinction in the beginning of the argument between choice of law for forum non conveniens and choice of law for purposes of deciding a motion for judgment on the pleadings. I think they're different.
MR. YANNUCCI: All right. So if I understand though, Your Honor, as you see it, you can't decide a judgment on the pleadings under Florida law if there aren't sufficient facts in front of

0070

you to inform you as to what choice of law to apply?
THE COURT: Correct, that that needs to be a motion for summary judgment, because it strikes me what you're asking me to do is take record evidence outside the pleadings themselves to make a decision that may be determinative on whether the motion for judgment on the pleadings should be granted.
MR. YANNUCCI: But again, I don't think there's any dispute that you have to do that to make a choice of law.
THE COURT: And that's why I think it's a motion for summary judgment. I think the procedural vehicle is a motion for summary judgment.
MR. YANNUCCI: Is it premature to do that?
THE COURT: Yeah.
MR. YANNUCCI: Your Honor, if I could, I just would like to have an opportunity to at least look at that issue.
THE COURT: It was an issue raised by plaintiff. I didn't just make it up.
MR. YANNUCCI: No, and in our reply brief, we address that we think you can make a decision.

0071

THE COURT: If this is the case you're relying on, quite honestly, given -- assuming our rule doesn't carry forward this language from the federal rule, but let me just double-check.
MR. YANNUCCI: Sure.
THE COURT: I don't remember it, but that doesn't mean it's not there.
I don't see it. Yeah, I don't see anything similar in our rule. I mean, that just seems intuitive to me. To the extent it's based on a factual predicate, we sort of need the procedural structure of a rule for summary judgment to establish the factual predicate.
MR. YANNUCCI: Let me try one more time, Your Honor.
THE COURT: Sure.
MR. YANNUCCI: I'm nothing if not persistent.
If you're going to make a choice of law determination for the forum non conveniens motion, I don't know why you wouldn't be able to use that same determination then as to which law applies for the pending motion for judgment on the pleadings.
Now, if you were to grant the forum non -- It's all moot anyway, because I would assume you

0072

wouldn't decide the issue if you were going to dismiss it in favor of New York.
THE COURT: In all honesty, what I was given for the choice of law issue on the forum non conveniens motion is not what I would expect in a motion for summary judgment for a choice of law. I mean, that's certainly not how I would expect it to be proven up.
I understand you disagree, but I don't think this gets done on a motion for judgment on the pleadings.
MR. YANNUCCI: All right, Your Honor.
Could I at least just make one or two points on the forum non conveniens motion?
THE COURT: No, because that we're done with.
MR. YANNUCCI: All right.
THE COURT: Okay?
MR. YANNUCCI: I just want to understand the issue of witnesses, but...
THE COURT: Thank you very much.
MR. YANNUCCI: Thank you.
THE COURT: So the motion for judgment on the pleadings would be denied, because everything is argued under New York law, and I can't determine, based on the face of the Complaint itself, that

NOT A CERTIFIED COPY

New York law applies. Okay?
Thank you very much.
MR. SCAROLA: Thank you very much, Your Honor.
MR. IANNO: Judge, we have a draft order on disk if you'd like that.
THE COURT: I like doing my own, but I would love the envelops.
MR. IANNO: Okay.
THE COURT: Thank you.
MR. YANNUCCI: Thank you, Your Honor
THE COURT: Just so the record is clear, the item you gave me in court today with the little tabs, is this one for the Court file, or was there one also filed?
MR. YANNUCCI: I can file one, Your Honor, but I brought it here this morning. I did not file it.
THE COURT: Do we need it filed?
MR. YANNUCCI: It's part of the argument, Your Honor, I did refer to it, but I don't think you need to have it filed, or you're going to have to have filed the flip charts.
MR. IANNO: Yeah. I think it was more demonstrative.

MR. YANNUCCI: It's the same thing you saw in the flip charts from counsel. I don't think it needs to be filed.
THE COURT: Mr. Scarola, do you care if it's filed?
MR. SCAROLA: I just need to maintain the objection that I raised earlier, Your Honor. Whether it is filed or not, I don't care, but I don't want by not objecting to its filing to waive the argument that it was an improper submission.
THE COURT: I'll tell you what. Do we agree that we can file it if I determine that you need to be given a chance -- Well, actually, no, because it's not relevant.
MR. YANNUCCI: Well, it could be relevant to the forum -- If you make a decision adverse to forum non conveniens, if we want to take an appeal on an interlocutory basis, it would be relevant.
THE COURT: Just to show that New York and Florida law is different?
MR. YANNUCCI: Yes, Your Honor. And I think the listing of witnesses; although, it's in the record again, Your Honor.
THE COURT: We will just tell the clerk to file it, and then we're not worrying the clerk.

MR. IANNO: Judge, would you like another copy, and that way you can keep one?
THE COURT: Sure. And actually, what I might do is -- We'll let the clerk take one apart.
Thank you. Okay.
MR. YANNUCCI: Your Honor, just so I'm clear, you denied the motion for judgment on the pleadings as premature. You're not in a position to apply law. Are you taking advisement on the --
THE COURT: Right. I'm taking the forum non conveniens motion under advisement.
The motion for judgment on the pleadings will be denied, because I can't determine based on the pleadings which state's law applies.
MR. YANNUCCI: Thank you, Your Honor.
THE COURT: Thank you.
(Proceedings concluded at 9:45 a.m.)

CERTIFICATE

THE STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, Lisa D. Danforth, Registered Professional Reporter, Certified Real-Time Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings at the time and place herein stated, and that the foregoing is a true and correct transcription of my stenotype notes taken during said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of December, 2003.

LISA D. DANFORTH, RPR, CRR

NOT A CERTIFIED COPY

24
25

NOT A CERTIFIED COPY

014217

file

From: Charles Francavilla on 08/26/98 10:55 AM CDT

To: Michael Murray@BOFA, Jeremy Fair@BOFA, John Shanahan@BOFA
cc: Deirdre B. Doyle@BOFA, Keith Barnish@BOFA, Steven Sterling@BOFA, Harold Hunby@BOFA, Thomas Biggi@BOFA, Peter Wheeler@BOFA, Sally Swift@BOFA, James O'Kane@BOFA
Subject: Update on Sunbeam

Yesterday the banks met with Sunbeam senior management and MacAndrews & Forbes to discuss the latest developments as well as covenant relief from the banks. In attendance were Jerry Levin, new CEO, Paul Sarvina, Chief Admin Officer, and from M&F- Howard Gittis, Irwin Engelman, and Todd Slotkin. The banks had their counsel Davis Polk and the company had Skadden in attendance. BofA had myself, Steve Sterling-Syndications and Tom Biggi-SAG, in attendance.

First- Jerry Levin updated everyone on their latest findings in the company now that they have been on the job for 10 days in Florida. Additional disturbing findings are now becoming clear:

- It is a virtual certainty in management's view that the 1997 audited financial statements will have to be re-stated due to accounting irregularities. Recall that Arthur Anderson gave a clean unqualified opinion on the Sunbeam 1997 statements and again supported that decision to the Board last week. Now however both new management and Arthur Anderson are finding things which are material which make the 1997 statements probably erroneous. For example, it appears that at least $165mm in sales accounted for as 1997 sales were in fact either 1998 sales or 1998 sales. Yes it appears the misleading statements started as early as late 1996 when Dunlap took over and some late 1996 sales were shown as 1997 while the associated expenses were left in '96. Again this was done at the end of 97 but in reverse.

- Arthur Anderson has said to M&F that they were " lied to in a fraudulent fashion by management"

- Because now Arthur Anderson will not consent to allow their 1997 opinion to be used in the planned S-3 filing (to register the existing zero coupon convertibles) that filing is being delayed. Note- this does not result in any default on the zeros but does cause a $5,000 per day penalty for late filing of the registration statement.

- Deloitte will do another audit of 1997 and an opinion and likely restated 1997 would come out around October 15th.

- New management will probably have a handle on the situation at the company and be able to forecast future income statements by August 10. At this point the business in 1999 looks more like a $ 2.5 billion sales and $ 325 to $350mm Ebitda business rather than Dunlap's 1998 of $ 2.8 billion sales and $ 460mm Ebitda. However given all the problems and accounting issues, 1998 numbers will be severely down. While Jerry Levin has now hired back most of the Coleman people that were fired or walked out the door in April, Coleman's business was significantly hurt for two months but is now OK according to management and M&F.

The Bank negotiation: we have an oral deal but first here is some background:
The company needs covenant relief and access to the remaining $270mm available under the $ 1.7 b bank facility. The banks have said ok but have insisted on getting now the stock of Coleman which is pledged to us but not in our possession and therefore not perfected. The Board and Howard Gittis have said no to the Coleman stock because they do not want to give us a valuable asset for a 45-day covenant waiver (the original deal on the table) and run the risk that if things don't look good in two months we take the collateral and accelerate. M&F bluntly stated that unless we gave a longer and stronger indication of support that they will have access to credit during this transition, that they would (i) pull Jerry Levin back to Revlon and ii) M&F would walk and we can have a legal fight over who gets Coleman. After the banks talked amongst themselves it was clear we all preferred to be fully covered by collateral. Today, we have $ 1.4 b in bank loans and we have partial collateral. We felt we would rather have $ 1.7 b in loans and be fully secured. The banks and the company and its board have verbally agreed to the following:

- company gets full access to the revolver until December 31 (i.e. no conditions to borrowings) plus no financial tests until then.
- in return we get the stock of Coleman and security in all the material hard assets (except Coleman)
- we are still discussing pricing changes

Rationale:
* this support from the banks gives the market and the trade a positive signal. The trade is likely to move against the company somewhat even with this but less so if we only gave a 45 day waiver.
* we and the management think there is value in the company once it fixes the mess left by the Dunlap management. Even with the stock price at $ 10 per share (down from $50), the enterprise value of the company is $ 3.3 billion, compared to senior secured debt of $ 1.5

011219

MS 338
8/14/98 W

NOT A CERTIFIED COPY

billion. $ 2.5 b in sales and $ 325 ebitda also confirms about a $ 3 billion valuation. Again we would rather be fully secured with a little more in outstandings and prevent the trade from over reacting

BACRR rating. DCA, SAG and the Credit Manager in Atlanta all view this as a Bacrr- 5 with this information although a cash forecast due to us in the first week of July would confirm this view. The expectation would be to restructure the loan between August and October once we get real numbers to work with. A syndication is not likely until after the restatement of 1997 by Deloitte. We should plan on no syndication until December or January . Our view is with the loan covered by collateral and enterprise value 2:1 the risk rating will probably stay a 5 . But if by end of August the future cash flows forecast are materially less than $ 300mm BofA should prepare for the potential of a Substandard rating before the Oct 15 new audit.

NOT A CERTIFIED COPY

Arthur
Andersen

Sunbeam Corporation
Additional Procedures Relating to 1996 and 1997 Restatement

	Job Number: SUN629 10
1	ADMINISTRATIVE
2	INTERVIEWS
3A	ANALYSIS OF RESTRUCTURING COSTS
3B	ANALYSIS OF RESTRUCTURING COSTS
3C	1998 RESTRUCTURING FILE
4A	ANALYSIS OF SALES & RETURNS
4B	ANALYSIS OF SALES & RETURNS
5	ACCOUNTING POLICIES & PROCEDURES
6A	JOURNAL ENTRY REVIEW - CORPORATE
6B	JOURNAL ENTRY REVIEW - HATTIESBURG
6C	JOURNAL ENTRY REVIEW - HATTIESBURG
7	INVOICE DEDUCTION PROJECT
8	UNVOUCHERED RECEIPTS
9	AGENDAS & MEETINGS W/ COMPANY
10	PREPAIDS AND ACCRUALS
11	VENDOR REBATE ANALYSIS
12	INTERNATIONAL
13	FIXED ASSET ADDITIONS
14	CAPITALIZED VARIANCES
15A	CRM-TESTING OF SALES & A/R
15B	CRM-TESTING OF SALES & A/R
16A	SALES CUT-OFF TESTING
16B	SALES CUT-OFF TESTING & MANUAL SALES ACCRUAL
17	BILL & HOLD SALES
18	PRESS RELEASES
19	SALES RETURN RESERVE ANALYSIS
20	UNAUTH. CUSTOMER DEDUCTIONS
21	INTERNATIONAL RESTRUCTURING
22	1996 ACCOUNTS PAYABLE AND ACCRUALS
23	E & O ANALYSIS
24	INTERCOMPANY
25	CO-OP & VOLUME REBATES ANALYSIS
26	FREIGHT - PRODUCT LIAB. - OUTSOURCING / WARRANTY ANALYSIS
27	SHIP EARLY/SHIP AFTER CANCEL
28	INCOME TAXES
29	MISCELLANEOUS
30	FINANCIAL REPORTING
31	96/97 BRIDGE ANALYSIS
32	SUBSEQUENT REVIEW
33	FORM 10-K/A REF-AIDS
34	POST AUDIT REVIEW
35	REFERENCING AIDS
36	COOPERS & LYBRAND RESTRUCTURING FINAL REPORT

NOT A CERTIFIED COPY

SUN 629 10 22 of 37

AA166173
Confidential Treatment Request
by Arthur Andersen LLP

DEPOSITION EXHIBIT
CPH-21
LM 11/6/03

File 2 - [redacted]

INTERVIEWS

NOT A CERTIFIED COPY

011223

AA166174
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CP-Enron-030517

FILE NUMBER SUN-629-9747

SUN-629-9747
SUNBEAM-RESTATEMENT
#2 INTERVIEWS

LABEL

DATE	ISSUED TO

OUT CARD
ARTHUR ANDERSEN
CONFIDENTIAL FILE

Form 08-W (Rev. 7/60) Printed in U.S.A.

NOT A CERTIFIED COPY

011224

AA168175
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062491
16div-020518

Sunbeam Corporation

Schedule of Interviews Performed by Arthur Andersen

Corporate Summary	Date	Time	Interviewee	Title	Phone #	Address	AA Interviewer	Sheldon Interviewer
11	October 13, 1998	n/a	Al Dunlap	CEO		Former Emp	P. Harbow	D. Dunbar
11	October 13, 1998	n/a	Russ Kersh	CFO		Former Emp	P. Harbow	D. Dunbar
19	July 19, 1998	10:00 AM	Lee Griffith	VP Sales	3-2003	Corporate	P. Harbow	D. Dunbar/R.Gordon
9	July 14, 1998	8:30 AM	Al Lofaro	Sales	3-2008	Corporate	P. Harbow	L. Bernstein
8-Q	July 9, 1998		Bob Gluck	Corporate Controller	3-2139	Corporate	P. Harbow	D. Dunbar/R.Gordon
12	July 16, 1998	1:00 PM	Don Hudson	Accounting Manager	3-2141	Corporate	P. Harbow	D. Dunbar
7	July 21, 1998	8:30 AM	Kyle Stanley	Director Int'l Accounting	3-7013	Corporate	C. Dunbar	L. Bernstein
17	July 17, 1998	1:30 PM	Judy Morello	VP Manufacturing	3-2014	Corporate	P. Harbow	D. Dunbar
27	July 14, 1998	10:30 AM	Mike Brumley	Director Mfg. Accounting	3-21140	Corporate	P. Harbow	L. Bernstein
15	July 20, 1998	10:30 AM	Ken Wolf	Plant Controller - Hattiesburg	6-7066	Corporate	D. Dunbar	R. Gordon
1	July 16, 1998	8:30 AM	David Fanos	Chief Legal Counsel	3-2121	Corporate	P. Harbow	L. Bernstein
2	July 17, 1998	3:00 PM	Jerel Kelly	General Counsel	3-21121	Corporate	P. Harbow	D. Dunbar
3	July 21, 1998	1:30 PM	George Tindall	Purchasing	3-2002	Corporate	D. Dunbar	L. Bernstein
4	July 16, 1998	3:00 PM	Steve Dalbeck	Treasury	3-2136	Corporate	P. Harbow	D. Dunbar
13	July 17, 1998	10:30 AM	Tom Henriksen	Internal Audit Director	3-2133	Corporate	P. Harbow	P. Harbow
6	July 17, 1998	8:30 AM	Barry Hansen	Credit Manager	3-2072	Corporate	P. Harbow	D. Dunbar
8	July 21, 1998	10:00 AM	Deborah MacDonald	Corporate Planner	3-2097	Corporate	D. Dunbar	L. Bernstein
26	July 28, 1998	3:30 PM	Scott Tyler	Planning & Analysis Manager	3-2120	Corporate	L. Bernstein	D. Petrone
18	August 10, 1998	10:00 AM	Chuck Mayes	Sales	3-2021	Corporate	P. Harbow	L. Bernstein
Huntsburg								
30	July 20, 1998	10:30 AM	David Aden	Traffic	6-3457	AMDC	P. Harbow	D. Tidlock
14	August 12, 1998	3:00 PM	Clifford Collins	Shipping Manager	6-1211	AMDC	P. Harbow	L. Bernstein
23	July 20, 1998	3:00 PM	Kyle Kaiser	Customer Service Materials	6-1301	AMDC	P. Harbow	D. Tidlock
21	July 21, 1998	9:00 AM	Bill Bloomfield	Director Distribution Center	6-1232	AMDC	P. Harbow	D. Petrone
33	July 21, 1997	1:00 PM	Jason Owen	Accounting	6-1219	AMDC	P. Harbow	D. Petrone
20	July 28, 1998	8:30 AM	Kathy Brown	Regional Plant Controller	6-3038	AMDC	P. Harbow	D. Tidlock
22	July 28, 1998	1:00 PM	Chris Adams	Conversion Facilitator	6-1997	AMDC	P. Harbow	D. Tidlock
24	July 21, 1998	10:30 AM	Jim Fish	Traffic	6-1138	AMDC	P. Harbow	D. Tidlock
Phone Interviews								
31	July 29, 1998	3:30 PM	Lisa Dalbeck	Former Employee	(617) 796-3744		L. Bernstein	C. Mallory
28	August 6, 1998	n/a	Sharon Thayer	Former VP International		Ext. 53	P. Harbow	K. Gordon
29	August 6, 1998	n/a	Joe Richardson	Controller			P. Harbow	C. Mallory
32	August 6, 1998	n/a	Rob Fletcher	Controller			P. Harbow	C. Mallory
Neosho (Phone Interviews)								
26	July 23, 1998	3:30 PM	Bert Perrine	Plant Controller	(800) 641-1500	Neosho	P. Harbow	C. Mallory
27	August 6, 1998	n/a	Dennis Ross	Sales Manager	(800) 641-1500	Neosho	P. Harbow	
16	August 6, 1998	n/a	Mitch Long	Distribution Manager	(800) 641-1500	Neosho	L. Bernstein	R. Gordon
25	July 23, 1998	11:00 AM	Jim Gibney	Plant Manager	(800) 641-1500	Neosho	P. Harbow	C. Mallory
Waynesboro (Phone Interviews)								
10	July 29, 1998	10:00 AM	Kevin Allford	Interpretation	(011) 611 2311	Waynesboro	P. Harbow	C. Mallory
20	July 23, 1998	9:00 AM	Ian Leath - Asst mgr	Asst Manager	(011) 611 2311	Waynesboro	D. Dunbar	C. Mallory
9	July 29, 1998	2:00 PM	Thomas Moody	Asst Controller	(011) 611 2311	Waynesboro	P. Harbow	C. Mallory

All titles shown are PLEASE BE STANDARD

NOT CERTIFIED COPY

AA166176
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062492
16div-020519

NOT A CERTIFIED COPY

TABLE OF CONTENTS

AA166177
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Index of Interviews (#2)

Index	Description
Tab 1	David Fannin
Tab 2	George Timchal
Tab 3	Al Lefevre
Tab 4	Steve Dalberth
Tab 5	Janet Kelly
Tab 6	Barry Hanson
Tab 7	Kyle Sinclair
Tab 8	Deborah McDonald
Tab 9	Tom Moody
Tab 10	Kevin Jeffcoat
Tab 11	Al Dunlap & Russ Kersh
Tab 12	Don Jackson
Tab 13	Tom Hartschorne
Tab 14	Clifford Collins
Tab 15	Ken Huff
Tab 16	Mitch Long
Tab 17	Judy Maudlin
Tab 18	Chuck Myers
Tab 19	Lee Griffith
Tab 20	Kerby Brown
Tab 21	Bill Bloomfield
Tab 22	Chris Adams
Tab 23	Janice Gavin

NOT A CERTIFIED COPY

011327

AA166178
Confidential Treatment Requested
by Arthur Andersen LLP

Sunbeam Corporation
Index of Interviews (#2)

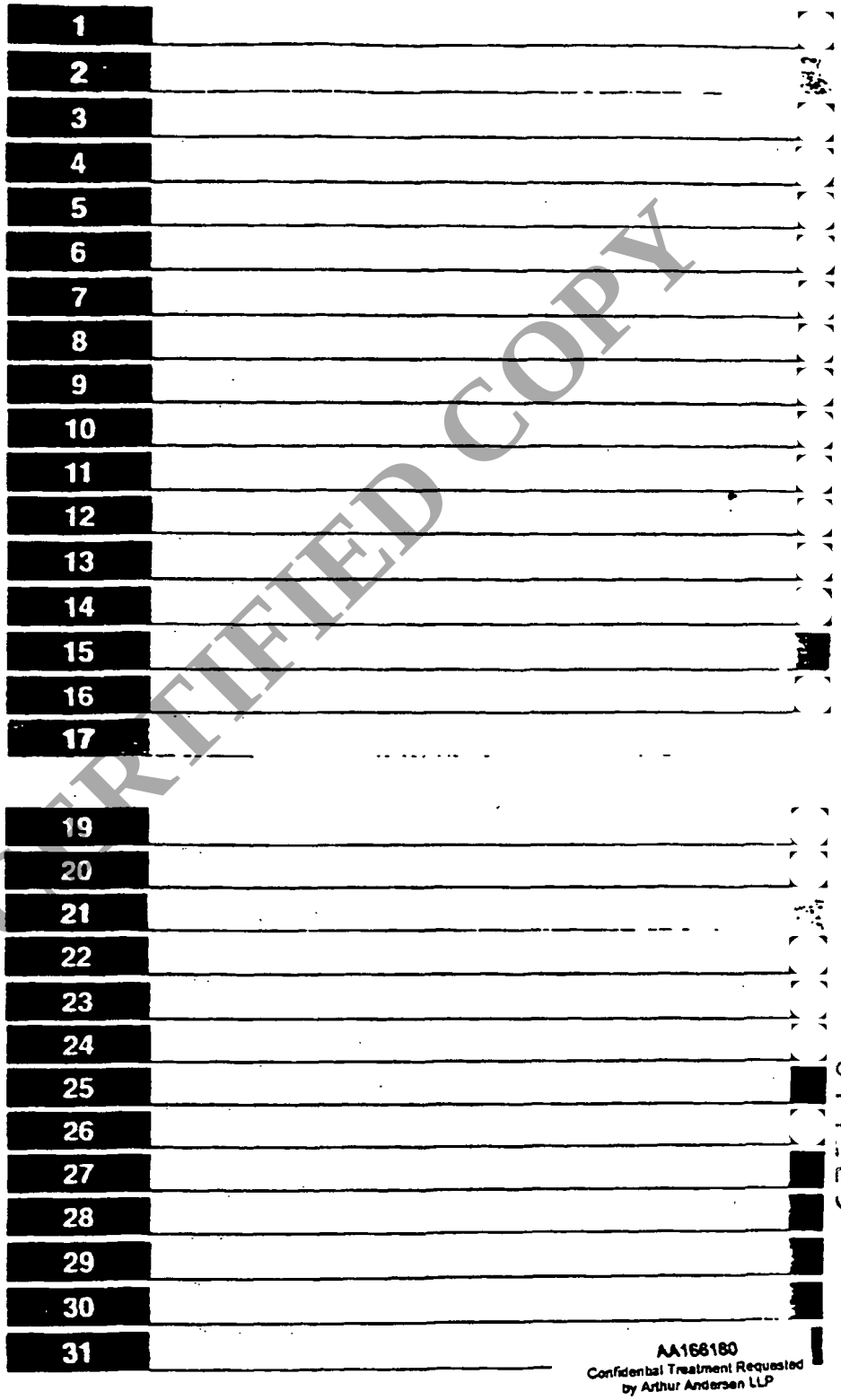
Index	Description
Tab 24	Jim Job
Tab 25	Kyle Kaiser
Tab 26	Scott Yates
Tab 27	Mike Bondisky
Tab 28	Jim Gitney
Tab 29	Jim Goffi
Tab 30	David Aslin
Tab 31	Lisa Dalberth
Tab 76	Ron Partner
Tab 77	Dennis Rice
Tab 78	Dixon Thayer
Tab 79	Joe Richardson & Rita Fletcher
Tab 80	Not used.
Tab 81	Not used.
Tab 82	Not used.
Tab 83	Not used.
Tab 84	Not used.
Tab 85	Not used.

NOT A CERTIFIED COPY

011228

AA166179
Confidential Treatment Requested
by Arthur Andersen LLP

Table of



AA166160
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

014230

AA166181
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 22, 1998

Subject: Sunbeam Corporation – Interview with David Fannin

On July 16, 1998, Phil Harlow, Chris Maloy, attorney with Skadden Arps, and I conducted an interview with David Fannin, chief legal officer of Sunbeam Corporation. The summary of information provided by Mr. Fannin is as follows:

- Fannin met with Bob Gluck on July 12, 1998 (four days after the Board meeting).
  - Fannin met with Bob Gluck as a result of being asked by Peter Langerman, a Board member, to "check things out" as a result of events that occurred at the Board meeting.
  - Fannin's interview with Bob Gluck lasted approximately one hour.
  - Fannin kept some brief notes regarding his meeting with Gluck.
  - At the Board meeting, Fannin had learned from Russ Kersh that sales for the second quarter were "soft" with a potential for $60-$80 million in shortfall.
  - Fannin was concerned that "1998 was in collapse."
  - Gluck indicated that open RAs ("return authorizations") were $10 million as of June 12 and would exceed the amounts that had been reserved at yearend.
  - Returns of merchandize from PHD would be $4-$5 million.
  - Bob Gluck told Fannin he had attended a meeting with Lee Griffith, Al Lefevre, Richard Kersh and Don Uzzi where they discussed setting up a "distributor program" for the fourth quarter of 1997. These sales were needed in order to make the fourth-quarter sales.
  - Bob said that Lee Griffith is a salesman and will do whatever needs to be done to make the sale.
  - Bob said that Don Uzzi said during the third quarter of 1997 that they will "need to go to the balance sheet to make the numbers."
  - Per Bob Gluck, "1997 performance was not sustainable."
  - Gluck said that people "hid the ball from him" during 1997 and came to him after events or transactions had already happened.
  - Kersh dumped the "no return" issue on Gluck.
  - Per Gluck, the Company wrote off the negative manufacturing variances in 1997 which was a one-time event.
  - Per Gluck, the accrual rates were kept at the low end of what is acceptable.
  - Per Gluck, reserves had been used to cover expense items. For example, the cost to the risk management department had been charged to the product liability reserve.
  - Per Gluck, the reserves established at yearend were "lean."
  - Gluck was "leaned on" by Kersh to make the targeted numbers.

NOT A CERTIFIED COPY

01423 1

AA166182
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 22, 1998

Subject: Sunbeam Corporation – Interview with David Fannin

- Gluck did what was needed. He felt his actions were acceptable but were the "bare minimum."
- Gluck thought the 1998 projected numbers were totally unrealistic. He felt that the 5¢-10¢ earnings per share in the second quarter could never be achieved.
- Per Gluck, the Company "operated for the moment."
- Per Gluck, Don Uzzi asked him to do whatever was necessary to make the numbers during the fourth quarter of 1997 since the Company would be sold.
- Per Gluck, the reserves were at the low end of reasonableness and there was a lot he wished he had done differently.
- The sale to I. Lehroff was to a distributor who sold products to the same customers that Sunbeam sold directly to. Per Gluck, the sales people knew that the Lehroff sales would return.
- The Company "moved" reserves. For example, the package redesign reserve was transferred to the media advertising account.
- Gluck learned about the PHD transaction two weeks after the books were closed.
- Fannin did not ask and Gluck did not volunteer any comments regarding discussions of any accounting issues with Arthur Andersen LLP.
- Gluck mentioned that barter sales transactions were discussed in connection with the fourth quarter of 1997 but were turned down.
- Gluck indicated that the EPI transaction in the fourth quarter of 1997 was made as an outsourcing decision and was not designed to make the numbers.

- Gluck received an option grant for 75,000 shares in connection with the 1998 acquisitions. Fannin indicated that this was the highest number of options that was granted to any of the officers or employees in connection with the acquisitions.

- Bonuses were paid in February 1998. Fannin was not sure about the amount of Gluck's bonus.

- Bill and Hold sales were discussed at the operating committee meetings during the middle of the fourth quarter of 1997. At those committee meetings, operating issues regarding the billing Bill and Hold transactions were discussed and not accounting matters. No minutes were maintained for operating committee meetings per Fannin. Starting in 1998, Al Dunlap stopped the operating committee meetings because Al was unhappy with Don Uzzi and did not want to meet with him.

- All-Tech litigation
  - On January 22, 1997, the Third Circuit Court reversed a judgment in the All-Tech matter that had been in Sunbeam's favor.

NOT A CERTIFIED COPY

AA166183
Confidential Treatment Requested
by Arthur Andersen LLP

011232

Date: July 22, 1998

Subject: Sunbeam Corporation – Interview with David Fannin

- Fannin said that at January 1997, the maximum exposure for the All-Tech litigation was $12 million and the Company received a legal letter from Morgan Lewis stating the possible exposure of $12 million.
- The All-Tech litigation was settled in August 1997 for $3 million.
- Gluck asked in May 1997 whether the All-Tech reserve was still needed. Morgan Lewis issued a second legal letter saying that a $6 million reserve was reasonable based on the current status of the case.
- Fannin told Gluck that other litigation matters needed to have increased reserves (he mentioned the Busso/Hotval litigation) and that the All-Tech reserve could be reduced by $6 million.

- Fannin said that he reviewed all press releases prior to their issuance. He indicated that Rich Goudis, former vice president of investor relations, drafted the press releases.

- March 19, 1998 press release. This press release was issued while the Company was in process of issuing its zero coupon bonds.
  - Morgan Lewis said that Arthur Andersen LLP raised an issue regarding disclosure of the reduced first-quarter 1998 sales.
  - Fannin discussed this matter with outside legal counsel (Fin Fog).
  - Don Uzzi said on March 18 that the Company would still be able to make $290 million in sales for the first quarter which was the "street" expectation.
  - Al Dunlap did not want to disclose anything regarding the Company's inability to make the analyst sales projections. Al indicted to Fannin that he did not know what the sales would be for the quarter. Al gave assurances that sales would exceed the sales in the first quarter of 1997.
  - Al Dunlap was very unhappy on the day after the press release went out and felt he had made the wrong decision allowing this disclosure.
  - Fanning said that Kersh was on a road show at this time and did not participate in the press release. Fannin confirmed that Arthur Andersen LLP did not review the press release (it was prepared at 11 p.m.). He also confirmed that Arthur Andersen LLP wanted disclosure in the press release of the Company's inability to achieve sales equal to the level of the first quarter of 1997.

NOT A CERTIFIED COPY

AA166184
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 22, 1998

Subject: Sunbeam Corporation – Interview with David Fannin

- The press release indicated that the Company felt comfortable with the 1998 forecast.

- Fannin indicated the he was not aware of the February 5, 1998 sales forecast which had indicated that the Company would not make its first quarter or 1998 sales forecast. Fannin said that Roger Lee, former sales controller, told him that Don Uzzi had directed Lee to destroy the February 5, 1998 sales forecast (a copy of this sales forecast was obtained during Discovery).

- Fannin confirmed that he was aware of the substantial pressure to make the numbers but he had no knowledge of improper accounting or sales recognition, particularly during the third and fourth quarters of 1997. Fannin confirmed that top management of the Company was primarily focused during the fourth quarter of 1997 on the sale of the Company. He indicated that the Company had set up a "data room" containing due diligence documents; however, no parties performed due diligence work.

- Fannin indicated that the Company's personnel resources were very inadequate. He also said that the internal audit department, consisting of two people, was very inadequate and was "chasing special projects." He said that internal audit reported to Russ Kersh until December 31, 1997. They worked closely with Bob Gluck. In 1998, internal audit reported to Fannin.

GBPsun429/InterviewDavidFannin-7-98

NOT A CERTIFIED COPY

0142314

AA166185
Confidential Treatment Requested
by Arthur Andersen LLP

Sunbeam

Chief Legal Officer

From: David Fannin

To: ~~AA~~

This is a copy of the worksheet from Don Uzzi/ Deborah MacDonald that was the discussion piece at the March 18 conference call w/ Morgan Stanley, Sheldon, et al.

NOT A CERTIFIED COPY

011235

AA166186
Confidential Treatment Requested
by Arthur Andersen LLP

January Gross Sales	35,242
February Gross Sales	48,422
Domestic Orders thru 3/23	96,718
International Orders thru 3/23	11,900
Quarter to Date Gross Sales	192,282

	Orders Pending	In Process	Total
AAFES	385		385
Ames	2,550		2,550
Best Buy	-		-
BJ's	175		175
Bradlees	600	1,584	2,184
Caldor	1,200		1,200
Consolidated Merchandise	1,000		1,000
CostCo	2,200		2,200
Cotter	250		250
CVS	50		50
Eckerd	1,000		1,000
Fred Meyer	600		600
Hills	750		750
Home Base	350		350
Home Depot	9,500	1,000	10,500
K-Mart	550		550
Linens & Things	400		400
Lowe's	160	2,583	2,743
M-Block	415		415
McKesson	500		500
Meijer	250		250
Menards	4,818	983	5,801
Mervyns	300		300
Montgomery Ward	550		550
Other	100		100
Other Dept/Groc (Locke)	660	297	957
Other - Reilly	1,327	250	1,577
PHD	-		-
QVC	700		700
Rite-Aid	1,380		1,380
Ross	1,100		1,100
Sam's	50		50
Sears	6,555	1,004	7,559
Service	300		300
Shopko	160		160
Target	2,800		2,800
Value City	-		-
Venture	50		50
Walmart	13,375		13,375
Walgreen's	100		100
Total Domestic	57,410	7,701	65,111
International - March Balance not identified by customer			38,700
Grand Total			296,093
Q1 Gross Sales Goal			301,000
Shortfall			(4,908)

NOT ACCERTIFIED COPY

011236

AA166187
Confidential Treatment Requested
by Arthur Andersen LLP

Lee Gifford was
on the call
as well.

NOT A CERTIFIED COPY

0114237

AA166188
Confidential Treatment Requested
by Arthur Andersen LLP

MORGAN STANLEY *MEMORANDUM*

TO: Russell Kersh
David Fannin
Janet Kelly
Donald Uzzi
Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 20, 1998

2:00

HAVE YOU TALKED TO SKADDEN RE SPEEDING UP CLOSE - AW

FROM: Ruth Porat
Brooks Harris
John Tyree
Johannes Groeller

SUBJECT: Bring-down due diligence

Here are some of the areas we would like to cover during our bring-down due diligence call:

- Please update us on the build-up of the first quarter revenues and earnings
  - booked revenues
  - probable orders (degree of probability?)
  - potential orders
  - domestic/international mix
- Are you still comfortable with the market update in the March 19 press release?
- Are you still comfortable with a 1998 earnings estimate of $1.80?
- Any further information on the impact of the Asian crisis on the overall business?
- Any significant customer account wins? Losses?
- Any indications of a management change/departure in the near future?
- What is the status of the acquisitions? Hart Scott approval?
- Are the expected synergy estimates for the three acquisitions still up-to-date?
- Any issues with the bank financing? Still on target? Disclosure still accurate?
- Any material business or litigation issues that have arisen at the three acquisitions that you are aware of?
- Any additional acquisitions/dispositions pending?
- Any material developments in litigation?
- Any other material developments that we should be aware of?

Please

timing to SEC + HSR Co.

0112238

NOT A CERTIFIED COPY

AA166189
Confidential Treatment Requested
by Arthur Andersen LLP

MORGAN STANLEY *MEMORANDUM*

TO: Russell Kersh
David Fannin
Janet Kelly
Donald Uzzi
Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 23, 1998

FROM: John Tyree
Johannes Groeller
Shani Boone

SUBJECT: Sunbeam Bring-down due diligence

There will be a Bring-down due diligence conference call on Tuesday, March 24 starting at 2:00 PM (EST). The conference call-in information is as follows:

Time:	2:00 PM (EST)
Call-in Number:	1-800-736-0013
Participant Code:	4051066
Conference Host:	John Tyree

If you have any questions, please do not hesitate to call.

John Tyree
(212) 761-7738

Johannes Groeller
(212) 761-7314

Shani Boone
(212) 761-4941

NOT A CERTIFIED COPY

011239

AA166190
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062506
16div-020533

2-1

MORGAN STANLEY & CO.
Incorporated
Client Services Group (CSG)
1585 Broadway
33rd Floor
New York, NY 10036-8293

TO: Janet Kelly DATE: March 23
COMPANY: Sunbeam PHONE: (561) 243-2127
FAX: (561) 243-2263
FROM: Joe Tyrrell PHONE: (212) 761-7738
PAGES: 2 (Including Cover Sheet)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL:
FAXES OVER 15 PAGES SEND TO (212) 761-0260.

COMMENTS:

As per our discussion

IMPORTANT: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If the reader of this message is not the intended recipient, or the person responsible for delivering the message to the intended recipient, you are hereby notified that any copying or distribution of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and destroy this communication. Thank you.

NOT A CERTIFIED COPY

AA166191
Confidential Treatment Requested
by Arthur Andersen LLP

2-1

Sunbeam

Legal Department

MEMORANDUM

CHIEF LEGAL OFFICER

PRIVILEGED AND CONFIDENTIAL/ATTORNEY-CLIENT COMMUNICATION

TO: **Skadden Arps Team**
Arthur Andersen

FROM: David Fannin

DATE: **July 27, 1998**

RE: March 18, 1998 Conference Call

I need to correct one item I gave to each of you last week, pertaining to the March 18 conference call with Don Uzzi and Deborah MacDonald. The document printed from the computer by Scott Yales is not the same document from which we worked on the conference call on March 18th. While it looked similar to the document which was faxed on the 18th of March, in fact, we worked from a different memo.

Attached is a copy of the worksheet as actually sent by Don and Deborah at 5:05 p.m. on the 18th of March (and as provided by Mark Shehan of Skadden Arps, who participated in the call with Fin Fogg, Greg Fernicola and me). The call took place between 5:30 and 6:30 p.m. (approximate times), followed by several calls with Al Dunlap, Russ Kersh and Bill Strong around 7:30 to 9:00 p.m. to work on the press release. I am not certain whose handwritten comments are on the document, although it would appear that these are the comments of either Don or Deborah.

The fax numbers at the top of the page are for Ruth Porat, who served as the point person at Morgan Stanley, the attorney at Davis Polk advising Morgan Stanley and the fax machine outside Fin Fogg's office at Skadden Arps for the group which was at Skadden. The notes at the bottom of the page correctly reflect the advice from Don and Deborah that the "low" side estimate for the quarter was $267 million and the "high" side estimate was $293 million. Everyone on the call was assured, after questioning, that sales for the first quarter would exceed the $253 million of sales in the first quarter of 1997.

If you have any questions about the attached, please contact me.

cc Janet Kelley

NOT A CERTIFIED COPY

0116241

AA166192
Confidential Treatment Requested
by Arthur Andersen LLP

07/23/98 04:14
07/23/98 16:24 NO. 385 2-1 001

[redacted]

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 THIRD AVENUE
NEW YORK 10022-3897

TELEPHONE NO.: (212) 735-3000
FACSIMILE NO.: (212) 735-2000
DIRECT FACSIMILE NO: (212) 735-3883

FACSIMILE TRANSMITTAL SHEET [redacted]

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME	David C Fannin		
FIRM	Sunbeam Corporation		
CITY	Delray Beach	DATE	July 23, 1998
TELEPHONE NO	(561) 243-2125		
FACSIMILE NO	(561) 243-2191		
FROM	Mark T Shehan	FLM/RM	4708
REFERENCE NO	545100	DIRECT DIAL	(212) 735-2042

TOTAL NUMBER OF PAGES INCLUDING COVER(S) 2

THIS FACSIMILE IS INTENDED ONLY FOR USE OF THE ADDRESSEE(S) NAMED HEREIN AND MAY CONTAIN LEGALLY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ADDRESS ABOVE VIA THE LOCAL POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US.

MESSAGE Here's what we received that afternoon before the press release

NOT A CERTIFIED COPY

011212

AA166193
Confidential Treatment Requested
by Arthur Andersen LLP

Kevin fax 212-761-0539
Alan 212 450-4990
David 212 735-3597

January Consolidated Net Sales Actual	29.0
February Consolidated Net Sales Actual	43.0
March International Net Sales thru 3/15/98(1)	6.9
March International Net Sales Forecast 3/16/98 thru 3/29/98 (1)	39.5
March Domestic Net Sales thru 3/17/98 (2)	22.7
March Domestic Open Orders @ 3/17/98 Net Sales (2)	27.6
	168.7

Potential Orders

Home Depot	14.8	
Menard's	11.7	
WalMart	9.4	
Sears	7.5	
Costco	4.0	
Service	3.3	
Lowes	2.7	
KMart	2.5	
PHD	2.3	
Hdlts	2.3	
QVC	2.2	
Caldor	2.1	
M-Bloc	2.0	
Target	1.7	
Ward's	1.4	
Scotty's	1.1	
Rose's	0.8	
Bradlees	0.8	
AAFES	0.7	
Ames	0.7	
Pergament	0.6	
Amer Drug	0.5	
BJ's	0.5	
Other	10.4	
	86.0	86.0

subtotal	254.7	0.5%	% multiply
low	267.0	5.3%	
high	293.0	15.6%	
plus Q1'97	253.5		

SW-736-0013

0142143

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

NOT A CERTIFIED COPY

AA166194
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

01424

AA166195
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with George Tunchal

On July 21, 1998, Larry Bornstein, Chris Maloy, attorney with Skadden Arps, and I conducted an interview with George Tinchal, vice president for procurement for Sunbeam Corporation. A summary of the information obtained during the interview is as follows:

- Tinchal started with Sunbeam in August of 1996. Tinchal is in charge of procurement which consists of supplier selection and contract negotiation. He is not responsible for the on-going operation of supply contracts.

- Fourth quarter 1996 restructuring.
  - As part of the restructuring, the Company centralized the purchasing function of the Company.
  - Tinchal was involved with Coopers & Lybrand's consulting regarding the restructuring.
  - The Company originally had 7,000 to 11,000 suppliers which were consolidated into 350 major suppliers.

- 98% of the Company's raw materials are sourced from the PRC (Peoples Republic of China).

- The supply contracts are in writing, however, the length and detail of the supply contracts vary substantially. Tinchal believes that the terms, pricing and conditions for each of the supply contracts are in writing.

- Bitterford textile plant.
  - This plant was sold by Sunbeam in 1997.
  - The Company has a "take or pay" contract with Bitterford.

- All suppliers are independent of Sunbeam and the Company has no loans or investments in any of its suppliers.

- Pace
  - Pace provides castings and the Company takes all of its production.
  - There is a "true-up" at the end of June.
  - There is an internal audit report that deals with the Pace relationship.

- Under the Company's normal supply agreement, title to goods passes at the supplier's plant.

NOT A CERTIFIED COPY

014215

AA166196
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with George Timchal

- Raw materials and other Sunbeam products are received from the PRC and stored at the Morgan warehouse.
- There are no supplier contracts with a Bill and Hold arrangement.
- Supplier rebate program.
  - The idea for supplier rebates came from Kersh and Uzzi.
  - There were two supplier rebate contracts in the second quarter of 1997 and a larger number of supplier contracts in the third and fourth quarter of 1997.
  - During the first quarter of 1998, the Company discontinued the supplier rebate program.
  - The suppliers were contacted by the Company and told that if they did not grant the Company a rebate in the form of cash or credit, that Sunbeam would do no further business with them.
  - Under most of the supplier rebate contracts, if Sunbeam does not make additional purchases in the future, then Sunbeam will have to pay a penalty in the future.
  - Timchal discussed the June 1997 Pace supplier rebate transaction. By way of example, he indicated that Sunbeam would pay $1 per unit for a product and was able to renegotiate purchases of that product for 90¢ per unit with Pace. After the price had been renegotiated at 90¢, the Company went back to Pace and asked them to give them a cash rebate for one half of the savings (5¢ per unit) in the form of a cash payment. In return, Sunbeam would agree to pay for future product at 95¢ per unit.
  - Some rebates were negotiated with suppliers after the initial contracts had been negotiated.
  - Timchal believes the Company received cash or credit memos from the suppliers prior to recording the rebates as income.
  - The manufactured standard cost did not include these types of rebates.
  - Timchal believes there were two or three other Pace-type deals.
  - All supplier rebates flowed through the purchase price variance (PPV) account. This account is recorded as a component of income.
  - Timchal does not believe any significant part of the supplier rebates relate to 1998 purchases. The agreements were all written and approved by Bob Gluck so that they would reflect the rebates as being applicable to 1997 purchases. However, these agreements also required Sunbeam to make purchase commitments at fixed prices for future periods. Timchal was aware of no situations where the Company was receiving lower invoice prices in 1997 with an understanding of paying back a lower price in a future period.
  - The Company received a rebate from Ogolve & Mathers that was used to reduce advertising expense.

NOT A CERTIFIED COPY

0116246

AA166197
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with George Timchal

- The Company received a $500,000 rebate from Durable Electric in the first quarter of 1998.
  - This was a commitment to source new product at a much lower price than Sunbeam could manufacture the product.
  - Durable Electric is an iron manufacturer.
  - Per Timchal, Sunbeam could have paid a lower price for future purchases rather than receive the up-front rebate of $500,000.
- Sunbeam received $1 million from Pentalfa (a company that produced bread makers for Sunbeam).
  - Pentalfa was a key supplier in the PRC for Sunbeam and was very influential in the PRC.
  - Timchal estimated that the Company purchased $5 to $6 million in product from Pentalfa.
  - Sunbeam incurred $800,000 of legal fees which Pentalfa was supposed to pay and this was part of the negotiated $1 million rebate.

At this point in the interview, Brian Wood, one of Timchal's direct reports, entered the interview.

- The yearend earnings per share initiatives included supplier rebates of $2 million. Timchal indicated that they were able to achieve $1.6 million at yearend 1997.

- Yearend EPS planning.
  - Timchal indicated that there were meetings three to five times per week at yearend and in early January 1998 regarding planning for achievement of 1997 EPS.
  - The meetings were run by Don Uzzi. Timchal indicated that he never attended a meeting in which Ross Kersh participated.
  - Timchal confirmed that he had seen the fourth-quarter initiatives schedule passed out at the meetings and that these schedules were collected at the end of each meeting.

- Third quarter 1997 EPS planning. Timchal indicated that the planning to achieve third-quarter 1997 EPS was less formal than at yearend.
  - Lisa Dalberth produced a similar schedule to that which was used at yearend 1997.

- EPI
  - Sunbeam uses Matrix Co. to outsource its consumer response function.
  - EPI is a major fulfillment house that does work for major companies such as General Motors and Kellogg.
  - EPI received Sunbeam goods on consignment prior to the end of 1997. The inventory of replacement parts was never closely monitored or managed by either Sunbeam or EPI.
  - Bob Gluck was very critical of the EPI transaction.

NOT A CERTIFIED COPY

0114247

AA166198
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with George Timchal

- Timchal believes the EPI transaction was a good business decision for the Company.
- Under the current arrangement with EPI, there is an intent to retroactively account for EPI activity back to January 1, 1998. Gary Jennings has been handling the EPI activities since January 1998.
  - The Company has renegotiated payment for the transfer of inventory to EPI and it will be received in six to seven monthly payments.

- Supplier rebates.
  - The Company wanted to receive cash or credit for the savings negotiated.
  - In most cases, there were multi-year agreements for Sunbeam to purchase product.
  - In some cases the Company was received a rebate for past purchases but, in most cases, it was tied to a commitment for future purchases.
  - If the Company did not purchase any more product, Sunbeam would have to repay cash to the supplier.
  - Sunbeam negotiated lower prices and received part of the savings upfront.
  - Morten was a normal volume rebate.
  - Weyerhaeuser rebate was for lower paper prices (used for boxes). The rebate required future purchases but, because of the volume of purchases by Sunbeam, this was a very short-term commitment.
  - Union was a $6 million box supplier. Sunbeam negotiated a reduction in paper prices. Because of the amount of future purchases, this was a short-term future commitment.
  - Market Tools. This was a rebate for grills.
  - Tuscarora. This is a supplier of expanded foam. The Company received a $250,000 rebate.
  - Brenner – Sunbeam was overcharged for material and received a proper rebate for this overcharge.
  - Janet Kelly has copies of the contracts.
  - Second quarter 1997 purchase rebates were $1.2 million.
  - Third quarter 1997 Pace supplier rebate were $1 million.

- Total purchase savings on an annual basis for 1997 were approximately $42 million over 1996. This is based on forecasted units of production.

C:\Personal\Interview-GeorgeTimchal

NOT A CERTIFIED COPY

011248

AA166199
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

AA165200
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062516
16div-020543

NOT A CERTIFIED COPY

Sunbeam

Fourth Quarter - 1997 Targets

612710

GEORGE TIMCHAK

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

TABLE OF CONTENTS

	SECTION
Consolidated Top Line Summary	1
Appliances and Garment Care	2
Health at Home	3
Personal Care and Comfort	4
Away From Home	5
Outdoor Cooking	6
International	7

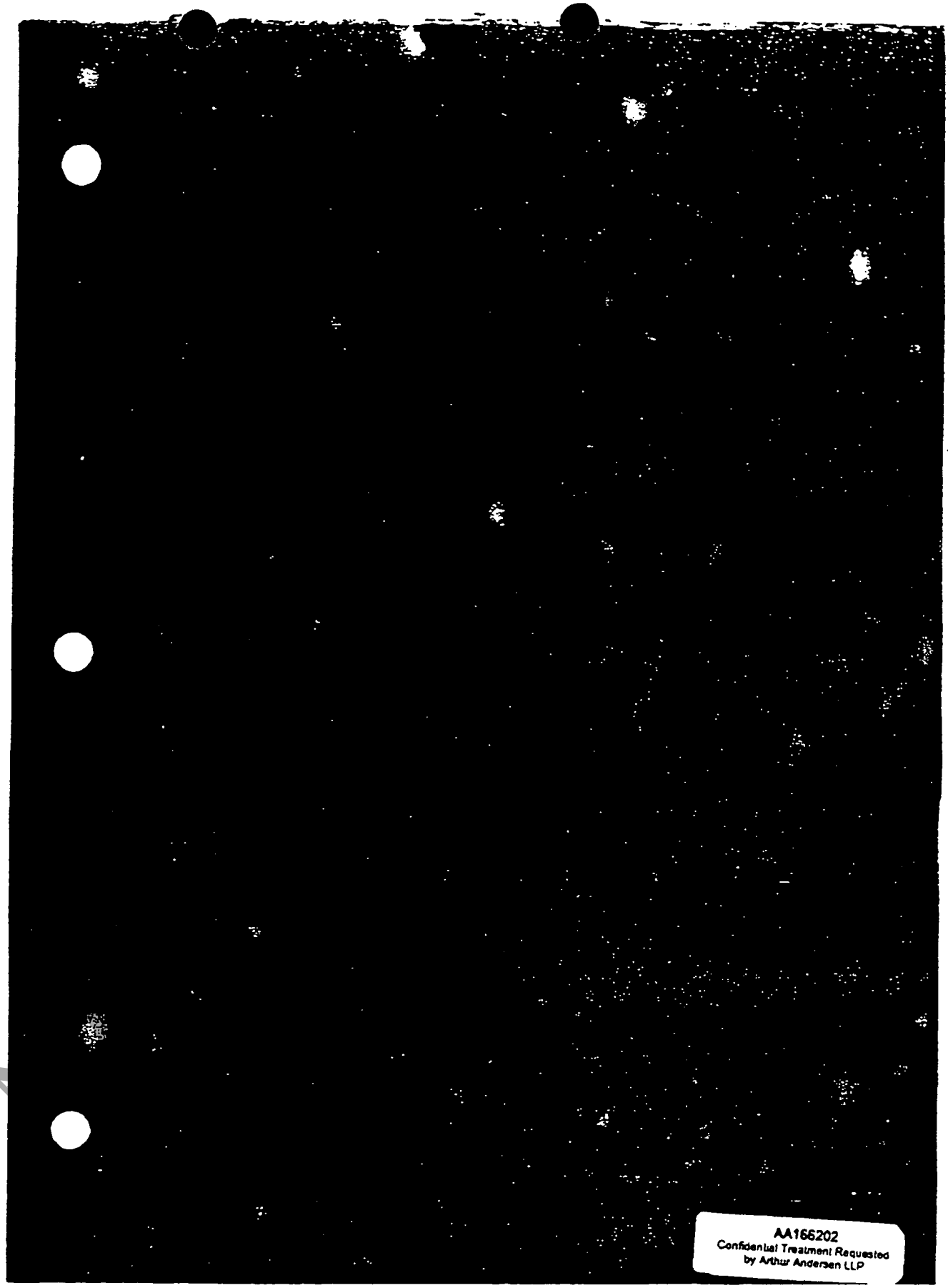
NOT A CERTIFIED COPY

CPH0062517

AA188201
Confidential Treatment Requested
by Arthur Andersen LLP

016250

16div-020544


AA166202
Confidential Treatment Requested
by Arthur Andersen LLP

014252

AA166203
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062519

unbeam Corporation
ourth Quarter 1997 Sales Summary
s of November 8, 1997
Millions

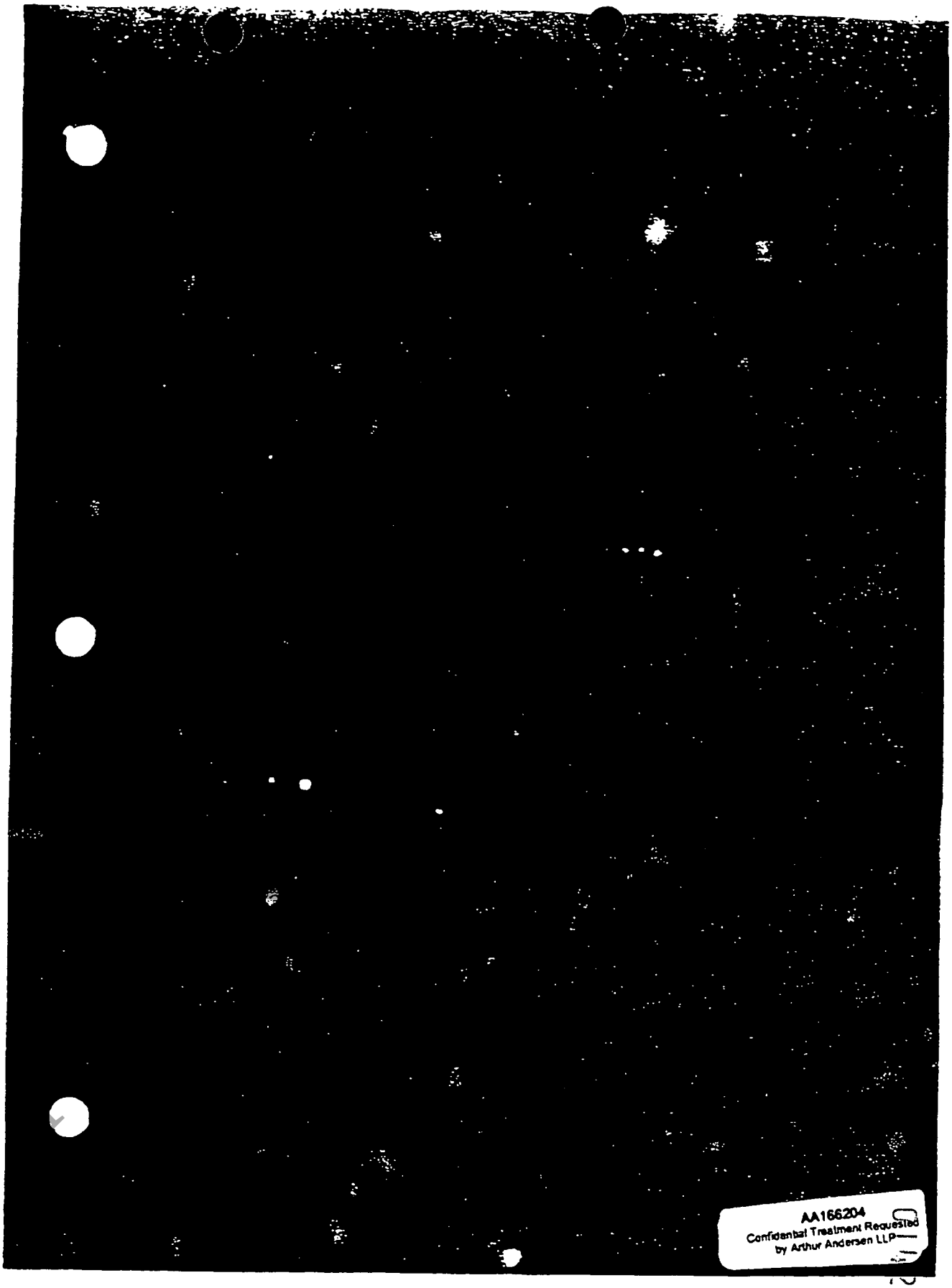
Category	Owner	10/97 Actual	11/97 Revised	12/97 Revised	Total Quarter	Note Plan*	Note % Chg to Plan
ppliances	Kevin McBride	32 7	51 0	54 6	138.3	114 8	20%
'ealth At Home	Kevin McBride	9 8	18 2	17 0	45.0	36 7	23%
ersonal Care & Comfort	Luis Silberwasser	23 4	25 0	19.7	68.1	94 3	-28%
rofessional/AFH	Bill Kirkpatrick	3 6	8 0	9 6	21.2	26 5	-20%
utdoor Cooking	Cynthia Vahlkamp	4.8	14.0	33.2	52.0	35.8	45%
Total Domestic		74 3	116 2	134 1	324.6	308 1	5%
utlet Stores	Resa Reed	1 2	2 3	6 5	10.0	14 1	-29%
ternational	Dixon Thayer	26.6	32.0	26.4	85.0	77.1	9%
Total Consolidated		102.1	150.5	167.0	419.6	399 9	5%

ote Monthly forecast figures from latest sales department estimates International challenge split estimated
etween November and December is subject to modification based upon inventory availability

1997 plan figures are overstated by $5MM in order to tie detailed bottoms up forecast to financial plan

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER



CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

progr: ppl

NOT A CERTIFIED COPY

Sunbeam Corporation
Category: Appliances
Driving to Success: Top Line Fourth Quarter Objectives

I. Sales Programs

1) "Out with the Old, in with the New MixMaster" Deal
- For incremental 4th quarter merchandising of the 2360-2 Stand Mixer and commmitment to carry the new stand mixer in '98, receive discounted price ($65.00) on old unit and special pricing on the new Mixmaster ($75)

2) Pull first quarter bread maker shipments into 4th quarter
- For all bread shipments between 12/5 and 12/28, receive 7-10% discount or special GWP offers with Oster Designer SKUs

3) GWP (gift with purchase) merchandising
- free carafes with coffee makers
- free knife pack in with steamers
- with shiskabob attachment with Oster Designer rotisseries

4) Million Dollar "deals"
- Mixed assortment of products that hit a $14 99 or $19 99 deal price in return for million dollar order

AA166205
Confidential Treatment Requested
by Arthur Andersen LLP

016254

CPH0062521
16div-020548

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam Corporation
Category: Appliances and Garment Care
Driving to Success: Top Line Fourth Quarter Objectives

II. Sales Targets by Account
Whole $'s

Customer:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
1) Wal*Mart	6,499,978	7,757,865	7,921,910	22,179,753
2) Price Costco	4,265,712	4,296,775	4,496,775	13,059,262
3) Kmart	4,207,136	3,446,296	4,864,197	12,517,629
4) Sears	1,570,880	3,128,084	3,128,084	7,827,048
5) PHD	969,949	1,496,760	2,296,760	4,763,469
6) Service Merchandise	730,798	1,841,853	1,841,853	4,414,504
7) JC Penney	443,048	1,169,867	1,169,867	2,782,782
8) Best Buy	1,657,229	200,000	850,000	2,707,229
9) Sam's Club	1,385,667	500,000	500,000	2,385,667
10) Montgomery Wards	175,940	1,299,121	866,080	2,341,141
All Others	10,793,663	25,863,379	26,664,474	63,321,516
Total	32,700,000	51,000,000	54,600,000	138,300,000

AA166206
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062522

016255

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Appliances and Garment Care
Driving to Success: Top Line Fourth Quarter Objectives

III. Sales Targets by Product Line
Whole $'s

	October $ Actual	November $ Forecast	December $ Forecast	4th Quarter Subtotal	Upside Potential	Potential From Excess Inventory	Revised Total
Blenders	$7,417,000	$7,100,000	$3,000,000	$17,517,000	$2,500,000		$20,017,000
Hand Mixers	$1,246,000	$2,288,794	$1,426,727	$4,959,521	$200,000	$2,500,000	$7,659,521
Stand Mixers	$4,535,000	$5,295,750	$4,318,302	$14,149,052		$2,000,000	$16,149,052
Can Openers	$994,000	$811,700	$766,435	$2,572,135	$200,000	$500,000	$3,272,135
Breadmakers	$2,574,000	$7,300,000	$4,490,000	$14,364,000	$1,600,000	$10,000,000	$25,964,000
Coffeemakers	$1,198,000	$1,926,002	$1,346,566	$4,470,568	$200,000	$1,500,000	$6,170,568
Toasters	$1,458,000	$1,110,000	$862,750	$3,428,750			$3,428,750
Wafflemaker	$253,000	$466,000	$186,660	$905,660		$1,000,000	$1,905,660
Other Kitchen Appliances	$2,115,000	$1,749,427	$1,759,942	$5,624,369	$600,000	$1,000,000	$7,224,369
Vegetable Steamers	$994,000	$1,318,385	$883,890	$3,194,275		$3,500,000	$6,694,275
Toaster Ovens	$665,000	$1,485,000	$1,057,085	$3,207,085		$3,000,000	$6,207,085
Frying Pan	$859,000	$557,000	$340,000	$1,556,000			$1,556,000
Rotisserie	$836,000	$1,830,000	$757,860	$3,223,860	$200,000	$3,500,000	$6,923,860
Indoor Grills	$531,000	$227,000	$299,794	$1,057,794	$200,000	$300,000	$1,557,794
Food Processors	$177,000	$309,463	$304,282	$790,745	$200,000	$500,000	$1,490,745
Irons & Steamers	$5,136,000	$5,401,666	$4,356,922	$14,894,588	$400,000	$500,000	$15,794,588
Slow Cooker	$0	$384,410	$403,260	$787,670			$787,670
Deep Fryer	$1,014,000	$650,000	$281,300	$1,945,300			$1,945,300
Soft Serve Ice Cream	$1,286,000	$1,500,000	$797,860	$3,593,860			$3,593,860
TOTAL	$32,896,000	$41,706,597	$27,639,635	$102,242,232	$6,300,000	$29,800,000	$138,342,232

Note: Upside and excess inventory potential is not identified by category for each month as programs are presently being sold into the channels

NOT ACCREDITED COPY

AA166207
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062523

16div-020550

Sunbeam Corporation
Category: Appliances
Driving to Success: Top Line Fourth Quarter Objectives

IV. Other Initiatives for Success

1) Blender Motor Sourcing
- Sourcing 200,000 additional motors (100,000 for US demand) to meet shortages in the production versus forecasted volume

$2 5 million upside

2) Excess Inventory
- Driving down inventory levels in selected product lines via account specific buying incentives

Bread Makers	Mixers	Rotisseries	Toaster Ovens
Steamers	Coffee Makers	Hand Mixers	Waffle Makers

$19 5 million upside

NOT A CERTIFIED COPY

014257

AA166208
Confidential Treatment Requested
by Arthur Andersen LLP

Sunbeam

Q4 1997 Sales Objectives
Appliances

Sales Mgr.	Account Name	Rep Group	October	November	December	Total Q4 Obj
MASS						
Dave Bowen	Ames Department Stores	House Account	55 108	530 497	420 322	[illegible]
Dave Bowen	Bradlees Dist Ctr	Pearow ME	235 987	568 618	445 746	1 350 25[illegible]
Dave Bowen	Caldor Incorporated	House Account	294 805	852 777	425 183	1 572 767
John Hassen	Family Dollar Stores	Evans Co	0	0	0	0
Chris Kolosvary	Fred Meyer	McCaffery Associates	355 190	608 877	705 918	1 669 985
Dave Bowen	Hills Dept Stores	Pearow ME	236 037	275 385	183 590	695 013
Scott Stando	Kmart Stores	Wagner Devine	4 207 136	3 446 296	4 864 [illegible]971	12 517 429
Brenda Miller	Mayer	Wagner Devine	187 945	819 423	546 282	1 553 350
Brenda Miller	Montgomery Ward/Lechmere	Marketing Frontiers	175 940	1 299 121	866 080	2 341 141
Grant Fagan	Pamida Inc	Keller Myers & Young	121 835	50 000	50 000	221 835
John Hassen	Roses Stores Inc	Evans Co	57 413	251 308	167 539	476 250
Curtis Wright	Sears Roebuck	House Account	1 570 880	3 128 084	3 128 084	7 827 048
John Hassen	Service Merchandise	House Account	730 798	1 941 853	1 941 853	4 614 504
Brenda Miller	Shopko (Englewood)	Marketing Frontiers	200 947	402 669	268 446	872 062
Curtis Wright	Target NOC	Sweeney Group	4 160 550	5 651 795	5 651 795	15 464 140
Brenda Miller	Venture Stores Inc	Keller Myers & Young	242 458	528 723	352 482	1 123 663
		TOTAL MASS	12,832,829	20,255,427	19,927,328	53,003,584
DRUG						
Dave Williams	American Drug Stores	Direct	0	6 581	4 388	10 969
Tim Morgan	CVS/Revco (Combined)	House Account	0	4 922	3 281	8 203
Tim Morgan	Eckerd's (+ Fay's Thrift Drug)	Johnson Prescott Martin	399 368	50 000	50 000	499 368
Tim Morgan	Genovese Drug	House Account	47 045	10 000	10 000	67 045
Chris Kolosvary	Longs Drug	Morgan & Sampson	4 918	21 839	14 559	41 316
Williams/Kolosvary	M. Black & Sons Inc	Morgan & Sampson	599 527	480 175	570 116	1 649 818
Chris Kolosvary	McKesson Drug	Morgan & Sampson	0	904	603	1 507
Tim Morgan	Rite Aid Corp (+ Payless Dr	House Account	50 397	609 449	406 299	1 066 145
Dave Williams	Walgreen's	House Account	78 590	201 217	134 145	413 952
		TOTAL DRUG	1,179,845	1,388,087	1,193,391	3,758,323
CLUB						
Dave Bowen	BJ's Wholesale	Pearow ME	253,364	506 782	337 854	1,098 000
Terry Reilly	Price Costco	McCaffery Associates	4 263 712	4 296 775	4 496 775	13 059 262
		TOTAL CLUB	4,519,076	4,803,557	4,834,629	14,157,262
HOME CENTER						
Grant Fagan	Ace Hardware Company	F & M Marketing	352 357	105 209	70,139	527,705
Grant Fagan	Cotter (& Servistar/Coast2C)	F & M Marketing	497 963	734 310	489 540	1,721 713
Hassett	Lowes Inc	Evans Co	0	144 564	94 269	238 833
Morgan	Home Depot	Sales Managers Inc	10 232	10 000	10 000	30 232
		TOTAL HOME CENTER	860,481	994,083	663,949	2,518,483
TEAM WAL-MART						
Chuck Myers	Wal-Mart Stores	Team Walmart	6 499 878	7 737 865	7 921 910	22,179 753
Greg DeMeyers	Sam's Club	Team Walmart	1 385 667	500 000	500 000	2,385,667
		TOTAL TEAM WAL-MART	7,885,545	8,237,865	8,421,910	24,565,420

NOT A CERTIFIED COPY

014258

AA166209
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062525
16div-020552

Sunbeam

Q4 1997 Sales Objectives
Appliances

Sales Mgr.	Account Name	Rep Group	October	November	December	Total Q4 Obj
DEPARTMENT (FEDERATED)						
John Dressler	Bloomingdale's	House Account	0	5 956	4 537	10 493
Dale Tubbs	Bon Marche	House Account	55 338	158 517	112 344	326 199
Sheila Tennaro	Burdines	Johnson Prescott Harris	106 419	174 869	116 580	397 867
John Dressler	Macy's E/A&S/ Jordan Marsh	House Account	330 878	458 362	458 362	1 247 602
Dale Tubbs	Macy's West	Morgan & Sampson	312 961	501 493	400 995	1 315 449
Sheila Tennaro	Richs Lazarus/Goldsmith	Johnson Prescott Harris	220 297	122 283	88 242	440 897
John Dressler	Sterns	Pezrow	50 271	176 220	114 147	350 638
		TOTAL DEPT (FEDERATED)	1 086,357	1 718,780	1,295,307	4,100,444
DEPARTMENT						
Barry Jones	Army Air Force Exchange	Evans Marketing	541 285	292 543	193 029	1 026 857
Mike Masterson	Bed Bath & Beyond	House Account	322 587	131 796	237 864	692 247
Jerry Jones	Dillards	House Account	0	0	0	0
John Dressler	I. Lemmoff & Co	Pezrow	54 009	323 178	465 452	842 639
Barry Jones	J C Penney	House Account	443 048	1 169 667	1 169 667	2 782 782
Barry Jones	Kohl's Dept Store	Marketing Promotions	301 159	643 708	429 138	1 374 005
John Dressler	Lechters	Pezrow	655 503	100 000	100 000	855 503
Mike Masterson	Linen's N Things	Pezrow (House - Blanket)	225 811	190 000	310 000	725 811
Jerry Jones	Mercantile Stores	House Account	274 338	139 334	92 889	456 559
Dale Tubbs	Mervyn's	Morgan & Sampson	97 018	813 081	813 091	1 723 198
Barry Jones	Navy Exchange	Evans Marketing	67 940	100 601	67 201	235 942
Jerry Jones	Professional Housewares	House Account	969 949	1 496 760	2 296 760	4 763 469
Dale Tubbs	Robinsons May	House Account	158 150	557 842	557 842	1 273 834
Sheila Tennaro	Younker's Division	Kistler Mumz & Young	52,180	215 250	143 500	410 930
		TOTAL DEPARTMENT	4,112,973	6,174,170	6,878,533	17,165,776
ALTERNATIVE MARKETS						
Mike Masterson	Best Buy	Signature Group	1 857 229	200 000	650 000	2 707 229
Mike Masterson	Fingerhut Corporation (DSI)	Signature Group	5 499	201,255	134 170	340 924
Mike Masterson	Home Shopping Network	Johnson Prescott Harris	0	276 510	184 340	460 850
Mike Masterson	Office Depot Inc	Johnson Prescott Harris	0	31 096	20 731	51 827
Mike Masterson	QVC Inc	Dynamic Marketing	951 608	205 562	387 041	1 544 211
		TOTAL ALT. MARKETS	2,814,336	914,423	1,376,282	5,105,041
	TOTAL REILLY		21,396,337	28,352,577	28,196,778	78,544,693
	TOTAL LOCKE		5,199,338	7,892,948	8,173,940	21,266,229
	TOTAL MYERS		7,885,646	8,237,865	8,431,918	24,555,429
	TOTAL KEY ACCOUNTS		35,081,312	44,503,392	44,791,629	124,376,333
	LESS SALES REVERSAL		-4,500,000			
	TOTAL ALL OTHER		2,118,688	6,496,608	9,808,371	12,923,667
	GRAND TOTAL		32,700,000	51,000,000	54,600,000	138,300,000

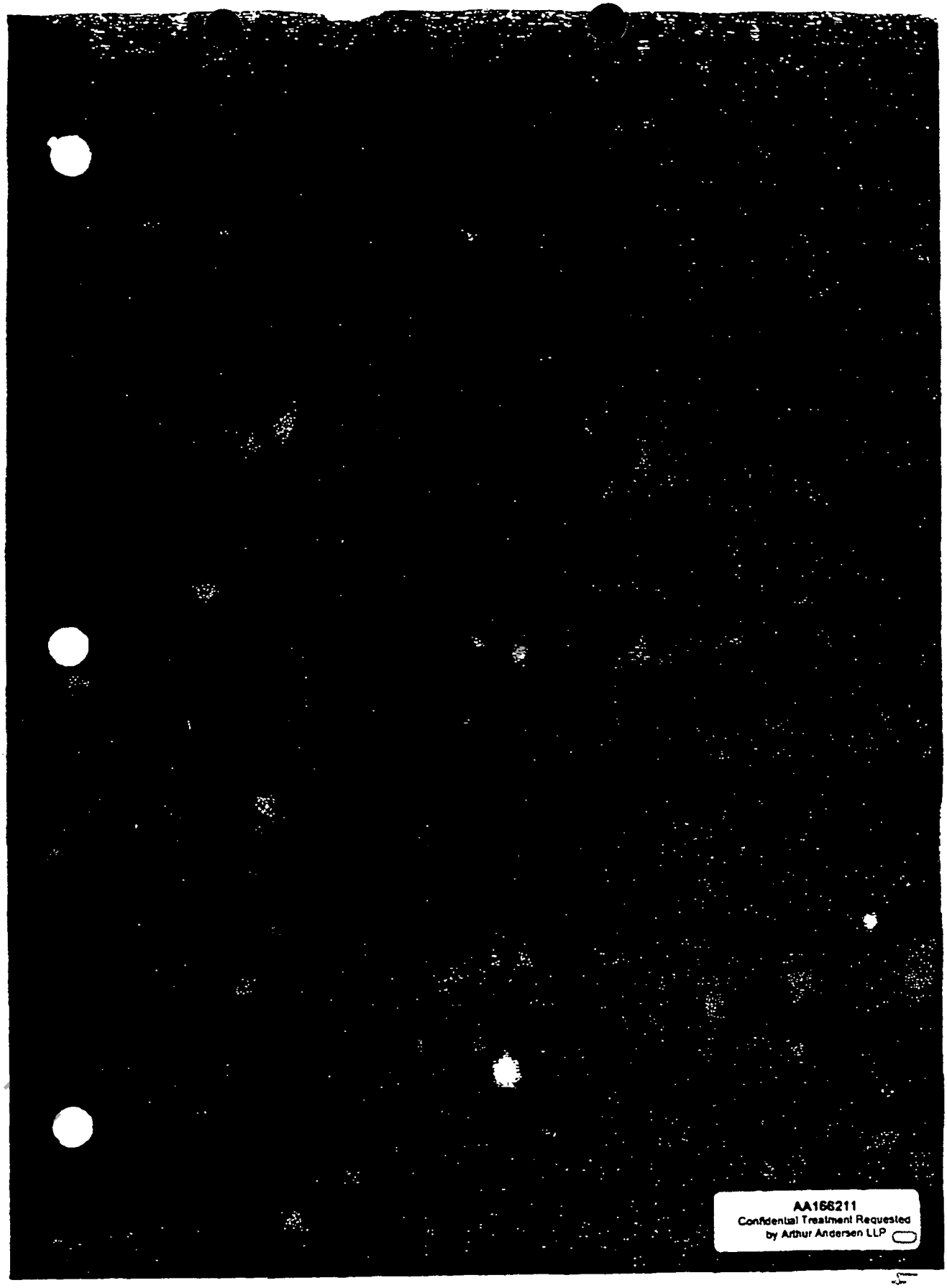
NOT A CERTIFIED COPY

0114259

AA166210
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062526
16div-020553



CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Health at Home
Driving to Success: Top Line Fourth Quarter Objectives

I. Sales Programs

1) Cough & Cold Season Drive Program
Available to all accounts who purchase add'l 4th quarter volume (above forecast) by scheduling additional cough & cold off-shelf displays, end-cap displays, TPR's or additional seasonal ads.

- Additional 3% Co-op advertising accrual on heating pads & Vaps/Hums
- March 15th Dating
- Confirmed order by no later than November 21st and Shipment prior to December 23rd
- Targeting Drug accounts and select nat'l/regional mass merchants
- Anticipated net extra volume is $1,000,000

2) Fourth Quarter "Scale Sale"
Special pricing and pallet program on select (excess inventory items) to drive distribution and off-shelf display

- Three your choice pallets to achieve $19 99, $24 99 and $29 99 price points
- Special pricing for 4th quarter shipment
- Confirmed orders by no later than November 21st with shipment before December 23rd
- Targeting Home Centers and select nat'l/regional mass merchants
- Anticipated next incremental volume is $1,000,000
- Target accounts: Home Centers, Clubs, Mont. Ward's

AA166212
Confidential Treatment Requested
by Arthur Andersen LLP

192110

CPH0062528
16div-020555

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

acct,hah

Sunbeam Corporation
Category: Health at Home
Driving to Success: Top Line Fourth Quarter Objectives

II. Sales Targets by Account
Whole $'s

Customer:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
1) Wal-Mart	1,684,900	2,219,060	1,850,000	5,753,960
2) Walgreen's	1,465,857	2,045,998	1,363,999	4,875,854
3) K-Mart	537,180	2,300,000	2,500,000	5,337,180
4) American Drug	642,879	996,752	664,501	2,304,132
5) Rite Aid	545,607	1,031,695	687,797	2,265,099
6) Eckerd's	903,826	914,885	1,343,256	3,161,967
7) CVS/Revco	358,019	541,121	610,747	1,509,887
8) Target	77,326	506,003	337,335	920,664
9) McKesson	341,779	285,112	190,075	816,966
10) Meijer's	222,558	277,642	185,094	685,294
Subtotal Top 10 Accts	6,779,931	11,118,268	9,732,804	27,631,003
All Others	3,002,069	7,099,732	7,267,196	17,368,997
Total	9,782,000	18,218,000	17,000,000	45,000,000

NOT A CERTIFIED COPY

AA166213
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062529

292910

16div-020556

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Inc.Item

Sunbeam Corporation
Category: Health at Home
Driving to Success: Top Line Fourth Quarter Objectives

III. Sales Targets by Product Line
Whole $'s

Product Line:	October $ Actual	November $ Forecast	December $ Forecast	4th Quarter Subtotal	Nov/Dec Upside	Nov/Dec Excess	Total Ups/Excess	Revised Total
Heating Pads	3,919,000	4,534,000	3,617,000	12,070,000	750,000	135,000	885,000	12,955,000
Vaps & Hums	2,421,000	3,300,000	2,480,000	8,201,000	750,000	75,000	825,000	9,026,000
Health & Monitoring	904,000	1,850,000	1,834,000	4,388,000		3,300,000	3,300,000	7,688,000
Air	447,000	1,050,000	830,000	2,327,000		1,190,000	1,190,000	3,517,000
New Air/Water	-	-	-	-	1,000,000	-	1,000,000	1,000,000
Scales	1,401,000	2,000,000	1,646,000	5,047,000	1,500,000	590,000	2,090,000	7,137,000
Massagers	249,000	450,000	298,000	997,000		570,000	570,000	1,567,000
Dental	118,000	372,000	200,000	690,000		140,000	140,000	830,000
Other	323,000	550,000	407,000	1,280,000		-	-	1,280,000
Total	$ 9,782,000	$ 14,106,000	$ 11,112,000	$ 35,000,000	$ 4,000,000	$ 6,000,000	$ 10,000,000	$ 45,000,000

Note Upside and excess inventory potential is not identified by product line for each month as programs are presently being sold into the channels

NOT A CERTIFIED COPY

AA166214
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062530

016263

16div-020557

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

other.nah

Sunbeam Corporation
Category: Health at Home
Driving to Success: Top Line Fourth Quarter Objectives

IV. Other Initiatives for Success

1) Reduce inventories on selected top 40 SKU's with excess inventory by reducing prices for fourth quarter shipments.

- Confirmed orders by Nov 21st
- Shipments by December 23rd
- Pricing is "dead net" --- no additional co-op accruals

Model	Item	Inventory	Target Accts
4210	Playskool Toothbrush	27,000	Drug
1612	Pedi-Spa	13,500	Drug
7623	Manual Inflate Digital BPM	115,000	Drug
7654	Auto-Inflate Digital BPM	75,000	Drug
	Thermometers	300,000	Drug/Mass
2588	100 CFM Air Cleaners	15,000	Menards, Home Depot
12680	Digital Scale	20,000	Home Centers, Drug
2590	150 CFM Air Cleaners	8,000	Menards, Home Depot

NOT A CERTIFIED COPY

AA166215
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062531

16div-020558

Sunbeam

Q4 1997 Sales Objectives
Health At Home

Sales Mgr.	Account Name	Rep Group	October	November	December	Total Q4 Obj
MASS						
Dave Bowen	Ames Department Stores	House Account	49 238	353 852	235 789	638 [illegible]
Dave Bowen	Bradlees Dist Ctr	Petrow NE	25 508	31 663	21 109	[illegible] 280
Dave Bowen	Caldor Incorporated	House Account	22 792	15 231	10 154	48 177
John Hassett	Family Dollar Stores	Evans Co	0	0	0	0
Chris Kolosvary	Fred Meyer	McCaffery Associates	88 716	264 085	176 056	528 857
Dave Bowen	Hills Dept Stores	Petrow NE	52 192	[illegible] 025	47 350	170 567
Scott Brandt	Kmart Stores	Adams Downs	537 180	2 300 000	2 500 000	5 337 180
Brenda Miller	Meijer	Adams & Downs	222 558	277 542	185 094	685 294
Brenda Miller	Montgomery Ward/Lechmere	Marketing Frontiers	76	20 919	13 346	34 789
Grant Fagan	Pamida Inc	Keller Muentz & Young	12 244	248 813	147 942	407 099
John Hassett	Roses Stores Inc	Evans Co	89 462	86 358	57 571	233 389
Curtis Wright	Sears Roebuck	House Account	108 409	185 181	123 441	417 031
John Hassett	Service Merchandise	House Account	48 878	163 [illegible] 58	108 772	320 808
Brenda Miller	Shopko (Englewood)	Marketing Frontiers	122 374	200 895	133 930	457 200
Curtis Wright	Target NOC	Sweeney Group	77 326	506 003	337 335	920 665
Brenda Miller	Venture Stores Inc	Keller Muentz & Young	12 921	201 477	134 318	348 216
		TOTAL MASS	1,469,322	4,924,181	4,232,787	10,626,291
DRUG						
Dave Williams	American Drug Stores	Drexel	642 879	996 752	664 501	2 304 132
Tim Morgan	CVS/Revco (Combined)	House Account	358 019	541 121	610 747	1 509 887
Tim Morgan	Eckerd's (+ Fay's Thrift Drug)	Johnson Prescott Hamm	903 826	914 689	1 342 256	3 181 967
Tim Morgan	Genovese Drug	House Account	27 562	144 648	96 431	268 639
Chris Kolosvary	Longs Drug	Morgan & Sampson	105 511	261 071	174 047	540 630
Wilkins/Kolosvary	M. Block & Sons Inc	Morgan & Sampson	50 227	242 115	161 410	453 752
Chris Kolosvary	McKesson Drug	Morgan & Sampson	341 779	285 112	190 075	816 965
Tim Morgan	Rite Aid Corp (+ Payless D)	House Account	545 807	1 031 895	687 797	2 265 099
Dave Williams	Walgreen's	House Account	1 485 857	2 045 988	1 383 999	4 875 853
		TOTAL DRUG	4,441,267	6,463,398	5,292,262	16,196,924
CLUB						
Dave Bowen	BJ's Wholesale	Petrow NE	0	0	0	0
Terry Reilly	Price Costco	McCaffery Associates	0	0	0	0
		TOTAL CLUB	0	0	0	0
HOME CENTER						
Grant Fagan	Ace Hardware Company	F & M Marketing	98 280	45 208	30 139	173 627
Grant Fagan	Coast (& ServistarCoast2C)	F & M Marketing	172 771	185 294	110 198	468 262
Hassett	Lowes Inc.	Evans Co	20 302	5 000	5 000	30 302
Hartman	Home Depot	Sales Managers Inc	0	14 725	9 817	24 542
		TOTAL HOME CENTER	291,353	250,228	155,152	696,733
TEAM WAL-MART						
Chuck Myers	Wal-Mart Stores	Team Warman	1 884 900	2 219 080	1 650 000	5 753 980
Greg Delaneyers	Sam's Club	Team Warman	0	90 562	60 368	150 930
		TOTAL TEAM WAL-MART	1,884,900	2,309,642	1,910,368	5,904,930

NOT ACERTIFIED COPY

4265

AA166216
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062532
16div-020559

Sunbeam

Q4 1997 Sales Objectives
Health At Home

Sales Mgr	Account Name	Rep Group	October	November	December	Total Q4 Obj
DEPARTMENT (FEDERATED)						
John Dressler	Bloomingdale's	House Account	0	0	0	0
Dale Tubbs	Bon Marche	House Account	0	6 409	4 273	10 682
Sheila Tennaro	Burdines	Johnson Prescott Hamm	112	13 220	8 813	22 922
John Dressler	Macy's E/A&S/ Jordan Marsh	House Account	12 687	84 833	56 555	154 075
Dale Tubbs	Macy's West	Morgan & Sampson	3 138	17 721	11 814	32 674
Sheila Tennaro	Rich's Lazarus/Goldsmith	Johnson Prescott Hamm	3 152	43 345	28 897	75 394
John Dressler	Sterns	Perrow	140	447	298	884
		TOTAL DEPT (FEDERATED)	19,005	165,976	110 630	295,631
DEPARTMENT						
Barry Jones	Army Air Force Exchange	Evans Military	147 581	28,232	18 821	194 634
Mike Masterson	Bed Bath & Beyond	House Account	0	1 425	950	2 375
Jerry Jones	Dillards	House Account	0	0	0	0
John Dressler	I Lehmaff & Co	Perrow	8 194	1 841	1 228	11 263
Barry Jones	J C Penney	House Account	82 159	123 364	82 243	287 782
Barry Jones	Kohl's Dept Store	Marketing Frontiers	0	0	0	0
John Dressler	Lechters	Perrow	494	0	0	494
Mike Masterson	Linen's N Things	Perrow (House Blanket)	0	0	0	0
Jerry Jones	Mercantile Stores	House Account	15 748	2 145	1 430	19 324
Dale Tubbs	Mervyn's	Morgan & Sampson	0	0	0	0
Barry Jones	Navy Exchange	Evans Military	13 205	89 013	59 341	161 558
Jerry Jones	Professional Housewares	House Account	26 775	11 480	7 653	45 909
Dale Tubbs	Robinsons May	House Account	0	0	0	0
Sheila Tennaro	Younker's Division	Keller Myers & Young	0	0	0	0
		TOTAL DEPARTMENT	274,152	257,500	171 667	703,319
ALTERNATIVE MARKETS						
Mike Masterson	Best Buy	Signature Group	10 842	0	0	10 842
Mike Masterson	Fingerhut Corporation (OSI)	Signature Group	14 978	121 477	80 985	217 437
Mike Masterson	Home Shopping Network	Johnson Prescott Hamm	0	23 490	15 660	39 150
Mike Masterson	Office Depot Inc	Johnson Prescott Hamm	147 370	364 822	243 081	755 073
Mike Masterson	QVC Inc	Dynamic Marketing	33	57,319	38 213	95 565
		TOTAL ALT. MARKETS	173,231	568,908	377,939	1,118,068
	TOTAL RELLY		6,378,163	12,184,712	10,858,141	28,618,016
	TOTAL LOCKE		293,157	423,476	282,317	998,949
	TOTAL MYERS		1,664,906	2,309,642	1,910,388	5,904,936
	TOTAL KEY ACCOUNTS		8,353,229	14,917,830	12,250,845	35,521,895
	LESS SALES REVERSAL		-790,000			
	TOTAL ALL OTHER		2,236,786	3,282,170	4,749,155	9,478,109
	GRAND TOTAL		9,800,000	18,200,000	17,000,000	45,000,000

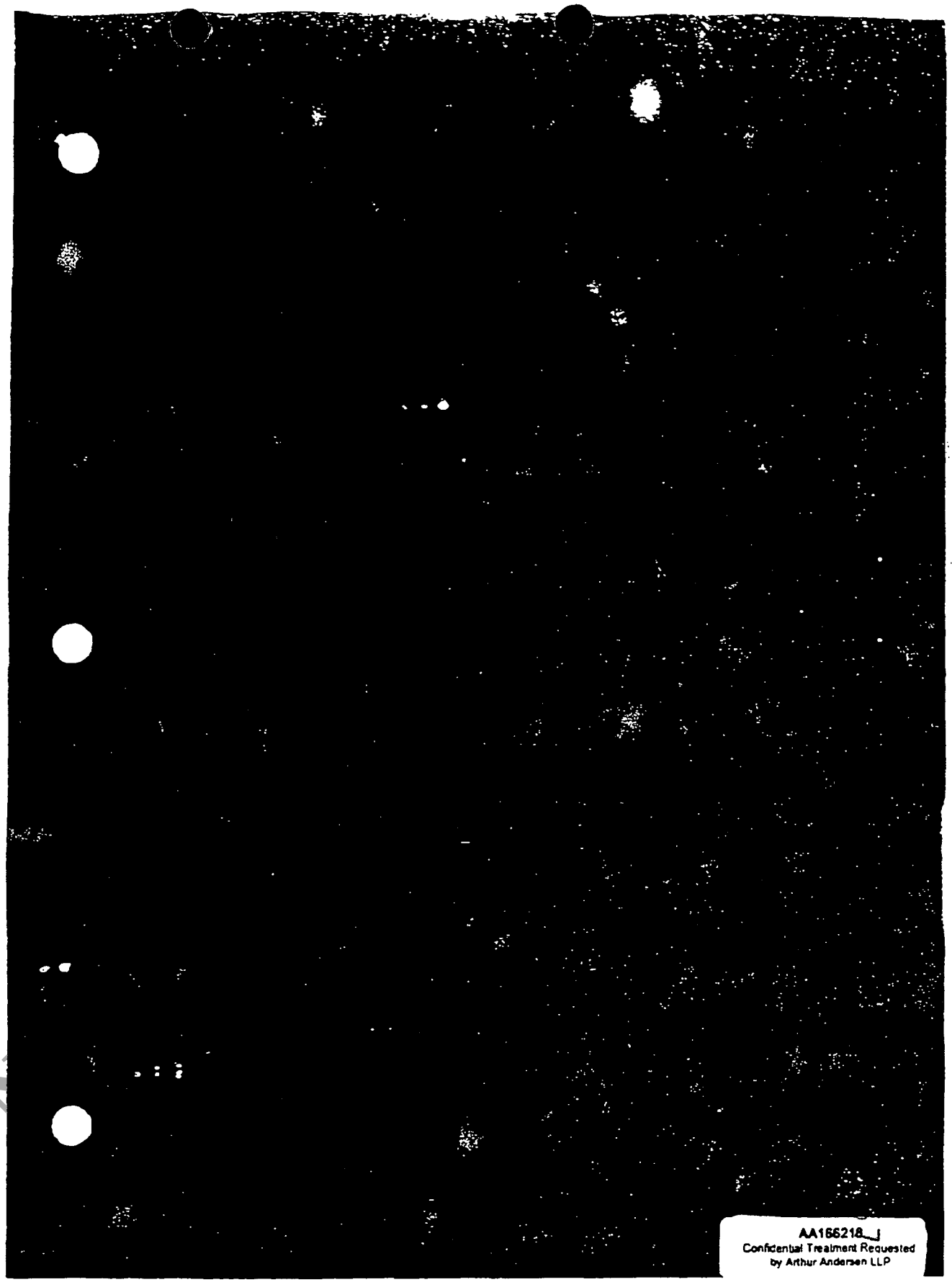
NOT A CERTIFIED COPY

99 1742

AA166217
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062533
16div-020560



AA166218
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

progr .c

Sunbeam Corporation
Category: Personal Care and Comfort
Driving to Success: Top Line Fourth Quarter Objectives

I. Sales Programs

A. Stock up for the January $8 rebate/radio advertising program on electric blankets, throws, and pads.

1) Twin/Full Size End of Year Blanket Special

- Buy additional twin or full size blankets in addition to the forecast at a special price
- Orders need to be received by 12/15, and will be shipped by 12/19
- 5% orders of 5000-20000 units
- 8% orders of 20001-40000
- 10% orders of 40001+
- 200,000 units available
- primarily inline models, 80/20 fabric

2) Heated Throw and Mattress Pads Special

- Buy incremental heated throws at a special price of $20 70 Order has to be incremental to the Forecast
- 60,000 units available
- Buy incremental mattress pads at a -5% discount Order has to be incremental to the Forecast
- 30,000 units available

B. Incremental shower massager opportunity

1) All shower Massagers will be -10% off on all orders (incremental to Forecast) before 12/15 Immediate availability.

- Target accounts are Costco, Menards, Kmart, Walmart, Target, Service Merchandise, Lowes

PRICES ARE DEAD NET, LIMITED QUANTITIES AVAILABLE

NOT A CERTIFIED COPY

AA168219
Confidential Treatment Requested
by Arthur Andersen LLP

892110

CPH0062535

16div-020562

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Personal Care and Comfort
Driving to Success: Top Line Fourth Quarter Objectives

II. Sales Targets by Account
Whole $'s

Customer:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
1) JC Penney	4,145,442	4,109,882	2,739,921	10,995,245
2) Wal*Mart	4,899,767	2,429,600	2,119,733	9,449,100
3) Kmart	4,040,299	2,842,965	2,228,644	9,111,908
4) Sears	1,839,045	2,381,128	1,587,418	5,807,591
5) Target	897,706	2,537,101	1,858,067	5,292,874
6) Family Dollar	1,021,801	200,000	800,000	2,021,801
7) Price Costco	1,499,627	570,224	380,149	2,450,000
8) Mervyn's	963,386	441,973	294,648	1,700,007
9) Walgreens	(90,813)	977,858	651,906	1,538,951
10) Sams Club	1,030,617	101,743	67,829	1,200,189
All Others	3,153,123	6,407,526	6,971,685	18,532,334
Total	23,400,000	25,000,000	19,700,000	68,100,000

NOT A CERTIFIED COPY

AA166220
Confidential Treatment Requested
by Arthur Andersen LLP

692110

CPH0062536

16div-020563

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Personal Care and Comfort
Driving to Success: Top Line Fourth Quarter Objectives

III. Sales Targets by Product Line
Whole $'s

Product Line:	October	November	December	Total
Clippers - Human	3,280,732	3,918,806	3,228,792	10,428,329
Clippers - Animal	133,297	159,222	131,187	423,706
Trimmers - Human	419,541	501,138	412,899	1,333,578
Trimmers - Animal	22,718	27,136	22,358	72,213
Other - Human	33,883	33,698	27,765	95,346
Other - Animal	(5,672)	-	-	(5,672)
Total Retail Clippers	3,884,499	4,640,000	3,823,000	12,347,499
Shower Massagers	317,356	250,000	1,186,000	1,753,356
Hair Dryers	402,146	110,000	180,000	692,146
Total Other Personal Care	719,502	360,000	1,366,000	2,445,502
Total Personal Care	4,604,001	5,000,000	5,189,000	14,793,001
Bedding Electric	16,413,340	18,150,000	13,356,000	47,919,340
Bedding Non Electric	(3,716)	-	-	(3,716)
Throws - Electric	1,308,721	1,150,000	715,000	3,173,721
Mattress Pads - Electric	1,138,718	700,000	440,000	2,278,718
Total Bedding	18,857,063	20,000,000	14,511,000	53,368,063
Total	23,461,064	25,000,000	19,700,000	68,161,064

NOT A CERTIFIED COPY

AA166221
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062537

16div-020564

2-2

[redacted]

[redacted]

[redacted]

other,pcc

Sunbeam Corporation
Category: Personal Care and Comfort
Driving to Success: Top Line Fourth Quarter Objectives

IV. Other Initiatives for Success

None

NOT A CERTIFIED COPY

014271

AA166222
Confidential Treatment Requested
by Arthur Andersen LLP

Sunbeam

Q4 1997 Sales Objectives
Bedding

Sales Mgr.	Account Name	Rep Group	October	November	December	Total Q4 Obj.
MASS						
Dave Bowen	Ames Department Stores	House Account	0	0	0	0
Dave Bowen	Bradlees Dist Ctr	Petrow NE	210 703	126 654	83 103	418 460
Dave Bowen	Caldor Incorporated	House Account	18 825	101 503	67 669	188 997
John Hassett	Family Dollar Stores	Evans Co	1 021 601	200 000	800 000	2 021 601
Chris Kolosvary	Fred Meyer	McCaffery Associates	1 427	110 138	73 424	184 987
Dave Bowen	Hills Dept Stores	Petrow NE	53 300	197 063	131 375	381 738
Scott Blando	Kmart Stores	Woods Downe	3 128 391	1 842 965	1 228 644	5 200 000
Brenda Miller	Meijer	Woods Downe	215 786	102 112	68 075	385 952
Brenda Miller	Montgomery Ward/Lechmere	Marketing Frontiers	512 410	112 594	75 036	900 000
Grant Fagan	Pamida Inc	Keller Mueniz & Young	0	0	0	0
John Hassett	Roses Stores Inc	Evans Co	117 794	64 659	43 106	225 559
Curtis Wright	Sears Roebuck	House Account	1 832 809	2 320 315	1 546 876	5 700 000
John Hassett	Service Merchandise	House Account	11 997	108 543	71 028	189 568
Brenda Miller	Shopko (Englewood)	Marketing Frontiers	71 242	282 548	188 366	542 156
Curtis Wright	Target NOC	Sweeney Group	677 719	2 032 101	1 358 067	4 072 887
Brenda Miller	Venture Stores Inc	Keller Mueniz & Young	159 352	283 651	189 100	632 103
		TOTAL MASS	8,131,536	7,885,803	5,923,889	21,941,208
DRUG						
Dave Wilkins	American Drug Stores	Direct	0	0	0	0
Tim Morgan	CVS/Revco (Combined)	House Account	0	0	0	0
Tim Morgan	Eckerd's (+ Fay's Thrift Drug)	Johnson Prescott Harris	9 898	70 024	46 683	126 604
Tim Morgan	Genovese Drug	House Account	0	0	0	0
Chris Kolosvary	Longs Drug	Morgan & Samoson	0	0	0	0
Wilkins/Kolosvary	M Black & Sons Inc	Morgan & Samoson	-466 770	474 084	316 062	323 376
Chris Kolosvary	McKesson Drug	Morgan & Samoson	0	65	43	108
Tim Morgan	Rite Aid Corp (+ Payless D)	House Account	0	192 230	128 153	320 384
Dave Wilkins	Walgreen's	House Account	-90 813	972 981	648 854	1 530 822
		TOTAL DRUG	-549,685	1,709,384	1,139,596	2,299,308
CLUB						
Dave Bowen	BJ's Wholesale	Petrow NE	68 947	5 000	5 000	78 947
Terry Reilly	Price Costco	McCaffery Associates	1 205 998	416 401	277 601	1 900 000
		TOTAL CLUB	1,274,945	421,401	282,601	1,978,947
HOME CENTER						
Grant Fagan	Ace Hardware Company	F & M Marketing	3 935	5 651	3 767	13 354
Grant Fagan	Cotter (& Servistar/Coast2C)	F & M Marketing	3 403	11 539	7 692	22 634
Hassett	Lowes Inc	Evans Co	0	0	0	0
Harrison	Home Depot	Sales Managers Inc	0	0	0	0
		TOTAL HOME CENTER	7,338	17,190	11,460	35,988
TEAM WAL-MART						
Chuck Myers	Wal-Mart Stores	Team Walmart	3 450 867	929 600	619,733	5 000 000
Greg Dalleyrare	Sam's Club	Team Walmart	1,030,428	101 743	67 829	1 200,000
		TOTAL TEAM WAL-MART	4,481,295	1,031,343	687,562	6,200,000

NOT A CERTIFIED COPY

AA166223
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0062539
16div-020566

Sunbeam

Q4 1997 Sales Objectives
Bedding

Sales Mgr	Account Name	Rep Group	October	November	December	Total Q4 Obj
DEPARTMENT (FEDERATED)						
John Dressler	Bloomingdale's	House Account	55 385	5 000	5 000	65 385
Dale Tubbs	Bon Marche	House Account	29 613	49 166	32 777	111 556
Sheila Tennare	Burdines	Johnson Prescott Hamm	673	22 196	14 797	37 667
John Dressler	Macy's E/A&S/ Jordan Marsh	House Account	89 803	10 000	10 000	109 803
Dale Tubbs	Macy's West	Morgan & Sampson	50 489	93 755	62 504	206 748
Sheila Tennare	Richs Lazarus/Goldsmith	Johnson Prescott Hamm	37 395	81 963	54 644	174 004
John Dressler	Sterns	Penow	50 073	10 000	10 000	70 073
		TOTAL DEPT (FEDERATED)	400,231	272,082	189,722	862,033
DEPARTMENT						
Barry Jones	Army Air Force Exchange	Evans Mallory	0	141 064	94 043	235 106
Mike Masterson	Bed Bath & Beyond	House Account	237 120	91 554	61 036	389 709
Jerry Jones	Dillards	House Account	216 921	20 000	120 000	356 921
John Dressler	I. Lennhoff & Co	Penow	0	0	0	0
Barry Jones	J C Penney	House Account	3 996 574	4 106 009	2 737 339	10 839 922
Barry Jones	Kohl's Dept Store	Marketing Frontiers	537 093	157 744	105 163	800 000
John Dressler	Leclers	Penow	0	0	0	0
Mike Masterson	Linen's N Things	Penow (House Blanket)	363 897	50 000	80 000	493 897
Jerry Jones	Mermaids Stores	House Account	93 960	147 968	98 646	340 574
Dale Tubbs	Mervyn's	Morgan & Sampson	963 379	441 973	294 648	1 700 000
Barry Jones	Navy Exchange	Evans Mallory	0	429	286	715
Jerry Jones	Professional Housewares	House Account	183	1 806	1 071	2 494
Dale Tubbs	Robinsons May	House Account	197 777	45 362	30 241	273 380
Sheila Tennare	Younger's Division	Keller Myers & Young	28 060	5 000	5 000	38 060
		TOTAL DEPARTMENT	6,634,558	5,208,708	3,627,472	15,470,779
ALTERNATIVE MARKETS						
Mike Masterson	Best Buy	Syndicate Group	0	0	0	0
Mike Masterson	Fingerhut Corporation (DSI)	Signature Group	170 721	313 293	208 862	692 876
Mike Masterson	Home Shopping Network	Johnson Prescott Hamm	0	0	0	0
Mike Masterson	Office Depot Inc	Johnson Prescott Hamm	0	0	0	0
Mike Masterson	QVC Inc	Dynamic Marketing	0	0	0	0
		TOTAL ALT. MARKETS	170,721	313,293	208,862	692,876
	TOTAL REILLY		9,834,856	10,347,082	7,566,388	26,948,324
	TOTAL LOCKE		7,034,829	5,486,791	3,817,194	16,332,814
	TOTAL MYERS		4,481,055	1,631,343	687,562	6,200,000
	TOTAL KEY ACCOUNTS		20,550,779	16,535,216	12,071,144	49,481,138
	LESS SALES REVERSAL		-3,900,000			
	TOTAL ALL OTHER		1,421,221	3,940,783	2,656,856	8,018,862
	GRAND TOTAL		18,072,000	19,900,000	14,728,000	53,100,000

NOT ACCREDITED COPY

AA166224
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH0062540
16div-020567

Sunbeam

Q4 1997 Sales Objectives
Personal Care & Clippers

Sales Mgr.	Account Name	Rep Group	October	November	December	Total Q4 Obj
MASS						
Dave Bowen	Ames Department Stores	House Account	0	25 583	17 055	42 533
Dave Bowen	Bradlees Dist Ctr	Pezrow NE	97 202	124 474	32 982	254 658
Dave Bowen	Caldor Incorporated	House Account	23 917	30 929	33 953	108 399
John Hassett	Family Dollar Stores	Evans Co	0	0	0	0
Chris Kolosvary	Fred Meyer	McCaffery Associates	88 996	25 449	16 966	131 411
Dave Bowen	Hills Dept Stores	Pezrow NE	17 814	53 351	35 901	107 566
Scott Blanco	Kmart Stores	Hobbs Downe	911 908	1 000 000	1 000 000	2 911 908
Brenda Miller	Meijer	Hobbs Downe	4 752	42 223	28 149	75 123
Brenda Miller	Montgomery Ward/Lechmere	Manning Fromers	7 282	15 377	10 551	32 390
Grant Fagan	Pamida Inc	Keller Muentz & Young	0	4 762	3 174	7 936
John Hassett	Roses Stores Inc	Evans Co	7 380	28 982	19 321	55 683
Curtis Wright	Sears Roebuck	House Account	8 236	50 813	48 542	107 590
John Hassett	Service Merchandise	House Account	80 190	70 000	70 000	220 190
Brenda Miller	Shopko (Englewood)	Manning Fromers	14 414	108 926	72 617	195 958
Curtis Wright	Target NOC	Sweeney Group	219 987	500 000	500 000	1 219 987
Brenda Miller	Venture Stores Inc	Keller Muentz & Young	26 558	40 817	27 078	94 253
		TOTAL MASS	1,466,196	2,151,682	1,987,788	5,575,667
DRUG						
Dave Williams	American Drug Stores	Direct	132	371 921	247 947	620 000
Tim Morgan	CVS/Revco (Combined)	House Account	0	0	0	0
Tim Morgan	Eckerd s (+ Fay s Thrift Drug)	Johnson Prescott Horton	292 426	0	0	292 426
Tim Morgan	Genovese Drug	House Account	0	0	0	0
Chris Kolosvary	Longs Drug	Morgan & Sampson	0	299	199	498
Williams/Kolosvary	M Block & Sons Inc	Morgan & Sampson	16 539	73 823	49 215	139 577
Chris Kolosvary	McKesson Drug	Morgan & Sampson	0	0	0	0
Tim Morgan	Rite Aid Corp (+ Payless D)	House Account	422 025	35 203	24 136	482 364
Dave Williams	Walgreen's	House Account	0	4 877	3 252	8 129
		TOTAL DRUG	731,122	487,123	324,749	1,542,994
CLUB						
Dave Bowen	BJ s Wholesale	Pezrow NE	22,590	52 843	35 229	110 621
Terry Reilly	Price Costco	McCaffery Associates	293 829	153 823	102 548	550 000
		TOTAL CLUB	316,179	206,665	137,777	660,621
HOME CENTER						
Grant Fagan	Ace Hardware Company	P & M Marketing	12,743	32 131	21 421	66 295
Grant Fagan	Coast (& Servistar/Coast2C)	P & M Marketing	13 181	38 383	25 588	77,152
Harrison	Home Depot	Sales Managers Inc	0	19 492	12 994	32,486
Hassett	Lowes Inc	Evans Co	28 226	0	0	28 226
		TOTAL HOME CENTER	54,150	90,005	60,004	204,159
TEAM WAL-MART						
Greg Deklewyn	Sam s Club	Team Walmart	189	0	0	189
Chuck Myers	Wal-Mart Stores	Team Walmart	1 449,100	1 500 000	1 500 000	4 449,100
		TOTAL TEAM WAL-MART	1,449,289	1,500,000	1,500,000	4,449,289

NOT A CERTIFIED COPY

AA166225
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062541
16div-020568

Sunbeam

Q4 1997 Sales Objectives
Personal Care & Clippers

Sales Mgr	Account Name	Rep Group	October	November	December	Total Q4 Obj
DEPARTMENT (FEDERATED)						
John Dressler	Bloomingdale's	House Account	0	0	0	0
Dale Tubbs	Bon Marche	House Account	0	369	257	543
Sheila Tennaro	Burdines	Johnson Prescott Hamm	0	10 407	6 938	17 345
John Dressler	Macy's E/A&S/ Jordan Marsh	House Account	8 739	31 074	20 716	60 529
Dale Tubbs	Macy's West	Morgan & Samesan	0	0	0	0
Sheila Tennaro	Richs Lazarus/Goldsmith	Johnson Prescott Hamm	1 833	15 410	10 274	27 517
John Dressler	Sterns	Pegrow	150	5 560	3 706	9 416
		TOTAL DEPT (FEDERATED)	10,722	62 837	41 891	115 450
DEPARTMENT						
Barry Jones	Army Air Force Exchange	Evans Mallory	16 668	257 395	178 063	451 646
Mike Masterson	Bed Bath & Beyond	House Account	0	0	0	0
Jerry Jones	Dillards	House Account	0	0	0	0
John Dressler	I. Lenmoff & Co	Pegrow	42 678	0	0	42 678
Barry Jones	J C Penney	House Account	14 668	3 673	2 582	21 323
Barry Jones	Kohl's Dept Store	Marketing Frontiers	0	0	0	0
John Dressler	Lechters	Pegrow	0	0	0	0
Mike Masterson	Linens N Things	Pegrow (House - Blanket)	0	0	0	0
Jerry Jones	Mercantile Stores	House Account	9 108	0	0	9 108
Dale Tubbs	Mervyn's	Morgan & Samesan	7	0	0	7
Barry Jones	Navy Exchange	Evans Mallory	2 995	17 382	11 575	31 931
Jerry Jones	Professional Housewares	House Account	26 799	0	0	26 799
Dale Tubbs	Robinsons May	House Account	0	0	0	0
Sheila Tennaro	Younker's Division	Keller Mudrit & Young	0	0	0	0
		TOTAL DEPARTMENT	133,143	288,330	192,328	613 893
ALTERNATIVE MARKETS						
Mike Masterson	Best Buy	Signature Group	0	0	0	0
Mike Masterson	Fingerhut Corporation (OSI)	Signature Group	0	89 569	59 713	149 282
Mike Masterson	Home Shopping Network	Johnson Prescott Hamm	0	0	0	0
Mike Masterson	Office Depot Inc	Johnson Prescott Hamm	0	0	0	0
Mike Masterson	QVC Inc	Dynamic Marketing	8	794	529	1,332
		TOTAL ALT. MARKETS	8	90,364	60,242	150,614
	TOTAL RELLY		2,567,855	3,025,848	2,540,560	8,134,055
	TOTAL LOCKE		143,888	381,187	234,111	729,143
	TOTAL MYERS		1,449,289	1,500,000	1,500,000	4,449,289
	TOTAL KEY ACCOUNTS		4,160,809	4,877,087	4,274,671	13,312,487
	TOTAL ALL OTHER		1,329,196	222,913	697,329	1,687,513
	GRAND TOTAL		4,928,000	5,100,000	4,972,000	15,000,000

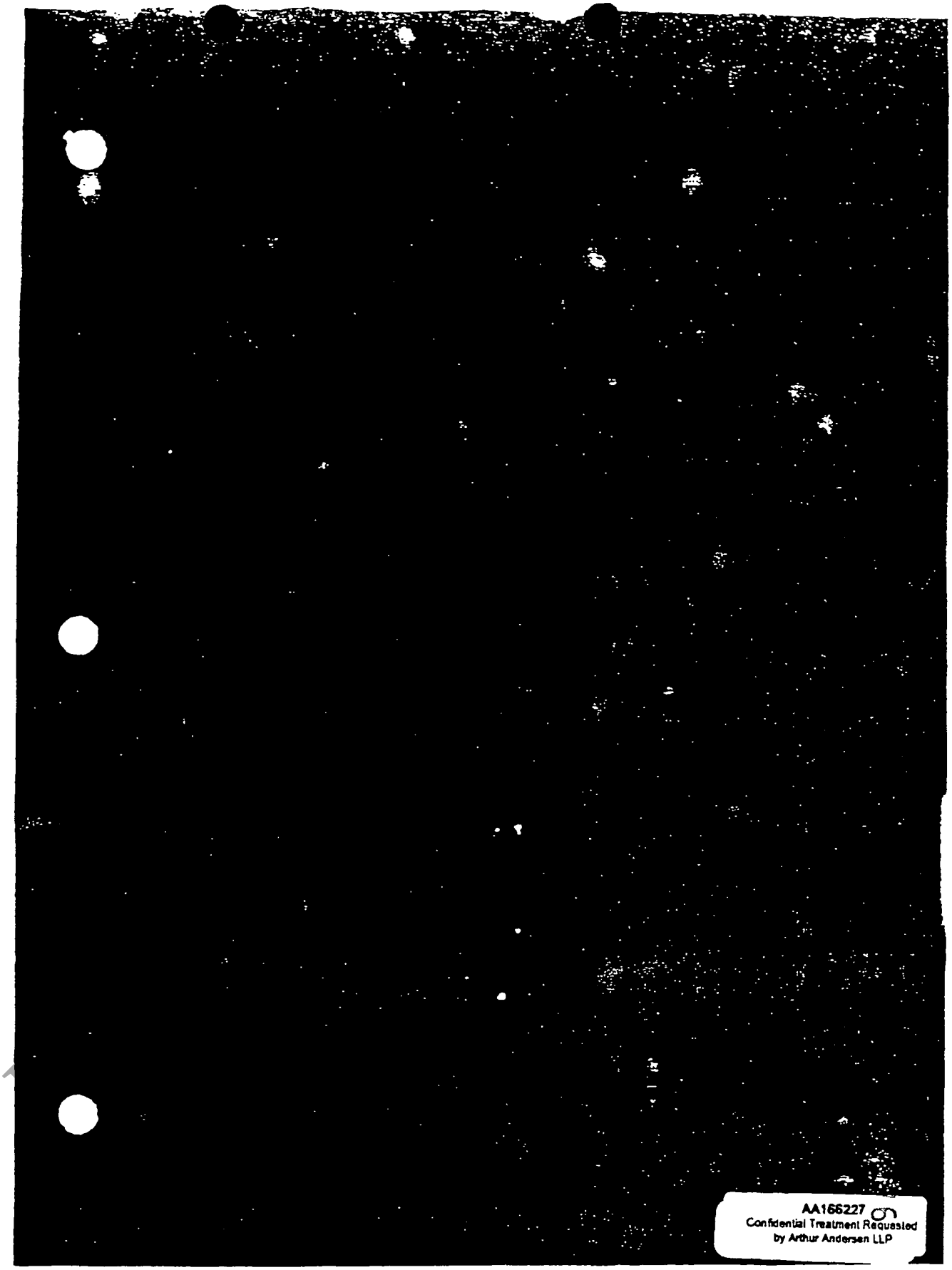
NOT A CERTIFIED COPY

0142175

AA166226
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062542
16div-020569


AA166227
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

progr ıro

Sunbeam Corporation
Category: Away From Home
Driving to Success: Top Line Fourth Quarter Objectives

I. Sales Programs

1) *National Blade Promotion (excluding Elite blades)*
- $2 00 off invoice price in November, $1 00 off rebate/sell through in December
- orders must be received by 11/26, ship by 11/29
- December reimbursement is limited to total November shipment amount
- distributors must show proof of delivery for December sales, offer expires 1/30/98

2) *Power Pro Promotion*
- include a free battery and case with minimum purchase plus rebate

3) *Models A5 and 76 Clipper Promotion*

4) *Price Increase Avoidance*
- orders received by December 19 and shipped before year end will avoid price increase effective 12/29

5) *Quality Stores clipper and cooking promotion*
- work with Outdoor Cooking to identify bundling opportunities

NOT A CERTIFIED COPY

AA16228
Confidential Treatment Requested
by Arthur Andersen LLP

01627

CPH0062544

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam Corporation
Category: Away From Home
Driving to Success: Top Line Fourth Quarter Objectives

II. Sales Targets by Account
Whole $'s

Customer:	October $ Actuals	November $ Forecast	December $ Forecast	Total Quarter
1) Sally's Beauty (Professional)	?	200,000	275,000	475,000
2) PetsMart (Professional)	?	400,000	500,000	900,000
3) New England Serum (Professional)	?	125,000	200,000	325,000
4) Sporting Dog (Professional)	?	150,000	200,000	350,000
5) Jeffers Vet (Professional)	?	70,000	75,000	145,000
6) West Coast Beauty (Professional)	?	60,000	50,000	110,000
7) General Appliance (Professional)	?	45,000	60,000	105,000
8) Mills Fleet Farm (Professional)	?	50,000	55,000	105,000
9) Veterinary Service Inc (Professional)	?	40,000	40,000	80,000
10) Hess Hair Milk (Professional)	?	35,000	40,000	75,000
11) American Hotel Register (Commercial)	?	130,000	125,000	255,000
12) NASCO (Commercial)	?	100,000	50,000	150,000
13) North American Hospitality (Commercial)	?	40,000	60,000	100,000
All Others	?	6,555,000	7,870,000	14,425,000
Total	?	8,000,000	9,600,000	17,600,000

Target/increase rolled into all others

AA166229
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062545

16div-020572

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Away From Home
Driving to Success: Top Line Fourth Quarter Objectives

III. Sales Targets by Product Line
Whole $'s

Product Line:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
Human Clippers	1,428,606	3,185,059	2,414,730	7,028,395
Human Accessories	86,000	91,678	594,745	772,423
Human Blades	300,674	398,896	1,082,741	1,782,311
Animal Clippers	547,589	2,083,410	2,082,321	4,713,320
Animal Accessories	211,906	307,530	829,205	1,348,641
Animal Blades	405,549	1,133,427	1,596,258	3,135,234
Commercial*	600,000	800,000	1,000,000	2,400,000
Total	3,580,324	8,000,000	9,600,000	21,180,324

* October Commercial figure estimated

Target/increase rolled into categories with inventories

NOT A CERTIFIED COPY

AA166230
Confidential Treatment Requested
by Arthur Andersen LLP

01627 9

CPH0062546

2-2

Sunbeam Corporation
Category: Away From Home
Driving to Success: Top Line Fourth Quarter Objectives

IV. Other Initiatives for Success

1) *Sell off $2 million in excess Power Pro clippers*

2) *Sell off excess animal and beauty accessories*

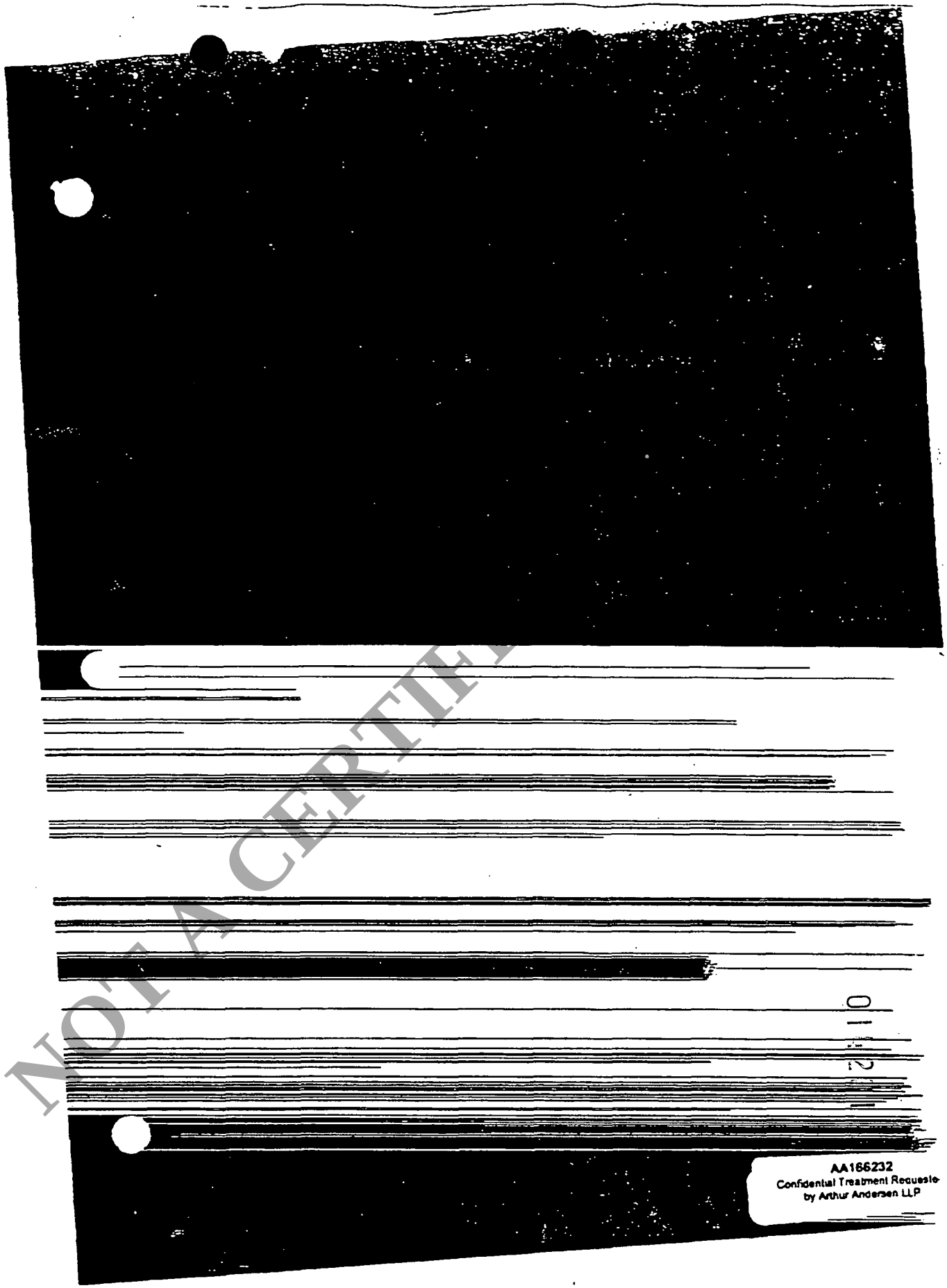
NOT A CERTIFIED COPY

082810

AA166231
Confidential Treatment Request
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062547
16div-020574



NOT A CERTIFIED

AA166232
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

progr. J

Sunbeam Corporation
Category Outdoor Cooking
Driving to Success. Top Line Fourth Quarter Objectives

I Sales Programs

1) Early Volume and Dating Programs

- accounts that submit and ship 25% of projected 1998 season volume qualify for dating as follows

P.O. by*	Ship by	Terms**	Normal Terms
11/21/97	12/23/97	net 6/10/98	net 60

* forecast by 11/15/98
** 2%, net 60 in lieu of net 6/10/98 if submitted to Phil Bogner for pre-approval

2) Incremental 2% Co-Op

- accounts that meet or exceed fourth quarter objectives for orders and shipments of 1998 season accessories and grills products can receive +2% co-op accrual on all November and December shipments

3) Incremental 5% discount on parts and accessory purchases

- accounts that meet or exceed fourth quarter objectives and purchase 25% of 1998 season forecast can get incremental accrual equal to 5% of gross sales on accessories and parts (excluding service parts) shipments in November and December
- applies to both 1997 and 1998 season product

AA168233
Confidential Treatment Requested
by Arthur Andersen LLP

016282

CPH0062549
16div-020576

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Outdoor Cooking
Driving to Success: Top Line Fourth Quarter Objectives

II. Sales Targets by Account
Whole $'s

Customer:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
1) Wal*Mart	1,192,000	2,851,000	7,457,000	11,500,000
2) Home Depot	2,273,000	2,100,000	6,000,000	10,373,000
3) Menards	406,000	800,000	3,100,000	4,306,000
4) Fred Meyer	1,400	3,000,000	-	3,001,400
5) Lowe's	362,000	300,000	2,338,000	3,000,000
6) Best Buy	-	-	1,900,000	1,900,000
7) AAFES	11,000	500,000	1,089,000	1,600,000
8) Caldor	-	-	1,600,000	1,600,000
9) Scotty's	333,000	187,000	980,000	1,500,000
10) Service Merchandise	65,000	250,000	1,160,000	1,475,000
All Others	156,600	4,012,000	7,576,000	11,744,600
Total	4,800,000	14,000,000	33,200,000	52,000,000

NOT A CERTIFIED COPY

AA166234
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062550

16div-020577

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Outdoor Cooking
Driving to Success: Top Line Fourth Quarter Objectives

III. Sales Targets by Product Line
Whole $'s

Product Line:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
Gas Grills	4,049,568	11,913,705	26,136,727	42,100,000
Charcoal Grills	44,597	1,002,287	2,453,116	3,500,000
Electric Grills	74,986	-	-	74,986
Tabletop Grills	93,016	404,786	827,212	1,325,014
Excess and Obsolete	-	679,222	1,320,778	2,000,000
Parts and Accessories	525,819	-	2,474,181	3,000,000
Total	4,787,986	14,000,000	33,212,014	52,000,000

NOT A CERTIFIED COPY

AA166235
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062551

16div-020578

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

other.ocd

Sunbeam Corporation
Category: Outdoor Cooking
Driving to Success: Top Line Fourth Quarter Objectives

IV. Other Initiatives for Success

1) Sell off $2 million in 1997 excess and obsolete grills (included in objectives)

2) Sell 1997 product originally forecasted for fourth quarter 1997 shipment at full margin less trade promotion (NOT at liquidation prices)

3) Finalize Sears first quarter "Class One" grills, ship in December (included in objectives)

4) Present Consumer Demand Program (attached)
- leverage pre-season (December) and early season (February) marketing support for fourth quarter shipments (especially major accounts).

Customer:	CA	FL	GA	NC	TN	TX
Wal*Mart	X				X	X
Home Depot	X	X	X	X	X	x
AAFES	X		X			X
Montgomery Wards	X	X				X
Sears	X	X		X		
Scotty's		X	X			
BJ's		X				
Service Merchandise		X	X		X	X
Lowe's			X	X	X	X

NOT A CERTIFIED COPY

AA166236
Confidential Treatment Requested
by Arthur Andersen LLP

016285

CPH0062552

16div-020579

2-2

[redacted]

NO ONE CREATES DEMAND

LIKE GRILLMASTER BY SUNBEAM!

"You Can't Be One Wi[redacted]"

- $12 MM in consumer support!
- Integrated program supporting *the entire GrillMaster grill and accessory line* to reach consumers in "Guy's World"!
- Pre-season, early-spring, and mid-season support highlighting the New GrillMaster 800 Series and 900 Series!
    - Holiday Gift Guide *this Christmas*
    - Full Page USA TODAY (February)
    - 10 weeks of 60 second national TV
- Local radio and exciting consumer promotion to drive prospects right into your stores to buy even more GrillMaster grills and accessories!

NOT A CERTIFIED COPY

TAKE FULL ADVANTAGE OF Q4 TRADE PROMOTIONS TO HARNESS THE POWER OF GRILLMASTER IN '98 FOR YOU!

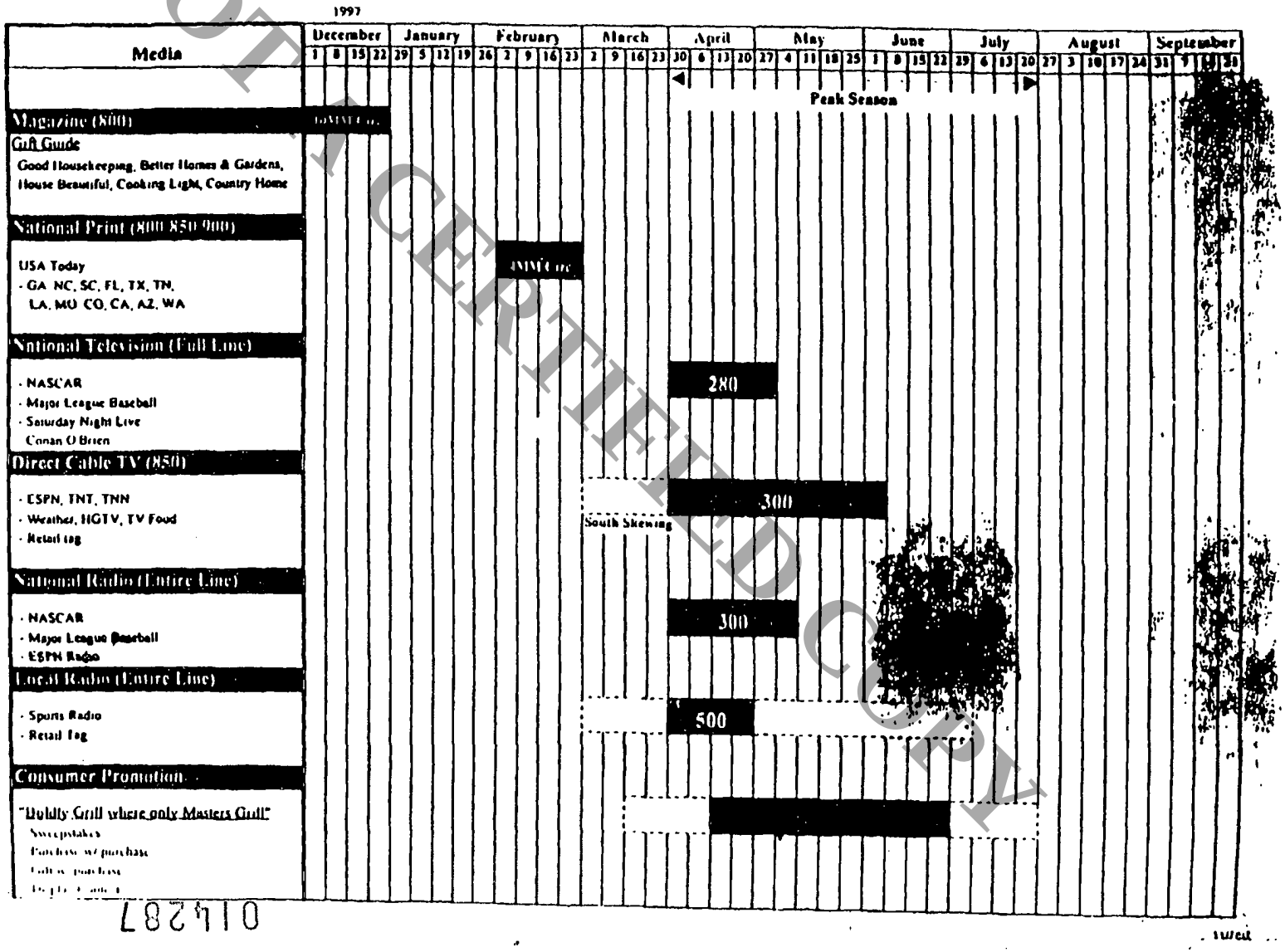
AA168237
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Grillmaster 1998 Season

Integrated Marketing Plan

$12MM Plan



NOT CERTIFIED COPY

AA186238
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062554
16div-020581

2-2

cc Lee AX Phil
Terry Bobl. Hunger
Myers Willen

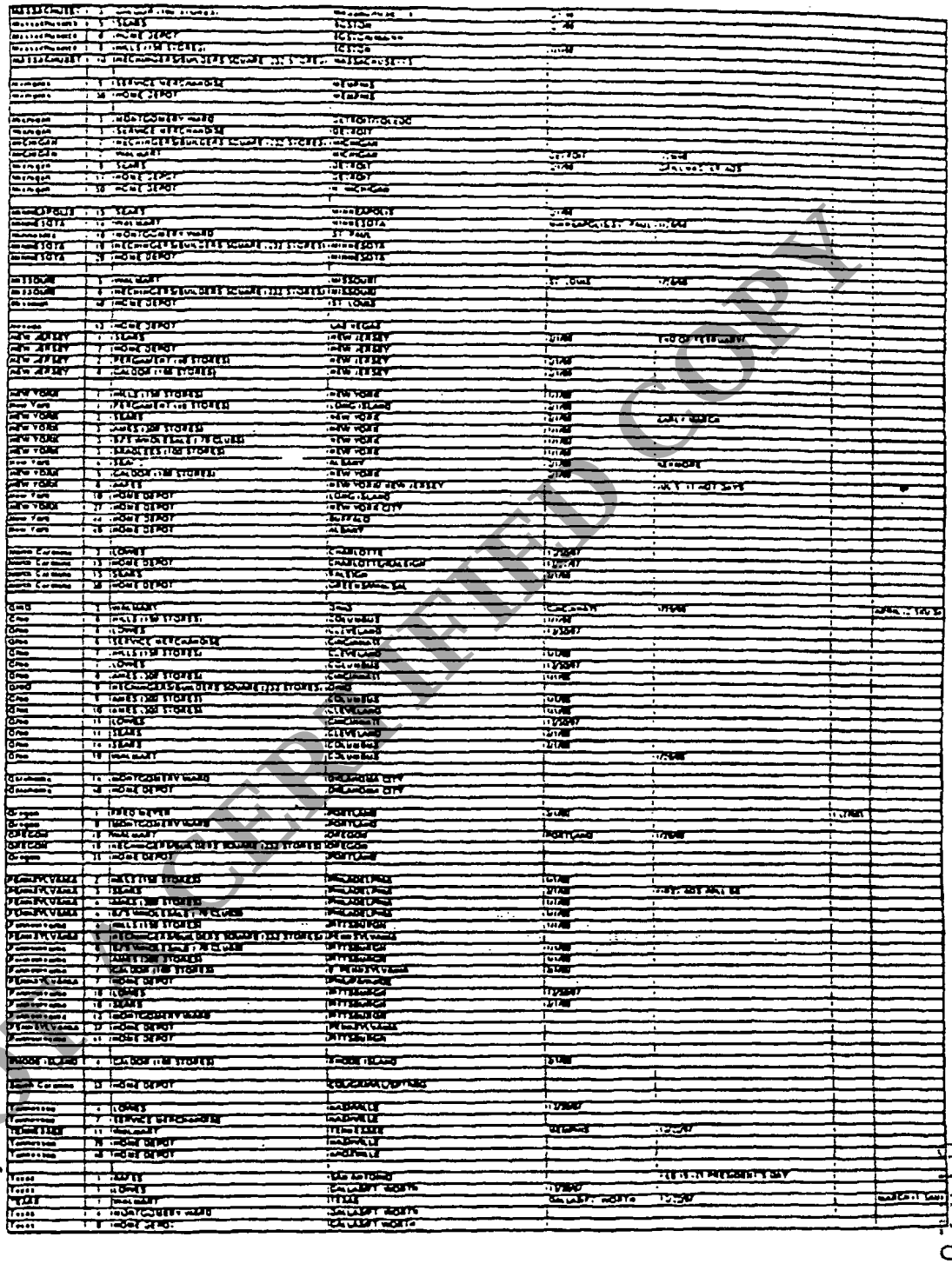
= EARLY SPRING PROGRAM (UNDER CERTAIN CIRCUMSTANCES)

NOT A CERTIFIED COPY

AA166239
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062555
16div-020582



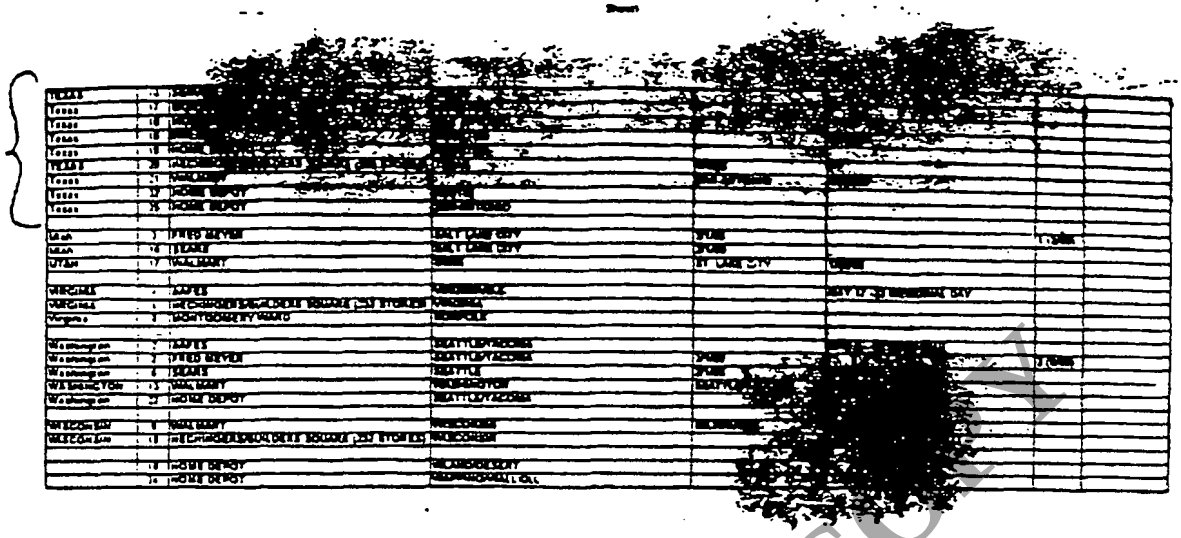
NOT CERTIFIED COPY

AA166240
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062556
16div-020583

2-2



NOT A CERTIFIED COPY

0114287

AA166241
Confidential Treatment Requested
by Arthur Andersen LLP

Sunbeam

Q4 1997 Sales Objectives
Outdoor Cooking

Sales Mgr	Cust Name	Rep Group	October	November	December	Total Q4 Obj
CLUB						
Bowen	BJ's Wholesale Club	Asquith Corporation	0	0	700 000	700 000
DRUG						
Wilkins	American Drug Stores	Signature Sales	0	0	0	0
Morgan	Rite Aid	Dynamic Marketing	0	0	380 000	380 000
Morgan	CVS	House Account	0	0	200 000	200 000
Wilkins	M-Block	House Account	0	0	0	0
		TOTAL DRUG	0	0	580,000	580,000
GROCERY						
Meier	All Accounts	Multiple	0	0	300 000	300 000
HOME CENTER						
Fagan	Ace Hardware	GDWHD	0	0	0	0
Lamson	Agway	Lewis Sales Corp	0	0	200 000	200 000
Fagan	Penn Daniels	BCE Marketing	0	85 000	0	85 000
Ramsay	Arena Distributors	Lewis Sales Corp	0	0	0	0
Kolosvary	BI Mart / Eugene	Team Marketing, Inc	0	500 000	0	500 000
Fagan	Builders Square	House Account	0	0	0	0
Fagan	Cotter & Company	GDWHD	1 000	0	0	1 000
Fagan	K's Merchandise	House Account	0	0	120 000	120 000
Kolosvary	Home Base	CDG	14 000	0	0	14 000
Hampson	Home Depot	Sales Managers Inc	2 273 000	2 100 000	6 000 000	10 373 000
Hassett	Lowe's Companies	Sheldon Co	362 000	300 000	2,338,000	3 000 000
Hampson	Menards	House Account	406 000	800 000	3 100 000	4 306 000
Ramsay	Pergament Home Centers	Lewis Sales Corp	0	0	600 000	600 000
Ramsay	Quality Stores	Woods & Devine	0	0	300 000	300 000
Lamson	Richel Home Center	Lewis Sales Corp	0	0	0	0
Lamson	Scotty's	Sheldon Co	333 000	187 000	980 000	1 500 000
		TOTAL HOME CENTER	3,389,000	3,972,000	13,838,000	20,999,000
MASS						
Bowen	Ames Department Stores	Asquith Corporation	0	0	500 000	500 000
Bowen	Bradlees	Asquith Corporation	0	0	500 000	500 000
Bowen	Caldor	Asquith Corporation	0	0	1 600 000	1 600 000
Bowen	Ann & Hope Cumberland	Asquith Corporation	0	0	125 000	125 000
Kolosvary	Fred Meyer	Team Marketing Inc	1 400	3 000 000	0	3 001 400
Bowen	Hills Department Stores	Asquith Corporation	0	400 000	400 000	800 000
Meier	Meijer	Woods & Devine	0	0	480 000	480 000
Miller	Mont. Wards/Lechmere	Frontier Marketing	0	0	700 000	700 000
Fagan	Pamida	BCE Marketing	0	250 000	465 000	715 000
Hassett	Rose's Stores	Evans Co	0	600 000	400 000	1,000 000
Wright	Sears	GDWHD	31,000	23 000	696 000	750 000
Hassett	Service Merchandise	House Account	65 000	250 000	1,160 000	1,475 000
Miller	Shopko Stores	Signature Sales	0	0	0	0
Wright	Target	Mitchell	0	0	0	0
Miller	Venture Stores	BCE Marketing	0	0	100,000	100,000
		TOTAL MASS	97,400	4,523,000	7,106,000	11,726,400
DEPARTMENT						
Jones Barry	Army Air Force Exchange	Specialized Marketing	11,000	500 000	1,089,000	1,600 000
Renalde	Marlin	Cannon Marketing	1 000	0	35 000	36,000
		TOTAL DEPARTMENT	12,000	500,000	1,124,000	1,636,000
ALTERNATIVE MARKETS						
Masterson	Fingerhut	Signature Sales	0	0	0	0
Masterson	Best Buy	Signature Sales	0	0	1,900 000	1,900,000
		TOTAL ALTERNATIVE	0	0	1,900,000	1,900,000
WALMART						
Myers	Wal-Mart Stores	Team Warman	1,192,000	2,851,000	7,457,000	11,500 000
	TOTAL REILLY		2,466,400	8,495,000	23,824,000	35,905,400
	TOTAL LOCKE		12,000	500,000	1,424,000	1,936,000
	TOTAL MYERS		1,192,000	2,851,000	7,457,000	11,500,000
	TOTAL KEY ACCOUNTS		4,670,400	11,846,000	32,805,000	49,341,400
	ALL OTHER		109,600	2,154,000	195,000	2,458,600
	GRAND TOTAL		4,800,000	14,000,000	33,000,000	52,000,000

NOT A CERTIFIED COPY

014287

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062558
16div-020585

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Category: Total International
Driving to Success: Top Line Fourth Quarter Objectives

Summary of Volume Targets by Region

$ Thousands

Region:	October $ Actual	November $ Forecast	December $ Forecast	Total Quarter
Canada	6,293	6,900	4,400	17,593
Mexico	5,521	6,900	4,200	16,621
Latin America	8,012	6,500	7,000	21,512
Venezuela	4,540	4,500	3,800	12,840
Far East	820	4,600	3,700	9,120
Europe	1,380	2,600	3,300	7,280
Total	26,566	32,000	26,400	84,966

Note these figures have not been reviewed by Dixon Thayer

NOT A CERTIFIED COPY

AA186243
Confidential Treatment Requested
by Arthur Andersen LLP

014287

2-2

CPH0062559

16div-020586

3

NOT A CERTIFIED COPY

014288

AA166244
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

To: The Files

From: Larry Bornstein, Ft. Lauderdale

Date: July 28, 1998

Subject: Interview of Al Lefevre (July 14, 1998)

Bill and Hold summary of issues by quarter

On July 14, 1998, Phil Harlow, Rita Gordon, Attorney with Skadden Arps, and I conducted an interview with Al Lefevre of Sunbeam Corporation. The Summary of information provided by Mr. Lefevre is as follows:

Lisa Dalberth and Debbie McDonald told Don Uzzi in November that $1.40 to 1.45 is a real problem

In November Lee Griffith and Al was in a sales meeting and Lee was asked by Don and Russ what needs to be done to make the number. Lee responded with the Distributor go to market initiative whereby products would be pushed out to distributors. Don and Russ said to go ahead.

Let me tell you how I believe the quarters were made:

Q1- Sale of excess and obsolete inventory of $12-15 million E & O stock. Sold at below margin, not sure how accounted for, I believe Bob Gluck credited loss against reserve.

Q2- $15 million of blankets pulled forward sold to Wal-Mart and stored at Deep South, not sure of the terms, Wal-Mart took title

Q3- more blankets pulled forward. 48% increase in blanket sales quarter over quarter. Sales were discounted at direction of Lee with the knowledge of Lee and Don

Q4- Grills sold in Q4 under early buy program, which has always been done by the Company in the Past

-Early buy program was not taking off
-Building grills earlier in order to meet demand and avoid stockouts we had in the past

-Discussions of bill and hold were made during early September. Phil Bogner drove bill and hold program, it was his idea.

Al Dunlap, Russ and Don all aware of program and approved in November

NOT A CERTIFIED COPY

011289

Tentative & Preliminary

DRAFT

AA166245
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062561
16div-020588

Date: July 28, 1998

Subject: Interview of Al Lefevre

Inquiry made to Bob Gluck in November December on what needed to be done in terms of accounting for bill and hold. Bob told them that they needed to get Customer's to confirm the transactions on Company letterhead, and insurance was needed in the Customer's name. Bob Gluck approved the accounting treatment and the revenue could be booked.

Ask Bill Bloomfield who paid for the insurance and the storage charges

In early January Bob Gluck told us to go back to the customers and get audit confirmation letters signed

Early buy program vs. Bill and hold. Bill and hold gave customer comfort that the product was built segregated. Extended terms were given in bill and hold the same as early buy but a 2%-3% co-op was given in bill and hold.

Of the 1997 bill and holds only $300k of Fred Meyer's remains

Q1 bill holds 2-3 million of Menards inventories remain.

Q1 bill and holds was under the same business reason as year end

RETURNS

The majority of 1998 returns relate to Q3, Q4 1997 sales

Industry standard to take back blankets

Blankets for Wal-Mart have always been guaranteed and Gluck knew this.

QVC always had the right to return

Price clubs have always drop non-selling product and send back. This was not new for Sam's, BJ's and Costco

No return policy was discussed at an August 25, 26 1997 meeting with all the VP's and GM's approx. 20 people. Al Dunlap, Don and Russ were present. Al Dunlap made fun of Lee at the returns taken back and Al Dunlap stated a no return policy

There was a new return policy with certain level of sign off established in December 1997. There had to be some level of approval for RA's to be put on the system.

NOT A CERTIFIED COPY

014290

Tentative & Preliminary

DRAFT

AA166246
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 28, 1998

Subject: Interview of Al Lefevre

I. Lehroff- guaranteed sale with no documentation
II. Eckerds- in writing, first time promotion for Eckerds to take consumer products
III. K-mart - possible softserve ice cream return problem
IV. Medards- Bill and hold customer
V. Petsmart- large professional 97 clippers large credit issued in 1998
VI. QVC-new products always have taken back over stock, existing products like blenders don't take back
VII. Fred Meyer -Bill and hold customer aprox $300k still remains
VIII. Costco- always have taken back items not sold through

Make returns go away directive from Russ between 1/18/98-1/22/98. Al received a call in Hattiesburg from Russ, Don and Bob Gluck. Russ was enraged and stated to delete the RA's from the system. Al questioned Russ and Russ said don't you fucken understand "No returns"

I did not feel comfortable and I called Lee and Don and they said just do it.

I called Bob Gluck, and said I don't feel comfortable, and said we can look at the returns vs. your reserves and figure something out." Bob replied I have other problems, you heard Russ Delete the returns off the system. You don't know what I need my reserves for." Al said OK to Bob I'll delete the Fucken returns. Al told Bob That we had other programs out there that needed a reserve.

Al told Roger Lee to keep track of them off the system.

The truck would come in with returns in January and they would be turned away circle the country, at time the trucker would just keep the product.

Wilkins was the salesperson on M Block, D.Hudson and Eckerds.

OTHER ISSUES

Middle of January a meeting with Bob Gluck, Russ Kersh, Lee Griffith and Al to discuss two audit issues:

EPI- Al discussed that the sale smelled fishy and that a 40-50% margin and that Bob had some reserves in inventory.

Returns- Russ said to make the issue go away

Don Uzzi circulated daily memos " drive to $1.45 per share. "High-pressure, fearful environment.".

NOT A CERTIFIED COPY

011291

Tentative & Preliminary

DRAFT

AA166247
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Not Given From Al Lefevre

NOT A CERTIFIED COPY

1998 U.S. SALES TARGETS

2/5/98

AA166248
Confidential Treatment Requested
by Arthur Anderson LLP

CPH0062564
16div-020591

016292

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1998 GROSS SALES PLAN
SUMMARY OF OBJECTIVES BY BUSINESS

BUSINESS	1997 ACTUAL	% INC. (Dec.) v. '96	1998 PLAN	INC. %
Clippers	41.7	8.3%	50.5	20%
Bedding	141.5	8.8%	155.0	10%
Other Personal Care	-		40.0	n/a
Health @ Home	92.4	(3.6%)[2]	107.1	16%
Air & Water[1]	13.8	90%	97.9	609%
Appliances	310.1	6.5%[3]	380.0	2.3%
Outdoor	313.9	23.7%	360.0	15%
Professional	57.1	29.2%	75.0	31%
Away From Home/Other	4.2	13.5%[4]	25.0	495%
Total U.S. Sales	974.7	12.7%[5]	1,290.0	32%

NOT A CERTIFIED COPY

1. *Includes last year's air and shower massagers.*
2. *Increase of 1% without discointinued scales*
3. *Incease of 14.9% without precision business*
4. *Increase reflects growth in hair dryers only. Rest of AFH business is included in other categories*
5. *Without Precision and discontinued scales, the U.S. is up 16.2% or 135 6 Million versus 1996*

AA16249
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062565

16div-020592

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES PLAN
SUMMARY OF "GHOSTS" BY BUSINESS

BUSINESS	1998 PLAN	GHOSTS	1998 SALES ORJ.
Clippers	50.0	-	50.0
Bedding	155.0	-	155.0
Other Personal Care	40.0	40.0	-
Health @ Home	107.1	-	107.1
Air & Water[1]	97.9	20.0	77.9
Appliances	380.0	-	380.0
Outdoor	360.0	40.0	320.0
Professional	75.0	-	75.0
Away From Home/Other	25.0	10.0	15.0
	1,290.0	110.0	1,180.0

NOT A CERTIFIED COPY

AA166250
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062566

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES PLAN
SUMMARY OF GAPS BY BUSINESS

BUSINESS	1998 PLAN	GAP	GHOSTS	1998 ESTIMATE
Clippers	50.0	5.0	-	45.0
Bedding	155.0	15.0	-	140.0
Other Personal Care	40.0	-	40.0	-
Health @ Home	107.1	5.0	-	102.1
Air & Water[1]	97.9	30.0	20.0	47.9
Appliances	380.0	30.0	-	350.0
Outdoor	360.0	40.0	40.0	280.0
Professional	75.0	10.0	-	65.0
Away From Home/Other	25.0	5.0	10.0	10.0
	1,290.0	140.0	110.0	1,040.0

+ 6.7% V. '97

(1) *Included in Sales Objective.*

NOT A CERTIFIED COPY

AA166251
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062567

16div-020594

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES SUMMARY
GHOSTS & GAPS BY QTR.

BUSINESS	Q1 PLAN	GHOSTS	GAPS	Q1 ESTIMATE
Clippers	13.0	-	2.0	11.0
Bedding	4.0	-	-	4.0
Other Personal Care	-	-	-	-
Health @ Home	22.7	-	2.0	20.7
Air & Water[1]	18.6	8.0	6.0	4.6
Appliances	53.0	-	7.0	46.0
Outdoor	100.0	25.0	15.0	60.0
Professional	15.0	-	3.0	12.0
Away From Home/Other	5.0	2.5	1.0	1.5
	231.3	35.5	36.0	159.8

NOT A CERTIFIED COPY

AA166252
Confidential Treatment Requested
by Arthur Andersen LLP

014295

CPH0062568

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES SUMMARY
GHOSTS & GAPS BY QTR.

BUSINESS	Q2 PLAN	GHOSTS	GAPS	Q2 ESTIMATE
Clippers	15.0	-	3.0	12.0
Bedding	17.0	-	10.0	7.0
Other Personal Care	-	-	-	-
Health @ Home	17.2	-	-	17.2
Air & Water[1]	23.8	5.0	10.0	8.8
Appliances	83.0	-	10.0	78.0
Outdoor	145.0	15.0	25.0	105.0
Professional	19.0	-	2.0	17.0
Away From Home/Other	5.0	2.5	1.0	1.5
	325.0	22.5	61.0	241.5

NOT A CERTIFIED COPY

AA166253
Confidential Treatment Requested
by Arthur Andersen LLP

962410

CPH0062569

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES SUMMARY
GHOSTS & GAPS BY QTR.

BUSINESS	Q3 PLAN	GHOSTS	GAPS	Q3 ESTIMATE
Clippers	11.0	-	-	11.0
Bedding	74.0	-	-	74.0
Other Personal Care	8.0	8.0	-	-
Health @ Home	28.1	-	-	28.1
Air & Water[1]	27.1	-	11.0	16.1
Appliances	118.0	-	10.0	108.0
Outdoor	42.0	-	5.0	37.0
Professional	20.0	-	2.0	18.0
Away From Home/Other	6.0	2.5	1.5	2.0
	334.2	10.5	29.5	294.2

NOT A CERTIFIED COPY

AA166254
Confidential Treatment Requested
by Arthur Andersen LLP

014297

CPH0062570

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

U.S. SALES SUMMARY
GHOSTS & GAPS BY QTR.

BUSINESS	Q4 PLAN	GHOSTS	GAPS	Q4 ESTIMATE
Clippers	11.0	-	-	11.0
Bedding	60.0	-	5.0	55.0
Other Personal Care	32.0	32.0	-	-
Health @ Home	39.1	-	3.0	36.1
Air & Water	28.4	7.0	3.0	18.4
Appliances	126.0	-	3.0	123.0
Outdoor	73.0	-	(5.0)	78.0
Professional	21.0	-	3.0	18.0
Away From Home/Other	9.0	2.5	1.5	5.0
	399.5	41.5	13.5	344.5

NOT A CERTIFIED COPY

AA166255
Confidential Treatment Requested
by Arthur Andersen LLP

862910

CPH0062571

4

NOT A CERTIFIED COPY

0114299

AA166256
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Steve Dalberth

On July 16, 1998, Phil Harlow, Rita Gordon, attorney with Skadden Arps, and I conducted an interview with Steve Dalberth, assistant treasurer with Sunbeam Corporation. A summary of the information provided by Mr. Dalberth is as follows:

- Dalberth started with Sunbeam in November 1996.
- Dalberth was somewhat involved with the 1996 restructuring plan.
  - The plan was built by identifying savings to be achieved by the Company on an SKU basis.
  - $225 million in savings were anticipated, which included approximately $50 million in savings for procurement of materials and $58 million of other manufacturing costs savings.
  - The plan called for the discontinuance of all non-continuing SKUs by June 1997.
  - The plan provided for the bulk sale of certain inventory to liquidators such as Goldstein, Gordon Brothers and Consolidated. These sales took place in the first quarter of 1997.
  - The Company never altered the restructuring plan after January 1997.
  - The Company tracked actual versus plan each month. Dalberth referred to an excel file with the name "planrev."
- A new marketing program was established each quarter.
  - These programs provided discounts to customers.
  - Examples of names of marketing programs: Midnight Madness and Sizzle with Sunbeam.
- Dalberth indicated that there was significant pressure by Russ Kersh and Don Uzzi on every sales and marketing person to make the revenue projection.
  - Dalberth did not think any of the sales that were made were "breaking the accounting rules."
- Inventory standards.
  - The Company converted to a new computer system (JD Edwards) in January 1997.
  - There were problems with the new standards and these problems were fixed by March 1997.

NOT A CERTIFIED COPY

014300

AA166257
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Steve Dalberth

- After April 1997, the Company tracked variances from standards.
- Dalberth does not know if the manufacturing efficiencies projected in the 1996 restructuring plan were ever realized.

- The Company would hold off buying office supplies at quarter end in accordance with communications received from Don Uzzi.

- Sale of accounts receivable to Capital USA on December 4, 1997.
  - The sale of these receivables was to only four customers (Wal-Mart, JCPenney, Loews and Home Depot).

GBP:sun429/Interview-SteveDalberth

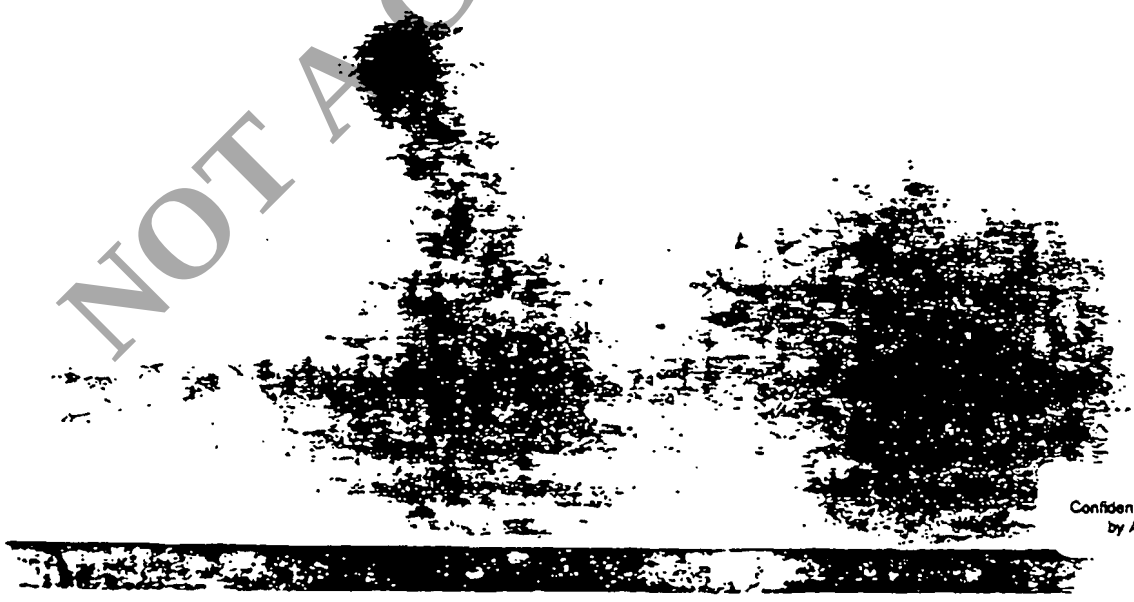
NOT A CERTIFIED COPY

014301

AA166258
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

014302



AA166259
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Janet Kelly

On July 17, 1998, Phil Harlow, Rita Gordon (attorney with Skadden Arps) and I conducted an interview of Janet Kelly, general counsel of Sunbeam Corporation. A summary of information provided by Ms. Kelly is as follows:

- Kelly was employed by the Company in March of 1994 as associate general counsel.
  - She was promoted to general counsel April 3, 1998.
  - She attended many of the Company's Board meetings.
  - David Fannin had started with the Company in mid-1993 and had hired her.
  - Kelly reviewed the environmental and litigation reserves on a quarterly basis.
  - Kelly confirmed that there was a substantial "push" by Dunlap and others to make the revenue and earnings projections.

- Supplier rebates
  - During the second quarter of 1997, there were rebates recorded as income from various suppliers. One rebate for $500,000 was from Pentalpha.
  - There were a number of other rebates and Kelly suggested discussing this with Charley James and Brian Woods.
  - The accounting for the supplier rebates were discussed with Russ Kersh, Bob Gluck and George Timchal.
  - The rebates were negotiated and were not part of a predetermined volume rebate. The agreements may have contained future purchase commitments.
  - Brian Woods was concerned about the "structure of the agreements."
  - In 1998 Kersh decided not to do any more supplier rebate transactions for the smaller suppliers.
  - Kelly thought there were approximately six supplier rebate agreements, but could only remember the names Pentalpha, Washington Penn Plastics and Marshall Glass.

- Bill and Hold sales.
  - Kelly heard about Bill and Hold sales for the first time in late 1997 and at Audit Committee Meeting but was not directly involved.

NOT A CERTIFIED COPY

AA166260
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHU NDERSEN

2-5

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Jannet Kelly

- Systems issue.
  - Kelly heard about problems with systems conversion issues relating to the first quarter of 1997. The Company was not getting reports losing information and had to do some billings by hand.

- No Return Policy
  - Kelly first heard about the no returns policy in the last 30-60 days.
  - Bill Blumfield would know about the warehouse problem.

- Press releases.
  - Coopers and Lybrand reviewed the press releases relating to the two restructuring transactions.
  - There was no formal review process for press releases.

- Kelly did not work on any guaranteed sales agreements.

- Kelly worked on the EPI agreement.
  - She worked with Bob Gluck on the accounting treatment and Gluck was happy with it.
  - She believes that Larry Bornstein was involved in discussing the EPI transaction in connection with Arthur Andersen's yearend audit work.

GBP:sun629/interview-JanetKelly

NOT A CERTIFIED COPY

0116304

AA166261
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062577
16div-020604

6

NOT A CERTIFIED COPY

014305

AA166262
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Barry Hanson

On July 17, 1998, Phil Harlow, Rita Gordon, attorney with Skadden Arps, and I conducted an interview with Barry Hanson, credit manager with Sunbeam Corporation. A summary of the information provided by Mr. Hanson is as follows:

- Hanson started with Sunbeam on November 6, 1996. He previously was employed by Telstar Factors.

- Hanson discussed the Company's JD Edwards system.
  - The Company has outsourced the credit system to CIT.
  - Hanson expressed his concern regarding the "address book" on the JD Edwards system which he says will allow anyone with access to the menu to be able to access any field in the system (a potential internal control issue). Hanson indicated that someone with this access could release an order for shipment.
  - Hanson said there was no one master account number for customers. By example, he said that PHD had 11 or 12 customer numbers.
  - The system has the ability to roll up a combination of account numbers which can be used to monitor the consolidated credit risk on a customer; however, this function was generally not used.
  - Hanson had two "critical" recommendations for the Company, as follows:
    - Fix the address book
    - Fix the audited cash process

- There were 354,000 disputed shipments in 1997.
  - This represents disputed items totaling $355 million.
  - There were approximately $200 million of disputed invoices and approximately $150 million of deductions.
  - The 1998 year-to-date disputed items are in excess of those during the comparable period in 1997.
  - These disputed items result in a significant delay in receiving cash from customers.
  - The Company has a 90% collection rate on billing issues.

- In January 1997, the Company converted to the new billing and collection system.

NOT A CERTIFIED COPY

015306

AA166263
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Barry Hanson

- There was no parallel testing of data during the conversion.

- Transition to new system was done in nine weeks.
- Hanson's key staff person is Dave Mullen.
- The Company had numerous problems with its EDI customers at the date of conversion and still continues to have some problems in this area.
  - There are technical issues relating to the transmission of data and "mapping issues" relating to the set up of EDI information.
  - Was running at a 35% error rate now down to 18%.
- The Company uses CrediTec for collection of deductions (the Company outsourced this function).
- CIT is responsible for follow up on past-due accounts receivable.
  - Initially with the conversion, CIT was following up on past due accounts receivable after 30 days.
  - CIT now follows up with past due accounts receivable after 10 days (this change was instituted sometime during the May to July 1997 period).
- The Company's loss experience on deductions is about 24% to 25%.
  - The Company also has slow paying customers representing about 10% to 15% of the receivable balances.
- The reasons for the deductions (in order of dollar magnitude) are as follows:
  1. Advertising
  2. Returns of non-defective merchandize
  3. Warranty returns
  4. Shortages of merchandise received
  5. Pricing differences between the purchase order and invoice
- The Company had a problem with duplicate shipments.
  - This was a significant problem during the early phases of the conversion (in the first and second quarters of 1997). This was partially the result of the Company using the same invoice number more than once.
  - During the third and fourth quarters of 1997, the problems with duplicate shipments improved.
  - Hanson was aware of no issues relating to intentional "double shipments."

NOT A CERTIFIED COPY

0154307

AA166264
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Barry Hanson

- Hanson was involved in establishing the accounts receivable reserves at yearend.
- The Company established daily reporting for accounts receivable during 1997. Information included:
  - Aging of receivables.
  - Dispute report by type of dispute.
  - Listing of accounts with balances over $500,000.
  - Listing of accounts over 90-day delinquent.
  - On average, the current portion of accounts receivable would be from a low of 40% of the total outstanding balance to a high of 55% to 60% of the outstanding balance.
- Montgomery Wards went bankrupt during the year and the Company had an accounts receivable of $3.2 million due from Montgomery Wards.
- Bad debt reserves.
  - Bob Gluck was in charge of establishing the bad debt reserves.
  - At December 31, 1997, Hanson believed that the bad debt reserve was approximately $6 million and that there was another $6 million in reserves for other items.
  - There was a delay in writing off bad debts at yearend until May or June of 1998.
  - There was a write off of Samsonite receivable in May 1998.
  - There was a write off of all 1996 balances.
- Unidentified deductions.
  - These represent instances where the customer makes a deduction from payment of its invoice but does not specify the reason the deduction is being made.
  - It usually takes 15 to 30 days to resolve the reason for an unidentified deduction.
  - Approximately 40% to 60% of all deductions are "unidentified deductions" which Hanson believes is the industry average.
  - CrediTec cannot authorize the issuance of the credit without Company approval.
  - Bob Gluck was very persistent in trying to resolve deductions and did not routinely authorize credit memos.
  - Nothing unusual occurred in 1998 in relating to the deductions issue.
  - CrediTec has 35 people employed in trying to resolve deduction issues. When the Company first outsourced this function to CrediTec, CrediTec believed that they would only need 7 to 10 people for this function.
- Credit memos can be issued in the following manner:
  - The customer service department can issue a credit.

NOT A CERTIFIED COPY

01308

AA166265
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 28, 1998

Subject: Sunbeam Corporation – Interview with Barry Hanson

- Return authorizations can be approved.
- CrediTec, with approval, can issue credit memos.
- The Company issues automatic credits for disputed items of less than $50 (previously the minimum was set at $200). This amounted to approximately $5 million to $7 million in 1997.

- CrediTec produces detailed monthly reports for the Company.

- During the July – August 1997 time frame, management came up with the "no-return" policy. Hanson thinks that a letter went to customers explaining the policy.

- Some return authorizations were improperly coded as warranty returns but really represented returns of non-defective products. This was done to allow the salesman to get around the Company policy of no returns.

- CrediTec receives a 23% commission on collection of chargebacks.

- During the July – August 1997 time frame, management came up with the "no-return" policy. Hanson thinks that a letter went to customers explaining the policy.

- CIT produces a weekly report of collections and reasons for non-collection of receivables.
  - The lead contact person at CIT is Joe Richardson in the New York office.
  - Rita Fletcher, the Company's account representative, is based in Danville, Virginia. Her telephone number is (804) 791-6345.

GRP-mm629/Interview-BarryHanson

NOT A CERTIFIED COPY

014309

AA166266
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

7

011310

AA166267
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Kyle Sinclair

On July 21, 1998, Larry Bornstein, Chris Maloy, attorney with Skadden Arps, and I conducted an interview with Kyle Sinclair, director of international finance for Sunbeam Corporation. A summary of information obtained from Mr. Sinclair is as follows:

- Sinclair started with Sunbeam in January of 1994.
- Prior to joining Sunbeam, Sinclair was with Arthur Andersen in Canada and worked on the Sunbeam audit.
- Sinclair has been the director of international finance since late 1996.
- Jim Miller has been hired as the international controller from Coleman Corporation and Sinclair is hoping to transfer to Sunbeam of Canada.
- Sinclair was responsible for Sunbeam's accounting for its foreign subsidiaries which consist of Asia (Hong Kong), Europe (UK), Mexico, Venezuela, Canada and Miami export.
- Sinclair participated in establishing the reserves at yearend 1996 for restructuring of the foreign operations.
  - Bob Gluck reviewed those reserves and reduced them (at December 31, 1996) to remove all contingencies from the reserves.
- Some excess and obsolescence reserves were taken into 1997 income. Sinclair thinks this was only a few hundred thousand dollars.
- Bob Gluck was not involved in the details regarding accounting for foreign operations.
- The Company was very aggressive in obtaining sales orders from customers, particularly at the end of the fourth quarter of 1997.
  - Sinclair was not aware of any 1997 sales with guaranteed right of return.
  - There were several instances in 1998 of potential guaranteed sales. In February 1998, Sunbeam Canada had high-sales return (approximately $774,000). In addition, The Bay Company and Wal-Mart may have had some guaranteed sales in 1998.

NOT A CERTIFIED COPY

0163111

AA166268
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Kyle Sinclair

- Asia
  - Sales projection for 1997 was $20 million.
    - The strategy to achieve these sales included a substantial increase in blanket sales
    - Blankets, which were manufactured at the Waynesboro plant were shipped before yearend 1997 to China, Japan and Taiwan. These were sold to the Company's Hong Kong distributor.
  - Sinclair showed us a income statement for the six-months ended June 1998 which reflected sales of $2.5 million and returns of $4.8 million resulting in net sales for the six months of a negative $2.3 million and a negative operating profit of approximately $3 million.
  - The blankets were returned in 1998. Sinclair indicated this was because of concern over ability of the distributor to pay for the blankets.
  - The blankets are still being held in Sunbeam warehouses located in China, Japan and Taiwan.

- Mexico
  - Sinclair believes that there was approximately $500,000 to $1 million in Bill and Hold sales at yearend 1997 in Mexico.
  - The Mexico operation is in disarray due to the substantial reduction in headcount from the restructuring plan.
  - The Company was producing more products in Mexico since the restructuring, but had no additional personnel.
  - There were problems in the finance area, including payables not being paid and receipts of raw materials being entered into the production line without entering this information into the inventory accounting system.
  - The physical inventory resulted in more inventory than was recorded on the books (due to the problem noted above).
  - There was a proposed adjustment by Arthur Andersen to record accounts payable and reduce inventory by approximately $1.5 million at the end of 1997. This adjustment was passed by the Company and negatively impacted 1998 income.
  - There were 1997 freight bills that were not accrued as of yearend 1997.
  - The Mexico plant has obsolete raw materials (perhaps $4 million) which may not be realizable if the Mexico plant is shut down. Sinclair indicated that the decision to close down the Mexico plant was still uncertain.

- Venezuela
  - There was an inventory shrink in Venezuela.
  - There are obsolete raw materials which are not used in the current production.

NOT A CERTIFIED COPY

011312

AA166269
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Kyle Sinclair

- Bill and Hold sales.
  - Sinclair was first aware of Bill and Hold sales in the middle of the fourth quarter of 1997.
  - Gluck did not want to have any Bill and Hold sales in the foreign operations.

- "Initiatives for Success in 4Q97."
  - Sinclair first saw this schedule in a leadership team meeting.
  - Don Uzzi was responsible for maintaining this list of initiatives.
  - The Canadian tax issue involves the duty charged on heating pads. The Company was charged at the "textile" rate but should have been charged at the rate applicable to "appliances." There was approximately $1 million of potential duty recovery.
    - The appeal was in process at December 31, 1997 and the Canadian duty recovery was not booked in 1997 and has not been done so far in 1998.
  - The National Electric bad debt recovery was 100% reserved at December 31, 1997. Sinclair thinks there was some money recovered in 1998 and suggested we talk with Janet Kelly regarding this matter.
    - The Company recorded $1 million in recovery on National Electric in 1997. Sinclair indicated that he would not have booked this recovery in 1997 since it had not been realized.
  - Sinclair indicated that there was no discussion at the leadership team meetings regarding "breaking the rules" regarding accounting matters.
  - Dickson Thayer did not agree with Don Uzzi regarding the Company's approach to accelerate sales and income. He was in a constant battle with Uzzi and left the Company in January 1998.
  - There was an atmosphere of constant pressure to make the numbers (revenue and earnings per share).
  - There was a push to make sales or lose your job.
  - The Company was run on a short-term basis.
  - Gluck's nature was to "do the right thing."

- Results of international operations for 1997.
  - 1997 had operating income of approximately $25 million versus a loss of approximately $5 million in 1996.
  - Sinclair thinks that the operating results, except as noted above, appropriately reflect actual operations.
  - The Company made significant improvements in foreign operations and in sales during 1997.
  - Mexico significantly increased production in 1997 and the Company's financial statements give full recognition for the intercompany profit to the Mexico operations.

NOT A CERTIFIED COPY

AA166270
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

01431h

AA166271
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Deborah McDonald

---

On July 21, 1998, Larry Bornstein and Chris Maloy, attorney with Skadden Arps, and I conducted an interview with Deborah McDonald. The summary of the information provided by Ms. McDonald is as follows:

- McDonald started with Sunbeam in October of 1997.
- Her initial job was in charge of corporate planning which included forecasting, budgeting and monitoring against the overall corporate budget.
- At the end of December 1997 when Lisa Dalberth left the Company, Lisa's responsibilities were added to McDonald's. Lisa was assistant to Don Uzzi. Uzzi was responsible for all operations and operated as the Chief Operating Officer of the Company.
- On April 1, 1998, McDonald was given the additional responsibility for business development and reported to Russ Kersh since Uzzi was no longer with the Company.
- McDonald had very little direct involvement in the yearend closing process. She believes that one of her direct reports (perhaps Steve Grow) was involved in reviewing research and development expenditures to determine which amounts could be properly capitalizable.
- McDonald was asked a series of questions about the report titled "Initiatives for Success for 4Q97."
  - This report was prepared by Lisa Dalberth and McDonald took over the process during the last week of December 1997 when Lisa left the Company.
  - The schedule was updated every day for Don Uzzi.
  - The schedule was discussed at leadership meetings. Attendees at the leadership meetings included the general managers for the business units, Bob Gluck, Lisa Dalberth, Al Lefevre, George Timchal, Judy Maudlin and Rich Goudis. Don Uzzi was the chairman of the leadership meetings.
  - The initiatives on the schedule were designed to help the Company achieve its forecasted fourth quarter 1997 earnings per share. Specific follow up was assigned to individuals.
  - Some of the individuals who were assigned responsibilities did not agree with certain items and these items were dropped from future schedules. McDonald mentioned that

NOT A CERTIFIED COPY

0145315

AA166272
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Deborah McDonald

the Company looked at and decided that it could not capitalize certain repair and maintenance costs.

- McDonald indicated she had no knowledge of what accounting entries actually got recorded on the books and records of the Company.
- She indicated that some of the circled items on her schedule were "up in the air" (presumably meaning they still needed to be resolved). For example, capitalized research and development cost of $2.5 million and over reserves for warranty costs.
- McDonald indicated that sale of the Bulls tickets related to the Company's plan to sell the Company's season tickets for the Bulls games which were used by the Chicago sales office.

- McDonald received a copy of Gluck's yearend adjustment schedule.

- McDonald indicated that the by January 15, 1998, she advised management (presumably Uzzi, her boss) that there was risk that the Company would not make its first quarter earnings projection. She thought that the Company would more like make 15¢ per share versus the 30¢ that had been planned.

- There was a conference call about mid-February 1998 where she stated that there was no way that the Company could make its first-quarter earnings per share plan.
  - Participants on this conference call included Rich Goudis, Russ Kersh, David Fannin, Don Uzzi (Kersh and Fannin where in New York at the time).
  - McDonald indicated that the first quarter of 1998 included a significant number of expenses which were applicable to 1997 and, therefore, the projected EPS was unrealistic.

- A schedule of "charges from 1997 booked in 1998" was prepared in February 1998.
  - The schedule reflects distribution-warehousing costs (D&W) freight costs relating to 1997. She indicated that Bill Bloomfield "scrubbed" (prepared) this information for her. She indicated that freight costs had been billed to a customer for $975,000 which should have been $975.
  - There was an under-accrual of freight costs of $1.5 million.
  - Customer cash discounts taken of $600,000 relate to 1997. The Company's previous accounting policy was to record cash discounts when the credit memos were issued.
  - Special deals not included in the "deal master" of $600,000 had been agreed to.
  - There was a proposed but not recorded audit adjustment of $1.1 million for Mexico which applied to 1997 and was recorded in the first quarter of 1998. This was booked to "other manufacturing variances."
  - There was a foreign exchange loss of $700,000.

NOT A CERTIFIED COPY

0116316

AA166273
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation -- Interview with Deborah McDonald

- Bill and Hold sales were not openly discussed at the Company until the last week of December 1997.

- McDonald discussed the "red book."
  - This book represented the "go to market" plan to help achieve fourth-quarter 1997 sales.
  - Kersh knew that the fourth quarter of 1997 was not going well.
  - There was a meeting of Russ Kersh and Don Uzzi (co-chairs of the meeting) and Lee Griffith, Lisa Dalberth and the general managers of the business units to discuss the red book. This meeting was held around the middle of the fourth quarter of 1997. Al Dunlap did not attend this meeting.
  - McDonald believes that the red book may have been the result of a meeting where Dunlap reviewed the 1998 to 2000 plan and was outraged because it was not aggressive enough. This meeting was conducted sometime in the middle of the fourth quarter of 1997.
  - The red book indicated that if a customer ordered 25% of its projected 1998 grill order before yearend, the customer would receive an extra discount. The plan was to sell in early and hopefully extend the selling season. McDonald indicated that the problem was that the Company never changed the customer's buying patterns.

- The early buy program was started in September 1997 and, as a result, October 1997 sales were terrible.

- McDonald was not involved in the Bill and Hold sales program. She indicated that Bob Gluck, Roger Lee and Al Lefevre were the ones most familiar with this program.

- There was a big push to sell to "consolidators" at quarter end. She mentioned PHD as an example.

- Sale of inventory to EPL
  - The only reason for this sale was to record sales revenue and margin.
  - The sales revenue recorded was approximately $9 or 10 million and the margin was approximately 70%. McDonald believes the Company reserved approximately $1 million of the margin on this sale.

- Gluck was concerned with first-quarter 1998 returns. McDonald believes he was told that there were no guaranteed sales at yearend.

NOT A CERTIFIED COPY

0163117

AA166274
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Deborah McDonald

- First-quarter 1998 sales forecast.
  - The goal was $315 million, the street expectation was $290 million and the actual results were $240 million.
  - McDonald knew they could not make the sale revenue numbers. She told management in a conference call in February of 1998 that they could not make the sales or earnings per share. She was projected EPS of 20¢ to 22¢ per share at that time. The shortfall was due partially to the "spillover" of expenses from 1997 and the low run rate of sales during the first quarter of 1998.
  - There was no way the Company could ever make $2.20 per share for 1998. McDonald thought that EPS would be closer to $1.20 per share.

- March 18, 1998 conference call prior to the March 19 press release.
  - Participants in the conference call included David Fannin, Don Uzzi and multiple participants from their investment banker (Morgan Stanley and Morgan Stanley's legal counsel). McDonald indicated Lee Griffith may have participated in this conference call. The call was held from approximately 4:30 p.m. to approximately 7:30 p.m.
  - The investment bankers and attorneys had concern over how the Company could ship the amount of product needed to make the first-quarter 1998 sales forecast. They were told that the customers had been conditioned to buy most of their products during the last week of the quarter.
  - There was no discussion of profit margin or first-quarter 1998 earnings per share during this conference call.

- McDonald indicated some sales were being made at a loss or low margin just to make the first-quarter 1998 sales projections.

- The second conference call on March 18, 1998.
  - McDonald did not participate in this call, but she believes it lasted until around 11 p.m. or later that evening.
  - She believes Fannin or Kersh drafted the press release.
  - The press release was distributed in the morning and she did not review the press release.
  - She disagreed with the statement in the press release that the Company would be able to match its first quarter 1997 revenue and earnings nor did she believe it would be able to make the revenue and earnings for the 1998 year.

NOT A CERTIFIED COPY

01413718

AA166275
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Deborah McDonald

- McDonald indicated that the only contact that the investment bankers (Morgan Stanley) had with the Company was through Kersh and Goudis.
  - Morgan Stanley prepared a ten-year projection with no input from operating management of the Company. McDonald believes Kersh and Gluck provided certain information to the investment bankers for this projection.
  - McDonald and Scott Yales (who worked for Lisa Dalberth) were asked to put together a ten-year plan for the company.
  - McDonald and Yales were told not to bother talking with operating management in the Company in order to put together this ten-year projection. They were asked to prepare it "in a vacuum" and give the information to Morgan Stanley. McDonald believes Morgan Stanley may have made further revisions to this ten-year projection. Yales produced a pro forma combined projection of the Company reflecting earnings per share of $1 to $1.30 per share. Morgan Stanley apparently used $1.80 per share in their projection.

- In mid-March 1998, McDonald attended a meeting with the investment bankers (including Morgan Stanley) and attorneys.
  - Uzzi and Kersh were out of town and McDonald was asked to chair this meeting.
  - Approximately 30 people attended this meeting.
  - She was never asked about the results for the first quarter of 1998.
  - McDonald presented a strategic plan overview which had previously been prepared by Kersh which she believes included a plan to earn $2.20 per share for 1998.

- April 1998 submission to investment bankers.
  - Coleman was coming in below plan at this time.
  - Scott Yales prepared an analysis of operating results which was later changed to be more favorable.
  - McDonald advised Kersh about her concerns regarding the plan. Specifically she advised Kersh of the following:
    - $150 million in exposure on sales revenue.
    - No plans were in place to reduce selling, general and administrative expenses (which had been projected at $20 million).
    - The plan reflected an outsourcing strategy savings which was not in place.
    - The plan reflected positive grill manufacturing variances which were not being achieved.

NOT A CERTIFIED COPY

01431 9

AA166276
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Deborah McDonald

- May 1998 submission to Morgan Stanley.
  - The Company prepared a "replan."
  - The revenue income projections provided to Morgan Stanley could not be achieved according to McDonald.
  - Goudis and other management committed to Al Dunlap and Wall Street projections that were not attainable.

- May 1998 press release.
  - No one in mid-level management ever saw or agreed to the numbers included in this press release.

- February 1998 change in accounting policy for inventory overhead.
  - Gluck approved this change in accounting policy which resulted in a one-time favorable impact on income.

- There was consideration of a sale of product for barter credits in the first quarter of 1998. Kersh did not approve this transaction.

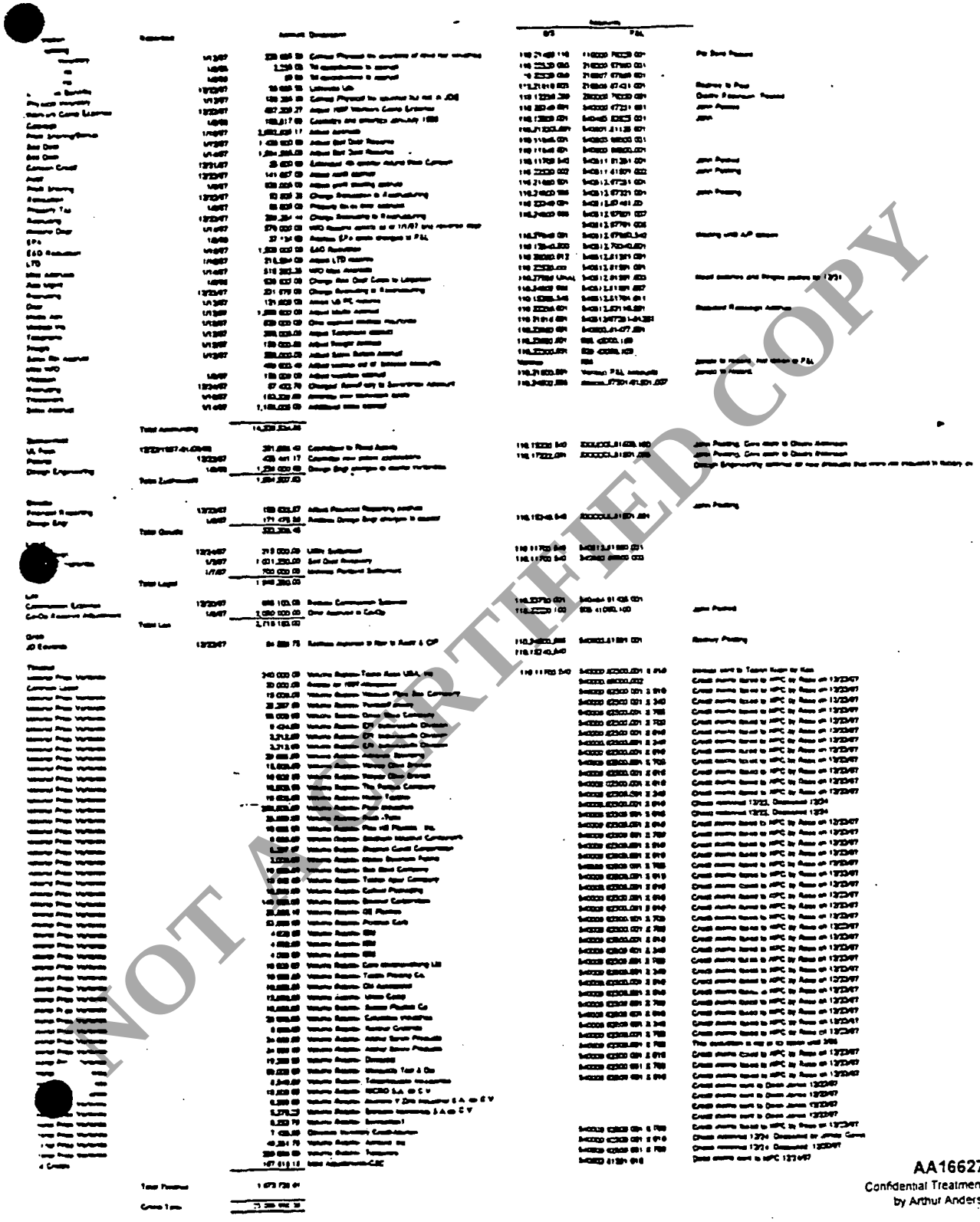
- Supplier rebates.
  - 1998 rebate program was effectively taken to income in 1997. McDonald indicated that the agreements do not say this, but the practical result is that the Company will not receive planned rebates for 1998.

GBPaard29/interview-DeborahMcDonald

NOT A CERTIFIED COPY

0113320

AA166277
Confidential Treatment Requested
by Arthur Andersen LLP



NOT CERTIFIED COPY

011321

AA166278
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062594

16div-020621

February 1998 Adjustments

	Account	Description	Type		Explanation
Prior period adjustments	60000 670 701 (Hyp)	Mfg. Variances Overhead - Depreciation	COS	(22,618)	
Mexico	various (Hyp)	Administration, Selling, etc.	SG&A	818	Mexico erroneously recorded depreciation expense that is to be amortized
Product Liability	540512 73000 001	Product Liability	COS	17	Mexico erroneously recorded depreciation expense that is to be amortized
Mexico	210001 01001 001	Distribution - Operating Supplies	SG&A	340	Reversed 1/2 of Jan & Feb product liability expense
Mexico	various (Hyp)	Standard Cost of Sales	COS	234	Reversed Outdoor patents expense. We will build a patents inventory account. I am coordinating with Ron Parker
Mexico	various (Hyp)	Administration	SG&A	199	1997 Mexico audit adjustment that is being deferred until second quarter
Mexico	various (Hyp)	Foreign Exchange/Other Financial Charges	OTHER	113	1997 Mexico audit adjustment that is being deferred until second quarter.
Legal	540512 81001 000	Administration - Legal	SG&A	731	1997 Mexico audit adjustment that is being deferred until second quarter.
Telephone	540503 81017 001	Administration - Telephone	SG&A	300	Reduced legal accrual
T&E	various	Administration - Travel/Entertainment	SG&A	500	Reversed excess telephone accrual
Workmens comp	540512 81731 001	Mfg. Variances Overhead - Workers Comp	COS	24	Expenses reclassified with acquisition
Profit sharing	540512 81291 001	Administration - Profit Sharing	SG&A	101	Eliminated workmens comp 1998 expenses.
Profit sharing	540512 81751 001	Mfg. Variances Overhead - Profit Sharing	COS	206	No profit-ex accrual
Financial Reporting	540501 81001 000	Administration - Outside Services	SG&A	447	No profit-ex accrual
Def Comp	540501 81117 001	Administration - Deferred Compensation	SG&A	100	Reduced financial reporting expense as we will not prepare a glossy annual report
Medical	540512 81791 001	Mfg. Variances Overhead - Group Insurance	COS	600	Reversed Jan and Feb comp expense as it is covered in the $30,240 charge.
Medical	540512 81791 001	Administration - Group Insurance	SG&A	480	Anticipating that we have savings in the medical accrual
Bad Debt	540512 81865 001	Administration - Customer Chargebacks	SG&A	300	Anticipating that we have savings in the medical accrual
JDE	540512 81291 001	Administration - Training	SG&A	416	Customer Chargebacks that were reversed to bad debt reserve
other	various	Other Cost of Sales	SG&A	33	Deferred JDE training expenses.
Subtotal			COS	(0)	
Compensation expense				(10,647)	
Total prelim @ 3/31/98				(30,240)	
				(41,087)	

Summary by Type of Cost	
COS	2,544
SG&A	2,691
OTHER	(30,609)
	(25,375)

NOT A CERTIFIED COPY

AA166279
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062595

16div-020622

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Summary

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party[ies]:	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		375.4	48.8	0.33	ALL SALES AT OCTOBER 1997 RATES
1	Lower Co-Op	Al LeFevre, Roger Lee	-	2.0	0.01	Further Control on Discretion (Blanket reserve)
2	Freight rebates/control	Jim Job	-	0.5	0.00	Tighten air freight spending, prepaids, etc. – for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.5	0.00	Accept ZERO back
4	Better Material PPV	George Timchal	-	2.0	0.01	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	0.2	0.00	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	2.8	0.02	Revise total year accrual to $36MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	0.9	0.01	Review all adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A, as well as Operations	-	0.2	0.00	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates	-	0.8	0.01	All development costs (including SG&A, pkging) to capital
10	Capitalize Mfg. Costs	Mike Bondiskey, all Controllers	-	1.0	0.01	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	0.5	0.00	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	0.2	0.00	Shower massagers, duty draw backs.
13	$1MM Claim in Canada	Kyle Sindak, Lisa Dalberth, Bob Gluck	-	1.0	0.01	On-going litigation that is a win for SOC (ref. heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.5	0.00	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	1.0	0.01	Sell low/no book value excess equipment overseas
16	Obsolete H@H Items to Non-Profit Org	Kevin McBride, Lisa Dalberth, Bob Totte	-	1.0	0.01	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	0.1	0.00	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	-	1.0	0.01	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	0.5	0.00	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Dailey, Terry Smith	-	0.6	0.00	Other initiatives in controlling spending, rebates
	Ending Balances:		375.4	65.7	0.45	
	Other Items:					
21	Asset Sales, Other Legal	Lisa Dalberth, Janet Kelley	-	2.5	0.02	Show booth, Bulls tickets, environmental, litigation
	Ending Balances:		375.4	68.2	0.47	
	AOD: September 1997 YTD EPS				0.93	
	Total Year EPS				1.40	
22	NEEDED OPPORTUNITIES				0.05	

Note: reflects 35.7% tax rate (full year), sharebase of 88.7 million

NOT A CERTIFIED COPY

AA166280
Confidential Treatment Requested
by Arthur Andersen LLP

016023

CPH0062596

16div-020623

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party[ies]:	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		354.6		0.255	
1	Lower Co-Op	Al LeFevre, Roger Lee	-1.4	2.00 SGA	0.014	Further Control on Discretion (Blanket reserve)
2	Freight rebates/control	Jim Job	-	SGA 0.50	0.004	Tighten air freight spending, prepaids, etc. ~ for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.25 SGA	0.002	Accept ZERO back
4	Better Material PPV	George Timchal	-	1.60 mfg	0.012	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	-	-	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	-	-	Revise total year accrual to $36MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	SGA 0.66	0.005	Review of adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A and Operations, Steve Groh	-	SGA 0.50	0.004	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates, Deb	-	SGA 2.25	0.018	
10	Capitalize Mfg. Costs	Mike Bondiskey, all Controllers	-	→ 0.50 mfg	0.004	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	SGA 0.50	0.004	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	X 0.20	0.001	Shower massagers, duty draw backs..
13	$1MM Claim in Canada	Kyle Sinclair, Janet	-	-	-	On-going litigation that is a win for SOC (ref. heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.50	0.004	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	-	-	Sell low/no book value excess equipment overseas
16	Obsolete H@H Items to Non-Profit Org	Kevin, Lisa Delberth, Bob Totte, Deb	-	-	-	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	SGA 0.10	0.001	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	10.0	6.00	0.043	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	-	-	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Dailey, Terry Smith	-	SGA 0.25	0.002	Other initiatives in controlling spending, rebates
21	USI residual billings or expense overaccruals	Steve Groh			-	
22	Accounting Analysis	Bob Gluck		SGA 2.00	0.014	
23	National Electronic bad debt settlement	Kyle & Bob G		SGA 1.18	0.009	
24	Ogilvey & Mather	Bob G		SGA 0.30	0.002	
	Ending Balances:		364.60	19.29	0.395	
	Other Items:					
22	Asset Sales, Other Legal	Janet Kelley	-	SGA 4.00	0.029	Litigation, Environmental, Show booth, Bulls tickets
	Ending Balances:		364.6	23.29	0.424	
	ADD: September 1997 YTD EPS				0.926	
	Total Year EPS				1.350	
22	NEEDED OPPORTUNITIES				0.100	

Note: reflects 35.7% tax rate (full year), sharebase of 88.7 million

Faxed to Ron 12/30/97
hand delivered to Bill 12/30/97

NOT A CERTIFIED COPY

AA166281
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062597

16div-020624

011324

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Summary

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party(ies):	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		375.4	48.8	0.33	ALL SALES AT OCTOBER 1997 RATES
1	Lower Co-Op	Al LeFevre, Roger Lee	-	2.0	0.01	Further Control on Discretion (Blanket reserve)
2	Freight rebates/control	Jim Job	-	0.5	0.00	Tighten air freight spending, prepaids, etc. – for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.5	0.00	Accept ZERO back
4	Better Material PPV	George Timchal	-	2.0	0.01	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	0.2	0.00	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	2.6	0.02	Revise total year accrual to $36MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	0.9	0.01	Review all adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A, as well as Operations	-	0.2	0.00	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates	-	0.8	0.01	All development costs (including SG&A, pkging) to capital
10	Capitalize Mfg Costs	Mike Bondiskey, all Controllers	-	1.0	0.01	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	0.5	0.00	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	0.2	0.00	Shower massagers, duty draw backs .
13	$1MM Claim in Canada	Kyle Sinclair, Lisa Dalberth, Bob Gluck	-	1.0	0.01	On-going litigation that is a win for SOC (ref. heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.5	0.00	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	1.0	0.01	Sell low/no book value excess equipment overseas
16	Obsolete H@H Items to Non-Profit Org	Kevin McBride, Lisa Dalberth, Bob Totte	-	1.0	0.01	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	0.1	0.00	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	-	1.0	0.01	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	0.5	0.00	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Dailey, Terry Smith	-	0.5	0.00	Other initiatives in controlling spending, rebates
	Ending Balances:		375.4	65.7	0.48	
	Other Items:					
21	Asset Sales, Other Legal	Lisa Dalberth, Janet Kelley	-	2.5	0.02	Show booth, Bulls tickets, environmental, litigation
	Ending Balances:		375.4	68.2	0.47	
	ADD: September 1997 YTD EPS				0.93	
	Total Year EPS				1.40	
22	NEEDED OPPORTUNITIES				0.05	

Note: reflects 35.7% tax rate (full year), sharebase of 88.7 million

AA166282
Confidential Treatment Requested
by Arthur Andersen LLP

016825

CPH0062598

16div-020625

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Summary (2)

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party[ies]:	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		375.4	48.80	0.299	ALL SALES AT OCTOBER 1997 RATES
1	Lower Co-Op	Al LeFevre, Roger Lee	-	2.00	0.014	Further Control on Discretion (Blanket reserve)
2	Freight rebates/control	Jim Job	-	0.50	0.004	Tighten air freight spending, prepaids, etc. – for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.25	0.002	Accept ZERO back
4	Better Material PPV	George Timchal	-	1.50	0.011	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	-	-	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	-	-	Revise total year accrual to $38MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	0.65	0.005	Review all adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A and Operations, Steve Groh	-	0.40	0.003	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates, Deb	-	1.50	0.011	All development costs (including SG&A, plg/mfg) to capital
10	Capitalize Mfg Costs	Mike Bondiskey, all Controllers	-	1.00	0.007	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	0.50	0.004	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	0.20	0.001	Shower massagers, duty draw backs..
13	$1MM Claim in Canada	Kyle Sinclair, Janet	-	-	-	On-going litigation that is a win for SOC (ref. heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.50	0.004	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	-	-	Sell low/no book value excess equipment overseas
16	Obsolete H@H Items to Non-Profit Org.	Kevin, Lisa Dalberth, Bob Totte, Deb	-	0.32	0.002	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	0.10	0.001	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	-	1.00	0.007	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	-	-	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Dailey, Terry Smith	-	0.25	0.002	Other initiatives in controlling spending, rebates
21	USI residual billings or expense overaccruals	Steve Groh				
22	Accounting Analysis	Bob Gluck		1.50	0.011	
23	National Electronic bad debt settlement	Kyle & Bob G		1.100	-	Potential $1 mil
24	Ogilvey & Mather	Bob G		.300	-	Potential $500K
	Ending Balances:		375.40	60.97	0.387	
	Other Items:					
22	Asset Sales, Other Legal	Janet Kelley	-	2.50	0.018	Show booth, Bulls tickets, environmental, litigation
	Ending Balances:		375.4	63.47	0.405	
	ADD: September 1997 YTD EPS				0.926	
	Total Year EPS				1.331	
22	**NEEDED OPPORTUNITIES**				0.119	

Note: reflects 35.7% tax rate (full year), sharebase of 68.7 million

AA166283
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062599

16div-020626

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Summary (2)

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party[ies]:	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		375.4	48.80	0.299	ALL SALES AT OCTOBER 1997 RATES
1	Lower Co-Op	Al LeFevre, Roger Lee	-	2.00	0.014	Further Control on Discretion (Blanket reserve)
2	Freight rebates/contra	Jim Job	-	0.50	0.004	Tighten air freight spending, prepaids, etc. - for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.25	0.002	Accept ZERO back
4	Better Material PPV	George Timchal	-	1.50	0.011	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	-	-	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	-	-	Revise total year accrual to $36MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	0.65	0.005	Review all adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A and Operations, Steve Groh	-	0.40	0.003	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates, Deb	-	1.50	0.011	All development costs (including SG&A, pkging) to capital
10	Capitalize Mfg Costs	Mike Bondiskey, all Controllers	-	1.00	0.007	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	0.50	0.004	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	0.20	0.001	Shower massagers, duty draw backs..
13	$1MM Claim in Canada	Kyle Sinclair, Janet	-	-	-	On-going litigation that is a win for SOC (ref heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.50	0.004	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	-	-	Sell low/no book value excess equipment overseas
16	Obsolete H&H Items to Non-Profit Org	Kevin, Lisa Delberth, Bob Totte, Deb	-	0.32	0.002	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	0.10	0.001	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	-	1.00	0.007	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	-	-	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Daley, Terry Smith	-	0.25	0.002	Other initiatives in controlling spending, rebates
21	USI residual billings or expense overaccruals	Steve Groh				→ $3M + Show found $5M
22	Accounting Analysis	Bob Gluck		1.50	0.011	
23	National Electronic bad debt settlement	Kyle & Bob G		1.11	-	Potentially $1 mil
24	Ogilvey & Mather	Bob G		.80	-	Potential $600K
	Ending Balances:		375.40	60.97	0.387	
	Other Items:					
22	Asset Sales, Other Legal	Janet Kelley	-	2.50	0.018	Show booth, Bulls tickets, environmental, litigation
	Ending Balances:		375.4	63.47	0.405	
	ADD: September 1997 YTD EPS				0.926	
	Total Year EPS				1.331	
22	NEEDED OPPORTUNITIES				0.119	

Note: reflects 35.7% tax rate (full year), sharebase of 68.7 million

NOT A CERTIFIED COPY

AA166284
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062600

16div-020627

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Summary

Sunbeam Corporation
Initiatives for Success in 4Q97
$ Millions, except EPS

		Responsible Party(ies):	Gross Sales:	Profit:	EPS:	Comments:
	Beginning Balances:		375.4	48.8	0.33	ALL SALES AT OCTOBER 1997 RATES
1	Lower Co-Op	Al LeFevre, Roger Lee	-	2.0	0.01	Further Control on Discretion (Blanket reserve)
2	Freight rebates/control	Jim Job	-	0.5	0.00	Tighten air freight spending, prepaids, etc. ~ for 1Q98
3	No Returns	Lee Griffith, Al LeFevre	-	0.5	0.00	Accept ZERO back
4	Better Material PPV	George Timchal	-	2.0	0.01	Scrubbing all rebates, etc.
5	Better Amortization (Manufacturing Var.)	Mike Bondiskey	-	0.2	0.00	FIFO calculation against favorable October results
6	Lower Cost of Quality	Bob Gluck, Dwaine Isenberg	-	2.6	0.02	Revise total year accrual to $36MM as planned
7	Lower Commissions	Al LeFevre, Roger Lee	-	0.9	0.01	Review all adequacy tests for over-accrued amounts
8	Lower Discretionary Spending (e.g., travel)	All SG&A, as well as Operations	-	0.2	0.00	Realizable favorability from spending controls
9	Capitalize R&D Costs	Jerry Zuchowicki, Scott Yates	-	0.6	0.01	All development costs (including SG&A, pkging) to capital
10	Capitalize Mfg. Costs	Mike Bondiskey, all Controllers	-	1.0	0.01	All expenses, costs reviewed for capitalization
11	Stop Spending on Marketing	VP/GM's, FM's	-	0.5	0.00	Realizable favorability from spending controls
12	Pull Through on Tariffs	Pat Boyle, Bob Totte	-	0.2	0.00	Shower massagers, duty draw backs..
13	$1MM Claim in Canada	Kyle Sinclair, Lisa Dalberth, Bob Gluck	-	1.0	0.01	On-going litigation that is a win for SOC (ref. heating pads)
14	MRO Spending Shut-Off at Sites	Judy Maudlin, Plant Managers	-	0.5	0.00	Stop requests at tool rooms for the rest of the month
15	Excess Equipment Sales to Sourcers	Judy Maudlin, George Timchal, LCD	-	1.0	0.01	Sell low/no book value excess equipment overseas
16	Obsolete H@H Items to Non-Profit Org	Kevin McBride, Lisa Dalberth, Bob Totte	-	1.0	0.01	Gain profit for goods in tax benefits
17	Mis-billed group insurance charge	Gary Mask, James Llewellyn	-	0.1	0.00	Charge is for USI employees
18	EPI inventory change to contract	Bill Bloomfield, George Timchal, LCD	-	1.0	0.01	Go forward with burden of inventory ownership on EPI
19	Direct response advertising	VP/GM's, FM's, Bob Gluck, LCD	-	0.5	0.00	Capitalize useful life of direct response advertising for '98
20	MIS Reductions	Jack Dailey, Terry Smith	-	0.5	0.00	Other initiatives in controlling spending, rebates
	Ending Balances:		375.4	65.7	0.46	
	Other Items:					
21	Asset Sales, Other Legal	Lisa Dalberth, Janet Kelley	-	2.5	0.02	Show booth, Bulls tickets, environmental, litigation
	Ending Balances:		375.4	68.2	0.47	
	ADD: September 1997 YTD EPS				0.93	
	Total Year EPS				1.40	
22	NEEDED OPPORTUNITIES				0.05	

Note: reflects 35.7% tax rate (full year), sharebase of 88.7 million

NOT A CERTIFIED COPY

AA166285
Confidential Treatment Requested
by Arthur Andersen LLP

016328

CPH0062601

16div-020628

Base PL

Sunbeam Corporation
Fourth Quarter 1997 Revised Forecast - INTERNAL ADJUSTED AS OF DECEMBER 11, 1997
$ Millions

	Act 10/97		Act 11/97		Fcst 12/97	Revised 12/97		Fcst Quarter		Revised Quarter		Change
Gross Sales	101.2		111.7		187.1	182.6		418.8		375.4		(43.4)
Net Sales	92.1	7%	103.6	9%	164.7	162.4	7%	388.2	9%	348.1	9%	(37.1)
Standard Gross Margin	28.2	31%	29.4	28%	57.7	41.0	27%	139.9	36%	98.6	28%	(40.3)
Manufacturing Variances	(3.8)		(0.0)		(7.9)	2.8		(18.8)		(8.8)		(10.0)
Inventory Adjustments	1.9		(1.5)		0.9	(3.5)		3.6		(3.1)		0.7
Cost of Quality	3.9		3.9		3.1	4.6		11.0		12.3		(1.3)
Product Liability	0.0		0.0		1.2	-		2.2		0.0		2.2
Other Period Cost	1.1		0.9		0.5	0.5		2.0		2.6		(0.6)
Inventory Valuation Reserves	(0.5)		0.2		0.2	0.2		(0.1)		(0.2)		0.0
Other Cost of Sales	1.4		0.8		0.1	0.1		2.0		2.3		(0.3)
Gross Profit	24.0	26%	26.1	24%	59.7	36.6	24%	138.9	36%	95.6	25%	(51.3)
Selling	2.0		2.0		2.2	2.0		6.3		6.0		0.3
Advertising	1.1		2.3		1.4	1.4		4.8		4.8		(0.4)
Marketing	1.2		1.3		0.8	0.8		2.8		3.3		(0.4)
Distribution/Warehousing	2.3		2.0		1.5	1.5		5.8		6.7		(1.2)
Administrative Expense	3.4		4.4		6.6 1.7	6.6		17.2		14.4		2.8
Receivable Valuation Provision	0.8		0.6		0.6	0.6		2.1		2.0		0.1
Research and Development	0.7		0.6		0.6	0.5		1.8		1.8		0.1
Total SG&A	11.5		13.9		13.8	13.5		40.3		38.9		1.3
Goodwill & TM Amortization	0.7		0.7		0.7	0.7		2.1		2.1		(0.0)
Operating Profit	11.8	13%	10.6	10%	46.2	22.3	15%	94.8	25%	44.8	13%	(50.0)
Other (Income)/Expense	1.2		1.4		0.8	0.8		2.6		3.4		(0.8)
Profit before Taxes	10.6	9%	9.1	9%	44.4	21.6	14%	92.0	24%	41.2	12%	(50.8)
Income Taxes @ 35%	3.7		3.2		15.8	7.6		33.1		14.4		(18.7)
Net Income	6.8	6%	6.0	6%	28.8	14.0	9%	58.9	15%	26.8	8%	32.1
EPS	0.08		0.07		0.33	0.16		0.68		0.30		(0.38)
Note Sharebase	88.7		88.7		88.7	88.7		88.7		88.7		-
								1.80		1.24		

1- December sales reflect inclusion of $11MM bonus activity on volume for good margins (34%), no bonus booked.
2- Product liability zeroed out, per Deb MacDonald/Don Jackson.
3- Selling and R&D adjusted slightly for reserve adequacy and under-spending, respectively

FIGURES DO NOT INCLUDE ADJUSTMENTS FOR RESERVE ADEQUACY CHANGES OR ONE TIME INCOME ITEMS.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

AA166286
Confidential Treatment Requested
by Arthur Andersen LLP

016329

CPH0062602

16div-020629

NOT A CERTIFIED COPY

9

011330

AA166287
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: Files

From: Phillip E. Harlow, Fort Lauderdale

Date: July 29, 1998

Subject: Sunbeam Interview with Tom Moody

On July 28, 1998, Larry Bornstein, Chris Malloy, attorney with Skadden, Arps and I interviewed Tom Moody, Plant Controller at Waynesboro, Mississippi. Tom joined the Company on March 23, 1998 and as such did not have much knowledge of 1997 activity.

Tom has not seen anything unusual relative to vendor rebates or bill and hold.

He indicated that open receivers related to 1997 paid in 1998, not accrued, amount to about $60,000. He also said that a blanket redesign recall reserve of $400,000 was established in the first quarter of "98" and should be adequate.

We also discussed blanket returns. Tom indicated that he did not have much knowledge of returns other than there was a lot of them.

Per Tom, has not seen –

- Vendor Rebates
- Anything unusual

Open "97" receiver amounts to $60,000 in "98" immaterial.

Tremendous amount of returns – (not on local Company books).

Redesign recall - $400,000 reserve on books. He thinks this will be adequate.

Janell Meadows – previous controller left the Company.

[redacted]

[redacted] interview with tom moody

NOT A CERTIFIED COPY

AA166288
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

10

0144332

AA166289
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Dennis Pastrana, Miami

Date: September 1, 1998

Subject: Interview with Kevin Jeffcoat

Nine years with Sunbeam

Title: District Manager, Waynesboro (Since Feb. '98)

Responsibilities:

- Bedding Division distribution
- Responsible for off-site warehouse in Laurel

Wal-Mart
Target
Payless
} Customer specific blanket inventory held under separate branch plant (Laub) in the inventory subledger

Prior Positions: 9/97 - Hattiesburg, as District Manager responsible for 49N warehouse & outlying warehouses.
Prior to 9/97, operations Manager for Brownsville (94 - 9/97) supplying materials to Mexico *Maquiladoras*

1/97 - 7/97 - Had some communications with suppliers as Kevin was responsible for placing P.O.s (to meet requirements of Maquiladoras). Pricing decisions were all made through the corporate purchasing.

Nothing unusual noted in purchasing responsibilities.

9/97 - Was aware that orders were pulled forward on a couple of occasions. e.g., Q3 - October orders pulled into September (15-20 days*)
- Not done for largest customers
- Normal lead = 14 days

Not too involved with this too much. He was mostly responsible for re-stocking the distribution centers.

4th Q '97 - Did not note significant pull forward of orders

NOT A CERTIFIED COPY

014333

AA166290
Confidential Treatment Requested
by Arthur Andersen LLP

Date: September 1, 1998

Subject: Interview with Kevin Jeffcoat

Bill & Hold

Not involved in Q3/Q4 '97. First involvement was in Q1 '98. Waynesboro & Neosho

12/97 - Was involved in shipments to customers out of the 49N warehouse. No early shipments occurred from this warehouse.

Q1 '98 - Bill & Hold

Blankets

1. *Pamida* - $424K - Shipped 6/15/98
2. Bradlees - $770K - Ship dates 8/98-10/98

} only 2 Bill & Hold re: Blankets

Stored at D&D Transport - used for storage of bankstock (i.e. unfinished Blanket cores) & Bill & Hold

Does not recall any pull forward of orders in Q1.
Due to seasonality - not much pull forward of blankets orders.

No unusual actions taken with respect to order processing in Q1 but B&H were separately identified (vs in Q4 they were not separately coded in the sales order system).

Grills

1. Last 3 weeks of March Kevin was pulled from Waynesboro to help with Grill Bill & Hold at NDC warehouse
2. NDC - 3 B&H customers stored at this warehouse
   Wal-Mart
   Bradlees
   Montgomery Ward
   } Aggregate guess = $8 million
3. Segregated inventory by marking off with tape, placards
4. Separately tracked on spreadsheet
5. Segregated by customer in NDC's inventory tracking system
6. Does not know about subsequent shipments

Waynesboro - Returns →

1. Not responsible for returns, but come through the same facility therefore has a feel for the activity
2. Lent people from the Distribution Center to assist in unloading returns in 1998
3. Large volume of returns in March & April* (*bigger month); returns continued through end of May.

NOT A CERTIFIED COPY

011334

AA166291
Confidential Treatment Requested
by Arthur Andersen LLP

Date: September 1, 1998

Subject: Interview with Kevin Jeffcoat

4. Could initially not accept return due to no RA's
5. RA problem was cleared up mainly in Aprnl. A small volume of RA's were processed in March.
6. Trucks carrying non-defective returns were turned away in March - approx. 15 loads. Returns were refused due to lack of RAs. Trucks sent back to carrier terminal.
7. Not involved in processing freight bills
8. Kevin asked the general question about why this was happening (turning away returns due to no RA's) he was told that the Company was in the process of trying to work out the issues with customers.

Inventory Levels

1. Currently ≈ $80 million
2. Mostly w/p inventory - $50-55 million

Data\Interview with Kevin Jeffcoat

SS

NOT A CERTIFIED COPY

0116335

AA166292
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062608

16div-020635

ARTHUR ANDERSEN

To: Files

From: Phillip E. Harlow, Fort Lauderdale

Date: July 29, 1998

Subject: Sunbeam Conversation - Interview with Kevin Jeffcoat

---

On July 28, 1998, Dennis Pastrana, Chris Malloy, attorney with Skadden Ayres and I conducted an interview with Kevin Jeffcoat, Distribution Manager at Waynesboro, Mississippi. A summary of information provided by Mr. Jeffcoat is as follows:

- Summary of positions held
  - Became Distribution Manager in Waynesboro in February, 1998
  - Distribution Manager - Warehousing September '97 to January '98
  - Product Supply Manager in Brownsville, Texas September '94 to September '97

- Order Pull-Ups.
  - Kevin was aware of several occasions at third quarter end '97 where customer orders were pulled up from 1 to 16 days.

- Bill and Hold
  - Not involved with Bill and Hold at year-end
  - Q 1 in 1998 was aware of two customers
    - Bradlees - Sales of $400,000 with ship date of August
    - Carmida (?) - Sales of $100,000 with ship date of June

  - These items were stored at D & T Transport warehouse in Meridian, Mississippi.

  - Kevin spent the last week of Q1 1998 at the NDC warehouse in Miami, Oklahoma.

  - He was aware of these B & H transactions totaling $8Million there:

    - Wal-mart
    - Bradlees
    - Montgomery Ward

  - This inventory was marked off in the warehouse and NDC maintained a separate list of each customer B&H inventory.

1998 Returns

- Returns were very heavy in March and April.
- Return authorization was the problem, since returns were coming back with no return authorizations in the system.
- Problem started in early March.

NOT A CERTIFIED COPY

01 4336

AA166293
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062609

16div-020636

Date: July 29, 1998

Subject: Sunbeam Conversation - Interview with Kevin Jeffcoat

- Turned away 15 truckloads of blankets which were returned to truck terminal.
- He was told that the reason for the problem was that the Company was trying to work out the details with the customers.

1998 Inventory Level

- Per Kevin, inventory site now at $80 Million, which in his mind, is very high.

Shp/sun000/interview with Kevin Jeffcoat

NOT A CERTIFIED COPY

011337

AA166294
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062610

16div-020637

NOT A CERTIFIED COPY

11

014338

AA166295
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: Files

From: Phil E. Harlow

Date: July 30, 1998

Subject: Sunbeam - Interview with Don Jackson

On July 16, 1998, Don Denkhaus, Rita Gordon, attorney from Skadden Ayers, and I interviewed Don Jackson, Corporate Accounting Manager. Don discussed the following items with us:

1996 Restructuring

- Don's only role, other than booking Journal entries given to him by others, was to gather the information for the COBRA accrual.
- Don never saw the Coopers and Lybrand report.
- Bob Gluck controlled the restructuring accounting process.
- Most of the restructuring journal entries were based on a summary form of information.
- Don did not see anything unusual with the restructuring reserve entries other than the speed in which it was pulled together.

1997 Use of Restructuring

- Bob Gluck would run the P & L's and identify items that didn't make sense.
- Don would receive a report monthly which showed "sales below standard". This was used for booking the standard cost shortfall on sales against the "E and O" reserve.
- Per Don, he was not aware of any reserves being moved around in the first quarter of 1997.
- In August and September 1997, some reserves may have been moved around to product liability – also litigation reserve may have been taken down.
- In fourth quarter, moved excess litigation reserve of $7 Million to warranty reserve.
- Workers Compensation restructuring was moved to Workers Compensation General since the third party administrator could not distinguish claims between active and closed facilities.

Other

- Each month a sales accrual is made. This started out as a large amount in early 1997 and has become a smaller amount each month.

First Quarter 1998

- $3 Million of environmental reserve taken down.

jlp

NOT A CERTIFIED COPY

011336

AA166296
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062612

16div-020639

NOT A CERTIFIED COPY

12

01340

AA166297
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062613

16div-020640

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow, Fort Lauderdale

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russell Kersh

---

On October 12, 1998, Don Denkhaus and Phil Harlow AA LLP partners, interviewed Al Dunlap former Chairman and CEO of Sunbeam Corporation (the "Company") and Russell Kersh, former CFO of the Company, in connection with the restatement of the Company's 1996, 1997 and first quarter 1998 financial statements. In attendance at the meeting were the following:

Name	Firm
Don Denkhaus	Arthur Andersen
Phil Harlow	Arthur Andersen
Chris Malloy	Skadden, Arps, Slate, Meagher & Flam
Chris Sues	Pryor Cashman
Don Zakarin	Pryor Cashman
Dan Dooley	PricewaterhouseCoopers
Harvey Kelly	PricewaterhouseCoopers
Steven Skalak	PricewaterhouseCoopers
Cassandra Reynolds	PricewaterhouseCoopers
Noel Spiegel	Deloitte & Touche
Debra Cohen	Deloitte & Touche
Robert Ambler	King & Spalding
Al Dunlap	
Russell Kersh	

The meeting began with all of the firms present reviewing and signing the Company required confidentiality agreement. Don began the interview by discussing the ground rules for the interview, indicating that AA would ask questions about various potential areas of restatement, however, AA could not provide details about the mechanics or specific facts for such areas of potential adjustment.

The following summarizes the areas covered and the responses from Dunlap and Kersh:

- EPI Guaranteed/Consignment Sale

  Kersh indicated that he did not negotiate this transaction and that Bob Gluck and Janet Kelly would have more details. He also stated that George Tinchal did the negotiation on this agreement and that he didn't know the details or terms of the purported sale (he thought it was for approximately $10 million). He said that the Company was getting out of the spare parts business and that, in his mind, this transaction was a sale and that the business was gone.

NOT A CERTIFIED COPY

0165411

AA166298
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062614

16div-020641

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

Dunlap indicated that he didn't know about this transaction. He did however, begin discussing his philosophy on sales return and stated that his policy was that a "sale was a sale" and that returns were ridiculous and that the Company was not in a consignment business. Dunlap further indicated that his management team knew of the "no returns" policy and that a business could not be run with the level of returns, that the Company incurred. He also indicated that he put out a directive to his senior executives to accept no returns shortly after he joined the Company. Dunlap also stated that he didn't know if the Company had nondefective returns after he put out his "no returns policy". His job as CEO was to set the policy and he assumed his management team carried out his policies. He was not aware of how his policy was communicated to the Company's customers. He stated that if returns came back to the Company that the salesman authorizing the return would be fired and/or the customer would be sued. He was aware of only one salesman that was fired for not following his no returns policy.

Kersh discussed how he had very little knowledge about sales terms and that he put out a directive to the sales and marketing people not to take blankets back and "don't send more than you can sell". This was done sometime in late 1997. Kersh was asked about the deletions of return authorization (RA's) file and he stated he had no knowledge of this matter.

- M Block

Dunlap had no knowledge of the M Block transaction.

Kersh initially said he didn't know the product sold to M Block but later said he thought it was blankets. He said he knows that Lee Griffith told him that M Block would keep the blankets but he thinks that they came back in May or June 1998. Kersh said that the customer had a bad winter resulting in poor sales and that the return of these blankets were accrued at the end of the first quarter of 1998. He stated that he didn't know about the original right of return terms and was not told until April 1998 (by Lee Griffith) that the blankets were being returned.

- PHD

Dunlap had no knowledge of the PHD transaction.

Kersh didn't know about the type of products sold to this customer and had no idea about the terms of this purported sale. At this point, he indicated that the returns reserve was controlled by Bob Gluck.

Kersh said that he never saw an actual customer order at any time he was with the Company. This Kersh comment relates to all sales (not just PHD).

NOT A CERTIFIED COPY

0114312

AA166299
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062615

16div-020642

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Encore

  According to Kersh, this was a failed attempt to make a sale that didn't work. Kersh didn't remember much about this transaction but he began at this point to say that he recently talked to Lee Griffith and knew that Lee went over all of these sales in "excruciating pain" with AA auditors (presumably in May through July 1998) and that he has discussed these sales so many times that he (Lee Griffith) was sick of discussing these sales. At this point Dunlap asked the question, "Are you people still independent?" referring to AALLP and Skadden. He then began a tirade about how Ron Perleman was trying to "steal" the Company and wanted to make the numbers (restated) look as bad as possible for the benefit of Perleman.

  Kersh indicated that he was made aware by Bob Gluck that there were several returns in the first quarter of 1998 that related to 1997 sales and that he believes there were some additional reserves recorded. He also indicated that Bob Gluck "controlled" the amount of return reserves that were recorded.

- I. Lehroff

  Neither Kersh nor Dunlap knew anything about this purported sale.

- Eckerd

  Kersh indicated that sometime in the April or May 1998 time frame there were some 1997 sales from this customer that were returned and that the salesman on this account had granted the customer the right of return. As a result of this, the salesman was terminated from employment by the Company. Dunlap did not have any additional comments.

- Hong Kong Guaranteed Sales

  Kersh did not know about sales made out of the Company's Hong Kong location. Dunlap didn't know about the Hong Kong blanket sales at yearend 1997, but he did know that China was a good market for blankets.

- Canada Guaranteed Sales

  Neither Kersh nor Dunlap knew anything about sales in Canada.

- Mexico

  Neither Kersh nor Dunlap knew anything about sales in Mexico.

NOT A CERTIFIED COPY

014343

AA166300
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062616

16div-020643

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Menards Sale

  Neither Kersh nor Dunlap could remember any specific information about the fourth quarter 1997 sale to Menards.

- Bill & Hold Sales

  Kersh didn't know which customers were involved in Bill and Hold ("B&H") sales. The B&H program was created because of the poor 1997 grill season. The Management group came up with the plan to encourage customers to sign up and order grills early. The program was designed to get to the grills out to customers earlier and provide for more sell through due to earlier sales by the retailer.

  The program was designed for only the very large customers like the Wal-Mart, Home Depot, etc. Dunlap stated that he was assured by Skadden, Arps and Arthur Andersen that B&H sales were okay. He believes this assurance was given at the Board meeting in June 1998.

  Kersh stated that he had a discussion with Frank Feraco regarding B&H sales and stated that "this was the biggest B.S. in the world because all companies do this to some extent, including his former employer". Kersh remembered a discussion with Don Uzzi regarding the accounting rules for recording B&H sales.

  Regarding second quarter 1997 B&H sale, Dunlap and Kersh said they had no knowledge. Kersh didn't know where the third party warehouse for B&H sales was located. Kersh discussed the cost of B&H warehousing and why he believes it was very immaterial.

  After a short break in the meeting, Dunlap and Kersh wanted to recap the B&H sales program. They stated that the program was a program designed for the Company's customers and that the customers came to the Company and requested the program.

- Supplier Rebates

  Dunlap stated that the Company's policy was to get the best price for the Company and the shareholders. Kersh said he did not know how the supplier rebates were recorded in the Company's books (he didn't know about the accounting). He did state that he knew that one of the supplier rebates was reversed in the first quarter of 1998.

  Kersh stated that he talked with George Tinchal who told him that he was surprised that "Arthur Andersen was messing with such small amounts". Kersh stated that there was nothing wrong with the Company's accounting for rebates and that, if we wanted to see aggressive accounting, we should look at Coleman's accounting for royalties. Kersh believed that the Penthalpha rebate was a penalty for lousy quality and not a volume rebate.

NOT A CERTIFIED COPY

011344

AA166301
Confidential Treatment Requested
by Arthur Andersen LLP

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Product Liability

  Kersh indicated that he didn't get involved with product liability and he "wasn't even sure if the Company was self-insured" He stated that this was an area handled by Bob Gluck and Bob told him that the actuarial runs were very conservative. Kersh didn't know anything about consistency in the product liability accounting between 1996, 1997 and 1998 and that Bob Gluck would know.

- Warranty Reserve

  Kersh indicated that the Company's focus was to improve quality and that with a significant amount of outsourcing, the financial responsibility for quality had switched more to the supplier. Kersh stated that he thought most returns within a year came back from the previous years sales as opposed to the current year sales.

  Kersh stated that the calculation of the warranty reserve was done by the accounting department and that he had not seen it and did not know anything about it. Kersh felt that some of the warranty information in the system was or could be questionable (he couldn't remember the name of the system, but later indicated it was J.D. Edwards).

  Kersh indicated that the reason for the change in the warranty calculation model was due to the changes in the business. He stated that he didn't review any details but at the end of the year he asked Bob Gluck if the reserve was adequate. He also stated that the adequacy of the reserve was covered at the audit committee since Charles Thayer was "all over the reserves".

  In Kersh's opinion the quality of the Company's products remained about the same between 1996 and 1997.

  Kersh said he would expect warranty and product liability reserves to decrease because of the following: (1) emphasis on quality; (2) the Company sold certain businesses in 1997; (3) more overseas sales which generally experience less litigation and (4) outsourcing shifts burden to suppliers.

- Coop Advertising

  Kersh wanted the Company to move from a "push to a pull" concept of sales and marketing and move towards more direct advertising. Kersh stated that in 1997 many errors were found in the Coop system. Kersh believed that there were a lot of over accruals in the system and that these were more than offset by any under accruals. For example, the system accrued for 1% of sales to Walmart for coop, yet none was paid. He stated that in 1998, the Company was going to take a more aggressive approach with customers who took overly aggressive advantage of the coop program.

  Kersh said he told Roger Lee to clean up the coop advertising problems. He indicated that he did not review yearend or quarter end calculations of the coop reserve.

NOT A CERTIFIED COPY

0145315

AA166302
Confidential Treatment Requested
by Arthur Andersen LLP

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Chargebacks

  Kersh stated that the chargeback reserve was an estimate of amounts that the Company ultimately would not recover from its customers. Kersh said that he did not review any details on the chargeback reserve but he would ask Bob Gluck if the reserve was adequate. He knew that the management and processing of chargebacks was a problem and he said the Company asked Arthur Andersen to come in either February or March of 1998 to help look at this problem.

  Kersh did not have any knowledge about the IBNR issue. He indicated that one of the causes of the problem was that the furniture division had 126 different terms of sale. Kersh did not know about the adequacy of the Company's computer programs but he felt that the Company's attempt to put everything on one system in January 1997 resulted in the computer system crash.

  Some of the problems resulted from the new CSC system being unable to distinguish between household and outdoor products, the system could not accept EDI transmission and employees didn't know how to use the system.

  He felt that overall the system was okay but that the employees didn't know how to use it and were not properly trained. Dunlap felt that the CSC system was a "disaster". Kersh felt that the early 1997 CSC problems were pretty well corrected by mid 1997.

- Excess and Obsolete Inventory Reserves

  Kersh believed that there was no need for a excess and obsolete inventory reserve in 1997 because all of the obsolete inventory was identified in 1996 restructuring and had been sold through liquidators in 1996 or 1997. He was not aware of any technologically obsolete product at yearend 1997. Also, the Company opened up outlet stores during 1997 to sell any excess and obsolete inventory.

  Kersh could not remember the balance of reserves or inventory amounts during 1997. He stated that the 1996 discontinued products were sold to Value City at the end of 1996 and early 1997 and that raw material and work-in-process inventory for discontinued products was sold at "10¢ on the dollar" at auctions.

  Kersh was asked if there was a Company policy in 1997 to not sell goods at a loss. He said that he did not believe any of the goods were impaired in value and therefore, management's policy was not accept sales at a loss since it made no economic sense.

NOT A CERTIFIED COPY

0143116

AA166303
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062619

16div-020646

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

Kersh stated that the Company had low grill inventories in 1996 and as a result, lost sales. Part of this was due to the moving of factories at that time resulting in low production. He felt that finally in the fourth quarter of 1997, the Company was getting to the point where it had adequate inventory. Additionally, the Company was building inventory to cover the Mexico factory shutdown, to improve service levels and ensure adequate product as the Company moved toward more outsourcing.

According to Kersh and Dunlap, the decision to close Mexico was made sometime in the first quarter of 1998 and approved by the Board in the second quarter of 1998. The Company's plan for 1998 was to increase distribution points, increase the number of new products and increase grill production.

Dunlap stated that at the May 11, 1998 meeting in New York City with the analysts and investment bankers, the heads of the two business units presented their plans and at that time the Company had not backed off of its original 1998 sales forecast. This plan was developed by the Company in late 1997 and was the basis for the 1998 production schedule. Kersh said the 1998 plan was "built from the ground up" and was based on detail support from various levels of management. Kersh did not know of the "ghosts and gaps" sales forecast report dated February 1998. At the May 11, 1998 meeting the 1998 EPS estimate was lower from $2.30 to $2.00 per share.

- Capitalized Inventory Variances

Kersh stated that the purpose of capitalizing variances is to match the cost of sales with revenues. He said that at the end of the first quarter of 1998 grill sales were not materializing as planned so an adjustment was made to capitalized variances. (He was not able to elaborate).

Kersh indicated that at yearend 1996 capitalized variances were less than 1997 since the plants were being shutdown, moved, etc. and production was very low. He indicated that during 1997, the Company had better cost information and that the cost accounting was much better and other than that, he was not aware of any changes to the Company's methodology for capitalizing variances in 1996 and 1997.

- Mexico Inventory

Kersh heard about proposed inventory adjustments at the end of 1997 as a result of the audit. He said he was concerned about internal controls in Mexico and was attempting to place an internal auditor in Mexico. He was not familiar with the 10% statutory profit sharing in Mexico. Dunlap stated that Skadden or AA should have kept the Company informed on that issue. Kersh indicated that he was aware of several million dollars of waived audit adjustments related to Mexico, that the Company was going to book over the following year (i.e., spread the negative impact on income over 1998).

NOT A CERTIFIED COPY

0114347

AA166304
Confidential Treatment Requested
by Arthur Andersen LLP

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Hong Kong

  Neither Kersh nor Dunlap had knowledge about accounting adjustments in Hong Kong.

- Venezuela

  Neither Kersh nor Dunlap knew about $500,000 of missing Venezuelan inventory.

- Unvouchered Receipts

  Kersh was told that the Company had a problem with the payable system and that it resulted in misstating the payable balances. He said he asked Bob Gluck if the Company would have vendor invoices outstanding over six months and they decided that this (over six months) would be a reasonable cut off since, if the Company had not been notified by the vendor within a six month period of time, then the invoice had most likely been paid.

- Restructuring Charges

  Kersh and Dunlap said that they did not see any details related to the accounting for restructuring. Kersh stated that estimates of cost were made of implementing the Coopers & Lybrand ("C&L") plan and that the Company's accounting department and C&L worked up the numbers. Kersh said he had no idea where the numbers for restructuring were recorded in the Company's income statement.

  Kersh recalled having some discussion with AA on what costs qualified as a restructuring charge, but he doesn't remember any details. He also remembered AA having discussions with the audit committee on what costs qualify as restructuring charges.

  McMinnville - Kersh and Dunlap indicated that the closing of McMinnville was delayed since the Company needed blades and clippers and the Mexican plant could not manufacture them in sufficient quantities. Kersh indicated that as part of the restructuring plan they closed about 50% (around 70,000 square feet) of the McMinnville plant. Once the Company decided to close the Mexican plant, the decision was made to keep McMinnville open. The decision to keep McMinnville open and to close Mexico was made at a board meeting in April 1998. The notices to McMinnville employees were sent in late 1996 but only some of the employees were actually let go. The clipper production was moved back to McMinnville from Mexico in March 1998.

  Hattiesburg Writedown - Regarding the Hattiesburg related charge, Kersh said that he was told that the Company had to take an impairment charge. He didn't know how the impairment computation was done but he felt that an even greater charge should have been taken. He assumed that the calculation was done properly but he had not seen it. Kersh said the Company had invested about $100 million in the Hattiesburg facility versus only $10 to $20 million for the other facilities.

NOT A CERTIFIED COPY

011318

AA166305
Confidential Treatment Requested
by Arthur Andersen LLP

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

CSC Outsourcing - Kersh didn't know much about the outsourcing of computer systems to CSC and said that Jack Dailey and George Timchal negotiated this agreement. He thought and Dunlap as well, that the $2 million refund received by the Company from CSC in mid 1997 was due to the poor service received from CSC starting on January 1, 1997 the beginning of the contract.

C&L Fees - Kersh was asked why he asked C&L to combine the Neosho plant reengineering consulting and the J.D. Edwards consulting project into one project. He could not remember the reason but he thought it could have been to get a lower fee.

Package Redesign - Kersh believes the package redesign charge was properly included as part of the restructuring and special charges.

Kersh and Dunlap were asked about a number of special charges and had the following comments:

Bad Debts - The reason why this was special was due to an unusual amount of bankruptcy's, i.e., Caldors and Bradlees. The Company trued up the bad debt reserve for this and also accrued for bad debts arising from some of the problems encountered in the CSC conversion.

Warranty - This was a part of the special charge since there was a concern over the prior year product quality and also to cover warranty requirements for the sold businesses. There was a general "make well" adjustment to get the reserve to the required level.

Product Liability - Per Kersh this special charge was needed in connection with the sale of the furniture division.

Litigation/Environmental - This reserve was increased for the $12 million All Tech judgement at year end 1996 which was related to discontinued businesses.

Discontinued Operations - The Company, per Kersh, booked a $13 million loss for the furniture business. The furniture divisions sales had decreased from $250 million to $175 million and as a result the buyer demanded a lower purchase price.

- Post Prototype Design Cost

  Kersh didn't know about this.

- Neosho Fixed Equipment

  Kersh had no knowledge of the Neosho fixed assets eliminated during the plant-reengineering project.

NOT A CERTIFIED COPY

014349

AA166306
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062622

16div-020649

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Al Dunlap and Russ Kersh

- Neosho Plant Inventory

  Kersh didn't know about this.

- Under Accrual of Freight Expense

  Kersh didn't know about billing issues related to Wal-Mart. He stated that the Company wouldn't bill Wal-Mart without a good reason.

- Overaccrual of Expenses

  Kersh and Dunlap were asked about the Olgivey and Mathers ("O&M") and they indicated there was a lot of advertising activity which took place in late 1996 to develop brand awareness. According to them, no 1997 advertising expenses were paid in 1996 or recorded in 1996. Don Uzzi handled the O&M relationship.

- Sales Shipments

  Kersh was asked about pulling forward shipments and he indicated that this was something done by all companies.

  He was asked about shipments made past cancellation date and he indicated that this was done and "is a part of doing business".

  Regarding duplicate shipments, he indicated that these were errors and should not have been done.

  He was asked about shipping grills with missing parts and he stated that it could happen but they did not instruct anyone to do this.

- Income Taxes

  Kersh had no knowledge of this area and left it up to Bob Totte.

- Initiative For Success

  Dunlap and Kersh said this was one of Don Uzzi's programs and he had meetings with his managers once a week to discuss how to make the planned fourth quarter 1997 results. Dunlap said he stopped in one meeting and had pizza but had no other involvement. He and Kersh didn't know any details about these meetings.

JC/Sun000/Interviews/Al Dunlap and Russ Kersh

NOT A CERTIFIED COPY

011350

AA166307
Confidential Treatment Requested
by Arthur Andersen LLP

PRYOR CASHMAN SHERMAN & FLYNN LLP

KRA

410 PARK AVENUE NEW YORK, NEW YORK 10022-4441

[illegible] CASHMAN
PAUL J. SHERMAN
DAVID L. AUERBACH
ALAN R. SIEGEL
STEPHEN F. RUPP
JOSEPH Z. EPSTEIN
SANFORD M. GOLDMAN
HOWARD SIEGEL*
JAMES A. JANOWITZ
ARNOLD J. SCHAAB
STEPHEN B. RODNER
SELIG D. SACKS
DONALD S. ZAKARIN
STEPHEN M. GOODMAN
RONALD N. SHECHTMAN

ANDREW M. BART
PHILIP R. HOFFMAN
EDWARD A. MORGAN
RONALD B. ABRAMITZER
RICHARD L. ABY
ERIC B. WOLDENBERG
LAWRENCE REMMEL
RICHARD M. BETHEA
ERIC M. MILLIGE
TOM J. PERRER
JAMIE M. BRICAULT
BLAKE HORNICK
KAREN M. ROBSON
ANGELA TESE-MILNER
JOSEPH L. CRIER

JONATHAN A. BERNSTEIN
ANDREW S. LEVINE
JOHN P. NAPOLI
WAYNE B. NEICKLER
CHRISTOPHER J. SUES
PETER D. WOLFSON
CAROLE NEVILLE
WILLIAM M. LEVINE
JOHN J. CROWE
ROBERT A. DRECHSLER
BRAD D. ROSE
PERRY M. AMSELLEM
STEPHEN G. EPSTEIN

COUNSEL
IRA J. GOLDSTEIN
P. ROBERT STEIN
W. WILDER KNIGHT II
STEVEN M. RABINOWITZ
EDWARD A. FOGEL
RICHARD LEVY, JR.
ARTHUR A. RUEGGER
DAVID M. WEINER
JOSEPH I. ROSENBAUM

TELEPHONE 212-421-4100
FAX 212-326-0806
EMAIL PSFM@PRYORCASHMAN.COM

WRITER'S DIRECT DIAL
(212) 326-0108

WRITER'S EMAIL
dzakarin@pryorcashman.com

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

October 30, 1998

Joseph B. Haynes, Esq.
King & Spalding
191 Peachtree Street
Atlanta, GA 30303-1763

Re: In re Sunbeam Securities Litigation

Dear Barney.

Thank you for arranging the October 12, 1998 meeting between your client, Arthur Andersen and our clients Messrs. Al Dunlap and Russell Kersh. I was pleased to see that, at the conclusion of the meeting, the Arthur Andersen auditors agreed that it had been helpful. As we agreed at the meeting, we have reflected on the matters raised by you on October 12th. The purpose of this letter is to respond to Arthur Andersen's request that we provide any additional information and thoughts that might be pertinent to Sunbeam's auditors.

Before launching into those matters, however, I think it is important to reiterate selected issues discussed on October 12th. Arthur Andersen's descriptions of certain of the matters upon which they inquired were frequently vague, ambiguous and lacking in sufficient detail to fully comprehend any concerns which may exist. Similarly, the denial to our clients of access to any of the relevant documents necessarily hindered the process. Our experts advise us that failure to provide former management with meaningful information is contrary to the auditors' intention to obtain management's understanding of the issues being reviewed (in particular accounting estimates).

At the meeting we quickly understood that it was Sunbeam, Deloitte & Touche ("D&T") and Skadden, Arps, Slate, Meagher & Flom ("Skadden Arps"), rather than Arthur Andersen itself, which were restricting the auditors' (i.e., Arthur Andersen) ability to disclose relevant information and documents. We reiterate our concerns that such restrictions on the scope of Arthur Andersen's efforts are not customary in the context of generally accepted auditing standards and limit the ability of interviewees to discern the issues at hand and, consequently, the relevant information they possess. That said, below are some responses to the issues raised by Arthur Andersen on October 12th.

AA166308
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

For clarity we have organized our comments by the nature of the issues raised and grouped them into the following categories:

1. Bill and hold sales;
2. Revenue recognition;
3. Estimates of expense accruals;
4. Estimates for capitalization of certain expenses;
5. Restructuring charge estimates;
6. Other estimates.

1. BILL AND HOLD SALES

1.1. Arthur Andersen raised the concept of Sunbeam's bill and hold policies. Specifically, Arthur Andersen inquired as to: a) which customers were offered bill and hold, b) which party requested the bill and hold terms, and c) whether Messrs Dunlap and Kersh's had any knowledge as to the party responsible for warehousing and insurance costs. No specific transaction details or documents were provided to refresh the recollections of Messrs. Dunlap and Kersh.

1.2. Messrs. Dunlap and Kersh's understandings and recollections are as follows:

1.2.1. Messrs. Dunlap and Kersh believe Arthur Andersen was fully aware of Sunbeam's policies and practice of bill and hold sales program and had reviewed and tested such transactions in the course of Arthur Andersen's 1997 audit. In addition, they believe that contained in Arthur Andersen's work papers is contemporaneous documentation and evaluation of significant bill and hold transactions

1.2.2. Arthur Andersen previously advised Messrs. Dunlap and Kersh that auditors directly contacted Sunbeam customers to confirm matters relevant to the propriety of the revenue recognition Messrs. Dunlap and Kersh recall that Arthur Andersen agreed with Sunbeam's accounting for such bill and hold sales.

1.2.3. Neither Messrs. Dunlap nor Kersh recall Arthur Andersen ever proposing an adjustment to Sunbeam's financial statements with respect to the bill and hold sales Quite the opposite, Messrs. Dunlap and Kersh recall that at the June 11, 1998 Sunbeam Board of Directors meeting the bill and hold practice was reviewed by Arthur Andersen and Phil Harlow of Arthur Andersen gave the Board assurances that the bill and hold practice was accounted for properly.

NOT A CERTIFIED COPY

0163512

AA168309
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062625

16div-020652

1.2.4 They recall that Skadden Arps, specifically Blaine Fogg, Esq., also reviewed the bill and hold sales process and assured Mr. Dunlap that the sales were fine and that the program was proper.

1.2.5. Mr. Kersh recommended that Arthur Andersen review the minutes of various audit committee meetings, since it was his understanding that bill and hold sales were discussed at length with Sunbeam's audit committee which also reviewed the bill and hold sales and determined that the program was proper.

1.2.6. Sunbeam's marketing department developed a bill and hold program sometime in 1997 to address customer needs including the following:

(a) Customers demanded vendor reliability with respect to the timely delivery of its products ordered. Historically, Sunbeam had experienced supply problems relating to reliability of delivery and supply of the products resulting in lost sales and sales opportunities. This, in turn, led to customers demanding that Sunbeam solve its previous inability to meet customer orders on a timely basis or risk losing the customer's business.

(b) Sunbeam's customers expected to generate more and earlier sales demand.

(c) Customers wanted to take advantage of early season discounts.

1.2.7. Although bill and hold sales also addressed manufacturing and sales issues for Sunbeam's benefit, the bill and hold sales were at the request of non-related, economically independent customers such as Wal-Mart, Home Depot, K-Mart and Sears.

1.2.8. All bill and hold sales were supported by bona fide purchase orders generated by the customers. All or substantially all of the merchandise sold on the bill and hold program was ultimately transferred to a customer site.

1.2.9. Products identified for bill and hold sales were packaged, segregated and designated by customer.

1.2.10. Warehousing costs and insurance for the bill and hold products were deminimus.

1.2.11. Any insurance for merchandise "held" under the bill and hold program, which may have been paid by Sunbeam, would have been for the benefit of customers, since the risk of loss associated with such merchandise had passed to the customer.

NOT A CERTIFIED COPY

1.2.12. Sunbeam disclosed its bill and hold sales program in its Form 10-K for the year ended December 31, 1997 and Form 10-Q for the quarter ended March 31, 1998. Both Messrs. Dunlap and Kersh believed that Arthur Andersen and Skadden Arps fully reviewed and took no exceptions to the accounting and disclosure in their Forms 10-K and 10-Q

1.2.13. If there are specific bill and hold transactions for which there are questions about the arrangements on accounting, Mr. Kersh may be able to assist Arthur Andersen in evaluating the accounting for these transactions.

2. REVENUE RECOGNITION

2.1. Arthur Andersen asked Messrs. Dunlap and Kersh as to their understanding of Sunbeam's policy with respect to sales returns and their recollection of various sales transactions. Specific details of the transactions, the accounting issues being considered by Arthur Andersen or documents were not provided to Messrs. Dunlap and Kersh.

2.2. Messrs. Kersh and Dunlap recall the following:

2.2.1. Beginning in an around early 1997, Sunbeam's unequivocal corporate policy was to accept no returns, other than for damaged goods or misshipments.

2.2.2. Sunbeam's no return policy was clearly communicated by Mr. Dunlap to his senior executives and he fully believes that such executives then clearly communicated the policy to sales personnel, who were specifically instructed not to offer or accept sales returns.

2.2.3. Sunbeam universally applied its policy of accepting no returns to customers of all sizes.

2.2.4. Mr. Dunlap advised management of the sales department that Sunbeam would not accept any returns (other than damaged goods and misshipment) and should sue customers to collect any related receivables which customers did not pay. Indeed, Mr Dunlap explicitly instructed David Fannin to initiate a lawsuit against a customer that attempted to return product and to fire a salesman who, against Company policy, had agreed to take back product if the customer could not sell the same.

2.2.5. Sunbeam instructed its sales personnel not to sell more product than their customers believed they could sell.

NOT A CERTIFIED COPY

2.2.6. Sunbeam recorded a reserve for potential returns consistent with the Company's return policies and management's best estimates of the likely returns. In this regard, Mr. Kersh pointed out that the rationalization of SKUs and the elimination of certain product lines (furniture in particular) also had a significant impact on the quantification of reserves.

2.3. Arthur Andersen questioned Messrs. Dunlap and Kersh regarding selected transactions discussed below.. Arthur Andersen did not produce any relevant documents, nor did they articulate the basis for any concerns they may have with respect to the accounting for such transactions.

2.3.1 EPI Sale: Arthur Andersen inquired as to the extent of any understanding Messrs. Dunlap and Kersh had with respect to the sale to EPI of Sunbeam's grill replacement parts business and inventory to EPI and any terms affecting the sales price. Without reference to the contract itself and related documents, Messrs Dunlap and Kersh had no specific recollection of the transaction terms, although they understood that the sale to EPI was final Mr. Kersh believes Ms. Janet Kelly, Sunbeam's in-house counsel, participated in the contract negotiations and drafting.

2.3.2. Wal-Mart alleged return of blankets: Arthur Andersen inquired as to whether Messrs. Kersh and Dunlap had any knowledge of an alleged authorized return of blankets being deleted from the system in the third week of January 1998. No documents or further specifics of this matter were provided by Arthur Andersen to Messrs Dunlap and Kersh, and neither of them had any recollection of the transaction or any processing of such in Sunbeam's computer system.

2.3.3. M-Block alleged returns: Arthur Andersen solicited any knowledge of Messrs. Dunlap and Kersh with respect to alleged returns of merchandise from M-Block. Mr. Kersh has some recollection that M-Block requested, but Sunbeam denied, an authorization to return certain merchandise. Mr Kersh also recalled instructing sales personnel that no sales returns would be accepted. Mr. Kersh also recalled that Mr. Lee Griffith, a representative of Sunbeam's sales department, advised him that M-Block would keep the blankets. In May or June 1998, due to changed circumstances which included Sunbeam's need for blanket products to meet other customer demand, Sunbeam negotiated with M-Block and accepted the return of certain merchandise.

2.3.4. PhD Distributors· Arthur Andersen inquired as to Messrs. Dunlap and Kersh's recollection of a Sunbeam sale to PhD in late 1997, that included an

NOT A CERTIFIED COPY

alleged possibility of sales returns and of Sunbeam paying for storage costs. Mr. Kersh recalls giving instructions not to accept any sales returns but does not recall any contract terms where Sunbeam was to pay any the storage costs

2.3.5. Encore: Arthur Andersen asked Messrs Dunlap and Kersh for their understanding of Sunbeam's terms of sale of kitchen appliances to Encore for its frequent buyer program. Mr. Kersh recalls that Encore's program was a pilot marketing effort that was not successful. Mr. Kersh said that he understood from Mr. Griffith that Encore would keep the product or Sunbeam would work out a program with them and there was no need for a reserve as Sunbeam would be able to collect its receivables from Encore eventually. Mr. Kersh believes that Sunbeam did book a reserve in the first quarter of 1998 even though there were continued assurances from the sales personnel that collection would occur.

2.3.6. Lehroff: Arthur Andersen questioned Messrs. Dunlap and Kersh about their recollection of a sale to Lehroff for $900,000 in the fourth quarter of 1997 Without additional information or reference to the sale documentation Messrs. Dunlap or Kersh have no recollection of the transaction or accounting therefor.

2.3.7. Eckard sale: Arthur Andersen inquired as to Messrs. Dunlap and Kersh's knowledge of an offer to guarantee a sale to Eckard for $600,000-$500,000 Messrs. Kersh and Dunlap recalled that contrary to Sunbeam's no return policy, a "rogue" salesperson had provided an unauthorized guarantee of sale to the customer. The sales person was terminated for his unauthorized actions

2.3.8. Hong Kong sale: Arthur Andersen asked Messrs. Dunlap and Kersh whether they were aware of an agent allegedly offering a guaranteed sale to a Hong Kong entity. Arthur Andersen did not provide specific details of their concern with this transaction or associated documents and consequently Messrs Dunlap and Kersh were unable to recall any right of return with respect to the sale. Mr. Dunlap believes that the blankets were not and would not be taken back under his management.

2.3.9. Menards: During the fourth quarter of 1997, a $1.9 million sale of grill accessories was made to Menards. Although neither Messrs. Dunlap nor Kersh had any specific recollection of the transaction or the accounting thereof, they may have relevant information if Arthur Andersen made the

AA166313
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062629

16div-020656

documents available to them and specified their issue of concern (which Arthur Andersen did not do).

3 ESTIMATE OF EXPENSE ACCRUALS

3 1. Estimates for Product Liability reserves

3.1.1. Arthur Andersen alluded to the possibility that certain calculations underlying management's estimates may have been different from one year to the next year. Mr. Kersh identified issues that may bear upon such estimates as detailed below. However, because Arthur Andersen did not provide Messrs. Dunlap and Kersh with details of the calculation at issue or relevant documents they were unable to refresh their recollections and provide more detailed explanations as to the calculation and methodology Messrs Dunlap and Kersh noted that Arthur Andersen had full and complete access to all Sunbeam files and personnel (i.e., carte blanche) and at an initial meeting with Messrs Dunlap and Kersh, Arthur Andersen personnel were advised that if they had any problem obtaining information they should bring it to the attention of either Mr. Dunlap or Mr. Kersh. Arthur Andersen did not indicate to either Mr. Dunlap or Mr. Kersh that any problems existed and did not interface with either Mr. Dunlap or Mr Kersh in conducting their audits

3.1.2 Messrs. Dunlap and Kersh noted that all material reserves were reviewed by Arthur Andersen as part of its quarterly review and presented by Arthur Andersen and internal Sunbeam personnel to Sunbeam's audit committee at several audit committee meetings throughout the year and the audit committee in fulfilling its responsibility reviewed the same

3.1.3. Mr. Kersh recalled various factors that should be taken into account when estimating the product liability reserve including:

(a) Sunbeam's general policy to enhance the quality of its products by returning to the older and traditional quality values of Sunbeam and completing redesigns and retooling for some of its products.

(b) Changes in the composition of Sunbeam's sales mix.

(c) The discontinuance of various business lines including outsourcing the production of various products and thereby shifting the product warranty burden to outsourcers.

NOT A CERTIFIED COPY

AA166314
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062630

16div-020657

(d) The proportional increase in international sales especially to Asian and Latin American countries that have a lower propensity to instigate litigation proceedings and where damage awards (including punitive damages) are considerably lower than the United States (if not non-existent).

(e) Disposal of various product lines In particular, the furniture business had been the source of significant claims and its sale warranted an adjustment.

3.1.4. Messrs. Dunlap and Kersh were not aware of any large settlements, litigation matters or unusual circumstances involving Sunbeam that would result in need for change in the estimates.

3.1.5. Mr. Kersh recalled that the product warranty reserves were presented to and reviewed by the audit committee on a regular basis He also stated his belief the all material reserves regularly had been tested and reviewed by Arthur Andersen in the normal course of its audits. He believes that Arthur Andersen's working papers will contain contemporaneous documentation of its testing of the reasonableness of Sunbeam's reserves and allowances.

3.1.6. Arthur Andersen asked why the system on tracking product warranty claims was discontinued. Messrs. Dunlap and Kersh indicated that they did not know that the system had been discontinued. Mr. Kersh then asked Arthur Andersen how did Arthur Andersen know whether the product warranty tracking system was accurate before discontinuance because of the many historical problems Sunbeam had with its systems He then indicated that it may have been discontinued as a result of Sunbeam's significant reduction in product lines, and as a result of Sunbeam's consolidating its systems to a uniform basis from division to division. He did indicate that Sunbeam's system had to be standardized as part of a reengineering process. He also asked Arthur Andersen if they had knowledge of which product lines the product warranty program pertained to.

3.2. Arthur Andersen inquired as to Messrs. Dunlap and Kersh's recollection of Sunbeam's estimated warranty reserve for a Hong Kong sale of $5 million. Arthur Andersen provided no documents or further specifics of the matter. Messrs. Dunlap and Kersh did not recall any circumstances for this sale requiring a special reserve other than the general warranty reserve, or requiring a significant increase to the existing reserve. However, Mr. Kersh believes that based on historical and industry experience any warranty reserve for these sales would be small given the size of the

NOT A CERTIFIED COPY

AA166315
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062631

16div-020658

sale and the less litigious environment of Hong Kong compared to the United States (if not, non-existent).

3.3 Arthur Andersen asked Messrs Dunlap and Kersh about an estimate for cooperative advertising accrual Arthur Andersen did not detail the issue of concern or provide documents for this accrual. Mr. Kersh recalled that in 1997 various errors were found in the cooperative advertising accrual dating back to 1996. In addition, an accrual for 1% of Wal-Mart sales should have been corrected which would have resulted in a change in the estimated accrual. Sunbeam also had a policy of reducing co-op advertising and switching to mass media advertising. Finally, Sunbeam was investigating using an outside source to monitor and process its co-op advertising to prevent abuse

3.4. Arthur Andersen questioned Messrs. Dunlap and Kersh as to their recollection of calculating the estimate for charge-backs reserves. Arthur Andersen did not elaborate as to the issue of concern and did not provide documentation for Messrs Dunlap and Kersh to refresh their recollection. Mr. Kersh believed there were problems with the new computer system that resulted in a manual review of charge-backs. Generally, he believed that the estimated charge-back reserve would be lower in 1997 compared to 1996 due to

(a) The disposal of the furniture manufacturing business that traditional had higher charge-backs.

(b) There was a consolidation of up to 125 different customer contracts to 3 standard contracts resulting in an estimated lower number of charge-backs

(c) In January or February 1998, Sunbeam had engaged Arthur Andersen to review the charge back procedure to help Sunbeam implement a credit memo procedure instead of a deduction procedure. Sunbeam was in the process of using credit memos to customers instead of allowing them to use charge-backs

(d) Sunbeam had engaged an independent agency to collect charge-backs from customers that had been incorrectly issued.

3.5. Arthur Andersen inquired as to Messrs Dunlap and Kersh's recollection of the estimate for excess inventory reserves Arthur Andersen did not elaborate as to the issue of concern or provide documents to refresh Messrs. Dunlap and Kersh's recollection. Messrs Dunlap and Kersh recalled that during 1997 and the first quarter of 1998, Sunbeam had a policy of increasing its inventory levels. Reasons for the increased inventory levels include:

NOT A CERTIFIED COPY

AA166316
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062632

16div-020659

(a) Closing down its Mexico manufacturing operations. During the process of closing down a manufacturing operation a company often experiences production interruptions not just at the plant being closed down but at other plants in the company. Sunbeam needed to ensure that the it had adequate inventory supplies to cover any production interruptions.

(b) The transition to outsourcing the production for some of its products. Sunbeam needed to ensure that during the transition period that it had an adequate supply of products as a contingency to meet any outsourcing supply, reliability or quality control problems that could arise.

(c) Sunbeam was determined to have sufficient supply of products to its customer demands and prevent the supply problems experienced during 1997

(d) During 1997 sales personnel were demanding more blenders, clipper blades and blankets indicating the need to increase inventory levels

3 6. Arthur Andersen questioned Messrs. Dunlap and Kersh regarding the calculation of the estimate for obsolete inventory reserve. Without details as to Arthur Andersen's concern or reference to documents Mr. Kersh recalled that most of the obsolete inventory was accrued for or sold during 1996/1997 Messrs. Dunlap and Kersh were not aware of any lower than cost compared to market problems or any advertent intention to sell product below carrying value. Mr. Kersh also stated that Sunbeam had done a complete purge of old inventory during the restructuring so, very little, if any, inventory should have been obsolete, and if anything were determined to be obsolete, it would still be sold through retail outlets

3.7 Arthur Andersen asked Messrs. Dunlap and Kersh as to their recollection of an estimate of an accrual for a statutory 10% of profit share in Mexico. Arthur Andersen did not provide specifics of the issue of their concern nor provide documents. Both Messrs. Dunlap and Kersh did not even know of this requirement Messrs. Dunlap and Kersh questioned why Arthur Andersen, who had been Sunbeam's auditors for several years prior to the time Messrs. Dunlap and Kersh were employed by Sunbeam did not raise this issue prior to the meeting. Messrs. Kersh and Dunlap were not aware of any claim filed relating to the Mexican profit sharing accrual or the probability of success of any such claim should a claim be made. In addition, Messrs. Kersh and Dunlap do not recall the issue being raised by Sunbeam's legal advisors; and they were most certain that Skadden Arps, particularly Mr Fogg, never had identified to them any such potential liability.

AA166317
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

3.8 Arthur Andersen inquired as to Messrs. Dunlap and Kersh's recollection of an estimate for unvouched payable accrual. Arthur Andersen did not provide details of why this accrual was at issue or documents regarding the accrual. Mr. Kersh understood that in 1997, it was discovered that there were several accounts payable outstanding that could not be matched to the computerized system, some of which dated back years. To resolve this problem all invoices greater than 6 months old for which there was no correspondence requesting payment were deemed to have been paid and no longer considered to be outstanding liabilities.

4. ESTIMATES FOR CAPITALIZATION OF EXPENSES

4.1 Arthur Andersen questioned Messrs. Dunlap and Kersh as to Sunbeam's policy of capitalizing inventory variances during interim periods. Mr. Kersh believed that Sunbeam historically capitalized inventory variances prior to the end of the season at which point the balance was brought to account on the income statement. There were continual adjustments to the estimated inventory variances due to increases in production levels. In addition, Mr. Kersh believed that during 1997, Sunbeam was fine tuning the costing system from the 1996 year where there were unallocated production expenses of $60 million. In the first quarter of 1998, Sunbeam made an adjustment to account for a variance between the number of grills estimated to be sold and the number of grills included in the inventory and in future production.

5. RESTRUCTURING CHARGES

5.1. Arthur Andersen raised general questions as to how the estimate for the 1996 restructuring charge of approximately $338 million was calculated and who was involved in making the calculation.

5.2. Messrs. Dunlap and Kersh had the following general recollection:

5.2.1. They understood that the restructuring charge was determined by estimating the costs associated with the implementation of the Coopers & Lybrand restructuring business plan.

5.2.2. They believe that the estimates of the restructuring charges were derived from many sources including the Coopers & Lybrand plan, plant managers, sales department personnel, payroll department with respect to estimates such as employee severance costs, the legal department with respect to contractual obligations such as lease terminations.

5.2.3. Messrs. Dunlap and Kersh were not aware of any disagreement with Arthur Andersen regarding the restructuring charge. They believe that details of the

AA166318
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062634

16div-020661

calculation of the estimates for the restructuring charge were fully tested and reviewed by Arthur Andersen, in the course of their audits They also believed that evidence of such work by Arthur Andersen is contained in Arthur Andersen's work papers, and that such files may contain various contemporaneous documents that evidence the calculations of the estimates

5.2 4. Messrs. Dunlap and Kersh believe that Arthur Andersen advised them as to the nature and appropriateness, under GAAP, of expenses that could be recorded in the restructuring charge.

5.2.5. Messrs. Dunlap and Kersh do not recall an adjustment to the restructuring charge being included on the Summary of Audit Differences, or Summary of Proposed Audit Adjustments Schedule

5 2.6. If Arthur Andersen were to provide Mr. Kersh with documents and detailed information as to the calculation of the estimate of the restructuring charge, he may be able to provide more detailed explanations as to the calculation and methodologies.

5.3. Specific issues raised by Arthur Andersen relating to the estimate for the 1996 restructuring charge are:

5.3.1. Arthur Andersen questions Messrs. Dunlap and Kersh as to their recollection of Sunbeam's charge for the discontinuation of the furniture business. Arthur Andersen did not provide specific details as to the issue of concern or documents relating to the calculation to refresh Messrs. Dunlap and Kersh's memory. However, Messrs. Dunlap and Kersh stated that it was Sunbeam's intention to exit the business of manufacturing furniture.

5.3.2. Arthur Andersen asked Messrs. Dunlap and Kersh about Sunbeam's calculation of the package redesign charge for $6 million. Mr. Kersh believed that it was Sunbeam's estimate that the cost of the package redesign was part of the general restructuring of Sunbeam and that any apportionment of the package redesign cost for the future benefits were not significant

5.3.3. Arthur Andersen inquired about the accounting for a Coopers & Lybrand bill in connection with the restructuring and for the reengineering of the Neosho facility and the reimplementation of the JD Edwards system. With respect to the Neosho facility and the JD Edwards system, Mr. Kersh recalled that Coopers & Lybrand personnel worked on both projects simultaneously and it was not practical to bill the projects separately since they were so intertwined.

AA166319
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062635

16div-020662

534 Arthur Andersen questioned Messrs. Dunlap and Kersh as to the calculation of the estimated restructuring charge for the proposed McMinnville factory closure. Arthur Andersen did not express their accounting concern or provide documentation as to the calculation, however, Messrs. Dunlap and Kersh were able to identify certain business issues that may bear upon the estimate.

(a) Messrs. Dunlap and Kersh stated that it was Sunbeam's intention to close the McMinnville plant.

(b) They recalled that Coopers & Lybrand had recommended the closure of the McMinnville plant in its restructuring plan.

(c) They believe that the plan was to close McMinnville included moving the production of all clipper blades to Mexico. During the transition phase it was determined that Mexico was unable to produce neither the quantity nor quality of clipper blades to satisfy production needs. During this interim period, McMinnville was still in operation to ensure that supply of the clipper blades was maintained.

(d) Messrs. Dunlap and Kersh believed that termination notices were sent to employees at McMinnville detailing the future closure of the plant, evidencing Sunbeam's intention to close the plant.

(e) APB No. 30 "Reporting the Results of Operations – Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions" states that plans for the disposal of a business would be carried out within a period of one year from the measurement date. Footnote No. 6 to APB No. 30 states that "When disposal is estimated to be completed within one year and subsequently is revised to a longer period of time, any revision of the net realizable value of the segment should be treated as a change in estimate."

(f) EITF 90-16 "Accounting for Discontinued Operations Subsequently Retained" governs the accounting for when a company decides to dispose of a segment of a business and accounts for that decision by accruing a loss in accordance with APB No. 30 and subsequently keeps the business segment. EITF 90-16 states that the company should in the period where the decision to keep the business reverse the accrued loss to the extent that the accrued loss does not relate to

NOT A CERTIFIED COPY

the prior period decision to dispose of the segment EITF 90-16 specifically states that changes to accrued loss of the prior reporting period should not be restated.

(g) Messrs. Dunlap and Kersh recalled that in 1998 Sunbeam concluded that Mexico would be closed and all of its products including retail clippers (but not professional clippers) would be outsourced. During this process, the decision to close McMinnville was reversed, the plant would remain in operation producing professional clippers.

5 3.5. Arthur Andersen's questioned Messrs Dunlap and Kersh about the SFAS No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of" write down of the Hattiesburg plant costs for the management information system and conveyor system. Messrs. Dunlap and Kersh identified certain business issues that may bear upon such estimate as follows:

(a) Mr. Kersh indicated that the Hattiesburg plant was a $100 million white elephant and that the write down of approximately $9 million was very conservative.

(b) Messrs. Kersh and Dunlap both believed that it was the future plan of Sunbeam to change the Hattiesburg plant to a one system manufacturing facility.

(c) Mr. Kersh understood that the write-down of the management information system and conveyor system represented an asset impairment due to the conversion to one system.

(d) Mr. Kersh recalled that Coopers & Lybrand assisted Sunbeam in the determination and calculation of the asset impairment.

(e) They recalled that the determination and calculation of the asset impairment was reviewed at numerous board meetings.

(f) Messrs. Dunlap and Kersh believe that Arthur Andersen was aware of the calculation and included in their work papers is contemporaneous documentation as to the calculation and the methodology used.

5.3 6. Arthur Andersen raised questions with respect to the initial cost charged by Computer Science Corporation ("CSC") for Sunbeam's outsourcing program and a subsequent refund of $2 million. Messrs. Dunlap and Kersh recalled

NOT A CERTIFIED COPY

AA166321
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062637

16div-020664

that CSC had failed to meet the expectations of the outsourcing agreement and after protracted negotiations between Sunbeam and CSC a settlement was reached where CSC was refunded $2 million. It is not clear whether the $2 million related to the initial outsourcing charge of CSC or a refund of subsequent payments or both.

5.3.7. Arthur Andersen inquired about the Bad Debt Reserve of $9 million included in special charges for 1996. Arthur Andersen did not specify the area of concern or documentation supporting the calculation, however, Mr. Kersh recalled that the special charge was to cover specific reserves required for bankruptcies experienced in the industry, including Sunbeam customers such as Bradlees and Caldors.

5.3.8. Arthur Andersen inquired about the Warranty Reserve of $10-$8 million included in special charge in 1996. Arthur Andersen did not elaborate on the issue of concern or provide documentation as to the calculation. Mr Kersh recalled that included in the special charge was an estimate for the cost of product damage associated with the close and moving of facilities and warranties associated with the disposal of various product lines.

5.3.9. Arthur Andersen inquired about a Litigation and Environmental charge of $12 million that was estimated with respect to the Altech matter. Messrs. Dunlap and Kersh understood that the legal department had been consulted with and assisted in the estimate and determination of probability of the expected cost of the litigation which was based upon a judgment against Sunbeam. Messrs. Dunlap and Kersh believe that an estimate of $12 million for litigation and environmental matters with Altech had been established as part of the 1996 restructuring charge. Messrs. Dunlap and Kersh believe that after negotiations with Altech a settlement was reached for approximately $4 million.

6. OTHER ESTIMATES

6.1 Arthur Andersen inquired about the accounting for the Supplier Rebate received during 1997. Messrs. Dunlap and Kersh understood that supplier rebates were for past purchases, to compensate for the supply of bad product and for changes in commodity prices such as steel and aluminum during the past year. The legal department, including Mr. Fannin and Ms. Kelly negotiated the terms of supplier rebate contracts with the objective of obtaining the best advantage for Sunbeam.

6.2. Arthur Andersen inquired as to Messrs Dunlap and Kersh's recollection with respect to a $2 million adjustment relating inventory to attrition in Mexico that was

AA166322
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062638

16div-020665

included on the 1997 Summary of Audit Differences schedule and how it was accounted for in 1998. Arthur Andersen did not provide documentation relating to the inventory attrition, however Messrs. Dunlap and Kersh were aware of the internal control matter relating to the security of company assets and had the intention of hiring an internal auditor for the Mexico operations. While Messrs. Dunlap and Kersh do not have a specific recollection as to this waived audit adjustment that was waived by Arthur Andersen as part of its audit or the subsequent accounting thereof, Mr. Kersh believed it was expensed on a monthly basis in 1998.

6.3. Arthur Andersen inquired as to Messrs. Dunlap and Kersh's knowledge with respect to alleged unaccounted inventory in Venezuela. Arthur Andersen did not provide details as to the time for when the inventory could not be accounted for or associated documentation. Messrs. Kersh and Dunlap are not aware of any unaccounted for inventory in Venezuela. From the ensuing conversation it was not even clear that there was any inventory issue, or if there was an issue, whether it related to any period during Messrs. Dunlap's and Kersh's employment. Messrs. Dunlap and Kersh expressed surprise, that if there were an issue, Arthur Andersen did not bring it to Sunbeam's attention when Arthur Andersen conducted its audits.

6.4. Arthur Andersen inquired as to Messrs. Dunlap and Kersh's understanding of Sunbeam rebilling Wal-Mart for a $900,000 handling fees from 1995 to 1997. Arthur Andersen did not provide Messrs. Dunlap and Kersh with documents or detailed information as to this transaction and consequently they were unable to recall the details of the transaction.

6.5. Arthur Andersen inquired as to the accounting for the Olgivy & Mather's accrued expense for $2 million. Messrs. Dunlap and Kersh recalled that the $2 million accrual was for advertising costs to revitalize Sunbeam product brand image during the Christmas period. Mr. Kersh was not aware of any amount expensed in 1996 that should have been recorded as an expense in 1997.

The above analysis of the accounting issues pertaining to the proposed restatement of Sunbeam financial statements sets forth a contemporaneous record of Messrs Dunlap and Kersh's recollection of the various accounting issues raised by Arthur Andersen. The very nature of Arthur Andersen's inquiry, by not specifying the accounting issues of concern and withholding relevant documentation, inherently resulted in some limitation of Messrs. Dunlap and Kersh's recollection. Should you provide such relevant documentation, we may be able to give you additional comments or information.

It became clear to us, in the course of this meeting, that much of this process is being driven by D&T or Skadden Arps and that the issues raised relate to changes in estimates and circumstances

AA166323
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062639

16div-020666

brought about by Sunbeam's new management. Based upon what was learned of these issues, it is Messrs. Dunlap's and Kersh's belief that any restatement for correction of accounting errors would be: (1) unwarranted by the facts; (2) a misapplication of GAAP (by erroneously treating changes in estimates as prior period errors), and (3) serious mischaracterization or misinterpretation of prior transactions, events and management judgments

Sincerely yours,

Donald S. Zakarin

NOT A CERTIFIED COPY

0114367

* NEW INFORMATION -- D. DENKHAUS AND P. HARLOW DO NOT RECOLLECT A DISCUSSION OF THIS INFORMATION DURING THE MEETING

AA166324
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062640

16div-020667

NOT A CERTIFIED COPY

13

011368

AA166325
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: Files

From: Phil E. Harlow

Date: July 30, 1998

Subject: Sunbeam - Interview with Tom Hartschorne

On July 17, 1998, Don Denkhaus, Rita Gordon, attorney from Skadden Ayers, and I interviewed Ton Hartschorne, Director of Internal Audit. The following items were discussed by Mr. Hartschorne:

Bill and Hold

- Tom was not clear when he found out about B & H - probably right around year-end.
- Other than being a business problem, he doesn't see anything wrong from an accounting standpoint. He believes GAAP was followed.
- Per Tom, Deidra Dendants, his internal audit staff, did an investigation and found some bill and hold sales in November 1997.
- Deidra gave Bob Gluck an oral report sometime in January on her findings (subsequently in the interview, Tom changed this to be sometime after the first quarter).
- Tom thinks that Deidra had several conversations with Arthur Andersen about B & H, but he isn't sure.

Other Topics

- Per Tom, the Company was booking sales a later period into an earlier period, but Tom wasn't sure how he learned this or the details as to how this was done.
- Per Tom, he discussed this with Russ Kersh, and Russ told him "it was Company policy". He also discussed it with the audit committee chairman who wasn't concerned as long as Russ knew about it.

Due to time constraints, we terminated our discussion with Tom and resumed them on July 23, 1998. Chris Mallay, attorney from Skadden, Ayers, replaced Rita Gordon in that meeting.

Accelerated Shipping Dates

- When we reconvened with Tom, he chanted his description of the accelerated sales accounting issue to an issue of moving the ship date up a number of days in order to book a sale in an earlier month.
- Tom thought that this complied with GAAP but thought it hurt subsequent sales.
- Tom believes that he spoke to Larry Bornstein but wasn't sure.

Bill and Hold (Second Discussion)

- After year-end '97, Tom talked with Vance Kistler and Dennis Pastrana and was told we were happy with "Bill and Hold".
- Per Tom, he reviewed the letters received from B & H customers.

Guaranteed Sales

NOT A CERTIFIED COPY

011369

AA166326
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Date: July 30, 1998

Subject: Sunbeam - Interview with Tom Hartschorne

- According to Tom, he raised the issue of guaranteed sales with Russ Kersh and was told it was not a problem.
- He believes he gave Larry Bornstein a report on these sales.

Sales Returns

- According to Tom, he prepared a report on the returns at Hattiesburg, Mexico City and Neosho.
- He believes that he spoke to Dennis Pastrana and Larry Bornstein about the problem.
- He also spoke to Russ Kersh, Bob Gluck, Roger Lee and Jack Daily.

1996 Restructuring

- Tom traveled with the C & L consultants to Mexico City and Cancun to assist in the restructuring project focusing on controllable expenses.
- He spent time in Hattiesburg, Laurel and Neosho doing time and motion studies on the credit/collection, accounts receivable and accounts payable functions.
- Per Tom, contingencies were built into the restructuring numbers.
- Tom spent six months in Laurel to work on new outsourcing of systems, including the first three months working on billings.

jlp

NOT A CERTIFIED COPY

011370

AA166327
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062643

NOT A CERTIFIED COPY

011371

AA166328
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow, Fort Lauderdale

Date: August 12, 1998

Subject: Sunbeam Interview - Clifford Collins

Phil Harlow, Larry Bornstein and Chris Malloy, Skadden, Arps attorney, interviewed Clifford Collins who is the Sunbeam shipping manager in Hattiesburg, Mississippi. Mr. Collins has the day to day responsibilities for both shipping and receiving at the Hattiesburg manufacturing and distribution center

We asked Clifford a number of questions regarding Sunbeam's shipping of discontinued inventory, bill and hold or anything unusual regarding changes to the companies policies and procedures in 1996, 1997 and 1998 Clifford indicated that he couldn't remember much of anything relative to these issues.

SMP/[illegible]/interview - collins

NOT A CERTIFIED COPY

0115372

AA166329
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062645

16div-020672

NOT A CERTIFIED COPY

15

0114373

AA166330
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The files

From: LARRY BORNSTEIN, West Palm Beach

Date: August 17, 1998

Subject: Sunbeam Corporation-Interview with Ken Huff

On July 20, 1998, Don Denkhaus, Rita Gordon, Attorney with Skadden Arps, and I conducted an interview with Ken Huff, Hattiesburg plant controller of Sunbeam Corporation. The summary of the information provided by Mr. Huff is as follows:

- Mr. Huff was hired in August of 1995 as plant controller at Hattiesburg.
- He reported directly to Mike Bondisky, his responsibilities included making sure STD costs were accurate, Bill of materials were accurate and supported the plant management duties.
- Not aware of corporate level rebates, however included in the standard setting was a 1-2% factor for volume rebates.
- Standard revaluation is performed on 1/1 of each year. He reviews the top 700 most active SIC (standard inventory cost) to review reevaluation procedure.
- No involvement with the unvouchered receipt issue , talk to Kirby Brown or Bob Gluck. He was aware that there was a large receiver issue at year-end.
- Did not know about bill and hold until the inventory in December.
- Remembered having lunch with Larry Bornstein and Vance Kistler in January to discuss bill and hold issue.

- LAB

NOT A CERTIFIED COPY

0114374

AA166331
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062647

16div-020674

NOT A CERTIFIED COPY

16

011375

AA166332
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Phillip E Harlow, Fort Lauderdale

Date: August 8, 1998

Subject: Sunbeam Corporation – Interview with Mitch Long

On August 6, 1998, Larry Bornstein, Rita Gordon, attorney with Skadden Arps, and I conducted an interview with Mitch Long, distribution manager of Sunbeam's Neosho manufacturing facility The following is a summary of the information provided by Mr Long

- He had been the operations manager in Hattiesburg from May 1994 to March 1997
- Since March 1997 he had been the distribution manager for the Company's Grill Group
- He was in-charge of shipping and receiving in Hattiesburg in 1996, but he did not have a direct involvement in the Company's restructuring.
- In late 1996 and early 1997, he was aware of discontinued products being shipping in significant quantities to liquidators, e.g., Gordon Brothers and Consolidated.
- Mitch was aware of the Company's bill and hold practices He specifically mentioned a large order (40,000 grills - model #GS2412-17) sales $3,389,000 from Wal-Mart which originally had a ship date of late November 1997 The order was subsequently resubmitted as a "bill and hold" order whereby some of these grills were shipped in December and some in January. He was not aware of the reason for this change.
- Mr. Long first became aware of "bill and hold" sales in November and sometime, in December, he received more instructions on bill and hold.
- Under this program, the Company shipped a significant number of grills and accessories to a third party warehouse (NDC) in Miami, Oklahoma.
- NDC's organization and administration of shipping "bill and hold" orders was not good and many of the shipments were incorrect.
- M. Long set up a folder to monitor when customers wanted their orders shipped and ultimately he sent his own employees to the NDC warehouse to ship product since the "bill and hold" orders "overwhelmed" the NDC warehouse staff.
- Initially, he sent two or three of his staff to act as checkers as the orders were pulled. He increased the number of staff in the March or April time frame to keep up with the shipping demands.
- Mr. Long maintained records of the credits issued to customers as a result of the NDC "bill and hold" shipping errors.

NOT A CERTIFIED COPY

01-4376

AA166333
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ERSEN

Date: August 8, 1998

Subject: Sunbeam Corporation – Interview with Mitch Long

- Most of the "bill and hold" customers received product based on their purchase order identified dates.
- He was aware of one large customers Home Depot, pulling up their order to an earlier date
- The Company's system identified the "bill and hold" transactions as shipped confirmed "which would record revenue. Sometime in March 1998 the Company set-up a new code for "bill and hold" (S and H). This designation was assigned by customer service.
- Mr Long was aware of one sale made to Menards near the end of the year (1997) where the customer wanted only two loads per day (every day) with shipments beginning in late December He believed that there were probably a total of 80 loads shipped under this purchase order He indicated that this deal was set up by Phil Bogner and Lee Griffith. He was not aware of any other sales like this
- Mr. Long was not aware of any significant "bill and hold" returns other than the following:

Menards	$407,000
Home Depot	25,162
Fred Meyers	272,440 orders #767641 and #767705
Lowes	$ 0 order #682892

- Mr Long indicated that there was some scale inventory shipped to Neosho from Shabuta, which was obsolete, and he suggested that we talk to Dennis Rice who is in charge of scales operations
- Mr. Long just recently put in charge of the Neosha return center and was not aware of anything unusual at this time.

[redacted]

NOT A CERTIFIED COPY

011377

AA166334
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

17

0143178

AA166335
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

2.17

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with Judy Maudlin

On July 17, 1998, Phil Harlow, Rita Gordon, attorney with Skadden Arps, and I interviewed Judy Maudlin, vice president of manufacturing of Sunbeam Corporation. A summary of information obtained during the interview is as follows:

- Maudlin started with Sunbeam in October 1997 and will be leaving Sunbeam effective July 31, 1998.
- Maudlin's current title is vice president of manufacturing. Prior to April 1998, Maudlin was vice president of operations and was in charge of the manufacturing plants, logistics, inventory, manufacturing engineering and distribution.
- Maudlin reported directly to Don Uzzi until his termination.
- The restructuring of the Company had been completed by the time Maudlin commenced employment with the Company, except for the closing of the Bay Springs plant.
- Maudlin was responsible for 7,000 Sunbeam employees (approximately 90% of the total employees) and about 85% of Sunbeam's total operating costs.
- Maudlin said that the 1997 manufacturing budget was prepared at the "top level" and was not prepared at the "detail level." She reviewed the 1998 budget for manufacturing volume projections which would be required to meet the Company's projected sales volumes.
- The 1996 restructuring plan projected substantial manufacturing and purchasing savings. Maudlin stated that she was not asked and did not attempt to monitor against the projected savings in the restructuring plan.
- Manufacturing standards.
  - Most of the manufacturing standards were estimated based on historical experience. Only some of the plants had industrial engineers.
  - Standards for new products had been estimated by the design engineers prior to her employment. Maudlin changed this procedure and new product standards were currently estimated by the production engineering department.
  - Standards were routinely used to review the "make vs. buy" decisions on products and components.

NOT A CERTIFIED COPY

011379

AA166336
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with Judy Maudlin

- The manufacturing standards were reviewed during the November 1997 to January 1998 period by the plant controllers.
- Maudlin was responsible for controlling manufacturing variances but did not get into the accounting aspects for manufacturing variances. That was done by the plant controllers.

- Warranty cost.
  - Bob Gluck was responsible for determining warranty reserves and for tracking of costs against the warranty reserves.
  - The Company's policy regarding warranties varied considerably among products and the warranties may have changed over time.
  - Maudlin estimated the warranty exposure relating to the grill recall and advised Bob Gluck of that estimate which was $1.4 million.
  - Maudlin also estimated the cost of the blanket recall.

- Mike Bondiski worked with the plant controllers to determine the accounting for manufacturing variances.

- Early-buy program.
  - Manufacturing was expected to start building for the 1998 grill season starting in September 1997.

- The marketing department provided the sales plan by product SKU and manufacturing was expected to build sufficient product to meet the sales plan.
  - In 1998 the Company had no "stock outs" except for one order of approximately $600,000 in clippers.

- In March 1998 there was a reduction in the 1998 sales forecast. The marketing department communicated the change to manufacturing which lowered its production levels.

- The manufacturing plants were able to estimate returns based on the prior year's activity and current year estimate.

- No-return policy.
  - Don Uzzi communicated to management the Company's change in policy to no longer accept returns sometime during the November 1997 to January 1998 period.
  - Maudlin had to stop trucks that were trying to return merchandise to the Company's distribution centers and plants.
  - Some trucks were turned away and the product was sent back to the customer.

NOT A CERTIFIED COPY

014380

AA166337
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with Judy Maudlin

- In March 1998 the Company started accepting returns of blankets.
- Maudlin had no knowledge of any gap in the tracking of RAs ("return authorizations").
- In January 1998, the Company started receiving reports that showed the reasons for merchandize returns.

- Maudlin was under no pressure to reduce or change standard costs from what she believed they should be (even though most of the standards represented estimated costs).

- Approximately 85% of the cost of grills is for materials.

- Regarding productivity and manufacturing volume
  - The "AR" represented the capacity of the plant based on the planned plant modifications.
  - The forecasted productivity for 1997 was lower than the AR.
  - The actual productivity was lower than the forecast.

- Excess and obsolete inventory
  - Maudlin was asked to review E&O inventory in November 1997.
  - Manufacturing delivered weekly reports of finished goods to the marketing department.
  - The Company uses a MRP ("materials requirement planning") process. Per Maudlin, the Company based its manufacturing production plan based on six and twelve month sales requirements.
  - The marketing department was responsible for the finished goods E&O reserves.
  - In December 1997 there was a comprehensive review of raw materials and work in process to determine if the inventory could be used in other products. Mike Bondiski coordinated this effort.

C:\Documents\29\Interview-Judy Maudlin

NOT A CERTIFIED COPY

0114381

AA166338
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

0143382

AA166339
Conficential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow, Fort Lauderdale

Date: August 19, 1998

Subject: Sunbeam Corporation - Interview with Chuck Myers

On August 10, 1998, Larry Bornstein, Chris Malloy, attorney with Skadden, Arps and I conducted an interview with Chuck Myers, Sales Manager for Team Wal-Mart. A summary of information provided by Mr Myers is as follows:

- Chuck joined the Company in January 1991 in sales operations for outdoor products.
- In 1997 he had responsibility for Wal-Mart and Sam's
- He now has responsibility for Wal-Mart, Sam's K-Mart, Target, Military, East & West Regional accounts, Ames, Caldor, Bradlees, Fred Meyer, Coles and Montgomery Wards.
- He has eight direct reports.
- From October "96" to mid February "97" he worked in Hattiesburg on the computer system problems.
- Company didn't invoice any customers (through the computer) for approximately 90 days.
- Myers never referred to the program as B&H but always called it "early buy"
- Myers indicated that he had a copy of letter to Wal-Mart in his files.

Returns

- Myers indicated that customers have issues which result in return such as inventory balancing, pricing and dumping of products.
- Wal-Mart has always been able to return on a seasonal basis - blankets.
- Wal-Mart currently has two RA's for next season's blankets and seasonal business.
- Myers estimate of Wall-Mart returns, in 1998 for "97" sales was $8 million plus $1.2 million for blankets.
- Myers did not tell Wal-Mart of the Company's no return policy.
- Dunlap had a "fight" with accounting on the turns issue.
- After the R.A.'s were deleted from the J.D.E. system - Sam's and Wal-Mart had a problem with the Company's non-acceptance of returns. Myers told Wal-Mart he would handle.

NOT A CERTIFIED COPY

014383

AA166340
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062656

16div-020683

Date: August 19, 1998

Subject: Sunbeam Corporation – Interview with Chuck Myers

- Myers said no return" policy was crazy, because its important for customer to have product first to get sales.
- Company not only was unable to deliver grills to Wal-Mart in "97" season, but had only about a 60% fill rate across the Board.
- During"97" grill season, there was such a push to get grills out that there would consistently be problems with availability of Wal-Mart grills since available inventory would be shipped on first request-first ship" basis. Big "out-of-stock" problem for Wal-Mart.
- As a result of this problem, the Company lost 5 Wal-Mart warehouses.
- Myers knew that 1998 sales goal was not attainable in December 1997. He indicated that all sales people knew.

Bill and Hold

- There were approximately $1.5 million of blankets sold on a bill and hold basis in 2Q 1997. This was for 3 or 4 accounts (Wal-Mart deal was 1% incentive).
- Terms were that inventory must be billed in order to secure the inventory. Net 30 days from receipt. Holding period was from 30-40 days. Inventory was segregated for the customer.
- Wal-Mart insisted that the company ship on time and accurately.
- Q-3- 1997 – No B&H that he was aware of.
- If you ship late to Wal-Mart there is a $100,000 fine and you lose out on catalog orders.
- The results of B&H in Q4 of 1997 were to move $18 to $20 million of sales from 1998 to 1997.

[redacted]

SHP

NOT A CERTIFIED COPY

014384

AA166341
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062657

16div-020684

NOT A CERTIFIED COPY

0143385

AA166342
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

To: The Files

From: Donald A. Denkhaus, Miami

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

On July 10, 1998, Phil Harlow, Brian Loughman, Rita Gordon, attorney with Skadden Arps, and I conducted an interview with Lee Griffith, vice president of sales of Sunbeam Corporation. A summary of information provided by Mr. Griffith is as follows:

Bill and Hold Sales (B&H)

- Genesis from 1997 grill season
  - Just came off a disastrous service level in Q2 1997.
  - Wal-Mart is Company's largest customer. During the "97" grill season, Sunbeam was not able to meet all the scheduled delivery needs of grills. As a result, Wal-Mart penalized Sunbeam for the "98" grill season by reducing the number of regional warehouses from 20 to 15. Chuck Meyers has the specific information regarding the Wal-Mart return estimates.
  - Thinking about how to improve "98" grill season.
  - How do we jump-start the "98" grill season.

- Management came up with an "early season buy" program which would cater to customer's need forecast
  - Gave customer an incremental 1-2% and normal seasonal term.
  - Product was manufactured in Q4 of 1997 and shipped to third party bonded warehouse.
  - All product was marked for each customer and segregated in warehouse.
  - Retailer could take down as needed.
  - Contracts with customer.
  - Goal was to avoid retailer stockouts.
  - Normal 30 day terms once customer got the product.
  - Griffith did not keep all the contracts only has Wal-Mart. LaFavre may have more.
  - Phil Harlow and Griffith called certain customers and confirmed that they couldn't return the product and that title had transferred to customer.
  - These calls were made to Wal-Mart, Home Depot, Fred Meyers and a few more.
  - B&H sales amounted to approximately $2.8 million at Q1 1998.
  - B&H program required at least $5 million in sales from a customer. This program was basically for "big guys". It would help larger customer manage their seasonal program. For customers it was a win-win situation since customer did not have to squeeze Sunbeam for product.
  - Goal was to increase sell through but weather did not cooperate (El Nino)

NOT A CERTIFIED COPY

96110

AA166343
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062659

16div-020686

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- Sunbeam had a small amount of B&H sales in Q3 1997 - approximately $2 million.
- Phil Bogner is the manager of the Bill and Hold program.
- As of July 9, 1998, only $500,000 of the Bill and Hold sales remained uncollected.
- Fred Myers purchased approximately $4 to $5 million in grills but cancelled and asked to return about $200,000 of unsold inventory.
- Bradlees purchased about $4 to $5 million of Bill and Hold inventory and asked to return approximately $200,000 of inventory after the grill season. Griffith felt it was a good relationship thing to do.

- Lee Griffith pre-called customers just to let them know that AA was going to call and ask a few questions about B&H. Griffith did not "prep" them. Had to "hound" certain customers to sign the confirmation letters.

- Griffith had conversations with customers prior to initiating B&H it's ensure that the customer knew it was their inventory; they got an incentive (2%) to do this. Griffith wanted everyone to be clear.

- Griffith doesn't know how customers would record inventory received. Griffith recalls Phil Harlow asking customer's for sure that they understood it was their inventory.

- Griffith recalls need the SEC reg. on B&H (Bob supplied it to him).

- Did B&H cover non-grills? Yes, blankets were done earlier '96 blanket season was screwed up.
  - So in June '97 went to Wal-Mart (Bob Connolly); grill season was really bad; customer service idea; we will make sure that blankets are place by August. "taking care of customer" - B&H.
  - Some blanket B&H in 3Q & 4Q 97 (small in 3Q).
  - '97 the 1st year they did this B&H.
  - Total B&H blankets were a few million $. (all Wal-Mart).
  - Blankets have historically had significant returns.
  - Agreement with Wal-Mart no contracts but PO's have term that Sunbeam will provide inventories in anticipation of a good season; then take back what doesn't sell; then no stock and sell next season or repkg. (Unwritten policy).
  - During 98-season attempt was to reduce level of returns i.e. sell less and manage inventory better.
  - Wal-Mart buyers are punished for store "out of stock" issues

- Return Authorization/No Return Policy

NOT A CERTIFIED COPY

01437

AA166344
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- Around January 18 to January 23, 1998, a meeting was held in which a decision was made to eliminate the return authorization on the Company's system. Don Uzzi, Russ Kersh and Bob Gluck at that meeting and LaFavre by phone.
- Al LeFevre reported that results to Griffith and was upset about this decision because elimination of information left him with customer service issues.
- Company had instituted a no return policy sometime in last half of 1997 but didn't really stick to it.
- Roger Lee, sales controller, may have reports on this Al LeFevre and Kyle Kaiser in Hattiesburg may have more details.
- Al LeFevre was directed to delete the information by Russ Kersh and was instructed that "this is a no return" business and the Company would have no return.
- Kersh said we'll sue the customers if they return goods.

- Input to accounting for return reserves:
  - met with Bob Gluck
  - look at POS data
  - give/discuss a range
  - end of 1997 range was $5-$9M just Wal-Mart - sales
  - Griffith did not prepare a schedule
  - Discuss it. Look at history.
  - (Chuck Myers would have details).
  - Difficult to assess returns in advance.
  - Wal-Mart bought $40M of blankets - returned $9M
  - prior/year $38M returned 6-7 months

  Bob Gluck's reaction to the $5-$9M estimate?
  - Gluck asked what it was based on.
  - Push to get behind the number

- Markdown money - Co-op funds to be used - account by account
  - Price quotes would be set to "spread" co-op funds over customers.
  - 1997 treatment would have been the same as prior/years.
  - Areas of concern provided to Gluck; he would deal with the numbers;
  - Gluck had the history.

- Griffith got to Sunbeam fall of 1996.
  - In the blanket business, the best's thing to do is accept returns so they can be resold at full price. There was no process of revving up sales to offer discounts later.

NOT A CERTIFIED COPY

0114388

AA166345
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- B & H
  - Basic seasonal terms normal - extended terms
  - No changes to original B & H agreements (except for Fred Meyers Bradlees - discussed above).
  - 1996 had a similar extended dating program.
  - May dating is normal for spring season. Prior years Jan/Feb shipment - May dating.

- RA's
  - Lots of pressure to make 3Q 1997 and 4Q 1997.
  - Early January 1998 policy of no returns was instituted.
  - There was talk about this prior to January; in 1997, it really heated up in January 1998.
  - Deletion of info - 3rd week January from JD Edwards files
  - Came to Griffith's attention from Al LeFevre; there was a mid-January meeting with Gluck, Russ K. and Don Uzzi.
  - No returns edict was pounded out. LeFevre was concerned and upset because elimination of info left him in a customer service void.
  - LeFevre was being "directed" to delete information. This is not a no-returns business. Griffith & LeFevre did not agree that there can be no returns. There will have to be returns.
  - Kersh said we'll sue the customers for returns.
  - LeFevre was not at the meeting (may have been patched in for a conference call). LeFevre left Griffith (who was out) a voicemail and they later talked. Don Uzzi told Griffith not to worry about it.
  - Efforts to retain information? Griffith heard that the info was to be deleted from the JD Edwards system but doesn't really know if information was retained elsewhere.
  - There were issues with customers - tied to markdowns. Customers would just put stuff on trucks and send it back. Some were unloaded, some were sent back. Sunbeam probably paid for the extra freight costs. Griffith had to effectively authorize returns up to $100K; he was having to go to Uzzi and Kersh to ask for authorization.
  - Griffith has seen the "Deleted" RA listing.
  - This report would have been after the mid-January meeting (18-23rd), but it would have summarized challenges faced version returns. This was shared with Griffith; he believes that there were earlier versions. Gluck would run reports via JD Edwards (copies would come over to Griffith).

- Markdown Funds

NOT CERTIFIED COPY

011389

AA166346
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- Griffith would "work" this report with customers. Had to take back Petsmart (but wanted to buy back later). Also K-Mart.
- There were both prior and subsequent reports to this one. Lee has reports after February 8, 1998; doesn't know whether from JD Edwards system or not.
- Other People to Interview: Roger Lee – Sales Controller, may have more of these reports.
  Al LeFevre also; Kyle Kaiser in Hattiesburg, may have more details on these reports.

• Encore sales
  - This sale was recorded at yearend 1997.
  - Definite guaranteed sale - plenty of letters. Skadden has folder. Lee Griffith and Bill Marc and Rep (Carlyle) put sale together. Trying to expand into other grocery stores. Lee Griffith went to New Jersey to meet Encore.
  - Premium programs - product given to customers for loyalty by grocery stores.
  - There was a right of cancel by April 1998 on this sale.
  - Griffith discussed it with Bob, and AA asked him for information.
  - Intent was for merchandise to go in First Quarter 1998 but didn't work.
  - This sale was recorded at yearend 1997.
  - Griffith discussed the Encore sale with Bob Gluck and told Gluck if he was "uncomfortable" with the sale he should not recorded it in 1997.

NOT A CERTIFIED COPY

014390

AA166347
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- EPI
  - EPI not really a "customer" - small order fulfillment.
  - This was really a sale of assets.
  - Bill Bloomfield and George Timchal was initially involved. Bob Gluck and Don Uzzi were also involved.
  - Al LeFevre thought that the sale "smelled."

- M Block
  - Terry Reilly and Dave Wilkins put this deal together. Both of them are no longer with the Company. The yearend sale to M Block was the first purchase of blankets by M Block.
  - Dave Wilkins guaranteed that if the blankets were not sold by April 1, 1998, they could be returned. Griffith says this agreement is in writing (December 1997).
  - Part of distributor program (Kersh and Gluck knew). M Block reseller. Wanted to expand the business and become a blanket distributor. Blankets sent for 97/98 season to M Block for the first time.
  - What Griffith didn't know was that Wilkins had guaranteed those blankets and would take back up to April 1st. (Agreement probably dated December '97) - LeFevre/Griffith not aware of the agreement. (Done in the field).
  - Wilkins' salesmen around 6/7 years at Sunbeam - culture was "we'll take it back". This guy had probably done this in the past, but remember there was significant pressure to meet numbers. This salesman got (about $15-$18K bonus for 1997), assuming this was a "good" sale. (No commission). Griffith determined bonuses for salesmen ("pool" basis was distributed).
  - Wilkins left Sunbeam because he was a poor administrator (Terry Reilly protected him -once Reilly left, Wilkins knew it was time). Griffith counseled Wilkins on his poor administrative performance and failure to generate customer relationship. He left a week later.
  - [Sales bonus based on revenue and EPS]
  - Griffith went to LeFevre when he found out. LeFevre didn't know, went to Terry Reilly, he knew. It would have been passed to Gluck and Fannin. Kersh & Dunlap said they can't send it back, we'll sue them.
  - Griffith said he learned about the guaranteed in March or April of 1998. This sale and other guaranteed sales were made because of tremendous pressure put on the salesmen to make the budgeted sales numbers.

NOT A CERTIFIED COPY

011391

AA166348
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- PHD – Professional Household Distributors
  - The Company had a consignment sales program in place for many years with PHD.
  - The Company put in place a program to "wean off" PHD from the consignment arrangement by yearend 1997. (October 14, 1997 Agreement)
  - The agreement allowed for PHD to do stock rebalancing in February and August.
  - $7.2M sales recorded as of year-end. Sent back $3.8M.
  - Terms: 2%/30, 1%/60 – Net 90, but Sunbeam wouldn't just let PHD buy and return in February with no contest.
  - Economics could be similar to a consignment situation at certain times of year, e.g., order December, return February. Griffith doesn't have prior agreement with PHD. It may not have been in an agreement – "old" arrangement.
  - Bob Gluck kept a schedule of consigned inventory held at PHD.
  - Griffith was concerned over PHD's credit worthiness.
  - PHD was sold the Company's new ice cream maker product which had problems with market acceptance.

- I. Lehroff
  - Perzrow was the New Jersey representative on this sale.
  - The Company "re-cut" an invoice to allow $150,000 return.

- Eckerd
  - Dave Wilkins committed to this guaranteed sale.
  - The guarantee was for the first-time purchases by Eckerd of certain seasonal products.
  - There was $1.4 million of returns.
  - Al LeFevre did not know about the Eckerd guarantee.
  - Lee Griffith not aware of the terms until February/March.

- Other customers for which Dave Wilkins was salesman included Walgreens, Rite Aid and CVS.

- Hills Department Stores.
  - Dave Bowen was the sales representative and agreed to the return of grills.

- Consolidated.
  - This is a mail order distributor and the Company's policy was to accept returns if the products could not be sold.

- QVC – Televison sales – Any <u>new</u> product company will accept any unsold back.

NOT A CERTIFIED COPY

011392

AA166349
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 24, 1998

Subject: Sunbeam Corporation – Interview with Lee Griffith

- Mercantile - Lee Griffith recalls; agreed to take back old stock and ship new SKU's.

- Excess and obsolete inventory
  - The Company received proceeds of approximately $30 million in the fourth quarter of 1996 and first quarter of 1997 from the sale of excess and obsolete inventory. This represented a standard cost of approximately $60 million.
  - Consolidated & Gordon Brothers took most of it. Company received about 50% of standard cost.

- On November 20, 1996, Griffith told Uzzi that he did not think the Company could achieve its fourth quarter 1997 sales budget.

- Griffith thought the problems with the Company achieving its 1998 sales budget were as follows:
  1. Because of the aggressive sales in the fourth quarter of 1997, the Company would lose a large amount of incremental revenue in 1998. There was a big push to sell products between Christmas and New Years, which was not done in prior years. Griffith thought this resulted in between $50-$60 million in revenue.
  2. New products were performing below expectations. Examples were the air filter and ice cream maker. There was also a recall on certain gas grills.
  3. The Company lost its grill accessory business (approximately $25 million in revenue) and there was a loss of 10 Wal-Mart warehouse locations (approximately $25 million in revenue).

GBP:sun629/interview-LeeGriffith 2

NOT A CERTIFIED COPY

014393

AA166350
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

20

011394

AA166351
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files, Miami

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Kerby Brown interview – 7/20/98, continued on 7/21/98

Title: Regional controller

Responsibilities:

1. Central cost accounting function
2. Support plant controllers in operational analysis
3. Inventory global oversight
4. Standard cost development
5. Full absorption entries for Hattiesburg, Waynesboro, Neosho

Started in current position in November 1996. He has been with the company since June 1996. From June 96 - October 96, Kerby was plant controller at Waynesboro.

Kerby was not involved in the development/calculation of restructuring charges.

1996 Duties:

1. Physical inventory reconciliation
2. 1997 standard cost development

The Company's philosophy for 1997 standards development was one of "Challenge costing" - i.e. zero-based budgeting. They did not consider historical standards.

1997 standards development

1. Began the budgeting process around 11/96.
2. The first standards roll out accured in the 1st week of January 1997. Several additional standards roll outs were performed due to system problems. 1997 standards roll out was completed in April.
3. The 1997 standards roll out adjustment resulted in an approximately $4 million decrease in inventory at standard in January 1997.
4. Decreases in std costs were mainly due to pressure to achieve lowest cost. This pressure was manifested in the following actions:

   Raw materials - pressure to obtain the lowest sourced cost

   Labor - reduced headcounts to reduce direct labor cost.

   Overhead:
   - In 1996, overhead was budgeted on a regional level. In 1997 this was done at a plant level.
   - 1997 overhead pool for Hattiesburg excluded approximately $10 million as excess capacity variance because the plant was not a full capacity.

NOT A CERTIFIED COPY

AA166352
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Date: August 30, 1998

Subject: Kerby Brown interview – 7/20/98, continued on 7/21/98

- Thus $10 million came through P&L (cogs) as period cost.
- If the $10 million had been built into the standards, it sould have had a favorable impact during periods of inventory build up but unfavorable during high sales periods.

$10 million excess capacity overhead excluded from overhead pool mainly due to:
- Unused floor space
- Excess production capacity in molding and iron factory.

But then in 1997, the Company produced more than plan. Therefore, of the $10 million excess, a $5 million was absorbed. (i.e. production absorbed $5 million more than budgeted OH pool).

Originally production ramp up budgeted to start mid June. Actually it started in early May.

OH pool approved by John Newcomb.

Certain 1997 issues discussed with Kerby

- January 1997 manufacturing variance - maybe due to reclass issue with inventory adjustments account due to systems problems. Kerby could only speculate did not know for sure.

- December 1997 inventory valuation reserves - $7 million credit - $6 million book to physical reserve was brought in to income. Kerby and Bob Gluck did the analysis. The actual book to physical adjustment was offset against the unvouchered receipts liability. The BTP reserves were brought into income.

- Kerby said that his main concern with unvouchered receipts problem (i.e. inability to match invoices against open receivers) had to with the breakdown in controls from procurement to materials management. But ultimately he felt comfortable with the reserve at year end.

- According to Kerby, no games were played with cost accounting. But there were initiatives to look for expenses that that could qualify for capitalization.

1st Quarter 1997 change in full absorbtion calculation

- Net effect of change was to benefit February 98 earnings by $4.5 million.
- In 1997 the full absorption calculation was done by plant; however, inventory moves between plants. In 1997, variances were charged to cost of sales when goods left one plant, even though they might have been moved to the DC in another plant.
- The new approach for calculating variances takes a global view of production variances so that variances associated with finished goods are not expensed until the goods are sold.
- In 97, variances were being changed to P&L when goods were still sitting in a dc.

NOT A CERTIFIED COPY

0114396

AA166353
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Kerby Brown interview – 7/20/98, continued on 7/21/98

- Mike Bondisky headed up the initiative to make the change. Actually, Bob Gluck, Deb Macdonald and Kerby had discussed making this change earlier (Q397), but the change was not made until Q198.

Kerby is not aware if there was any consideration of NRV given the volume of capitalized variances.

Cost of quality amount in cost of sales represents warranty expense. This is accrued monthly.

Change in production methodology

- In 1996 the company produced under a methodology of level production throughout the year.
- In 1997 the company went to seasonal production with low production in 1st half of 1997 followed by ramp-up of production in 2nd half of 1997.

Full absorption calculation:

- Household operates on a calendar year cycle. Variances are capitalized on a FIFO basis.
- Neosho operates on a June - July cycle. All labor and overhead variances are capitalized under the philosophy that unfavorable variances in the early part of the season will be consumed by favorable variances during the peak times.
- Mike Bondisky and Bob Gluck review the full absorption calculation montly. They have never asked Kerby to alter or manipulate the full absorption calculation.

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

011357

AA166354
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062670

16div-020697

NOT A CERTIFIED COPY

AA166355
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

Title. Director of Logistics

3 years with Sunbeam

Duties:
- FG Warehousing
- Transportation

People who report to Bill
- Jim Job
- David Aslin
- DC managers

Restructuring 1996

- C&L studied Domestic transportation
- 11/96 meeting → go forward given for restructuring plan. Bill Bloomfeld promoted from HH to Corp. Director of Distribution
- Transportation managers previously reported to manufacturing managers under the original plan, but in 6/97 went back to the old way where line managers reported to the plants.
-

1997

1997 was very aggressive month/quarter ends

9/97 → Big Push (also done in June)

1. Pull forward October order file
2. Many orders changed from collect (customer picks up) to prepaid (where Sunbeam ships to customer). This allowed Sunbeam to ship orders early and select mode of transport to slow delivery times.
3. E.g. - used HUB Group (rail shipment) too slow down delivery so orders would be delivered on right dates

Usually customers will not send truck until the desired date. Prepaid allows us to control the shipping process. This involves changing the terms of P.O.

NOT A CERTIFIED COPY

66410

AA166356
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

Early shipments resulted in a lot of customer trouble shooting

Shipping terms did not change, i.e. still FOB shipping point

Bill believes that all pressure/decisions came from top management - i.e. Al Dunlap, Don Uzzi, Russ Kersh and David Fannin (not David so much). This was the operating committee

Don Uzzi's philosophy - load the pipeline and we'll deal with the customers later..

According to Bill, there were daily meetings at end of each month/quarter. Attendees were generally:

All VPs
Don Uzzi
Lee Griffith
Al Lefevre
Jack Daily
Lisa Dalberth
Russ Kersh

David Fannin and Bob Gluck were not in the meetinsgs

The Company was managed based on EPS targets

- Projected EPS for quarter
- All activity managed based on EPS

1996 was quiet because they didn't want anything in 1996

March 1997 was an "unbelievable" push

Each quarter, it went deeper. Everyone was telling our operating committee "this has to stop". Lee Griffith said "this can't go on".

Don (Uzzi) in my opinion was the guy, → demanded you make the numbers and didn't want to hear any bull.

Dixon Thayer and Bill Kirkpatrick (both from Scott) were fired because Sunbeam didn't make the numbers.

Bill can only speculate as to the source of the continued pressure - % growth and EPS were the key drivers/measures

I think Al Dunlap and Russ Kersh gave the pressure. Don Uzzi was the instrument. Ultimately he was the scapegoat.

The pressure started in March 97. Every quarter there was a significant push to pull forward sales.

NOT A CERTIFIED COPY

001400

AA166357
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

Customer Service received the order to pull orders. Flow of instructions as follows:
Don Uzzi → Lee Griffith → Al Lefever → Kyle Kaiser (pull orders)

Usual order allocation is approximately 5 days out (curr + 5)

14 days)
21 days) @ quarter end, , every open order was pulled forward
One month)

With regard to shipping cut off policy, Bill agreed with Gluck that if the goods are loaded and sealed in a truck, then it should count as a shipment. From a system's standpoint, there is no way to segregate invoice generation from generation of a bill of lading. A pick slip is generated and the goods are pulled and loaded. Once the truck is loaded, the order is ship confirmed. This generates the bill of lading and the invoice.

@ quarder ends - two things happened:
- Pull orders forward
- Do deals to push sales

Based on shipping activity, Bill guesses that the biggest deals were probably with:
- PHD
- M. Block
- K-mart
- Any big accounts

Liquidators were used at quarter closes to drive the top line
- Consolidated
- Gordon Bros.
- Menards - used as liquidators

At quarter ends, E&O lists were given to sales guys who called the liquidators

Late 96 and early 1997: A lot of liquidated product to
Consolidated
Gordon Bros.
& one more (can't remember)

More deals were made at quarter ends. But none over $5 million

Outlet Stores - Sunbeam got in trouble with customers for selling same stuff through outlet stores. Later Sunbeam limited Outlet sales to to damaged and/or old stuff.

NOT A CERTIFIED COPY

AA166358
Confidential Treatment Requested
by Arthur Andersen LLP

CONT #966

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

Returns were often sent to outlet stores rather than being repacked.

Bloomfield responsible for shipping stuff to outlet stores

Returns were counted, put in inventory location and "sold" to outlets.

Asked if he is aware of any cases of goods billed not shipped, Bloomfield responded "Never"

Customer service can process order from order status to invoice status

People can advance orders to get product "shipped". There are ways for people to advance order statuses.

JDE (Neosho/Wayesboro) → direct interface. You can generate any document in the order process.

You can force allocate in JDE to wind up with negative inventory. Over allocate. – i.e. allocate inventory to orders that does not exist in the perpetual (although JDE does not include production that has not been closed).

Sometimes orders were negative allocated and insufficient product was available. Shipped short and over allocation later cleaned up.

Bill was not aware of any duplicate shipments.

Bill and Hold

1. First heard of it in 12/97. Bloomfield is almost sure it occurred only at end of December in 1997.
2. The plan was to:
   - Get valid PO
   - Isolate/segregate the goods
   - Do order confirm
   - Manage order papers manually and get goods to the customer eventually.

In Hattiesburg due to automated systems, goods actually have to be physically moved to execute commands to get ship confirm status.

Deep South (warehouser for bill and hold out of Hattiesburg) commingled inventories

Estimated bill and hold cost @ y/e → (we gave Gluck an estimate of approx $600K). This was for warehousing, handling and transport cost.

NOT A CERTIFIED COPY

AA166359
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

Neosho Bill and hold

1. YE bill and hold orders were not as clearly identified as at March 31 1998.
2. Y/E goods were already in the 3rd party warehouses. We just processed the documents.
3. @ YE there was no special order type for bill and hold – "we screwed it up royally". In March we forced the company to create a new order type.

On January 2, 1998 (approx) Gluck was in his office going over the Bill & Hold SEC ruling. Bob was aware of Bill & Hold in the December time frame (Bill speculates).

In December there were numerous discussions about B&H and what docs had to exist. Gluck was up everyone's ass about what we needed to have. No deals < $100K.

Gluck said AA partners had a problem with B&H and the SEC wasn't going to like it.

Bob was never receptive to this (i.e. bill and hold). He hates this kind of stuff. Russ (Kersh) probably pushed it on him.

Bill is not aware in any changes in sales terms after shipment.

Movement of B&H inventory

- December 97 - mainly shipped from January to March. Generally, all gone by April sometime. However, some blankets didn't move until June.
- March 98 – approx. $900K of B&H inventory currently left in Neosho. Merands - 4-5 trucks; Lowes - ½ trailer, Home Depot - ½ trailer
- Sunbeam ran the NDC operations to manage B&H.

Distributors (PHD, M.Block, Encore)

- Encore shipment never left the warehouse. This is the only deal that came back to us. This was a March bill and hold. Credit issued in June 1998.
- Turned to distributors at quarter ends to get sales on books

Don (Uzzi) would push to get revenue. Did not say how to get revenue.

- Everyone was tied the same thing. EPS, revenue growth, earnings.
- Bonus plan, options, etc.
- Then in October 1997, it started to fall apart when management closed the exercise window for options
- In Jan. it reopened after yearend earnings

No one wanted to be the guy that didn't make the numbers.

NOT A CERTIFIED COPY

011403

AA166360
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062676

16div-020703

Date: August 30, 1998

Subject: Bill Bloomfield interview – 7/21/98

As early as September 1997, the sales org. knew that the stores were stuffed with product. E.g Walmart had 12 weeks of product. Talk to Chuck Myers.

In 1997 the Company issued a no return policy (approx 6/97 – 7/97)

- Part of the C&L restructuring plan was to reduce returns
- When it wasn't working a "no return" policy was implemented.
- The policy was not communicated to retail channel
- Always @ Y/E, customers load return goods into gaylords and return them
- There were a lot of trapped freight charges through April 1998 because returned goods were not accepted at the plants.
- In April the plants were allowed to start processing returns again. $8 million in return authorizations was initially put up (i.e. RA's issued to permit returns) but this was not enough. They eventually put up more.
- $600K - $800K of additional transportation/storage charges was incurred as a resultof unwillingness to accept returns.

Bottleneck from no returns

- The retail community was never aware of the no return policy.
- This was a Russ Kersh initiative to meet C&L plan.
- Russ Kersh and Al Dunlap managed the company according to the CL study (e.g. trying to achieve targets for returns and warranty.
- 6/97 – no return policy. Only Lee Griffith could authorize returns. Later this was changed so that all returns had to be authroized by Don Uzzi. But returns are heaviest in the first 6 months of every year.
- Started turning trucks away from dock at end of January
- Instructions were issued to the carrier community that Sunbeam would not accept returns with out a return authorization.
- The transportation crisis was communicated back to sales who identified trapped freight.
- Return authorization were posted back up in April

<u>RA Process</u>

1. In early 1998, took all RA's off the system
2. List of trapped freight turned over to Kyle Kaiser or Jim Job or Al LeFever

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

011504

AA166361
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062677

16div-020704

NOT A CERTIFIED COPY

AA166362
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

fTo: The Files

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Interview with Chris Adams – 7/20/98

Title Conversion Inventory Control Manager

Conversion – Scope of activities

1 Prepricing finished goods pachaged for sales to – Sears, Macys, Penny's Catalog, Fingerhut Catalog items, Target
2 In line model → convesion of a finished good product to another product number by putting price on it or a magnetic tag for security
3. Mostly supposed to be for sourced product.

Inventory Control – Scope of activities

1. WMS = Warehouse Management System in distribution center. . Chris is to monitor integrity between the WMS system and JDE inventory record.
2. Daily integrity report generated.
3 Perform daily cycle counts in WMS

---

9 years with Sunbeam
3 Years in Hatiesberg

Nothing unusual in inventory control @ 12/96. She did not work in inventory control in 1997. (Conversion only)

1997 – Volume of shipping was high, but systems were able to handle it.

Cut off – "one of the strictest rules we have in the distribution center (DC)". At shiping cut off, we can complete a "wave" (i.e. a wave of containers at the DC bay doors) but cannot reload a new truck after the cut off time. Sometimes the morning shift would finish the wave that was started prior to cut-off.

Bill & Hold – if an order came thorough the WMS we shipped it. From Chris' standpoint processed like any other order. She would not be able to distinguish bill and hold from normal orders.

Not aware of unusual return volumes

Only change @ Y/E is increase in volume.

Not aware of any changes in policies and procedures or reports.

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

AA166363
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

23

AA166364
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files, Miami

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Janice Gavin interview – 7/21/98

Title: Manager, general accounting
Has been with the Company 29 years.
Reports to Delray

Involvement with 1996 restructuring

- All restructuring reserves set at Corp.
- All JEs posted to reserves are special coded (900s)
- Has support for book value of household plants written down in connection with restructuring
- No knowledge of excess reserves
- Has support for E&O reserves set up for household division
- No continuity of outdoor division personnel to track down outdoor files related to restructuring.
- Janice does not know where to find information for Outdoor restructuring
- Box of outdoor yearend 1996 accounting analysis going to Don Jackson in Delray

Asked about any unusual items related to restructuring set up or reserves, Janice responded that she was not aware of any unusual items. Any unusual items with respect to reserves: none noted. She was not asked to book entries for any additional or otherwise unsupported charges.

Corporate authorizes charges to the restructuring reserves.

1997

Manual Sales Accrual - some invoices do not make it through the system to g/l posting status. This is largely due to EDI problems.

The Company found out about this by comparing sales per the G/L to the scorecards. The scorecard tracks the relationship between orders and shipments. Shipments per the scorecard did not agree to sales posted to the general ledger. Management researched the issue and found that some invoices did not g/l posting status.

At month end, a report is generated of sales that have reached ship confirm status but did not reach g/l posting status and make a manual JE to accrue these sales. Entry automatically reverses at the beginning of the next period.

The scorecard tracks all orders that have shipped.
Manual J/E is to record sales that with "shipment confirmed" status that have not reached 999 status (i.e. g/l posting).

NOT A CERTIFIED COPY

AA166365
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Janice Gavin interview – 7/21/98

The manual sales accrual has ranged from approx. $1 million to $9 million A team was formed to troubleshoot and correct the problem.

Sales cutoff at end of quarters

Fourth quarter 1996 - Janice noted nothing unusual regarding sales cutoff

First quarter 1997 - again noted nothing unusual

- Sale of discontinued inventory - close out items sold to discount stores at below cost. Janice not involved. As far as she knows, these were booked as normal sales. Reports were generated of sales below standard. The loss on these sales was charged to E&O reserves.
- It seemed to Janice that sales below standard related mainly to grills and Neosho stuff. Household busy season was over.

Furniture entity was handled by outdoor division people (Disco).

Second quarter 1997 - nothing unusual

Third quarter 1997 - nothing unusual

Fourth quarter 1997 - nothing unusual

First quarter 1998 - nothing unusual

First time Janice heard Bill and Hold was at end of January (1998) - actually, Janice thought the term was "build and hold". JG made accrual for storage costs related to stored shipments:

$125k Neosho
70k Household
$195k yearend accrual = to cover for January/February/March storage charges related to bill and hold

In March 1998, the Company recorded additional storage charges due to large amount of stored inventory for Neosho.

Asked about any unusual journal entries made (or which she was asked to make) Janice said she could recall none. She was "never" asked to make any unusual/unsupported entries.

According to Janice, all judgemental reserves are handled at Corporate. The warranty reserve calculation is done at Hattiesburg, but Corp. can reverse or true up warranty accruals as they please. Ultimately, corporate decides how much to accrue.

NOT A CERTIFIED COPY

AA166366
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Janice Gavin interview – 7/21/98

Monthly accruals are recorded in Hattiesburg for warranty, workers' comp., product liability and employee health. At quarter end, these liabilities are analyzed at Hattiesburg, but adjustment is made at Corp.

Asked if they everything seems to be running O.K. at Hattiesburg, Janice says she "feels that they are getting the job done."

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

AA166367
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

24

AA166368
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Jim Job interview – 7/20/98

Title: Director of Traffic and Transportation

Job responsibilities:
- Deal with carriers
- Negotiating rates
- Selecting carriers (modes/types)
- Transfer choice of carrier over to DC after decision is made
- Puts out preferred vendor list
- Set operational requirements
- Troubleshooting specific situations
- Works for Bill Bloomfield
- Does not deal with running of DCs (distribution centers)
- Problem = customer demands for timely delivery windows

28 years with the Company

According to Jim problems arise because "Business is Good"

Fourth quarter 1997 issues = noted nothing unusual; normal busy season stuff.

Asked about goods shipped to NDC, said he found "short work" carrier to transport goods from NEOSHO to Miami, OK. He understands these to be bona fide sales. Has no knowledge of sales terms.

Asked about any unusual activity re: customer returns:
- Blankets - March, April, May (this is normal)
- Recalled grills
- Nothing else unusual

Returns center = Cynthia Byrd in charge.

Returns were heavy but not unusual. He heard about Kersh's "no return policy," and knew it would not work. Others have tried this before. The goods came back, but had no RA to receive against.

Jim made arrangements with shippers and agreed to accept storage charges. Estimates a total of 75 - 100 trucks for which the Company incurred storage charges until the Company started accepting returns. Many of the containers were "pups" - i.e. the small containers. Trucking Co's complained about trailers being tied up.
Estimated cost of policy changed was approximately $500k. This is what he approved to shippers for storage charges.

NOT A CERTIFIED COPY

14412

AA166369
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Jim Job interview – 7/20/98

Management and processing of freight bills is outsourced to Transtech. Transtech pays the freight bills. Another Company, Atlas, audits Transtech for Sunbeam.

As of June, no more storage in carriers' trailers. Storage of unaccepted returns occurred for approximately two months.

"I guess they didn't want to receive the goods because they wanted to make the first quarter look as good as possible."

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

AA166370
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

25

01414

AA166371
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files, Miami

From: Dennis Pastrana, Miami

Date: August 30, 1998

Subject: Kyle Kaiser interview – 7/21/98

Title: Director of Customer Services (previously in materials management). Started in that position in February 1998
Reports to Jack Daily.

Predecessor: Brian McCarthy – fired in January of 1998. Worked for Al Lefevre
- Customer service used to report to sales.
- Now reports to logistics. Jack Daily.

Jack Daily and Al Lefevre designed the reporting structure.

Kyle's Responsibilities:
1. Execute sales order processing system
2. Execute order processing from quotation to shipment
3. Take in customer orders (manual/EDI)
4. Verify terms, conditions, pricing, allowances
5. Process on-time orders in "complete" status
6. Follow up on product availability issues - talk to procurement and manufacturing to resolve back-order issues

The customer service organization consists of approximately fifty people, which not adequate due to JDE problems.

Customer service (CS) mostly deals with sales reps who talk to customers.

Biggest challenges
- Turnover
- Marketing
- Planning and scheduling
- Outsourcing products (increased lead times)
- Poor sales forecast
- Sales force redesign
- Automation does not always work due to poor front-end work
- Shipping violations

Misshipments = major cause of returns

Neosho - No coordination between sales forecast, production plan and space needs. Overproduced.
Hired NDC (National Distribution Center) who shipped poorly - wrong quantities, models, etc.

NOT A CERTIFIED COPY

AA166372
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Date: August 30, 1998

Subject: Kyle Kaiser interview – 7/21/98

This problem occurred mostly in first quarter of 1998. NDC relationship terminated recently.

Carriers inform us of customer refusals to accept shippments.

Misshipments generally result from
1. Ship past cancel date
2. Wrong quantity
3. Wrong product

In some cases Kyle has seen duplicate shipments, but there were two orders submitted.
1. Received both an EDI order from the customer and a hard copy order from customer.
2. Al LeFevre and Lee Griffith would call the sales reps saying "where's the order" and sales reps would fax a hard copy in advance of the EDI orders
3. Duplicate invoices occurred due to heading text in EDI orders. Le the EDI order number contained leading zeros or other leading information that resulted in the system reading this as a unique order. As a result, duplicate orders were not caught.

   Return Authorization Document Types
   CW – credit warranty (defective) consumer returns
   CR – return to stock (non defective)
   CQ – recalls

4. Duplicate shipments that Kyle was aware of – approximately 20 shipments of $2000 each. Total less than $100,000

In 1998 saw no intentional wrong doings. We only shipped orders we had.

Order allocation – normally pulled orders five days ahead of request date and sent to traffic for pulling and shipment. At quarter end this was extended out 10 days. Parameters in were changed in the system to go out further than 5 days. (Al Lefevre would give the instructions).

We never pulled everything that was out there. Also, we were selective, e.g. did not advance allocate orders where we knew customers would refuse shipment.

Sometimes customers would refuse shipment. We incurred detention charges days after several days of a customer refusing shipment. Despite this, a business decision was made to go ahead and ship orders early.

Mitch Long (shipping manager at Neosho) – got copies of all misshipments to customers from the customer service department.

NOT A CERTIFIED COPY

011116

AA166373
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062689

16div-020716

Date: August 30, 1998

Subject: Kyle Kaiser interview – 7/21/98

As of February (this is when Kyle started as director of customer service), the Company had excess grill inventory. This was being discussed as an issue – i.e. the need to find warehousing. But it was widely known that the plant kept running at full steam. This was a reaction to early 1997 poor service levels. By design, inventory levels were increased in 1997.

Bill and Hold

First heard of it in first quarter 98. Gluck talked to me about lack of procedures in fourth quarter 1997. Decision to do bill and hold was executed abruptly at end of fourth quarter of 1997.

Gluck was being forced – was not a proponent of it.

In first quarter tracked each bill and hold order in the system. Also tracked schedule of shipments.

- A few customers wanted to extend delivery dates, but Sunbeam took a hard stance and made customers take the goods.
- Approximately less than 2% of total orders were allowed to push back delivery dates and payment terms.
- Have Depot re-consigned goods to other stores. Le. Home Depot orders by store. In total orders were accepted, but were shifted to different stores.
- In Q198 bill and hold went much smoother.
- Procedures were put in place and followed. According to Kyle, "if it (bill and hold) is legal, we did it right."

Deductions

- Prior to Creditek, customer service was very involved in the process of managing deductions. In 1997, Creditek did all and there was no communication, so customer service kept doing things wrong.

  Big deductions: Advertising
  Mark downs

Chargeback types influenced by customer service

- Returns
- Vendor violations

In 1998, customer service reviewed the May 1998 Creditek report and is getting involved in the chargeback control process.

Current head of Creditek - Margaret ??

Comments about returns and guaranteed sales

- Magnitude of returns has gotten out of control.

NOT A CERTIFIED COPY

014117

AA166374
Confidential Treatment Requested
by Arthur Andersen LLP

Date: August 30, 1998

Subject: Kyle Kaiser interview – 7/21/98

- First time product sales to QVC always guaranteed.

Pressure to make sales numbers at end of Q1 98.

There were daily meetings near quarter end. In attendance were:
- Don Uzzi
- Lee Griffith
- Chuck Myers
- Kyle Kaiser
- Al Lefevre - came to Hattiesburg for one week at end of the first quarter

Score card = used tomorutor daily shipments and orders. Kyle's job to make sure that the gap between shipments and orders was small

Very high pressure

Don Uzzi would tell people - "this is your number"

They (top management) were planning to sell the Company. Anyone hired after October of 1996 was told this is an 18-month deal and when we sell you will be fully vested. (e.g. Lefevre/Hanson/Mack)

Kyle: "Nobody would put up with this bull if not for the options."

In the Fall of 1997 the Company hired Morgan Stanley and enthusiasm built within. Through January, February and March, employees felt OK. By the end of March, the attitude had shifted when the Company didn't make the numbers.

Return Authorizations

January 22, 1998 - return authorizations were removed from the system

By February 8, 1998 the return authorizations started being put back in the system.

Deletion of RAs from system - Al Lefevre received a call from Russ Kersh, Bob Gluck and Lee Griffith - Al gave the order to delete the RAs from the system and make a manual spreadsheet. There were approximately $8 million of open RA's at the time.

Negative inventory allocation

As far as Kyle knows, inventory was allocated into the negative infrequently.

END OF INTERVIEW

DP

NOT A CERTIFIED COPY

AA166375
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

26 of 619

AA166376
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The File

From: Dennis Pastrana, Miami

Date: September 1, 1998

Subject: Interview with Scott Yales

Job Title: Strategic Planning & Analysis
M & A on Ad Hoc

Started with Sunbeam 10/1/97

Initially reported to Lisa Dalberth, who left mid-December, '97, then to Deb McDonald.

Interacted with:

- Rich Goudis
- Russ Kersch
- Don Uzzi
- All VPs and GMs

When Scott started with Sunbeam there was already an outline for 1998. The budget was $2.25/share.

Started with $2.25 per share goal. Needed to make numbers. Other targets:

GM	= 34%	1998
SGA	= 14%	
Operating Profit	= 20%	

Q3 97 - Scott was not involved in reporting to management

Q4 97
- Scott was involved in communicating with upper management
- In Q4 1997 there was a big <u>push</u>
- Were looking to make $1.45/share
  - Selling
  - Spending Control
  - } Cost Control
- Looked through expenses in 4th Quarter for anything that could be capitalized
- A laundry list of items was being looked at
- Scott helped *Zucawski* in looking at 4th Quarter R & D expenses

NOT ACERTIFIED COPY

011120

AA166377
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062693

16div-020720

Date: September 1, 1998

Subject: Interview with Scott Yales

Profit Assurance plan (LAB showed the schedule to Scott).

- The Plan was reviewed daily with VPs and GMs
- This is common at all companies but not to the extent that Sunbeam does it
- Everyone had their "go gets"
- Lisa Dalberth or Deb McDonald drove the process
- Don Uzzi was very familiar with this because he was driving the assurance plan

Certain schedules "were not to be shown to anybody"

- Scott was not the keeper of such schedules (i.e., he does not have any copies)
- Lisa was the keeper at that time
- E.g. - Schedule "4th Quarter Revised Forecast" (LAB showed the schedule to Scott) – showed that without adjustment there was no way we would make EPS
- Schedule illustrates $0.21 problem at end of Q3-97, then "Profit Assurance Plan" was developed
- The profit assurance plan was put together for Don Uzzi so he could see the *magnitude* of the problem
- Bob was aware of all this push. A lot of this could not happen without Bob's yes or no. Scott does not know how involved Kersh was.

Troublesome Items

- Sales waterfall items
- Co-op
- PPV
- Lower returns
- Lower commissions
- Capitalized expenses
  1. Bob & *Zucanski* determined amounts to be capitalized
  2. $2.25 million = ¼ of annual spending was the target. [Actual capitalized = $1.25] Thus seemed unreasonable

NOT ACERTIFIED COPY

01141121

AA166378
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062694

16div-020721

Date: September 1, 1998

Subject: Interview with Scott Yales

Gross Sales

1. Don Uzzi drove people in the leadership meetings to "drive" sales
2. They expressed their views to Don and at times it got very heated
3. Sales were being pulled forward and it was clear that the VPs and GMs were uncomfortable with sales targets and the *untenability* of that - i.e. Pulling Q1,'Q2 '98 sales into Q4
4. "Red Book" - This was the common name for the "Go to Market Plan"
5. Scott was aware of stated no returns policy. Don Uzzi was very vocal about this policy in the leadership meetings.
6. Everyone knew that in practice, the no returns policy was "Total B.S".
7. Gross non-defective returns in '98 budgeted at $19 million from original estimate of approximately $25 million.
8. Sunbeam became a hostile work environment when bad news was delivered. Each quarter's expectations were increased.

P&L Variations - We asked Scott about reasons for some P&L variations

1. ↓ Co-op → maybe Δ in philosophy. From customer coop to national advertising; more than likely the decrease was due to something not kosher.

> "It was known among planning group that restructuring reserves were being used to benefit earnings."

2. Returns - not kosher
3. Analytically it seems like something is not kosher in manufacturing variations
4. Cost of quality
   Product Liability } BIG ISSUES
5. Bd. Exp.

We asked Scott about the above variations, but he was unable to point to any specific reasons for variations

February 1998 Profit Assurance

1. A decision made to book favorable entries in February '98.
2. Bob Gluck was aware of this.
3. By early February, it was apparent that Sunbeam would not make Q1 numbers.

NOT A CERTIFIED COPY

014122

AA166379
Confidential Treatment Requested
by Arthur Andersen LLP

Date: September 1, 1998

Subject: Interview with Scott Yales

1998 Acquisitions

1. Deb MacDonald/Scott got involved on 10-year projection for all the entities (1st week of March)
2. Rich Goudis & Russ Kersh fed forecasting group the information for the projections
3. Daily sales updates were given to Al Dunlap & Don Uzzi during Q1
4. 3/19/98 – Press release made of sales $253.5 for the quarter
5. The schedule for the 1st quarter forecast was done prior to a conference call on night of March 18th
6. The schedule was "absolutely" a reach. Concern was expressed to Don Uzzi
7. 10-year estimates were continually revised downward
8. Ron Richter and Steve Dalberth put together the numbers for the bank book

1st & 2nd Quarter 1998

1. Any unusual items – February J/Es were made for profit protection, but Scott believes some were reversed in March 1998 when it was apparent Sunbeam would not make the numbers.

Shared Server 1/dennis/interviews/Scott Yale

NOT A CERTIFIED COPY

011423

[redacted]
Confidential Treatment Requested by Arthur Andersen LLP

NOT ACCERTIFIED COPY

AA166381
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062697

16div-020724

NOT A CERTIFIED COPY

AA166382
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Lawrence A. Bornstein, West Palm Beach

Date: September 8, 1998

Subject: Sunbeam Corporation – Interview with Mike Bondisky

On July 21, Phil Harlow, Rita Gorden, attorney with Skadden Arps, and I conducted an interview with Mike Bondisky, Director of Manufacturing Accounting for Sunbeam Corporation. A summary of the information obtained during the interview is as follows:

- Hired in October of 1996 as Director of Manufacturing Accounting. Immediate supervisor is Bob Gluck and he is based in Delray.
- During early 1997 I spent most of the time in the field (approximately 75%). Mid to late 1997 he spent more time in Delray.
- His job was to support the head of Manufacturing, Ron Newcomb, who was terminated in October of 1997. Judy Maudlin took over as Head of Manufacturing in October of 1997. Judy spent little time in the field.
- He had no involvement in helping establishing the restructuring reserves, and did not look at capitalized variances as part of the restructuring.
- His first task at Sunbeam was to develop a new budget by plant and departmental budgets.
- Helped establish the manufacturing standards during 1997 and 1998.
- Was in charge of the physical inventories at domestic locations at the end of 1997.
- To the best of his knowledge no gross profit was recorded on the sale of discontinued products.
- No analysis of excess and obsolete inventory was prepared throughout 1997, only specific problems were addressed on an as-needed basis.
- Performed a comprehensive analysis of raw material and work in process and prepared a an excess and obsolete report at year end 1997, and reached a conclusion that a $7 million reserve was needed.
- No analysis was performed on finished goods.

NOT A CERTIFIED COPY

011426

AA166383
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062699

16div-020726

Date: September 8, 1998

Subject: Sunbeam Corporation – Interview with Mike Bondisky

- Went to Bob Gluck to inquire about finished goods E&O and was told not to worry about finished goods, as the Company would move the product through retail stores
- There was no interface with sales and marketing and manufacturing with respect to potential obsolete finished goods.
- Once product moved to the distribution facility it was no longer his responsibility.
- Moved to a new system in 1997, therefore historic data not relevant or comparative. Costs are now tracked at a department level and variances were analyzed at a plant level.
- To the best of his knowledge the overhead pool was consistent between 1996 and 1997.
- To the best of his knowledge, he is not aware of any aggressive cost accounting during 1996, 1997 or 1998.
- Had no knowledge of bill and hold at year end.
- Was aware of open receivable (NURF) problem at year end and during the year. This was a result of a painful transition to the outsourcer (NPC).
- There was a variety of reasons why NPC could not get a good match.
- The result of NPC not matching was a debit to inventory and credit to cash; therefore double booking inventory and thus the physical inventory was greater than the perpetual ledger.
- The company used unvouchered receipts greater than six months old as an estimate to offset the shrink at December 28, 1997.
- During 1998, there have been approximately $2 - $4 million of 1997 unvouchered receipts roll through.
- During the 1st quarter of 1998 the company changed the capitalized variance methodology to include all inventory at the DC's and plants including outside locations. The result of this was to capitalize additional variances during Q1 1998 in the amount of $4 million.
- The Company's inventory has increased substantially in 1998 and E&O reserves need to be addressed.

NOT A CERTIFIED COPY

AA166384
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

AA166385
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

To: The Files

From: Lawrence A. Bornstein, West Palm Beach

Date: September 8, 1998

Subject: Sunbeam Corporation – Interview with Jim Gitney

On July 21, 1998, Phil Harlow, Chris Maloy, attorney with Skadden Arps, and I conducted an interview with Jim Gitney, vice president of operations, Neosho for Sunbeam Corporation. A summary of the information obtained during the interview is as follows:

- My position for the past two weeks is VP of Operations in Neosho.
- Started with Sunbeam September of 1996 and worked closely with the Coopers and Lybrand team on the restructuring plan as it relates to plant rationization, inclusive of assisting in the preparation of a Financial Model. Worked closely with Ron Newcomb on the plant rationization.
- During the first two months of 1997 worked with Jack Daily and Rich Goudis to fix MIS/JDE system problems.
- During March of 1997 the Company had major problems producing Grills. In May of 1997 my position changed to Director of Outdoor to try and put out the fires in Neosho.
- As part of the C & L restructuring, they came to the conclusion that the facilities were underutilized from 35% to 75% and that the company's goal was to get to the optimal vertical integration.
- Not part of SKU rationization.
- The restructuring was well thought through, but the timing of completion of the plan was aggressive.
- Not involved in calculating capitalized variance.
- The Company planned in July of 1997 to re-layout Neosho, which was to be completed by October.
- No problems in getting money to complete plant re-layout in Neosho.
- This job had more pressure than other jobs. Other than that, no other differences.
- Was not aware of bill and hold until November of 1997.

NOT A CERTIFIED COPY

01411129

AA166386
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062702

16div-020729

Date: September 8, 1998

Subject: Sunbeam Corporation – Interview with Jim Gitney

- Don Uzzi received a daily status of sales during 1st, 2nd 3rd and 4th quarters of 1997
- Company rule in Neosho was to not record revenue on shipments past 10p.m.
- The Neosho facility had no sophisticated shipping process and no bar coding. To confirm a shipment, the only thing needed to be done was to have a clerk press a button.
- Was not aware of the Menards sale of grill accessories at year end that did not get shipped. Ask Ken Hempton who was the sales representative on Menards.
- He believes Menards shipment was an isolated case and that it was intended to be a bill and hold transaction.
- Mitch Long and Bob Bloomfield controlled the shipping process and the ship confirm process.
- There was one blanket order in May or June to Wal-Mart that was a bill and hold.
- 1998 plan for grills was $360 million. Actual sales were $200 million.
- 1st quarter 1998 bill and hold had co-op doubled on special deals.
- The defective returns policy was implemented in August of 1997. Only RA's signed by Lee Griffith were taken back. The remainder was pushed back to customer.

LAB/sj

NOT A CERTIFIED COPY

011430

AA166387
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

[redacted]

AA166388
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Date: July 27, 1998

Subject: Sunbeam Corporation – Interview with Jim Goffi

1997 problems

- Hard to get people
- Increase in employee turnover

The 1998 plan was to employ levelized production

- Running production lines on even flow (more or less 600 people)
- Build WIP which is then put into "bank stock" – i.e., wired blankets with module (no control or blanket cover). This can later be converted into one of several different models.
- The bank stock will be converted to finished goods during the busy season.

*Wal-Mart = 1/3 of business

Fourth quarter 1997 - no different than all year

- Every quarter there was a strong "push"
- Especially quarters 2, 3 and 4
- Push - some direct shipments to customers and some to outside warehouse
- Waynesboro was shipping goods to a warehouse in Laurel (at first run by Sunbeam then by Deep South)
- We were being asked to ship out product that customers were buying, the customers just did not want it delivered yet
- How much was sent to Deep South at quarter end:
  - A lot were Wal-Mart products which move quickly
  - 1997 approximately 1.3 million units were sold to Wal-Mart
- Even in prior year shipped product through the Laurel warehouse (five different buildings) and also through Purvis, MO.
- Shipping - usually the customer sends its own courier (95% of the time). Thus, order pick up is usually in customer's control.
- Goods moved to Laurel were carried on Sunbeam, not customer trucks.
- Transfers to another location.
- Generally transfers were internal transfers of Sunbeam-owned goods; however, in 1997 some transfers were for customer orders.
- Pulling forward orders - Gaffi is sure they did, but did not specifically know.

NOT A CERTIFIED COPY

016133

AA166390
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 27, 1998

Subject: Sunbeam Corporation – Interview with Jim Goffi

Returns
- Mostly from January to June
- Sales department approves returns and RA gets written
- Plant takes back so customer gets credit
- 1997 - approximately 500 units returned in 1997
- 1998 - approximately 460-470K units returned year to date, usual numbers

Returns are approximately 10% of units sold

Policy change - no returns
- Policy changed in January/February 1998 timeframe
- The policy was that no returns could be processed without RA (status quo)
- Learned of this through a phone call from Lee Griffith - vice president of sales (late January/early February)
- Plants argued - you are going to get "hit" all at one time if you change your mind
- Mid-April is when stuff started to come back in
- Goffi did not think this would stick due to size of Wal-Mart
- Sunbeam has tried unsuccessfully to stop returns in the past
- Trucks of returns were left in yard untouched
- Warranty returns were mixed with returns to stock
- Luis Silberwassa - gave impression that the policy was communicated to customers (left in the first quarter 1998)
- More or less 5-10 containers of unprocessed returns were in the yard at one time.
- Jim thinks Sunbeam was paying Demurrage

Manufacturing standards
- Standards were in place when Goffi started in November 1997
- Unfavorable variances increased in the slow season
- End of year approximately 100K unfavorable variances at Waynesboro

Restructuring (effect on Waynesboro)
- Lost 2-3 salaried positions.
- Laid off 450 hourly people (of which approximately 200 came back in 1997 production ramp up).
- Bay Springs - MS - makes proprietary wire for blankets and throws.

NOT ACERTIFIED COPY

011134

AA166391
Confidential Treatment Requested
by Arthur Andersen L.L.P.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062707

16div-020733

Date: July 27, 1998

Subject: Sunbeam Corporation – Interview with Jim Goffi

- Decision was made in December 1996 to shut down Bay Springs and move equipment from Bay Springs to Waynesboro.
  - Site preparation done by the end of 1997.
  - Moved equipment in January/February 1998.
- Time delay due to
  - Build up of wire stock to meet business demand
  - Build needed facilities in Waynesboro
- In budgeting process the Company built in a 25% labor challenge. Hurt us because we substituted temporary help for full time.
- Ended year with negative labor variances and favorable overhead variance.

Biddeford

- Biddeford was sold in Q2 1998 (made blanket shell – sole provider). Sold in employee buy-out
- As part of the sale agreement, prices were rolled back to 1996 levels which increased prices 7%

Production

- May 1997 – decision made to produce 1 million more blankets than plan. Later reduced to 500K because could not get enough blanket cases
- June 1 – end of year ran the plant seven days a week
- Only made approximately 300K, but met demand (except for king/queen) ran a little short

Material variances

- No price changes made
- Prices came from procurement
- Procurement department responsible for purchase price variances

1998 standards

- Reviewed all standards and corrected/trued up for known problems
- Problems
  - Labor – 20% challenge
  - Rates askew
  - Checked Bill of Material

NOT A CERTIFIED COPY

011435

AA166392
Confidential Treatment Requested by Arthur Andersen LLP

Date: July 27, 1998

Subject: Sunbeam Corporation – Interview with Jim Goffi

Accounting

- End of each quarter looked for items that could be capitalized
- Capitalization of costs was approved from Del Ray - Mike Bondiskey
  - Normal end of quarter stuff
  - No changes in policy
- Directives to "stop spending" came all the time to the point where we were sacrificing plant maintenance
- Usually Waynesboro plant is down one week in July and one week in December for maintenance
- Skipped July 1997 and December 1997 - told not to take down plant and do maintenance (approximately $200K of maintenance cost)
- Total cost of shut down = 200K + unabsorbed overhead cost
- First shut down since December 1996 occurred in July 1998

International

- Big change = Japan. Decision made to introduce blankets into Japan (more or less 100Kunits)
- Shipped 80-85K blankets to Japan
- We might be taking some product back from Taiwan (1997 sales)
- 1998 production for Japan has been cancelled

1998 plan - consistent with pre-1997 levels.

Shared Server \\ [redacted]

NOT A CERTIFIED COPY

011436

AA166393
Confidential Treatment Requested by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062709

16div-020735

NOT A CERTIFIED COPY

30

AA166394
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Dennis Pastrana

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with David Aslin

With the Company from 7/94 - 9/96 and left for one year
Rejoined in 9/97

- Director of Distribution for North America
- Being transitioned to more of an integration role. His new role involves less operations responsibility, but he was previously responsible for Distribution Center operations
- Transition from manual to computerized system (paperless) in Hattesburg was tough, but the problems have been corrected
- Not here during restructuring (not involved)
- David was previously the DC manager in Waynesboro
- Involvement in restructuring limited to assessment of inventory levels and determination of warehouse space requirements
- Waynesboro = high wip which can be made into a variety of finished good products
- Came in as Director of Distribution Planning 9/97
- Beginning in February 1998, all DC managers reported to Aslin who reports to Bloomfield
- Jim Job = Transportation Manager (also reports to Bloomfield)

- 3rd Quarter 97
  1. Big "push", worked around the clock
  2. Quarterly push was typical
  3. Bigger push in blankets
  4. Not aware of any Bill & Hold prior to Q4-97
  5. Had only been back with the Company one week. Did not notice any changes in polices and procedures
- 4th Quarter 97
  1. Bill & Hold program. Learned of Bill & Hold on 12/27 upon returning from vacation
  2. Bill & Hold sales were done for all products - grills, appliances, blankets
  3. Bill & Hold was described as "the customer will issue a P.O. and we will hold the goods until customer requests"
  4. Bill & Holds were shipped to:
     a) Appliances/blankets – Deep South Trucking
     b) Grill – Miami, OK (NDC)
  5. Management felt it was best to physically segregate the goods in third-party warehouses

NOT A CERTIFIED COPY

011438

AA166395
Confidential Treatment Requested by Arthur Andersen LLP

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with David Aslin

6. Approximate warehousing monthly cost
   a) Deep South - 10K pallets x $4 = $40,000/ month. Could be as high as 15K pallets
   b) David has looked at warehousing cost, but cannot remember total amounts
7. Did not have firm shipping dates to customers at the time Bill & Hold orders were received. Third party warehouses held the shipping documents. When goods shipped to customers, then the documents were sent back to Sunbeam
8. Bill & Hold ship dates were received a few days to two weeks before the customer's desired date. The inventory started shipping shortly after yearend through about April 1998
9. Dollar Stores blankets were just recently picked up - (July 1998).
10. David does not know much about sales terms
11. He believes there were some changes to extend terms an additional 30 days, but this is not necessarily unique to Bill & Hold. However, it is generally understood that customers will not pay or recognize an invoice prior to receipt

Shipping Cut Off Issues

1. A lot of attention was paid to cut-off in March 1998. "Wave" order, i.e., a wave of trucks at the bay doors at midnight can be completed and shipped
2. During peak times the Company sometimes closed down receiving doors and turned them into shipping doors
3. This policy was signed off on by Gluck - maximum value of wave is approximately 18 containers at $35K each
4. NO new waves started after midnight

System Circumvention - tough to do but can be done

12. Biggest trick played at end of March 1998 – Menards was expected to order 50 trucks of purifiers. Sunbeam started loading trucks in advance of receiving the order. Issued inventory to a new location and anticipated prior to P.O. $2.5 million. Complete order.

Systems from plant to plant

1. Hattiesburg automated - No manual intervention
2. Waynesboro and Neosho - Manual pick list. Alot loaded prior to keying shipping information.
3. Waynesboro and Neosho – truck loaded @ 11:50pm may not be keyed until 2pm
4. Not aware of my shipments past cut off.

NOT A CERTIFIED COPY

011539

AA166396
Confidential Treatment Requested
by Arthur Andersen LLP

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with David Aslin

5. Feels good about shipping cut-off.
6. Swapping of bill & hold product on orders - only knows of one case - Coffee Wells bought white coffee makers and later in March substituted black for white.

Distributors - does not know terms/deals were made

1. David was aware that PHD changed from consignment to sale customer
2. As far as he knows, these were full sales from the start. Did not know details of the deal. PHD and M Block are the only distributors he knows
3. PHD got a lot of inventory in 4th Q. David loaded himself. More than normal was shipped to PHD.

Receiving Returns

1. David is responsible for people who receive goods
2. Approval for returns received through customer service
3. Won't take back with out RA
4. If no RA, shipment is refused. Carrier calls customer who calls customer service, then the RA gets issued 99% of the time we end up taking back the goods
5. Took over returns center in 2/98
6. January starts the busy time for returns
7. RA's in system were "cleared" out so could not accept returns
   a) Asked carriers to hold & we paid storage for approximately one month)
   b) Started last week of January/first of February.
   c) "Russ Kersh" gave order to clean out RA's. (David heard this through the grapevine).
   d) The Company incurred $500K storage charges and lost customers' goodwill.
   e) The policy was described as the "no return policy".
   f) Returns processing personnel were occupied doing re-work, re-pack or assigned to other tasks.
9. David's impression of no return policy: In this business customers dictate. This was the first time he heard someone at the level of Kersh say there was a "no return policy".
10. RA's reinstated sometime in March/April 1998 the bulk in April at which time shipping companies brought back two travelers per day (50+ loads of product, rough estimate).
11. David estimates that returns through April relate to: 1997
    May -July relate to: 1998
12. Not familiar with Grill returns.
13. Reports of short shipments/etc. ($5-6 H problem usually) due to:
    a) Shipping dock problems
    b) Order entry
    c) No real swings noticed in 1997

NOT A CERTIFIED COPY

011940

AA166397
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

Date: July 20, 1998

Subject: Sunbeam Corporation – Interview with David Aslin

14. Big shipments recalled at December 97
    a) Wal-Mart
    b) PAD

Shared Server 1/dennis/interviews/David Aslin

NOT A CERTIFIED COPY

017410

AA166398
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

21110

AA166399
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The File

From: Dennis Pastrana, Miami

Date: September 1, 1998

Subject: Lisa Dalberth - Interview

---

1. Out of operations from December 15 → year-end

2. Deb McDonald

   - Stand-alone filing cabinet
   - In desk drawer - most recent information last couple quarters of 1997

3. Left Sunbeam → "not necessarily" due to concerns about impropriety or excessive pressure.

   - Signed a release stating that her release was part of the restructuring (1998) of Finance Department
   - Signed confidentiality agreement

4. Profit Assurance schedule (we discussed the schedule with Lisa)

   A. Common in most public companies
   B. Show Booth sale → booth from furniture division
   C. Chicago Bulls tickets
   D. At each Quarter/Month/Period End - Met with Kersh and Gluck
   E. The schedule was put together through Don Uzzi for review by Kersh
   F. Gluck consulted on accounting for these items
   G. Co-op/returns, etc. - relates to reserves
   H. Al Dunlop would not see this schedule

5. Never heard of huding stuff from the auditors in any discussion.

6. Worked with Chase on divestitures to come up with estimate of what they thought we would get.

7. Planning & Profit Assurance Activities → these are normal activities. Ultimately, accounting decided if we could or couldn't do something in a particular way. Always discussed adequacy of accruals with Gluck & many times Gluck said, "No, we can't do that."

End of Interview

Data/Interview with Lisa Dalberth

SS

NOT A CERTIFIED COPY

011643

AA166400
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

AA166401
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Dennis Pastrana, Miami

Date: September 21, 1998

Subject: Sunbeam Corporation - Interview with Ron Partner - Plant Controller, Neosho

---

On July 23, 1998 Phil Harlow, Chris Malloy, attorney with Skadden, Arps and I interviewed, by telephone, Ron Partner, plant controller in Neosho Missouri. The following summarizes his comments:

Started with Sunbeam 9/1/97

- No involvement in restructuring
- Responsibilities:
  - Focus on manufacturing
  - Forecasting, for manufacturing and keeping books
  - Cost Accounting
    - Put together product standards
    - Standards for the following year usually done in September (takes 2-4 weeks) - done by end of December
    - Rolled standards in 1/2/98
    - Also responsible for helping keep A/P clean
- Marketing demand is converted into a production Forecast which gets translated into the Production schedule
- Labor and overtime rates are finalized in January each year

PPV's → Not aware of anything unusual. 1997 - generated favorable PPV

- Vendor rebates → received a $1.2 million discount from Pace in late 1997. Ron does not know where it went on the balance sheet or income statement.
  - In 1998, the discount was spread over unit cost of units purchased.

NOT A CERTIFIED COPY

SUNH10

AA166402
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062718

16div-020744

Date: September 21, 1998

Subject: Sunbeam Corporation - Interview with Ron Partner - Plant Controller, Neosho

Unvouchered receipts: NPC relationship makes it difficult to manage the unvouchered receipts liability

Old received not vouched → vendors were trying to get paid, but didn't understand the NPC process. Sunbeam wrote off the accrual for old items because management felt that most got paid off by December 1997.

Old unvouchered receipts for which vendors now sought payment were charged to BTP reserves. Then charged the balance to expense ratably from January to June.

$519,000 debit sitting in account 110.12580.210 (Neosho BTP reserve account) at yearend 1997 for invoices paid without unvouched received.

Mike Bondisky was aware of this, but did not give approval to charge off.

Monthly reporting package:

- Headcount
- Scheduled realization (forecasted build vs. acutal)
- Comparison of forecast to budget (cost)

4th Q 1997

1. Nothing strange noted related to shipping activity
2. Normally yearend is not that busy
3. Neosho finished shipping on Saturday; Ron does not recall any unusual shipping activity
4. Shipping to NDC → used on an ongoing basis due to bulk of Grills. Neosho can hold $10-20 million grills max.
5. "Drive to finish line" → bonus pools for anyone who could help exceed $1.40 EPS at yearend 1997.

NOT A CERTIFIED COPY

AA166403
Confidential Treatment Requested
by Arthur Andersen LLP

Date: September 21, 1998

Subject: Sunbeam Corporation - Interview with Ron Partner - Plant Controller, Neosho

6 Periodic conference call - talked about setting aside additional bonus for persons who helped make the numbers
- Directed by Uzzi
- Jim Gitney & Staff
- Mitch Long
- Ken Hempman - sales
- Ron Partner

} Beginning December 3-4 weeks to achieve

7. Ron found out about Bill & Hold → late in 4th Qtr 1997
   A. Believes it was in accordance with GAAP
   B. Didn't talk to anyone about it
   C. A lot of the goods were already at NDC
   D. Bob Gluck sent him a GAAP guide on B&H

8. Quantities of B&H inventory at yearend - $21 million owned inventory (total)

9. Storage, handling, costs associated with Bill & Hold → $200K

10. There is still some inventory at 3rd party warehouses.

11. Monthly accrual was made based on expected # of pallets or square footage occupied.

12. E&O situation at 6/30

    FG → depends on changes to product line. If 1999 products are the same as 1998; there is no obsolete problem; however may have some excess.

13. Non-defective returns →
    A. No unusual returns activity noted in the last 6 months.

]c/p/dennis/interviews/Ron Partner

NOT A CERTIFIED COPY

014447

AA166404
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

011148

AA166405
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow, Fort Lauderdale

Date: October 8, 1998

Subject: Sunbeam Corporation – Discussion with Dennis Rice - Sales Manager

---

On August 6, 1998 Larry Bornstein and I called Dennis Rice, sales manager at Sunbeam's Neosho manufacturing facility to discuss inventory shipped to Neosho from Shabuta as part of the Company's restructuring. Mr. Rice indicated that the inventory consisted of cartons, parts and foam packing material which has not been used since being shipped to Neosho in early 1997 He indicated that it was obsolete at the time that it was shipped to Neosho and will not be used

SHP/sun0000/interview - dennis rice

NOT ACERTIFIED COPY

0114149

AA166406
Confidential Treatment Requested
by Arthur Andersen LLP

NOT A CERTIFIED COPY

011450

AA166407
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Dixon Thayer

On August 6, 1998, Don Denkhaus, Rita Gordon, attorney with Skadden Arps and I interviewed Dixon Thayer, former Sunbeam Vice President of International, by telephone. The following summarizes the information provided by Mr Thayer:

- Started with the Company in September 1996 and was fired by Don Uzzi on January 5, 1998.
- He believes he was fired because the International division was doing well and that now that it was running well, he no longer was needed and the Company eliminated him to cut cost.
- His involvement in the Company's 1996 restructuring was limited and his role in the Company has been primarily sales and marketing.
- Some leases in the U.K. were terminated.
- He indicated that he did provide some input to Coopers & Lybrand and the Company's and the Company's accountants in the restructuring but he had limited involvement.
- Mexico was always a challenge. The major problems were cost, quality and availability of the right products.
- The Company had a continuous problem of forecasting and integrating the sales plan into the manufacturing plan.
- The International division was so far ahead of the 1997 plan, Mr. Thayer did not receive pressure to make unusual sales or provide unusual terms.
- There were very few returns from the international customers and International had a no-return policy.
- The European strategy was to focus on unloading "dead" U.S. merchandise particularly blankets, clippers and gas grills.
- The focus in Australia was blenders and blankets in Japan and China. It was necessary to use a government agent in China to make sales.
- International sales could have been much better if the products were available. Mr. Thayer would often have international designated inventory diverted for domestic sales.
- Mr. Thayer was formerly at Scott Paper and was hired by Newt White. He said the Scott heritage was to make the product better at Sunbeam the approach was "sell the Company".

NOT A CERTIFIED COPY

AA166408
Confidential Treatment Requested
by Arthur Andersen LLP

Date: October 29, 1998

Subject: Sunbeam Corporation - Interview with Dixon Thayer

- New hires were told that the Company would be sold by December 1997 and when it didn't happen that is when games with numbers began
- Mr Thayer felt that the issues raised in the Baron's article were true but that the numbers were not right
- He indicated that the first quarter of 1998 for International was still a record and that was proof that 1997 was a good year

NOT A CERTIFIED COPY

011452

AA168409
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0062725

16div-020751

NOT A CERTIFIED COPY

011453

AA166410
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files

From: Phillip E. Harlow, Fort Lauderdale

Date: August 6, 1998

Subject: Sunbeam Corporation – Interview with Joe Richardson and Rita Fletcher

---

On August 6, 1998, Don Denkhaus, Chris Maloy, attorney from Skadden, Arps and I conducted an interview with Joe Richardson, Sr Vice President of commercial services operations for CrediTec and Rita Fletcher, Vice President of Commercial Services and Account offices for Sunbeam. CrediTec provides services for the collection of deductions taken by Sunbeam's customers. The following summarizes the information provided by Mr. Richardson and Ms. Fletcher:

- The Company signed a contract in the late fall of 1996 to provide collection services for deductions taken by customers.
- The Company's deduction records were set-up on CrediTec's system in January 1997 Since the Company was consolidating the household and outdoor divisions the customer information for these divisions the customer information for these division were combined. Additionally, Samsonite was also set up for the liquidating portfolio.
- CrediTec's responsibilities include the following:
  - The preparation of daily, weekly and monthly reports.
  - Collect cash.
  - Researches deductions and resolves with the Company and the customer the reason for the deductions.
  - Maintains twelve months of payment history on line which shows invoice and how relieved.
  - Maintains information on the Company's intercompany accounts as well.
  - Prepares a customer liability report monthly which shows disputes codes and again of invoices by category, open deductions and open CMs.
  - Maintains contact with large customers to try to begin the collection process early.
- Mr Richardson and Ms. Fletcher indicated the following:
  - Most remittance advice's have details with them.
  - The Company creates some problems due to billing errors and these automatically end up as deductions.
  - There are a number of reasons for deductions or disputes - Company has 28 codes.
  - One category, buyer hold, is used by buyers withholding payment for whatever reason.
  - Seven accounts (large customers represent 52% of open items)
  - Typically customers pay within 30 days once it is discussed with the customer however, if a dispute arises as a result the process is lengthened by 30 - 45 days.
- The two largest disputes are proof of delivery and EDI errors.
- For return merchandise the customer takes.

NOT A CERTIFIED COPY

011454

AA166411
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

Date: August 6, 1998

Subject: Sunbeam Corporation – Interview with Joe Richardson and Rita Fletcher

- Pricing errors run about 3%.
- Guaranteed sales returns are on the decline.
- Not aware of the reason for the recent increased in deductions.
- Duplicate billings have not been a big issue.
- For some "bill and hold" sales there have been disputes since an invoice was sent before the goods were received and customer disputed the timing of the requested payment date
- CrediTec received a SAS 70 report on its operations.
- IF AA wants any reports there we can specify format and prepare that report .

SHP / sun300 / Interview - Fletcher

NOT A CERTIFIED COPY

014455

AA166412
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0062728

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-020754

NOT A CERTIFIED COPY

014456

AA166413
Confidential Treatment Requested
by Arthur Andersen LLP

ARTHUR ANDERSEN

To: The Files, Fort Lauderdale

From: Phillip E. Harlow, Fort Lauderdale

Date: November 17, 1998

Subject: Sunbeam Corporation – Interview with Bob Gluck - July 9, 1998

On July 9, 1998, Don Denkhaus, Brian Loughman of our New York Corporate Fraud practice and I interviewed Bob Gluck, Corporate Controller of Sunbeam Corporation. The purpose of the interview was to get Gluck's perspective on the potential areas of restatement on the Company's 1997 financial statements. The following is a summary of Bob's comments:

- Sales
  - Bill and Hold ("B&H")
    - Gluck felt that B&H transactions were well documented and that they occurred only at yearend 1997 and Q1, 1998. He indicated that they were mainly grills and $5 million of household products. Most of the sales were confirmed by Arthur Andersen ("AA") but not 100%. There was an adjustment made for Encore promotions in the first quarter of "98". This had been recorded as a sale at yearend 1997.
    - B&H had extended terms which were not that different than historical grill sales made in December, January or February with payment terms in May or June.
    - The Company did not have B&H in prior years.
    - The push was to push sales into the channels early to hopefully create more sales later in the season.
    - Gluck was not sure what information was given to B&H customers
    - Customers acknowledged that they accepted title to the merchandise in writing.
    - Of the $32 million of yearend 1997 B&H and $30 million of Q1 "98" all has been shipped except for Encore promotion which was adjusted for in Q1 "98" and approximately $300,000 with Fred Meyer (out of $1-5 million sale)
    - Gluck indicated that the first round of B&H transactions might be difficult to figure out details since the relationship with the third-party warehouse (NPC) in Oklahoma had been terminated. Gluck said that access to the computer data would be an issue.
    - Gluck said 95% of B&H product was eventually shipped. Collections still need to be determined since some dating was as of May 10 and June 10.

NOT A CERTIFIED COPY

011457

AA166414
Confidential Treatment Requested
by Arthur Andersen LLP

Date: November 17, 1998

Subject: Sunbeam Corporation – Interview with Bob Gluck - July 9, 1998

- For 1Q "98" B&H, the Company had better documentation and letters from the customers indicating no right-of-return. Also, the Company developed a policy manual to handle B&H type transactions.
- Gluck indicated that he would not recognize revenue without support.
- Gluck said all SEC criteria are addressed in the letters received from the customers.
- The business purpose that customers entered into these sales, was to ensure product when needed and to manage their seasonal inventory.
- Overall Gluck felt that B&H was well documented and was controlled as well as he could.
- Per Gluck, all of the B&H confirmations were given to the SEC. He indicated that there were earlier letters which were not specific enough and Gluck doesn't know if these were produced.
- Overall returns were not significant (less than $5 million out of $60 million in sales)

- Sales/Shipping Cut-Off
  - Gluck doesn't know of any issues here.
- Sales Returns
  - Sales guys had aggressive targets
  - The Company's new products did not do well.
  - The Company had a 20% sales growth in an industry with only 3-4% of growth per year - maybe retail inventories were being built-up.
  - Gluck did not know if blankets were overshipped to Wal-Mart.
  - Lee Griffith may have guaranteed sales of blankets to Wal-Mart
  - Gluck said it was difficult to evaluate the returns exposure at yearend since the sell through happens through March.
  - Gluck accrued approximately $8 million for markdowns for Q1 "98" for Wal-Mart. The plan was to markdown product and then sell the blankets as opposed to being returned (Wal-Mart cooperating on this program).

NOT A CERTIFIED COPY

011458

AA166415
Confidential Treatment Requested
by Arthur Andersen LLP

Date: November 17, 1998

Subject: Sunbeam Corporation – Interview with Bob Gluck - July 9, 1998

- The distributor return, AA was generally aware of now.
- Gluck was not aware of anything "screwy" that AA was not aware of.
- Gluck had not dug into the reasons why returns were so heavy.
- Sunbeam does over 1 million invoices per year and there is no system flag for sales with right of return". There is a RA field but it is not always practical to use in reality.
- Gluck not aware of any changes in policy.
- RA's were getting approved against policy. They were purged by Russ Kersh in order to have RA's approved in a systematic way. Some RA's were not put back onto the system, as they were resolved. Gluck made sales accounting track the return exposure off-the system. Gluck tracked the returns through the time of filing the 10-K, Gluck felt that he was adequately reserved until late April then M Block and PHD surfaced and he booked another $10 million provision in Q1 1998.
- These were about $8 million of RA's which were put on an XL spreadsheet (AA obtained a copy from Gluck with Kersh's handwritten notes).
- Gluck didn't know who originally approved the RA's on this list since there was a "no returns" policy but this was not adhered to.
- Gluck believed that some written policies exist for the "No return" stating that failure to comply would result in termination.
- Lee Griffith and Russ Kersh needed to approved returns over $100 thousand.
- Lee Griffith was approving returns greater than his assigned authority.
- Customer service personnel could put in RA's. (Kyle Kaiser is customer service manager in Mississippi)
- Excel spreadsheet was to be taken out of J.D. Edwards systems and review requests before put back onto JDC, in order to see if done is accordance with Company's policy.
- Approval limits were not adhered to then the guaranteed sales arrangements surfaced. Gluck not clear on whether policy is written or not. (Need to talk to Kyle Kaiser)
- There were no other issues in the sales area per Gluck.

Restructuring Reserves

NOT A CERTIFIED COPY

011459

AA166416
Confidential Treatment Requested
by Arthur Andersen LLP

Date: November 17, 1998

Subject: Sunbeam Corporation – Interview with Bob Gluck - July 9, 1998

Established in 1996.

- Gluck is in the process of putting together a better rollforward of the utilization of the inventory elements.
- All sales less than standard sales was adjusted against the gross margin reserve set-up in 1996 restructuring.
- There was a charge taken for the divestiture of the furniture business.
- A disposal and warehouse cost factor was applied to sales below standard cost.
- During the general ledger conversion - debit balances from 1996 were sitting in inventory (outdoor products)
- The balance of $330 million was not enough to cover all items.
- Inventory exploded in 2Q 1998.
- Domestic sales are down 30% on year to date sales due to product problems and pipeline might have been filled.
- The Q2 "1997" blankets mentioned in Barron's were not bill & hold. They were held in a Wal-Mart carrier's warehouse.
- The yearend sale of accounts receivable at yearend resulted in the receipt of cash with some holdback. The funds go into a CAP USA lockbox. The A/R are carried on the books in a contra accounts.

SMP/sun000/[illegible]bob gluck

NOT A CERTIFIED COPY

0114160

AA166417
Confidential Treatment Requested
by Arthur Andersen LLP

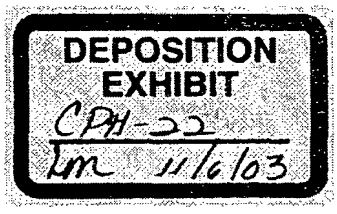
SUNBEAM CORPORATION

REPORT TO BOARD OF DIRECTORS
RESTATEMENT ADJUSTMENTS

PREPARED BY ARTHUR ANDERSEN LLP
OCTOBER 16, 1998

NOT A CERTIFIED COPY

29462



AA188506
Confidential Treatment Requested
by Arthur Andersen LLP

CPH0084462

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-020760

ARTHUR ANDERSEN

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4433

October 16, 1998

Board of Directors
Sunbeam Corporation

On June 25, 1998 Sunbeam Corporation (the "Company") issued a press release in which it disclosed that Arthur Andersen LLP had notified the Company that it would not provide its consent in a registration statement to the use of its opinion on the Company's 1997 financial statements, pending completion of a review of those financial statements and the Company's accounting practices. Beginning shortly after that date the Company, its Audit Committee and Arthur Andersen began a formal investigation to determine whether a restatement would be required to the Company's financial statements. Skadden, Arps, Slate, Meagher & Flom LLP and Deloitte & Touche LLP were engaged to advise the Company on various legal and accounting issues relating to this matter. On August 6, 1998 the Company issued a press release advising that the Company would be restating its 1997, first quarter 1998 and possibly 1996 financial statements.

The investigation relating to these financial matters involved a review of all material aspects of the Company's 1996, 1997 and first quarter 1998 financial reporting. In certain areas of the investigation, the review included financial matters relating to years prior to 1996. The investigation involved more than ten thousand hours of work by personnel from the Company and Arthur Andersen. Arthur Andersen's team included personnel from its offices in South Florida, Mexico, Hong Kong, Caracas, Toronto and London. Arthur Andersen's investigation was headed by a senior audit partner who had no involvement with the previous Sunbeam audits.

The attached memoranda describe the adjustments required as a result of the investigation referred to above and additional procedures initiated subsequent to January 28, 1998, the date of the Arthur Andersen audit report on Sunbeam Corporation's 1997 financial statements. Certain of the information discussed in the memoranda or obtained during the investigation was not available to Arthur Andersen on or before January 28, 1998. The memoranda do not address information relating to assignment of causes of the restatement adjustments.

NOT A CERTIFIED COPY

AA188507
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ARTHUR ANDERSEN

Attached to this report are condensed income statements, excluding disclosures required by generally accepted accounting principles, which show the impact of the restatement adjustments to the previously reported income statements for the years ended December 28, 1997 and December 29, 1996 and each of the six quarters in the period ended March 31, 1998. The Company is in the process of recording these adjustments in their accounting records and preparing restated financial statements based thereon.

Arthur Andersen LLP

NOT A CERTIFIED COPY

AA188508
Confidential Treatment Requested
by Arthur Andersen LLP

SUNBEAM CORPORATION

Restatement Adjustments

Table of Contents

Description	Page No.
Consolidated Statement of Operations	
For the Year Ended December 29, 1996	1
For the Year Ended December 28, 1997	2
For the Three Months Ended December 29, 1996	3
For the Three Months Ended March 30, 1997	4
For the Three Months Ended June 29, 1997	5
For the Three Months Ended September 28, 1997	6
For the Three Months Ended December 28, 1997	7
For the Three Months Ended March 31, 1998	8
Summary of Impact on Net Income of Restatement Adjustments	9
Summary of Impact on Revenue of Restatement Adjustments	
Issue No. - Restatement Adjustments and Reclassifications	
1. EPI Guaranteed/Consignment Sales	12
2. M. Block Guaranteed/Consignment Sales	14
3. PHD Guaranteed/Consignment Sales	16
4. Encore Guaranteed/Consignment Sales	18
5. Lehroff Guaranteed Sales	20
6. Eckerd Guaranteed Sale	

NOT A CERTIFIED COPY

AA188509
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Issue No. - Restatement Adjustments and Reclassifications

7. International Guaranteed/Consignment Sales	22
8. Bill and Hold Sales	24
9. Menards Sale	27
10 1996 Restructuring and Special Charges	28
11. Reductions in Restructuring Reserves in 1997	33
12. Over/Under Accrual of Expenses	35
13. Supplier Rebates	37
14. Sales Return Reserve	39
15. Product Liability	41
16. Co-op Advertising	43
17. Chargebacks/Deductions	44
18. Warranty Reserve	46
19. Capitalized Inventory Variances	48
20. Under Accrual of Freight Expenses	50
21. Freight Related to Sales Returns	51
22. Mexico Issues	52
23. Mexico Profit Sharing	53
24. Hong Kong Issues	54
25. Venezuela Issues	55
26 Unvouchered Receipts of Inventory	56
27. Fixed Asset Related Items	57

NOT A CERTIFIED COPY

011966

AA166510
Confidential Treatment Requested
by Arthur Andersen LLP

Issue No. - Restatement Adjustments and Reclassifications

28. Neosho Plant Inventory 58

29. Post-Prototype Development Costs 59

30. Other Miscellaneous Adjustments 60

31. Income Tax Effect of Adjustments 61

32. Income Tax Contingency Reserve 63

33. Reductions in Reserves 64

NOT A CERTIFIED COPY

L94110

AA188511
Confidential Treatment Requested
by Arthur Andersen LLP

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Year Ended December 29, 1996

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 984,236	$ 984,236	$ -	0%
Cost of goods sold	900,573	896,938	(3,635)	0%
Selling, general and administrative expense	214,029	221,655	7,626	4%
Restructuring and impairment charges	154,869	110,122	(44,747)	-29%
Operating loss	(285,235)	(244,479)	40,756	-14%
Interest expense	13,588	13,588	-	0%
Other expense, net	3,738	3,738	-	0%
Loss from continuing operations before income taxes	(302,561)	(261,805)	40,756	-13%
Income tax benefit	(105,890)	(91,625)	14,263	-13%
Loss from continuing operations	(196,671)	(170,180)		
Earnings from discontinued operations, net of taxes	839	839		
Loss from discontinued operations, net of taxes	(32,430)	(39,140)		
Net loss	$ (228,262)	$ (208,481)		
Loss per share of common stock from continuing operations:				
Basic	$ (2.37)	$ (2.05)	$ 0.32	-13%
Diluted	(2.37)	(2.05)	0.32	-13%
Net loss per share of common stock:				
Basic	$ (2.75)	$ (2.51)	$ 0.24	-9%
Diluted	(2.75)		0.24	-9%
Average number of common and common equivalent shares outstanding				
Basic	82,925	82,925		
Diluted	82,925	82,925		

NOT A CERTIFIED COPY

AA188512
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084468
16div-020766

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Year Ended December 28, 1997

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 1,168,182	$ 1,073,090	$ (95,092)	-8%
Cost of goods sold	837,683	830,956	(6,727)	-1%
Selling, general and administrative expense	131,056	152,653	21,597	16%
Reversal of Restructuring and impairment charges	-	(14,582)	(14,582)	
Operating earnings	199,443	104,063		-48%
Interest expense	11,381	11,381		0%
Other (income) expense, net	(1,218)	12	1,230	-101%
Earnings from continuing operations before income taxes	189,280	92,670	(96,610)	-51%
Income taxes	66,152	40,352	(25,800)	-39%
Earnings from continuing operations	123,128	52,318	(70,810)	
Loss from discontinued operations, net of taxes	(13,713)	(14,017)	(304)	
Net earnings	$ 109,415	$ 38,301	$ (71,114)	
Earnings per share of common stock from continuing operations:				
Basic	$ 1.45	$ 0.62	$ (0.83)	-57%
Diluted			(0.81)	-57%
Net earnings per share of common stock				
Basic	$ 1.29	$ 0.45	$ (0.84)	-65%
Diluted	1.25	0.44	(0.81)	-65%
Average number of common and common equivalent shares outstanding				
Basic	84,945	84,945		
Diluted	87,542	87,542		

NOT A CERTIFIED COPY

01463

AA188513
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084469
16div-020767

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months Ended December 29, 1996

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 268,861	$ 268,861	$ -	0%
Cost of goods sold	309,282	305,647	(3,635)	-1%
Selling, general and administrative expense	93,949	101,575	7,626	8%
Restructuring and impairment charges	154,869	110,122	(44,747)	-29%
Operating loss	(289,239)	(248,483)		
Interest expense	3,687	3,687		
Other expense, net	516	516		
Loss from continuing operations before income taxes	(293,442)	(252,686)	40,756	-14%
Income tax benefit	(103,159)	(88,894)	14,265	-14%
Loss from continuing operations	(190,283)	(163,792)	26,491	-14%
Loss from discontinued operations, net of taxes	(12,027)	(12,027)	-	0%
Loss from discontinued operations, net of taxes	(32,430)	(39,140)	(6,710)	21%
Net loss	$ (234,740)	$ (214,959)	$ 19,781	-8%
Loss per share of common stock from continuing operations				
Basic	$ (2.29)	$ (1.98)	$ 0.32	-14%
Diluted	(2.29)	(1.98)		-14%
Net loss per share of common stock				
Basic	$ (2.83)	$ (2.59)	$ 0.24	-8%
Diluted	(2.83)	(2.59)	0.24	-8%
Average number of common and common equivalent shares outstanding				
Basic	82,947	82,947		
Diluted	82,947	82,947		

NOT A CERTIFIED COPY

011470

AA188514
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084470
16div-020768

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months Ended March 30, 1997

	As Previously Reported	As Restated	Adjustment Amount	% Change
Net Sales	$ 253,450	$ 252,488	$ (962)	[illegible]%
Cost of goods sold	185,698	194,237	8,539	5%
Selling, general and administrative expense	33,009	41,159	8,150	25%
Restructuring and impairment charges		36	36	
Operating earnings	34,743	17,056		-51%
Interest expense	1,993	1,993		0%
Other expense, net	113	77	(36)	-32%
Earnings from continuing operations before income taxes	32,637	14,986	(17,651)	-54%
Income taxes	12,076	5,959	(6,117)	-51%
Earnings from continuing operations	20,561	9,027	(11,534)	
Loss from discontinued operations, net of taxes	(13,713)	(13,713)		
Net earnings (loss)	$ 6,848	$ (4,686)	$ (11,534)	-168%
Earnings per share of common stock from continuing operations				
Basic	$ 0.24	$ 0.11	$ (0.13)	-56%
Diluted		0.10	(0.14)	-57%
Net earnings (loss) per share of common stock				
Basic	$ 0.08	$ (0.06)	$ (0.14)	-175%
Diluted		(0.05)	(0.13)	-163%
Average number of common and common equivalent shares outstanding				
Basic	84,187	84,187		
Diluted				

NOT A CERTIFIED COPY

01471

AA188515
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084471
16div-020769

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months Ended June 29, 1997

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 287,609	$ 271,391	$ (16,218)	-6%
Cost of goods sold	213,080	216,050	2,970	1%
Selling, general and administrative expense	31,559	38,489	6,930	22%
Restructuring and impairment charges	-	5	5	-
Operating earnings	42,970	16,847	(26,123)	-61%
Interest expense	2,973	2,973	-	0%
Other (income) expense, net	(483)	336	819	-170%
Earnings from continuing operations before income taxes	40,480	13,538	(26,942)	-67%
Income taxes	14,246	4,816	(9,430)	-66%
Earnings from continuing operations	26,234	8,722	(17,512)	
Loss from discontinued operations, net of taxes	-	-	-	
Net earnings	$ 26,234	$ 8,722	$ (17,512)	
Earnings per share of common stock from continuing operations:				
Basic	$ 0.31	$ 0.10	$ (0.21)	-68%
Diluted	0.30	0.10	(0.20)	-67%
Net earnings per share of common stock:				
Basic	$ 0.31	$ 0.10	$ (0.21)	-68%
Diluted	0.30	0.10	(0.20)	-67%
Average number of common and common equivalent shares outstanding				
Basic	84,815	84,815		
Diluted	87,212	87,212		

NOT A CERTIFIED COPY

011472

AA188516
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084472
16div-020770

· SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months September 28, 1997

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 289,033	$ 286,819	$ (2,214)	-1%
Cost of goods sold	200,242	210,359	10,117	5%
Selling, general and administrative expense	33,863	37,152	3,289	10%
Reversal of Restructuring and impairment charges	-	(5,790)	(5,790)	0%
Operating earnings	54,928	45,098	(9,830)	-18%
Interest expense	2,850	2,850	-	0%
Other income, net	(1,347)	(1,307)	40	-3%
Earnings from continuing operations before income taxes	53,425	43,555	(9,870)	-18%
Income taxes	18,853	16,104	(2,749)	-15%
Earnings from continuing operations	34,572	27,451	(7,121)	-21%
Loss from discontinued operations, net of taxes	-	(2,683)	(2,683)	0%
Net earnings	$ 34,572	$ 24,768	$ (9,804)	-28%
Earnings per share of common stock from continuing operations:				
Basic	$ 0.41	$ 0.32	(0.09)	-22%
Diluted	0.39	0.31	(0.08)	-21%
Net earnings per share of common stock				
Basic	$ 0.41	$ 0.29	$ (0.12)	-29%
Diluted	0.39	0.28	(0.11)	-28%
Average number of common and common equivalent shares outstanding				
Basic	85,283	85,283		
Diluted	88,075	88,075		

NOT A CERTIFIED COPY

011473

AA188517
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084473
16div-020771

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months December 28, 1997

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 338,090	$ 262,392	$ (75,698)	-22%
Cost of goods sold	238,662	210,310	(28,352)	-12%
Selling, general and administrative expense	32,626	35,853	3,227	10%
Reversal of Restructuring and impairment charges	-	(8,833)	(8,833)	-
Operating earnings	66,802			
Interest expense	3,565			
Other (income) expense, net	500		406	
Earnings from continuing operations before income taxes	62,737	20,591	(42,146)	-67%
Income taxes	20,976	13,473	(7,503)	-36%
Earnings from continuing operations	41,761	7,118	(34,643)	-83%
Reversal of Loss from discontinued operations, net of taxes	-	2,379	2,379	-
Net earnings	$ 41,761	$ 9,497	$ (32,264)	-77%
Earnings per share of common stock from continuing operations.				
Basic	$ 0.49	$ 0.08	$ (0.41)	-83%
Diluted	0.47	0.08	(0.39)	-83%
Net earnings per share of common stock				
Basic	$ 0.49	$ 0.11	$ (0.38)	-77%
Diluted	0.47		(0.36)	-77%
Average number of common and common equivalent shares outstanding				
Basic	85,495	85,495		
Diluted	88,424	88,424		

NOT A CERTIFIED COPY

011174

AA188518
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084474
16div-020772

SUNBEAM CORPORATION
Consolidated Statement of Operations
For the Three Months Ended March 31, 1998

	As Previously Reported	As Restated	Adjustment Amount	Adjustment % Change
Net Sales	$ 244,296	$ 247,601	$ 3,305	1%
Cost of goods sold	211,459	213,828	2,369	1%
Selling, general and administrative expense	68,841	71,140	2,299	3%
Operating loss	(36,004)	(37,367)	(1,363)	
Interest expense	5,072	5,072	-	
Other expense, net	2,367	3,165	798	
Loss from continuing operations before income taxes	(43,443)	(45,604)	(2,161)	5%
Income tax benefit	(4,458)	(122)	4,336	-97%
Loss from continuing operations	(38,985)	(45,482)	(6,497)	
Extraordinary charge	(5,608)	(8,624)	(3,016)	
Net loss	$ (44,593)	$ (54,106)	$ (9,513)	
Loss per share of common stock from continuing operations:				
Basic	$ (0.45)	$ (0.53)	$ (0.08)	17%
Diluted	(0.45)	(0.53)	(0.08)	17%
Net loss per share of common stock:				
Basic	$ (0.52)	$ (0.63)	$ (0.11)	21%
Diluted	(0.52)	(0.63)	(0.11)	21%
Average number of common and common equivalent shares outstanding				
Basic	86,390	86,390		
Diluted	86,390	86,390		

NOT A CERTIFIED COPY

AA188519
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084475
16div-020773

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Summary of Impact on Net Income of Restatement Adjustments
(in thousands)

Issue No	Description	1996 Q4	1997 Q1	1997 Q2	1997 Q3	1997 Q4	1997 Year	1998 Q1
	Guaranteed and Consignment Sales							
1	EPI	$	$	$	$	$ (9,738)	(9,738)	$ (1,373)
2	M Block					(1,407)	(1,407)	-
3	PHD					(1,442)	(1,442)	308
4	Encore					(876)	(876)	
5	I Lehroff					(198)	(198)	-
6	Eckerd					(619)	(619)	154
7	International					(2,206)	(2,206)	529
	Total Guaranteed and Consignment Sales					(16,486)	(16,486)	(382)
8	Bill and Hold Sales			(4,629)	4,629	(4,489)	(4,489)	478
9	Reversal of Menards Sale not shipped at year end					(125)	(125)	63
10	1996 Restructuring & Special Charges	25,114	(4,107)	(5,788)	(3,078)	(4,985)	(17,958)	(2,678)
11	Reductions in Restructuring and Operating Reserves in 1997					7,560	7,560	
12	Over/under Accrual of Expenses	3,708	(1,600)	(814)	(396)	(962)	(3,572)	
13	Supplier Rebates			(2,750)	(435)	(875)	(4,060)	159
14	Sales Return Reserve		44	(596)	(2,970)	(2,507)	(6,029)	532
15	Product Liability	3,204	(1,556)	(1,568)	(2,147)	(2,986)	(8,257)	(1,750)
16	Co-op Advertising		(1,080)	(4,708)	(3,237)	1,799	(7,226)	(1,500)
17	Chargebacks/Deductions	(3,684)	(3,523)	(972)	(40)	(4,085)	(8,620)	343
18	Warranty Reserve		(3,560)	(3,835)	(3,895)	2,042	(9,248)	(641)
19	Capitalized Inventory Variances	093	(2,093)			(1,688)	(3,781)	1,688
20	Under Accrual of Freight Expense					(2,721)	(2,721)	1,221
21	Freight Related to Sales Returns					(1,178)	(1,176)	(106)
	International							
22	Mexico		-		-		(2,203)	(38)
23	Mexico Profit Sharing		(178)		(1,422)		(3,140)	-
24	Hong Kong		-				(893)	420
25	Venezuela						(387)	-

NOT A CERTIFIED COPY

CPH0084476

AA188520
Confidential Treatment Requested
by Arthur Andersen LLP

16div-020774

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Summary of Impact on Net Income of Restatement Adjustments
(In thousands)

Issue No	Description	1998 Q4	1999 Q1	1999 Q2	1999 Q3	1999 Q4	1999 Year	2000 Q1
26	Unvouchered Receipts of Inventory			-	-	(1,464)	(1,464)	1,338
27	Fixed Asset Related Items			(824)	(729)	(155)	(1,708)	(234)
28	Neosho Plant Inventory					(739)	(739)	(627)
29	Post-Prototype Development Costs					(1,226)	(1,226)	-
30	Other Miscellaneous Adjustments					(819)	(819)	(447)
	Reclassification from Restructuring to Discontinued Operations	10,323			3,850	(1,693)	2,157	
	TOTAL IMPACT ON EARNINGS FROM CONTINUING OPERATIONS BEFORE TAXES	40,758	(17,651)	(26,942)	(9,870)	(42,147)	(96,610)	(2,161)
31	Income Tax Effect of Adjustments	(10,852)	6,117	9,430	4,193	(4,113)	15,627	(4,336)
	Reclassification of Tax Effect to Discontinued Operations	(3,613)			(1,444)	1,281	(163)	
32	Income Tax Contingency Reserve					10,335	10,335	
	TOTAL IMPACT ON EARNINGS FROM CONTINUING OPERATIONS	26,491	(11,534)	(17,512)	(7,121)	(34,644)	(70,811)	(6,497)
	Adjustments and Reclassifications Related to Discontinued Operations							
	Restructuring	(10,323)			(3,850)	1,693	(2,157)	
	Warranty				-	2,967	2,967	
	Other	-			(277)	(1,000)	(1,277)	
	Tax Effect	3,613			1,444	(1,281)	163	-
31	Extraordinary Item -- Reversal of Tax Benefit						-	(3,016)
	TOTAL IMPACT ON NET EARNINGS	$ 19,781	$ (11,534)	$ (17,512)	$ (9,804)	$ (32,265)	$ (71,115)	$ (9,513)
33	Reduction of Reserves	$ -	$ (428)	$ (5,497)	$ (3,292)	$ (34,913)	$ (44,130)	$ (3,000)

NOT A CERTIFIED COPY

CPH0084477

LL1110

AA188521
Confidential Treatment Requested
by Arthur Andersen LLP

16div-020775

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam Corporation
Summary of Impact on Revenue of Restatement Adjustments
(in thousands)

Issue No	Description	1996 Q4	1997 Q1	1997 Q2	1997 Q3	1997 Q4	1997 Year	1998
	Guaranteed and Consignment Sales							
1	EPI	$ -	$	$	$	$ (11,077)	(11,077)	$ (1,842)
2	M Block	-				(4,299)	(4,299)	-
3	PHD	-				(4,751)	(4,751)	1,016
4	Encore	-				(2,897)	(2,897)	-
5	I Lehroff	-				(860)	(860)	-
6	Eckerd	-				(1,560)	(1,560)	387
7	International	-				(10,329)	(10,329)	1,815
	Total Guaranteed and Consignment Sales					(35,773)	(35,773)	1,376
8	Bill and Hold Sales			(9,900)	9,900	(29,340)	(29,340)	(1,955)
9	Reversal of Menards Sale not shipped at year end					(1,942)	(1,942)	1,868
14	Sales Return Reserve		118	(1,610)	(8,026)	(6,775)	(16,293)	2,114
16	Co-op Advertising		(1,080)	(4,708)	(3,237)	1,799	(7,226)	(1,500)
20	Under Accrual of Freight Expense					(2,721)	(2,721)	1,221
21	Freight Related to Sales Returns					(1,176)	(1,176)	(106)
	International							
22	Mexico					(122)	(122)	(212)
24	Hong Kong					(499)	(499)	499
30	Other Miscellaneous Adjustments					851	-	-
	TOTAL IMPACT ON NET SALES OF RESTATEMENT ADJUSTMENTS	-	(962)	(16,218)	(2,214)	(75,698)	(95,092)	3,305

NOT A CERTIFIED COPY

CPH0084478

014478

AA188522
Confidential Treatment Requested
by Arthur Andersen LLP

16div-020776

DESCRIPTION: 1. EPI Guaranteed/Consignment Sale

AMOUNT AND PERIODS AFFECTED:

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:		--	--		$(11,077)	$(11,077)	$(1,842)
PRE-TAX INCOME:	--			--	$(9,738)	$(9,738)	$(1,373)

BACKGROUND:

EPI Printers, Inc. ("EPI") is used to provide order processing fulfillment services for Sunbeam's small parts, warranty parts, replacement parts, accessory parts and service center stocking orders and certain related printing services. The terms and conditions of the agreement between EPI and Sunbeam were contained in a Master Servicing Agreement dated February 1, 1997. Under the Master Servicing Agreement, EPI received a specific fee for each fulfillment or printing service it performed. Prior to December 1997, the parts inventory was owned by Sunbeam and stored at EPI's warehouse.

Effective December 27, 1997, Sunbeam entered into an agreement in principle (the "Agreement") with EPI to amend the Master Servicing Agreement. Under the terms of the Agreement, EPI would purchase the Sunbeam inventory for a "base purchase price" of $11,077,409 payable "in six equal installments commencing upon the later of the date the execution of an agreement between the parties which more specifically details the terms of all transactions between the parties or July 30, 1998." The Agreement contains the following provisions:

1. The terms of the Agreement were not finalized as of December 28, 1997. Specifically, the parties would, in good faith, engage in ongoing negotiations for the further amendment of the Agreement on or before March 31, 1998 to, among other things, more completely detail all terms of performance under the Agreement.

2. Sunbeam guaranteed EPI a net profit on an annual basis of 5% of EPI's sales of inventory to third parties.

3. Certain of EPI's operating costs were guaranteed by Sunbeam through a complex inventory pricing formula.

4. Sunbeam was obligated to repurchase obsolete and excess inventory (under a formula described in the Agreement) no later than December 31, 1998.

NOT A CERTIFIED COPY

011479

AA188523
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084479

16div-020777

The EPI sale does not meet the following sales recognition criteria of Financial Accounting Standards Statement No. 48 ("FASB No. 48"):

The Agreement was not finalized at the date the sale was recorded. Sunbeam's price to EPI was not substantially fixed or determinable at the date of sale.

2. EPI's obligation to Sunbeam was contingent on resale of the product.

3. Sunbeam guaranteed EPI a profit on the sale of the product.

4. The amount of future returns could not be reasonably estimated.

In connection with the 1997 audit, Arthur Andersen LLP became aware of the EPI sale and reviewed the Agreement. Arthur Andersen LLP did not believe the sale met the criteria of SFAS No. 48 and proposed an adjustment to reverse the sale. At that time, Arthur Andersen believed the gross margin on the EPI sale was approximately $3 million because it was informed by management that a portion of the Company's inventory reserves related to the EPI sale and proposed an audit adjustment for that amount. The Company did not record this adjustment since the Company's management believed such amount was not material to the 1997 financial statements.

The original invoice of $11,077,409 was credited on April 2, 1998 and re-invoiced to be paid in eight equal installments commencing July 31, 1998. As of the date of the completion of the restatement investigation, the business arrangement between the Company and EPI for parts fulfillment services had not been finalized. The arrangement is still operating substantially as it was prior to the December 27, 1997 Agreement. EPI has not paid any amount for Sunbeam's inventory and Sunbeam continues to pay EPI for its fulfillment services.

During the fourth quarter of 1997, the Company inappropriately recognized $11.1 million in revenue and $7.0 million in gross margin on the EPI sale. The gross margin was based on the difference between the expected sales price of the inventory and the carrying value of the EPI inventory in Sunbeam's accounting records in December 1997. In connection with the restatement investigation, the Company determined that much of the EPI parts inventory was obsolete at December 28, 1997 and the quantities on hand at December 28, 1997 were excessive. Accordingly, in connection with the restatement, EPI inventory with an original cost of $4.1 million has been reduced to its estimated net realizable value of $1.4 million as of December 28, 1997.

The Company also recognized additional sales revenue of $1.8 million and gross margin of $1.4 million from EPI in the first quarter of 1998 which did not meet the criteria for revenue recognition as discussed above. Accordingly, such sales were reversed in the restatement.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

011480

AA188524
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084480

16div-020778

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 2. M. Block Guaranteed/Consignment Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:	–	–	–	–	$(4,299)	$(4,299)	
PRE-TAX INCOME:				–	$(1,407)	$(1,407)	

BACKGROUND:

M. Block and Sons, Inc. ("M. Block") is a distributor that had purchased merchandise from Sunbeam throughout 1997 for sale to smaller customers. As of December 28, 1997 Sunbeam entered into an agreement to sell $4.3 million in electric blankets to M. Block. The blankets were to be stored by M. Block and resold exclusively to Wal-Mart and K-Mart. Both Wal-Mart and K-Mart were existing Sunbeam customers and the M. Block inventory was to be sold if these customers required additional merchandise for the 1998 winter season in excess of quantities already purchased directly through Sunbeam.

The terms of this sale included the following:

1. Extended payment terms of 120 days with a 2% discount.
2. A guarantee that all product that was not sold by April 1, 1998 (payment by M. Block was not required until after this date) could be returned to Sunbeam.
3. A guarantee that M. Block would be price protected on the sales price (to effectively receive an 8% gross margin). If the blankets were returned, M. Block would receive an 8% mark-up on the original price that Sunbeam invoiced M. Block (to effectively guarantee an 8% margin whether the inventory was sold or returned).

Sunbeam recorded sales revenue of $4.3 million and gross margin of $1.4 million on the M. Block sale during the fourth quarter of 1997. This sale did not meet the following revenue recognition criteria of Financial Accounting Standards No. 48:

1. M. Block's obligation to Sunbeam was contingent on resale of the product.
2. Sunbeam guaranteed M. Block a profit on the sale of the product.
3. The amount of future returns could not be reasonably estimated.

NOT A CERTIFIED COPY

011481

AA188525
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084481

16div-020779

As the blankets were sold by April 1, 1998, Sunbeam further agreed to the following terms on May 1, 1998:

1. To pay M. Block for the storage cost of the inventory commencing May 1, 1998.

2. To re-date all receivables to net, September 30, 1998.

3. Sunbeam would use its best efforts to sell the blankets to Wal-Mart and K-Mart and M. Block would receive a 5% gross profit.

4. In the event the blankets are not sold, the remaining inventory would be returned to Sunbeam. Sunbeam would pay the freight cost and a $50,000 handling charge to M. Block.

Subsequent to May 1, 1998, Sunbeam agreed to accept the return of the goods sold to M. Block in December 1997.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

011482

AA188526
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084482

16div-020780

SUNB[illegible] 1 CORPORATION RESTATEMENT ADJ[illegible]MENT

DESCRIPTION: 3. PHD Guaranteed/Consignment Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:		–	–	–	$(4,751)	$(4,751)	$1,016
PRE-TAX INCOME:		–		–	$(1,442)	$(1,442)	$308

BACKGROUND:

PHD, Inc. and Sunbeam Corporation entered into a Consignment Agreement in 1991. The agreement provided that, among other things, Sunbeam merchandise would be stored at one of PHD's four facilities in anticipation of PHD's purchase of such merchandise and subsequent sale to its customers. This Consignment Agreement was used to facilitate the growth of Sunbeam's business with PHD without the need to grant PHD a credit line. As part of the agreement, Sunbeam maintained a security interest in the consigned inventory and the resulting proceeds of the sale of such consigned inventory to PHD's customers until Sunbeam was paid by PHD.

Sometime in late 1996 Sunbeam began discussions with PHD to change the arrangement into a conventional customer relationship. In July 1997 a new "proposed partnership agreement" was drafted which was further negotiated through September 1997. Under this proposed partnership agreement the Consignment Agreement would be terminated effective December 19, 1997 and PHD would be billed for all consignment inventory on hand at December 15, 1997. PHD would pay for the inventory 120 days thereafter. Under the terms of the new agreement, PHD was granted 90-day payment terms and would have the opportunity to purchase merchandise twice a year (February and August) on extended payment terms of 120 days. In addition PHD was given the opportunity to "stock balance inventories" at all PHD locations twice a year (February and August). At those dates PHD could return undamaged product to Sunbeam without any limitation. Freight for these stock balancing return shipments would be born by Sunbeam.

In December 1997 PHD purchased $7.7 million of product from Sunbeam of which $4.7 million were over and above PHD's normal credit line which was granted under the new agreement. Sunbeam agreed to the following provisions relating to the $4.7 million in sales.

1. Payment terms were 120 days.

NOT A CERTIFIED COPY

011483

AA188527
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084483

16div-020781

2. At the end of the ... day payment terms, Sunbeam would either take back or re-date the invoice for product remaining in PHD's inventory until the product was sold, field transferred, or returned to Sunbeam.

3. At the end of the 120 day payment term, PHD would charge Sunbeam a $6.00 per pallet per month storage fee for all remaining products, retroactive to the date of first receipt by PHD and PHD would continue to charge Sunbeam such storage fee for each month until the products were sold by PHD or otherwise moved by Sunbeam from the PHD facility.

4 Sunbeam agreed to price protect PHD on all products on these orders should any of these products be later reduced in price by Sunbeam

5 PHD would be permitted to stock balance in February 1998, all Sunbeam merchandise in inventory at PHD facilities, including this December 1997 merchandise.

During the fourth quarter of 1997 the Company recognized $4.7 million in revenue and $1.4 million in gross margin on the PHD sale. The above described sale does not meet the following sales recognition criteria of Financial Accounting Standards Statement No. 48:

1. Sunbeam's price to PHD is not substantially fixed or determinable at the date of sale because of the price protection feature of the sales agreement.

2. PHD's obligation to Sunbeam was contingent on resale of the product.

3. Sunbeam is obligated to pay for storage until the products are sold.

4. The amount of future returns could not be reasonably estimated.

The Company believes that the remaining $3 million in sales to PHD in December 1997 meet the revenue recognition criteria of Financial Accounting Standards Statement No. 48 since these sales were not subject to purchase order provisions 2 to 5 as described above. Further, Sunbeam has a long history of selling product to PHD and can reasonably estimate the amount of future returns related to products sold to PHD under Sunbeam's normal terms. As of the date of completion of the restatement investigation, the Company had collected substantially all of the related PHD receivables.

In the restated first quarter 1998 financial statements the Company recognized $1.0 million in sales revenue related to the $4.7 million December 1997 sale to PHD. This amount relates to goods that PHD agreed to keep and pay for. The remaining $3.7 million in goods were returned to the Company.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

AA188528
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084484

16div-020782

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 4. Encore Guaranteed/Consignment Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:			--	--	$(2,897)	$(2,897)	
PRE-TAX INCOME:			--	--	$(876)	$(876)	

BACKGROUND:

On December 23, 1997, Encore Promotions, Inc. ("Encore") executed its initial purchase order with Sunbeam to acquire $2.9 million of kitchen appliances. The merchandise was segregated and held under Sunbeam's control as of year end 1997 (simular to other "bill and hold" sales). Payment was due on April 20, 1998. Sunbeam agreed to pay all storage costs for the merchandise. Sunbeam further agreed that any product not sold by March 28, 1998 would be returned to Sunbeam (that is, the purchase order would be cancelled and ownership of the inventory would revert back to Sunbeam). The cancellation provision was later extended to April 20, 1998 at which date Encore cancelled the entire order. Sunbeam also had an obligation to help Encore solicit appliance continuity business for Encore.

Sunbeam recorded revenue of $2.9 million and gross margin of $.9 million in the fourth quarter of 1997. This sale did not meet the following revenue recognition criteria of Financial Accounting Standards No. 48:

1. Encore's obligation to Sunbeam was contingent on resale of the product.
2. Sunbeam is obligated to pay for storage of the product.
3. The amount of future returns could not be reasonably estimated.
4. Sunbeam had an obligation to help Encore solicit appliance continuity business for Encore.

In addition the bill and hold sales program does not meet the SEC's third criteria for revenue recognition (see Issue No. 8 "Bill and Hold Sales").

NOT A CERTIFIED COPY

011485

AA188529
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084485
16div-020783

In connection with the 7 audit, Arthur Andersen LLP became awa. . the Encore sale and reviewed the sales agreement. Arthur Andersen LLP did not believe the sale met the criteria of SFAS No. 48 and proposed an adjustment to reverse this sale. The Company did not record this adjustment since the Company's management believed the Encore sales revenue and gross margin were not material to the 1997 financial statements.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

0114486

AA188530
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084486
16div-020784

SUNB[illegible]I CORPORATION RESTATEMENT ADJ[illegible]MENT

DESCRIPTION: 5. I. Lehroff Guaranteed Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:					$(860)		
PRE-TAX INCOME:					$(198)		

BACKGROUND:

I. Lehroff & Co. is a distributor. Sunbeam agreed to sell Lehroff merchandise during the last week of fiscal 1997 which Lehroff anticipated purchasing during the first quarter of 1998. The merchandise was shipped prior to December 28, 1997 and the payment terms on the sale were net 120 days. In connection with the restatement investigation, Arthur Andersen LLP was advised that the Sunbeam salesman for the Lehroff sale had verbally agreed that Lehroff could evaluate its inventory position and return non-defective product to Sunbeam prior to the date the payment was due.

Sunbeam recorded $.9 million in sales revenue and $.2 million in gross margin during the fourth quarter of 1997. This sale did not meet the following revenue recognition criteria of Financial Accounting Standards Statement No. 48:

1. Lehroff's obligation to Sunbeam was contingent on resale of the product.
2. The amount of future returns could not be reasonably estimated.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

011487

AA188531
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084487
16div-020785

DESCRIPTION: 6. Eckerd Guaranteed Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:					$(1,560)	$(1,560)	$387
PRE-TAX INCOME:					$(619)	$(619)	$154

BACKGROUND:

Eckerd Drug ("Eckerd") has been a long-term customer of Sunbeam and purchased certain of Sunbeam's home and health products. In late 1997 Sunbeam wanted to expand their business with Eckerd and offered them an opportunity to purchase small appliances which Eckerd would sell on a special promotional basis. In December 1997, Sunbeam sold Eckerd $1.6 million of small appliances and agreed to accept the return of all unsold inventory at the end of the promotional period. In addition Sunbeam granted Eckerd other special terms on this sale including extended payment terms (75% due in 60 days and 25% due in 90 days), $250,000 in co-op advertising allowance and up to $75,000 in mark down funding.

Sunbeam recorded $1.6 million in sales revenues and $.6 million in gross margin during the fourth quarter of 1997. This promotional sale did not meet the revenue recognition criteria of Financial Accounting Standards No. 48 because the amount of future returns could not be reasonably estimated as Sunbeam had no historical experience in selling small appliances to Eckerd on this basis.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

88h110

AA188532
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084488
16div-020786

DESCRIPTION: 7. International Guaranteed/Consignment Sales

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:				–	$(10,329)	$(10,329)	
PRE-TAX INCOME:					$(2,206)	$(2,206)	

BACKGROUND:

Hong Kong

During 1997, the Company's Hong Kong subsidiary made several sales which did not meet the sales recognition criteria of Financial Accounting Standards No. 48 ("FASB No. 48"). One such sale was made to Tai Holly Ltd., a Hong Kong based distributor. In October 1997 Sunbeam and Tai Holly executed a distribution agreement for Tai Holly to sell Sunbeam products in Taiwan and the Peoples Republic of China. The terms of the distribution agreement included the following: "subject to the prior written approval of Sunbeam to Tai Holly, the risk of third parties" sales return will be taken care of by Sunbeam. Sunbeam had no prior sales experience with Tai Holly. Tai Holly never paid for any of any of the Sunbeam products shipped to Asia. In July 1998 Tai Holly informed Sunbeam that it would return all of its unsold inventory which reside at a warehouse in China under the control of Sunbeam pending the Company's decision regarding their disposition.

Sunbeam recorded $2.1 million in sales revenue to Tai Holly and $(.2) million in negative gross margin during the fourth quarter of 1997. Because of the guaranteed right of return and lack of experience with Tai Holly, this sale did not meet the revenue recognition criteria of FASB No. 48.

Another sale for approximately $3.3 million was made to Leo Technology, a Chinese distributor, who was given a guaranteed right of return for all unsold product. Sunbeam recorded $3.3 million in sales revenue to Leo Technology and $.75 million in gross margin during the fourth quarter of 1997. Because of the guaranteed right of return and lack of return experience with Leo Technology, the sale did not meet the revenue recognition criteria of FASB No. 48. In addition, the product arrived at the distributor after the end of the blanket selling season and was not available for sale. Substantially all of the product was returned in 1998.

NOT A CERTIFIED COPY

011489

AA188533
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084489
16div-020787

Additionally, approximately $3.2 million of sales were made to various other distributors at $1.2 million gross margin during the fourth quarter of 1997. Because of the right of return and lack of return experience with these various other distributors, these sales did not meet the revenue recognition criteria of FASB No. 48. Substantially all of the product was subsequently returned to the Company.

Canada

During the 1997 blanket season, the Company's Canadian subsidiary delivered a blanket order late to one customer resulting in the customer canceling the order and returning the product after year end. This resulted in an adjustment to sales of approximately $.6 million. Additionally, the Company made a number of sales with a guaranteed right of return. A substantial amount of these returns ($.5 million) came back to the Company after year end and should have been considered in the Company's allowance for returns as of year end. The Company lacked experience with these customers to reasonably estimate a return reserve and the sale allowed for a guaranteed right of return. Accordingly, this sale does not meet the revenue recognition criteria of FASB No. 48.

Mexico

The Company's subsidiary in Mexico recorded a "bill and hold" sales transaction ($.9 million sales and $.2 million in gross margin) at year end 1997. The customer specifically requested that the goods be held by the Company because of the customer's insufficient warehouse space. This sale is being deferred until the first quarter 1998, consistent with the restatement treatment of the Company's domestic bill and hold sales (see Issue No. 8 "Bill and Hold Sales").

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

011490

AA188534
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084490
16div-020788

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 8. **Bill and Hold Sales**

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:			$(9,900)	$9,900	$(29,340)	(29,340)	(1,955)
PRE-TAX INCOME:			(4,629)	4,629	(4,489)	(4,489)	478

BACKGROUND:

The Company's normal sales terms are to transfer ownership at the date the goods are shipped to the customer (i.e.; FOB shipping point). The Company's normal policy is to recognize revenue at the time of shipment. Bill and hold sales for Sunbeam represent sales of completed finished goods where a customer has executed a purchase order in which the customer agrees to take title to the goods by accepting ownership but requests a later shipment/delivery date. Bill and hold sales were made with extended credit terms and generally the customers were given a 1% to 2% additional co-op advertising discount. Bill and hold sales of barbecue grills in the fourth quarter of 1997 were part of the Company's "early buy" program and eligible customers were granted extended payment terms to May, June and July 1998. Approximately $19.7 million of the fourth quarter 1997 sales were to three large customers and the related receivables were sold without recourse to a third party financing entity as of year end 1997.

Upon receipt of a bill and hold purchase order, the Company immediately shipped the bill and hold goods to a third-party warehouse. In most cases, the Company paid for the freight costs to the third-party warehouse as well as paid for the storage and insurance costs. It was the Company's plan to outsource the control over the goods and subsequent shipment to the customer from the third-party warehouse. The Company recorded revenue on bill and hold sales when the goods were shipped from the Company's distribution center to the third-party warehouse.

The SEC has established seven criteria that must be met in order for a SEC registrant to immediately recognize revenue on bill and hold sales. The criteria and a description of Sunbeam's bill and hold sales are as follows:

1. The risks of ownership must have passed to the buyer

   Risks of ownership, including any change in the market value of the product, passed to the customers upon the shipment of the goods to the warehouses. Insurance policies covering the merchandise named the customers as the beneficiaries.

NOT A CERTIFIED COPY

AA188535
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084491
16div-020789

2. The customer ma[illegible] fixed commitment to purchase the goods, p[illegible]erably reflected in written documentation

All customers made fixed commitments to purchase the goods. Written or electronic purchase orders were received from the customers. The purchase orders specified the models of the merchandise and prices. Substantially all the product was ultimately shipped to the customers and the Company received full payment for the product.

3 *The buyer, not the seller, requested that the transaction be on a bill and hold basis and has a substantial business purpose for ordering the goods on a bill and hold basis*

Substantially all bill and hold sales were barbecue grills and in one instance, a large order of electric blankets Both of these items are large and bulky and require a large amount of warehouse space. In connection with the 1997 audit most of the customers who purchased goods under a bill and hold arrangement confirmed in writing to Arthur Andersen LLP that the goods were being held at a warehouse at their request due to the customer's limited warehousing space. In the case of grills, during the prior year's selling season, Sunbeam was unable to meet the supply and delivery schedule of many of its customers. As a result there was a business purpose for at least some of the customers to view the bill and hold arrangement as having "a substantial business purpose".

Based on the results of interviews conducted during the restatement investigation, certain Company management involved in the transactions believed that the bill and hold sales served a substantial business purpose of the customers, as described above, but also served the Company's needs in that the sales allowed the Company to accelerate sales revenue, to levelize seasonal production of grills and to resolve the Company's prior inability to supply the customers' demand for grills on a timely basis. Other individuals indicated that bill and hold sales were part of a marketing program conceived by the Company and offered to customers. This information casts substantial doubt on whether the "buyer, not the seller" requested that the transactions be done on a bill and hold basis.

4. There must be a fixed schedule for delivery of the goods which is reasonable and consistent with the buyer's business purpose

All bill and hold sales for which revenue was recognized were shipped to third-party warehouses during the period in which the revenue was recognized. Arrangements were to be made by the customers for delivery from the warehouses to the customers' distribution centers.

Based on results of interviews conducted during the restatement investigation, certain of the Company's representatives indicated that the control over the goods and subsequent shipments to the customer was controlled by Sunbeam personnel and not the outsourcer.

5. The seller did not retain any specific performance obligations such that the earnings process is not complete

NOT A CERTIFIED COPY

264110

AA188536
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084492
16div-020790

The Company has no specific performance obligations other than those related to normal warranties regarding the quality of the shipped product.

6. The ordered goods were segregated from the seller's inventory and not subject to use to fill other orders

   All sales were shipped to third party warehouses and the goods were physically segregated, titled and insured in the names of the customers.

7. The goods must be complete and ready for shipment

   All of the goods sold under the bill and hold arrangements were complete at the time of their shipment to the third-party warehouses.

The restatement investigation revealed information that the Company's bill and hold sales did not meet the SEC's criteria for immediate revenue recognition. Accordingly, the Company reversed all bill and hold sales in connection with the restatement. Such sales were recognized in subsequent periods in which the goods were shipped to the customers. Approximately $3.3 million of the fourth quarter 1997 bill and hold sales were cancelled, and substantially all of the remaining portion of the related receivables were collected in 1998 (generally in accordance with the agreed extended payment terms).

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014193

AA188537
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084493
16div-020791

DESCRIPTION: 9. Menards Sale

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	
NET SALES:					$(1,942)	$(1,942)	$1,868
PRE-TAX INCOME:					$(125)	$(125)	$63

BACKGROUND:

During the fourth quarter of 1997, the Company recorded a $1.9 million sale to Menards which requested that its order be shipped over time at the rate of two trailer loads per day. The goods consisted primarily of barbecue grill accessories. The initial shipment was made on January 22, 1998 and shipments continued throughout the first quarter of 1998. This sale was recorded in the improper period (fourth quarter 1997) and should be recorded in the period in which the goods were shipped (substantially in the first quarter of 1998).

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

0114194

AA188538
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084494
16div-020792

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 10. 1996 Restructuring and Special Charges

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
PRE-TAX INCOME:	$25,114	$(4,107)	$(5,788)	$(3,078)	$(4,985)	$(17,958)	$(2,678)

BACKGROUND:

The Company previously reported financial statements reflected a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount was allocated in the Company's 1996 Consolidated Statement of Operations as follows: $154.9 million to Restructuring, Impairment and Other Costs; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in products or stock keeping units ("SKU's") and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves and loss on the divestiture of the Company's Furniture Division of $47.9 million. The Company engaged Coopers & Lybrand LLP ("Coopers & Lybrand") to assist in developing and implementing the restructuring plan. In addition, Coopers & Lybrand assisted the Company in determining the cost of the restructuring plan and other special charges. Sunbeam established reserves to cover estimated restructuring costs and other "special charges" to be incurred in the amount of $252.5 million (the difference between the expense and the reserve was paid or recorded as direct write-off of assets prior to the 1996). The Company's restructuring reserve was established to cover severance for approximately 3,500 employees including other employee termination costs such as, COBRA benefits, worker's compensation and stay bonuses. Stay bonuses were primarily for employees of the Furniture Division, which was sold early in 1997 to U.S. Industries, Inc. In addition, reserves were established to cover plant closure costs, which included equipment relocation and future lease payments/termination costs and reserves for impairment for long-lived assets. Asset impairment reserves are required to be recorded on long-lived assets when the carrying value of the long-lived asset is not expected to be recoverable through future operations.

In connection with the restatement investigation, it was determined that certain 1996 reserves were not established in accordance with the applicable authoritative literature. The governing authoritative literature that provides guidance for companies to record restructuring expenses is Emerging Issues Task Force 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring)" ("EITF 94-3"). EITF 94-3 allows companies to record future costs that meet certain criteria as liabilities rather than recording these costs as an expense when they are incurred. As defined in EITF 94-3, only costs resulting from an exit plan that are not associated with or that do not benefit activities that will be continued are eligible for recognition as

NOT A CERTIFIED COPY

5 6 4 9 5 0 1 1 0

AA188539
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084495
16div-020793

liabilities at the com. .nent date (as defined in EITF 94-3) A cost meeting that requirement should be recognized at the commitment date if the cost is not associated with or is not incurred to generate revenues after the exit plan's commitment date and it meets either criterion (1) or (2) below:

The cost is incremental to other costs incurred by the enterprise in the conduct of its activities prior to the commitment date and will be incurred as a direct result of the exit plan. The notion of incremental does not contemplate a diminished future economic benefit to be derived from the cost but rather the absence of the cost in the enterprise's activities immediately prior to the commitment date.

2. The cost represents amounts to be incurred by the enterprise under a contractual obligation that existed prior to the commitment date and will either continue after the exit plan is completed with no economic benefit to the enterprise or be a penalty incurred by the enterprise to cancel the contractual obligation.

In connection with the 1996 audit, Arthur Andersen LLP had identified approximately $18.7 million of audit adjustments relating to the restructuring or special charges that did not meet the criteria for accrual under GAAP. The Company did not record this audit adjustment since the Company's management believed such amount was not material to the 1996 financial statements.

The Company established reserves for equipment relocation and installation costs, which are not restructuring costs under GAAP, as such costs will benefit future activities. In addition, the Company recorded an asset impairment reserve of $9.06 million based on a percentage of the idle manufacturing space at the Hattiesburg facility however; the reserve was not established in accordance with the provisions of the authoritative GAAP literature and, accordingly, this reserve is reversed in the restated financial statements. The governing authoritative literature that provides guidance for companies to record asset impairment reserves is Statement of Financial Accounting Standard No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" ("SFAS 121"). SFAS 121 requires that an impairment loss be recognized if the future cash inflows (grouped at the lowest asset level) less the future cash outflows expected to be necessary to obtain those inflows (undiscounted and without interest charges) is less than the carrying amount of the asset. If an asset held for use is expected to generate sufficient future undiscounted cash flow, an impairment charge is not appropriate. The Company did not prepare a future undiscounted cash flow analysis of the Hattiesburg manufacturing facility during the fourth quarter of 1996 when the asset impairment reserve was recorded. Nonetheless, based on interviews conducted during the restatement investigation, management in 1996 believed that the carrying amount of the facility was not fully recoverable and an asset impairment writedown for a portion of the carrying value was appropriate. An asset impairment reserve was not allowed in the restated 1996 financial statements because the analysis required under SFAS 121 was not prepared at the end of 1996, nor was the Company able to prepare such an analysis at the time of the restatement (using information available during the fourth quarter of 1996, including the 1997 financial plan), which would indicate that the carrying value of the facility was impaired.

The other disallowed reserves were primarily for the estimated costs for future package redesign costs of $4 million, which are not allowed to be accrued in advance of being incurred as such costs benefit future activities.

NOT A CERTIFIED COPY

011496

AA188540
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084496
16div-020794

The Company also recorded and categorized certain expenses as "special charges" in its previously reported 1996 financial statements, as the Company believed the recognition of such provisions resulted from the consolidation and/or relocation of operations, the abandonment of operations or productive assets, or the impairment of the carrying value of productive or other long-lived assets (i.e., restructuring plan). Certain expenses amounting to $62.8 million, recorded in the fourth quarter of 1996, such as litigation, environmental, product liability, warranty reserve and accounts receivable reserves, should not have been categorized as "special charges" since such charges relate to expenses that should have been recognized as a normal operating expense. The environmental and litigation component of the initially recorded "special charge" ($27.2 million) relates to discontinued operations and, therefore, could be described as a non-recurring charge. The Company has decided to exclude the environmental and litigation charges from the "special charge" category and instead provide an explanation of these items in the Management, Discussion and Analysis section of the Company's restated Form 10-K.

Furthermore, as part of the restructuring plan and redefinition of its core business, the Company announced the divestiture of its Furniture Division. In connection with the divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of approximately $47.9 million ($32.4 million net of taxes). The loss was primarily comprised of the difference between the net book value of the Furniture Division assets and the expected proceeds received from U.S. Industries, Inc. and other costs directly related to the divestiture of the Furniture Division. The governing authoritative literature that provides guidance for recording the effects of the disposal of a segment of a business, as defined, is APB Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of a Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequent Occurring Events and Transactions" ("APB No. 30"). APB No. 30 allows companies to record adjustments, costs, and expenses which (a) are clearly a direct result of the decision to dispose of the segment and (b) are clearly not the adjustments of carrying amounts or costs, or expenses that should have been recognized on a going-concern basis prior to the measurement date, as defined, should be included in determining the gain or loss on disposal. Examples of such costs that are a direct result of the decision to dispose of business are severance, stay bonuses and other employee termination benefits (e.g., COBRA, workers compensation). Included in the Company's $154.9 million Restructuring Impairment and Other Costs charge in 1996 was approximately $10.3 million for severance, stay bonuses and other employee termination benefits that should have been included as a component of the "Estimated loss on sale of discontinued operations" in the Company's 1996 consolidated statement of operations. In connection with the restatement of the Company's financial statements, a reclassification of approximately $10.3 million from "Restructuring and impairment charges" expense to "Estimated loss on sale of discontinued operations" will be recorded to accurately present the disposal of a segment of a business in accordance with APB No. 30.

NOT A CERTIFIED COPY

014497

AA188541
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084497
16div-020795

A summary of the e. of the restatement on restructuring and special charges for 1996 is as follows (in millions):

	As Reported	Disallowed as 1996 Expense	Reclass As Not "Special"	Other Reclass	As Restated
Restructuring	$90.2	$(11.8)	$(1.3)	$(17.7)	$58.5
Asset impairment	64.7	(9.3)	(1.9)	(2.7)	51.6
Total restructuring and asset impairment	154.9	(21.1)	(3.2)	(20.4)	110.1
Cost of sales	92.3	(3.2)	(23.0)	(5.3)	60.8
SG&A	42.5	(4.0)	(36.5)	8.1	10.1
Discontinued operations	47.9			10.3	58.2
Total Restructuring & Special Charges	$337.6	(28.3)	$(62.7)	$(7.3)*	$239.2
Less: Product liability adjustment (included in Issue No. 15)		3.2			
Total Restructuring Adjustments		$(25.1)			

*Column does not eliminate due to error in double counting of $7.3 million inventory reserve included in "as reported" amount under both cost of sales and discontinued operations.

In 1997, when the Company incurred the restructuring and special charges which were incorrectly accrued during the fourth quarter of 1996, such costs must be expensed or capitalized (in accordance with GAAP) in the restated financial statements. Since most of the disallowed restructuring and special charges were incurred in 1997, the restatement results in a large expense in 1997. A summary of 1996 disallowed expenses and their impact on 1997 pre-tax income is as follows (in millions):

NOT A CERTIFIED COPY

01419810

AA188542
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084498
16div-020796

	(Income) Expense	
	1996	1997
Severance and other employee termination benefits	($2.0)	$2.0
Employee relocation and recruiting	(2.5)	2.5
Equipment relocation	(5 6)	5 6
System implementation and transition costs	(1.7)	1.7
Package redesign	(4.0)	4.0
Asset impairment	(9.3)	9
Other disallowed 1997 charges	—	1.3
Total restructuring adjustments	($25.1)	$18.0

During the first quarter of 1998 the Company incurred $2.7 million of operating expenses which were inappropriately charged to the restructuring reserve. A restatement adjustment was made to correct for this error.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

011499

AA188543
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084499
16div-020797

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 11. Reductions in Restructuring Reserves in 1997

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$7,560	$7,560	

BACKGROUND:

During the fourth quarter of 1996, the Company previously recorded a pre-tax special charge to earnings in the amount of $337.6 million. This amount was allocated to Restructuring and Impairment, Cost of Sales, Selling General and Administrative ("SG&A") expenses and Loss on Discontinued Operations. (See Issue No. 10 "1996 Restructuring and Special Charges" for further information.)

During 1997, the Company charged $3.1 million to the restructuring reserve primarily for consulting and information system costs (i.e., J D Edwards), which were not specifically accrued for in the estimation of the reserve established in the fourth quarter of 1996. The Company charged these costs to the restructuring reserve because the "plant closure" component of the reserve had an excess and unnecessary reserve due to favorable subleases obtained on closed facilities. When initially establishing the reserve for future lease obligations, the Company took a conservative approach in estimating the amount of sublease income to be obtained as it was uncertain as to its ability to sublease. The governing authoritative literature ("EITF 94-3") indicates that amounts actually incurred in connection with the restructuring plan should be charged to the reserve only if they were specifically contemplated in the estimation of the reserve; otherwise, costs should be charged to expense or capitalized, as appropriate. The consulting and information systems costs were not contemplated and would not of qualified for accrual in the estimation of the reserve established in 1996, as such costs would provide a future benefit to the Company. In the 1997 restatement, the Company capitalized $2.3 million of the $3.1 million in consulting and information systems costs.

NOT A CERTIFIED COPY

011500

AA188544
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084500
16div-020798

In connection with estatement investigation, the Company identified approximately $14.6 million of excess and unnecessary restructuring reserves in the following reserve categories: severance, workers' compensation, COBRA and plant closure costs. These unnecessary amounts are reflected as a credit in the Restructuring and Impairment expense in the Company's restated financial statements. Of the $14.6 million of excess and unnecessary reserves, $7.5 million resulted in a direct increase to pre-tax income. The remaining $7.1 million does not result in a direct increase to pre-tax income as the Company utilized such excess and unnecessary reserves to offset normal operating expenses in 1997. A reclassification entry was made in the restatement to increase cost of sales ($2.5 million), other income, net ($.7 million) and discontinued operations ($3.9 million) and to credit restructuring and impairment expense which results in the proper disclosure of these reserve reductions as required by GAAP.

The Company will make appropriate disclosure on the reduction in restructuring reserves in Management's Discussion & Analysis ("MD&A") section of the Company's Form 10-K.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

0145010

AA188545
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084501
16div-020799

SUNBEAM CORPO[illegible]TION RESTATEMENT ADJUSTMENT

DESCRIPTION: 12. Over/Under Accrual of Expenses

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:	$3,706	$(1,600)	$(614)	$(396)	$(962)	$(3,572)	

BACKGROUND:

During December 1996, the Company requested from its advertising agency, Ogilvey & Mathers ("O&M"), an invoice for $1,320,000 representing a portion of the Company's advertising fee for 1997. The invoice was inappropriately identified as "1996 Agency Fee". Based on the Company's letter agreement with O&M, the Company was obligated to pay O&M $110,000 per month through the end of the agreement period, December 31, 1997 (i.e. $1,320,000 in total). The Company accrued $1,320,000 and incorrectly recorded this amount as an expense in 1996 even though the services were to be performed in 1997.

In addition, the Company accrued in error, an additional $700,000 in O&M agency fees for 1997 services at year end 1996. This amount was the maximum incentive bonus ("bonus") to be earned by O&M in 1997. A total restatement adjustment for $2,020,000 is necessary to reverse this expense from 1996 and record it in 1997, the proper period. In 1997 the Company incurred approximately $555,000 of the potential $700,000 bonus and expensed such amount, as a result, a restatement adjustment to record the actual bonus earned in 1997 is not required.

Other expenses relating to 1997 services which were accrued and expensed in fiscal 1996 were as follows:

Vendor	Amount
Integrated Access Corporation	$ 263,500
Herbert LaZar Bell, Inc.	437,500
Mosher Exhibits	300,000
EPI Printers	250,000
Loder, Drew & Associates	90,412
Ogilvey & Mather - direct mail fee	85,000
Employee medical accrual	260,000
	$1,686,412

NOT A CERTIFIED COPY

011502

AA188546
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084502
16div-020800

The Company also under-accrued O&M advertising agency fees at year end 1997. A total adjustment for $566,000 is necessary to accrue for these costs in 1997. Such amount is unrelated to the O&M overaccrual at year end 1996.

- - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014503

AA188547
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084503
16div-020801

DESCRIPTION: 13. Supplier Rebates

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997				1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:		--	$(2,750)	$(435)	$(875)	$(4,060)	$159

BACKGROUND:

During 1997, the Company began negotiating cash rebates from vendors (i.e., suppliers) for volume, pricing and other reasons. The rebates were in the form of cash or credit memorandums that could be applied against amounts the Company owed to the vendors. The Company's accounting department advised the procurement and the legal departments that the rebates would not represent 1997 income unless they related entirely to 1997 purchases. Most rebates were described in vendor agreements which stated that they related to 1997 purchases, however, most of the agreements also required Sunbeam to commit to purchase products in the future from these vendors for up to a four-year period.

Based on interviews conducted during the investigation, it was determined that for some vendors the Company negotiated a reduction in the price of goods to be purchased in the future and then requested that the vendor pay for a portion of the reduction in the form of an immediate rebate. The Company would receive the remainder of the rebate through price reductions on future purchases (at prices which were higher than the post-rebate price but lower than the price paid before the negotiation).

The Company's policy was to recognize these rebates as income at the time cash was received or documentation was obtained indicating a future credit memorandum would be received. The Company's accounting was not proper because the Company had negotiated the rebate together with an extended purchase commitment period which would require the deferral of this income over that period. To the extent that these rebates related to inventory on hand, an adjustment is made in the restatement to allocate a portion of the rebate to inventory at each quarter end.

NOT A CERTIFIED COPY

011504

AA188548
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084504
16div-020802

A 1997 rebate for $1 on was paid through a credit memorandum; however, based on non-performance of the agreement terms by both the Company and the vendor, the rebate will be returned to the supplier in 1998 The total amount of this rebate was deferred during the restatement period.

- - - - - - - - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014505

AA188549
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084505
16div-020803

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 14. Sales Return Reserve

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:		$118	$(1,610)	$(8,026)	$(6,775)	$(16,293)	$2,114
PRE-TAX INCOME:		$44	$(596)	$(2,970)	$(2,507)	$(6,029)	$532

BACKGROUND:

The Company has historically sold blankets to its major customers with an implied right of return for blankets when the customer is unable to sell the blankets during the winter season. In addition, the Company historically offered return privileges to certain other customers such as the television shopping networks. Due to a long history of sales and return patterns with these customers, the Company can make a reasonable estimate of the expected returns. In years prior to 1997, the Company provided reserves for expected returns which provided a reasonable estimate of the lost profit on such expected returns.

Commencing in the second half of 1997, the Company attempted to institute a "no-returns" policy for all sales. Based on interviews conducted during the investigation with sales and customer service personnel, as well as other management personnel, it appeared unlikely to those employees that the Company's new no-return policy could be successfully used with the Company's large customers. Based on interviews conducted during the investigation it appears as though few, if any, customers were formally notified of the Company's new no-return policy in late 1997 or 1998. There was very little adherence to this policy by the Company's personnel or its customers, as demonstrated by the significant amount of returned goods in 1998 relating to 1997 sales.

In addition, in late January 1998, the Company deleted its return authorization file which prevented its return centers from accepting returned merchandise. This file contained details of numerous returns that had previously been approved ("return authorizations") by Sunbeam management and customers had been notified that they were authorized to return the merchandise. The sale value of deleted return authorizations was approximately $8 million. As a result, in early 1998, the Company's return centers turned back numerous truckloads of nondefective sales returns and overloaded the capabilities of the truck carriers who were forced to hold the nondefective inventory. Company customer service personnel advised the customers that Sunbeam would pay for storage of the returned merchandise pending resolution of the decision to accept the return goods. Commencing around May 1998, the Company again began accepting and processing nondefective returns.

NOT A CERTIFIED COPY

011506

AA188550
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084506
16div-020804

In connection with implementing the no-returns policy, the Company intended to provide at least one customer with incentives to keep, rather than return products, including markdown funds (i.e., for future pricing concessions).

At December 1996 the Company had a sales return reserve of $6.5 million. At December 1997 the sales return reserve was $2.5 million which represents the gross profit on expected returns of approximately $8 million. The Company reduced its sales return reserve allegedly because of its new "no-returns" policy. Based on interviews conducted during the restatement investigation, the Company's sales management did not believe the "no-returns" policy could be implemented, nor was it effectively communicated or implemented with the Company's customers. The Company now believes the sale price of expected future returns of non-defective products sold in 1997 will be approximately $24.2 million (gross margin of $8.5 million) which includes $12 million of expected blanket returns. The difference between the gross margin of the expected returns of $8.5 million and the $2.5 million recorded as of year end 1997 results in a restatement adjustment of $6.0 million. This adjustment was allocated to the quarters of 1997 based on actual sales activity and expected returns.

During the first quarter of 1998 the Company recorded some additional sale return reserves related to certain "guaranteed/consignment" sales. The impact of the 1997 restatement adjustment results in a reduction in that reserve of approximately $.5 million.

- - - - - - - - - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

011507

AA188551
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084507
16div-020805

SU AM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 15. Product Liability

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:	$3,204	($1,556)	($1,568)	($2,147)	($2,986)	($8,257)	($1,750)

BACKGROUND:

As of December 1996, the Company's insurance broker prepared an estimate of third party administrator ("TPA") fees to be incurred to process future product liability claims ($3.2 million). The fourth quarter of 1996 was the first time the Company accrued the TPA fee. The $3.2 million was classified as a "special charge" (see Issue No. 10 "1996 Restructuring and Special Charges"). In 1997 the Company did not include this future TPA fee in its product liability reserve and thereby reduced its 1997 product liability expense in 1997 by $3.2 million. The Company's accounting policy is to expense product liability administrative costs as incurred, accordingly, a restatement adjustment was made to reverse the 1996 accrual for the TPA fee.

During the year ended December 29, 1996, the Company made several significant adjustments to its product liability reserve account. One adjustment related to the sale of the Company's furniture division, which was treated as a discontinued operation for financial reporting purposes. As part of the sale agreement for the furniture division, the Company retained the liability for future product claims for products sold prior to the date of the disposition. The Company's actuary calculated the liability for expected future (but not incurred) claims in addition to the amounts included in the actuary's report at the date of sale to be $5.7 million. This expense was included in the loss on discontinued operations and the liability included in the product liability reserve at December 29, 1996. In determining its 1997 product liability reserve, the Company did not include this future product liability for the furniture division and thereby reduced its 1997 product liability expense for continuing operations (the reserve for product liability for continuing and discontinued operations were included in a single account). Based on an actuarial calculation as of December 1997, the Company should have recorded an additional $4.6 million in product liability to be consistent with fiscal 1996. The $1.1 million reduction in the product liability reserve during 1997 ($5.7 million in 1996 vs. $4.6 million in 1997) results from one year less of exposure to future claims and is included in the actuary's report.

NOT A CERTIFIED COPY

015508

AA188552
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084508
16div-020806

In addition, as a result of the additional procedures performed during the restatement, the Company identified an error in the original product liability calculation at December 28, 1997. The error caused the original product liability adjustment to be understated by $.4 million, accordingly this amount has been included in the restatement.

In June 1998 the Company obtained an actuarial calculation to determine if the reserve for product liability at June 30, 1998 was adequate. The actuary report showed that the Company was experiencing unfavorable developments during 1998 and that an additional $4 million liability was needed. The Company determined that $1.75 million of this additional liability was needed at March 31, 1998 and a restatement adjustment was recorded. The additional $2.25 million will be recorded at June 30, 1998.

- - - - - - - - - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

014509

AA188553
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084509
16div-020807

DESCRIPTION: 16. *Co-op Advertising*

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:		$(1,080)	$(4,708)	$(3,237)	$1,799	$(7,226)	$(1,500)
PRE-TAX INCOME:		$(1,080)	$(4,708)	$(3,237)	$1,799	$(7,226)	$(1,500)

BACKGROUND:

The Company enters into cooperative advertising arrangements ("co-op") with its customers whereby the Company shares in the cost of its customers' advertising expense for Sunbeam products. In order to qualify for co-op, a customer must buy certain Sunbeam products and generally must provide evidence that the appropriate advertising cost was incurred. The Company has a software program ("Dealmaster system") which is used for tracking these arrangements and calculating the appropriate co-op credits. The Dealmaster system was used to record the 1997 year end co-op accrued liability.

Numerous errors were found in the Company's Dealmaster system due to incorrect quotes by the salesmen, deals entered into by salesmen which were not authorized in the Dealmaster system, keypunch errors and sales or customer service employees overriding the co-op percentage in the Dealmaster system. A restatement adjustment was made to record the co-op liability at year end 1997 based on actual allowances paid or credited on 1997 sales through September 1998 related to 1997 and an estimate of remaining 1997 co-op liability.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

011510

AA188554
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084510
16div-020808

SUI AM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 17. Chargebacks/Deductions

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:	$(3,684)	$(3,523)	$(972)	$(40)	$(4,085)	$(8,620)	$343

BACKGROUND:

Sunbeam's long-standing accounting policy has been to record sales revenue at the time goods are shipped to its customers and title has transferred to the buyer (i.e., sales are recorded on an accrual basis in advance of collection of the selling price of the goods). At the time of the sale, the Company records a reduction in sales revenue and profit margin for the estimated amount of sales returns for both non-defective and warranty merchandise. In addition, the Company records the additional cost for the estimated co-op advertising and volume rebate allowances that it gives to most of its customers. The allowances are granted by the Company once the customer provides the documentation to receive the co-operative advertising allowance, if required by the agreement with the customer, or when the customer achieves the necessary purchase volume to receive a rebate. Each of these estimates was evaluated in connection with the restatement and appropriate adjustments were made (see Issue No. 14 "Sales Return Reserve" and "Co-op Advertising"). These four areas comprise the largest amount and percent of future adjustments to recorded sales revenues. Most of these adjustments are finally determined when the customer takes a "deduction" (sometimes referred to as a "chargeback") from an amount due on another sales invoice. In other words, the Company pays for the cost of these deductions in the future by collecting less than the full amount of a future (often unrelated) sales invoice.

In addition, customers take deductions from paying the full amount of sales invoices for other reasons such as pricing errors, shortages in quantities received, markdowns (i.e., pricing concessions), billing errors, etc. Customers also take deductions for unauthorized reasons and follow-up is required to collect the proper amount. The processing of deductions was outsourced by the Company, effective January 1997, as part of the 1996 restructuring plan. Control over the customer deduction function, including follow-up and issue resolution deteriorated throughout 1997 and continues in 1998. This area presented a significant business issue for the Company in 1997 and is currently being addressed in 1998.

NOT A CERTIFIED COPY

011511

AA188555
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084511
16div-020809

As part of the proc trying to determine the cause of the deductions and resolution of this problem and in connection with addressing potential restatement issues, the Company determined that its methodology for accruing for estimated future deductions provided for known deductions but did not consider future deductions relating to pricing errors, shortages in quantities received, markdowns and billing errors. As a result, the Company adopted a new methodology that considered reserves for these types of deductions. The reserve for future deductions impacts collectibility of accounts receivable and, consistent with the Company's accounting policy for deductions, is included as a component of the "allowance for doubtful accounts" and "provision for bad debts." The impact of this change in accounting method was not material for periods prior to the fourth quarter of 1996. Accordingly, this new accounting method was adopted for periods commencing with the fourth quarter of 1996

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

AA188556
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084512
16div-020810

SUN .M CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 18. Warranty Reserve

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:		$(3,560)	$(3,835)	$(3,895)	$2,042	$(9,248)	$(641)

BACKGROUND:

The Company records an estimate for future warranty expense as sales are recorded. The Company has periodically adjusted (at least annually) its warranty liability based on a "model" that predicts expected future warranty claims for defective products. The Company's cost of warranty for a particular product is based on the average selling price of the product in the current year (i.e., the Company grants its customers a full warranty return) and freight costs. The Company has historically tracked defective returns by year of manufacture (i.e., products are date-stamped with the year of manufacture). Accordingly, the Company was able to determine for product returned in a given year, the year of manufacture. This information, along with other factors impacting quality which could increase or decrease the defective product return rates, was used for estimating the warranty accrual. In 1997 the Company implemented a new computer system and no longer tracked warranty return data by year of manufacture.

During 1997, the Company made several changes to assumptions in its model used for determining its warranty accrual. The impact of these changes was to reduce the estimate of future warranty liability. One significant change related to adjusting upward the percentage of total product sales assumed to be returned in the year of sale and, therefore, reducing the liability for future warranty claims. Another change related to reducing the expected return period from five to three years. No change was identified in the underlying business that gave rise to these assumption changes. Further, the changes were not made as a result of any empirical data.

NOT A CERTIFIED COPY

014513

AA188557
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084513

16div-020811

As a result of the changes in assumptions which could not be supported by actual facts, the Company's warranty accrual was reduced by approximately $9.2 million as of year end 1997. An adjustment for this amount has been made in the Company's restated financial statements.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014514

AA188558
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084514
16div-020812

DESCRIPTION: 19. Capitalized Inventory Variances

AMOUNT AND PERIODS AFFECTED:

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:	$2,093	$(2,093)	--	--	$(1,688)	$(3,781)	$1,688

BACKGROUND:

Inventories are accounted for at cost determined on the first-in-first-out method. For internal management and cost control purposes, inventories are costed at standard costs determined annually based on the budgeted cost to acquire and manufacture goods. Differences between standard costs and actual costs, (referred to as "variances") are tracked and an adjustment is made at each period end to capitalize variances related to inventory on hand (i.e., variances, which can be favorable or unfavorable, are allocated to inventory in order to state inventory balances at actual costs in accordance with generally accepted accounting principles). The capitalized variance is allocated to cost of sales in the period in which the inventory is sold. For non-seasonal products, the impact of the Company's accounting method is that capitalized variances that are incurred in one quarter are generally charged or credited to cost of sales in the next quarter.

In connection with the 1996 restructuring, the Company planned to reduce or eliminate a substantial number of stock keeping units ("SKU's"). As a result, approximately one-half of the products in its year end inventory were written down in value. In addition, the Company wrote off all capitalized variances for the Household Division. Because the other one-half of the products in inventory were realizable, variances related to this inventory should not have been written off at year end based on the Company's historic accounting practice. A restatement adjustment has been made to capitalize $2.1 million of variances related to saleable Household Division inventory in the fourth quarter of 1996. A restatement adjustment has also been made to reflect the amortization of these variances through cost of sales in the first quarter of 1997 in accordance with the Company's historic accounting method.

The Company's 1997 capitalized variance calculation did not consider inventory held in distribution centers and the favorable impact of certain material and overhead variances. The aggregate impact of these items was a $1.7 million overstatement of capitalized variances and

NOT A CERTIFIED COPY

014515

AA188559
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084515

16div-020813

understatement of cost [illegible]les at December 28, 1997. A restatement adjustment has been made in the fourth quarter of 1997 to correct these items. A restatement adjustment has also been made to reflect the amortization of these variances through cost of sales in the first quarter of 1998.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014516

AA188560
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084516
16div-020814

SUNA CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 20. Under Accrual of Freight Expense

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:					($2,721)	($2,721)	$1,221
PRE-TAX INCOME:					($2,721)	($2,721)	$1,221

BACKGROUND:

During the fourth quarter of 1997, the Company recorded several entries which resulted in overbilling customers for freight charges and resulted in uncollectible accounts receivable. One entry resulted from a keypunch error ($917,000). Another entry resulted from the billing of a significant customer for a return goods handling fee ($994,000) for grills returned during 1995 through 1997. Based on interviews conducted during the restatement investigation, it appears as though many individuals in the sales department believed that collectibility of this handling fee was unlikely. Another entry was made to bill another customer for handling charges ($488,000) related to returned blankets. The Company could not reasonably estimate collectibility of these charges at year end 1997 and, accordingly, in accordance with generally accepted accounting principles, these receivable either should not have been recorded or should have been fully reserved. The amounts have been adjusted in connection with the restatement. None of these receivables were collected during 1998.

The Company also underaccrued its liability for freight costs at year end 1997 by $322,000. This amount has been adjusted in connection with the restatement.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

014517

AA188561
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084517
16div-020815

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 21. Freight Related to Sales Returns

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:					$(1,176)	$(1,176)	
PRE-TAX INCOME:					$(1,176)	$(1,176)	

BACKGROUND:

In 1997 the Company attempted to adopt a "no returns" policy (see Issue No. 14 "Sales Return Reserve"). In connection with 1997 sales the Company incurred $876,000 in inbound freight costs and $300,000 in demurrage charges resulting from trucks being turned back from the Company's return centers. The Company did not accrue the liability for these costs at year end 1997 and, therefore, a restatement adjustment was made.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

0145 18

AA188562
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084518
16div-020816

SUI AM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 22. Mexico Issues

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:	–	–			($122)	($122)	($212)
PRE-TAX INCOME:					($2,203)	($2,203)	($38)

BACKGROUND:

Restatement adjustments of $1.0 million relating to the 1997 statutory audit of the Company's Mexican subsidiary were required. In addition, the fourth quarter of 1997 includes a $1.0 million restatement adjustment to accrue 1997 inventory purchases that were unaccrued for at year end 1997 and a $174,000 adjustment to record depreciation on certain assets placed in service in 1997. Fourth quarter 1997 also includes an adjustment to reverse sales of $122,000 due to improper shipping cut-off errors. The sales were recognized in first quarter 1998. The gross margin on these sales was $19,000.

In the first quarter of 1998 a restatement adjustment was recorded to reverse Mexico statutory adjustments of $865,000 previously recorded by the Company in first quarter 1998. The first quarter of 1998 restatement includes adjustments pertaining to inventory shrinkage of $500,000, write off of capitalized freight of approximately $334,000 (which is reflected in net sales), and $88,000 to record depreciation of an asset placed in service.

In connection with the 1997 audit of the Company's consolidated financial statements, Arthur Andersen LLP proposed several audit adjustments relating to the statutory financial statements of the Mexican subsidiary. The Company did not record these audit adjustments since the Company believed such adjustments were not material to its 1997 consolidated financial statements. In connection with the restatement of the Company's 1997 financial statements, the Company determined it was appropriate to make these adjustments. The total amount of the proposed audit adjustments was approximately $2.9 million and the adjustments related primarily to inventory issues (the amounts were later refined during the restatement investigation).

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

AA188563
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084519

16div-020817

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 23. **Mexico Profit Sharing**

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:		$(176)	$(658)	$(1,422)	$(884)	$(3,140)	

BACKGROUND:

Mexican law requires Mexican enterprises to annually pay their employees profit sharing equal to 10% of the enterprise's taxable income. In October 1998, the Company filed its 1997 Mexican tax return, which reflected a large loss. The loss is caused by provisions in the Mexican tax law that permit an immediate deduction for certain purchased inventories and fixed assets. However, for U.S. financial reporting the Company's Mexican subsidiary was profitable for 1997. The Company did not accrue any liability for profit sharing for its Mexican subsidiary for 1997. In connection with preparing the 1997 Mexican tax return the Company determined that it has a deferred profit sharing liability for 1997 of $3.1 million. The large liability results primarily from the complexity and interrelationship between the determination of Mexican taxable income and profit sharing and because net operating losses in Mexico cannot be carried forward to offset future profit sharing expense. The Company's liability for Mexican profit sharing for 1996 was only $190,000 which had been properly accrued in 1996.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

014520

AA188564
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084520
16div-020818

DESCRIPTION: 24. Hong Kong Issues

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:					($499)	($499)	$499
PRE-TAX INCOME:					($893)	($893)	$420

BACKGROUND:

During 1997, the Company's Hong Kong subsidiary, in addition to improperly recognizing revenue (see Issue No. 7 "International Guaranteed and Consignment Sales"), under provided for warranty and product liability expenses. Restatement adjustments have been recorded to accrue $106,000 of these costs in 1997. In addition 1997 net sales included sales of goods not shipped until first quarter 1998 of $.5 million. A restatement entry has been made to transfer sales revenue of $499,000 and gross margin of $212,000 from the fourth quarter of 1997 to the first quarter of 1998.

Sunbeam Hong Kong recorded deferred advertising cost of $515,000. Generally accepted accounting principles do not allow advertising costs to be deferred over future periods. A restatement adjustment has been made to charge these deferred costs to 1997.

In the first quarter of 1998, the Company expensed $290,000 of the deferred advertising. A first quarter 1998 restatement adjustment has been made to reverse the expense, since this amount was expensed in the fourth quarter of 1997. Additionally, restatement adjustments totalling $82,000 were made in first quarter 1998 for product liability, warranty and other miscellaneous expenses.

- - - - - - - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

011521

AA188565
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084521
16div-020819

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 25. Venezuela Issues

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$(387)	$(387)	

BACKGROUND:

At year end 1997, the accounting records of the Company's Venezuelan subsidiary reflected $387,000 of purchased raw materials that were held at various suppliers. Subsequent to year end the Company determined the raw materials were no longer held by the suppliers and believe they were either used in production (and not appropriately accounted for) or stolen during 1997. Therefore, a restatement adjustment was made to write-off the inventory in the fourth quarter of 1997.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

011522

AA188566
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084522
16div-020820

SUN M CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 26. · Unvouchered Receipts of Inventory

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$(1,464)	$(1,464)	$1,338

BACKGROUND:

During 1997, the Company outsourced its accounts payable function. The outsourcer paid the Company's invoices once all the supporting information was matched (e.g., purchase order and receiving report). This procedure did not always result in the timely payment of invoices and, when vendors delayed shipments, the Company instructed the outsourcer to pay certain invoices without the supporting documents. The 1997 year end accounting entry made to adjust for this process resulted in reducing both the inventory and accounts payable balances on the general ledger.

The Company's estimate to correct "unvouchered receipts" was in error and resulted in an understatement of the Company's accounts payable balance as of the end of 1997. During 1998, the Company discovered and paid some invoices which related to 1997 inventory purchases which had not been properly accrued in 1997. The restatement entry corrects for these accounting errors.

- - - - - - - - - - - - - - - - - - - -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

0145223
AA188567
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084523
16div-020821

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 27. **Fixed Asset Related Items**

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997				1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:			$(824)	$(729)	$(155)	$(1,708)	$(234)

BACKGROUND:

During the third quarter of 1997, the Company completed a reengineering of its Neosho, Missouri production facility. The costs associated with this project were comprised of consulting fees, construction and rearrangement costs and equipment purchases. Included in this project was the cost of demolition of office space and the replacement of equipment. The Company did not record the write-off of the building improvements and equipment associated with this project in 1997. A restatement adjustment of $747,000 is required to record the write-off and correct depreciation expense.

In connection with the reengineering project the Company engaged Coopers & Lybrand to provide consulting services. During 1997, the Company capitalized approximately $1.7 million of consulting fees related to the project. Of this amount, $960,000 represented the cost of re-implementing certain software modules to properly support manufacturing operations. Costs not associated with the development of new software must be expensed as incurred. Accordingly, a restatement adjustment was made to write off these costs. Additional software re-implementation costs of $234,000 were incorrectly capitalized in the first quarter of 1998. A restatement adjustment was made recorded to write off these costs in the first quarter of 1998.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014524

AA188568
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084524
16div-020822

DESCRIPTION: 28. Neosho Plant Inventory

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$(739)	$(739)	$(627)

BACKGROUND:

The Company performed a physical inventory count of its Neosho Outdoor Division inventory at August 31, 1997. The historical practice of the Company was to take an interim physical inventory due to low inventory levels because of the seasonality of the Outdoor Division. The Company's general ledger balance at December 28, 1997 was $739,000 in excess of the perpetual inventory records. The perpetual records were tested and found to be accurate. Accordingly, a restatement adjustment was made to provide for this inventory shrinkage between the August 31, 1997 physical inventory and December 28, 1997.

The Company's general ledger balance was in excess of the perpetual records by $627,000 as of March 31, 1998 and a restatement adjustment was made to provide for this additional inventory shrinkage.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

0145525

AA188569
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084525
16div-020823

DESCRIPTION: 29. Post-Prototype Development Costs

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$(1,226)	$(1,226)	

BACKGROUND:

During the fourth quarter of 1997 the Company capitalized $1.2 million of engineering cost associated with pre-manufacturing engineering. Some of the costs capitalized were incurred in earlier 1997 quarters. This engineering was done by engineers who were also involved in research and development associated with developing new products. Generally accepted accounting principles (GAAP) allow a company to capitalize engineering cost after the research and development stage of a product life. Contemporaneous records of the time incurred by the engineers between research and development and post-prototype development costs were not maintained and, therefore, do not adequately document the cost of the post-prototype development work. An adjustment has been made as part of the restatement to expense these costs.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

0145260

AA188570
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084526
16div-020824

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 30. Other Miscellaneous Adjustments

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:				$(851)	$851		
PRE-TAX INCOME:			--		$(819)	$(819)	$(447)

BACKGROUND:

At the end of each month, the Company reconciles a bank clearing account that is maintained as the interface between the Company and CIT, its outsourcer of accounts receivable processing. At year end 1997, the Company made an adjustment of $318,000 to the bank account in error that resulted in a reduction of the Company's bad debt provision. As part of the restatement, this amount has been adjusted at year end 1997.

As part of the restatement investigation, the Company identified $805,000 of debit balances in accounts payable that had accumulated during 1997. The Company is actively pursuing collection of these amounts; however, management of the Company believes that the likelihood of 100% collection is remote and that information to make this judgement was available at year end 1997. An allowance was provided for debit balances in accounts payable at December 29, 1996 and no allowance was provided at December 28, 1997. Accordingly, the Company has recorded a $500,000 allowance against these amounts in the restatement of the fourth quarter 1997.

At the end of the third quarter of 1997 the Company recorded a sale for $851,000 to a wholesaler of inventory at no profit margin. The terms of the transaction was customer pick-up. The customer did not pick up the inventory until the fourth quarter of 1997 and, accordingly, an adjustment was made to transfer the revenue from the third quarter to the fourth quarter.

In connection with the restatement procedures during the first quarter of 1998 the Company identified sales commissions that were underaccrued by $688,000 which had been adjusted as part of the restatement.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

011527

AA188571
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084527
16div-020825

SUN ,M CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 31. · Income Tax Effect of Adjustments

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:	$(10,652)	$6,117	$9,430	$4,193	$(4,113)	$15,627	$(4,336)

BACKGROUND:

The overall impact of the restatement is to reduce the 1996 pre-tax loss from continuing operations by $40.8 million and to reduce 1997 pre-tax income from continuing operations by $96.6 million. The tax effect of the adjustments has been reflected in the restatement. Most of the restatement adjustments will not have an immediate impact on the Company's federal or state income tax returns and result in "temporary differences" between income for financial and tax reporting purposes. A relatively small amount of the adjustments impact taxable income for 1996 and 1997 and the Company is currently planning to amend its 1996 and 1997 income tax returns.

After considering the impact of the restatement, the Company will have net deferred tax assets for its U.S. operations of $32.7 million at December 29, 1996 and $19.0 million at December 28, 1997. The large deferred tax asset at December 29, 1996 arose primarily because of the one-time restructuring and special charges in 1996. Because of the Company's projected profitability in 1997 (based on the 1997 plan prepared in late 1996), including a forecasted increase in revenues and margins and in cost savings, realization of the deferred tax asset at December 29, 1996 and at the end of the first three quarters of 1997 was "more likely than not" (the accounting standard used to assess the realizability of deferred tax assets under Financial Accounting Standards Statement No. 109). Accordingly, no valuation reserve is required at December 29, 1996 or at the end of the first three quarters of 1997.

The Company's financial condition began to deteriorate in the fourth quarter of 1997. The Company's restated income from continuing operations before taxes was $20.6 million in the fourth quarter of 1997. However, excluding the affects of the reductions in reserves that were established in 1996 and prior years (see Issue No. 33 "Reductions in Operating Reserves"), the loss from operations during the fourth quarter of 1997 was approximately $1 million, a substantial reduction from prior 1997 quarters. Further, subsequent to year end 1997 a number of significant negative events occurred including:

1. The significant decline in first quarter 1998 revenues versus the Company's forecast (and the prior year's revenues). January 1998 net sales were only $29 million.

NOT A CERTIFIED COPY

014528

AA188572
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084528
16div-020826

The Company restated loss before income taxes and extraordinary charge for the first quarter 1998 was $46.5 million.

At the date the 1997 financial statements were prepared there was negative information concerning the Company's future profitability. Such negative evidence needs to be considered in determining the need for a valuation reserve for deferred tax assets at December 28, 1997. The significant loss in the first quarter of 1998 and the continuing shortfall in forecasted net sales and profits provides evidence of the need to provide a valuation reserve against deferred tax assets as of March 31, 1998. It is clear that all deferred tax assets have to be fully reserved as of June 30, 1998. The Company has provided a 100% reserve against the net deferred tax assets (as restated) at December 28, 1997 and March 31, 1998. To do otherwise would result in net deferred tax assets at December 28, 1997 that would have to be fully reserved at June 30, 1998 and possibly March 31, 1998.

During the first quarter of 1998 the Company had recorded a deferred tax benefit of $3.0 million relating to the loss on refinancing (classified as an "extraordinary item" in the statement of operations). In the restatement such tax benefit has been reversed.

The valuation allowance for deferred tax assets was $23.2 million at December 28, 1997 and $42.9 million at March 31, 1998.

The Company also made several relatively minor adjustments to its December 28, 1997 consolidated balance sheet to properly reflect current tax refunds and liabilities based its evaluation of the restatement and the filing of its 1997 income tax returns. In addition the Company reduced paid-in-capital at December 28, 1997 and March 31, 1998 by $4.2 million and $5.0 million, respectively, to reflect the actual benefit received from the exercise of stock options in 1997 and 1998.

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

014529

AA188573
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084529
16div-020827

SUNBEAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 32. Income Tax Contingency Reserve

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
NET SALES:							
PRE-TAX INCOME:					$10,335	$10,335	

BACKGROUND:

In connection with the restatement investigation the Company determined that it had a reserve for tax contingencies at December 28, 1997 that was not needed for known contingencies. The contingency reserve was established a number of years ago and was needed for potential 1993 through 1994 income tax issues. In late 1997 and January 1998 the Company met with representatives of the IRS to discuss tax issues relating to the in-process 1993 and 1994 revenue agent's examination. At that time it became probable that the Company's unallocated tax contingency reserve was excessive. The Company reduced the tax contingency reserve by $3 million (i.e., a reduction of income tax expense in 1997), in its previously reported fourth quarter 1997 financial statements. However, based on the information known in January 1998, it was probable that the tax contingency reserve was still excessive. Accordingly, the Company has further reduced its tax contingency reserve in the restated fourth quarter of 1997 financial statements by an additional $10.3 million.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein.

NOT A CERTIFIED COPY

014530

AA188574
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084530
16div-020828

SUNAM CORPORATION RESTATEMENT ADJUSTMENT

DESCRIPTION: 33. **Reductions of Reserves**

AMOUNT AND PERIODS AFFECTED (in thousands):

	1996	1997					1998
	Q4	Q1	Q2	Q3	Q4	YEAR	Q1
DISCLOSURE ITEMS ONLY:	-	($428)	($5,497)	($3,292)	($34,913)	($44,130)	($3,000)

BACKGROUND:

In connection with the restatement investigation, it was determined that $8.1 million of litigation reserves, which were properly established at the end of 1996 in accordance with GAAP, were no longer needed in 1997 due to a favorable settlement during 1997. The Company transferred $7.1 million of this amount into the Company's warranty reserve in December of 1997 in order to cover a shortfall in this account, and $1.0 million was reversed directly into income during 1997. The amount transferred to the warranty reserve has been adjusted in the restatement as a reclassification to reflect an $7.1 million increase in Cost of Sales and a reduction of Selling General and Administrative expense. The appropriate disclosure of the amount of litigation reserves transferred and taken into income will be included in Management's Discussion and Analysis ("MD&A") in the restated Form 10-K.

The Company utilized various other operating reserves established in or prior to 1996 that benefited 1997 operating results. The Company also changed its accounting policy as it relates to manufacturing supplies inventory. A listing of the reserves and change in accounting policy that benefit 1997 net income are as follows:

Description	Account Benefited	Amount (000)
Reversal of excess 1996 Cooperative advertising accrual	Net sales	$ 5,350
Reversal of excess 1996 Corporate expenses	SG&A	679
Reversal of excess 1996 litigation reserve	SG&A	8,142
Reversal of excess 1996 consulting fees	SG&A	1,282
Risk management department 1997 expense charged to litigation reserve	SG&A	536
Reversal of excess 1996 advertising accrual	SG&A	683
Reversal of excess 1996 health insurance accrual	SG&A	820
Reversal of non-core liabilities set up prior to 1996	Cost of sales	3,469
Capitalization of manufacturing supplies inventory in 1997	Cost of sales	2,834
Reversal of excess 1996 inventory valuation reserve	Cost of sales	7,000
Total impact on pretax income		30,795
Reversal of income tax contingency reserve (see Issue No. 32)	Income tax	13,335
Total impact on net income		$ 44,130

NOT A CERTIFIED COPY

0145311

AA188575
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084531
16div-020829

In addition to the r[illegible]ves and change in accounting policy shown above, the Company also reduced restructuring reserves during 1997 by $14.6 million (see Issue No. 11 "Reductions in Restructuring Reserves in 1997").

For the period ended March 31, 1998 the Company properly reduced its environmental reserve by $3 million as a result of a favorable development which was confirmed by the Company's environmental consultant.

All of the restructuring and non-restructuring related excess and unnecessary reserve reversals and change in accounting policy will be disclosed in the MD&A section of the Company's restated 1997 Form 10-K and Form 10-Q's for 1997 and March 31, 1998.

- -

See accompanying cover letter for description of scope and limitations regarding matters discussed herein

NOT A CERTIFIED COPY

014532

AA188576
Confidential Treatment Requested
by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0084532
16div-020830

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA
Case No. 2003 CA 005045AI

COLEMAN (PARENT) HOLDINGS,
Plaintiff,
vs.
MORGAN STANLEY AND CO., INCORPORATED,
Defendant.
---------- x

DEPOSITION OF DONALD DENKHAUS

Taken before Sherilynn V. McKay, Certified Realtime Reporter and Registered Merit Reporter, pursuant to Notice of Taking Deposition filed in the above cause.

Thursday, November 6, 2003
14th Floor
44 West Flagler Street
Miami, Florida 33130
9:35 a.m. - 12:30 p.m.
1:00 p.m. - 3:00 p.m.
Job No. 581785, (305)651-0706

APPEARANCES

For the Plaintiff:
JENNER & BLOCK, LLC
By: CLARK C. JOHNSON and
DENISE KIRKOWSKI BOWLER, ESQS.
One IBM Plaza
Chicago, Illinois 60611-7603

For the Defendant:
KIRKLAND & ELLIS, LLP
By: ZHONETTE M. BROWN, ESQ.
655 15th Street, N.W.
Washington, D.C. 20005

For the Witness:
CURTIS, MALLET-PREVOST, COLT & MOSLE
By: MICHAEL J. MOSCATO, ESQ.
101 Park Avenue
New York, New York 10178-0061

INDEX

WITNESS	PAGE
DONALD DENKHAUS	
DIRECT EXAMINATION BY MR. JOHNSON	4
CROSS-EXAMINATION BY MS. BROWN	83

EXHIBITS

	PAGE
Deposition Exhibit No. CPH 21	15
Deposition Exhibit No. CPH 22	69
Deposition Exhibit No. CPH 23	77
Deposition Exhibit No. MS 13	86
Deposition Exhibit No. MS 14	103
Deposition Exhibit No. MS 15	121
Deposition Exhibit No. MS 16	126
Deposition Exhibit No. MS 17	134

DONALD DENKHAUS
was called as a witness by the Plaintiff, and having been first duly sworn, testified as follows:
THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Good morning, Mr. Denkhaus.
A Good morning.
Q Would you please state your name for the record?
A Donald Denkhaus.
Q And where do you reside currently?
A 10220 S.W. 87th Court, Miami.
Q And how long have you lived in the Miami area?
A Thirty-three years.
Q And do you have a college degree?
A Yes, I do.
Q What is that degree?
A I have a bachelor's of business administration with concentration in accounting.
Q From what institution?
A Kent State University.
Q And that's in Ohio?
A Yes.

NOT A CERTIFIED COPY

Q And what year did you receive that degree?
A 1969.
Q And if my math is any good, that means you moved to Florida right after getting the degree?
A No. I attended graduate school at the University of Maryland. Came to Florida the next year.
Q Did you get an MBA at Maryland?
A Yes.
Q Did you begin working when you moved to Florida?
A Yes.
Q With whom?
A Arthur Andersen.
Q And are you currently employed?
A No.
Q Are you retired?
A I guess -- I wouldn't say I'm retired. I'm looking for some activities, but not full time employment.
Q How many years were you with Andersen?
A Thirty-two or thirty-three years.
Q Did you ever obtain a CPA license in the state of Florida?
A Yes.
Q When did you receive that?

A I believe it was in 1971.
Q And is that license in force today?
A Yes.
Q Was it in force continually since 1971?
A Yes.
Q Aside from meeting with Mr. Moscato, have you done anything to prepare for the deposition today?
A No.
Q Have you spoken with anyone besides Mr. Moscato or any family members about this deposition?
A Other than the fact that I was having a deposition, I haven't spoken to anybody.
Q And you have and I have never spoken before this morning. Is that correct?
A Yes.
Q You didn't have any conversations with any lawyers from Morgan Stanley. Is that correct?
A No.
Q That's not correct or you didn't have the conversations?
MR. MOSCATO: Too many negatives in the question.
MR. JOHNSON: I'm sorry.
MR. MOSCATO: It's not your fault, Don.

THE WITNESS: I did not have any conversations with attorneys from Morgan Stanley.
BY MR. JOHNSON:
Q Now, in connection with your employment with Arthur Andersen, did you ever do any work relating to Sunbeam Corporation?
A Yes.
Q And you were involved in the additional procedures that led to the restatement of Sunbeam's financial statements. Is that correct?
A Yes.
Q When did you begin working on those additional procedures?
A I believe it was early July 1998.
Q Prior to early July 1998, did you perform any audit-related procedures for Sunbeam?
A No.
Q Did you review any Sunbeam-related materials in your capacity with Arthur Andersen during March of 1998?
A I don't believe so. I was the division head for south Florida, so I -- indirectly somebody might have asked me something about it, but I don't have any particular -- any recollection of reviewing any

documents.
Q In March of 1998?
A In March of 1998, yes.
Q So to the best of your knowledge, you didn't review any Sunbeam press releases that were issued in March of 1998 during the time they were issued?
A That's correct.
Q Did you, in March of 1998, review any Sunbeam offering memoranda?
A No, I don't believe -- I was aware of the offering, but I don't believe that I reviewed any of the documents.
Q At that time?
A At that time, yes.
Q Can you tell me briefly the circumstances that led you to get involved in the additional procedures that led to the restatement?
A I believe it was sometime in June -- I don't remember the exact timing -- probably late June that I was asked by our managing partner for Florida practice, Bill Pruitt, if I would have the time to do some additional procedures relating to Sunbeam, to determine if the financial statements would require restatement.
Q Prior to that conversation with Mr. Pruitt, had you had any discussions with anyone at Andersen

NOT A CERTIFIED COPY

about the need for any additional procedures at Sunbeam?

A In my capacity as the audit division head for south Florida, I was aware that there were issues involving Sunbeam. I think, my recollection would be related to the revenue recognition issues, and I was aware that there was ongoing review by Mr. Pruitt, and our team, and others in our practice director group that were involved in that. But I was not directly consulted on anything.

Q Did those issues arise in connection with the Baron's article in June of 1998?

MS. BROWN: Objection.

A I don't recall if they related to the Baron's article, or whether they related to other circumstances that the audit team was concerned about.

Q Can you put a time frame on when those issues arose?

MS. BROWN: Objection.

MR. MOSCATO: Is the question when they arose or when he became aware of them?

MR. JOHNSON: If he knows when they arose, as opposed to when you specifically became aware of the issues.

MR. MOSCATO: Do you know, Don?

MS. BROWN: Objection.

THE WITNESS: No, I don't.

BY MR. JOHNSON:

Q You agreed to take on the additional procedures on Mr. Pruitt's request?

A Yes. He had, I believe, consulted with other management members in Arthur Andersen and they had -- were considering who would do the additional procedures, and they asked me if I would have the time to do them, and I said I would.

Q And did you have primary responsibility within Andersen for those procedures?

A I had the primary responsibility of heading up the team and having the overall signing responsibility for the work that was going to be done, and in this case it would end up being the restated financial statements. But throughout that process there were many other individuals at Arthur Andersen that were involved that were more senior than I in the process.

Q You indicate you put together a team within Andersen to work on the additional procedures. Did this team have meetings or how did the team communicate with itself?

A There were members of the team that worked under my direction, and then they had subordinates that

worked under them. As the additional procedures got expanded, there were individuals in other offices outside of south Florida that were involved, that didn't work directly for me, but they were performing procedures that were part of the work that was necessary to do the additional procedures.

And there were also -- you asked about the reporting mechanism. There was a reporting by myself to members of Andersen's management as to the status of the work that was being done. Generally those meetings were on a weekly basis.

Q Now, can you tell me in a general fashion the additional procedures that were performed in connection with your work on Sunbeam?

A I'm not sure how to describe them in a general way.

Q Okay.

A They started out looking at revenue recognition issues, and then were expanded to include a significant number of other areas, and ultimately resulted in the restatement and adjustments in quite a few different areas.

Q And as part of the additional procedures, did your team interview Sunbeam employees?

A Yes.

Q And you yourself participated in many of those interviews?

A Yes, I did.

Q And were memoranda created as to the information obtained in those interviews?

A Yes.

Q And you drafted some of those memoranda?

A Yes.

Q Did you, in connection with the additional procedures, review all of the memoranda that were prepared?

MR. MOSCATO: By him or by everybody?

MR. JOHNSON: By everybody.

THE WITNESS: To the best of my recollection, I would have reviewed all of the memoranda.

BY MR. JOHNSON:

Q Were the memoranda circulated among the Arthur Andersen team in charge of the additional procedures?

A No.

Q Besides you, who, to your knowledge, reviewed all of the other interview memoranda?

MS. BROWN: Objection.

A I don't know that I'm sure who reviewed all of the memorandum. I think Larry Bornstein may have

NOT A CERTIFIED COPY

reviewed them all, but I don't know that for sure. I know he participated in many of the interviews, but whether he reviewed them all I can't tell you, but he was integrally involved in the process. Phil Harlow reviewed many of them, and participated in a number of the views.

Q How about Mr. Pastrana?

A Mr. Pastrana participated in some of the interviews, but I don't believe he would have necessarily reviewed the ones that he did not participate in. And the work papers reviewed by --

THE WITNESS: Mike, if you can tell me. John, from Chicago.

MR. MOSCATO: John Reilly?

THE WITNESS: Reilly.

MR. MOSCATO: So you want to get him involved in this now too, Don?

THE WITNESS: Yeah.

MR. MOSCATO: This is your revenge?

THE WITNESS: Revenge for John, yeah. John reviewed a lot of the work that was done. Whether he reviewed all of the memorandum, I can't really tell you that or not. But I know he was reviewing the work papers and had access to all of the work

papers for his review, if he chose to review them.

BY MR. JOHNSON:

Q What was the purpose of committing these interviews to written memoranda form?

MS. BROWN: Objection.

A The purpose was, putting them in written form, was just to memorialize the conversations so that they wouldn't be recollections, they would be what we wrote down and is our best knowledge that we gained, the individual who wrote the memorandum. They weren't reviewed by the people that we interviewed, so we don't have any feedback by them, and I don't think there were comments provided by anyone other than the person that was writing the memorandum.

Q So drafts of the memoranda were not circulated to the other Andersen participants in the interview?

MS. BROWN: Objection.

A I believe the drafts would have been circulated to the other -- in general there were two Andersen participants in the interviews, and I believe the second person would have also reviewed that memorandum, but not others, in terms of commenting or making suggested changes.

Q And as I understand your answer, these were

committed to writing, just to make a record of what you'd learned?

A Yes.

MR. JOHNSON: I'm going to mark an exhibit, if I could. This will be CPH 21.

(Deposition Exhibit No. CPH 21 was marked for identification.)

If you can take a second to look through Exhibit 21 for me, Mr. Denkhaus.

MR. MOSCATO: Don, you don't have to look at each page. He'll take you through.

BY MR. JOHNSON:

Q We're going to spend a lot of time on the details of this document today. But can you, for the record, tell me what Exhibit 21 is?

A Yes. This appears to be a copy of the Arthur Andersen file that contained the memorandum relating to the interviews conducted by Arthur Andersen during the additional procedures performed at Sunbeam.

Q So would it be accurate to say this is part of the work papers for the additional procedures?

A It certainly appears as though. It would be my recollection that this is what it would be.

Q If you would be kind enough to turn to Bates page CPH -- and you'll see there's several different

Bates numbers on each page here, but if you look at the lowest bottom right numbering -- CPH 0062494 and 495. These pages contain a list of the Sunbeam personnel who were interviewed in connection with the additional procedures. Is that correct?

A Yes.

Q Looking particularly at page 62495, do you know why the index numbering jumps from tab 31 to tab 76?

A I have no recollection of why that would be.

Q Are you aware of any Sunbeam personnel who were interviewed but for whom Andersen did not prepare a summary of the interview?

MS. BROWN: Objection.

A Well, let me say this is the result of what we considered formal interviews with a number of people. Throughout the additional procedures, which were performed over a five-month period, we talked with numerous individuals at Sunbeam, with no documentation, other than if we found something that our team considered of audit significance, they would have put notation of that somewhere in an audit work files, but not in a written memorandum such as these.

Q So these are the formal interviews?

A Correct.

NOT A CERTIFIED COPY

Q I want to focus on about a dozen of these interviews, and then we'll leave you alone. But as I've reviewed these, I've had questions about some of the statements made in the memos. I just wanted to walk through those, if I could.

If you turn to tab one for me, tab one, which bears the Bates stamp CPH 62498 through 62510. If you could just review that for me, I'll ask you a few questions about it.

MR. MOSCATO: What Bates numbers?

MR. JOHNSON: 62498 through 62510.

MR. MOSCATO: Okay.

Are you ready?

THE WITNESS: I've quickly looked through it.

MR. JOHNSON: Okay. Great.

BY MR. JOHNSON:

Q Could you identify this document for me?

A Yes. This is a copy of the memorandum that I prepared to document the interview that we conducted with David Fannin on July 16th, 1998.

Q And you participated in that interview?

A Yes.

Q The first bullet point on the first page states, quote: Fannin met with Bob Gluck on

July 12, 1998, close quote. Do you see that?

A Yes.

Q Should that in fact be June 12th, 1998?

A I don't know.

Q Do you know the parenthetical reference just after the date, "four days after the board meeting," what board meeting is referred to there?

A This was the board meeting that I think that Dunlap may have been relieved of his responsibilities, or discussion about his responsibilities and the financial results of the company. So I don't know the date of that meeting, but this is my best recollection is what is written here.

Q And about five bullet points down, you write, quote: Fannin was concerned, quote, 1998 was in collapse, close quote.

What was Mr. Fannin referring to there?

MS. BROWN: Objection.

A Well, I don't know exactly what he was referring to, that's why it's in quotes, but I believe it related to the financial issues that the company was having at the time. Have to ask him what he specifically meant by that.

Q Further down on the same page, there's a bullet that states, quote: Per Bob Gluck, quote, the

1997 performance was not sustainable, close quote.

Do you know what is being referred to there?

MS. BROWN: Objection.

MR. MOSCATO: I'm going to object too. I don't really understand the question.

Do your best, Don. If you understand it, answer it.

THE WITNESS: My recollection would be that it relates to financial performance again, of the company, and the company's financial performance in 1997 was not going to be repeated, I guess, I don't know for how long, but any in the current period.

BY MR. JOHNSON:

Q At least as of 1998?

MS. BROWN: Objection.

A As of the period when Mr. Fannin talked with Mr. Gluck about it.

Q And then the last bullet point on that page states: Gluck was, quote, leaned on, close quote, by Kersh to make the targeted numbers.

Mr. Gluck was the comptroller of the company. Is that correct?

A Yes, he was corporate comptroller.

Q And Kersh was the chief financial officer?

A Yes.

Q Was their audit significance to the fact that the CFO leaned on the comptroller to make the targeted numbers?

MR. MOSCATO: Objection.

MS. BROWN: Objection.

THE WITNESS: The purpose of the interviews was to determine if there were -- was matters affecting the company's financial statements that might give rise to the need for restatement. So there could be concern if there was -- if that meant there was manipulation of the financial statements. I can only say what was quoted here.

BY MR. JOHNSON:

Q So this is information that may be of interest to Andersen as part of the additional procedures?

A Yes.

Q On the next page, the second bullet point states: Gluck thought the 1998 projected numbers were totally unrealistic.

Do you see that?

A Yes.

Q Again, is that information that was of potential significance as part of the additional

NOT A CERTIFIED COPY

procedures?
MS. BROWN: Objection.
A It was significant that it would alert us to the potential to want to do additional work to see if we would find misstatements of the 1998 second quarter results.
Q The next bullet point indicates that you obtained information that the company was, quote, operated for the moment, close quote.
Do you know what the reference to "operated for the moment" means?
MS. BROWN: Objection.
A No, I don't recall.
Q Did it have anything to do with the likelihood that the company would be sold?
MR. MOSCATO: You know, I object. This is double hearsay. I don't know how you can expect him to interpret what Gluck told Fannin. It's just an unfair question.
MR. JOHNSON: I'll strike it then.
BY MR. JOHNSON:
Q Did you have any reaction to the information that the company was operated for the moment?
A I think a number of people that we spoke with at Sunbeam indicated that the company was focused on

trying to sell the company back in 1997, not that there's any secret that that's what Dunlap was trying to do, openly market it. And that could have -- if he was trying to sell the company, and improve the earnings and reduce expenses, maybe properly or improperly, that could have significance on the additional procedures being performed.
Q If you would turn to the next page for me. In the middle of the page there's a bullet point that states: March 19, 1998, press release. Do you see that? And then there's about a half dozen sub bullet points under that heading.
I'm afraid you're one page too far.
A I'm on the wrong page. I'm sorry.
Q So the middle of the page, there's a bullet, March 19, 1998 press release.
A Yes.
Q And then a number of sub bullets.
A I see that.
Q If you'd be kind enough to read through those for me, I'll have a handful of questions on those bullets.
A Okay.
Q The first sub bullet there states: Morgan Lewis said that Arthur Andersen raised an issue

regarding disclosure of the reduced first quarter 1998 sales.
Should that be a reference to Morgan Stanley, rather than Morgan Lewis?
MS. BROWN: Objection.
A In looking at this again, I believe it should be Morgan Stanley.
Q Morgan Stanley was the investment banker on the zero coupon bond?
A Yes. I don't believe -- Morgan Lewis is a law firm. I don't believe there were involved. That's my recollection.
Q Right. Okay.
Several of these bullet points indicate that Mr. Uzzi and Dunlap are giving assurances that the first quarter projections could still be met. Do you see that?
A Yes.
Q But the last bullet point on that page indicates that -- it is the last sentence of the last bullet point: Arthur Andersen LLP wanted disclosure in the press release of the company's inability to achieve sales equal to the level of the first quarter of 1997. Do you see that?
MR. MOSCATO: Well, it says that Fannin

confirmed that.
MR. JOHNSON: That Arthur Andersen wanted that disclosure.
MR. MOSCATO: Right.
MR. JOHNSON: Correct.
BY MR. JOHNSON:
Q Do you know whether Arthur Andersen wanted that disclosure?
MS. BROWN: Objection.
A I don't have any --
MR. MOSCATO: Penny for your thought.
THE WITNESS: I don't know that I had any firsthand knowledge about that. I've heard a lot about it over the period of the work that I did, but I'm not -- wasn't part of that process.
BY MR. JOHNSON:
Q At least of the date that you wrote this memorandum on July 22, 1998, you had some information that Arthur Andersen wanted disclosure in the press release related to the company's inability to achieve sales equal to first quarter of 1997?
MS. BROWN: Objection.
MR. MOSCATO: I'm confused. I mean, that's what the interview memo says Fannin

NOT A CERTIFIED COPY

told him.
MR. JOHNSON: Right.
MR. MOSCATO: Is that the case, Don?
THE WITNESS: Yes.
MR. JOHNSON: Is that the first you'd heard of it?
MR. MOSCATO: If you remember.
THE WITNESS: I just don't know. I may have heard it before then, I may not have. I just don't know the exact timing of when I heard about that.
BY MR. JOHNSON:
Q Do you have any reason to believe that what Mr. Fannin told you about Arthur Andersen's wishes is incorrect?
A I don't have any knowledge that it was incorrect.
Q As far as you know, in fact, it is correct?
MS. BROWN: Objection.
MR. MOSCATO: I object to that.
MR. JOHNSON: It's just a question.
MR. MOSCATO: It's argumentative. There's a long, involved record in this case that Andersen didn't even know the press release was going out, so, you know --

THE WITNESS: Can you repeat the question?
MR. JOHNSON: If I can remember it.
BY MR. JOHNSON:
Q The question is whether you have any information indicating that what Mr. Fannin told you about Arthur Andersen's wishes is incorrect.
MS. BROWN: Objection.
A Well, with some subsequent knowledge, you know, about whether that should be press release or offering memorandum, you know, maybe my -- maybe the way I wrote this is not entirely accurate. I don't know. I don't have any specific recollection.
Q So you don't know one way or the other whether what Mr. Fannin told you is correct?
A At the time I wrote down what my recollection was after the interview of what he had said. Whether I got it right or wrong is, you know, I don't know. It's possible that it is wrong, because it's -- I know subsequently the issue of the press release and the offering memorandum are two separate issues I may have confused.
MR. MOSCATO: He may have confused it too. Right?
THE WITNESS: He may have confused it

also.
BY MR. JOHNSON:
Q Did you obtain any information as to whom Arthur Andersen expressed its desire for the disclosure that Mr. Fannin is referring to in the last bullet point on page 62500?
MS. BROWN: Objection.
A In connection with the interview?
Q Or otherwise.
MR. MOSCATO: I don't mean to butt in. Would it be maybe more efficient just to ask him what his understanding of the whole process was? Because it's kind of picking around here, and you're probably never going to get his understanding of what happened. If you want to get his understanding of what happened, you may just want to ask him what he understands happened.
MR. JOHNSON: I think we're going to get to that, in summary fashion.
MR. MOSCATO: Okay. But it might put things in context. I'm not telling you how to do your deposition, I'm just concerned that the record be a fairly accurate record.
MR. JOHNSON: No, I appreciate that, and

I appreciate your suggestion. We're going to move through this as efficiently as we can.
And, for the record, we've been speaking, at this point, strictly about the interview of David Fannin memorandum.
BY MR. JOHNSON:
Q I'm going to move the next one here. If you could turn to, I believe it's tab four, for me. Tab four of Exhibit 21 is a two-page document, Bates CPH 62573 and 574. Could you identify this document for me, Mr. Denkhaus?
A Yes. This is a copy of the memorandum that I prepared after the interview that we conducted with Steve Dalbert on July 16th, 1998.
Q And Mr. Dalbert was the assistant treasurer at Sunbeam?
A Yes.
Q The second-to-last bullet point, major bullet point, I should say, on the first page, states, quote: Dalbert indicated there was significant pressure by Russ Kersh and Don Uzzi on every sale and marketing person to make the revenue projection.
Do you see that?
A Yes.
Q Can you tell me why you determined that

NOT A CERTIFIED COPY

information should be included in your memorandum?
A Because it left a potential that the salespeople might be entering into sales that did not meet either generally accepted accounting or the company's normal process, normal sales methods in order to achieve the targeted results.
Q Did you ever hear anything in the course of your interviews to the effect that the atmosphere at Sunbeam was to make your number or get fired?
A I remember hearing that. I can't recall specifically who may have told me that.
Q Did you come across any information as part of the additional procedures indicating that Morgan Stanley had ever attempted to speak with Mr. Steven Dalbert?
MS. BROWN: Objection.
A Not that I recall.
Q If you would be good enough to turn to tab five for me in your Exhibit 21. And tab five of Exhibit 21 is a two-page document bearing Bates stamp CPH 62576 through 62577.
Mr. Denkhaus, is this an interview you prepared concerning your interview with Janet Kelly?
A Yes.
Q Ms. Kelly was the general counsel at Sunbeam?

A She had recently been promoted, is my recollection. David Fannin had been the general counsel, and she had recently been promoted.
Q The last bullet point under the first major bullet point, so that's six bullet points from the bottom, if you're counting, states that there, quote, was a substantial push, end quotes, by Dunlap and others to make the revenue earnings projections.
Do you see that?
A Yes.
Q Did you obtain any information from Ms. Kelly as to when that push had occurred?
MS. BROWN: Objection.
A I don't recall.
Q Was this push in connection with Mr. Dunlap's desire to sell the company?
MS. BROWN: Objection.
A I don't recall the specifics of the discussion with Janet Kelly on that topic.
Q Did you come across any information during the additional procedures indicating that Morgan Stanley had attempted to contact Ms. Kelly?
A No.
Q If you'd jump ahead to tab seven for me in your binder, Exhibit 21. Tab seven is a

three-page document with Bates stamps CPH 62584 through 62586. Do you see that?
A Yes.
Q Is this also a memorandum that you prepared?
A Yes.
Q Concerning your interview with Kyle Sinclair?
A Yes.
Q The last major bullet point on the first page indicates that the company was, quote: Very aggressive in obtaining sales orders from customers, particularly at the end of the fourth quarter of 1997.
Do you see that?
A Yes.
Q Could you again tell me why that's information that you thought appropriate to include in this memorandum?
A Because it potentially could affect the revenue recognition that the company followed in the fourth quarter of 1997, potentially sales that didn't meet generally accepted revenue recognition.
Q If you'd flip to the last page of this memorandum for me. The second major bullet point states, in quotes, initiatives for success in 4Q97, end of quotes. Do you see that?
A Yes.

Q What is that a reference to?
A As I understand it, the company had a procedure in place that was followed, at least in the fourth quarter of '97 -- I don't recall about other periods -- where they would identify the results that had been achieved to date, and then have a list of other potential adjustments that could be made to the financial statements, potentially made to the financial statements, that could increase those results. And that was used as a document for, I'll say for planning purposes, as to the results for the -- at least for this quarter. I don't know about other quarters.
Q Under that "Initiatives for Success Bullet" point, about two-third of the way down, there's a reference to Dixon Thayer. Do you see that?
A Yes.
Q And it states here that Mr. Thayer, quote: Did not agree with Don Uzzi regarding the company's approach to accelerate sales and income.
Do you know what the reference there to accelerating sales and income is?
MS. BROWN: Objection.
A Well, I don't know what Mr. Sinclair would be talking about, but the company had what was called the early buy program, which would --

NOT A CERTIFIED COPY

MR. MOSCATO: Well, Don, the question was what was Mr. Sinclair talking about. I think that's a fair interpretation of the question.
MR. JOHNSON: Well, let me strike it and give you a new one and see if we're all on the same page.
BY MR. JOHNSON:
Q When you wrote this phrase, "accelerate sales and income," did you have in mind what was being referred to?
MS. BROWN: Objection.
A I don't recall.
Q At any point did you gain information leading you to believe that the company had sales practices that could potentially accelerate the recognition of income into a quarter earlier than it otherwise would be recognized?
MS. BROWN: Objection.
A The company had an early buy program which potentially could accelerate sales into earlier quarters. Those sales still may be appropriate under generally accepted accounting principals, but would accelerate those sales. And there was disclosures in the company's originally filed form 10 K for the 1997 year indicating that there were, that this early buy

program did exist.
Q Putting aside the accounting propriety of accelerated recognition of income, did you gain any understanding as to why Mr. Thayer disagreed with the approach to accelerate sales and income?
MS. BROWN: Objection.
A I mean, no, I don't have any specific knowledge of what his concern was.
Q The next three bullet points underneath the Dixon Thayer bullet point, if you'd look at those for me for a second. And I'll read them, just for the record:
There was an atmosphere of constant pressure to make the numbers, parenthesis, revenue and earnings per share, close parenthesis.
Next bullet point: There was a push to make sales or lose your job.
Next bullet point: The company was run on a short-term basis.
Can you tell me, Mr. Denkhaus, why you thought that was information that ought to be included in your memorandum concerning your interview with Kyle Sinclair?
MS. BROWN: Objection.
A For the reasons I already stated, that if

there were sales that were potentially not meeting generally accepted accounting principles that were recorded in earlier period, then we'd have to look at those to see if they should be subject to restatement. So there was a concern about sales, as well as earnings, so there could be impact of items other than revenue that affect the earnings of the company.
Q Doesn't every public company have pressure to make numbers?
MR. MOSCATO: I object to that, but do your best, Don.
THE WITNESS: Well, that's a pretty general statement.
MR. JOHNSON: Sure.
THE WITNESS: When you say "every company" --
BY MR. JOHNSON:
Q Every public company.
A I don't know if every public company. There are some companies that are public that, you know, are not -- are not under pressure to make numbers, because maybe they're in a development stage or whatever, so I don't know if I could make that statement as emphatically as do you.
Q That's fine.

I guess what I'm getting at is did you find something potentially out of the ordinary with respect to the pressures that you were hearing about at Sunbeam.
MS. BROWN: Objection.
A In my opinion, I did. I found that there was a very strong emphasis on revenue and earnings, and it came from the top of the organization. And just about all of the people that would be involved in the financial statements or in top management seemed to feel that pressure, and talk about it, both in these formal interviews and outside of the formal interviews. So I thought that was something that I hadn't experienced before.
Q And at that point in time you'd been an auditing professional for almost 30 years?
A I guess it would be 28 years at that time.
Q Now, in connection with the additional procedures, did you come across any information indicating that Morgan Stanley had ever tried to contact Kyle Sinclair?
A No.
Q Look at tab eight for me. It's one of the longer memoranda.
MR. MOSCATO: Are you ready, Don?

NOT A CERTIFIED COPY

THE WITNESS: Ready.
BY MR. JOHNSON:
Q For the record, tab eight is comprised of a document bearing the Bates stamp CPH 62588 through 62602.
Mr. Denkhaus, this is a memorandum that you prepared, with attachments, on July 24, 1998. Is that correct?
A It's a six-page memorandum that I prepared, and then there are attachments to that memorandum that I did not prepare.
Q Okay. Thank you.
And this is an interview summary of Deborah McDonald. Is that correct?
A Yes.
Q Do you know what Ms. McDonald's title was at Sunbeam?
A I don't recall. I was just looking to see it might be here in this memorandum, but I don't recall it.
Q I didn't see it, which is why I was asking.
Do you have a sense of what her job responsibilities were at Sunbeam in the '97, '98 time frame?
A Only what's indicated here in the second and

third bullet point, fourth bullet point, on CPH 62588.
Q You're referring to the text that she was put in charge of corporate planning, which included forecasting, budgeting, et cetera?
A Yes.
Q If you could flip for me to the fourth page of your memorandum, which has the Bates stamp CPH 62591, and take a second to read that page, I'm going to ask about actually both that page and the next page in some detail.
A Okay.
Q The first bullet point on page 62591 concerns the first quarter 1998 sales forecast. Do you see that?
A Yes.
Q And in connection with your interview with Ms. McDonald, you obtained information that she believed those projections could not be made? Is that correct?
MS. BROWN: Objection.
A Whatever is written here in the third bullet point is the exact words that would be my -- the way I wrote it.
Q That third bullet point, you're referring to the one that states, quote: There was no way the

company could ever make $2.20 per share for 1998?
A Yes.
Q Under the next bullet point, major bullet point, which is entitled, "March 18, 1998, conference call prior to the March 19 press release," I believe you testified earlier that to your knowledge Andersen did not see that press release before it went out. Is that correct?
MS. BROWN: Objection.
A That's my understanding.
Q The last sub bullet point there states, quote: There was no discussion of profit margin or first quarter 1998 earnings per share during this conference call.
Do you see that?
A Yes.
Q The conference call that is being referred to there is a conference call involving Morgan Stanley, Morgan Stanley's lawyers, Mr. Fannin, Mr. Uzzi. Is that correct?
MS. BROWN: Objection.
A Yes. I mean, that's what's written here.
Q Do you recall asking Ms. McDonald whether she had a reaction to the fact that there was no discussion concerning first quarter 1998 EPS?

A No.
Q Did you have a reaction to obtaining information that that subject wasn't discussed?
MS. BROWN: Objection.
A I don't recollect any reaction to that.
Q Can you tell me why you thought that was information that warranted inclusion in your memorandum, which is tab eight of Exhibit 21?
A I can't recall specifics on that. There are things throughout the memorandum that were indicated during the interviews that would have been potentially noted, because they were discussed at the interview, that we put into the memorandum that really have no direct bearing on the additional procedures that we did.
Q And this particular bullet point, sitting here today, you can't tell one way or the other whether that's a bullet point that is or is not of potential significance to the additional procedures?
A I don't have any recollection one way or the other.
Q The next major bullet point indicates that Ms. McDonald provided information to the effect that, quote: Sales were being made at a loss or low margin, just to make the first quarter 1998 sales projections.

NOT A CERTIFIED COPY

MR. MOSCATO: I object. It says "some sales."
MR. JOHNSON: Oh, okay. Thank you. Let me make a clean record.
BY MR. JOHNSON:
Q I'll just read the bullet point. The bullet point states, quote: McDonald indicated some sales were being made at a loss or low margin, just to make the first quarter 1998 sales projections.
Can you tell me why that bullet point was included in your interview summary?
MS. BROWN: Objection.
A Because it could potentially impact the, both the revenue and potentially the net income of the company indicating that they're trying to sell goods at a loss, and that could impact the accounting so that there should be recognition of that loss that might affect not only those goods but other goods still in inventory, and then the implication if the company is trying to make revenue numbers, how are they going to make the net income by selling at a low margin or loss. So there could be potential for understatement of expenses that could affect net income.
Q The last bullet point on this page, 62591, indicates that Ms. McDonald disagreed with the

statement on the press release that the company would be able to match first quarter 1997 revenue and earnings. Do you see that?
A Yes.
Q Did you ever learn why Ms. McDonald didn't express her disagreement to that press release within the company?
MR. MOSCATO: Why she didn't?
MR. JOHNSON: Right.
MR. MOSCATO: I object.
THE WITNESS: I don't recall whether she did or did not express her concern.
BY MR. JOHNSON:
Q Flip over to the next page for me. The first major bullet point states, quote: McDonald indicated that the only contact the investment bankers, parenthesis, Morgan Stanley, close parenthesis, had with the company was through Kersh and Goudis.
Who was Mr. Goudis?
A I believe he was the chief operating officer at a point in time, in maybe 1997. I don't know when he left the company, but he was not there when I did any of the procedures.
MR. MOSCATO: Don, was he chief operating officer or was he investor relations guy?

THE WITNESS: Your recollection --
MR. MOSCATO: I'm just asking.
THE WITNESS: No, I think your recollection may be better than mine. I think I am confusing that.
I am sorry. I am confusing that with Mr. Uzzi, who was the chief operating officer. So I believe you are correct. I think he was investor relations.
MR. JOHNSON: Let me make a clean record so there's no objection of a nonparty asking a question.
BY MR. JOHNSON:
Q Do you have a recollection, refreshed by your counsel, or not, as to what Mr. Goudis' job function was?
A Well, Mr. Goudis, I believe, was no longer with the company when I was involved there, so I'm not sure, but my recollection was that he was involved in investment -- investor relations.
Q Did you have any reaction to Ms. McDonald's statement that Morgan Stanley had contacts only with Kersh and Goudis?
MS. BROWN: Objection.
A I don't recall any reaction, or I don't recall

if I had a reaction.
Q Now, under that major bullet there's three small bullets, if you would read those for me.
A Read them into the record or just read them?
Q Just read them to yourself.
MR. MOSCATO: Just read them to yourself.
THE WITNESS: Okay.
BY MR. JOHNSON:
Q Again, why was this information that was potentially pertinent to your additional procedures?
MR. MOSCATO: Objection.
A As I indicated before, in reading this I'm not sure this was pertinent to our additional procedures, but was information that we learned during the interview with Debra McDonald, and therefore documented.
Q Did you have any concern or reaction relating to the information Ms. McDonald provided that's reflected in these three sub bullet points?
MS. BROWN: Objection.
A I don't know that I recall any specific reaction, other than this is consistent with the other information about potential for aggressive potentially improper revenue recognition or understatement of expenses that relates to the financial statements.

NOT A CERTIFIED COPY

This information relates to projected future financial information, but just the statements are consistent in terms of potential management of revenue and expenses.

Q Did you, as part of the additional procedures, ever come across any information indicating how Morgan Stanley came to use a dollar eighty per share as part of their projection?

MS. BROWN: Objection.

A No.

Q Under the second major bullet point on 62592 there's a sub bullet point that states, quote: She was never asked about the results for the first quarter of 1998.

Did you ask Ms. McDonald whether she was surprised that she was never asked for the results of the first quarter of 1998?

A I don't recall asking her that.

Q Do you recall her saying that she was surprised that no one asked her that information?

A I believe the reason that I put this in the interview notes is because of her reaction, but I don't specifically -- I don't remember asking her any follow-up questions regarding that topic.

Q But your perception, having interviewed her,

was that this was information which she believed was significant?

MS. BROWN: Objection.

A I don't know how significant she thought it was. She brought it to our attention, I documented it in the memorandum.

Q And no follow-up questions with her?

A To the best of my recollection, no follow-up questions.

Q Did you yourself draw any conclusions as to Sunbeam's projections for 1998, based on what you'd learned from Ms. McDonald?

MS. BROWN: Objection.

A No, I did not really do any work relating to the projections for 1998.

Q Did you draw the conclusion at least that Ms. McDonald wasn't behind the projections for 1998?

MS. BROWN: Objection.

A I believe that's what she indicated and is documented in this memorandum.

Q In connection with the information you were obtaining from Ms. McDonald, did you form any opinions as to who, if anyone, within the company was behind the company's 1998 projections?

MS. BROWN: Objection.

MR. MOSCATO: I'm sorry. I don't know exactly what you mean by "behind." I don't know if Don knows.

If you know what he means.

Do you mean who recreated them, who was pushing --

MR. JOHNSON: That's a good objection. Thank you. Let me rephrase the question.

BY MR. JOHNSON:

Q Based on information you were obtaining from Ms. McDonald, did you form any opinions as to who within the company was supporting the projections that the company was releasing?

MS. BROWN: Objection.

A I believe Mr. Kersh, the chief financial officer, would have been the one who had responsibility for the overall company projections. I believe that's consistent with the interview notes.

Q Anybody besides Mr. Kersh?

A I don't know Mr. Dunlap's -- I'm sure was, approved of whatever the results were in those projections, but I don't know what involvement he had with the preparation of any projections.

Q Let's skip ahead here to tab 13. Tab 13 of CPH Exhibit 21 is a two-page document, with Bates stamp

CPH 62642 through 62643.

Mr. Denkhaus, is this document a memorandum prepared by Phil Harlow concerning an interview by Mr. Harlow, you and others of Tom Hartschorne?

A Yes.

Q And Mr. Hartschorne was in charge of internal auditing at Sunbeam. Is that correct?

A Yes.

Q Under the heading "Bill and Hold," first, for the record, can you tell us what bill and hold refers to there?

A Yes. Bill and hold refers to making sales to a customer where the actual goods are retained by the seller and under the seller's control to be shipped at a later date to the customer pursuant to the customer's order.

Q The second bullet point under the "Bill and Hold" heading states: Other than being a business problem, Mr. Hartschorne doesn't see anything wrong from an accounting standpoint.

Do you know what the business problem was that Mr. Hartschorne recognized with respect to the bill and hold sales?

MS. BROWN: Objection.

A I can't recall anything specific. I could

NOT A CERTIFIED COPY

speculate, but I don't want to do that, so I'm just --
MR. MOSCATO: I don't want you to.
Q No one wants you to speculate.
A Okay.
Q Mr. Hartschorne did indicate his view that bill and hold could hurt subsequent sales for the company. Is that correct?
MS. BROWN: Objection.
A I don't see that here. Am I missing something?
Q Let me get you a more precise question.
A Okay.
Q If you look a little further down under the topic "Accelerated Shipping Dates."
MR. MOSCATO: I like this. "He chanted his description." I wish I had been there.
BY MR. JOHNSON:
Q Under the "Accelerated Shipping Dates" heading, it states, quote: Tom thought that this complied with GAAP but thought it hurt subsequent sales.
Is this the issue that we talked about earlier, about accelerating sales and revenue?
MS. BROWN: Objection.
A It's a sub component of acceleration of sales

and revenues. It relates to a purchase order that the company might have got that said I'd like to have the goods shipped on January 10th, and instead they shipped them on December 31st, and accelerated the sales.
Q In the example you give, that would also permit recognition in the fourth quarter as opposed to the first quarter. Is that correct?
A I don't know if GAAP is clear as to that. Usually the revenue recognition is triggered by the shipment of the goods, so under that scenario, the revenue would be properly recognized.
Q Let me ask something less esoteric for you then. In the example you gave, Sunbeam's practice at the time was to record a sale in the fourth quarter rather than in the first quarter. Is that correct?
MS. BROWN: Objection.
MR. MOSCATO: I object.
THE WITNESS: In the example I just gave you, that would result in a sale in the fourth quarter versus the first quarter. That's what I stated.
BY MR. JOHNSON:
Q And Mr. Hartschorne's view was that that practice would then hurt you first quarter sales using the dates in your example?

MS. BROWN: Objection.
A Yes. It's accelerated the sales by one quarter. And do more sales in the first quarter, it would hurt the overall results the first quarter.
Q As part of the additional procedure, did you come across any information indicating that Morgan Stanley had attempted to contact Mr. Hartschorne at any time?
A No.
Q Making progress here. Tab 18 of Exhibit 21. If you could look at that for me.
MR. MOSCATO: 18?
MR. JOHNSON: Yes.
MR. MOSCATO: This is Chuck Myers?
MR. JOHNSON: Exactly.
BY MR. JOHNSON:
Q A couple of questions on the second page of this document. This document bears, it's a two-page document, it bears Bates state CPH 62656 and 62657. I recognize that you are not the author, nor a noted participant in the interview described in this two-page document. That said, do you recall reviewing this memorandum in your capacity as leading the additional procedures?
A I did review it. I don't have any specific

recollections of that review.
Q You don't remember what day it was or where you were or any of that type information?
A That's true.
Q Did you take note of Mr. Myers' quantification of the effect of bill and hold as stated in the last bullet point on the second page, CPH 62657?
MS. BROWN: Objection.
A We had done extensive procedures relating to bill and hold, and did our own independent analysis, so I don't really know that I specifically gave thought to that, the numbers stated at the bottom of that second page of the interview notes.
Q As you sit here today, do you have any view on whether Mr. Myers' estimate that 18 to 20 million dollars in sales were moved from '98 to '97 is accurate?
A I don't have recollection of those numbers.
Q Just above the "Bill and Hold" line on that same page, 62657, there's a bullet point that reads, quote: Myers knew that 1998 sales goal was not attainable in December -- and then something is stricken, and written in by hand -- 1997. He indicated that all salespeople knew.
As part of the additional procedures, did you

NOT A CERTIFIED COPY

come across any salespeople who believed that the 1998 sales goals were attainable?
MS. BROWN: Objection.
A We didn't conduct extensive interviews with salespeople, but I don't have any knowledge of anybody that did or did not say that.
Q Did you come across any information indicating that Morgan Stanley had tried to contact Mr. Myers in connection with any of its work?
MS. BROWN: Objection.
A No.
Q We can skip over to tab 19 of Exhibit 21. This is the interview of Lee Griffith. Tab 19 of Exhibit 21 is Bates stamped CPH 62659 through 62666. This is a memorandum that you prepared, Mr. Denkhaus?
A Yes.
Q And it's concerning your interview with Lee Griffith. Is that correct?
A Yes.
Q And Mr. Griffith was the vice-president of sales at Sunbeam. Is that right?
A Yes.
Q If you flip to what is the sixth page of your memorandum. The initial numbering is poorly copied, and I apologize for that. It's Bates page 62664. The

last dash mark on that page, which is under the "M Block" heading -- actually, let's back up. What does M Block refer to?
A M Block was one of the customers of Sunbeam.
Q The last bullet point states, dash, "Griffith said he learned about the guaranteed sale in March or April of 1998."
MS. BROWN: Objection. Not what it says.
MR. JOHNSON: Oh, I'm sorry. I'm inserting words.
BY MR. JOHNSON:
Q It states, dash, "Griffith said he learned about the guaranteed in March or April 1998."
Did you inadvertently omit a word there when you drafted this memorandum?
A Yes. It should have been guaranteed sales.
Q Thank you.
The bullet continues: This sale and other guaranteed sales were made because of tremendous pressure put on the salesmen to make the budgeted sales numbers.
Do you know which quarters the guaranteed sales referred to there occurred in?
MS. BROWN: Objection.
A The M Block sale was during the fourth quarter

of 1997. There may have been some sales during the first quarter, but I don't recall that. There were sales during the fourth quarter.
Q Do you have a recollection as to any other guaranteed sales, when they occurred?
A There were a number of guaranteed sales. They ended up as part of our restatement adjustments to the extent that the company hadn't already made adjustments. I think there was one guaranteed sale they did actually make an adjustment for.
Q So the quarters in which those guaranteed sales were initially recognized would be reflected in your restatement recommendations?
A Yes.
Q Turn to the last page of your memorandum, which is Bates 62666. The second-to-last bullet point states: On November 20, 1996, Griffith told Uzzi that he did not think the company could achieve its fourth quarter 1997 sales budget.
Should that be in reference to November 20, 1997?
A In looking at it now it doesn't make sense to be 1996. It seemed 1997 -- although in reading this out of context, I have no idea what that date refers to, why Mr. Griffith made reference to that particular

date.
Q But sitting here now you think it's probably a typo, it should be '97, not '96?
A That would be my best judgment.
Q Under the last bullet point there are three numbered paragraphs. Do you see those?
A Yes.
Q The last bullet point refers to the company's problems in achieving 1998 sales. Under numbered paragraph one, Mr. Griffith indicates that between 50 and 60 million dollars in revenue was recognized in 1997, resulting in a loss of 1998 sales.
Do you see what?
MS. BROWN: Objection.
A Yes.
Q As you sit here, do you have any opinion as to whether Mr. Griffith's estimate of 50 to 60 million dollars in revenue was accurate?
A Not specifically. It's in the magnitude of being correct. I think there was some disclosure even in the originally filed financial statements as to the amount of the so-called early buy program.
Q If you could move to tab 21 for me. Tab 21 of Exhibit 21 is Bates stamped 62672 through 62677. And this document concerns the interview of Bill

NOT A CERTIFIED COPY

Bloomfield.
Do you see that, Mr. Denkhaus?
A Yes.
Q This interview memo was neither authored by you nor does it refer to an interview in which you participated. Is that correct?
A Yes.
Q Do you recall reviewing this memo in connection with leading the additional procedures?
A In a very indirect way I remember looking at this memo, but how much time or the circumstances or when it occurred I don't recall.
Q On the second page of this memorandum -- 62673 is the Bates stamp -- right in the middle of the page it states: The company was managed based on EPS targets.
Do you see that?
A Yes.
Q Had you heard that information from other employees besides Mr. Bloomfield?
MS. BROWN: Objection.
A Well, first of all, I didn't hear it from Mr. Bloomfield. I wasn't at the interview. And I'm not sure exactly what that statement says, "The company was managed based on EPS targets." So I find that

wording somewhat ambiguous to me.
Q Looking a little further up, on that same page, there's a statement, quote: Don Uzzi's philosophy, dash, load the pipeline, and we'll deal with the customers later.
What does "the pipeline" refer to there?
MS. BROWN: Objection.
MR. MOSCATO: If you know, Don.
THE WITNESS: Well, "pipeline" refers to the sales that were being recorded to a customer, and I guess the pipeline would be the continual sales to a particular customer. And if they loaded it, meaning they would front-end load the stream of sales so they got earlier revenue recognition.
BY MR. JOHNSON:
Q At the bottom of that page, 62673, and indeed throughout this memo, there's references to pulling forward. Is that what you've just referred to there? In other words, is it what we've talked about already today, the acceleration of sales?
A The acceleration of sales, including early buys which were referred to as bill and hold, the acceleration of the date of -- when the customer asked for receipt, shipping earlier than that, and

potentially other mechanisms used by the company to accelerate sales.
Q And then on the last page of this memorandum, at Bates 62677, the top states: As early as September 1997 the sales org knew that the stores were stuffed with product; e.g., Wal-Mart had 42 weeks of product.
This is an example of loading the pipeline that we were just talking about?
MR. MOSCATO: Objection.
MS. BROWN: Objection.
BY MR. JOHNSON:
Q Is that correct?
A That's what I would interpret this to mean.
Q Now, as part of the additional procedures, did you come across any information indicating that Morgan Stanley had attempted to contact Bill Bloomfield in connection with its work?
A No.
MS. BROWN: Objection.
Q Tab 25, if you could. Tab 25 of Exhibit 21. And I'm just going to ask about the last page, if you want to take a look at that.
For the record, tab 25 of Exhibit 21 bears the Bates stamp CPH 62688 through 62691.

MR. MOSCATO: Okay. Are you there, Don?
THE WITNESS: Yeah.
BY MR. JOHNSON:
Q This is a memorandum written by Mr. Pastrana to the files, dated August 30, 1998, concerning an interview with Kyle Kaiser. Is this what this document appears to be?
A Yes.
Q And, again, this is one of the memoranda that you neither authored, nor does it concern an interview in which you participated. Is that correct?
A Yes.
Q But it's your belief that you would have, at least in some manner, reviewed this memorandum in connection with leading the additional procedures?
A Yes.
Q In the middle of the last page of this memorandum, which is Bates stamped 62691, there's a sentence -- this is under the heading, quote, pressure to make sales numbers at end of Q1 98 -- there's a sentence that states: They, parenthesis, top management, close parenthesis, were planning to sell the company. Anyone hired after October of 1996 was told this is an 18-month deal, and when we sell, you will be fully vested.

NOT A CERTIFIED COPY

Do you know what the reference to "an 18-month deal" is in this memorandum?
MS. BROWN: Objection.
A When Al Dunlap was brought into the company, it's my understanding that he was to turn around and improve the results of the company, then he would most likely sell the company. That's what they had determined was an 18-month time frame in order to accomplish that.
Q The next bit of text provides, in quotes: Nobody would put up with this bull if not for the options.
When you reviewed this memorandum, did you have any sense of what Mr. Kaiser was referring to when he used the phrase "this bull"?
MS. BROWN: Objection.
MR. MOSCATO: I object. That calls for speculation.
THE WITNESS: Yeah, I don't know what that specifically refers to.
BY MR. JOHNSON:
Q Did you have a general sense of what he was talking about?
MR. MOSCATO: Same objection.
MS. BROWN: Objection.

A I wasn't at the interview, so I really can't comment.
Q Were you confused by this statement in the memorandum?
MR. MOSCATO: Objection.
A I wasn't confused. A lot of people were not happy with Al Dunlap's management style, so there was -- this statement would not be inconsistent with other statements I heard from others about management, but I don't know what -- whether Mr. Kaiser is referring to that or not, so I wasn't concerned about this statement when I saw it.
Q As part of the additional procedures, did you come across any information indicating that Morgan Stanley had attempted to contact Mr. Kaiser as part of the work it was performing?
A I'm not aware of any.
(Recess taken.)
BY MR. JOHNSON:
Q Mr. Denkhaus, if I could have you turn to tab 26 of Exhibit 21. It's the interview with -- Scott Yales' memorandum.
For the record, tab 26 of Exhibit 21 bears the Bates stamp CPH 62693 through 62697.
Mr. Denkhaus, does this appear to be a

memorandum authored by Denus Pastrana on September 21-one, 1998, concerning an interview with Scott Yales?
A Yes.
Q And you did not participate in that interview, did you?
A That's correct, I did not.
Q I thought you indicated earlier that two Andersen people attended each of the interviews. Is that just a general practice or --
A There were a number of interviews. They were divided up. The more important ones were the ones that I was referring to that generally had two Andersen personnel, and generally Sunbeam's counsel wanted to also attend those interviews. The -- but there were some other interviews, such as this one, that there was only one person attending, an Arthur Andersen representative.
Q Did you review this memorandum, at least to some degree, as part of leading the additional procedures?
A Yes.
Q If you'd look at the last page of the memorandum, before the single-page attachment, under the heading "1998 Acquisitions," there are eight

numbered paragraphs. Paragraphs five and six refer to a schedule for the first quarter forecast. Are you familiar with the schedule referred to there?
MS. BROWN: Objection.
A I remember seeing some schedules in connection with the work. There were supportive of the company's press release, but I don't have specific recollections of what schedule he's referring to.
Q Paragraph No. 6, the schedule was, quote, absolutely, close quote, a reach.
Did you have any reaction to that statement when you reviewed this memorandum in connection with the additional procedures?
MS. BROWN: Objection.
A I don't have any specific recollection, but this is dealing with projections, and we were dealing with reviewing the actual reported results.
Q Now, in connection with the additional procedures, did you come across any information indicating that Morgan Stanley had tried to contact Mr. Yales in connection with this Morgan Stanley's work?
MS. BROWN: Objection.
A No.
Q If you would jump up to tab 78 of Exhibit 21

NOT A CERTIFIED COPY

for me, please. Tab 78 of Exhibit 21 is a two-page document, bearing Bates stamp 62724 through 62725.

Could you identify this document for me, Mr. Denkhaus?

A Yes. This is a copy of a memorandum that was prepared by Phil Harlow, summarizing the interview that Mr. Harlow and myself and Rita Gordon conducted with Dixon Thayer on August 6, 1998.

Q And you conducted that interview by telephone. Is that correct?

A Yes.

Q The last bullet point on the first page states that Mr. Thayer was at Scott Paper. Was there any particular reason why that fact was noted in this memorandum?

A Well, the significance of Scott Paper is that's where Al Dunlap had worked prior to coming to Sunbeam.

Q In the same bullet point it stated that the approach at Sunbeam was, quote, sell the company, close quote. Is that part and parcel of the testimony you've already given as to the expectation that the company would be sold within 18 months of Mr. Dunlap starting?

MS. BROWN: Objection.

A That would be my understanding of what he was referring to.

Q And then turning over to the next page, the top bullet point states, quote: New hires were told that the company would be sold by December 1997, and when it didn't happen, that is when games with numbers began.

Mr. Thayer is referring to financial statement fraud when he's referring to games with numbers? Is that correct?

MS. BROWN: Objection.

MR. MOSCATO: Objection.

A I'm not sure what Mr. Thayer was referring to. It doesn't necessarily mean financial statement fraud. It may refer to the sales policies that we've been talking about, but I don't -- can't really comment exactly what he was referring to.

Q Do you remember Mr. Thayer making a statement to the effect that games with numbers began during your interview with him?

A I don't have any recollection of that specific statement.

Q Did you come across any information as part of the additional procedures to indicate that Morgan Stanley had ever tried to contact Mr. Thayer in

connection with the work that Morgan Stanley is performing?

A No.

Q If you could go to tab 80 for me, which you can tell is the last tab. For the record, could you tell us what tab 80 of Exhibit 21 is?

A It's a copy of a memorandum that Phil Harlow prepared documenting the interview that Mr. Harlow, myself and Brian Loughman conducted with Bob Gluck on July 9, 1998.

Q It bears the Bates stamp CPH 62730 through 62733.

I believe you previously testified that Mr. Gluck was the corporate comptroller of Sunbeam. Is that correct?

A Yes.

Q If you go to the second page of this memorandum for me. Five bullet points up from the bottom there's a bullet point that reads: The company had a 20 percent sales growth in an industry with only three, hyphen, four percent growth per year, dash, maybe retail inventories were being built up.

What was Mr. Gluck referring to there?

MS. BROWN: Objection.

A My recollection is that Mr. Gluck was

referring to the -- I think we said the filling the pipeline. It's also referred to as channel stuffing, or some other means of which sales are accelerated, and -- to the customers, and the customer inventories, because of whatever incentives are given to them, are built up to unusually high levels, meaning in the future the sales will be less.

Q And on the last page of this memo, Bates 62733, the three bullets up from the bottom, it's stated: Domestic sales are down 30 percent on year-to-date sales due to product problems and pipeline might have been filled.

The reference to "pipeline might have been filled," that's just what you were talking about with respect to channel stuffing?

A Yes.

Q So is it fair to say that during the course of the additional procedures Arthur Andersen obtained information that there was intense pressure on Sunbeam's sales force to make sales numbers?

MS. BROWN: Objection.

A Yes.

Q And did you also obtain information to the effect that Sunbeam's earnings per share were monitored on a daily basis?

NOT A CERTIFIED COPY

MS. BROWN: Objection.
A No, I don't believe I said that. I said that at the end of the fourth quarter I was aware of a process that included monitoring of the earnings per share. I don't know about any procedure to do it on a daily basis. Even at the end of the quarter it may have been not every day, but there was a process.
Q Did you, as part of the additional procedures, obtain information indicating that many Sunbeam employees believed that Sunbeam's growth was not sustainable into 1998?
A Yes. As indicated in some of those memorandums.
Q And you also obtained information as part of additional procedures that many Sunbeam employees believed the company was being positioned for sale?
MS. BROWN: Objection.
A Yes. In 1997, perhaps -- perhaps into early 1998, but -- but certainly in '97 we had learned that.
MR. JOHNSON: I want to mark what will be CPH Exhibit 22.
(Deposition Exhibit No. CPH 22 was marked for identification.)
BY MR. JOHNSON:
Q Sir, have you ever seen Exhibit 22 before?

A Yes.
Q Could you identify what that is for the record?
A Yes. This is a report that Arthur Andersen drafted to summarize the restatement adjustments, and it was reviewed with company management and presented to the board of directors of Sunbeam Corporation.
Q And the document, for the record, has Bates stamped CPH 84462 through 84532.
If you would turn to the third page of this document, page 84464. Did you sign "Arthur Andersen LLP" to this document?
A Yes.
Q We've touched on briefly already today quantification of the sales that were accelerated up potentially into the fourth quarter of '97. Looking at this document, is that information reflected somewhere?
I guess a slightly more precise question is is that information reflected on page 9 of the report, which has Bates stamp CPH 84476?
A The page you refer to would show the adjustments made to revenue recorded during each of the quarters, starting with the fourth quarter of '96 through the first quarter of 1998, that were improperly recorded in accordance with generally accepted

accounting principles.
There is probably additional revenue that was accelerated and recorded in the company's books and records that met generally accepted accounting --
Q Meaning it didn't require adjustment?
A Correct. Did not require adjustment, therefore is not reflected on this schedule.
Q Items 1 through 8, or issues 1 through 8 on that page, as I read this, led to a proposed adjustment of approximately $21 million out of the fourth quarter of 1997. Is that correct?
A Could you clarify what you're referring to?
Q Sure.
A I don't see that number.
Q Yeah. It's sloppy math, which I'm sure makes you uncomfortable.
I'm just trying to make sure I understand this page correctly. In the far left column there are designated issues, issue numbers, and I'm referring to issues one through eight. And as I understand this page, Arthur Andersen is proposing that Sunbeam make adjustments for the fourth quarter of '97 on those issues to reduce net income in the amount of approximately $21 million. That is 16.484 million plus 4.89 million. Is that correct?

A That is correct for the effect on that -- I'll say the effect on pretax income of guaranteed and consignment sales and bill and hold sales. Some of these other items affect sales. And previously on your question you were referring to sales, and the schedule that you're currently looking at is -- shows the impact on net income. Three pages later there's a schedule that shows the impact on revenue of the restatement adjustments.
Q And that, you're referring to CPH 84478?
A Yes.
Q And, again, looking just at issues one through eight, for the fourth quarter of '97, the revenue adjustment would be the sum of 35.773 million and 29.340 million?
A Yes.
Q So that's about $65 million in a downward adjustment for fourth quarter '97 revenue on issues one through eight?
A Yes.
Q Now, did you, as part of the additional procedures, come to the conclusion that any Sunbeam executives had lied to Arthur Andersen during Arthur Andersen's auditing processes?
A My recollection was -- and I was not part of

NOT A CERTIFIED COPY

the original audit, so you're asking about whether there was misrepresentations or lying to some of our original audit team.
Q Correct.
A I believe some of our audit team thinks that there was, either they were misled or lied to by certain members of management, but I don't have -- I think anything I would say would be potentially mischaracterizing their thoughts.
Q Did you yourself, putting aside what your colleagues may have told you as to their own opinions, did you form any opinions yourself as to whether any Sunbeam employees lied to Arthur Andersen in connection with audit procedures?
A In my belief, there was some instances where we were given incorrect information or certainly not provided adequate answers to inquiries that we made.
MR. MOSCATO: Don, when you say "we," you're talking about the original audit team?
THE WITNESS: The original audit team.
MR. JOHNSON: Exactly.
THE WITNESS: You asked my opinion.
MR. JOHNSON: Exactly.
That's a good clarification, counsel. We are on the same page, which is during the

original audit procedures.
BY MR. JOHNSON:
Q That obviously raises another question. During the additional procedures, in which you were involved, do you know of any Sunbeam executives that lied to Arthur Andersen in connection with the additional procedures?
MS. BROWN: Objection.
A I don't recall anybody that lied to us during the additional procedures.
Q Now, switching back to the original procedures, and I understand you weren't involved in those, did any of the Arthur Andersen auditors who were involved in the original procedures ever identify any members of Sunbeam management who provided false information to Andersen during the original audit procedures?
MS. BROWN: Objection.
THE WITNESS: Can I hear that question again?
(The question was read by the reporter as above recorded.)
THE WITNESS: Is your question did they identify those during the original audit?
MR. JOHNSON: No. At any time did they

express to you their view that Andersen had been lied to during the original audit procedures.
THE WITNESS: As I said, I already indicated, there are members of our team that think that they were lied to in connection with the original audit, but they weren't aware of it at the time of the original audit.
MR. JOHNSON: I understand that.
BY MR. JOHNSON:
Q Which members of your team, that is which Arthur Andersen auditors, believed they were lied to in connection with the original procedures?
MS. BROWN: Objection.
MR. MOSCATO: I think the only fair way of posing that question and answering it is which of them ever told you that. Don, which ones ever told you that? Don't try to read minds.
MR. JOHNSON: Yes. Let's break it down a little bit. I think that's a good point.
BY MR. JOHNSON:
Q Mr. Bornstein was involved in the original audit procedures. Is that correct?
A Yes.

Q Has Mr. Bornstein ever said to you that he was lied to by a Sunbeam employee in connection with the original audit procedures?
A Yes.
Q Did he identify which Sunbeam employees lied to him?
A My recollection is that his concern dealt with certain issues relating to dealing with Bob Gluck and with Al LeFevre, and there may have been others, but I never really sat down and asked that particular question. That was not the purpose of the work I was doing, to cover who lied to what, but to uncover the truth and get the financial statements as correct as possible.
Q Mr. Pastrana worked on the original audit procedures too. Is that correct?
A Yes.
Q Did Mr. Pastrana ever indicate to you that he had been provided false information by any Sunbeam employee in connection with the original audit procedures?
A I don't recall.
Q How about Mr. Harlow? He worked on the original audit procedures. Is that correct?
A Yes.

NOT A CERTIFIED COPY

Q And did Mr. Harlow ever indicate to you that Sunbeam employees had provided him false information in connection with the original audit procedures?
A I don't recall.
Q Did any Andersen auditor indicate to you a view that any other specific Sunbeam employee had provided false information aside from what Mr. Bornstein said about Gluck and LeFevre?
A As I said, there may have been others. I don't have any specific recollection at this time.
MR. JOHNSON: Let's mark Exhibit 23.
(Deposition Exhibit No. CPH 23 was marked for identification.)
MR. MOSCATO: Are you ready?
MR. JOHNSON: Yes.
BY MR. JOHNSON:
Q Mr. Denkhaus, I've given you a document that's been marked CPH 23. It bears the Bates stamp CPH 1184885 through CPH 1184905. Could you identify that document for the record?
A It appears to be copies of certain of our Sunbeam work papers from the original December 28, 1997 audit.
Q I want to focus on a portion of this document, if I could, beginning at page CPH 1184891. The top of

this page states "Sunbeam SMART A: 12/28/97." What does that refer to?
A Yeah. The -- that page is the index page to the form that follows that. The SMART form was -- I can't remember what the acronym stands for, but was our risk management tool to identify and rate various audit risks related to audit engagements, not specifically Sunbeam. It was a firm-wide audit tool. And the "A: 12/28/97" refers to the audit date of December 28, 1997.
Q And you signed this document at page 1184895. Is that correct?
A Yes.
Q As did Messrs. Harlow and Pruitt?
A Yes.
Q Now, as I understand this form, Sunbeam was given an overall risk assessment of high. Is that correct?
A Yes.
Q And they've been given the same overall risk assessment of high for the prior year. Is that also correct?
A Yes.
Q Now, if you turn to page 8 of this document, which is Bates stamped CPH 1184899, this is in the

section called "Business Fraud Risk." Do you see that?
A Yes.
Q There's a line numbered eight on the bottom of this page, that states: Overly aggressive revenue or earnings targets, significant.
Significant is the highest risk that can be assigned in this category. Is that correct?
A I know we had an overall maximum risk. I don't know if this particular category can be a maximum or significant. I don't recall.
Q I'm going to represent for the record that you, in your June 2nd, '99 testimony, on page 55, at line 15 and 16, testified that significant -- quote, my understanding is significant is the highest category, in reference to that page.
I'd be happy to get the transcript out if you'd like me to. The question is do you have any reason to believe that your prior testimony was incorrect on that point.
A No.
Q Let's go two pages up, page 10 of this form, Bates CPH 1184901. This section is entitled "Financial Statement Misstatement Risk." Is that correct?
A Yes.
Q What is the overall assessment that Arthur

Andersen assigned to this category?
A Looks like significant minus, minus sign.
Q And in your experience at Andersen, was that an unusual risk assessment for a public company?
A I don't recall what percentage -- I don't know that I ever did know -- what percentage of our clients fell into that category of our public companies, but it -- your question is is it unusual. I don't know that it would be that unusual to have a significant financial statement risk for a public company. It was not the norm.
Q So it's not common, a common risk assessment?
MS. BROWN: Objection.
A It would not be the norm or the median of the risk assessments.
Q If you could flip over to page 12 of the report, which is Bates stamped CPH 1184903. Paragraph No. 5 poses the question: Does the company have a high market risk profile relative to its industry peers, parenthesis, e.g., volatile stock price, high price earnings or other multiples, high insider sales, high short selling.
And it looks like you've completed this form with an answer of yes to that question. Do I understand that correctly?

NOT A CERTIFIED COPY

11553

A That's correct.
Q Do you have any recollection today of who the industry peers were that are referred to in this form?
A No, I don't have any recollection.
Q Do you know whether they were even appliance companies, or is it some other criteria that would be used?
A I don't know. Don't recall.
Q Now, as a result of the risk assessment, was it Arthur Andersen's professional judgment that some additional procedures might be appropriate as part of the auditing of the company?
MS. BROWN: Objection.
Q I'm referring back to the signature page, which is page 4, or Bates stamp 1184895.
A Yes. This form refers to three additional procedures. There obviously may have been others, but there are three that are referred to on the form, on this page 4 of the form.
Q So as I understand this, and let me know if I've got this wrong, because of the risk classifications, these additional procedures were viewed as appropriate for Andersen to conduct? Is that what this states?
MS. BROWN: Objection.

MR. MOSCATO: Objection.
THE WITNESS: Can you read that back?
(The question was read by the reporter as above recorded.)
MR. MOSCATO: I object. It doesn't state that.
MR. JOHNSON: Let me strike the question. There were about three different subparts, among other problems with it.
BY MR. JOHNSON:
Q Why did Andersen deem it appropriate to engage in the three enumerated procedures that are listed on page 4?
A As a result of the, completing the SMART tool, we identified a number of risk areas, and the audit team felt that those risks in those areas could be reduced to an acceptable level by performing additional procedures in the three areas that are listed on this form.
MR. JOHNSON: Do you want to give me a second?
That's all I've got.
MS. BROWN: Do you want to continue, or do you want to take a break for lunch? I'm happy to power through.

(Discussion off the record.)
(Lunch recess was taken from 12:30 p.m. to 1:05 p.m.)
CROSS-EXAMINATION
BY MS. BROWN:
Q Mr. Denkhaus, I'm Zhonette Brown. I represent Morgan Stanley and Co., Incorporated. We'll continue, if you're prepared.
A I'm prepared.
Q You said you hadn't talked with Morgan Stanley lawyers prior to your deposition. Have you spoken with anyone representing Coleman parent and MAFCO prior to your deposition?
A No.
Q Have you ever been retained as an expert on a consultant for litigation?
A Yes.
Q In what case? More than once?
A Yes.
Q What's your area of expertise?
MR. JOHNSON: Object to the form.
A Accounting and financial reporting. Some valuation issues.
Q Any others that you can recall?
A No.

Q Have you given deposition testimony as an expert?
A Yes.
Q Have you been admitted by a court as an expert?
A Yes.
Q How often that you recall?
A I haven't done it in ten or fifteen years, but probably at least, as an expert, at least a half dozen times.
Q And this is while you were employed at Arthur Andersen?
A Yes.
Q You were never retained by Sunbeam as an expert for litigation. Is that correct?
A That's correct.
Q You had no personal involvement with the 1996 or 1997 audit of Sunbeam. Correct?
A That's correct.
Q You had also no involvement related to Sunbeam's original filing of their 10 K for 1997. Is that correct?
A Correct.
Q Prior to June of 1998, did you have any communication with anyone from Morgan Stanley about any

NOT A CERTIFIED COPY

014554

issue related to Sunbeam?
A No.
Q Prior to June of 1998, did you have any communication with anyone from Morgan Stanley Senior Funding regarding Sunbeam?
A No.
Q Prior to June 1998, did you have any communication with anyone from or representing Coleman Company regarding Sunbeam?
A No. Prior -- no. That's correct. Prior to June I did not.
Q And you had no involvement with Arthur Andersen's March 19, 1998 comfort letter. Is that correct?
A That's correct. Other than my responsibilities as the audit division head, but I don't recall any specific -- I didn't look at any of the documents, so there may have been something that somebody asked me about during the process, but I wasn't involved, nor did I -- charged no time to that account, so I don't believe I had any involvement. I don't recall any involvement.
Q And you don't have any specific recollection of anyone consulting with you about that?
A No, no, I don't.

Q Is that also true with regard to the March 25th, 1998 comfort letter?
A That's also correct, yes.
Q You had no involvement or consultation regarding Sunbeam's offering memoranda for their notes in March of 1998. Is that correct?
A That's correct.
Q Prior to June of 1998, had anyone expressed to you any concern regarding the accuracy of Sunbeam's financial statements?
A Not that I recall.
Q Prior to June of 1998, had anyone expressed any concern to you regarding Sunbeam's financial performance in 1998?
A Not that I recall.
Q Prior to June 1998, did you have any contact directly with Sunbeam personnel in regards to Arthur Andersen's work for Sunbeam?
A No.
MS. BROWN: This will be Morgan Stanley Exhibit 13.
(Deposition Exhibit No. MS 13 was marked for identification.)
BY MS. BROWN:
Q The court reporter has just handed you what's

been marked as Morgan Stanley Exhibit 13. Take a second to look at it and tell me if you've ever seen this document before.
A I may have seen it, but I don't really have any recollection of this document.
Q For the record, Morgan Stanley Exhibit 13 is Bates stamped Morgan Stanley 27828 and 829, and it is a July 2nd, 1998 memo from Lawrence Bornstein to the file.
In the first paragraph --
MR. JOHNSON: Zhonette, sorry to interrupt. I also want to note for the record the memorandum refers to attachments that are not included with the exhibit. But subject to that, go ahead.
BY MS. BROWN:
Q In the first paragraph of Morgan Stanley Exhibit 13, it refers to the fact that Phil Harlow, engagement partner, discussed with Don Denkhaus, audit division head, that Morgan -- referring to Morgan Stanley -- was unwilling to sign a release letter, and Don stated it was not uncommon, and to proceed with the meeting, providing that the client was involved on the call.
Do you recall the conversation relating to

that?
A Only in a very vague way. I don't have any specific recollection. In reading this I remember there was -- somebody asked me about, you know, the conference call, and I responded. But I don't really, other than that, I wouldn't have remembered it without reading this.
Q And do you now remember anything else about that conversation?
A Not a thing.
Q What sort of release is it that Arthur Andersen might seek before participating in due diligence?
MR. JOHNSON: Object to the form.
MR. MOSCATO: Yes, I object too. I don't know if there's anything in the record about Arthur Andersen engaging in due diligence.
MR. JOHNSON: My objection was to the type of release that might be sought.
Your counsel will advise you you can answer if you understand the question.
MR. MOSCATO: Thank you.
THE WITNESS: Arthur Andersen had a standard form release that when we attended due diligence meetings that we would request

NOT A CERTIFIED COPY

014555

that the parties seeking due diligence would sign those forms. In some cases we would meet with the due diligence parties, in some cases we wouldn't. We'd make a decision. But we would -- our reference was to get the release letter that had been drafted by Andersen's -- I don't know, in-house or outside counsel.

BY MS. BROWN:

Q What's the purpose of the release that Arthur Andersen would seek to have a party performing due diligence sign?

MR. JOHNSON: Object to the form.

A The purpose would be to clarify the roles and responsibilities that Andersen had in that due diligence conversation. I don't remember the specifics of what the release said.

Q According to this memo from Mr. Bornstein, in this instance Arthur Andersen participated in a due diligence conversation without a release, at least in part because the client was involved. Is that correct?

MR. JOHNSON: Object to the form.

A Yes.

Q Do you recall anything contrary to what's recorded in this memo with regard to Arthur Andersen getting a release from Morgan Stanley for due

diligence?

A I don't have any recollection of anything else, or even of this, really.

Q I believe you testified before, you were not involved personally in any conference calls on or around March 18th or 19th, 1998, relating to an issuance of a press release. Is that correct?

A Yes.

Q I'd like to ask you some additional questions about parent Coleman's Exhibit 23. To your knowledge, was this SMART tool, the result of this SMART tool, provided to Morgan Stanley prior to June of 1998?

A It would not have been.

Q In performing the analysis that Arthur Andersen would do associated with this SMART tool, did Arthur Andersen rely in part on public knowledge?

A Yes, in part.

Q I'd like to refer you in CPH Exhibit 23 to what's page 8. The last two numbers of the Bates are 99. At the very bottom of the page, and spilling over to the next page, it refers to "Management Integrity and Behavior." Do you see where I'm referring?

A Yes.

Q And on page 9, there's an overall assessment of management, integrity and behavior of good. Do you

see that?

A Yes.

Q What did Arthur Andersen rely upon in reaching this conclusion, or assigning the assessment of good to this category?

A Well, in the case of Sunbeam, we had prior knowledge of working with management of the company for a number of years, and with the Dunlap team for at lease for the '96 audit and during, in this case, a half a year of 1997. So based on that working relationship that we would have had with the management.

Q Based on the relationship and experience that Arthur Andersen had working with Dunlap, and prior to June of 1998, were you aware of anyone within Arthur Andersen indicating that they had any reason to question the integrity of Mr. Dunlap?

MR. JOHNSON: Can I hear that one back?

(The question was read by the reporter as above recorded.)

MR. MOSCATO: So the focus is prior to June '98, Don.

THE WITNESS: Okay. No. I wasn't aware of any concerns on integrity of Mr. Dunlap.

BY MS. BROWN:

Q Were you aware of any concerns prior to June of 1998 with regard to the integrity of any of the senior management at Sunbeam in 1997 and early 1998?

A No.

Q Referring earlier in CPH Exhibit 23, now to page 6, bottom of page 6, and on to page 7, the Arthur Andersen SMART tool indicates an overall assessment of management ability of good. Do you know what Arthur Andersen relied upon in reaching that assessment?

A First of all, I didn't prepare the tool, I approved the tool, so -- but my understanding of how the process works, and what our team would have considered, could have been the prior working relationship that we had with Sunbeam management.

Q And at this time the Sunbeam management was led by Mr. Dunlap. Correct?

A Yes.

Q On item 19, on page 7 of CPH Exhibit 23, where it refers to success with other businesses, do you know what that's referring to?

A Well, it's a general question. Whether the existing management has been successful or if they've been involved with failed companies. That's the general question that was being asked, and the engagement team that completed this indicated good.

NOT A CERTIFIED COPY

Q And did you have any knowledge prior -- when you signed this, that would cause you to question that?
A No.
Q In the item 20, "participation in design of controls, resolution of problems, legal and regulatory compliance training," an assessment is provided of good there. Did you have any reason to question that assessment prior to June of 1998?
A No.
Q Did you have any reason to question any of these assessments of good on page 7, items 18 through 24, in CPH Exhibit 23?
MR. MOSCATO: Prior to June 1998?
MS. BROWN: Correct. Thank you.
THE WITNESS: No.
BY MS. BROWN:
Q Same question with regard to page 9, items 17 through 26, under "Management Behavior." Prior to June of 1998, did you have any reason to question the assessments that are reflected there regarding management integrity and behavior?
A No.
Q Even prior to June of 1998, Mr. Dunlap was a well-known figure, publicly, in the finance community. Is that correct?

A Yes.
Q Based on the information that you were aware of, or that anyone brought to your attention prior to June of 1998, did you have any concern regarding Arthur Andersen's work for Sunbeam?
MR. JOHNSON: I'm going to object to that.
MR. MOSCATO: Do you mind repeating that? You lost me.
MS. BROWN: Let me strike the question. I'll restate the question.
MR. MOSCATO: Thank you.
BY MS. BROWN:
Q Based on the public information that was available, and any other information that was available to you prior to June of 1998, did you have any concern about retaining Sunbeam as a client of Arthur Andersen?
MR. JOHNSON: Object to the form.
A We considered the risk, and we evaluated the higher risk of this company, in it being a public company, and Dunlap's prior history of turnarounds and trying to get the companies ready for sale. So we considered that, but we were -- felt that the -- we could manage that risk. So we were not concerned about continuing as Sunbeam's auditor.

Q And Dunlap's prior experience, turning around other companies, was public knowledge. Correct?
A Yes.
Q The overall risk assessment of high reflected in CPH 23, you said it wasn't the mean or median. But was it uncommon?
A I think I already indicated it was not uncommon. I don't know what percentage that would refer to for you, but for me I don't feel it's uncommon.
Q This risk assessment is something that Arthur Andersen would perform for each client that Arthur Andersen provided audit services for. Correct?
A Yes.
Q With regard to the procedures identified on page 4 that you testified to previously, was it uncommon to identify additional procedures to perform with regard to an audit to manage risk?
MR. JOHNSON: Object to the form.
A No.
Q It's true, isn't it, that each audit that Arthur Andersen performed was unique and would be specifically tailored to the company being audited?
A That's correct.
Q And it's the company, correct, that's

responsible for the fair presentation and consolidated statement of financial position, results of operations and cash flows, in conformance with the generally accepted accounting principles? Correct?
MR. JOHNSON: Hold on. Can I have that one back?
(The question was read by the reporter as above recorded.)
MR. JOHNSON: Object to the form.
THE WITNESS: Yes.
BY MS. BROWN:
Q Generally accepted accounting standards require that an auditor obtain reasonable, rather than absolute, assurance that the financial statements are free of material misstatement. Correct?
MR. JOHNSON: Object to the form. You're saying GAAS or GAAP?
MR. MOSCATO: Actually, many people confuse this. It's generally accepted accounting principles, and generally accepted auditing standard.
MR. JOHNSON: Are you asking GAAS or GAAP?
MR. MOSCATO: I think she's asking GAAS.
MS. BROWN: Let me strike that and reask

NOT A CERTIFIED COPY

01457

the question.
BY MS. BROWN:
Q Generally accepted auditing standards --
MR. MOSCATO: There you go.
Q -- require that an auditor obtain reasonable, rather than absolute, assurance that the financial statements are free from material misstatement. Correct?
A Yes.
Q Now, you testified earlier that the investigation and the additional procedures leading to the restatement was a five-month process. Correct?
A Yes.
Q And during that process, Arthur Andersen and the company spent more than 10,000 hours of work in its effort to correct and identify problems with financial statements. Correct?
MR. JOHNSON: Object to the form.
A Yes.
Q And you yourself spent in the range of 800 to 900 hours in your efforts during the additional procedures in restatement. Correct?
A I don't remember the specifics, but that sounds right magnitude of number of hours.
Q And you testified that your investigation and

the additional procedures leading to restatement began in June or early July of 1998. Correct?
A Yes.
Q And that was after Sunbeam had already acquired Coleman Company. Correct?
A Yes.
Q Your involvement was after Mr. Dunlap had been fired. Correct?
A Yes.
Q And Mr. Kersh had also been fired by the time you became involved. Correct?
A Yes.
Q And Mr. Levan had been brought on as new management at Sunbeam by the time you became involved. Correct?
MR. JOHNSON: Object to the form. And it's Levin.
MR. MOSCATO: Well, the court reporter can't pick that up one way or the other.
MS. BROWN: Let's strike that and restate that for a clean record.
BY MS. BROWN:
Q By the time that you became involved in the additional procedures in restatement, Mr. Jerry Levin had been brought on as management at Sunbeam. Correct?

MR. JOHNSON: Object to the form.
A Yes.
Q And Mr. Levin had announced what you've referred to in prior testimony as an amnesty program for Sunbeam employees. Correct?
A Yes.
Q That amnesty program was in effect when you performed the interviews, for instance, that are memorialized in CPH Exhibit 21. Correct?
A Yes. I'm not sure whether there was a defined date on the amnesty program, but I believe that it was intended to be open ended and include that period.
Q The amnesty program that Mr. Levin announced for Sunbeam employees had been announced prior to the interviews that are memorialized in CPH Exhibit 21. Correct?
A Yes.
Q Your understanding of that amnesty program is that it was not something that was in place, for example, in March of 1998. Correct?
A Yes.
Q In addition to Arthur Andersen, there were other entities working on the restatement of the financial statements for Sunbeam. Is that correct?
A I'm not sure I follow that question.

Q Deloitte and Touche was consulted with regard to the restatement of the financial statements for Sunbeam. Is that correct?
A Deloitte and Touche was engaged by the board of Sunbeam to, I guess, overview the work that Andersen and the company were undertaking related to the restatement procedures, the additional procedures.
Q And there were times when Arthur Andersen and company, or its board, and Deloitte and Touche would consult about issues pertaining to the restatement of Sunbeam's financial statements?
MR. JOHNSON: Object to the form.
A Yes.
Q Were there any other entities that were consulted in that manner with regard to the restatement of Sunbeam's financial statements in 1998?
MR. JOHNSON: Object to the form.
A I believe that either the board or through Scadden Arps there was a, I'll call it a litigation consulting firm that was engaged early in the process. I don't believe I had any interaction with them, and so I think their role was somewhat limited. But there was -- there was another group that was consulted, not by Andersen, but by, I believe, either the board or Scadden Arps on behalf of the board.

NOT A CERTIFIED COPY

Q And what group are you referring to?
A It was out of the Chicago, and I don't recall the name.
Q Chicago Partners? Does that sound familiar?
A That sounds familiar, yes.
Q In conducting the additional procedures, and then the restatement of Sunbeam's financials in 1998, you were basically given unlimited resources by the company and by Arthur Andersen management. Correct?
A Yes.
Q And when you conducted the restatement, there were detailed task lists that were created by Arthur Andersen with regard to their work for the restatement. Correct?
MR. JOHNSON: Objection to form.
A It was an ongoing process that included task lists of things that had to be done.
Q The work that Arthur Andersen performed during the additional procedures leading to the restatement, was that work on the issues that Arthur Andersen was looking at more in-depth than the work that had been done in the prior audit for 1997?
A Yes. Considerable additional work in the same area -- in some of the same areas.
Q And as a result of the resources and the work

that was done for the additional procedures, leading to the restatement of Sunbeam's financial statements, Arthur Andersen learned facts that it had not been aware of prior to June of 1998. Correct?
MR. JOHNSON: Hold on. Can I hear that question, please?
(The question was read by the reporter as above recorded.)
MR. JOHNSON: Object to the form.
THE WITNESS: Yes.
BY MS. BROWN:
Q When you were performing the interviews that are memorialized in CPH Exhibit 21, did you have a sense that some of the employees that you were interviewing were relieved by the change of management?
A Yes.
Q And did you get the sense when you were performing the interviews that are interviewed in CPH 21 that some of the employees were communicating information to you that they felt they would not have been able to do under the prior management led by Mr. Dunlap?
MR. JOHNSON: Objection to the form.
A That's the sense I got. I don't know if I asked them if they could have given that information to

prior management, but I got that sense that had not given the information to prior management, in certain circumstances.
Q You were asked a lot of questions about the interviews reflected or memorialized in CPH Exhibit 21. Did you have a script or a list of questions that you tried to follow during your interviews?
A No, not really. We thought about trying to put one together, but we started going to interviews before we really got organized, so we just -- each one was rather unique, so we did not have a predefined list of questions. Might have had some questions in our mind or might have written them down for a particular interview, but for the most part there was nothing in writing, the question for the interviewees.
MS. BROWN: I'd like to have that marked Morgan Stanley Exhibit 14.
(Deposition Exhibit No. MS 14 received in evidence.)
BY MS. BROWN:
Q You've been handed Morgan Stanley Exhibit 14, which is Bates stamped CPH 90040 to 45. Do you recall seeing this document before?
A Yes.
Q Starting on the third page of this document,

there's a list of some questions to ask, followed then by some review procedures. Do you recall anything about the creation of this document?
A Yeah. This document was the draft of what was started either -- I think maybe slightly before I got involved in the audit work at Sunbeam.
I remember seeing this. I don't think that we necessarily went -- I know in the interviews I attended, I don't believe we necessarily followed through asking all these questions to each of the interviewees, or to the respective questions that would relate to an interviewee.
Q But it's true, isn't it, that when you were conducting the exhibits that are memorialized in CPH 21, you had certain objectives or information that you wanted to get from each of the persons that you were interviewing. Correct?
MR. JOHNSON: Hold on a second. I think you misspoke at the beginning of questions.
BY MS. BROWN:
Q In conducting the interviews that are referred to in CPH Exhibit 21, it's true, isn't it, that you had certain objectives that you wanted to achieve with each interviewee, certain areas of interest?
MR. JOHNSON: Objection to the form.

NOT A CERTIFIED COPY

A Yes. And that's why we started putting together this list of who would be interviewed and some questions, and it was sort of an ongoing process to try and identify who we would interview. And I believe that the management of Sunbeam also, we got some input from them as to who would be interviewed and some of the questions that would be asked. But as I said, this process got started, but it never really got finalized into a specific by-person program that was used.

Q Well, you had many objectives in interviewing Sunbeam employees and former employees. Was it ever part of your objective to review the due diligence that had been performed related to Sunbeam's acquisition of Coleman?

MR. JOHNSON: Objection to form and foundation.

A No.

Q Was it part of your objective during the interviews that are reflected in CPH 21 to review any due diligence related to Sunbeam's issuance of notes in March of 1998?

A No.

MR. MOSCATO: You said Sunbeam's due diligence?

(The record was read by the reporter as

above recorded.)

BY MS. BROWN:

Q When you were talking earlier this morning about CPH 21, one of the things you mentioned was that Sunbeam was hoping to sell the company after Dunlap had been brought on board. Correct?

A Dunlap wanted to sell the company. I don't know whether Sunbeam wanted to sell itself, but Dunlap wanted to sell the company. I think probably the shareholders thought that might be a good idea if they realized more money, also.

Q And it was public information that Dunlap was looking to sell the company or buy a company in connection with his management of Sunbeam. Correct?

MR. JOHNSON: Objection to form and foundation.

A That's correct, at different periods of time. Dunlap was hired by Sunbeam, but was to turn the company around and improve operations, and presumably sell it. The acquisition strategy that won, in my understanding, commenced when he was unable to sell the company, because the stock price was so high nobody would buy it for the valuation.

Q When you were asked this morning about whether you had any information about whether Morgan Stanley

had attempted to speak with Mr. Dalbert. Do you have any information one way or another about whether Morgan Stanley spoke with Mr. Dalbert prior to June of 1998?

A No.

Q Do you have any information one way or another whether Morgan Stanley spoke with Ms. Kelly of Sunbeam prior to June of 1998?

A No.

Q Do you have any information one way or another with regard to whether Morgan Stanley spoke to Kyle Sinclair prior to June of '98?

A No.

Q Do you have any information one way or the other with regard to whether Morgan Stanley spoke with Mr. Hartschorne prior to June '98?

A No.

Q Do you have any information one way or another with regard to whether Morgan Stanley spoke with anyone that you interviewed at Sunbeam prior to June of 1998?

A McDonald said that she had been -- participated in a conference call. I don't remember the date. But I think it was prior to June of 1998.

Q Anyone else that you recall?

A No.

Q Do you have any information one way or another

whether the people that you interviewed during the additional procedures had spoken with anyone from Coleman Company or any of their representatives prior to the close of the acquisition in March of 1998?

MR. JOHNSON: Can I hear that one back? I'm sorry.

(The question was read by the reporter as above recorded.)

THE WITNESS: Well, I think that -- I didn't ask about that, but presumably the top officers, Dunlap, Kersh, perhaps others, would have had to speak to Coleman. So I think that seems rather obvious that that took place. But as to the interviews that I conducted, I didn't gain any knowledge regarding that topic.

BY MS. BROWN:

Q And when you were referring to the interview notes of Deborah McDonald, you noted that there are things throughout the interview memoranda that really have no direct bearing on the additional procedures. Was that true only with regard to Ms. McDonald's interview or was that true with regard to other interviews as well?

MR. JOHNSON: Objection to the form.

NOT A CERTIFIED COPY

011560

Mischaracterization of testimony.
A I think that would be true perhaps for all of them. We documented information that we learned that we weren't sure at the time whether would be relevant or not; in some cases just extemporaneous information that the interviewer decided would be appropriate to put in the final memorandum.
Q The interview memorandum that are documented in CPH Exhibit 21 are not verbatim summaries of the conversation you had with the interviewees. Correct?
A Correct.
Q In some instances the interview memoranda that are memorialized at CPH Exhibit 21 incorporate the interviewer's viewpoint or information as well as the interviewee's comments. Correct?
MR. JOHNSON: Objection to the form.
A I'm not sure I understand that question.
Q For instance, in some of the interviews where the interviewee indicated that they had spoken with someone from Arthur Andersen, there may be a notation in the interview as to Arthur Andersen's response to that comment. Correct?
MR. JOHNSON: Objection to the form.
A In some cases there are some responses that would not have been from the interviewee, but there

aren't -- I don't recall seeing very many, but there are a few of those instances.
MR. MOSCATO: Could we go off the record for one minute?
(Discussion off the record.)
BY MS. BROWN:
Q Turn, if you would, for just a moment to tab eight of CPH Exhibit 21.
MR. MOSCATO: I'm sorry. What tab?
MS. BROWN: Tab eight. It's the interview memorandum of the interview with Deborah McDonald.
Q Turn, if you would, to the Bates page ending in 91. With regard to the information reflected here concerning the March 19th, 1998 press release and the March 18th, 1998 press release, you have no personal first-hand knowledge of any of the facts reflected here. Correct?
MR. JOHNSON: Objection to the form.
THE WITNESS: I think you referred to two press releases.
MR. MOSCATO: I think you meant the March 18th conference call.
MS. BROWN: Okay. Strike that.
BY MS. BROWN:

Q In the middle of page 91, tab eight of the CPH Exhibit 21, refers to a March 18th, 1998 conference call. You have no personal information about what transpired during that conference call. Correct?
MR. JOHNSON: Objection to the form.
A Yes. I have no information.
Q It also refers to a March 19th, 1998 press release. You have no personal first-hand knowledge of what transpired prior to the issuance of that press release relating to the press release. Correct?
A Correct.
Q On the next page, the page ending in Bates 92, tab eight, CPH Exhibit 21, the third open bullet after the first bullet, last sentence, states, "Morgan Stanley apparently used $1.80 per share in their projection."
Do you have any information one way or another about what facts Morgan Stanley used in any projections?
A No.
Q Do you have any information one way or another about what information Sunbeam actually provided to Morgan Stanley prior to June of 1998?
MR. JOHNSON: Objection to the form.
A No, I don't have the actual information

provided.
Q You participated in an interview of Mr. Dunlap and Mr. Kersh with regard to the additional procedures?
A Yes.
Q Do you recall during that interview Mr. Dunlap and Mr. Kersh referring to a June 1998 board meeting, at which Phil Harlow attended, after the Baron's article came out?
MR. JOHNSON: Objection to the form.
A Only in a very indirect way. I don't have specific recollection. I know there was some discussion of the board meeting, but I don't know what Mr. Kersh or Dunlap may have said regarding that.
Q Do you recall that on June 25th, 1998, Sunbeam issued a press release indicating that Arthur Andersen had withheld its consent for Sunbeam to use Arthur Andersen's opinion in connection with the registration?
MR. JOHNSON: Objection to the form.
A I'm familiar with the press release.
Q When was it that Arthur Andersen determined that it would withhold its consent for Sunbeam to use Arthur Andersen's opinion related to the 1997 financial statements?
A I would presume about the time the press release went out, but I wasn't involved.

NOT A CERTIFIED COPY

Q Did you ever speak to Mr. Harlow about the June 1998 board meeting that he attended with Mr. Kersh and Mr. Dunlap?
A I don't recall any specific conversations regarding that. I know of the meeting, I know he attended, but I don't recall what we would have talked about.
Q So Mr. Harlow never spoke to you about whether he was asked about the propriety of the bill and hold sales in June, the June 1998 board meeting?
MR. JOHNSON: Hold on a second. Can I had that read back?
(The question was read by the reporter as above recorded.)
MR. JOHNSON: Object to the form.
THE WITNESS: I know the issue. I know -- but I don't remember sitting down with Mr. Harlow or discussing. I don't know where I learned about it, from Mr. Harlow or someone else, or from counsel, but I'm aware that it was discussed.
BY MS. BROWN:
Q But Arthur Andersen's decision to withhold its consent for the use of its opinion for the 1997 financials was a decision that had been made prior to

your involvement?
A Correct. When that decision was made, it was after that that they decided additional procedures, the firm decided additional procedures had to be performed, and that's when they looked around to find somebody to head that team up, and that's when I got selected.
Q You had mentioned previously that Sunbeam's 10 K for 1997 disclosed Sunbeam's, or some of Sunbeam's bill and hold sales. Correct?
A Correct. Included in this early buy program, included the bill and hold sales. So it's included in that disclosure, as I recall.
Q As of 1998, was bill and hold a term that you would expect someone who was a professional accountant to be familiar with?
A It was -- if they were professional accountants that practice with public companies, then it's a concept that if they didn't know the term, they should have at least understood the concept and been able to research and determine the proper accounting for these types of transactions.
Q And in 1998, based on your experience in the industry, did the term "bill and hold" have any particular connotation?
MR. MOSCATO: Do you understand the

question, Don?
THE WITNESS: I think the question is did I know prior to this, Sunbeam, did I know what the term bill and hold meant? Is that --
MR. MOSCATO: That's why I asked. That's not exactly --
THE WITNESS: That's not exactly the question, but --
MR. MOSCATO: You can answer that question if you want.
MS. BROWN: Strike that.
BY MS. BROWN:
Q In 1998, based on your experience in the industry, do you believe that if someone saw a public disclosure, that the company had engaged in bill and hold sales, would that have a positive or a negative impression, generally?
MR. JOHNSON: Object to the form of that.
MR. MOSCATO: I object also.
Can you answer that? Do you have the ability to answer that question?
THE WITNESS: I don't think I could make that judgment, no.
BY MS. BROWN:
Q In 1998, based your experience in the

industry, would you consider bill and hold to be a normal practice of public companies?
MR. MOSCATO: Objection.
MR. JOHNSON: Object to the form.
A Based on my experience in the accounting industry --
Q Correct.
A -- I would find bill and hold transactions to be unusual.
Q Seeing a public disclosure indicating that a company had engaged in bill and hold sales, would that raise a red flag for you concerning the performance of that company for the related financial period?
MR. JOHNSON: Objection to the form and foundation.
A You're asking as an investor, as an accountant?
Q As an accountant.
MR. JOHNSON: Same objection.
A As an accountant, I think it's relatively important information to understand that a company has changed its policy and would have a bill and hold policy that was unusual.
MR. MOSCATO: That's the answer to the question.

NOT A CERTIFIED COPY

0 4562

BY MS. BROWN:
Q If a company had changed its policy to now begin engaging in bill and hold sales, would that cause you concern about the performance of the company?
MR. JOHNSON: Objection to the form.
MR. MOSCATO: I object.
MR. JOHNSON: Hypothetical.
MR. MOSCATO: I think it's an unfair question to be asking this witness, or any witness, for that matter. There's just too much, too much information left out of the question to really give an intelligent answer.
THE WITNESS: It seems to me that's more appropriate to ask a financial analyst, whether it has an impact on the company's future performance. An auditor is auditing the historical performance of the company, not trying to make projections regarding the future performance.
BY MS. BROWN:
Q Do you recall that in a management letter to Sunbeam, Arthur Andersen indicated that it believed that Sunbeam had material weakness of its internal controls?
A In a management letter that was issued

subsequent to the restated financial statements we indicated as such.
Q And that communication from Arthur Andersen to Sunbeam was a result of information that Arthur Andersen learned during the additional procedures leading to the restatement. Correct?
MR. JOHNSON: Objection to the form.
A Correct.
Q During the restatement and the additional procedures, Arthur Andersen became uncomfortable with the representations that Mr. Gluck had made. Is that correct?
MR. JOHNSON: Object to form.
A Well, they were concerned about certain representations that Mr. Gluck had made.
MR. MOSCATO: Had made when?
THE WITNESS: In connection with the original audit work.
BY MS. BROWN:
Q Arthur Andersen had worked with Mr. Gluck as a client previously and found Mr. Gluck to be a conservative accountant. Correct?
MR. JOHNSON: Objection to the form.
A Mr. Gluck had been the corporate comptroller for some number of years prior to Dunlap's taking over

as chief executive officer, and my understanding is we had a good working relationship with Mr. Gluck. I don't now remember how conservative or not conservative he was.
Q In prior testimony to the SEC, and I'm happy to provide this to you if you like, you testified in --
MR. JOHNSON: Which day is this?
MS. BROWN: This is on June 3rd, 1999.
Page 251.
BY MS. BROWN:
Q You testified that Arthur Andersen had a long history of working with Mr. Gluck, I think in four previous audits, four previous to 1997. I think that we found him to be a competent accountant and generally a conservative accountant. So we certainly didn't know that he had changed under the pressure of management, changed from being a conservative accountant to one where he thought he could go to bare minimums for his reserves, and other accounting estimates that he had to make.
Do you recall generally that impression of Mr. Gluck?
A Yes.
Q Do you have any reason to think that your prior testimony was inaccurate in that regard?

A No.
Q After you completed the restatement of the Sunbeam financials, did Arthur Andersen continue to perform work for Sunbeam?
MR. JOHNSON: Objection to the form.
A I -- did we continue to perform audit work or any work?
Q Any work.
A I think there was some additional work that was done. It may have been in foreign offices, over some period, short period of time, at the conclusion of the restatement, probably a month or so after that, the board made a decision to select Deloitte and Touche as the auditor, and that was -- so that would discontinue the audit relationship. There may have been some ongoing tax projects or something that didn't -- that got completed after that period of time.
Q Do you recall obtaining documents or information from Ernst and Young in late 1998 concerning Sunbeam?
A In what regard?
Q In regard to preparing an audit or work plan.
MR. JOHNSON: Object to the form.
A I'm not sure I recall that.
MS. BROWN: We'll mark that as Morgan

NOT A CERTIFIED COPY

Stanley 15.
(Deposition Exhibit No. MS 15 received in evidence.)
BY MS. BROWN:
Q The court reporter has handed you what's been mark as Morgan Stanley 15, which is Bates CPH 84310, 311. It's a December 7, 1998 letter to you from Ernst and Young. On the second page of that document, is that your signature?
A Yes, it is.
Q Do you recall for what purpose you were obtaining documents for Ernst and Young?
MR. JOHNSON: Hold on a second. I didn't hear what you said.
(The question was read by the reporter as above recorded.)
MS. BROWN: From Ernst and Young.
THE WITNESS: In connection with the consolidated financial statements of Sunbeam, subsequent to the acquisition of Coleman, they would include the financial statements. Consolidated statements would include Coleman's operation.
And Coleman -- and I'm just reading this, because I don't recollect the specifics -- but

had performed work in June '98 and September 30, 1998. So those financial statements of Coleman would be consolidated into the financial statements of Sunbeam.
And since Arthur Andersen was responsible for the limited review procedures that we do in connection with quarterly financial reporting, we obtained -- we reviewed some of those work papers from the Coleman work that they had done on their quarterlies for the September and June periods.
BY MS. BROWN:
Q What is the last quarter for which Arthur Andersen performed a review of Sunbeam financials?
A I'm not sure I recall whether we did September. I think we did June. I don't remember whether we did September or not.
Maybe I should clarify, because I'm not sure what Sunbeam actually filed in terms of financial statements, because it got seriously behind in its financial statements.
So at the point they actually filed 10 Ks with the June and September periods, I don't know if we were still engaged as auditor or not. So I don't really recall.

MR. JOHNSON: Mr. Denkhaus, do you mean 10 Qs?
THE WITNESS: 10 Qs.
MR. MOSCATO: Do you feel like a two-minute break?
MS. BROWN: That's fine.
(Recess taken.)
BY MS. BROWN:
Q Do you recall a July 1998 meeting in Chicago with Jerry Levin?
A Yes.
Q What was the purpose of that meeting?
A To discuss Arthur Andersen's agreement and commitment to perform the additional procedures for Sunbeam.
Q Was there addition of any other work that Arthur Andersen would perform for Sunbeam after the additional procedures?
A Not that I recall.
Q And you testified previously that Mr. Levin had expressed concern regarding whether Arthur Andersen would be willing to do the restatement of financial statements that it had audited. Correct?
MR. JOHNSON: Objection to the form.
A I testified previous, not today, but previous

testimony, yes.
Q And Arthur Andersen provided a number of assurances to Mr. Levin in that regard. Correct?
A Yes.
Q Was there any discussion during that meeting where Mr. Levin essentially asked how could this have happened?
MR. JOHNSON: I object to the form of that.
A Not that I recall.
Q Was there any volunteered explanation to Mr. Levin about what necessitated the need for the additional procedures?
MR. MOSCATO: Objection.
MR. JOHNSON: I'll join.
A The need for the additional procedures came as a result of Arthur Andersen's learning about, I think it was some guaranteed sales that they weren't aware of, and therefore wanted to determine if there were other items that might affect the financial statements.
I think Mr. Levin was aware of these reasons that there was a need to do additional procedures to see if a restatement was in fact going to be necessary.
Q Now, when you referred to additional guaranteed sales, are you referring to sales,

NOT A CERTIFIED COPY

guaranteed sales that Arthur Andersen learned of after March of 1998?
A Yes.
Q And after March of 1998 Arthur Andersen also learned that Sunbeam had deleted files relating to return authorizations. Correct?
A Yes.
Q Other than talking to Mr. Levin about the resources that Arthur Andersen would put towards the additional procedure and a possible restatement, was there any other discussion with Mr. Levin about why additional procedures might provide information that Arthur Andersen had not been aware of prior to the close of the 1997 financial statements?
MR. JOHNSON: Objection to form.
MR. MOSCATO: I object.
THE WITNESS: I'm confused.
MS. BROWN: Can you read the question back?
MR. MOSCATO: I don't think reading it back is going to help, to tell you the truth.
MS. BROWN: I'll restate the question.
BY MS. BROWN:
Q When you met with Mr. Levin in Chicago in July of 1998, was there any discussion of any reason

why the additional procedures might reveal information that had not been available prior to June of 1998?
MR. JOHNSON: Objection to form.
A I'm still confused about the question. The additional procedures were to determine if there was information that we weren't aware of. If that's your question --
MR. MOSCATO: No, that's not the question. The question is did you discuss any of that with Jerry. Do you remember discussing any of that with Jerry Levin, yes or no.
THE WITNESS: I don't recall.
(Deposition Exhibit No. MS 16 received in evidence.)
BY MS. BROWN:
Q You've just been handed what's been marked as Morgan Stanley Exhibit 16, which is Bates CPH 76949. Do you recall ever seeing this document before?
A Yes.
Q This is a memo that you authored. Correct?
A Yes.
Q Can you explain for me the purpose of this memo, which is dated November 11, 1998?

MR. MOSCATO: You mean other than what the memo states?
MS. BROWN: Yes. Summary of the purpose.
MR. MOSCATO: Do you have anything to add, other than what the document states, Don?
MR. JOHNSON: The purpose of the memo or the purpose of the procedures described in the memo?
MS. BROWN: I'll strike it. I'll reask.
BY MS. BROWN:
Q What was the purpose of the procedures described in the memo?
MR. JOHNSON: I object. It stated expressly, right in the document itself, what the purpose is.
MR. MOSCATO: That's my objection too.
THE WITNESS: "The purpose of the above procedures is to have a complete set of all relevant work papers to support our restatement audit work."
BY MS. BROWN:
Q The distribution isn't included on this document. Was this distributed to all the people that worked with you on the additional procedures for the restatement?

A I believe so.
Q And to the best of your knowledge, were the procedures that are referred to in Morgan Stanley Exhibit 16 followed by those people?
MR. MOSCATO: I object.
A I don't really know if everybody followed these procedures.
Q Do you have any information concerning anyone who did not follow these procedures as referred to in Morgan Stanley Exhibit 16?
A No.
Q Were you aware that Coleman Parent Holdings had sued Arthur Andersen in regards to the work that Arthur Andersen performed for Sunbeam?
A Yes.
Q Were you aware that Arthur Andersen settled that suit?
A Yes.
Q Are you aware of the terms of that settlement?
A No.
Q Have you ever seen the settlement agreement?
A No.
Q Have you ever discussed the settlement with anyone?
A No.

NOT A CERTIFIED COPY

MR. MOSCATO: Nice try. I wasn't going to let him answer anyway. Nice try.
Q In the course of the work that you were doing for Sunbeam in 1998, were you aware that Sunbeam entered into a settlement agreement with MAFCO concerning Sunbeam's acquisition of Coleman?
MR. JOHNSON: Objection to form.
A MAFCO was the holding company for Coleman, as I recall.
Q That's correct.
A Yes, I was aware of that.
MR. JOHNSON: Object to that.
MS. BROWN: Indirect parent.
BY MS. BROWN:
Q Were you aware that as part of the settlement agreement between Sunbeam and MAFCO that Sunbeam issued warrants, directly or indirectly, to Ron Perlman?
A Yes.
Q Did you have occasion to review Sunbeam's valuation of those warrants?
A I reviewed the valuation. I thought it was performed by someone other than Sunbeam, but I'm not sure, but I do remember looking at some documents on the valuation.
Q Of the warrants that Sunbeam provided to

MAFCO?
A Yes.
Q Did you also have occasion to review Deloitte and Touche's assessment of the value of the warrant that Sunbeam had issued, indirectly or directly, to Ron Perlman?
A No.
Q So you weren't aware of Deloitte and Touche's valuation of those warrants?
A Unless they were the ones that did the valuation, and that was what I looked at. I remember looking at something, but I can't -- I thought it was a third party, but I didn't -- my recollection wasn't Deloitte, but --
Q Do you recall looking at a presentation by a group called the Blackstone Group?
A I think that's what I looked at.
Q What was your purpose in reviewing that presentation?
A There was accounting that needed to be made for the valuation of those warrants. It was reviewing them to ascertain the proper amount of the accounting entry.
Q In the course of reviewing the accounting of the settlement between Sunbeam and MAFCO, did anyone

ever express to you that Sunbeam had overpaid for the Coleman Company?
MR. JOHNSON: Objection to the form.
A I've heard -- I remember it being said that they, that Sunbeam had overpaid for Coleman. I don't remember specifics of who would have said that to me, but I do remember hearing that.
Q Do you remember whether that was something that was said by Sunbeam management that you were working with in 1998, or was that something that was said by someone else?
MR. JOHNSON: Objection to form.
A I don't really recall.
MR. JOHNSON: Let's go off the record.
(Discussion off the record.)
BY MS. BROWN:
Q When you were working on the additional procedures from June of 1998 through the restatement, you were working with the new management of Sunbeam. Correct?
MR. JOHNSON: Objection to form.
A Yes.
Q And a number of those individuals who are now at management of Sunbeam were prior employees of Coleman Company. Correct?

A Yes.
Q In the course of your interaction with any of the new management at Sunbeam, did you become aware of the history and the negotiations between Sunbeam and Coleman concerning Sunbeam's acquisition of Coleman?
MR. JOHNSON: Objection to form.
A Only in a general way. Basically what would be the public information in the financial statements.
Q In the course of your work with the senior management at Sunbeam, in late 1998, were you made aware that the deal between Sunbeam and Coleman had originally been negotiated as an all cash deal?
MR. JOHNSON: Objection to form, foundation.
A I don't have any recollection of that.
Q In reviewing the accounting treatment of the warrants that were issued directly or indirectly by -- directly by Sunbeam, to Ron Perlman directly or indirectly, do you recall what valuation Sunbeam placed on those warrants?
A My recollection was something around $80 million, but it's in the financial statements, so it should be readily available; not rely on my memory of this topic.
Q Do you recall in reviewing the Blackstone

NOT A CERTIFIED COPY

0014566

Group report that the Blackstone Group's valuation relied on a Black-Sholes method?
MR. JOHNSON: Objection to form.
A I don't know that I recall that. I mean, that's a normal way to value options, but I don't, I don't recall it specifically how they did it.
Q Do you recall that the Blackstone Group's presentation indicated a valuation for the warrants that Sunbeam issued to settle the MAFCO claims of 30 to 107 million dollars?
MR. JOHNSON: Objection to form.
A I don't recall the specifics.
Q Does that range sound approximately right?
A I know there was a range, but I don't recall whether that was the range or not.
Q Do you recall that the Blackstone Group presentation provided a warrant value sensitivity analysis?
A Only in a vague way. I don't remember the specifics, but I remember there were different scenarios to determine the value, as is typical of a valuation of a security, and I don't remember the specifics of how they determined it or what the final determination value was based on.
Q Do you recall by the time you reviewed the

Blackstone presentation you reached a conclusion that Sunbeam was not performing as well as Blackstone had projected that it would perform?
MR. JOHNSON: I'm going to object to that.
MR. MOSCATO: Do you recall that, Don?
THE WITNESS: No, I don't really recall that.
BY MS. BROWN:
Q Do you recall Blackstone, representatives of the Blackstone Group being at any board meetings that you attended?
MR. JOHNSON: Object to the form and foundation.
A No, I don't recall them being -- they may have -- there were a number of meetings that were telephonic participants. Sometimes I came into meetings that were taking place. So they may have been on a telephone meeting, but I don't specifically have a recollection of meeting anybody from Blackstone.
(Deposition Exhibit No. MS 17 received in evidence.)
BY MS. BROWN:
Q You've just been handed what's been marked as Morgan Stanley Exhibit 17. Do you recall ever seeing

this document before?
A Yes. I believe this is a document I would have seen relating to board of directors minutes for August 5th, 1998 meeting.
Q Morgan Stanley Exhibit 17, Bates CPH 0100203 to 207. It refers to an Arthur Newman of the Blackstone Group. Do you recall ever meeting Mr. Newman?
A Not really. He may have been there. I don't recall. They had board meetings that have 15, 20 people.
MR. MOSCATO: Don, the question is do you remember meeting him, yes or no.
THE WITNESS: No.
MR. MOSCATO: Okay. Thank you. Sorry. But just answer the question.
THE WITNESS: I know you want to get that taxi.
BY MS. BROWN:
Q You don't recall any direction conversations you had with anyone from the Blackstone Group?
A No, I don't.
Q Do you recall a meeting with bankers in New York, in September of 1998, at the request of Bobby Jenkins?

A Yes.
Q What bankers did you meet with?
A I don't recall.
Q You don't recall whether Morgan Stanley was present at that meeting?
A No.
Q What was the purpose of your attending that meeting?
A Bobby Jenkins was trying to calm down the concerns of the bankers, so that they wouldn't take any action on their loans, and he asked me to attend to tell them that we were doing additional procedures and where we -- and the progress of those procedures as it related to the restated financial statements.
Q Other than yourself and Mr. Jenkins, do you recall who else was present at that meeting?
A There were a number of bankers, but I don't recall which banks or bank names, bank individual officers that were there.
MS. BROWN: I have no further questions at this time.
MR. JOHNSON: Nothing from us.
MR. MOSCATO: Thank you, one and all.
THE REPORTER: Are you reading or waiving?

NOT A CERTIFIED COPY

MR. MOSCATO: I never waive anything, but I'm not ordering a transcript either, though. So I don't know where that leaves us.
MR. JOHNSON: Three days for us.
THE REPORTER: You want a rough ASCII?
MR. JOHNSON: (Nods head in the affirmative.)
MS. BROWN: Same thing.
(The deposition was concluded.)

- - -

_____
DONALD DENKHAUS

Sworn to and subscribed before me this
_____day of_____, 20_____.

_____
Notary Public:
Commission No.:
My commission expires:

CERTIFICATE OF OATH

STATE OF FLORIDA:
COUNTY OF DADE:

I, the undersigned authority, certify that DONALD DENKHAUS personally appeared before me and was duly sworn.
WITNESS my hand and official seal November 9, 2003.

_____
SHERILYNN V. McKAY, RMR, CRR
Notary Public - State of Florida.
My Commission No: CC 743595.
Expires: June 28, 2006

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA:
COUNTY OF DADE:

I, SHERILYNN V. McKAY, Registered Merit Reporter and Certified Realtime Reporter, certify that I was authorized to and did stenographically report the deposition of DONALD DENKHAUS; that review of the transcript was requested; and that the transcript is a true record of my stenographic notes.
I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.
DATED November 9, 2003.

_____
SHERILYNN V. McKAY, RMR, CRR

MR. DONALD DENKHAUS November 9, 2003
C/o MICHAEL J. MOSCATO, ESQ.
CURTIS, MALLET-PREVOST, COLT & MOSLE
101 Park Avenue
New York, New York 10178-0061

Re: COLEMAN v. MORGAN STANLEY
Case No. 2003 CA 005045AI

Dear Mr. Denkhaus:
Please note on November 6, 2003, you gave your deposition in the above-referenced matter. At that time, signature was not waived. It is now necessary to read and sign your deposition.

Please call (954)731-6616 to schedule an appointment at the Esquire office located nearest you. Our business hours are 9 a.m. to 4:30 p.m., Monday through Friday. If you do not read and sign the deposition within 30 days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court.

If you wish to waive your signature, please sign your name in the blank at the bottom of this page and return it to us.

Very truly yours,

_____
SHERILYNN V. McKAY, RMR, CRR
ESQUIRE DEPOSITION SERVICES
5410 N.W. 33rd Avenue, Suite 100
Fort Lauderdale, Florida 33309
(954)731-6616

_____
I do hereby waive my signature
DONALD DENKHAUS
cc via transcript:
Clark Johnson, Esq.; Zhonette Brown, Esq.

NOT A CERTIFIED COPY

014568

ERRATA SHEET

COLEMAN v. MORGAN STANLEY
Case No. 2003 CA 005045AI

Pursuant to Rule 1.310(e) of the Florida Rules of Civil Procedure, this transcript is being submitted to you for examination, reading and signing. Please do not write on transcript. Any changes in form or substance you desire to make should be entered on this sheet as follows:

Page/Line No. Change Reason

Under penalties of perjury, I declare that I have read my deposition and it is true and correct, subject to any changes in form or substance entered here.

Date DONALD DENKHAUS

NOT A CERTIFIED COPY

014569

438

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

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

CASE NO. CA 03-5045 AI

FILED
Jan 3 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY _____
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

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

VOLUME 3
(EXHIBITS 15-29)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

015001

968

16div-020867

TABLE OF CONTENTS
VOLUME 3

	TAB
CPH Ex. 371	15
CPH Ex. 372	16
CPH Ex. 374	17
CPH Ex. 375	18
CPH Ex. 37	19
John Tyree Deposition Transcript (11/14/03)	20
CPH Ex. 84	21
CPH Ex. 172	22
Lily Rafii Deposition Transcript	23
CPH Ex. 173	24
CPH Ex. 221	25
Gene Yoo Deposition Transcript	26
CPH Ex. 245	27
William Nesbitt Deposition Transcript (9/1/04)	28
CPH Ex. 9	29

NOT A CERTIFIED COPY

015002

NOT A CERTIFIED COPY

015003

February 24, 1994
02:27 PM

1993 Performance Evaluation

WILLIAM H. STRONG

CONFIDENTIAL

NOT A CERTIFIED COPY

015004

Evaluation Director:

Robert G Scott

EXHIBIT
CPH 371
12/8/04 SSL

WILLIAM H. STRONG
MANAGING DIRECTOR -- CFD
BANKING

List of Evaluators

DOWNWARD	COLLEAGUE	SHORT FORM	UPWARD
Adams, John C.* (v)	Crompton, John D. (v)	Ayers, Jonathan W. (v)	Evaluator 1
Anda, Jon A. (v)	Havens, John P.†	Berner, III, Robert L.* (v)	Evaluator 2
Brombach, Theodore J.† (v)	Lunn, Robert J	Boutros, George (v)	Evaluator 3
Busch, May C. (v)	Matschullat, Robert W.	Genova, Lisa A. (v)	Evaluator 4
Dean, Gordon G.* (v)	Scott, Robert G (Dir. Mgr.)	Goldstein, Ross H (v)	Evaluator 5
Howell, Lawrence M.* (v)	Seigel, Mark A†	Kauffman, Richard L.* (v)	Evaluator 6
Oelerich, III, Francis J.* (v)	Stonefield, Stephen†	Lewis, Jr., William M (v)	Evaluator 7
Spence, John F.* (v)	Stonehill, Charles†	Mack, John J	Evaluator 8
		O'Flynn, Thomas M. (v)	Evaluator 9
		Robson, Glenn R. (v)	Evaluator 10
		Shay, Dewey K. (v)	Evaluator 11
			Evaluator 12
			Evaluator 13
			Evaluator 14
			Evaluator 15†

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085404

Requested: 0	Requested: 7	Requested: 1	Requested: 6
Received: 3	Received: 8	Received: 9	Received: 15
Pending: 0	Pending: 0	Pending: 0	

0150010

Notes: *Evaluation not received; †Evaluator had Limited Involvement or is Unable to Evaluate; (v) Voluntary evaluation.

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Three Greatest Strengths

Downward Comments

Within IBD

Anda, Jon A. (v) (E)

Excellent business manager, very direct and effective communicator, a quiet study in banking business situations, very efficient. A clearly strong relationship builder, excellent follow-through, persuasive, persistent, works well with treasurers as well as CEO's. Very effective presence in the business community. Strong work ethic, hustles, works all day and entertains clients all night, very committed.

Busch, May C. (v) (N)

Leadership. There is a marked increase in activity/focus in Chicago region since Bill joined the Firm. Our Midwest effort is much better organized and the group is more highly energized. Initiative. Takes the lead in establishing new relationships, setting up meetings, instituting accountability systems. Aggressive pursuit of opportunities. In Whitman pitch for bond deal, Bill did not take no for an answer and kept on trying to change our status with the CFO. Bill is persistent and persuasive.

Colleague Comments

Within IBD

Maischullat, Robert W. (E)

Great with clients, very effectively deals with CEO level clients because of his excellent judgment, presence, and trustworthiness. Focused, dedicated, hardworking and intense. Teamplayer, teambuilder. Always willing to help out when/where ever needed.

Crompton, John D. (v) (N)

Client skills. Relationship building, selling and situational judgment. Professional skills. Excellent product knowledge and analytical ability. Excellent team leader. Sets long and short-term client objectives, and is imaginative and organized in ensuing follow-up.

Scott, Robert G (N)

Initiative, commitment. Bill has shown a lot of energy fitting into the Firm. He has worked hard at learning about MS and its people. He has lots of ideas about how we can do things better; M&A meetings, Derivatives. People skills. Bill is interested in his people and approachable. Versatile. Knowledgeable across a broad range of products.

Seigel, Mark A (L)

Bill has very strong client relationship skills and is clearly viewed as an effective senior banker within the financial community.

Stonehill, Charles (L)

Great team member.
Obviously has considerable pulling power with clients. Not afraid to speak his mind.

Outside IBD

Lunn, Robert J (EQUITY) (N)

Very smart, hard worker. Team player. I think he will be good at relationship building over time. New in town.

NOT A CERTIFIED COPY

(v) Voluntary evaluation.
Legend for Degree of Involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate.

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Three Areas in Need of Further Development

Downward Comments

Within IBD

Anda, Jon A. (v) (E)	Could be more open-minded on strategies, consider alternative approaches. Can be almost too decisive. Needs to continue to broaden his base within the Firm, to develop strong relationships with product and execution people who he can leverage for idea generation, judgment in soliciting and executing business, etc. Should continue to test and strengthen his professional skills by directly managing a couple of key accounts in each office.
Busch, May C. (v) (N)	More exposure to capital markets transactions which will occur naturally as Bill's clients do more financings with MS. This should make Bill even more comfortable with our capabilities as a Firm. Improve communication with CFD industry groups. I sometimes find myself the communication link between CFD NY and CFD Chicago on dual coverage clients.

Colleague Comments

Within IBD

Matschullat, Robert W. (E)	Could relax a bit more at times and show his human side.
Crompton, John D. (v) (N)	Research exposure and senior MS personal acron, a full range of product areas to ensure that his clients and ideas receive the attention they should command. (Not that I have observed any specific problems here).
Seigel, Mark A (L)	In one particular instance, was a little too willing to cut fees.

Outside IBD

Lunn, Robert J (EQUITY) (N)	Stretched.

NOT A CERTIFIED COPY

015007

MORGAN STANLEY
CONFIDENTIAL
0085406

(v) Voluntary evaluation.
Legend for Degree of Involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate.

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Summary Comments

Downward Comments

Within IBD

Anda, Jon A. (v) (E)

Bill has made a rapid and effective transition into his role at the Firm, and he has done it through a tireless work effort, a team-oriented attitude, and immediate utilization of his strong management talents. On management skills alone, he can be extremely valuable to MS over the long term.

Busch, May C. (v) (N)

Bill is a real positive for our Midwest effort. He has taken charge but not in an overbearing way. He does pitch the debt product and is able to gain the respect of clients at a very senior level. He is aggressive and persistent and conveys great confidence. A pleasure to work with, very responsive to capital markets efforts.

Colleague Comments

Within IBD

Matschullat, Robert W. (E)

Excellent hire, has already produced significant results commercially. Already has a very important job, but also can do more.

Crompton, John D. (v) (N)

Bill is a model of a senior client relationship manager. I have worked with him on several client banker development projects (e.g., Eaton, Price Corporation, General Dynamics) and also attend idea question and goal setting with the West Coast and Mid-West coverage groups. He displays excellent priority and goal setting skills, is an excellent listener and provides exemplary leadership both in internal and client meeting situations.

Scott, Robert G (N)

Bill has no major weaknesses. He needs to focus in '94 on personally making a major revenue impact. The loss of Stuart Taylor was not Bill's fault, but Bill should have realized sooner Stuart's degree of frustration.

Seigel, Mark A (L)

A great addition to MS team.

Stonehill, Charles (L)

The quintessential coverage officer on the Newmart deal. Knew his client, rapidly developed an understanding of the transaction, and stayed involved. Finally, gave good feedback to team members.

Outside IBD

Lunn, Robert J (EQUITY) (N)

Good partner. Straight shooter. Uphill at first because of my feelings for Doug Gray, but this is a great move long term.

Havens, John P. (EQUITY) (U)

I have only had two client meetings with Bill. He seems to be very good with clients and utilizes the Firm's resources.

NOT A CERTIFIED COPY

0150088

MORGAN STANLEY
CONFIDENTIAL
0085407

(v) Voluntary evaluation.
Legend for Degree of Involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate.

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Short Form Comments

Within IBD

Ayers, Jonathan W. (v)	No Comments.
Boutros, George (v)	Smart, intense individual. Seems very highly driven/motivated.
Genova, Lisa A. (v)	Camco Bake off (IPO) Baroid Business Development.: Senior banker role, introduced MS team to both situations. Very effective at identifying, pursuing and following up on new business opportunities, commands the respect of clients. Communicates very well within the team. Encourages input and participation from all team members. Very good coverage officer role model.
Goldstein, Ross H (v)	Various business development assignments.: Bill is the Senior Coverage Officer on many business development assignments. Most effective. Very good at framing the key issues and client objectives for ECMS. Understands clients' business well. Very effective public speaker. Good equity product knowledge.
Lewis, Jr., William M (v)	Very intense, very systematic and very impressive. A real pleasure to work with; will undoubtedly be a major factor in Chicago.
O'Flynn, Thomas M. (v)	Commonwealth Edison.: Provide regional coverage of Commonwealth Edison and a red list client that currently has a very strained relationship with Morgan Stanley. Outstanding commercial orientation; outstanding client relationship building. Bill has single handedly developed a relationship with president when dialogue with financial staff was closed off. Great job in a sometimes hostile environment. Very good professional skills, very good One Firm, and integrates NY and Chicago well.
Robson, Glenn R. (v)	Head of Regional Offices.: Managing west coast IBD Most. Management/Leadership Skills. Very clearly establishes goals and vision for the office and communicates it broadly to ensure that everyone is working to the same goals. Establishes a strong leadership presence without being meddlesome. Accessible and very responsive to fast changing events. Professionalism. Exercizes excellent judgment, able to draw upon a wealth of experience and bring it to bear on a client's specific situation. Ability to establish tremendous credibility with clients. Least. Probably could spend more time in LA office and play more of a mentor role.
Shay, Dewey K. (v)	Senior Banker on Fingerhut, Montgomery Ward.: Senior Banker. Limited exposure. Bill took the time to attend working level meetings which were important to a Montgomery assignment. The chairman attended one as a result. Bill is attempting to develop senior relationships with both of our companies proactively.

Outside IBD

Mack, John J (FM)	IPO for Prince Inc.: Senior coverage officer for Prince, Inc. He understands how to use the resources of the client. Managed the client and resources superbly.

(v) Voluntary evaluation.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085408

0 1 5 0 0 9

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Upward Comments

Should Stop Doing...

- Bill has been a very pleasant surprise. He has shed most of his unneeded Salomon tendencies and adapted well to the MS culture. He retains an edge which is useful only if displayed infrequently.

- Bill has done an exceptional job as manager of the branch offices in two respects; he has made the effort to truly understand our client base, and what we are trying to accomplish with each particular client, and he has created a framework that clearly defines goals that he expects us to accomplish, and how best he thinks we should accomplish those goals. My view of Bill is that we could benefit from his experience, and that he should stop being so hands-off, and try to keep more abreast of key activities at all levels in the branch offices.

- Although Bill works well under stress, there are times when he shows too much emotion. Tends to react too quickly in stressful situations.

- Bill should stop being a Regional person only. His methods of Management will have effect in N.Y. to the same degree it has shown in the Regional offices.

- Bill should continue providing junior people with responsibility and leading them by example, inspiring juniors to perform at their highest level and giving them opportunities to do so. Bill keeps his people informed as to the latest developments in transactions and provides clear guidance of next steps and expected performance. Bill should continue providing juniors with the opportunity to see him in action and continue to walk through his logic with respect to the strategies he chooses. Bill has a captivating presence with clients and wins their confidence very quickly.

- My only criticism relates to two instances where Bill has dealt with someone in a professsional, courteous manner. After the other person left, Bill made a very negative or caustic comment. It certainly occured to me that if Bill could be that "political in dealing with others, he could also be making negative comments about me behind my back. Having said that, I believe that Bill has been very fair and honest in all his dealings with me.

Should Continue Doing...

- Bill is a very effective communicator. If I am not involved in a specific relevant conversation, he will bend over backwards to update and post me on developments. I then can function more effectively. He delegates very well.

- Bill does a great job at setting and communicating his vision. Keeping staff informed as to all aspects of the business. Leading by example. Focusing on all areas of the business including deal management, personnel management and setting business goals. He is very focused on and excited about the business.

- Be hardworking. Show positive feedback. Highest integrity. Thoughful about solving client's problems. Help his subordinates get compensated well.

- Inspires enthusiasm. Bill has an enthusiastic style which was particularly infectious on the Rouge Steel IPO bake-off. Establish clear objectives. Bill will tell you what he wants and will give precendents that he likes for you to follow.

- Bill offers thought provoking and creative strategic/financing suggestions for our clients. It is a low pressure, trying to be helpful approach, and if an idea doesn't make sense, Bill is not burdened with a pride of authorship problem. He is also extremely encouraging, which (in this environment) is the right way to motivate the troops. He focuses on work harder because he knows we're working hard.

- Bill has been extremely supportive of me personally. Knowing that he feels that way gives me a higher level of confidence in my abilities than I would have otherwise.

- Bill is a very personable and down to earth individual who treats everyone equally and fairly. He is easy to work with because he is articulate, decisive and responsible. He is very approachable and very much a professional. Displays a great sense of humor. He is very proactive in the goings-on in the management of the office.

- Bill is simply the best manager I have worked for in my career, I make that statement without hesitation. He has created a highly

NOT A CERTIFIED COPY

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Upward Comments

Should Continue Doing...

(Continued)

energized and cooperative culture in the Chicago Office. He micromanages just the right amount. He keeps abreast without stifling degrees of formality. Most importantly he truly cares about the career development of each and every professional in the office from analyst to managing director. He is creative and thoughtful and shows tremendous initiative. He does not wait for his staff to deliver ideas and does not seek to be scripted. He has had at least one good idea in every client meeting we've done together. He has done a great job building a network of contacts and within a year has become a prominent and respected figure in the Chicago community. He has empowered each of us to create a business practice. At this point I am very happy to be in MS's Chicago office. I am quite confident that our market share and profits will grow each year under Bill Strong's leadership.

- Working hard. Very strong work ethic/leads by example. Provide support when needed. Bill is willing to get involved in client relationships and to devote his time generously. Thoughtful. Bill is refelctive and exercises good judgement on both internal and client matters.

- Continue to build the confidence and comfort of those who report to him. Continue with the high standards of excellence he has established for himself and others.

- Bill should continue to push individuals to take on greater responsibility. Bill gets involved to the extent he needs to, but allows others to think creatively about projects/ assignments/ meetings.

Should Start Doing...

- Relaxing just a bit more. Clients want a tiger when a tiger is needed, but in the context of less urgent situations, Bill needs to avoid seeming over eager and to respond appropriately to business opportunities or lack thereof.

- I believe that due to limited resources, we need to think about prioritizing some of our accounts, and decide where to spend more or less time. This comment is not so much for Bill personally, as for the entire office in general.

- re sense of humor. Relax a little. Spend more time having fun with employees. All work and no play.

- Develop a coordinated approach to steel company coverage in his region. I will pick up the phone and ask for this.

- I would recommend more frequent conversation with all the professionals who report to Bill, even if they are informal or social. He could develop closer personal ties with subordinates and generate insights into the coverage effort in regional offices.

- Bill deserves a lot of the credit for the San Francisco office's success this year. He manages by example, and the example he sets is of someone who is extremely hard working and respected by clients and colleagues alike. Bill would be an even more effective manager if he could stretch himself a little thinner and spend more time developing the skills of the junior people who report to him.

- It would be very effective if Bill interacted more with members of the support staff, i.e. word processing staff, other secretarial staff members. This would be a great morale booster.

- Slow down, relax a little. Bill can sometimes be all business and could benefit from taking time out to socialize with his staff more to strengthen morale and loyalty.

- Become more involved with N.Y. Management. Should be included in other managerial committees.

- I cannot think of any onething which Bill should start doing to bea more effective manager. He is very organized, bright, diligent and focused. At the same time, he does a good job of managing "people" issues. He is an outstanding managing leader.

Greatest Impact On The Management/Leadership Effectiveness Of This Person

NOT A CERTIFIED COPY

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Upward Comments

Greatest Impact On The Management/Leadership Effectiveness Of This Person

(Continued)

- Bill readily admits that he is being exposed to certain products for the first time, and thus wants to maximize his exposure and involvement in certain situations. This can manifest itself in an almost bureaucratic pursuit of certain product initiatives.
- Bill is a tremendous leader and manager of the investment banking business. I would only like to be able to utilize more of his time with my clients.
- Develop a lighter side (like Matschullat for example-who is funny, interes ted in his people's welfare and wants to have fun some small percent of the time. 10%?)
- A somewhat stepped up level of communication would help, as several of us on the Goldsmith sale of Newmar stock felt out of the loop.
- It ain't broke, but we could probably use Bill's senior banker talents more effectively, perhaps encouraging him to play a more active role in executing projects at a senior level. It has been effective when we have utilized those skills in the past.
- Unable to evaluate.
- Interact more frequently with members of the support staff.
- I have learned in coverage that productive use of one's time is most important. As we head into the next year I would like as much guidance as possible from Bill in this regard.
- As previously mentioned, Slow down, relax a little. Bill can sometimes be all business and could benefit from taking time out to socialize with this staff more to strengthen moral and loyalty.
- Continue to expect high standards from those under him and maintain the leadership he has shown in the Regional office and get even more involvedw ith N.Y. Management.
- Bill needs to better manage the time demands placed on his associates/analysts by the officers in the office. As it is currently, associates/analysts tend to complete work for the MO first, because he screams the loudest, the principal second and the VP third. This occurs despite the fact that the VP tries to give the greatest lead time. As a result, the VP is often the recipient of a good, but not great work product. Moreover, none of the officers really care how much the associates/analysts have done for others in the office. Once one large project is completed, there is another crises awaiting.

Summary Comments

- Leadership Role. Bill clearly communicated several tasks to me such that I understood my role and how it fits into the larger task, and then followed up with me focussed,.in detail on my portion and provided timely feedback. Impressive. Bill is the type of person I like to work for. Team Management . I reiterate the above comment and that Bill seems very sensitive to finding out Firm's policy/ The Morgan Stanley answer or perspective on issues of judgment. I recognize the importance of this at his level and am impressed with his thoroughness. Training and Development. As mentioned above, Bill has several times focussed in detail on work I have done for him and has provided timely feedback. Interpersonal skills. Bill is extremely respectful of the people who workfor him. He makes me feel that he cares about me and the work I do for him. I am impressed with his willingness to talk to anyone and sort of lack of arrogance which might be expected for such a senior banker.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085411

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Summary of Evaluations — Banking

Downward/Colleague Criteria	Direct Manager Score	William H. Strong Downward Average Score	William H. Strong Colleague Average Score
1. Professional Skills			
A. Product Knowledge	4.0	4.0	4.3
B. Analytical Skills/Problem Solving Ability	4.0	4.0	4.5
C. Oral Communication	4.0	4.5	4.5
D. Written Communication	-	5.0	4.0
E. Work Quality/Execution	3.0	5.0	4.3
F. Initiative/Commitment	5.0	5.0	5.0
G. Judgment/Decision Making	4.0	4.5	4.5
H. Imagination/Creativity	4.0	4.0	4.0
I. Flexibility/Versatility	4.0	4.0	4.0
J. Professionalism	5.0	4.5	4.8
2. Commercial Orientation			
A. Client Relationship Building/Influence on Client	4.0	4.5	4.3
B. Selling/Cross-Selling	3.0	4.5	4.0
C. Commercial Instinct/Revenue Contribution	4.0	4.5	4.8
3. Management Skills			
A. Leadership & Management of Personnel	5.0	5.0	5.0
B. Performance Management	4.0	4.5	4.0
C. Management of Diversity	3.0	4.5	3.0
D. Management of Firm's Resources	4.0	4.5	4.0
E. Time Management	4.0	4.5	4.3
4. One Firm Contribution			
A. Team Player Skills	4.0	4.5	4.3
B. Contributes to MS & External/Industry Community	3.0	4.5	3.3
5. Arithmetic Average	3.9	4.5	4.2
6. Overall Rating	4.0	4.5	4.5

Upward Criteria	William H. Strong Upward Average Score
LEADERSHIP	
1. Establishes Direction	
A. Develops & Communicates a Positive Vision	4.6
B. Focus On Clients/Users	4.8
C. Keeps Staff Informed of Changes & Developments	4.4
2. Builds Commitment	
A. Provides Sufficient Resources & Organizational Support	4.3
B. Recognizes Time Commitments; Balances Deadlines	4.1
C. Invites Information, Questions, Suggestions & Opinions from Staff	4.5
D. Ensures Appropriate Participation of Junior Staff	3.9
E. Builds Mutual Respect & Trust Among Team Members	4.5
F. Confronts Conflict Situations Honestly & Directly	4.7
3. Creates High Performance	
A. Challenges Conventional Wisdom; Takes Risks; Seeks Improvement	4.3
B. Empowers People by Delegating	4.3
C. Inspires Enthusiastic Efforts & Highest Levels of Achievement	4.6
D. Treats a Diverse Workforce with Sensitivity, Fairness & Respect	4.2
E. Fosters Collaboration & Cross-Selling; Builds Partnerships	4.2
F. Effectively Deals with Pressure & Crises	4.0
4. Leads By Example	
A. Leads by Example; Has High Credibility	4.6
B. Shows Patience & Understanding	3.9
C. Ability to Make Difficult Business Decisions	4.7
D. Possesses Required Professional/Technical/Product Knowledge	4.4
E. Strives to Grow Professionally; Seeks & Accepts Developmental Feedback	4.6
MANAGING PERFORMANCE	
5. Defines Expectations	
A. Establishes & Communicates Clear Objectives	4.2
B. Clearly Indicates The Highest Priority Goals & Assignments	4.4
6. Provides Feedback	
A. Provides Insightful, Real Time Positive & Corrective Feedback	4.4
B. Expresses Appreciation for a Job Well Done	4.4
C. Active and Accurate Listener	4.3
7. Improves Current Performance	
A. Spends Sufficient Time Teaching & Coaching	3.8
B. Keeps Abreast of Key Activities Without Excessive 'Checking Up'	4.4
8. Coaching for Development	
A. Acts as a Mentor; Takes time to Discuss Career Development	4.3
B. Challenges People to Expand their Role	4.4
C. Develops Leadership Capabilities of Staff	4.4
9. Arithmetic Average	4.4
10. Overall Rating	4.7

Evaluations Received, Excluding Limited: 2 Downward, 4 Colleague, 14 Upward

NOT A CERTIFIED COPY

16div-020879

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Summary of Downward & Colleague Evaluations — Banking

Downward							Colleague						
N/O	Unsat. (1)	Needs Improve. (2)	Good (3)	Very Good (4)	Outst. (5)		N/O	Unsat. (1)	Needs Improve. (2)	Good (3)	Very Good (4)	Outst. (5)
						1. Professional Skills						
0	0%	0%	0%	100%	0%	A. Product Knowledge	0	0%	0%	0%	75%	25%
1	0%	0%	0%	100%	0%	B. Analytical Skills/Problem Solving Ability	0	0%	0%	0%	50%	50%
0	0%	0%	0%	50%	50%	C. Oral Communication	0	0%	0%	0%	50%	50%
1	0%	0%	0%	0%	100%	D. Written Communication	2	0%	0%	0%	100%	0%
1	0%	0%	0%	0%	100%	E. Work Quality/Execution	0	0%	0%	25%	25%	50%
0	0%	0%	0%	0%	100%	F. Initiative/Commitment	0	0%	0%	0%	0%	100%
0	0%	0%	0%	50%	50%	G. Judgment/Decision Making	0	0%	0%	0%	50%	50%
0	0%	0%	0%	100%	0%	H. Imagination/Creativity	0	0%	0%	0%	100%	0%
0	0%	0%	0%	100%	0%	I. Flexibility/Versatility	0	0%	0%	0%	100%	0%
0	0%	0%	0%	50%	50%	J. Professionalism	0	0%	0%	0%	25%	75%
						2. Commercial Orientation						
0	0%	0%	0%	50%	50%	A. Client Relationship Building/Influence on Client	0	0%	0%	25%	25%	50%
0	0%	0%	0%	50%	50%	B. Selling/Cross-Selling	0	0%	0%	25%	50%	25%
0	0%	0%	0%	50%	50%	C. Commercial Instinct/Revenue Contribution	0	0%	0%	0%	25%	75%
						3. Management Skills						
0	0%	0%	0%	0%	100%	A. Leadership & Management of Personnel	2	0%	0%	0%	0%	100%
0	0%	0%	0%	50%	50%	B. Performance Management	2	0%	0%	0%	100%	0%
0	0%	0%	0%	50%	50%	C. Management of Diversity	2	0%	0%	100%	0%	0%
0	0%	0%	0%	50%	50%	D. Management of Firm's Resources	0	0%	0%	0%	100%	0%
0	0%	0%	0%	50%	50%	E. Time Management	0	0%	0%	0%	75%	25%
						4. One Firm Contribution						
0	0%	0%	0%	50%	50%	A. Team Player Skills	0	0%	0%	0%	75%	25%
0	0%	0%	0%	50%	50%	B. Contributes to MS & External/Industry Community	1	0%	0%	66%	33%	0%
0	0%	0%	0%	50%	50%	*5. Overall Rating*	0	0%	0%	0%	50%	50%

NOT A CERTIFIED COPY

Evaluations Received, Excluding Limited: 2

Evaluations Received, Excluding Limited: 4

16div-020880

* MORGAN STANLEY
CONFIDENTIAL
0085413

7105/0

WILLIAM H. STRONG
MANAGING DIRECTOR — CFD

Summary of Upward Evaluations

	William H. Strong					
	N/O	Unsat. (1)	Needs Improve. (2)	Good (3)	Very Good (4)	Outst. (5)
LEADERSHIP						
1. Establishes Direction						
A. Develops & Communicates a Positive Vision	3	0%	0%	9%	18%	72%
B. Focus On Clients/Users	3	0%	0%	0%	18%	81%
C. Keeps Staff Informed of Changes & Developments	3	0%	9%	9%	18%	63%
2. Builds Commitment						
A. Provides Sufficient Resources & Organizational Support	2	0%	0%	0%	66%	33%
B. Recognizes Time Commitments; Balances Deadlines	2	0%	0%	33%	25%	41%
C. Invites Information, Questions, Suggestions & Opinions from Staff	2	0%	0%	8%	33%	58%
D. Ensures Appropriate Participation of Junior Staff	2	0%	0%	25%	58%	16%
E. Builds Mutual Respect & Trust Among Team Members	1	0%	0%	0%	46%	53%
F. Confronts Conflict Situations Honestly & Directly	5	0%	0%	0%	33%	66%
3. Creates High Performance						
A. Challenges Conventional Wisdom; Takes Risks; Seeks Improvement	3	0%	0%	9%	54%	36%
B. Empowers People by Delegating	1	0%	7%	0%	46%	46%
C. Inspires Enthusiastic Efforts & Highest Levels of Achievement	1	0%	0%	0%	38%	61%
D. Treats a Diverse Workforce with Sensitivity, Fairness & Respect	5	0%	0%	11%	55%	33%
E. Fosters Collaboration & Cross-Selling; Builds Partnerships	3	0%	0%	18%	45%	36%
F. Effectively Deals with Pressure & Crises	2	0%	0%	25%	50%	25%
4. Leads By Example						
A. Leads by Example; Has High Credibility	1	0%	0%	0%	38%	61%
B. Shows Patience & Understanding	1	0%	0%	23%	61%	15%
C. Ability to Make Difficult Business Decisions	3	0%	0%	0%	27%	72%
D. Possesses Required Professional/Technical/Product Knowledge	2	0%	0%	8%	41%	50%
E. Strives to Grow Professionally; Seeks & Accepts Developmental Feedback	5	0%	0%	0%	44%	55%
MANAGING PERFORMANCE						
5. Defines Expectations						
A. Establishes & Communicates Clear Objectives	2	0%	0%	8%	66%	25%
B. Clearly Indicates The Highest Priority Goals & Assignments	1	0%	0%	0%	61%	38%
6. Provides Feedback						
A. Provides Insightful, Real Time Positive & Corrective Feedback	2	0%	0%	8%	41%	50%
B. Expresses Appreciation for a Job Well Done	1	0%	0%	15%	30%	53%
C. Active and Accurate Listener	1	0%	0%	7%	53%	38%
7. Improves Current Performance						
A. Spends Sufficient Time Teaching & Coaching	2	0%	0%	25%	66%	8%
B. Keeps Abreast of Key Activities Without Excessive 'Checking Up'	2	0%	0%	0%	58%	41%
8. Coaching for Development						
A. Acts as a Mentor; Takes time to Discuss Career Development	2	0%	0%	25%	25%	50%
B. Challenges People to Expand their Role	2	0%	0%	16%	25%	58%
C. Develops Leadership Capabilities of Staff	3	0%	0%	18%	27%	54%
9. Overall Rating	1	0%	0%	0%	30%	69%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085414

STUSIO

Evaluations Received, Excluding Limited: 14

16div-020881

February 24, 1994
02:29 PM

WILLIAM H. STRONG
MANAGING DIRECTOR—CFD

Detail of Downward Evaluations — Banking

Evaluators*	1. Professional										2. Commercial Orientation			3. Management					4. One Firm Contribution		5. Arithmetic Average**	6. Overall Rating
	A	B	C	D	E	F	G	H	I	J	A	B	C	A	B	C	D	E	A	B		
Within IBD																						
Anda, Jon A. (v) (E)	4	4	5	5	5	5	5	4	4	5	5	5	5	5	5	5	5	5	5	5	4.8	5
Busch, May C. (v) (N)	4	-	4	-	-	5	4	4	4	4	4	4	4	5	4	4	4	4	4	4	4.1	4

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085415

Notes: (v) Voluntary evaluation submitted; *Excludes 1 Limited Involvement/Unable to Evaluate; **Average does not include ratings of N/O.
Legend for Degree of Involvement: (E) Extensive Involvement; (N) Normal Involvement.
Legend for Scores: (-) N/O; (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding.

16div-020882

February 24, 1994
02:29 PM

WILLIAM H. STRONG
MANAGING DIRECTOR—CFD

Detail of Colleague Evaluations — Banking

Evaluators*	1. Professional										2. Commercial Orientation			3. Management					4. One Firm Contribution		5. Arithmetic Average**	6. Overall Rating
	A	B	C	D	E	F	G	H	I	J	A	B	C	A	B	C	D	E	A	B		
Within IBD																						
Crompton, John D. (v) (N)	4	5	5	-	5	5	5	4	4	5	5	5	5	-	-	-	4	4	5	-	4.7	5
Matschullat, Robert W. (E)	5	5	5	4	5	5	5	4	4	5	5	4	5	5	4	3	4	5	4	4	4.5	5
Scott, Robert G (N)	4	4	4	-	3	5	4	4	4	5	4	3	4	5	4	3	4	4	4	3	3.9	4
Outside IBD																						
Lunn, Robert J (EQUITY) (N)	4	4	4	4	4	5	4	4	4	4	3	4	5	-	-	-	4	4	4	3	4.0	4

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085416

Notes: (v) Voluntary evaluation submitted; *Excludes 4 Limited Involvement/Unable to Evaluate; **Average does not include ratings of N/O.
Legend for Degree of Involvement: (E) Extensive Involvement; (N) Normal Involvement.
Legend for Scores: (-) N/O; (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding.

16div-020883

WILLIAM H. STRONG
MANAGING DIRECTOR – CFD

Detail of Upward Evaluations

Evaluators*	1. Establishes Direction			2. Builds Commitment						3. Creates High Performance						4. Leads by Example					5. Defines Expectations		6. Provides Feedback			7. Improves Current Performance		8. Coaching for Development			9. Arithmetic Average**	10. Overall Rating
	A	B	C	A	B	C	D	E	F	A	B	C	D	E	F	A	B	C	D	E	A	B	A	B	C	A	B	A	B	C		
Evaluator 1	5	4	5	4	3	5	4	4	4	4	4	4	4	3	3	4	3	5	3	4	4	4	4	4	4	4	4	4	4	4	4.0	4
Evaluator 2	5	5	5	4	4	4	4	5	5	5	4	4	4	5	5	5	4	4	4	5	4	5	4	4	4	4	4	5	5	4	4.4	5
Evaluator 3	5	5	5	5	5	4	4	4	5	5	5	4	4	4	4	5	4	5	5	5	4	4	4	3	4	4	5	5	5	5	4.5	5
Evaluator 4	3	4	2	4	3	-	3	4	-	3	2	5	3	3	4	4	4	4	4	-	4	4	4	4	3	3	4	-	-	3	3.5	4
Evaluator 5	5	5	3	5	-	5	-	5	-	4	5	5	-	4	4	5	4	5	5	-	3	4	-	5	4	-	4	3	4	-	4.4	5
Evaluator 6	5	5	5	4	5	5	5	5	5	4	4	5	5	5	4	5	5	5	5	5	4	5	5	5	5	4	5	5	5	5	4.8	5
Evaluator 7	-	-	-	4	3	4	4	5	5	-	4	4	5	5	3	4	3	4	4	4	4	4	3	3	5	3	4	3	3	3	3.8	4
Evaluator 8	5	5	4	4	5	5	4	5	4	5	5	5	-	4	4	5	5	5	4	5	4	4	5	5	5	4	5	5	5	5	4.7	5
Evaluator 9	5	5	5	5	5	5	4	5	5	5	5	5	4	4	5	5	4	5	5	4	5	5	5	5	5	4	4	4	4	4	4.7	5
Evaluator 10	5	5	5	5	5	5	4	5	4	4	5	5	-	5	4	5	4	5	5	4	5	5	4	5	4	5	5	5	5	5	4.7	5
Evaluator 11	4	5	5	4	4	5	5	4	-	4	5	5	5	-	-	5	4	-	4	-	5	5	5	5	5	4	5	5	5	5	4.7	5
Evaluator 12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Evaluator 13	-	-	-	-	3	3	3	4	-	-	4	4	-	-	3	4	4	-	-	-	-	4	5	4	4	3	-	3	3	-	3.6	4
Evaluator 14	4	5	4	4	4	4	3	4	5	4	4	5	4	4	5	4	3	5	5	5	4	4	5	5	4	4	4	4	5	5	4.3	5

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085417

810510

Notes: *Excludes 1 Limited Involvement or Unable to Evaluate; **Average does not include ratings of N/O.
Legend for Scores: (-) N/O; (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding.

16div-020884

EVALUATION & DEVELOPMENT SUMMARY

Evaluatee:	William H. Strong	Evaluation Period:	1993
Title:	MD	Evaluation Director:	Robert G. Scott
Department:	CFD		

I. PERFORMANCE HIGHLIGHTS

Major Accomplishments:

- Bill joined the Firm in January 1993 and has already become a valued senior banker in CFD. His intensity and desire to win, motivate and inspire everyone who deals with him. He brought some valuable relationships with him which produced business in 1993 (Goldsmith) but more importantly fills the important role of senior banker for Chicago, San Francisco and Los Angeles.

Next Year's Performance Objectives:

- Finish staffing up the branches and generate revenue; help expand coverage in his regions.
- Become better known within the Firm.

II. KEY MESSAGES

Strengths	Comments/Action Plan:
1. Leadership/Communication.	Bill is a natural leader who inspires others to work hard and think creatively. He is an excellent communicator, both with his people and the rest of the Firm.
2. Relationship skills/Commercial instinct.	Bill is very strong on the client side, he builds relationships easily and delivers lots of ideas. He has a keen sense of where revenue opportunities might lie.
3. Initiative/Creativity/Intensity.	Bill shows tremendous initiative and hustle. He has lots of new ideas, both for managing his people as well as clients.

Development Areas	Comments/Action Plan:
1. Balance between management and covering accounts.	Bill spends a lot of time managing people. He should spend a little more in 1994 with his clients. He should personally generate more revenue in 1994.
2. Learn to read his audience better.	Bill puts his head down and charges full ahead. He needs to match his pace/style a little better with his audience.
3. Relax a little.	Bill is very intense. It fatigues some of his colleagues and must fatigue him. Many have suggested he relax.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085418

16div-020885

EVALUATION & DEVELOPMENT SUMMARY

III. CAREER ISSUES

Issues from Self-Evaluation (raised by evaluatee and/or identified by Manager/Evaluation Director):

- Major contribution to professional training and recruiting.

Evaluatee's Long-Term Career Goals:

- Increased management responsibility.

Recommended Training/Developmental Experiences/Assignments (Geography, Business, Function):

IV. EVALUATION SUMMARY

The right man, in the right place, at the right time sets a fine example of commitment, highest integrity, interest in his people and service to his clients. He has restored esprit d'corps to the domestic branches. His ideas and energy are an asset for the entire division. Bill pushes me, gently but firmly, and I appreciate it.

V. EVALUATEE COMMENTS

I agree.

[X] Signed by Evaluation Director

[X] Signed by Evaluatee

NOT A CERTIFIED COPY

015020

MORGAN STANLEY
CONFIDENTIAL
0085419

16div-020886

NOT A CERTIFIED COPY

015021

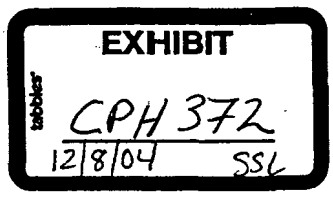
1995 Performance Evaluation

William H. Strong

Confidential

NOT A CERTIFIED COPY

0150222



Evaluation Director:
Joseph R. Perella - 39214 (Primary)
Robert G Scott - 02475 (Co-Director)

MORGAN STANLEY
CONFIDENTIAL
0085420

William H. Strong
Managing Director
IBD

List of Evaluators

Downward		Colleague		Upward
Mack, John J	Company Managemen	Evans, R Bradford	IBD	Evaluator 1
Scott, Robert G (CoDir)	Institutional Securities	Fiedorek, Bruce D	IBD	Evaluator 2
Perella, Joseph R. (Ev.Dir)	Institutional Securities	Hepburn, John K	IBD	Evaluator 3
		Kauffman, Richard L.	IBD	Evaluator 4
		Lumpkins, David B D (v)	IBD	Evaluator 5 +
		Parr, Gary W.	IBD	Evaluator 6
		Swift, Richard W.	IBD	Evaluator 7
		Chammah, Walid A. +	GCM - Joint Venture	
		Kourakos, William	GCM - Joint Venture	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085421

Requested:	3	Requested:	8	Requested:	7
Received:	3	Received:	9	Received:	7
Not Received:	0	Not Received:	0		

*Evaluation not received; **Evaluation received not entered; +Limited Involvement/Unable to Evaluate; (v) Voluntary evaluation

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

William H. Strong
MD IBD

Three Greatest Strengths (provide examples):

Downward Comments

Within IBD

Perella, Joseph R. (N) (DirMgr)	Energy level: Bill has one of the highest in the firm. Willingness to go anywhere for business is greatly appreciated by people in the regions.–Commercial Instincts are sharp; successes on Sears, Chrysler–Persistence: does not drop the ball when asked to take on responsibility. Resilient: went right back to work after management change in May; did minimum amount of complaining relative to Walter about the same as Hepburn.
Scott, Robert G (N) (CoDir)	Experience/product knowledge: Bill is an experienced investment banker with a broad knowledge of our products and real client impact.–Leadership skills: Bill is an active and involved manager of his people. Bill knows his people well and is focused on the individual's progress.–Energy/hustle: Bill works hard, long hours and travels a lot. His energy is a good example to the junior staff.

Outside IBD

Mack, John J (N) (FM)	Possibly the hardest working person in firm.–Knows how to build relationships with clients.–Leads by example.

Colleague Comments

Within IBD

Chammah, Walid A.	Bill has been a strong supporter of DCMS in 1995. As a head of regional corporate finance, Bill has been helpful in getting his team to focus on the debt product by making sure that they are equally accountable to the market coverage officers. He has been instrumental in MS winning the Sears and Dean Foods business and in penetrating Motorola.–x–x
Evans, R Bradford (N)	Bill has unlimited energy which he constantly directs at building client relationships and developing business. I believe he has done an outstanding job increasing the Firm's visibility in the Midwest.–Bill has a creative intellect. He comes up with new ideas and ways to address client problems.–He is very persistent and persuasive developer of business. Bill is not an easy person to say no to, which of course, is one of the traits of an outstanding developer of business.
Fiedorek, Bruce D	Bill is clearly a take-charge, assertive and focused professional. He seems to do a good job identifying commercial opportunities and then executing his plan of attack. I have seen him enjoy success (Amway) and help create the foundation for reestablishment of a relationship (Sara Lee).
Hepburn, John K (N)	Very commercial in his approach: Outstanding commercial instincts. Has moved MS&Co. and Chicago to the top of the group. Works his client base. Leaves no stones unturned.–Provides leadership to the troops on the field: Leads by example. A role model for the U.S. CFD coverage group. Should be very well compensated for his overall contribution to CFD.–Team player skills: A pleasure to work with; honest, straightforward, responsive, always willing to help move the ball forward. Has been particularly helpful in dealing with the Volvo/Chrysler situation.
Kauffman, Richard L. (N)	Bill is a franchise player. He is completely committed to the firm and is tenacious in pursuit of every business opportunity. He devotes weekends in building social relationships with his clients; clients really feel that Bill is loyal to them and that he will deliver the full resources of the firm. Bill is hands-on; he writes letters, really delves into projects and presentation preparation. With clients he prevents himself as professional, intelligent and experienced.
Kourakos, William	Extremely commercial.–Smart and aggressive. Good client skills. Hard Working.–Bill wants new business and is an aggressive marketer of the Firm. He developed and excellent relationship with Stone Container and TRW. He works long hours.
Lumpkins, David B D (v)	Responsiveness: I call Bill with a problem; I get a solution immediately.–Commitment: Bill is tireless in carrying out his role for the Firm. Extremely energetic. –Firm orientation: As a lateral hire, Bill has done an extremely good job of getting plugged in to the resources of the Firm. Super manager/leader.
Parr, Gary W. (N)	Initiative: Bill is able to pursue and manage an incredible number of clients and projects. His client focus is impressive.–Relationship Management: Bill is building a real presence in the Midwest that is enhancing the M.S. franchise greatly.

(v) Voluntary evaluation

Legend for degree of involvement: (E) Extensive involvement; (N) Normal involvement; (L) Limited involvement; (U) Unable to evaluate

NOT A CERTIFIED COPY

0150214

MORGAN STANLEY
CONFIDENTIAL
0085422

16div-020890

William H. Strong
MD IBD

Swift, Richard W.	Inititative and commitment: Bill works tirelessly. He is a role model to all who work with him or for him. When he was my client manager, Bill truly led by example. His willingness to look at presentations sent to his hotel at midnight set a standard for all of us. –Commercial instinct: Bill was excellent at seeing a transaction before it occurred and directing his people to achieve a quality product.–Leadership: Bill has demanding standards and his objectives were clear cut. I felt challenged by Bill to be at my very best.

NOT A CERTIFIED COPY

015025

(v) Voluntary evaluation

Legend for degree of involvement: (E) Extensive involvement; (N) Normal involvement; (L) Limited involvement; (U) Unable to evaluate

William H. Strong
MD IBD

Three areas in need of further development (Indicate suggestions for developing these areas):

Downward Comments

Within IBD

Perella, Joseph R. (N) (DirMgr)	Pace and Balance: Bill seemed to be trying to do too much. I spoke to him about this tendency. ("Bill, you have to learn to say no.") He has improved over the summer. This tendency results in others seeing him as trying to grab. Needs to work on this perception. Bill has great potential and is proving it. Things can come his way if he does not push it.~Back up plan: is his number two the right person for MS.
Scott, Robert G (N) (CoDir)	Political: Bill is viewed by many of his peers as highly political and overly ambitious. He is seen as overly focused on managing upward, especially JMack.~Revenue input: Bill covers a lot of territory; I wonder how productive he really is.~1996: What should Bill's focus be in 1996? More on productivity and client business.

Outside IBD

Mack, John J (N) (FM)	He needs to balance professional and private life better.~He needs to pace himself better.

Colleague Comments

Within IBD

Chammah, Walid A.	
Evans, R Bradford (N)	Bill needs to work more effectively with product areas in pursuing, accepting and staffing new assignments. He needs to consult early and often as to the type of business the Firm should undertake, the staffing available, and the appropriate financial terms before reaching any agreement with the client. At times, he had problems with quality of some assignments and available staffing, some of which might have been mitigated with earlier and more frequent consultation with M&A administration.~I would rate Bill as outstanding in all the categories I have observed. I have not had an ability to observe his management skills.
Fiedorek, Bruce D	Bill and I should share the blame for not having required more thoughtful and focused preparation for a recent bakeoff at S.C. Johnson, which we might have won had we done so. This is a reminder to both of us that we need to be untiring in our focus on what is necessary to get a piece of business. We cannot simply show up and get the mandate. ~Bill also needs to be consistent in seeking out MS quality business on acceptable MS commercial terms. He has a reputation in MARD administration (with MARD ops officers and assignment associates), as being too flexible.
Hepburn, John K (N)	A small suggestion: A little more focus on largest situations rather than trying to be everywhere. Again, only a minor suggestion.
Kauffman, Richard L. (N)	Bill can be a bit more efficient in his use of resources. He wants big books, big teams and seniority at too many meetings. I've also been to a couple of meetings where it was simply not necessary to have been there. In his desire to get business, in other words, Bill gold plates the effort. Because he is so competitive, his teams scurry about, afraid of Bill's reaction if work is not done early enough or up to Bill's level of expectation. A less intense environment might make his team happier and perhaps more productive.
Kourakos, William	Spread too thin in an effort to be associated with a lot of Morgan Stanley business. Needs to scale back and focus on key relationships.
Parr, Gary W. (N)	Bill needs to be careful not to be bossy to his partners. He is an outstanding banker but needs to be a team player and work with others rather than attempt to make them do work.
Swift, Richard W.	Time Management: Bill is involved in too many things. At times he is hard to reach. For a period, when he acted as my manager, I found that it could take two weeks to actually speak to Bill. I truly admire his effort and his commitment, but I believe at times he just does too much.

NOT A CERTIFIED COPY

(v) Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to evaluate

MORGAN STANLEY
CONFIDENTIAL
0085424

16div-020892

William H. Strong
MD IBD

Upward Comments

To be a more effective manager/leader and for the greatest impact, what should this person stop doing?

- Over committing to clients regarding timing and resources. May not maximize efficiency (but note comments in next question).
- Almost professional to a fault; notwithstanding huge demands on time, should try to get to know personalities in regions.
- Stop acting as an intermediary for those who don't want to deal with me directly. I believe Bill has listened effectively to last year's suggestions and made a real effort to improve what is already an extremely productive and strong leadership style.
- On occasion should slow down and not always face an issue or decision.
- Makes decisions too quickly; Bill can be too quick to judge sometimes. Sometimes this is useful but not always.
- I believe I said in last year's evaluation that Bill is the best manager I've encountered in my career, and I want to echo that again this year. Bill has done a fantastic job of managing a complex set of personnel issues in the Chicago office. He recognized that the management style and judgments of the office head were not conducive to officer career development, or to the maximization of long-term revenues. He got involved in situations in the appropriate way, at the appropriate time to ensure that, in each case, the right decision was made for the Firm, while not undermining other managers. To specifically answer the above question, I have no recommendations as to what Bill should stop doing. He has shown himself to be an adept manager in a host of situations, and I feel strongly he has the skillset to manage large units of the Firm with similar success.

To be a more effective manager/leader and for the greatest impact, what should this person continue doing?

- - Excellent at defining expectations of firm, success parameters, specific goals.
  - Continue to be positive (while still maintaining our accountability).
  - Continue to lead by example. Bill is driven and committed.
- Providing enthusiastic, aggressive briefing and follow up on client situations and making the team feel that the business opportunity is important and that each member's involvement matters. Visibly caring about each piece of business.
- Very responsive to all requests for direction. Keeps regional office current on thoughts re: various regional objectives. Keeps local coverage officers current on developments on client projects. A very strong leader.
- Continue the positive, enthusiastic, aggressive attitude that motivates those who work for him. Continue as a sounding board of outstanding investment banking judgement; this helps educate those who work for Bill. Continue to spend time with our younger professionals; they respond very well to Bill.
- Never gets rattled under pressure, which calms everyone involved down. Being extremely decisive. Being appreciative of hard work and success. Focusing on his clients needs and concerns. Being very open about his and everyone else's intentions in a particular situation.
- Lead by example: Bill works very hard, gives 100%, and always does what is right for the client and for MS. Praise good work: Bill is good at praise and it helps a lot. He is very direct and quick to give praise. Help his people: Bill is an effective advocate for his star performers and this helps those stars keep working hard.
- I have a long list of items Bill should continue doing as reflected on the Performance and Skills section I filled out. I must highlight the following: Leadership by example, hard work and intense initiative, creating a culture of maximum productivity, thoughtful yet quick decision making, plays well with a broad cross-section of client personalities, juggling a huge number of current projects effectively, insightful business and strategic planning, salesmanship, intense desire to grow the Firm's business, great team player, uses his time well, gets involved where necessary, does not glom onto revenues, achieves consensus, and is compassionate and thoughtful in the career development of all employees.

To be a more effective manager/leader and for the greatest impact, what should this person start doing?

- - Take better care of himself - slow down - before he burns out
- Spend more time in the region understanding client base and resource requirements. More assistance in developing regional objectives in terms of market penetration. Profile in Firm could be leveraged in region to use Bill as a senior banker.
- Be more demanding of those professionals who do not use resources effectively. Move to NY where the Firm can maximize the full range of Bill's talents as a leader and a manager. Be more direct with people: telling people what he really thinks in a timely manner will be a positive from a mgmt. perspective.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085425

01 50 27

William H. Strong
MD IBD

Upward Comments

- Could listen a bit more, before making quick decisions.
- Lighten up a bit: He's so intense and spread so thin that it's hard to develop a personal relationship.
- Given the previous comment, it is probably clear that I think Bill is already doing about all he can do. I think it is in the Firm's best interest to utilize his unique skillset as effectively as possible by giving him an increasing role in management and policy making.

NOT A CERTIFIED COPY

015028

MORGAN STANLEY
CONFIDENTIAL
0085426

William H. Strong
MD IBD

Summary of Evaluations -- IBD

Downward/Colleague Criteria	Direct Manager Score	Downward Average Score	Colleague Average Score
1. Professional Skills			
A. Market & Product Knowledge	4.0	4.3	5.0
B. Analytical/ Quantitative / Problem Solving Skills	-	4.5	4.5
C. Creativity	-	4.5	4.5
D. Initiative & Commitment	5.0	4.7	5.0
E. Judgment & Decision Making	5.0	4.7	4.0
F. Versatility	4.0	4.3	4.5
G. Oral Communication Skills	5.0	4.3	4.5
H. Written Communication Skills	-	N/A	4.5
I. Professionalism	4.0	4.7	4.8
2. Commercial Orientation			
A. Relationship Management	5.0	5.0	5.0
B. Cross Selling/Selling	5.0	5.0	4.5
C. Commercial Instincts/Revenue Contribution	5.0	4.7	5.0
D. Enhances PBT/Expense Control	-	4.5	4.0
E. Adherence to Firm Policies/Limits	-	4.5	5.0
F. Deal Execution/Project Management	5.0	5.0	4.3
3. Management Skills			
A. Global Business Management	5.0	4.3	4.3
B. Leadership & Management of People	4.0	4.3	4.3
C. Evaluation, Development & Coaching	4.0	4.5	4.0
D. Management of Diverse Workforce	4.0	4.0	4.0
E. Management of Firm's Resources	4.0	4.0	4.3
F. Time Management	4.0	3.3	4.5
G. Planning	4.0	4.0	4.0
4. One Firm Contribution			
A. Team Player Skills	4.0	4.3	4.0
B. Contributes to MS & External related community	5.0	4.7	4.5
Arithmetic Average	4.5	4.4	4.5
Overall Rating:	-	4.5	4.7

Upward Criteria	Upward Average Score
I. LEADERSHIP	
1. Establishes Direction	
A. Develops & communicates a positive vision of the unit's future & engages people in the vision	4.7
B. Maintains consistent focus on clients/users	4.8
C. Keeps staff informed of changes & developments	4.6
2. Builds Commitment	
A. Provides sufficient resources & organizational support	4.5
B. Recognizes time commitments of other projects; balances real deadlines & minimizes artificial ones	3.7
C. Invites information, questions, suggestions & opinions from staff	4.2
D. Ensures appropriate participation of junior members in meetings, phone calls, etc.	4.4
E. Builds mutual respect & trust among team members	4.7
F. Confronts conflict situations honestly & directly	4.5
3. Creates High Performance	
A. Challenges conventional wisdom; takes prudent risks; seeks continuous improvement	4.7
B. Empowers people by delegating clear & full authority & accountability	4.7
C. Inspires enthusiastic efforts & highest levels of achievement	4.8
D. Treats a diverse workforce with sensitivity, fairness & respect	4.7
E. Fosters collaboration & cross-selling; builds partnerships across organizational lines	4.7
F. Effectively deals with pressure & crises	4.8
4. Leads by Example	
A. Leads by example; has high credibility	5.0
B. Shows patience & understanding	4.3
C. Exhibits tough-mindedness and the ability to make difficult business decisions	4.8
D. Possesses required professional/technical/product knowledge & skills	4.8
E. Strive to grow professionally; seeks & accepts developmental feedback	4.4
II. MANAGING PERFORMANCE	
5. Defines Expectations	
A. Establishes & communicates clear individual/team performance objective & expectations	5.0
B. Clearly indicates the highest priority goals & assignments	4.6
6. Provides Feedback	
A. Provides insightful, real time positive & corrective feedback	4.3
B. Expresses appreciation for a job well done; recognizes value of contribution	4.8
C. Active and accurate listener	4.5
7. Improves Current Performance	
A. Spends sufficient time teaching & coaching	4.6
B. Keeps abreast of key activities without excessive checking up	4.8
8. Coaching for Development	
A. Acts as mentor, takes time to discuss career development	4.6
B. Challenges people to expand their role & maximize their abilities & contribution	4.8
C. Develops leadership capabilities of staff	4.4
Arithmetic Average	4.6
Overall Rating	4.8

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085427

015029

Long Evaluations Received, Excluding Unable to Evaluate and Limited Involvement: 3 Downward, 4 Colleague, 6 Upward

Summary of Downward Evaluations – IBD

	N/O	Unsat. (1)	Needs Imprv (2)	Good (3)	Very Good (4)	Outst. (5)
1. Professional Skills						
A. Market & Product Knowledge	0	0%	0%	0%	67%	33%
B. Analytical/ Quantitative / Problem Solving Skills	1	0%	0%	0%	50%	50%
C. Creativity	1	0%	0%	0%	50%	50%
D. Initiative & Commitment	0	0%	0%	0%	33%	67%
E. Judgment & Decision Making	0	0%	0%	0%	33%	67%
F. Versatility	0	0%	0%	0%	67%	33%
G. Oral Communication Skills	0	0%	0%	0%	67%	33%
H. Written Communication Skills	3	0%	0%	0%	0%	0%
I. Professionalism	0	0%	0%	0%	33%	67%
2. Commercial Orientation						
A. Relationship Management	0	0%	0%	0%	0%	100%
B. Cross Selling/Selling	0	0%	0%	0%	0%	100%
C. Commercial Instincts/Revenue Contribution	0	0%	0%	0%	33%	67%
D. Enhances PBT/Expense Control	1	0%	0%	0%	50%	50%
E. Adherence to Firm Policies/Limits	1	0%	0%	0%	50%	50%
F. Deal Execution/Project Management	0	0%	0%	0%	0%	100%
3. Management Skills						
A. Global Business Management	0	0%	0%	0%	67%	33%
B. Leadership & Management of People	0	0%	0%	0%	67%	33%
C. Evaluation, Development & Coaching	1	0%	0%	0%	50%	50%
D. Management of Diverse Workforce	1	0%	0%	0%	100%	0%
E. Management of Firm's Resources	0	0%	0%	0%	100%	0%
F. Time Management	0	0%	33%	0%	67%	0%
G. Planning	1	0%	0%	0%	100%	0%
4. One Firm Contribution						
A. Team Player Skills	0	0%	0%	0%	67%	33%
B. Contributes to MS & External related community	0	0%	0%	0%	33%	67%
Overall Rating:						
	1	0%	0%	0%	50%	50%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085428

Summary of Colleague Evaluations – IBD

	N/O	Unsat. (1)	Needs Imprv (2)	Good (3)	Very Good (4)	Outst. (5)
1. Professional Skills						
A. Market & Product Knowledge	0	0%	0%	0%	0%	100%
B. Analytical/ Quantitative / Problem Solving Skills	0	0%	0%	0%	50%	50%
C. Creativity	0	0%	0%	0%	50%	50%
D. Initiative & Commitment	0	0%	0%	0%	0%	100%
E. Judgment & Decision Making	0	0%	0%	0%	100%	0%
F. Versatility	0	0%	0%	25%	0%	75%
G. Oral Communication Skills	0	0%	0%	0%	50%	50%
H. Written Communication Skills	2	0%	0%	0%	50%	50%
I. Professionalism	0	0%	0%	0%	25%	75%
2. Commercial Orientation						
A. Relationship Management	0	0%	0%	0%	0%	100%
B. Cross Selling/Selling	0	0%	0%	0%	50%	50%
C. Commercial Instincts/Revenue Contribution	0	0%	0%	0%	0%	100%
D. Enhances PBT/Expense Control	0	0%	0%	50%	0%	50%
E. Adherence to Firm Policies/Limits	2	0%	0%	0%	0%	100%
F. Deal Execution/Project Management	1	0%	0%	0%	67%	33%
3. Management Skills						
A. Global Business Management	1	0%	0%	0%	67%	33%
B. Leadership & Management of People	1	0%	0%	0%	67%	33%
C. Evaluation, Development & Coaching	2	0%	0%	0%	100%	0%
D. Management of Diverse Workforce	2	0%	0%	0%	100%	0%
E. Management of Firm's Resources	1	0%	0%	0%	67%	33%
F. Time Management	2	0%	0%	0%	50%	50%
G. Planning	1	0%	0%	33%	33%	33%
4. One Firm Contribution						
A. Team Player Skills	0	0%	0%	0%	100%	0%
B. Contributes to MS & External related community	0	0%	0%	0%	50%	50%
Overall Rating:						
	1	0%	0%	0%	33%	67%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085429

Summary of Upward Evaluations – IBD

	N/O	Unsat. (1)	Needs Imprv (2)	Good (3)	Very Good (4)	Outst. (5)
I. LEADERSHIP						
1. Establishes Direction						
A. Develops & communicates a positive vision of the unit's future & engages people in the vision	0	0%	0%	0%	33%	67%
B. Maintains consistent focus on clients/users	0	0%	0%	0%	17%	83%
C. Keeps staff informed of changes & developments	1	0%	0%	0%	40%	60%
2. Builds Commitment						
A. Provides sufficient resources & organizational support	2	0%	0%	0%	50%	50%
B. Recognizes time commitments of other projects; balances real deadlines & minimizes artificial ones	0	0%	17%	17%	50%	17%
C. Invites information, questions, suggestions & opinions from staff	0	0%	0%	33%	17%	50%
D. Ensures appropriate participation of junior members in meetings, phone calls, etc.	1	0%	0%	0%	60%	40%
E. Builds mutual respect & trust among team members	0	0%	0%	0%	33%	67%
F. Confronts conflict situations honestly & directly	0	0%	0%	0%	50%	50%
3. Creates High Performance						
A. Challenges conventional wisdom; takes prudent risks; seeks continuous improvement	0	0%	0%	0%	33%	67%
B. Empowers people by delegating clear & full authority & accountability	0	0%	0%	0%	33%	67%
C. Inspires enthusiastic efforts & highest levels of achievement	0	0%	0%	0%	17%	83%
D. Treats a diverse workforce with sensitivity, fairness & respect	3	0%	0%	0%	33%	67%
E. Fosters collaboration & cross-selling; builds partnerships across organizational lines	0	0%	0%	0%	33%	67%
F. Effectively deals with pressure & crises	1	0%	0%	0%	20%	80%
4. Leads by Example						
A. Leads by example; has high credibility	0	0%	0%	0%	0%	100%
B. Shows patience & understanding	0	0%	0%	17%	33%	50%
C. Exhibits tough-mindedness and the ability to make difficult business decisions	0	0%	0%	0%	17%	83%
D. Possesses required professional/technical/product knowledge & skills	0	0%	0%	0%	17%	83%
E. Strive to grow professionally; seeks & accepts developmental feedback	1	0%	0%	20%	20%	60%
II. MANAGING PERFORMANCE						
5. Defines Expectations						
A. Establishes & communicates clear individual/team performance objective & expectations	1	0%	0%	0%	0%	100%
6. Provides Feedback						
A. Provides insightful, real time positive & corrective feedback	0	0%	0%	17%	33%	50%
B. Expresses appreciation for a job well done; recognizes value of contribution	0	0%	0%	0%	17%	83%
C. Active and accurate listener	0	0%	0%	0%	50%	50%
7. Improves Current Performance						
A. Spends sufficient time teaching & coaching	1	0%	0%	0%	40%	60%
B. Keeps abreast of key activities without excessive checking up	1	0%	0%	0%	20%	80%
8. Coaching for Development						
A. Acts as mentor, takes time to discuss career development	1	0%	0%	0%	40%	60%
B. Challenges people to expand their role & maximize their abilities & contribution	1	0%	0%	0%	20%	80%
C. Develops leadership capabilities of staff	1	0%	0%	20%	20%	60%
Overall Rating	0	0%	0%	0%	17%	83%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085430

015032

Evaluations Received, Excluding Limited: 6

16div-020898

William H. Strong
MD IBD
Detail of Downward Evaluations – IBD

Evaluators*	1. Professional Skills	2. Commercial Orientation	3. Management Skills	4. One Firm Contribution	5. Arith Average	6. Overall Rating
	A B C D E F G H I	A B C D E E	A B C D E F G	A B		
		Within IBD				
Perella, Joseph R. (N)	4 - - 5 5 4 5 - 4	5 5 5 - - 5	5 4 4 4 4 4 4	4 5	4.5	-
Scott, Robert G (N)	4 4 5 4 5 4 4 - 5	5 5 4 4 4 5	4 5 5 4 4 4 4	4 4	4.3	4
		Outside IBD				
Mack, John J (N)	5 5 4 5 4 5 4 - 5	5 5 5 5 5 5	4 4 - - 4 2 -	5 5	4.6	5

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085431

*Excludes Limited Involvement/Unable to Evaluate; (v) Voluntary evaluation

Degree of involvement: (E) Extensive Involvment; (N) Normal Involvement

Legend for scores: (-) N/O (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding

16div-020899

William H. Strong
MD IBD
Detail of Colleague Evaluations – IBD

Evaluators*	1. Professional Skills	2. Commercial Orientation	3. Management Skills	4. One Firm Contribution	5. Arith Average	6. Overall Rating
	A B C D E E G H I	A B C D E E	A B C D E E G	A B		
		Within IBD				
Evans, R Bradford (N)	5 5 5 5 4 5 5 4 5	5 5 5 5 5 4	- - - - - - -	4 4	4.7	-
Hepburn, John K (N)	5 4 4 5 4 5 5 - 4	5 4 5 3 - -	4 4 4 - 4 - 3	4 4	4.2	4
Kauffman, Richard L. (N)	5 5 5 5 4 5 4 5 5	5 5 5 5 5 5	5 5 4 4 4 4 5	4 5	4.7	5
Parr, Gary W. (N)	5 4 4 5 4 3 4 - 5	5 4 5 3 - 4	4 4 - 4 5 5 4	4 5	4.3	5

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085432

*Excludes Limited Involvement/Unable to Evaluate; (v) Voluntary evaluation

Degree of involvement: (E) Extensive Involvment; (N) Normal Involvement

Legend for scores: (-) N/O; (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding

16div-020900

William H. Strong

MD IBD

Detail of Upward Evaluations

	1. Establishes Direction	2. Builds Commitment	3. Creates Performance	4. Leads By Example	5. Defines Expectations	6. Provides Feedback	7. Improves Current Performance	8. Coaching for Develop	9. Arith Average	10. Overall Rating
Evaluators*	A B C	A B C D E F	A B C D E F	A B C D E	A B	A B C	A B	A B C		
Evaluator01	5 5 5	5 4 3 - 5 4	4 5 5 - 5 5	5 5 5 5 3	5 5	5 5 4	5 5	5 5 -	4.7	5
Evaluator02	4 5 -	- 2 4 4 4 4	4 4 4 - 4 -	5 3 4 5 -	- -	3 4 4	- -	- - 3	3.9	4
Evaluator03	4 4 4	- 4 5 4 5 5	5 4 5 4 5 5	5 4 5 5 5	5 5	5 5 5	4 4	4 4 4	4.6	5
Evaluator04	5 5 5	4 5 5 5 4 4	5 5 5 5 5 5	5 5 5 5 5	5 4	4 5 5	5 5	4 4 5	4.8	5
Evaluator06	5 5 4	5 4 3 4 5 5	5 5 5 - 4 4	5 4 5 5 4	5 5	4 5 4	4 5	5 5 5	4.6	5
Evaluator07	5 5 5	4 3 5 5 5 5	5 5 5 5 5 5	5 5 5 4 5	5 5	5 5 5	5 5	5 5 5	4.9	5

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085433

*Excludes Limited Involvement/Unable to Evaluate

Legend for scores: (-) N/O (1) Unsatisfactory; (2) Needs Improvement; (3) Good; (4) Very Good; (5) Outstanding

015035

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Perella, Joseph R.
Signature: _____
Date: _____

Review of 1995 Firmwide Performance E Performance

1995 PERFORMANCE SUMMARY, INCLUDING ACCOMPLISHMENTS

Consider objectives in 1994 E&D Summary as well as business objectives set earlier in 1995. Refer to Self-Evaluation where applicable.

Commercially; a very successful year for WHS. Success on Chrysler, PMI, Sears. Market Share; no way to measure; although everyone applauds increased effectiveness of Midwest effort since WHS arrival in January 1993 with many first time business hits: Kearney, Motorola, Snap on Tools, etc. Regional effort; while WHS wanted Dallas office we got a Houston office. They and all other regions appreciate his support. Excellent recruiting - Fortier, important with Gersky, Canadian effort ongoing. Outside activities; WHS has raised his profile in a constructive way in his community boards of Chicago Symphony and Steppanwolf Theater.

EVALUATION THEMES

Describe Strengths	Comments
1. Energy Level.	Bill is one of the hardest working people in the Firm. Willing to travel anywhere, anytime for business; greatly appreciated by the regions.
2. Experience/Product Knowledge.	A franchise player with great commercial instincts. Does not take cookie cutter approach but rather comes up with new ideas. An impact player.
3. Leadership.	Provides great leadership to regional effort. Troops in the field love him. He is always there for them, i.e., responsive. Shows strength under pressure.

Describe Development Areas	Comments
1. Focus. Pace. Balance	Consistent theme is trying to do too much, spread too thin, which then leads to other questions and concerns.
2. Prioritization through consultations with others.	Bill is advised to consider consulting with product areas before pursuing or accepting mandates.
3. Political.	All of the above leads some to question the motive.

1996 PERFORMANCE OBJECTIVES:

Business Goals (Identify and comment on important business and commercial targets).

Focus on priorities; larger accounts. Help get Canadian effort back on its feet. Maintain momentum in Chicago office.

Professional Development Goals (List important development suggestions to enhance evaluatee's professional effectiveness).

Learn to say no more often to those who want a piece of him, to himself. Intensity level cannot be sustained. Coordinate managing pursuit of business with product areas through early communication. Lower the perception that you are political by managing sideways as well as upwards.

CAREER GOALS (Comment on evaluatee's short-term and long-term career goals as described in the self evaluation):

Wants to be on Board of Morgan Stanley; function of future role of Board of public company, how many insiders vs. outsiders and Bill's overall standing in the Firm and the financial community.

NOT A CERTIFIED COPY

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Perella, Joseph R.
Signature: _____
Date: _____

Review of 1995 Firmwide Performance E Performance

EVALUATEE'S COMMENTS:

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085435

NOT A CERTIFIED COPY

015038

1997 Firmwide Performance Evaluations
Firmwide 360° Process

William H. Strong

North America

IBD \ Regional Coverage

Managing Director

Confidential *

NOT A CERTIFIED COPY

Evaluation Director:
Joseph R. Perella - 39214 (Primary)

0015039

* Confidentiality: Specific feedback may not be attributed to an Evaluator unless you, the Evaluation Director, ask for and receive that Evaluator's permission.

* MORGAN STANLEY
CONFIDENTIAL
0085453

EXHIBIT
tabbies
CPH 374
12/8/04 SSL

William H. Strong
Managing Director
IBD

List of Evaluators

Downward		Colleague		Upward
Fiedorek, Bruce D	IBD	Abdel-Meguid, Tarek F	IBD	Evaluator 1
Perella, Joseph R. (Ev.Dir)	Institutional Securities	Kitts, Robert W.	IBD	Evaluator 2
		Niehaus, Christopher J.	IBD	Evaluator 3
		Porat, Ruth M.	IBD	Evaluator 4
		Spence, John P.	IBD	Evaluator 5
		Stynes, James B	IBD	Evaluator 6
		Alley, Steven J.	Equity	Evaluator 7
		Fitzpatrick, Steven B.	GCM - Joint Venture	Evaluator 8
		Nathan, Saul	GCM - Joint Venture	Evaluator 9
				Evaluator 10
				Evaluator 11

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085454

Requested:	2	Requested:	9	Requested:	11
Received:	2	Received:	9	Received:	11
Not Received:	0	Not Received:	0		

*Evaluation not received; **Evaluation received not entered; +Unable to Evaluate; (v) Voluntary evaluation

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

IBD Self Evaluation

William H. Strong

Managing Director

Section I. 1997 Performance Summary

Describe your performance relative to your business goals and to the relevant performance criteria (see the Performance Criteria Matrix for details). Your comments should not exceed the space provided.

I am very pleased with my performance in 1997. 1997 is the best year that I have had with the Firm since joining in January of 1993. The Regional Offices for which I am responsible (Chicago, Houston, Los Angeles, San Francisco and Toronto) achieved record revenue in 1997. The Regional Offices have incurred Firm revenue of $130 million, $205 million, $276 million and will incur revenue in the range of from $375 to $400 million in 1994, 1995; 1996 and 1997, respectively. Our market shares have increased in each of the geographical areas across virtually all of the product areas. In 1994, I pledged that the Toronto Office would reach a Firm revenue level of US$60 million by 1998. The Office will achieve US$45 million in revenue in 1997 and has budgeted US$60 million for 1998 (a budget that I may increase). The Chicago Office has had a Firm revenue progression of a similar path-$70 million, $99 million, $117 million and in excess of $160 million for 1994, 1995, 1996 and 1997, respectively. My personal Firm revenue has been $70 million, $73 million and will exceed $90 million for 1995, 1996 and 1997, respectively. Further, my personal backlog going into fiscal 1998 has never been higher. Highlights from that backlog include the sale of Sunbeam (market capitalization $3.7 billion, signed engagement letter with success fees above fee scale), the sale of Everen Capital (market capitalization $600 million, engagement letter to be signed shortly), the acquisition of Beacon Properties by Equity Office, and the possible roll-up and subsequent IPO of a combined Chicago Bulls, Chicago Blackhawks, Chicago White Sox and the United Center for a current estimated total deal size of between $250 to $350 million out of a total value approximating $1.0 to $1.3 billion. My revenue production in 1997 included completed transactions in virtually all of the product areas including IPO's (e.g., Aftermarket Technology, Omniquip, LaSalle Partners, Stoneridge, Galileo International and CH Robinson), follow-on equity transactions both primary and secondary (e.g., Jacor, Aftermarket Technology, Omniquip and Sylvan Learning), high yield transactions (e.g., Exide), M&A transactions (e.g., Allwaste, Equity Office, Figgie, R. Howard, FMC, Guaranty Reserve, Scotsman, Stant and True North), investment grade debt, COPS and related interest rate swap transactions (e.g., Cargill, FMC, Sears and Tupperware), senior bridge lending (to finance Omniquip's acquisition of the Snorkel Division of Figgie which should close in early November) and numerous share repurchase programs (e.g., Allstate, FMC, Morton International and Tupperware). Further, I am confident that my client base is growing. As a result of this growing revenue, I believe I am accomplished at identifying new client relationships, marketing a broad range of products, and maintaining a strategic dialogue with the clients for which I am responsible. I also am confident that I can persuade senior client officials to pursue our advice even in difficult circumstances. As evidence of this, I attended and led the Firm's presentations before the Boards of Directors of Figgie, FMC, LaSalle Partners, Aftermarket Technology, Scotsman, RR Donnelley and True North. My product skills, as evidenced by the summary listof deals above, is broad and deep. I feel comfortable and have been successful with all of our product areas. I feel that my judgements in the areas of deal execution, personnel decisions, conflict management and related ethical or franchise matters are excellent. These judgements are sought by our clients and my partners. In the past few weeks, the new CEO of RR Donnelley asked me to personally negotiate RR Donnelley out of a very poorly performing JV with Bain Capital. I had turned down an IPO of the leading piece of the JV (which IPO has never taken place) and therefore had not been involved to date. The investment banks involved in the IPO (Lehman, Alex. Brown, Salomon, Goldman) had all tried and failed to resolve the dispute with Bain. I went into the assignment knowing the risks were great (i.e., fail in front of RR Donnelley in a first time assignment for the new CEO and/or antagonize Bain Capital an excellent client of the Firm). In approximately two days (although with a great deal of prior preparation time), I personally negotiated a settlement acceptable to each of RR Donnelley and Bain Capital. The CEO of RR Donnelley personally thanked me last week in my presence in front of the RR Donnelley Board of Directors and Bain Capital asked if I would go onto the newly constructed Board of the JV (which, of course, I declined). The Bain Capital partners have said they are amazed that an agreement was reached. Therefore, when necessary I can negotiate successfully even in difficult circumstances. I believe that I am an excellent communicator. I am an avid user of voice mail and cc: mail. I keep everyone up-to-date on deals where I am responsible or in connection with new business situations. I know every Associate, Vice President, Principal and Managing Director in each of the Regional Offices very well. As such, I frequently exchange telephone calls or voice mails with them when they are 'off-the-record' seeking advice on a deal or other type of situation. I follow their career progress very carefully and suggest changes when necessary. From a time management and productivity perspective, the Regional Offices are at or near the top of IBD in terms of revenue per officer or other similar measures. I work very hard and enjoydoing so. My face-to-face meetings with clients consistently exceed 250 meetings per year. I work late every day, work every weekend and due to the unusually heavy flow of business I took no vacation this Summer other than to drop off my two sons at school (I intend to make up for this around Christmas). As such, I hope and believe that I serve as a good role model for my colleagues. I have also been an active cross-seller for the Firm. Examples include bringing in money to be managed by the Firm in PCS or MSAM from TeleTech's CEO, TeleTech itself and Amway Japan. When Peter Allen left the Firm early in fiscal 1997, I immediately flew to Los Angeles to develop with Dan Ewell a response plan. I first told Dan that we would not bring anyone in above him to replace Peter. Second, we developed and implemented a plan to communicate with and overserve every client. This plan resulted in the fact that the Firm has not lost a single piece of business as a result of Peter's departure. 1997 is a record revenue year for the Los Angeles Office. After careful planning, I orchestrated Brad Crompton taking charge of our Canadian IBD practice late in 1996 replacing Peter Dey. This took place smoothly without causing Peter to leave the Firm. 1997 is a record revenue year for the Toronto Office. In 1997, the Chicago Office has hired three women and a man of color for the professional staff underscoring our commitment to a diverse work force. I was very pleased with my performance in 1997 and the performance of each of the offices. Regional Office revenue grew meaningfully. I was able to again have a record revenue production year. The consistency of client coverage, market share, level of professional experience and productivity grew in 1997. I very much enjoyed 1997 and I look forward to 1998. Morgan Stanley is an outstanding platform and we should be able to further grow our market share worldwide in 1998.

How many companies did you call on for the first time in 1997? Which of these companies did you develop business from in 1997? Which companies were first time mandates obtained from a competitor's traditional client? Why did we win the business?

Based upon a review of all of the documented meetings that I had in fiscal 1997, I met with approximately 30 companies for the first time. In many cases, the target companies were IBD prospects. However, in a number of cases, I met with company officials for the first time at the request of other areas of the Firm to assist them in pursuing business. This was most often true for PCS requests. Of this group, the Firm either executed business for the first

MORGAN STANLEY
CONFIDENTIAL
0085455

NOT FOR PUBLIC DISCLOSURE

IBD Self Evaluation

William H. Strong

Managing Director

time or is in the process of executing business for 14 of these companies and we have been promised or been strongly led to believe that we will be awarded business in the very near future for 3 of these companies. The list of first time business in 1997 for clients where I was actively involved includes the sale of Allwaste (Fee: $3.5 million), advisory work for Duty Free Shops (Fee: $1.1 million), sale of Guaranty Reserve (Fee: $1.7 million), common stock for Jacor (Fee: $1.0 million), follow-on equity deal for Sylvan Learning (Fee: $0.9 million), IPO of Aftermarket Technology (Fee: $1.6 million) and the upcoming IPO's of Stoneridge (Estimated fee: $2.5 million) and CH Robinson (Estimated fee: $2.0 million). While the reasons vary as to why we won the business from these first time clients, the most common reasons included personal relationship with decision-maker, perceived leading industry expertise, respected equity research analyst or simply better personal chemistry in the bake-off presentation.

What were the biggest disappointments in developing new business (excluding conflicts, losing bid situations) and what was learned from each? (CFD officers should include missed business in each product area).

The sale of Rand McNally. The CEO told me after the decision that if I had been positioned as the senior execution person we would have been awarded the business. I learned to trust my own selling skills and instincts even when they are in conflict with my partners. Two of my partners had concluded on their own that I should play a support role as opposed to the leading role in the final bake-off meeting. When they made their recommendation to me, I too quickly agreed; I did not want to appear egotistical or self-centered. One of these partners did not do a good job in the presentation. He answered certain questions completely improperly and in a manner that I would never have done. These were a series of standard questions that always come up in sell-side M&A bake-offs. Fortunately, the Firm represented the successful buyer of Rand McNally, AEA. -The sale of Sealy. Sam Zell, for personal reasons that will never be fully understood, simply awarded the business to Merrill Lynch after we had been told it was ours. I immediately set up a one-on-one meeting with Sam which, by the way, he does not like. I told him we had not been treated professionally, that the playing field was not level and that we were going to scale back our coverage efforts if it continued. The next day he called me to award us an $80 million primary follow-on equity transaction for Capital Trust, a company that he had just invested in and which I had never heard of before. He then caused Beacon Property to retain us in connection with its acquisition by Equity Office. He then called me to tell me that he had now made up for the Sealy matter. We have also been awarded the IPO of Midway Airlines by one of the Zell/Chilmark funds, but he did not mention Midway. The only lessons here are that (i) Sam will always spread the business around (in 1997 alone, he has done business with Morgan Stanley, JPMorgan, Salomon Brothers, DLJ, Merrill Lynch and Smith Barney to name just a few), (ii) we must keep careful track of the `final score` as he put it, and (iii) we must always follow-up lost business by asking for another piece of business. -The sale of Fel-Pro. This high quality, privately-held automotive parts manufacturer selected DLJ to represent it in its sale. The reasons we were not selected as told to us were (i) we knew each of the buyers so well that they were concerned about a conflict and (ii) DLJ told the Fel-Pro management that it should be directly and personally involved in every aspect of the process including hand carrying the OM's to the buyers even on day one. Our advice was to keep the management team separate for at least the first part of the process because every company which has a good relationship with the seller will try to take advantage of the relationship by trying to negotiate a deal immediately. In addition, there are several highly qualified buyers that can and will participate in an auction. This can create a very awkward situation if the seller has to say no early on to an important relationship. With the benefit of hindsight, I would not change our advice. However, it is important to always play to the ego of the client. We have been retained by Federal-Mogul on the buy-side. If their deal fails for T&N (which appears unlikely) or if they can do both, we will end up fine from a revenue perspective. Federal-Mogul has expressed interest in doing both.

Section II. Building the Franchise

How did you enhance the Firm's franchise this year (e.g., cross selling; development of significant new client relationships;difficult execution/structuring of a particularly complex transaction; broaden the firm's reputation in your industry.

As noted in Section 1B, I have made contact with numerous new prospects for the Firm thus far in 1997. I have called on approximately 30 new names thus far in 1997. Sunbeam, LaSalle Partners, the Chicago Bulls, et. al., Advanced Silicon Materials, Sylvan Learning Centers, Aftermarket Technology and Stoneridge are some of the highlights. This resulted in substantial new business for the Firm in 1997. I also assisted PCS, MSAM and IED in getting business. Examples include new PCS money to manage from TeleTech, new money to manage for MSAM from Amway Japan and hedging trades for IED from a local Chicago-based investment firm. My successful efforts to extricate RR Donnelley from an acrimonious JV with Bain Capital as noted in Section 1A clearly enhanced our franchise and strengthened the Firm's relationship with each of Bain Capital and RR Donnelley. I have also contributed a meaningful amount of time to my role as a member of the Board of Trustees of the Chicago Symphony Orchestra and as Chairman of its Finance Committee. In a small business community like Chicago, it is important to maintain a high profile in connection with serving the community. This, of course, allows me to remain in close contact with many of the area's leading CEO's whoalso serve on the Board. I have also regularly sent Firm literature to leading partners of law firms to insure that they are aware of our product strengths. This has been particularly important in the equity area. Lastly, I have encouraged each MD ineach of the Regional Offices to get to know their respective area head for Dean Witter. I am now coordinating closely, for example, with Tom O'Neil in Chicago.

Who did you recruit and/or mentor this year? Describe the results of your efforts.

I interviewed numerous people throughout the year. I made the lead presentation to kick off Kellogg School recruiting for the 1996-1997 recruiting season. I played an important role in recruiting (i) Richard Drouhin as a consultant and Vice Chairman of Morgan Stanley Canada Limited, (ii) Steve Cramer as a lateral hire for the Los Angeles office, (iii) Anand Gowda as a lateral hire for the Chicago office from Price Waterhouse, (iv) Jill Pick for the Chicago office as a University of Chicago graduate who had been made an offer from Dean Witter, and (v) Jeffrey Yingling an MD for Dean Witter in Chicago who the Firm hired in Chicago as a Principal in PUG. There are many people in the Regional Offices that I mentor. Every year for differing reasons I agree to have quarterly reviews with different professionals. In 1997, I agreed to do so for Charles Hilliard of the Los Angeles office as we almost lost him to DMG in late calendar 1996. He has remained with the Firm and will have Firm revenue in 1997 in the range of $15-$16 million.

NOT CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085456

IBD Self Evaluation

William H. Strong

Managing Director

Further, he is now up for and I believe deserves to be promoted to Principal effective December 1, 1997. I also played an important role over the past several months in encouraging Mark Bradley of the San Francisco office to remain with the Firm which Mark has just concluded to do.

Section III. Goals and Objectives

Develop preliminary business and professional development goals for 1998. Associates should focus on improving their professional/execution skills. Officers' goals should include ways to strengthen their client/business development skills.

My goals for fiscal 1998 would include (i) producing Firm revenue of at least $70 million, (ii) assisting the Toronto office achieve at least US$60 million in Firm revenue, (iii) improve the staffing in the Los Angeles and San Francisco offices, (iv) get each professional in the Regional Offices more adept at pitching our bridge lending and product bundling capabilities, (v) hold a Regional Office MD-only one day conference on the many issues common to each of the offices similar to the Technology Group meeting and (vi) work at keeping intact and motivated all of the excellent people that we have in each of the Regional Offices. The teams in each of the offices have come together nicely, we have momentum in each of the offices and they are being veryproductive. From the perspective of enhancing my leadership capabilities, I intend to pursue the following three leadership goals: 1. As our business grows, it is important that I stay focused on the key tasks and most important priorities. I believe that I accomplished this in 1997, but it is extremely important that I continue to do so. 2. Several of my partners and colleagues comment on my energy level and determination and the fact that this serves as an example for others. In order to continue to grow the business, I need to be extremely active and hard-working. 3. I need to strive for creative ways by which we can grow the business. I need to increasingly spend time on the 'big picture,' as was discussed in the Leadership Conference. Item (v) above will be a useful action, but as the Regional Office revenue moves above $400 million, 'big picture' issues will play an important role in growing the business and increasing our market share. I look forward to achieving these goals in 1998 and to a successful year.

What skills and abilities would you put to greater use? Describe training or other support that would leverage your effectiveness? What are your long-term career goals at Morgan Stanley?

As mentioned in prior years, I continue to aspire to positions of increased responsibility within the Firm. I continue to believe that my managerial skills are underutilized. Further and as mentioned last year, at the right time and only if it serves the Firm's interests, I would like to return to London or New York.

NOT A CERTIFIED COPY

015043

MORGAN STANLEY
CONFIDENTIAL
0085457

Review of Downward and Colleague Feedback

Firmwide Form

William H. Strong

Evaluator Name	Comments
Describe Primary Strengths	
	Colleague Comments
	Outside IBD
Alley, Steven J. (N) (Equity)	Bill is a great team player and does as good a job of cross selling as anyone in the Firm. He has extended his relationships with key individuals such as Ken Tuchman of Teletech on numerous occasions. Needless to say he gets the same respect in return. –Communication is another one of Bill's hallmarks. He is an avid user of voicemail and thus has used technology to enhance productivity through better communication channels.–Bill is a tireless worker who will go anywhere to get a piece of business done. His committment to building relationships for the Firm is outstanding.
Describe Primary Development Needs	
	Colleague Comments
	Outside IBD
Alley, Steven J. (N) (Equity)	Bill may want to consider pacing himself to a degree. Maybe that means a little more time off. Obviously this is personal choice, but balance is important.—

NOT A CERTIFIED COPY

015044

(v) - Voluntary Evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement/Unable to evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

MORGAN STANLEY
CONFIDENTIAL
0085458

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
Describe Primary Strengths	
Client Skills/Business Development	
	Downward Comments
	Within IBD
Fiedorek, Bruce D (N)	Observed a very strong relationship with the CEO and CFO of Sunbeam. These relationships were the most important factor in the Firm's success in obtaining strategic mandates at Sunbeam and in working around and through a possible conflict that developed in the course of dialogue with Sunbeam. Have seen a similar pattern in a second situation in Chicago. Bill clearly has senior level client impact which helps generate business. —
	Outside IBD
Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	Aggressive in the pursuit of new business.–Markets broad range of products.–Supportive of new business effort in the regions.
	Colleague Comments
	Within IBD
Abdel-Meguid, Tarek F (N)	Bill is an extremely commercial banker and a tenacious competitor. He is highly focused on money making opportunities, sometimes to a fault. He is incredibly energetic, very diligent. Very strong commercial results—
Kitts, Robert W. (N)	Bill is an excellent senior coverage officer. Bill is extraordinarily systematic in identifying and pursuing new business opportunities. Bill can be quite persuasive with clients and has good credibility with senior management.–Bill, in large part dueto his consistent, persistent calling efforts has established a number of strong ongoing relationships with clients in the Midwest. Bill is always marketing all of the products and services to all of his clients. Bill is very effective getting the mandate.
Niehaus, Christopher J. (N)	Bill is one of IBD's most prolific business generators. He is aggressive, works extremely hard and is available to clients or team members any hour of the day.–Client Skills - He spends the time to understand the clients business and objectives even infar afield industries, like real estate. He develops concensus on advice and then persuasively delivers it to clients. Clients really respect him.–Extremely good at cross-selling the Firm.
Porat, Ruth M. (N)	Very effective with clients: They trust his judgment and rely on him for guidance without question. His strength with clients comes from the combination of strong deal judgment and work ethic. He commits to clients that he will be an integral part ofan execution team and then he somehow finds the time to stay involved enough in the transaction. Clients respect him greatly. –Initiative/creative/aggressive/commercial: He is very persistent with clients. He identifies his target list and then does not let go if there is an attractive opportunity. At the same time, he retains a very high quality screen and does an excellent job repositioning clients to retain the best commercial outcome while maintaining a high qualitystandard. For example, we were working on an equity financing for Scottsman, following an acquisition we helped the company complete. When the Companypre-announced weaker than expected earnings, he very adeptly turned the business into a high yield deal which the Company had not ever considered doing. It was the right outcome for the client and it was the right outcome for the firm to move away fromequity. –Effective leader because he evidences the business development hunger that is needed in CFD officers. In my opinion his work ethic and focus on business development opportunities sets a good standard for junior officers because he sends a positive message that business upside is limited primarily by one's effort.
Spence, John F. (N)	One of Bill's greatest strengths, and he has many, is his ability to be persuasive with clients. Each time that I am with Bill during a new business development pitch, I am amazed at his ability to forcefully, yet politely, convey the importance of having Morgan Stanley lead manage a transaction. I have been with Morgan Stanley for 12 years and he is among the top two or three most persuasive bankers with whom I have worked. –Another of Bill's strengths is his grasp of the broad array of products offered by Morgan Stanley. He competes effectively for all types of business - equity, debt, convertibles, M&A, PCS, asset management - and he does so with a relatively thorough grounding in each of these areas. –Bill is also particularly effective at maintaining a strategic dialogue with his clients. His breadth of experience serves him well and his clients seek his counsel on difficult and complex issues. What is equally impressive, and perhaps moreso, is his ability to maintain a strategic dialogue with clients across an extremely wide range of industries (from consumer products and auto parts to insurance and advertising). This is not an easy task, but he does it with great skill.

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement/Unable to evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085459

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
Stynes, James B (N)	Tenacious banker and relentless hard worker. Pursues new business with laserlike focus and endless perseverance. Develops good relationships with clients through constant attention and his persistence in ensuring that product people focus on his clients. Overall, very effective coverage officer. —
	Outside IBD
Fitzpatrick, Steven B. (N) (GCM - Joint Venture)	Bill has excellent client skills. He has done a good job at Chrysler and is able to assess the competitive landscape and influence the client. He was very helpful in soliciting Chrysler's debt business. He followed up well and developed a game plan to give us the best possible chance to win —
Nathan, Saul (N) (GCM - Joint Venture)	Bill has an excellent skills. In the LaSalle Partners IPO, he maintained an extremely close dialog with Stuart Scott the Chairman and Bill Sullivan the CFO and understood clearly the goals and expectations of this group in choosing Morgan Stanley to lead mange their offering. For example, faced with a strong relationship at a personal level between the Chairman and one co-manager, and knowing client's preference to help that co-manager, Bill was instrumental in distinguishing between perceived needs and reality. —

Professional & Execution Skills/Management/Teamwork

Downward Comments

Within IBD

Fiedorek, Bruce D (N)	Bill displayed a Firm focus and orientation in addressing a conflict between the original mandate that we were pursuing at Sunbeam and a subsequent financing opportunity that arose. I thought he was statesmanlike and balanced in his approach to this matter. —

Outside IBD

Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	not observed—

Colleague Comments

Within IBD

Abdel-Meguid, Tarek F (N)	Bill is a strong advocate of his people. He sets a good example in terms of working hard. Strong banking skill set, great user of voice mail. Makes an effort to help regional offices with issues—
Kitts, Robert W. (N)	Bill is one of the hardest working MD's I have seen in my 15 years on Wall Street. Bill has an incredible work ethic and in that sense serves as an excellent role model to us all.–Bill is excellent at providing direction and devoting an appropriate amount of time and attention to transaction.–Bill has a good working knowledge of the Firm's products and presents himself in a very confident and sincere manner.
Niehaus, Christopher J. (N)	Bill is extremely knowledgeable about a wide array of banking products. He quickly identifies the relevant issues, has sound judgment and articulates himself very concisely. –Bill is a very effective manager. He provides deal teams with very clear direction, spends the time to get to know more junior colleagues and is all inclusive and prolific in his voice mail communication.–Time Management - Bill crams an awful lot of business into his day. He also doesn't waste other people's time.
Porat, Ruth M. (N)	Strong Team player: He is a very positive memeber of a team. He works well with colleagues. He motivates teammates to do their best because he is a workaholic (sends the message that hard work is key) but at the same time he appears to be respectful of his teammates' views. Too often workaholics become impatient with colleagues and convey that they are not carrying their load. Bill is a dramatic contrast -- he seems to motivate his teams. –Leads by example: Bill does an excellent job balancing the demands for his time, spending the appropriate amount of time on execution. He delivers high quality advice because he takes the time to understand the issues his clients are facing -- sounds like a basic part of CFD but many senior people are not as close to the facts of a trasaction as is Bill. –Excellent judgment. He clearly understands the strategic issues confronting his clients and does an excellent job assessing their alternaitves.
Spence, John F. (N)	Bill's judgment and decision making are tremendous strengths. He is a rational and analytical thinker with extraordinary ability to cut through a variety of complex issues to focus on the one or two items tat are most critical. When I have had difficult situations to deal with, I have frequently turned to Bill for a sanity check on my judgments. –Bill's communication skills are quite strong (no pun intended). He is confident and articulate with all types of audiences, from board meetings to performance evaluations.–Bill's work ethic is legendary. I would guess that I have spent nearly one-third of my Saturday's in 1997 with at least one conference call involving Bill and close to 100% of my Saturdays with at least one voice mail from Bill.

NOT A CERTIFIED COPY

0150146

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement/Unable to evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
Stynes, James B (N)	Good M&A skills and understanding of different product skills. Keeps everyone informed. Takes a consensus builder approach to decisions. Seeks and listens to advice from product teams and strives to work closely with them.--
	Outside IBD
Fitzpatrick, Steven B. (N) (GCM - Joint Venture)	Excellent selling skills and communication skills. He was incredibly focused on this particular solicitation and delegated well to the team.--
Nathan, Saul (N) (GCM - Joint Venture)	While Bill is among the most 'hands-on' Managing Director with whom I have worked, he is absolutely first class in his understanding of product firm resources and team dynamics. I had not worked directly with him before the LaSalle IPO, but sensed thatonce he trusted my judgement, he would let me take responsibility along with accountability. He was also particularly good about conveying client feedback as to my performance after the offering. --

Describe Development Areas

Client Skills/Business Development

Downward Comments

Within IBD

Fiedorek, Bruce D (N)	Continue to be disciplined on the quality of business variable. I did not think he was as soberly reflective on Firm franchise issues as he might have been on one specific piece of business that he was pursuing (a possible hostile mandate for a prospective client with a controversial image; I should note I supported taking this on, but Bill struck me as giving no weight to possible controversy). --

Colleague Comments

Within IBD

Abdel-Meguid, Tarek F (N)	Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgements which are sometimes very close to, if not over, the line. A number of individuals have had experiences which I have had to deal with on conflicts, etc. which reflect this --
Kitts, Robert W. (N)	Bill sometimes needs to be more selective and judicious in his assessment of the attractiveness of pursuing certain pieces of business and the impact that executing such pieces of business may have on the organization (resource usage) and the franchise.--
Niehaus, Christopher J. (N)	Client Skills - Bill has a very aggressive style which does not sell with everyone. I would encourage him to modulate his approach depending on his audience. -I think Bill would have better bonding with certain clients if he relaxed more, was lower key and related in a sincere fashion to their personal and professional side. Bill's aggressiveness/confidence can come off at times as arrogance which put off certain clients.
Porat, Ruth M. (N)	None--
Spence, John F. (N)	At times, Bill exaggerates slightly to try to make a point more convincing. On occasions, I have seen clients react somewhat skeptically when Bill has exaggerated. I do not believe that Bill needs to exaggerate because the conviction with which he communicates his points is already persuasive. The exaggeration has the potential to undermine Bill's credibility. --
	Outside IBD
Nathan, Saul (N) (GCM - Joint Venture)	Occasionally he can be overprotective of his personal client's interests. For example, he was more judgement about what one of his clients perceived to be a conflict that he perhaps should have been - (Teletech / Startek) even after the assignment had been discussed with him. He was talked out of his client's view quite quickly, however. --

Professional & Execution Skills/Management/Teamwork

Downward Comments

Outside IBD

Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	Bill should engage less in self promotion and focus more on developing a team approach, giving credit to others.-The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard. There very few people at MS that give me that impression.-

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement/Unable to evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

NOT A CERTIFIED COPY

0150747

* MORGAN STANLEY
CONFIDENTIAL
0085461

William H. Strong

Evaluator Name	Comments
	Colleague Comments
	Within IBD
Abdel-Meguid, Tarek F (N)	Bill continues to suffer the consequences of less than a straightforward approach. Gives people, including me, the impression that he is not completely up front. This needs to improve; there are numerous approaches to me from very credible people on this issue —
Kitts, Robert W. (N)	Bill can sometimes exaggerate or overstate the case or present the most optimistic scenario to the client. Bill needs to sometime defer important judgements to the product experts that he has brought into a client situation. Bill sometimes `races` to answer a client's question without consulting with the relevant product expert. -Bill has a tendency to be extremely hands on during the course of an assignment and needs to delegate more responsibility and provide more head room for other members of the execution team.-Bill needs to use the word `we` more often and `I` less often with clients.
Niehaus, Christopher J. (N)	Very little to comment on here. Sometimes his oral communication gets too rushed in delivery due to his excitement and the words come out too fast for the audience.-I have seen substantial improvement in how Bill relates and leads internally, but he could still smooth some of his edges a little more.-
Porat, Ruth M. (N)	None—
Spence, John F. (N)	As could most Morgan Stanley professionals, Bill could do a better job of providing developmental feedback during projects or immediately following projects. As I mentioned in discussing Bill's strengths, he is a rational and analytical thinker and his feedback could certainly help those around him develop. -Bill is a perfectionist and that has served him well throughout his career. However, he often will commit to provide a client with certain information that may be beyond the scope of Morgan Stanley's expertise (such as best practices for Treasury functions at major corporations). As a result, a significant amount of time is spent by junior professionals trying to pull together information that is not readily available nor does the finished product deliver the incremental benefit the client had hoped for. In summary, I would encourage Bill to use more caution in promising to deliver items which do not fit within the general areas of expertise within Morgan Stanley. -
Stynes, James B (N)	Sometimes gets out ahead of the team on advice. While he is a consensus builder, if he is asked by a client for transaction advice, he occasionally volunteers advice without consultating with M&A team. Not a serious issue but one that would make clientmanagement smoother. —

Exceptional Performance Description

	Colleague Comments
	Within IBD
Kitts, Robert W. (N)	Bill is exceptional in his relentless pursuit of new business. His work ethic is in the top one percent of the Firm -- analysts included!
Porat, Ruth M. (N)	As noted throughout, Bill is very effective in new business development, has a tremendous work ethic and has very strong execution skills. On top of his deal skills, he is a strong manager. His blend of strong deal skills and administrative skills is rare.
	Outside IBD
Nathan, Saul (N) (GCM - Joint Venture)	Bill is one of the most outstanding senior officers I have come across. He is incomparably attentive to his client's needs (see comments above), knows how to use the firm's resources effectively and certainly motivated me to perform at high levels. Bill is a model for the involved, supportive and well-rounded corporate financier. Would that all coverage officers had his depth of relationships, strategic foresight and attention detail.

NOT A CERTIFIED COPY

Review of Upward Feedback

IBD Evaluation Form

William H. Strong

Comments

Describe Strengths

Leadership

* Bill is one of the best bankers I've ever seen and is, without a doubt the best manager I've seen. He leads by example-meaning hard work, integrity, creativity and an extreme commitment to the firm manifested in his unyielding pace and tremendous focuson clients. –Bill is well organized and always maintains composure. One of Bill's best leadership traits is that he is genuinely fun to be with and truly enjoys his job. He has a way of being quite intense and driving people but in such a pleasing way that heis not intimidating. –Bill is extremely responsive. You can reach him 24 hours a day. He prepares well for every meeting and has no interest in attending anything without adding value (ie he never coasts)
* Bill is a great role model. He is one of the hardest working senior managing directors at the Firm. His level of commitment inspires those more junior members of the team to perform at the highest levels and leads to the best advice for the client. Billis the only person I know who consistently leaves voice mails at 6:00 a.m. on Saturday morning. Also, he is always willing to step in when a younger person is faced with a tough issue. Very reliable and willing to help. Several times this year I went toBill with complicated issues that needed senior focus. Bill never pushed me off, and on every occasion, helped me resolve the situation in the right way for the Firm, the client, and me (in that order). —
* Bill leads by example (from a distance) - he is hard worker and has very good business and commercial instincts. He has strong technical/product knowledge and skills. Bill is a good advocate on an as needed basis for resource allocation and organizational support. —
* Bill always leads by example and, when appropriate, leads by direction. He leads by example simply by conducting himself in a first class way at all times. He works extremely hard, he is passionate about our Firm's success and he inspires confidence and a competitiveness in those who work for him. He is completely honest and very direct. There is no ambiguity with Bill. You know where you stand. You know what is expected of you. He does not view his job as one who is responsible for simply grading subordinates. He does everything in his power to help subordinates do their job better. He's willing to fly seemingly anywhere on a moments notice if he can. He has tremendous energy and drive. This unusual combination of skills which allows him to be an extremely tough boss while at the same time maintaining very strong personal relationships with those who work for him. I feel Bill has done an excellent job of managing my career. He is extremely careful, precise and thorough in his evaluations. He spends a great deal of time of evaluating individuals development needs and is extremely specific and concrete in terms of goals for the upcoming year. He is an experienced investment banker who has seen a lot and as a result he knows were various bankers should be at each step of their career. One believes when working with Bill that he truly has a long term plan for those in his charge. —
* Leads by example - tremendous energy level and dedication to the business. Utilizes every possible advantage in the pursuit of business and is usually a winner. His direction, accountability and skill has been the key factor in the success of this office. –Establishes goals for group and is tireless in achieving those goals.–Cross-selling always looks for opportunity to sell the firm and all of its products, particularly PCS. Truly at the top of MD group in this area.
* Very strong work ethic which serves as a good example, i.e., voice mail is Bill's medium and if I need his input on something. I can generally count on a response within an hour.–Very specific in his expectations; there is generally no ambiguity in anyone's relationship with Bill.–Knows the Firm's product line well and when involved, is useful at cross selling.
* Building commitment: Bill provides an ideal balance, giving our coverage group a tremendous amount of independence to pursue our business plan, while at the same time keeping abreast of our progress and always being available and willing to provide support when needed, either with clients or internally on resource issues. –Leading by example: Bill has an exceptional work ethic and is amazingly focused and tenacious in going after new business. He is a very solid technical banker and this, combined with his drive, provides a great example to me and others in my group of the motivation and discipline expected of senior coverage officers. –Communication: Bill does a good job of making sure that the groups that report to him are all marching to the same tune as well as providing his perspective on important events both inside and outside the firm.
* Direction: Bill is very clear and concise as to his expectations for a project and its team members. He has been very supportive of the recently reestablished MARD effort in Chicago as a business policy matter, and that same clarity of purpose manifests itself on client coverage duties and specific execution assignments. –Commitment: Bill ensures that his team will be committed to a client project by weighing in at the appropriate level to append resources from other areas/divisions as needed. If, for example, research coverage is an issue, he will call Dennis Shea to correct the problem. He thus relieves the team of the need to fight internal or bureaucratic battles. Bill is also very much improved at delegating responsibility to teams and playing the more senior role his position demands. –Confrontation: In a positive sense, Bill will meet issues head on to ensure that the Firm and its client interests are being served. He has made very good progress in leaving behind the Salomon mentality of 'I got the call, we'll do the business.' He has been very much more discriminating in pursuing the mandates available to us than in the past.
* Bill leads by example better than anyone else I work with. He is incredibly driven, incredibly talented, and refuses to deliver anything less than the highest quality work product.–He manages people and projects very proactively and is capable of handling incredible volumes of activity. He creates opportunities where others fail to and takes charge of situations where he sees opportunity and makes things happen. He played a lead role in ensuring that the firm put its best foot forward in pursuit of the ASiMI IPO and as a result the team was well coordinated, driven hard and we a eventually won this very important peice of business.
* Bill was incredibly helpful and effective with the senior management at LaSalle Partners. He got totally immersed in the Company's IPO and was an enormous help to me and others working on the deal. Bill's consistent and extensive involvement in this rather small IPO flattered the client and the other bankers on the deal. –Bill is the best type of leader. On more than one occasion he referred to 'working for me' as his role in this deal. Bill always wanted to know how he could be most helpful and effective to the day-to-day deal team. Bill is very accessable, veryfocused on the issues, and ultimately very good with both the client and the bankers. Bill's work ethic is the definition of a leadership by example. He works hard, is incredibly responsive, and is encouraging to those working for him. –Working with Bill Strong on the LaSalle IPO was a very important learning experience for me. He challenges convention, pushes the client (in a very positive way) and is wholly tenacious in his desire to live up to Morgan Stanley standards of excellence.

Managing Performance

UNCERTIFIED COPY

0150 49

William H. Strong

Comments

- Bill provides honest constructive feedback throuout the year, not just at evaluation time. He is readily accessible and maintains a complete open door policy. He is extremely responsive to voicemail-it appears to me that he checks voicemail almost hourly throughout a weekend. ~Bill is great with clients. He maintains strong relationships with a large group of people and across a wide array of topics. He quite literally is an expert in just about every product and every industry.~
- Bill stays on top of every situation without excessively checking up. In fact, as part of his effort to mentor and coach, Bill concentrates on letting more junior member of the team have enough running room to grow and gain confidence. Several times this year, Bill encouraged me to take the lead which gave me added confidence and helped me gain credibility with various clients. Not only did I get a chance to prove myself but Bill's confidence in me enhanced various clients` confidence in me. ~Bill is an active communicator. When you work with Bill, you are never out of the loop. He constantly makes an effort to include even the most junior team members in the events surrounding the coverage of a client or the execution of a transaction.Of note, Bill is a great listener. Despite an unbelievably busy schedule, when you get his attention and he devotes time to a topic, he understands every nuance and probes to develop the best all around picture. His attention to detail, whether it is in analyzing a situation and dissecting the facts or proof reading for typos, is unlike any I have seen at his level in corporate finance. His intensity level and desire to get the right answer is a large part of the fun in working with him. ~
- Bill does a good job of defining expectations both for me as an individual and for the Canadian corporate finance group as a whole.~~
- Holds people accountable - always on top of all business in the region and both helps the group pursue business and holds officers accountable for missed business.~Manages for success - winning and the desire to win are important attributes to instill in people and Bill is very strong in this regard.~Strong in praise for people - has positive impact on morale.
- Has helped me define my role given that I am not a classic investment banker.~A very helpful advocate for additional resources.~
- Feedback--Bill does a great job of motivating people in our group through positive feedback. Whenever there is an important piece of new business, Bill takes the time to call or voicemail the team to deliver an `attaboy`.~Active oversight--Without micromanaging, Bill seeks periodic updates on the status of the business and always has a good sense of where key transactions and initiatives stand and what the key personnel and client issues facing the office are.~Mentoring--Bill is always willing to takethe time to provide career advice and guidance when I need it. During these conversations, I always feel that Bill is fully engaged and never that his mind is elsewhere.
- Feedback: Bill has been very responsive in providing feedback this year, from ad hoc comments in the cab on the way back from a meeting to more lengthy, yet still informal, epilogue type discussions at critical points throughout a project or solicitation.~Coaching: Bill has gone out of his way this year to provide guidance and mentoring this year, both relaying personal anecdotes and providing suggestions to help the group's efforts. He has displayed a genuine interest in my career development and has deemed it a personal challenge to help me advance this year. ~Results: The Midwest CFD results speak for themselves this year; Bill's stewardship over the last five years has translated into a group which, as a whole, is much more proactive, commercial, and successful, without compromising the qualities and standards which are the hallmark of the Firm's franchise.
- Bill drives all of the people he works with to their highest level of performance. He expects commitment but delivers his own commitment to set the example. He appears to have an endless supply of energy and motivation such that you can't help but work hard to support him. ~He is critical yet supportive of the work done for him. He makes substantive as well as detail oriented comments always leaving the impression that he has thoroughly reveiwed your work. He is apologetic if not able to give adequate attention to your work, a gesture which is often appreciated given the time generally spent to deliver him a high quality work product. ~
- Bill is very effective at cross selling the Firm's capabilities. He helped to identify and push forward both PCS opportunities and cash management opportunities.~~

Describe Development Needs

Leadership

- My most meaningful suggestion for Bill is that he at times try to minimize exaggerating in his presentation to clients. Bill has a tendency to overstate an issue or problem and over emphasize the creativity of our solution. At times, even if Bill is correct in his thesis, he undermines the credibility and power of his message. For instance, `We created this security just for you`, or `No one else is even remotely as good a a player as we are in this area`, or ` We have spoken to all of the top people in every product area to develop this advice for you` or on a Sunday afternoon, speaking to a client, `I just got off a conference call with three of my partners and we decided....`. Bill is extremely effective 95% of the time, but 5% of the time would play better if he toned it down just a little. ~~
- While I appreciate that Bill is stretched extremely thin as an investment banker given all his numerous responsibilities, I would encourage him to develop closer personal relationships with the more junior team members. Particularly associates who could benefit greatly from his guidance and mentoring. ~~
- Would like to see Bill be more direct and open on all issues. Tends to be less direct on difficult issues - the ones that most need to be discussed.~~
- Sometimes I wonder if Bill doesn't spend too much time on logistics etc., i.e., sometimes all the motion looks a bit contrived; his time should be spend on quality issues, e.g., franchise direction, business development.~ If he is going to lead our business, it's important that he improves his knowledge of our business.~Given the importance of the Dey/Crompton relationship, Bill should have spent more time with us; we were left to our own resources.
- Artificial Deadlines: Bill is still moving away from the Salomonesque technique of management by intimidation, though there remain certain circumstances (whose specifics are too revealing) where Bill has used artificial deadlines to create stress for working group teams and whose intent has been simply to reinforce his prioritization. ~Delegation: Bill at times relishes the intensity of the analytical exercise with such zeal that one can only imagine him checking exhibits for numerical accuracy as if he were a second year associate. He has established that he knows the businessand the numbers, yet still can be far too involved in the details. ~Creativity: Bill does not have enough time to `blue sky` ideas for clients and to develop thoughts and topics to discuss with clients. One senses he can be reacting to the day's headlines as his basis for business development conversations.

NOT A CERTIFIED COPY

Review of Upward Feedback

IBD Evaluation Form

William H. Strong

Comments

- Bill often has a tendencey to over exaggerate and diminish his impact on a client or particular situation. He displays so much skill and good judgment yet his efforts to impress people often go to far and appear transparent to everyone in the meeting. These over reaching comments are often simply ignored as marketing oriented yet on several occassions it led to raised eyebrows and weakened credibility. This tendency to go too far is one quality of Bill which is frequently cited among colleagues within the firm. —

Managing Performance

- Bill is a great manager and very flexible in his approach. He is not generally wasteful or unnecessarily tough on resources. However, I do think that Bill could think through a little more carefully what he needs and whether the additional work he requests at the last minute is absolutely necessary. —
- Needs to spend more time in the branch.–Not enough playback on performance; once a year is not enough.–Difficult for him to be senior banker; Canadian clients will expect the senior banker to come from New York.
- Managing Expectations: In part because of an extremely active and productive business environment, Bill has been much more successful in managing expectations upward than in recalibrating them to more realistic levels.—
- Bill often asks too much without any regard for other time committments. He views all resources as endless and at his unqualified disposal. In those instances when he piles on the work without regard, he diminsihes the otherwise overwhelmingly positive impact he has on the people who work for him –Bill does not always scrutinize the business opportunities he pursues nor does he always think through work requests fully. This can translate to unnecessary work which he does not always openly acknowledge. He hasa tendency to ask for things in writing which could be much more effeciently communicated verbally. I write more memos for Bill than all the others with whom I work in the office. –

Exceptional Performance Description

- Bill is the most productive investment banker I have seen. I truly believe that he may be our single most valuable resource. He uses his time extremely wisely and works all the time. These facts in conjunction with his vast experience, nose for deals, and great relationship skills make him uniquely valuable. Bill came to the Chicago office and inherited a sleepy culture where the firm was not being marketed effectively and our share was low. In a remarkably short period of time he turned thingsaround, tripled the number of relationships we have and probably quadrupled revenues. This was accomplished in a mature and extremely competitive market and while he was tending to the needs of the other regional offices as well. He is a textbook senior banker.
- Bill is absolutely fantastic to work with and the primary reason I choose to remain in Chicago. While Frank English and John Adams are important to the office and my level of commitment to and excitement with the business , Bill is clearly the leader from my perspective and the primary reason for our tremendous success. I learn a great deal from him, trust him, and importantly enjoy working for him. That in my view is the litmus test. I am putting my career in part in Bill's hands and feel very comfortable given his outstanding professional and interpersonal skills. I hope he remains at the helm here in Chicago for the foreseeable future.
- Establishes Direction/Leads by Example: As noted earlier, Bill is a dynamo with an outstanding work ethic. He is extremely devoted to his job and his specific responsibilities for others at our firm. He is passionate about our ability to succeed as aFirm and as individuals. He is clear and concise and specific in establishing direction and goals for individual team members. He is truly one of the most outstanding leaders at our firm.
- I was especially impressed with Bill's handling of the recent Donnelley project. Most importantly, he listened to the (new) CEO's objectives and worked with the team to devise a strategy to meet those objectives. These goals were dramatically different than had been the operative goals in the past, and Bill did not let the biases of other client team members sway him from the CEO's new marching orders. Further, in implementing the new strategy in negotiations with the counterparty to this project,he stuck unswervingly to the script, and avoided the temptation to engage in `gotcha` type interaction with the other side, satisfying (though counterproductive) as it might have been.
- Bill is truly exceptional in his ability to lead both execution and business development efforts. His hit rate in key meetings is unparalleled. He engages when a situation becomes difficult and almost always emerges victorious. He is a true winner and works hard to consistently win. He leads by example and can only be faulted for sometimes asking too much but only because he is incredibly driven to win at all costs.
- Working for Bill Strong was one of the best experiences I have had at Morgan Stanley. He is a tireless worker, he is highly responsive to both the client and to his subordinates, and he has the characteristics of a pit bull when he wants his way on anissue (meant as a positive!). I learned a lot about negotiation skills from Bill during the LaSalle IPO process.

NOT A CERTIFIED COPY

015051

* MORGAN STANLEY
CONFIDENTIAL
0085465

1997 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of Evaluations *	Average Rating +	Percentage of Evaluators Selecting Rating*				
					On Track		
			Not Observed	Unsatisfactory	Lower Third	Middle Third	Upper Third
			(-)	(1)	(2)	(3)	(4)
Downward Evaluations	2						
Client Skills/Business Development		3.5	-	-	-	50%	50%
Professional/Execution Skills		0.0	100%	-	-	-	-
Management and Leadership Skills		2.0	50%	-	50%	-	-
Teamwork/One Firm Contribution		3.0	-	-	50%	-	50%
Colleague Evaluations	8						
Client Skills/Business Development		3.9	-	-	-	13%	88%
Professional/Execution Skills		3.8	-	-	-	25%	75%
Management and Leadership Skills		3.6	13%	-	13%	13%	63%
Teamwork/One Firm Contribution		3.4	13%	-	13%	25%	50%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085466

0150327

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

Not Observed = (-), Unsatisfactory=(1), Development Required=(2), Meets Requirements =(3), Exceeds Many Requirements=(4) and Consistently Exceeds All Requirements=(5)

1997 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of Evaluations *	Average Rating +	Percentage of Evaluators Selecting Rating*				
					On Track		
			Not Observed	Unsatisfactory	Lower Third	Middle Third	Upper Third
			(-)	(1)	(2)	(3)	(4)
Upward Evaluations	10						
Leadership							
Establishes Direction		3.7	-	-	10%	10%	80%
Builds Commitment		3.8	10%	-	-	20%	70%
Leads By Example		3.8	-	-	-	20%	80%
Fosters Collaboration/Cross Selling		3.7	10%	-	10%	10%	70%
Managing Performance							
Defines Expectations		3.9	-	-	-	10%	90%
Provides Feedback		3.5	-	-	10%	30%	60%
Improves Current Performance		3.6	-	-	-	40%	60%
Coaching for Development		3.5	-	-	10%	30%	60%
Respects Cultural, Gender and Minority Differences		4.0	30%	-	-	-	70%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085467

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

Not Observed = (-), Unsatisfactory=(1), Development Required=(2), Meets Requirements =(3), Exceeds Many Requirements=(4) and Consistently Exceeds All Requirements=(5)

16div-020919

1997 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings

IBD Downward/Colleague

	Degree of Involvement	Performance Criteria: Client Skills/ Business Dev.	Professional/ Execution Skills	Management & Leadership Skills	Teamwork/One Firm Contribution
Downward Evaluators					
Within Division					
Bruce D Fiedorek	N	4	-	-	4
Outside Division					
Joseph R. Perella	N	3	-	2	2
Downward Average*		3.5	-	2	3
Colleague Evaluators					
Within Division					
Tarek F Abdel-Meguid	N	3	3	2	2
Robert W. Kitts	N	4	3	3	4
Christopher J. Niehaus	N	4	4	4	4
Ruth M. Porat	N	4	4	4	4
John F. Spence	N	4	4	4	3
James B Stynes	N	4	4	4	3
Outside Division					
Steven B. Fitzpatrick	N	4	4	-	-
Saul Nathan	N	4	4	4	4
Colleague Average*		3.9	3.8	3.6	3.4

NOT A CERTIFIED COPY

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

Legend:

(v): Voluntary Evaluation

Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited

Rating: (-) Not Observed; (1) Development Required; (2) On Track - Lower Third; (3) On Track - Middle Third; (4) On Track - Upper Third

MORGAN STANLEY
CONFIDENTIAL
0085468

1997 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings

IBD Upward

		Performance Criteria								
		Leadership				Managing Performance				
	Degree of Involvement	Establishes Direction	Builds Commitment	Leads By Example	Fosters Collaboration/ Cross Selling	Defines Expectations	Provides Feedback	Improves Current Perf.	Coaching for Development	Respects Cultural, Gender, and Minority Differences
Upward Evaluators										
Evaluator 1	E	4	4	4	4	4	4	4	4	4
Evaluator 2	E	4	4	4	4	4	4	4	4	4
Evaluator 3	E	3	-	4	-	4	3	3	3	-
Evaluator 4	E	4	4	4	3	4	4	3	4	-
Evaluator 5	E	2	3	3	2	3	2	3	2	-
Evaluator 6	E	4	4	3	4	4	4	3	4	4
Evaluator 7	E	4	3	4	4	4	3	4	3	4
Evaluator 8	E	4	4	4	4	4	4	4	4	4
Evaluator 9	N	4	4	4	4	4	3	4	3	4
Evaluator 10	N	4	4	4	4	4	4	4	4	4
Upward Average*		3.7	3.8	3.8	3.7	3.9	3.5	3.6	3.5	4

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
00854691

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement

Legend:

Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited

Rating: (-) Not Observed; (1) Development Required; (2) On Track - Lower Third; (3) On Track - Middle Third; (4) On Track - Upper Third

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Di. .or : Perella, Joseph R.
Signature: _____
Date: _____

Review of 1997 Firmwide Performance E Performance

1997 Performance Summary

Summarize the individual's performance in 1997 relative to the objectives set for the year.

Bill has continued to enhance the MS franchise. Regional offices achieved a record, with market by market share improvements. Self evaluation states personal revenue contribution at $90 million, with excellent backlog including the Sunbeam mandate.. Revenue contribution included deals in all product areas of IBD. Bill met with 30 companies for the first time in FY96, either as prospects or at the request of another MS business unit with business resulting from 14 of these companies. From a revenue standpoint, the year was great. There are performance areas where comments continue to reoccur and which need continued focus. See developmental areas. Surely, Bill will be disappointed by these but he will have to work on them harder in 1998 than he did in 1997.

PRIMARY STRENGTHS

Client Skills/Business Development	How to Leverage Strengths
Client Skills: Very persuasive with clients. Aggressive in pursuit of new business. Has impact at CEO and Board level. Shows good judgment and decision making.	
Tenacity and Hard Work: Hands-on; one of the hardest working MD's in the Firm. Seems to accomplish lots in the time given. Leads by example; provides feedback in a timely manner; famous for use of voice mails, especially early in the a.m.	

Professional & Execution Skills/Mgmt/Teamwork	How to Leverage Strengths
Product Knowledge: Grasp of broad array of products offered by MS is exceptional. He is also able to deal across a wide spectrum of industries.	

DEVELOPMENT NEEDS

Client Skills/Business Development	Suggestions to Improve
Balance: Overly aggressive at times in trying to capture transactions, so as to miss possible negative impact on resource usage or the franchise.	Try to be more selective in pursuing business. If there are doubts, seek advice from colleagues. Also try not to get into details; your time is better spent. Resources are not endless so prioritize what is important before making requests for work.
Prone to Exaggeration: Can cause skeptical reaction from client and loss of credibility with teammates. Also a tendency to over commit to clients on certain items which are not in MS area of expertise.	Don't oversell; you don't have to. As your stature grows, your salesmanship must mature.

NOT A CERTIFIED COPY

0150056

MORGAN STANLEY
CONFIDENTIAL
0085470

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Perella, Joseph R.
Signature: _____
Date: _____

Review of 1997 Firmwide Performance E Performance

Professional & Execution Skills/Mgmt/Teamwork	Suggestions to Improve
Straight Forwardness: People have the impression that he is not being completely up front. Also, certain product areas think he should consult with them before racing to answer a client question. Some suggest he still manages by intimidation or setting artificial deadlines.	Needs to work on being more open and transparent with colleagues.

1998 OBJECTIVES

Business Goals

Maintain revenue contribution at or above current level of $90 million. Provide support for continued improvement in the regional offices. All this will require continued commitment of the kind Bill has demonstrated to all. However, he should try and relax once in a while.

Professional Development Goals

Bill really has to work to eliminate the items mentioned in developmental areas. All of this seems interrelated to the extremely high standards and goals Bill sets for himself and his people. I don't know a better word than balance to describe what he has to strive for. Bill comments that his skills are under utilized and that if it serves the Firm he would return to New York or London, i.e., he aspires to a position with more responsibility. This aspiration is a good one, but Bill should work on the developmental areas in order to be positioned to be considered for new responsibilities.

EVALUATEE COMMENTS:

The review was excellent. I look forward to improving in the areas mentioned and to continuing to contribute in a meaningful way to the Firm. I very much enjoyed 1997. I look forward to 1998.

NOT A CERTIFIED COPY

0150S7

MORGAN STANLEY
CONFIDENTIAL
0085471

NOT A CERTIFIED COPY

015058

1998 Firmwide Performance Evaluations

Firmwide 360° Process

William H. Strong

North America

IBD \ Regional Coverage

Managing Director

Confidential *

NOT A CERTIFIED COPY

Evaluation Director:

Robert W Jones - 01892 (Primary)

Joseph R. Perella - 39214 (Co-Director)

01505 9

* Confidentiality: Specific feedback may not be attributed to an Evaluator unless you, the Evaluation Director, ask for and receive that Evaluator's permission.

EXHIBIT
tabbies
CPH 375
12/8/04 SSL

William H. Strong
Managing Director
IBD

List of Evaluators

Downward		Colleague		Upward
Abdel-Meguid, Tarek F	IBD	de Montfort, Piers	IBD	Evaluator 1
Purcell, Philip J.	Company Managemen	Kauffman, Richard L.	IBD	Evaluator 2
Perella, Joseph R. (CoDir) +	Institutional Securities	Oelerich, Francis J	IBD	Evaluator 3
		Porat, Ruth M.	IBD	Evaluator 4
		Spence, John F.	IBD	Evaluator 5
		Symes, James B	IBD	Evaluator 6
		Slayton, Shelby A.	Client Solutions	Evaluator 7
		Glascott, James D.	GCM - Joint Venture	Evaluator 8
		Orem, John R	GCM - Joint Venture	Evaluator 9
		Niehaus, Robert H.	Private Equity	Evaluator 10

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085473

Requested:	3	Requested:	10	Requested:	10
Received:	3	Received:	10	Received:	10
Not Received:	0	Not Received:	0		

*Evaluation not received; **Evaluation received not entered; +Unable to Evaluate; (v) Voluntary evaluation

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

IBD Self

William H. Strong

Managing Director

Section II. Building the Franchise

How did you enhance the Firm's franchise this year (e.g., cross selling; development of significant new client relationships;difficult execution/structuring of a particularly complex transaction; broaden the firm's reputation in your industry.

I enhanced the Firm's franchise in several ways during 1998. First, I assisted in meaningfully expanding the size and scope of the regional offices' practice during the year including both revenue and professional staffing. I assisted the North American Regional Offices in producing a record level of revenue and I have already personally produced over $100 million, well above my comparable YTD 1997 total and my sixth record year in a row. As mentioned above, I called on 25 new companies during the year. I spoke at two leading conferences on M&A matters and unique financing issues. These were the Tulane Corporate Law Institute and the Northwestern University Law School Garrett Institute. I was asked to and I accepted the position as Vice Chairman of the Chicago Symphony Orchestra. Among other things this requires that I supervise the management of the Symphony's endowment of $140 million. Further, I chaired the Opening Night fundraising committee to benefit the musicians' pension plan. We raised a record amount this year. The Symphony puts me in touch with virtually every meaningful CEO in the Chicago area. I led the Firm's efforts in securing the mandate to lead the IPO of Celestica which at $415 million is one of the largest technology offerings that the Firm has led. I specifically took advantage of my strong personal and professional relationship with Tony Melman, the Chief Operating Officer of Onex, the controlling shareholder of Celestica. I also led our efforts to represent True North in its acquisition of Bozell Jacobs. In the middle of our efforts, a large French company commenced a hostile tender offer for True North. We successfully completed the acquisition and we successfully defended True North. Our efforts included myproviding of a deposition as well as testifying in Federal Court on December 23rd in support of True North. I have also assisted Mr. Tom O'Neil, the regional head of Dean Witter in his recruiting efforts for significant producers. I am also acting as team leader for Allstate in the Firm's pilot program in North America for cross-divisional coordination of our efforts in covering large clients. I have also assisted in producing PCS and other non-IBD division revenue. Lastly, I organized a 1 1/2 daymeeting of the regional office heads to discuss issues of mutual concern. That meeting produced a detailed report and several specific recommendations which I developed and which I have forwarded to Rob Jones for review and consideration.

Who did you recruit and/or mentor this year? Describe the results of your efforts.

Throughout the year I recruited actively at the college or graduate school level for Analysts and Associates. Further, I actively recruited lateral hires as well including Brian McKay, Bob Ellis and Dan McClure for the Toronto Office and Scott Norby for the Chicago Office. Each of these four individuals were recruited from direct competitors. I counseled Mark Bradley, John Adams, Dan Ewell and Peter Dey during the year to remain with the Firm. Each of them for differing reasons contemplated leavingthe Firm. I believe that my relationships with each of them as well as the other professionals in the regional offices play an important part in the consistency of our staffing and coverage efforts and therefore our growing success from both revenue and market share perspectives. I also spent a considerable amount of time in assisting the strengthening of the relationship between Peter Dey and Brad Crompton. This improving relationship and role clarification have, in my judgement, played a role in the growing success in Canada.

Section III. Goals and Objectives

Develop preliminary business and professional development goals for 1999. Associates should focus on improving their professional/execution skills. Officers' goals should include ways to strengthen their client/business development skills.

First, I will endeavor in the early part of fiscal 1999 to see through the recommendations which emanated from the regional office head meeting. Implementation of these recommendations are necessary to provide for the continued growth of the regional office revenue production as well as simply maintaining market share. Second, I will try to again increase my personal revenue production in 1999 for the seventh straight year. I intend to continue to focus on Canada in 1999. This includes not only continuing to monitor the Dey-Crompton relationship, but also following to conclusion the possible acquisition of RBC Dominion Securities by the Firm. I also want to assist Steve Trauber in growing his business which includes getting increased support forhim in the Houston Office.

What skills and abilities would you put to greater use? Describe training or other support that would leverage your effectiveness? What are your long-term career goals at Morgan Stanley?

In prior years, I have commented that my management skills are being underutilized. I continue to believe that is the case. I continue to aspire to larger and more challenging roles at the Firm.

NOT A CERTIFIED COPY

015061

MORGAN STANLEY
CONFIDENTIAL
0085474

IBD Self

William H. Strong

Managing Director

Section I. 1998 Performance Summary

Describe your performance relative to your business goals and to the relevant performance criteria (see the Performance Criteria Matrix for details). Your comments should not exceed the space provided.

I am very pleased with my performance in 1998. Further, I am especially pleased with the performance of the Regional North American offices. On two occasions in 1998, I reviewed my 1997 Evaluation and Development Summary to ensure that I did not lose sight of the specific goals and objectives. I significantly exceeded the revenue goal and I have directly addressed the style and related communication points mentioned. The aggregate revenue of the Chicago, Houston, Los Angeles, San Francisco and Toronto offices will approximate $600 million; the sixth record year in a row. This revenue growth has approximated a 46% compound annual growth rate since 1994. In 1994, I committed that the Toronto practice would reach not less than US$50 million in Firm revenue by 1998 when its revenue at the time was less than US$20 million. Toronto's current revenue projection based upon the recently completed 90 day review is US$69 million for 1998. My personal revenue production each year at Morgan Stanley has exceeded the previous year. At this point in the year, my TSW revenue exceeds $100 million which exceeds the comparable number from 1997 by over 30%. This result includes successful solicitation and execution of IPOs (e.g., Capital Trust $2.6 million in Firm revenue, Celestica $5 million, LaSalle Hotel $1.6 million, Midway Airlines $3.0 million, Steelcase $3.1 million); M&A transactions (e.g., True North' acquisition of Bozell $3.5 million in Firm revenue; Sunbeam's acquisition of Coleman, First Alertand Signature Brands $13.5 million), convertible, secondary and follow-on equity transactions (e.g., Fort James $10.6 million in Firm revenue, Ha-Lo Industries $1.1 million, Omniquip $2.2 million, Sunbeam $18.2 million, Fred Meyer $2.0 million), high yield and senior bank funding transactions (e.g., Omniquip $1.6 million in Firm revenue, Scotsman Industries $2.0 million, Sunbeam $4.9 million, Focal Communications $1.4 million), and investment grade debt transactions for such companies as Allstate, Cargill, Chrysler, FMC, Fort James, IMC Global, Parker-Hannifin, Sears, Roebuck and TRW. In addition, I solicited and participated in the execution of other product areas such as share repurchase programs, tax-exempt debt offerings, valuation opinions, equity derivatives and commercial paper programs. I established new client relationships with Celestica, Focal Communications, Ha-Lo Industries, Midway Airlines, Steelcase, among others as well as first time M&A business for Motorola. I have also established a meaningful backlog of business moving into 1999 including possible transactions for Allstate, Focal Communications, Amway, IMC Global, LaSalle Partners, Sears, Motorola, Parker-Hannifin, Lennox, True North, Leo Burnett, Interlake, Rouge Steel, Kendall-Jackson and TeleTech, among others. In summary, I am confident that I have exceeded each of the goals established for me for 1998. I look forward to a successful 1999.

How many companies did you call on for the first time in 1998? Which of these companies did you develop business from in 1998? Which companies were first time mandates obtained from a competitor's traditional client? Why did we win the business?

Thus far in fiscal 1998 I have called on 25 companies for the first time. Of this 25, we have completed business already in 1998 for 6 of those including Steelcase-IPO, Ha-Lo-follow-on equity deal, Ft. James-equity, debt and derivatives, Focal-high yield, Celestica-IPO and IMC Global-M&A and debt. Business has been committed to us and is in progress for 7 companies including Kendall-Jackson-sale of company, Lennox-IPO, Leo Burnett-merger with McManus, General Mills-acquisition of Quaker Oats, Interlake-sale of company, OpenPort-IPO and ARC Network-high yield. We turned down business at two companies and nothing has yet happened at 10 companies. First time mandates obtained from a competitor's traditional client include Ft. James from Merrill Lynchand Salomon Brothers, IMC Global from Merrill Lynch, Kendall-Jackson from Hambrecht & Quist, Lennox from SG Warburg Dillon Read and General Mills from SG Warburg Dillon Read. The reasons for obtaining these mandates from new clients vary, of course, from client to client. However, the most frequent reasons include first class job in the bakeoff, strong equity research analyst, my personal relationship with a key executive, the Firm's product strengths, cold calling over a period of time and poor efforts by our competitors in bakeoffs. Given our increasing strengths vis-a-vis our competitors I expect this high percentage of success to continue and probably to increase.

What Development Areas from your 1997 Evaluation and Development (E&D) Summary/Review have you improved?

I have addressed each area. I have endeavored to be more selective in pursuing business. I have urged that we not take on inappropriate transactions for staffing or other reasons (e.g., Zacks Investment Service, NetDox, certain financing at Kendall-Jackson). Further, I have worked at not getting into the details of deals where possible. However, when the client makes a request of me I have made sure that someone got the job done or if no one else was available I addressed the issue myself. As such,I have made sure that our level of service to our clients remained at a high level. While I did not feel that Joe Perella felt that the exaggeration point made last year was a significant point, I nonetheless kept it in mind when making presentations and elsewhere. I have always prided myself on dealing with my colleagues in an open and partner-like manner. Therefore, I was quite surprised by the comment last year that certain people felt that I was not being totally upfront or transparent. I cannot say that I materially changed my operating style this year. However, I did keep the point in mind throughout the year.

What were the biggest disappointments in developing new business (excluding conflicts, losing bid situations) and what was learned from each? (CFD officers should include missed business in each product area).

Not getting the lead on Focal Communication's high yield deal. We are an investor in a direct competitor in Chicago (Allegiance, another CLEC). The client was only mildly uncomfortable with that point, but we still missed the lead. Salomon Brothers got the lead. Lesson learned: Sometimes the facts about our superior product skills just don't matter to directors who have already made up their minds. --Not representing Chrysler in its sale to Daimler-Benz. We aggressively pitched being their advisor well before anything was announced or rumored. We knew something would likely happen. We had Dick Fisher on two occasions directly 'ask for the order.' Lesson learned: Sometimes in spite of the Firm's proactive best efforts we simply are not going to overcome a 20+ year relationship that a specific officer of a competitor has with a client. --Not getting the mandate to sell Sealy on behalf of Sam Zell. We did the best job in the bakeoffs. Both Zell and Sealy representatives told us it would be our business. Two days later the business was given to

5062

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085475

16div-020928

IBD Self

William H. Strong

Managing Director

Merrill Lynch with a lame and inaccurate excuse being given to me and others on our team. That same day I called Sam Zell and made it crystal clear that this is not the way we do business and a relationship is a two-way street. The next morning he called me and awarded us the IPO ofCapital Trust which I had never even heard of. Lessons learned: Billionaires move in strange ways, particularly Sam Zell and when we have not been treated in an ethical and appropriate manner go right at the decision-maker and complain.

NOT A CERTIFIED COPY

015063

MORGAN STANLEY
CONFIDENTIAL
0085476

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments

Describe Primary Strengths

Client Skills/Business Development

Downward Comments

Within IBD

Abdel-Meguid, Tarek F (N)	Bill is an extremely commercial banker and a tenacious competitor. He is highly focused on money making opportunities, sometimes to a fault. He is incredibly energetic, very diligent. Very strong commercial results.—

Outside IBD

Purcell, Philip J. (N) (Company Management)	Bill is a highly energetic and aggressive builder of our investment banking business. He has made dramatic inroads into the Chicago business community because of his work ethic, energy and perseverance.–The situations I have personally been involved in with Bill have involved several clients. One new client in Jerry Reinsdorf, Bill assembled an excellent team, importantly involving Paul Taubman. The transaction has not been consummated, but the Firm knocked out all competition and got the assignment and it should come to fruition in the near future. Bill had a good relationship with Reinsdorf's outside attorney that led to a strong, positive Morgan Stanley recommendation and that coupled with my knowledge of Jerry Reinsdorf led to a meeting where no competitor was considered because of the team's obvious competence.–Bill led the effort with Reinsdorf and Company in a very professional way and deserves a lot of credit for that relationship. In addition, Bill has aggressively pursued a number of none-traditional Morgan Stanley clients in Chicago with a high degree of success. On the introduction of the Firm's investment banking expertise to Leo Burnett, Bill did not play a direct role, but did put Frank Oelerich in charge and Frank has performed very well. I believe Bill has a knack for finding the right resources, matching them to the right client; that includes, by my observation, Doug Brown at Allstate as well as Frank Oelerich at Leo Burnett. Therefore, I think Bill does have both business development and client resource deployment expertise that's serving the Firm well in the mid-west.
Perella, Joseph R. (U) (CoDir) (Institutional Securities Mgmt)	—

Colleague Comments

Within IBD

de Montfort, Piers (N)	Very strong client skills and relationships, enthusiastic business developer, good at seeking and taking detailed execution advice where required.—
Kauffman, Richard L. (N)	Bill always goes the distance in trying to get business. He will fly across the country for a lunch before a bake-off (as in the case of Lennox); he is very commercial, always looking for a way to get into a piece of business (pulling the Chrysler people aside at a non-profit event in Chicago).—
Oelerich, Francis J (E)	Bill conducts the coverage role with an 'in your face' approach. He is very aggressive in cultivating relationships with clients and presenting provocative thoughts to them. –Bill is highly inflential with his clients. Ken Tuchman, Bob Reum, Cheryl Francis and others will not make an important move without consulting him. –Bill has established a high profile reputation within the Chicago business community, and is proactively sought out because of his stature and referrals, from both clients and other professionals such as attorneys.

NOT A CERTIFIED COPY

015064

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

* MORGAN STANLEY CONFIDENTIAL 0085477

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
Porat, Ruth M. (E)	Impact with clients – I believe Bill is one of the most effective coverage officers in IBD. Clients trust and respect his judgment. He has build the trust through a combination of consistent hard work on their behalf and excellent judgment. In addition, his network of relationships is very broad, allowing him to leverage off of board contacts as well as management relationships. For example, through his work with True North we were able to secure the lead for an Internet IPO as well as meet the CEO of another important tech company. I am always confident that when Bill is the senior banker on a deal team, no stone will be left unturned and he will find a relationship to leverage to materially enhance our chance of success. –Focused/work ethic – Bill is a very good role model when it comes to business development because he is relentless. He takes nothing for granted – which may sound like Coverage 101 but his intense focus and analytical approach to winning a piece of business is, I believe, reflected in his wins. He obviously starts with a tremendous franchise but then works extremely hard and diligently to conquer each piece of business. It is then clear in a pitch that he is very familiar with the key issues facing a client which adds tremendous credibility to his assertion in a pitch that he will be there throughout the process to deliver the firm. For example, when we won the lead on the Celestica $350MM IPO, the client noted that it was impressive that Bill had been there throughout the due diligence preceding the pitch. –Well known/well respected in the industry. As noted above, Bill's work ethic and client commitment has resulted in a large stable of loyal clients which then serve as a very effective referral system to win new business.
Spence, John F. (N)	Bill's client skills are exemplary. Each year I hope to narrow the gap between Bill's client skills and my own. He is particularly effective at winning business. It is always fascinating to watch Bill when he is competing for a piece of business - he isincredibly hungry. A few years ago, I heard John Mack give an internal speech where he emphasized the need for all of us to be hungry. Bill epitomizes that hunger, even though he has already achieved great success. Most of the IBD professionals that I know are intensely competitive (myself included), but Bill's intensity is just a level higher. There are many great power hitters in the game of baseball, but Mark McGwire hit 70 home runs because of his intense concentration and ability to 'lock-in' to the pitcher when he steps to the plate. Bill has that kind of focus and intensity when he steps to the plate in our daily game. –Bill successfully markets the entire range of the Firm's products. Despite his grasp of the entire product array, Bill still strives to expand his knowledge base. If I am working on an offering of a product type that Bill has not used, he will inquire about specific technical details or implementation steps. –Bill is persuasive and credible with clients. During one potential IPO, the client wanted to proceed with their filing. The collective MSDW view was that the client should wait until early 1999 to file. Bill effectively persuaded the client to follow that advice, even though the two co-managers on the deal both recommended that the client file immediately.
Stynes, James B (N)	Bill is one of the most relentless pursuers of business I've met. He has a laser-like focus on going after business, deals with every detail, works every angle and has a pit bull persistence. He is also very good with clients. He is very focused on their needs and issues, ensures that they get first class service whether from him or a product group but can also effectively deliver a hard message when he *must*.—
	Outside IBD
Slayton, Shelby A. (L) (Client Solutions)	Bill Strong's work in winning the mandate for the Celestica IPO was impressive. Before officially pitching for the business, he knew who we were competing against and the key issues with a difficult client. His relationships the Onyx were crucial in getting a head start.—
Glascott, James D. (L) (GCM - Joint Venture)	Outstanding understanding of client's needs and objectives at the senior level. I only worked with Bill on TRW, but he certainly has credibility and clout at TRW with the CFO and above.—
Orem, John R (N) (GCM - Joint Venture)	Bill's experience as a senior level coverage officer is immediately apparent when he enters the room. He knows how to work the floor, is perceptive in terms of identifying issues, is a quick study in terms of formulating solutions, knows his business and products thoroughly (I am always impressed at how current he is on the finer points of the high yield market), and positions the Firm as well as any coverage officer that I have come into contact with. Perhaps most importantly, he very quickly establishes himself and the team with the client and wins their utmost confidence and trust – he literally had Jess Jackson of Kendall Jackson eating out of MSDW's hand. —
Niehaus, Robert H. (N) (Private Equity)	Excellent understanding of clients' goals and objectives.–Excellent relationship builder with CEO's; has built a good relationship with Fort James CEO Miles Marsh.–Persuasive; articulate.

NOT A CERTIFIED COPY

0 5065

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

* MORGAN STANLEY
CONFIDENTIAL
0085478

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments

Professional & Execution Skills/Management/Teamwork

Downward Comments

Within IBD

Abdel-Meguid, Tarek F (N)	Bill is a strong advocate of his people. He sets a good example in terms of working hard. Strong banking skill set, great user of voice mail. Makes an effort ot help regional offices with issues.—

Outside IBD

Purcell, Philip J. (N) (Company Management)	In his current role, living in Chicago, I would say Bill could adapt a little bit more to the more laid back, less frantic approach to things that is more typical in the mid-western markets. So I would coach him along those lines.—
Perella, Joseph R. (U) (CoDir) (Institutional Securities Mgmt)	—

Colleague Comments

Within IBD

Kauffman, Richard L. (N)	Bill is detail-oriented. He usually spends time on the details of a new business pitch, allowing time for rehearsing. He keeps the ECMS team fully briefed, using his famous time-stamped voice mail. And when he wants the product team's attention, he is very good at bringing us in early. He also is always willing to help out other team members (calling Sam Zell to get support on behalf of another deal not benefiting Bill directly).—
Oelerich, Francis J (E)	Bill is highly focused on marshaling Firm resources to client issues. He commands attention and has the pull to get resources focused on problems. He has a very solid work ethic, and demands no less of his teams. –Bill has a commanding presence in Board situations. He presents views with authority, and is nimble enough to react to provocative inquiries from directors. –Bill has continued to be highly focused on developing the careers of those around him, both as part of the formal year-end process butalso on a regular, ongoing career management basis. The commercial results of the region speak volumes as to the success of these efforts.
Porat, Ruth M. (E)	Excellent deal judgment – Bill is very effective managing transactions to get the right outcome for the client and the firm. For example, early in the year we executed a $100MM high yield deal for Scottsman after it became apparent that their preferred route – an equity deal – was unlikely to work. Bill did a very good job working with the client to turn a tough situation into a success. –Excellent team player – Bill is an excellent team player on a number of dimensions. First, he does a very good job building a team that wants to produce the most possible. He leads by example, working extremely hard himself so he sets a standardfor the entire team. Second, he is very good about acknowledging where people have made a contribution, which builds strong loyalty. Finally he is very effective turning client situations into revenue generating outcomes for the firm, which engenders loyalty - he doesn't waste anyone's time. –Effective communicator/negotiator – Bill has very strong execution skills, based on experience, judgment and confidence. He does a very good job working diligently with a client to bring the client to the appropriate point of view. For example, on the Celestica IPO, the client had a number of unrealistic expectations regarding pricing and allocation strategy. Bill was very effective at building consensus at the client so that we were able to reach the 'right' answer and have the clientview MS as a critical ally in getting to the right answer.
Spence, John F. (N)	Bill has excellent communication skills. His public speaking abilities are excellent. For example, at the MSDW midwest golf outing each year, Bill is the emcee for the event. In his first year at the Firm, Bill's presentation was somewhat stiff and dry.By contrast, his prepared remarks this year were delivered smoothly and with wit. In addition to his public speaking skills, Bill excels at presenting to clients. He comes across as knowledgeable, poised and articulate. –Bill should also be commended for efforts this year at aiding in the development of other professionals in the Chicago office. Bill is not my evaluation director. Nonetheless, on multiple occasions this year, Bill has taken the time to talk with meabout my performance, my progress and my career path. In each instance, Bill initiated these conversations. Bill works as hard as anyone in the Firm, and for him to take the time on these issues was greatly appreciated. –Bill is actively involved in all levels of recruiting. He is always willing to be involved in presentations, interviews or sell days. He sets a fine example for the rest of the office to follow.
Stynes, James B (N)	Solid grounding in all aspects of banking; M&A, debt, equity, etc. Very quick study - able to pick up the key issues in a transaction right away. Good communicator - always keeps teams fully informed/responds promptly to all communications.—

NOT A CERTIFIED COPY

0085096

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

* MORGAN STANLEY CONFIDENTIAL 0085479

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
	Outside IBD
Slayton, Shelby A. (L) (Client Solutions)	—
Glascott, James D. (L) (GCM - Joint Venture)	Excellent product knowledge and Bill is very comfortable allowing junior bankers and product people to speak in important meetings with senior clients. He has excellent presentation skills and communicates well internally. We had a legal problem in themiddle of the TRW transaction and Bill calmly handled things and showed great leadership.—
Niehaus, Robert H. (N) (Private Equity)	Team building. Has built a strong coverage and corporate finance capability in Chicago.–Strong one-firm mentality. Understood and managed well the complexities of the large Fort James secondary offering of MWD's equity position. Bill encouraged Fort James to launch the offering at a positive time in its operating cycle, helping the Firm to maximize the value of its Fort James holding at $43 per share. FJ stock now trades at $27 per share.–
Describe Development Areas	
Client Skills/Business Development	
	Downward Comments
	Within IBD
Abdel-Meguid, Tarek F (N)	Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgements which are sometimes very close to, if not over, the line. I continue to hear comments about his greater general concern for his own people/business unit, relative to the Firm's best interest.—
	Outside IBD
Perella, Joseph R. (U) (CoDir) (Institutional Securities Mgmt)	—
	Colleague Comments
	Within IBD
de Montfort, Piers (N)	From time to time in the enthusiasm for the mandate, needs to avoid over committing and maintain the efficacy of the M&R fee scale, particularly for non-Chicago based execution—
Kauffman, Richard L. (N)	Bill has a very intense style which can be off putting to some clients. He is 'all-business'. He might choose to vary his style - to introduce more humor or a lighter touch.—
Oelerich, Francis J (E)	Bill relishes the battle of execution, and quite often is not able to extract himself from client wishes that he play a very active role in such execution. This can lead to his having to double up time/staffing committed to such clients (TTEC, IK, etc.) and dilute his ability to invest his time on the next piece of business. –Bill has become much more discerning of prospective business, ensuring that it meets Firm standards. Still, his innate aggressiveness means he is predisposed to pursue every scrap of business, even if it is ultimately inefficent for him, and the Firm, to do so. I would also like to see Bill be more dogmatic in defending fee scale, or in not taking on pieces of business in which or role is 'defined' as limited, but actually evolves to full involvement at suboptimal economics. –
Porat, Ruth M. (E)	It is tough for me think of development areas for Bill. As noted above, he is extremely effective with clients and has successfully built a very broad client stable.—
Stynes, James B (N)	Minor area: needs to be careful not to over-promise and to consult with team before giving advice - generally not a problem - happens every now and then.—
	Outside IBD
Slayton, Shelby A. (L) (Client Solutions)	—
Glascott, James D. (L) (GCM - Joint Venture)	—
Niehaus, Robert H. (N) (Private Equity)	—

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

NOT A CERTIFIED COPY

015067

* MORGAN STANLEY CONFIDENTIAL 0085480

16div-020933

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments

Professional & Execution Skills/Management/Teamwork

Downward Comments

Within IBD

Abdel-Meguid, Tarek F (N)	Bill continues to suffer the consequences of less than a straightforward approach. Gives people, including me, the impression that he is not completely up front. I have heard fewer negative comments this year than in past years.—

Outside IBD

Perella, Joseph R. (U) (CoDir) (Institutional Securities Mgmt)	—

Colleague Comments

Within IBD

Kauffman, Richard L. (N)	Bill still has a fondness for the thick, put in the kitchen sink style of presentation. Less is more.—
Oelerich, Francis J (E)	Bill has more than his fair share of 'colorful' clients, and should continue to use good discretion in developing and ungrading relationships with a center of the plate client base, and less with clients on the fringe (often introduced by fringe attorneys such as Katten, Muchin and Zavis). –Bill has also improved dramatically his management of client expectations, but there are still circumstances with clients where his desire to ingratiate himself with the client can lead to unrealistic or unnecessary expections being established. –
Porat, Ruth M. (E)	Similarly, I have difficulty identifying development areas in this category. On every dimension – execution skills, leadership and teamwork, Bill is at the top of my list. He is very effective and committed to getting to the best possible result. The only potential issue to consider is that he appears to be a workaholic which he has leveraged to commercial success. My only concern is that few people are willing to work the way he does. For example, Bill appears to read every document for a transaction and be very immersed in all of the details of a deal as well as extremely active in businesses development. I would only caution him that there are probably going to be professionals who can do very well at MS and for MS who do not rise to his standard and would want to ensure that he conveys to them that there are many ways to succeed. Knowing Bill, I presume he is already sensitive to this point. —
Spence, John F. (N)	The only suggestion that I can offer for Bill is that he should let his junior professionals manage the day to day relationships with his clients at the more junior levels. He should focus his attention at the CEO and CFO levels, while permitting the junior officers to manage the lower level contacts. Such an approach will reduce Bill's already heavy burden and enable the junior officers to establish greater credibility with the client. —
Stynes, James B (N)	—

Outside IBD

Slayton, Shelby A. (L) (Client Solutions)	—
Glascott, James D. (L) (GCM - Joint Venture)	—
Niehaus, Robert H. (N) (Private Equity)	—

Exceptional Performance Description

Colleague Comments

Within IBD

Porat, Ruth M. (E)	Bill is an excellent role model for junior and senior professionals because he has all of the key elements of a successful leader – he is very effective with clients, he has built a large social circle of clients, he is an aggressive marketer, he has very strong execution skills and he is a pleasure to work with. His balance with business development, execution and leadership is rare, in my opinion.

NOT A CERTIFIED COPY

0150968

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

* MORGAN STANLEY
CONFIDENTIAL
0085481

16div-020934

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Comments
Spence, John F. (N)	Bill has done it all in 1998. He has delivered outstanding financial results, furthered MSDW relationships, effectively managed the regional offices, taken the time to work with individuals on professional and career development and actively participated in recruiting. He works as hard as anyone at the Firm. He sacrifices vacation days for client meetings (when they are important enough) and does an outstanding job of making each client feel that they are his most important priority.

NOT A CERTIFIED COPY

015069

* - Evaluator indicated that evaluatee is a direct report (v) - Voluntary evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

* MORGAN STANLEY
CONFIDENTIAL
0085482

Review of Upward Feedback
IBD Evaluation Form

William H. Strong

Comments

Describe Strengths

Leadership

* Bill is, by some distance, the best manager, leader and all-around banker I've worked for or with. He leads a number of different ways. He leads by example-he is extremely dedicated, hard working and continually ssacrifices for the firm. He leads through communication whether it be in a group setting, individually or even on voicemail. He leads with compassion-he has a genuine interest in the lives, careers and dreams of everyone one of us. ~Bill has been particularly effective in what is (at least from an org. chart perspective) is a peculiar position in overseeing the regional offices yet he does it with charm and style. I am very comfortable saying that none of the regional office heads if given a chance would change anything about the role Bill plays. In an industry not known for management Bill is a unique character. ~Bill leads one other way which to me is most important, that is through trust. This has been an exceptionally frustrating year for me in that I've had multiple experiences on different matters with certain of my partners at the firm that havecaused me to realize that I can not trust them. These incidents have troubled me substantially and made me realize more than ever how critically important it is to work for someone you trust. I trust Bill thoroughly and totally. I always will.
* Leads by Example: Bill is clearly an extremely accomplished banker who can generate significant revenues for the firm. More importantly however, he is one of those rare individuals who consistently increases the quality and performance of his colleagues by setting a good example. Bill has a few qualities that truly distinguish him. First, his work ethic is unparalleled. Few people at Morgan Stanley, even professionals quite a bit junior, work as hard as Bill. He manages to schedule an incredible number of substanative face-to-face meetings and phone conversations with both clients and co-workers. Secondly, Bill works hard at teaching junior bankers how to interact, not only with clients, but in the general community. He is constantly asking me if I am meeting with prominent lawyers and accountants and whether I am entertaining enough or have joined any new opera board type situations. He is clearly focused on creating the type of officer at Morgan Stanley who is well positioned both professionally and socially to generate significant business for the firm. ~Builds Commitment: I have always found being on an execution or business development team with Bill a real pleasure. He does a superb job of including both junior and senior members ofa team in all aspects of each assignment. For example, as senior banker on a recent proposed high yield debt financing for Kendall-Jackson, Bill made sure to solicit judgements from high yield, credit, corporate finance and even, when appropriate M&A.~Overall Leadership Capabilities: The categories suggested by the IBD Performance Criteria do not, in my opinion, allow for the appropriate review of Bill's leadership capabilities. The business that he manages (leads) - the branch offices have been phenomenally sucessful due to his involvement. He has (i) set the right work ethic, (ii) demanded excellence and integrity from his people, (iii) allowed the right amount of autonomy so people could develop but not so much that dramatic mistakes were made. The net result of his leadership has been revenues that have grown dramatically and offices staffed with capable, independent bankers. The success of the branch offices is the true measure of Bill's leadership capabilities.
* Bill is truly a leader. He leads by example. He sets a fast pace and is totally committed to his clients and the job.~Bill has broad and deep knowledge of the products offered and is creative in applying them to best meet his clients' needs.~Bill has tremendous presence with clients. He has the ability to walk in to a new situation and get business based on his presence, knowledge and confidence that he instills in clients.
* Bill leads by example: he has a strong work ethic, is committed to the success of the firm and has very strong technical/product knowledge skills.~Bill is a good team leader. He is inclusive, respectful and builds mutual trust and respect among team members.~
* Bill is the complete leader. He leads by direction and he leads by example. He leads by example in that his work ethic is simply unsurpassed. He conducts his business with a disciplined approach and a high standard of ethics and integrity. I have never had Bill ask anything of me which he wasn't prepared to do himself. Bill leads by direction in that he is always well informed and on top of developments in our market. He asks the right questions and devotes his time whenever it is needed. He is extraordinarily supportive while at the same time appropriately demanding that I and my team reach and maintain the high standard that he sets for us all.~Bill made a concerted effort this year to bring the managing directors from all the regional officesto Chicago for a regional summit. This turned out to be an extremely fruitful and worthwhile endeavor. Discovering and communicating common frustrations as well as best practices has resulted in a better understanding of the Firm and what each group istrying to accomplish. I have noticed a greater amount of communication since that summit and we've already begun to incorporate several of the best practices lessons learned at the summit. I found that this type of smaller working session of managing directors significantly more valuable than many of our larger group sessions. Bill deserves the credit for not only organizing this effort but also for drafting the ultimate report.~In summary, Bill is a leader because of his effective direction that he provides, the example that he sets and the fact that he is prepared to be innovative in his management approach.
* Bill's dedication and commitment to the franchise builds commitment~Bill has been sensitive to the dynamics in the leadership of the Canadian franchise and has spent quality time addressing the issue~The meeting of branch heads was an excellent exercise in identifying issues unique to the branches and providing a forum for finding answers
* Bill is a complete banker with a strong skill set in every facet of the business. As such, he is an individual who leads by example in dealing with younger professionals.~Cross selling - Bill works hard and effectively at selling all the products of theFirm and maximizing the revenue stream from each client.~Bill is aggressive in seeking new business. He has heightened the focus and efforts of the office and intensity level at which people perform. He deserves great credit for the achievements of theregional office.
* Bill leads by example. He is exceptionally diligent, dedicated and hardworking, and he communicates this work ethic typically not by direct exhortation but by example.~Vision: Bill has a clear vision of where the regional offices should be going, and has done a good job of soliciting the input of the various office heads to get consensus on this vision. He listens well and is open to new ideas.~
* Bill is a very strong and capable leader. Bill very clearly establishes direction both for a project and as well as the team members involved in a project. He is very organized and imposes that framework on everything he works on. He builds commitmentthrough thoughtful and consistent behavior and communication. Bill is the consummate communicator. He does not leave things hanging and provides very clear timely feedback.~Bill leads by example in many ways, including his unwavering passion for the business and excellence in everything that he is involved in. He hates to lose and is willing to make real sacrifice to improve the chances of a team win. He involves the whole team and is very responsive to input from all team members.~Bill drives the people who work for him to deliver the best possible product and to dig deep into their capabilities to develop into better bankers and better professionals. Bill is also the consummate professional in every regard.

Managing Performance

NOT A CERTIFIED COPY

Review of Upward Feedback
IBD Evaluation Form

William H. Strong

Comments

* Bill has taught me many things over the years mostly just by watching him in action. He has an insatiable appetite for business. He wants to have 100% markets share and goes after business aggressively and passionately. He is extremely productive andcan juggle dozens of initiatives at the same time. He works very long hours and uses his time with pinpoint accuracy. That combination of traits means that in the course of a year he is able to pack in more value added interaction with clients than sometimes seems humanly possible. I strive to do the same thing but I must honestly say that I'm not sure I can keep up with the guy. He has perfected the senior banker role and I mean that in the most positive sense. Our working relationship is like a well oiled machine at this point. I know just when and how to get him involved and I am very conscious of not overusing his time. At the same time, he jumps in *when needed and is always well prepared and makes informed judgments. Bill never tries to attach himself unnecessarily to revenues and is always* willing to help. —
* Coaches for Development: One of the greatest aspects of working for Bill is that he is so helpful in improving performance. First, he sets a great example. He is the classic marine that will not ask anyone to do something he is not willing to do himself. Thus, his work ethic is incredibly strong. Second, it is so obvious that the client come first in everything that Bill does that one cannot help but pick up that perspective when working with Bill. Finally, Bill is so thoughtful about every aspect of client relationships. He leaves nothing to chance. He spends an inordinate amount of time planning bake-offs, including what will go into the presentation, who will give, who should attend etc. That is why he is so successful at winning new mandates and developing truly strong and lasting relationships with his clients. Besides simply setting a great example, Bill actively coaches those bankers working for him. He is constantly reminding me of the importance of entertaining, of being involved in charitable situations like the opera. Bill is a *great coach both because he takes an active role in developing the bankers he is responsible for but also because he consistently sets a great example of* how the consummate senior Morgan Stanley banker should think and act. ~Provides Feedback: Bill is very good at giving immediate feedback. I have never left a client situation without a lengthy conversation with Bill regarding what was done exactly right and what could be improved upon in the future. Importantly, these conversations are always helpful and positive. ~Defines Expectations: Bill is very good at articulating his performance expectations. Most importantly, Bill always has been extremely clear with me where he would like meto spend my time. For example, when Bill and others asked me to cover financial buyers for the first time this year, Bill spent an enourmous amount of his time working with me to figure out what was the right coverage universe, the right mix between financial and industrial clients etc. Bill did a great job of helping me establish what our *priorities were going to be related to this effort.*
* Bill sets high standards for himself and those who work for him. He sets very clear goals and completely adheres to them. He sets the example. He is always on time, well thought through and correct.~Bill sets the tone for the office. He always take the time to discuss problems or issues with people. He is quick to give positive feedback and encouragement to people.~
* Bill does a good job of keeping abreast of the Canadian business without excessive 'checking up'. He is always available and willing to help with the internal battles and played a critical role in developing and implementing the CFD staffing model for Toronto and played and key role in getting the 'buy in' from the equity division for the Canadian research strategy which will include stand alone Toronto analysts in 4 sectors.~Bill is a good team player.~Bill is a good manager and is particularly attentive to the requirements of building a successful regional office.
* Bill gives clear and specific guidance as to what his goals and expectations are for those that report to him. He makes every effort to have subordinates buy in and agree to those goals and to lay out in very specific and concrete terms how those goals are to be achieved.—
* Bill has a relentless work ethic which sets an example for all~For what it's worth, I'm higher on Bill this year then in past; people recognize his decency and he seems more comfortable in his role as head of North American branch offices~
* Keeps abreast of key activities without excessive checking up. Bill believes in giving people 'room to grow' and yet he is knowledgeable and helpful on all projects in the office.~Is interested in and spends time discussing people's career objectives. He has been helpful to junior members in this regard.~Promotes Firm priorities in his own actions and what he demands of others.
* Bill takes his responsibilities in terms of evaluations, reviews, etc. quite seriously and executes them 'by the book'.—
* Bill actively manages performance. He sets goals and he measures performance against those goals. Bill provides active and frequent feedback and is not afraid to offer candid responses, both positive and negative, as required.~Bill uses his charisma tocreate a sense of bonding among team members. This dynamic engenders tremendous loyalty and drives people to work hard for him and for themselves. Bill is a very effective mentor as well and is always willing to provide personal coaching or advice whenneeded. In those instances he goes out of his way to do so.~

Describe Development Needs

Leadership

* As I mentioned earlier, I believe Bill is a truly phenomenal banker. He has great technical skills, an incredible work ethic and consistently displays good judgement. He always makes sure that his subordinates are focused on developing strong client relationships and a high level of revenue. I believe that Bill's highest and best use is sourcing new opportunities and fixing the difficult situations that invariable arise in any execution assignment. However, I further believe that Bill's first love is to roll up his sleeves and do deals. He could be more effective were he not so involved in the day-to-day details of each transaction. —
* —
* —
* The regional coverage officers within the United States cover hundreds of companies in dozens of industries. I suspect that there could be greater communication between those regional coverage officers and that their clients have a great deal of shared interest, perhaps even strategic combinations could result from greater communication. Bill has started the effort to increase the communication between the regional offices. I think that this process should be formalized so that regional officers communicate with each other as often and as effectively as they do with their industry group counterparts in New York. ~I for one would be pleased if Bill would spend more time either formally or informally discussing how he sees my career path developing overthe next five years. In our present markets, it is hard to anticipate staffing and levels of activity five weeks out much less five years but I would welcome and be encouraged to know that there is a specific career path and vision for his subordinates which Bill can articulate.~
* As a manager, Bill is very effective at setting goals or defining strategies; he should then spend more time on follow-up~As a manager, Bill should know more about our market~Suggest Bill spend more time with the juniors to get their view on the office strategy and its execution

NOT A CERTIFIED COPY

Review of Upward Feedback
IBD Evaluation Form

William H. Strong

Comments

- Uses information selectively - often times does not disclose information which I may view important or will disclose some information on a subject, but not all.-I would like to see Bill be more direct and open in dealing with conflict issues. At times Bill will react to and believe 'hearsay' without discussion with the relevant party.-
- Is Bill a strong and forceful advocate for his people internally? Third party comments suggest not. This raises issues of credibility and trust.—
- Bill's only leadership issue is his tendency to lose sight of the effort required to produce some of the things he asks for. I am convinced that if he better understood the effort it takes to do some of the marginal tasks he requests, he would rethink some of them. For example, Bill regularly asks for things to put into memos when a phone call or voice mail would suffice. In doing so, he multiplies the amount of work required to get it done, particularly given the scrutiny that he applies to any work product with his name on it.—

Managing Performance

- None that I am aware of.—
- —
- —
- —
- Bill has been very helpful in getting additional resources for our region; he is a strong ally and a strong advocate—
- None noted—
- N/O—
- Bill connects very well with the officers but needs to spend more time with the Associates and analysts in the office. I think this would be good for morale and would allow him to have a greater positive impact on their performance.-Bill has a tendency to exaggerate. He often does so when it doesn't appear necessary. In doing so he intends to impress his clients but often puts his team members into awkward or difficult situations, particularly if a reversal or recharacterization is later required.-

Exceptional Performance Description

- Bill is a fantastic role model and the primary reason I joined and stay in the Chicago Office. While Frank English, Frank Oelerich, and John Adams are all important to the success of our office, Bill is the force that accelerates our momentum. He is both the motivator and regulator on the business and is doing a superb job running the business and enhancing our franchise. He provides an outstanding platform for younger professionals. He is focused on teaching, always available, and there when times aretough. I could fill the page with his positive attributes and examples to illustrate them. Bill is not perfect but he is closer than any of the senior MD's with whom I have worked closely. I have tremendous loyalty to Bill and view his success as my success. In my view, Bill is critical to our continued success in the Chicago Office and critical to my continued growth and excitement about the business.
- Bill is the consumate senior banker. For example, MS historically has not worked with Kendall-Jackson Winery. Through a long-standing relationship, Bill heard of a potential transaction at KJ. He then successfully quarterbacked the bake-off by marchalling the appropriate high yield, M&A, equity research and corporate finance resources. After being awarded the mandate, Bill stayed very involved in the overall execution of the assignement. He was available when necessary but was not overbearing to his team. He consistently demonstrated both his technical skills and his good judgment in what turned out to be a very difficult transaction. In summary, as a result of Bill's efforts MS has developed a an extremeley strong new relationship with a company that will generate significant revenue in the future.
- In my opinion, Bill is one of the truly outstanding professionals in this industry. He is incredibly productive. He is a proven new business generator. He has tremendous respect from his clients. He works unbelievably hard. He helps foster the careers of younger professionals. He sets a standard and an example that makes people strive harder to increase performance.
- Bill is one of the best bankers I have worked with, His clients respect him tremendously. His peers within the firm respect him immensely. He generates tremendous amounts of business and sets the standard consistently in terms of work quality and commitment to his job.

NOT CERTIFIED COPY

015072

MORGAN STANLEY
CONFIDENTIAL
0085485

1998 Firmwide Performance Evaluations

V-1

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of * Evaluations	Average+ Rating	Percentage of Evaluators Selecting Rating*										
						On Track							
			Not Observed	Development Required		Lower Third		Middle Third			Upper Third		
			(-)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Downward Evaluations	2												
Client Skills/Business Development		9.0	50%	0%	0%	0%	0%	0%	0%	0%	0%	50%	
Professional/Execution Skills		8.0	50%	0%	0%	0%	0%	0%	0%	0%	50%	0%	0%
Management and Leadership Skills		5.0	50%	0%	0%	0%	0%	50%	0%	0%	0%	0%	0%
Teamwork/One Firm Contribution		5.0	50%	0%	0%	0%	0%	50%	0%	0%	0%	0%	0%
Colleague Evaluations	8												
Client Skills/Business Development		9.3	13%	0%	0%	0%	0%	0%	0%	0%	25%	13%	50%
Professional/Execution Skills		8.4	13%	0%	0%	0%	0%	0%	0%	25%	25%	13%	25%
Management and Leadership Skills		8.7	13%	0%	0%	0%	0%	0%	0%	13%	38%	0%	38%
Teamwork/One Firm Contribution		8.9	13%	0%	0%	0%	0%	0%	0%	13%	25%	13%	38%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
00854486

015013

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

1998 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of * Evaluations	Average+ Rating	Percentage of Evaluators Selecting Rating*										
						On Track							
			Not Observed	Development Required		Lower Third		Middle Third			Upper Third		
			(-)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Upward Evaluations	10												
Leadership													
Establishes Direction		9.2	10%	0%	0%	0%	0%	0%	0%	10%	10%	20%	[illegible]
Builds Commitment		8.7	0%	0%	0%	0%	0%	10%	0%	10%	20%	10%	30%
Leads By Example		9.1	0%	0%	0%	0%	0%	0%	0%	10%	20%	20%	50%
Fosters Collaboration/Cross Selling		9.1	0%	0%	0%	0%	0%	0%	0%	20%	10%	10%	60%
Managing Performance													
Defines Expectations		9.0	10%	0%	0%	0%	0%	0%	0%	10%	20%	20%	40%
Provides Feedback		8.4	10%	0%	0%	0%	0%	0%	20%	10%	10%	10%	40%
Improves Current Performance		8.8	10%	0%	0%	0%	0%	0%	0%	20%	10%	30%	30%
Coaching for Development		8.8	10%	0%	0%	0%	0%	0%	0%	10%	20%	40%	20%
Respects Cultural, Gender and Minority Differences		9.4	20%	0%	0%	0%	0%	0%	0%	0%	10%	30%	40%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085487

015074

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

1998 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of Evaluations	Average+ Rating	Percentage of Evaluators Selecting Rating*									
					On Track							
			Not Observed	Development Required	Lower Third			Middle Third			Upper Third	
			(-)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Upward Evaluations	10												
Leadership													
Establishes Direction		9.2	10%	-	-	-	-	-	-	10%	10%	20%	7%
Builds Commitment		8.7	-	-	-	-	-	10%	-	10%	20%	10%	3%
Leads By Example		9.1	-	-	-	-	-	-	-	10%	20%	20%	50%
Fosters Collaboration/Cross Selling		9.1	-	-	-	-	-	-	-	20%	10%	10%	60%
Managing Performance													
Defines Expectations		9.0	10%	-	-	-	-	-	-	10%	20%	20%	40%
Provides Feedback		8.4	10%	-	-	-	-	-	20%	10%	10%	10%	40%
Improves Current Performance		8.8	10%	-	-	-	-	-	-	20%	10%	30%	30%
Coaching for Development		8.8	10%	-	-	-	-	-	-	10%	20%	40%	20%
Respects Cultural, Gender and Minority Differences		9.4	20%	-	-	-	-	-	-	-	10%	30%	40%
Overall Upward Average		8.9											

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085488

015075

+ Excludes Not Observed ratings.
* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings
IBD Downward/Colleague

	Degree of Involvement	Performance Criteria: Client Skills/ Business Dev.	Professional/ Execution Skills	Management & Leadership Skills	Teamwork/One Firm Contribution
Downward Evaluators					
Within Division					
Tarek F Abdel-Meguid	N	9	8	5	5
Outside Division					
Philip J. Purcell	N	-	-	-	-
Downward Average*		9	8	5	5
Colleague Evaluators					
Within Division					
Francis J Oelerich	E	8	8	7	8
Ruth M. Porat	E	10	10	10	10
Piers de Montfort	N	9	7	8	9
Richard L. Kauffman	N	8	7	8	7
John F. Spence	N	10	10	10	10
James B Stynes	N	10	8	8	8
Outside Division					
Robert H. Niehaus	N	10	9	10	10
John R Orem	N	-	-	-	-
James D. Glascott	L	9	10	10	9
Shelby A. Fleck	L	10	9	9	9
Colleague Average*		9.3	8.4	8.7	8.9

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 00085489

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

Legend:
(v): Voluntary Evaluation 9L0510
Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited
Rating: (-) Not Observed; (1), (2) Development Required; (3), (4) On Track - Lower Third; (5), (6), (7) On Track - Middle Third; (8), (9), (10) On Track - Upper Third

1998 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings

IBD Upward

		Performance Criteria								
		Leadership				Managing Performance				
	Degree of Involvement	Establishes Direction	Builds Commitment	Leads By Example	Fosters Collaboration/ Cross Selling	Defines Expectations	Provides Feedback	Improves Current Perf.	Coaching for Development	Respects Cultural, Gender, and Minority Differences
Upward Evaluators										
Evaluator 1	E	10	10	10	10	10	10	10	9	10
Evaluator 2	E	8	9	10	7	9	8	9	9	8
Evaluator 3	E	10	10	9	10	10	10	9	9	10
Evaluator 4	N	9	10	10	10	10	10	10	10	10
Evaluator 5	N	10	10	10	10	-	-	-	-	-
Evaluator 6	N	10	10	10	10	10	10	10	10	10
Evaluator 7	N	-	8	8	7	8	7	7	7	-
Evaluator 8	N	7	8	8	8	8	6	8	8	9
Evaluator 9	N	10	5	7	10	7	6	7	8	9
Evaluator 10	N	9	7	9	9	9	9	9	9	9
Upward Average*		9.2	8.7	9.1	9.1	9	8.4	8.8	8.8	9.4

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085490

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement

Legend: LLOSIO

Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited

Rating: (-) Not Observed; (1), (2) Development Required; (3), (4) On Track - Lower Third; (5), (6), (7) On Track - Middle Third; (8), (9), (10) On Track - Upper Third

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Jones, Robert W
Signature: _____
Date: _____

Review of 1998 Firmwide Performance E Performance

I. 1998 PERFORMANCE SUMMARY

Summarize the individual's performance in 1998 relative to the objectives set for the year. The Performance Criteria Definitions provide a useful framework for your comments.

Bill can generally be pleased with his performance in 1998. From a personal commercial standpoint, Bill called on 25 companies for the first time in 1998 and generated business from 6 of these companies. Furthermore, Bill helped guide the regional offices to over $600MM in revenues. From an organizational standpoint, Bill played an important role in developing the effectiveness of the regional offices. Specifically, Bill held a first annual regional office head meeting that produced several important issues that must be addressed to enhance the effectiveness of the regional offices, counseled a number of bankers to stay with the Firm after they contemplated leaving the Firm and was an active participant in recruiting Associates and Analysts. His undivided and thoughtful participation in the year-end DRP process should also get specific mention.

II. PRIMARY STRENGTHS

Client Skills/Business Development

Very commercial: Is an extremely commercial banker and a tenacious competitor. Highly focused on money making opportunities, sometimes to a fault. Takes nothing for granted. His intense focus and analytical approach to winning a piece of business is reflected in his wins. Successfully markets the entire range of the Firm's products. Despite grasp of entire product array, still strives to expand his knowledge base. Will inquire about specific technical details or implementation steps.	Use instincts to increasingly play senior banker role.
Impact with clients: Clients trust and respect his judgment. Has built the trust through a combination of consistent hard work on their behalf and excellent judgment. His network of relationships is very broad, allowing him to leverage off of board contacts as well as management relationships.	Leverage impact with clients to introduce junior bankers to accounts and build their credibility with the client.
Recognized in industry: Has established a high profile reputation within Chicago business community, and is proactively sought out because of his stature and referrals, from both clients and other professionals such as attorneys.	See previous comment.

Professional & Execution Skills/Mgmt/Teamwork

Strong team leader/advocate of his people: Has continued to be highly focused on developing the careers of those around him, both as a part of the formal year-end process but also on a regular, ongoing career management basis. Does a very good job building a team that wants to produce the most possible. Leads by example, working extremely hard himself so he sets a standard for the entire team. Is very good about acknowledging where people have made a contribution, building strong loyalty.	Continue to mentor mid-level bankers. Establish greater rapport with Associates and Analysts.

NOT A CERTIFIED COPY

015078

MORGAN STANLEY
CONFIDENTIAL
0085491

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Jones, Robert W
Signature: _____
Date: _____

Review of 1998 Firmwide Performance E Performance

Good technical skills: Excellent product knowledge. Solid grounding in all aspects of banking: M&A, debt, equity, etc. Very quick study-able to pick up the key issues in a transaction right away.	Use ability to do quick study to focus on high impact situations; delegate all other situations to junior bankers.

III. DEVELOPMENT NEEDS

Client Skills/Business Development

Overly commercial: Can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to if not over the line. Needs to avoid over committing and maintain the efficacy of M&A fee scale.	Exercise increase vigilance here. Stop, look, listen.
Intense style: Has a very intense style which can be off putting to some clients.	Adjust style in certain circumstances.

Professional & Execution Skills/Mgmt/Teamwork

Communication: Although he has made progress (and is acutely aware of the concerns), he continues to suffer the consequences of less than a straightforward approach. Some colleagues feel he gives people the impression that he is not completely upfront and uses information selectively. Often times does not disclose information which others may view important or will disclose some information on a subject, but not all. Also, there is the perception that he does not properly balance the issues of his people/his region with the best overall interests of the Firm.	You say that you have not meaningfully changed your operating style in '98. Think of discussing with Tom Delong for ways to address these concerns.
Management: Should let his junior professionals manage the day to day relationships with his clients at the more junior levels. Connects very well with the officers but needs to spend more time with the Associates and Analysts in the office.	Focus whenever possible on delegation. Also, work to identify a thoughtful successor to your role as regional head as well as in Chicago.

IV. 1999 OBJECTIVES

A. Business Goals (Develop three to four goals. Focus should differ for Associates and Officers. Associates: focus on improving execution skills. Officers: focus on strengthening client/business development skills).

Progress on issues raised in regional officers meeting. Assist Trauber in building out Houston office. Increase mentoring of Associates and Analysts. Continue to mentor Peter Dey/Brad Crompton managerial roles. Assist in solving research issues for Canada.

NOT A CERTIFIED COPY

CONFIDENTIAL 0079

MORGAN STANLEY
CONFIDENTIAL
0085492

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Jones, Robert W
Signature:
Date:

Review of 1998 Firmwide Performance E Performance

B. Professional Development Goals (List development goals to help the individual improve and specify action steps that can be taken in 1999).

Try to tone down the aggressiveness. Focus on being the strong role model which you are. Take things less seriously and become more of a listener.

V. EVALUATEE'S COMMENTS

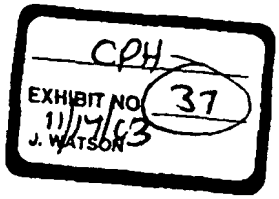
I substantially agree with this evaluation. I do not know what making "over the line" judgment means. I very much endeavor to be open and straight with my colleagues. There is no intention not to do so, but with some there is the impression that I am not open. I will focus on this in 1999. I welcome and respect the review process and I appreciate the comments.

NOT A CERTIFIED COPY

015080

NOT A CERTIFIED COPY

015081



ITINERARY
JOHN TYREE

John will meet with Andy Savarie on Thursday morning.
The MS Team will meet John at the Company.
MS Team Members: Bram Smith, Seth Ishaan, Thomas, Burchill, Michael Hart

Wednesday, March 4, 1998	**Delta Air Lines Flt. 447** LV: 8:50 a.m. LaGuardia Airport AR: 11:43 a.m. Ft. Lauderdale
Hertz rent a car (confirmed)	Midsized car **Confirmation#:A2902133D27GOLD**
Accommodation:	**Ritz Carlton Hotel** 100 South Ocean Boulevard Manalapan Fl 33462 561/533-6000 561/588-4202

From Airport- get on I95 headed north- follow through several cities (approximately 25 miles), look for signs t Boca Raton, look for Linton Boulevard, head west (away from Ocean), the first light after the turn is Congress turn left onto Congress, before the next light, look for a two story building with Sunbeam Marquis.

11:00am meeting at	**SUNBEAM Corporation** 1615 South Congress Avenue Suite 200 Delray Beach. FL 33445 561/243-2100
Contact: Deborah McDonald Director of Corporation Planning and Analysis (561) 243-2092	
RETURN: Thursday, March 5, 1998	**Continental Airlines Flt 458** LV: 4:10p.m. Ft. Lauderdale AR: 7:15 p.m. LaGuardia Airport.

Sunbeam/0726-001 (Convertible Debt)
Sunbeam/0726-002 (Leverage Finance)

NOT A CERTIFIED COPY

015082

MORGAN STANLEY
CONFIDENTIAL
0045317

NOT A CERTIFIED COPY

015083

MORGAN STANLEY
CONFIDENTIAL
0045318

F14\161336\PG2\07-17-03\9:02 十七/P

NOT A CERTIFIED COPY

015084

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

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

CONTINUED VIDEOTAPED DEPOSITION
OF JOHN D'A. TYREE
New York, New York
Friday, November 14, 2003

Reported by:
Jane Watson
JOB NO. 154649

November 14, 2003
9:27 a.m.

Continued Videotaped Deposition of JOHN D'A. TYREE, held at the offices of Esquire Deposition Services, Inc., 216 East 45th Street, 8th Floor, New York, New York 10017-3304, before Jane D. Watson, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, LLC
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS, L.L.P.
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
Ruben Martinez, Videographer
James F. Doyle (in a.m.)

JOHN D'A. TYREE, having been previously sworn, resumed the stand and testified further as follows:

CONTINUED EXAMINATION

BY MR. MARKOWSKI:

Q. Mr. Tyree, you understand you're still under oath today?

A. Yes, I do.

Q. Mr. Tyree, have you ever met with any representatives of Coleman (Parent) Holdings on any occasion?

A. I don't recall meeting with members of Coleman management.

Q. Well, I'm referring to Coleman (Parent) Holdings, not Coleman the operating company, Coleman (Parent) Holdings, the Plaintiff in our lawsuit.

A. I don't recall meeting with them either.

Q. Have you ever met on any occasion with any representatives of MacAndrews & Forbes?

A. No. Not that I recall.

Q. On any occasion?

A. Again, not that I recall.

NOT A CERTIFIED COPY

015005

Tyree

Q. Did you ever communicate in any way with representatives of Coleman (Parent) Holdings relating to the Sunbeam transaction?
A. I don't recall communicating with them about the Sunbeam transaction.
Q. Did you ever communicate in any way with any representatives of MacAndrews & Forbes relating to the Sunbeam transaction?
A. Again, the same: not that I recall.
Q. Do you recall any communications with any of the professionals representing Coleman (Parent) Holdings or MacAndrews & Forbes relating to the Sunbeam acquisition?
A. No.
Q. Did you ever participate in any conference calls where, whether you were a speaker or not, there were representatives of Coleman (Parent) Holdings or MacAndrews & Forbes participating in the phone call?
A. Not that I recall.
Q. So as far as you can recall today, you've had no communications relating to the Sunbeam transaction with Coleman (Parent) Holdings' representatives, MacAndrews & Forbes'

Tyree

representatives, or the professionals representing either of those companies?
MR. CLARE: Objection to form.
A. The way I characterize it, I don't recall any dialogue with any of the parties that you mentioned.
BY MR. MARKOWSKI:
Q. Or any communications of any sort?
A. No, I don't recall any communication of any sort with those parties.
Q. We were last together on September 15.
Since that time, what have you done to prepare yourself for today's testimony?
A. I reviewed my previous deposition, and I've met with counsel for a short period of time. That's pretty much it.
Q. When you say "that's pretty much it," is there anything else?
A. Not that I recall, no.
Q. With whom did you meet?
A. With Tom Clare and with Jim Doyle.
Q. How many times did you meet with Mr. Clare?

Tyree

A. Over what period?
Q. I'm focusing now on preparation for today's deposition since September 15th.
A. I believe I met with Mr. Clare once.
Q. How many times did you meet with Mr. Doyle in that same context?
A. I believe I met with Mr. Doyle once.
Q. Were those two separate meetings or one single meeting with the two of them?
A. It was one single meeting with the both of them.
Q. Was anyone else present?
A. Not that I recall.
Q. When was that?
A. Yesterday.
Q. Where was that?
A. Morgan Stanley's legal offices.
Q. How long was the meeting?
A. It lasted for a couple of hours.
Q. Did you review any documents?
MR. CLARE: It's a yes-or-no question.
A. Yes.
BY MR. MARKOWSKI:

Tyree

Q. Did you review any testimony of any other individuals?
A. Not that I recall.
Q. Did you meet with anyone else from the law department while you were present there?
A. No.
Q. You didn't meet with Mr. Kempf, for example?
A. No.
Q. Did you do anything, apart from reviewing your testimony and your meeting yesterday with Mr. Clare and Mr. Doyle, to prepare for today?
MR. CLARE: Objection; asked and answered.
A. Not that I recall.
BY MR. MARKOWSKI:
Q. Other than reviewing your testimony -- I take it you reviewed your testimony separately from your meeting with Mr. Clare and Mr. Doyle?
A. Yes.
Q. Other than reviewing your deposition testimony and reviewing documents with Mr. Clare

NOT A CERTIFIED COPY

Page 291

Tyree
and Mr. Doyle, did you look at any materials to prepare for today?
A. No.
Q. Other than Mr. Doyle and Mr. Clare, have you discussed any aspect of your September 15 testimony with anyone?
A. No.
Q. You didn't discuss it with any of your colleagues back in London in any way?
A. I didn't discuss the substance of my testimony, no.
Q. What did you discuss?
A. That I needed to go to New York to be deposed.
Q. Anything else?
A. No.
Q. You didn't make any comment to them about the deposition?
A. I mean, I can't recall the exact substance of the conversation, but what I do recall was that I mentioned to one or two colleagues that I was going to New York to be deposed relating to Morgan Stanley litigation. And that's all I remember.

Page 292

Tyree
Q. You don't remember making any other comment relating to the September 15th session?
A. No.
Q. Is this your first trip to the United States since September 15th?
A. Give me a moment. I just want to think back. I made one trip to Canada, but -- and I routed through Boston on my way back to a meeting in London. But that's the only trip I've made during that period of time.
Q. Do you have any plans to return to the United States between now and the end of the year?
A. No.
Q. Did anything that you've done since September 15th, Mr. Tyree, refresh your recollection on the events relating to the involvement you had with Sunbeam in 1998?
A. No.
Q. Your testimony is that your recollection today is no different than it was when you testified on September 15 with respect to the matters that you addressed in that first deposition session?

Page 293

Tyree
A. My testimony is that I haven't recalled anything additional relative to the Sunbeam transaction since I was last deposed.
Q. Did you use email back in the first quarter of 1998 in connection with your work at Morgan Stanley?
A. Yes, I did.
Q. Did you communicate by email, either receive something, messages or sending messages, in connection with any of the work you did relating to Sunbeam?
A. I don't recall if I did or did not use email in relation to the Sunbeam transaction.
Q. Was it common for you in the first quarter of '98 to use email to communicate with colleagues in connection with the work you were doing?
A. Yes.
Q. Although you don't specifically recall any communications relating to the work on Sunbeam, as I understand it. Is that right? You don't specifically recall any email communications relating to your Sunbeam work?
A. That's correct.

Page 294

Tyree
Q. Is there any reason to believe -- strike that.
Do you have any reason to believe you did not communicate by email in connection with the work you did on Sunbeam?
MR. CLARE: Objection to form.
A. Again, I have no recollection one way or the other whether I used email in the context of the Sunbeam transactions.
BY MR. MARKOWSKI:
Q. What I'm trying to understand is whether you can recall whether there is something specific about the Sunbeam work that causes you to believe it was unlikely that you would have used email in connection with your work on that transaction even though it was your normal practice to use email.
MR. CLARE: Objection to form; misstates the prior testimony.
A. How I would characterize it is there is nothing that I can recall that was unique to the Sunbeam transaction that would dictate whether I used email on that transaction or not.
BY MR. MARKOWSKI:

NOT A CERTIFIED COPY

015087

Tyree

Q. Do you recall printing out any email communications relating to the Sunbeam work?
A. No.
Q. Was it your practice on occasions to print out email communications and save them for some period of time back in '98?
A. It was not my practice to, as a matter of course or habit, print out emails and maintain them for a period of time for record-keeping or what have you, no.
Q. Was it your practice not to print out email communications?
A. No.
Q. What would dictate whether you printed out an email communication?
A. A host of different factors.
Q. Can you give me the factors that you can recall.
A. One factor would be was I going to need that document, need to have that document in a place where I did not have access to email. That would be one.
Q. I want you to give me all the factors that you can recall.

Tyree

A. I can't give you all of the factors. There are numerous factors that would dictate whether I printed out an email or not.
Q. All I'm asking you to do is to give me all the factors that you can identify at the moment.
A. Is the substance of the email such that I would want to be able to review it on a moment's notice would be one factor; is the substance of the email such that I would need it in terms of having a dialogue with an individual at a time when I didn't have access to email; is it a lengthy document that I would want to keep with me for review at a later time. Those are probably three of the more important factors.
Q. Are there any Morgan Stanley policies that come into play with respect to whether or not you preserve certain kinds of email communications?
MR. CLARE: Objection; lack of foundation.
A. Are you asking about the policies as I understand that exist today?
BY MR. MARKOWSKI:

Tyree

Q. No. I'm focusing on 1998.
A. I can't recall any specific policies in place in 1998 that related to email file maintenance.
Q. Or preserving particular kinds of email communications for purposes of having a record of that particular communication?
A. Again, I just can't recall any specific mandates from the firm about email file maintenance.
Q. Did you have a practice of preserving email communications on your personal computer back in 1998?
A. In 1998, I don't recall having any specific policy, be it a Morgan Stanley policy or my own policy, about maintaining emails in any form or fashion.
Q. Let me lay a predicate for this.
Back in '98, I assume you had a personal computer at your office location -- is that correct? -- that you used?
A. Yes.
Q. And your email messages would come directly to you at your computer at your desk, I

Tyree

assume, correct?
A. Yes.
Q. When an email message came in, I assume you would read it when you had an opportunity to do so, correct?
A. I would read email files at different times depending on if I was in the office or not.
Q. Did you have a practice of leaving all received emails in the in-box on your personal computer at work, or would you delete them as you read them?
A. It varied.
Q. So you would delete some and save some; is that correct?
A. Again, my recollection was I didn't follow any specific rote process in terms of saving or deleting emails. I just don't recall whether I would do one thing or the other in particular.
Q. Well, the two extreme alternatives are to leave all the email messages in the box versus deleting them as you completed your use of them, correct? Those are the two extremes?
A. Those are two extremes, yes.

NOT A CERTIFIED COPY

015088

Tyree

Q. Do you recall whether you followed one or the other of those two extremes with respect to email communications back in '98?

A. I don't recall following either of those two extremes back in 1998.

Q. Do you recall whether you had created archives of one sort or another on your computer so you could preserve certain kinds of email communications for a lengthy period?

MR. CLARE: Objection to form.

A. Again, I don't recall having any process where I archived or did not archive emails.

BY MR. MARKOWSKI:

Q. Assuming that you did receive email communications relating to Sunbeam or that you authored email communications relating to Sunbeam back in 1998, do you know where the record of those communications would be?

MR. CLARE: Objection; no foundation; and improper incomplete hypothetical.

A. I mean, it's difficult for me to opine on what you just laid out, because there a number of different factors that would dictate

Tyree

what I would or would not do in the context of email communication.

BY MR. MARKOWSKI:

Q. I'm not sure I follow your response. Let me ask a different question.

I want you to assume that you either did author or did receive email communications relating to Sunbeam during your work in 1998. If that was the case, do you have any knowledge today where any of those email communications might exist?

MR. CLARE: Same objection.

A. Again, I can't say one way or another. Because when you predicate this with an assumption, I don't know what all the other variables are. So I don't know what I would or would not have done or did or did not do based on those presumptions.

BY MR. MARKOWSKI:

Q. Let me ask a more general question.

Do you have any idea where email communications that you may have received or authored back in 1998 are today?

MR. CLARE: Objection; foundation.

Tyree

A. Can you repeat the question one more time.

MR. MARKOWSKI: Can you read that.

(Record read.)

A. Is your question where those files are maintained or printed out somewhere or --

BY MR. MARKOWSKI:

Q. I'm asking -- I suppose -- let me focus the question again.

Back in 1998, you do recall that you authored and received email messages in connection with your work at Morgan Stanley, correct?

A. That is correct.

Q. Do you have any idea where the electronic record of those communications would exist today?

A. No.

Q. Do you have any copies of any printed out versions of email communications from 1998 in your possession today?

A. No.

Q. By "in your possession today," I don't mean present here but in your control

Tyree

anywhere in Morgan Stanley's offices.

A. I don't recall having any email communications that I control in regards to the Sunbeam transaction as of today.

Q. The computer that you're currently using, Mr. Tyree -- your office is in London; is that correct?

A. That's correct.

Q. That's still true today?

A. That's correct.

Q. I assume you have a computer in your offices in London that you have access to, correct?

A. No. Actually, I have a laptop that I keep with me and is with me here in New York now.

Q. And you use that for purposes of email communications?

A. Among other things, yes.

Q. Do you have any emails archived on that computer that go back as far as 1998?

A. Not that I recall. But I don't believe so.

Q. Did anyone ask you to inspect your laptop to see whether or not you had any email

NOT A CERTIFIED COPY

Page 303

Tyree
communications going back to 1998?
A. I don't recall anyone asking me that question. But, again, you know, it's been five years. So certainly not within the last year. I don't recall ever having heard that.
Q. Have you determined there are no email communications archived on your personal laptop computer relating to your work on Sunbeam?
A. I haven't gone through my laptop to audit it, if that's what you are asking, but I don't believe there are any emails in regards to the Sunbeam transaction.
Q. But you have not specifically conducted that search?
A. I don't recall having done that search.
Q. I'm going to turn your attention to something we talked about the last time we were together, the press release that Sunbeam issued on March 19, 1998.
A. Yes.
Q. Let me give you a copy of that. Take a moment to refresh your memory about it.
MR. CLARE: What number was that?

Page 304

Tyree
MR. MARKOWSKI: CPH 14.
BY MR. MARKOWSKI:
Q. Have you had a chance to review it, Mr. Tyree?
A. Yes, I have.
Q. Who had responsibility for reviewing the substance of Morgan -- excuse me -- Sunbeam's March 19th press release to determine the accuracy of the factual statements contained in it?
MR. CLARE: Objection; lack of foundation; and asked and answered.
A. To my recollection, the company did.
BY MR. MARKOWSKI:
Q. Do you know what specific individuals at the company had responsibility for reviewing the March 19th press release to determine its factual accuracy?
A. No.
Q. Did Morgan Stanley have any responsibility, in your view, to review the substance of the March 19th press release to determine the factual accuracy of the statements being made in it?

Page 305

Tyree
MR. CLARE: Same objection.
A. Can you repeat the question, please.
MR. MARKOWSKI: Can you read that back, please.
(Record read.)
A. That's not how I would characterize it.
BY MR. MARKOWSKI:
Q. Is the answer "no"?
A. No. The answer is that's not how I would characterize it.
Q. Let me ask my question again, because I think it's susceptible to a yes-or-no answer.
In your view, did Morgan Stanley have any responsibility in connection with Sunbeam's issuance of the March 19th press release to determine the factual accuracy of the statements that are made in it?
MO MR. CLARE: Object. And I move to strike counsel's preamble to the question.
A. I understand your question. And my response to that remains the same, which is I would not characterize it in the way that you've characterized it.

Page 306

Tyree
BY MR. MARKOWSKI:
Q. Well, Mr. Tyree, do you agree or disagree with the statement -- let me ask a different question.
Mr. Tyree, do you agree with me that Morgan Stanley had a responsibility to determine the factual accuracy of the statements contained in the March 19th press release?
A. And, again, I'm going to give you the same response I gave before, which is that's not how I would characterize the responsibility of Morgan Stanley.
Q. I think I'm entitled to an answer to my question. It's a yes-or-no question.
MR. CLARE: I object --
MR. MARKOWSKI: Excuse me.
BY MR. MARKOWSKI:
Q. Do you agree that Morgan Stanley had a responsibility in connection with the work it was doing on the Sunbeam transactions to determine the factual accuracy of the statements being made in the March 19th press release?
MR. CLARE: I object.
Bob, his answer is what it is. He's

NOT A CERTIFIED COPY

Tyree
answered it now several times. If you want to follow up on his answer, that's fine. I object to your preamble to your question.
MR. MARKOWSKI: He hasn't answered the question.
MR. CLARE: The record will show that he did.
A. Again, just to repeat, I don't believe it's a yes-or-no answer because I don't agree with your characterization of the responsibility of Morgan Stanley one way or the other.
BY MR. MARKOWSKI:
Q. I'm asking you, Did Morgan Stanley have a responsibility in connection with the work it was doing on the Sunbeam transaction to determine the factual accuracy of the statements made in the March 19th press release?
MR. CLARE: Same objection.
A. And I understand. And that's not how I would characterize Morgan Stanley's responsibility in the context of the Sunbeam transaction or this press release.
BY MR. MARKOWSKI:

Tyree
Q. So you disagree?
A. No.
Q. Morgan Stanley wasn't responsible, in your view, for determining the factual accuracy of the statements contained in the press release?
MR. CLARE: Objection; misstates the testimony.
A. No, I do not disagree.
BY MR. MARKOWSKI:
Q. So then you agree?
A. No, I do not agree.
Q. If you don't agree or you don't disagree, what's your view, Mr. Tyree?
A. I disagree with your characterization of Morgan Stanley's responsibility.
Q. I've asked it both ways. Your statement is that you neither agree nor disagree with the proposition that Morgan Stanley was responsible for determining the factual accuracy of the press release, correct?
A. Sorry. Can you repeat that again.
Q. Your testimony is that you neither agree nor disagree with the statement that Morgan Stanley had a responsibility to determine the

Tyree
factual accuracy of the statements made in the March 19th press release; is that correct?
A. No. My testimony is that I would not characterize Morgan Stanley's responsibility in the way that you described it one way or the other.
Q. What is your testimony concerning Morgan Stanley's responsibility with respect to the statements contained in the press release?
A. My testimony is that Morgan Stanley had, and has, a wide array of responsibilities in the context of this transaction. When you look at the press release, my recollection is that we did see the press release before it was published. In terms of our responsibility, I don't recall, you know, anything dictating what responsibility we did or did not have in regards to this press release.
Q. Well, if Morgan Stanley -- Morgan Stanley was acting as Sunbeam's investment banker in connection with these transactions, correct?
MR. CLARE: Objection to form.
A. Morgan Stanley did act as an underwriter on the Sunbeam convertible bond

Tyree
issuance, yes.
BY MR. MARKOWSKI:
Q. Sunbeam was also Morgan Stanley's client with respect to three acquisitions that Sunbeam was hoping to complete in the first quarter of '98, correct? Do you recall that?
A. I do recall that, yes.
Q. And, in addition, Morgan Stanley was acting as an underwriter in connection with the convertible debenture offering that Sunbeam was attempting to complete in order to finance a portion of those acquisitions, correct?
A. To my recollection, that is correct.
Q. And this press release was issued in connection with the activities relating to those transactions, correct?
A. No. That's not how I would characterize it.
Q. Your testimony is this press release was not issued as a result of the state of Sunbeam's efforts to complete the convertible debenture offering?
A. Again, that is not how I would characterize it, no.

NOT A CERTIFIED COPY

Tyree

Q. Your view is the events relating to the planned debenture offering had no relationship to the issuance of this press release?

A. Not -- that's not what I said. It's just -- the way you've asked the question, you focused on one issue, which is the issuance of the convertible notes. I think there were a number of factors that caused this press release to be published as to my recollection.

Q. One of them was the convertible debenture offering, correct?

A. When you say "one of them was the convertible debenture offering," can you be a little more --

Q. One of the reasons Sunbeam issued this press release on March 19 related to the planned debenture offering, correct?

A. The way I would characterize it is this press release was issued in advance, as I recall, of the pricing of the convertible transaction -- the Sunbeam convertible transaction. There were discussions between ourselves and Sunbeam about the press release in

Tyree

advance of that. But what I would not say is that the causal factor for the printing of this press release was the convertible note offering -- the convertible bond offering.

Q. We'll have an easier time today if you listen to the questions I ask and try to respond directly to them. Because that wasn't the question I asked.

The question I asked was: Do you agree that one of the factors that caused Sunbeam to issue this press release on March 19th was the status of the planned debenture offering in the first quarter of 1998?

MO MR. CLARE: Object. Move to strike counsel's preamble to the question.

A. Again, no. I don't think it was the status of the planned convertible transaction that was one of the major factors that drove the publishing of this press release. That's not how I would characterize it.

BY MR. MARKOWSKI:

Q. Of course, again that wasn't the question I asked.

Is it your testimony, Mr. Tyree, the

Tyree

issuance of the March 19, 1998, press release was completely unrelated to Sunbeam's planned debenture offering in the first quarter of '98?

MR. CLARE: Objection to form; misstates the prior testimony.

A. I would characterize it as, to my recollection, a press release -- and this looks similar to it (indicating) -- was issued to communicate to the public markets, among other things, what the expectations should be for Sunbeam's financial performance for -- I believe it was the next quarter, I believe. That was the -- you know, the purpose of the press release. It did happen, the press release was issued in advance of the pricing of the convertible bonds.

BY MR. MARKOWSKI:

Q. Are you finished?

A. Uh-huh.

Q. Morgan Stanley was involved in discussions with Sunbeam relating to the substance of this press release, correct, before it was issued?

A. Morgan Stanley had discussions with Sunbeam management about certain of the contents

Tyree

of this press release in advance of its being published.

Q. And had discussions with Sunbeam concerning whether the press release would in fact be issued, correct?

A. Yes.

Q. And the reason why Morgan Stanley was a participant in those discussions before the issuance of the press release on March 19th is that Morgan Stanley is acting as the investment banker for Sunbeam in connection with three acquisitions and is acting as the underwriter for Sunbeam in connection with the convertible debenture offering that was planned, correct?

MR. CLARE: Objection to form and foundation.

A. Again, I'm sorry. If you can just read the question one more time.

BY MR. MARKOWSKI:

Q. I'll restate it.

You've testified that Morgan Stanley was involved in participation with Sunbeam in discussions relating to whether this press release would be issued, correct?

NOT A CERTIFIED COPY

015092

Page 315

Tyree
A. That's correct.
Q. The reason why Morgan Stanley is a participant in those discussions is that Morgan Stanley is acting as Sunbeam's investment banker with respect to three pending acquisitions and is acting as the underwriter in connection with Sunbeam's planned convertible debenture offering, correct?
MR. CLARE: Same objection.
A. I would characterize it differently, because I was focused on the financing part of the transaction. So what I can comment on is in our role relative to the issuance of the convertible bonds, we did interact with management in regards to their issuance of this press release.
BY MR. MARKOWSKI:
Q. So at least, as far as you're concerned, one of the reasons why Morgan Stanley is participating in discussions about the substance of the issuance of the press release is that Morgan Stanley is acting as an underwriter in connection with the planned convertible debenture offering, correct?

Page 316

Tyree
A. One of the reasons why we participated in that, yes, that I agree with you.
Q. And in that regard, in your view, did Morgan Stanley have responsibility for determining the factual accuracy of the statements contained in the March 19th press release?
MR. CLARE: Objection; asked and answered several times now.
A. I have nothing to add to my previous testimony.
BY MR. MARKOWSKI:
Q. And that previous testimony, as I understand it, is that you don't have an opinion one way or the other on that issue, correct?
A. I've commented on it many times now. I have nothing to add to what I said before.
Q. I am entitled to an answer to this question unless your lawyer instructs you not to answer. That's the way this works.
A. Okay. But I think I --
Q. So you don't have the option of saying, "I really don't care to respond."
MR. CLARE: He's answered your

Page 317

Tyree
question now multiple times. You've asked him for his view. He's given it to you in his own words. You've asked it 13 different ways. And now he says he doesn't have anything else to add. He's answered your question.
I object; asked and answered.
A. You're asking me to characterize this in one way and to apply a yes-or-no answer to it, correct?
BY MR. MARKOWSKI:
Q. That's exactly right.
A. And I don't think it's a yes-or-no question. I think there are a number of factors that you might characterize as Morgan Stanley's responsibility and other ones that I would characterize as Morgan Stanley's responsibility, which is why I hesitate to say yes or no about one specific responsibility without a broader discussion about it.
Q. I'm focusing on a single issue --
A. I understand that.
Q. -- factual statements contained in the March 19th press release. And my views are

Page 318

Tyree
really not what I'm inquiring about. I'm inquiring about your views.
And my question of you is whether, in your personal view, Morgan Stanley had responsibility for determining the factual accuracy of the statements contained in the March 19 press release.
A. And, again, I've answered this before. So I don't have anything to add to what I said before.
Q. So you are not going to respond to my question?
A. No. I just object to the way you phrased the question. If you want to phrase it more specifically, if you want to ask what we did, the factual issues of what we did, I'm happy to opine on that. But I don't think this is a factual question.
Q. It's a factual question concerning your personal views. And I'm entitled to an answer, and you're not entitled to object. That's his job today.
MR. CLARE: And I am objecting because I do think we are now beyond the

NOT A CERTIFIED COPY

Tyree

realm of repetitive and badgering questioning. He's answered the question multiple times. He's given you his view.

I object; asked and answered.

MR. MARKOWSKI: No. What he's done, he's told me he objects to my question. I'm entitled to an answer to it.

MR. CLARE: He's given you his answer.

A. I feel I've answered it to the extent that I'm comfortable answering your question.

BY MR. MARKOWSKI:

Q. Your level of comfort really isn't pertinent. I'm entitled to a direct answer to my question.

A. I feel I've given you an answer.

Q. And you refuse to answer the question beyond what you've stated?

A. I have already given you an answer to the question.

MR. CLARE: Bob, you may not like the answer that he's given you, but that's not the standard. The question is whether or not he's answered your question. He has

Tyree

answered it multiple times in multiple iterations. And now we're just wasting time arguing about semantics.

BY MR. MARKOWSKI:

Q. I suppose we'll have to take this up with the judge if you're not going to give me a direct answer to a direct question. I'm asking you for your personal views as of March 1998 concerning whether Morgan Stanley had a responsibility for determining the factual accuracy of the statements contained in the March 19th press release.

What's the answer to that?

A. Again, I've given you my answer already.

Q. And that's that you object to my question?

MR. CLARE: No. That's not his answer --

A. No. That's not my answer.

MR. MARKOWSKI: I think the record will speak for itself.

BY MR. MARKOWSKI:

Q. Did Morgan Stanley in fact take steps

Tyree

to determine the factual accuracy of the statements contained in the March 19th press release before it was issued?

MR. CLARE: Object to the extent you are asking him to opine on what Morgan Stanley did. You can ask him what he did. To the extent you are asking him beyond what Mr. Tyree's involvement was, I object on the lack of foundation.

A. Are you asking me about what I did personally or what --

BY MR. MARKOWSKI:

Q. We'll go back to the question again. It's very simple. If you'll listen to the questions and respond to them without making up different questions or having Mr. Clare suggest different questions, this will proceed a lot more quickly. Okay. That's my objective, to get through this.

A. I feel I'm being cooperative.

Q. Someone else will make that determination, Mr. Tyree.

MR. MARKOWSKI: Can you read the question back, please.

Tyree

(Record read.)

A. To my recollection, I was in the room when several of my colleagues questioned -- extensively questioned Sunbeam management about their financial performance over the quarter and the following year.

BY MR. MARKOWSKI:

Q. Anything else?

A. Yes. We conducted -- correction. I conducted bring-down due diligence where we judged the progress of the company against the commitments that it had made on that call that I mentioned earlier. And there may have been ongoing discussions that my colleagues had that I was not present at.

Q. Before the press release was issued on March 19, other than questions that were put to management during the course of conversations that day on March 18 -- let me take a step back. Let's lay a little bit of foundation.

You've identified three things that Morgan Stanley either did or may have done in connection with determining the factual accuracy of the statements contained in the March 19 press

NOT A CERTIFIED COPY

Page 323

Tyree
release; is that correct?
A. What's correct is what I've said, but --
Q. Let me try to identify them. You said that your colleagues put questions to Sunbeam management in conference calls; is that correct?
A. That's correct.
Q. And did that happen on March 18th?
A. To my recollection, I believe it was March 18th or thereabouts.
Q. Those are the conversations that you are referring to?
A. Yes.
Q. And you indicated that you conducted bring-down due diligence. I assume that's subsequent to March 19th; is that correct?
A. That's correct.
Q. And you indicated that other people may have done other things that you are not correctly aware of; is that correct?
A. That's correct.
Q. So there are two things of which you are aware: conversations on March 18th with Sunbeam management and your work after March 19th

Page 324

Tyree
in connection with bring-down due diligence. Correct?
A. That's correct.
Q. Other than the conversations that took place with Sunbeam management on March 18th, are you aware of anything that Morgan Stanley did prior to the issuance of the March 19th press release to determine the factual accuracy of the statements contained in it?
MR. CLARE: Same objection as to foundation and personal knowledge.
A. I don't personally recall having any other discussions in regards to the contents of this press release other than what I've mentioned prior to its being issued.
BY MR. MARKOWSKI:
Q. Mr. Tyree, did Morgan Stanley have any responsibility, in your view, to determine whether or not the press release issued on March 19th was misleading because it omitted other material facts relating to the subjects that are addressed?
MR. CLARE: Object to form; calls for a legal conclusion.

Page 325

Tyree
A. I think we're going back to the same kind of question you were asking before -- correct me if I'm wrong -- about Morgan Stanley's responsibility in terms of determining the accuracy of the press release.
BY MR. MARKOWSKI:
Q. It's a little different. Let me state it again.
Did Morgan Stanley, in your view, have any responsibility for determining whether or not the March 19th press release was misleading because it omitted facts that related to the issues addressed in the press release?
MR. CLARE: Same objection.
A. I want to try to answer your question as best I can. Morgan Stanley conducted due diligence during this process, which is part of their responsibility. In the end, however, this is the company's press release (indicating). So the key responsible party in regards to this press release is the company. And I'm trying to answer your question as best I can.
BY MR. MARKOWSKI:
Q. Anything else?

Page 326

Tyree
A. No. .
Q. I'm not asking about Sunbeam's responsibility; I'm asking about Morgan Stanley's.
And my question is: In your view, back in 1998 did Morgan Stanley have responsibility for determining whether or not the March 19th press release was misleading because it omitted facts that related to the subjects that were addressed in the press release?
A. Yes. And my response to that is that Morgan Stanley, in my mind, has responsibility to conduct due diligence with a healthy dose of scepticism in the context of transactions such as this one. And as part of the due diligence process, we did engage in due diligence in regards to the numbers laid out in this press release. And I do view that as part of our responsibility. And that's how I would characterize it, which is perhaps slightly different than what you said.
Q. If Morgan Stanley, Mr. Tyree, was aware of material facts relating to the substance or the statements made in the March 19th press

NOT A CERTIFIED COPY

015095

Page 327

Tyree
release that caused Morgan Stanley to conclude that the March 19th press release was materially misleading, what, in your view, were the responsibilities of Morgan Stanley under those circumstances?
MR. CLARE: Objection to form, and incomplete hypothetical. It assumes facts not in evidence.
You can answer.
A. I can speak for me.
If I was aware of material misstatements in this or any other document, I would have, I believe, barring all the other variables that might affect this -- that I would have a dialogue with the company to try and understand if, in fact, those were what I perceived to be misstatements were misstatements and how to solve the problem. That's how I would approach it as a member of the firm.
Now, other people may have a different approach. But that's what I would do.
BY MR. MARKOWSKI:
Q. In the context of this specific event, the issuance of this March 19th press

Page 328

Tyree
release, if Morgan Stanley was in fact aware of information that was omitted from this press release, and that caused the press release to be materially misleading, what, in your view, were the responsibilities of Morgan Stanley in connection with its work, both as the underwriter on the Sunbeam convertible debenture offering and as investment banker, in the three pending acquisitions?
MR. CLARE: Objection to form and asked and answered. He answered that exact same question.
A. I really do feel I answered that question.
BY MR. MARKOWSKI:
Q. Well, you indicated that you'd have a dialogue. My hypothetical that I'm positing is, in fact, you've concluded that the press release omitted material information that is causing the press release to be materially misleading.
What, in your view, are the responsibilities of Morgan Stanley under those circumstances?
MR. CLARE: Same objection.

Page 329

Tyree
A. I understand your hypothetical question. And, look, I think I've answered it to the extent I'm comfortable under oath, okay, given the fact that there are many other variables that could impact the situation that you've laid out.
BY MR. MARKOWSKI:
Q. Did Morgan Stanley have a responsibility not to proceed with the pending transactions in which it was involved?
A. I'm sorry. I didn't understand that question.
Q. If Morgan Stanley concluded that the statements contained in the March 19th press release were materially misleading, either because they weren't accurate, they weren't reasonable or they omitted material facts that caused the press release to be misleading, did Morgan Stanley have a responsibility to withdraw as the underwriter on the convertible debenture offering and as the investment banker in connection with the three pending acquisitions?
MR. CLARE: Object to the hypothetical and object as to form; also

Page 330

Tyree
assumes facts not in evidence.
A. Again, in the hypothetical you laid out, I don't want to give you any conclusion. Because there's a number of factors that would influence what Morgan Stanley would do in that situation.
BY MR. MARKOWSKI:
Q. What are they?
A. There are numerous factors. Among them, what is this misrepresentation that you've described? Can it be communicated to the market? There are a number of issues too numerous for me to go through.
Q. Why are they too numerous for you to go through?
A. Because this is a complicated business. And making judgments about what is or is not a misstatement, as you put, is unto itself a complicated business. It's not as clear-cut as you are trying to make it out to be.
Q. We've got time to go through it. It's an important matter. There's a lot involved here. And we're going to take the time to go through it. So don't worry about how much time

NOT A CERTIFIED COPY

16div-020962

Page 331

Tyree
it will take for you to explain your views concerning this.
A. Okay.
Q. If Morgan Stanley, in fact, concluded that the March 19th press release was materially misleading, what were Morgan Stanley's obligations, in your view?
MR. CLARE: Same objections.
A. And I will tell you again, you're positing a hypothetical to me without going through all the other variables that might dictate what Morgan Stanley's responsibility would be in that situation.
BY MR. MARKOWSKI:
Q. What are those variables?
A. When was the press release published; what was the substance of this supposed misstatement that you laid out; is there any way to communicate that misstatement to the market; was it a mistake or was it deliberate.
Those are, what, four of them, four of the variables?
Q. Some of those variables we know the answer to, right?

Page 332

Tyree
MR. CLARE: Objection.
BY MR. MARKOWSKI:
Q. The press release -- we're not dealing in complete isolation here. This is a press release issued on March 19th. Sunbeam was attempting to close four transactions between March 19 and the end of the quarter -- the first quarter of '98, which would end on March 28th. Those transactions were the convertible debenture offering and the closing of the three acquisitions, including the acquisition of Coleman (Parent) Holdings' interest in Coleman Company. So those facts are part of the hypothetical.
If, in fact, Morgan Stanley was aware that the March 19 press release relating to the subjects that are addressed in this press release was in fact materially misleading, what, in your view, were Morgan Stanley's obligations under those circumstances?
MR. CLARE: Objection; asked and answered. And you are asking this lay witness to give you a legal conclusion about legal responsibilities, to which I object.

Page 333

Tyree
A. I think that is exactly the question. I think you just repeated the question that I just answered and laid out the variables that would impact the situation -- a couple of the many variables that would impact it.
BY MR. MARKOWSKI:
Q. I want you to tell me -- my question is --
MR. MARKOWSKI: Could you read the question back, please.
(Record read.)
A. And my answer is, as I think I gave before was, there are a number of other variables that could impact that hypothetical. I think you asked me to list some of them, and I listed some of them.
BY MR. MARKOWSKI:
Q. What are those variables?
MR. CLARE: Objection; asked and answered.
A. I just listed four of them.
BY MR. MARKOWSKI:
Q. Tell me what all the variables are that you think affects the responsibility that

Page 334

Tyree
Morgan Stanley would have under the circumstances that I've just described to you.
A. In addition to the four that I've just mentioned?
Q. I want you to list them all so that we have a complete list of all of the thoughts that you have on this subject.
A. I don't think it's practical for me to list them all, because there may be some that I don't remember at this juncture.
Q. I want you to testify to the best of your recollection to the factors that would have affected your thinking back in March of 1998 on the circumstances that I've just described to you.
A. Beyond what I've mentioned, the four variables, I really don't have anything to add to that.
Q. The four variables again are what, Mr. Tyree?
A. Okay. The -- whether the misstatement was deliberate or not; whether the supposed misstatement was deliberate or not; the ability to communicate to the marketplace to

NOT A CERTIFIED COPY

16div-020963

Page 335

Tyree

correct the problem. The two other, I can't recall again.

Q. Do you agree with me that the only options that Morgan Stanley had under the circumstances that I've described would be either to withdraw from its engagements with Morgan Stanley and not proceed to the closing of the four transactions in which Morgan Stanley has been retained by Sunbeam or to ensure that Sunbeam communicated corrected information to the marketplace in advance of the closing of those transactions?

MR. CLARE: Object to form.

A. Look, I think that there might be other alternatives within that spectrum of options, and I can't opine on what they are, because you need to know what the answers are to these variables that I've described.

BY MR. MARKOWSKI:

Q. Other than the two alternatives that I've just described, withdrawing or ensuring that corrected information was communicated to the marketplace in advance of the closing of the four transactions, what other alternatives would

Page 336

Tyree

Morgan Stanley have had?

A. Morgan Stanley could have potentially delayed the transaction.

Q. What would the purpose of delaying have been?

A. Could be to -- a number factors. Could be to find out how material this supposed misstatement was; could be to communicate to the marketplace the misstatement. I mean, there are a number of reasons you might want to delay a transaction.

Q. Other than withdrawing, delaying or communicating corrected information in the marketplace in advance of the closing of the transactions, can you think of any other alternatives that Morgan Stanley would have had under the circumstances that I've described?

A. I can't think of any, but that's not to say that there aren't.

Q. Those are the only three that you can think of as you sit here?

A. As I sit here, yes.

Q. If Sunbeam had announced on March 19, 1998, in advance of the closing of the four

Page 337

Tyree

transactions we've been talking about that it was unlikely to exceed in the first quarter of 1998 the net sales that Sunbeam had accomplished in the first quarter of 1997, what do you think the effect would have been on those four transactions?

MR. CLARE: Objection; no foundation; and incomplete hypothetical; and calls for speculation.

A. I don't know.

BY MR. MARKOWSKI:

Q. You don't know whether the transactions would have been delayed?

A. I don't know what would have happened.

Q. Do you know whether the transactions might have failed as a result of that announcement?

MR. CLARE: Same objections.

A. I just don't know. I don't know what might have happened had that announcement been made.

BY MR. MARKOWSKI:

Q. Do you know whether Coleman (Parent)

Page 338

Tyree

Holdings would have proceeded with the closing of its sale of its interests in Coleman Company under those circumstances?

MR. CLARE: Calls for speculation.

A. I can't opine, because I would not be making that decision.

BY MR. MARKOWSKI:

Q. If Sunbeam had announced on March 19, 1998, that the reason why it was likely to fail to accomplish its sales in the first quarter of 1998 that exceeded its sales for the first quarter of 1997 was that it had accelerated a substantial volume of sales that otherwise would have occurred in the first quarter into the fourth quarter of 1997, what do you think the effect would have been on the four transactions in which Morgan Stanley was representing Sunbeam?

MR. CLARE: Same objections.

A. Again, I don't know. And just so you know, I wasn't part of the team that managed the M&A side of this transaction. So I don't have a place to even guess.

BY MR. MARKOWSKI:

Q. You don't have any opinion on that?

NOT A CERTIFIED COPY

Page 339

Tyree
A. No, I don't.
Q. Do you have any opinion with respect to the effect on the convertible debenture offering of a disclosure on March 19th of that sort?
A. No, I don't.
Q. Did you ever hear anyone from Morgan Stanley advise anyone from Sunbeam or any of Sunbeam's representatives that it was important to the completion of any of the four transactions in which Morgan Stanley was representing Sunbeam that Sunbeam continue to make its numbers for the reporting periods, the financial reporting periods?
A. I don't recall hearing anyone from Morgan Stanley make that comment to members of Sunbeam's management team.
Q. Would it surprise you if someone from Morgan Stanley made that statement to Sunbeam?
MR. CLARE: Object to form.
A. I don't think I'd have a reaction one way or the other.
BY MR. MARKOWSKI:
Q. Would it be, in your view,

Page 340

Tyree
inappropriate for Morgan Stanley to say to Sunbeam management that in connection with the four transactions in which Morgan Stanley was representing Sunbeam, that it was important that Sunbeam continue to achieve Wall Street expectations for Sunbeam's financial performance at least up through the closing of those transactions?
A. I would not characterize that as inappropriate, as you put it.
Q. Would it -- would that, in your view, be an appropriate thing for Sunbeam to be advised by Morgan Stanley?
MR. CLARE: Object to form.
A. Again, I'd stick with the characterization earlier, which is it's not inappropriate.
BY MR. MARKOWSKI:
Q. In internal discussions at Morgan Stanley relating to either convertible debenture offering or any of the other three transactions in which Morgan Stanley was representing Sunbeam, did you hear any discussion concerning the importance of Sunbeam continuing to achieve Wall

Page 341

Tyree
Street expectations with respect to its financial performance?
A. I don't recall hearing a conversation of the type you just described.
Q. Did you ever make that comment to anyone?
A. Not that I can recall.
Q. And you can't recall anyone making that comment in your presence?
A. No.
THE WITNESS: When we get to a break here, can I just visit the rest room?
MR. CLARE: Sure. Do you want to go now?
THE WITNESS: In a couple of minutes.
MR. MARKOWSKI: Actually, this is a breaking point. So we can break now.
THE VIDEOGRAPHER: The time is 10:30. We're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 10:39. We're back on the record.
BY MR. MARKOWSKI:
Q. Mr. Tyree, let me focus you on the

Page 342

Tyree
events leading up to the issuance of the March 19 press release. You indicated that there were conference calls or telephone calls that you participated in -- I believe on March 18th concerning the substance and issuance of the March 19th press release?
A. I recall a conference call with Sunbeam management and a number of other parties in regards to the forward-looking financial performance of Sunbeam.
Q. Do you know how that conference call came to occur?
A. Yes.
Q. How?
A. My recollection was that an individual -- and it may have been an individual from Sunbeam management -- spoke to my colleague Ruth Porat -- I believe it was on that day, the 18th -- and discussed with her the financial performance of Sunbeam in the next quarter and that that triggered the call, as I recall.
Q. You said, discussed the financial performance of Sunbeam in the next quarter. At that point, Sunbeam's first quarter was almost

NOT A CERTIFIED COPY

Page 343

Tyree
completed.
Are you referring to Sunbeam's performance in the first quarter?
A. I wasn't at the discussion, but I would assume -- I shouldn't assume -- the substance of the call that occurred was about their performance both in that quarter as well as the following performance. That I do remember.
Q. How do you know that Ms. Porat was approached by someone from Sunbeam management on these subjects?
A. I don't think I said that I was sure it was a member of Sunbeam's management team; I believe it was. And my recollection was that I was at a company investor presentation. Ruth was there. And she spoke to someone and then spoke to me immediately after that suggesting we go back to the office and discuss the forward-looking financial performance of Sunbeam.
Q. When you testified on March -- excuse me -- on September 15th, you said that you thought you were present for one of the Sunbeam road show presentations that took place in New York.

Page 344

Tyree
Do you recall that?
A. I'm sorry. Do I recall --
Q. Let me ask a better question. That was a pretty crummy question.
Do you recall that you attended the Sunbeam road show presentation in New York on March 18th?
A. I believe that I did.
Q. And the portion of that road show presentation that you recall attending was the luncheon portion of that day, correct?
A. That's correct.
Q. And it's at that luncheon road show presentation that you recall having a conversation with Ms. Porat on this subject?
A. I vaguely recall that it was at the end of the luncheon.
Q. Who else from Morgan Stanley was present at that luncheon presentation?
A. The only individual I have a vague recollection of being there was Andy Savarie. I think was there. But there were a number of other employees who I didn't know or don't recall who were there from Morgan Stanley.

Page 345

Tyree
Q. Do you remember Jim Stynes being there?
A. I don't remember him specifically being there.
Q. Do you remember Bram Smith or Michael Hart being there?
A. Again, I don't remember. It doesn't mean they weren't there. I just don't remember them being there.
Q. Did you know those gentlemen back then?
A. Yes.
Q. You would have recognized them if you saw them?
A. Back then, yes.
Q. And you don't remember having seen them that day at the New York luncheon?
A. I don't remember. But I have a very vague recollection at the time.
Q. Who were you seated with for the lunch?
A. I don't remember.
Q. Were you seated with Morgan Stanley people?

Page 346

Tyree
A. I do remember that there were some potential investors at my table, but I don't know if there were also Morgan Stanley employees there.
Q. Were you sitting with Ms. Porat?
A. I don't believe so.
Q. Tell me what you recall concerning Ms. Porat coming up to you toward the end of the luncheon.
A. I recall her approaching me and saying or indicating to me that she had spoken to someone -- and, again, I can't remember exactly if it was Sunbeam management, but I think it was someone from the company -- and that we needed to go back to the office and have some dialogue internally as well as with the company about their financial performance for the quarters that I described.
Q. Do you recall that Ms. Porat told you with whom she had spoken? Did she give you the name of someone?
A. I don't recall if she did or did not.
Q. Did Ms. Porat seem concerned about what she had been told?

NOT A CERTIFIED COPY

16div-020966

Page 347

Tyree
A. She, as I recall, seemed to feel that we just needed to get back to the office and talk about it. I don't know if I would characterize it as being overly concerned.
Q. I didn't ask you whether she seemed overly concerned. I asked you if she seemed concerned about what she had been told.
A. Yes, she seemed concerned.
Q. Do you recall any of the words that Ms. Porat used in telling you about her conversation or her reaction to it?
A. No. I don't recall any of words.
Q. Do you recall whether Ms. Porat was speaking to you alone? Or was there someone else from Morgan Stanley participating in your conversation with her?
A. I don't recall if anyone was there or not.
Q. Do you recall anyone from Sunbeam management being present when Ms. Porat advised you of her conversation?
A. Not that I recall.
Q. Do you recall if anyone from Davis Polk was present when she did that?

Page 348

Tyree
A. Again, not that I recall.
Q. Had there been any discussion before Ms. Porat coming up to you at the end of the road show luncheon in New York on March 18th concerning the question of Sunbeam's performance in the first quarter of 1998?
THE WITNESS: Could you just read back the first part of the question.
(Record read.)
A. I have a vague recollection of a due diligence session we conducted where we discussed, among other things, Sunbeam's financial performance.
BY MR. MARKOWSKI:
Q. Other than that due diligence session, do you recall any discussions with anyone at Morgan Stanley or at Sunbeam or with anyone else relating to Sunbeam's performance in the first quarter of 1998?
A. I don't recall any additional discussions on that topic.
Q. When did this due diligence session that you alluded to take place?
A. I don't remember the exact date.

Page 349

Tyree
Q. Do you recall where it took place?
A. I believe it took place at Sunbeam's headquarters in Florida.
Q. Were you physically present for that due diligence session?
A. Yes, I was.
Q. Who else was there?
A. I can't remember exactly who was present at the session.
Q. Do you remember anyone who was present?
A. I remember that Andy Savarie was either present or on by phone; and one of either Bram Smith or Michael Hart were also either present or on by phone during parts of the session, I believe.
Q. Can you recall anyone else?
A. There were a number of other people. I just can't recall exactly what their names were.
Q. Were there Sunbeam participants?
A. Yes, there were.
Q. Can you remember the names of any of those people?

Page 350

Tyree
A. What I remember there were a number of Sunbeam participants. I believe at some point we had a discussion with Al Dunlap. I can't be sure if it was on that trip or not, but I think it was. And Russ Kersh may have been there. But I don't remember the names of the other participants.
Q. Do you remember Deborah MacDonald participating in this due diligence session?
A. I don't remember her particularly participating in the session.
Q. Do you know who Deborah MacDonald is?
A. I recall the name vaguely, but I don't know what role she played.
Q. Do you recall meeting her at some time?
A. I don't remember meeting her.
Q. What do you recall being advised during that due diligence session in Florida concerning Sunbeam's performance in the first quarter of 1998?
A. I don't recall being advised anything specifically in regards to their financial performance.

NOT A CERTIFIED COPY

Page 351

Tyree

Q. Well, do you recall anything about what you were told relating to Sunbeam's performance in the first quarter of 1998 during that due diligence session in Florida?

A. No. I don't recall anything, any statements being made, exactly what was said about their financial performance. I mean, I know we had the discussion. And my recollection is there was nothing out of the ordinary that occurred. But I don't have any specific recollection about what was said.

Q. Whether you remember something specifically or not, do you recall any of the substance -- strike that.

Do you recall, in substance, what you were told relating to the status of Sunbeam's first quarter 1998 performance at that due diligence session?

A. No. I recall that management was broadly, you know, in agreement with the projections that were out in the research analyst community and that they went through a degree of specificity at the due diligence session. There was support for that contention. But beyond

Page 352

Tyree

that, that's about all I recall.

Q. Do you recall whether management advised Morgan Stanley at that session that its January sales results were 60 percent below its January 1997 sales results?

A. I don't recall anything like that.

Q. Do you recall that you were advised that the combined performance of Sunbeam in January and February of 1998 resulted in net sales that were approximately 50 percent below net sales in January and February 1997?

A. I'm sorry. When you say "the combined" --

Q. The combination of -- let me rephrase it.

Do you recall being advised in the due diligence session in Florida that you've been testifying about by Sunbeam management that Sunbeam's net sales in the first two months of 1998 were approximately 50 percent of Sunbeam's net sales in the first two months of 1997?

A. I don't recall anything like that.

Q. If you had been advised by Sunbeam management at that due diligence session that its

Page 353

Tyree

sales results in January and February of 1998 were approximately half of its sales results in January and February of 1997, is that something that you think would stick with you today?

MR. CLARE: Objection to the hypothetical.

A. I don't know. I don't know if it would stick with me or not.

BY MR. MARKOWSKI:

Q. You are not sure if that would have been sufficiently meaningful to you, that you would still recall it today?

A. It was five six years ago. I just don't know if it would have stuck with me or not.

Q. Did you take notes of the substance of the information you received from Sunbeam management during the due diligence session in Florida?

A. I don't recall if I did or did not take notes during the session.

Q. Would it be your practice to take notes when you are briefed by management in connection with due diligence sessions?

A. I don't know if I'd call it my

Page 354

Tyree

practice. I have in certain situations done that before.

Q. Do you know if you did that in connection with any of the due diligence you did relating to Sunbeam?

A. I don't remember if I did or did not.

Q. So it's possible that you took no notes of any of the due diligence information that you gathered in connection with the work that you did on Sunbeam?

A. It's possible.

Q. If you did take notes, do you know whether you maintained those notes after the transaction was concluded?

A. I'm sorry?

Q. If you did take notes of the information that you received from Sunbeam management or from others in connection with the due diligence work that you did relating to Sunbeam, do you know whether or not you made an effort to preserve those notes after the closing of the transactions in which Morgan Stanley was involved?

A. I don't recall making any special

NOT A CERTIFIED COPY

16div-020968

Page 355

Tyree
effort to retain those notes after the due diligence session.
Q. What was Morgan Stanley's policy back in the first quarter of 1998 with respect to due diligence notes? Do you know if there was one?
A. I honestly can't recall if there was a policy back then about maintaining or not maintaining due diligence notes.
Q. Has there been a Morgan Stanley policy that you're familiar with at some point in time on that subject?
A. I recollect that a couple of years ago, there was a policy in regards to not due diligence notes per se, but, you know, at the conclusion of a transaction, you would put together a file book with certain substance, you know, prospectus and that sort of thing, and everything else we would typically throw away unless there was some reason to keep it. But I don't know if that was Morgan Stanley policy or just keeping up files so people have reference materials.
Q. Would due diligence notes under that policy have been something that was discarded or

Page 356

Tyree
preserved?
A. I just don't know. I mean, I personally -- I can comment on what I personally would do. And at the end of a transaction, I would typically keep some of the major documents, like commitment committee memos and prospectuses and things of that nature, and then I would just discard things that didn't have utility going forward.
Q. Would that include due diligence notes?
A. In some cases it would.
Q. Were there ever occasions where you did make a special effort to preserve due diligence notes?
A. Not that I recall.
Q. Why is that?
A. I'm sorry? Why is what?
Q. You say your personal practice would be to discard your due diligence notes at the end of your work on a project.
And my question is why that is.
A. I guess for the sake of efficiency in terms of keeping files. I mean, if I kept all of

Page 357

Tyree
the documents relating to every transaction that I had done, it would become somewhat untenable.
Q. You don't view due diligence notes as something especially important to preserve?
A. I don't view it as more or less important than maintaining other documents in the course of a transaction.
Q. Well, you keep final deal documents, correct?
A. Yes.
Q. Are due diligence notes important to preserve for record-keeping purposes?
A. If you're asking me personally? Not as important as some of the other documents that I keep.
Q. Why isn't it important, in your mind, to have a written record of the substance of the information that you obtained in connection with due diligence?
MR. CLARE: Object to the form of the question. It misstates the testimony.
A. For me personally, I -- sometimes I would take extensive notes. For whatever reason, sometimes I wouldn't. It's a process that is

Page 358

Tyree
very specific to the situation; whereas in every transaction, you would have -- if it were an equity transaction, equity commitment committee memo, prospectus or what have you. And those are just standard documents that I do on every transaction, which is why I keep them.
So that's a long-winded way of answering the question, which is the degree to which I kept notes varied. So it's hard to have a personal policy of maintaining them or not maintaining them.
BY MR. MARKOWSKI:
Q. Were you ever told by anyone supervising your due diligence work to preserve the notes that you took in connection with your due diligence?
A. As a general matter?
Q. Yes.
A. No.
Q. In connection with your work on Sunbeam, were you ever told specifically to preserve your notes of the due diligence work that you did?
A. Not that I recall.

NOT A CERTIFIED COPY

Page 359

Tyree

Q. Do you recall being instructed in connection with your work on Sunbeam to discard any due diligence notes that you had generated?
A. No.
Q. Were you ever instructed as a general matter to discard due diligence notes at the end of your work on a project?
A. I don't recall anyone telling me to discard or there being a policy that says discard your due diligence notes after every transaction. I can't recall that.
Q. But that is your general practice, correct?
A. Me personally?
Q. Yes.
A. Generally, when I finish a transaction, I clean up my files. And in some cases, I will throw away notes that are associated with due diligence.
Q. Let me take you back to the conversation that you had with Ms. Porat at that New York luncheon.
Was the -- was she specific with respect to what she had been told by Sunbeam --

Page 360

Tyree

strike that.
Your recollection is that you believe that she told you she had had a side conversation with someone from Sunbeam management, correct?
A. It may have been someone from management. I just can't exactly remember.
Q. Whoever it was, they shared some information with her relating to Sunbeam's performance in the current financial reporting period, correct? The first quarter of 1998?
A. That is my recollection.
Q. Was she specific with you while you were still at the luncheon in telling you what she was told?
A. I just can't recall exactly what she told me at the luncheon or the degree of specificity that she provided them. I really don't remember the conversation.
Q. Do you recall her saying, in substance, I've just been told that there's a problem with Sunbeam's first quarter performance?
MR. CLARE: Object to the form.
A. I don't remember that exact dialogue.

Page 361

Tyree

BY MR. MARKOWSKI:
Q. I'm asking whether you recall that she told you that in substance; I'm not asking whether she told you that in those words.
Did she advise you, in substance, that she had just been told by someone, perhaps someone in Sunbeam management, that there was a problem with respect to Sunbeam's first quarter performance?
A. I don't remember that even in substance. What I remember is her saying that she had spoken to someone, and I thought it was someone from Sunbeam's management, about their performance this quarter and on a forward-looking basis and that we needed to go back to the firm to discuss it. That's what I remember.
Q. Do you recall any other conversation on this subject during the course of the New York road show meeting at the hotel?
A. No.
Q. Did you before you got back to the Sunbeam office -- excuse me.
Did you before you got back to Morgan Stanley's offices after that luncheon have any

Page 362

Tyree

discussion with anyone other than the one you've described with Ms. Porat concerning this matter?
A. Yes.
Q. Who did you talk to?
A. A number of people, in particular when we were on this conference call that I discussed earlier.
Q. That happened before you got back to Morgan Stanley's office?
A. Oh, I'm sorry. My mistake. No. That happened after we got to Morgan Stanley's offices. Prior to our arrival at Morgan Stanley's offices, I don't recall having a discussion with any additional Morgan Stanley employees about this issue.
Q. You don't recall having a discussion with someone else from Morgan Stanley who may have been present at the road show?
A. I don't recall that.
Q. Did you travel back to Morgan Stanley's offices with Ms. Porat?
A. I don't remember if I went with her or not.
Q. What do you recall happening next

NOT A CERTIFIED COPY

16div-020970

Page 363

Tyree
that day relating to the matter that Ms. Porat had raised with you at the luncheon?
A. My recollection is after getting back to the office, I went down to the capital market floor, which is where Ruth and several of our colleagues work, and we sat around a conference table and discussed Sunbeam's financial performance for the quarter and then later had this conference call that I described.
Q. Was Ms. Porat there? I'm focusing now on the discussion that you've just described with Morgan Stanley colleagues before the conference call takes place.
A. I believe that Ruth was there for that conversation. I believe she was there.
Q. Do you recall anyone else who was there?
A. I think there were a number of people in and out, and there were also people at different times on the phone. I just can't remember exactly who was present versus who was on the phone for that call.
Q. I want to separate this out so we cover this thoroughly. And I want to focus first

Page 364

Tyree
on the time period before you began to have discussions later that day with Sunbeam management.
A. Yes.
Q. I want to understand all of the discussions that took place internally at Morgan Stanley before those discussions with Sunbeam management occurred. So all of my questions at the moment relate to that segment of the day.
A. I understand.
Q. Other than Ms. Porat, who do you remember during this phase of your activities that day discussing Sunbeam's first quarter performance with?
A. I don't have a recollection of any specific people that I had a conversation with about Sunbeam's financial performance.
Q. Or participating in conversations that you were listening to?
A. Same answer for that.
Q. Do you remember that Bill Strong participated during these internal Morgan Stanley discussions that day?
A. This is in advance of the call?

Page 365

Tyree
Q. Right.
A. I don't recall if he did or did not.
Q. You don't recall Mr. Strong being tied in by telephone?
A. I don't recall. It doesn't mean it didn't happen. I just don't recall it.
Q. You said a number of people were coming in and out, and there were a number of people who were participating by telephone.
Other than Ms. Porat, you can't remember the identities of any of those people?
A. Not to the extent that I'm sure. And I just want to be sure before I throw out names of people who might or might not have been there.
Q. I don't want you to speculate. But if you have a belief that certain people were involved, I'm entitled to that information as well as part of the discovery we're taking in this case. And so if there were other people other than Ms. Porat who you believe were involved in those conversations, I need to know their names.
A. In advance of the conference call, I just don't remember any of the specific names of

Page 366

Tyree
people who were there.
Q. Do you remember how many, approximately, people were involved either in person or by telephone internally at Morgan Stanley discussing the subject of Sunbeam's first quarter performance in advance of the conversation starting with Sunbeam management later that day?
A. Including myself and Ruth, there were at least two others.
Q. How do you remember there were at least two?
A. I just have a recollection of being in a room with Ruth and different people coming in and out as we discussed this issue.
Q. When you got back to Sunbeam -- you indicated -- strike that.
You indicated that when you got back to Morgan Stanley's offices, that there was discussion relating to Sunbeam's performance in the first quarter, correct?
A. Yes.
Q. Did Mrs. Porat have more specific information relating to the status of Sunbeam's

NOT A CERTIFIED COPY

015105

Page 367

Tyree
first quarter performance that she shared with you when you got back to Morgan Stanley's offices?
A. I don't recall that she did or didn't have specific information at that point in time other than that she had this dialogue with the individual I mentioned earlier.
Q. Do you remember her saying something more expansive about the conversation she had at the road show meeting on that subject?
A. I don't recall that.
Q. Did someone else have information that they brought to bear relating to Sunbeam's first quarter performance?
A. Not that I recall.
Q. That you learned before you got on the phone with management?
A. Not that I recall.
Q. Do you recall having available to you during the course of the internal discussions that afternoon information relating to Sunbeam's first quarter performance from the comfort letter that Morgan Stanley had asked Arthur Andersen to provide?

Page 368

Tyree
A. I don't recall anything like that.
MR. MARKOWSKI: Will you mark as CPH Exhibit 24 a two-page document that is Bates-numbered DPW 00001 to 2.
(CPH Exhibit 24, Davis Polk & Wardwell chronology, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit 24. It's a two-page document entitled Davis Pork -- Polk & Wardwell chronology prepared in response to June 30, 2000, subpoena Sunbeam securities litigation. Take a moment to look at this. But I've got a particular entry I want refer you to on the second page of the document.
A. Can I just take a minute to read it?
Q. Sure.
A. Okay.
Q. Have you had a chance to read the document?
A. Yes, I have.
Q. Let me ask a background question. Davis Polk was serving as an outside

Page 369

Tyree
counsel to Morgan Stanley in connection with the work Morgan Stanley was doing for Sunbeam, correct?
A. To my recollection, yes.
Q. Let me direct your attention to the entry in this document from March 18, 1998. It's on the second page. It reads, "telephone conference calls re Sunbeam first quarter results and proposed press release; review of draft comfort letters from Arthur Andersen and KPMG."
Do you see that?
A. I do.
Q. Does this refresh your recollection that on March 18th, Morgan Stanley had in its possession the Arthur Andersen comfort letter?
A. No.
Q. Can you think of any reason why, if Davis Polk had the draft Andersen comfort letter on March 18, Davis Polk would not have shared that comfort letter with Morgan Stanley?
MR. CLARE: Objection; lack of foundation; calls for speculation.
A. I don't know what Davis Polk would or could have done.

Page 370

Tyree
BY MR. MARKOWSKI:
Q. I'm just asking what you know. I'm asking if you can think of any reason why Davis Polk would have not shared the draft Arthur Andersen comfort letter.
A. Not that I know of.
Q. Before -- can you remember anything else about the discussions internally at Morgan Stanley between the time of your conversation with Ms. Porat at the New York road show luncheon and the time of the initial conference calls, including Sunbeam management later that day that you have not testified to?
A. No. I can't recall anything specific about it.
Q. I'm still focusing on this time period before the conversation with management started up later that day.
A. Yes.
Q. Do you recall concluding that the information that was shared with Ms. Porat was in some manner different from the information that you had been provided by Sunbeam earlier relating to its performance in the first quarter?

NOT A CERTIFIED COPY

015106

16div-020972

Tyree

A. I don't recall what my exact reaction was when we had this dialogue with Ruth.

Q. Do you recall concluding there is already something I was aware of?

A. I don't recall thinking that.

Q. Do you recall thinking this is a new piece of information that I was not previously aware of?

A. I just don't recall what exactly my feeling what was at that time.

Q. Do you recall believing that -- and I'm still focusing on the time period before conversations started up with Sunbeam management later that day -- that somehow, in words or substance, Sunbeam management had created a false impression concerning its performance in the first quarter of 1998 in its communications with Morgan Stanley?

A. Again, I just don't remember exactly how I felt, because I don't even remember the substance of what came up in those conversations with Ruth --

(Cell phone interruption.)

A. I just don't remember the substance

Tyree

of those conversations with Ruth. So it's hard for me to remember my reaction.

BY MR. MARKOWSKI:

Q. The information that Ms. Porat said we need to go back to the office and talk about, was it your understanding that this was good news --

MR. CLARE: Object to the form.

BY MR. MARKOWSKI:

Q. -- relating to Sunbeam's performance in the first quarter of '98?

A. I don't recall that it was good news, bad news or other, just news that we have to do some work on.

Q. Let me go back. You indicated that Ms. Porat seemed concerned that her reaction was of concern when she first spoke to you at the luncheon, correct?

A. That's correct.

Q. Was it your conclusion based on her demeanor that the information that was being shared with her wasn't that Sunbeam was doing better than expected in the first quarter but, instead, that Sunbeam was doing worse than expected in the first quarter?

Tyree

A. My recollection was, yes, that it was relating to Sunbeam performing not as well as we had expected in that quarter.

Q. So is it your understanding that -- strike that.

Is it your testimony that prior to this conversation that you had with Ms. Porat at the New York luncheon, that your personal understanding was that Sunbeam's performance in the first quarter of '98 was on track with Wall Street's expectations for the quarter?

A. I'm sorry. Can you say the first part of that again?

Q. I'll restate it.

Is it your testimony that prior to your conversation with Ms. Porat at the New York road show luncheon on March 18, that your personal understanding was that Sunbeam was on track to accomplish Wall Street's expectations for its financial performance in the first quarter of 1998?

A. My recollection was in advance of that conversation you mentioned with Ruth that I had had no indication from -- personally from

Tyree

Sunbeam management that they were not going to achieve the financial performance targets that were in the marketplace held by equity research analysts up to that point in time.

Q. Given your responsibilities and the work that you had done up until that point in connection with due diligence on the convertible debenture offering, if there was an expectation on Sunbeam's part that it was going to fall significantly short of Wall Street's expectations for the first quarter of 1998, would you have expected Sunbeam management to bring that to your attention so that you could evaluate it?

MR. CLARE: Objection to form. It's a hypothetical.

A. In the context of my role in due diligence, as you say, I would expect Sunbeam management to be honest and forthright and answer all of our questions in that manner. The rest of your question is, effectively, more of a hypothetical in terms of what would I do.

THE WITNESS: Can you read the question back, please.

(Record read.)

NOT A CERTIFIED COPY

Tyree
A. It's a hypothetical.
BY MR. MARKOWSKI:
Q. It is a hypothetical.
I'm asking, under the circumstances in which you were operating and the responsibilities that you had had and the previous communications that you had had with Sunbeam management, would you have expected Sunbeam management to bring a problem to your attention relating to Sunbeam's first quarter 1998 performance so that you could evaluate it?
A. What I'm saying is in the context of my role in terms of due diligence, I would expect Sunbeam management to be up front and honest with all of my questions. And, you know, when you talk about your hypothetical here, you mentioned earnings. I think it was substantially below. If their earnings were 50 percent below market expectations or 60 percent market expectations, and there are a number of factors -- other factors that played into a decision, maybe I would have made that decision. If their numbers were a small percentage point, and they stood a very good chance of achieving their targets, then

Tyree
maybe I wouldn't have. It all depends on a number of different variables that would dictate what I would have done in that situation.
Q. I think you lost the thread of my question. Let me try again.
A. Okay.
Q. You were involved in conducting due diligence for Morgan Stanley in connection with the convertible debenture offering, correct?
A. I was involved in it.
Q. And you've testified, one of the things that you participated in was a due diligence session where Sunbeam had briefed you on Sunbeam's performance in the first quarter of '98, correct?
A. That's correct.
Q. And I think -- we'll pin down later the timing of that presentation. But whenever it happened, you were apprised at that point of the status of Sunbeam's first quarter performance, correct?
A. During the due diligence session?
Q. Correct.
A. My recollection is we went through

Tyree
their historical financial performance and their financial performance for that period that they were in.
Q. And you don't recall being advised during that session that Sunbeam's January and February sales were half of what the sales had been in the first two months of 1997, correct?
A. I don't recall that.
Q. If that was the case, would you have expected Sunbeam management to bring that to your attention so that you could evaluate its significance?
A. I would expect Sunbeam management to bring to my attention any material issues that we needed -- Morgan Stanley needed to represent Sunbeam appropriately in the market.
Q. I'm specifying a particular situation. And I'm asking you whether or not it meets that test.
A. Right.
Q. The hypothetical that I'm giving you is that Sunbeam's sales in January and February of 1998 are about half of what Sunbeam's sales had been in January and February of 1997.

Tyree
Would you have expected Sunbeam management to bring that piece of information to the attention of John Tyree so you could evaluate it in connection with the due diligence work you were doing on the convertible debenture offering?
A. And I'm comfortable saying what I just said, which is, in general, I would expect Sunbeam management, management of any company, to bring to my attention material information that I needed to do my job.
Q. Well, is that information that you would have needed at that point to do your job: Our sales for the first two months of 1998 are half of what our sales had been in the first two months of 1997?
A. In this hypothetical situation, it could be. I just don't want to opine on exactly what I would do in a hypothetical.
Q. I'm not asking what you would do. I'm asking whether or not you would have expected Sunbeam management to bring that information to your attention so that you could evaluate its significance.
A. And again -- you're right. I

NOT A CERTIFIED COPY

Tyree
wouldn't -- I wouldn't want to opine on my expectations in terms of a hypothetical situation without knowing the other variables surrounding it.
Q. Well, it's not a hypothetical. You know from the documents we reviewed when we were together last time that Sunbeam's financial performance in the first two months of 1998 were -- for net sales were half of Sunbeam's net sales in the first two months of 1997, right?
We've already established in this deposition?
A. I believe we have, yes.
Q. So that's a reality?
A. Uh-huh.
Q. Would you, given the responsibilities you had in connection with due diligence on the convertible debenture offering, have expected Sunbeam management to bring that decline in net sales performance to your attention so you could evaluate its significance?
A. And what I said before was I would expect them to bring any material development to my attention that impacted my ability as an

Tyree
individual to do my job.
Q. Does this fall into that category?
That's my question. That's what I'm trying to understand.
A. It certainly could have been, depending on a number of other factors.
Q. You need to understand what the information is in order to evaluate that, right?
My question is whether you would have expected Sunbeam to bring to your attention 50 percent decline net sales in the first two months of the first quarter of '98 so you could understand its significance in relationship to other matters.
A. Uh-huh.
MR. CLARE: Objection; asked and answered.
A. I think I've answered that already.
BY MR. MARKOWSKI:
Q. I'm entitled to an answer to my question. Objections are for him. The Court will rule on them later. Your job is to answer questions unless he instructs you not to.
A. But it's fair that I answer questions

Tyree
without speculating, correct?
Q. I'm asking whether you thought something. That doesn't call for speculation.
My question is whether or not, in connection with the work you did in due diligence on this transaction, you would have expected Sunbeam management to bring to your attention a 50 percent decline in net sales in the first two months of '98 so you could evaluate its significance in connection with an offering that was going to close before the end of the first quarter.
A. I understand. You're asking me to tell you what I would have done.
Q. No. I'm asking whether you would have expected them to bring it to your attention.
A. What I would have expected them to do?
Q. Correct.
A. To speculate on what I would have expected them to do, which is just something I'm not comfortable doing.
Q. You said you expected Sunbeam

Tyree
management to bring to your attention any material information necessary for you to do your job, correct?
A. That's right.
Q. My question to you is whether or not a 50 percent decline in net sales in the first two months of a quarter would meet that test, in your mind.
MR. CLARE: Objection; asked and answered.
A. I really do think I've answered this to the extent I can without speculating.
BY MR. MARKOWSKI:
Q. You don't know one way or another whether or not a 50 percent decline in Sunbeam's net sales in the first two months of 1998 would have been something significant that you needed to evaluate in connection with the closing of the debenture offering before the close of the first quarter?
A. I just -- what I don't know is exactly what I would have done, because I don't know all the variables surrounding the situation at that time.

NOT A CERTIFIED COPY

015109

Page 383

Tyree
Q. I'm not asking what you would have done, sir.
A. Or what I would have expected them to do not knowing all the variables surrounding the situation at that time.
Q. My question is this. It's not what you would have done. It's not what somebody else would have done. My question is the significance of a piece of information to you in connection with the work you personally were doing.
Would a 50 percent decline in Sunbeam's net sales in the first two months of 1998 have been a significant piece of information that you would have wanted to know in connection with the due diligence work that you were doing prior to the close of the $750 million debenture offering that Morgan Stanley was underwriting for Sunbeam?
A. I understand the question. And my answer just hasn't changed from what I said. It could very well be a material piece of information that would have to be taken into consideration with a number of other factors that were happening at that time.

Page 384

Tyree
Q. My question is whether or not it's a piece of information you would have wanted to know.
A. I would like to know everything that I could possibly know about a transaction of a financial situation of a company.
Q. Do you think that a 50 percent decline in net sales for the Sunbeam corporation under the circumstances that I've described is a significant piece of information that someone conducting due diligence in connection with a $750 million debt offering should know?
A. I think it's a piece of information. And as I said before, I'd like to have as much information as I possibly could have in the course of any transaction. So I'm not going to opine on how material it is or not. If it's information, I'll take it in and make a judgment at the time.
Q. My question is whether it's a piece of information you would have wanted to know.
A. I'd like to know all information I could. So if that -- to answer your question, if you are saying, you know, if this is happening,

Page 385

Tyree
if this event was happening at that time, would I like to know that information. If that's your question, yes, I would like to know that information.
THE VIDEOGRAPHER: The time is 11:30. This completes tape number one.
(Recess taken.)
THE VIDEOGRAPHER: The time is 11:34. This is tape number two of the videotaped deposition of Mr. John Tyree.
BY MR. MARKOWSKI:
Q. Mr. Tyree, I want to expand the time period that we're focusing on.
A. Yes.
Q. Up until now we've been focusing on the time period between the conversation that you had with Ms. Porat at the road show and the start of conversations with Sunbeam management. I want to expand the period now from the time of your conversation with Ms. Porat up until the time Sunbeam's press release is issued on March 19th.
A. Yes.
Q. Between those two points in time, with whom at Morgan Stanley do you recall there

Page 386

Tyree
being discussions relating to the status of Sunbeam's first quarter 1998 performance?
A. This period includes the conference call?
Q. It includes everything.
A. Okay. I recall speaking with Ruth, as we discussed. I believe that I either spoke to or was on a conference call that Bill Strong was on. I could be wrong, but I think so. From Morgan Stanley, those are the only people that I specifically recollect.
Q. Are there others that you believe were involved who you don't specifically recall at this point?
A. I have a vague recollection that maybe I spoke to Jim Stynes about this at some point; but beyond that, those are the only three that I can remember.
Q. Sticking with the same time period, do you recall any involvement on the part of Bob Kitts relating to the status of Sunbeam's first quarter performance?
A. Over this period of time?
Q. Right. I'm talking about from the

NOT A CERTIFIED COPY

16div-020976

Tyree
lunch presentation on March 18th to the issuance of the press release on March 19th.
Do you recall Bob Stynes [sic] being involved in any discussion relating to the status of Sunbeam's first quarter performance during that period?
A. Sorry. Bob Kitts or Jim Stynes?
Q. I'm sorry. Bob Kitts.
A. I don't recall interacting with Bob Kitts over that time.
Q. Alex Fuchs?
A. I don't recall interacting with Alex either over that time.
Q. Whether you interacted with him or not, do you recall him being involved in discussions relating to this subject during that time period?
A. Not that I recall.
Q. Bram Smith?
A. I don't recall specific discussions with Bram.
Q. My question again is a little bit different.
Do you recall Mr. Smith being

Tyree
involved in any way in the time period we're talking about between the lunch on the 18th and the issuance of the press release on the 19th in discussions relating to Sunbeam's first quarter performance?
A. No. I don't recall that.
Q. What about Michael Hart?
A. No. I don't recall that.
Q. Do you recall whether any in-house Morgan Stanley attorneys were involved in those discussions?
A. Not that I recall.
Q. What's your opinion of Mr. Strong?
MR. CLARE: Object to the form.
A. Can you be a little more specific?
BY MR. MARKOWSKI:
Q. In terms of his business capabilities.
A. I think Bill Strong is an extremely capable professional.
Q. How experienced was he in March of 1998, in your view?
A. He's experienced.
Q. How sophisticated in the business

Tyree
sense was he, in your opinion, back in March of 1998?
A. He -- my experience with Bill, he exhibits a degree of sophistication commensurate with his position at the time.
Q. What was his position back in March of 1998?
A. I believe he was a managing director at the time.
Q. What does that mean in Morgan Stanley parlance?
A. It means you are a relatively senior banker with the firm.
Q. Do you recall any administrative responsibilities Mr. Strong had back in March of 1998 at Morgan Stanley?
A. I don't recall what his administrative responsibilities were in that period.
Q. What was his involvement in the Sunbeam transaction?
MR. CLARE: Objection; calls for speculation.
BY MR. MARKOWSKI:

Tyree
Q. To your knowledge.
A. I'm sorry?
Q. What was Mr. Strong's involvement in the Sunbeam transaction, to your knowledge?
A. Sorry. Just in what way?
Q. What were his responsibilities? What was his role?
MR. CLARE: Objection to the form.
A. What I recall was that Bill knew the client senior management at Sunbeam. He participated on a number of conference calls. I believe he may have participated in part of the road show presentation. Those were kind of his duties as I recall them.
BY MR. MARKOWSKI:
Q. Would he have been the most senior Morgan Stanley person involved in the Sunbeam transactions?
A. I don't -- I hesitate because I don't recall if, for example, there were members of the senior management of the firm that may have participated at different points. I just don't remember. He was one of the senior -- most senior people who participated in the

NOT A CERTIFIED COPY

Tyree

transaction.

Q. In terms of who you can recall, is he the most senior person from Morgan Stanley involved in the transaction?

A. Again, I wouldn't characterize it that way. Because I believe Jim Stynes was managing director then, as well as even Bob Kitts might have been. I just don't recall if he was senior to those individuals.

Q. You're not sure at this point?

A. Not at this point, no.

Q. But he was an experienced and senior person in Morgan Stanley's management, right?

A. He was a senior and experienced professional. I don't know if he at that point was in a management role.

Q. How about Ruth Porat? How would you characterize her level of experience and sophistication back in March of 1998?

A. Again, Ruth was and is a seasoned professional.

Q. Would you characterize her as sophisticated in a business sense?

A. Sophisticated to the degree she

Tyree

should have -- should be for her position.

Q. Well, what is that? I guess I don't know.

Did you consider her to have a great deal of business sophistication or not?

A. I considered Ruth at that point to be a solid capital markets professional.

Q. Did that position require that she have a high degree of business sophistication?

MR. CLARE: Objection; lack of foundation.

A. I wouldn't characterize it that way. I would characterize it as the position Ruth was in required her to be very knowledgable about her specific area of investment banking.

BY MR. MARKOWSKI:

Q. And what would that area involve?

A. My recollection was that it was capital markets focused, meaning the issuance of debt and equity and the market judgments associated with that.

Q. And the debt offering that she was involved with in this context was the sale of $2 billion in zero coupon convertible debentures,

Tyree

correct?

A. I believe that is correct.

Q. And that's a significant amount of debt to -- for a company to be offering, correct?

MR. CLARE: Objection to form.

A. Again, it depends on the size of the company.

BY MR. MARKOWSKI:

Q. Between you and me, $2 billion is a significant debt offering, correct?

MR. CLARE: Objection to form; calls for speculation.

A. I view $2 billion to be a significant amount of money. Put it that way.

BY MR. MARKOWSKI:

Q. Other than the Morgan Stanley personnel that you've identified for me, between the time of the conversation you had with Ms. Porat at the road show and the issuance of the press release, what other individuals do you recall being involved in any discussions relating to the subject of Sunbeam's first quarter performance or the issuance of the press release on March 19th?

Tyree

A. Including the telephone --

Q. Including everything -- every other person outside of Morgan Stanley who was involved in discussions on either of those two subjects.

A. During the course of the entire transaction or up to the --

Q. Let me be clear. I want the record to be clear. I'm focusing on the time period from your conversation with Ms. Porat at the road show luncheon on March 18th and issuance of the press release the next day by Sunbeam on March 19th. That's the time period we're focusing on. And I want you to identify for me any individuals other than the Morgan Stanley personnel that you've already identified who were involved in any way in the discussions relating to Sunbeam's first quarter performance in 1998 or the issuance of the press release on March 19th.

A. There were lawyers, as I recall, from both Davis Polk and -- I believe it was Skadden Arps. I can't remember their names. If you gave me some names, I could potentially remember them. It's on the tip of my tongue. There were a number of individuals from Sunbeam management.

NOT A CERTIFIED COPY

0151112

Tyree
Included in that, I believe, were Al Dunlap, Russ Kersh, and then a number of other Sunbeam individuals, whose names I can't recall. Those were the people that I recall at this point in time.
Q. Do you remember any discussion during that time period with any in-house Morgan Stanley lawyers?
A. I do not.
Q. Take me now through the sequence of the conversations that you recall following the internal discussions at Morgan Stanley that day relating to Sunbeam's first quarter performance.
What's the first conversation that you recall involving someone from outside of Morgan Stanley?
A. The first conversation that I recall involving someone from outside of Morgan Stanley was in fact that conference call that we discussed on, I believe, the evening of the 18th, I think.
Q. Do you recall when in the day that conversation took place?
A. I recall that it was between

Tyree
midafternoon and late evening. That could be wrong. It could have been early in the afternoon. But that's my recollection.
Q. Did you have any involvement in the arrangements for that telephone call?
A. Not that I remember.
Q. Do you recall how long that telephone conversation lasted?
A. I recall that it wasn't necessarily one telephone call. I think there were periods of time where we had a conversation; then people dropped off and got back on. And I can't recall if those were separate conference calls or we just kept the line open. But there were kind of periods of time in which people adjourned off the call and then rejoined.
Q. I want to try to -- to the extent you can, to parse that out. So if you can remember an initial telephone conversation, an adjournment and resumption, that's the kind of sequence I'd like to try to develop here today, if you're capable of doing that.
A. Honestly, I just don't remember what the substance was in these separate dialogues.

Tyree
And I was in and out myself. So I couldn't -- I wouldn't be comfortable laying out for you a time line for it, because I either wasn't there or don't remember.
Q. So you remember an initial conference call that included, I take it, the various groups you've identified: Morgan Stanley personnel, Davis Polk, Skadden Arps and Sunbeam management. Correct?
A. No. I actually recall those parties having participated in -- could be one or all of these parsed, as you put it, conference calls. So I can't recall if, for example, all of those entities were present on the first call.
Q. And you're not sure if that first call was really a first call or whether it was several calls with some interruptions?
Here's what I'm trying to understand. You've indicated that there was a conference call that began after the internal discussion at Morgan Stanley took place. And Sunbeam management is on this initial conference call, correct?
Let me establish that clearly.

Tyree
A. I don't recall if they were or not.
Q. Who do you recall being on the initial phone conversation with someone outside of Morgan Stanley?
A. I don't remember who was on that phone call.
Q. Do you have a clear memory of -- let me start over here and make sure we have this straight.
The first conversation that takes place involving someone outside of Morgan Stanley, you said, was a conference call that took place, you believe, beginning in the midafternoon, correct?
A. Yes. And just to be clear, when I made that statement, I wasn't thinking of there being one conference call and then a series. I was thinking of this being a continuous series of conversations that occurred on the same line. Whether they did or not, I can't remember. But that's what I was referring to. So I didn't mean to say there was one specific call, and everyone joined, and then we went on from there. That's not what I meant to imply.

NOT A CERTIFIED COPY

Tyree

Q. Who do you recall being involved in that sequence of phone conversations, whether it was a single one or multiple calls that were resumed during the course of the afternoon?

A. It's the same list that I gave you before. So it's representatives of Skadden Arps, representatives of Davis Polk, the individuals that I mentioned from Morgan Stanley, and the individuals that I mentioned from Sunbeam management.

Q. And this either single call or series of closely related calls that you're recalling, over what period of time did they take place that day?

A. As I said before, they started sometime either between early afternoon and midevening. And they continued, as I recall, fairly late into the evening.

Q. Is there something then that happens after that that you can clearly distinguish from this either long telephone conference or a series of related phone calls?

Is there another clearly separate conversation that you can distinguish from the

Tyree

telephone conversations that you're describing?

A. No. My recollection is just in regards to that series of telephone conversations that occurred.

Q. So what you're describing are the events that you can recall that took place during the course of that day at this point, and you can't distinguish any of these conversations as being part of one or more separate telephone calls?

A. No, I cannot.

Q. In terms of internal communications at Morgan Stanley, were there points during the day where you conferred separately with your Morgan Stanley colleagues relating to those subjects apart from the phone calls that you participated in?

A. My recollection is that we were constantly conferring among ourselves. I don't recall a formal time where we adjourned to confer and then get back on the call. It was more fluid dialogue than that.

Q. Who was present with you when you were participating in these phone calls? Who was

Tyree

physically in the room with you?

A. Again, the only one I remember specifically was Ruth.

Q. Do you remember Mr. Strong's participation was by telephone; that he was not in New York that evening?

A. You know, it could have been, but I don't remember exactly.

Q. But you don't remember him being physically present with you, correct?

A. I don't remember that.

Q. Do you remember there being any separate conversations that either you or Ms. Porat had during the course of the day after these conversations with Sunbeam management began with Mr. Strong?

A. A conversation between myself, Ms. Porat and Mr. Strong?

Q. Conversations either between you and Ms. Porat and Mr. Strong or either one of you and Mr. Strong apart from his participation in the calls with Sunbeam management?

A. I don't recall any specific conversations apart from that fluid dialogue that

Tyree

I described.

Q. What do you recall relating to the conversations that you participated in that day or listened in on that day involving Davis Polk, Skadden Arps and members of Sunbeam management relating to those discussions?

A. Well, I recall, as I said, there was a lengthy period of time over which we had the conversations. I recall Ruth Porat having the management of Sunbeam go through their projection for the quarter in great detail. I recall -- I don't know if it was Ruth or who it was, but I recall specific requests made of Sunbeam to, you know, clarify the ensurability of the financial performance by breaking it down in the document that we've already looked through. I recall Ruth going through that in great detail.

I recall Sunbeam management getting off the phone to kind of -- to gather additional support from what I believe was junior -- more junior managers and salespeople for an effective guarantee of those financial results. And I recall associated conversations with counsel and Ruth and, as I said, with others about the press

NOT A CERTIFIED COPY

Tyree
release and the timing of the press release.
That's what I remember.
Q. Mr. Tyree, let me show you what we marked at your last -- the last session of your deposition. This is CPH Exhibit 16. It's a one-page document that bears Bates number Morgan Stanley confidential 28858.
Do you recall this being a document that was used in connection with the telephone conversations on March 18?
A. You said 28858?
Q. Morgan Stanley confidential --
A. Oh, yes. I'm sorry. Your question?
Q. Do you recall this being a document that you had in front of you in connection with the March 18th telephone conversations that you've just testified about?
A. I recall there being a document in front of us or that I had seen that ticked through the projected sales -- net sales for the company. But beyond that, I don't know if this is the document.
MR. CLARE: Let me take a quick time out. I think my exhibit that I have from

Tyree
the prior deposition does not match those same Bates numbers. Can I review the exhibit, please?
THE WITNESS: (Handing.)
MR. CLARE: The exhibit that we marked is different than the one that was provided to me at the prior deposition.
Do you have an extra copy of this one?
MR. O'CONNOR: No.
MR. CLARE: I suggest that we take a short break. I would just like to be able to have this in front of me while you're questioning the witness about it.
MR. MARKOWSKI: Sure.
MR. CLARE: Go off the record.
THE VIDEOGRAPHER: The time is 11:58. We're going off the record.
(Luncheon recess taken.)
AFTERNOON SESSION
(1:09 p.m.)
THE VIDEOGRAPHER: The time is 1:09. We're back on the record.
JOHN D'A. TYREE,

Tyree
resumed, having been previously duly sworn, was examined and testified further as follows:
EXAMINATION (Cont'd.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, do you have CPH Exhibit 16 in front of you?
A. Actually, I do not. I guess they're all the same.
Q. Is it your testimony that you don't recall this specific piece of paper being a document that you received from Sunbeam management on March 18th in connection with the conference calls you've been testifying about?
A. It's my testimony that there was a document that was not dissimilar to this that I had at that time, but I can't confirm this is in fact a copy of that document.
Q. Ms. Porat in other proceedings has testified this is the document that she received from Sunbeam management on March 18th.
Do you have any reason to agree or disagree with that testimony?
A. I have no reason to agree or disagree

Tyree
with that.
Q. There's nothing about this document that would cause you to say, This is not what I was looking at on March 18th?
A. Again, there is nothing here to say that it is or is not what I was looking at on that date.
Q. Do you recall that the document you received from Sunbeam management on March 18th included a list of potential orders?
A. Yes, I do recall that.
Q. And this document, CPH 16, contains a list of potential orders; is that correct?
A. Yes, it does.
Q. Were you at any time asked to do any due diligence with respect to any of the specific customers listed on the list of potential orders provided to Morgan Stanley on March 18?
A. I don't recall if I was asked to do due diligence or not on the specific customers.
Q. Do you recall contacting any of the customers listed on the list of potential customers that Morgan Stanley received on March 18?

NOT A CERTIFIED COPY

Page 407

Tyree
A. I don't recall contacting any of these specific customers. That's not to say it didn't happen; I just don't recall it.
Q. Do you recall any communication that you were involved in on or after March 18 with any of the companies listed on CPH Exhibit 16 relating to their business activities with Sunbeam?
A. Again, I don't recall it. That doesn't mean it didn't happen. I just don't remember.
Q. As you sit here right now, you have no recollection of having such contact, correct?
A. That's correct.
Q. Do you recall having any communications with any of those customers related to your Sunbeam due diligence prior to March 18?
A. I don't have any recollection of that one way or the other.
Q. As you sit here, you don't have any memory of having done that before March 18 either, correct?
A. No.

Page 408

Tyree
Q. Did the document that you received – let me take a step back.
Did you have in front of you on March 18th the same piece of paper that Ms. Porat received from Sunbeam management? Did she share that with you?
A. I recall that Ruth and I both had a piece of paper that was similar to this one during the conference call on the 18th.
Q. You both had the same piece of paper, I take it, right?
A. That's my recollection, yes.
Q. When you saw it, did that document appear to you to be a reasonable business plan for accomplishing the sales figure for the first quarter of 1998 that analysts were expecting Sunbeam to accomplish?
MR. CLARE: Objection to the form.
A. I don't recall, you know, five years ago having a sense for its reasonableness or it not being reasonable at the time.
BY MR. MARKOWSKI:
Q. Did you think it was your responsibility to evaluate the reasonableness of

Page 409

Tyree
the information that was being provided to you on March 18 from Sunbeam management concerning its ability to achieve street expectations for first quarter sales?
THE WITNESS: I'm sorry. Could you repeat the question.
(Record read.)
A. I don't think I would characterize it that way.
BY MR. MARKOWSKI:
Q. How would you it characterize it?
A. As I recall, I viewed it as my responsibility and, in fact, the responsibility of the entire Morgan Stanley team to conduct the appropriate level of due diligence in regards to all finance forecasts that were provided to us by Sunbeam.
Q. I'm focusing specifically on the information that was being provided on March 18 concerning Sunbeam's ability to accomplish the street expectations for net sales.
A. Uh-huh.
Q. Sunbeam management provided you with information on March 18 concerning that, correct?

Page 410

Tyree
A. They did. That's correct.
Q. Did you think it was your responsibility to evaluate the reasonableness of Sunbeam's plan to accomplish street expectations for first quarter sales?
A. I would characterize it a little bit differently.
Q. Can you answer my question yes or no?
A. Similar to our discussion before, I would prefer to characterize it in my own way from what I remember.
Q. My question is: Can you answer my question yes or no?
A. I could answer it yes or no, but it would not be an accurate response.
Q. In what way would it be inaccurate for you to answer my question yes or no?
A. Because it's dependent on the way you described the situation. I think it probably would be better for me to just describe my feelings about our approach to these numbers and our dialogue with Sunbeam.
Q. Go ahead.
A. The way I would characterize it is

NOT A CERTIFIED COPY

Page 411

Tyree
Sunbeam provided this document to us. As part of our role as underwriters in the context of the Sunbeam transaction, we reviewed this document; we asked, with, I'd say, a very strong and healthy degree of skepticism, numerous questions of the management team, about the achievability of these net sales numbers; received assurances from them to that effect.

And that was really what our role was. And I think it was the appropriate role at the time.

Q. Other than talking to Sunbeam management about their opinions relating to the achievability of the sales figures set forth on CPH Exhibit 16, did Morgan Stanley do anything else to determine whether or not Sunbeam had a reasonable prospect of achieving analysts' expectations for first quarter 1998 net sales?

A. Other than talking to management?

MR. CLARE: I object. Lack of foundation as to what Morgan Stanley did.

A. Other than talking to management? Is that your question?

BY MR. MARKOWSKI:

Page 412

Tyree
Q. Yes.

A. Yes. We did do something other than that.

Q. What did you do other than that?

A. Well, I shouldn't say we. I should say I. I participated in a call where, in addition to just talking to management, as it were, as I recall, we received assurances from management and I believe -- and I don't recall exactly who it was -- some additional more junior level managers who joined the conference call -- and I can't recall who they were -- about assurances that these were going to be achieved. That's point number one.

Point number two is -- forgive me if this goes beyond the scope of your question. But after this fact, after we had the conference call, we had very detailed bring down due diligence about the progress that they had made in regards to achieving the numbers that were laid out on that document at the time.

Q. My question, Mr. Tyree, was whether Morgan Stanley did anything other than discussing the issue with Sunbeam management. And as I

Page 413

Tyree
understand it, the two things that you've described both involve discussions with Sunbeam management and nothing additional.

Am I mistaken about that?

MR. CLARE: Objection. That misstates the testimony.

A. They involved discussions, but I don't necessarily characterize discussions and receiving guarantees or assurances as the same thing.

BY MR. MARKOWSKI:

Q. How are they different?

A. Well, my view is when you're having discussions, it's more of a relatively informal back-and-forth process. When you're receiving some assurances, direct assurances, and in fact requiring those assurances, it's much more of a formal dialogue and, in fact, gives you a degree of comfort that you might not otherwise have.

Q. Other than obtaining statements from Sunbeam management relating to its views on the progress of Sunbeam's first quarter sales, did Morgan Stanley do anything else to determine whether or not Sunbeam's first quarter 1998

Page 414

Tyree
performance would equal the street expectations for the quarter?

MR. CLARE: Objection. Lack of foundation as to what Morgan Stanley did.

A. Again, I can't opine on what the firm did; I can only opine on what I did.

BY MR. MARKOWSKI:

Q. No. What you can testify to is what you know, whether it's something you did or what you know about somebody else's activity. And that's what I'm asking you about. I'm asking you what you know.

Based on your personal knowledge, did Morgan Stanley do anything to confirm the reasonableness of Sunbeam's claim that it would achieve first quarter sales equal to the street expectations for the first quarter of 1998 other than obtain oral statements from Sunbeam management on that subject?

A. Other than what I've mentioned up to this point, we may have. I just don't recall if we did or not.

Q. When you say other than what you've mentioned -- what I'm trying to figure out,

NOT A CERTIFIED COPY

Page 415

Tyree
Mr. Tyree, is this. It's very simple.
Other than talking to Sunbeam management, did Morgan Stanley do anything else to determine whether or not it was reasonable to expect that Sunbeam in first quarter of 1998 would equal street expectations for first quarter sales?
A. I understand the question. To be more clear on what I said before, other than having discussions with Sunbeam management, other than requiring them to get assurances from their more junior level employees as to the assurances of these numbers, and other than the bring down due diligence that I discussed earlier, there may have been other things that were done. I just don't recall them.
Q. So the only thing that you're aware of were communications with Sunbeam management on that subject, correct?
MR. CLARE: Objection. That misstates his testimony.
A. That is the only thing that I recall.
BY MR. MARKOWSKI:

Page 416

Tyree
Q. At any point, Mr. Tyree, did you request that Sunbeam management provide you with documentation to support any of the statements being made to Morgan Stanley relating to the company's expectations for first quarter 1998 sales?
A. Again, that's covered in your last question. I don't recall that we did that, although it might have happened.
Q. You don't have any recollection of it, as you sit here today, correct?
A. I have no specific recollection of it.
Q. Do you have any general recollection of requesting and receiving documentation from Sunbeam supporting the statements being made to you by the company's management concerning the company's prospects for first quarter sales?
A. I don't have any recollection of what you just described.
Q. Did anyone in Morgan Stanley management direct you to obtain documentation from Sunbeam management on that subject?
A. I don't recall if they did or did

Page 417

Tyree
not.
Q. Did anyone tell you not to do that?
A. Again, I don't recall if they did or did not.
Q. So it's possible, in your mind, that somebody at Morgan Stanley management would have instructed you to not request any documentation from Sunbeam supporting statements being made to Morgan Stanley relating to its first quarter sales?
MR. CLARE: Object to form.
A. As I said, given that I don't have a clear recollection of five years ago, you know, I just don't know.
BY MR. MARKOWSKI:
Q. You can't rule that out?
A. I can't rule that out. I can't say it did happen.
Q. What do you recall Sunbeam -- do you recall who in Sunbeam management went through the information contained on CPH 16 during the conference call on the 16th -- on the 18th of March?
A. I don't recall if there was one

Page 418

Tyree
person who went through this. What I recall was a conference call or a series of calls where a number of people at Sunbeam opined on this document (indicating) and the assurances that I described before.
Q. Can you recall the names of those people who opined on this document?
A. I recall Al Dunlap commenting on it, I believe Russ Kersh as well; and then there were other people who joined the call at different times who spoke to this document. I just can't remember their names.
Q. Were you finished?
A. Yes.
Q. What do you remember Mr. Dunlap saying about the information contained on CPH 16?
A. I don't remember exactly what he said about that.
Q. Do you remember, in substance, what Mr. Dunlap said about CPH 16?
A. What I recall -- and it was either Al Dunlap or Russ Kersh commenting that it was important -- and this is the substance of it -- for Morgan Stanley to understand that the numbers

NOT A CERTIFIED COPY

Page 419

Tyree
laid out there here were these assurances, or however you want to phrase it, guarantees from the salespeople and that they typically undershoot, because, among other things, they are compensated on these numbers.
Q. Do you remember Mr. Dunlap saying anything else?
A. I don't remember him -- in terms of substance, I just remember him being extremely confident in their ability to achieve these sales numbers.
Q. Do you remember anything else that Mr. Dunlap said at any point during the various conversations that took place on March 18?
A. No.
Q. What do you recall Mr. Kersh commenting on?
A. You know, I don't recall Mr. Kersh commenting on anything in particular. He was commenting throughout a number of those conference calls that I described on a number of topics.
Q. Do you remember, in substance, any of the information, statements or opinions that

Page 420

Tyree
Mr. Kersh offered during the course of the conversation on March 18th?
A. Unfortunately, I do not.
Q. Whether you can remember the speaker or not, do you remember any other statements or the substance of any other statements made by Sunbeam management during the course of the phone conversation on March 18?
A. The only additional thing that I recall is Sunbeam management, to use the term broadly, because I don't know who said it, but wanted to be very clear that they weren't completely convinced that a press release needed to be issued because of the reason I said before. These were effectively guarantees, if you want to call it that. I don't know the term they used. And by putting out the press release, you're creating the sense that this is potentially -- this is the best they are going to do.
Q. Do you remember anything else?
A. That's all I remember.
Q. Do you remember any statements being made by any of the Skadden Arps participants in

Page 421

Tyree
the phone calls of March 18?
A. I remember that Skadden Arps representatives were active participants in the call, but I don't remember any specific comments or even general substantive comments that they made.
Q. And I take it you don't remember who from Skadden Arps participated?
A. I do not.
Q. Do you recall if Fin Fogg was on the phone from Skadden Arps on March 18?
A. I'm familiar with Fin Fogg's name. He may have been on the call. I just don't have a specific recollection.
Q. That does not refresh your recollection that he was on the call?
A. No. It refreshes my memory that he participated actively in the transaction, but I don't remember him specifically being on the call.
Q. Do you remember any of the statements, opinions, comments being made by Davis Polk participants?
A. No.

Page 422

Tyree
Q. Do you remember who participated from Davis Polk?
A. I don't recall the names. But if you have a list of names, I could probably tell you one or two of them. I just can't recall the specific names.
Q. Is there anything that you've not testified to that you recall happening on March 18 relating to either the subject of Sunbeam's first quarter 1998 performance or the issuance of the press release that you have not testified to?
A. No.
Q. When the conference call concluded on the evening of March 18, what happened next in terms of your activities relating to the issuance of the press release?
A. I don't remember exactly. I remember -- I remember having discussions with Ruth -- I can't remember the substance of them -- for maybe 10, 15 minutes; heading back up into my office and staying there for another -- for that period of time. I don't recall how long. I remember going home. I remember it was late. That's really all I remember.

NOT A CERTIFIED COPY

Tyree

Q. Did you and Ms. Porat work together on the draft press release?
A. I don't remember working with Ruth on the press release.
Q. Do you recall commenting on the press release?
A. No, I don't recall that.
Q. Do you recall receiving drafts of the press release?
A. I have a vague recollection that the company was going to show us a copy of the press release in advance of its being published or announced. But beyond that, I don't remember much more about the press lease itself.
Q. During the course of the phone conversations on March 18, did anyone raise the question of what the effect would be on Sunbeam's second quarter 1998 performance of the efforts that the company planned to undertake to maximize net sales in the first quarter of 1998?
A. They may have. I just don't recall that.
Q. You don't recall someone from Morgan Stanley inquiring into that?

Tyree

A. I just don't recall it. That doesn't mean it didn't happen.
Q. But as you sit here, you don't have any recollection of Morgan Stanley inquiring into that?
A. I don't have any recollection of us inquiring into that issue specifically.
Q. Do you recall considering that as being an issue that Morgan Stanley needed to obtain information about?
A. I just don't remember that time in detail. So I can't recall what my, you know, predisposition was in terms of the due diligence we needed to do at that point in time.
Q. Do you recall any discussion, whether it was internal at Morgan Stanley or during the course of these phone calls, with people outside of Morgan Stanley prior to the issuance of the press release about the possibility of deferring the transactions or delaying the transaction that Sunbeam was attempting to close before the end of the first quarter?
A. No, I don't recall that.
Q. Do you recall Morgan Stanley

Tyree

suggesting that to Sunbeam?
A. I'm sorry. Suggesting?
Q. Do you recall Morgan Stanley during the events preceding the March 19th press release suggesting to Sunbeam that in light of the company's sales in January and February of 1998, that an alternative the company should consider would be deferring the three acquisitions or any one of them and deferring the convertible debenture offering until after the first quarter was completed?
A. I do not recall that.
Q. Mr. Tyree, what, in your mind, was the purpose for the due diligence that Morgan Stanley conducted of Sunbeam?
A. There are a number of reasons for -- were a number of reasons for the due diligence that we conducted for Sunbeam. Among those, to gain an understanding of the company; gain an understanding of management's strategic intentions; to clarify the strategic environment in which the company operated. Those are three.
Q. Any others that you can think of?
A. There are many. To, among other

Tyree

things, assure that the company's fixed assets that they represented to be there are in fact there; to ensure that there aren't going to be any material changes to the management team in the near term that might impact the health of the company; and a number of others.
Q. Any that you can think of?
A. To enhance our understanding of the financial drivers and the performance drivers of the company. I think that pretty much does it.
Q. Why would Morgan Stanley want to obtain information that would provide it with greater knowledge on the six topics that you've identified? For what purpose would Morgan Stanley want that information?
A. There are numerous reasons why we want that information.
Q. What are those?
A. To more fully understand the appropriate pricing of the securities; to be able to advise the company appropriately in regards to their position in the capital markets; to be able to, I should say, provide the right level -- the appropriate level of -- correction -- to be able

NOT A CERTIFIED COPY

Page 427

Tyree
to shape the advice that we provide to this company by using the right resources of Morgan Stanley. Those are three examples.
Q. Was one of the reasons Morgan Stanley conducted due diligence of Sunbeam was so that Morgan Stanley would be able to confirm the factual accuracy of statements being made by Sunbeam in connection with the convertible debenture offering in the offering memorandum?
A. I'm sorry. Can you repeat that one more time.
Q. Let me say it again.
Was one of the reasons Morgan Stanley conducted due diligence so that Morgan Stanley could confirm the factual accuracy of statements made in the debenture offering that you were working on?
A. I would characterize it a little differently.
Q. How would you characterize it?
A. One of the reasons for conducting due diligence on Sunbeam is to -- or was to satisfy an institutional need to become comfortable with, among others things, the publicly made statements

Page 428

Tyree
of the management team in regards to their financial performance, the viability of the strategy going forward of the company, you know, the more mundane topics involving the size of the company, the assets of the company, the liabilities of the company, and a number of associated topics.
Q. Sunbeam had made a number of public statements concerning the success of Al Dunlap's turnaround plan for the company, correct?
A. I don't recall what -- reading the statements that you described.
Q. Do you recall that Sunbeam -- do you recall that Al Dunlap made public statements relating to the success of his plan for turning Sunbeam around?
A. My recollection was Al Dunlap was reasonably well known in the press, given his role in Scott Paper. I don't know if I -- I have a specific recollection of him making announcements in regards to Sunbeam. He may have, but I just don't recall those specifically.
Q. Do you recall that Al Dunlap's reputation was as a turnaround specialist?

Page 429

Tyree
A. Among other things, yes, I do.
Q. You were aware of that in March of 1998 when you were working on the convertible debenture offering, correct, that that was his reputation?
A. Again, among other aspects of his reputation, that was part of it; and, yes, I did have that sense of his reputation. He had just published a book about it.
Q. Did you consider it part of your due diligence objectives to attempt to confirm whether or not Sunbeam's claims of improved performance in '97 were real or not?
A. I can't recall exactly what my due diligence goals were.
Q. Do you recall whether that was one of them?
A. No. Because I don't recall what they were at that time.
Q. So you don't recall whether it was part of your due diligence objectives to determine whether or not Sunbeam's claims of improved financial performance in 1997 were real or false?

Page 430

Tyree
A. Again, I just don't remember. It's not to say that that wasn't a goal, but I don't remember having that as a discrete goal for my due diligence conduct.
Q. Who was at Morgan Stanley responsible for the due diligence activity that Morgan Stanley conducted in connection with its work for Sunbeam?
A. There wasn't one person.
Q. There was no one person responsible for due diligence?
A. No. At Morgan Stanley it's very much a team approach.
Q. There was no one senior person responsible for the work being completed in an appropriate way?
A. I'm sorry. The work being the due diligence work?
Q. Right.
A. I couldn't point to one person. It was a team effort.
Q. Were there senior members on the Morgan Stanley team who were responsible for confirming that appropriate due diligence was

NOT A CERTIFIED COPY

Page 431

Tyree

done?
A. I can't recall one person being assigned to oversee, you know, the due diligence process. That's not typically how we approach those things.
Q. Was Mr. Strong responsible for confirming that appropriate due diligence was done on any aspect of Morgan Stanley's work?
A. That's not how I would characterize it.
Q. Was Ruth Porat responsible in any way for assuring that appropriate due diligence was done on any aspect of Morgan Stanley's work?
A. Again, I wouldn't characterize her as the point person -- senior point person on due diligence.
Q. I'm talking about any aspect of it.
A. Well, I'm sorry. In terms of any aspect of due diligence, I think that both Ruth and Bill Strong were involved. They provided a degree of an oversight function. But as I said, it was a cooperative team effort.
Q. Was Jim Stynes responsible for assuring that appropriate due diligence was done

Page 432

Tyree

on any aspect of Morgan Stanley's work?
A. My recollection is that Jim Stynes was more involved in the three strategic transactions. I mean, what I've been speaking about are the financing transactions. So in terms of the financing transactions, I don't recall Jim being actively involved in an oversight capacity in that aspect of the due diligence.
Q. What about Bob Kitts? Did he have responsibility for making sure that Morgan Stanley conducted appropriate due diligence on any aspect of Morgan Stanley's work?
A. Excuse me. As it relates to the funding transactions or as it relates to the strategic transactions?
Q. As it relates to either Morgan Stanley's work as the underwriter on the debenture offering or as the investment banker for the three acquisitions.
A. Bob Kitts, similar to Jim Stynes, was, to my recollection, active on the strategic side. But I can't really opine on that because I didn't participate in it. He was, to my

Page 433

Tyree

recollection, less involved on the financing side of due diligence.
Q. Who were the people involved in conducting the due diligence that Morgan Stanley performed on any aspect of the engagement?
A. I'll name a couple of them. Ruth Porat, Bram Smith, Michael Hart; Bill Strong; Jim Stynes; Bob Kitts, myself. There was either a vice president or executive director of M&A, whose name escapes me -- oh, Andy Savarie. There were a number of junior people. I just can't recall their names right now.
Q. What did Ruth Porat do in terms of due diligence?
A. I don't know, because I wasn't with Ruth the whole time.
Q. I'm only asking for what your knowledge is.
What due diligence work did Ruth Porat do, to your knowledge?
A. The only specific thing I recall was going through the due diligence process of these or the documents we had at the time (indicating) that reviewed net sales for the quarter that we

Page 434

Tyree

discussed.
Q. You're referring to the activity on March 18th?
A. That's correct. Ruth was also, I mean, involved in this transaction or these transactions well before I was involved. So she may have played a role on the strategic side of the M&A transactions, but I'm just not aware of what it was.
Q. So the only due diligence activity on Ruth Porat's part that you're aware of is her participation in the conversation that took place on March 18th?
A. That's the only one that I can recommend. She may well have participated in other aspects of it. I just can't remember.
Q. What about Bram Smith? What due diligence work did Bram Smith do, to your knowledge?
A. My recollection was that Bram may have participated by phone or in person in the due diligence session in Florida. I just can't remember. Either him or Michael Hart. Bram had ongoing dialogue with the company in the context

NOT A CERTIFIED COPY

Tyree

of asking questions as it related to the debt financing side of this. I know he had those conversations. I know there were due diligence issues discussed. I just don't know exactly what they were. That's what sticks out in my mind.

Q. What about Michael Hart? What did Michael Hart do in terms of due diligence?

A. Similar to what I said about Bram. That's my recollection. They kind of worked together, as I recall.

Q. What due diligence did Bill Strong do, to your knowledge?

A. Bill was present in, you know, a lot of different places during the course of the transaction. I know he was present during an initial conference call that we had, which was, I guess, almost like an introductory call to the transaction -- the transactions, plural. This being when I became involved post, you know, a lot of the work being done on the M&A transactions and pre the financing transactions. There was a conference call there that he participated in. There were elements of due diligence discussed there. And then I just had

Tyree

on-and-off dialogues with Bill Strong. I can't remember the specific additional due diligence discussions that he had. As I said before, I also think he may have participated in discussions on the 18th -- the call on the 18th.

Q. I'm sorry. I may have missed it. But other than participating in the March 18 telephone calls relating to Sunbeam's first quarter performance, is there any other due diligence work you recall Mr. Strong doing himself?

A. Doing himself? If what you are getting at is did Bill Strong conduct a due diligence session with the company that was designated a due diligence session with the company, I don't recall him doing that -- doing that, but I recall him participating in dialogues which had characteristics of due diligence associated with them.

Let me just be clear here. Due diligence is a fluid process, as you know, and it's not just one session in time. You're constantly asking questions of the company seeking clarity. And Bill was part of, you know,

Tyree

certain of those dialogues.

Q. From the company, who was Mr. Strong involved in obtaining information about that related to Morgan Stanley's due diligence activity?

A. Again, I don't remember exactly who he asked specific questions of. I know that Bill had a fairly fluid dialogue with Al. He had a fairly fluid dialogue with Russ. I don't know the extent to which he asked them questions or not.

Q. Al is Al Dunlap, and Russ is Russ Kersh?

A. Yes. That's correct.

Q. And it's your understanding that Mr. Strong was in fairly regular contact with both of them?

A. I don't know if I call it regular, but I'll call it that he had a fluid dialogue.

Q. Fluid dialogue means -- what does that mean? More than -- you explain to me --

A. I'm sure during the course of my involvement in the transaction, he spoke to them multiple times.

Tyree

Q. Jim Stynes -- what due diligence work did Jim Stynes do?

A. I really don't know, because that was before I was involved.

Q. What due diligence work did Bob Kitts do?

A. Similar to Jim Stynes, I don't recall. It was before I was involved.

Q. Did you interview, in connection with your due diligence work, any of the people involved in what you've described as the strategic parts of the deal, the three acquisitions, to find out what they could tell you about their due diligence work?

A. I would not characterize it as an interview. I would characterize it as extensive dialogue during the course of the transaction about a number of topics, including the due diligence that they had done.

Q. So they were sharing information with you. And I take it you were sharing information with them that you were learning about the company?

A. Again, I have a vague recollection,

NOT A CERTIFIED COPY

Page 439

Tyree
but I think so, yes.
Q. Andy Savarie -- what due diligence work did he do?
A. I have a vague recollection that Andy participated in the due diligence discussions either in person or on the phone at Sunbeam's headquarters.
Q. Is that that one Florida meeting that you referred to?
A. That's correct. And, again, I don't know if it was one or multiple meetings that took place over a period of time.
Andy, similar to Bill Strong, was involved in a number of discussions during the course of the transaction where due diligence issues may or may not have come up. I don't have any specific recollection of that, though.
Q. How do you know he was involved in a number of discussions?
A. Because I talked to Andy frequently, as I recall, talked to a number of people, during the course of this transaction together fairly frequently.
Q. What was his general responsibility?

Page 440

Tyree
Do you have an understanding of that on the Sunbeam work?
A. His general responsibility was both, as was mine, to assist in the completion of the financing transactions; to -- to maintain an ongoing dialogue with the client. That's pretty much it.
Q. How would you characterize the extent of Morgan Stanley's overall due diligence of Sunbeam company?
A. I would characterize our due diligence, as I recall, as one which approached these financing transactions with a healthy degree of skepticism and covered a number of different areas in the course of our due diligence, as I think we've already described. That's how I characterize it.
Q. Would you characterize it as being thorough?
A. I would characterize it as being appropriate.
Q. What does appropriate mean in this content? I don't know if appropriate is thorough or superficial or what.

Page 441

Tyree
A. Appropriate is appropriate for the situation. That's the best way from my standpoint to look at due diligence. Because different situations require different kinds of due diligence. And, to my mind, the due diligence that we did was appropriate for the situation.
Q. What extent -- to what extent was due diligence necessary in connection with Morgan Stanley appropriately completing its assignments for the Sunbeam company?
MR. CLARE: Object to the form.
A. I just didn't understand that question.
BY MR. MARKOWSKI:
Q. Let me try to rephrase it.
Your telling me that the due diligence that Morgan Stanley did was appropriate is not very informative to me, because that's a conclusion on your part. And what I'm trying to understand is whether or not you believe that Morgan Stanley did a substantial amount of due diligence here that was thoroughly done and completed or whether or not your view of Morgan

Page 442

Tyree
Stanley's due diligence here was not in-depth; it was done in a short period of time or where you didn't have a sense of confidence with respect to understanding the performance of Sunbeam company.
MR. CLARE: I object to the form of the question.
BY MR. MARKOWSKI:
Q. So my question, Mr. Tyree, in that context is whether or not you believe that the due diligence investigation done by you and the other individuals that you've identified for me in the context of the four transactions that Morgan Stanley was engaged in to accomplish for Sunbeam was thorough?
A. And just so I'm clear on your question, in the beginning you said by my using the term "appropriate," it implies a conclusion on my part, correct, implying you don't want me to conclude? Well, "thorough" is a conclusion as well.
My view is that appropriate is the right way to characterize the due diligence that we did for this transaction. And I'm comfortable with it.

NOT A CERTIFIED COPY

Tyree

Q. Would you characterize it as extensive?
A. I would characterize it as appropriate.
Q. Would you characterize it as superficial?
A. Again, I'm not going to change the way I characterize this. I feel strongly this was an appropriate level of due diligence, given the situation and given the transaction.
Q. Do you deny that Morgan Stanley's due diligence was superficial?
A. I'm not denying anything. I'm saying that the level of due diligence that we pursued on this transaction was appropriate for the situation.
Q. So you don't deny that Morgan Stanley's due diligence was superficial?
A. My response stands.
Q. And your response is that you don't deny that?
MR. CLARE: Objection. That misstates his testimony.
A. No, that was not my response.

Tyree

BY MR. MARKOWSKI:
Q. Well, then, I misunderstood you. I thought you said that you did not deny the characterization that Morgan Stanley's due diligence was superficial.
A. Then I must have misspoken. Just to be very clear, my view as to the due diligence that the -- myself and the broader Morgan Stanley team, to the extent I know it executed on the Sunbeam transaction, was appropriate for the situation.
Q. Do you characterize it as extensive?
A. Are you asking me to change from "appropriate" to your terminology --
Q. No. I assume there is more than one way to characterize something, and "appropriate" is one way. I'm asking you whether you would also consider it to be extensive or whether you consider it to be superficial.
A. I believe that "appropriate" is the right descriptor for the work that we did on the Sunbeam due diligence transaction.
Q. There is no other characterization that you're willing to commit to with respect to

Tyree

the extent of Morgan Stanley's due diligence activity concerning Sunbeam other than "appropriate"; is that correct?
A. To my mind, it's not an issue of willingness. It's an issue of what I -- you're asking me a question what I believe. And I believe that the right term to use is "appropriate."
Q. There's no other term that you would consider to be a correct term to use in describing the extent of Morgan Stanley's due diligence?
A. No, there is not.
Q. Did you supervise any due diligence activity?
A. Can you clarify what you mean by "due diligence activity"?
Q. In connection with Sunbeam, you were involved in due diligence activity. You already testified to that.
A. Uh-huh.
Q. I want to understand if you supervised the completion of due diligence activity being performed by other Morgan Stanley

Tyree

personnel.
A. And just to be clear, when you say "due diligence activity," there's the activity of your assistant who's setting up the due diligence trips to go down there, and there is the activity of actually sitting around a table and asking -- running through a Q and A.
Are you talking about through that whole spectrum?
Q. Sure. Why not.
A. Yes, I did exercise some oversight, as it were.
Q. Who did you supervise in that context?
A. While I exercised oversight -- just to be clear, this was more of a team effort. And the teammates who helped me in this process ran from my assistant, who, you know, helped me manage a lot of the logistical issues, to -- and I'm forgetting their names now -- I believe a junior associate and an analyst who helped with things as mundane as collecting publicly available information on the company for me and for the rest of the team to analyze. And they

NOT A CERTIFIED COPY

Page 447

Tyree
additionally would help put together exhibits that would help me to guide the discussion in the context of due diligence and a number of other things.
Q. Did you supervise the activities of anyone involved in obtaining information from Sunbeam in connection with Morgan Stanley's due diligence activities?
A. I may have. I just don't recall exactly, you know, if one of those juniors that I mentioned, you know, were making periodic requests for data from Sunbeam. I have no exact memory of it.
Q. Did you consider someone to be your supervisor with respect to any of the due diligence activities that you were engaged in?
A. I wouldn't characterize them as supervisors.
Q. Did you consider someone to be responsible for monitoring your due diligence activity and assuring that your due diligence activity was done appropriately in connection with the work you did for Sunbeam?
A. I would again characterize it

Page 448

Tyree
differently. If you like me to, I will --
Q. Go ahead.
A. I would characterize it that in this broad team that executed due diligence were senior people, managing directors and whatnot who would periodically provide me with advice, who I could go to with questions, who would help me in the context of my interaction with the clients, among other things.
Q. Were there senior people who tasked you with particular due diligence projects in connection with the work you did?
A. I don't recall any specific tasking by senior members of the team to do specific things in the context of due diligence. I just don't recall it.
Q. Is it fair, in your mind, for me to characterize your due diligence with respect to the debenture offering as being the person responsible at Morgan Stanley for the proper completion of that due diligence?
A. No.
Q. How would you characterize your due diligence responsibility with respect to the

Page 449

Tyree
debenture offering?
A. I'm sorry. We're moving now to -- we're sticking with the convertible?
Q. Yes.
A. My role, as I recall it, was to help manage the due diligence process in the context of everything from setting up meetings, making sure the appropriate people from Morgan Stanley and from the company attended those meetings, and basically helping to shepherd the process along, is how I would characterize it.
Q. Other than -- I would characterize that primarily as an administrative activity.
Is that a fair characterization, in your mind?
A. No.
Q. How am I misperceiving, then, the extent of your responsibility?
A. Well, shepherding, for example, the process along, to my mind, is a very important role. It moves far beyond, as you put it, administration. Because, among other things, with the advice of your teammates, you have to make judgments; and you have to make

Page 450

Tyree
recommendations, and you have to discuss those recommendations with the right teammates. And then you have to communicate those in an appropriate fashion to the client. And that is not always an easy thing to do. And it requires thought, and it requires judgment; and, most importantly, it requires the ability to bring the right people, the right teammates, together.
Q. So you disagree with my characterization of you as being the person in charge of making sure that the due diligence was done properly on the debenture offering, correct?
A. That is not how I would characterize it.
Q. But you would be comfortable characterizing you as being the person responsible for acting as the shepherd with respect to the completion of the due diligence activity?
A. I would be comfortable in saying, among other things, I helped to shepherd the process along.
Q. Who else was involved in playing that role?

NOT A CERTIFIED COPY

015126

Page 451

Tyree
A. Many, if not most, of the people who I mentioned earlier.
Q. On the debenture offering?
A. On the debenture offering, yes.
Q. I'm going to mark as CPH Exhibit 25, Mr. Tyree, a document that has as its cover page a fax cover sheet from Skadden Arps. It's dated March 3, 1998.
(CPH Exhibit 25, fax cover sheet from Skadden Arps dated 3/3/98, marked for identification, as of this date.)
THE WITNESS: Are you going to ask specific comments about the contents --
BY MR. MARKOWSKI:
Q. I'm going to have a couple of very general comments, but I want you to take a moment to see if it refreshes your memory, to review it.
A. Okay.
Q. The fax cover sheet indicates that Mr. Easton at Skadden Arps is forwarding to you and Alan Dean at Davis Polk a list of documents relating to Sunbeam Company; is that correct?
A. This appears to indicate that,

Page 452

Tyree
although I don't have any recollection of this document.
Q. That was my next question.
Do you remember receiving this fax from Mr. Easton?
A. I do not.
Q. This document was not produced to us from Morgan Stanley's document production in this case. It was instead produced by Davis Polk.
Do you know, if you had received this document on March 3, 1998, or thereabouts from Mr. Easton, what would have happened to it at Morgan Stanley?
A. Sorry. What would have happened to it?
Q. Right.
A. I don't know what would have happened to it. I don't really understand the question.
Q. Well, it wasn't produced to us. So I'm assuming that Morgan Stanley no longer has this document. And I'm wondering if you can explain that.
A. Given the fact that I don't recall ever seeing it before, the answer to your

Page 453

Tyree
question is I have no idea what might or might not have happened to this document.
Q. Is this the kind of document that if you had it in your personal file at the end of Morgan Stanley's work for Sunbeam, that you would have discarded it?
A. I mean, as I was saying before, my own files, I typically keep documents such as commitment committee memos and prospectuses. A list of documents such as this one is not one that I, as a matter of course, keep in my files.
Q. Is this typically the kind of document that you would ordinarily throw away at the end of your work on a project?
A. No. It's just a document that I wouldn't necessarily keep or discard as a matter of course.
Q. Well, that's what I'm trying to understand.
Is it your personal practice -- or was it your personal practice back in 1998 if at the end of your work on a project, a due diligence project, you had in your possession a list such as this of due diligence documents that

Page 454

Tyree
you would either make an effort to preserve it or make an effort to clean the file by discarding it?
A. Again, as we said before, I'd rather not comment on a hypothetical and what I would have done back then. I will say that if I were to go to the office today and look at some of the files from old transactions, I don't necessarily know if a document like this, which is, frankly, fairly unique, would be in those files.
Q. Do you know why Mr. Easton would have faxed this document to you?
MR. CLARE: Objection; calls for speculation.
A. I do not know.
BY MR. MARKOWSKI:
Q. Do you know -- well, Mr. Easton's cover sheet suggests that contact be made with Todd Freed at Skadden Arps' New York office to make arrangements to review the documents contained on the attached list, correct?
A. That's what this document implies.
Q. Do you know -- did you got to -- did you go to Skadden Arps' offices to review

NOT A CERTIFIED COPY

0151127

Page 455

Tyree
documents of the sort listed on the attachment to CPH Exhibit 25?
A. Again, I have no recollection of this document or going to their offices to review the contents of this or, you know, what they had available at their offices.
Q. Do you recall assigning to someone else the responsibility to review documents at Skadden Arps?
A. No, I don't recall that.
Q. Do you recall whether anyone else from Morgan Stanley in fact did go to Skadden Arps to review documents of this sort listed in CPH Exhibit 25?
A. I do not recall that.
Q. Mr. Tyree, how were the results of your due diligence work communicated to other people at Morgan Stanley?
A. Are you referring to the Sunbeam transaction?
Q. Yes, I'm talking about Sunbeam.
A. My recollection is my due diligence findings were communicated in a number of different ways. Verbally, I have a recollection

Page 456

Tyree
of a brief discussion about due diligence in our commitment committee meeting.
We've already talked a lot about the due diligence done on the call on the 18th. I have a vague recollection of after the bring-down-due-diligence call leaving a voice mail for the team that that had been completed and a number of different ways that I just can't recall today.
Q. Did you memorialize in some way, the substance of the due diligence information that you obtained?
A. Not to my recollection.
Q. Is that typical on your part not to memorialize in some way the facts that you're obtaining from a company in connection with due diligence activity?
A. I don't recall having memorialized due diligence in a memo format for other team members of the firm. I don't recall ever having done that. If that answers your question.
Q. And you don't recall doing that in this case?
A. No, I don't recall doing that in this

Page 457

Tyree
case.
Q. You indicated that you may have made some statement relating to due diligence activity in the commitment committee meeting?
A. Just to clarify, I mean, we had an equity commitment committee meeting. I believe I was there. And I think due diligence may have come up. I don't remember the substance of that dialogue.
Q. Do you remember if you were asked questions about the due diligence work that you had done?
A. I don't remember getting asked specific questions about due diligence.
Q. Do you remember in general being asked questions, whether you can remember the specific questions or not?
A. I don't have any -- I don't have any general or specific recollection about the questions that may have been asked about due diligence.
Q. Do you remember the substance of any of the information you provided to the members of the commitment committee when the subject of due

Page 458

Tyree
diligence came up?
A. No.
Q. Do you remember the substance of the voice mail message that you left after the bring-down-due-diligence call?
A. My recollection was that, among other things I mentioned, that we had had a discussion with senior management of Sunbeam that they had gone through in detail buildup similar to the one that we discussed on the call on the 18th and that they were -- after reviewing that, were comfortable and more on track in terms of achieving those numbers. Beyond that, I don't have a recollection.
Q. Do you recall who you left that message for?
A. I do not.
Q. Do you recall any communications that you had with Bill Strong where you reported to him on your due diligence work?
A. No.
Q. Do you remember any communications with Ruth Porat where you communicated to her regarding your due diligence work?

NOT A CERTIFIED COPY

015128

Tyree

A. I don't have -- no.
Q. How often did you speak with Bill Strong relating to the work that you were doing on the Sunbeam engagement?
A. I don't remember exactly.
Q. I'm not asking exactly.
Do you recall approximately how frequently you would communicate with Bill Strong relating to your Sunbeam work?
A. I think we spoke, at a minimum, several times a week during my involvement in the transaction.
Q. How frequently did you communicate with Ruth Porat relating to your Sunbeam-related work?
A. I don't think I communicated with Ruth Porat as much at the beginning of my role in the transaction. But that accelerated towards the end, during the road show and pricing, during that period of time, barring for a moment the conference call that we discussed. I give it a couple of times a week.
Q. Of the managing directors from Morgan Stanley who were involved in the various aspects

Tyree

of the Sunbeam engagements, is it fair to say that your communications with Bill Strong were more frequent than they were with the other individuals?
A. No. I wouldn't necessarily say that, but primarily, just because I can't remember. So I wouldn't want to specify.
Q. Well, you indicated that you spoke at least several times a week with Bill Strong.
Do you think there are other managing directors with whom you spoke as frequently?
A. Again, during my involvement, I spoke to a number of managing directors. And the number of times that I spoke to them depended on really what was going on with the transaction at the time. So, for example, as you mentioned earlier, when I first got on the transaction, I needed to be briefed by some of the members of the M&A team.
So during that period, we had a fairly extensive number of discussions, and that then tailed off. So it's hard for me to generalize who I had more or less conversations with during the course of my work in the

Tyree

transaction.
Q. Were your conversations with Bill Strong fairly frequent throughout the entire course of your work on the transaction?
A. Again, at least a couple of times a week.
Q. Who at Morgan Stanley was responsible for evaluating the significance of the information that was being learned in the course of the due diligence?
A. The team that I described.
Q. That list of several people that you provided to me earlier were the people that were involved in the due diligence. Is that the team that you're referring to?
A. Let's be clear. Individuals such as Ruth, myself, Bill Strong and others.
Q. I want to make sure I understand your reference. Maybe you can list them for me again.
Who did you understand to be responsible at Morgan Stanley for evaluating the significance of information being learned about Sunbeam during the course of Morgan Stanley's work for Sunbeam?

Tyree

A. Just to be clear, I don't view there is one person who is responsible for that. I view it as the responsibility of the whole team who participated in the due diligence process. And so as we said there, people such as Ruth Porat, Bram Smith, Michael Hart, myself, Bill Strong would be a sample group of those people.
Q. Well, who else? I guess I'm interested in more than a sample.
A. I mean, I don't mean to be facetious, but I just can't tell you. Those are the only people. Because there may have been other people I had discussions with that I don't remember or that they had discussions with that I'm not aware of. Those are the key people who I remember. And Andy Savarie as well.
Q. Maybe it doesn't work this way. But what I'm trying to understand, Mr. Tyree, is whether, in your mind, there was one or more individuals at Morgan Stanley who had responsibility on behalf of the firm for evaluating the significance of the information that was learned about Sunbeam in connection with the due diligence activity that was being

NOT A CERTIFIED COPY

0151129

Tyree
conducted.
A. And to answer that, I don't think there is one or two, as you said. I think it's that whole group that I laid out.
Can I give you one other example? During the equity commitment committee meeting, you can meet with a number of people at the firm who opine on a number of issues. And I can't remember who was on the committee. But one could say they played a role in evaluating the company and the issues facing the company and whatnot.
So it's a very team-oriented process which uses a number of different people. And I just can't remember all of their names.
(CPH Exhibit 26, Project Laser Financing Structure Discussion February 27, 1998, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree --
THE WITNESS: Would you mind if I take off my coat?
MR. MARKOWSKI: No. Whatever you prefer.

Tyree
THE WITNESS: Okay.
BY MR. MARKOWSKI:
Q. Mr. Tyree, I put in front of you something we've identified as CPH Exhibit 26. The cover page reads "Project Laser Financing Structure Discussion February 27, 1998."
Have you seen this document before?
A. Let me review it to see if it triggers my memory. I recall seeing a document similar to this one.
Q. Let me direct your attention to the page that's Bates-numbered CPH 1412974. The title on that page is "Project Laser 144A Zero Coupon Convertible Check List," correct?
A. That's what's on the page, yes.
Q. The 144A Zero Coupon Convertible Check List is a reference to the convertible debenture offer, correct?
A. The convertible debenture offering being the Sunbeam?
Q. Correct.
A. It's not -- it looks that way. But, again, I can't remember this page in particular.
Q. Let me direct your attention to the

Tyree
first major bullet point, "Before Launch."
Do you see that?
A. Yes.
Q. Do you see the second item? Can you read that for me into the record.
A. Starting with "Due diligence"?
Q. Right.
A. "Due diligence laser and targets may be able to piggyback on prior due diligence."
Q. Do you recall that "laser" was the code name for Sunbeam in connection with Morgan Stanley's work on Sunbeam?
A. Laser was either the name for the series of transactions or for Sunbeam. I think it was actually a project name. But looking at this, that may have been used also to refer to Sunbeam.
Q. What do you understand the reference to piggybacking on prior due diligence in connection with zero coupon offering to refer to?
A. I don't know if I have anything to add to this. And, you know, the concept of piggybacking kind of is what it is.
Q. Did you do that in connection with

Tyree
due diligence on the debenture offering?
Did you piggyback on other due diligence activity?
A. Myself personally?
Q. Right.
A. I wouldn't characterize it that way.
Q. Did you -- do you know if anyone else in connection with the due diligence on the convertible debt offering piggybacked on other due diligence?
A. Again, to my knowledge, I wouldn't characterize what the team did in the context of due diligence as just piggybacking.
Q. Well, this note is "due diligence laser and targets may be able to piggyback on prior due diligence."
Is it your testimony that was not done in connection with the due diligence on the convertible debenture offering?
A. No. It's just my testimony. I think you asked me -- I think you asked me what I did. And I don't know if I would characterize what I did, or the members of the team what they did, as piggybacking. I would use a different term --

NOT A CERTIFIED COPY

Tyree

Q. So, in your view, Morgan Stanley did not, in connection with the due diligence on the convertible debenture offering, piggyback on prior due diligence; is that correct?

A. In my view, what Morgan Stanley did was build on prior due diligence done as opposed to using the term "piggybacking."

Q. How do you distinguish the two notions?

A. I distinguish it primarily through the fact that when you've already done due diligence on an asset and have a base understanding of it, you can build on that by refining your understanding as opposed to being in a situation where you don't know the asset at all and have to start from ground zero.

Q. How do you distinguish what you've just described as building on from piggybacking?

A. Well, because I think piggybacking can be misconstrued. It's not that precise a term.

Q. So you think piggybacking would be a poor term to use to describe the due diligence activity that Morgan Stanley did on the debenture

Tyree

offer?

A. No. I think it would be an inappropriate term to describe what I personally did and what I witnessed in the context of the due diligence in the context of the transaction.

(CPH Exhibit 27, Project Laser Fast Track Due Diligence, marked for identification, as of this date.)

BY MR. MARKOWSKI:

Q. Mr. Tyree, you have in front of you CPH Exhibit Number 27. It bears Bates number Morgan Stanley confidential 26219. I'd like you to take a moment to review this one-page document.

A. Okay.

Q. The title is "Project Laser Fast Track Due Diligence."

Do you see that?

A. I do.

Q. Did you ever hear -- have you seen this document before?

A. I don't recall seeing this document before.

Q. Did you ever hear the term "fast

Tyree

track due diligence" before?

A. I've heard people use that term.

Q. Did you ever hear the term used in connection with any aspect of due diligence done by Morgan Stanley on the Sunbeam engagement?

A. I don't recall hearing that term back then.

Q. What do you understand "fast track due diligence" to mean?

THE WITNESS: Did we go through this last time?

A. But in terms of what fast track due diligence means --

BY MR. MARKOWSKI:

Q. It could be one of your twenty hours of preparation for today.

MR. CLARE: No. I think he was referring to the prior deposition whether this was covered or not.

A. But, anyway --

BY MR. MARKOWSKI:

Q. That may be why it's familiar.

A. Sorry. Your question is what did you understand fast track due diligence to mean. I

Tyree

don't really have any understanding above what one would translate that to mean as written on the page.

Q. Well, I don't understand what that means. You are an investment banker. Can you explain it to me?

A. No. It's not what I would characterize as a term of art.

Q. So -- although you've heard the term used at Morgan Stanley, I take it, correct?

A. No.

Q. You've never heard someone at Morgan Stanley use the term "fast track due diligence"?

A. I don't recall anyone using it as a term of art, no.

Q. I'm not referring to it as a term of art. I'm asking if you've heard someone use the phrase "fast track due diligence."

A. I don't recall before hearing anyone at Morgan Stanley use the term "fast track due diligence." You know, I don't recall that.

Q. Is this -- does the term have a prejorative connotation to you?

A. No. It has no connotation to me.

NOT A CERTIFIED COPY

015131

Page 471

Tyree
Q. So fast track does not necessarily mean good, bad or indifferent in terms of due diligence, in your mind?
A. Absolutely not. It doesn't mean anything -- it doesn't imply anything to me per se.
Q. Why would you use "fast track due diligence"? Do you have any understanding of that?
MR. CLARE: I object to the characterization. I don't think he's testified that he did use that term.
A. I'm sorry. Why would I use that --
BY MR. MARKOWSKI:
Q. Why would someone use the term "fast track due diligence"?
Let me take the question back. Why would an investment banking firm employ fast track due diligence?
A. I don't know why an investment banking firm would employ fast track due diligence.
Q. Do you know if Morgan Stanley ever employed fast track due diligence?

Page 472

Tyree
A. You're implying again it's some kind of term of art or process that people understand. I don't really know what you mean or what this means by fast track due diligence as a process.
Q. That's what I'm trying to understand. It's on a document produced to us by Morgan Stanley. It says, fast track due diligence relating to project laser. I'm trying to understand what it means and why it would be employed as an approach to due diligence.
Can you shed any light on any of that?
A. I cannot.
Q. The first item on the list of numbered entries is access to CPAs and work papers.
Do you see that?
A. I do.
Q. In connection with the due diligence you did of Sunbeam, did you get access to the work papers of Arthur Andersen?
A. I don't remember if I did or not.
Q. Do you have any recollection, as you sit here, of having asked for Andersen's work

Page 473

Tyree
papers?
A. Again, I don't remember. Although that doesn't mean it didn't happen.
Q. Do you have any memory of seeing any Arthur Andersen work papers in connection with the work that you did for Sunbeam?
A. I don't have any recollection of that.
Q. The thirteenth entry, "meet with sales executives and customers" --
A. Yes.
Q. -- do you see that?
A. Uh-huh.
Q. Do you have any recollection of having any communications at any point with any Sunbeam customers?
MR. CLARE: I'm going to --
BY MR. MARKOWSKI:
Q. -- in connection with your due diligence activity?
MR. CLARE: I'm going to object to this question generally with respect to this document. I think you're mischaracterizing this document and the role that it played in

Page 474

Tyree
the transaction by asking questions about due diligence that was done on Sunbeam when there are indications on the document that that's not what it was created for.
If you want to ask him questions independent of the document, that's fine. But I object to the characterization of the document, the implication that the document was in the manner that you're suggesting.
BY MR. MARKOWSKI:
Q. Do you recall the question?
A. Do you want to repeat the question?
Q. I'll ask it again.
Do you recall, in connection with the due diligence you did with Sunbeam in connection with Sunbeam, having any contact with Sunbeam's customers?
A. Again, I don't recollect one way or the other if I did.
Q. Do you recall knowing whether any -- do you recall whether any other Morgan Stanley personnel had any contact with Sunbeam customers in connection with Morgan Stanley's due diligence activity?

NOT A CERTIFIED COPY

Tyree

A. They may have. I just don't recall.
Q. You don't have any recollection of that as you sit here?
A. Not one way or the other, no.
THE VIDEOGRAPHER: The time is 2:36, and we're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 2:46 p.m.
(CPH Exhibit 28, Sunbeam Due Diligence Review Agenda, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, I give you what we're marking as CPH Exhibit Number 28. It's a two-page document entitled "Sunbeam Due Diligence Review Agenda." I guess you only have one page. The second page has some other -- it's a one-page document entitled Sunbeam Due Diligence Review Agenda."
Have you seen that document before?
A. I don't recall seeing this document.
Q. The first numbered paragraph is entitled "Recent Developments For You."

Tyree

Do you see that?
A. Yes.
Q. And the third bullet under that is "high dependence of repeat sales growth on grills."
Do you see that?
A. Yes, I do.
Q. Do you recall, in connection with your due diligence activity, that an important due diligence issue for Morgan Stanley was the nature of Sunbeam sales growth and the extent to which it depended on grill sales?
MR. CLARE: Object to form.
A. As I mentioned earlier, I don't have a clear recollection of these key issues, as you put it, in terms of our due diligence review. I just don't remember it.
BY MR. MARKOWSKI:
Q. Do you remember particular emphasis being placed on -- in connection with Morgan Stanley's due diligence work on Sunbeam's grill business?
A. No. No. The only thing I remember in the context of due diligence and grills, I

Tyree

remember us seeing one of the facilities. And among other white goods, we saw some grills. But that's all I recall specifically about that time.
Q. You don't recall any concern that Sunbeam's recorded sales growth in its grill business wasn't sustainable?
A. I don't recall it one way or another.
(CPH Exhibit 29, Financial and Advisory Services Equity Offering Memo Table of Contents December 1993, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit 29. This is a document that we have assembled from the document that you brought to the first session of your deposition. Rather than mark the entire document as an exhibit, we marked the cover page, included the cover page and a couple of selected documents that are contained in this.
I've got a couple of general questions about it. We've got the entire document here if anybody wants to take a look at it. The cover page is Bates-numbered Morgan

Tyree

Stanley confidential 89440. And that's the table of contents entitled "Financial and Advisory Services Equity Offering Memo Table of Contents December 1993."
Do you see that?
A. Equity offering manual, yeah -- yes, I do.
Q. Did you consult, Mr. Tyree, in connection with the due diligence work that you did for Morgan Stanley, in connection with the Sunbeam engagements, any materials contained in this document relating to the manner in which due diligence should be conducted?
A. First of all, I don't recall consulting this memo or this memorandum one way or another. It's the first time I've seen this other than when we were talking in our previous discussion. So I haven't gone through it in detail. But, no, I don't recall consulting this in the context of Sunbeam.
Q. Have you ever consulted this document?
MR. CLARE: Let's just be clear. For the record, when you're talking about "this

UNCERTIFIED COPY

0151133

Page 479

Tyree
document," counsel has represented that this is not the document -- this is not a document --
THE WITNESS: A full document.
MR. CLARE: -- a full or complete document. This is a compilation that counsel has selected for purposes of facilitating a conversation.
So I'll object to the extent that questions aren't clear or answers -- I would just, for the sake of clarity, make sure that we're clear about what we're talking about.
BY MR. MARKOWSKI:
Q. I'm referring to the entire document that we've taken this excerpt from.
Do you recall consulting that document in connection with the work that you did on the Sunbeam engagement?
A. No, I do not.
Q. Do you recall ever seeing this document before?
A. You mean -- I do not recall seeing this document per se before -- you know, before

Page 480

Tyree
seeing it now in the context of these discussions. That's not to say I haven't seen it. It's just I don't have a direct recollection of it or using it on transactions.
Q. Do you recall this is a document that was used in connection with the training that you received at Morgan Stanley?
A. It may have been, but I don't recall using it as a matter of rote every time I did a transaction.
Q. It's not a document that you have a personal copy of?
A. I don't believe I have a personal copy of it in my office.
Q. Let me direct your attention to one of the memos that we've included in this excerpt. It's about fifteen pages in. The Bates number on the bottom right-hand corner is 80756.
A. Yes.
Q. It's a February 7, 1992, memorandum from R. W. Matschullat to IBD Professionals regarding due diligence.
Do you see that?
A. I do.

Page 481

Tyree
Q. Who is Mr. Matschullat? Do you know?
A. It's Bob Matschullat. As I recall, when I first joined the firm, I believe he was the head of investment banking. I could be wrong, but I believe that was his position.
Q. IBD is a reference to what?
A. The investment banking division.
Q. Mr. Matschullat's memo indicates that he's forwarding a copy of a memorandum written by Frank Quattrone at his request.
Do you see that?
A. That is what this says.
Q. Let me ask you to page a couple of pages further into our document. It's Bates-numbered 87059. It's a February 5, 1992, memorandum from F. P. Quattrone to R. W. Matschullat re minuscribe (phonetic)/due diligence.
Do you see that?
A. I do.
Q. Have you ever seen Mr. Quattrone's February 5 memorandum before?
A. Have I seen this memorandum before?
Q. Yes. Have you ever seen

Page 482

Tyree
Mr. Quattrone's February 5, 1999, memorandum concerning minuscribe (phonetic) due diligence before?
A. Not that I recall.
Q. This is not a document that you recall receiving in connection with any training that you received at Morgan Stanley?
A. I don't recall. I may have. I just don't remember.
Q. Let me direct your attention to another document a couple of pages further into this.
A. Uh-huh.
Q. It's a March 29, 1993, letter from W. Reece Bader at Orrick, Herrington & Sutcliffe to Jonathan Clark, Managing Director and General Counsel, Morgan Stanley & Company Incorporated.
Do you see that?
A. I do.
Q. This is Bates-numbered Morgan Stanley confidential 80765.
It indicates that Mr. Bader is forwarding a recent memorandum prepared by his partner Bill Alderman. And if you turn to the

NOT A CERTIFIED COPY

0151314

Page 483

Tyree
next page, there's a March 1993 article by William Alderman, Gary Weiss, John Canberg (phonetic) of Orrick, Herrington & Sutcliffe entitled "Don't and Due Diligence: Some Practical Tips From Litigators on Effective Conduct and Documentation of Underwriter Investigation."
Do you see that?
A. I do see that.
Q. Have you ever seen this memorandum before?
A. Not that I recall.
Q. It's not a document that you recall being provided in connection with any training that you received at Morgan Stanley?
A. I don't know. I just don't recall having seen it.
Q. Let me direct your attention to Page 16 of the memorandum.
A. Page 16?
MR. CLARE: Of the Alderman article?
MR. MARKOWSKI: Right.
BY MR. MARKOWSKI:
Q. It's Bates Number 80782.

Page 484

Tyree
A. Okay.
Q. Let me direct your attention to the last paragraph on the page.
A. Yes.
Q. I'm going to read two or three statements and ask you if you agree or disagree: "Providing organized in-house or other training to junior bankers or lawyers on appropriate due diligence techniques, and documentation can expel any future claim that they were insufficiently experienced to perform assigned roles."
Do you agree or disagree with that?
A. It's a little bit of a legal thing in terms of dispelling of future claim, but I guess I agree with the fact that providing organized in-house training to junior bankers in regards to due diligence is a good thing.
Q. Let me direct your attention to the next statement: "In addition, thorough documentation by the junior team members will facilitate review and supervision by more experienced senior members thereby not only helping to catch and correct any shortcomings in the work, but enabling the underwriter to point

Page 485

Tyree
to the careful nature of the process which was used."
Do you agree or disagree with that statement in connection with due diligence work by underwriters?
A. I agree that if junior members of a team document extensively their due diligence discussions, that, you know, the ability for other team members to review that and track the process more closely is a true statement.
Q. Did you thoroughly document your due diligence activities in connection with the Sunbeam due diligence investigation?
A. It depends on your definition of document.
Q. Well, in what way did you document your due diligence work?
A. As I recall, we discussed at length due diligence topics we discussed, "we" being the team and senior team members; what kind of information we were going to request from the client. Although I don't have the documents in front of me, I believe that we put together a series of checklists designed to lay out what

Page 486

Tyree
kind of questions we were going to ask and the follow-up we were going to do.
So in the context of shaping and, as I said, shepherding the process along, I thought that was an appropriate approach to documentation.
Q. But you didn't memorialize, you've already testified, the substance of any of the information that you obtained from Sunbeam, correct?
MR. CLARE: I object. Misstates the prior testimony.
A. What I did not do, I did not copy down every response that I received from the client in the context of due diligence and then provide that to the broader team. No, I did not do that.
BY MR. MARKOWSKI:
Q. Did you memorialize any of the due diligence information that you obtained from Sunbeam?
A. Yes. As I said, I mean, we documented a number of the questions that we asked, the topics that we covered. We

NOT A CERTIFIED COPY

Page 487

Tyree
distributed the information to various members of the team during the process we used -- well, it's not memorialized in terms of written form, but we used voice mail extensively. So I think we communicated appropriately the context of our due diligence.
Q. My question relates to documentation. You did not document any of the information you obtained from Sunbeam in connection with the due diligence work that you, John Tyree, did; isn't that correct?
MR. CLARE: Objection; misstates prior testimony, and asked and answered.
A. What I recall that I did not do, I did not copy down every response that came from Sunbeam due diligence discussions with management and whatnot and then distribute that around to the team. I did not do that, nor is that a normal process in the context of our due diligence.
BY MR. MARKOWSKI:
Q. I'm not asking about every; I'm asking about any.
You didn't document any of the

Page 488

Tyree
information that you obtained from Sunbeam management in connection with the due diligence work that you personally conducted?
A. I don't recall if I did or did not.
Q. You have no recollection of doing that, do you?
A. I don't have a recollection of, as I said before, putting together memoranda that reviewed all of our dialogue with the team and sending that around to the broader group. No, I don't recall doing that.
Q. I'm not asking about all; I'm asking about any.
You didn't document any of the due diligence information that you obtained from Sunbeam, did you?
A. No. I'll say it again: I don't recall doing it.
Q. In connection with the due diligence work that you did, did you contact Sunbeam's internal auditors?
A. As I recall, we had discussions with Arthur Andersen in regards to due diligence.
Q. Internal auditors, I'm asking about,

Page 489

Tyree
not outside.
A. Sorry. When you say "internal auditors," you mean their internal Sunbeam employees?
Q. Correct.
A. I don't recall if we did or not.
Q. Did you even determine the identity of the members of the Sunbeam internal audit department?
A. I don't know. I just don't recall.
Q. Did you meet Tom Hartschorne or communicate with Tom Hartschorne in connection with your due diligence work?
A. I don't recall meeting him.
Q. Do you recall communicating with a Diedra DenDanto in connection with your due diligence work?
A. Again, I don't recall the name one way or another.
(CPH Exhibit 30, memo dated 3/12/98 from Diedra DenDanto to Al Dunlap and others, marked for identification, as of this date.)
BY MR. MARKOWSKI:

Page 490

Tyree
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit 30. It's a two-page document Bates-numbered CPH 1122102 to '103. And it's a memorandum from Diedra DenDanto dated March 12, 1998, to Al Dunlap, Russ Kersh, Don Uzzie, T. Hartschorne, and the board of directors. Take a moment to look at that.
My first question is whether you've ever seen this before.
A. I'm just going to read through it, but I have not seen the document before.
Q. Go ahead. Read it.
A. Okay.
Q. Do you agree with me that in this memorandum, Ms. DenDanto states her strong objection to Sunbeam's accounting for its bill-and-hold sales?
MR. CLARE: Object. The document speaks for itself.
A. That's what the written words say.
BY MR. MARKOWSKI:
Q. March 12, 1998, was right in the middle of the time that you were doing due diligence of Sunbeam, correct?

NOT A CERTIFIED COPY

0151136

Page 491

Tyree
A. I don't know if it was in the middle of the time that we were conducting due diligence. It was prior to that phone call that we discussed.
Q. It was in the midst of it, correct? March 12, 1998, you had started your due diligence by that point, correct?
A. I believe we had.
Q. You personally had started due diligence before March 12, correct?
A. I believe that I had.
Q. But you have no recollection of contacting Diedra DenDanto or Tom Hartschorne in connection with the due diligence activity you engaged in, correct?
A. I don't have any recollection of it.
Q. Is that standard, that in connection with doing due diligence in connection with a major equity or debt offering, not to contact internal audit of the issuing company --
MR. CLARE: Object --
BY MR. MARKOWSKI:
Q. -- as part of the due diligence process?

Page 492

Tyree
MR. CLARE: Object to the form of the question. And I also object to the premises.
A. As I've said before, there is really no standard due diligence process. Myself -- speaking for myself, it is certainly and pretty much all the transactions that I've worked on, you have extensive dialogue with the third-party auditors. I have spoken to internal auditors before, but I don't know if I characterized one thing as standard or not standard.
BY MR. MARKOWSKI:
Q. Did you think, in connection with the Sunbeam due diligence, that would have been important to talk to the Sunbeam internal audit group as part of the due diligence process?
A. Is your question did I think it would -- at the time, did I think it was important then?
Q. Right.
A. I don't recall what my impressions were in terms of having dialogue with the internal auditors in addition to the third-party auditors.

Page 493

Tyree
Q. Were you aware at any time during the period that you were conducting due diligence of the objections made by Sunbeam's internal auditors to the company's bill-and-hold accounting practices?
A. I don't recall being aware of that, no.
Q. No one advised you that Sunbeam's internal auditors strongly objected to Sunbeam's bill-and-hold transactions?
A. No.
Q. Or to the accounting treatment the company gave to those transactions?
A. Not that I recall.
Q. You indicated that you had extensive -- strike that.
Do you recall as part of your due diligence activity speaking to Arthur Andersen?
A. I have a vague recollection of it, yes.
Q. What do you remember?
A. I recall having a -- it was either a due diligence call or a due diligence meeting with them on accounting issues. I recall having

Page 494

Tyree
a bring-down due-diligence discussion with representatives of Arthur Andersen at the printers. And then, you know, they were -- they were typically present in several different meetings where we did drafting and things of that nature
(CPH Exhibit 31, memo dated 3/7/98 from Mr. Tyree to Sunbeam financing team, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Let me show you, Mr. Tyree, what we've marked as CPH Exhibit Number 31. It's a one-page memorandum Bates-numbered CPH 635893. It's a Morgan Stanley memorandum from you to the Sunbeam financing team dated March 7, 1998. The subject is accounting due diligence call.
Do you recall this document?
A. I do not.
Q. Do you recall that you were the person at Morgan Stanley responsible for setting up due diligence conference calls with the Sunbeam outside auditors and the outside auditors for the three companies that Sunbeam was acquiring?

NOT A CERTIFIED COPY

Page 495

Tyree
A. I wouldn't characterize it as I was responsible for setting it up. I certainly played a role in accounting due diligence.
Q. What was that role?
A. My recollection -- it's been a long time, but I participated in the call and I had ongoing dialogue with the auditors. I believe I conducted bring-down due diligence at the printers. I think it was on the 19th. And I was just in general involved in these discussions.
Q. Do you recall that Morgan Stanley allocated thirty minutes for its due diligence telephone conversations with each of the outside accounting firms?
A. No, I don't recall that.
Q. Would you consider thirty minutes to be an adequate amount of time to conduct thorough due diligence discussions with the outside accounting firm --
A. It very much depends.
Q. -- corporation?
A. It very much depends.
Q. On what?
A. A number of factors.

Page 496

Tyree
Q. Such as?
A. Among others, the extent to which it is bring-down due diligence versus initial due diligence; the extent to which the company may have recently conducted a transaction with your firm, say, in the past quarter. There's a number of factors.
Q. Well, the call referenced here the March 12, 1998, call. That was not the bring-down due diligence call, was it?
A. I don't know what this call was.
Q. Well, the transaction, the debenture offering, didn't close until toward the end of March; is that correct?
A. I believe that's correct.
Q. You wouldn't have been doing the bring-down due diligence call March 12, then, would you?
A. No. I don't think we would have.
Q. So let's assume this was the initial discussion with the outside accounting firms.
Would you consider thirty minutes of time to be adequate to do thorough due diligence of the outside accounting firm for Sunbeam?

Page 497

Tyree
A. I wouldn't assume this was necessarily the first and/or only call with the auditors. I would assume it was -- it appears to be one call to the auditors.
Q. Let's assume it was the only one.
Would you consider thirty minutes to be adequate?
MR. CLARE: Objection; assumes facts not in evidence.
A. Again, it very much depends on the situation.
BY MR. MARKOWSKI:
Q. In what context?
A. I think I've given you three of them.
Q. Well, one of then was if it's the bring-down call. This wasn't the bring-down call. Another was whether your firm had recently done a transaction with the same company.
Morgan Stanley had not recently done another transaction with Sunbeam, had it?
A. With Sunbeam, to my knowledge, it had not at that time.
Q. So my question is: Under those circumstances -- it's not the bring-down call,

Page 498

Tyree
you had not previously done another transaction with Sunbeam Company in recent times -- in your view, would thirty minutes be adequate to do thorough due diligence with Sunbeam's outside accounting firm?
MR. CLARE: Objection to the incomplete hypothetical.
Are you still asking him to assume this is the only call?
MR. MARKOWSKI: Yeah.
A. I would just note here that you have signature brands, First Alert and Coleman, represented, correct, on this? Which are, I think, I believe at the time, were companies where I would imagine, although I didn't participate in it -- and that our M&A team would have conducted due diligence on them as well.
BY MR. MARKOWSKI:
Q. I'm focusing on Sunbeam. At twelve noon on this memorandum, it appears to me that thirty minutes has been allocated to the due diligence call with Arthur Andersen.
Do you read the document the same way?

NOT A CERTIFIED COPY

Page 499

Tyree
A. That's what this document says.
Q. Did you consider thirty minutes of discussion time with Arthur Andersen to be sufficient for Morgan Stanley to do the necessary due diligence with Sunbeam's outside accounting firm?
A. Again, I don't remember this document. So I don't remember if I considered thirty minutes at all.
Q. Well, that's what's allocated here. So my question is whether you recall believing that thirty minutes was all of the time necessary to conduct due diligence with Sunbeam's outside accounting firm.
MR. CLARE: I object to the premise.
A. I understand the question. And, again, this is a document that I don't recall seeing. It has times listed here that I don't recall dictating. So I think the logical follow-on is I don't remember making a judgment about whether thirty minutes would be sufficient or not for accounting due diligence with Sunbeam.
BY MR. MARKOWSKI:

Page 500

Tyree
Q. Put aside what you recall about the document for a minute.
As you sit here today, do you recall believing that thirty minutes was sufficient to conduct due diligence with Andersen in connection with the Sunbeam transactions?
A. I don't recall thinking one way or the other that there was necessarily a time limit placed on accounting due diligence one way or another.
Q. So you don't recall thinking thirty minutes was adequate?
A. I don't recall thinking it was adequate or inadequate.
Q. Based on your experience, generally, do you think thirty minutes is sufficient time to conduct due diligence with an outside accounting firm on a $750 million debt offer?
A. It very much depends.
Q. So it's conceivable, in your mind, that would be sufficient in that kind of transaction?
MR. CLARE: You're still asking him to assume that that's the only due diligence

Page 501

Tyree
that was conducted.
A. As I said, I'm not going to opine on a vague situation. I've been involved in due diligence sessions that take a very long time. Some of them are shorter, some are big transactions, some are small transactions. It depends on a number of different issues.
BY MR. MARKOWSKI:
Q. Do you remember devoting any more than the time set forth on this exhibit, the thirty minutes on March 12, to due diligence with Sunbeam's outside accounting firm?
A. I believe that we had discussions with Sunbeam's auditors for -- yes, for more time than just one meeting in regards to the accounting issues and policies and procedures of Sunbeam.
Q. What time do you recall other than this session on March 12?
A. I recall speaking to the auditors at the printer a couple of times face-to-face. As I said, I recall an actual formal due diligence session that was either telephonic or in person. As I said before, I recall bring-down due

Page 502

Tyree
diligence. You know, there were several occasions when different parts of -- or follow-up, as it were, of accounting due diligence was conducted during the transaction.
Q. Well, the discussion at the printer related to the Andersen comfort letter, correct?
MR. CLARE: Objection; asked and answered.
A. Can you clarify that, the discussion at the printer?
BY MR. MARKOWSKI:
Q. You said you had discussion with Arthur Andersen at the printer, correct?
A. I did say that, yes.
Q. That discussion related to Arthur Andersen's comfort letter, correct?
A. To my recollection, it related to bring-down due diligence.
Q. At the printer?
A. At the printer.
Q. It's your testimony that you had a bring-down due diligence conversation with Arthur Andersen at the printer independent of a discussion of Andersen's comfort letter?

NOT A CERTIFIED COPY

Tyree

A. I don't recall a conversation about Andersen's comfort letter. I recall asking very specific questions which, to me, were effectively bring-down-due-diligence-related questions.

Q. Let me show you what we're going to mark as CPH Exhibit Number 32.

(CPH Exhibit 32, Project Laser Accounting Due Diligence, marked for identification, as of this date.)

BY MR. MARKOWSKI:

Q. CPH Exhibit 32 is a two-page document Bates-numbered CPH 635894 to '95 F. It's entitled "Project Laser Accounting Due Diligence."

Do you see that?

A. I do.

Q. And it bears at the top a fax line dated March 10, 1998. Do you see that?

A. I do.

Q. Do you recall this document?

A. No, I do not.

Q. Do you recall using this document in connection with the -- this list of questions in connection with the due diligence that you

Tyree

conducted with Arthur Andersen relating to Sunbeam?

A. Again, I don't recall this document.

Q. Do you recall using a document like this that contained questions for Arthur Andersen in connection with the due diligence call you had with Arthur Andersen?

A. I could have. I just don't remember if I used one or not.

Q. What do you remember about your initial -- let me take a step back.

Do you remember participating on or about March 12th in a series of due diligence telephone calls with Arthur Andersen and the outside auditors for the companies that Sunbeam was attempting to acquire?

A. I don't remember the accounting due diligence process as specifically as you just described.

Q. Do you remember being involved in a series of telephone conversations with the outside auditors for these companies?

A. I remember that we conducted accounting due diligence with both Sunbeam and

Tyree

the other companies involved in the M&A transactions. I believe it was -- at least part of that was done on a conference call basis. And as I said before, I believe there were follow-up discussions at the printers. And there was the due diligence dialogue at the printers session on the 19th that I discussed. But beyond that, I don't have a specific recollection of what happened on those calls.

Q. What I'm trying to focus on were the conference calls that seemed to be scheduled in CPH Exhibit Number 31.

Do you remember there was a day set aside for a series of phone conversations with the outside auditors for each of the four firms listed on Exhibit 31?

A. I recall us scheduling accounting due diligence with Sunbeam and the three other companies we've been discussing. I don't recall specifically whether it was a conference call or whether it happened on one day or multiple days.

Q. Do you remember who participated in that aspect of the accounting due diligence?

A. I don't remember exactly who

Tyree

participated.

Q. Do you remember anyone?

A. Well, I believe I participated. I believe Andy Savarie might have been on one of the calls. There were other people involved, but I just don't recall their names.

Q. Do you remember if there was anyone from Sunbeam management participating in the call?

A. Again, I just don't recall.

Q. Would it have been inconsistent with Morgan Stanley's due diligence policies to include company management in a due diligence conversation with the company's outside auditors?

A. I don't know if -- you mean back then in '98?

Q. Right.

A. I don't know if there was a policy back then about inclusion or exclusion of company management from these discussions. So I just -- so when you ask if it's standard or not, I just don't remember if it was.

Q. I was asking if it violated Morgan Stanley's policy to do that.

NOT A CERTIFIED COPY

Tyree
A. In 1998? I don't remember.
Q. Would it violate Morgan Stanley's policy today to have company management participate in the due diligence call with outside auditors?
A. I don't recall that there is a -- that Morgan Stanley has mandated that in no circumstances can management participate in accounting due diligence. I don't recall them mandating that.
Q. Is that their recommendation?
A. I'm sorry?
Q. Is that the recommended practice?
A. The recommended practice? I don't know if there is a policy that recommends one process over the other.
Q. Do you remember if there was a recommended practice on that subject back in 1998?
A. I don't recall if there was one in 1998. What I do recall is on other transactions that I worked on, there were times when management was present, and there were times when management was not present.

Tyree
Q. Let me direct you back to CPH Exhibit 29.
A. Yes.
Q. And in particular the page that's Bates-numbered 80739.
A. Yes.
Q. Do you see that "Financial and Advisory Services Due Diligence Topics for Review with Accountants"?
A. Yes.
Q. Let me direct your attention to the second paragraph in the text: "Prior to discussion with the accountants' request from the company and review the last three years' management letters and the company's responses to those letters" --
A. Uh-huh.
Q. -- "the discussion with the accountants should be conducted without the company present."
Do you see that?
A. I do.
Q. Does that refresh your memory that Morgan Stanley's policy back in 1998 was that

Tyree
accounting due diligence should be conducted outside of the presence of company management?
A. In terms of refreshing my memory, I don't know if it refreshes my memory. That's what it says on the page.
Q. But you don't recall that, as you sit here, being the policy back in 1998?
A. The policy that we have to conduct due diligence without the company present?
Q. That that's the recommended practice?
A. I don't recall what the policy was in '98.
Q. No one told you in setting up the due diligence calls in connection with the Sunbeam due diligence that management should not be included?
A. Not that I recall.
Q. Let me direct your attention back to Exhibit 32 -- CPH Exhibit 32. Let me refer you to Item Number 8, "how aggressive is the company in its accounting policies."
Do you see that?
A. Yes.
Q. First off, let me start with Item 3:

Tyree
"Anything peculiar to the company that is not generally the way the industry accounts for (a) revenue recognition; (b) capitalizing cost versus expensing/deferring costs."
Do you see that?
A. I do.
Q. Do you recall asking that question of Arthur Andersen in connection with the due diligence that you conducted?
A. As I said, I don't recall the exact questions that we asked during accounting due diligence.
Q. Do you recall asking Arthur Andersen, in substance, is there anything peculiar about the way Sunbeam accounts for revenue?
A. Again, I just don't recall five years ago exactly what questions that we asked of Arthur Andersen.
Q. Do you recall that Mr. Harlow identified Sunbeam's bill-and-hold accounting practices as an unusual revenue recognition practice?
A. I don't recall anything like that.
Q. Do you recall, in response to

NOT A CERTIFIED COPY

Page 511

Tyree
questions about how aggressive Sunbeam was in recognizing revenue, that Mr. Harlow identified several transactions in which Sunbeam management recognized revenue where Arthur Andersen objected to that treatment?
A. No. I don't recall anything like that.
Q. Do you recall that in the course of your due diligence, you learned that Sunbeam used bill-and-hold accounting?
A. I don't recall one way or the other whether I did.
Q. Do you know what bill-and-hold accounting is?
A. I have a general idea, but I haven't spent a lot of time studying it.
Q. What's your general understanding of what that means?
A. Effectively, it allows for -- it's been a long time. But, effectively, it allows for the selling of a given product -- correction -- the booking of the sales of a given product while holding it and, hence, create inventory, so to speak. That's my recollection.

Page 512

Tyree
Q. Is it your understanding that's different from the way most companies recognize revenue?
MR. CLARE: Objection to form and foundation.
A. I'm not an accountant.
BY MR. MARKOWSKI:
Q. So if someone said to you, Sunbeam engages in bill-and-hold accounting, that would not be significant to you in terms of alerting you to potential issues with respect to Sunbeam's revenue recognition policy?
A. It depends very much on who says it, in the context in which it's said, and the degree of materiality it has, among other things.
Q. If Arthur Andersen -- if you asked Arthur Andersen, "Is there anything unusual about Sunbeam's revenue recognition practices?" and Arthur Andersen said to you, "Sunbeam uses bill-and-hold accounting," and you had heard that back in March of 1998, would that have been something that you would have inquired further about?
MR. CLARE: Object to the form;

Page 513

Tyree
incomplete hypothetical.
A. It could have been.
BY MR. MARKOWSKI:
Q. And what would you have been interested in knowing?
A. I don't know. I mean, this is another hypothetical where I don't want to speculate about what I would or would not have been interested in hearing more about.
Q. Would it have caused you some concern with respect to Sunbeam's accounting?
MR. CLARE: Objection to form.
A. Again, it could have, but I don't want to speculate.
BY MR. MARKOWSKI:
Q. Would it have caused you some concern with respect to whether Sunbeam's turnaround claims were, in fact, truthful?
MR. CLARE: Objection.
A. And my same comment: It could have, but I don't want to speculate.
BY MR. MARKOWSKI:
Q. Would it have caused you any concerns with respect to whether or not Sunbeam would have

Page 514

Tyree
accelerated the sale of -- the recognition of sales revenue into 1997 in a way that would have damaged the company's performance in 1998?
MR. CLARE: Same objection.
A. I don't want to speculate.
BY MR. MARKOWSKI:
Q. So you don't know one way or the other whether, in the course of doing your due diligence, Arthur Andersen advised you that Sunbeam engaged in bill-and-hold accounting whether that would have caused you to inquire further into whether or not that practice may have had negative effects on Sunbeam's prospects for 1998?
A. No. I said that I just don't want to speculate because other variables could have impacted what I would have done in that situation.
MR. MARKOWSKI: Could you read my question back, please.
(Record read.)
BY MR. MARKOWSKI:
Q. What variables would have affected whether you would have even made a further

NOT A CERTIFIED COPY

Tyree
inquiry on that subject?
MR. CLARE: Asked and answered.
A. Numerous variables would have dictated what I would have done in terms of follow-up.
BY MR. MARKOWSKI:
Q. What are those?
A. Among others, the potential impact of the policy that you described; the materiality of that impact; the degree to which it was common in the industry; probably most importantly -- most important, the degree to which the auditors were uncomfortable with the policy.
Q. Did you know that Arthur Andersen had recommended that Sunbeam discontinue the bill-and-hold accounting?
A. Not that I recall, no.
Q. You recall that you received the Arthur Andersen comfort letter that identified the acceleration of sales revenue into the fourth quarter of 1997 as the main reason for Sunbeam's poor performance in January and February of '98, correct?
MR. CLARE: Object to the

Tyree
characterization of the document.
A. Are you saying I did receive that?
BY MR. MARKOWSKI:
Q. Right.
A. Is that a statement or a question?
Q. It's a question. It's true, isn't it?
MR. CLARE: Same objection.
A. I don't know what the date is that you're talking about in terms of receiving a comfort letter. I don't know what the document is you're referring to.
BY MR. MARKOWSKI:
Q. You don't recall that Morgan Stanley was advised by Arthur Andersen in the comfort letter that Morgan Stanley requested from Arthur Andersen that the main reason for Sunbeam's poor sales performance in January and February of 1998 was Sunbeam's acceleration of sales into the fourth quarter of 1997 through the use of bill-and-hold accounting?
MR. CLARE: Objection to the mischaracterization of the document.
A. If I had the document in front of me,

Tyree
I could opine a little more on it. I mean, I looked at a lot of documents today, but I don't recall when I got this comfort letter that you're talking about. And right now I don't recall the exact substance of the comfort letter.
BY MR. MARKOWSKI:
Q. If you had been advised on March 12 that Sunbeam was engaged in bill-and-hold accounting, and you were advised on March 18th that Sunbeam's sales in January and February are half of what they had been in 1998, would you have related those two pieces of information to each other?
A. I think we've addressed this before. And, again, you're asking me what I would have done. And I don't want to speculate on what I would have done. I need to have a little bit more detail about what the situation was or could be.
Q. I'm asking about your level of sophistication here, sir.
A. Uh-huh.
Q. If on March 12 you're advised that Sunbeam's auditors have identified Sunbeam's

Tyree
bill-and-hold accounting practice as an unusual revenue recognition practice, and on March 19 or March 18, you're advised that Sunbeam's sales in January and February of 1998 are half of what they had been in the same two months of 1997, whether you would have understood that Sunbeam's bill-and-hold accounting practices were inflating Sunbeam's results in '97 and damaging Sunbeam's reported performance in 1998.
MR. CLARE: Objection to form.
A. I understand your question.
In terms of my level of sophistication, my level of sophistication tells me that -- among other things, that you can't make judgments on just one piece of data. You need a number of pieces of data to make a judgment and to take action. So I don't want to tell you, and I don't think it's unreasonable, what I would or would not do with just one or two facts that you outlined. I'd want to know a lot more detail. And that would dictate what I would do at that point in time.
BY MR. MARKOWSKI:
Q. Well, what did you do? Because those

FOR A CERTIFIED COPY

015143

Page 519

Tyree
are the facts.
On March 12, Sunbeam's auditors advised you that Sunbeam engaged in bill-and-hold accounting. And on March 18, as we spent a lot of time talking about today, you were aware of the fact that Sunbeam's performance in January and February was half of what it had been in those two months in 1997.
What did you do to understand the significance of that information with respect to the four transactions in which Morgan Stanley was acting as Sunbeam's investment banker?
MO MR. CLARE: I object and move to strike counsel's preamble to the question. Also, object to form.
A. If you don't mind, the first part of your question said I knew something. Would you just tell me what I knew?
BY MR. MARKOWSKI:
Q. On March 12, Sunbeam auditors advised you that Sunbeam engaged in bill-and-hold accounting on March 18th. You're aware that Sunbeam's sales in the first two months of 1998 are half of what they had been in the first two

Page 520

Tyree
months of 1997.
My question to you, sir, as the person very involved in conducting due diligence on the debenture offering, is what you, John Tyree, did to investigate those facts and their materiality.
MR. CLARE: I'm going to object. He's already testified he doesn't even remember being advised of these things. And your recitation of -- the premise of your question is inconsistent with his testimony. And to that extent, I object.
A. I want to answer your question, but I want to understand how you come to the viewpoint of what I knew and when. So if you could just humor me and tell me, first of all, when I admitted or said that the accountants had told me something on the 12th, I believe you said, because I don't recall making that statement that I knew something then.
BY MR. MARKOWSKI:
Q. There are other witnesses who have testified to that.

Page 521

Tyree
A. Well, I can't opine on what other witnesses say. I can opine on what I know and what I remember and what the facts were of the situation. And I've done that.
Q. Is it your testimony, sir, that you were oblivious to the fact after conducting the accounting due diligence of Sunbeam company, that Sunbeam in 1997 had extensively used bill-and-hold accounting --
MR. CLARE: Objection to form and argumentative --
BY MR. MARKOWSKI:
Q. Is that your testimony?
MR. CLARE: Objection; argumentative.
A. No.
BY MR. MARKOWSKI:
Q. So, then, you were aware of that?
MR. CLARE: Objection; argumentative.
A. Okay. No. That's not my testimony.
BY MR. MARKOWSKI:
Q. Were you aware or were you oblivious to the fact that Sunbeam in 1997 had extensively engaged in bill-and-hold accounting after you had conducted the accounting due diligence that you

Page 522

Tyree
say was appropriate for the circumstances?
MR. CLARE: Objection to form.
A. My answer to the question is I don't remember what I knew on, I guess, the 12th of March in 1998. I just do not remember. And that's not, I don't think, unreasonable.
BY MR. MARKOWSKI:
Q. Do you know, as you sit here today, sir, that Sunbeam engaged in extensive bill-and-hold accounting in 1997 --
MR. CLARE: Object to the premise.
BY MR. MARKOWSKI:
Q. -- and has had to restate its financial statements as a result of those transactions being viewed as inappropriately accounted for?
MR. CLARE: Object to the form.
A. I do now know that Sunbeam did have to restate their financials, yes.
BY MR. MARKOWSKI:
Q. And do you understand that a significant part of it related to Sunbeam's bill-and-hold accounting?
MR. CLARE: Object to the form.

NOT A CERTIFIED COPY

0151144

Page 523

Tyree
A. As of that, today I have been through this process and other processes. I understand that to have been a part of the cause of the restatement.
BY MR. MARKOWSKI:
Q. And is it your testimony that in connection with the due diligence you did of Sunbeam's accounting in 1998, that you do not recall knowing that Sunbeam engaged in extensive bill-and-hold accounting transactions?
MR. CLARE: Objection to form.
A. Excuse me. My -- I think I've already commented on this, but my recollection -- I'm trying to answer your question -- is that I just don't recall knowing or having had something highlighted to me from the auditors, as you, I think, have claimed, that Sunbeam participated in extensive bill-and-hold procedures, you know, in advance of the work that we did on the transaction. No, I don't recall that.
BY MR. MARKOWSKI:
Q. Do you recall asking Arthur Andersen, in connection with your accounting due diligence, how aggressive Sunbeam was in connection with

Page 524

Tyree
revenue recognition?
Do you recall that general subject coming up?
A. I don't recall having a specific discussion with Sunbeam's auditors about the aggressiveness of their policy and procedures.
Q. Is revenue recognition a question that you would always ask in connection with accounting due diligence?
A. I would characterize it differently. I'd say, looking at the transactions I've looked at historically, I have in many situations asked about accounting policy and procedures. And in some situations, that includes revenue recognition policies.
Q. Do you have a recollection of doing that in connection with your Sunbeam investigation?
A. I don't have that specific recollection, no.
Q. Do you have any reason to believe that you didn't ask that question?
A. I have no reason to believe one way or the other.

Page 525

Tyree
Q. So it's possible that you did not ask, in your mind, Sunbeam's auditors any questions about Sunbeam's -- their views of Sunbeam's revenue recognition practices?
A. Is it possible? Anything is possible.
Q. Do you recall Phil Harlow? Do you recall speaking to Phil Harlow?
A. I recall the name. I don't recall his face.
Q. Do you recall speaking to him on the telephone?
A. Not specifically.
Q. Do you know that Mr. Harlow is the Arthur Andersen engagement partner for Sunbeam?
A. I believe that was right.
Q. He was the audit partner, correct?
A. I believe that's correct.
Q. Do you recall that Mr. Harlow advised you that Arthur Andersen objected to Sunbeam's revenue recognition in connection with various transactions?
A. No, I don't recall that.
Q. Do you recall asking for an

Page 526

Tyree
opportunity to review Arthur Andersen's list of proposed audit adjustments for the 1997 audit?
A. I'm sorry. Do I recall asking for that?
Q. Did you ask Mr. Harlow or anyone else from Arthur Andersen for an opportunity to review Arthur Andersen's list of proposed audit adjustments in connection with Arthur Andersen's 1997 audit of Sunbeam?
A. I don't recall if I did or did not.
Q. Do you recall Arthur Andersen ever refusing an information request that you put to them?
A. No. I don't have a recollection of that.
THE WITNESS: When we reach a break point, do you want to take a break?
MR. MARKOWSKI: We're going on to a new topic. So if you need to take a break, this is the time to do it.
THE VIDEOGRAPHER: The time is 3:46. We're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 3:51.

NOT A CERTIFIED COPY

0151145

16div-021011

Page 527

Tyree
We're back on the record.
BY MR. MARKOWSKI:
Q. Mr. Tyree, after the Sunbeam press release on March 19, did you think it was important to closely monitor Sunbeam's sales results up until the time of the debenture offering -- closing?
A. I recall after that, the 18th and the episode of the 18th and then on the 19th, focusing very much on the need for bring-down due diligence and getting clarification in terms of the progress that Sunbeam was making in terms of its net sales.
Q. Why was that important?
A. Because it was a topic that we spent a good amount of time on, on the previous phone call or conference call. So in addition to all the other topics that you cover in accounting due diligence, bring-down due diligence, as it were, that was one of the points that I wanted to make sure that I went through in detail.
Q. I don't quite understand from your answer why you wanted to know as of March 19 what Sunbeam's sales results were.

Page 528

Tyree
A. Because if there had been a change from the time they had discussed with us their net sales figures on the 18th and the time of the bring-down due diligence, that would be important for us to know.
Q. Important for what reason?
A. To determine whether or not they were on track to meet those guaranteed targets.
Q. What if they weren't on track to meet those targets?
A. I'm sorry? What if?
Q. You said it was important to know if they were on target to meet those guaranteed targets.
Why was it important?
A. It was important because, as a number of topics in bring-down due diligence are important, we wanted to be able to judge as best as we could at that point the progress that they had made relative to the targets that had been put out in the press releases, among other things.
BY MR. MARKOWSKI:
Q. In what way would it have affected

Page 529

Tyree
Morgan Stanley's activities if Sunbeam was falling short of meeting the targets that were set forth in the March 19th press release?
A. Well, first of all, if you can define what you mean by Morgan Stanley's activities.
Q. Let me take a step back, because I don't know that I'm tracking here with you.
You said it was important after March 19th as a part of bring-down due diligence to determine where Sunbeam's performance stood in relationship to what had been guaranteed to Morgan Stanley during the course of the March 18 telephone calls, correct?
A. I would characterize it as the progress they had made towards those guaranteed targets.
Q. And I'm trying to understand what would have happened if Sunbeam was not making progress satisfactory to Morgan Stanley in meeting the targets that Sunbeam had promised.
MR. CLARE: Objection; calls for speculation.
A. I don't know what would have happened.

Page 530

Tyree
BY MR. MARKOWSKI:
Q. Had you been told by anyone that it was important for you to stay current with respect to Sunbeam's sales activities after the March 19 press release was issued; or did you take that upon yourself?
A. I don't recall anyone specifically saying to me that that was my responsibility. I just viewed it as something that the team needed to continue to monitor going forward.
Q. Ruth Porat didn't say, for example, "John, it's important that you stay on top of the sales results"?
A. I don't recall her saying that to me.
Q. Bill Strong didn't say that?
A. I don't recall him saying that to me.
Q. What did you do after March 19 to track Sunbeam sales results?
A. I don't remember exactly what we did. I have, as I mentioned before, a clear recollection of bring-down due diligence. As I mentioned before, we had a bring-down accounting due diligence at the printers. And other things may have happened during that interim time. I

NOT A CERTIFIED COPY

0151496

Tyree
just don't recall what they were.
Q. Do you recall what information you sought from Sunbeam relating to its sale results after March 19?
A. I don't know exactly what we required from Sunbeam at that point.
Q. Did you ask Sunbeam for any documents relating to its sales results after March 19?
A. We may have. I just don't remember.
Q. As you sit here today, do you have recollection of requesting any sort of sales reports in writing from Sunbeam after the March 19 press release was issued?
A. I don't recall me personally making that request of Sunbeam.
Q. Do you recall asking anyone else to do that?
A. I don't recall asking someone to make that request for me.
Q. Do you recall if anyone at Morgan Stanley did do that?
A. They may have, but I just don't recall.
Q. How did you get information from

Tyree
Sunbeam relating to its sales results after March 19?
A. You mean in addition to the two due diligence discussions?
Q. No. I'm including any source of information that you had after March 19. I want to make sure that I understand it all.
A. Well, this is after the printers? It's after the press release but before the printers on the 19th?
Q. No. It's after the press release and any time subsequent to that. I want to understand what you did to obtain information from Sunbeam relating to its sales results after March 19, when the press release was issued.
A. I'm sorry. I'm probably not being clear, but we had the call on the 18th, and then I think the press release went out on the morning of the 19th. And then we went to the printer that night, I believe.
Are you asking me to include in your question that period of time when we were at the printer?
Q. Well, did you get information from

Tyree
Sunbeam while you were present at the printer on March 19th relating to its sales results subsequent to March 18th?
A. My vague recollection was, in addition to other things, that may or may not have happened that we conducted bring-down due diligence with the auditors where we asked about the broader comfort level with the content of the prospectus -- that's one thing -- which included the press release.
I believe that we spoke -- there was a Sunbeam representative at the printer that night who I believe I spoke to about their forward-looking financial results. There was the bring-down due diligence after the 19th, which was an extensive conference call, as I said, with -- I believe it was Russ Kersh. And there may have been other activities, but those are the three that I remember.
Q. At the printer you didn't get any new information relating to Sunbeam's sales results updating the information that you received on March 18, did you?
A. I don't recall getting any

Tyree
information that would bring me more up to date from that page that we discussed earlier at the printer other than I believe we got a degree of assurance from the management they were on track. I can't recall how detailed that discussion was.
Q. When did you first after March 18 get information from Sunbeam updating you on Sunbeam's sales results subsequent to March 18?
A. And I believe it was at the printer on the evening of the 19th.
Q. Well, I'm not -- then you and I are not communicating well.
A. Okay.
Q. The conference call with Sunbeam management where they told you where they were at in the first quarter performance took place on March 18, correct?
A. That's right.
Q. Is it your testimony, sir, that on March 19 you received additional information from Sunbeam relating to its sales results subsequent or more current or more complete than the information that you had received on March 18?

NOT A CERTIFIED COPY

015147

Tyree

A. My recollection is that we received assurances from Sunbeam. I don't know if we received written papers or contracts, as you described, but assurances that they continued to be on track at the printers on the 19th.

Q. So they reported on the results of the 19th.

Is that what your testimony is? They told you that they had sold that day?

A. I don't know what they told me in that session.

Q. Your testimony is that you obtained additional information relating to Sunbeam's first quarter sales results at the printer from Sunbeam management on March 19?

A. No. What I recollect is getting additional assurances from the company. What I don't remember if they give me additional information such as revised numbers or something to that effect. That I don't recall.

Q. When is the first time you recall getting any additional sales numbers from Sunbeam after the press release issue?

A. I don't recall getting additional

Tyree

written materials in terms of the sales numbers going up to the bring-down due diligence that I discussed. It may have happened, but I just don't recall it.

Q. Is it your testimony that Sunbeam gave you at any time updated sales numbers after the March 19th press release was issued?

A. I can't remember. My recollection was we did bring-down down diligence, not the one at the printer but the later one, that we went by account by account. And they listed the progress that they had made relative to their targets and then gave us -- reasserted their assurance they were going to meet those targets.

Now, what I don't recall is if they gave us a piece of paper that did that. I just don't recall that.

Q. Other than the bring-down due diligence call with Sunbeam management that you just referred to, was there any other occasion where you believe you received updated sales numbers from Sunbeam management after the March 19 press release?

A. There may have been. I just don't

Tyree

recall.

Q. I'm going to mark three different documents as exhibits at this point. They'll be CPH Exhibit 33, 34 and 35.

(CPH Exhibit 33, memo dated 3/19/98 from Mr. Tyree and Johannes Groeller to Bob Gluck and others, marked for identification, as of this date.)

(CPH Exhibit 34, memo dated 3/20/98 from Ruth Porat and others, marked for identification, as of this date.)

(CPH Exhibit 35, memo dated 3/23/98 from Mr. Tyree, Mr. Groeller and Shani Boone, marked for identification, as of this date.)

BY MR. MARKOWSKI:

Q. I give you all three of these exhibits, Mr. Tyree, at the same time.

Exhibit 33 is a one-page document dated March 19, 1998. It bears Bates numbers Morgan Stanley confidential 29176. It's a March 19, 1998, memorandum from you and Johannes Groeller to Bob Gluck, Alan Dean and Greg Fernicola, subject bring-down due diligence.

Tyree

Exhibit Number 34 is a two-page document. It bears Bates number CPH 520973 to '974. It's a memorandum dated March 20, 1998, from Ruth Porat, Brooks Harris, John Tyree and Johannes Groeller, subject bring-down due diligence.

And Exhibit 35 is a March 35 -- excuse me. Exhibit 35 is a March 23, 1998, memorandum. It bears Bates numbers CPH 1257351 from you, Johannes Groeller and Shani Boone, subject Sunbeam bring-down due diligence.

I ask you to take a moment to look at all three of these documents.

My first question is, Can you explain to me or shed any light on why there are three such similar versions of this bring-down due diligence list of questions?

A. No.

Q. Let's work our way through them. The first one is dated March 19, 1998, from you and Johannes Groeller. The next one is dated the following day and has on its list of authors, in addition to you and Mr. Groeller, Ruth Porat and Brooks Harris.

NOT A CERTIFIED COPY

015148

Page 539

Tyree
Do you know why that change was made?
A. The 19th versus the 20th, you mean --
Q. Right. Adding on Ruth Porat and Brooks Harris as additional authors.
A. I don't know if this necessarily indicates that a change was made. It may be that these were for different purposes -- I don't know -- meaning incremental bring-down due diligence discussions.
Q. How many bring-down due diligence conversations do you recall having with Sunbeam?
A. The ones I recall, in addition to the 18th, which was effectively a bring-down, was on the 19th. As I discussed earlier, this is a kind of bring-down due diligence discussion with both the auditors and with management there. And there was one later with Russ Kersh and his team on the phone which happened a couple of days after that. That's what I remember. There may have been others.
MR. MARKOWSKI: Could you read the answer back for me, please.
(Record read.)
BY MR. MARKOWSKI:

Page 540

Tyree
Q. Do you recall on March 19 that you sat down with somebody from Sunbeam management and reviewed the questions that are listed on CPH Exhibit 33?
A. I'm sorry. On what date did you ask?
Q. We're talking about the printer. You said March 19th. You're including that within the bring-down due diligence communications that you think you may have had with Sunbeam management.
Do you recall that on March 19th you had this memorandum with you, CPH Exhibit 33, and that you reviewed these items with Sunbeam management while you were at the printer?
A. I don't recall having this document with me at the printer, no.
Q. Now, the first item on the March 19th version of this document, CPH Exhibit 30, could you read that into the record?
MR. CLARE: 30 or --
MR. MARKOWSKI: 33.
A. The first bullet point item?
BY MR. MARKOWSKI:

Page 541

Tyree
Q. Right.
A. "A top and bottom line outlook for first quarter first half and the year."
Q. So this called for the company to provide information to Morgan Stanley relating to Sunbeam's performance in the first quarter, the first and second quarter combined, the first half, and for the full year of 1998, correct? Am I interpreting this right?
A. Again, I don't remember drafting up this document, but that would appear to be what the text implies.
Q. Let me turn your attention to Exhibit 34, the March 20 version, with a list of bring-down due diligence questions.
A. Yes.
Q. Do you see any question on this list of -- included with this list of questions related to Sunbeam's outlook for the second quarter of 1998?
A. Do I see that on this list?
Q. Right.
A. I don't see any mention on this page of the second quarter.

Page 542

Tyree
Q. Can you explain to me why that subject was dropped from the March 19 version of the bring-down due diligence memo?
A. No. I can't explain that to you.
Q. Let me turn your attention now to Exhibit Number 35, the March 23 version.
A. Yes.
Q. The recipients of the March 23 version are identical to the recipients of the March 20 version; is that correct?
A. That's what it says on the page.
Q. The authors are different, though, correct?
A. Again, yes. That's what it says on the page.
Q. Ruth Porat's name had been dropped, right?
A. That's correct.
Q. Why?
A. I couldn't tell you, since I don't remember sending off or drafting up these documents.
Q. Do you see anything on CPH Exhibit 34 that inquires into Sunbeam's prospects for the

NOT A CERTIFIED COPY

015149

Page 543

Tyree
second quarter of 1998?
MR. CLARE: Are you asking 34 or 35 now?
MR. MARKOWSKI: I'm sorry. I was on 35.
BY MR. MARKOWSKI:
Q. Let me ask a question so the record is clear.
Do you see anything on CPH Exhibit Number 35, the March 23 version of the list of bring-down due diligence topics, relating to Sunbeam's views of its prospects for the second quarter of 1998?
A. No. But I would make the point that on this document, you have the comment "Are you still comfortable with your '98 earnings estimate of 180?" which, obviously, would have to incorporate into it a view on the second quarter.
Q. I'm asking specifically about the second quarter.
A. Okay. No. That's not written on this page.
Q. Do you know why that topic was dropped from the March 23 version of the

Page 544

Tyree
bring-down due diligence list of topics?
A. No, I do not.
Q. Do you recall if you were the person responsible for making that change?
A. No. I don't recall that.
Q. Do you recall if someone instructed you to drop from the list of due diligence topics inquiry into Sunbeam's views of its prospects for the second quarter of '98?
A. I don't recall anyone dictating to me one way or the other what I should or should not include in bring-down due diligence. As I can't remember this document per se -- I don't remember anyone telling me to change something. I don't even remember.
Q. Well, put the documents aside for a moment.
My question is: Do you remember after March 18 someone instructing you to drop from the list of questions you asked Sunbeam in connection with your bring-down due diligence inquiry into Sunbeam's prospects for the second quarter of 1998?
A. I don't recall anything like that.

Page 545

Tyree
Q. Does Exhibit 35, the March 23 version of this document, sir, suggest to you that your bring-down due diligence call with Mr. Kersh would have occurred either on March 23 or sometime after that?
A. Does this document?
Q. Right.
A. I don't think this document necessarily refreshes my memory as to the date at which that call occurred.
Q. Do you infer from its date, March 23, 1998, that you had not had the bring-down due diligence call with Mr. Kersh that you've referred to prior to the time of this memorandum?
A. Because I don't recall this document, I can't really opine on whether it gives me a sense for if I did or did not have the call with Mr. Kersh on -- before, on or after the 23rd of March.
Q. Well, the text of the memo says here are some topics -- here are some areas we would like to cover during our bring-down due diligence call, correct?
A. That's what this document says, yes.

Page 546

Tyree
Q. Is it a fair reading of that that the bring-down due diligence call had not occurred yet?
A. That's what this document would imply.
Q. Can you identify for me all the participants in the bring-down due diligence call that you had with Mr. Kersh?
A. I just don't remember everybody who was on that call.
Q. Do you remember anything other than you and Mr. Kersh?
A. My recollection was that there were representatives of both counsels, Davis Polk and Skadden on the call. I can't remember exactly who was on it. I was on it. As you mentioned, Russ Kersh was on it. I believe there may have been other Sunbeam representatives on the call, but I can't recall who.
Q. Do you remember that Don Uzzie was on the call?
A. He may have been. I just don't remember.
Q. Do you recall who Don Uzzie was?

NOT A CERTIFIED COPY

015150

Page 547

Tyree

A. I don't like to speculate. Don may have had something to do with sales at the organization, but I could be wrong.
Q. Did you ever meet Mr. Uzzie in connection with your due diligence in person?
A. I might have. I don't remember.
Q. Do you recall that Mr. Uzzie was the person from Sunbeam that primarily presented the sales information during the course of the phone conversations on March 18th?
A. On the phone conversation on March 18, my recollection was there was extensive dialogue on sales as a general matter and that a number of different people commented on it from Sunbeam. So what I don't recall is one person kind of taking through the sales position and that being it. I recall a number of different players from Sunbeam speaking to the sales issue.
Q. You don't remember Mr. Uzzie being the primary speaker with respect to Sunbeam's result in January, February and the first half of March and Sunbeam's views of its prospects for the balance of the quarter?
A. He could have been. I just don't

Page 548

Tyree

remember who covered what topics at what time.
Q. And your testimony is you don't remember whether Mr. Uzzie was a participant in the bring-down call, correct?
A. I don't recall if he was on it or not.
Q. An important topic for you in connection with the bring-down call was how Sunbeam has performed in terms of movement toward accomplishing the sales results that are the subject of the March 19 press release, correct?
A. To my recollection, that is correct.
Q. Would you have wanted to have Mr. Uzzie participate in that phone call in order to get information from the most knowledgable Sunbeam --
A. Would I have wanted?
Q. -- managers?
A. You know, again, hypothetical question. I would have wanted as much information as I could possibly get. But I don't recall in this situation whether I felt strongly or didn't that Mr. Uzzie had to be on that call.
Q. Do you recall that Mr. Uzzie in fact

Page 549

Tyree

was on the call but didn't speak?
A. I don't have that recollection.
Q. Do you recall that Mr. Uzzie was on the call but didn't say anything relating to the status of Sunbeam's sales for the period subsequent to March 19?
A. Again, I don't recall if he had been on the call or not.
Q. What do you recall being said on the subject of Sunbeam's first quarter 1998 performance during the bring-down due diligence call?
A. My recollection was spending a fairly lengthy period of time with Sunbeam walking through -- and I don't know who the representative was. It may have been Russ Kersh. -- walking through in detail their comfort level with different customers, in particular, their key customers, and then, you know, getting, I guess I'd say, a reiteration of their commitment that, in fact, the numbers they had laid out on the previous call on the 18th were, in fact, kind of the low end limit, as it were. But, you know, I don't have any specific

Page 550

Tyree

recollection about comments on individual accounts or numbers per se.
Q. So as you sit here, you don't remember -- well, do you remember whether Sunbeam -- whether you remember the number or not, do you remember that Sunbeam provided you with an updated total for Sunbeam's sales through that point, the first quarter?
A. I don't remember exactly what the quantitative numbers were that they provided on the call -- the numbers were that they provided on the call.
Q. I'm not sure I understand what you are saying.
A. You're asking me if they provided us with a total; is that correct --
Q. Right. That's what I'm trying to understand.
A. And what I'm telling you is I don't recall what the specific numbers were that they provided to us on the call, be it individual, account specific revenue numbers or net sales numbers or a total. I just don't remember.
Q. Do you remember whether you were

NOT A CERTIFIED COPY

0151151

Tyree
given any numbers?
A. On the call?
Q. Uh-huh. For net sales results or gross sales results?
A. I believe that we were, but I just don't remember exactly what those numbers were.
Q. Is it possible that you were provided with no updated sales numbers during that bring-down due diligence call?
A. I don't -- again, I don't want to opine on what's possible and what's not possible. Anything is possible. But my recollection was that we had reasonably detailed comfort on the individual sales numbers and the progress that they had made.
Q. Did you ask Mr. Kersh for anything in writing so that you could confirm that, for example, any daily sales reports or things of that sort?
A. I don't recall if I did or did not.
Q. Do you think it would have been a prudent thing to do?
A. At that point in time when I conducted the bring-down due diligence call, I

Tyree
felt that the questioning that we had done was prudent and appropriate for the situation at that point in time. And I think that's what you're asking, at that point time, whether I thought it was prudent to insist that he provide us with something in writing. And my view was and my vague recollection of the call, the detail that he gave us -- and it was pretty specific, very specific -- and the other information he gave us was both appropriate and prudent for where we were on the transaction.
Q. In hindsight, do you think you made a mistake in not asking Sunbeam management during the course of the bring-down due diligence phase to provide you with corroboration for its statements relating to Sunbeam's sales results for the first quarter?
MR. CLARE: Objection to form.
A. I would not call it a mistake.
BY MR. MARKOWSKI:
Q. In hindsight, do you wish you had done that?
MR. CLARE: Same objection.
A. I wish a number of things in

Tyree
hindsight. So I think it's kind of a silly question.
BY MR. MARKOWSKI:
Q. I'm asking something very specific.
In hindsight, do you wish you had asked that Sunbeam after March 19th provide you with written documentation corroborating management's statements concerning Sunbeam's sales results in the first quarter of 1998?
A. When I think about in hindsight, what I wish is that management had told us the truth.
Q. Do you think that Mr. Kersh misled you in connection with the bring-down due diligence call?
A. I don't know. I don't know the details of the litigation or his situation.
Q. Do you think you might have been in a position to learn the truth had you asked for documentation?
MR. CLARE: Objection; calls for speculation.
A. I think I would have been in a position to -- how did you phrase it?
BY MR. MARKOWSKI:

Tyree
Q. Learn the truth had you asked for documentation.
A. I think I would have been in a position to learn the truth if the company senior management had told me the truth.
Q. Did you think you had any responsibility to ask for information from the company by way of documentation that would have allowed you to corroborate management's oral representations?
MR. CLARE: Objection; asked and answered.
A. I think that I had a responsibility, along with the rest of the team, to conduct a prudent and appropriate due diligence process. And I think we did that.
BY MR. MARKOWSKI:
Q. You don't think you had any obligation to ask for documents that would have allowed you to evaluate the truthfulness of management's statements to you?
A. I think I've already answered that. I think broadly that the due diligence process that we conducted was prudent and appropriate in

NOT A CERTIFIED COPY

01-51-52

Page 555

Tyree
the entire process the whole way along. That's how I feel.
Q. And you don't think that Morgan Stanley's due diligence was flawed because of the failure to ask the company to provide documentation corroborating the statements made to you?
A. I think the due diligence process that I was involved in and that I conducted was both prudent and appropriate for this transaction.
Q. And you don't think it was flawed because of your failure to ask for documentation?
MR. CLARE: Asked and answered.
A. I really think I've answered that.
BY MR. MARKOWSKI:
Q. Have you ever seen recommendations relating to conduct of due diligence that statements made by management should be corroborated by obtaining written documentation?
A. Have I ever seen that?
Q. Yes. Have you ever seen that as a recommendation relating to the manner in which due diligence should be conducted in a securities

Page 556

Tyree
or a debt offering?
A. I just want clarity on this question. Sorry. But your question is, have I seen a document or a recommendation at Morgan Stanley that implies or says that we should -- Morgan Stanley professionals should -- seek written confirmation from management teams of the contentions that they give to us in due diligence?
Q. Right.
A. I don't recall ever seeing anything like that.
Q. So it's your understanding that you're entitled in connection with performing due diligence to rely exclusively on statements made by management?
A. No. I wouldn't say that either.
Q. How have I misstated it?
A. Well, I guess I would say that investment bankers are not auditors. That's not what we do. What we do, we conduct -- and I hate to go back on this terminology again, but a prudent and appropriate due diligence process that allows companies to access the capital

Page 557

Tyree
market while also analyzing the number of issues that I've already told you in the context of due diligence. But we're not auditors. It's an important point.
Q. Is there anything else? Are you done with your answer?
A. I thought that was your question.
Q. I'm just wondering if you're done with your answer. I don't want to interrupt.
A. Yes.
Q. So is it your testimony, Mr. Tyree, that because Morgan Stanley wasn't, in your words, the auditor with respect to Sunbeam, that it had the right to rely exclusively on oral statements made by management in connection with completing its due diligence of Sunbeam Company?
A. No. That's not my testimony.
Q. So it's your testimony that Morgan Stanley had an obligation to do more than rely on the statements made to it by management in order to complete appropriate due diligence?
A. I think that's -- that is correct.
Q. What here beyond relying on the statements made by Sunbeam management did Morgan

Page 558

Tyree
Stanley do with respect to conducting due diligence relating to Sunbeam's first quarter 1998 results?
A. Well, number one in the due diligence process, we -- and I think I've gone through this already -- we went down and inspected their facilities and their headquarters. That's one thing. We conducted the due diligence that you and I have already described where we asked for a significant amount of written information that we analyzed in the context of due diligence, whether it be 10-Ks, 10-Qs, just a number of different documents. We analyzed what the research analyst community was saying about the company. We did a number of different things other than just, as you put it, rely on what management told us.
Q. I think you lost the thread of my question. I was focusing on due diligence relating to Sunbeam's performance in the first quarter of 1998.
Other than relying on the statements made to you by Sunbeam management relating to its results and its views of the prospects for the balance of the first quarter of 1998, what did

NOT A CERTIFIED COPY

015153

Page 559

Tyree
Morgan Stanley do in connection with its due diligence? On that topic.
A. Oh, okay. I'm sorry. Again, I can't recall exactly what we did in particular post the conference call on the 18th. But that doesn't mean that we didn't, you know, conduct other due diligence processes.
Q. As far as you can recall at this point on that topic, what you did was you had a telephone conversation with Russ Kersh and perhaps others at Sunbeam, correct?
A. We did have that telephone call, but I just can't recall the other things that we did in the context of further due diligence on those -- on those numbers.
Q. The only thing you can recall as you sit here is the phone conversation with Russ Kersh, correct?
A. No. I mean, there were other discussions that you and I have already talked about, bring-down due diligence, and whatnot.
Q. I'm talking about updating the information that you received on March 18 relating to Sunbeam's sales in the first quarter

Page 560

Tyree
of 1998. The only thing that you can recall on that topic where you obtained additional information from Sunbeam was your telephone conversation with Russ Kersh sometime on or after March 23, correct?
A. No. We also spoke to the auditors at the printers, their third-party auditors, and got assurances that they were comfortable with the offering circular, which included the press release, which, by definition, had incorporated those numbers in it. We conducted, as I said, more than one bring-down due diligence. There was the discussion that we had with management at the printer. And then there could have been other things which I may not recollect. But that doesn't mean they didn't happen.
Q. We can go back through it again, and we're going to have to. I'm trying to find out on what occasions you obtained updated sales results information from Sunbeam after you received the report from Sunbeam management on March 18.
Is it your testimony that on March 19 at the printer, Sunbeam gave you updated sales

Page 561

Tyree
results beyond the information provided to you on the 18th?
A. No. That's not my testimony.
Q. Is it your testimony that there was some occasion other than the bring-down due diligence call with Russ Kersh where you obtained information on that topic from Sunbeam management?
A. No. My testimony is that we conducted that call with Russ Kersh, and there may have been other discussions with Sunbeam or related parties in terms of their forward -- I'm sorry -- their first quarter financial results, but I just don't recall them.
Q. The only thing you can recall that meets the definition that I have given you is the bring-down due diligence call with Russ Kersh sometime on or after March 23, correct?
A. The only thing I can recall is what I've already mentioned in terms of the due diligence that we did on those financial results.
Q. Let's go back through it. And I'll stay here as long as it takes.
You didn't get any updated sales

Page 562

Tyree
numbers from Sunbeam on March 19 at the printer, did you?
A. I don't recall.
Q. Do you think you did?
A. I said, "I don't recall."
Q. And I'm only asking what you can recall.
You do recall a bring-down due diligence call with Russ Kersh sometime after March 19, correct?
A. And a bring-down due diligence call at the printer, yes.
Q. No. That's March 19, sir.
A. I know.
Q. I already talked about March 19. I'm trying to move beyond March 19.
On March 19 you didn't get any updated sales information from Sunbeam management that you can recall, correct?
A. I can't recall whether I got updated sales information or not on the 19th.
Q. Then the answer to my question is no, I can't recall that?
A. No. The answer to your question is

NOT A CERTIFIED COPY

16div-021020

Tyree
what I just said.
Q. Somebody else will determine the reasonableness of your approach here, Mr. Tyree.
A. Okay.
Q. I'm getting tired of it after two days.
MR. CLARE: Objection.
BY MR. MARKOWSKI:
Q. After the meeting at the printer, other than the bring-down due diligence call with Russ Kersh sometime after March 23, do you recall personally getting any updated sales information relating to Sunbeam from Sunbeam management?
A. I don't have a recollection as to whether or not we did receive updated financial reports from Sunbeam post that period.
Q. The only time you can recall, as you sit here today, getting any updated information from Sunbeam relating to its sales results after the briefing on March 18 is the bring-down due diligence call with Russ Kersh, correct?
A. I've answered the question.
Q. I'm entitled to a yes-or-no answer to my question, sir.

Tyree
MR. CLARE: You're entitled to the witness' answer. You are not entitled to get it in the form that you want it.
A. I've answered the question the way I'm comfortable.
BY MR. MARKOWSKI:
Q. "I'm answering the question" is not an answer to the question. I'm entitled to an answer to that question other than "go read the transcript," all right?
A. I've answered the question the way I'm comfortable.
Q. Other than the bring-down due diligence call with Russ Kersh on March 23 or after, you can recall no other occasion after March 18 where you got updated sales information from Sunbeam, correct?
If you do, I want to inquire into it.
Can you recall any such occasion?
A. I've already answer this question.
Q. I'm entitled to know whether or not there is something else that you recall where after March 18, other than the bring-down due

Tyree
diligence call with Russ Kersh, where you got updated sales information from Sunbeam as part of the discovery I'm taking in the case, okay?
A. I understand.
Q. So I want an answer to that question.
A. What I'm comfortable answering to you is after the 18th, I don't recall one way or the another whether we received additional specific numerical, quantitative data in terms of the progress that Sunbeam had made towards the targets that they laid out on the 18th.
Q. So other than March 23 or after, when you spoke to Mr. Kersh, you have no recollection of receiving such information, correct?
A. I think I've answered the question.
Q. Do you recall that shortly after the end of Sunbeam's first quarter, Sunbeam issued a press release in which it said it would not accomplish the results that were described in the March 19 press release?
A. I have a vague recollection of that.
Q. Do you recall that you got a draft of that before this was issued to the public?
A. I may have. I just don't recall.

Tyree
(CPH Exhibit 36, fax cover sheet dated 4/3/98 from David Fannin to Bill Strong and others, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit 36. And it's a document that bears Bates numbers CPH 639323 through '327. And the cover sheet is a fax cover sheet dated April 3, 1998, from David Fannin to Bill Strong, James Stynes, Robert Kitts, John Tyree, cc: Fin Fogg, Rich Easton. I'd like you to take a moment to look at this.
THE VIDEOGRAPHER: The time is 4:40. This completes tape number three.
(Recess taken.)
THE VIDEOGRAPHER: The time is 4:42. This begins tape number four.
BY MR. MARKOWSKI:
Q. Mr. Tyree, you've had a chance to examine CPH Exhibit 36?
A. Yes, I have.
Q. Do you recall receiving this document?

NOT A CERTIFIED COPY

16div-021021

Tyree

A. I recall seeing a fax from Sunbeam that had a press release on it sent to me back in the late '90s, not dissimilar to this one.

Q. Did that announce that Sunbeam had failed to exceed its first quarter 1997 sales and the first quarter of 1998?

A. Something similar to that.

Q. What do you recall doing after -- well, let me ask an initial question.

What was your reaction when you read that fax when you received it?

A. I don't remember exactly what my reaction was.

Q. Did you -- were you disturbed by it?

A. I didn't expect it.

Q. It was a surprise to you. Is that your testimony?

A. I guess it was a surprise to me at the time. Again, I don't really remember it that well.

Q. But do you recall whether you were disturbed by it in addition to being surprised?

A. I don't remember one way or the other.

Tyree

Q. I assume it wasn't good news, right?

A. My recollection was that, no, I wouldn't characterize it as good news.

Q. Did you consider it to be bad news?

A. Again, I just don't recall exactly what my reaction was at the time.

Q. Well, as you sit here today, do you think this was a bad piece of information that Sunbeam was announcing?

A. As I sit here today and I look at this press release, my reaction is it is what it is. It indicates they're revising what their previous thought had been to the market.

Q. But you don't recall when you saw it back in April of 1998 that you viewed this as unfavorable information?

A. I just don't remember how I reacted at the time.

Q. Do you remember having any discussions with anyone at Morgan Stanley relating to the press release?

A. The only discussion that I recall having, and I may very well have had others, was having a discussion with Andy Savarie about it.

Tyree

Q. When was that?

A. I can't recall exactly. It was some point after I saw the press release.

Q. Was it close in time to when you received that?

A. It could have been. I just don't remember.

Q. Was it approximately the time when you received it, or was it months later?

A. I don't think it was months later. I think it was generally around that time.

Q. What do you recall about your conversation with Mr. Savarie?

A. Oh, just that I had received this and that he had seen it. And I don't really recall anything more than that, just discussing it.

Q. Did he have a view about the press release?

A. I don't remember what his view was.

Q. What thoughts did he express?

A. I don't recall if he expressed anything more than probably surprise, similar to my own.

Q. Did he indicate he found the

Tyree

announcement disturbing?

A. I don't remember him indicating that to me.

Q. Did he share with you anything concerning Mr. Strong's reaction to the press release?

A. Not that I recall.

Q. Do you know what Mr. Strong's reaction to the press release was?

A. No.

Q. Other than the conversation you had with Mr. Savarie, do you recall any other discussion at Morgan Stanley relating to Sunbeam's failure to exceed in the first quarter of 1998 its first quarter 1997 sales?

A. At the time of this press release? I don't recall having other discussions about what you just described at or around the time of this press release.

Q. Let me direct your attention to the first paragraph on the second page of Exhibit 36.

A. Yes.

Q. Do you see that? Read to yourself

NOT A CERTIFIED COPY

Page 571

Tyree
the last sentence.
A. I apologize. The first or second paragraph?
Q. First paragraph, the last sentence. It begins with the words "due to."
A. Yes. Uh-huh.
Q. That sentence advises that Sunbeam is going to show a loss for the first quarter of 1998, correct?
A. That's what it says.
Q. The March 19 press release didn't address the question of Sunbeam's expected earnings for the first quarter.
Do you recall that?
A. I can't recall exactly what was in that press release.
Q. Let me show it to you.
MR. CLARE: I think it's Exhibit 14.
BY MR. MARKOWSKI:
Q. Let me show you a copy of CPH Exhibit 14, the March 19 press release.
Is there anything in that press release that advises that Sunbeam may show a loss for the first quarter?

Page 572

Tyree
A. No, not in this press release.
Q. In connection with your due diligence relating to Sunbeam's performance in the first quarter of 1998, did you make any inquiry of management relating to management's expectations with respect to first quarter earnings?
A. I don't recall if I discussed that with them or not.
Q. You did make inquire relating to the company's expectations concerning first quarter sales, correct?
A. Well, my recollection was we had an extensive dialogue surrounding the company's -- the entire income statement. I just don't have a specific recollection of asking, you know, what you just described. I wouldn't be surprised if we did have that discussion with management.
Q. On March 18th, do you remember any discussion of Sunbeam earnings?
A. Oh, I'm sorry. On the 18th? On the 18th, I can't recall if we discussed earnings with them or not. Previously, I was talking about the earlier due diligence --
Q. Subsequent to that, in connection

Page 573

Tyree
with the bring-down due diligence, do you remember inquiring of Sunbeam management where the company expected to conclude the quarter with respect to --
A. Earnings?
Q. -- earnings?
A. I remember talking about earnings for the year, and I believe we talked about earnings for the quarter. I remember specifically talking about earnings for the year. And I believe we talked about the quarter as well.
Q. Do you know what the street's expectations were in March of 1998 for Sunbeam's earnings for the quarter?
A. Off the top of my head, no.
Q. Would it refresh your recollection that the street was expecting Sunbeam to earn a profit of something in excess of 25 cents per share?
A. Are you asking if that triggers my memory?
Q. Right.
A. Honestly, not really, it doesn't.
Q. During the bring-down due diligence

Page 574

Tyree
call that you had with Mr. Kersh on or after March 23, did Mr. Kersh advise you that Sunbeam expected to book a loss for the quarter?
A. I don't recollect that, no.
Q. Were you surprised to see the statement in the press release that Sunbeam was going to incur a loss for the first quarter of 1998?
A. In this press release?
Q. Uh-huh.
A. Again, I reiterate, I was somewhat surprised with this press release as a general matter. That's what I remember.
Q. I'm focusing on the earnings matter.
A. Yeah. I just don't remember what my reaction was to individual parts of the press release.
Q. Do you recall when you read the April 3 press release, Exhibit 36, that you felt as though Sunbeam management had misled you with respect to the earnings for the company for the first quarter of '98?
A. Again, my recollection was just being surprised by the press release. I don't recall

NOT A CERTIFIED COPY

Tyree
anything more specific than that.
Q. You don't recall any particular reaction to the information contained in the press release relating to earnings for the first quarter?
A. No. Just what I described earlier.
(CPH Exhibit 37, Itinerary John Tyree, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit 36. It's a two-page document. It bears Bates number Morgan Stanley confidential 45317 to '318.
MR. CLARE: I think you might have misspoken. It's 37.
BY MR. MARKOWSKI:
Q. Let me start over.
Mr. Tyree, let me show you what we've marked as CPH Exhibit 37. It's two-page document entitled "Itinerary John Tyree" bearing Morgan Stanley Bates number 0045317 to '318.
A. Yes.
Q. You testified previously that you

Tyree
recall attending one set of meetings at Sunbeam headquarters in Florida, correct?
A. That's correct.
Q. Does this document appear to reflect the itinerary for that trip?
A. It could be. Although I just don't remember the exact dates.
(CPH Exhibit 38, receipts and expense reports, marked for identification, as of this date.)
BY MR. MARKOWSKI:
Q. Mr. Tyree, I have a limited number of questions related to Exhibit 38. So I'm not going to ask you to look at the whole thing.
But do you recognize in general the documents that comprise Exhibit 38? It bears Bates number Morgan Stanley confidential 41766 through 41858.
A. Again, I have not read through it all, but they appear to be receipts and expense reports.
Q. For you, correct?
A. They appear to be, yes.
Q. Relating to work that you performed

Tyree
in connection with the Sunbeam engagement?
A. Again, having not gone through the whole thing, the dates here imply that some of these expenses were incurred in the context of the Sunbeam transactions.
Q. Let me direct your attention to a page that has -- well, I'm going to refer to a different set of Bates numbers on this. The document also bears the Bates number confidential Morgan Stanley 05062 through 05123, at least through the first portion of the document. And I want to direct your attention to the page that's labeled 05091.
A. Mine seems to be in an odd order. Sorry. 05091. Just give me a second.
Q. Right. Here we go. Got it?
A. Here we go. Got it.
Q. It's a page entitled "Expense Report Detail."
Do you see that?
A. Yes.
Q. Do you recognize the handwriting on this page?
A. No, I do not.

Tyree
Q. That's not your handwriting?
A. It doesn't appear to be, no.
Q. Maybe you can interpret the handwriting a little bit better than I can. Date of departure. Can you tell me what that number is?
A. It looks like March 4th.
Q. The date of return is March 5, 1998?
A. That's what it says, yes.
Q. Cities visited, Palm Beam, correct?
A. That's correct.
Q. Does this appear to be the expense report that relates to the itinerary we have in CPH Exhibit 37?
A. It certainly could be. It looks that way.
Q. Do you see the entry at the bottom relating to miscellaneous details?
A. Yes.
Q. Can you read the text set forth there out loud.
A. "In order to attend a morning meeting in Palm Beach, Florida, due to a last minute decision by client, John Tyree was unable to

NOT A CERTIFIED COPY

Tyree

leave the office and get a change of clothing. He had to rush to the airport to catch his flight. He bought shirt, T-shirt, socks. See attached receipt $90."

Q. Does this bring back a memory of rushing from the office without a change of clothing for an overnight trip to Palm Beach in connection with the Sunbeam work you were doing?

A. No.

Q. So you don't recall that happening, having to buy clothes and charge expenses to the client while you were down in Palm Beach in connection with the trip to Florida that you've testified about?

A. I don't recall it happening. But this sort of thing has happened to me before, so it certainly could have.

Q. Can you recall why you were suddenly required to travel to Florida for the meeting on March 5?

Do you recall something about a change of plans or the meeting coming up at the last minute that caused you to have to leave unexpectedly?

Tyree

A. No. But I would make the point that sometimes it's not the meeting that drives the situation that you're going to. Sometimes it's the meeting you came from. And that runs over, and you don't have time to go home. So there could be a whole number of reasons as to why this happened.

Q. But you don't recall there being something unusual with respect to the scheduling of the meeting down in Florida that caused you to leave unexpectedly for it?

A. Not that I recall.

Q. Now, your itinerary, CPH Exhibit 37 --

A. Yes.

Q. -- first line indicates, "John will meet Andy Savarie on Thursday morning."

Do you remember meeting Andy Savarie in Florida in connection with this visit to Sunbeam's headquarters on March 4 and 5?

A. You know, I may have. I just don't remember it exactly.

Q. Do you remember meeting additional Morgan Stanley team members once you arrived at

Tyree

Sunbeam?

A. I'm fairly confident that there were other Morgan Stanley team members both there and on the phone, although I can't recall exactly who was there versus was on the phone.

Q. This lists here on the third line MS team members Bram Smith, Seth Eischun (phonetic), Thomas Bertschom (phonetic), Michael Hart.

Does that refresh your memory that those four gentlemen were present at the meeting at Sunbeam on March 4 and 5?

A. I don't recall all of them being present. And I have a vague recollection that they all may not have attended. Some may have been on by conference call.

Q. The contact person on the itinerary is Debra McDonald.

Do you see that?

A. Yes, I do.

Q. Does that refresh your recollection that Debra Donald is one of the people that you met with from Sunbeam when you traveled to Florida on March 4 and 5?

A. It really does not.

Tyree

MR. MARKOWSKI: I'm going to adjourn the deposition at this point for today for reasons that I don't want to put on the record. I have to make sure I catch my flight back to Chicago tonight. My position is that the deposition is not concluded. And I have additional questions I'd like to put to Mr. Tyree at a future date. And we're prepared to discuss the scheduling of the continuation of Mr. Tyree's deposition with counsel for Morgan Stanley.

MR. CLARE: My position is, as previously described in correspondence with counsel for Coleman parent, that you had a more than adequate opportunity to examine Mr. Tyree for two full days of deposition testimony, including this trip, for which Mr. Tyree made a special trip back from the United Kingdom to testify.

We will deal with this at another time. You're free to take whatever position you want, and we can deal with it off the record. I do have, based on the two days of questioning, some very short questions for

NOT A CERTIFIED COPY

16div-021025

Tyree

Mr. Tyree which I'd like to ask now before we conclude for the day consistent with our position that the deposition is concluded.

EXAMINATION BY
MR. CLARE:

Q. Mr. Tyree, within the last year, do you recall being asked to search for and turn over materials related to any work that you had done in connection with Sunbeam?

A. Not that I recall in the last year.

Q. Do you recall ever being asked to search for materials in your possession related to work that you had done for Sunbeam?

A. Yes. I recall there was a time when we were asked to provide to -- I think it was the legal department of Morgan Stanley basically all of our documents involved in this transaction. Yes, I'm sure it was. As a matter of fact, I'm sure that happened.

Q. Do you have a recollection of the time period in which you were asked?

A. It happened at least once. And my recollection was it was a couple of years ago. I just can't remember exactly the date.

Tyree

Q. Did the request include that you search the electronic as well as hard copy documents?

A. I believe that it did.

Q. Did you comply with that request?

A. Yes. I believe that I did.

Q. Did you search documents both electronic and hard copy in your possession in all places where they would reasonably likely to be?

MR. MARKOWSKI: Object to the form of the question. It's leading.

A. As I recall, I conducted a comprehensive search in terms of my computer and hard copy files, that sort of thing.

BY MR. CLARE:

Q. Do you have any reason to believe that there are electronic documents, whether emails or other electronic documents on your computer now, that have not been previously searched for Sunbeam-related documents?

A. No. In particular, given the fact that my computer is new, our software system is new, I moved to London, I probably switched

Tyree

computers three to four times since this transaction took place.

Q. Since 1998?

A. That's right.

Q. Do you recall Mr. Markowski asked you a series of questions about the March 18 telephone conference calls?

A. Yes.

Q. And I'm not going to go through that in any great detail, but I did have one question relating to a statement that you attributed to Mr. Kersh or Mr. Dunlap. I believe you testified that Mr. Kersh or Mr. Dunlap stated on that call that the sales force at Sunbeam typically would undershoot.

Do you recall that?

A. I recall saying that, yes, and I recall that discussion.

Q. What did you understand Mr. Kersh or Mr. Dunlap to mean by that?

A. Well, as I recall, they actually spent some time describing it. And what I recall they said was that, for a number of reasons, including the fact that the salespeople are

Tyree

compensated based on these targets, and if you don't achieve those targets, you don't get compensated well, they tend to create what I would call achievable targets. And that has the effect of causing them to understate what the truly achievable revenue or target numbers might be for that given salesman or that given customer.

MR. CLARE: That's all I have.

THE VIDEOGRAPHER: The time is 5:06. This videotaped deposition will be adjourned. This is the end of tape number four.

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
COLEMAN (PARENT) HOLDINGS,)
INC.,)
Plaintiff,)
vs.)
MORGAN STANLEY & CO., INC.,)
Defendant.)
----------)

I, JOHN TYREE, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of November 14, 2003; that the transcript is a true, complete and correct record of my testimony, except for the corrections, if any, listed on the attached errata sheets.

_____
JOHN D'A. TYREE

Subscribed and sworn to before me this ____ day of _____, 2003.

_____
Notary Public

CERTIFICATE
STATE OF NEW YORK)
: ss.
COUNTY OF WESTCHESTER)

I, JANE WATSON, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That, the witness John D'A. Tyree whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of November, 2003.

_____
JANE WATSON

INDEX

WITNESS EXAMINATION BY PAGE
John D'A. Tyree Mr. Markowski 286
Mr. Clare 583

INFORMATION REQUESTS

MOTIONS: 305, 312, 519

EXHIBITS

CPH FOR ID.
CPH Exhibit 24, Davis Polk & Wardwell chronology..... 368
CPH Exhibit 25, fax cover sheet from Skadden Arps dated 3/3/98..... 451
CPH Exhibit 26, Project Laser Financing Structure Discussion February 27, 1998..... 463
CPH Exhibit 27, Project Laser Fast Track Due Diligence..... 468
CPH Exhibit 28, Sunbeam Due Diligence Review Agenda..... 475
CPH Exhibit 29, Financial and Advisory Services Equity Offering Memo Table of Contents December 1993..... 477

EXHIBITS

CPH FOR ID.
CPH Exhibit 30, memo dated 3/12/98 from Diedra DenDanto to Al Dunlap and others..... 489
CPH Exhibit 31, memo dated 3/7/98 from Mr. Tyree to Sunbeam financing team..... 494
CPH Exhibit 32, Project Laser Accounting Due Diligence..... 503
CPH Exhibit 33, memo dated 3/19/98 from Mr. Tyree and Johannes Groeller to Bob Gluck and others..... 537
CPH Exhibit 34, memo dated 3/20/98 from Ruth Porat and others..... 537
CPH Exhibit 35, memo dated 3/23/98 from Mr. Tyree, Mr. Groeller and Shani Boone..... 537
CPH Exhibit 36, fax cover sheet dated 4/3/98 from David Fannin to Bill Strong and others..... 566
CPH Exhibit 37, Itinerary John Tyree..... 575
CPH Exhibit 38, receipts and expense reports..... 576

NOT CERTIFIED COPY

NOT A CERTIFIED COPY

015162

NOT A CERTIFIED COPY

015163

CPH EXHIBIT 84
FOR IDENTIFICATION
PAMELA A. STITT
1-8 2004
WITNESS Chang, T.

MORGAN STANLEY
CONFIDENTIAL
0033255

PROJECT LASER

Chronology of Events

Date	Event	Location	Participants	
			Person	Firm
April 22	• SOC invites MS to present capabilities/credentials as financial advisor for advisory project - CLN first shown as potential acquisition target	SOC HQ/ Florida	ADunlap RKersh BFiedorek WStrong JStynes RKitts DMcCreery	SOC SOC MS MS MS MS MS
July 18	• Conference call with SOC - Analysis of potential synergies with BDK and MYG	Conference Call	RKersh [?] MS Team	SOC SOC MS
July 24	• Meeting to discuss potential acquisition candidates - BDK, MYG, RBD, SRM, SWK	SOC HQ/ Florida	RKersh WStrong JStynes RKitts AFuchs	SOC MS MS MS MS
August 4	• Conference call with SOC - Discussion of potential MYG acquisition	Conference Call	RKersh [?] MS Team	SOC SOC MS
August 5	• Letter drafted to Lester Crown of MYG - Re: Acquisition of MYG by SOC	Letter	MS Team (a)	MS
August 7	• BDK hostile memo prepared and presented internally	MS HQ/ New York	MS Team (a) JPerella Other MS officers	MS MS MS
August 8	• Meeting with SOC to discuss BDK acquisition materials and other potential acquisition candidates - BGG, ALRT, CUL, FBR, LEG, SNA, SPW	SOC HQ/ Florida	RKersh JStynes RKitts AFuchs	SOC MS MS MS
Sept. 11	• Conference call - Discussion of selling process - List of potential acquirors - MS engagement letter	Conference Call	RKersh MS Team (a)	SOC MS
Sept. 15	• Meeting with SOC to discuss project	MS HQ/ New York	RKersh JStynes RKitts AFuchs	SOC MS MS MS
Sept. 19 [?]	• MS officially retained			

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0033258

015164

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Sept. 22	• Meeting with SOC to discuss sellside project - Presentation by SOC mgmt. team	SOC HQ/ Florida	RGoudis JStynes RKitts AFuchs	SOC MS MS MS
Sept. 23&24	• MS due diligence @ SOC	SOC HQ/ Florida	GYoo TChang	MS MS
Oct. 2	• Meeting with Grupo Pulsar to discuss sellside	MS HQ/ New York	Grupo Pulsar Rep. RKitts AFuchs	GP MS MS
Oct. 7	• Meeting with SOC to discuss status of sellside project	Plaza Hotel/ New York	ADunlap RGoudis RKersh JStynes RKitts AFuchs	SOC SOC SOC MS MS MS
Oct. 8	• Witness product launch of Air & Water Filters	Plaza Hotel/ New York	ADunlap RGoudis RKersh MS Team	SOC SOC SOC MS
Oct. 14	• Meeting with Sara Lee to discuss sellside • Meeting with Newell to discuss sellside	SLE HQ/ Illinois NWL HQ/ Wisconsin	NGreer WAlldredge BStrong RKitts FOelerich AFuchs	SLE NWL MS MS MS MS
Oct. 15	• Breakfast with Colgate-Palmolive to discuss sellside	Waldorf/ New York	SPatrick RSwift RKitts AFuchs	CP MS MS MS
Oct. 21	• Meeting with Societe Bic to discuss sellside	New York ?	ATreuille RKitts AFuchs	Bic MS MS
Oct. 23	• Meeting with Stanley Works to discuss sellside	SWK HQ/ Connecticut	PRusso RKitts AFuchs	SWK MS MS

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0033257

015165

16div-021031

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Oct. 23	• Press release announcing the retention of MS and Llama Company to help SOC explore strategic alternatives			
Oct. 24	• Meeting with Gillette to discuss sellside	G HQ/ Boston	JDavis RKitts	G MS
Oct. 29	• Descriptive materials on SOC sent to SHirshfeld at Honeywell			
Oct. 29	• MS due diligence re: growth strategies, strategic plan	SOC HQ/ Florida	GYoo TChang LRafii	MS MS MS
Nov.	• Ongoing dialogue with Electrolux to arrange meeting concerning sale of SOC		JStynes	MS
Nov. 3	• Meeting with AEA Investors to discuss sellside	AEA HQ/ New York	[?] AFuchs RKitts	AEA MS MS
Nov. 7?	• Meeting with Whirlpool to discuss sellside	Mtg. in Chicago?	EKamerick JStynes	WHR MS
Nov. 4	• Sellside presentation books for meeting with Leggett & Platt sent to Llama			
Nov. 6	• Initial business development meeting with Mafco concerning possible transaction between SOC and CLN	Mafco HQ/ New York	JMaher RKitts MGrogan AFuchs	MCo MS MS MS
Nov. 11	• Meeting with Philips Electronics to discuss sellside	Philips HQ/ Eindhoven	Mr. Lurvink AFuchs	PHG MS
Nov. 20	• Meeting with Clorox to discuss sellside	CLX HQ/ San Fran.	PLouras RKitts AFuchs	CLX MS MS
Dec. 11	• Meeting with SOC mgmt. to discuss potential CLN transaction - SOC initiated talks w/ CLN without MS knowledge - Background presentation on CLN and preliminary financial analysis presented	Palace Hotel/ New York	RKersh DFannin JStynes RKitts AFuchs	SOC SOC MS MS MS

NOT A CERTIFIED COPY

0015166

MORGAN STANLEY
CONFIDENTIAL
0033258

16div-021032

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Dec. 12 [?]	• Meeting between SOC mgmt. and Mafco to discuss potential transaction - MS not present		JMaher RKersh DFannin	MCo SOC SOC
Dec. 15	• Conference call with Newell - Discuss potential alternative transaction structures to minimize NWL exposure to SOC grills business	Conference Call	WAlldredge MS Team	NWL MS
Dec. 18 [?]	• Meeting between SOC mgmt. and Mafco to negotiate transaction - Talks terminated after meeting due to price differences	New York	ADunlap MPrice RPerelman JMaher	SOC FMut MCo MCo
Jan. 5	• Meeting with SOC to prepare for potential sellside management presentation to Philips	SOC HQ/ Florida	RKersh RGoudis DFannin AFuchs GYoo LRafii	SOC SOC SOC MS MS MS
Jan. 13	• Organizational meeting with SOC and Llama to discuss status of sellsides	MS HQ/ New York	RKersh DFannin AWalton MS Team	SOC SOC Llama MS
Jan. 15	• Conference call with SOC - Update on status and organizational issues	Conference Call	RKersh MS Team	SOC MS
Jan. 20	• Conference call with SOC - Update on status and organizational issues	Conference Call	RKersh MS Team	SOC MS
Jan. 21	• Meeting with Al Dunlap to update on process	MS HQ/ New York	ADunlap RGoudis WStrong RKitts	SOC SOC MS MS
Jan. 23	• Meeting with Mafco - Re-initiate talks Re: Coleman	MCo HQ/ New York	WNesbitt JStynes GYoo TChang	MCo MS MS MS

NOT A CERTIFIED COPY

0015167

MORGAN STANLEY
CONFIDENTIAL
0033259

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Jan. 29	• Meeting with CLN and Mafco - Initial contact with CSFB bankers - Discussion of synergies - Discussion of 1998 expected performance - Preliminary due diligence	Revlon HQ/ New York	JLevin JPage JMaher WNesbitt CSFB Team RKersh DFannin JStynes AFuchs TChang	CLN CLN MCo MCo CSFB SOC SOC MS MS MS
Feb. 2	• Conference call with SOC - Discuss tactics, numbers & status of CLN transaction	Conference Call	RKersh DFannin MS Team	SOC SOC MS
Feb. 5	• Conference call with SOC - Discuss tactics & status of CLN transaction	Conference Call	RKersh DFannin MS Team	SOC SOC MS
Feb. 6	• Meeting with Mafco to negotiate CLN transaction - First informed of desire for SOC to acquire CLN Holding Company - Still differences in price and valuation	MCo HQ/ New York	JMaher WNesbitt CSFB Team JStynes RKitts TChang	MCo MCo CSFB MS MS MS
Feb. 10	• Meeting with SOC and SASM - Discuss Coleman transaction and issues - Legal, structural , tax, etc.	MS HQ/ New York	RKersh DFannin FFogg BWeiss MS Team	SOC SOC SASM SASM MS
Feb. 11	• Initial meeting with THLee to discuss acquisition of First Alert and Signature Brands	THLee HQ/ Boston	TDiNovi SSchoen RKersh DFannin JStynes RKitts JWebber	THLee THLee SOC SOC MS MS MS
Feb. 12	• Meeting with Conair to discuss potential acquisition by SOC	Conair HQ/ Connecticut	RKersh DFannin [?]	SOC SOC [?]

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0033260

015168

16div-021034

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Feb. 13	• Meeting with SOC - Discuss Coleman transaction and tactics - Negotiated with JMaher via telephone	MS HQ/ New York	RKersh DFannin JStynes RKitts AFuchs	
Feb. 17	• Conference call with ALRT - Information gathering, preliminary due diligence	Conference Call	TDiNovi JMessner JStynes RKitts	THLee ALRT MS MS
Feb. 19	• Meeting with SOC - Discuss ALRT, SIGB and CLN transactions - Negotiated with JMaher of Mafco on CLN transaction - Preliminary handshake agreement on a 0.745 exchange ratio	MS HQ/ New York	JMaher RKersh DFannin RKitts AFuchs JWebber TChang	MCo SOC SOC MS MS MS MS
Feb. 19	• Meeting with ALRT - Information gathering, negotiations, etc.	MS HQ/ New York	JMessner RKitts	ALRT MS
Feb. 20	• Meeting with DLJ Re: Signature Brands - Due diligence; information gathering; negotiations	DLJ HQ/ New York	LFriedman JStynes RKitts	DLJ MS MS
Feb. 23	• Strategic due diligence meeting with CLN - Review strategic plan and 1998 projections - Arrange facility visits • Due diligence on SOC by CLN and CSFB	MCo HQ/ New York	JLevin JPage WNesbitt CSFB Team RGoudis JStynes AFuchs JWebber TChang	CLN CLN MCo CSFB SOC MS MS MS MS
Feb. 24	• Meeting with SOC - Review status of transactions - Address organizational, legal, logistics and other issues • Calls with CLN to discuss final structure	MS HQ/ New York Conference Call	JMaher Wachtel[?] RKersh DFannin SASM [?] JStynes RKitts JWebber	MCo WL SOC SOC SASM MS MS MS

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0033261

0151169

16div-021035

PROJECT LASER

Chronology of Events
(continued)

Date	Event	Location	Participants	
			Person	Firm
Feb. 25	• Meeting with SOC - Review status of transactions - Address organizational, legal, logistics and other issues - Negotiate final structure of CLN transaction	MS HQ/ New York Conference Call	JMaher Wachtel[?] RKersh DFannin SASM [?] JStynes RKitts JWebber	MCo WL SOC SOC SASM MS MS MS
Feb. 26	• Meeting with SOC - Review status of transactions - Address organizational, legal, logistics and other issues - Final structure of CLN transaction agreed upon	MS HQ/ New York	JMaher Wachtel[?] RKersh DFannin SASM [?] JStynes RKitts JWebber	MCo WL SOC SOC SASM MS MS MS
Feb. 27	• SOC Board meeting approving CLN transaction and authorizing bid for SIGB and ALRT	MS HQ	SOC Board MS Team BSmith RPorat [?] MHart JTyree	SOC MS MS MS MS MS MS
Feb. 28	• Conference calls with SIGB and ALRT - Finalized terms of SIGB and ALRT transactions	Conference Call	[?] ADunlap RKersh DFannin RKitts JStynes	[?] SOC SOC SOC MS MS
Feb. 28 March 1	• Meetings with SOC and PR firms (Hill & Knowlton) - Discussion of PR aspects of transaction	New York	SOC Team H&K Team RKitts AFuchs JStynes	SOC HK MS MS MS
March 1	• Conference call with Steve Lippin (sp?) of the Wall Street Journal - Describe nature of transaction to Lippin	New York	SOC Team H&K Team RKitts AFuchs RPorat	SOC HK MS MS MS
March 2	• Announcement of transactions	New York		

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0033262

0151170

16div-021036

PROJECT LASER

Chronology of Events
(continued)

Key to Abbreviations:

SOC	Sunbeam Corporation	SIGB	Signature Brands USA, Inc.
CLN	The Coleman Company, Inc.	ALRT	First Alert, Inc.
MS	Morgan Stanley & Co., financial advisor to Sunbeam Corporation (a)	SASM	Skadden, Arps, Slate, Meagher & Flom LLP, legal advisor to Sunbeam Corporation
CSFB	Credit Suisse First Boston, financial advisor to The Coleman Company, Inc.	WL	Wachtell, Lipton, Rosen & Katz, legal advisor to The Coleman Company, Inc.
DLJ	Donaldson, Lufkin & Jenrette, financial advisor to Signature Brands USA, Inc.	MCo	MacAdnrews & Forbes, majority owners of The Coleman Company, Inc.
		HK	Hill & Knowlton, public relations firm to the Sunbeam Corporation

Notes:
a) MS Team consisting of: BStrong, JStynes, RKitts, AFuchs, GYoo, JWebber, TChang, LRafii.

NOT A CERTIFIED COPY

0151771

MORGAN STANLEY
CONFIDENTIAL
0033263

16div-021037

NOT A CERTIFIED COPY

015172

TRAVEL ITINERARY
Lily Rafii
Id #15444
CC # 9651
Project # W814-053

Important Information
MS Toll Free (800) 223-2440
MS Toll Free Voice Mail (800) 761-8950
MS AMEX Travel Hotline (800) 847-0242 after 6pm
MS Travel (212) 827-2850
Citywide (718) 405-2700 Acct # [redacted]

Tuesday, October 28, 1997

4:45 pm	**Citywide will pick up @ 1585 Carport**
6:10 pm	**Depart:** New York LGA on American Airlines Flight 2051 Seat 25 A
9:20 pm	**Arrives:** Ft. Lauderdale
Car Rental:	***Hertz Rent A Car*** ***Confirmation #A162110FDF8***

Hotel Accommodations:
1 night
Confirmation # RQ601982

Radisson Hotel Worldwide
Bridge Resort of Boca Raton
999 East Camino Real
Boca Raton, Fl 33432
(561) 368-9500
(561) 362-0492 (Fax)

Wednesday, October 29, 1997

Meeting with:	***Sunbeam*** ***1615 South Congress Avenue*** ***Del Rey Beach***
7:45 pm	**Depart:** Ft. Lauderdale on Continental Airlines Flight # 268
10:26 am	**Arrives:** Newark

Citywide will wait with name in the window. Confirmation # 80254

NOT A CERTIFIED COPY

EXHIBIT

NOT A CERTIFIED COPY

015174

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

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, vs. MORGAN STANLEY & CO., INC., Defendant.) CASE NO. 2003 CA 005045 AI

VIDEOTAPED EXAMINATION OF LILY RAFII
New York, New York
Friday, April 2, 2004

Reported by:
ANGELA GRANT
JOB NO. 158835

April 2, 2004
9:40 a.m.

Videotaped examination of LILY RAFII, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to notice, before Angela Grant, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: CLARK C. JOHNSON, ESQ.
-and-
BY: SUZANNE PRYSAK, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, DC 20005
BY: ZHONETTE M. BROWN, ESQ.

ALSO PRESENT:
MARK GRANDERSON, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

NOT A CERTIFIED COPY

015175

Page 5

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Lily Rafii, in the matter Coleman Holding, Inc., Plaintiff, versus Morgan Stanley & Company, Incorporated, Defendant. Case number CA 035045 AI. Morgan Stanley Senior Funding Incorporated, Plaintiff, versus McAndrews & Forbes Holding Incorporated, et. al., Defendant. Case number CA 035165 AI. This matter is being held in the Fifteenth Judicial Circuit In and For Palm Beach County, Florida.

This deposition is being held at Esquire Deposition Services at 216 East 45th Street, New York, New York 10017 on Friday, April 2, 2004 and the time is now 9:40 a.m.

My name is Mark Granderson with Esquire Deposition Services, and I am the Legal Video Specialist. The court reporter is Angela Grant, also in association with Esquire Deposition

Page 6

Services.

Will counsel please introduce themselves.

MR. JOHNSON: Yes, Clark Johnson and Susan Prysak, Jenner & Block, Chicago, for plaintiff Coleman Parent Holdings and defendants in the senior funding case.

MS. BROWN: Zhonette Brown, Kirkland & Ellis on behalf of Morgan Stanley and the witness.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

LILY RAFII, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. JOHNSON:

Q. Good morning, Ms. Rafii.

A. Good morning.

Q. I introduced myself as Clark Johnson this morning.

Would you be kind enough to state

Page 7

your name for the record.

A. Yes. Lily Rafii.

Q. Where do you reside, Ms. Rafii?

A. I currently reside at 57th Street, 146 West 57th Street in New York.

Q. How long have you been at that address?

A. I've been at that address for the last five years.

Q. Did you live in Manhattan prior to that time?

A. Yes, I did.

Q. How long have you lived in New York?

A. For about seven years.

Q. Have you ever given a deposition before?

A. No, I haven't.

Q. Well, as you can see, we have a court reporter here who is taking down what everyone says. As a result, you need to give answers to my questions orally or verbally so that she can take down the dialog.

If you don't understand any of my

Page 8

questions at any time, just let me know, and I'll try and rephrase them.

A. OK.

Q. And if you want to take a break for any reason, let me know that, and we can do that.

A. OK.

Q. Have you testified in any kind of a proceeding before?

A. No, I have not.

Q. Have you ever given an affidavit in connection with any type of legal proceeding?

A. No, I have not.

Q. Do you understand the oath that you just took to testify truthfully is the same oath that you'd give in a court of law?

A. Yes, I do.

Q. Are you represented by counsel today?

A. I'm represented by Kirkland & Ellis, Zhonette Brown.

Q. How did it come about that you would be represented by Kirkland & Ellis?

A. I, actually, probably a month ago

NOT A CERTIFIED COPY

015176

Rafii

or so I got a call from Kirkland & Ellis in conjunction with Morgan Stanley.

Q. Who was on that telephone call?

A. I spoke with Tom Clare.

Q. Was anyone else on the phone?

A. No. About a week ago was the first time I spoke to Zhonette.

Q. Have you spoken with any in-house lawyers at Morgan Stanley?

A. Very briefly on one of the first calls just to --

MS. BROWN: I don't. That's sufficient.

Q. That's one of the calls with Tom Clare?

A. Actually, I got a call from an in-house lawyer who directed me to Tom Clare.

Q. What was the name of that in-house lawyer?

A. I don't remember.

Q. Is that the only conversation you've had with an in-house lawyer at Morgan Stanley?

A. Yes. It was an introductory call.

Rafii

Q. Have you met with Tom Clare in person at any time?

A. No, I have not.

Q. Have you met with any lawyers from Kirkland & Ellis in person other than Ms. Brown?

A. No, I have not.

Q. When was the first time you met Ms. Brown in person?

A. Yesterday.

Q. You had spoken to her on the phone prior to that, I assume?

A. Yes, briefly.

Q. To make arrangements to meet?

A. Yes.

Q. Did anyone ever ask you for any documents you might have relating to Sunbeam in connection with the deposition that you're giving today?

A. Yes.

Q. Did you have any materials relating to Sunbeam?

A. No.

Q. When was the first time anyone ever

Rafii

asked you for materials relating to Sunbeam?

A. Just, again, probably a week ago.

Q. So in March?

A. Yes.

Q. Of 2004?

A. Yes, that's correct.

Q. What are the arrangements for Kirkland & Ellis representing you here today?

A. Can you please clarify?

Q. Sure. Who's paying for your representation?

A. I believe it's Morgan Stanley.

Q. Other than meeting with Ms. Brown yesterday, what have you done to prepare for the deposition today?

A. Really nothing.

Q. How long was your meeting with Ms. Brown yesterday?

A. Several hours.

Q. More than half a day?

A. Several hours. Probably about half a day. Excuse me.

Q. Did anyone attend the meeting besides you and Ms. Brown?

Rafii

A. No.

Q. Did you look at any documents that refreshed your memory about events relating to Sunbeam?

A. Yes, because I hadn't seen any documents before that.

Q. So your memory was refreshed by some of those documents?

A. A little bit.

Again, it was such a long time ago that.

Q. Do you remember any documents that helped you remember some of the events in the past?

A. It refreshed my memory to a limited extent.

Q. Which documents refreshed your memory?

A. Just mostly the presentation things that I had contributed to.

Q. Anything else?

A. An itinerary.

Q. An itinerary for a trip to Florida?

A. Yes.

NOT A CERTIFIED COPY

SEC 577

Rafii

There was a -- yeah.
Q. Anything else?
A. There was a chronology of events that I just didn't look over at length but.
Q. Had you ever seen that chronology of events before?
A. I don't remember specifically.
Q. Do you know who prepared that chronology that you looked at?
A. I don't remember specifically.
Q. Do you have any idea who did?
A. I can't say specifically.
Q. Do you have a general idea of who did it?
A. I really don't. There was so many people on the deal team that.
Q. It could have been any of them?
A. It could have.
Q. Are you still in contact with anyone from your days at Morgan Stanley?
A. No.
Q. When did you leave Morgan Stanley?
A. I left in 2000.
Q. What point in 2000 did you leave?

Rafii

A. In July of 2000, towards the end of July.
Q. Do you know whose given testimony in this lawsuit so far?
A. I'm not sure exactly.
Q. Do you have an idea of anyone whose given testimony?
A. Not specifically. I've heard that a couple of people have. I don't know specifically who has and who hasn't.
Q. Do you know who from Morgan Stanley has?
A. I've heard -- I don't know specifically. I've heard that some of the top-level people have so.
Q. Who in your mind are the top-level people?
A. On this deal specifically, the M.D.s on the deal were Jim Stynes and Bob Kitts.
Q. Do you know the gist of what their testimony has been?
A. No.
Q. Do you know what they've said about

Rafii

any topic so far?
A. No, not at all.
Q. Do you know what they said about your involvement in the transaction?
A. Not at all.
Q. Have you discussed the fact that you're giving this deposition with anyone other than your counsel?
A. No. I mean, in passing to my sister, who I live with, but just close relatives.
Q. When did you first hear that there was litigation relating to Sunbeam?
A. Again, probably about a month ago.
Q. When you were at Morgan Stanley did you ever hear that there were lawsuits relating to the acquisitions that you'd worked on?
A. No, I didn't.
Q. While you were at Morgan Stanley no one asked you to preserve any materials you had relating to Sunbeam?
A. No.
Q. Do you know what happened to the

Rafii

materials that you had relating to the Sunbeam engagement after you were done with the engagement?
A. No, I don't.
Q. Did you use e-mail while you worked at Morgan Stanley?
A. To a limited extent. Definitely not like we use it today. I don't think it was our main form of communication at that time.
Q. Do you know what your e-mail address was?
A. It changed a couple times at Morgan Stanley. When I left it was LilyRafii@, I think at MSDW.com. I don't think it originally was that. I can't recall. We didn't use it like we do today.
Q. What do you mean by that? You just used it less frequently?
A. Less frequently.
Q. Did you have a laptop computer while you worked at Morgan Stanley?
A. No, not my own.
Q. Did you have one you could

NOT A CERTIFIED COPY

0151178

Page 17

Rafii

basically loan out?
A. From what I recall there wasn't that many and it was a difficult process to actually garner one for use. I think there was a couple for the M&A department that they actually lent out sometimes.
Q. That's a little surprising.
A. Yeah. I think it's a different territory today.
Q. Well, we're talking about 1998. Hardly the stone age.
MS. BROWN: Is there a question pending?
MR. JOHNSON: Sure.
A. I was actually --
MS. BROWN: What's the question?
MR. JOHNSON: Well, she obviously knows. She's answering.
A. There wasn't many. No one had their individual laptops and it was only for trip purposes that you could actually reserve one so.
Q. You mentioned looking at an itinerary.

Page 18

Rafii

Did you take a laptop with you to Florida to visit Sunbeam?
A. I don't remember doing so.
Q. So the first time you heard about any litigation relating to the Sunbeam acquisitions was within the past month?
A. Yes. Directly, yes. In the -- probably through like newspaper articles I had, you know, caught a glimpse of something but I can't recall specifically.
Q. So you may have seen something in say the Wall Street Journal indicating that there was litigation?
A. Perhaps.
Q. When you say the first direct contact or knowledge you had about the litigation was the call within the past month.
A. Uh-huh.
Q. Did you have an e-mail account with Bloomberg?
A. I don't remember.
Q. You may have?
A. I don't think it was an e-mail

Page 19

Rafii

account.
Q. What kind of --
A. There may have been like a Bloomberg password to access information, but I don't recall specifically. I don't remember having an e-mail account with Bloomberg.
Q. Did you use Bloomberg for any type of messaging with other people?
A. Not that I recall.
Q. You have a college degree, I assume.
A. Yes, I do.
Q. When did you receive that?
A. In 1997.
Q. From what institution?
A. Georgetown University.
Q. What was your degree?
A. A B -- bachelors from the School of Foreign Service.
THE WITNESS: I'm sorry. Do you mind if I just refill my glass of water?
MR. JOHNSON: That's fine.

Page 20

Rafii

THE WITNESS: Would anyone like anything?
MS. BROWN: No, thank you.
MR. JOHNSON: Quite all right.
Q. Do you have any graduate education?
A. No, I don't.
Q. So after you finished Georgetown in 1997 that was the end of your schooling?
A. Yes, it was the end of my schooling.
Q. Did you go to work immediately at Morgan Stanley after graduating?
A. Yes, I did, about a month to six weeks after I graduated.
Q. A little vacation perhaps in between graduating and starting?
A. I don't remember much of a vacation. I think it was more of trying to find a place in New York.
Q. How did you decide to start working at Morgan Stanley with a foreign service degree?
A. My major was actually international

NOT A CERTIFIED COPY

015179

Rafii

economics, finance and commerce, and the investment banks recruited heavily at Morgan Stanley, so I interviewed with many investment banks.

Q. Why did you pick Morgan Stanley?

A. For a number of reasons, primarily its reputation and I really enjoyed the people that I met.

Q. While you were in college did you have any jobs?

A. Sorry?

Q. Summer internships, things of that sort?

A. Uh-huh, I did. I had internships at a few banking corporations, mostly private banking though. And I worked at CNN Financial News while I was at school.

Q. Did you go straight from high school into Georgetown or did you work between high school and undergraduate?

A. No, I went straight to Georgetown after high school.

Q. Obviously, we're going to spend a lot of time talking about your work at Morgan

Rafii

Stanley today, but lets fast forward to what you've been doing since you left Morgan Stanley.

A. OK.

Q. I think you said you left in late July of 2000?

A. Uh-huh.

Q. What did you do when you left Morgan Stanley?

A. I -- right after I left Morgan Stanley I was consulting and writing business plans for small companies, and during that time I started my own company which I've been involved in ever since.

Q. Other than consulting and running your own business, have you done any work of any kind professionally since July of 2000?

A. Can you clarify in light of what I said?

Q. Sure.

I'm just trying to understand whether you've done any work other than consulting and running your own business since July of 2000.

Rafii

A. No. That's about it.

Q. Can you tell me any entities you've provided consulting to.

MS. BROWN: Objection. I don't know what relevance this has.

MR. JOHNSON: You can answer the question.

A. One was a company called Loco Beverages. They were trying to launch a soft drink. Another company was called Aphora that worked -- basically it was trying to do rapid HIV testing devices and mad cow, develop a mad cow testing device and then, again, I started my own business.

Q. What kind of business did you start?

A. It's a handbag company, so the design, manufacturing, marketing of handbags.

Q. Do you have a title in your company?

A. Uh-huh. I'm co-president.

Q. Who's the other co-president?

A. My partner. Her name is Sulaika Zarrouk.

Rafii

Q. Maybe you could spell that for the court reporter.

A. S-u-l-a-i-k-a Z-a-r-r-o-u-k.

Q. Is your partner someone you met at Morgan Stanley?

A. No.

Q. What is the name of your company?

A. Felix Rey, LLC. F-e-l-i-x R-e-y.

Q. Van Gogh's physician?

A. Yes, exactly. Not many people know that.

Q. I guess Van Gogh's physician is not as good a name as Felix Rey.

A. Yeah.

Q. Why did you decide to leave Morgan Stanley?

A. I had really wanted to start my own business.

Q. Any other reason?

A. To just, again, part of that is doing something more creative than what I had done, and the analyst training program typically ends after two or three years so.

Q. So it would have been a

NOT A CERTIFIED COPY

015180

Rafii

transitional point in your career anyway?
A. Yes.
Q. Did the Sunbeam engagement have any role in your deciding to leave Morgan Stanley?
A. No.
Q. Did the Sunbeam engagement leave a bad taste in your mouth in any way?
A. No.
Q. The hours were reasonable and the demands were acceptable?
A. For the job at that time it was fairly normal.
Q. Was there any suggestion that your future at Morgan Stanley was anything other than bright?
A. No.
Q. What was your pay at Morgan Stanley, your base pay in say '98 and '99?
A. That's such a long time ago. I don't remember a specific number. I mean, maybe within the 50, 60,000 ballpark. I don't remember specifically.
Q. How about bonuses, do you remember

Rafii

what bonuses you received at Morgan Stanley?
A. Which year are you?
Q. Lets start with '98.
A. The end of '98?
Q. Correct.
A. I don't remember specifically. Maybe -- I don't know -- 20-to -- 20 maybe to 25.
Q. So something between say 50 percent of your base salary?
A. Approximately.
Q. Do you know what your base salary was when you left Morgan Stanley in 2000?
A. Again, an approximate number is probably 70. 65, 70.
Q. Did you have any titles at Morgan Stanley other than analyst?
A. No.
Q. So you were an analyst from June or July of 1997 until July 2000?
A. That's correct.
Q. What's the next title up the chain, is it associate?
A. Associate.

Rafii

Q. Did you receive favorable evaluations while you were at Morgan Stanley?
A. I think for the most part.
Q. Do you recall any constructive criticisms or other more negative comments about any of your work?
A. That was definitely part of the review process.
Q. What were some of those comments?
A. I remember after my first year it was, one of the comments may have been to the quantitative, need to work on the quantitative skills.
Q. What does that mean?
A. I mean, however you want to interpret it. I don't.
Q. Did you interpret it in any way?
A. Again, the constructive criticism is an integral part of any review so.
Q. Did anyone comment that you were too shy?
A. I don't remember.
Q. Or that you should speak up more often?

Rafii

A. I don't remember specifically.
Q. Did any of your evaluations during your time at Morgan Stanley mention your work for Sunbeam?
A. I don't remember specifically.
Q. You would expect Sunbeam to be mentioned though; is that fair to say?
MS. BROWN: Objection.
A. I mean, probably because your teammates are the ones who evaluate you, so I don't know if Sunbeam was specifically reference.
Q. You spent a lot of time on the Sunbeam engagement in '97 and '98; is that fair to say?
MS. BROWN: Objection. Vague.
A. In '97 when I started I did. In '98 I believe I was, I was working on other deals in February of '98, so I didn't spend a lot of time in '98 on Sunbeam.
Q. Did you prepare any type of a self-evaluation at Morgan Stanley?
A. That was part of the review process.

NOT A CERTIFIED COPY

Q. Did you mention your work on the Sunbeam engagement in any way in your self-evaluation?
A. I don't remember.
Q. Was the Sunbeam engagement a successful one for Morgan Stanley?
MS. BROWN: Objection. Vague.
A. I can't speak for Morgan Stanley.
Q. Go ahead, I'm sorry.
A. No. I can't speak for Morgan -- what does that mean, successful?
Q. Well, I'm just asking whether in your view Morgan Stanley was pleased with the way the Sunbeam engagement turned out.
MS. BROWN: Objection. Vague.
A. Again, I don't know. I was a junior member of the deal team. I don't know what Morgan Stanley's perception of the deal was.
Q. Well, lets start with you personally then.
Were you happy with the way the Sunbeam engagement turned out?
MS. BROWN: Objection. Vague.

Time frame.
A. Again, I don't -- if you're asking if I was happy with my work, then I say yes.
Q. You thought you did a good job on the engagement?
A. Yes. I mean, we all worked very hard and did the best that we could so.
Q. Did you ever hear any internal discussions at Morgan Stanley where anyone voiced their own views as to the success of the engagement?
MS. BROWN: Again, vague.
A. No.
Q. You don't view the Sunbeam engagement as a professional embarrassment for you in any way?
MS. BROWN: Objection. Vague.
A. No.
Q. Did you ever hear anyone at Morgan Stanley voice the view that the Sunbeam engagement was an embarrassment for Morgan Stanley?
A. No.
Q. Do you have the view with the

benefit of hindsight that Morgan Stanley should have done something differently in connection with the Sunbeam engagement?
MS. BROWN: Objection. Vague.
A. No.
Q. Did you ever hear anyone at Morgan Stanley articulate the view that Morgan Stanley should have done something differently in connection with the Sunbeam engagement?
MS. BROWN: Objection. Asked and answered.
A. No, not -- no. Not that I recall.
Q. Do you know what fees Morgan Stanley earned in connection with the Sunbeam engagement?
A. No.
Q. Did you understand that Morgan Stanley would not earn any fees unless some sort of transaction were consummated?
A. No.
Q. Can you describe how you were first assigned into an analyst job at Morgan Stanley.

A. Can you clarify?
Is it my role on the deal or?
Q. I guess that's what I'm trying to understand. Let me see if I can clarify.
You accepted a job at Morgan Stanley and you showed up for work --
A. Yes.
Q. -- and you were given a desk of some sort.
A. We had training for, I believe it was four-to-five weeks, maybe a little longer and then after training each analyst is assigned to a specific deal.
Q. Was the Sunbeam deal the first deal that you were assigned to?
A. Yes, it was.
Q. So you were assigned to that sometime in July of 1997?
A. No, it was in -- I believe I started in August. I was in training in July.
Q. How did you learn that you would be assigned to the Sunbeam engagement?
A. I don't remember specifically.

NOT A CERTIFIED COPY

015182

Page 33

Rafii

There are staffers that assign you deals.
Q. What did you understand the engagement to involve when you were first assigned to it?
MS. BROWN: Objection. Vague.
A. Yeah.
Again, I don't remember specifically. I don't remember specifically.
Q. Who else from Morgan Stanley was on the team when you were first assigned to it?
A. There was Bob Kitts, who was a managing director; Jim Stynes, who was also a managing director; Alex Fuchs, who was either a senior associate or a vice president, I don't recall exactly. Gene Yoo was an associate and Tyrone Chang was another analyst on the deal. So it was a fairly large deal team. This was within M&A so.
Q. And you presented those people kind of in the order of seniority as well, I think.
A. Yes, I did.
Q. Did you record your time in any way in connection with the Sunbeam engagement?

Page 34

Rafii

A. Yes.
Q. Tell me how that process worked.
A. Basically we had time sheets, I believe it was weekly, and you basically write the deal that you've been working on and how many hours you've spent on it during the week or two weeks, I don't remember specifically.
Q. Would you be surprised if the time sheets showed time entries for you in July of 1997?
A. I would be surprised because I thought I was in training during that time.
Q. What was the purpose of, to the best of your knowledge, the purpose of writing down time spent on certain transactions?
MS. BROWN: Objection. Foundation.
A. To keep track of what projects you're working on for the staffer to know how much time you're working on what deal for the most part.
Q. Was it a fairly informal or lax process?

Page 35

Rafii

MS. BROWN: Objection. Vague.
A. Not that I remember.
Q. Would you be surprised if, for example, Mr. Fuchs billed zero hours to the Sunbeam engagement in 1997?
A. I don't know.
MR. JOHNSON: Lets look at the '97 hours.
I'm going to mark a document as Exhibit 162 or 3. This will be CPH 163.
Do you have stickers I could borrow?
(CPH Exhibit 163, Morgan Stanley Confidential 0080427 through 30, marked for identification, as of this date.)
Q. Here's your very own copy, Ms. Rafii.
A. Thank you. Thanks.
Q. I've given you a document we've marked as CPH Exhibit 163.
A. Uh-huh.
Q. Which has the Bates stamp Morgan Stanley Confidential 0080427 through 30, and

Page 36

Rafii

if you just take a minute to look through that, I'd appreciate it.
Ms. Rafii, have you ever seen a document like this before?
A. Not before -- before yesterday.
Q. So you looked at this yesterday?
A. Uh-huh.
Q. Doesn't this show on the third page of the Exhibit which has the ending Bates numbers 429 that you billed 96 hours to the Project Laser in July of 1997?
A. Yes, it does show that.
Q. Do you think that's an error?
A. I'm not sure. That may -- I don't recall again specifically. There could be a possibility that I started at the end of July, but while being in training at the same time so.
Q. Do you know why Mr. Fuchs' name is not on this hour sheet?
A. No.
MS. BROWN: Objection. Foundation.
A. No, I don't, but this doesn't -- from what I recall these other people

NOT A CERTIFIED COPY

Page 37

Rafii

aren't -- weren't necessarily on the deal so.
Q. I was just about to ask about some of them.
A. Yeah.
Q. Andreas Boquist, for example, do you know what he was doing on Project Laser?
A. No, I don't.
Q. You understand that Project Laser is the code name for the Sunbeam engagement?
A. Yes, I do.
Q. How about Robert Lee?
A. No, I don't remember him.
Q. Is Mr. Lee or Mr. Boquist even a familiar name to you?
A. Mr. Boquist is a familiar name. Mr. Lee isn't.
Q. How about Mr. Hui or Hui, H-u-i?
A. His name is familiar but not in conjunction with Sunbeam.
Q. Well, if I understand Exhibit 163 it shows that you had the greatest number of hours in fiscal 1997 devoted to Project Laser; is that correct?
MS. BROWN: Objection. Foundation.

Page 38

Rafii

The document speaks for itself. To the extent he's asking beyond that, I object on foundation.
A. From what I see here that's what it looks like.
Q. Is that surprising to you?
A. Not very surprising.
Q. You were working pretty hard on the engagement.
A. Yes, I was.
And I was the most junior person on that team so typically --
Q. Work flows downhill?
Who was your primary contact within Morgan Stanley on the Sunbeam engagement when you first got involved?
A. Just by nature of my role it -- I would have to say it was Tyrone Chang who was the other analyst. I mean, again, I was the most junior member so it's not like the M.D.s would come and report to me so.
Q. You didn't keep Mr. Kitts up to date on a --
A. No.

Page 39

Rafii

Q. -- on a daily basis?
A. No, I didn't. No.
I would say Tyrone and then Gene Yoo.
Q. Did you understand that Bill Strong from Morgan Stanley Chicago was also on the Sunbeam team?
A. Yes, I remember vaguely.
Q. Did you ever have any telephone calls or meetings with Mr. Strong about Sunbeam?
A. I don't remember and it wouldn't have been me directly.
Q. How about Andrew Sevari, does that name ring a bell?
A. I don't remember.
Q. What were your duties and responsibilities as you understood them when you were assigned to the Sunbeam engagement?
A. During the course of the Sunbeam or as the inception of the deal?
Q. Lets take it from the day you were assigned through the time you were finished working on Sunbeam.

Page 40

Rafii

A. Again, my task primarily as a junior member of the team was mostly gathering public information and a lot of the administrative work in putting the presentations together from an administrative and clerical standpoint. Again, there were so many deal team members that as the junior member of the team you kind of assume those kinds of responsibilities.
Q. Did you gain any understanding as to how Morgan Stanley obtained Sunbeam as a client for the engagement?
A. No.
Q. Did you have any responsibility for preparing any analyses of any types of deals?
MS. BROWN: Objection. Vague.
A. Can you clarify. Types of deals?
Q. Sure.
Did you prepare or help prepare any analyses of possible transactions involving Sunbeam?
A. I must have contributed to the analyses.
Q. Did you assist in preparing

NOT A CERTIFIED COPY

015184

Rafii

materials to distribute to third parties who were possible transaction candidates?

MS. BROWN: Objection. Vague.

A. I don't remember specifically.

Q. Were you involved in discussions at Morgan Stanley about strategic options available to Sunbeam?

A. Again, I don't remember the specifics. I may have sat in on, you know, some of the group discussions.

Q. How about due diligence, did you perform any due diligence relating to the Sunbeam engagement and possible transactions?

MS. BROWN: Objection. Vague.

A. Due diligence is a very broad term.

Again, I contributed in terms of information gathering, publicly traded, like what I said before, publicly traded company information and such.

Q. Did you do any due diligence other than gathering publicly available information?

A. Due diligence is such a broad term

Rafii

and everything you're doing is kind of due diligence so.

Q. So that would be a yes?

A. Part of your role really is due diligence so.

Q. Were you involved in any way in preparing to address market reaction to the transactions that ultimately came to fruition for Sunbeam?

MS. BROWN: Objection. Vague.

A. I don't remember.

Q. What role did you have in connection with the financing of the transactions?

A. I don't remember specifically. Again, as part of my role I don't think I was much exposed to that aspect of it.

Q. What was the overall goal of the Sunbeam engagement?

MS. BROWN: Objection. Foundation and vague.

A. That's a very vague question. Again, as the most junior member of the team I wasn't making strategic decisions per se.

Rafii

Q. Do you know what your client's goal was in retaining Morgan Stanley?

MS. BROWN: Objection. Foundation.

A. No, not specifically.

Q. Do you have a general idea of what Morgan Stanley was supposed to be doing?

A. Not specifically. I know they were exploring a lot of options so.

Q. Those involved selling Sunbeam to a third party?

A. I don't remember specifically.

Q. That was one of the possible transactions being explored, wasn't it?

A. Again, I don't remember specifically. I remember there was, you know, a lot of different options so.

Q. And selling Sunbeam to a third party was one of the options, wasn't it?

MS. BROWN: Objection. Asked and answered.

A. It could have been.

Q. You just don't remember?

A. No. I mean, logically I can say it could have been.

Rafii

Q. Lets talk about the fourth quarter of 1997.

What percentage of your time was devoted to the Sunbeam engagement?

A. I think I was solely working on the Sunbeam deal in the third quarter of '97. Sorry, the fourth quarter of '97.

Q. How about the first quarter of '98, were you working on any other engagements at that time?

A. Yes, I was.

Q. What was that?

A. I don't remember specifically. I mean, I worked on so many deals since then that it's vague to me now.

Q. You were still spending some of your time on the Sunbeam engagement in the first quarter of 1998?

A. I believe in the very early portion of that I was.

Q. And then it dropped off after that?

A. For me it did. Again, it was a very big deal team so.

Q. Have you ever had any conversations

NOT A CERTIFIED COPY

Rafii

with Ruth Porat concerning Sunbeam?
A. No. Not that I remember.
Q. How about Michael Heart, have you ever had any conversations with Michael Heart concerning Sunbeam?
A. I don't believe so.
Q. How about Bram Smith, any conversations with him at any time concerning Sunbeam?
A. I don't believe so. Maybe in a conference call in a group setting, but not me specifically.
Q. How about John Tyree, did you ever have any conversations with him concerning Sunbeam?
A. Not me personally.
Q. When you say "not me personally," does that mean --
A. Not me uniquely. I don't think we ever had like a phone conversation directly. Again, it may have been in a group setting or on a conference call or, you know, with various members of the deal team there but.
Q. Do you ever remember anyone at

Rafii

Morgan Stanley soliciting your view concerning Sunbeam's first quarter 1998 sales?
A. No.
Q. So, for example, Mr. Tyree never asked you your view as to Sunbeam's projection for the first quarter of 1998?
A. Not that I recall.
THE WITNESS: Do you mind if I refill my water again?
MR. JOHNSON: Yeah, that's fine.
THE WITNESS: Thank you.
MR. JOHNSON: Sure.
Q. In the fall of 1997 you assisted in preparing materials to give to possible acquirers of Sunbeam; isn't that correct?
MS. BROWN: Objection. Misstates.
A. Again, I contributed to probably the presentations. I don't know specifically if it was for potential acquirers.
MR. JOHNSON: This will be Exhibit 164.
MS. PRYSAK: 165.
MR. JOHNSON: No, the first one

Rafii

was 163.
(CPH Exhibit 164, Morgan Stanley Confidential 0045133 through 139, marked for identification, as of this date.)
Q. Ms. Rafii, I've given you what we've marked as CPH Exhibit 164 which bears Bates stamp Morgan Stanley Confidential 0045133 through 139.
Does this document look familiar to you?
A. This type of document looks familiar. Not this one specifically.
Q. Does this appear to be an assessment of a possible transaction between Sunbeam and Whirlpool?
MS. BROWN: Objection. Foundation.
A. Not -- I mean, not necessarily. It doesn't necessarily have to be that. It can be an exploratory kind of document.
Q. Well, exploratory specifically as to Sunbeam and Whirlpool?
A. Well, yes, because it says Whirlpool so.

Rafii

Q. Did you assist in preparing this document?
A. I don't recall specifically. I may have done, again, I gathered publicly available information on a number of companies, so Whirlpool could have been one of them.
Again, I don't remember specifically.
Q. Do you remember any of the other companies like Whirlpool who were looked at as possible candidates for a transaction with Sunbeam?
A. Off the top of my head, again, I don't know if it's specific to a combination with Sunbeam or a transaction with Sunbeam, but in terms of comparable companies, I remember Black & Decker, Rubbermaid, for instance. Gathering information on Coleman, obviously, First Stewarts signature brands, Newell.
Q. Did you assist in preparing materials to distribute to third parties relating to each of those possible or any of

NOT A CERTIFIED COPY

0151-0196

Rafii

those possible combinations?
A. I don't remember specifically. Again, I -- we acquired -- I acquired publicly available information on a lot of these companies so not one stands out over any other and I don't recall specifically how it was distributed or to who it was distributed to.
Q. With respect to this Whirlpool then you don't recall whether you were involved in preparing what's been marked as Exhibit 164?
MS. BROWN: Asked and answered.
A. Yeah. I mean, specifically, again, I don't remember.
MR. JOHNSON: Lets mark this one as Exhibit 165.
(CPH Exhibit 165, Version of CPH Exhibit 164 with metadata exposed, marked for identification, as of this date.)
THE WITNESS: Thank you.
Q. I've given you what we've marked as CPH Exhibit 165, which I will represent for the record is a version of CPH Exhibit

Rafii

164 with the metadata on the document exposed and appearing at the first two pages of Exhibit 165.
Are you familiar with the term "metadata," Ms. Rafii?
A. No.
Q. Did you discuss metadata with counsel yesterday?
MS. BROWN: Objection.
I'm going to instruct her not to answer that.
Q. Do you see on the first page of Exhibit 165 it reflects under the bold heading built in document properties author: R-a-f-i-i-L-i. That signifies you, doesn't it?
MS. BROWN: Objection. Foundation.
THE VIDEOGRAPHER: Excuse me. Is someone buzzing or vibrating?
THE WITNESS: It may be me.
MS. BROWN: Lets go off the record.
THE VIDEOGRAPHER: The time is now 10:39 and we are off the record.

Rafii

(Discussion off the record.)
THE VIDEOGRAPHER: The time is now 10:46 and we are back on the record.
Q. Did you have a user name for computer purposes at Morgan Stanley?
A. I'm sure I did. I must have.
Q. Wasn't it R-a-f-i-i-L-i?
A. This could have been it, yeah.
Q. Under the next heading on the first page of Exhibit 165 doesn't it signify that you last saved this document on November 6, 1997 at 10:34 p.m.?
MS. BROWN: Objection. Foundation.
A. I'm sorry, can you direct where it says that?
Q. Sure.
Under the heading "Document Statistics." Do you see that?
A. Uh-huh.
Q. If you look at several of the criteria there they seem to indicate together that you last saved this document on November 6, 1997 at 10:34 p.m.
Do you see that?

Rafii

A. I do see that. I don't recall whether I specifically did or not. It's, again, hypothetically I could have edited this document or typed it out.
Q. We can go back to Exhibit 164, if we could. The first bullet point provides that, "Sunbeam represents an attractive growth story and investment opportunity for Whirlpool."
What's the basis for that statement?
MS. BROWN: Objection. Foundation.
A. In looking at this document it's probably what the bullet points underneath describe it to be.
Q. So you're referring to the three dashes underneath the bullet?
A. Yes.
Q. Was Sunbeam in fact the market share leader in all of the product segments noted in the parenthetical as of November 1997?
MS. BROWN: Objection. Foundation.
A. I don't remember.

NOT A CERTIFIED COPY

015187

Rafii

Q. The third bullet point provides, "tremendous intrinsic value in the company."
What's the basis for that statement?
MS. BROWN: Objection. Foundation.
A. Again, because I don't recall this document specifically, probably what the dashes attribute it to be.
Q. Lets look at the first dash again that provides, "Growth and profitability that outpace the nearest competitors."
Was that an accurate statement in November 1997?
MS. BROWN: Objection. Foundation and vague.
A. Yeah, I mean, I don't remember specifically.
Q. So it may have been a false statement in November of 1997?
MS. BROWN: Objection. Argumentive. Misstates.
A. No, that's not what I said. I just don't recall the research specifically.
Q. Was there research done by Morgan

Rafii

Stanley to determine whether the statements contained on the first page of Exhibit 164 were accurate?
A. Again, I don't remember specifically but probably.
Q. Why do you say that?
A. Again, data is compiled from a lot of different sources and from my experience, I can't speak for Morgan Stanley, you strive to be thorough and as accurate as possible and, again, derive information from various sources so.
Q. Why does Morgan Stanley strive to do that?
MS. BROWN: Objection. Vague. Foundation.
A. That is a very vague question. I mean, again, reputation is one of the leading investment banks and it has a certain obligation to its regulators and investors, clients, everybody, so it's vague. I mean, from my point of view.
Q. When you say that Morgan Stanley would typically gather information from a

Rafii

variety of sources when it's preparing a document like Exhibit 164, can you tell me what types of information Morgan Stanley would typically gather?
A. I mean, I can speak for, you know, what I remember I did on this --
Q. That's even better.
A. -- project. And, again, it's acquiring publicly available information in the form of equity research reports, newspaper articles, available market data. I can't speak to these details here in specific because I don't recall this document specifically.
Q. Did Morgan Stanley obtain any other information other than publicly available information in connection with preparing a document like Exhibit 164?
MS. BROWN: Objection. Foundation and vague.
A. I'm sorry. Can you repeat that.
MR. JOHNSON: Sure. We can actually have the reporter read it.
(Record read.)

Rafii

MS. BROWN: My objection stands.
A. Again, I don't recall this specifically, but typically company information, the information the company provides is an integral part of presentations such as this or information. Again, I can't speak for these pages or this specifically so.
Q. But as a general matter it's publicly available information and information from the client?
A. No. I mean, I'm just speaking for my role here. So I use publicly traded information because that was from what I recall, you know, the crux of the information I gathered.
Q. Do you recall gathering any other information besides the publicly available information you gathered that you've already talked about?
A. I don't remember specifically.
Q. Do you have any general recollection?
A. Again, not specifically. I

NOT A CERTIFIED COPY

0151188

Rafii

remember doing extensive work on publicly traded companies and gathering information.

Q. You may have already detected every time you answer with a question not specifically, I ask you whether you generally recall something.

A. Yeah. I'm -- that's a question of semantics. It's very hard to remember this six years ago, you know, with so many deals in between. I mean, these documents are all familiar because you see them, types of this document on many deals, so I can't remember the specific details.

Q. I want you to look at pages 45136 and 137 of Exhibit 164 for me. Those pages are subtitled, "Analysis of Synergies and Sources of Synergies."

Do you see that?

A. Uh-huh.

Q. What is synergies referred to there?

MS. BROWN: Objection. Foundation.

A. I mean, here it alludes to the benefits of -- potential benefits of a

Rafii

combination.

Q. The last bullet point on page 137 provides total potential synergies of over $150 million from Sunbeam with 50 percent recognized in year one and the remainder by year two.

Do you know what the basis of that statement is?

A. No, I don't recall.

Q. Who at Morgan Stanley was involved with analyzing synergies in connection with possible Sunbeam transactions?

MS. BROWN: Objection. Foundation.

A. I don't remember exactly. Again, it was a large deal team so.

Q. Did you have any role in analyzing synergies in connection with possible transactions?

A. No.

MS. BROWN: Objection. Vague.

A. Not that I recall.

Q. Do you remember preparing a handout to Electrolux concerning a possible transaction between Sunbeam and Electrolux?

Rafii

A. Not specifically. I may have done research on Electrolux and contributed to a handout or a presentation or whatnot.

MR. JOHNSON: This will be Exhibit 166.

(CPH Exhibit 166, Morgan Stanley Confidential 0045102 through 108, marked for identification, as of this date.)

Q. Ms. Rafii, I've given you CPH Exhibit 166 which has the Bates stamp Morgan Stanley Confidential 0045102 through 108.

Does this appear to be materials prepared by Morgan Stanley concerning the transaction with Electrolux?

A. Again, it's similar to the last document and, yeah, it looks like an exploratory document like the last one.

Q. Can you tell me what you mean when you say exploratory?

A. Again, it doesn't necessarily mean a potential combination. It's looking at the -- it looks like a general overview.

Q. An overview of the pros and cons of

Rafii

a possible transaction?

A. That's what it appears to be, yes.

Q. Did you assist in preparing this material, Exhibit 166?

A. I don't recall specifically. I may have done. Again, it could have been in, you know, typing this out or editing context. Again, I wasn't responsible for the strategic information.

Q. Who at Morgan Stanley was responsible for the strategic information?

MS. BROWN: Objection. Vague and foundation.

A. I mean, I don't remember specifically. There was many members on the team so.

MR. JOHNSON: Lets go ahead and mark 167, I guess.

(CPH Exhibit 167, Copy of CPH 166 with metadata exposed, marked for identification, as of this date.)

Q. Ms. Rafii, I've given you a document we've marked as CPH Exhibit 167, which I'll represent, for the record, is a

NOT A CERTIFIED COPY

0151189

Page 61

Rafii

copy of CPH Exhibit 166 with the metadata exposed at the first two pages of Exhibit 167.

Doesn't this exhibit identify you as the author of the materials concerning the possible transaction with Electrolux?

MS. BROWN: Objection. Foundation. Asking about metadata they created or displayed.

A. Again, I could have edited this document or even typed it out. I don't remember specifically.

Q. But you see that you are listed as the author of the document in the metadata?

A. Again, I could have been.

Q. Do you know what the basis for any of the statements contained on the Executive Summary page of Exhibit 167 is?

MS. BROWN: Objection. Vague and compound.

A. That is a broad question.

Is there anything in specific that you're referring to?

Q. Well, we've already covered some of

Page 62

Rafii

these, haven't we?

A. Yeah. I mean, again, I'll have to -- it's -- I have the same responses as I did to the last one. I don't know specifically where any of these statements specifically come from so.

Q. But they generally come from publicly available information or the company?

MS. BROWN: Objection. Misstates.

A. Yeah. I didn't, I mean, the publicly traded information is, again, I was attesting to my role in acquiring what I remember from my role in contributing to presentations and handouts and such so.

Q. So can you just give me, to the best of your own knowledge, the sources of the information that appear on the Executive Summary page of Exhibit 167.

MS. BROWN: Objection. Compound and foundation.

A. I mean, I don't remember specifically. This -- do you want me to give you hypotheticals, is that what -- where

Page 63

Rafii

information could have come from because that's not very concrete.

Q. No, I don't want that.

What I want is just to understand why Morgan Stanley is making the statements that it makes on the Executive Summary page of Exhibit 167.

MS. BROWN: Objection. Foundation.

A. I mean, I don't know. I can't give you an exact source of information so.

Q. Can you give me a category of type of information like publicly available information or SEC filings?

A. I was just going to say SEC filings or a 10K perhaps in terms of the leadership information. Again, this is hypothetical. I don't know exactly where this was extracted from.

Q. Lets look back at Exhibit 166 again because I think we can navigate better with the Bates pages. If you'd look at pages 105 and 106, again, we have subheadings, "Synergies Analysis and Sources of Synergies."

Page 64

Rafii

Do you see that?

A. Uh-huh.

Q. And, again, Morgan Stanley is showing potential synergies of over $150 million for a transaction between Sunbeam and Electrolux.

Do you see that?

MS. BROWN: Objection. It mischaracterizes.

A. Yes, under sources of synergies, the last bullet point.

Q. Correct.

And that's the same synergy amount that was shown in the materials concerning Whirlpool, is that correct?

A. It appears to be so.

Q. With respect to the Electrolux synergies, do you know where the $150 million figure came from?

A. No, I don't recall.

MR. JOHNSON: Folder 8. I'm going to try and save a step here, if we can. This will be CPH 168.

(CPH Exhibit 168, Strategic

NOT A CERTIFIED COPY

01-5190

Rafii

Rationale for Leggett & Platt, marked for identification, as of this date.)

Q. Ms. Rafii, can you identify CPH Exhibit 168 for the record.

A. The title is "Strategic Rationale for Leggett & Platt."

Q. And the metadata listed at page two again identify you as the author; is that correct?

MS. BROWN: Objection.

A. I could have been, again, in an editing or potentially typing out this document.

Q. And the metadata indicates a creation date of October 25, 1997; is that correct?

A. Apparently that's what it says, yes.

Q. What is Leggett & Platt?

A. I mean, the name is familiar. It's probably a comparable company to Sunbeam. I don't remember specifically what Leggett & Platt did.

Q. If you'd look at the first page of

Rafii

the document excluding the metadata which has the subheading "Strategic Rationale for Leggett & Platt."

A. Uh-huh.

Q. The first dash under the first bullet states, "Sunbeam top and bottom line growth both outpace the market significantly."

What does that refer to?

MS. BROWN: Foundation objection.

A. I mean, I believe it refers to sales and income numbers.

Q. So Morgan Stanley is representing here that Sunbeam's sales growth outpaced the market?

MS. BROWN: Objection to the characterization of the document purpose. Foundation.

A. Yeah. I mean, I don't, I don't remember, recall specifically. These are, I mean, these look like general statements so.

Q. Well, did you have the understanding in the fall of 1997 that Sunbeam was representing itself to have a

Rafii

dramatic sales growth?

A. I don't remember specifically.

Q. At that time did Sunbeam have the reputation as being a stagnant company?

MS. BROWN: Objection. Vague. Reputation.

A. When you say at that time, in the fall of '97?

Q. '97.

A. Not that I remember.

Q. In fact, it had the opposite reputation, didn't it?

MS. BROWN: Objection.

A. I'm not sure. I don't think it was a stagnant company. I mean, all of these documents -- I don't remember specifically. I don't recall it being a stagnant company.

Q. Is it fair to say there was a fair amount of hype over Sunbeam in the fall of 1997?

MS. BROWN: Objection. Vague.

A. Hype in the sense of press or?

Q. In any sense.

A. I mean, I remember there was quite

Rafii

a few articles about Sunbeam and Al Dunlap is a high profile CEO at the time.

Q. And its stock price was taking off as well; isn't that true?

A. I don't remember specifically. I mean, there was a lot of talk around Dunlap and turnaround so it could have been.

Q. If you look at the last two pages of Exhibit 168, again, we have Synergies Analysis and Sources of Synergies. This Morgan Stanley document, again, indicates synergies in a transaction with Leggett & Platt of over $150 million; is that correct?

A. That's what it indicates here.

Q. Do you know where that number came from?

A. No, I don't remember specifically.

Q. Is it just coincidence that Whirlpool, Electrolux and Leggett & Platt all presented possible synergies of $150 million?

MS. BROWN: Objection. Argumentive and foundation.

A. Again, a lot of this is it seems like preliminary exploratory documents and a

NOT A CERTIFIED COPY

Rafii

lot of these statements are just broad statements or information.

Q. Well, the synergies number there is a specific number, isn't it?

A. Yeah, I mean, with the exception of that. It says potential synergies so.

Q. So what's the significance of the potential synergies language that you just noted?

A. I mean, potential isn't a concrete. It's not a concrete number.

Q. Morgan Stanley though wouldn't put $150 million down if it didn't believe that was a reasonably attainable synergy number, would it?

MS. BROWN: Objection. Argumentative. Foundation.

A. I mean, I can't speak for Morgan Stanley. From what I recall of this type of document these are very broad kind of exploratory handouts.

Q. I guess I'm not sure that I understand that answer.

Do you have any reason to believe

Rafii

that Morgan Stanley believed that the $150 million synergy number was not a realistic expectation?

A. I don't know any of the synergy information or details of it, so I don't recall anything.

Q. I think when you're suggesting this is a broad and --

A. For instance, if you look at the bullet point above SGNA Savings, I mean, most M&A transaction aim at reducing sales force functions or marketing functions, distribution and warehousing, so elimination of duplicate administrative costs.

Q. So are you saying that a --

A. I'm saying it's not odd that.

MS. BROWN: Hold on. Let him ask his question.

Q. Yeah, I think we're getting at the same result here.

The fact that each of the three possible transactions we've looked at now indicate $150 million in synergies is not odd because at least a substantial subset of the

Rafii

synergies is the same no matter what the combination is going to be?

A. No, not at all. Actually, I wasn't referring to the actual number indicated. I was just drawing an example from SGNA Savings. It's not odd that you draw SGNA Savings, for instance, between three companies. It's -- I mean, that's part of the reason to even enter into a combination so.

Q. Well, then I guess I don't understand what you were getting at with respect to the fact that each of these transactions presents $150 million of synergies.

MS. BROWN: I don't know if that's a question, but if it is, it's vague.

A. Again, I can't speak for the 150 million. I don't know what the source is and I don't recall that number so.

Q. Maybe I'm just confused here. What are you trying to convey by referring to the SGNA Savings?

A. It was just an example. You asked

Rafii

me about the -- you asked me about me saying these are broad statements, right. So I'm pulling SGNA Savings, for example, is the bullet point above. That could be applicable to any kind of transaction.

Q. OK. But the $150 million number, you agree, is not a broad statement?

A. I didn't -- I don't know where that number came from and I don't recall that number so. No, it's not as broad as the other statements.

And, again, I actually -- it's potential synergies so.

Q. So what?

A. I'm just -- it's -- it doesn't look like a concrete number when it says potential.

Q. Well, would you ever know with certainty what the synergy number would be in a transaction?

MS. BROWN: Objection. Vague. Hypothetical.

A. I mean, I don't know if you know specifically until a combination is forged,

NOT A CERTIFIED COPY

01792

Rafii

so from my experience.
Q. Until after the combination is forged?
A. Probably.
Q. Morgan Stanley was unable to find a buyer of Sunbeam; isn't that true?
A. I don't recall.
Q. Well, no one bought Sunbeam in connection with Morgan Stanley's work, did it?
A. I mean, that's not what resulted in the deal.
Q. In fact, Sunbeam ended up acquiring several companies; is that correct?
A. From what I recall, yes.
Q. Do you know why those transactions resulted as opposed to Sunbeam being sold to a third party?
MS. BROWN: Objection. Vague and foundation.
A. I don't remember specifically.
Q. It's true that Morgan Stanley contacted a variety of potential acquirers of Sunbeam in the fall of 1997, isn't it?

Rafii

A. I don't remember.
MR. JOHNSON: Lets look at folder 7.
(CPH Exhibit 169, Morgan Stanley Confidential 0044556 through 573, marked for identification, as of this date.)
Q. Ms. Rafii, I've given you a document we've marked as CPH Exhibit 169 which has the Bates stamp Morgan Stanley Confidential 0044556 through 573.
Have you ever seen this document before?
A. A document, this type of document is familiar.
Q. The first 17 pages or so of this document are subtitled "Potential Acquirers;" is that correct?
A. Yes, that's what it says.
Q. And then the last three pages I guess are potential targets.
A. Uh-huh. That's what it says here.
Q. And that's potential acquirers of Sunbeam, isn't it?

Rafii

MS. BROWN: Objection. Foundation.
A. Possibly. That's what it appears to be.
Q. Did you look at this document yesterday?
MS. BROWN: Objection.
Instruction not to answer.
Q. If you would look at page 561 for me. Actually, why don't we go ahead to 562.
Both of those pages concern the Gillette Company, do you see that?
A. Yes.
Q. In the comments column under comments for October 24, 1997 the first bullet provides "Concern with sustainable profitability of 20 percent EBIT margins."
A. Uh-huh.
Q. Do you know what that refers to?
MS. BROWN: Objection. Foundation.
A. No, I don't recall specifically.
Q. The last bullet provides, "Another concern is the restructuring charge and quality sustainability of earnings issues."
Do you know what the phrase

Rafii

"sustainability of earnings" refers to there?
MS. BROWN: Same objection. Foundation.
A. No. I mean, I don't recall specific to this document but exactly what it says, what I can draw from it now, sustainability of earnings.
Q. Which is that Gillette was worried about Sunbeam's ability to sustain the earnings growth that it had reported?
MS. BROWN: Objection. Foundation. Assumes facts not in evidence.
A. Again, I don't remember specifically. However it's interpreted here is all I can speak for.
Q. If you flip over to page 565. That page is directed to contacts with Newell Company; is that correct?
MS. BROWN: Objection. Foundation.
A. It appears to be so.
Q. In the comments column under October 14, 1997 there's a bullet that provides some concerns over quality of earnings.

NOT A CERTIFIED COPY

0151193

Rafii

Do you see that?
A. The last dash?
Q. Correct.
A. Uh-huh.
Q. Do you know what that refers to?
A. Again, I don't recall in this case, but whatever we can extract from it based on reading this now.
Q. Lets go to the next page, 566.
Do you see comments from Premark International?
A. Uh-huh.
Q. Again, Premark was raising issues about the sustainability of earnings and revenues; is that correct?
MS. BROWN: Objection. Foundation. Assumes facts not in evidence.
A. I don't recall. What I read here is what it is so.
Q. The next bullet point which is the second bullet point under Premark International comments provides, "Also concerned about Al's reputations, and how turnarounds are sustained after he leaves."

Rafii

Do you know what that refers to?
MS. BROWN: Foundation. Objection.
A. Not specifically. I don't recall specifically.
Q. Were you aware of any discussions at Morgan Stanley in the fall of 1997 concerning the quality or sustainability of Sunbeam's revenues?
A. No, I don't remember.
Q. Were you involved in any discussions at Morgan Stanley concerning the authenticity of Mr. Dunlap's turnaround stories?
A. Not that I recall.
Q. To your knowledge, did Morgan Stanley ever share with anyone questions about the sustainability of Sunbeam's revenues?
A. I don't recall.
THE WITNESS: Do you mind if I take a break to go to the lady's room?
MR. JOHNSON: That's fine.
MS. BROWN: Go off the record
THE VIDEOGRAPHER: The time is now

Rafii

11:49 and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 11:36 and we are back on the record.
Q. Before the break we were looking at CPH Exhibit 169 and in particular most recently we were looking at comments of Premark International on page 566.
To your knowledge, did Morgan Stanley ever share with any third parties questions about the sustainability of Mr. Dunlap's turnaround efforts?
A. Not that I recall.
Q. Were you aware of those questions at any time while you worked on the Sunbeam engagement?
MS. BROWN: Objection. Vague.
A. I don't remember.
Q. You may have been?
A. I don't think so.
Q. Why do you say that?
A. I really don't remember. I don't think so.
Q. Is that the type of thing you think

Rafii

you would remember?
A. No, not necessarily.
Q. You think questions about the authenticity of Dunlap's turnaround stories are something that would be of interest to third parties?
MS. BROWN: Objection. Calls for speculation.
A. Again, I can't speak for that in specific. It's up to the third parties to draw their own conclusions, any kind of conclusions.
Q. Do you think that's information that should be conveyed to third parties?
MS. BROWN: Objection. Vague.
A. I mean, I don't -- are we speaking about this case or?
Q. Well, we're speaking in particular about questions concerning the authenticity of the turnaround stories that Mr. Dunlap's reputation was built on?
MS. BROWN: Hold on.
Objection to the extent that he was clarifying or reasking the

NOT A CERTIFIED COPY

015194

Rafii

question. I'm going to object again as vague. Calls for speculation.

MR. JOHNSON: Lets get a clean record.

Q. Do you personally believe that questions concerning the authenticity of Dunlap's turnarounds is information that should be provided to third parties who may be engaging in a transaction with Sunbeam?

MS. BROWN: I'm also going to object. Vague. Also object to the extent that he's calling for any sort of a legal conclusion.

A. I mean, that's a very hypothetical question considering I don't remember anything about the authenticity of this turnaround so.

Q. You say the question is hypothetical in the sense that you don't know whether you're aware of that information at the time?

A. I don't recall any conversations as such or discussion as you called it.

Q. So is it your testimony that you

Rafii

don't have an opinion as to whether that type of information, that is, the authenticity of the turnarounds, should be provided to third parties?

MS. BROWN: Again, objection. Vague. Also argumentive. And objection to the extent he's calling for a legal conclusion.

A. Again, it's a hypothetical question considering that I don't remember any question to the authenticity of this turnaround so.

Q. Let me phrase it in that context then and acknowledging that it's hypothetical.

Assuming you were aware of questions concerning the authenticity of the turnarounds in fall of 1997, is that information that should be provided to third parties who are considering a transaction with Sunbeam?

MS. BROWN: Objection. Vague. Improper hypothetical. And objection to the extent that he's calling for a

Rafii

legal conclusion.

A. Again, I'll have to say it's hypothetical and if you want me to speak to that it won't be regarding this case, but it's up to the third party to kind of gather their own information and due diligence and extract what they want from it.

Q. So Morgan Stanley has no responsibility to provide accurate information to third parties?

MS. BROWN: Objection. Argumentive and misstates testimony.

A. Yeah. I didn't say that at all.

Q. Let me ask the question again.

If it's up to third parties to get their own information then why does Morgan Stanley prepare information to give to third parties?

MS. BROWN: Objection. Vague and hypothetical.

A. I'm just saying it's part of the responsibility of third parties to gather their own information. And from my personal opinion Morgan Stanley, again, we talked

Rafii

about their reputation and, yeah, they could potentially express their views on of any company to a potential acquirer, if that's what we're talking about.

MR. JOHNSON: Can I hear that question and answer back.

(Record read.)

Q. Is it part of the responsibility of Morgan Stanley to provide full and accurate information about companies that it's describing?

MS. BROWN: Objection. Vague. Objection to the extent he's calling for a legal conclusion.

A. Again, hypothetically people do their best.

Q. I don't want to interrupt you, but that's a yes or no question.

A. The reason why I keep saying hypothetically is because you keep drawing it back to this and I don't recall specifically any --

Q. Lets be clear.

I'm not referring to an exhibit

NOT A CERTIFIED COPY

015195

Page 85

Rafii

right now.
A. OK.
Q. I'm asking you a simple question and that is without regard to a specific exhibit or a specific fact.
Is it part of the responsibility of Morgan Stanley to provide full and accurate information about a company that Morgan Stanley is describing to third parties?
MS. BROWN: Objection. Vague again. And also objection to the extent that he's calling for a legal conclusion.
A. You asked about accuracy. I think Morgan Stanley tries to be as accurate as possible from my point of view and from my experience there.
Q. Can you answer the question that I asked.
MS. BROWN: Objection. She has answered the question. She doesn't have to answer it the way that you want to answer. She's given an answer. If you don't like it, that's unfortunate,

Page 86

Rafii

but this is the answer that she has given, so objection.
Q. So your testimony is that Morgan Stanley tries to provide accurate information; is that what you're saying?
A. Yes, they try to be as accurate as possible.
Q. And they do that for purposes of their own reputation?
A. At least partly.
Q. And for what other reasons does Morgan Stanley strive to provide accurate information about companies that it's describing to third parties?
MS. BROWN: Objection. Vague and foundation.
A. Again, from my perspective and from my experience it has -- it tries its best as a responsible entity to provide accurate information for its regulators, clients, investors, etcetera.
Q. Did you ever have occasion to meet Mr. Dunlap personally?
A. I don't remember ever meeting him

Page 87

Rafii

personally.
Q. By all accounts it's something that people remember.
A. That's why I don't specifically remember. I don't specifically remember the details. I may have been -- I may have been in a meeting with him, but I never met him personally.
Q. Did you gain any understanding as to his personality while you were working on the Sunbeam engagement?
A. Just by hearsay. I mean, he was a brash kind of guy in terms of character.
Q. By brash you mean hot headed, overbearing?
MS. BROWN: Objection. Misstates.
A. Not necessarily. More an aggressive type of person.
Q. Did his reputation or personality inform the way that Morgan Stanley went about the way in any way?
MS. BROWN: Objection. Foundation.
A. No. Not that I recall.
Q. Did you understand that several of

Page 88

Rafii

the executive officers at Sunbeam had worked with Mr. Dunlap at other companies?
A. I'm vaguely aware of that. I don't specifically remember who it was.
Q. Did you prepare any biographies or other material about Mr. Dunlap as part of your work on the Sunbeam engagement?
A. I don't remember specifically, but I could have prepared like a brief summary probably extracted from a 10K, if I did at all.
MR. JOHNSON: Let me show you one of these. This will be folder 12, I guess.
(CPH Exhibit 170, Morgan Stanley Confidential 0042538 through 540, marked for identification, as of this date.)
Q. I've given you CPH Exhibit 170 which has the Bates stamp Morgan Stanley Confidential 0042538 through 540. If you could just take a second and read through that for me.
MR. JOHNSON: Why don't we change

NOT A CERTIFIED COPY

015196

Rafii

the tape. We can go off the record for a second.

THE VIDEOGRAPHER: The time is now 11:52 and we have reached the end of tape number one and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is now 11:54 and this is tape number 2 and we are back on the record.

Q. Ms. Rafii, have you had an opportunity to review the document we've marked as CPH Exhibit 170?

A. Yes, over the last couple of minutes.

Q. Have you ever seen this document before?

A. I don't recall ever seeing this.

Q. Can you tell whether this is a document prepared by Morgan Stanley?

A. I can't tell. It doesn't look like it, but I can't tell.

Q. Why do you say it doesn't look like it?

Rafii

A. It's not or Morgan Stanley -- it's not in a Morgan Stanley format. It could be a Morgan Stanley document, it just -- it doesn't appear to be. It could be.

Q. I believe you testified earlier that Morgan Stanley may have prepared biographical information about Sunbeam's officers; is that correct?

A. Yeah, they may have done. Yes, they may have done.

Q. What's the purpose of Morgan Stanley preparing biographical information about officers of its client?

MS. BROWN: Objection. Vague.

A. Yeah. For the most part just to get a brief overview of management.

Q. Again, not talking about Exhibit 170, but as a general matter, have you prepared biographical information about officers of Morgan Stanley clients?

A. I probably have in the past. I don't know if specifically on this deal. I may have done.

Q. Could you tell me as a general

Rafii

matter how you would go about preparing the biographical information.

A. From what I recall it's mostly brief biographical overviews and specifically I recall just gathering information that's in the 10K which is publicly available. Sometimes for more information you can look into newspaper articles and such so.

Q. If you look at the last page of Exhibit 170 it gives the names of Mr. Dunlap's dogs there.

A. Uh-huh.

Q. That's not information you would expect to find in a 10K, is it?

A. Not necessarily.

Q. Have you ever seen a 10K that has pet names in it?

A. I don't recall. I mean, not that I remember.

Q. I've seen a lot of 10K's and I've never seen dogs' names.

MS. BROWN: Objection.

Q. How about on page 2 there's a subheading that states, "Wake-up call for

Rafii

corporate America."

A. Uh-huh.

Q. Do you think that a 10K for Sunbeam included that phrase?

A. Probably not.

Again, you can extract information from newspaper articles.

MR. JOHNSON: Let me mark Exhibit 171, if I could.

(CPH Exhibit 171, Exhibit 170 plus two pages of metadata, marked for identification, as of this date.)

Q. I've given you what we've marked as CPH Exhibit 171 which I'll represent for the record is Exhibit 170 plus two pages of metadata. And, again, this metadata lists you as an author and the last saver of the document.

Do you see that?

A. Based on what it says here I see that.

Q. So this document would indicate that Morgan, excuse me, the metadata would indicate that Morgan Stanley was involved in

NOT A CERTIFIED COPY

015197

Rafii

preparing this biographical information?
MS. BROWN: Objection. Foundation.
She didn't prepare the metadata so she can't testify what it indicates.
MR. JOHNSON: Well, actually, she did, just not consciously.
A. Not necessarily.
Again, this could have been edited or this could have been typed out based on something the company gave us. It doesn't mean that Morgan Stanley compiled this information. I don't remember this document.
Q. I may have asked this but, can you tell me what the purpose of documents like this is?
MS. BROWN: Objection. Vague.
A. From my experience to get an overview of management at companies.
Q. This type of document would be provided to third parties who might be involved in a potential transaction?
MS. BROWN: Objection. Vague. Foundation.
A. I don't remember.

Rafii

Q. Maybe? Maybe not?
A. I don't remember this document. Yeah, maybe, maybe not.
MR. JOHNSON: Can I have folder 15 please.
This is a document that's already been marked as Exhibit 68, and Exhibit 68, I'll represent for the record, is a printout of a Business Week article which was produced from Morgan Stanley's files.
Q. Have you ever seen this article before?
A. I don't recall this document in conjunction with this deal or at that time.
Q. Do you recall this document in any way?
A. I may have looked at it when I met with Zhonette, but I don't specifically remember this article.
Q. Is Business Week the type of publication that Morgan Stanley analysts might research in determining what was being said about a company?

Rafii

A. It definitely could be a source among other sources.
Q. If you look at the third paragraph there's a subheading, "Wake-up call".
Do you see that?
A. Uh-huh.
Q. Would it be a fair assumption that that subheading provided the basis for the subheading in what we marked as Exhibit 170?
MS. BROWN: Objection. Calls for speculation. Foundation.
A. I don't know. Maybe it is. Maybe it isn't.
Q. If you look at Exhibit 68 again which is the Business Week article, on page 2 of the article, the second full paragraph which begins, "But critics inside and outside Scott say Dunlap is leaving the company at Scott in a much less healthy position than he claims."
Do you see that?
A. Yes, I do see that.
Q. Did you or, to your knowledge, anyone at Morgan Stanley investigate whether

Rafii

in fact Dunlap had left Scott in a less healthy position than he claimed?
A. I don't remember.
Q. If you look at the next paragraph down there's a phrase, an M dashes that states, "Pumping up short-term results at the expense of long-term health."
Did you or, to your knowledge, anyone at Morgan Stanley investigate whether Mr. Dunlap had in fact pumped up short-term results at the expense of long-term health at Scott Paper?
A. Again, I don't recall.
Q. If you turn to the page which has the Bates stamped 998, the second full paragraph which begins, "While Dunlap's cuts." The last sentence contains a quote, "By the end of 1998 it just became a volume driven plan to pretty up the place for sale."
Do you see that?
A. I do see that.
Q. Did you or, to your knowledge, anyone at Morgan Stanley investigate whether Dunlap had just prettied up Scott Paper for

NOT A CERTIFIED COPY

015198

Rafii

sale?
A. Again, I don't recall.
Q. Did you or anyone at Morgan Stanley, to your knowledge, investigate whether Sunbeam had been simply prettied up for sale by Mr. Dunlap?
MS. BROWN: Objection. Vague.
A. No. I don't recall.
Q. So Morgan Stanley may not have investigated whether Sunbeam was just prettied up for sale?
MS. BROWN: Objection. Misstates. Argumentative.
A. That's not what I said. I just don't remember any discussions as such.
Q. So Morgan Stanley didn't have skepticism about Sunbeam's results?
A. I didn't say that either. Again, it was a big deal team and I was the most junior member so I wasn't.
Q. Just so we're clear, I'm only asking about what you know, so that's a running assumption here.
By the way, when she objects on the

Rafii

basis of foundation, do you know what that means?
A. I vaguely know what it means.
Q. What do you think that means?
MS. BROWN: Objection. This is not relevant. I'm going to instruct her not to answer, and whatever she -- if to the basis she knows anything on the basis of our preparation yesterday, it's not proper for testimony here today or inquiry.
MR. JOHNSON: Unless it's a signal for coaching the witness and --
MS. BROWN: That's offensive.
MR. JOHNSON: Well, I'm sorry you're offended, but the record will reflect a remarkable correlation between that objection and her answers.
Q. Do you recall any discussion within Morgan Stanley concerning whether Sunbeam had just been prettied up for sale?
A. Again, I don't recall, and I have to reiterate that as a junior member of the team it's not like people would come to me

Rafii

and report anything to me or report directly to me so.
Q. Were you ever asked to investigate whether Sunbeam's results were prettied up in order to help sell the company?
A. I don't recall.
Q. You would agree that Exhibit 170 doesn't contain any information about questions over the Scott Paper turnaround?
A. It doesn't appear to be so.
Q. Do you know why that information wasn't included in Exhibit 170?
A. Again, I don't recall this document, so I don't know exactly what the sources are.
Q. Is it fair to say that both Sunbeam and Morgan Stanley touted Mr. Dunlap's turnaround expertise?
MS. BROWN: Objection. Vague.
A. From -- no, I don't think it's fair to say that. I don't -- I don't specifically recall.
Q. Do you think Exhibit 170 touts Mr. Dunlap's turnaround expertise?

Rafii

MS. BROWN: Objection. Vague.
A. Yeah, it is vague, and from my perspective it's a positive article. It's a positive information, not article.
Q. Would you agree that Morgan Stanley would have greater difficulty assisting in the consummation of a transaction if questions about Scott Paper had been included in materials concerning Mr. Dunlap's turnaround expertise?
MS. BROWN: Objection. Hypothetical. Calls for speculation.
A. Again, that's a hypothetical question. Can you repeat it.
Are you looking for my personal?
Q. Well, lets make sure it's hypothetical.
To your knowledge, Morgan Stanley never disclosed to anyone questions about the authenticity of the Scott Paper turnaround?
A. I didn't say that. I just don't recall.
Q. So you can't recall an instance when that was ever disclosed?

NOT A CERTIFIED COPY

015199

Rafii

A. I don't remember specifically.
Q. You don't remember any instance when that information was disclosed?
A. No. I mean, I, I don't remember Morgan Stanley in conjunction with that question and from what I heard or my involvement I don't remember.
Q. Did Morgan Stanley dig down in any way in it's due diligence of Sunbeam in light of the questions about Scott Paper?
MS. BROWN: Objection. Vague.
A. Again, I don't remember and that wasn't necessarily my role so.
Q. But you were involved in due diligence, weren't you?
A. Due diligence is a very broad term and everybody on the deal team is involved in due diligence.
Q. But with respect to your own involvement in due diligence, you didn't dig down as a result of hearing questions about the Scott Paper turnaround?
MS. BROWN: Objection. I think he's assuming facts not in evidence.

Rafii

A. Not that I remember.
MR. JOHNSON: Can I have folder 14, please.
This has previously been marked as Exhibit CPH 148.
Q. Ms. Rafii, have you ever seen what's been marked as CPH Exhibit 148 before?
A. Not in conjunction with this time frame of this deal.
Q. Without invading privilege, if you've seen it, it's been within the past week?
A. That's correct, if I've seen it it's been within the past week.
Q. Do you know whose handwriting this is?
A. I don't know whose handwriting it is.
Q. In the column under Scott Paper, about two thirds of the way down there's a note that states, "Volume driven plan. Prop up for sale."
A. I see that.
Q. Do you know what that refers to?

Rafii

A. No, I don't know specifically what that refers to.
Q. Well, it refers to Scott Paper, doesn't it?
MS. BROWN: Objection.
A. I mean, it's under the Scott Paper column.
Q. Do you know what Mr. Chang's handwriting looks like?
A. Excuse me?
Q. Do you know Mr. Chang? Do you know what his handwriting looks like?
A. I don't remember what his handwriting looks like.
MR. JOHNSON: Can I see folder 16, please. This is a document that's previously been marked as Exhibit 92.
Q. Have you seen this document before?
A. I've seen a similar type of document. It's reminiscent. But, again, I don't recall it contemporaneous to this time frame.
Q. Lets look at page 412 if we could,

Rafii

which is towards the back of the exhibit. That page has the subtitle Scott Paper Restructuring and Growth Plans.
Do you see that?
A. Yes.
Q. Have you ever seen that page before?
A. I don't recall, but I highly doubt I was even working on this deal when this document was generated. It has the date of July 18.
Q. Although you had perhaps 92 hours in July, you think that was in the last half of the month?
A. If I did, I'm pretty sure it had to be the last, the latter half of the month.
Q. By the way, lets go back to that hour sheet for a second if we could, which is Exhibit 163 and probably at the bottom of your stack. If you look at the last page of that Exhibit 163 which has the Bates stamped ending 430. That shows that no one spent any time on Project Laser in November.
Do you think that's accurate?

NOT A CERTIFIED COPY

015200

Rafii

A. I don't recall. I mean, I don't really recall what happened specifically at that time.
Q. Are you surprised by that in any way?
A. I don't know. Surprise is just more curious as to -- I mean, is the document accurate?
Q. I guess that's what I'm asking.
A. I don't know. I can't.
Q. Were you given any background reading materials on Sunbeam when you joined the Sunbeam team in late July '97?
A. I don't recall specifically.
Q. Were there any types of meetings or other sessions to get you up to speed on the engagement?
A. Again, I don't recall specifically. I vaguely remember primarily having discussions with Tyrone, the other analyst.
Q. That's Tyrone Chang?
A. Yes, sorry, Tyrone Chang.
Q. I believe you mentioned earlier today you looked at an itinerary for a trip

Rafii

to Florida; is that right?
A. Yes, that's correct.
Q. How many trips did you make to Florida in the course of the Sunbeam engagement?
A. I only remember taking one trip.
Q. When was that trip?
A. I didn't -- I don't recall specifically.
MR. JOHNSON: This is going to be folder 3.
This will be CPH Exhibit 172.
(CPH Exhibit 172, Itinerary for travel to Sunbeam on October 28, 1997, marked for identification, as of this date.)
Q. Ms. Rafii, Exhibit 172 appears to be an itinerary for you to travel to Sunbeam on October 28, 1997.
Do you see that?
A. Yes, I do see that.
Q. Is this the trip that you recall?
A. I don't recall. I remember taking one trip. I don't know exactly when it was.

Rafii

Q. Do you remember who from Morgan Stanley went with you, if anyone, on the trip?
A. I remember the trip that I went on that specifically that Gene Yoo was there.
Q. Anyone else?
A. I don't recall anyone specifically.
Q. Well, I guess do you remember there were other Morgan Stanley people there you just can't remember their identity or it was just the two of you?
A. I don't even remember that. I know that -- I remember Gene Yoo was there.
MR. JOHNSON: Let me give you one more document here. This will be Exhibit 173.
(CPH Exhibit 173, Itinerary reflecting trip on January 4, 1998, marked for identification, as of this date.)
Q. Exhibit 173 appears to be an affidavit for Gene Yoo reflecting a trip to Sunbeam on January 4, 1998, and you and Mr. Fuchs and Mr. Stynes are listed as MS

Rafii

Professional.
Does that help you recall which trip you made to Florida?
A. Not really. I mean, I do remember a trip where Gene Yoo specifically was there and maybe that's because I worked more closely with him and Tyrone Chang versus anyone else.
Q. Is it your testimony that you recall only one trip?
A. I do only recall one trip. It could have been two. I recall one trip. I mean, this was very early on in my -- what it says here, if I actually did go on this October trip, it was very early on in my career and there was many trips from this deal to when I left Morgan Stanley, so it gets very blurry.
Q. Well, maybe we can save some time. Tell me what you remember about the trip that you made to Sunbeam.
A. I remember very little. Again, I remember Gene Yoo being there. I don't remember the purpose of the trip or what we

NOT A CERTIFIED COPY

0-15201

Cont'd 9168

Page 109

Rafii

specifically did there. I remember going to headquarters, but I don't remember what we extracted or what we talked about or what we did.

Q. Can you identify any Sunbeam officer that you met with in Florida?

A. No, I can't. I don't remember.

Q. Did you meet with any Sunbeam officers?

A. I'm sure we met with Sunbeam people. I can't tell you who they were.

Q. Can you tell me how many Sunbeam people you met with?

A. No, I don't remember.

Q. Did you review any Sunbeam documents when you were at headquarters?

A. I don't remember.

Q. Did you discuss 1997 year-end results?

A. I don't remember.

Q. Did you discuss 1998 sales or EPS projections?

A. Again, I don't remember.

Q. Did you travel in connection with

Page 110

Rafii

the Sunbeam engagement to anyplace other than this one trip to Florida that you remember?

A. Not that I recall.

Q. So you never visited any of their facilities or plants other than headquarters?

A. Not that I remember. I just remember one trip to Sunbeam headquarters. That's all I remember.

Q. During the course of the Sunbeam engagement did you ever contact any Sunbeam customers to talk about their relationship with Sunbeam?

A. Not that I remember. Not me personally I don't think.

Q. Do you know if anyone on the Morgan Stanley team spoke to Sunbeam customers about the Sunbeam relationship?

A. I don't remember.

Q. Would you expect that type of inquiry to be made?

MS. BROWN: Objection. Vague.

A. I'm not sure. It could have been made. I don't remember.

Q. Have you in connection with other

Page 111

Rafii

transactions talked to customers of Morgan Stanley's clients?

A. I may have done so.

Q. As a general matter can you tell me what the purpose of those types of conversations is?

MS. BROWN: Objection. I don't know if we're speaking about concrete, hypothetical.

She said may have. I don't know what the -- objection.

A. Yeah.

Again, maybe as a part of due diligence. I can't point out any specific instance or any other deal.

Q. Did you ever speak with any outside auditors of Sunbeam?

A. Not that I remember.

Q. Can you identify any of Sunbeam's outside auditors by name?

A. I can't remember who it was. It's vague. It could have been any of the big auditors. I can't -- I don't know specifically.

Page 112

Rafii

Q. I'm going to go through a series of names here and I'm just going to see if you recall speaking with any of them, either on the phone, by e-mail or in person.

A. OK.

Q. Deb McDonald?

A. I don't remember.

Q. Scott Yales?

A. I don't remember.

Q. Kyle Kaiser?

A. I don't remember the name.

Q. Kyle Sinclair?

A. I don't remember that name either.

Q. Dixon Thayer?

A. The name is vaguely familiar. I don't remember anything beyond that.

Q. Lee Griffith?

A. Again, the name is familiar. I don't -- I doubt I ever had a direct conversation with him.

Q. Diedra Dendanto?

A. I don't remember.

Q. Tom Hartshorne?

A. I don't remember.

NOT A CERTIFIED COPY

015202

Rafii

Q. Chuck Myers?
A. I don't recall.
Q. Bill Bloomfield?
A. I don't recall that name either.
Q. To your knowledge, did Sunbeam ever withhold any information that Morgan Stanley requested of it?
A. Not to my knowledge, but I don't recall.
Q. To your knowledge, Morgan Stanley had full access to the company?
MS. BROWN: Objection. Vague.
A. Yeah.
Again, I wouldn't completely know that as the most junior member of the team.
Q. Which is why I said, to your knowledge.
A. No, not to my knowledge.
Q. To your knowledge, did Morgan Stanley attempt to determine whether Sunbeam's distribution channels were stuffed with product?
A. I don't recall. Not to my knowledge.

Rafii

Q. To your knowledge, did Morgan Stanley ever attempt to determine whether Sunbeam was accelerating recognition of income from future quarters into current quarters?
A. I don't recall.
Q. Did, to your knowledge, did Morgan Stanley ever attempt to determine whether Sunbeam was micromanaging its earnings results?
A. I don't recall.
Q. Did you ever get the sense that there was undue pressure at Sunbeam for the sales staff to make its numbers?
MS. BROWN: Objection. Vague.
A. Not to my knowledge.
Q. Did Morgan Stanley have a due diligence plan before due diligence started on the transactions?
MS. BROWN: Objection. Foundation.
A. I don't remember specifically. I mean, it's different for every deal so.
Q. You just don't remember one way or the other whether there was a game plan for

Rafii

due diligence?
A. I don't recall specifics.
Q. Did you submit expense reports for your trip to Florida?
A. I probably did. I don't recall specifically. I mean, every trip you -- if you, if you have expenses, you submit them.
Q. And it's fair to say you have expenses on every trip?
MS. BROWN: Objection.
A. You probably do.
MR. JOHNSON: This is probably as good a time as any to take a lunch break.
THE VIDEOGRAPHER: The time is now 12:32 and we are off the record.
(A lunch recess was taken.)

Rafii

THE VIDEOGRAPHER: The time is now 1:20 and we are back on the record.
AFTERNOON SESSION
(Time noted: 1:20 p.m.)
LILY RAFII, resumed and testified as follows:
EXAMINATION BY
MR. JOHNSON:
Q. Ms. Rafii, you've already testified that you received several weeks of training when you joined Morgan Stanley.
A. That's correct.
Q. Could you tell me what was involved with that training?
A. As I remember accounting classes and such.
Q. These were classes attended by other new analysts at the firm?
A. That's right.
Q. Who taught the classes?
A. From what I recall I think there was an ex-Wharton professor who was our accounting professor in specific.
Q. Other than accounting, do you

NOT A CERTIFIED COPY

015203

Rafii

remember any other areas that were addressed in the training?

A. I remember that, depending on what group you were going to as an analyst, for instance, I had M&A specific training as an M&A analyst.

Q. What was the content of the M&A specific training?

A. What I remember specifically is valuation training. And beyond that I haven't looked at the training documents or remember the training, I mean, in years so.

Q. Was there any training directed to the way in which due diligence should be conducted?

A. I don't remember specifically. It could have been a part of our training materials. I remember computer classes as well like Excel proficiency, familiarity with Word and some of the other common applications we used.

Q. When you say due diligence could have been one of the subjects of training --

A. Yes.

Rafii

Q. Do you have any better recollection of whether it was or wasn't?

A. I don't specifically. Again, due diligence is so broad and subjective. I can't recall specifically at that time seven years ago in July what documents or what material related specifically to due diligence training.

Q. Do you recall any information along the lines of here are steps that you should consider conducting when you're doing due diligence?

A. Not specifically in conjunction with training materials. I don't recall specific documents. I do recall due diligence lists from other deals but.

Q. Due diligence lists from other deals being circulated in the training sessions?

A. No.

Again, not in conjunction with training. I just don't recall.

Q. When you say you recall due diligence lists, what are you referring to

Rafii

there?

A. From my recollection just bullet point style due diligence areas. Again, different for every deal so I, I don't have specifics that I remember.

Q. Did you receive any manuals or guides on how to conduct due diligence?

A. I don't recall.

Q. Did you receive any training in how to document the due diligence work that Morgan Stanley performs?

A. I don't recall.

Q. Putting aside whether you received training in it, do you have any understanding as to Morgan Stanley's practices for documenting its due diligence work?

MS. BROWN: Objection. Vague.

A. Again, I don't recall specifically. Due diligence is like a very broad topic. It envelops many things so.

Q. Why don't you tell us some of the things it envelops.

A. From my experience there's different aspects of due diligence. There's

Rafii

qualitative analysis and quantitative analysis.

Q. What do you mean by qualitative analysis?

A. Anything from publicly available information such as news, 10Ks, SEC filings, market information, to discussions with management on a -- I'm broadly speaking so.

Q. How about quantitative analysis, what are you referring to there?

A. Probably the same thing. Publicly traded, public information, publicly available market information, analyst's reports, research reports, company information.

Q. Is the qualitative analysis directed to something different than the quantitative analysis?

A. Again, I mean, that's very subjective. It's so different for every deal and depending on what kind of transaction you're conducting so.

Q. I guess what I'm trying to get at is how you're using the terms qualitative and

NOT A CERTIFIED COPY

015204

Page 121

Rafii

quantitative and the difference between the terms.
A. Well, qualitative is in relation to how I'm using it now, is more -- is not the hard financial facts.
Q. So in that sense it's more subjective?
A. Not necessarily subjective, but just, for instance, strategic information on a company or, you know, their strengths and weaknesses, company description.
Q. Whereas quantitative would be sales figures, for example?
A. As an example, yes.
MR. JOHNSON: I'll show you folder 5.
This has previously been marked as CPH Exhibit 29.
THE WITNESS: Thank you.
Q. If you could just take a few minutes to thumb through, I'm going to ask you whether you've seen any of the materials that are contained in this exhibit.
A. I don't specifically remember

Page 122

Rafii

seeing this document during my time on this deal.
Q. So if you've seen it, it's been in connection with your meetings with counsel?
A. That's right.
Q. Other than what you may have seen in meetings with counsel, none of this material looks familiar to you?
A. I don't recall this, this document specifically.
Q. Do you have any general recollection of this document?
A. I mean, I would have to read it at length, but not specifically this document, no.
Q. Is this akin to due diligence materials that you received during the course of your work at Morgan Stanley?
A. It could have been or aspects of it.
Q. I guess I'm getting confused now.
My understanding is that you couldn't recall any due diligence training manuals that you received; is that correct?

Page 123

Rafii

A. No, not during training. I can't recall specific documents.
Q. Did you receive any manuals at any time?
A. I don't recall specific manuals.
Q. Do you recall any manuals generally?
MS. BROWN: Relating to due diligence?
MR. JOHNSON: Correct.
A. I recall just general due diligence, just information and lists that I've already spoken to. I don't remember the specific contents of none of those.
Q. The lists that you're referring to were ones prepared in connection with other transactions?
A. From what I remember, yes.
Q. Can you tell me what the purpose of due diligence is?
MS. BROWN: Objection. Vague.
A. That's a very broad question. Again, it's subjective for every deal. It's different and it depends, you know, what

Page 124

Rafii

you're trying to do and what kind of transaction you're trying to conduct.
In this case in particular I have to point out that I was never involved in underwriting or equity offerings so this looks like its equity specific which is a different -- it's not related to M&A work so.
Q. Did you perform due diligence of any sort in connection with the Sunbeam engagement?
A. Again, due diligence is a broad statement. I would probably attribute most of what you do is due diligence in terms of information gathering.
Q. So the purpose of due diligence is to gather information?
A. It's not the purpose. It's one of the aspects of it.
Q. Can you tell me what the purpose is?
MS. BROWN: Objection. Vague. Asked and answered.
A. Again, it depends on what deal and what your ends are, what kind of transaction

NOT A CERTIFIED COPY

Rafii

it is, what you're trying to compile.
Q. Lets put it in the context of the Sunbeam engagement and the M&A transaction.
A. Uh-huh.
Q. What was the purpose of due diligence in the context of the M&A transaction?
A. I can speak for what I did and, again, gathering information, public information that's readily available like market information, research reports, news articles. That's all part of due diligence.
Q. I understand that's what you did, but what was the purpose of that is my question.
A. I mean, part of that work was put into presentations, presentation work. Me specifically, I did comparable company analysis work that I gathered from various sources, again, research reports, market information, etcetera.
Q. When you refer to presentations there, you mean presentations to among other entities third parties?

Rafii

A. Again, I don't remember specifically what kind of presentations we did and who they were presented to necessarily. And, yeah, I don't remember what specific presentations we did but that's fairly standard in presentation work so.
Q. So let me see if I understand what you're saying.
From your perspective due diligence on the M&A transaction was directed to gathering information for presentation to any number of persons or entities?
MS. BROWN: Objection to the extent that that misstates.
MR. JOHNSON: I guess that's what I'm trying to get it.
Q. How does that misstate your testimony, if it does?
A. In terms of my role and what I did that I recall specifically, that was an aspect that I, that was part of due diligence that I personally conducted so.
Q. Again, focusing on what you personally conducted, were there any other

Rafii

aspects of due diligence that you personally conducted?
A. Again, due diligence is so broad. I don't, I mean, specifically that was what I recall the crux of what I did in relation to this deal so.
Q. Did you test any of the information that you gathered?
MS. BROWN: Objection. Vague.
A. Test in what sense, in what kind of information?
Q. Did you make any effort to independently verify information that you received from public sources of the company?
A. In terms of my work, when comparable company analysis, for instance, is an aspect of getting an objective or benchmark for valuing, for instance, a company or it's comparables, like where it stands in terms of market data. So that in itself is a test when you kind of look at all different kinds of companies.
Q. Did you in connection with the comparables analysis examine Sunbeam's

Rafii

margins as compared to those of its competitors?
A. I don't remember specifically.
Q. Do you recall anything anomalous that came out in connection with the comparison of Sunbeam to it's competitors?
A. I don't recall.
MS. BROWN: Objection. Vague.
A. I don't recall anything anomalous.
Q. Did you have an understanding as to whether anyone else on the Morgan Stanley team was making any effort to independently verify any of the information that was presented to Morgan Stanley by the company?
A. I don't recall. Again, I was the most junior member of the team so.
Q. Did you view it as Morgan Stanley's responsibility in connection with M&A due diligence to determine whether Sunbeam was making unduly optimistic statements?
MS. BROWN: Objection. Vague and objection to the extent it's calling for a legal conclusion.
A. I can't speak for Morgan Stanley,

NOT A CERTIFIED COPY

015206

Rafii

but, again, I -- in terms of it's standards, everyone tries to be as accurate as possible. I don't know what any one person on the deal team was doing at any particular time.

Q. Are you aware of any instance when someone on the Morgan Stanley team attempted to determine whether Sunbeam was making unduly optimistic statements?

A. I don't recall.

Q. In the M&A context, is it your view that Morgan Stanley was serving as an intermediary between Sunbeam and potential third parties?

A. In what capacity?

Q. Sure. I tried to define that by saying in the M&A context. Let me see if I can be more specific.

Is it your view that Morgan Stanley was serving as an intermediary between Sunbeam and say potential acquirers of Sunbeam?

MS. BROWN: Objection. Vague.

A. Yeah. I don't quite understand. I think it's -- from what I understand, you

Rafii

know, a classic banking relationship as, yeah.

Q. What is a classic banking relationship?

A. I just think, again, it depends on what deal and what kind of transaction. Again, I'm not very clear on your question. It was an advisor to Sunbeam, so I don't know. Like intermediary in what sense?

Q. Was Morgan Stanley a matchmaker in any way?

A. I don't recall specifically. I mean, based on the documents we've looked at it looks like they were exploring a number of options in conjunction with the company. I can't speak beyond that.

Q. Morgan Stanley helped Sunbeam present itself to possible candidates for transactions; is that correct?

A. It appears to be so based on the documents we looked at.

Q. You drew a distinction a few minutes ago between due diligence in the M&A context and due diligence in an underwriting

Rafii

context.

Can you tell me what the difference between those two contexts would be?

A. I don't quite know. I'm just saying in terms of this document specifically. I may have never seen this because this looks like it's an equity offering document and it is very separate divisions so. So I wouldn't know its specific differences between the two.

Q. Did you ever have any responsibility for assisting in due diligence in a public offering while you were at Morgan Stanley?

A. Equity underwriting, not that I recall.

Q. Do you have any understanding of the difference between due diligence in the underwriting context and due diligence in the M&A context?

A. No, not specifically.

Q. Do you have a general understanding of the difference?

A. During my time there, I mean,

Rafii

there's certain fire walls between the two so we wouldn't necessarily be exposed to equity offering manuals and such, so I wouldn't be able to tell you specific differences, no.

Q. So you don't know what is done in underwriting due diligence that's different than what's done in M&A due diligence?

A. Not specifically.

Q. Do you have any general idea of difference in the standards?

A. No. I would have to review these documents. No, I wouldn't know exactly.

Q. In the M&A context do you think that the investment banker should serve as a devil's advocate for its client?

MS. BROWN: Objection. Vague.

A. Can you rephrase that?

Q. Have you ever heard of the phrase "devil's advocate"?

A. I have but it seems very subjective in this case.

Q. Well, let me back up, I guess. That's probably a shorthand way of saying is it the investment banker's role to keep its

NOT A CERTIFIED COPY

0152017

Page 133

Rafii

client honest in connection with an M&A transaction?

MS. BROWN: Objection. Vague and objection to the extent it's calling for a legal conclusion.

A. It is. From my perspective, again, one tries to be as accurate and thorough as possible and to provide all kinds of information so.

Q. Does that depend on whether you're in the M&A context or another context in your experience at Morgan Stanley?

MS. BROWN: Objection. Foundation.

A. Probably not. Again, I can't speak to -- my exposure was -- in terms of investment banking was solely to M&A transactions, so I can't attest to anything else here.

Q. In the M&A context, is it fair for an investment banker to rely solely on a company to provide information about the company?

A. Do you mean using the company as the primary source?

Page 134

Rafii

Q. The sole source.

A. The sole source. Again, that's a subjective question. From what my experience you typically -- that's why you use publicly available information and comparable company analysis data and kind of look at a broad range of information.

MR. JOHNSON: Can I have the question and answer back, please.

(Record read.)

MR. JOHNSON: We're two ships passing in the night here, I think.

Q. Is it your testimony that it's not reasonable for an investment banker to rely on information solely from the company it's representing?

MS. BROWN: Objection. Misstates.

A. No, that's not what I said. It's just -- from my experience you use supportive information such as comparable company analysis, such as equity research reports, etcetera.

Q. So you verify what the company's telling by looking at other materials?

Page 135

Rafii

A. From my experience you use multiple sources, that being one of them.

Q. What are the other sources that an investment banker typically would consult in verifying the information a company provides to it?

MS. BROWN: Objection. Asked and answered.

A. Again, from my experience and from my role specifically on this deal, again, acquiring information that's available, SEC documents, market information, equity research reports. Looking at a number of different companies.

Q. How about speaking with lower level employees, is that something that often occurs when an investment banker is trying to verify what a company is telling it?

MS. BROWN: Objection to form.

A. It's an aspect, speaking to company employees or officers is an aspect of due diligence, if that's what you're asking. Every deal is different. Depends, again, what kind of transaction you're trying to

Page 136

Rafii

conduct.

Q. Do you know who the lowest level employee was at Sunbeam, who Morgan Stanley interviewed in connection with it's M&A due diligence?

A. No, I don't.

Q. I believe you've already testified that you couldn't identify any customers that Morgan Stanley contacted in connection with its M&A due diligence?

MS. BROWN: Asked and answered.

A. That's correct. I couldn't.

Q. In the M&A context, is it fair for a third party to expect the investment banker to protect its interests?

MS. BROWN: Objection. Vague. Calls for a legal conclusion.

A. Again, it's the third party, I believe, from my experience the third party is responsible for its own due diligence and own research and investigation.

Q. So lets put it in the context of this case, if we can.

Is it your testimony that it would

NOT A CERTIFIED COPY

015208

Page 137

Rafii

be unreasonable for the owners, the former owners of the Coleman Company, to rely on information that Morgan Stanley was providing to it concerning Sunbeam?

A. Can you repeat that because I'm --

MR. JOHNSON: Lets see if we can have it read.

(Record read.)

A. From my point of view, not specific to this because I recall so few facts of this deal in specific. It is a third parties' I would say responsibility to do it's own due diligence and as much research as they could and, you know, they have their -- they probably have their own financial advisors as well.

Q. So the goal of accuracy that you've described is one that should not inure to the former owners of Coleman in any way?

A. I'm sorry. Can you repeat the latter half of your question?

MR. JOHNSON: Sure. Let me just start over. I'll strike that one.

Q. You've testified already today

Page 138

Rafii

that at least from a professional reputation standpoint Morgan Stanley strives to convey accurate information about its clients.

A. Uh-huh.

Q. And my question is, doesn't that goal of accuracy inure to the benefit of people like the former owners of Coleman?

MS. BROWN: Objection. Vague. Calls for speculation. Also objection to the extent it calls for a legal conclusion.

A. Again, just from my personal perspective, I believe it's up to the third party, whoever we're talking about, to conduct its own due diligence and rely on its own counsel to a certain extent and do its own due diligence, however broad that term is so.

Q. But for Morgan Stanley's professional reputation, Morgan Stanley could present false information knowingly?

MS. BROWN: Objection. Argumentative. Misstates.

A. No, I didn't say that at all. I'm

Page 139

Rafii

just --

Q. Tell me what you disagree with in that statement.

MS. BROWN: Objection. Vague. Compound.

A. The statement you just made?

Q. Correct.

A. I don't think, from my experience I don't think Morgan Stanley -- I think Morgan Stanley would strive to be, again, as accurate as possible and not to misinform people.

Q. But I think you've testified that it would do that just for its own sake. Not for the benefit of third parties.

MS. BROWN: Objection. Misstates.

A. Yeah. I didn't say that. I said for its reputation as well as its investors, its clients, etcetera.

Q. Wouldn't that include someone like the former owners of Coleman?

MS. BROWN: Objection. Vague and also to the extent it calls for a legal conclusion.

Page 140

Rafii

A. Yeah, I mean I, I can't draw any conclusions based on this case in specific. Again, I don't recall many of the details so, and you're asking me hypothetical questions.

Q. Well, actually, lets put a little more meat on it so it's not so hypothetical.

Lets say that the former owners of the Coleman Company relied on information provided to it by Morgan Stanley concerning Sunbeam.

Is that an unfair or unrealistic act by the former owners of Coleman?

MS. BROWN: Objection. Assuming facts not in evidence. It's a hypothetical as posed and objection to the extent that it calls for a legal conclusion.

A. I have to restate what I said before. It can use, and I don't want to be specific to Coleman here. In general, the third party can use Morgan Stanley information supported by most third parties have their own counsel/financial advisory. And, you know, public information is just as

NOT A CERTIFIED COPY

0052009

Rafii

available to them as it is to anyone else so. All aspects of that is important.

Q. So the fact that third parties have their own financial advisors and lawyers gives Morgan Stanley some kind of a pass in connection with representation that it makes to those third parties?

MS. BROWN: Objection. Misstates and argumentive.

A. Not at all. That's not what I'm saying.

Q. Can you explain what you mean. You have referred to the fact that third parties have their own financial advisors.

A. Uh-huh.

Q. What's the significance of that fact?

A. Doing what Morgan Stanley does for its client for its own client and being a kind of getting from their point of view, if it's valuation that they're concerned with or anything else, conducting their own analysis.

Q. Are you suggesting in any way that the third party's retention of its own

Rafii

advisors and counsel obviates Morgan Stanley's obligations, whatever they may be, to provide accurate information?

MS. BROWN: Objection. Vague and hypothetical. And objection to the extent he's calling for a legal conclusion.

A. No. I'm not saying that. I'm saying as another source you have your own advisors who supposedly are meant to do analysis for you as well so.

Q. So what?

A. So it's an important aspect. So -- you're primary question was Coleman using Morgan Stanley as its primary source of information, and me in my response not speaking specifically toward this deal, from my experience, there's a number of sources of information and verification, that being one of them.

Q. And my question based on your testimony is: Does that in any way alleviate Morgan Stanley's duties?

MS. BROWN: Objection. Asked and

Rafii

answered for about the 50th time.

MR. JOHNSON: Asked. Not answered.

MS. BROWN: Objection. My objection remains and also vague.

A. Yeah.

I mean, no, I didn't say that.

Again, Morgan Stanley tries to be as -- from my experience, as accurate as possible and as thorough as possible so.

Q. Is one of the reasons for that goal because Morgan Stanley knows that at least to some extent third parties are going to rely on the information Morgan Stanley is conveying?

MS. BROWN: Objection. Foundation. Speculation.

A. Again, it's different and subjective because it's different for every deal. Morgan Stanley, from my experience, has a responsibility to many parties so, regulators, investors, clients, etcetera.

Q. Would that etcetera or any of those other terms you've used, include third

Rafii

parties such as the former owners of Coleman?

MS. BROWN: Objection. Vague and also to the extent he's calling for a legal conclusion.

A. I mean, from my personal experience I think it takes many parties into consideration. Perhaps third parties being one of them so.

Q. Does Morgan Stanley have any obligation to perform due diligence in connection with an M&A transaction?

MS. BROWN: Objection. Vague.

A. Again, due diligence is broad. I think a lot of what one does is due diligence.

Q. My question was is there an obligation to perform due diligence in an M&A transaction. Whether due diligence is broad or a number of acts constitute due diligence doesn't answer the question.

MS. BROWN: My same objection.

A. From my experience due diligence is an integral part of any deal.

Q. Should due diligence continue until

NOT A CERTIFIED COPY

0151210

Page 145

Rafii

the last minute of before a transaction closes?

MS. BROWN: Objection. Vague.

A. I mean, I have to say, again, due diligence is a very broad term and you can classify many things as due diligence. Like a phone call is due diligence, new market information is due diligence, new stock price is due diligence.

Q. Does the due diligence obligation end at any time prior to the closing of the transaction?

MS. BROWN: Objection. Vague.

A. Again, it's -- that's subjective. Due diligence is different for every transaction and every circumstance. It depends on what kind of information you're trying to gather.

Q. So there may be transactions where it would be appropriate to cease due diligence prior to the closing of the transaction?

MS. BROWN: Again, objection. Vague.

Page 146

Rafii

A. No, that's not what I said. Again, what type of due diligence are you specifically referring to? There's many things that can be considered due diligence.

Q. And I'm not referring to a specific type of due diligence.

What I'm trying to understand is whether from your perspective the due diligence has a terminable point that could be any time other than the closing of a transaction?

MS. BROWN: Same objection.

A. Yeah. I mean, not necessarily.

Q. So they may not necessarily have the same end date?

A. I have to give my same response. Again, it depends on the deal. It depends what kind of transaction you're conducting, what type of information you're trying to gather.

Q. How about information that your client's sales are half of projections, is that something that would require additional due diligence prior to the closing of any

Page 147

Rafii

type of transaction?

MS. BROWN: Objection. Vague.

A. Are you asking me hypothetically or?

Q. I gave you the facts that I'd like you to address.

MS. BROWN: Same objection.

A. Again, I don't recall specific figures or information or, you know, sales numbers, projections, whatnot.

Q. The question doesn't have anything to do with that. The question has to do with -- I've asked you about whether the obligation of due diligence has an end date. And you said you can't answer that question because due diligence is broad, and I'm stipulating to that fact now.

A. Uh-huh.

Q. The point is, and you asked for more specifics, and so the specific example I gave you was learning information that your client's sales were half of projections.

A. Uh-huh.

Q. Would it be permissible to cease

Page 148

Rafii

due diligence prior to the consummation of a transaction when you were aware of that fact?

MS. BROWN: Objection. Vague.

A. Again, what do you mean by due diligence? Is it gathering information? Is it --

Q. Well, let me ask you this.

A. At what point does due diligence end?

Q. That's what I'm asking you.

A. And it depends on the deal. It depends what kind of information you're trying to gather. It depends on the transaction you're trying to conduct.

Q. So you can't give me an answer that additional due diligence is required when you learn information that your client's sales are half of its projections?

MS. BROWN: Objection. Vague.

A. I mean, apparently not in the manner that you're asking me.

Q. Well, let me ask you this.

If you learned information that you deemed material immediately prior to the

NOT A CERTIFIED COPY

Page 149

Rafii

closing of a transaction, what do you think an appropriate course of action is?

MS. BROWN: Objection. Calls for speculation and vague.

A. Again, you would have to clarify the context. What kind of deal it is? What we're trying to accomplish. Everything I referred to before.

Q. So lets try to put it in the context of this transaction.

Do you recall that the M&A transaction was announced in early March of 1998?

A. I don't recall specifically.

Q. Lets stipulate. Let me represent for the record that the transactions were announced on March 2, 1998.

A. OK.

Q. And they were expected to close within 60 days.

A. Uh-huh.

Q. No later than March 19 Morgan Stanley learned that Sunbeam's sales for the first quarter were half of projections.

Page 150

Rafii

In your view, what would be appropriate courses of action for Morgan Stanley when it received that information?

MS. BROWN: Objection. Vague.

A. I don't recall those facts and I wasn't working on the deal at the time so I don't have a specific response or reaction or hypothetical course of action, especially as the most junior person on that team.

Q. Well, I'm not asking you whether you knew those facts yet. We'll get to that.

If you had known those facts, what do you think an appropriate course of action is?

MS. BROWN: Objection. Calls for speculation.

A. Again, I can't speak for Morgan Stanley. I can't tell you what an appropriate course of action was. I'm not --

Q. You have no idea of what an appropriate course of action would be based on the information that we're discussing?

MS. BROWN: Objection. Argumentive. Asked and answered. Also

Page 151

Rafii

the question was vague.

A. Yeah. I mean, it's -- you're asking me hypothetically.

Q. Absolutely. I recognize that.

A. I don't know exactly. Again, Morgan Stanley, from my experience, tries to be as accurate and thorough as possible and has a certain obligation to its -- everybody, regulators, investors, clients, etcetera.

Q. Would delaying the consummation of the transaction be a potentially appropriate course of action?

MS. BROWN: Objection. Calls for speculation.

A. I have no idea. I don't know. I don't recall what transpired. Again, I wasn't part of the deal at that time. I don't -- I.

Q. This was the first deal that you were assigned to when you joined Morgan Stanley?

A. That's correct.

Q. And you don't really know what happened with the deal?

Page 152

Rafii

MS. BROWN: Objection. Vague. I don't know.

A. I don't recall the specifics, and if you're referring to March, I was entrenched in other deals. I don't know specifically the course of events that ensued.

Q. Did you ever understand that there was an SEC investigation and penalties associated with Sunbeam?

A. Again, it's very vague to me. I don't remember specifics. I don't recall exactly.

Q. You don't recall ever hearing that Sunbeam was described as one of the largest financial frauds in American history?

A. I don't recall that specifically.

Q. Its since been surpassed, of course.

What were you doing in connection with the Sunbeam engagement in the first quarter of 1998?

MS. BROWN: Asked and answered.

A. From what I recall I think January

NOT A CERTIFIED COPY

015212

Page 153

Rafii

of 1998 was the last time I was involved in the deal. And, again, are you asking me specifics of what I did or?

Q. I'm just trying to get anything you can recall about what you were doing the first quarter of 1998 for Sunbeam.

A. From what I recall it's what I've expressed before, compiling information, contributing to the presentations and a lot of administrative and clerical work to a certain extent.

Q. Did you make any inquiries of anyone in the first quarter of 1998 concerning Sunbeam's sales or earnings per share for the first quarter of 1998?

A. Not that I recall.

Q. Did you work on any synergies analyses in the first quarter of 1998?

A. Not that I recall.

MR. JOHNSON: Lets get folder 24. Where are we, 170?

MS. BROWN: I think you need 172 next.

MS. PRYSAK: No, 174.

Page 154

Rafii

(CPH Exhibit 174, Morgan Stanley Confidential 0042570, marked for identification, as of this date.)

Q. I've given you a one-page document which we've marked as CPH Exhibit 174 which is Bates stamped Morgan Stanley Confidential 0042570.

Does this document look familiar to you?

A. I don't recall this document in conjunction with the time frame we're talking about.

Q. Do you recall a downward revision of the synergies figures by Morgan Stanley?

MS. BROWN: Objection. Vague.

A. Again, I don't recall this document or what it's representing.

Q. So looking at Exhibit 174, you don't have an idea of what this signifies?

MS. BROWN: Objection. Vague.

A. I don't recall this document. From the project, I mean, we can. Based on what it says here from me looking at it right now it's Key Synergies Assumptions and it

Page 155

Rafii

looks like -- it appears to be a downward revision in synergies.

Q. Do you understand that you worked on this document which we've marked as Exhibit CPH 174?

A. I don't recall working on this.

Q. I think you indicated that your efforts ended largely in January 1998; is that what you said?

A. I believe so.

Yeah, I believe so. Again, it's vague because it was such a long time ago.

MR. JOHNSON: Could I have a few more stickers, please.

THE WITNESS: Do you mind if I take a quick break?

MR. JOHNSON: Sure. Fine

THE VIDEOGRAPHER: The time is now 11 minutes after 2:00 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is now 2:16 and we are back on the record.

MS. BROWN: Just as an

Page 156

Rafii

administrative matter, for the record, Morgan Stanley produced this morning before the deposition here, at this deposition Morgan Stanley Confidential 0085777 through 783.

MR. JOHNSON: I'm going to mark another exhibit as CPH 175.

(CPH Exhibit 175, Version of Exhibit 174 with metadata exposed, marked for identification, as of this date.)

Q. Ms. Rafii, I'm going to represent to you that CPH Exhibit 175 is a version of Exhibit 174 with the metadata exposed, and ask you whether that metadata refreshes your recollection in any way as to whether you worked on the document we've marked as Exhibit 174?

A. Again, I don't recall this document, and based on the previous metadata documents I could have edited this or had to type it out for a presentation.

Q. Does the metadata reflected in CPH Exhibit 175 refresh your recollection in any

NOT A CERTIFIED COPY

Rafii

way concerning the time period in which you were working on the Sunbeam engagement?

A. I mean, it says February here. I don't recall the specifics of when I -- when my involvement in the deal kind of stopped. I thought it was January. Maybe it was February. It's very unclear to me.

Q. Did you attend the presentation to Sunbeam's board of directors concerning the Coleman acquisition?

A. I don't recall specifically. I may have. I don't remember specifically.

MR. JOHNSON: Let me see if I can help you remember. This has been marked previously as Exhibit 89.

THE WITNESS: Thank you.

Q. Have you ever seen Exhibit 89 before, excluding the handwriting on it?

A. The document looks familiar in terms of the type of information we used to put together.

Q. Does this look like what you would refer to as a board book?

A. It's called presentation to the

Rafii

board of directors, so it probably is a board presentation.

Q. Looking at this, the date on it, does that help you recall whether you attended the presentation to Sunbeam's board?

A. A presentation to Sunbeam's board you said?

Q. Correct.

A. I remember vaguely being in some kind of board meeting. I don't remember if it's specific to this or the presentation represented hear. This type of information looks familiar.

Q. If you would look at -- I'm going to use the numbering in the document itself rather than the Bates numbers, pages 18 through 21.

Those pages represent valuations under different sets of assumptions; is that correct?

A. That's what it appears to be.

Q. Did you have any role in preparing these valuations?

A. I don't recall. I could have

Rafii

contributed.

Q. The differences among the pages is the synergies figures. There is one scenario without synergies; one with 100 million of synergies; one with 150 million of synergies and one with 200 million of synergies.

How were those synergy values selected?

MS. BROWN: Objection. Foundation.

A. I don't recall specifically.

Q. Do you have any general idea on why those numbers were chosen?

A. No, I don't recall specifically.

Q. Do those represent the range of synergies that Morgan Stanley believed were attainable in the transaction?

A. I don't recall specifically.

Q. Do you have any general knowledge as to the synergies that Morgan Stanley expected to be realized in the transactions?

A. I don't remember.

Q. In connection with the Sunbeam engagement, did you ever have any conversation with anyone from McAndrews &

Rafii

Forbes?

A. Not that I recall.

Q. Were you ever at any meetings where any individuals from McAndrews & Forbes attended?

A. Not that I recall. I could have been, I just don't remember.

Q. Were you on any telephone calls with anyone from McAndrews & Forbes?

A. I can't remember. It could have been some kind of conference call or something, but I don't remember.

Q. Do you remember the name of anyone from McAndrews & Forbes who you dealt with at all during the Sunbeam engagement?

A. No. I don't remember the names.

Q. Have you ever dealt with anyone from McAndrews & Forbes in any context?

A. I don't recall. Not that I remember.

Q. Did you ever hear that there was softness in Sunbeam's first quarter 1998 results?

A. I don't recall.

NOT A CERTIFIED COPY

Page 161

Rafii

Q. You may have heard that, you just don't remember or you don't recall hearing that?
A. I don't recall hearing that and at what time frame?
Q. Good clarification.
At any time during the first quarter of 1998 did you hear that there was softness in Sunbeam's first quarter 1998 results?
A. I don't remember. From what I remember I had limited involvement after January on the deal.
Q. Do you have a recollection of anyone from Morgan Stanley contacting you to discuss Sunbeam's first quarter sales?
A. No, not that I remember.
MR. JOHNSON: This has been marked already as CPH Exhibit 9.
THE WITNESS: Thank you.
Q. Have you ever seen Exhibit 9 prior to yesterday?
A. I don't recall this specific document, but this type of document is

Page 162

Rafii

familiar to me.
Q. What type of document is it?
A. Just the information presented.
Q. This is information that would be given to third parties?
A. I don't know specifically who it was given to or who saw it.
Q. Do you know why information of this type is prepared?
MS. BROWN: Objection. Vague.
A. Again, it's -- it depends on what kind of transaction, what kind of deal.
Q. This is dated February 1998.
Do you see that on the front?
A. Uh-huh.
Q. Do you know who prepared this draft?
A. In what capacity? The information provided in it or?
Q. Well, lets talk about describe the scribner first.
Do you know whose document, excuse me, on whose computer this document resided before it was printed?

Page 163

Rafii

A. I don't know. It could have been mine, it could have been Tyrone's. I don't know specifically. It could have been Gene's. I don't know, recall specifically. Again, this type of document is familiar.
Q. Would you agree with me that the information in this document should be accurate?
MS. BROWN: Objection. Vague. Compound.
A. I mean, as accurate as possible.
Q. Can you think of any limitations on the accuracy of material like this?
MS. BROWN: Objection. Vague.
A. Not specifically. You'd have to be more specific about what kind of -- this is a large document with a lot of information.
Q. You testified a minute ago that this should be as accurate as possible and what I'm trying to get at is, well, what would prevent it from being perfectly accurate?
A. Again, you would have to clarify

Page 164

Rafii

like what aspect of it. It could be anything from like a typo to.
Q. Lets take a specific example then. If you'd flip to the Bates page CP 026290.
A. Uh-huh.
Q. We've looked at this previously. Under the third major bullet point there's a representation that Sunbeam has growth and profitability that outpaced the nearest competitors.
What would prevent Morgan Stanley from providing accurate information as to the growth and profitability of Sunbeam?
MS. BROWN: Objection. Calls for speculation.
A. I'm not sure in what context. I can't put that in context based on this information.
Q. Was this information and that is the specific dash that we just referenced, was that information correct when it was made?
MS. BROWN: Objection. Vague.
A. Again, I don't recall details of

NOT A CERTIFIED COPY

0—5215

Page 165

Rafii

this.
Q. Do you know whether it was correct when it was made?
A. I don't really recall this information so.
Q. So you don't recall one way or the other whether you knew this was correct when it was made?
MS. BROWN: Objection. Foundation.
A. I don't recall this information in specific, so I can't.
Q. So you can't testify that it was correct when it was made because you don't recall it being made?
A. I don't recall this specific information here, so I can't comment, but, again, strive to be as accurate as possible.
Q. But referring to this specific provision, you can't comment on whether it was accurate when it was made?
A. No, I don't recall this information.
Q. If you could dig through the stack there and find Exhibit 164 for me. That's

Page 166

Rafii

it.
Do you see that the substantive information contained on the first page of Exhibit 164 is the same as is conveyed on the page we were just looking at in Exhibit 9, that is page 26290.
MS. BROWN: Objection. Vague.
A. It appears to be the same information.
Q. Can you identify -- let me back up. The Exhibit 164 included metadata that indicated that it had been prepared in I believe late October or early November. Exhibit 9 in contrast is prepared in February of 1998.
Can you tell me what, if anything, Morgan Stanley did to confirm that the representations that are contained on the first page of 164 were still true and accurate as of February 1998?
MS. BROWN: Objection. Go ahead.
A. I don't recall, but, I mean, these are broad statements. I don't recall specifically.

Page 167

Rafii

Q. So you can't identify a specific thing that Morgan Stanley did to confirm that the statements were still true?
MS. BROWN: Objection. Argumentive.
A. Again, I don't recall this information in specific or the statements that it puts forward so.
Q. So you can't identify a specific act that Morgan Stanley did to confirm the accuracy of the information?
A. I don't recall and I don't know what any one member of the team was doing at any particular time so.
Q. Can you recall anything that you did to confirm the accuracy of the information?
MS. BROWN: Objection. Vague.
A. Yeah. I don't recall.
MR. JOHNSON: Can I see folder 19, please.
Q. I think we touched on this at the beginning of the day, but did you have any involvement in connection with preparing for

Page 168

Rafii

market reaction to the announcement of the transactions that you had worked on?
A. I don't recall.
MR. JOHNSON: Let me see if I can jog your memory here. This will be Exhibit 176.
(CPH Exhibit 176, three-page document with two pages of metadata, marked for identification, as of this date.)
THE WITNESS: Thank you.
MR. JOHNSON: I'm not going to mark this but as a courtesy I'll give you the Bates stamped version of the document so you can have it.
Q. Ms. Rafii, we've given you Exhibit CPH 176 which is two pages of metadata and then what appears to be a document in Morgan Stanley format. It's a three-page document.
Does that document look familiar to you in any way?
A. I don't recall this document.
Q. The metadata reflects your authorship and a last save time by you on

NOT A CERTIFIED COPY

015219

Page 169

Rafii

March 2, 1998.
Do you see that?
A. I do see that. That's what it says here.
Q. And March 2, I'll represent is the day the transactions were announced.
Were you involved in any type of public relations aspects of the announcement of the transaction?
A. I don't recall.
Again, this could have been a document that I edited or typed out for somebody.
Q. The first page of the document states, "Potential market reaction to Project Laser."
A. Uh-huh.
Q. Did you have any discussions with anyone in the first quarter of 1998 as to how the market would react to the transactions?
A. I don't remember.
Q. Do you know how the market did react to the transactions?
A. Again, I don't remember

Page 170

Rafii

specifically. My involvement with the deal at the time was very limited, if I had any involvement at all.
Q. Were you involved in any other publicity aspects of the transaction?
A. Not that I recall.
Q. Do you know who Hill & Nolton is?
A. It sounds vaguely familiar. I can't tell you specifically who they are.
Q. In connection with your work at Morgan Stanley did you ever work with publicists or public relations firms in connection with the announcement of the transaction?
A. I don't remember.
Q. Did you prepare a script of questions and answers for use in connection with press conferences surrounding the announcement of the transactions?
A. I don't remember.
MR. JOHNSON: Let me see the first of those. 20.
This has been marked as Exhibit 140 previously.

Page 171

Rafii

THE WITNESS: Thank you.
Q. Putting aside the handwriting and marginalia, does this document look familiar to you?
A. I don't remember this document.
Q. Who at Morgan Stanley was involved in the public relations aspects of the announcement of the transactions?
A. I don't remember specifically. Again, it was a large deal team. I don't know.
Q. Do you have any idea who was involved?
A. I really couldn't say.
Q. Was Bob Kitts involved?
MS. BROWN: Objection. Asked and answered.
A. I don't know.
Q. When was the last time you spoke with anyone at Sunbeam?
A. Wow. I'm not sure. I don't recall.
Q. Do you think it was even in 1998 or do you think it was probably 1997 was the

Page 172

Rafii

last time?
A. I don't remember specifically.
Q. Did you speak with anyone from Sunbeam after the announcement of the acquisitions?
A. Not that I remember.
Q. Do you know the term "fast track due diligence"?
A. No.
Q. You've never heard that term in connection with your employment at Morgan Stanley?
A. I don't recall that term. No.
Q. This has been marked previously as CPH Exhibit 27.
A. Thank you.
Q. Ms. Rafii, does CPH Exhibit 27 refresh your recollection in any way as to the term "fast track due diligence"?
A. No. Not specific to fast track due diligence.
Q. Would you be surprised if metadata revealed that you had authored what's been marked as CPH Exhibit 27?

NOT A CERTIFIED COPY

0-5217

Rafii

A. Based on previous information I'm not surprised, per se. Again, I could have edited the document or typed it up for someone so.

Q. But even with that, that doesn't help you understand the term "fast track due diligence"?

A. No. I don't recall that specifically.

Q. Was there any urgency to completing the transactions that Sunbeam was contemplating?

A. Not that I recall.

Q. Did you have a secretary while you worked at Morgan Stanley?

A. I did, but not one that would do -- I mean, I think between four or more analysts we shared an assistant so.

Q. Did the assistant work on documents for you?

A. Not that I recall.

Q. What did he or she do?

A. Answer phone calls sometimes when we weren't there, order supplies. I don't

Rafii

really remember them ever typing things out. They may have done, but I don't remember specifically.

Q. What was your assistant's name in fourth quarter '97, first quarter '98?

A. I don't remember her name.

Q. Was it just one during that time period?

A. Yes.

Q. Did you ever learn that Sunbeam issued an earnings warning during the first quarter of 1998?

A. I don't recall.

MR. JOHNSON: Why don't we get that out, folder 28.

Why don't we change tapes.

THE VIDEOGRAPHER: The time is now 2:46 and we have reached the end of tape number 2 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: This is tape number 3 and the time is 2:49 and we are back on the record.

Rafii

Q. I'm going to show you what's been marked previously as CPH 14.

Ms. Rafii, have you ever seen this document before?

A. I don't recall this document.

Q. Do you recall Sunbeam issuing this press release?

A. I don't remember.

Q. Did anyone from Morgan Stanley contact you in connection with the release identified in Exhibit 14?

A. Not that I remember.

Q. What was the other deal or deals you were working on in March of 1998?

A. I don't remember specifically.

Q. But Sunbeam was your first engagement?

A. That's correct.

Q. Do you know who, if anyone, at Morgan Stanley was involved in drafting Exhibit 14?

A. No, I don't know.

Q. Did you ever have any discussions with anyone at Morgan Stanley concerning this

Rafii

press release?

A. Not that I recall.

Q. Do you have an opinion as to whether Morgan Stanley had an obligation to convey fully and accurately the information in its possession at the time this press release was issued?

MS. BROWN: Objection. Vague. Also object to the extent it calls for a legal conclusion.

A. In relation to this document or, I mean, this is public information, right?

Q. Well, I guess by definition a press release is public information.

A. Yeah.

Q. Did Morgan Stanley have any obligation to make sure that the public information that, the information being released to the public, was true and accurate?

MS. BROWN: Same objection as before.

A. Again, I wasn't involved on this deal at this time, to my knowledge, and I

NOT A CERTIFIED COPY

015218

Page 177

Rafii

really don't know what the events were. I can't speak to that.

Q. I'm not asking whether the press release is true and accurate. I'm asking whether Morgan Stanley had an obligation to ensure the truthfulness and accuracy of the press release.

MS. BROWN: Same objections.

Q. Just so we can avoid any further question on this, I think the answer is not dependant upon whether you were involved in the transaction at the time.

A. OK.

MS. BROWN: Objection. Move to strike that. My other objections remain.

A. Again, from my experience Morgan Stanley tried to be as accurate as possible and that's as much as I can say or I know.

Q. So you don't know whether Morgan Stanley had an obligation to do so?

MS. BROWN: Objection. Vague. Argumentive. Misstates.

A. I reiterate what I said before.

Page 178

Rafii

Morgan Stanley in it's obligations. It's a personal point of view.

Q. What you said before was that Morgan Stanley has obligations to entities beyond just its client and itself; is that correct?

MS. BROWN: Objection to the extent that it's out of context and it's mischaracterizing.

A. From my perspective and my experience it has obligations to many parties including regulators, investors, clients and so forth.

Q. I show you what's been marked previously as Exhibit 17.

I'm going to ask you to look at at least several portions of Exhibit 17, but as an initial matter I'll ask whether you've ever seen the document before.

A. I don't recall having ever seen this document at the time.

Q. So if you've seen it, it's been in connection with meetings with counsel?

MS. BROWN: You've got Exhibit 17

Page 179

Rafii

and 36 here together.

MR. JOHNSON: What's 36?

Thank you.

Mine was the only one that was.

MS. BROWN: Usually is.

MR. JOHNSON: I think there was a pending question. Maybe I didn't hear your answer.

A. You had asked me if I had seen this document.

Q. Other than in meetings with counsel.

A. No, I don't recall this document.

Q. If you would look at in particular paragraphs 5B, 6B and 6C, and I'm going to have a few questions about that.

A. You said 5B, 6B and --

Q. 6C. Let me back up for one second.

You understand that Exhibit 17 is a comfort letter?

A. I guess that's what it is.

Q. I understand you haven't seen Exhibit 17 previously.

Did you ever see any comfort

Page 180

Rafii

letters in connection with your work at Morgan Stanley?

A. I don't recall it. Not that I recall.

Q. Do you know what the purpose of a comfort letter is?

A. Not specifically. I can extract what the purpose is.

Q. Could you do that for me.

MS. BROWN: So you're asking her to say what the purpose is based on the content of the document?

Q. If what you're saying is you can read the letter and extract from it the purpose, I don't think I need you to do that.

A. No. I mean, I was just going to define it based on what I see here or what I could.

Q. Well, I guess I will ask you to do that.

A. OK.

It looks like an auditor's reviewed to confirm certain numbers or look into certain numbers as an auditor would do for

NOT A CERTIFIED COPY

015219

Rafii

everyone to feel comfortable with the transaction, is that right?

Q. Well, unfortunately, I'm the only one who asks questions.

The paragraphs that I directed your attention to specifically, 5B, 6B and 6C, those paragraphs indicate a substantial decline in sales and income, do they not?

MS. BROWN: Objection. She's testified she's never seen this before, so the document speaks for itself.

A. The document does speak for itself. That's what I see here.

Q. Would you describe the sales fall off described in 6B and 6C as substantial?

MS. BROWN: Objection. Vague.

A. Based on this document it accounts at least to a certain extent to the decline in sales. I mean, 6B it says, "Primarily due to the company's new early buy company for outdoor grills." I mean, I only know what I can read here so.

Q. I guess I'm asking whether in your professional judgment whether the

Rafii

quantitative information, that is the sales numbers, illustrate a significant fall off in sales?

MS. BROWN: Same objection.

A. It's supported by qualitative data so there's at least a partial explanation based on what I read here.

Q. Putting aside the explanation, do those numbers trouble you in any way?

A. I can't have an opinion before I read the qualitative data that supports this.

Q. Does the qualitative data make you feel better about the sales figures presented in 5B and 6C?

A. Again, I would have to read this in further detail. I mean, I'm just pulling out a line I see from 6B, so I don't recall exactly what happened or why, for what reasons.

Q. So the mere fact that as stated in 6C for the first two months of '98 sales were half for the same period for '97 that fact alone doesn't cause you trouble by itself?

A. Again, I don't think one can

Rafii

extrapolate by looking at numbers. You have to see what's happening at the companies, changing anything, acquiring anything, eliminating any sales channel. I don't really know unless I read this at least.

Q. So the information doesn't trouble you?

A. No, that's not the answer. I think this probably needs supporting information based on this document.

MR. JOHNSON: Can I have the question and answer back, please.

(Record read.)

Q. So the information presented in paragraph 6C by itself would not trouble you in any way?

MS. BROWN: Objection. Asked and answered.

A. Again, I don't recall this, the specific data so I can only read what I have in front of me and kind of look at it and extrapolate based on your questions.

As I read 6B further they indicate another reason which is decrease in

Rafii

consolidated net sales during the period as compared to the corresponding period, in part from a recurring sale in January. I mean, there's a number of factors I think to take into consideration so.

Q. One of those factors I think we've already touched on in 6B, the first part of that paragraph refers to acceleration of sales into the fourth quarter of fiscal '97 and that explains the decrease in first quarter '98 results, do you see that? Does that fact make you more or less comfortable with the overall decline in sales as described in 6C?

A. Again, they have another information as you read, another something else that attributed to the decrease in consolidated net sales, so it looks like a number of factors. I don't --

Q. Putting aside whatever factors cause the decrease, the fact of the decrease is not a troubling fact for you; is that correct?

MS. BROWN: Objection.

NOT A CERTIFIED COPY

015220

Page 185

Rafii

A. Again, I think you need to look at the backup data. If you're asking me if it's a large decrease, it looks like a large decrease, but they seem to provide some kind of justification. I don't -- that's as far as I can answer based on this information.

Q. Do you have an opinion as to whether the magnitude of the decrease is information that should be provided to third parties?

MS. BROWN: Objection. Form and to the extent it calls for a legal conclusion.

A. Yeah. Again, I can't speak for Morgan Stanley. I reiterate what I've said before regarding obligations. You know, this wasn't -- I'm -- I was the most junior member of this team and it's not an analyst's territory to kind of make hypothetical conclusions like that or draw any kind of -- I don't know.

Q. So you don't have an opinion?

A. I mean, not based on this data I don't.

Page 186

Rafii

Q. This has been marked previously as Exhibit 16.

Have you ever seen this document prior to yesterday?

A. No, I don't recall this document.

Q. Do you know what the document represents?

A. Are these Sunbeam sales to its biggest customers? I don't know exactly what it is.

Q. Did you, in connection with your work on the Sunbeam engagement, ever gain an understanding as to the magnitude of product that Sunbeam could ship on a given day?

A. No, I don't recall.

Q. Did anyone ever ask you how much product Sunbeam could ship on a given day?

A. Not that I remember.

Q. Can you tell me how the transactions that you were involved in were financed?

MS. BROWN: You mean the Sunbeam transactions?

MR. JOHNSON: Correct.

Page 187

Rafii

A. I don't remember.

Q. Do you recall that there was an offering of debt?

A. I vaguely remember. Again, I wasn't, I wasn't really involved on this deal at the time and if I was, it was to a very limited extent and definitely not the offering.

Q. So you never reviewed the offering memorandum for debt?

A. I don't recall having done so.

Q. Did you ever gain any knowledge as to any events that occurred at the printer where the offering memorandum was finalized?

A. No, not to my recollection.

Q. Did you ever talk to John Tyree about Sunbeam ever?

A. I don't remember having done so.

Q. Have you ever talked to John Tyree in any connection?

A. I don't recall. If I had done so, I don't think it was ever directly.

Q. Do you know what he looks like?

A. I couldn't tell you what he looks

Page 188

Rafii

like. I don't recall.

Q. Do you know who Morgan Stanley's counsel was in connection with the Sunbeam transactions?

A. I don't remember specific to this deal.

Q. Do you have an understanding as to who Morgan Stanley generally uses in its transactions?

MS. BROWN: At that time?

Q. At that time.

A. I remember some vaguely, some of the other deals I worked on they used Skadden Arps. I don't know if they did for this deal or not.

Q. Do you know how Sunbeam's first quarter 1998 numbers actually turned out?

A. I don't recall.

Q. Do you have any understanding that Sunbeam's 1998 first quarter results were lower than first quarter 1997 results?

A. I mean, based on what the Arthur Anderson document, that's all I can. I don't recall at the time, no.

NOT A CERTIFIED COPY

015921

Rafii

Q. What does the Arthur Anderson document say about that?

A. I mean, what we just talked about, a decrease in sales versus the same period in the preceding year.

Q. And so from your perspective the Anderson letter indicates that first quarter '98 results would be less than first quarter '97 results?

MS. BROWN: Objection. Mischaracterizes.

A. I mean, it doesn't specifically say that. It's just showing, I see it shows December 29, '97 to February 1.

Q. If you look at 6C, I think it goes up to March 1 as well.

A. Yeah. It says March 1.

Q. So based on that information you wouldn't be surprised that first quarter '98 results were less than first quarter '97 results?

A. I mean, just based on the information I see here, otherwise, I don't recall exactly.

Rafii

Q. Did you ever come to learn that Mr. Dunlap had been fired by Sunbeam's board?

A. I don't remember specifically. I mean, I think, again, just rumor/articles. I don't remember specifically at the time or when exactly it happened.

Q. When you say "rumors," what do you mean by that?

A. Just things you hear in the papers or CNBC or I don't remember specifically anyone saying anything in particular.

Q. Did you have any discussions with any of your colleagues at Morgan Stanley about the developments at Sunbeam after your work was finished?

A. Not that I recall.

Q. Did you hear any surprise or disappointment voiced by anyone at Morgan Stanley concerning the events after the transaction was completed?

A. Not that I recall.

Q. This has already been marked as Exhibit 76.

A. Thank you.

Rafii

Q. Exhibit 76, Ms. Rafii, has a cover memo and then a more detailed memo. On the more detailed memo you're listed as one of the authors.

Have you ever seen either of these memos before?

A. The top two memos, I don't recall them. And you name me as an author. I mean, I'm on the distribution list. That doesn't necessarily mean I'm an author.

Q. Looking at page 25830, doesn't this indicate that the memo is from you among many other persons?

A. I mean, it's not necessarily from me. Again, I think it's protocol to kind of list the different members of the teams and I was part of the M&A team. That doesn't mean I drafted the memo or was or even contributed to it.

Q. Do you know one way or the other whether you did contribute to it?

A. I don't recall this memo specifically and the date indicates that I had very limited, if any, involvement at the

Rafii

deal at the time so I highly doubt it.

Q. On the front page of the document do you know what any of that handwriting signifies?

A. No, I don't.

Q. Do you know whose handwriting it is?

A. No, I don't know whose handwriting it is.

MR. JOHNSON: Off the record.

(Discussion off the record.)

THE VIDEOGRAPHER: The time is now 3:18 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:25 and we are back on the record.

Q. Ms. Rafii, I may have asked this already, but I apologize if I have, but I'm wondering if you're aware of any efforts by Morgan Stanley to monitor Sunbeam's sales in the last half of March of 1998?

A. Last half of March of 1998?

Q. Correct.

A. I don't remember specifically.

NOT A CERTIFIED COPY

015222

Rafii

Q. Do you have any general recollection of any efforts in that nature?

A. Again, I don't recall and specifically to that time frame I think I had limited involvement on the deal at the time.

Q. So you can't identify an effort made by Morgan Stanley to monitor sales in the second half of March of 1998?

A. Not that I recall.

Q. I'm going to show you what we've marked as CPH 177.

(CPH Exhibit 177, Self-evaluation, marked for identification, as of this date.)

Q. Ms. Rafii, can you identify Exhibit 177 for the record.

A. It looks like my firm self-evaluation.

MR. JOHNSON: For the record, that has -- it's a single-page document with Bates stamp Morgan Stanley Confidential 0085779.

Q. Do you know approximately when you completed this form?

Rafii

A. I don't remember specifically. Probably closer to mid '98 sometime. I don't remember exactly.

Q. Mid '98 would be about your one year anniversary with the firm?

A. That's right.

Q. You note in response to both the first and second questions that you did not have a finance background prior to joining Morgan Stanley.

Do you see that?

A. Yes, I see that in the first sentence.

Q. Do you see it also in the last sentence of the second response?

A. Yes, I do see that.

Q. Did you view your lack of a finance background as an impediment to your work at Morgan Stanley?

A. I wouldn't categorize it as impediment. I, obviously, expressed, I mean, lack of a finance background in terms of an M&A context is where your environment is highly quantitative. It's kind of not that

Rafii

surprising that I said that.

Q. But you didn't view it as an impediment?

A. No, I don't think necessarily. I don't know what I thought at the time. I don't recall, but I don't know if impediment is the right word.

Q. I'm going to hand you what we've marked as Exhibit 84, and I believe at the beginning of the day you referred to a chronology that you used to refresh your memory when meeting with counsel.

Is this that chronology?

A. It appears to be. I don't know if it's specifically the same document but.

Q. If you would turn to the page ending in Bates stamp 33258 there's an entry for October 29. There's actually two entries for October 29. I'm going to ask about the second one. That reflects a trip to Florida by you, Mr. Chang and Mr. Yoo, do you see that?

A. Yes, I do see that.

Q. And the event assigned to that date

Rafii

reads, "MS Due Diligence Re Growth Strategies, Strategic Plan."

Does that help you to remember in any way which trip, whether the October trip or the January trip, you made to Florida?

A. I really don't remember which trip it was that I recall.

Q. Looking at the chronology, do you find anything unusual about the fact that the three most junior members of the team were sent on that trip?

A. Not necessarily. Again, I don't know specifically what was discussed or what the purpose of the trip is.

Q. So it's possible that you didn't actually attend the trip that's listed on this chronology on October 29?

A. I'm not sure. I remember one trip and, again, I don't remember what was discussed or who we met with. I remember Gene Yoo being on the trip. I don't remember details of it.

Q. If you look on the chronology on the next page, there's a January 5 entry and

NOT A CERTIFIED COPY

01523

Rafii

that entry includes Mr. Fuchs and also suggests the meeting was directed to the presentation, sell side presentation to Phillips.

Does that help your memory in any way as to which trip you made to Florida?

A. No. I don't remember.

Q. So it's possible that the October 29 trip never happened?

A. Again, I'm not sure. I remember one trip. It could have been two. October is very early in my career at Morgan Stanley. I don't know.

Q. Do you recall any trip directed specifically to due diligence on growth strategies and strategic plan?

A. Again, I don't remember the content of what was discussed or the purpose of the trips.

Q. So you can't, as a result, identify any trip you made to Florida specifically to conduct due diligence on the strategic plan or growth?

A. I don't recall specifically.

Rafii

Q. Can you identify any trip to Florida by any member of the Morgan Stanley team that was directed primarily to due diligence on Sunbeam's growth and strategic plans?

A. Again, I don't recall specifically for that purpose.

MR. JOHNSON: I think that's all I've got.

MS. BROWN: Just two questions.

EXAMINATION BY
MS. BROWN:

Q. Ms. Rafii, during this deposition you've been shown a number of presentations by Mr. Johnson.

As you sit here today, do you know whether any of those presentations were the final copies or whether they were draft versions?

A. I'm not exactly sure. I can't tell.

Q. As you sit here today, do you know if any of the presentations that you've been shown during the course of your deposition

Rafii

were actually disclosed to third parties at any time in 1997 and 1998, based on your own knowledge?

A. I'm not sure exactly.

MS. BROWN: I have no further questions.

MR. JOHNSON: Nothing further.

THE VIDEOGRAPHER: The time is 3:37 and that concludes the deposition of Lily Rafii and we are off the record.

(Time noted: 3:37 p.m.)

_____

LILY RAFII

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, ANGELA GRANT, a Notary Public within and for the State of New York hereby certify:

That LILY RAFII, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2004.

_____

ANGELA GRANT

NOT A CERTIFIED COPY

015224

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
LILY RAFII	MR. JOHNSON	6
	MS. BROWN	198

---------- EXHIBITS ----------

CPH FOR ID.

CPH Exhibit 163, Morgan Stanley Confidential 0080427 through 30, marked for identification 35:15

CPH Exhibit 164, Morgan Stanley Confidential 0045133 through 139, marked for identification..... 47:3

CPH Exhibit 165, Version of CPH Exhibit 164 with metadata exposed, marked for identification..... 49:18

CPH Exhibit 166, Morgan Stanley Confidential 0045102 through 108, marked for identification..... 59:7

CPH Exhibit 167, Copy of CPH 166 with metadata exposed, marked for identification 60:20

---------- EXHIBITS ----------

CPH FOR ID.

CPH Exhibit 168, Strategic Rationale for Leggett & Platt, marked for identification 64:25

CPH Exhibit 169, Morgan Stanley Confidential 0044556 through 573, marked for identification..... 74:5

CPH Exhibit 170, Morgan Stanley Confidential 0042538 through 540, marked for identification..... 88:16

CPH Exhibit 171, Exhibit 170 plus two pages of metadata, marked for identification..... ..... 92:11

CPH Exhibit 172, Itinerary for travel to Sunbeam on October 28, 1997, marked for identification..... 106:14

CPH Exhibit 173, Itinerary reflecting trip on January 4, 1998, marked for identification 107:18

CPH Exhibit 174, Morgan Stanley Confidential 0042570, marked for identification... 153:25

---------- EXHIBITS ----------

CPH FOR ID.

CPH Exhibit 175, Version of Exhibit 174 with metadata exposed, marked for identification 156:8

CPH Exhibit 176, three-page document with two pages of metadata, marked for identification 168:7

CPH Exhibit 177, Self-evaluation, marked for identification..... 193:11

NOT A CERTIFIED COPY

015225

NOT A CERTIFIED COPY

015226

Itinerary

Gene Yoo
ID# 33331
CC# 9651
Job# W814-083

Important Information

MS Toll Free (800) 223-2440
MS Toll Free Voice Mail (800) 761-8950
MS Amex Travel Hotline (800) 847-0242-after 6:00 p.m.
MS Travel (212) 827-2850
Metroliner Reservations/Info. (800) 523-8720
Citywide (718) 405-2700 Acct#2701

Sunday, January 4, 1998

7:15 p.m. — **Depart:** New York LGA on American Airlines Flt. # 427 Seat 15F(Coach)

10:19 p.m. — **Arrive:** West Palm Beach

Car Rental: — **Hertz Rent A Car**
Pick up @ 10:19 pm
Confirmation # A226257A965

MS Professional: — *Jim Stynes, Alex Fuchs, Lily Rafii*

1 night
Hotel Accommodations:

Marriott Boca Raton
5150 Town Ctr Circle
Boca Raton, Fl 33486
Tel: (561) 392-4600
Fax: (561) 368-9223
Confirmation # 82824919

Monday, January 5, 1998

6:20 p.m. — **Depart:** West Palm Beach on Continental Airlines Flt. # 626 16E (Coach)

8:56 p.m. — **Arrive:** Newark

Directions to get to Sunbeam are attached.

NOT A CERTIFIED COPY

0015227

MORGAN STANLEY
CONFIDENTIAL
0043129

F13\100431\07-17-03\7:25 キセ/PVPG1

NOT A CERTIFIED COPY

015228

Gene Yoo & Tyrone Chang
Monday, September 22 - Wednesday, September 24, 1997
W814-053

Monday, September 22

4:45pm ***CITYWIDE***
Pick up from 1585 Broadway
Drop off at LGA
Confirmation #80117
(Voucher attached)

AMERICAN AIRLINES FLIGHT #685
6:30pm Departs LGA
9:34pm Arrives Ft Lauderdale, FL

HERTZ RENTAL CAR
Confirmation #A1231-2F0-BB3

RADISSON HOTEL WORLDWIDE
Bridge Resort of Boca Raton
999 East Camino Real
Boca Raton, FL 33432
Tel: (561) 368-9500
Fax: (561) 362-0492
Confirmation #RQ-029-550

Tuesday, September 23

SUNBEAM CORPORATION
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Tel: (561) 243-2100
See: Rich Goudis-
Vice President-Investor Relations & Corporate Planning

Wednesday, September 24

CONTINENTAL AIRLINES FLIGHT #496
6:15pm Departs Ft. Lauderdale, FL
9:00pm Arrives Newark

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT 221
Yoo
6-16-04

Take cab as directed

NOT A CERTIFIED COPY

0152230

MORGAN STANLEY
CONFIDENTIAL
0045475

NOT A CERTIFIED COPY

015231

EUGENE YOO

Volume: I

Pages: 1 - 227

Exhibits: 217 - 229

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

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff, Case No. CA 03-5045 AI

v.

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

v.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants.

----------x

VIDEOTAPED DEPOSITION of EUGENE YOO, a witness called for examination, taken pursuant to the Applicable Provisions of the Florida Rules of Civil Procedure, before Laurie K. Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of

NOT A CERTIFIED COPY

01532

EUGENE YOO

Massachusetts, at the offices of Esquire Boston, 99 Summer Street, Boston, Massachusetts, on Wednesday, June 16, 2004, commencing at 9:30 a.m.

APPEARANCES

KIRKLAND & ELLIS LLP
By Zhonette M. Brown, Esq.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5108
For Morgan Stanley & Co., Morgan Stanley Senior Funding, Inc., and Eugene Yoo

JENNER & BLOCK LLP
By Christopher M. O'Connor, Esq.
One IBM Plaza
Chicago, IL 60611
(312) 222-9350
For Coleman (Parent) Holdings, Inc., and MacAndrews & Forbes Holdings, Inc.

EUGENE YOO

ALSO PRESENT
Shawn Budd, Videographer

INDEX

ATTORNEY	EXAMINATION	CROSS	REDIRECT
Mr. Johnson	6	223	
Ms. Brown		222	

EXHIBIT	PAGE
217 1998 Fiscal Year Hours Report	35
218 Document	73
219 Bates Labeled Morgan Stanley 36347 through 36349	74
220 Bates Labeled CPH 467090 through 467126	75
221 Document	83
222 Morgan Stanley Document, Bates Labeled 3431 through 3464	101
223 Document	108
224 Document	108
225 Letter from Coopers and Lybrand to Mr. Yoo Dated October 3, 1997	135
226 Fax Cover Sheet For Coopers and Lybrand to Gene Yoo Dated October 23, 1997 and Attached	137

EUGENE YOO

(Index Continued)

EXHIBITS	PAGE
227 Document from Skadden Arps	160
228 1997 Firm wide Performance Evaluation	213
229 Self-evaluation For the 1998 Firm wide Performance Evaluation	213

EUGENE YOO

PROCEEDINGS

VIDEOGRAPHER: Okay, we are on the record. My name is Shawn Budd, your videographer of Esquire Deposition Services. Today's date is June 16, 2004 and the time is nine thirty-four. We are here at the offices of Esquire Deposition Services, located at 99 Summer Street, Boston, Massachusetts, to take the videotaped deposition of Gene Yoo in the matter of Coleman Holdings, Inc., versus Morgan Stanley and Company, Inc. and Morgan Stanley Senior Funding, Inc. versus MacAndrews and Forbes Holding, Inc.

Will counsel please identify themselves and state whom you represent.

MR. O'CONNOR: Christopher O'Connor of Jenner and Block on behalf of the plaintiff Coleman Parent Holdings.

MS. BROWN: Zhonette Brown of Kirkland and Ellis on behalf of Morgan Stanley and Morgan Stanley Senior Funding and the witness.

VIDEOGRAPHER: And would the court reporter please swear in the witness.

NOT A CERTIFIED COPY

EUGENE YOO

EUGENE YOO,

called as a witness, being duly sworn, testified as follows:

EXAMINATION

BY MR. O'CONNOR:

Q. Mr. Yoo, could you please state your full name and spell it for the record.
A. Full name is Eugene Kim Yoo, E-u-g-e-n-e, middle name is K-i-m, the last name is spelled Y-o-o.
Q. And what is your current address?
A. 99 Waltham Street, Unit Number 1, Boston, Mass., 02118.
Q. Mr. Yoo, have you ever been deposed before?
A. No, I have not.
Q. Let's go over some of the basic ground rules. First, if you don't understand any of the questions that I ask you just let me know and I'll try and rephrase or help you out. If you need to take a break, that's fine, I just ask that you don't take breaks while a question is pending. Are those acceptable?
A. Yes.

Q. Okay. And also, if you could not answer questions until I've completed the question, it will just make the job easier for the court reporter --
A. Sure.
Q. -- so she can get our answers and our questions. Have you ever given testimony under oath before?
A. No, I have not.
Q. Okay. And do you realize that you're under oath today?
A. Yes, I do.
Q. You're represented today by the law firm of Kirkland and Ellis?
A. Yes, I am.
Q. Are you paying for that representation?
A. No, I am not.
Q. Are you aware of who is paying for that representation?
A. I am not.
Q. Do you understand that they, that Miss Brown represents Morgan Stanley and Morgan Stanley Senior Funding in this case?
A. Yes, I do.

Q. Okay. Did those attorneys ever ask you to search for documents in your possession that might --
A. Yes.
Q. I'm sorry. -- that might relate to Sunbeam or the Sunbeam and Coleman transaction?
A. Yes, they did.
Q. Did you have any documents in your possession?
A. No, I did not.
Q. Before we get started on some of the more interesting questions, I would like to go through some of your personal background. Not that that's not interesting. But I would like to ask you a few questions about your education after high school.
A. Sure.
Q. Where did you attend college?
A. I went to Boston College for my undergrad degree.
Q. And what was your degree in?
A. Computer science and business.
Q. What year did you graduate from Boston College?
A. 1990.
Q. Upon graduation what did you do?

A. I started at Goldman Sachs Co. in New York, I was in their operations group for four years.
Q. So until 1994?
A. Correct.
Q. And where did you go after Goldman Sachs?
A. I attended Columbia Business School.
Q. Did you graduate from Columbia?
A. Yes, I did.
Q. And in what year?
A. 1996.
Q. With an M.B.A.?
A. Yes, I did.
Q. Any specialization in that program?
A. I concentrated in finance.
Q. Upon graduation what did you do?
A. I started work full-time at Morgan Stanley in their investment banking division.
Q. Was that directly after graduation?
A. Yes.
Q. You no longer are currently employed with Morgan Stanley?
A. That's correct.
Q. Okay. When did your employment with Morgan Stanley cease?

NOT A CERTIFIED COPY

EUGENE YOO

A. In February of 2000.
Q. When you left Morgan Stanley what did you do?
A. I went to work at Bank of America in their investment banking group.
Q. Was that in New York?
A. Yes, it was.
Q. Are you still employed with Bank of America?
A. No, I am not.
Q. When did you leave Bank of America?
A. In January of 2002.
Q. And what did you do when you left Bank of America?
A. I was an independent consultant for about three years. I should say two years.
Q. Is that your current employment?
A. No, I'm currently a small business owner.
Q. And what type of business do you own?
A. It's a retail shop.
Q. Any other education other than what you've testified to this morning?
A. No.
Q. Okay. In 1996 when you first joined Morgan Stanley what was your position at that time?
A. I actually started as an intern while I was at

EUGENE YOO

Columbia and I worked there during my second semester in their debt capital markets group. Then I started full-time in August in the investment banking division, I was an associate at that time.
Q. That's August of 1996?
A. Yes.
Q. And I'm sorry, your first position was associate?
A. First full-time position was associate.
Q. Okay. Did you ever receive a promotion at Morgan Stanley?
A. No. I left prior to being up for promotion.
Q. Can you explain the duties and responsibilities of an associate in the investment banking division at Morgan Stanley back in 1996?
A. Well, I guess it's hard to explain because there are a lot of different positions for associates within the investment banking division.
Q. I'll make it easier. What were your responsibilities in 1996 as an associate?
A. My responsibilities were to manage the deal team, at least manage the analyst at the lower level members of the team and to work as a

EUGENE YOO

liaison between the lower level team and the managing directors or the senior members of the team.
Q. And the same responsibilities in 1997?
A. Yes.
Q. And in 1998 did your responsibilities change?
A. Well, the description probably is the same, but the scope probably expanded a little bit.
Q. And what would -- what did it expand to?
A. Well, in 1996 my, during my first year I was rotating through different groups so I was essentially riding alongside with other associates and learning from them and as we moved into 1997 and 1998 I began to take more of that on my own.
Q. Okay. I'm sorry, the analysts that you supervised, those typically were college graduates without an M.B.A.?
A. Yes.
Q. What -- who did you report to in 1997 when you were working as an associate?
A. There were several people. The ones that I can remember specifically, Bob Kitts, Jim Stynes; I don't remember anybody else.

EUGENE YOO

Q. Alex Fuchs?
A. Alex Fuchs. David Mcreary (ph.). that's it.
Q. In 1997 do you recall the names of the analysts that you supervised?
A. I remember some of them. Tyrone Chang, Lilly Rafii, Andreas Boquist. It's been awhile. I don't remember anybody else, actually.
Q. Okay. Why did you leave Morgan Stanley in February of 2000?
A. I decided to change my career direction a little bit. I was going down a generalist path at Morgan Stanley and I wanted to focus a little bit more on a particular industry. And an opportunity came up with a friend to go to Bank of America and work in the telecom group, which I was very interested in.
Q. Your departure from Morgan Stanley was unrelated to the Sunbeam transaction?
A. It was not related at all.
Q. Okay. Mr. Yoo, when I refer to the Sunbeam transaction do you understand that to mean Morgan Stanley's engagement with Sunbeam Corporation in 1997 and 1998 and Sunbeam's efforts to sell the company or acquire other

NOT A CERTIFIED COPY

EUGENE YOO

businesses?
A. Yes.
Q. Sir, are you familiar with, with my client Coleman Parent Holdings, Inc. which prior to the sale to Sunbeam owned approximately 82 percent of the stock of Coleman Company, Inc.?
A. Yes.
Q. Okay. Are you familiar, sir, with my client's claims against Morgan Stanley and Company?
A. I am somewhat familiar with them.
Q. What is your understanding of that lawsuit?
MS. BROWN: I'm going to object and instruct you not to answer to the extent that your answer would reveal any communications that you had with counsel.
A. I guess I can't answer that.
Q. Okay. Are you aware, sir, that Morgan Stanley -- let me ask you. Are you familiar with the entity Morgan Stanley Senior Funding?
A. Somewhat familiar.
Q. Okay. What is your understanding of that entity?
A. From what I understand it is an organization set up within Morgan Stanley to provide senior

EUGENE YOO

lending to clients.
Q. Were you ever employed, sir, by Morgan Stanley Senior Funding?
A. No, I was not.
Q. Are you aware that Morgan Stanley Senior Funding has filed a lawsuit against Coleman Parent Holdings and MacAndrews and Forbes Holdings?
A. Yes, I was.
Q. Are you familiar with that lawsuit?
A. Not very familiar.
Q. Okay. What is your understanding of that lawsuit?
A. From what I understand Morgan Stanley Senior Funding is suing in an effort to recover some of the loan proceeds it had lent out.
Q. Have you read that Complaint?
A. No, I have not.
Q. Did anyone consult you about that Complaint prior to its filing?
A. No.
Q. Mr. Yoo, when you left Morgan Stanley in February of 2000 did you take any documents with you?
A. No.

EUGENE YOO

Q. What happened to your documents when you left the company?
A. All of my deal-related documents were left in my office. They were in my files on my, in my bookshelf. I don't know what happened to them after that.
Q. Were you told to leave your deal documents in your office?
A. I was never really told anything specifically about them, but I just assume that they were documents that I shouldn't be taking with me.
Q. Mr. Yoo, when was the first time that you were contacted by attorneys for Morgan Stanley or Morgan Stanley Senior Funding in connection with these lawsuits?
A. I don't remember precisely. I believe it was sometime in early 2004.
Q. Do you remember who you spoke with?
A. Tom Clare.
Q. Did you speak with any other attorneys for Morgan Stanley?
A. No.
Q. Did any in-house attorneys from Morgan Stanley contact you concerning this case?

EUGENE YOO

A. No.
Q. Mr. Yoo, do you have any continuing contact with your former colleagues at Morgan Stanley?
A. I keep in touch with a few folks on a sporadic basis but I don't really talk to anyone on a regular basis. Just whoever I happen to run into.
Q. Do you recall any of those people; the names of those people?
A. Xavier Stationberg (ph.). Who else did I run into? Davis Mcreary, Tyrone Chang. That's probably about it.
Q. When is the last time that you spoke with Mr. Change?
A. Let's see, almost a year ago now. It was late spring of last year when I was in Los Angeles.
Q. Have you spoken to any current or former Morgan Stanley employees concerning these lawsuits or your testimony here today?
A. No.
Q. Sir, do you have any business relationships, existing business relationships with Morgan Stanley as a result of any of your prior deals or current business relationships?

NOT A CERTIFIED COPY

EUGENE YOO

A. No, nothing.
Q. What did you do to prepare for your deposition today?
A. I met yesterday with Zhonette Brown and she filled me in on the details of the case and what was --
MS. Brown: You don't need to reveal communications between counsel.
A. Right.
Q. Did you review any documents?
A. Yes.
Q. Did any of those documents refresh your recollection of any of the facts or events concerning the Sunbeam/Coleman transaction?
A. Not really.
Q. Did you review any deposition testimony?
A. No, I did not.
Q. Was any deposition testimony read to you or described to you?
A. No.
Q. How long did you meet with Miss Brown?
A. Just a few hours.
Q. Have you ever been contacted by any state or federal regulators in connection with your

EUGENE YOO

employment at Morgan Stanley?
A. No.
Q. While you were employed at Morgan Stanley did you use e-mail?
A. Yes, I did.
Q. Did you ever print out any of the e-mail messages that you sent or received?
A. I'm sure I printed some at some point.
Q. Did you personally create any documents in connection with the Sunbeam engagement?
A. Yes, I did.
Q. What did you do with those documents?
A. It depends on what documents you're talking about specifically.
Q. Well, the deal, the deal documents, --
A. I mean.
Q. -- other than keeping them in your office when you walked out?
A. The original files I guess were at Morgan Stanley still in electronic format; I don't have any of the hard copies.
Q. While you were employed at Morgan Stanley were you aware of any document retention or destruction policies?

EUGENE YOO

A. There was a document retention policy which, at least for the MNA group; I don't recall what it was now.
Q. Did you file those policies?
A. I hope I did.
Q. Did you receive any specific instructions on preserving e-mail?
A. No, not really.
Q. Mr. Yoo, I'm going to show you what's been previously marked as CPH Exhibit 6. Mr. Yoo, have you seen this document before?
A. No, I haven't seen this one.
MS. Brown: Just for the record, when you ask him whether he's seen documents before, he will exclude any documents that he saw during his preparation.
MR. O'CONNOR: Correct. That's fine.
Q. Sir, could I point your attention to the first paragraph under file maintenance or it reads, "file should be kept lean and unnecessary material should be discarded on a regular basis." Do you see that?
A. Yes, I do.
Q. Do you recall that being part of the document

EUGENE YOO

retention policy at Morgan Stanley while you were employed at the company?
A. I do recall that, yes.
Q. Do you have an understanding of why files should be kept lean at Morgan Stanley?
A. I don't know precisely why.
Q. Did you keep your files lean in accordance with this policy, sir?
A. Well, I mean, I would throw out things that I thought were unnecessary on an ongoing basis. You know, paper tends to pile up pretty quickly.
Q. How would you make the decision whether to retain or keep documents in connection with the Sunbeam engagement?
A. I don't know what my -- I don't know if there was a methodology. Anything that I considered to be a finished product I usually kept anything that was a work in progress or if there were final versions of it I usually through out.
Q. Were you instructed by anyone to discard documents that were not in their final form?
A. No. I was never instructed in any way to discard anything, or not to discard anything.
Q. You can set that aside.

NOT A CERTIFIED COPY

EUGENE YOO

Mr. Yoo, do you recall that Morgan Stanley began working with Sunbeam in the spring of 1997 to identify opportunities for the sale of Sunbeam Corporation?

A. Yes, I do.

Q. When was your first involvement on the Sunbeam engagement?

A. I was involved nearly from the beginning when we first began to pitch for the business with Sunbeam, when Al became, Al Dunlap became CEO.

Q. Do you recall who asked you to join the team to prepare that pitch?

A. At the time I was an associate in the associate pool and I was doing my MNA rotation and I was next up for the assignment when it came up.

Q. What do you recall doing to assist Morgan Stanley in preparing the pitch to Sunbeam?

A. Do you want me to go through all of it?

Q. Sure.

A. We, we, from what I can remember we went through the history of, you know, where Sunbeam was at that time and the difficulties that it was in. The reasons they had brought on Al Dunlap as CEO. We did some research on Al Dunlap's prior,

EUGENE YOO

prior work at places like Kimberly-Clark or Scott Paper, I guess, to just kind of get a sense of who he was and what he had done. We did quite a bit of analysis on Sunbeam itself; financial analysis.

Q. Anything else that you can recall?

A. No, not really.

Q. Okay. What was the purpose of this research into Sunbeam and Al Dunlap in connection with this pitch to Sunbeam?

A. Well, it was really just to make sure that we knew all of the facts before we went into the meeting, to make sure that we knew the situation, knew everything about who it was that we were presenting to and making sure that the presentation was, you know, on top of everything.

Q. Do you recall when this presentation occurred?

A. I don't know specifically. It was sometime in the spring of 1997.

Q. Who else worked with you on preparing this pitch?

A. Alex Fuchs, Bob Kitts, Jim Stynes, Tyrone Chang.

Q. Anyone else?

EUGENE YOO

A. No.

Q. Were you aware at that time, sir, that Morgan Stanley was in competition with other investment banks for the Sunbeam engagement?

A. I didn't have any firsthand knowledge about who else was in competition for the business.

Q. But part of this exercise -- part of this exercise, sir, was to show Sunbeam why Sunbeam should choose Morgan Stanley as its investment bankers as opposed to another company; is that correct?

A. Yes.

Q. Do you recall when Sunbeam formally engaged Morgan Stanley as its advisers?

A. Again, I don't know the exact date; I believe it was somewhere around September or October of '97.

Q. Do you recall, sir, how many hours you worked on the Sunbeam matter prior to that formal engagement?

A. I don't know exactly how many.

Q. Would it be in the hundreds of hours?

A. That's most likely correct.

Q. Okay. Did you ever keep track of your time

EUGENE YOO

working on Sunbeam, the Sunbeam matter?

A. We kept time sheets as a regular process in our time keeping process in the U.S. banking group.

Q. What information did you record on those time sheets?

A. Just the hours that we, we would bill our hours for different clients. That's about it.

Q. You wouldn't provide descriptions, general or detailed descriptions of the work that you performed?

A. No.

Q. Okay. Was that time submitted on a regular basis? Like a weekly basis?

A. I don't remember exactly. I think it was either weekly or biweekly.

Q. Okay. I'm going to show you what's been previously marked as CPH Exhibit 163. My first question, sir, is have you ever seen this document before?

A. No, I have not.

Q. You'll notice on the first page of Exhibit 163 is a listing of employees at Morgan Stanley and you'll see that the second to the last is your name, Gene Yoo?

NOT A CERTIFIED COPY

01528

EUGENE YOO

A. Yes.
Q. Okay. If you follow the line over to year-to-date hours there's an entry for 356?
A. Okay.
Q. And it appears that this document reflects as you'll see in the right hand, just below the upper right-hand corner for fiscal year 1997?
A. Yes.
Q. Does that number seem accurate for your work on the Sunbeam engagement in 1997?
A. I couldn't tell. But it seems right.
Q. Okay. If you would flip, sir, to the last page of this document. You'll see that there are entries across from your name for August, September and October of 147 in August, 115 in September and 94 in October. Do you see those, sir?
A. Yes, I do.
Q. Okay. And if you flip to the page previous to that which is 80429. And across from your name for April, May, June and July there are no hours entered?
A. Uh-huh.
Q. Do you know why there would be no hours entered

EUGENE YOO

in for those months in 1997?
A. I don't know.
Q. Did you work on the Sunbeam engagement in April through July of 1997?
A. Yes, I did.
Q. Okay. So then on the first page of CPH Exhibit 163 the year-to-date hours of 356 probably is not an accurate representation of the hours that you worked on the Sunbeam engagement in 1997?
A. I couldn't tell. I'm not sure how the, the time keeping department allocated the hours to the months.
Q. Set that aside. I'm trying to get a sense of an overview of the scope of your involvement on the Sunbeam engagement. You testified that you were involved in preparing the pitch to Sunbeam; after that assignment what did you work on?
A. For Sunbeam?
Q. Yes.
A. After the pitch I guess it was just continuing to try to come up with ideas for Sunbeam and seeing if there were any other situations that came up that might peak their interests. But we weren't really formally engaged for I think

EUGENE YOO

about five or six months between.
Q. Between the time that you, that Morgan Stanley provided the pitch to Sunbeam and the formal engagement agreement, did you continue to work on the Sunbeam transaction identifying these ideas?
A. I don't recall specifically. But, you know, I would think that, I think -- I'm pretty sure I did work on it somewhat. I don't know how much.
Q. When you say you worked on ideas for Sunbeam, what do you mean by that?
A. Well, in coming out of, coming out of the initial meeting, you know, the idea was that they were either looking to sell the company or to find targets, at least, you know, that was the thought. And so were trying to come up with ideas that might turn into something more tangible in terms of a transaction.
Q. Did you attend that pitch to Sunbeam?
A. No, I did not.
Q. Okay. Do you know what Morgan Stanley's primary mission was coming out of that meeting with Sunbeam?
MS. Brown: Object to form.

EUGENE YOO

A. I don't know exactly what came out of the meeting. I wasn't there. I didn't hear what they said.
Q. Did anyone tell you that the primary focus in 1997 was to find a buyer for Sunbeam to sell Sunbeam Corporation?
A. They never said that that was the primary focus.
Q. Other than identifying these other potential ideas for Sunbeam what else did you do on the engagement?
A. From what I remember, before being formally engaged most of the work was really just keeping up with current events on the company or the industry, making sure that we were, you know, on top of getting all of the latest financial filings or earnings releases, any news that came out, any announcements that they made.
Q. Did you ever attend any meetings with potential buyers or acquisition targets?
A. I personally did not attend any of those meetings.
Q. Did you prepare any documents for other members of the Morgan Stanley team in connection with exploring strategic alternatives for Sunbeam?

NOT A CERTIFIED COPY

EUGENE YOO

A. Yes, I did.
Q. What are the types of documents that you recall drafting?
A. Again, I don't recall specifically, but the documents mostly were descriptive materials about Sunbeam, describing the company, financials, that's about it.
Q. Did you prepare any of the transaction documents related to the acquisition of the Coleman Company?
MS. Brown: Object to the form.
A. I'm not sure what you mean by --
Q. Purchase agreement.
A. No, I did not.
Q. Were you involved in preparing any of the financing documents in connection with that deal?
A. No, I was not.
Q. Were you involved in preparing any documents analyzing potential synergies of a combination involving Sunbeam and another company?
MS. Brown: Object to form.
A. I'm not sure what documents you're referring to.
Q. Are you aware of the concept of synergies?

EUGENE YOO

A. Yes.
Q. Okay. Did you personally prepare any documents that sought to analyze potential synergies, assuming the transaction would occur between Sunbeam and another company?
MS. Brown: Object to form.
Q. Or perform a synergies analysis.
A. I'm sure we did some that were part of the standard investment banking analysis. I don't recall specifically which documents we did.
Q. Did you perform any due diligence of Sunbeam?
A. The Morgan Stanley team did.
Q. What did you do personally, if anything, to conduct due diligence on Sunbeam?
A. From what I remember we had, we had done interviews of the management team, the senior management team, and we also visited their headquarters in Florida. We also met with the heads of all of the different divisions. We were given a presentation on their new business plan. We spent some time with Russ Kirsch the CFO and Don Oosi, I believe he was the COO, and they spent a good deal of time giving us a lot of the detail on the turn around plan and the

EUGENE YOO

growth plan going forward.
Q. Any other aspects of due diligence that you recall that you performed?
A. And then just the standard, you know, MNA type of due diligence, going through financial filings, public documents.
Q. As part of that financial due diligence did you look at anything other than publicly filed documents?
MS. Brown: Object to form.
A. I'm not sure what you mean.
Q. Well, what types of public documents would you look at in conducting the MNA due diligence that you spoke of?
A. For -- again, for this transaction, from what I remember, the types of things we looked at were filings with the SEC, any press releases that the company put out or any other, any of the other companies in its industry, any new stories that came out on any of the relevant companies. Any, you know, any publicly available equity research.
Q. In addition to those sources of information did you look at any non-public information in

EUGENE YOO

conducting this MNA financing due diligence?
A. Again, I'm not sure what you mean by.
Q. Documents that someone on the street wouldn't have access to. Not filed with the SEC or otherwise publicly available.
A. I can't think of anything.
Q. Were you involved on the roadshow for the debenture offering?
A. No.
Q. Do you recall that happening?
A. I sort of recall, you know, the time it was happening. But I wasn't part of it at all. I wasn't part of the financing process.
Q. Do you recall when the deal closed, the Coleman deal closed?
A. I think it was spring of 2000. I'm sorry. Spring of 1998.
Q. After that transaction closed did you continue to work on the Sunbeam engagement?
MS. Brown: Object to the form.
A. It depends on how you define Sunbeam engagement.
Q. I'm just trying to get a sense of every aspect of the engagement that you worked on. After Sunbeam acquired the Coleman Company did you

NOT A CERTIFIED COPY

015240

EUGENE YOO

continue to work for Sunbeam in developing strategic options for the company?
A. No.
Q. Did you work on any other deals other than Sunbeam when you were an associate in 1997 and 1998?
A. Yes.
Q. What were those deals?
A. I can't recall specifically what was happening at the time. We were -- I think the only two that I can remember specifically we were working on a sale of a division for General Motors and we were looking at strategic alternatives for a technology client on the west coast.
Q. In 1997 what percentage of your time did you devote to the Sunbeam engagement?
A. In 1997?
Q. Yes.
A. My best guess, somewhere between a third and a half.
Q. In the first three months of 1998 do you recall what percentage of your time was devoted to the Sunbeam engagement?
A. Again, my best guess is about the same.

EUGENE YOO

Q. A third to a half of your time?
A. (Witness nods in the affirmative.)
MR. O'CONNOR: I'll ask the court reporter to mark the next exhibit as CPH 217.
(Deposition Exhibit 217 marked for identification.)
Q. Mr. Yoo, you've been handed what's been marked as CPH Exhibit 217. This is what appears to be a 1998 fiscal year hours report.
A. Uh-huh.
Q. You'll see again that your name is listed as an employee with year-to-date hours of 1,286. And if you turn, sir, to the second page of this document. For your hours report for December indicates 361; January, 289; February, 123; in March, 106. Do you believe, sir, that to be an accurate representation of the time that you worked on the Sunbeam engagement in those months?
A. And I -- I couldn't tell you for sure.
Q. And if you could turn then to page 80433 of Exhibit 217. You'll see across from your name for April it reflects 169 hours. The same for May and then 69 hours in June. Do you recall,

EUGENE YOO

sir, what you were working on in April, May and June of 1998 for Sunbeam?
A. From what I can remember I believe what this is was we were looking at, or we were in the middle of selling one of the Coleman divisions.
Q. And that was after Sunbeam acquired the Coleman Company?
A. That was post closing, yes.
Q. Do you recall why Sunbeam was, attempted to sell divisions of Coleman after the transaction was closed in March?
A. I don't know the reasons behind it. They were very small, though.
Q. Small divisions?
A. Very small divisions, yes.
Q. In the spring of 1997 while you were preparing the pitch to Sunbeam, did you know why Sunbeam intended to pursue these strategic alternatives?
MS. Brown: Objection. Foundation.
A. I have no idea.
Q. No one ever expressed Sunbeam's intentions to you in the spring of 1997?
MS. Brown: Objection. Form.
A. I'm not sure what you mean by that.

EUGENE YOO

Q. Mr. Kitts or Mr. Stynes never advised the team at Morgan Stanley why they were preparing a pitch to Sunbeam other than to get the business from Sunbeam?
A. For me at the time? I was a first year associate and it was my first MNA transaction. And I was more concerned with just getting the work done.
Q. Did you have a lot of contact, sir, with Mr. Kitts or Mr. Stynes?
A. Not in the spring of 1997.
Q. When did you begin to have more contacts with those individuals?
A. It sort of grew over the year. Probably came more regular by the end of 1997.
Q. Who did you regularly report to in 1997?
A. For the Sunbeam transaction?
Q. Correct.
MS. Brown: Asked and answered.
A. For the most part it was Alex Fuchs.
Q. So if you had a question typically would you go see Mr. Fuchs?
A. Typically.
Q. Okay. Sir, I'm handing you what's been

NOT A CERTIFIED COPY

EUGENE YOO

previously marked as CPH Exhibit 77. It's a one-page document that appears to be a news release dated April 4th of 1997. Have you seen this document before? Or this press release. Not necessarily in this form.

A. I don't recall exactly.

Q. In the first paragraph you'll see that it states, "that Sunbeam Corp. has begun interviewing investment bankers to consider options that include making hostile takeovers of as much as five billion or selling the company, chairman Al Dunlap said." Does that refresh your recollection of Sunbeam's intention in the spring of 1997 in pursuing strategic alternatives?

MS. Brown: Object to form.

A. Again, I don't really remember. I don't really remember much about, you know, the reasoning behind a lot of what we were doing at the time.

Q. If you look at the last paragraph where it lists the names of some companies. Chase Manhattan, Goldman Sachs, JP Morgan and Company; does that refresh your recollection, sir, of the other banks that were competing with Morgan Stanley

EUGENE YOO

for the Sunbeam engagement?

A. At the time, like I said, I really didn't know who else was competing for the business.

Q. Set that aside. I'm going to show you what's been previously marked as CPH Exhibit 78. CPH Exhibit 78 is a, it's a two part e-mail, the first is dated April 13th of 1997, authored by Tyrone Chang and the second is dated April 15th of 1997. Have you seen this e-mail before?

A. No, I've never seen this.

Q. You did not direct Mr. Chang to send out this e-mail?

A. I don't recall.

Q. Did Mr. Chang report to anyone else besides yourself on the Sunbeam engagement?

A. He also reported directly to Alex Fuchs on occasion. Alex and Tyrone were part of a subgroup called business development. And I was on loan on my rotation to business development.

Q. Okay. Set that aside. In 1997 what was your understanding of Al Dunlap's business reputation?

A. I didn't know much about him prior to being brought onto the assignment.

EUGENE YOO

Q. You testified earlier this morning that you researched Al Dunlap and his history with other companies; --

A. (Witness nods in the affirmative.)

Q. -- is that correct?

A. That's correct.

Q. What did you learn about Mr. Dunlap in conducting that research?

A. It's a long time ago. I don't remember much about the specifics of what we learned. Generally speaking he had a reputation for turning around troubled companies.

Q. Did you understand that his involvement at Sunbeam as the CEO was intended by the board of Sunbeam to utilize his turn around capabilities?

A. I don't know anything about what the board intended.

Q. In your review of Sunbeam's historical financial information did you learn that Sunbeam prior to Mr. Dunlap's arrival was in need of financial or business restructuring?

MS. Brown: Object to form.

A. I'm not sure -- can you be a little more specific with that?

EUGENE YOO

Q. Do you have any recollection, sir, of why Mr. Dunlap was hired by the Sunbeam board to be the CEO of Sunbeam in 1996?

MS. Brown: Objection. Foundation.

A. I don't recall.

Q. I'm sorry?

A. I don't recall -- I don't recall anything about that.

Q. Did you review any documents or speak to anyone in order to determine whether Mr. Dunlap was performing a turn around of Sunbeam?

MS. Brown: Objection. Form.

A. I, as far as what Al was brought in to do at Sunbeam, again, we didn't, you know, until we had started working on the project I didn't really know much about it. I had just, I knew there was a headline about it, but that was about it.

Q. And my question was once you started digging into the information about Sunbeam's historical and anticipated growth, did you come to learn that Al Dunlap was touting the turn around of the Sunbeam Corporation under his leadership?

MS. Brown: Object to form.

NOT A CERTIFIED COPY

Page 42

EUGENE YOO

A. I'm not sure what he was touting.
Q. Let me show you, sir, what's been previously marked as CPH Exhibit 170. My first question, Mr. Yoo, is whether you've seen this document before?
A. I don't believe I have.
Q. Do you know if anyone at Morgan Stanley was involved in drafting this document?
A. I don't know.
Q. I'm going to show you what's previously been marked as CPH Exhibit 80. This is a document entitled Memorandum Regarding the Information Request. Subject: Allen Dunlap's track record. Have you seen this document before?
A. I don't think so. It doesn't look familiar.
Q. Did you read Mr. Dunlap's book Mean Business in connection with the Sunbeam engagement?
A. Actually, I did not.
Q. Did you read any portions of that book?
A. I think I did read portions of it. But I didn't think there was much in there to gain so I didn't really read much, most of it.
Q. Did you ask Mr. Chang to research Mr. Dunlap's track record?

Page 43

EUGENE YOO

A. I don't remember if it was me specifically who asked him or if it was something that Bob or Alex had asked.
Q. In the second paragraph there's a reference to a Cavenham Forest Industries?
A. Uh-huh.
Q. And, quote, the turn around orchestrated by Albert Dunlap and completed under his leadership culminating in the sale of the company in 1990. Do you see that, sir?
A. Yes.
Q. Did you investigate the -- did you investigate Dunlap's turn around of Cavenham Forest Industries in connection with the Sunbeam engagement?
A. Could you be a little bit more specific when you say "investigate."
Q. Did you do anything to review the financial or business condition of that company before and after Al Dunlap's arrival at that company to orchestrate a turn around?
A. I don't remember specifically what analysis we had done on his prior tenures.
Q. Mr. Yoo, when you testified earlier that you

Page 44

EUGENE YOO

conducted research on Mr. Dunlap, who he was and what he did, what did you do?
A. Mostly from what I remember it was, again, going through prior financials from his past companies or pulling up news articles from, from his prior deals.
Q. But you don't recall doing that for Cavenham?
A. Again, I don't remember specifically what we did for Cavenham.
Q. If you could turn back to CPH Exhibit 170. The second paragraph. There's a discussion of Mr. Dunlap's tenure at Scott Paper Company?
A. Uh-huh.
Q. Take a second to read that, please.
A. (Witness reviewing.) Okay.
Q. Do you recall reviewing Scott Paper's financial condition or news reports about Scott Paper in connection with your work on the Sunbeam engagement?
A. I do recall that we did do some, some work on looking at Scott. I think that was the, the biggest of the, or the most notable of his turn around.
Q. Did you confirm, sir, that Mr. Dunlap indeed

Page 45

EUGENE YOO

conducted a successful turn around of Scott Paper Company?
MS. Brown: Object to form.
A. How do you define successful?
Q. Well, what do you recall doing to review Dunlap's turn around of Scott Paper Company?
A. The only thing I can remember for sure was sort of a before and after look at the financials of Scott before Dunlap had arrived. And Scott after it had arrived. And the return to the Scott shareholders.
Q. What do you recall learning?
A. I'm sorry.
Q. What do you recall learning from that exercise?
A. At the time it seemed like it was a good deal for the Scott shareholders. I don't know how it turned out now, but.
Q. Do you recall why you believed that at the time?
A. I don't know any specifics. I don't remember anything.
Q. Have you come across any information subsequent to that investigation of Scott Paper that leads you to believe that Dunlap did not complete a successful turn around of the company?

NOT A CERTIFIED COPY

EUGENE YOO

MS. Brown: Object to the form.

A. I haven't really, you know, I haven't really looked at it since.

Q. What was the purpose of Morgan Stanley's research into Mr. Dunlap's background and his performance in turning around companies prior to Sunbeam?

MS. Brown: Asked and answered.

A. I'm sorry, could you repeat that again.

Q. Sure. Could you read back the question.

(Prior testimony read back.)

"What was the purpose of Morgan Stanley's research into Mr. Dunlap's background and his performance in turning around companies prior to Sunbeam?"

A. I think as I said before we were trying to make sure that we understood, you know, we fully understood all of the aspects of the meeting, of the company and the situation and Al before going into the meeting.

Q. Were you also trying to understand whether Dunlap's turn around of companies, where he was CEO prior to Sunbeam were in fact true turn

arounds of those companies?

MS. Brown: Object to form.

A. I don't know.

Q. No one ever mentioned to you that there might be some question as to whether his turnaround at Scott Paper was successful or real?

A. No, not as far as I can remember, that never came up.

Q. What did you do with the information that you learned about Mr. Dunlap beyond preparing the pitch to Sunbeam?

A. All of the information pretty much went to Alex and Bob and Jim.

Q. That's Mr. Fuchs, Mr. Kitts and Mr. Stynes?

A. Yes.

Q. Do you know what they did with that information?

A. I don't know.

Q. Did you know, Mr. Yoo, that Morgan Stanley had a prior relationship with Mr. Dunlap before his arrival at Sunbeam?

A. I didn't know.

Q. Do you know Bill Strong at Morgan Stanley?

A. I met him a few times.

Q. So you were not aware at the time that Bill

Strong had a relationship with Mr. Dunlap prior to Dunlap's arrival at Sunbeam?

A. No, I didn't know that.

Q. I'm handing you what's previously been marked as CPH Exhibit 68. Have you seen this document before, Mr. Yoo?

A. Yes, I have.

Q. When do you recall seeing this document?

A. I don't know exactly, but it was maybe a few weeks after the article was published.

Q. So that would be a few weeks after January 15th of 1996?

A. Yes.

Q. Do you recall why you saw this document?

A. No, I don't.

Q. Did you read this document in connection with the Sunbeam engagement or did you read it outside of your work at Morgan Stanley?

A. I don't recall.

Q. Did you read the entire article in 1996?

A. In 1997?

Q. In 1996.

A. No.

Q. Just so we're clear, sir, the, it appears the

article was written in January of 1996, in the upper left-hand corner.

A. Oh, okay.

Q. There's also a date on the bottom right-hand corner of July 16th of 1997. Just so we're clear, sir, do you recall reading this document a couple of weeks after January 15th of 1996 or a couple of weeks after July 16th of 1997?

A. I don't know, I don't remember exactly when I read it. But probably sometime around the time that it was published.

Q. Did you have any discussions with anyone at Morgan Stanley about the contents of this article?

A. I don't remember anything specifically.

Q. Anything generally?

A. Not about this article itself.

Q. What do you recall discussing with members at Morgan Stanley about Mr. Dunlap's performance at Scott Paper?

MS. Brown: Object to form.

A. Other than the analysis that we had done there wasn't really much other discussion on that. After the first meeting we didn't really spend a

NOT A CERTIFIED COPY

EUGENE YOO

lot of time looking back at Scott.
Q. You don't recall any discussions about the accuracy of the information in this article?
A. Not, there were no discussions about the accuracy of the article.
Q. Do you recall what your reaction was after reading this article?
A. I recall thinking that it was humorous at the time. And I don't know who I was talking to, but the only thing I can remember talking about the article was how people who went into turn around situations tended to get a bad reputation. But that was the only thing I could remember.
Q. Why did you think that the article was humorous?
A. The, some of the outrageous, I think if this is the one I'm thinking about, some of the outrageous numbers or some of the things that they were saying about Al seemed to be funny.
Q. When you say "outrageous numbers" are you referring to the numbers relating to Scott Paper in the turn around?
A. No, just the, you know, they're talking about, for instance, here, 225 percent stock gain and

EUGENE YOO

adding 6.3 billion of company value; it was just kind of funny that, you know, it was all being linked to one event, so.
Q. And why was that funny to you?
A. I don't know. The -- there are a lot of things that can take place over a long period. I just thought it was funny they were putting it all on one thing.
Q. What was that one thing?
A. It seemed like they were attributing it all to Al.
Q. Did you believe that Mr. Dunlap was not responsible for the stock price increase?
A. I mean, I didn't know either way. It seemed like that was the assumption that they were making in the article.
Q. Did you ever investigate whether Mr. Dunlap had indeed added 6.3 billion in value in stock, or to Scott Paper?
MS. Brown: Object to form.
A. I don't, I don't remember -- I didn't really know either way, you know.
Q. So other than thinking that it was funny that they had attributed these increases to

EUGENE YOO

Mr. Dunlap, you don't recall ever seeking out information to confirm or deny that information?
A. I don't think there was any way we could prove either way.
Q. Did you ask Mr. Dunlap?
A. I didn't really talk to him about this.
Q. Did you ever speak to Mr. Dunlap?
A. I did speak to him probably once or twice.
Q. Did you ever discuss his performance at Scott Paper?
A. No.
Q. What did you discuss with Mr. Dunlap?
A. Nothing, really. It was just, he would walk into a meeting that I was attending and we would say hello. He would ask how things were going and that's it.
Q. Did you discuss with anyone the information contained in the Shredder article?
MS. Brown: Object to form.
A. Again, I don't remember ever talking to anyone specifically about this article. You know, just talking about Sunbeam in general and that's part of the deal.
Q. Did you ever tell anyone at Morgan Stanley that

EUGENE YOO

you thought that this article was humorous?
A. I don't remember. I don't remember who I was talking to.
Q. Do you recall talking to anyone at Morgan Stanley about the outrageous numbers in this article?
MS. Brown: Object to form. Mischaracterization.
A. No, I don't really. I just remember, again, I think this was -- I don't recall where -- I don't recall when exactly I read this in relation to the time line. Yeah, I don't recall ever talking about this article specifically, or bringing this up or anything about this article before.
Q. You also said that after reviewing this article you thought that people who did turn around work, received bad reputations; why is that?
MS. Brown: Objection. Vague sentence, mischaracterizes his testimony.
A. I don't remember exactly who it was, but I just remember, I think there were a few articles that came out at that time about people who were involved in, you know, difficult situation at

NOT A CERTIFIED COPY

01525

EUGENE YOO

companies. That's the only thing I can remember about that connection or that aspect of it. For some reason I just happened to read a few articles at the time that talked about different people doing, or working in similar situations. And they all seemed to be very negative about those people.

Q. Did you believe that Mr. Dunlap was receiving a bad reputation as a result of his turn around work?

MS. Brown: Object to form.

A. I didn't really know. I mean, I didn't really know, at least at the time I was reading the article I wasn't really thinking about, I wasn't concentrating on the specifics of his work.

Q. Was that information you sought to acquire in your review of his performance at companies prior to Sunbeam?

MS. Brown: Object to form.

A. I'm not sure what you mean.

Q. Well, as part of your research into Mr. Dunlap's history did you feel that it was important for you to determine whether Mr. Dunlap received, unfairly received a bad reputation for his turn

EUGENE YOO

around work?

MS. Brown: Object to form.

A. As part of our work at Morgan Stanley, you know, we weren't really looking at his reputation, you know, whether, we weren't looking really at that angle of it, we were just looking at his results and what had he actually done.

Q. Was his reputation immaterial to your work in connection with Sunbeam, the Sunbeam engagement?

MS. Brown: Object to form. Argumentative.

A. I mean, I don't know what it related to in terms of the engagement with Morgan Stanley and Sunbeam. My part of it was just, you know, my focus at that time in that deal was just to perform the analysis on what we looked at at Scott.

Q. What was your conclusion after performing that analysis?

A. As I said before, I think at the time it looked like the numbers were pretty good.

Q. And what do you mean by "pretty good"? That they were accurate?

A. I don't know what you mean by "accurate."

Q. Whether Mr. Dunlap truly turned around Scott

EUGENE YOO

Paper prior to its sale?

MS. Brown: Object to form.

A. That's his opinion.

Q. Did you ever reach that opinion one way or the other?

A. Did I personally reach that opinion?

Q. Right.

A. Like I said, at the time I thought he had done a good job. You know, the numbers seemed to work out.

Q. Did anyone at Morgan Stanley disagree with that opinion to your knowledge?

A. Not that I can remember.

MS. Brown: Let's take a break.

MR. O'CONNOR: Can I go for about two more minutes?

MS. Brown: Okay.

Q. Sir, I'm going to show you a copy of an exhibit previously marked CPH 148. Have you seen this document, sir?

A. Yes, I have.

Q. When did you first see this document?

A. I believe I wrote it.

Q. This is your handwriting?

EUGENE YOO

A. I think so.

Q. Do you recall why you prepared this document?

A. I don't know exactly. It looks like I'm taking notes on something.

Q. It appears that you're taking notes on Mr. Dunlap's performance at Scott Paper; is that fair to say, --

MS. Brown: Objection.

Q. -- in the left hand column?

MS. Brown: Object to form. Mischaracterization.

A. I think I was actually taking notes on the article, from the news article.

Q. If you flip back to CPH Exhibit 68. The next to the last paragraph which appears on Morgan Stanley 3996. There's information in that paragraph concerning 11,000 people that were eliminated, 11,000 jobs eliminated at Scott Paper, 71 percent headquarter staff, 50 percent of the managers and 20 percent of the hourly workers. That information is also contained in your handwriting notes on CPH Exhibit 148; is that correct?

A. Which page are you on? I'm sorry.

NOT A CERTIFIED COPY

015246

EUGENE YOO

Q. It's page 2 of the Shredder article, CPH Exhibit 68.
A. Okay.
Q. It's the next to the last paragraph.
A. Okay. Okay.
Q. And my question, sir, was the information contained in this article in that paragraph that's also reflected in your handwritten notes in CPH 148 correct?
A. It appears to be.
Q. Do you recall, sir, why when thinking that this information was humorous you were taking notes of that information as reflected in CPH Exhibit 148?
MS. Brown: Object to form. Mischaracterization. Assumes facts not in evidence.
A. I don't know, again, I don't recall when I read the article the first time. And I don't know when I wrote this.
Q. Do you have any general recollection of when you wrote the information on CPH Exhibit 148?
A. I don't know specifically. I would have to guess.

EUGENE YOO

Q. You also see on Exhibit CPH Exhibit 148 fourth from the bottom there is an asterisk which states "volume driven plan, arrow, prop up for sale."
A. Uh-huh.
Q. Do you know what that refers to?
A. Again, I don't know. I think it was just something that I had written from the news article.
Q. You don't recall whether you investigated, whether Dunlap pursued a volume driven plan at Scott Paper to prop it up for sale?
A. There's nothing here. There was no discussion of that kind of, that I know of.
Q. On CPH Exhibit 148 there is a column entitled Kimberly-Clark. Do you recall, sir, that Scott Paper was sold to Kimberly-Clark?
A. Yes.
Q. And you'll see there's a hand notation of 600 million in synergies and cost reductions?
A. Uh-huh.
Q. Synergies and cost reductions appear in quotes. Do you recall why you made that notation?
A. Which -- why did I write that line?

EUGENE YOO

Q. Correct.
A. Again, I think I was just taking notes from the article. I think that's what actually happened or what they were saying they had achieved.
Q. Did you ever investigate whether there were 600 million in synergies and cost reductions as a result of that transaction?
A. Again, I don't remember the specifics of how we did the analysis on Scott Paper, I would think that we went back and looked at, you know, some of the financial performance of both. But I don't remember exactly what we did.
Q. And you don't recall why you prepared this document which has been marked as CPH Exhibit 148?
A. No. I think that, you know, I don't remember why exactly.
Q. Do you remember what was done with this document?
A. No.
Q. Did you provide it to anybody?
A. No. I wouldn't have given something like this to anyone.
Q. Was it used to create any documents in

EUGENE YOO

connection with the Sunbeam engagement?
A. Not that I know of. I'm sure some of the factual information went into some documents. But, you know.
Q. Okay. This is a good time to take a break.
VIDEOGRAPHER: The time is ten fifty-eight, we're off the record.
(Short break taken.)
VIDEOGRAPHER: We're back on the record, this is tape number two and the time is seven minutes after eleven.
Q. Mr. Yoo, I'm going to show you what's previously been marked as CPH Exhibit 81. This is a document titled, Project Laser, Laser Corporation, Restructuring and Growth Plans. Do you recall, sir, that the code name for the Sunbeam engagement was Project Laser?
A. Yes, I do.
Q. Okay. Have you seen this document before?
A. I think I have.
Q. When did you see this document?
A. I think at the time that we, it was prepared.
Q. Did you prepare it?
A. I didn't personally prepare this, no.

NOT A CERTIFIED COPY

EUGENE YOO

Q. Do you know who did?
A. I don't know.
Q. What was the purpose of preparing this document?
A. I don't remember.
Q. If you look at the document page 36394, where it says "restructuring plan." Do you know where this information -- do you know where the person that drafted this document obtained this information?
A. No, I don't.
Q. And the same question for the growth targets; do you know the source of that information?
A. No.
Q. Under "growth targets" the first bullet point says "doubling of 1996 sales of about 984 million to almost 2 billion by 1999 without acquisitions; do you see that, sir?
A. Yes.
Q. Did you ever investigate how Sunbeam was going to achieve that growth goal?
MS. Brown: Object to form.
A. I'm not sure what you mean.
Q. Well, do you recall that Sunbeam had a growth target which included doubling its 1996 sales to

EUGENE YOO

almost 2 billion by 1999 without acquisitions?
A. I don't remember any of their growth targets or what their plans were. It was such a long time ago.
Q. Do you remember conducting any investigation to determine whether Sunbeam's growth targets were attainable?
A. We did talk to several people at Sunbeam about the numbers they had given us. We talked to Russ Kirsch and Rich Goudis. Again, I think we spent a day at their office talking to the different division heads about the, their budget plan for the year.
Q. Did the information you received from these individuals comport with the growth plans that are indicated in CPH Exhibit 81?
A. Again, I don't know if they matched up with this. But I do remember that we were very comfortable with the detailed information they had given us behind their growth plans.
Q. Do you recall how you became comfortable with that information?
MS. Brown: Object to form.
A. How we became comfortable?

EUGENE YOO

Q. Right.
A. I'm not sure what you mean.
Q. Did you take it on face value what they were saying; did you do something to investigate those statements to confirm you were comfortable with their growth plans?
A. We did our investigation as far as we typically do. I mean, there's only so far that we go on an MNA transaction, at some point we're relying on the company and the information they give us to be accurate.
Q. And in this respect what, what did you do to become comfortable with the information they were providing you? Do you recall any specific things that you did?
MS. Brown: Object to form.
A. I don't remember specifically what we did.
Q. What typically does Morgan Stanley do in a deal like this to become comfortable with the growth plans provided to them by the company?
A. It depends on the company and it depends on the transaction.
Q. Okay. In a transaction of this magnitude what does Morgan Stanley typically do?

EUGENE YOO

A. Again, my experience has only been with, and for me this was probably one of the larger transactions that I worked on. So, you know, I can only speak about what I had done.
Q. What have you done in the past on deals similar to Sunbeam to determine whether Morgan Stanley is comfortable with the growth plans given to them by the company that's retained them to provide investment counseling or acquisition counseling for the sale of the company?
MS. BROWN: Object to form and foundation.
A. I guess, it's been a long time since I've done it. I can only really talk about what I've done. But from what I remember on this, as I said, we went through the growth plan, tried to get the detail behind the numbers they were giving us with Russ and with Rich Goudis and we met with the division heads and they walked through how they were going to achieve their numbers. And that's probably pretty typical for any investment bank on an MNA transaction.
Q. Is there any independent analysis that Morgan Stanley conducts to confirm the information provided to them by the company?

NOT A CERTIFIED COPY

EUGENE YOO

MS. Brown: Object to form.

A. I don't know what else they do.

Q. You indicated that you spoke with division heads at Sunbeam, who were the individuals that you spoke with?

A. I don't remember specifically.

Q. Did you speak with Don Oosi?

A. Yes.

Q. And did Mr. Oosi provide you with any documents to back up the growth targets that are indicated in CPH Exhibit 81?

A. I believe he did.

Q. Do you recall the form of those documents?

A. No. I don't remember what he gave us.

Q. Other than Mr. Kirsch and Mr. Goudis did you meet with anyone else in senior management at Sunbeam to determine whether the growth targets were attainable?

MS. Brown: Object to form. Mischaracterization testimony.

A. Our primary contact was with Russ and Rich on almost anything that was deal related, on almost anything that was Sunbeam related, I should say. And, you know, the managing directors had

EUGENE YOO

contact with Al, it was -- I don't recall if there was anyone else in senior management that we talked with, you know, above the division heads.

Q. If you turn to page 2 of that document which is Morgan Stanley 36395. This is a slide entitled Scott Paper Restructuring and Growth Plans. If you take a look at the information under restructuring plan; do you recall the source of this information?

A. (Witness shakes head in the negative.) I don't know specifically, no.

Q. If you look at the fourth bullet point where it reads, "reduce work force by over 35 percent with approximately 11,000 layoffs, --

A. Uh-huh.

Q. -- 71 percent of headquarter staff, 50 percent managers, 20 percent hourly workers and 60 percent R and D." Do you recall, sir, that that information is contained in CPH Exhibit 148 and CPH Exhibit 68 that we looked at a few moments ago?

A. Yeah, they appear to be the same.

Q. Your testimony is that you did not draft this

EUGENE YOO

document; is that correct?

A. I don't know for sure. I don't think I did.

Q. Do you know what was done with this document, CPH Exhibit 81?

A. I don't remember.

Q. Do you recall if this document was provided to any potential buyers?

A. I couldn't say for sure, I don't know.

Q. Or its potential acquisition targets?

A. Again, I don't know. I didn't attend any of those meetings.

Q. Handing you what's been previously marked as CPH Exhibit 69, the cover page reads "Project Laser Discussion Materials, September 11, 1997, Conference Call." Setting aside the handwriting on this document, Mr. Yoo, do you recall seeing this document?

A. I may have seen this. I couldn't say for sure, but it's possible.

Q. Do you recall seeing the document with the handwriting?

A. No.

Q. You'll notice in the upper right-hand corner there's the notation MS and then a list of names

EUGENE YOO

and the fifth name down appears to be Yoo, Y-o-o?

A. Uh-huh.

Q. Do you recall attending a September 11, 1997 conference call?

A. I don't remember specifically, but it's possible.

Q. Do you recall who -- I'm sorry. Withdrawn. Do you recognize the handwriting on this document?

A. No, I'm not sure who it is.

Q. On the first page in handwriting off to the left-hand side right above "Morgan," there's a handwritten notation "Coopers and Lybrand to calibrate synergies"?

A. Oh, okay, yeah.

Q. Do you see that. Do you recall, sir, that Coopers and Lybrand was providing synergy analysis to Sunbeam and Morgan Stanley in connection with the Sunbeam engagement in 1997?

MS. BROWN: Object to form.

A. I don't remember exactly what it was that they were providing us. I do know that they had worked with Al in the past and I don't remember

NOT A CERTIFIED COPY

01529

EUGENE YOO

their exact role in this transaction. But from what I remember I think they were working with Al on the turn around plan. On developing a plan, I think, but I don't remember for sure.

Q. That's the turnaround plan at Sunbeam?

A. At Sunbeam, right.

Q. If you could turn to page 3 of the document which is Morgan Stanley 3897. It's a slide entitled Overview of Proposed Selling Process?

A. Uh-huh.

Q. Do you see on the left-hand side, sir, handwriting, it says "just get it done"? To the left of Overview of Proposed Selling Process.

A. Okay. Yeah.

Q. Does that refresh your recollection, sir, of participating in this conference call? Someone making the statement "just get it done"?

A. No. I don't know.

Q. You don't know what that means?

A. No.

Q. In about the middle of the page looking at the handwriting again there is two asterisks, the second asterisk says "Kimberly/Scott - won't see anything." Do you recall anyone making that

EUGENE YOO

statement at Morgan Stanley?

A. No, I don't, I don't recall anything about that.

Q. You don't know what that means?

A. No. I, I don't know what that means.

Q. If you can turn to page 12 of the document which is Morgan Stanley 3906. In much larger handwriting on the top left of that page it says "amateurs" and it's underlined; do you see that?

A. Okay.

Q. Does that refresh your recollection of this September 11th conference call?

A. No.

Q. Do you know what -- do you know what that refers to?

MS. BROWN: Objection. Speculation.

A. No. I'm not sure.

Q. To the right-hand side in handwriting there's an asterisk with 20 to 25 pages, Strat Plan; possibly strategic plan. Does that --

A. Okay.

Q. Does that refresh your recollection of this call and discussion of a Sunbeam strategic plan?

A. No.

Q. Were you aware, sir, that Sunbeam and Morgan

EUGENE YOO

Stanley prepared a document entitled Strategic Plan or contained the words strategic plan in the title of the document?

A. I don't know for sure. I mean, we produced a lot of documents.

Q. I'm sorry. How about long range strategic plan; do you recall that document?

A. No.

Q. And then in the middle of page 3906 of CPH Exhibit 69 there's a box around some handwriting, and the handwriting states "beef up sex appeal." And there's an arrow to "future growth opportunities." Do you know what that refers to?

A. I couldn't say for sure.

Q. Do you recall anyone at Morgan Stanley discussing beefing up the sex appeal of Sunbeam by touting future growth opportunities?

MS. BROWN: Object to form.

A. No. I mean, there was really no discussion about that.

Q. Did anyone at Morgan Stanley refer to Sunbeam management as amateurs?

A. Not that I can remember, no.

EUGENE YOO

Q. If you take a moment, sir, to flip through the rest of the document. My question for you is whether you recall preparing any portions of this document?

A. (Witness reviewing.) I don't know specifically where, but I'm sure I had a hand in helping to prepare this somewhere.

Q. You mean you don't recall any specific pages that you have a recollection of preparing?

A. No.

Q. Did anyone at Morgan Stanley or Sunbeam advise Morgan Stanley to not contact Kimberly-Clark in connection with Morgan Stanley's work in trying to find a buyer or an acquisition target for Sunbeam?

MS. BROWN: Objection. Foundation.

A. No, there was no discussion of that kind.

Q. That you recall?

A. That I recall.

(Deposition Exhibit 218 marked for identification.)

Q. Sir, you've been handed what's been marked as CPH Exhibit 218.

A. Uh-huh.

NOT A CERTIFIED COPY

EUGENE YOO

Q. Do you recall this document?
A. I think I do, yeah. It's sort of familiar.
Q. Did you draft this document?
A. I think I helped write it up.
Q. Who assisted you in writing up this document?
A. I think it was Alex Fuchs and Tyrone Chang.
Q. What was the purpose of drafting this document?
A. I don't know what the end goal or the end product was to be, but I think this was part of our due diligence on Sunbeam. Just understanding their growth plan.
Q. Why was it important for Morgan Stanley personnel to understand Sunbeam's growth plan?
MS. BROWN: Object to form. Characterization.
A. I don't remember what the end product was to be or the end goal was here.
MR. O'CONNOR: Mark this.
(Deposition Exhibit 219 marked for identification.)
Q. Do you know if CPH Exhibit 218 was ever sent to Mr. Fannin and Mr. Goudis?
A. I don't know for sure.
Q. Sir, I'm handing you what's been marked as CPH

EUGENE YOO

Exhibit 219. It's a document bearing Bates label Morgan Stanley 36347 through 36349; do you recall this document?
A. Uh-huh. Yes.
Q. This appears to be a later version of CPH Exhibit 218, does that refresh your recollection that you may have changed Exhibit 218 in a matter reflected in CPH Exhibit 219?
A. I, again, I don't remember exactly what the reasoning was. I think we were just reorganizing the questions into categories to make it easier for them to gather the information.
(Deposition Exhibit 220 marked for identification.)
Q. Do you recall drafting that document, CPH Exhibit 219 or revising the document that we marked as CPH Exhibit 218?
A. I don't remember that specifically, no.
Q. I'm handing you what's been marked as CPH Exhibit 220. CPH Exhibit 220 bears Bates labels CPH 467090 through 467126. I'll represent to you that this is the way the document appears in the files, I'm not sure if the first three pages

EUGENE YOO

of CPH Exhibit 220 were physically attached to the following document. But do you know, sir, whether that was the case? Whether these two documents were in fact attached?
A. I don't know.
Q. Does your handwriting appear on the first page, the fax cover sheet on CPH Exhibit 220?
A. No, that's not my handwriting.
Q. Is that Mr. Chang's handwriting?
A. I don't know whose that is.
Q. But you're listed as the author of the fax?
A. Yes.
Q. On page 2 of that document, CPH 220, under Financial Projections; do you see that?
A. Yes.
Q. First bullet point reads "please provide backup numbers to all the new revenue stream graphical charts." Do you see that?
A. Yes, I do.
Q. What was the purpose of attaining that information?
A. Again, I don't know if there was any other reasoning behind it other than just typical due diligence and trying to make sure that we fully

EUGENE YOO

understand and are comfortable with their projections.
Q. Do you recall whether you received materials that were responsive to the request under "financial projections"?
A. I do know we received some documents from them, I don't know for sure we got all of them or not.
Q. Did you ever make an effort to determine whether they provided you with all of the information requested in this September 19, 1997 memo?
A. I believe we did follow up with them on some outstanding items, yeah. I don't recall if those were ever followed through or not.
Q. Looking at the product development R and D pipeline section, the third bullet point. The second dash reads, "is 30 new products a year a reasonable number to achieve." Do you recall receiving any comfort or a response to that inquiry?
A. I don't remember specifically.
Q. Did you believe that 30 new products a year was an unreasonable number to achieve?
A. I had no idea. I didn't really know the industry.

NOT A CERTIFIED COPY

Page 78

EUGENE YOO

Q. On the third page of the document, CPH 467092, there's a category entitled, not category, /channel/pricing; do you see that?
A. Yes.
Q. And the fourth bullet point it reads "definition of category management? Does it differ from channel management?" Do you recall inquiring into Sunbeam's channel management?
MS. BROWN: Object to form.
A. I'm not sure. I mean, I still don't fully know what channel management is. That's part of the question was trying to work through their terminology, understanding what it is they were talking about.
Q. Did you ever come to an understanding of Sunbeam's channel management practices?
MS. BROWN: Object to form.
A. Again, I'm not really sure, you know, what channel management, you know, it's more of a marketing term, I believe. I'm not really sure what channel management is.
Q. There's another category entitled Other at the bottom of that same page. And next to the fourth bullet point it reads "provide examples

Page 79

EUGENE YOO

of how the company has repositioned itself (manufacturing, shipping and billing, R and D and other systems and processes.) For growth as opposed to being viewed as a cost cutter." Do you recall obtaining information in response to this inquiry?
A. I don't remember specifically what we got back on this one.
Q. Do you recall whether you received any comfort on whether the company repositioned itself for growth as opposed to simply cost cutting?
MS. BROWN: Object to form.
A. I don't recall.
Q. The following document is a list of documents in data room, CPH 467093?
A. Uh-huh.
Q. And it appears that this document runs through the rest of this exhibit through CPH 467126. Do you recall seeing that document?
A. No, I don't think I've seen this before.
Q. Did you ever go into a data room in connection with your due diligence of Sunbeam?
A. Not that I can remember.
Q. Do you know if anyone did?

Page 80

EUGENE YOO

A. As far as I remember there was, at least for the Morgan Stanley due diligence, I don't believe there was a formal data room set up. I don't recall if there was ever one set up during the transaction, during the actual consummation of the transaction.
Q. Did you, did you ever have any contact with the law firm Skadden Arps in connection with the Sunbeam engagement?
A. I believe so, yes.
Q. Do you recall that Skadden represented Sunbeam in the transaction?
A. That sounds familiar, yeah.
Q. Okay. Did you have any discussions with Skadden in connection with the due diligence that you performed?
A. I don't think we talked about that, no.
Q. Do you recall when you started your due diligence of Sunbeam?
A. I mean, for a client -- I'm sorry.
Q. No, go ahead.
A. For a client I don't think it's a one time event. It's sort of an ongoing thing. As I said, we were learning about the company when we

Page 81

EUGENE YOO

did our first pitch and then from then it was sort of an ongoing process of trying to stay on top of the progress of the company.
Q. Is September 19, 1997 a significant date to you in connection with your due diligence work? When the memo that's attached to CPH Exhibit 220 was faxed to Mr. Goudis and Mr. Fannin at Sunbeam?
A. I don't recall anything specific or anything special about that day.
Q. Did Sunbeam ever refuse to provide any information that you requested in connection with your due diligence work?
A. No. Not as far as I can remember.
Q. Did Sunbeam limit Morgan Stanley's access to any of Sunbeam's customers or employees?
MS. BROWN: Objection. Foundation.
A. There was no -- there was no attempt on Sunbeam's part to limit our access to any of the customers.
Q. Did you interview any customers at Sunbeam?
A. I did not personally, no.
Q. Do you know if anyone did?
A. I don't believe anyone did. But I don't think

NOT A CERTIFIED COPY

EUGENE YOO

that's -- it's not really part of the normal due diligence process for an MNA transaction.

Q. You've never contacted companies' customers as part of due diligence?

A. I haven't personally and I don't know of anyone that has. I can't think of anybody that has.

Q. Okay. How about lower level employees, employees below the division heads, did you have any contact with those employees in connection with your due diligence?

A. Occasionally here and there. I don't remember anyone directly.

Q. Do you recall any of those employees that you spoke with?

A. No.

Q. Do you recall the subjects of your conversations with those employees?

A. No. It was mainly in the context of when we would request information or specific documents most of our contact was with senior or mid level management and they would have some of their subordinates do the actual work to provide us the information. That was really the main context of our contact with them.

EUGENE YOO

Q. So is it your testimony that you never spoke to those employees, you just obtained information from them through their superiors?

MS. BROWN: Objection. Mischaracterizes.

A. I don't recall the nature our conversations with them. You know, there was some contact, I don't really remember what it was.

MR. O'CONNOR: Mark the next exhibit.

(Deposition Exhibit 221 marked for identification.)

Q. Mr. Yoo, you've been handed what's been marked as CPH Exhibit 221; do you recall this document?

A. No, I don't think I've seen this one.

Q. Do you recall traveling to Sunbeam's headquarters in Florida on September 22nd through the 24th, 1997?

A. I don't know the dates that I was down there. I made several trips down there.

Q. How many trips do you think you made to Florida in connection with the Sunbeam engagement?

A. I have to guess. Maybe four or five.

Q. And each time you traveled to Florida did you, did you go to Sunbeam's headquarters in Del Ray Beach?

EUGENE YOO

A. Yes, I believe so.

Q. What were the purposes of your trips to Florida?

A. They were all different. We were down there for different reasons.

Q. Did you go to the beach?

A. No.

Q. Was this a part of your due diligence of Sunbeam?

A. Some of it was for due diligence, yes.

Q. Besides due diligence why else did you go to Sunbeam?

A. Some of it was, I believe there was one meeting or one presentation we made to them and I think one was a, I remember we went down there for a, sort of a preparation session. I think they were having a meeting with someone, I don't recall who.

Q. Was this a potential buyer?

A. I don't remember who it was. It was really -- Jim Stynes was the one that went with me in that meeting and they were asking for Jim's help in just preparing for a meeting.

Q. In the presentation, of the trip for the presentation was that for the pitch to Sunbeam?

EUGENE YOO

A. No. What was that about? I think it was --

Q. That's my next question.

A. I think it was just an update of the progress to that point. Where we were in our discussions.

Q. Do you recall when that trip occurred?

A. I think it was in the fall sometime that I remember.

Q. Do you recall Mr. Dunlap being unhappy with Morgan Stanley because Morgan Stanley could not find a buyer for Sunbeam?

A. I never knew, I mean, I never, like I said, I never talked to him.

Q. You never talked to him ever?

A. About the transaction. It was really just formalities and greetings.

Q. Does CPH Exhibit 221 read in connection with CPH Exhibit 220, refresh your recollection that your trip to Florida from September 22nd to the 24th of 1997 was in connection with the information that you requested in the September 19, 1997 memo?

A. Okay. I believe we did go down there for that trip for a due diligence session.

Q. What do you recall about that trip?

NOT A CERTIFIED COPY

Page 86

EUGENE YOO

A. It was pretty nondescript. I mean, it was just information gathering, going through documentation they had given us, a few presentations. Actually, this may have been the trip where we met with the various division heads and they were giving us their growth plan for the year.
Q. Do you recall any of the information they provided you on those growth plans?
A. No.
Q. Do you recall looking at any documents during this trip that you requested in the September 19, 1997 memo?
A. We did go through quite a few documents during this time. I don't, again, I couldn't tell you specifically what.
Q. Did you find any information in those documents that caused you any concern about Sunbeam's turn around or the future growth projections?
MS. BROWN: Object to form.
A. No. At the time there was nothing really that raised any red flags for us.
Q. Was there anything that raised any yellow flags?
A. No.

Page 87

EUGENE YOO

Q. Did Mr. Chang accompany you on this trip to Florida in September?
A. I believe he did.
Q. Did anyone else go to Florida with you on this trip, or did you meet anyone from Morgan Stanley down in Florida on this trip?
A. I don't remember. I don't think so, but I'm not sure.
Q. CPH Exhibit 221 indicates that you spent Tuesday, September 23rd, at Sunbeam?
A. Uh-huh.
Q. And you were to see Rich Goudis. And it shows your departure on Wednesday, September 24th, six fifteen flight.
A. Uh-huh.
Q. Does that refresh your recollection on how much time you spent at Sunbeam's headquarters reviewing documents and meeting with division heads?
MS. BROWN: On this trip?
Q. On this trip. Thanks.
A. I thought we were there for a few days, maybe two days or three days. And -- I've got to look at the time line here. Yeah, it looks like

Page 88

EUGENE YOO

that, it was probably two days.
Q. Do you recall whether this trip in late September of 1997 preceded this presentation that you spoke about earlier?
A. Which presentation?
Q. The trip to Florida where you were involved in a presentation to Sunbeam to update them on the progress?
MS. BROWN: With Mr. Stynes.
A. I don't remember the exact chronology.
Q. How long were you in Florida for that presentation?
A. I think it was just a day.
Q. In that preparation session?
A. I think it was just a day.
Q. Other than the trip to Florida on September 22nd, do you recall any other trips to Florida in 1997 during which time you performed due diligence of Sunbeam?
A. I couldn't say for sure. I don't know.
Q. I'm handing you what's been previously marked as CPH Exhibit 71.
A. (Witness reviewing.)
Q. Have you seen this document before?

Page 89

EUGENE YOO

A. Yes, I have.
Q. When did you see this document?
A. I actually helped put this together.
Q. Okay. The first two pages of CPH Exhibit 71 are contents of an e-mail authored by Tyrone Chang dated October 23, 1997, attaching an October 22, 1997 memo to worldwide IBD Professionals; do you see that?
A. Yes, I do.
Q. Do you recall the purpose of sending this e-mail and the attached documents at this time? At that time.
A. This was a standard announcement that we would send out when we were engaged by a client.
Q. What's the purpose of sending out that announcement?
A. I think it was just informative for the rest of the investment banking division.
Q. You said that you prepared the materials that are attached to that e-mail?
A. Well, I helped put this together.
Q. When you say you helped put it together, what does that mean?
A. I think most of the actual documentation on the

NOT A CERTIFIED COPY

EUGENE YOO

project, the person who actually physically sat there and drafted these was Tyrone, and I was overseeing that and then Alex was overseeing us, Alex Fuchs.

Q. Did you physically type the information that's contained on Morgan Stanley 5986?

A. 86? No, I didn't type this.

Q. Do you know who did?

A. I don't know.

Q. Do you recall reading the investment rationale that appears on this page at this point in time?

A. I believe I did read this.

Q. The first bullet point reads, "Sunbeam represents an attractive growth story and investment opportunity"?

A. Uh-huh.

Q. Do you know the basis for that statement?

A. I don't know.

Q. Did you do anything in connection with your due diligence of Sunbeam to confirm that Sunbeam in fact represented an attractive growth story and investment opportunity?

MS. BROWN: Object to form.

A. Well, all of these I think are just opinion

EUGENE YOO

about the quality of the company. I think the growth aspect was coming out of the growth plan that Sunbeam had.

Q. So the statements, the four bullet point statements that appear on Morgan Stanley 5986 are Morgan Stanley's opinion of the condition of Sunbeam Corporation at this time?

MS. BROWN: Object. Mischaracter --

Q. I'm sorry. At the time that the document was circulated to the worldwide IBD Professionals?

MS. BROWN: Objection. Mischaracterization. Foundation.

A. At the time that this was drafted based on the information that we had from the company and what we knew about the company, you know, we felt that these were reasonably accurate.

Q. Do you recall anything specifically that you did to confirm that Sunbeam had undergone a profound transformation since the arrival of new management in July of 1996?

A. I don't remember specifically.

Q. For the next bullet point "tremendous intrinsic value, outpacing nearest competitors"?

A. Uh-huh.

EUGENE YOO

Q. You testified earlier as part of your due diligence you were keeping an eye on other companies in the industry?

A. (Witness nods in the affirmative.)

Q. Is that part of what you did to confirm that Sunbeam presented a tremendous intrinsic value?

A. I can't say for sure, but that's a possibility.

Q. If you turn, sir, to page 5991, a few pages back in CPH Exhibit 71. There's a summary of recent analyst commentary.

A. Uh-huh.

Q. And that spans for several pages. Did you draft those pages of this document?

A. Actually, I don't think that I worked on this part of it.

Q. Did you perform any research into analyst commentaries on Sunbeam or did someone else take care of that?

A. Most of that was actually done by the, by our, our financial analysts, Tiruse (ph.), Tyrone and Louie.

Q. You can set that aside. During your trip to Sunbeam in September, late September of 1997 did you ever meet with any of the company's internal

EUGENE YOO

auditors?

A. No, I don't think we did.

Q. You never spoke to Tom Hartshorn?

A. Harshorn?

Q. Thank you.

A. I don't recall ever meeting him face to face. I think I may have spoken to him on the phone once or twice.

Q. What did you discuss with him?

A. I don't recall.

Q. How about Deirdre Dadando, did you ever speak with her on the phone?

A. I don't recall that name.

Q. Did you ever review Sunbeam's internal audit papers?

A. I don't believe we did.

Q. Did you ever review the audit work papers prepared by Arthur Andersen, Sunbeam's accountant?

A. I don't think we did. We typically don't review the audit papers.

Q. Why is that?

A. We rely on the auditors who provide us with a comfort on the financials. We couldn't do that

NOT A CERTIFIED COPY

EUGENE YOO

on every transaction to go in and review their work.

Q. Did you ever speak to anyone at Arthur Andersen in connection with your due diligence?

A. I don't think we did.

Q. You don't recall speaking to Larry Bornstein?

A. No. I may have on the phone once, but I don't really remember. I didn't really deal with Larry.

Q. Do you know who Larry Bornstein is? Have you met him?

A. I've never met him, no.

Q. Phil Harlow?

A. Phil I think I've spoken to. I think he was the person I talked to more.

Q. You don't recall what you discussed with Mr. Bornstein?

A. No.

Q. Do you recall what you discussed with Mr. Harlow?

A. I don't remember specifically. It was more in connection with the acquisitions that Sunbeam was making.

Q. Was part of your due diligence of Sunbeam and

EUGENE YOO

its financial condition you didn't have conversation with Mr. Harlow or Mr. Bornstein?

MS. BROWN: Objection. Mischaracterizes.

A. I don't believe we did.

Q. Sir, I'm handing you what's previously been marked as CPH Exhibit 84. Have you seen this document?

A. I don't believe I have.

Q. This is a document that was produced by Morgan Stanley and it appears to be the chronology of the events, some of the events, Project Laser. On page 2 of the chronology next to the date of September 23rd and 24th, the event reads "MS due diligence at SOC"?

A. Uh-huh.

Q. First, SOC refers to Sunbeam's stock ticker symbol; correct?

A. Correct.

Q. And the participants of that due diligence session at Sunbeam are listed as yourself and Mr. Chang --

A. Uh-huh.

Q. -- at Sunbeam's headquarters? Do you recall traveling to Sunbeam on September 23rd and 24th

EUGENE YOO

as part of your due diligence? I'm sorry. I withdraw that question.

Is that the same -- does that refer to the trip that we discussed in CPH Exhibit 221?

A. I believe that's the same trip, yes.

Q. And then the next page lists October 29th?

A. Uh-huh.

Q. "MS due diligence regarding growth strategies and strategic plan at Sunbeam's headquarters in Florida" and your name, Mr. Chang's name and Miss Rafii's name are listed there. Do you recall traveling to Sunbeam in Florida on October 29th to conduct due diligence on Sunbeam's growth strategies and strategic plan?

A. I vaguely remember making the trip.

Q. Do you recall what you did on that trip?

A. I just remember part of it being sitting with Rich Goudis and with Russ and some of the backup financials they had to the growth plan, understanding how they built up to their final, final numbers. I don't recall what else we did on that trip.

Q. Did they provide you with documents reflecting that build up?

EUGENE YOO

A. Yes, I believe they did.

Q. Do you recall what those documents contained?

A. I don't remember now, no.

Q. Did you speak with anyone besides Mr. Goudis and Mr. Kirsch during that trip?

A. I may have. I think there was somebody else that worked for Russ that we actually dealt with on a more regular basis for the financials. And we may have talked to, we may have talked to Don as well, Don Oosi.

Q. Did you speak with anyone below senior management on that trip to discuss the back up for the strategic plan or the growth strategies?

A. I don't recall.

Q. Do you recall anything else about that trip or the information you learned?

A. No. I don't recall anything else about that.

Q. Did anyone else from Morgan Stanley go down to Florida for that trip other than yourself and Mr. Chang and Miss Rafii?

A. I don't know. I don't remember.

Q. Handing you what's been previously marked as Exhibit CPH 173. Do you recall traveling to Sunbeam's headquarters in Florida on January

NOT A CERTIFIED COPY

5th?
A. January 5th? I don't remember what the trip was for.
Q. You don't recall going down to Florida shortly after New Year's, 1998?
A. I may have. I mean....
Q. If you turn to CPH Exhibit 84, --
A. Uh-huh.
Q. -- page 33259.
A. Uh-huh.
Q. Next to January 5th there's an entry that states "meeting with SOC to prepare for potential sell side management presentation to Phillips." Does that refresh your recollection of your trip to Florida on January 5th?
A. I'm sorry, I'm drawing a blank on that. I don't remember.
Q. Mr. Yoo, did you create any documents to reflect the information that you learned during the due diligence trips to Sunbeam?
MS. BROWN: Object to the form.
A. The, I mean, on which trip? On --
Q. Any of the trips.
A. I may have taken notes. That's all I know.

Q. Was it your practice to take handwritten notes while you were conducting due diligence while reviewing documents and speaking with people?
A. Generally I took notes, yeah.
Q. But you don't recall doing so in this case?
A. Again, I'm speculating. I'm assuming I did but I don't have anything.
Q. Nobody at Morgan Stanley was designated as the point person who was responsible for keeping notes of the due diligence activities?
A. Typically the analysts were the ones that were responsible for making sure that any and all information that we gathered on a due diligence trip made it back with us to New York. Whether that was notes or physical documents that we received or discs or anything like that.
Q. Did the analysts on the Sunbeam engagement do that?
A. I believe they did.
Q. Do you know where those notes or documents were stored once they were carried back to New York?
A. No.
Q. Did you ever look at those documents at a subsequent time after the due diligence trip?

A. I'm pretty sure we went through some of them again at some point.
Q. You didn't create any summaries of your due diligence findings?
A. No.
Q. In 1997 and 1998 did Morgan Stanley have any policies documenting due diligence?
A. Not that I knew of.
Q. Did you receive any training at Morgan Stanley on conducting due diligence or documenting due diligence?
A. There was no formal training class on due diligence. You know, just like almost anything else on the job it's sort of learning on the job, learning with somebody else who knows what they're doing. In this case, especially in this case because it was my first MNA transaction, I was working with Alex and also Tyrone who had actually more experience than I did in the MNA group.
Q. Were you ever given a manual at Morgan Stanley which provided policies and recommendations on conducting due diligence?
A. I don't think we ever received anything like

that. I don't remember anything like that.
Q. Other than the trips that we've looked at on your itineraries or in this chronology, do you recall any other trips to Sunbeam in 1997 where you performed due diligence?
A. No. I don't recall any, anything specific.
Q. Mr. Yoo, did you prepare presentation books for potential acquisition targets in the Sunbeam engagement?
A. I believe we did.
Q. Did you personally?
A. I am pretty sure that I helped work on them.
Q. Who else was involved in preparing presentation books?
A. I guess it depends on the book.
(Deposition Exhibit 222 marked for identification.)
Q. You've been handed what's been marked as CPH Exhibit 222, which is a Morgan Stanley document Bates labeled 3431 through 3464. Have you seen this document before, sir?
A. Yes, I believe I have.
Q. Did you draft this document?
A. I helped put it, I helped put it together.

NOT A CERTIFIED COPY

EUGENE YOO

Q. Do you recall when you did that?
A. No, I don't remember.
Q. If you look on the lower left-hand corner of the document there's a computer file stamp and a date; do you see that?
A. Uh-huh. Yes.
Q. It appears that the date is December 11, 1997. Does that refresh your recollection as to the time that you helped prepare this document?
A. Yes, a little bit.
Q. What's the purpose of this document?
MS. BROWN: Objection. Foundation.
A. Who were we presenting this to, or?
Q. Why was that document created?
A. I can't be certain but I think it might have been to inform or, I guess, educate Sunbeam on the Coleman Company.
Q. Do you know if this document was given to Sunbeam?
A. I don't know that for sure.
Q. If you turn back, sir, to CPH Exhibit 84, the chronology.
A. Okay.
Q. There's an entry there for December 11th.

EUGENE YOO

"Meeting with Sunbeam management to discuss potential Coleman transaction. Sunbeam --
A. Okay.
Q. -- initiated talks with Coleman without MS knowledge background presentation on Coleman and preliminary financial analysis presented"?
A. Okay.
Q. Does that refresh your recollection, sir, on what was done with this document?
A. Well, I wasn't actually at the meeting, I don't know what they used this for. It could have either been to inform Sunbeam or sometimes our own team use it to make sure we knew all of the answers if anybody had any questions on Coleman, if they asked us what the sales were last year or anything like that.
Q. Do you recall when you first started researching the Coleman Company in connection with the Sunbeam engagement?
A. No. I mean, there were so many things happening at the time, I don't remember.
Q. If you could turn, sir, to the third page of CPH Exhibit 222. In the overview of the Coleman Company the section entitled Overview of the

EUGENE YOO

Coleman Company. There's a document entitled the Coleman Company, Inc. Transaction Rationale. Did you prepare this page?
A. I don't think I did. It doesn't look familiar.
Q. There's a column entitled Issues and there's a bullet point, second bullet point under that column indicates "research earnings, estimates already include 50 million of cost savings"?
A. Okay.
Q. Do you have any recollection of looking into that information?
A. "Looking into" meaning what?
Q. Determining whether that was in fact the case.
A. I don't know. I don't remember looking into it.
Q. If you flip ahead, sir, to Morgan Stanley 3452. That page is entitled Synergy and Price Analysis; did you prepare this page?
A. No. This was part of the model that Tyrone was working on.
Q. This page in the upper left-hand corner indicates that this is, this purports to be a chart relating to Sunbeam's acquisition of Coleman with synergies; do you see that?
A. Yes.

EUGENE YOO

Q. Is it your testimony that you were not involved in preparing model outputs that analyzed an acquisition of the Coleman Company and the synergies that are assumed in such an acquisition?
MS. BROWN: Objection to form. Mischaracterizes.
A. No, that's not what I am saying. I certainly helped work on a good portions of the model. This particular one, though, is one I didn't really work on.
Q. When you say you worked on portions of the model, what do you mean by that?
A. Well, I was overseeing Tyrone as he would run various analyses.
Q. Did you tell Tyrone what data to input into the model?
MS. BROWN: Object to the form.
A. I didn't, I didn't give him the specific numbers to put in, but I would help him tell, you know, help him figure out where the sources were.
Q. What were the sources of that data?
MS. BROWN: Object to form.
A. I mean, the data for the inputs?

NOT A CERTIFIED COPY

EUGENE YOO

Q. Correct. For the synergy analysis.
A. I don't know what the data for the synergy analysis was. Generally for the model we used publicly available financials.
Q. Did you ask Mr. Tyrone where he obtained the data to perform synergy and price analysis that appears on Morgan Stanley 3452?
A. No. I think this was something that he was running with Alex. But I can't be certain. But I don't really recall anything about this page.
Q. Flip ahead to Morgan Stanley 3454. This is a chart entitled Transaction Structure Analysis?
A. Uh-huh.
Q. And the upper left-hand corner indicates "SOC acquires Coleman without synergies"?
MS. BROWN: Coleman, SOC.
Q. Thank you. Did you prepare this document?
A. I don't know if I helped prepare this specific one. This is again a page from our standard model which we've run hundreds of times. I don't know if this specific version is one that I worked on.
Q. Again, you don't know the source of the data -- I'll withdraw that.

EUGENE YOO

If you turn to the next page, Morgan Stanley 3455. It's another transaction structure analysis. This time it says, "SOC acquires CLN with synergies." Do you see that?
A. Uh-huh.
Q. And the synergies assumptions in the bottom left-hand corner states, "includes synergies of 95.1 million." Do you know where that number came from?
A. No, I don't know.
Q. Turn to the next page. Morgan Stanley 3456. That analysis includes synergies of 126.8 million. Do you see that?
A. Yes, I do.
Q. Do you know where that number came from?
A. I can take a guess but it's just a guess. I don't know for certain.
Q. Well, where do you believe it came from? What's your guess?
MS. BROWN: Objection. Calls for speculation.
A. And just, it looks like it comes off of this chart you first showed me, the synergy and price analysis.

EUGENE YOO

Q. What page is that?
A. 3452.
Q. And that page you don't recall where those, that synergy data came from?
A. I don't know.
MS. BROWN: Chris, are we going to take a lunch break?
MR. O'CONNOR: Yeah, I'm close to moving on so let's finish this up. I would like that marked the next document.
(Deposition Exhibit 223 marked for identification.)
Q. Sir, you've been handed what's been marked as CPH Exhibit 223; do you recall this document?
A. I think I do, yes.
Q. Did you draft this document?
A. I can't be certain. I don't know.
(Deposition Exhibit 224 marked for identification.)
Q. Sir, you've been handed what's been marked as CPH Exhibit 224.
A. Uh-huh.
Q. I'll represent to you, sir, that the first two pages of this document contain meta data from

EUGENE YOO

file produced to us by Morgan Stanley. Are you familiar with the concept of meta data?
A. Not very, no.
Q. Okay. Information contained in the file that was provided to us indicates that you created this document on December 11, 1997, as indicated by your name after author, y-o-o-g?
A. Uh-huh.
Q. And under Document Statistics, Creation Date. Does this refresh your recollection of your drafting of this document?
A. Again, I can't be certain, but it's possible I drafted it.
Q. Do you know why this document was drafted on December 11, 1997?
A. On the 11th? I don't remember exactly why.
Q. Did you attend a December 12, 1997 meeting between Sunbeam management and MacAndrews and Forbes Holdings Company to discuss a potential transaction involving those two companies?
A. No. I never met with MacAndrews and Forbes.
Q. At anytime?
A. I met with somebody from MacAndrews and Forbes after the acquisition when we were selling the

NOT A CERTIFIED COPY

015259

EUGENE YOO

spa business.
Q. Were you aware of the meeting on December 12th?
A. Sure. I'm pretty sure I was.
Q. Do you know if Sunbeam used Exhibits 222, 223 and 224 in connection with their meeting with MacAndrews and Forbes?
A. I don't know.
MS. BROWN: Hold on. 224?
MR. O'CONNOR: I'm sorry, Exhibit 222 and Exhibit 223. Thank you.
MS. BROWN: Objection. Foundation.
A. I don't know.
Q. Do these documents refresh your recollection, sir, that Morgan Stanley was analyzing potential synergies of a Sunbeam/Coleman transaction prior to the first meeting between Sunbeam and MacAndrews and Forbes on December 12, 1997?
MS. BROWN: Object to form. Object to foundation. And also I believe mischaracterizes the facts in evidence.
A. I mean, I don't know. I mean, which synergies, which?
Q. We looked at two documents that indicated that someone at Morgan Stanley, perhaps Mr. Chang,

EUGENE YOO

perhaps yourself, were compiling information analyzing potential transaction between Sunbeam and Coleman; correct?
A. It appears that way, yes.
Q. And those documents are dated December 11, 1997; right?
A. Okay, yeah.
Q. Okay. My question for you is do you recall yourself or Mr. Chang or anyone else at Morgan Stanley analyzing the potential synergies of a transaction between Coleman and Sunbeam before December 12, 1997?
MS. BROWN: Object to the form. Compound. And also foundation.
A. Again, I don't remember specifically what we were looking at with Coleman prior to the meeting. I don't really remember the chronology of the meetings with Coleman.
Q. But although you don't know the source of the synergy data that appears in CPH Exhibit 222 that document reveals that someone at Morgan Stanley was inputting synergy assumptions into models to determine a potential transaction with the Coleman Company; correct?

EUGENE YOO

A. It appears that way.
Q. A good time to take a lunch break?
VIDEOGRAPHER: The time is twelve thirty, we're off the record.
(Lunch break taken.)
VIDEOGRAPHER: We're back on the record. This is tape number 3, the time is eleven minutes after one.
Q. Mr. Yoo, before the lunch break you testified that you had no contacts with representatives of MacAndrews and Forbes Holdings until, except for after the transaction closed; is that correct?
A. As far as I can remember that's correct.
Q. If you can turn back to CPH Exhibit 84, the chronology.
A. Okay.
Q. And on page 33259 of that document there's an entry for January 23rd. And next to that entry there is a description, "meeting with Mavco, reinitiate talks, Ray Coleman." The location it says Emco headquarters, I believe that to be Mavco headquarters in New York. Your name is listed as an attendee. Is that an error or do you recall meeting with Mavco on January 23rd?

EUGENE YOO

A. I don't recall that meeting at all. I don't think I've ever been to their headquarters.
Q. If you turn to the next page there's an entry for January 29th, there are a lot of names listed there, yours is not among them.
A. Okay.
Q. Reflecting another meeting with Coleman and Mavco. You were not present in that meeting as well, at Revlon's headquarters?
A. I was not there.
Q. And again, on February 6th there's an entry for a meeting with Mavco to negotiate the Coleman transaction at Mavco's headquarters. Mr. Chang's name is listed but yours is not, you did not attend that meeting?
A. Again, I don't believe I ever went there. I don't think I've ever been to the Mavco headquarters.
Q. If you can turn to the next page, Morgan Stanley 33261. There's an entry dated February 23rd, "strategic due diligence meeting with Coleman, review strategic plan in 1998 projections, arrange for facility visits, due diligence on Sunbeam by Coleman and CSFB." Again, your name

NOT A CERTIFIED COPY

is not listed there, do you have any recollection of any meetings on February 23rd involving those individuals?

A. No, I don't.

Q. You don't recall any discussions involving MacAndrews and Forbes or anyone from Coleman with members of Morgan Stanley or Sunbeam concerning any details of the transaction such as the price, the timing, the consideration that would be paid?

A. No, I don't remember being part of any of those meetings.

Q. I'm handing you what's been previously marked as CPH Exhibit 9. Do you recall this document, sir?

A. Yes, I think I do.

Q. What is this document?

A. I think this was our, our company description of Sunbeam and its current situation.

Q. Do you call this a presentation book?

A. I guess -- what do you mean by presentation book? It appears to be in presentation format.

Q. Do you know if this document was provided to Coleman Company representatives or MacAndrews

and Forbes representatives in February of 1998?

A. I don't know what they were given.

Q. If you could turn to page 26290, which is the fifth page in on Exhibit 9.

A. Okay.

Q. Do you recognize that document, sir, as the same document that was circulated to Worldwide IBD Professionals at Morgan Stanley back on October 22nd of 1997?

MS. BROWN: What's the Exhibit number?

MR. O'CONNOR: CPH Exhibit 71.

(Prior testimony read back.)

"Do you recognize that document, sir, as the same document that was circulated to Worldwide IBD Professionals at Morgan Stanley back on October 22nd of 1997?"

A. Okay, they look to be the same page?

Q. And this particular page it was prepared by you?

A. You know, again, I don't remember if I prepared this one specifically.

Q. But you recall -- you recall that document being prepared in connection with attempting to find a buyer or acquisition targets for Sunbeam?

MS. BROWN: Document or page?

MR. O'CONNOR: Page.

A. This page, yes. I do recall that.

Q. What's the purpose of preparing this document, the discussion materials marked as CPH Exhibit 9?

A. I don't know specifically what meeting this is for or who the audience was.

Q. Was this document an effort by Morgan Stanley to in essence sell Sunbeam Corporation -- I withdraw.

Is this document in essence materials prepared to provide prospective buyers or acquisition targets with information concerning Sunbeam's existing financial and business condition?

A. I don't know if that was the purpose here.

Q. Do you know of any other purpose --

A. It could have been. I'm sorry.

Q. Do you know of any other purpose this document would serve?

A. February of '98. It could have been given, again, just speculating, it could have been given to anyone just to update them or inform

them about Sunbeam. Just their current situation.

Q. For what purpose?

A. Oh, I don't know.

Q. As you flip through this document, Mr. Yoo, did you prepare, do you recognize any pages in this document that you prepared?

A. I didn't put any of these pages together myself. But I worked with Tyrone and Lilly in putting them together.

Q. Did Mr. Chang and Miss Rafii provide you with the materials that they were preparing for your review?

MS. BROWN: Object to the form.

A. They provided me with these pages, you mean?

Q. Were you asked to review the work product of Mr. Chang and Miss Rafii?

A. Yes, I did review their work.

Q. And if there were any errors or inconsistencies would you correct those or send the document back to them to change?

MS. BROWN: Are you referring specifically to this document?

Q. Generally the documents that they were

NOT A CERTIFIED COPY

015261

EUGENE YOO

preparing.
A. I'm sorry, what was the question?
Q. In general the documents that were prepared by Mr. Chang and Miss Rafii for your review, if you found any inconsistencies or errors in those documents did you change those documents or did you send them back down to those individuals for editing?
A. I would give them the changes to make.
Q. Showing you what has been previously marked as CPH Exhibit 187. Do you recognize that document?
A. I think I do.
Q. When do you recall seeing that document?
A. I don't know the exact date. But I think I saw this or some version of this presentation in the fall of 1997.
Q. Did you prepare any of the pages in this document?
A. I don't think so.
Q. Do you know who did?
A. I don't know.
Q. The same question for CPH Exhibit 9, do you know who compiled the materials to create this

EUGENE YOO

discussion material packet?
A. CPH 9?
Q. Correct.
A. The raw data and information that was used to produce this was probably collected by Lilly and Tyrone.
Q. What did you do to confirm that the information contained in CPH Exhibit 9 and CPH Exhibit 187 was accurate?
A. Accurate meaning?
Q. True.
A. Was it actually -- okay. Not that these and this were the same, or?
Q. Correct. Let's take them one at a time.
A. Okay.
Q. CPH Exhibit 9. What did you do to confirm that the information contained in CPH Exhibit 9 was accurate?
A. Okay. Again, I couldn't give you specific examples, but for the most part we would go back or I would go back and check the file output of the product, a page like this versus whatever source data I could get my hands on. Mostly looking for accuracy and figures and text.

EUGENE YOO

Q. Do you recall any instance where you found inaccuracies in their materials that you had to change?
A. There were a few instances of typographical errors or just misinterpreting of some numbers, maybe. But not many.
Q. And again, with CPH Exhibit 187, what did you do to confirm that the statements contained in this document were accurate?
MS. BROWN: Objection. Assumes facts not in evidence.
Q. I'm sorry, what was the --
(Prior testimony read back.)
"And again, with CPH Exhibit 187, what did you do to confirm that the statements contained in this document were accurate?"
A. I don't remember the specific steps that we took. Many of the things in here are just statements that, I don't think anybody can verify one way or the other. The financials, to the extent they're in here, I don't believe we really even used because they're too general and too broad.

EUGENE YOO

Q. If someone -- I'm sorry.
A. We may have used some of these but I don't really think we relied on these very much.
Q. If somebody outside of Morgan Stanley or somebody wanted to confirm the accuracy of these statements, what would they do?
MS. BROWN: Objection. Hypothetical. Calls for speculation.
A. Well, I mean, in the few cases that I had where we had questions with a company's numbers we would ask for any kind of backup data that they had to support the final numbers that they were showing us and how did they arrive at that particular number, what was the methodology.
Q. So if an individual investor wanted to confirm the accuracy of these statements they would have to ask somebody for the backup information; is that your testimony?
MS. BROWN: Objection. Mischaracterizes. Also a hypothetical.
A. I don't think an individual investor would ever see this presentation, but I don't know. I don't know who it's given to.
Q. If you can turn to page CPH 254636 in Exhibit

NOT A CERTIFIED COPY

0152562

EUGENE YOO

187.

A. Okay.

Q. That page is entitled Long Range Strategic Objectives Earnings From Continuing Operations. At the bottom of that table there's EPS, earnings per share, estimated at two dollars and twenty cents in 1998; do you see that?

A. Yes.

Q. What did you do to confirm that that estimate was accurate?

A. I don't remember specifically what we did on that.

Q. The same question for 1999 and 2000; do you recall what you did to confirm the accuracy of two seventy-five a share and three thirty a share?

A. Again, on these financials and this presentation I'm not sure if we relied on these numbers as much. Generally speaking, going back to what I said before, if there were numbers in any of the financials we got back from a client that we had questions on or were unsure of we would go back and ask for the backup data and then we would try to rebuild that to try to see if we agreed

EUGENE YOO

with their conclusions on their numbers.

Q. Do you recall if in 1998 you believe that Sunbeam's plan to achieve EPS of two twenty a share in 1998 was attainable?

A. I can't remember any reason why we thought it was not attainable.

Q. But you can't recall what you did to confirm that it was attainable?

A. Not specifically, no. I mean, we had our own models that we ran.

Q. Where did you obtain the data to run those models?

MS. BROWN: Object to form.

A. For the models that we ran here on Sunbeam, some of the information was again from public information, some of the information was from analysts reports, equity analyst reports.

Q. Was the data also provided by Sunbeam itself?

MS. BROWN: Objection.

A. It depends on when.

Q. I'm sorry?

A. It depends on what time period you're talking about.

Q. In the first quarter of 1998.

EUGENE YOO

A. In 1998 we may have been using some financials from Sunbeam.

Q. How about 1997?

A. Definitely not before we were engaged.

Q. But after -- well, do you mean formally engaged in the fall of 1997 or starting in April of 1997 when Morgan Stanley began preparing materials in connection with the pitch and the engagement?

A. Before the formal engagement.

Q. If you could turn to page CPH 254639. It's entitled net sales growth analysis. At the bottom it indicates a net sales plan of 1.6 billion in 1998, 2.0 billion in 1999, 2.4 billion in 2000; do you see those numbers?

A. Yes.

Q. What did you do to confirm that Sunbeam -- withdrawn.

What did you do to confirm that these net sales were attainable?

A. I don't remember about this page specifically. Or these specific numbers. But in confirming their growth plan in general, when we went through the backup financials that they had to build up to the sales, and we also met with the

EUGENE YOO

division heads to talk about the growth plans that they had for each individual, each individual division, how they were going to get that.

Q. Were their plans for sales consistent with what's reflected on page CPH 254639?

A. Were whose plans?

Q. Sunbeam. Sunbeam management. The folks that you spoke to.

A. These numbers came from them, so I don't remember exactly what the numbers were at the time.

Q. If you turn to the next page, CPH 254640. What did you do, if anything, to confirm the attainability of first quarter 1998 earnings as indicated on this page?

A. I think it was the same process. For our first quarter '98 we were probably also able to compare the numbers to analyst reports at the time and their projections for the 1998 first quarter.

Q. Did you ever speak to any analysts about their reports?

A. We never spoke to any research analysts. At

NOT A CERTIFIED COPY

0152263

Page 126

EUGENE YOO

least I did not.
Q. You don't know anyone else who did?
A. I don't believe anyone did.
Q. Did Morgan Stanley attempt to verify or challenge any of the statements made by the analysts?
MS. BROWN: Object. Foundation.
A. I don't know.
Q. And, again, you don't recall if either of these documents were provided to Coleman or MacAndrews and Forbes?
A. I don't know.
Q. Mr. Yoo, I'm handing you what's previously been marked as CPH Exhibit 92. My first question for you, Mr. Yoo, actually is not related specifically to that document, but other than reviewing the work performed by Mr. Chang and Miss Rafii, were you involved in assessing or estimating the potential synergies of contemplated a transaction involving Sunbeam and Coleman?
MS. BROWN: Object to form.
A. I, you know, I was not involved in developing any kind of estimates or coming up with any kind

Page 127

EUGENE YOO

of projections on synergies. Our role was simply using synergy numbers that others were providing to us.
Q. Who provided you with those synergy numbers?
A. I don't remember specifically who. But I think generally synergy numbers were provided by Sunbeam or Coopers and Lybrand.
Q. And Coopers was retained by Sunbeam or Morgan Stanley to assist with preparing synergy analyses?
MS. BROWN: Object? Facts not in evidence.
A. I don't know -- I'm pretty sure they weren't retained by Morgan Stanley. I don't think they were working for us.
Q. Other than Sunbeam and Coopers who else provided synergy numbers for Morgan Stanley's models?
MS. BROWN: Object to form.
Q. If any.
A. Well, as far as I knew for the potential transactions we were contemplating there were, I don't think there were any other sources for the synergy numbers.
Q. Who was involved at Morgan Stanley with taking that data and reviewing it or manipulating it or

Page 128

EUGENE YOO

entering it into financial models?
MS. BROWN: Object. Compound.
A. The actual handling of the models was done by the analysts, mostly Tyrone. But all of his work was then ultimately reviewed by either myself or Alex.
Q. Other than Mr. Chang do you know of anyone else that was involved with preparing synergy models?
A. Preparing models using the synergy numbers?
Q. Correct.
A. Not that I can think of, no.
Q. Turning to the document that I handed you, CPH Exhibit 92. Do you recall this document?
A. I think I do, yes.
Q. Do you recall reviewing this document in 1997 in connection with proposed transactions involving Black and Decker, any other companies listed in here?
A. I do recall that.
Q. In the second paragraph on the first page of Exhibit 92, it states, "enclosed please find our initial attempts at determining the likely synergies associated with the change of control. For each targeted company we have made estimates

Page 129

EUGENE YOO

as to the range of attainable synergies and their ensuing financial impact on the combined company." Is that consistent with what Morgan Stanley was doing in connection with the potential transaction with Coleman?
A. I'm not sure what you mean by that.
Q. Well, in analyzing a potential transaction involving Sunbeam and Coleman, did Morgan Stanley make estimates as to the range of attainable synergies in their financial impact as is indicated in CPH Exhibit 92?
MS. BROWN: Object to form and foundation.
A. The analysis here is a little different from what might have been done in the Coleman transaction. This is a preliminary look before we had any contact with any company before we have any potential transaction even showing any signs. These were just ideas. And these synergies were also flushed out. We made guesses here at this point and then talked with the Sunbeam management team to make sure that they were reasonable and they adjusted our estimates, our original estimates to what they thought were, you know, at least on a first

NOT A CERTIFIED COPY

Page 130

EUGENE YOO

broad brush, reasonable assumptions. You know, at the point with, where we were with Coleman it was a much more, I don't want to use the word precise, but it was a different kind of synergy estimate. It wasn't something that we were coming up with. At that point we were relying on Sunbeam or Coopers to give us a more refined number. Where there was an actual tangible transaction. At this point there were just too many companies we were considering.

Q. Okay. In the last sentence of that second paragraph it states, "we have also included the background on Scott Paper and Sunbeam which we used as templates for our analysis"?

A. Uh-huh.

Q. Do you recall if Morgan Stanley used the background information it possessed on Scott Paper in analyzing potential synergies in a transaction involving Sunbeam and Coleman?

A. I don't recall that happening.

Q. Do you know why Morgan Stanley was using Scott Paper as a template for potential synergies?

MS. BROWN: Objection.

Q. Involving the companies that are listed in these

Page 131

EUGENE YOO

materials?

MS. BROWN: Object to form. "These materials" being CPH 92?

MR. O'CONNOR: Yes. Thank you.

MS. BROWN: I still object to form.

A. From what I can recall I'm not sure if this is the only reason behind it, but. It was one of the more recent transactions that Al Dunlap had been involved with and one of the bigger ones, and it was a closer fit to the transactions that we were contemplating at the time. But other than that I can't, I don't recall any other reasons.

Q. Is Sunbeam's restructuring and growth plans relevant to analyzing potential synergies in a transaction involving Sunbeam and another company?

MS. BROWN: Can I hear that question back.

(Prior testimony read back.)

"Is Sunbeam's restructuring and growth plans relevant to analyzing potential synergies in a transaction involving Sunbeam and another company?"

Page 132

EUGENE YOO

MS. BROWN: Object to form.

A. I'm not sure I understand the question.

Q. Well, if you turn to page Morgan Stanley 3414. Included in this package that was sent to Sunbeam was the Sunbeam restructuring and growth plans which we've seen before. Two pages prior to that are Scott paper restructuring plans and growth projects. Is that information important for Morgan Stanley to consider in attempting to estimate a range of attainable synergies in a potential transaction involving Sunbeam and another company?

MS. BROWN: Object to form.

Q. Such as the companies that are analyzed in CPH Exhibit 92?

MS. BROWN: The same objection.

A. For this analysis I don't know how relevant they are or not. I'm trying to remember what we were doing here. I can't read the numbers. Again, I don't know specifically what we were doing. I can't remember what we were doing on this analysis. I would think that's, the restructuring plan and the growth targets might have some impact on potential synergies, but I

Page 133

EUGENE YOO

wouldn't know how to incorporate that into an analysis.

Q. I show you what's been previously marked as CPH Exhibit 93. The first two pages are meta data for the attached document which is entitled Sunbeam Corporation Executive Summary. The third page in which is entitled Sunbeam Corporation Synergies Analysis, do you recognize this document? This page of this document.

A. Yes, I think I do.

Q. Did you prepare this or review this page?

A. I believe I did review this page.

Q. And then the following page is entitled Sunbeam Corporation Sources of Synergies.

A. Okay.

Q. Do you see that?

A. Yes, I do.

Q. And the last bullet point on that page reads, "total potential synergies of over one hundred and 50 million from Sunbeam with 50 percent recognized in year one and the remainder by year two." Do you recall reviewing that statement back in 1997?

A. Again, I think I do. I'm not sure exactly what

NOT A CERTIFIED COPY

EUGENE YOO

presentation this was in.
Q. Looking at those two pages, the synergy analysis and sources of synergies, is that information, is the information contained on those pages relevant to Morgan Stanley's analysis of potential synergies involving Sunbeam and the transaction involving Sunbeam and another company?
MS. BROWN: Object to form and foundation.
A. Some of these are somewhat useful. But most of this is not something that we could use in a quantitative form for a model or any kind of quantitative analysis.
Q. Do you recall how Morgan Stanley came up with the total potential synergies of 150 million dollars involving Sunbeam?
MS. BROWN: Objection. Foundation. Form.
A. No, I don't recall where the 150 million dollar figure came from.
Q. Do you recall asking Mr. Chang? I'll represent to you that the meta data on the first page of CPH Exhibit 93 indicates that Mr. Chang drafted this document in October of 1997.
A. Okay.

EUGENE YOO

Q. Do you ever recall -- do you recall ever speaking with Mr. Chang about where he obtained the information that's contained in this, on the pages entitled Synergies Analysis and Sources of Synergies?
A. I don't recall ever having that conversation with him.
(Deposition Exhibit 225 marked for identification.)
Q. You've been handed what's been marked as CPH Exhibit 225, this is a letter from Coopers and Lybrand addressed to yourself dated October 3, 1997. Do you recognize this document?
A. I think I've seen the matrix before.
Q. Do you recall the purpose of, the purpose behind Coopers sending you this information?
A. I believe this was the initial response back from Coopers and Lybrand from our request for more detail and backup on synergies.
Q. So as of October 3rd of 1997 Coopers was actively engaged in providing its expertise on analyzing synergies to Morgan Stanley or potential transaction involving Sunbeam?
MS. BROWN: Object to form.

EUGENE YOO

Mischaracterization.
A. I don't know what the relationship with Coopers was. There was no formal relationship that I knew of between Coopers and Morgan Stanley and I wasn't aware of what the relationship was between Coopers and Sunbeam. I didn't know when they were brought on board or what the arrangement was with them.
Q. But you knew why they were sending you this document on October 3rd; right?
A. At the time I knew, yeah. I knew they were sending it to us, I knew that they were working on a project with us.
Q. And that project was a potential transaction involving Sunbeam; right?
A. Right.
Q. And analyzing potential synergies that might arise from those transactions; correct?
MS. BROWN: Object to form. Characterization.
A. Well, for, we were trying to narrow down the field of potential companies that we would consider to begin looking at potential transactions. I think at this point it was a

EUGENE YOO

little too premature, we weren't looking at transactions with all of these companies.
Q. Do you recall when Coopers first started providing information to Morgan Stanley concerning potential synergies?
A. No. I didn't know when they were signed by, or when they were brought on board by Sunbeam. I didn't know what their role was.
Q. All you knew is that they were providing you with information on potential synergies involving other companies?
MS. BROWN: Object to form.
A. I don't remember the first contact I had with them or knew about them. We just started receiving information from them one day.
Q. You had no advanced notice that they were going to start working in --
A. I don't remember.
Q. Working on providing you with information on potential synergies involving a transaction with Sunbeam and another company?
A. I don't remember what we knew about Coopers; we weren't really focusing on them.
(Deposition Exhibit 226 marked for

NOT A CERTIFIED COPY

015266

EUGENE YOO

identification.)

Q. Mr. Yoo, you've been handed what's been marked as CPH Exhibit 226 which is a fax cover sheet for Coopers and Lybrand to Gene Yoo dated October 23, 1997 attaching several pages of documents. Do you recall receiving this fax?

A. I think I do recall this.

Q. Do you recall the purpose behind this information?

A. I don't remember specifically what we requested this for.

Q. Is this the type of information that Coopers was providing Morgan Stanley in 1997 on various potential strategic alternatives for Sunbeam?

MS. BROWN: Object to form.

A. I couldn't say if this was typical or not.

Q. Do you recall if they prepared a similar document for a potential acquisition of the Coleman Company?

A. I don't remember.

Q. Do you recall Al Dunlap ever stating that he believed the transaction -- strike that.

Do you recall Al Dunlap ever saying that Sunbeam could attain 2 hundred million dollars

EUGENE YOO

in synergies as a result of an acquisition of the Coleman Company?

A. I don't recall anything like that at all.

Q. Do you recall any statements made by any Sunbeam personnel regarding their beliefs on the potential to obtain synergies in a transaction involving the acquisition of the Coleman Company?

A. I can't remember specifically what anybody said.

Q. Generally?

A. I think the only thing that I can remember was that some of the potential cost savings were already implemented on the Coleman side. I don't remember the amount, but that's the only thing that I can remember about the Coleman situation.

Q. How did you know that?

A. I didn't know it; I remember somebody saying that.

Q. You remember someone telling you that some cost savings had already been implemented at Coleman?

A. I don't know if it was cost savings or if it was some of the restructuring plan in place at Coleman were already underway.

EUGENE YOO

Q. As compared to what?

A. As compared to Sunbeam coming in and implementing their own restructuring plan and a target company.

Q. Were those potential savings that were identified by Morgan Stanley?

A. No. We didn't identify any savings that I can remember.

Q. Were the savings that had already been implemented at Coleman part of the synergies estimates provided by Sunbeam?

MS. BROWN: Object to foundation.

A. From what I remember of the synergy estimates we actually segregated out, I thought, the cost savings that were already achieved or part of the restructuring plan that was already in place. I thought we had done that.

Q. Do you recall ever receiving any synergy estimates or ideas from the Coleman Company?

A. I don't recall what we got from Coleman.

Q. You don't recall any particular number, an amount of synergies thought to be attainable, where that information came from Coleman or MacAndrews and Forbes?

EUGENE YOO

A. No. I don't remember any specific numbers.

Q. I show you what's been previously marked as CPH Exhibit 95. Do you recall this document?

A. Yes, I do.

Q. Did you prepare this document?

A. I don't remember if I did this document or not.

Q. Where do you recall seeing this document?

A. I think this came up somewhere during the negotiations with Coleman, but I don't remember exactly at what point in time.

Q. The first column is entitled Item and there are 15 items listed under that column. Do you know where those items came from?

A. I don't remember the source of the data, no.

Q. And the same question with respect to the column entitled original and the numbers listed in that column, do you know the source of those numbers?

A. No, I don't. I don't recall.

Q. And then with the revision count, do you know the source of those revised numbers?

A. Nope. I don't remember.

Q. Do you know what was done with this document, if anything?

A. I don't remember what we did this for.

NOT A CERTIFIED COPY

Page 142

EUGENE YOO

Q. You can't recall if Morgan Stanley relied on this document in preparing any synergies analysis?
MS. BROWN: Objection. Form and foundation.
A. I don't remember what the ultimate use of this was for.
Q. Do you recall any conversations that you had with people at Morgan Stanley or Sunbeam concerning the items or the dollar amounts on CPH Exhibit 95?
A. No, we never really had any discussions that I can remember about this.
Q. Okay. Showing you what's previously been marked as CPH Exhibit 97. Do you recall seeing this document?
A. I'm not sure if I've seen this one.
Q. In this document there's an additional column, a second revised column. You don't know where those numbers came from?
A. No.
Q. And on the far right-hand side there's a column entitled Comments. Did you draft any of those comments for this particular document?

Page 143

EUGENE YOO

A. I don't believe I did.
Q. Do you know who did?
A. No.
Q. Let me ask a better question. Do you know anyone involved in analyzing potential synergies involving these items that would provide these types of comments?
MS. BROWN: Can you....
(Prior testimony read back.)
"Do you know anyone involved in analyzing potential synergies involving these items that would provide these types of comments?"
MS. BROWN: Object to form.
A. At this level of detail we most likely were relying on Sunbeam and/or Coopers for this information.
Q. Do you recall having any conversations with anyone at Morgan Stanley or Sunbeam involving these types of comments or issues related to these potential synergy ideas?
MS. BROWN: Object to form.
A. I don't recall any conversations.
Q. Do you recall if Morgan Stanley or Sunbeam used CPH Exhibit 97 in connection with the Sunbeam and Coleman transaction?
MS. BROWN: Objection. Foundation.

Page 144

EUGENE YOO

A. I don't know.
Q. I'm handing you what's been previously marked as CPH Exhibit 62. Do you recall seeing this document with this handwriting?
A. No, I don't think I've seen this before.
Q. Do you recognize the handwriting?
A. No, I'm not sure who it is.
Q. Okay. Set that aside. I'm handing you what's been previously marked as CPH Exhibit 139. Do you recognize this document?
A. The first page is familiar, the second page is familiar. I'm not sure I've seen the last two pages.
Q. You did not prepare the last two pages on CPH Exhibit 139?
A. I don't think I did. They're not familiar.
Q. If you look at the last page which is labeled Morgan Stanley 26544.
A. Okay.
Q. It's a page entitled Project Laser Overview of Synergy Analysis Camper. Do you recall the code

Page 145

EUGENE YOO

name for Coleman Company was Camper?
A. I believe that was the case, yes.
Q. And on this chart there are three boxes, the first box on the left next to the words estimated annual synergies reflects 100 million dollars in the top of the box; do you see that?
A. Yes.
Q. And the middle box shows 150 million and the third box shows 200 million?
A. Uh-huh.
Q. Do you recall the source of those synergy estimates?
A. No. I don't, no.
Q. You don't recall any conversations with Sunbeam or Morgan Stanley in which the synergy estimates were discussed? The 100, 150 and 200 million dollar estimates?
A. Those numbers aren't familiar to me, I don't recall anything about them.
Q. Do you recall anyone at Morgan Stanley reaching a decision on the amount of potential synergies that could be attained as a result of Sunbeam's acquisition of the Coleman Company?
MS. BROWN: Object to form and foundation.

NOT A CERTIFIED COPY

Page 146

EUGENE YOO

A. As far as I knew we really didn't make any conclusions or decisions on what the synergies were going to be.
Q. Do you recall if anyone at Sunbeam came to any conclusion on the amount of potential synergies that could be attained in the acquisition of the Coleman Company by Sunbeam?
MS. BROWN: Objection. Foundation.
A. I don't recall who, I don't recall if Sunbeam came up with any definitive answers on the synergies.
Q. Do you recall whether anyone at Sunbeam came to a decision as to a range of synergies?
MS. BROWN: Objection. Foundation.
A. For the most part as far as any synergy discussions we were relying on Russ and it was from the Sunbeam side. We were relying on Russ Kirsch.
Q. Relying on him for what?
A. For guidance on synergies or potential synergies in a transaction.
Q. Why were you relying on Mr. Kirsch for that?
A. He seemed to have the , from our position, he seemed to have the best knowledge of what

Page 147

EUGENE YOO

potential synergies could be with these different target companies.
Q. Why did you believe that to be true?
A. He seemed to have a level of knowledge of the companies that was deeper than our view as an outside adviser.
Q. Knowledge of Sunbeam?
A. Of Sunbeam and of the industry in general.
Q. Other than Mr. Kirsch anyone else that Morgan Stanley relied on in obtaining guidance on potential synergies?
MS. BROWN: Objection. Form and foundation.
A. From Sunbeam, you mean?
Q. Correct.
A. From the Sunbeam side?
Q. Correct.
A. Russ was our main point of contact. I don't know if there was anyone else at Sunbeam who was working on coming up with the numbers.
Q. I'm handing you what's previously been marked as CPH Exhibit 205. Do you recall this document?
A. I'm not sure if I've seen this before or not.
Q. The top of CPH Exhibit 205 contains a fax line

Page 148

EUGENE YOO

where it says "sent by C and L" and then across the top it reads "Coopers and Lybrand, dated 2/27/98." Does that refresh your recollection with respect to who created this document?
A. No. I don't remember this. I may have seen it but I don't remember.
Q. I'm sorry. Were you aware that Coopers estimated potential synergies of 118 million with respect to an acquisition of the Coleman Company by Sunbeam?
MS. BROWN: Objection. Form, foundation. Assumes facts not in evidence.
A. I did know that Coopers was working in some form on developing the synergy estimates. I didn't know, or at least I don't remember now what the ultimate number was that they came up with.
Q. Did you have any conversations with anyone at Coopers concerning potential synergies involving an acquisition of Coleman by Sunbeam?
A. I don't remember.
Q. Do you know if anyone at Morgan Stanley had communications with Coopers on that issue?
A. I couldn't say for sure.
Q. Do you know if anyone at Coleman or MacAndrews

Page 149

EUGENE YOO

and Forbes came to any conclusion on the synergies that could be attained in an acquisition of the Coleman Company by Sunbeam?
MS. BROWN: Can I have that question back.
(Prior testimony read back.)
"Do you know if anyone at Coleman or MacAndrews and Forbes came to any conclusion on the synergies that could be attained in an acquisition of the Coleman Company by Sunbeam?"
MS. BROWN: Objection. Foundation.
A. I don't know any conclusions or anything about what they decided or concluded.
Q. Did anyone at Morgan Stanley offer to you their opinion on the level of synergies that could be attained in an acquisition of Coleman by Sunbeam?
A. Not that I can recall.
Q. Mr. Chang didn't ever give you his opinion on the synergies that might be attained?
A. I don't remember. No, I don't remember.
Q. Mr. Yoo, did you attend the meeting of the Sunbeam board of directors on February 27, 1998

NOT A CERTIFIED COPY

0152510

EUGENE YOO

where the issue of acquisition of Coleman was discussed?

A. I was present for a part of the meeting. I was not there for the first half of the meeting.

Q. Why did you arrive after the start of the meeting?

A. There were, I believe, five presentations that Morgan Stanley put together for that meeting and I was finishing the last two while the meeting began.

Q. What do you recall being discussed at the board meeting while you were in attendance?

A. At the point that I walked in I think Jim Stynes was talking about the details of either FirstAlert or Signature Brands in an acquisition. And then I think, I think after that Bill Strong was talking about financing alternatives. After that I think it was just a general Q and A, or open discussion with the board, I don't remember any of the details after that.

Q. Do you recall any of the specifics, anything specific that Mr. Strong told the board in regard to financing alternatives?

EUGENE YOO

A. I don't remember any specifics. Mostly it was just laying out alternatives and views from our capital market people.

Q. Anything else you can remember being discussed at the meeting?

A. No. I was pretty tired at that point.

Q. Do you recall any discussion of Sunbeam's financial performance in January and February of 1998?

A. No.

Q. Any discussions of Sunbeam's projected financial performance, for example, second quarter of 1998?

A. No, I don't remember anything like that.

Q. Mr. Yoo, I'm handing you what's been previously marked as CPH Exhibit 89. Do you recall this document, sir?

A. Yes, I do.

Q. What is this document?

A. This is the presentation that we put together for the Sunbeam board outlining the potential acquisition of Coleman.

Q. On the first page of CPH Exhibit 89 up in the upper right-hand corner there's a designation of

EUGENE YOO

preliminary draft, do you have any knowledge if there was drafts subsequent to this that would have been presented to the board or if this was in fact the final version?

A. I couldn't say definitively if this was the final version or not. Yeah, I don't know.

Q. If you could just take a moment to flip through it. My question would be do you have any reason to believe this was not the final version?

A. No, there's no reason to believe it's not the final version.

Q. If you could please turn to page 16 of the presentation, which is Morgan Stanley 83982.

A. Okay.

Q. This page is entitled Summary of Camper Evaluation Analyses. Section 4 on this page is entitled Estimated Value of Synergies, and below this there's 100 million pre tax, 150 million pre tax and 200 million pre tax. Do you see that?

A. Yes, I do.

Q. Do you recall any discussions about the potential for Sunbeam to realize between 100 and 200 million in pre tax synergies at this board

EUGENE YOO

meeting?

A. No, I don't recall. I don't think I was even there for the presentation on Coleman.

Q. Would you please turn to page Morgan Stanley 84007. That page is entitled Review of Anticipated Combination Synergies. The next page appears to be the same document that I showed you earlier. Does that refresh your recollection with respect to who created that document or the use of that document?

A. No, not really. I don't really remember this page.

Q. And then the next page, Morgan Stanley 840009. It appears to be the same document we looked at earlier?

A. Uh-huh.

Q. Does that refresh your recollection with respect to who prepared that document or what the document was to be used for?

A. No. Again, I don't really remember this page.

Q. If you turn to page 84011, entitled Scott Paper Restructuring Growth Plans. Does the inclusion of this page in the board book refresh your recollection with respect to Morgan Stanley's

NOT A CERTIFIED COPY

015270

Page 154

EUGENE YOO

use of Scott Paper restructuring in estimating potential synergies in a transaction involving Coleman?

MS. BROWN: Object to form. Assumes facts not in evidence.

A. As far as Scott Paper I think the only time we actually ever used it to develop any kind of synergy estimates was at the very beginning when we were first pitching for Al's business. From what I remember this was placed here only as a reference point just to show that he has done similar types of restructurings at other places, that it wasn't completely out of the ballpark that he could try to do something similar at Coleman.

Q. So Dunlap's ability to restructure companies was important to determining the anticipated combination of synergies of this transaction?

MS. BROWN: Object to the form. Mischaracterizes.

A. I'm not sure if we used it to develop the numbers. But it was to show that the idea of Al Dunlap and his team going in and trying to restructure a company was not something that was

Page 155

EUGENE YOO

unfathomable. It was really more the use here. It's something that they've been through before and they may or may not be successful again, but it's something that they've done before. They had a track record.

Q. Can you recall anything else from board of directors meeting on February 27th on the issue of synergies?

A. No, not synergies.

Q. Was there any discussion of the value of the Coleman Company and the price that Sunbeam was paying for the acquisition of the Coleman Company?

A. No, I, as far as I can remember I wasn't present for that part of the discussion.

Q. Did you participate at all in the discussion that day at the board meeting?

A. No, I didn't.

Q. What was your role at that board meeting?

A. I was there simply to observe.

Q. Do you recall working with a public relations firm in connection with announcing the transactions that the board approved on February 27, 1998?

Page 156

EUGENE YOO

A. I, I didn't work with a, anyone from a public relations firm that I can remember. There may have been one that was retained at some point prior to the announcement, but I don't know for sure.

Q. Does the name Hilden Knowlton (ph.) ring a bell?

A. I know the company but I don't recall if they were specifically involved in this or not.

Q. Okay. Were you involved in preparing any statements or responses to potential questions that may be asked at the public announcement of the transaction involving the Coleman Company?

A. No. Not that I can recall.

Q. I'm handing you what's been previously marked as CPH Exhibit 142. Do you recall seeing this document?

A. I don't think I've seen this before.

Q. If you turn to page 3 of the document which is CPH 253549.

A. Okay.

Q. Paragraph 13 reads, "what's your first quarter going to look like? Are you comfortable with analyst estimates?" Do you remember discussing the response that should be given to that

Page 157

EUGENE YOO

question upon the announcement of the transaction?

A. No, I don't think I was ever part of any discussion on this.

Q. Okay. Between the board meeting on February 27, 1998 and the announcement, were you involved in any discussions or meetings concerning Sunbeam's first quarter 1998 sales?

A. No, not that I can recall.

Q. I show you one more previously marked as CPH 143. Page 3 of 12. Paragraph 15. If you can just read that to yourself.

A. (Witness reviewing.)

Q. Do you have any knowledge of why the response changed from CPH Exhibit 142 to what's shown on CPH Exhibit 143?

A. No, I don't know why it changed.

Q. Okay. Set those aside. Mr. Yoo, did you ever speak to John Tyree in connection with your work on the Sunbeam engagement?

A. Yes, I did.

Q. What did you discuss with Mr. Tyree?

A. John was taking over on the Sunbeam project once they moved into the financing phase and I was

NOT A CERTIFIED COPY

EUGENE YOO

handing off to him.
Q. What were you handing off to Mr. Tyree?
A. Mostly, I think the only involvement I had with him was with regard to gathering company information and industry information. They were putting some of the standard descriptions into, I guess, the offering document and he was looking to me to help him fill it in.
Q. And the reason for that was because you were the one who had been working with Sunbeam --
A. Right
Q. -- all along, gathering the information about the company?
A. Right. So I had some of that information readily available and I could give it to him rather than having him look it up himself.
Q. Were you involved in drafting any portion of the debenture offering memorandum?
A. No.
Q. And you understand what the debenture offering memorandum was in this deal?
A. The convertible notes?
Q. Correct.
A. Yes.

EUGENE YOO

Q. Other than Mr. Tyree do you know who was involved in drafting that memo?
A. No. I wasn't involved with that.
Q. Okay. Did you ever speak to Mr. Tyree in connection with any due diligence that may have been performed on Sunbeam's accounting?
MS. BROWN: Object to form.
A. I never really spoke to him about the financials as far as I can remember.
Q. Let me show you what's been previously marked as CPH Exhibit 31. This is a memo from John Tyree to the Sunbeam financing team dated March 7, 1998 referencing an accounting due diligence conference call on March 12th; you did not participate in that call; correct?
A. I don't believe I did.
Q. And you had no conversations with Mr. Tyree or Shani Boone concerning the accounting due diligence call?
A. Not that I can remember, no.
Q. You don't recall seeing any documents summarizing what was discussed on that call or the information they learned on that call?
A. No.

EUGENE YOO

Q. You don't remember that ever being discussed at Morgan Stanley in any meetings, the results of that conference call?
A. No. My involvement with Sunbeam after the announcement was limited and then once the transaction closed it was really only focused on the sale of the spa business coming out of Coleman.
Q. Okay.
VIDEOGRAPHER: Can we take a break for one second? The time is two thirty-seven, we're off the record.
(Short break taken.)
VIDEOGRAPHER: We're back on the record. This is tape number four, the time is two forty-two.
MR. O'CONNOR: I'll ask the court reporter to please mark the next exhibit.
(Deposition Exhibit 227 marked for identification.)
Q. Mr. Yoo, take a few minutes to look at what's been marked as CPH Exhibit 227. Do you recognize this document, sir?
A. Yes, I do.

EUGENE YOO

Q. What was the purpose of Skadden Arps sending you this document?
A. I believe this was part of the due diligence process as we were trying to, I don't know if we were just -- this was post announcement or pre announcement? We were trying to get to a closure on the deal.
Q. Were you responsible for conducting legal due diligence of Sunbeam?
A. I personally was not responsible for legal due diligence, but one of my roles was helping to make sure that the due diligence process moved forward smoothly.
Q. Do you know who was responsible for legal due diligence?
MS. BROWN: Object to form.
A. I believe it was Skadden. I don't remember who specifically at Skadden.
Q. Do you know why Skadden would be sending this document to you if they were responsible for conducting legal due diligence?
A. In this case I think they were asking for any documents that we may have collected already in our work so they didn't have to go gather it

NOT A CERTIFIED COPY

0152712

EUGENE YOO

again.

Q. Are they asking you to request documents from Sunbeam for the due diligence review?

MS. BROWN: Object to form. And foundation.

A. In this case, no, I don't believe so. As far as I can remember we were just assisting them, but they were the ones ultimately responsible for the due diligence, for the legal due diligence.

Q. Okay. I guess I'm confused by the first sentence of her memo. Which states, "the following items should be included as part of your due diligence request for Project Laser." Do you have any understanding of what that means?

A. Oh, I do, actually. We were compiling a master list for the due diligence and we were getting lists from the legal team, from, I believe it was Arthur Andersen and our own, we had included our own prior list that we had sent to Sunbeam so that we could, rather than sending four or five different lists from different sources we were going to send them one list for the due diligence.

EUGENE YOO

Q. Okay. Who were you sending the list to, the master list?

A. Let's see, I think this was going to, I think this was going to Coleman or somebody from the Coleman side.

Q. Okay. And what exactly were you compiling for this master list, what would this master list include?

A. I'm not sure what you mean.

MS. BROWN: Object to form.

Q. Well, maybe we're miscommunicating. You referred to a master list, what is the master list?

A. A list of all of the items that we would be requesting as part of the due diligence for the MNA transaction. And rather than sending a list for the legal due diligence and a list for the accounting due diligence and a list for any other due diligence, financing, whatever, we were going to send them one list that they could use to compile their information. We were trying to make the process as easy for the other side as possible.

Q. Okay. And part of this master list was this due

EUGENE YOO

diligence, legal due diligence list?

A. I believe that was the case, if I remember correctly.

Q. What else was included in the list?

A. I think there was a section that came from Arthur Andersen, I don't recall whether or not there was a section that came from Coopers. We had a -- I believe we had a list that Morgan Stanley worked with Sunbeam to compile for their portion of the due diligence.

Q. What materials did you obtain from Arthur Andersen?

A. We -- I'm not sure what you mean by "materials."

Q. When you said you believe they provided a section?

A. Well, they provided a list for us to give to the other side.

Q. Okay. My question is what was that list?

A. I don't know now.

Q. Is it one document?

A. I think it was just a few pages they sent us of items that they were looking for from the other side.

Q. Looking for from who?

EUGENE YOO

A. From the Coleman side.

Q. Seeking information from Coleman?

A. Right.

Q. Okay. I'm handing you what's been previously marked as CPH Exhibit 28. Do you recognize this document?

A. I think I do. I think I've seen this.

Q. Where do you recall seeing this document?

A. I don't remember the specific instance when I had seen this, but I think this was part of our update process with Sunbeam, just making sure that we were current on company events.

Q. And why was that important to you?

MS. BROWN: Object. Characterization.

A. Again, I don't remember the specific impetus for this meeting, but generally, especially if we're going to go out and talk to other companies about Sunbeam, which I think this is when it was happening. I don't remember.

Q. There's a reference there in paragraph 1 to "recent developments review." And in the third line down is "high dependence of recent sales growth on grilles." Do you recall why that was an issue to explore?

NOT A CERTIFIED COPY

015279

Page 166

EUGENE YOO

A. The only thing I can think of was that the sales mix had changed a little bit and we were just curious as to why.
Q. Do you recall what response you received from Sunbeam on this issue?
A. I don't remember the response.
Q. Do you know who was responsible for obtaining the information that is listed in this agenda?
MS. BROWN: Object to form.
A. I'm not sure if there was anyone responsible, or any single person responsible for getting this information. I think this was just a guide for us to hold a discussion with them.
Q. Do you know who created this document?
A. No, I don't know.
Q. Do you recall any discussions with anyone at Morgan Stanley about the contents of this document?
A. No.
Q. Paragraph 5, "financial forecast review" lists five items --
A. Uh-huh.
Q. -- for inquiry. Do you remember obtaining any information on those issues?

Page 167

EUGENE YOO

A. I think we did get most of this at some point. I don't know if it was directly as a result of this. Other than maybe the sensitivity analysis, I don't seem to remember anything about that.
Q. Why is this information important to Morgan Stanley?
A. In this case, or?
Q. Correct.
A. I'm not sure when it was. You know, I think it was really just part of our making sure that our financial models were accurate, that we were representing the company and our analyses in the right way.
Q. And why is that important?
MS. BROWN: Objection.
A. We need to make sure we're presenting accurate data.
Q. Who were you presenting the accurate data to?
MS. BROWN: Objection to form.
A. I'm not sure who it was in this case.
Q. Is this the type of information that was being provided to potential acquisition targets?
MS. BROWN: Object to form.

Page 168

EUGENE YOO

A. I don't know. I don't know if any of this information was presented to them.
Q. Were you concerned about ensuring the accuracy of the presentation books that were being prepared by Morgan Stanley?
MS. BROWN: Object to form.
A. What do you mean by "concern"?
Q. Was one reason why you were performing this due diligence -- withdrawn.
Was it important to you that the information contained in presentation statements, or presentation materials provided to third parties was accurate?
A. Generally speaking, I mean, that was, I guess, part of my job was to make sure that to the best of our knowledge what we were presenting was accurate.
Q. And one way to do that is to conduct due diligence of the company; correct?
A. That's correct.
Q. And does this agenda reflect the issues that Morgan Stanley needed to explore in order to ensure that the information it had about the company that it was providing to third parties

Page 169

EUGENE YOO

was accurate?
MS. BROWN: Object to form. Can I hear that back, actually.
(Prior testimony read back.)
"And does this agenda reflect the issues that Morgan Stanley needed to explore in order to ensure that the information it had about the company that it was providing to third parties was accurate?"
A. Again, I don't remember the specific instance when we were using this, but this seems like something we would use more, not to verify accuracy, but more just to stay updated on the company. It wasn't really -- this didn't seem to be a matter of going back and questioning anything that we thought was wrong. This is just trying to make sure that we were as current on the company as possible.
Q. If in attempting to remain current on the company you discovered information that was inconsistent with what you were communicating to third parties, what would you do?
MS. BROWN: Object to form. Improper

NOT A CERTIFIED COPY

Page 170

EUGENE YOO

hypothetical.
A. I don't know. I haven't been in that situation. I haven't had to deal with that yet.
Q. In this transaction you never came across any information about Sunbeam's business or financial condition that was inconsistent with what was being presented to third parties by Morgan Stanley?
MS. BROWN: Object to form.
A. As far as I knew there were no inconsistencies between what we were presenting and information that we were getting from Sunbeam.
Q. And had you come across that information what would you have done?
MS. BROWN: Objection. Asked and answered. Improper hypothetical.
A. Again, I don't know. I haven't been in that situation before, so I don't know.
Q. You may have answered this question as well; you don't recall who was responsible for obtaining this information from Sunbeam?
A. I don't think it was any single person. Again, I don't think this was really a list of items to gather, it was really more just talking points

Page 171

EUGENE YOO

for a meeting or a discussion with them.
Q. Who was responsible for ensuring that all the appropriate due diligence was completed by Morgan Stanley?
MS. BROWN: Object to form.
A. On the MNA side? Or --
Q. We can start there.
A. Okay. For this transaction or, I guess, MNA in general, I don't think there's any person assigned to oversee the completion of due diligence. It's part of our process just, you know, in order to be able to complete all of our work, to have all of the information that we need it's sort of fundamental that we have all of the due diligence completed, and also we have all the information we need.
Q. If no one is responsible how does your department know that all of the due diligence has been conducted?
MS. BROWN: Object to form. Mischaracterization.
A. Like I said, in order for us to be able to complete our work and to be able to do our assignment properly that due diligence sort of

Page 172

EUGENE YOO

gets completed as a matter of course. If we don't complete that we don't have the information we need to do our work and we're not able to provide our service to our clients.
Q. Who is responsible for conducting the follow-up due diligence?
A. I'm not sure what you mean by follow-up.
Q. Well, you testified earlier that part of your due diligence function was to keep up with current events of the company, their latest filings, earnings and announcements. Who was responsible for ensuring that all of that was reviewed?
A. It was really the whole deal team, really.
Q. Who was responsible at Morgan Stanley for conducting the accounting due diligence?
MS. BROWN: Object to form.
A. The accounting due diligence -- well, to a certain extent we would do due diligence on the financials, but typically on an MNA transaction we didn't do any detailed accounting due diligence, we were relying on the auditors to do that for us and provide us comfort.
Q. Were you involved in that process?

Page 173

EUGENE YOO

MS. BROWN: Object to form.
A. In which process?
Q. In the due diligence process in reviewing the financial information and reviewing the auditor's comfort that it was providing to Morgan Stanley?
MS. BROWN: Object to form.
A. Well, we didn't review the auditors, but we were reviewing financials that they had signed off on.
Q. I guess my question is did you review those financials?
A. Yes, we did.
Q. You personally?
A. I looked at some of them.
Q. Okay. And those were publicly available documents?
A. Yes.
Q. Any other documents that weren't publicly available?
MS. BROWN: Asked and answered.
A. In terms of financials?
Q. Correct.
A. There were the growth plans and budget that they

NOT A CERTIFIED COPY

015275

EUGENE YOO

had shown us.
Q. Did you ever review a comfort letter provided by Arthur Andersen to Morgan Stanley in connection with this transaction?
A. In connection with the MNA transaction?
Q. With -- well, in connection with the acquisition of the Coleman Company in the subsequent financing of that transaction.
A. I don't think I've seen that.
Q. Let's find it. I'm handing you what's previously been marked as CPH Exhibit 17. Do you recall seeing this document?
A. I don't think I've seen this.
Q. While conducting your due diligence did you discover any information indicating that Sunbeam was employing bill and hold transactions?
A. I'm sorry, what was the question again?
Q. In conducting your due diligence of Sunbeam did you acquire any information indicating that Sunbeam was employing bill and hold practices?
A. There was nothing in anything that we had seen that indicated that there was any kind of fraud or anything else going on that was out of the ordinary, just, you know, regular normal course

EUGENE YOO

of business.
Q. At that time were you familiar with the concept of a bill and hold transaction?
A. At the time I was not.
Q. Are you now aware of what a bill and hold transaction is?
A. Vaguely.
Q. Okay. How did you come to that information?
A. I, in reading about what had happened with Sunbeam through the newspapers.
Q. While conducting your due diligence did you acquire any information indicating that Sunbeam was engaging in other aggressive revenue recognition practices?
MS. BROWN: Object to form.
A. Again, as far as I could see there was really nothing that I saw that was out of the ordinary course of business.
Q. Okay. How about with respect to restructuring reserves. Did you find anything that indicated that they were improperly reserving?
A. No. Not that I can remember.
Q. You never had any conversations with Mr. Tyree on those issues?

EUGENE YOO

MS. BROWN: Objection. Compound.
A. No. I never really talked to John that much about, you know, the Sunbeam transaction. I actually really didn't see him that much, period.
Q. And your testimony is you have not seen the March 19, 1998 comfort letter before today?
A. I don't think I have. It doesn't look familiar.
Q. Do you recall reviewing any drafts of this letter?
A. I don't think so, no.
Q. Was the information about Sunbeam's existing financial condition, business and financial condition in January and February of 1998 relevant to the due diligence that you were performing?
MS. BROWN: Object to form.
A. Are you talking about the due diligence for the MNA transaction?
Q. Any due diligence that you performed on Sunbeam.
A. The financial condition of the company was something that I guess is relevant, but in our case it was something that we were, for the transaction itself something that we were less

EUGENE YOO

focused on. We had spent a lot of time with them and had grown comfortable with their numbers and when a transaction became tangible we were more focused on the financials of the target companies.
Q. Did you ever ask to see the comfort letter Arthur Andersen was providing to Sunbeam?
A. I did not personally, no.
Q. Did you know in January or February -- strike that.
Did you know at any point in the first quarter of 1998 that Sunbeam was experiencing a significant decline in sales?
MS. BROWN: Object to form.
A. I didn't know that there was any difficulty of the company in the first quarter.
Q. Is that information that you should have known in conducting your due diligence?
MS. BROWN: Object to form. And also to the extent it calls for a legal conclusion.
A. Based on the numbers that we were getting from the company everything seemed to be in order. Whether those numbers were accurate or not it was difficult for us to tell from our vantage

NOT A CERTIFIED COPY

015276

EUGENE YOO

point.
Q. What numbers do you recall receiving from Sunbeam the first quarter of 1998 with respect to its first quarter sales?
A. First quarter sales? I don't remember exactly what we got from them.
Q. If you could turn, sir, to CPH Exhibit 17, page MS377. I'm sorry, the bottom of MS378 to the top of 379. Paragraph 6.
A. Okay.
Q. And 6B. I'm sorry, 6C, which runs over onto MS379. "Although the company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998 which were 17,018,000 as compared to 143,499,000 for the corresponding period of the preceding year." Do you see that?
A. Yes, I do.
Q. Did you have that information in your possession in the first quarter of 1998 while you were conducting due diligence for Sunbeam?
A. I don't believe we did.

EUGENE YOO

Q. Is that information that would have been relevant to the tasks you were performing in conducting due diligence?
MS. BROWN: Object to form.
A. If we had that information it probably would have been relevant.
Q. If someone at Morgan Stanley had that information would you expect that person to advise you about a 50 percent decrease in net sales over that period of time?
MS. BROWN: Object to form. Hypothetical.
A. I don't know what they would do. I can't speculate what they would do with that.
Q. But is that something you would have liked to have known?
MS. BROWN: Object to form.
A. As an adviser on the transaction, you mean?
Q. Yes.
A. Yeah, it would have been good to know if we had known that at the time.
Q. What would you have done with that information?
MS. BROWN: Object to form. Hypothetical.
A. Again, I don't know. I haven't really been in that situation.

EUGENE YOO

Q. You have no idea what you would do?
A. If I had been given this?
Q. Uh-huh.
A. I don't know. I guess it just depends on what was going on at the time and how I found out and, you know, what we were doing.
Q. In the context of what you were doing and what information was being communicated to third parties in connection with your efforts to find a buyer or an acquisition target for Sunbeam, is this the kind of information that would be important to -- strike that.
Would this information be relevant to those third parties?
MS. BROWN: Object to form and calls for speculation.
A. I think it might be important.
Q. Why is that?
A. Because the, I don't know why it would be important to them. If I were to see this, if the sales numbers were significantly different from what I thought they were going to be that might be something important to let people know.
Q. Do you recall, sir, what Wall Street's

EUGENE YOO

expectations were of Sunbeam with respect to first quarter of 1998 sales?
A. No, I don't.
Q. Does the range of 285 to 295 million refresh your recollection?
A. It might be, I don't know for sure.
Q. You don't recall anyone at Morgan Stanley discussing the contents of this comfort letter or the subject of Sunbeam's sales shortfall prior to the closing of the Coleman transaction?
MS. BROWN: Object to form and foundation.
A. I don't recall anything about that letter.
Q. The contents of the letter?
A. I think there was a public announcement by Sunbeam to that extent or something along those lines around that time. But again, at that point my involvement with Sunbeam was pretty limited.
Q. You were not involved in preparing or reviewing a press release in March of 1998?
A. No, I didn't have anything to do with that.
Q. Let me show you what's previously been marked as CPH Exhibit 14.
A. All right.

NOT A CERTIFIED COPY

Page 182

EUGENE YOO

Q. Do you recall reading this press release at anytime?
A. I do recall reading this maybe the day or the day after that it came out.
Q. And again, you were not involved in any discussions concerning the issuance of this press release?
A. No.
Q. You were not involved in any conferences on March 18th, the day before the press release concerning Sunbeam's sales shortfall?
A. Not that I remember.
Q. What was your reaction to reading this press release?
A. Surprise. That's probably about it, just very surprised.
Q. Why were you surprised?
A. From what I remember up until that point I thought things were going very well. I thought they were on track for a good first quarter.
Q. Reading the first paragraph of that press release, what particular language in the press release surprised you?
A. It says its possible that its net sales for the

Page 183

EUGENE YOO

first quarter of 1998 may be lower than the range of analyst estimates.
Q. That came as a surprise to you?
A. Yes.
Q. With respect to the, the language, "the shortfall from analysts estimates, if any, would be due to changes in inventory management in order patterns at certain of the companies major retail customers." Did that statement surprise you?
A. Actually, I didn't really understand that statement as much as part of the operations of the company that we weren't really involved in. That was the area where we started to rely more on the management team and team at Coopers to help us understand. But we weren't really involved at that level.
Q. Did you have any conversations with anyone at Morgan Stanley about this press release?
A. I think the only person I talked to about it was Tyrone Chang.
Q. What did you and Mr. Chang discuss?
A. Well, he was the one that brought it to my attention, I believe. And we were both just

Page 184

EUGENE YOO

talking about how we were surprised, because we were both very involved in the numbers in the model beforehand.
Q. Do you recall what specifically Mr. Chang said?
A. I don't remember specifically what he said.
Q. Did you feel misled when you read this press release?
A. I think at this point I wasn't quite sure what was happening, so I didn't know what to think.
Q. Did you talk to anybody at Sunbeam about this press release?
A. No. I hadn't really had any contact with anybody from Sunbeam since the board meeting.
Q. Other than Mr. Chang did you talk to anyone about the press release; Mr. Fuchs, Mr. Stynes, Mr. Kitts?
A. No, not Mr. Kitts. Not Mr. Stynes. I don't believe I talked to Alex about it.
Q. Did you tell anyone at Morgan Stanley that the information contained in the press release was inconsistent with what you were being told by Sunbeam?
A. I never really -- I'm not sure what you mean. Well.

Page 185

EUGENE YOO

Q. Well, you said you were surprised to learn of this press release.
A. Right.
Q. Did you convey that surprise to anyone besides Mr. Chang?
A. Not that I can remember, no.
Q. And you didn't do anything to follow up on the information contained in the press release?
A. No, I didn't.
Q. Now, CPH Exhibit 14 does not contain the information on the status of Sunbeam's sales in January and February of 1998 as reflected in the comfort letter; is that correct?
A. Can you read that back.
(Prior testimony read back.)
"Now, CPH Exhibit 14 does not contain the information on the status of Sunbeam's sales in January and February of 1998 as reflected in the comfort letter; is that correct?"
A. I believe that's correct.
Q. There's no discussion in CPH 14 about the 50 percent decline in sales in the first two months

NOT A CERTIFIED COPY

EUGENE YOO

of 1998; right?
A. Not that I can see here, no.
Q. Again, that's information that was not provided to you either by Sunbeam, Morgan Stanley or Arthur Andersen for the --
A. Where do you get your information?
Q. The 50 percent decline of sales in the first two months of 1998.
A. That's correct. As far as I can remember that's not, that was not provided to us.
Q. And you couldn't, you couldn't tell that sales had declined by 50 percent by reading the press release on CPH Exhibit 14; correct?
MS. BROWN: Object to form.
A. I don't know what anybody else could interpret. I couldn't interpret it from that.
Q. In fact, the press release indicates that it was still possible that Sunbeam could reach Wall Street's estimates of 285 to 295 million; right?
A. I don't know. I can't say what other people would interpret it.
Q. Well, how do you interpret the first sentence? "Sunbeam Corporation said today that it is possible that its net sales for the first

EUGENE YOO

quarter of 1998 may be lower than the range of Wall Street analysts estimates of 285 million to 295 million, but net sales are expected to exceed 1997 first quarter net sales of 253.4 million. Do you read that to indicate that Sunbeam would not make Wall Street estimates of 285 to 295?
A. The way I read it myself personally, I thought there was a reasonably good chance that they were not going to be able to make sales in the range of 285 to 295.
Q. But it's not out of the question as worded in the press release?
A. It's a possibility it is, based on what the press release says.
Q. Did you talk to Mr. Tyree about this press release?
A. I don't believe I did.
Q. At the time you read the press release were you aware that he had conducted accounting due diligence of Sunbeam?
A. I was not aware of that.
Q. I'm handing you what's previously been marked as CPH Exhibit 112. Have you seen this document

EUGENE YOO

before?
A. No, I don't think so.
Q. This is a March 25, 1998 letter from Arthur Andersen updating the March 19th comfort letter; correct?
A. That appears to be the case.
Q. This document was not provided to you at anytime?
A. I don't believe so, no.
Q. Handing you what's previously been marked as CPH Exhibit 16. Do you recognize this document?
A. I'm not sure. I don't think I've seen this.
Q. This isn't a document that you obtained from Sunbeam management during your review of their expectations for sales in 1998?
A. I don't think I've ever seen this.
Q. Do you recall seeing any build up of sales, whether it related to the first quarter of 1998 or the entire year of 1998?
MS. BROWN: Object to form.
A. As far as I can remember for 1998 I don't believe we ever saw any build up like this for sales. We had seen some historical numbers that they gave us for 1997.

EUGENE YOO

Q. They didn't show you any documents that showed how they were going to reach their sales expectations for 1998?
MS. BROWN: Object to form. Mischaracterization.
A. For 1998 I don't remember exactly what we saw, but I believe the breakdowns were based on product lines or divisions. But I don't remember exactly what it was we saw. And I don't think at the time, at least up until the point of the transaction they even had very much data available for first quarter.
Q. Except what's contained in the Arthur Andersen comfort letters; right?
MS. BROWN: Object to form. Mischaracterization. Do you want to put a date on what you're asking?
Q. First quarter of 1998 sales.
A. The -- well, my involvement tailed off after the board meeting which I think was early March. Up until that point I don't think we had much information on the first quarter. After the board meeting up until closing I had really had little to do with the transaction until after

NOT A CERTIFIED COPY

01527G

Page 190

EUGENE YOO

the closing.
Q. What did you do to ensure that others were looking at Sunbeam's first quarter sales after your involvement with the transaction tailed off?
A. I'm not sure if there was anything I did specifically to point people towards first quarter sales.
Q. Who assumed your responsibilities on the matter after the board meeting?
MS. BROWN: Object to form.
A. There was the financing team which basically took over from the point the transaction was approved by the board. And then I think the legal team took over in terms of getting the deal closed.
Q. Who were the members of the finance team?
A. I don't know the whole team. I only really interacted with John Tyree.
Q. Ruth Porat?
A. I do believe she was involved at some point, I don't know how much.
Q. What were the other members of the MNA team doing after the board meeting on February 27th?

Page 191

EUGENE YOO

MS. BROWN: Object to form. Calls for speculation. Foundation.
Q. I'll clarify. What were they doing with respect to following Sunbeam's performance in 1998?
MS. BROWN: Object to foundation.
A. I don't know. I don't know what they were doing specifically. I don't know if there was anything they were doing at all.
Q. Is it typical that the MNA team stops working on the deal after the deal has been approved by the company's board?
A. Once the deal is approved there isn't much for us to do, we hand it off to mostly the legal team to get the closing completed. But most of our advisory work is completed at that point and then the team usually moves on to the next transaction.
Q. Who were the members of the legal team?
A. Skadden Arps, I believe. And I don't know who else.
Q. Is there anyone else in-house at Morgan Stanley that was working on the legal aspects of the deal?
A. Not that I can remember.

Page 192

EUGENE YOO

Q. Do you recall the law firm of the name Davis Polk?
A. I know who they are, yes.
Q. Do you recall they were representing Morgan Stanley in connection with the Sunbeam engagement?
MS. BROWN: Object to form.
A. I don't recall their involvement.
Q. Skadden represented Sunbeam; right?
A. Yes, I think that's the case.
Q. Other than members of the finance team and the legal team, was there anyone else at Morgan Stanley who was responsible for monitoring Sunbeam's business and financial condition after the board approved the transaction on February 27th?
MS. BROWN: Object to the form and characterization with regard to the legal team and Morgan Stanley.
A. I mean, anybody from the Morgan Stanley MNA team? Or everybody from Morgan Stanley in general, or?
Q. Well, you testified that members of the finance team and the legal team continued to perform due

Page 193

EUGENE YOO

diligence of Sunbeam after the board meeting on February 27th; is that correct?
A. I'm not sure -- I'm not sure what, I'm assuming they were doing due diligence in preparing for the offering, but I wasn't involved with it at all.
Q. Other than those two groups of people, do you know of anyone else that would have been working on the Sunbeam transaction after the board approved the acquisition of Coleman?
A. As far as I know from the MNA side I don't think there was anyone really actively working on Sunbeam.
Q. Were you involved in any bring down due diligence?
A. I was not.
Q. You did not participate in any bring down due diligence conference calls?
A. No, I don't believe so.
Q. I'm showing you what's been previously marked as CPH Exhibit 36. Have you seen this document before?
A. I don't think I saw it in this format. But I think I did review the press release when it was

NOT A CERTIFIED COPY

EUGENE YOO

released.
Q. What was your reaction to Sunbeam's April 3rd press release?
A. Actually, at this point on the announcement of the financials, the sales shortfall, I actually really didn't think much of it at that point. I guess based on the prior press release I knew that there was a possibility that they were going to disappoint. So it didn't surprise me too much.
Q. It didn't surprise you that they were now announcing that first quarter sales were expected to be below 1997 levels based on what you read in the March 19th press release?
A. From my perspective I wasn't really paying attention to that portion of the press release. I just knew that the sales were disappointing, that's all I remember from reading the press release at that time. I was more focused on just Rich Goudis leaving, that was the part that I was more focused on.
Q. Why did you have an interest in his departure?
A. Well, he was the person that I had the most contact with from Sunbeam and I had gotten along

EUGENE YOO

quite well with him. I thought he was a good guy.
Q. You said Rich Goudis?
A. Yes.
Q. Where in this press release does it discuss Goudis's departure?
A. I think it was -- maybe it wasn't in this one. Don had left. Maybe it wasn't in this one.
Q. Were you surprised that Mr. Oosi was terminated?
A. I guess at the time I don't think I was that surprised. It didn't seem like he had a great relationship with Al. I didn't really know him that well, but, and they seemed to only bring him out in certain situations. He wasn't really present at all of the meetings.
Q. Did you believe that their explanation for the shortfall was accurate?
MS. BROWN: Object to form.
A. You know, again, that's kind of getting to a level of business that we weren't all that involved with. Their inventory management it seems like.
Q. Did you discuss this press release with anyone at Morgan Stanley after it was released?

EUGENE YOO

A. Again, I think the only person I really spoke about it with was Tyrone Chang, along the same lines as the prior ones. And I think he was the one that brought it to my attention.
Q. What did the two of you discuss?
A. I don't really recall what we said at that point. I think for us Sunbeam was pretty far in the rearview mirror at that point.
Q. Do you recall hearing that the March, the contents of the March 19, 1998 press release were included in the debenture offering memo?
A. I didn't know that they were.
Q. Did you hear that Arthur Andersen objected to the inclusion of the press release language into the offering memo?
A. I didn't know anything about that.
Q. No one ever told you about a confrontation between Mr. Bornstein of Anderson and Mr. Tyree on March 18th or 19th --
A. No.
Q. -- regarding the contents of the press release or the offering memo?
A. No, I didn't know anything about that.
Q. Okay. Do you know anything about that now?

EUGENE YOO

A. (Witness shakes head in the negative.) No, this is the first time I'm hearing about it.
Q. Have you ever heard Mr. Tyree use profanity around the office?
A. Not really. I didn't really work with him that much. I probably talked to him three or four times total in my four years there. I think he was a former, he came out of the Navy or the Army.
Q. One of the services?
A. Yeah. That's all I really knew about him. I don't think combined I spent more than 30 minutes with him in four years.
Q. You testified earlier you did not participate on the roadshow; is that correct?
A. That's correct.
Q. Do you recall hearing that Mr. Kirsch or Mr. Dunlap were downplaying the significance of the March 19th press release during the roadshow?
A. I don't think I heard anything about that.
Q. Did you have any communications with Andrew Conway at Morgan Stanley on the issue of synergies?

NOT A CERTIFIED COPY

Page 198

EUGENE YOO

A. I never talked to Andrew about synergies. Actually, I never even spoke to Andrew.
Q. You know who he is?
A. I believe he's the equity research analyst.
Q. Do you know if Mr. Chang ever spoke to Mr. Conway?
A. I don't know.
Q. Did you have any involvement preparing materials for the leverage finance commitment committee at Morgan Stanley; materials in connection with the debenture offering or the financing of the acquisition of Coleman?
MS. BROWN: Objection. Compound.
A. Not that I know of.
Q. On either of those issues?
A. No.
Q. And let me show you what has previously been marked as CPH Exhibit 129. This is a fairly long document. I don't have many questions about it. But do you see that your name is listed, it's spelled incorrectly, under Mar?
A. Yes.
Q. And this is a March 10, 1998 equity commitment, a memo to the equity commitment committee?

Page 199

EUGENE YOO

A. Right.
Q. And it's listed -- the authors are listed as many individuals at Morgan Stanley including yourself?
A. Uh-huh.
Q. Did you prepare any of the pages of this memo?
A. I think I helped draft the background information. I don't recall who wrote the original version, but I think I helped edit it.
Q. What pages?
A. One and 2.
Q. Were you involved in the preparation of the highly confidential letter with regard to the financing of the acquisitions?
A. No, I don't believe so.
Q. Did you attend any meetings of the equity commitment committee and the leverage finance commitment committee?
A. No, I did not.
Q. Are those two entities the same; are they referred to as the same?
A. I think they're separate entities.
Q. Okay. Would you turn to page 516, page 4 of the memo of Exhibit 129. There's a paragraph called

Page 200

EUGENE YOO

Restructuring?
A. Okay.
Q. The second sentence, "the restructuring portion of the plan has been substantially completed with only the final, quote, refinement, unquote, stage remaining." Do you see that?
A. Maybe I have the wrong page number.
Q. I'm sorry. Page 4?
A. Page 4.
Q. Right. Restructuring?
A. Second sentence, I'm sorry. Right.
Q. Do you see that? Do you know what that refers to? The final refinement stage.
MS. BROWN: Object. Speculation.
A. I can't say for certain.
Q. You didn't draft this paragraph, to your knowledge?
A. No, not this page, not this paragraph.
Q. If you turn to page 11 of the memo, which is Morgan Stanley 523.
A. Okay.
Q. Under "equity valuation," third bullet point, "the company's current trading levels are warranted given the level of expected synergies,

Page 201

EUGENE YOO

150 million pre tax." Do you know the basis --
MS. BROWN: And it continues from there.
Q. I'm sorry? And it continues from there. Do you recall the basis for that?
MS. BROWN: Objection. Speculation.
A. For the 150 million?
Q. Right.
A. I don't know.
Q. If you turn to page 17 of the memo, page 529, paragraph 5. Take a moment to read that, please.
A. (Witness reviewing.) Okay.
Q. Do you recall the basis for that paragraph?
MS. BROWN: Objection. Speculation.
A. No, I couldn't say for certain where it came from.
Q. Sorry. You didn't draft that?
A. No, I didn't write this.
Q. Okay. The last sentence refers to Sunbeam management informing -- well, let's see. It shouldn't say that. It refers to a "they," I'm not sure if it's referring to Sunbeam management or who, but "they informed Sunbeam board of directors that the synergies are likely to be in

NOT A CERTIFIED COPY

EUGENE YOO

the 225 to 275 million pre tax range." Do you have any knowledge of where those numbers came from?

A. No, I don't.

Q. Showing you what's previously been marked as CPH Exhibit 100. It's another lengthy document entitled The Selling Memorandum, dated March 12, 1998. Have you seen this document before?

A. I don't think I've seen this before. It doesn't look familiar.

Q. You don't recall preparing any of the pages that are contained in this document?

A. Let me see. I may have prepared some of these pages at some point, but not specifically for this document.

Q. Okay.

A. This looks like a collection of other pages.

Q. Do you know what the purpose of -- strike that. Do you know if the selling memorandum was used in connection with the debenture offering?

A. I have no idea.

Q. Okay. If you can turn to page 22 of the memo which is Morgan Stanley 62882.

A. Okay.

EUGENE YOO

Q. The paragraph "ability to attain synergies." The last sentence reads "in addition, while Andrew Conway has modeled 150 million in synergies in 1998 he feels that there could be an upside to this figure." Do you recall any conversations with anyone at Morgan Stanley concerning this modeling by Andrew Conway?

A. No, I didn't know anything about this.

Q. And again you never had any conversations with him about that?

A. I never talked to Andrew, no.

Q. Showing you what's previously been marked as CPH Exhibit 76. Have you ever seen this document?

A. No, I don't think so.

Q. The first page is a memorandum to the leverage finance commitment committee from RB Smith or Braum Smith?

A. Right.

Q. It references a meeting of that committee on March 20th. Did you attend that meeting?

A. No, I didn't.

Q. Do you know if during that meeting the commitment committee discussed Sunbeam's sales shortfall?

EUGENE YOO

MS. BROWN: Objection. Foundation.

A. I don't know what they discussed at the meeting, no.

Q. No one ever talked to you about what was discussed at that meeting?

A. No. As far as I remember I've never heard anything about it.

Q. I'm handing you what's previously been marked CPH Exhibit 135. In connection with your work on potential divestiture of certain aspects of Coleman or the new Sunbeam, did you attend the analyst meeting on May 11, 1998?

A. I don't think I did.

Q. Have you seen this document before?

A. No, I haven't.

Q. Do you know if Morgan Stanley prepared any of the slides that are contained in this document?

MS. BROWN: Objection. Foundation.

A. I don't think we helped them with this. I couldn't tell you.

Q. If you could turn to page, Morgan Stanley 63748, please.

A. Okay.

Q. This indicates an original cost savings and

EUGENE YOO

synergies of 150 million dollars and it purports to be an actual cost savings of synergies of 291 million. Do you have any knowledge of this page or the, or the 291 million dollar figure that appears on that page?

A. No. I don't know either one.

Q. Please turn to page 63751. It's entitled Sources of Growth. "Potential 1999 impact of 265 million." Do you have any knowledge of the basis for that synergy estimate?

A. No, I don't know.

MS. BROWN: Object to the characterization.

Q. Would you please turn to Morgan Stanley 63755 entitled Savings Summary. There's a list of savings on this page with total savings of acquired companies 201 million, Sunbeam sourcing strategy of 52 million with a grand total savings of 253 million. Do you have any knowledge of the basis for that calculation?

A. No, I'm not sure where they came up with these numbers.

Q. You don't know if Morgan Stanley was involved in providing any of that type of data to Sunbeam?

MS. BROWN: Objection. Asked and answered.

NOT A CERTIFIED COPY

Page 206

EUGENE YOO

A. I don't know, I don't know if Morgan Stanley was involved at all or not.
Q. Set that aside. Mr. Yoo, were you involved in conducting any due diligence of the Coleman Company prior to the close of the transaction?
A. I had some involvement with that, yes.
Q. And what was your role?
A. At that point it was more of a coordination role, I think, between Skadden and Arthur Andersen and Coopers. There were teams that were going through the various corporate documents or visiting various sites around the country and our job at that point was to make sure that people were going to the right places and all the right information was getting gathered.
Q. Did you actually attend any of these site visits?
A. I did not personally, no.
Q. Did you review any documents provided by Coleman as part of the due diligence process?
A. I don't recall what documents I went through.
Q. But you did in fact go through some documents, or you just can't recall if you looked at any

Page 207

EUGENE YOO

documents?
A. I know we went through some of the financials and some of the projections, but we had already gone through some of that before. I don't recall if there was anything else that we went through or I went through personally.
Q. Did you ever request any information from Coleman that you didn't receive?
A. Not that I can remember.
Q. Did you ever form an opinion on the value of the Coleman Company?
MS. BROWN: Object to the form.
A. Did I personally --
Q. Correct.
A. -- come up with an opinion? I probably came up with some, some opinion of what it was worth. I don't recall what it was.
Q. Do you have any recollection, ballpark range?
A. No. I don't remember anything about it being significantly different from the transaction.
Q. You never formed an opinion that Sunbeam was overpaying for the Coleman Company?
A. (No response.)
Q. I sorry, I didn't hear your answer.

Page 208

EUGENE YOO

MS. BROWN: He didn't yet.
A. I didn't answer. No, I don't think I ever really had that opinion.
Q. Did anyone express that opinion to you at anytime?
A. Not, not during the transaction, no.
Q. After the transaction closed?
A. I think I remember hearing some people talking about the value that was ultimately paid, or I guess the price, the dollar price of the stock that was announced.
Q. What do you recall hearing?
A. I don't remember exactly what they said, but it was something along the lines of, it was a, it was a good price for Pearlman.
Q. What did you take that to mean?
A. I think at the time that I had heard it I was thinking that the, you know, one could argue that the price was maybe high based on traditional valuation techniques, but we thought that it was still a good deal for Sunbeam, you know.
Q. But in your work prior to the close of the transaction in reviewing information about

Page 209

EUGENE YOO

Coleman's business and Sunbeam's business, you never reached that conclusion; right?
A. Which?
Q. The conclusion that -- I'll withdraw it.
During the time that you were reviewing Coleman's financial and business information and Sunbeam's business and financial information prior to the closing of the transaction, you never formed the conclusion that Sunbeam was overpaying for Coleman; correct?
A. No, I never really thought that.
Q. Did you hear what the basis was for these people that were saying that, saying that Pearlman, Mr. Pearlman had received whatever it was that they were saying?
MS. BROWN: Object to form.
Q. It was a bad question. Other than hearing that some people were saying that Mr. Pearlman -- I'll withdraw that.
Did the people that spoke to you about the Coleman purchase price, did they provide any basis for the statements that they were making about what Sunbeam paid for Coleman?
A. I don't really remember the conversation. If I

NOT A CERTIFIED COPY

312.782.8087 800.708.8087 FAX 312.704.4950

EUGENE YOO

anything related to Sunbeam.
Q. In light of what you learned throughout the rest of 1998 and before you wrote this, is there anything you would have done differently?
A. Done differently where?
Q. At any point in the Sunbeam engagement.
A. I don't think there's really anything that I would have done differently. I don't think we -- we went through the entire deal process pretty thoroughly and thought.
Q. I have no further questions at this time.
MS. BROWN: Just a couple of quick questions.

EXAMINATION

BY MS. BROWN:
Q. I think you already told Mr. O'Connor that you do not -- do you know -- strike that.
Do you know what information Sunbeam relied on when it determined to acquire Coleman?
A. Do I know?
Q. What information Sunbeam management or board relied on when it determined to acquire Coleman?
A. I don't know firsthand what information they had

EUGENE YOO

or what they were using.
Q. Do you know what information Morgan Stanley Senior Funding relied upon when it provided a bank facility to Sunbeam?
A. No, I can't say with certainty I know.
Q. Were you involved in the team that was providing the underwriting service for the convertible note offering?
A. No, I was not involved.
Q. Are you familiar with the due diligence performed by that team?
A. No, not really.
Q. Are you familiar with any due diligence performed by Morgan Stanley Senior Funding before giving the bank facility to Sunbeam?
A. No, I don't believe so.
Q. No further questions.

EXAMINATION

BY MR. O'CONNOR:
Q. Mr. Yoo, in response to the question of whether you have knowledge of what Morgan Stanley Senior Funding relied on in providing financing for the acquisition, your response was "not with

EUGENE YOO

certainty." Are you aware of any, anything that Morgan Stanley Senior Funding relied on?
A. I can assume that they were using most of the same information that we had, but I don't know.
Q. So other than that assumption you don't know?
A. No.
Q. Okay. No further questions.
VIDEOGRAPHER: The time is four twenty-eight. We're off the record.
(Whereupon, the deposition concluded at approximately 4:28 p.m.)

EUGENE YOO

COMMONWEALTH OF MASSACHUSETTS)
SUFFOLK, ss.)

I, Laurie Langer, Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts do hereby certify that there came before me on the 16th day of June, 2004, at 9:30 o'clock a.m. the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath, and his examination reduced to typewriting under my direction; and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and seal this 20th day of June, 2004.

NOTARY PUBLIC
Commission Expires
9/20/07

NOT A CERTIFIED COPY

EUGENE YOO
ERRATA SHEET DISTRIBUTION INFORMATION
DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS

ERRATA SHEET DISTRIBUTION INFORMATION

The original of the Errata Sheet has been delivered to Ms. Brown, Esquire.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL forwarded to Mr. O'Connor, Esquire.

INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, please indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself. Add additional sheets if necessary. Please refer to the above instructions for errata sheet distribution information.

EUGENE YOO
ATTACH TO THE DEPOSITION OF EUGENE YOO
CASE: Coleman v. Morgan DATE TAKEN: 6/16/04
ERRATA SHEET

Please refer to page 226 for errata sheet instructions and distribution instructions.

PAGE	LINE	CHANGE	REASON

I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Executed this ____ day of_____, 2004

_____
EUGENE YOO

NOT A CERTIFIED COPY

01526409

NOT A CERTIFIED COPY

015290

JAMES STYNES
ITINERARY
PROJECT LASER: W814-053

TUESDAY, JANUARY 6

6:30 am	Citywide pickup at home
7:20 am	Depart LGA, American Flight #1005 First Class, Special Meal, Seat 5B
10:30 am	Arrive West Palm Beach

Carey car service will pick you up at gate (561-471-5466)

MEETING: **Sunbeam Corporation**
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
(561) 243-2125

Return:

Carey car service pickup at 2:15

3:15 pm	Depart West Palm Beach, American Flight #5694
3:50 pm	Arrive Miami, connect to AA#860 (First Class, Seat 4B)
5:30 pm	Depart Miami
8:30 pm	Arrive LGA

Double Booked under Brendan Stynes: confirm #:

7:00 pm	Depart West Palm Beach, Delta Flight #530
9:29 pm	Arrive LGA

NOT A CERTIFIED COPY

0152911

MORGAN STANLEY
CONFIDENTIAL
0043210

F13\10043307-12-03\7:29 + E/P\PG1

EXHIBIT 45
PLF
CPH 245
7/13/04

NOT A CERTIFIED COPY

015292

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.
----------x

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants.
----------x

CONFIDENTIAL

WILLIAM G. NESBITT

New York, New York

Wednesday, September 1, 2004

Reported by: Steven Neil Cohen, RPR
Job No. 164218

NOT A CERTIFIED COPY

015293

September 1, 2004
9:30 a.m.

Continued Videotaped Deposition of WILLIAM G. NESBITT, taken by Morgan Stanley & Co, Inc., pursuant to notice at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois [redacted]
Attorneys for Coleman (Parent) Holding, Inc.

BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.

BY: LAWRENCE P. BEMIS, ESQ.

KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.

BY: KATHRYN R. DeBORD, ESQ.

ALSO PRESENT: Kristin Zarnetske, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. William Nesbitt. This is volume 2.

The time is 9:30 a.m. on September 1, 2004.

WILLIAM G. NESBITT,
called as a witness by Morgan Stanley & Co., Inc, having been previously duly sworn, testified further as follows:

BY MR. BEMIS:

Q. Good morning, Mr. Nesbitt. How are you?

A. Fine, thanks.

Q. Yesterday we were in the month of December discussing some meetings you had and I would like to move forward in the month of December with you.

According to MS 75 which is the chronology we looked at earlier there was a meeting on December 16.

I will hand you a copy of that if you like.

MR. BEMIS: Do you have a copy, Mr. Markowski?

015294

NOT A CERTIFIED COPY

THE WITNESS: May I refer to this generally, by the way?
BY MR. BEMIS:
Q. Yes, sure. If you need to see a document, you want to see something, ask for it and we will try to find it real quickly.
Referring to December 16, there is a reference -- withdrawn.
Let me see 224.
Let me ask you to set that aside for a second. We will come back to that in a minute.
I will show you what the court reporter will mark as MS 224 first.
(MS Exhibit 224 marked for identification)
BY MR. BEMIS:
Q. Mr. Nesbitt, I have handed you what the court reporter marked as MS 224.
Do you have that in front of you?
A. Yes, I do.
Q. Did you write this memorandum to Mr. Perelman and Mr. Gittis and Mr. Maher?
A. Yes, I did.

Q. Did you give it to them?
A. Yes, I did.
Q. What was the reason that you prepared this memorandum to Mr. Perelman and the others?
A. We were contemplating a transaction which involved the sale of a company which we controlled at the time, had a substantial economic interest in, and I think the understanding going forward was that Mr. Dunlap would be running that business, overseeing it as chief executive officer.
As a consequence it was extraordinarily important for us to understand the economic incentives that had been previously negotiated with Mr. Dunlap so that -- to understand his motivations, to understand his compensation, to understand perhaps some of his objectives as chief executive officer, and, I think, as it related to anything that involved a purchase of stock on his part, his commitment, his confidence level in a particular situation.

Q. What is the relationship between his purchase of stock and his commitment and confidence level in your view as an analyst?
A. I think it has to be considered in the context of the overall contract. It has to be considered in the context of his compensation. It has to be considered in the context of his net worth, whether it is meaningful, but I think it is fair to say that the purchase of stock is better than no purchase of stock as an example of some commitment.
Having said that at the chief executive officer level it is quite typical and quite expected from my experience that a chief executive officer would purchase some stock.
There are exceptions but -- so --
Q. In December of 1997 when you reviewed the contract and you did get a copy of the contract, right?
A. Yes, I believe it was an exhibit to one of the 10-Ks.
Q. When you reviewed the contract

and you looked at the terms and you analyzed it did you consider this contract a positive in terms of Mr. Dunlap's commitment to Sunbeam?
A. If you give me a chance to review this to refresh my memory I will try to give you an opinion on that.
I guess my reaction today and recollection of my reaction at that time is I would put this on the far side of rich in terms of the stock grants and the options, but having said that it certainly presented Mr. Dunlap with the incentive to increase the stock price and I do want to emphasize increase the stock price.
There doesn't appear to be as much compensation relating to meeting objectives as set out by the board of directors for profit goals, short or long term, whatever measures that they wanted, whatever hurdles that they wanted him to set, but it certainly set the cross bar or rather the upside for Mr. Dunlap at very significant levels if he was able to get the stock price up over the period of time

NOT A CERTIFIED COPY

01525

Page 261

during which this was -- this contract was in effect subject to its terms and conditions.
Q. My question was to you, did you view in your analysis Mr. Dunlap's contract to reflect a commitment to him by Sunbeam?
I used "commitment" the way you used it in one of your previous answers.
A. I understand.
Yes.
Q. Thank you.
You can set that aside.
Did you discuss your analyses with Mr. Perelman, Mr. Gittis or Mr. Maher after you gave them MS 224?
A. I believe I did.
Q. When did you do that?
A. I do not recall specifically the date.
Q. Was it a meeting with all three gentlemen or just one of them?
A. I do not recall.
Q. What was said in the meeting with the gentlemen, Mr. Maher, Mr. Gittis, or Mr. Perelman or a combination of them the

Page 262

best that you can tell us now?
A. May I take another look at the document just to hopefully refresh my memory?
Q. Sure.
A. To the best of my recollection I believe the discussion was along the lines of what I conveyed to you earlier in terms of our interpretation of it.
Q. Did Mr. -- I interrupted you. Were you finished?
A. Yes.
I cannot recall specific commentary by any one of those individuals. I am giving you the kind of general sense which I left the meeting.
Q. Did anyone?
A. Or discussion. It could have been a series of discussions and for that matter there could have been discussions without me so --
Q. Did anyone at the meetings that you recall on the subject of the contract in which either Mr. Perelman, Mr. Gittis or Mr. Maher were present, did any of those

Page 263

gentlemen express a view that the employment contract did not reflect a commitment by Mr. Dunlap to Sunbeam, at least as of this time?
A. I do not recall any discussion to that effect either way, affirmatively or negatively.
Q. Did one individual give you the task of obtaining the employment contract? For example, did Mr. Maher ask you to do it as opposed to Mr. Perelman?
A. I don't recall whether it was at my own initiative or whether it was at Mr. Maher's which would be typical but this is for me to review. This is standard and customary.
It is to understand the motivations of the individual with whom, some aspect, one aspect of the motivations of the individual with whom we are negotiating and who may hold and run a business that will run.
Put differently, whenever we buy a business these sorts of -- a contract is extremely important.

Page 264

Q. When you buy a business you buy the contract as well, right?
A. I am not sure what you are referring to.
Q. If you buy a business and the people in the business have employment contracts, you, as the buyer of the business, become responsible for the contracts?
A. We may also be responsible for -- to the extent there is a change contemplated as part of the purchase in negotiating a contract with a new individual or a series of contracts.
Q. My question was when you buy a business.
A. You buy --
Q. You buy the contract along with the business unless there is an escape out of the contract, right?
A. Assuming it is a stock purchase, you are absolutely right.
If it is an asset purchase it is not the same.
Q. In addition to Mr. Dunlap's

NOT A CERTIFIED COPY

contract there were other executives at Sunbeam who entered into long term, and I will use "long term" in the sense they were multiyear, contracts of employment; did you research that as well?

A. I believe I may have, yes.

Q. For example, I believe that Mr. Kersh and Mr. Fannin both entered into long term contracts at the same time as Mr. Dunlap, do you recall that?

MR. MARKOWSKI: Are you referring to -- at what point in time are you referring?

MR. BEMIS: The same time Mr. Dunlap entered his contract.

MR. MARKOWSKI: His original contract?

MR. BEMIS: Yes, sir. The period he is looking at.

THE WITNESS: I do not recall the fact that they entered into -- the terms of those contracts I believe -- it is consistent with my recollection that they entered into contracts at roughly the same time.

BY MR. BEMIS:

Q. Did you --

A. And of a similar vein, similar theme, if you will, similar kind of tone to those contracts.

Q. And similar --

A. But -- sorry.

Q. That is all right. I am not always sure when you are done and I apologize. We will get our rhythm down this morning.

Go ahead and answer.

A. Having said that I do recall they were at substantially lower levels in terms of the various parameters.

Q. Did they have the same terms as you recall in year length, not in compensation?

A. I don't recall.

Q. Did you consider the existence of those contracts by Mr. Kersh as an example of a commitment by him as well to Sunbeam?

A. Yes, I did, in the sense that it presented substantial upside and limited downside.

Q. Would the same be true for Mr. Fannin?

A. I believe so.

Q. Now we are finished with that. Thank you.

Let me hand you back -- no, excuse me. You already do have MS 75, the chronology, in front of you.

I would like you to look at the meeting date of December 16, 1997.

Do you see that?

A. Yes, I do.

Q. There is a reference there to a meeting at which you are listed as an attendee with the various individuals where there was a discussion of the Coleman-Sunbeam transaction.

Did you in fact attend that meeting?

A. The record suggests I did and I -- it was -- this was provided to Wachtell as part of my commentary to them but I have no specific recollection at this point that on December 16, 1997 I attended this meeting nor do I have any recollection

of the specific agenda of that meeting and the outcome based on what I see now.

Q. Had you -- strike that.

Did you have, at least about this time, one or more meetings with Credit Suisse First Boston?

A. Again, as our investment banker, we did have a number of meetings, numerous meetings with them on all aspects of the transaction I believe primarily at our offices but, again, I don't -- I do not recall in the absence of perhaps seeing a specific document with a date what the agenda was on the basis of what I see here.

Q. Was -- did you attend any meetings with -- at which Mr. Perelman was present where there was any discussion of the meeting with Mr. Dunlap that is on the chronology shown as occurring on December 18, 1997?

I think that is the meeting in Palm Beach that we discussed yesterday briefly.

A. Right. December 18, you said?

If I can take a moment to review

NOT A CERTIFIED COPY

015207

Page 269

this?
I do not recall whether Mr. Perelman was present. I do recall hearing about it. I believe it was Mr. Maher that informed me.
Q. That the meeting was going to take place or --
A. No, that it had taken place.
Q. Let's focus before the meeting taking place and let's go there and then go forward.
Do you recall anyone telling you -- and if you told me this yesterday I apologize -- do you remember anyone telling you that the meeting was going to take place with Mr. Dunlap?
A. No.
Q. Referring to December 16, 1997 on the chronology, Exhibit 75, is it correct to say you don't have any recollection of that meeting as you sit here today?
A. Repeat that again.
Q. Is it fair to say that the meeting that is shown on MS 75 as occurring on December 16 where Mr. Perelman,

Page 270

Mr. Maher, Mr. Gittis, Mr. Levin, Mr. Shapiro and yourself and Mr. Ginstling are shown as appearing as well as Mr. Drapkin, Gordon Rich, Robin Duffy and Steven Geller are shown as meeting, that you do not remember that meeting as you sit here today?
A. I do not recall the specific content of the meeting on the 16th, or, put differently, I would not be able to distinguish between, for example, the meeting on the 16th and the meeting on the 17th but I do recall that there were a series of meetings during which these individuals -- large group meetings, were held and I was present to discuss this transaction.
Q. Would you characterize the December 16 meeting, if all of the attendance were there that are shown on MS 17 -- excuse me -- 75, were present as one of the large group meetings?
A. Yes.
Q. Recognizing that you may have trouble differentiating one meeting from

Page 271

another this many years that passed do you recall there was at least one initial meeting where you were introduced to CSFB and their role in the transaction as an adviser to Coleman was explained?
A. Yes.
Q. Was Mr. Perelman at that first meeting?
A. I do not recall.
Q. What happened at the first meeting that you attended, one of these large meetings where CSFB was introduced as the adviser to Coleman, the Coleman team in the transaction being contemplated or at least discussed at this time with Sunbeam?
A. Is there a document related to that meeting that was discussed that is a matter of record?
Q. There isn't. I am not hiding from you. I don't have a document for that date.
If there is I don't know what it is. This is the best document I could give you.
A. There is no document that I can

Page 272

refer to? That is all I want to know.
Q. All I can tell you is I can't find one if there is.
A. That is fine. I understand.
My recollection of the initial sort of kickoff meeting, if in fact that is the one on the 16th, but let's forget about the date because I can't attach a meeting to a date, was that it was a general -- a general discussion of the -- I guess involving potential structures, potential strategy and perhaps fit, motivation, and I think some discussion regarding our interest in entertaining a transaction which involved a substantial component of stock at least, in fact, I think at this point it was contemplated to be all stock at least as far as --
Q. When you had this initial meeting where you discussed these items, structure, strategy, fit, motivation, stock as the primary consideration, did you give to CSFB the modeling that you had done that we looked at yesterday and marked as Morgan Stanley 104 and 105?

NOT A CERTIFIED COPY

A. I have no specific recollection of giving it to them. It would be quite typical given our relationship with CSFB which was long-standing and very close for to us share -- for me to share that information with them, show them whatever we had done, and, for that matter, vice versa.

Q. Did you, at this first meeting, the best you can recall it, share with CSFB the analysis you had done of Mr. Dunlap's employment contract which we marked as your memorandum MS 224?

A. What was the date?

Q. December 15.

A. That -- I have no recollection of any discussion on that front.

Q. Do you recall whether -- strike that.

Did CSFB give the Coleman team any documents at this first large group meeting?

A. I do not recall a specific document but it would be quite typical for there to be some discussion document that

CSFB had prepared as a basis for understanding the kind of basic economics and business lines, executives, stock price history, kind of a primer on the potential purchaser and even the rudimentary merger consequences.

Q. Did you discuss at this first large group meeting where Mr. Perelman was present, CSFB was present, that Morgan Stanley was the investment banker adviser to Sunbeam?

A. I don't recall that it was clear at that point that Morgan Stanley had been specifically retained -- well, I don't recall specific discussion on that point but my recollection is that Sunbeam, it is -- Sunbeam had, I believe, engaged an investment banker prior to this in the fall, I believe, to solicit bids for the company.

I don't know if that was a matter of kind of public record or an announcement but there may have been -- I thought I had heard there was kind of an informal effort to shop the company.

Q. At some point you did however learn --

A. That would involve an investment bank. Sorry.

Q. At some point you did however learn that Morgan Stanley was the investment adviser for Sunbeam, correct?

A. Yes.

Q. And did you learn that in one of these group meetings regardless of which one it was?

A. Yes, or it could have even been just a conversation between Jim Maher and myself.

Q. I asked you earlier whether you had received any documents from CSFB and I am going to show you a package of documents that has been previously marked as MS 76 and while it looks daunting there is actually only four documents attached which is -- on the second page it gives you a table of contents and I would ask you first to take a look at it and then I will have a couple of questions again.

I hand you MS 76.

Again, just look at the second page. It will give you an index of what is in that larger group of documents, if that helps.

I don't have questions, by the way, about the underlying documents.

A. Fine. Okay.

Q. My first question now that you looked at MS 76 is: Did you receive that package of documents from CSFB?

A. Yes, I did.

Q. Did you receive it from them at the first large group meeting that you attended or was it sometime thereafter?

A. I don't recall specifically when I received this. This is -- having said that, this is the sort of document that may have been sent over by courier just as -- to assist us because as you will note it is just the 10-Q, 10-K proxy, research reports to help us out in any way.

Rather than wait until a specific meeting, you send this over to the client immediately as soon as there is any sort of discussion.

NOT A CERTIFIED COPY

Q. Looking at the documents that were sent over to you, the form 10-Q for Sunbeam, that is for the third quarter, right?
A. I am checking.
Q. By that I mean the third quarter of 1997.
A. Yes, it is.
Q. You had already seen that when you were preparing your December analyses we marked as MS 104 and 105, right?
A. Yes, I believe so.
Q. The next document which is in the packet which is the form 10-K for 1996, you had already seen that as well?
A. I believe so, yes.
Q. And you had seen the research reports which are set forth behind tab 5 -- excuse me -- tab 4?
I realize your document isn't tabbed because none of them are. If I flip --
A. I got it.
Q. Okay.
A. We subscribe, I don't recall

specifically what, which ones, but to one or more services which provide us with research, online research related to -- that is distributed by the various Wall Street banks.
Having said that, access differs from -- depending on the service you have and so my sense is that I may have seen some of this.
Sorry. Let me put it differently.
I may have retrieved some of this on my own or for that matter it is conceivable that this was the basis for my -- for my work although -- I can clarify that in one second.
There is nothing here from Goldman, so that would at least, since one of my numbers was a Goldman number, it would suggest that I may have retrieved on my own separate, apart and separate from CSFB, from what CSFB received.
This augmented my --
Q. As I recall MS 104 and 105, for Sunbeam you were using Goldman Sachs'

analyst's estimates for your electronic spreadsheet, right?
A. I was using Goldman Sachs research, I want to refer to the document, but I believe it was for Sunbeam and I thought one of them was CSFB.
Q. It was for Coleman that was CSFB.
A. Okay.
Q. Now, when you received the package from CSFB which we just marked as Ms. 76 you received additional Sunbeam research reports from, it looks like, Prudential Securities?
A. Right.
Q. And I think the next one in the package is from Oppenheimer & Company, Inc.
A. Yes.
Q. Then there is another research report from -- there is one from PaineWebber that I know is in here and then we have another one, I think, at the very end from Merrill Lynch, right?
A. Yes.
Q. Did you review all of these research reports after you received them

from CSFB?
A. Yes, I would have.
Q. Did you make any changes -- did you make any changes in your analyses that you had done in MS 104 and 105 after reviewing these four additional analyst reports on Sunbeam?
A. At this point I don't recall that my review of these research reports caused me to make any specific changes.
Q. I noticed -- I notice on top of the analyst reports they all bear the header Thomson Financial. Do you know who that is, Thomson Financial?
A. It is a publication firm, media research firm.
Q. Is it one of the firms from which one can gather analyst reports?
A. I believe it is, yes. Again, I don't recall which one we used but --
Q. Based on your receipt of these materials in MS 76, particularly the analyst reports now and your own gathering of analyst reports, to the extent that you did that when you prepared MS 104 and 105

NOT A CERTIFIED COPY

015300

you would have had at least five analyst reports to look at as of the mid December 1997, correct?
A. Yes; these four and the Goldman report.
Q. Did you find in your analysis of these five analyst reports any information that to you was a red flag, if you will, about Sunbeam?
A. I don't recall anything that rose to the level of a red flag show stopper, deal killer, but I am happy to review these again if you would like.
Q. I am not trying to find one for you. I don't know if there is one or not but I don't see anything in your documentation that suggests that you did. That why I asked you the question.
I take it your answer is as you sit here today you don't recall any show stopper, red flags?
A. No.
Q. Would the same be true with regard to the public filings that you reviewed of Sunbeam, that is, at least as

of this time in December you didn't see any show stopper red flags with regard to Sunbeam?
A. That is true.
Q. With regard to your review of the audited financial statements of Sunbeam that were audited and certified by Arthur Andersen did you see any show stopper red flags in those audited financial statements that you as an analyst would report to your superiors on the Coleman team?
A. No, I did not.
Q. You may hand it back and I will put it back. If it wasn't for all the paper this job wouldn't be too bad.
As a result of the first meeting -- withdrawn.
As a result of the first large group meeting that you can remember with CSFB when Mr. Perelman was present were there any assignments handed out to CSFB?
A. I don't recall a specific assignment.
Q. Having worked with CSFB before in other transactions did you consider this

transaction with Sunbeam to be unusual in terms of the types of assignments that CSFB had had with Mr. Perelman's companies?
A. In terms of the -- no, I don't believe so.
Q. Did you feel based on your relationship with CSFB and of course your reporting to Mr. Maher and Mr. Perelman, to the extent that you did so, that there was sufficient familiarity, if you will, between the parties, that is, CSFB and the Coleman team here, that the parties understood what they were going to do in this negotiation with Sunbeam in terms of their analysis and how they were going to go about their discussions with Sunbeam?
A. Yes.
Q. In any of the large group meetings where you have described discussions -- discussing such things as structure and strategy and fit and the relationship between -- excuse me -- the motivations that enter into the deal did you ever invite Morgan Stanley to sit in on those meetings?

A. No.
Q. After Mr. Perelman and Mr. Dunlap met, again, on November 18, I think that is what the record will show, I know you didn't attend the meeting but at some point you did hear about it, right?
A. Yes.
MR. MARKOWSKI: I think you said November.
MR. BEMIS: I meant to say December. Let me ask the question again so it is clear.
BY MR. BEMIS:
Q. After Mr. Dunlap and Mr. Perelman met at his home in West Palm in or about December 18, you told me you heard about the meeting from some source.
A. Yes.
Q. What did you hear about how the meeting went?
A. I heard that the meeting did not go particularly well on two levels.
One is with respect to price, that the offer was considered low. I believe it was something on the order of 18

NOT A CERTIFIED COPY

Page 285

to 22 or so per share being offered.
Second, the tenor of the meeting was such that it was my understanding that Mr. Dunlap stormed out at some point.
There was a discussion and again I was not there so I don't know specifically at which point or why but during the -- during that discussion Mr. Dunlap, and I don't recall if anyone else was present, simply left.
Q. You referred to the price that you heard was offered as 18 to $22 as being low.
Had the Coleman team based on these large group meetings or even internal meetings up to this point arrived at, at least, a working number internally that they were looking to receive from Sunbeam if a transaction should go forward recognizing that there could be other negotiations?
A. I don't recall a specific number being discussed as the only number or the number that we should shoot for at this point.

Page 286

Q. Can you tell the jury, given that 18 to $20 was low --
A. Right.
Q. -- what was considered to be a reasonable number at that time even if it was subject to negotiation and reasonable on the side of the Coleman team of the negotiations?
A. I don't recall a view that we had formed -- I don't recall a discussion that -- in which we reviewed a specific number and formulated an opinion on the basis of analysis and work with CSFB at that point.
Q. Whatever you were talking about, 18 to $22 was lower than what you were talking about; is that fair to say?
A. That is fair to say.
Q. At the time of the meeting with Mr. Dunlap on December 18 had the Coleman team in terms of structure of a transaction, was it looking at an all-stock transaction of some kind?
A. I believe at that point we were talking about an all-stock transaction.

Page 287

Q. Is there a reason why the Coleman team was, at this time, December of 1997, looking at a stock -- all-stock transaction as opposed to a structure that had either all cash or a component of cash and stock?
A. I believe it was at the suggestion of Sunbeam that we were discussing all cash -- sorry, all stock.
Q. Who is it that you understood at Sunbeam made that suggestion?
A. I don't recall.
Q. Did you participate in the meeting where a representative of Sunbeam made that statement to you?
A. No.
Q. Was this something that you heard from someone else on the Coleman team?
A. Yes, I believe it was Mr. Maher.
Q. Moving forward now from the December 18, 1997 meeting which ended as I understand or recall your testimony that Mr. Dunlap stormed out, was the word that you used, what was the next involvement that you had with the Coleman-Sunbeam transaction as it eventually materialized

Page 288

in February of 1998?
A. As the document from Wachtell, MS 75, suggests and I recall, I think there was a period where the transaction was essentially dormant after that meeting which extended through the holidays and into -- I don't recall nor does the Wachtell document indicate that sometime in January I do recall hearing, I don't believe I participated on any call, but that Bill Reid who was a representative of Morgan Stanley, also happened to be our relationship banker at Morgan Stanley, had called to try to resurrect discussions, that they were still interested and notwithstanding what had happened, which I think left a bad taste in our mouths, that they were interested in trying to go forward on some basis.
Q. That is very helpful. We can skip almost a month it sounds like between December 18, the meeting at West Palm Beach until sometime in January until something happens again; is that fair?
A. Yes, I believe that is the case.

NOT A CERTIFIED COPY

Q. From your standpoint you were able to turn your attention if you will to other matters during this dormant period and you had no further involvement with the Sunbeam analyses then after the fallout with Mr. Dunlap and Mr. Perelman at Mr. Perelman's residence in Palm Beach?

A. I don't recall. I can refer to my calendar. I should check whether I may have been on vacation but I don't recall continued work on this transaction at that point.

Q. Let me hand you your calendar, MS 195. It is possible something is there but I don't recall anything is there.

Why don't you take a quick look and see for us?

A. Okay.

Q. It looks to me like you were doing a lot of traveling between the east and west coast during this period of time on the Panavision deal?

A. Yes, unrelated to Sunbeam.

Through the month of January that appears to be how I spent my time.

Q. You were traveling frequently to go to Woodland Hills. That is one of the addresses for Panavision?

A. That is the headquarters of Panavision.

Q. Then you were staying in Santa Monica if I look at your calendar?

A. Yes, at one point, yes.

Q. Flying my favorite American Airlines back and forth too by flight number. I say that because I have been on it so many times.

A. There are, in my calendar towards the end of the month there is -- there are various notes or dates, schedule related to a road show. I was not on that road show. It is in my calendar.

Q. What date are you referring to?

A. I am looking really from the 27th -- 27th, I think I was part of that, but the 28th, Philadelphia, Hartford, Baltimore, Boston and through the 29th, 30th, I was not on that road show.

Q. The road show you are referring to is the road show for Panavision?

A. Yes. I am just clarifying, if you are taking this as I was present, I was not.

Q. Your preoccupation, and I don't mean that in any disparaging way, your preoccupation of work, what you were working under at this time, late December, January time frame, you were working on the Panavision transaction which is getting ready to close, right?

A. Yes, as far as I knew and probably more importantly the people for whom I worked, this was the best use of my time during that period.

Q. CSFB was the investment banker for Mr. Perelman's companies in the Panavision deal, correct?

A. Yes, that is accurate.

Q. Indeed, they were the underwriter, that is, CSFB, of notes that were issued in connection with the Panavision acquisition, were they not?

A. Yes, that is accurate.

Q. At some point in time in January you do learn that there is a possibility

that the Sunbeam transaction is going to be revived, at least discussions revived, right?

A. Yes.

Q. Did Mr. Maher tell you that or was it someone else?

A. I believe it was Mr. Maher.

Q. Looking at your calendar or the chronology, if that is more helpful, MS 75, can you tell me on or about when you believe you learned from Mr. Maher that the transaction with Sunbeam might be revived and discussions would ensue between the Coleman team and the Sunbeam -- and Sunbeam?

A. Looking at both my calendar as well as the MS 75 document, I can't recall any specific date at which I learned, I believe it was through Mr. Maher, that Mr. Reid had called.

There is a suggestion, and it is accurate, that I met with several representatives of Morgan Stanley really to, I think the word to "discuss" is perhaps inaccurate. It was really to

NOT A CERTIFIED COPY

Page 293

listen to their, and to be presented with some analysis regarding a transaction for -- between Sunbeam and Coleman.
Q. Are you referring to the meeting of January 23, 1998 that is shown on MS 75?
A. Yes, I am, and I was the only person at that --
Q. Is it fair to say that after the December 18, 1997 meeting between Mr. Dunlap and Mr. Perelman and others at his home that the next meeting that -- the next meeting that you attended personally where there were any outside parties, whether it be CSFB or a Morgan Stanley representative or Sunbeam, would be January 23 of 1998?
A. I can't say that that is absolutely accurate because representatives of CSFB were in our offices all the time and discussing Panavision, discussing other ideas, discussing, possibly even probably discussing Sunbeam, oh, by the way --
Q. Anything going on?
A. And so -- but I don't recall a specific all-hands meeting to discuss

Page 294

Sunbeam and the status of the Sunbeam discussions prior to this meeting.
Again, from our perspective, it was dead.
Q. According to the chronology, MS 75, in the call that Mr. Reid made to Mr. Perelman as described by your attorneys, Wachtell, Lipton, to the SEC, Mr. Perelman advised Mr. Reid that he, Mr. Perelman, would be willing to discuss supporting a transaction at $30 per share, do you see that?
A. Yes, I do.
Q. By the time of your meeting on or about January 23, 1998 when you met with the Morgan Stanley people as you described it a moment ago to listen, I think you put it, had you been told by anyone that Mr. Perelman would on behalf of the Coleman side support a transaction at $30 a share with Sunbeam?
A. I don't recall being told that.
Q. Let's focus now on the January 23 meeting. We will move forward to that meeting.

Page 295

Do you have a recollection as you sit here today of that meeting?
A. Yes.
Q. Are the people who are listed as being at the meeting Mr. Stynes, Mr. Yoo, Mr. Chang and Mr. Fuchs, were they all present at the meeting?
A. Yes, I believe so.
Q. The meeting was at MacAndrews & Forbes' offices here in New York?
A. I don't know that. I don't recall whether it was at Morgan Stanley or at our offices.
Q. I interrupted.
MR. MARKOWSKI: Let me interject. Maybe I am reading the wrong entry. We are talking about the January 23 entry? Did you refer to Mr. Yoo being one of the participants?
MR. BEMIS: I did. I didn't say he was -- if I did I misspoke. I may have misspoke if I did.
BY MR. BEMIS:
Q. Let me ask you, who do you remember being there.

Page 296

A. The gentlemen that are -- I should stop looking at this and listen to you -- the gentlemen that are listed in the MS 75 for January 23 which is Jim Stynes, Alex Fuchs and Tyrone Chang.
Q. In terms of -- withdrawn.
You do remember -- strike that.
How did you get invited to the meeting? For example, did Mr. Maher tell you?
A. Yes. Mr. Maher was unable to attend the meeting and asked me to meet with them. I do not know how he was informed.
Q. Originally Mr. Maher was going to attend the meeting and he could not and then you got assigned or were you both going to attend and he just couldn't make it?
A. I don't know that at any point Mr. Maher was in a position to attend.
Mr. Maher made the decision knowing his schedule to have me attend the meeting.
Q. How long did this meeting last

NOT A CERTIFIED COPY

with the Morgan Stanley people that we have identified?
A. An hour.
Q. Did you do anything to prepare for the meeting?
A. No. I don't believe so.
Q. As an example, even though you said you didn't do anything, did you go back and look at your spreadsheets that you had prepared, MS 104 and 105, about the transaction or Mr. Dunlap's employment contract or your memorandum to Mr. Perelman of December 11 discussing Black & Decker, anything like that?
A. I don't believe I did to any great length for the very reason that I was -- it was crystal clear that I was to listen.
Q. Why was that crystal clear?
A. Because my role was not to negotiate this transaction.
Q. Why was that crystal clear that it was not your role?
A. Because there were other individuals within MacAndrews & Forbes, be

it Mr. Maher, Mr. Drapkin, Mr. Gittis, Mr. Perelman who have far more experience in these matters and for whom the economic consequences of a transaction, particularly Mr. Perelman, were significant.
Q. Again, you were the analyst but they were the decision makers, is that fair?
A. Yes. The difference between capital and labor.
Q. That is good. I like that.
Let me -- were there any documents handed out at this meeting on January 23?
A. Yes, I believe there was.
Q. Let me show you a document marked as MS 80 first. I hand you what has previously been marked as Morgan Stanley 80.
Do you have that document in front of you?
A. Yes, I do.
Q. Is this -- was this document handed out at the meeting of January 23?
A. Yes, I believe it was.

Q. Is this -- is that your handwriting that appears on MS 80?
A. Yes, it is.
Q. Did you make those notes during the meeting with the Morgan Stanley people you have identified?
A. I don't know that I did. I could have made them afterwards.
Q. For example, on the -- on the first page under the column heading camper specific, do you see that area?
A. Yes.
Q. There is an arrow and then I believe it says -- let me ask you, please read that into the record.
A. I believe it says, "From discussions with Levin and Page," referring to Jerry Levin and Joseph Page.
Q. What does that note mean to you, your note mean to you now, or let me ask the question differently.
What did your note mean at the time that you wrote it?
A. I don't recall.
Q. If you will turn to the next page

of the document which has, under the heading, summary information, there is some handwriting. It looks like you have an arrow drawn to two numbers. One is the 1998E which I assume is estimated?
A. Yes.
Q. EBITDA.
A. Yes.
Q. And under the heading camper, there is 160.4 million, I think, and then you have an arrow up saying, versus 178.4 million in CSFB report.
Did I read that correctly?
A. Yes.
Q. Does that mean there is a difference between the number that Morgan Stanley was using in its document and what you found in the CSFB report that you had used in your spreadsheets MS 104 and 105?
A. I believe I am referring to, yes, a Credit Suisse First Boston analyst report.
Q. Of Coleman?
A. Yes.
Q. In this report Camper is Coleman

NOT A CERTIFIED COPY

and Laser is Sunbeam, right?
A. Yes, we have now determined that versus yesterday, so -- I am not a big believer in these names, but anyway --
Q. Will you please turn to page 4? Is that your handwriting that appears on the top which I believe reads Morgan's key analysis?
A. Yes.
Q. You have underscored that, correct?
A. Yes, I have.
Q. As I understand it this page is -- uses synergies or cost savings, as you used the term, in the range of, in one scenario, $50 million -- excuse me, $50 million in 1998 and $75 million in 1999; is that correct?
A. Yes.
Q. There is then -- if you will turn to the three pages from the end, the page ending with CPH, last three digits, 294 and tell me when you are there?
A. I am there. I believe I am there.

Q. Is that your writing, irrelevant?
A. Irrelevant, yes.
Q. Is that because there was a pooling analysis used and you had concluded that a pooling accounting treatment was not going to be applicable to this transaction?
A. Yes, I believe so.
Q. The information that is set forth in this document is -- was provided -- strike that.
Was the document provided to you at the meeting or after the meeting, do you recall specifically?
A. At the meeting.
Q. Did you understand that the Laser specific information which is now on the very first page was based on projections from I/B/E/S?
A. If you are asking did I know what that meant, yes.
Q. Did you understand --
A. Did I read it, yes.
Q. Did you understand that the projections that were here for Sunbeam were indeed based on the I/B/E/S projections as

set forth here?
A. Yes.
Q. I/B/E/S is one of these reporting services that reports analyst projections, correct?
A. Yes.
Q. Doesn't I/B/E/S try to come up with blending -- I don't know what the right term is for the various projections that it obtains?
A. Yes, I think that is the -- depending on what you would like to purchase you can probably get the bargain basement average number, you can get the compilation of all the numbers that go into an average. I don't know.
Q. There is all sorts of data out there in the marketplace, right?
A. Yes.
Q. As long as you know what you are looking at you have a point of reference to make judgments as to whether you want to rely on it or not rely on it, fair enough?
A. Yes.
Q. In this case -- so did you

consider -- withdrawn.
Like you had used CSFB or Goldman Sachs, Morgan Stanley, whatever they were creating, was using I/B/E/S for their projections, correct?
A. Yes.
Q. In terms of the Coleman and the Morgan Stanley projections that we have in MS 80 they told you at least that they were using a modified CSFB report dated November 18, 1997, right?
A. Yes.
Q. That -- is that the same report that you used? I am not saying you modified it but is that the same base report that you used in your projections set forth in MS 104 and 105?
A. That would be difficult.
Q. That would be difficult why?
A. Because I believe the date of MS 104 and 105 preceded the report on the 18th of -- sorry. I stand corrected. Fine.
You had your one November mistake. I now have my November mistake.
Q. Don't worry about it.

NOT A CERTIFIED COPY

A. It is likely but I don't remember that specific date.
Q. Just -- let me ask the question one more time.
Between you and I getting the dates backwards I want to make sure we don't have any confusion later.
A. Yes.
Q. Is the First Boston report that Morgan Stanley used under the Camper specific heading, although it said to be modified, is that the same First Boston report that you believe you used in preparing MS 104 and 105 back in December of 1997?
A. I believe it was.
Q. Is there any information that, as you sit here today, that you recall based on what you knew on -- you knew on January 23, 1998, that you consider to be a misrepresentation to you by Morgan Stanley?
A. Yes.
Q. What is it?
A. I was led to believe that Morgan Stanley was in a position to pay in excess

of $25 per share with a cash component and I recall being quite surprised although there was not a specific proposal, of course, but there were ranges between 17 and -- well, it varies depending on which page you look, if you look at page 4, it is 20 to $24, I believe this is an all-stock transaction.
If you look at the matrix on the following page --
Q. Just focus on page 4. You were referring to the one where you state Morgan's key analysis?
A. Yes. If you refer to the row entitled price/premium.
Q. Right.
A. There is a matrix or a line that has a range of prices to be paid to Coleman of between 20 and $24 per share, and that -- absent from that row was a number in excess of $25 a share.
Q. Mathematically one could put a row for $25 per share and do the extensions?
A. You are right but they didn't.

Q. Did Morgan Stanley ever, before this meeting, tell you, someone from Morgan Stanley, whether Mr. Fuchs, Mr. Chang, Mr. Reid, Mr. Reid, Mr. Stynes, did they ever call you up and say, Mr. Nesbitt, we are prepared to offer $25 or more with some cash component?
A. No one called me up and suggested that but I do recall hearing from Mr. Maher that we had been led to believe that Coleman -- sorry -- Sunbeam was in a position to pay in excess of $25 per share in some combination of cash and stock and I believe that was conveyed to Mr. Maher by Mr. Reid.
Q. Let me set aside the issue of what people said what the ultimate price they were willing to pay in the negotiations.
Looking at the underlying data from the sources it is alleged to have come from, which you had back in January of 1998, is there any statement in here that the data to you is a misrepresentation to you of the data, not the mathematical

extensions of the data but just the underlying data itself?
A. I understand. I don't believe there was anything in this document as it was labeled or qualified which at the time or now I viewed as a misrepresentation of a fact.
Q. You can hand that back to me.
Following your meeting on January 23, your receipt of the MS 80 that we just went through, did you go back and make any adjustments to your spreadsheets, MS 104, 105 or 106 and 107 as well where you just adjusted the Sunbeam stock prices as I recall?
A. I don't recall that based on this analysis apart from perhaps the stock price which would be a logical adjustment to make that I made any adjustments to my analysis.
Q. If you go back and make an adjustment on the stock price would you have gone back and adjusted both Coleman's and Sunbeam's since by this point the market is a month down the line from when you did your work?

NOT A CERTIFIED COPY

0153307

Page 309

A. It would be logical to do so, appropriate to do so.
Q. Following January -- did you make any notes of the January 23 meeting other than the ones we have identified in your handwriting on MS 80?
A. Apart from that, I don't believe so.
Q. Did you share your models, MS 104 and 105, with Morgan Stanley at the meeting on January 23? Did you share them your internal work?
A. No.
Q. Did you share Morgan Stanley's work, MS 80, with CSFB?
A. Yes, and -- sorry, go ahead.
Q. And who?
A. I will let you the ask question.
Q. And who did you share it with besides CSFB?
A. Internally at MacAndrews & Forbes.
Q. So at least as of January 23 both CSFB and internally at MacAndrews & Forbes the people who were on the Coleman team had

Page 310

the benefit not only of your internal analyses to the extent that you had progressed with that through the exhibits we have identified, MS 104 through 107, and you also had a Morgan Stanley analysis, MS 80, that we just went through and your notes about that, correct?
A. I don't know that I shared my notes as I forget the number.
Q. MS 80 with your notes?
A. I don't know that I made a xerox of that document. I probably took extra copies and distributed clean copies.
Q. Setting aside your notes though, is it fair to say that internally with -- at MacAndrews & Forbes as well as with your investment bankers on the Coleman team you had shared both your analyses and you had shared Morgan Stanley's analysis, MS 80, on or about the time of January 23, 1998?
A. That is accurate.
MR. BEMIS: Let's take a short break here.
THE VIDEOGRAPHER: The time is 10:49 a.m. and we are going off the

Page 311

record.
(Discussion off the record)
THE VIDEOGRAPHER: The time is 11:04 a.m. We are back on the record.
BY MR. BEMIS:
Q. Let me show you what the court reporter will mark as Morgan Stanley 354.
(MS Exhibit 354 marked for identification)
BY MR. BEMIS:
Q. Do you have MS 354 in front of you?
A. Yes, I do.
Q. Did you prepare this document on or about January 23, 1998?
A. Yes, I did.
Q. Are these, is this a memorandum purporting to summarize from Mr. -- let me withdraw and rephrase the question.
Is this document, MS 354, a memorandum that you prepared for Mr. Perelman, Mr. Gittis, Mr. Drapkin and Mr. Maher summarizing your meeting with Morgan Stanley on January 23, 1998?
A. Yes, it is.

Page 312

Q. As a preliminary matter look at the last bullet point which ends, "Morgan is very."
Then there is a bullet point after that which has no text whatsoever.
Do you see that?
A. Yes.
Q. Do you know what the -- let me ask you the question this way.
Is that a dropped sentence, the "Morgan is very" or did you type it and send it this way?
A. I hope not the latter for obvious reasons. I don't know what it means.
It is not the only problem. There is a spacing issue. It could have been that this was an intermediate -- it was a draft of something that I was going to send and that I completed it.
I was interrupted at "very" would be my assumption here.
Q. Does the memorandum as you sit here today accurately reflect, to the extent you completed the memorandum, accurately reflect your meeting with Morgan

USER CERTIFIED COPY

Page 313

Stanley?
A. Yes, I believe there is nothing here that, as I see it now, that I would believe would have been changed in a subsequent version if in fact there was a subsequent version.
Q. There is a reference in the first bullet to a 100 percent cash transaction. Do you see that?
A. Yes.
Q. Had there been as of January 23, 1998 discussions with Sunbeam about a 100 percent cash transaction?
A. My recollection going into the meeting was that there was going to be a substantial cash component.
Here I suggest 100 percent and so this is refreshing my recollection.
My interpretation of the discussions that were going on, or one discussion that had been going, had gone on between Morgan Stanley and MacAndrews & Forbes or its representatives may have been wrong because apparently there was a disconnect but I went into this meeting

Page 314

expecting to see something very different in terms of the structure.
Q. I may be confused. Did you expect going into the January 23 meeting there would be a cash component?
A. Yes.
Q. You did?
A. If I didn't state that correctly, yes, that is exactly what I --
Q. You had gone from, in your original discussions internally, from thinking in terms of a 100 percent stock transaction, and I think you said that was based on something you thought Sunbeam had suggested?
A. Yes.
Q. And now by January 23 there was at least some cash component that was going to be part of the transaction assuming something got negotiated.
We will take a break.
THE VIDEOGRAPHER: The time is 11:09 a.m. and we are going off the record.
(Discussion off the record)

Page 315

THE VIDEOGRAPHER: The time is 11:13 a.m. We are back on the record.
BY MR. BEMIS:
Q. When we broke the question that was pending was as follows: Now by January 23, 1998 there was at least a cash component that was going to be a part of a transaction assuming something got negotiated to a final deal; is that correct?
A. My understanding was that I don't know the genesis of this on the side of Morgan Stanley and whether it resulted from any discussions between Morgan Stanley or MacAndrews & Forbes, and MacAndrews & Forbes, but that they had suggested -- Bill Reid had suggested that there was going to be a cash component, yes, and so that was -- going into this meeting on the 23rd I was expecting to see analysis or some indication of exactly that.
Q. You never spoke to Bill Reid about stock or cash?
A. No.
Q. What information you have is

Page 316

based on a conversation that someone else said they had with Bill Reid?
A. Exactly.
Q. Let's put Exhibit 353 aside right now. I said 353. I meant 354, excuse me.
Did you, by the way, attach the Morgan Stanley presentation that we marked as MS 80 to the memorandum, MS 354?
A. That would be -- that is a reasonable assumption.
Q. As you sit here today because the document doesn't appear to be complete and it appears to be spaced incorrectly you are not even sure if you sent it out; is that fair?
A. No.
Q. You do think you sent it out?
A. I believe I sent out a summary of that meeting. The only thing that would have caused me not to was a phone call from one of those individuals, come down and tell me about the meeting, and I would have brought down the Morgan Stanley analysis and conveyed to them what I said in that memo in general terms, or in specific

NOT A CERTIFIED COPY

terms, I mean.
Q. Either you sent them the memo with the attachment or you brought the memo in its current form even with the incomplete sentence and you discussed it to them face-to-face?
A. Yes. I can't explain what happened, why that is the case there.
Q. Let me show you what has been marked as Morgan Stanley 106.
Mr. Reporter, would you please date that for me?
(MS Exhibit 106 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley [redacted] -- excuse me -- yes, 106 in front of you?
A. Yes, I do.
Q. Did you prepare it?
A. Yes, I did.
Q. Let me show you another document which is -- we will mark as Morgan Stanley 107.
(MS Exhibit 107 marked for identification)

MR. BEMIS: Mr. Reporter, if you would date that for me please?
THE WITNESS: Yes. I have it.
BY MR. BEMIS:
Q. Did you prepare Morgan Stanley Exhibit 107?
A. Yes, I did.
Q. Did you prepare both of these exhibits on January 26, 1998?
A. Yes, I did.
Q. Are these models that you prepared following -- strike that.
Are Exhibits 106 and 107 models that you prepared of the merger consequences of the Sunbeam-Coleman merger following your meeting with Morgan Stanley on January 23 of 1998?
A. I don't know. I believe that I prepared them at some point between the time that I learned from Mr. Maher that Bill Reid had conveyed an interest in resurrecting these discussions and the time that this document was printed but I can't -- it is probable that I did it immediately after that meeting but I can't

say for sure whether I didn't start it before that meeting on the 23rd.
Q. Are there any -- are there any differences in the two exhibits, MS 106 and 107, other than the cost savings which appear to be $100,000 in MS 106 and -- I said 100,000, I meant 100 million, excuse me -- and $150 million in cost savings in MS 107?
A. I am going to have to look pretty carefully.
Q. Please. That is the difference I found but that doesn't mean that I got it right.
A. Okay. I believe that is the only difference.
Q. My next question is, turning to page 2 of -- either you can look at either Exhibit 106 or 107, just tell me which one. You have to turn to page 2.
A. 106 --
Q. 106 is fine.
A. Yes.
Q. You have the two boxes of information for 1997 estimated pro forma

which I -- and then you have one for 1998 estimated pro forma. Do you see those two boxes?
A. Yes, I do.
Q. The information in those two boxes was just, with just a few exceptions that I could identify, is identical from the figures that you used in MS 104 and 105; is that correct?
A. I will have to refer to it.
Q. Let me show you one of them. I need you to confirm it for me.
A. That is fine. Then I will have to confirm it.
I can't recall.
Q. I will hand you MS 104. We have already been over 104 and 105 appear to be the same exhibits with the exception of cost savings -- excuse me -- stock price.
We will use 104 as a basis. Start with the 1997 pro forma statement estimated information and all of the figures that I located under both Sunbeam and Coleman appear to be identical with the exception of earnings per share which are

NOT A CERTIFIED COPY

16div-021173

slightly different.
A. Okay. I don't recall seeing an earnings -- you are saying the earnings per share for 1997 was different in the model.
I didn't think we had a earnings per share.
Q. I think you took --
A. That was for 1998 though.
Q. You are correct. It was for 1998.
A. Let's look at 1998.
Q. We will look at 1998.
Am I correct that other than the earnings per share information all of the information you used for the 1997 estimated pro forma is identical to what you used in Exhibit 104?
A. I am not there yet. I am not done.
Q. Let's do that question first.
A. Okay. The 1997 data for the columns Sunbeam and Coleman appear to be the same with, of course, the exception that I did not outline the earnings per share numbers for 1997 in this analysis.

Q. If I recall correctly we could have calculated the earnings per share from Exhibit 104 and indeed, for example, for Coleman it was 56 cents per share. That is just a mathematical calculation?
A. But it is not a mathematical calculation necessarily based on shares outstanding exactly.
There is a subtle distinction that the accountants and auditors go through in doing that.
Q. How did you arrive at 56 cents per share for Coleman for --
A. I don't know.
Q. Do you want a calculator? I know how you did it.
A. Why don't you tell me?
Q. You divided revenue by number of outstanding shares and you get 56 cents?
A. Just to qualify what you said, you said revenue. I divided --
Q. Net income. I just did the calculation to see if it was 56 cents and that is what it was.
A. That is fine.

Q. That is what you did?
A. That is fine. That is fine.
Q. You did the same thing?
A. Okay.
Q. With regard to Sunbeam as well, right?
A. Yes.
Q. I understand it is just an arithmetic calculation.
Let's go over to the 1998 estimated column in MS 107 and let's compare it to MS 104 which you were looking at and I will tell you I saw a couple of differences and if you have others you let me know. I am trying to move this along for you.
A. I understand.
Q. You had, for example, for Coleman, under EBITDA, you have $184,000 for the 1990E?
MR. MARKOWSKI: You dropped three zeros.
BY THE VIDEOGRAPHER:
Q. 184 million, excuse me, not thousand, and you used a slightly different

figure under your Coleman data I believe in MS 104, correct?
A. Yes. It appears that in the 104 I used 178,500.
Q. Do you know why you picked a different number for Exhibit 107?
A. No, I don't.
Q. You also appear to have used a different figure for pretax income which in Exhibit 107 is 102 million and then I see in Exhibit MS 104 it is 96,500,000; is that correct?
A. That is correct. That would necessarily follow.
Q. Would that flow from the change in the EBITDA?
A. Yes.
Q. Then I see there is a difference in the net income and that is a flow through as well because you changed the EBITDA for 1999E for Coleman, correct?
A. Yes, that's true.
MR. MARKOWSKI: I think you said 1999E.
BY MR. BEMIS:

NOT A CERTIFIED COPY

Page 325

Q. If I did I meant 1998. I did.
We are talking about 1998E, fair enough?
A. Yes.
Q. There is also a difference in the -- withdrawn.
You have an earnings per share for Coleman for 1999E at $1.24.
That would be a flow through number as well if there was any difference in the arithmetic calculation between your figures in Exhibit 104, correct?
A. Yes.
MR. MARKOWSKI: You again said 1999E.
MR. BEMIS: I stand corrected. 1998.
THE WITNESS: Yes, 1998, yes.
BY MR. BEMIS:
Q. Other than -- strike that.
Is it fair to say then at least as of the dates these exhibits were printed, MS 106 and 107, you didn't -- did you not make any changes in your underlying data that -- upon which you performed your

Page 326

arithmetic calculations on the merger consequences based on any information that you received from Morgan Stanley on January 23 of 1998?
Do you need the Morgan Stanley exhibit?
A. Yes.
Q. Let me have MS 80 please.
A. Yes, that is accurate.
Q. Indeed, if we were to look at the Morgan Stanley 1998 estimated EBITDA for Coleman, Morgan Stanley was using a figure of 160.4 million while you were using in your figure in MS 106 184 million, correct?
A. Yes.
Q. We can set that aside. Just 84. Hold on to those.
A couple quick questions and we will be done with the larger spreadsheets.
The spreadsheets MS 106 and 107 assume cost savings of 1 -- $100 million in MS 106 and then $150 million in 107, correct?
A. Yes.
Q. Where did you -- strike that.

Page 327

How did you arrive at those cost saving figures as assumptions you used in the two spreadsheets?
A. It was not based on my own analysis of head count, revenue, opportunities, et cetera, et cetera, on an operating basis, and it would have been based -- it was based on discussions with a group but I cannot specifically recall who suggested to use 100 and 150, and I know that we ran numerous -- numerous cases at all sorts of different prices and all sorts of different synergy assumptions.
We have two in front of us.
Q. Indeed, I think in MS 104 and 105 you ran 40 million and 60 million earlier in the year, correct?
A. Yes. That is all part of the evolving analysis.
Q. Did anyone at the meeting on January 23, 1998 with Morgan Stanley tell you that you should assume 1998 cost savings of $150 million in combining the two entities?
A. No, they did not.

Page 328

Q. Did they tell you to assume $100 million in cost savings in combining the two entities?
A. No, they did not.
Q. Indeed, if I remember correctly that Morgan Stanley projection, MS 80, had assumed cost savings of only $50 million in 1998 but growing to as much as $75 million in 1999; is that correct?
A. That is accurate.
Q. One last question.
If I look at the first page of both MS 106 and 107, that is a summary page, is it not, of the pages that follow behind it for the various prices and cost saving variables as you have assumed them in the spreadsheet?
A. Yes, it is.
Q. You may give those back to me and we will move along.
MR. BEMIS: Let's change the tape.
THE VIDEOGRAPHER: The time is 11:33 a.m. on September 1, 2004. This is the end of tape number one, volume

NOT A CERTIFIED COPY

Page 329

two of the videotaped deposition of Mr. William Nesbitt.
(Pause)
THE VIDEOGRAPHER: The time is 11:35 a.m. on September 1, 2004. This is tape number two, volume two of the videotaped deposition of Mr. William Nesbitt.
BY MR. BEMIS:
Q. Mr. Nesbitt, following the January 23, 1998 meeting with Morgan Stanley when is the next meeting that you can recall attending where Morgan Stanley or Sunbeam representatives were present, and if it helps you go ahead and look at the chronology, MS 75?
A. I am referring to MS 175 and there was a meeting which I believe I attended on the 29th during which potential synergies were discussed I think in a reasonably detailed fashion between Mr. Levin, Mr. Page, Mr. Shapiro primarily on our side, and Mr. Fannin and Kersh on the other.
I say that because they are the

Page 330

operating, or executives with an understanding of operations and are familiar and had a very clear -- a point of view with respect to potential synergies.
Q. How long did that meeting last?
A. I do not recall.
Q. Are the attendees of the meeting properly identified in MS 175 as far as you can now recall?
A. As far as I can recall --
Q. Excuse me, MS 75.
A. Yes.
Q. Did you take any notes of that meeting, and I don't have them by the way?
A. It would be normal and customary for me to do so and I don't have them.
Q. How long did this meeting last where the synergies were discussed as you have described it?
A. I just said I don't know.
Q. Was it an evening meeting, a day meeting, afternoon meeting?
A. I don't recall. I don't believe it was in our offices. I believe -- when I say "our offices," I mean MacAndrews &

Page 331

Forbes.
I believe it may have been in the Coleman -- New York offices of Coleman.
Q. Do you actually remember there were Coleman products in the room itself, green Coleman products?
A. No.
Q. You don't?
A. No.
Q. Who did most of -- strike that.
How did the meeting progress in terms of who spoke?
For example, did Mr. Levin speak first or did Mr. Kersh speak first?
A. I don't recall who spoke first.
Q. Do you recall anything that was said at the meeting?
A. Not in any detail except that there was a significant amount of discussion again primarily between the operating executives, among the operating executives regarding those cost savings.
Q. As a result of -- strike that.
In the course of these discussions was there any type of consensus

Page 332

reached among the opposing parties at the meeting of what the cost savings would be for a combined entity -- combined entity of Coleman and Sunbeam?
A. I don't recall whether there was an actual consensus or a supposed consensus on the basis of what people said but, yes --
Q. What do you recall about whatever was said, whether it be a real or supposed consensus in terms of a number as opposed to no number?
A. Not very much.
Q. You have used various numbers as we have talked about, 0, 40 million all through $150 million in your spreadsheets as assumptions.
Did anyone use those types of numbers at the meeting?
A. I think the purpose of the meeting was instead to work on a ground up basis and move from item to item to item and really to brainstorm about here is what we think on this item, what do you think, and as you are suggesting I think, can we

NOT A CERTIFIED COPY

reach consensus on this or disagreement and perhaps on the basis of that revisit it internally on each side as opposed to how about 100, 150 or how about 75.

Q. Do you recall yesterday when we looked at that schedule, it had $150.5 million.

Was that a document -- let me identify it for the record -- which was MS 78, was that used at the meeting?

A. I believe it was. I think it had previously been discussed with this gentleman -- these gentlemen, the Morgan Stanley and Sunbeam representatives, and so it was I believe a primary document.

I do not recall if they had a document that they presented to us with a different view or modifications to ours.

Q. Did the meeting progress by going down the list on MS 78 and kind of talk through each one of the items as set forth on the list?

A. I believe so, yes.

Q. Did you talk at all at the meeting other than pleasantries which I am

sure you did?

A. I don't believe so.

Q. Is that because you are not an operations person and you deferred to the operational people on the Coleman team?

A. Yes.

Q. Is it fair to say it was primarily the Coleman team that directed the operational savings discussion, Mr. Page and Mr. Levin?

A. Well, we should -- if I could, I would like to refer back to that document in question.

Q. 78?

A. Yes.

Q. Sure. I will grab it for you.

I am handing you MS 78. I turned it to the second --

A. Yes, I have it.

MR. BEMIS: Do you need it?

MR. MARKOWSKI: No. That is all right.

Could you read the question back for me?

(Record read)

THE WITNESS: I believe that is accurate.

BY MR. BEMIS:

Q. Looking again at MS 78 does that in any way refresh your recollection if there was either a stated or presumed consensus as to the cost savings of combining the two entities that the parties reached after their discussion on January 29 as you described it?

A. It provides me with a -- a benchmark that -- around which there was general, I think, consensus but I don't recall whether we departed it -- from it in a positive sense or in a negative sense.

Q. Is the benchmark now that you are referring to the $150 million?

A. .5.

Q. $150.5 million?

A. Yes.

Q. You can hand that back to me?

A. My only recollection was that during the few meetings in which -- that I was present at in which these sorts of cost savings were -- were discussed there was --

there was some commentary about their ability to do better on certain items.

Q. Their ability being Sunbeam?

A. Yes. I think, yes, that Sunbeam, the Sunbeam representatives had a high degree of confidence with respect to their ability to cut costs.

They were prepared to do things that most executives were not able to do or perhaps willing to do. They got -- they had a high degree of confidence in themselves.

Q. When you say the Sunbeam executives, can you identify which or if there was more than one of the executives made statements like you have just told us?

A. I believe it was Mr. Kersh.

Q. Did you ever at any time in your work on the Coleman-Sunbeam transaction see any documents prepared by Sunbeam where they listed out proposed cost savings or synergies similar to what we looked at in MS 78 a few minutes ago?

A. No, I do not.

Q. Following the meeting on January

NOT A CERTIFIED COPY

Page 337

29 what is the next thing that you recall doing in connection -- not necessarily meeting, but in connection with the Sunbeam-Coleman merger discussions?
A. Independent of the Wachtell analysis I do not recall the next specific step or meeting.
Q. Let me show you what we will mark as MS 355.
(MS Exhibit 355 marked for identification)
MR. BEMIS: Mr. Reporter, if you would please date that for me?
THE WITNESS: I have it in front of me.
BY MR. BEMIS:
Q. Referring now to MS 355, did you prepare this document on or about January 30, 1998?
A. I believe I did. I believe I did.
Q. Did you do this -- withdrawn.
Look at the title on page -- strike that.
Is that your handwriting on the

Page 338

first page where it says Sunbeam research?
A. Yes, I believe it is.
Q. Did you have a file by the way that was entitled Sunbeam research in your office?
A. I believe so.
Q. Look at the second page where it says Sunbeam EPS estimates revised for fourth quarter earnings. Do you see that?
A. Yes.
Q. The day before January 29 -- withdrawn.
On the day before you prepared this exhibit as it is dated January 30, Sunbeam's fourth quarter 1997 earnings had been reported in the press, correct?
A. I don't know.
Q. Let me show you a Wall Street Journal article which has previously been marked as MS 206 and see if that helps you, your recollection, and then we can hopefully move on.
A. That would suggest, yes.
Q. You were, without even reference to the newspaper article in the Wall Street

Page 339

Journal, you were aware that Sunbeam had reported that it had reported earnings for the fourth quarter of 1997 that were below analysts' expectations for that quarter, correct?
A. Yes, I believe they were slightly.
Q. Is it your recollection that as a result of missing their fourth quarter earnings estimates, Street estimates, that Sunbeam's stock as reported by the Wall Street Journal had fallen 9.5 percent on that news?
A. Yes. MS 206 certainly suggests that.
Q. You can hand that back to me.
Following the fourth quarter earnings report by Sunbeam which caused this stock drop, did you go back and revisit analysts' earnings estimates for 1998 for Sunbeam and then record them on the document we have marked as MS 355?
A. Yes.
Q. Am I correct then that the earnings estimates that you are showing

Page 340

here for Goldman Sachs, PaineWebber, Merrill Lynch, Oppenheimer, Buckingham Research, those are estimates that the analysts revised after the fourth quarter results for Sunbeam for the year 1997 were announced, is that right?
A. Yes.
Q. Did you go back after your the fourth quarter results were announced as we looked at in MS 206 and make any changes to your models that we have already looked at, MS 104 all the way through MS 107?
A. I don't know but this would be the first step in doing so. I believe I listened on the conference call too.
Q. You are referring to Mr. Dunlap's conference call?
A. Yes.
Q. Mr. Dunlap's conference call, did he state $2 per share were his estimates in January of 1998 for the full year 1998?
A. I believe he did.
Q. In that conference call he was actually projecting forward 11 months of results from whatever they were on January

NOT A CERTIFIED COPY

20 or 29 or 30 of 1998, correct?
A. Yes.
Q. Do you know what a forward looking statement is in the securities business?
A. Yes.
Q. Was Mr. Dunlap's statement in your view a forward looking statement?
A. I don't recall the specific context in which I arrived at the conclusion that Mr. Dunlap was comfortable with $2.
It could have been in response -- I believe it might have been in response to an analyst suggesting are you comfortable with a number such as $2, our numbers, and, it is a subtle distinction between the proactive statement pounding the table I can do, make $2, as part of a scripted call, but, nevertheless, I believe in the Q and A this was the conclusion I came to, and that is certainly a forward looking statement as I understand.
You may want to --
Q. Let me show you a document

previously marked as MS 137 which is just slightly different from the one that we looked at a few moments ago.
The title is a little bit different but the information appears to be basically the same with the handwritten Prudential appearing with the figure $2.15 under the 1998 column Revised.
Do you see that?
A. Yes.
Q. Is that your handwriting?
A. Yes, it is.
Q. You can hand that back to me. I am done with that.
A. This too?
Q. Yes. You can hand that back to me as well.
Mr. Reporter, would you please mark as Exhibit MS 108 a multi-page document the cover page of which is dated February 6, 1998 and the author is shown on the header as being Will Nesbitt.
(MS Exhibit 108 marked for identification)
BY MR. BEMIS:

Q. Let me ask you first, sir, for the record, do you have MS 108 in front of you?
A. Yes, I do.
Q. Did you prepare the first page?
A. Yes, I did.
Q. There are a number of attachments to the document and I tell you now this is the way the document is numbered as being produced and my first question is historically were all of these pages attached together with your cover page?
A. No, I don't believe so. This is a Morgan Stanley document.
Q. There is Morgan Stanley -- Morgan Stanley documents, there is blank pages, there is -- appears to be sections of public filings attached, there is public filings with handwriting on them, there appear to be Project Violet discounted cash flow analyses in the back which was, I think we established yesterday, Project Violet, that at least was used on a CSFB document?
A. Yes.

Q. We have Project Violet acquisition matrix. There is just a large number of documents attached from various sources.
As you sit here today you don't recall assembling all of these this way?
A. No, I do not.
Q. Let's focus then on page 1 of the document which has your name on it. You did prepare this one, correct?
A. Yes, I did.
Q. There is some handwriting on yours which I believe is a public financial, then I don't know what the other word is, do you see it?
A. Yes.
Q. On the right-hand side?
A. I am sorry. I was looking at something else. Okay. Sorry. Go ahead.
Q. Let me try again.
On the upper right-hand corner of the first page of MS 108 there is some handwriting which I read as public financial, and then there is another word. Do you see that?

NOT A CERTIFIED COPY

015316

A. Yes.
Q. Is that your handwriting?
A. I don't believe so.
Q. Do you know whose it is?
A. No, I do not.
Q. Why did you prepare the first page of MS 108?
A. The analysis would suggest that there was further progress in delineating the terms of the consideration and I believe there began to be discussions regarding -- this was reflecting the discussions which involved Sunbeam potentially assuming the discount notes that -- the holding company notes of Coleman in order to avoid the prepayment penalties, and this -- I believe this analysis is an exercise to try to analyze the consequence, merger consequences from that development in the discussions.
Q. As I understand the figures on Ms. 108, they are as -- they are an attempt to arrive at a merger consequence assuming, first of all, cost savings of $75 million; that is one assumption, correct?

A. Yes.
Q. And then there are also factored into the document the net proceeds that would be received from a sale of a Coleman subsidiary, is that right?
A. Yes.
Q. That subsidiary, it is described here as SEATT?
A. Yes.
Q. That is a Coleman security -- what is the name of the company?
A. I think it is called SEATT. I don't -- enlighten me as to --
Q. Honestly I don't recall what it is but I know there was one sold.
Do you remember what the company did?
A. No, not specifically.
Q. In addition to the cost savings variable, the proceeds of the sale, then there is the structural issues of assuming debt from the holding company, those notes, the first and second notes that we discussed yesterday when looking at an exhibit, the Coleman offering memorandum,

MS 241, and then there are certain adjustments for options.
Other than those kinds of variables basically the figures we are dealing with stem from your earlier work in MS 104 through 107; is that fair?
A. Yes, it is, again refining, as you learn more, refining the analysis.
Q. We are here now looking at MS 108 at this page. This is more of a structural approach to the problem with two pricing assumptions. One is savings and the other is acquisition price.
You are then relating those variables to other consequences based on other structural changes that might occur, cash, stock, sale of an asset, assumption of debt, of the like, right?
A. I think the assumption -- no. Your statement is fair, yes.
Q. You can hand that back to me. We are done with it.
I am going to hand you what has been marked previously as Morgan Stanley 81 entitled Project Laser, Proposed Summary

Transaction Terms.
Based on a footer on the document in the lower right-hand corner, I am going to use the date February 6, 1998 from the document.
A. Yes.
Q. Do you have the document in front of you?
A. Yes.
Q. Have you ever seen it before?
A. Yes, I believe I did.
Q. In what context did you see this document?
A. I believe we were presented with this and I am also referring to the Wachtell, Lipton MS 75, as I recall.
Q. Yes.
A. We were presented this as a term sheet for a transaction and I was -- I believe I was present at a meeting which involved certain representatives of CSFB, Morgan Stanley and ourselves and Mr. Maher and myself regarding a potential transaction.
Q. When you say "a term sheet," what

NOT A CERTIFIED COPY

Page 349

do you mean by that?
A. It would be -- it is a summary of the proposed terms for discussion purposes. It is not a formal proposal and it was a basis for discussion in that meeting delineating the kind of key provisions that might later be outlined in an offer, a letter of intent.
Q. So when -- at the meeting there were -- both sides were present in the negotiations, both the Coleman team and Sunbeam, correct?
A. Yes.
Q. Was this transaction term sheet discussed amongst the parties?
A. Yes, it was.
Q. What do you recall about the discussion on or about February 6, 1998 about MS 81?
A. My recollection is that, one, we discussed in some detail the terms as outlined although a number of the terms are somewhat irrelevant if you can't agree on price so I think we certainly jumped right to price and price involved a

Page 350

share-for-share exchange as well as the issuance of warrants and I don't think we at the time of the meeting tried to value the warrants on our own during the course of the meeting.
I believe they were represented, and I am also referring to MS 175 as being roughly $4 a share, and I believe our view which was conveyed to them was that this was -- was not a workable structure, transaction based on price and other matters but that we would get back to them.
Q. Basically the term sheet, if I understood it, for the common stock, there was an implied price that was approximately $22 that was being suggested based on this analysis and for the warrants which there is no price on here, somebody -- someone came up with the figure of approximately $4 but that was a number that wasn't set forth in the document itself, is that right?
A. Morgan Stanley.
Q. Right?
A. Yes.
Q. And whatever had been the merits

Page 351

of a stock and warrants transaction, that transaction never went anywhere, did it?
There was never a warrant proposal ultimately agreed to by the parties?
A. Yes, that is accurate, yes.
Q. After this meeting where the term sheet was discussed I think you said that you would consider it and someone would get back.
Did someone get back to Sunbeam and say this transaction is not acceptable?
A. I don't know whether that was stated. I don't recall whether it was actually just stated in the meeting or whether Mr. Maher did it privately or in what context.
I was not -- if it occurred afterwards, I don't believe I was on a conference call and that would not be atypical.
Q. Can you identify for me as you sit here today any -- anything in this document that you considered at the time or even now -- starting with at the time,

Page 352

let's do that, a misrepresentation by Sunbeam or Morgan Stanley other than issues about what price they were going to offer, et cetera.
I am looking for underlying data. That is just patently in your view a misrepresentation of what the data was at the time?
A. Laser is committed to realizing the full value of the -- it is just an opinion. As the facts, no.
Q. You can hand that back to me. We are done with it.
By the way, how long did this meeting last that we were discussing where you went over the MS 81?
A. I don't believe it was a particularly long meeting.
Q. Where was it held?
A. I believe -- I don't know. I don't know.
Q. Can I see MS 83 please?
A. I can. If you want I will refer to my calendar.
Q. Go ahead. You can go ahead and

NOT A CERTIFIED COPY

0153198

Page 353

do that.
A. My calendar indicates a meeting at 4:00 on the 6th with Morgan Stanley and Gordon Rich with no address, therefore, the default would be MacAndrews & Forbes, I believe.
Q. Your best recollection is a meeting did take place at late in the day on February 6?
A. What I am --
Q. Okay.
Let me show you what has been marked as MS83 which we just looked at but there is some handwriting on it and I would like you to look at it and tell me if that is your handwriting.
A. I believe -- let's just look. I believe this is my handwriting, yes, up at the top and on the first page.
I can't tell whether the -- the words "draft" though don't look like my handwriting but the 10/15/97, whatever that means, that may have been an interest payment date on the holding company.
Q. That is what I thought it was.

Page 354

A. And then from Jerry there was an adjustment to the options and the price but I don't believe the words "draft" -- I can't comment on whether those are my circles or not, and "continuation of draft," I don't believe that is my handwriting.
Q. Okay. You can hand that back to me. Thank you very much. We are all done with that.
Let me show you now a document marked as MS 356.
MR. BEMIS: Mr. Reporter, would you please mark MS 356 with today's date?
(MS Exhibit 356 marked for identification)
BY MR. BEMIS:
Q. I have asked the court reporter to hand to you MS 356 and you have that in front of you, correct?
A. Yes, I do.
Q. Did you receive this document from Credit Suisse First Boston on or about February 12, 1998, which is the date on the

Page 355

fax cover sheet?
A. It would appear so, yes.
Q. On page 2 there is -- the heading is Project Violet Assuming No 338(h)(10) and then Summary Statistics. Do you see that?
A. Yes, I do.
MR. MARKOWSKI: You are referring to the second page of the document.
MR. BEMIS: Yes, the second page of the document, correct.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. What is this document? You can assume I know what a 338(h)(10) election is but beyond that what is it?
A. It is -- let me look at the rest of it.
MR. MARKOWSKI: You are referring just to this page when you asked him what is this?
MR. BEMIS: The whole document because I think it is all related to each other. He will tell me if it isn't.

Page 356

THE WITNESS: There are several cases actually.
BY MR. BEMIS:
Q. I see it starts on page 1. About midway through again I noted a page CPH --
A. There are two cases. It is a little hard to read but one is at -- I just can't read that.
I can probably back into the share price but this is an LBO model, leveraged buyout model.
It is a model that in this case I believe is looking at Coleman on a stand-alone basis as a leveraged buyout so without the benefit of synergies since there are -- there is no strategic acquirer in this case that will bring -- allow the two companies to share synergies, and it is kind -- it is First Boston's standard LBO model, standard in the sense of a template and then all the Coleman data.
Q. It basically just is all Coleman stand-alone data and it doesn't involve any combination of Sunbeam data, correct?
A. That is accurate.

NOT A CERTIFIED COPY

Page 357

Q. It is all data that either comes from a Coleman public statement or analyst projections that they have done, that is, CSFB, correct?
A. Yes. I believe CSFB in some of their work, a fair amount of their work used I/B/E/S numbers as kind of the one meaningful measure of how either of these, in this case, just Coleman, but also Sunbeam.
Q. Is this, the LBO valuation, a measurement of value that one can use in determining the fairness of a transaction or is it just a totally stand alone valuation that you just put in the total mix of information that you have when you are considering what to do in an acquisition?
A. I think it is. It is one measure of value.
It -- in determining fairness which gets into all sorts of other issues, fairness can be analyzed with respect to other alternatives and a leveraged buyout of a business is simply one -- one measure

Page 358

of what the -- what an entity in a leveraged buyout structure can pay for it.
Q. You may hand that back to me. We are all done with it.
A. It tends to be below what a strategic acquirer --
Q. LBO is not going to include any acquisition premium, for example, in normal circumstances, right?
A. I don't understand that statement.
Q. That is good. It is a terrible question. It doesn't make any sense now that I listen to it. Thank you. It doesn't make any sense.
A. I am awake.
Q. As soon as you said it I realized I was awake. It didn't make any sense. Every once in a while --
A. Would you like this back?
Q. Yes. We will put that away too.
Looking at the chronology, the next meeting that you are, I think, identified as appearing at is, or a call or a meeting -- withdrawn.

Page 359

Looking at the chronology when is the next meeting that you attended following the February, I think, the February 6, 1998 meeting that we discussed where the proposal that included the warrants was discussed?
What is the next thing that you did by way of the meeting, telephone conference with Morgan Stanley?
A. With Morgan Stanley?
Q. Morgan Stanley, yes.
A. I have no recollection apart from this analysis which is consistent with my recollection on the 23rd that the next meeting was the 23rd.
Q. Let's go from February 6 to February 23 of 1998 and in that -- between those two dates did you have any internal discussions with the MAFCO people and if you feel free, look at your calendar and see if there is anything there that helps refresh your recollection?
A. According to my calendar there were no meetings that were scheduled and recorded as such.

Page 360

I am sure there was some impromptu discussions but I can't recall when or who attended, and my calendar suggests that on the meeting -- on the day of the 23rd there were actually three meetings that involved various parties to this transaction.
The first two were -- well, let me address the first one.
Morning of the 23rd from 8:00 to 8:30. I do not recall.
Q. Could I ask you, let's hold off on the 23rd and we will take that --
A. Go ahead.
Q. I appreciate your looking. Let's close this out.
Between February 6 and February 23, based on looking at your calendar and your own recollection as you sit here, you don't remember any internal meetings that you were involved with at MacAndrews & Forbes about the Sunbeam-Coleman transaction, is that fair?
A. That is accurate.
Q. Let me show you a couple of

NOT A CERTIFIED COPY

01320

Page 361

documents during that time period and quickly see whether you happened to see those.

I am handing you what has previously been marked in another deposition as MS 82 and I would ask you, please to take a look at it and tell me when you are done.

I don't have any real detailed questions about it.

My first question is going to be, had you ever seen it before?

A. I don't specifically recall seeing this document and having --

Q. The second page refers to Camper Stand-Alone Income Statement Without Sale of Safety and Security?

A. Yes.

Q. Is that the same as SEATT?

A. Yes. As I recall it is not a particularly substantial business.

Q. Then on the last page it refers to sale of safety and security. That would be SEATT as well?

A. Yes.

Page 362

Q. Do you see the handwriting on page 3 where it says Highly Preliminary?

A. Suggests about 80 or 90 million of sales for safety and security.

Sorry. What?

Q. Page 3 of MS 82 there is right next to the stamped draft it says Highly Preliminary. Do you know whose handwriting that is?

A. I think it is mine. No. I don't think it is mine, no. No, I don't. I don't believe it is mine.

Q. Did you -- when you look at the first page where it says Laser Stand-Alone Income Statements, I/B/E/S case, looking at this, would you recognize that as being the same I/B/E/S we have been talking about that collects the analyst information and provides that information to those who subscribe to their service?

A. Yes, yes.

Q. You can hand it back. I did have one last question. One more time.

Is there anything on either -- starting with page 2 and 3 which is the

Page 363

Camper stand alone income statements either with or without sale of safety and security, is there anything as you look at it and as you sit here today that you can see as being a false -- as you look at it or a misrepresentation of any kind, just looking at the information that is laid out there in the sources and the footnotes?

A. That assumes I can read it, right.

Q. I know. They are getting tough after so many photocopies and faxes. I realize that.

A. Well, management case. I don't happen to know what a management case is for Camper.

I don't know whose management. I don't know what that means so I can't tell you whether it is a misrepresentation nor am I intimately familiar at this point based on my recollection of what the management case -- if it in fact was our management case, what it was, so I can't comment on the first two pages.

Q. How about the first page?

Page 364

A. I have no basis to assume that -- the problem I have with an I/B/E/S case is I/B/E/S doesn't do projections so to refer to this as an I/B/E/S case suggests that I/B/E/S prepared -- that they used I/B/E/S data in preparing this schedule and they may have but I don't believe I/B/E/S looks out more than a year or two. They may have taken that and then used their own thoughts, own expectations to then --

Q. Make arithmetic projections?

A. Yes. I would say this is misleading. It is not an I/B/E/S case. It is a case which utilizes I/B/E/S.

Anyway, I just can't -- there may be a footnote here which explains that but anything after '99 is their own thinking, not I/B/E/S.

Q. But you know that when you look at the document that I/B/E/S -- if you are saying I/B/E/S doesn't make the projections, you know that whatever they are doing with it I/B/E/S is only providing information for a certain number of years and the balance is somebody else's

NOT A CERTIFIED COPY

Page 365

projection?
A. Yes, but you are asking me -- I am suggesting to refer -- let's not get into it.
Q. Is that all you can find?
A. Yes.
Q. Okay. We will set that aside.
MR. BEMIS: We are going have to take a break at this point.
Do you want to break for lunch here and take 30 minutes, 35, 40 minutes? We have to take a break.
THE WITNESS: Sure.
MR. BEMIS: If people get back early we will start early.
THE VIDEOGRAPHER: The time is 12:30 p.m. We are going off the record.
(Luncheon recess: 12:30 p.m.)

Page 366

AFTERNOON SESSION
1:13 p.m.
THE VIDEOGRAPHER: The time is 1:13 p.m. We are back on the record.
BY MR. BEMIS:
Q. Let's turn to February 23 of 1998. I think you earlier told me you thought there were three different meetings on that date that you attended; is that correct?
A. According to my schedule, my calendar, I have three meetings listed during the day that relate to Coleman-Sunbeam.
I don't recall the agenda or what was discussed in the 8:00 a.m. meeting.
Q. Before you move on from the 8:00 a.m. to compare it to the MS 75, the first meeting that is listed under February 23, and ask you if the people that are listed there which is yourself, Mr. Page, Mr. Levin, Mr. Shapiro, Mr. Duffy and Mr. Geller, along with Messrs. Stynes, Fuchs and Goudis in New York to conduct due diligence, is that the 8:00 a.m. meeting?

Page 367

A. Yes, I believe it would be. Yes, it was.
Q. Was this the first meeting that you had to conduct due diligence on Sunbeam?
A. "You" meaning me?
Q. Yes, sir, that you attended.
A. I believe that I would consider the meeting in which our group -- let me find the meeting.
MR. MARKOWSKI: Could you read the question back for me please?
(Record read)
THE WITNESS: My definition of due diligence is anything that really helps your understanding, in this case, of Sunbeam, and so to the extent we are reviewing or discussing public documents, analyst reports, I consider -- so maybe it is a definitional question, but if what you are referring to are face-to-face meetings with management of Sunbeam then I would also characterize the previous meeting in which synergies

Page 368

were discussed as general due diligence sessions.
BY MR. BEMIS:
Q. Do you remember as you sit here today what the gentlemen at this meeting along with yourself discussed as a matter of due diligence at this 8:00 meeting, assuming again that is the time it took place based on your calendar?
A. No, I do not recall the specific content of that due diligence session and whether -- specifically whether it was focused more on Sunbeam or more on Coleman.
Q. Do you have any notes of the meeting?
A. Apart from what I have provided, no.
Q. Did you in the course of any of the meetings that you attended with, whether it be Sunbeam or internally, ever have a checkoff list of due diligence items that you were going -- about Sunbeam that you wanted to investigate?
MR. MARKOWSKI: Mr. Nesbitt personally?

NOT A CERTIFIED COPY

01 5322

Page 369

MR. BEMIS: Whether he had it or he saw it and it was prepared by someone else who was managing the list.
THE WITNESS: I don't believe that I created such a list and I have not seen in discovery any list and I don't -- I just have no recollection of such a list existing but, you know, it is entirely possible.
BY MR. BEMIS:
Q. The second meeting that is identified on MS 75 and also is referenced on your calendar, do you recall that meeting?
A. Only as it was characterized by Mr. Ward's presence but I don't recall the specific agenda and discussion in that meeting.
Q. The second meeting was strictly among the Coleman team, correct?
A. Yes, that's accurate, Mr. Duffy, Mr. Ward of CSFB and Mr. Maher and myself.
Q. What time does your calendar show that meeting taking place?
A. 12:15 to 12:40 but I can't --

Page 370

again, the 12:40 is not after the fact and may have just been a default of some sort.
Q. Do you recall as you sit here today what the subject matter of this meeting was that you have identified starting based on your calendar at 12:15, February 23, 1998?
A. No, no, I do not.
Q. Do you recall any documents being discussed at the second meeting; as an example, your spreadsheet analysis of any of the ones that we have looked at such as MS 104 through 107?
A. No, no. I think it was a higher level sort of discussion primarily between Mr. Maher and Mr. Ward who -- Chuck Ward was a senior investment banker at that time at CSFB.
Q. Was Mr. Ward senior to Gordon Rich?
A. I believe that is accurate, yes.
Q. I would like to go back to the first meeting. One question I forgot to ask you.
Do you recall any documents being

Page 371

exchanged at the first meeting on February 23, 1998 which I believe your calendar shows starting at approximately 8:00 a.m.?
A. No, I don't.
Q. Let's turn to the third meeting which is the meeting where the document we identified as MS 84 earlier was discussed.
I want to hand that back to you to put you in a point of reference.
Do you have that document in front of you?
A. Yes, I do.
Q. You have given us some information about --
MR. MARKOWSKI: Could I have a copy?
MR. BEMIS: I am sorry. I think there should be one in there. I think I saw it when I was looking for my chronology. If not I will give you another one.
MR. MARKOWSKI: Yes.
BY MR. BEMIS:
Q. Who asked you to attend the evening meeting on February 23?

Page 372

A. I believe it was Mr. Maher.
Q. Did he tell you anything about what was going to occur at the meeting?
A. It was going to be a presentation of Sunbeam's long range strategic plan, what they thought, what their expectations were for the business.
Q. In the future?
A. In the future, yes. Well, yes, as well as it was -- let me rephrase and start again.
It was an opportunity to ask questions and to work through a presentation on the part of the Sunbeam management team on their operating performance ultimately that included some discussion of results as they were experiencing them at that point and, yes, very importantly, their expectations for the quarter, their expectations for the future on a product line by product line basis.
Q. Again, it was expectations of future performance even if -- based on what they knew at that moment in time?

NOT A CERTIFIED COPY

Page 373

A. Yes.
Q. These projections went forward how many years that you were being presented with?
A. I think it was through 2000.
Q. This plan that you looked at really was focusing on the remainder of 1998 which was 10 months plus a few weeks plus and then 1999 and the year 2000, correct?
A. Yes, yes, and, yes, and not only results but strategic initiatives, here is how we think about the business, here is what we as operating executives are doing; very important for Jerry Levin, Paul Shapiro, Joe Page, Ron Perelman to hear that if our company stock that we would then own in Sunbeam is going to be entrusted in the hands of this management team and we are to receive consideration based on their stewardship of the business.
Q. Did they -- did anyone at the meeting on behalf of Sunbeam say that the strategic plan would not under any circumstances be changed over the next

Page 374

three years?
A. No.
Q. Did anyone at the meeting make any promises or representations to anyone at the meeting representing the Coleman side that there would never be any changes in the strategic plan?
A. Repeat the question.
Q. Sure.
Did anyone representing Sunbeam, Mr. Kersh as an example only, did he make any representations in the form of promises or commitments, that is our strategic plan and it will not change over the next three years no matter what events occur?
A. No.
Q. Have you seen strategic plans for other businesses in the past?
A. Yes.
Q. Have you seen them based on three years and five year models just as examples?
A. Yes.
Q. Have you seen those plans sometimes not come to fruition?

Page 375

A. Yes, I have.
Q. Have you seen management after they put forward a strategic plan to use those terms that six months later or a year later they decide that they have to make changes in the strategic plan?
A. Yes.
Q. Have you had that happen at MacAndrews & Forbes with companies controlled by Mr. Perelman?
A. Yes.
Q. Let me show you before we get into the details a couple of other copies of MS 84 and I just want to see if any of them have your handwriting on them and if we can identify them then we will use that one and no one else's.
A. Fine.
Q. I want to show you first MS 81 which has been previously marked in another -- excuse me, 181, and ask if that is your handwriting on MS 181?
A. No, it is not.
Q. Do you know whose it is?
A. No, I do not.

Page 376

Q. You may hand it back to me.
I will show you now what has previously been marked as MS 182.
A. Don't rip it.
Q. Okay. Fair enough. We are even now, right?
I have handed you Exhibit 182 and there is a date on the first page and I believe there is a couple other handwritten notes on the interior of the document.
Is any of that your handwriting? The other handwriting is on the very, very last page.
A. I don't believe it is.
Q. Do you know whose it is?
A. No.
Q. I am going to hand you now what has been marked as MS 283 -- excuse me -- 183.
There is handwriting both on the cover page which looks like it was sent to someone --
A. This is not my handwriting and I don't recognize it.
Q. Okay. You may hand that back to

NOT A CERTIFIED COPY

Page 377

me.
I am going to hand you now what has been previously marked as MS 184.
A. This is not my handwriting and I don't recognize it.
Q. How long did the meeting on the evening of February 23 last where the presentations were made that we have discussed and the document we have been using as a baseline for the discussion is MS 84?
A. I would have to guess three, four hours. It was a long meeting, certainly longer than any of the other meetings with the representatives.
Q. How did the meeting start?
A. I believe that Mr. Kersh -- actually, I don't recall how it started but --
Q. I mean other than pleasantries, I mean the substantive part of the meeting.
A. I understand.
I think there was a brief introduction, I believe, on the part of I don't know who but on the part of kind of

Page 378

Morgan Stanley, here is what we are going to do.
Then we moved very quickly to discussion of this document, this being the MS 84, page by page at a presentation with the opportunity to ask questions, a presentation by the Sunbeam management team, and I believe it was primarily -- I would have to -- I don't know if there are logical places where it would have meant that anyone other than Kersh would have been speaking but it was primarily Mr. Kersh.
Q. Do you remember Mr. Fannin saying anything at the meeting?
A. I do, but -- and if you want I will refer -- I just don't recall at this point what he was saying.
Let me -- I don't recall the substance of any comments that he made.
Q. At any time during the course of the meeting did anyone on the Coleman side of the transaction ask anyone representing Sunbeam including Morgan Stanley for copies of any of Sunbeam's financial statements

Page 379

for a period after year end 1997?
A. I don't believe that specific request was made at that meeting.
Q. Do you ever recall any meeting at all where anyone from the Coleman side of the transaction asked for -- anyone -- for a copy of a financial statement of Sunbeam, audited or unaudited, for any period after year end 1997?
A. I don't recall at any meeting I was present that that question -- specific question was asked.
Q. Do you ever recall either at this meeting or any other meeting being told by anyone, whether it be someone on the Coleman side or on the Sunbeam side of the transaction, stating in words or substance that Sunbeam would not provide to the Coleman side of the transaction its financial statements for any period after year end 1997?
A. I don't believe anyone made that affirmative statement.
Q. After Mr. -- when Mr. Kersh spoke did he use a projector putting the slides,

Page 380

if you will, of the document MS 84 up on a screen page by page or did you just work through a hard copy of the document?
A. I don't recall whether there was a slide presentation. We certainly had hard copies from which to work.
Q. Would you just -- would you refer to MS 84 as a DEC, D-E-C?
A. I will if you like.
Q. You have heard the term used before? Other people have used that term. Would you use that term?
A. No. I would use Power Point.
Q. Some people call it Power Point, Power Point Dec.
A. Whatever you want me to call it.
Q. You created these presentations on Power Point, I take it, yourself?
A. Yes.
Q. After Mr. Kersh made his presentation was there any presentation by anyone else?
A. I don't believe there was a presentation by anyone from Morgan Stanley.
I believe Mr. Goudis did speak

NOT A CERTIFIED COPY

Page 381

but I do not recall -- it may have been a short presentation of sorts but I just don't recall the commentary or the substance of it.

Q. You don't recall Mr. Kitts making any presentation, right?

A. That was implicit in my statement regarding Morgan Stanley.

Mr. Kitts is an employee of Morgan Stanley. Was.

Q. Was.

You identified that there were some materials -- there were some materials handed out at the meeting that had been prepared by Morgan Stanley.

I am going to show you a document previously marked as MS 187 and ask you if that is the document you are referring to?

A. Sure.

Q. I said 187. I meant 186, I guess. I misspoke.

I think you may have actually identified this for me the other day when we were going over documents you reviewed in anticipation of your deposition.

Page 382

I hand that to you, MS 186.

For the record this was previously marked in another deposition.

A. Am I supposed to be doing something?

Q. I apologize. Let me ask a question.

A. Sure.

Q. You have MS 186 in front of you?

A. Yes, I do.

Q. You have had a chance to look at it at least briefly now?

A. Yes.

Q. Was this the document that you recall being handed out at the meeting on February 23, 1998?

A. Yes, it is.

Q. Was the document discussed at the meeting by those in attendance in the manner that Mr. Kersh did his presentation of MS 84?

A. I don't believe that this document was the basis for a presentation. I believe it was handed out at this meeting.

Page 383

Q. When you got -- did you get a copy of the document?

A. Yes, I did.

Q. Did you take it from the meeting with you?

A. Again, I believe I received this at that meeting.

Q. My question was even if you received it did you take it with you when you left the meeting such that you had a copy in your files?

A. Yes, I believe I did.

Q. Did you go through the document in detail after the meeting on February 23?

A. Yes, I did. Yes, we did.

Q. When you say "we," you mean the Coleman team?

A. Yes.

Q. Did you find anything in the document when you went through it that you felt was a misrepresentation by -- of Morgan Stanley?

MR. MARKOWSKI: You are asking him if he made a determination back at that time?

Page 384

MR. BEMIS: Yes, at that time when they went back and reviewed it, that is correct.

THE WITNESS: At that time I was not aware of any misrepresentation in this document.

BY MR. BEMIS:

Q. As you sit here today do you believe there is something in here that Morgan Stanley intended to misrepresent to you at the time this document was presented on February 23?

A. I can't begin to speculate as to their intentions.

Q. Do you think there was anything that Morgan Stanley misrepresented on February 23, 1998 that they knew at that time was a misrepresentation?

A. At this point, February 23, based on information that I am aware of, that I had been shown through discovery with Mr. Markowski, I am not aware at this point that there was an intent to misrepresent.

Q. You can set the document aside. How was the meeting left on

NOT A CERTIFIED COPY

01533926

February 23 after the presentations and the handouts and whatever social discussion there was?

A. Well, the objective of the meeting was for Morgan Stanley and Sunbeam to provide us with a basis for evaluating the merits of accepting Sunbeam's stock since we would be significant shareholders and so we were -- I think it provided, based on what we learned that night and were told, I think it is fair to say that -- and the representations that were made -- that it provided us with a higher degree of confidence in the stock of Sunbeam, in the value of the stock of Sunbeam and in the future of Sunbeam such that we were in a better position to evaluate the merits of cash versus stock and at what price in total, all of the various attributes, so it really, apart from going back and digesting this, which from our side was of course priority one, it provided us with some footing with which to then accelerate or continue negotiations with the Sunbeam -- Sunbeam and its

representatives.

Q. Did the Coleman side of the transaction, the Coleman team go back and digest the material that he either heard presented or saw on paper at the February 23, 1998 meeting?

A. Yes.

Q. The documentation of the transaction by contract occurs as of February 27, 1998 although the documents I think were actually signed on the morning of February 28?

A. Okay.

Q. In the period of time between February 23 and February 27 what steps did the Coleman team take to verify the information that was presented at the February 23 meeting, either in writing or orally by Mr. Kersh or by Mr. Goudis if he happened to speak?

A. As you are aware we had engaged CSFB and the combined team of CSFB, our management team and the other principal representatives of MacAndrews & Forbes reviewed this material.

I can't say that I was present in every meeting, particularly those that might involve Mr. Levin and Mr. Page regarding -- and possibly Mr. Perelman -- regarding the strategic plan and its merits and how credible it was but I think it was during that period that there were a lot of work in reviewing this material and discussing it but like with I think lots of different discussions and I think, I assume very importantly you know ultimately Mr. Levin, based on his discussions with the Sunbeam team, kind of acknowledging the strategic plan and its credibility.

Q. Is it your -- strike that.

Were you present at any meeting where Mr. Levin was present where he acknowledged the viability, if you will, of the Sunbeam strategic plan set forth in MS 84?

A. I apologize. Could you repeat the question?

Q. Sure.

Are you all right?

A. Yes.

Q. Were you present at any meeting where Mr. Levin spoke and said words in substance that I have reviewed the Sunbeam strategic plan and I believe it is a viable plan?

A. I don't recall Mr. Levin being in a meeting in which Mr. Levin made that affirmative statement.

Q. Do you recall being at any meetings where Mr. Levin said in words and substance to Mr. Perelman or to other representatives of MacAndrews & Forbes that Mr. Perelman should take cash and not stock from Sunbeam?

A. I believe there was a view internally all else being equal that cash was better than stock but that is a hypothetical comparison in this situation. We were in the midst of a negotiation. Since --

Q. Sorry. I interrupted.

A. No.

Q. Did Mr. Levin at any meeting that you attended or any meeting that you were told that he spoke express to the Coleman

NOT A CERTIFIED COPY

Page 389

side of the transaction that he intended if the deal was consummated to sell his Coleman stock that he had or he would have pursuant to options on the market, take cash and not take Sunbeam stock?
A. No. His intent, no.
Q. Do you know in fact if he did that?
A. I am aware that he did.
Q. Mr. Levin, you understand it, he did in fact not take Sunbeam stock but he liquidated his Coleman position and took cash for his Coleman stock, correct?
A. Yes, I am aware of that.
Q. Were you ever told or present -- withdrawn.
Were you ever told that Mr. Levin said to the Coleman side of the negotiation team that there was no way in his view that Sunbeam could maintain the operating margins that it was claiming that it had achieved in 1997, for example?
A. No, I don't believe so.
Q. Were you ever -- were you ever present or did you ever hear that

Page 390

Mr. Perelman told Mr. Levin, why can't you achieve the operating margins at Coleman that Mr. Dunlap is achieving?
A. I don't believe I was -- I was present at any meeting where Mr. Perelman said that.
Q. Did you ever hear from anyone that Mr. Perelman said that to Mr. Levin in words or substance even if you were not present when it was said?
A. No.
Q. Do you know what Coleman's operating margins were in 1997?
A. Percentage terms?
Q. Yes, in percentage.
A. No, I don't recall specifically. There is an important distinction between theirs and Sunbeam's.
Q. That may be the case. I wasn't trying to make a comparison.
A. I understand. No. I don't recall the specific margin.
Q. Those would be set forth in Coleman's 10-K, would they not?
A. Yes.

Page 391

Q. We -- rather than taking you through that I can go back and look at the 10-K and the auditors' financial statements will give us those figures, correct?
A. Yes, sir.
Q. Let me show you what has been marked as MS 359 which the court reporter will mark for us now.
(MS Exhibit 359 marked for identification)
BY MR. BEMIS:
Q. Do you have MS 359 in front of you?
A. Yes, I do.
Q. Did you prepare this letter to the Blackstone Group?
A. Yes, I did.
Q. Is the list of enclosures that are set forth in the letter correct?
A. Correct in what sense?
Q. That you actually sent them to them. I realize they are not attached to the letter.
A. Right. Okay.
Yes, to the best of my knowledge

Page 392

it was attached.
Q. The Sunbeam long range strategic plan, item 6, the MS 84 that we have been talking about, correct, without the handwriting?
A. Yes.
Q. Item number 7 would be the MS 186 that -- the pack of materials that we went through a minute ago, right?
A. Right.
Q. Who was the Blackstone Group and why were you sending the letter to them?
A. The Blackstone Group is a -- an investment bank and private equity firm, investment concern, and they were asked to -- I don't recall who they were retained by in connection with the potential restructuring of the company.
Q. Was this --
A. And the board but -- sorry.
Q. Did the Blackstone Group perform a valuation of warrants that were eventually issued to Mr. Perelman's entities as a result of a settlement with Sunbeam?

NOT A CERTIFIED COPY

015328

A. I believe they may have.
Q. What was the valuation that the Blackstone Group placed upon the warrants that Mr. Perelman's or his entities received that were valued at approximately $7 per share for 23 million warrants?
MR. MARKOWSKI: I object to the form of the question.
BY MR. BEMIS:
Q. Let me ask it again. I got a little bit tangled up because I was speaking to the floor. The court reporter couldn't hear me. Let me try again.
What valuation did the Blackstone Group place upon the warrants that Mr. Perelman's entities ultimately received as a result of the settlement with Sunbeam in August of 1998 that -- where there was 23 million warrants issued I think at a strike price of $7 if I recall correctly?
A. That is a different question. I don't recall the specific number but I am sure there is analysis to that effect if you want to jump to that.
Q. We will do that a little bit

later.
Let me show you one more document and then we will go forward from February 23.
Mr. Reporter, would you please mark as MS 360 a July 10, 1998 document, I believe, authored by Mr. Nesbitt.
(MS Exhibit 360 marked for identification)
BY MR. BEMIS:
Q. Do you have MS 360 in front of you?
A. Yes, I do.
Q. Is this a letter that you wrote to the Blackstone Group on or about July 10, 1998?
A. Yes, it is.
Q. Did you send the enclosures that are identified in the letter?
A. Yes, to the best of my knowledge, yes.
Q. Was this letter, MS 360, a second transmittal of information to the Blackstone Group the other being MS 359?
A. At their request, yes.

Q. All of this in connection with the valuation of warrants that were being considered to be issued to Mr. Perelman's companies in settlement of a controversy with Sunbeam?
A. I cannot say that all of this information was necessary in their review of the valuation for the benefit of the warrants.
Q. Okay. You can hand it back to me.
Do you know any other work that the Blackstone Group did for Mr. Perelman or in connection with Sunbeam other than the valuation of the warrants that were issued as part of the August 1998 settlement with Sunbeam?
A. No.
Q. After February 23 did you do some -- did you do some calculations to try to determine how much stock and how much cash Mr. Perelman's entities could receive in exchange for their interest in Coleman without having to go through a shareholder vote at Coleman or Sunbeam?

A. After which date?
Q. After February 23, 1998?
A. I believe I did.
Q. What was the precise reason that you did that analysis?
A. I believe it shortened the time frame during which we could close the transaction.
Q. Because you could close it without a shareholder vote, correct?
A. Yes.
Q. Was the concern in terms of time as you have expressed it a concern over a shareholder vote of Sunbeam or a concern of a shareholder vote of the Coleman Company, Inc. or both if that is the case?
A. I believe the concern was over the Sunbeam shareholders since we are speaking about, I believe, a New York Stock Exchange rule which limits the amount of stock that can be issued, something like 18-1/2 or 20 percent or so, I can't recall at the time.
If you issue below that you don't need a shareholder vote.

NOT A CERTIFIED COPY

Q. If you issue above that number then you do have to get a shareholder vote?
A. Exactly.
Q. The way the transaction between Sunbeam and Coleman is finally structured Sunbeam did have to issue a certain number of new shares which the concern was would that issuance bump up against the New York Stock Exchange requirements; is that correct?
A. I believe that is accurate.
Q. Was the transaction that ultimately was agreed upon between Sunbeam and Coleman, was it negotiated in such a way that Sunbeam did not cross over the New York Stock Exchange threshold for issuance of new stock that would require a shareholder vote?
A. I wouldn't go that far. I would say that was one consideration but if you are a penny apart you would prefer to not cause yourself to have to incur the expense and disruption and time delay of a shareholder vote at the Sunbeam level because you hadn't done your homework.

Q. You attended the two board of directors meetings of the Coleman Company, Inc. at which time the merger was presented to the board of directors, correct?
A. Yes, that's accurate.
Q. Are you aware of any instructions -- strike that.
Up to the time of the presentation to the board of directors of the -- of the Coleman Company, Inc. the first of which was February 25 as the record has already shown us --
A. Okay.
Q. -- did you provide to Morgan Stanley any of the valuation materials you had done on the merger transaction, as an example only, Morgan Stanley Exhibits 104 through 107?
A. I don't believe so.
Q. Are you aware of Credit Suisse First Boston up to the date of February 25, 1998 providing to Morgan Stanley any of the evaluation materials that Credit Suisse First Boston had done in connection with the analysis of the potential merger

transaction?
A. No, I am not.
Q. Internally, given that you had code names for this project, whether it be Project Laser or Project Violet that were being used did you keep the information that the Coleman team had developed with its advisers confidential within your negotiating group?
A. Not in its entirety.
Q. What did you share with Morgan Stanley?
A. Cost savings.
Q. The synergies?
A. Yes.
Q. Anything else that you can think of?
A. I think there was discussion on both sides about the projected operating results of the businesses, the key element of due diligence, but as it related to negotiating strategy, structural considerations, preferences, line in the sand issue, what do we really want to do in life, no, that is our side of the

negotiation or their side as the case may be.
Q. Let's go to the board of directors meeting on February 25, 1998. Did you attend the entire meeting?
A. Yes, I did.
Q. Was --
A. Unless there was some sort of audit or whatever but I think this was a special meeting.
Q. I am not aware of anymore than one meeting. I think you are correct.
We are going to change the tape right here.
THE VIDEOGRAPHER: The time is 2:07 p.m. on September 1, 2004. This is the end of tape number two, volume two of the videotaped deposition of Mr. William Nesbitt.
(Pause)
THE VIDEOGRAPHER: The time is 2:09 p.m. on September 1, 2004. This is tape number three, volume two of the videotaped deposition of Mr. William Nesbitt.

NOT A CERTIFIED COPY

015330

BY MR. BEMIS:
Q. I am going to show you what has previously been marked as MS 88 which is a copy of board minutes, some presentation materials that were attached to the minutes in case you need to make reference to them, I hand that to you.
Let me have that back a second. I want to make sure there is no two copies stapled together. There you are one more time.
Do you have MS 88 in front of you?
A. Yes, I do.
Q. This has previously been identified as minutes of the February 25, 1998 board of directors meeting of the Coleman Company, Inc.
If you need to refer to it feel free to do so.
In the minutes there is a reference to, in the second page, very first paragraph, of Mr. Levin presenting the company's results for the fourth quarter and the full year 1997 as well as

an outlook for year term prospects, do you see that?
A. Yes, I do.
Q. Did Mr. Levin's presentation differ in any way from the assumptions you made in the models that you had created for Coleman's 1997 performance in the various analyses that we have looked at?
A. Can I see the presentation?
Q. Sure. Mr. Levin's presentation?
A. Yes.
Q. I don't have Mr. Levin's presentation. I am just referring to the notes.
A. No one has it, the board?
Q. They have it. I don't have it so I can't be more helpful than that.
A. We are talking about 104 -- 104, 105, 106, 107?
Q. Yes, sir.
A. I don't know. There is a substantial period of time that had transpired between the board meeting as well as most importantly the realization of results and continuing valuation of results

so I have no reason to believe there were substantial differences but I just don't know.
Q. Did you speak at the board meeting at all?
A. I don't believe so.
Q. Had you presented -- withdrawn.
A. I should refer --
Q. I will tell you I don't see there is any reference to you speaking, Mr. Nesbitt.
A. Okay.
Q. In CSFB's presentation at the board meeting of February 25, did CSFB offer any financial modeling or projections that differed with what you had prepared in your models such as MS 104 through 107 that we have been discussing?
A. Well, I believe that MS 104 and 105, 106, 107 did not benefit from -- I lost my numbers on it -- but the February 23 long range strategic plan and so I believe First Boston's analysis which evaluated Sunbeam on the basis of two sets of projections; one based on the long range

strategic plan; two, based on analysts' estimates, therefore differed somewhat from 104, 105, 106 and 107.
Q. What projection did Credit Suisse First Boston prepare based on the -- on the long range strategic plan, MS 84?
A. I believe that in the first -- in one of the board meetings, and we can, if we have the documents we can refer to them, that First Boston prepared some pro formas which included projected operating results of Sunbeam and Coleman and probably some historical combination numbers based on recent historicals but certainly my guess is -- my recollection is '98 and '99.
Q. My question was a little bit more precise. Perhaps you answered it.
A. Let's try again.
Q. What is the -- what document did Credit Suisse First Boston prepare that was based on the February 23 long range strategic plan document marked as MS 84?
A. I believe First Boston made a presentation to the board of directors which would be customary which was to --

NOT A CERTIFIED COPY

015331

Page 405

since -- particularly since we were receiving stock as part of the consideration, as to the pro forma analysis, a pro forma analysis of the combined company.

Q. What information out of MS 84 did Credit Suisse First Boston to your knowledge use in any long range projection that they were making to the board of directors? What did they use?

A. I believe there was some important top line data in the two documents -- and bottom line data in the documents that were presented on the 23rd. I can refer to them again.

Q. What I am referring to is what did Credit Suisse First Boston put into a report that they prepared?

A. Can we look at that document please?

Q. I don't know what document you are referring to. I can give you MS 84 if you want.

A. Your colleague seems to be aware.

Q. If this is the presentation,

Page 406

there was some documents handed out.

A. Okay.

Q. I will give you one that was apparently presented by Credit Suisse First Boston.

A. Okay.

Q. This is MS 112 which has previously been marked.

MR. MARKOWSKI: May I have a copy?

MR. BEMIS: Yes. I am sorry.

BY MR. BEMIS:

Q. Do you have that in front of you, MS 112?

A. Yes, I do. Sorry.

Q. Where in MS 112?

A. I am looking.

Q. Let me get the question out so the record will know what I am asking.

Where in MS 112 which is the Credit Suisse presentations of February 25, 1998 is there any reference to the Sunbeam long range strategic plan, MS 84?

A. Well, if you turn to page 14, okay?

Page 407

Q. Yes.

A. Operating assumptions, SOC, ticker symbol for Sunbeam, long term strategic plan, SOC projections for 1998 and 2000 and estimates of 2000 and 2002.

I assume therefore that '01 and '02 from First Boston is an extrapolation, I am not sure, but it references footnote 2, long range strategic plan, the discounted cash flow for SOC.

Q. Anything other than that in the report?

A. Well, I will continue.

Q. You are on page 13. Is there anything else in the report that makes any reference to the strategic plan MS 84?

MR. MARKOWSKI: He was referring to page 14 I believe.

BY MR. BEMIS:

Q. Yes, page 14. Did I say 13? I misspoke. Sorry.

A. I am inferring from your tone of voice that I answered the wrong questions. I thought you asked if there was any relationship between the documents prepared

Page 408

there and the materials presented on the 23rd. I am referring to page 14, yes, there is. There is a question -- go ahead.

Q. Let's slow down.

Is there anywhere else other than page 14?

A. Page 13 also.

Q. Page 13?

A. It references a DCF based on those numbers. It provides an enterprise value range based on both -- the base case which I think is really related to I/B/E/S estimates and then the long range strategic plans so two -- actually four different approaches.

Q. What Credit Suisse First Boston did, start on page 13, they took some numbers from the long term strategic plan and calculated enterprise values, right?

A. Yes, exactly.

Q. Those numbers don't appear in the long range strategic plan, the enterprise value?

A. No.

Q. And then Credit Suisse First

NOT A CERTIFIED COPY

Boston did its own analysis, did three other analyses and said, look at all the different analyses that are available?
A. Absolutely.
Q. Then on page 14 Credit Suisse First Boston took, as I understand what you believe they did, they took figures for 1998, 1999 and 2000?
A. Yes.
Q. Which were in the MS 84 and then they also did estimates themselves for 2000 and 2002, correct?
A. Both of us are interpreting this footnote but, yes, the absence of the numbers in the strategic plan would suggest that they extrapolated beyond that.
Q. Then they looked at those numbers, whatever the long term strategic plan and estimates were that they put on the electronic spreadsheet. They also compared those numbers to a base case which is footnote 1, correct?
A. Yes.
Q. And First Boston said that these are the base case, footnote 1, these are

projections developed in conjunction with CLN. That is Coleman, correct?
A. Yes.
Q. Management based on equity analyst research?
A. Yes.
Q. So, again, Credit Suisse First Boston was presenting with various analyses that had been done by different people and then was presenting whatever opinions or judgments it could from its analyses; is that fair?
A. Yes, sir.
Q. You can set MS 112 aside or hand that back. I will take it out of your way.
Do you remember any discussions at the February 25 board meeting that specifically identified any work that Morgan Stanley had done in connection with its role as investment banker to Sunbeam?
A. May I refer to the minutes?
Q. Sure. You go ahead, sure.
A. I apologize. Could you repeat the question? I want to answer it accurately.

Q. Sure.
Do you remember any discussion at the February 25 board meeting that specifically identified any work that Morgan Stanley had done in connection with its role as investment banker to Sunbeam?
A. I think -- I believe in recounting the history of the transaction and discussions back and forth, summarized by Mr. Maher, there was probably a reference to Morgan Stanley's involvement as investment banker. That is the extent of it.
Q. At any point during Credit Suisse First Boston's presentation did they say to the board of directors of Coleman we guarantee to you that the projections that we have put in our base case in that February 25, 1998 projection are guaranteed to you board of directors to come true, did they tell you that?
A. No.
Q. Did you believe that to be true that Credit Suisse First Boston's base case was a guarantee by them that those things

would indeed happen over the next five years?
A. No.
Q. Indeed the projections that Credit Suisse First Boston gave you in the base case, in the February 25, 1998 board presentation materials that we just went over, I think it was MS 111, 112, they didn't come to pass, did they?
A. No.
Q. Did Credit Suisse First Boston in your view, your investment banker, did they misrepresent to the board of directors those projections that they had calculated based on what analyst information they had available to them?
A. They accurately represented that those numbers were the culmination of due diligence with the Sunbeam management team and Morgan Stanley and analyst estimates and they conveyed them to us.
Q. Did they make misrepresentations to you?
MR. MARKOWSKI: The "they" is First Boston?

NOT A CERTIFIED COPY

015333

Page 413

BY MR. BEMIS:
Q. Credit Suisse First Boston.
A. I think the way I answered it, I said they accurately represented the work that they had done so, no, they did not make misrepresentation.
Q. Can you tell me, as of the board meetings on February 25, 1998, can you identify for me any misrepresentation that Morgan Stanley made to you where you were present concerning work that they had done, like Credit Suisse First Boston had done, that you just described for me?
A. What is the date again?
Q. As of February 25, 1998.
A. I am not aware of what Morgan Stanley knew at that point on the 28th but of course I have learned later or I learned that later there was information subsequent to that which suggested that the company might not meet its earnings estimates but let's --
Q. Let's focus up to February 25. We will deal with what may have happened later. That is where I want you to

Page 414

concentrate.
Are you aware of any misrepresentation that Morgan Stanley made to you in a meeting, for example, that you attended or that you were told that Morgan Stanley made up to February 25, 1998 about the estimates or analysis they had done in connection with the Coleman-Sunbeam transaction?
MR. MARKOWSKI: Could you read the question back for me please?
BY MR. BEMIS:
Q. I will just ask it again. It will be faster.
As of February 25, 1998 are you aware that Morgan Stanley made any -- withdrawn.
Let me try it one more time.
As of February 25, 1998 as you sit here today are you aware of any misrepresentation that you know that Morgan Stanley made to you as of that date based upon the information and analyses they had gone through as of February 25, 1998 in connection with the Coleman-Sunbeam merger?

Page 415

MR. MARKOWSKI: Are you asking whether he knew -- let me ask this.
I am going to object to the form.
Is the question whether he knows that Morgan Stanley knew it was a misrepresentation prior to February 25?
BY MR. BEMIS:
Q. That is my question; that Morgan Stanley knew it was a misrepresentation.
A. I have no basis to know that Morgan Stanley knew it was a representation.
Q. You mean misrepresentation?
A. A misrepresentation.
I cannot believe based on the facts and their involvement with the company that they were not aware that this was a house of cards.
Q. What facts do you base that upon that Morgan Stanley knew that Sunbeam was a house of cards as you put it as of February 25, 1998?
A. Again, I am -- I cannot say that I know that they knew, but the speed with which the company's operating results

Page 416

deteriorated and the extent to which they missed their first quarter numbers is startling.
Q. What is the extent they missed their first quarter numbers expressed in dollars? What is the extent they missed it?
A. I just remember it was significant.
Q. Do you know how significant? You don't know?
A. No, but I have seen documentation subsequent in discovery suggesting that it was significant.
Q. What is significant to you so we know, the percentages are dollars?
A. Let's refer to the documents.
Q. We can do that.
A. I can't answer the question. I have been sitting here for 16 hours so --
Q. I will show you the document.
Let's go up to February -- withdrawn.
At the time of the February 25, 1998 board meeting had a price been agreed

NOT A CERTIFIED COPY

015334

Page 417

to between the parties for the purchase of the Coleman stock, a price that had been agreed to?
A. No.
Q. The parties were indeed still actively negotiating as of the time this presentation was made to the board of directors on February 25, correct?
A. What I was actually referring to was, maybe it is semantics but an exchange ratio was agreed to ultimately. There was never a price agreed to in this transaction.
Q. That is a fair question. That is what was going to be my next question.
By February 25 had the exchange ratio been agreed to between the parties?
MR. MARKOWSKI: When you say the -- sorry. Did you say had the exchange ratio been agreed to?
MR. BEMIS: Had the or an exchange ratio?
MR. MARKOWSKI: I think there is a difference that is significant.
BY MR. BEMIS:

Page 418

Q. As of February 25, 1998, the board meeting -- had the parties agreed to an exchange ratio for the transaction?
A. I recall vaguely and I am also referring to the Wachtell sequence of events, there was, I think, agreement as to an exchange ratio and a dollar amount of cash and for reasons that I don't recall the ratio and the amount of cash was modified slightly from .6258 shares and 440 in cash as of the 25th to .5677 and 644, the final number.
Q. Between February 25 and February 27 of 1998 is it fair to say that the parties were trying to still -- were still discussing the final exchange ratio for the stock as well as the cash component of the deal?
A. Yes.
Q. Had the parties as of February 25 arrived at a price that would -- the stock component and the cash component would be equal to such as, for example, $30 per share or $25 per share?
A. I am sorry. I didn't --

Page 419

Q. It is a hard -- a bad question, a hard question to express.
The manner in which the transaction closed has two components, conversion ratio, converting Coleman stock into Sunbeam stock and it has a conversion price?
A. Yes.
Q. And it changes daily?
A. And it will change daily.
Q. It will continue to change just as the Coleman stock changed over the course of the negotiations, correct?
A. Yes.
Q. Did there come a point in time when the parties picked a date and a time, if you will, to fix the price of each party's stock for purposes of calculating the conversion ratio and the cash portion of the transaction?
A. I don't think so the way I believe you have described it.
I think what they agreed on was an exchange ratio. Part of agreeing to that is knowing what your stock -- what

Page 420

Sunbeam's stock and what Coleman's stock is and what is the cash component. It is a multivaried equation.
Q. How does the exchange ratio help you get to the cash portion of the deal unless you have agreed on the final price that the two components, cash and stock, they have to equal?
A. But they don't have to equal something, a certain price. That is the reason why it is an exchange ratio.
If the price of the stock -- the price of Sunbeam stock goes down prior to closing you are out of luck.
Q. That is true. If it goes up you are in luck?
A. Exactly. When you say "price," what I am referring to is -- I think the way you have described it and maybe it is just -- I am just not focusing here -- that -- I don't believe that we said the price has to be, or the price as it is structured and described, is $27 a share and whatever the price is as of a specific date but I may be wrong.

NOT A CERTIFIED COPY

015335

I think -- I just don't recall why the exchange ratio and cash component were changed. Maybe you can enlighten me.

Q. I was actually trying to have you enlighten me if there was a point in time in which the parties agreed we will set the consideration as of this point in time and as of that point in time we know the two parties' stock prices based on closing prices on the New York Stock Exchange, for example, and knowing that we can fix, if we have agreed on what the total compensation must be per share for the Coleman stock, we can fix a conversion ratio and we can fix the cash component, am I correct in that?

MR. MARKOWSKI: I don't think I tracked that.

Could you read it back to me please?

THE WITNESS: I don't think so.

BY MR. BEMIS:

Q. I don't want to spend too much more time on this. Let me try it one more time.

The way this transaction is

eventually closed, if you will, there is a point in time when the parties fix the exchange rate for Sunbeam and Coleman stock?

A. Exactly, yes.

Q. At that point in time which is indeed February 27, is it not?

A. Yes, it is.

Q. At that point in time you have a closing price for the Sunbeam stock and you have a closing price for the Coleman stock, correct?

A. Yes, but --

MR. MARKOWSKI: I think you said the same thing twice.

THE WITNESS: Yes. I think --

MR. MARKOWSKI: Coleman and Coleman.

THE WITNESS: Sunbeam and Coleman, yes.

BY MR. BEMIS:

Q. At the date that you decided to fix the price you have closing prices for both the Coleman stock and the Sunbeam stock based on I guess New York Stock

Exchange prices, right?

A. Yes.

Q. At that point in time did the parties agree on what the total consideration, that is, the value of the Sunbeam stock that they were going to receive in exchange for the Coleman -- whatever conversion ratio plus the cash consideration had to equal as expressed for one share of Coleman stock?

A. I believe that First Boston opined that the value was X. I think it was something on the order of 27 or 27.50 or so at that moment in time.

But I think everyone in the room was aware that the terms of the transaction would almost necessarily probablistically lead to some different consideration in the future at closing.

Q. At closing?

A. Yes, at closing since you can't fix the price of Sunbeam's stock which would be the one variable that if you could fix that you can structure a transaction differently so that you fix the price and

the exchange ratio obviously varies.

Q. To close this out, as of February 27 the parties agreed upon the exchange ratio and they agreed upon the cash component of the consideration, correct?

A. Yes.

Q. And they left it to the market, if you will, between February 27 and the closing, if you will, on March 30, to determine what the final consideration was because one of the components was Sunbeam stock which was subject to market fluctuations?

A. Yes.

Q. Was there ever any discussion in the course of the negotiation for placing a collar on the price of Sunbeam stock?

A. A collar is a common device, there are reasons why you don't use it and why you do use it, so I believe there may have been discussion regarding it but at the end of the day there was no dollar and so whatever transpired during the negotiations led to no collar.

Q. Do you recall either party

NOT A CERTIFIED COPY

Page 425

suggesting a collar and the other party saying, no, I don't want one?
A. I can't recall a specific proposal regarding the collar that was then rejected.
Q. Do you recall -- withdrawn.
A. Yes.
MR. BEMIS: Let's take a short break so we can use the restrooms.
THE VIDEOGRAPHER: The time is 2:42 p.m. We are going off the record.
(Discussion off the record)
THE VIDEOGRAPHER: The time is 2:54 p.m. We are back on the record.
MR. BEMIS: Why don't you read me the last question?
(Record read)
BY MR. BEMIS:
Q. Following the execution of the merger agreements on -- as of February 27, 1998 did you attend any road shows in connection with the sale of the Sunbeam zero coupon debentures that Morgan Stanley underwrote?
A. I recall being present at a

Page 426

presentation by Al Dunlap and other representatives of Morgan Stanley.
I don't recall where -- which hotel, and I don't recall when it was. I believe it was to -- it was a presentation with respect to the debentures.
Q. Do you recall anything -- strike that.
Did Morgan Stanley speak at the road show?
A. Yes, I believe so, but I don't recall who.
Q. Do you recall anything that Morgan Stanley said?
A. No.
Q. Do you recall Mr. Dunlap speaking at the road show?
MR. MARKOWSKI: He said he recalls him speaking. Does he remember what he said?
MR. BEMIS: Yes, what Mr. Dunlap said.
THE WITNESS: I recall -- it is my recollection that there were synergy numbers that were discussed, an

Page 427

important component of the analysis, the potential purchasers are going to -- that were in excess, and I do not recall how much, but in excess of the synergies that we felt -- that we had discussed with Sunbeam which I think were something along the lines of around 100 or so.
BY MR. BEMIS:
Q. When you say 100 or so --
A. Million related to Coleman because there were a couple of other companies which had been purchased.
Q. I am sorry. Is this 100 million that Coleman was using as synergies or that Sunbeam was using as synergies?
I am not sure. I didn't understand your answer.
My recollection of -- let me withdraw the question. I want to get you finished if I can.
A. Yes.
Q. What do you recall Mr. Dunlap saying as best you can? If you can't remember his exact words, what was the

Page 428

substance of what he said at the road show meeting that you attended?
A. I recall a more optimistic view with respect to synergies than what we were assuming and that had been discussed with the Sunbeam people.
Q. I thought you were finished.
A. Go ahead, please.
Q. Do you remember any specific numbers that Mr. Dunlap used?
A. No.
Q. Other than the discussion, presentation, whatever on the road show of synergies, do you recall anything else that Mr. Dunlap said?
A. Well, it was kind of -- I think as is characteristic for Mr. Dunlap, a very kind of go get them, take no prisoners, we are going to do it, trust us, it is going to happen presentation.
There are executives out there and I have seen hundreds of them. Remember, I was -- ran a hedge fund so I meet with these guys who were either more conservative and they are not table

NOT A CERTIFIED COPY

Page 429

pounders, that is not Al Dunlap. He says what he thinks.

He says what he thinks he can do or at least he does not hesitate to convey what he thinks he can do. So I just -- the tone of the presentation certainly was like that.

Q. Did you say anything at the road show?

A. No.

Q. Did you ask any questions?

A. No.

Q. Did MacAndrews & Forbes to your knowledge purchase any of the zero coupon debentures underwritten by Morgan Stanley in connection with the Sunbeam-Coleman merger?

A. No, I don't believe so.

Q. Let's go forward from -- withdrawn. Let's change topics.

I don't know if we are going to go forward or backwards but I would like to turn to the subject of the March 19 press release which I think you touched on a little bit earlier when you were talking

Page 430

about missing first quarter estimates.

A. Right.

Q. Did there come a point in time after the closing that you saw -- withdrawn.

Did there come a point in time when you did see the March 19 press release issued by Sunbeam?

A. Yes.

Q. Let me hand you what has been marked as MS 39, so you have a copy in front of you.

Would you like to read it before we go forward?

A. Please.

Q. Let me know when you are finished.

A. Okay.

Q. Would you tell us the circumstances under which you first saw the March 19 press release?

A. I don't believe -- I don't recall the exact method, whether it was electronically, I do have -- I may have had a Bloomberg or whatever in my office and

Page 431

whether I noted a news story but I don't believe I was given any advance warning nor did I receive an advance copy or -- but it may have been distributed to me internally because someone else saw it first.

MR. BEMIS: Off the record.

THE VIDEOGRAPHER: The time is 3:04 p.m. and we are going off the record.

(Discussion off the record)

THE VIDEOGRAPHER: The time is 3:05 p.m. We are back on the record.

BY MR. BEMIS:

Q. After you saw the press release in whatever form, whether it be electronic or be a hard copy, were you asked to take any steps by Mr. Maher or Mr. Perelman or anyone else in the Coleman group?

A. I believe -- this is subsequent to the announcement so it was a matter of public record of course that we were doing the deal.

I believe that I was asked to canvass the market, the institutional research community, but I can't recall

Page 432

whether -- because there were various times that I did this, whether I actually spoke to any of the analysts or in fact whether I just went on to first call to interview the analyst, analyst responses to this -- I believe it was the latter.

I don't think at this point that I conducted conversations with any -- particularly because the deal hadn't closed and it is a two-way street to speak to these guys so --

Q. Let me show you what we will mark as MS 167 by the reporter.

A. But I don't know. Maybe.

Q. I apologize. It has already been marked.

A. It looks like I did speak to him.

Q. Let me hand you a copy.

A. I did speak to him.

Q. You spoke to the analyst after the closing, not before the closing, and after the March 19 press release, right?

A. Wait a second. This is dated May 20.

Q. Correct.

NOT A CERTIFIED COPY

015338

Page 433

A. I am sorry. I am confused.
Q. My original question, what did you do after March 19? I think you said you spoke to analysts at some point?
A. Yes, I believe I did. I just couldn't recall if I spoke to them immediately after but my sense was that it was -- that I canvassed the institutional research community electronically.
I gathered whatever was available on the wire for our benefit to see what their response was to this release and then I guess what you have now provided me is what I am referring to which is later on I did actually speak to some of the analysts.
Q. The first thing that you did after March 19 in terms of the analyst was just to do an electronic search if you will of what was available from the analyst in terms of their reaction to the March 19 press release, correct?
A. Yes, yes. It raised a little flag -- not -- this was not Def Con 3 at this point.
Q. When you say the March 19 press

Page 434

release, this was not Def Con 3, you are referring to the press release of March 19, correct?
A. Yes, as we interpreted this press release. It is hard to argue it was good news but it wasn't clear that it was very bad news.
It was an indication that they might not meet their results.
Q. You can hand MS 167 back and we will get it off the table.
Did you eventually do a comparison between what Sunbeam reported for its first quarter sales of 1998 when it filed its 10-Q and what it said in the March 19 press release?
A. I don't recall actually doing that work but it would be logical to assume I did.
Q. Before we get to that point let's talk about the canvassing the market electronically for the analyst reports.
Did you have, for example, access to Mr. Shore's reports from PaineWebber on Sunbeam?

Page 435

A. I don't recall which reports not only that I had access to but who was diligent enough or not on vacation or whatever to actually put out what is typically referred in the industry as a first call synopsis and so I contrast that with a full blown periodic review of a company and it is instead -- it is more of an institutional -- institutionally directed couple of paragraphs or so on interpretation of here is what happened yesterday, I have spoken with management.
Q. Did you -- do you recall whether you saw Mr. Shore's report?
A. No, specifically, no. I just recall that the -- I believe that the response was this is the blip, possibly a buying opportunity but we should --
Q. Let me show you what has been marked as MS 212 previously marked in another deposition.
This is from PaineWebber, Andrew Shore, March 19, 1998.
Do you have Mr. Shore's report in front of you?

Page 436

A. Yes.
Q. Did you see this report when you did your electronic canvassing of the analyst reports after you saw the March 19 or heard about the March 19 press release?
A. I believe I did. I don't believe it was the only one I did but, yes, I believe I did.
Q. You read it after you saw it, correct?
A. Yes.
Q. This is entitled Sunbeam: Grilled?
MR. MARKOWSKI: He started to say something.
MR. BEMIS: I am sorry.
THE WITNESS: Let me try to clarify. I do not recall specifically reading Andrew Shore's report. I am familiar with Andrew Shore as an analyst at PaineWebber on Sunbeam and read his research in the past but I do not recall that I read a March 19 report by Andrew Shore. I read I think numerous relatively brief reports and

NOT A CERTIFIED COPY

015339

Page 437

whatever I could have gotten my hands on I read but I don't know whether I had access to this and there are access questions depending on who you are and depending on who you are trying to read, which analyst you are trying to read, their research so --

BY MR. BEMIS:

Q. Let me change directions from the analyst reports for a second.

After March 19 but before the closing of March 30 did you make any request of Sunbeam to see their financial statements for any period in the 1998 fiscal year, for example, January or February of 1998?

A. I did not.

Q. Do you know of anyone at MacAndrews & Forbes who made such a request either of Sunbeam or one of its representatives to see Sunbeam's monthly financial statements for either January or February of 1998?

A. No.

Q. Why didn't you ask to see them as

Page 438

an analyst?

A. Well --

Q. Let me back up.

Do you know of any reason why you as a representative of MacAndrews & Forbes could not have asked for and received a copy of Sunbeam's financial statements for January and February of 1998 if you had asked for them?

A. No.

Q. Indeed you are aware that under the merger documents that MacAndrews & Forbes had a right of access to Sunbeam's financial records before the closing, right?

A. Yes, and an obligation to inform us of a material adverse change.

Q. That is a different question.

A. I understand.

Q. The question now is whether you, that is, MacAndrews & Forbes, had a right under the merger agreements to ask Sunbeam for Sunbeam's financial information before the closing as scheduled on March 30, 1998?

A. We did have that right and I

Page 439

believe that one of the -- I believe it might have been Jerry Levin -- had a conversation with one or more executives at Sunbeam on this.

Q. Let's talk about the financial statements and then get to the conversations.

MR. MARKOWSKI: Let's not interrupt his answer.

BY MR. BEMIS:

Q. I want to get him out of here.

A. I am happy --

Q. If you want to stay longer we can stay longer now that I don't have to go to Florida.

A. I want to get out of here.

MR. MARKOWSKI: I would appreciate --

MR. BEMIS: I appreciate what you said and I apologize for interrupting. I will do it again and follow up with you.

BY MR. BEMIS:

Q. You were talking -- you understood Mr. Levin had a conversation

Page 440

with someone at some point?

A. I believe that there was a discussion regarding -- by Mr. Levin, regarding the release of this press release. In fact, I know there was. There was concern.

The reason, again, I don't know that, there -- whether there was a request for financial statements but I also know enough having overseen, looked at enough companies that simply seeing the numbers is not the only way to get to the bottom or necessarily the most efficient way to get to the bottom and I believe that -- so a call was made to get to the bottom of this issue.

Q. Let's take it one step at a time and I will get to the call.

The first step though, I want to confirm that as far as you know as you sit here today the MacAndrews & Forbes Coleman team, if you will, for this negotiation, did not request after March 19 any financial statements from Sunbeam before the closing on March 30, 1998, correct?

NOT A CERTIFIED COPY

Page 441

A. I believe that is accurate.
Q. Would you agree with me that had you -- had you a right, that is, the MacAndrews & Forbes side, under the merger documents to request financial information from Sunbeam as part of your right to do due diligence prior to the closing?
A. Yes.
Q. My understanding is that you are -- you know that Mr. Levin made a --
A. I believe, yes. Please. Sorry.
Q. I thought you said you were certain that you did.
Let me ask you. Let's do it one piece at a time.
A. Fine.
Q. You testified that Mr. Levin made a phone call or had a phone call with someone where he was asking questions, as I understand your testimony, about the March 19 press release; is that right?
A. Yes, it is my recollection that Mr. Levin had a discussion.
Q. Were you on the phone?
A. No, I was not.

Page 442

Q. Were you in the room when the phone call was made?
A. No, I was not.
Q. Did Mr. Levin tell you about the phone call?
A. No.
Q. Who told you about it then?
A. I believe Mr. Maher told me about it.
Q. Was Mr. Maher on the phone call?
A. I don't believe so.
Q. Was Mr. Maher in the room when Mr. Levin made the phone call?
A. I don't know.
Q. Who did Mr. Levin speak to if you know?
A. I don't know.
Q. Mr. Maher didn't tell you who Mr. Levin spoke to?
A. I don't recall.
Q. Did Mr. Maher tell you he knew who Mr. Levin spoke to?
A. I don't recall.
Q. Did Mr. Maher tell you that he spoke to someone at Sunbeam?

Page 443

A. Yes.
Q. Did he tell that you he spoke to -- Mr. Levin spoke to anyone at Morgan Stanley?
A. I believe it was Sunbeam and my expectation was that it was Mr. Kersh since that was the line of communication.
Q. Did you learn of this conversation with whoever it was at Sunbeam that presumably, as you described it, Mr. Levin had, based on what Mr. Maher told you?
Did you take any steps from that point forward to at least discuss internally at MacAndrews & Forbes requesting copies of Sunbeam's internal financial statements at least for the months of 1998 in the first quarter?
A. Did I? No.
Q. Did that suggestion ever get made at any meeting inside MacAndrews & Forbes before the closing on March 30, that is, let's request from Sunbeam a copy of their financial statements even though we know they are unaudited for January and February

Page 444

of 1998, let's request a copy of them and take a look at them?
A. No.
Q. You knew as part of the MacAndrews & Forbes team that was negotiating with Sunbeam that Sunbeam had certified public accountants that audited Sunbeam's financial statements, correct?
A. Yes.
Q. You knew that Sunbeam's certified public accountants were, or was, Arthur Andersen, correct?
A. Yes.
Q. As a matters of securities law for a public company, Arthur Andersen -- excuse me -- the company, that is, Sunbeam, would file in its quarterly statement for the first quarter financial statements for the first three months, correct?
A. Yes.
Q. As a matter of securities practice for public companies those quarterly statements are reviewed by certified public accountants, correct?
A. That is accurate.

NOT A CERTIFIED COPY

Q. Are those statements subject to a full audit on a quarterly basis?
A. No, they are not.
Q. They are subject to what is called a review process?
A. I believe so, yes.
Q. At any time between, say, March 19 and the closing on March 30, did anyone on the MacAndrews & Forbes side of negotiations with Sunbeam make any request either through Sunbeam or directly to the auditors for a copy of the comfort letters that the auditors were providing in connection with the debenture offering?
A. No, not that I was aware of.
Q. Were you aware that such a comfort letter would be issued to the auditors in connection with the debenture offering that Morgan Stanley was underwriting for Sunbeam in connection with the closing?
A. I was not.
Q. You didn't know that Morgan Stanley was underwriting -- withdrawn.
Did you know that Morgan Stanley

was --
A. That is not what you said.
Q. Did you understand that Morgan Stanley was the underwriter for the debentures?
A. Yes.
Q. Did you understand that underwriters request comfort letters from the auditors in a public company situation like this before the closing of an underwriting such as was issued in this case?
A. No.
Q. You are not familiar with that?
A. That is a different question.
You asked was I.
Q. Are you familiar with at least what comfort letters are?
A. I am.
Q. Are you familiar that auditors issue them at least in connection with underwriting of securities?
A. Yes.
Q. Are you familiar with the concept that underwriters request these letters as

part of establishing their due diligence defense under Section 11 of the 1933 act?
A. Not in as much detail as you just described. You are asking the question in the present tense.
That is not what you asked before, was I.
Q. Did you know in 1998?
A. No.
Q. Let's go back to the March 19 press release.
We have talked now about requesting financial statements from Sunbeam and we have talked about the canvassing of the analysts.
Did you do anything else on the MacAndrews & Forbes side to investigate the substance of the March 19 press release?
A. Apart from discussions between Mr. Levin and his people and the representatives at Sunbeam?
Q. I don't know if there was representatives plural but that is --
A. Sunbeam.
Q. Let me back up. My question was

really -- was too broadly phrased to be fair.
After March 19 and before March 30, that is the time period I want to focus on, I want to make sure I understand what the MacAndrews & Forbes side did after the press release was issued.
Are you clear on the time frame?
A. Yes.
Q. You have described for me that you believe based on conversations you had with Mr. Maher that Mr. Levin had a conversation with someone at Sunbeam, right?
A. Yes.
Q. You have told me that no request was made by the MacAndrews & Forbes side for any of Sunbeam's financial statements whether audited or unaudited for the period -- any period in 1998, correct?
A. No. That is not correct. I said I was not aware of any. I did not say that no request was made.
Q. Then I misspoke.
As you sit here today you are not

NOT A CERTIFIED COPY

Page 449

aware of any request being made by the MacAndrews & Forbes side between March 19 and March 30 for copies of any of Sunbeam's financial statements for the 1998 period, for example, January or February?
A. Right, that is accurate.
Q. As far as you know as you sit here today no one at MacAndrews & Forbes had any communications with Arthur Andersen, Sunbeam's certified public accountants, correct?
A. That is accurate.
Q. As you sit here today you are not aware of any specific request whether directly to Arthur Andersen or through another source for Arthur Andersen to provide a copy of any financial information that they had for Sunbeam for the period January 1, 1998, if you will, up until whatever date the request was made?
A. That's accurate.
Q. You are also aware that under, whether it be the Coleman merger documents or the CLN Holdings merger documents, those have been identified as MS 117 and MS 93,

Page 450

that the MacAndrews & Forbes side of the transaction had a right to request Sunbeam financial information before the closing on March 30, 1998?
A. Yes, I am.
Q. As I understand your testimony, while you did an electronic survey of whatever you could find from analysts you did not speak to any analysts like Andrew Shore or anyone at Goldman Sachs or what have you before the closing on March 30, 1998 and after the March 19 press release was issued?
That is a terrible question because I got the dates backwards. Let me try it again. Withdrawn.
Am I correct that did you not speak to any analyst following Sunbeam between March 19 and March 30, 1998?
A. Yes.
Q. Is -- am I also correct that notwithstanding the press release and whatever was in the analyst reports and whatever Mr. Levin -- withdrawn.
At some point in time you did as

Page 451

I understand it look at Sunbeam's reported results for the first quarter of 1998 as filed with their -- filed in their 10-Q, correct?
A. Yes, I believe so.
Q. I think you said earlier that there was a substantial miss between what was said in the press release and what they reported in their first quarter results, correct?
A. Yes.
Q. Let me show you now the 10-Q for the first quarter of 1998 as reported by Sunbeam at the time and ask you if you looked at this document.
I hand you what has been marked as MS 281. Do you have MS 281 in front of you?
A. Yes, I do.
Q. Do you want to turn to -- you are probably at the page faster than me.
Do you want to turn to the page of the financial statements which should be page 2 of the financial statements which is I believe on page 4 of the document in

Page 452

front of you. Are you there?
A. Yes, I am.
Q. Would you read into the record what Arthur Andersen reported Sunbeam's sales -- net sales were for the first quarter of 1997?
MR. MARKOWSKI: Arthur Andersen?
BY MR. BEMIS:
Q. Didn't I say Arthur Andersen?
MR. MARKOWSKI: You said Arthur Andersen but this isn't Arthur Andersen's report.
MR. BEMIS: You are right. I misspoke.
BY MR. BEMIS:
Q. Would you read into the record what Sunbeam reported in its financial statements as reflected in Exhibit 281 for the first quarter of March 30, 1997?
A. Sales; 253,450,000.
Q. That is the same number that is set forth in MS 39, the press release as being their 1997 first quarter net sales, right?
A. Yes.

IN FACE CERTIFIED COPY

Page 453

Q. Then what is the number that Sunbeam reported in its quarterly report filed with the Securities and Exchange Commission in MS 281 for the first quarter of 1998?
A. 244.3 million.
Q. The difference between those figures is less than $10 million, correct?
A. Yes.
Q. That is what you consider a substantial difference between what was set forth in the press release and what was reported when the 10-Q was filed?
A. Yes.
Q. Do you know what -- I know that you don't have your HP in front of you. I have one if you want it but I think we can both do it -- what the percentage miss is between the reported first quarter results for 1998 and what was set forth in the press release?
A. No.
Q. It is about 5 percent.
A. Okay. Well, I think we might want to look a little deeper.

Page 454

Q. You might want to look a little deeper but you told me -- the press release said that, as I read the press release and as you read the press release back in 1998, that Sunbeam expected its first quarter of net sales of 1253.4. That was its 1997 figures, right?
A. Yes.
Q. Sunbeam said that it expected that it would not meet analyst expectations for the first quarter of 1998 which were in the range of 285 million to 295 million, right?
A. Actually they said that it was possible. It didn't say they would not. The wording is somewhat different than what you are suggesting and I think that one of my considerations is, and if you want we can take some time, this is five years old, but looking at the quality of the number that they actually reported because I do recall there were some issues related to the quality of the 244, whatever it was, 244 million that suggested not only did they not meet the number, that 12 days

Page 455

before whatever the end of the month, but they said they were going to meet, but, two -- that there were certain -- that the analyst estimates were not comparable to the number that was actually reported.
Q. Can you explain what you mean by that?
A. My recollection is it included a certain number of days which presumably coincides with the closing of Sunbeam results at the end of the month.
No analyst to my knowledge had factored that into the numbers.
Q. Are you referring to the issue of the -- including some of Coleman's sales in the last three days of the month, something of that nature?
A. Yes. We can go there but as I recall directionally in my analysis at the time that it is one thing to possibly miss a number of 285 to 295 and if they had come in, I mean, my read of this, what was my expected number.
If you ask me now, 275 or so, 270, 280 reading this. That is just my

Page 456

interpretation.
Not only did they not make the number that their financial statements would have suggested at March 19, I mean, they are 90 percent through the month so they ought to have good visibility on their numbers but they missed the number that they said in a report 12 days prior to the conclusion of the month and I believe there were certain items in that number which suggested that the 244 was not really 244 the way I would think about it.
We can look into that if you like but that was my recollection.
Q. Are you done with your answer?
A. Yes, I am sorry.
Q. Did you, after -- did you get a copy of the 10-Q when it was filed?
A. Yes, I did.
Q. That was on -- I think the date of the 10-Q is May 11 or 12?
A. Yes.
Q. It is actually May 15 if you look at the last page.
A. Okay.

NOT A CERTIFIED COPY

01534

Page 457

Q. As of May 15, 1998 did you take any steps to investigate further the first quarter results reported by Sunbeam as set forth in MS 281?
A. I do not recall the specific steps that we did.
Q. Did you go back -- strike that.
Do you recall any steps that you did, setting aside whether you recall specifics, did you take any steps to investigate further the first quarter results?
A. I do not recall the steps that we took immediately thereafter to investigate this problem.
Q. Do you recall making any inquiry of Sunbeam?
A. I believe that would be implicit in my statement that I just do not recall the specific steps that were taken. There were lines of communication.
Q. You suggest there were steps taken. I am not asking -- if you don't remember a specific I understand that.
Do you recall any steps, and that

Page 458

is why I was suggesting, for example, as you said, you thought that Mr. Levin had made a phone call earlier. That is what was prompting me to ask.
If the answer is no, you tell me no and I will move on.
Do you recall any communications after May 15, 1998 when the first quarter results were publicly filed by Sunbeam, where the MacAndrews & Forbes side made inquiry of Sunbeam about those results as expressed in their 10-Q?
A. I do not recall any specific instances but knowing the people at MacAndrews & Forbes, having worked with them, I am very confident that the necessary steps would have been taken which would have been to look very carefully at this, consult with First Boston, consult with Sunbeam, communications particularly between Jerry Levin and Russell Kersh.
I would certainly have expected those activities in the ensuing days or weeks to have occurred to get to the bottom of the shortfall and, in general, to better

Page 459

understand as a significant shareholder the operating results of the company.
Q. As you sit here today you don't know of any such steps personally being taken, you just assume they would have been taken; is that fair?
A. I do not recall five years later specific instances or phone calls or analyses that were conducted in doing them.
Q. You, at least, did -- you did your phone calls to analysts set forth in MS 167 that we talked about earlier and forwarded to Mr. Perelman on May 20, 1998, correct?
A. Yes, but we established that earlier.
Q. Right.
When you spoke -- withdrawn.
When you provided MS 167 to Mr. Perelman did you discuss it with him?
A. Let me see it.
Q. Let me hand it to you.
A. I believe I discussed this with at least Mr. Maher and Mr. Perelman. I do not recall whether Mr. Drapkin, Gittis and

Page 460

Levin were present.
Q. Did you have a meeting with Mr. Perelman and Mr. Maher at which time you discussed the contents of Morgan Stanley 167?
A. I believe I did. I cannot say for sure.
Q. What do you believe occurred at the meeting that you believe you had with Mr. Perelman and Mr. Maher in relationship to MS 167?
A. If such a meeting occurred, and I believe it did, I would have described frankly exactly what is written here which is the purpose of the memo and to the extent there were questions, and I don't recall specific questions, I would have been available to answer them and for that matter to have followed up on any further analysis or questions that they may have which I do not recall.
Q. If I understand you correctly you don't recall that you were requested by either Mr. Perelman or Mr. Maher to do any further follow up?

NOT A CERTIFIED COPY

A. As it related to this analysis.
Q. Do you recall any of the questions asked by Mr. Maher and Mr. Perelman in connection with MS 167?
A. I just stated I do not recall any of the questions that were asked of me.
Q. I take it you don't recall any of the answers that you gave if you were asked any questions?
A. That would follow. I try to anticipate the questions in writing to Mr. Perelman and Mr. Gittis and Mr. Drapkin and Mr. Levin and Mr. Maher. I try to anticipate the questions that they might ask since that improves the efficiency of the process.
Q. After March -- withdrawn.
After May 20, 1998 did you do any further analysis or inquiry of Sunbeam, however you want to categorize it, before Mr. Dunlap and Mr. Kersh were terminated by Sunbeam's board of directors in June of 1998?
A. I know that we did some work regarding accounting, the financial results

and reviewing them.
I recall there was a Barron's article also that was looked at pretty carefully and I don't recall what specifically either Mr. Levin or Page did in connection with these results and the situation at hand.
We also looked at -- I don't recall specifically when, and it -- refresh my -- what were the dates you were referring to?
Q. May 20 and the date that Mr. Dunlap and Mr. Kersh were terminated by the board of directors in June of 1998 which I think is -- it is either June 13 or June 15 of 1998. The date escapes me right at the moment.
A. Yes. I cannot extract in my mind a specific analysis between those two dates.
Q. Did you -- you read the Barron's article that you referred to?
A. Five years ago, yes. I would have to read it again.
Q. Did you ever meet Mr. Dunlap

after the closing on March 30, 1998?
A. I apologize. I am just trying to think. I don't recall.
I might have met him a couple of times. I just don't recall when.
Q. Do you know whether there were any meetings between Mr. Dunlap and Mr. Perelman between the closing on August 30, 1998 and Mr. Dunlap's termination by the Sunbeam board of directors in June 1998?
A. No, I don't.
MR. MARKOWSKI: You used the closing in August?
MR. BEMIS: Did I say August?
BY MR. BEMIS:
Q. Let me rephrase the question and we will move faster.
Are you aware of any meetings between Mr. Dunlap -- between the closing on March 30, 1998 and Mr. Dunlap's termination by the Sunbeam board of directors in June of 1998.
A. No, I am not, not that I recall.
Q. Did you do any analysis of the --

withdrawn.
Let me show you the Barron's article. I have a couple of quick questions about it.
I will hand you what has been marked as Morgan Stanley Exhibit 74 which is a copy of the Barron's article.
Do you have that in front of you?
A. Yes, I do.
Q. Is this the article, albeit in a different form, that you were referring to when you referred to the Barron's article in your testimony earlier today?
A. I believe it is.
Q. Did you receive any instructions from anyone at MacAndrews & Forbes to do an analysis of the article?
A. Yes, I believe I did.
Q. Who was that?
A. Who asked me?
Q. Yes, sir.
A. I don't recall.
Q. Did you prepare such an analysis?
A. Yes.
Q. Did you reduce it to writing?

NOT A CERTIFIED COPY

Page 465

A. I believe I did but ultimately I forwarded, since this was very much an accounting exercise, given what we knew and given the tenor of the article, I believe I forwarded it to our internal accounting.

We have several people on staff that -- and at the moment I am forgetting to whom but -- and they -- I believe they completed or assisted in the preparation of a -- of an analysis, the specific details of which I don't recall.

Q. Do you recall any of the details of the analysis that you did for the Barron's article?

A. If I could refer to it it would help.

Q. I don't have it in front of me. That is why -- I don't have it in front of me. I don't have it in the boxes so I can't show it to you.

MR. MARKOWSKI: You guys do have that, though.

MR. BEMIS: No.

MR. MARKOWSKI: I know it is --

MR. BEMIS: I know you didn't

Page 466

produce it.

MR. MARKOWSKI: Okay.

BY MR. BEMIS:

Q. My question is -- we got lost in the colloquy, it happens -- do you recall any of the conclusions that you reached in your --

MR. MARKOWSKI: Wait a minute. That is refreshing my memory. I think we asserted privilege with respect to that analysis which reminds me that, whether you can recall it or not, I am going to have to instruct you not to answer questions relating to the substance of that.

THE WITNESS: Okay.

BY MR. BEMIS:

Q. Do you recall who received a copy of the analysis you did other than your accounting department?

A. No.

Q. Do you recall who you sent your analysis to outside of the accounting department after -- did you get something back from the accounting department after

Page 467

you sent it to them?

A. Yes. I asked them to take -- to review this and to analyze the article and its implications and their interpretation of it as it related to Sunbeam's historical performance.

Q. Who in the accounting department by name did you send it to?

A. I said I didn't recall.

Q. Do you remember who was in the accounting department in 1998?

A. I don't remember if it was Norman Ginstling who was our tax accountant. I just don't recall.

Q. Did you receive back from someone --

A. Not that we have that many people, by the way. I just can't recall the guy's name at this point.

Q. You said there were only a couple. I figured if we can get down to two we can pick one of the two.

A. No.

Q. Regardless of who you sent it to in the accounting department did you get

Page 468

something back from the accounting department?

A. Yes.

Q. What did you do with it after you received it back?

A. I believe, as is typical of what I do, I disseminated it to the group.

Q. That is Mr. Perelman, Mr. Maher and Mr. Gittis?

A. And Jerry Levin, probably Mr. Drapkin.

Q. As you sit here today you -- withdrawn.

That is all. You can set -- we will set aside the report now based on your counsel's instructions.

Let me show you what has been marked as Exhibit 337.

Do you have Exhibit 337 in front of you?

A. Yes, I do.

Q. Just to assist you, and you will obviously want to read this for yourself, these are notes or a memorandum of a meeting that took place in -- as identified

NOT A CERTIFIED COPY

Page 469

by Mr. Shapiro in his deposition on June 18 and 19 at the offices of MacAndrews & Forbes with bankers to discuss the -- discuss Sunbeam.

When you have had an opportunity to look at the document let me know and I will ask you --

A. Yes.

Q. Are you aware of this meeting that took place at MacAndrews & Forbes?

A. No.

Q. According to item number 2 of the document, of MS 337, the statement was made by either Mr. Gittis or Mr. Engelman that, "The questions raised by the Barron's article are without merit."

Do you see that sentence?

A. Yes.

Q. Is that consistent with your independent conclusion after you reviewed the Barron's article, MS 74?

MR. MARKOWSKI: I will instruct you not to answer that question on the grounds that it calls for privileged information.

Page 470

BY MR. BEMIS:

Q. As of at least June, the 1st of June of 1998, were you aware of any statements by Arthur Andersen, Sunbeam's certified public accountants, that they were of the position that Sunbeam's financial statements for 1997 were not prepared in accordance with Generally Accepted Accounting Principles?

MR. MARKOWSKI: Could I have the date?

BY MR. BEMIS:

Q. As of June 1, 1998.

MR. MARKOWSKI: June 1?

MR. BEMIS: Yes.

THE WITNESS: I have no recollection as of June 1 that Arthur Andersen, that's true.

BY MR. BEMIS:

Q. Did you learn at some point in time that Arthur Andersen took the position that people should not rely upon their audits of Sunbeam's financial statements for the year 1997?

A. Yes, I believe that was accurate,

Page 471

that is accurate.

Q. Is it accurate that that statement by Sunbeam to the public did not occur until late in the month of June of 1998?

A. I can't relate that statement to a specific date.

Q. Let me ask you then to focus as of the date of closing of the transaction, March 30, 1998. We are on the right date.

You are with me?

A. Yes.

Q. As of that date are you aware of any statements by Arthur Andersen that the public, whether it be MacAndrews & Forbes, whether it be Morgan Stanley, Credit Suisse First Boston, Jerry Levin, Ronald Perelman could not rely upon the audits that Arthur Andersen performed of Sunbeam's financial statements?

A. I was not aware of that point.

Q. You can hand that back to me.

Did you send the Barron's article to Joe Page at Coleman?

A. I believe I did.

Page 472

Q. Did you call Mr. Page and then discuss the article with him?

A. I believe I did.

Q. Did you ask Mr. Page for his reaction to the article?

A. I believe I did.

Q. What did Mr. Page say to you when you asked him about his reaction to the Barron's article?

MR. MARKOWSKI: There may be a privilege issue here so I want to clarify something. I can do it privately with him or do it on the record.

MR. BEMIS: You can do it privately with him.

MR. MARKOWSKI: Let's take a short break.

THE VIDEOGRAPHER: The time is 4:00 p.m. on September 1, 2004. This is the end of tape number three, volume two of the videotaped deposition of Mr. William Nesbitt.

(Recess)

THE VIDEOGRAPHER: The time is

NOT A CERTIFIED COPY

Page 473

4:02 p.m. on September 1, 2004. This is tape number four, volume 2 of the videotaped deposition of Mr. William Nesbitt.

MR. MARKOWSKI: After consulting with Mr. Nesbitt I am going to have to assert the privilege with respect to the pending question and instruct Mr. Nesbitt not to answer. He has advised me that his conversations with Mr. Page were in connection with his work to complete the memorandum as to which we have asserted the attorney-client privilege.

BY MR. BEMIS:

Q. Let's turn to the settlement agreement with Sunbeam that we touched just briefly upon when we were going over documents sent to the Blackstone Group.

I will turn to a different topic.

Let me show you, first of all, a copy of MS 96 which I believe is the settlement agreement.

I hand you MS 96. Do you have MS 96 in front of you?

Page 474

A. Yes, I do.

Q. Did you have any role in the analysis of the terms of settlement agreement between Sunbeam and MacAndrews & Forbes?

A. I don't believe so.

Q. Did you do any valuation of the warrants that Sunbeam issued as part of the consideration for the settlement agreement, MS 96?

A. I don't believe so.

Q. Did you ever see a valuation of the warrants that were issued by Sunbeam to the MacAndrews & Forbes companies in connection with the settlement agreement, MS 96, regardless of who the analysis was prepared by?

A. I believe I did but it is hazy.

Q. Tell me what you remember, albeit hazy.

A. I recall about that much. I don't recall the specific valuation on our side or any issues or considerations.

I believe there was a Black-Scholes model and the relevance of

Page 475

which sharper minds I suppose can comment on, but given the volatility in the stock, et cetera, it kind of calls in the question of the ability to value such an instrument at this point in any kind of rational basis but that is --

Q. Didn't the Black-Scholes model win some kind of famous prize for the economists that developed it?

A. Yes.

Q. What prize did they win for that?

A. I don't know; probably the Nobel. God knows what. Myron has a few problems these days.

Q. Didn't the economists that developed the Black-Scholes model develop the Nobel Prize for economics?

A. That doesn't mean it was --

Q. I didn't say it was. I didn't win the Nobel Prize.

Let me show you what has been marked as Morgan Stanley 97. Please take a look at it and when you are ready I will ask you a couple of questions.

A. Do you want me to read the whole

Page 476

thing?

Q. Just to a point. You could always stop and read anything you want but just to the point where I can ask you a couple of questions.

Are you ready?

A. Yes.

Q. First of all, have you seen Exhibit 97 before which is a document that came from Deloitte & Touche?

A. No, I have not.

Q. Internally, that is, inside the document on page 4, turn to the heading marked Valuation of the Warrants.

A. I am looking for page numbers.

Q. There aren't. You will have to count, just to page 4.

A. Okay.

Q. The paragraph begins, "Sunbeam engaged the Blackstone Group to assist them with the valuation of the warrants."

Do you see that?

A. Yes.

Q. That is the same Blackstone Group that you sent the documents to that we

NOT A CERTIFIED COPY

015349

Page 477

looked at in MS 359 and 360, right?
A. Yes.
Q. Blackstone ultimately issued some valuation according to this document.
Did you see the valuation, you, personally, did you see it at some point?
A. I believe I did.
Q. According to the Deloitte Touche memorandum Blackstone, applying the Black-Scholes model, came up with a valuation of the warrants ranging from 30 to $107 million with a mid point of $70 million; do you see that?
A. Yes.
Q. Is that consistent with your recollection of the report after you looked at it?
A. No, because I have no recollection of the report.
Q. Fair enough.
A. Yes. I will accept this as consistent with it.
Q. Did MacAndrews & Forbes, for purposes of its financial statements, place any valuation on the Sunbeam warrants?

Page 478

A. I wouldn't know. I am not the CFO nor was I.
Q. You can hand that back to me.
I am going to hand you what has been marked as MS 98. The only question I have is did you prepare the document?
A. I don't think so. I do not recall this. It wouldn't be my style to refer to it as MAF particularly since there is an ampersand but I don't know what they were trying to do here.
Q. Without a comma.
A. Yes.
Q. Do you have any idea who did prepare this document inside MacAndrews & Forbes assuming it was prepared there since it was produced by them?
A. No, nor do I recall ever seeing it.
Q. You may hand that back.
In connection with the due diligence that was done by MacAndrews & Forbes, you can use the term however broadly you want in answering the question, up to the time of closing on March 30 was

Page 479

there any one person at MacAndrews & Forbes who was charged with doing the due diligence of Sunbeam, and you can break it out if you want for financial due diligence, legal due diligence, however you are comfortable answering the question.
MR. MARKOWSKI: I object to the form.
BY MR. BEMIS:
Q. You can answer.
A. I think it is fair to say that Mr. Maher was responsible for coordinating the transaction generally which included due diligence. Operating due diligence would certainly fall under Mr. Levin's responsibility. Financial due diligence, I would -- includes -- when you refer to financial due diligence I think I would break that into two categories which would be -- there is understanding operations from a financial perspective which I would include certainly under Mr. Levin which would also include discussion, evaluation of the merits of Sunbeam's operating strategy, business strategy, but the only

Page 480

way to translate into economic terms is through financials.
Mr. Maher and I were responsible for, as well as CSFB, for analyzing the consequences, the merger consequences of the transaction and Barry Schwartz who was chief counsel would have been -- was responsible for coordinating legal due diligence although there is certainly overlap with Mr. Maher as it relates to negotiating the terms of the transaction.
Q. We have identified operating, financial and legal due diligence and financial had two prongs to it as you identified it?
A. Yes.
Q. Is that the way you would categorize the assignments for due diligence, if you will, in this transaction?
A. Yes, except that again I would emphasize that I think the lines are often very blurred, to some extent, intentionally, within MacAndrews & Forbes.
We have several attorneys who

NOT A CERTIFIED COPY

operate in a financial/legal capacity; Don Drapkin, a former Skadden partner, so there is by design multitalented people.
Q. Sometimes you can wear two hats is what it boils down to?
A. Yes.
Q. Sometimes legal, sometimes business?
A. Mr. Maher has run several companies, at the time was chief executive officer I believe of two and had run National Health Labs so he is not just a former investment banker but someone who had run a couple of businesses.
Q. Was any due diligence responsibility assigned to Ernst & Young, an -- the accounting firm for Coleman?
A. To refresh my memory can I see the working group list?
Q. Sure. I will give you one. You probably got one.
For the record I handed you MS 69.
A. The table of contents suggests, and I agree with it, no.

Q. Was anyone outside of MacAndrews & Forbes as part of the due diligence process assigned the task of reviewing Sunbeam's financial statements as audited by Arthur Andersen or if unaudited for a period to review those statements?
A. CSFB.
Q. Did CSFB hire any outside certified public accounting firm to assist them with their work?
A. I don't know.
Q. Sunbeam maintained a room of materials that they had assembled as part of a collection of documents that might be required by the acquirer to review for due diligence. That room was maintained at Skadden, Arps.
Were you familiar with that?
A. I am not familiar with it in the sense that I don't believe I visited it.
Q. Did you know that it existed?
A. I believe so. I just don't know who from our team if any visited that room inclusive of CSFB.
Q. Inclusive of CSFB?

A. Yes. I believe they may have but I just don't recall the specific times nor can I recall specific analysis that may have been conducted.
Q. Do you recall how you learned of the room of materials that was maintained at Skadden by Sunbeam for review by a party to an acquisition with Sunbeam, whether it be on the buy or sell side?
A. No.
Q. You can hand me back the working group list if you would and I will put it away.
If I could have just a minute I think we are probably done.
THE VIDEOGRAPHER: The time is 4:23 p.m. We are going off the record.
(Discussion off the record)
THE VIDEOGRAPHER: The time is 4:27 p.m. We are back on the record.
BY MR. BEMIS:
Q. When you went to the road show meeting that you could not recall the exact one or the exact location but the road show in --

A. It was in New York.
Q. It was in New York?
A. Yes.
Q. Did you just recall that? I thought you said you didn't remember where it was. Not that it matters.
A. I wasn't clear. When I said location, I meant the hotel.
Q. I got you, or I understand you.
When you went to the road show meeting in New York in March of, I assume, 1998 did you receive any documents at the road show?
A. Yes. I believe there was a slide presentation.
Q. Let me show you what has been marked as MS 194 which is entitled Road Show Presentation, Speaking Points.
Do you have that in front of you?
A. Yes.
Q. Did you -- have you seen this document before?
A. I don't think I have seen the speaking points. I think I just saw the slides.

NOT A CERTIFIED COPY

015351

Q. Were these slides put up as like a Power Point presentation?
A. Yes, I believe so.
Q. Were these slides presented by Mr. Dunlap?
A. Yes, I believe so, yes. I don't believe so. Definitely.
Q. Did you take a copy of the -- did you get a copy of the slides at the presentation?
A. Yes. Gees, yes, yes.
Q. As a result -- excuse me. After you left the presentation and you took a copy of the slides did you give them to anyone else?
A. Normal procedure, distributed them internally to the MacAndrews team, possibly First Boston, CSFB.
Q. Did you use any of the information in the slides in any of your analyses and spreadsheets that you did such as MS 104 through 107 that we talked about?
A. You mean modifying them?
Q. Yes, modifying them or even creating a new one that I haven't shown you

because I don't have it after all these years?
A. I don't think so. I mean, yes, I don't think so.
Q. Did you ever have any discussions with CSFB about any of the slides which are contained in MS 194 that you can remember as you sit here today?
A. No.
MR. BEMIS: That is all I have.
MR. MARKOWSKI: I don't have any questions.
MR. BEMIS: Thank you very much.
THE VIDEOGRAPHER: The time is 4:31 p.m. on September 1, 2004. This is the end of tape number 4, volume 2 of the, and this completes the videotaped deposition of Mr. William Nesbitt.
(Time noted: 4:31 p.m.)

_____
WILLIAM G. NESBITT

Subscribed and sworn to before me this day of 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That WILLIAM G. NESBITT, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

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

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 7th day of September, 2004.

STEVEN NEIL COHEN, RPR

INDEX OF EXAMINATION

Witness
WILLIAM G. NESBITT.....256

MS EXHIBITS

Exhibit No. Marked
224 Memorandum.....257
354 Memorandum.....311
106 Model.....317
107 Model.....317
355 Document.....337
108 Document.....342
356 Fax.....354
359 Letter.....391
360 Letter.....394

NOT A CERTIFIED COPY

013352

NOT A CERTIFIED COPY

015353

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Discussion Materials

February 1998

CP 026288
CONFIDENTIAL

015354

MORGAN STANLEY

SUNBEAM CORPORATION

Table of Contents

SECTION I EXECUTIVE SUMMARY

SECTION II OVERVIEW OF SUNBEAM CORPORATION

Tab A Products & Markets Summary

SECTION III FUTURE GROWTH OPPORTUNITIES

Tab B New Product Initiatives
Tab C International Expansion
Tab D Channel Management
Tab E Marketing, Licensing and Merchandising

APPENDIX

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

CP 026288
CONFIDENTIAL

SECTION I

015356

EXECUTIVE SUMMARY

NOT A CERTIFIED COPY

CP 026289
CONFIDENTIAL

015357

SUNBEAM CORPORATION

Summary Descriptive Sheet

($MM except per share amounts)

DESCRIPTION OF BUSINESS

Company develops makes and sells small appliances barbecue grills electric blankets and heated throws health and personal care products barber and beauty equipment lawn clippers and animal care products Small appliances include fans blenders coffee makers cookware irons etc Outdoor products include portable natural gas charcoal and electric barbecue grills including Looks models Health care products include blood pressure monitoring devices heating pads massagers dental care products humidifiers and air cleaners

RECENT EVENTS

October 24 1997 The Company announced it has hired Morgan Stanley to explore strategic alternatives

October 23 1997 The Company reported positive EPS earnings of $0 39, exceeding Street estimates by a penny

October 6 1997 - The Company announced the introduction of its new FreshSource waste filtration system and Allergy Smart air filtration system The two products are expected to contribute $100 MM in 1998 sales

June 25 1997 The Company announced the completion of five additional international distributor/marketing agreements signed during the second quarter of 1997 This brings the total to 21 since Dunlap joined

June 17 1997 - The Company entered into a partnership arrangement with United Family Communications for exclusive pan-regional advertising on Cable TV the only network entirely dedicated to the home in Latin America

May 13 1997 The Company announced the sale of its Biddeford Maine textile factory to an investment group

SELECTED INFORMATION.

State of Incorp	Delaware
Headquarters	Delray Beach, FL
Stock Symbol	SOI
Listing	NYSE
Fiscal Year End	December 28

SEGMENT SALES BREAKDOWN.

Industry (Estimated)

Outdoor Cooking	$455 6	39 9%
Health & Home	116 8	10 0%
Pers Care & Comfort	222 0	19 0%
Outdoor Cooking	303 7	26 0%
Professional Care	70 1	6 0%
Total	$1,168 2	100 0%

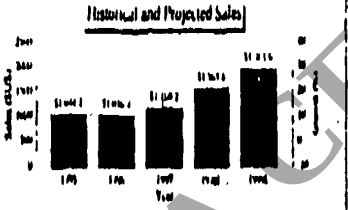
Geographic

Domestic	$891 0	81 4%
International	183 1	18 6%
Total	$984 2	100 0%

SELECTED FINANCIAL INFORMATION.

	Fiscal Years Ended December 28,			3 Yr	Expenses (2)	
	1995	1996	1997	C G R	1998E	1999E
Revenues (1)	$1 016 9	$984 2	$1,168 2	5 0%	$1 561 4	$1 961 6
% Change	-3 2%	-3 2%	18 7%		33 3%	25 5%
EBITDA (1)	114 2	48 2	238 0	44 3%	384 9	482 7
% Margin	11 2%	4 9%	20 4%		24 6%	24 6%
EBIT (1)	70 1	0 7	199 4	14 6%	339 9	434 7
% Margin	6 9%	0 1%	17 1%		21 8%	22 0%
Net Income (1)	37 6	(8 3)	123 1	N A	199 4	253 2
% Margin	3 7%	-0 8%	10 5%		12 8%	12 9%
Capital Expenditures	94 2	75 3	58 3	N A	70 0	95 0

Historical and Projected Sales



SELECTED MARKET INFORMATION.

Stock Price (2/2/98)	$17 063
LTM Low / High	21 875/10 438
10-year High (10/24/97)	50 438
Shares Outstanding (MM)	84 900
Dividend	$0 04
Dividend Payout	2 0%
Dividend Yield	0 1%

SELECTED VALUATION PARAMETERS.

	1997		LFY	PFL
Adj Mkt Cap /Sales (3)	167 7%	1998E (3)	$2 18	1 76 x
Adj Mkt Cap / EBIT (3)	8 1 x	1999E (3)	2 65	1 40
Adj Mkt Cap / EBITDA (3)	6 8			
		Proj 3 Yr		
Mkt/Int/Book (4)	2 8	Growth (5)	20%	
		1998E PFL		
Discount to LTM High	(36 5)%	to Growth	0 7 x	
Discount to 10-year High	(36 5)			

FULLY DILUTED OWNERSHIP

Significant Shareholders (6)	
Total Insider Holdings	11%
Franklin Mutual	19 2%
Alliance Capital Management	11 4%
Columbia Management	5 3%
Other Institutional Ownership	41 9%
Other	10 9%
	100 0%

D&O Holdings (6)	
(Jerry Levin CEO Albert J Dunlap CEO)	2 6%
Other	1 4%
Total D&O Holdings	3 8%
LMJP	0 0%
Total Insider Holdings	3 8%

CAPITALIZATION.

	Book Capitalization at 12/28/97		Market Capitalization at 2/2/98	
	Amount	%	Amount	%
Short Term Debt	$0 0	100 0%	$0 0	100 0%
Long-Term Debt	$194 6	14 8%	$194 6	5 8%
Preferred Stock	0 0	0 0%	0 0	0 0%
Shareholders Equity	1,120 3	85 2%	3 146 6	94 2%
Total Capitalization (7)	$1,314 9	100 0%	$3,341 2	100 0%
Cash and Cash Equivalents			$52 4	
Adjusted Market Capitalization (3)			$3 288 8	

SELECTED CREDIT STATISTICS.

LTM EBIT / Net Interest	1 9 x
LTM EBITDA / Net Interest	2 3
Total Debt / LTM EBITDA	0 8
Current Debt Ratings	
Moody's	NA
S&P	NA

Notes

(1) Sales EBIT EBITDA and Net Income are for continuing operations before any extraordinary or non recurring items, and cumulative effect of accounting changes
(2) Estimates from Upgradement research report dated December 11 1997 on Sunbeam Corporation
(3) Adj Market Cap consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents
(4) Based on a closing market price of $17 063 per share on 2/2/98 and 84 9 MM shares outstanding on 12/28/97
(5) Upgradement earnings estimates as of 1/28/98 3 year term growth from IBES/S dated 2/2/98
(6) Based on information from proxy dated 4/16/97 Institutional ownership from Thomson's run dated 9/11/97
(7) Total Capitalization excludes short term debt

CP 028282
CONFIDENTIAL

MORGAN STANLEY

015360

16div-021221

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Company Strengths

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

NOT ACCEPTED COPY

CP 026293
CONFIDENTIAL

015361

SUNBEAM CORPORATION

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

Cost Related

- Majority of the **restructuring plan completed** in the first quarter of 1997
  - Expected to result in cost savings of $225MM, of which 75% are expected to be realized in 1997 and the balance in 1998
- **Facility consolidation** finished
  - Of 26 factories, eight remain (four in the US, three in Mexico and one in Venezuela)
  - Reduced the number of warehouses from 61 to 18
  - Consolidated the number of headquarter locations from six to one
- **Workforce** reduction to 6,000 from 12,000 employees
  - 3,000 positions related to businesses sold
- Eliminate **88% of its Stock Keeping Units** (SKUs)
  - From 12,500 items (of which 4,500 were furniture products) to about 2,000
  - Elimination of product variations, not product lines; simplified ongoing business
- **Divested** non-core businesses
  - Furniture, decorative bedding, time and temperature lines, gas logs & heaters and Biddeford, Maine textile mill sold, *Counselor* and *Borg* scales brands exclusively licensed to Signature Brands

Growth Related

- Implemented and integrated **new systems and processes** for all core business functions (e.g., new J.D. Edwards systems, product development, *Demand Solutions* forecasting, controllers, accounting, etc.)
- Redesigned concurrent **product development cycle** from 2.5 years to 6 months
  - Plans to introduce 30 new products a year over the next several years
- Initiated "Project Full Time" to improve **customer service**
  - Opportunity to further increase sales by eliminating supplier hedging, filling voids and being invited into new categories
  - Channel management expected to contribute $200 MM in revenue by 1999
- Selectively targeting **international markets** for growth opportunities
- Initiated extensive consumer and market research
  - Identify opportunities by addressing consumer issues and needs
- Revamped **advertising campaign**
  - Award winning advertising and marketing campaign

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Summary of Recent Analyst Estimates

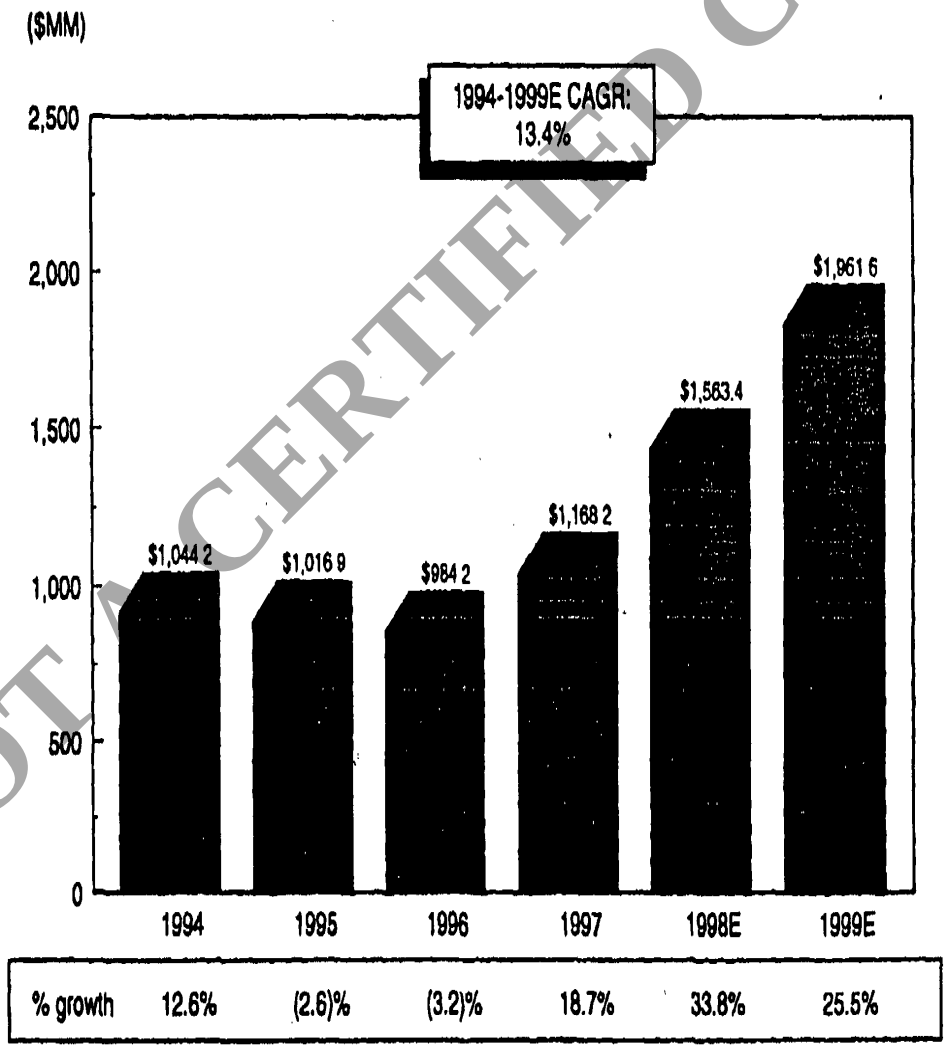
Date	Price	Firm/(Analyst)	Recomm.	Target Price	EPS 1998E	EPS 1999E	PE 1998E	PE 1999E	Long Term EPS Growth	1998 PE/Growth
01/29/98	$37 63	Prudential Securities/ (Nicholas Heymann)	Buy	$55 12 months	$2.10	$2 60	17 9x	14 5x	20 - 25%	72 - 90
01/29/98	$37 63	Buckingham Research/ (William H Steele)	Neutral	$43	2.00	2 40	18 8	15 7	21 0%	90
01/29/98	$37 63	PaineWebber/ (Andrew Shore)	NA	$50 12 - 18 mo	2 00	2 60	18 8	14 5	20 0%	94
01/29/98	$37 63	Merrill Lynch/ (John Gibbons)	Buy	NA	1.80	NA	20 9	NA	15 0%	1 4
01/28/98	$37 75	CIBC Oppenheimer/ (Scott Graham)	Strong Buy	$53 12 months	2 10	2 65	18 0	14 2	NA	NA
02/2/98	$37 06	I/B/E/S			$2 00	$2 63	18 5x	14 1x	20 0%	0 93
02/2/98	$37 06	First Call (Eight Estimates)			2 02	2 58	18 3	14 4	20 3%	1 80

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

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Consolidated Net Sales, 1994-1998E [1]



% growth	12.6%	(2.6)%	(3.2)%	18.7%	33.8%	25.5%

Source Sunbeam Annual Report

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

NOT A CERTIFIED COPY

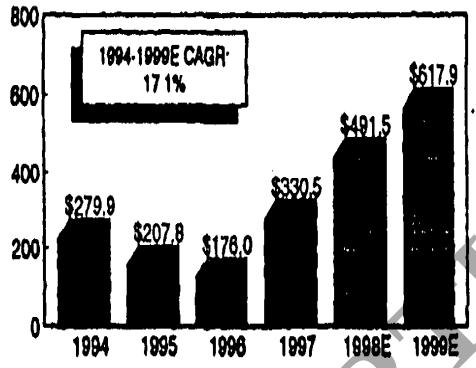
CP 026296
CONFIDENTIAL

015364

SUNBEAM CORPORATION

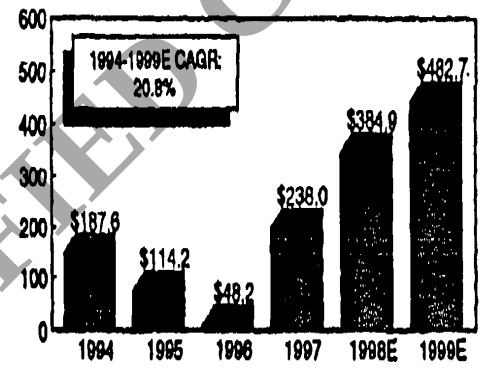
Consolidated Profitability Statistics [1][2]

($ MM) **Gross Profit**



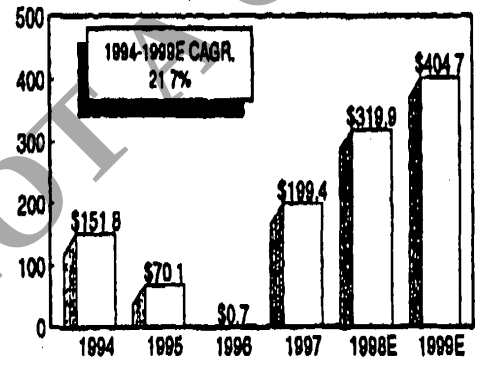
	1994	1995	1996	1997	1998E	1999E
% Margin	26.8%	20.4%	17.9%	28.3%	31.4%	31.5%

($ MM) **EBITDA**



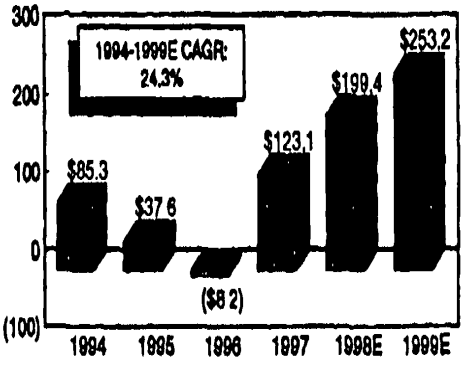
	1994	1995	1996	1997	1998E	1999E
% Margin	18.0%	11.2%	4.9%	20.4%	24.6%	24.6%

($ MM) **EBIT**



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

($ MM) **Net Income**



	1994	1995	1996	1997	1998E	1999E
% Margin	8.2%	3.7%	(1.7)%	10.6%	12.8%	12.9%

Notes. (1) Projections from Oppenheimer research dated December 11, 1997
(2) Data excludes any one-time or extraordinary charges

CP 026297
CONFIDENTIAL

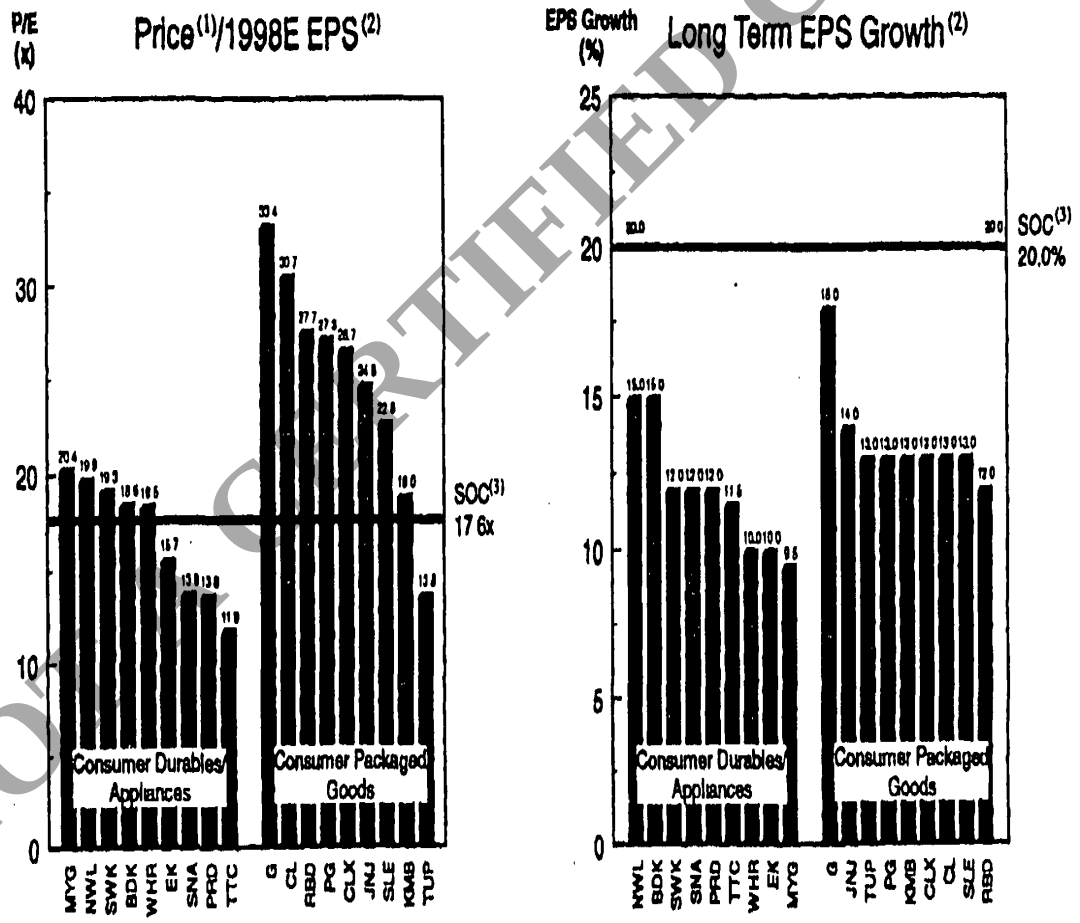
MORGAN STANLEY

015365

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Trading Statistics of Selected Consumer Products Companies



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

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

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

NOT A CERTIFIED COPY

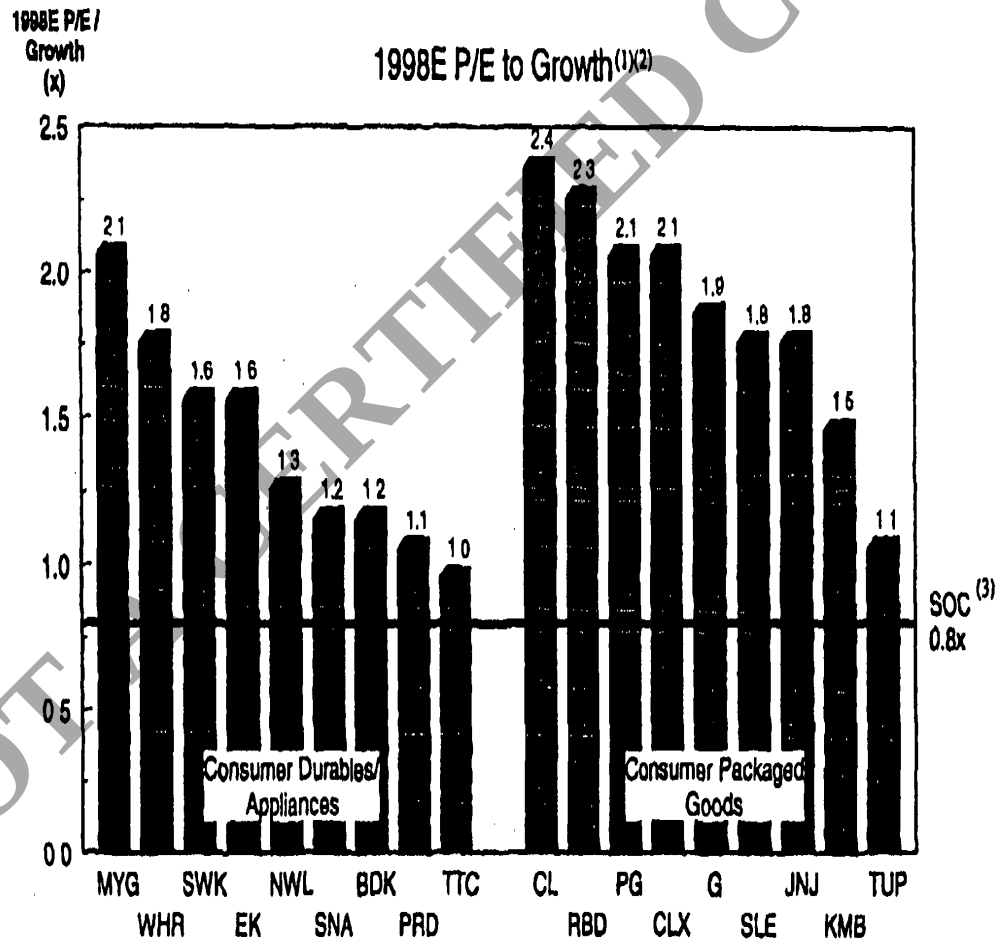
CP 026298
CONFIDENTIAL

MORGAN STANLEY

015366

SUNBEAM CORPORATION

Trading Statistics of Selected Consumer Products Companies



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

CP 026299
CONFIDENTIAL

NOT CERTIFIED COPY

015367

SUNBEAM CORPORATION

Business Overview

Sunbeam: Preeminent Branded Consumer Devices Company

What is a branded consumer device?

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

Key success factors

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

NOT A CERTIFIED COPY

CP 026300
CONFIDENTIAL

015368

SUNBEAM CORPORATION

Stated Growth Objectives

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

NOT A CERTIFIED COPY

CP 026301
CONFIDENTIAL

MORGAN STANLEY

015369

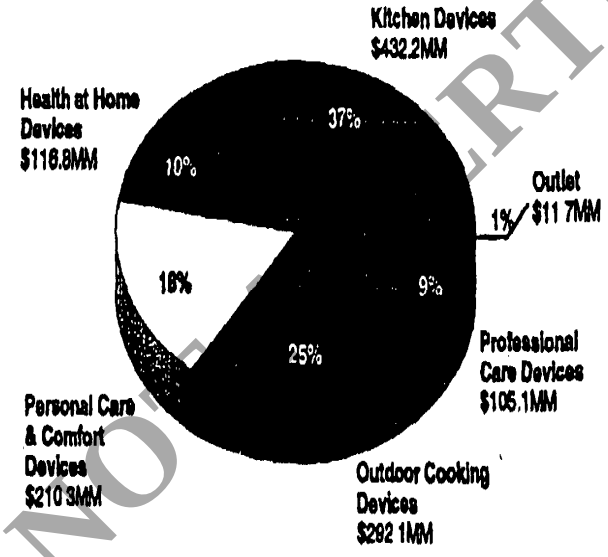
SUNBEAM CORPORATION

1997E Dollar Share by Segment

Sunbeam: Preeminent Branded Consumer Devices Company

Broad presence in a number of categories

No single true competitor for Sunbeam across all product lines.



Total 1997 Sales: $1,168.2MM

Kitchen Devices

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

Health at Home Devices

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

Personal Care & Comfort Devices

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

Outdoor Cooking Devices

- Charbroil/Thermos
- Weber
- Fiesta

Professional Care Devices

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

CP 026302
CONFIDENTIAL

NOT CERTIFIED COPY

F1831\J65532 1 BAS 05P

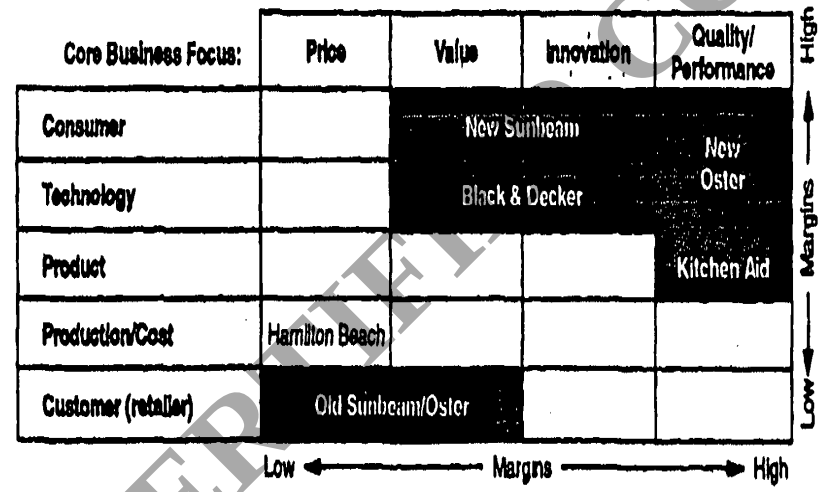
015370

MORGAN STANLEY

SUNBEAM CORPORATION

Repositioning of *Sunbeam* and *Oster* Brand Names

Relative Competitive Position



New Positioning Direction

Sunbeam

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

Oster

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

CP 028303
CONFIDENTIAL

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Future Growth Opportunities

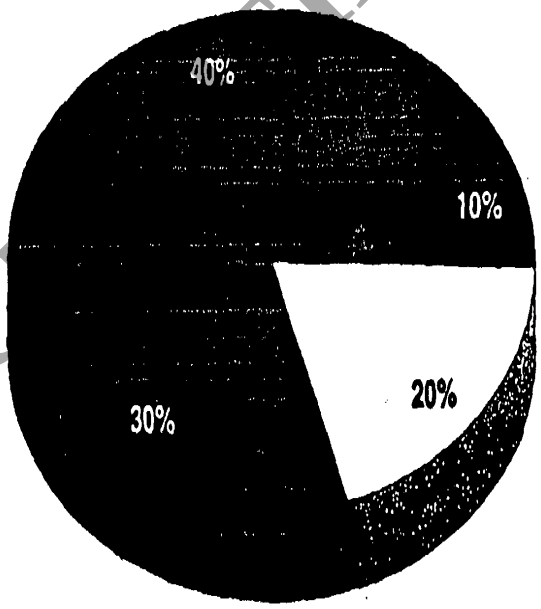
Where will growth come from?

International Growth: +$400MM

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

Core Growth: +$100MM

- 3% industry growth from core products



New Products: +$300MM

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

Channel Management: +$200MM

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

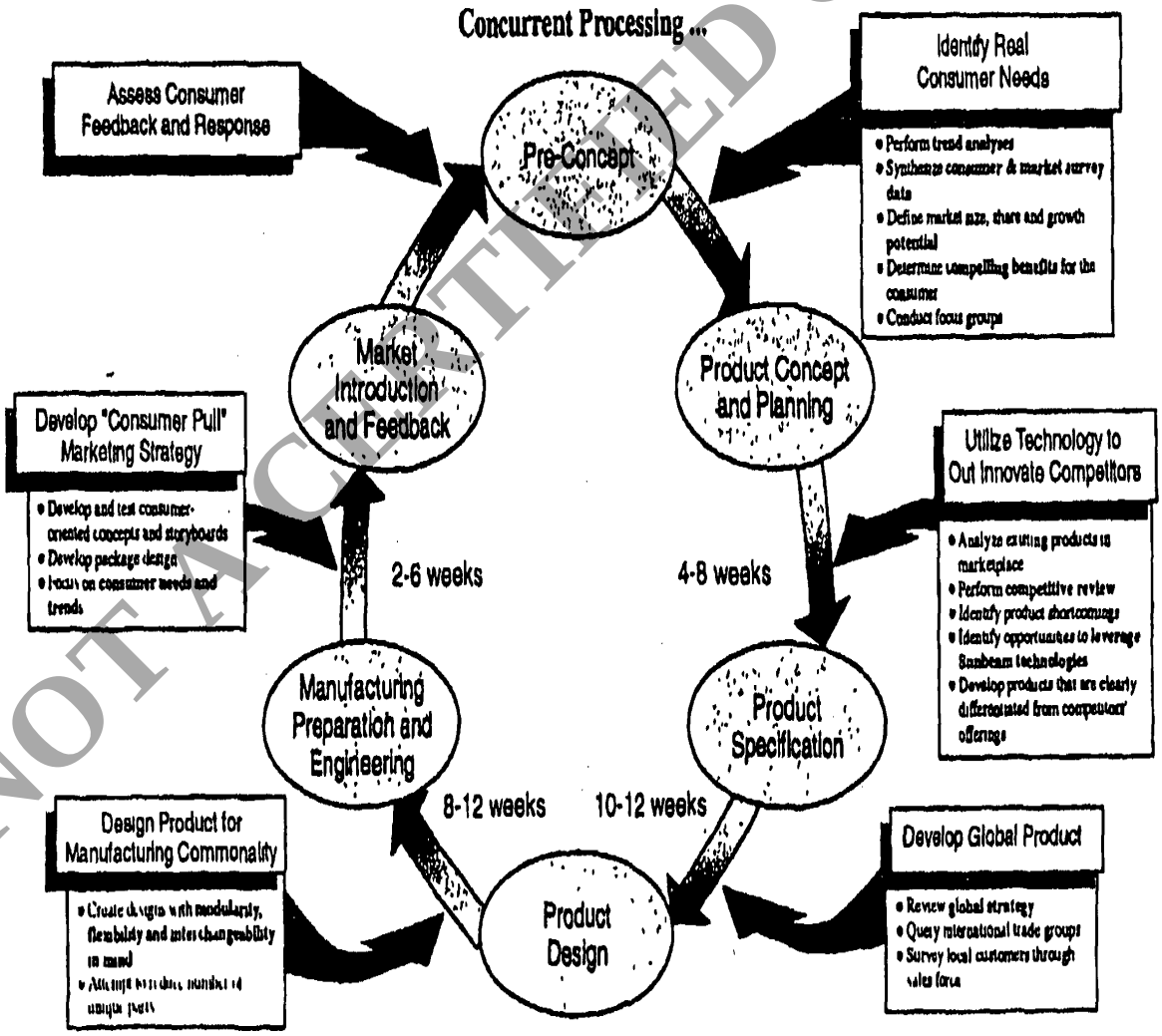
Total 1996-1999E
Revenue Growth: $1 Billion

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Redesigned New Products Development Process



NOT ACCREDITED COPY

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Recent and Planned Product Introductions

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

1Q'97 | 2Q'97 | 3Q'97 | 4Q'97 | ...

Already Introduced

- Custom Blend Coffee*
- Toast Logic Chrome*
- New Breadmaker
- Distributor Line Grill*
- Cordless Hair Trimmer
- Cordless Hair Clipper
- Digital Bath Scales
- Raised Dial Bath Scale
- Outdoor Fireplace*
- Digital Blood Pressure Monitor
- 4 Cup Coffee Maker*
- Hepa Air Cleaner*
- Titanium Clipper Bades*
- Jumbo/Indiglo Thermometer*
- 4 Slice Toast Logic Toaster*
- 220 Volt Products

Remaining Introductions

- Redesigned Oster Blender
- Redesigned Sunbeam Mixmaster
- "Fry-Right" Deep Fryer*
- Toast Logic Toaster Ovens*
- Soft Serve Ice Cream Maker*
- Rice Cooker*
- Horizontal Breadmaker*
- 800 Series Grill*
- Slow Cooker w/Stirring Arm*
- Wall Mount Hair Dryer w/Nightlight*
- New Retail Hair Clipper
- Basic Value Iron*
- **Water Filtration***
- **Air Filtration***
- 220 Volt Products

CP 026308
CONFIDENTIAL

* Denotes non-cannibalizing products

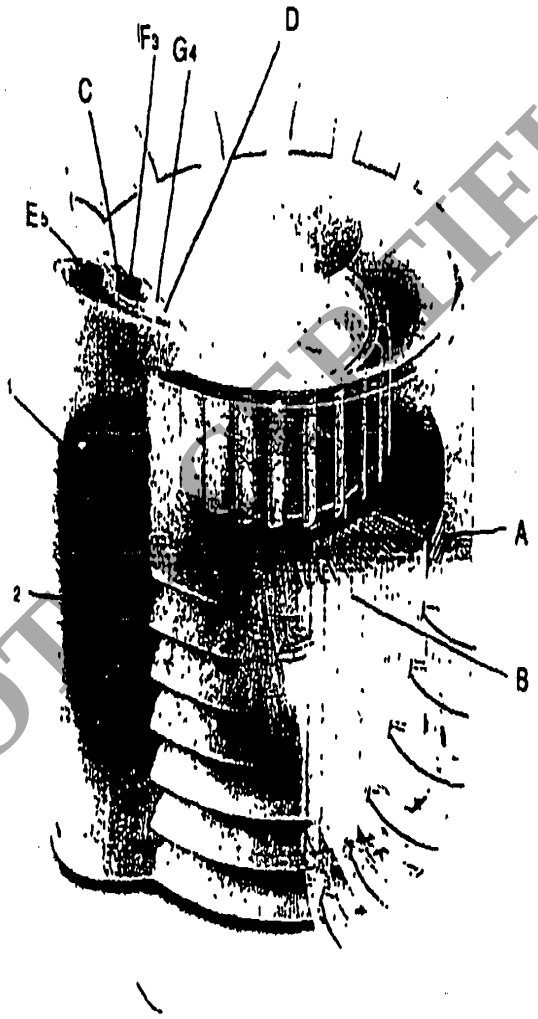
MORGAN STANLEY

NOT A CERTIFIED COPY

015374

SUNBEAM CORPORATION

*Allergy**smart*** Air Cleaner with Allergen Detector



HOW IT WORKS

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

FEATURES

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

CP 026307
CONFIDENTIAL

NOT CERTIFIED COPY

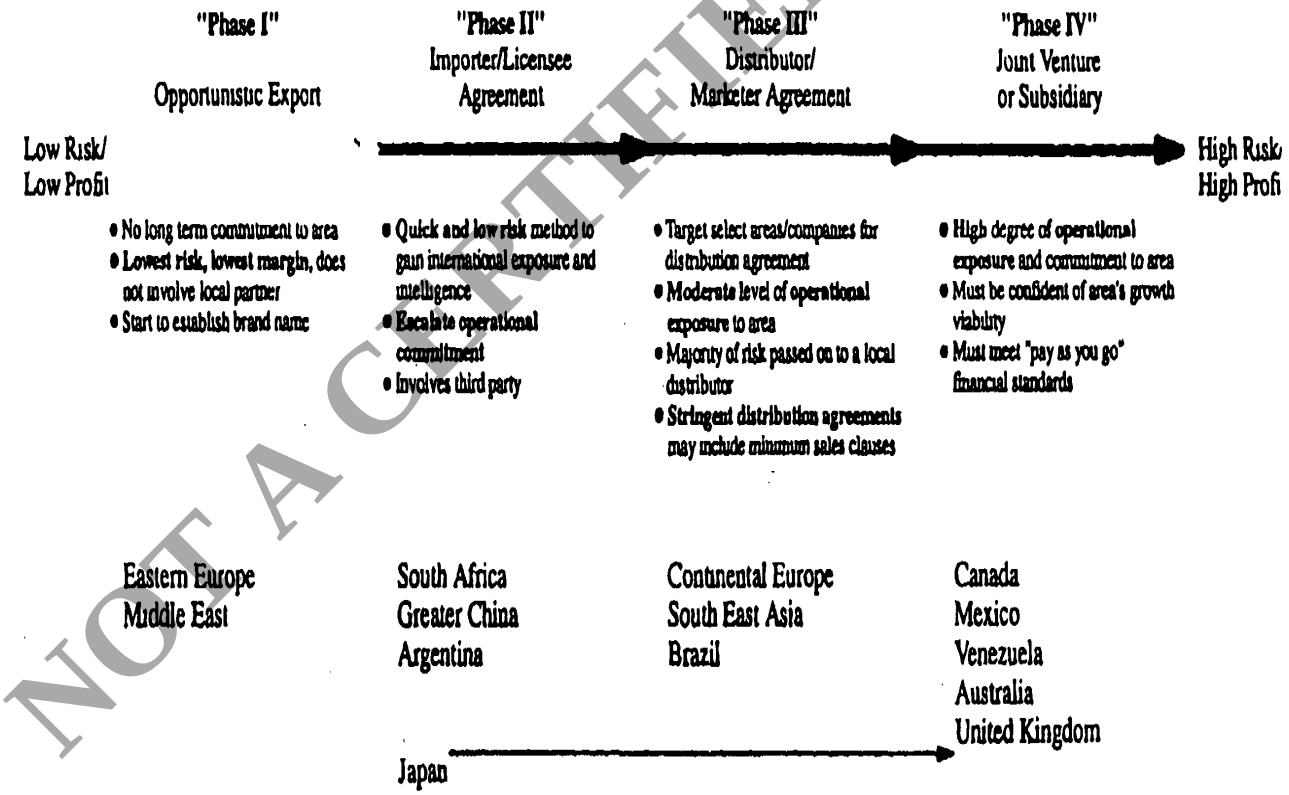
015375

MORGAN STANLEY

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Market Penetration Strategy



NOT A CERTIFIED COPY

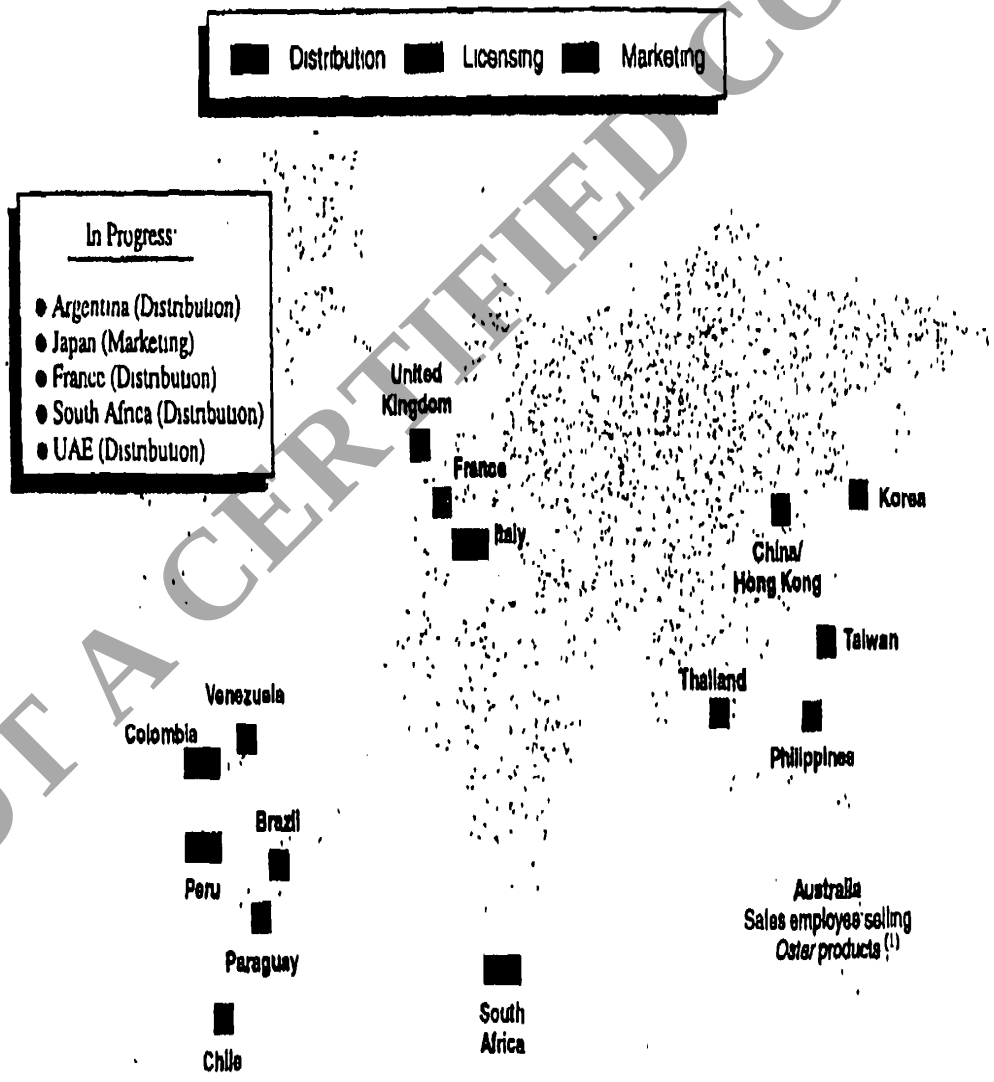
CP 026308
CONFIDENTIAL

015376

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

1997 International Expansion Initiatives - Global Agreements



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

NOT A CERTIFIED COPY

CP 026309
CONFIDENTIAL

015377

MORGAN STANLEY

SUNBEAM CORPORATION

Sunbeam Operational Improvement Potential

"Project Full Time"

Enormous Potential to Increase Market Share and Sales Through Service Improvements

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

NOT A CERTIFIED COPY

CP 026310
CONFIDENTIAL

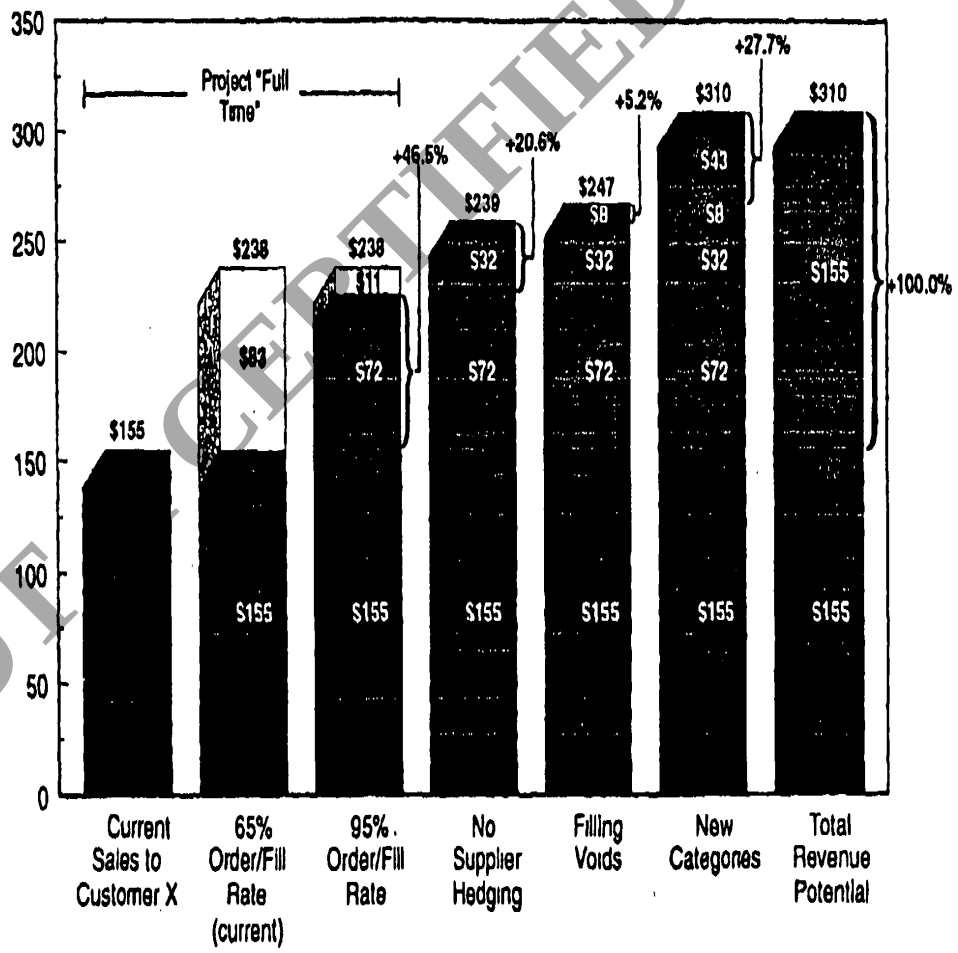
015378

SUNBEAM CORPORATION

Channel Management

Case Study - Revenue Potential

Significant Potential to Grow Revenues Through Existing Channels



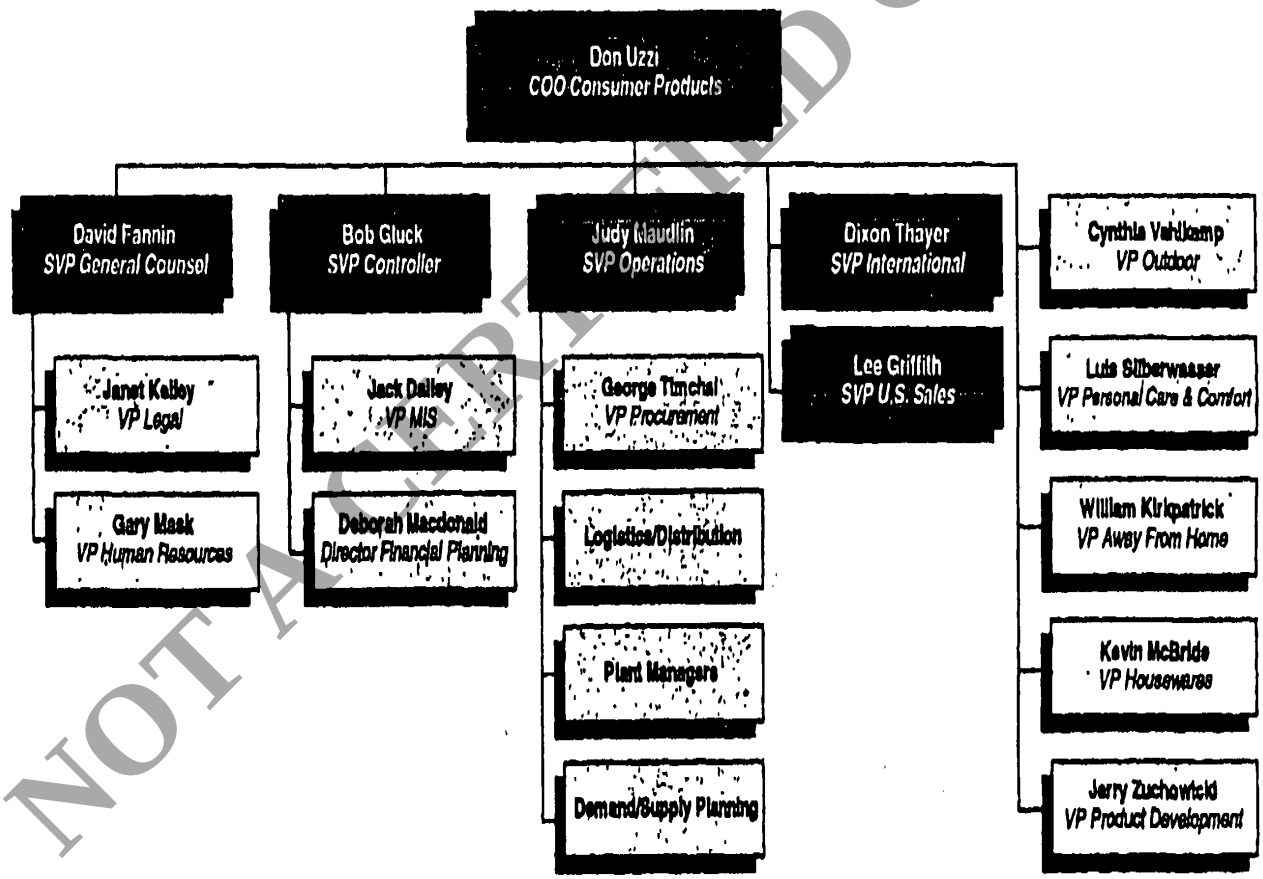
NOT CERTIFIED COPY

CP 026311
CONFIDENTIAL

015379

SUNBEAM CORPORATION

Sunbeam Worldwide Organization Chart Post Merger



NOT A CERTIFIED COPY

CP 026312
CONFIDENTIAL

MORGAN STANLEY

015380

16div-021241

SUNBEAM CORPORATION

Sunbeam

Global Trends and Opportunities

	Trend	Implications & Opportunities	Sunbeam Solutions
Consumer Trends	Aging of the western population • 35% of Americans over 45 by 2000 • 30% of Europeans over 50 by 2000	• Focus on length and quality of life issues ·Monitoring & maintenance, at-home care • Distinct needs (e.g., small kitchens, leftover storage, unique diet) • Age sensitive product design • Familiarity and trust of known brands • Household	• Sunbeam for seniors ·Easy to operate, address specific needs • Health at home products which provide monitoring and therapy • Target marketing of trusted Sunbeam and Oster brands to seniors • Alternate channels with shop at home accessibility
	Increasingly youthful population in developing economies • Average age in Latin America is 19 years old • One billion people worldwide are 10-19 years old • Average age in China is 20 years old and declining	• Pursuit of Western lifestyle ·Fast food, rock&roll, blue jeans, Hollywood, the Internet • More aware of current trends/brands savvy • Combining of cultural influences (new food fads and cuisines)	• Expansion of brands globally ·Export product innovation, leverage strengths of Oster in Latin America • Ethnic cuisine food preparation systems • Direct consumer access
	Sensitivity to health and sanitation issues • 80% of U.S. consumers have great confidence in own ability to care for themselves • Only 53% have great confidence in doctors	• Focus on air & water quality ·U.S. bottled water per capita (1983 = 3 gal, 1994 = 10 gal) • Health & fitness regimens shifting to home ·Home fitness machines are a $2Bn+ business • Consumers searching for healthier food preparation ·Rotisserie cooking and roasting	• Home water filtration • Home air filtration • Personal diagnostics providing monitoring, measurement, therapy • Healthy food preparation systems (e.g., rotisseries, steamers, grills, etc.)
	Increasing demands on time • 60% of U.S. women are now working outside the home • 62% of kids under 13 prepare at least one meal themselves weekly • 70% of adults feel "stressed" during the average day	• A need for appliances that "think for you" • Products that eliminate hassles & time-consuming work • Increased self-sufficiency for children • Combination appliances	• "Smart" products ·Blanket With a Brain, Custom Blend Coffee Maker, 3-Way Auto-Off Steam Master • Sunbeam Logic™ • "Less hassle" innovations ·Cordless clippers combination coffee grinder/brewer, pre-assembled grills • Functioning and safe appliances for children
	The home as a sanctuary • 68% of people say home is "only place I can unwind" • Americans now spend 90% of their time indoors (EPA) • Home becoming a last refuge (34% U.S. H.H. own alarm, only 14% in 1990)	• 30-50% of U.S. homes and offices have damp conditions, encouraging buildup of pollutants • 50 million Americans suffer from allergies, 64% of doctors recommend air cleaners for allergies • Air cleaners growing at 12% CAGR, only 10% of U.S. homes own one • Water filters growing at 10% CAGR, only 15% of U.S. homes own one	• Expand health at home ·Broadened product line, differentiated technologies • Broadly penetrate new channels broadly • Test retail impact ·Joint advertising with retailers
Channel Trends	Retailer consolidation & globalization • Largest retailers getting bigger, more efficient and global • Five largest retailers account for $208B in 1995 sales up from $120B in 1990 & competition is intensifying • Wal-Mart sales outside the U.S. up from $2MM in 1989 to $12Bn projected for 1997	• Retailers consolidating suppliers creating increased leverage • Growth in category management partnerships • Global consumers and global customers • Global growth opportunities for global suppliers • Emphasis on supplier efficiency	• Build strong global brands (Sunbeam and Oster) -- consumer pull strategy Global advertising agency partnership, 2-brand strategy, global products • International expansion (licensing, distribution and selling) Partner with retailer expansion supported by category focus and execution Alternate channel access to diversify portfolio ·Partner with key retailers on new categories (e.g., lawn maintenance) but focus on supply chain management opportunities
	Growth & role of alternative channels • Home shopping now accounts for 2% of total U.S. retail sales • Manufacturer outlet store growth (+27% CAGR past 5 yrs.) • Worldwide catalog sales $100 Bn in 1996 (projected to $200 Bn in 2006) • Away from home (3rd Bn business with 4% growth per year)	• Opportunity to balance/diversify the customer mix • Can't afford to miss the emerging market trends • Requires non-traditional marketing & sales processes • Some opportunity to keep more of the available margin • Opportunity to flatten seasonality	• "Shop@Home" market access strategy ·Direct marketing, door to door, Internet, catalog, own catalog in 30 million buyer/year, TV/infomercial, outbound telemarketing • Away from home strategy • Outlet store strategy

NOT ACCREDITED COPY

CP 028313
CONFIDENTIAL

015381

16div-021242

NOT A CERTIFIED COPY

SECTION II

CP 026314
CONFIDENTIAL

015382

NOT A CERTIFIED COPY

OVERVIEW OF SUNBEAM CORPORATION

CP 028315
CONFIDENTIAL

0153783

MORGAN STANLEY

NOT A CERTIFIED COPY

A

CP 026316
CONFIDENTIAL

015384

PRODUCTS & MARKETS SUMMARY

NOT A CERTIFIED COPY

CP 026317
CONFIDENTIAL

015385

SUNBEAM CORPORATION

Segment Trends & Strategies Overview (1)

	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	• Mixmaster • Sunbeam • Oster • Coleman	• Health at Home	• Cuddle-Up • Oster	• Sunbeam • Grillmaster	• Oster
Market Position	• #1, 2 or 3 depending on product category	• #1, 2 or 3 in most categories	• #1 in electric blankets • #1 in clippers	• #1 in gas grills	• #1 in clippers
Major Competitors	• Black & Decker • Hamilton Beach/Proctor Silex (Nacco) • KitchenAid (Whirlpool)	• Durocraft • Braun (Gillette) • Health O'Meter	• Weiv • Ardes • Teledyne	• Char-Broil • Thermos • Weber	• Wahl • Ardes
Distribution	• Mass merchandisers • Department stores • Specialty stores	• Mass merchants • Drug stores	• Mass merchants • Drug stores	• Mass merchants • Hardware/Home centers	• Mass merchants • Drug stores • Specialty stores • Professional distributors
Trends	• Time pressure demands convenience and speed • Need for speed, simplicity and reliability of use • Sensitivity to health and sanitation • Need for healthy food preparation appliances • Broadening taste profiles • Need for more ethnic food processing products • Emphasis on leisure and value Opportunity to make cooking "fun" • Develop products for all types of cooks	• Health conscious lifestyle • Heightened consumer interest in health related products • Aging population • Growing market for health related products • Value consciousness • Drives business to mass merchant channels where Sunbeam has strong presence • Home as a sanctuary/Self-care • Sunbeam brand has strong equity in the home vs. other lesser known medical brands	• Healthy lifestyle • Opportunity to improve personal appearance and "slow down" the aging process • "Do-it-Yourself" Value • Need to save time and money • Self-indulgence • Desire to pamper oneself and relax • Time crunch • Opportunity for professional quality and service with at-home convenience	• Time shortage • Leads to more gas grilling, meal simplification and speed scratch cooking • Home as a sanctuary • People are spending more time at home with family and friends • Baby Boomer demographics • Creates shopping behavior favoring cost/quality/convenience combination and trade-up from charcoal to gas	• Quality/Durability • Product usage is expected to be 7 to 10 years • Ergonomics/Styling • Comfortable grip and unique styling • Ease of use/Speed Power to cut healthy hair growth without slowing
Strategies	• Reposition and differentiate the *Sunbeam* and *Oster* trademarks • Expand the strategic breadth of product line through a consistent stream of new products built on consumer needs Become the perceived category leader for innovation by key customers Rapidly expand innovation abroad, specifically in Latin America and Asia	• Establish Sunbeam as the premiere brand in health at home market by owning consumer on numerous fronts • Deepen Sunbeam's consumer relevance through a consistent stream of new and enhanced benefit-driven products • Immediately fill brand leadership void in air and water purification • Establish a defensible category leader position on numerous channel fronts • Export "health at home" concept to Latin America, Asia, Europe	• Immediately establish Sunbeam as a leading competitor in personal care appliances through a dual branding strategy • Establish a broad and highly differentiated product line • Export personal care innovations on a global basis	• Establish Grillmaster from Sunbeam as the dominant worldwide brand of gas grills and accessories • Grow category by redefining "Grilling" as "Outdoor Cooking" • Dramatically increase the profit importance of Grillmaster and "Outdoor Cooking" to the trade • Establish worldwide design and technology network to maximize product innovation	• Immediately expand leadership in all business segments by better meeting professional need for consistency and s • Extend *Oster* quality professional heritage into broader-based product line for certain stylists and groomers
1997 Net Sales (1)	$432.2MM 37%	$116.8MM 10%	$210.3MM 18%	$292.1MM 25%	$105.1MM 9%

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

MORGAN STANLEY

CP 026318
CONFIDENTIAL

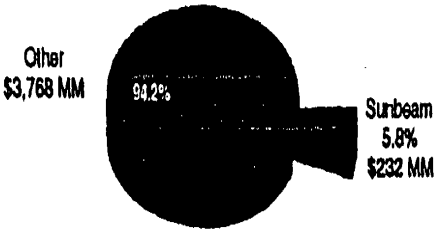
015386

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Overview of the Kitchen Devices Industry

1996 North American Market



Total Sales. $4,000 MM

Growth Opportunities

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

Industry

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

Competition

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

Consumer Image

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

Channel

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

Source: Industry trade magazines

MORGAN STANLEY

NOT A CERTIFIED COPY

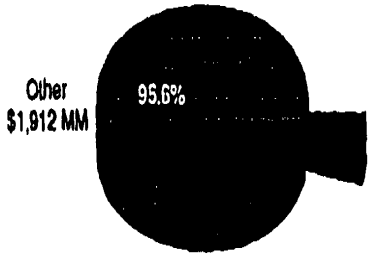
CP 026319
CONFIDENTIAL

L8C5T0

SUNBEAM CORPORATION

Overview of the Health at Home Devices Industry

1996 North American Market



Total Sales $2,000 million

Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

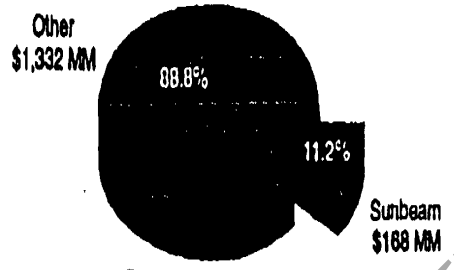
Source: Industry trade magazines

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Overview of the Personal Care & Comfort Devices Industry

1996 North American Market



Total Sales $1,500 million

Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines

MORGAN STANLEY

NOT A CERTIFIED COPY

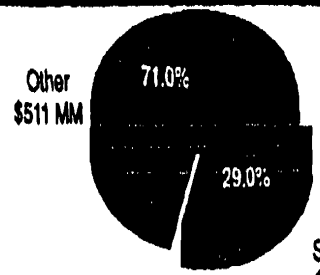
CP 026321
CONFIDENTIAL

015389

SUNBEAM CORPORATION

Overview of the Outdoor Cooking Devices Industry

1996 North American Market



Total Sales: $750 million

Growth Opportunities

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

Industry

- Market includes gas, charcoal and electric grill and appliances
  - Global category is $1 5 billion, Domestic market is $750 million (11 4 million units)
- Gas grills represent 84% of sales, 51% of units
  - Segment growing at 8% per year
  - Charcoal declining at 6% per year

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines

MORGAN STANLEY

NOT A CERTIFIED COPY

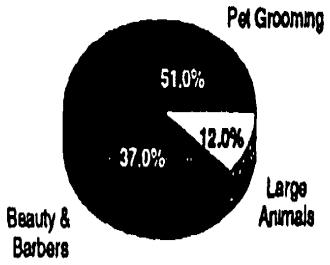
CP 026322
CONFIDENTIAL

015390

SUNBEAM CORPORATION

Overview of the Professional Care Devices Industry

1996 North American Market



Growth Opportunities

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

Industry

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

Competition

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

Consumer

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

Channel

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

Source: Industry trade magazines

MORGAN STANLEY

NOT A CERTIFIED COPY

CP 026323
CONFIDENTIAL

015391

SUNBEAM CORPORATION

Future Growth Opportunities

Key Initiatives

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

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Summary of Recent Analyst Commentary
(continued)

NOT A CERTIFIED COPY

New Product Introductions:

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

"Project Full Time":

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

SUNBEAM CORPORATION

Summary of Recent Analyst Commentary
(continued)

NOT A CERTIFIED COPY

International Opportunities:

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

New Channels/Distribution:

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

Advertising:

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

NOT A CERTIFIED COPY

015395

FUTURE GROWTH OPPORTUNITIES

NOT A CERTIFIED COPY

CP 026328
CONFIDENTIAL

015396

SUNBEAM CORPORATION

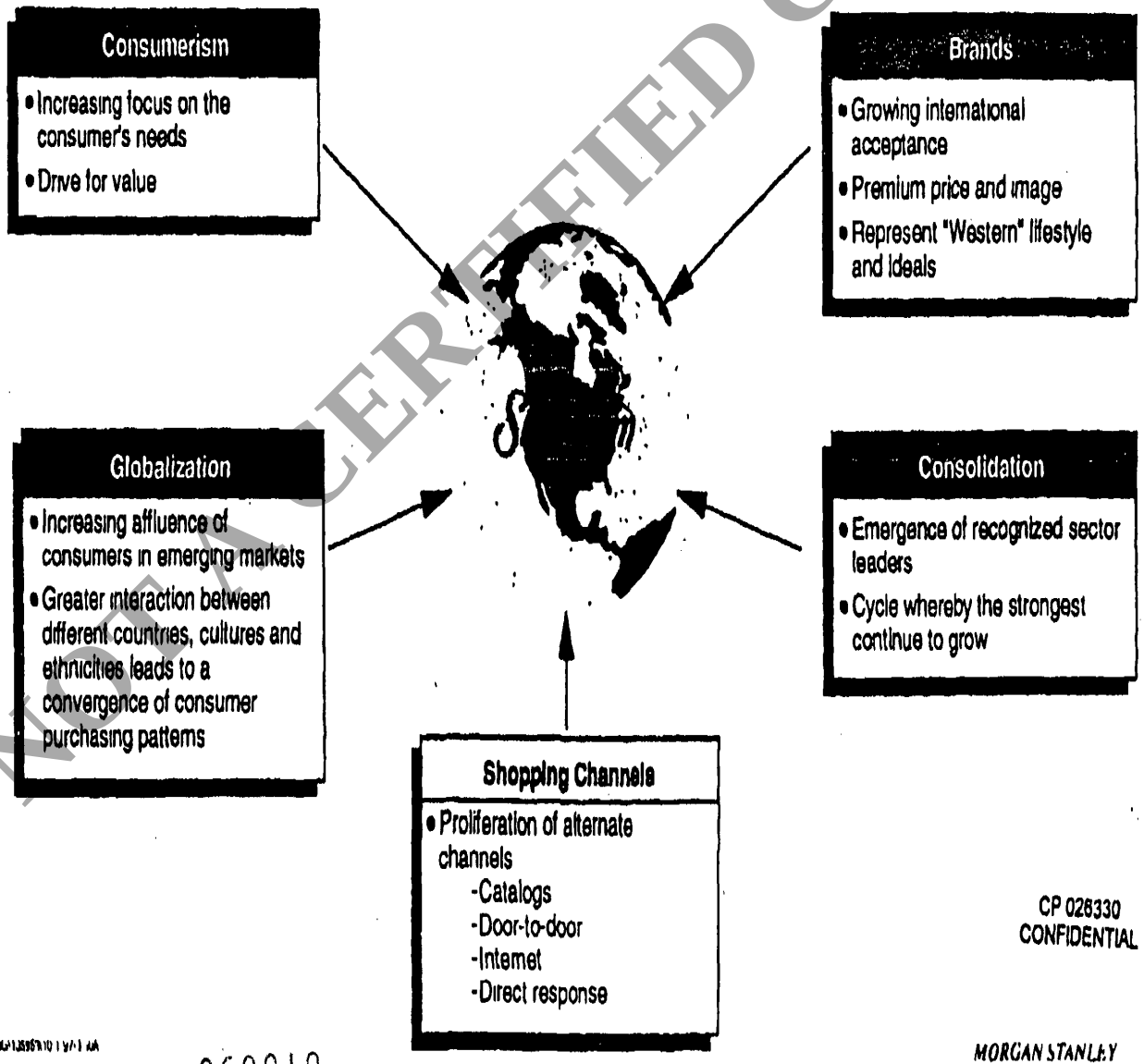
Stated Growth Objectives

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

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Global Environment Trends



MEA CERTIFIED COPY

CP 026330
CONFIDENTIAL

MORGAN STANLEY

015398

NOT A CERTIFIED COPY

B

CP 026331
CONFIDENTIAL

015399

NEW PRODUCT INITIATIVES

NOT A CERTIFIED COPY

CP 026332
CONFIDENTIAL

16div-021261

CONT #9168

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Focus on Accelerated New Product Development

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

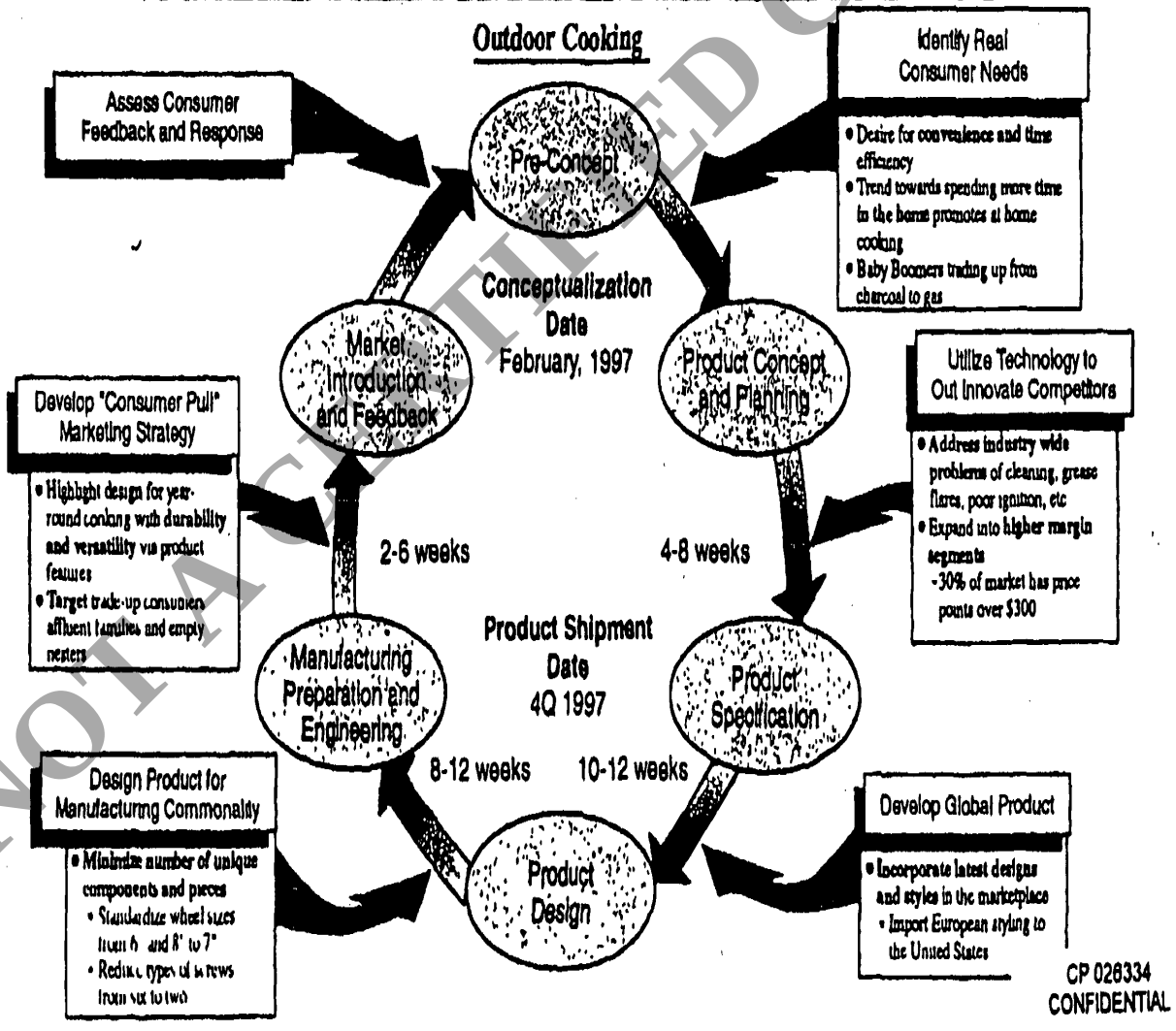
NOT A CERTIFIED COPY

CP 026333
CONFIDENTIAL

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products



Expected incremental revenue in the first year: $53 MM

NOT A CERTIFIED COPY

CP 026334
CONFIDENTIAL

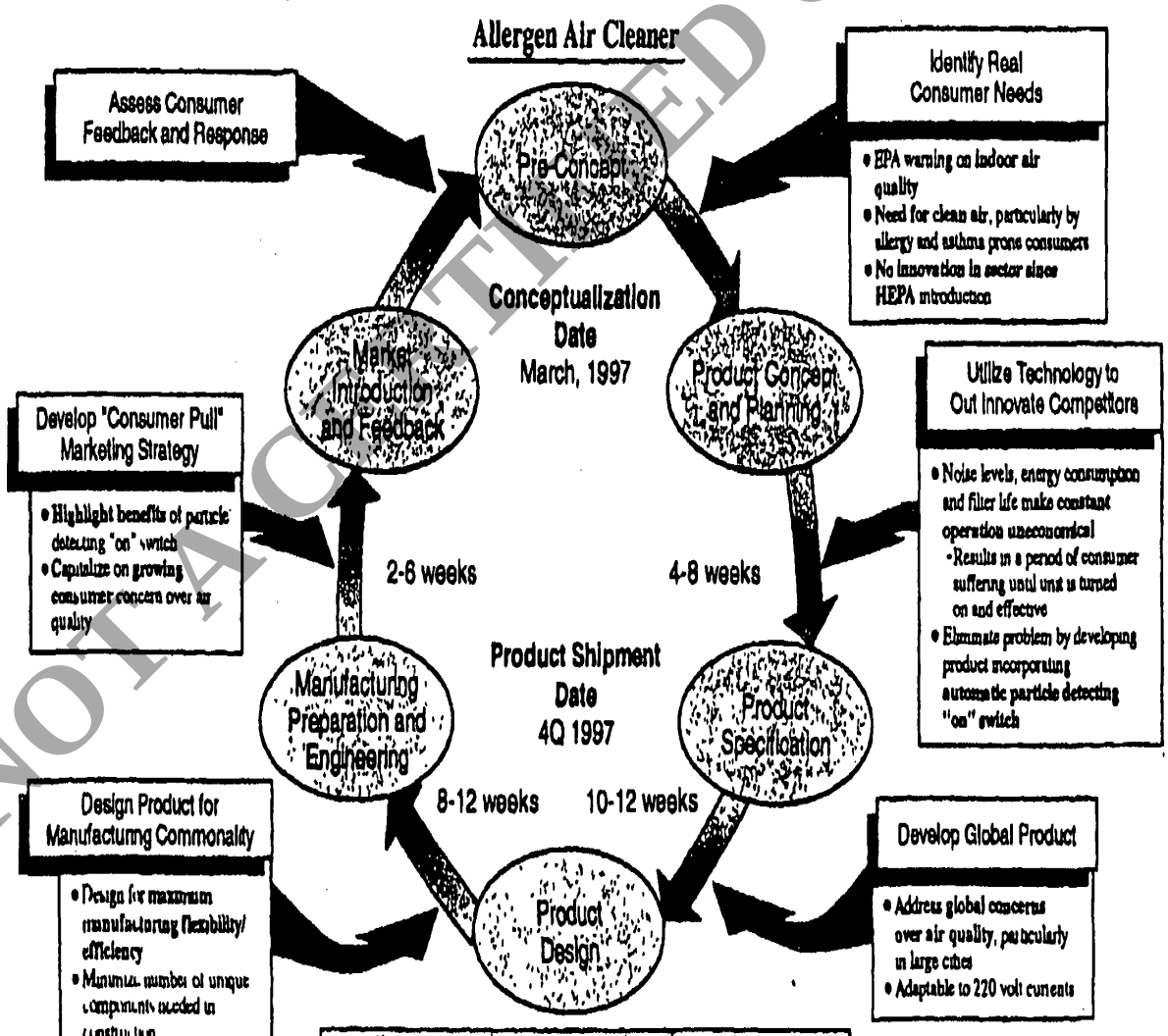
MORGAN STANLEY

015402

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Continued Innovation of Existing Products

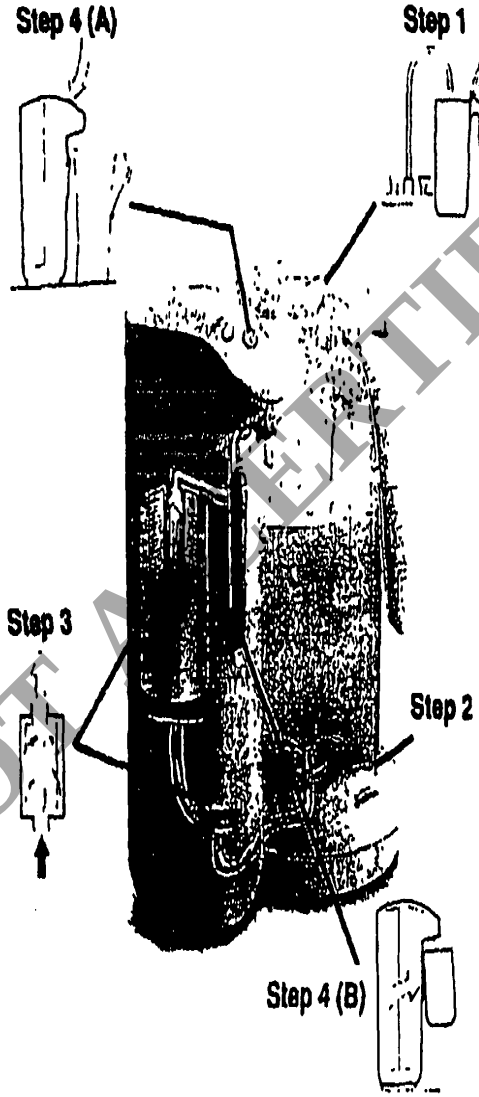


NOT ACCEPTED COPY

015403

SUNBEAM CORPORATION

Freshsource+. Water Purifier



HOW IT WORKS

1. Fill reservoir with cold tap water
2. Replace reservoir on base
3. A powerful motor and pump force water through a micro-fine filter, reducing chemicals and microorganisms

4(A). Volume dispensing

4(B). Glass at a time

NOT A CERTIFIED COPY

CP 026336
CONFIDENTIAL

MORGAN STANLEY

SUNBEAM CORPORATION

Analyst Reaction to New Air and Water Products

- "We, like SOC management, believe that both of Sunbeam's **new products have "home run" potential**. The products are **timely, innovative** and **margin enhancing, a perfect complement to the new Sunbeam portfolio**...These products should help to **deliver the 20% top-line growth** we are modeling for in 1998." *(PaineWebber - 10/9/97)*

- "In our view, [Sunbeam's] entries in the water and air purification markets lend **significant credibility to Sunbeam's new product strategy**, offer **demonstrable value-added** for consumers, and increase our confidence in estimated 20% plus sales growth and management's targeted 20% operating margin through 1999." *(Goldman Sachs - 10/9/97)*

- "Sunbeam has added visibility to its new product sales goals with [the new product] launches. It is **tapping into consumers' desires for clean water and air** in their homes. Each product **introduces new technology** into the small electric market and Freshsource **effectively creates a new category**...Our estimates seem destined to increase again." *(Oppenheimer - 10/8/97)*

- "Consumer **response is very strong** for [AllergySmart's] **feature/benefit/value proposition**. These products are positioned to grow the market as well as to establish a leading position for Sunbeam." *(Goldman Sachs - 10/9/97)*

- "Both products have **global applications, high long term growth potential**, and fit well within Sunbeam's Health at Home business" *(Bear Stearns - 10/9/97)*

- "The AllergySmart is a unique launch, **introducing proprietary laser technology**" *(PaineWebber - 10/9/97)*

- "While other water purification products are on the market today, there is **no product that purifies water with FreshSource's effectiveness and speed**." *(Oppenheimer - 10/8/97)*

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

[redacted]

[redacted]

CP 026338
CONFIDENTIAL

0154906

NOT A CERTIFIED COPY

INTERNATIONAL EXPANSION

CP 026339
CONFIDENTIAL

015407

MORGAN STANLEY

SUNBEAM CORPORATION

Sunbeam International Growth Opportunities

Enormous Upside Potential for International Growth

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

Strengths

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

Opportunities

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

NOT A CERTIFIED COPY

CP 028340
CONFIDENTIAL

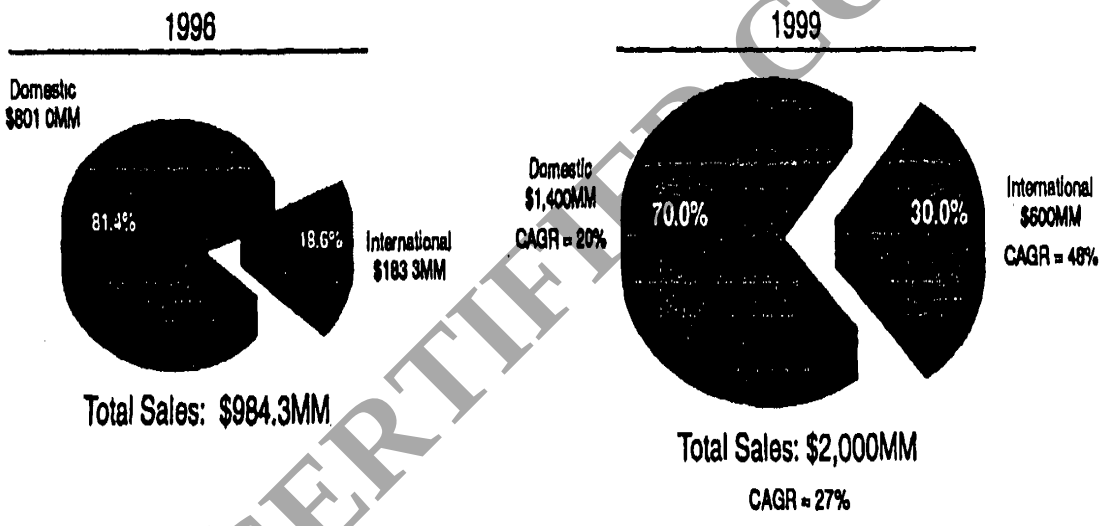
F18G13585A10 1 9AJ LCA

015408

16div-021269

SUNBEAM CORPORATION

Sunbeam International Growth Strategies



- Three key sources of growth:
  - Expansion of existing franchise
  - New product introduction
  - Geographic expansion
- Reorganize product development and salesforce to maximize global opportunities
  - Global perspective on product development
  - Support global category marketing
  - Uniform global brand development and advertising
- Profit center mentality (vs. investment mentality)
  - Focus on bottom line growth as well as top line growth
  - International operations already at 20% operating margins
- Target situations that offer the greatest potential risk-adjusted returns based on:
  - Ease of entry
  - Existing relationships
  - Tangible opportunities
  - Distinct product differentiation
- Capitalize on strong brand equity overseas

NOT A CERTIFIED COPY

CP 026341
CONFIDENTIAL

16div-021270

SUNBEAM CORPORATION

International Growth Strategies

Expansion of Existing Franchise

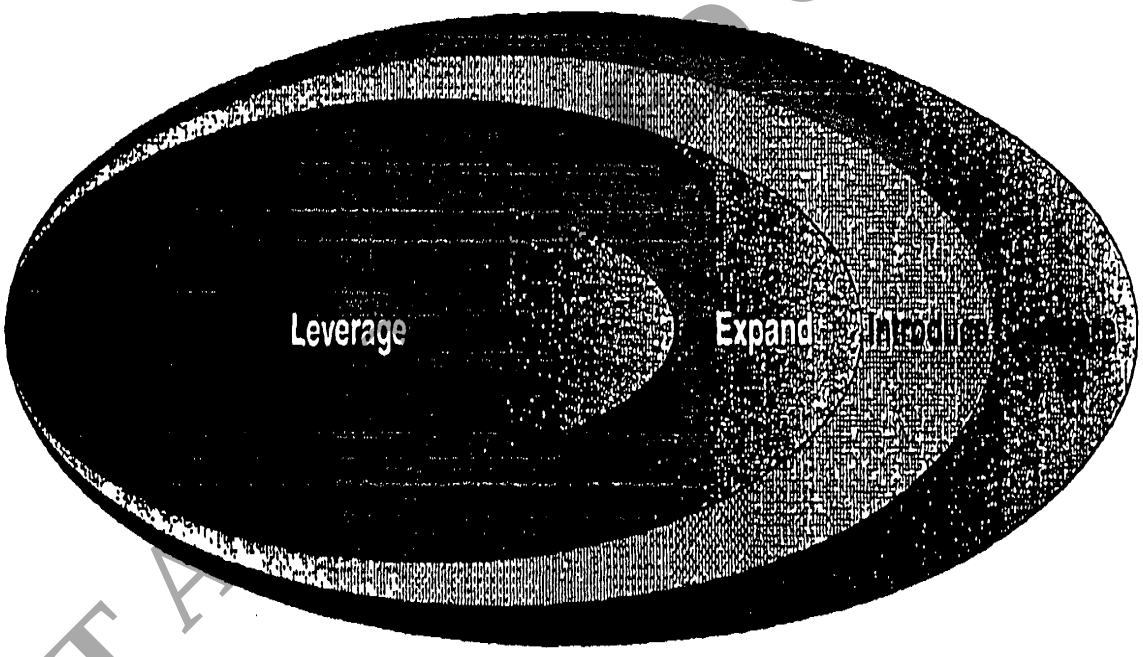
- Expand into new categories and new distribution channels
  - Grills, electric blankets, clippers, air and water, health at home, ethnic products
  - Do-It-Yourself/Home centers, professional and retail stores, drug stores, home shopping, catalog, Internet
- Regenerate brand awareness and demand
  -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

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Geographic Expansion



	Leverage	Expand	Introduce	Explore
Strategy:	• Build from currently existing Sunbeam strongholds -Continue to grow Sunbeam sales and brand recognition • Leverage strong base to expand sales growth -Geographical expansion to surrounding areas -Channel expansion within region	• Targeted expansion into key growth markets with tangible opportunities • Leverage strong Latin American position to penetrate Brazil and Argentina • Expand key Asian markets (Japan, Korea and Taiwan) through strong relationships and product distinctiveness	• Initiate business opportunistically in regions with specific situations • Introduce Sunbeam brands and stimulate brand awareness • Need flexibility to enter and exit markets quickly as situations change • "Pay as you go" risk management and financial standards	• Explore other possibilities for future geographic expansion • Typically areas presenting higher risk but also higher growth potential • Enter only if there are valid distribution/product opportunities that meet financial standards
Regions:	• Central America • Chile • Colombia • Ecuador • Mexico • Peru • Venezuela • Canada	• Argentina • Brazil • Australia • Hong Kong • Japan • Korea • Taiwan • Spain • South Africa	• China • New Zealand • Germany • Italy • Middle East	• Poland • Russia • Scandinavia • India • Indonesia • Malaysia

F18CN13983A10 1 8/AJ 60A

CP 026343
CONFIDENTIAL

MORGAN STANLEY

NOT A COPY

SUNBEAM CORPORATION

Sunbeam International Growth Strategies

Specific Global Opportunities and Market Potential

Canada

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

Europe

- Strengthen leadership position in professional clippers
  - Cordless products, low heat products, elite blade
- Launch electric blanket business (low EMF PTC technology)
- Regenerate significant gas grill business
- Selectively launch distinctive high margin new appliances (e.g., rotisserie, air filter with allergen detector, slow cooker)
- Opportunistically export to Middle East, Eastern Europe and South Africa

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

Key Products
Blankets
Clippers
Grills

Asia

- Launch electric blankets, water filtration and beehive blenders (chrome line) in.
  - Japan
  - Taiwan
  - Korea
  - Australia/New Zealand
- Opportunistically export to.
  - Greater China
  - Philippines
  - Indo China

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

Key Products
Blenders
Water Filtration
Air Filtration
Clippers
Blankets

Latin America

- Broaden existing strong leadership position in core markets (Mexico, Venezuela, Central America, Peru, Equador, Colombia)
  - Air & water business launches (health at home)
  - New grills "Samba" series
- Regenerate market leadership position in blenders (remain the best)
- Launch business in Brazil and Argentina
  - Air, water, blenders, and unique small appliances (rotisserie, etc.)

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

Key Products
Blenders
Arepa Maker
Water Filtration
Grills
Clippers

NOT A CERTIFIED COPY

CP 026344
CONFIDENTIAL

16div-021273

SUNBEAM CORPORATION

Sunbeam International New Product Initiatives

- Introduce **54 new products** representing **$26MM in revenue in 1997**
  - -Introduce **new 220 volt** products aggressively
  - -Introduce distinctive **existing U.S. products** (Blanket with a Brain, Beehive Blender, etc.)
  - -Introduce new globally designed products and categories **simultaneously** to the United States (clippers, air, water and grills)

- All new product development initiatives have a **global perspective**
  - -Maximize **ethnicity value** of new products
    - Sandwich maker adaptation to **Arepa** maker in Venezuela
    - Slow cooker with paddle adaptation to **Polenta** maker in Italy
  - -Maximize total potential market

- Emphasize distinctive Sunbeam **technologies and product differentiation**
  - -All-metal drive/higher output motors on blenders and mixers
  - -PTC wire in blankets and carpets
  - -Titanium coated clipper blades
  - -Air cleaner utilizing laser technology
  - -Power water filtration

- Capitalize on **strong brand equity**
  - -Strong demand for **U.S. brands in Asia**
    - Retail and consumer familiarity via exposure to the U.S. marketplace
    - WalMart's "Made in America" brand focus expanded into China (electric blankets)
  - -*Oster* well entrenched as the **premium brand in Latin America** (higher brand awareness than *Pepsi*)

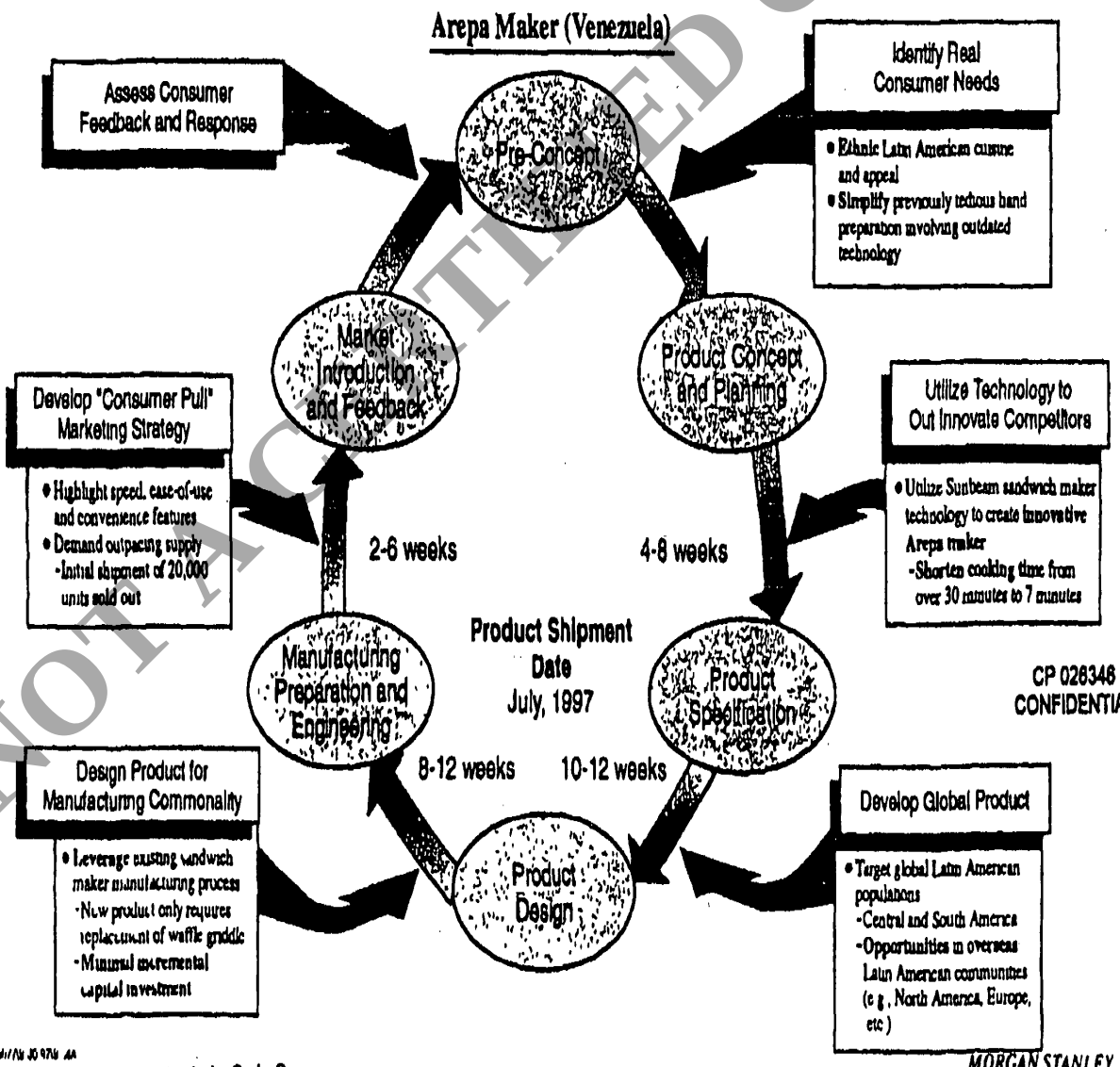
NOT A CERTIFIED COPY

CP 028345
CONFIDENTIAL

SUNBEAM CORPORATION

Sunbeam New Product Initiatives

Case Study: Innovative International New Product Development



CP 026346
CONFIDENTIAL

MORGAN STANLEY

NOT ACCEPTED COPY

015415

NOT A CERTIFIED COPY

D

CP 026347
CONFIDENTIAL

CHANNEL MANAGEMENT

NOT A CERTIFIED COPY

CP 028348
CONFIDENTIAL

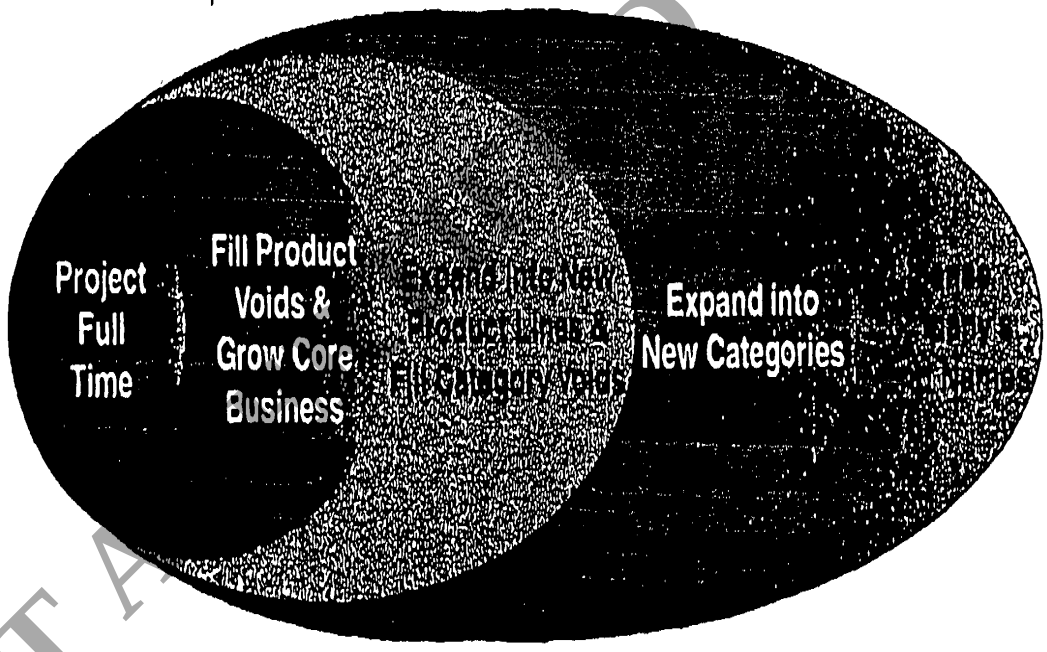
MORGAN STANLEY

0154 16 91

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Improve Customer Service to Catalyze Channel and Category Growth



Concurrent Profit Maximization Opportunities

Price Realization

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

Mitigate Business Seasonality

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

NOT A COPY

CP 028349
CONFIDENTIAL

16div-021278

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Filling Product Voids

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

NOT A CERTIFIED COPY

CP 026350
CONFIDENTIAL

16div-021279

SUNBEAM CORPORATION

Channel Management - Filling Product Voids

Opportunities to Expand Breadth and Depth of Product Line

	Current Sunbeam Distribution	Sunbeam Product Lines	Customer X Product Lines	Customer X Product Line Size ($MM)	Sunbeam Share/ Potential Share Penetration (%)	Sunbeam Share/ Potential Share Revenue ($MM)	Total Opportunity ($MM)
Blenders	•	•	•	$45.0	35% / 50%	$15.8 / $22.5	
Stand Mixers	•	•	•	20.0	20% / 35%	4.0 / 7.0	
Breadmakers	•	•	•	10.0	50% / 65%	5.0 / 6.5	
Rotisserie	•	•	•	5.0	50% / 65%	2.5 / 3.3	
Irons and Steamers	•	•	•	60.0	30% / 45%	17.5 / 27.0	
Hand Mixers	•	•	•	10.0	15% / 30%	1.5 / 3.0	+$25.0
Can Openers		•	•	$10.0	-- / 15%	-- / $1.5	
Coffee Makers		•	•	$0.0	-- / 15%	-- / 7.5	
Toasters		•	•	20.0	-- / 15%	-- / 3.0	
Waffle Makers		•	•	5.0	-- / 15%	-- / 0.8	
Vegetable Steamers		•	•	60.0	-- / 15%	-- / 0.9	
Toaster Ovens		•	•	12.0	-- / 15%	-- / 1.8	
Frying Pans		•	•	5.0	-- / 15%	-- / 0.8	
Food Processors		•	•	5.0	-- / 15%	-- / 0.8	
Rice Cookers/Steamers		•	•	N.A.	-- / 15%	N.A.	
Indoor Grills		•	•	3.0	-- / 15%	-- / 0.5	
Juice Extractors		•	•	N.A.	-- / 15%	N.A.	
Citrus Juicers		•	•	N.A.	-- / 15%	N.A.	
Ice Crusher		•	•	N.A.	-- / 15%	N.A.	
Tea/Hot Beverage Maker		•	•	N.A.	-- / 15%	N.A.	
Electric Woks		•	•	N.A.	-- / 15%	N.A.	
Crock Pots/Slow Cookers		•	•	N.A.	-- / 15%	N.A.	
Deep Fryers		•	•	N.A.	-- / 15%	N.A.	+$17.6
Meat Slicer			•	N.A.	-- / --	N.A.	
Electric Knives			•	N.A.	-- / --	N.A.	
Pasta Maker			•	N.A.	-- / --	N.A.	
Meat Grinders			•	N.A.	-- / --	N.A.	
Kitchen Gadgets			•	N.A.	-- / --	N.A.	
Electric Knife Sharpener			•	N.A.	-- / --	N.A.	N.A.
							+$42.6

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Sunbeam Channel Management Opportunities

Filling Category Voids

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

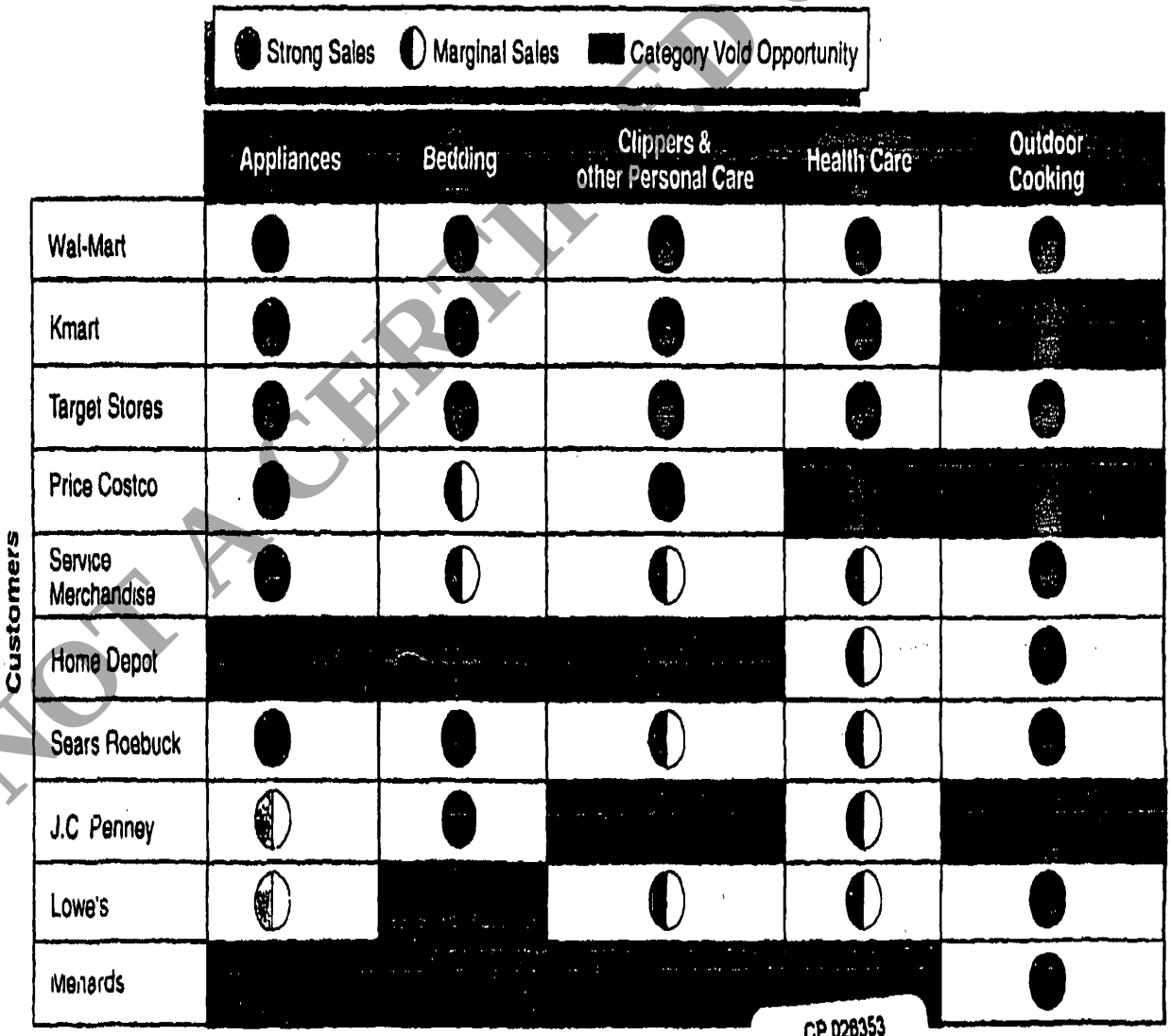
NOT A CERTIFIED COPY

CP 026352
CONFIDENTIAL

SUNBEAM CORPORATION

Channel Management / Filling Category Voids

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



NOT ACERTIFIED COPY

015421

SUNBEAM CORPORATION

Sunbeam Other Operating Initiatives

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

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

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

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

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

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

E

CP 028355
CONFIDENTIAL

015423

MARKETING, LICENSING AND MERCHANDISING

NOT A CERTIFIED COPY

CP 026356
CONFIDENTIAL

0154124

MORGAN STANLEY

SUNBEAM CORPORATION

Advertising and Brand Management

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

NOT A CERTIFIED COPY

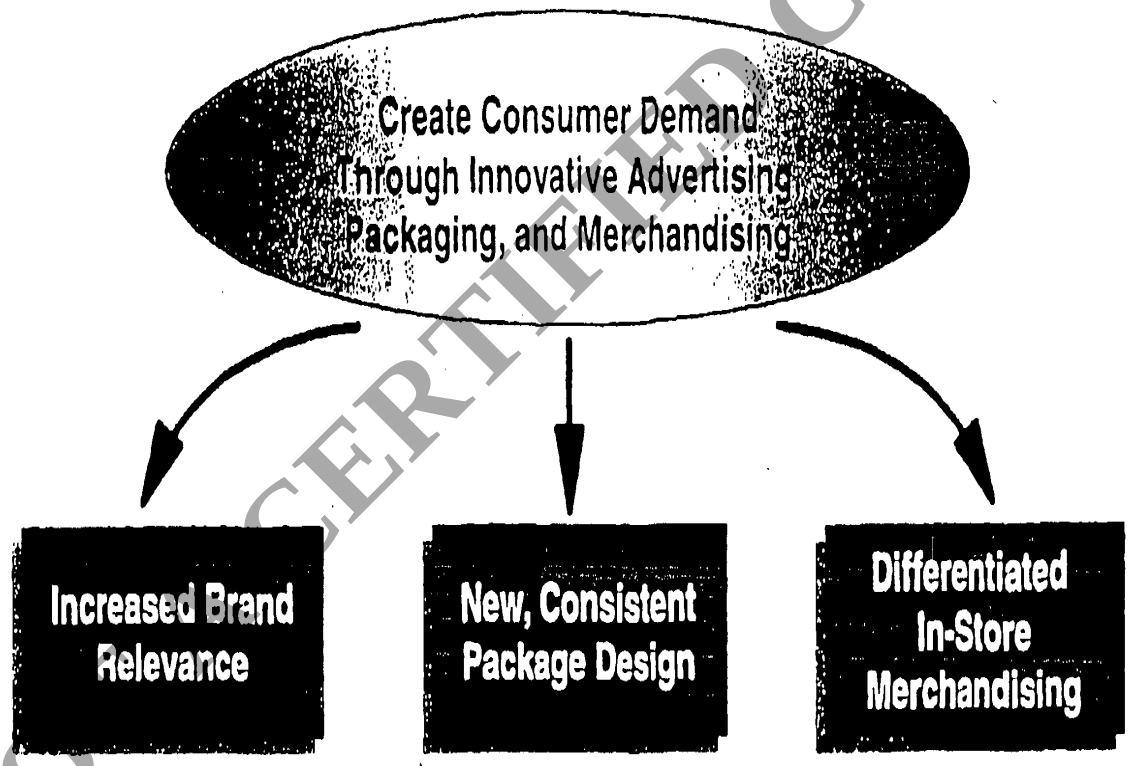
CP 026357
CONFIDENTIAL

016425

SUNBEAM CORPORATION

Advertising Opportunity

Repositioning the *Sunbeam* Brands



NOT CERTIFIED COPY

CP 026358
CONFIDENTIAL

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

015426

SUNBEAM CORPORATION

The New *Sunbeam* Brand

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

- When asked "What is the brand for you," consumers identified *Sunbeam* as #2 (second to *Black & Decker*) among the top 5 brands in its peer group, a jump from the #4 position

- USA Today's annual "What's In, What's Out" identified *Sunbeam* as "**in**" and *Black & Decker* as "**out**"

- *Sunbeam* was rated a top 10 favorite household brand according to a September 1997 HFN survey; brands such as *Braun*, *Cuisinart*, *Rival*, and *Toastmaster* did not even make the top 50

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Consumer Brand Ratings

Consumers Asked, "What Brand Is for Me?"

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

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Current Consumer Perceptions of Sunbeam and Oster Brand Names

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

NOT A CERTIFIED COPY

CP 026361
CONFIDENTIAL

0154129

SUNBEAM CORPORATION

"What's In, What's Out"

NOT A CERTIFIED COPY

CP 026362
CONFIDENTIAL

SUNBEAM CORPORATION

Marketing, Licensing and Merchandising Opportunities

NOT A CERTIFIED COPY

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

CP 026383
CONFIDENTIAL

16div-021292

NOT A CERTIFIED COPY

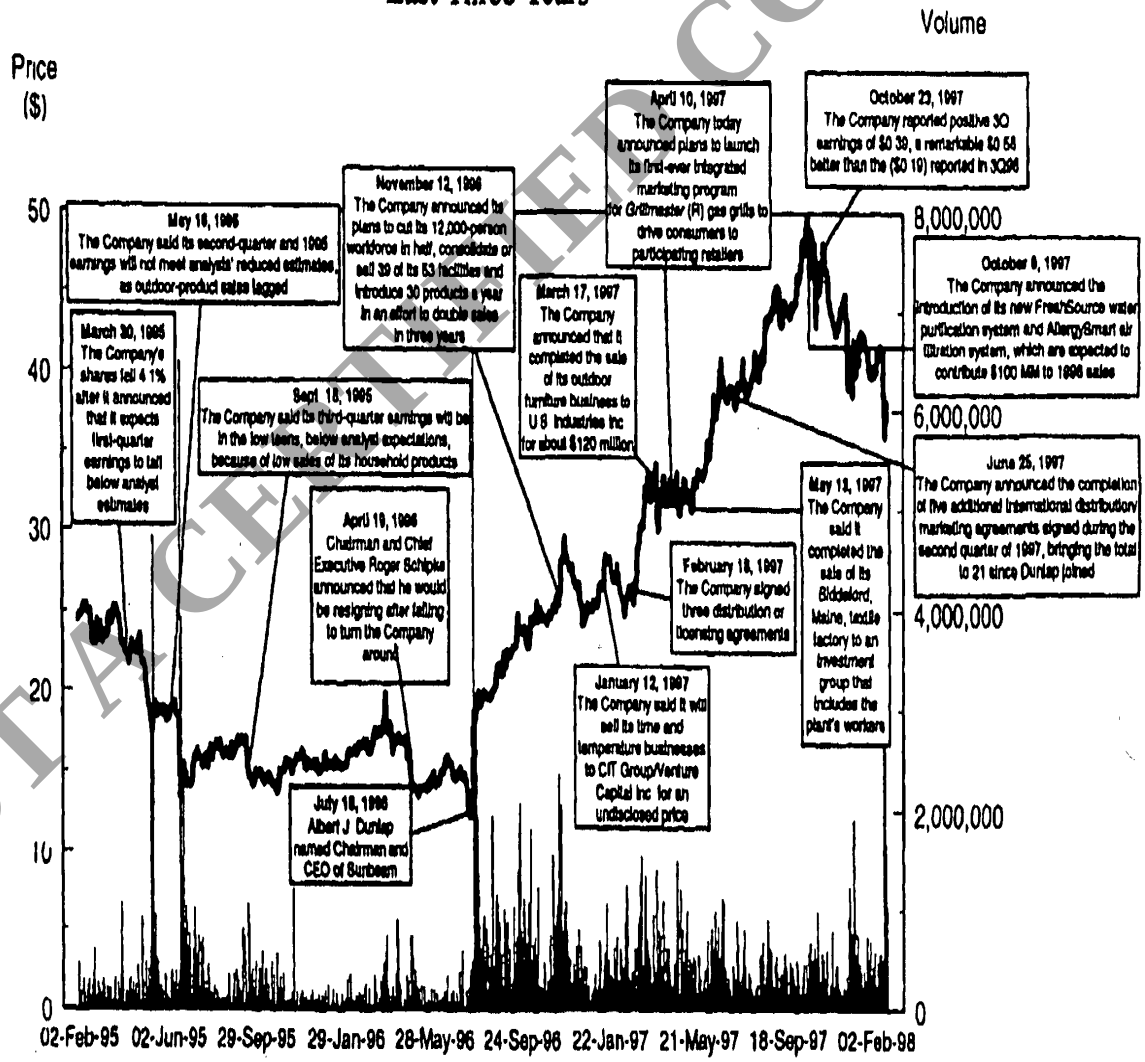
APPENDIX

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Annotated Closing Share Price and Volume Analysis

Last Three Years



NOT ACCEPTED COPY

CP 028366
CONFIDENTIAL

MORGAN STANLEY

SUNBEAM CORPORATION

Directors and Officers

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

NOT A CERTIFIED COPY

CP 026387
CONFIDENTIAL

Notes (1) Common shares and options exercisable within 60 days, including those held beneficially, disclosed in the 4/17/97 proxy statement
(2) Includes 666,667 and 100,000 restricted shares held by Messrs Dunlap and Kersh respectively

[illegible] 015435

16div-021296

[redacted]\box_sps wk4

SUNBEAM CORPORATION

Analysis of Shareholdings

(000s)

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

NOT A CERTIFIED COPY

Notes: (1) Based on Technimetrics ownership run dated 9/11/97

(2) Based on Proxy dated 4/17/97, includes options exercisable within 60 days and restricted shares

(3) From 10-Q dated 6/29/97

CP 028368
CONFIDENTIAL

015436

MORGAN STANLEY

SUNBEAM CORPORATION

Market Statistics for Selected Comparable Companies

(Items except per share data)

Company	Price [1]	LTM Price High	LTM Price Low	Market Value Equity	Market Value Aggregate [2]	EPS [3] LTM	EPS [3] Calendar 1998E	EPS [3] Calendar 1999E	P/E LTM	P/E Calendar 1998E	P/E Calendar 1999E	CY98 PE/ Growth	CY99 PE/ Growth	Proj. 5 yr. EPS growth [4]
Consumer Durable/Appliances														
Black & Decker	$49 25	$50 13	$29 63	$4,669 3	$6,524 0	$2 25	$2 65	$3 25	21 9 x	18 6 x	15 2	1 2 x	1 0	15 0 %
Snap-On	39 56	46 31	35 25	2,408 7	2,622 9	2 38	2 84	3 18	16 6	13 9	12 4	1 2	1 0	12 0
Stanley Works	46 25	47 38	35 50	4,128 7	4,393 3	2 04	2 40	2 75	22 7	19 3	16 8	1 6	1 4	12 0
Toro	38 56	46 31	33 00	467 2	754 9	2 90	3 25	3 57	13 3	11 9	10 8	1 0	0 9	11 5
Newell Companies	41 81	43 81	32 13	6,654 6	8,081 8	1 77	2 10	2 38	23 6	19 9	17 6	1 3	1 2	15 0
Maytag	38 75	39 25	20 00	3,680 3	4,391 2	1 62	1 90	2 28	23 9	20 4	17 0	2 1	1 8	9 5
Polaroid	41 31	60 31	36 25	1,854 5	2,479 5	2 25	3 00	3 75	18 4	13 8	11 0	1 1	0 9	12 0
Eastman Kodak	65 25	94 75	53 31	21,199 8	22,290 3	3 93	4 15	4 82	16 6	15 7	13 5	1 6	1 4	10 0
Whirlpool	58 19	69 50	45 25	4,364 7	7,565 7	2 90	3 15	4 15	20 1	18 5	14 0	1 8	1 4	10 0
					Median:				20.1 x	18.5 x	14.0 x	1.3 x	1.2 x	12.0 %
					Mean:				19.7	16.9	14.3	1.5	1.2	11.9
Consumer Packaged Goods														
Rubbermaid	$25 75	$30 50	$22 88	$3,857 2	$4,197 4	$0 81	0 93	1 18	31 8 x	27 7 x	21 8 x	2 3 x	1 8	12 0 %
Gillette	100 19	106 38	72 00	56,112 7	58,270 7	2 43	3 00	3 55	41 2	33 4	28 2	1 9	1 6	18 0
Tupperware	26 00	49 38	22 50	1,586 3	1,803 7	2 27	1 88	1 79	11 5	13 8	14 5	1 1	1 1	13 0
Procter & Gamble	79 50	83 44	56 63	106,847 4	109,042 4	2 53	2 91	3 28	31 4	27 3	24 2	2 1	1 9	13 0
Clorox	78 13	80 38	55 00	8,073 0	9,115 5	2 50	2 93	3 30	31 3	26 7	23 7	2 1	1 8	13 0
Kimberly-Clark	54 19	56 88	43 25	29,661 8	31,865 2	2 43	2 85	3 25	22 3	19 0	16 7	1 5	1 3	13 0
Johnson & Johnson	68 81	69 44	51 13	92,461 6	91,741 7	2 42	2 78	3 15	28 4	24 8	21 8	1 8	1 6	14 0
Colgate-Palmolive	74 50	78 69	46 81	22,037 6	24,997 7	2 36	2 43	2 77	31 6	30 7	26 9	2 4	2 1	13 0
Sara Lee	54 56	59 94	38 50	26,188 3	29,345 3	2 02	2 40	2 72	27 0	22 8	20 1	1 8	1 5	13 0
					Median:				31.3 x	26.7 x	21.8 x	1.9 x	1.6 x	13.0 %
					Mean:				28.9	25.1	22.0	1.9	1.6	13.6
Sunbeam (5)	$17 06	$50 44	$24 63	$3,167 5	$3,345 3	$0 80	$2 10	$2 65	NM x	17 6 x	14 0 x	0 9 x	0 7	20 0 %

Notes

(1) Closing prices as of 2/2/98 High and low represent the latest 52 week figures

(2) Aggregate value equals market value of equity plus short-term debt, long-term debt, minority interests and any capital leases and underfunded pensions, as appropriate

(3) IBES median EPS estimates as of 2/2/98 and calendarized to December 31st for 1998 and 1999

(4) IBES median long-term growth estimates as of 2/2/98

(5) 1998E, 1999E and long term growth estimates based on Hambrecht & Quist research dated 1/28/97

NOT A CERTIFIED COPY

CP 026389
CONFIDENTIAL

015437

MORGAN STANLEY

16div-021298

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Franklin Mutual Advisers, Inc.	Growth	n/a	0	17,541,398	19.2%	19.2%	6/10/97
Alliance Capital Management L.P.	Growth, Value	171.7	(421,038)	10,080,299	11.0%	30.2%	6/30/97
Columbia Management Company	Growth, Value	18.5	1,010,600	5,049,500	5.5%	35.7%	6/10/97
Fred Alger Management Inc.	Index	6.8	784,100	2,643,415	2.9%	38.6%	6/10/97
Fidelity Management & Research Co	Growth, Value, Income	433.8	(4,195,600)	2,352,800	2.6%	41.2%	6/30/97
TIAA-CREF Investment Management Inc	Growth, Index	63.3	(508,400)	2,169,900	2.4%	43.6%	6/10/97
Alex. Brown Investment Management	Growth	2.9	586,600	2,094,800	2.3%	45.9%	6/30/97
Wells Fargo Bank, N.A.	Index	n/a	91,077	1,552,169	1.7%	47.6%	6/30/97
Columbus Circle Investors	Growth	14.1	(32,700)	1,540,100	1.7%	49.2%	6/10/97
New York State Common Retirement Fd	Index	n/a	(272,000)	1,489,100	1.6%	50.9%	5/11/97
Strong Capital Management, Inc.	Growth, Value	21.8	1,221,200	1,258,150	1.4%	52.2%	6/30/97
Husic Capital Management	Growth	4.1	737,500	1,215,400	1.3%	53.6%	6/30/97
Brown Brothers Harriman & Co. (Asset)	Growth	n/a	(199,319)	1,122,583	1.2%	54.8%	6/30/97
Valentis Capital Management, Inc.	Growth	0.5	211,700	1,098,000	1.2%	56.0%	6/30/97
ARCO Investment Management Co.	Growth	n/a	180,000	1,070,000	1.2%	57.2%	6/30/97
Duncan-Hurst Capital Management	Growth	2.9	482,460	915,760	1.0%	58.2%	6/30/97
Smith Barney Investment Advisors	Growth, Value	13.0	140,510	878,637	1.0%	59.1%	6/30/97
Sloate Weisman Murray & Co., Inc.	Value	1.2	(27,450)	877,055	1.0%	60.1%	6/10/97
Barclays Global Investors N.A.	Growth, Value, Index, Quant	n/a	(28,032)	750,122	0.8%	60.9%	6/10/97
Nicholas-Applegate Capital Mgmt	Growth	32.0	245,449	738,749	0.8%	61.7%	6/30/97
California Public Employees Retirement	Growth	n/a	0	723,800	0.8%	62.5%	6/10/97
Founders Asset Management, Inc.	Growth, Value	4.3	90,175	677,325	0.7%	63.3%	6/10/97
Neuberger & Berman, LLC	Value, Growth	42.9	(114,514)	632,630	0.7%	63.9%	6/10/97
Deutsche Morgan Grenfell Inc.	Growth, Value	2.6	597,000	597,000	0.7%	64.6%	6/30/97
Cadence Capital Management	Growth	1.0	570,300	570,300	0.6%	65.2%	6/10/97
Chancellor LGT Asset Management, Inc.	Growth, Value, Index	n/a	(378,200)	555,100	0.6%	65.8%	6/10/97
Bankers Trust Company (Invt. Mgmt.)	Index, Growth, Value	n/a	(172,792)	526,700	0.6%	66.4%	6/10/97
General Electric Investment Corp.	Growth, Value	n/a	5,000	516,800	0.6%	67.0%	6/10/97
California State Teachers Retirement	Index	n/a	181,371	498,294	0.5%	67.5%	6/10/97
CoreStates Bank, N.A. (PA)	Income	n/a	(62,175)	473,575	0.5%	68.0%	6/10/97
SBC Warburg Inc.	n/a	n/a	442,500	442,500	0.5%	68.5%	6/10/97
Eagle Asset Management, Inc.	Growth, Value	2.5	35,140	414,575	0.5%	69.0%	6/10/97
N.Y. State Teachers' Retirement	Index	n/a	58,500	362,900	0.4%	69.4%	5/11/97
Marvin & Palmer Associates, Inc.	Value	7.3	0	357,600	0.4%	69.8%	6/10/97
Perpetual plc	n/a	n/a	340,000	340,000	0.4%	70.1%	5/11/97
Top 35 Institutions			1,559,522	64,127,016	70.1%		
Remaining 129 Institutions			161,497	6,785,183	7.4%		
Total Institutional Holdings			1,721,019	70,912,219	77.6%		
Other Holdings				20,525,127	22.4%		
Total Fully Diluted Shares Outstanding				91,437,346	100.0%		

Summary of Latest 13F Reports

30 institutions increased holdings of which 4 were new investors or first time filers

12 institutions decreased holdings of which 0 eliminated their positions

1 institution held their position

Index funds representing 10.4% of Total Institutional Shares Outstanding

NOT A CERTIFIED COPY

CP 028370
CONFIDENTIAL

MORGAN STANLEY

015438

379

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

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

CASE NO. CA 03-5045 AI

FILED
Jan 3 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY _____
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

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

VOLUME 4
(EXHIBITS 30-39)

NOT A CERTIFIED COPY

0154439

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

969

TABLE OF CONTENTS
VOLUME 4

	TAB
MS Ex. 75	30
Answer of Morgan Stanley & Co. Inc. (*Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc.*)	31
Ronald Perelman Deposition Transcript (11/17/04)	32
Plaintiff's Responses and Objections to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogatories (*Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc)*	33
Ronald Perelman Deposition Transcript (11/18/04)	34
William Nesbitt Deposition Transcript (8/31/04)	35
CPH Ex. 229	36
CPH Ex. 238	37
CPH Ex. 316	38
James Maher Deposition Transcript (11/2/04)	39

NOT A CERTIFIED COPY

015440

NOT A CERTIFIED COPY

015441

115
DEPOSITION
EXHIBIT # 75
FOR ID TRN
4-8-04

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

227 WEST MONROE STREET
CHICAGO, ILLINOIS 60606
TELEPHONE: (312) 236-8080
FACSIMILE: (312) 236-8695

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE GEWERTZ
BERNARD W. NUSSBAUM
RICHARD D. KATCHER
DOUGLAS S. LIEBHAFSKY
STEVEN M. BARNA
CHARLES T. HEDERRICK
CHAIM J. FORTGANG
PETER C. CANELLOS
MICHAEL W. SCHWARTZ
ALLAN A. MARTIN
BARRY A. BRYER
LAWRENCE B. PEDOWITZ
ROBERT B. MAZUR
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
DAVID M. EINHORN
KENNETH B. FORREST
MEYER G. KOPLOW
THEODORE N. MIRVIS
EDWARD D. HERLIHY
RICHARD D. FEINTUCH
DANIEL A. NEFF
ERIC M. ROTH
WARREN R. STERN
ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
PAUL K. ROWE
MICHAEL B. BENNER
MARC WOLINSKY

DAVID GRUENSTEIN
PATRICIA A. VLAHAKIS
STEPHEN G. GELLMAN
SETH A. KAPLAN
BARBARA ROBBINS
STEVEN A. ROSENBLUM
PAMELA S. SEYMON
STEPHANIE J. SELIGMAN
ERIC S. ROBINSON
ELLIOTT V. STEIN
JOHN F. SAVARESE
SCOTT K. CHARLES
ANDREW C. HOUSTON
PHILIP MINDLIN
DAVID S. NEILL
JODI J. SCHWARTZ
ADAM O. EMMERICH
CRAIG M. WASSERMAN
ADAM D. CHINN
GEORGE T. CONWAY III
RALPH M. LEVENE
RICHARD G. MASON
KAREN G. KRUEGER
DOUGLAS K. MAYER
DAVID M. SILK
ROBIN PANOVKA
DAVID A. KATZ
MITCHELL S. PRESSER
ILENE KNABLE GOTTS
JEFFREY R. BOFFA
DAVID M. MURPHY
JEFFREY M. WINTNER

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)

COUNSEL

WILLIAM T. ALLEN*
LAWRENCE P. KING
PETER D. MCKENNA
NORMAN REDLICH
JOHN M. RICHMAN
LEONARD M. ROSEN
AMY R. WOLF

MICHAEL S. KATZKE
DEBORAH L. PAUL
TREVOR S. NORWITZ
TOM P. REAMER
STEVEN M. ABRAMOWITZ
BRADLEY A. ROBINS
STUART C. BERMAN
YOCHEVED COHEN
BEN M. GERMANA
DAVID B. LURIE
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEPHEN R. BLACKLOCKS
DAVID C. BRYAN
STEVEN A. COHEN
ERIC L. PRESS
GAVIN D. SOLOTAR
ADRIENNE ATKINSON
JUDITH G. FEDERBUSH
LAWRENCE GERSCHWER
DAVID C. KARP
BARBARA S. KOHL
MIRIAN P. LONGCHAMP
HOWARD A. MERGELKAMP III
EDWARD A. STELZER
ELIZABETH K. STEPP
KEITH M. WOFFORD
MARC D. ASHLEY
JOSHUA R. CAMMAKER
SETH GARDNER
MARK GORDON

BARRY R. KLEINER
JOSEPH D. LARSON
LAWRENCE S. MARROW
THAO P. MATLOCK
JEANNEMARIE O'BRIEN
MELANIE L. OXNORN
JARED M. RUSNAK
EUGENE P. STEIN
SHEENA WRIGHT
LARA ADAMSONS
SCOTT L. BLACK
JAMES COLE, JR.
STEPHEN R. DIPRIMA
DAVID L. ELSBERG
DOUGLAS C. FREEMAN
NANCY B. GREENBAUM
SALIL KUMAR
FRANK L. MILLER
ARRIE R. PARR
JULIUS R. SCHWARZ
ALEXANDER SHARMES
KEVIN P. SHEEHAN
SARAH E. STRASSER
GARY M. SWIDLER
WAYNE W. YU
NICOLE E. CLARE
BRUCE N. GOLDBERGER
JEFFREY B. GOLDEN
RICHARD B. HARDEGREE
MICHAEL F. MASLANSKY

*OF DELAWARE BAR ONLY

March 30, 1998

VIA TELECOPIER AND FEDERAL EXPRESS

Susie Youn, Esq.
Staff Attorney
Division of Enforcement
United States Securities and
Exchange Commission
Central Regional Office -
1801 California St., Suite 4800
Denver, Colorado 80202-2648

Re: Trading in the Securities of Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (MD-1200)

Dear Ms. Youn:

We are counsel to The Coleman Company, Inc. ("Coleman" or the "Company"). This letter is in response to your letter of March 3, 1998, requesting that Coleman voluntarily provide to the Commission certain information relating to the March 2, 1998 announcement concerning Sunbeam Corporation and Coleman.

The information herein and provided herewith represents a reconstruction of events and was compiled based upon a reasonable review of the documents in the possession of Coleman and reasonable inquiries made by Coleman of its personnel and certain of its legal and other advisors and representatives. The information is based in substantial part on the recollection of the individuals involved, as many of the events leading up to the March 2

NOT A CERTIFIED COPY

015142

CP 011337
CONFIDENTIAL

announcement were not documented. In addition, although the Company of course seeks to provide the SEC with accurate information, the information included herein and provided herewith was collected on an expedited basis and it is possible that supplementation, correction and/or modification by the Company may be needed in the future.

A chronology of events leading up to the March 2, 1998 announcement is attached hereto as Exhibit A. A list of individuals known to Coleman who had knowledge of a potential transaction between Coleman and Sunbeam prior to the March 2 announcement (other than those already identified in the Chronology) is attached hereto as Exhibit B. In response to your request for the identity of persons from whom the Company received inquiries regarding the acquisition prior to the March 2 announcement:

(i) during a February 27, 1998 telephone conversation between Jerry W. Levin, the Chairman of Coleman, and Timothy B. Horne, the Chief Executive Officer of the Charbroil Division of W.C. Bradley Co., Mr. Horne told Mr. Levin he had heard rumors that Coleman was contemplating a transaction with Sunbeam. Mr. Levin did not respond.

(ii) Marc Shiffman, the person principally responsible for investor relations at Coleman, received several calls from buy- and sell-side analysts, equity holders and bondholders in February 1998, particularly following the February 19 release of Coleman's financial results. During the course of some of those discussions, inquiries were made of Mr. Shiffman regarding the possibility of a transaction with Sunbeam. Mr. Shiffman, who at that time was not aware that any discussion had taken place between Coleman and Sunbeam, does not recall which specific individuals made such inquiries. Mr. Schiffman responded to all such inquiries by stating that it is Coleman's policy not to comment on rumors.

The materials attached hereto bear Bates numbers COLEMAN 00001-COLEMAN 00007, and are marked "confidential." We request confidential treatment for this letter and the accompanying materials pursuant to 18 U.S.C. § 1905, 17 C.F.R. § 200.83, and other applicable laws and regulations and further request that these materials not be made part of any public record and not be disclosed to any person.

The information contained in this letter and the accompanying materials is maintained in confidence and is not available to competitors or other parties. In addition, the information has been provided voluntarily in connection with the above-referenced inquiry. We believe that the disclosure of this information could have adverse affects on our client's competitive position and/or would constitute an unwarranted invasion of personal privacy. Accordingly, such documents are exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(6) and (b)(7), and disclosure is prohibited pursuant to 18 U.S.C. § 1905.

If any person (including any government employee who is not an employee of the Securities and Exchange Commission) should request an opportunity to inspect or copy this

NOT A CERTIFIED COPY

0151543

letter or the accompanying materials, we request that we be immediately notified of any such request, be furnished with a copy of all documents pertaining to such requests (including, but not limited to, the request itself or any agency determinations with respect to such request) and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. If the Securities and Exchange Commission is not satisfied that the information set forth in this letter and the accompanying materials is exempt (or protected) from disclosure pursuant to the Freedom of Information Act, we stand ready to supply further particulars, and we would request in such event a hearing on this claim of exemption.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any such whatsoever which are made by or at the direction of any employee of the Securities and Exchange Commission (or any other governmental agency) which incorporate, include or relate to any of the confidential information contained in this letter or the accompanying materials.

If you have any questions about the foregoing, please contact the undersigned at 212-403-1000.

Very truly yours,

Paul K. Rowe

cc: Freedom of Information Act Officer
Joram C. Salig, Esq.
Steven R. Isko, Esq.

NOT A CERTIFIED COPY

0154144

CP 011339
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1401527

16div-021305

Exhibit A

Early Dec. 1997	Albert J. Dunlap (Chairman and Chief Executive Officer, Sunbeam), called Ronald O. Perelman (Chairman and Chief Executive Officer of Mafco Holdings Inc. ("MacAndrews"), indirectly the largest stockholder of The Coleman Company ("Coleman"), with an interest of in excess of 80%, and a director of Coleman) to talk about a possible transaction involving Sunbeam and Coleman.
Dec. 12, 1997	Jerry Levin (Chairman, Coleman), Paul E. Shapiro (Executive Vice President and General Counsel, Coleman) and Joseph P. Page (Executive Vice President and Chief Financial Officer, Coleman) gave a presentation to David C. Fannin (Executive Vice President, General Counsel and Secretary, Sunbeam Corporation ("Sunbeam")), Russell A. Kersch (Vice Chairman and Chief Financial Officer, Sunbeam) and Peter A. Langerman (a director of Sunbeam) on Coleman's business and potential synergies that could result from a combination of Sunbeam and Coleman. Later that day, Mr. Perelman met with Howard Gittis (Vice Chairman of MacAndrews), James R. Maher (also of MacAndrews), Gordon Rich (of Credit Suisse First Boston ("CSFB")) and Mr. Levin and discussed a potential transaction involving Coleman and Sunbeam. Coleman retained CSFB to act as financial advisor in connection with a potential transaction between Sunbeam and Coleman.
Dec. 16, 1997	Messrs. Perelman, Maher, Gittis, Levin and Shapiro, and William G. Nesbitt and Norman J. Ginstling (both of MacAndrews), Donald G. Drapkin (a director of Coleman and an officer of MacAndrews) and Gordon Rich, Robert Duffy and Stephen Geller (all from CSFB) met and discussed a potential transaction involving Coleman and Sunbeam.
Dec. 17, 1997	Messrs. Perelman, Maher, Gittis, Shapiro, Nesbitt, Drapkin, Rich, Duffy and Geller met and discussed a potential transaction involving Coleman and Sunbeam.

NOT A CERTIFIED COPY

015415

Dec. 18, 1997	Messrs. Perelman, Dunlap and Michael Price (President of Franklin Mutual Advisors, Inc., the largest holder of Sunbeam stock) met in Florida to discuss a potential transaction between Coleman and Sunbeam. Mr. Dunlap indicated an interest in acquiring Coleman in a transaction valued in the range of $18-22 per Coleman share. Mr. Perelman advised Mr. Dunlap that the price was too low and indicated that he would not be prepared to support a transaction at that price.
Week of Dec. 22, 1997	Mr. Price called Mr. Gittis and indicated that Sunbeam might be willing to consider a transaction valued as high as $25 per Coleman share. Mr. Gittis indicated that a proposal at that level would not be of interest.
Early Jan.1998	William Reid (a Managing Director of Morgan Stanley, Sunbeam's financial advisor) called Mr. Perelman and advised him that Sunbeam still had interest in a potential transaction with Coleman. Mr. Reid further advised Mr. Perelman that Sunbeam would consider a proposal that involved the payment by Sunbeam of both cash and stock, and that Sunbeam might be prepared to make an offer valued in excess of $25 per share. Mr. Perelman advised Mr. Reid that he would be willing to discuss supporting a transaction at $30 per share.
Jan. 23, 1998	Mr. Nesbitt met with James B. Stynes, Alexandre J. Fuchs and Tyrone Chang (each from Morgan Stanley) to discuss a potential transaction involving Sunbeam and Coleman.
Jan. 28, 1998	Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton") is retained as special counsel to Coleman.
Jan. 29, 1998	Barry F. Schwartz of MacAndrews telephoned Wachtell Lipton to indicate that a form of confidentiality agreement to be proposed to Sunbeam in connection with the provision of confidential information to Sunbeam will be faxed to Wachtell Lipton for review. Joram C. Salig of MacAndrews faxed the confidentiality agreement to Wachtell Lipton and Paul Shapiro, General Counsel of Coleman, for their respective review. Messrs. Stynes, Fuchs, Chang, Fannin and Kersch met with Messrs. Levin, Page, Shapiro, Maher, Nesbitt and Rich discussed potential synergies that could be created by a combination of Coleman and Sunbeam. They further discussed how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal.

NOT A CERTIFIED COPY

0151446

CP 011341
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

COLEMAN 00002

CPH 1401529

16div-021307

Feb. 4, 1998	Sunbeam entered into a confidentiality agreement with Coleman.
Feb. 6, 1998	Messrs. Stynes, Fuchs, Chang and Robert Kitts of Morgan Stanley met with Messrs. Maher, Nesbitt, Rich and Duffy in New York. The representatives of Morgan Stanley made a presentation reflecting a transaction in which Coleman would be acquired by Sunbeam for consideration of .6017 Sunbeam shares per Coleman share (which was approximately $22 per share), plus warrants that Morgan Stanley valued at $4 per share. Mr. Maher indicated that MacAndrews would not be prepared to support such a proposal and advised Morgan Stanley that only an all-stock transaction that valued Coleman's stock at $30 per share, or an amount slightly lower than $30 per share if the transaction involved a combination of stock and cash, would be of interest.
Feb. 13, 1998	Messrs. Stynes and Kitts called Mr. Maher and said they were making a "best and final" proposal of .65116 shares of Sunbeam stock per share of Coleman (which was approximately $24.50 per share). Mr. Maher again indicated that the proposal was not of interest.
Feb. 18, 1998	During a telephone conversation between Messrs. Maher and Kitts, Mr. Kitts invited a counter-proposal.
Feb. 19, 1998	Following discussion among Messrs. Perelman and Maher, Mr. Maher conveyed to Mr. Kitts by telephone that management and MacAndrews would be willing to recommend a proposal of .789 Sunbeam shares per Coleman share (which was approximately $30 per share). Mr. Kitts called Mr. Maher later that day and proposed .711 Sunbeam shares per share of Coleman stock (which was approximately $26.90 per share). Mr. Maher indicated that he believed that Coleman would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock per share of Coleman stock (which was approximately $28.20 per share).
Feb. 23, 1998	Messrs. Nesbitt, Page, Levin, Shapiro, Duffy and Geller met with Messrs. Stynes, Fuchs and Richard Goudis (Vice President, Finance and Investor Relations of Sunbeam) in New York to conduct due diligence. Later that day, Messrs. Maher, Nesbitt, Duffy and Chuck Ward (of CSFB) met to discuss the potential transaction.

NOT A CERTIFIED COPY

0154147

That night, Messrs. Nesbitt, Shapiro, Levin, Page, Maher, Duffy and Steven R. Isko (Vice President - Legal of Coleman) and Messrs. Fannin, Kersch, Kitts, Stynes, Fuchs, Chang and Goudis met at Morgan Stanley's offices. Sunbeam made a presentation regarding its 1998 operating projections.

Feb. 24-27, 1998 — Coleman and Sunbeam, and their respective advisors, negotiated the structure of the transaction, conducted due diligence, and drafted the necessary documentation.

Feb. 24, 1998 — Mr. Levin called the Coleman directors and advised them of the proposed transaction, described the principal terms of the deal, and notified them of a board meeting to be held the following day. Mr. Levin reached all of the directors except Lawrence M. Jones.

Representatives of Coopers & Lybrand visited Coleman's headquarters in Wichita, Kansas on behalf of Sunbeam in order to tour the Wichita plant facility. They were accompanied by Messrs. David Ramone and Joseph Nold, two senior Coleman executives.

Feb. 25, 1998 — By February 25, the negotiations had resulted in a proposed transaction in which each share of Coleman common stock would be converted into the right to receive (A) 0.6258 shares of Sunbeam common stock and (B) $4.40 in cash. The Board of Directors of Coleman met. The meeting was attended by directors Jerry W. Levin, Donald G. Drapkin, Frank Gifford, Ann D. Jordan, John A. Moran (by telephone), Ronald O. Perelman, Bruce Slovin and William H. Spoor (by telephone); representatives of Coleman (Joseph P. Page, Paul E. Shapiro and Steven R. Isko); representatives of MacAndrews (Howard Gittis, Barry F. Schwartz, James R. Maher, William G. Nesbitt); representatives of Wachtell Lipton (Adam O. Emmerich, Paul K. Rowe, Michael S. Katzke); and representatives of CSFB (Gordon Rich, Robert Duffy). Directors Lawrence M. Jones and James D. Robinson III did not attend the meeting. Messrs. Levin and Maher and the outside advisers advised the Board of the history of the negotiations, the structure of the transaction, and various legal and financial issues regarding the proposal. The meeting adjourned with the expectation that the directors would meet again on February 27, 1998 to discuss the transaction further.

NOT A CERTIFIED COPY

015148

Feb. 27, 1998	The Board of Directors of Coleman met to consider the proposed transaction. The meeting was attended by directors Levin, Drapkin, Gifford, Jones, Jordon, Moran (by telephone), Perelman, Robinson, Slovin, Spoor (by telephone); representatives of Coleman (Messrs. Page, Shapiro, Isko); representatives of MacAndrews (Messrs. Gittis, Maher and Nesbitt); representatives of Wachtell Lipton (Messrs. Emmerich, Rowe and Katzke); and representatives of CSFB (Messrs. Rich and Duffy). The directors were updated on the status of the transaction, and were advised that that transaction contemplated that each share of Coleman common stock would be converted into the right to receive (A) 0.5677 shares of Sunbeam common stock and (B) $6.44 in cash. The Board heard presentations from Mr. Levin and the outside advisers regarding the structure and terms of the transaction and related financial and legal matters, and the Board approved the transaction.
Feb. 28, 1998	Coleman and Sunbeam executed a final agreement early Saturday morning.
March 2, 1998	Coleman and Sunbeam publicly announced the transaction prior to the opening of the securities markets.

NOT A CERTIFIED COPY

015449

Exhibit B

In addition to the individuals identified in the Chronology, the following individuals were aware of a potential transaction involving Coleman and Sunbeam prior to the public announcement on March 2, 1998:

MacAndrews & Forbes

Lenny Ajzenman
Lorelei Joy Borland
James T. Conroy
Glenn P. Dickes
Jaymie A. Durnan
Irwin Engelman
Steven L. Fasman
Norman J. Ginstling
Richard E. Halperin
J. Eric Hanson
Anthony J. Ian
Robert J. Knibb
Gary L. Leshko
Paul G. Savas
Marvin Schaffer
Todd J. Slotkin
A. Ernst Toth
John Winkel
Laurence Winoker
Gregory J. Woodland

The Coleman Company

Karen C. Clark
James Rasmus
Cynthia Rosel

Credit Suisse First Boston

Ramesh Chakrapani

NOT A CERTIFIED COPY

0151150

Wachtell, Lipton, Rosen & Katz

Andrew R. Brownstein
Michael H. Byowitz
Peter C. Canellos
Steven A. Cohen
David M. Einhorn
Ilene Knable Gotts
Michael W. Jahnke
Karen G. Krueger
Martin Lipton
Frank L. Miller
Deborah L. Paul

Robinson, Lerer & Montgomery

Linda Gosden Robinson
Walter Montgomery
Jim Badenhausen
Mary Ann Dunnell
John Franklin
John Quirk
Carey Monserrate
Deborah Bohac
Julie Lougee
Jennifer Kipe

NOT A CERTIFIED COPY

015151

CP 011346
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1401534

16div-021312

Wachtell, Lipton, Rosen & Katz

Andrew R. Brownstein
Michael H. Byowitz
Peter C. Canellos
Steven A. Cohen
David M. Einhorn
Ilene Knable Gotts
Michael W. Jahnke
Karen G. Krueger
Martin Lipton
Frank L. Miller
Deborah L. Paul

Robinson, Lerer & Montgomery

Linda Gosden Robinson
Walter Montgomery
Jim Badenhausen
Mary Ann Dunnell
John Franklin
John Quirk
Carey Monserrate
Deborah Bohac
Julie Lougee
Jennifer Kipe

NOT A CERTIFIED COPY

015151

CP 011346
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

COLEMAN 00027

CPH 1401534

16div-021313

NOT A CERTIFIED COPY

015452

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

COLEMAN (PARENT) HOLDINGS, INC.,	
Plaintiff,	2003 CA 005045 AI
v.	Judge Elizabeth T. Maass
MORGAN STANLEY & CO., INC.,	
Defendant.	

NOT A CERTIFIED COPY

ANSWER OF MORGAN STANLEY & CO. INCORPORATED

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

Nature of the Action

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

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

015453

MS & Co. knew (or even suspected) that the value of Sunbeam's stock had been "fraudulently inflated." MS & Co. admits that it facilitated communications between Sunbeam and Coleman, but denies that it in any way "persuaded" CPH to sell its interest in Coleman. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 2 and consequently denies them.

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

4. MS & Co. admits that CPH has brought this action against MS & Co. alleging fraudulent misrepresentation, aiding and abetting, conspiracy, and negligent misrepresentation,

NOT A CERTIFIED COPY

01515-4

16div-021316

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

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

Jurisdiction and Venue

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

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

Parties and Other Key Participants

8. MS & Co. admits that CPH represented, in negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. admits that on March 30, 1998, Sunbeam acquired CPH's interest in Coleman by paying CPH with 14.1 million shares of Sunbeam common stock and other consideration, including a cash payment by Sunbeam to CPH in the amount of $159,956,756.00. (*See* Feb. 27, 1998 Merger Agmt. § 3.1(a)(i) (Ex. 1).) MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 8 and consequently denies them.

9. MS & Co. admits that it is an investment banking firm providing financial and securities services. MS & Co. admits that, as part of its business operations, it at times provides advice on mergers and acquisitions, and raises capital in equity and debt markets, depending on the needs of its clients. MS & Co. admits that it served as Sunbeam's investment banker for

NOT A CERTIFIED COPY

01515155

certain aspects of Sunbeam's acquisition of Coleman, and served as underwriter of certain securities issued by Sunbeam in connection with the acquisition. MS & Co. denies any remaining allegations contained in Paragraph 9.

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

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

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

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

NOT A CERTIFIED COPY

015456

Factual Background

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

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

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

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

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

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

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

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

NOT A CERTIFIED COPY

01515457

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

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

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

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

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

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

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

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

NOT A CERTIFIED COPY

0151458

William Strong had worked with Dunlap before, during Strong's previous employment with Salomon Brothers. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 29 and consequently denies them.

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

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

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

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

NOT A CERTIFIED COPY

16div-021321

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

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

36. MS & Co. admits that, in its capacity as advisor to Sunbeam, it identified Coleman as a potential acquisition candidate. MS & Co. admits that it communicated with representatives of Coleman to discuss a potential acquisition, but denies that it "persuade[d] CPH to sell its interest in Coleman to Sunbeam." MS & Co. admits that CPH represented, in

NOT A CERTIFIED COPY

01545O

negotiations with Sunbeam, that it owned, directly or indirectly, approximately 82% of Coleman prior to March 30, 1998. MS & Co. denies the remaining allegations contained in Paragraph 36.

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

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

39. MS & Co. denies that it "persuade[d]" CPH to sell Coleman in exchange for Sunbeam stock. MS & Co. denies that it "prepared" financial information for CPH. There is, in any event, no factual allegation contained in Paragraph 39 or elsewhere that identifies such alleged information at all, let alone with particularity. MS & Co. further denies that it knowingly "provided" CPH with false financial and business information, or otherwise knowingly relayed false information to CPH which created an appearance that "Sunbeam was prospering and that Sunbeam's stock had great value." Specifically, MS & Co. denies that it knowingly provided CPH with false 1996 and 1997 sales and revenue figures or with false projections. MS & Co. denies that it "falsely assured CPH that Sunbeam's 'early buy' sales program would not hurt Sunbeam's future revenues," that "Sunbeam would meet or exceed" first quarter 1998 estimates, that 1998 earnings estimates were accurate, that a plan to earn $2.20/share was attainable or even low, or that it "specifically advised CPH that Sunbeam's first quarter 1998 sales were 'tracking fine' and running ahead of analysts' estimates."

In any event CPH could not have relied on such alleged representations in light of (i) the Merger Agreement's representations and warranties (Merger Agmt. §§ 5.1-5.4), none of

NOT A CERTIFIED COPY

016496

16div-021323

which refer to any alleged representation contained in this Paragraph, (ii) the representations and warranties in a separate agreement that was executed by Coleman and Sunbeam (Feb. 27, 1998 Company Merger Agmt. § 5.1-5.12 (Ex. 3)), which are expressly incorporated into the Merger Agreement and none of which refer to any alleged representation contained in this Paragraph, and (iii) the Merger Agreement's broad integration clause which forecloses reliance on any alleged representation contained in this Paragraph (Merger Agmt. § 12.5). MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and consequently denies them.

40. MS & Co. admits that CPH agreed to sell its shares in Coleman to Sunbeam, and that CPH agreed to accept Sunbeam stock as partial payment for the sale, but denies that MS & Co. "persuaded" CPH to make the deal. CPH is a sophisticated party and was represented by its own expert advisors and attorneys. (*Id.* §§ 1.1; 4.11.) CPH and its advisors also enjoyed full access to Sunbeam's "books, records, properties, plants and personnel." (*Id.* § 6.7.) CPH also expressly disclaimed reliance on statements allegedly made during negotiations. (*Id.* § 12.5.) MS & Co. responds that the allegations contained in Paragraph 40 regarding stock value pertain to publicly available information, and refers to such information for the truth or falsity of such allegations. To the extent that further response is required, MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 and consequently denies them.

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

42. MS & Co. admits it made a presentation during the February 27, 1998 Sunbeam Board of Directors Meeting. MS & Co. further admits that MS & Co. representatives, including William Strong, Robert Kitts, James Stynes and Ruth Porat, were present at this meeting. MS &

NOT A CERTIFIED COPY

0151462

Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 42 and consequently denies them.

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

44. MS & Co. admits that the Sunbeam Board of Directors approved the Coleman acquisition at the February 27, 1998 meeting in New York. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 44 and consequently denies them.

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

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

47. MS & Co. admits that it agreed to serve as underwriter for Sunbeam's subordinated debentures. The "cash portion" of the consideration set forth in the Merger Agreement was also financed in part through a $680 million loan made by Morgan Stanley Senior Funding, an affiliate of MS & Co. (*See* Credit Facilities Mem.) MS & Co. lacks

NOT A CERTIFIED COPY

01-5163

sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 47 and consequently denies them.

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

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

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

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

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

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

54. MS & Co. admits that William Strong worked on MS & Co.'s engagement for Sunbeam. MS & Co. also admits that Strong has provided deposition testimony discussing conversations with Sunbeam officials. MS & Co. denies that Strong or any other MS & Co.

NOT A CERTIFIED COPY

0151464

employee was accurately apprised of Sunbeam's financial condition because MS & Co. at all times relied on information provided by Sunbeam management and Arthur Andersen, including Sunbeam's audited financial statements. MS & Co. lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations contained in Paragraph 54 and consequently denies them.

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

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

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

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

NOT A CERTIFIED COPY

01515165

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

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

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

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

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

NOT A CERTIFIED COPY

01516

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

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

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

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

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

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

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

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

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

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

NOT A CERTIFIED COPY

015467

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

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

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

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

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

74. MS & Co. admits that on March 19, 1998, Sunbeam issued a press release which stated that "net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million." MS & Co. lacks sufficient knowledge or

NOT A CERTIFIED COPY

01516968

information to form a belief as to the truth of the remaining allegations contained in Paragraph 74 and consequently denies them.

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

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

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

Count I – Fraudulent Misrepresentation

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

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

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

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

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

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

Count II – Aiding and Abetting Fraud

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

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

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

87. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker and underwriter for Sunbeam. MS & Co. admits that it attempted to identify a party

NOT A CERTIFIED COPY

0151469

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

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

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

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

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

NOT A CERTIFIED COPY

01514770

Count III – Conspiracy

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

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

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

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

Count IV -- Negligent Misrepresentation

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

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

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

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

AFFIRMATIVE DEFENSES

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

NOT A CERTIFIED COPY

015471

First Affirmative Defense

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

Second Affirmative Defense

CPH's alleged claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

Third Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of laches.

Fourth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of estoppel.

Fifth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of waiver.

Sixth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of unclean hands.

Seventh Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by plaintiff's failure to mitigate its damages.

Eighth Affirmative Defense

CPH's alleged claims are barred because CPH has experienced no damages, and any claimed loss is speculative and/or was avoidable.

Ninth Affirmative Defense

CPH's alleged claims are barred, in whole or in part, because the claimed injuries were not proximately caused by any acts or omissions of MS & Co.

NOT A CERTIFIED COPY

0151472

Tenth Affirmative Defense

To the extent CPH's fraud-claim relies on non-disclosure, that claim is barred, in whole or in part, because MS & Co. was under no duty to disclose.

Eleventh Affirmative Defense

CPH's claims are barred, in whole or in part, because of MS & Co.'s repeated disclaimers of reliance.

Twelfth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) the allegedly tortuous conduct is not gross, wanton, willful, or otherwise morally culpable; and (ii) the alleged conduct was not part of a pattern directed at the public generally.

NOT A CERTIFIED COPY

015473

NOT A CERTIFIED COPY

015476

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to all counsel of record listed below on this 23rd day of June, 2003.

John Scarola **SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.** 2139 Palm Beach Lakes Boulevard West Palm Beach, Florida 33409	Counsel for Defendants
Jerold S. Solovy **JENNER & BLOCK, LLC** One IBM Plaza Suite 4400 Chicago, Illinois 60611	Counsel for Defendants

Joseph Ianno Jr.
JOSEPH IANNO, JR.

NOT A CERTIFIED COPY

015475

NOT A CERTIFIED COPY

015476

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

CONTAINS CONFIDENTIAL PORTION

RONALD O. PERELMAN

New York, New York

Wednesday, November 17, 2004

NOT A CERTIFIED COPY

015477

Reported by: Steven Neil Cohen, RPR
Job No. 167561

November 17, 2004
9:51 a.m.

Videotaped Deposition of RONALD O. PERELMAN, taken by Defendants, pursuant to notice at the offices of MacAndrews & Forbes, 35 East 62nd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Attorneys for Coleman (Parent) Holding, Inc.
BY: JEROLD S. SOLOVY, ESQ.
RONALD L. MARMER, ESQ.
DEIRDRE E. CONNELL, ESQ.

KIRKLAND & ELLIS, LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.
BY: LAWRENCE P. BEMIS, ESQ.

KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.
BY: KATHRYN DeBORD, ESQ.

BARRY F. SCHWARTZ
35 East 62nd Street
New York, New York 10021
Attorney for MacAndrews & Forbes Holdings Inc.

ALSO PRESENT: Steven Fasman, Esq.
Heather Zamora-Hagg, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: This is the video operator speaking, Heather Zamora-Hagg, of Esquire Video Services. Today is November 17, 2004 and the time is 9:51 a.m. We are at the offices of MacAndrews & Forbes Holding Incorporated, 35 East 62nd Street, New York, New York to take the videotaped deposition of Ronald O. Perelman in the matter of Coleman (Parent) Holdings Incorporated versus Morgan Stanley & Company, Incorporated in the Fifteenth Judicial Circuit in and for Palm Beach Florida.

Would counsel please introduce themselves for the record?

MR. BEMIS: Good morning. Lawrence Bemis on behalf of the Morgan Stanley entities.

MS. DeBORD: Kathryn DeBord for the Morgan Stanley entities.

MR. SOLOVY: Gerald Solovy for the plaintiff.

MR. MARMER: Ronald Marmer for the plaintiff.

NOT A CERTIFIED COPY

015478

MR. CONNELL: Deirdre Connell for the plaintiff.
MR. MARMER: With us also this morning is Barry Schwartz and Steven Fasman who are attorneys at MacAndrews & Forbes.
THE VIDEOGRAPHER: The court reporter today is Steven Cohen with Esquire Deposition Services.
Will the court reporter please swear the witness?
RONALD O. PERELMAN,
called as a witness by the Defendant, having been duly affirmed, testified as follows:
BY MR. BEMIS:
Q. Good morning, Mr. Perelman.
Would you state your full name including your middle name for the record?
A. Ronald Owen Perelman.
Q. How old are you, Mr. Perelman?
A. 61.
Q. Are you represented by counsel here this morning?
A. Yes.

Q. Which counsel is representing you this morning?
A. To my right.
Q. Mr. Solovy?
A. Yes.
MR. BEMIS: Good morning, Mr. Solovy.
MR. SOLOVY: Good morning.
BY MR. BEMIS:
Q. Will you state where you live today?
A. In New York City.
Q. 36 East 63rd Street is your residence?
A. On 63rd Street.
Q. Who are you employed by today?
A. MacAndrews & Forbes.
Q. Is there a particular MacAndrews & Forbes entity that you are employed by?
A. I believe MacAndrews & Forbes Holdings.
Q. That is MacAndrews & Forbes Holdings Inc. is the full legal name?
A. I believe so.
Q. The office address is where we

are having your deposition today; is that correct?
A. Yes.
Q. That is 35 East 62nd Street, New York, New York?
A. Yes.
Q. Did you -- you have been deposed before, haven't you, sir?
A. Yes.
Q. You are familiar with the process?
A. I don't know what that means but I have been deposed.
Q. You understand you are being videotaped?
A. Yes.
Q. You understand that the videotape can be played to the jury in this action?
A. Yes.
Q. You understand that you had a right to consult with counsel before you came into your deposition, right?
A. Yes.
Q. And you did, right?
A. Yes.

Q. You understand that you are under oath today, right?
A. Yes.
Q. Your testimony is subject to the same penalties of perjury as if you were testifying in court; you understand that?
A. Yes.
Q. Is there any reason you can tell the jury that you can't testify truthfully today?
A. No.
Q. For example, are you taking any medication that would affect your memory?
A. No.
Q. How many times have you been deposed before?
A. Maybe 20, 15, 10; I don't know.
Q. If you at any point need a break as you discussed earlier let me know and we will go off the record and take a break for you.
A. Thank you very much.
Q. My understanding is you graduated from Harvard Law School, is that right?
A. No.

NOT A CERTIFIED COPY

015479

Q. You did not graduate from Harvard Law School?
A. No.
Q. Did you graduate from law school?
A. No.
Q. This report and some of the periodicals says you did.
A. They were wrong.
Q. They were wrong?
A. Yes.
Q. Did you attend the University of Pennsylvania at one point?
A. Yes.
Q. Graduated from the Wharton School of Business?
A. Yes.
Q. When was that?
A. 1960 -- '64 with a B.S. and '66 with an MBA.
Q. Have you had any further education since you graduated from the Wharton school?
A. No.
Q. That is a pretty renowned School of Business, isn't it, sir?

A. Yes. It is a good school.
Q. In fact, you were -- withdrawn. How much time did you spend getting ready for your deposition these couple of days we are going to be here?
A. Not much.
Q. What does that mean? For example, how many hours did you spend?
A. A couple hours.
Q. What -- when was the -- when did you do the preparation?
A. Yesterday.
Q. Before yesterday you had not done any preparation for this deposition?
A. Maybe an hour.
Q. Did you have an opportunity to review documents in your preparation?
A. A few.
Q. Did some of those documents refresh your recollection about the events of 1997 and 1998 that we are here about?
A. Somewhat.
Q. What documents did you look at that refreshed your recollection about events during that time?

A. I looked at the comfort letters that were received by Morgan Stanley from Arthur Andersen and I think that is about all.
Q. Did you look at the comfort letters that Morgan Stanley received from Ernst & Young?
A. No.
Q. Did you know that Morgan Stanley had received comfort letters from Ernst & Young in connection with the Coleman transaction?
A. No.
Q. Did you review the complaint in this action --
A. No.
Q. -- that you filed?
A. No.
Q. Did you review the complaint that was filed in this action against Morgan Stanley before it was filed?
A. No.
Q. Have you ever seen it?
A. No.
Q. You are not familiar with any of

the specific allegations in the complaint because you have not seen it and you didn't review it before it was filed, right?
A. The specific allegations?
Q. Yes.
A. General allegations, yes; the specific --
Q. I didn't say general. I said specific.
A. Yes, one specific.
Q. You are familiar with one specific?
A. Yes.
Q. What is that?
A. Morgan Stanley committed a fraud against the company.
Q. Anything other than that?
A. No.
Q. When you prepared for your deposition did you review a -- your calendar for the year 1997?
A. No.
Q. Did you review a calendar for any period?
A. No.

NOT A CERTIFIED COPY

0151480

Q. Did you review any deposition transcripts?
A. No.
Q. Any videotapes of other depositions?
A. No.
Q. Did you review any excerpts of depositions, for example, where your name was mentioned?
A. No.
Q. Did you review Mr. Levin's sworn testimony in prior proceedings?
A. No.
Q. When was the last time you spoke to Mr. Levin, and I am talking about Jerry Levin?
A. There are two Jerry Levins.
Q. I mispronounced his name. The Jerry Levin who was formerly the CEO of Coleman and also I understand, I think, he was the CEO of Revlon at one point.
A. I think I bumped into him on the street about three months ago.
Q. Did you discuss this lawsuit when you bumped into him on the street about

three months ago?
A. No.
Q. You said nothing about it whatsoever?
A. Nothing whatsoever.
Q. One last question on this topic.
Have you given -- withdrawn.
You do know what an affidavit is, don't you?
A. Yes.
Q. Have you given any affidavits to anyone about the subject matter of the allegations in this action that has been filed against Morgan Stanley?
A. Not that I am aware of.
Q. You, by the way, are the ultimate beneficiary of any judgment that is received in this case, are you not, sir?
A. The company is.
Q. Sir, you own MacAndrews & Forbes Holdings Inc., don't you?
A. Yes.
Q. You own Coleman (Parent) Holdings indirectly through your ownership of MacAndrews & Forbes, right?

A. Right.
Q. Coleman (Parent) Holdings is the plaintiff in this case, correct?
A. Yes.
Q. Ultimately you are the beneficiary of any judgment in this case, are you not, sir, as the sole owner of the company?
A. The company is.
Q. You are the sole owner of the company?
A. You are assuming the company won't make a distribution.
Q. Let's assume it does make a distribution. You are the sole owner of the company?
A. That is an assumption you can't make.
Q. Are you the sole owner of the company, sir?
A. Yes.
Q. By "sole owner," you own 100 percent of the common stock of MacAndrews & Forbes, correct?
A. Yes.

Q. Above MacAndrews & Forbes is there still MacAndrews & Forbes -- MAFCO Holdings Inc., does that company still exist?
A. I am not sure.
Q. Did it exist at one point?
A. I am not sure.
Q. I am going to show you what as been marked as Morgan Stanley 171 which I believe is a partial copy of your calendar for 1997.
(Morgan Stanley Exhibit 171 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 171 in front of you?
A. Yes.
Q. Is this a portion of your calendar for 1997?
A. No.
Q. What is it?
A. These are Xeroxes of my daily cards.
Q. What are your daily cards?
A. I get a card put in my pocket

NOT A CERTIFIED COPY

015481

every day to advise me of either my meetings or issues that I might want to be aware of.
Q. Who gives you your daily cards?
A. One of my secretaries.
Q. Does your secretary maintain -- withdrawn.
In 1997, the time period we are talking about, did your secretary maintain a calendar for you from which she extracted your daily cards?
A. Yes. I don't believe that -- I don't believe my calendars are saved.
Q. Apparently your daily cards were saved; is that right? They were produced in the litigation?
A. I don't know.
Q. Do you have your daily cards for 1998?
A. No. I throw my daily cards away.
Q. If you throw your daily cards -- withdrawn.
Did your secretary keep copies of your daily cards?
A. I don't know.

Q. Did you ever look to see whether you had daily cards for 1998?
A. No.
Q. Do your daily cards -- withdrawn.
Who was the secretary in 1998 who maintained your daily cards?
A. I don't know.
Q. You don't know the name of your secretary in 1998?
A. I have five secretaries and I don't know who in 1998 was doing that.
Q. Do you still keep this process today of keeping daily cards generated by your secretaries?
A. Yes.
Q. Do you still have five secretaries who take care of this for you?
A. Yes.
Q. You can set aside Exhibit 171 for the time being. You might keep it in front of you because we will return to it later.
A. Okay.
Q. When you looked at your daily cards was it supposed to have all of your activities slotted out for that day on the

card?
A. No.
Q. What was it -- the daily card supposed to be then?
A. It was supposed to be a reminder of certain things that were occurring. It was supposed to be an awareness of things that I might want to be a part of and it had openings for me to make meetings.
Q. My understanding is that one of your five secretaries or perhaps more than one of them would set whatever calendar entries were on your daily card and then simply give it to you once each day; is that right?
A. That is true.
Q. At the end of the day or perhaps the next morning you would dispose of your daily cards, correct?
A. Correct.
Q. If there were any copies of your daily cards for 1998 you don't have them personally, right?
A. That's correct.
Q. The only people who would have

them would be your secretaries if they have them?
A. That is correct.
Q. I asked you earlier who you were employed by and my understanding is you don't know whether the company MAFCO Holdings Inc. still exists, is that right?
A. Yes.
Q. You do own, that is, you, personally, own 100 percent of MacAndrews & Forbes Holdings Inc., correct?
A. Yes.
Q. Is it all common stock?
A. I believe so.
Q. MacAndrews & Forbes Holdings Inc., that company owns 100 percent of the plaintiff here, Coleman (Parent) Holdings, Inc., right?
A. Yes.
Q. That also was -- that was true in 1997 and 1998, the time period we will be talking about, is that true?
A. Yes.
Q. You are today, so the jury understands exactly who you are, are you

NOT A CERTIFIED COPY

015482

a -- the chairman of the board of MacAndrews & Forbes Holdings Inc.?
A. Yes.
Q. Is that company sometimes called MAFCO?
A. I don't believe so.
Q. I will try to use MacAndrews & Forbes.
A. That would be good. Thank you.
Q. Are you also a director of MacAndrews & Forbes Holdings Inc.?
A. Yes.
Q. Are you the chairman of the board of directors?
A. I think you just asked me that.
Q. If I did difficulty I apologize. I thought I asked if you were a director. Maybe I misspoke.
You are the chairman?
A. I thought you just asked me, yes.
Q. Are you a director of Coleman (Parent) Holdings?
A. I am not sure.
Q. Were you a director in 1997 and 1998?

A. I'm not sure.
Q. In 1997 and 1998 were you a director of a company called CLN Holdings, Inc.?
A. I am not sure.
Q. Do you know what CLN Holdings Inc. is or was?
A. No.
Q. Have you ever heard of it?
A. CLN are the initials of Coleman.
Q. I know that. It is the stock symbol for Coleman?
A. If you are asking me the question then you know the answer. It is sort of silly.
Q. Will you answer the question?
A. I answered it.
Q. Was that the stock symbol at the time for Coleman, CLN?
A. Yes.
Q. As you sit here today your testimony to the jury is you don't know whether you were a director of Coleman Holdings, Inc. in 1997 or 1998?
A. That is true.

Q. You don't know whether you were an officer of that company?
A. That's true.
Q. Do you know whether Coleman Holdings, Inc. was a party to any of the merger agreements that are at issue in this litigation?
A. I don't know whether Coleman Holdings, Inc. was the operating company, the public company, I just don't recall, or our holding company. I just don't recall.
Q. Are you familiar with a company known as Coleman Worldwide Corporation?
A. Again, I am not sure which all the companies are.
Q. Did you know what they were in 1997 and 1998 at the time of the merger transaction?
A. I am sure I did.
Q. Do you know a company called the Coleman Company, Inc.?
A. Yes.
Q. Did you know that you were a director of that company?
A. At various times, yes.

Q. Did you know you were a director of the company at the time of the merger agreement?
A. I believe so.
Q. Do you remember who the chairman of the board of the company was?
A. I believe Jerry Levin.
Q. The same Jerry Levin that you bumped into on the street I think you said three months ago?
A. Yes.
Q. The same Jerry Levin who was the CEO of Revlon, Inc., correct?
A. Correct.
Q. You know Mr. Levin pretty well, don't you?
MR. SOLOVY: Object to the form of the question.
You can answer.
BY MR. BEMIS:
Q. You can answer.
You know Mr. Levin fairly well?
A. I know him fairly well, yes.
Q. How many years did you do business with him?

NOT A CERTIFIED COPY

015483

Let me withdraw the question.
That was poor question. Let me try again.
How many years was Mr. Levin employed by one of the companies that MacAndrews & Forbes either held an ownership interest, direct or indirect, in whether in whole or in part?
A. Maybe ten years.
Q. You have had quite a bit of interaction with him over the ten years, right?
A. Some.
Q. He was -- Revlon, Inc. is one of MacAndrews & Forbes largest holdings, isn't it?
A. It is a major holding for us, yes.
Q. You put Mr. Levin in charge of that company, didn't you?
A. Yes.
Q. When did you do that?
A. I believe like in '92, '93, something like that.
Q. You put him in charge of the company at a time that Revlon, Inc. was

having some difficulties, didn't you?
A. Yes.
Q. You put him in charge of Revlon Inc. in order to assist in a restructuring of the company, correct?
A. I don't know if it was a restructuring but he was put in charge to bring in a new management team.
Q. He was essentially put in charge to move Revlon into a mass marketing format for its cosmetics as opposed to being sold out of department stores; is that fair?
A. No.
Q. That is not fair. Okay.
Based on your experience with Mr. Levin over ten years -- by the way, with your executives you have breakfast meetings at your townhouse across the street or next door, don't you?
A. Some.
Q. Don't you have almost daily breakfast meetings with your executives when you are in town?
A. Some executives.
Q. Some, like Mr. Schwartz attends

on occasion?
A. Yes.
Q. Mr. Levin, he attended on occasion when he was in New York?
A. On occasion.
Q. Mr. Bruce Slovin, he used to attend at times?
A. On occasion.
Q. Mr. Gittis, he used to attend as well?
MR. SOLOVY: It is Gittis.
THE WITNESS: Yes, he did.
BY MR. BEMIS:
Q. I apologize.
Did Mr. Drapkin attend?
A. Yes.
Q. Did Mr. Engelman ever attend?
A. Yes.
Q. Going back to Mr. Levin for a minute, based on your ten years -- withdrawn.
After Revlon you made the decision to put Mr. Levin in control -- excuse me, the decision -- withdrawn.
After Mr. Levin left Revlon Inc.

you made the decision to put him into the CEO position at the Coleman Company, Inc., did you not?
A. Yes.
Q. You put him in there because you needed to restructure that company, right?
A. It needed new management.
Q. When did you put him in, Mr. Levin?
A. '95, I think, '96. '96.
Q. I spoke over you. I apologize.
A. I think it was '95, '96.
Q. At that time at least in '96 the Coleman Company had lost a substantial amount of money that year, right, about $41 million if I remember correctly from the financial statements?
A. I don't recall.
Q. You don't recall whether it lost any money in 1996 or just the $41 million you don't recall?
A. I don't recall either.
Q. Even though you don't recall whether Coleman made or lost money in 1996 you did put Mr. Levin in charge of Coleman

NOT A CERTIFIED COPY

015484

because, as you put it, you needed a change of management?
A. Right.
Q. What was the change that you needed?
A. A change of management.
Q. I understand. What did you mean by that?
A. A different management.
Q. To do what?
A. To manage the company better.
Q. It was being managed not good before that?
A. I thought it could be managed better.
Q. Then after Mr. Levin managed the Coleman Company, which he did up to the time of the closing of the Coleman-Sunbeam transaction, correct?
A. Yes.
Q. He was on the board of directors, right?
A. Yes.
Q. Then he resigned when you resigned at the time of the closing,

correct?
A. I would assume so.
Q. Then in June of 1998 you called upon Mr. Levin to come back and help run Sunbeam when you were asked for assistance by the Sunbeam board of directors, correct?
A. No.
Q. Did you ask Mr. Levin to come back and assist you?
A. No.
Q. Did Mr. Levin go to Sunbeam?
A. Yes.
Q. Do you know how that happened?
A. I believe at the request of the Sunbeam directors.
Q. Were you aware -- did you ever ask Mr. Levin whether he would be willing to go back and do that?
A. I don't believe so.
Q. Based on your experience with Mr. Levin -- withdrawn.
Before Mr. Levin came to work for Revlon did he work with any of your other companies?
A. I don't believe so.

Q. The first employment Mr. Levin had with one of MacAndrews & Forbes companies -- can I refer to those companies as MacAndrews & Forbes companies?
A. Yes.
Q. If I misspoke let me know and I will try to correct it.
A. He joined us in some capacity before Revlon I believe but I don't recall what it was.
Q. Do you think he is a good executive, by the way?
A. Yes.
Q. What is his -- in your view, what is his -- your opinion of his reputation for truth and veracity?
A. I don't know what "veracity" means.
Q. Do you know what "truth" means?
A. Yes. I think he is truthful.
Q. Has he ever lied to you, do you know?
A. Not that I know of.
Q. What is his reputation in your view for probity?

A. I don't know what that means.
Q. Can you think of anything that Mr. Levin has ever misrepresented to you in all of the years that he was an executive for companies owned or controlled by MacAndrews & Forbes Holdings Inc.?
A. Intentionally or unintentionally?
Q. Intentionally.
A. I mean, I think that -- I don't think he has ever intentionally lied to me about anything.
I think he has represented positions as he saw them that may have turned out to be accurate or may have turned out to be inaccurate.
Q. That can happen in business, right?
A. Of course.
Q. Did Mr. Levin in the years that you have known him since 1992, did he ever do anything that you would categorize as unethical?
A. Not that I am aware of.
Q. Let's roll back to December 31, 1997.

NOT A CERTIFIED COPY

015485

You owned through MacAndrews & Forbes indirectly 82 percent of the common stock of the Coleman Company, Inc.; is that correct?

A. Yes.

Q. The Coleman transaction -- as you sit here today, I think you have answered this but we will move on if we are clear.

You don't know the intermediate holding company structure as you sit here today between MacAndrews & Forbes and the Coleman Company, Inc. as of December 31, 1997; is that right?

A. That's correct.

Q. But there were a series of holding companies between the public company and yourself ultimately?

A. And MacAndrews & Forbes, that is correct.

Q. These holding companies, they didn't engage in any business operations other than acting as a holding company, correct?

A. I believe so.

Q. A holding company, as we are

speaking about here, that doesn't make any products, right?

A. They could own companies that make products.

Q. The holding company itself doesn't make any?

A. It is not an operating company.

Q. They don't make any cars or refrigerators or fans?

A. Correct.

Q. MacAndrews & Forbes controlled all of the holding companies above the Coleman Company, Inc., correct?

A. Yes.

Q. You controlled MacAndrews & Forbes?

A. Yes.

Q. You were the guy at the top?

A. I would guess so.

Q. You made all final decisions, didn't you?

A. No.

Q. Who made the final decisions for MacAndrews & Forbes?

A. There are lots of decisions made

everyday by lots of different people.

Q. I may have misspoke or misled you.

The question may not have been clear. Let me try again.

If a final decision had to be made at MacAndrews & Forbes on an issue, on a matter such as selling the stock to Sunbeam, did you make that final decision?

A. On whether to sell the stock?

Q. Yes.

A. Yes.

Q. Sir, would -- you made the ultimate decision to file the complaint against Morgan Stanley that we are taking your testimony on, correct?

A. No.

Q. Who made that ultimate decision?

A. I was part of the decision but that decision was made by counsel.

Q. You elected to have counsel -- excuse me. I withdraw the question.

You delegated to your counsel the decision whether to file a suit against Morgan Stanley; is that right?

A. No. In this case it would be Howard Gittis.

Q. Howard Gittis made the decision to file the suit against Morgan Stanley?

A. As I said we all participated in it but he made the decision to file the litigation.

Q. When I depose Mr. Gittis Mr. Gittis will take responsibility for making the decision to file the lawsuit, correct?

MR. SOLOVY: Object to the form of the question.

MR. BEMIS: Withdrawn.

BY MR. BEMIS:

Q. Mr. Perelman, do you consider yourself a sophisticated businessman?

A. I think so.

Q. You have been -- withdrawn.

Do you consider yourself a sophisticated investor?

A. Not necessarily.

Q. Do you consider -- do you consider that you have over the course of your business career hired sophisticated

NOT A CERTIFIED COPY

0151486

Page 38

advisers to help you?
A. Yes.
Q. For example, investment bankers, you have retained them on a regular basis, have you not?
A. Yes.
Q. Tell the jury some of the investment banking firms that you retained to advise MacAndrews & Forbes over the years.
A. Morgan Stanley, Goldman Sachs, Lazard, First Boston, a whole slew of them.
Q. When you said First Boston you would include in that Credit Suisse First Boston after the merger?
A. Yes.
Q. You have as well -- withdrawn. You have other advisers as well such as attorneys, correct?
A. Yes.
Q. You have Mr. Schwartz who is sitting in the room here as your general counsel, correct?
A. That's correct.
Q. You consider him a sophisticated

Page 39

legal counsel, don't you?
A. I think he is good legal counsel, yes.
Q. He is a good businessman, too, isn't he?
A. He is a good lawyer.
Q. A good business lawyer?
A. Yes.
Q. Good adviser?
A. He is a good legal adviser, yes.
Q. In addition to Mr. Schwartz who is sitting here in this deposition you have Mr. Fasman sitting over here. He is one of your legal advisers, right?
A. Yes.
Q. He works with Mr. Schwartz, doesn't he?
A. Yes.
Q. He is a good legal adviser, right?
A. Yes.
Q. Good business legal adviser?
A. I don't know.
Q. In addition to your in-house legal advisers -- by the way, Mr. Fasman

Page 40

and Mr. Schwartz are here to help in the deposition?
MR. SOLOVY: Object to the form.
MR. BEMIS: Withdraw the question.
BY MR. BEMIS:
Q. In addition to Mr. Fasman and Mr. Schwartz you also have other attorneys that work for Mr. Schwartz at MacAndrews & Forbes, correct?
A. Not many.
Q. You have others. There may not be many in your view but there are others?
A. I think one other.
Q. Did you have an attorney at one time, Joram Salig?
A. Yes.
Q. He worked for Mr. Schwartz, right?
A. I believe so.
Q. Provided legal advice to MacAndrews & Forbes?
A. I never worked with him.
Q. Did you ever meet him?
A. Yes.

Page 41

Q. Did you ever authorize him to file documents on your behalf?
A. No.
Q. You are sure of that?
A. Not directly, no.
Q. Do you have, in addition to your, I will refer to it as your in-house counsel, you have used outside law firms in New York City, correct?
A. Yes.
Q. You have -- tell the jury some of the law firms in New York City, the larger law firms, that you have used at MacAndrews & Forbes.
A. Skadden, Wachtell, a lot of different law firms.
Q. Good law firms, right?
A. Yes.
Q. Expensive law firms?
A. I guess all law firms are expensive.
Q. In addition to --
A. You must be expensive.
Q. In addition to your in-house counsel and your outside counsel that you

NOT A CERTIFIED COPY

015487

have used at times you have analysts in house, don't you?
A. An analyst.
Q. At one time you had a gentleman by the name of William Nesbitt, did you not?
A. Yes.
Q. Mr. Nesbitt, he was the in-house analyst who was responsible for evaluating the Coleman-Sunbeam transaction, right?
A. Along with others.
Q. Who were the other analysts in house besides Mr. Nesbitt?
Mr. Maher?
A. Maher was in the process, Nesbitt was in the process and then you had all the Coleman people who were in the process who did the analysis for Coleman.
Q. Let's just focus, if we could, right now on the in-house analysts who were analyzing Sunbeam during the time of 1997, 1998.
A. In-house at MacAndrews, not at Coleman?
Q. Yes.

A. That would be William Nesbitt and Jimmy Maher.
Q. Jimmy Maher was a very senior person at Credit Suisse First Boston, correct?
A. Yes.
Q. A very experienced investment banker, wouldn't you agree?
A. Yes.
Q. Very knowledgeable about investment banking, wouldn't you say?
A. Yes.
Q. A brilliant financial analyst, wouldn't you say?
A. I don't know what that means.
Q. Would you say he was a stupid financial analyst?
A. I wouldn't say he was stupid but I don't know if he was brilliant. He is a good financial executive.
Q. How much -- in 1998 how much did MacAndrews & Forbes pay Mr. Maher for his services at MacAndrews & Forbes?
A. I don't know.
Q. Was it in the millions of

dollars?
A. I don't know.
Q. You don't have any idea?
A. No idea.
Q. How long did Mr. Maher work for you as an analyst?
A. He was more than an analyst. He was a senior executive.
Q. Very senior executive, right?
A. I don't know what very -- he reported --
Q. He reported to you or did he report to Mr. Gittis?
A. We all report to one another. We don't have a very sophisticated or a defined organizational structure.
Q. Correct me if I am wrong. In 1998, at least, Mr. Maher was the president of MacAndrews & Forbes Holdings Inc., is that right?
A. I don't believe so.
Q. What was his position then?
A. What was his title?
Q. Yes, sir. What was his title in 1998?

A. I don't recall.
Q. In 1998 -- in 1997 and 1998 -- we will be talking about the Coleman transaction and the Sunbeam transaction.
Mr. Maher was one of the people who would attend the breakfast meetings at your townhouse, correct?
A. On occasion, yes.
Q. You have -- withdrawn.
Other than Mr. Maher and Mr. Nesbitt, now, in connection with the Coleman transaction and analysis of Sunbeam were there any other in-house analysts that worked on the transaction, and by "in-house," MacAndrews & Forbes in-house.
Let me withdraw the question. It is poorly articulated.
Limiting myself now to MacAndrews & Forbes in-house analysts were there any other analysts other than Mr. Nesbitt and Mr. Maher who worked on the analysis of Sunbeam in the Coleman-Sunbeam transaction?
A. I don't believe so.
Q. Mr. -- did Mr. Maher and Mr. Nesbitt report the results of their

NOT A CERTIFIED COPY

015488

analysis to you?
A. Yes.
Q. Would they do that -- and so -- withdrawn.
Was there any other person that they reported to concerning their analysis of Sunbeam other than you within MacAndrews & Forbes?
A. "Report to" is the wrong way to put it.
I mean, I am sure that all of us were aware of the analysis -- of the review that was going on.
When I say "all of us," myself and Gittis and Barry Schwartz and Maher.
Q. Is that the top tier of the team, yourself, Mr. Schwartz, Mr. Gittis and Mr. Maher on the Coleman-Sunbeam transaction?
A. We didn't have a team like that on the Coleman-Sunbeam transaction.
Maher negotiated the transaction. Maher and Nesbitt were part of the review of Sunbeam.
Q. The due diligence of Sunbeam; is

that what you mean?
A. Yes.
Q. It is Maher and Nesbitt who did the due diligence of Sunbeam?
A. In part, along with the Coleman guys.
Q. That would be -- I am interrupting you.
Mr. Levin, would he be the person who would be in charge of Coleman for the due diligence?
A. I don't know. I am sure he was part of it.
They would on various occasions report back to us as to what they saw and what they thought of the company.
Q. The "us" that you just referred to is Mr. Maher, Mr. Gittis, Mr. Schwartz, and yourself, the four of you?
A. Yes.
Q. Then ultimately the four of you discussed these issues of whatever analysis was being done and then you, however, had the final say so, go or no go, on the transaction?

A. Yes.
Q. How long have you been -- withdrawn.
Tell the jury how long you have been in business buying and selling companies.
A. I have been in business since I graduated from graduate school.
Q. There came a point in time when you did buy one company and got started in the business you are in now today, correct?
A. I don't know what that means.
Q. Then I will try again.
Let's not worry about a starting point. Let's say over the course -- you are 61 years old now, right?
A. Yes.
Q. In the course of your years since you graduated from Wharton you have bought and sold many companies, right?
A. Several.
Q. More than two, right?
A. More than two.
Q. More than ten?
A. I don't know if that is so.

Q. Have you bought -- strike that.
You own today, today as you sit here you own many companies directly or indirectly through your various holding companies, correct?
A. Yes.
Q. In addition to owning companies you have stock positions in companies that you don't own 100 percent of, correct?
A. Yes.
Q. Like Revlon, MacAndrews & Forbes does not own 100 percent of Revlon today, does it?
A. No.
Q. You have also in your many years of business, you have sold -- your companies, MacAndrews, or your subsidiary companies, you have sold billions of dollars of debt securities?
A. Yes.
Q. That is one of the things that you are renowned for doing, selling debt securities?
A. I hope not.
Q. Have you -- tell the jury how

NOT A CERTIFIED COPY

015489

many companies through your various holding companies you own or control today through your stock ownerships.
We talked about Revlon?
A. About eight.
Q. Eight?
A. Yes.
Q. Eight operating companies?
A. Yes.
Q. Tell me today what the operating companies are so the jury has a better idea who you are.
A. Revlon.
Q. Revlon.
A. Panavision, Scientific Games, Allied Security, MFW, AM General. How many is that?
Q. Seven.
A. I think that is it.
Q. That is just today, right?
You have owned other operating companies directly or indirectly through your holding companies like the Coleman Company?
A. Yes.

Q. You have owned, another example, you owned Marvel at one time, right?
A. Yes.
Q. Marvel had the rights of Marvel comics and the Marvel characters?
A. Yes.
Q. Spiderman?
A. Yes.
Q. In addition to that you owned directly or indirectly Consolidated Cigar at one time, didn't you?
A. Yes.
Q. In fact you owned it twice as I recall, didn't you?
A. Yes.
Q. Does that refresh your recollection of any other companies that you owned or controlled in your business career, sir?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. I am trying to suggest other companies to you. I thought it might help you remember some others. Maybe there

aren't any others.
A. New World.
Q. Sold to?
A. News Corp.
Q. News Corp.
Any others you can think of now?
A. Technicolor.
Q. How about Meridian Sports? I can't remember the exact name. I am sure I can look it up. The company that Meridian -- I think it is sports.
A. What is the question?
Q. Did you own it directly or indirectly?
A. We owned it but it was part of Coleman. It was not a company that we -- it was not a core business that we intended to keep.
What we do is identify businesses that we like and hopefully over time help them grow and develop.
Our plan is not to sell them. Our plan is to make them grow.
Q. Would you say that over your business career that you personally through

your buying and selling businesses and making them grow as you described that you have made hundreds of millions of dollars?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. We have been successful.
You posed the question as if buying and selling is our business. That is not our business. Buying and operating companies is our business.
Q. Let me rephrase the question.
In your business, as you have described it, would it be fair to say, sir, that you have made hundreds of millions of dollars?
A. We have been successful in our business, that is correct.
Q. In fact, wouldn't you say, sir, that you have been so successful in your business you have not made just hundreds of millions of dollars, you have made billions of dollars?
MR. SOLOVY: This is not a proper

NOT A CERTIFIED COPY

01514,90

subject of inquiry and I advise you you need not answer the question. I think the question is inappropriate and should be withdrawn as per the court's order.

MR. BEMIS: I am not withdrawing the question. If you want to instruct him not to the answer you may do so and I won't argue with you about it.

MR. SOLOVY: You need not answer the question.

THE WITNESS: Thank you.

BY MR. BEMIS:

Q. Would you agree with me that the Coleman transaction was a transaction between two large sophisticated parties, that is, Sunbeam and MacAndrews & Forbes?

MR. SOLOVY: Object to the form of the question.

THE WITNESS: I mean I don't understand the question.

BY MR. BEMIS:

Q. Okay. If you don't understand the question I will move on to something else if you can't understand it.

A. Okay.

Q. Did you -- at the time of the Coleman transaction Coleman was a publicly traded corporation, correct?

A. Yes.

Q. It filed reports with the Securities and Exchange Commission?

A. Yes.

Q. Did you -- withdrawn.

Sunbeam was a publicly traded corporation, correct?

A. Yes.

Q. It filed reports with the Securities and Exchange Commission?

A. Yes.

Q. In the transaction, the Coleman transaction now that we are talking about, there were investment bankers representing both sides of the transaction, correct?

A. Yes.

Q. Morgan Stanley was represented by Sunbeam and MacAndrews & Forbes and Coleman were represented by Credit Suisse First Boston, correct?

A. I don't know if Credit Suisse

First Boston represented MacAndrews. I believe they represented Coleman.

Q. In the course of Credit Suisse First Boston's work did they provide advice to the executive team that you described for me earlier of MacAndrews & Forbes?

A. I think they provided advice to the board of Coleman.

Q. Did they provide -- I was speaking now of the four gentlemen that you talked to, Mr. Maher, for example, Mr. Gittis.

A. Right.

Q. Mr. Schwartz and yourself, had Credit Suisse First Boston provided advice to those gentlemen?

A. No.

MR. SOLOVY: Objection. The question was asked and answered.

BY MR. BEMIS:

Q. I didn't hear the witness' response?

A. I believe they were retained by Coleman and provided their advice to Coleman.

Q. My question -- you may not have understood my question or perhaps it was poorly phrased.

My question is: Did Credit Suisse First Boston provide advice, as well as to Coleman, as to yourself, Mr. Maher, Mr. Schwartz and Mr. Gittis?

A. Whoever was on the Coleman board which I don't recall right now would have been a recipient of that advice.

Q. As I understand your testimony, Mr. Maher was the head negotiator, if you will, for MacAndrews & Forbes in the Coleman-Sunbeam transaction on behalf of MacAndrews & Forbes; is that fair?

A. I believe you could describe it that way, yes.

Q. Was there a person at Coleman that you would describe as a head negotiator for the Coleman Company, Inc.?

A. I would guess it would be Jerry Levin.

Q. Was Mr. Maher on behalf of MacAndrews & Forbes, was he the responsible executive at MacAndrews & Forbes to bring

NOT A CERTIFIED COPY

015191

the Coleman-Sunbeam transaction to a closing as it ultimately did on March 30, 1998?
A. I don't know the answer to that.
Q. If not Mr. Maher, who would it be?
A. I don't know what you are referring to.
Q. Let me try again. Perhaps the question wasn't well phrased for you.
You are aware that merger agreements were signed with Sunbeam, correct?
A. Yes.
Q. You are aware that one of those agreements closed on March 30, 1998, correct?
A. Yes.
Q. On the date of the closing, just as an example, your -- MacAndrews & Forbes through one of its holding companies received within a hair's breath of $160 million in cash, right?
A. Right.
Q. Was Mr. Maher the person

responsible for bringing the transaction to closing after the merger agreements were signed by the parties, and this is on behalf of MacAndrews?
A. I don't know what that means.
Q. We will move on if you don't know what it means.
A. Okay.
Q. You attended the February 25 board meeting of the Coleman Company, correct?
A. Yes.
Q. You listened to the presentations, did you not?
A. Yes.
Q. You were a director?
A. Yes.
Q. You also attended the February 27, 1998 Coleman board meeting, correct?
A. There were two board meetings. I believe those were the dates.
Q. This -- do you know when the merger agreements were signed?
A. I believe the end of February.
Q. February -- do you know --

February 28, if that is of assistance to you.
I think they are dated as of the 27th but were actually signed on the 28th but we can use that date.
You, as a director of Coleman, actually voted in favor of the merger, correct?
A. Yes.
Q. The following -- following the meeting you resigned -- withdrawn.
I asked you this earlier and you weren't sure if you resigned after the meeting; is that fair?
A. That's fair.
Q. Let me show you what has been marked as Exhibit Morgan Stanley 430 and see if we can clarify that.
You have to excuse me for one second.
Why don't we go off the record?
THE VIDEOGRAPHER: Going off the record. The time is 10:44 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to

the record. The time is 10:46 a.m.
MR. BEMIS: Mr. Reporter, I misspoke. I would like you to mark Exhibit 425 which is a one-page document directed to the board of directors of the Coleman Company, Inc.
(Morgan Stanley Exhibit 425 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit Morgan Stanley 425 in front of you?
A. Yes.
Q. Is that your signature, sir?
A. Yes.
Q. Is this your resignation from the board of directors of the Coleman Company, Inc. following the closing of the merger?
A. I don't know.
Q. You see there is a fax date.
You are correct. I said "following."
You will see there is a fax date at the top, March 27, 1998?
A. Yes.
Q. Did there come a point -- strike

NOT A CERTIFIED COPY

015492

that.
Did you resign from the Coleman Company board of directors more than one time?
A. I don't believe so.
Q. You can set that aside. In fact, you can hand that back to me. Thank you, sir.
At the Coleman board meeting of February 27 -- withdrawn.
At the February 27, 1998 Coleman board meeting that was the meeting where the Coleman merger agreement was approved by the board of directors, correct, the one you voted on?
A. I don't know if the agreement was approved. I believe the transaction was approved.
Q. Fair enough.
The transaction was the one that eventually does close, correct?
A. Yes.
Q. Did anyone tell you how to vote as a member of the board of directors?
A. What do you mean?

Q. Just what I said.
Did somebody say to you, Mr. Perelman, you need to vote for the merger?
A. No.
Q. Did you tell -- strike that.
Did you have certain designees on the board of directors representing your interests since you held 82 percent of the Coleman stock?
A. Yes.
Q. Who were your designees?
A. I am not sure.
Q. Do you know any of them?
A. No.
Q. Would you know if you saw a list of who attended the board meeting?
A. Absolutely.
Q. You would?
A. Of course.
Q. Then let me show you the minutes of the February 27 meeting in fairness.
If there is any document you want to see during the questioning let me know and if I have it I will try to locate it

for you because these things happened six years ago, I understand.
A. Yes.
Q. I hand you or the court reporter will hand you Morgan Stanley Exhibit 118.
You have in front of you the minutes of the board of directors of the Coleman Company, Inc. on Friday, February 27, 1998?
A. Yes.
Q. There are directors listed in attendance?
A. Yes.
Q. Can you tell the jury which of these directors were your designees?
A. Drapkin, Perelman, Slovin.
Q. Did you tell Mr. Drapkin how to vote?
A. No.
Q. He was free to exercise his own independent business judgment; is that correct?
A. That is correct.
Q. Mr. Bruce Slovin, did you -- withdrawn.

Did you tell Mr. Bruce Slovin how to vote?
A. No.
Q. Mr. Slovin was free to exercise his own independent business judgment?
A. Yes.
Q. Did you tell Mr. Levin how to vote?
A. No.
Q. Did you tell Mr. Frank Gifford how to vote?
A. No.
Q. Did you tell Mr. Jones how to vote?
A. No.
Q. Did you tell Ms. Jordan how to vote?
A. No.
Q. Did you tell James A. Moran who was on by telephone, according to the minutes, how to vote?
A. John A. Moran, no.
Q. Did I misspeak? I am sorry.
Did you tell Mr. James D. Robinson, III, how to vote?

NOT A CERTIFIED COPY

015493

A. No.
Q. Did you tell Mr. William H. Spoor how to vote?
A. No.
Q. Before the meeting on February 27, 1998 of the board of directors of the Coleman Company had any of the board members been advised -- withdrawn.
I want you to go back now to the February 25 board meeting which -- can you go back there in your mind, please?
A. I will try.
Q. You will try. Good.
Before February 25, 1997 had any of the Coleman Company board members been advised of the potential transactions between Sunbeam and Coleman?
A. I would assume so but I am not aware specifically.
Q. You know that you knew about it?
A. Yes.
Q. Mr. Slovin knew about it, right?
A. Those of us who were inside knew about it.
Q. As you sit here today do you know

on firsthand knowledge of any of the outside directors, that is, those who were not your designees, who knew of the transaction?
A. No.
Q. As you sit here today the first knowledge the outside directors had of the transaction with Sunbeam would have been February 25 at the board meeting?
A. That is not what I said.
Q. When is your -- strike that.
What is your testimony as to when any of those people would have had knowledge of a potential transaction?
A. I said I didn't know.
Q. You don't know one way or the other whether they knew?
A. That is correct.
Q. If all of these directors said that they first learned of the transaction at or around the February 25 board meeting, would you accept their testimony?
A. Yes.
Q. In addition to the -- withdrawn.
You may hand that back to me, the

minutes back, and I will take those out of the way for you. Thank you very much.
A. Thank you.
Q. I will try to keep the paper from piling up.
A. Good.
Q. At the board of directors meetings of the Coleman Company that we have been going over your advisers, that is, on behalf of the Coleman Company did address the board of directors, correct?
A. Yes.
Q. We know that Credit Suisse First Boston advised the board, right?
A. Yes.
Q. Do you remember who -- who spoke on behalf of Credit Suisse First Boston?
A. I believe Gordon Rich.
Q. Gordon Rich. You have -- withdrawn.
The adviser -- withdrawn.
The legal adviser to the Coleman Company from Wachtell, Lipton, Adam Emmerich, also advised the board of directors, correct?

A. I believe so.
Q. You had -- in addition to those presentations, you had presentations by Mr. Maher, correct?
A. Possibly.
Q. Mr. Maher, he did not -- so we are clear, Mr. Maher was not a director of the Coleman board, correct?
A. Not from the sheet you just showed me, yes.
Q. Mr. Maher was addressing the board of directors as a representative of MacAndrews & Forbes, right?
A. I don't recall him addressing the board.
Q. I will hand you what has previously been marked as Morgan Stanley Exhibit 88.
A. Do you want me to review this?
Q. If you would like.
My question is: Did Mr. Maher address the board of directors on February 25 while you were there, and I direct your attention, if this helps you, to the second page of the minutes, third paragraph which

NOT A CERTIFIED COPY

015194

begins, "Mr. Levin then asked Mr. James Maher to review with the board the history of the proposed transaction with Sunbeam."
Do you see that sentence?
A. Yes.
Q. Does that refresh your recollection, sir, that Mr. Maher did indeed address the board?
A. No.
Q. As you sit here today you have no recollection of Mr. Maher addressing the board of directors?
A. No.
Q. Mr. -- let's set that aside. We will come back to the meeting in a little bit more detail later in your deposition. Thank you for handing that back to me.
A. You are welcome.
Q. Do you have any reason to believe that the minutes are incorrect, that is, that Mr. Maher did address the board of directors?
A. No.
Q. Were you there for the entire meeting on February 25?

A. I believe so.
Q. Did you -- strike that.
The Coleman companies' outside auditors at the time of the Coleman-Sunbeam transaction was Ernst & Young, is that right?
A. I believe so.
Q. Ernst & Young audited the financial statements of the Coleman Company, Inc. at least up to the year end 1997, correct?
A. I believe so.
Q. They issued their opinions on the financial statements of the Coleman Company, Inc., correct?
A. I believe so.
Q. As the 82 percent owner of the Coleman Company, Inc. did you rely upon the certified audits of Ernst & Young as to the financial results of the Coleman Company, Inc.?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I don't know what that means.

BY MR. BEMIS:
Q. Tell me what it is that is confusing you and I will see if I can help.
A. I mean I believed the financials of Coleman to be accurate.
Q. Was that belief encouraged by the fact that those statements were audited by Ernst & Young?
A. Yes.
Q. Was it also a belief that was fostered by the fact that Ernst & Young, I think it was LLP at that time, was a renowned public accounting firm?
A. Yes.
Q. One of the -- I don't know if it was big five, big six or big seven at that time but one of the big ones?
A. A big one, yes.
Q. You have identified, I think, probably 11 operating companies earlier. If the number is wrong don't hold me to it and I won't hold you to it.
A. Okay.
Q. Those companies, they had outside auditors, as well, right?

A. Yes.
Q. At least the public company?
A. Yes.
Q. With regard to your public companies did MacAndrews & Forbes have one particular auditing firm that it used or did it use a number of them?
A. I believe a number.
Q. Could you tell the jury what auditing firms, and focusing on the period 1997, 1998 if that is helpful for you, the outside auditing firms that MacAndrews & Forbes operating companies retained?
A. Ernst & Young, Peat Marwick; there might be others but I don't recall them.
Q. Did MacAndrews & Forbes for its part in the Coleman transaction, did it have any outside audit assistance other than Ernst & Young for the Coleman Company?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I don't understand the question.
BY MR. BEMIS:

NOT A CERTIFIED COPY

015495

Q. Let me try again.
A. Okay.
Q. Did -- does MacAndrews & Forbes have an auditing company?
A. What do you mean?
Q. Just that. Let me try again. I didn't think that I one was very hard.
MacAndrews & Forbes Holdings Inc., your company, does it have financial statements?
A. Yes.
Q. Are they audited?
A. Yes.
Q. Who audits -- who audited them in 1997 and 1998?
A. I don't know.
Q. Was it one of the big accounting firms?
A. Yes.
Q. It would have been one of the ones you mentioned for us, Peat Marwick, Ernst & Young?
A. I believe so.
Q. Do you know what a clean opinion is in the context of an audit?

A. I believe so.
Q. Would you tell the jury what it is?
A. It is an unqualified opinion.
Q. At the time of the 19 -- at the time of the merger in 1998 that we are talking about, the Coleman-Sunbeam transaction, had Ernst & Young issued unqualified opinions on the Coleman financial statements?
A. I believe so.
Q. At the time of the transaction with Sunbeam and Coleman in 1998 you knew that Sunbeam had outside auditors, correct?
A. Yes.
Q. Those outside auditors were Arthur Andersen?
A. Yes.
Q. And to your knowledge, at least as of the time of the execution of the merger agreements in February 1998, that Arthur Andersen issued unqualified opinions on Sunbeam's financial statements for 199 -- for 1996?
A. I believe so.

Q. At the time of the closing of the transaction, that is, March 30, 1998, had Arthur Andersen issued unqualified or clean opinions, if you will, on Sunbeam's 1997 financial statements?
A. I don't know technically whether the comfort letters sent by Arthur Andersen in March of 1998 would have required a qualification of the 1997 statements after what Arthur Andersen and Morgan Stanley knew as of that date.
Q. As you sit here today as of the closing are you aware of Arthur Andersen withdrawing its audit opinion on Sunbeam's 1997 financial statements as of the date of the closing, March 30, 1998?
A. I don't know whether that comfort letter constitutes a qualified opinion at that point.
Q. Setting aside the comfort letter, and I understand your testimony, and I will not quarrel with you about it, but aside from the comfort letter are you aware of any action by Arthur Andersen to withdraw its opinion on Sunbeam's financial

statements for the year ended, I believe it is, December 27, 1997 for Sunbeam?
A. I don't know the answer to that.
Q. You don't know one way or the other?
A. Correct.
Q. Of course, you, before the closing, you had read Sunbeam's 1997 10-K, right?
A. Yes.
Q. When did you read it?
A. I don't recall.
Q. You read it before the closing?
A. Yes.
Q. Who did you -- where did you get it from?
A. I don't recall.
Q. When you read it, the 1997 10-K, you saw Sunbeam's financial statements and Arthur Andersen's opinion, right?
A. I don't know if I focused on Arthur Andersen's opinion but I saw their financial statements, yes.
Q. By the way, when you read financial statements do you read the

NOT A CERTIFIED COPY

015496

footnotes?
A. Yes.
Q. At the February 27, 1998 board meeting CSFB presented at least orally a fairness opinion, correct?
A. At which meeting?
Q. At the February 27, 1998.
A. At one of the meetings.
Q. At one of the meetings. Okay.
Morgan Stanley, of course, wasn't at that meeting according to the minutes, right?
A. Correct.
Q. It didn't present a fairness opinion to the board of directors, right?
A. Of Coleman, no.
Q. There were -- strike that.
At either board meeting on February 25 or February 27, 1998 were there any projections presented to the board of directors that were prepared by Morgan Stanley?
A. I am not sure.
Q. You are not sure one way or the other?

A. Correct.
Q. The board of directors of Coleman (Parent) Holdings, Inc. also approved the transaction, correct?
A. Now you are getting into the area that I mentioned earlier I am not -- my recollection is not good.
Is that the holding company that owned the stock?
Q. I tell you what. It is best that I not try to answer questions for you. I appreciate -- you are not being discourteous and I am not trying to be. Let me ask you another question.
A. If you want to get the facts it would be helpful.
Q. I understand that. Trust me, I am not trying to be discourteous. It is just the way the process has to work from my perspective.
A. Okay.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 172. This is a new exhibit.
(Morgan Stanley Exhibit 172

marked for identification)
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 172 in front of you?
A. Yes.
Q. Is that your signature that appears above the line, Ronald O. Perelman?
A. Yes.
Q. Is that Mr. Gittis' signature above your name?
A. Yes.
MR. SOLOVY: Try again. It is Gittis.
MR. BEMIS: I promise you I continue to get it wrong and I am continuing to get it wrong.
MR. SOLOVY: You have two more days to practice. Okay?
BY MR. BEMIS:
Q. I lost my train of thought.
We are looking at Exhibit 172?
A. Yes.
Q. Did you sign this document as of, dated as of February 27, 1998 as it

appears?
A. Yes.
Q. According to this document, if you look at it, as I understand it this is a resolution of the board of directors of Coleman (Parent) Holdings approving the merger; is that correct?
A. I believe so.
Q. When you -- were you -- were you therefore a director of Coleman (Parent) -- tell the jury who Coleman (Parent) Holdings was in 1998 when you signed this document as a director?
A. I answered you. I don't know.
Q. I realize you don't know what the company was.
Can you look at the minutes that you signed in February 27, 1998 and turn to -- let's turn to page number 2. It will be the third page of the document.
A. These are not minutes.
Q. I misspoke if I said minutes. These are consents in lieu of a meeting with resolutions attached, correct?
A. That is what it says, yes.

NOT A CERTIFIED COPY

015497

Q. I apologize. Thank you for correcting me.
Turn to page 2. Tell me when you are there.
A. I am here.
Q. There is -- there are two whereas clauses that appear on this document, correct, on that page, the second page?
A. Yes.
Q. I am referring now to the second page and the second whereas clause which reads as follows, "Whereas upon careful consideration of the information presented by the management of the corporation, and the corporation's other advisers, and after full discussion of these matters which the board of directors believes are necessary or appropriate to enable it to evaluate and reach an informed decision regarding the fairness and advisability of the holdings merger and the respective transactions contemplated thereby, including the Coleman merger, the board of directors has determined that it is advisable and in the best interests of the capital C Corporation

and its stockholders to approve, initial caps, Holding Merger Agreement in consummation of each of the transactions contemplated by such agreement, including the Coleman capital M Merger."
Do you see that paragraph, sir?
A. Yes.
Q. You read that paragraph before you signed the first page of the document, did you not?
A. Possibly.
Q. You wouldn't have signed this document without reading it, would you?
A. Yes.
Q. You would have signed it without reading it?
A. Yes.
Q. Somebody else wrote this for you and you might have signed it without even reading it?
A. Yes. This was a legal document prepared by the lawyers and I was asked to sign it.
Q. May I ask, sir, when you say "the lawyers," was that Mr. Schwartz who

prepared it for you?
A. Possibly.
Q. Can you tell me what the capital C Corporation refers to? Who is that in that whereas clause we were reading?
A. I don't see that.
MR. SOLOVY: Excuse me. For the record, it is a little confusing when you say capital C because it sounds like there is a corporation -- you mean the corporation with a capitalized C?
MR. BEMIS: That is what I was referring to.
MR. SOLOVY: It is confusing.
MR. BEMIS: I will fix it for you.
MR. SOLOVY: Okay.
BY MR. BEMIS:
Q. That may have been confusing.
In the whereas clause the word "corporation" is capitalized?
A. Right.
Q. My question is what is that capitalized c corporation, what is the name of it?

A. I would assume that is the Coleman (Parent) Holdings, Inc.
Q. That is what I think is true if you look at the first page.
A. I would assume so.
Q. Okay.
So could you tell me who Coleman (Parent) Holdings other advisers are that are referred to in that sentence that we read to the jury?
A. No.
Q. You don't know -- withdrawn.
Then there is -- in the sentence at the very beginning it refers to, "Careful consideration of the information presented by the management of the capital C Corporation, again, Coleman (Parent) Holdings," you see that language?
A. Yes.
Q. What was the information that was presented to the management?
A. I would assume the same manage -- the same information that the Coleman Holdings -- the Coleman operating company got. Both Gittis and I were directors of

NOT A CERTIFIED COPY

the Coleman operating company.
Q. I interrupted you. I will try not to do that.
The management that is referred to in that whereas clause, would you tell the jury who that management consists of?
A. I don't know. I assume Gittis and me.
Q. In any event the management to whomever it refers to and the advisers as you described them?
A. I didn't describe them. I can't describe them.
Q. Okay.
A. I am unable to describe them.
Q. Perhaps I misunderstood what you said. I apologize. We will let it go.
A. Okay.
Q. You can set that aside for the time being. I do need you to hold on to that.
A. Okay.
Q. I would ask you if you would -- you look like you need a break.
A. No. I am fine.

Q. On the first page of the resolutions, at the very bottom of the page there is a whereas clause and it refers to the registration rights agreement.
MR. SOLOVY: We are back, Mr. Bemis, on 172?
MR. BEMIS: Yes, Mr. Solovy. I apologize if I didn't identify it properly. Exhibit 172.
BY MR. BEMIS:
Q. Do you have it back in front of you, Mr. Perelman?
A. Yes, the last whereas.
Q. The last whereas clause on the first page of the resolutions.
A. Yes.
Q. In those resolutions there -- the board approved -- it refers to a condition to the consummation of the holdings merger, that Laser have entered into a registration rights agreement. Then it defines it thereafter.
Do you see that language?
A. Yes.
Q. You know who Laser is, right?

A. No.
Q. Do you know what the registration rights agreement is?
A. No.
Q. You didn't see it before you -- did you see the registration rights agreement before you put your signature on Morgan Stanley Exhibit 172?
A. No.
Q. You may set it aside. Thank you, sir.
A. Okay.
MR. BEMIS: Mr. Reporter, would you please mark as Morgan Stanley Exhibit 423 the following document headed CLN Holdings Inc., no comma, unanimous written consent of the board of directors.
(Morgan Stanley Exhibit 423 marked for identification)
BY MR. BEMIS:
Q. Sir, do you have Morgan Stanley Exhibit 423 in front of you?
A. Yes.
Q. You earlier told me you did not

know what CLN Holdings Inc. was, right?
A. Yes.
Q. Is that, however, your signature that appears on page 1 dated February 27, 1998?
A. Yes.
Q. Will you just excuse me for one second?
Is that Mr. Gittis' signature below?
A. I believe so.
Q. Did you sign this document on or about February 27, 1998?
A. I don't know.
Q. Did you read it before you signed it?
A. I don't know.
Q. The document -- if you will turn to page 1 of the resolutions?
A. Right.
Q. It would be page 2 of the document and tell me when you are there.
A. I am here.
Q. If you will look at the very last paragraph which begins, "Whereas, upon

NOT A CERTIFIED COPY

015499

careful consideration of the information presented by the management of the Corporation," capitalized there.
A. Right.
Q. "And with the Corporation's," capitalized again, "other advisers and after full discussion of those matters with the board of directors believes are necessary and appropriate to enable it to evaluate and reach an informed decision regarding the fairness and advisability of the Holdings Merger," which is capitalized, "and the respective transactions contemplated thereby including the Coleman Merger," capitalized, "and the Board of Directors," capitalized, "has determined that it is advisable and in the best interests of the Corporation," capitalized, "and its stockholders to approve the holdings merger agreement and the consummation of each of the transactions contemplated by such agreement including the," capitalized "Coleman Merger."
Do you see that sentence?
A. Yes.

Q. Are the advisers and the management that are -- withdrawn.
Are the advisers that are referred to in this paragraph the same advisers that you -- we discussed, excuse me, when we were referring to the Exhibit 172 a few moments ago which is the Coleman (Parent) Holdings resolutions?
A. I believe I said there were no advisers there.
Q. The board of directors-- strike that.
Are you aware of-- strike that.
As I understand it you don't remember whether you were a director of CLN Holdings Inc. because you don't even remember that company?
A. Correct.
Q. Right?
A. Yes.
Q. So I take it you don't remember as you sit here today -- you can't remember any full discussion of the matters set forth in that whereas clause, among them, the board of directors; is that right?

A. It looks like the board of directors is just Gittis and me.
Q. It may well be.
Do you recall any discussion among the board of directors, of you and Mr. Gittis, as described in this whereas clause?
A. Gittis and I clearly talked about this transaction and if Gittis and I, which appears to be the case, are the entire board of directors of CLN Holdings then we did discuss this transaction.
Q. Based on discussing the -- withdrawn.
You were approving in this instance the holdings merger agreement, right, or entering into the agreement?
A. I think we were approving a bunch of things here.
Q. I don't think I was trying to include a bunch at this point.
You were approving the entry into at least the holdings merger agreement?
A. And it says, "The consummation of each transactions contemplated by such

agreement."
Q. You, at this point, had you read the holdings merger agreement?
A. No.
Q. Had you read the Coleman merger agreement at the time you approved entering into it?
A. No.
Q. If I asked you this, and I may have, I apologize.
A. Okay.
Q. When you entered -- withdrawn.
When you signed Morgan Stanley Exhibit 172 which is the CPH minutes -- do you want to see it again?
A. Yes.
Q. Fair enough. May I have 172 again?
I have handed you Exhibit 172 and the question I am asking you is: At the time that you signed Exhibit 172 had you read the Holdings Merger Agreement, which is capitalized in that whereas clause?
A. No.
Q. Had you read the Coleman Merger

NOT A CERTIFIED COPY

Agreement which is again capitalized in that paragraph?
A. No.
Q. You can hand that back to me.
At the time that you signed the two documents we were looking at, 172 -- withdrawn.
At the time that you signed Morgan Stanley Exhibit 172 and 423 had you been present at any presentation of any kind by Morgan Stanley in connection with the Coleman-Sunbeam transaction, you, personally?
A. Other than the call from Bill Reid to me, I don't think so.
Q. The call from Bill Reid that you are referring to is a call that takes place in the week of January 18, I believe, of 1998, correct?
A. I am not sure of the date. Sometime --
Q. We will get there in due time. It is a call that Mr. Reid made to you after the meeting that you and Mr. Dunlap had on December 18, 1998 -- 1997, excuse

me, at your home in Palm Beach?
A. That is correct.
Q. Again, it was -- that -- again, we will do this in a little more detail but so the jury knows what we are talking about later, this call from Mr. Reid was indeed the first and only time that you ever had any communication with -- you, personally, had any communication directly with Morgan Stanley about the Sunbeam-Coleman transaction; is that fair?
A. Possibly.
Q. You can't think of any as you sit here today?
A. That is correct.
Q. Since there will be some more questions on this if you do think of anything and it is appropriate please let me know and we will deal with it then.
A. Thank you.
MR. BEMIS: Mr. Reporter, would you mark as Morgan Stanley Exhibit 424 Coleman Worldwide Corporation consent of directors in lieu of board of directors meeting?

(Morgan Stanley Exhibit 424 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit 424 in front of you?
A. Yes.
Q. Please correct me if I misheard your testimony earlier.
I think I recall you telling me that you did not know what Coleman Worldwide Corporation was?
A. Yes.
Q. Is that fair?
A. Yes.
Q. On the first page of Exhibit 424 we have your signature above the printed Ronald O. Perelman; is that correct?
A. Yes.
Q. And Mr. Gittis, is that his signature?
A. I believe so.
Q. Both of you signed this on or about February 27, 1998, correct?
A. It is dated "as of." I don't know when it was signed.

Q. Fair enough.
Did you read the document before you signed it?
A. I don't believe so.
Q. If you will turn to the second page of Exhibit MS 424, I would like you to please look at the last paragraph beginning with, "Whereas the board of directors of Holdings," initial caps, "has authorized, and approved and adopted the," capital H "Holdings Merger Agreement," in capitals, "in all respects and recommended that the sole stockholder of Holdings approve," initial caps, "Holdings Merger Agreement and the transactions contemplated thereby including the Coleman merger."
Do you see that whereas clause?
A. Yes.
Q. I have asked you with regard to two other documents that have virtually identical language.
Would your answers be the same if I asked you the questions?
A. Why don't you ask me the questions?

NOT A CERTIFIED COPY

01551

Q. I will. I thought I would save you some time.
As of the date of this agreement had you read the holdings agreement?
A. No.
Q. Had you read the Coleman transaction?
A. No.
Q. That is all we need.
Would you like --
THE WITNESS: I am fine.
MR. BEMIS: I saw people looking at their watches.
BY MR. BEMIS:
Q. With regard to that last written consent, there was no presentation by Morgan Stanley to Coleman Worldwide Corporation before you signed the document, right?
A. This last document?
Q. Yes.
A. Not that I am aware of.
Q. I am now going to show you a document that has been marked as Morgan Stanley Exhibit 426.

This is a thicker one.
Would you mark that for me, Mr. Reporter?
(Morgan Stanley Exhibit 426 marked for identification)
THE WITNESS: Can I make a quick run to the men's room?
MR. BEMIS: Why don't we take five minutes?
THE VIDEOGRAPHER: Going off the record. The time is 11:32 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 11:42 a.m.
This is the beginning of tape number 2.
BY MR. BEMIS:
Q. You should have in front of you Morgan Stanley Exhibit 426.
A. Yes.
Q. If you will turn to the last page, we will do that first, and actually it is not the last page, it is going to be the next to the last page, and tell me when you are there?
MR. SOLOVY: Page 15, Mr. Bemis,

on the bottom?
MR. BEMIS: Yes, Mr. Solovy.
THE WITNESS: What is called page 15?
MR. SOLOVY: Yes, on the bottom.
MR. BEMIS: The penultimate page on the document.
THE WITNESS: Say again.
MR. BEMIS: Next to last page.
THE WITNESS: There are two page 15s.
MR. BEMIS: It may be that we photocopied it poorly. Here is a page 15 too.
You are absolutely correct. That is page 15 of the attachment.
The second to the last page of the document which has -- I will read a Bates number into the record so we don't have confusion later. It is WLRK0019438.
MR. SOLOVY: 39, you mean?
MR. BEMIS: I have 38.
MR. SOLOVY: Mine says 39.
MR. BEMIS: Now I am looking at the wrong page. It is 39. I

apologize. I was looking for a second page 15. Now we are all page challenged.
We have it?
MR. SOLOVY: Yes.
BY MR. BEMIS:
Q. Now I will ask you a question.
If you will look at the signatures that appear there and for Mr. Joram C. Salig, he is listed as a vice president, law, MAFCO Holdings Inc., do you see that?
A. Yes.
Q. In March of 1998 Mr. Salig was an attorney who worked for one of your companies, correct?
A. Yes.
Q. Although it says MAFCO Holdings Inc. here I think you told me earlier that you didn't recall the name of this company?
A. Correct, yes.
Q. There is no question that he worked -- Mr. Salig worked for one of your companies?
A. That is correct.

NOT A CERTIFIED COPY

015502

Page 102

Q. This report or this document which is a form of the Federal Trade Commission, you can see that on the lower right-hand corner, left-hand corner of the first page, was submitted on your behalf, correct?
A. I don't know.
Q. You are the name of the person filing an item number 1, are you not, sir, on page 1? If you will turn to that?
A. Yes.
Q. The address there is the address of your business offices; in fact, where we are at today?
A. Yes.
Q. You authorized, I take it, your attorneys to file this document on your behalf; is that correct?
A. No.
Q. May I see Exhibit 430 please? By the way, you wouldn't make any misrepresentations to the federal government, would you, in a form that you filed with them, sir?
A. Not knowingly.

Page 103

Q. That is what I thought.
I withdraw that remark. That is inappropriate. I apologize.
Would you mark that as Exhibit MS 430 please?
(Morgan Stanley Exhibit 430 marked for identification)
BY MR. BEMIS:
Q. First of all, this is a document it is entitled Affidavit Pursuant to Sections 803.2(a) and 803.5(d) of Premerger Notification Rules Relating to the Hart-Scott-Rodino Act.
A. Yes.
Q. If you will turn to the last page we have Mr. Joram Salig's signature again, vice president of law, March of 1998; do you see that?
A. Yes. There is no date here. Yes.
Q. If you will turn to the first paragraph on page 1 of Exhibit 430, Mr. Salig swears to the Federal Trade Commission of the United States of America, "I am vice president-law of MAFCO Holdings Inc.," with MAFCO in quotation marks and parentheses. "I am authorized to submit this affidavit on behalf of Ronald O. Perelman who owns 100 percent of MAFCO pursuant to Sections 803.2(a) and 803.5(b) of the rules and regulations promulgated under Title 2 of the Hart-Scott-Rodino Antitrust Improvements Acts of 1976."
Do you see that language?
A. Yes.
Q. Did you authorize Mr. Salig to file this affidavit on your behalf in connection with the Sunbeam-Coleman merger transaction?
A. No.
Q. Do you know who did?
A. No.
Q. Is it customary for attorneys -- withdrawn.
Is it customary at least in the period 1998 for attorneys at MAFCO Holdings Inc. or MacAndrews & Forbes as the case may be to submit affidavits to the federal government representing they are authorized to file documents on your behalf when you have not given that authorization?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: Yes. I would have given authorization to proceed with the transaction and whatever was required to do so would have been done by the attorneys. You are asking me a specific question which I don't even know pursuant to Section 803.2(a), I would suggest that you probably don't even know what Section 803.2(a) and 803.5(b) of the rules and regulations promulgated under title 2 of the act are.
BY MR. BEMIS:
Q. Are you finished? I don't want to interrupt you.
A. Yes, sir.
Q. Is it fair to say regardless, so we are not quarreling about this, that Mr. Salig submitted this on your behalf even if you did not specifically authorize it?
A. I don't know what this is. He would have done what was required to have

Page 104

Page 105

NOT A CERTIFIED COPY

015503

been done under the rules and regulations that we were set to comply with.
Q. Would you please turn to item 4C?
A. 4C?
Q. Yes. 4C?
A. What is that?
Q. 4C is -- I will get you the exact page.
A. Item 4C or page 4C?
Q. I understand. I am getting a page for you so it will be easier for you to find.
It is page 5, printed page at the bottom, Bates number WLRK0019392.
A. I don't know what 4C is.
MR. SOLOVY: He is referring, Mr. Perelman, to this MS 426.
THE WITNESS: Okay. You want me to go to which page?
BY MR. BEMIS:
Q. Page 5 on the bottom and there is a subitem C.
A. There is no page 2, 3, 4, 5. Okay. Subitem C, yes.
Q. Did you -- this is headed

Studies, Surveys, Analyses and Reports.
Do you see that?
A. Yes.
Q. Did you review any of these studies, analyses or reports that Mr. Salig directed the Federal Trade Commission to in this item of this form?
A. What is stated here specifically, I am not sure.
Does it go on to these next five pages? I don't understand what is here.
Q. Let me try again.
A. Okay.
Q. My question is focusing just on the three items that are referred to in subparagraph C of item 4 on page 5, you are there, right. You are on that page?
A. Yes. My question is does it continue on the following pages?
Q. It does not.
Item 4(a) is an attachment on the next page. That is a list of all of your -- that is a list of public filings by companies that are related to MacAndrews & Forbes.

A. Okay.
Q. Let's step back to item 4C. Are you with me?
A. Yes.
Q. I want -- my question was: Did you look at, at any time before the closing on March 30, 1998, any of the documents that are identified in item 4C?
There is only three.
A. Well, item 1 is the Coleman Company agrees to acquisition by Sunbeam, press release dated March 2. I am sure that I saw the press release.
Draft materials prepared for discussion, I don't know what that means.
Q. Okay.
A. And Sunbeam Corporation discussion materials dated February 1998 prepared by Kitts, Morgan Stanley -- I don't know if I -- I don't think I ever saw those.
Q. You can set this document aside. You can hand it up to me. I will take it out of your way and reduce the clutter for you.

A. Will you show me those pieces of paper later to refresh my memory on them?
Q. I think I can show them to you right now. Would you like to see them right now?
A. Good.
Q. As I said, if you want to see a document you ask me and I will try to find it for you. It is already marked. I am handing you what has been marked as MS 85.
I will tell you that I am making the assumption that you will make, I assume, that that is the document that Mr. Salig is referring to. I believe that it is but -- so I handed you MS 85.
Take whatever time you need to look at it and let me know when you are finished and I will ask you a question.
MR. SOLOVY: So the record is clear, Mr. Bemis, you are representing that Morgan Stanley 85 is the item described in MS 426 at page 5 as, "Sunbeam Corporation discussion materials dated February 1998 prepared by Robert W. Kitts, managing director

NOT A CERTIFIED COPY

0151504

of Morgan Stanley & Company?"
MR. BEMIS: No. I am not making any representations.
I believe that is the document that Mr. Salig, I mispronounced his name, is referring to.
I don't vouch for Mr. Salig's description of the document. I think that is the document he is referring to.
THE WITNESS: How do I know what I am looking at then?
BY MR. BEMIS:
Q. I can't be anymore help than that.
You asked me what I thought the document was that refreshed your recollection. I have done the best that I can do.
A. Can I see the previous thing?
Q. You may. The Federal Trade Commission filing.
A. Thank you. Can you understand the date of this?
Q. Are you asking me what the date of the document is?

A. Yes.
Q. I think if you look -- if your eyes are not real good it will be hard to read. Lower left-hand side of the document.
A. Okay.
Q. There is a footer?
A. February 3. Okay. Okay.
Q. My question was, and I think this is what you were asking me, I had asked you whether you had ever seen it and now I have shown it to you and you gave me your answer. You asked to see the document. I have now shown it to you.
Have you seen the document before?
A. Yes.
Q. When did you see it?
A. I don't recall.
Q. Do you know if you saw it before or after the closing of the merger transaction?
A. I would assume before.
Q. You may assume that but do you know one way or the other?

A. Specifically, no.
Q. Then you may -- are you done looking at it?
A. Yes.
Q. Then you can hand it back to me.
A. Everything?
Q. We will take the big ones back and get them out of your way.
A. How about this one?
Q. We will take that as well. Thank you very much.
Did you want to see the other documents, the discussion materials and the press release as well?
A. If you are not sure what is referred to in the thing then --
Q. I can't testify for you but I can show you what I believe is the documents referred to.
A. No. I think I am okay. You will show them to me later, I guess.
Q. You will see them.
A. Good.
Q. Give us one second.
In the Coleman-Sunbeam

transaction that we have been discussing we have reviewed minutes or resolutions of a number of companies on the MacAndrews & Forbes side of the table, if you will.
We looked at Coleman Company minutes. Do you recall that, the two minutes --
A. Right.
Q. Are you aware of any payments by the Coleman Company, Inc. to Morgan Stanley in connection with the transaction?
A. No.
Q. Are you aware of any payments by the company called Coleman Worldwide Corporation to Morgan Stanley in connection with the transaction, the Coleman transaction?
A. I think Morgan Stanley was involved in the Coleman Company when we bought it.
Q. Back in 1989?
A. I believe so.
Q. Could we set 1989 forward and just -- we will talk about the Coleman-Sunbeam transaction only.

NOT A CERTIFIED COPY

01505

Page 114

My question was unclear. I apologize. Let me try again.

With regard to Coleman Worldwide Corporation, we looked at the resolutions and the board of directors signatures.

Are you aware of any payments by Coleman Worldwide Corporation to Morgan Stanley in connection with the Sunbeam transaction?

A. No.

Q. Are you aware of any payments by CLN Holdings Inc. to Morgan Stanley in connection with the Coleman transaction?

A. No.

Q. Are you aware of any payments by Coleman (Parent) Holdings, Inc. to Morgan Stanley in connection with the Sunbeam transaction?

A. No.

Q. Are you aware of any payments by MacAndrews & Forbes?

A. What was the last thing you asked me?

Q. I will repeat the question for you.

Page 115

Are you aware of any payments by Coleman (Parent) Holdings, Inc., the plaintiff in this case, to Morgan Stanley in connection --

A. No, I don't believe.

Q. With the Sunbeam transaction?

A. No.

Q. Last question on this.

Are you aware of any payments by MacAndrews & Forbes Holdings Inc. to Morgan Stanley in connection with the Sunbeam-Coleman transaction?

A. No.

Q. Based on my -- withdrawn.

If -- as I understand your testimony, the only person from Morgan Stanley that you spoke directly with before -- let's say before the closing other than perhaps on a social basis now in connection with the Coleman transaction was Mr. Bill Reid; is that right?

A. No.

Q. Who else did you speak to?

A. I said that was all that I recalled.

Page 116

Q. Do you recall anymore now?

A. No.

Q. At least as you sit here today subject to your memory getting refreshed on something else?

A. At least as I sit here this minute. Okay.

Q. We are clear as you sit here this minute?

A. Correct.

Q. The only -- the conversation you recall with a Morgan Stanley person in connection with the Coleman-Sunbeam transaction is a conversation with Bill Reid which I think we agreed was sometime after the meeting with Mr. Dunlap at your house in Palm Beach which the record will show is December 18, 1997?

A. That is correct.

Q. The meeting -- withdrawn.

The conversation that you had with Mr. Reid, was that on the telephone or was that a face-to-face meeting?

A. I believe on the telephone.

Q. Do you recall -- withdrawn.

Page 117

Did you receive up to the time of the signing of the merger documents, February 28, 1998, any documents from Morgan Stanley in connection with the Coleman transaction?

A. I think we saw some presentations.

Q. Did you see them though?

A. I believe so.

Q. You, personally?

A. I believe so, yes.

Q. Which presentations did you see?

A. Specifically, I don't recall but ones similar to that that I just saw.

Q. You were at the presentation?

A. Possibly, possibly.

Q. Was this a presentation where Mr. Kersh spoke?

A. I don't recall.

Q. When was this presentation?

A. I don't recall.

Q. Where was it?

A. I would assume here.

Q. Can we set aside your assumptions and tell me if you remember one way or the

NOT A CERTIFIED COPY

015506

other whether when you say "here," I assume you mean your office?
A. Yes.
Q. You believe that there was a presentation that Morgan Stanley was present at that was at your offices where we are taking your deposition today?
A. Not specifically this room but in this building, yes.
Q. Do you remember -- strike that.
Who from Morgan Stanley was present?
A. I don't recall.
Q. Did someone from Morgan Stanley speak as opposed to someone from Sunbeam speaking?
A. I am sure the Morgan Stanley people spoke.
Q. You may be sure but did they?
A. Yes.
Q. You don't know who it was?
A. No.
Q. What did they say?
A. It was a presentation giving us some background on the company.

Q. On Sunbeam?
A. On Sunbeam.
Q. Was this in 1997 or 1998? Withdrawn.
Can you differentiate -- withdrawn.
Was it in 1997 or 1998?
A. I believe 1998.
Q. In 1998?
A. 1998.
Q. Were you personally using electronic mail, you, in 1997?
A. No.
Q. In 1998?
A. No.
Q. Did you personally, now, receive any correspondence from anyone from Morgan Stanley in connection with the Coleman-Sunbeam transaction?
A. Directed to me?
Q. Yes, sir, directed to you.
A. I don't believe so.
Q. As I understand your testimony at least up to the time of the closing, March 30, 1998, you recall what you believe is a

telephone conference with Mr. Reid and Morgan Stanley being present in this office for a presentation about Sunbeam although you don't remember who at Morgan Stanley was there?
A. That is correct.
Q. Is there anybody, anything else by way of letters, correspondence, telephone calls or meetings that you can recall during that time period, again up to March 30, 1998, about the Coleman transaction with Sunbeam?
A. You got to ask me that question again.
Q. Fair enough. That was a longer question.
You have told me again about Mr. Reid's telephone call?
A. Right.
Q. You believe you were present at a meeting of some kind?
A. Right.
Q. Where Morgan Stanley was present?
A. Right.
Q. Although you don't know who?

A. Correct.
Q. And there was a discussion about Sunbeam.
My question now is: Are there any other meetings, conversations that you recall with Morgan Stanley about Sunbeam before March 30, 1998?
A. Not that I recall.
Q. The questions I have been asking you, I have been using the term "Morgan Stanley" and I should have clarified this earlier.
I would like to shorten things by including Morgan Stanley, Morgan Stanley Senior Funding or any other Morgan Stanley entity.
Would your answers be the same if I asked you the same questions for the company Morgan Stanley Senior Funding about these meetings?
A. Yes.
Q. Going forward, if you could do me the courtesy, if I ask you a question about Morgan Stanley, to shortcut this, I would like to include in that someone who may

NOT A CERTIFIED COPY

015507

technically be employed by Morgan Stanley Senior Funding or some other entity.
If you associate the person at all with Morgan Stanley please tell me and you can clarify your answer any way you want, is that fair?
A. I don't understand what you said.
Q. You understand that there are -- there is more than one company with the name Morgan Stanley in its full name?
A. Yes.
Q. I have been using just Morgan Stanley.
A. To encompass --
Q. All of these entities.
A. Okay.
Q. I am asking you if going forward you can answer the questions in the larger context of any Morgan Stanley entity that you may have spoken to, had dealings with in the Sunbeam-Coleman transaction so I don't have to ask the question three different times.
Fair enough?
A. Yes.

Q. Did you -- are you personally aware of anyone from Coleman conducting any type of examination of the financial -- the books and records, if you will, of Sunbeam after the signing of the merger agreements on February 28 and up to the closing, March 30, 1998?
A. Am I personally aware of it?
Q. Yes.
A. No.
Q. Are you aware of anyone from MacAndrews & Forbes, I am including all the holding companies in that, examining the books and records of Sunbeam after February 28, 1998 and up to the closing on March 30, 1998?
A. Am I personally aware of it? No.
Q. Were you ever told by anyone even though you might not have been there and done it yourself, were you ever told by anyone that Coleman had examined Sunbeam's books and records after the signing of the merger agreements but before the closing on March 30, 1998?
A. The period from February --

Q. To the closing?
A. Until March 30.
Q. Yes, sir.
A. Specifically, no.
Q. Were you ever told that anyone from MacAndrews & Forbes including its holding companies, the plaintiff here, Coleman (Parent) Holding or CLN Holding had -- I misspoke. I said "parent." It should have been subsidiary. Let me withdraw the question and rephrase it.
Were you ever told by anyone, even though you personally didn't do it, that anyone from MacAndrews & Forbes or its subsidiary companies had examined the books and records of Sunbeam after the signing of the merger agreements and before the closing on March 30?
A. Am I specifically aware of that? No.
Generally I am aware of updates that occurred. There were public announcements that Sunbeam was making as to their performance.
There were meetings that were

occurring where Sunbeam was talking about its performance so -- of which Morgan Stanley was a part of so there were ongoing updates all of which were not only positive but glowing as to the ongoing performance of Sunbeam during this period.
Q. You referred to some meetings. Are these the so-called road show meetings you are referring to?
A. Yes.
Q. You didn't attend any of them, did you?
A. No.
Q. Can you identify any person at MacAndrews & Forbes or its subsidiary companies who attended any of those meetings?
A. Specifically, no.
Q. Then you referred to -- then you referred to public announcements, I think is what your testimony was?
A. Right.
Q. You are referring to the March 19, press release?
A. And to statements made by the

NOT A CERTIFIED COPY

management prior to that at various times.
Q. Did you see the March 19 press release in your deposition preparation?
A. Yes.
Q. Let me show you a copy of the March 19 press release. I have a couple quick questions. We will do it in a little more detail later. I want to ask you this while you raised it.
I am going to hand you now an Exhibit MS 39 which is the -- what we referred to as the March 19 press release.
I hand that to you.
MR. BEMIS: Do you have any objection if I take my jacket off now that we have turned the air conditioning up or down whichever most symbolizes it appropriately?
MR. SOLOVY: Not at all.
BY MR. BEMIS:
Q. I think we are on Exhibit Morgan Stanley 39.
You have that in front of you, right, sir?
A. Yes.

Q. Would you tell me, sir, this is the press release that you saw during your deposition preparation even if it might have been in a slightly different form? There are different documents that have the same press release in it?
A. Yes.
Q. You saw this press release at -- withdrawn.
Did you see this press release or -- withdrawn.
Did you see this press release at or about March 19, 1998?
A. I don't know if I saw this release.
Q. I understand it might not be the exact one but did you see the press release in some form?
A. I saw the press report.
Q. Reported in one of the financial newses such as Bloomberg?
A. Yes.
Q. Do you get Bloomberg?
A. Yes.
Q. Let me show you the Bloomberg one

then because I think that is probably the one you saw. We might as well use that.
I will hand you what the court reporter will mark as Morgan Stanley Exhibit 211.
(Morgan Stanley Exhibit 211 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 211 in front of you?
A. Yes.
Q. Is this the version of the March 19 press release as it was reported by Bloomberg that you saw?
A. No.
Q. There is more of them.
Using either one of them you did see the contents of the press release?
A. Yes.
Q. Following the issuance of the press release -- withdrawn.
Did you see the press release at the time it was issued or right about the time it was issued?
A. I believe so.

Q. You saw it before the closing on March 30, 1998?
A. Yes.
Q. When you saw the press release, did you personally contact -- after you saw the press release, whether it be Morgan Stanley Exhibit 39 or another version of it, did you personally make any inquiries, whether by writing or telephone, face-to-face meetings, with Sunbeam about the contents of the press release?
A. I had our people --
Q. Let's start with you personally and then we will get to your people.
Can you give me the answer first to the question.
Did you personally do anything?
A. Did I personally set up a meeting?
Q. Let me ask the question again. I understand the problem and I will see if I can keep it clear for you.
A. Thank you.
Q. After you saw the March 19, 1998 press release did you personally, Ronald O.

NOT A CERTIFIED COPY

015509

Perelman, pick up the telephone, type an e-mail, write a letter to anyone at Sunbeam and make inquiry about the subject matter of the press release?

A. I don't recall whether I personally spoke to Dunlap or asked somebody else to talk to him.

I know that subsequently they came to the office to give us an update in person.

Q. Let me focus now on other people that you might have asked -- withdrawn.

Let me ask you to tell the jury what -- withdrawn.

Tell the jury who the people were or person if it is only one that you asked to make inquiry about the March 19 press release.

A. I would imagine that I would have asked either Maher and/or Jerry Levin.

Q. If Mr. Maher said that he didn't contact anybody, which he did under oath, you would assume then it would be Mr. Levin?

A. Possibly, yes.

Q. If Mr. Levin testifies under oath that he didn't talk to anybody at Sunbeam, would you have any reason to doubt his testimony?

A. No.

Q. Other than -- did you get a report back?

A. It -- maybe I called it myself.

Q. You don't remember?

A. I don't remember, no.

Q. Do you remember hearing -- withdrawn.

I want you to focus on the period before March 30 --

A. Right.

Q. -- only. We will cover after March 30 in another set of questions.

A. Okay.

Q. Before March 30, 1999 did you hear from anyone at MacAndrews & Forbes, or Coleman, for that matter, that they -- whether MacAndrews & Forbes or someone at Coleman had spoken to someone at Sunbeam to make further inquiry about the March 19 press release?

A. Yes.

Q. Who did you hear that from?

A. I am not sure. I thought it was either Maher or Levin. But what -- but somebody came back to me and I believe there was a meeting in our offices here in this building with Dunlap and Kersh present talking about their view of the quarter and the year.

Q. That meeting that you are referring to was a meeting that took place right before the May 11, 1998 announcement of Sunbeam's results for the first quarter, isn't it?

A. I don't recall.

Q. Isn't that -- withdrawn.

At that meeting, the one you were referring to --

A. Right.

Q. -- did you offer assistance to Mr. Dunlap and Mr. Kersh by way of Mr. Levin, for example, providing some additional management assistance?

A. I can't imagine that.

Q. You can't imagine that.

A. No.

Q. Do you have any -- other than you recall meeting with Mr. Dunlap -- by the way, was this meeting with Mr. Dunlap the first meeting face-to-face that you had had with him since the meeting at your home in Palm Beach on December 18?

A. I believe so. I believe so. There might have been one other.

Q. The one other one that you might have had may have been somewhere around Christmastime, Chanukah, at Palm Beach where you both ran into each other, correct?

A. Yes. I am referring to something much later. There may or may not have been.

I know -- look, in reading this press release this is a rather bullish press release and it points up some issues that have to be addressed but it is a rather bullish press release.

I am positive that I made inquiry of somebody and got back a response from somebody saying that -- what the response

NOT A CERTIFIED COPY

015510

was from Sunbeam.
Q. You didn't talk to Morgan Stanley about it?
A. Me, personally?
Q. Yes.
A. No.
Q. Nobody got back to you that you are positive of got back to you from Morgan Stanley?
A. I don't know if my people talked to Morgan Stanley. I would assume -- there is a high likelihood that they did.
Q. There is a high likelihood that the sun will come up tomorrow.
A. Both are high likelihoods.
Q. Did you have any communication with anyone at Morgan Stanley about the press release before the closing?
A. Did I personally?
Q. Yes.
A. No.
Q. Are you aware as you sit here today of any communication by anyone at MacAndrews & Forbes or its subsidiary companies with Morgan Stanley about the

March 19 press release?
A. Specifically?
Q. Yes.
A. That I could tell you a date certain?
Q. That you could tell --
A. No.
Q. Are you aware of any employee of MacAndrews & Forbes or any of its subsidiaries speaking to anyone at Morgan Stanley about the March 19 press release before the closing on March 30, 1998?
A. Yes.
Q. Who?
A. The process of which -- by which this transaction got negotiated in and consummated was an ongoing process that was basically done between Maher, the Coleman people and Morgan Stanley. It was an ongoing process. Those people were talking constantly.
The bulk of the representation and the bulk of the specifics as to the company were coming from Morgan Stanley so that this was not a unique thing.

This was a deal that was negotiated between those three parties so that this was an ongoing thing.
This press release, when we got this press release this press release said today it is possible that sales might be, the company stressed that sales of its products remained strong, the shortfall, if any, due to changes in inventory management or to patterns of the company's major retail customers.
This is -- the company further stated, based on the strengths of its new products and powerful brand names it remains highly confident about the overall sales outlooks for its products in the coming year.
This is a very, very bold press release. I look at this press release and I say, look, they might not be a 295 but things are going great and they are going to be way above 253 and wherever they are -- and this is going to be a dynamite year, and, by the way, so does Morgan Stanley.

Q. By the way, Morgan Stanley's name doesn't appear on the press release, does it?
A. No, but Morgan Stanley knew about the press release.
Q. Do you know that of personal knowledge?
A. Yes.
Q. We will cover that a little bit later. Let me go back to the question that I asked you. I heard you out.
A. Good.
Q. I have your position on it.
I would ask you if you could focus on the single question I asked.
It was as follows: Are you aware of any employee of MacAndrews & Forbes or its subsidiaries speaking to anyone at Morgan Stanley about the March 19 press release before the closing on March 30, 1998?
A. I am aware of continuing dialogue on the part of people at MacAndrews & Forbes with people at Sunbeam and Morgan Stanley on the continuing performance of

NOT A CERTIFIED COPY

0155

Page 138

Sunbeam during this period, yes.
Now, what this press release relates to is the performance of the company and there were discussions on the performance of the company.
Q. Can you tell me who after March 19 was having these -- strike that.
Do you have any personal knowledge of any of these ongoing discussions after March 19 and up to March 30 concerning Sunbeam's performance?
A. The specific dates?
Q. Yes.
A. No, I do not.
Q. Do you know who spoke to Morgan Stanley, if anyone?
A. It would have been amongst that group.
Q. I am not asking you who it would have been. I am asking you very specifically now do you know who -- and if you don't know you just tell me you don't know and we will move on.
A. Specifically I do not know.
Q. Okay.

Page 139

So it would be the -- if there were people talking to Morgan Stanley, they would have been the people you have identified for me as part of your group, Mr. Schwartz, Mr. Levin, Mr. Maher, and you have told us about yourself, correct?
A. Or Paul Shapiro.
Q. Or Paul Shapiro?
A. Or Bobby Jenkins, yes, all those people.
Q. J-E-N-K-I-N-S.
Q. After the issuance of the March 19 press release did you, you, personally now, ever speak -- withdrawn.
After the March 19 press release was issued and you saw it and up to the point of closing did you personally ever speak to anyone at Arthur Andersen about the matters in the press release?
A. No.
Q. Did you have any of your team speak to Arthur Andersen?
A. Not that I am aware of. I did not.
Q. Did you have your -- anyone --

Page 140

strike that.
Did you have any of your legal advisers speak to Arthur Andersen?
A. I don't know if we were permitted to speak to Arthur Andersen.
Q. That may be a different question.
Right now, do you know whether they did or did not?
A. If you are not permitted to then the answer is self-evident.
Q. It may well be.
So the answer may be they couldn't and they didn't but tell me whether you are aware of anyone speaking to them, yes or no?
A. No, I am not.
Q. Are you aware of anyone on your side of the team, the people you have identified for us on MacAndrews & Forbes and Coleman, speaking to CSFB, your -- Coleman's investment banker about the subject matter of the press release of March 19 up until the point of closing on March 30?
A. Ask me the question again.

Page 141

Q. That was a terrible question. It was long and convoluted so I will withdraw it and start over again.
Focusing on the period March 19 to March 30 are you aware of anyone from CSFB making any inquiry of Sunbeam about the subject matter of the March 19 press release?
A. Or of Morgan Stanley?
Q. Let's just start with Sunbeam. One at a time.
A. Specifically, no.
Q. I will ask you the same question with regard to CSFB making any inquiry of Morgan Stanley.
A. Specifically, no.
Q. You have mentioned in your answers several times the term "comfort letters" or "comfort letter." Do you recall that?
A. Yes.
Q. I take it you are familiar with what a comfort letter is?
A. No.
Q. Never heard of it?

NOT A CERTIFIED COPY

015512

Page 142

A. No.
Q. The first time you ever knew anything about -- strike that.
Are you telling the jury that the first instance you ever had any knowledge of a comfort letter was in connection with the transactions in this lawsuit?
A. I am saying that the first time I had any knowledge of a comfort level was about two weeks ago, not even two weeks ago.
Q. What was the circumstances of that?
A. When I first met with my lawyers.
Q. In all of the -- am I correct then that you -- strike that.
Is it your testimony to the jury in all of the billions of dollars of debt financings you have done over the years with your companies that you have never received in connection with a debt financing a copy of the comfort letter issued by auditors, is that your testimony?
A. Absolutely.
Q. Did you know -- withdrawn.

Page 143

Did you ever discuss with Mr. -- withdrawn.
MR. SOLOVY: So the record is clear, there is no question pending, correct.
MR. BEMIS: That is correct, Mr. Solovy. I am a little -- a little, I am taking a moment to try to shortcut a few things and get some documents so we can move it along a little faster.
MR. SOLOVY: Thank you.
MR. BEMIS: Although I think we are moving relatively quickly.
BY MR. BEMIS:
Q. I am going to hand you what has been marked as Morgan Stanley 128 in a previous deposition.
Do you have Exhibit 128 in front of you?
A. Yes.
Q. My first question: Is that your signature that appears above the date line November 1, 1996?
A. Yes.
Q. Is this a corporate record that

Page 144

you signed on behalf of one of the MacAndrews & Forbes companies?
A. I don't see the name of the company.
Q. I think what you are going to find is they are actually attached after the signature pages.
Keep -- keep going through the document and we will have to go all the way, that is what I was looking for, to -- it is not paginated but it is called Schedule I.
If it helps you the Bates number on the page --
A. Schedule I. I see, okay.
Q. I will do this for the record even though you found it, DWP0014391.
We are on the same page?
A. Yes.
Q. This document is dated as of November 1, 1996. I would like -- briefly ask you a couple of questions about some of the corporations that are on the left-hand column.
The first one is Abco Canada

Page 145

Holdings Inc.
Do you see that?
A. Yes.
Q. Is that a company that was owned or controlled by MacAndrews & Forbes?
A. I don't know the company.
Q. You were listed as on either the board of directors or the executive committee?
A. Yes.
Q. With Mr. Gittis?
A. Yes.
Q. Yet -- but you don't recall now what that company did?
A. No.
Q. The next company is AGI Management Corporation and you are listed as on the board or the executive committee.
Do you see that?
A. Yes.
Q. What did that company do in 1996?
A. I don't know.
Q. The next company on this list showing you as on the board of directors or the executive committee is American Brake

NOT A CERTIFIED COPY

015513

Page 146

Shoe Company. What did that company do?
A. I don't know.
Q. The next company is Andrews Group Incorporated and you are listed on the board or the executive committee. Do you see that?
A. Yes.
Q. What did that company do?
A. That company primarily owned our entertainment assets.
Q. Such as Panavision?
A. No. I believe it owned Compact Video. I forget what else was in there.
Q. Did it own the television stations, the television stations?
A. I don't believe so. I think it owned Compact Video.
Q. The next entity is Auto Holdings Inc. and you are listed on the board or the executive committee. Do you see that?
A. Yes.
Q. What did that company do?
A. I think it owns the cars.
Q. Are those company cars?
A. Yes.

Page 147

Q. Is that similar to -- there has been some testimony about, and I don't know what the name, if I have it right, but Mr. Maher referred to it on his calendar as ROP Airlines. Is that a company that you own?
A. Never heard of it.
Q. Do you have a company that leases aircraft?
A. No.
Q. Provides any type of aircraft service?
A. There is a company called ROP Aviation.
Q. Maybe I misspoke or he wrote it down wrong.
What is ROP Aviation?
A. That is the company that owns one of the airplanes.
Q. One of the company airplanes used by MacAndrews & Forbes?
A. Used by the executives of MacAndrews & Forbes.
Q. When Mr. Maher, for example, took ROP Aviation to go skiing in Aspen and he said he was on one of those aircraft, that would be one of the corporate aircraft you were referring to?
A. I think it only owns one.
Q. It only owns one?
A. I think so.
Q. The next company is BW Sale Corporation. Do you see that?
A. Yes.
Q. You are not identified as on the board or the executive committee but Mr. Slovin is.
Do you know what that company did?
A. No.
Q. Do you know what the next company did, CFB Holdings, this one does have a comma, Inc., which you are on the board or the executive committee. Do you know what it does?
A. No.
Q. The next company listed with your name as on the board or executive committee is Cleveco Inc.
What did that company do?

Page 148

Page 149

A. I don't know.
Q. The next company is Coleman Holdings.
A. I never heard of some of these names.
Q. The next company is Coleman Holdings, Inc. You are listed on the board or the executive committee. This is again 1996.
What does that company do?
A. That was one of the holding companies in line with owning the Coleman stock.
Q. The next two, Coleman (Parent) and Coleman Worldwide we have talked about. I won't ask you about those again.
Consolidated Cigar II Holdings Inc., is that different from Consolidated Cigars Inc.?
Maybe I have the name --
A. I don't know.
Q. What is Consolidated Cigars Holdings Inc.?
A. I don't know what Consolidated Cigar Holding Inc. is.

NOT A CERTIFIED COPY

015514

Page 150

I know Consolidated Cigar was our cigar operating company.
Q. There is a company called Creeks Acquisition Corp. You are on the board or executive committee.
Is that a corporation you formed to buy your house?
A. Yes.
Q. Is that the house in the Hamptons that you bought?
A. Yes.
Q. Then Creeks 2 Corporation, is that a corporation that you formed in connection with the purchase of your home in the Hamptons?
A. The lot next door to my home.
Q. Then there is two entities with the name -- starting with the name First Gibraltar Guarantor Corp.
What is that company?
A. First Gibraltar was our bank in Texas. I don't know what Guarantee Corp. or Holdings was. Holdings may have been the company that owned the operating company.

Page 151

Q. Is First Gibraltar the bank that you bought or your companies bought in Texas from the -- I want to say the FDIC but that is not right. You bought it from the government?
A. That is correct.
Q. After the S&L crisis?
A. That is correct.
Q. Then you have First Nationwide Escrow Corp. and you are listed as a board member or on the executive committee.
What is that?
A. Again, First Nationwide was a bank that we bought from Ford Motor Company. I can't tell you what each of these companies are.
Q. All the First Nationwide relate to the bank you bought?
A. I would assume so.
Q. Were these a bank through which Ford Motor Company did subprime lending?
A. No.
Q. No. I may have been mistaken in my understanding.
Where was First Nationwide

Page 152

located?
A. In California.
Q. Did First Nationwide eventually change its name?
A. Yes.
Q. What did it become?
A. Golden State.
Q. Did Golden State eventually change its name?
A. Yes.
Q. Is it Cal Fed; is that what it is now?
A. No. It is Citibank now.
Q. Was it Cal Fed or something in between?
A. I think it was Cal Fed before Golden State.
Q. Then, again, 1996 you are listed as on the board or executive committee of First Texas Financial Corporation, Delaware.
What is that?
A. I don't know.
Q. Then the next company or corporation you are identified as being on

Page 153

the board or the executive committee is Flavors Holdings Inc.
A. These two flavors companies are -- Flavors is our operating licorice business.
Q. Is that then subsidiaries of M&W or -- yes, M&F. I misspoke.
A. Yes.
Q. Four Star Holdings Corporation, you are identified as on the board or executive committee.
What is that?
A. Four Star was a small theatrical film library that we got when we bought Technicolor.
Q. Did Technicolor eventually file for bankruptcy?
A. No.
Q. Did you sell it?
A. We sold it for -- to Carlton Communications in the UK.
Q. Then the next, you have Henley Residence Inc. and you are on the board and/or executive committee. What is that?
A. I don't know. The next several I

NOT A CERTIFIED COPY

Page 154

don't know.
Q. The next two you don't know as well?
A. No.
Q. Which for the record is Henley Shareholder Services Inc. You are next listed as on the board or executive committee of Liberty Lane Real Estate Inc.
What is that?
A. I don't know.
Q. You are next listed on the board or executive committee of M&F Designs Inc.
What is that?
A. That was a little family company we set up for -- to do our decorating.
Q. At the Creeks?
A. At various places for the office, for various places.
Q. It did include the Creeks, your house in the Hamptons?
A. For whatever -- it was for whatever required the purchase of furniture and the decorator's discount was gotten through M&F Designs and we had a decorator who did work for us and work for other

Page 155

people.
Q. The next entity is MacAndrews & Forbes Foundation, Inc.
A. That is our foundation.
Q. If you will turn now to the next page, we have MacAndrews & Forbes Group, Incorporated?
A. Yes.
Q. Is that the company that you told me this morning you thought you were employed by?
A. Yes.
Q. Then there is MacAndrews & Forbes Holdings Inc. What is that company and how does it differ from MacAndrews & Forbes Group Incorporated?
A. I think it is just below MacAndrews & Forbes Group.
Q. I may have misspoke.
I think I said you told me this morning you worked for MacAndrews & Forbes Group Incorporated. That is not correct. You told me you worked, you thought, for MacAndrews & Forbes Holdings Inc.
A. One or the other.

Page 156

Q. I just didn't want to make a mistake on the record if I could avoid it.
You are listed also on the board or executive committee of MAFCO Consolidated Group.
What is that?
A. I am not sure.
Q. You are listed on the board or executive committee of Mafco Consolidated Holdings.
What is that?
A. I am not sure.
Q. You are on the board of Mafco Holdings Inc.
What is that?
A. I am not sure.
Q. You are listed on the board or executive committee of MAFCO Worldwide Corporation.
What is that?
A. Go back. MAFCO International and MAFCO Worldwide must be our flavors businesses.
Q. Then you are listed on the board or executive committee of Marvel Holdings,

Page 157

Inc.
A. There is a whole series of Marvel. Marvel was our comic book company.
Q. Marvel did go into bankruptcy, correct?
A. Yes, it did.
Q. It -- in the course of that litigation you -- strike that.
In the course of the bankruptcy there was also litigation that ensued, was there not?
A. Yes.
Q. That followed a rejection of a proposal that MacAndrews & Forbes or one of its entities made to inject additional capital into Marvel along with a restructuring of the structure of the company; is that correct?
A. I believe your timing is backwards.
Q. Backwards. It may well be.
Marvel Parent Holdings Inc., is that a holding company related to Marvel?
A. All of these companies were related to Marvel.

NOT A CERTIFIED COPY

015516

Page 158

Q. We have Marvel Holdings 3, 4 and 5. Those are all holding companies related to Marvel, right?
A. Yes.
Q. Then you have next under your name, MCG Intermediate Holdings Inc.
What is that?
A. I don't know.
Q. Meridian Sports Holdings Inc., you are listed?
A. Meridian owned our boat business.
Q. Does MacAndrews & Forbes still own Meridian now?
A. No.
Q. When was it sold?
A. We sold the pieces of it over, I don't know, I guess five years.
Q. Then you have a company identified -- withdrawn.
You have a company MFH Holdings Corp.
What is that?
A. I don't know.
Q. The last company on this page anyway is National Health Care Group. What

Page 159

is that?
A. National Health Care was our diagnostic laboratory company.
Q. Is that the one that Mr. Maher worked for for some time before he came to New York?
A. Yes.
Q. Continuing on, we have New Abco Holdings Inc. You were on the board or executive committee. What is that?
A. I don't know.
Q. The next one that you are associated with is Newco, and then initial caps with periods, K.M.R. Corporation. What is that?
A. I don't know.
Q. Then you are listed as on the board or executive committee of 924 Bel Aire Corporation.
What is that?
A. I believe that owned the house at 924 Bel Aire Road in California.
Q. You are listed as on the board or executive committee of NWGC Parent Holdings Corporation.

Page 160

What is that?
A. I don't know.
Q. The next entry where your name appears is One East Management Corporation.
What is that?
A. I don't know.
Q. The next entry your name is on the board or executive committee is 1001 Investments, Inc.
What is that?
A. I don't know.
Q. Then we have next PA Defense Systems, Inc. You are on the board or executive committee.
What is that?
A. I don't know. I never heard these names before.
These must be either dormant companies or companies set up for one purpose and then not used again.
Q. The next company is -- we are almost done with this -- Pershing Park Inc. Do you see that?
A. Yes.
Q. What is that?

Page 161

A. I don't know.
Q. The next one is Pneumo Abex Corporation.
Do you know what that is even though your name isn't there? Do you know what it is?
A. It was a company that we purchased, yes.
Q. What did it do?
A. It was in the brake business, brake linings.
Q. Brake linings for automobiles, trucks?
A. Airplanes, I believe.
Q. Airplanes.
You are listed on the board or executive committee of Power Controls Technologies Inc.
What is that?
A. I believe that was a subsidiary of Pneumo Abex.
Q. You are next listed as on the board or executive committee of Pride 21 Corporation.
What is that?

NOT A CERTIFIED COPY

015517

A. I don't know.
Q. You are listed on the board or executive committee of Revlon Finance Corporation.
A. These two Revlons would be associated with Revlon.
Q. Revlon Inc. being the parent company?
A. Yes.
Q. The next two companies, the next company is ROPA, one word, all capitals, Two Corporation.
What is that?
A. I don't know.
Q. Then -- withdrawn.
The next company is RV Acquisition Corporation.
What is that?
A. I don't know.
Q. On the last page there is a company SCSA, Inc. and you are listed on the board or executive committee.
What is that?
A. I don't know.
Q. Moving down there are -- there is

an entry for 35 East Corporation and you are on the board or executive committee.
What is that?
A. I believe that owns 35 East 63rd Street.
Q. The building we are in today?
A. No. Maybe it is the building we are in today. It must be the building we are in today.
The other two companies own the other two buildings. That must be the 62nd Street and the other two buildings are on 63rd Street.
Q. The last item -- withdrawn.
The last corporation listed in this document is ZMAF Corporation and you are listed on the board or the executive committee.
What is that?
A. I don't know.
Q. You may set that document aside.
Is this a convenient time to break for lunch?
MR. SOLOVY: Yes. Good time.
THE VIDEOGRAPHER: Going off the record.
The time is 12:54 p.m.
(Luncheon recess: 12:54 p.m.)

AFTERNOON SESSION
1:46 p.m.
THE VIDEOGRAPHER: Returning to the record. The time is 1:46 p.m.
BY MR. BEMIS:
Q. I have handed you what we previously marked as Exhibit 426. I would like you to turn there to the page -- I will give you the Bates numbered page, Mr. Perelman, because it is not numbered.
A. Okay.
Q. If you look at the bottom right-hand corner.
A. Right.
Q. Look for the page that ends in 414. 414.
A. Yes.
Q. For the record, the full Bates numbered page is WLRK0019414.
MR. SOLOVY: Excuse me, Mr. Bemis. I must have the wrong document. What document?
MR. BEMIS: 426. Maybe we took it back from you. It is possible. I will give you another one. I just ask

NOT A CERTIFIED COPY

015518

that you give them back.
MR. SOLOVY: What page are we looking at?
MR. BEMIS: The last four digits are 414. It is item 6A.
MR. SOLOVY: We are all set.
BY MR. BEMIS:
Q. Mr. Perelman, are you on that page that we have identified as page --
A. I think so. Item 6A?
Q. Yes, sir.
A. Yes.
Q. The companies that are listed on the pages that follow, it goes on for -- it lists almost nine, ten pages of companies.
It ends on page -- let me read the Bates number in for you. It will be easier.
The last three digits on this schedule are -- is 434. Tell me when you are there.
A. Yes.
Q. Are these companies that are listed -- you can go back to 414 if you like -- all companies which one or more of

your companies, either directly or through a holding company, owns either all or an interest in the companies?
A. A lot of these I never heard of so I can't tell you.
Q. I appreciate that.
There are a -- are there a lot of them on these pages that you do hold an interest in?
On the first page that we are looking at you have Revlon Commissary Sales, Revlon Consumer Products Corporation, Revlon Government Sales, Revlon Holdings Inc., Revlon International Corporation, Revlon Professional Products, Inc., Revlon Professional Inc. and then continuing on with additional Revlon companies on the next page, do you see that?
A. Yes.
Q. Those, for example, are all companies that you through MacAndrews & Forbes own, control, directly or indirectly, in whole or in part; is that correct?

A. I answered you. I don't know.
Q. You don't know about the Revlon companies?
A. Some of these -- Revlon, I know, of course. Revlon Commissary Sales I never heard of. Revlon Consumer Corp. I never heard of. Revlon International Corp. I assume is their international company.
RIROS I never heard of. Amerinail I never heard of. Revlon Shanghai Limited I assume is their Shanghai company.
I mean, you know, Applied Science & Technology I never heard of.
Cosmetiques Holding -- there is a whole bunch of these I never heard of.
Q. I take it that since this form was filed by your attorney, Mr. Joram Salig, that you left it up to him or his superiors in the legal department to properly fill out these forms for the Federal Trade Commission?
A. Yes.
Q. You would stand by whatever your attorneys submitted to the Federal Trade

Commission per this form?
A. I don't even know what question this list is answering.
Q. The ones that we were looking at on Schedule 6A are listed as item 6 on the form 6A. It is on page WLRK0019413.
A. Entities within persons filing notification.
Q. You asked me what those were. That is what this is.
A. I don't know what that means.
Q. We will leave it at that, to what your lawyers know, is that fair?
This is filed on your behalf?
A. Yes. I am not -- I am not saying it wasn't. I am saying it was.
Q. We will leave it that it was filed on your behalf.
You can hand that back to me.
A. Thank you.
Do you want this back too, sir?
Q. I can take it back if you like, sure.
Thank you.
One of the companies I don't

NOT A CERTIFIED COPY

think that we talked about is Panavision.
Does MacAndrews & Forbes own an interest in Panavision?
A. Yes.
Q. When did it acquire that interest or its first interest is probably fairer?
A. I think it has only got one interest. I think in 1997, '98, right around there.
Q. From one of the forms I looked at it appears that MacAndrews & Forbes or one of its other holding companies owns about 72 percent of Panavision; is that correct?
A. I believe it is in the 90s.
Q. 90s now.
MR. BEMIS: Mr. Reporter, would you mark as Morgan Stanley Exhibit 244 a Schedule 13D prepared for Sunbeam Corporation by Barry F. Schwartz, MAFCO Holdings Inc., dated June 14, 1998?
(Morgan Stanley Exhibit 244 marked for identification)
BY MR. BEMIS:
Q. Do you have in front of you MS 244?

A. Yes.
Q. Have you seen this document before?
A. I don't believe so.
Q. We are moving forward in time now to June 14, 1998 based on the document that you are looking at right now.
If you look at item number 1 you are identified as the reporting person, Ronald O. Perelman. Do you see that?
A. Yes.
Q. There is also a schedule on page -- it would be the third page which lists the reporting persons as MAFCO Holdings Inc., do you see that?
A. Yes.
Q. I asked you earlier about MAFCO Holdings Inc. and whether you remembered it. You said you did not.
Does that refresh your recollection of what MAFCO Holdings is?
A. No.
Q. Then there is, the third page is another reporting entity and that is Coleman (Parent) Holdings. We have talked

about that company. That is the plaintiff here, right?
A. Yes.
Q. When we look at item number 2 it lists out a number of companies.
A. Where are you?
Q. It would be the page numbered 5 in the center. The pagination is not always easy to follow.
Are you there?
A. Yes.
Q. At least as of June of 1998 were you, as described in this paragraph, were you the chairman of the board of Revlon Inc.?
A. Yes.
Q. Were you the chairman of the board of Meridian Sports Incorporated?
A. Yes.
Q. Meridian Sports Incorporated was the boat building company we talked about?
A. Yes.
Q. As chairman of the board of Revlon Inc., Revlon Inc. had many subsidiaries below it?

A. Yes.
Q. Both in the United States and overseas?
A. Right. I was not executive chairman of the board.
Q. What is executive chairman of the board versus chairman?
A. I was not an executive officer of the company. I was just a member of the board.
Q. MS 244 also lists you as the chairman of the executive committee of the boards of directors of Consolidated Cigar Holdings.; is that correct?
A. Yes.
Q. That is the -- that company -- withdrawn.
That was the company that distributes cigars?
A. Yes.
Q. It doesn't grow -- grow tobacco for cigars? It buys tobacco and manufactures cigars and sells them?
A. Yes.
Q. Do you still own an interest --

NOT A CERTIFIED COPY

015520

Page 174

does MacAndrews & Forbes still own that today?
A. No.
Q. When was it sold?
A. Three, four years ago.
Q. The next company that you are listed as the chairman of the executive committee of the boards of directors is M&F Worldwide Corp. That is the flavoring company?
A. I think it says I am chairman of the executive committee of the board.
Q. If I misspoke I apologize.
The way it reads is chairman of the executive committee of the boards of directors.
What does it mean to be chairman of the executive committee of the boards of directors?
A. It is a committee of the board. It is a non-executive member of the board.
Q. The executive committee of the board, does it act in the absence of the full board of directors?
A. Depending on what the board of

Page 175

directors authorizes us to do.
Q. In the case of these companies where you are on the executive committee of the board of directors, in all of those instances do the executive committees act in the absence of the board?
A. Only when specifically told by the board to do so.
Q. Could that be -- is that sometimes on an instance-by-instance basis or -- as opposed to, say, a threshold basis?
A. My recollection is that it is always on an instance-by-instance basis.
Q. Then you are also listed as chairman of the executive committee of the board of directors of Panavision, correct?
A. Yes.
Q. Panavision -- strike that.
Is Panavision the company that leases cameras for the making of movies?
A. And television shows, yes.
Q. It has indeed -- it does not sell cameras as I understand it. They lease it based on their own proprietary technology?

Page 176

A. A little bit of sales but it is primarily leasing.
Q. This is the same Panavision that I believe you explained to me MacAndrews & Forbes holds approximately 90 percent of the common stock today?
A. I believe so.
Q. Then all of these companies list their principal address as 35 East 62nd Street, New York, New York 10021 where we are today, is that right?
A. No.
Q. No. What did I -- do I have the address wrong? I thought that is where we were.
A. Yes, but it doesn't say that.
Q. I thought it says the -- I apologize. You are right.
It says the principal business address of Mr. Perelman is 35 East 62nd Street, New York, New York; is that correct?
A. Yes.
Q. Then we have MAFCO Holdings listed below that.

Page 177

My understanding is you don't know what that company is, right?
A. Correct.
Q. It says, however, that --
A. I know it is one of our holding companies. I don't know where it fits into the chain.
Q. Who keeps track of your companies, where the various companies fit into the chain of ownership? Who is in charge of doing that?
A. The lawyers.
Q. That would be Mr. Schwartz?
A. And Mr. Gittis.
Q. And Mr. Gittis.
As I understand it, reading this form, MAFCO Holdings owns 83 percent of Revlon, is that right?
A. As of this time, yes.
Q. That is Revlon Inc., the ultimate Revlon company?
A. The operating company, yes.
Q. So -- even though you don't know where MAFCO Holdings fits in the ownership chain you ultimately are the owner of

NOT A CERTIFIED COPY

015521

Page 178

either MAFCO Holdings or whatever company owns MAFCO Holdings, correct?
A. Correct.
Q. Then MAFCO Holdings is said to own 72 percent of Panavision. That is the same Panavision we talked about earlier, right?
A. Yes.
Q. Then there is percentage ownership, 65 percent of Meridian Sports, that is correct as of this time, right?
A. Yes.
Q. And likewise, MAFCO Holdings, therefore, ultimately through yourself owns 64 percent of Consolidated Cigar Holdings Inc., right?
A. Say that again. How did you put it?
Q. Maybe I misspoke.
As I understand it MAFCO Holdings has a 64 percent beneficial ownership interest in Consolidated Cigar Holdings, at least as of the time of this document?
A. That is correct, yes.
Q. MAFCO Holdings at least as of

Page 179

1998 in June had a 39 percent interest in M&F Worldwide.
It says, assuming conversion of certain preferred stock, is that right?
A. Yes.
Q. MAFCO Holdings also is shown as having an 80 percent interest in California Federal Bank.
Is that the same California Federal Bank we discussed earlier in your testimony today? We talked about Gibraltar. I thought we talked about California Federal.
A. We did. We talked about a couple of banks. One of them is the one we talked about before.
Q. Let's make sure we are on the same page.
At least as of 1998, June of the date of this document, MAFCO Holdings owned 80 percent of California Federal Bank?
A. Correct.
Q. And the principal offices of MAFCO Holdings is -- has the same address as your principal place of business, 35

Page 180

East 62nd Street, where we are today?
A. That is correct.
Q. Have you ever been to the principal executive offices of Coleman (Parent) Holdings which is said to be at 5900 North Andrews Avenue in Fort Lauderdale, Florida?
A. If it is the same offices that are shared with Consolidated Cigar, I have been there.
Q. You may return that to me. We are finished with that.
I asked you at one point this morning whether you received news releases, we may have used the term press releases, from the Bloomberg service and I think you said you did, is that right?
A. No, I didn't say that. You asked me if I had Bloomberg.
Q. You are correct. Do you have Bloomberg?
A. Yes.
Q. Do you have any other financial reporting services?
A. Other than -- nothing other than

Page 181

what comes on Bloomberg, no.
Q. Do you have, your companies, have a subscription of some kind to a clipping service that follows news about either companies that you own or companies that you may have an interest in?
A. I don't believe so.
Q. A number of witnesses have said there is a clippings package that was circulated within MacAndrews & Forbes around 1997, 1998 which covered news stories about your companies or companies that you had an interest in. You are not familiar with that?
A. Yes.
Q. What is that called?
A. What do you mean what is that called?
Q. What is the service called?
A. I don't think there is a service.
Q. How are the clippings accumulated?
A. I think one of the secretaries.
Q. One of the secretaries here?
A. Yes.

NOT A CERTIFIED COPY

015522

Page 182

Q. Does she have -- does she review on a regular basis certain periodicals for clippings?
A. I don't know.
Q. Who is responsible for her work?
A. I don't know who does it.
Q. You don't know who does the clippings?
A. Correct.
Q. Do you get this package?
A. Yes.
Q. How often did you get this -- may I call it a clippings package for ease of use?
A. Sure.
Q. Did you receive the clippings package in 1998?
A. I would assume so.
Q. How often was the clippings package circulated?
A. When we get it -- I don't know when it was started but when we get it we get it everyday.
Q. In 1998 you got it everyday?
A. I don't recall if we had it in

Page 183

1998. If we did have it in 1998 we got it everyday. From the point it was instituted within the company we got it everyday.
Q. Who instituted it within the company?
A. I don't know.
Q. Do you still do it -- strike that.
Do you still receive the clippings packages today?
A. Yes.
Q. Is it done on a daily basis?
A. Yes.
Q. Is it something you receive in the morning when you come in or when you go home at night?
A. Sometime during the day.
Q. Some time during the day.
Can you give me a general description of what is in the clippings services by subject?
Withdrawn. Terrible question.
Would you just tell us what is in the clippings package recognizing that the articles will change day by day but what is

Page 184

supposed to be in there?
A. Articles about companies that we have interest in, articles about people we have interest in, articles about charities we have interest in, just -- anything that would touch us on a whole variety of levels, charities, financial, social.
Q. In 1998 did the clippings service -- withdrawn.
In 1997 towards the latter part of the year at least did the clippings service include clippings on Sunbeam?
A. I told you earlier, I don't recall whether it was in place then seven years ago or eight years ago. If it was there would have been clippings on Sunbeam.
Q. Would it have included clippings on Coleman?
A. It would have included clippings on all of our companies.
Q. Would it have included clippings on Al Dunlap, for example?
A. Yes.
Q. Did the --
A. Maybe not in 1997. Sometime in

Page 185

1998 after we did the transaction, but I am -- I can't recall specifically what we got in 1997 and 1998. I know what we get today. I know what we have got for the last several years.
I don't know if it was instituted, this clipping package, back then but if it were it would have included as it does today all of our companies that we have interest in.
Q. Does the clipping service include --
A. Clipping package.
Q. Sorry, clipping package, does it include clippings from financial publications such as the Wall Street Journal?
A. Yes.
Q. Barron's?
A. Yes.
Q. Business Week?
A. Yes.
Q. Fortune?
A. Yes.
Q. Analyst reports that become

NOT A CERTIFIED COPY

015523

available on companies that you have an interest?
A. I don't believe so.
Q. Would it also include Bloomberg?
A. Possibly.
Q. You have Bloomberg, I take it, online; is that correct?
A. What do you mean?
Q. You can access Bloomberg electronically. Bloomberg has a service you you can access electronically if you have their service.
A. No.
Q. You don't have it?
A. I don't know how to use it.
Q. Those are two different things.
A. You asked if I can access it.
Q. Does your company have it?
A. Yes.
Q. Someone in your company knows how to use it?
A. Yes.
Q. In 1998 did you have people in your company who had access to analysts, I will refer to them as Wall Street analysts,

who were following particular companies?
A. I don't know what that means.
Q. What is it you don't understand?
A. Access and analysts.
Q. You don't know what a Wall Street analyst is?
A. Is that what you mean?
Q. A Wall Street analyst. Do you understand that?
A. Yes. I understand Wall Street analyst.
Q. I think we have done a pretty good job communicating.
Did you have people such as Mr. Nesbitt or Mr. Maher who had the ability to pick up the phone and talk to particular analysts who were following a company you were interested in?
A. I don't know the answer to that.
Q. Let me show you what has previously been marked as Morgan Stanley 167.
Do you have Morgan Stanley Exhibit 167 in front of you?
A. Yes.

Q. You are shown as the addressee of this document. It is dated May 20, 1998.
Did you receive it?
A. I would assume so, yes.
Q. If you received it would you have read it?
A. Yes. I may not have read every page of it but I would have read it.
Q. By the way -- withdrawn.
Mr. Nesbitt has testified that he prepared this document in May of 1998. He was an analyst for MacAndrews & Forbes, one of your companies, correct?
A. Yes.
Q. He indicates -- withdrawn.
He states in the first paragraph of his memorandum that he spoke with six -- not six -- with the following individuals this morning and he lists then three analysts?
A. Right.
Q. Nick Heyman at Prudential, Jay Gibbons at Merrill Lynch and Scott Graham at Oppenheimer, do you see that?
A. Yes.

Q. Did you ask Mr. Nesbitt to call these analysts for their summary of opinions on Sunbeam?
A. I don't believe so.
Q. Did you ask someone to have either Mr. Nesbitt or someone else call these analysts and obtain their opinions on, or thoughts, if you excuse me, on Sunbeam?
A. I don't believe so.
Q. In 1998 before the closing of the merger agreement and after its public announcement -- withdrawn.
In 1998 before the closing of the merger agreements was there any reason why Mr. Nesbitt could not have called analysts such as Mr. Heyman, Mr. Gibbons or Mr. Graham to get their thoughts on Sunbeam?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I don't know any of these analysts. I don't know what his

NOT A CERTIFIED COPY

015524

Page 190

relationship with any of these analysts are. I don't know how -- what they know, what they don't know.

I mean, that is like asking me how long a piece of string is. I just don't know.

Q. Let me try it a different way to see if I can make the question easier for you.

Did MacAndrews & Forbes have any policies in place in 1998 that prohibited an analyst like Mr. Nesbitt from calling an analyst like Mr. Heyman, Mr. Gibbons or Mr. Graham and asking their thoughts on a company like Sunbeam?

A. There was no policy against it. I don't know what the point would have been but there was no policy against it.

Q. You do not know what the point would have been in early 1998 for Mr. Nesbitt or Mr. Maher to speak to analysts?

A. This is May of 1998 and I can't speak to what he was trying to find out. I didn't tell him to do this.

Page 191

Q. Let me try to back up to my question.

My question is: Before May 30 of 1998 --

A. May 20.

Q. I am not talking about this document now. You can keep it in front of you as a point of reference.

A. Okay.

Q. Before May 30, 1998 in connection with the Coleman-Sunbeam -- Sunbeam-Coleman transaction, it is your testimony that you can't see any point in Mr. Nesbitt calling analysts to discuss with the analyst, the Wall Street analysts, their views on Sunbeam?

A. No. That is not my point.

Q. What is your testimony then?

A. I think there was a point in talking to the analysts in getting their input.

I don't know what his point was at this moment in time in talking to these three people. I never heard of these three people. I don't know who they are. I

Page 192

can't speak to their -- to their depth of knowledge on Sunbeam. I never heard of these people before.

Q. Can you tell me of a single analyst that anyone at MacAndrews & Forbes spoke to before March 30, 1998 about their thoughts, that is, the analyst thoughts on Sunbeam?

A. I couldn't tell you.

Q. You can set that -- I will take that back for me. We will talk a little bit more about it later.

A. Okay.

Q. Let's turn now to the actual participants in the Coleman-Sunbeam transaction from the MacAndrews side.

You told me earlier that your top tier team, if you will, was Mr. Schwartz, Mr. Maher, Mr. Gittis and yourself, right?

A. No. The team that was most involved was Maher and Nesbitt.

Q. Okay. Then they would have reported to you and Mr. Gittis; is that right?

A. Either me or Gittis, yes.

Page 193

Q. Ultimately if there was a report to Mr. Gittis would he then usually talk to you about it?

A. Yes.

Q. He would seek your counsel as well as any decisions that needed ultimately to be made?

A. If he thought that necessary, yes.

Q. I take it that you have a good working relationship with Mr. Gittis, don't you?

A. Yes.

Q. You are very close friends, are you not?

A. Yes.

Q. You have been business associates and close friends for years?

A. Yes.

Q. Is Mr. Gittis, for lack of a better term, second in command at MacAndrews & Forbes?

A. I don't think we have one second in command.

Q. Is there anyone on equal level

NOT A CERTIFIED COPY

015525

with him within MacAndrews & Forbes that reports to you?
A. I think we are all like at the same level.
Q. Mr. Maher was at the same level as Mr. Gittis?
A. No. He was a level below.
Q. What was Mr. Gittis' role in the Sunbeam-Coleman transaction as specifically as you can for me please?
A. It would have been an overview role in the due diligence. It would have been an overview role in the documentation.
Q. When you used the term "overview" here you are referring to overview, for example, Mr. Maher, right?
A. Whoever was involved, either Mr. Maher or Mr. Levin or the lawyers or -- it would be an overview role rather than a direct operating or functioning role.
Q. You didn't -- withdrawn.
You used the term "due diligence." Did Mr. Gittis have responsibility for due diligence as you have described it in this overview capacity

before the signing of the merger agreements on February 28, 1998?
A. He didn't have responsibility for it but he was in the process.
Q. Did he have the overview responsibility in the process in that period?
A. "Responsibility" is the wrong word. He had some overview awareness of the due diligence process.
Q. Did he have this overview awareness of the due diligence process in the period after February 28 and continuing to March 30, 1998 at the closing?
A. Whatever it was it would have continued, yes.
MR. BEMIS: Could I ask, how are we doing on sound?
THE VIDEOGRAPHER: The sound is great but you have probably 12 minutes or so.
MR. BEMIS: We are going to change the tape as long as we have stopped for a second.
THE WITNESS: Sure.

THE VIDEOGRAPHER: This marks the end of tape number two. The time is 2:24 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 2:26 p.m.. This marks the beginning of tape number three.
BY MR. BEMIS:
Q. Was it Mr. Gittis who had the first communications with Sunbeam about a possible Sunbeam-Coleman transaction?
A. I had the first communications with Morgan Stanley about a possible Sunbeam-Coleman transaction.
Q. When was that?
A. Sometime in January.
Q. Of 1998?
A. 1998.
Q. There were -- there was -- we know there was a meeting at your home on December 18, 1997 where Mr. Dunlap --
A. That is correct.
Q. Came to your house, correct?
A. Yes.

Q. So somebody had communications with -- before 1998?
A. That was set up. That meeting was set up between Michael Price, I believe, and Howard Gittis.
Q. Is it fair to say that Michael Price actually contacted Mr. Gittis and told Mr. Gittis that Mr. Dunlap had an interest in acquiring Coleman?
A. I am not sure what he exactly said but whatever it was it developed into a meeting that we had at my house.
Q. With that backdrop is it fair to say that Mr. Gittis was indeed the first contact with Sunbeam with regard to the possible Coleman-Sunbeam transaction?
A. First of all, the contact was with Michael Price, not with Sunbeam, if you want to be specific about the first contact.
Secondly --
Q. Fair enough.
Could I ask you, let me try to get the question better phrased for you. I understand what is your confusion.

NOT A CERTIFIED COPY

015526

With regard to MacAndrews & Forbes --
A. Right.
Q. -- and your people, was the first contact with MacAndrews & Forbes about a Sunbeam-Coleman transaction Michael Price contacting Mr. Gittis about an interest that Sunbeam had in Coleman?
A. I don't know.
Q. Is that the first one you are aware of?
A. I don't know what Michael Price said to Gittis when he called him to set up the meeting.
Q. But you do know that Michael Price did contact Mr. Gittis in 1997 before the meeting that took place at your house on December 18, 1997, correct?
A. Yes.
Q. It was that initial contact with -- between Mr. Price and Mr. Gittis that led to the meeting at your house?
A. That is correct.
Q. Before the meeting at your house on December -- in December 1998 had Mr.

Maher been given any assignment with respect to the Coleman-Sunbeam transaction by you?
A. I don't believe so.
Q. Going forward, we will come back to this meeting at your house in Palm Beach. I would ask just a couple of questions about Mr. Maher.
When Mr. -- withdrawn.
Mr. Maher had, as you put it, the responsibility for some of the negotiations and due diligence on the transaction.
That responsibility continued on through the closing, did it not, through March 30?
A. To the extent that it was required, yes.
Q. Mr. Maher, given his position in these negotiations once it was assigned to him, the information flow as general would have gone to Mr. Gittis and then ultimately to you, is that fair?
A. Probably, yes.
Q. Mr. Maher left MacAndrews & Forbes to do something else in about the

year 2000; is that your recollection?
A. Approximately.
Q. Why did he leave?
A. I think he wanted to just go out on his own.
Q. Did you ask him to leave?
A. No.
Q. Did you suggest that he leave?
A. No.
Q. Did you tell him that you were in any way unhappy with his work on the Sunbeam-Coleman transaction?
A. No.
Q. Were you happy with his work on the Sunbeam-Coleman transaction?
A. Yes.
Q. Do you think he did everything that he should have done as part of his due diligence?
A. Yes.
Q. As you sit here today you have absolutely no complaints about Mr. Maher's work on the Coleman-Sunbeam transaction; is that fair?
A. Not that I am aware of.

Q. Mr. Schwartz sitting here with us today, Mr. Schwartz was your MacAndrews & Forbes executive vice president and general counsel at the time of the negotiations, correct?
A. Yes.
Q. Was he effectively your in-house legal adviser in connection with the transaction?
A. We had -- I guess you could say that, yes.
Q. Was Mr. Schwartz responsible for coordinating his work with Wachtell, Lipton, your outside counsel?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: What was the question?
BY MR. BEMIS:
Q. Let me ask it again.
Was Mr. Schwartz responsible for coordinating his work with Wachtell, Lipton, your outside counsel?
A. I don't understand the question.
Q. What is it you don't understand?

NOT A CERTIFIED COPY

015527

I will see if I can fix it.
A. The question --
Q. I understand that. What is it within the question? We understand who Wachtell, Lipton and we understand who Barry Schwartz is. What is it you don't understand?
A. The way you put the question.
Q. Who is responsible for -- strike that.
Was Mr. Schwartz responsible for communicating on legal matters with your outside counsel Wachtell, Lipton?
MR. SOLOVY: Objection to the form of the question.
THE WITNESS: I don't understand it.
BY MR. BEMIS:
Q. Can you be of any help to me?
A. What is he communicating, the weather? I don't understand what you are asking me.
Q. I would have thought it would have been obvious. I will try it again.
Was Mr. Schwartz responsible for

communicating with Wachtell, Lipton with regard to the Coleman transaction during the period the parties were in negotiations?
A. Communicating what from whom to who?
Q. Legal matters.
A. From whom to whom about what?
Q. Either direction in connection with the Coleman transaction.
A. I don't understand what you are saying.
Q. Mr. Schwartz was in charge of legal matters. I will tell you what. I will withdraw -- I will let the matter stay where it is. We will let the jury determine if you understood it.
A. I can tell you whether I understand it.
I don't think anybody listening to that question could understand it. If you want to ask a question that I can understand I will be happy to answer whatever question that you want but to ask me a question that is so convoluted that

you refuse to answer what you mean in the question either because you can't or you won't, that is sort of silly.
Q. Are you all done? I don't want to interrupt you.
A. Yes, I am done. Thank you.
Q. Mr. Drapkin, Donald Drapkin, what role did he have, if any, in the negotiations?
A. I don't believe any.
Q. Did he have any responsibility for due diligence aside -- withdrawn.
Did he have any responsibility for due diligence?
A. No.
Q. Mr. Slotkin, what was his position during the negotiation in 1998?
A. I believe he was chief financial officer.
Q. Did he have any responsibility with regard to -- strike that.
Did he have any responsibilities -- withdrawn.
Did he have any responsibilities in connection with the Coleman-Sunbeam

transaction?
A. I don't believe so.
Q. That would include both negotiations and due diligence, correct?
A. He may have been involved in some of the due diligence and he may have been involved in some of the negotiations but he did not have the responsibility.
Q. When you say "he," then what do you mean by "he may have been involved?"
A. I mean he may have sat through some of the meetings, some of the due diligence meetings. He may have participated in some of the negotiations but he did not have the responsibility for such.
Q. I would like to ask you a couple of questions now about Will Nesbitt. I know we have talked about his role reporting to Mr. Maher.
Did you have any direct communications with Mr. Nesbitt about the Coleman-Sunbeam transaction either face-to-face or in writing?
A. I am sure I did.

NOT A CERTIFIED COPY

015528

Q. Can you think of anything?
A. Specific?
Q. Specific, yes, sir.
A. No.
Q. Am I correct that Mr. Nesbitt was the only in-house analyst that worked on the Sunbeam-Coleman transaction?
A. Along with Mr. Maher.
Q. Now I would like to ask you a couple of quick questions on Mr. Levin. It is my understanding that at least in the Coleman-Sunbeam transaction, that he would have been the most senior person at Coleman working on the transaction; is that fair?
A. Yes.
Q. Then backing him up at Coleman, he had Paul E. Shapiro, the -- I think he was the executive vice president and general counsel?
A. Yes.
Q. If, whatever due diligence was done by Coleman, it would have fallen under Mr. Levin's responsibility being at the top of the Coleman chain?
A. I would assume so, yes.

Q. Did Mr. -- in your -- withdrawn.
In your view did Mr. Ginstling have any role in the Coleman-Sunbeam transaction?
A. Mr. Ginstling is a tax attorney so I can't answer that.
Q. He is in-house tax attorney for you, correct?
A. Yes.
Q. I take it that he -- withdrawn.
Did Mr. Ginstling provide tax advice to MacAndrews & Forbes in connection with the Sunbeam-Coleman transaction?
A. Possibly. I don't know specifically.
Q. Are you aware of any -- of Mr. Ginstling participating in any due diligence of Sunbeam by MacAndrews & Forbes?
A. Specifically, no.
Q. Mr. Dickes, did he have any role in the negotiations?
A. I don't believe so.
Q. Was his position at the time of the negotiations secretary of MacAndrews &

Forbes?
A. I believe so.
Q. He is an attorney as well, correct?
A. Yes.
Q. Does he report directly to Mr. Schwartz?
A. I believe so.
Q. Did all of the attorneys in 1998 at MacAndrews & Forbes report to -- who were in-house report to Mr. Schwartz?
A. I believe so.
Q. Then Mr. Schwartz reported to you?
A. No.
Q. Who did he report to, Mr. Gittis?
A. Gittis.
Can I make it a little cooler in here?
Q. You can.
I would like to ask you to focus on the period of, say, January and February of 1998 if you could right after the holidays. Are you there?
A. Yes.

Q. Were you involved, and by "you" I mean MacAndrews & Forbes, involved in any financing transactions, debt financing transactions with regard to Revlon or one of its subsidiaries?
A. Was Revlon involved? I don't recall.
Q. Are you familiar with a debt offering of about $900 million in notes in February by, I believe it is Revlon Escrow Corporation which I think is a subsidiary of REV Holdings Inc.?
A. No.
Q. Let me show you what has been marked as MS 410. This has been previously marked in a deposition so I will ask the court reporter if he could just hand it to you.
A. Yes.
Q. Have you -- this document was printed off of the so-called EDGAR system.
You are familiar with that?
A. The internet thing?
Q. The internet thing for the government where you can get securities

NOT A CERTIFIED COPY

015529

Page 210

filings off the internet.
A. Right.
Q. The printing and the pagination can be a little bit difficult. I will try to direct you to the right places.
If you will look at the second page of the document, it is the first page, I think, of the actual filing.
It is the form 10-K for a company called REV Holdings Inc.
A. Yes.
Q. Do you see that?
A. Yes.
Q. REV Holdings Inc. is a company that is actually the holding company for one or more of the Revlon companies, correct?
A. Yes.
Q. And if you will turn to, now, to -- it will say page 4 of 114 in the upper right-hand corner?
A. Right.
Q. And it will be -- I want you to look at the last paragraph which begins on February 2, 1998.

Page 211

A. Yes.
Q. Are you there?
A. Yes.
Q. According to this paragraph Revlon Escrow Corp., an affiliate of products corporation, which is defined up above, I believe, as Revlon consumer products corporation, issued and sold in a private placement $650 million aggregate principal amount of 8-5/8 percent senior subordinated notes due 2008 and $250 million aggregate principal amount of 8-1/8 percent senior notes due 2006."
Do you see that?
A. Yes.
Q. You were aware of that transaction?
A. Yes.
Q. In February of 1998 -- strike that.
Did this transaction for the issuance of $900 million in notes begin sometime in January or was it in 1997?
A. I am not sure. I don't know.
Q. Did you work on this transaction?

Page 212

A. No.
Q. Were you aware of it going on?
A. Yes.
Q. Who was responsible for this transaction, Mr. Maher?
A. No, the people at Revlon.
Q. Was this transaction by Revlon Escrow Corp. issuing $900 million in notes a, if you will, a refinancing of certain outstanding notes?
A. I don't recall specifically.
Q. If you will continue reading it says the -- I am reading from the same paragraph.
A. Right.
Q. "The proceeds from the sale of the notes were used to finance the redemption of product corporation's 550 million aggregate principal amount of 10-1/2 percent senior subordinated notes due 2003 and will be used to finance the redemption of products corporation's 260 million aggregate principal amount of 9-3/8 senior notes due 2001.
Do you see that?

Page 213

A. Yes.
Q. Having seen that, am I reading that correctly that the notes sale by Revlon Escrow was used to retire certain existing notes and replace them with the new notes?
A. In part, yes.
Q. In addition to that it also raised some new capital, correct?
A. Yes.
Q. In addition to -- you can set that one aside.
In 1998, this same time period, January through, say, March, were you having some discussions with Gucci about a possible acquisition?
A. No.
Q. Were you discussing anything with Gucci?
A. No.
Q. Were you having meetings with Gucci?
A. No.
Q. Let me show you your calendar which I think is MS 172 -- 171. I said

NOT A CERTIFIED COPY

015530

Page 214

your calendar. I meant your cards.
A. Yes.
Q. Do you still have that over there?
A. Yes, I do.
MR. BEMIS: Do you need another one?
MR. SOLOVY: I don't know which one we are dealing with.
MR. BEMIS: 171.
MR. SOLOVY: It will be quicker if you give it to me. I won't have to rifle through the whole pile again.
THE WITNESS: Can you ask them to make it a little cooler here? I don't think he did it.
BY MR. BEMIS:
Q. I would ask you to turn to the third page of your cards and the date that we will be focusing on is Tuesday, November 25, 1997.
A. Right.
Q. Do you see the entry at 11:00 a.m. for Gordon Rich? Is that Gail Souther? Do I have the name correct?

Page 215

A. I don't know her.
Q. You don't know --
A. No.
Q. Then there is HG; is that Mr. Gittis?
A. Yes.
Q. Then JM, is that Mr. Maher?
A. I would assume so.
Q. It says Re: Gucci?
A. Yes.
Q. What does that refer to?
A. I assume Gucci.
Q. Can you be anymore helpful than that?
A. Not specifically, no. Generally, I don't believe we had any conversations with Gucci at all.
We did have conversations with Morgan Stanley who represented Gucci who came to us and asked whether we would be interested in doing some transaction with Gucci and we indicated that we might be and I believe that that was the extent of it.
I don't believe we ever met with Gucci. I don't believe we ever talked to

Page 216

Gucci and that would be the substance of it.
Our Gucci conversations were with Morgan Stanley.
Q. Mr. Gordon Rich is on the list of people shown at 11:00 a.m., correct?
A. Yes.
Q. This is the same Gordon Rich from Credit Suisse First Boston, the investment banking firm?
A. Yes.
Q. Did MacAndrews & Forbes retain in any fashion Credit Suisse First Boston to look at a possible Gucci transaction?
A. Retain, no.
Q. Did you ask them to attend at least these initial discussions?
A. No.
Q. Why were they there?
A. I am sure we wanted to ask them a couple questions about Gucci.
Q. Did they represent Gucci?
A. No. Morgan Stanley did.
Q. So how -- did you pay Mr. Rich for his time, that is, MacAndrews & Forbes?

Page 217

A. I certainly hope not. He didn't do anything. Nothing happened.
Q. When you say nothing happened so you don't pay, what do you mean by that?
A. Because investment bankers normally work on a transaction fee and if there is no transaction consummated then they don't get a fee.
Q. That is customary in the business?
A. I would assume so. It is customary with us.
Q. In all your experience with investment bankers, with MacAndrews & Forbes, your fee structure with them is such that no transaction, no fee?
A. Yes.
Q. In your opinion as a sophisticated investor as you described yourself earlier, are you --
A. I said I was not a sophisticated investor.
Q. You said you weren't a sophisticated businessman?
A. No.

NOT A CERTIFIED COPY

015531

Page 218

Q. We won't quarrel about it.
A. I said the other way around.
Q. You may be right and I don't want do quarrel with it.
A. I said the other way around. All I want to do is be accurate.
Q. I appreciate that.
A. Okay.
Q. I sincerely do.
Is the fee structure -- withdrawn.
Is the fee arrangement that you described that MacAndrews & Forbes does -- that is success, success fees for transactions in your view customary in the mergers and acquisitions business in New York?
A. I don't think anybody does it any way else.
Q. How long did the Gucci discussions -- strike that.
Were there discussions with Gucci after the November 25 discussions shown on your daily cards in Exhibit MS 171?
MR. SOLOVY: Object to the form

Page 219

of the question.
THE WITNESS: There were no discussions with Gucci.
BY MR. BEMIS:
Q. Thank you. I may have misspoke. Let me try again.
Were there any internal discussions about a transaction with Gucci after the November 25, 1997 entry on your daily cards?
A. I can't recall. If any other discussions came about they were instigated by Morgan Stanley.
Q. You can set your cards aside.
A. Do you want them back?
Q. Hold on to them.
The court reporter will hand you what has previously been marked as Morgan Stanley Exhibit 86 which is a portion of Mr. Maher's calendar as produced in the litigation for 1997 and 1998.
Do you have that exhibit in front of you?
A. Yes.
Q. Please turn to the entry for

Page 220

January 27, 1998. Tell me when you are there.
A. I am here.
Q. Do you see the entry for 11:30 a.m.?
A. Yes.
Q. The reference is to HG/ROP. That is Mr. Gittis and yourself, right?
A. Yes.
Q. And Gordon Rich is from Credit Suisse First Boston, right?
Q. The HG refers to a meeting in Mr. Gittis' office, right?
A. Yes.
Q. It says Re: Gucci and Coleman. Do you see that?
A. Yes.
Q. Did you participate in this meeting?
A. Not that I recall; possibly though.
Q. At least internally as of -- is it fair to say as of Tuesday, January 27 there were still some internal discussions at MacAndrews & Forbes about Gucci?

Page 221

A. Possibly, but they could be -- I don't know what they would be.
Q. Turn to the entry for February 11. Tell me when you are there.
A. I am here.
Q. There is a reference to a meeting at 12:00 noon with Bill Reid. Do you see that?
A. Yes.
Q. And then yourself, correct?
A. Yes.
Q. And then Mr. Gittis again?
A. Yes.
Q. And WGN I believe is Mr. Nesbitt. It is Re: Gucci. That is in your office here in this building, right?
A. Yes.
Q. Did you attend that meeting?
A. Possibly. I don't recall the meeting but Bill Reid as I said represented Gucci from Morgan Stanley and they brought us the idea of doing something with Gucci.
I mean it was not a freestanding idea. It was an idea generated by Morgan Stanley as to whether we wanted to make an

NOT A CERTIFIED COPY

015532

investment in Gucci.
Q. Is there something improper about Morgan Stanley contacting you about an investment in Gucci?
A. No. We were very close to Morgan Stanley.
Q. Just curious the way you answered the question.
A. It was routine.
Q. Routine.
What was the outcome of the discussions about Gucci, whether it be with Morgan Stanley or internally within MacAndrews & Forbes?
A. Nothing.
Q. Nothing means a transaction never came to pass?
A. Nothing ever happened.
Q. That is what I meant by nothing came to pass. Nothing happened?
A. Nothing happened.
Q. You just talked but nothing happened?
A. Correct.
Q. You may, if you would, hand that

back to me and I will put it away.
During the January, February, March period 1998 was MacAndrews & Forbes involved in any transactions regarding Panavision?
A. Yes.
Q. What?
A. I don't know the specific dates but MacAndrews & Forbes I believe in 1997 purchased Panavision.
Q. Was there -- did Mr. Maher play a role in the negotiations concerning the purchase of Panavision?
A. A bit, yes.
Q. Was there another person who had a bigger part in the negotiations?
A. Joe Page had a role in the negotiations and I believe Bill Bevins had a role in the negotiations.
What was the date of that?
Q. Which date are you asking me?
A. The transaction with Panavision.
Q. Let me get the prospectus. I can tell you. I want to make sure I have the date right.

I think the prospectus was filed on May 6 of 1998. Let me double-check it. MS 355 please. I only have one extra copy of this one.
I will have the court reporter mark it and feel free to look at it. If you need any extra time I have no objection.
Somehow of all these documents we ended up with only two of these.
MR. BEMIS: Mr. Reporter would you please mark as Morgan Stanley Exhibit 335 a multi-page document which is the Panavision, Inc. proxy statement and prospectus for the combined annual meeting to be held on June 4, 1998?
(Morgan Stanley Exhibit 335 marked for identification)
BY MR. BEMIS:
Q. I have handed you what the reporter has marked as MS 335.
Do you have that in front of you?
A. Yes.
Q. You are free, of course, to look at anything you want in the document but as

usual the first few pages contain a summary of a lot of the detail in the back.
If you would like to look at that you can or I can ask you a few questions or I can try to answer the question which you originally asked which I have now forgot.
Do you remember what it was?
A. No.
Q. Okay.
My first question is: When did you start negotiating, that is, MacAndrews & Forbes, about a transaction with Panavision?
A. We signed the deal in December of 1997.
Q. It looks like December 18, 1997.
A. It says here December 17. December 18, okay.
Q. It is dated as of the 18th. Okay?
A. I assume it was prior to that.
Q. After -- were you done? I didn't mean to interrupt you.
A. Yes.
Q. After the deal -- withdrawn.

NOT A CERTIFIED COPY

Page 226

After the agreement was signed as of December 18, they call it the recapitalization agreement here, there were some -- there were some renegotiations that took place, were there not, over the price?
A. Possibly.
Q. If you look down -- just excuse me for one second. There is no question pending.
In connection with the Panavision transaction was there an amendment to the original recapitalization agreement that is referred to here such that the price that was being offered in the recapitalization changed?
A. Possibly. I don't recall.
Q. Do you recall that during the -- withdrawn.
Do you recall that after the signing of the original recapitalization agreement that MacAndrews & Forbes concluded that the projected performance for Panavision for its most recent quarter, I believe it was the fourth quarter of 1997, was going to be below expectations?

Page 227

A. Do I recall that, no.
Q. In any event, the transaction eventually did close, correct?
A. Yes.
Q. And do you remember when it closed?
A. No.
Q. What was your involvement in the transaction, that is, the Panavision transaction?
A. I am looking here at the summary. It looks like in the background of the merger section that this started in early 1997 -- in early September of 1997 that I had a meeting October 8 of 1997 with the Panavision people and that we submitted -- it looks like we negotiated a transaction November 3 and 4 of 1997.
Q. When did -- the transaction actually closed in 1998, correct?
A. I don't know when it was closed.
Q. Let's set that aside for right now and you can hand that back to me. I may come back to that later. I will give this back to you.

Page 228

Turn to the page, sir --
A. What page?
Q. I am going to give it to you. We will use the top page numbers. It says 37 of 155.
A. Yes.
Q. I think if you were actually looking at the document itself I believe it would be page 29.
Now, according to this description it was Mr. Maher who made the first inquiry concerning a possible transaction involving Panavision stock, right; is that correct?
MR. SOLOVY: Where are you reading from?
THE WITNESS: What page are you on?
BY MR. BEMIS:
Q. I am looking at page 36 of 155 and if I said 37 that is because I was looking at that page at the time.
A. Yes. Okay.
Q. Turn over to page 36.
A. Yes. I see it. It is 36.

Page 229

Q. I am correct that in September of 1997 it was Mr. Maher who was MAFCO's representative who made the first inquiry about MAFCO purchasing Panavision?
A. Yes.
Q. The contact with Warburg is because Warburg owned something like 80 some odd percent of Panavision?
A. A big percentage.
Q. A *big percentage*.
It was kind of like your ownership of Coleman. You -- in that sense. They were the largest and controlling shareholder of Panavision at this time; is that right?
A. I don't know what it was like but they were the largest shareholder.
Q. Then, at least in the description of the negotiations, it looks -- it continues again on page 36 of 155 that Mr. Maher and Mr. Nesbitt met with representatives of Panavision to discuss the company's operations, financial conditions, strategies and prospects.
Is that consistent with your

NOT A CERTIFIED COPY

015534

Page 230

recollection of events?
A. Not specifically but that would not be unreasonable.
Q. It continues -- we are down now to the last paragraph on page 36 of 155, and that paragraph states that you, Mr. Perelman, met with the -- with various executives of Panavision to discuss MacAndrews & Forbes' interest in Panavision.
Is that --
A. Yes.
Q. Is that accurate; you had that meeting?
A. I believe so, yes.
Q. Then Mr. Maher requested, according to the summary in the prospectus, Mr. Maher requested due diligence materials be provided to MAFCO.
I assume that is MacAndrews & Forbes or one of its holding companies?
A. Right.
Q. Is that consistent with your recollection of events?
A. No, but it would not be

Page 231

inconsistent.
Q. The company, that is, Panavision, according to the prospectus, agreed to provide the information providing MacAndrews & Forbes or MAFCO, as the case may be, signed a confidentiality agreement according to this summary?
A. Right.
Q. Is that consistent with your recollection?
A. Yes.
Q. Would that be consistent with custom and practice in these types of discussions?
A. Yes.
Q. Would it be customary, if you were going to have a merger transaction of two companies, for both companies to exchange confidentiality agreements?
A. I don't know if that is customary.
Q. The summary continues, and I am looking at the second full paragraph that begins, "At the conclusion." Do you see that?

Page 232

A. Yes.
Q. It refers to a continuing due diligence review of the company by MacAndrews & Forbes.
Is that consistent with your recollection?
A. I don't know specifically the time frame but that would be not unreasonable but that would not have been conducted by Maher. That would have been done by Joe Page and Bill Bevins.
Q. If you look at the next paragraph it states in so many words that as a result of the information obtained during MAFCO's due diligence investigation and the expectation of the company's earnings for the fourth quarter of 1997 would be below analyst's estimates on November 21, 1997 MAFCO advised Warburg and the company, that is Panavision, that it would be revising its indication of interest to lower the price per share to be received by the shareholders in the company's recapitalization.
Is that consistent with your

Page 233

recollection of the negotiations?
A. I don't know what that means.
Q. The following sentence means -- "MAFCO stated that although it had not yet determined what price per share it would propose it believed that such price would be as much as 10 percent below the $27.50 per share previously discussed."
Do you see that sentence?
A. Yes, but what I don't -- what I am not sure of is what this means "below analyst's estimates."
I am sure we got estimates from the company. I don't know if they are talking about financial analysts, company analysts, company projections.
I mean, that is the piece of it that I am confused about. I am sure what this is saying is that the current information that we were given by the company is less for the fourth quarter than we were given previously.
Q. So you revised your indication of interest to lower the price you would pay, is that fair?

NOT A CERTIFIED COPY

015535

Page 234

A. That is what it looks like, yes.
Q. As a result of your due diligence and your review of the financial information indeed a transaction -- withdrawn.
Eventually after you went through this due diligence process and expressed your interest as we have been discussing a definitive agreement was eventually reached, right?
A. Yes.
Q. And closed?
A. Yes.
Q. You may hand that back to me.
A. I need a quick --
THE VIDEOGRAPHER: Going off the record. The time is 3:19.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 3:30 p.m.
BY MR. BEMIS:
Q. We are back on the record.
Mr. Perelman, I would like to ask you now to focus on the Coleman Company and the time period we will be talking about at

Page 235

least as a starting point is about year end 1997 is where we will work ourselves up to.
I have a couple of questions on background.
When -- I think you told me earlier you purchased -- your companies purchased it in 1989?
A. I think so.
Q. Research I did suggests the purchase price was 455 million in cash?
A. About right.
Q. You made an all cash offer for the company and were actually in a bidding war, a potential leveraged buyout by management?
A. Yes.
Q. The leveraged buyout by management were some of the old time family members of the Coleman Company?
A. I think the young family members.
Q. When you acquired the company and, you, of course, I mean your companies, acquired the company in 1989 you had acquired 100 percent of the common stock?
A. I believe so.

Page 236

Q. The public eventually obtained an interest in the company through a public offering that you did in 1992, is that right?
A. I don't recall the date but sometime after.
Q. Was that public offering the only public offering of Coleman stock that was ever done?
A. I believe so.
Q. I did a little looking at this. What I found is that you sold the stock, that is, offered the stock to the public at about $13 a share and you sold a little over 9.67 million shares. Does that sound about right?
A. It could be, yes.
Q. In addition to the sale to the public, at the end of the day when -- where you are at today -- withdrawn.
In terms of just cash, when you sold Coleman, your interest in Coleman, that is, to Sunbeam in 1998, you received just a hair under $160 million in cash, right?

Page 237

A. When we sold --
Q. To Sunbeam?
A. Yes.
Q. In addition to the --
MR. SOLOVY: Excuse me.
MR. BEMIS: It surprised me.
That is all.
BY MR. BEMIS:
Q. In addition to the $160 million in cash at the time of the Sunbeam transaction, Sunbeam assumed and agreed to pay certain debt of one of your holding companies, correct?
A. Yes.
Q. That debt was in excess of $500 million, was it not?
A. I don't recall the exact amount but something like that.
(Continued on next page)

NOT A CERTIFIED COPY

015536

Page 238

Q. In addition to the -- in addition to these sums then you collected in litigation that you filed with -- against Arthur Andersen -- I apologize.

In addition to the sums we have been talking about your companies recovered $70 million against, or from, excuse me, Arthur Andersen, right?

MR. SOLOVY: In connection with our settlement agreement with Andersen we will designate this answer confidential, the question and answer. You may answer.

THE WITNESS: I believe so, yes.

(Continued on next page)

Page 239

BY MR. BEMIS:

Q. You approved the filing of that litigation against Andersen?

A. Yes.

Q. You accused Andersen of fraud, right?

A. Yes.

Q. You accused them of numerous accounting irregularities that they approved in a fraudulent manner of Sunbeam's financial statements, correct?

A. I don't know the specifics but it was a general fraud complaint.

Q. Essentially you said that the financial statements of Sunbeam were fraudulent and that Andersen audited them and participated in the fraud, correct?

A. That Andersen knew of the fraud, yes.

Q. Knew of Sunbeam's fraud?

A. Correct.

Q. And notwithstanding Andersen's knowledge of Sunbeam's fraud Andersen provided Sunbeam with clean opinions on Sunbeam's financial statements in 1996 and

Page 240

1997?

A. Yes.

Q. Indeed Andersen stood by Sunbeam's financial statements all the way up until sometime in the fall of 1998, correct?

A. I don't believe so.

Q. Actually it was June. I misspoke. June of 1998?

A. I don't believe so.

Q. When do you recall that Andersen withdrew its opinions with regard to Sunbeam's financial statements?

A. I think the comfort letter to -- from Arthur Andersen to Morgan Stanley constituted a revision of their opinion.

Q. Which opinion was being revised with regard to the comfort letters?

A. Certainly whatever continuing opinion they would have had to make relative to 1997.

I believe that their comfort letter saying to Morgan Stanley that this company is in a free fall decline in and of itself was a change in their opinion.

Page 241

Q. Would you --

A. It had to be construed in connection with their opinion at that moment.

Q. Let me move on to something else. We will get to that a little bit later; not probably today but tomorrow.

A. Good.

Q. Then, in addition to the charges that you -- your companies brought against Andersen for fraud, you brought -- you alleged, although you didn't file a complaint, you alleged that Sunbeam engaged in fraud as well, right?

MR. SOLOVY: Object to the form of the question.

MR. BEMIS: Fair enough. Let me withdraw it and rephrase it.

BY MR. BEMIS:

Q. In the summer of 1998 you told Sunbeam's management, that is, your companies, that you believed that MacAndrews & Forbes had claims against Sunbeam for fraud, right?

A. I am not quite sure what forum

NOT A CERTIFIED COPY

01553 7

that took.
Q. I am not suggesting you filed a lawsuit but did you say form or forum?
A. Forum. I am not sure how that took place.
Q. Let's set aside exactly how it took place.
It was your position as the owner of -- ultimate owner of MacAndrews & Forbes that Sunbeam had committed a fraud?
A. Yes.
Q. It was Sunbeam's underlying fraud that you contended that Arthur Andersen participated in, right?
A. And Morgan Stanley.
Q. Not in the claims -- you may be doing that today but in the claims you brought against Sunbeam in 1998 you didn't make any claims against Morgan Stanley.
A. We didn't know as much then as we know now.
Q. That may be the case. You didn't do it in 1998?
A. I don't know when we did it.
Q. Ultimately you resolved your

dispute with Sunbeam in 1998, correct?
A. I believe so, yes.
Q. It was resolved by Sunbeam issuing to MacAndrews & Forbes or one of its other entities -- I can look at the settlement agreement -- but 23 million warrants for Sunbeam's stock, right?
A. Some number of warrants. I am not quite sure how many.
Q. Going back to Coleman now, going back to Coleman, can you tell me whether Coleman after 1995 ever made a profit?
A. It depends on what you define as "profit."
We look at cash flow and most transactions that are done today are done on the basis of what is called EBITDA which is an updated term for cash flow, and, yes, Coleman had very significant cash flows from 1996 through 1997.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 251.
A. Yes.
Q. Would you look at page 13 --
withdrawn.

For the record, have you seen this document before which is the December 31, 1997 form 10-K?
A. Yes.
Q. Did you see before it was filed with the Securities and Exchange Commission?
A. I would assume so.
Q. Turn to page 13 under Selected Financial Data.
A. Right.
Q. Are you there?
A. Yes.
Q. Page 13?
A. Yes.
Q. Am I correct that the selected financial data shows that in 1995 the company had a -- had net earnings of $39,280,000?
A. Correct.
Q. Then the following year which would be 1996 it had a loss of $41,893,000; is that correct?
A. Yes.
Q. In addition, in 1997 --

A. I have to put my thing back on.
Q. Okay.
A. I think I need help here.
MR. SOLOVY: Maybe you want to repeat the question.
BY MR. BEMIS:
Q. In 1997 am I correct that Coleman had a net loss of $2,536,000?
A. These numbers that you are giving me are after very significant charges which have to be eliminated in calculating the EBITDA which is on the basis that we sold the company so that, for example, in the year '97, let's take '97, you would take that $2 million and you would add back the interest of $41 million, you would add back the depreciation and amortization of $38 million, you would add back the non-cash restructuring of $17 million, you would add back the minority interest of $1.4 million and that would give you the EBITDA which is roughly -- it is about $100 some million.
You would add back the 11 million 338 of amortization to goodwill so you would add back $38 million, $17 million,

NOT A CERTIFIED COPY

015538

$11 million, $41 million and that would give you the EBITDA.
Q. Not to quarrel with you about what the EBIT is which I don't want to do right now, what you reported to the Securities and Exchange Commission and to the public --
A. This is what we reported. I am reading from the exact same schedule. This is what was reported to the public and to the SEC.
Q. Did you report to the public in 1997 under the line item in your selective financial data that the company had a net loss of 2 million?
A. On that line item, yes. That does not tell the story. You have to look on other line items to see what the performance of the company is.
Q. Let's talk about performance of the company. 1996, what was the highest stock price the company hit?
A. I don't recall.
Q. Let me see. If we look at -- let's look at page 12. Tell the jury what

the highest stock price was of Coleman in 1996.
A. $26.
Q. Then in 1997 what was the highest price the company's stock reached?
A. 19-1/8.
Q. It fell about $7 per share in that year, right, from 1996 to 1997?
A. Right.
Q. Just in your holdings alone, what did you have, about 14.1 million shares of Coleman stock?
A. I don't recall how much shares I had but --
Q. I don't want to quarrel with you. I just asked you how many shares of stock.
A. I don't know.
Q. That is fine. You don't know.
You had -- and if we look at 1997 as reported to the Securities and Exchange Commission, the stock of Coleman actually hit a low of 11-1/2 dollars?
A. Right.
Q. Were there, by the way, any rumors of Coleman bankruptcy on the Street

in 1996 or 1997?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I didn't hear any.
BY MR. BEMIS:
Q. You brought in Mr. Levin in 1997 as CEO?
A. Correct.
Q. You told us earlier because you needed to make some management changes?
A. Yes.
Q. You were making management changes because Coleman was doing so well?
A. I was making changes because I thought it could do better.
Q. It would do better in 1997 with Mr. Levin than it had done in 1996 under old management is what you hoped?
A. No. I thought it would do better going forward. We don't own a company for one year. We own a company potentially forever so that when I brought in Jerry Levin to replace the then CEO I was bringing him in to help drive this company to the next level of growth, not for one

year.
Q. I didn't mean to interrupt you.
A. Not for one year but going forward.
On the point of the stock price, what you have got to keep in mind is that the float in this company is very small so that we owned in excess of 80 percent of the stock.
Q. Let me ask you --
A. Here there were only 700 shareholders as of this date. It is truly not a publicly traded company with 700 shareholders.
Q. In 1993, if you go back to page 13 --
A. Right.
Q. The debt of the Coleman Company was 168.8 million, is that right?
A. Yes.
Q. Long term debt?
A. Yes.
Q. Then by 1996 it had increased to 584 million, rounded up, right?
A. Correct.

NOT A CERTIFIED COPY

015539

NOT A CERTIFIED COPY

Page 250

Q. Then you have it down -- Coleman got it down to about 478 million by 1997; is that right?
A. Yes.
Q. Mr. Levin, when he was brought in, was he the only candidate you considered for the CEO position?
A. I don't recall.
Q. Did you ever consider Al Dunlap?
A. Possibly. Possibly.
Q. Isn't it a fact that you actually talked to Al Dunlap several times before you brought Mr. Levin in and asked him to consider coming over to be the CEO of Coleman?
A. No. I talked to him several times about his management style. I talked to him possibly about coming on the board of Coleman but he was making a compensation package that was just extraordinary. Nobody could compete with that package.
Q. May I ask when you first spoke to -- when -- withdrawn
A. When did I first speak to him?
Q. Let me ask the question.

Page 251

When was the first time that you spoke to Mr. Dunlap about possibly coming on the Coleman board?
A. I don't recall.
Q. Was it before Mr. Levin was brought over from Revlon to Coleman?
A. I think it was after. I think it was right around that time.
He was under contract to Sunbeam in a very Rich contract.
Q. Just one second. My recollection of events, they could be faulty on this, but I think Mr. Levin was brought over to Coleman in February of 1997, is that right?
A. I just don't recall.
Q. In any event, you believe that you spoke to Mr. Dunlap about coming onto the Coleman board after Mr. Levin --
A. I believe so.
Q. -- had become --
A. Maybe it was before. I don't recall. Okay.
Q. Let me just ask the question and then go ahead and answer it however is appropriate. The record gets very

Page 252

difficult to follow when we both talk over each other. We have been doing a good job.
A. I think we are doing a great job.
Q. A great job.
Did you speak to Mr. Dunlap about coming onto the Coleman board after Mr. Levin was hired to become the chief executive officer of Coleman?
A. I spoke to Mr. Dunlap about it either before or after Mr. Levin. I am not sure which.
Q. What was his response to your discussions about him coming onto the Coleman board?
A. I think he just smiled.
Q. Was this conversation with Mr. Dunlap about coming onto the Coleman board before or after Mr. Dunlap's book Mean Business was published?
A. I never saw that book.
Q. You never saw that book?
A. No.
MR. BEMIS: Mark this -- please mark the following document as Exhibit MS 431 which is a three-page --

Page 253

four-page document. On the cover are some blurbs from Mr. Dunlap's book, Mean Business.
(Morgan Stanley Exhibit 431 marked for identification)
BY MR. BEMIS:
Q. I have handed you what the court reporter has marked as Exhibit 431.
Unfortunately is that the only copy I have with me.
That is the cover jacket from Mr. Dunlap's book Mean Business.
You are familiar with the book?
A. No, I am not familiar with the book.
Q. Did you provide the quotation that appears on the back of the cover, of the jacket?
A. Yes.
Q. Who did you provide it to?
A. I guess to him, either him or his PR person.
Q. Did you do that without reading the book?
A. Yes.

0151540

Q. You can hand that back to me.
Just read to the jury what you said about Mr. Dunlap.
A. "Lively, funny and provocative. No one feels neutral about Al Dunlap --
Q. I will read it for you. You tell me if I read --
A. I will read it.
Q. Read it slowly so the jury can hear you.
A. "Lively, funny and provocative. Nobody feels neutral about Al Dunlap. You either love his ideas about how to run a business or hate them. Read Mean Business and find out what he is all about."
Q. Did you love Al Dunlap's ideas or hate them? You said either one of the two?
A. I never read the book. I never -- first of all, these things you normally send in long before the book is published.
Secondly, after the book is published I never read it. I don't even think I saw it.
Q. You just did it as a favor for

Mr. Dunlap?
A. I don't know whether he asked me to do it or whether the book publisher asked me to do it. Somebody asked me to do it.
By the way, I didn't write that.
Q. You let somebody else write it and put your name on it?
A. Our PR person, yes. That is not my writing style.
Q. May I have that, Mr. Reporter?
Let's go back to the Coleman Company, if we could for a second.
Did you -- withdrawn.
Going back to Coleman, did Coleman incur restructuring charges in 1996?
I think you will find them on -- I think they are on pages 13 and 14 of Morgan Stanley Exhibit 251.
If it helps you I will direct your attention to page 14 under the heading Results of Operation, the next to the last paragraph which reports --
A. There are some --

Q. Can I finish the question?
A. I thought you did already.
Q. I know you did. Let me try again.
On page 14 in the next to last paragraph, Morgan Stanley Exhibit 251, it is reported that the company, that is Coleman, recorded restructuring charges of $66.2 million.
Do you see that?
A. Yes.
Q. As a director of the company -- strike that.
That is correct that the company incurred those charges?
A. I would assume so.
Q. Then in 1997 the company incurred additional restructuring charges, correct, and that is the paragraph above the 1996 paragraph on page 14?
A. Yes.
Q. Am I correct that the restructuring charges in 1997 were $36.4 million?
A. Yes. That is what it says here.
In 1997 -- see they are in a

couple of places so to really -- if you look on page F6 which is the cash flow you can see some of the -- there are some cash charges so I can't see how they fit in but go ahead.
Q. Would you turn to page 46 of MS 251?
A. Yes.
Q. Would you please tell the jury whether you signed the document you have in front of you, MS 251, as of March 18, 1998?
A. Yes.
Q. You signed it pursuant to your obligations not only as a director the company but under the federal securities laws, correct?
A. Yes.
Q. As of 1997 -- withdrawn.
I am handing you what has previously been marked as Morgan Stanley Exhibit 93, the agreement and plan of merger among Sunbeam Corporation.
A. Are we finished with this?
Q. You will need to hold on to it for a second.

NOT A CERTIFIED COPY

0151-1

Sunbeam Corporation, Laser Acquisition Corporation, CLN Holdings Inc. and Coleman (Parent) Holdings, Inc.

A. Yes.

Q. Earlier I asked you how many shares of Coleman stock that you had and I didn't have a document. I realized you may not remember that.

I want to refer you to page 8 of this exhibit -- let me withdraw the question.

Have you ever seen this document before, MS 93?

A. I don't believe so.

Q. Turn to page 8 of the document. That is article 3 under Conversion of Shares.

Tell me when you are there.

A. I am here.

Q. If you look at subparagraph 3.1(a)(i), you will see figures, the shares of stock. Do you see that?

A. Yes.

Q. Those are the Sunbeam stock that you received in exchange for the Coleman

stock at CLN Holdings held at that time?

A. It calls them here Laser.

Q. Sunbeam was called Laser in this document. You are correct.

Now I don't know what the question was so let me withdraw the question and try it again.

There is an easier way to go at this. Let's go back to Exhibit 251. You should have that in front of you.

If you will turn to page 3 and that is numbered 3 at the bottom, Mr. Perelman.

A. Yes.

Q. Under the heading Background.

A. Yes.

Q. There is in the first paragraph a statement made to which you subscribe as we talked about earlier, that Coleman Worldwide owns 44,067,520 shares of Coleman stock, right?

A. Yes.

Q. That is the number of shares that you would have owned in 1996, is that fair?

A. I believe so, yes.

Q. I think we established that the stock price for Coleman went from a high of $26 in 1996 to a high of about $19-1/8 in 1997, am I correct?

A. Right.

Q. So you had a decline in value of your holdings, that is, your company's holdings in Coleman in 1996 at the high point in 1997 of 44,067,000 shares times roughly $7 per share; isn't that right?

A. No.

Q. That is not right?

A. No.

Q. Tell me -- tell the jury why that is not right.

A. Because the market price is irrelevant to the value of our holdings.

What is relevant to the value of our holdings is the company. The stock ownership of Coleman was so narrowly traded that it didn't mean anything.

You had 700 shareholders of Coleman so that what we looked at was what is the intrinsic value of the asset.

We did not mark-to-market on a

daily basis what the stock was worth. That was irrelevant to us.

Q. The market price of the stock was irrelevant to you; is that right?

A. The market price of the stock is irrelevant to the value of the company, that is correct.

Q. To you it was irrelevant that the decrease in value in market price of the stock as listed on the New York Stock Exchange as your holdings dropped $308 million in one year; is that what you are telling the jury?

A. Nobody likes the perception of a stock drop in market price but what you asked was whether there was a diminution of value of my holdings.

The holdings -- the 82 percent is really the ownership of the company and the value of the company did not change. The value of the company actually improved as you can tell from Morgan Stanley's own valuation of the company.

Q. Let me ask you this, sir. On December 31, 1997 had you pledged, that is,

NOT A CERTIFIED COPY

015512

your companies, pledged all of your Coleman stock as a security for other indebtedness?
A. I am not sure.
Q. Let me show you a document, MS -- let's look at MS 239.
Do you have Morgan Stanley Exhibit 239 in front of you?
A. Yes.
Q. This document has previously been marked and identified in depositions as what is referred to as an information statement pursuant to Section 14F of the Securities and Exchange Act of 1934 and Rule 14 F-1 thereunder.
Turn to page 17. Tell me when you are there.
A. Right.
Q. According to the Coleman's filing on this date with the Securities and Exchange Commission you owned either beneficially -- withdrawn.
According to this statement which was filed with the Securities and Exchange Commission you owned beneficially 44,067,520 shares, right, of Coleman stock?

A. Yes.
Q. And do you remember how we talked about reading the footnotes to these things earlier today?
A. Right.
Q. Look at footnote 1. Do you want to read that to yourself and tell me when you are done?
A. I read it, yes.
Q. Am I correct, sir, that it says as follows, "Substantially all of the shares owned are pledged to secure obligations of Coleman Worldwide and CLN Holdings and shares of intermediate holding companies are, or from time to time may be, pledged to secure obligations of MacAndrews & Forbes Holdings Inc. or its affiliates."
Did I read that correctly?
A. Yes.
Q. As of the date of this document which is said to be the close of business March 3, 1998, if you look at the second line on the page we are looking at -- all of the Coleman stock that you owned beneficially had indeed been pledged?

A. No. That is not what it says.
Q. What does it say?
A. It says were or from time to time may be.
Q. It says -- I will not quarrel with you what it says.
A. That is what it says.
Q. It says what it says?
A. That is what it says. It says from time to time may be. That is what it says.
Q. Are you going -- are you telling the jury they weren't pledged?
A. I am saying -- you asked me to read what it says here. I said to you I didn't know.
You asked me to read what was here and I read what was here. Now you don't like what was here. I can't help that, sir.
Q. Let me try again. We will see if we -- then we will move on. We don't want to quarrel with each other.
A. Good.
Q. As of March 3, 1998 were your

Coleman shares that you beneficially owned, were they pledged to security obligations of your other companies?
A. I do not know.
Q. Did you approve this securities filing with the federal government, and that is MS 239?
A. Did I specifically approve it?
Q. Sure.
A. No. Why would I approve a specific filing?
Q. Because you are a member of the board of directors of the Coleman Company, that is why.
A. Whatever had to be filed our attorneys would file in due course.
Our attorneys do what is proper or appropriate. Our lawyers and accountants do what is appropriate and appropriate and our investment bankers do what is proper and appropriate unlike Morgan Stanley.
Q. I move to strike those comments.
Sir, in addition to -- let me show you a document marked as -- that we

NOT A CERTIFIED COPY

will mark as Exhibit MS 427.
I would ask the court reporter to mark as Exhibit 427 a document entitled Outstanding Debt Analysis.
(Morgan Stanley Exhibit 427 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit 427 in front of you?
A. Yes.
Q. Have you ever seen this document before?
A. No.
Q. Was it prepared by employees of your company?
A. I don't know what it is.
Q. If you don't know, you don't know.
You can hand it back to me.
A. Yes, sir.
Q. As part of the Sunbeam transaction the debt of the Coleman Company, the long term debt that is reflected on the balance sheet we looked at in Exhibit MS 251?

A. Yes.
Q. That debt was assumed by Sunbeam, correct?
A. Yes.
Q. The total amount of debt that was assumed by Sunbeam as part of the transaction was the CLN Holdings that we talked about earlier in excess of 500 million plus the Coleman debt which was I believe we identified that as $477.7 million or .8 million as of December 31, 1997?
A. No. I believe you are mixing apples and oranges.
Q. Then we will just skip that and go on to something else.
Did you carry that -- did your companies carry on your consolidated financial statements the debt of the Coleman Company?
A. I would assume so.
Q. Let me see MS 241 please. Look at page 36 of MS 251, the annual report for Coleman that you signed.
A. This is not the annual report.

Q. Maybe -- I did misspeak.
Please look at MS 251 which is the December 31 form 10-K. We looked at this a little earlier. Page 36.
A. Yes.
Q. With regard to your beneficial ownership that is again shown as 44,067,520 shares.
In footnote one it says, "Substantially all of the shares owned are pledged to secure obligations of Coleman Worldwide and CLN Holdings and shares of intermediate holding companies." Correct?
MR. SOLOVY: You have to finish reading, Mr. Bemis, the rest of the sentence.
MR. BEMIS: I will read it all for him. I don't want to quarrel with him.
Footnote 1 reads, "Substantially all of the shares are pledged to secure obligations of the Coleman Worldwide and CLN Holdings and shares of intermediate holding companies are from time to time --"
MR. SOLOVY: Are, or.

BY MR. BEMIS:
Q. "Are or from time to time may be pledged to secure obligations of MacAndrews & Forbes Holdings or its affiliates."
Do you see that sentence, sir?
A. Yes.
Q. Was that sentence correct at the time you signed this document on March 18, 1998?
A. I am sure it was.
Q. One of the intermediate holding companies that Coleman stock was pledged to secure their obligations was a company called Coleman Escrow Corporation, correct?
A. I don't know.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 241.
A. Right.
Q. The Coleman Escrow Corporation was one of MacAndrews & Forbes Holdings, holding companies above the Coleman Company, Inc., correct?
A. Yes.
Q. It had no operating business, correct?

NOT A CERTIFIED COPY

015514

A. Correct.
Q. It essentially functioned as a holding company that issued -- issued debt securities?
A. It owned securities. I don't know what it primarily functioned as. I am not familiar with the company. It was a holding company above the operating company.
Q. Pursuant to this offering, MS 241, Coleman Escrow Corporation issued 6,475,000 senior secured first priority discount notes due 2001, correct?
A. Yes.
Q. In addition, your company issued 131,560,000 senior secured second priority discount notes, correct?
A. Yes.
Q. These notes were secured by a pledge of the Coleman securities that you beneficially own, correct?
A. Some of them.
Q. Do you know how many of the -- of your Coleman shares that you beneficially own were pledged to secure this offering of

$732,035,000?
A. No.
Q. In addition, Coleman Worldwide had earlier issued -- and I may have misspoke. It is not Coleman Worldwide. Coleman had issued something called LYONs or liquid yield option notes, correct?
A. No.
Q. Who had issued those?
A. This company.
Q. Coleman Escrow Corp.?
A. That is what it says.
Q. I think -- I misspoke. I apologize.
Coleman Escrow Corp. issued the liquid yield option notes which is referred to in the document as all capitals L-Y-O-N-small S, right; am I correct?
A. It is L-Y.
Q. O-N-small S?
A. Yes.
Q. These notes had been secured by a pledge of your Coleman stock as well, correct?
A. Some of it.

Q. Can you tell the jury as of March 3, 1998, that is the date of the section 14F statement that we were looking at which is -- let me start again since I didn't have the number in my head.
Can you tell the jury, sir, how many of your Coleman shares were not pledged as of March 3, 1998, the date of Exhibit MS 239, the section 14F statement, how many of --
A. Please do that again.
Q. Sure.
Probably the easiest way to do it is do you have MS 239 in front of you? That is the 14F.
A. I don't believe so.
MR. SOLOVY: I will give you my copy.
THE WITNESS: Okay, I got it.
BY MR. BEMIS:
Q. Can you tell the jury, sir, how many of your beneficially owned Coleman shares which are identified as 44,067,520 were not pledged to secure obligations of your other companies such as Coleman

Worldwide and CLN Holdings?
A. No.
Q. Can you tell us what percentage it was?
A. No.
Q. Can you tell the jury whether you had pledged substantially all of the shares to secure your other holding company's debt?
A. No.
Q. You can hand that back to me. Give us a second and we will clean up some of these documents.
Did the Coleman Company have a profit in the first quarter of 1998?
A. I don't recall.
Q. I would like to turn back to Mr. Dunlap for a few minutes and work our way up to the meeting at your house on December 18 if we could.
A. Sure.
Q. We are back at 1997.
A. Yes.
Q. In 1997 my understanding is that you do have this meeting on December 18 at

NOT A CERTIFIED COPY

015515

your house and Mr. Gittis, he makes the arrangements after speaking to Michael Price; is that correct?
A. Correct.
Q. Before that meeting at your house on December 18 you had at least spoken to Mr. Dunlap about the subject of him coming on the Coleman board?
A. Correct.
Q. He had declined?
A. I don't think he declined. He just didn't answer.
Q. Were these conversations you had with Mr. Dunlap, did you have them face-to-face or were they telephone conversations?
A. I think face-to-face.
Q. Were they in New York or in Florida?
A. I am not sure. They were very casual. They were like social conversations. It may have been here, it may have been in Florida when I bumped into him.
These were not in those specific

meeting conversations.
Q. Did they take -- for example -- withdrawn.
For example, did they take place at a party someplace?
A. Could, possibly.
Q. When Mr. -- withdrawn.
When you approached Mr. Dunlap on this topic of becoming a director I understand he did not respond.
Did you follow up in any way with him?
A. I don't believe so.
Q. How many of these conversations, as brief as they were as you described them, did you have with Mr. Dunlap about becoming a director of Coleman?
A. Maybe one, maybe two at the most, but they weren't conversations on that.
I only met him maybe three times prior to the -- to that December meeting.
Q. Did you at any point --
A. I have to make one more quick stop.
MR. SOLOVY: Good time.

THE VIDEOGRAPHER: This marks the end of tape number three. We are going off the record at 4:32 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 4:43 p.m. This marks the beginning of tape number 4.
BY MR. BEMIS:
Q. Are we all set?
A. Yes.
Q. I think the agreement was we would run until 5:45 today?
MR. SOLOVY: Correct.
MR. BEMIS: We will run to the end unless the witness needs a short break.
MR. SOLOVY: Or his elderly lawyer.
MR. BEMIS: Or his elderly lawyer or his younger lawyers, whatever.
BY MR. BEMIS:
Q. We were talking about your meetings with Mr. Dunlap --
A. Yes.

Q. -- when we took a short break there to take the tape and other things.
When you -- right before you met with Mr. Dunlap for the first time were you with -- were you with Mr. Levin at a meeting in Florida?
MR. SOLOVY: Could I make a clarification? There is a confusion, Mr. Bemis, between the first time -- I don't know if you are talking about the first time he ever met him or the December meeting at his house.
MR. BEMIS: Fair enough.
BY MR. BEMIS:
Q. Before you met at his house on December 18 you had at least one earlier meeting with Mr. Dunlap and I thought you said you thought you might have had two, fair enough?
A. Yes.
Q. At at least one of those meetings where you ran into Mr. Dunlap and I think you said likely in a social setting, were you in Florida with Mr. Levin to call on Home Depot?

NOT A CERTIFIED COPY

015546

A. Not that I recall.
Q. Did you at the meeting with Mr. Dunlap when you talked to him either on the first social occasion or the second social occasion, again, before December 18, did Mr. Dunlap tell you that he was reporting 20 percent margins on some of Sunbeam's product offerings?
A. Not that I recall.
Q. Did you, Mr. Perelman, at any time after the first couple meetings with Mr. Dunlap, did you make a call to his office and ask him or one of his assistants to fax to you Sunbeam's financial statements?
A. Not that I recall.
Q. Did you at any time give Mr. Levin Mr. -- withdrawn.
At any time before the meeting at your home on December 18, 1997 did you give Mr. Levin copies of Sunbeam's internal financial statements and ask Mr. Levin to review them?
A. Internal financial statements?
Q. Yes. Sunbeam financial

statements.
A. How would I get internal financial statements?
Q. I am -- I am not trying to be rude. I am not here to answer your questions.
Let me ask a question. You answer it however you feel --
A. No.
Q. Did you ever give Mr. Levin -- withdrawn.
Before the December 18 meeting, did you ever have Mr. Levin review Sunbeam's financial statements as publicly filed?
A. Not that I recall.
Q. Did you tell -- strike that.
Did Mr. Levin ever tell you that he had, and this is again before December 18, 1997, that he had reviewed Sunbeam's financial statements and that he expressed skepticism about them?
A. Not that I recall.
Q. Did you tell Mr. Levin that you believed in -- withdrawn.

Before December 18, 1997 did you tell Mr. Levin that you, that is, you personally, believed in Mr. Dunlap's approach to business?
A. What is his approach to business?
Q. Yes, approach to business.
A. What is his approach to business?
Q. That is not my question. My question is, did you make that statement to Mr. Levin?
A. I couldn't have made it because I don't know what his approach to business is.
Q. My question was just whether you made the statement. If the answer is no, you tell me no.
A. Not that I know of, no.
Q. Did you tell Mr. Levin that you believed that Mr. Dunlap's approach to business represented "a new business model" for the consumer product market and Mr. -- he, Mr. Levin, did not know how to make it work, did you tell Mr. Levin that?
A. I don't have a clue what you are talking about.

Q. Is your answer, no?
A. Yes.
Q. Did Mr. Levin tell you -- withdrawn.
Did Mr. Levin tell you that he, that is, Mr. Levin, found Sunbeam's numbers hard to believe? Did he tell you that?
A. Not that I recall, no.
Q. Did Mr. Levin tell you, Mr. Perelman -- withdrawn.
Mr. Levin testified under oath in an earlier proceeding in this case involving Sunbeam in a deposition taken on August 2, 2000.
I am referring now to page 112 of his deposition transcript. This is Mr. Levin's testimony under oath?
MR. SOLOVY: What case is this, please, Mr. Bemis?
MR. BEMIS: Sure, Mr. Solovy.
In the matter of the arbitration between Albert J. Dunlap and Sunbeam Corporation.
It is again on page 112 is where I will be referring to to start with.

NOT A CERTIFIED COPY

015547

BY MR. BEMIS:
Q. With that background let me read what Mr. Levin said under oath.
"And the next morning we were -- we were flying back to New York together," he is referring to you, Mr. Perelman, "and in the car going back to the airport he said he had drinks with Dunlap and he is not terrible and he's got a great plan."
Did you tell Mr. Levin that?
A. I don't know what you are talking about. When was this -- what was this -- what was this plan. I don't have a clue.
Q. Mr. Levin continued under oath that you said, Mr. Perelman, he's, Al Dunlap, doing wonders with this company; he's growing the company at 20 percent; he's got gross -- he's going to make operating income of 20 percent, and, you know, he went, that is Mr. Perelman, went on about all the things that Dunlap was doing and I said I had been doing this for a long time. I find that hard to believe. Are those projections?"
Did Mr. Levin tell you those

things about his analysis of Mr. Dunlap's operations?
A. You are talking about a conversation in a car you are saying? I don't know what he said or what I said. I don't know when this occurred or what company you are talking about.
Q. The company is -- the company is Sunbeam and the time we are talking about is the time you had drinks with Mr. Dunlap.
A. In Florida?
Q. Yes.
A. Where did I have drinks in Florida with Mr. Dunlap?
Q. It is your testimony to the jury that did you not say what Mr. Levin said you did say under oath?
A. I don't recall that.
Q. Are you denying you said it or you don't remember?
A. What you are saying is we had idle chatter. Could we have had idle chatter about Dunlap? Yes.
I don't recall having -- I don't recall having drinks with Dunlap in Florida

and I don't recall specifically this conversation.
Q. As you told us earlier you have never known Mr. Levin to misrepresent anything at least to you?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I didn't say that.
BY MR. BEMIS:
Q. I will withdraw the question.
You said what you said and we will leave it at that.
Mr. Levin goes on to say during this conversation that he had with you in the car on the way back to the airport, "he said," referring to you, "no, no, that is actually what he is doing. I said, referring to Mr. Levin, I don't believe it. Perelman said, oh, I will get you the financials."
A. Right.
Q. Did you tell Mr. Levin that?
A. I don't know. You are talking about a conversation either before or after an airplane ride in a car someplace with at

least several other people in the car.
Q. Who else was in the car?
A. A driver, obviously Mr. Levin, obviously me and whoever else was on this trip.
Q. Who else was on the trip?
A. I don't know. I don't know the trip you are talking about. I don't even know the company you are talking about. Maybe we are talking about Scott Paper here.
Q. No. We are talking about Sunbeam.
A. How do you know?
Q. Because it refers to Mr. Dunlap.
A. Mr. Dunlap was the chairman of Scott Paper.
Q. We will leave it at that.
A. You ask the questions and you won't tell me what company you are talking about.
Q. I tried to be courteous and tell you it was Sunbeam.
A. Sir, I am being very courteous.
Q. We both are. Let's move on and

NOT A CERTIFIED COPY

015548

Page 286

not argue.
A. Okay.
Q. Mr. Levin continues under oath at page 112, line 17, "So he placed the -- so he placed the financials to Dunlap's office. By the time I got to New York there was a set of, I don't remember the forms, of financials of Sunbeam. It could have been an analyst report. I am not sure what it was. I read through it that night, walked back into Perelman's office the next morning saying, 'I have been doing this for over 30 years. I don't know how you run a company with this character with no RB." I think it is supposed to be RD, "expense, 1 percent sales expense. The whole thing did not add up to me. You want somebody to do this for one of your companies. You get somebody else. I am not even going to try. I don't want to talk about them."
Did Mr. Levin say that to you in your offices?
A. Are you telling me that he threatened to quit?
Q. Sir, all I am asking is whether

Page 287

Mr. Levin said --
A. Not that I recall.
Q. Mr. Levin continues under oath, "I gave that to Perelman. I was predisposed. I had a mind set I should say as to what this was all about and then started reading the analyst reports and I could read a balance sheet. I saw the build up of inventories change to the cash flow of the company and I told Perelman in the strongest possible terms not to take any stock of this company and he chose to ignore me."
Did Mr. Levin tell you that?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. Did he tell you that?
A. Not only did he not tell me that. He didn't tell any member of the board. He voted in favor of this.
Q. Are you aware that Mr. Levin sold all of his Coleman stock and did not take Sunbeam stock in the merger?
A. He took Sunbeam stock. Everybody

Page 288

got the same stock and he voted with all the other directors of Coleman to accept this transaction. And he voted with all the other directors of Coleman that this was an appropriate transaction to be taken.
Q. Are you aware that Mr. Levin sold his Coleman stock on the market, New York Stock Exchange, before the closing of the transaction; are you aware of that?
A. He sold his Coleman stock?
Q. Yes.
A. No.
Q. You weren't aware of that?
A. No.
Q. Were you aware that Bruce Slovin sold his Coleman stock on the market the morning after the public announcement was made on, I believe it is, March -- March 2 or March 3 of 1998 of the Coleman-Sunbeam transaction?
A. No.
Q. You weren't aware that Mr. Slovin sold over 50,000 shares of Coleman stock?
A. No.
Q. Mr. Slovin did vote for the

Page 289

merger as -- he voted for the merger, right?
A. Yes.
Q. Did --
A. But Mr. Slovin was not executive of the company.
Q. Did Mr. Levin ever tell you at any time up to the closing, March 30, 1998, did he ever tell you, Ronald, or Mr. Perelman, and I don't mean to be offensive using your first name?
A. Please do.
Q. That in his view, Mr. Levin's, you, Mr. Perelman, should not take Sunbeam stock but should take cash in the merger?
A. No.
Q. Mr. Maher testified that Mr. Levin was on the side of the transaction that supported taking cash rather than stock.
Were you aware that Mr. Maher was of that mind?
A. So then why didn't he vote for that?
Q. Mr. Maher didn't have a vote.

NOT A CERTIFIED COPY

015549

Page 290

A. I mean Mr. Levin. He was chairman of the board of the company. Why didn't he say at any directors meeting, listen, I don't think that the directors should approve this transaction. I think that this should be done for all cash, and, by the way, that is going to be my position.

He was chairman -- he was president, CEO, and may have been chairman of the board but he was certainly CEO and had an obligation if that is what he felt to make his position known.

Q. You say -- it is your testimony --

A. If I knew then --

Q. Excuse me. Can I --

A. Yes, please do.

Q. It is your testimony to the jury under oath that Mr. Levin never told you at any time up to March 30, 1998 that you, Mr. Perelman, should take cash rather than Sunbeam stock?

A. Not that I recall and he certainly made no position out of it and he

Page 291

certainly did not make his position clear to any director or to the board as a whole when this deal was being contemplated.

Now, in retrospect, if I knew then what I know now we would not have done the transaction.

Q. You would not have done the transaction at all?

A. At all, absolutely not.

Q. What I understand you just to have said is if you had known what was in the comfort letters today you would not have done the transaction?

A. Absolutely not.

Q. Thank you very much, sir.

By the way, at any point in the presentations to the board of directors was there any discussion of any other suitor for the Coleman company?

A. Not that I recall.

Q. Let me show you the minutes of February 25, 1998 which is Exhibit MS 88.

A. I will make one last stop. Keep going.

Q. I have to wait until you get

Page 292

back. I can't concentrate.

THE VIDEOGRAPHER: Going off the record. The time is 5:01 p.m.

(Recess)

THE VIDEOGRAPHER: Returning to the record. The time is 5:02 p.m.

BY MR. BEMIS:

Q. I am going to give back to you Morgan Stanley Exhibit 88 which we marked -- talked about earlier today, the minutes of the February 25 board of directors meeting of the Coleman Company.

Do you have that exhibit, sir?

A. Yes.

Q. Would you please turn to page 2 and I direct your attention to the third paragraph? Tell me when you are there.

A. I am here.

Q. Mr. Maher is reported to have reviewed with the Board, capital B, the history of the proposed transaction with Sunbeam.

Do you see that?

A. Yes.

Q. And he also makes reference to --

Page 293

now I am reading from the end of the third line, "On inquiry made by the company," that is referring to Coleman, "to what the company," referring to Coleman, "believed was the most likely potential bidder, which bidder was not interested."

Do you see that?

A. Yes.

Q. Were you there for that presentation by Mr. Maher?

A. I believe so, yes.

Q. Who was the company that was contacted as a most likely potential bidder?

A. I don't know.

Q. Did you ever ask Mr. Maher who that was?

A. Possibly.

Q. As you sit here today you are not aware of who this company was?

A. Correct.

Q. But whoever it was, at least based on Mr. Maher's presentation of the board, the board was advised that other bidder wasn't interested, right?

NOT A CERTIFIED COPY

015550

Page 294

A. That is what it says here, yes.
Q. In 1997 did you have -- withdrawn.
In 1997 did the Coleman Company have any potential, I will use the term, "bidders" as Mr. Maher did for the Coleman Company?
A. It was not for sale.
Q. It may not have been but that would not foreclose, would it, someone asking?
A. It is highly unlikely.
Q. Let me phrase the question differently so maybe we can make some progress with this.
In 1997 did anyone, anyone, come to the Coleman Company that you are aware of as a director and ask whether the company was for sale?
A. I don't know.
Q. In 1998, before Sunbeam contacted, through Mr. Price, Mr. Gittis, were there any inquiries of Coleman whether it would be for sale?
A. That was in 1997.

Page 295

Q. That was in 1997. I will try it again. It was a terribly phrased question. Thank you very much for helping me with that one.
A. You are very welcome.
Q. At any time in 1997 -- withdrawn.
In 1998, are you aware of, other than Sunbeam, any companies making any inquiry of whether the Coleman Company was for sale?
A. Not that I am aware of.
Q. So at the time of the signing of the merger and acquisition agreements, one of which was MS 93 we looked at earlier, Sunbeam is the only company that had made inquiry of Coleman about Coleman's availability for purchase, if you will?
A. I didn't say that.
Q. What -- withdrawn.
Let me try one more time.
Was Sunbeam the only bidder for the Coleman Company in 1997 or 1998?
A. Yes.
Q. Did any other company to your knowledge approach the Coleman Company

Page 296

about a potential purchase in 1997 or 1998?
A. Not that I am aware of.
Q. Am I correct that -- withdrawn. Please hand me the minutes back. Sometimes you slip. We will put them away for now.
Let's roll forward to the fall of 1997 to the meeting at your house on December 18. Are you there?
A. Yes.
Q. Just to set the background for the jury one more time, Mr. Gittis met with Mr. Price?
A. Gittis.
Q. I have it in my head but I keep doing it incorrectly.
He met with Mr. Price who had a -- whose mutual fund had a substantial investment in Sunbeam, correct?
A. No.
Q. He did not?
A. No.
Q. Who -- I thought Mr. Price was -- I won't quarrel with you about it.
Did Mr. Price have a substantial interest in Sunbeam?

Page 297

A. A fund of his did.
Q. A fund of his did.
I may have misspoke the way I said it.
Mr. Price's fund had a substantial interest in Sunbeam in 1997, correct?
A. Yes.
Q. Mr. Price approached Mr. Gittis at some function and asked him to come over to his house for drinks, is that what you understand happened?
A. No.
Q. What do you understand happened?
A. I thought it was a phone call.
Q. As of this phone call did Mr. Gittis then come over to Mr. Price's house where Mr. Dunlap was present?
A. I don't know.
Q. At some point, at some point after this initial meeting -- well, at some point Mr. Gittis did meet with Mr. Dunlap; is that correct before -- let me try again.
Before the December 18 meeting Mr. Dunlap did have a conversation with

NOT A CERTIFIED COPY

015551

Mr. Price and Mr. Gittis; is that correct?
A. Not that I know of.
Q. Did Mr. Gittis meet Mr. Dunlap before the meeting on December 18?
A. Not that I know of.
Q. We will ask him on Friday what happened.
Let's move up to the meeting at your house.
How did that meeting get scheduled?
A. I believe Michael Price calling Mr. Gittis.
Q. How do we get from the phone call to your house. What happened next?
A. I guess by car.
Q. I guess that would be a way to do it. I think my question was a little different. Probably poorly phrased.
Did Mr. Gittis ask you whether you wanted to have a meeting with Mr. Dunlap?
A. Yes.
Q. Preparatory -- did you know what the subject of the meeting was?

A. I don't believe so.
Q. You had -- when Mr. Dunlap met with you -- withdrawn.
Let's identify right now who was at the meeting at your house on December 18. Who was there?
A. I believe just the four of us, Gittis, myself, Price and Dunlap.
Q. The four of you met. What time of day was it?
A. I don't recall.
Q. For cocktails?
A. We didn't have drinks, I don't think.
Q. Was the -- did you have any idea what the purpose of the meeting was?
A. Not that I recall.
Q. I take it then that you had not done any type of investigation of Sunbeam in advance of the meeting; is that right?
A. I may have.
Q. What may you have done?
A. I may have done some looking at Sunbeam prior to the meeting.
Q. Did you have anyone at MacAndrews

& Forbes do any investigation of a possible combination between Sunbeam and Coleman before the December 18 meeting at your house?
A. Possibly but I don't recall.
Q. Did you ask -- withdrawn.
Mr. -- let me see MS 224.
The court reporter has handed you what has previously been marked as MS 224. Do you have that in front of you?
A. Yes.
Q. That is a memorandum dated December 15, 1997 to you?
A. Yes.
Q. Mr. Gittis and Mr. Maher, correct?
A. Yes.
Q. From Mr. Nesbitt?
A. Right.
Q. It is about Mr. Dunlap's employment contract?
A. Yes.
Q. Did you ask that information, this information in this memorandum MS 224 to be gathered?

A. I don't believe so.
Q. Did this memorandum from Mr. Nesbitt just appear on your desk without any forewarning to you?
A. You will have to ask Mr. Nesbitt.
Q. Not to be flip but was Mr. Nesbitt in the habit of sending you, Mr. Perelman -- let me finish the question -- unsolicited memorandum?
A. It may have been solicited by Maher, by Gittis. It wasn't solicited by me. It is addressed to three of us.
Q. Did you read it?
A. I don't think I ever saw this before.
Q. Is there a reason why you think you did not see it before?
A. Because it doesn't look familiar.
Q. Can you tell me why Mr. Maher or Mr. Gittis would be preparing -- having Mr. Nesbitt prepare a memorandum on Mr. Dunlap's employment contract as of December 15, 1997?
MR. SOLOVY: Object to the form of the question.

NOT A CERTIFIED COPY

015552

Page 302

THE WITNESS: Maybe Mr. Gittis thought he was looking for a job at the meeting. I don't know.
BY MR. BEMIS:
Q. Mr. Dunlap was looking for a job at the meeting in your house?
A. Maybe. I don't know.
Q. I would like to ask you now to focus on the meeting at your house on December 18.
I might withdraw the pending question.
A. Do you want this back?
Q. For the time being just hold on to it.
The court reporter is going to hand you what has been marked or was marked in Mr. Nesbitt's deposition as Morgan Stanley Exhibit 104.
I have handed you what has been marked as Morgan Stanley Exhibit 104 which Mr. Nesbitt testified in his deposition he prepared.
Have you ever seen this document before?

Page 303

A. Possibly.
Q. Did you see it on or about the date it bears, January -- excuse me, December 8, 1997?
A. I am not sure.
Q. What were the circumstances under which you think you possibly saw this document?
A. It would be sent to me.
Q. Sorry?
A. It would have been sent to me.
Q. It would have been sent to you?
A. Yes. I don't know if I saw this -- I don't know when this was prepared.
Q. Look up in the upper right-hand corner and you will see the time of the run and the date which Mr. Nesbitt confirmed would have been December 8, 1997.
A. Yes, but I think this was distributed, the back page of this has a handwritten note that says, Sunbeam, I believe this is McKay, something McKitty, the guy from Morgan Stanley, agenda M5 -- something Bank of America, First Union,

Page 304

Bank of America.
This must be very late that I would have seen this.
Q. First of all, Mr. Nesbitt was unable to identify the last page being attached to this document. Setting that aside --
A. You just gave it to me.
Q. Can we focus us right now on the spreadsheet?
A. Yes.
Q. There is a spreadsheet, multiple pages, dated December 8, 1997 with a 2:13 p.m. run date.
A. Yes.
Q. Can you tell me why as of December 8, 1997 MacAndrews & Forbes was looking at a possible Sunbeam-Coleman combination?
MR. SOLOVY: I object to the form of the question.
THE WITNESS: I don't know what date it was because clearly the last piece of paper attached has the time frame far after December 8, 1997 so I

Page 305

don't know where you attribute the specific time.
BY MR. BEMIS:
Q. To Mr. Nesbitt' sworn testimony. That is when he said he prepared it.
A. How does he swear to the fact when the last page is --
Q. This is not my document. It is a CPH document.
A. Whose document?
Q. Coleman (Parent) Holdings, your company's document.
A. I don't know either.
Q. Can we --
A. You gave it to me. I am just trying to respond to the document you gave me and I see part of it as referring to bank financing which probably wasn't developed until, what, February of 1998.
Q. Can we try to focus on the question that I have asked? I realize it is getting late in the day.
A. Okay. Ask the question.
Q. On December 8, 1997 was MacAndrews & Forbes looking at a possible

NOT A CERTIFIED COPY

015553

Page 306

combination between Sunbeam and Coleman as set forth in Mr. Nesbitt's spreadsheets of that day that you have in front of you, MS 104?
A. I don't know what that means. I didn't tell Nesbitt to do this.
Q. Can you explain to me why Mr. Nesbitt would be doing these spreadsheets as early as December 8, 1997?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I don't know if it was December 8. The back page would indicate sometime in February.
BY MR. BEMIS:
Q. I will not quarrel with you. We will let Mr. Nesbitt's testimony take care of that.
That is not your handwriting on the last page; is it?
A. No.
Q. Do you know whose it is?
A. No.
Q. No idea?
A. No idea.

Page 307

Q. Let me show you Exhibit MS 105. This is a spreadsheet that Mr. Nesbitt prepared.
I hand you 105, counsel.
Mr. Reporter, could you please hand that to the witness? It has been previously marked.
A. Right.
Q. You have Exhibit 105 in front of you?
A. Yes.
Q. This is a spreadsheet that Mr. Nesbitt testified that he prepared on or about December 10, 1997.
Have you seen this document before?
A. I would imagine so, yes.
Q. Did you see it on or about December 10 of 1997?
A. I don't know.
Q. Did you see it before your meeting with Mr. Dunlap on December 18, 1997?
A. I don't believe so.
Q. Can you tell me why Mr. Nesbitt

Page 308

was preparing an analysis of a Sunbeam-Coleman combination as of December 10, 1997?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: No.
BY MR. BEMIS:
Q. You had not given any such instruction; is that fair?
A. That is correct.
Q. Had you given Mr. Maher instructions to begin an analysis of a possible Sunbeam-Coleman combination?
A. No.
Q. Had you talked to Mr. -- had you told Mr. Maher as of December 10, 1997 that there was going to be a meeting with Mr. -- strike that.
When -- strike that.
How far in advance of December 18, 1997 was the meeting set between you and Mr. Dunlap at your house in Palm Beach?
A. I don't know. I don't know when it was set.
Q. If you will turn to page 3 of

Page 309

Exhibit 105, in the box -- first box that appears below the heading Merger Consequences Assuming Pooling Treatment Not Available, do you see that box?
A. Yes.
Q. There is, there are four lines. The third and fourth are PF, which I believe means pro forma, (dilution with cost savings of 40,000) which I believe is 40 million, based on Mr. Nesbitt's testimony.
Do you see that?
A. No.
Q. Did you say you can't see it?
A. I haven't found it yet.
Q. Okay.
Look in the second box on the -- full box. The heading inside the box is 1998E.
A. You are on page 3?
Q. On the bottom of page 3. This box.
A. Oh, okay.
Q. The question --
A. I see, right.

NOT A CERTIFIED COPY

015554

Q. Let me try to get the question out so the jury will understand what it was.
A. Right.
Q. Inside that box it reads, "PF" and then "dilution, in parentheses, with cost savings of 40,000," which, if those are in thousands that would be $40 million those are so-called synergies, cost savings?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I don't know what they are. I didn't prepare this document.
Q. You don't understand --
A. It says cost savings but you are asking me are they synergies. I don't know what they are.
Q. Are -- withdrawn.
Do you know where Mr. Nesbitt came up with the figure of $40 million?
A. No.
Q. In the next line he has cost

savings of $60 million. Do you see that?
A. Yes.
Q. Do you know where he obtained that number?
A. No.
Q. You didn't provide it to him?
A. No.
Q. You are not aware of Mr. Maher providing it to him, right?
A. I don't know.
Q. You can hand that back to me. We are done with that.
It is your understanding that -- it is your testimony that as of December 12, 1997 you had not given Mr. Maher any instructions to prepare any analysis of a combination of Coleman and Sunbeam, is that right?
A. Not that I am aware of, no.
Q. Not that you are aware of.
Let me show you now a document which we will mark -- excuse me -- has been marked as Plaintiff's Exhibit 353.
I have handed you what I referred to as Plaintiff's Exhibit 353 but it is

Morgan Stanley Exhibit 353.
Do you have that in front of you?
A. Yes.
Q. Did you receive this document from Mr. Nesbitt on December 11, 1997?
A. I would imagine so.
Q. He writes, "To the extent that you are wondering when a combined Sunbeam-Coleman could affect a pooling with Black & Decker the answer is two years following a Sunbeam/Coleman combination."
Do you see that?
A. Yes.
Q. Had you discussed with Mr. Nesbitt when there could be a Sunbeam-Coleman combination with Black & Decker?
A. I don't believe so.
Q. Have you ever heard of the expression "out of the blue?"
A. Yes.
Q. Did you receive this memorandum from Mr. Nesbitt just out of the blue?
A. It could have been thinking out of the blue.

Q. He could have --
A. It could have been thinking out of the blue. Maybe in some passing conversation, you know, but I never heard of Black & Decker having any interest in Coleman or Sunbeam or anything else.
Q. By this time had you talked to Mr. Nesbitt about a Sunbeam-Coleman combination?
A. Not that I am aware of.
Q. Do you know where he would have, that is, Mr. Nesbitt, would have gotten the idea for a "combined Sunbeam/Coleman entity?"
A. No. Look -- if the meeting with Dunlap had been set up around December 11, you know, people, Nesbitt or Maher or Gittis, may have been speculating that he either wanted to talk about getting a job which is why there was a synopsis of his employment contract or doing some kind of transaction, you know, but I don't know -- I don't know where Black & Decker comes from.
I never heard Black & Decker

NOT A CERTIFIED COPY

015555

Page 314

having any interest in Sunbeam or Coleman.
Q. Or a Sunbeam-Coleman combination?
A. Correct.
Q. By the way, you said you were -- withdrawn.
You said something about Mr. Dunlap may have been coming to your house to ask for a job.
Is that what you said?
A. You gave me this synopsis of his contract.
Q. I sure did. My question is: Did you say that one of the possibilities was that Mr. Dunlap was coming to your house on December 18 to ask for a job?
A. Somebody must have thought that. Why else would they give us a contract, a synopsis of his contract?
Q. What job did you think that Mr. Dunlap was coming to your house for?
A. I never saw this before but you gave me a piece of paper that gives a synopsis of Dunlap's contract on December 15.
Q. The piece of paper is addressed

Page 315

to you.
A. Addressed to three people.
Q. Is it addressed to you?
A. It is addressed to Howard Gittis, James Maher and Ronald Perelman.
I never saw this piece of paper before. Somebody must have come up with the idea that he might be looking for a job.
Why else would they have a synopsis of his contract?
Q. As I understand it your people, your analysts, Mr. Maher and Mr. Nesbitt, they were speculating that Mr. Dunlap was going to meet at your house in Palm Beach and ask you for a job?
A. Maybe. Maybe.
Q. Hand that back to me.
A. Okay.
Q. We will put that one away.
A. Okay.
Q. You can hand back 353 as well. I will get it out of your way.
A. Thank you very much.
Q. The court reporter will hand you

Page 316

what has been previously marked as Morgan Stanley Exhibit 165.
Do you have that in front of you?
A. Yes.
Q. Mr. Nesbitt testified under oath that he prepared this document on or about December 11, 1997 which is a comparison of Sunbeam's quarterly earnings as well as some additional analyses that appear on the other pages.
Would you like to take a minute and look through it or can I go ahead?
A. Go ahead.
Q. Have you seen before Exhibit Morgan Stanley 165?
A. 165 looks like it encompasses the previous one you showed me.
Q. It does indeed, sir, attach to it some pages from Exhibit 105. I can only tell you that is how the document was provided to Morgan Stanley by your company.
My only question is have you seen the document before?
A. Not that I recall.
Q. You can hand that back to me.

Page 317

Can you tell the jury why as of December 11, 1997 Mr. Nesbitt would have been doing comparisons of Sunbeam's quarterly earnings, analysis of cash versus a stock comparison between all stock and all cash if the two companies were combined, other -- and attaching other pro forma information on Sunbeam-Coleman combination, Mr. Dunlap was coming to your house to ask for a job?
MR. SOLOVY: Object to the form. Wait a second. Object to the form of the question as complex, compound and not really subject to one answer, in addition to asking him for somebody else's state of mind.
BY MR. BEMIS:
Q. You can answer.
A. I don't understand that but --
Q. Okay. You don't understand it?
A. I think I should make one thing clear. I would like to make one thing clear.
On December 18 there was a meeting held with Al Dunlap, Ronald

CONFIDENTIAL 015559

NOT A CERTIFIED COPY

Page 318

Perelman, Howard Gittis and Michael Price. Sometime prior to that meeting it was set up. It was not set up by me. It was set up between Michael Price and Howard Gittis.

I do not know when that meeting was set up. Sometime prior to that meeting there was obviously speculation as to what the meeting was going to be about. That would not be unusual.

I did not tell Mr. Maher or Mr. Nesbitt to the best of my knowledge and awareness to prepare any of these documents because I did not know specifically what Mr. Dunlap was coming for.

You have shown me today a whole series of documents. Some talk about Black & Decker, some talk about Mr. Dunlap's employment contracts and some talk about Sunbeam.

I have imagined that all of these were prepared to give some kind of background to the meeting held on December 18.

I mean, he obviously asked for a meeting not to talk to me about how good

Page 319

looking we are, to talk about something, so I imagine that was done in preparation for that meeting, not by me.

Q. Let me show you a document previously marked as MS 78.

The court reporter has handed you a document previously marked as MS 78. Do you have that document in front of you?

A. Yes.

Q. This document has an attachment to it.

Setting aside the handwriting which I don't want you to be concerned about, have you ever seen the document before?

A. No.

Q. Were you aware that on December 12, 1997 there was a meeting between Sunbeam and Coleman at which the parties discussed "synergies and cost savings in putting the two companies together."

A. Not that I recall, no.

Q. Did you tell Mr. Levin in December of 1997, before December 12, in a telephone call that --

Page 320

A. Wait. What is the date of this?

Q. Let me rephrase the question.

Before December 12?

A. Before December 12.

Q. Before December 12, 1997 did you tell Mr. Levin in a phone call that was -- withdrawn.

Let me try it again. It is getting late in the day for both of us.

Before December 12, 1997 did you participate in a telephone call with Mr. Levin and Mr. Gittis about --

A. Mr. Gittis.

Q. Mr. Gittis, once again, Gittis, I will get it down. One more time. Withdraw the question.

Did you participate in a telephone call before December 12 with Mr. Gittis and Mr. Levin at which you told Mr. Levin that Mr. Dunlap had expressed an interest in buying Coleman and that the two of you, that is, yourself and Mr. Gittis, wanted Mr. Levin to prepare materials relating to a meeting that was to take place with Mr. Dunlap's people several days

Page 321

later? Did you tell Mr. Levin that?

A. Who was meeting with Dunlap and his people? This question -- I don't understand the question.

Q. Then I will rephrase it for you. I don't want you to answer a question you don't understand.

Did you tell -- strike that.

Did you have a telephone conference with Mr. Levin sometime before December 12 where Mr. Gittis was also on the line and you asked Mr. Levin to prepare some potential cost savings that might be achieved in a combination between Coleman and Sunbeam?

A. I don't believe so.

Q. Did you tell Mr. Levin any time before December 12 that he should prepare materials relating to ideas for potential synergies between Coleman and Sunbeam?

A. I don't believe so.

Q. Were you aware that there was a meeting in MacAndrews & Forbes' offices on December 12 between representatives of MacAndrews & Forbes and Coleman and Sunbeam

NOT A CERTIFIED COPY

015557

to discuss the potential cost savings and synergies that are attached to the second page of Exhibit MS 78 that you have in front of you?

A. No.

Q. You are totally unaware of that meeting?

A. Totally unaware. This by the way is dated December 15.

Q. It is a fax referring to a meeting that took place the preceding Friday. That is why I was referring to December 12, if you read the cover.

You can hand that back to me unless you want to look at it some more.

A. Morgan Stanley was involved back then with these synergies, these cost savings?

Q. I am not trying to be rude to you. It is not my role to answer questions here.

A. I notice Mr. Kitts' name on the top.

Q. Please don't take my not answering the question as rudeness, please.

MR. SOLOVY: Let me ask you, Mr. Bemis, as points of inquiry. It is two minutes to go. You are tired, he is tired. How much longer do you want to go?

MR. BEMIS: If it is two minutes to go then my watch is a little bit off. I will be happy to stop right here. I thought we had about six or seven.

MR. SOLOVY: I was going by the --

THE VIDEOGRAPHER: I have two more minutes. 5:43.

MR. BEMIS: How much is on the tape?

THE VIDEOGRAPHER: The time I have is 5:43.

MR. BEMIS: If it is 5:43 on the tape we will adjourn for today and pick up tomorrow. I apologize for being a bad timekeeper.

THE WITNESS: I thank you very much.

MR. BEMIS: Off the record.

THE VIDEOGRAPHER: This concludes for today, November 17, 2004, the videotaped deposition of Ronald O. Perelman.

The total number of tapes used was four.

The time is 5:43 p.m.

(Time noted: 5:43 p.m.)

_____

RONALD O. PERELMAN

Subscribed and sworn to before me this day of 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That RONALD O. PERELMAN, the witness whose deposition is herein before set forth, was duly affirmed by me and that such deposition is a true record of the testimony given by such witness.

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

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 22nd day of November, 2004.

STEVEN NEIL COHEN, RPR

NOT A CERTIFIED COPY

01558

INDEX OF EXAMINATION

Witness

RONALD O. PERELMAN
By Mr. Bemis.....6

MORGAN STANLEY EXHIBITS

Exhibit Number Marked
171 Calendar.....17
425 Resignation.....61
172 Resolution.....79
423 Unanimous Written Consent.....88
424 Consent of Directors.....96
426 Document.....99
430 Affidavit.....103
211 Press Release.....128
244 13-D.....170
335 Prospectus.....224
431 Cover Jacket.....253
427 Outstanding Debt Analysis.....266

NOT A CERTIFIED COPY

015559

NOT A CERTIFIED COPY

015560

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

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

CASE NO. CA 03-5045 AI

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION
NOV 29 2004
COPY / ORIGINAL
RECEIVED FOR FILING

COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO. INC.'S FIFTH SET OF INTERROGATORIES

Plaintiff Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys and pursuant to Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure and the Court's October 14, 2004 Order, responds and objects to Morgan Stanley & Co., Inc.'s ("Morgan Stanley's") Fifth Set of Interrogatories ("Interrogatories") as follows:

INITIAL OBJECTIONS

1. CPH objects to the Interrogatories, including all Definitions and Instructions, to the extent they purport to impose upon CPH any requirements that exceed or are inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. CPH objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege, doctrine, immunity, or rule. CPH reserves the right to assert any and all privileges to which CPH is entitled under the law.

3. CPH objects to the definitions of "CPH" and "MAFCO" to the extent they include CPH's counsel in this litigation. CPH interprets these definitions to exclude Jenner & Block, LLP and Searcy Denney Scarola Barnhart & Shipley P.A., and their respective attorneys.

NOT A CERTIFIED COPY

4. CPH's response to any interrogatory is not intended and should not be construed as an acknowledgment that the requested information is relevant or that any persons identified actually possess knowledge or information relevant to the subject matter of this action.

5. CPH's objections and responses are based on a good-faith investigation. CPH expressly reserves the right to amend and/or modify its objections and responses.

6. CPH responds to Morgan Stanley's Interrogatories without waiving the Initial Objections. CPH incorporates, as though fully set forth therein, these Initial Objections into each of its responses.

NOT A CERTIFIED COPY

FURTHER OBJECTIONS

INTERROGATORY 1: Identify every instance in which Mafco or CPH engaged or retained Morgan Stanley between January 1, 1993 and March 30, 1998. Your response should identify the nature, subject, and purpose of each such engagement, the transaction or proposed transaction contemplated by each such engagement, and the name(s) of any Morgan Stanley employee or agents retained or consulted by Mafco or CPH.

FURTHER OBJECTION AND RESPONSE: CPH objects to this interrogatory as unduly burdensome because it seeks information already in the possession of Morgan Stanley and details concerning "every instance" in which Morgan Stanley was engaged or retained. MacAndrews & Forbes Holdings Inc. ("Mafco"), CPH, and their affiliates worked with Morgan Stanley on numerous occasions and in numerous capacities during this multi-year period, which ended more than six years ago. None of these companies keeps records of the sort that would allow for an easy or comprehensive determination of all of the engagements in which Morgan Stanley may have played some role. Thus, the information set forth below is necessarily incomplete and tentative, but CPH has made a reasonable effort to compile this response. CPH's investigation continues. CPH also notes that Interrogatory No. 1 constitutes multiple separate interrogatories. Subject to and notwithstanding its Initial and Further Objections, CPH states that

Morgan Stanley was involved in the following transactions with Mafco, CPH, or affiliated companies:

- In 1985, Morgan Stanley served as advisor to Pantry Pride, Inc. ("Pantry Pride"), a Mafco affiliate, in its acquisition of Revlon, Inc. ("Old Revlon").
- In 1986, Morgan Stanley served as an advisor to Pantry Pride in the sale of Old Revlon's pharmaceutical business to Rorer Group Inc.
- In 1989, Morgan Stanley served as an advisor to The Coleman Company, Inc. ("Old Coleman") during the acquisition by a Mafco affiliate of Old Coleman.
- In 1989, Morgan Stanley served as Old Coleman's financial advisor when Old Coleman reviewed the $460.5 million buyout proposal by former Old Coleman chairman Sheldon Coleman and other members of the Coleman family.
- In 1991, National Health Laboratories Incorporated ("NHL"), an affiliate of Mafco, completed a secondary public offering of its common stock, for which Morgan Stanley served as a co-manager.
- In 1992, National Health Care Group Inc. (an indirect Mafco subsidiary) sold 14 million shares of NHL in a registered offering through Morgan Stanley and other underwriters.
- In 1992, Morgan Stanley served as an underwriter for Old Coleman's February 1992 offering of $100 million in Guaranteed Pass Through Certificates due 2022.
- In 1992, Morgan Stanley served as a joint underwriting manager for the $83 million initial public offering by The Coleman Company, Inc. ("Coleman") of its common stock.
- In 1992, Revlon, Inc. ("Revlon") planned but did not complete a $120 million initial public offering of its common stock, which was to be co-managed by Morgan Stanley.
- In 1992, MacAndrews & Forbes Company ("Flavors"), a Mafco affiliate, retained Morgan Stanley and other underwriters in connection with a contemplated, but later withdrawn, initial public offering of its common stock.
- In 1992, Morgan Stanley co-managed an $85 million 12% senior debt offering for Flavors.
- In 1993, Morgan Stanley served as the financial advisor for NHL in connection with its proposed acquisition of Damon Corp.

NOT A CERTIFIED COPY

- In 1993-94, Morgan Stanley served as one of the underwriters for a $125 million senior subordinated notes offering by Marvel III Holdings Inc., a Mafco affiliate.

- In 1994, Morgan Stanley served as the financial advisor and dealer manager for NHL's tender offer for the outstanding shares of Allied Clinical Laboratories Inc.

- In 1994, Morgan Stanley served as the financing agent for $200 million of senior notes issued by NHL Intermediate Holdings Corp. II, a unit of National Health Laboratories Holdings Inc., a Mafco affiliate.

- In 1994, New World Communications Group Incorporated, a Mafco affiliate, arranged for $200 million in financing using Morgan Stanley, as agent.

- In 1995, Toy Biz, Inc. ("Toy Biz"), a Mafco affiliate, and one of its shareholders sold Toy Biz common stock in a $62 million initial public offering co-managed by Morgan Stanley.

- In 1995, a Mafco affiliate and Abex Inc. agreed to merge. Morgan Stanley served as a financial advisor to Mafco in this transaction.

- In 1996, Revlon completed a $180 million initial public offering of its common stock, which was co-managed by Morgan Stanley.

- In 1996, Morgan Stanley led an underwriting group in conjunction with the $48 million sale by Toy Biz and one of its shareholders of shares of Toy Biz common stock.

- In 1996, Consolidated Cigar Holdings Inc. ("Cigar"), a Mafco affiliate, completed a $124 million initial public offering of its common stock, which was co-managed by Morgan Stanley.

- In 1997, Cigar completed a $118 million additional offering of its common stock, which was co-managed by Morgan Stanley.

- In 1997, Mafco Holdings Inc., a Mafco affiliate, completed a "going private" transaction with its affiliate, Mafco Consolidated Group Inc. ("Mafco Consolidated"). Mafco Consolidated retained Morgan Stanley as a financial advisor to represent the minority interest in evaluating and negotiating the Mafco Holdings proposal.

In addition to the transactions listed above, in late 1997 and early 1998, Morgan Stanley (including at least William Reid, Robert Kitts, and Matt Grogan) sought to interest Mafco in a

NOT A CERTIFIED COPY

01559

transaction involving Gucci. In early 1998, Morgan Stanley (including at least Mark Perret and Edwin Datson) also sought to interest Mafco in possible European acquisition opportunities.

INTERROGATORY 2: Identify all communications between Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) and Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps between March 19, 1998 and March 30, 1998 concerning Sunbeam's sales during the first quarter of 1998, Sunbeam's March 19, 1998 Press Release, or any of the information contained in Sunbeam's March 19, 1998 Press Release.

FURTHER OBJECTION AND RESPONSE: Subject to and without waiving its Initial Objections, CPH states that a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition. Further, after the March 19, 1998 press release was issued, one or more CPH and/or Coleman representatives reached out to and spoke with one or more Sunbeam and/or Morgan Stanley employees concerning the subject matter of the interrogatory. Sunbeam and/or Morgan Stanley assured CPH and/or Coleman that Sunbeam would make the sales numbers it previously had projected for the first quarter of 1998 and the full year. Sunbeam and/or Morgan Stanley also represented that the March 19, 1998 press release had been issued out of an abundance of caution, solely at the behest of legal counsel, due to the debenture offering and not because there was any problem at Sunbeam that imperiled its previous projections. In addition, CPH had a request outstanding throughout this period pursuant to Section 6.8 of the Agreement and Plan of Merger among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and CPH dated as of February 27, 1998 (the "Holdings Merger Agreement") for, among other things, advice of any change or event that would be materially adverse. CPH further states that there were numerous communications between CPH

NOT A CERTIFIED COPY

and/or Coleman and Sunbeam and/or Morgan Stanley during this time period and Sunbeam and/or Morgan Stanley failed to inform CPH and/or Coleman of Sunbeam's true condition.

INTERROGATORY 3: Identify all inquiries or requests for information that Coleman, CPH, or Mafco (or any of their attorneys or financial advisors) made to Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps regarding Sunbeam's history, operations, financial performance, or projection that Sunbeam, Arthur Andersen, Morgan Stanley, or Skadden Arps failed or refused to answer.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. Subject to and without waiving its Initial or Further Objections, CPH states that prior to the March 30, 1998 closing, CPH made the following requests for information from Sunbeam and Morgan Stanley: (i) on or before February 23, 1998, CPH and Coleman representatives requested that Morgan Stanley and Sunbeam provide information about Sunbeam, including Sunbeam's history, operations, financial performance, and projections, but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (ii) on February 27, 1998, CPH and Coleman requested that Morgan Stanley and Sunbeam advise CPH and Coleman if Sunbeam's operations and/or financial performance changed in a material adverse manner (*see* § 6.8 of the Holdings Merger Agreement), but Morgan Stanley and Sunbeam did not provide truthful information to CPH and Coleman in response; (iii) a CPH representative attended Sunbeam's and Morgan Stanley's "roadshow" presentation for the Senior Subordinated Convertible Debenture offering on March 18, 1998, at which Sunbeam and Morgan Stanley misrepresented and concealed Sunbeam's true condition, and (iv) after the March 19, 1998 press release was issued, CPH and Coleman requested that Morgan Stanley and Sunbeam provide information concerning Sunbeam, including Sunbeam's operations, financial information, and

NOT A CERTIFIED COPY

projections, but Morgan Stanley and Sunbeam failed to provide truthful information to CPH and Coleman in response.

INTERROGATORY 4: For each of Morgan Stanley's Second, Third, and Fourth Set of Requests for Admission that CPH has denied, in whole or in part, state each fact that supports the denial. If CPH's denial is related to its objection to Morgan Stanley's definition of the term "CPH" in the Requests for Admission, state how CPH's response to the Request for Admission would change if CPH applied Morgan Stanley's definition.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects to Interrogatory No. 4 as overbroad insofar as it seeks identification of "all facts" that support CPH's denial of the requests for admission. CPH also notes that Interrogatory No. 4 constitutes multiple separate interrogatories. Subject to and without waiving its Initial or Further Objections, CPH states the following:

Morgan Stanley's Second Set of Requests for Admission:

No. 1: CPH did not retain CSFB. Rather, Coleman retained CSFB.

No. 3: Mafco did not retain CSFB. Rather, Coleman retained CSFB.

Nos. 4, 5, 11, 12, 17, 21: CSFB did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.

Nos. 9, 10, 13, 14: Wachtell Lipton, Rosen & Katz did not have the same responsibilities and relationship with Sunbeam as Morgan Stanley did with Sunbeam.

Nos. 16, 18, 20, 22: Wachtell, Lipton, Rosen & Katz performed customary legal services in connection with the Coleman Transaction.

No. 23: One or more of the pre-March 19, 1998 drafts of the Arthur Andersen comfort letters were communicated to Morgan Stanley on or about March 18, 1998 and pre-March 19, 1998 drafts of the comfort letter have been produced in this litigation.

NOT A CERTIFIED COPY

015557

Morgan Stanley's Third Set of Requests for Admission:

Nos. 9, 13, 17: Coleman did not close the March 30, 1998 Coleman Transaction. Coleman could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 10, 14, 18: CLN could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Nos. 11, 15, 19: CPH could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

No. 12, 16, 20: Mafco did not close the March 30, 1998 Coleman Transaction. Mafco could not have obtained the "comfort letters" described by Section 7.3(b) of the Public Merger Agreement prior to the March 30, 1998 closing of the CPH transaction.

Morgan Stanley's Fourth Set of Requests for Admission:

No. 1: The February 23, 1998 Letter was not drafted by counsel for CPH and was not signed.

No. 2: There is no evidence that the February 23, 1998 Letter is the agreement referred to in those merger agreement provisions.

Nos. 3, 4, 10, 11, 12, 13, 14: In negotiating the merger agreement, CPH requested and Sunbeam agreed to provide information reflecting any material adverse development in Sunbeam's performance or operations. The information referred to in these Requests plainly would have been within the scope of that provision. Morgan Stanley knew that Sunbeam had an

NOT A CERTIFIED COPY

affirmative obligation to notify CPH of any material adverse change and yet Morgan Stanley affirmatively assisted Sunbeam in concealing from and misrepresenting to CPH this information.

No. 5: CPH did not learn that 50% of Sunbeam's sales typically occurred in the last month of the quarter. Rather, CPH reviewed analyst commentary that suggested that in the third quarter of 1997, 50% of Sunbeam's sales occurred in the last month of the quarter.

No. 6: An analyst mentioned possible international sales pipeline filling.

No. 7: Not all Sunbeam Research Analysts decreased their estimates of Sunbeam's 1998 Earnings Per Share.

No. 8: No one told CPH representatives that Sunbeam's February 1998 sales were slow.

No. 15: Sunbeam and Morgan Stanley misrepresented and concealed the true facts concerning Sunbeam during the negotiations with CPH and Coleman.

No. 17: Morgan Stanley participated in the oral presentation of the Long Range Strategic Plan, which also was presented by both Morgan Stanley and Sunbeam in written form.

Nos. 18, 20, 21, 22: The facts known to Sunbeam and Morgan Stanley rendered those statements false.

No. 19: CPH lacks information sufficient to answer this request. CPH further states that Morgan Stanley adopted and vouched for the statements by incorporating them into Morgan Stanley's presentation.

No. 23: CPH wanted and accepted Sunbeam's stock on the basis of Sunbeam's and Morgan Stanley's representations concerning the condition and performance of Sunbeam, but CPH did not affirmatively request it.

No. 25: CPH exercised its rights by obtaining the right in § 6.8 of the Holdings Merger Agreement to receive notice of material adverse changes. Further, among other things, (a) CPH

NOT A CERTIFIED COPY

0155569

received and reviewed Sunbeam's Annual Report on Form 10-K for the year ended December 29, 1997; (b) a CPH representative attended one of the "roadshow" presentations made by Sunbeam and Morgan Stanley in connection with its offering of Senior Subordinated Convertible Debentures that were used to finance the acquisition; (c) a CPH representative obtained and reviewed the offering memorandum prepared and distributed by Sunbeam and Morgan Stanley in connection with the offering of the debentures; (d) CPH received and reviewed the March 19, 1998 press release drafted by Sunbeam and Morgan Stanley; (e) following its receipt of the March 19, 1998 press release, one or more CPH and/or Coleman representatives contacted and spoke with one or more Sunbeam and/or Morgan Stanley representatives concerning the release and Sunbeam's expectations for first quarter 1998.

No. 26: CPH does not have information sufficient to determine whether the handwriting on the identified documents is authentic.

No. 27: CPH does not believe that the documents on Exhibit 2 of the response meet the requirements of Florida Evidence Code ¶ 90.803(b). As to the remaining documents and all handwriting, CPH denies that or does not have information sufficient to determine whether those documents meet the requirements of Florida Evidence Code ¶ 90.803(a).

No. 28: CPH did not author the documents or handwriting in question.

INTERROGATORY 5: State the value that CPH and/or Mafco ascribed to the warrants that they received from Sunbeam pursuant to the August 12, 1998 settlement between CPH and Sunbeam, including but not limited to the value that CPH and Mafco placed upon the warrants for tax or accounting purposes and an identification of all persons from CPH, Mafco, or their outside advisors involved in the valuation.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is overbroad and not reasonably calculated to lead to the

NOT A CERTIFIED COPY

16div-021432

discovery of admissible evidence to extent that the interrogatory is not limited as to time. CPH further objects that neither the tax treatment nor the accounting treatment of the warrants is a relevant issue in this case. CPH further objects that it has not placed the treatment of the warrants for taxation purposes at issue in this action, and Morgan Stanley has failed to show that it is unable to obtain discovery concerning the value of the warrants from other sources. CPH further objects to this interrogatory to the extent that it calls for information protected by the attorney-client privilege, work product doctrine or the accountant privilege. Moreover, CPH further objects to this interrogatory as vague and ambiguous in its use of the term "value," which is susceptible to different meanings.

Subject to and without waiving its Initial or Further Objections, CPH states that the warrants had no value to CPH when they were received, or at any time thereafter. CPH refers to the November 18, 2004 corporate representative deposition of CPH (Mr. Laurence Winoker), the November 17 and November 18, 2004 deposition of Ronald O. Perelman, and the November 19, 2004 deposition of Howard Gittis for information concerning the economic value ascribed to the warrants by CPH and its management, as well as CPH's treatment of the warrants in CPH's books and records.

INTERROGATORY 6: Identify every potential bidder and/or acquirer for Coleman that discussed a proposed acquisition of Coleman with Mafco, CPH or Coleman between January 1, 1997 and March 30, 1998, including without limitation "the most likely potential bidder" referenced at CPH 0634057 of the 2/25/98 Coleman Board Meeting Minutes. Your response should include the dates, terms and outcome of any such discussions.

FURTHER OBJECTION AND RESPONSE: Morgan Stanley has exceeded any conceivable calculation of its 30 permissible interrogatories under Rule 1.340 of the Florida Rules of Civil Procedure without securing the agreement of plaintiff or a court order. CPH further objects that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its Initial and Further Objections, CPH

NOT A CERTIFIED COPY

states that the "most likely potential bidder" referenced in the February 25, 1998 Coleman Board meeting minutes was Brunswick Corporation. In further response, CPH incorporates by reference the November 19, 2004 deposition testimony of Howard Gittis concerning the contact with Brunswick.

Dated: November 24, 2004

As to objections:

By: _____

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

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

NOT A CERTIFIED COPY

015572

16div-021434

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and federal express to counsel listed below on this 24th day of November, 2004:

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

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

Mark C. Hansen
Kellogg, Huber, Hansen, Todd
& EVANS, P .L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Deirdre E. Connell

NOT A CERTIFIED COPY

I, Steven L. Fasman, being duly sworn, depose and say that I am authorized on behalf of Coleman (Parent) Holdings Inc. and, on its behalf, I have read the foregoing COLEMAN (PARENT) HOLDINGS INC.'S RESPONSES AND OBJECTIONS TO MORGAN STANLEY & CO., INC.'S FIFTH SET OF INTERROGATORIES, and to the best of my knowledge and belief the response contained therein is true and correct.

STEVEN L. FASMAN

Subscribed and sworn to before me
this 22nd day of November, 2004.

KAREN A. DeMECO
Notary Public, State of New York
No. 01DE4688502
Qualified In Queens County
Commission Expires March 30, 2007

NOT A CERTIFIED COPY

099 P02 NOV 24 '04 11:51

NOT A CERTIFIED COPY

015575

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

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

RONALD O. PERELMAN

New York, New York

Thursday, November 18, 2004

NOT A CERTIFIED COPY

015576

Reported by: Steven Neil Cohen, RPR

Job No. 167564

November 18, 2004
9:09 a.m.

Continued Videotaped Deposition of RONALD O. PERELMAN, taken by Defendants, pursuant to notice at the offices of MacAndrews & Forbes, 35 East 62nd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Attorneys for Coleman (Parent) Holding, Inc.
BY: JEROLD S. SOLOVY, ESQ.
RONALD L. MARMER, ESQ.
DEIRDRE E. CONNELL, ESQ.

KIRKLAND & ELLIS, LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.
BY: LAWRENCE P. BEMIS, ESQ.

BARRY F. SCHWARTZ
35 East 62nd Street
New York, New York 10021
Attorney for MacAndrews & Forbes Holdings Inc.

CARLTON FIELDS
Esperante
222 Lakeview Avenue
Suite 1400
West Palm Beach, Florida 33401-6149
Attorneys for Morgan Stanley
BY: JOSEPH IANNO, JR., ESQ.

ALSO PRESENT: Steven Fasman
Heather Zamora-Hagg, Videographer
Katie Piotrowski

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: We are now on the record today, November 18, 2004. The time is 9:09 a.m.

This marks the beginning of tape number one, volume two of the continuing videotaped deposition of Ronald O. Perelman.

The witness has been previously affirmed. Please begin.

RONALD O. PERELMAN,
called as a witness by the Defendants, having been previously duly affirmed, testified further as follows:

BY MR. BEMIS:

Q. Good morning, Mr. Perelman.
A. Good morning.
Q. Yesterday when we adjourned we were discussing events in December of 1997. Are you there with me?
A. Yes.
Q. Did you participate in any of the discussions to retain Credit Suisse First Boston by Coleman?
A. I don't believe so.
Q. I apologize for not putting that

NOT A CERTIFIED COPY

015577

Page 332

on.
Let me show you what has previously been marked as Morgan Stanley Exhibit 75 which is a chronology that has been identified as having been prepared by Wachtell, Lipton which was counsel retained by MacAndrews & Forbes and Coleman in the transaction.
I would ask you to look at the Exhibit A attached thereto. You will see it begins with some dates early December 1997.
A. Yes.
Q. Look at the date December 12, 1997 in the second paragraph in particular.
A. Right.
Q. It refers to a meeting that you had with Mr. Gittis and Mr. Maher, Mr. Gordon Rich of Credit Suisse First Boston as well as Mr. Levin, do you see that?
A. Yes.
Q. That meeting does not appear on your calendar that I can find.
I meant your cards.

Page 333

Did you attend the meeting on December 12 that is referred to there?
A. Possibly.
Q. As you sit here today do you have any specific recollection of being involved in any way in the retention discussions having now looked at Morgan Stanley Exhibit 75?
A. No.
Q. Let's move forward then to the meeting with Mr. Dunlap at your home in Palm Beach.
I want to show you a document that we will mark as Morgan Stanley Exhibit 174.
(Morgan Stanley Exhibit 174 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 174 in front of you?
A. Yes.
Q. Did you receive this document which is -- purports to be a letter from Al Dunlap to Ron, which I assume is you, Mr. Perelman?

Page 334

A. I don't recall ever seeing this letter.
Q. In this exhibit, MS 174, there is reference to a phone call earlier in the day on December 16.
It says, talk but I phone call.
Do you recall talking to Mr. Dunlap in advance of your meeting at your house on December 18?
A. No, but I assume it was a phone call.
Q. Let's turn to the meeting on December 18. I think we established earlier that Mr. Price was present, Mr. Dunlap was present, you were present and Mr. Gittis was present, correct?
A. Yes.
Q. If I ask you this already I apologize.
How long did the meeting last at your house?
A. Half an hour, 45 minutes, something like that. I don't think it was very long.
Q. Could you tell me what happened

Page 335

at the meeting?
A. Generally?
Q. Generally -- why don't we start there and then we will get into some more details.
A. Generally we exchanged some pleasantries. Dunlap then indicated that he wanted to buy Coleman. He offered a price for the purchase of Coleman. I said, no. He then put on a little show and he left.
Q. Did -- what was -- what was the price that Mr. Dunlap offered and to which you said, no?
A. I don't recall.
Q. In the course of the meeting did -- withdrawn.
Did Mr. Dunlap storm out of the meeting when it was over?
A. He left in a huff.
Q. H-U-F-F?
A. H-U-F-F.
Q. I have read a couple descriptions of the meeting and I want to ask you if they are accurate.

NOT A CERTIFIED COPY

015578

According to -- let me ask you this.

Did Mr. Dunlap call you a pig at the meeting?

A. Not that I recall.

Q. Did he tell you that Coleman was a piece of shit?

A. Not that I recall.

Q. Did you tell him that you, Mr. Perelman, wanted $30 a share for Coleman?

A. Yes.

Q. Did Mr. Dunlap tell you that it was only worth 20 bucks?

A. I don't recall the price but he said a price.

Q. Did you tell him -- strike that.

Did Mr. Dunlap tell you that the price he was offering was an early Christmas present?

A. I don't recall that.

Q. Did Mr. Dunlap get agitated during the meeting?

A. I don't know if "agitated" is the right word. He got excited during the

meeting.

Q. Did he turn red?

A. I don't know if he turned red.

Q. At a point in the meeting did Mr. Dunlap tell you in so many words, fuck you?

A. Possibly.

Q. Did he in so many words tell you, screw you?

A. Possibly.

Q. Did Mr. Dunlap in so many words say to you, to you and Mr. Gittis, you guys don't know what the fuck you are talking about?

A. Possibly.

Q. Did you respond at some point to what Mr. Dunlap said with, fuck you?

A. No.

Q. Never used that word?

A. No.

Q. Did Mr. Dunlap tell you at the meeting on December 18 that he was going to save Coleman for you, Mr. Perelman?

A. No.

Q. Nothing like that?

A. Not that I recall.

Q. Did he tell you I am going to do that because I did it at Scott and Sunbeam, anything like that?

A. Not that I recall.

Q. Did he make any reference, that is, Mr. Dunlap, to his work at Scott and Sunbeam?

A. He was very animated and excited about what a fabulous manager he was, how good he was and he we should do this transaction with him.

Q. Did Mr. Gittis say -- part of it is my accent, it is not intentional.

A. That is not hard.

Q. It is also my midwest accent that sounds improper to you.

Did you, during the meeting with Mr. Dunlap, hear him say, I give heart attacks?

A. Possibly something like that.

Q. Was that in reference to being told to calm down because Mr. Dunlap was going to have a heart attack?

A. Something like that.

Q. Did Mr. Gittis say at the meeting for Mr. Dunlap to calm down because whether we make this deal or not Ron isn't going to be any more or less rich?

A. I don't know.

Q. You don't know --

A. What is that comment, whether we make this deal or not Ron --

Q. Will be any more or less rich?

A. I don't think he would have said that.

Q. At the conclusion of the meeting was -- would you describe Mr. Dunlap as agitated at the end of the meeting?

MR. SOLOVY: Object to the form of the question.

BY MR. BEMIS:

Q. Withdrawn.

At the end of the meeting would you describe Mr. Dunlap as agitated?

A. I am not sure. I don't know how much of it was a show, how much of it was true agitation. I thought it was hysterical. I was just laughing.

Q. Mr. Dunlap was using words like

NOT A CERTIFIED COPY

015579

"fuck you" and you were laughing?
A. I don't know. I said to you I don't know if he used "fuck you."
Q. I thought you said possibly.
A. Possibly but I don't know if he did.
Q. Whatever it was you were laughing at him?
A. If he would have said that I would have laughed. If he called me a pig I would have laughed.
Q. Did Mr. Dunlap at any point at the meeting on December 18 at your home tell you that you would never make a deal for Coleman?
A. Why would he tell me that?
Q. Did Mr. Dunlap ever say to you, Perelman, you should never listen to your lawyers?
A. Not that I recall.
Q. Did Mr. Dunlap say to you at the conclusion of the meeting words to the effect, fuck you and fuck your company?
A. Maybe. This was not a serious meeting.

Q. Let me show you what has been marked as Morgan Stanley Exhibit 408 in an earlier deposition.
Do you have that in front of you?
A. Yes.
Q. Please turn to paragraph 37 of this document which is the complaint. Tell me when you are there.
Are you there?
A. Yes.
Q. My understanding is you told me you did not see the complaint filed by the plaintiff in this case before it was filed, correct?
A. That is true.
Q. In paragraph 37 there is a reference to, in the first sentence, to Morgan Stanley laying the groundwork for a meeting in December 1997 in Palm Beach.
Did -- to your knowledge, did Morgan Stanley have any role in setting up the meeting at your house on December 18?
A. Not that I am aware of.
Q. In the same paragraph there is a statement in the last sentence that reads

as follows: "During the December 1997 Palm Beach meeting when CPH rejected Dunlap's initial all stock offering Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out."
Do you see that sentence?
A. Yes.
Q. Is that an accurate description of what happened at the meeting?
A. Yes.
Q. So you do remember Mr. Dunlap now cursing?
A. I don't know if he said fuck you.
Q. You remember him cursing?
A. Yes, he cursed, but I don't know if he said fuck you, or fuck your company.
You were very specific.
Q. I was.
I also said that he said your company was a piece of shit. That would be cursing, would you agree with me?
A. Yes.
Q. Is the reference to an all-stock offer correct in that sentence?
A. I believe so.

Q. Having looked at this, does this in any way refresh your recollection of any response you gave to Mr. Dunlap, you and Mr. Gittis, with regard to Mr. Dunlap's offer?
A. We said, no, and we thought the meeting was hysterical. We did not take it seriously.
Q. My question -- and then we will move on to something else.
Did you respond in any way to the all cash offer -- excuse me -- all-stock offer such as, no, we are not interested in stock, we would rather have cash, anything like that?
A. The only recollection I have is responding to the price.
Q. You don't recall what -- excuse me.
You don't recall what Mr. Dunlap offered; is that correct?
A. That is correct.
Q. You do recall responding $30 per share?
A. That is what I wanted, yes.

NOT A CERTIFIED COPY

015580

Q. If you could hand that back to me we are done with that?
Are you aware as of at least December 1997 --
MR. SOLOVY: December 18.
MR. BEMIS: Let me withdraw the question and start over. I think I probably misspoke.
BY MR. BEMIS:
Q. Are you aware of any facts as of December 18, 1997 as you sit here today that Morgan Stanley was engaged in a fraudulent scheme with Mr. Dunlap or Sunbeam to defraud CPH, the plaintiff in this case?
A. Yes.
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. What are those facts as of December 18, 1997?
A. Yesterday you showed me a memo from the company, Sunbeam, to Morgan Stanley indicating the synergies that Morgan Stanley and Sunbeam thought could be

derived out of this transaction so that clearly as of that moment which was December 15 Morgan Stanley was intimately involved in the details of the Sunbeam business.
Q. Anything other than that document as you sit here today that you believe shows that Morgan Stanley was engaged in a fraudulent scheme with Sunbeam as of December 18, 1997?
A. Not that I can recall right now.
Q. Just so the record -- let me show you that December 12 document one more time so the record is clear of what you were referring to.
I have handed you what the court reporter -- withdrawn.
The court report has handed you Morgan Stanley Exhibit 78 which is page 2 of the document, the listing of synergies that you were just referring to in your testimony.
MR. SOLOVY: Object to the form of the question.
THE WITNESS: First of all, this

is a December 15 document. I don't know, did you want to hand me a December 12 document?
BY MR. BEMIS:
Q. If I said December 12 I misspoke. Let me withdraw the question.
Is the document, MS 78, that I -- that the court reporter handed you the document that you were referring to earlier?
A. The two pages, yes.
Q. The second page being a listing of so-called synergies. That is the synergies you were referring to, correct?
A. No. The two pages refer to the synergies.
Q. Do you know who prepared the second page without the handwriting of MS 78?
A. No.
Q. You can hand that back to me.
Did you discuss your meeting with Mr. Dunlap on December 18 with anyone at MacAndrews & Forbes after the meeting was over?

A. I am sure we did.
Q. Do you have a specific recollection of doing so?
A. Right after the meeting Gittis and I were hysterical.
Q. What do you mean right after the meeting you and Mr. Gittis were hysterical?
A. We stayed together for a couple of minutes.
Q. You stayed together at your house?
A. Yes.
Q. That is where you and Mr. Gittis were hysterical?
A. Yes. We thought --
MR. SOLOVY: Excuse me. He didn't finish.
MR. BEMIS: I apologize. I thought he was done.
THE WITNESS: We thought his -- Dunlap's behavior quite funny.
BY MR. BEMIS:
Q. Did you tell anyone else at MacAndrews & Forbes or Coleman for that matter about the meeting?

NOT A CERTIFIED COPY

015581

A. Not specifically that I recall but I am sure the other people at MacAndrews were made aware of the meeting.
Q. Can you tell me what happened next with regard to any proposal that -- withdrawn.
What happened after the meeting with -- on December 18 with regard to Mr. Dunlap and Sunbeam's proposal even though it was rejected at the meeting?
What is the next thing that happened that you remember?
A. Say that again.
Q. What is the next thing that you remember happening in connection with the Sunbeam-Coleman transaction after the meeting on December 18?
A. That day?
Q. No, after December 18.
A. I got a call from Morgan Stanley.
Q. When was that? Is that the Bill Reid call?
A. Yes.
Q. I take it after December 18 you did not participate in any discussions or

negotiations with anyone at Sunbeam about a possible Coleman-Sunbeam transaction until Mr. Reid called; is that fair?
A. I believe that is the case, yes.
Q. Do you know if Mr. Gittis participated in any such discussions with anyone about a Coleman-Sunbeam transaction before Mr. Reid's call?
A. Not that I am aware of.
Q. Just as an example, I am not suggesting you did, did you speak or did anyone at MacAndrews & Forbes to your knowledge speak with Michael Price after the December 18 meeting and before Mr. Reid's call?
A. Possibly.
Q. You don't know as you sit here today?
A. That is correct.
Q. Can you tell me, at least as of the December 18 meeting, well -- withdrawn.
As of Mr. Reid's call which I think we placed sometime in January, we will get to that in more specifics in a minute, can you tell me if MacAndrews & Forbes had done any type of due diligence about Sunbeam?
A. Not that I am aware of.
Q. Would it be fair to say as of December 18 -- withdrawn.
Would it be fair to say that up to the time of the phone call with Mr. Reid in January of 1998 that as far as you were concerned a deal with Sunbeam if there was one was dead in the water?
A. As far as I was concerned.
Q. Yes?
A. Yes.
Q. Did you -- let me show you what has been marked as Morgan Stanley Exhibit 418.
MR. BEMIS: Would you mark that, please.
(Morgan Stanley Exhibit 418 marked for identification)
BY MR. BEMIS:
Q. I have hand -- I have asked the court reporter to hand you Morgan Stanley Exhibit 418.
Do you have that in front of you?

A. Yes.
Q. Have you ever seen this document before?
It is dated December 22, 1997.
A. I don't believe so. What is this about?
Q. I think it is about what it says. If you haven't seen it before I don't have anymore questions for you.
A. Can I see that again?
Q. Sure.
Let the record show I am handing the witness back Exhibit Morgan Stanley 418.
A. What is that?
Q. It is an Exhibit 418.
A. Where did it come from?
MR. SOLOVY: He can't answer that, Mr. Perelman. He just has to conduct his examination.
MR. BEMIS: Again, I apologize. I am not trying to be rude. That is the rules we have to go by.
BY MR. BEMIS:
Q. Let's turn to the telephone call

NOT A CERTIFIED COPY

015582

Page 352

with Mr. Reid.
Am I correct it was a telephone call that you received?
A. I believe so.
Q. Did you know William Reid?
A. Yes.
Q. How did you come to know him?
A. Morgan Stanley had been our investment banker for many years.
Q. What was Mr. Reid's relationship with MacAndrews & Forbes? Was he your -- Morgan Stanley's contact with MacAndrews & Forbes?
A. One of them, yes.
Q. Had you personally done business with Mr. Reid before?
A. Yes.
Q. What was your opinion of him?
A. I thought he was very smart, very nice, very good guy.
Q. At the time that Mr. Reid called had you had any communications, you, personally, any communications with him before the phone call about a possible Sunbeam-Coleman transaction?

Page 353

A. I don't believe so.
Q. Are you aware of anyone at MacAndrews & Forbes or Coleman having any communications with Mr. Reid before the telephone call to you?
A. Not that I recall.
Q. Up to December -- up to this phone call with Mr. Reid in 1998 are you aware of anyone at either Coleman or MacAndrews & Forbes having any communications directly with Morgan Stanley about a Coleman-Sunbeam transaction?
A. Not that I recall.
Q. Would you tell the jury what Mr. Reid said to you and what you said to him on this telephone call when you spoke in January of 1998?
A. Generally he said that Dunlap wants to do a transaction with Coleman. I said we were apart on price before. He said we can come together on price, let's get together and sit down, something to that effect.
Q. Did you agree to get together and see if you could come together on price?

Page 354

A. I don't know if I specifically agreed to get together but I said let's get our people together.
Q. Would you consider there anything improper for Mr. Reid to call you to see if you were interested, that is, MacAndrews & Forbes, in continuing discussions?
A. No.
Q. Did Mr. Reid discuss a price at all during these discussions?
A. Specific price?
Q. A specific price that a transaction might be done.
A. I think it was clear that it would be close to my asking price of $30.
Q. When you say "it was clear," you were clear that it would have to be close to your asking price?
A. I think he was clear that there was movement to get there.
Q. Did the two of you discuss in this telephone call whether the consideration would be paid in cash or stock or a combination of the two?
A. I don't believe so.

Page 355

Q. Did you have any discussion about when a transaction might be completed?
A. I believe he indicated that they want to move quickly.
Q. They being Sunbeam wanted to move quickly?
A. Yes.
Q. That would be consistent with the press release that you asked me about where Sunbeam announced the -- drafted a press release announcing in December a transaction between Coleman and Sunbeam?
MR. SOLOVY: I object to the form of the question. It is strictly conjecture. He never saw the document.
THE WITNESS: The answer would be, no.
BY MR. BEMIS:
Q. Did you discuss at all with Mr. Reid whether a transaction could be done quickly if the parties could agree on price and form of consideration?
A. Say that again.
Q. Did you discuss with Mr. Reid whether a deal could be done quickly if the

NOT A CERTIFIED COPY

015583

Page 356

parties agreed on price and the form of consideration for the Coleman stock?
A. I don't know if I -- this was a simple transaction to get done. This was not hard. If both parties wanted to come to an agreement this could get done quickly.
Q. How long did you and Mr. Reid talk in this conversation?
A. A couple of minutes.
Q. After the -- strike that.
How was the conversation left with Mr. Reid?
A. I am not quite sure whether he would have his people call the MacAndrews people or the Coleman people or we would call him. I am not sure how it was followed up or if Maher would call him. It was picked up after that.
Q. At some point after the conversation there were further communications obviously between MacAndrews & Forbes and Sunbeam and Morgan Stanley, correct?
A. And Morgan Stanley.

Page 357

Q. There were -- after the meeting -- after the conversation with Mr. Reid did you have anymore conversations with him about the Coleman-Sunbeam transaction up to the closing on March 30?
A. If I saw him at a meeting I would have walked in and said hello and been a party to those conversations but I don't recall any one-on-one independent conversations.
Q. Is it fair to say that after this conversation with Mr. Reid in January of 1999 -- 1998, that the two of you had no further substantive conversations about the transaction that you can recall today?
A. No. I didn't say that.
Q. What substantive conversations did you have with Mr. Reid after that phone call?
A. I didn't say there were any. I said I do not recall any one-on-one conversations with Mr. Reid but had Mr. Reid been in meeting that I would have attended then he would have been a party to those conversations as I would have.

Page 358

Q. Do you recall any particular meeting that you and Mr. Reid attended after this telephone call?
A. Specifically at this point, no.
Q. Would you look at Morgan Stanley Exhibit 75 in -- which should be in front of you? That is the chronology again.
A. Right.
Q. There is a reference to the -- what I believe is the call with Mr. Reid under the date early January 19981.
A. Yes.
Q. Would you read the description to yourself that is in that paragraph?
A. Yes.
Q. Is that in your view an accurate description of your conversation with Mr. Reid in early January 1998?
A. Yes.
Q. What was your -- your next involvement in the discussions concerning the Sunbeam-Coleman transaction?
A. I just participated from a distance at that point.
If meetings were held in the

Page 359

office for due diligence or for Morgan Stanley presentations or the like I may or may not have popped in or out of them.
I would have reviewed the results of the due diligence with Maher and possibly Nesbitt and would have been apprised of the negotiations between Maher and Morgan Stanley.
Q. After the phone call with Mr. Reid in January of 1998 did you instruct Mr. Maher to proceed with negotiations?
A. I don't know if I instructed him to proceed with negotiations. I instructed him to, let's see what we can do here.
Q. Fair enough.
Is it fair then for the jury to understand that after the meeting with -- excuse me -- the telephone call with Mr. Reid that you did give Mr. Maher the task of continuing the discussions about the Coleman -- what becomes the Coleman-Sunbeam transaction?
A. Yes.
Q. Then from that point forward did you rely upon Mr. Maher to conduct the

NOT A CERTIFIED COPY

015584

Page 360

negotiations on behalf of MacAndrews & Forbes in consultation with you?
A. With Morgan Stanley, yes.
Q. So when you say with Morgan Stanley, I am asking -- I was asking on the MacAndrews side. My question may not have been clear. Let me try one more time.
Is it fair to say after the telephone call with Mr. Reid that you tasked Mr. Maher with, on behalf of MacAndrews & Forbes, with continuing the discussions concerning what becomes the Coleman-Sunbeam transaction?
A. With Morgan Stanley.
Q. With Morgan Stanley or Sunbeam?
A. With Morgan Stanley.
Q. Did you have someone else that -- strike that?
Was there anyone else in MacAndrews & Forbes other than Mr. Maher that you specifically tasked with continuing these discussions with Morgan Stanley, if you want to put it that way?
A. I don't believe so, no.
Q. Then -- withdrawn.

Page 361

Did you also -- you said you would have reviewed with Mr. Maher the results of any of his due diligence, correct?
A. The due diligence that was going on, that is correct.
Q. Did you do that?
A. Yes.
Q. Were you satisfied at all points with Mr. Maher's due diligence?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. As -- let me withdraw the question.
Were you satisfied with the results of Mr. Maher's due diligence as he reported it to you?
A. You are making it seem that Mr. Maher was the only one doing due diligence.
Mr. Maher reported to me as to the due diligence that was being done by many people.
Q. Let me ask it then this way.
Were you satisfied with the

Page 362

results or the reports that Mr. Maher gave you about the due diligence that was being done either by him or by people who were reporting to him?
A. Or people reporting to Jerry Levin, yes.
Q. Did there come a point in time during the discussions where you, Mr. Perelman, on behalf of MacAndrews & Forbes, made a decision as to the form of consideration that you would find acceptable in a transaction with Sunbeam assuming the price was agreed to?
A. Ask that again please.
Q. I thought you might ask me to do that.
Did there come a point in time in the discussions that you, Mr. Perelman, agreed upon a form of consideration, that is, combination of either cash and stock or all stock or all cash?
A. With who?
Q. With Sunbeam.
A. I still don't understand the question.

Page 363

Q. Let me see if I can do it a different way.
In the final documentation and at the closing, the form of consideration that MacAndrews & Forbes received was a combination of cash, stock and assumption of debt, correct?
A. Correct.
Q. Did there come a point in time when you personally made the decision in the negotiations that that was indeed the form of consideration that you wanted, those three components?
A. That was not the form of consideration I wanted.
Q. What was the form of consideration that you wanted?
A. I wanted all stock.
Q. Why did the transaction -- strike that.
At one point in the transaction -- withdrawn.
When did you decide to accept something rather than all stock from Sunbeam?

NOT A CERTIFIED COPY

015585

A. That was negotiated during the process. Sunbeam wanted more cash in the transaction and less stock and I wanted more stock in the transaction and less cash.
Q. Is it fair to say that at the time the parties signed the merger agreements that the agreement that had been reached was some form of compromise between your desire to receive all stock and Sunbeam's desire to do the transaction as you described it?
A. By definition, yes.
Q. There was a meeting that, that took place, and has testified to --
A. Can I get some more coffee?
Q. You may have all the coffee in your office that you want.
MR. BEMIS: Off the record.
THE VIDEOGRAPHER: Going off the record. The time is 9:52 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 9:53 a.m.
BY MR. BEMIS:

Q. Did you have any involvement in the drafting of the confidentiality agreements that are referenced in the merger agreements?
A. No.
Q. Did you ever see them?
A. I don't believe so.
Q. Let me show you just one of them and then if you haven't seen them we will move on to another topic.
Let me show you what has been previously marked as Morgan Stanley Exhibit 133.
The reporter has handed you what has been marked previously as Morgan Stanley 133.
Do you have that in front of you?
A. Yes.
Q. This document was signed by Mr. Shapiro and countersigned by Mr. Fannin. Have you ever seen it before?
A. No.
Q. Then you can hand that back to me.
There is a reference in the

merger agreements, both the CLN Holdings merger agreement which is Morgan Stanley Exhibit 93 and in the Coleman Merger Agreement, for shorthand, which is Morgan Stanley Exhibit 117 to a second confidentiality agreement which is dated February 23, 1998.
Did you ever see that document?
A. I don't believe so.
Q. Let's move forward into February. I want to move forward into February of 1998.
Did you participate in a meeting or meetings that took place on February 23, 1998? If it helps you you can refer to MS 75.
A. I don't believe so but I can't recall.
Q. I would like to show you now a document previously marked as Morgan Stanley Exhibit 84.
Do you have that exhibit in front of you?
A. Yes.
Q. Without regard to the handwriting

that may appear on the document, have you ever seen this document before?
A. I believe so.
Q. When did you -- did you see it in your deposition preparation?
A. No.
Q. When did you first see this document?
A. I would imagine right around this time.
Q. Can you tell us the circumstances how you came to see the document?
A. I believe this and the Morgan Stanley document you showed me yesterday came out of the due diligence review.
Q. Let me, just so we are -- I want to make sure we are on the same page with what documents we are talking about.
Let me show you Exhibit Morgan Stanley 187. I am going to hand you again Morgan Stanley Exhibit 85 and please take a look at it and tell me if that is the document you were referring to.
A. Yes.
Q. Did you see Exhibits -- Exhibit

NOT A CERTIFIED COPY

015586

Page 368

85 at or about the same time that you believe you saw Exhibit 84?
A. I believe in the same time frame.
Q. So you saw them sometime -- did you see them before or after the signing of the merger agreements which were signed on February 28, on a Saturday?
A. I believe before.
Q. Did you see them in a meeting or did you just have them sent to you and you reviewed them by yourself?
A. I don't know.
Q. How much time did you spend reviewing the documents?
A. Specifically, I can't recall but I read through them.
Q. Did you -- you can set those aside for the time being.
Did you have any discussions with anyone with Morgan Stanley about either Exhibit 84 or 85 that we just looked at?
A. I don't believe so.
Q. Did you discuss Exhibits 84 or 85 with anyone from Credit Suisse First Boston?

Page 369

A. I believe that these two documents came about in presentations being made to our people both by Morgan Stanley and Sunbeam or Sunbeam alone.
If these presentations occurred in our office I would have stopped in for part of them.
If they occurred outside of our office then I would not have. So to the extent that these would have occurred with Morgan Stanley here in our office, then I would have popped in and been a part of them.
Q. Did you have any discussions with Mr. Levin that you can recall as you sit here today about Morgan Stanley Exhibit 84 which is the Sunbeam long range strategic plan, specifically, now about this document?
A. We talked about the Sunbeam company in great length amongst ourselves between Levin and Jim Maher and myself and Howard Gittis.
This particular document was Jerry Levin's document because I noticed

Page 370

Jerry Levin's handwriting on here.
Q. Now you are referring to Morgan Stanley 84?
A. Yes.
Q. Could you please continue?
A. Obviously he added handwritten notes that came from the meetings and he would have brought me up to date on these.
Q. If you will turn to page -- turn to page -- I will give you a Bates number for it because I don't think this is paginated in a way that is easy to work with.
Turn to page Bates numbered CPH1324771.
A. Yes.
Q. Where there is the line item, net sales, it reads, "Jan. slow," and then February directly below Jan.
Do you see that?
A. Yes.
Q. You discuss -- did you discuss with Mr. Levin his handwritten notes on this page that net sales Jan. was slow?
A. Yes, but you have to continue on.

Page 371

"Jan. slow, operating profit 296" which is what they were told in front of Morgan Stanley that the company was going to do and that January slow was of no concern to anybody.
If they were going to hit the 296 operating profit, their margins were improving from 20 to 25 percent.
It is the whole story here. This is a very, very bullish story that they were being told here on, whenever it was, February, because it does not say slow here. I assumed that they were told that February was going to be very strong.
Q. You don't know what was said about February because you weren't at the meeting, correct, where this was discussed?
A. I see the notes here though. You are asking me about the notes.
Q. Yes, sir, I was.
A. I think the notes should be taken in context for the whole notes that January is slow, February good and 296 to 328 million dollars of operating profit.
Q. I don't see "February good" on

NOT A CERTIFIED COPY

015587

Page 372

here. Where do you see that?
A. By lack of slow I assume February good.
Q. In any event, you know this is Mr. Levin's handwriting, correct?
A. That is correct.
Q. Mr. Levin would probably be the person who would best know what he meant when he wrote these notes?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I see the notes all the way down.
BY MR. BEMIS:
Q. In any event --
A. And I know what we discussed.
Q. Let me return to what you discussed.
You know you discussed with Mr. Levin after this February 23 meeting --
A. I don't know when the meeting was.
Q. If it would help you you can look at the chronology but other witnesses have testified that was on February 23, if that

Page 373

helps.
If you want to look at the chronology do so. I will rephrase the question.
At the meeting where MS 84 was presented, Mr. Levin did tell you at least that whoever spoke on behalf of Sunbeam said that January sales were slow?
A. January sales were slow, February was fine and we are going to hit 296 to 328 of operating profit for the year.
Q. That would be --
A. Those are all here. That is what all was discussed.
That is a pretty bullish group of statements stated by Sunbeam and Morgan Stanley.
Q. Did Mr. Levin tell you that Morgan Stanley said these things or that someone at Sunbeam said them?
A. Specifically he did not say.
Q. As you sit here today you don't know that Morgan Stanley ever said anything about what the sales were in January or February at this meeting?

Page 374

A. I know Morgan Stanley was at the meeting and Morgan Stanley was listening to this presentation and it was under the auspices of Morgan Stanley.
We were at these meetings under the auspices of Morgan Stanley.
Q. You had your investment bankers at the meeting, Credit Suisse First Boston, correct?
A. We had them there, yes.
Q. You had your representatives from MacAndrews & Forbes as well as Mr. Levin, right?
A. Yes.
Q. You had Mr. Maher there, correct?
A. Yes, but none of these people knew the statements to be false but Sunbeam and Morgan Stanley.
Q. The statements that you say that Morgan Stanley knew at this time, February 23, that the full year results for 1998 that were projected here were false?
A. Yes.
Q. Based -- what are the facts that you base that statement?

Page 375

A. Because what they knew for the first quarter at that moment were so weak that there was no way that this company could have generated that kind of growth.
Their sales were significantly below last year. They didn't say significantly below last year. They said, slow. There is a big difference.
Secondly, they were supportive of February sales.
Thirdly, they talk about an increase of profitability that is so significant here from 1997 to 1998 which is what Morgan Stanley told us and in reality they knew this business was falling apart.
Q. As of February 23, is my question, what are the facts upon which you base the statements that Morgan Stanley knew the business was falling apart?
MR. SOLOVY: Object; asked and answered.
BY MR. BEMIS:
Q. As of February 23, 1998?
MR. SOLOVY: Object; asked and answered.

NOT A CERTIFIED COPY

015588

Page 376

BY MR. BEMIS:
Q. You can go ahead and answer.
A. Because Morgan Stanley knew what the business was doing.
Q. Can you give me any specific facts other than a statement that Morgan Stanley knew what the business was doing to support the statements that you made that Morgan Stanley knew Sunbeam's business was falling apart as of February 23, 1998?
A. Not right now.
Q. You can set that exhibit aside.
If you would like you can give me the discussion materials. I will put those away for you, out of your way.
If you will look at the chronology which is in Morgan Stanley Exhibit 75, the dates February 24-27, 1998, you will see that there is the following reference. "Coleman and Sunbeam, and their respective advisers, negotiated the structure of the transaction, conducted due diligence and drafted the necessary documentation."
Do you see that sentence, sir?

Page 377

A. Yes.
Q. Can you tell -- did Mr. -- withdrawn.
You didn't participate personally in whatever due diligence was done during this time period, is that fair to say?
A. That is fair to say.
Q. Did Mr. Maher report to you what if anything he or people assisting him did by way of due diligence during this time period?
A. Generally, yes.
Q. Tell me generally what you recall Mr. Maher telling you that he did during this time period, either him personally or people helping him?
A. They went through these Morgan Stanley presentations, they reviewed all of the financials. Some people went to, I believe, the factories.
I mean specifically I don't recall exactly what was done but it was -- it was due diligence of a publicly-traded company.
Q. When you referred to the

Page 378

financials you were referring to Sunbeam's financials?
A. Yes.
Q. Were you referring to financial statements audited by Arthur Andersen?
A. Audited financial statements and the materials prepared by Morgan Stanley.
Q. Did Mr. -- withdrawn.
Did Mr. Maher tell you when he advised you that -- withdrawn.
Did Mr. Maher tell you that he had looked at or had someone else look at any Sunbeam interim financial statements for 1998?
A. I don't recall.
Q. Earlier you told me that your desire was to get all Sunbeam stock in the transaction but you - ultimately something less than that was accepted, correct?
A. Yes.
Q. Why did you want all Sunbeam stock?
A. Because from what I knew of the Sunbeam transaction the Sunbeam company would have been a good stock to hold.

Page 379

Q. Did you have any of your -- strike that.
Was there anyone at MacAndrews & Forbes other than Mr. Levin who we talked about yesterday who suggested that you, Mr. Perelman, should not take Sunbeam stock but should take all the cash you could get?
A. I don't believe so.
Q. The final form of consideration as you -- as we have described it, the assumption of debt, the cash and the specific amount of Sunbeam stock, was then specifically negotiated and that was something you ultimately accepted when you agreed to proceed with the signing of the merger agreements; is that fair?
A. Yes.
Q. Was there any -- the amount of cash that is set forth in the merger agreements is just slightly below $160 million.
Was there a particular reason why you agreed to that figure as opposed to either some greater or lesser figure?
A. For some reason, and I don't

NOT A CERTIFIED COPY

015589

Page 380

recall what the reason was, Sunbeam had to change the structure to put more cash in and less stock and that was in response to their requirement for more cash in the transaction and less stock.

I am not sure what motivated that.

Q. At the time of the closing you -- not you, sir, but your companies -- had both a term credit agreement and revolving credit agreements with various banks, correct?

A. I don't know if we had a term credit agreement or -- we had one credit agreement. I don't know if we had two. I don't recall two.

Q. There has been prior testimony that there was both a term credit agreement and a revolving credit agreement with a combined total of $650 million.

Is that consistent with your recollection?

A. I don't have a recollection of that.

Q. As you sit here today do you know

Page 381

the -- whether under your credit agreements whether there was one or two?

A. No.

Q. Let me finish the question.

Regardless of whether it was one or two agreements do you know whether MacAndrews & Forbes had reached the limits of their ability to draw down on their credit agreements as of the date of the closing with Sunbeam?

A. No.

Q. After the closing of the transaction did MacAndrews & Forbes or one of its affiliated companies pledge the Sunbeam stock to secure any indebtedness of MacAndrews & Forbes?

A. Possibly. I don't know.

Q. Who would know that? Who would be the person who would know that?

A. Todd Slotkin.

Q. Could you spell that for the reporter?

A. S-L-O-T-K-I-N.

Q. Todd Slotkin. I thought you said something else. Thank you. I apologize

Page 382

even for asking. I did not understand.

Indeed, is it -- in your view, is Mr. Todd Slotkin the person who is probably the most knowledgeable in MacAndrews & Forbes about its credit agreements and debt financing during the 1997-1998 time period?

A. I don't know what you mean by "debt financing" but he would be knowledgeable about the credit agreements, yes.

Q. That is -- debt financing was probably a poor term.

Would he be the most knowledgeable about MacAndrews & Forbes borrowings at that time period, 1997, 1998?

A. He would be aware of them. I don't know if he would be the most knowledgeable but he would be aware.

Q. You have told us about some Morgan Stanley and Sunbeam materials that you saw in advance of the execution of the merger agreements.

Did you see materials prepared by Credit Suisse First Boston?

A. I saw at the board meeting the

Page 383

presentation that was given.

Q. Did you see any documents prepared by Credit Suisse First Boston?

A. I just said so.

Q. I am sorry. I thought you said you were present at the meeting. I may have misunderstood you.

Let me show you a couple of documents and ask you if you saw these documents prepared by Credit Suisse First Boston.

Could I have 112 please? Then 197.

Mr. Reporter, would you please hand to the witness Morgan Stanley 112?

I have handed you what has been marked as Morgan Stanley Exhibit 112. Do you have that in front of you?

A. Yes.

Q. Did you see this -- did you see this document before the execution of the merger agreements?

A. Yes.

Q. Did you read it in the same manner that you read the documents we

NOT A CERTIFIED COPY

015590

Page 384

talked about earlier, Morgan Stanley Exhibit 84, the long range strategic plan and Morgan Stanley Exhibit 85 which was the discussion materials?

MR. SOLOVY: Object to the form of the question.

THE WITNESS: I don't know what that means but I read it, yes.

BY MR. BEMIS:

Q. Did you have any questions about the Credit Suisse First Boston materials, Morgan Stanley Exhibit 112?

A. At the time?

Q. Yes, sir.

A. I don't recall.

Q. Did you have any afterwards that you recall?

A. Not that I recall, no.

Q. Is it fair to say that as you sit here today you did not discuss Morgan Stanley Exhibit 112 with anyone at Credit Suisse First Boston?

A. No, it is not.

Q. Who did -- did you discuss --

A. This was a presentation by Credit

Page 385

Suisse made at the board meeting. There was a discussion. Whether I participated or I listened or I added or I took mental note, but I was there and absorbed what was said.

Q. Let me show you another document which is -- you can hand one back to me. We will put it away.

Please hand the witness Morgan Stanley Exhibit 197.

Do you have Morgan Stanley Exhibit 197 in front of you?

A. Yes.

Q. Did you see these materials at the board of directors meeting of the Coleman Company?

A. I am not sure.

Q. If they had been presented at the board meeting you would have reviewed them as you reviewed Morgan Stanley Exhibit 112?

A. This was a much more in-depth and detailed analysis.

What you showed me earlier was a summary. I mean, this is the back up matrix, valuation matrix, for each of the

Page 386

cases that were given in the previous example so I don't know if they passed this out. I would assume not.

Q. As you sit here today you cannot recall whether you have seen this document before?

A. That is correct. To the extent that the short form is incorporated into the long form, I would have seen that in the short form version that you showed me previously.

Q. All right. If you will hand that back to me? Thank you very much.

During the board of directors meeting on February 25 when CSFB made its presentation we have been talking about, did the directors ask any questions of CSFB?

A. I am sure they did.

Q. Do you remember any of them?

A. No.

Q. Did you ask any questions?

A. Not that I recall.

Q. To the extent that questions were asked of CSFB, were they answered by the

Page 387

representatives of CSFB?

A. I would assume so.

Q. You don't recall any incident during the meeting where someone asked the question and CSFB said we can't answer that or we don't know?

A. Not that I recall.

Q. Were you, as a sophisticated businessman as you told me yesterday, satisfied with CSFB's presentation?

A. Yes.

Q. Were you satisfied, as a sophisticated businessman, with CSFB's analysis of the transaction as presented in the materials to the board of directors?

A. I was satisfied at the conclusion of CSFB's presentation, yes.

Q. As I understand it, at the second board meeting which is the February 27 board meeting, that was the specific meeting where the so-called fairness opinion was rendered by CSFB, is that right?

A. I believe so.

Q. The February 25 meeting was more

NOT A CERTIFIED COPY

015591

Page 388

of a discussion meeting where the various evaluation methodologies were gone through by CSFB with the board?
A. I believe so.
Q. Then everyone was given some time to consider that and two days later the actual fairness opinion was given in oral form, is that right?
A. I don't recall what form it was given.
Q. Did you ever -- withdrawn.
Did you see -- ever see a written fairness opinion by CSFB?
A. Not that I recall.
Q. Let me show you what has been marked as MS 120.
A. While you are getting that, I -- I will be back in one.
MR. BEMIS: Why don't -- we have been going an hour-and-a-half. Let's take a break.
THE VIDEOGRAPHER: Going off the record. The time is 10:31 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to

Page 389

the record. The time is 10:46 a.m.
BY MR. BEMIS:
Q. I have handed you, Mr. Perelman, a document previously marked as Morgan Stanley Exhibit 120.
Do you have that in front of you?
A. Yes.
Q. This document which is dated February 27, 1998 has previously been identified as having been prepared by Credit Suisse First Boston.
Have you seen this document before?
A. Not that I recall.
Q. You can hand it back to me.
In the course of Credit Suisse First Boston's work as investment banker for the Coleman Company are you aware personally of CSFB ever reviewing any unaudited financial statements of Sunbeam?
A. Other than for Morgan Stanley.
Q. If you say, yes, I will ask you from whom.
My first question is: Are you aware that they did.

Page 390

Let me put the question to you again so it is clear for everyone.
Are you aware of Credit Suisse First Boston reviewing any unaudited financial statements of Sunbeam?
A. The Morgan Stanley presentations that you gave me previously were also given to CSFB.
Q. Those two documents, what you are referring to are MS 84 and 85 we talked about, the strategic long range plan and the discussion materials --
A. Whatever they were.
Q. Aside from those two documents are you aware of Credit Suisse First Boston reviewing any unaudited financial statements such as interim financial statements of Sunbeam?
A. Not that I am aware of.
Q. Are you aware -- strike that.
To your knowledge did Credit Suisse First Boston ever go to the offices of Sunbeam and review any of its financial records?
A. I don't know.

Page 391

Q. Are you -- strike that.
Earlier we spoke briefly about the accounting firm for Coleman which was -- which was at the time Ernst & Young?
A. Right.
Q. Correct?
A. Yes.
Q. Before the signing of the merger agreements which again is February 28, 1998, are you aware of Ernst & Young doing any review of Sunbeam's audited financial statements for any period from 1997 going back historically?
A. To reaudit their statements?
Q. No, just to review them.
A. I don't know.
Q. You are not aware of -- withdrawn.
Are you as you sit here today aware of whether Ernst & Young reviewed any unaudited financial statements of Sunbeam for 1998 such as interim financial statements?
A. I am not aware.
Q. To your knowledge did Ernst &

NOT A CERTIFIED COPY

015592

Page 392

Young review before the execution of the merger agreements the two documents you have identified as, earlier, Morgan Stanley Exhibit 84, 85 the strategic long range plan and the discussion materials?
A. I don't know.
Q. Did Ernst & Young to your knowledge before February 28, 1998 go to Sunbeam's offices and review any of its financial books and records?
A. I don't know.
Q. Did anyone on any side of the transaction to your knowledge do any review -- withdrawn.
Let me switch gears from the accounting firm and ask a couple of questions about Wachtell, Lipton who you previously told us was your outside legal counsel in the transaction, correct?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
Do you want me to ask the question again?

Page 393

A. Yes.
Q. Wachtell, Lipton was outside legal counsel for MacAndrews & Forbes in the transaction, correct?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I think they represented Coleman.
BY MR. BEMIS:
Q. Did MacAndrews & Forbes have counsel at all?
A. I am not sure.
Q. With regard to Wachtell, Lipton's work for Coleman, if that is the case, was Wachtell, Lipton assigned any due diligence responsibilities?
A. Not by me.
Q. Do you know if Maher, Mr. Maher, assigned Wachtell, Lipton any responsibilities?
A. I do not.
Q. Up to the time of the closing on February -- withdrawn.
Up to February 28, 1998, the date of the execution of the merger agreements,

Page 394

did you review any documents prepared by Morgan Stanley or Sunbeam other than the ones that you have identified as Morgan Stanley Exhibits 84 and 85?
A. Were those the two presentations?
Q. Yes, those are the two presentations.
A. Not that I am aware of.
Q. Again, up to the period of February 28, 1998 -- withdrawn.
If I asked you this I apologize. I want to make sure I covered this.
Did you speak to Mr. Reid again after the February call and up to the point of the closing in March of 1998?
A. I indicated that we did not have a one-on-one meeting.
Q. Except unless he might have been in a meeting?
A. Correct.
Q. Thank you very much. You did say that.
Going back to the one conversation that you had with Mr. Reid, was there anything in that conversation as

Page 395

you sit here today that you considered to be false that he said to you?
A. Yes.
Q. What was that?
A. He basically presented Sunbeam as this fabulous company that would make a great combination with Coleman without Dunlap as a fabulous manager and this is a deal that should get done.
Q. Anything other than that?
A. No, not that I recall.
Q. After the closing on March 30 did you have any further discussions with Mr. Reid about the Sunbeam-Coleman transaction?
A. Ask that again please.
Q. Sure.
After the closing which was March 30, 1998 of the Sunbeam-Coleman transactions did you have any further discussions with Mr. Reid about the Sunbeam-Coleman transaction?
A. Possibly.
Q. Do you remember any as you sit here today?
A. No.

NOT A CERTIFIED COPY

015593

Page 396

Q. Did you speak directly to anyone else at Morgan Stanley about the Sunbeam-Coleman transaction before March 30, 1998 other than Mr. Reid?
A. I have answered that.
Q. I apologize.
What was your answer? Other than being at a meeting?
A. I think that answers it.
Q. I understand that. Let me try and clarify and then I will move on with you.
A. Okay.
Q. Other than attending meetings did you have any one-on-one meetings or conversations with anyone at Morgan Stanley other than Mr. Reid before the closing on March 30, 1998?
A. I don't believe so.
Q. After March 30, 1998 did you have any one-on-one conversations with anyone at Morgan Stanley about the Sunbeam-Coleman transaction that --
A. Not that I recall.
Q. Is it fair to say then, at least

Page 397

as your recollection sits today, that the only one-on-one conversation that you had with an employee of Morgan Stanley about Sunbeam-Coleman was the one telephone call with Mr. Reid in 1998?
A. I think you are presenting that wrong. I mean, if I would have popped into a meeting and there were representatives from Morgan Stanley there we would have had discussion so it is not as if I was not a party to discussions with anybody at Morgan Stanley during this process.
There were no private meetings, though, between myself and a member of Morgan Stanley.
Q. Let's go to the closing itself. Did you physically -- did you actually attend the closing of the merger agreements?
A. No. I don't believe so.
Q. Let me show you what has been previously marked as Morgan Stanley 237.
Do you have that exhibit in front of you?
A. Yes.

Page 398

Q. Have you seen this press release before?
A. I believe so.
Q. On the second page in the penultimate paragraph --
A. In which?
Q. The next to last paragraph.
A. Right.
Q. It begins -- it reads as follows: "'This is a fantastic situation for all Sunbeam shareholders giving them the opportunity to participate in the wealth that Al Dunlap and his team are building,' said Ronald O. Perelman who will become Sunbeam's second largest shareholder after the transaction. 'Coleman will thrive as part of Sunbeam's unbeatable family of brands,' added Mr. Perelman."
Do you see that paragraph?
A. Yes.
Q. Did you make these statements?
A. Yes.
Q. At the time that you made these statements did you believe that Al Dunlap had a team at Sunbeam?

Page 399

A. I believed that Al Dunlap had -- yes.
Q. Did you believe as you said that Al Dunlap had a team that would build wealth at Sunbeam?
A. Yes.
Q. Was that -- strike that.
Because you believed that Al Dunlap and his team were building wealth at Sunbeam that is the reason you wanted as much stock as you could get, right?
A. No.
Q. You can hand that back to me.
Let me show you what we will have the court reporter mark as Morgan Stanley Exhibit 196.
(Morgan Stanley Exhibit 196 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 196 in front of you?
A. Yes.
Q. Have you seen this document before?
A. I believe so.

NOT A CERTIFIED COPY

015594

Q. Would you tell the jury what it is?
A. This is a press release from Coleman.
Q. Did you review the press release before it was issued?
A. I would imagine so, yes.
Q. At the time that you reviewed it -- withdrawn.
When you reviewed it did you make any changes in it that you can remember today?
A. Not that I recall.
Q. Did you approve the press release after you reviewed it?
A. Yes.
Q. You can hand it back to me.
Mr. Reporter, would you please mark a press release dated March 30, 1998 as Morgan Stanley Exhibit 135?
(Morgan Stanley Exhibit 135 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit 135 in front of you, sir?

A. Yes.
Q. Have you seen this before?
A. Not that I recall. Possibly.
Q. Did you -- withdrawn.
I will take it back if you haven't seen it before.
A. I don't know.
Q. I understand. You don't know if you have seen it before.
A. Yes.
Q. After the closing -- withdrawn.
After the execution of the merger agreements that -- on February 28 and the actual date of closing of the agreements on March 30, 1998 did you attend any meetings where Morgan Stanley was present, for example, where you might have, as you put it, I think you said, popped in?
A. Not that I recall.
May I have two seconds?
THE VIDEOGRAPHER: Going off the record. The time is 11:06 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 11:08 a.m.

BY MR. BEMIS:
Q. Did you attend any of the -- withdrawn.
I think earlier you made reference to Morgan Stanley providing certain financing in connection with the Sunbeam-Coleman acquisition.
Do you recall that testimony?
A. Yes.
Q. There has been testimony about -- withdrawn.
You know what a road show is, don't you?
A. Yes.
Q. Did you personally attend any road shows that Sunbeam conducted in connection with its zero coupon convertible senior subordinated debenture offering?
A. I didn't but our people did.
Q. Which of your people did?
A. I believe Nesbitt did.
Q. Anyone other than Mr. Nesbitt that you believe attended one of these?
A. This was a Morgan Stanley road show. Not that I recall.

Q. Did Mr. Nesbitt make -- did Mr. Nesbitt tell you which of the road show presentations he attended?
A. What do you mean? I believe it was in New York, I believe.
Q. What is the basis for that belief?
A. Just a recollection that that is what he told me.
Q. Other than Mr. -- other than Mr. Nesbitt, can you recall any other MacAndrews & Forbes employee telling you that they attended a road show presentation?
A. I believe it was Mr. Nesbitt. Somebody attended and I believe it to be Mr. Nesbitt, yes.
Q. Did you -- withdrawn.
Did Mr. Nesbitt tell you what happened at the presentation that you believe he attended assuming again it was Mr. Nesbitt?
A. Whoever it was just indicated that the presentation was similar to the other presentations that we had gotten from

NOT A CERTIFIED COPY

015595

Page 404

Morgan Stanley.
Q. I am sorry. I am lost.
A. The presentation was similar to what we had gotten previously from Morgan Stanley.
Q. This presentation from Morgan Stanley that you just referred to, are you referring to the February 23 evening meeting that we discussed earlier and those two documents, MS 84 and MS 85?
A. Whatever constituted what he thought to be Morgan Stanley's presentation, that would be part of it, those documents. I don't know how many meetings he attended with Morgan Stanley.
Q. Did you ever see the -- any of the documents executed in connection with the offering of the zero coupon debentures issued by Sunbeam?
A. I don't believe so.
Q. For example, I will just give you a couple of the documents without even showing them to you and you can tell me if you saw them.
Did you see the purchase

Page 405

agreement, for example, where Morgan Stanley purchased the debentures from Sunbeam?
A. No. I don't believe so.
Q. Did you see the offering memorandum?
A. Possibly.
Q. Let me show it to you then and you can tell me whether you did see it.
A. Yes.
Q. When did you first see it?
A. I believe I saw this right around the time that it was issued.
Q. Could you tell me how you came to receive a copy of the offering memorandum?
A. I don't know. Somebody just would have shown it to me.
Q. Did you -- did you read it at the time that you saw it?
A. I would not have read it all, no.
Q. Would you have read at least the summary provisions of the agreement?
A. The summary provisions of the agreement, no.
Q. I misspoke. The summary

Page 406

provisions of the offering memorandum.
A. I probably would have just looked at the financials.
Q. The financial statements of Sunbeam that are attached?
A. Correct.
Q. The financial statements of Coleman that are attached?
A. Yes.
Q. I believe there is the financial statements of CLN Holdings that are attached.
A. Possibly.
Q. When you reviewed the financial statements -- withdrawn.
You can hand that back to me.
Did MacAndrews & Forbes purchase any of the debentures?
A. Not that I am aware of.
Q. Did MacAndrews & Forbes purchase any of the debentures after the initial offering which is in the secondary purchase?
A. Not that I am aware of.
Q. Did you ever see any of the --

Page 407

withdrawn.
Did you ever see any documents that purported to be presentations at the road shows for the debentures?
A. I believe there was hard copy.
Q. Did you ever see one?
A. I believe so.
Q. How did you -- strike that.
From whom did you receive the hard copy of the presentation?
A. Whoever would have gone to the road show.
Q. If Mr. Nesbitt did it would have been him?
A. Yes.
Q. I want to move forward now into March and ask a couple more questions that we didn't talk about yesterday concerning the March 19, 1998 press release.
Do you recall yesterday we looked at a couple versions of that including a Bloomberg version?
A. I don't think we looked at a press release from Bloomberg. I think we looked at a press account from Bloomberg.

NOT A CERTIFIED COPY

015596

Page 408

Q. That may be a better description.
Let me show you the document and we will work off of that.
I have handed you what has previously been marked as MS 211. Do you have that in front of you?
A. Yes.
Q. Yesterday we -- when we discussed this just briefly in the morning session, and I think your testimony was that you believe the press release was bullish, do you recall that testimony?
A. Yes.
Q. I also want to give to you a copy of the actual press release so we don't have just the Bloomberg version of it.
A. This is not the press release.
Q. I will give you the actual press release. I will give you Morgan Stanley 39 which is the press release itself.
A. Right.
Q. Do you have Morgan Stanley Exhibit 39 in front of you?
A. Yes.
Q. Morgan Stanley 39 is the actual

Page 409

press release that you were referring to, correct?
A. Yes.
Q. What you have in the Bloomberg document which is Morgan Stanley 211 is references to the press release and some additional commentary, correct?
A. Yes.
MR. BEMIS: We are going to take a break and change the tape. We are just about out of time on the tape.
THE VIDEOGRAPHER: This marks the end of tape number one, volume two.
Going off the record. The time is 11:21 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 11:25 a.m. This marks the beginning of tape number two, volume number two.
BY MR. BEMIS:
Q. I have handed you the press release and the Bloomberg portion of the release and some commentary, MS 39 and 211.
You have those in front of you,

Page 410

am I right?
A. Yes.
Q. Is the Bloomberg commentary which is in MS 211 correct based on your recollection that the Sunbeam stock fell 4-11/16 upon the issuance of the press release on March 19?
A. I don't understand the question.
Q. Look at the last paragraph of the first section of the Bloomberg Exhibit MS 211.
It begins, "The shares of the Del Ray Beach, Florida-based company fell 4-11/16 to 45-3/8 in trading of 5.5 million. Earlier, the stock hit 45-1/4. It was the 20th most active stock in the U.S. market."
Do you see that?
A. Yes.
Q. It is your recollection that Sunbeam's stock fell upon issuance of the March 19 press release?
A. Yes, and then proceeded to respond.
Q. It is your recollection at least

Page 411

on March 19 that it fell as reported by Bloomberg?
A. I don't know what this time is. Is this?
Q. March 19 at the top.
A. No. That is not my question.
Q. Sorry.
A. Is this at 9:00 in the morning or 1:00 in the morning or 11:00 in the morning or 12:00 or 1:00 in the day or 2:00 in the day or 3:00 in the day? You can't tell from that. I can't tell.
You are asking -- it is what it is. The stock did fall on the day of the announcement and then the stock recovered subsequent to the announcement.
Q. At the time -- withdrawn.
At March 19 you through your -- through your holding companies and pursuant to the merger agreements were to receive almost 14.1 shares of Sunbeam stock at the closing on March 30, correct?
A. Right.
MR. SOLOVY: I object to the form of the question. You misspoke

NOT A CERTIFIED COPY

015597

Page 412

inadvertently.
BY MR. BEMIS:
Q. I may have. Let me try again.
Thank you very much for correcting me.
As of March 19 and pursuant to the merger agreements, assuming they closed on March 30, your companies were to receive 14.1 million shares of Sunbeam stock in exchange for the Coleman stock and other consideration, correct?
A. Yes.
Q. Had Sunbeam's stock had -- withdrawn.
In January of 1998 were you aware that Sunbeam reported earnings for the fourth quarter of 1997 that resulted in a market drop of its stock at the time of the announcement?
A. Yes.
Q. Let me show you what has been marked as Morgan Stanley 406 -- excuse me -- 206.
Do you have Morgan Stanley Exhibit 206 in front of you?

Page 413

A. Yes.
Q. This is a copy of an article from the Wall Street Journal on January 29, 1998.
Have you seen -- did you see this article from the Wall Street Journal at the time?
A. Possibly.
Q. Is it your recollection based on your knowledge of the markets in 1998 that Sunbeam's stock did indeed go down approximately 9.5 percent when it released its fourth quarter 1997 results in January of 1998?
A. Then it immediately went back up.
Q. In these two instances, both, the release of the fourth quarter -- strike that.
You have looked at two exhibits and we have discussed the background, both the release of the fourth quarter results and the March 19 press release.
In both instances the market reacted negatively to the announcements at least initially?

Page 414

A. In both instances the market then reacted positively.
Q. Would you say then that Sunbeam's stock was a volatile stock?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I wouldn't -- I am not equipped to answer that.
BY MR. BEMIS:
Q. Would you say it was a risky stock?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: No. I would not say it was a risky stock. I think you have to look at, what you showed me in this January 29 story was that the market reacted to a drop in the expected fourth quarter earnings of instead of 50 cents, 47 cents, so that that certainly does not indicate a risky corporation.
BY MR. BEMIS:
Q. I am all done with that.
A. Thank you.

Page 415

Q. Thank you.
Can I have those other two press releases back as well?
In the Bloomberg version that we looked at Bloomberg points out that the company did not discuss the effect of the lower sale -- withdrawn.
In the Bloomberg, Exhibit MS 211 -- did I take that away from you?
MR. SOLOVY: You did.
BY MR. BEMIS:
Q. I shouldn't have taken it away from you. I meant only to take 39.
Do you have MS 211 in front of you again?
A. Yes.
Q. The third paragraph which begins, "The maker of Sunbeam toasters," do you see that paragraph?
A. Yes.
Q. It continues, and the last sentence reads as follows: "The company didn't discuss the effect of lower sales on earnings."
Do you see that?

NOT A CERTIFIED COPY

015568

Page 416

A. Yes.
Q. Did you expect that if Sunbeam's sales fell from what was forecast that its earnings would fall from what was forecast?
A. Sunbeam specifically said that was not the case.
Q. When did they say that to you after March 19?
A. In the press release, in their press release.
If you give me the press release back I will be happy to show you.
A. Sure.
MR. SOLOVY: Borrow my copy.
THE WITNESS: "The company further stated that based on the strengths of its new product offering and powerful brand names it remains highly confident about the overall sales prospects of its sales for the entire year." That sales outlook was the analyst expectations of a 20 percent increase in sales. That is what everybody was basing upon and the subsequent earnings come from that.

Page 417

BY MR. BEMIS:
Q. Not to quarrel with you, that wasn't my object.
Is there any reference in MS 39 to a specific projection of the company's earnings for either the first quarter or the full year, its earnings?
A. There is reference under the law that if the company and its investment banker at the time, Morgan Stanley, knew this not to be truthful that they had an obligation under the law to tell its shareholders that that was the case.
Q. My question was: Was there any reference in there, and then we will move on. If there is you can tell me.
Is there any specific reference in the --
A. I think the press release has to be interpreted relative to the existing law of the state.
Q. Is there -- let me try one more time.
If we can't reach the agreement on the question we will move on.

Page 418

Is there any specific reference in the press release to Sunbeam's earnings projections for either the first quarter of 1998 or the year as a whole, a specific reference?
A. Just by the exclusion and reference to the law.
Q. Did you after you saw the press release make any calls to -- withdrawn. I asked that you question. I did ask you that. I withdraw that question.
At any time up to the closing on March 31 did anyone at MacAndrews & Forbes ask Sunbeam for an update on the matters set forth in the March 19 press release?
A. I don't know whether -- I know that on -- at that meeting that Jerry Levin attended there was discussion about January and February and the first quarter and the year.
Q. This is the February 23 meeting we talked about earlier, right?
A. I don't know what date that was.
Q. It is the one where the two documents, the discussion materials and the

Page 419

strategic long term plan, were at issue and you talked about --
A. I don't know the two documents came from that meeting. I do know that at a meeting there was one document that Jerry Levin's handwriting was on.
Q. That is the meeting you are referring to?
A. Yes, where there was talk about January, confirmation about the earnings for the first quarter, confirmation about earnings for the year so that we did have some insight at whatever date that was, February 22, February 23, whatever date that meeting occurred and confirmation that the company was on track to hit its stated numbers.
I believe that there was at least one or maybe more other conversations that occurred just to confirm that that continued to be the case. Specifically I cannot recall who they were with.
Q. Did you have these conversations or was it someone else?
A. I believe it was somebody else.

NOT A CERTIFIED COPY

Page 420

Q. It was somebody else within your organization that spoke to someone at Sunbeam?
A. Sunbeam or Morgan Stanley or both.
Q. You don't know which and you don't know who had the conversation?
A. That is correct, but I do know at that February, whatever date it was, 23rd, 24th meeting, Sunbeam and Morgan Stanley presented to us their confirmation of the results for the quarter and year.
Q. You know that -- strike that.
These one or two conversations that you were just referring to, were these after March? These were after March 19; is that correct?
A. No. I don't know when they were.
Q. Okay. My specific question is --
A. I said right around that time we got confirmation again of the performance of Sunbeam.
Q. As you sit here today, with specific reference to the March 19 press release, you don't have an independent

Page 421

recollection of any communication with Sunbeam about an update of the press release before the closing, is that fair?
A. Specifically?
Q. Yes.
A. Other than the updates that were going on generally, that is correct.
Q. Any of the updates that were generally going on were updates -- you were not a participant in the updates, correct?
A. I was made aware of them.
Q. You were being made aware of them by people but as you sit here today you don't remember who they were?
A. Except Jerry Levin.
Q. You say Jerry Levin indicated to you this --
A. The end of February is when you say that meeting occurred.
As of the end of February we are updated as to what Morgan Stanley says the company is doing and Morgan Stanley says that January sales are slow, February sales are going to be fine and we are on track for the year of 2/96 to 3/95. That is the

Page 422

end of February.
Q. Right.
A. There is nothing different in this press release other than what we know, the end of February. Now Morgan Stanley knows things but we don't know them.
Q. After -- again, we will close this out and move on to something else.
After March 19 you don't have any specific recollection of a communication with either Sunbeam or Morgan Stanley about updating the matters in the press release?
A. I personally don't, that is correct.
Q. Then we will move on to something else. Thank you.
Are you aware after March 19 and before the closing on March 30 of anyone on behalf of MacAndrews & Forbes having any communications with anyone at Arthur Andersen about Sunbeam?
A. I am -- not to my knowledge.
Q. Are you -- strike that.
At any time after February 28, 1998 -- withdrawn.

Page 423

After March 19, 1998 and before the closing on March 30 did anyone to your knowledge at MacAndrews & Forbes make any request of Sunbeam for copies of the comfort letters that Sunbeam had its auditors provide to Morgan Stanley?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I don't know.
BY MR. BEMIS:
Q. Are you aware of anyone at MacAndrews & Forbes requested that Coleman provide MacAndrews & Forbes with a copy of the comfort letters that its auditors, Ernst & Young, provided to Morgan Stanley?
A. No.
THE VIDEOGRAPHER: Going off the record. The time is 11:44 a.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 11:46 a.m.
BY MR. BEMIS:
Q. I am going to hand you what the reporter has previously marked as Morgan Stanley Exhibit 278.

NOT A CERTIFIED COPY

Page 424

Do you have Morgan Stanley Exhibit 278.
A. Yes.
Q. If you look at the last two pages you will see that this document was signed by Mr. Dickes on behalf of Coleman (Parent) Holdings and by Mr. Russell Kersh on behalf of Sunbeam Corporation.
Do you see those signatures?
A. Yes.
Q. You recognize Mr. Dickes' signature?
A. Yes. I don't recognize his signature but I know Mr. Dickes.
Q. At the date of this document, March 29, 1998 which is on the first page if you need to see that, Mr. Dickes was the vice president of Coleman (Parent) Holdings, Inc. and its secretary, I think, is that right?
A. I believe so.
Q. This registration rights -- have you seen the registration rights agreement before in its signed version?
A. No.

Page 425

Q. Were you aware that in discussions with anyone, even though you did not see the agreement, that in the document there is a provision for providing comfort letters from the auditors in connection with the registration of the securities covered by this agreement?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: What is the question?
BY MR. BEMIS:
Q. I will repeat it for you.
Were you aware in discussions with anyone, even though I know you said you did not see the agreement, that in the agreement there is a provision providing for comfort letters from the auditors in connection with the registration of the securities covered by the agreement?
A. No.
Q. Did you understand at the time of the closing of the Sunbeam-Coleman transaction on March 30, 1998 that one of the conditions of the closing was that

Page 426

there be an executed registration rights agreement covering the 14.1 million shares of Sunbeam stock that were to be issued indirectly to you?
A. I know that is customary. I didn't know specifically that that was it, no.
Q. You left that to your lawyers to cover those matters?
A. Yes.
Q. You can hand that back to me. We are finished with it.
You told me in your -- withdrawn.
A. Are we finished with 211?
Q. Probably. Excuse me one second.
MR. BEMIS: I am going to ask the court reporter to mark as Exhibit 431 a Barron's article dated January 29, 2000 -- 2001 as Exhibit 431.
(Morgan Stanley Exhibit 431 marked for identification)
BY MR. BEMIS:
Q. The court reporter has handed you Exhibit 431.
I have highlighted a paragraph

Page 427

off in the right-hand margin. Do you see that paragraph?
A. Yes.
Q. Would you read that into the record please?
A. "The Coleman sale to Sunbeam still rankles. Obviously it would --"
Q. Let me do this. Let me read it for you. I can read it slower than you. We only have one copy.
A. Okay.
Q. I am referring to page 6 of the exhibit. It reads as follows: "The Coleman sale to Sunbeam still rankles. Obviously he," referring to you, Mr. Perelman, "would have taken all cash rather than the 590 million in Sunbeam stock if he had the 1998 deal to do all over again. 'I wasn't the only one fooled by Al Dunlap and the fake he was,' he observed. 'Three banks loaned Sunbeam 3.7 billion at the time and all the sell side analysts were touting the stock.'"
Did you make the statements that Barron's attributes to you in that article?

NOT A CERTIFIED COPY

015601

CONT #969

Page 428

A. I don't know what they attribute to me.
Q. The part that is in quotation marks.
A. Possibly.
Q. You can hand it back to me.
A. You would have to look at my whole interview as to what exactly was said.
MR. SOLOVY: May I borrow that while you are moving on to something else?
MR. BEMIS: Sure.
BY MR. BEMIS:
Q. At the time of the closing did Sunbeam pay, based on the package of consideration we went through, a premium for the market price of Coleman stock as it was being traded on the New York Stock Exchange?
A. I don't know what the stock was at the time of closing of Coleman.
Q. Even if you don't know the exact price was a premium made for the stock by Sunbeam?

Page 429

A. At the time of closing?
Q. Yes, sir.
A. The stock price of Coleman should have been exactly what the price was for the transaction so there should not have been a premium.
Q. You are right. That was a poor question. Let me try it a different way.
At the closing did -- on March 30, did Sunbeam pay a premium for the Coleman stock over what it was trading at the close of trading on February 26, 1998 right before the execution of the merger agreements?
A. Yes.
Q. What was that premium?
A. I don't know.
Q. Let me show you what has previously been marked as Morgan Stanley Exhibit 279.
Would you hand the witness, please, Exhibit 279 previously marked in another deposition?
A. Yes.
Q. The exhibit that I have given to you is double side copied. When you look at it you will have to turn the pages appropriately.
What I have handed you is the -- a document entitled the Coleman Company, Inc. Notice of Merger and Appraisal Rights and Information Statement-Sunbeam Corporation Prospectus which is dated, if you were to refer to the second page of the document, December 6, 1999, and I would like you to turn specifically to page 40 of the document.
Again because yours is double-sided you may have to take the binder clip off to find the page.
A. What page do you want me to go to?
Q. 40.
MR. SOLOVY: On the bottom?
MR. BEMIS: Using the bottom numbers.
THE WITNESS: 40, yes.
BY MR. BEMIS:
Q. If you would look at the second full paragraph, sir?

Page 430

Page 431

A. The structure of the transaction?
Q. It is the second full paragraph under the heading Terms and Structure of the Transaction.
The paragraph begins, "The Coleman board reviewed."
When you have read that paragraph just let me know.
A. Okay. Yes.
Q. This document states that the premium was approximately 44.2 percent based on the market price of the Coleman stock immediately before the transaction and then what is set forth in the merger documents.
Does that square with your recollection?
A. It doesn't say that.
Q. What does it say?
A. It doesn't say anything. The first paragraph just talks about the terms and structure of the transaction.
Q. I was actually asking -- I thought I -- maybe I didn't make myself clear.

NOT A CERTIFIED COPY

015602

Page 432

The second paragraph under the terms -- it begins, "the Coleman board reviewed."
A. I thought you wanted me to look at the first paragraph.
Q. My error, I am sure.
A. Yes.
Q. Having read that paragraph does that square with your recollection that the market premium was approximately 44.2 percent?
A. No, but I won't dispute it.
I don't have an independent recollection of the stock price.
Q. Even without the independent recollection of the stock prices, the information here, that is set forth here in the prospectus and the information statement is reflecting what was considered at the board meetings that you attended.
Do you recall discussing -- a discussion, even if you did not participate directly, that the premium being paid by Sunbeam for the Coleman stock was in excess of 44 percent?

Page 433

A. No. What was discussed was the value of the respective companies.
This was a transaction not to sell to Sunbeam ten shares of Coleman common stock that they could buy on the exchange but what the value of this company was both freestanding and to a suitor such as Sunbeam, and that is what the transaction was based upon, and that is what those valuations were based upon and those valuations had nothing to do with the stock price of a company such as Coleman who had 700 shareholders.
Q. Were you finished?
A. Yes.
Q. The last sentence in -- on page 40 of Exhibit 279 provides that the Coleman board also considered that the merger consideration was higher than the value implied by the historical stock market prices of the Coleman common stock and Sunbeam common stock.
Do you see that sentence?
A. No.
Q. The last sentence in that

Page 434

paragraph, sir?
A. I don't understand that sentence.
Q. If you don't understand it then I don't have anymore questions about it.
If you will put the exhibit back to together and we will set that aside right now?
At the time of the closing, March 30, at the time of the closing on March 30, 1998 my recollection of your testimony is that you didn't physically attend the closing, correct?
A. I don't believe so.
Q. Was there a physical closing someplace where the parties assembled to sign the documentation?
A. I don't know.
Q. You don't know?
A. No.
Q. To your knowledge did anyone on the MacAndrews & Forbes side of the transaction inquire at closing whether there had been any material adverse changes in Sunbeam's financial condition since the signing of the merger agreements as of

Page 435

February 27, 1998?
A. I don't know who was -- where the closing took place, if it took place.
Q. I understand that.
A. So I couldn't answer that.
Q. Did anyone --
A. You are talking about an event that I can't tell you occurred.
Q. I understand you weren't there but someone could have told you that the question was asked and that was the point of my question.
Let me try again.
To your knowledge even though I understand you didn't attend a physical closing and you are not even sure there was one where people were present did anyone on the MacAndrews & Forbes side of the transaction tell you that there was an inquiry at a closing concerning whether there had been any material adverse changes in Sunbeam's financial condition since the execution of the merger documents?
A. At a closing that I don't know if it took place?

NOT A CERTIFIED COPY

015603

Page 436

Q. Yes, sir.
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I don't know that it took place.
BY MR. BEMIS:
Q. Were you ever told by anyone that before the closing on March 30 anyone from MacAndrews & Forbes ever asked Sunbeam has there been a material adverse change in your financial condition since February 27, 1998?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: Our people went through that Morgan Stanley road show presentation and got an update at that point.
BY MR. BEMIS:
Q. Anything other than that?
A. I don't believe so. Not that I am aware of. There could be but --
Q. Let me show you a document that has been -- withdrawn. Let me show you Morgan Stanley Exhibit 198.

Page 437

Did you ever speak to Mr. Dunlap after the December 18 meeting at your house and up to the time of the closing on March 30?
A. I believe so.
Q. Where was that?
A. I believe here but I am not positive.
Q. This may be the same meeting you -- we talked about -- about briefly yesterday.
Is that the one you are thinking of where Mr. Levin was present?
A. I am not sure if Mr. Levin was present or not. He may have been.
Q. Is that -- you did tell me that you did recall at least one other meeting with Mr. Dunlap although I think you weren't sure precisely when it took place.
A. That is correct.
Q. That is to one you are talking about now?
A. That is correct.
Q. Then I won't ask you anything more. You already answered my questions on

Page 438

that.
I want to show you an article. There are two exhibits --
A. My contact lens is going out of whack.
Q. I empathize with you.
I am going to show you first Exhibit 198 and -- that, Mr. Reporter, you will have to mark.
(Morgan Stanley Exhibit 198 marked for identification)
MR. BEMIS: I am also going to have the court reporter mark as Morgan Stanley Exhibit 199 a version of the article from Barron's that was printed directly from Dow Jones News Retrieval and is readable as opposed to the one we had photocopied earlier.
(Morgan Stanley Exhibit 199 marked for identification)
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Did you see this Dow Jones article that we have marked as Morgan Stanley Exhibit 198 in its original form

Page 439

and we have given you a cleaner copy. It is Morgan Stanley 199.
Have you ever seen that article?
A. You mean the Barron's article?
Q. The Barron's article, yes, sir.
A. Probably not.
Q. Would you take a moment to take a quick look at it and tell me whether you have seen it?
A. I would say probably not.
Q. If you haven't seen it you can hand it back to me.
Barron's is one of the services, or, excuse me, one of the financial publications that would be included in the package of clippings that you received on a periodic basis as we discussed yesterday, is that right?
A. I don't read Barron's.
Q. I didn't say you read Barron's. Would it be included in the package --
A. Possibly.
Q. Barron's is one of the financial publications you told me yesterday was reviewed for clippings, correct?

NOT A CERTIFIED COPY

015604

Page 440

A. No. I said it could be.
Q. Could be. Okay.
Did you follow the -- withdrawn.
In, say, late 1997, early 1998 while you were negotiating, that is -- withdrawn.
In late 1997, early 1998 while the parties were in negotiations in the Coleman-Sunbeam transaction were you following any of the analyst reports on Sunbeam?
A. I don't understand your dates.
Q. Okay. Then I will just show you some specific reports and then we will focus that way if you don't understand the dates.
A. Okay.
Q. You told me that you did see the Wall Street Journal article that you thought is when Sunbeam announced its fourth quarter 1997 results and the drop in the stock price?
A. I said I probably saw it.
Q. Let me show you now what has been marked as Morgan Stanley 202.

Page 441

A. I will make one more quick stop.
THE VIDEOGRAPHER: Going off the record. The time is 12:13 p.m.
(Recess)
MR. BEMIS: Mark this as 202.
(Morgan Stanley Exhibit 202 marked for identification)
THE VIDEOGRAPHER: Back on the record. The time is 12:14 p.m.
BY MR. BEMIS:
Q. Do you have Exhibit 202 in front of you?
A. Yes.
Q. This is a -- would you call this an analyst's report?
A. It looks like a copy of something. I don't know what it is. I don't know what this is.
Q. Have you ever seen this document before?
A. I don't believe so.
Q. In the course of your -- withdrawn.
In your corporate office here in New York do you have someone either with

Page 442

your analysts or secretaries or someone else who follows analyst's reports on companies that you have an interest in?
By that I mean you might own them or you might be interested in possible transaction with the company?
A. Not formally, no.
Q. Do you have such a thing informally?
A. I don't know what you are saying.
Q. Let me try again.
Do you have someone in your company that follows analyst's reports on companies that you either own an interest in or perhaps have an interest in possibly doing a transaction?
A. Not necessarily.
Q. What do you mean by "not necessarily?"
A. Not necessarily.
Q. Can you help me out? I don't understand what you mean by that.
A. We don't necessarily have -- get all the research reports of every company that we have got an interest in.

Page 443

Q. When you do -- did you have someone assigned to get research reports on Sunbeam when you began to have an interest in a possible transaction with Sunbeam?
A. Did I assign someone, no.
Q. Do you know if anyone else in your -- excuse me.
Do you know if anyone else in MacAndrews & Forbes assigned someone to that task, to collect research reports?
A. No, I don't.
Q. Set aside Exhibit 202 since you told me had you not seen it before.
A. I don't know what it is.
Q. Let me show you what has been marked as Exhibit 204.
You know who Andrew Shore is, don't you?
A. Yes.
Q. Tell the jury who he is.
A. He is an analyst.
Q. At least in 1998, for PaineWebber?
A. Possibly.
Q. For the record, I believe this

NOT A CERTIFIED COPY

015605

Page 444

document was previously marked although it doesn't have a date on it. It has the court reporter's initials.

Do you have Exhibit 204 in front of you?

A. Yes.

Q. This is a research report by Mr. Andrew Shore dated January 29, 1998.

Let me start again so we have --

A. Excuse me.

Q. I understand.

What I have handed you is Exhibit 204 which is a research report by Mr. Andrew Shore dated January 29, 1998.

Have you ever seen this report?

A. I don't know if that is what it is.

Q. What do you think it is?

A. I don't have a clue.

Q. You don't have a clue?

A. Normally a research report has on the top heading the stationery of the firm who is issuing it, it has got the name of the person who is issuing it. I don't see any of this.

Page 445

Q. It is on the front page. On the first line, 12 --

A. This is not on PaineWebber stationery.

Q. I will not quarrel with you about that. If you tell -- you have answered the question and I will not quarrel with you.

Is it your testimony that this is not a research report on Sunbeam?

A. I have never seen a research report in this form. That is what I am telling you.

Q. Whether you have seen it in this form or not, we looked at articles from Barron's that weren't in the form that you read Barron's either, that is, printed from a different source, correct?

MR. SOLOVY: Object to the form of the question.

THE WITNESS: You are telling me this is reprinted from a research report?

BY MR. BEMIS:

Q. Well. I am not trying to tell you anything but that is what it is. It is

Page 446

reprinted from a research report.

A. So it is not the research report.

Q. It is the research report.

A. If it was the research report it would be on the stationery of PaineWebber so I don't know what this is.

Q. Okay.

Have you ever seen it before in another format?

A. I don't believe so.

Q. Did you ever hear that, about the time of January 29, 1998, that Mr. Shore was reporting that, and I am referring now to page 3, that Sunbeam has and continues to be a very risky story?

A. Page 3?

Q. Page 3, the paragraph right below the heading Risks.

A. No.

Q. Did you hear in or about January of 1998 that Mr. Shore was reporting that Sunbeam's EPS, that is, earnings per share, in normal parlance --

A. Yes.

Q. Growth Target of 40 percent in

Page 447

1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in, it is 2H97.

Do you see that?

A. Yes.

Q. 2H97, do you mean second half of 1997?

A. Second half of '97.

Q. Did you hear that?

A. No.

Q. Did you hear that Mr. Shore was reporting that the company, Sunbeam, is employing a risky strategy to capture a larger share of the grill market; did you hear that?

A. No.

Q. Did you hear that Mr. Shore was reporting in January of 1998 that execution is the key to the company providing an encore to its stellar 1997 performance?

A. No.

Q. Hand that back to me.

A. Yes. I do not believe this to be a research report.

Q. Do you believe it wasn't authored

NOT A CERTIFIED COPY

015606

Page 448

by Mr. Shore?
A. I can't tell what it is.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 138.
Do you have Morgan Stanley Exhibit 138 in front of you?
A. Yes.
Q. This document, as you will see, is dated February 6, 1998. It is in the lower left-hand corner.
A. Yes.
Q. Have you seen this document before?
A. I don't believe so.
Q. Is this what you are referring to as the format of a research report?
A. Yes.
Q. Would you agree with me that this is a research report?
A. Yes.
Q. This research report is also -- withdrawn.
This research report, Exhibit 138, is authored by Mr. Shore as you will see at the bottom.

Page 449

A. I don't know if that is so.
Q. Okay.
Did you -- were you aware that in February of 1998 that PaineWebber in its research report was referring to Sunbeam's aggressive balance sheet management, and that appears in the very first paragraph of the document?
A. No. See here, PaineWebber was issuing a buy.
Q. Were you aware that in the same paragraph on page 1 that Sunbeam had, according to the report, high inventory and receivable levels?
A. No.
Q. Were you aware that PaineWebber was reporting, if you look at the bottom of that same paragraph, at the very bottom, that there were warning signs, do you see that?
A. Yes.
Q. Are you aware that PaineWebber was reporting that in its research reports?
A. Yes. With all of that they say to buy, an unqualified buy, by the way.

Page 450

Q. Were you aware that PaineWebber was reporting, again, on the first page, right-hand column that "at present Sunbeam needs some new positive news to stop its steady decline."
A. No.
Q. Turn to page 3 of Exhibit 138.
Were you aware that under the heading -- withdrawn.
Look -- I am looking now at the paragraph under fourth quarter EPS, it's low end of range.
Do you see that, the paragraph below that heading?
A. Yes.
Q. If you will read down a few sentences, the sentence -- there is a sentence that reads as follows: "As the last couple of quarters have indicated, Sunbeam's goals are very aggressive, even at the low end of the range."
Do you see that?
A. Yes.
Q. Were you aware that PaineWebber was of this opinion in February of 1996

Page 451

about Sunbeam?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I was not aware of this. What you are telling me is that with all of this they say to buy.
BY MR. BEMIS:
Q. Is PaineWebber engaged in a fraud against you?
MR. SOLOVY: Wait a second. That is an improper question. I instruct the witness he need not answer. I suggest you withdraw it.
MR. BEMIS: I am not withdrawing it. You are instructing him not to answer?
MR. SOLOVY: That's right.
MR. BEMIS: Okay. I am not a judge so I won't rule on it.
BY MR. BEMIS:
Q. Let's try again. Were you aware -- withdrawn.
Look at the heading, strong -- excuse me -- sales strong led by grills.
Do you see that?

NOT A CERTIFIED COPY

015607

Page 452

A. Yes.
Q. Were you aware of PaineWebber's report as follows, "We are not bothered by the grill blip in the fourth quarter as long as the company hasn't stolen some first quarter 1998 up side to stretch to meet fourth quarter 1997 expectations. We will not really know this until we are further into the first quarter but must note that we believe the receivable and inventory position is still a bit heavy."
Were you aware of that statement by PaineWebber?
A. No, but you should continue, "If it works Sunbeam will likely gain substantial market share and have a blowout first half in grills --"
Q. The next sentence --
A. I did not see this report, sir.
Q. I understand you may not have seen the report. That is not specifically my question.
A. Oh, I thought that is what you were asking me about.
Were you not asking me about this

Page 453

report?
Q. I want to finish you today. I don't want to argue.
A. We are going to be finished today, sir.
Q. Look at the next sentence from where I was reading. "The stakes are high as Sunbeam enters the peak grill season as the company has already begun to seed the channel in the fourth quarter. Grill inventory is high (according to strategy) and its product lineup is brand new."
Do you see that?
A. Yes.
Q. Were you aware of that statement by PaineWebber?
A. No.
Q. Turn to page --
MR. SOLOVY: Let me say for the record, I object to this whole line of questioning. You are asking him about a document the witness has said he has never seen before. I suggest respectfully that you are consuming a lot of time asking questions about a

Page 454

document which he has never seen or read before.
BY MR. BEMIS:
Q. Turn to page 5 of the document please under the Heading Risks.
A. Yes.
Q. The first sentence reads, "Sunbeam has been and continues to be a very risky story."
Do you see that sentence?
A. Yes.
Q. Were you aware of that statement by PaineWebber in February of 1998?
A. No.
Q. Continuing in that paragraph, "The company's EPS growth target of 40 percent in 1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in the second half of 1997."
Do you see that sentence?
A. Yes.
Q. Were you aware of that statement by PaineWebber in February of 1998?
MR. SOLOVY: Object to the form

Page 455

of the question; asked and answered.
BY MR. BEMIS:
Q. You can answer.
A. No.
Q. Were you aware of the following statement by PaineWebber in February of 1998.
"We also believe the company," referring to Sunbeam, "is employing a risky strategy to capture a larger share of the grill market."
Were you aware of that statement?
MR. SOLOVY: Object to the form of the question; asked and answered.
THE WITNESS: No.
BY MR. BEMIS:
Q. You can hand that back to me.
A. With all of that, PaineWebber says to buy.
Q. Are you saying that PaineWebber was engaged in a fraud with Sunbeam?
MR. SOLOVY: I object to the question. I instruct that he not answer.
MR. IANNO: That is an improper

NOT A CERTIFIED COPY

015608

objection under Florida law.
MR. BEMIS: Mr. Ianno, only one person may speak and Mr. Ianno will not be objecting. I apologize. We don't do that.
MR. SOLOVY: Apology accepted. At that point I think it is past 12:30.
MR. BEMIS: Why don't we break?
THE VIDEOGRAPHER: Going off the record. The time is 12:32 p.m.
(Luncheon recess: 12:32 p.m.)

AFTERNOON SESSION
1:40 p.m.
THE VIDEOGRAPHER: Returning to the record. The time is 1:41 p.m.
BY MR. BEMIS:
Q. Good afternoon, Mr. Perelman.
A. Good afternoon.
Q. Let me hand you what has previously been marked as Morgan Stanley Exhibit 220. I will slide that in front of you.
Do you have that exhibit in front of you, sir?
A. Yes.
Q. Would you please take a look at it and I will ask you a few questions about it?
A. Yes.
Q. First of all, have you ever seen this document?
A. I don't believe so.
Q. On the right-hand side there are the initials ROP and DD.
Do you see that?
A. Yes.

Q. Is there anyone else at MacAndrews & Forbes with the initials ROP?
A. No.
Q. And DD, is there anyone, again at MacAndrews & Forbes, anyone other than Mr. Drapkin, Donald Drapkin, with those initials?
A. No.
Q. Below that there is HGS. Is there anyone other than Mr. Gittis with those initials?
A. Mr. Gittis.
Q. Is there anyone else with those initials?
A. Mr. Gittis.
Q. Yes?
A. No.
Q. There is a loop, for lack of a better descriptor, on the left side.
Have you ever seen that mark on a document before?
A. No.
Q. Did you -- withdrawn.
When Mr. Gittis would send you a document would you normally receive it in

the office?
A. Normally, yes. Can I take a look at this?
Q. You sure can. I thought you had. I didn't mean to rush you. I thought you had looked at it before I started questioning. I apologize.
A. Okay.
Q. Have you read the document now?
A. I haven't read it all. I have looked at it.
Q. Are you -- strike that.
Do you know anyone at MacAndrews & Forbes who uses a marking similar to what you see on the left side of MS 220?
A. No.
Q. Let me show you another document which we will mark as Exhibit MS 417.
(Morgan Stanley Exhibit 417 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit 417 in front of you?
A. Yes.
Q. On the left side of this document

NOT A CERTIFIED COPY

015609

Page 460

there appears to be a similar looping mark on the left side as in MS 220.
Do you agree with me?
A. No.
Q. You disagree with me. Okay.
MR. SOLOVY: Can I see it for a second?
MR. BEMIS: Sure.
MR. SOLOVY: Fine.
BY MR. BEMIS:
Q. You can hand it back to me.
In any event, sir, did you have any discussions with -- withdrawn.
Did you see the press release that was issued by Sunbeam on or about April 3, 1998 regarding its first quarter results?
A. Can I see it?
Q. Yes.
A. Thank you.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 58.
Do you have Morgan Stanley 58 in front of you?
A. Yes.

Page 461

Q. Behind the fax cover sheet is a press release.
Have you seen that press release before?
A. I don't believe so.
Q. Did you have any discussion on or around April 3, 1998 with either Mr. Drapkin or Mr. Gittis about Sunbeam's announcement on April 3 concerning its first quarter 1998 sales?
A. I am sure we did.
Q. What was the market's reaction to the announcement on April 3 -- strike that?
Do you recall there was an announcement on or around April 3 even if you didn't see the press release about Sunbeam's first quarter sales?
A. Yes.
Q. What was the market's reaction to that announcement?
A. I believe negative.
Q. Negative meaning that the price of Sunbeam's stock dropped, correct?
A. Yes.
Q. Do you remember how much it

Page 462

dropped?
A. No.
Q. If you look at Morgan Stanley Exhibit 220, do you still have that in front of you, sir? 220?
A. Which is 220? Yes.
Q. The one with your initials.
A. Yes.
Q. And Mr. Drapkin's initials on it.
According to this document, Sunbeam's stock dropped nearly 25 percent on April 3 following the issuance of the press release.
Is that consistent with your recollection of events?
A. I don't have a specific recollection. If you show me the stock price closes I will be able to see that.
I don't quarrel with that.
Q. The impact -- at that time, being April 3, of the transaction with Sunbeam had closed, correct?
A. Yes.
Q. So you had, that is your companies, had received the 14.1 million

Page 463

approximate -- million shares of Sunbeam stock, correct?
A. I would assume so.
Q. As a result of the drop in the stock on April 3, regardless of what it was, you would consider that to have been a material impact on the value of your holdings of Sunbeam's stock?
A. I don't understand the question.
Q. You don't understand the question. I will try it again.
A. Good.
Q. You held either directly or indirectly through your companies about 14.1 million shares of Sunbeam stock on April 3?
A. Right.
Q. As a result of the press release on April 3 and the announcement of Sunbeam's earnings the price of Sunbeam's stock dropped?
A. Yes.
Q. The market reacted negatively to the announcement?
A. Yes.

NOT A CERTIFIED COPY

015910

Page 464

Q. Although not necessarily in the same amounts the market reacted negatively on March 19, the day of the announcement?
A. Are you giving me statements or asking me questions?
Q. I am not trying --
A. I don't understand the question.
Q. I will try again.
A. Okay.
Q. On March 19 the market reacted negatively when Sunbeam issued its press release, correct?
A. Yes.
Q. On September 29, I believe it was, when Sunbeam announced its fourth quarter 1997 results the market reacted negatively, correct?
A. When was that, September --
Q. Excuse me. January. I said September.
A. Why don't we start all over again because you are getting me all confused.
September, December, January. I think you are confused.
Q. I wouldn't want to confuse you.

Page 465

A. Good.
Q. In January 1998 when Sunbeam announced its fourth quarter results the market reacted negatively, did it not?
A. Yes.
Q. So to make sure you are not confused, on March 19, 1998 when Sunbeam issued its press release the market reacted negatively, did it not?
A. I don't recall what the market price was during these periods of time but whatever it was it was.
Q. My question was: Did the market react negatively?
A. I believe so but these are definable issues.
Q. On April 3 you have told me the market reacted negatively to Sunbeam's announcement, correct?
A. I believe so.
Q. Following the April 3, announcement did you take any steps to communicate directly with Sunbeam to obtain additional information about it's, that is, Sunbeam's results for the first quarter of

Page 466

1998?
A. Me personally?
Q. We will start with you personally.
A. No.
Q. Did anyone to your knowledge at MacAndrews & Forbes?
A. I believe the Coleman people did. I believe that Jim Maher did.
Q. Who are the Coleman people that you believe called Sunbeam?
A. I didn't say they called Sunbeam.
Q. Who are the people at Coleman that you believe contacted or communicated directly with Sunbeam to obtain additional information about first quarter results?
A. Directly to Sunbeam or directly to Morgan Stanley? It would have been the same group. It would have been Jerry Levin or Joe Page or Bobby Jenkins.
Q. Do you know for a fact that Mr. Levin did contact Sunbeam?
A. No.
Q. Do you know for a fact that Joe Page did contact Sunbeam?

Page 467

A. No.
Q. You also identified Mr. Maher as a person who might have contacted Sunbeam.
A. Or Morgan Stanley.
Q. Let's focus on one person at a time.
You said Mr. Maher, did you not?
A. I said Mr. Maher and I said Sunbeam or Morgan Stanley. That is one person.
Q. We will get to Morgan Stanley.
A. Sunbeam is not a person.
Q. Mr. Maher -- withdrawn.
Do you know who --
A. So I was dealing with one person at a time, Mr. Maher.
Q. Let me ask the questions so -- and then we will move on.
Do you know who if anyone Mr. Maher spoke to at Sunbeam?
A. Or Morgan Stanley, no, I don't.
Q. I want -- one at a time. Let's start with Sunbeam.
A. No.
Q. You said you think Mr. Maher may

NOT A CERTIFIED COPY

015911

Page 468

have spoken to someone at Morgan Stanley?
A. Maybe.
Q. Maybe?
A. Yes.
Q. Do you have any firsthand knowledge of that?
A. No.
Q. Other than Mr. Levin, Mr. Page and Mr. Maher, are you aware of anyone else that you think may have communicated with Sunbeam, let's start with them first, about the April 3 announcement by Sunbeam?
A. Ask me that again.
Q. Are you aware of anyone other than Mr. Levin, Mr. Joe Page, or Mr. Maher who you believe may have contacted Sunbeam about its announcement on April 3?
A. I am not aware who did contact either Sunbeam or Morgan Stanley.
Q. Are you aware --
A. But somebody --
Q. I interrupted you. I apologize.
A. Go ahead.
Q. Are you aware of anyone associated in any way with MacAndrews &

Page 469

Forbes who contacted anyone at Sunbeam about the April 3 press release?
A. Specifically, no.
Q. Are you aware of anyone associated with MacAndrews & Forbes, and I am including Coleman in this because that is the way you answered the question, who contacted Morgan Stanley about the April 3 Sunbeam announcement?
A. Not that I recall.
Q. Are you aware of anyone associated with MacAndrews & Forbes who contacted Arthur Andersen about the April 3 press release announcement?
A. Not that I recall.
Q. Did anyone associated with MacAndrews & Forbes contact anyone at CSFB about the April 3 announcement?
A. Not that I recall.
Q. After April -- excuse me.
Are you aware of anyone associated with MacAndrews & Forbes contacting Coleman's accountants, Ernst & Young, and asking them any questions about the April 3 announcement?

Page 470

A. Look, we got information. I am not quite sure who got it but we got information.
You are asking me specifically who did this and I can't tell you right now who did this.
Q. Is your answer no to my last question?
A. What was your last question?
Q. Are you aware of anyone associated with MacAndrews & Forbes contacting Coleman's accountants, Ernst & Young, and asking them any questions about the April 3 announcement?
A. Specifically, no.
Q. Were you aware after April 3 of any analyst following Sunbeam downgrading Sunbeam?
A. As of when?
Q. As of April 3, following the April 3 announcement?
A. I would imagine that everybody did.
Q. After April 3 did anyone at MacAndrews & Forbes make any request from

Page 471

any source to obtain interim financial statements for Sunbeam's first quarter 1998 results?
A. Say that again.
Q. After April 3 did anyone at MacAndrews & Forbes make any requests from any source to obtain interim financial statements for Sunbeam's first quarter 1998 results?
A. I don't understand the question.
Q. What is it that you don't understand? I will try to fix it.
A. Are you talking about first quarter statements or interim statements?
Q. Interim statements for any period in the first quarter of 1998.
MR. SOLOVY: I object to form.
THE WITNESS: They are two different things. You are asking two different questions.
BY MR. BEMIS:
Q. I am not asking two different questions.
A. You are.
Q. We can disagree upon that without

NOT A CERTIFIED COPY

015512

Page 472

getting into a quarrel.
A. We are not quarreling.
Q. After the April 3 announcement did anyone at MacAndrews & Forbes make any request from any source to obtain Sunbeam's financial statements for the first quarter of 1998?
A. Yes, we received first quarter statements.
Q. When was that?
A. I don't recall.
Q. Was it after they were publicly filed in the 10-Q for Sunbeam or for the first quarter of 1998?
A. I don't recall when we received them.
Q. Did you receive -- did you -- withdrawn.
Did MacAndrews & Forbes receive Sunbeam's first quarter financial statements before they were made a matter of public record in Sunbeam's 10-Q filing?
A. I can't answer that.
Q. What did you do when you saw -- strike that.

Page 473

Did you personally see Sunbeam's first quarter financial statements for 1998 at some point?
A. Yes.
Q. What did -- what were the circumstances under which you saw the statements?
A. I was shown them.
Q. By whom?
A. I don't recall.
Q. Was this at a meeting or at which you were discussing your investment in Sunbeam?
A. I don't recall.
Q. What, if any, action did you take after you reviewed the first quarter financial statements of Sunbeam?
A. There was a gradual process from the beginning of April until I believe mid May where we began learning more and more about what was going on in the company and it was during that period that the board fired, I believe, in mid May, although my dates may be wrong, Al Dunlap, but during that period we became gradually more aware

Page 474

of the financial performance of Sunbeam for that period of time so specifically I do not know when I became aware of certain things.
I do know that I was terribly upset to see the performance of Sunbeam during the first quarter.
I thought that we were lied to by both Morgan Stanley and Sunbeam during the preceding periods of time and I did not know then the extent to which that was true but over this period of time we sought out and received information as to the performance of the company.
Q. If I understand this, sometime in -- between the April 3 announcement and what you believe was mid May you became --
A. Mid May, end of May.
Q. Mid May, end of May you were terribly upset, right?
A. Yes.
Q. And you believed that Morgan Stanley had lied to you, correct?
A. Deceived us.
Q. Deceived you?

Page 475

A. Yes.
Q. You also thought that Sunbeam had deceived you; is that right?
A. Yes.
Q. I take it -- withdrawn.
Did you also think that Morgan Stanley had lied to you which is the words you used in your original answer?
A. Yes.
Q. You thought that in April and May of 1998, correct?
A. Yes.
Q. Did you at any point in April or May of 1998 after you became terribly upset, felt that you had deceived and lied to by Morgan Stanley, communicate your feelings to anyone at Morgan Stanley?
A. Me personally?
Q. Yes.
A. No.
Q. Did you ask someone to do it for you?
A. No.
Q. How much, in terms of just sheer market --

NOT A CERTIFIED COPY

0156 13

Page 476

A. I didn't do that to Al Dunlap either.
Q. Just in terms of market value of Sunbeam's securities, just based on New York Stock Exchange prices, how much money, from April -- excuse me -- March 30 to whatever point in May you reached the point you had been lied to, deceived and you were upset, how much market value had the securities lost that you received from Sunbeam in the Coleman transaction?
A. You are asking me to recall what the stock price was day by day in 1998. I can't do that.
Q. I wasn't trying to do day by day. In general.
Tell the jury how much you had lost in millions of dollars when you reached this point of being terribly upset, deceived and lied to.
A. I felt that way the first day.
Q. Of April 3?
A. Yes, and the second day and third day.
As I learned more which I did not

Page 477

know everything until only recently, but as I learned more I became more and more bothered.
Now did I confront or tell my people to confront Al Dunlap? No, I did not.
Did I confront or tell my people to confront Mr. Kersh? No, I did not.
Did I confront or tell my people to confront Morgan Stanley or their people? No, I did not.
Q. Did you at any time speak to Bill Reid after April 3 to convey your reactions as you have described them as being terribly upset, deceived and lied to by Morgan Stanley?
A. I don't think I relayed my feelings toward anybody who was on the other side up until that point.
Q. When was the first time that -- strike that.
Other than filing this lawsuit against Morgan Stanley which was filed in May of 2003, when was the first time that you conveyed to anyone at Morgan Stanley

Page 478

your feelings that you had been lied to, deceived and that you were terribly upset almost immediately after April 3, 1998?
A. I never did. But I never conveyed them to anybody either. I don't think that is my place.
Q. Is it fair to say, sir, that -- withdrawn.
After April 3 did you ask Mr. Levin to do any research or perhaps analysis may be a better word about the projections of Sunbeam's performance that you had seen before the closing on March 30, 1998?
A. I don't understand the question.
Q. Did you ask Mr. Levin to do -- did you ask Mr. Levin to do anything after April 3, 1998 to investigate what went wrong at Sunbeam?
A. At one point after that period he became the CEO so he investigated it in depth.
Q. After -- setting that aside.
After April 30 and before Mr. Levin went on to become the CEO of

Page 479

Sunbeam did you ask Mr. Levin to do any type of investigation of your analysis of Sunbeam before the acquisition?
A. Of my analysis -- I don't understand the question.
Q. MacAndrews & Forbes' analysis of Sunbeam before the transaction.
A. I still don't understand the question.
Q. Let me show you a document that we will mark as Morgan Stanley Exhibit 168.
Before do I that let me ask you a couple more questions.
Did you ask Mr. Levin at any time after April 3 to review any of the key assumptions that had been used in the analysis of whether to go forward with the transaction with Sunbeam?
A. Possibly.
Q. Did you ask Mr. Levin after April 3 and before he became CEO of Sunbeam to contact various analysts to discuss with them their views of what had happened at Sunbeam?
A. Possibly.

NOT A CERTIFIED COPY

015914

Page 480

Q. Did you ask Mr. Levin after April 3 but before he became chief executive officer to review certain analyst's models about Sunbeam's expected future performance as they existed at the time of the closing?
A. Unlikely. It is unlikely that I would have asked him your second question either. It is possible but it is unlikely.
Q. Did you ever see a memorandum that Mr. Levin prepared concerning the key differences to Wall Street's analyst's models between MacAndrews & Forbes models?
A. Do you want to show it to me?
Q. I may. Right now I want to know whether you saw one.
A. I don't know.
Q. Did you ever discuss with Mr. Levin after April 3 any conclusions he may have reached about differences between Wall Street analyst's models and MacAndrews & Forbes' models?
A. I would highly doubt it because we did not base our analysis on Wall Street's models.
Our analysis was based on the

Page 481

information given to us from Morgan Stanley so that it really was irrelevant to us what some third-party based some model on, that they may have gotten their information off the Encyclopedia Britannica so that would not have been of significance to me.
Now if you said to me, did I ask Mr. Levin to go back and define the differences between what we were told by Morgan Stanley and what in fact occurred, I probably did do that but I find it unlikely that I would have said to him -- because that would not have any relevance to me.
Q. What Morgan Stanley models did you rely upon in the acquisition?
A. The information given to us by Morgan Stanley.
Q. Is there a particular document that you are referring to as the model?
A. Those documents we were talking to before.
Q. Let me show you Morgan Stanley Exhibit 85. I want you to look through the document and tell me what model you relied upon in selling your Coleman stock to

Page 482

Sunbeam.
A. Sure.
Can I make a quick stop to the men's room?
THE VIDEOGRAPHER: Going off the record. The time is 2:12 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 2:16 p.m. This marks the beginning of tape number three, volume two.
BY MR. BEMIS:
Q. Sir, I have handed you Morgan Stanley Exhibit 85.
MR. SOLOVY: I don't think you had.
MR. BEMIS: I thought I had, right before you left.
BY MR. BEMIS:
Q. Let me hand you a copy.
Do you have a copy of Morgan Stanley 85 now?
A. Yes.
Q. Would you please point out for me by page number the model that Morgan

Page 483

Stanley provided?
A. Can I have the other one too?
Q. Can we do one document at a time? Then I will give you the other document.
A. But --
Q. I will give you both. I don't want to quarrel with you.
I am going to hand you Morgan Stanley 84, sir.
A. Yes.
Q. My question was: Could you point out for me the model in Morgan Stanley Exhibit 85 that you said was provided to you and upon which you based your analysis?
A. Let me just pick out a few. Sunbeam Corporation's consolidated profitability statistics, they were showing EBITDA --
Q. Could you give me a page number since I can't see where you are reading from?
A. I don't have a page number here.
MR. SOLOVY: It will be on the bottom.
THE WITNESS: CPH, it ends 1227.

NOT A CERTIFIED COPY

015915

Page 484

BY MR. BEMIS:
Q. I see.
A. It has got 1997 EBITDA of 238 million dollars, 1998 of $385 million, 1999 of $483 million.
Q. Do you see the footnote 1 and 2?
A. Right.
Q. Does footnote 1 say these projections are from Oppenheimer and the Oppenheimer research report dated --
A. This is in their Morgan Stanley book so --
Q. Do you see the footnote, sir?
A. I see the footnote but it is in the Morgan Stanley book so Morgan Stanley who is making this presentation to me is giving me this information as for me to believe this is their position.
Do you want me to go --
Q. Yes, I want you to go through and identify every page for me in this document that you believe is a -- let me finish my question -- that is a model of Morgan Stanley that you relied upon in your analysis?

Page 485

A. Page 1231.
Q. Give me a second to get there please.
A. Okay?
Q. Okay.
A. Doubling of 96 sales of about 984 to almost 2 billion by 1999 without acquisitions, tripling of international sales from 185 to 600 by 1999, achieve an operating margin of at least 20 percent, achieve 25 percent return on equity.
These numbers, by the way, which have no footnote match perfectly to the previously defined numbers that I gave you.
Q. I interrupted you.
A. It says, stated growth objectives.
Q. Does it say Sunbeam Corporation's?
A. That is what we are talking about, Sunbeam Corporation, given to me by Morgan Stanley on the right-hand corner.
Q. What else besides those pages?
A. Every page.
Q. Do you want to give me other information that you relied upon?
A. Every page. Oster became the preferred premium brand. Sunbeam expanded value segment by strong appeal to women.
Q. What page are you reading from?
A. The next page. Go to page 1234.
Q. Is there any --
A. Where will it come from.
Q. Can you slow down? We will do one page at a time.
Is there any modeling page on CPH 1411233.
A. This is the narrative from which modeling is based upon.
Q. I have to answer the question.
CPH1411233.
My question was: On that page that we were just discussing, I just gave the number to the court reporter, is there a modeling information that you relied upon?
A. This is narrative to the modeling information.
Q. Sir, could you continue?
A. Sure.

Page 486

Page 487

Where will growth come from. International growth of $400 million. Aggressively pursue international distribution and licensing agreements. Triple international sales from 185 to 600. 50 percent new geography, 40 percent new products, 10 percent core growth. New products, $300 million, introduce 300 new products a year over the next several years in all five segments, shorten time from -- core group, $100 million, 3 percent industry growth from core products, channel management, new and existing channels, improve order time fulfillment rate to 95 percent, leverage trend toward fewer suppliers in the mass channel, filling product voids, revenue growth 1 billion dollars.
Q. This is on the page entitled Sunbeam Corporation Future Growth Opportunities, Where Will the Growth Come From?
A. Signed by Morgan Stanley.
Q. Is that the page you were reading from with the question mark?

NOT A CERTIFIED COPY

015616

Page 488

A. Yes. The next --
Q. Anything else?
A. I will continue. Every page is this.
The next page supports the product development time being shortened from the two-and-a-half year period. We designed a new product development process.
The next page talks about some of the new products which supports the previous page; first quarter of 1997, second quarter of 1997.
Q. Are you now, because we have to have a paper record of what you are doing, I would like to make sure I know what page you are on.
A. I am going page by page in order. I am on page 1236 now.
Q. Anything else?
A. The next page is detailed blueprint of one of their -- the Allergy Smart Air Cleaner.
Q. That is page 1237?
A. Yes.
Page 1239 is an international

Page 489

expansion initiative, global agreements, going country by country from Argentina to Korea to United Kingdom to South Africa.
Q. You relied on this -- you called this a model?
A. No. This is -- no. Some of this is back up to the model. Some of this is in support of how -- when they say that the international expansion is going to grow by $400 million, this is the back up to how they get there.
Q. Are you reading, where are you reading from, what page?
A. 1239. International growth strategies, global agreements, distribution, licensing and marketing.
Q. I asked you to focus your answer if you could on specific models as you did in your first answer.
A. You asked me to go through what I based it upon in the modeling. This is all the background.
My point is that on the earlier page I gave you what the model was and now I am giving you detail, specific detail

Page 490

that was given to us by Morgan Stanley to support that model.
Q. Can you please focus on any models as opposed to what you call backup material. Let's get the basic models that you relied on.
A. I started with --
Q. You only gave me one.
A. No. I gave you two. One to support two. One was page 1227.
Q. Actually you gave me --
A. Which modeled to 1999 and the other was 1231 which supported that model, the 1299. Now we will go --
Q. Let me slow down. I need to -- I have to know what page you are on.
Let's make sure we are clear on what models you are relying on. You first pointed out 1126 as one of the models, didn't you?
A. No.
Q. We will set aside 1126.
A. Wait a second. I don't believe I mentioned 1126.
Q. Is that one of the models that

Page 491

you relied on?
A. It is here in the report.
Q. I just asked you did you rely on this model?
A. I relied on this whole book. I relied on this whole package from Morgan Stanley.
Q. Sir, I want you to focus on the limited question.
A. I answered you. I relied on this entire package.
Now you are saying to me what specific modeling was done in here and I am trying to tell you.
Now, some of it is the actual financial modeling and some of it is the dialogue supporting that and some of it is the assumption supporting that.
Q. Let's focus on the financial model and see if we can -- take the very first financial model you relied on and tell the jury the page number.
A. Let me start again. I relied on this book in its entirety. Okay. That is what I relied on.

NOT A CERTIFIED COPY

015617

Page 492

Q. Now will you answer my question? Will you please tell me the page in MS 85 that is the first financial model that you relied on?

I want you to go page by page and stop after you said the page identification. Then we will move on to another topic.

A. Good. On page 1222.

Q. That is one of the pages of financial modeling that you relied upon?

A. No. You cannot take this book out of context by page.

I relied on this entire book that says Morgan Stanley right here, discussion materials from Morgan Stanley. I relied on this entire book. That is what I relied on.

So page number 1, given to me by Morgan Stanley, is estimates for the year 1998 and 1999.

Then we go to the next financial page that you want to talk about.

Q. What number is that, sir?

A. 1226. I am just responding to

Page 493

your question to give you financial pages.

1226.

Q. All right. What is the next financial modeling page?

A. 1227.

Q. 1227. What is the next page you relied on?

A. 1231.

Q. Let me turn to 1231 please. That is the page entitled Sunbeam Corporation Stated Growth Objectives?

A. Yes.

Q. You consider that a financial modeling?

A. That is what it is, financial statistics.

Q. I just asked --

A. It says doubling of sales, tripling of international sales.

Q. What is the next page that you relied upon as financial modeling?

A. No. Let me repeat.

I relied upon this entire book. I would be happy to go through with you and give you and point out to you every

Page 494

financial page, every page that has financial information on it but that is not what I relied on. I relied on this book in its entirety.

Page 1234.

Q. 1234. Give me a second to turn to that.

Sunbeam Corporation future growth opportunities, where will they come from, question mark.

A. Correct.

Q. What is the next page?

A. Not question mark. It has the answers.

Q. If you would give me the next page, sir?

A. Page 1235.

Q. That page is entitled Sunbeam Corporation New Product Initiatives?

A. Correct.

Q. What is the next page of financial modeling?

A. I would go to 1240.

Q. Go to page 1240. Give me one second to get there. The page entitled

Page 495

Sunbeam Operational Improvement Potential "Project Full Time."

A. Yes.

Q. What is the next page, sir?

A. I would go to page 1241.

Q. That one is entitled Channel Management Case Study Revenue Potential; is that what you are referring to?

A. Yes.

Q. What is the next one?

A. I would go to page 1271.

Q. Give me one second to get there, sir. All right. That is the page entitled Sunbeam Corporation, Sunbeam International Growth Strategies, correct?

A. Yes. Growing sales from 984 to 2 billion dollars.

Q. That is in 1999?

A. Correct.

Q. Would you please continue?

A. I would go to page 1274.

Q. Give me one second. Let me get there.

That is the page named Sunbeam Corporation, Sunbeam International Growth

NOT A CERTIFIED COPY

015618

Page 496

Strategies, Specific Global Opportunities and Market Potential?
A. Correct.
Q. What else?
A. I would go to page 1281.
Q. That is the page entitled Sunbeam Corporation Channel Management Filling Product Voids, Opportunities to Expand, Breadth and Depth of Product Line?
A. Yes.
Q. Okay. Please continue.
A. I believe those are the only financial pages in the book.
Q. Are there -- did you receive from Morgan Stanley any other financial modeling materials other than what was in Exhibit MS 85?
A. This.
Q. What you are referring to is MS 84, right?
A. Yes.
Q. You can hand those two documents back to me. Thank you.
A. Are we finished with these?
Q. We may be.

Page 497

Did you have -- withdrawn.
Did you write this -- did you circle this on here with your pencil?
A. I just did that just right now.
Q. Would you just initial that for me please so that we know that you put that on there?
A. I put it on right now.
Q. That is what I thought. I didn't remember seeing it. Just put your initials --
A. How about if I just erase it?
Q. I think it would be best if you just initial it.
A. Is that okay?
MR. SOLOVY: Sure.
MR. BEMIS: I thought that was not on the document.
BY MR. BEMIS:
Q. I will hand this back to you one more time.
Turn to page CPH1411225 of Morgan Stanley Exhibit 85. Tell me when you are there.
A. Yes.

Page 498

Q. There is a listing of recent analyst estimates that appears on this page, correct?
A. Yes.
Q. The first one is Prudential securities, a Mr. Nicholas Heymann, H-E-Y-M-A-N-N. Do you see that?
A. Yes.
Q. Did you or anyone at MacAndrews & Forbes ever request a copy of this analyst report on Sunbeam?
A. Not that I am aware of.
Q. Are you aware of any allegation that Prudential Securities or Mr. Heymann was a participant in any fraud with Sunbeam as you have alleged in your case against Morgan Stanley?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I never talked to Prudential.
Q. I take it then you are not -- I take it then you are not aware that -- aware of any allegations that Prudential

Page 499

Securities or Mr. Nicholas Heymann was engaged in any fraud with Sunbeam?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer, sir.
A. Ask the question again.
Q. Sure.
I take it then you are not aware of any allegations that Prudential Securities or Mr. Nicholas Heymann was engaged in any fraud with Sunbeam?
MR. SOLOVY: Object to the form of the question.
THE WITNESS: I am not, no.
BY MR. BEMIS:
Q. Then there are four other analysts listed on this page; Buckingham Research, PaineWebber and Mr. Andrew Shore; Merrill Lynch, Mr. John Gibbons; and CIBC, Oppenheimer, Mr. Scott Graham.
Do you see those?
A. Yes.
Q. Are you aware of any allegations by anyone that those four analysts

NOT A CERTIFIED COPY

01519

Page 500

participated in any fraud by Sunbeam?
MR. SOLOVY: Object to the form of the question.
MR. BEMIS: You can answer.
THE WITNESS: I am not aware of any activity on their part at Sunbeam.
BY MR. BEMIS:
Q. You were aware when you read this that these analysts were making estimates of Sunbeam's earnings per share, were you not?
A. No.
Q. You didn't read this information?
A. I never got back up to this. I just saw this in the package.
Q. You did see at least the information itself that is set forth on these pages, specifically page 1225, the analyst estimates?
A. Yes, but I would not have relied upon them.
Q. To make sure I understand your testimony, you would not have relied upon these analyst estimates in making any decisions whether to accept Sunbeam's stock

Page 501

in the transaction?
A. That is correct.
Q. Did you follow up -- strike that.
My understanding is that your testimony is that you did not seek to obtain the underlying research from these analysts that is quoted in this page of Morgan Stanley Exhibit 85; is that correct?
A. I did not, no.
Q. Do you know if anyone at MacAndrews & Forbes did?
A. Not that I am aware of, no.
Q. Do you know if anyone at MacAndrews & Forbes even called any of these analysts listed on page 1225 of Morgan Stanley 85?
A. No, not that I know of. That would not have been significant to us.
Q. There is also two additional sources listed on the same page.
One is I/B/E/S. Do you see that?
MR. SOLOVY: Where is that, Mr. Bemis?
MR. BEMIS: Directly below the solid line.

Page 502

MR. SOLOVY: I see. Thank you.
BY MR. BEMIS:
Q. Do you see that, sir?
A. Yes.
Q. Do you know what I/B/E/S is?
A. No.
Q. Do you know what First Call is?
A. I believe it is just an average of the estimates.
Q. By analyst?
A. An average of the estimate -- the analyst's estimates, I believe.
Q. Are you aware of any allegation that First Call was engaged in any fraud with Sunbeam?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. Not that I am aware.
Q. Are you aware of whether I/B/E/S, I/B/E/S which is an acronym which I can't remember right now the name of, are you aware of any allegations that it was involved in a fraud with Sunbeam?

Page 503

MR. SOLOVY: Object to the form.
THE WITNESS: If you don't know who they are and I don't know who they are --
BY MR. BEMIS:
Q. I do know who they are. Mr. Nesbitt and Mr. Maher told us. I apologize.
A. Maybe if you tell me who they are I can answer the question.
MR. SOLOVY: I still object to the form of the question.
BY MR. BEMIS:
Q. You can hand that back to me. I think we are probably done with that one. Thank you very much.
Did I understand you correctly to say that you took information from Morgan Stanley Exhibit 85 and put it in MacAndrews & Forbes financial model?
A. I don't believe I said that.
Q. Then I may have misunderstood you.
Did MacAndrews & Forbes ever develop any internal financial models with

NOT A CERTIFIED COPY

015620

Page 504

regard to a possible combination between Sunbeam and Morgan Stanley other than what -- the material that we looked at yesterday which were Mr. Nesbitt's calculations, MS 104 and 105?
A. Would you ask me that question again?
Q. Sure.
Did MacAndrews & Forbes ever develop any internal financial models with regard to a possible combination between Sunbeam and Morgan Stanley?
A. Was Sunbeam merging with Morgan Stanley?
Q. I said combination.
A. Of Sunbeam and Morgan Stanley.
Q. Thank you very much. I was distracted by the drilling. Let me try one more time.
Did MacAndrews & Forbes ever develop any internal financial models with respect to a combination between Sunbeam and Coleman?
A. I am sure we did, yes.
Q. Was that Mr. -- who had

Page 505

responsibility for those financial models?
A. I would assume CSFB.
Q. Then are these the models that CSFB then presented to the board of directors on February 25 as we looked at earlier?
A. Correct. We may have done some of our own too.
Q. Are you aware of any other than perhaps the ones we looked at yesterday which if it will help you were Morgan Stanley 104 and 105 that Mr. Nesbitt prepared?
I can show you those again.
A. Those would have been the kinds of things we would have done.
Q. Other than the work that -- the kind that Mr. Nesbitt would have done and the CSFB materials that we have gone through are there any other MacAndrews & Forbes financial modeling that was done in connection with the Coleman-Sunbeam transaction?
A. We did some and CSFB did some and I don't know if Morgan Stanley did some

Page 506

that they shared with us. I am not sure.
Q. Let me show you what has been marked as Morgan Stanley 115.
A. I will make a quick stop.
THE VIDEOGRAPHER: Going off the record. The time is 2:51 p.m.
(Recess)
MR. BEMIS: Mark this as Morgan Stanley 115.
(Morgan Stanley Exhibit 115 marked for identification)
THE VIDEOGRAPHER: Returning to the record. The time is 2:53 p.m.
BY MR. BEMIS:
Q. Sir, I have asked the court reporter to give you an exhibit we have just marked as Morgan Stanley Exhibit 115.
Do you have it?
A. Yes.
Q. Have you seen this document before?
A. Possibly.
Q. Do you recognize this as a press release of Sunbeam?
A. Yes.

Page 507

Q. Press release issued in connection with the release of Sunbeam's first quarter 1998 results on its form 10-Q?
A. Yes.
Q. About this time, May 11, 1998, did you have a meeting with Mr. Dunlap and Mr. Fannin to go over the subject matter of the release, that is, Sunbeam's results for the first quarter?
A. Possibly.
Q. Do you know Mr. Fannin, David Fannin?
A. No.
Q. Did you ever meet him in the course of the Sunbeam negotiation?
A. I am sure I did. I wouldn't know him if he walked in here.
Q. You did have a meeting, you told me, at some point with Mr. Dunlap, you thought it was at your offices here in New York; is that correct?
A. Yes.
Q. Was he only here once in your offices?

NOT A CERTIFIED COPY

015621

Page 508

A. I believe so.
Q. Was that meeting with Mr. Dunlap -- it was after the closing of the transaction on March 30, 1998?
A. No. I didn't say that.
Q. That is what I am asking you.
A. I think it was before.
Q. You think it was before. Okay. Did you take any -- strike that. After you received either the press release or the information in the press release, Exhibit Morgan Stanley 115, did you take any action with respect to obtaining additional information from Sunbeam about its financial performance for the first quarter of 1998?
A. As I indicated earlier, from the time we knew of their performance we sought to get additional information which I indicated to you at the earlier press release and that would have carried through until this.
Q. Did there -- there came a time when you know Mr. Dunlap was terminated by the board of directors of Sunbeam?

Page 509

A. Yes.
Q. What was the first knowledge that you had that the board either was considering or had terminated Mr. Dunlap?
A. When I was told.
Q. Who told you?
A. I think Mr. Gittis.
Q. Do you know how Mr. Gittis learned of that action?
A. No.
Q. What did Mr. Gittis tell you?
A. That the board was terminating Mr. Dunlap.
Q. Did he say anything else?
A. I don't believe so.
Q. Where were you when Mr. Gittis told you this?
A. I don't recall.
Q. Did you do anything as a result of this information that you received from Mr. Gittis?
A. Not that I recall.
Q. Were you -- what was your reaction to the board terminating Mr. Dunlap?

Page 510

A. I don't think I had a particularly strong reaction.
Q. Is it fair to say that as of the time of Mr. Dunlap's termination that you were neutral as to whether he should remain as the chief executive officer of Sunbeam?
A. No. That is not what I said.
Q. I understand. I don't know what you said. That is why I am asking you.
A. What is the question?
Q. Let me try again.
A. Okay.
Q. Is it fair to say at the time of Mr. Dunlap's termination that you were neutral as to whether he should remain as the chief executive officer of Sunbeam?
A. No.
Q. What was your position?
A. That he should have been fired.
Q. When did you reach that conclusion?
A. As I knew -- as I began to know more about what was actually occurring within the company.
Q. Can you pinpoint a time in this

Page 511

period from April through, say, June of 1999 -- 1998, excuse me.
A. It was gradual, just as it was gradual after that, but I was not neutral. I was positive.
Q. Positive about terminating him?
A. Correct.
Q. Were you positive about terminating Mr. Kersh?
A. Yes.
Q. Why were you positive about terminating Mr. Kersh?
A. Because he participated in the fraud also.
Q. Why were you positive about terminating Mr. Dunlap?
A. Because he participated in the fraud.
Q. When did this -- did you ever come to a conclusion in your own mind when Mr. Dunlap began this fraud?
A. Specifically, no.
Q. How about non-specifically or in general, if that is a better way to ask it?
A. I think when the restructuring

NOT A CERTIFIED COPY

015622

Page 512

charges were originally taken I believe in 1996 they were taken in excess of true restructuring charges and really were charges ultimately to just blend in income in later periods.

I think that in 1997 when he was doing this what has been called bill and hold which is a term I never heard of in my life until then, that was a piece of it, and I think that in '98 when he was aggressively trying to purchase Coleman it was all a part of that same plan along with Morgan Stanley to cover up what were the real results of that company, of the Sunbeam company.

Q. You said a moment ago that you had never heard of bill and hold, correct?

A. Yes.

Q. Would you please hand the witness Exhibit 208 please?

MR. SOLOVY: May I have a copy please?

MR. BEMIS: I am sorry.

MR. SOLOVY: Thank you.

MR. BEMIS: You are welcome.

Page 513

BY MR. BEMIS:

Q. Do you have Exhibit 208 in front of you?

A. Yes.

Q. My understanding is that you -- withdrawn.

Did you see Sunbeam's form 10-K for 1997 before the March 30 closing?

A. Yes.

Q. I think you told me you at least read the financial statements, correct?

A. Yes.

Q. Would you turn to the financial statements?

A. What page?

Q. I am going to give you the page number in just one second.

If you -- I will give you the Bates numbered page, the CPH number on the bottom right-hand corner.

A. Right.

Q. CPH1428862.

MR. SOLOVY: What page?

MR. BEMIS: 1428862.

MR. SOLOVY: 62.

Page 514

BY MR. BEMIS:

Q. Tell me when you are there, sir?

A. I am here.

Q. Would you look at the heading Revenue Recognition?

A. Yes.

Q. Are you there?

A. Yes. I am there.

Q. I will read this into the record. Hopefully I will read it slow enough so the court reporter can do it.

"The company recognizes revenues from product sales principally at the time of shipment to customers. In limited circumstances, at the customer's request, the company may sell seasonal product on a bill and hold basis provided that the goods are completed, packaged and ready for shipment, such goods are segregated and the risk of ownership and legal title have passed to the customer. The amount of such bill and hold sales at December 29, 1997 was approximately 3 percent of consolidated revenues."

Do you see that language?

Page 515

A. Yes.

Q. You read this language about Sunbeam's bill and hold sales before the closing on March 30, didn't you?

A. Yes.

Q. You had heard of bill and hold by the time of the closing, hadn't you?

A. Two things; number one, I never heard of it before here. This was the first time I ever heard of it, and, secondly, the risk of ownership and title did not pass to the purchaser.

These were just bookkeeping entries that were made by Sunbeam irrespective of whether there was a purchase order, irrespective of whether there was a commitment on the customer to buy them.

This was something I had never heard of in my life, and it was not -- I mean, to have -- receive a purchase order and hold for a customer for later shipment, there is nothing wrong with that but to build and hold when you don't have a purchase order and when the customer is not

NOT A CERTIFIED COPY

0156923

Page 516

planning to accept -- is not planning to pay for it, then you have got something I have never heard of before.
Q. These footnotes are in the audited financial statements of Sunbeam, correct?
A. That is correct.
Q. They were audited and given a clean opinion by Arthur Andersen, correct?
A. Yes.
Q. Are you suggesting, sir, that as of March 30, 1998, that Morgan Stanley knew that this footnote that you just read in Arthur Andersen's audited financial statements was false?
A. Yes.
Q. What basis do you have to say that?
A. Because the customers didn't accept shipment.
Q. What basis do you have to know?
A. Because --
Q. Let me finish the question and then you can answer.
What is your factual basis for

Page 517

saying that Morgan Stanley knew that, assuming it is true?
A. Because they knew in March what the actual shipments were. They knew what was being relieved out of this account.
Q. What is the basis for that statement?
A. The comfort letter.
Q. The comfort letter?
A. Sure.
Q. That's it?
A. Sure.
Q. You can hand that back to me.
A. All you have to do is look at the growth of long term debt in that comfort letter and the lack of sales in that comfort letter and you know precisely what is happening.
Q. If you had seen the comfort letter before March 30, 1999 -- excuse me.
If you had seen the comfort letter before March 30, 1998 it is your statement that you would have known what was happening at Sunbeam; is that right?
A. It is my statement I would not

Page 518

have closed.
Q. You would not have closed?
A. That is correct. It is my statement that Morgan Stanley and Sunbeam together had an obligation to tell me that.
Q. Let me show you a document that is marked as Morgan Stanley 74.
Do you have Morgan Stanley Exhibit 74 in front of you?
A. Yes.
Q. Did you see this article from Barron's?
A. I don't believe so.
Q. You can hand it back to me.
Did you see any summary or analysis of the Barron's article by anyone -- strike that.
Did you see any summary or analysis of that Barron's article prepared by anyone at MacAndrews & Forbes?
A. Not that I am aware of.
Q. Would you please tell me what -- withdrawn.
After you learned that Mr. Dunlap had been terminated as well as Mr. Kersh,

Page 519

did anyone from the Sunbeam board of directors make any requests of you to provide assistance to Sunbeam?
A. I don't believe so.
Q. Did they make a request of MacAndrews & Forbes?
A. Yes.
Q. What was -- to whom was the request directed?
A. I think to Mr. Gittis.
Q. What was the request?
A. To make available the Coleman management team to go into Sunbeam.
Q. Did Mr. Gittis pass that request along to you?
A. Mr. Gittis?
Q. Yes.
A. Yes.
Q. What did he say to you?
A. Just that.
Q. What did you say to him?
A. Fine.
Q. Anything else?
A. No.
Q. What happened -- do you know what

NOT A CERTIFIED COPY

0156524

Page 520

happened next?
A. I believe they were retained.
Q. Who is "they?"
A. Jerry Levin and the former Coleman management team.
Q. After they were retained as the former Coleman management team did you stay in communication with them?
A. With who?
Q. With the Coleman management team.
A. Somewhat, yes.
Q. Did you receive reports from the Coleman management team on a fairly regular basis as to Coleman's performance?
A. I received reports. I don't know how regular they were.
Q. Do you know a Robin, I don't know if I am pronouncing her name correctly, Esterson?
A. Yes.
Q. Who is she?
A. It is a he.
Q. Who is he?
A. He was on the management team.
Q. Was he a former Coleman employee

Page 521

who had returned to Coleman after Mr. Dunlap's termination?
A. Yes.
Q. What was his position at Coleman when he returned?
MR. SOLOVY: Object to the form of the question. Just so we don't waste time, you are saying Coleman, Coleman. You really mean Sunbeam, I assume.
BY MR. BEMIS:
Q. I did. I apologize. I misspoke.
A. Okay.
Q. Let me try again.
What was his position at Sunbeam when he returned?
A. I don't know.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 428 by the court reporter.
(Morgan Stanley Exhibit 428 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit 428 in front of you?

Page 522

A. Yes.
Q. Did you receive this memorandum?
A. I would assume so.
Q. From Mr. Levin?
A. I would assume so.
Q. You see the marking again on the left-hand side?
A. Yes.
Q. Do you know whose that is?
A. No.
Q. You are sure that is not yours?
A. 100 percent.
Q. Did a secretary mark any of your documents when they were received?
A. I don't know.
Q. Have you ever seen documents other than the ones I have shown you with that mark similar to that on the left side?
A. No.
Q. The looping mark.
A. No.
Q. Did you tell us, sir, if the type of financial data that Mr. Esterson was sending to you as referred to in the first paragraph of Mr. Levin's letter?

Page 523

A. Please ask me that again.
Q. Sure.
Could you tell us the type of financial data that Mr. Esterson was sending to you as referred to in the first paragraph of Mr. Levin's letter?
A. No.
Q. You recognize that as Jerry Levin's signature?
A. Yes.
Q. How long did you -- how long did you receive financial information about Sunbeam either from Mr. Esterson or others in Sunbeam?
By that I am excluding publicly filed, any type of publicly filed information.
A. I don't know.
Q. Did there come a time when it stopped?
A. I don't know when it started.
Q. It hadn't started by July 21, 1998 as reflected in Mr. Levin's letter?
A. I don't know if this is not public information. I don't know what it

NOT A CERTIFIED COPY

015625

Page 524

is. It just says it was copies of the financial data. I don't know what that is. I don't recall what that is.
Q. What were you -- what type of financial data were you reviewing of Sunbeam?
A. I don't recall. I don't know why I would be reviewing any of it with the second paragraph saying that it is wrong.
MR. BEMIS: Let's take a short break.
THE VIDEOGRAPHER: Going off the record. The time is 3:16 p.m.
(Recess)
MR. BEMIS: Mark that as 432.
(Morgan Stanley Exhibit 432 marked for identification)
THE VIDEOGRAPHER: Returning to the record. The time is 3:29 p.m.
BY MR. BEMIS:
Q. I am going to show you, show you counsel, a composite exhibit I marked as Morgan Stanley Exhibit 432 which you obviously can review but it consists of information that appears to have come from

Page 525

Sunbeam to you after or about the time of the termination of Mr. Dunlap forward going into the future.
First I want to show it to your counsel so they can take a look at it. I do not have another copy of it. I didn't anticipate using it. I have a rubber band placed around the document. If we have to read all the numbers in we will but they are not sequential.
MR. SOLOVY: The purpose will be to authenticate it?
MR. BEMIS: The purpose will be to show it to the witness and ask if he received it from Sunbeam, financial information.
MR. SOLOVY: What we will do, we will look at it, pass on it the witness.
BY MR. BEMIS:
Q. That is fine. Could I ask when you look at it you keep the documents in the same sequence so when you look at one, turn it over? I think they are in a rough order.

Page 526

A. Sure.
MR. SOLOVY: He would like you to flip it over so they are in an inverse pile.
BY MR. BEMIS:
Q. All done?
A. Yes, sir.
Q. Have had you a chance to review the composite Exhibit 432?
A. Quickly, yes.
Q. Did you receive those documents from Sunbeam?
A. I can't tell.
Q. I didn't hear you. What did you say? You can't tell?
A. Yes.
Q. Why is it that you can't tell? Your name is on them or your initials appear on them or they are addressed to you or you are copied, are you not?
A. You asked if I received them. There is no indication of receipt on them.
Q. Do you have any reason to believe that you did not receive them since they are addressed to you or that your initials

Page 527

appear on them?
A. No reason either way.
Q. Is that the type of information that is in composite Exhibit 432 that you received from Sunbeam?
A. There are two different types of information here. One is their normal budgets and it just says ROP with a date. There is no receipt copy and I believe my office when they receive things has a receipt copy so I see none of that here.
I am not saying I didn't get it but this does not indicate to me that I got it.
Then there is some information here from Frank Feraco who I don't know who he is to Al Dunlap.
Q. However it is attached in a facsimile cover from Jerry Levin to you, is it not?
A. Yes. I don't know that I got that. I don't see a fax receipt.
Q. That is how the documents were produced to us. I can't be anymore helpful than that.

NOT A CERTIFIED COPY

0155926

Page 528

A. I can't either.
Q. You said there were two types of documents. I am not sure that I understood what the two types were.
A. I thought I did.
Q. You probably did and I didn't understand.
A. Regular budget information like this and the other was other than this, like this letter from Frank Feraco to Al Dunlap.
Q. It is sent to you with a fax cover sheet being transmitted to you from Mr. Levin?
A. I don't know if it is transmitted to me.
Q. Let me take a look at the top copy of the document you are referring to. It is on Sunbeam stationery.
It says Jerry Levin, chairman and chief executive officer, addressed to Ronald Perelman, five pages.
Is it your testimony that you didn't receive that document or you just don't know?

Page 529

A. I just don't know.
Q. Okay.
A. There is nothing on any of these documents to indicate receipt by me of these documents.
Q. Do you know of any reason why people would address documents of this type to you and not send them to you?
A. They could have been noted for sending and just not sent.
Q. Did you, in the course of summer and fall of 1998, monitor matters of the type that are in that composite exhibit such as you put it; there is budgets, there is strategic plans and what have you of Sunbeam in there?
A. I was made generally aware, not specifically aware.
Q. Were you made specifically aware at least of some of the strategic plans of the company as set forth in the documents there?
A. You have given me six inches of documents. It would take me a whole day to go through each of the specifics.

Page 530

Q. I am not disputing how long it would take us for you to go through it. My question is --
A. Don't ask me a question of the specifics. I think that is an unfair question.
Q. Were you made aware of the strategic plans of Sunbeam during the summer of 1978?
A. 1978, no.
Q. How about 1998 since I misspoke?
A. Generally, some plans.
Q. Were those strategic plans public knowledge?
A. I didn't say they were strategic plans.
Q. How about the plans that you were made aware of? Were those public documents that were a matter of public record?
A. Possibly. I don't know.
Q. Did you -- how long did you continue to receive information about Sunbeam's business plans and financing directly from Sunbeam?
A. I don't know if I did.

Page 531

Q. Are you denying, sir, to the jury under oath that all of the documents in front of you including the one that I showed you earlier, MS 428, that you don't know that you received any of those documents?
A. You gave me a pile in total and you said did I receive these and I answered you that there is no indication on any of these documents of receipt by me so I could not swear, or in this case affirm, I am sorry, under oath that I received these. That is the truth.
Q. Is it your testimony to the jury under oath, sir, that you did not receive any of these documents that is in composite Exhibit 432 as well as Exhibit 428?
A. No. I did not say that. I said I could have.
Q. How long did you continue to monitor Sunbeam's finances after Mr. Dunlap was terminated through information you received directly from Sunbeam?
A. I never said I monitored Sunbeam's finances.

NOT A CERTIFIED COPY

015627

Q. Is it your testimony that you were not, after Mr. Dunlap was terminated, monitoring Sunbeam's financial performance through information that you were receiving from insiders at Sunbeam?
A. Monitor, no. I was not monitoring their performance.
Q. Hand those back to me. Thank you, Jerry.
MR. SOLOVY: You are welcome.
MR. BEMIS: We will get you a copy. You will have it tomorrow.
If for some reason I forget we will have it done while you are there.
MR. MARMER: Okay.
MR. BEMIS: I also took back the original of the Barron's article. I think those are the only two that are originals that I only had one copy of.
Mr. Reporter, would you please mark the next exhibit as Morgan Stanley Exhibit 232, a new exhibit?
(Morgan Stanley Exhibit 232 marked for identification)
BY MR. BEMIS:

Q. Do you have Exhibit --
A. Can I hit the men's room?
Q. Sure.
THE VIDEOGRAPHER: Going off the record. The time is 3:47 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 3:49 p.m.
BY MR. BEMIS:
Q. Sir, I have handed you what the court reporter has marked as Morgan Stanley Exhibit 232.
Do you have that in front of you?
A. Yes.
Q. Have you read it?
A. I am reading it now.
Q. Let me know when you are finished.
A. Yes.
Q. Did you authorize this -- first of all, do you recognize the signature on this letter?
A. Yes.
Q. Whose is it?
A. Howard Gittis.

Q. Did you authorize Mr. Gittis to send this letter?
A. No.
Q. Did you know that he sent it?
A. I don't believe so.
Q. Were you aware at any time that he had requested rescission of the Sunbeam-Coleman transaction?
A. Yes.
Q. How did you learn that?
A. We had discussed it.
Q. When did you discuss it?
A. As soon as we -- we started discussing it as soon as we knew what the results of the company were.
Q. You started discussing it as early as April?
A. I don't know if April; maybe May.
Q. Was this the first communication that you, that is, Coleman (Parent) Holdings, Inc., made to Sunbeam Corporation to rescind the transaction?
A. I don't know.
Q. Do you know of any other communications of whatever date to Sunbeam

Corporation by Coleman (Parent) Holdings or MacAndrews & Forbes or any of your affiliated companies to rescind the transaction?
A. I would not know of that, no.
Q. Why would you not know that?
A. Because Mr. Gittis would take care of that.
Q. Did you ever learn whether Mr. Fannin responded to MS 232?
A. No.
Q. Did you ever ask Mr. Gittis?
A. No.
Q. Were you interested whether Sunbeam had responded?
A. Not whether Mr. Fannin responded.
Q. Excuse me. You weren't interested whether Mr. Fannin responded?
A. No.
Q. Why would that be?
A. Because the response didn't have to come from Mr. Fannin.
Q. Were you interested in whether Sunbeam responded?
A. Yes.

NOT A CERTIFIED COPY

0156528

Page 536

Q. Did you ask whether Sunbeam had responded?
A. Yes.
Q. What did you hear?
A. That they would not rescind.
Q. They would not rescind?
A. Correct.
Q. Who told you that?
A. Mr. Gittis.
Q. Did you ever see any documents to that effect?
A. No, I don't believe so.
Q. You can hand that back to me please. Let me show you what the court reporter will mark as Morgan Stanley Exhibit 233.
(Morgan Stanley Exhibit 233 marked for identification)
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Have you seen Exhibit MS 233 before?
A. I don't believe so.
Q. Did you authorize, first of all, who sent this letter? Who is it signed by?

Page 537

A. Howard Gittis.
Q. Did you authorize him to send it?
A. No.
Q. He did it on his own?
A. Yes.
Q. Did you -- did MacAndrews & Forbes or Coleman (Parent) Holdings, Inc. in this case receive a response from Mr. Kristol at the Reboul McMurray firm?
A. I don't know. I don't know who Mr. Kristol is.
Q. He is an attorney for one thing. He is with the Reboul firm.
You don't know if there was a response?
A. No.
Q. Did you receive any comments on this letter from Mr. Langerman who is shown as copied on the letter?
A. Say that again.
Q. Did you receive any response or comment to this letter, MS 233, from Mr. Langerman who is shown as copied on the letter?
A. I don't believe so.

Page 538

Q. You can hand that back to me.
Earlier we touched upon the subject of MacAndrews & Forbes or its affiliates settlement with Sunbeam in 1998.
Do you recall yesterday when we talked about that briefly?
A. Briefly.
Q. As consideration of the settlement MacAndrews & Forbes received from Sunbeam certain warrants, correct?
A. Yes.
Q. Those warrants were for Sunbeam stock, correct?
A. Correct.
Q. They had a period -- exercise period, I believe, of five years?
A. I don't recall.
Q. Do you remember what the exercise price was?
A. No.
Q. How did MacAndrews & Forbes or Coleman (Parent) Holdings, whichever entity was a recipient, value the warrants?
A. I don't think we did.
Q. Did you carry them -- did you

Page 539

record them as income on your income statement for the year 1998?
A. I don't know how they were carried. I didn't value them.
Q. I am sorry.
A. I didn't value them.
Q. You didn't value them?
A. No.
Q. Did someone at MacAndrews & Forbes, or, as the case may be, Coleman (Parent) Holdings value them for purposes of their financial statement?
A. I don't believe so.
Q. Did you ever see any valuation of the warrants?
A. I don't believe so.
Q. Did you assign, you, yourself, did you approve the settlement?
A. Yes.
Q. Did you attempt to value the warrants or the settlement as a whole at the time you entered into the settlement with Sunbeam?
A. Yes.
Q. What did you value the warrants

NOT A CERTIFIED COPY

015629

Page 540

at?
A. Close to zero.
Q. You settled MacAndrews & Forbes, or, as the case may be, Coleman (Parent) Holdings' claims against Sunbeam for next to zero?
A. Yes. There was nothing to get.
Q. Did you ever see any reports from consulting firms valuing the warrants?
A. I don't believe so.
Q. Did you ever see any valuations by accounting firms?
A. I don't believe so.
Q. Did you ever take a position in litigation as to the value of the warrants?
A. Not that I am aware of.
Q. Did MacAndrews & Forbes or Coleman (Parent) Holdings or any of its affiliates?
A. Not that I am aware of.
Q. Are you aware there was litigation filed over the issuance of the warrants to MacAndrews & Forbes or its affiliates?
A. No.

Page 541

Q. You were unaware of the litigation?
A. At this point, at this moment, yes, and our value turned out to be accurate.
Q. Let me show you what has been marked as Morgan Stanley Deposition Exhibit 96.
Have you seen this settlement agreement?
A. I don't believe so.
Q. Did you see a copy of it or a draft of it before it was signed?
A. I don't believe so.
Q. Turn to page 15 please, under the heading Coleman (Parent) Holdings, Inc.
Are you there?
A. No. There must be two-page 15s.
Q. I am looking at the printed page.
A. Yes.
Q. Is that Mr. Schwartz's signature?
A. Yes.
Q. You can hand that back to me.
Thank you.
During 1998 were you interviewed

Page 542

by the office of the -- office of independent counsel in connection with a Ms. Monica Lewinsky?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I was interviewed by somebody.
Q. From the office of independent counsel?
A. Possibly.
Q. Was that -- how many times were you interviewed?
A. I believe once. No. Twice.
Q. Did you also give a sworn statement as well?
A. One of those times, yes. It was an affirmed statement.
Q. It was a what?
A. An affirmed statement.
Q. Affirmed statement.
Was the subject matter of the interviews a certain call that had been placed to you by Vernon Jordan?
A. Yes.

Page 543

Q. Mr. Vernon Jordan was the former husband of Ms. Jordan who served on the board of directors of Coleman; is that correct?
A. No.
Q. They were never married?
A. They are still married.
Q. I actually thought they were separated or divorced.
They are married?
A. Yes.
Q. You had a -- Ms. Jordan was one of your appointees to the Coleman board, correct?
A. Yes. Not one of -- she was a member of the board.
Q. She was a member. She was appointed to the board of directors initially and elected?
A. She was elected. She was an independent board member.
Q. An outside director?
A. Correct.
Q. My understanding is that she was paid a retainer of $25,000 a year as a

NOT A CERTIFIED COPY

015630

Page 544

director; is that right?
A. Whatever the directors were paid. I don't know.
Q. Whatever is reported in the 10-K would be correct, right?
A. Yes.
Q. If the 10-K reports $25,000 that would be the number, right?
A. Yes.
Q. Mr. Jordan called you at some point in January of 1998, did he not?
A. I don't remember the date. Is that when it was?
Q. I believe so.
A. Okay.
MR. SOLOVY: Mr. Bemis, I would like a standing objection to this line.
MR. BEMIS: You may have it.
MR. SOLOVY: Thank you.
MR. BEMIS: All your relevancy objections are preserved in Florida.
MR. SOLOVY: Nevertheless, I would like a standing objection.
MR. BEMIS: I would be gracious enough to give you both.

Page 545

MR. SOLOVY: Thank you.
BY MR. BEMIS:
Q. Did you -- did your communication with Mr. Jordan and your interview by the office of independent counsel become a matter that was disclosed in the press of the United States?
A. Yes.
Q. For example, were there stories in the Washington Post about your communications with Mr. Jordan?
A. I don't think there were stories about it, no.
Q. Were there stories that Mr. Jordan had called and asked you about helping find Monica Lewinsky a job?
A. I don't recall any stories about that phone call. I recall stories where that phone call was mentioned.
Q. The stories were -- that was mentioned -- these were in late January of 1998, right?
A. You will have to refresh my memory if you would on the date of the phone call.

Page 546

Q. The date of the phone call was January 8, 1998 according to the report of the office of independent counsel?
A. Okay.
Q. Do you accept that date?
A. Yes, sure.
Q. Do you recall when the story, stories first surfaced in the press about the call from Mr. Jordan to you?
A. No.
Q. Mr. Jordan, Vernon Jordan, the wife of Ann Jordan, the Coleman board member, concerned a request by Mr. Jordan that you, Mr. Perelman, do something or help find a job for Monica Lewinsky, correct?
A. No.
Q. What was the call from Mr. Jordan about?
A. First of all, he is not the wife of. He is the husband of.
Secondly --
Q. I stand corrected.
Now tell me what the conversation was between you and Mr. Jordan when he

Page 547

spoke to you on January 8, 1998.
A. He asked if I would arrange an interview for her at Revlon.
Q. Did you do so?
A. No.
Q. What did you do?
A. I spoke to Jamie Durnham who was then my assistant and told him about the call and he indicated to me that he was already aware of -- I did not know the name of this person that he was referring to, Vernon did not tell me, just that a friend, and I then called up Jamie, asked him to come to my office, said that Vernon called and has a friend that he would like to get an interview for at Revlon. He said we have already done that. I said, thank you very much and that was the end of it.
Q. Before the call from Mr. Jordan had you also -- withdrawn.
Before the call from Mr. Jordan had you also through one of your companies entered into a consulting contract with Webster Hubbell?
A. I believe so.

NOT A CERTIFIED COPY

015631

Page 548

Q. This is the Webster Hubbell who was eventually indicted, correct?
A. Former Attorney General of the United States.
Q. For stealing money from his law partners, correct?
A. I don't know what for.
Q. Do you know that he eventually pled guilty and served time in a federal penitentiary?
A. Yes.
Q. You hired him -- when did you hire him, that is, your companies?
A. I don't know and I don't think we hired him.
Q. You hired him -- excuse me.
You entered into a contract with him as a consultant, did you not?
A. I believe so.
Q. To do public relations work for your companies, correct?
A. I believe so.
Q. Did he do any?
A. I don't know. I had nothing to do with that.

Page 549

Q. Who did?
A. I believe Mr. Gittis.
Q. Mr. Gittis hired Mr. Hubbell?
A. I didn't.
Q. Did Mr. Gittis talk to you about hiring Mr. Hubbell?
A. No.
Q. How did Mr. Hubbell come to call upon Mr. Gittis to get a job with your companies?
A. I don't know. I had nothing to do with it.
Q. It just came out of the blue?
A. I don't know.
Q. In any event, let's go back to Ms. Lewinsky.
You -- at the time that -- withdrawn.
I asked you about when the story first surfaced in the press. Let me show you one of the articles that I think you may be referring to.
I will show you what has been marked as Morgan Stanley Exhibit 419.
If you would mark that, Mr. Reporter?
(Morgan Stanley Exhibit 419 marked for identification)

Page 550

BY MR. BEMIS:
Q. Do you have Exhibit 419 in front of you?
A. Yes.
Q. Have you read it?
A. I am reading it now.
Q. Okay.
This -- for the record this is a January 26, 1998 report printed from The New York Post.
A. Okay.
Q. Have you seen this story before?
A. I don't believe so.
Q. Is -- on the second page it refers to Mr. Barry Schwartz having testified before Starr's grand jury in 1994. Do you see that?
A. Yes.
Q. He was threatened with a possible perjury indictment, do you see that?
A. Yes.
Q. You were aware of that?

Page 551

A. No, and I --
Q. Did you want to say something else?
A. There are so many inaccuracies that I know of in the story. I don't know where this story came from, the National -- Washingtonian Magazine which I don't know what that is.
Q. Did you -- were there other articles about this time in January of 1998 concerning Ms. Lewinsky and Mr. Jordan and Revlon?
A. Yes. I don't know if there were articles about it. It was included in stories.
Q. Stories in newspapers?
A. Yes, but this is a patently false document, story.
Don't make a face, sir. I can attest to it.
Q. I am sure you can. Don't accuse me of making faces. No one is making faces at you.
A. It sure looked like you were making a face to me.

NOT A CERTIFIED COPY

0156632

Page 552

Q. I apologize to whatever it was you thought you saw.
The story about Ms. Lewinsky and Mr. Vernon Jordan's call broke just about the time that Mr. Reid called you to discuss resuming the negotiations with Sunbeam, correct, mid January of 1998?
A. Yes, probably.
Q. Indeed it was during this same period, January of 1998, that you were first interviewed by the office of independent counsel, isn't it?
A. I don't believe so.
Q. The record reflects that, according to the reports, that you were interviewed on January 30, 1998. Do you know deny that?
A. Is that when it was?
Q. Yes. That is according to public records.
A. It is fact whenever it was. I think Mr. Starr is a partner of yours.
Q. I think Mr. Starr is currently the Dean of the Pepperdine Law School.
A. Isn't he of counsel to the firm?

Page 553

Q. Would you like to take a look at Morgan Stanley Exhibit 420?
Please tell me when you have had an opportunity -- withdrawn.
Please tell me when you have finished looking at Exhibit 420.
A. I skimmed it, yes.
Q. This is an article reprinted from the Washington Post, February 6, 1998?
A. That is what it says, yes.
Q. Have you seen this article before?
A. I don't believe so.
Q. You can hand that back to me.
Do you recall that Mr. Jordan testified before the -- a grand jury in connection with the Lewinsky matter in March 1998?
A. No.
Q. Did you see any reports of that in the newspapers?
A. Not that I recall.
Q. You weren't following it at all?
A. No.
Q. It was after Mr. Jordan's

Page 554

testimony before the grand jury, was it not, that you were interviewed a second time by the office of independent counsel?
A. I don't recall.
Q. The record reflects that you were -- the public record reflects that you were interviewed on April 2, 1998. Is that consistent with your recollection?
A. I don't have a recollection. I wouldn't dispute the prosecutor's record but I don't have a specific recollection of when it was.
Q. The public record reflects that you then testified --
A. What do you mean "the public record?"
Q. The public record that one can -- in the reports of the office of independent counsel.
A. Okay. That is the prosecutor's record.
Q. The office of independent counsel.
A. I would not disagree with that record but I don't have independent

Page 555

recollection of that.
Q. The records also reflect that you then testified before the office of independent counsel on April 23, 1998.
Is that consistent with your recollection?
A. I don't have a specific recollection but that would not be inconsistent.
Q. In addition to the reports that we looked at in The New York Post and the Washington Post were there other newspapers that carried stories about Mr. Jordan's activities in attempting to find Ms. Lewinsky a job at Revlon?
A. As I said before, I don't recall specific stories about it.
I recall it being included in bigger stories about President Clinton and the investigation on President Clinton.
Q. Were these stories generally of -- being published in the press during the period of the first three months of 1998 while the Coleman-Sunbeam acquisition was being negotiated?

NOT A CERTIFIED COPY

0156633

Page 556

A. They are still being published.
Q. Is your answer, yes, and they are still being published?
A. There have been stories since then through today. I mean this phone call took 20 seconds.
My involvement in this phone call was one conversation with Jamie Durnham after that phone call, nothing after that, and then two or three subsequent interviews with a member or members of the special prosecutor's office.
That was my entire involvement in this procedure or activity.
Q. What was your reaction to being drawn into President Clinton's difficulties during this time period in early 1998?
MR. SOLOVY: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. I wasn't happy about it.
Q. Was it distracting to you?
A. No.
MR. BEMIS: If you give me a

Page 557

minute I may be finished.
May I have five minutes?
THE VIDEOGRAPHER: Going off the record. The time is 4:20 p.m.
(Recess)
THE VIDEOGRAPHER: Returning to the record. The time is 4:28 p.m.
BY MR. BEMIS:
Q. Did you have any discussions with anyone before the closing on March 30, 1998 of the Coleman transaction about hedging your interest in the Sunbeam stock if the transaction closed?
A. Yes.
Q. With whom?
A. Mr. Maher.
Q. Anyone other than Mr. Maher?
A. Primarily Maher. Gittis might have been aware of it too.
Q. When did you first discuss the subject with Mr. Maher?
A. I don't recall.
Q. How many times did you have discussions with Mr. Maher about hedging the Sunbeam stock? Again we are in the

Page 558

period before the closing.
A. I can't recall. A couple.
Q. What did you say and what did Mr. Maher say in these discussions?
A. Something to the effect that if we could I would like to see us hedge some of these securities but there is a legal issue as to whether or not we can hedge them because of the lock up and ultimately the conclusion was that they could not be hedged.
Q. When you say ultimately the conclusion was they could not be hedged who reached that conclusion?
A. Everybody.
Q. Who is everybody?
A. Nobody would hedge them and we reached the conclusion that those that would supply the hedge concluded they couldn't be hedged.
Our counsel concluded that they couldn't be hedged and our executives concluded they couldn't be hedged.
Q. Did you consider hedging the Sunbeam stock after the closing on August,

Page 559

on April -- withdrawn.
Did you consider hedging the stock after the closing on March 30, 1998?
A. I didn't consider hedging the stock.
Q. I don't understand your answer.
You just said you discussed it with Mr. Maher.
A. Yes.
Q. Yes. What do you mean you didn't consider it?
A. It was discussed but I didn't consider it.
Q. All right.
Did you discuss it after March 30, 1998?
A. I don't recall.
Q. Did you discuss it as late as May of 1998?
A. I don't recall. I don't recall the dates that it -- that this conversation took place.
Q. Did you have more -- strike that.
Who were the companies that you were discussing hedging the stock with?

NOT A CERTIFIED COPY

0156634

A. I didn't discuss it with anybody.
Q. In this case, MacAndrews & Forbes or one of your affiliates?
A. I didn't discuss hedging with any company.
Q. I am talking about your companies.
Who are the companies that you discussed, that is, your companies discussed hedging?
A. I don't know.
Q. You told us that none of the companies would do the hedging?
A. Yes.
Q. You don't know who any of them were?
A. That is correct.
Q. You left that all up to Mr. Maher?
A. Yes.
Q. Was there -- was there -- were there two periods of discussion with these companies about hedging?
A. I didn't have any discussion with these companies.

Q. I don't care whether it was you or whether it was Mr. Schwartz or whether it was Mr. Maher. I am referring to your entities, your companies, whoever was doing it for you.
A. I don't know.
Q. You don't know?
A. No.
MR. BEMIS: We are done. Thank you very much.
THE VIDEOGRAPHER: *This concludes* for today November 18, 2004 the videotaped deposition of Ronald O. Perelman. The total number of tapes used was three.
Going off the record.
The time is 4:32 p.m.
(Time noted: 4:32 p.m.)

_____
RONALD O. PERELMAN

Subscribed and sworn to before me this day of 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That RONALD O. PERELMAN, the witness whose deposition is herein before set forth, was duly affirmed by me and that such deposition is a true record of the testimony given by such witness.

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

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 22nd day of November, 2004.

STEVEN NEIL COHEN, RPR

INDEX OF EXAMINATION

Witness
RONALD O. PERELMAN
By Mr. Bemis.....331

MORGAN STANLEY EXHIBITS

Ehxibit No. Marked
174 Letter.....333
418 Document.....350
196 Press Release.....399
135 Press Release.....400
431 Article.....426
198 Article.....438
199 Article.....438
202 Analyst Report.....441
417 Document.....459
115 Press Release.....506
428 Memorandum.....521
432 Documents.....524
232 Letter.....532
233 Letter.....536
419 Article.....550

NOT A CERTIFIED COPY

015635

NOT A CERTIFIED COPY

015636

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.
----------x

MORGAN STANLEY SENIOR FUNDING,
INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS,
INC.,

Defendants.
----------x

CONFIDENTIAL

WILLIAM G. NESBITT

New York, New York

Tuesday, August 31, 2004

Reported by: Steven Neil Cohen, RPR
Job No. 164220

NOT A CERTIFIED COPY

015637

August 31, 2004
9:39 a.m.

Videotaped Deposition of WILLIAM G. NESBITT, taken by Morgan Stanley & Co., Inc., pursuant to notice at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 606-11-7603
Attorneys for Coleman (Parent) Holding, Inc.

BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.

BY: LAWRENCE P. BEMIS, ESQ.

KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.

BY: KATHRYN R. DeBORD, ESQ.

ALSO PRESENT: Ruben Martinez, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. William Nesbitt in the matter Coleman versus Morgan Stanley.

This deposition is being held at Kirkland & Ellis located at 153 East 53rd Street, New York, New York on August 31, 2004 at approximately 9:39 a.m.

My name is Ruben Martinez from the firm of Esquire Video Services.

The court reporter is Mr. Steve Cohen in association with Esquire Deposition Services.

Will counsel please introduce themselves?

MR. BEMIS: Good morning. Lawrence Bemis on behalf of the Morgan Stanley entities.

MS. DeBORD: Kathryn DeBord for the Morgan Stanley entities.

MR. MARKOWSKI: Bob Markowski, Jenner & Block, on behalf of Coleman (Parent) Holdings.

WILLIAM G. NESBITT,

NOT A CERTIFIED COPY

015638

called as a witness by the Morgan Stanley, entities having been duly sworn, testified as follows:

BY MR. BEMIS:

Q. Good morning, Mr. Nesbitt.

As I said my name is Larry Bemis and I will be asking you some questions over the next day or so.

Sitting next to me is Ms. DeBord who is an associate in my office. You have been introduced to the court reporter and the videographer.

Will you tell the jury your full name please?

A. William G. Nesbitt.

Q. What does the G stand for, sir?

A. Gould.

Q. How old are you, sir?

A. 42.

Q. What is your date of birth?

A. 10/31/61.

Q. You are represented by Mr. Markowski this morning?

A. I am.

Q. Where do you live today?

A. 390 Riverside Drive in New York.

Q. New York City?

A. Yes.

Q. Do you have a listed telephone number in your residence?

A. I do.

Q. What is your listed telephone number?

A. 212-316-6285.

Q. Are you married?

A. I am.

Q. What is your spouse's first name?

A. Michelle.

Q. Does she go by your last name?

A. She does not.

Q. What is her last name?

A. De Savigny.

Q. Can you spell that for the court reporter?

A. D-E space S-A-V-I-G-N-Y.

Q. Who do you work for today?

A. I am a partner at Park Avenue Equity Partners.

Q. How long have you been there?

A. Approximately two years.

Q. October about 2002?

A. Exactly.

Q. Do you work with Mr. Maher there?

A. No, I do not.

Q. Did you ever work with Mr. Maher there?

A. I did.

Q. When did you work with Mr. Maher at Park Avenue Equity Partners?

A. From October 2002 until June of this year, '04, at which time Mr. Maher left.

Q. Where is Mr. Maher now, and I mean where does he work as opposed to where is he physically at this moment?

A. I am actually not sure exactly what he is doing except that he is I think engaged in some sort of partnership with Blackrock and Kelso in putting together a BDC.

Q. What is a PDC?

A. BDC, Bravo; a business development corporation.

Q. What is your office address at Park Avenue Equity?

A. 399 Park Avenue, 32nd floor.

Q. Suite 3204?

A. Yes.

Q. New York, New York 10022, right?

A. Yes.

Q. What is your office telephone there?

A. 212-430-0148.

Q. You understand that you are being videotaped, correct?

A. Yes.

Q. You understand that your deposition is being taken in connection with litigation that has been filed in the State of Florida?

A. Yes.

Q. You have -- try to answer yes or no, and I won't remind you, you will do it no matter what I tell you and no matter how many times I remind you. Don't worry about it.

A. Yes.

Q. You understand that your videotaped deposition here can be played to the jury at the trial of this matter when

NOT A CERTIFIED COPY

0156639

it goes forward before the jury?
A. I now do.
Q. You understand that you are under oath today just like you would be if you were testifying in court in front of a jury, correct?
A. Yes.
Q. Is there any reason that you can think of, medication, illness, that you can't testify truthfully today?
A. No.
Q. Have you ever testified by deposition before?
A. No, I have not.
Q. Have you ever testified in court before?
A. No, I have not.
Q. If anything comes up and you don't understand anything about the process you let me know, otherwise, I will assume that your lawyers have had an opportunity to meet with you and explain the process to you.
The residence you gave us, did you live there in 1997 through 2000?

A. Certainly 1998 through 2000. I have been there about seven or eight years.
Q. Have you lived continuously in New York since 1997 up until today at least?
A. Yes. Prior to that I lived on East 62nd Street.
Q. Just a couple of questions on your background and then we will get to hopefully the substance of this pretty quickly.
Where did you do your undergraduate education?
A. Duke University.
Q. When did you graduate?
A. 1984.
Q. What was your degree in?
A. Economics.
Q. After you graduated from Duke University did you go on and get a Master's of Business Administration?
A. Ultimately, but prior to that I was a financial analyst at the First Boston Corporation in the merger and acquisition group.

I then, two years later in 1986, I went to Harvard Business School and received a Master's, an MBA, in 1988.
Q. Did you go full time at Harvard?
A. Yes, I did.
Q. Did that complete your formal education?
A. In theory, yes.
Q. Has Mr. Markowski represented you before?
A. No.
Q. Is Coleman (Parent) Holdings Companies paying Mr. Markowski's fee for your -- your appearance here today?
A. I am not sure.
Q. Are you paying?
A. No; certainly not.
Q. Have you any form of written retention agreement with Mr. Markowski or his law firm to represent you?
A. No, I do not.
Q. Did you have an opportunity to meet with Mr. Markowski before you came here today in preparation for your deposition?

A. Yes, I have.
Q. Do you feel you had enough time to prepare for your deposition?
A. I do at this moment, yes.
Q. Did you have an opportunity with Mr. Markowski to review documents?
A. Yes, I have.
Q. These transactions that we are going to be talking about, the Coleman-Sunbeam transaction, they occurred in 1998 and sometimes a little bit -- some months even before that, right?
A. Yes.
Q. Your involvement in this transaction began as early as 1997, did it not?
A. Yes, late 1997.
Q. Then your involvement in the transaction continued through 1998 through the closing of the acquisition, right?
A. Yes.
Q. You even did some post acquisition review of things that had happened to Sunbeam, right?
A. Yes.

NOT A CERTIFIED COPY

015540

Q. For example, one of the things that you did is you actually interviewed analysts of Sunbeam following March 11, 1998 to discuss their views about the future of Sunbeam, didn't you?
A. Not in person, via phone, and if you are referring to analysts as financial analysts, yes.
Q. You actually wrote a memorandum of that and gave it to Mr. Perelman, among others, correct?
A. Yes, I believe I did.
Q. May I see MS 167 please?
MR. BEMIS: Mr. Reporter would you just initial this for me, MS 167?
(MS Exhibit 167 marked for identification)
BY MR. BEMIS:
Q. The court reporter has just handed you what we have marked and identified as Morgan Stanley Exhibit 167.
Do you have that exhibit in front of you?
A. Yes, I do.
Q. Did you write this exhibit to

Mr. Ronald O. Perelman on or about May 20, 1998?
A. Yes, I did.
Q. Does this memorandum, MS 167, fairly and accurately summarize the conversations that you had by telephone with the analysts listed below?
A. Yes.
Q. Before the acquisition on -- of the Coleman Company, Inc. by Sunbeam Corporation had you spoken to any analyst such as Nick Heyman from Prudential?
MR. MARKOWSKI: On any occasion about anything?
BY MR. BEMIS:
Q. About Sunbeam.
A. No.
Q. You hadn't spoken to Mr. Gibbons either, correct?
A. No.
Q. And you didn't speak to Mr. Scott Graham of Oppenheimer, correct?
A. No.
Q. Indeed, prior to May 20, 1998 at least in your capacity working for

Mr. Perelman's companies you didn't speak to any analyst such as these gentlemen in connection with the Sunbeam-Coleman acquisition, did you?
A. No.
Q. You can hand that back to me.
After -- withdrawn.
In preparation for your deposition did you look at MS 167 that I just showed to you?
MR. MARKOWSKI: I am instructing Mr. Nesbitt not to answer questions about the substance of our conversations.
BY MR. BEMIS:
Q. I am not asking about the substance.
Did you look at that document, MS 167?
MR. MARKOWSKI: I will instruct him not to answer questions about the specific documents we reviewed in connection with preparing for his deposition.
BY MR. BEMIS:

Q. Did you look at documents in preparation for your deposition?
MR. MARKOWSKI: You can answer that.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Did any of those documents refresh your recollection of facts that occurred over six years ago?
A. Marginally, yes.
Q. What documents did you look at that refreshed your recollection about events six years ago?
MR. MARKOWSKI: You can answer that.
THE WITNESS: There were a series of presentations; I guess one important presentation in particular, regarding -- from Morgan -- that Morgan Stanley I believe had prepared which outlined the companies, that is, Sunbeam's strategic plan, its projected operating performance and there was an associated slide presentation.
There were some -- there were

NOT A CERTIFIED COPY

0159641

Page 18

some notes that I had prepared, handwritten, as well as the document that MS 167 -- that I had prepared as well as numerical analyses regarding the merger consequences, whether the transaction was dilutive, accretive, for varying levels of cost savings, assumed cost savings, assumed, projected and actual, historical operating performance for the benefit of the various individuals within MacAndrews & Forbes and the Coleman companies.

Q. Any other categories of documents you can recall now?

A. No.

Q. Let me show you a document that has been previously marked as --

A. I am sorry. One other document is my calendar.

Q. Excuse me one second.

Let me show you what has been marked previously as Morgan Stanley 84.

Please take a look at that, Mr. Nesbitt, and tell me if that is one of the documents that you looked at?

MR. MARKOWSKI: Are you including

Page 19

the handwritten portions of this, Mr. Bemis, or just the typed portion?

MR. BEMIS: Right now just the typed portion.

THE WITNESS: When you are saying "looked at," what you are referring to is with Mr. Markowski or prior?

BY MR. BEMIS:

Q. I was referring to what you reviewed with Mr. Markowski and you identified as a strategic document or plan of some kind.

A. Yes, I have.

Q. You can hand that back to me.

By the way, do you recognize any of the handwriting on this document?

A. No, I do not.

Q. Do you know Jerry Levin?

A. Yes.

Q. Have you ever seen his handwriting before?

A. No.

Q. Did you have a copy of MS 84 at the meeting where this was presented?

A. Is that MS 84?

Page 20

Q. 84, yes.

A. Yes.

Q. Did you make notes on your copy?

A. I would assume so but --

Q. What we have been doing, Mr. Markowski, since you and I were first together, we have already given you the document and then we take them back and give you new ones but I have copies for you during the deposition. Any time you want to see one let me know.

Let me show you a document which I think is your calendar which is MS 195 and ask if this is a copy of the calendar that you reviewed.

This was previously marked in another deposition. I hand you Morgan Stanley 195.

A. This is my calendar.

Q. We will come back to that periodically. Let's get it out of the way. I will give it back to you a little later.

Thank you.

You said that you also reviewed some documents that showed the dilutive and

Page 21

accretive effects of the Sunbeam-Coleman merger transaction assuming certain cost savings, am I correct?

A. Yes.

Q. When you say "cost savings," is that synonymous with the terminology "synergies?"

A. Yes. When you combine both revenues -- revenue enhancements and cost savings.

Q. If I use the term "synergies" or you use the term "synergies" we will both understand each other as meaning cost savings as you described them?

A. Yes.

MR. MARKOWSKI: He indicated revenue enhancements and cost savings within his definition.

MR. BEMIS: Understood.

BY MR. BEMIS:

Q. When you used the term "dilutive," I am understanding you to mean that the combination of the entities in the merger transaction results in a reduction in earnings per share of the combined

NOT A CERTIFIED COPY

011542

entities from that of the earnings per share of the acquiring entity, is that fair?
A. Yes, with the caveat that I might look at that on a pre and post goodwill basis.
Q. You might also look at it based on how the accounting was treated at that time; for example, whether you were using purchase accounting in one instance, correct?
A. Yes.
Q. And just so the jury knows, there is another form of accounting called pooling accounting, isn't there, sir?
A. Yes.
Q. My understanding is that one of those two forms of accounting is no longer -- can no longer be used as of, I think it is, April of 2001, correct?
A. Yes.
Q. Am I correct that that is the pooling accounting?
A. Yes.
Q. In addition to -- withdrawn.

We used the term "dilutive." As we go forward we will probably use the term "accretive" at some point.
Accretive has the opposite definition of dilutive, correct?
A. Yes.
Q. When you use the term "accretive" in the terms of a combination of two companies in a merger acquisition if you say the transaction is accretive to the acquiring company that means a combination of the two companies would result, at least on a pro forma basis when we are looking at it, in an increase in the earnings per share, correct?
A. Yes, either as reported or on a cash basis.
Q. When we talk about earnings per share do you use as a definition for that net income if you will divided by total number of outstanding shares?
A. For the purposes of these discussions, yes.
Q. Now these -- you looked at more than one of these numerical summaries, if

you will, of whether the transactions -- the transaction between Coleman and Sunbeam was accretive or dilutive to Sunbeam, did you not?
A. Yes.
Q. You did the first of these transactions, these -- strike that.
Did you do these summaries on an electronic spreadsheet?
A. Yes.
Q. What software program did you use?
A. Excel.
Q. Was this an -- the Excel models that -- withdrawn.
Did you have a model template that you used or did you create a separate template just for the Sunbeam-Coleman transaction?
A. Created a separate template for this transaction.
Q. You looked at some of the hard copies, if you will, of your electronic spreadsheets for the Sunbeam-Coleman transaction, did you not?

A. Yes, I did.
Q. I am going to show you one of these documents and ask if that is one of the transactions that you prepared.
May I have MS 104?
I will ask the court reporter to mark for us as Morgan Stanley Exhibit 104 a multi-page document.
(MS Exhibit 104 marked for identification)
BY MR. BEMIS:
Q. Can I ask you if I could hand you this one? It has the official court reporter's signature on it. That is the same copy. I will put the other one away so you have the original.
Do you have Morgan Stanley Exhibit 104 in front of you?
A. Yes, I do.
Q. Did you prepare this document?
A. Yes, I did.
Q. Is this document one of the summaries that you prepared while you were an employee of MAFCO Consolidated Group, Inc. in connection with the Sunbeam-Coleman

NOT A CERTIFIED COPY

015943

Page 26

merger transaction?
A. Yes, it is.
Q. Is this document a hard copy from an Excel spreadsheet as you described it for us?
A. Yes, it is.
Q. Is the handwriting that appears on the left page yours?
A. No, it is not.
Q. Do you know whose it is?
A. No, I do not.
Q. Did you see this document in your preparation, that is, MS 104?
A. No, because I don't recall seeing --
Q. The last page with the handwriting?
A. Yes.
Q. You prepared a number of documents like MS 104, did you not?
A. Depends what you mean by "like."
Q. What I mean by "like," not to get into a Bill Clinton debate with you about what "it" is, but what I am referring to is a document even with this template but

Page 27

changing variables in the document?
A. Sure.
Q. And, for example, just so the jury understands, when we look at this document if we change any one of a number of variables in a cell of the spreadsheet that will translate in many instances to a change in other numbers which are linked to that cell by virtue of mathematical formulas, correct?
A. Yes.
Q. Indeed, most of the information that is on MS 104 is linked arithmetically from one cell to another cell, correct?
A. Yes.
Q. We will -- I will ask you to set that aside for now. We are going to do these in detail later. I want to make sure I understand the documents that you looked at.
One last question on this and I will hand it back to you.
When you printed out a document from your electronic spreadsheets apparently doing these on a laptop or table

Page 28

unit --
A. Yes.
Q. Did you customarily put the date that you created the document in the upper right-hand corner as a header of some kind along with the time that you actually printed the document?
A. Yes, but I believe what happens is when you print it out it is the time you print it out, not when the document was created, so if you created the document five days before and printed it out five days after it is five days after that goes right here, in the upper right-hand corner, the time of printing.
Q. The header date, and I will use the header describing the upper right-hand corner of MS 104, the date that appears is the date that you prepared the document?
A. No. That is what I -- it is an Excel question. I will defer to anyone who knows Excel.
I believe that the date and the time relate to the date and the time that the document is printed, not when it is

Page 29

created.
You could save it five days before, not touch it, print it five days later and this will be the time -- date and time it was printed.
Q. Let me ask you an Excel question. You may or may not know the answer.
A. I will try.
Q. There is a function on Excel called Keep Date Current which does update the date and you can do it a lot of different ways. Are you familiar with that function?
A. No, I am not.
Q. You wouldn't customarily go into the special date menus and say keep current, right?
A. No, I would not.
Q. We will set that one aside for the time being.
You said that you also looked at some handwritten notes that you prepared?
A. Yes. I don't recall the specific content of them but I think there were some limited notes that I had taken.

NOT A CERTIFIED COPY

015644

Q. Were these notes of a meeting that you attended?
A. I don't recall that.
Q. Let me ask you if -- withdrawn.
Mr. Reporter, would you please mark as MS 365 a one-page handwritten document on Mr. Nesbitt's stationery?
(MS Exhibit 365 marked for identification)
BY MR. BEMIS:
Q. Do you have in front of you MS 365?
A. Yes, I do.
Q. First of all, is that a document that you created while you were an employee of MAFCO Consolidated Group Inc.?
A. Yes.
Q. Is that your handwriting?
A. Yes.
Q. Is this one of the documents that you looked at?
A. No.
Q. Is this document which we are going to touch on in a little bit more detail, this document is dated as of March

30, 1998, right?
A. Yes, it is.
Q. The closing that is written next to the date, that is the closing --
A. Wait a minute. I am sorry.
Repeat the question you asked before that.
Q. There is a date, March 30, 1998, in the top right?
A. Yes.
Q. The closing that is written there, that refers to the closing of the Sunbeam-Coleman transaction, correct?
A. Yes, I believe so.
Q. The first and second priority that appears above those, those are -- those are references to notes that were issued by Coleman Escrow Corporation, correct?
A. Yes, I believe so.
Q. These notes were both the first and second priority senior secured discount notes, if I remember the title correctly, that were issued by Coleman Escrow in about 1997, correct?

A. I don't recall.
Q. Let me show you a document, MS 241, real quick and see if we can get this background set up.
I have handed you what has previously been marked as MS 241.
Do you have that now in front of you?
A. Yes, I do.
Q. The notes -- are the notes that are referred to in MS 365 the notes identified on the front page of MS 241, the offering memorandum for Coleman Escrow Corporation for -- two sets of notes due 2001?
A. Yes.
Q. Having looked at MS 241 is your handwriting where it says first priority and second priority a reference to the notes that were issued pursuant to the offering memorandum MS 241?
A. Yes, it is.
Q. Are the figures that appear below first and second priority, are those the, I will use the term, accrued amount due on

those notes as of certain dates per thousand dollar face value?
A. Yes, they are.
Q. So, if I read this correctly, where you have the date 11/15/97, which I assume is November 15, 1997?
A. Yes.
Q. And then you have under first priority 684.59, does that refer to $684.59 accrued value on a one thousand dollar face amount discounted note issued pursuant to MS 241?
A. Yes.
Q. When I go down the list I go all the way to March 30, 1998 and I see the figure 712.99. Do you see that?
A. Yes.
Q. Is the 712.99, $712.99, first of all, is that what that figure represents?
A. Yes, per 1,000.
Q. That is the accrued amount of the per 1,000 of the first priority notes on March 30, 1998?
A. Yes.
Q. The second priority notes, we

NOT A CERTIFIED COPY

would read those the same way, correct?
A. Yes.
Q. What you did is you calculated based on the number of outstanding instruments that were issued pursuant to the offering memorandum, and the way I read your figures on the line that begins with an X, and then I see 600,475,000, do you see that?
A. Yes.
Q. That is the face amount of the notes that were issued pursuant to MS 241, right?
A. Yes.
Q. For the second priority the face amount was 131,560,000, right?
A. Yes.
Q. Then you concluded based on the accrued value of the notes as of March 30, 1998 what the total liability was of Coleman Escrow Corporation, did you not?
A. Yes, at that time, yes.
Q. At that moment in time which would be March 30, 1998 the accrued value of the Coleman Escrow notes as described in

MS 241 was $517,222,470, right?
A. Yes.
Q. The Coleman Escrow notes in MS 241 were issued to redeem instruments called LYONS, representing liquid yield options notes, correct?
A. Yes.
Q. The liquid yield option notes when -- strike that.
Were you an employee of MAFCO Consolidated Group Inc. when the LYONS were issued?
A. I don't know. I had nothing -- no involvement in the issuance.
Q. You know what they are, though, the LYONS?
A. Yes.
Q. They are a debt instrument that had several features. One was they had -- they paid interest, right?
A. Yes.
Q. They were issued at a discount as well, correct?
A. Yes.
Q. And, in addition, they had a

conversion feature, did they not?
A. Well, again I have not studied the LYONS specifically issued by Coleman or any of its entities.
Q. Didn't you do some calculations over how many LYONS might be converted into Coleman shares in connection with the Coleman-Sunbeam merger transaction?
A. I may have but I would have to --
Q. We will come back to that.
A. Yes.
Q. The handwritten notes that you looked at, about how many pages of notes did you look at?
A. Several, two or three.
Q. One or two?
A. Two or three.
Q. Or 15?
A. No; two or three.
Q. Did you look at any documents that specifically -- strike that.
Did you look at any documents in your deposition preparation that had a Morgan Stanley logo on them?
A. Yes.

Q. What kind of documents were those?
A. I believe there was a reasonably extensive outline of Sunbeam's strategic plan outlining projected strengths, weaknesses, projected operating performance for each of its business units, key strategic initiatives.
Q. Was this a document that you reviewed at the same time that you looked at the MS 84 which was the strategic plan document?
A. Yes, I believe so.
Q. Let me show you what has been marked as MS -- you have to excuse me a second, it escaped my memory.
I am going to hand you what we previously marked in another deposition as Morgan Stanley 186.
Do you have that in front of you?
A. Yes, I do.
Q. Is that the document that you were referring to that had the Morgan Stanley logo that you reviewed or saw on the February 23, 1998 meeting?

NOT A CERTIFIED COPY

015646

A. Yes, it is.
Q. Do you recognize the handwriting in the upper right-hand corner, I think it is RSE, the April 7, 1998?
A. No.
Q. You can hand that back to me.
Other than MS 186 which we just looked at did you look at any other documents in your preparation that bore the Morgan Stanley logo?
A. Yes.
Q. What document?
A. I believe there were some merger consequences or some analysis, something that I guess you would describe as somewhat comparable to what I did.
Q. Were these -- if I interrupt you let me know. I thought you were finished.
A. I am done.
Q. These merger consequence documents, were these documents that attempted, by defining both price, if you will, and I am going to use the term "currency," whether combinations of cash, stock, variances of stock, were these

documents that applied those two variables, a price for securities and then a form of currency that would trans -- be translatable from the price?
A. Yes, among many other variables, but, yes.
Q. For example, if you assigned a price to the Coleman stock of, we will use $30 a share right now, that would be one variable that would be in these documents that you looked at, right?
A. Yes.
Q. Was another one of the variables an exchange ratio between the Coleman stock and Sunbeam stock?
A. Yes.
Q. Was that exchange ratio usually expressed or, I am from Chicago, expressed usually as a percentage?
A. A ratio.
Q. Or a ratio?
A. Yes.
Q. And then in terms of the currency, did some of the currency constitute cash in some of the documents?

A. Yes.
Q. And then was -- did some of the currency reflect forms of stock that would be given for -- in exchange for Coleman stock?
A. Yes, but I don't recall the percentages nor the splits between those two that may have been, and I don't actually recall whether any of the analyses as I recall that Morgan Stanley prepared had any component of cash even.
Q. You did analyses just like the ones that Morgan Stanley prepared and that you saw, right?
A. Yes.
Q. Each side was preparing these documents, using electronic spreadsheets, am I correct?
A. Yes.
Q. Electronic spreadsheets were being adjusted based on the various assumptions that the people were using in the negotiations; is that correct?
A. Yes.
Q. Is it fair to say at the end of

the transaction before the closing that the parties agreed on the variables that went into the spreadsheets so they could determine both the price and the form of the consideration that would be exchanged at the closing?
A. Those specific two variables?
Q. No, not just those two, but all of the variables that went into the pricing considerations.
MR. MARKOWSKI: I am going to object to the form of the question.
THE WITNESS: I can't --
BY MR. BEMIS:
Q. That was probably a poorly phrased question. I will set that aside. We will come back to it later.
We will talk about some of those documents and it is probably easier if you had them in front of you rather than trying to remember.
Are there any other Morgan Stanley -- withdrawn.
Are there any other documents you can recall, setting aside the type you just

NOT A CERTIFIED COPY

015647

described for me, these pricing transaction documents, that you saw that bore the Morgan Stanley logo other than the ones you have now identified for me, one by category and one by specific exhibit number, MS 187?
A. If I broadly define Morgan Stanley on a numerical analyses of the transaction as what I saw, yes.
Q. What --
A. I cannot recall how many different versions that I saw from Morgan Stanley but I think that encapsulates everything that I saw that bore a Morgan Stanley logo.
Q. When you say "encapsulates," one is the specific document and the other type you saw or other document you saw is a category of documents?
A. Exactly.
Q. Okay. Before we get on the distraction of what documents you looked at, when did you first meet with your attorneys, not necessarily even Mr. Markowski but anyone representing you for the deposition, when did you guys first get

together?
A. I do not recall.
Q. When was the last time you got together?
A. Yesterday.
Q. How long did you meet yesterday?
A. Three hours.
Q. Where did you meet?
A. At the offices of MacAndrews & Forbes.
Q. Was anyone else present?
A. No.
Q. Mr. Fasman didn't come in?
A. No.
Q. Mr. Perelman stopped and said hello?
A. No.
Q. Did you see him yesterday?
A. I did not.
Q. Had you met before yesterday with any attorneys representing Mr. Perelman's companies in connection with this litigation and preparing for your deposition?
A. With Mr. Markowski.

Q. When was that?
A. You asked me that before. I said I don't know. It was several months ago.
Q. Several months ago. That is fair enough.
Did you meet just one other time?
MR. MARKOWSKI: To prepare for the deposition you are referring to?
BY MR. BEMIS:
Q. Yes, to prepare for the deposition.
A. We either met once or twice.
Q. How long did you meet with him the other time that you met with him?
A. Two, three hours each.
Q. Have you given anyone including Mr. Markowski any affidavits about this case?
A. No.
Q. You know what an affidavit is?
A. Yes.
Q. Something under oath that you write out?
A. Yes.
Q. Have you ever given --

MR. MARKOWSKI: I think he was responding to your question about -- let's get it straight.
THE WITNESS: No, I have not given any affidavits.
BY MR. BEMIS:
Q. I understood what you meant. I am sorry.
Have you given any statements to anyone whether they were under oath or not such as being transcribed here by the court reporter?
A. No, I have not.
Q. Have you ever given any statements to anyone even if they weren't under oath where either you or the other person wrote out the facts about this case or something related to this case and you were asked to sign it?
A. No, I have not.
Q. I take it that this is really the first time that you have sat down with anyone and had someone transcribe your recollection of events from 1997 forward on the Coleman transaction?

NOT A CERTIFIED COPY

015948

Page 46

A. Well, there was -- actually now that I -- my mistake.
I believe I was interviewed by I think attorneys from Wachtell regarding the situation in, it was presumably the summer of 1998.
Q. Wachtell is the law firm Wachtell, Lipton in New York City, correct?
A. Yes.
Q. They were attorneys representing Mr. Perelman's companies in the Coleman acquisition, correct?
A. Yes; a very vague recollection.
Q. Was this in connection with establishing a chronology of events during the negotiations?
A. I believe so, yes.
Q. Let me show you what has been marked as MS 75.
Do you have that in front of you, MS 75?
A. Yes.
Q. Have you ever seen MS 75 before today?
A. I don't recall the first three

Page 47

pages but I certainly recall the exhibit.
Q. The exhibit you are referring to is the Exhibit A which is a chronology that begins with early December 1997 and ends with March 2, 1998, correct?
A. Yes.
Q. Did you see Exhibit D which is also attached?
A. Yes, I believe so.
Q. Did you see this -- did this document, when you looked at it -- have you looked at this document recently?
A. I don't know what you mean by "recently."
Q. Let's say in the course of preparing for your deposition in the last couple of months?
A. Yes, I believe I did.
Q. Did it help you remember events and dates?
A. Yes.
Q. Are -- your name is mentioned in here a number of places, right?
A. Yes.
Q. When you looked at this document

Page 48

did the dates that appeared in the meetings that you are noted as attending appear to you to be accurate?
A. Yes.
Q. Did you notice any errors in MS 75 with regard to at least the events that you are identified as being a participant in?
A. I will take a look.
Q. Sure, go ahead.
A. There is nothing I see here that would suggest this is inaccurate.
Q. Would you hand that back to me? We will probably refer to it again.
Let me show you what we previously marked as MS 69.
I don't think there are any secrets on those anyway.
I hand what you has been marked as MS 69 in an earlier deposition.
Do you have that in front of you?
A. Yes, I do.
Q. You will see on page 3 your name William G. Nesbitt under the company name Macandrews & Forbes Holdings, Inc. Do you

Page 49

see that?
A. No. I am on page 3. I don't see Macandrews & Forbes Holdings, Inc. I just see my name.
Q. It is a continuation from page 2 where the heading appears. My fault.
That is you, right?
A. Yes.
Q. You are listed as in the working group for Project Laser, right?
A. Yes.
Q. Tell the jury what Project Laser is?
A. Project Laser is the name, I believe, that was adopted to describe the potential transaction between Sunbeam and the Coleman companies.
Q. It was --
A. A code.
Q. A code name?
A. Yes.
Q. This transaction in one group went by the code name Project Violet?
A. Yes.
Q. Who used project Violet as a code

NOT A CERTIFIED COPY

015649

Page 50

name for this transaction?
A. I believe it was Morgan Stanley and Sunbeam.
Q. And Sunbeam?
A. Yes.
Q. Did you ever hear Credit Suisse First Boston use the term Project Violet?
A. No.
Q. With regard to the project code named Laser what was your responsibility?
A. I think it was -- sorry. I worked for Jim Maher and it was to assist Jim Maher and, if appropriate, any of the other principals from MacAndrews & Forbes in executing numerical analyses related to the transaction.
Q. Were you the primary person that conducted the numerical analyses of the transaction?
MR. MARKOWSKI: You mean in-house at MacAndrews & Forbes?
MR. BEMIS: Yes.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Did you provide then your

Page 51

numerical analyses in-house to Mr. Maher?
A. Yes.
Q. Did you also provide them to an investment banking firm?
A. Any particular one?
Q. Yes.
A. Yes.
Q. Credit Suisse First Boston?
A. Yes.
Q. Did you provide any of your numerical analyses to Morgan Stanley?
A. I don't believe so.
Q. Did you provide any to Sunbeam or their representatives in any meetings?
Let me rephrase the question because that is too broad for you.
Did you provide any of your numerical analyses to Sunbeam or its employees or officers or directors?
A. No.
Q. Did you -- was -- withdrawn.
Did you have any responsibility for -- strike that.
Did you have a person that you communicated with at Coleman in connection

Page 52

with preparing your numerical analyses.
MR. MARKOWSKI: I will object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. Restate it please.
Q. Sure. Let me try it this way, make it clearer for all of us.
In your numerical analyses like MS 104 that we looked at earlier, your first spreadsheet, you have figures for Coleman for both 1997 estimates, you have 1998 estimates, you have -- you have them on multiple pages.
Did you have a person at the Coleman company that you could speak to to obtain the information like that for whatever numerical analyses that you did involving Coleman?
A. Yes.
Q. Who was that?
A. Joe Page or Jerry Levin.
Q. You also had information in your numerical analyses such as MS 104 that incorporated financial information similar

Page 53

to that for Coleman for Sunbeam Corporation, right?
A. Yes.
Q. Did you have a person at Sunbeam that you could call up on the telephone and get information from?
A. No.
Q. Did you obtain your information as you put it in the spreadsheets for Sunbeam from public documents?
A. I would have to refer to -- depends which spreadsheet.
Q. Fair enough. We will do that when we look at each one of the spreadsheets.
In any event, going back to the -- your role in the transaction and your work for Mr. Maher did you have the same role that you described earlier in your testimony from the inception of your work up to the time of closing which was March 30, 1998?
A. Yes, as described broadly, yes.
Q. In addition to working with Mr. Maher you told me you communicated with

NOT A CERTIFIED COPY

015950

Page 54

Credit Suisse First Boston and Coleman, right?
A. Yes.
Q. You also had attorneys you communicated with, correct?
A. Yes.
Q. You communicated directly with the Wachtell firm in connection with this transaction, right?
A. Yes.
Q. You had a -- withdrawn.
You communicated directly with Adam Emmerich on a number of occasions, did you not?
A. Yes.
Q. He was for all practical purposes the lead attorney on this transaction for Wachtell, correct?
A. Yes.
Q. If you had a legal question on this transaction you could communicate with Mr. Emmerich at Wachtell, correct?
A. Yes, or internally.
Q. Or internally at MacAndrews & Forbes Holding, Inc., right?

Page 55

A. Yes.
Q. Do you use the -- did you use the term "MAFCO" internally or how did you describe the company that you were working for during this period of the Sunbeam-Coleman merger?
A. Technically I was working for MAFCO Consolidated Group, I believe, at that time which is a subsidiary of MacAndrews & Forbes.
Q. Your title which I think we will get to in more detail, but you were an executive, a senior vice president, correct?
A. Of MAFCO Consolidated.
Q. MAFCO Consolidated Group Inc.?
A. Yes, but I had a series of different titles at different entities. I would have to refer to -- for timing. It changed over time.
Q. You got a paycheck from one of Mr. Perelman's companies?
A. As long as it cashed --
Q. You probably got direct deposit like everybody else, isn't that true?

Page 56

A. Yes.
Q. When I ask people where their check came from, nobody knows where their check came from. It is all direct deposit. We will set that aside.
In addition to the people at Coleman, Mr. Page and Mr. Levin and the people you had -- Mr. Emmerich at Wachtell, if you had a legal question, if you had an investment banking question could you turn to Credit Suisse First Boston?
A. Yes.
Q. And who did you deal with primarily at Credit Suisse First Boston?
A. Either Rob Duffy or Gordon Rich; on a limited basis Chuck Ward.
Q. If you had a question about an accounting matter did you have a line of communication to the Coleman companies certified public accountants?
A. No. Well, did I have one? Yes. Did I utilize it? I think I spoke more with Joe Page, the CFO.
Q. During the negotiations -- strike that.

Page 57

Would you consider the transaction between Sunbeam and the Coleman company a negotiated transaction?
A. Yes.
Q. On one side of the negotiations you said you had -- Mr. Perelman's companies had a law firm, Wachtell, Lipton, correct?
A. Yes.
Q. Who was the law firm on the other side of the negotiation, for Sunbeam?
A. I believe it was Skadden, Arps.
Q. You told me on your side of the negotiations you had an investment banking firm Credit Suisse First Boston, correct?
A. Yes.
Q. They were paid exclusively by Mr. Perelman's companies, correct?
A. I believe by the Coleman companies.
Q. The Coleman company was owned at the time of the transaction, just before -- about 82.4 percent by one of the subsidiaries of Mr. Perelman specifically, Coleman Worldwide, correct?

NOT A CERTIFIED COPY

015651

A. Yes.
Q. On the opposite side, on the investment side, there was Morgan Stanley, correct?
A. Yes.
Q. They were paid for by Sunbeam as far as you understood it, right?
A. Yes.
Q. Then on the -- Sunbeam had accountants, right?
A. Yes.
Q. Arthur Andersen?
A. Yes.
Q. The Coleman companies had certified public accountants. It was Ernst & Young, right?
A. I don't recall.
Q. They did have certified public accountants because they filed public filings with the SEC which requires statements signed by certified public accountants or attested to by certified public accountants?
A. Of course.
Q. In addition -- strike that.

In addition now to the financial advisers, the investment bankers, the law firms, the accountants and the numerical analysts that you were the head of at Mr. Perelman's companies were there any other people involved in the negotiations that you can identify on either side of the table?
MR. MARKOWSKI: Could you read that back please?
BY MR. BEMIS:
Q. I will rephrase the question.
In addition to the investment bankers which you identified in the negotiations, you have identified the law firms in the negotiations, you have identified at least one of the accounting firms and you know there was another accounting firm in the negotiations.
Can you identify anyone else on either side of the negotiating table that was involved in the negotiations.
A. I believe early on there was a representative from one of the significant shareholders of Sunbeam who was involved in

some preliminary discussions.
Q. Mr. Price?
A. Yes. I don't know that it was Mr. Price or Peter Langerman but that firm had a substantial position and substantial influence.
Q. Are you familiar with the term "arms length negotiations?"
A. Yes.
Q. Would you characterize the Sunbeam transaction as an arms length negotiations?
A. Yes.
Q. Do you consider -- did you consider Mr. Perelman's companies to be sophisticated investors when you worked for Mr. Perelman's companies?
A. Yes.
Q. Did you consider yourself to be sophisticated in the responsibilities that were assigned to you in connection with the Sunbeam-Coleman transaction?
A. Yes.
Q. You understood, as I read your paper, you understood such sophisticated

concepts as pooling accounting and purchase accounting, right?
A. Yes, or if I didn't know I would get the answer.
Q. You knew, for example, what it was, like to take a 338(h) election in tax treatment for these transactions, didn't you?
A. Yes, but, again, if there were holes in my understanding I would fill them with advice from the varied people that you named.
Q. The people on your side of the negotiating table?
A. Yes.
Q. Did you ever call up Morgan Stanley and ask Morgan Stanley for advice as to what you should advise Mr. Perelman's companies to do?
A. Of course not.
Q. Have you ever met Mr. Perelman?
A. Yes.
Q. How many times?
A. 200, 300.
Q. Do you consider him a smart man?

NOT A CERTIFIED COPY

0152

A. Yes.
Q. Do you consider him a sophisticated investor?
A. Yes.
Q. Do you consider him one of the most sophisticated investors in New York City?
A. Yes.
Q. What was Mr. Barry Schwartz's involvement in Project Laser as described on the working group list MS 69 that you still have in front of you, what was his role?
A. Barry was and is in-house counsel at MacAndrews & Forbes which means from a legal perspective he watches out for MacAndrews & Forbes' interests to the best of his abilities and he might interface with counsel, might sit in on meetings generally to make sure, given his extensive knowledge of all of the activities from a legal perspective of MacAndrews & Forbes, that he is familiar with what is going on and can advise Mr. Perelman and other members of MacAndrews & Forbes as to what

is appropriate or not appropriate.
Q. If you had a legal question in connection with the Sunbeam-Coleman merger and you wanted to discuss it in-house rather than going over to Wachtell, Lipton would Mr. Schwartz be the ultimate point of contact with Mr. Perelman's companies?
A. Ultimate, yes.
Q. Might he assign you to someone else to speak to on a problem?
Withdrawn.
Let's get real focused.
In connection with the Sunbeam-Coleman transaction did you have matters that you in connection with your responsibilities addressed directly with Mr. Schwartz?
MR. MARKOWSKI: Can I have the question back please?
(Record read)
MR. MARKOWSKI: Are we focusing on the time period up to the closing still?
MR. BEMIS: Yes, sir, up to the closing.

THE WITNESS: I speak to Barry -- spoke to Barry regularly but I can't recall specific instances, questions that I may have asked him, but his door was open on these sorts of issues.
BY MR. BEMIS:
Q. Where was your office -- strike that.
What floor was your office on at Mr. Perelman's headquarters?
A. Fourth floor.
Q. Can you refresh my recollection where Mr. Perelman's office was?
A. Second floor.
Q. That is what I thought.
Mr. Drapkin, you know him, Donald G. Drapkin?
A. Yes.
Q. What was his role in the merger?
A. I think that Mr. Drapkin, given his legal background and, for that matter, extensive background with Mr. Perelman on the transaction side, provided more general advice and direction with respect to the discussions and negotiations and was

briefed from time to time appropriately.
Q. Where was Mr. Drapkin's office in the headquarters?
A. Third floor.
Q. Of MacAndrews & Forbes, third floor.
You know Mr. Howard Gittis, right?
A. Yes.
Q. He was on the second floor directly with Mr. Perelman, correct?
A. Yes.
Q. What was Mr. Gittis' role in the Sunbeam-Coleman transaction?
A. I would characterize it as a similar role to Mr. Drapkin's but Howard has been with Ronald almost from the start, Mr. Perelman, from the start and so again providing day-to-day strategic advice on negotiation strategy pros and cons.
Q. Did Mr. Ronald O. Perelman have the final say so in terms of the Coleman Sunbeam transaction?
MR. MARKOWSKI: You are referring to for MacAndrews & Forbes?

NOT A CERTIFIED COPY

015653

MR. BEMIS: Yes, sir.
BY MR. BEMIS:
Q. Let me ask the question again. I apologize. If it is a little awkward tell me and I will try to redo it for you.
Did Mr. Ronald O. Perelman have the final say so, the final yes or no, on behalf of his companies whether to proceed with the Sunbeam-Coleman merger transaction?
A. Yes.
Q. Was this the first deal, that is, the Sunbeam-Coleman merger transaction, that Mr. Perelman had done?
You are smiling.
A. Apparently a lot of time here.
No.
MR. BEMIS: Why don't we take a break here? We have gone an hour-and-a-half and then run to lunch.
Off the record.
THE VIDEOGRAPHER: Going off the record. The time is 10:59.
(Recess)
THE VIDEOGRAPHER: We are back on

the record. The time is 11:11.
BY MR. BEMIS:
Q. Before we turn to your first involvement in the Coleman-Sunbeam transaction which we have touched upon a little bit already I would like to have you tell the jury a little bit about your professional background so they will better understand the role you played in the transaction.
You told us earlier that after you graduated from Duke with your degree in economics in 1984 you went to First Boston Corporation; is that correct?
A. Yes.
Q. If you told me I apologize but how long were you there?
A. I was there two years in the financial analyst program in the merger and acquisition group as a generalist meaning from an industry perspective focusing on mergers and acquisitions, acquisitions, divestitures but no specific industry.
Q. Did you spend the entire two years in that group?

A. Yes, I did.
Q. Can you generally describe what you did as a generalist and an analyst at First Boston?
A. Basically responsible for analyzing from a numerical perspective the consequence, consequences of various mergers and acquisitions on behalf of clients that had retained First Boston as it related to divestiture assignments, the sale of either subsidiaries or entire companies.
I was involved in the preparation of offering memos that would be used to describe the business, its prospects for the benefit of potential purchasers, and then involved pretty extensively in the preparation of pitches, pitch books, marketing materials, to various companies that might be interested in retaining First Boston, the merger group.
Q. First Boston at the time that you were speaking of was an investment banking firm, right?
A. Yes.

Q. And it eventually merges with Credit Suisse and becomes Credit Suisse First Boston, right?
A. Yes.
Q. When you worked for First Boston in this two-year period and you were developing either your numerical analyses or your offering memos or your pitch books these were in connection with matters that First Boston had been retained as an investment banker for a client?
A. Again, if we had been retained it would be subject to an engagement letter.
If it was prospective, hopeful, it would be more involved on a pitch book basis.
Q. When you refer to a "pitch book" are you referring to presentation materials you would prepare for a potential client to persuade them that you had the merits to be hired to assist them in whatever their ultimate goal was?
A. Yes.
Q. As part of the investment banking business as you learned it back with First

NOT A CERTIFIED COPY

015954

Boston, was making presentations to potential clients a customary thing that you did in your work?

A. Well, I myself did not make the presentations. I was involved but, yes, it is a natural part, it is a necessary part of investment banking if you are to secure business.

Q. Like being interviewed for the job, right?

A. Yes.

Q. Your object in the interview is to persuade your prospective client that you have the expertise and the knowledge in a particular area to add value to the client's interest in selling or buying a business, however you might describe the client's goal?

A. Yes.

Q. Then after -- when you were at First Boston did you make the decision then to go to business school?

A. Yes.

Q. Then I guess from 1986 to 1988 you were at Harvard, right?

A. Yes, with a summer in between at Coniston Partners.

Q. I know what -- what is Coniston Partners?

A. What was Coniston Partners?

Q. Right.

A. Coniston Partners, the general partner of which was a firm by the name of Gollust, Tierney & Oliver, was a fund that had been raised to take strategic blocks in publicly held companies with a view towards redirecting corporate strategy.

It tended to be undermanaged, undervalued public companies, large public companies.

Q. Coniston Partners -- strike that.

In your view is Coniston Partners similar to Mr. Price's and Mr. Langerman, their business in taking positions with their funds?

A. There is some modest overlap. Mr. Price, Mr. Langerman run or ran a mutual fund which as a matter of strategy from time to time would take activist positions in undervalued, undermanaged

companies, sometimes on a proactive basis, sometimes on a reactive basis.

If something went wrong they might raise their hand to try to fix things.

Coniston was purely proactive, did not hold a diversified portfolio at all and tended to involve itself only in two or three situations at most in its pool of capital which was somewhere between 800 million and a billion dollars, depending on the time.

Q. What did you do at Coniston that summer?

A. And subsequent, by the way.

Q. And subsequent, right.

A. The summer of 1987 I was involved in -- we decided to take a position in Allegis which was the parent company of United Airlines, Hilton, Hertz and Westin and we acquired a significant block of stock with a view towards splitting the company up on a tax-free basis if possible, basically splitting up to kind of -- to extract the value of its component parts,

and I was involved in the analysis of Allegis.

Q. This was during the year when some of the parts was worth more than the whole?

A. Yes, it was a great period of time.

Q. When you -- withdrawn.

During the summer were you an intern with the company, is that what you described your work?

A. Yes.

Q. An intern with a full degree from Duke University and a year under your belt at the Harvard Business School, right?

A. Yes.

Q. Then after you were -- spent the summer at Coniston then did you go to another firm or did you go -- you went there right afterwards?

A. I went to Coniston and during the second year I consulted from time to time with the partners of Coniston Partners on various potential investments.

Q. Did you do that while you were

NOT A CERTIFIED COPY

finishing your second year in the business program at Harvard?
A. Yes.
Q. Did you eventually go to work for the, and I will say this slowly, Gollust, Tierney & Oliver investment firm?
A. Yes. That is the general partner of Coniston Partners.
Q. That is what I thought. You did tell me that.
A. Yes.
Q. You left Coniston directly and went to work for the general partner?
A. No. I was never -- I was never employed by the partnership. I was employed by the management company which was Gollust, Tierney & Oliver Management.
Q. I appreciate that. I should have known better when I asked that question.
You were there about four years?
A. I was there, yes, from 1988 through '92 and actually physically until 1996 but I can elaborate on that, why I stayed that --
Q. Before we get there, what did you

do at least during the period 1988 through 1992 at Coniston Partners?
A. Chiefly responsible for identifying potential investment opportunities on behalf of the partnership and analyzing the investment merits of making them and, as well, being involved in discussions or analysis that might be required subsequent to making an investment because these were not passive investments.
Q. When you did your identification of potential investments and looked at the merits of making investments you were investing or were looking at investing someone else's money, right, the partners' money?
A. Limited partners' money and the general partners' money.
Q. Would you describe -- without trying to be facetious now, would you describe it as a lot of money you were dealing with in these investments?
A. Absolutely, an enormous amount. We ran an entirely undiversified portfolio. Positions tended to be 150 million to 300

million dollars or so in an individual stock.
Q. Real money even to a man like Everett Dirkson, right?
A. Who?
Q. You are showing your age.
Would you consider $100 million to be a substantial amount of money to invest?
A. I did, I do, I will.
Q. When you did your investigation of this money for other people which involves substantial amounts did you do your own investigations, that is, did you use your own brain power and your own research abilities to try to analyze the data?
A. You have to clarify the question. I am not sure.
Q. That is fair enough. That is not a very good question. Let me try again.
When you did your investigation even going back now to the period of 1988 to 1992 and looking for companies with merit, would you look at publicly filed

information of companies if they had it available?
A. Yes.
Q. Would you look at analyst reports about companies if they were being followed by an analyst?
A. Yes.
Q. Would you do research of data bases like Lexis or Nexis or any of the multitude of data bases that were emerging during that time period?
A. Yes.
Q. Did you uncritically accept any number that you happened to see in a document or did you analyze it yourself for its merits?
A. To the best of our abilities we tried to investigate.
Q. When you say you investigate or you critically look at something in the context of your work as IDing investments and investments of hundreds of millions of dollars, would you describe that as due diligence on your part?
A. Yes, but ultimately we were

NOT A CERTIFIED COPY

relying on publicly available information, SEC filings as the primary source document to guide our investment research.
Q. As an investment researcher for an investment banking group, as an example. You are not an auditor, right?
A. No.
Q. By trade you are not an accountant, are you?
A. No.
Q. When you look at a financial statement that is certified by a public accounting firm that files reports with the Securities and Exchange Commission do you customarily go behind those statements in the sense of reauditing the figures in the statements?
A. In the true sense of the word "auditing?"
Q. Yes.
A. No. One doesn't have that ability.
Q. You might analyze the figures in different ways, correct?
A. As best you can, yes, whatever

you can do.
Q. In any investment banking transaction that you have been involved in, whether it be on the acquisition side or the sell side, or even just on the investment -- just on the investment side, and you had publicly available financial statements that you looked at and analyzed did you ever, in any instance, go back and commission anyone to reaudit the financial statements that you were relying upon?
A. No.
Q. When you finished your four-year stretch at Coniston about 1992, I think you said, you continued to work for them for a period in another capacity; is that right?
A. Yes.
Q. What period of time was that?
A. At the end of early 1992 the partners -- there were three partners and myself was the firm, the extent of the firm as it related to Coniston Partners -- decided to liquidate the fund.
They had a very, very -- the partners had an extraordinarily successful

ten years and felt that the environment had changed for the -- perhaps permanently for the type of activity that we were involved in and they decided that they would take their chips off the table so the fund as much as it could have been at that point was liquidated and capital was returned to the partners and I was -- with another individual set up a hedge fund with seed capital from the partners of Gollust, Tierney & Oliver. That is Lakeview Partners.
Q. Lakeview Management?
A. Yes, so Lakeview was again a hedge fund that was involved in the investment both on the long and short side in securities that we believe were mispriced, whether it was the risk arbitrage investments, distressed securities, bankruptcy securities, foreign securities, anyone -- focused on companies that were undergoing a great deal of change or structurings.
Q. As an example of what you are talking about, if you had a major

enterprise that was in bankruptcy and had a large amount of bonds outstanding, we will use bonds -- I am talking about secured instruments now in this instance, they were out there in the market and they had a distressed price, that might be something that you would analyze and look at and go to the underlying value of the security and say these bonds are underpriced, if we can wait them out they will eventually be able to be liquidated at a profit to us hopefully at far more than we could make in a bank account?
A. Yes.
Q. For those on the jury and maybe others who don't know what a hedge fund is could you explain to us in a few words --
A. First of all, it is a misnomer because it doesn't imply that we are hedged.
Q. It doesn't imply you are taking both sides, does it?
A. Yes, exactly.
What it typically refers to is a partnership that has been set up on behalf

NOT A CERTIFIED COPY

0157

Page 82

of limited partners to invest their capital with us and it really relates to -- generically to the compensation structure which tends -- which typically, or in our case, provided us with a management fee and then a strong incentive, a percentage of profits that would accrue to us, typically a 1 percent management fee and 20 percent of profits so there is a strong incentive to do well.

Q. Hedge funds are in comparison -- withdrawn.

Are hedge funds generally, as the terminology is used in the financial markets such as New York, considered higher risk investments than, for example, a mutual fund that the average American might invest in?

A. It depends, depends on what the strategy is. The structure does not necessarily have anything to do with the strategy. I think it relates to the strategy, not the structure.

Q. In terms --

A. That is a perception question. I

Page 83

don't know.

Q. I think that is a good answer frankly.

Lakeview Management, how would you describe its investment strategy? Was it -- did it go after high risk but very high return investments or did it follow a more conservative growth but with more security and preservation of capital?

A. Well, as you have characterized it, I have two choices I guess. It is more in the former camp.

We were value investors; invested in special situations. We did not typically invest in situations for the long term.

We were trying to exploit pricing aberrations in the marketplace relative to -- that we thought would ultimately be corrected when the dust cleared either because of confusion over strategic direction of the company, a very complicated transaction that the typical shareholder wasn't in a position to analyze.

Page 84

Q. Or understand?

A. Or understand.

Q. When you left -- strike that.

How did your employment come to an end with Lakeview Management?

A. We ran the partnership for three years and I ultimately decided that I wanted to focus on the acquisition of companies as a profession and to be involved more intimately with those companies on a longer term basis to work with management teams and to try to grow as opposed to sitting in front of a Bloomberg and trying to exploit pricing differences so we ended up liquidating the fund and returned the capital to our investors the largest of which was Gollust, Tierney & Oliver that had roughly $20 million with us; the partners -- excuse me -- the principals of Gollust, Tierney & Oliver.

We had returns of 28, 29 percent a year for the three years.

Q. I should have called.

How many deals had you done by the time you liquidated Lakeview?

Page 85

A. Deals or investments?

Q. A fair question.

Let's start with deals, mergers, acquisitions, business combinations some of kind.

I don't mean that you were necessarily an investor but how many had you worked on? It is an awkward question.

From the time when you went to First Boston as an intern in about 1997 I suspect was when you went, until say 1995 when you leave Lakeview, how many merger and acquisition transactions had you participated in advising either a buyer or seller on?

A. Well, engaged because I mean we are getting into nuances here.

In the case of Coniston Partners we were the largest shareholder so we were doing our best to call the shots but we weren't engaged as an adviser.

We were an influential shareholder. There is certainly a legal distinction.

What are you referring to as an

NOT A CERTIFIED COPY

015958

adviser engaged as an investment banker?
Q. Let's start with engaged as an investment banker and then we will go to the next step.
A. Probably in those two years, 15, 20 situations, in some reasonable capacity again as a analyst so I certainly wasn't advising.
Q. Then when you get to the -- get away from the -- strike that.
Let's step now away from engagements and where you are doing an actual investment for either a partnership or analyzing an investment even if you are an investment banker and someone wants you to analyze whether they should do a transaction, how many of those did you do?
A. From the time I was at Gollust, Tierney & Oliver to the time I left Lakeview I did not act in an advisory capacity as you have described it.
I was making investments as a principal on behalf of partners who invested their capital with us.
Q. How many -- did you have an

interest in the investments other than your profits -- other than a profit participation?
A. A de minimus interest while I was at Coniston Partners, I didn't have any money, and then I was a general partner and an investor in Lakeview Partners.
Q. Between Coniston and Lakeview Partners how many deals did you invest in where you were actively involved in making or -- the decision or giving advice on whether the investment had merit and was advisable for the partners, the limited partners?
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:
Q. Go ahead. You can answer.
A. Well, I will make one distinction.
Investments in Coniston Partners, I was not the decision maker, I was not a general partner, so consulted, advised, identified and they were active investments.

We were actually going to precipitate change. There were four or five investments that we made of the sort of scale that I mentioned.
Q. Of Allegis?
A. Yes, Allegis, Gillette, situations like that, substantial investments in large public companies, united Airlines, attempted a leveraged buyout of United Airlines with the three unions and then -- so there were a handful, very concentrated.
In the case of Lakeview I would have to say it was more in the 50 to 100 range. These were smaller passive stakes. The partnership probably had 15 to 30 positions at any one time.
Q. That takes us up to the end of 1995. At that point you liquidated the Lakeview and you went to work for Mr. Perelman's companies, did you not?
A. Yes.
Q. What was -- withdrawn.
Did you start in 1996, about that time?

A. I believe it was March of 1996.
Q. What was your -- what company did you first go to work for if you can remember and what was your position?
A. I was asked to join and did join MAFCO Consolidated Group which was a New York Stock Exchange listed, publicly traded company that was controlled by MacAndrews & Forbes. I believe we owned 81, 82 percent or so. The remaining shares were owned by the public and internally and from my vantage point it was viewed as a publicly traded acquisition vehicle and so I joined for two purposes.
The first was that MAFCO Consolidated Group had several existing businesses and there was a question as to what should we do with those businesses, grow them, sell them, buy more, use the capital, and then the second question or second objective from my perspective was to, if appropriate, to then use whatever proceeds or borrowing that was available to then do additional acquisitions.
Q. MAFCO Consolidated Group -- no

NOT A CERTIFIED COPY

015959

Page 90

comma, by the way -- Inc. was not an operating company, right?
A. Well, MAFCO Consolidated Group was the holding company for two operating companies.
Q. One of which was --
A. M&F Worldwide and the other was Consolidated Cigar.
Q. M&F Worldwide was in what business?
A. The largest manufacturer of licorice extract in the world.
Q. One of Mr. Perelman's first big acquisitions, was it not?
A. Yes. Well, big at the time. It was a relatively small one in comparison to later, but, yes.
Q. MAFCO -- withdrawn.
MAFCO Consolidated Group Inc., the company that you worked for, essentially was in the business of doing deals, acquiring other companies or selling companies that it had acquired for a profit, right?
A. Yes.

Page 91

Q. Just so the --
A. It is a holding company for two operating companies so we were, but, yes.
Q. When you refer to it as an acquisition company, so the jury understands, an acquisition company versus a company that makes things, an acquisition company doesn't make razor blades, for example, like Gillette, does it?
A. What I stated was that there were two primary activities. One was to monitor and continue to evaluate the merits of continuing to operate the existing businesses, again, the Consolidated Cigar which was the largest maker of premium cigars in the world or in the U.S. and then as well M&F Worldwide, and the other was, if appropriate, to then use whatever capital was available to make further acquisitions, but relative to probably most publicly traded companies I think it is fair to say that we had a more open view with respect to doing acquisitions.
Q. What do you mean by that?
A. That it was a, as far as my

Page 92

understanding of the task at hand, it was certainly at the top of the list as far as how I would be spending my time looking for acquisition vehicles -- opportunities, excuse me.
Q. Did MAFCO Consolidated Group, aside from companies it may have held an interest in as a holding company, did it make any products?
A. The holding company, no.
Q. Do you know how many employees when you joined the company that MAFCO Consolidated Group Inc. had?
A. After I joined or when I joined?
Q. When you joined, 1996.
A. The holding company?
Q. Just the holding company now, who either deposited --
A. Two.
Q. You and who else?
A. Mr. Maher.
Q. You and Mr. Maher. I am not trying to be facetious. I want the jury to understand what we are dealing with.
Did you guys own any factories

Page 93

where you made goods?
A. The holding company?
Q. MAFCO Consolidated.
A. That legal line.
Q. The one who paid you.
A. No.
MR. BEMIS: Why don't we change the tape?
THE VIDEOGRAPHER: The time is 11:44. This completes tape number one.
(Pause)
THE VIDEOGRAPHER: The time is 11:45. This begins tape number two.
BY MR. BEMIS:
Q. Right before we changed tapes we were talking about MAFCO Consolidated Group Inc.
Did you hold a position in that company up until the time that you left Mr. Perelman's companies?
A. Personally?
Q. Yes, sir. You?
A. Did I hold -- you mean not an investment position but a professional --
Q. As a person who received a

NOT A CERTIFIED COPY

015660

Page 94

paycheck from the company.
A. Yes.
Yes, I believe so.
There was a point where that entity became private so -- and I just can't recall whether I then became -- ultimately became a senior vice president of MacAndrews & Forbes and I just don't recall what happened to the title, if you will, at MAFCO Consolidated Group.
Q. At some point you did become the senior vice president at Macandrews & Forbes Holdings, Inc., right?
A. Yes.
Q. Do you remember -- about what time did that occur?
A. I don't recall.
Q. How did -- did your duties change when you assumed this title of senior vice president at MacAndrews & Forbes Holdings, Inc.?
A. Yes, in -- well, my responsibilities changed in that as compared to being directly responsible for identifying investment opportunities on

Page 95

behalf of MAFCO Consolidated Group and overseeing -- evaluating its operating businesses, it became much more general in nature in that it extended to all of the MacAndrews & Forbes entities in theory although in practice we had a number of different entities, Revlon, et cetera, and the bank -- and I didn't really have any day-to-day responsibilities on those entities so it became much more of either a Mr. Fix-It role, we have an issue here, can you look into this, or continuing to look on behalf of MacAndrews & Forbes for new acquisition opportunities.
Q. The bank you referred to, could you tell the jury what bank that was?
A. It was originally Cal Fed. It has gone through a series of name changes.
Q. What is the name it goes by today?
A. Now? I am not even sure of its ownership at this point.
Q. Is it California Union?
A. I don't recall. No, it was actually bought by Citicorp ultimately.

Page 96

Q. Was Cal Fed -- that stands for California Federal at one time but primarily located in California, being from California?
A. I mean, again, no involvement but the second or third largest thrift in the country. Was.
Q. Were you -- you weren't employed by any MAFCO entity when Cal Fed was purchased by Mr. Perelman's companies, were you?
A. No. I think it is fair to say that those -- that sequence tended to result in assigned responsibility.
If you were involved in the acquisition you tended to have more responsibility day-to-day.
Q. Did you -- you worked then all the way through the year 2000 -- withdrawn.
When did you leave Mr. Perelman's companies and start with someone else?
A. I left in July, perhaps early August of 2000.
Q. Where did you go?
A. I joined or became one of five

Page 97

founding partners of an entity called Lamphere Capital Partners which had no operations at that point. It was an entity that was established to go out and raise a fund, so this was the going out and -- going out on my own.
Q. Is Lamphere L-A-M-P-H-E-R-E?
A. Yes.
Q. Was your title managing director?
A. Yes.
Q. How long did you remain associated with Lamphere Capital Partners?
A. Roughly a year.
Q. What precisely did you do while you were there?
A. I was one of five partners apart from two other clerical people. There were no other employees, and I was responsible equally, I suppose, among all the other partners for developing a strategy and preparing an offering memo with which to raise a private equity fund.
Q. Sometimes called a PEF?
A. Yes.
Q. Did you do that? Did you raise

NOT A CERTIFIED COPY

the money for the PEF?
A. No, we did not.
Q. The idea of a PEF or private equity fund is you raise the money from investors and then you as the private equity fund invest in other investments, businesses, startup entities or others with the objective of holding that position for a period of time and then hopefully liquidating at a profit, correct?
A. Yes.
Q. Is there -- you were simply unsuccessful in raising capital for your PEF at this time?
A. Yes.
Q. You started this business right as the economy went into the downward spiral it looks like if you started in June and July of 2000, is that right?
A. Well, we -- yes. I think we started fund raising in late 2000 and early 2001.
Q. After you were unsuccessful with Lamphere raising the funds that you tried to raise did you then go to Park Avenue

Equity where you are working today?
A. Yes.
Q. How many partners do you have at Park Avenue Equity?
A. I have four.
Q. Four?
A. Yes.
Q. What does Park Avenue Equity do?
A. It -- Park Avenue Equity Management has two activities. One is, and its primary activity is -- we have a pool of capital, a private equity fund with which we make middle market medium size private equity investments in medium size companies, typically private companies.
The second activity really on an opportunistic basis, we will advise a very limited number of clients on typically divestiture assignments, more general strategic advice and --
Q. Could you give me an example of -- you don't have to name any names but give me an example of the type of divestiture advice you are talking about.
A. I am and have been, since October

of '02, been advising an east coast based privately held company on the sale of its -- all of its operations which include two refineries, 350 gas stations and eight or nine product terminals. It is about a billion-and-a-half dollar revenue company.
Q. As an example, if I or my family owned a business that had been quite successful and I was looking to divest the family of the business, would this be -- and it was substantial, dollar wise, is this the type of client that you might provide divestiture advice for?
A. Yes.
Q. Does that advice include pricing?
A. Pricing, you mean negotiating a price?
Q. Value of the enterprise.
A. Yes.
Q. To a buyer?
A. Yes.
Q. Does it include tax advice to the seller?
A. No.
Q. Do you have people that you are

affiliated with in your business that provide that type of advice, tax advice?
A. No. I mean we know people but we tend to believe that is the responsibility of the company, perhaps at our suggestion, to engage experts in that capacity.
Q. Do you look for buyers on these divestiture assignments?
A. If appropriate, yes, or if asked to.
Q. Are the services that you do in this context similar to what an investment banking firm would do?
A. Very much so.
Q. I couldn't tell the difference when you described it.
A. Right. It is just that we do it -- we are a small firm so we do it on a very limited basis and we really don't chase it, I suppose, the same way that investment bankers do.
It tends to be much more relationship based. They know you us, we know them. We don't get involved in bakeoffs.

NOT A CERTIFIED COPY

015662

Page 102

Q. I haven't heard "bakeoffs" used for pitches in a while so in the context --
A. Right.
Q. So the jury knows, "bakeoffs" is the term sometimes used in the industry when five investment banking firms compete for the same business and they each make a pitch and there is a bakeoff to see who wins, right?
A. Yes.
Q. When you worked for Mr. Perelman's companies what was the largest by dollar size transaction that you worked on?
A. I guess that would be, on the buy side, the purchase of Panavision which is a west coast-based, Los Angeles-based renter of motion picture cameras and lighting.
Q. When we see on the screen at the end the word "Panavision," the "Filmed in Panavision" words, would -- that is the company, or at least the cameras, that you are referring to, right?
A. Yes.
Q. On the buy side for Panavision

Page 103

as -- how big was that transaction measured in dollars?
A. It was roughly $700 million.
Q. You did that transaction in 1997, right?
A. I believe it closed in 1998, early '98.
Q. It closed before the Sunbeam transaction, though, did it not?
A. Yes, yes. There was a bond deal, I believe, in February or so, around that period, but, yes.
Q. Let's turn now to the sell side.
What was the largest sell side transaction that you worked on while you worked for Mr. Perelman's companies?
A. I was involved peripherally in the sale of Consolidated Cigar, and I say "peripherally." Mr. Maher was leading the negotiations. At that point we owned a meaningful stake in -- it was not then a public company -- in Consolidated Cigar and we ended up selling both our block and the entire company to Seita, the European tobacco company.

Page 104

Q. Can you spell that?
A. S-E-I-T-A.
Q. I thought so. I wasn't positive though.
A. Yes.
Q. How big was that transaction dollar wise?
A. I think it was about 800 million, 7, 800 million.
Q. Then, of course, you worked on the Sunbeam-Coleman transaction, right?
A. Yes.
Q. Did you work on the Sunbeam-Coleman transaction at the same time you worked on the Panavision deal?
I know your involvement was a little bit different but did you work on it at the same time?
A. There was some overlap. The Panavision situation was really winding down in terms of its demands on my time.
The deal had been negotiated and due diligence had been largely completed and it was -- it kind of moved into that closing period.

Page 105

I think there was some -- there were some road shows to get the bond deal done but I did not participate on those. Those were more the responsibility of the management team at Panavision.
Q. Was there a management team at MacAndrews & Forbes?
A. Management team in what sense?
Q. The same way you used management team at Panavision?
A. We didn't -- there were some -- I think some close relationships of the firm, in fact, current employees that Ronald had high regard for but, no, there weren't -- if what you are referring to is did we have executives in residence the way private equity firms do that were just out looking for deals as a general matter for extended periods of time, no.
Q. Who were Mr. Perelman's closest advisers while you were there at MacAndrews & Forbes?
A. I think, as I stated earlier, Mr. Gittis, Mr. Drapkin, Mr. Maher, Mr. Schwartz and his CFO who was either --

NOT A CERTIFIED COPY

015663

Todd Slotkin, I guess.
Q. Did you ever attend the breakfast meetings at Mr. Perelman's townhouse?
A. No.
Q. You were aware of those meetings though?
A. Of course.
Q. My understanding is that those breakfast meetings took place virtually every day that he was in town and the others were in town, that his senior people met with him for breakfast to discuss the business of his companies?
A. Yes.
Q. Was Mr. Gittis one of the people who would attend these breakfast meetings?
A. To my knowledge, yes.
Q. Mr. Drapkin as well?
A. Drapkin, yes.
Q. Mr. Maher?
A. Yes.
Q. And Mr. Schwartz?
A. Yes.
Q. And Mr. Slotkin, right?
A. Yes.

Q. How about Mr. Shapiro, was he a member of this group?
A. I don't think so.
Q. How about Mr. Engleman?
A. Mr. Engelman was CFO prior to Mr. Slotkin so there was a point where presumably one of them went but Mr. Slotkin worked for Mr. Engelman prior to Mr. Engelman's departure.
I think there may have been a couple of the operating executives, to the extent they were in town, were there, either Jerry Ford or --
Q. Jerry Levin?
A. Jerry Levin, yes. I -- again, I wasn't there everyday so -- any days.
Q. You worked on the Sunbeam-Coleman transaction. You told us what you did.
Let's turn to that before we go to lunch and see how far we can get.
When was your first -- let me withdraw the question.
Turning to the Sunbeam-Coleman transaction now, I know you told us a little bit about it.

When was the first time you heard there was any transaction between Sunbeam and Coleman that was being discussed no matter how peripherally between Mr. Perelman's companies and Sunbeam?
A. A specific date?
Q. If you could give me the hour and minute that would be great but if you can give me a day or a month or a year, that is what we will --
A. I believe it was sometime in December.
Q. Of 1997?
A. Yes.
Q. Could you describe for us the circumstances that you first heard about a possible transaction between Sunbeam and Coleman?
A. I believe there was, and I don't recall who made it, but there was an overture from either Sunbeam or a representative of Sunbeam, someone related to Sunbeam, that expressed interest in Coleman, in purchasing Coleman.
Q. How did you learn of this

overture by whomever?
A. I believe it was from Mr. Maher.
Q. The first time that you learned of a possible transaction between Coleman and Sunbeam is in a meeting with Mr. Maher as opposed to a meeting with Sunbeam or Morgan Stanley, for example; is that right?
A. Yes.
Q. Let me ask you to look at your calendar which is -- you identified as Morgan Stanley 195.
I want you to turn to November 6 of 1997 of your calendar and tell me when you are there.
A. November 6?
Q. November 6.
MR. MARKOWSKI: Very informative.
MR. BEMIS: That is because I gave you -- you have to look also at the preceding page which is also November 6.
MR. MARKOWSKI: Thanks.
BY MR. BEMIS:
Q. Before you accuse me of being uninformative you have to make sure you

NOT A CERTIFIED COPY

015664

review the document in whole.
MR. MARKOWSKI: I appreciate the advice.
BY MR. BEMIS:
Q. Are we there on November 6?
MR. MARKOWSKI: Bates number CPH200639.
BY MR. BEMIS:
Q. Are you on that page, Mr. Nesbitt?
A. Yes, I am.
Q. There are a series of entries on your calendar for that date. Do you see the date for Gucci meeting?
A. Yes.
Q. Then it says, slash ROP. Is that Mr. Perelman?
A. Yes.
Q. HG is Mr. Gittis?
A. Yes.
Q. And JRM, that is Mr. Maher?
A. Yes.
Q. Bill Reid, he was with Morgan Stanley at that time?
A. Yes.

Q. And then we have Matt Grogan and Bob Kitts?
A. Yes.
Q. Both from Morgan Stanley, right?
A. Yes.
Q. Do you know what the Gucci meeting refers to?
A. Yes.
Q. What does it refer to?
A. It refers to a discussion to possibly acquire Gucci.
Q. Were you at all involved in that?
A. I don't recall whether I attended this meeting but I was certainly -- I was peripherally involved.
It didn't really advance to the stage where it became a serious idea.
Q. Can I ask you when you look at your calendar, I know this is an earlier version of Lotus notes is what this was kept on, this calendar?
A. That is what it says down at the bottom.
Okay. I will take your word for it.

Q. Did you keep your calendar or did your secretary?
A. My secretary did it. I did some of it but she also did it and so the reason why there is a little bit of confusion here is that some of this I was -- was on my calendar so I was aware it was taking place.
Mr. Maher might be in a meeting so I would be aware of what he was doing but it wasn't perfect either way.
Q. There are meetings that you would have attended that are not on your calendar as well, right?
A. Yes, I suppose.
Q. When I see the little bell sign, for example, on the 6 after 9:15 to 10:15 there is a bell. Do you see that?
A. Yes.
Q. Does that mean a meeting?
A. No. It means a reminder, I would guess, I think. That may be a default. You and I talking about this is dangerous.
Q. That is my -- when you have times in here are those times -- could you set

these programs, if you enter a reminder or conference, it defaults to a half hour, whatever you set it for.
A. I don't know.
Q. What I am trying to understand is how much reliance we can place on the amount of time you have set for a meeting.
What I am hearing is you don't know if you relied or not?
A. I think what these indicate is to the best of my knowledge how long do I think a meeting will take but since these tended not to be my meetings I would allocate an hour.
It is -- unless I saw an important reason not to indicate an hour, I just simply couldn't predict the duration of a meeting, and, yes, there were a lot of meetings that I found out about 46 seconds before and I scurried down to whatever, or up.
Q. Recognizing that your calendar is not perfect, if we get to a point where you recall a meeting that is not on your calendar let me know and if the meeting

NOT A CERTIFIED COPY

Page 114

didn't take place that is on your calendar let me know and we will try to sort it out.

There is a reference on November 7 to a conference call with Morgan Stanley in London. What does that refer to?

A. We had -- I had been speaking with Ed Dotson about -- generally initiating this effort to look more extensively at or actively at European acquisition opportunities, the view being that there was -- it was perhaps more fertile territory in which to look for acquisitions, less efficient companies, et cetera.

So this was a call with a couple of investment bankers from Morgan Stanley to talk about European acquisition opportunities, I believe.

Q. Did you initiate these discussions with Morgan Stanley?

A. Yes.

Q. Had you worked with Morgan Stanley before?

A. Yes. I mean, I knew Bill Reid who was our primary contact quite well. We

Page 115

had relationships with most of the big investment banks that we would call on for this sort of purpose.

Q. Had you worked with -- strike that.

Had you worked personally with Bill Reid before?

A. Yes. I think it was primarily -- well, actually, he had done some work, I believe, on the Consolidated Cigar situation, I believe, and as well he was in fairly frequently pitching us ideas.

That was his -- sort of his role to acquisition ideas.

Q. Did you ever discuss -- did you ever discuss with Bill Reid the Sunbeam-Coleman transaction before you spoke to Mr. Maher as you have described it earlier?

A. I don't think so, no. If what you mean is did Bill and I cook this up on our own, the answer is certainly, no.

Q. Had you ever -- strike that.

To your knowledge before Mr. Maher spoke to you had Mr. Perelman's

Page 116

company or anyone at Mr. Perelman's company looked at Sunbeam as a company either as a potential buyer or even as a potential acquisition candidate?

A. I have no knowledge.

Q. You don't know one way or the other?

A. No.

Q. You had never been assigned that task?

A. No. I don't think so.

Q. Let me show you now -- let's look at what has previously been marked as MS 104 and I will pull that out.

Let me take a couple of these things out of your way so you don't have so much material in front of you.

I will ask you to keep your calendar out. I will take these documents back.

I have handed you what we have earlier identified as Morgan Stanley Exhibit 104.

You told me that you prepared this and we know it was printed at least as

Page 117

of December 8, 1997, correct?

A. Yes.

Q. In the context of your conversation with -- withdrawn.

When you spoke to Mr. Maher or he spoke to you about the Coleman-Sunbeam transaction in whatever state it was did he give you any assignments?

A. Let me put it this way. Based on this document it was to take a look at the pro formas for the company, some combination of the two companies.

And in this case this is, at least on the first page, is strictly a valuation, just trading multiples of each business based on presumably analyst estimates.

This is the quick back of the envelope, how are we doing, how are they doing.

Q. This back-of-the-envelope exercise that you have identified as MS 104, how long did it take you to prepare it?

A. I don't know.

NOT A CERTIFIED COPY

015666

Q. Do you have any idea at all from gathering the data to creating the work sheet to entering the data and doing the analysis?
A. No.
Q. None at all?
A. Well, it didn't take a month. It probably -- I just don't know whether this is the first version.
It is an iterative process and the first version may have been the first page and then a couple of conversations, why don't we look at this, go back, come back.
It could have been but my guess is, let's forget about actual hours the way you think of them, billable hours, probably several days, a couple of days to look over this.
But what we are looking at could be something that was ten days, as an example, after Jim had first mentioned it, and this is the product ten days after that, a consequence of a series of back and forths. I was up and wore the carpet out

between Maher's office, Jim Maher's office.
Q. Is it fair to tell the jury that you created MS 104 at the directions of Mr. Maher?
A. Yes.
Q. Is it fair to tell the jury that you gave this document to Mr. Maher after you prepared it?
A. Yes.
Q. Focusing --
MR. MARKOWSKI: Let me make sure the record is clear.
There is handwriting on it and there are handwritten notes at the back end of it. You are excluding that from the question?
MR. BEMIS: That is fair. He did not identify the last page. Let's even be fairer on this.
BY MR. BEMIS:
Q. I don't want to be misleading or suggest I am trying to be misleading to you.
There is some handwriting even on the first page. There are numbers circled

and then there is a few places where we will see a number written on the margin or we will see a checkmark or a percentage mark.
Do you see all of those on the front page, first page?
A. Yes.
Q. Do you recognize any of that handwriting?
A. No.
Q. Do you recognize any of the handwriting that appears on any of the other pages, and you can go from 1 to 5 and tell me if you recognize any of those circles?
A. No. The circles to my knowledge are not mine.
Q. Did Mr. Maher when he gave you the assignment that results in MS 104 give you any specific directions as to how you were to go about your assignment?
A. Well, I think that the direction that was provided was probably a range in price or Jim and I kicking this back and forth, what do you want to look at this at

or I will look at it at 22 to 35, yes, and I don't know that it came from Jim Maher actually but there certainly are some cost savings assumptions and I say that because it could have been a group meeting, small group meeting that included someone else. It could have been Jerry Levin. I just don't know.
But, anyway, the key variables that I believe I would have been given some direction on would be cost savings, price range.
Q. Let's talk a little bit about the more specific items. I think it will be helpful if we do that rather than try to do it as a whole.
A. And pooling.
Q. And the issue whether you could do the pooling accounting?
A. Yes.
Q. Let me get to that as a separate item.
Just so the jury is clear, MS 104 was the first -- is the first written analyses that you can recall doing anyways,

NOT A CERTIFIED COPY

015667

Page 122

as you sit here today, for the acquisition of Coleman by Sunbeam, correct, recognizing there might have been another version of this. I don't have it if there is.

A. Again -- well, exactly. It is the first one that we have knowledge, that was printed out.

My guess is there were several earlier versions that may have been a page or two and it expanded accordingly and always happens in these sorts of situations.

Q. Excluding drafts, this is the first version of this that you would have presented to Mr. Maher as a final first stab at the project; is that fair?

MR. MARKOWSKI: I am going to object to the form of the question. I don't know what a "final first stab" is.

THE WITNESS: I don't know what the difference is between a draft and final version.

MR. MARKOWSKI: Or a final first stab.

Page 123

BY MR. BEMIS:

Q. Let me ask another question. It is faster if I ask you questions rather than argue about what I meant when it is a bad question. I will try again.

Do you recall as you sit here today any earlier versions of MS 104 other than the one you have in front of you, any earlier versions?

A. I cannot recall with any specificity a version that would be substantially different from this.

Q. Do you recall this Sunbeam/Coleman comparison, as MS 104 is entitled, to be your first written assignment, if you will, to Mr. Maher regarding the Coleman-Sunbeam transaction?

A. My guess --

MR. MARKOWSKI: Don't guess. If you can't remember you can't remember.

THE WITNESS: I cannot say that this is the first version that I presented to Mr. Maher.

BY MR. BEMIS:

Q. I am not asking whether it is the

Page 124

first version. I am talking about a totally separate project.

Did you do any projects before this one recognizing you might have run a separate draft of this before you gave it to Mr. Maher, any other projects?

A. As it related to Sunbeam?

Q. As it related to Sunbeam, right.

A. I believe this exercise in various drafts I believe was my first involvement with Sunbeam.

Q. The tables that are prepared on each of the pages, and I will -- is it okay if I use "tables" for the spreadsheet?

A. Sure.

Q. These are tables that you created on the software Excel, right?

A. Yes.

Q. And I think you told me earlier that this was not a template that you took from another transaction but you actually created this analysis that is in MS 104, is that right?

A. Yes.

Q. Focusing now on the first page of

Page 125

the document which looks to me like a comparison of the entities on a stand-alone basis; is that fair?

A. Yes.

Q. Let's start with the Sunbeam entity which appears on the left side.

Where did you get the source information for, let's start with the top of the document, a stock price?

Did it just come from a Bloomberg or a ticker someplace?

A. Yes.

Q. Where did you get the number of shares outstanding?

A. From the 10-Q, most recent 10-Q.

Q. So the jury understands, a 10-Q is a quarterly filing with the Securities and Exchange Commission, in this case, by Sunbeam, correct?

A. Yes.

Q. There are three 10-Qs filed per year, correct?

A. For these guys --

Q. Assuming there is not an amendment, normally there would be three

NOT A CERTIFIED COPY

015968

Page 126

because in the fourth quarter you file a 10-K?
A. Yes.
Q. The market value of the company is -- is that an arithmetic exercise by you multiplying stock price by outstanding shares?
A. Yes.
Q. Then you have net debt. You added in the debt of $177,712,000, correct?
A. Yes.
Q. Did you take that information again from the most recent filing by Sunbeam with the SEC?
A. To my knowledge, yes.
Q. Then we come up with a total enterprise value which is the combined market value, stock issued, stock price adding in net debt to arrive at what you call enterprise value, right?
A. Yes.
Q. With regard to the 1996 figures that appear in the left-hand column of MS 104, are you looking at that?
A. Yes.

Page 127

Q. It starts with revenues and continues down until we get to a figure for net income of a negative $8,200,000, do you see that?
A. Yes.
Q. Did the figures under the 1996 column come from public documents?
A. Yes.
Q. Then when we did any of the -- withdrawn.
Then if we drop below the net income line where it begins with depreciation and amortization, is that a number you took from the financial statements as well that were part of Sunbeam's most recent filings?
A. Yes, presumably from the cash flow statement.
Q. Then you calculated or -- strike that.
Did you calculate the -- this is a tongue twister -- EBITDA, did you calculate that, just an arithmetic function?
A. The computer did, but, yes.

Page 128

Q. You put a formula in and it tells you what it is?
A. Yes.
Q. That is what I mean by an arithmetic function.
A. Sure.
Q. So the jury knows, that is earnings before income, taxes, depreciation and amortization, correct; that is what EBITDA means?
A. No.
Q. What does it mean?
A. It means, earnings before interest, taxes, depreciation and amortization.
Q. What did I say, income?
A. Income, taxes.
Q. I misspoke, sorry.
A. It is not a biggie.
Q. Then you have, less capital expenditures. Do you see that?
A. Yes.
Q. Did you get that figure from the financial statements on public filing or did you calculate that from some source?

Page 129

A. I presume I got it from the financial statements.
Q. Then I understand the balance of the arithmetic function. We get to the Sunbeam multiples.
Those are things that -- are those things that you calculated based on the data set in the various columns, the descriptors like enterprise value divided by revenues?
A. Yes.
Q. There is one here that I wasn't familiar with until I looked it up. Enterprise value divided by EBITDA minus Cap Ex?
A. Cap Ex.
Q. You take out capital expenditures?
A. Yes.
Q. It allows -- withdrawn.
Turning now to the next column -- strike that.
Is any of the information in the 1996 column -- withdrawn.
Before you prepared MS 104 you

NOT A CERTIFIED COPY

015669

had never spoken to Morgan Stanley about Sunbeam, correct?
A. Don't know.
Q. Did Mr. Maher give you any documents that you understood to have been received from Sunbeam that you used in the preparation of MS 104?
A. I don't believe so.
Q. The Sunbeam estimates which appear for 1997, the first item being revenue 1,185,100,000, where did you get those estimates?
A. Specifically, I don't know.
Q. Look at page 3 and you will -- you will see under the Sunbeam data, you do have some notes for Goldman estimate.
A. Yes.
Q. Did the figures that appear under the 1997 estimates come from Goldman Sachs?
A. They appear to, yes.
Q. Goldman -- Goldman Sachs -- did Goldman Sachs at this time have an analyst following Sunbeam Corporation?
A. Yes, but I do not remember his or her name.

Q. When I -- strike that.
What -- I would like you now to turn to the third column which is 1998E which I assume -- is that 1998 estimate?
A. Yes.
Q. Did you get the 1998 estimates from Goldman Sachs as well?
A. Based on page 3 I can say that I got the operating income number. It is entirely possible, for example, that Goldman Sachs did not have, just as an example, a Cap Ex estimate. I don't know, but if Goldman Sachs had an entire income statement, cash flow statement, and as this indicates it would all be from Goldman Sachs. It is easy enough to check.
Q. When you say it is easy enough to check, you mean by going back and looking to Goldman Sachs and taking a look. Okay.
As you sit here today the only analyst input that you can recall for the creation of MS 104 is the Goldman Sachs analyst report?
MR. MARKOWSKI: Could you read that back, please?

BY MR. BEMIS:
Q. Let me ask it again. Let me withdraw the question and ask it again.
As you sit here today can you recall using any other analyst reports for at least the Sunbeam data other than Goldman Sachs?
A. I would have used whatever was available in the analyst community and -- but I cannot recall why I decided that Goldman Sachs was appropriate.
Going back to how I typically would do these it might have been a function of Goldman Sachs, the stature of Goldman Sachs' analyst, it may have been because at that time, at the time I prepared this there wasn't anything but Goldman Sachs research available to us at that point so -- but certainly I would canvass the available universe of research and that is an evolving process.
Q. You are constantly doing research when you are doing these analyses, right?
A. Yes.
Q. You would update, if you came

upon new research or new hard information, by "hard," for example, I would be referring to a public filing?
A. Yes.
Q. You would update your work, correct?
A. Yes, but this is electronically available research. I can't pick up the phone and call the guy at Goldman Sachs for obvious reasons.
Q. When you say "electronically available" you mean you can go to a source that collects this, like I/B/E/S or whoever it was at that point, First Call, Bloomberg, any one of a number of sources that collects analyst reports, right?
A. Yes.
Q. Then you collect the analyst reports and then you make a judgment of who you think in the analyst community is the most reliable in -- for the company you are looking at, right?
A. Yes.
Q. When we get over to the 1998 estimate column, that at this point would

NOT A CERTIFIED COPY

015670

Page 134

be a projection for the year end 1998 before even you have closing year data for 1997, correct?
A. Yes.
Q. Let's talk about the Coleman data for a second.
The 19 -- did the 1996 Coleman data come from the Coleman 10-K, its annual report?
A. Most likely.
Q. Then when I look at the -- withdrawn.
Coleman's 10-K for 1996 would have been filed by December of 1997, right?
A. Sure.
Q. They are typically filed within the first two months, usually of the end of the fiscal year for the entity, right?
A. Sure, three months.
Q. The 1997 estimates for Coleman, do you see those?
A. Yes.
Q. Where did you get the figures for the 1997 estimates?
A. I don't know specifically but

Page 135

again if I was being asked to do this, or my recollection, my sense is that I would have taken analyst estimates for the very reason that what I am trying to ascertain here is what is the institutional investment communities, institutional investment community research, how did they look at Sunbeam versus Coleman on a valuation basis, so if we had dramatically different numbers that the market was not aware of it wouldn't tend to serve the purpose that I am trying to -- the objective that I am trying to fulfill in this analysis which is, that is, the investment community value each of those two companies on a multiple basis for each one of these parameters.
Q. You are saying if you had dramatically different numbers for, let's say, 1997 earnings, and by "earnings" I am going to use net income, we will use your line item net income, you would not use the numbers you had internally, you would use the analyst estimates even if the analyst estimates were dramatically different?

Page 136

A. Again, I believe for this exercise on page 1 at this point for the reasons that I stated that is what I did but that certainly does not mean that I wouldn't look at Coleman's valuation relative to our expectations for the very reason that it addresses the question of, relative to Sunbeam, relative to other companies, is the market appropriately valuing Coleman relative to what we think because we have got the best information Coleman is going to do.
Q. So, for example --
A. Go ahead.
Q. For example, referring now to Coleman and the analyst, if you look at page 3 you do have two notes next to Coleman data for 1998EPS and 1998E EBIT, and you see your references to CSFB?
A. Yes.
Q. Does that mean that you had an analyst estimate from Credit Suisse First Boston at the time you prepared this document?
A. Yes.

Page 137

Q. Would that then suggest to you as the creator of MS 104 that you used CSFB investment bank estimates for the 1997E column on page 1?
A. The numbers certainly suggest that.
Q. Now referring to the 1998E column on page 1 for Coleman, is it reasonable to conclude for the jury that you likewise used CSFB estimates for that column as well?
A. Which column?
Q. The 1998E column.
A. Yes.
Q. There is a fourth column that is the -- withdrawn.
There is a fourth column that has a heading, 1998E and then space ADJ which I assume means adjusted; is that fair?
A. Yes.
Q. Would you explain to me how you arithmetically arrived at the numbers in the column 1998E adjusted?
You might want to look -- it says "using Sunbeam margins" right above there?

NOT A CERTIFIED COPY

0151671

Page 138

A. I got that. I am still reasonably alert.
The exercise was to -- was really a margin comparison and it was, instead of using -- to accept at kind of face value revenues for Coleman and to say, go through the exercise of taking the Sunbeam margins that they had been, or rather were projected to be earning or experiencing in the future and to apply them to the Coleman revenue base and that would give you a -- a number, an estimated number for 1998 for cost of goods sold, gross profit, operating expenses and operating income, there is no reason to believe that amortization should change depending on management or Sunbeam methodology, no reason to change that, no reason to change interest expense, taxes fall out just arithmetically, percentage of the calculated number and no reason to change depreciation and amortization and no reason to change capital expenditures, the exercise, again, arithmetically, was then to say, well, at Sunbeam's -- excuse me -- at Coleman's current market valuation and

Page 139

enterprise value if we were earning the sorts of margins that Sunbeam was projected to earn in the future how would our valuation look relative to, say, Sunbeam's valuation.
Q. You in effect took the operating income calculation for Sunbeam and can you tell me which year you were using as the operator?
A. If I had a calculator we could verify it but my guess is I took 1998s.
Q. That was my observation. You simply applied it across. It would make sense that you would use 1998 in both instances to compare year to year, right?
A. It makes sense.
Q. The net result of all of this is -- the net income basis is that Coleman's 1997 estimated net income was $30,100,000 without the Sunbeam margins, right?
A. Yes.
Q. By the way, when we talk about margins, tell the jury how you are defining "margin" in this calculation.

Page 140

A. Well, when I say "margin," I should qualify it by operating margin or cash flow margin, EBITDA margin, but it is the percentage as calculated by dividing either operating income or EBITDA by revenues.
Q. That is what you did here, right?
A. Yes. You don't see it here but --
Q. It is in the formula?
A. Yes.
Q. What you conclude, you end up concluding that the 1997 -- excuse me -- the 1998 estimate which Credit Suisse First Boston apparently provided is approximately $60,600,000 in profit, right?
A. Yes. I mean -- it was what it was. That is what --
Q. That is what they estimated?
A. Yes.
Q. And then based on your adjustment using the Sunbeam margin you were able to raise the net income estimate, if you will, or adjust it to Coleman to $122,927,000, right?

Page 141

A. Yes; that arithmetic exercise, yes.
Q. So we are clear on these arithmetic exercises I want you to concentrate on the figure for the 1997 estimate for Coleman which is a net income of $30,100,000. Do you see that?
A. Sure.
Q. Given that this is December 8, 1997 we are pretty close to Coleman's year end, right?
A. Sure, yes.
Q. At year end Coleman filed a 10-K with the SEC and it included in that 10-K audited financial statements, right?
A. Yes.
Q. Do you know what Coleman's net income was for 1997, when it reported that to the public?
A. I don't recall and I think it depends on whether it is an actual reported number or whether there are at back adjustments which would be typical for any company for extraordinary events but I do not recall the number.

NOT A CERTIFIED COPY

015672

Q. Let's take a look at the 10-K and see whether there is, A, any extraordinary event to see if we can figure out what the number is.

Mr. Reporter, would you please mark -- I withdraw that. It has been previously marked.

Let me show you what has been previously marked as Morgan Stanley 251.

Do you have Morgan Stanley 251 in front of you?

A. Yes, I do.

Q. If you will take a look at that and tell me if you recognize this as the Coleman Company, Inc.'s form 10-K for the year ending December 31, 1997 as filed with the Securities and Exchange Commission?

A. Yes.

Q. Attached to this document are the financial statements of the Coleman company as audited by their outside auditors, right?

A. Yes.

Q. Would you turn to the audited financial statements which are designated

by an F on the bottom? That is an F4. It looks like you are already there.

A. Yes.

Q. What was the net income, if you will, in 1997 of the Coleman Company as reported by their auditors?

A. Negative 2.5.

Q. You say negative 2.5?

A. Million.

Q. That means that Coleman lost $2,536,000 for 1997, right?

A. Yes.

Q. There are no extraordinary charges for that year, are there?

A. I can't tell.

Q. Sure, you can. Look up above, loss before extraordinary items. Do you see an entry for --

A. That is not the only place I would look.

Q. Where else would you look?

A. In the MD&A, in the notes.

Q. Do you want to look and tell me if there are any extraordinary --

A. I have all the time in the world.

Q. I am happy to hear that. I was told to the contrary.

MR. MARKOWSKI: Mr. Bemis is taking all the time in the world.

MR. BEMIS: We were getting along so nicely.

MR. MARKOWSKI: Don't provoke me.

THE WITNESS: I think what you have got to do actually which is a shortcut, you have got to find -- I have got to look at the source document for the analyst estimate.

That is the way -- because the guy is going to have -- he may not but that -- he -- there may be some explanation where I have decided to do this but I will read through this, but in that document there may be something that would indicate that his number is 30 because of -- remember at that point he's got three-quarters. So we can look at the fourth quarter.

Q. I am not quarreling with what the analyst said. All I am doing is asking you to tell me the number that you used,

even -- and you have attributed it to the analyst, you got it from CSFB, understood, however, when we look at the actual number which admittedly is going -- it is a couple of months later because now the year end data is available for 1997, we see, at least as reported by the auditors, not a profit, a net income, if you will, of $30,100,000 but we are actually showing a loss of 2.5 million.

A. I am sorry. 1997 -- during 1997 the company recorded pretax restructuring and other charges totalling 36.4 million, okay, of which 19.7 was reflected in cost of sales, 16.7 million in SG&A.

That is 36.4 plus negative 2 gets you to about 34 million dollars. Actually that is pretax. Give me an HP -- so I would add back $36 million to this number.

Q. You would add 36 million back to the loss?

A. To the pretax number.

Q. Okay.

A. Let me put it this way, I think, very seriously and look into as an analyst.

NOT A CERTIFIED COPY

015673

Looking at this from a research analyst's perspective, understanding what were those restructuring charges, are they recurring, and my guess is if you went through that exercise that is where you would get this $30.1 million, give or take.

But I have got to go back to the analyst report. I have to take a look at this more carefully but that is opening up page 18 in two minutes and doing it so that is why you can't look at -- for an extraordinary number in the income statement because it is going to be buried in MD&A which is exactly where it is on page 18 -- sorry, page 14. No. Page 14.

Q. I may be reading this wrong but the way I read the statement of operations which is on page F4, it -- there is no footnote to it. It explains that I am looking at the loss before extraordinary items. Am I reading that correctly? It refers to a loss of $2,536,000?

A. Okay.

Q. Am I reading it right?

A. Yes.

Q. The auditor, certified auditors don't -- do not list for 1997 any extraordinary -- any extraordinary items, at least on that line item?

A. Okay, but auditor view of the world, and I am putting my money in your stock view of the world and I am trying to make money are two different things.

They have two very different functions in life so you look at both. You look at everything. You read the document cover to cover so -- and I haven't had the opportunity to do so but I am simply pulling up page 14.

If you were asking me, which I think you were asking me, why does this number not relate to this number, I don't know if you were. I am simply saying the place I would focus my attention is these -- my guess is the analyst said these restructuring charges are non-recurring and therefore on an operating basis, normalized operating performance, that is how I would look at it, and so at a tax rate of give or take 30 odd percent I would probably --

this is -- again, I haven't read any other pages but I would probably take about two-thirds of the 36, let's call it 24, and add it back to the 2 which would give me about a $22 million net income number and that is before going through this with a fine tooth comb. Okay.

Q. If we go through -- withdrawn.

The figures that the analyst, the analyst provided with regard to earnings per share, at least what you used for 19 -- did you have a 1997 number -- withdrawn.

Did you have a 1997 number for earnings per share on your spreadsheet?

A. No.

Q. You could calculate it, can't you?

A. Yes.

Q. Do you want my HP? Can you tell us what it is? Let me give you my HP.

A. Why bother? You can look at F4 and look at net income and compare the two.

Q. What is it then?

A. It is, as you said, negative 2 but I am saying they are not comparable

necessarily.

Analysts don't just regurgitate, that is why they get paid, don't necessarily regurgitate 10-K. A monkey can do that.

We would have to sit down with the research analyst report and go through his footnotes, his MD&A -- not his MD&A, his analysis of the numbers, and then try to compare and contrast with this number.

Q. I think my question was, and maybe it wasn't clear.

A. Yes.

Q. Was there an earnings per share number on your spreadsheet MS 104 for 1997 even if it was estimated, earnings per share?

A. No, but you could divide 30.1 by whatever the numbers were, the share numbers were in F4.

MR. MARKOWSKI: You have the share numbers --

THE WITNESS: Yes, but you wouldn't come up with the exact number because they are going to use stock

NOT A CERTIFIED COPY

015674

Page 150

equivalents and things like that so -- it is buried here somewhere in one of these pages.
BY MR. BEMIS:
Q. I couldn't find it. That is why I wanted you to find it.
A. That is extra.
Q. Let me give you my HP.
A. Call Park Avenue and obtain -- earnings per share. Page F11, I think.
Q. I was actually looking at -- I think I found it on F11. I was looking for it on MS 104, your spreadsheet.
You don't have it on here, do you?
A. No, but, again, in this situation the distinction between this Andersen share equivalents kind of minutia, it is irrelevant.
Q. What did you mean by "Andersen's?"
A. Excuse me. E&Y.
They are going to come up with this somewhat complicated formula which isn't going to matter at all in this

Page 151

situation.
Q. I take it what you do as an analyst when you were valuing either Sunbeam or Coleman, you took whatever public information was available, I think you said even a monkey could repeat that, right?
A. Yes.
Q. And then you would analyze that in whatever fashion you were trained to do and make whatever adjustments you thought were appropriate in the numbers, right?
A. Yes, depending on the exercise. This exercise, you got to decide which seat am I putting myself in.
Q. Whose seat were you in here at MS 104?
A. The institutional investor seat.
Q. You looked at the institutional investors, in this case you looked at Goldman Sachs and you looked at CSFB as the institutional investor?
A. As a proxy.
Q. As a proxy.
Then, based upon these proxies

Page 152

and whatever massaging you did with the audited financial statements, you came up with MS 104?
A. Yes.
Q. Nothing from MS 104 came from Morgan Stanley, did it?
A. No, I don't think so.
MR. BEMIS: Let's break for lunch.
THE VIDEOGRAPHER: The time is 1:03 and we are going off the record.
(Luncheon recess: 1:03 p.m.)

Page 153

AFTERNOON SESSION
2:22 p.m.
THE VIDEOGRAPHER: We are back on the record. The time is 2:22.
BY MR. BEMIS:
Q. Before we broke for lunch we were discussing the source of the data in MS 104.
You still have that exhibit in front of you, correct?
A. Yes.
Q. Did you use any Coleman internal data in MS 104, and by "internal" I mean not public information and not data from an analyst?
A. Well, I don't believe, as I stated before, that the projected numbers were Coleman source numbers. I think they were analyst's numbers. And -- but certainly with respect to, at this point, this very early point, the cost savings estimate that is not available in any public document, wasn't available in any research analyst report so that was a number that Jim Maher and I and others took

NOT A CERTIFIED COPY

015675

a very, early on in this process, a stab at.

Q. When you refer to the cost savings numbers you are referring to those on page 3, the two boxes at the bottom, correct?

A. Yes.

Q. The 40 million and 60 million?

A. Yes.

Q. I will come back to those in a minute.

A. Right.

Q. Aside from possibly the cost savings numbers, were there any other internal Coleman numbers that you used, that is, numbers you obtained from Coleman that weren't a matter of a public filing with the Securities and Exchange Commission?

A. I don't believe so.

Q. Did you use any numbers that MAFCO, your employer, had developed internally for either Sunbeam or Coleman, setting aside the synergies numbers again? We will talk about that in a minute.

A. No. I think it is a distinction without a difference. That is between Coleman and MAFCO.

Q. No, it is not an issue without a difference. If you had picked up the phone and called Joe Page at Coleman and you used the number he gave you as opposed a number on an SEC filing I would like to know that. I take it that did not happen.

A. Right. I am saying -- that is what I am saying. It is a distinction without a difference. There is no difference.

Anyway, you know what I mean if I didn't state that right.

Q. You didn't call Mr. Page?

A. I do not believe so, no.

Q. Let's turn to page 2 which is entitled Sunbeam-Coleman Comparison. Do you see that?

A. Yes.

Q. Am I correct that the percentages that are reflected here unless otherwise indicated are the result of the ratios between gross -- I misspoke -- between

revenues on page 1 and then the line item expressed -- on page 2 under the heading margins, the figures that appear there are ratios between, for example, gross profit on page 1 and revenues on page 1, correct?

A. That specific example would be reflected again specifically to say an operating income margin.

These numbers on page 2 are calculated based on page 1.

A. Apart from the other data, of course.

Q. Each one of the -- in each one of the percentage calculations, if these were expressed as a fraction, the denominator -- is the denominator in all cases revenue?

A. Yes.

Q. The same would be true on the Coleman side of the margins, right?

A. Yes.

Q. Just so the jury, one example for the jury, if we get to this point, if we are looking at the Sunbeam margins for revenue for 1996, the fraction that we might look at to arrive at that percentage

would be the gross profit from page 1 of 176 million and the revenues would be 984,300,000, right?

A. Yes. I believe is the -- I believe that is accurate, yes.

Q. With regard to the cost savings on page 3 I would like to ask you a couple of questions.

Are you on page 3 of MS 104?

A. Yes.

Q. The two boxes that appear towards the bottom of the page, it has the figures 40 and 60.

Those are 40 and $60 million, correct?

A. Yes.

Q. The PF is -- is that pro forma; is that what that stands for?

A. Yes.

Q. Where -- strike that.

How did you arrive at the cost saving of 40 million as an assumption for page 3 of MS 104?

A. I don't recall.

Q. Did you --

NOT A CERTIFIED COPY

015676

A. Let me clarify that. I believe it was discussion with Mr. Maher.
Q. In your discussion with Mr. Maher was there any factual basis given for the conclusion of $40 million in cost savings of a merger transaction between Sunbeam and Coleman or among Sunbeam and Coleman?
A. To me, no, I don't believe so.
Q. Did the $40 million come from Mr. Maher?
A. I believe so.
Q. The next figure that you use is $60 million. Do you see that?
A. Yes.
Q. Did you arrive at that figure in the same fashion as the 40 million, that is, from Mr. Maher?
A. Yes.
Q. Did you ever --
A. But the question in my mind is whether that came -- the source of that number.
What I am certain about is that I did not independently calculate it based on an assessment of cost savings in my view.

The question is who suggested to me to use 40 to 60. It is not a number I would have independently based on any sort of ratios or magnitude have said, well, let's just use 40 to 60. Jim, here is what it looks like.
So -- I believe I was instructed to use 40 and $60 million from our team is as much specificity as I can provide.
Q. When you refer to your team you are referring to the people at MAFCO, your employer, correct?
A. I am referring to the team, the business people on our team which could include Jerry Levin, it could include Joe Page or any of the people from MacAndrews & Forbes Holdings or MAFCO.
Q. How about your investment banker, CSFB?
A. I don't believe so, as to the source of this number.
Q. Did you ever see from any analyst source any projection of cost savings resulting from a combination of Sunbeam and Coleman?

A. At this point?
Q. At this point, yes.
A. It would be impossible. There was no -- on December 6 it was not a matter of public knowledge.
Q. Somebody didn't think about it?
A. Thinking about it and writing about it are two different things.
Q. Some people think about it and write about it. You didn't see any such thing?
A. No.
Q. Did you ever see, up to the point of closing, any analyst analysis of the combination of Sunbeam and Coleman?
A. I believe after the announcement some of the analysts, and I don't recall the magnitude again, it is a document that we can refer to presumably, discussed, more importantly wrote about the cost savings to my knowledge. I think that is true.
Q. When you referred to after the announcement are you referring to the March 2, 1998 announcement of the merger transaction?

A. I am referring to the announcement of the merger transaction. I do not recall the specific date. If it was March 6, the first announcement to the public, yes, then that would be what I would be referring to.
Q. If I misspoke, I thought I said March 2, but it was March 2.
A. The 2nd, okay.
Q. If I understand correctly your chart, I will start with the middle box where it says, merger consequences assuming pooling treatment not available. Do you see that information?
A. Yes.
Q. When you say merger consequences assuming pooling treatment not available, are you referring to pooling treatment as an accounting treatment for the merger, correct?
A. Yes.
Q. Under the pooling treatment, if it had been available you would not have had to account for the difference between the acquisition price and the market price

NOT A CERTIFIED COPY

015677

in general terms?
A. In general terms, yes. I will leave it up to the accountants to figure out the goodwill.
Q. It is in effect the goodwill component. It does not have to be accounted for under a pooling?
A. Yes, that is my recollection from those days, yes.
Q. If you account for goodwill, goodwill becomes in the future a charge over time against earnings, correct?
A. Yes.
Q. That is where we -- that is -- that charge is included in your amortization charges, right?
A. Yes, on an after-tax basis, yes.
Q. In the first box of information, am I correct that I read this that if you use the 1998 earnings per share estimate, that is for Sunbeam, is it not, where it says current?
A. Yes.
Q. And then what you did, and I am going to go down the left-hand columns, is

what you did is you looked at the pro forma dilution or accretion in earnings per share if there were no cost savings achieved in the combination, am I right?
A. Yes, the delta, yes.
Q. What you concluded is that it, as an example, at $22 a share paid for the Coleman stock, it would be dilutive in the amount of 14 cents per share for 1998 based on the earnings per share of $2.05 for Sunbeam; is that right?
A. Yes.
Q. If you go all the way across and if you assume that Sunbeam paid $30 per share that the transaction at the same earnings per share of $2.05 would be dilutive at 38 cents per share, right?
A. Yes.
Q. Then if I move down on the left-hand side --
A. By the way, I think the assumption there is, I have to do the math but, but it would be 40 years, 40 year amortization schedule for goodwill but again that is something that -- that is a

very rough assumption.
It is subject to refinement based on further analysis on lack of pooling treatment, but, yes, as you described, yes.
Q. If I -- I would ask you now again to direct your attention to the left-hand side of the first box and I want to look at the pro forma dilution with cost savings of $40 million. Do you see that?
A. Yes.
Q. Do I read this correctly that if we -- if we -- that is, if we assume here today that you had a $40 million cost savings you calculated that the acquisition, again assuming earnings per share on Sunbeam at 2.05, would be accretive at the rate of 8 cents per share?
A. Yes.
Q. That is at a purchase price by Sunbeam of $22 for the Coleman stock?
A. Yes.
Q. That is all of the Coleman stock, not just Mr. Perelman's shares?
A. That is true.
Q. As the price that Sunbeam pays

increases to a high of $30 on your chart, the transaction is dilutive now to the extent of 17 cents per share; is that right?
A. Yes.
Q. If we increase the cost savings as you seem to do on the last line to $60 million we keep a constant earnings per share of 2.05 but we raise the acquisition price to $30 per share, the transaction becomes dilutive in the amount of only 7 cents per share; is that right?
A. Yes.
Q. There is a direct relationship at least in the math that you have used in the box that we have been discussing between the acquisition price, the earnings per share and the cost savings, correct?
A. Yes.
Q. If we assume constants of the earnings per share and we assume a constant in the purchase price, whether it be 22 or $30, the more cost savings that are assumed in the mathematical formulas, the more the earnings per share is either accretive, or,

NOT A CERTIFIED COPY

015678

Page 166

stated another way, less dilutive if that happens to be the case?
A. Yes, that is accurate.
Q. The final box, when you wrote pro forma EPS excluding goodwill, were you -- backing out, if you will, the charge for the goodwill, that would have to be normally accounted for under purchase accounting?
A. Yes.
Q. At $30 -- at $30 a share under straight pooling -- straight purchase accounting, and if the cost savings were only 60 you told me that your calculations based on the spreadsheet would be a dilutive effect of 7 cents per share assuming an EPS for Sunbeam of $2.05; is that right?
A. Yes. The $60 million in cost savings, accounting and including intellectually however you want to think about it, goodwill, subtracting goodwill, 7 cents at $30.
Q. Then if we do the comparison and exclude the goodwill charge to earnings on

Page 167

your second box there and using again the $30 per share and the cost savings of 60, the transaction goes from a dilutive 7 cents a share to an accretive 30 cents per share, right?
A. Yes.
Q. Did the transaction as it ultimately was structured, did it qualify for pooling treatment?
A. I believe not but the purpose of the last box was not opining on that as you know -- as you may know.
It is really a question of how the analyst community, investment community, would look at this because goodwill is, to many, is not a substantive deduction. It is an accounting so that is why I looked at it both ways.
Q. The transaction that is contemplated on your spreadsheet on page 3 is an all stock transaction, correct?
A. Yes.
Q. Would you turn to page 5 please of MS 104?
A. Yes.

Page 168

Q. Before we get into the substance of the numbers I think there is a line missing on the bottom row after the last row, EPS before goodwill, am I correct?
A. It would appear that the dilution/accretion line didn't print out.
Q. Is page 5 of Exhibit MS 104 a summary, if you will of the -- of basic data that appears on page 1 through 4?
A. Put a little differently I think page 3 is a summary of what is on page 1 and 5.
Q. Okay.
A. This is where the calculation is done, page 3.
Q. That summarizes in the boxes on page 3?
A. Yes.
Q. You are correct. That is a better way to state it.
What this is expressing on this page, this is the -- this is the combined entity calculation on a pro forma basis, correct?
A. Yes.

Page 169

Q. For example, if we look at the very first line on -- of the -- of the page 5 where Sunbeam pretax income, Coleman pretax income, you are adding those two numbers together to get the combined pretax income of the two entities, correct?
A. Yes.
Q. I would ask you to turn to the last page of this document and I know that I asked you if you recognized the handwriting. I think you told me earlier you did not.
Do you have any idea whose it might be based on people you have worked with even if you don't know for sure?
A. No, no idea whatsoever. I can't even read it.
Q. I am sure you can read Sunbeam, right?
A. No. I don't recognize this.
Q. Let me show you one other document while I have it handy which has previously been identified as MS 177.
You said you had looked at some handwriting. This has been previously

NOT A CERTIFIED COPY

015679

identified although the copy I have does not have where this was marked. Let's see if we can determine that.

It was marked in Mr. Shapiro's -- it actually is marked. It was marked on June 8, 2004.

That being said, looking at MS 177, do you have that in front of you?

A. Yes, I do.

Q. Is that your handwriting?

A. No, it is not.

Q. Do you recognize the handwriting?

A. I do not.

Q. You can hand that back to me.

MR. BEMIS: Mr. Reporter, would you please mark as Morgan Stanley Exhibit 105 a spreadsheet dated December 10, 1997 at 4:56 p.m.

(MS Exhibit 105 marked for identification)

BY MR. BEMIS:

Q. Do you have Morgan Stanley Exhibit 105 in front of you?

A. Yes, I do.

Q. Did you prepare this exhibit?

A. Yes, I did.

Q. The date of this document is December 10, 1997 on the print date at the top?

A. Sure.

Q. We looked at one a few minutes ago that -- MS 104 that was dated December 8. Did you discuss -- withdrawn.

Did you discuss MS 104 with Mr. Maher before you prepared MS 105?

A. Don't know.

Q. Looking now at MS 105, did you change any of the assumptions, whether they be based on public filings or analyst reports or your own assumptions, other than the stock price which appears at the top of the document which shows a stock price of $39 for Sunbeam whereas I think in MS 104 you assumed a stock price of --

A. 43.13, three-and-an-eighth.

Q. 43.13.

A. I would have to look through line by line.

Q. Why don't you take a quick look at it? If you look -- I can't detect a

difference between the two.

A. The stock price is the only thing that jumped out at me.

The fact that all of the dollar numbers are -- appear to be identical even on a stand-alone and pro forma basis would suggest that the only numbers -- the only number that has changed, in this case, since there was no assumed ratio except the two stock prices just to be the price of the acquiring company's stock.

Q. Had --

A. Actually, 15-1/4, 15-1/4. They happen to be the same.

Q. Had Sunbeam's stock dropped between December 8 and December 10 of 1997?

A. You would know better than I did. I would assume from this analysis that, yes. I can't recall though independent of this analysis that it did.

Q. At any point in time if you wanted to reflect the current price of either Coleman or Sunbeam stock given these are electronic spreadsheets one could simply plug the new numbers into the

formulas, that is, the stock prices and regenerate the spreadsheet with whatever consequences it has, correct?

A. That is fabulous.

Q. The wonder of spreadsheets. You can do all kinds of what ifs in areas, can't you?

A. Yes.

Q. Do you still have the electronic versions of these spreadsheets, MS 104 and 105?

A. I don't believe so.

Q. Did you ever look for them in response to a document request in this case?

A. Yes.

Q. Did you --

A. I don't save independent disks or things like that. They stay on the office so -- so, no, I don't have copies in my possession.

Q. As I understand the math of this spreadsheet, as the Sunbeam price for its stock goes down in the marketplace, that the transaction, assuming all other

NOT A CERTIFIED COPY

015680

variables are the same, it becomes less accretive, or, stated another way, more dilutive to Sunbeam; is that correct?
A. Yes, assuming -- yes, assuming that the price that is paid for Sunbeam -- sorry -- for Coleman, stays the same and it is not a fixed ratio.
Q. As long as I keep every variable on this spreadsheet the same except Sunbeam's price, if I drop Sunbeam's stock price the transaction will become less accretive or more dilutive for Sunbeam?
A. Yes, in this scenario, yes.
Q. As an example, as I read page 3 of MS 105, assuming $60 million in synergies under your first box which assumes pooling treatment not available, the transaction is dilutive by 13 cents in MS 105 where it is only dilutive by 7 cents in MS 104?
A. Yes, exactly.
Q. One could compensate for the decline in Sunbeam's stock price by increasing the synergies or cost savings, correct?

MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I don't know what you mean by "compensate."
BY MR. BEMIS:
Q. That is a fair question.
When you drop the -- we said all other things being equal if Sunbeam's stock price drops the transaction is going to become less accretive or more dilutive for Sunbeam, correct?
A. Correct.
Q. If we drop the stock price but at the same time you increase the cost savings variable that you have assumed in your calculation you can make up some of the dilution, if you will, of the transaction to Sunbeam caused by the stock price decrease?
A. Mathematically what you say is accurate but there has to be some basis in deciding to compensate, as you put it, by increasing cost savings in order to do so but, yes, mathematically you can change a lot of the variables here and compensate,

as you say.
Q. Did you discuss -- withdrawn.
Did you discuss MS 105 with Mr. Maher?
A. I have a very general recollection, yes, I am sure I did.
Q. What did you say to Mr. Maher and what did he say to you -- withdrawn.
When did you speak to Mr. Maher about Exhibits 104 and 105?
MR. MARKOWSKI: I am going to object to the form of the question.
MR. BEMIS: I will withdraw it and let me rephrase it.
BY MR. BEMIS:
Q. When did you discuss Exhibit MS 105 with Mr. Maher?
A. I don't know specifically. Around the time that it was produced.
Q. Do you recall hearing about a meeting between Mr. Perelman and Mr. Albert Dunlap in Palm Beach in late December of 1997?
A. After the fact, yes.
Q. Did you discuss -- withdrawn.

Using that as a benchmark, this meeting between Mr. Perelman and Mr. Dunlap which I think other people have identified as, I think, December 17, 1997 --
A. Okay.
Q. Did you -- does that help you identify when you discussed MS 105 with Mr. Maher?
A. No.
Q. Did you discuss -- had you had any discussions about the Sunbeam-Coleman acquisition with Mr. Maher that you can recall as you sit here today before Mr. Perelman and Mr. Dunlap met in Palm Beach on December 17 of 1997?
MR. MARKOWSKI: You are saying December 17. I am not sure that is the precise date.
BY MR. BEMIS:
Q. Let me look at MS 75. I think that is right. Maybe I am wrong.
I misspoke. It is December 18.
The meeting in Palm Beach according to MS 75 which has been identified earlier, you looked at it, by

NOT A CERTIFIED COPY

other witnesses, there was a meeting between Mr. Dunlap, Mr. Perelman and others in Palm Beach.

Again, using that as a benchmark does that give you any point of reference for when you can tell us you first spoke to Mr. Maher about your calculations as expressed in MS 104 or 105?

A. As you stated the question, no.

Q. What is your best recollection as you sit here today when you spoke to Mr. Maher about the results of your analysis set forth in MS 104 and 105?

A. Shortly after this document was printed. There is no reason to let grass grow under my feet. He is 30 feet away.

Q. It is fair to say that given he was 30 feet away and there is no need to let the grass grow, as you put it, that you discussed these spreadsheets with Mr. Maher before Mr. Perelman went into the meeting with Mr. Dunlap?

A. On the assumption that Mr. Maher was in the office in town and reachable which, again, I have no specific

recollection of discussing this with Mr. Maher, I am basing that much more on my relationship with Mr. Maher and his interest and my interest in actively discussing these sorts of analysis, analyses, so I would assume it happened, give or take, the same day.

Q. Did you discuss either MS 104 or 105 with anyone from Credit Suisse First Boston, Coleman's investment banker?

A. I don't recall.

Q. Do you recall discussing either MS 104 or 105 with anyone outside of Mr. Perelman's companies?

A. You mean within the group that we have discussed, law firms, et cetera?

Q. Investment banking firms, accounting firms, Morgan Stanley, Sunbeam.

A. No.

Q. Did you consider, in your analyses of the merger consequences as set forth in these two exhibits, MS 104 and 105 as confidential documents?

A. Repeat the question.

Q. Did you consider your analyses as

set forth in MS 104 and 105 as confidential documents?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: To whom?

BY MR. BEMIS:

Q. Confidential to you and to your employer?

A. Confidential, yes, unless there was an interest in sharing it with another party, Sunbeam or Sunbeam's representatives, that it would be constructive in furthering negotiations.

Q. In the course of the negotiations with Sunbeam or its representatives did you ever feel it was constructive to share your analyses in MS 104 or 105 with anyone on the Sunbeam side of the transaction?

A. No.

MR. BEMIS: Let's change tapes.

THE VIDEOGRAPHER: The time is 3:04. This completes tape number two.

(Pause)

THE VIDEOGRAPHER: We are back on the record. The time is 3:04. This

begins tape number three.

BY MR. BEMIS:

Q. Based on your analyses as set forth in MS 104 and 105 did you and Mr. Maher ever discuss what price Mr. Perelman's company should ask for their interest in the Coleman Company on a stock for stock transaction?

A. I believe we had, I think, probably discussed kind of the merits of general ranges that were either acceptable or not acceptable.

Q. What were the ranges that were acceptable and not acceptable?

MR. MARKOWSKI: Object to the form of the question.

BY MR. BEMIS:

Q. Let me withdraw that and I will ask it in two parts.

What were the prices that were not acceptable?

A. I don't recall.

MR. MARKOWSKI: Same objection.

BY MR. BEMIS:

Q. What were the prices that were

NOT A CERTIFIED COPY

015982

Page 182

acceptable?
A. I don't recall.
Q. What were the range of prices that were not acceptable?
A. I don't recall.
Q. What were the range of prices that were acceptable?
A. I don't recall.
Q. Before December 18 of 1997, the date that we established a moment ago, the meeting with Mr. Perelman and Mr. Dunlap in Palm Beach, did you have any discussions with Mr. Perelman about the analyses that you had as of that date performed about the possible merger consequences of a Sunbeam-Coleman merger?
A. I do not -- I don't recall a specific meeting but -- because there were, you know, numerous meetings internally that involved various members of this -- of our team and this was certainly -- was not something that just Jim and I discussed alone without discussing it with either Mr. Perelman or Mr. Gittis.
Q. Did Mr. --

Page 183

A. I just don't recall again five or six years later the specific meeting -- the specific topic but it would be very common for us to go over this, go back, rethink things, modify, get together again for 20 minutes or two hours and to review this.
Jim and I were not kind of closeted in this kind of back and forth analysis with a view towards getting together with Ronald in seven days or whatever. It was very much an interactive process.
Q. Did you ever change based on any interaction with your team the analysis that you set forth in MS 104 and 105?
A. Again, undoubtedly, but I cannot recall the specific changes.
This is very much an interactive process where each member of the group often brings something different to the table and some added experience will be adding some value in the generation of this sort of analysis.
Q. When people added value to the transaction through this interactive

Page 184

process as you described it on your team would you take that value back to your spreadsheets and then incorporate that in your analyses?
A. To the extent that there had been constructive value created where someone had opined as such, yes, but it is a function of someone having an intelligent statement or additional information or a change in a stock price for there to be a reason to do it.
Q. Setting aside things like stock price which are going to change on a daily basis given the market at any particular moment in time did Mr. Perelman, for example, tell you to make any changes in the assumptions you used in MS 105?
A. Did he tell me?
Q. Yes.
A. I don't recall any specific suggestions.
Q. Did Mr. Maher?
A. I believe that the number that became, apart from structural considerations, pricing considerations,

Page 185

form of consideration as well as price, the number that -- the numbers that were -- that evolved over time included Sunbeam anticipated performance and cost savings but I don't recall a specific comment by Mr. Maher as it relates to 105 to change any of these variables from what we have here which would have resulted in version, you know, whatever, on the following day, 12/11/97.
Q. So there were some changes in expected Sunbeam performance; is that correct?
A. I am fast forwarding over the next several months.
Q. I understand that.
Was the change in Sunbeam's performance positive or negative in your assumptions?
A. My recollection on that account, and I am fast forwarding to a February 23 meeting, I believe that is the date which is the meeting at Morgan Stanley, and so at that point what we had in our possession was -- were analyst estimates for Sunbeam

NOT A CERTIFIED COPY

015983

at that point which are not necessarily the analyst estimates that you have in this document.

Wherever the analyst estimates were at that point, the statement was made by Sunbeam management at that meeting that they were very low relative to anticipated performance in the first quarter of '98 and for the remainder of the year but the analyst had it wrong, that they were low and performance was going to be much better for Sunbeam.

Q. This is something that Sunbeam said at the meeting?

A. Yes.

Q. Do you have -- were there any documents that -- handed out that said they were -- performance was going to be better than what the analysts were saying?

A. The only documents that I recall were handed out were the two documents that we discussed before.

We would have to refer to those. It certainly was stated again by some combination, I believe it was Sunbeam

management, Morgan Stanley was certainly there, and -- so I would just have to look at the documents.

Q. This meeting on February 23 we will get to.

Morgan Stanley didn't make any of these statements at that meeting, did it?

A. I don't recall. What I recall is that -- I believe that Sunbeam, one of the Sunbeam executives in response to a series of questions that related to how is your performance today, how is it going relative to analyst expectations, the numbers that we have, are you going to meet your first quarter numbers, are you going to meet your numbers for the remainder of the year, and what came back, and I believe it was Sunbeam management, was a very affirmative statement that management was going -- Sunbeam was going to make their numbers.

Q. Do you have any -- have you ever seen any documents that said that?

A. I don't believe so.

I shouldn't say that. We should refer and look for projected numbers, and

according to Sunbeam management, and I think what we were referring to was really a comparison between here is what you guys are thinking, here is what the analyst community is thinking, who is right.

I believe -- so I -- I believe there were statements in the form of projected numbers that suggested that Sunbeam felt that it was -- it was going to do better.

Q. These statements were made by one of the executives of Sunbeam?

A. Yes.

Q. Let me show you what has been marked as Exhibit 84 which you looked at earlier.

I am going to turn you to the page CPH1324771. Do you see that page, sir?

A. Yes.

Q. Do you see under the heading net sales, January slow, February.

Do you see that?

A. Yes.

Q. Isn't it a fact that you were

told at the meeting by the speaker for Sunbeam who was Mr. Kersh that January sales were slow?

A. No.

Q. You weren't told that? Were you told --

A. Not my knowledge. I didn't hear that. We were told everything was rosy.

Q. If Mr. Levin wrote this document as Mr. Shapiro has identified his handwriting, what he believes it to be, January slow, would you not interpret that being that net sales for January were slow?

A. I can't interpret what Mr. Levin is thinking.

Q. I didn't ask you what you were thinking.

A. That is what you asked.

Q. Then I didn't ask the question very well.

A. Okay.

Q. While you were at the meeting and I will ask you this one -- one more time and then we will leave it, did anyone from Sunbeam tell you that net sales for January

NOT A CERTIFIED COPY

015684

were slow?
A. I do not recall anyone from Sunbeam saying that.
I left the meeting with the impression that business for the first quarter, the narrow question of January and February, we are now February 23, so nearly two-thirds of the way through the quarter, that things were going very well.
Q. Do you see under earnings per share under the heading -- under the column 1998 --
A. Yes.
Q. Do you see the figure 220 at the bottom?
A. Yes.
Q. Then you see the handwriting 199 with an asterisk at the bottom?
A. Yes.
Q. Did Mr. Kersh tell you that at that time earnings per share were not at, projected at 2.20 but at $1.99?
A. Not to my knowledge. I don't remember any specific number that was outlined by Mr. Kersh that would be

different than these numbers.
Q. You don't know where the author of this document identified in Mr. Levin's handwriting, where he would have gotten $1.99 based on your attending the meeting?
A. No.
Q. Let me show you what has been marked as Exhibit -- Exhibit 364.
Mr. Reporter, would you mark as MS 364 a document that appears to have been prepared by Credit Suisse First Boston, and hand it to the witness?
(MS Exhibit 364 marked for identification)
BY MR. BEMIS:
Q. Do you have MS 364 in front of you?
A. Yes.
Q. Have you seen it before?
A. It has been about five years but I believe so, yes.
Q. Do you see the reference to Project Violet in the upper right-hand corner?
A. Yes.

Q. Is this also a reference to the Laser acquisition as you termed it earlier?
A. Yes, yes.
Q. This document does relate to the Coleman-Sunbeam merger?
A. Sorry.
Q. It does relate to the Coleman-Sunbeam merger?
A. Yes.
Q. It was prepared by your investment bankers?
A. Yes.
Q. Were your investment bankers at the meeting on February 23, 1998 where Sunbeam made a representation?
A. Yes.
Q. You had your advisers at the meeting, right?
A. Yes.
Q. What were the earnings per share that you were assuming on February 23, 1998 at the meeting before Sunbeam spoke to you?
A. I don't know. I have got the document from the 10th of December so there is a lot of water under the bridge at that

point, before the February 23rd.
Q. Yes, sir. I think in the December documents, MS 104 and 105, I think you said you used 2.05 per share based upon a Goldman Sachs estimate?
A. Yes.
Q. Do you remember any change in that number by the analysts before the February 23 meeting?
A. I do not recall there was a change either way.
Q. Turn to page 2 of MS 364 and look at the column marked projected stand alone. Go to the bottom of the page under fully diluted earnings per share.
A. Okay. I think -- I can barely read this. This is '98-'99. Is that what that says?
Q. Yes.
A. Okay.
Q. What is the figure that Credit Suisse First Boston uses for earnings per share for 1998 in this projection which is a projected income statement according to its title; what do they use?

NOT A CERTIFIED COPY

Page 194

A. 179.7.
Q. What do they use for fully -- what is the -- what are the fully diluted earnings per share, not net income?
A. 1.99.
Q. That is the same figure that appears in handwriting in MS 84?
A. Okay.
Q. Isn't that the same figure?
A. Well, that says 1.99. This says 1.99.
Q. Where did Credit Suisse First Boston get 1.99?
A. I don't know. How I would know?
Q. I don't know. They were your investment adviser, weren't they?
A. Sure.
Q. Did you ask them where they got $1.99 for earnings per share?
A. I am sure we discussed it.
Q. What are you sure they said to you about it when you discussed why they were using $1.99 for earnings per share rather than $2.20 which appeared in the printing in MS 84 as we were looking at it

Page 195

but has handwritten on it $1.99?
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:
Q. Can you answer it?
A. Repeat the question.
Q. Did you discuss -- did you discuss with Credit Suisse First Boston why they were using $1.99 for earnings per share when you said that at the meeting on February 23 you were assured that the earnings per share for the year were at least going to meet expectations?
A. I do not recall the outcome of such a discussion, that sort of interaction between the two of us or the two firms.
Q. The MS 84 which is the document you said you received, I believe, at the February 23 meeting, has an estimate under long range strategic plan of $2.20 for 1998, correct?
A. I am sorry. I was staring at this. I want to look at this for a second. Okay?
Q. Yes.

Page 196

A. I can't quite read the number but somewhere there is -- they believe there is a $120 million revenue difference.
This is, of course, part of the reason why and I don't know why that was the case.
Q. You say they believed?
A. They, these numbers.
Q. These --
A. The Sunbeam numbers indicate 1 billion 6 in revenues. The Credit Suisse First Boston numbers indicate a billion 480 which seems to be more consistent with the analyst estimates for the company, a billion 473.
I recognize that is Goldman. I don't know what First Boston's analyst was saying. I don't even recall whether First Boston covered Sunbeam so I don't know the distinction between these numbers and these numbers except for in this particular case there is $120 million difference in assumed revenue growth.
Q. These numbers -- and these numbers won't translate for us. Let's slow

Page 197

down and -- let's focus on the earnings per share number one more time and then we will leave it for the moment?
A. Sure.
Q. Do you know where Credit Suisse First Boston got the number of earnings per share that they reflect in MS 364 of $1.99 which is the same number that appears in MS 84 in handwriting as we previously discussed based on the February 23, 1998 meeting?
A. I do not know.
Q. As far as you sit here today when you got MS 364 you don't recall ever discussing it with Credit Suisse --
A. Which is MS 364?
Q. The spreadsheet, this one right here.
Let's try it again. You have in front of you MS 364?
A. Yes.
Q. You received it?
A. Yes.
Q. You received it on or about the dates that it bears, February 27, 1998

NOT A CERTIFIED COPY

015686

apparently printed at 5:39 a.m.?
A. Yes.
Q. You got it. You read it, right?
A. Yes.
Q. You got it as the analyst in this transaction for MacAndrews & Forbes, right?
A. Yes.
Q. Credit Suisse First Boston is using a figure of $1.99 projected for Sunbeam as a stand-alone entity, is that right?
A. Yes.
Q. That is the same name that appears on MS 84 that was the handout at the February 23, 1998 meeting, is that right?
A. Yes.
Q. It is still your testimony based on these documents that Mr. Kersh or whoever spoke for Sunbeam was telling you they were going to make $2.20 a share for 1998?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: It is my

recollection that the management of Sunbeam said that they were going to beat these numbers.
BY MR. BEMIS:
Q. They were going to beat the numbers that appear on page CPH1324771; that is your testimony?
A. Yes.
Q. They were going to beat $2.20 a share for earnings per share for 1998?
A. That is the impression I left the meeting with.
Q. Did you write that down on your copy of the document that you had in front of you?
A. I don't recall.
Q. Did you confirm it in writing with anybody?
A. On their side, no.
Q. How about on your side?
A. No.
Q. Did you meet with Mr. Perelman and tell him that?
A. I don't recall specifically whether I met with Mr. Perelman to review

that conclusion. It would certainly be reviewed generally internally.
Q. Do you recall any such review internally?
A. We had numerous meetings regarding this and many other discussions or meetings that we had so I do not -- if you are asking do I remember that -- did we meet at 10:30 a.m. the next day hypothetically, no.
I do believe that we met to discuss the meeting the night before and what our -- what was said, yes, but I do not recall six years later the specific discussion that transpired afterwards nor do I recall the distinction between a billion 6 and a billion 480.
Q. Indeed on the Credit Suisse First Boston projections which were given to you four days after this February 23 meeting you have pointed out that sales on this document are approximately 1 billion 460, correct?
A. I can't read it, whether it is 460 or 480. We could figure it out. A 20

million difference.
Q. I understand what you are saying.
If you look at the next line on the consolidated?
A. It looks like a billion 480 to me.
Q. We will take a billion 480 and in MS 84 the figure is a billion 600 million?
A. Yes.
Q. As you sit here today you can't tell the jury how Credit Suisse First Boston came up with lower numbers in their projections four days after the February 23 meeting, is that right?
A. That is true.
Q. You can set those aside for right now.
Did you have any role in the hiring of Credit Suisse First Boston as the investment banker on your team?
A. No.
Q. Were you simply informed that Credit Suisse First Boston had been retained?
A. Yes.

NOT A CERTIFIED COPY

015687

Q. I think you told me that you worked with Mr. Gordon Rich and Mr. Duffy on that -- on the Credit Suisse First Boston side, right?
A. Yes.
Q. Was there -- was one of the two men the person that you worked with more closely than the other?
Let me ask it a different way.
Did you work with one of the two men more closely than the other?
A. I think I spent more time with Rob Duffy. He was, I believe, a vice president.
Q. He reported to Mr. Rich, right?
A. Yes.
Q. Let me show you what has been marked as MS 77.
Do you have MS 77 in front of you?
A. Yes.
Q. Please read it. I just have a couple of questions for you.
A. Okay. Do you want me to read the whole thing?

Q. Just look through it. If you need to take more time, take any time you want. I don't want to take your time unnecessarily.
A. Okay.
Q. Have you ever seen this document before?
A. I don't believe so.
Q. Did Chase Securities make a pitch as you have described it to Mr. Perelman's companies in connection with the Coleman-Sunbeam acquisition, act, as Coleman's investment banker?
A. I don't recall them doing so.
Q. Did you ever have any communications with anyone at Chase Securities about the Coleman-Sunbeam acquisition in 1997 or 1998 before the closing of the transaction?
A. I don't recall. It would have been Doug Traver but I don't recall having discussions with him about this.
Q. Could you spell Mr. Traver's last name for the reporter?
A. T-R-A-V-E-R.

I say that because he was our account guy from Chase but I wasn't the point of contact with Chase, certainly.
Q. You can hand that back to me.
Why don't we take a break here and then sprint to closing?
THE VIDEOGRAPHER: The time is 3:40 p.m. We are going off the record.
(Discussion off the record)
THE VIDEOGRAPHER: We are back on the record. The time is 3:52.
BY MR. BEMIS:
Q. Other than Exhibit 77, that Chase document that we looked at just a few minutes ago, did you see -- did you see any other document -- withdrawn.
You didn't see it. Let me rephrase the question.
Did you see any documents that you can recall prepared by Chase Securities in the course of the Sunbeam-Coleman acquisition?
MR. MARKOWSKI: May I have that question back please?
MR. BEMIS: I will rephrase it.

BY MR. BEMIS:
Q. In the course of the acquisition, Coleman-Sunbeam acquisition, 1997 to closing on March 30, 1998, did you see any documents prepared by Chase Securities?
MR. MARKOWSKI: Non-public documents relating to Sunbeam, Coleman, this deal? I think you asked a very broad question.
MR. BEMIS: I will try it for the third time. I must be getting tired.
BY MR. BEMIS:
Q. In the course of the acquisition, 1997 to 1998, when you worked it up in the closing March 30, 1998?
A. Up to the closing?
Q. Up to the closing, did you see any documents prepared by Chase Securities relating to the acquisition?
A. I did not see and recall that I saw those documents.
Q. To your knowledge did Chase Securities place any advisory role on your team, that is, Mr. Perelman's team, in the acquisition or the sale of Coleman to

NOT A CERTIFIED COPY

01588

Sunbeam?
A. If they did I can't recall.
MR. BEMIS: Mr. Reporter, would you please mark as MS 353 a one-page document to Mr. Ronald O. Perelman from Mr. Nesbitt dated December 11, 1997.
(MS Exhibit 353 marked for identification)
BY MR. BEMIS:
Q. Do you have MS 353 in front of you?
A. Yes, I do.
Q. Did you write it?
A. Yes, it appears so. Let me read it.
Okay.
Q. Did you write it?
A. Yes.
Q. Now we established you wrote it. Did you give it to Mr. Perelman?
A. Yes.
Q. Did Mr. Perelman ask you to answer the question that you answer in your memorandum concerning Black & Decker pooling?

A. Based on the form of the memo directly to Perelman, no one else CC'd, yes.
Q. What did -- what was Mr. Perelman's question to you that caused you to write your memorandum MS 353?
MR. MARKOWSKI: I am going to object to the lack of foundation given the way he just answered.
BY MR. BEMIS:
Q. You can answer.
A. I don't recall a specific question, exact nature of the question regarding Black & Decker. I could infer from the memo that I wrote what that question is.
Q. Tell me what you infer the question was from your memorandum.
MR. MARKOWSKI: Object to the form of the question. It calls for speculation.
BY MR. BEMIS:
Q. You can still answer.
A. The memo would appear to address the question as to whether we could do a

pooling with Black & Decker at some point in the future.
Q. Who is "we could do a pooling?"
A. We as the combined Sunbeam-Coleman so if we were to conclude a transaction with Sunbeam could the combined enterprise then effect a pooling with Black & Decker.
Q. When you mean a pooling with Black & Decker you mean a merger with Black & Decker using pooling accounting as it existed in 1998?
A. Yes.
Q. Based on this memorandum it is -- is it your inference that Mr. Perelman asked you this question?
MR. MARKOWSKI: Object to the lack of foundation and the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. Well, this is speculation but --
MR. MARKOWSKI: Don't speculate.
THE WITNESS: Okay.
BY MR. BEMIS:

Q. Answer the question unless you are instructing him not to answer.
MR. MARKOWSKI: I am instructing him not to speculate. If there is some basis upon which he can answer without speculating --
THE WITNESS: I do not recall the question that was asked that led me to write this memo specifically.
BY MR. BEMIS:
Q. Would you have written this memorandum, MS 353, if Mr. Perelman had not asked you the question about the pooling accounting with Black & Decker?
A. It is possible. That is why I am wrestling with what question, if any, there was, whether a question --
BY MR. BEMIS:
Q. Assuming there are many things that are possible in your experience and the man has worked on a lot of deals, as you described, do you think it is probable that you addressed this memorandum to Mr. Perelman without being asked the question from him about the pooling

NOT A CERTIFIED COPY

015689

Page 210

accounting with Black & Decker?
MR. MARKOWSKI: Same objections.
BY MR. BEMIS:
Q. You can answer.
A. I am sorry. Can you repeat the question?
Q. Is it likely that you would have written this memorandum to Mr. Perelman if he had not asked you the question about pooling accounting with Black & Decker?
MR. MARKOWSKI: Same objections.
BY MR. BEMIS:
Q. You can answer.
A. The wording suggests to me -- I can't say.
Q. Did Mr. Perelman respond in any way to your memorandum to him, MS 353?
A. I do not recall.
Q. Before MS 353 was written by you on or about December 11, 1997 had you had any discussions that you can recall with Mr. Perelman about the Sunbeam-Coleman acquisition?
If it helps you your two spreadsheets are dated December 8 and

Page 211

December 10 of 1997.
A. It is likely that I had -- I was involved in some discussions which Mr. Perelman was present in a meeting internally about this but I do not recall a specific discussion with Mr. Perelman regarding Sunbeam-Coleman.
There were numerous discussions between Mr. Maher and myself as I said but there were other -- whether Mr. Perelman was involved, it is likely but --
Q. Were you finished?
A. Go ahead.
Q. By December 11, 1997 had you had numerous discussions with Mr. Maher already about the Coleman-Sunbeam possible transaction?
A. Yes. Give and take, short, brief, walk in and out of his office and kick things around, particularly as it relates to preparing this.
Q. When you refer to "this," you are referring to MS 104?
A. The consequences and refining it and making sure that it answers the

Page 212

questions that Mr. Maher would like it to.
Q. Again, the "this" you are referring to in your answer is MS 104?
A. Yes, MS 104.
Q. You can hand back MS 353. Thank you.
Had there been any discussion within MacAndrews & Forbes about a possible combination with Sunbeam and Black & Decker before December 11, 1997?
A. I have a vague recollection that we discussed Black & Decker as a potential merger partner.
Q. For Sunbeam, right?
A. I am sorry. Did you say for Sunbeam?
Q. Yes, I did say for Sunbeam.
A. Excuse me. I thought you said Coleman. My mistake.
Q. I didn't say either one. I just asked a merger partner.
Before December 11 of 1997 had you had any -- you participated in any discussions or even were you aware of any discussions within MacAndrews & Forbes

Page 213

about a possible Sunbeam merger with Black & Decker?
A. I don't believe so.
Q. You had discussions about a Coleman merger with Black & Decker?
A. I believe so.
Q. Had those discussions reached the point of discussions with Black & Decker as opposed to just being internal?
A. I don't believe so. I think it was more brainstorming.
Q. Is it fair to say that by December of 1997 that MacAndrews & Forbes was looking to sell the Coleman Company, Inc. if it could?
A. I would have to qualify that with if a price -- relatively unemotional, if the price is right we will sell.
Q. What was the right price in December of 1997?
A. Again, I think as you stated about five hours ago that was Mr. Perelman's ultimate decision.
Q. It may will have been Mr. Perelman's ultimate decision but you

NOT A CERTIFIED COPY

01590

had hundreds of conversations over, as you put it earlier, with Mr. Perelman, you spoke to Mr. Maher numerous times as you told us?

A. Rephrase it. I didn't have hundreds of discussions with Mr. Perelman about this. I had hundreds of discussions with Mr. Perelman.

I would like to correct that if that is what I said before.

Q. Fair enough.

In those conversations that you had with Mr. Perelman and Mr. Maher, at least up until December 11, 1997, did you have any discussions about a price at which Mr. Perelman would sell his company's interest in the Coleman Company, Inc. to either Black & Decker, if that be the acquirer, or Sunbeam?

A. I do not recall a specific price that was where we drew the line in the sand and said it is either this or not.

Q. Setting aside drawing lines in sands --

A. And based on my experience within

MacAndrews & Forbes it can be an evolving discussion so --

Q. Your spreadsheets start at $22 and go to $30?

A. Exactly.

Q. Who told you to start with those figures? The stock price at that point -- withdrawn. Let me start again.

The stock price in December of 1997 at the time you did your spreadsheets, MS 104 and 105, was slightly over $15 a share?

A. Right.

Q. $15 and a quarter, I think?

A. Yes.

Q. Your spreadsheets assume $22, 24, 26, 28 and $30 per share on -- for the Coleman stock, right?

A. Okay.

Q. That is right?

A. Right.

Q. Where did you get those numbers?

A. From Mr. Maher.

Q. Mr. Maher gave you a range at least by December of 1997 of a sale price

of between 22 and $30 per share for the Coleman Company if the company was sold?

MR. MARKOWSKI: Object to the form of the question.

BY MR. BEMIS:

Q. You can answer.

A. The discussions that Mr. Maher and I had regarding this analysis led to an analysis between 22 and $30 a share as related to this exercise.

Q. Did you pick the 22 or did Mr. Maher as a starting point?

A. I don't know.

Q. It was one of the two of you, right?

A. We can make it as wide as possible and --

Q. You could put a dollar in the cell for Excel.

Where did the $22 come from? Did it come from you or did it come from Mr. Maher?

MR. MARKOWSKI: How many times do you want to ask the same question?

MR. BEMIS: As many times as is

necessary to answer it.

MR. MARKOWSKI: He already did answer it.

THE WITNESS: I will answer it again. Discussions between Mr. Maher and myself, normal back and forth, somewhat different than you and I are having, led to me, we, us, picking a range between 22 and 30.

BY MR. BEMIS:

Q. What was the basis for you picking that sale range between 22 and 30 as of December 8, if you will, of 1997, the date of MS 104?

A. I think the important considerations from our perspective would be, one, a premium to the current market price both from our perspective and the other shareholders' perspective; two, a first cut in advance of very serious work as to what we felt the value of Sunbeam was, okay, because -- two; and, three, let's pick a range, and let's look at it because part of figuring out where we should sell is understanding what they can

NOT ACERTIFIED COPY

pay and what is reasonable for them to pay and what is reasonable for us to accept.

This is very early on in the process and so I don't know how many days after the initial discussions this analysis was done but we had to start somewhere and it could have been a buck or two, 2 to $4 on either side of that we could have expanded it so that all of the various experts, First Boston, internal people, could look at this analysis and react based on comparative multiples where Sunbeam was trading, other companies were trading, and I think it is a stretch to suggest that that range indicated our view as to the specific valuation range a couple of days into this exercise, if that is what you are implying.

Q. Don't worry about what I am implying. I will try to ask the question, you try to answer and we will keep it at that.

A. I will try to keep answering.

Q. I appreciate that.

Did anyone on your team then take

your analysis in 104 and 105 after you did it and come back to you and say change this or change that?

A. I think it is fair to say that of those that saw this, and I cannot recall who saw -- was 104 the first one?

Q. Yes, sir.

A. Who saw 104, that there were at that point based on the information and thought process that went on between 104 and 105, no one saw any reason to change it. If they did I would have done it.

Q. In fact, other than changing the form of the consideration did you change in any material way the substantive input of data in MS 104 or 105 in later spreadsheets?

A. Yes. I think there were various sensitivity analyses that -- where price was modified, where structure -- consideration of stock versus cash, cost savings, operating performance, all the normal variables that as you conduct further work become somewhat clearer or where people form opinions as to what they

think they should be based upon what they know and the development of negotiations so this is not the last --

Q. Sir, I appreciate it is not the last one and I assume what you are telling me, if you did further analyses you put it into your spreadsheets?

A. Yes.

Q. I assume also as part of the work you did you said you also wanted to assess what Sunbeam could pay, right; that was one of the things you needed to know?

A. Well, the accretion dilution analysis is one measure, one measure of what a company might think they can pay.

Q. You did that analysis, right?

A. Yes. That is what 104 -- part of what 104 and 105 address.

Q. Did you do later analysis of what Sunbeam could afford to pay?

A. I don't recall.

Q. Excuse me. I withdraw that.

You already described MS 104 and 105 as back-of-the-envelope calculations. Do you recall that testimony?

A. I think relatively speaking it is based on what we knew at this point relative to what we learned later on and the specificity of the negotiations and structure and timing and consideration, this was a relatively kind of simplistic analysis based on analyst reports, publicly available information and without the benefit of extensive input from either Sunbeam or ourselves.

Q. If you are telling me -- withdrawn.

Did you prepare the document I am going to show you, MS 165?

MR. BEMIS: I would ask the reporter, sir, if you would initial it and date it and then hand it to the witness?

(MS Exhibit 165 marked for identification)

BY MR. BEMIS:

Q. Do you have MS 165 in front of you, sir?

A. Yes, I do.

Q. Did you prepare it?

NOT A CERTIFIED COPY

015962

A. Yes, I did.
Q. I don't want to mislead you, sir. I want you to note that the pagination on this document and the dates they are printed are not necessarily consistent.
Let me walk you through what I read so you are aware of it so you don't get confused.
The first two pages are pages 7 and 8 and they are dated December 11, 1997, 9:17 a.m. Do you see that?
A. Yes.
Q. When you get to the third page of the document it begins on page 1 again.
A. Yes.
Q. And it attaches what is a copy of MS 105 that you have already looked at and you will see that it starts with page 1.
A. Okay.
Q. I just wanted you to be aware of that. This is the way the document was produced to us. I don't know if it came that way or not.
Looking at it did you at least prepare the first two pages that you have

in front of you which have the numbers pages 7 and 8?
A. Yes.
Q. Then did you -- were there six other pages attached to this document when it was originally created?
A. I don't know. I don't know. My guess is it is the first five pages of this and then somewhere it is -- somewhere there is 6 and then there is 7 and 8. I think it is just part of the same document.
Q. I don't want to spend anymore time on this than I have to.
You think the last five pages of the document are supposed to be the first five pages of MS 165?
A. I can't -- well, I don't know how this arrived in your hands. This could have been someone doing this and --
Q. Do me a favor. Don't ever do that again with original exhibits, tear them apart. We will put them back together but don't do that.
A. I don't know why they are like this.

Q. Let's not worry about it for the time being. If there are more pages you don't know where they are at, right?
A. Yes, and I can't recall what they are.
Q. Let's focus on the first two pages of MS 165 then which are entitled *Sunbeam quarterly earnings comparison*. Do you see that?
A. Yes.
Q. You did this spreadsheet, correct?
A. Yes, I did.
Q. You wrote the footnotes, am I correct?
A. Yes, I did.
Q. If you will look at your heading on your footnotes, fourth quarter issues, do you see that?
A. Yes.
Q. You were reporting here on Sunbeam's third quarter results and the estimates for the fourth quarter, right?
A. Yes.
Q. You had looked at the 10-Q of

Sunbeam for third quarter 1997 and you were now looking at issues related to the fourth quarter, correct?
A. I believe that what this is is fourth quarter issues that relate to my reading of analyst reports and what they may have -- concerns that they had or issues that were raised in analyst reports at that point that are of concern to them or issues to the analyst community but I can't relate it to a specific analyst.
Q. Did you prepare MS 165, the first two pages now? Let's focus on that.
A. Yes.
Q. You prepared it after you prepared your initial spreadsheets, MS 104 and 105?
A. Yes.
Q. You were trying to identify analyst issues, as you put it, for the fourth quarter for Sunbeam's performance which of course had yet to be closed and therefore reported, right?
A. Okay.
Q. Do you need the question read

NOT A CERTIFIED COPY

015693

back to you?
A. Yes, please.
Q. As I understand what you were doing with the first two pages of MS 165 is you were trying to identify the analyst issues for the fourth quarter as it relates to Sunbeam's performance for the fourth quarter which had not yet closed?
A. This analysis was an effort to look at the business on a quarter-by-quarter basis to try to take a look at some working capital relationships, trend lines on a quarter-to-quarter basis as opposed to an annual basis and as it relates to the heading, fourth quarter issues. At this point I was working with Qs and analyst reports and these were some items that jumped out as a consequence of that work that was done.
Q. Let's look at your fourth quarter issues that jumped out at you as a result of your work. Are you with me on your fourth quarter issues?
A. Or repeated as analyst issues.
Q. Let's look at your fourth bullet

point. You see the word "uptick?"
A. Yes.
Q. You say, "Uptick in third quarter receivables supposedly relates to one half of the quarter sales being shipped in September." Right?
A. Yes.
Q. That is September of 1997 which is the third month of the third quarter?
A. Yes.
Q. Of 1997, correct?
A. Yes.
Q. So you knew, at least based on what you wrote in your memorandum, that in 1997 the uptick in, at least Sunbeam's receivables, was supposedly the result of one half of its third quarter sales of 1997 being recorded in the last month of the quarter, right?
A. Not necessarily. What I wrote here is -- I kind of underscore, supposedly, was -- again, I would have to go back to the source documents in the analyst community who are much closer to Sunbeam on a relationship basis -- basis

than I am.
The wording here, my interpretation of what I wrote at the time would suggest that I am referring to comments in the analyst community that perhaps this was the case.
Q. Then perhaps this was the case. That means it was perhaps the case based on the analysts that you were reviewing that one half of Sunbeam's sales for the third quarter of 1997 were indeed occurring in the third month of the quarter?
A. Right.
Q. As an example, let's say that Sunbeam reported $140 million in sales in the third quarter of 1997, 140 million.
We will take that as an assumption. Are you with me?
A. I am with you.
Q. That would mean that one half of those sales which would be 70 million were recorded in July and August based on the assumptions we have used, correct?
A. Yes.
Q. Then another 70 million would be

recorded in September bringing us up to 140 million for the third quarter of 1997, right?
A. Yes. I follow you, yes.
Q. That is what you were reading in the analyst reports that you were analyzing as of this time?
A. Not necessarily. It is a combination of what I was reading which included 10-Qs and analyst reports.
I can't relate it to a specific analyst report. I cannot say, which is what you said, that it was exclusively analyst reports.
I flagged this as an issue or as something to -- as an explanation that had been provided and I should say that there are other sources in the public domain, whether it would be quarterly MD&A on quarterly, quarterly reports that were -- it could be transcripts of Q and A after a quarterly -- for a quarterly analyst discussion, those sorts -- there are lots of different sources.
I cannot recall what the source

NOT A CERTIFIED COPY

015694

of this -- of bullet point 4 is.
Q. Okay. So we all understand when you say MD&A you are referring to management's discussion and analysis?
A. Yes.
Q. You have to let me finish. It is getting late in the day and it is starting to get easy to run over each other. I will try likewise.
When you say MD&A you are referring to management discussion and analysis in, for example, a 10-Q or a 10-K, correct?
A. Yes, and I was also referring generally to any management discussion analysis of results, whether it is in a press release, whether it is in an interview, whether it is on a teleconference that may have been a matter of publicly available, so there is --
Q. Whatever the source -- and I hope I wasn't cutting you off -- whatever the source for your fourth footnote in MS 165 where you say, "uptick in third quarter receivables supposedly relates to one half

of quarter sales being shipped in September," you got that from some source, whether it be analysts, a public document, interview, if you will, or discussion by management of its results, correct?
A. Yes, but not a direct discussion with them. I would have picked it up.
Q. You flagged this for -- did you give -- withdrawn.
Did you give MS 165 to Mr. Maher?
MR. MARKOWSKI: You have been focusing on the first two pages?
MR. BEMIS: Yes, sir; just the first two pages.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Did you give it to Mr. Perelman?
A. I can't say. I don't know.
Q. Did you discuss MS 165 with Mr. Maher, and again just the first two pages I am talking about now.
A. In all likelihood, yes.
Q. Did Mr. Maher ever question your footnote 4 which begins with the language, "Uptick in third quarter?"

A. I do not know.
Q. You write in the last bullet point, "Another concern has been international pipeline filling."
Do you see that?
A. Yes.
Q. What did you mean by "international public line filling?"
A. That would refer to -- international pipeline filling refers to sales in the international markets and sales into those -- filling those sales channels with product, so if you have got whatever the equivalent is in Europe of a Home Depot or a K-Mart, it would be filling those channels with inventory that yet has to be sold and businesses such as Sunbeam or Coleman have to balance that against what can ultimately be sold without -- they don't want to risk having to cause the retailers to have to mark down product.
Q. What did you do, if anything, to investigate your concern that there was international pipeline filling by Sunbeam?
MR. MARKOWSKI: I am going to

object. It mischaracterizes this as being Mr. Nesbitt's concern.
BY MR. BEMIS:
Q. Let me rephrase the question for you to see if we can obviate the objection.
You wrote that one of the concerns of somebody, whether it be analysts or the conclusions that you reached based on reading something else or in a public document or hearing a management discussion, analysis of the results, that there was a concern about "international pipeline filling," right?
A. Right.
Q. What did you do, if anything, to investigate the concern that you noted based upon the research that you had done?
A. This sort of document, this document, excuse me, MS 165, would have been forwarded to the team which would include Jerry Levin, the Coleman team, the guys who actually understand on a -- as operators about these sorts of issues and my role, my objective would have been to flag these and to disseminate this within

NOT A CERTIFIED COPY

015695

Page 234

the group for discussion and ultimately in this sort of case I would be reliant on the operating management team to make a judgment as to whether this was an issue or not and to follow up.

I do not recall a specific response as to whether this was -- how serious an issue if at all this was and -- but in the context of the overall transaction it didn't rise to the level that warranted or that -- that warranted a -- an enormous amount of discussion further on.

Q. Would what you just told me be true with the bullet beginning "uptick in third quarter receivables?"

A. Again, yes. Procedurally anything that we can generate from my side, our side, of an operational nature would be conveyed to the operating guys who were much more familiar with the impact or seriousness or veracity of these sorts of issues.

Q. Did the operating guys at Coleman that received MS 165, did they ever report

Page 235

back to you that the concern expressed in this bullet point beginning "uptick in third quarter receivables" was of concern to the operating guys at Coleman?

A. I believe what I just said was, no.

Q. Did you ever have any conversation with the operating guys at Coleman in which they expressed any disbelief that sales, for example, of Sunbeam in a quarter might be as expressed here largely concentrated in the last month of a quarter?

A. I do not recall.

Q. Do you recall in response to any of your bullet points under fourth quarter issues in MS 165 that any of the operating guys at Coleman ever reported back to you that these issues were issues that required further investigation by the MacAndrews & Forbes team?

A. No.

Q. You may set that aside. Wait a minute. I do have another question. Don't set it aside.

Page 236

Turn to page 2.

A. Yes, sir.

MR. MARKOWSKI: The second page or page numbered 2?

THE WITNESS: Page 8, I assume.

BY MR. BEMIS:

Q. The second page of the document which is numbered page 8.

This document stumped me for a long time until I realized it was printed on different dates.

Are we on page 8 of -- numbered 8 on MS 165 which, for the confusion of the jury, which is actually the second page of the document. Are you there?

A. Yes.

Q. This is entitled Cash Versus Stock Comparison-No Cost Savings.

Are you there?

A. Yes.

Q. Is this a further attempt by you to look at the possible effects of a Sunbeam-Coleman merger on the -- earnings per share, if you will, of the -- of Sunbeam should it acquire Coleman?

Page 237

A. Yes, with an entirely different structure.

Q. Correct.

Indeed, in the first structure that we looked at which was MS 104 and 105 that was an all-stock transaction, correct?

A. Yes.

Q. The analysis that you have in the all-stock column for $26, is that -- that is just an extraction, isn't it, of the analysis in MS 104 and 105 for $26 with no cost savings?

A. For all stock or all cash?

Q. For all stock, yes, sir.

A. Yes.

Q. Then on the all-cash transaction you calculated what the transactions dilution or accretion to earnings per share would be if Sunbeam had to go out and borrow enough money to pay $26 per share for all of the outstanding Coleman stock, both Mr. Perelman's stock or his holding company's stock as well as the public shareholders, right?

A. Yes.

NOT A CERTIFIED COPY

015696

Q. What you concluded as a result of this analysis is that if you did an all cash offer the -- the dilutive effect of the transaction was almost double what it was in a stock transaction, correct?
A. For 1998.
Q. For 1998. I thought these were for 1998. That is what you are assuming, right?
A. Yes, but cash -- pay in all cash is -- has a very different effect on a longer term depending on the operating performance, but, yes for that particular year.
Q. The reason the cash transaction has a, or in this instance, dilutive effect is because you have to -- you have an interest component that you have to add because the company has to borrow the money, for example, to complete the acquisition, correct?
A. Not entirely.
Q. Is the interest component here for borrowed funds?
A. Yes.

Q. Was it for 100 percent of the borrowed funds?
A. Yes.
Q. You assumed that at $26 per share if Sunbeam borrowed all of the necessary funds, the incremental interest expense to Sunbeam -- that means additional interest expense, that is what "incremental" means, right?
A. Yes.
Q. It was going to be $128,485,000 per year?
A. Yes.
Q. The net effect of the -- withdrawn.
The transaction that you have as the all-stock transaction, this is done on a non-pooling basis accounting, right?
A. True.
Q. Now we are done with that. You can set that aside. You can give it back to me and I will put it away for you. You don't even have to look at it for a while.
Why did you pick, by the way, $26 per share for that analysis?

A. Do not recall.
Q. You don't remember whether Mr. Maher told you to use that figure?
A. I do not recall Mr. Maher specifically suggesting $26 a share but --
Q. Sorry. Go ahead. But --
A. It is likely. I, as a consequence of those discussions, said that let's run it at 26.
Q. Which is the mid point between 22 and 30, right?
A. That is an arithmetic coincidence.
Q. That you used 26, 24, 26, 28 and 30 in MS 104 and it is a coincidence that you used 26 a day later in your calculations?
MR. MARKOWSKI: What is to coincidence?
MR. BEMIS: I am asking him --
MR. MARKOWSKI: I am trying to understand your question.
MR. BEMIS: If the witness doesn't understand I am sure he will tell me.

MR. MARKOWSKI: Could you read it back please?
MR. BEMIS: We will try it again. In fact we won't try it again. Let's let that go.
BY MR. BEMIS:
Q. There was a meeting that has previously been testified to between representatives of Sunbeam and Coleman as well as MacAndrews & Forbes at MacAndrews & Forbes' offices on or about December 12, 1997 to discuss the subject of synergies.
Are you -- did you attend that meeting?
MR. MARKOWSKI: I am going to object to the question. I think it misstates the testimony.
MR. BEMIS: Maybe I got it wrong. Let me see MS 75 again.
BY MR. BEMIS:
Q. Do you have MS 75 still in front of you which is the chronology or did I take your copy? I probably picked it up. We had to reduce your paper flow there. Here is one. You can use this one. This

NOT A CERTIFIED COPY

015697

Page 242

is MS 75. That is a --
A. What a relief.
Q. Do you have MS 75 in front of you?
A. Yes, I do.
Q. If you will turn to Exhibit A under the date December 12, 1997 there is a representation to the United States Securities and Exchange Commission by your attorneys that on December 12, 1997 there was a meeting?
A. Yes.
Q. It was at the offices of -- strike where the office was -- but it was between the people identified here, Mr. Levin, and Mr. Shapiro and Mr. Page of Coleman, representatives of Sunbeam and David Fannin, Russell Kersh and Peter Langerman on Coleman's business and potential synergies that could result from a combination of Sunbeam and Coleman. Do you see that?
A. There you go.
Q. Did you attend that meeting even though you are not listed? I realize you

Page 243

are not listed.
Did you attend the meeting?
A. I don't believe so.
Q. Were you aware that the meeting was taking place or going to take place?
A. I don't recall whether I knew about it in advance.
Q. Did you know about it?
A. I don't recall whether I knew about it in advance.
Q. I misunderstood.
A. But I am always last to know so --
Q. Somehow I don't think that is the case but -- did you learn the results of the meeting from anyone?
MR. MARKOWSKI: I guess for the record I will move to strike counsel's comment.
I am sure it was meant in a jocular way.
MR. BEMIS: I withdraw the comment. Even his as well.
BY MR. BEMIS:
Q. Do you have the question in mind?

Page 244

A. Yes. I am wrestling with a specific recollection of that, someone recounting that meeting.
Q. When you say you are wrestling --
A. I am wrestling with, I do not have a specific recollection of one or more of those individuals after that meeting relaying the substance of that meeting to me, but it is --
Q. At some point -- I am interrupting you.
A. It is probable that it was filtered down to me.
Q. Were you asked to prepare any documents for use in the meeting on December 12?
A. I don't believe so, particularly given the agenda. I wouldn't have any basis to do that. That is strictly an operating which is also why I wasn't invited.
Q. Let me show you what has been marked as MS 78, previously marked in another deposition.
I hand you MS 78, sir.

Page 245

The first page you can ignore. That is a transmittal that I don't have any questions about. My questions will be directed to the second page.
A. Yes.
MR. MARKOWSKI: Take a look at the whole exhibit so you know the context in which this is being transmitted.
THE WITNESS: Okay. Page 1. Sorry. Let me get to page 2.
BY MR. BEMIS:
Q. My only questions which should be brief are on page 2.
A. Okay.
Q. Have you ever seen page 2 of MS 78 before?
A. Yes, I have.
Q. When did you first see it?
A. I believe I saw this after a meeting but I don't -- I don't recall how far after.
Q. There is a meeting referenced in MS 75 which is the letter to the Securities and Exchange Commission on December 16 that

NOT A CERTIFIED COPY

015698

you are supposed to have attended based on the chronology.
Did you attend that meeting?
A. Yes.
Q. Before December -- the December 16, 1997 meeting did you see the second page of MS 78?
MR. MARKOWSKI: I assume you are excluding the handwriting from this?
MR. BEMIS: Yes, I am.
THE WITNESS: I cannot begin to recall whether I saw this after that meeting between the 12th and the 16th. I certainly saw it. I had no part in preparing it but I certainly saw it at some stage in this review.
BY MR. BEMIS:
Q. Could you tell me the context in which you saw the second page of MS 78? For example, was it a meeting with Mr. Maher or was it a meeting with Mr. Levin, whatever the case may be?
A. There was a meeting with -- it involved Jerry Levin. There was an explanation of this that I was part -- took

part in. It was part of the agenda but I just --
Q. An agenda?
A. It was part -- I don't mean agenda. It was -- I do not recall whether it was the only reason why that meeting took place but I do remember some discussion on these items in a meeting.
Q. Was this --
A. But I have a recollection that it was after the fact, not before the fact.
Q. When you say "after the fact," you mean?
A. After the 12th. Sorry.
Q. That is okay.
Your best recollection is that you did see the second page of Exhibit 78 sometime after December 12 and at least Mr. Levin was present?
A. Yes.
Q. Do you recall whether, at this meeting where the second page of MS 78 was discussed, whether anyone from Morgan Stanley was there?
A. I don't believe they would have

been.
Q. Was the meeting you are referring to an internal meeting of the Coleman team from this transaction?
A. Yes, I believe so, but I can't recall what fraction of it.
Q. Do you recall anyone at the meeting that you recall seeing the second page of MS 12 expressing any disagreement with the numbers that are set forth in the second page of MS 78 as synergies possible in the Coleman-Sunbeam transaction?
A. No.
MR. MARKOWSKI: Is there something good on TV over there?
MR. BEMIS: No. I am looking at the question.
BY MR. BEMIS:
Q. There is a wrong -- I gave -- I don't know if I gave you the wrong exhibit number or I misspoke or you got it wrong, Mr. Reporter. Let me read you the question again. I will put the right number in and you can repeat your answer.
Do you recall anyone at the

meeting that you recall where you saw the second page of MS 78 expressing any disagreement with the numbers that are set forth on the second page of MS 78 as synergies possible in the Coleman-Sunbeam transaction?
A. No, I don't.
Q. You can set that aside.
We are all done with that and we only have a minute or two to go so we will adjourn for today before we start another document and we will see you tomorrow morning at 9:30, God willing.
A. Sounds great.
Q. As our enemies say.
THE VIDEOGRAPHER: The time is 4:58. This videotaped deposition will be adjourned.
(Time noted: 4:58 p.m.)

WILLIAM G. NESBITT

Subscribed and sworn to before me this day of 2004.

NOT A CERTIFIED COPY

015699

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That WILLIAM G. NESBITT, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

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

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 2nd day of 2004.

STEVEN NEIL COHEN, RPR

INDEX OF EXAMINATION

WITNESS
WILLIAM G. NESBITT

By Mr. Bemis.....5

MS EXHIBITS

Exhibit No. Marked
167 Document.....14
104 Summary.....25
365 Handwritten Document.....30
105 Spreadsheet.....170
364 Document.....191
353 Memorandum.....206
165 Document.....221

NOT A CERTIFIED COPY

015700

NOT A CERTIFIED COPY

015701

IBD Self

Gene K. Yoo

Associate

Section II. Building the Franchise

How did you enhance the Firm's franchise this year (e.g., cross selling; development of significant new client relationships;difficult execution/structuring of a particularly complex transaction; broaden the firm's reputation in your industry.

1.) SUNBEAM TRIPLE ACQUISITIONS - worked intensely with the rest of the M&A team to bring together simultaneous acquisition of Coleman, First Alert and Signature Brands. This involved extremely complex analysis of all the various permutations and structures, as well as financing alternatives involving the Bank Loan, High Yield and Convertible groups. As we carried on concurrent negotiations with the sellers, numerous issues and alternatives arose which rippled through each aspect of the deal. Complicating matters were the complex ownership structure of Coleman, the volatile personalities involved (Al Dunlap, Ron Pereleman) and the extremely tight deadline (we had to announce before 1Q98 earnings announcement; had to close before end of second quarter). A great deal of negative publicity has surrounded our client, focused mainly on the operations and accounting of the company. Also, there is still the outstanding issue of the convertibles that were sold and the outstanding bank debt. Nevertheless, the acquisitions are still looked upon favorably and the M&A experience was certainly positive. 2.) FIRSTENERGY MERCHANT PLANT BUYSIDES - FE was bidding on the first round of power generation assets being sold off from the diversified utility companies. Although our client was not successful in winning any of the auctions, this was a very useful exercise for MS for two reasons: first, this was the first time that companies were bidding on assets as merchant (unregulated) plants, thus this was the first opportunity for our GPUG/M&A team to understand and evaluate these plants. Second, this was the first opportunity for our DCMS people to take a look at these merchant plants, consider potential market receptivity, develop financing structures and understand the key drivers and dynamics involved. Both of these experiences will be helpful as these merchant plants continue to come to market. The DCMS team has already used this experience to market financing packages to the winning bidders of these auctions.

Who did you recruit and/or mentor this year? Describe the results of your efforts.

I have been closely involved with the Columbia Business School recruiting team for most of this past year, screening resumes, attending functions, meeting students, conducting interviews and mentoring. For the full-time hiring process, I was particularly involved in helping to recruit Todd Davision, Stephen Conner, David Older, Jennifer Lamprecht and Soly Vahabzadeh. Todd and Stephen were targeted by the team early on as the two top candidates, while David had a non-traditional background but ultimately arose as our third candidate. We were able to bring all three to MS as summer associates and later sign them on as full-time hires. Soly was was the cover bid from the summer recruiting, but we were able to bring him through the process and sign him as a full-time hire as well. Jennifer had made a strong effort to contact CBS alumni at MS and was highly recomended from the people she did meet with. I spoke to Jennifer at length about my experience in DCMS as that was a specific area of interest for her. She also was able to get through our regular full-time recruiting process and received an offer. In all, we gave out eight full-time offers (including one former analyst - Rachel Censor, one from the minority track and one for Hong Kong) and we were able to get seven of them to commit to MS (the eighth person went to Goldman). I was less involved with the summer recruiting this year due to time constraints (I seemed to be out of town for every function). However, I did meet with several students,helped to screen the resumes and conducted several interviews. I also spent a great deal of time talking with Carl Tate and Guy Shanon during their internships this summer. Carl has received a full-time offer and will most likely accept. This past yearI have also done a number of interviews for other recruiting teams. These included analyst, summer associate and sell interviews. I have also worked with a summer associate, Will Hawkins, who has received an offer and accepted.

Section III. Goals and Objectives

Develop preliminary business and professional development goals for 1999. Associates should focus on improving their professional/execution skills. Officers' goals should include ways to strengthen their client/business development skills.

1.) ACTIVELY PRESENT IDEAS/VIEWS TO TEAM MEMBERS AND TO CLIENTS - as was the case last year, I will need to continue to be more vocal and assertive in my views. Where in the past I have deferred to the opinion of far more experienced colleagues, I have become increasingly more comfortable with being an outspoken member of the team. As I gain more experience and become more familiar with my MARD colleagues, this will become less of an issue. 2.) BUILD SELLING AND CLIENT RELATIONSHIP SKILLS - this is anarea that beretofore I have not focused on at all. However, as I become more senior and have even greater interaction with clients, I believe this will become ever more important. My experience in BDG was an excellent introduction to this aspect of thebusiness, and my continued involvement with the group will certainly help. However, I believe more formal training is in order. 3.) BUILD STRONGER RELATIONSHIPS WITH OTHER MARD PROFESSIONALS - Having spent my first year as a generalist in the AssociatePool and the first half of this past year in BDG, I have not worked with very many people within the department. Further, my first significant deal (Sunbeam) was essentially with BDG. My reticence early on did not help either. I feel that I don't knowvery many people within MARD and they don't know me. This is somewhat of a sore point now that I am entering my third year with the firm. I would like to make a point of getting to know more people within the department, whether it is by working together on a project or otherwise. 4.) CONTINUE TO IMPROVE COMMUNICATION/MANAGEMENT SKILLS - as I mentioned earlier, this is still an area of concern for me. I am still learning to stay in closer contact with my team members, both upward and downward. Managing analysts more closely and utilizing them better are things that become easier with experience. Managing upward is an artform I am only now beginning to understand. 5.) CONTINUE TO GAIN EXPERIENCE AND DEVELOP TECHNICAL SKILLS THROUGH A BROAD RANGE OFPROJECTS - now that I will have a full year to execute transactions, this should not be a problem. I am still somewhat involved with BDG, particulary with situations in Asia, but that is only a small portion of my time. I think this will be an important year in my development.

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT 729
1/00
6-16-04

IBD Self

Gene K. Yoo

Associate

What skills and abilities would you put to greater use? Describe training or other support that would leverage your effectiveness? What are your long-term career goals at Morgan Stanley?

1.) UNDERSTANDING TAX ISSUES AND TAX-DRIVEN TRANSACTIONS - after having heard so much about them, I was surprised to see how little tax issues are considered beyond Morris Trusts and Spin-Offs and the occasional 338(h)10. This is especially true at the junior level. Often when these types of questions are asked they are deferred until we can consult with our tax group. I think there are many basic questions that could be answered with a little background. More importantly, I think there is an opportunity to develop more creative and more tax efficient solutions. Andy Sperling and the tax group would still be consulted to bounce ideas off of and to work out the many details, but I think we can help them be more helpful to us. 2.) BETTER GRASP OF LEGAL ISSUES AND PROCEDURES INVOLVED WITH VARIOUS TRANSACTIONS - as with everything else and similar to the above issue, this is an area that one generally learns piecemiel on an 'as needed' basis. I think some basic training on legal issues, procedures andsituations that are often encountered would be helpful.

Section I. 1998 Performance Summary

Describe your performance relative to your business goals and to the relevant performance criteria (see the Performance Criteria Matrix for details). Your comments should not exceed the space provided.

1) CONTINUE TO GAIN M&A EXPERIENCE - this has been the key issue for me over the past year. I have tried to use each project as a new learning experience. I am certainly far more comfortable and confident in my skillset than I was last year by several orders of magnitude. Unfortunately, having to experience so much for the first time, the inevitable consequence of working up the learning curve was that I was not always performing as efficiently as I would like to have been. 2) WORK ON A WIDE VARIETY OF TRANSACTIONS - This past year a significant portion of my time was dedicated to the BDG group, the Sunbeam acquisitions and two small sellsides (Einstein/Noah Bagels, Colman Spas). I thus did not gain as much execution experience as I had expected.Working on the sellsides did allow me to take a significant role on each, particularly the Coleman Spas transaction. My involvement with Ken Marks on the FirstEnergy series of buysides was a fantastic experience, by far the best learning experience for me last year. I continue to be involved with certain BDG situations, but I would like to continue to try to build my base of experience. 3) TAKE AN INCREASINGLY LARGER, MORE PROACTIVE ROLE ON DEAL TEAMS - This was my neediest area of development this past year. Much of my first year and a half was spent simply learning who people are and how things get done. With some practical experience under my belt I steadily built the knowlede and the confidence to interact with team members, clients and others within and outside the firm. I was able to take on a larger role within the team, managing the process, providing input and contributing to the effort to reach a conclusion to the project.

How many companies did you call on for the first time in 1998? Which of these companies did you develop business from in 1998? Which companies were first time mandates obtained from a competitor's traditional client? Why did we win the business?

What Development Areas from your 1997 Evaluation and Development (E&D) Summary/Review have you improved?

1.) GAIN MORE EXPOSURE IN CLIENT SETTINGS - this was certainly accomplished during the FirstEnergy and the Coleman Spas transactions. With FirstEnergy, the CFD coverage officer (Tim Schwartz) gave way to the M&A team (Ken Marks, myself, Yehbin Song). Under Ken's guidance, I took the lead role in evaluating the various assets up for auction. I was the main point of contact with the client and their fuel supply partner in gathering and analyzing information. I was also the focal point with our High Yield, Bank Loan and Credit groups in structuring financing packages. On the Coleman Spas sellside, Bob Lee got the process started and stepped in occasionally to provide direction and supervision. However, it was essentially left to me to execute the deal(due diligence, drafting of the OM, identifying and contacting potential buyers, negotiating CA's, management presentations, data room, managing the process etc.). This began as three sellsides, so we had to go through this process three times (the seller ultimately decided not to sell two of its businesses). 2.) ACTIVELY PURSUE OPPORTUNITIES TO PRESENT WORK/VIEWS, BOTH INTERNALLY AND WITH CLIENTS - this is a development need that I have become increasingly conscious of. My initial reticence was primarily due to my lack of experience and confidence. As I continue to gain some of both, this is becoming less of an issue. I feel I have certainly improved in this area over the past year, but I am probably 3.) IMPROVING EXECUTION/TECHNICAL SKILLS - this is an area that I feel most confident about. Although I have much to learn, I feel I am making good progress and I do not see any reason why this will not continue . I now have a base of experience upon which to build further, having now worked on a variety of situations at various stages. I no longer feel that I must learn everything from scratch. This has certainly made me much more efficient in terms of getting work done. Further, I now feel I can be a much larger contributor to a deal team. 4.) IMPROVE COMMUNICATION SKILLS - this is an area that is probably of most concern. I have made a conscious effort to improve my communication, particularly with my deal team members. I believe I have done a much better job than last year, although therehave been some lapses. In particular, I have had the most difficulty with this when I have been out of the office. Still, I have learned to make much better use of my secretary and the call board on these occasions. I think this soon will no longer bean area of concern.

What were the biggest disappointments in developing new business (excluding conflicts, losing bid situations) and what was learned from each? (CFD officers should include missed business in each product area).

It has been somewhat disappointing that we have not been able to generate more transactions out of the turmoil in Asia. I have spent a good deal of time

FOR A CERTIFIED COPY

IBD Self

Gene K. Yoo

Associate

with David McCreery and various people in the regional offices in Asia trying to study the situationfrom an M&A perspective. The lack of transactions stems mostly from the general lack of M&A activity in Asia; there are a lot of people looking at a lot of situations, but few active transactions that will actually close. However, the noticable lack ofstrong relationships with major companies, political figures and prominent families in Asia has also proven to be a stumbling block. It has often seemed that many potential situations were beyond our reach because we did not know the right people or they were much closer to one of our competitors. In particular, Goldman and Salomon seemed to have a much higher profile in the region. MS certainly has a strong presence, especially when compared to other foreign banks, but it will be some time before much comes out of Asia, and there is a lot that is still up for grabs.—

NOT A CERTIFIED COPY

015704

MORGAN STANLEY
CONFIDENTIAL
0085765

16div-021566

NOT A CERTIFIED COPY

015705

Sales '96
Eliminated $40-$50

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam®

Long Range Strategic Plan

NOT A CERTIFIED COPY

015706

PLAINTIFF'S EXHIBIT

CP 022317
CONFIDENTIAL
16div-021568

CPH 1412552

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

NOT A CERTIFIED COPY

1. Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.).

2. Strengthen Sunbeam and Oster brands globally.

3. Continually introduce innovative and highly differentiated products globally.

4. Optimize worldwide supply chain.

5. Achieve industry leadership in customer service.

CPH 1412553

015707

CP 022318
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1) *Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.)*

- Leverage our brand halo to further strengthen our image and reputation with the consumer, customer and investor, worldwide.
- Develop comprehensive Go-To-Market plans to drive worldwide activity.
- Sharpen international market focus to Latin America, Mexico, Venezuela, Japan, UK and Canada and tailor product bundles to the individual markets.
- Continue to be the consumer's first choice for innovative and differentiated solutions in both the value and premium segments of our core businesses.
- Deliver product to market better and faster than the competition.

NOT A CERTIFIED COPY

CPH 1412554

CP 022318
16div-021570
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

NOT A CERTIFIED COPY

2) Strengthen Sunbeam and Oster brands globally..

- Position and differentiate the Sunbeam and Oster brands globally with targeted marketing and advertising.

- Improve competitive positioning through core business focus on the consumer and technology:

  Sunbeam - Value and Innovation segments
  Oster - Quality and Performance segments

- Leverage Oster brand recognition in Latin America.

- Explore licensing opportunities. $6 Licensing before 1997

Pets, pens
light bulbs
60L5 Vacuum cleaners

CP 022320
CONFIDENTIAL
16div-021571

CPH 1412555

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Product Development X

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

3) *Continually introduce innovative and highly differentiated products globally.*

- Continue to develop highly differentiated products.

89 New products in 97

- Focus development resources on "Home Runs" (e.g., air and water).

5-10 MM minimum

Air/Water $ 100MM

- Respond to and meet consumer needs better than the competition.

- Explore alternative uses for proprietary technology (i.e., utilize PTC wire technology to enter the heated carpet market).

- Continue to enhance the product development process and turn around.

015710

NOT A CERTIFIED COPY

CPH 1412556

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

4) *Optimize worldwide supply chain.*

- Shift make versus buy mix from 70/30 to 50/50.

Close Mexico City Facility – $25mm savings; move to 2 border facilities (max production at from facility to 3rd party)
3,000 employees makes everything
Land Work $20mm

- Balance proximity of supplier, plant and customer locations to minimize logistical requirements and associated costs and accelerate delivery.

- Exploit cost savings opportunities associated with Asia Pacific economies via joint ventures and acquisitions.

- Simplify and standardize processes and practices.

NOT A CERTIFIED COPY

CPH 1412557

CP 022322
CONFIDENTIAL
16div-021573

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

5) Achieve industry leadership in customer service.

- Define and monitor customer satisfaction from forecasting to invoicing through Project Full Time. 95% on-time delivery
- Fill distribution voids and achieve new product sell-in leveraging Full Time performance. Walmart 21% of sales
  Poor presence b/c of delivery skill
- Achieve preferred supplier status with joint partnering and 98% on time and in full shipments to key customers.
- Implement systems to track and resolve total quality issues incorporating ISO 9000 requirements.

NOT A CERTIFIED COPY

CPH 1412558

015712

CP 022323
CONFIDENTIAL
16div-021574

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam APPLIANCES

Strategic Headlines

1. Strengthen Sunbeam and Oster trademarks globally.

2. Continually introduce a constant stream of consumer-driven new products concentrated in three focus areas:
   - Blending and Mixing – $0.50/share of blending
   - Smart Cooking
   - Everyday Best

MKT Share
Black Decker
Kitchen Aid
P

1-2 in every niche

3. Broaden distribution with existing customers.

New categories
W/ Crock Pot

$MM	1997	1998	1999	2000
U.S. Sales	288	356	430	480
% Increase	16%	24%	21%	12%

NOT A CERTIFIED COPY

CPH 1412559

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam HEALTH AT HOME

Filters very competitive

WATER PRODUCT
- Use filter (proprietary)
- Compete w/ Brita

AIR CLEANER
Use laser to control setting

Strategic Headlines

1. Leverage Sunbeam brand equity to become the category expert.

2. Expand the business to healthy environment (i.e., air and water) and home safety (e.g., emergency carbon monoxide or smoke notification, security alarms, first aid monitoring.)

3. Fill distribution voids and extend product seasons.

4. Use Air & Water to launch our core Health at Home product lines globally.

Healthy home environment not just air & water

$MM	1997	1998	1999	2000
U.S. Sales	93	189	240	300
% Increase	7%	103%	27%	25%

NOT A CERTIFIED COPY

CP 022325
CONFIDENTIAL
16div-021576

CPH 1412560

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. PERSONAL CARE & COMFORT - Bedding

Strategic Headlines

1. Advance technology advantage with continuous development of new wire technology (lower EMF) and electronic controls (solid state controls).

Japan ~1M
& 300K market
50% penetration
US 20%

2. Launch new products that address consumer's safety concerns and provide heating comfort in places other than the bedroom.

3. Globalize the business focusing on high potential countries.

Lost Kmart Queen: sold Bithfod facility (make shells)
- was not able to meet demand
- looking for alternative sources

4. Increase household penetration by introducing new packaging and promoting the "Blanket with a Brain" concept.

40% Margin

$MM	1997	1998	1999	2000
U.S. Sales	169/12 blankets	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

Clippers (Philips/Norelco/Retail -40/45% margin)

NOT A CERTIFIED COPY

CPH 1412561

CP 022326
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam PERSONAL CARE & COMFORT - Clippers and Other Personal Care

Strategic Headlines

1. Grow household penetration by focusing on high potential targets:
   - large and low income families
   - teens
   - African Americans
2. Introduce new products with better performance than the competition.
3. Grow business globally.
4. Enter new personal care categories leveraging our Sunbeam and Oster brand names.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

CP 022327
CONFIDENTIAL
16dfv-02587

CPH 1412562

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OUTDOOR COOKING

Strategic Headlines

1. Continue to entrench GrillMaster as the dominant worldwide brand of grills and accessories/replacement parts.
2. Achieve category growth by promoting grilling in high-growth, high-profit segments. Address category negatives/barriers.
3. Dramatically increase the profit importance of GrillMaster and Outdoor Cooking to Sunbeam and the trade.
4. Develop outdoor cooking business globally, focusing on countries with high disposable income and high meat consumption.

12/96 Consolidated Production
8/97 Shut down - to rationalize & create common parts

NOT A CERTIFIED COPY

- 50% margin dollars in grills over $300
- Added engine and made!

$MM	1997	1998	1999	2000
U.S. Sales	297	341	390	420
% Increase	23%	15%	14%	8%

10-15% margin
=> 20-75% margin

CP 022328
CONFIDENTIAL
16div-021579

CPH 1412563

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OTHER CHANNELS

Strategic Headlines

1. Away From Home

   - Bundle existing products to effectively grow lodging.
   - Expand beyond lodging into commercial food service.

2. Outlet Stores

   21 Stores (16W/5Can)

   - Continue to expand in "A" locations.
   - Continue to serve as more profitable alternative channel for excess inventory.

17 total of new product
5 Core Professional Upper.

$MM	1997	1998	1999	2000
U.S. Sales	65	111	135	150
% Increase	55%	71%	20%	15%

Retail 15

NOT A CERTIFIED COPY

CPH 1412564

CP 022329
CONFIDENTIAL
16dfv-021580

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam INTERNATIONAL

Strategic Headlines

1. Focus on high growth areas where we can leverage Sunbeam and Oster brand names, such as Latin America, Canada, Southeast Asia.

2. Tailor product bundles to the individual markets (i.e., pick and choose product lines in the rest of the world). Sell highly differentiated products Larger bundles

3. Continue to develop license and distributor arrangements (25 in 97) ↓ 50

4. Minimize capital investment.

5. Globalize core business successes (i.e., blenders, clippers and blankets).

Asia 35 15 ?

$MM	1997	1998	1999	2000
Int'l. Sales	240	360	529	734
% Increase	25%	50%	47%	39%

1) Distribution
2) Products

NOT A CERTIFIED COPY

CPH 1412565

CP 022330
CONFIDENTIAL
16div-021581

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam CHANGING COMPETITIVE DYNAMICS

NOT A CERTIFIED COPY

- Reinvestable Returns Differentiates the Winners from the Losers.
  - Market Leaders are those who will invest in the business (i.e., New Products, Advertising, Working Capital).
    - Philips
    - KitchenAid
    - Sunbeam
    - Braun
    - Krups
    - Hamilton Beach / Proctor Silex
  - Other Companies will not remain competitive
    - Rival
    - National Presto
    - Mr. Coffee
    - Health O'Meter
    - Black & Decker
    - West Bend
- Sunbeam Maintains a Unique Global Position
  - No global competitor
  - No competitor in more than one category in the U.S./Abroad
  - Two strong global brands

CP 022331
CONFIDENTIAL
16div-021582

CPH 1412566

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

- Int'l margin higher
- Better margin @ facilities in Mexico
- -22 consolidation
- -98 full year of '97 restructuring

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 331	$ 511	$ 640	$ 773
	28%	32%	32%	32%
Selling, General and Administrative Expenses	$ 131	$ 193	$ 240	$ 288
	11%	12%	12%	12%
Operating Profit	$ 200	$ 318	$ 400	$ 485
	17%	20%	20%	20%
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 190	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

97 1.10 vs 1.60 Toscu

Excludes $13mm loss on furniture business

12 5 10

TAX RATE: 35% allows use of NOL around world

$7mm benefit Relates tied to that

NOT A CERTIFIED COPY

CPH 1412567

CP 022332
CONFIDENTIAL
16div-021583

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED BALANCE SHEET

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Cash and Cash Equivalents	$ 52	$ 229	$ 396	$ 633
Receivables,Net	$ 296	$ 328	$ 400	$ 460
Inventories, Net	$ 256	$ 264	$ 309	$ 351
Other Current Assets	$ 54	$ 34	$ 39	$ 51
Total Current Assets	$ 658	$ 855	$ 1,144	$ 1,495
Property, Plant and Equipment, Net	$ 241	$ 274	$ 310	$ 355
Goodwill and Trademarks & Other	$ 221	$ 215	$ 208	$ 200
Total assets	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Current Liabilities	$ 198	$ 213	$ 252	$ 295
Long Term Debt	$ 195	$ 195	$ 195	$ 195
Other Long Term Liabilities	$ 195	$ 199	$ 221	$ 249
Shareholders Equity	$ 532	$ 737	$ 994	$ 1,311
Total Liabilities and Shareholders Equity	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Net Debt	$ 143	$ (34)	$ (201)	$ (438)

Flat b/c of absorption

Trans & Holdings

3%

Possible for ... ITC

015722

NOT A CERTIFIED COPY

CPH 1412568

16div-021584 GP-022333 CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam.

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED STATEMENT OF CASH FLOW

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Income, Continuing	$124	$199	$252	$308
Depreciation and amortization	$39	$54	$71	$83
Deferred Income Taxes	$58	$0	$5	$15
Change in Working Capital	($237)	($7)	($73)	($61)
Cash Flow from Operations	($16)	$246	$255	$345
Proceeds from Asset Sales	$91	$0	$0	$0
Capital Expenditures	($58)	($81)	($100)	($120)
Dividends	($3)	($3)	($3)	($3)
Proceeds from Exercised Options	$27	$15	$15	$15
Cash Flow before Debt Repayment	$41	$177	$167	$237
Net Debt	$143	($34)	($201)	($438)

5.6% of sales

NOT A CERTIFIED COPY

CPH 1412569

CP 022334
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES - NET SALES GROWTH ANALYSIS

97 New Products : Good orders w/ bad placement last throws

		Long Range Strategic Plan		
		1998	1999	2000
Base Net Sales	220 Volt Coffee Note Blender is 9	$ 1,168	$ 1,600	$ 2,000
Domestic				
# New Products	89	30		
Air/Wake 100 New Products	190	227	165	145
New and Existing Channels	Home Depot Costco	−65	51	30
Price (97 3% Worldwide)		20	15	20
Total Domestic		312	231	195
International				
New Products		50	70	80
New Geography and Franchise Growth		70	99	125
Total International		120	169	205
Net Sales Plan		$ 1,600	2,000	$2,400

015724

NOT A CERTIFIED COPY

CPH 1412570

CP 022335
16dis00021586
CONFIDENTIAL

NOT A CERTIFIED COPY

015725

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO THE ATTORNEY WORK PRODUCT
AND ATTORNEY-CLIENT PRIVILEGES

MEMORANDUM

April 30, 1999

TO: Steven Isko

FROM: Rita Gordon

Re: Sunbeam Chronology

Attached, at the request of Allison Amorison, are copies of the Chronology, Schedules and cover letters which were submitted in April and May, 1998 on behalf of Sunbeam in response to insider trading inquiries from the SEC and the New York Stock Exchange. Please call if I can be of further assistance.

Attachments

NOT A CERTIFIED COPY

DEFENDANT'S EXHIBIT
CPH 316
11-23-04 LS

MORGAN STANLEY
CONFIDENTIAL
0027051

015726

STATEMENT OF CONFIDENTIALITY PURSUANT TO THE FREEDOM OF INFORMATION ACT

Pursuant to Rule 83 of the Commission's Rules on Information and Requests, 17 C.F.R. § 200.83, Sunbeam Corporation requests that the document submitted herewith be treated as confidential, that such document not be disclosed to any person pursuant to the Freedom of Information Act ("FOIA") or otherwise, and that, with respect to any request for disclosure under the FOIA or otherwise, no disclosure should be made without prior notice to Douglas M. Kraus, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022 and David C. Fannin, Esq., Executive Vice President, Chief Legal Officer and Secretary, Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 (561) 243-2100.

NOT A CERTIFIED COPY

015727

MORGAN STANLEY
CONFIDENTIAL
0027052

16div-021589

CHRONOLOGY

March-April, 1997	In or about late March or early April, 1997, senior management of Sunbeam Corporation ("Sunbeam") initially began to consider a possible sale of Sunbeam or the initiation of one or more major acquisitions.
April 22, 1997	Albert J. Dunlap, Chairman of the Board and Chief Executive Officer of Sunbeam, and Russell A. Kersh, Sunbeam's Chief Financial Officer, met at Sunbeam's headquarters in Delray Beach, Florida with Bruce Fiedorek, William H. Strong, James B. Stynes and Robert W. Kitts, Managing Directors of Morgan Stanley & Co., Incorporated ("Morgan Stanley"), to discuss the retention of Morgan Stanley as financial advisor to Sunbeam in connection with a possible sale of Sunbeam or a possible acquisition by Sunbeam of one or more other companies. The Coleman Company, Inc. ("Coleman") was identified as one of many companies that might be a potential buyer of Sunbeam or a potential acquisition candidate for Sunbeam.
April-September, 1997	During this period, Sunbeam, with the assistance of Morgan Stanley, reviewed and considered a variety of strategies. Various companies were identified as potential buyers of Sunbeam or potential acquisition candidates.

NOT A CERTIFIED COPY

0157728

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027053

16div-021590

September 11, 1997	Morgan Stanley was formally retained by Sunbeam as financial advisor in connection with "the proposed sale or merger of Sunbeam to or with another corporation and/or the possible acquisition of one or more entities." (See Schedule A for a list of Morgan Stanley personnel who worked on this matter).
November 6, 1997	Morgan Stanley representatives Kitts, Managing Director William Reid and Vice President Alexandre J. Fuchs met with James Maher of MacAndrews & Forbes ("Mafco"), the majority owner of Coleman, at Mafco headquarters in New York City to discuss possible opportunities for Mafco. Sunbeam understands that, from time to time, Morgan Stanley advises Mafco on a variety of business and financial matters and among the potential transactions identified by Messrs. Reid and Fuchs was the possible acquisition of Sunbeam by Mafco.
December 11, 1997	Sunbeam representatives Kersh and David C. Fannin, Executive Vice President, Chief Legal Officer and Secretary, met with Messrs. Stynes, Kitts and Fuchs of Morgan Stanley at the Palace Hotel in New York City to discuss a possible business combination of Coleman and Sunbeam. The meeting included a background presentation on Coleman and a preliminary financial analysis by Morgan Stanley.
December 12, 1997	Messrs. Kersh and Fannin of Sunbeam and Peter Langerman, a director of

NOT A CERTIFIED COPY

REDACTED

015729 REDACTED

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY
CONFIDENTIAL
0027054

	Sunbeam and Senior Vice President and Chief Operating Officer of Franklin Mutual Advisors Incorporated ("Franklin"), Sunbeam's largest shareholder, met with Coleman's Chairman and Chief Executive Officer, Jerry W. Levin, Coleman's Executive Vice President and Chief Financial Officer, Joseph P. Page, and Coleman's Executive Vice President and General Counsel, Paul E. Shapiro, to discuss Coleman's business and potential synergies that could result from a business combination of Sunbeam and Coleman.
December 15, 1997	Sunbeam contacted Blaine V. Fogg, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") regarding legal advice concerning a possible transaction with Coleman. (See Schedule B for a list of Skadden personnel who worked on this matter).
December 16, 1997	Messrs. Kersh and Fannin of Sunbeam conferred by telephone with Mr. Fogg, Richard L. Easton, Esq. and Allison L. Amorison, Esq. of Skadden for advice concerning a possible acquisition of Coleman.
December 18, 1997	Mr. Dunlap and Michael Price, President and Chief Executive Officer of Franklin, met with Coleman director and Mafco's Chairman, Chief Executive Officer and controlling stockholder, Ronald O. Perelman, in Florida, as well as with Mr. Howard Gittis, another Mafco executive. Mr. Dunlap indicated Sunbeam's interest in a possible transaction in which Sunbeam

REDACTED

REDACTED 015730

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY
CONFIDENTIAL
0027055

	would purchase Coleman in a transaction valued in a range of $18 to $22 per share of Coleman stock. Mr. Perelman indicated that such a price range was too low and stated that he would not be prepared to support a potential transaction at such a price.
January 21 or 22, 1998	After consultation with Messrs. Kersh and Fannin, in an effort to revive a possible transaction, a Morgan Stanley representative contacted Mr. Perelman and indicated that Sunbeam would consider a possible transaction involving both cash and shares of Sunbeam stock at a price higher than the prices discussed at the December 18 meeting with Mr. Dunlap. Mr. Perelman indicated his willingness to discuss such a potential transaction.
January 23, 1998	William Nesbitt of Mafco met with Morgan Stanley representatives Stynes, Gene K. Yoo, Associate, and Tyrone Chang, Analyst, at Mafco headquarters in New York City, to renew talks concerning a possible transaction with Coleman.
January 29, 1998	Messrs. Kersh and Fannin of Sunbeam and Messrs. Stynes, Fuchs and Chang of Morgan Stanley met with Coleman representatives Levin and Page, Mafco representatives Maher and Nesbitt and Gordon Rich of Credit Suisse First Boston ("CSFB"), Coleman's financial advisor, to discuss the potential synergies that might be associated with a business combination of Sunbeam and

REDACTED REDACTED REDACTED REDACTED 015731

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027056

	Coleman and to discuss a preliminary schedule for mutual due diligence.
Week of February 2, 1998	During this week, Morgan Stanley submitted to Mafco an outline of a proposed transaction structure which focused on Sunbeam's acquisition of Coleman.
February 3, 1998	Messrs. Kersh and Fannin of Sunbeam met with Phil Harlow of Arthur Andersen LLP, Sunbeam's auditors, at Sunbeam's headquarters in Delray Beach, Florida to discuss the financial impact on Sunbeam of a potential acquisition of Coleman.
February 4, 1998	Sunbeam and Coleman entered into a Confidentiality Agreement.
February 6, 1998	Messrs. Stynes, Kitts, Fuchs and Chang of Morgan Stanley met with Messrs. Maher and Nesbitt of Mafco and Mr. Rich and Robert Duffy of CSFB at Mafco headquarters in New York City to discuss a possible acquisition of Coleman by Sunbeam, including a possible acquisition by Sunbeam of CLN Holdings Inc., the Mafco affiliate that indirectly owned Coleman stock. Substantial differences in price and valuation remained.
February 9, 1998	Mr. Kitts of Morgan Stanley contacted Anthony DiNovi, Managing Director of the Thomas H. Lee Co. of Boston, Mass. (the "THL Co."), who was also a Board member of First Alert, Inc. ("First Alert"), to express Sunbeam's interest

REDACTED

REDACTED

015732

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027057

	in the acquisition of First Alert and Signature Brands USA, Inc. ("Signature"), both of which were controlled by THL Co. Sunbeam viewed such transactions as either alternatives to a Coleman transaction or possible "add ons" to a Coleman transaction.
February 10, 1998	Messrs. Kersh and Fannin of Sunbeam, Messrs. Fogg and William J. Weiss, Esq. of Skadden and Messrs. Stynes, Kitts, Fuchs and Webber of Morgan Stanley met at Morgan Stanley headquarters in New York City to discuss legal, structural and tax issues in connection with a potential Coleman transaction, as well as the possible acquisition by Sunbeam of First Alert and Signature.
February 11, 1998	Messrs. Kersh and Fannin of Sunbeam, Messrs. Stynes, Kitts and Josh Webber, Associate, of Morgan Stanley, met with Mr. DiNovi and Scott Schoen, Managing Director of THL Co., at THL Co. headquarters in Boston to discuss Sunbeam's interest in a possible acquisition of First Alert and Signature.
February 12, 1998	After the announcement by First Alert of an adverse jury verdict awarding $16.9 million in a product liability case, Mr. DiNovi of THL Co. contacted Mr. Kitts of Morgan Stanley to explain the jury verdict and confirm Sunbeam's interest in light of the verdict.
February 13, 1998	Messrs. Stynes, Kitts and Fuchs of Morgan Stanley participated in a conference call to discuss the terms of a

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

REDACTED 733

MORGAN STANLEY CONFIDENTIAL 0027058

REDACTED

	transaction with Coleman, including the structure and price with Mafco representative Maher.
February 16, 1998	Sunbeam and First Alert, Inc. entered into a Confidentiality Agreement.
February 17, 1998	Sunbeam contacted its insurance brokers, Sedgewick of Florida, Inc. ("Sedgewick of Florida"), regarding the performance of insurance due diligence in connection with First Alert's adverse jury verdict. (See Schedule C for a list of Sedgewick of Florida personnel who worked on this matter).
	Mr. Fannin of Sunbeam, Barbara Wrubel, Esq. of Skadden, Messrs. Stynes and Kitts of Morgan Stanley and Peter Cook of Sedgewick of Florida participated in a conference call with Mr. DiNovi and B. Joseph Messner, President and Chief Executive Officer of First Alert, concerning First Alert's adverse jury verdict.
	Mr. Kitts of Morgan Stanley contacted the directors of Signature affiliated with THL Co. concerning due diligence.
	Sunbeam and Signature entered into a Confidentiality Agreement.
February 18, 1998	Mr. Fannin of Sunbeam conferred by telephone with Skadden attorneys Easton and Amorison concerning product liability issues and related transaction structuring issues in connection with the possible acquisition of First Alert.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
FOIA REQUESTED

0157314

MORGAN STANLEY
CONFIDENTIAL
0027059

16div-021596

Sunbeam representatives met with First Alert's insurance advisors to discuss First Alert's cost and ability to obtain insurance with respect to the subject matter of the jury verdict.

February 19, 1998

Messrs. Kersh and Fannin of Sunbeam and Messrs. Kitts, Fuchs, Webber and Chang of Morgan Stanley participated in a conference call with Mafco representative Maher to discuss price and structural details of the Coleman transaction.

Messrs. Kersh and Fannin of Sunbeam and Mr. Kitts of Morgan Stanley met with Mr. Messner of First Alert at Morgan Stanley headquarters in New York for information gathering and negotiation of a possible transaction with First Alert.

February 20, 1998

Representatives of Skadden began drafting definitive acquisition agreements for the Coleman transaction reflecting terms of the potential transaction discussed by representatives of Mafco and Sunbeam.

Mr. Kitts of Morgan Stanley contacted Mr. DiNovi of First Alert to discuss in greater detail Sunbeam's interest in acquiring First Alert.

Robert J. Gluck, Vice President and Controller of Sunbeam, telephoned Mr. Harlow and Larry Bornstein of Arthur Andersen LLP ("Arthur Andersen") regarding the performance of financial due diligence in connection with the

REDACTED

REDACTED

015735

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027060

proposed acquisitions of Coleman, First Alert and Signature and to discuss a financial due diligence schedule. (See Schedule D for a list of Arthur Andersen personnel who worked on this matter).

Sunbeam contacted Joseph R. Brendel, Esq. and Michael J. Kline, Esq. of Thorp Reed & Armstrong, Sunbeam's counsel for intellectual property and environmental issues, regarding intellectual property and environmental due diligence in connection with the Coleman transaction. (See Schedule E for a list of Thorp Reed & Armstrong personnel who worked on this matter).

Mr. Kersh of Sunbeam and Messrs. Stynes and Kitts of Morgan Stanley met with Meeta Vyas, Chief Executive Officer and Vice Chairman of the Board of Directors of Signature, Louis P. Friedman, Managing Director, and Robert Mann, Vice President, of Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), Signature's financial advisor, at DLJ headquarters in New York City to perform due diligence, gather information and engage in negotiations in connection with Sunbeam's acquisition of Signature.

February 21, 1998

Mr. Kersh telephoned Andrew Molenaar, a partner at Coopers & Lybrand LLP ("Coopers & Lybrand"), Sunbeams's management consulting firm, regarding the performance of operational due diligence at plant facilities of Coleman,

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

015736

MORGAN STANLEY CONFIDENTIAL 0027061

16div-021598

	First Alert and Signature. Mr. Molenaar, Jong Lee, Manager, and Keith Polak, Senior Associate, of Coopers & Lybrand participated in a conference call with Messrs. Levin and Page of Coleman to discuss Coleman's business. (See Schedule F for a list of Coopers & Lybrand personnel who worked on this matter).
February 22, 1998	Conrad Bringsjord, Managing Director of Salomon Smith Barney, one of First Alert's financial advisors, met with Morgan Stanley representatives Kitts and Stynes to discuss Sunbeam's proposal to acquire all equity securities of First Alert at a price of $4.50 per share, payable one-half in cash and one-half in equity securities of Sunbeam.
February 23-24, 1998	Mr. Fannin, Richard Goudis, Sunbeam's Vice President of Investor Relations and Corporate Planning, Messrs. Stynes, Fuchs, Webber and Chang of Morgan Stanley and representatives of Arthur Andersen and Coopers & Lybrand met with Messrs. Levin and Page of Coleman, Mr. Nesbitt of Mafco and Messrs. Rich, Duffy and Steven Geller of CSFB at Mafco Headquarters in New York City to conduct due diligence and to arrange facility visits.
	Janet Kelley, Sunbeam's Vice President, General Counsel and Assistant Secretary, met with Mr. Shapiro and Steven R. Isko, Vice President-Legal, both of the Coleman legal group, to conduct due diligence.

NOT A CERTIFIED COPY

REDACTED REDACTED 015737

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027062

16div-021599

Due diligence meetings were also held at Morgan Stanley's offices in New York and Mafco's headquarters during which Messrs. Kersh, Fannin and Goudis met with Messrs. Levin, Page, Shapiro, Maher and Nesbitt, along with representatives of CSFB, to discuss Sunbeam's long term strategic plan and financial projections for fiscal years 1998 through 2000.

Mr. Brendel of Thorp Reed & Armstrong, met with Lorelie Borland, Esq. of Mafco at Mafco's offices at 625 Madison Avenue in New York City to review environmental issues in connection with the Coleman transaction. In the course of the Coleman due diligence, Mr. Brendel learned of the First Alert and Signature acquisitions and agreed to conduct environmental due diligence with regard to First Alert and Signature. Mr. Kline of Thorp Reed & Armstrong met with Steve Fasman, Esq. of Mafco to review intellectual property issues in connection with the Coleman transaction.

Mr. Gluck of Sunbeam and Messrs. Harlow and Bornstein of Arthur Andersen reviewed the 1996-97 audit work papers for Coleman at the offices of Coleman's auditors, Ernst & Young LLP, in Kansas City.

February 24, 1998

Messrs. Kersh and Fannin, along with representatives from Morgan Stanley, held conference calls with Mr. Maher to finalize the structure and negoti-

REDACTED

REDACTED

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027063

16div-021600

REDACTED

ate the remaining terms of the transaction with Coleman.

Mr. Molenaar, Dick Oishi and Dave Winston, Managers of Coopers & Lybrand, performed operational due diligence at Coleman's facility in Wichita.

Mr. Messner and First Alert's financial and legal advisors visited Sunbeam to conduct due diligence regarding the fairness of a potential transaction between Sunbeam and First Alert and to continue discussions concerning Sunbeam's proposal for the acquisition of First Alert. Sunbeam modified its offer for First Alert to $5.00 per share, one-half payable in cash and one-half payable in equity securities of Sunbeam. First Alert's financial advisors indicated that First Alert would consider an all-cash offer at a higher price.

Sunbeam contacted its public relations firm, Hill & Knowlton, Inc. ("Hill & Knowlton"), regarding a special engagement in connection with the acquisitions. (See Schedule G for a list of Hill & Knowlton personnel who worked on this matter).

February 25, 1998

Sunbeam representatives Fannin, Fogg, Easton, Weiss and Amorison met with Messrs. Shapiro and Isko of Coleman, Adam O. Emmerich, Esq. and Steven A. Cohen, Esq., Coleman's legal advisors from Wachtell, Lipton, Rosen & Katz ("Wachtell"), at the New York offices

REDACTED 739

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027064

16div-021601

of Skadden to review the status of the transactions, address organizational, legal, logistical and other issues and negotiate the final structure of the Coleman transaction.

First Alert's Board of Directors met to discuss the Sunbeam proposal. Mr. Goudis met in the morning with Mr. Messner of First Alert in Aurora, Illinois to conduct due diligence.

Mr. Oishi and Eric Mauch, Senior Associate of Coopers & Lybrand, performed operational due diligence at First Alert's facility in Chicago.

Janet Kelley of Sunbeam and Messrs. Brendel and Kline of Thorp Reed & Armstrong met in the morning in Cleveland with Steven Billick, Chief Financial Officer of Signature, and Rem Bellzinskas, Signature's Controller, and outside counsel for Signature to review environmental and intellectual property documents.

Mr. Goudis and Ms. Kelley of Sunbeam met in the afternoon in Cleveland, Ohio with Steven Billick, Chief Financial Officer of Signature, as well as Signature's internal and outside counsel, to conduct business, legal and tax due diligence.

Mr. Gluck of Sunbeam and Mr. Bornstein of Arthur Andersen conducted due diligence review on financial information, books and records and audit work papers at the offices of Signature's

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
FOIA REQUESTED

MORGAN STANLEY
CONFIDENTIAL
0027065

0157140

auditors, KPMG Peat Marwick L.L.P. ("KPMG Peat Marwick") in Cleveland.

February 25-27, 1998 — Representatives from Morgan Stanley visited First Alert's facilities and engaged in discussions concerning possible synergies between Sunbeam and First Alert and the terms of the transaction. Legal, accounting and business due diligence was performed by Sunbeam representatives.

February 26, 1998 — Messrs. Kersh and Fannin of Sunbeam and Messrs. Stynes, Kitts and Webber of Morgan Stanley participated in a conference call with Mr. Maher of Mafco and representatives from Wachtell at Morgan Stanley headquarters in New York to review the status of the Coleman transaction and address organizational, legal, logistical and other issues. A final structure for the transaction was agreed upon.

Mr. Easton and Ms. Amorison of Skadden met with Messrs. Shapiro and Isko of Coleman, Mr. Nesbitt of Mafco and Messrs. Emmerich and Cohen of Wachtell at the offices of Wachtell to review the merger agreements and discuss outstanding issues in connection with the Coleman transaction.

Janet Kelley of Sunbeam and Messrs. Brendel and Kline of Thorp Reed & Armstrong met in Aurora, Illinois with Mr. Messner of First Alert and First Alert's general counsel, Haldon Grant, to conduct general legal, environmen-

REDACTED REDACTED

015741

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027066

tal and intellectual property due diligence

Mr. Gluck of Sunbeam and Messrs. Harlow and Bornstein of Arthur Andersen reviewed First Alert's audit work papers at the offices of First Alert's auditors, Price Waterhouse LLP ("Price Waterhouse"), in Chicago.

Sunbeam's financial advisors continued discussions with First Alert's financial advisors regarding the terms of the transaction, including the price payable to shareholders. Sunbeam modified its proposal to an all cash tender offer at a price of $5.00 per share.

Messrs. Molenaar and Tom Nicholas, Senior Associate of Coopers & Lybrand, met with Ms. Vyas to conduct due diligence and tour Signature's production facilities in Glenwillow, Ohio.

February 27, 1998

Late at night on February 26th and early in the morning on February 27th, Mr. Fogg and Mark T. Shehan, Esq. of Skadden and Messrs. Stynes, Kitts and Fuchs of Morgan Stanley negotiated by telephone with Signature's lawyers and Mr. Friedman of DLJ and presented an offer for Sunbeam's acquisition of Signature with a price of $8.00 per share in cash.

In the afternoon of February 27th, the Board of Directors of Sunbeam, Morgan Stanley representatives Stynes, Fuchs, Kitts, Strong, Webber, Chang, Yoo, Bram Smith, Managing Director, Ruth

NOT A CERTIFIED COPY

REDACTED 0157142

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027067

16div-021604

Porat, Managing Director, Michael Hart, Principal, John Tyree, Associate, and Lily Rafi, Analyst, Messrs. Fogg and Easton of Skadden and Mr. Pannin and Ms. Kelley of Sunbeam met at Morgan Stanley headquarters in New York to consider the Coleman transaction, pursuant to which each outstanding share of Coleman common stock would be converted into the right to receive 0.5677 of a share of Sunbeam common stock and $6.44 in cash. The Board unanimously approved the Coleman transaction.

The Board of Directors of Sunbeam also unanimously approved a negotiating range and authorized certain officers of Sunbeam to proceed with negotiations related to the proposed acquisitions of First Alert and Signature and to enter into a definitive agreement if satisfactory terms could be reached. Late in the evening, Sunbeam proposed to purchase, in a tender offer, all outstanding shares of First Alert at a price of $5.25 per share, net to the seller in cash.

Skadden attorneys Easton, Amorison, Weiss and Steven Daniels, Esq. met with Wachtell attorneys Emmerich, Cohen, Frank L. Miller, Esq., Michael S. Katzke, Esq. and Deborah L. Paul, Esq. and Messrs. Isko and Shapiro of Coleman at the offices of Wachtell to finalize the definitive merger agreements.

REDACTED

NOT A CERTIFIED COPY

015743

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY
CONFIDENTIAL
0027068

Messrs. Fannin, Kersh, Gluck and Ms. Kelley met with Messrs. Harlow and Bornstein of Arthur Andersen at the Palace Hotel in New York to discuss the recent due diligence performed on Coleman, First Alert and Signature.

Messrs. Molenaar and Nicholas of Coopers & Lybrand toured Signature's production facilities in Bridgeview, Illinois.

February 28, 1998

Late at night on February 27th and early in the morning on February 28th, Messrs. Fogg and Shehan of Skadden and Messrs. Stynes, Kitts and Fuchs negotiated by telephone with Signature's lawyers and Mr. Friedman of DLJ and presented an offer for Sunbeam's acquisition of Signature to the representatives of DLJ with a price of $8.25 per share in cash.

Messrs. Dunlap, Kersh and Fannin of Sunbeam and Messrs. Kitts and Stynes of Morgan Stanley participated in conference calls with First Alert and Signature to finalize the terms of the transactions.

The Board of Directors of First Alert and Signature approved the transactions with Sunbeam. Definitive agreement between Sunbeam and First Alert and Sunbeam and Signature were executed.

February 28 - March 1, 1998

Messrs. Dunlap, Kersh, Fannin and Goudis of Sunbeam, Messrs. Kitts,

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027069

015744

	Fuchs and Porat of Morgan Stanley met with Mauri Hope of Hill & Knowlton to discuss the public relations aspects of the transactions.
March 1, 1998	Representatives of Sunbeam, Messrs. Kitts, Fuchs and Stynes of Morgan Stanley and Ms. Hope of Hill & Knowlton participated in a conference call with Steve Lipin of the Wall Street Journal to advise him of the impending announcement of the transactions.
March 2, 1998	Announcement of the transactions prior to the opening of trading on the New York Stock Exchange.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027070

015715

CONFIDENTIAL TREATMENT UNDER
FOIA REQUESTED

16div-021607

The information on this schedule has been supplied by Morgan Stanley & Co., Incorporated. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE A

Personnel from Morgan Stanley & Co., Incorporated, 1585 Broadway, New York, New York 10036, (212) 761-4000, who worked on the Sunbeam project were:

Bruce D. Fiedorek, Managing Director, Firm Management (New York)
William H. Strong, Managing Director (Chicago Branch)
Robert W. Kitts, Managing Director, Mergers & Acquisitions (New York)
Ruth Porat, Managing Director, Mergers & Acquisitions (New York)
William Reid, Managing Director, Mergers & Acquisitions (New York)
Bram Smith, Managing Director, Mergers & Acquisitions (New York)
James B. Stynes, Managing Director, Mergers & Acquisitions (New York)
Alexandre J. Fuchs, Vice President, Mergers & Acquisitions (New York)
Michael Hart, Principal
John Tyree, Associate, Mergers & Acquisitions (New York)
Josh Webber, Associate, Mergers & Acquisitions (New York)
Gene K. Yoo, Associate, Mergers & Acquisitions (New York)
Tyrone Chang, Analyst, Mergers & Acquisitions (New York)
Lily Rafi, Analyst, Mergers & Acquisitions (New York)

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027071

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021608

The information on this schedule has been supplied by Skadden, Arps, Slate, Meagher & Flom LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE B

Personnel from Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, (212) 735-3000, who worked on the Sunbeam project were:

Partners	Of Counsel	Counsel	Associates
Clifford H. Aronson	James A. Levitan	Wendy Fleishman	Allison L. Amorison
Richard L. Easton		Joseph P. Nisa	Angela I Daniel
Blaine V. Fogg			Steven J. Daniels
Mitchell J. Solomon			Matthew M. Greenberg
Barbara Wrubel			Alexander B. Johnson
			Nancy H. Johnson
			Deborah J. Komins
			Patrick J. Morgan
			Timothy P. Nelson
			Regina Olshan
			Mark E. Rakoczy
			Mark T. Shehan
			James A. Stotlzfus
			Clem G. Turner
			Romina Weiss
			William J. Weiss

Legal Assistants		Support Staff	
Cat Bistransin	Carol A. Albano	Marlene Flom	Sandra J. Roach
Buzz Bovshow	Rudolph E. Ariza	Todd William Genger	Jennifer Roberts
Robert A. Davies	Philip A. Ashby	Josephine Giambalvo	Florence Samuelson
Jennifer Hessmer	Kim Baker	Kathryn Graybill	Quetcy Santiago
Nicholas F. Matranga	Katherine J. Balazs	Elizabeth C. Guthrie	Linda Schager
Metthew J. Plante	Camilla K. Beattie	Helen Harris	Gregory J.Simon
Todd Ross	Paul Bogdanovic	Laura L. Hauck	Lorna Smith-Grant
Martha I. Rosas	Brenda Boykin	Beryl Heaton	Maureen Todman
Laura M. Sheridan	Lynn T. Buckley	Patricia Jones	
Janet W. Slater	Carole Casey	Helen B. Kaplan	
	Jill G. Cornell	Mary E. Keough	
	Joanne D'Angelo	Leslie C. Leach	
	Linda Davis	Ann Link	
	Serafina Distefano	Robert C. Loehr	
	Carol Donnelly	G. Bradford Newman	
	Rosalie Engelman	Karl J. Peterson	
	Margaret Flocco	Cristina Poggioli	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027072

0157

The Information on this schedule has been supplied by Sedgewick of Florida, Inc. Sunbeam makes no representation as to its

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021609

accuracy or completeness.

SCHEDULE C

Personnel from Sedgewick of Florida, Inc., 1 Financial Plaza, Suite 2400, Ft. Lauderdale, Florida 33394, (954)764-7700, who worked on the Sunbeam project were:

Peter Cook - Account Manager
Thomas Patrick - Account Director

NOT A CERTIFIED COPY

0157148

MORGAN STANLEY
CONFIDENTIAL
0027073

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021610

The information on this schedule has been supplied to us by Arthur Andersen LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE D

Personnel from Arthur Andersen LLP, 100 N.E. 3rd Avenue, Suite 700, Fort Lauderdale, Florida 33301, (954) 523-4433) and 777 South Flagler Drive, Phillips Point, Suite 1700, West Tower, West Palm Beach, Florida 33401 (561) 832-8100, and One Biscayne Towers, Suite 2100, Miami, Florida 33131, (305) 374-3700, who worked on the Sunbeam project were:

Phil Harlow, Partner (Fort Lauderdale)
Sandra Prisco, Executive Assistant to Phil Harlow
Larry Bornstein, Senior Audit Manager (West Palm Beach)
Rosemary Alberto, Executive Assistant to Larry Bornstein
Dennis Pastrana, Senior Accountant (Miami)

NOT A CERTIFIED COPY

015749

MORGAN STANLEY
CONFIDENTIAL
0027074

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021611

The information on this schedule has been supplied to us by Thorp Reed & Armstrong. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE E

Personnel from Thorp Reed & Armstrong, One Riverfront Center, Pittsburgh, Pennsylvania 15222-4895, (412) 394-7711, who worked on the Sunbeam project were:

Partners	Of Counsel	Associates
Joseph R. Brendel Edward B. Harmon Michael J. Kline	Peter G. Veeder	Ronald C. Gahagan, Jr. James M. Ginocchi

Support Staff	Librarian
Roberta S. McLaughlin	Donna Kieler

NOT A CERTIFIED COPY

015750

MORGAN STANLEY
CONFIDENTIAL
0027075

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021612

The information on this schedule has been supplied by Coopers & Lybrand LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE F

Personnel from Coopers & Lybrand LLP, 1301 Avenue of the Americas, New York, New York 10019-6013, (212) 259-1000, who worked on the Sunbeam project were:

Donald Burnett, Partner (New York)
Andrew Molenaar, Partner (New York)
Jong Lee, Manager (New York)
Dick Oishi, Manager (Chicago)
Dave Winston, Manager (Chicago)
Keith Polak, Senior Associate (New York)
Eric Mauch, Senior Associate (Chicago)
Tom Nicholas, Senior Associate (Chicago)

NOT A CERTIFIED COPY

015751

MORGAN STANLEY
CONFIDENTIAL
0027076

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021613

The information on this schedule has been supplied by Hill & Knowlton, Inc. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE G

Personnel from Hill & Knowlton, Inc., 466 Lexington Avenue, New York, New York 10017, (212) 885-0300, who worked on the Sunbeam project were:

Ed Belak
Kim Brooks
Pat Carle
A.J. Desjardins
Madeline Hardardt
Mari Hope
Christopher Markham
Pamela Ritchie
Michael Sheinfield
Carla Sylvester
Harlan Teller
Jane-Linn Vincent

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027077

0015752

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021614

The information on this schedule has been supplied by Sunbeam Corporation.

SCHEDULE H

Personnel from Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445, (561) 243-2100, who were not referred to in the above Chronology to which this schedule is attached, but who worked on the Sunbeam project, were:

Steve Dalberth - Director, Treasury Operations
Marta Deak - Human Resources Generalist
Steve Groh - Manager-Financial Planning and Analysis
Silvia Inman - Administrative Assistant
James Llewellyn - Director of Compensation and Benefits
Dee Valek - Administrative Assistant
Sean Thornton - Director-Corporate Security
Deborah MacDonald - Director, Worldwide Planning & Strategy
Gary Mask -Vice President-Human Resources
Shelley Meronchuk- Administrative Assistant
Dale Tabinowski - Director, Field Human Resources
George Timchal - Vice President, Procurement
Bob Totte - Vice President,Taxes
Don Uzzi - Left firm-was Executive Vice President, Consumer Products, Worldwide

NOT A CERTIFIED COPY

0157753

MORGAN STANLEY
CONFIDENTIAL
0027078

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021615

The information on this schedule has been supplied by Morgan Stanley & Co., Incorporated. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE A

Personnel from Morgan Stanley & Co., Incorporated, 1585 Broadway, New York, New York 10036, (212) 761-4000, who worked on the Sunbeam project were:

Bruce D. Fiedorek, Managing Director, Firm Management (New York)
William H. Strong, Managing Director (Chicago Branch)
Robert W. Kitts, Managing Director, Mergers & Acquisitions (New York)
Ruth Porat, Managing Director, Mergers & Acquisitions (New York)
William Reid, Managing Director, Mergers & Acquisitions (New York)
Bram Smith, Managing Director, Mergers & Acquisitions (New York)
James B. Stynes, Managing Director, Mergers & Acquisitions (New York)
Alexandre J. Fuchs, Vice President, Mergers & Acquisitions (New York)
Michael Hart, Principal
John Tyree, Associate, Mergers & Acquisitions (New York)
Josh Webber, Associate, Mergers & Acquisitions (New York)
Gene K. Yoo, Associate, Mergers & Acquisitions (New York)

NOT A CERTIFIED COPY

0157514

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY CONFIDENTIAL 0027079

16div-021616

Tyrone Chang, Analyst, Mergers & Acquisitions (New York)
Lily Rafi, Analyst, Mergers & Acquisitions (New York)

NOT A CERTIFIED COPY

015755

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

MORGAN STANLEY
CONFIDENTIAL
0027080

16div-021617

The information on this schedule has been supplied by Skadden, Arps, Slate, Meagher & Flom LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE B

Personnel from Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, (212) 735-3000, who worked on the Sunbeam project were:

Partners	Of Counsel	Counsel	Associates
Clifford H. Aronson	James A. Levitan	Wendy Fleishman	Allison L. Amorison
Richard L. Easton		Joseph P. Nisa	Angela I Daniel
Blaine V. Fogg			Steven J. Daniels
Mitchell J. Solomon			Matthew M. Greenberg
Barbara Wrubel			Alexander B. Johnson
			Nancy H. Johnson
			Deborah J. Komins
			Patrick J. Morgan
			Timothy F. Nelson
			Regina Olshan
			Mark E. Rakoczy
			Mark T. Shehan
			James A. Stotlzfus
			Clem G. Turner
			Romina Weiss
			William J. Weiss

Legal Assistants	Support Staff	
Cat Bistransin	Rudolph E. Ariza	Helen B. Kaplan
Buzz Bovshow	Philip A. Ashby	Mary E. Keough
Roberta W. Davies	Katherine J. Balaza	Leslie C. Leach
Jennifer Hessmer	Camilla K. Beattie	Ann Link
Nicholas F. Matranga	Paul Bogdanovic	Robert C. Loehr
Matthew J. Plante	Lynn T. Buckley	G. Bradford Newman
Todd Ross	Jill G. Cornell	Karl J. Peterson
Martha I. Rosas	Todd William Genger	Cristina Poggioli
Laura M. Sheridan	Kathryn Graybill	Gregory J. Simon
Janet W. Slater	Elizabeth C. Guthrie	
	Laura L. Hauck	
	Beryl Heaton	

NOT A CERTIFIED COPY

0157756

MORGAN STANLEY
CONFIDENTIAL
0027081

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021618

The information on this schedule has been supplied by Sedgewick of Florida, Inc. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE C

Personnel from Sedgewick of Florida, Inc., 1 Financial Plaza, Suite 2400, Ft. Lauderdale, Florida 33394, (954)764-7700, who worked on the Sunbeam project were:

Peter Cook - Account Manager
Thomas Patrick - Account Director

NOT A CERTIFIED COPY

0157557

MORGAN STANLEY
CONFIDENTIAL
0027082

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021619

The information on this schedule has been supplied to us by Arthur Andersen LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE D

Personnel from Arthur Andersen LLP, 100 N.E. 3rd Avenue, Suite 700, Fort Lauderdale, Florida 33301, (954) 523-4433) and 777 South Flagler Drive, Phillips Point, Suite 1700, West Tower, West Palm Beach, Florida 33401 (561) 832-8100, and One Biscayne Towers, Suite 2100, Miami, Florida 33131, (305) 374-3700, who worked on the Sunbeam project were:

Phil Harlow, Partner (Fort Lauderdale)
Sandra Prisco, Executive Assistant to Phil Harlow
Larry Bornstein, Senior Audit Manager (West Palm Beach)
Rosemary Alberto, Executive Assistant to Larry Bornstein
Dennis Pastrana, Senior Accountant (Miami)

NOT A CERTIFIED COPY

015758

MORGAN STANLEY
CONFIDENTIAL
0027083

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021620

The information on this schedule has been supplied to us by Thorp Reed & Armstrong. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE E

Personnel from Thorp Reed & Armstrong, One Riverfront Center, Pittsburgh, Pennsylvania 15222-4895, (412) 394-7711, who worked on the Sunbeam project were:

Partners	Of Counsel	Associates
Joseph R. Brendel Edward B. Harmon Michael J. Kline	Peter G. Veeder	Ronald C. Gahagan, Jr. James M. Ginocchi

Support Staff

Roberta S. McLaughlin

NOT A CERTIFIED COPY

015759

MORGAN STANLEY
CONFIDENTIAL
0027084

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021621

The information on this schedule has been supplied by Coopers & Lybrand LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE F

Personnel from Coopers & Lybrand LLP, 1301 Avenue of the Americas, New York, New York 10019-6013, (212) 259-1000, who worked on the Sunbeam project were:

Andrew Molenaar, Partner (New York)
Jong Lee, Manager (New York)
Dick Oishi, Manager (Chicago)
Dave Winston, Manager (Chicago)
Keith Polak, Senior Associate (New York)
Eric Mauch, Senior Associate (Chicago)
Tom Nicholas, Senior Associate (Chicago)

NOT A CERTIFIED COPY

015760

MORGAN STANLEY
CONFIDENTIAL
0027085

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021622

The information on this schedule has been supplied by Hill & Knowlton, Inc. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE G

Personnel from Hill & Knowlton, Inc., 466 Lexington Avenue, New York, New York 10017, (212) 885-0300, who worked on the Sunbeam project were:

Mauri Hope, Managing Director

NOT A CERTIFIED COPY

015761

MORGAN STANLEY
CONFIDENTIAL
0027086

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

16div-021623

NOT A CERTIFIED COPY

0157762

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

JAMES ROBERT MAHER

New York, New York

Tuesday, November 2, 2004

NOT A CERTIFIED COPY

015763

Reported by: Steven Neil Cohen, RPR

Job No. 166728

November 2, 2004
9:42 a.m.

Videotaped Deposition of JAMES ROBERT MAHER, taken by Defendants, pursuant to notice at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Attorneys for Coleman (Parent) Holding, Inc.
BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS, LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.
BY: LAWRENCE P. BEMIS, ESQ.

KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.
BY: RYAN P. PHAIR, ESQ.

ALSO PRESENT: Steven Fasman
Ruben Martinez, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. James Maher in the matter Coleman versus Morgan Stanley.

This deposition is being held at Kirkland & Ellis located at 153 East 53rd Street, New York on November 2, 2004 at approximately 9:42 a.m.

My name is Ruben Martinez from the firm of Esquire Video Services.

The court reporter is Mr. Steve Cohen in association with Esquire Deposition Services.

Will counsel please introduce themselves?

MR. BEMIS: Good morning. Lawrence Bemis on behalf of Morgan Stanley.

MR. MARKOWSKI: Bob Markowski on behalf of Coleman (Parent) Holdings and the witness.

JAMES ROBERT MAHER,
called as a witness by the Defendant, having been duly sworn, testified as follows:

BY MR. BEMIS:

NOT A CERTIFIED COPY

01576

Q. Good morning, Mr. Maher.
Would you state your full name for the jury please?
A. James Robert Maher.
Q. How old are you, Mr. Maher?
A. 54.
Q. What is your date of birth?
A. 11/30/49.
Q. You are represented here by Mr. Markowski this morning?
A. That is correct.
Q. Where do you live today?
A. In New York.
Q. Where in New York?
A. 775 Park Avenue.
Q. What is the zip code there?
A. 10021.
Q. Who are you employed by today?
A. Actually I am not employed by anybody today.
Q. What was your -- what do you do for a living?
A. I am in the process of raising a fund with two partners, Kelso & Company and Blackrock & Company.

Q. Is Kelso K-E-L-S-O?
A. That's correct.
Q. Blackrock, like it sounds?
A. Yes.
Q. Do you have an office address here in the city?
A. 320 Park Avenue.
Q. What is the zip code there?
A. 10022.
Q. Is there a name associated with your office address?
A. Well, I am officing with Kelso & Company and the name of the new company will be called Blackrock Kelso Capital, Inc.
Q. What does -- what will be the business of Blackrock Kelso, Inc.?
A. It is a business development company. It will invest and lend to middle market companies.
Q. What do you mean by "middle market companies?"
A. Companies with EBITDA of 10 to 100 million.
Q. You said EBITDA. You mean what?

A. Cash flow.
Q. That is an abbreviation for something else, right?
A. Earnings before interest, depreciation and taxes.
Q. Do you have an office telephone number at your -- the address you just gave me?
A. I do.
Q. What is that?
A. 212-751-3939.
Q. Did you live in New York at the 775 Park Avenue address at the time of the Sunbeam-Coleman transaction?
A. Yes.
Q. You understand that you are being videotaped this morning?
A. I do.
Q. Do you understand that your videotape can be played to the jury in the civil trial of this action?
A. I do.
Q. You have had an opportunity to consult with Mr. Markowski before your deposition, right?

A. Yes.
Q. Did you have an opportunity to review some documents?
A. Yes.
Q. Did you review them with Mr. Markowski?
A. I did.
Q. Did some of those documents refresh your recollection about events years back, 1998, for example?
A. They did.
Q. What documents did you look at?
MR. MARKOWSKI: That refreshed his recollection?
MR. BEMIS: Yes.
THE WITNESS: I don't recall which ones -- I recall some of them refreshing my recollection but I don't remember any specifically.
BY MR. BEMIS:
Q. When did you look at these documents that refreshed your recollection?
A. I looked at them several times, the last time being last Friday.
Q. Between -- today is Tuesday. So

NOT A CERTIFIED COPY

015765

Page 10

between last Friday and today, Tuesday, you can't recall what you looked at?
A. No, I can't recall anything that I looked at on last Friday that refreshed my recollection.
Q. What other times did you -- withdrawn.
What other times did you look at documents with your counsel that refreshed your recollection?
A. We had several meetings over the last year, I guess. I don't recall the dates.
Q. Do you recall any of the documents that you looked at over the past year that refreshed your recollection about events that are at issue in this civil action?
A. Nothing specifically, no.
Q. What do you remember non-specifically?
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.

Page 11

A. I remember seeing documents that included --
MR. MARKOWSKI: Hold on.
The only question is whether you can remember anything that refreshed your recollection.
MR. BEMIS: That isn't the question at this time. If you have an objection make an objection, don't instruct.
MR. MARKOWSKI: That is how I interpret the question. That is what I will permit him to answer. If the question is for anything other than that I instruct him not to answer.
MR. BEMIS: You are instructing the witness not to answer?
MR. MARKOWSKI: If the question is anything other than what documents he can recall that refreshed his recollection I am instructing him not to answer, yes. Is that the question or is it something else?
MR. BEMIS: If you were listening to the question he responded he

Page 12

couldn't remember specifically what documents he looked at that did not re -- that did refresh his recollection so I asked him what he recalled non-specifically.
MR. MARKOWSKI: That refreshed his recollection?
MR. BEMIS: Yes. You interrupted without an objection.
MR. MARKOWSKI: I want to make it clear to the witness that the question focuses on documents that refreshed his recollection.
MR. BEMIS: I am sure you had an opportunity to prepare the witness. Let's ask the witness to respond to the question please.
BY MR. BEMIS:
Q. What documents did you look at that you cannot -- that you do not specifically remember today that refreshed your recollection?
MR. MARKOWSKI: I am going to object to the form of the question.
THE WITNESS: I don't understand

Page 13

the question.
BY MR. BEMIS:
Q. What is it you don't understand, sir?
A. What documents did I look at that non-specifically refreshed my recollection?
Q. Let's try again.
You looked at documents over the past year, right?
A. Yes.
Q. I asked you what documents you looked at that refreshed your recollection.
You said you can't remember anything specifically, right?
A. Right.
Q. What do you remember non-specifically that you looked at over the past year?
MR. MARKOWSKI: I am going to object to the form of the question.
Are you asking about documents that refreshed his recollection because you keep omitting that from your question?
MR. BEMIS: Yes.
BY MR. BEMIS:

NOT A CERTIFIED COPY

015766

Q. Please answer the question.
A. I don't know what the question is.
Q. What documents did you look at over the past year that refreshed your recollection?
A. I can remember looking at documents that -- for example, First Boston's presentation to the board of directors. They made several presentations.
Q. Anything else?
A. I also saw -- remember seeing the presentation by Sunbeam who I guess it was to, I think it was in February, a presentation to First Boston and MacAndrews & Forbes.
Those are the two sets of documents that I recall specifically.
Q. The first set are documents that Credit Suisse First Boston prepared for the board of directors of Coleman?
A. Yes.
Q. And then there was a presentation by Sunbeam that you remember being

presented before the board of directors voted on the transaction?
A. Yes.
Q. Were you present when this presentation was made by Sunbeam to which these documents refer?
A. Yes.
Q. Who from Sunbeam made the presentation?
A. Kersh and I believe general counsel, I think his name is Fannin, something like that.
Q. David Fannin?
A. I don't recall his first name.
Q. Any other documents that you recall looking at over the past year, whether it be months ago or last Friday, that refreshed your recollection in preparation for your deposition?
A. No.
Q. Did you review your calendar for the period 1997 and 1998?
A. I don't recall doing that, no.
Q. By the way, are you taking any type of medication that affects your memory

at all?
A. No.
Q. Any mental condition that would affect your memory?
A. Only being 54.
Q. I am older than you and my memory is pretty good.
Any reason to tell the jury why your memory would be faulty here today?
A. No.
Q. Tell the jury a little bit about your background starting with where you went to school, your education.
A. I went to undergraduate school -- is that where you want to start?
Q. Let's start at college.
A. I went to Boston College, graduated in 1971, worked for several years after that, went to Columbia Business School, graduated in 19 -- June of 1976, went to work for First Boston in the investment banking department.
Q. Let me stop you right there before we jump ahead to your employment history.

When you graduated from Boston College what degree did you get?
A. A BS, I think.
Q. Then you went on and got an MBA from Columbia?
A. Yes.
Q. Master's of Business Administration?
A. That's correct.
Q. You later went to work shortly -- let's start with after you got your MBA degree. Where did you first go to work?
A. First Boston.
Q. That is the same First Boston that you were referring to in your earlier testimony about documents that reviewed but at least after the merger with Credit Suisse?
A. That is correct.
Q. Let me ask you a couple of questions before we get into some of the substance of your involvement with the Coleman transaction.
In 1995 you were employed by MacAndrews & Forbes Holdings Inc., is that

NOT A CERTIFIED COPY

015767

Page 18

right?
A. In 1995?
Q. Right.
A. No.
Q. When did you start?
A. The first time I was employed by MacAndrews & Forbes Inc. was 19 -- sometime in 1998.
Q. What was --
A. I could be wrong about a year here.
Q. You did eventually have the title of president of MacAndrews & Forbes Holdings Inc., didn't you?
A. Yes.
Q. When were you the president?
A. I think 1998, 1999, 2000, somewhere in there. I don't remember the exact dates.
Q. Did you have a position with one of Mr. Perelman's companies before 1998?
A. Yes.
Q. What was that?
A. One of his companies. It was a public company called MAFCO Consolidated

Page 19

Group Inc.
Q. When did you go to work for MAFCO Consolidated Group Inc.?
A. I think it was the summer of 1995, I believe.
Q. Was that your -- withdrawn.
Was that your first position with one of Mr. Perelman's companies?
A. What do you mean by "one of Mr. Perelman's companies?"
Q. One of the companies that he owns directly or indirectly?
A. What do you mean by "directly or indirectly?"
Q. Through one of his holding companies.
A. What does that mean?
Q. Answer -- if you can't answer the question tell me you are not going to answer the question.
A. I will answer the question. I want to know what you are asking me.
Q. What is confusing you?
A. Directly or indirectly. Does that mean 1 percent, 20 percent, 50

Page 20

percent?
Q. Any one of those numbers you like.
A. Well, I went to work in 1992 for National Health Labs as CEO. Mr. Perelman owned, I believe, 25 percent, approximately, of that company at that point in time.
Q. Was that the first company that Mr. Perelman owned directly or indirectly that you worked for?
A. Yes.
Q. Then in 1995 as I understand it your next position was with MAFCO Consolidated Group Inc.?
A. That's correct.
Q. What -- then you moved up to being president of MacAndrews & Forbes Holdings Inc. in 1998, right?
A. That's correct.
Q. How long were you --
A. I just don't remember exact dates; a couple of years.
Q. I understand.
When did you leave MAFCO

Page 21

Consolidated Group Inc. as president?
A. 2000.
Q. When you --
A. I believe.
Q. When you were the president of MacAndrews & Forbes Holding Inc. did you report directly to Mr. Perelman?
A. Yes.
Q. At that time was MacAndrews & Forbes Holding Inc. a direct subsidiary of MAFCO Holdings Inc.?
A. Gees, I don't know.
Q. When you were at MacAndrews & Forbes Holdings Inc. did you supervise William Nesbitt?
A. Yes.
Q. Were you, sir, the head negotiator for MacAndrews & Forbes Holdings, Inc. with regard to the Coleman-Sunbeam transaction?
A. I think I probably, I think I spent as much time on that transaction as anybody else did.
I don't think anybody ever designated me head negotiator.

NOT A CERTIFIED COPY

015768

Q. Who else were the other principal negotiators on behalf of MacAndrews & Forbes?
A. Jerry Levin was certainly one as CEO of Coleman.
Q. Anyone else besides you and Mr. Levin?
A. Perelman was certainly involved.
Q. Mr. Ronald Perelman was certainly involved?
A. Yes.
Q. Did Mr. Perelman conduct the day-to-day negotiations with Sunbeam?
A. No.
Q. Who conducted the day-to-day negotiations with Sunbeam with regard to the Coleman-Sunbeam merger transaction?
MR. MARKOWSKI: I object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. Do you want to ask the question again?
Q. Sure.
Who conducted, if you will, the

day-to-day negotiations with Sunbeam in connection with the Sunbeam-Coleman transaction?
MR. MARKOWSKI: By "conducted" you mean communicated?
THE WITNESS: I think conducted the negotiations -- ask me again.
BY MR. BEMIS:
Q. Sure.
Did you, sir -- withdrawn.
Who conducted the day-to-day negotiations on behalf of MacAndrews & Forbes with Sunbeam in connection with the Sunbeam-Coleman merger transaction?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I don't think there were any negotiations with Sunbeam directly. There may have been some but they were largely with Morgan Stanley.
BY MR. BEMIS:
Q. Who on behalf of MacAndrews & Forbes then conducted those negotiations?
A. Myself and Jerry Levin.
Q. What was Mr. Perelman's role in

the negotiations?
A. His role was, I think, as sort of final arbiter of our negotiating position.
Q. Tell the jury what you mean by "final arbiter."
A. He would -- if there were issues he would express his point of view and that would be the point of view that we would take.
Q. He had the final say so?
A. Ultimately the board had the final say so but in negotiations -- we are talking about negotiations at this point in time?
Q. Yes, sir.
A. In negotiations he had the final say, yes.
Q. When you say "the board had the final say so" you are referring to which board?
A. The board of Coleman.
Q. What about the board of CLN Holdings Inc.?
A. I don't know who that is.
MR. BEMIS: Mr. Reporter, are you

getting volume?
THE VIDEOGRAPHER: I am okay.
BY MR. BEMIS:
Q. Were you responsible for the Sunbeam-Coleman transaction proceeding to the point of execution of the merger agreements?
A. I am not sure I understand what you are asking me.
Q. What is it that you don't understand? I will try to fix the question for you.
A. You are asking me what I was responsible for?
Q. Yes; within the MacAndrews & Forbes organization.
A. You already asked me whether I was involved in the negotiations so what is the difference between the question?
Q. I am not here to answer your questions. I am here to ask you questions.
A. You just asked me --
MR. MARKOWSKI: Hold on. Don't argue with him, Jim. He asked you to clarify and now he is arguing with you

NOT A CERTIFIED COPY

015769

Page 26

because you asked him to clarify it so the problem is Mr. Bemis' failure to articulate a clear question. I object.
MR. BEMIS: I move to strike your sidebar comments. Don't give me instructions.
MR. MARKOWSKI: Don't argue.
MR. BEMIS: If you don't like what is going on you know what you can do.
MR. MARKOWSKI: Ask questions.
MR. BEMIS: I will.
Presumptively we will get an answer.
MR. MARKOWSKI: Ask questions, proper ones, preferably.
MR. BEMIS: I will work on it.
BY MR. BEMIS:
Q. Were you the person at MacAndrews & Forbes that was responsible for the Coleman transaction reaching the point of its execution of the merger documents?
MR. MARKOWSKI: Object to the form.
THE WITNESS: All I can tell you is I was heavily involved in the

Page 27

negotiations leading up to the merger agreement.
BY MR. BEMIS:
Q. Okay. The other people that were heavily involved were Mr. Levin, you said?
A. Yes.
Q. And then Mr. Perelman who gave the final approval to enter into the merger transaction subject to board approval?
A. He didn't give an approval to enter into it. He gave an approval that it could be taken to the board.
Q. Did Mr. Perelman approve the merger agreements that were submitted to the board?
A. I don't know -- I don't recall whether he voted on that or not.
Q. Do you recall that he was present at the board meetings?
A. Yes, he was.
Q. Did you review, that is, personally, the Sunbeam 10-K for the year 1997 before the closing of the Coleman-Sunbeam transaction?
A. I don't recall seeing it, no. I

Page 28

don't recall.
Q. Did you assign anyone within MacAndrews & Forbes working with you to review the Sunbeam 10-K for the period ending in 1997 before the closing of the merger agreements?
A. I don't recall assigning anybody, no.
The general responsibility for the financials of Sunbeam was allied with the financial department at Coleman largely which was -- the chief financial officer was Joe Page, I believe, at that time.
Q. Did you assign -- withdrawn.
Did someone to your knowledge assign Joe Page to review the Sunbeam 10-K?
A. I don't know.
Q. Did you review the offering memorandum -- withdrawn.
You recall, don't you, sir, that there were debentures issued by Sunbeam in connection with the merger?
A. Yes.
Q. That they were underwritten by Morgan Stanley?

Page 29

A. I do.
Q. You recall there was an offering memorandum?
A. Yes.
Q. Did you read the offering memorandum for the Sunbeam debentures issued in connection with the Coleman transaction?
A. I don't specifically recall reading it, no.
Q. Do you recall ever reading it as you sit here today?
A. No.
Q. Did you assign anyone from MacAndrews & Forbes the responsibility for reading the offering memorandum for the Sunbeam debentures before the closing on March 30, 1998 of the Coleman transaction?
A. No.
Q. To also put this in perspective for the jury you did attend the February 25, 1998 board meeting of the Coleman company, correct?
A. February 25. I don't remember the exact date. Maybe you can help me.

NOT A CERTIFIED COPY

015770

Q. That would be the first of the two meetings when the merger agreement was presented.
A. Yes.
Q. You made a presentation to the board about the history of the negotiations, didn't you?
A. I did.
Q. You made that presentation in your capacity as a representative of MacAndrews & Forbes, correct?
A. Yes.
Q. You also -- this was the first time, by the way, February 25, 1998, that the board as a board of directors of Coleman had been advised of the negotiations with Sunbeam; isn't that right?
A. I don't know when the board was advised of the negotiations. I don't know whether they were advised prior to that or not.
Q. As you sit here today you personally are not aware of any specific meetings before February 25, 1998 of the

board of Coleman at which the board was advised of the ongoing discussions; is that fair?
A. Yes.
Q. You also attended, just so, again, for the jury's benefit, the February 27 board of directors meeting of Coleman at which the board actually voted to proceed with the merger agreement with Sunbeam, correct?
A. Yes.
Q. Again, you attended on behalf of MacAndrews & Forbes, correct?
A. Yes.
Q. When you attended the board meetings, and, by the way, it was the board of directors of Coleman that approved the merger agreement, correct?
A. I believe so.
Q. The -- did you tell the board of directors how to vote?
A. No.
Q. Did Mr. Perelman to your knowledge?
A. No.

Q. You mentioned earlier that you saw some presentation materials that were prepared by Credit Suisse First Boston, correct?
A. Yes.
Q. Credit Suisse First Boston, so the jury understands, was the financial adviser to the Coleman board?
A. That's correct.
Q. The exclusive financial adviser, correct?
A. I think so, yes.
Q. As the exclusive financial adviser it actually made a presentation to the board of directors at the February 27 meeting, correct?
A. Yes.
Q. It opined, that is, Credit Suisse First Boston, that the transaction was fair, correct?
A. With all the words that go around that, yes.
Q. Morgan Stanley didn't make any presentations to the board of directors of the Coleman company, did it?

A. Not to my knowledge.
Q. In addition to the -- in addition to the presentation by Credit Suisse First Boston at the board of directors, this would be February 27, were there presentations by the legal advisers to the Coleman company?
A. I am sure there were. I am sure the merger agreement was presented, at least outlined.
Q. Did the Coleman company have its own legal advisers in the merger transaction, that is, separate and apart from Sunbeam's legal advisers?
A. Yes.
Q. Who was that?
A. Wachtell, Lipton, I believe.
Q. Did you -- is MacAndrews & Forbes Holding Inc. in your view a sophisticated company in financial transactions?
A. Yes.
Q. Would you agree that Mr. Perelman is a sophisticated individual in financial transactions?
A. Yes.

NOT A CERTIFIED COPY

015771

Page 34

Q. Are you?
A. Most days.
Q. Most days?
A. Yes.
Q. Did you consider yourself a sophisticated person in financial transactions in 1998 on the day the transaction was approved by the Coleman board?
A. Yes.
Q. Did you consider yourself a sophisticated person in financial transactions on March 30, 1998 when the transaction closed?
A. Yes.
Q. Do you consider -- did you consider Credit Suisse First Boston -- by the way, you worked for Credit Suisse First Boston when it was First Boston, right?
A. Yes.
Q. Going back before --
A. Even before it was Credit Suisse First Boston too.
Q. As well as when it was Credit Suisse First Boston?

Page 35

A. That is a good question. It may have been. There are parts of it that were certainly Credit Suisse First Boston at that time.
Q. We won't worry about when the combination took place yet.
When the Credit Suisse First Boston made its presentation to the Coleman boards in connection with the merger was Credit Suisse First Boston in your view a sophisticated financial adviser to the company.
A. Yes.
Q. It was an investment banking firm?
A. Yes.
Q. High standing in the financial community in New York?
A. Yes.
Q. Did you consider Credit Suisse First Boston in 1998 to be capable of performing due diligence in connection with a merger such as the Coleman-Sunbeam merger?
A. Yes.

Page 36

Q. Did you consider yourself capable of doing due diligence in connection with a transaction like the Coleman-Sunbeam merger in 1998?
A. Yes.
Q. Did you consider Mr. Perelman capable of doing due diligence in connection with a transaction like the Coleman-Sunbeam merger in 1998?
A. Capable of doing it, yes.
Q. Yes.
Did you consider the law firm of Wachtell, Lipton to be a law firm that was sophisticated from a corporate side in mergers and acquisition transactions in 1998?
A. Yes.
Q. Did you consider them to not only be capable but to have an outstanding reputation in that area in the New York financial markets?
A. I understood them to be capable.
Q. Did you have any -- strike that.
Did you consider the Coleman-Sunbeam merger transaction to be an

Page 37

arms length transaction?
A. Yes.
Q. Would you agree with me that Mr. Perelman's company and -- Mr. Perelman's companies, if you will, and Sunbeam are both -- were both at that time large companies?
A. Yes.
Q. Both companies, Sunbeam and Mr. Perelman's companies, were both sophisticated in terms of their businesses?
A. Yes.
Q. Sunbeam -- Coleman had at that time an audit firm, did it not?
A. I am sure it did.
Q. Ernst & Young?
A. I don't recall.
Q. Do you know who Ernst & Young is?
A. Yes.
Q. You knew who they were in 1998?
A. Yes.
Q. Would you consider them to be a sophisticated accounting firm?
A. Yes.
Q. Sophisticated in public

NOT A CERTIFIED COPY

015772

accounting?
A. Yes.
Q. You knew that Sunbeam had an accounting firm as well, correct?
A. Yes.
Q. And that accounting firm was Arthur Andersen?
A. Yes.
Q. You understood at least in 1998 that Arthur Andersen was a sophisticated accounting firm, correct?
A. Yes.
Q. Both Ernst & Young and Arthur Andersen were one of the big five, six or seven, whatever it was at that time, accounting firms, correct?
A. Yes.
Q. Let me ask you little bit about -- I want to talk a little bit about your sophistication in 1998 in financial transactions so the jury understands you a little bit better.
You -- when did you first go to work for First Boston Corporation?
A. 1976.

Q. Would you tell the jury what First Boston Corporation was when you joined the company in 1976?
A. It was an investment banking firm headquartered in New York. Its business at that point in time was largely an underwriting and advisory business.
Q. When you say --
A. And obviously sales and trading.
Q. Would you tell the jury in your own words what an investment banking firm does?
A. Or what it did then?
Q. Let's say in 1976 when you joined; that is fair.
MR. MARKOWSKI: At First Boston generally or generically?
MR. BEMIS: *First Boston, his* investment banking firm.
THE WITNESS: Its major business was raising capital for companies in either the form of the sale of equities or the sale of debt.
BY MR. BEMIS:
Q. You used the term "underwriting."

Would you tell the jury what "underwriting" is?
A. When a company sells securities in the public markets it sells them first to a securities firm, i.e., an underwriter.
The underwriter owns them for a brief period of time and then distributes them to "the public."
By "underwriting" I mean they actually own the security for a, some people would say a nanosecond, but a brief period of time.
Q. In simple terms, the underwriter actually buys in -- a firm underwriting will buy the underlying securities whether it be debt or equity and then it will resell them, as you put it, to the public over a period of time, whether it be a nanosecond or two nanoseconds?
A. That is correct. That is a fair description.
Q. You told me that you started in 1976 with First Boston as you described it.
What was your first position there?

A. I was an associate.
Q. How long did you work for First Boston?
A. Until 1992.
Q. When you left in 1992 what was your position within First Boston?
A. I was head of investment banking.
Q. Were you with First Boston continuously from 1976 to 1992?
A. Yes.
Q. When you started as an associate is that pretty much the bottom of the investment banking rung?
A. It was then.
Q. I take it when you left as head of the investment banking division that was quite a promotion within the company over the years, is that fair?
A. There is a significant difference between associate and head of investment banking, yes.
Q. When you were head of investment banking in 1992 you had by that time I take it done many mergers and acquisition transactions?

NOT A CERTIFIED COPY

015773

Page 42

A. I had been involved in quite a few, yes.
Q. Had you been involved in quite a few underwritings of debt and equity securities?
A. Well, I was responsible for, during the last four years of my career there, for the investment banking business which included the securities underwriting business.
I don't think I was specifically involved in a single -- well, that is not true -- a single underwriting in the last 15 years that I was there.
I spent most of my time, if not all of it, on the merger and acquisition side of the business but I was responsible for the underwriting business but -- that was not my primary responsibility.
Q. What do you mean when you say you were responsible for the underwriting division?
A. People reported to me as part of the business.
Q. Did you have bottom line

Page 43

responsibility for that division within First Boston?
A. Well, there are -- without complicating the issue, the people who do the underwriting, who go out and contact the companies, do the due diligence and take the companies on road shows, are the people that -- that I was responsible for.
There are capital markets people and trading people who are in another part of the firm which are responsible for the actual sale of the securities.
I was not responsible for that part of the business which would be typical of any investment banking firm.
Q. I apologize for interrupting you.
Were you one of the people who would approve an underwriting by First Boston?
A. Approve? There are various approval processes within the firm so you have to be more specific.
Q. Let's take an example. In the Sunbeam transaction when the debentures were eventually underwritten by Morgan

Page 44

Stanley someone had to approve Morgan Stanley putting its capital out on the debenture underwriting.
Did you have that type of role as the head of the investment banking division?
A. Typically in an investment banking firm taking on a new client would require approval of an investment banking committee.
That investment banking committee reported to me and at various times during my career I sat on that investment banking committee.
That committee was responsible for approving, doing business with a client, not responsible for the capital commitment.
The capital commitment was the responsibility of the capital markets division of the company.
Q. If you --
A. Now --
Q. I interrupted again.
A. As head of investment banking, if

Page 45

there were issues with any underwriting I would certainly be aware of it.
Q. As the head of the investment banking division and in the role as you have explained it with regard to underwriting, I take it you became familiar with financial statements?
A. Ask that question again.
Q. In your role as head of the investment banking division and on the committee reviewing underwritings you became familiar with reading financial statements of companies, right?
A. I don't think the two are related. I became -- I did during the course of my career at First Boston I became familiar with financial statements.
Q. You -- that would --
A. I mean it had nothing to do with my role as head of investment banking.
Q. As part of your role as head of the investment banking division you did read financial statements of companies that you were involved with as an investment banker, right?

NOT A CERTIFIED COPY

015774

Page 46

You used the financial statements of the company?
MR. MARKOWSKI: Object to the form of the question.
MR. BEMIS: Let me withdraw the question and ask you again.
THE WITNESS: I am not trying to be difficult.
BY MR. BEMIS:
Q. I understand. Let's try to move on.
You know what an audited financial statement is of a public company?
A. I do.
Q. You have seen those over many of the years of your career, correct?
A. Yes.
Q. You know how to read them?
A. I do.
Q. You know how to read the footnotes?
A. I do.
Q. You are also familiar as a result of your work in the investment banking community with public filings that

Page 47

companies do like an annual report on a form 10-K?
A. I do.
Q. You are also familiar with the reports that companies file, public companies, on a quarterly basis like a form 10-Q, right?
A. Yes.
Q. You are also familiar with the maintenance of interim financial statements by companies, aren't you?
A. Yes.
Q. Is it your experience that most public companies that file quarterly statements maintain interim financial statements?
A. Yes.
Q. At least in 1998, at the time that you were negotiating the Sunbeam-Coleman transaction, you knew that Sunbeam filed public -- filed financial statements with its public filings, correct?
A. I did.
Q. It filed audited statements for

Page 48

its annual periods, correct?
A. Yes.
Q. It filed quarterly statements with the Securities and Exchange Commission for periods that were not audited, right?
A. That's correct.
Q. And you also knew by virtue of your negotiations in the transactions that Sunbeam had interim financial statements, correct?
A. Yes.
Q. Let's go back to First Boston for a second.
When you worked for First Boston did First Boston do any work in the area of investment banking with Mr. Perelman's companies?
A. Yes.
Q. What?
A. We did a secondary offering of shares on behalf of Mr. Perelman in National Health Labs, I remember. That is certainly one thing we did.
We did an advisory assignment on the sale of Max Factor from Revlon. I am

Page 49

sure we did other things.
Those are two things that come to mind.
Q. Were both of these transactions underwritings?
A. No. The stock sale was an underwriting. The advisory assignment was a typical advisory assignment where Revlon sold its Max Factor business to another party.
Q. Would you tell the jury what an advisory assignment is please?
A. An advisory assignment is where you assist a company typically -- an example of an advisory assignment would be a company wants to sell a businesses, it hires an investment banker to assist in the sale of that business.
That is what I mean by "advisory assignment," the typical advisory assignment.
Q. In the case of the -- withdrawn.
When you left First Boston in 1992 am I correct then that you went to National Health Laboratories?

NOT A CERTIFIED COPY

015775

Page 50

A. I eventually went to National Health Laboratories. I left First Boston and was going to do something different and I ended up joining National Health Labs at the end of the year in 1992, late December of 1992 and I had left First Boston in the summer.

I had -- I think the first discussion about joining National Health Labs occurred with Mr. Perelman in either late September or early October of that year.

Q. How did you come to discuss with Mr. Perelman taking this position?

A. He called me and asked me -- asked me to have lunch with him.

Q. How long have you known Mr. Perelman?

A. The first time I met him was somewhere in the mid '80s.

Q. Was this in connection with your investment banking work?

A. I frankly don't recall the initial meeting. I don't.

Q. When you first met Mr. Perelman

Page 51

it was in a business setting though, I take it?

A. Yes.

Q. I take it he persuaded you eventually to take the position with National Health Laboratories?

A. He did.

Q. You served there how long; 1992 to -- until when?

A. Well, in 19 -- from 1992 to 1995 I was chief executive officer. During the, I guess it was the early part of 1995, we entered into a merger agreement to effectively acquire Roche's laboratory business for common stock of National Health Labs.

That transaction left -- put -- left Roche with roughly 50.1 percent of the stock of the combined enterprise.

At that point in time I became chairman. I stayed on as chairman for another year, as non-executive chairman.

Q. You were in effect Mr. Perelman's representative?

A. No. I wasn't then. Roche owned

Page 52

50 percent. They controlled the company. I was there because they asked me to be.

Q. You stayed there and -- as chairman did you -- you said you were as -- in a non-executive position?

A. That's correct.

Q. What did you mean by that?

A. I wasn't running the day-to-day operations of the company.

Q. Someone else was the chief operating officer?

A. There was a CEO.

Q. You left then --

A. Effectively left the operating position at the time of the merger which I believe was April, May of 1995, somewhere around there.

Q. You go from president to chairman and then eventually leave and go to MacAndrews & Forbes Holdings?

A. No. Then in July, I believe July of 1995, a new company, not a new company but a company was being created called MAFCO Consolidated Group Inc. which was -- which was created out of a merger of a

Page 53

public company which I think was called Pneumo Abex merging with Mr. Perelman's licorice company and his cigar company so he contributed or effectively contributed those two companies to this public company for stock in the public company.

Q. What was your position?

A. CEO.

Q. In that position you actually were running the company, correct?

A. Yes.

Q. How long?

A. Well, as a holding company. It was a holding company. It had several -- literally had three different businesses at that point in time.

Q. MAFCO Consolidated Group Inc. was a holding company for three operating companies?

A. That's correct.

Q. You were the CEO of MAFCO Consolidated Group, right?

A. Yes.

Q. Then there were operating officers in each one of the operating

NOT A CERTIFIED COPY

015776

companies?
A. Yes, there were.
Q. As I understand it you had the cigar business, consolidated cigar, whatever name it was going by at that time?
A. Yes.
Q. That was one of them, you had the licorice flavoring business, was it M&W?
A. M&F Worldwide.
Q. Worldwide at that time.
What was the other operating division?
A. The other operating division was the aerospace business that we sold or entered, went out and marketed and sold shortly after we went public.
Q. How long did you --
A. We didn't own 100 percent of that.
Q. Again, I interrupted you.
How long did you stay chief executive officer of MAFCO Consolidated Group Inc.?
A. Well, I think actually I think I maintained that title until I left

MacAndrews & Forbes but there was a transaction in 1998 which took that company private.
At the time of the initial transaction I believe Mr. Perelman owned 85 percent of M&F Worldwide and in 1998 he took the company or -- yes, effectively took the company private and I don't think my title actually changed at that point in time.
Q. Did you -- withdrawn.
As far as you can recall as you sit here today at least until you left Mr. Perelman companies you still had the CEO position even when the company went private?
A. I think so, yes.
Q. Okay.
You had an additional title I think as you told us earlier. You also were the president of MacAndrews & Forbes Holdings Inc., right?
A. Yes. That occurred sometime in 1998, I believe.
Q. Focusing now on MacAndrews &

Forbes Holdings Inc., I want to make sure the jury is going to understand at one place the structure of this company and I hope you can remember it.
Mr. Perelman -- if we put -- we are going put him at the top of the organization for right now if you just assume that.
There was another company directly below Mr. -- that Mr. Perelman owned which was his MAFCO Holdings Inc.; is that correct?
I am talking about 1998.
A. I don't remember the exact structure.
Q. Who owned MacAndrews & Forbes Holdings Inc.?
A. If that was the ultimate holding company Perelman owned 100 percent of it.
Q. An ultimate holding company?
A. Yes.
MR. MARKOWSKI: I think we have given you organization charts.
MR. BEMIS: My understanding is that you objected to giving

organization charts. I could be wrong and I don't want to quarrel about something like that.
MR. MARKOWSKI: You can do a memory test.
MR. BEMIS: I flunked.
MR. MARKOWSKI: You can do a memory test on Mr. Maher.
BY MR. BEMIS:
Q. MacAndrews & Forbes, at least as of 1998, it owned Coleman (Parent) Holdings, Inc., right?
A. I don't recall the names of what it owned. All I can tell you -- I can tell you that Perelman owned 100 percent of the holding company and there may have been companies below that that owned -- that had different names but I don't recall the exact structure, the exact name of the companies -- and I think -- but I don't think it effectively changed anything.
Essentially Perelman owned 100 percent of the holding company and whatever percentages of these companies that were below directly or indirectly.

NOT A CERTIFIED COPY

015777

Page 58

Q. One of the below companies, MacAndrews & Forbes Holdings Inc., was the Coleman company, correct?
A. Eventually, yes.
Q. I am talking about the beginning of 1998.
A. Yes.
Q. There were intermediate holding companies between MacAndrews & Forbes Holding Inc. and the Coleman Company, Inc. in 1998, correct?
A. Yes, I believe there were. I can't tell you how many or what their names were but I believe there were.
Q. Mr. Perelman, as you described it, was the 100 percent owner of the ultimate holding company in this chain that we have been discussing?
A. That is my understanding.
Q. When you left MacAndrews & Forbes Holdings Inc. what did you do next?
A. I joined a small private equity firm called Park Avenue Equity Partners.
Q. What did it do?
A. It had a fund that invested in

Page 59

small companies, in the equity of small companies.
Q. Did you raise capital from individuals or other companies and then invest that?
A. It had -- when I joined it had raised -- already raised some capital and I added to that, personally added to that capital and -- but during the period I was there it did not raise any additional capital.
Q. Is it so-called direct investment funds?
A. I don't think it was called a direct investment fund.
Q. The -- the Park Avenue Equity Partners, did all of the partners, did they own all of the capital of the company?
A. No. There were limited partners.
Q. You, that is, the company, Park Avenue, you actually --
A. Was a partnership.
Q. Partnership, excuse me, actually did the investments for both the general partners and the limited partners, correct?

Page 60

A. That's correct.
Q. You were responsible, that is, Park Avenue Equity Partners, for the oversight of the investments, correct?
A. Well, I was a senior partner.
Q. I didn't mean you individually; the organization?
A. Yes.
Q. You would make a decision to invest and divest your positions?
A. That is correct.
Q. You made your money by presumably buying in low and selling at a high price, correct?
A. Yes.
Q. How long did you stay at Park Avenue Equity Partners?
A. Through, I would say, June of this year.
Q. You have been involved in investment banking or running companies or managing other people's money including your own since 1976, correct?
A. That's correct.
Q. While you were with

Page 61

Mr. Perelman's -- withdrawn.
While you were with MacAndrews & Forbes Holdings Inc. or -- and even the MAFCO Consolidated Holding Group, if you will, when it went private were you involved in merger and acquisition transactions other than Sunbeam?
A. Yes.
Q. About how many others?
A. I can think of one, two, three. There may have been more but I can think of three off the top of my head.
Q. What were the three that you can think of off the top of your head?
A. The sale of the cigar business to Seita which is the French tobacco company.
Q. This is Consolidated Cigar?
A. Yes; the sale of Revlon's Spanish business, for lack of a better description, and the acquisition of Panavision.
Q. The Panavision acquisition took place in 1997, correct, late 1997?
A. I think that's right. That sounds about right.
Q. Were you heavily involved in the

NOT A CERTIFIED COPY

Page 62

Panavision deal?
A. I was, yes.
Q. The Panavision deal was actually a deal where you renegotiated the acquisition price, didn't you, after the signing of the initial agreements and before the closing?
A. I don't recall -- there was a renegotiation. I just don't recall exactly what the timing was of them.
Q. There was, however, a renegotiation of the purchase price as a result of the financial performance of Panavision during an interim period after the signing of the merger agreements; right?
A. I said specifically I don't remember when it took place. There was a renegotiation. It had to do with the financial performance but I don't recall exactly the timing of it.
Q. Panavision was a purchase transaction, right, as opposed to a sale?
A. I don't know what you mean by that.

Page 63

Q. When you referred to the Consolidated Cigar business, you spoke of that as being a sale?
A. The Perelman entity bought the company, yes.
Q. That is what I meant. The Perelman entity was buying Panavision?
A. I was just wondering if it was an accounting issue.
Q. Not a trick question.
A. Okay.
Q. Were you involved while you were with Mr. Perelman's companies with any debt transactions?
A. The only one I recall was the -- had some involvement in the sale of securities, debt securities, for Panavision.
Q. Were you involved in the sale of debt securities by Coleman Escrow?
A. No.
Q. There were some debt securities sold by Mr. Perelman's company called Liquid Yield Option Notes, abbreviated LYONS, do you recall those?

Page 64

A. Do I recall them or was I involved?
Q. Do you recall them first?
A. I remember there were LYONS somewhere in the empire.
Q. Were you involved in the empire sale of any of the sale of LYONS?
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:
Q. You can answer.
A. Do you want to ask me again?
Q. Were you involved in the sale of the LYONS by what you referred to as the empire?
A. No.
Q. Did you have any position in CLN Holdings Inc.?
A. I don't believe so.
Q. While you were the president of MacAndrews & Forbes did you receive through a clipping service public information about companies that Mr. Perelman was involved with?
A. I received financial clippings.

Page 65

I frankly don't recall what the basis of those -- I don't recall why items were or were not in the clippings.
Q. You did receive some type of clippings package in the regular course of your business?
A. Yes.
Q. Was this something you received -- withdrawn.
How often did you receive it?
A. Daily, I believe.
Q. Did the daily package have a name like the clippings package or something?
A. I don't recall.
Q. Who received that within your organization?
Mr. Shapiro, for example, recalled that he received it. Now you recall that you received it?
A. I don't know who else received it.
Q. Where was your office when you worked for MacAndrews & Forbes Holdings Inc.?
A. 35 East 62nd Street.

NOT A CERTIFIED COPY

015779

Q. What floor were you on?
A. I was on different floors.
Q. When you were president?
A. Fifth, fourth and third at various times.
Q. Were you ever on Mr. Perelman's floor?
A. No.
Q. Going back to the clippings, what -- could you describe for the jury just generally what these clippings packages contained?
A. It has been a long time. They tended to be about businesses that -- either about the industries that we were involved in or companies that we were specifically involved in.
Q. As an example, if there was an article in some financial press, be it the Wall Street Journal, Barron's, whatever, if there was an article about the Coleman company, would you get a copy of that from the clipping service usually?
A. Usually, yes.
Q. Did this clipping service cover

analyst reports as well?
A. I don't think so.
Q. What else did it cover besides, say, clippings from the financial press?
A. That is -- my recollection is that is about it.
Q. Do you know what newspapers it covered?
A. I don't.
Q. What financial press it cover?
A. I don't.
Q. Was there an outside vendor that provided the clippings or was it done in-house?
A. I don't know.
Q. You told us that at least from a holding company position that you were involved with three of Mr. -- three companies that Mr. Perelman owned or controlled, the cigar company, M&F and the aerospace company earlier that were actual manufacturing or companies that produced products, right? There were those three?
A. Right.
Q. Are there others that you were

involved with while you were with Mr. Perelman's companies, and I will set aside labs for right now.
A. Well, I told you I was involved in the sale of the business for Revlon.
Q. You were involved with Mr. Perelman's interest in Revlon at least at one point?
A. Yes.
Q. Any other companies?
A. I handled the sale of the common stock that was owned by Perelman in News Corp. that was the result of a merger.
Q. When was that?
A. It was over a long period of time. I don't recall exactly what year it was.
Q. Did you have any role in Panavision after the acquisition of Mr. Perelman's controlling interest?
A. Yes. I was a director and continue to be a director.
Q. Would you tell the jury what Panavision's business is please?
A. Panavision's main business is --

it builds and rents cameras to -- for -- largely for the making of major motion pictures, television shows, commercials.
Q. Have you been a director of Panavision since 1997 or 1998 at the time of the acquisition?
A. Yes.
Q. Did you have any -- strike that.
Did you have any responsibility for the operations of any of Mr. Perelman's financial service businesses?
A. No.
Q. For example, Cal Fed Bank, you were not involved in the operations of that in any way?
A. No.
Q. Did it report to you in any way through MacAndrews & Forbes Holdings Inc.?
A. No.
Q. Is that through a different holding company that it was operating?
A. It didn't report to me.
Q. Did you have any involvement with Meridian Sports?
A. No.

NOT A CERTIFIED COPY

015780

Q. Do you know what the company did?
A. I think they were in the water ski business.
Q. Water skis and boats?
A. Boats was part of it.
Q. Did it report to you in any way in your position at MacAndrews & Forbes Holdings, Inc.?
A. No.
Q. In 1998 other than the Coleman company were there any operating companies that reported to you in 1998?
A. Other than the Coleman Company, you mean other than -- are you suggesting the Coleman Company reported to me?
Q. In the sense that it was a company within the ownership chain that ran up to MacAndrews & Forbes.
A. The Coleman Company did not report to me.
Q. Were there any other operating companies other than Coleman, the Coleman Company, Inc., that were directly in your -- in the line of ownership under MacAndrews & Forbes Holdings Inc. that you

were the president of?
A. That question -- I mean, I can't answer that question. If you want to restate it you can because it doesn't make any sense.
You asked about three different questions in the same question.
Q. Thank you for being so critical but I will try a little harder.
The Coleman Company, Inc. as I think you explained to us was a subsidiary of a chain of holding companies one of which was owned directly by MacAndrews & Forbes Holdings Inc., is that right?
A. I believe that is correct, yes.
Q. What I am asking, were there any other operating companies, and they don't have to be camping companies but operating companies that reported up through a series of holding companies that eventually reported to you at MacAndrews & Forbes Holdings Inc.?
A. You keep phrasing this question with the assumption I believe in the way you have phrased the question that Coleman

reported to me.
Q. I am not -- I am not trying to suggest that Coleman ultimately reported to you but within the ownership chain, MacAndrews & Forbes Holding Inc., going down were there operating companies other than the Coleman Company?
You mentioned Consolidated Cigar, for example, and I don't recall what the date of the sales were that you were talking about.
A. I don't recall -- Consolidated Cigar and M&F Worldwide I believe were the two companies.
Q. The three operating companies that at some point or another that were in a holding chain that you sat at the top of at MacAndrews & Forbes Holding Inc. were the Coleman Company's Consolidated Cigar and the aerospace company?
A. Not the Coleman Company.
Q. I will not argue with you whether you controlled Coleman or not.
A. I didn't.
Q. I hear you.

Let me have 86.
When was your first discussions with anyone about a possible transaction between Sunbeam and Mr. Perelman's companies that involved the Coleman Company?
A. Sometime late -- I don't recall an initial discussion but it had to have occurred sometime late -- sometime in 1997. I just don't recall a specific date or specific conversation.
Q. Just so the jury will understand where we are at time-wise, your involvement, it began sometime in late 1997 and would have continued at least to what, March of 1998 at the time of the closing, right?
A. Yes.
Q. Let me ask you to take a look at a document that was previously marked as Morgan Stanley 86 in another deposition.
First of all, sir, do you have Morgan Stanley Exhibit 86 in front of you?
A. Yes.
Q. Is that a copy of your calendar,

NOT A CERTIFIED COPY

015781

at least for the periods reflected on the calendar?
A. It looks like it.
Q. Can you -- did you maintain your calendar or did someone do it for you or was it a combination of the two?
A. I would say it was a combination of the two would be the best description.
Q. Sir, can you tell me, looking at your calendar, were you -- do you have a home in Aspen, Colorado?
A. I have a home in Snow Mass, Colorado.
Q. In Snow Mass. You have to excuse me for my lack of Colorado. I am not real good on -- you fly into Aspen to get to Snow Mass, the Aspen airport?
A. Yes.
Q. When you -- withdrawn.
Please look at your calendar. Can you confirm for me that you were in either Aspen or Snow Mass as the case may be between December 22 and January 3 of 1997 and 1998?
A. That is what it looks like. I

have no reason to dispute it.
Q. I note that when it refers to you -- withdrawn.
Then if we move forward from, in January of 1998, were you in -- can I use Aspen?
A. Aspen is fine.
Q. You were in Aspen between January 7 and January 10 of 1998?
A. That is what the calendar says. Again, I have no reason to dispute it.
Q. If you -- continue please going forward in your calendar.
Were you in Aspen February 13 through February 17?
A. Again, it seems to me that is correct.
Q. If you would continue, sir, can you look at February 19 through the 22nd and tell me whether you were in Aspen on those days?
A. It looks like that weekend also.
Q. Were you also in Aspen between March 14 and March 28?
A. I believe that is correct also.

Q. Changing physical locations here, were you in London between March 6 and March 9?
A. It looks like I was in London for a Panavision meeting, yes.
Q. Then you left London on March 9 and flew, it looks like to me, you flew the Concord back arriving then back in New York later that evening?
A. Yes. It looks that way.
Q. Did -- you were -- during this -- the period of your calendar starting with March 11 -- excuse me. I didn't -- let me withdraw that.
Referring to your calendar, MS 86, you have a number of entries for Panavision.
I would like to see if we -- I want to confirm that these entries are for Panavision.
On December 11 there is an entry that appears to be regarding Panavision; is that correct?
A. Yes. It looks like that way, yes.

Q. Does this mean you were working on the Panavision transaction at this time or was it in some other capacity?
A. I don't know.
Q. Then you were -- on the 15th of December there is another reference to Panavision. There is a reference to Chase there. Do you see that?
A. Yes.
Q. Is this the Chase investment banking division that this is referring to?
A. I don't think so.
Q. What is it, do you know?
A. Probably their financing.
Q. Were they assisting in the financing of some portion of the Panavision transaction?
A. I don't know if they were assisting or whether they were trying to assist at this point in time. I don't know if we had decided on who was going to underwrite the securities at that point in time.
Q. Did Chase eventually get the job?
A. No.

NOT A CERTIFIED COPY

015782

Page 78

Q. Who did get it?
A. First Boston.
Q. First Boston. This --
A. But I don't remember who did the bank deal. Chase may have -- I think Chase did do the bank piece of that transaction.
Q. Was this an underwriting -- this is an underwriting of debt securities, right, in connection with --
A. Which?
Q. In connection with Panavision?
A. Which?
Q. The one you are referring -- you are referring --
A. I was referring to both.
Q. Was there both a debt and equity underwriting?
A. There was a bank transaction and a public sale of securities.
Q. Similar to what happened in the Sunbeam transaction?
A. Somewhat similar.
Q. Mr. Perelman used the --
Mr. Perelman used the -- both the bank loan and the underwriting of the debt securities

Page 79

to purchase the securities in Panavision, correct?
A. In part.
Q. Yes. Then the securities in Panavision were pledged to secure the debt, correct?
A. I don't know that. I don't think that is true actually.
Q. All right. Let's look at the 19th of December.
Were you working on the Panavision transaction at that time as well?
A. It certainly looks like I had a PVI notation in there.
Q. PVI stands for?
A. Panavision, Inc.
Q. Then on the 19th -- excuse me, withdrawn.
Go forward now to January 7. Are you there?
A. Yes.
Q. The entries there, some of those relate to Panavision as well, correct?
A. Yes.

Page 80

Q. If we go all the way through, continuing through to the 12th, you are continuing to work on the Panavision transactions, correct, January 12?
A. Well, I don't see anything about Panavision on the 8th, 9th.
Q. I am just referring to the 12th, just to the 12th.
A. There is a reference to Panavision on the 12th, yes.
Q. Then if you --
A. It is not a reference to me on the 12th.
Q. What is it a reference to?
A. It is a reference to --
Q. Mr. Nesbitt being there?
A. Yes.
Q. WGN refers to Mr. William G. Nesbitt?
A. I think so.
Q. If you will continue on to January 30, would you please turn to that entry?
At 12:30 p.m. there is an entry PVI RD, initial caps, SHOW, all caps,

Page 81

/institutional luncheon/Waldorf Astoria/301 Park Avenue. Do you see that?
A. I do.
Q. That is a reference, is it not, to the Panavision road show for the sale of the debt securities, correct?
A. Yes.
Q. Being underwritten at this time by First Boston?
A. Yes.
Q. Would you just tell the jury -- we are going to talk more about it later but tell them what a road show is.
A. I think the best way to describe it is a sales pitch by the management of the company to prospective investors.
Q. Did you conduct -- strike that.
Did you do the presentation by management to the investors at this road show?
A. I did not.
Q. Did someone from MacAndrews & Forbes Holdings Inc. do it?
A. No.
Q. Who did it?

NOT A CERTIFIED COPY

015783

A. The management of Panavision.
Q. Management of Panavision. Did First Boston do a presentation?
A. No.
Q. Is it traditionally in road shows that management does the presentation at the road shows?
A. Yes.
Q. In your career, how many road shows have you participated in as an investment banker?
A. Very few.
Q. How many have you attended?
A. A handful.
Q. Have you ever -- as -- withdrawn.
In road shows that you have attended or participated in have you as the investment banker ever done the presentation to investors?
A. Ask the question again.
Q. Sure.
A. Please.
Q. In the road shows that you have attended or participated in have you as the investment banker ever done the

presentation to potential investors?
A. No.
Q. If you will turn now to February 3 there is another entry at 4:30 p.m. which refers to CS First Boston conference, CONF, call, re: all caps, PVI. Then with /IE.
Do you see that?
MR. MARKOWSKI: Which date?
MR. BEMIS: February 3.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Is that a reference to Panavision where it refers to PVI?
A. I believe so.
Q. Is the CS First Boston a conference call with investors?
A. I doubt it.
Q. That was a terrible question now that I think about it.
What does the IE refer to or is that Irwin Engelman?
A. I would think so.
Q. First Boston was having -- according to this entry there is going to be a conference call between First Boston

which was the underwriter and the Panavision transaction, right?
A. Yes.
Q. You were going to have a conference with Mr. Engelman at MacAndrews & Forbes Holdings Inc., correct?
A. I don't know where it would have been.
Q. I am not saying where it was but it was with Mr. Engelman who at that time was, correct me if I am wrong, the chief financial officer of MacAndrews & Forbes Holdings Inc., right?
A. I believe that is correct.
Q. Then if we continue on to March 9 you are, if I read this correctly, you have another meeting with -- regarding Panavision and that is -- looks to be connected with your trip to London that we discussed earlier; is that correct?
A. It looks to me that that was the reason for the trip to London.
Q. To have a meeting with Mr. Scott, Mr. Perelman and Joe Page, right?
A. Yes. It looks like that; I think

probably some other people at Panavision.
Q. Was Bill Scott with Panavision?
A. Yes. He was the CEO.
Q. Mr. Page at this time was the chief financial officer of Coleman, correct?
A. I don't -- I don't know what he was at that point in time.
Q. He was at one point the chief financial officer of Coleman, correct?
A. Yes.
Q. He was at the time of the -- indeed it was at the time of the acquisition, correct?
A. I remember he was certainly the chief financial officer at one point in time.
Q. When you flew to -- when you fly into Aspen you would fly in by private jet?
A. Sometimes.
Q. One of these private jets were owned by Mr. Perelman?
A. Sometimes.
Q. Is it referred to as ROP Aviation, coloquially, if you will?

NOT A CERTIFIED COPY

015784

Page 86

A. No.
Q. I am confused then. Maybe you can help me with this.
On Friday, January 2, 1998 when you were in Aspen it refers to ROP Aviation and then a phone number 201-288-8464, will call you regarding the tail number, et cetera.
Do you see that?
A. Yes.
Q. What is ROP Aviation?
A. ROP Aviation is an entity that manages Perelman's planes and other people's private flying so it could be one of his planes. It could be a net jet, a charter.
Q. What does the ROP stand for?
A. I believe it stands for Ronald O. Perelman.
Q. When you travel through bookings on ROP Aviation, was that part of your compensation that -- as president of MacAndrews & Forbes Holdings Inc.?
A. Was it part of my compensation? Yes, I guess, because I got a W-2 statement

Page 87

on it every year.
MR. BEMIS: Why don't we take a break here?
THE VIDEOGRAPHER: Going off the record. The time is 11:21. This completes tape number one.
(Recess)
THE VIDEOGRAPHER: We are back on record. The time is 11:38. This begins tape number two of the videotaped deposition of Mr. James R. Maher.
BY MR. BEMIS:
Q. Sir, would you look at your calendar on December 4, 1997? It would be the first page of MS 86. Tell me when you are there.
A. I am there.
Q. There is an entry at 4:15 p.m. which refers to Day, D-A-Y, International. Do you see that?
A. Yes.
Q. What does Day International refer to?
A. I have no idea.

Page 88

Q. Look at your calendar entry on January 27, 1998. Tell me when you are there.
A. Yes.
Q. There is an entry at 11:30 a.m. which appears to be for Howard Gittis and Mr. Perelman, Gordon Rich and at Mr. Gittis' office. It says Re: Gucci and Coleman.
Do you see that?
A. Yes, I do.
Q. What is the reference to Gucci?
A. I don't know.
Q. About this time in January of 1998 were there any discussions internally at MacAndrews & Forbes or Mr. Perelman's companies in general about a possible acquisition of Gucci?
A. Gucci came up from time to time. I don't recall there were discussions. It came up from time to time but there were hundreds of companies that came up from time to time.
Q. Did you attend this meeting?
A. I don't remember attending it,

Page 89

no.
Q. Look at February 11, 1998. There is a reference at 12:00 p.m. to a meeting among Bill Reid, ROP which I assume is Mr. Perelman, HG which I assume is Mr. Gittis, and WGN which I assume is Mr. Nesbitt.
It says re: Coleman and Gucci again.
Do you see that?
A. Yes.
Q. By looking at that can you be anymore specific as to what, if any, discussions were ongoing about Gucci at this time?
A. I will just reiterate what I said before. There were discussions about Gucci. I don't remember anything specific.
Q. Were you involved in any of these discussions? You attended two, several meetings, it appears?
A. Yes. I attended -- it looks like I attended several meetings. I don't remember the meetings though.
Q. Was there ever -- did you have

NOT A CERTIFIED COPY

015785

Page 90

any further participation -- withdrawn.
Turn to, if you would, back to the December 8 entry on your calendar. Are you there?
A. Yes.
Q. There is a reference to a 9:30 meeting, Re: it says: Timber REITS, R-E-I-T-S.
What does that refer to?
A. I don't know what the specific meeting was about but we did look at forest products, product, timber investments so it had to be about the general -- it had to be a tax meeting since Barney Phillips is a tax lawyer. I don't remember the meeting specifically.
Q. What does the REITS refer to?
A. Real estate investment trust.
Q. That is what I am guessing. That is what I am asking you.
A. I am guessing on it too.
Q. I didn't know of a company known as Timber REITS. I assumed it was a trust of some kind.
A. Yes.

Page 91

Q. Were you involved in a private placement of notes by, I believe it is, Revlon Escrow Corp. in 1997 and 1998?
A. No.
Q. Who handled that on, let's start with, the investment banking side?
A. I don't know.
Q. Who within Mr. Perelman's organization was involved with that?
A. I can only speculate that Irwin Engelman would be involved. Beyond that, I don't know.
Q. Were the notes issued by an entity called REV, all caps, Holding Inc. to retire Revlon Escrow Corp. notes?
MR. MARKOWSKI: I am going to object to the lack of foundation at this point.
THE WITNESS: I don't know.
BY MR. BEMIS:
Q. You had nothing to do with it at all?
A. No.
Q. You think Mr. Engelman would be the person who would know?

Page 92

A. I would think.
Q. And Mr. Perelman, of course, you would think?
A. I would think.
Q. Was Rev, I am using the initial caps, Holdings Inc., was that owned by MacAndrews & Forbes Holdings Inc. in 1998?
A. I don't know.
MR. MARKOWSKI: Larry, you are not going to get us all sick here?
MR. BEMIS: No. I swallowed incorrectly; a polite way of putting it.
BY MR. BEMIS:
Q. Let me show you what has been marked as Morgan Stanley 410 by the court reporter.
(Morgan Stanley Exhibit 410 marked for identification)
BY MR. BEMIS:
Q. Do you have Morgan Stanley Exhibit MS 410 in front of you?
A. I do.
Q. The date of this document is, on the filed as of date which is what I am

Page 93

referring to, is March 31, 1998. Do you see that?
A. Is that the front page?
Q. The very front page, sir.
These are a little bit awkward to read sometimes because of the government's printing format.
Right at the very top it says conform period of report and then filed as of date, 1998 March 31.
A. I don't see it. Maybe you can point it out to me.
Q. Right over here.
A. Oh, that is 1998. Okay.
Q. Are we all on the same page?
A. I see something filed 1998, 0331 something.
Q. This is for a company called REV Holdings Inc., former company name, Revlon Worldwide Parent Corp.
Do you see that?
A. I do.
Q. This is a form you are familiar with, right?
A. Yes.

NOT A CERTIFIED COPY

015786

Page 94

Q. If you turn to page 4 -- you will have to look at the pagination at the bottom. Don't look at the top. Just get to the bottom numbers. Go down.
A. You mean the middle of the page?
Q. The page numbers will actually appear both at the middle and at the bottom. Go to the --
A. Page 6 on the top.
Q. 114. That is the easier way to do it. Thank you very much.
If you go down to the third full paragraph --
A. Starts with?
Q. Starts with REV Holdings.
A. Okay.
Q. It states as follows: "REV Holdings is an indirect wholly-owned subsidiary of Holdings --" we can get back to the definition of that -- "that is Revlon Holdings Inc. as defined above and an indirect wholly-owned subsidiary of MacAndrews & Forbes Holdings Inc."
Did I read that correctly?
A. Yes.

Page 95

Q. You were the president of MacAndrews & Forbes Holdings Inc. at this *time, were you not, that is, the date this* report was filed, March 31, 1998?
A. Frankly, I am not -- I don't know the answer.
Q. I had asked you earlier whether MacAndrews & Forbes Holdings Inc. was wholly-owned through a company called MAFCO Holdings Inc.
I would like you now to read on in that sentence and tell me when you are done.
A. The corporation wholly-owned through MAFCO Holdings Inc.
Q. Does that refresh your recollection whether MacAndrews & Forbes Holdings Inc. was in 1998, the time we are talking about, March, a wholly owned subsidiary of MAFCO Holdings Inc.?
A. That is what it says.
Q. Then Mr. Perelman, Ronald O. Perelman, he is listed as being the owner of MAFCO Holdings Inc., right?
A. Yes.

Page 96

Q. One more question. Bear with me one second. You can set that aside for the time being.
Having looked at Exhibit MS 410, is it your testimony that you don't recall at all being involved in this private placement that is referred to in the document?
A. That's correct.
Q. Were you involved at all at any level with the inquiry by the office of *independent counsel involving the offer to* Ms. Lewinsky of a job at one of the Revlon companies?
A. No.
Q. Did you participate in any meetings about that?
A. No.
Q. Did you follow it in the newspapers?
A. Follow what?
Q. Reporting.
A. Of?
Q. The Lewinsky matter and Mr. Perelman?

Page 97

A. One couldn't help but, during that period of time, being exposed to *everything. If you turned the television* on or read the newspaper you couldn't help but being exposed.
Q. Did you have any discussions with Mr. Perelman in a face-to-face matter about the Lewinsky matter from the office of independent counsel?
A. No.
Q. Do you know Vernon Jordan?
A. I do.
Q. How long have you known him?
A. The first time I met Mr. Jordan was in the late '70s.
Q. Did you have any discussions with him about the investigation by the office of independent counsel concerning Ms. Lewinsky's potential employment by Revlon?
A. No.
Q. Were you interviewed by the office of independent counsel?
A. No.
Q. *Do you know of anyone at -- in*

NOT A CERTIFIED COPY

015787

Mr. Perelman's companies who were interviewed by the office of independent counsel other than Mr. Perelman?
A. I didn't know Mr. Perelman was so the answer is, no. It is no to both.
Q. At the time of the negotiations that took place between Sunbeam and MacAndrews & Forbes involving the sale of the Coleman Company to Sunbeam did you familiarize yourself with Coleman's financial condition?
A. Yes. I am not exactly sure -- during the course, sometime -- ask the question again.
Q. Sure.
During the -- withdrawn.
At some point during the negotiations between Sunbeam and MacAndrews & Forbes concerning the possible sale of Coleman to Sunbeam did you familiarize yourself with the financial condition of the Coleman Company?
A. Yes.
Q. I take it then that you looked at its annual reports filed on form 10-K with

the SEC?
A. No.
Q. What -- what did you do to familiarize yourself with the Coleman Company's financial condition?
A. What I recall is having discussions with Jerry Levin and with First Boston who had familiarized themselves with Coleman in terms of its current performance, its future prospects, its valuation.
Q. With regard to -- let's focus on current performance.
Are you familiar with what its current performance were in the two years before the sales transaction?
A. I am sure I was at the time. I don't recall today.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 251. Do you have Morgan Stanley Exhibit 251 in front of you?
A. I do.
Q. This is the form 10-K for the year ending December 31, 1997, correct, for

the Coleman Company?
A. Yes.
Q. If you would look at page 13 of the 10-K which has the caption Selected Financial Data which is item 6. Are you there?
A. I am.
Q. You have looked at many 10-Ks in your lifetime, correct?
A. Yes, I have.
Q. Looking at the selected financial data would you -- and this is audited financial data; correct?
A. Yes.
Q. Audited by Coleman's auditors, Ernst & Young, right?
A. Yes.
Q. It has comparative data for the periods running from 1993 all the way through 1997, correct?
A. Yes.
Q. In 1996 would you tell the jury whether the company had a net loss or had net earnings that year, 1996?
A. A net loss.

Q. Am I correct, when the jury looks at this we will both be reading the same numbers, that Coleman lost $41,893,000 that year?
A. Yes, after a $50 million charge for something which -- after a $50 million charge for something.
Q. That translates if I read the selected financial data correctly from 1996, Coleman lost 79 cents per share, is that right?
A. That is what it says.
Q. Then if we were to look back from 1996, let's look back at 1995, we see that the company actually had earned a profit the year before of approximately $39,280,000, right?
A. Yes.
Q. Then in the year before that in 1994 Coleman had earned a profit of $32,803,000, correct?
A. Yes.
Q. Then if you go back all the way to 1993, it had even a higher profit than the preceding year, $34,934,000, right?

NOT A CERTIFIED COPY

015788

Page 102

A. Correct.
Q. I misspoke. The loss -- the profit for 1993 was $34,974,000, correct?
A. That's correct.
Q. We had a loss beginning in 1996 and that loss continued in 1997 according to the selected financial data, is that right?
MR. MARKOWSKI: Object to the form.
BY MR. BEMIS:
Q. You can answer, sir.
A. Do you want to ask it again?
Q. Sure.
I want you now to focus on 1997 and we see that Coleman, according to the selected financial data, had a loss of $2,536,000; is that correct?
A. That is what it says.
Q. And that translated into a loss of 5 cents per share, right?
A. That is what it says.
Q. When you say that is what it says, that is what your auditors expressed an opinion on when they signed off on

Page 103

these -- this financial data, correct?
A. Yes. That is what it says.
Q. Just looking at Coleman's stock price, if you will turn to page 12, go back one page, if you would.
Are you at the table on page 12 under item 5?
A. I am.
Q. By the way, the time we are talking about -- strike that.
In 1997 Mr. Perelman through his companies owned approximately 82 percent of the common stock of the Coleman Company, correct?
A. I don't remember the exact amount.
Q. Am I close?
A. I think you are in the ballpark.
Q. Focusing on the -- let me digress.
Turn to page 3 and under the background heading, the first paragraph, it refers to Coleman Worldwide owns 44,067,520 shares of the common stock of Coleman which represented approximately 82 percent of the

Page 104

outstanding Coleman stock as of December 31, 1997.
Do you see that sentence?
A. I do.
Q. Do you see above that that Mr. Perelman is the ultimate owner of the entities in these holding companies that control the Coleman Company common stock?
A. I haven't read it all but that is probably correct.
Q. Can we use 82 percent at least as of December 31, 1997?
A. We can.
Q. Let's turn to the price of Coleman's common stock and that appears on page 12 which is item 5 of the form 10-K. Tell me when you are there.
A. Page 12, item 5. I am there.
Q. As I understand it, reading this chart, in 1997 the highest price Coleman stock reached during that year was 19-1/8, is that right?
A. I think you read it correctly.
Q. That is in the second quarter of 1997, right?

Page 105

A. Yes.
Q. Then it had a low, that is, in 1997, of 11-1/2 dollars and that was in the first quarter of 1997?
A. That's correct.
Q. This was -- this -- in 1996 the stock had actually, that is, the Coleman stock had actually hit a high of $26 per share; is that right?
A. That's correct.
Q. In the fourth quarter of 1997 which would -- the highest price that it reached, that is, the Coleman stock, appears to be 16-13/16, is that right?
A. That's correct.
Q. These are prices that are taken from the closing prices on the New York Stock Exchange composite index, right?
Read the paragraph directly above the chart.
A. It doesn't say closing.
Q. All right.
It says New York Stock Exchange, NYSE Composite Tape, and I will delete closing, but short of that that is where

NOT A CERTIFIED COPY

015789

Page 106

the figures come from, right?
A. Yes.
Q. Do you believe that the New York Stock Exchange is an efficient market?
A. Have you got a week?
Q. No.
I do if you do but I didn't understand you wanted to sit a week.
A. It is a relatively efficient market.
Q. Coleman's stock during the period 1997 and 1998 was traded on, and in 1998 for a period, was traded on the New York Stock Exchange, correct?
A. Yes.
Q. We talked a little bit about Coleman's earnings. I would like you now to tell me if you can by looking at the financial data of the company what Coleman's debt was, and let's look at long term debt as defined by the accountants which is over a year plus current portion if I understand it and correct me if I am wrong.
Let's look at 1993. Are you

Page 107

there? It is on page 13.
A. Yes.
Q. Tell the jury what Coleman's debt was in 1993, its long term debt.
A. Approximately $168 million.
Q. The exact figure I am looking at is $168,858,000, right?
A. That's correct.
Q. Would you agree with me that that debt goes up every year thereafter up to 1997, its long term debt?
A. No.
Q. Do you know, you are right. I misspoke.
Its debt rose, its debt rose to -- from 1996 to $583,613,000, correct?
A. That's correct.
Q. Then in 1997 the debt of the company had fallen to $477,799,000, right?
A. That's correct.
Q. Do you remember when Mr. Perelman acquired through his companies his interest in the Coleman Company, Inc.?
A. I don't.
Q. Do you recall what the

Page 108

approximate valuation on a per share basis was used to value Coleman at the time of the execution of the transaction between Sunbeam and Coleman?
MR. MARKOWSKI: Object to the form.
THE WITNESS: I don't recall that the execution, so that was --
BY MR. BEMIS:
Q. Say February 28 of 1998.
A. So the question is?
Q. What was the value assigned to the Coleman stock to establish the exchange ratio under the terms of the merger agreement?
MR. MARKOWSKI: Same objection.
THE WITNESS: I don't understand the value ascribed to the Coleman stock.
BY MR. BEMIS:
Q. Right; the per share, per share value.
A. No. I don't recall. I don't know -- I don't know what you are asking me exactly.

Page 109

Q. During --
A. I am not --
Q. It is not a trick question.
A. No.
Q. During the negotiations you on behalf of MacAndrews & Forbes negotiated with Coleman representatives, right?
A. Yes.
MR. MARKOWSKI: I think you misspoke.
THE WITNESS: Yes, you did.
BY MR. BEMIS:
Q. Let me try it again.
During the negotiations on behalf of MacAndrews & Forbes you negotiated with the Sunbeam representatives, right?
A. Yes.
Q. Your negotiations in large measure were over price, right?
A. Yes, that's correct.
Q. You had to have a price for the Coleman stock, right?
A. Right; a value of cash and Sunbeam stock. Is that what you are asking?

NOT A CERTIFIED COPY

0015790

Page 110

Q. Yes. You had to have a value?
A. You keep saying Coleman stock.
Q. Let me back up.
During the negotiations there was a value that you put on the Coleman stock on a per share basis for which you were going to receive some consideration from Sunbeam, right?
MR. MARKOWSKI: Object to the form.
THE WITNESS: We were going to receive cash and Sunbeam stock which totalled to some amount.
BY MR. BEMIS:
Q. You also got a big assumption of debt in the transaction, right?
A. We were going to receive -- what I said was we were going to receive cash and stock of Sunbeam for the shares of Coleman.
Q. As part of the consideration that flowed to Mr. Perelman's companies, if you will, in the transaction there was also an assumption of debt by Sunbeam, right?
A. That's correct.

Page 111

Q. CLN Holdings debt?
A. That is correct.
Q. I am not quarreling about the amounts right now. That is not what I want to get at at this point.
Coleman stock had to have a dollar value assigned to it by your side of the table by the time of the closing, it was worth so much per share.
MR. MARKOWSKI: Object to the form.
BY MR. BEMIS:
Q. Isn't that right?
A. At the time of the closing?
Q. At the time of the closing of the merger agreements.
A. What --
MR. MARKOWSKI: Excuse me. I object to the form.
BY MR. BEMIS:
Q. Let me try it again. I understand your problem.
At the time the merger agreements were executed they were signed -- not the closing of the actual transaction. At the

Page 112

time of the signing of the merger agreements which is February 28, 1998 you, that is, on behalf of your side of the negotiations, had assigned a value on a per share basis for the Coleman stock?
MR. MARKOWSKI: Object to the form; lack of foundation.
BY MR. BEMIS:
Q. Right, sir?
A. I don't quite know how to answer the question. I think I answered it before by saying there was an amount of stock, an amount of cash that when combined gave you a value, an amount of -- dollar amount for the Coleman share.
Q. Yes, sir. When you were negotiating, when you were negotiating -- one at a time. I will try not to talk over you as well.
While you were negotiating with the Sunbeam representatives you had a per share price in mind that you had to receive in some form of consideration from Sunbeam, whether it be cash, stock, combination of the above, assumption of debt, what have

Page 113

you; isn't that right?
A. Did I have a number in mind? No.
Q. You had no number in mind?
A. No.
Q. No one on your side of the table had a number in mind?
A. I can't speak for --
Q. For example, we are going to have to get $30 per share or its equivalents?
A. I am sure some people had numbers in their mind.
Q. What was the final number that was agreed upon at the time of the execution of the merger agreements for the value to be assigned on a per share basis for Coleman stock?
A. At the time the merger agreement was executed I believe the value of the stock and cash was something around $28 a share. That is my rough recollection.
Q. That $28 per share in February of 1998 then represented a substantial premium over the highest price that Coleman had traded at in 1997 based on the New York Stock Exchange composite tape as shown in

NOT A CERTIFIED COPY

015791

Page 114

the 10-K, right?
A. It is clearly a higher price.
Q. Wouldn't you agree with me that at least based on what you heard CSFB, First Boston, say at the board of directors meeting that the premium was over 40 percent?
A. I don't recall what number they used. It clearly is a premium. I wouldn't characterize it as substantial.
Q. You wouldn't characterize a premium from what is it, a high of $19 a share, assuming that was the price it was trading at -- withdrawn.
I am not going to argue about it. We will get to it later.
At the time of the execution of the merger agreements, February 28, 1998, was the Coleman stock owned by Mr. Perelman's entities -- I think the direct owner was Coleman Worldwide Corporation -- was that stock pledged to cover other -- to cover indebtedness?
A. I don't know.
Q. You don't have any idea?

Page 115

A. I don't know.
Q. Are you familiar with any of the -- withdrawn.
Are you familiar with the, I will use the term MAFCO here because I am not sure, there are so many entities involved, we will use MAFCO for the time being, its long term and revolving credit agreements as they existed say on January 1 of 1998?
A. No.
Q. You had no involvement with them whatsoever?
A. None.
Q. Were you aware that MAFCO had a $400 million term credit agreement as of that time, say, January 1, 1998?
MR. MARKOWSKI: What do you mean MAFCO to mean in this context? All the entities? You are using it --
BY MR. BEMIS:
Q. I can give you -- I will ask the question again and I will use the exact name of the entity because I do have it.
Let me see 301.
Let me show you what has been

Page 116

marked as Exhibit 301 at another deposition.
You will be happy to know I am not going to ask you a bunch of questions about the term of the credit agreement.
Were you aware that MAFCO Finance Corporation had a $400 million term credit agreement here dated as of March 30, 1997?
A. No.
Q. You knew nothing about it whatsoever?
A. No.
Q. Who was the person who was most directly involved with the credit agreements at -- in Mr. Perelman's companies?
A. Engelman.
Q. Mr. Engelman.
Mr. Engelman has already given us some help on this.
I will take that back. I won't ask you about Mr. Engelman's testimony.
Were you aware that in addition to the term credit agreement that MAFCO had a revolving credit agreement with a group

Page 117

of banks in the amount of I believe $450 -- excuse me, $250 million.
MR. MARKOWSKI: Object to the form of the question.
MR. BEMIS: I will rephrase the question.
MR. MARKOWSKI: You put in the 450 million.
MR. BEMIS: I did correct it but it is confusing.
I will withdraw the question and ask it again.
BY MR. BEMIS:
Q. Were you aware that as of the timing of the -- withdrawn.
Were you aware that as of the execution of the merger agreements, February 28, 1998, that MAFCO had a revolving credit facility for $250 million?
A. No.
Q. Were you aware that at the time of the signing of the credit agreement, that is, the term credit agreement and the revolving credit facility, that MAFCO Finance had reached the maximum withdrawals

NOT A CERTIFIED COPY

015792

Page 118

on those agreements, that is, $650 million?
A. No.
Q. Did you ever have any discussions within MacAndrews & Forbes, and whether they be the holding company above or someone below, about the amount of cash that MacAndrews & Forbes could receive in the deal with Sunbeam without having to pay the cash to the banks under either the revolving credit facility or the term credit agreement?
A. I don't recall having that discussion.
Q. That would be Mr. -- would be Mr. Engelman who would know about that?
A. He certainly should.
Q. Why do you tell the jury Mr. Engelman certainly should know that?
A. He was the chief financial officer and in my experience he was involved in these matters.
Q. In the course of the negotiations leading up to the execution of the merger agreements on February 28, 1998 did you have internal discussions at MacAndrews &

Page 119

Forbes about the amount -- withdrawn.
Let me rephrase the question.
In the negotiations leading up to the discussions -- that is worse. Withdrawn.
In the negotiations leading up to the execution of the merger agreements of February 28, 1998 did you have discussions at MacAndrews & Forbes about whether Mr. Perelman or his companies would be better advised to take cash as opposed to stock or stock as opposed to cash from Sunbeam as a major portion of the consideration?
A. There were discussions about, as there would always be in any transaction like this, about what might be preferable.
Q. With whom did you have those discussions?
A. I am sure I had them with Mr. Perelman.
Q. Did you have them with Mr. Jerry Levin?
A. I don't recall having any discussions with Levin. I actually don't

Page 120

recall any specific discussions but I know the subject was talked about.
Q. Could you explain to the jury what the discussion was that you recall having been talked about with regard to the amount, whether the -- withdrawn.
Could you tell the jury what the substance of the discussion, even if in general terms, about whether the form of consideration that Mr. Perelman and his companies would receive would be stock or cash?
MR. MARKOWSKI: Could you read the question back for me please?
(Record read)
MR. MARKOWSKI: Object to the form.
BY MR. BEMIS:
Q. Let me ask it again since there is an objection.
You had discussions with Mr. Perelman about the form of the consideration?
A. Yes.
Q. At least one of the topics

Page 121

discussed how much cash versus how much stock, right?
A. Yes.
Q. Would you tell the jury what you recall about those discussions with Mr. Perelman?
A. I think, the discussions that I recall, in general, were about -- were based on the merit of taking some percentage of stock versus a percentage of cash.
Those discussions tended to hinge on the -- on one's view as to the performance of the combined entity after the fact in the stock market.
Q. Do you mean by that if the performance of the combined entity was good there was an upside potential to the taking stock?
A. Absolutely.
Q. If the performance of the combined entity was not as good there was a downside to taking stock as opposed to cash?
A. That is the nature of stock.

NOT A CERTIFIED COPY

015793

Page 122

Q. Is it fair to say that the -- as a result of the negotiations that Mr. Perelman favored taking as much stock as possible?
A. You will have to ask him that question.
Q. I will, but based on your discussions with Mr. Perelman is that a fair statement?
A. I think taking -- ask the question again.
Q. Sure.
Is it fair to say that as a result of your discussions with Mr. Perelman you concluded that he wanted to take as much Sunbeam stock as possible in the transaction?
A. No.
Q. What was Mr. Perelman's opinion on the matter as best you can recall it again based on your discussions with him as a negotiator for his companies?
A. I think he was on the optimistic side of the equation in terms of the performance of the stock of the combined

Page 123

entity after the transaction was announced and completed.
Q. When you say "the optimistic side --"
A. That the stock would perform, would reach levels higher than it was on the day of the transaction.
Q. Therefore Mr. Perelman as the ultimate beneficiary of the Sunbeam stock would yield or receive more money in the transaction?
A. That's correct.
Q. Was there ever a point in the negotiations with Sunbeam that Sunbeam or its representatives offered an all cash transaction for Coleman?
A. All cash?
Q. Yes.
A. I don't believe so. I don't recall.
Q. You don't recall one way or the other or it didn't happen?
A. I don't believe it happened.
Q. Did you ever hear Mr. -- strike that.

Page 124

Did you ever hear that Mr. Levin or Levin -- let me rephrase the question.
Did you ever hear that Mr. Levin told Mr. Perelman in the strongest possible terms not to take any Sunbeam stock?
A. No.
Q. Did you hear something to the contrary?
A. No. I will tell you what I heard.
Q. Tell me what you heard.
A. I describe him as being on the other side of optimistic --
Q. The other side of optimistic?
A. The other side of the argument that the stock would necessarily go up, that it might, it might not.
Don't forget, at that point in time Perelman had been, and Gittis had been subject to some fairly erratic behavior by what's his name, Dunlap.
Q. Are you referring to the meeting at Mr. Perelman's home in Palm Beach on --
A. I am.
Q. Let's go back to Jerry Levin.

Page 125

He testified in a proceeding in this case on August 2 of 2000 under oath as follows. I am referring to page 113 of his transcript like we are taking for you today.
A. When was this?
Q. This is August 2 of 2000.
Mr. Levin testified, "I saw the build up of inventory changes to the cash flow of the company," referring to Sunbeam, "and I told Perelman in the strongest possible terms not to take any stock of this company, that is, Sunbeam, and he chose to ignore me."
That is again on page 113 of his deposition transcript.
Did you ever recall Mr. Levin ever saying anything like that to you during the negotiations?
MR. MARKOWSKI: Object to the form.
THE WITNESS: I think I answered that before.
BY MR. BEMIS:
Q. There is a difference between

NOT A CERTIFIED COPY

0157794

Page 126

answering it --
A. I told you. I don't remember ever saying what you are saying.
The answer is, no.
Q. Let's set aside exactly what Mr. Levin said, that he told Mr. Perelman in the strongest possible terms.
Just focus now on conversations that you either heard or Mr. Levin spoke or you actually just spoke to Mr. Levin.
Did he ever say to you in words or expression, Jim -- you go by Jim, don't you, sir?
A. I do.
Q. And you called him Jerry, I take it?
A. Yes.
Q. Did he ever say to you, Jim, I am telling you, don't take Sunbeam stock, get cash, or something like that?
A. As I told you before, I think Levin was not as optimistic about the performance of the stock in this company and that included his view of the valuation of the stock in the marketplace at that

Page 127

point in time.
Q. That is Sunbeam's stock?
A. Yes.
Q. He felt the market was overvaluing Sunbeam's stock, did he not?
A. I believe that was part of his rationale.
Q. Did you as -- withdrawn.
You reported to Mr. Perelman, you told us, during this time period when the negotiations were ongoing and the agreements were signed, correct?
A. Yes.
Q. Did you as a subalter to Mr. Perelman --
A. What does that mean?
Q. Subordinate.
A. I have a new word.
Q. Did you tell Mr. Perelman as his subalter, did you tell him what Mr. Levin's opinion was about Sunbeam's stock?
A. No.
Q. You kept that -- did you tell Mr. Gittis?
A. No. I think, in whatever manner

Page 128

I was aware that Ronald was aware of what Jerry -- that he was on the cash side of the argument.
Q. You were aware in the negotiations that Mr. Perelman was aware of Mr. Levin's views?
A. I believe he was, yes.
Q. Where were you in this range of views? Were you on the optimistic or pessimistic side of Sunbeam's stock valuation?
A. I would like to think I was on the balanced side which is it was fine to take some amount of stock because there was the prospect of putting these two companies together and having some upside but it is always prudent to take as much cash off the table as possible because I for one believe that Sunbeam's stock was at least fully valued, and Ronald, he may have been right and in perfect hindsight he was right, the stock reacted to the announcement of the merger by going up, the world thought it was a wonderful thing, and that was -- that is what he was basing his decision on.

Page 129

I had a balanced point of view on it, that some amount of stock, and I frankly can't reconstruct in my own mind what I thought was a good balance, but more cash than stock was a good thing.
That is generally my view anyway.
Q. Was the balance that was struck, that is, I think it was $159 million and some change approximately in cash, 14.1 million, approximately, Sunbeam shares, was that the balance that you thought was best?
A. I don't recall -- like I said, I don't recall where I was in the equation at that point in time.
Q. Where was -- was the final balance that was struck between cash and stock Mr. Perelman's decision?
A. Well, his decision -- these things as you know are negotiations so -- was it his decision to go along -- did he endorse whatever was ultimately negotiated?
The answer is, yes, he endorsed whatever was ultimately negotiated. I don't recall whether that is what he wanted or exactly what he wanted at the time.

NOT A CERTIFIED COPY

015795

Page 130

Q. Were you aware that certain executives of Mr. Perelman's companies sold their Coleman stock rather than accept Sunbeam's stock in the merger?
A. I was aware that Mr. Levin sold his stock at a price that was appreciably higher than the negotiated transaction price.
I guess it was before the merger had taken place, otherwise, he wouldn't have been able to do it.
Q. Were you aware that Mr. Slovin, Bruce Slovin, sold his Coleman stock, and I believe the figures are something like 51,300 shares, after the announcement of the merger; in fact, immediately after the announcement of the merger on, I believe it was, March 2, 1998?
A. I wasn't but it is -- my recollection was that the stock traded up quite a bit and the price of -- therefore the price of the Coleman stock was substantially higher than the negotiated deal.
Q. You remember that the Coleman

Page 131

stock went over the price of the negotiated deal?
A. Yes.
Q. How long -- withdrawn.
MR. BEMIS: Let's break here. I am going to start something completely new.
THE VIDEOGRAPHER: Going off the record.
The time is 12:44.
(Luncheon recess: 12:44 p.m.)

Page 132

AFTERNOON SESSION
1:51 p.m.
THE VIDEOGRAPHER: We are back on the record.
The time is 1:51.
BY MR. BEMIS:
Q. Good afternoon, Mr. Maher.
A. Good afternoon.
Q. Why did you leave MacAndrews & Forbes?
A. Why?
Q. Yes.
A. Because I wanted to do something else.
Q. Any other reason?
A. No.
Q. Was your departure in any way related to the Sunbeam transaction?
A. No.
Q. Did you have any disagreements with Mr. Perelman --
A. No.
Q. -- at the time of your departure?
A. No; only that he wanted me to stay and I wanted to leave.

Page 133

Q. Let's turn to your role in the negotiations of the Coleman transaction.
I know that you attended a meeting in Mr. Perelman's home with Mr. Dunlap present, and we will eventually reach that.
Did you have some earlier meetings with representatives of Sunbeam about a potential transaction before this first meeting?
A. First of all, I didn't attend that meeting that occurred at Perelman's home with Dunlap.
Q. I misunderstood. I thought you said you did attend.
A. No. I didn't.
Q. When was the first time that you had any meeting with anyone about a transaction involving Sunbeam and Coleman?
A. I think you asked me that earlier and I think I said sometime in late 1997 but I don't remember specifically.
Q. Who did you meet with?
A. I don't recall. I don't remember. I don't know whether it was a

NOT A CERTIFIED COPY

0157996

Page 134

meeting or telephone call.
Q. Let me show you a document that has been previously marked as Morgan Stanley 173.
Do you have Morgan Stanley Exhibit 173 in front of you?
A. I do.
Q. If you will turn to the third page of this document and the date is November 6? Let me know when you are there.
A. Yes.
Q. On November 6, at least according to this document, there is another document generated by MacAndrews & Forbes' counsel that confirms this meeting. You had a meeting, it looks like, in New York with certain representatives of Sunbeam. Do you see that?
A. I do.
Q. Did you attend this meeting on or about November 6?
A. I frankly don't remember it.
Q. You have no recollection of the meeting?

Page 135

A. No.
Q. What do you -- strike that.
Before this meeting did you know Mr. Fuchs, for example?
A. No.
Q. Did you know Mr. Kitts?
A. Yes.
Q. What was your background with Mr. Kitts?
A. I don't remember when I first met him. He worked for Morgan Stanley.
Somewhere in -- along the way I met him. I understood he was a business development fellow at Morgan Stanley. I think he called on us with ideas from time to time with companies that we should acquire.
He actually called on us trying to sell Sunbeam to us at one point in time.
Q. When was this?
A. I think during the summer of '97.
Q. Did you -- strike that.
Since you don't recall the meeting on November 6 can you tell the jury the best you can remember what happened at

Page 136

the first meeting that you had with any representatives of Sunbeam that was in late 1997?
A. I don't remember.
Q. Let's go forward then to your first -- your first meeting with Mr. Dunlap.
You have met him, correct?
A. Yes.
Q. When was the first time you met Mr. Albert Dunlap?
A. A good question.
I have a vague recollection of meeting him at MacAndrews & Forbes sometime -- it may have even been before he was running Sunbeam, may have been after. He had been CEO of a paper company. I have a vague recollection of some meeting but I think it was at MacAndrews & Forbes.
Q. Did you meet him at all in connection with the -- either the negotiation of the Sunbeam-Coleman transaction or points in time leading up to its closing in March of 1998?
A. I don't think so. It is possible

Page 137

but I don't think so.
Q. Did there come a time when you asked Mr. Nesbitt to do some initial modeling analysis of a Coleman-Sunbeam transaction?
A. It's possible.
Q. You don't have any recollection of that as you sit here today?
A. I probably did. Either I did or Ronald did or somebody probably did.
I actually saw a document in the last -- one of the documents I now recall seeing last week was a -- was a model of a combination so somebody had. Whether it was me or Perelman, I don't remember.
Q. Mr. Nesbitt at this time, late 1997, did report directly to you?
A. Yes. That doesn't mean that Howard or Ronald or Jerry couldn't have asked him.
Q. Let me show you what has been -- withdrawn.
You mentioned earlier this meeting that took place with -- excuse me -- not with but at Mr. Perelman's home

NOT A CERTIFIED COPY

015797

Page 138

in Palm Beach. Do you recall that testimony?
A. Yes.
Q. My understanding is you were not there?
A. I was not there.
Q. How did you hear about the meeting?
A. Either from Perelman or Gittis.
Q. The meeting -- let me show you a document that has been previously marked as Morgan Stanley Exhibit 75 which is a chronology not unlike the one you may have in front of you but this one was prepared by Wachtell, Lipton.
There you go. If you will take a look at MS 75?
A. Yes.
Q. And, in particular, the December 18 date. Tell me when you are there.
A. I am there.
Q. Is that the meeting that is referred to there? Is this the meeting that you recall having heard about and having taken place in Palm Beach?

Page 139

A. I don't know whether there was that meeting or another meeting. It could well have been that meeting, yes.
Q. Let's focus -- let's use the date for December 18, 1997 for this meeting that is referred to in MS 75.
Are you with me on the date now, December 18, 1997?
A. Yes.
Q. You heard at least about a meeting between Mr. Perelman and Mr. Dunlap from either Mr. Perelman or Mr. Gittis, right?
A. Yes.
Q. What did Mr. Perelman -- first of all, can you -- did you hear from both gentlemen or just one?
A. I may have heard from both. I don't recall. I may have heard from them together; probably, more than likely, together.
Q. Tell me -- withdrawn.
Please tell the jury what you remember Mr. Perelman and Mr. Gittis telling you about the meeting with

Page 140

Mr. Dunlap on December 18, 1997.
A. Well, I can tell you what I remember about them telling me about a meeting in Florida. Whether it was the 18th or not I can't tell you. It was around that period of time. That they had met and Dunlap had made, I think, an all stock offer to acquire Coleman, Sunbeam.
Perelman told them he wasn't interested in it. At some point thereafter Dunlap got upset and stormed out of the meeting.
Q. Did you hear from Mr. Perelman or Mr. Gittis that Mr. Dunlap used obscenities at the meeting?
A. I don't remember.
Q. Did Mr. Perelman or Mr. Gittis use the term "stormed out of the meeting" to describe Mr. Dunlap's conduct?
A. That is the impression I am left with. I don't remember the exact words.
Q. Did they explain to you what -- withdrawn.
Did Mr. Perelman or Mr. Gittis explain to you how Mr. Dunlap expressed

Page 141

being upset?
A. I am sure they did but I don't recall what their description of that was.
Q. Let me read to you from what the plaintiffs in this case, Coleman (Parent) Holdings have said about that meeting.
MR. BEMIS: Mr. Reporter if you would mark that as Exhibit 408?
(Morgan Stanley Exhibit 408 marked for identification)
BY MR. BEMIS:
Q. My first question, sir, is do you have MS 408 in front of you?
A. I do.
Q. This is the complaint that was filed by Coleman (Parent) Holdings, Inc. against Morgan Stanley & Co. Incorporated.
If you will turn to page 37 which is on page 12?
A. Okay.
Q. The last sentence of that paragraph which carries over to page 13 describes the meeting as follows: "During the December 1997 Palm Beach meeting when CPH rejected Dunlap's initial all stock

NOT A CERTIFIED COPY

015798

Page 142

offer Dunlap became so angry that he cursed and ranted at the CPH representatives and stormed out."

Do you see that?

A. Yes.

Q. Is that description consistent with what Mr. Perelman and Mr. Gittis told you?

A. Yes.

Q. They did tell you that Mr. Dunlap cursed?

A. Yes. I guess they must have. You said is this consistent --

Q. With your recollection of what they said to you.

A. Consistent, ranted, cursed.

Q. Would you describe this as a friendly meeting between the parties?

A. Well, I think it started out as a friendly meeting and ended up somewhat unfriendly or less than friendly.

I think they were just aghast. They weren't hostile. I don't think their attitude was unfriendly. They were just sort of surprised.

Page 143

Q. Surprised at Mr. Dunlap's conduct?

A. Yes.

Q. Did you refer to Mr. Dunlap as being unstable earlier in your testimony?

A. Unstable? I think I used another word but I don't remember exactly what I said. I don't think it was unstable.

I think "erratic" was the word. I think erratic.

Q. Erratic behavior?

A. Yes.

Q. You were referring to Mr. Dunlap?

A. Yes.

Q. You were referring when you used the word "erratic behavior" to his behavior at this meeting that is described in the complaint?

A. Yes.

Q. Were you advised of Mr. Dunlap's behavior shortly after the meeting as opposed to six months later, for example?

A. Oh, yes, sometime shortly thereafter.

Certainly -- I don't recall

Page 144

whether it was the next Monday or -- because I may have been gone.

Q. Let me ask you this, sir.

You had had some discussions about a Sunbeam acquisition of Coleman before the meeting at Mr. Perelman's home in Palm Beach, correct?

A. Yes.

Q. As of -- let's assume the meeting was December 18 for purposes of -- for the record here.

Would you -- could you tell the jury how many meetings you had had with Sunbeam or Sunbeam representatives about a possible transaction?

A. Not many.

Q. Had you done any due diligence by the time of Sunbeam -- by the time of the meeting in Mr. Perelman's home where Mr. Dunlap exhibited this erratic behavior?

A. I don't believe so.

Q. Had you reviewed any documents from -- that had been prepared by Morgan Stanley that you can remember?

A. I had -- at some point in time in

Page 145

1997 Morgan Stanley gave us a presentation that I think they were using as a document to try to sell Sunbeam and I remember looking at that sometime earlier in the year.

Q. Earlier in the year 1997?

A. Yes.

Q. Did you see that document in your deposition preparation?

A. I don't think so. It doesn't mean I didn't but -- I may have.

Q. Let's focus on documents relating to a possible purchase of Coleman.

A. Okay.

Q. Up to the meeting in Mr. -- let me start again. Withdrawn.

Up to the time of the meeting with Mr. Perelman in Palm Beach had you seen any documents prepared by Morgan Stanley that related to a purchase transaction involving Coleman?

A. Purchase of Coleman by?

Q. Sunbeam.

A. I don't think so.

Q. Had anyone -- my understanding --

NOT A CERTIFIED COPY

0157799

A. There was this meeting that is listed on my calendar. It may be there was something in that meeting. I just don't know.
Q. I don't believe there is any meeting listed on your calendar for that time period.
A. Or you have it on the chronology.
Q. That is not your calendar. That is not something you said. That is something somebody else said.
A. Okay.
Q. Let me show you what has been marked as Morgan Stanley 374.
I state for the record I am not sure whether that one has been previously marked so we will mark it again if we have to.
(Morgan Stanley Exhibit 374 marked for identification)
BY MR. BEMIS:
Q. I have handed what you has been previously marked as Morgan Stanley 374 or marked in this deposition, if that be the case.

Do you have that in front of you?
A. I do.
Q. This is a document that supplements another document for the record previously marked as Morgan Stanley Exhibit 75.
If you will look at the second page, Wachtell, Lipton's attorney, Paul K. Rowe, writes, "There should be an entry for November 6, 1997."
Do you see that entry?
A. Yes.
Q. Would you please read it to yourself and tell me when you are done?
A. I have.
Q. Does that entry by -- refresh your recollection in any way when you first met with Sunbeam representatives about a possible acquisition of Coleman?
A. It does. It says we met with Morgan Stanley on a variety of matters. It wasn't just a Sunbeam meeting so that would make it more consistent.
I couldn't remember an event where it was just Sunbeam.

Q. This entry as I see it on November 6 is -- refers to general business opportunities or potential business opportunities but it specifically refers to an acquisition of Sunbeam by MacAndrews.
Do you see that?
A. Yes.
Q. You earlier had said that you thought your first communication with Sunbeam was about a possible purchase of Sunbeam by MacAndrews & Forbes; is that correct?
A. Yes.
Q. Do you believe this -- based on your recollection of events and having now looked at this document, do you believe November 6, 1997 was the first time you had such a meeting with representatives of Sunbeam about a buy or sell transaction?
A. No.
Q. You think there was something before November?
A. I do.
Q. In any event, sometime between November 6, 1997 and the meeting at

Mr. Perelman's house in Palm Beach the transaction discussions, to the extent we can call them that, had shifted to Sunbeam making a purchase of the -- of Coleman; is that correct?
A. Yes.
Q. In between November 6, 1997 and the meeting at Mr. Perelman's home in Palm Beach you gave Mr. Nesbitt certain instructions, did you not, to do some analysis of a combination of Sunbeam and Coleman?
A. There was an analysis done. I don't know whether I gave him instructions or Perelman did or Gittis or somebody else. I don't recall.
Q. Mr. Nesbitt would not have done such a modeling analysis on his own, would he?
A. No. I think that sort of covered the waterfront; Perelman, myself or Gittis, probably, or Levin.
Q. You can hand 408 back to me and I will put that away and get that out of your way.

NOT A CERTIFIED COPY

015800

Page 150

It is the complaint.
Let me show you what we will mark as Morgan Stanley Exhibit 104.
Do you have Morgan Stanley Exhibit 104 in front of you?
A. I do.
Q. Is this one of the documents that you saw in your deposition preparation?
A. I think so, yes.
Q. This document, which Mr. Nesbitt testified he prepared, it is a document that is -- the title is Sunbeam/Coleman Comparison; do you see that?
A. I do.
Q. Having looked at this document did you instruct Mr. Nesbitt to prepare this?
A. I already told you that I didn't recall specifically instructing him to prepare this. It doesn't mean I didn't.
Q. Looking at the documents, sir, there -- do you know the source of the figures that appear on this document?
A. I don't.
Q. Did you discuss it with

Page 151

Mr. Nesbitt after he prepared it?
A. I don't recall having a specific discussion. I probably did though.
Q. Did Mr. Nesbitt receive an assignment from someone at MacAndrews & Forbes to do modeling analysis in advance of the meeting with Mr. Dunlap and Mr. Perelman later in December of 1997?
A. What was the last part of that?
Q. Why don't I repeat the question for you?
Did Mr. Nesbitt receive an assignment from someone at MacAndrews & Forbes to do a modeling analysis in advance of the meeting with Mr. Dunlap and Mr. Perelman that occurred later in December 1997?
A. I said already I assume that is what happened.
Q. There are certain cost savings that are assumed in the merger consequences portion of this document which appears on page 3. They are in the -- towards the bottom in the boxed area. Do you see that?
A. Yes, I do.

Page 152

Q. There are two figures used, 40 million and 60 million. Do you see that?
A. I do.
Q. Did you provide these figures to Mr. Nesbitt?
A. I don't recall.
Q. You don't recall one way or the other?
A. Right.
Q. Do I read this correctly that there are certain prices per share that are set out across the top of the document, $22, $24, 26, 28 and $30. That is what those --
A. Yes.
Q. Those are price per share for Coleman stock, right?
A. That is what it appears to be.
Q. Do you know where Mr. Nesbitt got those figures?
A. I do not.
Q. The current Coleman price is listed as $15.25 at the top of this document as of December 8, 1997. Do you see that?

Page 153

A. Yes.
Q. Does that square with your recollection of what Coleman was trading at at this time?
A. More or less.
Q. So, someone was planning, according to -- withdrawn.
As I read the document there are various merger consequences to Sunbeam assuming pooling treatment is not available and that is pooling treatment versus purchase accounting, right?
A. Yes.
Q. That at various price levels you are trying to determine whether the transaction is accretive or dilutive to Sunbeam, right?
A. Yes.
Q. The conclusion you reach is that with no cost savings even at $22 a share the transaction is dilutive, correct?
A. Without -- yes, without pooling treatment.
Q. Pooling treatment wasn't available from an accounting standpoint at

NOT A CERTIFIED COPY

00153021

CONT #969

Page 154

this time, was it?
A. Well, you have a calculation just below that excludes goodwill.
Q. You can calculate anything you want but from an accounting standpoint pooling treatment was no longer permitted as of this date, was it?
A. I don't remember.
Q. You don't remember the date it was no longer available?
A. No.
Q. Okay.
Am I correct -- can you tell the jury what the first -- the first point, considering both stock price of Coleman and savings, if you will, the transaction became accretive to Sunbeam?
A. Could you ask me that question again? Sorry.
Q. Using the Coleman share price as one variable and cost savings, if you will, what is the first point in time in which the transaction would become accretive to Sunbeam?
MR. MARKOWSKI: As shown on this

Page 155

document?
BY MR. BEMIS:
Q. Yes, as shown on the document prepared by Mr. Nesbitt.
A. The first point?
Q. Yes.
A. I don't understand the question.
Q. You don't understand the question.
The way I read it, $22 a share, for example, I look at this and I can say if there is cost savings assumed of $40 million it becomes an accretive transaction at 8 cents per share. Am I reading it right?
A. Yes. That is not what you asked me.
MR. MARKOWSKI: Can I have the question back please? Sorry.
(Record read)
MR. MARKOWSKI: Thank you.
THE WITNESS: At 8 cents per share? Of 8 cents per share; not at, of.
BY MR. BEMIS:

Page 156

Q. It is accretive in that the transaction adds 8 cents per share to the combined value of the companies, correct?
A. Combined earnings of the company.
Q. Combined earnings, excuse me.
A. Yes.
Q. Then I can -- if, however, I assume a price of $28 a share also with cost savings of $40 million the transaction is dilutive to the extent of 11 cents per share; is that right?
A. From an earnings per share standpoint, that is correct.
Q. This document was -- to your knowledge, did Morgan Stanley provide any of the information that went into Morgan Stanley Exhibit 104?
A. I don't know the answer to that.
Q. Turn to the last page. Do you recognize the handwriting there?
A. No.
Q. Having reviewed Morgan Stanley Exhibit 104 do you -- do you have now any recollection of asking Mr. Nesbitt to do a Sunbeam-Coleman comparison such as you are

Page 157

looking at now?
A. No.
Q. Not at any point in time?
A. No, but I said that, I think, three or four times already.
Q. I think it is three or four times. I also hadn't shown you this document before.
A. But I said I saw this document a few days ago.
Q. You didn't say that until I showed it to you. Let's not quarrel about that. Let's move on.
My understanding is you are telling the jury as you sit here today that you have no recollection of telling William Nesbitt, the man who worked for you, he was a subalter to you, in effect, you have no recollection of telling him to do any modeling analysis of the Sunbeam-Coleman transaction; is that right?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I have no recollection of telling him to --

NOT A CERTIFIED COPY

Page 158

specifically to do a model for the Sunbeam-Coleman transaction.
BY MR. BEMIS:
Q. Did you ever --
A. In late 1997. It may very well be that I told him. It may very well be that Mr. Perelman asked him to do it. It may very well be that Mr. Gittis asked him, that somebody else asked him. All of those are possible.
Q. Let -- hand that one back to me.
Did you ever tell Mr. Nesbitt -- withdrawn.
As you sit here today Morgan Stanley 104 which had certain cost saving figures, so-called synergies, incorporated into the analysis -- you agree those cost savings are called synergies in your business?
A. Generally, yes.
Q. Did you ever tell Mr. Nesbitt for purposes of his modeling what synergies to assume in a Coleman-Sunbeam transaction?
A. I don't recall telling him. I don't recall telling him to do the analysis

Page 159

so I don't --
Q. Did you ever tell Mr. Nesbitt at any time up until the signing of the merger agreements to do any type of analysis that assumed a Sunbeam-Coleman comparison or transaction as set forth in MS 104 and to assume certain prices for Coleman stock such as the $22, $24, $26, $28 and $30 in Exhibit 104?
A. Can I have it back?
Q. You may.
MR. MARKOWSKI: Could you read that question please?
MR. BEMIS: I will ask the question again now that he has the exhibit in front of him.
BY MR. BEMIS:
Q. I have given you back Morgan Stanley Exhibit 104.
On page 3 we see certain prices on a per share basis for Coleman ranging from $22 to $30 in $2 increments, right?
A. Yes, sir.
Q. Is it your testimony to the jury that having looked at Morgan Stanley

Page 160

Exhibit 104 that did you not give these figures to Mr. Nesbitt?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: It is my testimony that I don't recall telling Mr. Nesbitt to use specific share prices or specific amounts of synergies or cost savings.
BY MR. BEMIS:
Q. You can hand that back to me.
I hand you what has been marked previously in Mr. Nesbitt's deposition as Morgan Stanley Exhibit 105.
Q. Mr. Nesbitt testified that he prepared Exhibit 104 at your direction.
Can you think of any reason why he would lie about that?
A. Absolutely not. I told you that I thought it was a distinct possibility.
Q. He also testified that he gave you, that is, Mr. Nesbitt, gave you Exhibit 104 after he prepared it.
Can you think of any reason he would lie about it?

Page 161

A. Absolutely not.
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:
Q. Mr. Maher, we were looking at Exhibit 105 and you have that in front of you, right?
A. MS 105.
Q. Did you -- withdrawn.
This document, MS 105, has a date of December 10, 1997 which Mr. Nesbitt told us earlier in a deposition it was a date that it was at least printed.
Do you see the dates in the upper right-hand corner?
A. I do.
Q. Did you receive this document from Mr. Nesbitt?
A. I may have.
Q. Why would you be looking at this document if you got it from Mr. Nesbitt?
A. Why?
Q. Yes. Why would you look at it?
MR. MARKOWSKI: Object to the form of the question.

NOT A CERTIFIED COPY

015803

Page 162

THE WITNESS: Well, as I think I told you earlier, sometime in late '97 the notion of a Sunbeam-Coleman transaction came up and since Mr. Nesbitt did this work and that was a prospect of a transaction why wouldn't I look at it, I guess, is my question.
BY MR. BEMIS:
Q. Someone, Mr. Nesbitt in this case, was looking at the consequences of a Coleman-Sunbeam transaction, right?
A. Clearly.
Q. The information that is in this document is information that MacAndrews & Forbes collected, correct?
A. That I don't know the answer to.
Q. It is your testimony --
A. It says -- Will Nesbitt collected it from somewhere.
Q. It is your testimony you don't know where the information came from that appears in Exhibit 105 because Mr. Nesbitt collected it?
A. That's correct.

Page 163

Q. If Mr. Nesbitt told us where it came from he would be the person we could rely upon to know where the information came from, right?
A. I would think that to be the case.
Q. You relied on Mr. Nesbitt to gather whatever information he put into these comparisons, correct?
A. I would think that also would be the case.
Q. Hand that back to me.
Before we get on to the next two exhibits, do you recall at any point in the negotiations with Sunbeam providing any of MacAndrews & Forbes internal analyses of the financial effects of a combination of Sunbeam and Coleman to Sunbeam?
A. I don't think so. I think we may have -- there may have been some pieces of paper that said if you do the transaction with X number of shares it would have this impact.
There may have been something -- there were several meetings and we may have

Page 164

produced something. I am not sure or we may have just worked off of the documents. I don't recall.
Q. Is it fair to say during the course of the negotiations that MacAndrews & Forbes was preparing its own internal analyses of the financial consequences of a transaction with Sunbeam?
A. Well, you have an example that you just showed me, sure.
The answer is, yes.
Q. When you said the answer is, yes, you were referring to Morgan Stanleys 104 and 105 that we just looked at, right?
A. Yes.
Q. Let me show you two other exhibits.
I will start with Morgan Stanley Exhibit 106 previously marked at Mr. Nesbitt's deposition.
MR. BEMIS: Mr. Markowski, could you hand it to the witness?
Thank you.
BY MR. BEMIS:
Q. Would you please look at Exhibit

Page 165

106 and tell me when you are done?
A. What do you want me to look to? Look at the whole thing?
Q. Look at it so you are comfortable and I will ask you á couple of questions.
A. I think it is -- there is quite a bit of information here so -- okay.
Q. If you look at the first page it has a run date, if you will, of January 26, 1998. Do you see that?
A. I do.
Q. Did you -- and Mr. Nesbitt has testified that he did prepare MS 106. I would ask you to accept that for our purposes right now.
A. Yes.
Q. My question is: Did you ask him to prepare it?
A. I don't recall specifically but I may have.
Q. The first page of this document continues in the fashion that -- of MS 104 and 105 with having prices for Coleman stock and certain cost savings resulting in an analysis of whether there is a pro forma

FOR A CERTIFIED COPY

015804

Page 166

accretion or dilution of the company's earnings per share?
A. Yes.
Q. Did you provide Mr. Nesbitt with the merger consequence cost savings of $100 million?
A. No. I don't think I provided it. I think it was a number -- there had -- there had been a discussion by then between Levin and Kersh and Page and Fannin about cost savings.
Somewhere along the way I think there may have been a discussion by that point in time. If there hadn't been, or maybe if there hadn't been there was one shortly thereafter.
Q. To your knowledge was -- withdrawn.
Did you participate in any of these discussions about cost savings?
A. Between Coleman and Sunbeam?
Q. Yes, sir.
A. I don't think so.
Q. Do you remember -- strike that.
Did you receive a copy of MS 106

Page 167

at some point before the signing of the merger agreements on February 28, 1998?
A. It looks somewhat familiar. I can't tell you whether I did or didn't but it looks familiar.
Q. Did you rely upon this in your negotiations with Sunbeam?
A. Rely upon it?
Q. Sure, the information.
A. The math?
Q. The merger consequences.
A. The math, the number of shares, all of the math added up.
Q. All of the math, all of the assumptions, all of the adjustments, for example, which appear on page 2. There are 1998 --
A. I can't tell you whether I specifically relied on these numbers, Morgan Stanley produced numbers.
There were lots of numbers produced. I can't tell you whether I specifically relied on this set of numbers or not.
Q. As you sit here today you can't

Page 168

tell me what set of numbers you relied upon in going forward with the merger transaction and the execution of the documents thereon on February 28?
A. I can't tell you whether this set of numbers was the numbers I relied upon.
Don't forget, this was an iterative process in terms of we started with some numbers that Will worked on I guess in early December. These are further refined.
I can't tell you at what point in time we sort of buttoned what the analysis was.
Q. At some point you do in your mind button up the analysis; is that right?
A. I assume so.
Q. Let me show you Exhibit 107 -- let's take a break and change the tape.
THE VIDEOGRAPHER: The time is 2:42.
This completes tape number two.
(Pause)
THE VIDEOGRAPHER: We are back on the record.

Page 169

This begins tape number three.
The time is 2:52.
BY MR. BEMIS:
Q. Let me show you what the court reporter has previously marked as MS 107.
A. This is what we just had.
Q. They lookalike. There is a slight difference in the two documents.
Do you have Exhibit MS 107 in front of you?
A. I do.
Q. In this document Mr. Nesbitt uses cost savings of $150 million. Do you see that?
A. I do.
Q. Do you know where he obtained that figure?
A. I don't.
Q. Did you see MS 107 after Mr. Nesbitt prepared it?
A. I probably did.
Q. Did you discuss it with Mr. Nesbitt?
A. I -- if I saw it I probably did discuss it.

NOT A CERTIFIED COPY

015805

Page 170

Q. As you sit here today can you tell the jury whether you discussed it with Mr. Nesbitt?
A. I cannot tell you definitively that I discussed it with him.
Q. Did you provide a copy of MS 107 to anyone at Morgan Stanley?
A. Not that I recall.
Q. Did you provide a copy of Exhibit MS 107 to anyone at Sunbeam?
A. Not that I recall.
Q. Sir, we have looked at four spreadsheets prepared by Mr. Nesbitt and they are Exhibits MS 104 through 107 and you have 107 in front of you, correct?
A. Yes.
Q. With regard to all four of these exhibits --
A. The two early ones and these two later ones in early December, late January?
Q. Correct.
With regard to those four exhibits, MS 104 through 107, do you have any recollection as you sit here today of discussing them with Mr. Nesbitt?

Page 171

A. A recollection of a discussion?
Q. Yes.
A. No.
Q. Do you have any recollection as you sit here today of providing any of those exhibits, MS 104 through 107, to Morgan Stanley?
A. No.
Q. Do you have any recollection of, as you sit here today, of providing any of those exhibits to Sunbeam?
A. No.
Q. Did you provide them to your investment bankers at this time, Credit Suisse First Boston?
A. Not that I recall.
Q. Did you rely upon the calculation of Mr. Nesbitt in MS 104 through 107 in, as you were putting it, buttoning up the numbers?
MR. MARKOWSKI: I object to the form of the question.
THE WITNESS: I think I am sure I took into consideration the information here.

Page 172

I don't think there is -- this is a series of assumptions involving different amounts of cash, different stock prices, different values of the transaction, different savings.
I am sure that all of that input had some influence on my decision-making process, yes.
Q. You can hand that back to me.
A. It probably had more influence on what I thought Sunbeam could actually legitimately afford to pay as opposed to anything else.
Q. Did I hear you correctly that you used Exhibits MS 104 through 107 to determine what Sunbeam could actually legitimately afford to pay for Coleman?
A. As one indicia, yes.
Q. There comes a point in time when Credit Suisse First Boston is retained as Coleman's exclusive investment adviser, correct?
A. Yes.
Q. Did you participate in that decision?

Page 173

A. I probably participated to some degree. Either it was kicked around or I think Credit Suisse First Boston had done a lot of work on a lot of Coleman business anyway. I think they were probably the natural investment bank to hire but I don't recall specifically having discussion about hiring them versus hiring somebody else.
Q. Who made the call to Credit Suisse First Boston and said we would like to retain you?
A. I don't remember.
Q. Who would have had the responsibility to do that?
A. It could have been Howard.
Q. Howard Gittis?
A. Yes. It could have been Jerry, it could have been -- it also could have been me. It could have been Ronald.
Q. Ronald, Mr. Perelman?
A. Yes.
Q. Did you ever have any discussions -- withdrawn?
A. It might not have been a call. They might have been there.

NOT A CERTIFIED COPY

Page 174

Q. Would they just hang around Mr. Perelman's offices?
A. They could have been there for some other reason.
Q. I am going to hand you what has previously been marked as Morgan Stanley Exhibit 77 which is a multi-page document with the logo of Chase and Chase Securities, Inc. on it.
Please take a minute and look at it and tell me when you are done. I just have a few questions.
Have you ever seen MS 77 before?
A. I don't think so.
Q. Did Chase Securities make a presentation to MacAndrews & Forbes about a possible Sunbeam-Coleman transaction?
A. It looks like they did.
Q. Did you attend the presentation?
A. I don't recall attending it. This doesn't ring a bell.
Q. Do you know who requested that Chase do such a presentation?
A. I don't. I don't know that anybody requested it.

Page 175

Q. Do you know who would have told Chase Securities that there was even a transaction under consideration?
A. I don't. Maybe they thought it was a good idea.
Q. "They" being Chase?
A. Yes.
Q. Thought what was a good idea?
A. That combination of Sunbeam and Coleman.
Q. Are you suggesting that they pitched the deal to you?
A. No. I wasn't suggesting it. I just suggested that that was a possibility.
Q. You can hand that back to me.
Let me hand you what has previously been marked in Mr. Nesbitt's deposition as Morgan Stanley Exhibit 353.
Do you have that exhibit in front of you?
A. I do.
Q. Have you seen it before?
A. No.
Q. Did you have any -- go ahead.
A. I don't believe I have seen it before.
Q. Did you have any discussions within MacAndrews & Forbes about this time about a possible transaction with Black & Decker after there was a Sunbeam-Coleman combination of some kind?
A. I don't recall.
Q. You can hand it back to me if you don't remember.
A. Sure.
Q. Let me see 165.
I hand you what has been marked in another deposition Morgan Stanley Exhibit 165. Please take a look at it.
Do you have that exhibit in front of you, sir?
A. I do.
Q. Have you seen it before?
A. It looks similar to some of the other information. I think it was 104, 105.
Q. There are exhibits with those numbers. I leave it to others to say whether they are similar.
This document is entitled Sunbeam

Page 176

Page 177

Quarterly Earnings Comparison and then there are some obviously additional calculations on the other pages.
My question is: Did you get this?
A. I don't recall seeing this before. It doesn't mean I didn't get it.
Q. Tell me something. When Mr. Nesbitt sent you things did you read them?
A. Generally, yes.
Q. What do you mean by that; generally, yes?
A. Well, I mean what I said. Generally, yes. He might have sent me an article on some company. I might have chosen not to read it.
Q. Let's assume he sent you something on Sunbeam in a Coleman transaction and he said he sent it to you. Would you have read it?
A. Probably.
Q. It is more likely than not that if Mr. Nesbitt sent you something on the Sunbeam-Coleman transaction you would have

NOT A CERTIFIED COPY

015807

Page 178

taken the time to read it, right?
A. Probably.
Q. According to Mr. Nesbitt, and I am looking at the bullet points under the heading Fourth Quarter Issues, he writes, as follows: "Uptick in third quarter receivables supposedly relates to one half of quarter sales being shipped in September."
Do you see that?
A. Yes.
Q. Based on your -- withdrawn.
Did you understand that to mean that one half of Sunbeam's sales at least in the third quarter were in the last month of that quarter?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I didn't -- I don't remember seeing this so I don't know if I saw it. I don't know what I thought at that point.
BY MR. BEMIS:
Q. Is that what it means to you now when you read it? Withdrawn.

Page 179

You can hand it back to me. We will rely on Mr. Nesbitt. Thank you, sir.
Up to -- did you ask Mr. Nesbitt to do the work that we just looked at in Exhibit 165?
A. Was that the exhibit I just handed back?
Q. Yes, sir; the one you just handed back to me.
A. I don't specifically recall asking him to do that work, no.
Q. He has done -- Mr. Nesbitt did spreadsheets we looked at for December 8 and then he did, a couple of days later he did another set of spreadsheets that we looked at as Exhibits 106 through 107.
Now we see on 165 on December 11 another set of analyses by Mr. Nesbitt.
You have now looked at all those documents, correct?
A. Yes.
Q. Can you tell the jury whether that in any way refreshes your recollection of what MacAndrews & Forbes was doing concerning a financial analysis of a

Page 180

Sunbeam-Coleman transaction at this point in December of 1997?
A. What did you just ask me? Which question do you want me to answer?
Q. There was really only one question there if you were listening.
I have shown you multiple documents Mr. Nesbitt prepared in December of 1997, correct?
A. Yes.
Q. Mr. Nesbitt reported to you?
A. Yes.
Q. You read what Mr. Nesbitt sends to you if it relates to Coleman-Sunbeam; at least probably you read it, correct?
A. That's correct.
Q. My question to you is can you tell the jury, having looked at all those documents, five, in fact, of Mr. Nesbitt's analysis, what MacAndrews & Forbes was doing by way of a financial analysis of a Coleman-Sunbeam transaction in December of 1997?
A. You just showed me the documents. That is the analysis that was being done

Page 181

apparently.
Q. That is the only analysis, right?
A. No, not necessarily.
Q. Do you know of any other? Can you tell the jury any other?
A. In December of 1997, no, I don't know of any other. It doesn't mean it isn't being done.
Q. It doesn't mean it is not going to snow today.
A. It certainly will snow somewhere.
MR. MARKOWSKI: Hold on. We don't need to respond to that. That is an improper comment.
MR. BEMIS: I didn't mean to be improper.
MR. MARKOWSKI: Somehow I doubt that.
MR. BEMIS: I am sure you do.
BY MR. BEMIS:
Q. Let me show you what has been marked as MS 78.
Do you have that exhibit in front of you?
A. I do.

NOT A CERTIFIED COPY

015808

Page 182

Q. Did you attend the meeting where this document was discussed?
MR. MARKOWSKI: You are referring to the second page?
MR. BEMIS: The second page, yes, sir. Sorry. Second page.
THE WITNESS: I got two copies.
BY MR. BEMIS:
Q. You have two?
A. Yes.
MR. MARKOWSKI: Can I have the question back please?
BY MR. BEMIS:
Q. Did you attend the meeting where this document was discussed?
MR. MARKOWSKI: When you say "the meeting --"
BY MR. BEMIS:
Q. The meeting --
MR. MARKOWSKI: Are you referring to the December 12 meeting?
BY MR. BEMIS:
Q. I am referring to the meeting where the second page was discussed.
MR. MARKOWSKI: There may have

Page 183

been more than one meeting where the second page was discussed.
MR. BEMIS: May have been.
MR. MARKOWSKI: Are you referring to the December 12 meeting?
MR. BEMIS: I am referring to the meeting where this document was discussed.
The prior testimony, as I understand it, had discussed one meeting between the parties. If I am wrong then I am wrong.
MR. MARKOWSKI: I think you are wrong. Your own documents I think prove you wrong.
MR. BEMIS: I am not hear to take your deposition.
MR. MARKOWSKI: I am trying to clarify if you are asking about a particular meeting or not.
I still don't know so I will object to the form of the question.
THE WITNESS: Let me answer.
BY MR. BEMIS:
Q. Let me put the question again to

Page 184

solve Mr. Markowski's concern.
There is a reference to a meeting that took place on a Friday which the record will reflect was December 12, 1997.
Did you attend that meeting?
A. I believe there was a meeting that related to cost savings that took place -- it actually did take place on a Friday. I don't remember the exact date. And it was, I believe, at least the first meeting, was I think Levin, Kersh, Page and Fannin, something like that. There was a meeting. I don't know if this was specifically discussed.
This document I had seen before, I have seen at some point in time. There were discussions about it with Levin so there wasn't just one meeting where this document was discussed.
Q. Did you attend the meeting that is on December 12?
A. I don't know.
Q. Let me show you what has been marked as Morgan Stanley 75.
A. There were -- I think there were

Page 185

several meetings on the synergies.
There was one I referred to several times which was Levin, Kersh, several other people but I was not at that meeting. I believe that was the initial discussion of synergies.
Q. You say you were not at that meeting?
A. I was not at that meeting.
Q. I am not clear.
Did you say you did attend more than one meeting on synergies or you only attended one?
A. I had discussions with Levin, Jerry, about synergies.
Q. Fair enough.
Let's talk about a meeting with Sunbeam representatives and MacAndrews & Forbes representatives.
How many such meetings where synergies were discussed did you attend?
A. The one I remember that I have a clear recollection that it took place was a Friday meeting with Page, Levin, Kersh and I don't know whether Fannin was there or

NOT A CERTIFIED COPY

015809

Page 186

not.
There may have been a later meeting in which a number of other people were at in -- I have a vague recollection of being at some meeting where synergies were discussed where the Sunbeam people may have been. Vague.
Q. Let me hand you what has been marked as Morgan Stanley 75 which is a chronology that was prepared by MacAndrews & Forbes counsel in this case.
Turn to --
MR. MARKOWSKI: Do you have a copy for the witness?
MR. BEMIS: I had already given you a copy earlier. I have another copy.
MR. MARKOWSKI: If I have got it I will weed it out.
THE WITNESS: I have it. 75. I still got 75. Wachtell, Lipton 75. Got it.
BY MR. BEMIS:
Q. All right. We all have a copy of MS 75 in front of us?

Page 187

A. Yes.
Q. Turn to December 12, 1997. Are you there?
A. Yes.
Q. Did you attend the first meeting that is referred to in that -- in the chronology?
A. On the 12th?
Q. On the 12th of December.
A. No.
Q. It says later in the day there was a meeting?
A. I think that is what I was referring to before.
Q. That is the meeting you are referring to?
A. Yes.
Q. So the record is clear, going down the chronology in MS 75 under December 12 there is a meeting later in that day where Mr. Perelman, Mr. Gittis, yourself, Mr. Rich of Credit Suisse First Boston and Mr. Levin had a discussion about a potential transaction; is that right?
A. That sounds right.

Page 188

Q. After the synergies meeting, if you will, on December 12, which you did not attend; is that right; you did not attend that meeting?
A. I don't believe I did.
Q. You then met and you had a discussion as described in MS 75, right?
A. That is my recollection.
Q. What was discussed?
A. I think it was a discussion -- as I recall the meeting had taken place earlier and what the -- what Levin thought, what the people from Sunbeam thought and what -- I think it was a discussion, a summary of a meeting that took place earlier in the day.
Q. What did Mr. Levin say he thought? Do you remember what anyone said about what they thought?
A. No, not specifically.
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I don't remember what anybody said specifically.
BY MR. BEMIS:

Page 189

Q. Do you remember anything that Mr. Perelman said?
A. No.
Q. Did you discuss anything about Morgan Stanley at the meeting?
A. Not that I recall.
Q. To your knowledge -- withdrawn.
The chronology does not show Morgan Stanley attending the meeting on December 12 that preceded your meeting with Mr. Perelman, Mr. Gittis and Mr. Levin, if I have everyone properly attending; is that right?
A. I think that is right.
Q. As of this point in time, December 12, when you met with Mr. Perelman, et cetera, as we described, had you been provided with any documents by Morgan Stanley?
I should qualify that by saying regarding an acquisition of Coleman by Sunbeam, not the other way around.
A. We were provided with documents by Morgan Stanley about Sunbeam prior to the 12th.

NOT A CERTIFIED COPY

015810

Page 190

Q. You are talking about the documents -- let me finish -- that you described earlier where you were being asked about a possible acquisition of Sunbeam by Coleman or by MacAndrews, excuse me?
A. That's correct.
Q. Focusing on just specifically a transaction whereby Sunbeam would acquire Coleman, as of the December 12 meeting had you been, to your knowledge, been provided with any documents by Morgan Stanley?
A. Not that I recall.
Q. Had you had any -- had you personally had any meetings with anyone from Morgan Stanley about such a transaction and that is where Sunbeam acquired Coleman?
A. Well, there was that earlier meeting, I forgot what the date was, that we talked about before in which Morgan Stanley mentioned the possibility of us acquiring Sunbeam.
Q. Yes. I was excluding that.
Let me try again.

Page 191

You have told us there was a meeting earlier which we think was about November 6 of 1997 where there were discussions of MacAndrews purchasing Sunbeam?
A. Yes.
Q. That was rejected, was it not, by MacAndrews?
A. Yes. It had been rejected before because it had been brought up before.
Q. Up to December 12 had you received any documents from Morgan Stanley about a potential transaction where Sunbeam would acquire Coleman whether for stock or cash or some combination?
A. I don't believe so.
Q. When you met with Mr. Perelman on December 12 and Credit Suisse First Boston did you discuss any of the work that Mr. Nesbitt had done to -- by that time as reflected in Exhibits Morgan Stanley 104 and 105?
A. I don't recall.
Q. Is the next thing -- withdrawn.
Was the document that is attached

Page 192

to Morgan Stanley Exhibit 78, the synergies list, was that document provided to Credit Suisse First Boston at the meeting on December 12 that you had with Credit Suisse, Mr. Perelman and Mr. Levin?
A. This document with writing on it?
Q. No. Exclude the writing, sir.
A. I don't -- I don't remember specifically but I imagine it was.
Q. You can set that aside.
Did you request Mr. Nesbitt to obtain information about Mr. Dunlap's employment contract with Sunbeam?
A. I remember there was some discussion about Dunlap's employment contract but I don't know whether I brought it up or whether somebody else did.
I just -- I don't know what relevance it had. I do recall there was some discussion about his employment contract.
Q. Let me show you what has previously been marked as Morgan Stanley Exhibit 224.
I have handed you what has been

Page 193

marked as Morgan Stanley Exhibit 224 which Mr. Nesbitt told us that he prepared on or about December 15, 1997.
Did you receive a copy of this document from Mr. Nesbitt?
A. It says it was copied to me. I probably did.
Q. What prompted -- strike that.
Did you request that Mr. Nesbitt research Mr. Dunlap's employment contract with Sunbeam?
A. I don't specifically recall requesting this, no. I don't know whether Will did it on his own or whether I asked for it or Perelman or Gittis.
Q. Did you have -- withdrawn.
Did you have a meeting with any of the people at MacAndrews after you received a copy of this memorandum to discuss the information gathered by Mr. Nesbitt?
A. No. I don't recall it.
There may have been one but I don't recall a meeting specifically to discuss this.

NOT A CERTIFIED COPY

015811

Q. Do you know why Mr. Nesbitt would have been looking for information about Mr. Dunlap's contract with Sunbeam?
A. I don't actually.
Q. You can hand that back to me.
If you look at MS 75 again which is the chronology -- I hope you have it still out there -- there is a reference to a meeting with CSFB on that date, December 16, 1997.
Do you see that?
A. Yes.
Q. You are identified as attending that meeting. Do you see that?
A. I do.
Q. Did you attend the meeting?
A. I assume so.
Q. Do you have any recollection as you sit here today of attending a meeting?
A. Well, I can't tell you if it was on that specific date but I do remember having this cast of characters together at some point in time in December.
Q. What was the reason why these characters gathered at this time?

A. To discuss a possible transaction between Coleman and Sunbeam. I think there was -- there was a meeting scheduled between Perelman, Gittis and Dunlap for that weekend.
Q. Was this meeting in anticipation of that meeting?
A. I believe so.
Q. That was a terrible question.
Was the meeting on December 16 in anticipation of the meeting that was upcoming between Mr. Perelman and Mr. Dunlap in Palm Beach?
A. I believe so.
Q. Was there a discussion at this meeting, that is, December 16, concerning a price that Mr. Perelman would seek to obtain for his company's interest in Coleman?
A. There may have been but I don't recall it.
Q. As of the meeting that took place at Mr. Perelman's home which we believe is December 18, 1997, you had not received any documents from Morgan Stanley with regard

to Sunbeam buying Coleman; is that correct?
A. I don't believe so.
Q. You don't believe you had received any documents, right?
A. Yes.
Q. You, yourself, at least as of that meeting, had not had any face-to-face meetings with Morgan Stanley concerning specifically Sunbeam buying Coleman?
A. I don't believe so.
Q. By December 18 -- we will move forward hopefully to the meeting in west Palm Beach -- withdrawn.
There is another meeting on December 17, 1997. Do you see that?
A. I do.
Q. Was this in effect a continuation of the discussions that started on December 16?
A. I assume so.
Q. Again, in preparation for the meeting at Mr. Perelman's home?
A. I assume so.
Q. Up to -- withdrawn.
As of December 17 you had already

retained Credit Suisse First Boston, correct?
A. That is what it says here.
Q. You had in your possession at that time, whether you looked at them or not, documents Mr. Nesbitt had created, Exhibits MS 104 and 105 that we looked at, right?
A. I think so.
Q. You also had done some or had received some research from Credit Suisse First Boston, had you not, about Sunbeam?
A. I may have.
Q. Let me show you what has been marked -- give me one second here.
These are pretty bulky but I am going to hand you real quickly a document that we previously marked as Morgan Stanley 76.
Do you need a copy, Mr. Markowski?
MR. MARKOWSKI: That is fine.
BY MR. BEMIS:
Q. Do you have MS 76 in front of you, sir?

NOT A CERTIFIED COPY

0151812

Page 198

A. I do.
Q. These documents have a December 1997 date on them.
I think they have been identified as having been provided on -- sometime in December of 1997.
Have you seen these documents before?
A. They look -- I mean, it seems like something that First Boston would have delivered to us around that point in time.
Q. Were these documents provided by Credit Suisse First Boston in anticipation of the meeting with Mr. Dunlap at Mr. Perelman's home?
A. I assume so. I can only assume so.
Q. Did you review this package when you received it from Credit Suisse First Boston?
A. Assuming that I did, I can't imagine I wouldn't have reviewed it.
Q. You can hand it back to me. I don't have anymore questions about it. You are free to look at it some more if you

Page 199

want.
A. I was just curious as to what it was.
Q. At the two meetings on December 16 and 17 that we have been talking about in anticipation of the meeting between Mr. Dunlap and Mr. Perelman in Palm Beach was there a discussion by the MacAndrews group about a deal structure such as cash, combination of cash and stock or all cash, or, excuse me, all stock?
A. I don't specifically recall the discussion at that meeting so it is hard for me to sort of say what went on but on the other hand I can't imagine that that wasn't a topic of discussion.
Q. Was there a Coleman price per share that had been decided upon as a starting point for negotiations with Mr. Dunlap that took place at Mr. Perelman's home?
A. No. I don't believe so.
Q. Did you have a bottom figure that you were considering?
A. No.

Page 200

Q. Did you discuss --
A. Trying to ever get a bottom number out of Perelman is impossible.
Q. Did Mr. -- strike that.
Did the parties on December 16 or 17 at these preparatory meetings discuss the amount of cost savings or synergies that would be necessary in order for a transaction to be doable between the two parties at a price Mr. Perelman would accept?
A. No.
Q. Had CSFB done any analysis by the December 18 meeting similar in any way to what Mr. Nesbitt had done in Exhibits MS 104 and 105?
A. They may have. I don't know. They may have.
Q. If they did you don't recall it as you sit here today; is that fair?
A. That's fair.
Q. That takes us to the meeting at Mr. Perelman's home which we have already covered, so how did matters -- how did matters stand after the meeting with

Page 201

Mr. Perelman and Mr. Dunlap which ended up in Mr. Dunlap storming out of the meeting as you put it?
A. I think my recollection is the best way to describe it is, that was interesting, let's move on, that is over.
Any transaction with Sunbeam was dead and gone.
Q. As of December 18, as you put it, things were dead and done?
A. I said dead and gone but dead and done works too.
Q. I note that in the chronology for December 18 the transaction price range that Mr. Dunlap indicated was 18 to $22 per share.
Do you see that on your copy of MS 75?
A. Yes, I did see that, yes.
Q. According to MacAndrews' attorneys, Wachtell, Lipton, they told the Securities and Exchange Commission that Mr. Perelman advised Mr. Dunlap that the price was too low and he would not be prepared to support a transaction at that

NOT A CERTIFIED COPY

01583

Page 202

price. Do you see that?
A. I do.
Q. Going into this meeting on December 18 is it your testimony that you had not had any discussions where you participated where Mr. Perelman indicated a price where he would be prepared to support a transaction?
A. That is not my testimony.
I don't know whether he indicated a price at which he was willing to support a transaction, I don't remember, but what I did say is I would guarantee you I would never know what his minimum price was.
Q. Had he indicated any price?
A. I don't recall. I really don't.
Q. When you were doing your negotiations with --
A. It is not -- it would be unlike Ronald Perelman to indicate a price. It is just unlike him.
Q. What do you mean by that, unlike him to do that?
A. Because he -- to indicate a price would indicate a level at which he was

Page 203

willing to do something.
When you got there you got there. You wouldn't know a level at which he was prepared to do it. He wasn't going to say my bottom line is X.
That is not his style.
Q. There did come a point in time where you did tell Sunbeam representatives that there was indeed a price that Mr. Perelman would be prepared to support, did you not?
A. Yes, eventually.
Q. Let's move forward from December 18.
At that point, as I understand your testimony, you are telling the jury the deal was done, it was dead in the water at least as of that time?
A. Yes.
Q. When does the -- when does the deal as it eventually emerges resurface?
A. Sometime in January, in part because I am looking at the chronology here.
It says early January he called

Page 204

and said Sunbeam was still interested in doing a transaction and I guess the net result of that was that they set up a meeting.
Q. There is an entry on the chronology and by McAndrews' counsel that Mr. Price called Mr. Gittis to indicate that Sunbeam might be willing to consider a transaction valued as high as $25 per Coleman share. Mr. Gittis indicated that a proposal at that level would not be of interest.
Do you see that?
A. Yes.
Q. Did you know about that call?
A. In advance of the call?
Q. Well, we could ask that but I was actually thinking about after the call took place.
A. At some point in time after the call took place I knew about that, yes.
Q. Did Mr. Gittis tell you about that?
A. I frankly don't know who told me about it, Gittis or Perelman.

Page 205

Q. Somebody told you?
A. Somebody, yes.
Q. What they told you was Sunbeam was willing to go as high as $25 a share; is that right?
A. That is what it says here.
Q. You were on your way to Aspen, as I recall, on December 22, according to your calendar?
A. Is that what my calendar says, the 22nd?
Q. Yes. That is what you told me earlier today.
A. On the 22nd?
Q. On the 22nd. I don't know whether you were in the plane on the 22nd but that is what you told me.
A. Whatever my calendar says is probably right.
Q. Let me get MS 86 out again and make sure we don't have that wrong.
Do you have a copy of your calendar still in front of you or did I pick it up?
A. I think you picked it up.

0151-8114

NOT A CERTIFIED COPY

Page 206

Q. Okay.
MR. BEMIS: Do you have a copy, Mr. Markowski?
MR. MARKOWSKI: No.
BY MR. BEMIS:
Q. Look at your entry for Monday, December 22. It looks like you were leaving for Aspen at 7:30 in the morning from Teterboro which is a small, private airport, right?
A. Yes.
Q. You spoke -- did Mr. -- did you speak to Mr. Gittis while you were skiing in Aspen and learn -- I take it when you go to Aspen you go skiing I take it.
A. I do.
Q. When -- did Mr. Gittis call you and tell you that even after Mr. Dunlap had stormed out he was now prepared to go from 18 to 22 to as high as $25 a share?
A. I frankly can't tell you whether he called me, how I found out or whether it was even that week.
Q. The next thing that you remember happening then is, I take it, after this

Page 207

phone call, is something happens in early January and the parties have some further discussions; is that right?
A. Yes.
Q. Up to January of 1998 had MacAndrews & Forbes done any due diligence concerning Sunbeam other than what we have been through; for example, Mr. Nesbitt's spreadsheets, the discussion materials from -- that we saw from Credit Suisse First Boston, I think, in Morgan Stanley 76; anything else?
A. Well, I don't know what Jerry and Joe Page were doing at that point in time. I think once we got to the 18th I am sure there was nothing done after that until we got into January.
Q. We get to January. What is it that you recall happening in January to restart the parties' discussions about a possible business combination?
A. Well, I am reading a chronology again which I have no reason to dispute.
Reid called Perelman and said they would have an interest in doing a

Page 208

transaction in excess of, as it says here, in excess of $25 that would involve both cash and stock.
Q. Setting aside the chronology.
A. I remember that happening sometime in early January.
The next thing that happened is -- I don't know how the transition came from that. I don't remember the transition but there was a meeting where Morgan Stanley came by, to MacAndrews & Forbes, I think it was, I don't know whether Kitts was there, Stynes was there, I think Kitts was there, and they made a presentation about a transaction that -- they gave us some documents and I think if I recall that was a transaction that again was -- I think it was all stock and it was at a price that -- I don't remember the price but it was not acceptable and I think before they left the meeting we told them that it wasn't acceptable.
Q. Let me go back to Mr. Reid's phone call which at least according to the chronology was January 18.

Page 209

You were not on the call?
A. I don't think it says January 18 actually.
Q. The week of January 18, excuse me.
MR. MARKOWSKI: It doesn't say that either.
THE WITNESS: It says early 1998.
BY MR. BEMIS:
Q. Why do I have it in my notes?
MR. MARKOWSKI: Is that the Skadden chron?
MR. BEMIS: It is probably the Skadden chron. It is somebody's chron. I think that is where it is.
MR. MARKOWSKI: It is about 10 minutes to 4:00. We told you we would be finishing at 4:00 today.
MR. BEMIS: Who did you tell that to?
MR. MARKOWSKI: We said 4:00 today and we can go to 5:00 tomorrow.
MR. BEMIS: I didn't know that. Neither did I know that you were going to show up a half hour late today. Can

NOT A CERTIFIED COPY

we start at 9:00 tomorrow? I didn't know about that.
BY MR. BEMIS:
Q. For the record, I think I said the week of the 18th. That is taken from the Coleman Company notice of merger and appraisal rights and information statement which we have, I think, marked in previous depositions as Morgan Stanley 279.
On page 37 it says, "On or about January 22 in an effort to revive a possible transaction a representative of Morgan Stanley contacted a representative of MacAndrews & Forbes and indicated that Sunbeam might consider a possible transaction involving both cash and shares of Sunbeam stock at a higher price than the price range suggested by Mr. Dunlap at the December 18 meetings."
That is what I was referring to.
Be that as it may, you knew there was a phone call to Mr. Perelman; is that correct?
A. Yes.
Q. Did you know who made the call to

Mr. Perelman?
A. It says here Bill Reid and I have no reason to dispute that.
Q. Do you know Bill Reid?
A. Yes.
Q. Did you know him before the phone call?
A. Yes.
Q. What was your relationship with Mr. Reid?
A. He worked for me for a number of years.
Q. At Credit Suisse First Boston?
A. Yes.
Q. Have you had any discussions with him about this lawsuit?
A. No.
Q. When was the last time you spoke to him?
A. Two years ago maybe, a year ago, two years ago.
Q. Would you consider -- strike that.
Am I correct that as far as you know there was no activity on the

Coleman-Sunbeam transaction between December 18 if that was the date of the meeting at Mr. Perelman's home and this phone call from Mr. Reid, if that is who it was, the week of January 18, 1998, is that fair?
A. As far as I know that seems correct.
MR. BEMIS: Let's break there. It is 4:00.
THE VIDEOGRAPHER: Going off the record.
The videotaped deposition will be adjourned.
(Time noted: 4:00 p.m.)

JAMES ROBERT MAHER

Subscribed and sworn to before me this day of 2004.

CERTIFICATE
STATE OF NEW YORK)
COUNTY OF NEW YORK)
I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That JAMES ROBERT MAHER, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.
I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.
I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.
In witness whereof, I have hereunto set my hand this 4th day of November, 2004.

STEVEN NEIL COHEN, RPR

NOT A CERTIFIED COPY

0157816

INDEX OF EXAMINATION

Witness
JAMES ROBERT MAHER
By Mr. Bemis.....5

MORGAN STANLEY EXHIBITS

Exhibit No. Marked
410 Document.....92
408 Complaint.....141
374 Document.....146

NOT A CERTIFIED COPY

015817

431

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

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

CASE NO. CA 03-5045 AI

FILED
Jan 3 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY Lee Mons
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

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

VOLUME 2
(EXHIBITS 7-14)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

011570

967

TABLE OF CONTENTS
VOLUME 2

	TAB
Jerry Levin Deposition Transcript (12/1/04)	7
Jerry Levin Deposition Transcript (12/2/04)	8
William Strong Deposition Transcript	9
Howard Gittis Deposition Transcript	10
Robert Kitts Deposition Transcript	11
Bram Smith Deposition Transcript	12
CPH Ex. 373	13
Bruce Fiedorek Deposition Transcript	14

NOT A CERTIFIED COPY

011571

IN THE CIRCUIT COURT

OF THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,	)	
Plaintiff,	)	No. 03 CA-005045 A1
vs.	)	
MORGAN STANLEY & CO. INCORPORATED,	)	
Defendant.	)	

DEPOSITION OF JERRY W. LEVIN

New York, New York

Wednesday, December 1, 2004

Reported by:
ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 167827

NOT A CERTIFIED COPY

01457S

December 1, 2004
10:21 a.m.

Deposition of JERRY W. LEVIN, held at the offices of Kirkland & Ellis, Citicorp Center, 153 East 53rd Street, New York, New York, pursuant to notice, before Andrea L. Kingsley, a Notary Public of the State of New York.

APPEARANCES:
JENNER & BLOCK, LLP
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.
JEROLD S. SOLOVY, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
KATHRYN REED DeBORD, ESQ.

APPEARANCES: (Cont'd.)
GREENBERG TRAURIG, LLP
Attorneys for the Witness
200 Park Avenue
New York, New York 10166
BY: MARK BIDEAU, ESQ.

ALSO PRESENT:
STEVEN L. FASMAN, ESQ.
STEVEN R. ISKO, ESQ.
JAMES DOYLE, ESQ.
SILVIO FACCHIN, CLVS, Videographer

JERRY W. LEVIN,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning, Mr. Levin. How are you?
A. Good morning.
Q. Would you state your full name including your middle initial for the record please?
A. Jerry W. Levin.
Q. What does the W stand for?
A. Wayne.
Q. How old are you, Mr. Levin?
A. 60.
Q. Are you represented by Mr. Bideau here this morning?
A. Yes.
Q. Where do you live today?
A. I have multiple residences. My primary residence is Boca Raton, Florida.
Q. What is your address is Boca Raton, Florida?

NOT A CERTIFIED COPY

Page 6

A. 17027 Brookwood Drive, Boca Raton.
Q. Is that your legal residence?
A. Yes.
Q. So you vote in Florida?
A. Yes.
Q. You have a driver's license in Florida?
A. Yes.
Q. Do you have a residence in New York as well?
A. Yes.
Q. What is the address there?
A. The New York City address is 15 East 70th, New York City; and then the Island address is 1111 Meeting House Road, Quogue, New York.
Q. Do you also have a residence in Tucson, Arizona?
A. Yes.
Q. What is the address there?
A. 8461 East Milford, Tucson, Arizona.
Q. What's the zip code there?
A. I don't know.

Page 7

Q. You also have a residence in Minneapolis, Minnesota?
A. No.
Q. Did you at one time?
A. Yes.
Q. When did you dispose of your residence in Minneapolis?
A. It was several years ago. I'm not sure exactly when.
Q. After the Coleman merger?
A. I don't recall.
Q. Who are you employed by today?
A. American Household, Inc.
Q. Is that a company formerly known as Sunbeam Corporation?
A. Formerly, yes.
Q. What is your office address today?
A. It's on Executive Center Drive in Boca Raton.
Q. What's your position with American Household?
A. I'm chairman and chief executive officer.
Q. Are you a member of the board of

Page 8

directors?
A. Yes.
Q. I understand from reading some of your past transcripts that you have been deposed quite a few times; correct?
A. Yes.
Q. I read once you were deposed over 100 times; is that fair?
A. It was an estimate, yes.
Q. You testified in court before?
A. Yes.
Q. You understand that your testimony you are giving here today is under oath just as if you were testifying in court?
A. Yes.
Q. Is there any reason that you can think of that you can't testify truthfully? Any medication, for example, something that would impair your memory?
A. None that I'm aware of.
Q. If you have any questions in the course of the deposition, let me know; but, otherwise, let's move onto some -- a little background so the jury understands who you

Page 9

are.
You have an MBA degree; don't you?
A. Yes.
Q. Where did you get your degree?
A. University of Chicago.
Q. When was that?
A. 1968.
Q. You've been deposed in a number of matters related to Sunbeam Corporation; correct?
A. Yes.
Q. How many depositions have you given? I located three. Is there more than that?
A. I'm not sure but three sounds approximately right.
Q. In preparation for today's deposition, did you go over any documents to help you refresh your memory about events at Sunbeam Corporation?
A. Yes.
Q. What documents did you look at to refresh your recollection about events?
A. I believe it was the 1998 annual

NOT A CERTIFIED COPY

plan for the domestic Coleman operations, a copy of a memo by David Fannin about possible ideas for cost savings.
Q. Synergies in other words?
A. No. They were ideas, it was specifically stated in that document.
And there was, I believe, three internal bank documents that talked about the credit.
Q. Were these documents in June or so of 1998 after you became the chairman of Sunbeam?
A. I'm not sure if someone -- I think at least one was and perhaps one was earlier, I'm not sure.
Q. Any other documents or categories of documents other than those three?
A. None that I could recall.
Q. Did you review the complaint in this action that Coleman (Parent) Holdings filed against Morgan Stanley?
A. Originally when it happened but not since.
Q. When you say you reviewed it originally when it first happened, what do

you mean by that?
A. I was informed by Morgan Stanley that MacAndrews & Forbes had filed a complaint against them and, being curious, I read a copy of it at that point.
Q. I take it from your answer that you did not see the Coleman (Parent) Holdings complaint before it was filed against Morgan Stanley; is that fair?
A. That's fair.
Q. Other than these documents that you've identified and your review sometime ago of the complaint, are there any other documents that you reviewed in preparation for your deposition?
A. Not that I can recall.
Q. Did you read any of your deposition transcripts from the other Sunbeam cases that you gave testimony?
A. No.
Q. Have you ever looked at them since you gave the testimony?
A. I believe after the testimony I was asked to review them for factual errors, typos, which I did. So I read them

shortly after the date of the depositions.
Q. Do you have written calendars or diaries of any kind for your activities in 1997 or 1998?
A. Yes.
Q. Where are they today, those calendars?
A. I believe they would be in my tax files.
Q. Could you describe the type of calendar that you kept in 1997 and 1998? If it's different, just tell me so.
A. I can't recall how we did it in 1997 but in 1998 I was asked by the Internal Revenue Department of New York State to produce documentation as to my residency in the course of 1998 and that was created for them.
Q. During the course of -- just take 1997 as a starter, did you keep like a day planner -- some people call them -- or any type of daily calendar whatever it's name?
A. Yes.
Q. Did you keep that yourself or did you have your secretary do it?

A. My secretary did it.
Q. Did you do the same thing in 1998?
A. Yes.
Q. Do you still have those in your tax files?
A. I can't speak to 1997. If it was not relevant than it might have been tossed, I don't know. The systems changed and we had to decide what data we wanted to save.
Q. I understand your secretary maintained your day planner; is that correct?
A. Yes.
Q. Did she do it electronically or was it in a manual system?
A. It was electronically.
Q. Did she print out for you a daily schedule for example?
A. Yes.
Q. At some point, it is my understanding, you believe a hard copy of your 1998 day planner was at least printed out by your office?

NOT A CERTIFIED COPY

Page 14

A. I am confident there was a hard copy the second half of 1998 and we somehow re-created the first half. It could have been a hard copy.
Q. Other than the calendar now that you have described for us, did you keep any other form of calendar for either 1997 or 1998?
A. No.
Q. Have you ever been asked to produce your calendar in any of the Sunbeam litigation that you can remember?
A. I don't recall.
Q. I want to ask you a couple of background questions about your employment, not where you worked 20 years ago right now, so just the jury understands who you are in case you testify by videotape here. Let me focus first on the Coleman Company.
The Coleman Company was headquartered in Wichita, Kansas; right?
A. Yes.
Q. You were employed there twice as I understand it; is that correct?
A. Prior to Sunbeam, twice.

Page 15

Q. When was the first time that you were employed at the Coleman Company in Wichita?
A. In April of 1989.
Q. How long did you work there before you left?
A. Two years.
Q. So you left about 1991?
A. In April of 1991.
Q. During your first tour at Coleman, what was your position with the company?
A. Chairman of the holding company.
Q. When you refer to chairman of the holding company, what is the name of that holding company?
A. I believe it was Coleman Holding Company.
Q. That held all of the stock of Coleman -- the Coleman Company, Inc.?
A. I believe so.
Q. Then Coleman Holding Company was owned by another holding company; correct?
A. I'm not sure which one of the holding companies was affiliated with

Page 16

MacAndrews & Forbes.
Q. Ultimately, these holding companies that were affiliated with MacAndrews & Forbes were owned by Ronald O. Perelman; correct?
A. Yes.
Q. Did Mr. Perelman hire you to go to work at the Coleman Company?
A. Yes.
Q. Then you had a second tour of duty at the Coleman Company starting in 1997?
A. Yes.
Q. February?
A. Yes.
Q. How long did you stay with the Coleman Company on this second tour?
A. Until we closed the sale of the Coleman Company to Sunbeam.
Q. That was in March 30, 1998 as the record will show. Did you resign at that point?
A. Yes.
Q. Let me show you a document we'll mark as Morgan Stanley Exhibit 445 which I

Page 17

believe is your resignation and we'll just get that date set.
(Morgan Stanley Exhibit 445, resignation, marked for identification, as of this date.)
Q. I've handed you, Mr. Levin, what has been marked by the reporter as Morgan Stanley Exhibit 445. Do you have that in front of you?
A. Yes.
Q. Is that your signature that appears on the document?
A. Yes.
Q. What is this document?
A. My resignation notice from the Coleman Company.
Q. Is your resignation dated March 31, 1998?
A. Yes.
Q. Is that in fact the date that you resigned?
A. Apparently, yes.
Q. Focusing on your second tour of duty with the Coleman Company in 1997 and 1998, were you the president of the

NOT A CERTIFIED COPY

Page 18

company?
A. Yes.
Q. Were you on the board of directors?
A. Yes.
Q. Were you on the board of directors the entire time until you resigned?
A. Yes.
Q. Who was the chairman of the board of directors?
A. I was.
Q. Did Mr. Perelman recruit you to come back to the Coleman Company?
A. Yes.
Q. Did he tell you why he wanted you to go back to the Coleman Company in 1997?
A. Yes.
Q. What did he say?
A. I don't recall his language.
Q. Even if you don't recall his language, do you recall the substance of what he said to you?
A. Substantively, they were concerned about the leadership of the

Page 19

Coleman Company and felt given things were going so well at my current position at Revlon, that the best solution would be for me to go back and run the Coleman Company again.
Q. At this time when you came back to the Coleman Company, you went to work directly for the operating company and not a holding company; is that correct?
A. That's correct.
Q. In both instances that you worked for the Coleman Company, did you live in Wichita?
A. The first time I had an apartment in Wichita and lived in both Minneapolis and Wichita and the second time I lived in Minneapolis -- the second time I lived in New York.
Q. I didn't mean to interrupt. I apologize.
Let's move forward. After you resigned from the Coleman Company you eventually go to work for Sunbeam Corporation; right? I know --
A. Eventually, yes.

Page 20

Q. When did you go to work for Sunbeam?
A. I believe it was approximately June 15, 1998.
Q. So you were -- just so the jury can put this in perspective -- you were at the Coleman Company, Inc. at the time of the merger between Coleman and Sunbeam; correct?
A. I was there right up until the day of the sale of the Coleman Company to Sunbeam.
Q. And then you had a short hiatus in your career and then you ended up going to Sunbeam on June 15, 1998; right?
A. That's correct.
Q. When you went to Sunbeam on June 15, 1998 you replaced Mr. Dunlap; correct?
A. Yes.
Q. Who had been terminated by the board of directors; correct?
A. Yes.
Q. You received your position from Sunbeam Corporation directly from the board of directors on or about June 15; right?

Page 21

A. Yes.
Q. It was Mr. Perelman who contacted you first about a position at Sunbeam; right?
MR. MARKOWSKI: Objection to the form of the question.
A. No.
Q. Who was it?
A. Mr. Gittis.
Q. Was Mr. Perelman on the line with Mr. Gittis?
A. No.
Q. What did Mr. Gittis say when he called you?
A. That the board of directors of Sunbeam had terminated Mr. Dunlap and that the board wanted to meet with me the next day about the possibility of my becoming an interim CEO until they could find a permanent CEO.
Q. What did you say?
A. That I would meet with them.
Q. Did you do so?
A. Yes.
Q. In New York?

NOT A CERTIFIED COPY

01453/8

Page 22

A. Yes.
Q. Did you then meet with the board of directors of Sunbeam the next day, if you will?
A. Yes.
Q. Were you hired on that day?
A. I agreed to become the interim CEO on that day.
Q. Was Mr. Gittis at that time, was he a member of the board of directors of Sunbeam?
A. Not that I recall, no.
Q. Did he tell you how he came to call you on behalf of Sunbeam's board of directors?
A. That Sunbeam's board of directors had called him and asked specifically to contact me.
Q. Did you ask him why Mr. Dunlap had been fired?
A. Mr. Gittis did not know the details.
Q. Did you ask him, though, why?
A. We talked in the morning before the meeting with the Sunbeam board of

Page 23

directors and he really had no information as to what was going on.
Q. Is it fair to say that the phone call -- the termination of Mr. Dunlap and the phone call to you happened relatively quickly?
A. I believe it all happened on the same day.
Q. When you met with the board of directors, were you hired on that same day or offered the position on that same day?
A. The Sunday following the evening when I was called, I was offered the position of becoming the temporary or interim CEO.
Q. In addition to being the interim or temporary CEO, did you also assume the title of president of Sunbeam?
A. Yes.
Q. You were given a position on the board of directors as well; correct?
A. Yes.
Q. Who was chairman of the board of directors after you -- immediately after you became the chief executive officer and

Page 24

president?
A. Peter Langerman.
Q. Did you eventually become the chairman of the board of directors of Sunbeam?
A. Yes.
Q. When did that occur, sir?
A. I don't recall.
Q. How soon after June 15, 1998?
A. Could have been several months, could have been a year, I don't recall.
Q. Was it before the bankruptcy of Sunbeam?
A. Yes.
Q. When did Sunbeam enter bankruptcy proceedings?
A. I believe it was February of 2001.
Q. At that time, did you hold all three positions, president, chief executive officer and chairman of the board of directors of Sunbeam?
A. Yes.
Q. When did Sunbeam emerge from bankruptcy proceedings?

Page 25

A. December 18, 2002.
Q. At that time you still held those three positions?
A. Yes.
Q. When did Sunbeam change its name to American Household, Inc.?
A. On December 18, 2002.
Q. When it came out of the bankruptcy?
A. Yes.
Q. You have until today maintained those same three positions, president, CEO and chairman of the board of directors of now American Household, Inc. but formerly Sunbeam Corporation; correct?
A. Yes.
Q. From March 31, 1998 when you submitted your resignation that we marked as Morgan Stanley Exhibit 445 and June 15, 1998, you worked for one of Mr. Perelman's companies; correct?
A. I was on a retainer for Mr. Perelman during that period of time.
Q. Did you have any specific assignments?

NOT A CERTIFIED COPY

01457 9

Page 26

A. No.
Q. Were you kind of on holiday in between jobs?
A. I was definitely on holiday.
Q. Spent some time at your house in Tucson?
A. Yes.
Q. Let's spend a little bit of time on the Sunbeam/Coleman merger which we will cover in much more detail later, just to get a background for the jury.
You did participate to some degree in the negotiations for Sunbeam's acquisition of Coleman; correct?
A. Yes.
Q. How would you describe for the jury what your role was in the negotiations?
A. I was never involved in the face-to-face negotiations with Sunbeam or Morgan Stanley but I did represent management's perspective to Mr. Perelman, First Boston and the people who were involved in the direct negotiations.
Q. You used the term management's

Page 27

perspective. You are referring to management of MacAndrews & Forbes and Coleman?
A. No.
Q. Just Coleman?
A. Coleman.
Q. So if I understand you correctly, from your perspective, your participation in the negotiations was on behalf of the Coleman Company, Inc.; is that right?
A. And its shareholders, yes.
Q. Other people on the MacAndrews side, whether they be outside consultants or inside people, they were representing the interests of the other MacAndrews & Forbes entities that were party to the merger agreement; is that fair?
MR. MARKOWSKI: Objection to the form of the question.
Q. You can answer.
A. No.
Q. Who represented Coleman (Parent) Holdings' interests in the merger transaction?
A. To the best of my knowledge,

Page 28

MacAndrews & Forbes and whatever attorneys they had representing them.
Q. Who, to your knowledge, conducted the negotiations in the Sunbeam/Coleman transaction on behalf of MacAndrews & Forbes?
A. I wasn't in the room when it happened so it would be very speculative for me to guess who was interfacing.
Q. But you did attend meetings where there were combined negotiations; correct?
A. Not until the transaction was resolved.
Q. Let me use the date of February 27, 1998 as the date that the merger agreements were signed. Does that square pretty much with your recollection?
A. Yes.
Q. Before that time, did MacAndrews & Forbes have someone participating in the negotiations on their behalf inside the company?
A. Could you restate that?
Q. Sure. MacAndrews & Forbes, one or more of its entities was a party to one

Page 29

or more of the merger agreements; correct?
A. Yes.
Q. Who on behalf of MacAndrews & Forbes within the organization participated in the negotiations?
A. I don't know specifically who, as I said, was in the room when they were having those conversations.
Q. You know Mr. Maher?
A. I know Mr. Maher.
Q. Was he in the room some of the time when you were there?
A. I just said I wasn't in the room.
MR. BIDEAU: He said he wasn't there.
MR. BEMIS: Do you have an objection to form?
MR. BIDEAU: I have an objection to form. He said he wasn't in the room.
MR. BEMIS: Then you have an objection to form and I heard your objection.
MR. BIDEAU: Okay, good.
Q. Can you answer the question? I

UNCERTIFIED COPY

Page 30

will put it to you again with all the confusion. Do you want me to ask you again?
A. Yes.
Q. Was Mr. Maher in the room when you were there during the negotiations?
MR. BIDEAU: Objection to the form of the question.
A. I wasn't there during the negotiations other than at the very end, approximately February 20th to the 27th. Through that time period, Mr. Maher was in the room when I was there.
Q. Is it fair to say that your participation in the negotiations from your perspective began in earnest on, say, February 20th, which is the date you just used, 1998?
A. It was approximately February 20th.
Q. Because, as I recall, you were in Puerto Rico and got a phone call and were asked to come back to New York and you got that phone call directly from Mr. Perelman; is that right?

Page 31

A. That's correct.
Q. After February 20th, 1998, the negotiation moved very quickly and concluded on February 27, 1998; correct?
MR. MARKOWSKI: Objection to the form.
A. That sounds reasonably accurate.
Q. Again, just to put this in place for the jury, you did attend the board of directors meetings of the Coleman Company, Inc. where the merger was considered by the full board; correct?
A. Yes.
Q. You did attend the February 25 meeting where the merger was first disclosed to the full board; correct?
MR. MARKOWSKI: Objection to the form.
A. I don't think it's fair to say that was the first time the board was informed about the merger.
Q. I'm speaking of the full board. So if there was any confusion let me try again.
When was the full board of

Page 32

directors first informed of merger discussions with Sunbeam, the full board of directors of the Coleman Company, Inc.?
A. I don't recall.
Q. You think it was before February 25, 1998?
A. It would have been quite unusual, the way I relate to the board, for me not to keep them informed that there was the possibility of a transaction.
Q. When did you first learn of a possibility of a transaction with Sunbeam such that you would have informed the board of directors of the Coleman company, Inc.?
MR. MARKOWSKI: Objection to the form.
A. I don't know when I first told them about it.
Q. Did you tell them before the phone call from Mr. Perelman on February 20th, 1998?
A. Almost certainly.
Q. Did you do this at a formal board meeting or was it informally, for example, by telephone calls or face-to-face

Page 33

meetings?
A. It could have been either depending on the timing of the board meetings.
Q. In addition to the February 25th, 1998 board meeting, you also attended and made a presentation at the February 27th, 1998 board meeting at which time the merger was approved by the board; correct?
A. I don't recall making a specific presentation but I certainly was there.
Q. There were minutes kept of the board meetings; correct?
A. Yes.
Q. In your view, being chairman of the board, were the minutes accurate?
A. Yes.
Q. So if the minutes reflected you made a presentation, would you assume then that you did so based on the accuracy of the minutes?
A. Yes, I would.
Q. The Coleman board of directors had advisors in the transaction; correct?
A. Yes.

NOT A CERTIFIED COPY

Page 34

Q. Who were the attorneys that advised the Coleman Company?
A. I don't recall who we used.
Q. Was it Wachtell Lipton?
A. I don't recall.
Q. Do you know an attorney by the name of Adam O. Emmerich?
A. Yes.
Q. Was he one of the attorneys that advised the company?
A. I'm not sure what role his firm played in the transaction.
Q. Did the Coleman Company itself retain attorneys to represent the company or did someone do it on their behalf?
A. I know we did, I just don't recall the dynamics at the time.
Q. My question may not have been clear. Let me try it one more time.
I understand attorneys were retained to represent the Coleman Company, you've told me that; correct?
A. Yes.
Q. My question is did the Coleman Company retain the attorneys or did someone

Page 35

retain them on their behalf?
A. No, the Coleman Company would have made that decision.
Q. Do you have firsthand knowledge of them doing that?
A. I can only say we would always make that decision.
Q. And the Coleman Company retained an investment banking firm to represent the Coleman Company in the merger; right?
A. Yes.
Q. Who was that?
A. That was Credit Suisse First Boston.
Q. Who made the first contact with Credit Suisse First Boston to act as advisor to the Coleman Company?
A. I don't recall.
Q. Did you do it?
A. I might have.
Q. Who did you talk with at Credit Suisse First Boston?
A. Gordon Rich.
Q. Did the Coleman Company have an accounting advisor during the transaction?

Page 36

A. I do not recall hiring a special accounting advisor.
Q. Did the Coleman Company have an outside accounting firm conducting its audits, for example, at that time?
A. Yes.
Q. Who was that?
A. I don't recall.
Q. How about Ernst & Young; does that sound familiar?
A. It could well have been.
Q. At any point in time, did the board of directors of the Coleman Company retain Morgan Stanley or any of its affiliates to perform services in connection with the Sunbeam/Coleman merger?
A. No.
Q. At any point in time, did the Coleman Company make any payments to Morgan Stanley in connection with the Sunbeam/Coleman merger?
A. I'm unaware of any.
Q. Did you have any face-to-face meetings with Morgan Stanley employees after the merger agreements were signed and

Page 37

up to the date of closing, March 30, 1998?
A. Not that I recall.
Q. Did you have any -- I will use the word conference call or telephone calls, if you like, with Morgan Stanley concerning the Sunbeam/Coleman acquisition after the signing of the merger documents on February 27 and up to the closing on March 30, 1998?
A. I can't speak to the specific date but the only incident that I can recall is when the company asked us to make a presentation to the proposed bank's syndicate. They were trying to syndicate the loan and asked us to lead them through our plans. I believe that call was led by Morgan Stanley.
Q. When you say our plans, you are referring to the Coleman Company's plans?
A. Coleman Company's plans.
Q. Would this be the 1998 strategic plan for Coleman you looked at in preparation for your deposition?
A. Yes and no.
Q. What's the no part?

NOT A CERTIFIED COPY

01582

Page 38

A. We were presenting the corporate strategic plan. The banks had received just the North American strategic plan and it lead to considerable confusion as nothing was matching in the conversation and Morgan Stanley quickly aborted the call and we never reconvened.
Q. I take it then there was one plan, as you put it, that had -- you said North America and then there was a plan for the entire company that included the 100 companies that the Coleman was operating in?
A. As many as there were, yes, it was a big corporate plan.
Q. That call got deferred and, to your knowledge, it did not get resumed; is that fair?
A. It did not get resumed.
Q. Other than this presentation that you've been discussing, do you recall any written documents being exchanged between yourself or the Coleman Company, Inc. and Morgan Stanley after the closing on February 27 of the merger agreements and

Page 39

then the actually closing of the merger on March 30, 1998?
MR. BIDEAU: Objection to the form.
A. I don't recall.
Q. Were you using e-mails in 1998 at the time of the merger transaction?
A. No.
Q. I would like you to focus now on a separate time period, that's going to be March 30th up until June 15th when you become the new president of Sunbeam.
Did you have any communications with Morgan Stanley in any fashion whether it be a telephone call, face-to-face meeting or electronic mail, if you happened to use it during that period of time?
A. On this subject, no.
Q. Was there some unrelated subject that you spoke to Morgan Stanley --
A. I have a lot of friends there and we talk, unrelated things.
Q. Is it fair to say that on the subject of the Coleman/Sunbeam transaction, you didn't talk to Morgan Stanley either

Page 40

directly or through electronic means or written means between March 30th, 1998 and June 15th, 1998 when you became the president of Sunbeam?
A. I intentionally avoided discussion because I felt it would be inappropriate.
Q. Did you read the merger agreement involving Coleman before it was signed by the Coleman Company?
A. Yes.
Q. You were aware, then, under the terms of the merger agreement which has been marked as Morgan Stanley Exhibit 117 that Coleman had access to Sunbeam's books and records after February 27, 1998 and up to the date of closing? You were aware of that; right?
A. I don't recall.
Q. Let me show you the document. We'll see if that helps your recollection.
MR. BEMIS: Do you have copies of some of these documents in your five to six boxes? Only because throwing them across the table is a little awkward.

Page 41

Do you have the merger agreements?
MR. BIDEAU: Anything in particular you want him to look at?
MR. BEMIS: Yes.
Q. Do you have Exhibit Morgan Stanley 117 in front of you?
A. Yes.
Q. Mr. Levin, if you would turn to section 7.2, it's on page 29. It is entitled, "Section 7.2, Access and Information; Confidentiality."
Tell me when you're there.
A. I'm there.
Q. My question is, sir, pursuant to this provision of the merger agreement, Coleman Company had access to the books and records, if you will, of Sunbeam from the date of the signing of the agreement up until the date of the closing; correct?
MR. BIDEAU: Objection to the form.
MR. MARKOWSKI: Objection to the form.
A. Could you repeat the question please?

NOT A CERTIFIED COPY

0154583

Page 42

Q. Sure. Between February 27, 1998 and up to the date of closing which is March 30, 1998, Coleman upon request was was to be given access of the books and records of Sunbeam Corporation pursuant to the merger agreement; correct?
MR. MARKOWSKI: Objection to form.
MR. BIDEAU: Same objection.
A. Could you just repeat that for me?
Q. Sure. After the signing of the merger agreement and up until the time of the closing, the Coleman Company upon request had access pursuant to this provision to the books and records of Sunbeam Corporation?
MR. MARKOWSKI: Same objection.
A. It appears as long as the times were reasonable that is true.
Q. To your knowledge, between February 27 and March 30, did the Coleman Company make a request to inspect the books and records of Sunbeam Corporation pursuant to this provision, section 7.2?
A. I don't recall.

Page 43

Q. Would it be fair to say, sir -- first of all, you've operated a number of public companies; right?
A. Yes.
Q. Public companies file or prepare or have prepared annual financial statements which are audited by their accountants; correct?
A. Yes.
Q. They also, that is public companies such as you have managed, they have prepared quarterly financial statements that are filed with the Securities and Exchange Commission; correct?
A. Yes.
Q. So-called 10-Q filings; right?
A. Yes.
Q. And in the companies that you have managed, do those companies also maintain monthly financial statements, sometimes called interim financial statements, that lead to the issuance of quarterly and then annual statements?
MR. BIDEAU: Objection.

Page 44

A. Yes.
Q. At any time between February 27, 1998 and March 30, 1998, are you aware of anyone at the Coleman Company, Inc. requesting from Sunbeam to review Sunbeam's interim financial statements for the period January 1998?
A. Mr. Dunlap and Mr. Kersh had closed me out of the company on February 27th and asked I not come to the company and since the only potential hazard to closing was Hart Scott Rodino which was extremely remote, I agreed to do that and had extremely limited involvement with the company from February 27 to March -- until the closing date which I guess is March 30. So I really don't know.
Q. As you sit here today, do you have any recollection of requesting a copy of Sunbeam's January 1998 interim financial statement? Even if the request was denied, do you have a recollection of making such a request?
A. I do not personally know of any.
Q. Do you anyone on the MacAndrews &

Page 45

Forbes side of the transaction that made such a request of Sunbeam?
A. I don't know of any.
Q. I would ask you now the same question for February 1998. Are you aware of any request by the Coleman Company to Sunbeam, even if it was declined, to view Sunbeam's February 1998 interim financial statements?
A. The February 1998 interim financial statements would not be available until sometime in this period.
Q. That's correct. During this period, are you aware of any requests to see the February 1998 interim financial statements of Sunbeam?
A. I guess I just testified there were none requested in that period so, yes.
Q. Let's go all the way up to the closing, March 30, 1998, are you aware of any request by the Coleman Company, Inc. to see Sunbeam's interim financial statements for any period in 1998 whether it be January, February or even a partial period in 1998?

NOT A CERTIFIED COPY

0145841

Page 46

A. As I said, I was in Tucson and I'm unaware of what happened.
Q. Are you aware of any request by MacAndrews & Forbes even if you didn't participate in it directly, are aware of any request by MacAndrews & Forbes to view at any point up to the point up to the time of closing, March 30, 1998, the interim financial statements of Sunbeam for the month of January 1998?
A. I don't know.
Q. Are you aware of any such request by MacAndrews & Forbes to see the February 1998 Sunbeam interim financial statements?
A. I'm unaware of any.
Q. Are you aware of MacAndrews & Forbes requesting, even if you didn't participate in this directly, Sunbeam's interim financial statements for any portion of March of 1998?
A. I was out of the company completely by the time those financials were available.
Q. When you managed your public companies such as the Coleman Company, I

Page 47

think you said Revlon as well; correct?
A. Yes.
Q. As the president of the company, did you review on a monthly basis your company's interim financial statements?
A. Yes.
Q. Do you know how to read them?
A. I think so.
Q. Do you know Mr. Perelman pretty well?
A. From a business perspective. I've worked for him for a long time.
Q. From a business perspective, do you think Mr. Perelman knows how to read an interim financial statement?
A. I believe so.
Q. Do you think he knew how to do that in 1998?
A. I believe so.
Q. Before the closing on March 30, 1998, the Coleman Company filed its annual Form 10-K with the Securities and Exchange Commission for the year 1997; correct?
A. It should have.
Q. You signed that document, did you

Page 48

not, as the president and chief executive officer of the company?
A. I don't recall if I signed that document or not but I'm aware of it.
Q. Before the actual closing of the Sunbeam/Coleman transaction, did you obtain a copy of Sunbeam's 1997 annual report on Form 10-K filed with the SEC and the record will show on or about February 26, 1998?
A. Yes.
MR. MARKOWSKI: Objection to the form. I think you misspoke.
MR. BEMIS: I did. Thank you. Let me re-ask the question. Thank you.
Q. Before the actual closing of the Sunbeam transaction on March 30, 1998, did you obtain a copy of Sunbeam's 1997 annual report on Form 10-K that was filed with the SEC on or about March 6, 1998?
A. Before the closing?
Q. The closing on March 30, 1998.
A. I don't recall doing so.
Q. At that time, March of 1998, if I recall your testimony correctly, you were in Tucson, Arizona at your vacation home;

Page 49

is that correct?
A. That's correct.
Q. You had effectively left day-to-day operations of the Coleman Company at the request I think you said of Mr. Kersh; is that right?
A. Dunlap and Kersh.
Q. Mr. Dunlap and Mr. Kersh. Thank you.
We touched a little bit on these preliminary matters of your employment with Mr. Perelman's companies. I would like to get just a little more detail on your background for the jury so they can understand what's going to come in the rest of your testimony.
You first went to work, as I understand it, with Texas Instruments after you got your MBA; is that right?
A. That's correct.
Q. How long were you with them?
A. Approximately four years.
Q. What did you do there?
A. Starting as a financial analyst, my last position was to manage the treasury

NOT A CERTIFIED COPY

Page 50

department.
Q. Tell the jury what the treasury department does.
A. We manage the foreign exchange, the borrowings, the management of the cash of the company, moving it from country to country as required on the operations.
Q. Did you do that the entire four years you were with Texas Instruments?
A. As I recall, about half the time.
Q. After Texas Instruments, did you go to Marsh & McLennan?
A. Yes.
Q. What do they do?
A. It was then called Milennan Corporation (phonetic). They are a large insurance broker and mutual fund manager and employee benefit consultant.
Q. What did you do there?
A. I was originally treasurer.
Q. Similar function to what you did at Texas Instruments?
A. It was quite different given the different characteristics of the insurance brokerage business but there were some

Page 51

similarities.
Q. You were still managing the money; weren't you?
A. Yes.
Q. And then you went to Pillsbury where you stayed for quite a few years; right?
A. I should point out that I finished Marsh & McLennan as the head of their corporate development area which was mergers and acquisitions and then went to the Pillsbury Company.
Q. How long were you in the corporate development area of Marsh & McLennan?
A. Almost all of the time I was there. Approximately two years.
Q. How many mergers and acquisitions did you work on during that time period?
A. I worked on dozens.
Q. Can you give us a sense of size of the transactions on a dollar value basis?
A. The transactions we consummated?
Q. Whether consummated or not

Page 52

consummated.
A. Most of them were in the 10 to 100 million dollar range.
Q. Were these transactions both buying and selling, if you will?
A. No. They were all acquisitions.
Q. Can I use Marsh & McLennan? Because I don't remember the other company's name, that's the one I remember.
A. Okay.
Q. When you were with Marsh & McLennan in corporate development, were these companies that were being acquired by Marsh & McLennan?
A. Yes.
Q. Was I correct that you then go to Pillsbury?
A. Yes.
Q. Were you in Minneapolis first?
A. No. I left Chicago where Marsh & McLennan had been headquartered previously, then at Milennan, and then was recruited to Minneapolis by the Pillsbury Company.
Q. How long did you stay at Pillsbury?

Page 53

A. It was around 15, 16 years.
Q. One of the positions you had was CEO of Burger King?
A. Briefly, yes.
Q. Did you live in Miami then?
A. No.
Q. Did you commute?
A. Yes.
Q. Tell the jury what you did at Pillsbury.
A. I started as director of mergers and acquisitions which was a function that grew significantly through the years as the company was growing principally by merger and acquisition, buying other food and restaurant companies. It evolved later in career there as treasurer. In addition to the corporate development of merger acquisition function, I had the planning, did the strategic planning, and later in my career shifted over to managing the problem businesses of Pillsbury.
Q. In fact, one of the problem businesses at Pillsbury was Burger King at this time; is that --

NOT A CERTIFIED COPY

016586

Page 54

A. Most people would consider that a problem business.
Q. Was this your first foray into working with problem businesses?
A. No.
Q. When did you start doing that in your career?
A. On a small scale when I was at Pillsbury, whenever they had a business that they wanted to divest because it was a problem, they would give it to me to run until I sold it and then I took -- the first full time business I ran which was not intended to be sold was Häagen-Dazs Ice Cream and then I picked up at various times, I can't remember the sequencing, our commodity merchandising business, the restaurant group which included Burger King and then in the midst of a hostile takeover of the company, became CEO of Burger King.
Q. When you were CEO of Burger King, did you oversee the acquisition of a number of franchise stores in conversion of those into company stores?
A. No.

Page 55

Q. Was it the other way around or that didn't take place during your tenure?
A. We were always buying and selling a few units, that was a constant part of our business, but there were no significant sales or acquisitions by Burger King while I was CEO of Burger King.
Q. What was the period that you were the CEO of Burger King?
A. It must have been from about October of 1988 until January of 1989.
Q. Then at that point did you leave Burger King and go to the Coleman Company?
A. No. The company was sold to Grand Metropolitan, I believe it closed in January of 1989, and then for two or three months I worked for the new buyer and then went to the Coleman Company.
Q. You told us earlier that Mr. Perelman recruited you to go to the Coleman Company in 1998. Did you know Mr. Perelman before he recruited you?
A. Yes.
Q. How did you first come to meet him?

Page 56

A. While I was at Pillsbury we made an acquisition of a restaurant company that took place simultaneous with Mr. Perelman's acquisition of Revlon and we were using the same attorney and I got to meet Mr. Perelman through that attorney.
Q. When Mr. Perelman hired you in 1989, I understand that it was to assist the Coleman Company in resolving some difficulties it was having?
MR. MARKOWSKI: Objection to the form.
Q. Is that fair?
A. No.
Q. Tell me why he hired you to run the Coleman Company.
MR. MARKOWSKI: Objection to the form.
A. My understanding why he hired me was to restructure the Coleman Company but it was to sell off a series of businesses that -- to raise cash which he thought allowed him to buy the core pieces he wanted of Coleman for a very attractive price once he executed those sales.

Page 57

Q. At this point, that is 1989 when you were hired to run the Coleman Company, Mr. Perelman's entities had already purchased the Coleman Company; correct?
A. I don't think so.
Q. My understanding is that the initial acquisition of the Coleman Company was a 100 percent acquisition for cash all of the common stock of the Coleman Company; is that correct?
A. I believe so.
Q. Were you contacted by Mr. Perelman with regard to working for the Coleman Company before he had successfully acquired the Coleman Company in 1989 through one of his entities?
A. Yes.
Q. Did you know at the time that you were contacted by Mr. Perelman that his desire was that you work on this restructuring if the acquisition was successful?
A. Yes.
Q. So the plan was to make an all cash offer and then sell some of the assets

NOT A CERTIFIED COPY

Page 58

of the Coleman leaving the core company?
A. Yes.
Q. And using the proceeds of the sale then to pay off the debt incurred in order to acquire the Coleman Company; correct?
A. Yes.
Q. And that's what you did?
A. Yes.
Q. Successfully?
A. Yes.
Q. You then leave the Coleman Company and go on to -- is it Revlon Corp., is that where you went first?
A. I don't recall. It was private at the time I went and then he took it public. I can't remember which Revlon it was but it was all of the Revlon operations.
Q. What was your position at Revlon?
A. My first position was president and chief operating officer.
Q. How long were you the president and chief operating officer of Revlon?
A. I don't recall the sequence.

Page 59

Q. Did you eventually become the chief executive officer of Revlon?
A. Yes.
Q. Did that include all of its subsidiary operating companies?
A. Yes.
Q. So you also would have been chief executive officer of Revlon Consumer Products?
A. Yes.
Q. How long were the chief executive officer of the Revlon entities?
A. I don't recall when I became chief executive officer but I believe it was about two years -- maybe it was a year and a half after I joined Revlon I became chief executive officer and I was at Revlon from April of 1991 until I joined Coleman in very early 1997.
Q. During this period of April 1991 until the time that you joined the Coleman Company, did Mr. Perelman or his affiliated entities own an interest in Revlon?
A. Yes.
Q. What interest did they own? All

Page 60

of it, a portion of it?
A. He owned all of it until we went public and then they owned something over 80 percent.
Q. When did Revlon go public?
A. I believe it was in 1993 but I'm not sure.
Q. During the period you were with Revlon, were you tasked with restructuring any portion of its operations?
A. Restructuring in a different sense that I used before, yes.
Q. Can you explain that to us?
A. It wasn't to buy or sell off pieces, it was really to make the operations more efficient and to restore Revlon's market position.
Q. How did you do?
A. We did great.
Q. The year that you went over to the Coleman Company, what were Revlon's revenues?
A. It was something in the 3 billion dollars.
Q. Profitable?

Page 61

A. Approximately 300 million EBITDA.
Q. Did Mr. Perelman tell you why he wanted you to go back to Coleman in 1997?
A. Yes.
Q. What did he tell you?
A. They were concerned about the leadership and they were concerned about the performance of the chief executive officer and his inability to meet the projections given both to the public and to the financing institutions.
Q. Who was the chief executive officer at this time?
A. Michael Hammis.
Q. H-A-M-M-I-S; right?
A. Yes.
Q. So you replaced him and you remained in that position, as you told us, up until the time you resigned, March 31, 1998; right?
A. Yes.
Q. How successful were you in resolving the problems at Coleman?
A. We were very pleased with what we accomplished.

NOT A CERTIFIED COPY

01457888

Page 62

Q. Would you call what you did at Coleman during your second tour a restructuring of the company?
A. You could, yes.
Q. Had you completed that task at the time that you resigned on March 31, 1998?
A. No.
Q. During the time that you were with the Coleman Company during your second tour, 1997 to March 31, 1998, did you hold positions in other companies associated or affiliated with Mr. Perelman such as Revlon?
A. I know I was a director of Revlon.
Q. Any others, of his company?
A. There might have been affiliates of Revlon that I might have had some title with but I don't remember.
Q. Did you work in any of the other lines of his company like Consolidated Cigar or Marvel or any --
A. No.
Q. In terms of business lines, were

Page 63

the only two companies in Mr. Perelman's group of companies that you worked with the Coleman operating company and the Revlon operating companies?
A. As broadly defined. There was partially owned subsidiaries here and there but yes.
Q. Do you consider yourself an operations guy?
A. Not particularly.
Q. What do you consider to be your forte as a businessman now that you are 60 years old and you have described your career for us; what is your forte?
A. I have an ability to put teams together that can execute turnarounds of branded consumer product companies.
Q. Would you consider yourself a specialist in consumer branded products?
A. It's one of my strengths.
Q. In 1998 at the time of the merger, did you consider Sunbeam to be a consumer branded products company?
A. Yes.
Q. And Sunbeam had as of 1998, had

Page 64

at least as it announced to the public, been involved in a restructure, for instance, since Mr. Dunlap had been hired in 1996; is that fair?
A. Yes.
Q. Had you been following what had been going on at Sunbeam?
A. Slightly.
Q. In the course of developing your business acumen as you've described it to the jury, I understand from reading your other transcripts in the cases that you consider yourself at least generally familiar with methods of valuing businesses; is that fair?
MR. MARKOWSKI: Objection to the form.
A. Yes.
Q. Just as an example, I mean, you understand discounted cash flow analysis of a business in trying to value it?
A. Yes.
Q. And you understand the concept of enterprise value?
A. Yes.

Page 65

Q. You understand market multiple analysis in valuing; don't you?
A. Yes.
Q. You learned these things not only as an MBA in getting your degree but within your many years of business experience; correct?
A. Yes.
Q. In the course of your business with MacAndrews & Forbes, did you have access to, for lack of a better term, a clipping service that kept track of public information on companies affiliated with Mr. Perelman?
MR. MARKOWSKI: Could you read the question back for me please?
MR. BEMIS: I will rephrase the question.
Q. In the course of your work with the MacAndrews & Forbes companies, whether it be Revlon or whether it be Coleman, did you have access to a service which I will just call a clipping service that provided you with information available, whether it be magazines or newspapers or analyst

NOT A CERTIFIED COPY

01435 09

Page 66

reports, on companies that either MacAndrews & Forbes owned or had an interest in?
MR. MARKOWSKI: Objection to the form.
A. I received some clippings from him, I don't remember if it was everything.
Q. When you say from him, do you mean from Mr. Perelman or MacAndrews & Forbes?
A. From MacAndrews & Forbes, excuse me.
Q. Was this done on a regular basis, this clipping service?
A. I believe it was.
Q. Could you generally describe it for the jury, what it was that you received?
A. I get a small stack of copies of be it newspaper articles, magazine articles, I actually don't recall getting analysts' reports, which might have talked about some development or mentions of my own company that I was operating, Revlon -- which I intended more to ignore publicity

Page 67

than any of the other companies but I don't recall specifically -- but I'm sure there could have been stuff about whether it be Marvel or Consolidated Cigar, the banks.
Q. When you refer to the banks, you are referring to the banks that Mr. Perelman's companies acquired in the 1980s and 1990s?
A. Controlling interest in them, yes.
Q. Would these clipping services include things like articles in the Wall Street Journal?
A. I don't recall.
Q. Barrons?
A. I don't recall.
Q. Do you read the Wall Street Journal?
A. Yes.
Q. Do you read Barrons?
A. No.
Q. Never?
A. Occasionally, yes.
Q. If they write about you, do you read it?

Page 68

A. It gets to me somehow. I try to ignore it.
Q. Did you read the stories that were in Barrons starting in 1997?
A. Yes -- excuse me, in 1997?
Q. The first story in 1997.
A. I don't know that I read any stories about Sunbeam in Barrons in 1997. I do recall reading some in 1998.
Q. This was after the acquisition of Coleman; correct?
A. Yes.
Q. You did have some clippings information, if you will, on Sunbeam, as I understand it, while you were at Coleman; is that correct?
MR. BIDEAU: Objection to the form.
A. It sounds like a reasonable assumption but I don't recall.
Q. Was this just a personal interest of yours or were you following it because Mr. Perelman wanted it to be followed?
A. At what time period?
Q. Let's say late 1997.

Page 69

A. Late 1997 we found that Sunbeam had an interest in acquiring Coleman so at that point I'm sure I started reading the articles.
Q. Did you at this time, late 1997, start reading Sunbeam's filings with the Securities and Exchange Commission such as their 10-Qs, 8Ks if there were any at that time, and annual reports on form 10-K?
A. Yes.
Q. Let me ask you a couple questions about Mr. Perelman.
You said you knew him as a business associate; right?
A. Yes.
Q. And you worked with him from 1989 up until at least June 15, 1998, right, when you went to Sunbeam?
A. Yes.
Q. Even while you were at Sunbeam, for a period of time after June 15, 1998 you were in communication with Mr. Perelman about the operations of Sunbeam; were you not?
A. Yes.

NOT A CERTIFIED COPY

014590

Page 70

Q. At least up to a point in time going forward from June 15, 1998 you attempted to keep Mr. Perelman advised of Sunbeam's financial progress; correct?
A. Yes.
Q. You indeed sent him pretty regular reports on Sunbeam's operations and business plans; did you not?
MR. MARKOWSKI: Objection to the form.
A. I don't recall what I sent him.
Q. As an example only, did you send him business plans of the company?
MR. MARKOWSKI: Objection to the form.
Q. Sunbeam.
A. Mr. Gittis was on our board and I don't know who was sending who what.
Q. Was it fair to say you had an open line of communication to Mr. Perelman while you were at Sunbeam?
A. Yes.
Q. Did there come a point in time when that open line of communication stopped?

Page 71

A. Yes.
Q. When was that?
A. I think it -- when my contract with MacAndrews & Forbes ran out, there was one point when it changed to considerably less at that point because I then resigned from the Revlon directors position and I had spent sometime attempting to advise on the Revlon situation even though I was not there and once we went into Chapter 11 and it was clear that he no longer was going to be a shareholder, there was nothing much to talk about other than through Mr. Gittis. Mr. Gittis was totally involved in everything we were doing. He knew everything that was going on.
Q. Because he was a board member of Sunbeam?
A. Yes.
Q. There's been prior testimony about breakfast meetings that Mr. Perelman would hold at his townhouse in New York City. Did you attend those meetings?
A. Not all of them but, yes, I did.
Q. If you were in New York you would attend?
A. Yes.
Q. When you were with the Coleman Company during your second tour, you did have an office both in New York and Wichita; correct?
A. Yes.
Q. Where was your office in New York City? Was it at the Revlon headquarters?
A. It was in the same building, separate space.
Q. How much time did you spend on a weekly basis at each location, if you can assess it that way?
A. At the beginning in early 1997 I was almost entirely in Wichita and as things stabilized and we put the management team in place, things started getting better, I evolved away from that to towards the end it might have been half and half.
Q. At these breakfast meetings that you were able to attend at Mr. Perelman's townhouse, was there a somewhat regular group of executives that would be in attendance if they were in the city?

Page 72

Page 73

A. Yes.
Q. Who were those people? You can focus on 1997, 1998 if you are comfortable with that.
A. Mr. Perelman, Mr. Gittis, Mr. Schwartz, Mr. Drapkin, I believe Scott Sassa attended, Mr. Maher. I can't recall any other regular participants.
Q. Were these breakfast meetings designed to keep this group of people that you've identified for the jury informed of the operations of Mr. Perelman's companies?
MR. MARKOWSKI: Objection to the form.
A. It is what happened there. I'm not sure what the actual purpose was but operations were discussed in that forum.
Q. What was discussed at these meetings? I realize many things but just in general.
MR. MARKOWSKI: Objection to the form.
A. It ranged from watches, cars, social activities, to transactions that they are considering making.

NOT A CERTIFIED COPY

01491

Q. Was the Sunbeam transaction with Coleman discussed at these breakfast meetings?
A. I think when it was highly -- when it was in the decision making process, it probably had some attention; but post that, I really wasn't there very much. From that point forward if at all.
Q. Would you put the decision making process date at sometime on or around February 20, 1998?
A. Yes.
Q. Do you have any business arrangements with Mr. Perelman or his companies today?
A. When I turn 62 I will get a pension from the Revlon Company.
Q. Congratulations. Other than a pension, anything else?
A. No.
Q. You don't sit, for example, as the director on any companies he owns or controls?
A. No.
Q. You don't have an office any more

in any of his buildings?
A. No.
Q. Or any of his company's buildings?
A. No.
Q. Was your resignation from Revlon your last position with Mr. Perelman's companies?
A. Yes.
Q. How many years have you known Mr. Perelman? Given I think you first met him in the context of an acquisition that you were involved with, how many years have you known him?
A. It would have been somewhere in the mid '80s so something less than 20 years.
Q. Do you feel at least as a businessman you know him pretty well?
A. I don't know the answer to that question.
Q. Would you call him secretive in terms of his operations?
MR. MARKOWSKI: Objection.
A. Not with anything I have dealt

with him on.
Q. Would you call him sophisticated as a businessman?
A. Not in all instances but in many.
Q. Which instance would you call him not sophisticated?
A. He does not spend much time on the actual operations of things, he likes to hire a good CEO and let that CEO run the business. That's his most effective formula.
Q. Would you consider him a sophisticated investor in businesses?
A. I have seen him make wonderful decisions and I've seen him make very bad decisions.
Q. Would you consider Sunbeam to be a very bad decision?
MR. MARKOWSKI: Objection to the form.
A. I think he, as I, was completely surprised in the negative way of the outcome.
Q. You weren't totally completely surprised; were you?

A. I was not surprised that the business was not well run. I did not understand the strategy. I was completely shocked by fraud. I had never encountered it in my career and had no idea.
Q. The fraud now you are referring to is the fraud at Sunbeam as you are talking about; correct?
A. As described by the SEC, the massive financial fraud, yes.
Q. The massive financial fraud at Sunbeam involved the accounting firm of Arthur Andersen; correct?
A. Among others, yes.
Q. And you were -- who were the others that were involved in the massive financial fraud? Mr. Dunlap?
A. A great number of employees including Mr. Dunlap and Mr. Kersh.
Q. The SEC didn't name Morgan Stanley as being involved in any massive financial fraud; did it?
MR. MARKOWSKI: Objection to the form.
A. I don't recall.

NOT A CERTIFIED COPY

016592

Q. You don't recall one way or the other?
A. One way or the other.
Q. In terms of your dealings with Mr. Perelman over the years, were you involved in mergers and acquisitions for or on behalf of his companies?
A. Yes.
Q. How many?
A. They were relatively few. We bought some small cosmetic operations. I would say less than five.
Q. With Coleman you were involved with some; right? You sold some?
A. I sold some. The acquisitions were made in between my first and second term with Coleman.
Q. You sold a company called Coleman Safety and Security, didn't you, right before the merger?
A. Yes.
Q. It was about a 105 million dollar transaction if I remember the document.
A. I don't recall. I'm sure it's a matter of record.

Q. It is.
Let me ask you to focus now specifically on the Coleman transaction and I want to ask you some questions about some of the people who were involved and get your understanding of what their role was in the transaction. I will start with yourself. Always start at the person here.
You at that point told the jury you were the president, chief executive officer of Coleman; right?
A. I told the jury?
Q. You mean -- you're telling the jury now on the videotape.
A. Okay. I thought I was chairman and president and CEO.
Q. Would you consider yourself the lead negotiator on the business side for Coleman?
A. I don't know what that means.
Q. Who was the lead negotiator for Coleman?
A. It was someone in MacAndrews & Forbes organization.
Q. So MacAndrews & Forbes was

negotiating on behalf of Coleman?
A. On behalf of the 80 percent shareholding interest I assume.
Q. Who was representing the public shareholders then in the negotiations?
A. I was representing, in the transaction, the company and the rest of the shareholders, I viewed that as my responsibility.
Q. Who at MacAndrews & Forbes was leading the negotiations for Coleman?
MR. MARKOWSKI: Objection to the form.
A. I think I've answered that. I don't know who was actually doing the interfacing with Morgan Stanley.
MR. BIDEAU: Larry, would this be a good time to take a break? We've been going about an hour and a half.
MR. BEMIS: Sure.
MR. BIDEAU: What's your plan in terms of breaking for lunch?
MR. BEMIS: One o'clock. Want to try to one o'clock?
THE WITNESS: That's fine me with

me.
(Discussion off the record.)
THE VIDEOGRAPHER: We're now going off the record. The time is 11:49 a.m.
(Recess taken.)
THE VIDEOGRAPHER: We're now going on the record. The time is 12:07 p.m.
BY MR. BEMIS:
Q. In your role as you've described it in the negotiations on behalf of Coleman, did you report directly to Mr. Perelman?
MR. MARKOWSKI: Objection to the form.
A. I reported to the board of directors for which Mr. Perelman was not a member.
Q. Did you have any responsibility on behalf of Coleman for due diligence of Sunbeam before the signing of the merger agreements?
A. Yes.
Q. What was your responsibility?
A. They asked me to review Sunbeam's

NOT A CERTIFIED COPY

014593

Page 82

business plan and long term strategy.
Q. Who is they? You said, "They asked me."
A. I don't recall. I just wound up going to the meeting as part of the due diligence. I don't know specifically who asked me.
Q. Is this meeting you referred to a meeting that took place after you returned from Puerto Rico?
A. Yes.
Q. Where Mr. Kersh made a presentation using overhead slides?
A. I know their investor relations, Rich Goudis, being at the presentation, it was probably Mr. Kersh that made the rest of it, I don't remember.
Q. Let me show you a document that's been marked as MS 84. I don't want to cover it right now but I want to see if that's the strategic plan or business plan that you were looking at.
A. Yes.
Q. Is that your handwriting that appears on the document?

Page 83

A. Yes, it is.
Q. Keep it in front of you right now because we'll get back to it later.
MR. BEMIS: And when I do, I will give you a copy.
Q. Did you have any responsibility for due diligence of Sunbeam after the signing of the merger agreements? I think you said you went to Tucson.
A. No, I did not.
Q. Did anyone at the Coleman Company have due diligence responsibilities after February 28 or was it a matter that was handled by MacAndrews & Forbes?
MR. MARKOWSKI: Objection to the form.
A. I don't know of any that Coleman did.
Q. During the negotiations on behalf -- to the extent they were being conducted on behalf of MacAndrews & Forbes, was it your understanding that Mr. Perelman was taking the final responsibility on the terms of the transaction for MacAndrews & Forbes' side?

Page 84

MR. MARKOWSKI: Objection to the form.
MR. BIDEAU: Same objection.
A. No.
Q. Who in your understanding was making the decisions on behalf of MacAndrews & Forbes?
MR. MARKOWSKI: Same objection.
A. I don't know who made the final decision on all the terms from MacAndrews & Forbes.
Q. In the course of your participation in the negotiations, did you deal with Mr. Gittis at all?
A. Mr. Gittis?
Q. Gittis at all, yes.
A. Probably.
Q. Anything in particular that you can recall as you sit here today?
A. That Mr. Gittis and I specifically discussed?
Q. Yes, that you two interfaced on.
A. He was a member of the board of directors and probably had the same dialogues that I had with the rest of the

Page 85

directors.
Q. Did you work at all with James Maher during the negotiations?
A. Slightly.
Q. How would you describe the slightly?
A. There were a few issues that were important to the company that I wanted to make sure were attended to.
Q. What were those issues?
A. I felt it was very important that if we were going to do this, we did it with great certainty and very fast.
Q. What do you mean by great certainty?
A. I thought it would be destructive to the value of the company to have announced a transaction with Mr. Dunlap and Sunbeam and then not consummated. I felt it would have done damage to the company from a shareholders' perspective.
Q. What did you mean by quickly?
A. As fast as they could possibly do it.
Q. Why did you want to do the

NOT A CERTIFIED COPY

011594

Page 86

transaction with Sunbeam as fast as they could possibly do it?
A. Mr. Dunlap had a unique reputation and quite a different management style than I had, different philosophies, and once the Coleman Company employees realized that we were willing to sell the company to Dunlap, it would have been hard to restore the morale, the trade relations, many implications which bothered me and since it was a public company and public data available to us, I didn't see any reason not to do a very fast, public kind of transaction.
Q. Was your view that the transaction should be done quickly a view that was also held by MacAndrews & Forbes at least to the extent that you were aware of their views?
MR. MARKOWSKI: Object to lack of foundation.
A. I don't know. All I know is all parties agreed that it was in everybody's interest to do this very fast.
Q. That includes the people at

Page 87

MacAndrews & Forbes that you dealt with?
A. I believe so.
Q. And the people at Sunbeam that you dealt with?
A. I didn't deal with them much but I assume they agreed.
Q. Did you deal directly with anyone at Morgan Stanley?
A. I believe there were Morgan Stanley representatives in any meeting I attended.
Q. Other than them being in a meeting, did you have any face-to-face conversations or dealings with them concerning the transaction?
MR. MARKOWSKI: Objection to the form.
A. I don't recall.
Q. Did you deal with Mr. Barry Schwartz during the period that you were involved in the negotiations?
A. I don't recall specifically anything we talked about as it relates to this subject during the negotiations.
Q. Did you have any role in the

Page 88

drafting of the merger agreements on behalf the Coleman Company?
A. Personally, no.
Q. What do you mean by personally no?
A. I read them before they were released to the other side. They were drafted by the attorneys. It was a fairly straightforward document. I don't remember if I had any edits or not.
Q. During the course of the negotiations, were there any particular points of interest that you focused on during the negotiations?
A. There were two points. One was the speed, which I mentioned, and the other is that management not be put in a position of having to hold Sunbeam stock or options unless they voluntarily chose to do so.
Q. What do you mean by that?
A. Well, most of the transaction value to me and to the Coleman team, and the options ran very deep, was in the form of stock options and I didn't want to wind up in a situation where I would not have

Page 89

control of the business, Mr. Dunlap would, and most of my personal net worth would be tied up in Sunbeam stock options. It was just something I did not want to do.
Q. Did you want Sunbeam stock as opposed to cash in the transaction, you personally?
A. Well, Sunbeam stock I could have sold right away. There wouldn't be a particular problem. In fact --
Q. You could have if it was registered but it wasn't registered stock --
A. Anything that was not saleable I did not want. I did not want Sunbeam stock.
Q. Were you one of the negotiators on the Coleman side that crafted the agreements and allowed the Coleman option holders to cash out, if you would, at a price of $27.50 per share of their Coleman stock?
A. I didn't draft it.
Q. I understand you didn't do the drafting.

NOT A CERTIFIED COPY

Page 90

A. But I looked to make sure it worked to my satisfaction.
Q. Were you an advocate of that on behalf of the Coleman option holders?
A. Yes.
Q. Explain that provision to the jury, please.
A. As I recall, it gave the ability for a Coleman option holder to exercise the options immediately to be fully vested and receive no less than 27.50 in price.
Q. That was cash price?
A. In cash price, yes.
Q. Did the public shareholders have that option?
A. None of the public shareholders had options. It wasn't an issue.
Q. That was a very bad question.
Was there any provision in the merger agreements with respect to the public shareholders that gave them, even though they didn't have an option, options, stock options, the right to receive in lieu of Sunbeam stock a cash payment of 27.50 per share?

Page 91

A. They didn't need it. They could just sell their stock. It simply wasn't relevant.
Q. The Sunbeam shareholders, the public -- the Coleman public shareholders who got Sunbeam stock could immediately sell their Sunbeam stock?
A. Could immediately sell their Coleman stock.
Q. Let me try the question differently.
If they didn't sell their Coleman stock immediately before the transaction, was there any provision in the merger agreement that allowed the public shareholders of Coleman to take cash as opposed to a combination of cash and Sunbeam stock?
A. As it wasn't relevant, no.
Q. Did you deal at all in the negotiation with Mr. William Nesbitt?
A. I did not negotiate with William Nesbitt.
Q. I understand you didn't negotiate with him. Let me put it this way:

Page 92

Mr. Nesbitt was an employee of MacAndrews & Forbes or one of its affiliates; correct?
A. Yes.
Q. Did you have any dealings with him in the course of the negotiations on the MacAndrews & Forbes and Coleman side of the transaction?
A. I think on occasion he came to me with questions. Relating to the Coleman Company.
Q. What questions did he come to you with?
A. They could be business questions, I don't recall what they were. Generally about how we're doing, how our business works.
Q. Did you assist him at all in any analysis of a combination of Coleman and Sunbeam?
A. Other than answering direct questions, no.
Q. As you sit here today, do you remember any of the questions that he asked you?

Page 93

A. No.
Q. Did you review during the period of time that you were involved in the transaction, did you review any of the modeling that MacAndrews & Forbes did on the Sunbeam/Coleman transaction?
A. I don't recall ever seeing it.
Q. Say after the closing, did you review some of the modeling?
A. I don't recall seeing it to this day.
Q. To your knowledge, did Mr. Nesbitt have any responsibilities for due diligence of Sunbeam before the execution of the merger agreements as of February 27, 1998?
MR. MARKOWSKI: Object to lack of foundation.
A. I do not know what responsibilities he had.
Q. Are you aware of any responsibility that he had after February 27, 1998 up to the date of closing for due diligence of Sunbeam?
A. No.

NOT A CERTIFIED COPY

011596

Page 94

MR. MARKOWSKI: Same objection.
Q. Do you know Paul E. Shapiro?
A. Yes.
Q. At the time of the transaction, was he the general counsel of Coleman?
A. Yes.
Q. Did he have any role in the negotiations of the merger transaction?
A. I know he was supplying data.
Q. To whom?
A. The attorney work group. I don't know exactly who was in that.
Q. Do you know whether Mr. Shapiro had any responsibility for due diligence of Sunbeam after the execution of the merger agreements as of February 27, 1998?
A. I don't recall any.
Q. When did you first meet Albert Dunlap?
A. I met Al Dunlap at the time he was relatively new to Sunbeam at a Merrill Lynch CEO conference dinner.
Q. Where was this?
A. In New York.
Q. Did the two of you just casually

Page 95

meet each other or did you talk to each other about business matters? What happened?
A. You don't talk to Al Dunlap; you listen to Al Dunlap.
Q. Did you listen to him?
A. I was in a small conversational group during the cocktail hour and listened to him briefly.
Q. Would this have been in 1996 or early 1997?
A. I don't know.
Q. What do you remember about the conversation that Mr. Dunlap held?
A. He declared himself the only CEO who knows anything and disparaged everybody else who was in the room and eventually several of us left.
Q. What was your impression of Mr. Dunlap after this first meeting?
A. It wasn't very good.
Q. At this time -- when you met Mr. Dunlap at this Merrill Lynch conference, were you employed by the Coleman Company?

Page 96

A. I don't remember if I was at Revlon or Coleman at that time.
Q. At this time was it your understanding that Mr. Dunlap was then with Sunbeam?
A. I believe so.
Q. Did you pass along any of your feelings about Mr. Dunlap to anyone at MacAndrews & Forbes?
A. Yes.
Q. To whom?
A. Mr. Perelman.
Q. When did you tell Mr. Perelman about your observations about Mr. Dunlap?
A. It would have been in 1997.
Q. Why do you pinpoint that year?
A. Mr. Perelman and I made a trip to Boca Raton to meet with Bernie Marcus of Home Depot and that evening he went to have cocktails with Al Dunlap.
THE VIDEOGRAPHER: Excuse me, 10 minutes now, counselors.
MR. BEMIS: Let's switch the tape.
THE VIDEOGRAPHER: We're now going off the record. The time is 12:27 p.m.

Page 97

This is the end of tape labeled 1 of the deposition. We will continue on tape labeled 2.
(Recess taken.)
THE VIDEOGRAPHER: This is the tape labeled number 2 of the videotape deposition of Jerry Levin. We're now going on the record. The time is 12:29 p.m.
BY MR. BEMIS:
Q. You were explaining to us that you were at a meeting in Florida with Mr. Perelman, Boca Raton in particular, I think visiting Home Depot, and as I understood your testimony, Mr. Perelman had cocktails with Mr. Dunlap; is that correct?
A. Yes.
Q. Were you present during that cocktail session with Mr. Dunlap?
A. No.
Q. How did the conversation come about between you and Mr. Perelman about Mr. Dunlap?
A. The next morning as we headed to the airport to go back to New York, I asked

NOT A CERTIFIED COPY

Page 98

him how cocktails went.
Q. What did Mr. Perelman say?
A. Great.
Q. Anything else?
A. That the guy is doing a tremendous job and has extraordinary financial returns and he couldn't understand why I couldn't produce profitability like Dunlap was doing at Sunbeam.
Q. What did you say to Mr. Perelman, if anything?
A. I said, "I assume you're talking about profits he's projecting, not profits he's actually made." Perelman said, "No, he's actually doing it. "I said I find that incredible. Mr. Perelman called Mr. Dunlap and asked him to fax to his New York office a set of the financials.
Q. The conversation that you are relating between you and Mr. Perelman was in the car on the way to the airport?
A. That's correct.
Q. Did you tell Mr. Perelman about your experience with Mr. Dunlap at the

Page 99

Merrill Lynch conference?
A. No.
Q. Did you tell Mr. Perelman your impressions of Mr. Dunlap based on your one meeting with him at the Merrill Lynch conference?
A. I don't recall doing so. This was several months later, if my memory serves me right.
Q. Can you recall anything else about the conversation that you and Mr. Perelman had in the car on the way to the airport following the cocktail session between Mr. Dunlap and Mr. Perelman in Boca Raton?
A. I think I generally described what I recall.
Q. My understanding is that when you and Mr. Perelman return -- you and Mr. Perelman were obviously on your way back to New York; is that fair?
A. Yes.
Q. At some point your understanding is that Mr. Perelman asked Mr. Dunlap for some financial statements; is that right?

Page 100

A. While we were in the car.
Q. Mr. Perelman made a phone call from the car?
A. Yes.
Q. Did he speak directly to Mr. Dunlap, to your knowledge?
A. He did.
Q. Were you able to hear the conversation?
A. No.
Q. Just one side of it, Mr. Perelman?
A. Yes.
Q. What do you recall Mr. Perelman asking of Mr. Dunlap?
A. He essentially said I'm here with Jerry Levin, I would like for him to see more of what you are doing, could you send us a copy of your financials so he could look at it.
Q. When you got back to New York were the financials there in New York in Mr. Perelman's office?
A. Yes.
Q. They were Sunbeam's financials I

Page 101

take it?
A. Yes.
Q. Were these public financial statements or interim financial statements? What were they?
A. I believe it was a combination thereof.
Q. Both their interim statements as well as what was publicly on file?
A. I don't recall specifically but I believe it was a very current look at his business.
Q. At the time you looked at the public materials, were these audited financial statements?
A. I had not looked at that point at any public materials outside of what Mr. Dunlap might have provided me, whatever he sent.
Q. The financial statements that you looked at, did they include financial statements that had been filed with the Securities and Exchange Commission?
A. I don't think so. This was probably towards the end of the first

NOT A CERTIFIED COPY

011598

Page 102

quarter of 1997, I suspect what I was given was a combination of actuals for early 1997 and projections for the rest of the year.
Q. When you use the term actuals, you mean interim financial statements as of a particular date?
A. Yes.
Q. Did Mr. Perelman personally give you these financial statements from Sunbeam?
A. Either he or his secretary handed them to me.
Q. Did you look at them?
A. Yes.
Q. Did you analyze them to the best of your ability?
A. Yes.
Q. Did you reach any opinions about the financial statements when you reviewed them?
A. Yes.
Q. What?
A. That it was a business model that I was unfamiliar with, that I did not understand how that business model would be

Page 103

effective over the long term.
Q. Could you please tell us what the business model was that you observed in reviewing the financial statements?
A. There did not appear to be enough investment in sales or research and development or consumer communication to sustain a business in mature industries at a remarkably high growth rate and still be very profitable at the same time.
Q. When you say remarkably high growth rate, what do you mean by that?
A. I believe the company was growing double digits, perhaps 20 percent per annum at that point.
Q. When you expressed this growth at 20 percent, is this net sales or --
A. Sales.
Q. Did you speak to Mr. Perelman about your review and analysis of the Sunbeam financial statements sent to Mr. Perelman by Mr. Dunlap?
A. Yes.
Q. How soon after you did your review did you speak to Mr. Perelman?

Page 104

A. The next morning.
Q. In New York in Mafco's offices?
A. Yes.
Q. What did you say to Mr. Perelman and what did he say to you?
A. That recognizing that Al Dunlap is currently the most admired and respected CEO in America, he's Wall Street's absolute darling, I did not know based on my own experiences how to do what he is doing. If you, Mr. Perelman, want somebody to try, find somebody else because this is not in my business skill base. I'm just a relic of the past if this is what is working out there today.
Q. What do you mean that Mr. Dunlap was the darling of Wall Street?
A. He was one of the lead commentators on CNBC, he was written up the best CEO of America by himself and the others, the analysts that run his stock price up very favorable reports. He was considered a true great celebrity CEO at that point.
Q. What did Mr. Perelman say in

Page 105

response to your statements to him?
A. Essentially okay.
Q. Just okay?
A. Well, he -- there was nothing to say. I wasn't going to do it and he wasn't going to fire me so it was the end of the conversation and we never discussed it again.
Q. Did Mr. Perelman ever tell you that he had offered Mr. Dunlap a position on the board of directors of the Coleman Company?
A. No. I don't recall him saying that.
Q. Had you ever heard that before today when I just said it?
A. It sounds vaguely familiar but I really don't recall specifically.
Q. Did you ever hear that Mr. Perelman had offered Mr. Dunlap the position of chief executive officer of Coleman?
A. No.
Q. The conversation that you've just related to us occurred, I take it, sometime

NOT A CERTIFIED COPY

Page 106

in the summer of 1997, would that be fair?
A. I think it would have been earlier because it would be unlikely that Bernie Marcus would be in the Boca house in the summer.
Q. Too hot?
A. Yes.
Q. Did you ever meet Mr. Dunlap after the Merrill Lynch conference?
A. Once.
Q. Was this in Mr. Perelman's offices?
A. Yes.
Q. When did you meet him?
A. It was the Friday before his analyst conference when he was going to straighten out Wall Street on the issues that were beginning to surround Sunbeam. I believe that was towards the end of April, early May of '98 but I'm sure you would have a record of it.
Q. If the analyst conference was on or about May 11, 1998, where would that put the conversation with Mr. Perelman?
A. If it was May 11, then I think I

Page 107

would have met in his office at May 7 or 8 or something like that.
Q. How is it you came to be at this meeting in Mr. Perelman's office where Mr. Dunlap was present right before the analyst meeting in May 1998?
A. Either Mr. Perelman or one of the other MacAndrews officers had called me about a week to two weeks before that and said they were getting concerned about what was going on at Sunbeam and they were trying to get this meeting together with Mr. Dunlap, would I do some independent research as to what was going on in the company.
Q. You said it was Mr. Perelman or someone else in the MacAndrews office who called you. Do you know who the other person is?
A. It was almost certainly either Mr. Gittis or Mr. Perelman, I don't recall which one.
Q. By the time that you met with Mr. Dunlap and Mr. Perelman, had you done the investigation that you had been asked

Page 108

to do by Mr. Perelman or Mr. Gittis?
A. I had done some work.
Q. Had you reduced it to writing?
A. I don't recall doing that. I might have.
Q. Let me show you a document marked as Morgan Stanley Exhibit 168.
MR. BEMIS: Ms. Reporter, would you please initial this document for me. It's not been previously marked.
(Morgan Stanley Exhibit 168, two-page document, marked for identification, as of this date.)
Q. Mr. Levin, I have handed you a two-page document marked as Morgan Stanley Exhibit 168. Do you have that in front of you?
A. Yes.
Q. At the bottom -- did you prepare this document?
A. I believe I did.
Q. If you look on the lower right-hand side of the document, there is what I will use -- I will describe as a footer, for lack of a better term, that is

Page 109

0414 and then the initials lower case jwl. Is that you?
A. I'm jwl. I don't know who typed this because we normally don't use that kind of system but it looks like my style and I'm reasonably sure I did this.
Q. Is Morgan Stanley Exhibit 168 a document that you created as a response to the request that you received from either Mr. Perelman or Mr. Gittis to look into Sunbeam?
A. I think it's more complicated than that. I don't think I was the sole producer of this information. Some of it I'm familiar with but I -- for instance, I don't remember ever seeing an analyst unpublished model which is referred to here and I don't know if this is a consolidation of some work I did with somebody else or not.
Q. We'll get to this in more detail later in your deposition, but does this document appear to you now as you sit here today to be part of the analysis you did at the request of Mr. Perelman or Mr. Gittis,

NOT A CERTIFIED COPY

017600

Page 110

if he was the one who asked you, to look into Sunbeam?
MR. MARKOWSKI: Objection to the form.
MR. BIDEAU: I think you have that backwards.
MR. BEMIS: I will withdraw the question. I know what I wanted to ask you.
Q. As you sit here today, is at least part of this document a result of an analysis you did that was requested by either Mr. Perelman or Mr. Gittis?
MR. MARKOWSKI: Same objection.
A. I know this sounds strange but as I look at this in detail, I did not prepare this.
Q. Why do you say that?
A. Because there are many things in here that I just would never have done, would never have known and would not have access to. I might have provided some information in terms of who prepared this report. This was done with data that I just have absolutely no access to.

Page 111

Q. Looking at the document and seeing at least the initials jwl on the footer, can you tell us who you think might have been the author of the document, if not you?
MR. MARKOWSKI: Object to the form. Lack of foundation.
MR. BIDEAU: Tell if you know but don't guess --
MR. BEMIS: I can ask him for purposes so I can proceed with further discovery. I understand he will qualify his answer however he wants to qualify.
MR. BIDEAU: I will give you the same admonition: You are not required to guess. If you have a reasonable assumption as to who it is, by all means tell him; but if you don't know, you don't know.
A. I know there was a separate analysis done by Will Nesbitt independent of what I was doing.
Q. Was this an analysis of analysts who he interviewed about Mr. Dunlap?

Page 112

A. I don't know who he interviewed. I know who I interviewed but I don't know who he interviewed.
Q. Who did you interview?
A. I know I talked to Andrew Shore. I'm pretty sure I talked to Lisa Fontenelli and Connie Maneaty. I'm not sure I saw all of these, I probably saw some.
Q. As you sit here today, and now having looked at Morgan Stanley 168, did you prepare something in writing that summarized the results of whatever review and analysis that you did do after being requested?
A. I don't recall doing that. And I didn't have a secretary at the time so it would be fairly unlikely that I would have done anything.
Q. I'm not trying to be facetious but do you type?
A. Yes. Yes, I do type. Not as neatly as in this document. I could assure you I did not type this document.
Q. You can hand that back to me for now.

Page 113

Do you know anyone else in the MacAndrews & Forbes company as of, say, 1998 who had the initials jwl?
A. No.
Q. Anyone at Coleman who had those initials?
A. No.
Q. At least as of April 14, 1998, I think you told us earlier you --
(Witness and counsel confer.)
A. Pardon?
Q. I think you told us earlier that in April of 1998 you were still working for MacAndrews & Forbes without any specific responsibilities; is that fair?
A. Yes.
Q. Going back now to the meeting that you had in Mr. Perelman's with Mr. Dunlap in May of 1998, I think you said, according to my notes here, that Mr. Perelman was concerned about his investment in Sunbeam at this time?
A. Yes.
Q. Was this the first time that Mr. Perelman had expressed that concern to

NOT A CERTIFIED COPY

016110

Cont 967

Page 114

you?
A. As I said, I don't remember whether Mr. Gittis or Mr. Perelman called me but it was the first time that I became aware that they were concerned.
Q. Whether it be Mr. Perelman or Mr. Gittis, do you recall what they said about their concern over Sunbeam at this time?
MR. MARKOWSKI: Objection to the form.
A. I don't recall the specifics, I just remember they were concerned.
Q. Did you have any role in inviting Mr. Dunlap to come to MacAndrews & Forbes' offices?
A. No.
Q. Who invited you to attend?
A. Either Mr. Gittis or Mr. Perelman.
Q. Who was present at the meeting at MacAndrews & Forbes' offices when Mr. Dunlap was there; and I know you were there, who else was there?
A. I believe David Fannin who was

Page 115

general counsel of Sunbeam at the time was with Mr. Dunlap and I know that Mr. Perelman, Mr. Gittis, Mr. Schwartz and I were there. If somebody else attended from MacAndrews & Forbes, I don't recall.
Q. How long did the meeting last?
A. Approximately an hour.
Q. Was it in the conference room on the first floor or --
A. No, it was in Mr. Perelman's office.
Q. Were there some social pleasantries before you got down to the merits of the meeting?
A. I'm sure there was some but they were minimal.
Q. How did the meeting start?
A. "Have you signed our proxy statement yet?"
Q. This is Mr. Dunlap asking Mr. Perelman whether they -- Mr. Perelman's companies had signed the proxy statement; correct?
A. Right.
Q. At that time Mr. Perelman's

Page 116

companies owned approximately 13 percent of Sunbeam?
A. I don't recall.
Q. But it was a substantial amount?
A. It was an important vote.
Q. What happened after Mr. Dunlap started the meeting with that question?
A. They said, "Oh, we'll get to that." And then Mr. Dunlap proceeded to take us through a draft copy of his presentation to the analysts.
Q. What happened next?
A. Well, he finished the presentation and then he asked if there were any questions.
Q. And?
A. I asked him a question.
Q. Did you ask him a question about Wal-Mart?
A. Yes.
Q. What was the question?
A. "I understand that you've been discontinued from a large part of your grill sales and grill accessories at Wal-Mart."

Page 117

Q. What did he say?
A. He didn't say anything for a long pause and then proceeded to scream at the top of his voice as to what an incompetent I was.
Q. Can you be any more specific about the terms in which he expressed your incompetence?
A. Worst manager he's ever encountered, Coleman was not what we represented to him, they were off 30 million dollars in sales versus the forecast, several other unflattering comments none of which, in my opinion, were true. The ones that could easily be determined by -- anything there was data for in terms of his that we were off on sales was definitely not true other than it disturbed the marketplace some and I did not -- I still do not feel I am as incompetent as Al Dunlap.
Q. Did he tell you, "Go fuck yourself," in so many words?
A. That would be an extremely polite way of putting what he said.

NOT A CERTIFIED COPY

014502

Page 118

Q. He did use that word; didn't he?
A. Quite a bit.
Q. And he said words to the effect, "You don't know what the fuck you were doing"; didn't he?
A. Yes.
Q. He used words to say, in effect, he was sold a dog by Mr. Perelman; didn't he?
A. Could be. I don't remember all the language. It was six years ago.
Q. Was that the import of what he said in not his exact words?
A. That all the problems were Coleman.
Q. Based on your earlier meeting with Mr. Dunlap with Merrill Lynch, did your impression of him change for the better or the worse after meeting with him in May at this meeting?
A. I don't recall whether -- his reputation was well-known. By then the meeting where he'd also been screaming and yelling at Perelman and Gittis had been in the Wall Street Journal. It was a classic

Page 119

Dunlap performance from my perspective. I wasn't particularly surprised by what happened.
Q. The meeting with Mr. Perelman and Mr. Gittis, that was at Mr. Perelman's home in Palm Beach right before the holidays in December; correct?
A. I don't remember if it was Gittis' home or Perelman's home but it was in Palm Beach and it was at the time you mentioned.
Q. Have you read Mr. Byrne's book "Chainsaw"?
A. Yes.
Q. He describes the meeting that you just described in Mr. Perelman's office; doesn't he?
A. He might. I don't recall. It's been a long time.
Q. Were you interviewed by Mr. Byrne?
A. I was not interviewed but he did talk to me before he published it to check facts.
Q. Is one of the facts he checked

Page 120

what happened at the May 11 meeting, the meeting in anticipation of the analysts' conference?
A. I think he really -- I don't recall if that was covered, I just don't remember.
Q. What if anything did you say or do as Mr. Dunlap was expressing his views on your management style and capabilities?
A. I said, "Okay, if that's the way you feel about it, fine, but did you or did you not lose distribution at Wal-Mart?"
Q. Did he answer eventually?
A. Then he got really mad and we actually were concerned about his physical well-being because he was so out of control but he didn't answer the question and finally David Fannin said, "Yes, we did lose three distribution centers," which was a small fraction of what had actually happened.
Q. Did you find out when this happened, this loss of the distribution centers at Wal-Mart? At some point in time did you find out when did it happen?

Page 121

A. Oh, I knew before I went into the meeting.
Q. When did it happen?
A. It happened, must have been sometime in February, March and it was obviously shocking to me to learn about this because one of the feature presentations of Sunbeam and why it was such a great company was the grill business and this had never been disclosed.
Q. How did you learn about this at whatever point in time you did learn about it?
A. Wal-Mart told me.
Q. Who was it at Wal-Mart that told you this?
A. I don't recall. I talked to a number of people but they made it quite clear as to what happened and how angry they were.
Q. They were angry at Sunbeam?
A. This was a punishment. This was done as a punishment.
Q. What happened next after Mr. Fannin made his statements about the

NOT A CERTIFIED COPY

014603

Page 122

situation at Wal-Mart?
A. I dropped the subject as it was ludicrous to continue that course of action and then there was one additional question asked as to whether Mr. Dunlap felt Andrew Shore would attend the analyst meeting.
Q. What was the response?
A. He got about as angry as in the second phase and proceeded to make many unflattering comments about Andrew Shore.
Q. Andrew Shore was at this time an analyst for PaineWebber; correct?
A. Yes.
Q. You knew Mr. Shore I think you said; right?
A. Yes.
Q. Had you spoken to Andrew Shore by the time of this meeting about Sunbeam?
A. Yes.
Q. When did you speak to Mr. Shore?
A. It would have been within the two-week period before the meeting.
Q. The two-week period before the analyst meeting, May 1998?
A. Yes.

Page 123

Q. Where did you and Mr. Shore speak to each other?
A. In his office.
Q. Here in New York?
A. Yes.
Q. How long did the two of you talk?
A. I don't recall.
Q. What did you say and what did he say?
A. At that point, if my memory serves me correctly, he had issued the first negative report on Sunbeam of the analyst group that had been following Al Dunlap. He had been really the first one to get on the Dunlap bandwagon so this -- when he jumped off the bandwagon, it caused considerable concern and I believe some of the stock had started to retreat and I just wanted to hear from him his views as to what was happening at Sunbeam.
Q. What did he say about what was happening at Sunbeam?
A. I don't recall the specifics of it.
Q. You spoke to Mr. Shore because of

Page 124

the request given to you by Mr. Perelman or Mr. Gittis; right?
A. Yes.
Q. At any point before the closing on March 30, 1998, did you speak to Mr. Shore about Sunbeam?
A. No.
Q. Are you aware of anyone at MacAndrews & Forbes or Coleman or any of their advisors speaking to Andrew Shore about Sunbeam before the closing?
A. I'm not aware of any.
Q. What happened next at the meeting following Mr. Dunlap's remarks about Andrew Shore?
A. He stopped and said, "Well, got to go. Can I have my proxy statement?" And somebody signed it and he left.
Q. So at the end of the meeting MacAndrews & Forbes did execute a proxy statement in favor of Sunbeam's management; correct?
A. I guess it's not a proxy statement, they signed their proxy.
Q. Just so the record is clear since

Page 125

I asked a poor question: At end of the meeting, it's your recollection that MacAndrews & Forbes did sign their proxy in favor of Sunbeam's management?
A. Yes.
Q. And then the meeting was adjourned?
A. Yes.
Q. Did you ever meet Mr. Dunlap again?
A. No.
MR. BEMIS: Why don't we break for lunch.
THE VIDEOGRAPHER: We're now going off the record. The time is 1:04 p.m.
(Time noted: 1:04 p.m.)

FINAL CERTIFIED COPY

01450h

Page 126

AFTERNOON SESSION.
(Time noted: 2:09 p.m.)

JERRY W. LEVIN,
resumed and testified as follows:
EXAMINATION (Cont'd.)
BY MR. BEMIS:
THE VIDEOGRAPHER: We're now going on the record. The time is 2:09 p.m.
Q. Good afternoon, Mr. Levin. When we adjourned we had been talking about the meeting at Mr. Perelman's office with Mr. Dunlap in May of 1998. I want to ask a couple more quick questions on that and then we'll move on to something else.
Did Mr. Perelman say anything at the meeting beyond what you've already told me?
A. While Dunlap was there?
Q. While Dunlap was there, correct.
A. I don't recall anything.
Q. How about Mr. Gittis, did he say anything?
A. Nothing stands out.

Page 127

Q. After Mr. Dunlap left, did the three of you, Mr. Perelman, Mr. Gittis and yourself have a further meeting?
A. We talked for a few minutes.
Q. What was said?
A. When Dunlap was in his third tirade about Andrew Shore, he cut himself off in the middle of a sentence and stopped talking and said, "It's time to go," and we speculated as to what exactly happened there and why Dunlap cut himself off.
Q. What was Mr. Dunlap saying at the point he cut himself off?
A. He was using some very derogatory language about Andrew Shore and he just stopped in the middle of a sentence.
Q. Anything else that you can remember discussing after Mr. Dunlap left the meeting?
A. I think we generally concurred that he wasn't particularly ready for the analyst meeting, a very disorganized presentation.
Q. At any point in the meeting did anyone on the MacAndrews & Forbes side

Page 128

express to Mr. Dunlap a willingness to have you help out at Coleman or Sunbeam?
A. I don't remember them doing that.
Q. You mentioned that you found out that there had been a loss of certain distribution centers involving Wal-Mart and Sunbeam and I think you said that the dates were sometime in February or March that this occurred. Am I correct, that's when you found out or is that when it happened at Wal-Mart?
A. I found out --
MR. MARKOWSKI: Excuse me, I object to the form of the question.
MR. BEMIS: I will withdraw the question. I will ask it again. It was a pretty poorly phrased question.
Q. You were testifying that at some point you learned that Sunbeam was having difficulties with Wal-Mart, they were losing some business to certain distribution centers. Do you recall that testimony?
A. Yes.
Q. When did you find out that that

Page 129

had happened?
A. In the two-week period before the meeting.
Q. You found this out by speaking to someone at Sunbeam?
A. No.
Q. At Wal-Mart. I'd misspoken.
A. Yes.
Q. So the time that you spoke to the person at Wal-Mart was approximately two weeks before the May 1998 analyst meeting?
A. A week or two would be fine.
Q. The person that you spoke to at Wal-Mart, did that person tell you the date at which Sunbeam had lost whatever business it had at these distribution centers?
A. No.
Q. Did you find that out later?
A. I'm sure I did sometime much later but it has just to do with the timing of when grills are shipped. Grills are really shipped very early in the year. That losing distribution of fresh product in April wouldn't be as impactful as losing in December, January, February because

NOT A CERTIFIED COPY

014505

Page 130

they're starting to fill their warehouses with the product and I just assumed it was sometime in that period.
Q. But as you sit here today, you don't know the time that Sunbeam lost these distribution center accounts with Wal-Mart?
A. I probably knew sometime later in 1998 but I don't recall exactly what I found out.
Q. You testified that you were present where Mr. Dunlap was present at a Merrill Lynch conference and he spoke as you described it and you were also present at Mr. Perelman's office in May of 1998. Between the first conversation you had with Mr. Perelman at the Merrill Lynch conference and the one in May of 1998, did you ever speak to Mr. Perelman about your views on whether Mr. Perelman should take cash or stock if he did a transaction with Sunbeam?
MR. BIDEAU: I think you misspoke that you had meetings with Mr. Perelman and conversations with Mr. Perelman.
MR. BEMIS: One more time.

Page 131

Q. Between the conversation you had with Mr. Dunlap at the Merrill Lynch meeting and the May 1998 meeting at Mr. Perelman's office where Mr. Dunlap was present, did you ever express to Mr. Perelman your views on whether he should take cash or stock if he did a transaction with Sunbeam?
A. Yes. The part of the time period you are referring to, transaction had already occurred.
Q. When did you tell him that?
A. I told him that -- it would have been probably late December of '97 through February 20th of '98.
Q. Did you have more than one conversation with Mr. Perelman on the subject of whether he should take cash or stock in the transaction with Sunbeam?
A. Yes.
Q. When was the first such conversation that you had with Mr. Perelman?
A. I don't recall. It is just what I told you. That would have been the time

Page 132

frame in which we discussed it because it's when I first knew something was a factor which was December and then February 20 it was all over so there was no point in having the conversation.
Q. What did you say to Mr. Perelman when you discussed with him whether he should take cash or stock in Sunbeam?
A. I still didn't understand the business model and I really thought he should take as much cash as he could.
Q. What did Mr. Perelman say?
A. He didn't really respond. He listened. Never told me what was on his mind.
Q. I take it that you had more than one of these conversations in this period between December 1997 and February 1998; is that fair?
A. A few. The transaction was off and on from my knowledge. I knew they were thinking about December then it was off, then I might have heard about it a month later that they were still talking and then it was off. February 19, approximately, I

Page 133

got a phone call saying they had agreed in principal.
Q. February 19, that's when you were in Puerto Rico and came back to New York; right?
A. Yes.
MR. BEMIS: Ms. Reporter, would you mark as Morgan Stanley 442 a transcript of a deposition of Mr. Levin in the Russell Kersh and Sunbeam Corporation arbitration proceeding and that transcript is dated August 2, 2000.
(Morgan Stanley Exhibit 442, deposition transcript of Mr. Levin dated August 2, 2000, marked for identification, as of this date.)
Q. Do you have Exhibit Morgan Stanley 442 in front of you, sir?
A. Yes.
Q. Did you give a deposition in this arbitration proceeding on or about August 2, 2000?
A. Apparently, yes.
Q. As I recall, you said at one

NOT A CERTIFIED COPY

011606

Page 134

point you read your transcript after the proceedings that you gave testimony in and you made corrections or changes as appropriate; am I right in that?
A. Yes.
Q. Is Exhibit Morgan Stanley 442 a copy of your deposition transcript in the arbitration proceeding?
A. I would have to go through the entire document to be completely positive but it appears to be.
Q. If it turns out it is not, your counsel can let us know.
Sir, did you tell Mr. Perelman at one of the instances in which you talked about cash or stock, did you tell him in the strongest possible terms not to take any stock of Sunbeam?
A. I don't recall exactly how I phrased it but I did feel strongly about it.
Q. Sir, if you will turn to page 112 of your deposition transcript we've marked as Exhibit MS 442. Tell me when you're there.

Page 135

A. This is page 112?
Q. Yes, sir. Are you there?
A. Yes.
Q. In response to the question on line 1 of page 112, I'd ask you to turn now to page 113, line 5. Are you there?
A. Yes.
Q. Did you give the following answer in response at least to that question in part:
"Answer: I gave that to Perelman, I was predisposed. I had a mind set, I should say, as to what this was all about and then started reading the analysts' reports. And I could read a balance sheet. I saw the build of inventories, changes to the cash flow of the company and I told Perelman in the strongest possible terms not to take any stock of this company and he chose to ignore me."
Did you give that answer in response to the question on page 112?
A. Yes.
MR. MARKOWSKI: Objection to the form.
MR. BEMIS: What's your basis?
MR. MARKOWSKI: Objection to the form.
MR. BEMIS: I can cure it --
MR. MARKOWSKI: I don't think you've laid a foundation for impeaching him, if that's what you are doing, and he hasn't indicated his recollection is exhausted and the question is not properly in context here.
Q. You can go ahead and answer.
A. I believe so.
Q. You can set that aside for now.
Did Mr. Perelman ever express to you why he chose to ignore you when you recommended cash rather than taking Sunbeam stock in the strongest possible terms?
A. No.
Q. Not in any way?
A. He listened to me but then he took his own counsel and given I was a lone voice in the wilderness with all of Wall Street and the stock is high and Dunlap's book being a best seller, all those things,

Page 136

Page 137

I was one voice and he chose to ignore me and go with the conventional wisdom.
Q. Which was?
A. That Dunlap was the future of CEOs, that that was the right way of running a company and that I was a dinosaur.
Q. When was the very first point in time in which you learned there was some interest in Sunbeam acquiring an interest in Coleman?
A. A few days before the December meeting, I believe Mr. Gittis called me and said that Sunbeam has expressed an interest in Coleman and they would like me to prepare for a meeting to present to them what our annual plan is and how we might fit these companies together.
Q. Let me show you a document that has been previously marked as --
You mentioned a December meeting, you are now in December of 1997; correct?
A. Yes.
Q. This is the meeting I think you earlier referred to as presenting certain

NOT A CERTIFIED COPY

011607

Page 138

ideas about a combination of the two companies?
A. We did present this as part of a meeting.
Q. I just want to put the meeting in context. I will hand you an exhibit previously marked as Morgan Stanley 78. I will slide that over to you.
The first page of the document is not something I have any specific questions about. It's the second page I just want to ask you a couple of quick questions on.
Are you on the second page of MS 78?
A. Yes.
Q. I want you to ignore the handwriting on the document for the time being. Is this the document that -- or one of the documents that you discussed at this meeting in December of 1997?
A. I believe it was.
Q. Did you prepare this document yourself or was it prepared by someone else or did you assist in preparing it?
A. It was the consolidation of ideas

Page 139

of three of us.
Q. Who were those three?
A. Paul Shapiro and Joe Page.
Q. Was this the first document that you were involved in preparing following your being informed that Sunbeam had an interest in acquiring Coleman?
A. I think the first document we prepared was to summarize our 1998 annual plan and where we stood in 1997, it was a 1997 forecast and 1998 annual plan if memory serves me right.
Q. Did you prepare a summary document that you used at the meeting where the second page of MS 78 was used?
A. I think so.
Q. Let's step back now. I want you to focus on the first conversation you had with the people at MacAndrews & Forbes about the possible interest of Sunbeam. Who do you recall made the first communication with you on that topic?
A. I think it was Howard Gittis.
Q. How close in time was it to the meeting in which you discussed the second

Page 140

page of Morgan Stanley, Exhibit 78?
A. Measured in days, not weeks.
Q. What did Mr. Gittis say to you and what did you say to him in this first telephone call about Sunbeam's interest in Coleman?
A. Their interest in making an offer, he wanted us to show where the '97, '98 outlook and could I put together a list of the synergies of the two companies.
Q. I take it you told him you would do that?
A. I told him, yes, we would do the first part and the second part was impossible.
Q. The second part being the synergies?
A. Synergies. Because we didn't know anything about the other company at that point nor did we have any idea how they were going to operate the companies together because I was aware that Dunlap had a significantly different operating philosophy than I had.
Q. Did you then discuss Mr. Gittis'

Page 141

call with Mr. Page and Mr. Shapiro?
A. Eventually, yes.
Q. The three of you put your heads together and came up with whatever materials you used at the meeting with Sunbeam; correct?
A. Yes.
Q. Who was present at this meeting on behalf of Sunbeam?
A. I don't recall. I've been asked on a number of occasions, I just don't remember who the people were in the room.
Q. How long did the meeting last?
A. An hour or two.
Q. How did it go?
A. Fine. I don't think they asked us a lot of questions.
Q. They seemed to pay attention?
A. Yes. Everyone was polite.
Q. Mr. Dunlap, he wasn't there; was he?
A. He was definitely not there.
Q. Who attended on behalf of the MacAndrews & Forbes side of the transaction besides yourself?

NOT A CERTIFIED COPY

014608

Page 142

A. Well, the three Coleman employees which were myself, Paul Shapiro and Joe Page. I do not recollect whether somebody from MacAndrews & Forbes attended that or not.
Q. The fax cover sheet which appears on MS 78, I think we've established in the record pretty clearly this meeting most likely occurred on December 12, 1997. Would that square with your recollection of the timing of the meeting?
A. It was approximately in that time frame.
Q. Did you know at the time that you had the meeting on or about December 12, 1997 that there was a meeting that was going to take place at Mr. Perelman's or Mr. Gittis' home in Palm Beach with Mr. Dunlap?
A. No.
Q. Did you find out about that meeting after the fact, the meeting at the home?
A. Yes.
Q. You spent about an hour and half,

Page 143

as I think you said, they seemed to listen, you talked. How did the parties leave the meeting?
A. They thanked us. There was really no conversation with us other than we offered if you have additional questions, please call us. They had our business cards and they took copies of the material and that was the end of it from our perspective. We did what we were asked to do as best we could.
Q. Was there any follow-up by the Sunbeam attendees at the December 12 meeting with you?
A. I don't recollect it; but from previous depositions it's been pointed out to me there was another conversation, I don't know if it was by phone or in person, but they did ask me additional questions about this but to this day I don't remember.
Q. Somebody from Sunbeam asked you additional questions?
A. Yes.
Q. As of December 12, 1997, had

Page 144

MacAndrews & Forbes or any of its affiliated companies done a valuation of Coleman?
A. None that I had access to.
Q. Did you hear that there had been such a valuation done?
A. No.
Q. Had you, during the year 1997, in some fashion studied Coleman and concluded what price it could be sold for if it was purchased by another company?
A. I was not interested in selling the company and did not participate in that process.
MR. BEMIS: Ms. Reporter, would you mark as Morgan Stanley Exhibit 443 Mr. Levin's deposition transcript taken June 20, 2001 in the case In the Matter of In Re: Sunbeam Corporation.
(Morgan Stanley Exhibit 443, deposition transcript of Mr. Levin taken June 20, 2001, marked for identification, as of this date.)
Q. First of all, sir, did you give a deposition in the matter set forth in

Page 145

Morgan Stanley Exhibit 443, that is In Re: Sunbeam Corporation?
A. Apparently so.
Q. Was this one of the deposition transcripts that you said after you gave the deposition you read it and you made corrections if you found any errors?
A. Probably.
MR. BIDEAU: Just for the record, the one you gave us doesn't have a signed errata sheet. That's the same for the last transcript. You asked the question but I want to make clear on the record we don't know if the one you have here is the one done after the errata sheet was signed or not.
MR. BEMIS: I don't know if he did an errata sheet.
MR. BIDEAU: I'm not saying he did or didn't. I think -- since you set the precedent, I wanted to be clear. I think these were in the bankruptcy proceedings.
Q. If you will turn to page 25. Tell me when you are there. Are you there, sir?

NOT A CERTIFIED COPY

Page 146

A. Yes.
Q. Were you asked the following questions and give the following answers beginning on page 25, line 9 of your deposition of June 20, 2001:
"Question: Do you recall any discussions about whether or not a purchase price of two times sales was better than what other comparable companies were worth on a trading basis?
"Answer: Yes.
"Question: What do you recall about that?
"Answer: We had studied the question earlier and reached a conclusion that if we sold Coleman somewhere in the mid teens per share, we would be very happy with the transaction.
"Question: When was that?
"Answer: During 1997.
"Question: Did anything change between the point when you had that recognition and the time when Mr. Perelman agreed to the purchase price that would have cost Coleman to have increased

Page 147

significantly in value?
"Answer: As valued as an independent company, no.
"Question: Just so the record is clear, when you say mid teens, that is 15, 16 dollars a share; is that a fair statement?
"Answer: Yes."
Were you asked those questions and did you give those answers in 2001, sir?
MR. MARKOWSKI: Objection to the form.
A. Yes.
Q. How had you studied the valuation of Coleman in 1997? What had been done?
A. I'm sure it was quite informal. We were a public company. We would look at the competitive multiples, we looked at sales that took place. It's kind of like trying to figure out what your house is worth when you're not really selling it and we had estimates that if the company was put up for sale, it would be somewhere in that range. These are done by myself. I

Page 148

don't know that we had a written study.
Q. My understanding is when you reached this price of 15 to 16 dollars a share, that that did include the assumption of whatever Coleman debt had by the buyer; is that correct?
MR. MARKOWSKI: Objection to the form.
A. Yes.
Q. Am I also correct that the 15 to 16 dollar per share price we've been referring to did not include the assumption of debt of the Coleman holding companies, CON holdings of over $500 million in 1997; is that correct?
MR. MARKOWSKI: Objection to the form.
A. I'm not sure -- I get a little confused with how all that debt was held for a long time as I thought about it but for the equity that was trading on the New York Stock Exchange, that was my conclusion.
Q. You can set that transcript aside for the time being.

Page 149

Did you ever see an analysis done by Chase involving a combination of Sunbeam and Coleman?
A. I don't recall seeing anything like that.
Q. Let me show you what has been marked as MS 77. I've handed you what has been marked as Ms. Exhibit 77. Do you have that in front of you?
A. Yes.
Q. This bears CPH Bates numbers 1425610 and then continuing to CPH 1425629. Have you seen this document before?
A. I don't recall seeing it.
Q. Did you ever hear that Chase had done an analysis of a Coleman/Sunbeam Corporation combination?
A. I don't recall ever hearing about that.
Q. You can hand it back to me if you haven't seen it.
Did you report the results of your December 12 meeting with the Sunbeam personnel to anyone at MacAndrews & Forbes?
A. I'm sure I did.

NOT A CERTIFIED COPY

Page 150

Q. Do you have a recollection as you sit here today of doing that?
A. No.
Q. Let me show you a document previously marked as MS 104. I will hand you two copies. If you would be so kind as to pass them over to other counsel, I would appreciate it.
I've handed you what's been marked as Morgan Stanley Exhibit 104 which was, according to Mr. William Nesbitt, prepared by him sometime in December of 1997. Have you ever seen this document before?
A. I do not recall seeing this.
Q. Even if you have not seen this specific document, did you see any documents similar in format to this concerning a combination of Sunbeam and Coleman?
A. I do not recall seeing any.
Q. At any point up to the execution of the merger agreements as of February 27, 1998, did you see any analyses of a Sunbeam/Coleman combination that was

Page 151

prepared by Mr. William Nesbitt?
A. I don't recall seeing any.
Q. You can hand that back to me.
What's the next thing that you remember happening in connection with the transaction following your meeting on December 12, 1997 with the Sunbeam personnel in which the synergies ideas were discussed, along with other matters as you've told us?
A. Well, I had reported back to me that meeting with Dunlap to try to work out a transaction was a disaster, that Mr. Perelman wanted $30 a share, that was his price, and Dunlap was somewhere in the low 20s, I can't recall exactly what it was, and that it was dead.
Q. The meeting that was a disaster, this is the meeting at Mr. Perelman's home or Mr. Gittis' home in Palm Beach; correct?
A. Yes.
Q. There comes a point in time when the Coleman Company retains Credit Suisse First Boston as its investment banker; correct?

Page 152

A. Yes.
Q. When was that?
A. It would have been sometime after February 20.
Q. Let me show you what's been marked as Morgan Stanley Exhibit 169. Do you have Morgan Stanley Exhibit 169 in front of you?
A. Yes.
Q. This document has previously been identified as the Coleman Company's retention letter with Credit Suisse First Boston signed by Mr. Shapiro whose signature you will see appears on the third page. Do you see that?
A. Yes.
Q. This document is dated December 10, 1997. Can you explain to me why, if Credit Suisse First Boston was retained in February, there's a retention letter dated December 10, 1997?
MR. MARKOWSKI: Objection to the form.
A. Other than that my memory was incorrect, no.

Page 153

Q. That happens sometimes.
Did you have any role, you personally have any role in hiring Credit Suisse First Boston on behalf of the Coleman Company?
A. I'm sure that it was my first choice to use in this situation and was probably involved in the major terms.
Q. Did you make the call to Credit Suisse First Boston?
A. Quite probably. I don't know. A number of us were very friendly with the team at Credit Suisse First Boston and I'm not sure who made the first call to Gordon Rich.
Q. Setting aside who made the first call to Gordon Rich, what was the assignment given to Credit Suisse First Boston when they were retained?
A. Other than reading you the assignment, I'm not sure what I can add to that. This looks accurate.
Q. When you say reading the assignment, you are referring to the engagement letter, Exhibit MS 169, on page

NOT A CERTIFIED COPY

Page 154

1 items A through E?
A. Yes.
Q. Did Credit Suisse First Boston assist you or Mr. Page or Mr. Shapiro in any way in preparing for the December 12 meeting with Sunbeam?
A. I do not believe so.
Q. Could you tell me what your -- did Credit Suisse First Boston do any due diligence of Sunbeam after December 10, 1997?
A. Yes.
Q. What?
A. They did due diligence with respect to providing a fairness opinion.
Q. Anything other than the fairness opinion?
MR. MARKOWSKI: Objection to the form.
A. I think most of their activities, as I recall, were directly related to providing us a fairness opinion.
Q. Let me show you a document that has been previously marked as Morgan Stanley 230. I've handed you an exhibit

Page 155

marked as Morgan Stanley Exhibit 230. Do you have that in front of you?
A. Yes.
Q. Item number 12 which appears on the last page is entitled, "Due Diligence." Tell me when you're there.
A. Okay.
Q. The second paragraph under, "Due Diligence" states as follows: "Credit Suisse First Boston also met with Sunbeam senior management on February 23, 1998 and February 24, 1998 to discuss Sunbeam's strategic plan in 1997 results. Credit Suisse First Boston attendees were Robert Duffy and Steven Geller."
Do you see those two sentences?
A. Yes.
Q. Do you recall any due diligence other than these two items that are identified by Credit Suisse First Boston?
MR. MARKOWSKI: Object to the lack of foundation.
A. Do I recall any other than the technical legal work on contracts and issues surrounding the legal side? No.

Page 156

Q. The February 23 meeting of 1998, that is the same meeting I think you had testified you attended and we identified your handwriting on the notes in Exhibit MS 84; is that correct, sir?
A. If you say it was February 23, I will take your word for it.
Q. Let me show you a document that's been identified as Morgan Stanley Exhibit 165 at another deposition. Sir, I handed you what's been marked as Morgan Stanley Exhibit 165 in the deposition of Mr. Nesbitt. Have you seen this document before?
A. Not to the best of my recollection.
Q. You can hand it back to me if you don't recall seeing it.
Going into the meeting on December 12, 1997 between Sunbeam and the Coleman Company personnel including yourself, had there been any discussion that you participated in as to the price that Mr. Perelman wanted for his interest in the Coleman Company?

Page 157

A. I knew he wanted $30 per share but I don't know when I obtained that knowledge, whether it was before or after that meeting.
Q. Is it fair to say that the next thing you can recall happening after the December 12 meeting is finding out that the meeting at Mr. Perelman's house, which is where it turns out it was, was a disaster?
A. I can't recall anything.
Q. Did you ever discuss with anyone at MacAndrews & Forbes what actually transpired at the meeting, who said what to who?
A. Oh, I'm sure we did because the entertainment value was substantive.
Q. The entertainment value of what happened at the meeting?
A. Things like Howard Gittis saying he thought he was going to have a heart attack.
Q. That is Mr. Dunlap --
A. Mr. Dunlap was going to have a heart attack. Things like that. Not the substance.

NOT A CERTIFIED COPY

01612

Page 158

Q. Did anyone at MacAndrews & Forbes tell you that the meeting with Mr. Dunlap was funny?
A. No. I found it entertaining.
Q. Did anyone at MacAndrews & Forbes tell you that they laughed at Mr. Dunlap while he was there?
A. No.
Q. Let me show you a document that has previously been marked as Morgan Stanley Exhibit 418. I've handed you a document that has been marked as Morgan Stanley Exhibit 418. It's entitled, "Draft for Immediate Release, Sunbeam Corporation Announces Combination With Coleman; Chairman Al Dunlap Commits to Multiyear Contract Extension," and it's headlined Delray Beach, Florida, December 22, 1997. Please take a look at it.
A. Okay.
Q. Have you ever seen this draft press release before dated December 22, 1997?
A. No.
Q. Did you ever become aware when

Page 159

you became the president and chief executive officer of Sunbeam that Sunbeam had actually drafted a press release on the date of December 22, 1997 announcing the acquisition of Coleman?
A. No.
Q. Is this the first time you have ever seen this?
A. Yes.
Q. I want to take you up to the end of the year 1997, let's go to New Year's Eve December 31, 1997. Are you there with me, that time period?
A. Okay.
Q. Would you tell me as best you can summarize it, to your knowledge, what due diligence of Sunbeam had been done by MacAndrews & Forbes or Coleman up to that date?
A. I could only tell you what was done by Coleman. I do not know what in addition was done by MacAndrews & Forbes.
Q. Fair enough. Tell me what Coleman did.
A. When Mr. Gittis asked us to

Page 160

prepare for this meeting which has not been identified by date --
MR. BIDEAU: December 12.
A. December 12.
Q. Yes, sir.
A. We got ahold of all the public filings of the company and Joe Page, Paul Shapiro and I, all three of us went to the public filings to get as much of a sense of what was going on in the company and what they were trying to accomplish, particularly so that we could take a guess as to what -- how they would manage the Coleman Company as part of Sunbeam in response to Mr. Gittis's request that we do that.
Q. What public filings would have been available and that you would have looked at as of December 31, 1997?
A. I believe we looked at all the recent 10-Qs, 10-K from the year prior, proxy statements, press releases. I don't recall getting ahold of analysts' reports and going through those but one of the three of us might have.

Page 161

Q. To the best of your knowledge, had Credit Suisse First Boston done anything for the Coleman Company pursuant to its engagement letter dated December 10, 1997?
A. I don't recall what they did.
Q. Or whether they did anything?
A. I'm sorry, could you repeat that?
Q. Your answer was I don't recall what they did and my question was and you don't recall if they did anything; do you?
MR. MARKOWSKI: Objection to the form.
MR. BIDEAU: Why don't you back up a little bit because even I lost the question now.
Q. Let me try it one more time.
As of December 31, 1997, can you tell us any work that Credit Suisse First Boston did by way of due diligence of Sunbeam up to the end of the year of 1997?
A. Well, I thought, as did the Coleman management team, some relief that the transaction was dead so we did not ask CSFB to do anything at that point.

NOT A CERTIFIED COPY

Page 162

Q. So is it fair to say that by year end 1997, as far as you know as you sit here today, Credit Suisse First Boston didn't do any due diligence of Sunbeam because, as you put it, the transaction was dead?
A. There was nothing they did at our request that I'm aware of.
Q. The transaction is dead and we're now going into the new year 1998. What is the next thing that you remember happening; the phone call on February 19 while you were in Puerto Rico?
A. No. I think there were at least one maybe two flare-ups where Morgan Stanley was pushing to find a way of doing the transaction. I know I was talking to MacAndrews & Forbes on occasion. They seemed fairly far apart. Perelman was adamant he was not going to sell the company for less than $30 and, to the best of my knowledge, it was really going nowhere.
Q. Let me show you two additional analyses that Mr. Nesbitt prepared in early

Page 163

1998 and ask if you have ever seen those. I will show you Morgan Stanley Exhibits 106 and 107. We'll start with 106 first.
Do you have Exhibit Morgan Stanley 106 in front of you?
A. Yes.
Q. Mr. Nesbitt testified in his deposition that he prepared this document. Have you ever seen this before?
A. No. As I stated earlier, I had never, to the best of my recollection, seen this or any permutations of it as you asked me earlier.
Q. Then I will not show the next exhibit because it looks just like this one but with a couple permutations. You can hand that back to me.
Did you have at any point up to the execution of the merger agreements as of February 27, 1998 any discussions with Mr. Nesbitt that you can remember now concerning modeling or analyses, if you will, of a combination of Sunbeam and Coleman on a pro forma basis?
A. As I stated earlier, I think on

Page 164

occasion he would pick up the phone and call me and ask me a question about something relating to the business but I really didn't know what he was doing with it. I didn't follow through.
Q. I take it, then, you had no responsibility for doing any type of financial modeling of a combination of Coleman and Sunbeam on a pro forma basis assuming a combination; is that fair?
A. That's correct.
Q. That was somebody else's responsibility; right?
A. Apparently, yes.
Q. And you weren't asked to approve or sign off on any of these pro forma combination analyses; were you?
A. No.
Q. That was somebody at MacAndrews & Forbes; if they wanted to do it, that was their task; right?
A. Yes.
Q. You didn't have any involvement in whatever these possible communications were between Morgan Stanley and MacAndrews

Page 165

& Forbes leading up to the call to you on February 19, 1998; right?
A. As I mentioned, there might have been little flare-ups where I would hear that they are talking again. No.
Q. Setting aside hearing about something happening, you didn't participate directly at all; right?
A. No.
Q. So you are effectively out of the picture, if you will, from the December 1997 time period, as you described, up until this phone call on February 19; right?
MR. MARKOWSKI: Objection to the form of the question. I think it's misleading.
MR. BEMIS: I will rephrase the question. I was trying to move it along a little faster.
Q. Between December of 1997, towards the end the year and the February 19, 1998 call, did you have any substantive communications with anyone at Sunbeam about the transaction?

NOT A CERTIFIED COPY

Page 166

A. I did not talk to anyone at Sunbeam at all during that time period.
Q. Same question with regard to MacAndrews & Forbes.
A. I'm not sure how to define substantive because the sale of the company would be quite substantive even in a casual mention, but there was really no discussion about the transaction itself, the chances of it happening. I was busy running the business under the assumption that this was not going to happen.
Q. So is it fair to say that during this December 1997 period to February 19, whatever discussions were ongoing between Sunbeam and MacAndrews & Forbes, you weren't participating in them except indirectly hearing about them?
MR. MARKOWSKI: I object. I don't know if you are being -- whether it's inadvertent or not, but there are documents that you have in your possession, Mr. Bemis, that bear directly upon this that you are choosing not to show the witness and I

Page 167

think that question is misleading on that basis.
MR. BEMIS: Is your objection misleading?
MR. MARKOWSKI: Yes, misleading. You've got documents, you choose not to show them and you are asking misleading questions.
A. As best as I recall, I had very limited involvement in the time period that you are asking about.
Q. There was a meeting with Sunbeam personnel that took place in New York in a room where Coleman, if you will, products were on display and there was a discussion of the Coleman business. Did you attend that meeting?
A. I mentioned earlier that the data I've been shown since has indicated that I did or by telephone, but I don't remember attending that meeting.
Q. Is that the only other meeting that has been brought to your attention during this time period that you don't remember?

Page 168

A. Yes.
Q. By February 19, had you seen the announcement that Sunbeam had missed its estimates or street estimates for the fourth quarter of 1997?
A. By when?
Q. By February 19.
A. I believe so.
Q. Let me show you what has been marked as Exhibit 206. You have Exhibit 206 in front of you?
A. Yes.
Q. If you will turn to the second page, you are shown as being on the distribution list for this exhibit. Do you see that?
A. Yes.
Q. Do you recall getting this exhibit?
A. I recall reading it. Whether I read it in the Wall Street Journal before I got this or through this communication, I don't recall.
Q. Did you have any discussions internally at MacAndrews & Forbes, or at

Page 169

Coleman for that matter if you wish to make that distinction, about the Sunbeam announcement reflected in Morgan Stanley Exhibit 206?
MR. BIDEAU: Objection to the form of the question.
MR. BEMIS: Let me rephrase it.
Q. Did you have any discussions at MacAndrews & Forbes about Morgan Stanley Exhibit 206 or the subject matter reflected in it?
A. I'm sure we discussed it at the Coleman level. I don't recall specifically discussing it at MacAndrews though I certainly might have.
Q. What discussions do you recall at the Coleman level?
A. There seemed to be some flaws in the Sunbeam situation.
Q. Who did you have these discussions with at the Coleman Company?
A. I don't recall.
Q. Did you take any steps to investigate these flaws at the Sunbeam company as a result of receiving Morgan

NOT A CERTIFIED COPY

Page 170

Stanley 206?
A. No.
Q. I'm going to show you what has been marked as Morgan Stanley Exhibit 75. This is a document used in many of the other depositions. It's a chronology made by one of the law firms. I will hand it to you. Do you have Exhibit 75 in front of you?
A. Yes.
Q. Please turn to the entry, it's page 2 but it's not actually page 2 if you were to count the pages from the beginning, but turn to the entry for January 29, 1998 and tell me when you are there.
MR. BIDEAU: Are we looking at the exhibit to the letter or the exhibit itself?
MR. BEMIS: I'm directing his attention to the January 28, 1998 entry.
Q. Tell me when you're there.
A. Okay.
Q. I want you to focus on January 29, 1998 beginning Barry F. Schwartz. Do

Page 171

you see that?
A. Yes.
Q. In the third paragraph down from that entry there's a reference to a meeting between Messrs. Stynes, Fuchs, Chang, Fannin and Kersh along with Messrs. Levin, Page, Shapiro, Maher, Nesbitt and Rich. Do you see that?
A. Yes.
Q. Does this in any way refresh your recollection of a meeting that you had in New York concerning the proposed or suggested synergies that might be achieved between a combination of the two companies?
A. It looks like more people than can fit in the conference room that we had this in. I don't remember the meeting being nearly that large.
Q. But do you remember a meeting where some of those people attended and you discussed possible synergies that might be achieved in a combination?
A. This is January -- I'm sorry. This is the meeting I don't remember participating in.

Page 172

Q. Does this help you remember the meeting at all because if it doesn't, I will just move on.
A. I simply don't remember this meeting.
Q. Set that exhibit aside. We are done with January 29 for right now.
Did you see at any time before February 19 of 1998 when you got this phone call, did you see the confidentiality agreement that was executed between Sunbeam and the Coleman Company?
MR. MARKOWSKI: Objection to the form.
A. I don't recall.
Q. I will show you the document. Maybe that will help. I only have one clean copy of that one. This is MS 133.
I've handed you what has been marked as Morgan Stanley Exhibit 133. Do you have it in front of you?
A. Yes.
Q. Have you ever seen this document before?
A. I can't recall. I might or might

Page 173

not have.
Q. In all of the merger transactions or acquisition transactions that you've been involved with, which I think you said was at one point in excess of 300, have you seen confidentiality agreements exchanged among the parties?
A. Yes.
Q. Is it customary in your view, in mergers and acquisitions transactions, for the parties to exchange a form of confidentiality agreement?
MR. MARKOWSKI: Objection to the form. Lack of foundation.
A. Can you repeat the question?
Q. In your experience in mergers and acquisitions as you described your experience, is it customary for the parties to exchange confidentiality agreements?
MR. MARKOWSKI: Objection to the form. Lack of foundation.
A. Yes.
Q. Is it customary, in your experience, for the parties to exchange cross or mutual confidentiality agreements?

NOT A CERTIFIED COPY

Page 174

MR. MARKOWSKI: Same objections.
A. It depends on the transaction but with two public companies, I would say yes.
Q. You can set aside Morgan Stanley Exhibit 133.
Let's move forward to February 19. You've told us you were in Puerto Rico. What were you doing there?
A. I was scheduled to attend an Ecolabs board of directors meeting.
Q. Ecolabs?
A. Yes.
Q. Could you spell that just so we make sure we get it right?
A. E-C-O-L-A-B-S.
Q. Is that one of Mr. Perelman's companies?
A. No.
Q. Are you on the board of directors of this company or were you at that time?
A. I was and still am.
Q. You were reached by either Mr. Perelman or Mr. Gittis; right?
A. There was a message when I arrived and was attempting to check in at

Page 175

the hotel which said please call Mr. Perelman.
Q. Did you do so?
A. Yes.
Q. Did you reach him?
A. Yes.
Q. Did you talk?
A. Yes.
Q. What did you say and what did he say?
A. I said, "Hello, what's up?" He said he cut a deal with Dunlap to sell Coleman to Sunbeam. I said how much. He said 27.50 a share. I asked him if it was all cash and he said no.
Q. And?
A. I said, "I will see you tomorrow."
Q. That's all?
A. He was at a cocktail party or something, there was a tremendous amount of noise, it was very hard to talk.
Q. I take it that you flew back to New York from Puerto Rico on the following day, on the 20th?

Page 176

A. I took the first flight out in the morning.
THE VIDEOGRAPHER: Excuse me. 10 minutes, counselor.
MR. BEMIS: Why don't we take a break here and change the tape. We've been going almost an hour and a half already. Time flies.
THE VIDEOGRAPHER: We're now going off the record. The time is 3:23 p.m. This is the end of tape labeled 2 of this videotaped deposition. We will continue on tape labeled 3.
(Recess taken.)
THE VIDEOGRAPHER: This is tape labeled 3 of the videotaped deposition of Jerry Levin. We're now going on the record. The time is 3:36 p.m.
BY MR. BEMIS:
Q. You took the first flight out from Puerto Rico to New York on February 20th; right?
A. I don't absolutely recall the dates, but, yes.
Q. What's the first thing that you

Page 177

did after you arrived back in New York in connection with the Sunbeam/Coleman transaction?
A. I went to MacAndrews & Forbes headquarters. By the time I got there, most folks were assembled. There was a broad array of lawyers and investment bankers. And they started the meeting.
Q. Was this a meeting that was attended by anyone other than people on the MacAndrews & Forbes side of the transaction?
A. Yes, I believe both sides of the transaction were there. If my memory serves me.
Q. On this same day was there a meeting later in the evening at Morgan Stanley's offices in New York?
A. I only went to one meeting in Morgan Stanley's office and that was when the plan was presented to us. I don't recall being in Morgan Stanley's office for any other meeting.
Q. My question was the meetings that you were referring to that you went into

NOT A CERTIFIED COPY

Page 178

when you arrived on the 20th, did the meeting at Morgan Stanley's office occur the same day?
A. The meeting that I attended?
Q. Yes.
A. I don't think so.
Q. That helps. Thank you.
The reason I was pausing is because you're suggesting that you went into a meeting when you arrived. I don't have a reference to a meeting on that date. If you arrived on the 20th, if that's helpful to you, that's a Friday. Is it your recollection that you went into meetings on February 20th when you arrived upon coming back from Puerto Rico?
A. Well, as I said earlier, we surmised that these meetings took place February 19, 20th. That he called me on the 19th. I don't remember the exact date, I just know it was the evening when I went down for an Ecolabs board meeting and I do recall getting up in the morning very early, catching the early flight and going right to MacAndrews & Forbes' board room.

Page 179

There were a lot of people as I recall.
Q. As you sit here today, do you remember who was present at this meeting assuming it was on February 20th?
A. I believe both sets of attorneys were there, representatives of both sides. I suspect Morgan Stanley was there, I don't know. If Credit Suisse First Boston was there, I don't recollect that. There were some MacAndrews & Forbes people.
Q. Was this a drafting session for agreements?
A. I think it was sort of the first step of the process to start the drafting and getting the information together as the two principals had agreed to a price and a structure sometime the day before, I got the meeting but I don't remember --
Q. Do you have a specific recollection as you sit here today of anyone from Morgan Stanley being at this first meeting when you returned?
A. No.
Q. How long did this meeting last? Assuming it was on February 20, how long

Page 180

did it last?
A. For me, not very long. I just had a couple points I wanted to make and then they went back to work.
Q. The next business day, if you will, is February 23 if that's helpful to you. Can you tell us what's the next thing you remember doing after the meeting you attended in the board room assuming it was February 20th?
A. I don't recall but I'm sure I was busy informing key Coleman managers as to what was going on.
Q. Let me move forward to the evening of February 23rd. I showed you a document earlier, MS 84, which has been testified to as having been available at that meeting. Would you please put that in front of you.
A. Okay. So this would have been the Monday evening according to the timetable --
Q. According to the timetable we're working off, yes. Before we get into the details of this, if you look at MS 75 which

Page 181

is the chronology we were working with earlier --
MR. MARKOWSKI: Mr. Bemis, before you get into questions about 84, I didn't get any copy of that when you went through it the first time.
MR. BEMIS: Let me give you a copy. We have an extra copy.
Q. Do you have Morgan Stanley Exhibit 75 in front of you?
A. Yes.
Q. If you turn to page 3 of the chronology and focus on the date February 23, 1998.
A. Yes.
Q. There is reference on that date to a meeting between Messrs. Nesbitt, Page, Levin, Shapiro, Duffy and Geller meeting with Messrs. Stynes, Fuchs and Richard Goudis vice president finance and investor relations of Sunbeam in New York to conduct due diligence. Do you see that entry?
A. Yes.
Q. Do you recall that meeting?
A. No.

NOT A CERTIFIED COPY

016618

Page 182

Q. Then you don't know how long it lasted I take it?
A. Correct.
Q. There is then, if you turn the page, a second meeting identified between Messrs. or among Messrs. Nesbitt, Shapiro, Levin, Page, Maher, Duffy, Steven Isko, Messrs. Fannin, Kersh, Kitts, Stynes, Fuchs, Chang and Goudis at Morgan Stanley office. Do you see that?
A. Yes.
Q. Do you recall this meeting?
A. Yes. I also recall that I was introduced to Mr. Goudis for the first time at this meeting so there's a fair chance that I was not at that earlier meeting.
Q. Is that the earlier meeting on the date of the 23rd?
A. Yes.
Q. That may explain why you don't remember it then.
Look at MS 84 which you should now have in front of you. Let's start at the beginning. How long did this meeting last at Morgan Stanley's offices that

Page 183

evening of February 23?
A. I don't recall but it was at least an hour.
Q. How is it that you came to attend the meeting?
A. I was probably in the best position to evaluate their business plans from our group.
Q. When you say their business plan, you mean Sunbeam's business plan?
A. Yes. That's Sunbeam's long range strategic plan.
Q. The handwriting in MS 84 is entirely your handwriting; correct?
A. As far as I had a chance to look through this document, yes.
MR. BIDEAU: Why don't you go through and see if there's anything that doesn't look like yours.
A. All of the markings on this exhibit are mine.
Q. Did Mr. Goudis speak at this meeting on February 23?
A. Yes.
Q. Did Mr. Kersh speak?

Page 184

A. I can't recall how they split the presentation up but I think they both spoke.
Q. Did anyone else speak at the meeting other than questions from the audience, if you will?
A. Nothing comes to mind.
Q. Would you describe this as a presentation by Sunbeam?
A. Yes.
Q. Had you met Mr. Kersh before this meeting other than I think it was the December 12th meeting in New York when you discussed the cost savings synergies that we talked about earlier?
A. We discussed the possible cost savings ideas at that December meeting but, as I said earlier, I don't recall who was representing the other side, was representing Sunbeam there unless somewhere in these documents we established that and I forgot.
Q. Mr. Kersh was not a person you had met with on frequent occasion then?
A. No -- I don't remember if this

Page 185

was the first time I met him or if he was participating in some other way.
Q. Was there any presentation by Morgan Stanley at the February 23 evening meeting?
MR. BIDEAU: Objection to the form.
A. I don't recall any.
Q. Did you know the Morgan Stanley representatives who were at the meeting; Mr. Fuchs, for example, did you know him?
A. No.
Q. Had you ever met him before?
A. I'm not very good at remembering names or faces. Nobody comes to mind as somebody I knew.
Q. So we can put this all down at one time: Did you know Mr. Stynes?
A. No.
Q. To your knowledge, you had never met him before either?
A. Correct.
Q. Did you know Mr. Kitts?
A. No.
Q. So as you sit here today, to the

NOT A CERTIFIED COPY

0119619

Page 186

best of your recollection, those three gentlemen did not make any presentation at the meeting; correct?
MR. MARKOWSKI: Objection to the form.
A. I don't recall if they did or didn't.
Q. Did you speak to them at the meeting?
A. I don't recall.
Q. Was MS 84 available to you at the beginning of the presentation by either Mr. Kersh or Mr. Goudis?
A. Yes.
Q. Was the presentation something that was projected up on a screen and you were able to follow along in a hard copy?
A. Yes.
Q. Is the hard copy of the presentation MS 84, is that a duplicate of what was being projected on a screen?
A. I don't recall any exceptions.
Q. Were there breaks in the presentation of MS 84 or did it go from page 1 to page end?

Page 187

A. I don't remember.
Q. Were there questions interposed during the presentation?
A. I believe I asked some questions.
Q. Do you recall anyone else asking any questions?
A. I don't recall what others did.
Q. Do you recall CSFB asking any questions?
A. I don't recall.
Q. Now CSFB was at the meeting; correct?
A. I believe so.
Q. They were there as the Coleman Company's representatives, investment bankers?
A. Yes.
Q. Did you have any legal advisors at the meeting?
A. My general counsel.
Q. Mr. Shapiro?
A. Shapiro.
Q. Mr. Isko was also present at the meeting; correct?
A. I forgot that but I will accept

Page 188

that, yes.
Q. Let's look at MS 84. Turn to the first page of the document headlined, "Long Range Strategic Objectives," and tell me when you're there.
MR. MARKOWSKI: You mean the second page?
A. The one that starts, "Dominate"?
Q. My understanding as I read this, the five headings under, "Long Range Strategic Objectives," are followed by separate pages explaining in more detail each of the five points on page 2 as counsel corrected me.
A. Yes.
Q. Did you understand that these were the long range strategic objectives of Sunbeam that were being discussed?
A. These were the long range strategic objectives they wished to share with us, yes.
Q. How long was long range as you understood the presentation?
A. 1998, 1999 and 2000.
Q. So roughly this was a three-year

Page 189

forward projection; correct?
A. Yes.
Q. Was that true for all of the long range strategic objectives as you understood the presentation was covering this three-year period?
A. It was true for all the financials that were presented. I can't speak to each individual business activity.
Q. But you understood that the financial matters that were presented were projections three years into the future?
A. Yes.
Q. You've done projections into the future for your business plans; have you not?
A. Yes.
Q. Have you ever missed your targets on your business plans?
A. Both ways.
Q. Up and down?
A. Yes.
Q. You don't have a crystal ball; do you?
A. No.

NOT A CERTIFIED COPY

029410

Page 190

Q. Let's look at the third page which is entitled number 1, "Dominate Core Business Globally, e.g. Blenders, Blankets, Clippers, Outdoor Cooking, Et Cetera." Are you there, sir?
A. Yes.
Q. Do you recall any particular discussion about this topic at the meeting?
A. No.
Q. Turn to the next page which is page 4 of the document and for the record there is a Bates number we can use, MF 0004. Are you there?
A. Yes.
Q. This is entitled, "Sunbeam Long Range Strategic Objectives. Number 2, Strengthen Sunbeam and Oster Brands Globally." Do you see that?
A. Yes.
Q. Could you read your handwriting under the fourth -- next to the fourth bullet point on the right side?
A. Need head of licensing.
Q. What did you mean by that?
A. As I recall, they told us they

Page 191

were searching for head of licensing department.
Q. Was there a discussion on item number 2 of where Sunbeam stood at the time of the meeting, February 23, 1998, as opposed to where they wanted to be three years forward?
A. I don't recall a specific discussion.
Q. Turn now to page MF 5 entitled, "Sunbeam Long Range Strategic Objectives. Number 3, Continually Introduce Innovative and Highly Differentiated Products Globally." Are you there?
A. Yes.
Q. Do you recall any discussion on this strategic objective of Sunbeam?
A. I believe by my notes I had asked some questions.
Q. Looking at your notes, do you recall what questions that you asked?
A. I must have asked something about the air and water projects they have and I must have asked something about the electric blanket business.

Page 192

Q. Focusing on the bullet number 2 which begins with, "Focus," you have some handwriting that appears -- looks to me under the words in quotation marks, "home runs." Do you see that?
A. Yes.
Q. Would you read your handwriting into the record please?
A. "5 to 10 million dollars revenue cut off."
Q. What did you mean by that?
A. I think I asked them what they considered a home run and they said something that adds at least 5 to 10 million dollars of sales.
Q. Was there a discussion of the air and water products that are identified in that bullet point?
A. I can't recall.
Q. Did you look at this meeting at any new products that Sunbeam supposedly had on the drawing boards or in the offing?
A. I don't remember any new products being displayed.
Q. Do you recall at any point after

Page 193

this meeting viewing any Sunbeam products that were in the offing?
A. Not until after the transaction closed. I remember seeing some on the shelves, I remember some were presented at the analyst meeting in May.
Q. When you say after it closed, you mean after March 30?
A. Yes, after March 30.
Q. Did Sunbeam's definition of home runs, 5 to 10 million revenue cut off surprise you in any way?
A. I don't recall being surprised.
Q. One way or the other?
A. Right.
Q. Do you remember whether at this point in the presentation Mr. Kersh or Mr. Goudis was speaking or --
A. No.
Q. Was there any discussion even, if products were not on display, of what new products were being developed by Sunbeam?
A. I think they talked about how wonderful the air and water products were going to be.

NOT A CERTIFIED COPY

Page 194

Q. They were not yet on the market, were they, at this time?
A. I don't remember.
Q. To the left of the bullet beginning, "Explore Alternatives," there is handwriting. Do you see that?
A. Yes.
Q. Would you read that into the record?
A. "Dumped $10 million blankets Japan and China fourth quarter."
Q. What did you mean by that?
A. They described their entry into the Japanese and Chinese markets for electric blankets and based on some questions I asked them, my knowledge of how things worked, it was clear that they had loaded their distributors with the $10 million and booked the sales but it had not sold through in either market.
Q. So you were using "dumped" in a pejorative sense here; weren't you?
A. Yes.
Q. This was your conclusion and analysis that you reached based on the

Page 195

presentation that either Mr. Kersh or Mr. Goudis was giving?
A. That's correct.
Q. Sunbeam did not at this meeting acknowledge they had dumped anything in China; did they?
A. No.
Q. So it was your conclusion, I take it, at the end of this portion of the discussion that Sunbeam had -- loaded the channel, is that the term you used with these blankets in Asia?
A. Well, that -- could be several things. That they actually dumped $10 million of blankets to distributors.
Q. They hadn't sold them, they had put them with distributors?
A. Right.
Q. As you analyzed the situation, the blankets were still with the distributors?
A. Yes.
Q. Turn to the next page which is MF 6.
A. Okay.

Page 196

Q. It is entitled, "4, Optimize Worldwide Supply Chain." Do you recall any discussion about this topic, optimizing the worldwide supply chain?
A. When they presented, they went beyond the exact language here and provided us some supplement information which I noted as they spoke.
Q. Could you tell us what you noted as they spoke?
A. When they talked about shifting make versus buy mix, they said they were going to outsource their -- this would be small electric motors, 6 million units per year, stop production of them and start buying them on the outside.
Q. Would you read your writing that appears to the right of the first bullet on this page.
A. "Outsource motors 6 million units per year."
Q. So that's 6 million small motors?
A. Yes.
Q. And that means rather than manufacturing those 6 million small motors,

Page 197

Sunbeam would outsource or have someone else manufacture them; correct?
A. Correct.
Q. That's what you were being told?
A. Yes.
Q. That's what their plan was in the future?
A. Yes.
Q. Did they discuss when Sunbeam intended to implement this plan to shift their mix of 70/30 manufacture/buy to 50/50 manufacture/buy?
A. Unfortunately, I can only assume it was during this three-year planning period.
Q. Was there an advantage discussed over outsourcing versus manufacturing of these small motors by Sunbeam?
A. Yes.
Q. What was the discussion?
A. Well, clearly labor rates in less developed countries, specifically China, sell below wherever they were making these motors at that time. I don't remember exactly where they were making them.

NOT A CERTIFIED COPY

016622

Page 198

Q. The next item on this page was bullet 2 and it begins, "Balance proximity of supplier plant and customer locations to minimize logistical requirements and associated cost and accelerate delivery." Do you see that?
A. Yes.
Q. Do you recall any discussion on this bullet point?
A. My note says, "Closing Mexico City facility, 2000 employees and the property was worth $20 million." They stated they were closing the Mexico facility to reallocate the production either to outsourcing or other factories, eliminate 2000 employees and they would sell the Mexico City property for $20 million.
Q. Had this been done at the time of the meeting or was this something that was planned to be done?
A. I learned later that it was in process.
Q. Bullet number 3 which explains, "Exploit cost savings opportunities

Page 199

associated with Asia Pacific economies by a joint venture and acquisitions." Do you see that?
A. Yes.
Q. You have a question mark there. What did that mean?
A. I really don't know what the intent.
Q. Is that what the question mark meant, you didn't know that they meant?
A. Yes.
Q. Did anyone ask that you remember?
A. It seemed like a small point to me so I let it go.
Q. Again, this was something they had hoped to do over the next three years?
A. Apparently.
Q. The last bullet point is as follows, "simplify and standardize process and practices." Do you see that one?
A. Yes.
Q. Do you recall any discussion about that point?
A. No.
Q. If you turn to the next page

Page 200

which is MF 7, this long range strategic objective is entitled, "5, Achieve Industry Leadership in Customer Service." Do you recall any discussion about this topic?
A. I don't recall what was discussed on this page.
Q. At the time, did Sunbeam claim that it had achieved -- to your knowledge, had they claimed that they had achieved industry leadership in customer service?
A. I don't believe they made that claim.
Q. Turn to the next page which is MF 8. Are you there?
A. Yes.
Q. This page is entitled, "Strategic Headlines." It's for Sunbeam appliances. Do you see that?
A. Yes.
Q. Can you just give me a description of what these strategic headlines are referring to as you understood it based on the presentation?
A. Point one, to strengthen their two core brands around the world in the

Page 201

minds of, I assume, consumers as well as retailers.
Q. Was appliances -- I'm interrupting. If I am, stop me.
Appliances as a line of business, is that how would you describe this, for Sunbeam?
A. Generally. It's small electrics.
Q. Because I note that as we continue the next item, for example, is health at home. Are the categories in this document starting with appliances, were those described as lines of business or some other descriptor?
A. I'm not sure. When Sunbeam referred to appliances they were talking about some electrics for the kitchen as well as irons.
Q. Were these all corded products, is that another way they were described?
A. Yes.
Q. Let's go back to Sunbeam appliances on page 8. The second bullet has some handwriting after the introduction, "Continually introduce a

NOT A CERTIFIED COPY

074623

Page 202

constant stream of consumer driven new products concentrated in three focus areas." And then it lists blending and mixing, smart cooking and then everyday best. Do you see that?
A. Yes.
Q. Could you read your handwriting to us please on the right side of that entry?
A. It says number 1 or number 2 in each category and there's a separate reference to B&D.
Q. What does that mean?
A. I assume that's Black & Decker, their principal competitor.
Q. At the time of this presentation, was Sunbeam number 1 or 2 in these three areas, blending and mixing, smart cooking and everyday best?
A. I learned subsequently through the years they were number 1 in blending, number 2 or -- number 2 in mixing. I don't think we ever used the term smart cooking as a category, nor everyday best as a category so I couldn't speak to it.

Page 203

Q. What did smart cooking refer to as you understood it in the presentation?
A. I don't remember.
Q. How about everyday best, do you know what that referred to?
A. I really don't know what they were trying to do.
Q. So as I understand this bullet point number 2 on page 8, whoever was speaking, Kersh or Mr. Goudis, was saying their objective over the next three years was to become number 1 or 2 within each of the categories; is that right?
MR. MARKOWSKI: Objection to the form.
A. Actually, I don't know in this case whether they said they were there number 1 and number 2 in the category or trying to get there, I don't recall.
Q. Let's move to bullet point 3 which reads, "Broaden Distribution With Existing Customers." And then you have some writing to the right. Could you read that into the record?
A. To the right is, "30 percent GM,"

Page 204

which was my abbreviation for 30 percent gross margin. And then to the left is MS which is my abbreviation for market share.
Q. Would you define gross margin as you use the term for the jury?
A. It's simply net sales minus cost of goods standard, standard cost of goods and it's not an accurate number usually because of variances but it gives a sense as to the inherent profitability of a category.
Q. And then your writing above the box, that is -- U.S. sales figures which -- those are in millions of dollars; correct?
A. Yes.
Q. Were these for 1998, 1999 and 2000, were these projected sales?
A. Yes.
Q. I guess they'd have to be if you were in 1998; right?
A. Yes.
Q. And then the percentage increase, that's an arithmetic calculation as I read it from one year over to the other years; is that fair?

Page 205

A. Yes.
Q. Did anyone question at the meeting where Sunbeam obtained the projections that appeared in this box?
A. I might have asked them what the market share would go to and where it was at the current time to get some sense of realism but it apparently either I was thinking the question and didn't ask it or they didn't have the answer. But I'm sure when I wrote down market share I was questioning what it was.
Q. These are supposed to be Sunbeam sales; correct?
A. Sunbeam and Oster.
Q. What you were trying to translate their sales into, what does this mean in terms of market share; right?
A. Right.
Q. And you are not sure whether you got the question out or not?
A. Correct.
Q. Let's turn to page 9 entitled, "Health at Home Strategic Headlines." Are you there?

NOT A CERTIFIED COPY

014624

Page 206

A. Yes.
Q. What do you remember about the discussion of this strategic headline, health at home?
A. Nothing other than my notes indicate that we had some discussion of the air and water strategy again.
Q. Does air and water strategy refer to these new products, an air cleaner and water purifier?
A. Yes. It was an air purifier and a water cleaner, yes.
Q. I got it backwards then. One of us --
A. It was a water purifying system and air cleaner.
Q. I think you have it right and I got it wrong. Thank you.
These products, to your knowledge, had not yet been launched; that is, they were not on Wal-Mart's shelves or Sears' shelves?
A. I just don't remember.
Q. The figures that appear below the fourth bullet under, "Health at Home," you

Page 207

have, it looks to me, 30 percent GM. Is that gross margin again?
A. Yes.
Q. Did you ask the question of whoever was speaking, "What is your gross margin on the products?"
A. I must have to come up with the number.
Q. When I looked to the box below, I see above the 1998 figure some writing. Would you read that into the record for the jury?
A. 100 million of 1998.
Q. What does that mean?
A. Of the 189 million they were projecting for 1998, 100 million of that was coming from the new products and 89 was coming from existing products.
Q. Then going forward, was Sunbeam projecting a continued growth in its air and water products in 1999 and 2000?
A. Substantial increase, yes.
Q. Did anyone ask any questions at this meeting about the reasonableness, if you will, of these projections of the

Page 208

success of the air and water products as set forth in this document?
A. I don't remember whether we had an open discussion of that or not.
Q. Do you remember at any time after the meeting, February 23, viewing these air and water products, you personally?
A. Yes.
Q. When did you do that?
A. I think I first saw them physically at the analyst meeting.
Q. That would be in May of 1998?
A. I might have seen them in the super market, I don't recall, but I know they were at the analyst meeting.
Q. Let me focus on a shorter time period. Before the signing of the merger agreements which is only four days after this evening meeting, did you see the new air and water products that they were promoting at this meeting?
A. I do not believe so.
Q. Are you aware of anyone at MacAndrews & Forbes asking to see the new air and water products that Sunbeam was

Page 209

promoting at this strategic long term planning presentation?
A. I don't remember. I don't know if they had models there, pictures, I just don't recall what was happening at that point.
Q. But you don't remember seeing them?
A. I do not remember seeing them.
Q. Did you ask anyone at Coleman, your company you were running, to go to Sunbeam and look at the new products that they were claiming they were going to introduce and were going to have this increase in net sales figures?
MR. MARKOWSKI: Objection to the form.
MR. BEMIS: Withdrawn. I will ask the question again.
Q. Mr. Levin, did you ask anyone at Coleman after the meeting on February 23 and before the execution of the merger agreements to go to Sunbeam or any other location and look at these new air and water products that were being explained to

NOT A CERTIFIED COPY

Page 210

you at this meeting on the 23rd?
A. There were only four of us at Coleman who knew they were considering this transaction and two of them were lawyers and one was my chief financial officer. So if I didn't do it myself, it's unlikely anyone would have done it and, of course, I simply don't remember whether it was in the market at all, whether it was possible to do that.
Q. Did anyone ask at the meeting with Sunbeam, "Are these air and water products in a research and development facility or in some location we can look at?"
A. They had talked about this publicly at this point and it was well discussed and I'm sure they described in some format what they were doing here, I just don't recall.
Q. Have you ever heard the expression, "kick the tires"?
MR. MARKOWSKI: Objection to the form.
A. Yes.

Page 211

Q. That's my question. Did anyone at Coleman or MacAndrews & Forbes go kick the tires on these new and air and water products that were being explained to you?
MR. MARKOWSKI: Same objection.
A. In terms of physically kicking them?
Q. Yes.
A. Not to the best of my knowledge.
Q. Was that done at any time before the closing on March 30, 1998?
A. I don't recall.
Q. You didn't do it because you were in Tucson, Arizona; right?
A. That's correct.
Q. Let's turn to the next page which is entitled, "Sunbeam Personal Care and Comfort-Bedding Strategic Headlines." There's four bullet points there. What do you recall about the discussion of bedding at this meeting?
A. Nothing other than what's expressed in my notes.
Q. What is the first note that you wrote above the paragraph numbered 1?

Page 212

A. Implemented no return policy.
Q. Tell us what you understood that to be?
A. The company either had announced or is about to announce that they would no longer take customer returns other than warranty.
Q. Did you have an opinion as to the wisdom of that as a business practice?
A. Yes.
Q. Did you have it February 23?
A. Yes.
Q. What was your opinion?
A. That it ranged from unwise to impossible.
Q. What do you recall Mr. Goudis or Mr. Kersh saying at the meeting about the no return policy other than they had implemented it?
A. I don't recall. The company had made a public disclosure that they would implement this policy, I don't remember if that was before or after this meeting.
Q. You became the president of Sunbeam as of June 15 you told me earlier.

Page 213

Did you have a chance to evaluate the no return policy at Sunbeam?
A. Yes.
Q. How did it work?
A. It was part of the fraud.
Q. The next item you appear to have handwriting is item number 4, "Increased household penetration by introducing new packaging and by promoting the 'blanket with a brain' concept." Do you see that?
A. Yes.
Q. What was the discussion about that product, the Blanket With a Brain?
A. I apparently asked a question about the blankets they were trying to sell in Japan because my note says, "Sell blankets in Japan for ten times local price."
Q. What was the Blanket With a Brain concept?
A. Through using Sunbeam's proprietary technology, the wire that is woven within the electric blanket will automatically adjust to heat like a thermostat will. So you set a certain

NOT A CERTIFIED COPY

Page 214

temperature and it won't just keep heating, it will heat to that temperature and it will continually re-adjust itself automatically.
Q. So if the room temperature goes up, the blanket temperature might go up as well?
A. It's usually from body temperature.
Q. Was this a product, Blanket With a Brain, that Sunbeam had on the shelves or was developing?
A. They had it on the shelf and still have it.
Q. Did it work?
A. It works wonderfully.
Q. You have an entry that looks like 40 percent GM before item number 4. Does that mean 40 percent gross margin with Blanket With a Brain?
A. Yes.
Q. Then the box "Global" at number 4 has some additional handwriting after the reference to Japan. Can you read the second block of handwriting? I think it

Page 215

begins with cost.
A. Lost. "Lost $20 million of sales due to product unavailability and then Asia."
Q. What does that mean?
A. I am reasonably confident that I noted the very large increase from '97 to '98 in the sales of what is a very mature business and I asked them why and they said, well, 1997 would have been higher by $20 million, they lost sales because they couldn't produce enough product and in addition they were going into Asia in 1998 as we actually discussed previously with Japan and China.
Q. Going back to the entry of, "Sell blankets in Japan for ten times local price," what did you mean by that?
A. Electric blankets do exist in Japan, they do not have the technology or the comfort that the Sunbeam blankets have, but the price value was such that it was hard for me to imagine how you would sell the product for ten times what it was even though it had certain product advantages.

Page 216

The cost value equation was wrong.
Q. So this was a question you were asking about how they could achieve, that is Sunbeam could achieve what it was projecting to achieve given this cost price differential?
A. Yes.
Q. Again, this was your own internal questioning, not something that Sunbeam said; right?
A. That's correct. I would ask them, "What are you selling it to relative to the competition," they would explain it to me and I would form my judgement.
Q. Is it fair to say that based upon the cost differential between the blankets -- local blankets produced in Japan and what Sunbeam was selling that you were at least skeptical of Sunbeam's projections for sales in that market?
A. Yes.
Q. Turn now to the next page, if you will, which is MF 11 entitled, "Sunbeam Personal Care and Comfort Clippers and Other Personal Care Strategic Headlines."

Page 217

Are you there?
A. Yes.
Q. What, in general, was the discussion on this slide?
A. Again, other than what I have notes on, I don't recall; but we established that the gross margin on these products was quite high at 45 percent making it a very attractive business financially and that of the 169 million in 1997 sales, 120 million was the blanket business, blankets and mattress pads, and 49 were the retail clippers.
Q. What does retail clippers mean?
A. They are hair clippers that are used -- used doesn't sound right -- they sell them to two channels of distribution: one is barber shops and the other is pet supply, sheep clippers and dog clippers and horse clippers. Things like that.
Q. Retail clippers together, that was both channels you mentioned, that is the barbers and the animals for lack of a better term?
A. Yes. That had an exceptional

NOT A CERTIFIED COPY

016627

Page 218

margin because bedding, which was most of the sales, was at 40 percent and they averaged 45 percent so that meant that the clippers was a very, very profitable business.

Q. In terms of the first bullet, "Grow household penetration," was this a projection of what Sunbeam wanted to do; it wanted to get more of these products in the household going forward the next three years?

A. I assume so.

Q. Was it your understanding that Sunbeam in the next three years was going to target large and low income families, teens and African-Americans?

A. I don't recall the specific conversations. The priorities of these things. I do know that they have low penetration in African -- had low penetration in African-Americans at the that point.

Q. Their strategic plan, if you will, was in the next three years to increase their penetration in these low

Page 219

penetration markets; right?

A. Yes.

Q. Were there any questions that you can recall being asked other than what you've talked to me about already on this page?

A. I don't recall any.

Q. Let's look at the next page which is entitled, "Sunbeam Outdoor Cooking Strategic Headlines." Do you recall any discussion on this topic?

A. Well, essentially we concluded it doesn't make any money with 10 to 15 percent gross margins. So they have plans to move that up to 25 percent. That's why I wrote target 25 percent.

Q. At least as of the time of the meeting, it was your conclusion that they didn't make any money in this area?

A. Right.

Q. Did they express, that is Sunbeam's representatives express how they hoped to reach their target of 25 percent?

A. Other than the language that is on this page, I don't recall what was said.

Page 220

Q. Let's turn to the next page which is MF 13 and it is entitled, "Sunbeam Other Channels Strategic Headlines." Are you there?

A. Yes.

Q. The first entry is, "Away from home." Could you tell us what your writing is directly below that entry?

A. I was trying to determine how important this was and they talked about bundling existing products to effectively grow lodging, it became clear they were just talking about adding irons into this channel of distribution and if they were successful, it was small, less than a million dollars.

Q. Is away from home products products that would, for example, be in a hotel room?

A. Typically.

Q. So when I check in and I see an iron or an ironing board in the closet, Sunbeam was hoping to be able to sell to people who owned or leased hotels, something like that?

Page 221

A. Irons, coffee makers.

Q. Clocks?

A. Clocks. Several other products. But not ironing boards actually.

Q. The next item is outlet stores. Is that a reference to Sunbeam owned outlet stores?

A. Owned or leased, yes.

Q. I mean Coleman had some outlet stores; correct?

A. Correct.

Q. Could you tell the jury what outlet stores are for a consumer products business like Coleman and Sunbeam?

A. Well, outlet stores are traditionally small retail outlets in outlet malls, designed for manufacturers, to sell their surplus and discontinued products.

Q. And Coleman did that; correct?

A. Yes.

Q. At the time of this meeting, Sunbeam, did it have outlet stores?

A. According to my notes, they had 21; 16 in the U.S. and five in Canada.

NOT A CERTIFIED COPY

011526

Page 222

Q. There is a reference to, "Continue to expand in 'A' locations." Do you see that?
A. Yes.
Q. Did you personally at any time before March 30, 1998 visit any of the Sunbeam outlet stores that are referred to in your notes?
A. Actually, because of Revlon's participation in a very large outlet operation of 300 stores and Coleman also being in the outlet stores, I have virtually been in every outlet store that exists including the Sunbeam outlet stores. I had seen them. That was a coincidence.
Q. So you actually saw them before the closing?
A. Right.
Q. What was your opinion of the outlet stores of Sunbeam that you saw before the closing on March 30, 1998?
A. Not well merchandised.
Q. Did you think they were in "A" locations?
A. They were in pretty good malls,

Page 223

yes. It's hard to say what an "A" location is in an outlet mall because the outlet situation is changing so quickly today, but the geography wasn't a problem.
Q. Could you read your handwriting that appears above the box of figures at the bottom of page 13?
A. This is, "15 million professional clippers," which would indicate I misled you on page 011. That business must have been the retail portion of the clipper business. I thought it was the other way around. I apologize for that. The clippers that are described on page 011 are sales of lower end clippers to the Wal-Marts and Costcos of the world. On page 013, this is the other side of the business that sells to the barbers and the pet supply.
Q. Would you turn to the next page which is 014 entitled, "Sunbeam International Strategic Headlines." Are you there?
A. Yes.
Q. What do you recall about the

Page 224

discussion of this slide?
A. I remember that they added a bunch of distributors. This is a continuation of the conversation on the blanket business where they brought in a lot of distributors towards the end of the year, sold them in total $50 million worth of stuff which couldn't possibly, because of the timing, have passed through the system.
Q. What did you write then in your handwriting notes?
A. "25 new ones last year." This is an opinion -- they probably told the $50 million in sales were in international and my opinion was that that loaded the tray.
Q. Again, loaded you are using here the same way you used it earlier in your testimony; correct?
A. When you introduce a new product, you load the tray, that's just what it is. You have to get it out there in their inventories, in their warehouses and in retail but it's not really a continued business. Until it sells through, you

Page 225

really don't know where you are. That meant they had an unusual surge of sales in the fourth quarter.
Q. Of 1997?
A. 1997.
Q. A quarter that Sunbeam even fell short, as you knew, having loaded these sales in 1997; correct?
MR. MARKOWSKI: Objection to the form.
MR. BIDEAU: Objection to the form.
A. Can you repeat the question?
Q. You knew by February 23rd that Sunbeam had fallen short on its projected sales in the fourth quarter of 1997; right?
MR. MARKOWSKI: Objection to the form. It's misleading.
Q. You saw it in the Wall Street Journal?
MR. MARKOWSKI: Objection to the form. Misleading.
MR. BIDEAU: Same objection.
A. I don't know what they were comparing to.

NOT A CERTIFIED COPY

014629

Page 226

Q. I will withdraw the question.
I had asked you did you use the term loaded in the same way you had used loaded earlier in your testimony. I don't think you answered that --
A. No, it's different.
Q. It's different in this case?
A. In my opinion, dumped means really had no chance of selling -- it was there and it was probably going to stay there and in the case of loaded, it's an ordinary business practice, it's just historic the -- it could distort your look at operating performance if you don't know how they've changed their distribution.
Q. And in this case with item number 3, licensing and distributor agreements, these were new ones; right? As they told you?
A. I was referring to the distributors here. Licensing would have no relevance to this, to my comments.
Q. With regard to the distributors at least then, focusing on that point, you were told there were 25 new ones; right?

Page 227

A. I hope that's what I wrote. I think that's right.
Q. And that you understood that those 25 new distributors had been, as you put it, loaded and as you described with approximately $50 million of sales in the fourth quarter of 1997; right?
A. Right.
Q. Of course at this point you would not know in the first quarter of 1998 whether those distributors were going to be successful or unsuccessful in selling their $50 million of product; would you?
MR. BIDEAU: Objection.
A. It would have been Wal-Mart, it could have been Costco.
Q. But you didn't know at this time?
A. No.
Q. The next page which is page 15 is entitled, "Sunbeam Changing Competitive Dynamics." Are you there?
A. Yes.
Q. What do you recall about this topic?
A. Nothing in particular.

Page 228

Q. Let's turn to the next page. This is page MF 00016 entitled, "Sunbeam Long Range Strategic Objectives Earnings From Continuing Operations." Are you there?
A. Yes.
Q. Focusing on the line net sells, could you tell the jury what the net sells for 1997 was supposed to represent or did represent?
A. I believe it was 1 billion 168 million. Is that your question?
Q. Yes. Thank you. A poor question but a good answer.
Reading across, then, the long range strategic plan for 1998, that was a projection of 1 billion 600 million in net sales; right?
A. Yes.
Q. That would continue through the year 2000, Sunbeam was projecting 2 billion 400 million in sales; right?
A. Yes.
Q. You wrote to the left of 1996, I think you wrote 984. Is that right?

Page 229

A. Yes.
Q. What does that number represent?
A. I must have asked what their net sales were in 1996.
Q. And then you have -- right above net sales you have Jan slow Feb; is that correct?
A. Yes.
Q. What did you mean by that?
A. Well, I must have asked them or they volunteered that January was a slow month in sales, not unusual for a company in these businesses, January should be -- December or January should be their smallest month. So it doesn't mean that much when you're off somewhat in January. I wrote something about February, I really don't recall what the comment was.
Q. Did someone ask a question about January or February sales or did Mr. Kersh or Mr. Goudis volunteer the information?
A. I don't remember.
Q. When the information from either Mr. Goudis or Mr. Kersh, as the case may be, was given about Jan, Feb slow, did

NOT A CERTIFIED COPY

011630

Page 230

anyone ask for further information after the meeting from Sunbeam?
MR. MARKOWSKI: Objection to the form. You misstated the --
MR. BIDEAU: Right.
MR. BEMIS: I will withdraw the question.
Q. At the meeting itself, when there was either a statement or a question asked about sales in January and it was reported as you wrote, slow, did anyone at the meeting ask for additional information from Sunbeam?
A. I might have asked them about February right at that point and my reference might mean January and February were both slow and I didn't write it down, I just don't recall.
Q. Let's leave the meeting on the 23rd. Between the evening of February 23 and the signing of the merger agreements as of February 27, to your knowledge, did anyone at MacAndrews & Forbes request any information from Sunbeam on what its actual January and February sales were to date?

Page 231

A. In the four-day period?
Q. Yes, sir, in the four-day period.
A. I don't recall.
Q. Up to the time of the closing of the transaction, March 30, 1998, did anyone at MacAndrews & Forbes, to your knowledge, ask Sunbeam for detailed information on what it's sales were, net sales were for the first quarter of 1998 or any period --
A. They didn't have to, they made a disclosure as to their sales at that point.
Q. Focus on my question. We'll get to what you are talking about later.
Did anyone from MacAndrews & Forbes, to your knowledge, specifically ask Sunbeam after the February 23 meeting and before the closing on March 30, 1998 for detailed information on Sunbeam's net sales for any period in the first quarter of 1998?
A. I don't know of any.
Q. Did anyone from Coleman ask Sunbeam for the same information at any time before the closing on March 30, 1998?
A. I'm unaware of anybody doing

Page 232

that.
Q. Let's move down the page to operating profit. You have some writing that appears to the right. It looks like you did some division and then -- I think I know where it comes from but could you explain it to us please?
A. I'm glad you know where it comes from because I was having trouble deciphering with my own computations.
Q. I think the 1168 comes from actual sales in 1997. You divide it by 4 to arrive at a per sales by quarter. That's your testimony, not mine.
A. I don't know why I would have been looking at the quarters because they would have to have seasonal variation. I just don't know what I was trying to accomplish.
Q. Could you now move to the right of your first block of handwriting and read that into the record? It looks like --
A. It says 328 divided by a billion 6 and then there's a note 20 percent from 25 percent.

Page 233

Q. What does that mean?
A. I don't know. I don't recognize the 328 number. I see they went to 20 percent operating profit in '98 but I -- I don't know what I was doing. I don't know what conclusions I reached.
Q. If you look at the long range plan, look at the next page, 17, look at receivables net, you will see the figure 328. Does that help you reconstruct what you were doing?
A. Yes. I was trying to figure out what was happening to cash.
Q. What was happening to cash?
A. Yes.
Q. What was your opinion as to what was happening to cash?
A. They were going from a ratio of 25 percent receivables and inventories -- I think it was just receivables -- it was receivables to sales, 328 divided by a billion 6 is something over 20 percent slightly and I was trying to compare that to the actual of the 296 -- I was focusing on receivables. I took 296, divided it --

UNCERTIFIED COPY

014631

Page 234

I want to know how many times they turned their receivables and my conclusion was they were making very significant improvements in their plan and receivable collections despite an increase in international sales.
Q. Did you conclude that was a good thing or bad thing?
A. It would be great if they could do it. My question was was that reasonable.
Q. Did you ask anyone whether it was reasonable at the meeting?
A. I think this was something I was just doing off to the side.
Q. So I take it you weren't actually listening, you were actually doing some calculations while the presentation was ongoing; weren't you?
A. Apparently.
Q. In the line that appears above earnings per share, EPS, it reads, "Net earnings from continuing operations." Do you see that?
A. Yes.

Page 235

Q. You have some figures written there. What are those figures and what do they represent?
A. I seem to be saying something about the earnings growth rate is 35 percent but -- something like that. I was probably trying to evaluate how fast the earnings per share were growing.
Q. Below the earnings per share line it looks like you have written 1.99 and then there's something in writing after that. Can you read that into the record for us?
A. Yes. It's 1.99 street.
Q. Was that the street estimate for earnings?
A. Yes. That was really what I was trying to focus on because long range plans are long range plans and I did, as you noted, have some skepticism. I was trying to see if the street estimates are reasonable and I thought that was much more reasonable than the long range plan.
Q. The street estimates were much more reasonable?

Page 236

A. Yes.
Q. Tell the jury what a street estimate is.
A. It's either the average or the median of the analysts who cover the company's estimates for earnings per share. In this case, for 1998.
Q. Is this something in your business, consumer products as you've described it, that you follow and pay attention to?
A. Not since we're private.
Q. When you were public?
A. Yes.
Q. When you were at Sunbeam and public, running the company before the bankruptcy, did you pay attention to this, street estimates?
A. Yes. Not with the intensity one would normally because of the circumstances.
Q. One more -- you've got about 7 minutes before five. You want to leave now or you --
A. We'll do one more page.

Page 237

Q. Because we're almost done and then we'll let you out of here.
Turn to the next page which is Morgan Stanley 00017 and entitled, "Long Range Strategic Objectives, Condensed Consolidated Balance Sheet." Do you see that?
A. Yes.
Q. I think you've explained the first handwriting at the top but would you read it into the record for us again? It says, "Going from."
A. 'going from 25 percent to 20 percent despite increased international sales."
Q. That's what you told us you thought was a good thing if it was true; right?
A. Yes.
Q. That was a projection for 1998; right?
A. Yes.
Q. It wasn't what they had done, it was Sunbeam was projecting they could do in 1998?

NOT A CERTIFIED COPY

014632

Page 238

A. I can't speak to whether they really viewed it as projection or a target to achieve. Everyone has a different view of one long range plan. Some like to make the big reach, some like to make the numbers. Every management is a different style.
Q. What, by the way, was your style at Coleman when you did projections for the year?
A. We never wanted to put a number on a piece of paper we couldn't make.
Q. So you were not a reacher as you put it?
A. No. We were bottoms up. Get the commitment of all the individuals as you work your way up through the system and then be more conservative.
Q. In 1997, at Coleman, you didn't make your projections that year; did you?
A. In 1997?
Q. Year end 1997.
A. I don't know whose projections those were. Those were the projections I was handed by the 1996

Page 239

management group.
Q. In 1997, you came in February of 1997?
A. Right.
Q. And you did have a substantial short fall from projections by the year end 1997 as a result of good weather conditions in 1997; right?
A. Are you referring to the plan or projections we made subsequent?
Q. Let's start with plan.
A. It wasn't my plan.
Q. I understand it wasn't --
MR. BIDEAU: Let's not argue. Let him finish.
A. We knew the plan was unachievable.
Q. It may have been unachievable but it was made by your predecessor?
A. Yes.
Q. You didn't make plan; right?
A. I didn't make his plan, correct.
Q. And you didn't make the plan because, as I remember, you had some pretty good weather that impacted your generator sales; isn't that right?

Page 240

A. That would be one of many factors and good weather could offset itself with a good camping season. So I don't recall specifically the weather conditions, rain fall and a whole bunch --
Q. How about hurricanes?
A. If there are no hurricanes, the generator business will be weak.
Q. In 1998 when you did your projections after you came in, you did look at the plan and you made independent projections; right?
A. In --
Q. '97.
A. In 1997 we made the projections for 1998.
Q. Did you make any revisions to the plan for 1997 when you came in?
MR. BIDEAU: I think you guys are talking about two different things. He's saying '98 --
Q. I know what I'm asking -- let me try again so it's a clear question.
In 1997 when you joined Coleman again, did you make your own projections,

Page 241

or plan if you will, for 1997, your own?
A. Yes.
Q. Did you make that plan that year?
A. To the best of my knowledge, we were pretty much on target for the plans we put together -- for the projections which was a replanning effort for 1997. I don't remember any significant defaults.
Q. In your business career over the years, have you had instances where you did not make your plan?
A. Yes.
Q. Have you had instances where you exceeded your plan?
A. Yes.
Q. Does the fact that you didn't make a plan in one year or that you exceeded it in another year mean that you are a bad businessman?
MR. BIDEAU: Objection to the form of the question.
A. It's better to make your plan.
Q. Does it mean you're a good businessman?
MR. BIDEAU: Same objection.

NOT A CERTIFIED COPY

U146333

A. Too many other variables to answer your question.
Q. Turn to the last page and then we will let you go. Turn to the writing on the same page to the right of, "Current liabilities." Can you read that into the record?
A. "225 million write-off in 1996, 10 million left."
Q. What were you referring to?
A. As I recall, Sunbeam shortly after Dunlap's arrival took a very large write-off for restructuring the company.
Q. Were you here calculating how much of the -- is that called sometimes a restructuring reserve?
A. I assume that's what it was at that time.
Q. Were you writing here what you calculated to be left on the restructuring reserve?
A. Right. How much had not been paid out.
Q. Was this a question you asked or a figure you calculated?

A. I don't remember.
Q. Why were you interested?
A. Cash.
Q. Explain.
A. If they had the big reserve left on their books and had not spent it, there would be huge cash drain going forward which would devalue the company. In this case, they had spent it which was quite good news.
MR. BEMIS: Let's stop here. I told you we would stop at 5. We'll see you tomorrow at 10 o'clock again; correct?
(Continued on the following page.)

THE WITNESS: Yes. Are you aware I have a lunch problem? It might be a little longer.
MR. BEMIS: I wasn't aware of that but now I am.
THE VIDEOGRAPHER: We're now going off the record at 4:59 p.m. This is the end of tape labeled number 3 of the videotaped deposition. We'll continue tomorrow, December 2, 2004, on the tape labeled number 1, volume 2.
(Time noted: 4:59 p.m.)

_____
JERRY W. LEVIN

Subscribed and sworn to before me this ____ day of _____, 2004

_____

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, ANDREA L. KINGSLEY, a Notary Public within and for the State of New York, do hereby certify:
That JERRY W. LEVIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of December, 2004.

_____
ANDREA L. KINGSLEY

NOT A CERTIFIED COPY

011634

---------- I N D E X ----------

WITNESS EXAMINATION BY PAGE
J. Levin Mr. Bemis 5

---------- INFORMATION REQUESTS ----------

DIRECTIONS:
RULINGS:
TO BE FURNISHED:
REQUESTS:
MOTIONS:

---------- EXHIBITS ----------

MORGAN STANLEY FOR ID.
Morgan Stanley Exhibit 445, resignation... 17
Morgan Stanley Exhibit 168, two-page document..... 112
Morgan Stanley Exhibit 442, deposition transcript of Mr. Levin dated August 2, 2000..... 138
Morgan Stanley Exhibit 443, deposition transcript of Mr. Levin taken June 20, 2001 150

NOT A CERTIFIED COPY

017635

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

CONTINUED VIDEOTAPED
DEPOSITION OF JERRY LEVIN
New York, New York
Thursday, December 2, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167610

NOT A CERTIFIED COPY

01637

December 2, 2004
10:12 a.m.

Videotaped Continued Deposition of JERRY LEVIN, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York, pursuant to Adjournment, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: JEROLD SOLOVY, ESQ.
ROBERT T. MARKOWSKI, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.

MacANDREWS & FORBES HOLDINGS, INC.
36 East 62nd Street
New York, New York 10021
BY: STEVEN L. FASMAN, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
KATHRYN REED DeBORD, ESQ.

APPEARANCES (Cont'd):

GREENBERG TRAURIG
Attorneys for Mr. Levin
777 South Flager Drive
West Palm Beach, Florida 33401
BY: MARK BIDEAU, ESQ.

ALSO PRESENT:
Silvio Facchin, CLVS, Videographer

THE VIDEOGRAPHER: Stand by. I will ask you to stand by, please. This is the tape labeled number 1 of volume 2 of the videotaped deposition of Jerry Levin, and we are now going on the record. The time is 10:12 a.m.

JERRY LEVIN, having been previously duly sworn by the Notary Public, testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning, Mr. Levin. I am going to hand back to you Morgan Stanley Exhibit 84 that we were talking about yesterday, at the time of the break. I hand that to you.

MR. BEMIS: And, Mr. Reporter, could you hand both copies to the witness.

A. I can reach it.

Q. Thank you. Do you have Exhibit 84 in front of you?

A. Yes.

NOT A CERTIFIED COPY

Page 252

Q. Would you please turn to page 00018. It would be, I think it is the second to the last page in the exhibit.
A. Okay.
Q. Was there any discussion that you remember at the February 23rd evening meeting about this page?
A. During the meeting?
Q. Yes. That you remember.
A. I don't recall any.
Q. Could you explain this page, as you understood it, when it would be presented to you?
A. This is for the original Sunbeam, and this is their three-year strategic plan in terms of the sales base.
Q. Am I correct that the base net sales that appear on the first line are Sunbeam's projections for 1998, 1999 and 2000, before certain increases that they are projecting to occur?
MR. BIDEAU: You mean 2000; right?
MR. BEMIS: I misspoke, 2000.
MR. MARKOWSKI: Objection to the form.

Page 253

Q. Do you see the figure, base sale $1,168,000,000?
A. Yes.
Q. That figure comes from another page in the report, and I believe that is from page 16, if you would like to look at that.
A. Yes.
Q. The base figure for 1998, as I read it, is the 1997 net sales; is that correct?
MR. MARKOWSKI: Same objection.
A. Yes.
Q. Is that what you, is that what you understood it to be when --
A. I understand this to be a bridging analysis, year by year, starting with what it was the prior year and adding to it the changes within that year and ending at the total sales for the new year.
Q. Do you understand that to be the pattern all the way through the year 2000?
A. Yes, sir.
Q. What is a bridging analysis?
A. Well, in 1997 they -- according to page 16, they had $1,168,000,000 in sales, projecting for 1998, 1.6 billion, and the

Page 254

bridging explains how they got from point A to point B.
Q. And did you understand that the bridging information under both domestic and international captions was accumulation of data that appeared earlier in Morgan Stanley Exhibit 84?
A. I don't think it was presented to us that way. I would have to -- I would be happy to go back through this analysis, but I don't remember price, existing channels broken down in an earlier presentation. You can look, if you would -- I can look, if you would like me to.
Q. Feel free to do so. If you remember how they explained it to you, please tell us.
A. I am sure this is how they explained it to us.
Q. Were there any questions that were asked by those in the audience when either Mr. Goudis or Mr. Kersh made this presentation?
A. I don't recall any.
Q. Please turn to the last page, which is not -- which is Morgan Stanley 00 -- excuse

Page 255

me, it is MF 00019.
Are you there?
A. Yes.
Q. And this page is entitled "long-range strategic objectives condensed consolidated statement of cash flow." Do you recall the discussion of this page?
A. I don't recall any discussion of this page.
Q. At the conclusion of the presentation by either Mr. Kersh or Mr. Goudis, as you described it, what happened next in the meeting?
A. I think we left immediately after they finished the presentation.
Q. Did you go -- withdrawn.
When you say "we left," are you referring now to the Coleman and the MacAndrews & Forbes people?
A. CSFB, Coleman, MacAndrews & Forbes, we all left at that point.
Q. Did you go to, did all of you go to another location to continue discussion further, or did you call it a night?
A. I don't recall.

NOT A CERTIFIED COPY

0114339

Page 256

Q. Okay.
Was there any further discussion that evening, outside of the presence of Sunbeam or Morgan Stanley, about the materials in Exhibit 84?
MR. MARKOWSKI: Objection to the form.
A. Yes.
Q. There was? Did you say Yes?
A. Yes.
Q. Where did that discussion take place?
A. Between the conference room we were in and reaching the lobby of the Morgan Stanley building.
Q. Do you recall the discussion?
A. I recall some of it.
Q. What do you recall?
A. I voiced an opinion.
Q. What was your opinion? Who did you voice the opinion to from -- while you were traveling from the Morgan Stanley conference room to the lobby of the building?
A. The MacAndrews & Forbes people.
Q. What did you tell them?

Page 257

A. That I thought the sales in that, and net income expectations of the long-range plan were quite a stretch and I did not think they were achievable.
Q. What did -- withdrawn. Was there any -- withdrawn.
Who were you speaking to when you expressed this opinion?
A. I recall Jim Maher, in particular, and Will Nesbitt.
Q. Anyone else in the, either from MacAndrews & Forbes or CSFB?
A. I don't know if anyone from CSFB was present when I made that comment.
Q. Did Mr. Maher respond to your opinion?
A. Yes.
Q. What did he say?
A. He asked what I thought was realistic.
Q. What did you say?
A. Things more along the line of the Wall Street expectations.
Q. Did he respond to that?
A. No.

Page 258

Q. Did Mr. William Nesbitt respond to your opinion that the Sunbeam projections were quite stretched, quite a stretch?
A. No. They both asked me what I thought was reasonable, and I did not think they were going to make these numbers, but that something lesser was certainly achievable.
Q. Did Mr. Nesbitt say anything in response to your opinion?
A. I don't recall any response from anybody. I think that was the end of the conversation.
Q. When you left the Morgan Stanley building, did you leave with Mr. Maher and Mr. Nesbitt?
A. I don't remember where we all went.
Q. Did you all both --
A. Probably.
Q. Excuse me. I interrupted. Did you all go someplace -- that is, Mr. Nesbitt, yourself and Mr. Maher or anyone else, and have a further discussion that evening about the presentation?
A. I don't think so.

Page 259

Q. Everybody went home, as you recall it?
A. I did.
Q. Okay. Now, at the meeting, were there other materials available for discussion or review by those who were there?
A. I don't recall. It was too long ago.
Q. Let me show you a document that was, that has been marked as Morgan Stanley Exhibit 85.
A. Thank you.
(Witness and counsel confer.)
Q. Do you have Morgan Stanley Exhibit 85 in front of you?
A. Yes.
Q. Now, have you seen this document before?
A. I don't recall seeing this.
Q. Please take as much time as you would like to look at it, and if you tell me you don't recall seeing it, I will not ask you any questions about it.
A. You can stop right there. I don't recall seeing this.

NOT A CERTIFIED COPY

01640

Page 260

Q. Would you hand Morgan Stanley Exhibit 85 back to me, please.
Thank you.
The meeting that we have been discussing with Morgan Stanley, Exhibit 84, it is on the evening of February 23rd, 1998. By all accounts from other witnesses, it was -- between that evening -- withdrawn.
Between the evening of February 23rd, 1998 and the conclusion of the meeting that we have been going over, discussing Morgan Stanley Exhibit 84 and the actual execution of the merger agreements, as of February 27th, 1998, did you have any discussions with anyone at MacAndrews & Forbes or Coleman about Morgan Stanley Exhibit 84?
MR. BIDEAU: Other than the elevator --
Q. Other than the elevator conversation, yes.
A. Probably.
Q. Did you have any specific recollection of those conversations, as you sit here today?
A. Not specific, no.

Page 261

Q. Do you have any general recollection of discussions of the, of Morgan Stanley Exhibit 84, of --
A. That was the presentation?
Q. Yes, sir. From the conclusion of the presentation up to the signing of the merger agreements on February 27th.
A. Yes.
Q. What is your general recollection?
A. That I felt the strategic plan, as presented, was a stretch, unlikely to be achieved, but that I thought it was reasonable that they would achieve growth and earnings in line with whatever, where Wall Street was, which was considerably below the strategic plan at that point.
And I did not have any particular thoughts, one way or the other, as to whether the stock was valued high or low, as a result.
Q. Who did you have these discussions with?
A. I am sure I had them with Mr. Perelman and Mr. Gittis and associates.
Q. Would Mr. Maher be within that group?

Page 262

A. Yes, sir.
Q. Would Mr. Nesbitt be in that group?
A. He may or may not have been in attendance.
Q. Where did these discussions take place, if you remember?
A. They -- almost certainly took place the next morning. Assuming that was not the Friday night -- I don't -- February 23rd?
Q. It was a Monday, I believe.
A. I am almost certain they took place the next morning, either at breakfast at the townhouse or after breakfast at the townhouse -- the MacAndrews & Forbes headquarters, I should say.
Q. And the townhouse, and the headquarters are virtually within 100 yards of each other; correct?
A. It is a lot closer.
Q. A lot closer than that, actually.
Do you remember, as you sit here today, the reaction of Mr. Perelman, for example, to your opinion about the strategic projections of Sunbeam in MS 84?
A. No. I don't recall anything

Page 263

specific.
Q. Do you recall any reaction to your opinion by Mr. Gittis?
A. No.
Q. Mr. Maher?
A. No.
Q. And if Mr. Nesbitt was there, anything from Mr. Nesbitt?
A. No.
Q. Between February 23rd and the execution of the merger agreements on or -- as of, excuse me, February 27th, 1998, did your opinion change about Morgan Stanley's strategic plan, MS 84?
A. Give me the dates again.
Q. I will do it one more time.
MR. BIDEAU: All right.
Q. Between February 23rd, 1998, and the execution of the merger agreements as of February 27th, 1998, did your opinion of the Sunbeam long-range strategic plan MS 84 change?
A. Not that I recall.
Q. Between February 23rd, 1998 and the execution of the merger agreements as of

NOT A CERTIFIED COPY

Page 264

February 27th, 1998, did you discuss your opinions about MS 84 with anyone at CSFB?
A. I don't recall whether I did or did not.
Q. If you had such discussions, would you have expressed the same opinion that you did to Mr. Maher, Mr. Nesbitt, Mr. Perelman?
A. If they asked me, that is what I would have said.
Q. Did you express -- withdrawn.
At any point -- withdrawn.
Between February 23rd, 1998 and the execution of the merger agreements, as of February 27th, 1998, did you have any discussions with Morgan Stanley about MS 84, the presentation by Mr. Goudis or Mr. Kersh?
A. No.
Q. When you expressed your opinions to -- to Mr. Perelman -- withdrawn.
Other than what you told me concerning your conversations with Messrs. Perlman, Gittis, Mr. Nesbitt, if it happened to be the case, and Mr. Maher, did you discuss with anyone else, that you can recall as you sit here today, the meeting on February 23rd,

Page 265

1998, and your opinions that you reached up until -- up until the point of the signing of the merger agreements in that four-day period?
A. There would have been other people in the room. 0if we had this conversation at breakfast, there may have been one or two other attendees.
Q. Do you recall or -- strike that.
Between February 23rd, 1998 and the signing of the merger agreements, as of February 27th, do you recall anyone from MacAndrews & Forbes or Coleman requesting any additional information from Sunbeam?
A. I don't recall any.
Q. Do you recall, between those same dates, anyone from MacAndrews & Forbes or Coleman requesting any additional information from Morgan Stanley concerning the presentation on February 23rd?
A. I only understand, based on what you told me yesterday, that CSFB had a meeting in between, and I don't know what information they requested.
Q. For the record, you are referring to the meeting identified in Morgan Stanley

Page 266

Exhibit 230, the last page, paragraph 12.
I will ask you another question.
MR. MARKOWSKI: I will move to strike that.
MR. BEMIS: I will ask another question.
MR. MARKOWSKI: No. For the record, your statement concerning what he was referring to.
MR. BEMIS: Okay.
That "okay" doesn't mean that I agree with you. That is, however, the right exhibit, and it is the right page, and it is the right paragraph.
Would you like me to show it to him?
MR. MARKOWSKI: If you want to testify --
MR. BEMIS: We will look at 230.
We will take the gentleman's time and see if that is what we need to do. It was gratuitous -- we will take his time and your time.
MR. MARKOWSKI: You are wasting time.
MR. BEMIS: I will show you what has

Page 267

been marked as Morgan Stanley Exhibit 230 that we looked at yesterday. Turn to the last page, paragraph 12. Tell me when you are there.
A. Yes.
Q. Was the meeting that you referred to in your answer to the question a few moments ago the February 24th, 1998 meeting that is referred to in that paragraph?
A. Yes.
Q. You did not attend that meeting or you don't know what happened or whether the meeting occurred?
A. That is correct.
Q. Would you hand that back to me.
MR. BEMIS: Anything else?
Q. I would like to move forward now to the board meeting of February 25th, 1998. I am going to provide you with a copy of the minutes of the meeting. The minutes have been previously marked as Morgan Stanley Exhibit 88. I hand those to you. Thank you.
Do you have Morgan Stanley Exhibit 88 in front of you?
A. Yes.

NOT A CERTIFIED COPY

Page 268

Q. Have you seen these minutes before?
A. I don't recall doing so, but I am sure I did review them. I always review the minutes of our board meetings.
Q. According to the minutes, you were present at the meeting; is that correct?
A. Yes.
MR. MARKOWSKI: I have a question about the exhibit that was handed to me -- there appears to be another document stapled to the back.
THE WITNESS: You are seeing --
MR. BEMIS: It is possible. It is possible, Mr. Markowski, that we have one with an additional attachment that shouldn't be there. I have run out of copies. Let me take a look and see. Mine doesn't have the attachment on it.
MR. BIDEAU: I can tell you what we have and the witness has.
MR. MARKOWSKI: What Bates numbers are on the exhibit?
MR. BEMIS: I will give you the CPH Bates numbers: CPH 0634056, and it goes through 4064 on my copy.

Page 269

MR. MARKOWSKI: It looks like it is inadvertently attached.
MR. BIDEAU: The witness has the numbers that you just read. I think we just had one that was misassembled. Sorry about that.
Q. Do you have Morgan Stanley Exhibit 88 in front of you?
A. Yes.
Q. You did attend the meeting and made a presentation; right?
A. Yes.
Q. Could you tell us what the general outline of your presentation was to the board of directors at that meeting on February 25th, 1998?
A. Well, according to the minutes, I talked about how the company was doing --
Q. That is Coleman; correct?
A. Coleman & Company.
And how we did in the fourth quarter and how 1997 had finished and gave a perspective on how we, in 1998, how 1998 was shaping up, as we were then starting the camping season, the heaviest part of our year.

Page 270

And I went down to discuss the transaction whereby Coleman would be merged with Sunbeam and described the terms of the transaction, stated that it was structured, the transaction was structured to put Sunbeam in control as quickly as possible through -- to reduce disruption to the company's business. And talked about Sunbeam's current plans, what businesses they keep and what they would sell, and then talked about some employee protection provisions which we wanted our board to implement.
Q. Did you -- withdrawn.
What did you tell the board about how Coleman finished in 1997?
A. I don't recall.
Q. At this point in time, February 25th, 1998, the record will show you had, the company had not filed -- that is, Coleman had not yet filed its 10K, which, I believe, was filed on March 18th, if my memory serves me correctly.
Did you give the board full year-end results at the February 25th meeting?
A. It would have been as best we could

Page 271

estimate, without the audit being complete.
Q. It would not be unusual by that point in time, the end of February, to have at least year-end estimates available to management?
A. That is correct.
Q. As of February 25th, 1998, was the audit of Coleman's operations for the calendar year 1997 still ongoing by Ernst & Young?
A. I assume so.
Q. What -- did you tell the board that, what the plan was or projections were, if you prefer that term, for 1998?
A. I would have done that at the end of 1997.
Q. What was discussed about 1998 at the February 25th board meeting?
A. Relative to what I had told them in December, how we were doing.
Q. How we are to this date against what I told you earlier?
A. Yes. We would have known in February the customer commitments for the camping season, what our distribution would be with what accounts, what SKUs they were

NOT A CERTIFIED COPY

Page 272

taking, would not have known the sell-through to the consumers, but maybe a -- a function of -- a function -- weather and a bunch of things that hadn't happened yet.

But we would give them a pretty good sense as to whether we were on track in terms of getting the distribution with the customers that we anticipated and planned.

Q. You used the term SKU. That means stock-keeping units?

A. Yes.

Q. Just tell the jury what a stock-keeping unit is.

A. It is an item -- it could be a lantern with a specific shape, size, color. There are two colors, there would be two SKUs.

Q. It is amazing, I was going to ask you whether a lantern was a stock-keeping unit. Coleman's must be the most famous for its lanterns, is that true, their marquee?

A. Lanterns are the icon product with Coleman.

Q. When you presented the company's progress or results so far in 1998, were you basing it on, at least in part, upon interim

Page 273

financial statements of the company?

A. I would have known by that date the sales, the final sales for January, and by February 25th, I would have an extremely good estimate of the sales for February.

Q. Did you get -- withdrawn.

At Coleman, when you were the president of the company, did you receive a daily sales report, daily sales reports?

A. Yes.

Q. So, at any point in a month, you were able to prepare cumulative information to a point in time in the month for your sales; right?

A. Yes.

Q. Of course, these are unaudited figures at the time that you look at them; right?

A. They are several flaws to the system. There are -- there is quite a bit of estimating that is done, because these are gross sales and not net sales, and the international results come in later than the domestic results.

But I spent a lot of time talking to

Page 274

our managers to get a feel for what's happening behind the numbers. I had a reasonable idea of what was happening to the company.

Q. Notwithstanding the system is not perfect, as a businessman, it is at least a reasonable method that you can gather information about how you are doing sales-wise up to a point in time in a quarter?

A. Yes.

Q. Did you -- strike that.

How were you doing in 1998, as of February 25th?

A. I don't recall.

Q. Do you remember whether you were ahead or behind plan, as given to the board of directors in 1997, for the year 1998?

A. No.

Q. Did you discuss with the board of -- withdrawn.

You did discuss the proposed transaction with Sunbeam, you told us; right?

A. Yes.

Q. Did you tell the board of directors about the presentation on February 23rd?

Page 275

A. I don't recall.

Q. Did you tell the board your opinion that you had reached about Sunbeam's strategic plan set forth in Morgan Stanley Exhibit 84, that it was -- I think you used the term "a stretch" -- did you tell them that?

A. I don't recall.

Q. Did you tell the board why the transaction was being structured to put Sunbeam in control as quickly as possible?

A. Yes.

Q. What did you tell them?

A. To repeat what I said yesterday, because of Mr. Dunlap's reputation as taking out many, many employees, I felt, as soon as it was known that Sunbeam was taking over Coleman, there would be considerable employee moral issues for the company, and it was a predicate that could extend into our trade relations.

Q. Did anyone from the board of directors express a disagreement with your view that the transaction should be consummated as quickly as possible?

A. I don't recall anyone disagreeing.

NOT A CERTIFIED COPY

Page 276

Q. Was your opinion that the transaction should be closed as quickly as possible also -- withdrawn. Did anyone from MacAndrews & Forbes express any disagreement with your belief that the transaction with Sunbeam should be closed as quickly as possible?
A. I don't recall anyone disagreeing.
Q. Did Mr. Perelman speak at the board of directors meeting on February 25th?
A. I don't --
Q. He is shown in attendance on the page.
A. I don't recall.
Q. Did Mr. Maher speak -- withdrawn.
Did Mr. Maher express any disagreement at the board of directors meeting with your presentation?
A. As the minutes show, Mr. Maher did present to the board following my presentation, and I don't recall any disagreements or differences between our presentations.
Q. Did Mr. Nesbitt, who is shown in attendance at the meeting, express any

Page 277

disagreement with your presentations?
A. I don't recall any.
Q. Did Mr. Barry F. Schwartz, who is also shown in attendance, express any disagreement with your presentation?
A. I don't recall any.
Q. Did either Mr. Rich or Mr. Duffy from Credit Suisse First Boston express any disagreement with your presentation on February 23rd?
A. I don't recall any.
Q. Did the board of directors ask you any questions during your presentation?
A. It is likely.
Q. Do you remember any of the questions?
A. No.
Q. If you had been asked any questions, would you have responded to them with the -- withdrawn.
If you had been asked any questions by the board of directors, would you have responded in the same manner you have testified today as to your opinions on the transaction?

Page 278

A. I would have responded openly, candidly and truthfully.
Q. As you are doing here today; right?
A. Yes.
Q. You remember -- do you remember how long you spoke in the meeting which -- it shows the meeting lasting about an hour and a half -- withdrawn.
A. No.
Q. I will ask the question again. The meeting is shown in the minutes as lasting about an hour and a half. Do you know how long you spoke?
A. No.
Q. The meeting minutes reflect that Mr. Maher spoke next. Is that consistent with your recollection of the meeting?
A. Yes.
Q. Do you remember Mr. Maher's presentation, independent of what is in the minutes?
A. No.
Q. The minutes reflect that "Following Mr. Maher's review, the directors asked numerous questions regarding the proposed

Page 279

transactions and a discussion ensued among the directors." Do you see that language, sir?
A. Yes.
Q. Do you remember any of the numerous questions asked by the directors?
A. No.
Q. Do you remember any of Mr. Maher's responses?
A. No.
Q. Did Mr. Maher's presentation, to your recollection, touch upon Sunbeam's operations or its projections, as were discussed at the February 23rd, 1998 meeting at Morgan Stanley?
A. I don't recall.
Q. One of the items that you spoke to the directors about is the employee protection provisions.
Do you see that reference in the minutes?
A. Yes.
Q. Is that a reference to the ability of the employees who had options to exercise their options and -- at a price that would allow them to receive, I believe it was $27.50

NOT A CERTIFIED COPY

Page 280

cash for their Coleman stock?
A. I don't recall if that was part of my presentation or something that came up later in the description of the transaction.
Q. There is -- Mr. Maher's presentation made a reference to the company -- that is, the Coleman Company made an inquiry to another company, or I think it is referred to here as a potential bidder, about that company's interest in Coleman. Do you see that reference in Mr. Maher's presentation?
A. Yes.
Q. What do you remember Mr. Maher saying about that bidder and the inquiry made by Coleman to that bidder?
A. If my memory serves me correctly, there was one company that had contacted MacAndrews & Forbes on a number of occasions, expressing their interest in acquiring Coleman, if it became available.
Q. Who was that?
A. I believe it was Brunswick.
Q. Did you have, are you aware of any contact by Coleman, at or about the time of the Sunbeam discussions, whether it be from

Page 281

December or all the way up until February, any further contact with Brunswick about an interest in acquiring Coleman?
A. I was not involved in this. I don't know what took place.
Q. Do you know of anyone at Coleman who was involved in such discussions, if they took place?
A. No one involved in the operating company, which is all I can speak to, was involved in talking to Brunswick, if it was Brunswick, or in discussions -- if there were discussions. We just weren't part of that.
Q. Did you ever have any discussions with Brunswick, and by "you," I mean you, personally?
A. No.
Q. It was all done at the holding company level?
A. Yes.
Q. Is there anything that you, anything you recall -- withdrawn.
After Mr. Maher's presentation, did Mr. Emmerich of the Wachtel Lipton firm then address the board about certain legal matters?

Page 282

A. Yes.
Q. Do you recall any part of that discussion, independent of what is set forth in the minutes?
A. No.
Q. After Mr. Emmerich's presentation, the minutes reflect that you then introduced Credit Suisse First Boston and Mr. Gordon Rich, in particular, and then he spoke to the board. Is that consistent with your recollection of the meeting?
A. Yes.
Q. The minutes of the meeting reflect that Mr. Rich's presentation included a statement that there was a premium of approximately 44.2 percent being offered by Sunbeam for the company's stock based on the stock price the previous day; do you see that?
A. Yes.
Q. Is that consistent with your recollection?
A. I don't recall what it was.
Q. Do you recall it was -- a premium in that neighborhood?
A. I recall there was a significant

Page 283

premium.
Q. What do you recall about Mr. Rich's presentation?
A. Nothing.
Q. Was it simply an oral presentation or was he assisted by overheads, such as Mr. Kersh or Mr. Goudis used on the evening of February 23rd?
A. I don't recall.
Q. Did you attend the entire hour and a half that the meeting lasted? Withdrawn.
Were you there for the entire board meeting on February 25th?
A. According to the minutes, I was there for the entire meeting.
Q. Mr. Rich is quoted as referring to Coleman's 1998 estimates on earnings before interest, taxes, depreciation and amortization, which he says, or the minutes say show a significant increase over 1997 results.
Do you see that reference there?
A. Yes.
Q. Is it accurate that Coleman's plan for 1998, its projections for the full year,

NOT A CERTIFIED COPY

014645

Page 284

did show significant increases over 1997 results?
A. Yes.
Q. And is it true that the 1998 plan that Coleman had, as of the date of this meeting, February 25th, had higher EBITDA than the company's best results in any other year before that time?
A. I don't know that that is true.
Q. Did Mr. Rich say at the meeting, as reflected in the minutes, that another buyer would likely discount Coleman's 1998 EBITDA forecast?
A. According to the minutes, yes.
Q. Do you have any reason to doubt that he did not say that?
A. Sounds like a reasonable thing to say.
Q. Mr. Rich is then described as presenting on the next page of the minutes a brief overview of Sunbeam, including Wall Street estimates for Sunbeam's stock price. Do you see that?
A. Yes.
Q. Wall Street's estimates for Sunbeam

Page 285

were different, as you have described it, from what you heard from Sunbeam on February 23rd; correct?
A. Yes. They are different than those presented in their strategic plan.
Q. Did Mr. Rich make any reference at the board meeting on February 25th, 1998 to Sunbeam's strategic plan figures as they were presented at that meeting on February 23rd?
A. I don't recall which set of numbers he used.
Q. Is there any reference that you see in the minutes to Sunbeam's long-range strategic plan in this presentation that Mr. Rich made to the board on February 25th?
A. It is somewhat ambiguous in that it talks about a summary of the discounted cash flow analysis, which could have been a Wall Street set of numbers; it could have been an internally generated set of numbers; or it could have been Sunbeam's strategic plan. I don't know which.
Q. Or it could have even been a combination of one or more of those; right?
A. Well -- (indicating).

Page 286

Q. The question I asked you is: Based on your reading of the paragraph, can you see any specific reference to the Sunbeam's long-range strategic plan?
A. No.
Q. There follows Mr. Rich's presentation summary in the minutes a paragraph that reads: "Following Mr. Rich's presentation, the directors asked questions and a discussion ensued." Do you see that?
A. Yes.
Q. Do you recall any of the questions asked or the discussions that ensued by the board of directors?
A. No.
Q. Is there anything that stands out in your mind about the February 25th board of directors meetings, whether the matter is or is not reflected in the minutes?
A. No.
Q. Would you describe the meeting as businesslike?
A. Our directors meetings always were.
Q. Was there any discussion, at the meeting, about Mr. Dunlap, in particular, and

Page 287

his reputation, as you have described it already in your deposition?
A. I don't recall any.
Q. You can hand that exhibit back to me. Thank you, sir.
Do you recall any discussion at all at the board meeting about whether it was in the best interest of Coleman's shareholders to take Sunbeam's stock, as opposed to cash, as the merger consideration?
A. I don't recall any discussion that that was an option.
Q. Did management of the company -- that is, Coleman -- express to the board of directors on February 25th, that it was in favor of the merger?
A. Yes.
Q. Were there any dissenters in management?
A. I am sure had I surveyed them, there would have been a large number of dissenters. I am only referring to the management who was aware that this was happening, which was a very small percent.
Q. That would have been yourself,

NOT A CERTIFIED COPY

011646

Page 288

Mr. Shapiro and Mr. Isko -- and Mr. Paige?
A. And Mr. Paige.
Q. As of the time of the February 25th meet, beyond those board members of the management of Coleman, the other members of senior management had not yet been informed of the potential transaction; is that right?
A. They were not formally informed or informed by me. Whether there was leakage or not, I don't know.
Q. It is your opinion, as the chief executive officer of Coleman, that as of February 25th, had there been a survey of senior management, as a whole, there would have been opposition to the merger?
A. Some -- the individuals, yes.
Q. At the meeting were any materials prepared by CSFB handed out or made available to the board of directors?
A. I don't recall.
Q. Let me show you two documents, and we will start with Morgan Stanley Exhibit 112.
Do you have Morgan Stanley Exhibit 112 in front of you?
A. Yes.

Page 289

Q. Have you seen this document before? Please take a moment to look at it, as long as you would like.
(Pause.)
A. I don't know if I have or haven't.
Q. It just, as you sit here today, you just can't remember, one way or the other, whether you have seen it?
A. Yes. This was a draft and I don't know if it was presented to me or not.
Q. Do you recall any documents being either handed out or otherwise made available to the Coleman board of directors at the February 25th meeting?
A. I don't recall any.
Q. Okay. Had you, personally, provided any information to Credit Suisse First Boston concerning Coleman's 1998 plan, as you had developed that plan and presented it to the board sometime in 1997?
A. I am sure we gave them a plan.
Q. There are references to a, at various points in this document, on Coleman management estimates. Would those types of estimates have been provided at your direction

Page 290

through your chief financial officer or would you have done it yourself?
A. It could have been either way.
Q. Either way.
Why don't you hand that document back to me.
One last question.
I realize you can't remember whether you saw it -- that document -- as you sit here today, did it have any impact on your decision, one way or the other, to vote for the merger?
MR. MARKOWSKI: Objection to the form.
MR. BIDEAU: Objection to the form. If he doesn't remember if he saw it, how would he know if it would affect the opinion?
MR. BEMIS: I heard the objection to the form. I heard the objection.
MR. BIDEAU: Okay.
A. No.
MR. BEMIS: One more document on that, and then we will be finished with this topic.

Page 291

Q. I am handing you what has been previously marked as Morgan Stanley Exhibit 197. Please take a minute and look at it.
Do you have Exhibit 197 in front of you?
A. Yes.
Q. When you are done looking at it, please let me know.
(Pause.)
Q. I don't have detailed questioning on it.
My first question is going to be whether you saw it.
A. I don't recall.
Q. Just so I can get -- withdrawn.
As you sit here today, sir, you do not recall seeing exhibit, Morgan Stanley Exhibit 197 at any time; correct?
A. Correct.
Q. You may hand it back to me. Thank you, sir.
Sir, I am going to hand you now Morgan Stanley Exhibit 118, which has previously been identified as the minutes of the Coleman board of directors on February

NOT A CERTIFIED COPY

Page 292

27th, 1998.
Please take a moment and look at the exhibit and tell me when you are done, and then I will ask you a couple of questions about it.
(Pause.)
A. Okay.
Q. First of all, have you seen these minutes before?
A. I believe so.
Q. Did the minutes, when you saw them, have all of the attachments that appear at the back?
A. I don't recall the details, but I assume so.
Q. Did you have any further role in the negotiations of the Sunbeam Coleman merger from any perspective between February 25th and this meeting on February 27th?
A. I don't recall any.
Q. The minutes seem to reflect that you made a brief introduction and then the meeting was started in earnest with Mr. Emmerich reviewing the transaction from a legal standpoint. Is that your recollection of the

Page 293

meeting?
A. My recollection is that my role, as presented, was very limited in this meeting and I was there as a director.
Q. You are shown on page 2 as introducing Mr. Rich at the meeting. Do you see that?
A. Yes.
Q. Do you recall Mr. Rich speaking at the meeting?
A. I don't recall the meeting, but the minutes reflect that that happened.
Q. If you will turn to the last -- excuse me, the next to the last page of this, of the minutes, there is a document which is entitled "CLN transaction multiples."
A. Did you give me the page number?
Q. Sure. It is --
MR. BIDEAU: The last page, second to the last page of the exhibit.
Q. I will start over, because I even gave you the wrong page.
Would you turn to the page, the third from the last, which bears the Bates numbers ending in the two digits 82.

Page 294

MR. BIDEAU: The preliminary financial terms of the transaction is the caption.
MR. BEMIS: That is it, Mr. Bideau.
Q. Are you there?
A. Yes.
Q. Then, if you continue on, you will see in the upper right-hand corner there are page numbers and it continues through what I think is page 4, although page 4 appears to have been lost in the photocopying. But anyway, there are three page numbers and the Bates numbers go through ending numbers 82 through 85.
Do you see those four pages?
A. Yes.
Q. Were those, was this document, the four pages of it -- withdrawn. Were these four pages presented to the board of directors and discussed?
A. According to the minutes, they were.
Q. Would you turn to the page -- let's look at the page first -- ending in two digits, 82. That is the preliminary financial terms.

Page 295

Are you there?
A. Yes.
Q. Under the MacAndrews consideration terms, there are two -- there are two bullet points.
First, there is -- it reads: "Assumption of first and second priority notes 496,000,000 of accreted value, 11/15/97," and then "525,000,000 accreted value, as of 5/15/98." Do you see that?
A. Yes.
Q. Do you understand what that is, or do you know what that is?
A. I know some notes of MacAndrews & Forbes were assumed as part of this transaction in exchange for shares, controlled by MacAndrews, but I really never spent much time thinking about that portion of it.
Q. In addition to this assumption of notes, the second bullet point refers to MacAndrews' consideration being 14.1 million SOC shares. That is Sunbeam shares; correct?
A. Yes.
Q. And "160,000,000 in cash (tax-free)." Do you see that?

NOT A CERTIFIED COPY

Page 296

A. Yes.
Q. Is that your recollection of the MacAndrews consideration of stock and cash from Sunbeam?
A. I don't have a recollection of it, but I assume this is accurate.
Q. Turn to the -- to the next page of this same document, MS 118, ending in the CPH Bates number 83. Tell me when you are there. It has key transaction multiples on the top.
A. Yes.
Q. Under the heading "relevant statistics," on the right side, there is a column marked "premium." Do you see that?
A. Yes.
Q. It says "42.6 percent based on" as I read the chart, "CLN last 12 months high." Do you see that?
A. Yes.
Q. Could you explain to the jury what you understood that to mean when you saw this document?
A. That the highest price for Coleman in the last 12 months was $20 and 11/16ths and that the purchase price Coleman shareholders

Page 297

would be receiving would be at a premium 42.6 percent to that price.
Q. Now, if we go down one line, based on Coleman's 12 months' low, it has a premium figure of 136 percent; correct?
A. Yes.
Q. Would you tell the jury what you understood that to mean, at the time of the February 27th, 1998 board meeting?
A. Looking at the lowest price Coleman traded at, in the previous 12 months, of 12 and a half dollars a share, the new -- the Coleman shareholders would be receiving a premium of 136 percent, 12 1/2.
Q. Please turn to the next page, which is CLN transaction multiples. Are you there?
A. Yes.
Q. There is references to, in footnote 1, to "CLN management estimate of 1997 year-end debt less 90,000,000 of estimated after tax proceeds from the sale of safety and security products units." Do you see that?
A. Yes.
Q. The sale of -- the safety and security products unit was an operating

Page 298

division that, at least was a contract pending for sale at the time of the approval of the merger; is that correct?
A. I don't remember if the contract was signed or about to be signed, but --
Q. You told me that yesterday. I apologize, you did tell me that.
With regard to footnote number 3, which addresses earnings per share estimates, these are, are these estimates, at least for 1998, that were provided by Coleman's management to Credit Suisse First Boston?
A. I assume so.
Q. You can at least go back to the beginning of the front of the document.
You are shown on page 2, at the very bottom paragraph, of having addressed the board on the topic of employee severance and benefits.
Do you see that?
A. Yes.
Q. And an additional topic appears to be the acceleration of the stock options; do you see that?
A. Yes.

Page 299

Q. The discussion on the stock options is what we have talked about earlier; that is the ability of certain officers and directors who had options to exercise their options for the cash price of 27.50 in merger consideration?
A. No.
Q. I think I misspoke when I asked the question.
Is the stock options the ability of the officers and directors to exercise their existing Coleman options and then exchange their Coleman stock for 27.50 in cash if they elected to do so as part of the merger consideration?
A. I don't know that this was dealing with anything beyond the acceleration of vesting. And it was a much broader group than just officers and directors, there were several hundred employees involved.
Q. Were the options of all of the employees of Coleman who had options accelerated under the terms of the merger agreements?
A. I believe that is correct.

NOT A CERTIFIED COPY

Page 300

Q. Do you recall any specific discussion by the board of directors, at the February 27th meeting, about whether the transaction with Sunbeam was in the best interest of Coleman's shareholders?
A. Yes.
Q. What do you recall about that discussion?
A. It ultimately concluded that it was.
Q. Was there any discussion at the February 27th, 1998 meeting about your opinions that you formed following the February 23rd, 1998 meeting about Sunbeam's long-range strategic plan -- that it was "a stretch," as you put it?
A. I believe my comments were reflected per the documents that you showed me in the CSFB analysis where they actually took more Street estimates and a more conservative view, and that apparently was presented to the board. So, they accepted, at least in part, my reasoning.
Q. CSFB's presentation to the board, as you recall it, and as reflected in the minutes, was based on Street estimates, not on

Page 301

the figures that were in and presented to you on February 23rd in the strategic plan; correct?
A. I am not sure of the origin of it -- they seemed to have taken a conservative view of the strategic plan, per my advice.
Q. You did give that advice to CSFB that they should take a conservative view?
A. I gave it to MacAndrews & Forbes. I know -- I don't recall any conversations with CSFB.
Q. Do you recall anything unusual -- strike that.
Was the board of directors meeting on February 27th as businesslike as the February 25th meeting was?
A. Yes.
Q. Was there anything, as you sit here today, that stands out as being out of the ordinary for a meeting of this type?
A. No.
MR. BEMIS: It is 11:30 and you said that you wanted to break at 11:30.
THE WITNESS: I could take 5 or 10 more minutes now, if you would like, but

Page 302

I have to then run out of the door. If you would like to break now.
MR. BEMIS: It is a perfect breaking time right now, and I don't want you to have to run, and I said that at 11:30 I would get you out.
MR. SOLOVY: What time are you going to resume?
THE WITNESS: I will try to get back here at 1:15. I will be on the dais, and sneaking out is a little more complicated than usual.
THE VIDEOGRAPHER: We are now going off the record, and the time is 11:29 a.m.
(Time noted: 11:29 a.m.)

Page 303

AFTERNOON SESSION
1:52 p.m.
JERRY LEVIN, having been previously sworn, resumed the stand and testified further as follows:
THE VIDEOGRAPHER: Stand by.
MR. BEMIS: On the record.
THE VIDEOGRAPHER: We are now going on the record.
The time is 1:52 p.m.
EXAMINATION (cont'd)
BY MR. BEMIS:
Q. Good afternoon, Mr. Levin.
When we left for lunch we were discussing the February 27th, 1998 board meeting, and I would like to move forward from there.
My first question is: Did you attend the actual signing or execution of the merger agreements?
A. I don't recall.
Q. You don't recall, one way or the other?
A. Correct.

NOT A CERTIFIED COPY

011650

Page 304

Q. After the closing of the merger agreements, which are dated as of February 27th, 1998, did you take a vacation of sorts?
MR. MARKOWSKI: After the closing of the agreements or the signing of the agreements?
MR. BEMIS: The signing of the agreements on February 27th.
Q. I will ask the question again, so that it is a clear question for you.
After the signing of the merger agreements, which are dated as of February 27th, 1998, did you take a vacation?
A. Of sorts, would probably be the best way of putting it, per an understanding reached between Sunbeam and Coleman. The Sunbeam management immediately stepped in and started taking care of the business.
Q. Where did you go for this vacation "of sorts"?
A. I believe most of it was spent in Tucson, Arizona.
Q. When was your last day that you were actually at the Coleman facilities in Wichita working?

Page 305

A. I don't recall. It would be -- I seem to recollect that I went to Wichita immediately, after the announcement, to meet with the employees, and probably went down from Wichita to do something.
Q. Does your wife live pretty much in the Tucson, Arizona home that you have there?
A. No.
Q. Where does she live?
A. She spends more of her time in either our New York homes or Florida.
Q. How long did you stay on vacation in Tucson, Arizona, following the signing of the merger agreements?
A. I don't recall.
Q. Was your wife with you when you were on vacation in Tucson?
A. My wife was with me when I was on vacation in Tucson, yes.
Q. Did you have -- withdrawn.
Did you ever see the offering memorandum for the Sunbeam zero coupon convertible senior subordinated debentures that were issued in connection with the merger transaction?

Page 306

A. I don't recall seeing them.
Q. Let me show you, just real quickly, Morgan Stanley Exhibit 166, which is the offering memorandum, and after you are done looking at it, and I don't expect you to read it thoroughly, it is pretty long -- I will ask you just a couple quick questions.
MR. BEMIS: Do you need a copy of this?
MR. MARKOWSKI: No.
(Pause.)
Q. I just want you to take a quick look at it and let me know when you are done, and if you need to look at it again, you can tell me.
A. I have seen offering memorandums before; so, I have a general sense of what they should be doing.
Q. My only question is: Now, after having looked at Morgan Stanley Exhibit 166, do you recall seeing it in connection with the merger transaction between Sunbeam and Coleman?
A. I don't recall having done so.
Q. Then you can hand it back to me and

Page 307

we have no questions on it. Thank you.
I recognize that you were in Tucson sometime shortly after the execution of the merger agreements, but did you attend any of the road shows for the debentures?
A. No.
Q. Let me now show you a document I should have, that I should have shown you yesterday. I want to see if you recognize the handwriting on it? I hand to you Morgan Stanley Exhibit 177.
(Pause.)
A. Okay.
Q. Do you recognize the handwriting?
A. No.
Q. Okay. You may hand it back to me. We are done. Thank you.
Were you aware that Morgan Stanley was, with other banks, going to loan Sunbeam money to finance the purchase of the Coleman Company?
MR. MARKOWSKI: Objection to the form.
A. I knew that there was a bank syndication effort going forward, and I knew

NOT A CERTIFIED COPY

016851

Page 308

that Morgan Stanley and Wachovia had some roles in it, but I did not know whether they were taking any of the participation, and what their debt role was.
Q. Did you know, by the time of the bankruptcy, that Morgan Stanley Senior Funding had loaned money to Sunbeam in connection with the transaction?
A. I became quite familiar with that fact, yes.
Q. In fact, when Morgan Stanley Senior Funding was the largest creditor in the bankruptcy proceeding; was it not?
A. Yes.
Q. Do you remember what the size of Morgan Stanley's claim was in the bankruptcy proceeding?
A. It would be approximately 40 percent of 1 billion-650, or something like that.
Q. The date of the bankruptcy filing was what?
A. February, '01.
Q. One second.
Using your figures, because I can't lay my hand right on the Morgan Stanley claim

Page 309

at the moment -- you said it was approximately 40 percent of $1.6 billion?
A. It was slightly over 1.6, but I believe the 40 percent is correct.
Q. Okay. So that, if my math is correct, that is about $480,000,000, if your figures are correct; right? Actually it is more than that.
A. I don't think it is correct.
Q. My math is wrong. It is actually closer to 664 --
A. That sounds letter.
Q. I was multiplying it by 3 and not 4. So, Morgan Stanley Senior Funding filed a claim for approximately $664,000,000 in the bankruptcy, as you recall it; correct?
MR. MARKOWSKI: Objection to the form.
Q. You can answer.
A. On the secured debt.
Q. Unsecured --
On the secured debt --
THE REPORTER: Unsecured?
THE WITNESS: No.
A. On the secured debt.

Page 310

Q. Was the Morgan Stanley claim on the secured debt allowed in the bankruptcy proceeding?
A. I am not sure what "allowed" means.
Q. Recognized as being a valid claim.
A. I believe so.
Q. Based on your participation in negotiations of the acquisition, as you described it, and as limited as you described it, and your stewardship of Sunbeam Corporation after you became president, can you think of any reason why Morgan Stanley would have loaned in excess of $664,000,000 to Sunbeam to participate in this massive fraud that you described earlier?
MR. MARKOWSKI: Objection to the form. Lack of foundation.
MR. BIDEAU: Objection to the form.
A. Yes.
Q. What is that reason?
A. The loan syndication failed.
Q. Is that the only reason?
A. I do not believe Morgan Stanley had any intent of taking but a small fraction of that and anticipated taking substantial fees

Page 311

out; so, I assume there was very small investment and -- risk by Morgan Stanley on that.
Q. Do you know how much that was?
A. No.
Q. And, of course, you know the syndication did not go forward?
A. Yes.
Q. Correct.
Let me ask you to move forward from the end of February, 1998 to March, 19 -- excuse me. Withdrawn.
Let me move from the closing of the merger agreements -- withdrawn.
Let me move forward from the execution of the merger agreements on February 28th, now, up to about March 19th, 1998.
Do you recall seeing a press release that was issued by Sunbeam at about that time?
A. I recall seeing a press release about that time, about their first quarter.
Q. Let me show you a copy of that press release, which has been previously marked as Morgan Stanley Exhibit 39.
I handed you what has been marked as

25910

NOT A CERTIFIED COPY

Page 312

Morgan Stanley Exhibit 39.
Do you see that? Do you have that in front of you?
A. Yes.
Q. Is this the press release that was issued by Sunbeam that you recall seeing on or about March 19th?
A. Yes.
Q. Where were you when you saw the press release?
A. I don't recall.
Q. Were you still on vacation in Tucson?
A. I don't remember if I had come back to New York at that time or not.
Q. While you were on vacation in Tucson, did you, on occasion, fly back to New York on business and then return to Tucson to continue your vacation?
A. I don't remember.
Q. Would -- withdrawn.
When you saw the press release -- withdrawn.
What were the circumstances that, under which you saw the press release? For

Page 313

example, was it sent to you? Did you see it on a financial wire?
A. I don't recall. I don't recall how it got to me.
Q. Did you read it when you saw it, the --
A. Yes.
Q. Did you discuss it with anyone?
A. I believe I did, yes.
Q. Who did you discuss it with?
A. It could have been members of senior management at Coleman, members of MacAndrews & Forbes, or both.
Q. As you sit here today, do you have a specific recollection of speaking to anyone at Coleman?
A. I don't know who I talked to about it, but I do remember it generated some discussion.
Q. As you sit here today, do you have a specific recollection of who you talked to at MacAndrews & Forbes?
A. No.
Q. Did you have more than one discussion about the press release?

Page 314

A. I don't recall.
Q. What do you recall about the discussion that you had with either senior management at Coleman or MacAndrews & Forbes, or both, if that be the case?
A. That it was not terribly surprising that they were below on sales and we had already somewhat discounted their financial strategic plan, including 1997. But it was unusual in that it only talked about revenues, which would be the secondary important item, and did not speak to any impact on company profits, and implying that despite the shortfall, that the analysts' estimates of profits were unchanged.
Q. Did MacAndrews & Forbes ask you to do anything as a result of the press release, such as make a phone call, talk to somebody?
A. Not at that time, no.
Q. Did anyone at Coleman ask you to take any actions following your discussions about the press release, such as talk to someone at Sunbeam?
A. No. It would not -- Coleman would not have asked me to do that.

Page 315

Q. Am I correct, sir, that you did not do --
Withdrawn.
Am I correct, sir, that following the issuance of the press release and your learning of the release, that you really did not take any action as a result of the press release because you did not view it as your problem?
MR. BIDEAU: Objection to the form.
A. Well, if you took it at its face, there was no problem. I just thought it was odd.
Q. My question was, sir: As a result of -- I will withdraw the question.
My question to you was, sir: Following your receipt of the press release, am I correct that you took no action with regard to the press release, either individually or on behalf of MacAndrews & Forbes, because you did not view it as your problem?
MR. BIDEAU: Objection. He just answered that exact question.
MR. BEMIS: The objection is asked

NOT A CERTIFIED COPY

Page 316

and answered.
MR. BIDEAU: That was the objection, you are right. It was asked and answered.
MR. BEMIS: He may answer again.
MR. MARKOWSKI: Objection to the form.
A. I continued to consider anything that could happen that could affect Coleman Company and its shareholders to be my problem; so, the answer to your question is No.
Q. Sir, let me ask you if you were asked the following questions and gave the following answers in your deposition, I believe in 2001. For the record, we previously marked that as Exhibit 443.
MR. BIDEAU: You may want to put your microphone back on.
MR. BEMIS: I will. Thank you.
MR. BIDEAU: I just noticed the videographer going -- (indicating).
Q. Turn to page 33. Tell me when you are there.
A. Okay.
Q. Sir, were you asked the following

Page 317

questions and did you give the following answers, under oath, in your deposition on June 20th, 2001, beginning at line 19, page 33:
"Question: Mr. Levin, I have handed you a printout of a press release that was issued by Sunbeam on March 19th, 1998, and I invite you to read it -- but, in particular, the first two sentences relate to sales, the possibility that sales would fall below Wall Street estimates. And it says, 'But net sales are expected to exceed 1997 first quarter net sales of 253.4 million.'
"Answer: Yes.
"Question: Do you see that language?
"Answer: Yes.
"Question: Now, do you recall that the Coleman acquisition occurred at, I think it was March 30th or 31st of 1998?
"Answer: I believe it was March 30th.
"Question: Does this help refresh your recollection about whether or not you saw this press release before the

Page 318

acquisition was closed?
"Answer: Yes. I did see this before the acquisition closed.
"Question: After you saw this press release, did you undertake any actions in response to the press release?
"Answer: No, I -- I viewed this as not my problem at the time."
Were you asked those questions and did you give those answers under oath in 2001?
A. Yes.
MR. MARKOWSKI: Objection to the form.
(Witness and counsel confer.)
Q. Following the issuance of the press release, my understanding is that you did not take any steps at anybody's direction to contact Sunbeam; correct?
A. Not -- not to the best of my recollection.
Q. You did not take any steps, following the issuance of the March 19th press release, to contact Arthur Andersen, Sunbeam's auditors; correct?
A. Correct.

Page 319

Q. Did you take any steps to contact Ernst & Young, the auditors of Coleman, to ask them about the contents of the press release?
A. No. Not that I recall.
Q. Did you take any steps to contact anyone at Morgan Stanley after the issuance of the press release?
A. No.
Q. Did you take any steps to contact anyone at Credit Suisse First Boston after the issuance of the March 19th press release?
A. No.
Q. Are you aware of anyone at MacAndrews & Forbes that, following the issuance of the March 19th press release, and up to and including the date of the closing of the merger agreement, March 30th, 1998, made any contact with Sunbeam to discuss the March 19th press release?
A. I am not aware of what discussions took place, if any.
Q. Are you -- as you sit here today, are you aware of anyone at MacAndrews & Forbes, after the issuance of the March 19th press release, and up to and including the

NOT A CERTIFIED COPY

Page 320

closing of the transaction on March 30th, contacting anyone at Morgan Stanley about the contents of the March 19th press release?
A. I don't recall anybody doing it. They might have.
Q. Are you aware of anyone at MacAndrews & Forbes, after the issuance of the March 19th press release and up to and including the closing of the merger transaction on March 30th, 1998, contacting anyone at the accounting firm of Arthur Andersen to inquire about the contents of the press release?
A. I am unaware of anyone doing that.
Q. Following the issuance of the March 19th press release and up to and including the closing of the merger transaction on March 30th, are you aware of anyone at MacAndrews & Forbes contacting Credit Suisse First Boston to make inquiry of them about the contents of the March 19th press release?
A. I am not aware of it.
Q. Are you aware of anyone at MacAndrews & Forbes contacting anyone, outside of the company, and asking any questions about

Page 321

the contents of the March 19th press release?
A. I am only aware of what they asked me about it, and I told them, if you read it, it is odd, but on its face there is no problem.
And, therefore, it was not my problem, it was not their problem, there was really no action necessary.
Q. Is it my understanding, then, that you took -- you, personally, took absolutely no steps to contact Sunbeam after the issuance of the March 19th press release to make inquiry of Sunbeam about the contents of the press release; is that correct??
MR. BIDEAU: Asked and answered for the third time.
Q. I won't ask it a fourth time.
MR. BIDEAU: That would be good, and we will move this along.
A. Sorry. I hate to do this to you both, but would you repeat the question.
Q. It is my understanding that you took, that is you, personally, took absolutely no steps to contact Sunbeam after the issuance of the March 19th press release to make

Page 322

inquiry of Sunbeam about the contents of the press release; is that correct?
A. To the best of my knowledge, I assumed that, since this was a public press release, it was what it was, and it was absolutely factual, there was no fraud. It never occurred to me that there would be fraud in this situation, and I took it on its face, and felt there was no problem and no need to pursue it further.
Whether MacAndrews, Credit Suisse First Boston, listened to me, accepted it, I have no knowledge.
Q. You, personally, did not take any action; correct?
A. I, personally, took no action, other than expressed my opinions to MacAndrews & Forbes or Coleman or both. I just don't remember.
Q. You can hand the press release back to me. We are all done with it. You can hand the transcript back to me. Thank you.
You told us earlier that in 1998 you had contacts at Walmart that you, I think described as "good friends"; am I correct?

Page 323

A. Yes.
Q. Following the issuance of the March 19th press release, did you contact anyone, any of your friends at Walmart to see how Sunbeam was doing at Walmart?
A. As I said before, yes.
Q. When was that?
A. That was towards the end of April.
Q. So, in the period from March 19th through and including the closing on March 30th, 1998, you did not make any contact with your friends at Walmart; is that correct?
A. That is correct.
Q. Who is -- and if I asked you this, I apologize, but I can't remember -- who was the person at Walmart that you considered your friend that you could contact? And there may be more than one. I am not suggesting that there is just one.
A. It could have been a series of people, and I don't remember exactly who I talked to.
Q. Do you remember the names of the people that you could have contacted, now, again in 1998?

NOT A CERTIFIED COPY

Page 324

A. Do you want the whole list?
Q. How long is the list?
A. Five or six likely candidates, or possible candidates.
Q. Could you give us their names, as best you can remember?
A. I don't remember when the CEO transition took place. It could have been David Glass or Lee Scott.
Q. You have to go slow enough for the court reporter to take them down. David Glass?
A. Or Lee Scott, depending on when the CEO transition took place there. It could have been Tom Kaufman.
Q. Kaufman?
A. C-O-U-G-H-L-I-N. I am sorry, short-term memory loss on the hard goods senior merchandising manager. It could have been the grill buyer.
Q. Anyone else?
A. The president at that time, and I can't remember his name right now. I just don't remember the organizational structure, seven years ago.

Page 325

Q. Okay. Your recollection is that it is sometime in April that you spoke to one or more of these individuals?
A. Yes.
Q. Were you present at the actual closing of the merger transactions on March 30th, 1998?
A. I would -- I don't remember being there. Typically, not.
Q. Did you hear, at any point after the closing, what, if anything, transpired at the closing, other than the signing of the documents?
A. I don't recall anything special.
Q. So, as far as you know, it was a fairly routine closing?
A. I don't remember a routine closing ever, any time. They always seem to drag out for something or other. I don't remember what the issues were in this case.
THE VIDEOGRAPHER: Excuse me, ten minutes, counsel.
MR. BEMIS: Why don't we change the tape now.
THE VIDEOGRAPHER: We are now going

Page 326

off the record.
The time is 2:24 p.m., and this is the end of the tape labeled number 1 of number 2.
This videotaped deposition will continue on the tape labeled number 2.
Off the record.
(Recess.)
THE VIDEOGRAPHER: Stand by.
This is the tape labeled number 2 of volume 2 of the videotaped deposition of Jerry Levin, and we are now going on the record.
And the time is 2:26 p.m.
BY MR. BEMIS:
Q. Sir, you remember at the board of directors meetings of February 25th and 27th, 1998, Mr. Adam Emmerich from the Wachtel firm spoke to the board; do you recall that?
A. The minutes say that he did.
Q. Are you aware of any due diligence of any kind that was undertaken by the Wachtel Lipton firm on behalf of Coleman in connection with the merger transaction?
A. I believe they were doing routine

Page 327

due diligence, appropriate to the merger to public companies.
Q. And do you have any firsthand knowledge of what they did?
A. I don't remember anything distressing being reported to me.
Q. Do you remember anything being reported to you at all as to what, if anything, that they did?
A. I don't recall what our conversations were back then.
Q. The Coleman companies' auditors, you told us earlier, were Ernst & Young at the time of the merger transaction; correct?
A. They were or weren't?
Q. They were.
A. Yes, I believe so.
Q. Do you recall any due diligence that was of Sunbeam that was undertaken by Ernst & Young at any point up to the closing of the merger agreements on March 30th, 1998?
A. I seem to recall that they went to the audit work papers of Sunbeam, but I don't recall anything else.
Q. Okay. Who, do you recall at Ernst &

NOT A CERTIFIED COPY

014656

Page 328

Young -- strike that. What is the basis -- withdrawn.

Do you know who at Ernst & Young did that?

A. I am not completely sure that they did, but we tend to do that on transactions like this, and I think they did, and I am not sure who was involved.

Q. So, Ernst & Young, if they did review the audit work papers, they would have been reviewing Sunbeam's audit work papers -- that is, Sunbeam's auditors --

I will rephrase the question. That is terrible.

If Ernst & Young did a review of the work papers, would that have been a review of Arthur Andersen's work papers involving Sunbeam's audits?

A. Yes.

Q. Did Ernst & Young make any report to you or to the board of directors or to Mafco, if that be the case, as to the results of any review of Arthur Andersen's work papers of Sunbeam's financial statements?

A. No. We were ultimately completely

Page 329

blindsided by the problems.

Q. So, your auditors, as far as you know, based on their review, did not detect any of what you call, I think you referred to as the massive fraud at Sunbeam; is that correct??

A. I am quoting the Securities and Exchange Commission and the financial -- that was uncovered by my own financial people.

Q. But during, in the course of the Ernst & Young review of the Andersen work papers, if that, indeed, occurred, as you described it, Ernst & Young did not report to you that they had uncovered any massive fraud?

A. I don't -- yes.

Q. Did Ernst & Young report to you that they had uncovered any irregularities in Andersen's work papers, regardless of whether they are massive fraud or not massive fraud?

A. I don't remember anything that would be considered a material item.

Q. Did the Coleman Company authorize Ernst & Young to send a comfort letter to Morgan Stanley in connection with the debenture offering?

Page 330

A. I don't recall.

Q. Do you know what a comfort letter is?

A. Yes.

Q. Is it customary in a debenture offering such as you had in this case, for there to be comfort letters from the auditors of the two companies involved in the merger that is being financed by the debentures?

MR. MARKOWSKI: Objection to the form.

A. I don't know the answer to that question.

Q. What is a comfort letter?

A. Generally, I believe that it would be a letter from our existing auditors that things are still, whatever they were in the last audit report are still okay.

Q. Is it, it is a bring-forward from the last audited financial statements to the date of the comfort letter?

A. I think so.

Q. Let me show you what has been previously marked as Morgan Stanley Exhibit 243.

Page 331

(Pause.)

Q. Do you have Exhibit 243 in front of you, sir?

A. Yes.

Q. Have you seen this document before?

A. I don't recall seeing its.

Q. At any point in the -- withdrawn. You may hand that back to me if you have not seen it. Thank you.

A. Sorry.

Q. At any point in either the negotiations or up to the actual closing on March 30th, 1998 of the merger, did you ask to see a comfort letter from Arthur Andersen involving Sunbeam's financial statements?

A. I don't recall.

Q. You don't recall asking or you don't recall, one way or the other?

A. I don't recall, one way or the other.

Q. Did you understand that Arthur Andersen would issue a comfort letter in connection with Sunbeam's financial statements prior to the closing on March 30th?

A. It would be standard.

NOT A CERTIFIED COPY

016457

Page 332

Q. Was there someone at MacAndrews & Forbes or Coleman who was tasked with obtaining or reviewing a copy of the Arthur Andersen comfort letter?
A. If it was a condition of closing, I am sure that there was.
Q. In your employment lifetime, whether it be with MacAndrews & Forbes, or Pillsbury or the other companies that you have worked for, have you been involved in debt offerings by the companies that you worked with?
A. Yes.
Q. These debt offerings included instruments such as debentures?
A. Yes.
Q. Bonds?
A. Yes.
Q. In connection with those offerings, were there underwritings by securities houses such as Morgan Stanley?
A. They were underwritten by securities houses, yes.
Q. In connection with those securities underwritings, was it your understanding that the auditors of the companies issuing the

Page 333

securities would provide comfort letters to the underwriters?
A. I don't recall specifically how that worked.
Q. You recall that they are customary?
A. I believe they are customary, yes.
Q. Following the execution of the merger agreements and up to and including the closing of the transaction, merger transaction on March 30th, 1998, did CSFB, to your knowledge, perform any due diligence of Sunbeam?
A. Give me the dates again -- when did you start, I am not sure when you started.
Q. I will try again. Following the execution of the merger agreements, which was as of February 27th, 1998, and up to and including the actual closing of the transaction on March 30th, 1998, did CSFB, to your knowledge, perform any due diligence of Sunbeam?
A. I am unaware of anything that they did in that four-day period. Three- or four-day period.
Q. Actually, it is a month period.

Page 334

MR. BIDEAU: He is talking about February 27th to the end of March.
MR. BEMIS: I will try the question one more time, so that we have a clear question and answer for you.
Q. Following the execution of the merger agreements, which was as of February 27th, 1998, and up to and including March 30th, 1998, the actual closing of the merger transaction, did CSFB perform any due diligence of Sunbeam?
A. I do not know.
Q. Did you participate in any discussions at MacAndrews & Forbes about hedging MacAndrews & Forbes' position in Sunbeam following the merger transaction?
A. "Participate" would be a strong term. I was aware that they were considering it. It was not that they asked me -- you know, they just -- I knew that that was one of the things that they were looking at.
Q. How is it that you came to know this?
A. Somebody mentioned it. I heard it.
Q. So that, is that the extent of your

Page 335

knowledge of what was being considered with regard to hedging the securities?
A. Yes. I don't know if they did it or did not do it. I just heard that they were thinking about it.
Q. Did you, at any time, participate in any meetings or communications with anyone who was advising MacAndrews & Forbes on the possibility of hedging their Sunbeam securities?
A. Well, somebody told me. I don't remember who and when or where. But I was not participating in the process, in any way.
Q. Let me show you what has been previously marked as Morgan Stanley Exhibit 58. This is a press release dated April 3rd, 1998.
A. Thank you.
Q. Please take a moment and look at Morgan Stanley Exhibit 58 and tell me when you are done.
(Pause.)
A. Okay, I read it once, but I can't say that I memorized it. Please proceed.
Q. Have you seen a copy of this press

NOT A CERTIFIED COPY

011658

Page 336

release before?
MR. MARKOWSKI: You are excluding the fax cover page?
MR. BEMIS: Yes.
A. I don't know that I have seen the press release, but I saw this in the press.
Q. When you say you saw it in the press, you mean, like an article in the Wall Street Journal?
A. Yes.
Q. Did you discuss either the press release or what you saw in the Wall Street Journal with anyone at MacAndrews & Forbes?
A. I remember having discussions about this, and again, it could have been people at MacAndrews, people at Goldman, or both.
Q. Were these discussions with either people at Coleman or MacAndrews & Forbes at about the time of the issuance of the press release or the reporting in the press, as you identified it?
A. I would like to correct what I said before, having thought about it. Certainly with MacAndrews & Forbes, but not Coleman. Because the Coleman people have gone.

Page 337

Q. Let me rephrase my question.
A. Okay.
Q. Were the discussions that you had with the people at MacAndrews & Forbes close in time to the issuance of the press release or the reporting in the press, as you described it?
A. Yes.
Q. Who did you speak to at MacAndrews & Forbes?
A. That I am less sure of. It would be the usual cast of characters -- Perelman, Gittis, Schwartz, Maher, Nesbitt. It would be people within that group.
Q. Did you have more than one conversation or was there just one?
A. I don't recall.
Q. Whatever conversations that you had, do they -- do they held together as one for you now, as you sit here six years later?
A. Well, as I sit here six and a half years later, I do remember, in general, my reaction to this, and -- and discussions of this, which could have been done in one meeting or two or three. I just don't know.

Page 338

Q. Please tell me what you remember about your discussions in reaction to the April 3rd press release, Morgan Stanley 58.
A. Wow, that is a surprise. There are a lot of things in here that were really new, that we had no idea was in the works. In addition, missing the sales, given the previous press release by 5 percent below last year's first quarter, was quite extraordinary.
There are comments on grill sales which did not really make a lot of sense. For instance, we expected our grill sales, especially reorder business late in the quarter, a level that was not realized -- there is no first quarter reorder business. It simply doesn't happen seasonally. You are still loading the trade for the season. Though I admit it is difficult to forecast, but it is not a first quarter problem.
If the retailers were managing down their inventories, ah, you would have known about it.
And -- May 19th, whatever the date was of the press release, this would not come as a huge surprise, unless you were completely

Page 339

out of touch with your own business.
MR. BIDEAU: March 19th.
THE WITNESS: Excuse me. March 19th.
A. Then, of course, the management changes were complete news, that Uzzi, who had been highly touted, was just gone. That was a sign that there was something wrong, something had happened that we were unaware of.
Q. As a result of these discussions, and you said wow, what a surprise, were you asked by MacAndrews & Forbes to take any action?
A. Not at that time. Yes, not at that time.
Q. Are you aware of anyone at MacAndrews & Forbes, other than yourself, taking any action at that time, as a result of the April 3rd press release?
A. I am unaware of what they did.
Q. By April 3rd of 1998, were you back in your offices in New York from Tucson?
A. I don't recall when I was in New York and when I was in Tucson. I am sure it is a matter of record.

NOT A CERTIFIED COPY

Page 340

Q. Would that record be your diary that is with your tax records?
A. I think I have been asked these questions before, but -- it would be. Yes.
Q. Is there any other place that it would be of record where you were other than in the tax records and your planner, I think that you described for us on the first day of your deposition?
A. I would have to ask my administrative assistant what we have for that time period, if anything, left.
Q. Following the April -- the April 3rd press release and these discussions, did you have any discussions directly with Mr. Perelman about the press release, that you can remember?
A. I don't remember, as -- as talking to Mr. Gittis was essentially the same as talking to Mr. Perelman, they were very, very close.
Q. Did Mr. Gittis give you any instructions at all following the issuance of the April 3rd press release to do any follow-up about the results that Sunbeam

Page 341

announced on April 3rd?
A. I don't recall any.
Q. Do you recall being told by anyone at MacAndrews & Forbes that anyone else had been asked to do a follow-up on the April 3rd press release with Sunbeam?
A. I don't recall.
Q. All right.
MR. BEMIS: Off the record.
THE VIDEOGRAPHER: We are now going off the record.
The time is 2:50 p.m.
(Recess.)
THE VIDEOGRAPHER: Stand by. We are now going on the record.
The time is 3 p.m.
BY MR. BEMIS:
Q. You told me earlier that you knew Andrew Shore, the PaineWebber analyst; correct?
A. Yes.
Q. You respected him; right?
A. Yes.
Q. I am handing you what has been previously marked as Morgan Stanley Exhibit

Page 342

220.
(Pause.)
Q. Do you have Exhibit 220 in front of you?
A. Yes.
Q. Please take a look at it and let me know when you are finished. I have a few questions about that.
(Pause.)
A. Okay. I have read it, though I did not study it, in the interest of time.
Q. Fair enough. If there is anything that you need to look at, let me know. My questions are not very detailed on this.
First, did you receive a copy of this, from -- at some time?
A. I don't think so.
Q. There is a loop on the right-hand -- excuse me, the left-hand side of the first page of the document; do you see that?
A. Yes.
Q. Do you know whose marking that is?
A. No.
Q. Did you know that Andrew Shore downgraded Sunbeam to neutral from buy on

Page 343

April 3rd, 1998?
A. Yes. This is very widely publicized in the media.
Q. In the financial media?
A. Yes.
Q. As you sit here today, even if you did not see this copy of the Andrew Shore downgrade, did you see another version of it at some time?
A. I am sure I read the media and it covered a great deal of what was in Andrew's actual analyst report.
Q. Did you seen documents of this type before, in this format that you are looking at?
A. Similar, referring to analysts' reports?
Q. Yes. Analysts' reports. Would you call this an analyst report?
A. I would.
Q. As a result of -- withdrawn.
When you learned of the downgrade by Andrew Shore of Sunbeam, did you, on your own or at the request of anyone at MacAndrews & Forbes, talk to Mr. Shore?

NOT A CERTIFIED COPY

014660

Page 344

A. I don't recall doing so until a few weeks later.
Q. And that is later in April; right?
A. Yes.
Q. And, as I recall, it is sometime later in April that you were first tasked with doing a further investigation of Sunbeam; is that correct?
A. Yes.
Q. And that tasking came from either Mr. Perelman or Mr. Gittis; correct?
A. Yes.
Q. Was Mr. Shore the first analyst that you spoke to later in April?
A. I don't remember which analysts I spoke to of the group that covered the company. I know it was more than one. And what order I spoke to them and -- it would strictly be a question of scheduling meetings. I just, you know, probably called two or three or four whatever it was, and tried to arrange times to come in and see them.
Q. I am going to hand you back an exhibit that we looked at yesterday, which is Morgan Stanley Exhibit 168. Do you have

Page 345

Exhibit 168 in front of you?
A. Yes.
Q. There are analysts listed on the first page as sources of information. Do you see that?
A. Yes.
Q. Of course Andrew Shore is one of the analysts listed there; correct?
A. Yes.
Q. Now, from that list can you identify any other analysts that you spoke to in April, as you, as a result of your -- let me ask the question again, so that it is clear on the record.
From the list on Morgan Stanley Exhibit 168, can you identify for us any of the other analysts that you either spoke to in April or attempted to speak to in April as a result of your assignments from Mr. Perelman or Mr. Gittis?
MR. MARKOWSKI: Objection to the form.
A. I can't, but in the interest of trying to be helpful, I can tell you that I did not meet with Merrill Lynch and I did not

Page 346

meet with CIBC Oppenheimer and I did not meet with what should have been Goldman, Sachs, because I don't know these analysts.
Q. That leaves us with the Bear, Stearns analyst, Connie M-A-N-E-A-T-Y -- did I pronounce it correctly?
A. It is actually Connie Maneaty.
Q. Is that a woman or a man?
A. A woman.
Q. Did you meet with her?
A. I don't know. I might or might not have.
Q. The other individual that you did not identify was Justin Maurer. Did you meet with him?
A. Again, I might or might not have.
Q. Yesterday, when I showed you Morgan Stanley Exhibit 168, you said that there was information on the two pages of this document that you did not have access to; do you recall that testimony?
A. Yes.
Q. What information on these two pages did you not have access to?
A. Well, as I said, I did not meet with

Page 347

all of these analysts. That is first.
And second, I did not have access to any unpublished models by analysts.
And I did not have the unpublished S4.
I did have miscellaneous Coleman knowledge.
I had seen Sunbeam's internal strategic plan.
And I might have seen some of the published analysts reports; I just don't recall which, if any, I saw.
Q. Well, proceeding down to the next bullet, that I believe you were reading from, on the first page of Morgan Stanley 168, there is a bullet, "additional future sources of information," and the first one listed is "K-Mart 4/16 - all Sunbeam buyers"; do you see that?
A. Yes.
Q. Now, I recall you testified that sometime in April you believed you spoke to someone at Walmart?
A. Right.
Q. Is it about this time, April 16th?

NOT A CERTIFIED COPY

Page 348

A. Yes. Somewhere in there.
Q. Did you speak to any other Sunbeam buyers other than Walmart? There are two others listed here, K-Mart and Target.
A. I think I did both of those.
Q. Who did you speak to at K-Mart?
A. I don't recall.
Q. Who did you speak to at Target?
A. I also don't recall.
Q. All right. The Target reference refers to being tentatively 4/22, which I would read as April 22nd. Would you read it that way?
A. Yes.
Q. Would that be about the date that you believed that you spoke to someone at Target?
A. If I did, it would be in this time frame.
Q. What, specifically, were you asked to do by either Mr. Perelman or Mr. Gittis with regard to Sunbeam that led you to make the phone calls that you have identified and speak to Mr. Shore, as you have told us?
A. They wanted another perspective as

Page 349

to what was going on.
Q. When you say "what was going on," what do you mean by that?
A. In general, what was happening with the company.
Q. Are you aware -- withdrawn.
When you say "the company," you mean Sunbeam; correct?
A. There is only one left at this point, yes. Sunbeam.
Q. Before your assignment in April, as you have described it for us, are you aware of anyone at MacAndrews & Forbes contacting any of Sunbeam's customers, such as K-Mart, Target or Walmart?
A. I would have found that odd, had they done it.
Q. You would have found that odd in the due diligence process, for MacAndrews & Forbes to have made contact with those customers?
A. They would have asked me to do it.
Q. You did not do it, because you weren't asked?
A. I was not asked until sometime mid-April.

Page 350

Q. Just so we are clear, before the closing of the merger transaction on March 30th, 1998, no one at MacAndrews & Forbes asked you to contact any of Sunbeam's customers, such as Walmart, Target or K-Mart to see what the status of their relationship was with Sunbeam?
A. That would have been disastrous and probably illegal.
Q. We will deal with the illegality to someone else and we will leave the disaster to someone else. My question is: You did not do it because you weren't asked; is that fair?
A. I wouldn't have done it if I was asked, and it would have been totally inappropriate.
Q. You weren't asked and you did not do it?
A. No, they would not ask me to do something inappropriate like that.
Q. Before the closing on March 30th, 1998, of the merger transaction, you also never spoke to any analysts that were following Sunbeam; is that correct?
A. Yes.

Page 351

Q. And you did not do that because, indeed, you weren't asked to do it by MacAndrews & Forbes; were you?
A. That would also be illegal.
Q. It would be illegal to speak to an analyst about Sunbeam?
A. About merging our company with Sunbeam?
Q. I did not say about merging the company. Just speaking to an analyst about Sunbeam.
A. And what on earth would the analyst think I was doing?
MR. BIDEAU: Let's not have an argument here. Just ask the question and he will answer it.
MR. BEMIS: Fair enough. Fair enough.
Q. Mr. Levin, at any time before March 30th, 1998, were you asked by MacAndrews & Forbes to speak to any analysts about their opinions of Sunbeam?
A. No.
Q. Now, when you spoke to Mr. Shore, did you do this in a face-to-face meeting?

NOT A CERTIFIED COPY

299510

Page 352

A. Yes.
Q. Did you go to his office or did he go to your office?
A. I went to his office.
Q. How long did the two of you talk?
A. I would say, about an hour.
Q. Is this the only meeting that you had with Mr. Shore about Sunbeam?
A. I might have talked to him briefly after the analyst meeting took place.
Q. The analyst meeting that you are referring to is the one, I believe, was May 11th, 1998, that followed the second meeting that you had with Mr. Dunlap at Mr. Perelman's office; right?
A. Yes.
MR. BEMIS: Just one second.
Q. At this meeting with Mr. Shore, that lasted about an hour, what did you say to him and what did he say to you about Sunbeam?
A. I wanted to hear, firsthand, how he had reached his conclusions, and I remember having some specific questions because, from a business perspective, both his report and the statements of Sunbeam were a little muddled,

Page 353

and I wanted to get everything clear in my mind as to what he thought.
And I wanted to know if he had any additional information on the terminations and the departures of executives that took place, as he seemed to know before anybody else did what had happened.
I found that one of the executives had called Andrew and tipped him off that they were leaving, for some reason.
Q. Was this an executive at Sunbeam who had tipped Mr. Shore off?
A. Yes. I know "tipped" is a pejorative term. He just said I am leaving the company and it has been nice working with you. Whether it was Rich Goudis or Izzi, I do not remember -- he did know, Andrew knew before anybody else did about that fact.
Then there was an extended conversation about his personal life.
Q. Mr. Shore's personal life?
A. Yes.
Q. Did it have anything to do with Sunbeam?
A. Nothing.

Page 354

Q. Did you talk about Mr. Dunlap?
A. I am sure we did.
Q. Do you remember any of the specific questions that you had for Mr. Shore at this meeting?
A. Other than as I generally described, no.
Q. At the time of the meeting with Mr. Shore, Mr. Shore changed his rating from neutral to something -- something below that or was he still at a neutral rating on Sunbeam?
A. I don't remember.
Q. Was this meeting with Mr. Shore held with some condition of anonymity with regard to what was said at the meeting?
That is a poorly phrased question. Let me try again.
Was the meeting with Mr. Shore a meeting that you had agreed to hold as confidential and not disclose that the two of you had met, at least at that time?
A. No.
Q. Did you prepare any reports to anyone as a result of the meeting with

Page 355

Mr. Shore?
A. I don't recall preparing any written reports.
Q. Did you prepare -- well, that would be -- I will rephrase that.
Did you give someone an oral report of your meeting with Mr. Shore in April of 1998?
A. Yes. I gave MacAndrews & Forbes my report on what transpired.
Q. Who at MacAndrews & Forbes?
A. I don't recall, but it was -- it was the group I identified previously. Among the group I identified previously.
Q. And just because there have been a couple of groups, and I don't want to get confused later, it would be Mr. Perelman, Mr. Gittis, Maher, Nesbitt, that would be the group; right?
A. And possibly Barry Schwartz.
Q. And possibly Barry Schwartz.
What did you tell them about your meeting with Mr. Shore in April of 1998?
A. That I thought Andrew had figured it out and I agreed with his positions.

NOT A CERTIFIED COPY

01463

Page 356

Q. What had Andrew figured out?
A. That there were deep problems in the Sunbeam business. And I had supplemental data. I did not report to them only about the meeting with Mr. Shore. I reported to them about all I had done, more comprehensibly, in terms of my reading, my meeting with folks, and the knowledge I gained on what was going on in the grill business, that all transpired as one oral report.
Q. What other reading had you done as part of your investigation?
A. Whatever I needed to catch up, going back over the press clippings. I don't remember if there were any new filings at that point.
Q. Would these be, for example, historical press clippings about Sunbeam?
A. It would be things that happened over the past few weeks. I don't remember if the Barron's article had come out at that point or not.
There is --
Q. The Barron's article is in June, if that helps you?

Page 357

A. Then it hadn't. The press was starting to accumulate the situation at Sunbeam at that point.
Q. Did you go back and review any of Sunbeam's public filings with the Securities and Exchange Commission?
A. I don't think there are any new ones.
Q. Did you go back and look at any of the old ones?
A. I doubt it.
Q. Did your report include your communications with the customers, as you have already told us about?
A. Yes.
Q. And if you spoke to other analysts, did your report include their comments, as well?
A. Yes.
Q. You have told us, as part of your investigations, as you described it, you spoke to analysts, including Mr. Shore; you looked at some press clippings and other reading as you described it, and you had spoken to some customers of Sunbeam. Did you do any other,

Page 358

anything else, as part of your investigation?
A. Yes.
Q. What was that?
A. I talked to former Coleman employees, people who had left the company.
Q. What did they tell you?
A. That Coleman, which was the only part that they had access to, had become a disaster.
Q. Did they tell you why Coleman had become a disaster?
A. Um, yes. A number of issues.
Q. What?
A. One, they had put Russell Kersh in as the CEO of Coleman. He had showed up with two armed bodyguards for the meetings, and proceeded to state that virtually everything I did was terrible and I was a complete incompetent to my own people who had worked for me for many years.
They had made a number of operational changes, ranging from cutting off coffee to killing the pensions to starting to move the entire organization -- excuse me, that was not correct -- to start to move --

Page 359

to start the remainder of the Coleman organization to Boca Raton from Wichita.
And there were massive terminations. They had announced they were going to sell East Pack at a price that was far beyond its market value. They were attempting to do so.
That the plant operations had come to a complete halt because -- her name is Judith-something, that was head of operations and visited all of the plants and said you are no longer authorized to spend 10 cents without my permission, and then would not answer phone calls, e-mails or faxes.
And the equipment was stopping to work because they couldn't get approval to do anything.
It was a long list of truly irrational acts that had happened in an unbelievably short period of time.
They had eliminated the management of the outlet stores; so, there was literally no management, and they were running with a part-time supervisor out of her home.
If I sat here long enough I could think of dozens of incidents, but the report

NOT A CERTIFIED COPY

Page 360

was that they had made a complete mess of Coleman and, of course, it was dead in the middle of the season.
Q. Of its highest sales season?
A. Of its highest sales season.
And nobody was paying any attention. They were consolidating the sales force.
They were trying to teach appliance buyers to sell canoes and canoe buyers to sell toasters, and it was absolutely bizarre, and the whole thing was falling apart.
Q. So, I take it that the employees that you talked to were unhappy?
A. They were not employees; they were all former employees. And I refused to talk to any existing employees of the company.
Q. Did you do anything else, not beyond what you told me, which now includes talking to former Coleman employees, before you completed --
A. I can't recall anything else.
Q. Let's go back to the meeting that you had where you delivered your report orally to MacAndrews & Forbes.
The first thing you told me, of

Page 361

course, was that Mr. Shore had figured it out and that Sunbeam had deep problems. What were the deep problems that he identified, Mr. Shore?
A. Well, the biggest ones were in this report that you gave me, that they had heavy sales activity at the end of 1997, which was moving sales forward from the first quarter of 1998.
So, it diminished the 1998 sales activity. He picked up something that no one else had -- including myself, because I was not aware of the incident.
But in 1997, the first quarter, they had a very bad shipping quarter, because they had attempted to implement the system without redundancy, turned it on, and it did not work and they couldn't ship for weeks.
So, the comparison to, between 1998 and 1997 should have been a very positive one, but he realized that the comparison was even worse, when he took into account that 1997 was a bad year.
The --
Q. Anything else? I am sorry.

Page 362

A. I don't remember all of it. But the key items that he talked about were he had -- he had put them forward in his analyst's report on April 3rd. He did not hold anything back.
Q. What else did you tell the MacAndrews & Forbes group, other than what Mr. Shore told you?
A. I don't -- well, other than what Mr. Shore told me, you mean, about --
Q. Yes.
A. About what Mr. Shore said?
Q. Let me try again. It was a poor question.
Have you told me everything that you told MacAndrews & Forbes, the MacAndrews & Forbes group about Mr. Shore's views of Sunbeam?
A. I can say, with 100 percent certainty, I have left something out because of the time, you know, the years that have passed, but I think I got the important points.
Q. What else did you tell MacAndrews & Forbes about your investigation, which

Page 363

included the other items that you told us about the press clippings, interviews with employees, what have you?
A. Well, the net of it was that Sunbeam had serious problems that had never been disclosed to us, and those problems were now being spread to the Coleman Company. And they were putting Coleman in terrible condition, in a remarkably short period of time.
Q. Did you -- withdrawn.
In the period between February 20th, 1998, which is when you said you got actively, the negotiations were back on and you got actively involved in the signing of the merger agreements, on February 27th, are you aware of anyone from MacAndrews & Forbes visiting any of Sunbeam's operations?
A. Are you saying in the -- between the time of February 20th and signing or -- or between then and closing?
Q. Signing.
I will rephrase the question.
Between then and signing. I understand.
A. Too many dates.
Q. Too many days and too many dates.

NOT A CERTIFIED COPY

01665

Page 364

Between February 20h, 1998, which is the day that you believe you returned from Puerto Rico, and the execution of the merger documents, which is February, as of February 27th, 1998, are you aware of anyone from MacAndrews & Forbes visiting any of the Sunbeam operations?
A. No, I am not.
Q. Are you aware of anyone from CSFB, the investment banker advising Coleman, visiting any of Sunbeam's operations?
A. I don't recall.
Q. How about Coleman's attorneys, did they go visit any of Sunbeam's operations?
A. I am unaware of anyone doing that.
Q. Are you aware of anyone from MacAndrews & Forbes going over and visiting the data room that had been set up at the Skadden Arps law firm about Sunbeam's operations?
A. I don't know what they did to obtain the data that they had.
Q. Do you know if they even went over and looked at the data that was at Skadden Arps and that had been set up by Sunbeam for

Page 365

review in connection with a possible acquisition?
A. I don't know.
Q. In the period after the execution of the merger agreements, February, as of February 27th, 1998, let's go all the way up now to April 30th, 1998, the closing, are you --
MR. BIDEAU: You mean, March 30th? You said April 30th.
MR. BEMIS: I did. I apologize, I will try again.
Q. In the period after the execution of the merger agreements, which are dated as of February 27th, 1998, and going forward to March 30th, 1998, the date of the actual closing, are you aware of anyone at MacAndrews & Forbes going to any Sunbeam plant, facility or office, to do any due diligence of their method of operation?
A. I am unaware of any.
Q. In fact, didn't you tell me that you were told that you were not even to go to work at Coleman following the February, the February 28th execution of the merger

Page 366

agreements; isn't that right?
A. That is correct.
Q. And you did what you were told, you did not even go to work; right?
A. I attempted to help them, but they rejected every offer.
Q. Well, so, you knew at least that as of February, as of the time that they rejected every offer, that Sunbeam was going to reject any help that you were prepared to offer them, to integrate the two companies; you knew that, right?
A. Yes.
Q. And are you aware of any investigation by CSFB between February 28th, 1998 and March 30th, 1998, of Sunbeam's offices, manufacturing facilities, warehouses, retail outlets, anything like that?
A. I am unaware of any.
Q. Are you aware of MacAndrews & Forbes' or Coleman's, if that be the case, attorneys, after February 28th, and up through March 30th, doing any investigation of Sunbeam's facilities, its plants, its warehouses, its retail outlets, anything like

Page 367

that, doing any type of investigation?
A. I am unaware of any.
Q. From the beginning of the first discussions with Mr. Dunlap and Sunbeam, about the acquisition of Coleman, all the way up to the date of the closing on March 30th, 1998, are you aware of any MacAndrews & Forbes employee or person representing them, whether it be an investment banker or an accountant, or an attorney, going and visiting any of Sunbeam's manufacturing facilities?
A. I am unaware of any.
Q. Are you aware of anyone in that group investigating or going to visit, if you will, any of Sunbeam's retail outlet facilities, as you have described them?
A. Other than myself, I am unaware of any.
Q. Are you aware of any MacAndrews & Forbes person going to visit either -- the home office of Sunbeam in Boca Raton?
A. It was in Delray, Florida.
Q. Sorry. Delray, Florida.
A. I am unaware of any.
Q. What did MacAndrews & Forbes do as

NOT A CERTIFIED COPY

Page 368

due diligence up to March 30th, 1998, other than attend the February 23rd, 1998 meeting that you have described, that you have described to us and that we went over looking at MS 84? What else did they do?
A. They assumed that the public filings were accurate.
Q. Anything else?
A. I know they went through contracts. I know they looked at, I believe they went through the accountants' work papers. I believe they acted responsibly and in a way that is very appropriate for public companies that are trying to put together a transaction under the veil of secrecy and confidentiality. I find no fault with what they did.
Q. Without asking you to opine on fault, as I understand it, all you can tell me that MacAndrews & Forbes did by way of due diligence is look at public filings, perhaps look at the work papers of Arthur Andersen, but you don't know that, one way or the other, for sure; correct?
A. Correct.

Page 369

Q. And attending a meeting on February 23rd, 1998, that's all; isn't that right?
A. From my perspective, and my recollection, and I don't remember specifically what was done, that is correct.
Q. After your report to the MacAndrews & Forbes team, as you have described it, did they give you any further assignment to do any -- I will withdraw the question.
After your report to the MacAndrews & Forbes people following your April investigation, did you get any further assignment from MacAndrews & Forbes to do anything further with regard to Sunbeam?
A. Yes.
Q. What was that?
A. I don't know how it came about. But they -- it was either the board or Michael Price or Al Dunlap, but they had all agreed that Al Dunlap needed a successor, and they asked if I would help or if I had any ideas on the search, as I knew the industry reasonably well and the kind of people that they would be looking at.
Q. Was this at the time of the board

Page 370

meetings in June of 1998, when Mr. Dunlap was discharged?
A. Well, it was before that, obviously.
Q. How soon before that?
MR. BIDEAU: Did you say his successor?
THE WITNESS: A potential future successor, somebody who could run the day-to-day of the business, they were looking for either a president of the company, president and chief operating officer type.
Q. When did this happen, that you were asked by Mr. Price or Mr. Langerman, as I recall your testimony?
A. I don't think Mr. Langerman was there, in this particular meeting.
Q. Maybe I misheard you. I will ask another question.
You were asked by, I believe you said Mr. Price --
A. I was asked by Mr. Perelman and Gittis to assist, trying to find some ideas for our potential successor.
Q. When did Mr. Perelman and Mr. Gittis

Page 371

make that request of you?
A. It was while all this turmoil was going on.
Q. Was it before the analyst meeting of May 11th, 1998?
A. I don't recall it. It was in that range, it was -- it was probably towards the latter part of May.
Q. After Mr. Perelman had given Mr. Dunlap the proxy for the shareholders' meeting that year; correct?
A. I think so.
Q. Between the date of your oral report to the MacAndrews & Forbes team about your April investigation and this request, as you have described it, sometime in May, to think about a possible president for Sunbeam, were you given any other assignments by MacAndrews & Forbes related to Sunbeam?
A. I don't recall any.
Q. Now, you did attend the meeting with, as you have described it yesterday, with Mr. Dunlap, in anticipation of the analyst call in May of 1998; right?
A. Yes. That was the culmination of

NOT A CERTIFIED COPY

016657

Page 372

the assignment that they gave me.
Q. So, after the analyst call -- strike that.
Am I correct that it was after then, the analysts' call, that Mr. Price and you began to think about a, coming up with the name of a possible president of the company, that is Sunbeam?
A. It was not just maybe. They had a headhunter who was already engaged to be doing this.
Q. Sunbeam did?
A. Yes.
Q. Who was the headhunter?
A. I don't remember.
Q. Do you remember the company?
A. It could have been Russell Reynolds, but -- Russell Reynolds or Spencer Stuart, one or the other.
Q. Spencer Stuart, right?
A. It was one or the other. It was not Heidrick.
There are only three firms likely.
And they were very unhappy about anything that had turned up in that search and

Page 373

I do remember being asked to attend the meeting with Price and Perlman to talk about who -- giving my ideas of who the possible successors could be.
Q. There was this meeting between yourself --
A. I am using the term "successors" probably, perhaps, unwisely. That is about the possible president and chief operating officer at that point.
Q. But there was a meeting between yourself, Mr. Price and Mr. Perelman where you did discuss this possible president, as you described it, of Sunbeam?
A. Yes.
Q. When did that meeting take place in relation to the board of directors meetings when Mr. Dunlap was terminated?
A. I can't be precise about that, but it was some time after -- I am almost sure it was after the analyst meeting, which was May 10th, we decided earlier.
Q. I think it is May 11th, but we are close.
A. May 11th. And obviously before June

Page 374

15th; so, somewhere in there.
Q. Where was this meeting held with Mr. Price, Mr. Perelman and yourself?
A. In Mr. Gittis's office, and I assume Mr. Gittis was attending, also.
Q. How long did the four of you talk?
A. Let's say, a half hour to an hour.
Q. What was said?
A. I had a few ideas.
Q. Yes, but what was said?
A. Oh, that they were serious about strengthening the management team. They realized that Mr. Dunlap had some deficiencies in terms of managing the day-to-day business. They were completely committed to him, as, as Mr. Price was completely committed to him, as remaining the chairman and the CEO. Mr. Perelman probably would have liked a complete change.
Q. Did you express an opinion?
A. That it would be difficult to fill that job with Mr. Dunlap as the CEO.
Q. What was the outcome of the meeting, between the four of you?
A. I came up with one candidate who

Page 375

they did interview, who ultimately -- it did not work out. I don't know if he turned the job down or they turned him down.
Q. Who was that?
A. It is Charles, and I have been trying to remember his last name -- he came from the Duracell organization. It was Nacho Perini. It was his number 2, who is, after they sold Duracell to KKR, most of their team had left, and he had been very successful there and seemed to be an appropriate kind of individual to come in.
But I can't speak as to what was on their minds when that did not work out, but I do know that there were conversations.
Q. After you had this meeting with Mr. Perelman and Mr. Price and Mr. Gittis, did you ever get any further assignments until you got the phone call while you were in New York, as I think you said you were going to the movies and asked to come to the board meeting?
A. I don't recall any.
Q. So, the next thing of substance that happens in regard to Sunbeam and you, anyway, is the cell phone call as you were going to

NOT A CERTIFIED COPY

Page 376

the movies, where you were told that Mr. Dunlap has been terminated?
A. Right.
Q. Do you still have 168 in front of you?
MR. BIDEAU: Yes.
Q. Could you just turn to the second page and tell me if there is any information on this page that you believe that you did not have access to. I should have asked you this earlier, but we got sidetracked. I am now on the second page.
A. Well, I don't know that I had all of the analysts' reports, or any for that matter. Point one.
I did not have the analysts' models.
The point 3 is the same problem, and the analysts' reports -- again, I did not have the analysts' models.
Point 5.
Point 6 refers to the analysts models. I did not have access to the M&F model. And, I guess -- all right.
The industry growth rates, realistic and -- high, single digits, I certainly knew

Page 377

that industry growth rates were not 20 percent, that was common knowledge. And again, it refers to the analysts' models. I did not have the M&F model. I did not have the analysts' model. Under SOC, analysts include 100,000,000 of Sunbeam loaded -- in 1990 sales -- in 1998 growth rate, that subsequently became clear to me that they had really pushed hard at the end of 1997 to make the numbers, stealing sales from 1998.
Q. Let me ask you, right there, when you are on that bullet under SOC, and it, as I read it, "Analysts include 100,000,000 of Sunbeam 'loaded' - 1997 sales in 1998, and 1998 growth base."
Did I read that correctly?
A. Yes.
Q. As I understood what you were saying, there were $100,000,000 of sales in 1997 that were included in the 1998 growth base, but in someone's view it should have been accounted for in 1998; is that fair?
MR. MARKOWSKI: Objection tots form.
MR. BIDEAU: I think you had it backwards.

Page 378

Q. Maybe I did.
I will try again. As I read, as I understood what you just told me, the analysts included $100,000,000 of loaded in 1997 sales, in the 1998 growth base; is that fair?
MR. MARKOWSKI: Objection to the form.
A. Let me try to answer in my own words -- what I understand this to be, because --
Q. Answer --
A. -- around here a while longer.
When they built their model, they used, as a base, the 1997 base.
Q. This is the analysts?
A. The analysts.
Q. Right.
A. So, that is the first year. And then they took growth assumptions off of that base to build their projections, and forward.
What this says is 1997 was overstated by $100,000,000.
Q. Doesn't it also say, on the next line, that the M&F, that MacAndrews & Forbes' model reduced the '98 base by $100,000,000?

Page 379

A. It says that they took it out, when they did their model.
Q. When MacAndrews & Forbes did their modeling, they took out the $100,000,000 of loaded sales from their base figures; didn't they?
MR. MARKOWSKI: Objection to form.
Q. According to this, lack of foundation?
A. I don't know that.
Q. Isn't that what it says?
MR. BIDEAU: Same objection.
A. I don't know which model. I know they did a more conservative model for 1998. We saw that in the earlier data. And that might be what they are referring to.
Q. Just -- just so we don't -- the transcript is a little bit clearer. I am referring now to the first bullet point under SOC, and the line that reads: " -- M&F model reduces base '98, base $100,000,000." Do you see that line?
A. Yes.
Q. And do you understand that to mean that the MacAndrews & Forbes model had,

NOT A CERTIFIED COPY

016469

Page 380

indeed, reduced the growth, the 1998 growth base by $100,000,000 in one or more of its internal models?
MR. BIDEAU: Objection to the form and lack of foundation.
A. You threw in something, the '98 growth base. I think what really happened is they reduced the '97 base from which they are building their growth model by $100,000,000.
Q. Is that what you understand the MacAndrews & Forbes model to be?
A. I think that is what they did. There are other elements in that bridge -- remember we talked about that.
Q. Now, continuing on, the second page of Morgan Stanley Exhibit 168.
Are there any other of the, of these bullet points, and there are only four left, that you did not have access to?
A. I was having trouble understanding this point.
Q. Which point?
A. The fourth one, the second SOC point.
Q. Bullet.

Page 381

A. What they seem to be saying here is Sunbeam had put in their growth model, for example, the introduction of coffee-makers, which was a logical thing to do under the Sunbeam brand. But what they did not count was they made the acquisition of Mr. Coffee, which is coffee-makers. So, there seemed to be a double-count, and that is true. That is also true with smoke --
Q. Again, these are the analysts, the analysts and the Sunbeam plants that are being referred to in this paragraph, as you read it?
A. Yes, these are the plans that Sunbeam must have communicated to the analysts, the concepts that the analysts used.
And, as the same thing, introduced a Sunbeam-branded smoke and CO-detector, while they bought First Alert. They were going to introduce s Sunbeam brand scale, and they bought Healt-O-Meter. So, it is double-count.
Q. With regard to the next group, which is Coleman, there are references to Coleman margins being at certain levels.
And, apparently in the models, and then analysts' estimates, which were

Page 382

different -- I will withdraw the question.
Do you see the first bullet?
A. Yes.
Q. Is that information that you had access to?
A. I don't know where these numbers came from.
Q. Okay. The last two items under the heading of "Coleman," is this information that you had access to or you don't know where the numbers came from?
A. I don't know what the effect of Japan they are referring to is.
In the second, the last point, I believe what they are referring to is that they continued to use the roughly $100,000,000 of Coleman safety and securities sales in their model, even though we divested it at the end, at the end of the plan. Divested it very early -- yes, very early in the year of 1998.
Q. Now, I recognize that you told us that you did not think that you prepared this, notwithstanding the JWL that appears in the footers on both pages.
Knowing the personnel at MacAndrews

Page 383

& Forbes, who would be the most logical person to have created a document like this, with the information that you have reviewed?
MR. MARKOWSKI: Objection to the form.
A. I don't know. The only analyst that I knew that was working on this was Will Nesbitt, and apparently he did not do it; so, I don't know.
Q. When you say "apparently he did not do it" --
A. I thought I was told that somewhere along the line.
Q. Not by me you weren't.
A. Okay.
Q. Is this something that you would expect Mr. Perelman to create, that is MS 168?
A. There is zero probability of that.
Q. How about Mr. Schwartz?
A. A lower probability than zero.
Q. Than zero?
A. Yes.
Q. How about Mr. Gittis, how about him?
A. No. He is right there --
Q. With the zeros.

NOT A CERTIFIED COPY

Page 384

A. This is not what he would do.
Q. How about Mr. Maher?
A. It could be. It is possible that he was of the skill base to do this, though I don't think he has actually done analyst work directly for a few decades.
Q. So, that leaves us with the team with Mr. Nesbitt?
A. That is my conclusion.
Q. Okay. That's all we have for that. You can set that aside.
I will hand you now what has been previously marked as Morgan Stanley Exhibit 167.
A. Thank you.
Q. I have handed you what has been marked as Morgan Stanley Exhibit 167. You are shown as being copied on this document. Did you receive it?
A. I don't recall, but I assume I did.
Q. Looking at the document, there is a, there is a summary below each of the analyst's names, and it refers to there having been a conversation with the analysts. Do you see that?

Page 385

A. Yes.
Q. Now, did you speak to any of the three analysts at any point before you became president of Sunbeam, about Sunbeam?
A. No.
Q. Did you discuss this document or the contents of it with Mr. Perelman?
A. I don't recall doing so.
Q. Do you recall discussing it with any of the other individuals who are copied on it, which include Mr. Drapkin, Mr. Maher and Mr. Gittis?
A. I don't recall any conversation about this.
Q. Okay, you can hand it back to me.
Did you see the June 6th, 1998 Barron's article when it was published, and that is the article about Sunbeam?
A. Yes.
Q. And what were the circumstances that you came to see it?
A. That somebody said that I should read that article.
Q. I take it you did read it?
A. Yes.

Page 386

Q. And what was your reaction to the article, when you read it?
A. Well, at that point we suspected that, clear indications, I should say, that there were serious signs of problems within the new Sunbeam company. This made some allegations that were brand new, I recall, as to the way they were accounting for things. And I found it troubling.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 74.
This is a copy of the Barron's article. It is not a photocopy of the actual article, although I do have one, but you can't read the photocopy; so, we printed out one separately. I will hand that to you, sir. I have handed you what has been marked as Morgan Stanley Exhibit 74.
Can you just identify this for me as the Barron's article that you read in June of 1998 about Sunbeam?
(Pause.)
A. Okay.
Q. My only question, at this point, is: Is this the article that you read in June of

Page 387

1998 about Sunbeam?
A. It has been so long, I really did not remember much of this text, but I believe it is.
Q. Following this article, you, shortly thereafter, got the phone call on your way to the movies and became the new president of Sunbeam; right?
A. Yes.
Q. Let me show you some -- a document previously marked as Morgan Stanley Exhibit 337, concerning certain meetings with Sunbeam bankers on June 18th and 19th of 1998. Do you have Morgan Stanley Exhibit 337 in front of you?
A. Yes.
Q. Have you ever seen this document before?
A. I do not recall.
Q. You are shown as -- sorry. I did not mean to interrupt you. You are shown as being in attendance at a meeting on June 18th and 19th, at the offices of MacAndrews & Forbes with certain banks to discuss Sunbeam Corporation. Did that meeting take place?

NOT A CERTIFIED COPY

011671

Page 388

A. We had a number of meetings back then, but -- I am sure that this took place, and Mr. Maliker was quite accurate in his note-taking.
Q. Mr. Maliker is, Molitor, I think, is --
A. Molitor.
Q. -- is the author of this document; is that correct?
A. That is what it says.
Q. Under item number 2, headed "SEC inquiry"; do you see that?
A. Yes.
Q. The third sentence reads: "According to Gittis and Engelman, the questions raised by the Barron's article are without merit." Do you see that?
A. Yes.
Q. Were you present -- or, first of all, did they say that, those two gentlemen?
A. I believe so.
Q. And you were present when they said it?
A. Yes.
Q. Did you believe it to be true, that

Page 389

the Barron's article was without merit?
A. The most serious aspects about it we had discussed during that week with Arthur Andersen, and to say the questions are without merit -- the blanket, with all due respect -- I doubt that it is actually exactly what they said and what they meant.
But the, you know, the real critical issues about the accounting Arthur Andersen had testified constantly in the course of the week that there were no problems, that everything was okay, and I think they were relying on Arthur Andersen to make that comment. There were business issues in this article that, the Barron's article, that clearly were true.
Q. Am I correct that in the week or so before this, these meetings on June 18th and 19th, that there had been discussions that you were aware of with Arthur Andersen about the accounting issues raised in the Barron's article? Is that fair?
A. Yes.
Q. And is it fair to say that you were a participant in some of those discussions?

Page 390

A. Yes.
Q. And is it fair to say, further, that Arthur Andersen affirmed to you in those meetings that there were no accounting problems, as written about in the Barron's article?
A. That is correct.
Q. And you relied upon what Arthur Andersen, certified public accountants, told you at this time; is that correct?
A. During that week, yes.
Q. You relied on it, at least to the extent that that is what you told or Mr. Gittis and Mr. Engelman told Morgan Stanley, and I believe it is Bank of America at this meeting; correct?
A. Yes.
Q. And these banks had loaned hundreds of millions of dollars to Sunbeam at the time of this meeting; hadn't they?
A. Yes.
Q. When was it that Arthur Andersen -- strike that.
Did there come a time when Arthur Andersen announced -- or, perhaps better,

Page 391

articulated, said to Sunbeam that Sunbeam could no longer include Arthur Andersen's opinion with regard to Sunbeam's financial statements?
A. Yes.
Q. When was that?
A. Some weeks later, as I recall.
Q. Can we refer to that as Arthur Andersen withdrawing its opinion from Sunbeam's financial statements?
A. They refused to stand behind the financial statements at that point.
Q. This was several weeks after June 18th or June 19th, when these meetings with the banks, with these meetings with the banks; correct?
A. It was some weeks, it may not have been several. It may have been just a few.
Q. Whether it was one or two weeks after June 18th, am I correct that that announcement by Andersen in June was the first time, to your knowledge, that Andersen had ever said that the public could not rely upon Arthur Andersen's certification of Sunbeam's financial statements?

NOT A CERTIFIED COPY

Page 392

A. I don't know that they made an announcement. I think it was just that they were unwilling to stand behind, for some filing that we had to make, and I can't remember what the filing was.
Q. It was a filing by Sunbeam; correct?
A. Yes.
Q. It was a filing in connection with the registration of certain shares that were to be issued in connection with the Coleman Sunbeam merger; right?
A. It sounds reasonable. I don't recall what it was, but I know it all revolved around the filing that we were trying to make.
Q. Whether it was an announcement or Andersen just told Sunbeam, this statement by Sunbeam that they were, in effect, withdrawing their opinion, was the first statement that you were aware of, was it not, that Sunbeam was no longer going to stand behind its previous audits?
A. That the auditor was -- Arthur Andersen was no longer going to stand behind it.
MR. BIDEAU: I think you misspoke.

Page 393

You said Sunbeam --
MR. BEMIS: I will rephrase the question.
MR. BIDEAU: Sunbeam a couple times.
Q. Whether the statement by Andersen is characterized as an announcements or something else, whenever Andersen told you that they were no longer going to allow their opinion to be used in connection with Sunbeam's financial statements, this was the first such statement by Sunbeam -- excuse me, by Andersen that you are aware of; is that fair?
A. It was the first time that they acknowledged it, yes.
Q. At the time that you learned that Andersen was withdrawing its opinions on Sunbeam's financial statements, did Andersen tell you why?
A. I think it was more that we told Andersen why.
Q. What did you tell Andersen why?
A. Doing our own investigation, by the time we hit the second week, we had stumbled over so many questionable entries and policies and practices, that we doubted Andersen was

Page 394

going to stand behind their financial statement. They insisted that they were for a period of time, and we kept proceeding, and we had at least three meetings with Andersen where they absolutely confirmed that they were going forward, despite all of the things that we had found, and then one night, overnight, there was, it was reversed, probably, out of their Chicago headquarters, they made the decision not to.
Q. Was there a person at Arthur Andersen who communicated Andersen's decision to withdraw their opinions?
A. Well, the local partner was doing most of the communications, Fort Lauderdale partner. I am not sure that he was the one that actually communicated the reversal, and I can't remember how that happened.
Q. Was the partner that you were referring to Mr. Harlow?
A. Yes.
Q. Now going forward from June 18th or 19th --
MR. BIDEAU: He is done with this.
Q. Let me show you a document marked as

Page 395

Morgan Stanley Exhibit 262. Do you have Exhibit 262 in front of you, sir?
A. Yes.
Q. These are minutes of the -- of the special -- excuse me, these are minutes of the special meeting of the executive committee and of the audit committee of the board of directors of Sunbeam Corporation, dated June 29th, 1998. You were a member of the audit committee, correct, of Sunbeam?
A. No.
Q. You were not. Were you a member of the executive committee?
A. Yes.
Q. Mr. Shapiro, at this time, was he a member of the audit committee?
A. I don't believe he was a member of the board.
MR. MARKOWSKI: Could I get a copy of the exhibit? Could you pass a copy over?
MR. BEMIS: I will pass a copy over. I am sorry about that.
MR. MARKOWSKI: Thank you.
Q. Were you in attendance at this

NOT A CERTIFIED COPY

Page 396

meeting on June 29th, 1998, referred to in the minutes of the committee?
A. Yes.
Q. Was it at this meeting that Andersen -- strike that.
Had Andersen, by the time of this meeting, and I direct your attention to page -- I think it is page 3 of the minutes, under the heading Discussion of Relationship with Arthur Andersen; are you there?
A. Yes.
Q. By the time that this meeting, January 29th, 1998, had Andersen informed Sunbeam that it would not, that is Andersen would not issue a consent to the use of the 1997 audit letter in connection with Sunbeam's registration statement for the zero coupon bonds that Morgan Stanley had underwritten?
MR. MARKOWSKI: Would you read the first part of the question back to me, please.
(Record read.)
MR. BEMIS: I will rephrase the question, now that I look at it.
Q. By the time of this meeting, which

Page 397

is June 29th, 1998, had Andersen advised Sunbeam's management that Andersen would not consent to the use of its 1997 audit letter in connection with the registration statement for Sunbeam's zero coupon bonds that had been underwritten by Morgan Stanley?
A. Yes.
Q. And now, is this -- this announcement by Andersen, the one that you believe was made by the Chicago office, as you described a few questions ago --
A. That was an assumption that headquarters made that decision.
Q. Did you participate, after this meeting on June 29th, 1998, with any meetings with Arthur Andersen concerning the use of Arthur Andersen's consent with regard to Sunbeam's 1997 audited financial statements?
A. No. I think that was a dead issue at that point.
Q. What do you mean by "a dead issue"?
A. They had refused to give their consent, and we -- and we moved on, as to what to do next.
Q. Did you ever receive any formal

Page 398

communications from Andersen by way of a letter -- for example, that Andersen would no longer consent to the use of its opinion in connection with Sunbeam's 1997 audited financial statements?
A. I don't recall.
Q. Eventually, there came a point in time when there was a restatement of certain, of a certain portion of Sunbeam's audited -- withdrawn.
There came a point in time when Sunbeam reissued certain of its financial statements that had been audited by Arthur Andersen; correct?
A. Yes.
Q. And those -- am I correct that the restatement, if you will, included all of the 1997 audited financial statement?
A. I believe we did have to restate 1997, and 1998, yes.
Q. A portion.
A. A portion of '98.
Q. And a portion of '96.
A. That could be. I don't recall.
Q. And each of those financial

Page 399

statements that were restated had -- strike that. Of those --
Of the financial statements that had been restated, Arthur Andersen had been the accounting firm for Sunbeam during that entire period; correct?
A. Yes.
Q. And as far as you can remember -- withdrawn.
Now, in addition to the restatement process that we have just touched upon, there was also an investigation by the board of directors, was there not, as to possible wrongdoing at Sunbeam?
A. Could you repeat that.
Q. Sure. In addition to the restatement process that resulted in the restatement of the financial statements, there was also a separate investigation, was there not, of possible wrongdoing at Sunbeam?
A. Yes.
Q. And there was a report prepared of the investigation; correct?
A. Yes.
Q. There was a law firm involved in

NOT A CERTIFIED COPY

Page 400

that, Skadden Arps; correct?
A. I am not sure. I seem to recall that we had special counsel and a forensic audit firm, but, yes, it was done.
Q. The forensic audit firm --
A. I can't remember Skadden Arps' role in that, though.
Q. Was the forensic firm Chicago Partners?
A. Yes.
Q. Did you read the report?
A. Yes.
Q. Was Morgan Stanley identified in the report as having participated in any wrongdoing by Sunbeam?
DI MR. BIDEAU: Jerry, don't answer the question. The report contains privileged information, and it was prepared by counsel and delivered to you, and there has already been a determination by the court that the report is privileged.
MR. BEMIS: I did not ask him about the report.
MR. BIDEAU: You asked him about information that came within the report,

Page 401

which is requiring him to dispose of privileged information.
My instruction is: Don't answer.
MR. BEMIS: And I am not, obviously, not going to reverse your instruction.
MR. BIDEAU: Right.
MR. BEMIS: I will make one more statement and we will move on.
Q. I am not asking you the contents of the report, but I am asking what's not in the report.
MR. BEMIS: SO certify the question, so that I can find it later, because I will ask the judge to review it.
MR. BIDEAU: Okay.
MR. BEMIS: So, we are done.
MR. BIDEAU: We will move on.
MR. BEMIS: We will.
Q. In the course of the restatement there were a number of accounting items that required some adjustment in the financial statements of Sunbeam in the period that we have talked about, 1996 to the first quarter of 1998; correct?
A. Yes.

Page 402

Q. In the course of the restatement, was Morgan Stanley identified as having participated in any of the accounting judgments that had to be restated?
A. I am unaware of any.
Q. During the course of the restatement investigation, did Sunbeam obtain any information from any source that led you to believe that Morgan Stanley knew about any accounting irregularities at Sunbeam in 1996?
MR. BIDEAU: Again, to the extent that you have information that comes out of the Skadden Arps report that is privileged, don't disclose it. Obviously, you got information from other sources. If you got information from other sources, you can disclose that.
A. You are testing me in terms of what was in that -- do I remember what was in that report or not.
Could you ask it again.
Q. First of all, there are two reports that are at issue. One is this report of the special investigation committee that your counsel is instructing you not to answer

Page 403

questions on.
Now I am referring to the restatement investigation of the financial statements. That is what my questions are addressed to.
Are you with me so far?
A. Yes.
Q. Okay. Focusing only on the restatement investigation -- during the course of the restatement investigation, did you obtain any information from any source that led you to believe that Morgan Stanley knew about any accounting irregularities in 19 -- for the period 1996?
A. Yes.
Q. What?
A. The financial people working on this reached the conclusion that everybody who touched this thing had to know about it.
Q. Everybody that touched what?
A. That touched Sunbeam.
It was so blatant that the statements, the representations and everything, was so false, we uncovered most of the stuff without having any professional

NOT A CERTIFIED COPY

Page 404

accountants within ten days. That how anybody who was involved in this did not know what was going on was a mystery to them.
Q. Did you identify in any announcement by Sunbeam that you had uncovered some involvement by Morgan Stanley in these 1996 irregularities?
A. I don't know what was -- when you say what was -- ask it again.
Q. Did you identify in any announcement made by Sunbeam that you had uncovered involvement by Morgan Stanley in these 1996 accounting irregularities?
A. No.
Q. There were also accounting irregularities in 1997 that were restated; correct?
A. Yes.
Q. In your announcement of these accounting irregularities, did you identify Sunbeam had uncovered any involvement by Morgan Stanley in Sunbeam's 1997 accounting irregularities?
A. No.
Q. There was also a restatement of the

Page 405

first quarter of 1998; correct?
A. I believe so.
Q. Your announcement of the restatement for the first quarter of 1998, did Sunbeam identify that Morgan Stanley had been identified as having involvement in the 1998 first quarter irregularities?
A. No.
THE VIDEOGRAPHER: Excuse me. Ten minutes.
Q. Did you uncover any information that Morgan Stanley had had any participation in either the preparation or the auditing of Sunbeam's 1996 financial statements?
A. No.
Q. Did you uncover in your investigation that, any information that Morgan Stanley had participated in either the preparation or the auditing of Sunbeam's 1997 financial statements?
A. No.
Q. Did you uncover any information in your investigation that Morgan Stanley had participated in either the preparation or auditing of Sunbeam's first quarter 1998

Page 406

financial statements?
A. No.
THE VIDEOGRAPHER: Excuse me, ten minutes, counsel.
Q. After the accounting restatement that resulted from this investigation, did Sunbeam make any claims against Morgan Stanley?
A. Sunbeam the company?
Q. Yes.
A. No.
Q. Did you have any involvement in the settlement of MacAndrews & Forbes' claims against Sunbeam in August of 1998?
A. I stayed out of that negotiation.
Q. Did you vote on the settlement agreement as a member of the board of directors?
A. I believe I avoided doing that as a conflict.
Q. Sunbeam did issue warrants to MacAndrews & Forbes, or one of its entities, as a consequence of the settlement that was reached in August of 1998; correct?
A. Yes.

Page 407

Q. Were those warrants valued on Sunbeam's financial statements for 1998?
A. Were the warrants issued by Sunbeam valued on their financial statements?
Q. On Sunbeam's financial statements. They would actually be expensed, but they have to be assigned a value before they can be expensed; correct?
A. I don't know the answer to that.
Q. You don't know the answer to that.
If it was expensed, would it have been an item that would have been included in Sunbeam's form 10K for 1998?
A. I can only assume so.
Q. And you, did you sign Sunbeam's 1998 form 10K as an officer of the company?
A. If I was required to, as an officer of the company, I would have, yes.
Q. You would have investigate the truth and veracity of the financial statements before you signed the, signed, not the financial statements but the annual report; correct?
A. Yes, there is a process to do that.
MR. BEMIS: Let's stop the tape,

MEDIA CERTIFIED COPY

Page 408

please.
THE VIDEOGRAPHER: We are now going off the record.
The time is 4:28 p.m., and this is the end of the tape labeled number 2 of volume 2. This videotaped deposition will continued on the tape labeled number 3 of volume 2.
We are Off the record.
(Recess.)
THE VIDEOGRAPHER: Back on the record.
Stand by, please.
This is the tape labeled number 3 of volume 2 of the videotaped deposition of Jerry Levin, and we are now going on the record, and the time is 4:30 p.m.
Q. I have handed you what has been marked as Morgan Stanley Exhibit 99. Do you have that in front of you?
A. Yes.
Q. Is this Sunbeam's annual report for 1998?
A. Yes.
Q. And page 50, is that your

Page 409

signature -- although it is typed -- on the filed report MS 99, dated as of May 11th, 1999?
A. That is my typed signature, yes, I think. What is -- it is not my real signature, if that is your question.
Q. I understand that it is not. It says name and signature above there; correct, sir?
A. Yes.
Q. It has a little S slash there, yes?
A. Yes.
Q. That represents that you, for purposes of filing with the Securities and Exchange Commission, signed this report; correct?
A. I am sure that that is correct.
Q. All right. Now, would you please look at page F15, which is, I believe, the financial statements.
Are you there?
A. Yes.
Q. In the first full paragraph there is a specific reference to Sunbeam taking a $70,000,000 non-cash charge as an expense for

Page 410

the issuance of five-year warrants to an M&F affiliate. Do you see that?
A. Yes.
Q. Now, the M&F affiliate is MacAndrews & Forbes; right?
A. Yes.
Q. Sir, isn't it a fact that Sunbeam took a $70,000,000 non-cash charge on its financial statements for the warrants issued to MacAndrews & Forbes or its affiliates, as a result of the August, 1998 settlement of the dispute between Sunbeam and MacAndrews & Forbes?
MR. MARKOWSKI: Objection to the form.
A. I got lost.
Q. You got lost.
A. What's your question?
Q. Let me try again.
A. Was it a question or are you just reading it?
Q. No. I was not reading it. I was trying to paraphrase.
A. I apologize.
Q. You were probably trying to read

Page 411

while I was trying to talk. One more time.
Isn't it a fact, sir, that Sunbeam took s $70,000,000 non-cash expense in its 1998 financial statements for the issuance of the warrants to MacAndrews & Forbes or its affiliate, as a result of the settlement agreement that was reached in August of 1998?
MR. MARKOWSKI: Objection to the form.
A. Yes.
MR. BEMIS: You can set that side. We are done with that.
Q. I will hand you what has been previously marked as Morgan Stanley Exhibit 408, which is the complaint of Coleman (Parent) Holdings filed against Morgan Stanley Company, Incorporated. I would like you to turn first -- well, withdrawn.
I believe you told me yesterday that you had seen the complaint filed against Morgan Stanley that you are here today giving a deposition about; correct?
A. I believe so.
Q. All right. I would like you to look at paragraph 39, first, of the complaint.

NOT A CERTIFIED COPY

Page 412

Are you there?
A. Yes.
Q. About halfway down the paragraph there is a sentence that begins "For example"; do you see that?
A. Yes.
Q. All right. It reads, as follows: "For example, Morgan Stanley provided CPH with false 1996 and 1997 sales figures," or, excuse me, "sales and revenue figures, as well as false projections that Sunbeam could not expect to achieve."
And then it goes on in the next sentence: "Together in face-to-face discussions, Morgan Stanley and Sunbeam assured CPH that Sunbeam would meet or exceed first quarter 1998 earnings estimates." Do you see that?
A. Yes.
Q. Were you present at any time when Morgan Stanley made a statement like that?
A. As to the second sentence, "Together in face-to-face discussions, the first quarter" -- the answer is No.
Q. All right.

Page 413

A. As to the first part of the sentence, "the false 1996 and 1997 sales revenue and false projections," it is possible that they are referring to the long-term strategic plan, but I do not know that.
Q. It is also possible that they were referring to the audited financial statements for 1997; correct?
A. I agree. I don't know what this refers to; so, I can't answer the question.
Q. Let me go to the next question.
Were you ever present when Morgan Stanley told CPH that analysts' 1998 earnings estimates for Sunbeam were correct?
A. No.
Q. Were you ever present when -- when Morgan Stanley said to CPH, the Plaintiff in this case, that Sunbeam's plan to earn $2.20 per share in 1998 were easily achievable and probably low?
A. No.
Q. Were you ever present when Morgan Stanley is alleged to have said, and falsely assured CPH, that Sunbeam's early buy sales program would not hurt Sunbeam's future revenues?
A. No.
Q. Turn to paragraph 30 -- 49.
49. Are you there?
A. Yes.
Q. Are you aware of -- well, strike that.
Earlier you told me that it was your desire that the transaction with Coleman and Sunbeam be closed as quickly as possible; correct?
A. Yes.
Q. Are you aware of any efforts by Morgan Stanley to move up the closing date of the debenture offering in order to accelerate the closing of the Sunbeam Coleman merger?
A. I was only concerned that the debenture offer be consummated by closing. And, in fact, now that I think about that, I am not sure that there was any financing division. I may not have been concerned at all about that.
MR. BEMIS: Sir, I don't have any further questions for you.
MR. BIDEAU: How about that.

Page 414

Page 415

MR. BEMIS: How about that.
MR. SOLOVY: Could we get a little break for ourselves, since you allot us 20 minutes to -- let us take a little break here.
We will take a five-minute break.
THE VIDEOGRAPHER: We are now going off the record.
The time is 4:39 p.m.
(Recess.)
MR. SOLOVY: Back on the record.
THE VIDEOGRAPHER: Stand by.
We are now going on the record.
The time is 4:47 p.m.
MR. MARKOWSKI: Mr. Levin, I am Bob Markowski, and I represent Coleman (Parent) Holdings, and I wanted to thank you for your time for the last few days, and we don't have any questions for you.
We appreciate that.
MR. BEMIS: Thank you very much, and we don't have any more redirect, and we have no questions.
MR. BIDEAU: I guess we will not waive reading and signing?

NOT A CERTIFIED COPY

MR. BEMIS: I guess you will not.
MR. SOLOVY: Thank you.
THE VIDEOGRAPHER: We are now going off the record.
The time is 4:48 p.m. and this is the end of the tape labeled number 3, volume 2, and we are going off the record.
(Time noted: 4:48 p.m.)

JERRY LEVIN

Subscribed and sworn to before me
this day of 20__.

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That JERRY LEVIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 5 day of December, 2004.

_____
ROBERT X. SHAW, CSR

NOT A CERTIFIED COPY

01467/9

CONFIDENTIAL - STRONG

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

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

The videotaped deposition of WILLIAM STRONG, taken before CARIANN BILLS, CSR No. 84-003836, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 4000, One IBM Plaza, Chicago, Illinois, on the 4th day of December, A.D. 2003, at 8:00 a.m.

NOT A CERTIFIED COPY

011681

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

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

The videotaped deposition of WILLIAM STRONG, taken before CARIANN BILLS, CSR No. 84-003836, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 4000, One IBM Plaza, Chicago, Illinois, on the 4th day of December, A.D. 2003, at 8:00 a.m.

CONFIDENTIAL - STRONG
PRESENT:

JENNER & BLOCK, LLC,
(One IBM Plaza,
Chicago, Illinois 60611-7603,
312-222-9350) by:
MR. ROBERT T. MARKOWSKI, ESQ., and
MR. CHRISTOPHER M. O'CONNOR, ESQ.
Appeared on behalf of the Plaintiff;

KIRKLAND & ELLIS, LLP,
(655 Fifteenth Street, N.W.
Washington, D.C. 20005,
202-879-5993) by:
MR. THOMAS A. CLARE, ESQ.
Appeared on behalf of the Defendant.

ALSO PRESENT:
Mr. James J. Doyle,
Mr. Marc Buhlman, videographer.

REPORTED BY: Cariann Bills, CSR NO. 84-003836.

CONFIDENTIAL - STRONG
THE VIDEOGRAPHER: Good morning. We're going on the video record at 8:04 a.m. My name is Marc Buhlman, and I am a legal videographer in association with Esquire Deposition Services. My address is 155 North Wacker Drive, Chicago, Illinois. The court reporter today is Cari Bills, also of Esquire Deposition Services.
Here begins the videotaped deposition of William Strong taking place at Jenner & Block, One IBM Plaza, Suite 4000, Chicago, Illinois. Today's date is December 4, 2003. This deposition is being taken in the matter of Coleman Holdings, Inc., versus Morgan Stanley and Co., Inc., in the Circuit Court of the Fifteenth Judicial Circuit in and for Long Beach County Florida, Case No. 03 CA 005045AI.
Will counsel please state their names for the record.
MR. MARKOWSKI: Bob Markowski on behalf of Coleman Parent.
MR. O'CONNOR: Christopher O'Connor on behalf of the plaintiff, Coleman Parent.
MR. CLARE: Tom Clare of the firm Kirkland & Ellis, LLP, on behalf of Morgan Stanley and the

CONFIDENTIAL - STRONG
witness, Mr. Strong.
MR. DOYLE: Jim Doyle, vice president and counsel of Morgan Stanley, on behalf of Morgan Stanley and the witness.
THE VIDEOGRAPHER: Will the reporter now swear in the witness, please.
(Whereupon, the witness was duly sworn.)
WILLIAM STRONG,
called as a witness herein, having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MR. MARKOWSKI:
Q. Mr. Strong, would you please state your full name.
A. William H. Strong.
Q. And what is your current home address?
A. 904 North Green Bay Road, Lake Forest, Illinois.
Q. And your current employer, Mr. Strong.
A. Morgan Stanley.
Q. Where is your business office located?

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

A. Chicago, Illinois.
Q. The address?
A. 440 South LaSalle Street.
Q. Your current position with Morgan Stanley, Mr. Strong, is what?
A. Managing director.
Q. What are your current responsibilities?
A. I have responsibility for the coverage of investment banking clients.
Q. Do you have any administrative responsibilities within the firm?
A. I do, yes.
Q. What are those?
A. I have responsibility for a variety of programs within Morgan Stanley, its cross-selling program, the participant in the First Connects program and others.
Q. Do you have responsibility for supervising any business activities at any offices of Morgan Stanley?
A. No.
Q. Did you formerly have that responsibility?

CONFIDENTIAL - STRONG

A. Yes.
Q. And during what period of time was that?
A. I had various responsibilities for the supervision of investment banking offices from January of '93 until December of 2002.
Q. What were those administrative responsibilities?
A. I had responsibility for supervising the activity of the Toronto, Houston, Chicago, Los Angeles and San Francisco offices.
Q. And that is no longer the case?
A. Correct.
Q. What were the circumstances relating to that change in administrative responsibilities on your part?
A. I don't understand the question.
Q. What led to that change in assignment?
A. I wanted to spend full time working on behalf of clients -- or essentially full time.
Q. Did someone succeed you in that position?
A. No.
Q. Mr. Strong, you received your

CONFIDENTIAL - STRONG

undergraduate degree from Purdue University?
A. Yes.
Q. In 1973?
A. Yes.
Q. And then you received an MBA from Northwestern?
A. Yes.
Q. In 1976, I believe; is that correct?
A. Yes.
Q. And your MBA had concentrations in both finance and accounting?
A. Yes.
Q. You are a certified public accountant; is that correct, sir?
A. Yes.
Q. You have a current CPA license?
A. Yes.
Q. And that's an Illinois license?
A. Yes.
Q. Your initial employment after you received your MBA was with PriceWaterHouse?
A. Yes.
Q. What were your assignments with PriceWaterHouse? What positions did you hold?

CONFIDENTIAL - STRONG

A. I was at first an entry level staff accountant and then I was promoted early to senior accountant.
Q. Did you work as an auditor at any time during your employment at PriceWaterHouse?
A. Staff accountant and senior accountant are the fancy titles for being an auditor, yes.
Q. And during what period were you employed by PriceWaterHouse, sir?
A. From June 1976 to November 1979.
Q. Are you currently a member in any accounting societies?
A. Yes.
Q. And what are those?
A. I am a member of the American Institute of Certified Public Accountants, and I am a member of the Illinois CPA Society.
Q. What was your employment after you left PriceWaterHouse?
A. I joined Solomon Brothers in November of 1979.
Q. And can you briefly review for me your employment history at Solomon Brothers?
A. I joined Solomon Brothers, as I said,

NOT A CERTIFIED COPY

0014033

CONFIDENTIAL - STRONG

in November of 1979 as an associate in the merger and acquisition practice. I was promoted to vice president in October of 1980 in the merger and acquisition practice, and I was promoted to managing director effective January 1, 1987, in the merger and acquisition practice. I was then asked subsequent to that to run worldwide the merger and acquisition practice.

Subsequent to that, I moved to London to run European investment banking. I was then asked to run international investment banking which was the investment banking of practice -- the investment banking practice of Solomon Brothers everywhere around the world other than the United States.

Q. I am sorry, during what period of time were you head of Solomon Brothers' merger and acquisitions practice?

A. I don't recall the exact dates but; it would have been probably 1989 to probably 1991, something like that. I could be off a little bit.

Q. How significant a business was that during that period of time at Solomon Brothers?

CONFIDENTIAL - STRONG

MR. CLARE: Objection to form.

BY THE WITNESS:

A. It was significant.

BY MR. MARKOWSKI:

Q. Can you tell me what its revenues were?

A. I don't recall.

Q. How many employees were working at that firm at that point?

A. It would be under 100.

Q. And, approximately, how many of those would be -- have been managing directors?

A. I don't recall.

Q. And it was in 1991 that you moved to London?

A. Yes.

Q. And there you initially were responsible for European investment banking for Solomon?

A. Yes.

Q. Is investment banking a broader classification of services than mergers and acquisitions?

A. Yes.

CONFIDENTIAL - STRONG

Q. In what way?

A. Investment banking also includes, among other things, the raising of capital for clients.

Q. How significant was the European investment banking of Solomon Brothers when you joined it in 1991?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. It was a small business.

BY MR. MARKOWSKI:

Q. Do you recall its revenues at that point?

A. Between 30 and $40 million, U.S.

Q. And how long did you have that responsibility, sir?

A. Until January of 1993.

Q. Did the size of the business change in any material way between 1991 when you first joined it and 1993?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. The business grew.

BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. What were its revenues at the end of that time period?

A. I don't recall, but they were materially higher.

Q. Can you give me an order of magnitude? Was it double?

A. It wasn't double, but materially higher.

Q. Something less than double?

A. Something less than double.

Q. And then at that point you became the person at Solomon Brothers responsible for investment banking business everywhere except for the United States; is that correct?

A. No.

Q. In what way have I misdescribed it?

A. In January of 1993, I joined Morgan Stanley.

Q. I'm sorry. There was a time between -- let me rephrase the question.

There was a point where you became responsible for investment banking activities for Solomon Brothers outside of Europe; is that correct?

NOT A CERTIFIED COPY

A. Yes.
Q. And that included investment banking activities of Solomon Brothers for all locations other than within the United States?
A. Yes.
Q. And how large a business operation would that have been?
A. I don't recall.
Q. Did that add significantly to the scope of the business you were responsible for?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Yes.
BY MR. MARKOWSKI:
Q. Can you recall, approximately, how many employees you were responsible for supervising during that period?
A. No.
Q. In terms of revenue, can you approximate for me the revenue that that business generated for Solomon Brothers?
A. I don't recall at this time.
Q. Were the investment banking operations outside of Europe larger in scale than the

European operations in total?
A. I don't recall.
Q. You joined Morgan Stanley in January of 1993, sir?
A. Yes.
Q. What caused you to leave Solomon Brothers?
A. I wanted to work for a firm where investment banking drove the culture.
Q. Did you approach Morgan Stanley or did Morgan Stanley approach you?
A. As I recall, Morgan Stanley approached me.
Q. Can you briefly review for me the positions that you have held at Morgan Stanley since January of '93?
A. I have been a managing director the entire time and was named a vice chairman, investment banking, over the last couple of years.
Q. Have you always been located in Chicago?
A. On behalf of Morgan Stanley, yes.
Q. And you currently hold the title of

vice president of investment banking?
A. My title is managing director and vice chairman, investment banking, the full title.
Q. Who is the chairman of investment banking. Is there such a person?
A. Yes. I believe it's Joe Porella.
Q. Is there more than one vice chairman?
A. Yes.
Q. How many?
A. As I recall, less than ten.
Q. What are your responsibilities as vice chairman?
A. I have senior coverage responsibility for a variety of clients.
Q. What does it mean to have coverage responsibility?
A. Responsibility for our relationship with specific clients.
Q. And what clients are you responsible for at this point?
MR. CLARE: Objection. Relevance.
BY THE WITNESS:
A. A variety of large and small clients.
BY MR. MARKOWSKI:

Q. Is it a particular business grouping or a particular geographical division of responsibility at this point?
How is the responsibility allocated?
A. No.
Q. What -- can you give me examples of the clients that you are currently responsible for covering for Morgan Stanley?
A. Yes.
Q. What are they?
A. I will give you a comprehensive list, obviously, because I won't be able to recall that; but a couple of examples would be the Chicago Mercantile Exchange Holdings, Inc., R.R. Donnelley.
Q. Are those the most significant?
MR. CLARE: I'm going to object to form and also object on the grounds of client confidentiality concerns may constrain our ability to respond to these questions. We'll be designating the transcript as confidential under the protective order.
I'll object generally to these questions as improperly intruding on client

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

confidentiality. It's irrelevant to the lawsuit.

BY THE WITNESS:

A. Every client is important.

BY MR. MARKOWSKI:

Q. I appreciate that.

In terms of the size of the clients, are those the two largest businesses that you have responsibility for covering for Morgan Stanley.

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I don't understand the question.

BY MR. MARKOWSKI:

Q. In terms of the size of the business operation of the client, are the two that you have identified, the Chicago Mercantile Exchange and R.R. Donnelley, the largest businesses that you have responsibility for covering for Morgan Stanley?

A. Based upon what?

Q. The clients' revenues?

A. No.

Q. Which would be the largest clients in

CONFIDENTIAL - STRONG

terms of revenues?

A. I'm not certain, but they would not be the largest.

Q. Can you think of some that are larger?

A. Yes.

Q. And what would those be?

A. One that occurs to me now would be the Boeing Company.

Q. In terms of the business activities with Morgan Stanley over the last two years, which are the most significant clients that you have responsibility for covering?

MR. CLARE: Objection to relevance and form.

I also object to this entire line of questioning as irrelevant to the time period that we're talking about. If you want to ask him generally what his responsibilities are; but now we're moving into an intrusion of the company's interactions with Morgan Stanley, and it's improper.

BY MR. MARKOWSKI:

Q. Can you answer the question?

A. No, I will decline to answer.

CONFIDENTIAL - STRONG

Q. You decline to answer?

A. Yes.

MR. CLARE: I'll instruct him not to answer the question.

MR. MARKOWSKI: You have instructed him not to answer?

MR. CLARE: Yes.

MR. MARKOWSKI: And the ground for that is what?

MR. CLARE: It's an improper intrusion into Morgan Stanley's relationship with clients. It is irrelevant to the time period and the issues in the litigation.

MR. MARKOWSKI: I disagree.

BY MR. MARKOWSKI:

Q. Sir, do you plan to continue working for Morgan Stanley for the foreseeable future?

A. Yes.

Q. You have been deposed many times, have you not, sir?

A. Yes.

Q. Have you ever been deposed in a matter where Morgan Stanley was a party?

A. Yes.

CONFIDENTIAL - STRONG

Q. More than one matter?

A. No.

Q. What matter was that?

A. Litigation surrounding Sunbeam Corporation.

Q. You have been deposed in other matters, though, as well, correct?

A. Yes.

Q. Are you familiar with the claims that have been asserted in the lawsuit filed by my client, Coleman Parent, against Morgan Stanley?

A. Not specifically, no.

Q. Have you read the complaint?

A. No.

Q. What did you do to prepare yourself for your testimony today?

MR. CLARE: I'll instruct the witness. You can answer Mr. Markowski's question to describe generally preparation steps but not to disclose any communications that you had with attorneys representing Morgan Stanley, either inside or outside counsel.

BY THE WITNESS:

A. I re-read my deposition from, I

NOT A CERTIFIED COPY

believe it was, 2001. I could be wrong on the date.
BY MR. MARKOWSKI:
Q. The deposition that you gave in the Sunbeam case?
A. It was related in some way to Sunbeam litigation, yes.
Q. Did you do anything else to prepare for today?
MR. CLARE: You can describe generally meeting with counsel, time, place, duration; but do not discuss the substance of anything that was discussed during those sessions.
BY THE WITNESS:
A. I met with counsel to Morgan Stanley and internal counsel with respect to this matter.
BY MR. MARKOWSKI:
Q. With whom did you meet?
A. Counsel who's present in the room today.
Q. Mr. Clare and Mr. Doyle?
A. Yes.
Q. Did you meet with them on more than

one occasion?
A. Yes.
Q. And when were those occasions?
A. I met with them on -- as I recall December 3, 2003, and then, approximately, two or three weeks ago.
Q. Where were those meetings at?
A. The meeting on December 3rd was in Chicago, Illinois, and the previous meeting was in New York, New York.
Q. The meeting in New York two or three weeks ago, sir, where did that take place?
A. It took place at the offices of Morgan Stanley.
Q. And how long did the meeting last?
A. I don't recall.
Q. Was it longer than an hour?
A. It may have been, but I don't recall.
Q. Was it as long as half a day?
A. No.
Q. And how long did the meeting last yesterday?
A. I don't recall the exact time.
Q. Approximately?

A. Plus or minus an hour.
Q. During those meetings did you review any documents?
MR. CLARE: That's a yes or no question.
BY THE WITNESS:
A. Yes.
BY MR. MARKOWSKI:
Q. Did you -- were you shown any other person's testimony?
A. No.
Q. Have you read the testimony of any other person given in this litigation, sir?
A. No.
Q. Has the testimony of any other person been described to you at any point?
A. No.
Q. Have you read the deposition testimony given by Morgan Stanley witnesses relating to Sunbeam that was given in any other proceeding?
A. No.
Q. Other than your meetings to prepare for the deposition today, sir, with whom have you discussed any aspect of Coleman Parent's lawsuit against Morgan Stanley?

MR. CLARE: You're asking him to exclude the deposition meetings?
MR. MARKOWSKI: Yes.
MR. CLARE: Okay. And do you have a time frame for these discussions?
MR. MARKOWSKI: No.
BY THE WITNESS:
A. No one.
BY MR. MARKOWSKI:
Q. You've had no discussions with any Morgan Stanley employee concerning the fact that Coleman Parent's lawsuit against Morgan Stanley?
A. Correct.
Q. How did you learn that Morgan Stanley had filed a lawsuit against Morgan Stanley?
A. As I can recall – and I could be wrong here -- but I was informed, I believe, by Mr. Doyle.
Q. When was that?
A. I don't recall.
Q. Was it before the meeting in New York two or three weeks ago?
A. Yes.
Q. Was it significantly before that?

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

MR. CLARE: Objection to form.
BY THE WITNESS:
A. I don't recall.
BY MR. MARKOWSKI:
Q. Do you recall whether it was early this summer?
A. No.
Q. Have you been asked, sir, to review your personal materials to look for any documents since Coleman Parent filed its lawsuit against Morgan Stanley in the spring of this year?
A. Can you repeat the question, please.
Q. Coleman Parent's lawsuit was filed against Morgan Stanley in the spring of this year. I'm asking whether since that time you have been asked to review your personal materials for any documents that might be potentially relevant to that lawsuit?
A. As I recall, I may have been; but I have no documents in my possession.
Q. You're not certain that you received such a request, though?
A. Not that I recall but I had previously produced all documents I had in connection with

CONFIDENTIAL - STRONG

Sunbeam litigation.
Q. Do you recall what you had at that time?
A. No.
Q. Do you recall if you had anything?
A. I believe I did.
Q. Do you recall, generally, the nature of the materials that you had?
A. No.
Q. Did you use email to communicate with Morgan Stanley personnel in 1998, sir?
A. Possibly. I can't remember when we adopted email.
Q. If Morgan Stanley had an operational email system, were you using it generally to communicate with people within Morgan Stanley from that time forward?
A. I was a late adopter, but I may have been.
Q. Do you recall whether you used email to communicate in connection with Morgan Stanley's engagement for Sunbeam Company in 1997 or 1998?
A. Not today, no.

CONFIDENTIAL - STRONG

Q. Mr. Strong, you were instrumental in helping Morgan Stanley obtain the Sunbeam engagement in 1997, were you not?
MR. CLARE: Objection to form and argumentative.
BY THE WITNESS:
A. I would not agree with that characterization, no.
BY MR. MARKOWSKI:
Q. What role did you play?
A. I was one of the people who played a role in obtaining that assignment.
Q. What role did you play?
A. I was one of the professionals on the assignment.
Q. What role did you play in assisting Morgan Stanley in obtaining the engagement?
A. I participated in a meeting with management of Sunbeam.
Q. Do you recall that you were the person who received a call from Sunbeam inviting Morgan Stanley to make a presentation for the engagement?
A. Yes.

CONFIDENTIAL - STRONG

Q. Tell me what you recall about that contact.
A. I recall receiving -- I recall receiving a telephone call, I believe from Mr. Kersh, indicating that Sunbeam would like Morgan Stanley and other forums to make a presentation to them about a range of strategic alternatives or something to that effect.
Q. Did you know Mr. Kersh previously?
A. Yes.
Q. How did you know him?
A. I had met him in connection with a prior assignment or two that I had had.
Q. And what companies were those assignments for?
A. In each case, they were assignments on behalf of Sir James Goldsmith.
Q. And how did you come to know Mr. Kersh in connection with that work?
A. As I recall, Mr. Kersh was an aide to Mr. Dunlap.
Q. And Mr. Dunlap was involved in those transactions?
A. Yes.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. What was Mr. Dunlap's involvement?
A. He was an aid to Sir James Goldsmith.
Q. Do you recall that this call came in the spring of 1997?
A. That sounds about right.
Q. Do you know why they called you? Did Mr. Kersh explain?
MR. CLARE: Objection. Calls for speculation.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. Did Mr. Kersh tell you whether he was also contacting other investment banking firms to request that they make presentations concerning the services they might provide Sunbeam?
A. I believe that he did, although I'm not certain I learned it in that call.
Q. Do you recall anything else about your initial telephone call with Mr. Kersh?
A. Only in that they would want us to make a presentation.
Q. Did he describe generally the nature of the presentation he wanted?

CONFIDENTIAL - STRONG

A. Not beyond what I have already testified, no.
Q. Did you understand it to be a presentation relating to Morgan Stanley's capacity to find a buyer for Sunbeam Company?
A. I just recall kind of reviewing all of the strategic alternatives.
Q. What did you do after that initial telephone call before the initial meeting with Sunbeam?
A. I don't recall specifically, but I'm sure I would have contacted other of my colleagues.
Q. Do you recall with whom you spoke?
A. No.
Q. Do you recall what was done to prepare for the initial meeting with Sunbeam?
A. As I recall today, in general, we reviewed public information and began to give consideration to what would be possible alternatives for Sunbeam to pursue to maximize shareholder value.
Q. Can you recall who was involved in that initial effort?

CONFIDENTIAL - STRONG

A. I can recall certain of the names. I may not be able to recall all of the names today.
Q. Who do you recall?
A. I recall Bruce Fiedorek; Bob Kitts; Jim Stynes; I believe Alex Fuchs. There may have been others.
Q. Do you recall David McQuery?
A. Not specifically today, no.
Q. Now, you were working at Morgan Stanley's Chicago office at that time, correct?
A. Yes.
Q. Where were these gentlemen that you have just identified working, in New York?
A. Yes.
Q. What did you do to assemble this team to begin the initial background work?
A. As I previously testified, I probably spoke with one or more of them.
Q. What was Mr. Fiedorek's position in the spring of 1997 at Morgan Stanley?
A. He was a managing director of Morgan Stanley.
Q. Do you recall whether he was responsible for managing Morgan Stanley's M & A

CONFIDENTIAL - STRONG

business at that time?
A. I don't recall if he was at that time or not.
Q. Why did you involve Mr. Fiedorek?
A. He is a partner at the time in the merger and acquisition business.
Q. Was there some particular reason for including him in this project?
A. There may have been. I don't recall today.
Q. Was it your decision to include him in this project?
A. I believe so, but I could be wrong.
Q. Where is Mr. Fiedorek today, do you know?
A. No.
Q. He's no longer at Morgan Stanley, is he?
A. I'm not sure.
Q. Mr. Kitts, was it your decision to include him in the initial project?
A. I don't recall.
Q. What was Mr. Kitts responsibility at the time?

NOT A CERTIFIED COPY

A. As I recall, he was also a managing director in the merger and acquisition practice.
Q. Mr. Stynes, what was his position at the time?
A. As I recall, he was also a managing director in the merger and acquisition practice.
Q. Did Mr. Kitts have different experience or capabilities from Mr. Fiedorek or Mr. Stynes?
A. Yes.
Q. In what way?
A. Just different experiences.
Q. Is there something about his experiences that caused you to want to include him specifically in the preparation for the initial meeting with Sunbeam?
A. There may have been, but I don't recall today.
Q. Why was Mr. Stynes included in the initial team?
A. He was also an experienced merger and acquisition professional.
Q. Was your objective in connection with the initial preparations for the first meeting

with Sunbeam Company to impress Mr. Dunlap and Mr. Kersh with Morgan Stanley's capabilities and commitment to the project?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. That would be one of the objectives, yes.
BY MR. MARKOWSKI:
Q. What others?
A. The other objective, as I would recall today would be to describe alternatives that we felt would be conceivably realistic for Sunbeam as well as secondly to learn of their interests in pursuing one or more of these alternatives.
There may have been others as well.
BY MR. MARKOWSKI:
Q. How well did you know Mr. Dunlap at this point in time, Mr. Strong?
A. He was a business acquaintance.
Q. How much time had you spent with him personally in connection with the work he did for Sir James Goldsmith's companies?
A. I don't recall the exact amount of times or amounts.

Q. Approximately.
A. I don't know.
Q. Had you interacted with him frequently in connection with those engagements?
A. I would say periodically, yes.
Q. Was Mr. Dunlap the person primarily responsible for on behalf of Sir James Goldsmith's companies for dealing with Morgan Stanley in connection with those projects?
A. No.
Q. Who would have been the person primarily responsible?
A. There was not anyone other than Sir James Goldsmith who was primarily responsible. There would be a number of his colleagues that would work on the transactions.
Q. And, so far as you could tell, was Mr. Dunlap playing a particular role in that regard?
A. Yes.
Q. And what was Mr. Dunlap's role?
A. He was playing an important role.
Q. Was there some particular aspect of the projects that Mr. Dunlap had responsibility

for that you can recall?
A. No.
Q. What was your impression of Mr. Dunlap in connection -- as a result of that activity?
A. That he was an experienced executive.
Q. Did you come to have any views relating to his management style?
A. No.
Q. Did you find Mr. Dunlap to be particularly aggressive?
A. He liked to achieve things. He worked hard.
Q. Was he difficult to work with?
MR. CLARE: I want to be clear about the time frame of the questions that you're asking here. You're asking about views that Mr. Strong had at a time period when Mr. Dunlap was at Sir James Goldsmith and Mr. Strong was not at Morgan Stanley. Is that the time period that you're asking about?
MR. MARKOWSKI: The time before this initial of Sunbeam for the presentation leading to the Sunbeam engagement.
MR. CLARE: And, as I understand the

NOT A CERTIFIED COPY

069710

testimony, that was at a time before Mr. Strong was at Morgan Stanley and while Mr. Dunlap was at Sir James Goldsmith. That's the time frame that you're asking about; is that correct?

MR. MARKOWSKI: I'm asking about Mr. Strong's impression of Mr. Dunlap prior to the time that Morgan Stanley met with Mr. Dunlap and Mr. Kersh to make a presentation leading to the Sunbeam engagement.

BY MR. MARKOWSKI:

Q. Did you understand me to be focusing on that time period, sir?

A. Not specifically; but I was assuming it was when I was at Solomon Brothers, yes.

Q. The pending question was have you found Mr. Dunlap particularly difficult to work with?

A. No.

Q. Did you observe Mr. Dunlap's interaction with the individuals reporting to him in connection with the work he did for Sir James Goldsmith?

A. Yes.

Q. And did you find this Mr. Dunlap was a

demanding taskmaster in terms of dealing with people who reported to him?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. Would you say that Mr. Dunlap was easygoing?

A. No.

Q. What were the nature of the transactions that you handled where Mr. Dunlap was involved before you joined Morgan Stanley?

A. The transaction that I first met Mr. Dunlap, as I recall, was in representing Sir James Goldsmith in the exchange of an interest that he had in Timberlands with Lord Hanson and Hanson PLC's interest in Newmont Mining.

Q. Do you recall approximately when that transaction took place?

A. Late '80s, maybe 1990.

Q. What was the next transaction?

A. The next transaction, as I recall, was in the first half of 1993, which would have been after I joined Morgan Stanley.

Q. That's what I was just going to ask. What transaction was that?

A. That was a regulation S sale by Sir James Goldsmith of a portion of his stake in Newmont Mining.

Q. And that work was done by Morgan Stanley?

A. Correct.

Q. How did Morgan Stanley get that assignment?

A. I had been suggesting the technique of using regulation S in a possible sale of Sir James's estate to him directly.

Q. Was that prior to the time that you joined Morgan Stanley or subsequent to it?

A. It would have been subsequent to.

Q. And it was a result of that that Morgan Stanley was engaged by Newmont Mining; is that correct?

A. No.

Q. Who was Morgan Stanley engaged by in connection with that transaction?

A. We were not formally engaged. We were selected to serve as the underwriter for a

secondary sale via regulations on behalf of Sir James Goldsmith of his interest -- a portion of his interest in Newmont Mining.

Q. And that came about as a result of your suggestion of that approach to Sir James Goldsmith, correct?

A. Yes.

Q. You have identified two transactions. Was there another?

A. Not that I recall.

Q. A number of Morgan Stanley documents indicate that you are involved in three transactions with Mr. Dunlap and Sir James Goldsmith.

A. I don't recall a third. I may have forgotten one.

Yes, I do remember, actually. Thank you. We were -- this is when I was at Solomon Brothers. We were engaged to look at the possible sale of a timber mill, I believe, in the Pacific Northwest. I could be wrong on that, but that's what I recall.

Q. Did a transaction in fact occur?

A. Not that I recall.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. Where did the initial meeting with Sunbeam take place?
A. At their headquarters.
Q. Who was present for Sunbeam?
A. As I recall -- I may not be able to recall a complete list but Mr. Dunlap, I believe Mr. Kersh, I believe Mr. Fannin, although I could be wrong.
Q. Do you recall that you, Mr. Fiedorek, Mr. Kitts, Mr. Stynes and Mr. McQuery attended for Morgan Stanley?
A. That may be true. I don't recall Mr. McQuery, but that may have been true.
Q. Do you know David McQuery?
A. Yes.
Q. What was his responsibility at Morgan Stanley in the spring of 1997?
A. I'm not certain.
Q. Do you recall that he was a managing director in mergers and acquisitions?
A. He was not a managing director in mergers and acquisitions.
Q. Was he working within the mergers and acquisitions group at that time?

CONFIDENTIAL - STRONG

A. He may have been, but I don't recall.
Q. What you recall is that he was not a managing director at that time?
A. Correct.
Q. Tell me everything that you can recall with the initial meeting with Sunbeam in the spring of 1997.
A. I recall that we met at their headquarters. I recall that we made a written presentation to them based upon public information of alternatives that we felt might be reasonable for them to pursue.
Q. Do you recall anything else?
A. Not specifically, no.
Q. Do you recall anything else, generally?
A. We met in one of their conference rooms.
Q. How long did the meeting take place. How long did it take?
A. I don't recall specifically, but I would estimate a couple of hours.
Q. Do you recall the various types of alternatives that you described as potentially

CONFIDENTIAL - STRONG

viable for Sunbeam?
A. I recall certain of them.
Q. What do you recall?
A. I recall that we looked at the possibility of Sunbeam making one or more acquisitions. I recall that we also looked at the possibility of Sunbeam selling itself for merging with another third party and there may have been other alternatives as well.
Q. Do you recall that -- do you recall what Morgan Stanley's conclusion was at that point in time regarding the viability of Sunbeam selling itself or merging with another company?
MR. CLARE: Objection to form and foundation.
BY THE WITNESS:
A. I don't recall if it was at that meeting or not; but I do recall having the view that successfully consummating a sale might be relatively more difficult in this particular case.
BY MR. MARKOWSKI:
Q. Do you recall if that's a view you expressed or anyone from Morgan Stanley expressed

CONFIDENTIAL - STRONG

during the initial presentation of Sunbeam?
A. We may have.
Q. Based on the discussions at this initial meeting, did you have a conclusion -- did you reach a conclusion concerning Mr. Dunlap's goals?
A. No.
Q. Did Mr. Dunlap tell you that he -- his primary goal was to try and find a company to buy Sunbeam?
A. No.
Q. Was there a point in time where it became clear to you that Mr. Dunlap's primary goal was to find a company to buy Sunbeam?
A. I am sorry. I thought I just asked and answered that. Then I am confused.
Q. I think I asked a somewhat different question.
Did there come a point in time where it became clear to you that Mr. Dunlap's preference among the various alternatives that might be possible was to find a company to purchase Sunbeam?
MR. CLARE: I'm going to object to the form

NOT A CERTIFIED COPY

16div-021800

of that question and your question now relates to a time period after the initial meeting; is that correct?

MR. MARKOWSKI: Can you read the question back, please.

(Whereupon, the record was read by the reporter.)

MR. CLARE: Bill, are you clear on the time frame that he's asking about?

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. My question now, Mr. Strong, isn't related to the conclusions you reached at the initial meeting with Sunbeam.

My question is, at any point in time did it become apparent to you that Mr. Dunlap's preference was to find a company to purchase Sunbeam?

A. I think there was a time, as I recall probably in 1997, I believe, where a period of time where that would have been his preference.

Q. How was that communicated to you?

A. I don't recall specifically.

Q. Do you recall Mr. Dunlap personally advising you in some manner that his preference was for Morgan Stanley to find a company willing and able to purchase Sunbeam?

A. Not a specific as you're putting it, no; but I generally became aware of that -- although we may have, I just don't recall.

Q. So Mr. Dunlap may have told you that his primary objective was for Morgan Stanley to find a company capable of purchasing Sunbeam, correct?

MR. CLARE: Objection. That misstates the testimony.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. Your testimony is that at no point in time did Mr. Dunlap say to you that his preference was for you to find a company --

A. Excuse me. I find this inappropriate. You're changing the question every time. You're going from preference to primary. That's inappropriate. Ask a question, I'll answer it.

Q. I'm asking a question.

A. But you're changing it when you repeat it, so tell me which one you want me to answer.

Q. Each of my questions stands alone, sir, so you should listen to each one carefully.

A. I have been, but you're changing it. Which one do you want me to answer?

MR. CLARE: Bob, we're not going to engage in a debate about the questioning style. Ask a question.

MR. MARKOWSKI: And I'm trying to.

MR. CLARE: Well, I invite you to ask your next question.

MR. MARKOWSKI: I'm trying to.

BY MR. MARKOWSKI:

Q. My question is, is it your testimony that at no point in time did Mr. Dunlap say to you that his preference was for Morgan Stanley to find a company willing and able to purchase Sunbeam?

A. No.

Q. So it is possible in your mind that Mr. Dunlap made such a statement to you, correct?

A. That it was his preference, correct.

Q. Yes.

Do you have a recollection, as you sit here today, that at some point in time Mr. Dunlap said to you that his preference was for Morgan Stanley to find a company willing and able to buy Sunbeam?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. He may have. As I recall -- I don't recall as specifically as you're putting it, but he may have.

BY MR. MARKOWSKI:

Q. Did Mr. Kersh advise you of that, that at some point in time that Mr. Dunlap's preference was for Morgan Stanley to find a company willing and able to purchase Sunbeam?

A. He may have, but I don't recall.

Q. You don't rule it out?

A. He may have, but I don't recall.

Q. Sunbeam did not engage Morgan Stanley immediately after the initial presentation that Morgan Stanley made to Sunbeam in the spring of 1997; is that correct, sir?

A. Yes.

NOT A CERTIFIED COPY

Q. In fact, Sunbeam didn't formally engage Morgan Stanley until September of 1997; do you recall that?
A. I know it was later, and I believe the fall was when we signed an engagement letter.
Q. Between the initial meeting in April with Sunbeam management and the time Morgan Stanley was formally engaged by Sunbeam in the fall of 1997, Morgan Stanley did extensive work on behalf of Sunbeam; is that correct?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I'm not sure I agree with the characterization "extensive," but we did perform work on behalf of Sunbeam, yes.
BY MR. MARKOWSKI:
Q. Who was involved in performing services relating to Sunbeam in this connection between the initial meeting with Sunbeam in the spring and the formal engagement of Morgan Stanley in the fall?
A. For Morgan Stanley?
Q. Yes.
A. It would have been all or a portion of

the same team members who were present at the meeting as well as others.
Q. Do you recall who the others were?
A. No. I do recall that at some point Andy Savarie became involved. I don't recall when and there may have been others involved, but I don't recall any other names.
Q. Do you recall what work was being performed between this initial meeting in the spring and Morgan Stanley's formal engagement in the fall by Morgan Stanley?
A. No.
Q. How extensive was your involvement during that time period relating to Sunbeam?
A. I would speak periodically to Morgan Stanley team members and to members of Sunbeam management.
Q. Were you personally doing any work other than speaking with team members and talking to Sunbeam?
A. I don't recall specifically; but I'm confident I would have been reviewing documents -- reviewing public documents and any other materials that we might be producing. It's

likely, although I'm not certain, that I would have reviewed them.
Q. Why was Morgan Stanley continuing to do work?
MR. CLARE: Objection to the form.
BY THE WITNESS:
A. If I understand the question, because we were asked to.
BY MR. MARKOWSKI:
Q. Well, you weren't formally engaged, correct?
A. So you're asking prior to September?
Q. Right.
The time period between the initial meeting in April and September, Morgan Stanley had not been engaged by Sunbeam, correct?
A. We would have been engaged in substance. The engagement letter would not have been signed until the fall of 1997. And it's the practice in the industry that once you have been retained in substance, the investment bank would begin to provide services on the understanding that the engagement letter would eventually be signed.

Q. Did you understand that Morgan Stanley had the right to compensation for the work that was being performed during this interim period in -- between the initial meeting in April and the signing of an engagement letter in September?
MR. CLARE: Object to the form to the extent it asks for a legal conclusion.
BY THE WITNESS:
A. Not that I recall.
BY MR. MARKOWSKI:
Q. So it is your understanding that Sunbeam had no obligation to pay Morgan Stanley for the work that was being performed; is that correct?
A. They would have no legal obligation until and if an engagement letter was executed.
Q. Do you recall generally what the focus of Morgan Stanley's efforts were during that interim time period?
A. I don't recall specifically; but I, in general, would recall that we were beginning to more fully investigate various alternatives.
Q. The alternatives included what kinds of transactions, sir?

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

A. The two major themes that I recall today would be to examine potential companies that Sunbeam could conceivably acquire as well as to examine the possible sale of Sunbeam to another company.

Q. Did you --

A. There may have been others as well.

Q. I'm sorry. I didn't mean to interrupt.

Did you visit Florida to meet with Sunbeam during this interim period of time after the initial meeting in April prior to the formal engagement in the fall?

A. Not that I recall.

Q. Do you know if anyone from Morgan Stanley did?

A. Not that I recall today. They may have, I just don't recall.

Q. During this interim period, were you communicating directly with Mr. Dunlap?

A. Periodically, yes.

Q. Were you communicating directly with Mr. Kersh?

A. Periodically, yes.

CONFIDENTIAL - STRONG

Q. Were you communicating with anyone else at Sunbeam during this interim period?

A. I may have been, but I don't recall.

Q. How frequently did you communicate with Mr. Dunlap during this interim phase?

A. Periodically.

Q. What is your definition of periodic in this context?

A. A couple times a week, possibly, maybe more, maybe less.

Q. Do you recall that the frequency of your communications with Mr. Kersh was relatively the same?

A. Probably.

Q. Do you know if anyone else from Morgan Stanley other than yourself was communicating with Sunbeam during this interim period?

A. I don't recall specifically, but it would not surprise me that there probably was.

Q. Were you aware, Mr. Strong, say, at any time in 1997 that Mr. Dunlap had a reputation for bullying his corporate staff?

MR. CLARE: Objection to form.

BY THE WITNESS:

CONFIDENTIAL - STRONG

A. No.

BY MR. MARKOWSKI:

Q. Do you recall that he had a reputation for being abusive to people reporting to him?

MR. MARKOWSKI: Same objection.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. Do you recall that he had a reputation for cutting corners?

MR. CLARE: Same objection.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. For exaggerating the results of his companies?

MR. CLARE: Same objection.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. Do you recall that he had a reputation for exaggerating the success of his purported turnaround activities?

MR. CLARE: Same objection.

CONFIDENTIAL - STRONG

BY THE WITNESS:

A. No

BY MR. MARKOWSKI:

Q. Had you seen personally evidence of Mr. Dunlap's temper during any of the projects that you were engaged in?

A. Yes.

Q. When did you first see evidence of Mr. Dunlap's temper?

A. I don't recall.

Q. Would it have been during the time period where Mr. Dunlap was working for Sir James Goldsmith?

A. It may have been, but I don't recall.

Q. Do you recall seeing evidence of Mr. Dunlap's temper in connection with the work that Morgan Stanley was performing for Sunbeam?

MR. CLARE: At any point in time?

MR. MARKOWSKI: Yes.

BY THE WITNESS:

A. Yes.

BY MR. MARKOWSKI:

Q. When was the first occasion?

A. I don't recall.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. Was it during the time period before Morgan Stanley was formally retained?
A. Not that I recall.
Q. So you saw -- as far as you can recall today, you saw no evidence of Mr. Dunlap's temper prior to the time period where Morgan Stanley was formally retained in the fall of 1997?
A. Right. I could be wrong, but that's what I recall today.
Q. When do you recall seeing the first evidence of Mr. Dunlap's temper then?
A. I don't recall a specific time.
Q. Do you recall a context?
A. No.
Q. Who was his temper directed toward?
A. I just recall that Mr. Dunlap could get upset at times, would want people to work hard, general things like that.
Q. Were there any occasions where you felt that Mr. Dunlap's temper was directed at you personally?
MR. CLARE: Again, during any time period?
MR. MARKOWSKI: Yes.
BY THE WITNESS:

CONFIDENTIAL - STRONG

A. Yes.
BY MR. MARKOWSKI:
Q. What was that occasion?
A. He was very upset with me for insisting that they issue a press release in connection with the zero coupon convertible financing.
Q. On any other occasion did you feel that Mr. Dunlap's temper was directed at you personally?
A. Yes.
Q. What was the context of that?
A. I recall one other occasion where he was very upset with me because of comments that one of our economists had made about some topic. I don't recall what the topic was.
Q. And do you recall approximately when that occurred?
A. No.
Q. Do you recall any other occasion where Mr. Dunlap's temper was directed at you personally or you felt that it was?
A. Not that I recall today.
Q. Do you recall any occasion where

CONFIDENTIAL - STRONG

Mr. Dunlap's -- where you saw Mr. Dunlap exhibit his temper toward any other Morgan Stanley personnel?
A. On the occasion I previously testified to with respect to the economist, there were others present in the room when he was expressing his displeasure.
Q. Do you recall any other occasion where Mr. Dunlap directed his temper either at you personally or anyone else at Morgan Stanley?
A. Not that I recall today.
Q. You saw no evidence of this temper while you were working at Solomon Brothers?
A. No, not that I recall.
Q. Do you recall that Mr. Dunlap had been the subject of some negative media commentary prior to the time Morgan Stanley was formally retained by Sunbeam?
A. Yes.
Q. What was the nature of that?
A. As I recall, there was publicity about some of the job cuts he had initiated while he was the Chief Executive Officer of Scott Paper.
Q. Do you recall any other negative media

CONFIDENTIAL - STRONG

commentary relating to Mr. Dunlap prior to the time Morgan Stanley was formally retained?
A. Not that I recall today, no.
(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 67, for identification, as of 12/04/03.)
BY MR. MARKOWSKI:
Q. Mr. Strong, I'm going to show you what we're going to mark as Deposition Exhibit No. 67. It is an August 7, 1997 Morgan Stanley interoffice memorandum from Mr. Fiedorek, you, Mr. Kitts, Mr. Stynes and Mr. Fuchs to Distribution.
The document, sir, bears the Bates No. Morgan Stanley Confidential 63827 through 833.
Would you take a moment to look at that.
Do you recall this document, sir?
A. Not specifically, no.
Q. Let me direct your attention to the second page of the document. There is a section entitled Background.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

A. Yes.
Q. Do you see that?
A. Yes.
Q. The second sentence describes an April 22, 1997 meeting.
Do you see that?
A. Yes.
Q. Do you believe that that's a reference to the initial meeting at Sunbeam's headquarters that you testified to this morning?
A. Probably.
Q. Do you see it indicates that Mr. McQuery was present as well as Mr. Fiedorek, you, Mr. Kitts and Mr. Stynes?
A. I see that, yes.
Q. Does that refresh your recollection of his participation?
A. No.
Q. You will see reading a couple of sentences further there is a reference to a July 24, 1997 meeting of you, Mr. Kitts, Mr. Stynes, Mr. Fuchs with Mr. Dunlap and Mr. Kersh in Florida. Do you see that?
A. Yes.

CONFIDENTIAL - STRONG

Q. Does that refresh your recollection that, in fact, you did have at least one additional trip to Florida between the time of your initial meeting and the time Morgan Stanley was formally engaged by Sunbeam in the fall of '97?
A. No.
Q. Do you have any reason to dispute the statement that's contained in that paragraph that there was such a meeting?
A. No.
Q. I'll ask you to turn to the next page. There is a section entitled, Acquirer Track Record.
Do you see that?
A. Yes.
Q. The first sentence in that paragraph reads, "Al Dunlap has a distinctive track record for executing significant corporate turnarounds most recently at Scott Paper and Laser."
Do you see that?
A. Yes.
Q. Laser is a reference there to Sunbeam, is it not?

CONFIDENTIAL - STRONG

A. I believe so, yes.
Q. What is a significant corporate turnaround in the context of this statement?
MR. CLARE: Objection. No foundation that Mr. Strong drafted the document. He does not have a recollection of it.
You can answer, if you understand.
BY THE WITNESS:
A. I would say, in general, not specifically with reference to this document, just material improvements in different financial statistics.
BY MR. MARKOWSKI:
Q. Do you agree that that was Mr. Dunlap's reputation in 1997?
A. Yes.
Q. Mr. Dunlap touted himself, did he not, sir, as someone who could turn around poorly performing companies in a short period of time?
MR. CLARE: Objection to form. Vague as to context.
BY THE WITNESS:
A. Yes.
BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. Now, the last paragraph in that section, sir, reads, "Given his very forceful style, Laser's CEO has attracted significant personal attention and the focus of intense media scrutiny, some of it negative."
Do you see that sentence?
A. Yes.
Q. The reference to Laser's CEO there is a reference to Mr. Dunlap; is that correct?
A. I believe so, yes.
Q. Did you agree at that point in time, sir, that Mr. Dunlap had a reputation as having a very forceful management style?
MR. CLARE: Objection to form, mischaracterizes the document.
BY THE WITNESS:
A. Well, as I previously testified, he was a very hardworking CEO.
BY MR. MARKOWSKI:
Q. Would you agree that his reputation was that he had a very forceful management style?
MR. CLARE: Same objection. Mischaracterizes the document.
BY THE WITNESS:

NOT A CERTIFIED COPY

016697

CONFIDENTIAL - STRONG

A. I don't know.
BY MR. MARKOWSKI:
Q. You don't recall that being Mr. Dunlap's reputation as a manager in 1997?
A. I am sorry. I didn't think that was the question.
MR. CLARE: That's right. It wasn't.
BY MR. MARKOWSKI:
Q. Do you recall that Mr. Dunlap's reputation in 1997 was as an executive with a very forceful management style?
A. He was a hard-charging CEO who got things done. I think that's how I would characterize it. I'm not sure what forceful means.
Q. And do you recall that he had been the subject of intense media scrutiny?
A. I don't recall specifically intense. I know there have been media scrutiny as I previously testified.
Q. Do you think that the statement in this document is inaccurate, that he has been the subject of intense media scrutiny at that point in time?

CONFIDENTIAL - STRONG

A. I think people can characterize it different ways.
Q. Well, you're identified, sir, as one of the individuals from whom this memorandum is coming, correct?
A. Yes.
Q. At the time the memorandum was circulated, did you advise anyone that you disagreed with the characterizations in this document of Mr. Dunlap?
A. I don't know. I may have.
Q. Do you recall whether the document was corrected at any point?
A. I don't recall.
Q. Who was this document directed to, sir?
A. It just says distribution.
Q. Do you know to whom this memorandum would have been circulated given its content?
A. Not that I recall today.
Q. Let me mark another exhibit, Mr. Strong, Coleman Parent Exhibit No. 68. It is a document that bears Bates label Morgan Stanley confidential 3995 through 4001. It's a Business

CONFIDENTIAL - STRONG

Week news story entitled, The Shredder: Did CEO Dunlap Save Scott Paper or Just Pretty It Up.
(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 68, for identification, as of 12/04/03.)
BY MR. MARKOWSKI:
Q. I would like you to take a moment, sir, and review this document.
My initial question is going to be whether you have ever seen it before.
A. I may have. I don't recall.
Q. Do you recall seeing media commentary relating to Mr. Dunlap's work at Scott Paper that called into question whether or not the results that Mr. Dunlap had purportedly accomplished at Scott Paper were real?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. Do you recall that as part of Morgan Stanley's due diligence relating to whether to

CONFIDENTIAL - STRONG

accept an engagement with Sunbeam you requested that a survey be done of news stories relating to Mr. Dunlap?
A. I don't recall. I may have.
Q. Do you recall that in connection with that media review by Morgan Stanley, news stories were identified by Morgan Stanley that called into question whether Mr. Dunlap had simply manipulated the results at Scott Paper to position the company for sale rather than accomplishing a true turnaround of the business?
MR. CLARE: Objection to the form. Argumentative and I object to the premise of the question. Mr. Strong did not testify that he directed the media review.
You can answer if you can understand the question.
BY THE WITNESS:
A. As I previously testified, I don't recall whether I asked for a media review or not. So I can't really answer your question.
BY MR. MARKOWSKI:
Q. Do you recall seeing news stories, Mr. Strong, before Morgan Stanley was formally

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

retained by Sunbeam that called into question Mr. Dunlap's accomplishments at Scott Paper?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. It's been asked and answered.

MR. MARKOWSKI: Can you read the question back, please.

(Whereupon, the record was read by the reporter.)

BY MR. MARKOWSKI:

Q. And your answer to that question, sir, is what?

A. It's still the same. I don't recall.

Q. Do you know how this document found its way into Morgan Stanley's files, sir?

MR. CLARE: Objection. Calls for speculation.

BY THE WITNESS:

A. No, and I don't know that it was.

BY MR. MARKOWSKI:

Q. Well, it's -- I'll represent to you, sir, that it was produced to us by Morgan Stanley.

Do you have any knowledge concerning

CONFIDENTIAL - STRONG

how this document found its way into Morgan Stanley's files?

A. No.

Q. Did you think, sir, that Mr. Dunlap might obtain some additional credibility with investors in connection with potential transactions with Sunbeam if he engaged Morgan Stanley to act as his investment banking company?

MR. CLARE: Objection. Calls for speculation and entirely hypothetical.

BY THE WITNESS:

A. I don't know.

BY MR. MARKOWSKI:

Q. Is it your thought, sir, that Morgan Stanley in 1997 had a favorable reputation as an investment banking firm?

A. Yes.

Q. Do you think one reason why Mr. Dunlap wanted to engage Morgan Stanley was because of Morgan Stanley's reputation in the investment banking community?

MR. CLARE: Objection. Calls for speculation. There is no way that Mr. Strong can know what was in Mr. Dunlap's mind.

CONFIDENTIAL - STRONG

BY THE WITNESS:

A. I don't know.

BY MR. MARKOWSKI:

Q. Did that thought occur to you?

A. It may have. I don't recall.

Q. At the time Mr. Dunlap had first approached Morgan Stanley in the spring of 1997, sir, how long had Mr. Dunlap been the Chief Executive Officer of Sunbeam, do you recall?

A. First, I don't agree with the premise of the question. I'm not confident that it was Mr. Dunlap who approached Morgan Stanley. I'm not sure specifically who approached us.

Q. At the time Sunbeam first approached Morgan Stanley in the spring of 1997 concerning a potential engagement, do you recall how long Mr. Dunlap had been the Chief Executive with Sunbeam?

A. Not specifically, no.

Q. Do you recall that he had become the Chief Executive of Sunbeam in 1996?

A. Not that I recall today.

Q. Do you recall that he had been the Chief Executive of Sunbeam for a relatively short

CONFIDENTIAL - STRONG

period of time?

A. Yes.

Q. Mr. Dunlap was also the Chief Executive Officer of Scott Paper for a relatively short period of time, correct?

A. I don't know if I would agree with the characterization "a short period of time," but I do agree that he had been the CEO of Scott Paper.

Q. Do you recall it was approximately 18 months?

A. No.

Q. Do you recall that he became the Chief Executive at Scott Paper in April of 1994 and that the sale to Kimberly Clarke of the Scott Paper business occurred in December of 1995?

A. No, I specifically don't.

Q. Do those time frames sound approximately right to you?

A. Don't know.

Q. Mr. Strong, we're going to mark as deposition Exhibit No. 69 a document that bearing Bates No. Morgan Stanley confidential 3894 through 3930. The cover page is entitled, ProjectProject Laser Discussion Material,

NOT A CERTIFIED COPY

01699

CONFIDENTIAL - STRONG

September 11, 1997 Conference Call.

(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 69, for identification, as of 12/04/03.)

BY MR. MARKOWSKI:

Q. Have you seen this document before, sir?

A. I don't know if I have seen this specific copy of this document before, and I don't recall seeing this document in general either.

Q. Putting aside the handwriting that appears on it, do you recall seeing this document previously?

A. No.

Q. Let me direct your attention to the page that bears Bates label 3916.

Let me ask you before I get specifically to this page, sir, does this document appear to be a document generated by Morgan Stanley?

A. Yes.

CONFIDENTIAL - STRONG

MR. CLARE: And, again, you're asking him to exclude the handwriting?

MR. MARKOWSKI: Yes.

BY MR. MARKOWSKI:

Q. Are you at page 3916, sir?

A. Yes.

Q. Do you see there is a brief biographical description of Mr. Dunlap and Mr. Kersh on this page?

A. Yes.

Q. And with respect to Mr. Dunlap, do you see that it indicates that he became the Chief Executive Officer of Sunbeam on July 18, 1996?

A. Yes.

Q. And that was less than a year before Morgan Stanley was approached by Sunbeam with respect to potential engagement in the spring of 1997, correct?

A. Yes.

Q. And do you see that it also indicates the term of Mr. Dunlap's service as the Chief Executive Officer of Scott Paper?

A. Yes.

Q. And those time periods are from April

CONFIDENTIAL - STRONG

of 1994 through December of 1995, correct?

A. That's what's typed on this page, yes.

Q. Do you have any reason to question the accuracy of this information, sir?

A. No.

Q. So Mr. Dunlap had been, according to this document, the Chief Executive Officer of Scott Paper for slightly more than 18 months before Scott Paper was sold by Mr. Dunlap to Kimberly Clarke, correct?

MR. CLARE: The question is according to this document?

MR. MARKOWSKI: Yes.

MR. CLARE: Then I object. The document speaks for itself. This is a waste of time to have the witness read the document into the record.

BY THE WITNESS:

A. This is what the document reads. It says April '94 to December of '95 -- is what's typed here.

BY MR. MARKOWSKI:

Q. And you recall that Mr. Dunlap had remained the Chairman and Chief Executive of

CONFIDENTIAL - STRONG

Scott Paper until its sale to Kimberly Clarke, sir?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. I believe so, yes, as I recall today.

BY MR. MARKOWSKI:

Q. And Mr. Dunlap had been employed according to this document as the Chief Executive Officer of Sunbeam for less than a year before he approached Morgan Stanley about the possibility of arranging the sale of Sunbeam to a third party, correct?

MR. CLARE: Same objection. The document speaks for itself. The dates are what they are. Waste of time.

BY THE WITNESS:

A. I previously testified that I don't know if he approached Morgan Stanley or someone else did, but I do recall that we were approached in the spring of '97.

BY MR. MARKOWSKI:

Q. And according to this document it was less than a year after Mr. Dunlap became the Chief Executive Officer of Sunbeam, correct?

NOT A CERTIFIED COPY

A. If this document is accurate, yes.
Q. Did you know that Mr. Dunlap personally made a great deal of money when he sold Scott Paper to Kimberly Clarke? Were you aware of that?
MR. CLARE: Objection. No foundation.
BY THE WITNESS:
A. I know that he was -- I know that he was a stockholder and therefore was compensated consistent with that.
BY MR. MARKOWSKI:
Q. Do you know that he made approximately $100 million on his sale of Scott Paper stock to Kimberly Clarke?
A. Not that I recall today.
Q. You do have some understanding that Mr. Dunlap made a great deal of money when Scott Paper was sold to Kimberly Clarke?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I recall that he made money consistent with his ownership in Scott Paper.
BY MR. MARKOWSKI:
Q. Do you recall if that was a

significant amount of money?
MR. CLARE: Same objection.
BY THE WITNESS:
A. It is what it is. I don't recall the exact amounts.
BY MR. MARKOWSKI:
Q. I'm not asking whether you can today tell me what the exact amounts are, sir. I am asking whether if it was your understanding in the spring of 1997 when Mr. Dunlap approached Morgan Stanley or when Sunbeam approached Morgan Stanley that in connection with the sale of Scott Paper to Kimberly Clarke in late 1995 that Mr. Dunlap had made a significant amount of money personally?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Again, I think I have answered that. He was a stockholder. He sold the stock and was compensated for that.
BY MR. MARKOWSKI:
Q. You don't have any notion whether the amount of money that Mr. Dunlap made on the stock was modest or significant?

MR. CLARE: Objection. Argumentative.
BY THE WITNESS:
A. I would let him characterize that.
BY MR. MARKOWSKI:
Q. Well, do you consider $100 million to be significant?
A. It sure is. To me it is.
Q. Did you have an understanding that Mr. Dunlap made a significant amount of money upon the sale of his Sunbeam stock from your perspective -- excuse me. Let me start over.
Do you have an understanding in the spring of 1997 that Mr. Dunlap made from your perspective a significant amount of money on the sale of his Scott Paper stock to Kimberly Clarke in late 1995?
MR. CLARE: Objection. Asked and answered now several times.
BY THE WITNESS:
A. Again, I don't recall exactly what he made. I know that he had been a stockholder and he was compensated for that.
BY MR. MARKOWSKI:
Q. I am not asking if you can recall it

exactly, sir. I'm asking whether you recall knowing that Mr. Dunlap made a significant amount of money from your standards upon the sale of his Scott Paper stock to Kimberly Clarke in late 1995?
A. I don't recall. Probably, but I don't recall.
Q. You think you probably were aware of that; is that correct, sir?
A. But I don't recall.
Q. And Mr. Dunlap wanted you to help him repeat that success and to find someone to buy Sunbeam, correct?
MR. CLARE: Objection. Calls for speculation about what Mr. Dunlap wanted.
BY THE WITNESS:
A. I don't agree with the characterization of the question. We were asked to examine a number of alternatives.
BY MR. MARKOWSKI:
Q. And if Morgan Stanley had been able to find a company to purchase Sunbeam at a premium above its market price, Mr. Dunlap, again, would have personally made a significant amount of

NOT A CERTIFIED COPY

money upon the consummation of that transaction, correct, sir?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. He would -- again, as with Scott Paper would have been compensated consistent with his ownership in the company.
BY MR. MARKOWSKI:
Q. Did you understand that Mr. Dunlap held a significant amount of stock in Sunbeam in 1997?
A. I believe it being meaningful, yes.
Q. If Sunbeam had been sold at premium as a result of Morgan Stanley's efforts, Mr. Dunlap you knew would stand personally to make a significant amount of money, correct?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Maybe.
BY MR. MARKOWSKI:
Q. Why do you say maybe?
A. When you say "premium," premium to what? Premium to zero is not a very big number.
Q. Premium to its then market price?

A. Possibly. He had some options, I believe some stock. I don't recall where the strike prices where. He may have.
Q. You knew, sir, that Mr. Dunlap upon the sale of Sunbeam Company to a third party stood personally to make a significant amount of money, correct?
A. It would have been consistent with his ownership.
Q. Which you understood to be significant, correct?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I think I said meaningful. I don't recall the exact numbers.
BY MR. MARKOWSKI:
Q. What is meaningful in your mind?
A. Meaningful.
Q. Meaningful in terms of the number of shares, sir?
A. Number of shares or absolute dollars I think would be meaningful in my mind.
Q. And it was your understanding that Mr. Dunlap held a meaningful equity interest in

Sunbeam Company in 1997, correct?
A. I think from an individual's point of view, probably that's yes.
Q. And you understood at least at some point that Mr. Dunlap's preference in terms of possible transactions was for Morgan Stanley to arrange the sale of Sunbeam to a third party, correct?
MR. CLARE: Objection. That misstates the testimony.
BY THE WITNESS:
A. For a period of time, I recall that that was his preference.
BY MR. MARKOWSKI:
Q. Do you recall that Mr. Dunlap -- Morgan Stanley was not able to arrange for the sale of Sunbeam Company, correct?
A. Correct.
Q. Do you recall that at some point Mr. Dunlap expressed his unhappiness with you over Morgan Stanley's inability to find a company to purchase Sunbeam?
A. There was a period of time where that was his preference and when it was not

forthcoming, he was disappointed with that.
Q. Do you recall that Mr. Dunlap expressed unhappiness with Morgan Stanley's failure to find a buyer for Sunbeam?
MR. CLARE: Objection. Asked and answered.
BY THE WITNESS:
A. Again, I don't know how to answer it any differently.
BY MR. MARKOWSKI:
Q. How did he express his disappointment, sir?
A. I just remember generally that he was disappointed.
Q. Did he say that Morgan Stanley wasn't working hard enough to find a buyer?
A. He may have, but I don't recall.
Q. Did he say that you personally weren't doing everything that you should be doing to find a buyer for Sunbeam?
A. He may have, but I don't recall.
Q. Do you recall that Mr. Dunlap encouraged Morgan Stanley to do more to find a buyer for Sunbeam than it was doing in his view?
A. He continued to encourage us to work

NOT A CERTIFIED COPY

hard with respect to that during the time frame where it was his preference. That's what I recall.

Q. Do you recall him raising his voice in communicating that view to you?

A. He may have.

Q. Do you recall him showing anger in communicating his views to you on that subject?

A. He may have but I don't recall.

Q. Who was present during those discussions with Mr. Dunlap on that subject, just you and he personally individually or were there others present?

A. There would have likely been others at those points in time where it would have been discussed.

Q. Do you recall discussing that topic with Mr. Dunlap in person, Mr. Dunlap's unhappiness with Morgan Stanley's ability to find a buyer for Sunbeam?

MR. CLARE: Object to the form and you're mischaracterizing the witness' prior testimony characterizing Mr. Dunlap's views.

BY THE WITNESS:

A. Again, I recall in general that he was disappointed. I don't recall any specific conversations.

BY MR. MARKOWSKI:

Q. You don't recall a face-to-face session with Mr. Dunlap where he expressed that view to you very directly?

A. Not specifically. It may have taken place, but I don't recall.

Q. Do you remember speaking with Mr. Dunlap on the telephone where he expressed that view to you?

A. He may have, but I don't recall.

Q. Do you recall that Mr. Dunlap expressed that view to you either in person or by telephone on more than one occasion expressing his unhappiness with Morgan Stanley's failure to find a buyer for Sunbeam?

MR. CLARE: Object. It mischaracterizes the witness' prior testimony.

BY THE WITNESS:

A. He may have expressed disappointment. I just don't recall.

BY MR. MARKOWSKI:

Q. My question is whether it happened on more than one occasion?

A. I don't know.

Q. Do you recall over what period of time it was clear to you that Mr. Dunlap's preference was to find a buyer for Sunbeam?

A. I don't recall the specific time, but I recall that during the latter part of 1997, once we had been formally engaged, there was a period of time during that time where that was his preference.

Q. So that would have been sometime after September -- let me give you the engagement letter, sir. Let's pin this down.

Mr. Strong, let me show you what we will mark as CPH No. 70, a letter dated September 5, 1997, from you to Albert J. Dunlap on Morgan Stanley stationery and it bears Bates No. SB 237825 through 830.

Can you identify Exhibit No. 70 for me, Mr. Strong.

(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 70, for

identification, as of 12/4/03.)

MR. CLARE: Take a moment to read through it.

BY THE WITNESS:

A. It looks to be a photocopy of an engagement letter dated September 5, 1997.

BY MR. MARKOWSKI:

Q. Does it bear your signature, sir, on page 828?

A. This copy does, yes.

Q. Do you see it's signed by Sunbeam Company as accepted on September 11, 1997?

A. Yes.

Q. And do you recall that that is approximately the date on which Sunbeam formally retained Morgan Stanley to act as its advisor with respect to potential transactions?

A. I recall it was the fall of '97.

Q. So is it your testimony, sir, that subsequent to the execution by Sunbeam of Exhibit No. 70, the September 5 engagement letter, that it became apparent to you that Mr. Dunlap's preference was for Morgan Stanley to

NOT A CERTIFIED COPY

011703

find a company to purchase Sunbeam?
MR. CLARE: That's a misstatement of the testimony. I object.
BY THE WITNESS:
A. As I previously testified, as I recall subsequent to the date, as I say, the fall of '97, there was a period of time where I recall Mr. Dunlap had a preference for the sale of the company.
Q. And you relate that time period, sir, to a period after Sunbeam executed the Morgan Stanley engagement letter, correct?
A. It wasn't that sort of brightlined as you've described it. I just recall it was in late '97.
Q. And do you recall how long Mr. Dunlap -- strike that.
Do you recall how long a period of time Mr. Dunlap continued to articulate a preference for Morgan Stanley finding a company to purchase Sunbeam?
A. As I recall, he had a preference for it during at least a portion of the time where we were examining that alternative.

Q. Well, do you recall whether Mr. Dunlap continued to express the view that he preferred for Morgan Stanley to find a company to purchase Sunbeam through the end of 1997?
A. I don't recall the specific time where he would have ceased having that be his preference.
Q. Do you have an understanding why Mr. Dunlap changed his views with respect to his preferences?
MR. CLARE: Objection to form.
BY MR. MARKOWSKI:
Q. Let me ask a background question. Strike that.
Did you understand at some point in time Mr. Dunlap decided that he preferred to enter into acquisitions rather than the sale of Sunbeam?
A. As I recall, we were pursuing a couple of alternatives in parallel; but I don't recall specifically when it would have become his preference to pursue an acquisition.
Q. Well, did Mr. Dunlap change his views with respect to his preferences or did it become

apparent that it would not be possible to arrange for the sale of Sunbeam?
MR. CLARE: Or some other option.
BY THE WITNESS:
A. I don't know.
BY MR. MARKOWSKI:
Q. Well, was there a point in time where it became apparent to you, sir, that it would not be possible to arrange for the sale of Sunbeam?
A. Yes.
Q. When did you come to that conclusion?
A. It would have been sometime late 1997 or in the first or early of 1998 is my recollection.
Q. Did you advise Mr. Dunlap of that?
A. Not that I recall specifically, but I probably did.
Q. Do you recall whether up until the time that you advised Mr. Dunlap that you had concluded that it would not be possible to arrange for the sale of Sunbeam, Mr. Dunlap continued to prefer that Morgan Stanley find a buyer?
MR. CLARE: I don't understand that

question.
BY THE WITNESS:
A. Would you repeat the question, please.
BY MR. MARKOWSKI:
Q. Let me rephrase it.
Do you recall, sir, that up until the time that you informed Mr. Dunlap that it would not be possible in your view for Morgan Stanley to find a company to purchase Sunbeam, that it appeared to you that Mr. Dunlap's preference remained that Sunbeam be sold?
MR. CLARE: Object to form.
BY THE WITNESS:
A. That's probably fair, although he knew that we were pursuing alternatives in parallel.
BY MR. MARKOWSKI:
Q. But until such time as it became apparent that it would not be possible to arrange for a sale of Sunbeam, it was your view that that had been and continued to be Mr. Dunlap's preference, sir?
A. I don't know that it continued to be. I believe there was a period of time where it was

NOT A CERTIFIED COPY

016704

CONFIDENTIAL - STRONG

his preference.

Q. And from that point forward until such time as it became apparent that it would not be possible for Morgan Stanley to arrange for the sale of Sunbeam, it was your view that Mr. Dunlap continued to prefer that Sunbeam be sold?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. That's not what I have testified.

MR. MARKOWSKI: I'm trying to understand it.

BY MR. MARKOWSKI:

Q. There was a point in time where Mr. Dunlap, in your view, had a preference that Sunbeam be sold, correct?

A. Yes.

Q. And that point in time, in your recollection, was a point in the fall of 1997, correct?

A. Yes, whatever I testified before, maybe up to early '98. I don't remember the exact time frame.

Q. And there was a point in time subsequent to that where you concluded that it

CONFIDENTIAL - STRONG

would not be possible for Morgan Stanley to find a company to purchase Sunbeam, correct?

A. Yes.

Q. Between the time that you became aware that Mr. Dunlap had a preference to sell Sunbeam until the time when it became apparent to you that it would not be possible for Morgan Stanley to arrange for a sale, was it your belief that Mr. Dunlap's preference during that time period was the sale of Sunbeam?

A. This is prior to the time where I communicated to him, if I did, that a sale might not be possible; is that your question?

Q. Let me try to make it clear.

Between the time when it became apparent to you that Mr. Dunlap's preference was the sale of the business and the point in time where it became apparent to you that that would not be possible, was it your belief that Mr. Dunlap's preference during that entire time period was for Morgan Stanley to find a buyer for Sunbeam?

A. It may have been.

Q. And do you recall, sir, that when

CONFIDENTIAL - STRONG

Morgan Stanley advised Sunbeam that Morgan Stanley could not arrange for the sale of the business, that Mr. Dunlap expressed personally and directly to you his unhappiness with Morgan Stanley's failure to find a buyer for the company?

MR. CLARE: Objection. Asked and answered and misstates the prior testimony.

BY THE WITNESS:

A. Again, as I think I previously testified, I do recall him expressing disappointment in general and I know that I was present in some form in hearing that. I don't recall the circumstances, though.

BY MR. MARKOWSKI:

Q. You've referred a couple of times now, at least, sir, to looking at the fact that Morgan Stanley was also engaged in looking at alternatives other than selling Sunbeam, correct?

A. Yes.

Q. And what were those alternatives?

A. As I previously testified, I recall that we were looking at possible acquisition candidates for Sunbeam Corporation and we may

CONFIDENTIAL - STRONG

have also been examining other alternatives.

Q. Whose idea was it to look at potential acquisitions?

A. Well, it's always the client's idea to pursue it or not pursue it.

Q. Did Morgan Stanley suggest to Sunbeam in the first instance that something Sunbeam might consider was the possibility of making acquisitions?

A. When we made our presentation in the spring of '97, as I recall, it was one of the alternatives we thought might be conceivably available to Sunbeam; but it's probably fair to say that they had thought about it as well.

Q. Do you recall that Morgan Stanley suggested to Sunbeam at some point that in connection with acquisitions, Sunbeam's stock could be used as either all or a portion of the consideration paid for the purchase of a company?

A. Yes.

Q. Who at Morgan Stanley first made that suggestion?

A. I don't know.

Q. Do you recall whether someone

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

internally at Morgan Stanley made that suggestion to you at some point?

A. I don't recall.

Q. Do you recall whether the idea first occurred to you before someone else suggested it?

A. One, I haven't testified that someone else did suggest it to me; and, two, I don't recall.

Q. Do you recall a point in time where you had conversations with -- you personally had conversations with Sunbeam concerning the potential use of Sunbeam's stock to make an acquisition?

A. I don't recall specifically, but I know we did have conversations.

Q. Do you recall what Sunbeam's reaction was when Morgan Stanley made that suggestion?

A. Not specifically, no.

Q. Let me direct your attention back to Exhibit No. 67, sir. That's the August 7, 1997 memorandum from Mr. Fiedorek, you, Mr. Kitts, Mr. Stynes and Mr. Fuchs for distribution.

The subject line reads, "Potential hostile acquisition of alpha corporation by

CONFIDENTIAL - STRONG

Laser." Do you see that?

A. Yes.

Q. Laser was Morgan Stanley's code name for Sunbeam?

A. I believe so, yes.

Q. Do you recall that Alpha Corporation was Black & Decker?

A. Yes.

Q. Tell me what you recall about the possible hostile acquisition of Alpha Corporation by Sunbeam?

A. I recall, in general, that it was one of the alternatives that Sunbeam management was looking at.

Q. Do you recall who first raised the possible hostile acquisition of the Black & Decker business, whether it was first raised by Sunbeam or whether it was first raised by Morgan Stanley?

A. No.

Q. Is it possible in your mind, sir, that Morgan Stanley would have suggested a hostile bid by Sunbeam for Black & Decker?

A. I don't recall.

CONFIDENTIAL - STRONG

Q. There's nothing about the concept of a hostile bid in this context from Sunbeam by Black & Decker that would cause you to say that that's not a proposal that Morgan Stanley would have brought to Sunbeam?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. I don't recall specifically, no.

BY MR. MARKOWSKI:

Q. Now, do you see at the bottom of this page, sir, there is a bold heading that reads, "Question for the firm"?

A. Yes.

Q. "Does Morgan Stanley want to advise Laser and arrange the financing in a potentially hostile public offer for Alpha?"

Did I read that correctly?

A. Yes.

Q. Do you recall that being an issue for Morgan Stanley?

A. Yes.

Q. Why was that an issue for Morgan Stanley?

A. With respect to any merger acquisition

CONFIDENTIAL - STRONG

or divestiture assignment, we would always want to think carefully about whether or not we would want to be retained and what role we would play. And it would be especially important in a situation where it might be an unsolicited transaction.

Q. Why is that?

A. At all times Morgan Stanley wants to be sure that we conduct ourselves in a first-class way and that any transaction that's public, our name is associated with it, we'd want to be comfortable with the transaction.

Q. Is there something about a hostile merger that changes the evaluation of whether a transaction is an appropriate one for Morgan Stanley to become associated with?

A. I think it is a higher standard.

Q. And for what reason?

A. Because at times the target companies can be disappointed if they are the subject of an offer.

Q. That's the definition of a hostile takeover, isn't it, sir?

A. I would characterize this as

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

unsolicited. I'm not quite sure what hostile means.

Q. Well, this document itself uses that term, right, sir, "hostile"?

A. Yes.

Q. How is that question resolved by Morgan Stanley?

A. We did not proceed with the transaction, so I don't recall if we concluded not to go forward or the client did.

Q. Who within Morgan Stanley would this question have been submitted to for a decision?

A. It would be a wide group of people within the firm.

Q. Can you recall anyone that would have been involved in that decision-making process?

A. Certainly team members would be involved with that, and beyond that I don't recall specifically.

Q. Team members being the individuals working on the Sunbeam transaction?

A. The Sunbeam assignment, yes.

Q. Any one would anyone in firm management been involved in evaluating whether an

CONFIDENTIAL - STRONG

engagement to pursue a hostile takeover of Black & Decker would be an appropriate assignment for Morgan Stanley to undertake?

A. Probably, yes.

Q. Who in management would have been involved in that discussion?

A. I don't recall specifically.

Q. Do you recall generally?

A. No.

Q. Do you recall whether this issue did get raised to the level of Morgan Stanley management?

A. I don't recall, but it probably did though.

Q. Do you recall, yourself, having any personal discussions with members of Morgan Stanley management concerning the possible reputation of Sunbeam in a hostile bid for Black & Decker?

A. No.

Q. In the list of five individuals that this memorandum is coming from, Mr. Fiedorek, Mr. Kitts, Mr. Stynes and Mr. Fuchs, is there one of them that would have been the person

CONFIDENTIAL - STRONG

responsible for dealing with Morgan Stanley firm management on this issue?

A. No.

Q. So none of them would have been more likely than you to be the individual responsible for dealing with firm management concerning the answer to the question on the bottom of this first page?

MR. CLARE: Objection. That misstates the testimony.

BY THE WITNESS:

A. Other than the fact that my other colleagues were based in New York, they may have; but we typically do things as a team.

BY MR. MARKOWSKI:

Q. Now Sunbeam did not make a hostile bid for Black & Decker, correct?

A. Not that I recall, no.

Q. Do you know why?

A. Not that I recall, no.

Q. Had Morgan Stanley successfully represented Sunbeam in a hostile bid for Black & Decker, the engagement offered the prospect of very significant fees to Morgan

CONFIDENTIAL - STRONG

Stanley, did it not?

MR. CLARE: Objection to form and hypothetical. Incomplete.

BY THE WITNESS:

A. Had it concluded, we would have been compensated in an appropriate and reasonable manner consistent with the transaction.

BY MR. MARKOWSKI:

Q. Let me direct your attention to the page that has Bates No. 63831 on it.

Do you see the heading Potential Morgan Stanley Revenues?

A. Yes.

Q. The first sentence reads, "Morgan Stanley stands to generate significant revenues from the different aspects of this potential assignment."

Do you see that, sir?

A. Yes.

Q. Do you have any reason to dispute that statement?

A. No.

Q. Do you see at the bottom of the page there is a chart that breaks out the various fees

NOT A CERTIFIED COPY

011707

Page 105

CONFIDENTIAL - STRONG

that would be generated -- professional fees that would be generated by this potential transaction?
A. Yes.
Q. Do you see that the total is $258 million?
A. This is total fees for the transaction, yes.
Q. Do you consider $258 million to be a substantial fee?
A. To me it is, yes.
Q. Morgan Stanley does not bill for investment banking services on an hourly basis, does it, sir?
A. Sometimes we do.
Q. Generally the billing is done on a contingency fee basis, correct?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. With respect to merger and acquisition transactions, yes.
BY MR. MARKOWSKI:
Q. The bigger the deal, the higher the fee Morgan Stanley gets paid in those terms, correct?

Page 106

CONFIDENTIAL - STRONG

A. Sometimes, yes.
Q. Do you have any idea of how many hours Morgan Stanley spent in total on its work for Sunbeam?
A. No.
Q. Any aspect of the project -- do you have any idea how much time Morgan Stanley spent on any aspect of a Sunbeam engagement?
A. No. We don't keep track of our time.
Q. Morgan Stanley doesn't track in any way the time spent by its personnel on a project?
A. No, not at that time.
Q. Has that changed at some point?
A. We have instituted a system in the last few weeks where you will keep track of the percentage of time you spend on various clients and other matters.
Q. Do you have any way of knowing how the individuals that you supervise -- let me go back to 1998. Let's talk about that time period, 1998 and 1997.
Did you have any way of determining how much work any individual whom you were supervising was spending on a particular project?

Page 107

CONFIDENTIAL - STRONG

A. Yes.
Q. How is that?
A. I would stay in regular contact with certain of the professionals on the projects for which I was involved.
Q. Were people reporting to you the amount of time being spent by the Sunbeam team?
A. No.
Q. Why was that?
A. As I previously testified, we don't keep track of no report amounts of time.
Q. But I thought I understood your testimony to be that in connection with your supervision of projects, you would have sufficient contact with the individuals involved in the project to understand in general terms how much time is being spent on them. Did I misunderstand you?
A. I would differ on the time. I wouldn't know what they were doing, what activities they were undertaking, how they were in general spending their time.
Q. Was that the case in connection with your involvement in Sunbeam?

Page 108

CONFIDENTIAL - STRONG

A. I would say less so here because I was not directly responsible for the execution, but I had an overall understanding.
Q. Who was directly involved for the execution, as you put it, if you were not?
A. Well, I was involved but less -- as noted here and other documents, there were a number of other people involved.
Q. When you refer to responsibility for the execution, execution of what?
A. I was referring to the merger and acquisition side of this.
Q. Who at Morgan Stanley was responsible if you were not, for the execution of the mergers and acquisition side of this?
A. I had some responsibilities. I had previously testified it was a team approach and a shared responsibility. There were other eminent partners as I previously testified who were actively involved.
Q. Is there someone who had more direct responsibility in the execution than you?
A. On the M & A side, day-to-day was Mr. Stein and Mr. Kitts, as I recall, and there

NOT E-CERTIFIED COPY

017708

were others involved as well.
Q. Would you expect them to be more knowledgeable about the amount of time that team members were spending on that aspect of the project than you had?
A. Yes.
THE VIDEOGRAPHER: Counsel, I have about a minute left on this tape.
MR. MARKOWSKI: We can stop.
THE VIDEOGRAPHER: We're going off the video record at the end of tape No. 1 at 10:03 a.m.
(WHEREUPON, a short break was taken.)
THE VIDEOGRAPHER: Going back on the video record at the start of tape 2 at 10:12 a.m.
BY MR. MARKOWSKI:
Q. Mr. Strong, let me direct your attention back to the Sunbeam engagement letter, Exhibit No. 70. It's dated September 5, 1997.
The Sunbeam engagement letter provided for a contingent fee for Morgan Stanley's work; is that correct?
A. That was a portion of the letter, yes.
Q. If Morgan Stanley succeeded in an

arranging for either a sale of Sunbeam or the acquisition of another company, Morgan Stanley would be paid a fee, correct?
A. Yes.
Q. And if Morgan Stanley failed to successfully arrange for the sale of Sunbeam or an acquisition, Morgan Stanley would not receive a fee, correct?
MR. CLARE: Object to that characterization of the document.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. How is that incorrect?
A. If we announced -- if a definitive agreement was signed providing for the sale of Sunbeam but the transaction did not close, which was your question, Morgan Stanley would still receive some fees.
Q. So there were circumstances in which Morgan Stanley would arrange the transaction, a definitive agreement could be executed and the transaction would fail to close when Morgan Stanley would still be paid a fee, correct?

A. A fee, yes, a smaller fee.
Q. If Morgan Stanley failed in its efforts to arrange for a definitive agreement to either sell Sunbeam or to purchase another company, Morgan Stanley received no fee, correct?
A. Well, if I could just -- I wouldn't use the word "use." We don't arrange for a definitive agreement to be signed. As a role as a financial advisor if no definitive agreement was signed, it would be covered by this engagement letter. We would not receive a fee.
Q. So the fees that Morgan Stanley got would potentially be paid were for successes, correct, under this agreement?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. I believe that we would -- other than what I had previously testified, that we would only be compensated on the consummation of a transaction.
BY MR. MARKOWSKI:
Q. And under the terms of this agreement the larger the value of the transaction, the higher the fee Morgan Stanley stood to earn,

correct?
A. It would be a lower fee percentage, but it may be a higher absolute fee.
Q. Well, it would in fact be a larger absolute fee, correct, sir?
A. I can get my calculator and check if you would like, but I don't know.
Q. It was your understanding under the terms of this agreement, sir, that the bigger the transaction Morgan Stanley was able to successfully arrange for Sunbeam, the higher the fee Morgan Stanley would receive from Sunbeam, correct?
A. Again, as I've testified, possibly.
Q. And it was also your hope, Mr. Strong, that if Morgan Stanley successfully arranged for a transaction for Sunbeam, that Sunbeam would also employ Morgan Stanley to arrange for any necessary financing; is that correct?
A. I don't recall if they were obligated to do that.
Q. Do you recall if that was your hope?
A. I would speculate that it certainly was my hope, yes.

NOT A CERTIFIED COPY

014709

CONFIDENTIAL - STRONG

Q. Morgan Stanley would stand to make additional fees in addition to the fees provided for under the September 5 engagement letter if Sunbeam also employed Morgan Stanley to arrange for financing of the transaction, correct?

A. That's likely correct.

Q. Let me direct your --

A. If the financings were successful.

Q. Let me direct your attention to the third page of the engagement letter, sir. It is the first full paragraph. Take a moment to read that.

Have you had an opportunity to read that?

A. Yes.

Q. Does this refresh your recollection that the engagement letter did deal with the possibility that Morgan Stanley would be retained to assist Sunbeam in obtaining financing that was necessary to consummate any transactions that Morgan Stanley successfully arranged for Sunbeam?

A. It would be if it was in connection with the assignment that was covered by this engagement letter, yes.

CONFIDENTIAL - STRONG

Q. And under the terms of this, Sunbeam was obligated to offer to Morgan Stanley on mutually agreeable terms the opportunity to assist in arranging such financing, correct?

A. If in connection with that assignment, yes.

Q. And that was another way for Morgan Stanley to make money, correct?

A. Possibly. You don't necessarily make money on every financing transaction.

Q. But that's the hope and expectation of Morgan Stanley, I assume, correct?

A. That's certainly the hope.

Q. Do you recall, sir, that subsequent to the initial engagement letter with Morgan Stanley, that the engagement letter was amended to provide for the sharing of the fees with a company called Llama?

A. Yes.

Q. What were the circumstances that led to that?

A. As I recall today, Mr. Dunlap had indicated that he and Sunbeam management wanted to have the benefit of advice from Llama.

CONFIDENTIAL - STRONG

Q. Did he explain to you why?

A. As I recall, the senior principal of Llama knew the retail business well and I recall him feeling he would benefit from having that counsel.

Q. Llama is owned primarily by Alice Walton; is that correct?

MR. CLARE: Objection to form and calls for speculation regarding the ownership.

BY THE WITNESS:

A. I don't recall specifically but I recall her being the chief executive of Llama.

BY MR. MARKOWSKI:

Q. And Alice Walton is a member of the Wal-Mart Waltons; is that correct?

A. Yes.

Q. Was it your understanding that Wal-Mart was a significant customer of Sunbeam's?

A. It was a meaningful customer, yes, that's my recollection.

Q. Did you have any belief that Wal-Mart's role as a meaningful customer of Sunbeam's had an effect on Mr. Dunlap's desire to include Llama in the investment banking aspects

CONFIDENTIAL - STRONG

of this project?

MR. CLARE: Objection. Calls for speculation.

BY THE WITNESS:

A. I don't know.

BY MR. MARKOWSKI:

Q. I'm asking for your belief.

MR. CLARE: Your belief about what Mr. Dunlap thought?

BY THE WITNESS:

A. That's what the question was. I don't know what he was thinking.

BY MR. MARKOWSKI:

Q. Let me be clear. I'm only asking for what you believed at the time.

At the time did you have a belief that Mr. Dunlap sought to include Llama in the mergers and acquisitions activity that Morgan Stanley had previously been engaged to perform because Wal-Mart was a significant customer of Sunbeam and Ms. Walton was the Chief Executive Officer of Llama?

MR. CLARE: Objection to form.

BY MR. MARKOWSKI:

NOT A CERTIFIED COPY

011710

CONFIDENTIAL - STRONG

Q. Is that your personal belief?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I don't recall.
BY MR. MARKOWSKI:
Q. Did anyone ever suggest that to you that you recall?
A. Not that I recall today, no.
Q. Do you recall Mr. Dunlap ever saying that to you?
A. No.
Q. How were you compensated in 1997, sir?
MR. CLARE: I don't understand the question. What do you mean how?
BY THE WITNESS:
A. I don't understand the question.
BY MR. MARKOWSKI:
Q. Were you paid a fixed salary in 1997?
A. Yes.
Q. And were you paid a bonus as well?
A. Yes.
Q. Did you receive any other form of compensation from Morgan Stanley?

CONFIDENTIAL - STRONG

A. Not that I recall.
Q. What portion of your income in 1997 did your fixed salary represent?
A. I don't recall the specific percentage, but it would be less than 10 percent or about 10 percent probably.
Q. And your bonus would have made a vast majority of your compensation in 1997; is that correct, sir?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Yes.
BY MR. MARKOWSKI:
Q. Would that have been true in 1998 also?
A. Yes.
Q. Do you recall what your total compensation was in 1997?
A. No.
Q. Do you recall approximately?
A. No.
Q. Do you recall what your total compensation was approximately in 1998?
A. No.

CONFIDENTIAL - STRONG

Q. How was your bonus determined, the size of it?
A. It would be all bonuses in the investment bank at Morgan Stanley are the result of 360-degree evaluations. Those evaluations are then reviewed and then differing groups of partners will make decisions about what is fair compensation; and I presume, although I don't know for sure, that the same process worked for me.
Q. Does the amount of business that you generate have an effect on your bonus?
MR. CLARE: Objection. Calls for speculation.
BY THE WITNESS:
A. It has some effect, but a less and less effect as you get more and more senior.
BY MR. MARKOWSKI:
Q. Did your -- did Morgan Stanley's engagement with Sunbeam in 1997 and the work that was performed in 1998 have any effect on your bonus either in 1997 or 1998?
A. I don't know.
Q. Did you get credit in some way,

CONFIDENTIAL - STRONG

Mr. Strong, for bringing the Sunbeam engagement into Morgan Stanley?
A. No, not to my knowledge.
Q. Does Morgan Stanley have a system of fee credits?
A. No.
Q. Was the -- Morgan Stanley ultimately was paid fees as a result of the September 5, 1997 engagement letter subsequently amended; is that correct, sir?
A. That's my recollection, yes.
Q. Did you receive in any way credit in terms of your bonus determination in 1998 for the fees generated as a result of the work that Morgan Stanley performed pursuant to the terms of the Sunbeam engagement letter?
A. One, I don't know; and, two, in determining compensation -- I know when I am involved in setting compensation we don't take any single transaction into consideration.
Q. Would it have had any effect?
A. I don't know.
Q. Who would have been the individuals responsible for determining your compensation in

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

1997 and 1998?

A. It would have been several. Again, I don't know for sure. I have never known. I would speculate that Joe Porella, maybe Terry McGeed, maybe others.

Q. Would they all have been -- Mr. Porella is the person you identified earlier as the current chairman of the mergers and acquisitions group at Morgan Stanley; is that correct?

A. No.

Q. I am sorry. I misunderstood then.

What was Mr. Porella's responsibility back in 1997 and 1998?

A. I believe -- and I could be wrong on this -- but I believe at the time he was responsible for the investment banking division within Morgan Stanley.

Q. In connection with the setting of your bonus, did you prepare in 1997 or 1998 a description of your accomplishments for consideration of the individual or individuals involved in the bonus setting process for you?

A. What I recall is that each year we

CONFIDENTIAL - STRONG

were responsible for preparing a so-called self-evaluation. I believe I have done that every year.

Q. Do you recall whether in connection with your self-evaluation in 1997 or 1998, you made reference to the Sunbeam engagement?

A. Not that I can recall.

Q. Would it have been your practice to talk about in your self-evaluations the specific transactions that you were involved in working on?

A. Sometimes.

Q. But you don't recall doing that in connection with Sunbeam; is that correct?

A. Correct.

Q. Is there a reason for that? Let me ask you a different question.

Do you believe you did not make reference to Sunbeam in either of your self-evaluations in '97 or '98?

A. I just don't recall.

Q. You don't recall one way or the other?

A. Correct.

Q. Is the compensation process at Morgan

CONFIDENTIAL - STRONG

Stanley the same today as it was in 1997 or 1998?

A. In major respects, yes.

Q. Does it remain the case that the vast majority of your personal income is generated by your bonus?

A. Yes. When you say "personal income," income from Morgan Stanley for that specific year, yes.

Q. Yes, that's what I'm referring to.

In 1997 or 1998, were bonuses dependent upon, in some respect, the overall performance of either Morgan Stanley as a whole or the investment banking group or the M & A group?

MR. CLARE: Objection to form. Compound.

BY THE WITNESS:

A. When I've been involved in compensation and I've been informed periodically that those were factors that are taken into consideration overall, the overall success of the firm, that the firm may have had in that particular year or investment banking or other aspects of the firm, those are factors.

BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. So it's possible that the success of the M & A group has an effect on your personal bonus, correct?

A. Not directly, no.

Q. Is it your understanding that it plays a role?

A. Well, overall success of the investment banking division as a senior member of investment banking, that would be a factor that's taken into consideration for setting bonus levels overall for senior people within the division.

Q. I want to go back to 1997 and 1998 for a moment.

Back during that time period, would the performance overall of the mergers and acquisitions group have had an effect on the setting and size of your bonus?

A. No, I would answer it the same way.

Q. What about the overall performance of the investment banking division back in 1997 or 1998, would that have had an effect in some on the size of your bonus during that time period?

A. Again, I don't know how my compensation has been set; but I know when I have

NOT A CERTIFIED COPY

16div-021820

been involved in setting compensation and the discussions I've had, it is a factor in the overall setting of bonus pools and that kind of thing.

Q. What personal responsibilities, sir, did you have for Morgan Stanley's work for Sunbeam?

A. I -- as I testified earlier, I was a member of a team and would interface with the senior management of Sunbeam periodically.

Q. Is that it?

A. I think that's a fair description.

Q. So your responsibility involved interfacing with Sunbeam management, correct?

A. Periodically, yes.

Q. And interfacing from time to time with the team performing the work?

A. Yes.

Q. What do you mean by inferface with the team?

A. Speak with or otherwise communicate with.

Q. Was that for purposes of your obtaining information or was it for the purposes

of your providing direction?

A. It could be both.

Q. So part of your responsibility included providing direction to members of the Sunbeam M & A team?

A. No, not really. I would provide input to the team periodically.

Q. What do you mean by "input"?

A. Views on actions to be taken or not taken.

Q. Did you consider yourself to have any responsibility providing -- for providing direction to any members of the M & A team working on the Sunbeam transaction?

A. I would provide views but not day-to-day direction. It was really the responsibility of others.

Q. There are times, I take it, Mr. Strong, in connection with the work you do as a managing director of Sunbeam -- at Morgan Stanley where you do provide direction to Morgan Stanley professionals in connection with performing investment banking or mergers and acquisitions activities; is that correct?

A. Yes.

Q. But in connection with Sunbeam that was not the case?

A. It varies assignment by assignment. In the case of Sunbeam, we had several partners involved so it was less important for me to provide that kind of direction; although, I may have provided some periodically.

Q. Would it have been your role as a member of the M & A team working on the Sunbeam project to provide direction or supervision to any other managing director working on the project?

A. I would most often communicate with other managing directors and share with them my views, but I also spoke with other team members.

Q. I'm just trying to understand the hierarchy of Morgan Stanley, whether it is at least at that point in time within the scope of your responsibilities at Morgan Stanley to give direction to another -- let me start over.

In connection with the Sunbeam assignment you have indicated that there were a number of other managing directors working on the

project -- the M & A aspect of the project, correct?

A. Yes.

Q. Were you more senior than any of them in any respect in connection with the performance of the services to Sunbeam?

A. The firm would have viewed me as more senior to them in general; but as very experienced M & A professionals, they would have had responsibility for the day-to-day execution of the M & A portion of the assignment.

Q. From the firm's perspective, did you have any management responsibility for supervising the activities of the other managing directors working in the M & A aspects of the project?

A. No, I would not characterize it that way.

Q. Did you -- from your personal perspective, did you feel as though it was your responsibility to monitor the work being performed by the other managing directors of the project and to give supervision where you thought it was necessary?

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

A. I would want to be a contributing member of the team and contribute what I could to hopefully add to the execution of the transaction.

And, as I previously testified, I would interface periodically with the client. And so I would also want to make sure that I was informed as to various aspects.

Q. Did you feel as though you were fully informed with respect to all significant aspects of the M & A work that the Sunbeam team was performing?

MR. CLARE: Object to the form.

BY THE WITNESS:

A. Well, I only know what I knew and to my knowledge I believe that I was.

BY MR. MARKOWSKI:

Q. It was your objective to stay informed about any of the significant activities of the members of the Morgan Stanley M & A team working on the Sunbeam engagement; is that correct?

A. Yes.

Q. And how did you do that? How did you go back keeping yourself adequately informed for

CONFIDENTIAL - STRONG

that purpose?

A. Well, as I previously testified, I would communicate periodically with members of the team.

Q. Were there particular members of the team you relied on to supply you with the information that you needed?

A. I would speak with all members of the team; but I would say possibly more frequently as I previously testified, with the other managing directors.

Q. And in terms of the non-managing directors, were there any individuals that you had more contact with than others?

A. Not that I recall.

Q. Andy Savarie -- is that how his name is pronounced, Savarie?

A. Savarie.

Q. Andy Savarie was located in the Chicago office of Morgan Stanley at that time, correct?

A. Yes.

Q. Did you have more contact with him in connection with the performance of his work?

CONFIDENTIAL - STRONG

A. I don't recall. I may have.

Q. What was Andy Savarie's responsibility on the engagement?

A. Andy Savarie was a -- as I recall, was an associate and would therefore assist with various aspects of the assignment.

Q. Did you cause Mr. Savarie to be assigned to the Sunbeam engagement?

A. I believe so, yes.

Q. And what was your reason for doing that?

A. I don't recall.

Q. Was it because you wanted someone from the Chicago office to be involved in the activities?

A. I don't recall.

Q. John Tyree was a non-managing director person involved in the M & A activities for the Sunbeam project; is that correct?

A. I'm not certain.

Q. Do you remember communicating with Mr. Tyree relating to his work for Sunbeam?

MR. CLARE: Objection to the form.

BY THE WITNESS:

CONFIDENTIAL - STRONG

A. I recall in general having communicated with Mr. Tyree periodically.

BY MR. MARKOWSKI:

Q. Relating to Sunbeam?

A. Yes.

Q. Were you the person primarily responsible for supervising Mr. Tyree's activities?

A. No.

Q. Who was?

A. I'm not certain, but I would speculate Ruth Porat and others; but, once again, it's a team approach so we try to work in a collegial team-like environment. I don't recall her being his specific direct supervisor in the group in which he was then in.

Q. Were there any occasions where you did provide direction or guidance to Mr. Tyree that you can recall?

A. Not that I recall today.

Q. How many people from Morgan Stanley were involved in performing the work on the Sunbeam engagement?

A. I don't know the exact number.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. Do you know approximately?
A. Not off the top of my head, no.
Q. Did you feel that the Sunbeam project was being adequately staffed by Morgan Stanley?
A. Yes.
Q. Was there any point in time where you had any concerns about the level of staffing on the Sunbeam engagement?
A. No, not that I recall.
Q. Was it unusual to have several managing directors working on the M & A aspect of the Sunbeam engagement, sir?
A. No.
Q. It's common for four or five managing directors to be involved in working on the M & A aspects of an assignment?
A. Depending on the client and the circumstances, it happens.
Q. Is it unusual?
MR. CLARE: Objection. Asked and answered.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. Were there aspects -- did the Sunbeam

CONFIDENTIAL - STRONG

transaction in your view require significant involvement on the part of managing director level mergers and acquisitions group personnel?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. For assignments of this perspective assignments of this size, we would typically have one or more managing directors involved from the merger and acquisition group.
BY MR. MARKOWSKI:
Q. Well, here there were four or five; is that correct?
A. Not to my knowledge, no.
Q. Well, there was yourself, correct?
A. I'm not in the merger and acquisition group.
Q. You were in corporate finance at the time?
A. Yes.
Q. Mr. Fiedorek, was he in the merger and acquisitions group?
A. As I previously testified to, I think so.
Q. And Mr. Kitts, correct?

CONFIDENTIAL - STRONG

A. That's my recollection, yes.
Q. And Mr. Stynes?
A. That's my recollection, yes.
Q. So those are three managing directors from the M & A group who are involved in the Sunbeam assignment. Do you recall if there were any others?
A. Well, if Mr. Fiedorek was, then he would have added up to three, yes.
Q. Do you recall if there were others?
A. Other professionals?
Q. Other managing director professionals from the M & A group?
A. Not specifically; but there could have been others involved as we had conversations with other prospective acquirers of Sunbeam, others might have been involved.
Q. Out of the -- who from the -- which of the managing directors from the M & A group performed the greatest amount of work on the Sunbeam engagement, do you know?
MR. CLARE: Object.
BY THE WITNESS:
A. No.

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:
Q. Do you know what portion of Mr. Kitts' time was spent on the Sunbeam project?
A. Not specifically, no.
Q. Do you know approximately?
A. No.
Q. Do you know if it was a significant portion of his work over any period of time?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I don't know.
BY MR. MARKOWSKI:
Q. What about Mr. Stynes, do you know if Sunbeam was a significant portion of his work over any period of time?
MR. CLARE: Same objection.
BY THE WITNESS:
A. Don't know specifically.
BY MR. MARKOWSKI:
Q. Do you know whether Mr. Kitts worked on the project more extensively than Mr. Stynes?
A. That's not my recollection, no.
Q. Do you think Mr. Stynes worked more extensively on the project than Mr. Kitts?

NOT A CERTIFIED COPY

011715

CONFIDENTIAL - STRONG

A. That's not my recollection, no.
Q. Your recollection is that they worked, approximately, the same on the project?
A. Yes.
Q. By the end of 1997, sir, Mr. Dunlap was communicating to the investing public that he had accomplished a tremendous turnaround in Sunbeam's performance since he had become CEO; isn't that correct?
A. I don't know.
Q. That's what Morgan Stanley itself was communicating to the companies that it contacted on behalf of Sunbeam, was it not?
A. Your characterization of the turnaround, I don't know if I agree with that. I don't know specifically what we said to buyers at that time.
Q. Do you recall that Morgan Stanley was communicating to companies that it contacted on behalf of Sunbeam that Mr. Dunlap had accomplished a tremendous improvement in Sunbeam's performance?
A. I don't know.
Q. Do you recall that Morgan Stanley on

CONFIDENTIAL - STRONG

behalf of Sunbeam was touting Mr. Dunlap's turnaround accomplishments at Sunbeam?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I don't know. I don't recall.
BY MR. MARKOWSKI:
Q. Do you recall that that's the message that Morgan Stanley communicated to my client, Coleman Parent?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Not that I recall.
BY MR. MARKOWSKI:
Q. Do you recall that it was not the case or you simply don't recall one way or the other?
A. I don't recall one way or the other.
Q. Do you recall that Morgan Stanley itself told Sunbeam that the key message that Sunbeam needed to communicate to potential investors in Sunbeam was that Sunbeam had accomplished a tremendous turnaround?
A. Not that I recall today.
Q. Let me direct your attention back, Mr. Strong, to CPH Exhibit No. 69. Again, it's

CONFIDENTIAL - STRONG

entitled Project Laser Discussion Materials September 11, 1997 Conference Call.
And I think you've already testified, sir, that this appeared to you to be a document generated by Morgan Stanley, am I correct?
A. Yes, excluding the writing.
Q. My first question is about the writing.
Do you recognize the handwriting on this page, sir?
A. No.
Q. Do you know that it's not your handwriting?
A. Yes, I know that it is not my handwriting.
Q. Prior to today had you been asked whether you can identify the handwriting on this page, sir?
A. Yes.
Q. Do you recall the circumstances under which this document was prepared, sir?
A. No.
Q. Do you recall a conference call with Sunbeam in early September 1997 that involved the

CONFIDENTIAL - STRONG

participation of the individuals whose names appear in handwriting in the upper right-hand corner of the first page of Exhibit No. 70?
Under the heading MS the names Strong, Stynes, Kitts, Fuchs, Yoo and Chang; under Llama, Alice Walton, Randy and Scott Hollingsworth I believe; and under SOC, Russ Kersh, David Fannin and Rich Gittis.
MR. CLARE: For the record, when you said "Yoo," that's not "you" referring to Mr. Strong.
MR. MARKOWSKI: Y-o-o, a proper name.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. Do you remember a conference call in early September 1997, Mr. Strong, in which you participated with Mr. Kersh and others at Sunbeam relating to a review of the status of Morgan Stanley's work for Sunbeam in attempting to identify potential acquisition candidates?
MR. CLARE: Now, you're referring to "you" as Mr. Strong.
MR. MARKOWSKI: That's correct.
BY THE WITNESS:

NOT A CERTIFIED COPY

016716

CONFIDENTIAL - STRONG

A. No.
BY MR. MARKOWSKI:
Q. Is it your recollection that you did not participate in such a conference call or you just can't recall one way or the other?
A. I just can't recall one way or the other.
Q. Let me direct your attention to the page that has a Bates No. 3896, sir.
Do you see it's a heading that reads, "Overview of Proposed Selling Process?"
Do you see that?
A. Yes.
Q. I'll turn you to the next page. It's entitled Project Laser Overview of Proposed Selling Process.
Do you see that?
A. Yes.
Q. Take a moment to look at the contents of this page, sir, for me.
Have you done that, sir?
A. Yes.
Q. What does this discussion address?
A. It discusses an overview of the

CONFIDENTIAL - STRONG

proposed selling process.
Q. And that's the process of selling Sunbeam to a third party potentially?
A. Yes.
Q. Which in September of 1997, as you previously testified, was Mr. Dunlap's preferred action, correct?
MR. CLARE: Objection, that misstates the testimony.
BY THE WITNESS:
A. I previously testified that in the latter part of 1997, I recall that being his preference for a period of time.
BY MR. MARKOWSKI:
Q. Do you see the handwritten note in the left-hand -- upper left-hand corner of the document next to "Overview of Proposed Selling Process"?
A. Yes.
Q. It appears to read, "Just get it done," do you see that?
A. Yes.
Q. Do you recall that being the message from Sunbeam?

CONFIDENTIAL - STRONG

A. No. And I'm not even sure that's the first word. It's hard to read.
Q. You don't recall the message from Sunbeam management being -- to Morgan Stanley being "just get the sale of the business done"?
A. No.
Q. Do you see the handwritten note to the right of "enter into confidentiality agreements, if necessary." There is an asterisk and the words, "Kimberly/Scott - won't say anything." Do you see that?
A. Yes.
Q. Do you have any understanding of what that handwritten note relates to?
A. I have no idea.
Q. Do you recall Morgan Stanley receiving direction from Sunbeam management not to include Kimberly Clarke on the list of potential companies to contact with respect to the possible sale of Sunbeam?
A. Not that I recall today, no.
Q. Do you recall at any point that Mr. Dunlap indicated that he did not want you communicating with Kimberly Clarke?

CONFIDENTIAL - STRONG

A. Not that I recall today, no.
Q. Do you recall hearing that Mr. Dunlap or Mr. Kersh instructed anyone from Morgan Stanley working on the Sunbeam engagement not to communicate with Kimberly Clarke?
A. Not that I recall today, no.
Q. Let me direct your attention to the page that bears Bates No. 3905.
Do you see that it bears a heading entitled, Draft and Memo Memorandum.
Do you see that?
A. Yes.
Q. What's your understanding of what a draft memorandum information is?
A. A draft information memorandum in the context of a merger and acquisition assignment would be a document that would be provided to in the case of a sale, prospective acquirers so that those acquirers can begin to possess their preliminary interest in pursuing a transaction.
Q. This would be part of the information package that a potential acquirer would receive relating to Sunbeam?
A. Yes, in many cases.

NOT A CERTIFIED COPY

011717

CONFIDENTIAL - STRONG

Q. And Morgan Stanley assisted Sunbeam in connection with the preparation of that material, correct, the draft information memorandum?

MR. CLARE: I object to the form.

BY THE WITNESS:

A. I recall that we -- there may have been a memorandum created and they would obviously be responsible for its contents, but we would typically assist in the drafting of it.

BY MR. MARKOWSKI:

Q. And this version of the draft information memorandum that we see in Exhibit No. 69 was material put together at least by Morgan Stanley, correct?

MR. CLARE: Object to the form, and I object to the characterization of this document as you've just described it.

BY THE WITNESS:

A. Again, the content would be the responsibility of Sunbeam, and I don't recall specifically if a memorandum was put together in connection with the Sunbeam assignment.

BY MR. MARKOWSKI:

Q. I'm asking specifically about this

CONFIDENTIAL - STRONG

piece of paper that we have in front of us.

This piece of paper, the draft memorandum information that we're looking at on page 3905 and the pages that follow were generated by Morgan Stanley, correct.

MR. CLARE: I object to that characterization. This is not the draft information memorandum. There's been no testimony that that's the case and it is also contradicted by the face of the document.

MR. MARKOWSKI: I'll tell you what, objections that are speaking objections of that sort are totally inappropriate. Okay?

If you want to testify, you can testify. If you want to object to the form of my question, you can go ahead and do that; but attempting to guide Mr. Strong's testimony is totally objectionable.

MR. CLARE: And it is equally improper for you to mischaracterize documents and then ask the witness to accept your characterization of the document that is flatly contradicted by the face of it and also Mr. Strong's prior testimony.

I invite you to ask your next question

CONFIDENTIAL - STRONG

and I'll object as I deem appropriate.

MR. MARKOWSKI: Your objection was inappropriate.

MR. CLARE: As was your question.

BY MR. MARKOWSKI:

Q. Mr. Strong, I'm asking about the specific piece of paper that we have in front of us in Exhibit No. 69 starting with the heading Draft Information Memorandum.

The material that starts on page 3950 and that follows was information that Morgan Stanley generated, correct? These pages were generated by Morgan Stanley.

A. Again, I'm not quite sure how to answer your question; but -- and I'm not sure I agree with the characterization. In all that I see is that Bates No. 3906 is labeled a table of contents and then the pages after that are other -- it's page 12 and then page 14, just other information that looks to be from public or other sources.

Q. This is the kind of information that would potentially be included in an information memorandum of the sort you've described, correct?

CONFIDENTIAL - STRONG

A. No.

Q. So it's your testimony that, for example, the information contained on page 3907 is not the kind of information that Morgan Stanley would include in an information memorandum to provide to potential acquisition candidates?

A. No.

Q. Let me focus on --

MR. CLARE: Were you done with your answer, Bill?

BY THE WITNESS:

A. I was going to say there might be portions of it that might be included in it. I just don't know if this was part of an information memorandum or not.

BY MR. MARKOWSKI:

Q. Let me focus your attention on page 3906, Sunbeam corporation table of contents. Do you see that?

A. Yes.

Q. Does this table of contents appear to be the outline of the contents of an information memorandum?

NOT A CERTIFIED COPY

A. If one was created -- and I'm just reacting to the fact that the prior page said "draft memorandum information" -- it may be.

Q. And this page was generated by Morgan Stanley, correct?

A. This page was typed by Morgan Stanley because it looks like our type-face, but it may have actually been drafted by the client. I don't know.

Q. But it's your belief that this page was prepared -- typed by someone at Morgan Stanley, correct?

A. It's our typeface, so it appears it's been typed by someone at Morgan Stanley.

Q. Do you see the note in the upper left-hand corner, the word "amateurs" appears in relatively large handwriting.

Do you see that?

A. Yes.

Q. Was there any point in time, sir, that anyone at Morgan Stanley, to your knowledge, referred to Sunbeam management as amateurs?

A. Not to my knowledge, no.

Q. Is there any point in time where

someone at Morgan Stanley -- excuse me, someone at Sunbeam communicated to Morgan Stanley its view that Morgan Stanley's activity in some way was amateurish?

A. Not to my knowledge, no.

Q. Let me direct your attention to the portion of the table of contents that begins section Roman Numeral XI, Future Growth Opportunities.

Do you see that?

A. Yes.

Q. Future growth opportunities on this page is circled, is it not, sir?

A. Yes.

Q. And in the box above it, the handwriting -- can you read that handwriting?

A. It looks like "Beefed up sex appeal."

Q. And there's further handwriting connected to the circle around the box for future growth opportunities, is there not, to the right?

A. Yes.

Q. And can you read that handwriting?

A. Portions of it, yes.

Q. What can you read?

A. It looks like that's going to sell quantitative -- and the last word there is geographical.

Q. The other words appear to be "brands," "licensing" an abbreviation for marketing, "penetration," "new" and an abbreviation for products?

A. It may be. Your eyesight is superb.

Q. Do you recall at some point, sir, that the future growth opportunities for Sunbeam -- excuse me -- where Morgan Stanley advised Sunbeam that it was important for Sunbeam to emphasize its future growth opportunities in communicating with potential investors?

A. I don't recall that specifically, no.

Q. That Morgan Stanley advised Sunbeam that that's where the "sex appeal" would be in the transaction?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I have no recollection of that whatsoever.

BY MR. MARKOWSKI:

Q. And that Sunbeam needed to "beef up"

the information it was providing to Morgan Stanley about potential growth opportunities.

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I have no recollection of that whatsoever.

BY MR. MARKOWSKI:

Q. And that Morgan Stanley told Sunbeam that that's the kind of information that would help Morgan Stanley sell some?

A. I have no recollection of that.

Q. Do you recall believing that in order to sell Sunbeam it would be very important to convince potential acquirers that Sunbeam had the potential for significant future growth?

A. No, but I recall that Sunbeam had had an excellent track record prior to us getting involved and that was certainly a positive aspect.

Q. Do you recall believing that no one would pay a premium for Sunbeam which would be necessary to sell it without believing and being convinced that Sunbeam had the potential for continued future growth?

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

A. I have no knowledge of that.

Q. Mr. Strong, I'm going to show you in a moment what we're marking as CPH Exhibit No. 71. It's a document bearing Morgan Stanley Bates No. 5984 through 5995. The first page includes includes an email dated October 23, 1997, from, I believe, Tyrone Chang to the ibdwprof@ms.com. The subject is Sunbeam Corporation Strategic Advisory Assignment.

(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 71, for identification, as of 12/04/03.)

BY MR. MARKOWSKI:

Q. Take a moment, Mr. Strong, to at least thumb through Exhibit No. 71 and familiarize yourself with its contents.

Mr. Strong, do you recall that it was several weeks between the time that Sunbeam formally engaged Morgan Stanley and the public announcement of that engagement?

A. I don't specifically recall that, but I see the dates here on the document.

CONFIDENTIAL - STRONG

Q. And this shows that there was a public announcement of Sunbeam's engagement of Morgan Stanley on October 23; is that correct?

A. That's what it appears, correct.

Q. Do you know why there would have been a delay of several weeks of Sunbeam's engagement of Morgan Stanley and the public announcement?

A. Well, first, I wouldn't characterize it as a delay. Sometimes clients disclose this when an investment bank has been retained. Sometimes they do not. It's for them to decide.

Q. Did Morgan Stanley offer any advice to Sunbeam on that subject?

A. I don't recall.

Q. Do you recall any discussion with Sunbeam management that you personally were involved in relating to that issue?

A. I recall being aware of the fact that they had an intention of doing this prior to the release of the press statement.

Q. Do you recall who advised you of that?

A. Not specifically, no.

Q. Was it somebody at Sunbeam or someone internally at Morgan Stanley?

CONFIDENTIAL - STRONG

A. I recall that I had been informed by someone at Sunbeam, but I don't recall who.

Q. Do you recall your reaction to that news?

A. No.

Q. Do you recall whether you advised Morgan Stanley to withhold a public announcement?

MR. CLARE: Objection to the form. Whether he advised Morgan Stanley?

MR. MARKOWSKI: If that's what I said, I misspoke.

BY MR. MARKOWSKI:

Q. Do you recall advising Sunbeam when you were first told that it intended to make a public announcement that it was your view that it would be preferable if Sunbeam delayed the announcement?

A. No. It's for the clients to decide what they disclose and don't disclose.

Q. Do you recall that the Sunbeam team circulated an interoffice memorandum to all of the worldwide IBD professionals relating to the Sunbeam engagement?

CONFIDENTIAL - STRONG

A. It appears that there was one based upon this document in front of me. I don't recall specifically.

Q. IBD is a reference to what, Mr. Strong?

A. Investment banking division.

Q. And the text of this memo requests that the recipients advised the Sunbeam team if they're aware of any potential acquisition candidate or any company that might be interested in acquiring Sunbeam to notify the Sunbeam team of that?

A. That's what the document says, yes.

Q. Is that typical?

A. Yes. Where there's a release of this type, it's put out.

Q. I direct your attention to the third page of the document.

Let me take a step back before we get there.

The email indicates that in addition to the press announcement that an attached file is also being sent along with the email with further information relating to Sunbeam.

NOT A CERTIFIED COPY

01127

Page 157

CONFIDENTIAL - STRONG

Do you see that in the second paragraph of the October 22 memorandum to all worldwide IBD professionals?

A. Yes.

Q. Let me direct your attention to the third page of the document. It bears Bates No. 6986.

A. 5986.

Q. 5985. I stand corrected. It reads "Sunbeam Corporation Investment Rationale." Do you see that?

MR. CLARE: Hold on.

MR. MARKOWSKI: 5986.

BY MR. MARKOWSKI:

Q. Do you see the heading is Sunbeam Corporation Investment Rationale?

A. Yes.

Q. This was a document that was generated by Morgan Stanley, correct?

A. This is a document that appears to be on Morgan Stanley typeface, but the content would have come from public sources or from the company.

Q. Do you see that it states Sunbeam

Page 158

CONFIDENTIAL - STRONG

represents an attractive growth story and investment opportunity?

A. Yes.

Q. The second major bullet point, "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996."

Do you see that?

A. Yes.

Q. Do you see below that it indicates that "growth and profitability that outpace the nearest competitors?" Do you see that statement?

A. Yes.

Q. Further down in that section it further indicates "strong management team that is opportunistic but disciplined." Do you see that?

A. Yes.

Q. These are the messages that Morgan Stanley thought prospective buyers would be interested in hearing, correct?

MR. CLARE: Objection. Argumentative. Calls for speculation.

BY THE WITNESS:

A. If this is the file that was attached

Page 159

CONFIDENTIAL - STRONG

here, counsel -- and I don't know that it is -- but if it is, these are just statements that were actively in the press and actively in public documents.

BY MR. MARKOWSKI:

Q. These are statements that Morgan Stanley wanted to communicate to other companies to interest them in a potential acquisition of Sunbeam, correct?

A. If it was the document that's attached -- again, I don't know that it is -- these are aspects of Sunbeam that are positive aspects that underscore the success that they had had.

Q. So the message Morgan Stanley wanted to communicate to the companies it was contacting on behalf of Sunbeam was that Sunbeam had undergone a profound transformation since the arrival of new management in July 1996, correct?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. I would just repeat my same answer.

BY MR. MARKOWSKI:

Q. Well, I need an answer to that question.

Page 160

CONFIDENTIAL - STRONG

A. Can we read back what my response was, I'll just repeat it.

(Whereupon, the record was read by the reporter.)

MR. MARKOWSKI:

Q. My question is, sir, those are the messages that Morgan Stanley wanted to communicate to companies that it might interest in potentially acquiring Sunbeam?

A. Again, I'm not quite sure what to say. It's the responsibility of Sunbeam to really execute a transaction.

Q. The contacts here that are contemplated pursuant to this document are contacts Morgan Stanley is going to make with other companies on behalf of Sunbeam, correct?

A. Possibly.

Q. And these are the messages that Morgan Stanley thought best communicated to potential acquirers of Sunbeam to communicate messages that Morgan Stanley wanted those companies to hear about Sunbeam, correct?

A. Again, I don't know. I mean, company information would come from the company or public

NOT A CERTIFIED COPY

01471

CONFIDENTIAL - STRONG

sources. There may have been other messages in addition to these. These, as I recall, were, again, from public documents at the time and are positive aspects of Sunbeam's performance.

Q. And the intent of this is that the individuals in the investment banking division at Morgan Stanley will be communicating these messages to companies on behalf of Sunbeam, correct?

A. No, they're not supposed to.

Q. Why is that, sir?

A. The individual engagement team would be responsible for contacts with prospective aquirers of a situation like this.

Q. And these are the messages that that team would be communicating on behalf of Sunbeam to those companies that it contacted, correct?

A. What we would typically do is have, as I have testified earlier, an investment memorandum. There may be other materials that we provide. It appears that this was simply a document to solicit ideas from our colleagues.

Q. The page I'm focusing on, sir, the Sunbeam Corporation Investment Rationale was

CONFIDENTIAL - STRONG

information you were providing other people in the investment banking division, correct?

A. Yes, if that is the memorandum that was attached, if this was the file.

Q. And this is the message that the Sunbeam team at Morgan Stanley has generated, correct?

A. Again, I don't know why you keep asking this over and over again. This would have been some of the aspects that we would have felt if this was the file that we would like our colleagues to know so that they could provide to us as the email suggests, you know, other possible ideas.

Q. And these are the very same messages that were communicated by Morgan Stanley on Sunbeam's behalf to my client, Coleman Parent, correct?

A. I don't know.

Q. Let me show you a document that we previously marked as CPH Exhibit No. 9, Mr. Strong. It's entitled Sunbeam Corporation Discussion Materials, February 1998, on Morgan Stanley stationery.

CONFIDENTIAL - STRONG

You can take a moment if you'd like, sir, to familiarize yourself with the contents of the document and I'll refer you to a particular page to review.

Have you seen this document, Mr. Strong?

A. Not that I can recall today, no.

Q. Were you involved in reviewing the materials that Morgan Stanley provided to my client, Coleman Parent, relating to Sunbeam Company?

A. I don't know. I may have. I just don't recall.

Q. I represent to you, sir, that this is the package of materials that Morgan Stanley provided to Coleman Parent relating to Sunbeam Company.

Is it your testimony that you were not knowledgeable about the contents of the presentation package that was presented on Morgan Stanley's behalf to my client Coleman Parent.

MR. CLARE: Objection. That misstates Mr. Strong's testimony.

BY THE WITNESS:

CONFIDENTIAL - STRONG

A. No.

BY MR. MARKOWSKI:

Q. Did you make it a point to review the materials that were provided to Coleman Parent before they were delivered to Coleman Parent by Morgan Stanley?

A. As I've asked and answered once before, I may have reviewed this document. I just don't recall.

Q. Let me direct your attention to the page that bears the Bates No. CP 26290. It's like the document we're looking at previously captioned Sunbeam Corporation Investment Rationale.

Do you see that?

A. I see what you have read, yes.

Q. And, again, reading from page 26290 in Exhibit CPH 9, this document states that Sunbeam represents an attractive growth story and investment opportunity, correct?

A. That's what you've read in the document, yes.

Q. And it states that Sunbeam has undergone a profound transformation since the

NOT A CERTIFIED COPY

011722

arrival of new management in July of 1996, correct?
MR. CLARE: Objection. A waste of time.
BY THE WITNESS:
A. That's what the document reads, yes.
BY MR. MARKOWSKI:
Q. And that there's tremendous intrinsic value in the company, correct?
MR. CLARE: Same objection.
BY THE WITNESS:
A. That's what the document reads, yes.
BY MR. MARKOWSKI:
Q. And a reference to the company there is a reference to Sunbeam, correct?
A. It appears to be, yes.
Q. And it states that the growth and profitability of Sunbeam outpaced the nearest competitors, correct?
A. That's what the document reads, yes.
Q. And it describes Sunbeam's management team as strong, opportunistic but disciplined, correct?
A. That's what the document reads, yes.
Q. And those are the messages that Morgan

Stanley wanted to communicate to my client, Coleman Parent, correct?
MR. CLARE: Objection. No foundation.
BY THE WITNESS:
A. No. This goes back to the previous document as well. I don't know if this was a document that was presented to Coleman; but, again, it would be the responsibility obviously of Sunbeam.
BY MR. MARKOWSKI:
Q. But this is a document that was prepared by Morgan Stanley, correct, sir, CPH Exhibit No. 9?
MR. CLARE: Objection. No foundation.
BY THE WITNESS:
A. When you say "prepared," again it looks like it was typed by us; but it would be the responsibility of Sunbeam and the content. It's really their document.
BY MR. MARKOWSKI:
Q. Does Morgan Stanley, sir, have any responsibility for the contents of this document other than acting as typist for Sunbeam?
A. We would comment on it to help

communicate it in an effective way, but beyond that, it's their document.
Q. So Morgan Stanley, in your view, sir, had no responsibility at all for determining the reasonableness or accuracy of the statements contained in CPH Exhibit No. 9?
MR. CLARE: Objection. Argumentative.
BY THE WITNESS:
A. It would be their responsibility, of course; but if we were aware of anything that was wrong, I would not want a document to go out nor would my partners if we knew it to be incorrect.
BY MR. MARKOWSKI:
Q. In your view did Morgan Stanley have a duty to make a reasonable inquiry into the accuracy of the statements contained in the information that was provided by Morgan Stanley to my client, Coleman Parent, relating to Sunbeam?
MR. CLARE: I object to the extent you're asking for a legal conclusion.
BY THE WITNESS:
A. We would rely upon the comments and data provided to us by management. If we were

aware of something that was inaccurate, we would want that to be corrected.
BY MR. MARKOWSKI:
Q. So it is your view, sir, that Morgan Stanley had no responsibility for itself inquiring into the accuracy or the reasonableness of the statements contained and the information that Morgan Stanley provided to my client?
MR. CLARE: Objection. Argumentative.
BY THE WITNESS:
A. As a reputation of matters, I previously testified with respect to any investment memorandum, if we were aware of something that we thought was inaccurate, we would certainly want that to be corrected; but the ultimate content is the responsibility of the client.
BY MR. MARKOWSKI:
Q. My question, sir, is whether, in your view, your personal view, Morgan Stanley had a responsibility to make a reasonable inquiry into the accuracy and the reasonableness of the statements being made in documents prepared by Morgan Stanley and provided to my client?

NOT A CERTIFIED COPY

014723

CONFIDENTIAL - STRONG

MR. CLARE: Objection. Asked and answered now.

BY THE WITNESS:

A. I think, again, I can repeat it, counsel, if you'd like; but this does appear to be our typeface. It's got our logo on it. So it appears that we did type it; but the content would be the responsibility, as I've said several times in this particular case if this was the document of Sunbeam.

BY MR. MARKOWSKI:

Q. And Morgan Stanley, in your view, had no duty to make an inquiry into the accuracy of the statements contained in the document?

MR. CLARE: Objection. Argumentative.

BY THE WITNESS:

A. Again, as I've testified before, we can keep going over and over this if you'd like; but if we were aware of something that was inaccurate, we would want that to be corrected.

BY MR. MARKOWSKI:

Q. The reason we're going over it is I'm not getting an answer to my question.

I'm asking whether in your personal

CONFIDENTIAL - STRONG

opinion Morgan Stanley had an obligation to make an inquiry into the accuracy of the information obtained in the documents. You're not responding to that aspect of my question. Can you respond to it?

MR. CLARE: I object and move to strike counsel's statement and characterization of the previous testimony.

I object to the question on the grounds that it's been asked and answered several times now.

BY THE WITNESS:

A. I've answered the question.

BY MR. MARKOWSKI:

Q. So you refuse to answer my question whether Morgan Stanley in your personal view had an obligation to make an inquiry into the accuracy of the statements being made and documents prepared by Morgan Stanley and presented by Morgan Stanley to my client?

MR. CLARE: Objection. Bob, he's answered this question now several times. He's given you a complete answer.

BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. Can you answer the question, sir?

A. Sure. I'm not refusing to answer your question. I have answered it several times. That is my answer. I don't know how to answer it any better.

Q. My question is, did Morgan Stanley have a duty to make an inquiry into the accuracy of the statements contained in documents that Morgan Stanley gave to my client? It's a very simple question.

A. I understand it and I have answered it. I'll repeat the answer again, I guess.

If we were aware -- at least a portion of the answer -- if we were aware of something in the document that was incorrect, we would want that to be corrected; but the ultimate responsibility for the document is that of the client. We would rely upon the client and its information that would have been provided to us because it looks like we did type this and rely upon them.

Q. Beyond taking action if Morgan Stanley in fact knew that statements contained in this document were false, do you believe that Morgan

CONFIDENTIAL - STRONG

Stanley had no responsibility to verify the accuracy of the statements contained in the document?

MR. CLARE: Objection. Asked and answered.

MR. MARKOWSKI: You have to answer the question, sir.

BY THE WITNESS:

A. I have.

BY MR. MARKOWSKI:

Q. What's your answer to the pending question?

A. The same I have given four or five times before. I answered the question. That is the answer.

Q. Who suggested to Sunbeam that Coleman Parent might make a good acquisition -- excuse me. Strike that.

Who suggested to Sunbeam that Coleman Company might be a good acquisition candidate for Sunbeam?

A. I don't recall. I don't know. I don't recall today.

Q. Do you know whether it was Morgan Stanley that first identified Coleman Company as

NOT A CERTIFIED COPY

011724

a potential acquisition target?
A. I don't recall.
Q. Do you recall whether you personally were the individual who first raised the possibility of Sunbeam acquiring Coleman Company?
A. I know that I was not.
Q. Did you know in 1997 that McAndrews and Forbes controlled a majority of Coleman Company stock?
A. Yes -- or MAFCO. I don't know the exact legal owner; but I recall that somewhere in that family of companies they controlled Coleman, yes.
Q. Did Morgan Stanley have a relationship with MAFCO, McAndrews and Forbes?
A. Yes.
Q. Do you recall what that was?
A. We had an investment banking relationship with them. I don't know how active it was or was not.
Q. Had you previously been involved in any work that Morgan Stanley did for any of the McAndrews and Forbes enterprises?
A. Not that I recall.

Q. Do you recall whether -- let me ask the broadest possible question.
At any time in your professional career have you ever had any communications with any McAndrews and Forbes personnel, officers, directors, employees?
A. Not that I recall.
Q. Have you ever met Ronald Perlman?
A. No.
Q. Did you personally have any communications with Ronald Perlman in connection with your work for Sunbeam?
A. No.
Q. In connection with your work for Sunbeam, did you have any communications with any McAndrews and Forbes personnel?
A. No.
Q. Did you have any communications in connection with work you did for Sunbeam with any McAndrews and Forbes representatives? By that I include attorneys, investment bankers.
A. Not that I recall.
Q. In connection with the work you did for Sunbeam, did you have any communications with

any Coleman Company personnel?
A. Not that I recall.
Q. Did you ever meet -- did you meet -- do you know that Jerry Levine was the Chief Executive Officer of Coleman Company at this time?
A. I don't recall that, no.
Q. Do you recall meeting the Chief Executive Officer of Coleman Company at any time you were doing work for Sunbeam?
A. You mean Mr. Levine.
Q. Well, if you don't recall that Mr. Levine was the CEO, I'm asking a somewhat broader question.
A. I know I've never met Mr. Levine before if that's the question.
Q. Let me ask a more clear question or try to.
Do you recall in connection with the work that you were performing for Sunbeam that you met or communicated with the Chief Executive Officer of Coleman Company?
A. I don't believe I ever did, no.
Q. Do you know Howard Giddis?

A. I recognize the name, but I don't recall ever having met him.
Q. Do you recall whether you had any communications with him in connection with any work that Morgan Stanley did for Sunbeam?
A. No.
Q. Were you aware that in late 1997 Mr. Dunlap had a meeting with Mr. Perlman to discuss Sunbeam's interest in acquiring Coleman Company?
A. I don't recall the exact time, but I was aware that he had had a meeting. It may be more than one, but I don't recall. I know at least one.
Q. Were you at all involved in the preparation for Mr. Dunlap's initial meeting with Mr. Perlman relating to the potential interest of Sunbeam in acquiring Coleman?
A. I don't recall.
Q. Do you know how it was decided that the initial approach would be made -- strike that.
Do you know how it was decided that Mr. Dunlap would meet personally with Mr. Perlman

NOT A CERTIFIED COPY

011725

to discuss Mr. Dunlap's interest in acquiring Coleman?
A. No.
Q. Do you recall whether you made a suggestion that Mr. Dunlap do that?
A. I don't recall.
Q. Did you receive any information relating to the initial meeting that Mr. Dunlap had with Mr. Perlman?
A. I recall receiving information about a meeting that was held. Again, I don't know if there was one or two; but I recall receiving information about a meeting.
Q. From whom did you receive that information?
A. I don't recall specifically.
Q. Was it someone at Sunbeam?
A. Not that I recall. My recollection is that it was someone at Morgan Stanley.
Q. Do you recall the context in which you received a report on that meeting between Mr. Dunlap and Mr. Perlman?
A. No.
Q. Do you recall where you were?

A. No.
Q. Do you recall whether it was a face-to-face discussion?
A. No.
Q. What do you recall being told to you?
A. I recall of this one meeting that it was -- it concluded in a very acrimonious manner and the discussions were terminated.
Q. Were you told anything about Mr. Dunlap's conduct during the meeting?
A. Yes.
Q. What were you told?
A. I was told that he was very upset.
Q. Is that all you were told about his conduct?
A. I recall that -- of his conduct? I also recall that there was, you know, very loud speaking or maybe even shouting between Mr. Dunlap and Mr. Perlman.
Q. Do you recall being told that Mr. Dunlap swore at Mr. Perlman?
A. I don't recall that, no.
Q. Do you recall being told anything else about that meeting?

A. Not today, no.
Q. You said, if I recall correctly, that the meeting ended in an acrimonious fashion; is that correct?
A. Yes.
Q. Where did you understand the discussions to stand at the conclusion of Mr. Dunlap's meeting with Mr. Perlman relating to possible acquisition of Coleman Company by Sunbeam?
A. As I testified, my recollection is that they were effectively terminated.
Q. I'm sorry if you said that previously. I forgot.
Did Morgan Stanley take any steps to reach out to McAndrews and Forbes to reinitiate discussions about the possibility of Sunbeam acquiring Coleman Company?
A. I recall that Morgan Stanley took steps to restart the discussions. I don't recall if they were with McAndrews and Forbes or whether they were with one of their representatives.
Q. One of McAndrews and Forbes's representatives?

A. Correct. And it may be they approached us first. I just don't recall.
Q. Do you recall that -- do you know Bill Reid?
A. Yes.
Q. Bill Reid in 1997 and 1998 was a managing director in Morgan Stanley's New York offices, correct?
A. Yes.
Q. Did Mr. Reid work in the M & A group?
A. Not that I recall, no.
Q. Do you recall that Mr. Reid had a relationship with McAndrews and Forbes?
A. Yes.
Q. Do you recall discussing with Mr. Reid Sunbeam's interest in acquiring Coleman?
A. Not specifically, no. I may have, but I don't recall.
Q. Do you recall suggesting to Mr. Reid that Mr. Reid subsequent to the meeting that Mr. Perlman and Mr. Dunlap had attempted to restart discussions with McAndrews and Forbes?
A. No.
Q. Do you believe you did not do that?

NOT A CERTIFIED COPY

01476

CONFIDENTIAL - STRONG

A. I don't recall whether I did or I didn't.

Q. Do you know if anyone at Morgan Stanley did contact Bill Reid to request that he make an overture to McAndrew and Forbes on behalf of Sunbeam?

A. I don't know.

Q. Mr. Strong, I'm going to show you what we're going to mark as CPH Exhibit No. 72. It is a two-page document bearing Bates label Morgan Stanley 64865 through 866 and it's entitled, Project Laser.

(WHEREUPON, certain documents were marked CPH Deposition Exhibit No. 72 and 73, for identification, as of 12/4/03.)

BY MR. MARKOWSKI:

Q. Do you recognize this document, sir?

A. No.

Q. Do you recognize it as a document generated by Morgan Stanley?

A. I see the Bates stamp that says that it is.

CONFIDENTIAL - STRONG

Q. And the typeface also appears to be Morgan Stanley?

A. Yes, it does.

Q. The first page is entitled,Summary of Potential Acquirers.

Do you see that?

A. Yes.

Q. And the second page is entitled, "Summary of Potential Acquisition Candidates," correct?

A. Yes.

Q. There is a handwritten note on the first page that reads, "Call 1/20 Tuesday afternoon, 2:30 p.m."

Do you see that?

A. Yes.

Q. Does this document appear to be a list of potential acquirers and potential acquisition candidates that Morgan Stanley had in mind as of mid January 1998?

A. There's no way for me to know that.

Q. Do you see on the potential list of acquisition candidates, sir -- correct me if I'm wrong, but I don't see any reference to Coleman

CONFIDENTIAL - STRONG

Company.

A. Potential acquirers?

Q. No, the second page. Potential acquisition candidates. Sorry.

A. I don't see it either.

Q. Is it your recollection that as of mid January Coleman Company was not on Morgan Stanley's radar screen any longer as a potential acquisition candidate?

MR. CLARE: Objection to the form.

BY THE WITNESS:

A. First, I don't know what the date of this document is.

BY MR. MARKOWSKI:

Q. Sorry.

A. That's the issue. Then, secondly, I do recall -- and I could be off a little bit on dates but I think it was January of '98 -- where there were discussions between -- at least reinitiating discussions between Sunbeam and Coleman.

Q. I am sorry to have interrupted. You're finished with your answer.

Independently of the document, sir, so

CONFIDENTIAL - STRONG

set that aside for a moment, do you recall that in mid January Coleman Company was no longer being considered by Morgan Stanley as a potential viable acquisition candidate for Sunbeam?

A. No.

Q. Mr. Strong, let me show you what we're marking as CPH Exhibit No. 73. It is a two-page document bearing Bates No. CPH 586913 through 14. The second page of the document, sir, is entitled, "AJD itinerary, Wednesday, January 21 through Sunday, January 25, 1998." Do you see that?

A. Yes.

Q. Do you recognize AJD as Albert Dunlap's initials?

A. I believe those are his initials, yes.

Q. Direct your attention to the entry that appears under the heading Wednesday, January 21.

Do you see the initial entry, 12:30 p.m., Pick up at Palace?

A. Yes.

Q. Do you understand Mr. Dunlap commonly stayed at the Palace Hotel in New York? Correct?

NOT A CERTIFIED COPY

011727

CONFIDENTIAL - STRONG

A. That is my recollection, yes.
Q. Second meeting, Morgan Stanley. Do you see that?
A. Yes.
Q. And to the right under the location heading "Comments," there is the address 1585 Broadway. Is that the address for Morgan Stanley offices in Manhattan?
A. That's one of them, yes.
Q. And under that entry the names Bob Kitts and Bill Strong appear. Do you see that?
A. Yes.
Q. Do you recall a meeting in Morgan Stanley's offices at 1285 Broadway with Mr. Dunlap in late January 1998?
MR. CLARE: I think you misread the document, 1585 Broadway.
MR. MARKOWSKI: 1585, sorry
BY THE WITNESS:
A. I recall that we had a meeting or meetings with Mr. Dunlap at 1585 Broadway. I don't recall the specific times.
BY MR. MARKOWSKI:
Q. Do you remember the purpose for

CONFIDENTIAL - STRONG

meeting with Mr. Dunlap in mid-to late January of 1998 at those offices?
A. Again, first, I don't know if a meeting took place; and then, second, I don't recall anything about a meeting of a specific time in January.
Q. Do you recall that in a meeting at Morgan Stanley's offices in Manhattan a decision was made that Morgan Stanley would make an overture to sunbeam -- excuse me. Let me start over.
Do you recall that a meeting with Mr. Dunlap at Morgan Stanley's offices in Manhattan in mid-to late January 1998, a decision was made that Morgan Stanley would make an overture on Sunbeam's behalf to McAndrews and Forbes to attempt to reinitiate conversations about Sunbeam's acquisition of Coleman Company?
A. No.
Q. You do recall, sir, that in late February 1998 Sunbeam signed an agreement to acquire Coleman Company?
A. Without getting hung up on the specific corporate names, I think it was late

CONFIDENTIAL - STRONG

February, yes.
Q. In connection with that transaction -- Morgan Stanley assisted Sunbeam in arranging that transaction, correct?
A. Yes.
Q. And under the terms of Sunbeam's engagement letter of Morgan Stanley, Morgan Stanley was paid a success fee for arranging that transaction, correct?
A. Again, as I have testified, I would disagree with your characterization we arranged it. We acted as financial advisor for Sunbeam in connection with that transaction, and I do recall that we were compensated subsequent to the consummation of that transaction.
Q. Morgan Stanley did whatever it needed to do to earn a fee under the terms of the September 1997 engagement letter as a result of Sunbeam's acquisition of Coleman Company, correct?
MR. CLARE: Object to the form and argumentative.
BY THE WITNESS:
A. I would just say that, again, we acted

CONFIDENTIAL - STRONG

as financial advisor to Sunbeam in connection with the transaction.
BY MR. MARKOWSKI:
Q. And as a result of that you earned a fee under the terms of the September 1997 engagement letter as a result of Sunbeam's acquisition of Coleman, correct?
A. Yes.
Q. And in connection with Sunbeam's acquisition of Coleman Company, Sunbeam in fact did retain Morgan Stanley to assist it in retaining the necessary financing, correct?
A. No. You're never retained typically in connection with financing because you need to have underwriting agreements and similar documents signed. They did indicate that they did want us to lead that financing.
Q. And that's what you hoped would happen when Sunbeam first engaged Morgan Stanley pursuant to the terms of the September engagement letter, correct?
A. Well, if there were to be transactions that were to be compensated as the engagement letter provided if there was to be financing, we

NOT A CERTIFIED COPY

011728

would help to provide that financing.
Q. That was another opportunity, as we've discussed, for Morgan Stanley to earn significant fees eventually, correct?
MR. CLARE: I object to the form of the question.
Bill, were you done with your prior answer?
BY THE WITNESS:
A. Yes.
MR. CLARE: I apologize. I'll object to the form.
BY THE WITNESS:
A. I would only disagree with the fact that sometimes financings are money-makers for an investment bank like Morgan Stanley. Sometimes they are not.
BY MR. MARKOWSKI:
Q. But your hope was that this would be another opportunity for Morgan Stanley to earn significant fees, correct?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. As I testified earlier, my hope was

that if they were to pursue the financing, that we would do it and, of course, that it would be profitable for us.
BY MR. MARKOWSKI:
Q. Did you consider the fees that Morgan Stanley stood potentially to earn as a result of assisting Sunbeam in obtaining the necessary financing associated with the Coleman transaction to be significant?
A. I would say that every client is significant, but it was not material to the overall responsibilities that I had.
Q. So you did not consider the fees that Morgan Stanley would be paid -- potentially paid as a result of its financing activities for Sunbeam to be significant to Morgan Stanley or to you personally?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Well, as I think I have testified earlier today and just now, every client, every fee is important.
As a percent of the business I was responsible for, it was small but this was also a

large transaction. So I'm not quite sure how that answers your question.
BY MR. MARKOWSKI:
Q. I guess I don't understand the reference to it being small but a significant transaction. What do you mean?
A. Well, it's a big transaction, but in relation to the overall business, I was responsible for the small portion of that.
Q. And the fees that Morgan Stanley stood potentially to make with respect to assisting Sunbeam and obtaining the financing associated with the Coleman acquisition, in your mind, were an insignificant part of the overall business that you were responsible for?
A. I would say that they were -- insignificant is too strong. They were a small part.
Q. What percentage of the business that you were responsible for at that point in time did the financing fees potentially represent?
A. Well, when you say "financing fees," you mean the growth spread that we realized. I don't know exactly. But the total revenue I

would have been responsible for at the time would have been -- and I'm guessing here -- I'm guessing here but 6 or $700,000 or something like that.
Q. In fees?
A. In the sum of fees, plus gross spreads received in connection with financings and related matters across all of the offices that I was responsible for.
Q. That would include the revenue being generated by all of the offices that you had responsibility for managing on behalf of Morgan Stanley back in 1997 and 1998?
A. Yes.
Q. In terms of your own personal business activity, what percentage of -- let me start over.
In terms of your own personal business activity, did the potential fees that Morgan Stanley stood to earn as a result of assisting Sunbeam in its financings activities related to the Coleman acquisition constitute a significant portion of the fee generation.
MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

011729

CONFIDENTIAL - STRONG

BY THE WITNESS:

A. I'm sorry. I'm not sure I understand. I have --

MR. MARKOWSKI: Let me start over.

BY MR. MARKOWSKI:

Q. Did you consider yourself to in any way be responsible for the activities that Morgan Stanley engaged in to assist Sunbeam in obtaining financing for its acquisition of Coleman Company?

A. I was a member of the team; therefore, to that extent, yes.

Q. In terms of the projects that you were personally involved in working on, did the potential fees that Morgan Stanley stood to generate on the financing activity for Sunbeam represent a significant portion of the total fees being generated on those projects?

A. If I understand your question, it would certainly be material.

Q. Do you recall that Morgan Stanley provided Sunbeam with a highly confidential letter with respect to the financing?

A. My recollection is that we did provide some letter, yes. I could be wrong; but, yes,

CONFIDENTIAL - STRONG

that's what I recall.

MR. MARKOWSKI: Mr. Strong, I'll be showing you what we will be marking as CPH Exhibit No. 74. It's a three-page document bearing Bates No. Morgan Stanley Confidential 80356 through 58 and it's a letter dated March 5, 1998, on Morgan Stanley stationery from R. Bram Smith to Sunbeam Corporation.

(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 73, for identification, as of 12/4/03.)

BY MR. MARKOWSKI:

Q. Have you seen this document before, sir?

A. I don't recall.

Q. Do you recall that you did see a letter from Morgan Stanley to Sunbeam indicating that Morgan Stanley was highly confident in its ability to arrange the financing necessary to complete the Coleman acquisition?

A. As I previously testified, I believe there was a letter that could be characterized

CONFIDENTIAL - STRONG

the way you did it as a highly confident letter. I don't recall seeing it. I don't recall seeing this specific letter that is Exhibit 74.

Q. The first paragraph of this letter indicates that it relates to the financing required in connection with the acquisition by Sunbeam of CLN Holdings, Inc., the Coleman Company, Signature Brands and First Alert; is that what it reads, sir?

A. That's what it reads, yes.

Q. And if you turn to the second page of the letter, the second full paragraph, reads, "Based upon a subject to the foregoing, we are pleased to confirm that we are highly confident that the proposed credit facilities could be syndicated in a general allowance indication to lenders." Do you see that?

A. Yes.

Q. Now, do you recall, sir, that Morgan Stanley provided Sunbeam with a letter indicating that it was highly confident that it could arrange the necessary financing to complete the Coleman acquisition prior to completing due diligence?

CONFIDENTIAL - STRONG

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. If I understand the question, I recall, as I previously testified, that we did provide a letter that somewhat characterized the highly confident letter. I don't recall seeing this letter or any other letter. And with respect to your question about prior due diligence, we have been doing due diligence throughout the process.

So I don't know what kind of win and through and including the transactions, so I'm not quite sure how to answer it beyond that.

BY MR. MARKOWSKI:

Q. Does Morgan Stanley have an internal policy that highly confident letters relating to financings should not be provided until due diligence is substantially completed?

A. Not that I'm aware of.

Q. What's the purpose of a highly confident letter in this context, sir?

A. In this context, from time to time, clients will want to have an informal non-binding opinion from a nationally recognized investment

NOT CERTIFIED COPY

CONFIDENTIAL - STRONG

bank like Morgan Stanley that in our opinion the financing can be obtained so that they can be assured or at least provide some assurance that they're not wasting their time.

Q. Is it typical that that letter is sought after a definitive acquisition agreement is executed?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Is it typical that it's sought after? I would say because it's informal, there are examples on both sides because at times clients can change their mind about how they wish to finance a transaction. So I would say both ways.

BY MR. MARKOWSKI:

Q. Did you have any involvement in the internal discussions at Morgan Stanley relating to the issuance of a highly confident letter to Sunbeam?

A. I don't recall.

Q. In light of your position in connection with the Sunbeam M & A engagement, is that something you would have expected to have

CONFIDENTIAL - STRONG

been involved in based on your experience?

A. Well, again, it is a hypothetical; but I would say it varies. Mr. Smith at the time was a senior member and I believe ran our loan process so he might not have discussed with me. On the other hand, he may have. I just don't recall.

Q. You don't have any recollection as you sit here of discussing Sunbeam with Mr. Smith before Mr. Smith signed a highly confident letter on behalf of Morgan Stanley?

A. That's not what I just testified to. I may have had conversations with Mr. Smith on other matters with respect to Sunbeam, but I just don't recall.

Q. Let me ask a stand-alone question at this point.

Do you recall as you sit here today any conversations that you had with Bram Smith relating to Sunbeam on any subject concerning Sunbeam before Mr. Smith signed a highly confident financing letter on behalf of Morgan Stanley?

A. I don't know.

CONFIDENTIAL - STRONG

Q. Well, my question is can you recall it and your answer is I don't know?

A. I know that I had a conversation with Mr. Smith regarding Sunbeam. I don't know if they were before the line you drew or after or during. I just don't know.

Q. What conversations with Mr. Smith can you recall?

A. Nothing specifically but just in general with him being the senior person responsible for this. I just recall speaking with him about it but nothing specifically.

Q. Are you aware, sir, that in connection with its financing activities, Morgan Stanley conducted due diligence relating to Sunbeam Company?

A. Yes.

Q. And you're aware, sir, that as part of that due diligence activity, Morgan Stanley suggested that Arthur Andersen provide Morgan Stanley with a comfort letter?

A. Yes.

Q. Arthur Andersen in 1997 and 1998 acted as the outside auditing firm for Sunbeam Company,

CONFIDENTIAL - STRONG

correct?

A. Yes, and I believe also previous to that. Yes.

Q. Do you recall that you read the comfort letter that Arthur Andersen provided to Morgan Stanley in connection with Morgan Stanley's financing due diligence?

A. I recall reading a comfort letter, yes.

Q. Do you know that, in fact, you read the Andersen comfort letter prior to the time a decision was made by Morgan Stanley to proceed with the Sunbeam financing?

A. I don't know.

Q. Let me show you, sir, what we've previously marked as CPH Exhibit No. 17. CPH Exhibit No. 17 bears MS 375 through 381, and it's a letter dated March 19, 1998, on Arthur Andersen letterhead and is directed to Morgan Stanley & Company, Inc. Take a moment, sir, and review the contents of Exhibit No. 17.

This is the Arthur Andersen comfort letter that you read, correct?

A. I recall reading a comfort letter. I

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

don't know if this is the one that I read.
Q. Do you recall that Morgan Stanley requested two comfort letters from Arthur Andersen, an initial comfort letter and a bring down comfort letter?
A. Yes.
Q. Do you recall that it was, in fact, the initial letter that you read?
A. I don't know whether it was the initial one or the bring down letter.
Q. You're uncertain whether you read the comfort letter before the financings closed?
A. Yes.
Q. Why would you read the comfort letter after the financings closed?
A. In general -- I would say in general to simply read the document.
Q. The comfort letter is an important part of due diligence, correct?
A. Yes.
Q. Why is that?
A. It is providing comfort, as the phrase is, from the independent accounting experts with respect to certain facts. So it's an important

CONFIDENTIAL - STRONG

part of due diligence.
Q. One of the things the comfort letter does is to provide information concerning the company's most current financial performance, correct?
A. Typically, yes.
Q. Do you recall that Sunbeam's acquisition of Coleman Company was scheduled to close before the end of Sunbeam's first quarter?
A. I don't recall. I don't recall.
Q. Do you recall that the financings were scheduled to close before the end of Sunbeam's first financial quarter of 1998?
A. Yes.
Q. If the financings were scheduled to close before the end of the first quarter, does that indicate to you that the acquisition of Coleman Company would have closed prior to that as well?
A. Not necessarily, no.
Q. Who was responsible, sir, for reading the comfort letter provided to Morgan Stanley by Arthur Andersen in connection with Morgan Stanley's investment banking activities for

CONFIDENTIAL - STRONG

Sunbeam?
A. There could be a variety of people who would have read it. There could be a Mr. Tyree. It could have been outside counsel. It could have been Ruth Porat and others.
Q. I take it that you didn't have that responsibility; is that correct?
A. It is not directly my responsibility, no.
Q. Would it surprise you if I told you that Ms. Porat has testified that she did not think it was her responsibility?
A. No. Ruth is a member of equity capital markets. I remember Mr. Tyree being a part of corporate finance execution. So Mr. Tyree would be the person primarily responsible if not singly responsible for reviewing this.
Q. So Mr. Tyree may have been the sole person within Morgan Stanley responsible for reading and evaluating the contents of Arthur Andersen's comfort letter?
A. I don't know that to be true, but it may be true.

CONFIDENTIAL - STRONG

Q. Morgan Stanley doesn't have a policy that requires that in connection with transactions of this sort that comfort letters be examined by individuals at the managing director level?
A. No, not that I'm aware of.
Q. Do you recall that when you did read the Andersen comfort letter, that it disclosed to you that Sunbeam's performance in the first two months of 1998 was very poor?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I have no recollection of that at all.
BY MR. MARKOWSKI:
Q. What do you recall about your examination of the Andersen comfort letter?
A. I wouldn't characterize it as an examination. I think my testimony is I believe I have read it. And I just recall reading it, not much beyond that.
Q. You don't recall having any thoughts or reactions to the content?
A. No, sir.

NOT A CERTIFIED COPY

16div-021840

CONFIDENTIAL - STRONG

Q. You don't recall that the comfort letter that you read stated that Sunbeam's performance in the first two months of 1998 in terms of net sales was, approximately, 50 percent of Sunbeam's net sales results in the first two months of the prior year?

A. Do I recall that today?

Q. Yes.

A. I don't recall that today.

Q. Do you recall that the comfort letter that you read put you on notice that Sunbeam's performance in the first two months of 1998 was substantially below Sunbeam's performance in the first two months of 1997?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Not that I recall today.

BY MR. MARKOWSKI:

Q. Let me direct your attention to paragraph 6(C) of this letter. It is on the page bearing Bates No. MS 379.

Would you read that paragraph to yourself, sir, just the first paragraph at the top of the page?

CONFIDENTIAL - STRONG

A. Yes.

Q. Have you had a chance to read it?

A. Yes.

Q. It advised you, sir -- strike that. It advises, does it not, that Sunbeam's sales in the first two months of 1998 were approximately $72,018,000 as compared to net sales of $143,499,000 for the corresponding period of 1997?

MR. CLARE: Objection. Waste of time.

BY THE WITNESS:

A. That's what the letter says, yes.

BY MR. MARKOWSKI:

Q. You don't recall seeing that information when you read the Andersen comfort letter back in 1998?

A. Again, if I read the letter -- and I believe I did -- I don't recall specifically the individual paragraphs.

Q. Do you recall this specific piece of information?

A. I don't recall the individual paragraphs.

Q. My question isn't that.

CONFIDENTIAL - STRONG

A. This is a paragraph.

Q. You don't recall any specific information contained in the letter, is that what you mean?

A. All I recall about the comfort letter -- and I'm not sure this is responsive to your question -- is that they had been received by us consistent with our policies of seeking comfort letters as you had suggested at the beginning.

Q. Is the comfort letter to be received and filed away or is it something to be carefully examined by Morgan Stanley upon its receipt?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I think we would carefully review its contents.

BY MR. MARKOWSKI:

Q. When you say "we" in this context, there were several managing directors working on the Sunbeam transaction, correct?

A. No.

Q. How many were there at this point in time?

A. You mean on the financing, on the

CONFIDENTIAL - STRONG

M & A or other aspects? I am confused.

Q. On the overall project?

A. On the overall project, as I've testified earlier, there were somewhere between four and ten, I would guess.

Q. Managing directors?

A. Yes.

Q. And you don't recall any discussion among the managing directors of the information that you have just read in paragraph 6(C) in the Andersen March 19 comfort letter that Sunbeam's net sales in the first two months of 1998 were approximately 50 percent of Sunbeam's net sales in the first two months of 1997?

A. There may have been. I don't recall today.

Q. Looking at this information now, sir, does it appear to be a significant piece of information relating to Sunbeam's 1998 performance?

MR. CLARE: Objection to form.

BY THE WITNESS:.

A. A comfort letter is something that we would, as I have testified, actively take a look

NOT A CERTIFIED COPY

16div-021841

CONFIDENTIAL - STRONG

at and consider.
BY MR. MARKOWSKI:
Q. My question, sir, is looking at the information set forth in paragraph 6(C) that Sunbeam's net sales in the first two months of 1998 were approximately 50 percent of Sunbeam's net sales in the first two months of 1997, does that piece of information, as you sit here today, in your view constitute a significant piece of information relating to Sunbeam's performance?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I'm not sure I understand the question. We would take the entire letter, review it and consider it part of our due diligence. Consider it.
BY MR. MARKOWSKI:
Q. Do you have any opinion, as you sit here today, relating to the significance of the information contained in paragraph 6(C) relating to Sunbeam's net sales being half of its 1997 net sales in the first two months of the year?
A. I'm sorry. I'm not quite sure what you're trying to get at.

CONFIDENTIAL - STRONG

Q. As you sit here today -- I am focusing specifically on this piece of information, sir -- do you have any view relating to the significance of the fact that Sunbeam's net sales in the first two months of 1998 as reported by Arthur Andersen in this letter were approximately half of Sunbeam's net sales in the first two months of 1997?
A. I think the entire letter is an important part of our due diligence. I would look at all of the paragraphs. I say "I" -- our team would look at all of the paragraphs and consider that to be a part of our due diligence.
Q. And this piece of information in your view is no more or no less important than anything else that's said in the letter?
A. Well, at the time of the letter we would consider all of this and take that into consideration as part of our due diligence.
Q. Now, do you recall when you read the March 19 -- strike that.
Do you recall that when you read Andersen's comfort letter relating to Sunbeam transactions that you were disturbed by any

CONFIDENTIAL - STRONG

information contained in the comfort letter?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. As I previously testified, I believe I have read one of the comfort letters, and I don't recall today what my reactions were to any particular aspect.
BY MR. MARKOWSKI:
Q. You don't have any general recollection that something in the Andersen comfort letter that you read troubled you?
A. No, not that I recall today. It may have, but not that I recall today.
Q. If it had troubled you, is that something that you think you would have remembered today?
A. If it had troubled me, would I remember it? I might.
Q. If in fact Sunbeam's performance in the first two months of 1998 in net sales was half of Sunbeam's performance in the first two months of 1997, sir, wouldn't that have called into serious question Mr. Dunlap's claims that he had turned Sunbeam around?

CONFIDENTIAL - STRONG

A. No, not at all.
Q. You think it is immaterial to that issue?
A. I wouldn't characterize it that way, but sales of companies of this type are volatile. Oftentimes sales are back-end loaded in any particular quarter. So it is just a fact.
Q. Do you know that Wall Street was expecting Sunbeam to accomplish substantially higher sales in the first quarter of 1998 than it had accomplished in the first quarter of 1997?
A. Yes.
Q. And do you know that Wall Street was expecting Sunbeam to accomplish substantially higher profits in the first quarter of 1998 compared to its performance in the first quarter of 1997?
A. I think so, yes.
Q. And information that Sunbeam sales in the first two months of the quarter were half of what they had been in 1997 wouldn't have been disturbing to you?
MR. CLARE: Objection. Asked and answered.

NOT A CERTIFIED COPY

16div-021842

CONFIDENTIAL - STRONG
BY THE WITNESS:
A. Again, it may have been. I just don't recall today.
BY MR. MARKOWSKI:
Q. So you may have been disturbed to learn when you read the Andersen comfort letter that Sunbeam's sales in the first two months of '98 were half of what they had been in the first two months of 1997, you just don't remember it today?
A. I would look at the entire letter. I don't recall specifically when I read it or which letter I read; but I would read it all and then take it into consideration as part of the due diligence.
Q. Now, in March of 1998, did you consider yourself to be a sophisticated investment banker?
A. Yes.
Q. Would seeing information of this sort that is set forth in paragraph 6(C) of the Andersen comfort letter that Sunbeam's net sales in the first two months of 1998 are half of what Sunbeam's net sales had been in the first two

CONFIDENTIAL - STRONG
months of 1997 had caused you to at least question whether Sunbeam had done things with respect to its business to enhance its performance in 1997 at the expense of its performance in 1998?
MR. CLARE: Objection to form and hypothetical.
BY THE WITNESS:
A. Not necessarily, no.
BY MR. MARKOWSKI:
Q. I'm not asking necessarily if it necessarily would have caused you to do that. I am asking you whether it would have caused you to at least question whether that was a possibility?
A. My answer is not necessarily.
Q. Well, did it?
A. Again, I don't recall.
Q. Well, there was a point where you did learn that Sunbeam's sales in the first two months of 1998 were far below Sunbeam's net sales in the first two months of 1997, whether it came from the comfort letter or some other source, correct?
MR. CLARE: Objection to form.

CONFIDENTIAL - STRONG
BY THE WITNESS:
A. Yes.
BY MR. MARKOWSKI:
Q. That is something you did know, correct?
A. At some point in time I became aware of that, yes.
Q. And you knew that prior to the time that the Coleman acquisition closed, correct?
A. Probably.
Q. Well, you knew it before the financing transactions closed, right?
A. Yes.
Q. And the Coleman transaction isn't going to close until the financing transaction is closed, correct?
A. Yes.
Q. So, in fact, you knew before the Coleman Company transaction closed that Sunbeam's net sales in the first two months of 1998 were about half of what Sunbeam's net sales had been in the first two months of 1997, correct?
MR. CLARE: Objection. Misstates the prior testimony.

CONFIDENTIAL - STRONG
BY THE WITNESS:
A. I obviously recall having discussions with my colleagues the day prior to the closing of the financing about sales. I may have become aware of it at that point. May have.
BY MR. MARKOWSKI:
Q. If Mr. Tyree received this letter, do you think this is something Mr. Tyree kept to himself?
MR. CLARE: Objection, calls for speculation.
BY THE WITNESS:
A. I don't know.
THE VIDEOGRAPHER: Counsel, we have less than a minute left on this tape.
MR. MARKOWSKI: Why don't we stop.
THE VIDEOGRAPHER: Going off the video record at the end of tape No. 2 at 12:11 p.m.
(WHEREUPON, discussion was had off the record.)
THE VIDEOGRAPHER: We're going back on the video record at the start of tape 3 at 12:24 p.m.
MR. MARKOWSKI: I just want to put on the

NOT A CERTIFIED COPY

16div-021843

CONFIDENTIAL - STRONG

record that Mr. Clare during the break informed me that he is terminating the deposition today at 3:30 and taking a position that at that point the deposition is closed.

I have told him that that's unacceptable, that I cannot reasonably conclude my examination within that period of time; but that we will proceed as quickly and expeditiously as we can to cover as much as possible between now and that point in the day.

MR. CLARE: I'll briefly respond. During the break I informed counsel that we had previously been informed that Mr. Strong's testimony would not last a full day. We have had not imposed any limitations on the length of questioning; but we're told that Mr. Strong has a business commitment this afternoon, which was scheduled late in the afternoon.

And it was our intention in starting at 8:00 a.m. this morning to allow us to get as much testimony in as possible that would give you a full day of testimony or as close to a full day as possible beginning at 8:00 concluding at 3:30, especially given Mr. Strong's two days of prior

CONFIDENTIAL - STRONG

testimony on Sunbeam related engagements. It's more than adequate for your purposes.

We informed you by letter prior to today's deposition that it was our intention to begin the deposition at 8:00 o'clock in order to complete it as early in the day as possible. There was no response received to that.

And it is our intention to go forward this afternoon until 3:30 at which point we will need to leave so that Mr. Strong can make his business commitment.

MR. MARKOWSKI: I don't want to belabor the record with a debate between you and I on this, Tom, because time is short at this point but I'm not aware of any commitment on our part to complete Mr. Strong's deposition today.

I will conduct the examination as expeditiously as I can. I have no objection to adjourning at 3:30 to complete Mr. Strong's deposition at a time that we can agree upon, but I'm not agreeing that Mr. Strong's deposition is concluded at 3:30 today.

MR. CLARE: Well, I would encourage you to conduct the examination, the remainder of it, in

CONFIDENTIAL - STRONG

the manner that you described, expeditiously, and focusing on issues that have not previously been covered this morning or in Mr. Strong's prior testimony; and, with that, there should be no difficulty in completing the deposition not only today, but certainly by 3:30, the time that Mr. Strong needs to leave.

So, with that, I suggest we move back to the questioning.

BY MR. MARKOWSKI:

Q. Mr. Strong, before we broke, I asked you whether as a sophisticated investment banker it would have caused you to at least question whether Sunbeam had managed its business in 1997 to maximize its results in that fiscal year at the expense of its results in 1998 if you were advised that Sunbeam's sales in the first two months of 1998 were approximately 50 percent of its sales in the first two months of 1997.

Do you recall that question?

A. Yes.

Q. And your answer to that question is what, sir?

A. The same as before, which was not

CONFIDENTIAL - STRONG

necessarily.

Q. In fact, Mr. Strong, you were informed that Sunbeam had managed its affairs in order to maximize its performance in 1997 at the expense of its performance in the first quarter of 1998 and that was the reason for the significant decline in Sunbeam's net sales in the first two months of that quarter, were you not?

MR. CLARE: Objection. Form. Argumentative.

BY THE WITNESS:

A. I don't agree with the premise in your question at all and I disagree with the answer you provided.

BY MR. MARKOWSKI:

Q. Let me direct your attention to the Andersen comfort letter, again, CPH Exhibit 17, the page bearing Bates No. 378. I would like you to read to yourself paragraph 6(B).

Have you had a chance to read paragraph 6(B)?

A. Yes.

Q. Arthur Andersen in paragraph 6(B) specifically advised Morgan Stanley that the

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

primary reason for the decline in Sunbeam's net sales in the first two months of 1998 was because Sunbeam had accelerated the sale of outdoor grills in the fourth quarter of fiscal year 1997; is that correct?

A. If you're trying to paraphrase the sentence, I can just read it here. It says, "Sales decreased as compared to the corresponding period of the preceding year primarily due to the company's new early buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter fiscal 1997." And it goes on a couple of other sentences.

Q. So Morgan Stanley knew that prior to the closing of the Coleman Company transaction, correct?

A. Morgan Stanley did, yes.

Q. And you were put on notice of it as well when you reviewed the Andersen comfort letter, correct?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Again, I don't know specifically when

CONFIDENTIAL - STRONG

I read which of the letters. I know that we, as I've testified, had received this and factored this into our due diligence along with the unqualified opinion of Arthur Andersen on the financial statements.

BY MR. MARKOWSKI:

Q. Do you recall whether the comfort letter, the Andersen comfort letter, was the first information you had that Sunbeam's performance in the first two months of 1998 was far below its performance in 1997?

A. "Performance," you mean -- you're referring to net sales?

Q. Yes.

MR. CLARE: And I object to the form of the question.

BY THE WITNESS:

A. I'm not certain. I don't recall.

BY MR. MARKOWSKI:

Q. What other information did you have in the first quarter of 1998 that put you on notice that Sunbeam's performance in net sales was far below its performance in the comparable period in 1997?

CONFIDENTIAL - STRONG

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Well, I don't know which corresponding period you are referring to; but --

BY MR. MARKOWSKI:

Q. If that's unclear, let me be clear.

A. Please.

Q. What was the information that you had prior to the close of the Coleman Company transaction that Sunbeam's net sales in the first quarter of 1998 were far below Sunbeam's net sales for the comparable period in the first quarter of 1997?

A. None. We had just the opposite. We had information to suggest that it would be materially above the first calendar quarter of 1997.

Q. Was there a point prior to the closing of the Coleman Company transaction where you learned that Sunbeam's actual net sales results in the first quarter of 1998 were below substantially its net sales results in the comparable time period in the first quarter of 1997?

CONFIDENTIAL - STRONG

A. You're changing the question. You said comparable period. I don't know if you're talking about the quarter or the first two months or the first month. I don't understand what your question is.

Q. Whenever you learned the information in 1998 that indicated that Sunbeam's net sales were below its net sales for the comparable period in 1997, whatever that period was, whether it was the first month, whether it was the first two months, whether it was the first ten weeks, I want to know what information you had putting you on notice of that prior to the time the Coleman Company transaction closed?

MR. CLARE: I object to the form.

BY THE WITNESS:

A. Well, all I recall is that we were informed -- assured by management that their sales would meet -- for the first calendar quarter would meet street estimates. And those street estimates, if I understand your question, were above actual sales for the first calendar quarter of 1997 and I didn't receive information that they were not going to be at that level

NOT A CERTIFIED COPY

011737

CONFIDENTIAL - STRONG

until they issued their press release saying that they were not, which I don't recall exactly. I think it was in April sometime.

BY MR. MARKOWSKI:

Q. That wasn't my question.

My question was, was there a point in time before the Coleman Company transaction closed where you learned that Sunbeam's actual net sales results in the first quarter of 1998 were substantially below Sunbeam's actual net sales results for the comparable time period in the first quarter of 1997?

A. If I understand your question, I don't know.

Q. You may have been advised of this, but, as you sit here, your testimony is you can't recall it?

A. Correct.

Q. You were in regular contact with Mr. Dunlap, were you not, sir, during the first two months of 1998?

A. As I previously testified, I was in periodic contact with Mr. Dunlap throughout the project.

CONFIDENTIAL - STRONG

Q. And I believe you defined periodic to mean two or three times per week?

A. Yes, something in that range.

Q. And you were in contact with Mr. Kersh during the first two months of 1998 as well, correct?

A. Yes.

Q. At approximately the same frequency?

A. As I recall, yes.

Q. Did you inquire of them in connection with the conversations that you had with either of them how Sunbeam's actual sales results in the first weeks of 1998 were progressing?

A. All that I recall today is a conversation I had with Mr. Dunlap and others about whether or not they would make Wall Street estimates for net sales in the first quarter and they assured me that they would. And those numbers, as I recall, were above -- as I said earlier, the first calendar quarter of 1997.

Q. My question, sir, is whether you made any inquiry of Mr. Dunlap or of Mr. Kersh in which you asked them for information relating to Sunbeam's actual sales results in the first weeks

CONFIDENTIAL - STRONG

of 1998?

A. I don't know.

Q. You may have asked that question, you just don't recall?

A. I may have asked that question. I don't recall.

Q. Do you recall whether you personally received any information from Mr. Dunlap, Mr. Kersh or anyone else at Sunbeam during the first weeks of 1998 relating to Sunbeam's actual net sales results?

A. Not that I recall today, no.

Q. Do you agree that Sunbeam's actual results in the first quarter of 1998 would be significant to the investment community in evaluating whether or not Mr. Dunlap's claims that he had turned Sunbeam around were true or whether they were false?

MR. CLARE: Objection to form. Calls for speculation.

BY THE WITNESS:

A. I mean, there would be a number of factors investors would consider. Certainly quarterly results would be one of them.

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:

Q. And if Sunbeam's results in the first quarter of 1998 were below Sunbeam's results in the first quarter of 1997, do you believe that that would have caused the financial community to question whether or not Mr. Dunlap had in fact turned Sunbeam around as he had claimed?

MR. CLARE: Objection. Hypothetical.

BY THE WITNESS:

A. I don't know. It would just depend on a whole series of factors.

BY MR. MARKOWSKI:

Q. But it might have that consequence, correct?

A. I don't know.

Q. Do you think it's possible -- wouldn't it have even raised questions about the credibility of Mr. Dunlap's turnaround claims?

A. The reason I said I don't know is that it would depend upon the reasons that led to that on your hypothetical question. It just depends.

Q. What if one of the reasons that led to it was that Sunbeam had accelerated the sale of products into the last quarter of 1997 that

NOT CERTIFIED COPY

014738

CONFIDENTIAL - STRONG

otherwise would normally have occurred in the first quarter of 1998? What if that's the reason?

MR. CLARE: Same objection. Hypothetical.

BY THE WITNESS:

A. Again, I don't know. I don't know how they would react. It would depend on a lot of factors.

BY MR. MARKOWSKI:

Q. It wouldn't be a favorable piece of information in evaluating the truthfulness of Mr. Dunlap's claims that he had turned Sunbeam around in the manner in which he had claimed, correct?

A. I don't know that I can say that. Again, you're picking one factor out. Investors would look at a whole series of factors, progress with the company, profitability, things they might do in the future, other events in the marketplace. And those are just a handful. There's many others. I really don't know.

Q. Do you think one of those factors would be whether Mr. Dunlap had accomplished the 1997 results by tactics that resulted in Sunbeam

CONFIDENTIAL - STRONG

stealing sales revenue from 1998?

MR. CLARE: Objection to form and hypothetical.

BY THE WITNESS:

A. I wouldn't agree obviously with your characterization. The financial statements for 1997 had been audited by Arthur Andersen and had issued an unqualified opinion on those, and I recall even specifically refer to some of the information you talk about in their 10K.

So the investors, I think, had knowledge of that. I think. I may be wrong.

BY MR. MARKOWSKI:

Q. How -- you've now, sir, had a chance to look at the contents of Arthur Andersen's March 19 comfort letter, at least in a couple of respects.

How do the things that I have brought to your attention this afternoon relating to the comparison of Sunbeam's results in the first two months of 1998 and Andersen's conclusion that the reason for the shortfall is that Sunbeam had accelerated sales in the first quarter of 1997 at the expense of 1998 compare to what you were told

CONFIDENTIAL - STRONG

by Sunbeam management during your conversations with Mr. Dunlap and Mr. Kersh in January and February about the company's performance in the first quarter of '98?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. How do they compare? I don't recall any differences at this point in time.

BY MR. MARKOWSKI:

Q. Mr. Dunlap kept you advised that Sunbeam had accelerated sales revenue into the fourth quarter of 1998 by taking sales that would have otherwise occurred in the first quarter of 1998 and recognizing those sales in the first quarter of 1997?

A. Not that I recall.

Q. Did Mr. Dunlap tell you during his conversations in January and February with you that his net sales were far below the net sales Sunbeam had accomplished in the first two months of 1998? Let me rephrase that.

Is it your testimony that Mr. Dunlap told you during your conversations with him in January and February of 1998 that Sunbeam's net

CONFIDENTIAL - STRONG

sales were running far below Sunbeam's net sales for January and February of 1997?

A. Not that I recall.

Q. You don't recall Mr. Dunlap telling you that?

A. No.

MR. MARKOWSKI: We will take our break now.

THE VIDEOGRAPHER: Going off the video record at 12:40 p.m.

(Whereupon a short break was taken.)

THE VIDEOGRAPHER: We're going back on the video record at 1:17 p.m.

BY MR. MARKOWSKI:

Q. Mr. Strong, Sunbeam issued a press release in late March relating to its first quarter sales. Do you recall that?

A. Yes. I recall around March 19, I think.

Q. Your memory is good on that.

Let me show you what we have previously marked as CPH Exhibit No. 14. This bears Bates No. Morgan Stanley Confidential 16944. And the title of the document is "Sunbeam

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

States That First Quarter Revenues May Be Lower Than Street Estimates."

Take a moment to look at Exhibit 14, if you would, sir.

MR. CLARE: My copy only has one page. The prior Exhibit 14 had two pages.

MR. O'CONNOR: They didn't copy the second page. I've got to run and make four copies of it.

MR. MARKOWSKI: Let's go off the record a minute.

THE VIDEOGRAPHER: We're going off the video record at 1:18 p.m.

(WHEREUPON, discussion was had off the record.)

THE VIDEOGRAPHER: We're going back on the video record at 1:20 p.m.

MR. MARKOWSKI: Mr. Strong, I think we corrected the glitch with the exhibit. CPH Exhibit 14 is a two-page document bearing Bates stamp No. Morgan Stanley Confidential 16944 through 45.

BY MR. MARKOWSKI:

Q. Have you seen this document before,

CONFIDENTIAL - STRONG

sir?

A. I have seen a copy of this before, yes.

Q. This is the press release that Sunbeam issued on March 19 concerning its first quarter sales?

A. It appears to be, yes.

Q. Did you see this press release prior to it being publicly released?

A. Not that I recall, no.

Q. Is it your best recollection that in fact you did not see it before it was publicly released?

A. I don't recall. I may have, but I don't recall.

Q. Are you aware that Morgan Stanley did see this document in draft form before there was a public press release by Sunbeam?

A. I don't recall that either.

Q. You're unaware that Ms. Porat commented on the draft press release?

A. I recall that we were -- that the draft in general was discussed with us or informed or informed us of its contents, but I

CONFIDENTIAL - STRONG

don't recall specifically who it would have been with.

Q. So you do have an understanding that Morgan Stanley was involved in the preparation of the ultimate press release; is that correct?

MR. CLARE: Objection. Misstates the prior testimony.

BY THE WITNESS:

A. No. That's not what I said.

BY MR. MARKOWSKI:

Q. Your understanding is that Morgan Stanley was involved in discussions with Sunbeam concerning the content of the press release before the press release was publicly disseminated; is that correct?

A. No. I would simply say that we were -- I don't know if it was via counsel or how it happened, but I know that we had some discussions with someone about the content or they would have been informing us of the content.

Q. Do you know Ms. Porat made suggestions relating to the content of the press release?

A. I don't recall.

Q. Do you know that Mr. Tyree was also

CONFIDENTIAL - STRONG

involved in reviewing the draft press release?

A. I don't recall today.

Q. Did you make a request of anyone working on the Morgan Stanley/Sunbeam team that they review the press release in advance of it being released by Sunbeam?

A. I recall certainly having a conversation. Of course, we had suggested a release be put out and I recall discussing with, I believe, Ruth Porat in general what we felt ought to be said to investors.

Q. And did you request that Ms. Porat confirm that the press release was in a form satisfactory to Morgan Stanley before it was publicly released?

A. No, I don't recall that.

Q. Did you request that Ms. Porat inform herself of the contents of the press release before it was publicly disclosed?

A. I may have. Since we had suggested the release be put out, I may have. I just don't recall today.

Q. Can you recall requesting that anyone else on behalf of Morgan Stanley review Sunbeam's

NOT A CERTIFIED COPY

011940

proposed press release before it was publicly released?

A. Not that I recall today.

Q. Did you request Morgan Stanley's outside counsel to review the press release before Sunbeam publicly disseminated it?

MR. CLARE: I object and instruct the witness not to answer the question to the extent any discussions with Morgan Stanley's counsel were in discussions where third parties were not present.

Mr. Strong, if you understand my limitation on your ability to answer, I'm instructing you -- you can answer Mr. Markowski's question, if you're able -- to limit yourself to any setting if such a conversation took place where there were individuals present that were not from either Morgan Stanley or its counsel.

BY THE WITNESS:

A. No, I don't recall who would have been present on the couple of calls I had.

I do know that I had some conversations with counsel. I don't recall if those were or were not on the telephone at the

time.

BY MR. MARKOWSKI:

Q. Can you recall giving instruction to anyone that the press release be reviewed by Morgan Stanley's lawyers before it was publicly disseminated?

MR. CLARE: I'm giving the same objection and same limitation.

BY THE WITNESS:

A. Not that I recall today.

BY MR. MARKOWSKI:

Q. What did you tell Ms. Porat the press release should include?

A. Well, I would respond to that narrow question, when we became aware -- and I believe it was Ms. Porat became aware of the possibility that the first quarter estimate for net sales might not be reached, we further investigated that; and even though the client felt assured very strongly that it would meet the estimates, we felt that a press release should go out stating that they might not -- what's here might not make first quarter street estimates for sales.

But more specific than that, I really can't be.

Q. Do you recall telling Ms. Porat that you wanted to be assured that Sunbeam's press release stated that Sunbeam might not achieve street estimates for first quarter sales?

A. Something like that. It was something that we felt an appropriate thing to do.

Q. Do you recall telling her that the press release should say anything other than that?

A. No, because it's obviously Sunbeam's press release. They'll decide whether it should be issued and, if so, what it will include.

But as I've previously testified, we felt it was appropriate that something be said.

Q. But as far as you can recall the only thing you told Ms. Porat you wanted to make sure the press release said was that Sunbeam might not achieve street estimates for first quarter sales?

A. As it says here, that for the first quarter of 1998 may be lower than the range of Wall Street estimates in 285 to 295.

Q. That's the only thing you recall

telling Ms. Porat you wanted to be sure that the press release said, correct?

A. Well, you say "sure the press release said."

Just, in general, that was the area that we were concerned about and felt something should be said. The exact content and wording of the press release is really the responsibility of Sunbeam and whether or not it should be issued at all.

Q. I'm just trying to understand what you said to Ms. Porat.

Did you tell Ms. Porat that the press release should say anything other than, in substance, Sunbeam might not achieve Wall Street expectations for first quarter net sales?

A. Not that I recall. I may have, but not that I recall today.

Q. Did you tell Ms. Porat that the press release should include a statement of Sunbeam's actual sales in the first quarter to date?

A. As I testified, I can't recall anything else.

Q. Did you tell Ms. Porat that the press

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

release should contain a statement of the reasons Arthur Andersen had given for the reasons why first quarter sales were so far below 1997 results?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Not that I recall.

BY MR. MARKOWSKI:

Q. Did you tell Ms. Porat that the press release should address Sunbeam's earning expectations for the first quarter?

A. Not that I recall.

Q. Mr. Strong, is there anything in the press release, CPH Exhibit 14, that would put a reader of the press release on notice that Sunbeam's sales for January and February of 1998 were approximately half of Sunbeam's sales for the first two months of 1997?

MR. CLARE: Objection to form and calls for speculation.

BY THE WITNESS:

A. Yeah, I would say it's hard for me to answer the question. I don't know how investors would interpret this, how they would think sales

CONFIDENTIAL - STRONG

earlier in the quarter would be or what they would not be. I just don't know how to answer that.

BY MR. MARKOWSKI:

Q. Well, you're a sophisticated investment banker, correct?

A. Yes.

Q. Looking at this document, does this document, in your view, put you on notice that Sunbeam's net sales for the first two months of 1998 were approximately 50 percent of Sunbeam's net sales for the first two months of 1997?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. It might.

BY MR. MARKOWSKI:

Q. What words in this press release tell you that Sunbeam's net sales in the first two months of 1998 are half of the results that Sunbeam had accomplished in the first two months of 1997?

A. You're changing the question a bit. I am going to say that the statement in here that says that sales for the first quarter of 1998 may

CONFIDENTIAL - STRONG

be lower than a range of Wall Street estimates of 285 to 295 could lead investors to conclude a variety of things about sales thus far in that quarter; but it would be hard for me -- it would be speculation as to what they think or not think.

Q. You agree with me that the words are not actually in the press release, correct, that Sunbeam's net sales in January and February had fallen 50 percent below Sunbeam's net sales in January and February of 1997?

MR. CLARE: Objection. Waste of time.

BY THE WITNESS:

A. The press release speaks for itself.

BY MR. MARKOWSKI:

Q. That's a good objection. That's not a good answer.

Do you agree with me those words aren't there?

MR. CLARE: Objection and move to strike counsel's characterization of the answer.

BY THE WITNESS:

A. I don't see them in here.

BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. You agree that the press release indicates that it is still possible that Sunbeam might achieve sales of 285 to $295 million on a net basis in the first quarter?

MR. CLARE: Same objection.

BY THE WITNESS:

A. Yes, because it says may be lower.

BY MR. MARKOWSKI:

Q. Mr. Strong, the press release doesn't address Sunbeam's earnings expectations for the first quarter, does it?

MR. CLARE: Same objection.

BY THE WITNESS:

A. No.

BY MR. MARKOWSKI:

Q. Why is that?

A. You have to ask Sunbeam.

Q. Well, Arthur Andersen had provided information to Morgan Stanley relating to Sunbeam's earnings in the first weeks of 1997 that showed that Sunbeam's earnings had fallen well below its earnings for the comparable year of 1997.

Did you address that fact with Sunbeam

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

management at any point?
MR. CLARE: Objection to form. Also assumes facts not in evidence.
BY THE WITNESS:
A. I don't know.
BY MR. MARKOWSKI:
Q. I am sorry. Your answer is...?
A. I don't know.
Q. You mean you don't recall?
A. I also don't recall.
Q. Did the subject of whether Sunbeam would meet earnings expectations for the first quarter of 1998 come up at any point during your discussions with Sunbeam management?
A. Not that I recall today.
Q. Isn't that a significant piece of information?
A. Earnings of a company are important, yes.
Q. Did you ever inquire of Sunbeam at any point prior to the closing of the Coleman Company transaction whether Sunbeam expected to meet street expectations for earnings per share in the first quarter?

CONFIDENTIAL - STRONG

A. I may have.
Q. Do you recall what you were told?
A. I don't recall if I did. Therefore, I don't recall what the response was. The only thing the company basically said was that they would meet the street estimates for sales for the first quarter. I do recall that.
Q. But you don't recall being assured that the company would meet street expectations for earnings?
A. No. They could have been exceeded. They could have been met. They could have been less. I don't specifically recall.
Q. Do you agree that Morgan Stanley had an obligation to inquire into Sunbeam's earnings expectations for the first quarter?
MR. CLARE: Objection to the extent you're asking for a legal conclusion. I object to the form.
BY THE WITNESS:
A. It is the responsibility of the management of a client, in this case, Sunbeam, to disclose what they feel should be disclosed, their responsibility for this press release,

CONFIDENTIAL - STRONG

financial statements, other documents. We simply conduct due diligence and that's it.
BY MR. MARKOWSKI:
Q. Did Morgan Stanley conduct due diligence into whether Sunbeam would achieve Wall Street expectations for first quarter 1998 earnings?
A. We may have. What I recall is that we conducted all of the due diligence that we felt was appropriate in the circumstances.
Q. Do you believe, Mr. Strong, that Morgan Stanley had a responsibility to evaluate the reasonableness of the statements contained in the March 19 press release?
MR. CLARE: Same objection.
BY THE WITNESS:
A. We have no responsibility for that. It is the company's press release. If we thought something was wrong, we would certainly bring that to someone's attention; but it's their responsibility, their press release.
BY MR. MARKOWSKI:
Q. As far as you're concerned, Morgan Stanley had no affirmative duty to make an

CONFIDENTIAL - STRONG

inquiry into whether the statements contained in CPH Exhibit 14 were reasonable?
MR. CLARE: Objection. Asked and answered. Calls for legal conclusion.
BY THE WITNESS:
A. Again, they have the responsibility for the press release whether or not it's even issued, their responsibility and their responsibility alone for its accuracy.
BY MR. MARKOWSKI:
Q. And Morgan Stanley has no responsibility in that regard?
MR. CLARE: Objection. Asked and answered.
BY THE WITNESS:
A. Again, as I've previously testified, if we felt something was wrong, we would certainly bring it to their attention.
BY MR. MARKOWSKI:
Q. Did you agree with me, sir, that Morgan Stanley had a responsibility to evaluate whether the March 19 press release omitted material facts that made the press release misleading?
MR. CLARE: Same objection.

NOT A CERTIFIED COPY

16div-021851

CONFIDENTIAL - STRONG
BY THE WITNESS:
A. Again, as I have said several times, the press release is the responsibility in this case of Sunbeam. And whether or not it's to be issued at all and what its content is, they have sole responsibility for its content. Every company does, obviously.
BY MR. MARKOWSKI:
Q. Do you agree with me, sir, that if Morgan Stanley was aware of facts that were known to Morgan Stanley that showed the statements made in the press release were misleading, that Morgan Stanley had a responsibility to address that with Sunbeam?
MR. CLARE: Same objection.
BY THE WITNESS:
A. The knowledge we had was that they were going to make -- the client was absolutely insisting upon the fact that they would make street estimates for sales for the first quarter as they had stated. That's the information that we had.
BY MR. MARKOWSKI:
Q. Other than speaking with Sunbeam

CONFIDENTIAL - STRONG
management on that subject, do you know what else, if anything, Morgan Stanley did to evaluate the truthfulness of Sunbeam's claim that it expected to meet street estimates of $285 to $295 million of net sales in the first quarter of 1998?
A. We obviously had the benefit of all of the due diligence we had done, the 10K that had been filed, the unqualified opinion on the financials. When you say "management," I'm not sure exactly who you're referring to; but we discussed with additional people down the chain of command at Sunbeam sales estimates for the first quarter.
Q. But what I'm trying to focus on is this, sir: Other than a conversation with Sunbeam personnel, do you know what, if anything, Morgan Stanley did to determine whether or not the March 19 press release was a reasonable statement of Sunbeam's expectations for the first quarter of 1998?
A. Again, we don't have an obligation to do that. It is their press release. They are responsible for the content.

CONFIDENTIAL - STRONG
Q. I am just trying to understand factually, sir, what Morgan Stanley did. I don't want to get into a debate with you about who was responsible for doing what. I just want to understand what you know on this subject.
And my question is, other than having conversation with Sunbeam personnel, do you know what, if anything, Morgan Stanley did to evaluate the reasonableness of the statements contained in CPH Exhibit No. 14?
A. I guess I'll try to answer it this way. We had no information when taken in totality to suggest this wasn't appropriate.
As I said earlier, if we felt something was inaccurate, we would have brought it to someone's attention.
Q. Do you know whether Morgan Stanley did anything other than have a conversation with Sunbeam personnel to inform itself of the facts relevant to the reasonableness and accuracy of the statements contained in CPH Exhibit No. 14?
A. Well, as I think I've previously testified, we obviously relied upon and reviewed and took into consideration the other publicly

CONFIDENTIAL - STRONG
available information from Sunbeam as well as all of the other information they had provided to us.
So it wasn't just conversations. They would provide us with additional documents and information.
Q. What documents did Morgan Stanley receive from Sunbeam bearing upon Sunbeam's sales expectations for the first quarter of 1998?
A. I recall -- I don't recall when I saw this; but I know that there was a page that built up sales for the quarter which was discussed and attested to by managers at Sunbeam. I don't recall when I saw that, though.
Q. Mr. Strong, let me show you what we have marked previously as CPH Exhibit No. 16. It's a one-page document bearing Bates No. Morgan Stanley confidential 28858.
This is -- is this the document that you were just referring to?
A. I don't recognize any of the handwriting on this page. So I don't think it is the same document, no.
Q. Do you recall a different document

NOT A CERTIFIED COPY

being received from Morgan Stanley from Sunbeam relating to Sunbeam's first quarter sales?

A. I don't recall. Again, I don't recall when I saw this; but I recall seeing a page that had just like this sales built up for the quarter that corroborated there what management had indicated sales would be for the first quarter. I just don't recall any of this handwriting or any of that.

So I don't know if this was the page or not the page.

Q. Let's set aside the handwriting. I don't want to confuse things with the handwriting.

Putting aside the handwriting, do you believe that this is the document that you were referring to earlier that Morgan Stanley received from Sunbeam management concerning first quarter sales?

A. It may be. I don't know for sure.

Q. Ms. Porat has testified in other proceedings that this is the document that she received from Sunbeam the day before the press release was issued.

Is the document that you have in mind the document that Ms. Porat received from Sunbeam management the day before the press release was issued?

A. Yes.

Q. So if Ms. Porat has identified this as being that document, is this the document that you believe you saw?

A. Again, I don't know. It may be.

Q. I'm just trying to figure out whether there is something other than the document that Ms. Porat received from Sunbeam management that you have in mind?

A. You have to ask her. I don't know.

Q. No, I'm asking you.

A. I don't know.

Q. Is there something other than the document that Ms. Porat received from Sunbeam management, whether it is this document or something else, that you recall receiving from Sunbeam management relating to Sunbeam's first quarter 1998 sales?

A. I don't recall receiving any document other than a document I believe Ruth Porat

received.

Q. Other than this piece of paper or the piece of paper that Ms. Porat received on March 18, do you know if Morgan Stanley requested any other documentation from Sunbeam relating to Sunbeam's first quarter 1998 sales results or its sales expectations?

A. We may have. I just don't know.

Q. Did you direct any of Morgan Stanley personnel on the Sunbeam team to obtain additional documentation relating to Sunbeam's first quarter 1998 sales results or expectations?

A. If this is responsive, what I did upon hearing, I believe from Ms. Porat, that there was some concern about this was to investigate it fully, to drill down to it, get the information we needed to as part of our due diligence to provide us with support that the street estimates would be met for the first quarter or not.

I don't recall giving any specific direction about what to look at or who to talk to, but just find out.

Q. Did you tell Ms. Porat you wanted to see documentation from Sunbeam?

A. I may have. I don't recall.

Q. Did you tell anyone in the Morgan Stanley team that it would be appropriate or necessary for Morgan Stanley to contact any Sunbeam customers to verify Sunbeam's statements relating to its first quarter 1998 sales expectations?

A. Not that I recall, no.

Q. What would have happened if on March 19, Mr. Strong, Sunbeam had issued a release saying that it had no reasonable expectation of meeting 1998 first quarter sales expectations?

MR. CLARE: Objection. Hypothetical. Calls for speculation.

BY THE WITNESS:

A. What would have happened? I don't know what you mean. To who? What? Where? I don't know how to answer that.

BY MR. MARKOWSKI:

Q. Do you think it would have had an effect on Sunbeam's stock price?

MR. CLARE: Same objections.

BY THE WITNESS:

A. Yes.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:

Q. And the effect would have been negative, correct?

A. Yes. Assuming there is no other information to the contrary and the markets otherwise are the same and all of those other thousands of variables constant, yes.

Q. It's a piece of bad news for the stock price, correct?

A. Well, again, if that's the only fact that's put out there, if you're not meeting estimates, that's not good news.

Q. If Sunbeam had reported that it expected to incur a loss in the first quarter of 1998, what would the effect have been on Sunbeam's stock price?

MR. CLARE: Same objections.

BY THE WITNESS:

A. Again, it's hard to kind of speculate on that because I would have to know what all of the other facts are, why it happened and it's hard to say.

BY MR. MARKOWSKI:

Q. It's not a good piece of information,

CONFIDENTIAL - STRONG

is it?

A. Well, again, it depends on why it happened. If there were a fire and we had a plant burn down but we're going to have a huge insurance settlement, maybe it's good news. It's hard to say. It's hard to say.

The point is that they assured us that the sales were going to be met for the quarter and that's the information we had.

Q. Sunbeam -- strike that.

You spoke to Mr. Dunlap concerning the issuance of the March 19 press release, correct?

A. Yes.

Q. You spoke to him at some point during the evening of March 18?

A. Yes.

Q. Where were you at?

A. I was in San Francisco.

Q. Where in San Francisco were you when you spoke to Mr. Dunlap that evening?

A. I was in the San Francisco Airport.

Q. Had you made special arrangements to be able to have a private conversation with Mr. Dunlap while at the airport?

CONFIDENTIAL - STRONG

A. No.

Q. Where were you physically at the airport when you had your conversation with him?

A. I was just at a telephone.

Q. A public telephone?

A. Yes.

Q. Was it in a private room?

A. I don't think so, although I don't recall.

Q. How long did the conversation last?

A. First, just so the record is clear, you talked about a private conversation. It was not a private conversation in the sense that there were other participants on the call.

How long did the call last? I don't know exactly. I would say it was probably less than an hour.

Q. Do you think it was something approximating an hour?

A. I don't know. Probably less than an hour.

Q. In estimating the length of the call, can you give me a minimum range?

A. No. I mean, it's hard to say.

CONFIDENTIAL - STRONG

Q. Was it at least 15 minutes?

A. Probably. Probably more than 15 minutes. We had a number of people on the call.

Q. Do you recall who was on it?

A. I don't recall everyone, of course, but Mr. Dunlap, of course, was on. I believe Ms. Porat was on. I recall that outside counsel to Sunbeam was on. Skadden Arps. Beyond that, I'm not sure.

Q. Do you recall who specifically from Skadden was on the call?

A. I believe it was Blaine Fogg.

Q. Do you recall if Mr. Kersh was on the call?

A. Not specifically, no, but he probably was.

Q. Tell me everything you can recall about that telephone call.

A. Well, just in general, I informed Mr. Dunlap that based upon the fact that someone had approached us at the New York road show event raising concern about whether or not street estimates for the first quarter net sales would be met; that we had done additional work; and

NOT A CERTIFIED COPY

011746

CONFIDENTIAL - STRONG

while that work continued to corroborate that they would meet street estimates, we, nonetheless, felt that it was the appropriate thing to do that the company issue a press release talking about first quarter sales.

Mr. Dunlap strongly disagreed, felt that the press release was unnecessary.

Q. Do you recall anything else being said by anyone?

A. Mr. Dunlap also made the comment that, you know, it is impossible to predict what sales will be exactly; and, therefore, why are we putting out a press release when I can't predict what the sales will be; but I have no reason to believe they are not going to be consistent with what we already told you or words to that effect.

Q. Do you remember anything else?

A. Other than he was very upset that we were insisting upon this.

Q. How do you know he was upset?

A. Raising his voice. He was very disappointed, angry.

Q. Did he use any profane language?

A. I don't recall specifically.

CONFIDENTIAL - STRONG

Q. Did he say he was unhappy with you, personally?

A. I don't recall. He may have.

Q. Did Mr. Dunlap at any point in the conversation say that he guaranteed that Sunbeam would achieve Wall Street expectations for first quarter sales?

A. No.

Q. Do you recall anyone of Sunbeam saying they can guarantee that Sunbeam would meet street expectations for first quarter sales?

A. No, no one would say that.

Q. Did you ask Mr. Dunlap what the company's expectations were with regard to first quarter earnings?

A. Not that I recall, no.

Q. Why were you only addressing sales and not earnings?

A. It really came from the approach we received at the New York road show of someone I believe from the company suggesting that there was a concern about first quarter sales and that led us to investigate that.

So it was then -- so hopefully being

CONFIDENTIAL - STRONG

alert during the due diligence process that led us to, in a sense, cynically look at additional information during the day of which I guess was the 18th.

Q. Sales and earnings can be related, correct?

A. Sales and earnings can be related? Yes.

Q. If the company misses its sales number, it creates a greater possibility the company will also miss street expectations for earnings, correct?

MR. CLARE: Objection. Hypothetical.

BY THE WITNESS:

A. It's possible.

BY MR. MARKOWSKI:

Q. It increases the likelihood of it, doesn't it?

A. It's possible.

Q. But in the course of your discussions leading up to the press release, you don't recall making an inquiry about where the company stood with respect to its earnings expectations?

A. Not that I recall, no.

CONFIDENTIAL - STRONG

Q. If you didn't make that inquiry of Sunbeam, did you make that inquiry of any Morgan Stanley personnel?

A. I don't know. I may have. I don't recall.

Q. Do you recall anything else about the telephone call with Mr. Dunlap relating to the press release?

A. Other than in substance the conclusion was that Mr. Dunlap agreed as a CEO of Sunbeam to have the company issue a press release.

Q. Did Mr. Dunlap tell you why he was unhappy about the prospect of issuing a press release?

A. Yes, I believe so, because I think I previously testified he felt that street estimates would be met; but he also said that he can't predict sales and why was he being forced to put out a press release like this.

Q. But why would he be unhappy about it?

A. Well, as I testified, I think because he just felt it was inappropriate. And I think further by putting out a press release -- and I'm speculating now -- but I would speculate that by

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

putting out a press release, it would cause the stock price to go down.

Q. Do you think Mr. Dunlap was unhappy with the possibility of a press release because the stock market would view this as a negative development?

MR. CLARE: Objection.

Calls for speculation. Asked and answered.

BY THE WITNESS:

A. I don't know, other than to say a CEO's job is to maximize shareholder value. So I'm sure it's something he would be concerned about; but he didn't specifically say, that I recall today.

BY MR. MARKOWSKI:

Q. He didn't say what the harmful consequences would be to Sunbeam if the press release was issued?

A. No, sir, not that I recall.

Q. Did you tell Mr. Dunlap during the course of the call when he made it clear that he opposed the issuance of a press release that another option to Sunbeam would be to delay the

CONFIDENTIAL - STRONG

pending transactions until the first quarter results were in?

A. Not that I recall, no.

Q. Did that occur to you as an option?

A. It may have, but not that I recall today.

Q. Do you recall any discussion with Sunbeam at any point prior to the closing of the Coleman Company transaction about the possibility of delaying the closing because of the uncertainty with respect to Sunbeam's first quarter 1998 performance?

A. Not that I recall, again, because Sunbeam management felt very strongly, including sales management, that the sales numbers would be met, that is the estimates -- the street estimates that were out there for the first quarter of 1998. So I don't believe so.

Q. Do you agree with me that another option available to Sunbeam at this time if Mr. Dunlap didn't want to make a public announcement would be -- that would have been satisfactory to Morgan Stanley would have been to delay the closing of the financing transactions

CONFIDENTIAL - STRONG

until the first quarter results were known?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. Again, satisfactory. It's really their decision to proceed or not to proceed with the financing, to issue the press release or not issue it.

So if they had chosen to delay it, that's their decision.

BY MR. MARKOWSKI:

Q. I understand you would have taken the position with Mr. Dunlap, sir, that it was Morgan Stanley's view that the appropriate action to take was to issue the March 19 press release; is that correct?

A. Yes.

Q. My question is --

A. Except I would say the press release to comment on this issue about sales. The actual content and wording of the press release was really their responsibility.

Q. But you are recommending as the advisor to Sunbeam that on behalf of Morgan Stanley that Sunbeam issue a press release on

CONFIDENTIAL - STRONG

March 19, correct?

A. Yes.

Q. And my question to you is whether or not in lieu of a press release once it became clear to you that Mr. Dunlap had a strong objection to the issuance of a press release, would it have been satisfactory if Sunbeam had delayed the closing of the pending transactions until the first quarter results were known?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. Satisfactory to whom?

BY MR. MARKOWSKI:

Q. In lieu of the press release -- well, you had an opinion about the issuance of the press release, correct, sir?

A. Yes, as I've testified.

Q. And I'm asking whether your opinion about the need for issuing the press release or the desirability of issuing the press release would have changed if Sunbeam had delayed the closing of the pending first quarter transactions until the first quarter results were known?

A. I think because as underwriter in the

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

middle of a transaction, even though it was Rule 144(A) as you have stated, we felt a press release on this topic should be put out.

If there was no financing at all to do and there was no transaction taking place, companies rarely in the middle of a quarter for no particular reason announce whether or not they are going to make sales or not.

So I don't know if that answers your question or not.

Q. Well, if the financings had been deferred until the end of the first quarter, the press release in your view would not have been necessary; is that correct?

MR. CLARE: Objection. Misstates the prior testimony.

BY THE WITNESS:

A. Again, if there was no transaction to do, we would not have been insisting upon a press release. Again, it's their decision whether they put it out or don't put it out or whether they delay the financing or not.

BY MR. MARKOWSKI:

Q. Did you raise with anyone at any

CONFIDENTIAL - STRONG

point, Mr. Strong, the question whether additional information should be provided to Coleman Parent related to Sunbeam's first quarter performance before that transaction closed?

A. No. It's really responsive to Coleman to seek whatever information they want. So it is unlikely I would have said anything like at that.

Q. Do you recall that topic ever coming up in discussion that you were a party to?

A. No.

Q. You were in the airport in San Francisco that evening because you were traveling to Boston; is that correct?

A. Well, I was in San Francisco not to travel to Boston -- I'm from Chicago -- I was in San Francisco for another business reason.

Q. You were in the airport that evening because you were going to be traveling that night to Boston, correct?

A. Correct.

Q. Why were you in San Francisco? Did it relate to Sunbeam?

A. No, as I just testified, it was another business matter.

CONFIDENTIAL - STRONG

Q. So that evening you were in the airport preparing to travel to Boston where you were going to be involved in activities relating to Sunbeam, correct?

A. Yes.

Q. What was scheduled the next day in Boston?

A. It was what we typically would refer to as the road show where you visit prospective investors who would purchase securities and I tried to attend at least one day of each of my clients' road shows.

Q. And this was the last day of the Sunbeam convertible debenture road show?

A. Yes. I believe it's only two or three days, yes. Boston was scheduled to be the last day.

Q. When did you first see the Sunbeam management team after you arrived in Boston?

A. I can't recall if they picked me up at my hotel or I met them at the first investor. I just don't recall.

Q. You didn't see them the evening of the 18th, I take it?

CONFIDENTIAL - STRONG

A. No.

Q. The earliest you would have seen them is sometime the morning of the 19th?

A. Yes, it was an overnight flight. It didn't land until about 6:00 a.m. or 5:00 a.m.

Q. At what point do you recall first seeing them?

A. As I said, I don't recall specifically if they picked me up at the hotel or whether I met them at the first investor.

Q. Had the press release been issued at that point, do you know?

A. Yes.

Q. So there had been a news announcement of the substance of CPH Exhibit 14 by the time you saw the Sunbeam people that day?

A. Yes.

Q. Do you recall before the first meeting with investors that day speaking with either Mr. Dunlap or Mr. Kersh or Mr. Fannin about including within the presentation that was being made that day some discussion of the press release?

A. No.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. Is it your testimony that you did not do that?

A. I don't recall doing it, plus it was a public document so...

Q. So your testimony, sir, is that you think you did not advise Mr. Kersh to include within his presentation some discussion of the March 19 press release?

MR. CLARE: Objection. Asked and answered.

BY THE WITNESS:

A. No, that is not my testimony. I just don't recall.

BY MR. MARKOWSKI:

Q. Mr. Strong, I'm going to show you what we're marking as CPH Exhibit No. 75. It's a document that bears Morgan Stanley's name on the first page and Bates No. SB 18203 through 288.

(WHEREUPON, a certain document was marked CPH Deposition Exhibit No. 75, for identification, as of 12/4/03.)

BY MR. MARKOWSKI:

Q. Putting aside, Mr. Strong, some of the

CONFIDENTIAL - STRONG

handwritten notation on this document, do you recall seeing this previously?

A. Not specifically, no.

Q. I'm going to direct your attention to the page that's Bates No. 18225.

I would like you to read the handwritten portion at the bottom of the page that starts with "Our sales at retail value are strong."

Have you had a chance to examine that?

A. As best I can, yes.

Q. Do you recall Mr. Kersh during the course of his presentations to investors during the course of the road show in Boston on March 18 making a statement in substance of the sort set forth in these handwritten notes at the bottom of page 18?

A. Not that I recall today.

Q. You recall, in fact, that Mr. Kersh did address the investors?

A. Not that I recall today.

Q. Is it your recollection that that topic did not come up?

A. I just don't know if it did or didn't.

CONFIDENTIAL - STRONG

Q. Were you present with the Sunbeam team during each of the presentations that day to investors?

A. I believe so, yes, at least for a portion of each one.

Q. If Mr. Kersh made a statement relating to the press release, you would have heard it, correct?

A. If he made it and made it while I was in the room, then, yes, I would have heard it.

Q. I guess that was my foundational question. I was trying to understand whether you were present that day for the entirety of the presentations that were made to potential investors by the Sunbeam management team.

A. I was present, as I recall, substantially for all. I may have been present for all. I just don't recall if I stepped out to make a phone call or something like that.

Q. Do you agree with me that the handwritten notes at the bottom of page 18225 attempt to minimize the significance of the press release?

MR. CLARE: Objection to form.

CONFIDENTIAL - STRONG

Argumentative.

BY THE WITNESS:

A. I mean, I barely can read them. I don't know.

BY MR. MARKOWSKI:

Q. Do you recall that Sunbeam management attempted during the course of the day on March 19 to minimize the significance of the press release?

A. Not that I recall today, no.

Q. Did you get any inquiries from potential investors relating to the Sunbeam press release?

A. No, not that I recall.

Q. Do you know if anyone at Morgan Stanley did?

A. I don't have have knowledge of it now if I did. I don't know.

Q. Do you recall Sunbeam management advising potential investors during the course of the day on March 19 that a reason why Sunbeam might fail to meet street expectations for net sales in the first quarter was that Sunbeam had accelerated sales from the first quarter into the

NOT A CERTIFIED COPY

011750

CONFIDENTIAL - STRONG

fourth quarter of 1997?
A. I don't recall that, no.
Q. At the end of the day on March 19, you participated in a conference call relating to the pricing of the zero coupon convertible debentures that were being underwritten by Morgan Stanley to assist in the financing of the Coleman Company acquisition; is that correct?
A. Yes.
Q. Where were you when that call took place?
A. I was in our Boston office.
Q. Do you recall at what time of the day that occurred?
A. It was at the end of the afternoon. I don't recall the specific time.
Q. But it was still afternoon?
A. Your definition of afternoon is...?
Q. Prior to 6:00, I would say?
A. Probably.
Q. Were you alone or was someone else present with you in the Boston office on the telephone call?
A. I recall that the Sunbeam management

CONFIDENTIAL - STRONG

team was present and there were others, obviously, on the phone from Morgan Stanley in New York.
Q. So Mr. Dunlap joined you in Morgan Stanley's offices?
A. Yes.
Q. Mr. Kersh?
A. I believe so, yes.
Q. Do you remember anyone else from Sunbeam management being with you in the Boston office for purposes of the pricing call?
A. I recall Mr. Fannin, I believe. I'm not certain about that. There may have been other Morgan Stanley professionals in the room as well.
Q. Do you remember someone being there?
A. No, sir.
Q. It was a telephone call; is that correct?
A. Well, there were people on the phone from New York and then we were there in person in Boston.
Q. Who was on the phone in New York?
A. I don't recall specifically.

CONFIDENTIAL - STRONG

Q. Do you recall if Ms. Porat was on the phone?
A. Not specifically, no. She probably was, but I don't recall.
Q. Was anyone on the phone other than the Sunbeam management personnel present with you other than additional Morgan Stanley personnel in New York?
A. I can't think of anyone today.
Q. Tell me what you can recall about that telephone call.
A. Just in general, what I recall is my colleagues in New York informing Sunbeam management that even with the press release having been issued that morning that the transaction was substantially oversubscribed and that if they wished, they could increase the size of the transaction.
Q. Was that a new piece of information for you?
A. I think it was at the time.
Q. What else do you recall?
A. I recall that we could have done a transaction even larger than what Mr. Dunlap

CONFIDENTIAL - STRONG

ultimately concluded to do. I recall that we had a demand, if memory serves me correctly, that could have satisfied a transaction of proceeds raised of, approximately, $1 billion if they wanted to at essentially the same pricing. That's what I recall.
Q. What else do you recall?
A. I recall in general that Mr. Dunlap continued to be quite upset about the issuance of the press release because at that point the stock had traded down during the day and therefore effectively the cost at which the financing would be issued would be higher and more favorable for investors, less favorable for Sunbeam.
Q. Was that qualified for him in any way?
A. Well, only qualified in the sense that he would know and knew where his stock had closed the day before, that is on the 18th, and where it closed on the 19th. So he certainly was aware of that.
Q. But in terms of the increase in the cost of the financing to Sunbeam, was that difference in the transaction quantified for him?
A. It may have been. It probably was.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. Do you remember what the difference was?

A. It would only be in the sense that the conversion ratio would be more favorable to investors because by definition the Sunbeam stock had fallen. So I'm sure there was some discussion of that, as I recall today.

Q. What else do you recall being said in that phone call?

A. Well, in the meeting ultimately he concluded, if memory serves, that he would seek to increase the size of the transaction for what originally had been planned to be around $500 million, not to go all the way to the billion as he could have.

But I recall he did something around $750 million.

Q. That's the amount of money that would be raised; is that correct?

A. Approximately, correct.

Q. What else do you recall?

A. I believe that's it.

Q. Did you make any recommendation to Mr. Dunlap with respect to the advisability of

CONFIDENTIAL - STRONG

increasing the amount of financing rates through the convertible debenture offering?

A. Not that I recall; that I recall, no.

Q. Did he ask your views?

A. I don't recall him asking me anything during the meeting.

Q. Did you have a view?

A. I may have had a view.

Q. Do you remember what it was?

A. No.

Q. Was this the first occasion in which you had participated in a discussion about increasing the size of the debenture offering to an amount above $500 million?

A. Probably, but I'm not certain.

Q. But Morgan Stanley made no recommendation, as far as you can recall, whether Sunbeam should or should not do that; is that correct?

A. That's what I recall. Typically, we provide the client with the range of options and then they decide.

Q. They don't look to -- strike that.

Sunbeam didn't look to Morgan Stanley

CONFIDENTIAL - STRONG

for its recommendation on that subject?

A. We will provide advice about overall financing structure; but in a situation like this, it's more the client's call.

Q. Do you recall also, sir, that in addition to changing the size of the debenture offering, that the schedule for the debenture offering had been changed as well?

A. I do not recall that.

Q. Do you recall that originally the debenture offering wasn't scheduled to close until later in March and that the closing date was moved forward?

A. Not that I recall, no.

Q. Do you recall that the closing date for the debenture offering was accelerated so Sunbeam could close the Coleman Company transaction before the end of Sunbeam's first quarter?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I don't recall that at all.

BY MR. MARKOWSKI:

Q. Do you recall a discussion that if

CONFIDENTIAL - STRONG

Sunbeam closed -- could close the Coleman transaction before the end of its quarter, it could count Coleman Company sales towards its net sales results for the first quarter in an effort to meet street expectations?

A. That statement is false.

Q. You don't remember that being said?

A. Because it would never be true because Generally Accepted Accounting Principles would not permit that.

Q. Do you know, sir, that in fact Sunbeam claimed as part of its net sales for the first quarter of 1998 Coleman Company sales that took place on March 29 and March 30?

A. Oh, yes.

MR. CLARE: Objection. No foundation.

BY THE WITNESS:

A. Well, whatever it closed, the point I was making is that Generally Accepted Accounting Principles pursuant to APB 16 you'd only allow -- you could only include the financial results from the date of the consummation of the acquisition.

I thought you were referring to the beginning of the quarter. This was accounted for

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

as a purchase, not a pooling.
BY MR. MARKOWSKI:
Q. Does that refresh your recollection or that clarification that there was discussion that if Sunbeam could accelerate the closing of the debenture offering and thereby accelerate the closing of the Coleman Company transaction, that Sunbeam would be able to realize some additional first quarter sales that Coleman Company generated in the first quarter of 1998?
A. I have no recollection of that at all.
Q. You are aware that that's what happened?
A. I don't specifically recall the date that the Coleman transaction closed, no.
Q. Do you recall that Sunbeam extended its first quarter from a March 28 end to a March 31 end?
MR. CLARE: Objection. No foundation.
BY THE WITNESS:
A. I don't have any knowledge of that. I don't recall.
BY MR. MARKOWSKI:
Q. You didn't participate in any

CONFIDENTIAL - STRONG

discussion with Sunbeam about Sunbeam changing the end of its first quarter so it could realize additional first quarter sales?
A. No.
Q. Mr. Strong, what was your first involvement in the events leading up to the press release on March 19?
A. I recall receiving a call, I believe, from Ruth Porat sometime on the 18th where she informed me -- I believe it was her -- that we had learned at the New York road show luncheon that someone had approached us and suggested there might be an issue or concern about sales for the first calendar quarter.
Q. Where were you?
A. I was in San Francisco.
Q. Do you recall specifically where you were at at that moment?
A. No.
Q. Ms. Porat called you?
A. Yes. That is to say she probably tried to reach me. I was out of the office. I probably found out she called and I probably called her back.

CONFIDENTIAL - STRONG

Q. Is that your recollection of how it happened?
A. I don't recall specifically.
Q. Why did Ms. Porat call you with that news?
MR. CLARE: Objection. Calls for speculation.
BY THE WITNESS:
A. I don't know other than we were working together as a team on this assignment. She probably wanted me to be aware of it. And should there be -- needed to be any communication, particularly where we were insisting on something like a press release, I would be the one to have that conversation.
BY MR. MARKOWSKI:
Q. Why was that?
A. Because I would do what we felt was correct and Mr. Dunlap would accept it as our -- you know, he would take it at face value. That's my speculation.
Q. As opposed to Mr. Kitts having that conversation with Mr. Dunlap or Mr. Stynes?
A. Yes.

CONFIDENTIAL - STRONG

Q. Why was that the case? Was it because you had a more senior position within Morgan Stanley?
A. That's probably part of it. I also had had, as I previously testified, some contact with Mr. Dunlap in the past. That would be another reason why.
Q. Did Ms. Porat contact you because in terms of decision-making at Morgan Stanley with respect to what was necessary, you would be the person responsible for making that ultimate decision?
MR. CLARE: Objection. Calls for speculation.
BY THE WITNESS:
A. I don't know specifically why she did as I testified; but it would certainly be -- I would have the expectation something like this, that she would contact me so that we could all discuss it as a team.
BY MR. MARKOWSKI:
Q. In your view, would you have been the person on the Morgan Stanley/Sunbeam team responsible ultimately for making the decision

NOT A CERTIFIED COPY

16div-021861

with respect to matters such as the issuance of the March 19 press release?

A. Not necessarily, but I would say that if I felt it needed to be put out, then I would stand very firmly behind that.

Q. Were you in a position to overrule Mr. Kitts or Mr. Stynes with respect to matters of that sort?

A. Well, overrule is probably not the right word. Again, we would do it collegially and discuss it as a team but it would be speculation -- but I would speculate that they would defer to me. And I felt strongly that a press release on this topic should go out.

Q. Did you have any discussions with Mr. Kitts or Mr. Stynes with respect to that?

A. Not that I recall. I believe Mr. Stynes was at the New York road show luncheon, but I don't recall if I spoke with him on this topic or not or on any topic that day. I just don't recall.

Q. How long did your initial conversation with Ms. Porat take?

A. I don't know.

Q. Do you recall if she told you specifically who she spoke with at the New York road show that day?

A. I don't recall.

Q. Do you recall if she told you whether they had provided her with any information relating to Sunbeam's results in January and February, any specific numbers?

A. Not that I recall in that first call, no.

Q. Was there anyone on that initial call other than you and Ms. Porat?

A. Not that I recall, but there may have been.

Q. Do you recall what time of day it was when you got that call?

A. No.

Q. Do you recall if it was morning?

A. New York time?

Q. Well, you're in San Francisco. Let's work with your time out there.

A. The information came from a lunch in New York. So if we assume that the lunch was around noon, then it can be anywhere from

9:00 o'clock San Francisco time to maybe noon San Francisco time.

Q. Is it your recollection that Ms. Porat called you quickly after the luncheon meeting adjourned?

A. That's my recollection, yes.

Q. Is it your recollection that you spoke with Ms. Porat shortly after the New York luncheon ended?

A. I don't recall specifically, but it was fairly quickly.

Q. Did Ms. Porat indicate that she was concerned about the information she had received?

A. My recollection is that, yes, this information had been received and she felt it was something we should promptly investigate and I concurred with her.

Q. Did she say that this troubled her? Did she use those words or words in substance to that effect?

A. I don't recall.

Q. Did she say, this is inconsistent with what Sunbeam had led us to believe?

A. Not that I recall.

Q. Did you think it was inconsistent with what you had been led to believe by Mr. Dunlap and Mr. Kersh?

A. Well, to that point in time, we had no evidence to the contrary. Quite the contrary. But having received this, we felt we had a professional obligation to really investigate it fully and that's what we did.

Q. I'm just trying to understand.

Once you heard this information from Ms. Porat, it caused you to conclude that Mr. Dunlap or Mr. Kersh had not been candid with you in the numerous conversations you had had with them in January and February?

A. No.

Q. So there was nothing about what Ms. Porat told you in this conversation that caused you to call into question the candor of Mr. Dunlap?

A. No.

Q. Or the candor of Mr. Kersh?

A. No.

Q. If, in fact, as the Arthur Andersen comfort letter indicates, Mr. Strong, Sunbeam's

NOT A CERTIFIED COPY

016754

CONFIDENTIAL - STRONG

sales in January and February of 1998 were so far below Sunbeam's sales in the first two months of 1997, would you have expected Mr. Dunlap or Mr. Kersh to communicate that information to you at some point so you could take it into account in connection with the activities you were engaged in?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Possibly, but I just don't recall. What they did continually do, including in the call we previously discussed, is continue to -- in a very forceful way continue to provide assurance that they have every expectation that street estimates for the quarter would be met, but that they can't predict future events.

BY MR. MARKOWSKI:

Q. But if the sales in January were -- excuse me for just a minute.

Do you have CPH Exhibit No. 17, Mr. Strong? It's the March 19 letter.

A. Yes.

Q. Let me direct your attention to page MS 377, paragraph 5(B). Take a moment to review

CONFIDENTIAL - STRONG

the contents of paragraph 5(B).

Have you done that?

A. Yes.

Q. Let me direct your attention to the table. There is a table that has the heading "The Period."

Do you see that?

A. Yes.

Q. In the left-hand column in the table describes Sunbeam's results in the first month of 1997, correct?

A. In the first month, yes, that's approximately right.

Q. And the right-hand column is intended to describe Sunbeam's results in the comparable period of 1998, correct?

A. I believe so, yes.

Q. And it indicates that Sunbeam's net sales in the first month of 1997 were $72,945,000, correct?

A. Yes.

Q. And Sunbeam's net sales in the first month of 1998 are reported here to be $28,984,000, correct?

CONFIDENTIAL - STRONG

A. Yes.

Q. Substantially less than 50 percent of the net sales that Sunbeam had accomplished in the first month of 1997, correct?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I would say that the 29 million is less than half of the 72.9 million.

BY MR. MARKOWSKI:

Q. And it indicates that Sunbeam had a profit of $4,786,000 in the first month of 1997, correct?

MR. CLARE: Objection. It's a waste of time reading the document line by line.

BY THE WITNESS:

A. Yes.

BY MR. MARKOWSKI:

Q. And a loss of $9,510,000 in the first month of 1998, correct?

MR. CLARE: Same objection.

BY THE WITNESS:

A. Yes.

BY MR. MARKOWSKI:

Q. If something like this was happening

CONFIDENTIAL - STRONG

at Sunbeam in the first month of 1998, given your relationship with Mr. Dunlap, would you have expected either Mr. Dunlap or Mr. Kersh to reach out to you and inform you of those facts?

MR CLARE: Asked and answered.

BY THE WITNESS:

A. Not necessarily.

BY MR. MARKOWSKI:

Q. Why is that?

A. The only thing I would say is that my recollection is they continued to believe that sales would be met for the first fiscal quarter as compared to street estimates. And there was no evidence when taking everything in totality -- they insisted they would make that and so we accepted what management had said to us.

Q. Is this information that you would have liked to have received from Mr. Dunlap and Mr. Kersh prior to March 18 or March 19?

MR CLARE: Objection to form.

BY THE WITNESS:

A. Well, we would rely upon management's statements to us and the information that they provided to us, you know, in total. And they had

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

responsibility for the financing statements, the press releases, et cetera.

So I'm not quite sure how to answer it beyond that.

BY MR. MARKOWSKI:

Q. My question simply is whether this is information that you as the senior person at Morgan Stanley working on the Sunbeam engagement would have wanted to have received in an earlier point in time than Morgan Stanley received it?

A. I think we relied upon, you know, all information we received. Would I want to receive this particular piece versus other pieces? You know, all information is useful.

Q. I'm simply asking whether you would have wanted to have had it sooner?

A. Sooner? Again, I don't know if we did or didn't have it. I don't know that we didn't have it sooner. I just don't recall.

Q. Do you remember anything else about this initial telephone call with Ms. Porat?

A. No. I may have already testified earlier that the call I know concluded with her undertaking to conduct the necessary work

CONFIDENTIAL - STRONG

throughout the day and then we would reach a conclusion about what to do next.

Q. Did you tell Ms. Porat what you expected her to do?

A. No. As I have testified, I just wanted to get -- we felt we had to investigate this fully and in detail and that's what she committed to do.

Q. Did you communicate the substance of your conversation with Ms. Porat to anyone else at that point?

A. Not that I recall.

Q. You don't recall informing any of the other members of the Sunbeam -- Morgan Stanley/Sunbeam team about what his Porat had told you?

A. Can we go off the record a second.

MR. CLARE: Yes.

THE VIDEOGRAPHER: Going off the video record at 2:31 p.m.

(WHEREUPON, discussion was had off the record.)

THE VIDEOGRAPHER: Going back on the video record at 2:36 p.m.

CONFIDENTIAL - STRONG

MR. CLARE: During the break Mr. Strong raised the possibility of getting into an area of attorney-client privilege.

Mr. Strong, in answering Mr. Markowski's questions, I instruct you not to reveal the substance of any conversations that you may have had, if you had any, with attorneys representing Morgan Stanley unless there were others that were part of those communications that were not either at the law film or were not lawyers representing Morgan Stanley that were third parties present.

So answer Mr. Markowski's questions as best you're able subject to that instruction.

BY THE WITNESS:

A. I recall having a conversation with counsel to Morgan Stanley at some point during the day. And I may have had -- and I recall that I did; but I can't be certain that I had had a conversation, too, with counsel to Sunbeam, outside counsel, Finn Fogg, Blaine Fogg.

BY MR. MARKOWSKI:

Q. The conversation that you recall having with counsel of Morgan Stanley, was that

CONFIDENTIAL - STRONG

with in-house counsel or outside counsel?

A. That, as I recall, was with outside counsel.

Q. Davis Polk?

A. I believe so, yes.

Q. Do you recall who at David Polk you spoke with?

A. I believe it would have been Allen Dean, probably.

Q. Now, the question I put to you, sir, that got us to this conversation was whether after you spoke with Ms. Porat you called anyone else to talk with them about the information that you had received from Ms. Porat.

Is it your testimony that upon the conclusion of your conversation with Ms. Porat you called Allen Dean at David Polk or someone else at David Polk?

A. My testimony is that I recall having a conversation with outside counsel and, as I believe, although I'm not certain, also outside counsel with Sunbeam; but I don't know if it was immediately following my call with Ruth, but it was at some point during the day.

NOT A CERTIFIED COPY

CONFIDENTIAL - STRONG

Q. The conversation with David Polk, was that a conversation that you initiated?
A. I don't recall.
Q. Do you remember if anyone other than you and attorneys from Davis Polk were participating in that telephone call?
A. Not that I recall.
Q. Your recollection is that it was only you and Davis Polk attorneys on the phone?
A. I believe so, yes.
Q. And you were seeking legal advice from them concerning the conversation you had had with Ms. Porat?
MR. CLARE: That's a yes or no answer.
BY THE WITNESS:
A. No.
BY MR. MARKOWSKI:
Q. Were you seeking legal advice from them on some other topic?
A. No.
Q. Tell me about your conversation with the lawyers at Davis Polk then?
MR. CLARE: Object, and I will instruct the witness not to answer the question.

CONFIDENTIAL - STRONG

MR. MARKOWSKI: I don't think Mr. Strong has laid a foundation for the assertion of the privilege. He's indicated that he was not engaged in seeking legal advice from Davis Polk in connection with the telephone call that he recalls.
MR. CLARE: I understand your position and my instruction remains. I'm instructing the witness not to answer the question.
BY MR. MARKOWSKI:
Q. What was the purpose of your conversation with the Davis Polk attorneys, Mr. Strong?
MR. CLARE: You can answer that, but I will instruct you not to reveal the substance of any of the conversation. What was your purpose was the question.
BY THE WITNESS:
A. To provide Mr. Dean with information.
BY MR. MARKOWSKI:
Q. How long did that conversation take?
A. I don't recall.
Q. Do you recall that that conversation took place before you again spoke with Ms. Porat

CONFIDENTIAL - STRONG

that day?
A. I don't know. I don't recall.
Q. Can you place it in sequence in relationship to any other activities you had that day?
A. No.
Q. Do you recall where you were when you had the conversation with Mr. Dean?
A. I recall being at the San Francisco airport.
Q. If you have already told me this, I apologize; but where were you physically when Ms. Porat and you initially spoke that day?
A. I don't recall if I was at the airport or earlier in the day. I don't recall. I probably was not at the airport, but I don't remember.
Q. Were you in San Francisco for a client meeting?
A. Yes.
Q. Do you recall whether your initial conversation with Ms. Porat took place while you were -- were you meeting at the client's offices?

CONFIDENTIAL - STRONG

Let me ask that question.
A. I don't recall. I don't know if it was their offices or ours.
Q. And you don't recall whether your initial conversation with Ms. Porat took place while you were still engaged in those client meetings that day?
MR. CLARE: Asked and answered.
BY THE WITNESS:
A. I don't specifically recall.
BY MR. MARKOWSKI:
Q. Do you recall what time your flight was that day from San Francisco to Boston?
A. I don't recall the exact time, but it would have been around probably 9:00 or 10:00 o'clock San Francisco time.
Q. Does that suggest to you, sir, that your conversation with Mr. Dean occurred prior to the time you went to the airport that day?
A. Not necessarily.
Q. Do you recall -- your conversation with Mr. Dunlap took place while you were at the airport; is that correct?
A. Yes.

NOT A CERTIFIED COPY

016757

CONFIDENTIAL - STRONG

Q. Did that conversation with Mr. Dean take place before or after your conversation with Mr. Dunlap?
A. I'm not certain.
Q. It's possible that you spoke with Mr. Dean again after you concluded your conversation with Mr. Dunlap?
A. It's possible. I don't recall.
Q. You don't recall how much time there was between the conclusion of your conversation with Mr. Dunlap and your flight?
A. No.
Q. Let me go back to my original question.

After you spoke with Ms. Porat and putting aside the conversation with Mr. Dean, do you recall before you again spoke with Ms. Porat that day that you communicated with anyone concerning the information that Ms. Porat had provided to you?
A. Not that I recall today, no.
Q. When is the next event that you can recall on March 18 leading into -- in the sequence of events leading to the March 19 press

CONFIDENTIAL - STRONG

release that you were involved in?
A. Starting when?
Q. Well, you had your initial call with Ms. Porat that day that starts the chain of events, correct?
A. Yes.
Q. What is the next event in the sequence of events that you can recall in the chain of events leading to the March 19 press release?
A. I recall having another conversation, and it may have been conversations, plural, with Ms. Porat prior to the call with Mr. Dunlap.

I don't know exactly when they took place or whether it was a single conversation or more than one.
Q. Other than communication -- additional communication with Ms. Porat that day, do you recall any other activities you were engaged in relating to this subject prior to your conversation with Mr. Dunlap?
A. Not other than what I previously testified to, no.
Q. And the other thing you previously testified to is the conversation with Mr. Dean

CONFIDENTIAL - STRONG

and the conversation with outside counsel for Sunbeam?
A. If I had it with outside counsel of Sunbeam, yes.
Q. Tell me what you can recall about your further conversations with Ms. Porat.
A. I recall almost the conclusions, not so much the substance, of the call where she informed me of the work that had been done during the day, importantly the fact that management of Sunbeam -- sales management of Sunbeam had strongly reaffirmed their belief that sales estimates for the first calendar quarter consistent with street estimates would be met.

But I also recall that she and I felt that because we had been approached with this information that we concluded and that I concluded that we would need to inform the client that we would want them to issue a press release indicating, you know, our concern about this topic or, you know, something like that.
Q. Did Ms. Porat provide you any detail relating to the information that she received from Sunbeam management?

CONFIDENTIAL - STRONG

A. She may have. I just recall sort of the conclusions of the work she had done and her describing what had been done in general basically of a buildup of the sales and that she had had other conversations with Sunbeam management where they reaffirmed their expectation of making the sales estimates.
Q. Did you ask Ms. Porat to send it to you so you could personally review it, the buildup of sales that she had received from Sunbeam?
A. Not that I recall.
Q. Do you recall whether there was anyone else from Morgan Stanley involved in the telephone conversations between you and Ms. Porat?
A. There may have been, but I don't recall.
Q. Ms. Porat is the only person whose name stands out for you in connection with those conversations?
A. From Morgan Stanley, yes.
Q. When do you recall first having a conversation with someone other than Morgan

NOT A CERTIFIED COPY

011758

CONFIDENTIAL - STRONG

Stanley personnel?
A. Again, I don't recall specifically when I spoke with Mr. Dean or if I spoke with Mr. Fogg. So the next conversation could have been with Mr. Dunlap, but I just don't know.
Q. Do you recall personally participating in the conference call with Mr. Uzi where Mr. Uzi made a presentation to Morgan Stanley relating to Sunbeam's first quarter results and expectations?
A. Not that I recall today, no.
Q. Do you know who Mr. Uzi is?
A. Yes.
Q. What's your recollection of who he is -- was?
A. My recollection is that he was a senior sales executive.
Q. If Ms. Porat has testified that you were a party to the conference call where Mr. Uzi made his presentation, would you dispute her on that?
MR. CLARE: Object to the form of the question.
BY THE WITNESS:
A. I just don't recall.

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:
Q. Do you think she's wrong?
MR. CLARE: Same objection.
BY THE WITNESS:
A. I just don't recall.
BY MR. MARKOWSKI:
Q. So I take it, Mr. Strong, that you don't deny that you may have personally heard Mr. Uzi's presentation?
A. I may have. I just don't remember. She may be right. She may be wrong. I just don't recall.
Q. Did you consult with anyone other than Ms. Porat with respect to the question whether a press release should be issued?
A. Not that I recall today beyond what I have already testified.
Q. Did you and Ms. Porat discuss any options other than the issuance of a press release?
A. Option? Not that I recall.
Q. Do you remember participating in a conference call that day, sir, where representatives from Sunbeam, Skadden Aarps,

CONFIDENTIAL - STRONG

Davis Polk and Morgan Stanley received a presentation from Sunbeam management relating to Sunbeam's sales expectations for the balance of the first quarter on a customer-by-customer basis?
A. Not today I don't recall, no.
Q. At any point during the course of your conversations on March 18, Mr. Strong, was there any discussion concerning whether any of the statements that Morgan Stanley had made to Coleman Company or McAndrews and Forbes relating to Sunbeam might be inaccurate?
A. I don't recall any conversation like that.
Q. Did Ms. Porat personally have due diligence responsibilities in connection with the Sunbeam engagement?
MR. CLARE: Asked and answered.
BY THE WITNESS:
A. I would say, again, as a firm we conduct due diligence and, you know, various team members contribute to that.
BY MR. MARKOWSKI:
Q. Do you recall that in your previous

CONFIDENTIAL - STRONG

testimony you indicated that Ms. Porat had lead responsibility with respect to the debenture offering due diligence?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. She was a managing director in the equity capital markets group, so it played a very important role.
BY MR. MARKOWSKI:
Q. Is it fair to say that she had lead responsibility with respect to debenture offering due diligence?
A. From the equity capital markets perspective, yes.
Q. Who else -- what other groups -- let's start with other groups within Morgan Stanley -- had responsibility for due diligence in connection with the debenture offering?
A. Well, we had people from corporate finance. I would suspect we had people from some of our fixed income areas. We obviously had Mr. Stynes and Mr. Kitts who had spent time.
We had the corporate finance execution department. We had had representatives of our

NOT A CERTIFIED COPY

011759

lending department do due diligence as well and I'm sure many others, too, who in one form or another would have added to the due diligence record.

Q. Mr. Stynes and Mr. Kitts were involved in due diligence with respect to the debenture offering?

A. Yes.

Q. What responsibility did they have?

A. Well, they would have gathered information because they had been responsible for the -- primarily responsible for execution on the M & A side and it would have been information that they gathered from that process which was used in our various commitment memoranda and other documents.

And, again, every team member -- and I think Mr. Stynes was at the road show in New York if I recall correctly, so that's another place where he could have participated and learned more. So various places.

Q. Did Morgan Stanley make an effort to record and memorialize the information that it received in connection with due diligence on the

debenture offering or any other aspect of the Sunbeam engagement?

MR. CLARE: Objection, form, foundation.

BY THE WITNESS:

A. We would, you know, follow whatever policies we were supposed to follow.

BY MR. MARKOWSKI:

Q. Do you remember whether Morgan Stanley created a formal record of its due diligence activities and results that it had received?

A. I'm not sure what you mean by "a formal record."

Q. Let me ask a different question.

Was an effort made at Morgan Stanley to preserve the substance of the information that Morgan Stanley received in connection with its due diligence activities concerning Sunbeam?

A. Well, I have no reason to believe we did not follow our usual and customary document retention policies in connection with an assignment of this type. That's how I would answer. I don't know if that's a formal record or not.

Q. I didn't ask about a formal record

this time. Bear with me.

Do you know whether an effort was made to preserve the results of information that Morgan Stanley received in connection with its due diligence activities concerning Sunbeam?

A. Well, I do know just from looking at the documents that you have shown me that we have produced documents that we obtained during our due diligence function, the comfort letters you referred to and others. So I think the answer must be, yes.

Q. Did you generate any documents in connection with -- let me ask a foundational question.

Did you consider any of the activities you engaged in in connection with the Sunbeam assignment to be due diligence activities?

A. Yes.

Q. Did you record the information that you received in connection with that activity in some way?

A. Not specifically, no, that I recall.

Q. Did you make an effort in some way to preserve the information that you received for

future reference?

A. No. What I would typically do and what I recall doing here is that as we learned things throughout an assignment like this, to the extent that I thought information was useful or important, I would share it with my colleagues orally.

Q. You made no effort to document the information that you received in connection with your personal due diligence activities so as to preserve it?

A. I may have, but I don't recall today.

Q. Would it be your practice, sir, generally if you're personally involved in due diligence activities to make an effort to record the information that you received so that it's preserved for future reference?

A. Well, typically I'll just receive a document or something from a client, and I would review that. Occasionally, I have written memoranda on particular points. I don't recall if I did here or not.

Q. Did you take any notes of your conversations with Mr. Dunlap or Mr. Kersh?

NOT A CERTIFIED COPY

09717

CONFIDENTIAL - STRONG

A. Not that I recall, no.
Q. What happened to the -- did you have at various points in time documents in your possession relating to work Morgan Stanley was doing for Sunbeam?
A. Yes.
Q. What did you do with those documents at the end of Morgan Stanley's work on the transactions that were pending in March of 1998?
A. End of our work for transactions pending. So you're saying sometime during March?
Q. Well, let me make sure I'm clear.
Morgan Stanley acted as Sunbeam's investment banker in connection with three acquisitions that closed in March of 1998, correct?
A. Yes.
Q. The acquisition of Coleman Company, the acquisition of Signature Brands and the acquisition of First Alert, correct?
A. Yes.
Q. And Sunbeam was also engaged in financing activities associated with those three

CONFIDENTIAL - STRONG

acquisitions, correct?
A. Yes.
Q. Those transactions were consummated in March of 1998, correct?
A. I don't recall the specific date.
Q. Upon the consummation of those activities, what did you do with the documents that you had in your possession relating to the Sunbeam projects?
A. I don't recall specifically.
Q. Do you recall discarding any documents?
A. I don't know. I may have threw out the assignment.
Q. Do you recall there was a point where your activities in the projects had concluded or the transactions had closed or you gathered together documents that you had in your possession and discarded some or all of them?
A. Probably, but I don't recall. I know that you can check in the file. Whatever I had, I produced.
Q. In connection with the press release that Sunbeam issued on March 19, Mr. Strong, did

CONFIDENTIAL - STRONG

you instruct Ms. Porat to confirm with Arthur Andersen, Arthur Andersen's belief that the press release was accurate?
A. No, not that I recall.
Q. Did you instruct Ms. Porat in connection with following up on the information that she had received at the New York road show that precipitated the events leading to the press release to discuss the information she had received with Arthur Andersen?
A. Not that I recall.
Q. Did that occur to you as something that should have been done?
A. Not that I recall today.
Q. As you sit here today, do you think given the nature of the information that Sunbeam had provided to Ms. Porat, that Morgan Stanley as part of its due diligence activities should have contacted Arthur Andersen to discuss the issue with Arthur Andersen?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. Not necessarily.
BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. At any point, sir, did you inquire of Arthur Andersen's views concerning whether it was realistic to expect that Sunbeam could achieve Wall Street expectations for first quarter sales?
A. I don't recall that and that would be unlikely.
Q. Why would that have been unlikely, sir?
A. My speculation would be unlikely because it's not their job. They're just accountants. They just report on facts. It's not their job to make projections or speculations about what clients might or might not do. That's really the obligation of the client itself.
But I don't specifically recall to answer your question.
Q. It's your view that Arthur Andersen would not have had any meaningful information to offer concerning whether it was realistic to expect Sunbeam to accomplish sufficient sales in the remaining days of the first quarter of 1998 to reach street expectations?
MR. CLARE: Objection to form.
BY THE WITNESS:

NOT A CERTIFIED COPY

0147961

CONFIDENTIAL - STRONG

A. We would rely upon what management reports to us. They -- it's their responsibility. They're operating the business. Arthur Andersen are just accountants. They're not operators. It would be speculative for them to sort of suggest what might or might not have happened. As with comfort letters, they report on historical facts. They don't provide projections.

So it would have been, frankly, unprofessional of them to even try to do it.

BY MR. MARKOWSKI:

Q. So the answer to my question is, yes, you don't think they would have had any meaningful information to offer on that subject?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Not if it's projections and they would have declined to provide it anyway, probably. Again, that's speculation on my part.

BY MR. MARKOWSKI:

Q. In fact, Arthur Andersen did advise Morgan Stanley that it thought the statements contained in the March 19 press release were

CONFIDENTIAL - STRONG

unrealistic, isn't that the case?

MR. CLARE: Objection. Foundation.

BY THE WITNESS:

A. I have no knowledge of that.

BY MR. MARKOWSKI:

Q. Mr. Tyree did not inform you that Larry Bornstein at Arthur Andersen advised him on the evening of March 19 while they were both together at Global Financial Press that the Sunbeam press release was completely unrealistic?

MR. CLARE: Objection to form and foundation.

BY THE WITNESS:

A. Not that I recall, no.

BY MR. MARKOWSKI:

Q. Do you recall, sir, how far short of street expectations Sunbeam's net sales were as of March 18?

A. I'm not quite sure how to answer that. It's a complicated question because sales don't come in readily every day. They tend to be very much back-end loaded in industries of this type, so I don't know how I could make that comparison.

CONFIDENTIAL - STRONG

Q. I'm just asking numerically.

Do you know how far short of street expectations and net sales Sunbeam was as of March 18, 1998?

A. I have answered the question. It depends on when the sales were expected by the street and there's no way to know that.

Do they expect them to come in at the last week of the quarter, a big chunk in the last week, a big section in the last week? There's no way to be able to compare what you said short of intra-quarter to date. There's no way to know.

Q. Let me ask the question this way.

You recall that Sunbeam's -- the expectation that Wall Street had was that Sunbeam would achieve 285 to $295 million in net sales in the first quarter of 1998?

A. I think that's my recollection, yes.

Q. And do you recall what Sunbeam's net sales were -- actual net sales were as of March 18, 1998?

A. Not as I sit here today, no.

Q. You don't recall how many millions of dollars short of 285 to $295 million Sunbeam was

CONFIDENTIAL - STRONG

as of the time of your conversations with Ms. Porat and Mr. Dunlap on March 18?

A. Not as I sit here today, no, I don't recall.

Q. Do you recall that it was something in excess of $100 million?

A. I don't recall.

Q. Not even on an order of magnitude?

A. No.

Q. Do you recall doing an analysis yourself of the volume of daily sales activities Sunbeam would have to accomplish in the remaining days of March 1998 in order to achieve Wall Street expectations for net sales for the quarter?

A. Counsel, this would have been when?

Q. March 18 when you're having these conversations leading to the press release, did you personally attempt to do any evaluation of the amount of sales activity that Sunbeam would have to have on an average basis in the remaining days of the month in order to achieve Wall Street expectations of $285 to $295 million?

A. As I recall, I relied upon the work

NOT A CERTIFIED COPY

011762

CONFIDENTIAL - STRONG

that Ms. Porat and others had done, which as I have testified, they shared with me in summary fashion.

Q. Did Ms. Porat tell you on a daily average basis what sales Sunbeam would have to accomplish in order to reach street expectations?

A. She may have, but I don't recall.

Q. Did she tell you what sales Sunbeam would have to achieve in the first quarter of 1998 to exceed its net sales results for the first quarter of 1997?

A. She may have, but I don't recall.

Q. Do you remember asking her to make that inquiry and do that analysis?

A. I may have, but I don't recall today.

THE VIDEOGRAPHER: We have about one minute on this tape.

MR. MARKOWSKI: We can stop now.

THE VIDEOGRAPHER: Going off the video record at the end of tape 3 at 3:06 p.m.

(WHEREUPON, discussion was had off the record.)

THE VIDEOGRAPHER: We are going back on the video record at the start of tape 4 at 3:07 p.m.

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:

Q. Do you deny, Mr. Strong, that you were informed that Arthur Andersen strongly objected to the statements contained in Sunbeam's March 19 press release?

MR. CLARE: Objection. Form. Foundation.

BY THE WITNESS:

A. I have no knowledge of that.

BY MR. MARKOWSKI:

Q. I'm asking if you deny whether that occurred?

MR. CLARE: Same objection.

BY THE WITNESS:

A. I don't recall being told that.

BY MR. MARKOWSKI:

Q. So is it your testimony, sir, that you can't recall one way or the other whether you were informed that Arthur Andersen strongly objected to the statements contained in Sunbeam's March 19 press release?

A. I don't recall if they did.

Q. Do you deny that you were informed that Arthur Andersen objected strongly to including the substance of the March 19 press

CONFIDENTIAL - STRONG

release in the offering memorandum for the convertible debentures?

MR. CLARE: Objection to form and foundation.

BY THE WITNESS:

A. I don't recall being told that.

BY MR. MARKOWSKI:

Q. My question is whether you deny that that's what you were told?

MR. CLARE: Same objection. Asked and answered as well.

BY THE WITNESS:

A. I don't recall being told that.

BY MR. MARKOWSKI:

Q. So you don't deny it?

MR. CLARE: Objection. Argumentative.

BY THE WITNESS:

A. I don't recall being told that and I'll say I do not recall at all speaking with Arthur Andersen at any time on this project.

BY MR. MARKOWSKI:

Q. Do you know who suggested that the substance of the March 19 press release be included in the offering memorandum for the

CONFIDENTIAL - STRONG

convertible debentures?

A. No.

Q. Did you make that suggestion to anyone?

A. Not that I recall. I may have, but I don't recall.

Q. Mr. Strong, I'm going to show you what we're marking as CPH Exhibit No. 76. It is a document on Morgan Stanley stationery bearing Bates No. Morgan Stanley Confidential 25829 through 25886.

Putting aside for a moment, Mr. Strong, the handwriting on the document, do you recall seeing this document previously?

A. Not specifically but I probably did.

Q. The first page of the document is a March 19 memorandum from R.B. Smith to the leverage finance commitment committee, correct?

A. Yes.

Q. The second page is a memorandum dated March 20, 1998, to the leverage finance committee as well, correct?

A. You say "as well." One was the leverage finance commitment committee. The other

NOT A CERTIFIED COPY

is leverage finance committee.
Q. Thank you for that clarification.
Are those two different committees?
A. I don't think so.
Q. Do you know what the proper name is?
A. Either one.
Q. And the March 20 memorandum shows that it's from a number of different people to the leverage to finance committee, correct?
A. Yes.
Q. Including you; is that right?
A. Yes.
Q. In fact, your name is the first name listed, correct?
A. Well, I'm in the left hand column if that's what you mean. I don't know what you mean by "first."
Q. Does your position on this document, the position of your name on this document have any significance, sir?
A. No.
Q. Were you involved in the preparation or review of this document before it was presented to the leverage finance committee?

A. I don't recall being involved in its preparation. I may have reviewed a draft, but I don't recall today.
Q. Did you participate -- turn your attention back to the first page.
The first page of the document indicates that there will be a leverage finance commitment committee meeting regarding Sunbeam on March 20 at 7:30 a.m., correct?
A. Yes.
Q. In Conference Room 20, which I assume would be in Morgan Stanley's New York offices; is that right?
A. Yes.
Q. Did you participate in that meeting?
A. I don't recall participating in this meeting.
Q. Do you recall participating by telephone in the leverage finance committee meeting on March 20?
A. No. I may have, but I don't recall.
Q. Is there some reason that you can recall that would make it unlikely that you participated in the meeting?

A. Other than just in general, I sometimes will attend these. Sometimes I will not. There is a large team involved here. I just don't recall.
Q. You don't recall being otherwise involved in some activity that prevented your participation?
A. No, I don't recall one way or the other.
Q. You will see that there is some handwriting on the first page?
A. Yes.
Q. There is a -- do you recognize the handwriting?
A. No.
Q. Have you been asked before today whether or not you could identify the handwriting on this page, sir?
A. I don't recall.
Q. There's some additional handwriting on the second page of the document.
Do you see that?
A. Yes.
Q. Can you recognize that handwriting?

A. No.
Q. What about the handwriting on the third page?
A. No.
Q. Can you identify that handwriting?
A. No.
Q. Does it refresh your recollection, Mr. Strong, that you participated in the management -- the leverage finance commitment meeting on March 20 by reviewing the handwritten notes on the first page of the document?
Do you see the reference to Don Uzi, VP Sales. Do you see that?
A. Yes. The answer to your question is, no, it does not refresh my recollection.
Q. Do you see the references to 285 to $295 million?
A. Yeah. I'm not sure those are dollars, but it says 285 - 295. I see that, but it does not refresh my recollection.
Q. You're right. I'm putting my own gloss on it. It does say 285 to 295, correct?
A. Yes.
Q. And you recall that 285 to $295

NOT A CERTIFIED COPY

16div-021872

CONFIDENTIAL - STRONG

million was the expectation that Sunbeam had for first quarter sales?

A. Yes.

Q. Does this suggest to you that those numbers relate to that subject?

A. I don't know.

Q. Do you know whether the leverage finance commitment meeting received a briefing in connection with its evaluation of the financing commitment being requested of it on the presentation that Mr. Uzi made on March 18 concerning Sunbeam's first quarter sales situation?

A. Again, I don't recall if I was on it, so I can't answer if I have first-hand knowledge of that or not. But I would say that we were sharing information among the entire team, as you see here, from the entire engagement team.

So the answer is possibly but I don't know. I'm not sure if I was on this call or not.

Q. It wouldn't surprise you, sir, that the leverage finance committee meeting received a briefing on the substance of Mr. Uzi's presentation on March 18 before it made a

CONFIDENTIAL - STRONG

decision on the financing commitment?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I mean, to speculate, would it surprise me? It would not surprise me, no

MR. CLARE: Bob, I just want to point out it's now 3:15. We're going to need to get Mr. Strong out of here, as I previously indicated, in 15 minutes so for your planning purposes.

MR. MARKOWSKI: Well, my position is that the deposition can be adjourned at 3:30; but it will not be concluded at 3:30.

MR. CLARE: Well, we put our positions on record. I don't want to waste any more of your time by debating it; but I just want to make you aware that Mr. Strong will need to leave promptly at 3:30.

BY MR. MARKOWSKI:

Q. Do you recall, Mr. Strong, that in connection with an evaluation of the financing commitment that was before the finance committee at the March 20 meeting the possibility of deferring the financing until Sunbeam's first

CONFIDENTIAL - STRONG

quarter closed was raised?

A. I don't recall that, no.

Q. Do you recall whether there were reservations expressed by anyone at Morgan Stanley concerning proceeding with the transactions that were then pending on the scheduled dates as a result of the information that Morgan Stanley had received concerning Sunbeam's first quarter sales situation?

A. No, quite the contrary. All of the indications that we had received, particularly the call you asked me about on March 18, the company was continuing to strongly assert that they would make their sales estimates for the quarter. So we had no information to the contrary.

Q. So no one at Morgan Stanley had, to your knowledge, expressed any reservations about proceeding with the closing of the pending acquisitions and the financings?

A. No, not to my knowledge.

Q. Now, after March 19th, sir, did you instruct the individuals at Morgan Stanley involved in Morgan Stanley's continuing due

CONFIDENTIAL - STRONG

diligence to focus special attention on Sunbeam's sales performance in the final days of the quarter?

A. As I recall, the time of the 19 we priced the transaction until the financing closes, you know, we continue our due diligence and have so-called bring down due diligence. And I recall that we did focus on that during that time frame.

Yes, if that's your question. I'm not sure if it is or not.

Q. The debenture offering closed on March 25, sir.

Do you recall giving instruction to the individuals involved in performing due diligence between March 19 and March 25 to pay special attention to Sunbeam's sales during that period of time?

A. I know that we did. I can't recall if I specifically asked anyone to do that.

Q. What do you know about any inquiry that Morgan Stanley made concerning Sunbeam's sales activities between March 18 and March 25 when the offering closed?

NOT A CERTIFIED COPY

017965

CONFIDENTIAL - STRONG

A. I just recall in some of the bring down due diligence work with the client the questions along those lines were asked again and the company again reasserted its confidence in making those numbers. That's what I recall.

Q. Did you give instruction to the individuals involved in conducting additional due diligence to obtain documentation relating to Sunbeam's daily sales after March 18?

A. I don't recall.

Q. Do you know if Sunbeam provided Morgan Stanley with daily sales reports?

A. Not that I would recall. They may have. I just don't recall.

Q. I was focusing on the period subsequent to March 18.

A. Understood.

Q. Did you receive any information relating to Sunbeam's daily sales activities after March 18?

A. I may have, but I don't recall.

Q. Is it something that worried you?

A. Well, as I previously testified, I know that we did direct additional questions

CONFIDENTIAL - STRONG

through and until the time frame that the debenture offering closed, and I was broadly aware of that.

So I would know about those questions being asked. It's likely I would have known.

Q. Did you assume that Sunbeam was monitoring its sales activity very closely during that period?

A. I wouldn't say very closely. I wouldn't have any reason to believe they were doing anything out of the ordinary, just monitoring it the way they always would.

Q. Do you know how Sunbeam monitored its sales activities?

A. No. I'm sure Mr. Uzi can answer that.

Q. Did you ask Sunbeam whether they had available for your review daily sales reports?

A. Not that I recall.

Q. Shouldn't monitoring Sunbeam's daily sales activities after the March 19 press release have been Morgan Stanley's highest priority?

A. No, not necessarily.

Q. Were you advised, sir, that after March 19 -- after the March 19 press release was

CONFIDENTIAL - STRONG

issued, Morgan Stanley dropped from its due diligence agenda questions relating to Sunbeam's second quarter expectations?

MR. CLARE: Objection. Form and foundation.

BY THE WITNESS:

A. I don't have knowledge of that.

BY MR. MARKOWSKI:

Q. Did you instruct that Morgan Stanley individuals involved in doing bring down due diligence not to inquire into Sunbeam's second quarter expectations after the March 19 press release was issued?

A. Not that I recall, no.

Q. Can you think of any reason why Morgan Stanley would drop from its bring down due diligence agenda questions relating to Sunbeam's second quarter expectations?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I don't know that we did or we didn't. The focus at the time was on sales for the first quarter and results for the entire year as well.

CONFIDENTIAL - STRONG

BY MR. MARKOWSKI:

Q. Well, can you think of any reason if questions relating to Sunbeam's second quarter expectations were originally part of Morgan Stanley's intended checklist, why those questions would be dropped after the March 19 press release was issued?

MR. CLARE: Objection to form and foundation.

BY THE WITNESS:

A. Again, I don't know that they were dropped

BY MR. MARKOWSKI:.

Q. I am asking if you can think of any reason why they would have been.

MR. CLARE: Same objection.

BY THE WITNESS:

A. Why they would have been? If there was comfort -- again, I'm speculating; but if there was comfort with respect to the full year numbers as part of the due diligence, specifically the second quarter would be of less importance.

BY MR. MARKOWSKI:

NOT A CERTIFIED COPY

014766

CONFIDENTIAL - STRONG

Q. Did you in connection with your conversations with Sunbeam management about Sunbeam's efforts to meet first quarter 1997 street expectations, did you inquire at all whether the activities that they were engaging in to meet or at least come as close as they possibly could, that the expectations for the first quarter would affect Sunbeam's second quarter performance?

A. You said 1997. You mean 1998.

Q. Let me ask a stand-alone question.

Sir, did you inquire during the course of the conversations you had with Sunbeam management whether the activities that Sunbeam intended to engage in to meet Wall Street expectations for net sales for the first quarter of 1998 would have effects that adversely affected Sunbeam's financial performance in the second quarter of 1998? Did you make that inquiry?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. Not that I recall.

BY MR. MARKOWSKI:

CONFIDENTIAL - STRONG

Q. Don't you think that would have been an appropriate aspect of Morgan Stanley's due diligence?

A. Not necessarily. Again, we were relying upon the unqualified opinion from Arthur Andersen, the fact that their financial statements were prepared consistent with Generally Accepted Accounting Principles. Not necessarily, no.

Q. Now, Sunbeam, in fact, did not accomplish the results that the financial community had expected for first quarter sales, correct?

A. Correct.

Q. It made a press release on April 3 to that effect?

A. Sometime early April, yes.

Q. When did you first learn that Sunbeam was going to fail to meet Wall Street's net sales expectations for the first quarter?

A. As I recall, almost simultaneous with that press release going out.

Q. What was your reaction?

A. My reaction? My reaction was

CONFIDENTIAL - STRONG

disappointment, anger, shock.

Q. Who did you have that initial communication with?

A. I simply recall receiving a fax -- I believe a fax. I believe it was from Mr. Fannin.

Q. What did you do after receiving notice that Sunbeam had failed to meet Wall Street's expectations for net sales for the first quarter?

A. My recollection was I spoke with team members. I don't recall who. I probably spoke with Ms. Porat and I may have spoke with Mr. Fannin as well, but I don't recall specifically.

Q. Was anybody at Morgan Stanley criticized in any way for their performance in connection with work done for Sunbeam in connection with any of the three acquisitions or the financings?

A. Not to my knowledge, no.

Q. One of the things you did after Sunbeam announced that it had failed to meet Wall Street's expectations for first quarter sales was assist Sunbeam in obtaining a new public relations firm, correct?

CONFIDENTIAL - STRONG

A. I recall at some point -- I don't recall the time frame, counsel -- yes, I did make a recommendation that they retain a firm. I don't know if it was a different firm. I can't remember if they had someone before; but retain a firm, yes.

Q. Who did you recommend?

A. My recollection is it was Sard Verbinnen.

Q. Why did you make that recommendation to Sunbeam?

A. The firm was called Sard Verbinnen at the time. Its predecessor is a first-class firm in public relations and investor relations.

Q. One of the things they specialize in is crisis management communications, correct?

MR. CLARE: Objection. Foundation.

BY THE WITNESS:

A. I don't know.

BY MR. MARKOWSKI:

Q. Is that the reason why, their experience and capabilities in crisis management you recommended to Sunbeam that Sunbeam engage their services?

NOT A CERTIFIED COPY

01767

CONFIDENTIAL - STRONG

A. I don't recall specifically.
Q. In connection with the work that Morgan Stanley did for Sunbeam, Morgan Stanley provided Sunbeam with a written opinion that the price Sunbeam was paying for Coleman Company was fair to Sunbeam shareholders, correct?
A. That's my recollection, yes.
Q. What process did the Sunbeam team have to engage in in order to obtain authority to provide Sunbeam with that opinion?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. They would perform financial analysis and due diligence on Coleman, its financial statements, as well as on the similar type of information from Sunbeam, look at a whole series of things, synergies, other things like that.
BY MR. MARKOWSKI:
Q. Were you involved in that process?
A. Not in a direct way, no.
Q. Did the Sunbeam -- the members of the Sunbeam team have the authority to provide Sunbeam with a fairness opinion with respect to the Coleman transaction or did it need to obtain

CONFIDENTIAL - STRONG

approval from some other part of the firm?
A. I would typically discuss it with a group of other partners.
MR. CLARE: Bob, my watch shows that we're now at 3:30.
THE WITNESS: I'd better go here.
MR. CLARE: Mr. Strong has previously testified or informed us that he has a commitment, so I think we made our positions on the record clear. We're done for the day.
And it is our position that the deposition has concluded. You have had adequate time with Mr. Strong and chosen to conduct your examination with this information, so our positions are clear.
MR. MARKOWSKI: Well, my position is that the deposition is not concluded, that I have additional questions I wish to put to Mr. Strong and we do not agree that the deposition is adjourned.
MR. CLARE: We're off the record.
THE VIDEOGRAPHER: Going off the video record at the end of tape 4 at 3:31 p.m.
FURTHER DEPONENT SAITH NAUGHT.

CONFIDENTIAL - STRONG

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
----------)
COLEMAN (PARENT) HOLDINGS, INC.)
Plaintiff,)
versus)
MORGAN STANLEY & CO., INC.)
Defendant.)

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 339, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

WILLIAM STRONG,

SUBSCRIBED AND SWORN TO before me this day of , A.D. 2003.
Notary Public

CONFIDENTIAL - STRONG

STATE OF ILLINOIS)
) SS:
COUNTY OF Cook)

I, CARIANN BILLS, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:
That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;
That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given and the proceedings had;
That the said deposition was taken before me at the time and place specified;
That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.
IN WITNESS WHEREOF, I do hereunto set

NOT A CERTIFIED COPY

897710

CONFIDENTIAL - STRONG

my hand of office at Chicago, Illinois, this 4th day of December, 2003.

Notary Public, Cook County, Illinois.
My commission expires 05/31/05.

C.S.R. Certificate No. 84-003836.

CONFIDENTIAL - STRONG

INDEX

WITNESS	EXAMINATION
WILLIAM STRONG	
By Mr. Markowski	3

EXHIBITS

NUMBER	PAGE/LINE
No. 67	60:5
No. 68	67:4
No. 69	73:3
No. 70	87:23
No. 71	153:11
No. 72	181:14
No. 73	181:14
No. 74	194:10
No. 76	273:19

CERTIFIED QUESTIONS

NUMBER	PAGE/LINE
None	

CONFIDENTIAL PAGES

All

NOT A CERTIFIED COPY

011769

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED DEPOSITION
OF HOWARD GITTIS
New York, New York
Friday, November 19, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167570

NOT A CERTIFIED COPY

011771

November 19, 2004
9:33 a.m.

Videotaped Deposition of HOWARD GITTIS, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York, pursuant to Notice and Court Order, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: JEROLD S. SOLOVY, ESQ.
RONALD L. MARMER, ESQ.
DEIRDRE E. CONNELL, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
KATHRYN REED DeBORD, ESQ.

ALSO PRESENT:
Victor Disla, Videographer

Barry F. Schwartz, Esq.
MacAndrews & Forbes Holdings

Joseph Ianno, Jr. Esq., Carlton Fields

THE VIDEOGRAPHER: Stand by.
This is tape number 1 of the videotaped deposition of Mr. Howard Gittis in the matter of Coleman (Parent) Holdings Inc., Plaintiff, versus Morgan Stanley and Co., Inc., Defendant, in the 15th Judicial Circuit, in and for Palm Beach County, Florida.
This deposition is being held at 153 East 53rd Street, New York, New York on November 19th, 2004 at approximately 9:45 a.m.
My name is Victor Disla from the firm of Esquire Video Services, and I am the legal video specialist.
And the court reporter is Mr. Bob Shaw, also in association with Esquire Deposition Services.
Will counsel please introduce themselves for the record.
MR. BEMIS: Good morning. Lawrence Bemis, on behalf of Morgan Stanley.
MS. DeBORD: Kathryn DeBord, on behalf of Morgan Stanley.
MR. IANNO: Joseph Ianno, on behalf

of Morgan Stanley.
MR. SOLOVY: Jerold Solovy, on behalf of the Plaintiff.
MR. MARMER: Ronald Marmer, on behalf of the Plaintiff.
MS. CONNELL: Deirdre Connell, on behalf of the Plaintiff.
MR. SCHWARTZ: Barry Schwartz from MacAndrews & Forbes.
THE VIDEOGRAPHER: Will the court reporter please swear in the witness.
HOWARD GITTIS, having been first duly sworn by the Notary Public, testified as follows:
THE WITNESS: I do.
EXAMINATION BY
MR. BEMIS:
Q. Good morning, sir.
A. Good morning, Mr. Bemis.
Q. Would you tell the jury your full name, please.
A. My name is Howard Gittis, G-I-T-T-I-S.
Q. How old are you, Mr. Gittis?
A. 70 years old.

NOT A CERTIFIED COPY

011772

Q. Are you represented by Mr. Solovy here this morning?
A. Mr. Solovy, Mr. Marmer and Ms. Connell.
Q. Where do you live today?
A. I live in New York, 760 Park Avenue.
Q. How long have you lived there?
A. Since about 1987.
Q. So, you lived at that address during the Coleman Sunbeam transaction?
A. I did.
Q. Are you working today?
A. I am.
Q. Where do you work?
A. I work at MacAndrews & Forbes.
Q. What is your current position there today?
A. I am the vice-chairman and chief administrative officer.
Q. Do you hold any other positions with any companies owned or controlled directly or indirectly by MacAndrews & Forbes?
A. Oh, I am sure I am an officer and/or director of dozens of companies.
Q. Do you report directly to Mr. Ronald

Perelman?
A. I do.
Q. Did you have the position you hold today in 1997 and 1998?
A. Yes.
Q. In 1997 and in 1998 did you also report to Mr. Perelman?
A. Yes.
Q. You have been deposed before a number of times; correct, sir?
A. I have, indeed.
Q. In fact, you have been deposed before in several cases involving the Sunbeam Coleman transaction; correct?
A. That is correct.
Q. How many times in that transaction were you deposed? I would include, within that, transactions involving Mr. Dunlap and Mr. Kersh?
A. Either 1, 2, 3, some number like that. I don't really recall.
Q. Did you, before you came to your deposition here today, review your transcripts and -- the deposition transcripts in the other cases?

A. No.
Q. When was the last time that you saw those transcripts?
A. I don't think I have ever seen them after they were transcribed.
Q. Did you make any changes to those transcripts after they were transcribed?
A. I don't think so.
Q. Since you have been deposed before, the only, I am only going to give you a few admonitions, so we are clear for the jury.
One, you understand that you are being videotaped; correct?
A. Yes.
Q. You understand that you are under oath and the oath that you took here has the same force and effect here as if you were testifying in court?
A. I do.
Q. Is there any reason that you can't testify truthfully here today?
A. No.
Q. With that, let's get to the merits of what you are here for.
A. Sure.

Q. My understanding is that you are a lawyer, but you don't practice; is that correct?
A. That is correct. I practiced law actively for about 25 years. I left the active practice of law in 1985.
Q. May I ask: Are you still licensed to practice?
A. I am licensed to practice in Pennsylvania and in Florida, although I believe that I have inactive status in both locations.
Q. You have never practiced law, I take it, then, when you worked for MacAndrews & Forbes?
A. No. That was the condition upon which I joined Mr. Perelman.
Q. Your position is as a businessman within the company?
A. That is correct.
Q. I take it you did some preparation for your deposition; is that correct?
A. Yes.
Q. When did you do that?
A. Um, I spent about an hour last night

NOT A CERTIFIED COPY

014773

Page 10

talking to my lawyers, and other than that, maybe another hour, or some time during the course of the past week.
Q. Did you review any documents related to the Sunbeam Coleman transaction?
A. Um, yes, I did.
Q. Did you review the complaint, for example?
A. No.
Q. Have you ever seen the complaint that was filed in this action against Morgan Stanley?
A. Yes, I saw the complaint when it was filed.
Q. Did any of the documents that you reviewed in preparation for your deposition help you recall events that occurred a number of years in the past?
A. Oh, sure.
Q. What documents were those that you looked at that helped you remember things?
A. Um, the presentation of the Morgan Stanley, that Morgan Stanley made to us in February of 1990.
Um, some of the corporate niceties

Page 11

surrounding the transaction. By that, I mean resolutions and things of that nature.
Um, I would say that is primarily the ones that refresh my recollection.
Q. Did you look at any material prepared by Credit Suisse First Boston?
A. I think I saw the, a portion of the document which they presented to the Coleman board, in connection with our fairness opinion.
Q. Was this document the, called backup materials or something like that?
A. I don't recall.
Q. Would you recognize it, if you saw it?
A. I might.
Q. Again? Okay, maybe we will show it to you when we get to that point.
A. Okay.
Q. Were there any other documents that you looked at that helped you remember events from 6 years ago?
A. I think that is about it.
Q. You referred to a presentation by Morgan Stanley in February of 1990. Did you

Page 12

misspeak when you said 1990?
A. Yes. 1998.
Q. Was that a presentation where Mr. Russell Kersh spoke?
A. I was not physically present at the meeting. I simply received the materials thereafter.
Q. So, when you said a presentation Morgan Stanley made, you don't know whether Morgan Stanley actually made a presentation, because you weren't there; right?
A. But I was told that they did.
Q. But as to your own personal knowledge?
A. I was not in the room.
Q. You weren't in the room.
In fact, my understanding is that, and you can correct me now -- if I am wrong, we will shortcut some of the questioning -- is that your involvement in this transaction began sometime in November or December of 1997, with some meetings with Michael Price and Mr. Mr. Dunlap and Mr. Perelman; is that correct, in general?
A. That is correct.

Page 13

Q. And that, following those initial meetings in 1997, and perhaps extending into some calls in early 1998, you had no further involvement in the Coleman Sunbeam transaction until after the closing, which was March 30th, 1998?
A. No. I had no further involvement with the negotiation of the transaction between Coleman (Parent) Holdings or MacAndrews, however you want to characterize it, and Sunbeam. Internally, I had various processes which report to me, which require me to review certain things.
Q. And you also attended the board meetings of the Coleman Corporation; correct?
A. I did.
Q. As a director of various holding companies related to Coleman, you -- you voted, as a director, in favor of the transaction; correct?
A. I certainly signed the resolutions authorizing it.
Q. So, your involvement, you had no involvement in any negotiations, if you will, between Sunbeam and Coleman concerning the

NOT A CERTIFIED COPY

014774

terms of the transaction; is that fair?
A. That is fair.
Q. Your involvement, if any, was with internal discussions within MacAndrews & Forbes?
A. That's right. Before that contract got signed, I would have to sign off on it.
Q. How long have you known Mr. Perelman?
A. Um, probably 35 years.
Q. How did you come to meet him?
A. Um, socially. And after meeting him socially, I would say in the mid-70s he asked if I would do some legal work for he and his then wife, um -- I had previously done work in opposition to his father -- a rather hotly contested matter, and I suggested to him that he might want to consult his father before he did that. He said no, this is just for me personally. He was then working for his father.
And I said, fine.
Q. And at some point in time you decided to cease practicing law and go to work for Mr. Perelman?

A. That was '85. Ten years later.
Q. You have been working for Mr. Perelman almost 20 years now?
A. That is correct.
Q. And you are, as I understand it, by your title you are the number 2 man at MacAndrews & Forbes; is that correct?
A. That is correct.
Q. Are you still active in the business?
A. Oh, very active.
Q. You go to work every day?
A. I go to work every day.
Q. Love every minute of it?
A. Love it.
Q. In your -- 20-some years of working for Mr. Perelman, do you think he is a sophisticated businessman?
A. Yes.
Q. Do you think he is a sophisticated investor in companies?
A. Yes.
Q. Sophisticated in analyzing mergers and acquisitions transactions?
A. I think so.

Q. Sophisticated in issuing debt securities?
A. Yes.
Q. In the twenty-some-odd years that you have been working -- - withdrawn.
Would you characterize yourself as Mr. Perelman's right-hand man? Not to offend left-handers here.
A. I am left-handed.
Q. I wasn't sure.
A. No. It is a fair characterization. Our offices are right next to each other. They have been since I have gotten here.
Q. You have been involved in, I take it, many of the major transactions by Mr. Perelman?
A. I think I have been involved in all of them.
Q. Revlon, for example?
A. Oh, yes.
Q. Marvel?
A. Yes.
Q. Panavision?
A. Yes.
Q. Coleman?

A. Yes.
Q. When you have done these transactions -- would you consider those major transactions, the ones we have just --
A. Sure.
Q. -- listed? What are some of the others which you consider big transactions that you have been involved with Mr. Perelman in the last 20 years?
A. Oh, all of our banking transactions, the acquisition of, you know, five bankrupt thrifts which became first -- Reporter Bank, the subsequent sale of those assets to Bank of America.
The purchase of First Nationwide Bank from Ford Motor Company.
Seven divestitures, and six acquisitions later it became the second largest thrift in the United States.
Q. Is that CalFed?
A. No. It is, actually, Golden State Bank. CalFed was a subsidiary, and the subsequent sale of Golden State to Citi Group. Then we had, we bought and sold the cigar business twice, took it public.

NOT A CERTIFIED COPY

014775

And I think we have done, since I have been here, something like 36 or 38 transactions.
Q. I was going to add, Consolidated Cigar?
A. Right.
Q. You bought and sold that company?
A. Bought it once, sold it, bought it back and then sold it. In the intervening time, the second time we also took it public.
Q. Would it be fair to say that, on the debt side, in terms of debt that has been issued by companies owned or controlled directly or indirectly by Mr. Perelman, that they have issued billions of dollars of debt over the years?
A. Oh, yes.
Q. Would it be fair to say that in materials of companies that Mr. Perelman has purchased, either through stock acquisitions or otherwise, that those transactions have involved billions of dollars?
A. Absolutely.
Q. In these -- well, would you call these sophisticated transactions, like the

Consolidated Cigar and Revlon and Gibraltar, First Nationwide, these are sophisticated transactions?
MR. SOLOVY: Objection to the form of the question.
Q. You can answer.
A. Some are more sophisticated than others, but they are -- you know, some of the financings are sophisticated, you know, and you know, we learned as we went along, you know. We started out as two little guys in Philadelphia, and then we learned a little bit as we went through the transactions.
Q. In the transactions that you have told the jury about, over the past 20 or so years, have you, on occasion, used investment bankers to advise you?
A. Yes.
Q. Is that a frequent occurrence?
A. In almost every transaction.
Q. Who are some of the investment bankers that you have worked with on your side of the table?
A. Morgan Stanley. Goldman, Sachs. Credit Suisse First Boston.

Lehman Brothers.
Bear, Stearns.
Citi Group.
Including the Solomon Smith Barney part of the Citi Group.
J.P. Morgan Chase, including the J.P. Morgan part of that company.
Q. You pretty much ran the table of the large names; didn't you?
A. Pretty much so.
Q. Have you used outside attorneys in your transactions?
A. Oh, sure.
Q. In the 20 or so years that you have been doing deals, is there one law firm in New York City, for example, that you have used more often than others?
A. I would think we have used Skadden more often than anybody else, Skadden Arps.
Q. You have not used Skadden Arps in the Sunbeam transaction?
A. No. They had a conflict.
Q. They were representing Sunbeam?
A. Exactly.
Q. Would you have used Skadden Arps if

they had not had a conflict?
A. I don't know. We make the decisions from matter to matter.
Q. Were you involved in the decision, or -- withdrawn.
What other law firms in New York City, for example, have you used in your merger and acquisition transactions?
A. Wachtel Lipton.
Paul Weiss.
Latham & Watkins.
I think that is about it.
Oh, no, Kramer Levin.
I don't think we used Wilkie Farr.
I don't think we have used Weil Gotshal, but we may have.
Q. At least in the public firms --
A. I am sorry. Also another California firm -- Gibson Dunn.
Q. Gibson Dunn & Crutcher?
A. Yes.
Q. Would you consider all of those firms to be sophisticated law firms in financial transactions?
A. Certain people in there are.

NOT A CERTIFIED COPY

011776

Page 22

Q. I mean, the people that you worked with.
A. Yes.
Q. You did not hire unsophisticated people?
A. I would hope not, no.
Q. In addition to investment bankers and law firms, as you have described it, in these deals that you have done over the past 20 years with Mr. Perelman, have you had occasion to use accounting firms to assist you in your work?
A. Um, we don't use accounting firms very much in connection with doing a transaction.
But each of the companies, either before or after, are represented by one of the, I guess it is a Big Four now. It used to be the Big Six or Big Seven.
Q. It was Eight once.
A. It was Eight once.
Q. Okay. Does MacAndrews & Forbes have, today, does it have an outside accounting firm that it uses to audit its books?

Page 23

A. Yes.
Q. Who is that?
A. Ernst & Young.
Q. And Ernst & Young was the Coleman Company's auditors at the time of the Sunbeam transaction, Coleman transaction; correct?
A. Yes, but that was -- that was not as a result of anything that we had done. I think they were there before.
Q. And Ernst & Young today would be -- strike that. Would Ernst & Young today, in your view, be one of the Big Four or Five, however they are described?
A. Certainly one of the Big Four, I would say.
Q. Does MacAndrews & Forbes do filings with the Securities & Exchange Commission?
A. Sure.
When you say MacAndrews & Forbes, there are various levels of MacAndrews & Forbes.
Q. I want to make sure that I get the right one. Was it MacAndrews & Forbes Holdings Inc. that does the filing?
A. No. No. No. It depends on where

Page 24

public debt is issued. We have no public securities coming out of MacAndrews, except for a company called MacAndrews & Forbes Worldwide, which is a separate public company that does securities act filings on its own.
It has public shareholders, and -- I don't know whether it still has public debt. I should know, since I am its chairman.
Then there is Mafco Holdings, which is the top company, and I don't think that does filings, because I don't think there is any public debt left there. But as you come down the chain from Mafco to MacAndrews & Forbes Holdings to MacAndrews & Forbes Group, wherever, at any time during the 20 years there is public debt issued at that level they become a filer.
Q. Do you know the holding company structure, as you sit here today?
A. I know it as well as anybody can. There are hundreds of companies.
Q. I don't want to go through all of the 100. Now that I have the person who -- I think knows it probably as well as I think I may know it, as best I can piece it together,

Page 25

I would like to ask you a few questions.
A. Sure, right.
Q. See if I get it right.
Mr. Perelman sits at the top; correct?
A. Yes, he owns 100 percent of the securities of the ultimate holding company.
Q. The ultimate holding company, is it Mafco Holdings Inc.?
A. It is either Mafco Holdings Inc., or Mafco Finance. I am not quite sure what the name is now. One or the other.
Q. There is no comma between Holdings and Inc.; right?
A. Right.
Q. And then after Mafco Holdings Inc., or Mafco Finance, whichever it is, directly below that is MacAndrews & Forbes Holdings, Inc.; correct?
A. That is correct.
Q. And now, for our purposes, given the Coleman side of the transaction, directly below MacAndrews & Forbes Holdings, Inc. was Coleman (Parent) Holdings Inc.; is that correct?

NOT A CERTIFIED COPY

Page 26

A. No. There should be -- there should be a company called MacAndrews & Forbes Group in there before that.
Q. All right. That's one I did not know where it was. MacAndrews & Forbes Group Inc.; is that what it is?
A. I don't really know.
Q. Okay. But it is below MacAndrews & Forbes Holdings Inc.?
A. Below Holdings and before the chains that hold the operating businesses.
Q. The MacAndrews & Forbes Group Company, that is a holding company; correct?
A. Yes.
Q. And the legal name, as best you can remember, is MacAndrews & Forbes Group, Inc.?
A. I think that is right.
Q. Now, working now down, going, if we had Coleman in the transaction, we would go to Coleman (Parent) Holdings?
A. Once you go down below MacAndrews & Forbes Group, each of the operating businesses go off into a series of companies, so that you don't mix the candy money with the beer money.
That is, Coleman stays in its own

Page 27

line, no cross collateral, no obligation for any debt of, say, Revlon, which has its own line.
And then the banks, which had their own line.
And then the cigar company, when that was there, had its own line.
So, there are a variety of companies that come down, and all of the operating, and this is the strategy that we had from the beginning, which is all of the operating businesses are kept pure. They may have their own holding companies up and down the line, but they are not touched by any of the other operating businesses.
They always remain by themselves.
Q. So, absent credit agreements or finance agreements of some kind that provide some type of cross-collateralization upstream, there are no obligations amongst the different operating companies?
A. That is a fair comment.
Q. With regard to -- let's focus on the operating group on the Coleman side, real quickly, and go down the list, and I think we

Page 28

are done with this.
A. No problem.
Q. Directly below MacAndrews & Forbes Group, the ultimate holding company for the Coleman group was Coleman (Parent) Holdings?
A. I think that is right.
Q. Inc.? Correct?
A. I am pretty sure that is right.
Q. Directly below that was a company called CLN Holdings Inc.; correct?
A. I don't know.
Q. Now, below that I have seen reference to a company called Coleman Worldwide Corp. and also, I think, in a former life known as Coleman Escrow Corporation; does that sound right to you?
A. That is well beyond my canon at this point.
Q. But at the very bottom of the chain was the Coleman Company, Inc., the operating company?
A. Right, that was a publicly owned company, which we owned approximately 82 percent of up through that chain, and which had its own debt issuance capacity.

Page 29

Q. And now, with regard to decisions to whether to buy or sell, let's focus on the Coleman transaction.
As I understand your testimony, you would have given final approval to the merger agreement before it reached Mr. Perelman; is that fair?
A. That is fair.
Q. And then Mr. Perelman would ultimately be advised of your opinions and would make a decision up or down?
A. No. I would -- I would write on a paper, okay, to sign, HG, and he would sign it.
Q. He would sign it. When you review documents, do you have any symbol that you put on the documents to show that you have read them?
A. No.
Q. Okay. Have you ever seen Mr. Perelman use some type of marking on a document to show that he has read them?
A. Never.
Q. Never?
A. Never. That's not his strong suit.

NOT A CERTIFIED COPY

011778

Q. Markings or documents?
A. Either one.
Q. Either one. Okay.
Now, at the time of the -- well, let me ask you. If you were to step back to 1998, during the Coleman Sunbeam transaction, would you agree with the following: that the transaction involved, was negotiated arm's-length by two large sophisticated and publicly traded corporations?
A. Um, it was negotiated arm's-length. With one of them committing a fraud.
Q. And which one was that?
A. Sunbeam.
Q. Would you say that each side in the case, each side of the transaction was represented by advisers?
A. Oh, sure.
Q. That, in your case, your side of the transaction was represented by Skadden Arps?
A. No.
Q. Excuse me, Wachtel Lipton?
A. Wachtel Lipton.
Q. On the Sunbeam side they had retained your counsel in other cases, Skadden

Arps?
A. That is correct.
Q. And you, on your side of the table you had an investment banking firm, Credit Suisse First Boston?
A. Coleman did.
Q. Coleman did.
Now, I know Coleman, Coleman signed the retention agreement, by documents that I have seen, but Credit Swiss First Boston also made presentations that you listened to; correct?
A. Yes.
Q. You did not have any position on the Coleman board of directors?
A. No. But I was director of one of the holding companies as it went up. The Coleman board of directors couldn't sell my stock.
Q. In fact, the Coleman board of -- you were a director of all of the companies going up the chain directly up to Mr. Perelman; correct?
A. Except for the Coleman Company Inc., the publicly traded company.

Q. And at the time of the transaction on the other side of the table, from the attorneys from Skadden, I think if I haven't said this, we had Wachtel Lipton representing your side; correct?
A. Yes.
Q. And in terms of investment bankers, in addition to CSFB on your side, Morgan Stanley was representing Sunbeam in the transaction; is that correct?
A. That is correct.
Q. You knew, at the time of the transaction, that Arthur Andersen was the accounting firm that was doing audit work for Sunbeam; correct?
A. Sure.
Q. Up to the time that the transaction closed, did you have any indication that Arthur Andersen had committed any fraud with regard to its audits of Sunbeam, as later alleged by Coleman (Parent) Holdings?
A. No.
Q. Was there any indication in the public filings of the financial statements of Sunbeam Corporation that it had committed any

fraud that you were aware of?
A. No.
Q. Did you have any information, at the time of the closing of the Sunbeam Coleman transaction, that Arthur Andersen was going to, only months later, announce that the public could no longer rely on its opinions in regard to Sunbeam's financial statements?
A. Of course not.
Q. Now, turning to the Coleman Sunbeam transaction, the negotiations, externally -- was Mr. Maher, in your view, the head negotiator?
A. Mr. Maher and Mr. Levin.
Q. Mr. Levin on behalf of Coleman?
A. Mr. Levin on behalf of the Coleman Company Inc. Mr. Maher on behalf of the various Coleman holding companies and the MacAndrews companies.
Q. How long have you known Mr. Maher?
A. Oh, probably 25 years.
Q. Did you work with Mr. Maher when he was an investment banker at First Boston?
A. I met him when I was there, but I don't recall working with him on a

NOT A CERTIFIED COPY

014779

Page 34

transaction.
Q. Did you -- excuse me. Did MacAndrews & Forbes, and I will use holding company now, if that is all right with you.
Did they ever retain Mr. Maher as its investment banker in a transaction while he was employed by Credit Suisse First Boston or First Boston?
A. No. When he was at First Boston our real contact there was Mr. Wasserstein and Mr. Perella.
Q. Okay.
When did Mr. Maher, in your recollection, come to work for MacAndrews & Forbes?
A. Sometime prior to 1997. My best guess is 1993, '94.
Q. He did not directly work for MacAndrews & Forbes at that time, he worked for one of the operating companies; correct?
A. No. No. He came, I believe he came right to work for MacAndrews & Forbes. What was happening is that Bruce Slovin, who had been the long-time president of MacAndrews, was getting, slowing down and wanted to

Page 35

retire. He made enough money. So, we were looking around for someone to take that position, and Maher became available. We hired Maher for that.
Q. He became the president of MacAndrews & Forbes Holdings, Inc.; is that correct?
A. That is correct
Q. He stay until about year 2000; is that your recollection?
A. I know he left us sometime after this transaction.
Um, I don't know if it was 2000, 2001, sometime like that.
Q. When Mr. Maher left, was, did he leave for any reasons related to the Sunbeam Coleman transaction?
A. No. No. He wanted to do something else.
Q. Did you like working with Mr. Maher?
A. Yes.
Q. Do you think he was a sophisticated investment banker?
A. Yes.
Q. Sophisticated businessman?

Page 36

A. Yes.
Q. You attended the February 25th -- withdrawn.
There are two board meetings of the Coleman Company, and they were held by record dates that we now know of February 25th and February 27th of 1998.
Did you attend those two meetings?
A. Yes.
Q. You attended as an observer, I take it?
A. Well, I guess you could call me an observer of the public company, but also I was attending because I was going to sign resolutions authorizing the transactions; so, I thought it was one of the easiest ways to listen.
Q. I would like to show you the minutes of the February 25th, 1998 board meeting and just ask you a couple questions about that.
A. All right.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 88.
What I would like you to do is look at this document to whatever extent you would

Page 37

like to do so. I only have a couple of questions and they are really directed to the second page in Mr. Maher's presentation; so, look. When you think you are ready to proceed, let me know and I will ask you a question.
A. Okay.
(Pause.)
A. Okay. Yes, thank you.
Q. If you would look at the second page of the minutes, and I will be directing your attention to the third paragraph that begins "Mr. Levin"; do you see that?
A. I do.
Q. It is reported in the minutes, as follows:
"Mr. Maher reviewed the history of the proposed transaction, including both the course of discussion between the company and Sunbeam and an inquiry made by the company," which refers to Coleman, "to what the company believed was the most likely potential bidder, which bidder was not interested."
Did you see that sentence, sir?
A. I do.

NOT A CERTIFIED COPY

011780

Q. Do you know the company to which this inquiry was made?
A. Yes.
Q. Who was it?
A. The Brunswick Corp.
Q. Who made that inquiry?
A. I don't recall whether it was Mr. Maher or me, but I think it was him.
Q. When did that occur?
A. Prior to the execution, prior to this meeting.
Q. Can you tell me how close to the time of this meeting the inquiry to Brunswick was made?
A. No. We had received various inquiries from Brunswick over the years about acquiring Coleman -- and I can't remember when the last conversation took place, but as a matter of prudence, we thought it was necessary to call and make sure that they weren't in the game anymore, I think, since they had acquired a small company in the camping business.
Q. What did, do you know what Brunswick --

A. No. That is the whole basis of my recollection.
Q. My understanding is that you did not make the inquiry.
A. I don't think I did.
Q. Did Mr. Maher make the inquiry?
A. Yes.
Q. I take it that whatever the, whatever was said in the enquiry, the answer was that Brunswick was not interested?
A. At that time, yes.
Q. Were there any other companies that, say in the period 1997, expressed any interest in acquiring Coleman, other than Sunbeam?
A. Not that I know of.
Q. Did Brunswick actually express an interest in buying Coleman, or did Coleman ask Brunswick if Brunswick had an interest?
A. No. The impetus came from Brunswick.
Q. You don't know if this was in 1997 or even sometime earlier?
A. I think that it would have been in 1997. It may have been earlier, as well, but certainly in '97 there was an agreement.

Q. Did you participate in any of the discussions with Brunswick -- well, let me withdraw that.
Were there actual discussions with Brunswick?
A. I had a conversation with the then chairman, and I can't tell you exactly when it was, but my best guess is that it was in 1997, when he expressed an interest in acquiring Sunbeam for Brunswick.
And I told him that Sunbeam was in the early phases of a turnaround.
Q. Do you mean Coleman, as opposed to Brunswick? You said Sunbeam.
A. I apologize.
Q. That's right.
A. Coleman was in the early phases of a turnaround and the market value would not reflect what we considered to be the company's intrinsic value and, therefore, we had no interest in selling it at that time.
Q. Did that pretty much put an end to the matter?
A. Tried to put an end to it.
Q. Was there ever a point in time in

your discussion with the chairman of Brunswick that you discussed price?
A. No.
Q. Were any investment bankers involved in the discussions?
A. I don't think so.
Q. Just -- one man to one man discussion?
A. Pretty much so.
Q. Not to belabor this, but was this like a lunch or dinner meeting?
A. No. No. They came in the office to see me. I knew the chairman.
Q. In the call that was made to Brunswick, as a matter, I think you put it, of prudence, before the February 25th board meeting, do you know, either directly or from being told by someone else, whether Brunswick was told of the pending Sunbeam transaction?
A. I would be surprised if they had been, but I really don't know.
Q. Again, the person we would have to ask this question is Mr. Maher?
A. That is correct.
Q. Other than Brunswick, going back

NOT A CERTIFIED COPY

01473

Page 42

perhaps even to -- let's go back to, say, 1995, forward, were there any companies that you remember expressing any interest in acquiring Coleman?
A. I don't recall any.
Q. Now, you mentioned that you remembered seeing some materials prepared by CSFB, at about the time of the board meetings, which were related to the fairness opinion. Do you recall your testimony on that?
A. Yes.
Q. I would like to show you several documents and see if you can tell me whether those are the documents that you remember seeing.
A. Sure.
Q. I am handing the witness what has been marked as Morgan Stanley 120, and I am handing a copy to Mr. Solovy.
Do you have Exhibit 120 in front of you, sir?
A. I do.
Q. I will represent to you that my understanding is that this is the fairness opinion itself.

Page 43

A. Aha.
Q. There are also some backup materials which I will show you in a second.
My first question is: Have you seen before Morgan Stanley Exhibit 120?
A. I have no recollection.
Q. Okay. You can hand that back to me and we will put it back in the files.
Now I am going to provide to you what I understand are the so-called backup materials.
112.
Why don't you hand me back that document, and we will try to keep it a little less cluttered over there.
A. All right.
Q. I will hand you, sir, Morgan Stanley Exhibit 112.
I will hand a copy to counsel.
Do you have Exhibit 112 in front of you?
A. I do.
Q. Is this the materials prepared by CSFB that you were speaking about earlier in your testimony?

Page 44

A. If this was what was presented to the board at Coleman, at the meeting at which I was present, this is the material.
Q. There was actually -- strike that.
At the board meeting of the Coleman Company, when Credit Suisse First Boston prepared their --
At the board meeting of February 24th, 1998 that you attended, do you remember that Credit Suisse First Boston had discussion materials that they presented to the board?
A. Sure.
Q. Were they handed out for everyone to follow through?
A. Yes.
Q. And did these materials appear to you to be the materials that were handed out or a similar to --
A. Something like this.
Q. I recognize it has been six years ago.
A. Yes.
Q. Are these the type of materials, then, that the board reviewed in making its decision whether to vote for the merger?

Page 45

A. Well, I wasn't on the board, I was just present at the meeting, but these are the kinds of journals that you would always, almost always get at a board meeting.
Q. But although you weren't a member of the Coleman board, you were a member of the boards of directors that actually owned 82 percent of the Coleman stock?
A. Right.
Q. Correct?
A. Correct.
Q. Are these the types of materials that -- Morgan Stanley Exhibit 112 -- that you relied upon in exercising your business judgment whether to vote for the mergers?
A. No.
Q. What did you rely upon?
A. I relied upon primarily the Morgan Stanley presentation that was made to us on the 23rd of February.
Q. And in that presentation, was that a set of documents that you --
A. Yes.
Q. Because you did not appear at the presentation?

NOT A CERTIFIED COPY

011782

Page 46

A. Those documents were on my desk as soon as that meeting was over.
Q. Was the Morgan Stanley presentation that you are referring to, was that presented to the Coleman board of directors at the meeting?
A. Not to my recollection.
Q. Would that be true for both the meeting of February 25th and 27th?
A. I think that is correct.
Q. And did anyone from Morgan Stanley make any presentation directly to you?
A. To me, personally?
Q. Yes.
A. No.
Q. So, when you say you relied upon a Morgan Stanley presentation, again, you are simply talking about a document or documents that you saw given to you by someone else?
A. And before I permitted this matter to go to the boards, I insisted that Sunbeam and Morgan Stanley come in and make a presentation to our people, which they did. That was the, that was delivered to me promptly upon the conclusion of the meeting.

Page 47

I then met with our people to get them completely debriefed upon that, and there was -- then I said go ahead, take this matter to the boards.
Q. Other than the -- the presentation -- I want to show you what I think is the documents that you are referring to that you said you received.
You can hand that back to me. The documents that you received and you have been describing as this presentation by Morgan Stanley and Sunbeam.
First, I am going to hand you what has been marked as Morgan Stanley Exhibit 84.
A. Thank you.
Q. Excuse me. Exhibit 85. I misspoke.
Do you have that exhibit in front of you?
A. I have in front of me an exhibit that has been marked as 85.
Q. My question, next, would be: Is this the Morgan Stanley document that you said you received after the Morgan Stanley Sunbeam presentation, that you did not --
A. I have to look at it.

Page 48

Q. Yes, sir.
A. Because the copy I saw had a beautiful blue Morgan Stanley cover on it.
(Pause.)
A. I believe this is the document that I saw, or there may have been an earlier related version of this, but this contained essentially this information.
Q. Let me ask you to set that aside for now. We will come back to it.
A. Sure.
Q. And we will just collect that up for now and, at a later point, we will talk about it in a little bit more detail.
A. No problem.
Q. There was also a document I think you said you saw from Sunbeam, and I want to show you a document now and ask you if that is the Sunbeam document that you were referring to. MS 84, please.
By the way, was it Mr. Levin that gave you Morgan Stanley 85?
A. No. I think it was either Mr. Nesbitt or Mr. Maher.
Q. Maher.

Page 49

A. Mr. Levin was present. He is a New York or Chicago Levin. He is Levin.
Q. Did I say Levin?
A. Sorry.
Q. I started, because I am from Chicago. I know it is Levin.
A. He is, too.
Q. Let me hand you Morgan Stanley Exhibit 84.
If you will, please, look through Morgan Stanley 84, and various handwriting on it, I am not suggesting to you that the handwriting was on it originally, but -- just, please, look at the document and tell me when you are done.
A. Sure.
(Pause.)
A. Yes.
Q. Mr. Perelman, yesterday, identified the handwriting on this document as Mr. Levin's.
Do you recognize the handwriting?
A. I think it is his, as well. Yes.
Q. You may hand that back to me.
A. Aha.

NOT A CERTIFIED COPY

011783

Q. Did you ever discuss with Mr. Levin the presentation by Sunbeam that was, that is set forth in, on hard copy, if you will, in Morgan Stanley Exhibit 84?
A. I am sure I did.
Q. We will come back to these a little bit later.
Now, at the -- at or about the time of the second board meeting, had you already, had you reviewed the final contracts that were being drafted by the attorneys?
A. I don't recall whether I had seen the final drafts or not yet, but others who were working with me did.
Q. Did you review the final drafts of the contracts before they were signed?
A. Um, before I signed -- before I signed the document, I reviewed it. Did I see the final drafts that, of -- I am not sure if I did or not.
Q. Let me show you what has been marked as MS 421. That is a February 27th, 1998 CLN Holdings Inc. resolution.
If I misspoke, the Exhibit Number is 423, not 421.

(Pause.)
Q. Mr. Gittis, have you read the document, Exhibit 423?
A. I am looking through it. Yes.
(Pause.)
MR. SOLOVY: Just so the record is clear, there is no question pending; correct?
MR. BEMIS: He asked to read the document.
THE WITNESS: I was waiting for you. Okay.
Q. Now we are communicating better.
A. Right.
Q. Is that your signature on page 1 of the document?
A. It is.
Q. And did you sign this document on or about the date it bears, February 27th, 1998?
A. Probably sometime thereafter -- probably just as they were getting everything ready for a closing or signing, you know, I was signing, just before that. Dated as of February 27th; so, that is my best guess.
Q. Okay. I apologize for interrupting

you.
A. That is okay.
Q. From your past testimony my understanding is that you read documents before you sign them; correct?
A. Oh, yes.
Q. You can hand that back to me.
A. All right.
Q. I will hand you what was marked as Exhibit 172 in a previous deposition. I have handed you Exhibit 172, sir, and when you are finished looking at it, I will ask you a couple questions.
A. Go ahead.
Q. Is that your signature that appears on page 1?
A. Yes.
Q. As was like in the case that I just showed you, Morgan Stanley 123, did you sign it as of February 27th, 1998?
A. Yes.
Q. Did you read it before you signed it?
A. Sure.
Q. You can hand it back to me. That is

all done.
Let me show you what has been marked as Exhibit 280.
A. Thank you.
Q. Morgan Stanley Exhibit 280 is captioned "registration rights agreement." The signatures appear at the end.
(Pause.)
A. Do you want me to read the whole thing?
Q. No.
Okay. Have you seen, did you see this document before it was signed?
A. Not to the best of my recollection.
Q. You can hand that back to me then.
A. Aha.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 278, which is also captioned "registration rights agreement."
Have you seen that document before?
A. I don't think so.
Q. The registration agreement, rights agreement is signed, if you look at the back of the document, by Mr. Glen P. D-I-C-K-E-S; do you see that?

NOT A CERTIFIED COPY

011793

Page 54

A. Yes.
Q. This document, this unsigned form is attached as an exhibit to the CLN Sunbeam Laser, if you will, merger agreement as an exhibit.
Did you review the entire acquisition agreement, which is -- it is a longer question -- Morgan Stanley Exhibit 93, before it was signed --
A. I don't think so. I reviewed certain sections of it, but I would not have read a registration rights agreement.
Q. Do you know what it is?
A. Of course.
Q. And just, if you look at, if you look at page 8, if you would please turn to that, CPH Bates No. 109425.
A. Page 8, right.
Q. Look at paragraph 12.
It makes reference to a comfort letter signed by independent public accountants. Do you see that?
A. Yes.
Q. Do you know what a comfort letter is?

Page 55

A. Yes.
Q. What is it?
A. It is a letter given by an accounting firm to the issuer of securities, giving them comfort that as of the time of the issuance of the securities, certain, what events have transpired since the filing of the last certified financials.
Q. To state it another way, it covers a time period from the last, the date of the last certified financials up to a date stated on the letter; correct?
A. Yes. The date while, the date when you are going to issue securities.
Q. The issuance of this registration rights agreement was a condition precedent to the closing of the CLN merger agreement; correct?
A. I am sure it was, yes.
Q. Indeed, if you will go back, and I will ask you to take a look at Exhibit 172 --
A. Yes.
Q. Which exhibit is the consent of the directors in lieu of a meeting of Coleman (Parent) Holdings. And on the first page the

Page 56

execution of the registration rights agreement, Exhibit 278, is the condition precedent to the closing of the merger; correct?
A. Sure. Taking unregistered securities --
THE REPORTER: I did not hear.
A. We were getting unregistered securities. You want to get the securities registered within a certain time period. That is the purpose of a registration rights agreement.
Q. In the case of the registration rights agreement and obtaining a comfort letter, Sunbeam is the issuer of the securities; correct?
A. Sunbeam is the issuer of the securities.
Q. And the comfort letter that was referred to in the registration rights agreement would come from Sunbeam's auditor; correct?
A. From Sunbeam's auditor -- yes.
Q. Arthur Andersen.
A. Arthur Andersen.

Page 57

MR. BEMIS: Let's take a recess and get some papers organized and refiled and we will move on to the next topic.
THE VIDEOGRAPHER: The time is 10:53 a.m., and we are going off the video record.
(Recess.)
THE VIDEOGRAPHER: Stand by. The time is 11:04 a.m., and we are back on the video record.
Q. Let me hand you, sir, what has been previously marked as Morgan Stanley Exhibit 424.
This is entitled "Coleman Worldwide Corporation consent of directors in lieu of board of directors meeting."
Do you have that in front of you, sir?
A. Aha. I do.
Q. Please take a minute and look at it and I just have a couple of quick questions about it.
(Pause.)
A. Yes.
Q. The first question, sir, is: Is

NOT A CERTIFIED COPY

014783

Page 58

that your signature that appears on the first page?
A. It is.
Q. Did you sign it on, as of, excuse me, February 27th, 1998?
A. Sure.
Q. Did you read it before you signed it?
A. Yes.
Q. Was it signed in connection with the Coleman Sunbeam transaction?
A. Yes.
Q. You can hand it back to me. Thank you very much.
Let me show you now what has been marked as Morgan Stanley Exhibit 93.
A. All right.
Q. Do you have that exhibit in front of you?
A. I do.
Q. For the record, that is the agreement and plan of merger among Sunbeam Corporation, Laser Acquisition Corporation, CLN Holdings Inc. and Coleman (Parent) Holdings, Inc.

Page 59

I don't expect you to read the document, obviously -- I will direct you to a paragraph if -- would you just take a minute and feel comfortable with what the document is, and let me know, and then I will ask you a question.
A. Okay.
Q. Would you confirm for me, sir, that the copy you have attached to it, has, as Exhibit A, the registration rights agreement -- as an exhibit?
A. Exhibit A is what purports to be a registration rights agreement.
Q. And at the -- did you review before -- excuse me.
Withdrawn.
Before Exhibit 93 was signed, and the signature pages are attached to this copy -- and I believe Mr. Schwartz may have signed this on behalf of CPH -- I will look to make sure that that is right.
MR. SOLOVY: That is correct.
MR. BEMIS: It is correct. Thank you, Mr. Solovy.
Q. Did you review Exhibit 93 before it

Page 60

was signed?
A. I have no recollection of whether I did or not.
Q. Would it be your practice to do so?
A. Sometimes, and sometimes not.
Q. Did you review the confidentiality agreements that are referred to in paragraph, if you want to look at this -- it is paragraph 6.7 of the document? On page 18.
A. What's the question?
Q. Did you review the confidentiality agreements between the parties that are identified in section 6.7 of the exhibit? MS '93.
A. I have no recollection of seeing the confidentiality agreements in this matter.
Q. In a transaction of this nature would it be customary, in your view, based on the many deals that you have participated in, to have confidentiality agreements between the parties?
MR. SOLOVY: Objection to the form of the question.
A. Sometimes -- mainly yes, but not always.

Page 61

Q. Who would be the person at Coleman (Parent) Holdings or CLN Holdings, as the case may be, who would be responsible for verifying the existence of the confidentiality agreements that are identified in that paragraph 6.7?
MR. SOLOVY: Objection to the form of the question.
A. Either Mr. Schwartz or Mr. Dickes.
Q. Let me ask you to turn to 1997 -- in your -- the man by name of L. Dunlap. You know who he is; right?
A. Yes.
Q. You wish you had never met him?
A. That is an apt description.
Q. Did Mr. Dunlap -- excuse me, when did you first meet Mr. Dunlap?
A. Sometime in the middle of the spring of 1997 I attended a luncheon hosted by an investment banker in New York named Mark Davis, whom I have known for years, in which Mr. Davis, Mr. Dunlap, Mr. Perelman, myself and I believe Mr. Drapkin were at the first luncheon -- um -- and then there was a second lunch which, I think, I was not present at.

NOT A CERTIFIED COPY

011786

Page 62

But I characterized it as, those lunches as Mr. Dunlap looking for his next job.
Q. Was he employed by Sunbeam at the time of this luncheon, 19 --
A. Certainly not the first time, but the second time he may have been.
Q. So, you were introduced to Mr. Dunlap by Mr. Davis; is that correct?
A. Yes.
Q. And who did Mr. Davis work for at that time?
A. I think it was Solomon Smith Barney or maybe Solomon Bros. I just don't know when those mergers took place.
Q. And did you have lunch with Mr. Dunlap and the other gentlemen, Mr. Perelman and Mr. Drapkin?
A. Yes.
Q. What was -- do you remember the discussion over lunch?
A. Yes. Um -- Davis had handled the sale of Scott Paper Kimberly Clark, which was apparently a very successful transaction, and he was extolling Dunlap's virtues as a manager, and saying they were looking for

Page 63

another deal for Dunlap to run, and there was somebody that might be willing to finance such a deal.
And would we have any interest.
And I said, or Mr. Perelman said, or Mr. Drapkin said -- it was one or the other of us, or all of us -- look, if you have a deal that is interesting, you want to bring it to us and we have to look at it. And that was really the whole purpose of the luncheon.
Q. Then you met him again, I believe you said, at another luncheon later?
A. I don't think I was at the second luncheon.
Q. What is it, what can you tell us about the second luncheon, even though you were not there?
A. I think by then he had done the Sunbeam deal, and said what a great deal it was.
Q. Who was present at this second luncheon, as you understand it?
A. Davis, Dunlap, Perelman and Drapkin, I think.
Q. Did you hear from someone about what

Page 64

happened at the luncheon?
A. It was a non-event, the luncheon, just telling him he had done a deal.
Q. Did Mr. Perelman -- Mr. Perelman testified yesterday or the day before, I can't remember -- at this point I don't remember which of the two days it was -- at some point he discussed with Mr. Dunlap whether he would have an interest in being on the board of directors of the Coleman Company. Did he ever discuss that subject with you?
A. No. That would not have been a fruitful subject with me.
Q. Why not?
A. I thought that Dunlap was very aggressive, um -- and not someone that I thought was, would have been a great board member.
Q. There does come a time, again in the fall of 1997, when you meet Mr. Dunlap again; is that correct?
A. That is correct.
Q. And did you meet him in connection with an introduction by Michael Price?
A. Yes.

Page 65

Q. Would you tell the jury who Michael Price is.
A. Mike Price is a fund manager, highly successful investor, then running a series of funds called the Mutual Benefit Shares.
Q. Would you spell that for us.
A. Mutual benefit shares.
Q. I thought you said L-E -- I thought it was mutual?
A. Mutual benefit shares. Sorry.
Q. That's all right.
A. I know Mike for years.
Q. He was with Chase Securities at one time; was he not?
A. I don't think so. He was, he started with a guy in, down in Canton named Max Heine. That is how I knew him. I had done some legal work for Max Heine, and Max Heine was a legendary investor. That's how Mike got started, at least to the best of my knowledge.
Q. How did you and Mr. Price come to speak to each other about Mr. Dunlap?
A. Well, I am home in Palm Beach, I had a home, a different home that I presently live

NOT A CERTIFIED COPY

014787

Page 66

in. I had a home in Palm Beach, which won a lot of awards for historical renovation that I had done there -- an old house, fallen into terrible disrepair, and it took me over a year to restore it. You know, with meticulous attention to the details of that house.

Mike then bought -- Mike Price bought a house within five minutes of that house, and he was in the process of restoring his house. So, we chatted about that.

So, I was down there for a weekend, and I think it was -- pretty sure it was in November of 1997 -- and Mike called and said, asked if I would come over and have a drink and he wanted to show me some of the work that he had been doing. I said, fine.

Q. I take it that, at this time, no one from Morgan Stanley had contacted you in connection with the Sunbeam, what becomes the Sunbeam Coleman transaction?

A. Uhm, I don't think so.

I don't think anybody from Morgan had contacts, yes.

Q. Mr. Price calls you to stop by, see the renovation.

Page 67

A. Right.

Q. And have a libation before the evening?

A. Before the evening. So, my wife and I, then, went over.

We rang the bell. I hear a lot of voices. Oh, Mike must be having a party.

In any event, somebody came to the door and we came in, and there was Dunlap, who I said I met before, and the person who was introduced as Russell Kersh, who I had not met before, a woman, who I think was Mike's cousin or something, and Mike, and we had a drink.

Q. What happened? Was there any discussion while you --

A. No discussion about business at all. They went off to dinner and I went off to dinner, separately.

And I remember -- sort of -- kidding Ronald about it when I came back, after that weekend, saying, this is the craziest thing, why did Mike have me over there when Dunlap and Kersh was there; there is something in his mind. That was it.

Q. What did Mr. Perelman say?

Page 68

A. He laughed.

Q. Did you have any further talks with Mr. Price that involved Mr. Dunlap?

A. I did.

Q. What happened next?

A. Price called me shortly thereafter, and said that Dunlap had a significant interest in seeing Sunbeam acquire Coleman, and I said look Mike, you know, Coleman is in the early stages of its turnaround, its stock market price is not going to reflect what we consider to be its real intrinsic value.

So, it is sort of silly to have that kind of a meeting now, wait six or nine months or a year when you will see that the market price will have begun to reflect what the real value is and, you know, you can talk to us then.

He said, no, no, Al is hell-bent on doing it very quickly, he wants to do this right way.

Q. He said that Al Dunlap was bent on doing it?

A. Yes.

Q. Did he mention in this conversation

Page 69

at all Morgan Stanley?

A. No. He did not mention Morgan Stanley. This was all Al.

Q. So, at this time when Michael Price called, are we in, sometime in late November of 1997?

A. No. It is late November. It could have been the first week of December, but sometime in that time frame.

Q. And at this time was Mr. Price still the fund manager for the mutual fund that you described?

A. Yes. And they owned a ton of Sunbeam shares.

Q. When you refer to "a ton," does that translate into more than 1 percent?

A. Yes.

Q. So, Mr. Price, obviously, had some financial interest in the performance of Sunbeam stock?

A. Oh, sure.

Q. And he was interested, I would take it, in having it go up, rather than go down?

A. He certainly was.

Q. So, how was this conversation with

NOT A CERTIFIED COPY

014788

Page 70

Mr. Price left about Mr. Dunlap's interest in Coleman?
A. I think Mike said -- look, I will have Morgan Stanley, who was representing the company -- call you. I said no, don't have them call me, have them call Jim Maher.
And, some time subsequent to that call, the call went in to Maher from, I think, Bob Kitts or maybe Bill Reid, I am not quite sure -- I think Bill Kitts or Bob Kitts, of Morgan Stanley. And then a subsequent call from Bill Reid to Ronald.
Q. That call takes place after the meeting at Mr. Perelman's house in Palm Beach?
A. I think there was an earlier call, too.
Q. Let me ask you to move forward from the phone call with Mr. Price, now, to -- well, withdrawn. In the call with Mr. Price, the second telephone call -- did he and you discuss a possible meeting with Mr. Perelman and Mr. Dunlap?
A. No.
Q. How did the meeting come about, then, on March, on December, what the record

Page 71

will show is December 18th, 1997?
A. Well, Maher started these conversations with Morgan. Morgan expressed the view that the companies should be together, that Al had accomplished a lot with Sunbeam already, more to do, but he could do the same thing with Sunbeam that he had done, the same thing with Coleman that he had done with Sunbeam.
Maher said great -- um -- so, somehow or other, a meeting got set up for sometime in mid-December, where the Coleman guys met with the Sunbeam people.
Q. You did not participate in that meeting; did you?
A. No.
Q. Was that meeting in New York?
A. Yes.
Q. Did Mr. Levin attend that meeting?
A. Yes.
Q. Mr. Page?
A. Yes.
Q. Was that a meeting, did you hear about the topics discussed at the meeting?
A. Yes, they were all talking about,

Page 72

the discussion focused on if a transaction could be done, you know, how would the company be run, would there be synergies or not -- you know, what were their businesses like, where were we in our turnaround.
Where were they. You know, they now had pretty much '97 under their belt; so, they had a pretty good fix of where their numbers were going to be.
Just general conversation like that.
Q. To your knowledge, was anyone from Morgan Stanley at that meeting?
A. I don't know.
Q. Were you ever told that anyone from Morgan Stanley was there?
A. I don't know. I don't remember.
Q. There must come a point in time when a meeting is set up at Mr. Perelman's house. I assume one does not come unannounced?
A. What happens is, after that meeting Mike Price calls me, and I said I have known Mike for a lot of years.
He said look Howard, we want to get this deal done right now. I said Mike, you know, I have told you before, we are in the

Page 73

early stages of a turnaround.
Maybe coming close to the middle of the turnaround.
The market price of the stock does not reflect the company's real value.
I have no interest in selling this company at this time.
Wait six to nine months and you will see the turnaround. The market price will reflect it. Then we can talk about whether it is a transaction.
Q. What did he say?
A. He said, no, no, no. No. Al is insisting, insisting that we press ahead with this. He has Morgan Stanley lined up.
Don't worry, this is a deal that you can get done. I said, I am sure that it is a deal that you can get done but, you know, but it is just silly stuff, it is the Christmas holidays, Ronald is going to be away for two weeks, I am away for two weeks. What are you talking about.
No, no. We got to meet, we got to meet.
Q. This is Mr. Price talking?

NOT A CERTIFIED COPY

011789

A. This is Mr. Price. I said Mike, what's going to happen, we are going to have a meeting, nothing is going to happen for two weeks anyway, we will all 2be away, you are going to be away, too.

He said, no. No. We have to have a meeting. So, Ronald was going to fly down to Palm Beach en route to St. Bart's on the Thursday of that weekend. I was not scheduled to leave with some kids and grand kids until Friday.

I finally said, all right, I will talk to Ronald. Look, Ronald, I will fly down with you and then the plane will take my kids and grandkids down the next day. He said okay, so, we will meet with them.

Q. You flew down to Palm Beach?

A. I flew down with Ronald that afternoon on his plane. My plane stayed back and took my grandkids down the next day. We met at Ronald's house about 5:30. That's what I told --

Q. Now we are at the December 18th meeting at Mr. Perelman's house; correct?

A. That is correct; about 5:30 in the

evening. Exactly.

Q. Was there any communication between you and Mr. Dunlap before the meeting on December 18th at Mr. Perelman's house about the meeting, or was it all conducted through Mr. Price?

A. All through Mr. Price.

Q. Mr. Price is acting kind of like an intermediary between the two parties to set up the meeting?

A. The principal shareholder of Sunbeam, yes. That is the role in which he was acting.

Q. Okay. The principal shareholder through his mutual funds?

A. Right.

Q. So, all right, we are at 5:30, December 18th, the doorbell rings.

A. And in comes Mr. Price and Mr. Dunlap.

Q. What happens next?

A. We had some Coca-Cola or -- a glass of iced tea or coffee. If they wanted anything stronger, if they wanted coffee, they could have had it. We went into Mr. Coleman's

library and Mr. Dunlap began to extol the virtues of everything that he had done at Sunbeam -- the company is doing great, making money hand over fist. He had taken 26 factories down to eight, some such number. He cut, fired 7,000 people.

I never heard of such stuff, but he was really flying.

Q. Nobody from Morgan Stanley was at this meeting?

A. No. It is just the four of us. And so.

Q. Go ahead.

A. Listen -- so.

I want to buy Coleman, I want to have Sunbeam buy Coleman.

Q. This is Mr. Dunlap talking?

A. Dunlap.

Ronald said to him what I had said to Mike Price, look Al, it is all very interesting, but I have zero interest in selling Coleman at this stage.

The stock market price is not reflective of the true value of the company. I have great confidence in the management team

that I put in there to accomplish this turnaround.

They all worked for us before. It is not as if we put new untested, untried people in there.

They tell me that they are going to pull this off, and I believe them. There is no rush. I am not selling it to anybody else. Let me finish the turnaround and let the marketplace reflect it.

And talk to me in six or nine months or a year.

Q. How did Mr. Dunlap respond?

A. Oh, he went crazy, he went crazy. He started pacing up and down. It is a very funny scene. He was wearing a white silk turtleneck. I had never quite seen that before in Palm Beach, and his face got very red. I don't know if he had sunburn, or his face just got red, and he has bleach blond hair.

I was sitting there, just having a little difficult time, not laughing, but -- he is a serious businessman and making a serious proposal; so, I had to take him seriously.

NOT A CERTIFIED COPY

011790

Page 78

So --

Q. I am sorry, go ahead.
A. So, I said to him -- look, Al, this is not a conversation I want to have with you, but I am going to tell you, I have taken a look at your company, the analyst reports, I have looked at mine, I asked CSFB to calculate out one thing for me, which is what price can Sunbeam pay depending upon the amount of synergies that we would agree might be available.
Without us being dilutive to Sunbeam. And that is 30 bucks a share.
And I have zero interest in selling for less than that. And I either thought that -- you know -- an attack on, you know, Dunlap's manhood or something, he went, you know, yelling and screaming, and his face was red, we want to do a share-for-share exchange.
All of a sudden I said Al, what's the sense of having this meeting, we told Mike five times now that we have no interest in selling this business at this stage.
So, why would you even come in and

Page 79

talk to us about that. That is another transaction. You know, I hope you enjoy your Christmas holiday, and we will see you in a year or so.
Q. What did Mr. Dunlap say?
A. Oh, no, Mr. Dunlap started screaming, no, this is a deal that cries out to be done, Morgan has looked all over, Morgan determined who should be our next acquisition. You are our favorite candidate.
You are the only one we want to do this merger with.
Morgan is prepared to finance it, and on and on and on. And his face was getting redder and redder.
I said, Al, please, this is only a business transaction. It is not going to change your style of living and certainly not going to change ours. You know, there is no rush.
I mean, you are going to have a heart attack, calm down. I was really worried.
He started pointing his finger at me, I don't get heart attacks, I give heart

Page 80

attacks, and I am going to give you a heart attack.
And I did not like that too much.
So, either Ron -- this is a silly conversation, you know.
This is a conversation that is going nowhere and you ought to go ahead and have a nice Christmas.
Mike Price called me a day or two later to apologize for him. I mean, he was just way too emotional. This was a business transaction, nothing to get emotional about.
Q. I want to ask you a couple of specific questions about some reports that I have read of the meeting and ask you whether they are accurate with your recollection.
A. Sure.
Q. Were you ever interviewed by John Byrne for his book Chain Saw?
A. I may have been, but I don't remember that.
Q. Some of the things that you described are almost verbatim out of his transcript of the meeting.
A. It could be.

Page 81

Q. Mr. Byrne describes --
THE VIDEOGRAPHER: Your microphone.
Q. Mr. Byrne describes some portion of the meeting and, and he attributes to Mr. Dunlap the statement, Ron you are a pig. You know your company is a piece of shit, you will never see it worth $30 a share in your lifetime, it is only worth 20 bucks, and that is an early Christmas present. Was something like that said?
A. No, he would never have called Ronald a pig. He did not lose that much control. Actually, Ronald and I always thought that he hadn't really lost control, this was just part of his act. This is, you know, the Rambo act.
Q. Did Mr. Dunlap say words to the effect, during the discussions on price, well fuck you, screw you, you guys don't know what you are talking about?
A. He did use certain scatologic terms.
Q. Did Mr. Perelman reply "fuck you"?
A. No.
Q. He would never use a term like that?
A. Ronald doesn't talk like that.

NOT A CERTIFIED COPY

014791

Page 82

Q. Did Mr. Dunlap shout at the meeting?
A. Oh, yes. He was very exercised.
Q. Did Mr. Dunlap say words to the effect, quote, I am going to save this company for you, I am going to do for -- ah, do what I did at Scott and Sunbeam, I am going to cut all of the costs out? Did he say words like that?
A. Oh, yes. He said words like that.
Q. Then, you are attributed as saying look Al, don't get yourself so excited, you are going to have a heart attack here?
A. That is absolutely accurate.
Q. And then Mr. Dunlap is reported to have said, which I think is consistent with what you said, "I don't get heart attacks, I give heart attacks and I am going to give you a heart attack"?
A. Right. That happened. You don't forget that.
Q. And then you are attributed as saying to Mr. Dunlap, calm down, this is only business, whether we make this deal or not, Ron is not going to be any more or less rich and I am not going to be any more or less

Page 83

rich, I am not going to change -- it is not going to change any of our lives, I don't think it is going to change yours. I know it is not going to change Mike's.
Was something like that said?
A. Something like that I would have said, yes.
Q. Then Dunlap screamed, according to Mr. Byrne, fuck you guys, you will never make a deal, I told you Perelman, you should never listen to lawyers.
A. That means me.
Q. I think it means you.
A. Yes. He said something like that.
Q. Then Dunlap is reported to have stormed out of the house. Did he do that?
A. Well, stormed out. He left.
Q. In a hurry?
A. He did not finish his coke, I will put it that way.
Q. And as he was walking out, did he shout, words to the effect, fuck you and fuck your company?
A. No. I don't remember that.
Q. Did you come to the conclusion --

Page 84

well, have you ever been in a meeting like that with another businessman of Mr. Dunlap's stature where he behaved like that?
A. Well, I have been in business where people lose their temper, you know, but this was pretty extreme. Donald and I both talked about it actually afterwards. 85 percent -- we thought it was 85 percent act. You know, he was one of those macho, U.S. Army Ranger type guys and he likes to talk tough, you know. It was not very effective with us, but that is how we read it, at least.
Q. What happens -- well, withdrawn.
Did you finish your cokes after Mr. Dunlap left?
A. Ronald and I did, yes.
Q. And after that, did you take off for your two-week vacation as you had planned?
A. Actually Ronald took off the next morning to go to St. Bart's and I just went around the corner to my home, which is three minutes away, and I spent the next two weeks at, the next 12 days, I think, in Palm Beach with my children and grandchildren, and then I went over to St. Bart's for Ronald's birthday.

Page 85

Ronald's birthday is, it is January 1st. He was the first child born on January 1st.
And historically, for 20-some years, we spent his birthday together. So, I flew over from Palm Beach to St. Bart's for his birthday party, which we celebrated, no discussion of Mr. Dunlap or Mr. Price.
Q. So, what is the next thing that you remember happening in connection with the Coleman Sunbeam transaction after this meeting with Mr. Dunlap in Palm Beach?
A. Morgan Stanley called Maher, and again, I don't remember whether it was Kitts or Reid -- and Bill Reid called Ronald, that I do know, saying look, this is really silly, these two companies should be together, we worked on this for months. You know, Al gets carried away, let's leave Al out of this. Let's see if we can't get this back on track.
Q. Did you consider there being anything improper about Morgan Stanley speaking to -- to MacAndrews & Forbes again about whether negotiations could be restarted?
A. Not at all.
Q. Or discussions?

NOT A CERTIFIED COPY

014792

Page 86

A. Morgan Stanley has been a bank of ours for years. You know, we have had very good relations with them. There was no problem at all in their calling us like that.

Bill Reid was the guy in charge of our account at Morgan Stanley at that time -- he succeeded Eric Gleacher and Joe Perella. There were a series of guys at Morgan.

He was trying to get us to buy Gucci, it was a company that we looked at.

And so, it was perfectly appropriate for them to call Ronald or to call me, or to have some of the younger guys call Maher. There was no problem at all with that.

And they were trying to get a deal done. It is their job.

Q. Mr. Perelman said, in his deposition, that he did speak to Mr. Reid sometime in January, approximately, January. Were you on that call?

A. No.

Q. Did you hear about the call?

A. Yes. He told me right away.

Q. To the best you can recall -- it is years later, I understand -- what did

Page 87

Mr. Perelman tell you about the call with Mr. Reid?

A. Well, Bill said, look, you know, Al gets carried away, you know, it doesn't detract from whether or not these two companies will do well together.

Ronald said to him, look, Bill, this is a simple deal, you know, Jerry -- he knew Jerry Levin very well -- you know, we are in the middle of a turnaround. You know us, you know that we will pull it off, we will get it accomplished, what the hell is the rush. You want to buy it, you can buy it a year from now, you don't have to buy it now.

Bill just repeated, look, Al wants to get this deal done and he wants to get it done right away. And he reiterated, also, that Morgan was prepared to finance the deal.

So, after I heard that --

Q. This is what Mr. Perelman is telling you Mr. Reid said?

A. Yes. Then after I hear that, so let me look into this a little more.

And I call Mark Davis, because that's how we met Dunlap, and he did the Scott

Page 88

deal.

So, I said to Mark Davis, Mark I am going to ask you a question, you don't have to answer if you don't want to.

But, you know, Al Dunlap has been around in connection with a potential transaction -- I did not describe the transaction to him -- and he is represented by Morgan Stanley, what happened to you. Because he is the guy that brought him to us, originally.

He said, look, Al was trying to sell Sunbeam, and he pumped that stock so high because it was, talking that he drove the price of the stock so high that nobody was willing to buy it.

He said, I, Mark Davis, told him I couldn't get him more than maybe mid-30 or $35 a share, I forget the exact number, some number in the 30s.

And he said well, you are no good, you know, you are a white shoe banker, get out of here, I am going to hire the best. I am going to hire Morgan Stanley.

And that's when Morgan Stanley came

Page 89

in, sometime in the mid-1997, as best I can tell. And he said they pumped him up now, not that they can sell the company, but that he ought to be buying. And they are willing to use their balance sheet to finance.

And that's why Morgan Stanley is doing this and not me.

Q. Did you say that in advance of the meeting on December 18th, that there had been at least some analysis of analysts reports on Sunbeam by CSFB?

A. Sure.

Q. Who had requested that work be done by CSFB?

A. Me.

Q. You?

A. Aha.

Q. In 1997, let's take the month of December, were there analysts that were following Sunbeam?

A. Oh, sure.

Q. About how many?

A. I don't remember now, but at least half a dozen.

Q. Were they analysts at houses,

NOT A CERTIFIED COPY

014793

Page 90

investment houses that you respected?
A. Some were and some weren't.
Q. Was Sunbeam, in your view, a widely followed stock in the analysts community?
A. I am surprised. I thought it was more widely followed than I thought it would have been.
Q. Was one of the analysts Andrew Shore?
A. Yes.
Q. What is your opinion of Andrew Shore?
A. I think Andrew is excellent. I have known Andrew for a long time.
Q. And was, there is a couple other analysts that I would like to ask you about.
Do you know Mr. Hayman?
A. Yes, I do know Mr. Hayman.
Q. What was your opinion of Mr. Hayman? I think his first name is Nicholas.
A. Not very high.
Q. Not very high. Do you know Mr. William Steele at Buckingham Research, or was at that time?

Page 91

A. No. I never heard of him.
Q. How about John Gibbons at Merrill Lynch?
A. No.
Q. Scott Graham at CIBC Oppenheimer?
A. No.
Q. Do you remember the, what analyst that CSFB looked at when it was preparing this analysis for Mr. Perelman in advance of the December 18th meeting?
A. No. All I said was, look at the -- tell me what they think they are going to make for '97 and what the projections were. By then the projections were out for '98 or maybe longer. I don't know what Al was doing.
In order to do the calculation I wanted to get done, I wanted to have some baseline to start with, the baseline, what were they making in '97, and projecting for '98. I know what Coleman thinks it is going to make and I can pick any number I want as to what potential synergies are, because I don't know the answer to that.
But I know how to size it, and then I can determine where you get the dilution.

Page 92

That is the only exercise that I was interested in.
Q. CSFB, at the time of the December 18th meeting, had an analyst following Coleman; didn't it?
A. I think so, but I am not sure. If they did, I don't know who it was. I did not deal with them.
Q. Are you familiar with a company called First Call?
A. Yes, I know First Call.
Q. What is it?
A. It is a compendium of analysts' reports that they will say, you know, The Street estimate is, and then they will take a number of estimates and divide them by the number and they get sort of an average of The Street estimates.
Q. Is that, is first call something that you look at in your business when you are analyzing estimates on a company's growth over a period, or the next period of time that you are measuring?
A. No.
Q. You never look at them?

Page 93

A. Never look at them.
Q. You never look at -- do you look at a service, IBES?
A. No.
Q. Do you know what that is?
A. No.
Q. I will get the name of it at the break from the computer. I can't remember. I can never remember what the name is, what the acronym stands for.
Did you show your, your analysis, if you will, to Mr. Dunlap at the December 18th meeting?
A. I don't recall whether I did or not. I know I had one sheet, a one-sheeter with me that showed that, that showed the synergies, potential synergies of 100, 125, 150. Mr. Dunlap looked at me -- and he said, that is why you don't know what you are doing, it is 250 million in synergies here. You know. I started to scratch my head. I said what's this guy telling me, that it is 250 in synergies and he is complaining about a price. It was sort of counterproductive, but that was the conversation.

NOT A CERTIFIED COPY

014794

Q. What was the result of your analysis that you had done by CSFB?
A. That he could pay us 30 bucks a share and not suffer dilution.
Q. When you said "dilution," dilution in his earnings per share; correct?
A. Exactly. That's not the full analysis, you know. That was the top of the head analysis.
THE VIDEOGRAPHER: Five minutes.
MR. BEMIS: Let's change the tape. We are going to run out of tape in five minutes.
THE VIDEOGRAPHER: The time is 11:49 a.m., and this is the end of tape number 1.
(Recess.)
MR. BEMIS: Back on the record.
THE VIDEOGRAPHER: Stand by.
Q. After the December 18th meeting and following the phone call from Mr. --
THE VIDEOGRAPHER: Excuse me. The time is 11:53 a.m., and this begins tape number 2.
MR. BEMIS: Now we are on the record.
Q. Following the December 18th meeting and moving up all the way to the call that Mr. Perelman received, as he testified from Mr. Reid, I take it you had really no involvement in any discussions in that kind of gap period; is that correct?
A. No. There were no discussions during that gap period.
Q. I think the description I used yesterday with Mr. Perelman was, as of December 18th, the matter was dead in the water, as far as he was concerned; is that fair?
A. I think it never started, it was pretty close to being dead in the water.
Q. If it ever got started, it got turned off?
A. Yes.
Q. Moving now into January, as a result of Mr. Reid's call, or if it was someone else who called Mr. Maher, it is not clear -- did discussions resume?
A. Yes. Mr. Maher then resumed discussions with Morgan. And from that standpoint, from that time on, the bulk of the discussions were between Mr. Maher and Mr. Levin and his team, on our side -- and Morgan Stanley, on the other side.
Q. I take it you did not arrange for any additional meetings with Mr. Dunlap and Mr. Perelman?
A. Ah, no. There were no further meetings.
Q. Did you ever meet Mr. Dunlap again?
A. I don't think so.
Q. All right.
A. That is not true. That is not true. I apologize. I think I saw him once in what had come to be called the Sunbeam building in Boca Raton, after his termination, ah -- somewhere, either he was in the building one time to get some papers or something, and I think I passed him, but we spoke no words.
Q. Did someone -- strike that.
Who was in charge of due diligence on the MacAndrews & Forbes side as the discussions went forward?
A. Well, we had the Maher team, which is Maher and Nesbitt, and we had the Coleman team, which was Jerry Levin, Joe Paige, Bobby Jenkins and Paul Shapiro. He is a Philadelphia Shapiro.
Q. Shapiro.
All right.
All right. So, on the MacAndrews & Forbes team we have Mr. Maher and Mr. Nesbitt and then --
A. And Glen Dickes overseeing the legal aspect.
Q. Then we have Mr. Dickes and Mr. Levin and Mr. Paige down the Coleman side of the transaction?
A. Levin, Paige, Jenkins, Shapiro.
Q. Do you know what due diligence was done by Mr. Nesbitt and Mr. Maher with regard to Sunbeam?
A. I couldn't tell you now. Whatever they thought was necessary.
Q. Were you following the due diligence -- well, I will put it this way. Was the Sunbeam Coleman deal your deal or Mr. Maher's deal?
A. It was not my deal, it was Mr. Maher's deal, but Mr. Maher did not have

NOT A CERTIFIED COPY

01795

Page 98

the power to sign anything and I did. So, I would not get back, I did not get back into this until probably February, right after I got back from vacation.
Q. When did you get back from vacation?
A. I don't remember now, but around the 20th, probably.
Q. Then the deal closes, like, within a week.
A. Right.
Q. Did you consider it --
Well, withdrawn.
Was that a fast, was it a fast deal?
A. Very fast. And that was driven by Morgan. They wanted to do this very quickly.
Q. Did someone tell you that Morgan wanted to do the deal fast or Sunbeam wanted to do the deal fast?
A. I know Sunbeam did, but I was told that Morgan wanted to do it fast, too.
Q. Did someone from Morgan Stanley tell you that?
A. No. It was one of our guys repeating what Morgan Stanley told them.
Q. Who was that who told you that?

Page 99

A. I think it was either Nesbitt or Maher.
Q. What did Mr. Nesbitt or Mr. Maher tell you?
A. That Sunbeam was driving Morgan to get it done then and Morgan liked the financing markets then.
Q. So, Sunbeam was driving Morgan Stanley and Morgan Stanley thought the financing markets were time for this transaction?
A. Yes. We do that all the time. It was not unusual. You know, when you catch good financing markets, particularly in a transaction this size, you don't want to lose your market. February is historically a good time to finance this kind of paper.
Q. When -- the paper here we are talking about are the almost two point, I think it is -- 014 billion dollars worth of the debentures that were eventually issued?
A. Well, there was, the zero convert, which was the face of about two billion dollars, and then there was the bank loans, which were about a billion 7.

Page 100

Q. Thank you, you are right. There was a second component. That is what we are talking about, the financing?
A. Yes.
Q. All of that financing is interest rate-sensitive; right?
A. Sure.
Q. Did you -- well, withdrawn.
What is the first thing that you did when you got back from vacation, I think you said about February 20th, 1998, that relates to the Coleman Sunbeam transaction?
A. I got Maher and Nesbitt in my office, and I said, asked them where we were.
You know, tell me what is being done, where are the documents, where are Jerry and his team in connection with their due diligence. How is our business doing.
I think I talked to Jerry, probably to Paul about that.
Paul was my better contact inside Coleman than was Jerry. I talked to Paul a lot about it. Gave it to a partner of -- worked for me a long time.
Q. This is Mr. Shapiro?

Page 101

A. Yes. So, then, I said well, look, you better get Morgan and Sunbeam in to take you through one last time, take us, Dickes is telling me that the contract is going to be signed by the end of February.
I want to get one final run-through, where you guys tell me that you are satisfied.
And that led to the meeting which took place sometime after the 20th of February and before the 27th.
The result of that meeting was delivery to me of these Morgan Stanley books.
My question then was, did anything come up at the meeting that would lead you to conclude that the Morgan Stanley book was inaccurate.
He said, no, to the contrary, everybody is extolling the virtues of this company and what is going to happen and how great it is going to be. And I said Okay.
Q. Mr. Perelman testified yesterday that Mr. Levin told Mr. Perelman, that at least for the month of January Sunbeam's sales were soft.
Were you told that by Mr. Nesbitt or

NOT A CERTIFIED COPY

014796

Mr. Maher?
A. Yes.
Q. So, both Mr. Nesbitt and Mr. Maher told you that fact?
A. Well, one or the other, and it could have been Mr. Levin said that January sales were slow.
But that February was okay.
And they were going to make the quarter. The estimate for the quarter was very high.
Q. So, did you --
A. Not unusual in the consumer products company, a slow January, by the way.
Q. So, having, looking at -- I will show you now MS 84, which, I think, is, is one of the documents that we talked about earlier. I said that we will come back to it, and we will.
A. All right.
Q. I have handed you Morgan Stanley Exhibit 84, and you have that in front of you; correct?
A. Aha.
Q. If you will turn to the page, and I

am going to use the Bates numbered pages, and I will just use the last two digits for you, that are with CPH. Because there are no page numbers on these charts. Turn to 71.
A. All right.
Q. Now, in Mr. Levin' handwriting it says "Jan slow," and my understanding is that either Mr. Maher or Nesbitt repeated that to you when you spoke to one of the two of them?
A. It could have been Jerry himself.
Q. There is nothing written below February that I see -- but your recollection is that there was discussion about February was okay?
A. Right. At least that's what they told us.
Q. That's what they told you. You were not at that meeting?
A. I was not. That's what Sunbeam told our guys.
Q. They told them "Jan slow"?
A. January slow, February okay. We are going to make the quarter.
Q. We are going to make the quarter. Now, the quarter being what was going to

happen in the future, what was going to be the result by the end of March?
A. March 31st. But by -- February 23rd, most businesses, you know, what's going to happen by March 31st.
Q. At any point in time before the closing, did anyone from MacAndrews & Forbes' due diligence team, whether it be Mr. Levin's group or Mr. Nesbitt, Maher, ask for interim financial statements of Sunbeam for the month of January to see how slow they were?
A. I don't think so. I don't know if they did.
Q. You did not do that?
A. No.
Q. If anyone should have done it, it should have been Mr. Maher; right?
MR. SOLOVY: Objection to the form of the question.
A. It was not particularly relevant. If they are going to make the quarter, they are going to make the quarter.
Q. I asked you about January. At any point, up to the closing, did anyone from the MacAndrews & Forbes due diligence team ask

Sunbeam for its February interim financial statements?
A. No, I did not even know if they had them.
Q. Up to the point of closing, which the record will show is March 30th, 1998, did anyone on the MacAndrews & Forbes due diligence team ask Sunbeam for its interim financial statements for any month in 1998?
A. Not that I know of.
Q. Did they ask for an update foreclosing on where Sunbeam was for its sales for the first quarter of 1998?
A. Sure.
Q. Who asked?
A. I am sure Mr. Nesbitt did, because I asked him. Because, on March 18th they put this statement out, saying they are not going to make what The Street was projecting they are going to make for the first quarter. They were going to make more than last year.
Q. So, you --
A. That is not in terms of earnings, but it is in terms of sales. I see this press release, said -- well, Nesbitt, what's going

NOT A CERTIFIED COPY

014797

Page 106

on. Nesbitt, that day, March 18th, had been on the road, at the road show presentation. There was a road show presentation on the zero converts in New York, on the 18th.

I said, was there any indication of this that they are not going to make their quarter.

He said No, they are going to make their quarter and they are going to make their year.

I said, are you sure of that?

He said Yes, the release, I don't know what this is.

I had him call -- I don't know who he talked to at Morgan, but he talked to somebody.

And he said oh, the lawyers made us do this, this is silly, we are going to be fine.

Q. Mr. Nesbitt told you that he said the lawyers told him to do this?

A. Yes.

Q. You weren't on that call?

A. No. I was not on any of these calls.

Page 107

Q. So, Mr. Nesbitt would be the one who would know who he spoke to and what was said?

A. Yes, right. And I am not sure whether it was somebody at Morgan, but I think it was, or somebody at Sunbeam.

But the only person that you could talk to at Sunbeam was Kersh, and Kersh was in Boston making the same speech.

Q. You never attended any of the road shows?

A. No.

Q. Anything that you think you heard about the road shows came from someone else telling you what they heard?

A. Yes. I sent people -- it just doesn't happen by accident.

Q. Did you, did -- other than this conversation with Mr. Nesbitt, up to the point of closing, was there any other action taken by MacAndrews & Forbes' due diligence team, that you are aware of, to confirm what Sunbeam's sales were as of the date of the closing, March 30th, 1998?

A. No. Because we had a provision in our agreement which said that they are going

Page 108

to bring whatever, you know, adverse changes occurred to our attention, and nothing was ever brought to our attention.

Q. So, the answer is No?

A. No.

Q. When you spoke to Mr. Nesbitt, this was after the March 19th press release; right?

A. Yeah. The 18th, they were road showing in New York, the 19th in Boston. I spoke to him right, as soon as that thing came out.

Q. Did you ever, after you spoke to Mr. Nesbitt -- withdrawn.

Other than this conversation with Mr. Nesbitt, where you believe he spoke to someone at either Sunbeam or Morgan Stanley, did you have any other communications with him, with the MacAndrews & Forbes due diligence team about Sunbeam's results for the first quarter of 1998, before the closing?

A. No. I mean -- you got them on the road show, they are road showing it, two billion dollars worth of securities, you know, and telling the world that they are going to make their quarter, they are going to make

Page 109

their year.

What they are telling me. I have a provision and agreement that says that they are going to bring any material, adverse changes to my notice, and nobody is telling me anything, and they are telling the world, Morgan Stanley is sitting in the room, this is not Joe Jones, some two-bit street broker, this is Morgan Stanley.

Sitting in a room, letting this happen.

Q. You weren't in the room, just so the jury understands?

A. *The jury can understand,* I was not in that room.

Q. You don't know what was said, other than what you have been told?

A. I do know that had -- I have done a lot of road shows, okay. If they had told them that they are going to miss their quarter and miss their year, they would not have sold these securities, okay. These securities not only got sold, they were oversold.

Q. They were -- after the press release *was issued.*

NOT A CERTIFIED COPY

014798

Page 110

A. After the press release was issued. The press release did not raise a lot of hackles in anybody's mind.
Q. Do you know what the market did after the press release was issued on March 19th?
A. Yes, the market went off a few points.
Q. It went off almost 10 percent; didn't it?
A. Yeah, but it had been up so high, that is all right. That value of Sunbeam, when it went off the 10 percent, that was okay with me.
Q. It was okay when the market dropped 10 percent?
A. That was okay with me. I would have taken the Sunbeam stock at that price. That did not bother me.
You know, the stock was worth 43, 44, that is a good price of Sunbeam.
If you take a look at the transaction and you calculate out, you know what that would have meant to us, take it 14-million-0 shares, that was a nice price.

Page 111

It is above the 30 bucks a share that we wanted.
Q. Let's take this up to the -- withdrawn.
Did you speak to anyone -- strike that.
To your knowledge, did anyone on the MacAndrews & Forbes due diligence team, as you have described it, have CSFB make any inquiry of Sunbeam about its first quarter results following the March 19th press release?
A. I don't know.
Q. Did anyone on the MacAndrews & Forbes team due diligence team, as you have described it, and to your knowledge, make any inquiry of Arthur Andersen, Sunbeam's accountants, about how Sunbeam was doing for the first quarter?
A. I don't think we had any direct contact with Arthur Andersen, at least not that I know of.
Q. Are you aware of, you told me that you were familiar with debt offerings and road shows; is that correct?
A. Yes.

Page 112

Q. In connection with issuing debt, after, you are familiar with the underwriter receiving comfort letters from the auditors; correct?
A. Yes.
Q. At any point after the March 19th press release, did anyone on the MacAndrews & Forbes due diligence team request from Morgan Stanley a copy of the comfort letters that it would have received in connection with the underwriting?
A. No. Because I wouldn't believe that they had received the comfort letters which we discovered later in the Arthur Andersen litigation that anybody would have closed that -- or would have permitted us to close that transaction.
Q. I take it your answer is that you made no such request?
A. No such request.
Q. Comfort letters, the comfort letters that were received by Morgan Stanley just weren't from Arthur Andersen, they were also a comfort letter from the Coleman Company; correct?

Page 113

A. Right. The Coleman companies were fine, but the Arthur Andersen letters were not fine.
Q. The Coleman Company, in order for its auditors to issue a comfort letter that would have been requested of Ernst & Young by Coleman; correct?
A. Sure. The standard.
Q. Standard procedure.
A. Standard.
Q. Likewise, the standard procedure would be for Sunbeam to tell Arthur Andersen -- or request that Arthur Andersen, is probably a better term -- issue a comfort letter to Morgan Stanley covering the period since the last audited financial statements; correct?
A. Absolutely, one would expect, having received that comfort letter, that that transaction would have stopped then, right in its tracks.
Q. But, as I understand it, you were perfectly happy after March 19th to close the transaction, even at the lower stock price, even with the drop in the price of the Sunbeam

NOT A CERTIFIED COPY

014799

stock after March 19th?
A. Still over the 30 bucks a share, but I wouldn't have closed it if they told me what was going on. This was one of these gigantic frauds, the beginning of the gigantic frauds of the 20th Century.
Q. Did you know, at the time, that Arthur Andersen was engaged in a massive fraud at Sunbeam?
A. I don't think Arthur Andersen was engaged in a massive fraud. I think Sunbeam was engaged in a massive fraud that they did not find.
Q. Arthur Andersen did not find it.
A. Okay.
(The following portion has been deemed confidential and bound under separate cover.)

Q. Isn't it a fact that MacAndrews & Forbes, one of its entities, sued Arthur Andersen for fraud in connection with its audits?
A. Sure. And they paid us.
Q. And they paid you $70,000,000?
A. Yes.
MR. SOLOVY: Wait a minute. Pursuant to our contractual agreement with Andersen, I ask that you make that question and answer a separate document, mark it highly confidential.
(Continued in non-confidential portion of transcript.)

BY MR. BEMIS:
Q. Other than the meeting in February, the meeting that you, that Mr. Nesbitt and Mr. Maher apparently attended and collected the Exhibit MS 84 that you had in front of you and the other document, Morgan Stanley Exhibit 85 we looked at earlier, can you describe for the jury any other due diligence that the MacAndrews & Forbes team did after February 23rd -- which is, by the way, the date of that meeting, February 23rd --
A. Right.
Q. -- up to closing.
A. Not that I know of.
Q. Where were you on the date of the closing, which was, again, March 30th, 1998?
A. I have not the slightest idea.
Q. You remembered where you were on vacation. I thought you might remember --
A. No.
Q. Sometimes we remember those things.
A. No.
Q. Did you ever review any of the financial modeling that Mr. Nesbitt did in connection with the Sunbeam Coleman

transaction?
A. Sure.
Q. Let me show you one of the exhibits and I will ask you if this is the type of thing that you reviewed.
I will show you Morgan Stanley Exhibit 105.
Do you have Exhibit 105 in front of you?
A. I do.
Q. Have you seen this document before?
A. I don't remember seeing this before.
Q. Is this, though, the type of document that you saw that Mr. Nesbitt prepared as the analyst for the MacAndrews & Forbes due diligence team?
A. Yes, I probably would have seen iterations. This is too early, December 10th, 1997. I wouldn't have been looking at this document.
Q. Have you seen any documents like this that are dated after December 10th, 1997?
A. I don't recall.
Q. Okay.
That would have been Mr. Maher's

NOT A CERTIFIED COPY

014800

Page 118

responsibility to review those?
A. Yes.
Q. Were you working, by the way, during the January, February time frame, on the Panavision deal?
A. Um, I don't think I was particularly working on that. They all -- come to my desk, but -- I was not engaged in the discussions with Warburg Pincus, who were the -- or the seller there.
Q. What were you involved with in the January, February time frame on behalf of MacAndrews & Forbes?
A. Ah, I was spending an enormous amount of on the bank deal.
Q. The financing?
A. The bank deals.
Q. Oh, the bank deals.
A. Yeah. They were huge transactions for us, complex, and I spent a lot of my time on that.
Q. Were you working with Todd Slotkin on those?
A. Todd is the chief financial officer. He reports to me.

Page 119

Q. Which bank deals are you referring to?
A. Well, there was a continuum of bank transactions starting in 1992 or '93, when we acquired First Nationwide, which were a series of divestitures and a series of acquisitions, and a series of financings in connection with really good size, much larger transactions than these. And --
Q. Much larger than Sunbeam?
A. Yes. And we had a -- I spent a lot of time there. The bank was headquartered in San Francisco and I was going back and forth to San Francisco.
And I don't recall where this came in the continuum of the cigar business -- what you will find is that, as we were geared up, all of the operating companies report to Ronald. That is what his real interest is in, is in the operations of the companies.
But there are just too many of them, many times; and so, we will assign out various of the operating units to me and to Donnie Drapkin. So, like, Coleman was his, that's why he was on the Coleman board and I was not.

Page 120

The bank, cigar, um, they were my babies to watch.
So, as Ronald watched their operations, he needed some help, and that is what we are doing then. So, I did not get in the Panavision until two or three years later.
Q. Was that when Panavision ran into difficulties?
A. Yes. That is when I got into it.
Q. Do you get into, you get into difficulties when they get into difficulties --
A. Yes. A transaction that is going to happen or a financing that they are going to do or there is some difficulty, or the company is doing great, you don't see much of me.
Q. When you refer to the bank deals, you weren't referring to financing for MacAndrews & Forbes, you were actually referring to our own, into buying and selling of banks?
A. And the financing of that.
Q. I, at one point, thought you were referring to your term and revolving credit agreements.

Page 121

A. No. Revolving credit agreements with us are, you know, pretty standard. Todd does those. He will talk to me about that, but they don't take a lot of our time.
Q. Okay, you can hand back Morgan Stanley 105 to me.
A. All right.
Q. Let me show you two other exhibits, Exhibit 106, we will start with that, and I will ask you if you have seen that.
I have handed you what has been marked as Exhibit 106. Have you seen that before?
A. I don't know whether I have seen documents like this.
Q. This one is dated on January 26th, 1998, which, I believe, Mr. Nesbitt did confirm when he was deposed.
A. Sure.
Q. By the way, what is your opinion of Mr. Nesbitt as an analyst, having worked with him?
A. I think he is quiet good.
Q. What is his -- in your view, what is his reputation for honesty?

NOT A CERTIFIED COPY

011601

Court 9 67

Page 122

A. He is completely honest.
Q. And probity?
A. Quite high.
Q. Truth and veracity?
A. I think he tells the truth.
Q. We are done with that.
What is your opinion of Mr. Maher -- reputation for truth and veracity?
A. Very high.
Q. His reputation for probity?
A. The same.
Q. I will show you one more document, similar to what we have been looking at, and then we will be done with these.
A. Aha.
Q. I have handed you Exhibit 107. Have you seen that one before?
A. I am sure I have seen a document like this. Whether it is this one or some other iteration, I can't tell you.
Q. Is this the type of internal analysis that you would expect to see from a Mr. Nesbitt in connection with the, a merger like the Sunbeam Coleman merger transaction?
A. Sure.

Page 123

Q. Okay.
A. You notice the one you showed me previously, assumed -- ah -- synergies of 100,000,000. This one assumes synergies of 150. As I told you, Mr. Dunlap told me it was going to be 250, but we were not as bullish as he was.
Q. Okay. You can hand that back to me, and we are all done with that.
A. Aha.
Q. Thank you.
Are you aware of any interviews of Sunbeam's customers such as a Walmart or a K Mart, during the due diligence that was conducted by the MacAndrews & Forbes team before the closing?
A. No. That would have been done by the Coleman team themselves. Jerry Levin is the one that would have the contact with those customers.
Q. Are you aware of Mr. Levin making any contacts with Sunbeam's customers as part of the due diligence?
A. I know he made contact with the customers. Whether it was before or after

Page 124

closing, I don't know.
Q. In advance of the -- before the closing on March 30th, are you aware of any meetings by the MacAndrews & Forbes due diligence teams with analysts that were following Sunbeam?
A. I don't think so.
Q. I said meetings. I would ask you the same question with regard to just conversations on whether they be face-to-face or on the telephone.
A. I don't know the answer to that, because I know Jerry, for instance, had a very good relationship with Andy Shore.
Q. That is Jerry Levin?
A. Yes. And whether he talked to Andy or not, I don't know.
Q. Did you --
A. Jerry also had a good relationship with Conney Maneatty, who, I think, was covering them, as well. I don't know the answer to that.
Q. Was there a procedure by which Mr. Perelman was kept advised of the status of the negotiations between Sunbeam and Coleman

Page 125

prior to the closing?
A. Well, if he doesn't sign off on price, no one else can. So, he is, has to be aware of price, and he would be aware of the terms -- that is, how much cash, how much stock. He has the final say on that, not me.
And he would be advised -- that you have to understand, we are a very small organization, and he walks the halls, you know; so, it is my office or Maher's office or Jerry had an office up on the 5th floor. It is only a five-story building.
Ronald was there and out of everybody's office, but nobody had authority to negotiate that price if he did not give them.
Q. What about the structure of the transaction? Did anyone have authority to negotiate the structure, other than Mr. Perelman?
A. He wouldn't negotiate it himself. He would instruct his negotiators as to what he was willing do, and it was their job to negotiate then with Morgan.
Q. Did you receive from Mr. Perelman

NOT A CERTIFIED COPY

011802

Page 126

any instructions, that you can remember, about the structure of the consideration that he wanted in the transaction?
A. He wanted stock.
Q. All stock, if he could get it?
A. Yes. Aha.
Q. Did he tell you why he wanted all stock?
A. He believed Morgan.
Q. He believed Morgan.
Did he believe in Sunbeam?
A. Well --
Q. Did he tell you that he believed in Sunbeam?
A. He believed in what Morgan told him about Sunbeam.
Q. Did he believe in Mr. Dunlap?
A. Look, Dunlap had a great record up to that point. It is hard to argue with the record. He did not implode until far after that, until this deal.
Q. Why did the transaction then eventually result in not all stock -- that is, some cash and some assumption of debt?
A. Because Morgan wanted to close the

Page 127

deal right away. They couldn't give us more than 19.8 percent of the stock without going and, without getting New York Stock Exchange approval, which requires time, and they did not want to take the time. That's what set the cap on the stock that we could get.
Q. You say Morgan wanted to close. Did Sunbeam, in your understanding, want to close to the client --
A. Sure. I said that before, absolutely. They both wanted to close right away. They did not want to go to the Stock Exchange, which would have taken time. So, that put the cap on the amount of stock that we could get.
Q. It was that issue that caused Mr. Perelman to take less than 100 percent stock?
A. Yes.
Q. If he could have taken 100 percent stock, he would have?
A. He would have.
Q. Did you ever encourage -- strike that.
Did you ever suggest to him that he

Page 128

should not do that, that he should take cash?
A. That is irrelevant. That is why he is richer than me. I would always take cash, but he is far more bullish than I am.
Q. Do you remember Mr. Levin, were you ever present when Mr. Levin said words to the effect that he, Mr. Perelman, should take as cash and not stock?
A. I don't recall that. At least, it was not in my presence.
Q. I take it, given the 1998 markets being what they were, there was more upside in stock than in cash?
A. Ronald certainly believed so.
MR. BEMIS: Let's break for lunch.
MR. SOLOVY: Sure.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: The time is 12:29 p.m. and we are going off the video record.
(Luncheon recess: 12:29 p.m.)

Page 129

AFTERNOON SESSION
1:47 p.m.
H O W A R D G I T T I S, having been previously sworn, resumed the stand and testified further as follows:
CONTINUED EXAMINATION
BY MR. BEMIS:
THE VIDEOGRAPHER: Stand by.
MR. BEMIS: On the record.
THE VIDEOGRAPHER: The time is 1:47 p.m., and we are back on the video record.
EXAMINATION (cont'd)
BY MR. BEMIS:
Q. I am handing you Morgan Stanley Exhibit 75, which has been marked in previous depositions. It is A chronology that was prepared by Wachtel -- the Wachtel Lipton firm and submitted to the SEC.
I have just a couple of questions about meetings that you are shown to have attended, and the first one is on December 16TH, 1997, and if you could turn to that, and let me know when you are there.

014803

NOT A CERTIFIED COPY

Page 130

A. All right. I have no recollection of either the 16th or the 17th meetings. I am sure it was just to get me prepared for the meeting of the 18th.
Q. I will ask your indulgence. I will ask a question and if you want, you can give the same answer.
A. Go ahead.
Q. There is a reference to you attending on December 16th, 1997, a meeting with Mr. Perelman, Mr. Maher and Mr. Levin and others. Do you have any recollection of that meeting?
A. No.
Q. There is also a meeting on December 17th, which includes Mr. Perelman, Mr. Maher, Mr. Shapiro, and representatives of CSFB were also at the December 16th meeting, according to this document.
Do you recall the December 17th meeting?
A. No.
Q. Was it at one of these two meetings that you would have received the brief analysis, as I think you described it, of the

Page 131

analysts' views of Sunbeam?
A. Yes.
Q. That would, then, be consistent with what you recall. You had this analysis when you met with Mr. Dunlap on December 18th; correct?
A. It was not an analysis of what the analysts said. What it was is using numbers for '97, '98, contained in the various analysts' reports. Know -- knowing what we did about the Coleman earnings for '97, '98, at what price could Sunbeam do a transaction and not dilute their common stock.
Q. And it is -- did you have any -- withdrawn.
Did you have any role in retaining CSFB?
A. Um, I don't recall now whether it was Maher or myself. I am sure we talked about it.
Q. Why did you select CSFB for this transaction?
A. Well, if it was me, it was because I had a lot of confidence in Gordon Rich. Gordon Rich was just a wonderful, wonderful

Page 132

banker.
Q. Were you present at any time CSFB was given any instructions with regard to what they were to do after being retained by Coleman?
A. Um, I don't know whether I was present or they simply conveyed my wish to look at the dilution analysis, prior to my meeting of the 18th.
Q. Do you know what CSFB was tasked to do after the resumption of discussions among the parties sometime in January, 1998?
A. No. They were being driven by Maher at that point.
Q. Okay. Did you ever see a draft press release that Sunbeam prepared in December announcing the merger of Sunbeam and Coleman?
A. December '97?
Q. Yes.
A. No.
Q. I will show you what has been marked as Morgan Stanley 418.
A. Thank you. Can I give you this back?

Page 133

Q. Yes, you may.
A. All right.
Q. I have handed you what we marked, I think it was yesterday, at Mr. Perelman's deposition, Exhibit 418, which is a draft press release dated December 22nd, 1997, entitled "Sunbeam Corporation announces combination with Coleman Chairman Al Dunlap, commits to multi-year contract extension."
Have you ever seen this before?
A. No.
Q. At any point at the December 18th meeting at Mr. Perelman's house, did Mr. Dunlap ever suggest to you that he had gone so far as to consider issuing a press release of the announcement of the merger?
A. No.
Q. This is the first time you have ever seen this document?
A. The first time I have ever seen it.
Q. I am going to hand you what we looked at a little bit earlier, which was Morgan Stanley Exhibit 85. I told you we would come back to that.
A. Yes.

NOT A CERTIFIED COPY

011804

Q. Now -- this is the time -- you have a copy over there.
I will put this one back.
What I would like you to do -- my understanding is that, from your prior testimony today, is that you did receive a copy of this document from either Mr. Maher or Mr. Nesbitt, following the meeting that we have been talking about, which the record will establish was February 23rd. Am I correct?
A. That is correct.
Q. And that you reviewed this document sometime thereafter; is that correct?
A. That same day.
Q. Okay. Or did you get it -- did you get it on -- in the evening or during a normal business day?
A. I don't remember.
Q. Okay. Whatever day it was, you received it is when you reviewed it?
A. Yes.
Q. I would like you to just walk through the document with me, and you will have to use page numbers.
A. Sure. Okay.

Q. One at a time.
And tell me, if you would, any page number that you read, relied upon and believed Morgan Stanley, assuming Morgan Stanley presented this information -- that it was false, at the time that you read it, on or around February 23rd?
A. Aha.
MR. SOLOVY: I object to the form of the question. I think it is a little ambiguous, if you read it back, Mr. Bemis. It seems to imply that when he read it, he knew it was false. That's my problem with the question.
MR. BEMIS: I will stand on the question.
MR. SOLOVY: Okay.
A. Could you repeat the question.
Q. Sure, I will read it back. Would you please, going page by page, in Morgan Stanley Exhibit 85 -- tell me which page, which pages you read that you relied upon and believed at that time, that is February, 1993, were -- now I have to rephrase the question. Withdrawn. I will ask it one more time.

Is there something funny? If you would look, again, at MS 85, there is going to be page numbers in the lower-right-hand corner. CPH page numbers.
A. Yes.
Q. Those are the numbers that we will be referring to.
Looking at each page of the document, one page at a time, would you tell me which of those pages you read and relied upon and that you believed Morgan Stanley knew, in February of 1993, were false?
A. Okay, let's start with page 224, that is the CPH number.
Q. If you give me a chance, I will get there.
A. Okay.
Q. I am there.
MR. SOLOVY: Let's see what page that is. Where are you reading the numbers from?
THE WITNESS: The side here. Right on the side here.
MR. SOLOVY: I see. 224. Sorry.
A. The majority of the restructuring

plan was completed in the first quarter of 1997.
And I expected the resultant cost savings to be 225 million, of which 75 percent are -- expected to be realized in 1997 and the balance in 1998.
I relied upon that. I expected it to be true.
I found out later that it was not true.
Q. May I ask you: Do you have any facts to support a statement that Morgan Stanley believed that statement to be false in February of 1998?
A. Well, if they did not, they should have known. They had been working on this company for nine months at this point.
Q. Other than what -- sorry?
A. If they did not know that, they did not know anything. When they present this to me, I expect them to believe that it is true.
They had to know this was not true. They had to know that.
Q. Do you have any facts, other than what you think they should have known, that

NOT A CERTIFIED COPY

014805

Page 138

would tell you that they knew it was false?
A. No.
Q. Please continue.
A. Page 226.
Q. Yes, sir.
A. The consolidated net sales number for 1997.
Projections for '98 and '99.
I relied upon. Morgan Stanley certainly by the time of um, the comfort letters knew that was inaccurate, and couldn't be met.
Q. Before you move on, the figures for 1997 -- may I ask you -- that you referred to, those figures are footnoted as being taken from Sunbeam's annual report; correct?
A. Right.
Q. Do you have any facts that you can tell the jury that would support a conclusion that Morgan Stanley knew in February of 1998 that the sales figures in Sunbeam's audited 1997 financial statements were incorrect?
A. Well, they did not have the audited statements yet. Because this was, the earliest, February, they did not have the

Page 139

audited statement yet, I don't think. For 1997. Then they had to know they were false.
Q. How is it that, what facts do you base that upon?
A. Because once we got into the numbers, as they had, spending months doing, and they had to reset all these, all these numbers were changed.
Q. When were they changed?
A. They were changed by the year 2000. It took us that long to get a financial statement here.
Q. Wasn't it in late 1998 when Arthur Anderson -- when the restatement was done?
A. The restatement was done in '98, but they wouldn't issue a certified financial statement then.
Q. Wasn't it, was it not until -- excuse me. When did Arthur Andersen withdraw its opinion on the 1997 financial statements?
A. Sometime mid June.
Q. Of 1998?
A. Of 1998.
Q. When did Arthur Andersen withdraw its opinion on anything related to the 1996

Page 140

financial statements of Sunbeam?
A. Sometime subsequent.
Q. In June of 1998, right?
A. Sometime subsequent.
Q. Sometime subsequent to February 23rd, 1998?
A. Absolutely.
Q. With regard to the projections going forward that you mentioned, those are also footnoted as being projections from Oppenheimer, an Oppenheimer research report; correct?
A. Yeah, that doesn't excuse them. They were -- are being presented to me by Morgan Stanley as being accurate.
Q. Did you ask anyone from Morgan Stanley or the MacAndrews & Forbes' team to see the Oppenheimer research report?
A. No. I am sure we had that.
Q. You are sure you had it?
A. I am sure we had it.
Q. Would you continue for me, please.
A. The consolidated profitability statistics, as shown on page 227, which shows net income in '97 of 123 million, in '98 of

Page 141

199 million -- and in '99 of 253 million.
Q. Notes to those figures say they are based on projections from Oppenheimer Research, which you said you had; correct?
A. Right, and they excluded any one time for extraordinary charges.
Q. Would you please continue.
A. Page 231. Stated growth objectives of Sunbeam.
To double without acquisition, '96 sales of 984 million, to two billion by 1999, implying compound average growth at about 27 percent.
Q. Which is what it says?
A. That's what it says; right. But Morgan Stanley should have known that was impossible to obtain.
Q. And did you understand objectives to be something to be achieved in the future when you read this?
A. Sure.
Q. Did you ask Morgan Stanley any questions about the figures that appear on this page, 231?
A. I know Mr. Levin did.

NOT A CERTIFIED COPY

011806

Page 142

Q. Mr. Levin did.
A. Tripling international sales from 185 million to about 600 million in '99, compound annual growth rate of about 48 percent.
Q. Again, that was an objective through the year 1999?
A. That is an objective through the year 1999, but when Morgan Stanley presented it to you, they are adopting that thing. This is what we are going to get done.
Q. You read this stated growth objectives as a representation by Morgan Stanley that in 1999 Sunbeam would be able to achieve these results?
A. If Morgan Stanley thought that they were false, they would not have presented these, or they shouldn't have presented them.
Q. Go ahead, please continue to the next page, sir, that you -- that, as you worked through document.
A. Page 234, the future growth opportunities.
Again, dealing with very significant international growth -- the same number, 185

Page 143

million to 600 million.
Then they said they were going to introduce 30 new products a year -- shortening the product development time to six months, from two-and-a-half years, generating an additional $300,000,000.
Morgan Stanley had to have known that they weren't, did not have that many products on the board, you can't generate those products that fast enough.
Q. Do you know that Morgan Stanley knew that or are you just assuming that they had to know that?
A. I am assuming that they had to know that.
Q. Okay. Please continue.
(Pause.)
A. Then there is a whole page on the allergy smart air cleaner, page 237, which we thought -- we thought it was going to be a great product.
Q. Who was that telling you that?
A. Morgan and Sunbeam.
And certainly by June they knew this product was a failure. I don't know if they

Page 144

knew it in February. I can't say that they did.
Q. We are talking the year 1998 when you said February and June; correct?
A. Yes.
Q. Okay. Please continue.
A. Then --
Q. Before we move on, if I can interrupt you one second. Have you, in your many years of business experience, ever known to have a company develop a product that they felt was going to be a big success and turned out to be a failure?
A. Oh, sure. But they were so sure about this one, of all of the 30 new products, this one and one other were the ones that they were relying on.
Q. Do you think that Ford was sure about the Edsel when it marketed it?
MR. SOLOVY: Objection to the form of the question.
A. Probably was.
Q. You can answer.
You did.
And you may continue.

Page 145

MR. SOLOVY: Did you buy any Edsel stock?
MR. BEMIS: I was too young, Mr. Solovy.
MR. SOLOVY: Me, too.
A. Then the operational improvement which we thought had been accomplished because they told us it had been.
Q. What page are you on, sir?
A. Page 240.
Q. Let me get there. Give we one second. I am there. Page 240.
A. Yes.
Essentially, what they are saying to you on this page is that we have now cleaned up our service operation so that we are gaining market share and we will do that because we are, you know, fulfilling our orders, you know, efficiently and on timely.
Q. Do you have any basis to know that any of these service improvements in the potentials here, that Morgan Stanley knew that they were false on February 23rd?
A. By April, by April we knew that they were false, because they were screwing up the

NOT A CERTIFIED COPY

01480

Page 146

Coleman part of it.
We did not find out there was, that they were screwing up the Sunbeam part of it until June, when we got there.
Q. So, as of February, at least, 1998, you don't have any basis to say that Morgan Stanley knew that these statements were false?
A. When you say that -- what I am saying to you is, if Morgan Stanley, after being there for nine months, did not know this, they weren't doing their job right.
Q. Would you please continue.
A. Then the channel management case, I did not really pay a lot of attention to that.
Q. That was on page 241; right?
A. Yes. The worldwide organization post chart, post merger, looked okay to us. We did not know very many of these people.
Then, when we got there, you know, half of these people were gone.
Q. When you say when you got there, you mean in June of -- excuse me.
A. By April, Uzzi, who is the chief operating officer, he was gone by April. Fannin, you know, he is ratting out, you know,

Page 147

senior management, Dunlap and Kersh, by June.
Q. Mr. Fannin never left the company?
A. He left.
Q. Not during this time period?
A. No. He left the company subsequently.
Q. After June?
A. After June. By June he is already telling them that there is a gigantic fraud going on.
Q. Let's focus on the period February. Was this chart, as you knew it, accurate in February of 1998?
A. I don't know. I am not sure that Debbie McDonald was still there. She left right around then.
Q. Do you have any facts to support, just as an example, the conclusion that Morgan Stanley knew Mr. Uzzi would be terminated on or about April 3rd, 1998?
A. Yes. I think so, because, you know, when they got the comfort letter, the person they talked with, Morgan Stanley talked with was Uzzi. And then, thereafter, when they talked with Dunlap and Kersh, they blamed all

Page 148

this on Uzzi and they were going to fire him.
Q. Could I ask you to, please, refer back to February, that is the question.
A. February 23rd, no.
Q. As of February 23rd, 1998, you don't have any basis to say that Morgan Stanley knew Mr. Uzzi was going to be fired in April; correct?
A. No. It was not until March.
Q. Okay. You can continue.
A. Summary of recent analysts commentary.
Q. What page is that, sir?
A. Page 248.
Q. I am --
A. Something about the sign-in agreement with Nuskin to help distribute its fresh source water product in Asia. The source being CIBC Oppenheimer, CSFB Oppenheimer may have said that. I can't believe that Morgan Stanley did not know that that had happened and wasn't.
Q. It is quoted as being a source from CSFB?
A. Slightly right. You can't excuse

Page 149

what you are presenting to us by saying it is a source of somebody else and I don't know, and I don't know anything about it. That is not what I expect from Morgan Stanley or any other investment bank.
Q. Did you ask CSFB, your investment bank, to check this representation?
A. I did not have to, because Morgan Stanley is presenting it to us. Do you think that they are going to lie to us?
Q. You did not ask CSFB, then, to investigate this statement?
A. I did not.
Q. Okay.
A. "Sunbeam has 20 signed distribution and license agreements so far in 1997. By expanding into new SKUs in Latin America, the company can leverage the Oster brand into new revenue streams."
This is nonsense, nonsense. It was not true.
It is true -- that was right.
Q. This statement that you read is in quotation marks, and the source is given; correct?

NOT A CERTIFIED COPY

0148

Page 150

A. Exactly. Again, it is Oppenheimer, but what does that have to do with it; it is Morgan Stanley giving it to us. If it was not true, they shouldn't have given it to us.
Q. Again, you did not ask your investment banker, CSFB, to investigate this statement?
A. I did not.
Q. Neither did anyone on the MacAndrews & Forbes team, to your knowledge?
A. Not to my knowledge.
Q. Please continue.
A. One of my favorites, "Sunbeam overview of the outdoor cooking devices industry."
Q. What page are you on?
A. I am on page 252.
Q. Okay. What about that?
A. They are talking about the grill business. Gas, charcoal, electric grill.
And they are telling you about all of the growth opportunities. Okay.
Q. Yes, the opportunities.
A. Right. And what they are saying here is, these are the opportunities that this

Page 151

great Sunbeam company has. They did not tell you that Sunbeam had been thrown out of either Home Depot or Walmart, I don't remember now, in the accessories business, in the most profitable part of the grill business.
Q. When did that happen?
A. Before February 23rd. The Morgan community did not bother to tell us that.
Q. Are you telling me that you know that Morgan Stanley knew that?
A. If they did not know, they should have known.
Q. Go ahead.
A. Also, when we got there in June we got an anonymous tip to go down and look in June, sometime after we sent our people down there in June of 1998 to the Tulsa air -- a little airport in Tulsa, we found a million square feet of rented space by Sunbeam filled to the gills with grills.
Q. Had this been reported in Sunbeam's annual report audited by Arthur Andersen?
A. No. And sure wasn't told to us by Morgan Stanley, either.
Q. Do you have any facts to support a

Page 152

statement that Morgan Stanley knew about this warehouse in February, in Tulsa, that you received information on by way of an anonymous tip?
A. No.
Q. Did you ever hear that Morgan Stanley received an anonymous tip to go look at this warehouse in Tulsa?
A. I don't know whether they did or not.
Q. Please continue. Is there anything else on this page, 252?
A. Well, that was enough for the grill business.
Q. Okay. Please continue.
A. Then they go through a whole series of summaries -- analysts; commentary. The reason they are telling you that is that they are vouching for it. They are not telling you this is what all of the analysts are saying but it is false, we have been here for nine months.
Q. So, you were on page 255?
A. I was going through all of those pages, with respect to the analysts'

Page 153

commentaries.
Q. Let me make sure that I get those.
A. 255, 254. 255 is the best one.
Q. 255.
A. Yes.
Q. Okay. Please continue. You last stopped on page 255. You should go forward.
A. 259 is just repeating what they had said before. I already commented on that.
263, again, talking about shortening the product development frame from two and a half years to six months. Again, about the, open air, purification and grill business. 30 distinct products a year. Launching.
Again, not attributed to any analysts, but this is what Morgan Stanley said.
Q. These are under the heading, if you will, "new product initiatives"?
A. That's right. And they continued to go.
Q. Please turn to, give me the next page that you find --
A. 266, the water fresh source water purifier. This was a hot new product,

NOT A CERTIFIED COPY

608110

Page 154

according to Morgan Stanley. The only problem is that it did not work. It did not work.
Q. Where did Morgan Stanley tell you that the product did or did not work? When did --
A. Well, they certainly represented it to us on February 23rd, that this was a hot new product.
Q. You weren't there on February 23rd; so, are you just talking about what's in this document?
A. Yeah. Of course. Why do you think they put it in the document for? They did not put it in the document because it was a failure.
Q. What else, sir?
A. They go through the international expansion again.
Page 270, "management goal tripled international sales from 185 million to 600 million."
Q. That is stated as a goal; correct?
A. Stated as a goal.
Q. Okay. You may continue.
A. Morgan Stanley -- they knew, or

Page 155

should have known, they were incapable of doing that.
Q. Please continue.
A. If you look at page 274, you see what their opportunities were for growth, particularly in Asia. They go from 3 million in '96 to 150 million in 1999. Morgan Stanley knew, or should have known, that they were not capable of doing that.
Q. Again, these are -- what you are referring to are projections of what are described as global opportunities and market potential; correct?
A. Right.
Q. All right. Please go forward from page 274.
A. This whole series of pages which deal with the channel management opportunities, what they are doing here is saying look, here is how we can manage these channels, improve -- improve our sales and profitability.
We certainly thought that was a worthwhile objective and thought it was possible to have happened. Someone who had

Page 156

been servicing this company for nine months should have known that they were nowhere in trying to get that project completed.
Q. You were referring to pages 79 --
A. Right, up through 82.
Q. -- through 82.
A. Then, page 293, the marketing licensing and merchandising opportunities.
And the point that licensing presents an immediate profit opportunity. Everyone agrees with that.
They should have known, or did know that, at that point, Sunbeam had virtually no licensing projects going forward.
Q. That is under the heading "Make Versus License Decisions."
A. Yes.
Q. Please continue.
A. I think that is it. Thank you.
Q. Thank you, sir, for taking the time to do that for me. Get that assembled.
Two of the products that you pointed out for us, one was the, I want to call it the air cleaner, but I think it is the air filtration system?

Page 157

A. Air purifier.
Q. Air purifier. Did you, at any point during the due diligence, see one of those units?
A. I did not.
Q. Do you know if anyone did on your --
A. Yes, I am sure the Coleman people did.
Q. When you say you are sure, do you know that they did?
A. They told me that they did.
Q. Who told you that?
A. Now, I can't remember which one of them.
Q. Did they tell you that it wouldn't work?
A. No.
Q. The other device that you identified was, I think, a water purification system?
A. Right.
Q. Did you see that device?
A. No.
Q. Did you ask to see it?
A. No.
Q. Are you, did anyone on the

NOT A CERTIFIED COPY

011810

MacAndrews & Forbes team of due diligence see the device?
A. I am sure the Coleman people saw that, probably --
Q. Sorry.
A. Pretty sure.
Q. You are sure that they did. Did someone tell you that they did?
A. Yes.
Q. Who was that?
A. I can't remember.
Q. Did the person who saw it and told you that they saw it tell you that it wouldn't work?
A. No.
Q. Did they tell you it worked?
A. We just presumed that it worked. The question was would it sell.
Q. Okay. Of all of the pages that you identified, and I wrote them down as you went through -- and I will list them out for you, and I don't expect you to follow through if you don't want to -- you listed CPH 1411. 224. And then 226, 227, and 231. 234, 237, 240. 242. 248. 252.

255. 259. 263. 266. 270. 274. 279 through 282, and 293 -- did you ask CSFB to perform any investigation of the matters set forth on those pages?
A. No.
Q. Did anyone on the due diligence team of MacAndrews & Forbes?
A. I don't know.
Q. That would be Mr. Maher, would know that?
A. Maher and Mr. Nesbitt, or the Coleman people.
Q. Okay. Let me set this aside.
A. All right.
Q. In the final contracts which I will hand to you, which are Morgan Stanley 193 and 117, did you review, at least in draft form, those contracts before you approved them?
A. At some point, yes.
Q. Each of those contracts, which I will refer to as the merger agreements, contains representations and warranties; correct?
A. Sure.
Q. Those were negotiated by the parties

before the agreements were finally signed; correct?
A. Aha. Yes.
Q. All right. Is there any representation in the warranty, in either Morgan Stanley Exhibit 93 or 117, that anything said at the February 23rd meeting was a representation and warranty about Sunbeam, or any other matter going forward after the signing of the documents on February 28th, 1998?
MR. SOLOVY: Objection to the form of the question.
Q. You can answer, sir.
(Pause.)
A. Can you repeat the question, please.
Q. Sure.
Is there any representation or warranty in either Morgan Stanley Exhibit 93 or 117 that anything said at the February 23rd meeting was a representation and warranty about Sunbeam going forward after the signing of the documents on February 28th, 1998?
MR. SOLOVY: Objection to the form of the question.

A. Well, there is the usual provision that all of the SEC filings which incorporate all of the stuff on the pre-98 financials were correct. They were actually false.
Q. Those are Sunbeam's financial filings that you are referring to?
A. Of course, yes.
Q. Anything else? I think you are referring to Morgan Stanley Exhibit 117 right now, for the record.
A. Section 4.7, which says the absence of certain changes and events.
Since there has been no change -- event change or development with individual in the aggregate has had, that would reasonably be expected to have, a -- material adverse effect.
Q. Sir, these are, these are represetntations in 4.7 of Coleman to Laser.
A. Well, I promise you that in the agreement that you will show me next, there will be the identical representations made by Sunbeam to Coleman.
Q. All right. Maybe we can shortcut this to save you some time, I know your time

NOT A CERTIFIED COPY

01581

Page 162

is valuable. Whatever the parties negotiated in terms of representations and warranties were reviewed by you; correct?
A. I am sure I read them, yes.
Q. When you read them, you read them with the idea that someone from MacAndrews & Forbes was going to sign the document; correct?
A. Sure.
Q. And being a transaction in the billions of dollars of value, it was an important matter for you and for the people signing the document to understand what was in it; correct?
A. Absolutely.
Q. And it was a negotiated document; was it not?
A. Of course.
Q. And at least in the negotiations you both had lawyers who reviewed the documents before they were signed; correct?
A. Sure.
Q. You both had investment bankers before the documents were signed; correct?
A. Absolutely.

Page 163

Q. And you both had -- that is, both companies had an opportunity to do whatever due diligence they chose to do before signing the documents and, indeed, closing the transaction; correct?
A. Right.
Q. Why don't you hand me those back. We are all done with those.
(Pause.)
Q. Now, earlier you told me that had you known the information that was in the Arthur Andersen comfort letter that was issued to Morgan Stanley in connection with the issuance of the debentures, that had you known that information, you would not have proceeded with the transaction; correct?
A. That is correct.
Q. I take it that means you would have terminated the transaction?
A. Yes.
Q. Okay. Did you see the 10-Q that Sunbeam filed in May of 1998, which set forth the actuals of both sales and income or loss numbers for the first quarter of 1998?
A. I don't recall now whether I did or did not.

Page 164

Q. Let me show you what has been marked as Morgan Stanley Exhibit 281.
A. All right.
Q. I would like you to look at page -- well, first of all, I will ask you: Do you have Exhibit 281 in front of you?
A. I do.
Q. Now that I have given it to you, do you recall whether you saw it sometime in 1998?
A. No.
Q. Okay. The figures that I would like you to look at are on the page numbered 2, under the heading part 1, financial information.
And the first item there is net sales. Do you see that?
A. Yes.
Q. The figures for March 30th, 1997, the first quarter, are listed as reported to the SEC by Sunbeam as 253 million -- 450 thousand; correct?
A. Correct.
Q. And then, the actual sales, or --

Page 165

excuse me, the sales recorded, reported for the period March 31st, 1998, are $244,296,000; correct?
A. Correct.
Q. Had you known this information on March 30th, '98, would you have closed the transaction?
MR. SOLOVY: Objection to the form of the question.
Q. Sorry.
A. No.
Q. With regard to the net earnings, which are shown both from continuing operations and before extraordinary charge, basic and diluted, do you see those figures there?
A. I do.
Q. Would you have closed the transaction, had you known of those figures?
A. No.
MR. SOLOVY: Objection to the form of the question.
A. No.
Q. Now, Sunbeam, and I will show you next Exhibit 282. You can hand that back to

NOT A CERTIFIED COPY

Page 166

me.
A. All right.
Q. This document is in a little different format, since it was printed directly from Edgar, I believe. You have seen documents printed in this format from Edgar; is that right?
A. Yes.
Q. Have you seen this document before, which is a 10QA, for the period ending March 31st, 1998, for Sunbeam?
A. No.
Q. You know what a 10-QA is; don't you?
A. No.
Q. Do you know what a 10Q is?
A. Yes.
Q. The "A" means amended.
A. All right.
Q. This document, if you will turn to page 11, and I have to make sure that I give you the right 11; so, let me turn to it, because there are two sets of numbers on the pages here. It will be the 11 at the bottom of the page.
Tell me when you are there.

Page 167

A. Yes.
Q. Are you there?
A. Yes.
Q. It is under the number 8, "restatement," and then there is the condensed consolidated statements of operations.
A. Aha.
Q. Do you see that?
A. Sure.
Q. Now, would you have, I don't want, I want you just to focus on the restated numbers.
A. Aha.
Q. First, looking at net sales, the net sales figures restated are $247,601,000 dollars, which is a difference from what was originally reported of 252,488,000. Do you see that?
A. Sure.
Q. If you had known the restated numbers --
A. That is not -- no, that is what the previous quarter had been the previous year.
Q. Yes, but I am --
A. It had previously been 253 and 244

Page 168

in '97 and '98. Now it is 252 and 247.
Q. Maybe I misspoke. I will try again.
There are figures for both the, there are is figures for 1998 which are both as previously reported, and I did misspeak, now that I look at this. My eyes are --
A. As bad as mine.
Q. I was going to say that, but I thought I shouldn't say that.
If you look at the column under March 31st, 1998, there are figures of both as previously reported, that is in Exhibit 281 that we looked at, and then the restated numbers; do you see that?
A. Sure.
Q. That includes both net sales and net earnings, whether at profit or loss; right?
A. Yes.
Q. If you had seen the restated figures, had they been provided to you as of March 31st, 1998, would you have, would MacAndrews & Forbes have closed the transaction?
MR. SOLOVY: Objection to the form of the question.

Page 169

A. No. Because the difference is really greater than that. You know, the '98 numbers include -- extra days of sales and about 14-and-a-half million dollars of Coleman sales. If you take those out, that is really the difference between 252 and probably around 230.
Q. You are telling us that you wouldn't have closed the transaction?
A. Absolutely not.
Q. Okay. Hand that back to me, please.
A. All right.
Q. If you had proceeded not to close the transaction as of March 30th, 1998, as I understand your prior testimony, there was no other prior suitor out there that you are aware of?
A. Right.
Q. And would you have expected Sunbeam's stock to -- excuse me, Coleman's stock to have dropped, if there had been an announcement that the merger was not going to go forward?
MR. SOLOVY: Objection to the form of the question.

NOT A CERTIFIED COPY

011313

Page 170

A. Probably, but that is not important to us.
Q. It may not be important to you, but you would expect the stock to have dropped?
A. Ordinarily, sure.
MR. SOLOVY: Objection to the form of the question.
Q. Leading up to the point of the time of the closing -- excuse me, from the point of announcement -- excuse me, I will withdraw the question.
At the time that the transaction was announced, I think it was March 3rd, 1998, Coleman stock did run up; did it not?
A. Sure it would, on the basis of the transaction.
Q. Because Sunbeam was paying approximately a 44 percent premium over market for Sunbeam's, excuse me -- for Coleman's stock?
A. That is correct.
Q. Would you have expected Sunbeam's stocks -- excuse me, Coleman's stock, after an announcement that the merger was not going forward, to drop in the marketplace to a level

Page 171

approximating where it was before?
A. Sure.
Q. The announcement --
MR. SOLOVY: Objection to the form of the question.
A. That is exactly what I would have expected.
MR. SOLOVY: Objection to the form of the question.
Q. Where was Coleman -- withdrawn. I am done with that.
Did you see Sunbeam's annual report on form 10K for the year 1997 before the closing?
A. No.
Q. Did you see the offering memorandum for the debentures that Morgan Stanley underwrote in connection with the transaction?
A. I did.
Q. Did you read it?
A. I paged through it, I really just looked at financials.
Q. You, of course -- well, let me ask you. Do you read the footnotes to the financial statements?

Page 172

A. Usually. Usually.
Q. Some of the most important information is in the footnotes?
A. Right.
Q. Were you involved in any discussions at MacAndrews & Forbes, either internally or with third parties, concerning hedging the Sunbeam stock that Mr. Perelman's companies were to receive at the closing?
A. Yes, I was in part of those meetings.
Q. Did you -- were some of those discussions before the actual closing on March 30th?
A. I don't recall any before the closing. I think they all took place afterwards.
Q. What was your involvement in these discussions?
A. Well, I wanted to find out whether or not you could hedge, which I was told by our lawyers was simply not clear -- it was not a problem for us to hedge, it was a problem for the investment bank. It was very complex SEC stuff.

Page 173

And one of the conclusion I reached was, if you really couldn't do it, you really couldn't do it because you couldn't ask an investment bank to take a risk, or at least I wasn't ask an investment bank to take a risky position like that; so, we dropped that.
Q. What was the risky position?
A. I don't remember, to be honest with you. It was very complex SEC stuff.
Q. Is it fair to say that you passed those issues off to others to let them think it through?
A. Well, yes, no question about it. They told me it was questionable and they did not think any major investment bank would do it, so forget it.
Q. Who was the person who was the most closely involved with the hedging discussions at MacAndrews & Forbes?
A. I think Maher, Glen Dickes.
Q. Okay.
A. Dickes was a real SEC expert -- he knew that stuff backwards and forwards.
Q. Now, there was a press release issued by Sunbeam on or about April 3rd, 1998,

NOT A CERTIFIED COPY

Page 174

announcing its first quarter 1998 results; did you see that?
A. I did.
Q. Let me show you what has been marked as Morgan Stanley Exhibit 58.
There you are, sir. I hand you Morgan Stanley Exhibit 58. Please take a moment and let me know when you are finished. I don't have a lot of detailed questions about it. Read it to the extent that you wish.
A. Okay.
Q. Did you see a copy of this press release at or about April 3rd, '97?
A. Shortly afterwards.
Q. Could you tell us the circumstances as to how you came to see it.
A. Somebody brought it to my desk.
Q. What happened then?
A. I was, to say the least, very much annoyed. I felt we had been misled. I felt that they had to know this before April 3rd.
Q. Now, who is the who?
A. Morgan Stanley and Sunbeam.
Q. Okay.
A. That, I had not seen a comfort

Page 175

letter at this point. That, in my view, when they issued the March 19th release, it had to have been false. I called Mike Price and took his head off.
And Mike said to me, look Howard, I don't -- you know, don't worry about it, they are going to make the year.
You know, I don't know what you are complaining about.
I said, what I am complaining about is, it is my choice to make, if I want to run a risk, I am a big boy, I can run a risk, but i want to have the facts.
I don't know who had the facts.
Why are you so sure?
I said, why did they fire Uzzi? Uzzi was the guy running the place.
Q. This is Michael Price at the mutual fund?
A. Yes, he is the largest shareholder besides us -- he is a larger shareholder than we are.
Q. What else did Mr. Price say to you?
A. He said he would look into it.
Q. Did he get back to you?

Page 176

A. Sometime later. We then started a dialogue, actually in April and May, because notwithstanding what this release said -- you know, that jerk Dunlap had never even been to Wichita, and the only time that Kersh went there, he went there with two armed guards, and, you know, we were starting to, get messages back from our people.
We had owned Coleman for ten years and the people we cared about, and they cared about us, and, you know, everybody was leaving, no direction.
They were -- that spring selling season is everything in that business, the camping business. They were going to miss the business because nobody had the plans and directives and they couldn't make any decisions, all of the help was leaving.
I called Mike. I called Peter Langerman.
Q. Who is Mr. Langerman?
A. He was the chairman of the Sunbeam board and he was a -- an employee of Mutual Funds, of mutual benefit shares.
Q. The same company that employed

Page 177

Mr. Price?
A. Yes. He was Mr. Price's lead designee on the board.
Q. So, now, you, MacAndrews & Forbes and Mr. Price's Mutual Funds, they are the two largest shareholder of Sunbeam?
A. Right.
Q. You are communicating with each other about these matters?
A. Yes. Came in to see me, look, you know, ah, Al is the greatest, he will pull this together. Uzzi misled him.
I said, it is outrageous, I don't understand how you guys can say that to me.
You knew so little about this business.
Where is Morgan Stanley now? They just sold -- sold the damn, you know, zero coupon A debentures, I would not want to be in their position.
Q. You wouldn't want to be in Morgan Stanley's position, to say anything false --
A. Absolutely not. Let me tell you something, the customers were going to be all over them, just as I am all over them. If

NOT A CERTIFIED COPY

011615

Page 178

their customers knew what I know now about that comfort letter, they would have been sued by them a lot earlier. In any event, those conversations continued well into the early part of June.

Um, and they were still very protective of Dunlap and Kersh.

Q. That is Mr. Price?

A. Price and Langerman.

Q. And Langerman.

A. And then we got that crazy call on the Saturday of mid-June. The call went to Barry Schwartz and then he called me.

Q. That's the call from the board of directors?

A. Yes.

Q. Is that Mr. Dunlap was going to be terminated?

A. They fired, they already fired him. Maybe they had to have another meeting with him. He was fired.

Q. I understand after April 3rd, and leading at least up to that time probably, and probably continuing thereafter, you were mad at Morgan Stanley; right?

Page 179

A. Sure was.

Q. Did you, at any point after April 3rd and up to the firing of Mr. Dunlap, did you call anyone at Morgan Stanley and say, what happened, why didn't you tell us; anything like that?

A. No.

Q. Did you write any letters to them saying we are upset about this, you misled us, what happened; anything like that?

A. No.

Q. Did anyone at MacAndrews & Forbes?

A. No. First, we had to -- first, we had to explore what had happened. We were on the outside. It was not until after we got there in June that we began to learn some of the facts. We get there in June.

We learn some of the facts, and we have three potential defendants, Sunbeam, officers and directors, Arthur Andersen, Morgan Stanley.

At first, the first thing I want to do is, give me back my company, okay.

It is very simple, guys.

I will give you back your stock,

Page 180

give me back your cash, everything that you paid --

You know what, I love this company.

We will give it all back to you.

Give us back the company -- did --

Q. Who did you have this conversation with?

A. -- not do it.

I had this conversation with the Sunbeam board and the Sunbeam banks, including Morgan Stanley. It was, then, First Union, Wachovia and Bank of America.

Q. Hopefully, the conclusion was reached by the parties concerned that that was not going to be a deal that couldn't be done?

A. That was a deal that they would not contemplate, because they had reached the conclusion that we thought was right, which is that Coleman was the best part of Sunbeam.

Q. At that -- at that point, you are -- withdrawn.

These rescission discussions began when?

A. June.

Q. Of 1998?

Page 181

A. Yes.

Q. You have to answer Yes or No.

A. Yes. Sorry.

Q. That's okay.

During these discussions on rescission, did you make any allegations against Morgan Stanley?

A. No, I did not make any allegations against anyone. I just said I was misled, I was defrauded, give me back my company.

Q. You told Morgan Stanley, during these discussions, that you had been defrauded?

A. Oh, sure.

Q. You told them that Morgan Stanley had defrauded you?

A. I simply said "defrauded." I did not allocate blame between Sunbeam, Andersen and Morgan Stanley.

Q. Who did you speak to at Morgan Stanley?

A. Whoever was the Morgan Stanley representative at the board.

Q. A director.

A. Not board director.

NOT A CERTIFIED COPY

Page 182

Q. Yeah.
A. There were board meetings conducted where the banks were present, and whoever the Morgan Stanley representative was who was there, he heard me loud and clear.
Q. These were the banks that had loaned money to Sunbeam?
A. Sure, they loaned money hoping to syndicate it out and couldn't get the syndication, because the thing fell apart too fast.
Q. How much money -- do you know how much money Morgan Stanley loaned to Sunbeam, as a banker?
A. Um, did I know how much then? No, I did not know how -- split between the three banks. It did not make any difference, because none of them intended to keep any of it. They had the syndication meeting set up already. They sell it all down. They don't hold -- they don't hold 5 percent of what they make originally.
Q. Do you know how much the banks loaned?
A. A billion 7, at one point.

Page 183

Q. All right. Do you know how much the banks were holding in June of 1998 when you had these meetings?
A. I sure did. They were holding every penny of it.
Q. 1.7 billion.
A. Because they couldn't syndicate it out, because this whole thing fell apart.
Q. Is it your theory that the banks were attempting to -- excuse me, that the banks loaned 1.7 billion dollars to Sunbeam with knowledge of the fraud, just so that they could syndicate the loans?
A. No, I did not say that. They did have knowledge, they did have knowledge of what was happening to the business in mid-March and March 25th. They had every obligation to tell me that. And if they had told me that, this transaction wouldn't have closed, they wouldn't have lent their money and --
Q. They wouldn't have sold the debentures?
A. They wouldn't have been sold the debentures and we all would have been going

Page 184

home happy.
Q. But it is your position that Morgan Stanley knew about the fraud and went ahead and sold $2.014 billion of face amount debentures and loaned about $680 million to Sunbeam in order for this transaction to go forward. Is that your position, sir?
A. No. It is my position that they were in possession of sufficient facts by the end of March, which I did not know, to stop this transaction, which is exactly what they should have done.
This transaction should have come to an end, at the earliest, on March 19th, and at the latest, on March 25th. With the knowledge of what was in those comfort letters, this transaction never ever should have been permitted to close.
Q. Is it your position that Morgan Stanley had, at the time of the closing, an intent, conscious intent to defraud MacAndrews & Forbes?
A. They had a conscious intent to force this closing through without telling us the facts.

Page 185

Q. What do you base that on?
A. The fact that they had the facts and did not tell us.
Q. Anything else?
A. Well, the general perversity, but I wouldn't do that.
Q. I suppose we could all do that with a lot of things. That was not my question.
A. All right.
Q. Now, you referred to Morgan Stanley and the other banks syndicating a portion of the bank loans. Did Morgan Stanley, to your knowledge, have any intent to, I don't know if the term is syndicate the underwriting of the debentures or whether there is another appropriate term?
A. No. No. The debentures, they underwrite the debentures and sell them to their customers. There is not a syndication of that. They keep all those fees for themselves.
Q. So, when Morgan Stanley, you understood that when Morgan Stanley was selling the -- excuse me, I will withdraw the question. So, you at least understood, based

NOT A CERTIFIED COPY

Page 186

on your knowledge of the debt financing, that Morgan Stanley actually was purchasing all of the debentures and then going to resell them to others; correct?

A. That is a simultaneous transaction. They don't hold them for one second. That is all pre-sold. They take them down and parcel them out.

Now, there may have been other underwriters. I don't think there were at that time. I would have to look at the front cover again. They would be on the front cover, if there are other underwriters.

Q. As I understand your testimony, your belief was that, if Morgan Stanley knew what you think it knew -- think and say that it knew, that it was subjecting itself to lawsuits by the debenture-holders at the time it proceeded with the offering; correct?

A. Absolutely. And that is the continual defense that you hear of investment banks and accounting firms throughout the fraud scandals of the 21st century. That is exactly what they all said, would I have done this, and they all did it. Morgan Stanley did

Page 187

it here.

Q. Did you work on the settlement with Sunbeam that resulted in warrants being received by MacAndrews & Forbes?

A. Yes. I did that settlement.

Q. You did that settlement?

A. I did.

Q. Did you do an evaluation of the warrants at any point in the negotiations, that is what the warrants were worth at the time of the settlement, not some future time, but the time of the settlement?

A. I did not.

Q. Yesterday, in one of the depositions that we took, we were told that MacAndrews & Forbes valued the warrants at something slightly over $41 million.

MR. SOLOVY: Objection to the form of the question.

Q. You can answer. I did not finish; so, now I will have to ask it again.

A. Go ahead.

Q. Yesterday, in one of the depositions -- I was not at Mr. Perelman's deposition yesterday; so, I asked my associate --

Page 188

A. I saw you in the office.

Q. You did.

A. Pardon me.

Q. I did not recognize you. I don't think we met before. Let's get this finished.

Let's get back on and get this finished.

After the settlement -- withdrawn.

Did you value, at any point in 1998, that is MacAndrews & Forbes, the, the warrants received in the settlement, and valuation -- that is terrible. I will try again.

For financial statement purposes did MacAndrews & Forbes value the warrants in 1998?

A. I found out that, subsequently, that they did, yes.

Q. Do you know what the number was?

A. No. No.

Q. Whatever valuation was placed on the warrants, that would have been an item of income; correct?

A. No.

Q. What would it be?

A. It would be an item of just capital

Page 189

that you have. It would not be an income item.

Q. You are right. It would not. It would be characterized somewhere on the income statement to show that it had been received, though; correct?

A. I am not sure of that. Maybe a footnote to the income statement would show you, the capital account -- probably that is where it was.

Q. And on -- whose financial statement were the warrants recorded in 1998, which MacAndrews & Forbes Company?

A. Oh, it would always be the parent. It always goes up to the parent.

Q. Which would be Mafco Holdings, Inc.?

A. Yes.

Q. Did Mafco Holdings Inc., in 1998, have to file or make filings, excuse me, with the Securities & Exchange Commission?

A. I don't think so.

Q. Were Mafco Holdings Inc. financial statements for the year, for the year 1998, on a calendar year basis?

A. Yes.

NOT A CERTIFIED COPY

01-93-08

Page 190

Q. If the settlement was reached in, I believe it was August of 1998, then, however the warrant value was recorded, it would have been reflected in the year-end 1998 financial statements for Mafco Holdings, Inc.; is that correct?
A. That is correct.
Q. Those statements were audited by --
A. E&Y.
Q. E&Y. Did they give a clean opinion on the statements?
A. Sure. We always get clean opinions.
MR. BEMIS: Let's take a break here. We are almost finished. I think you said you needed 30 minutes. You can make your phone call and we will have you out here within 30 minutes of the conclusion of the break.
A. That is great. Thank you very much.
THE VIDEOGRAPHER: The time is 3:03 p.m., and this completes tape number 2.
(Recess.)
THE VIDEOGRAPHER: Stand by.
MR. BEMIS: Back on the record.
THE VIDEOGRAPHER: The time is 3:19

Page 191

p.m., and this begins tape number 3.
BY MR. BEMIS:
Q. After April 3rd, there came a point in time when you became a member of the board of directors of Sunbeam; correct?
A. Correct.
Q. When was that?
A. June 14th.
Q. 1998?
A. 1998.
Q. Right after the termination of Mr. Dunlap; correct?
A. That is correct.
Q. And you served on the board for how long?
A. Um, a couple, three years.
Q. Did you serve until Sunbeam filed for bankruptcy?
A. I filed, I served even after that.
Q. You, as a -- withdrawn.
You attended, either as a director or otherwise, meetings with Sunbeam's lenders; correct?
A. Oh, sure.
Q. Morgan Stanley was one of those

Page 192

lenders; right?
A. Yes.
Q. Bank of America was one of those lenders?
A. Right.
Q. First Union, at that time, now Wachovia; correct?
A. That is correct.
Q. Now, I want to show you a document that we previously marked as Morgan Stanley -- please turn off the Black Berries, please. Thank you.
Let me show you what has been marked as Morgan Stanley Exhibit 262.
MR. SOLOVY: Thank you.
Q. I apologize for the delay. Do you have exhibit -- do you have Exhibit 262 in front of you?
A. I do.
Q. Let me also hand you Exhibit 337. This was previously marked, I believe, at Mr. Shapiro's deposition. Do you have both Exhibit 337 and 362 in front of you?
A. Yes.
Q. The first, I first would like you to

Page 193

look at Exhibit 337. That is a memorandum dated June 22nd from a Thomas Molitor from the leverage finance group, re Sunbeam Corporation.
Do you have that document in front of you?
A. Yes.
Q. Did you attend the meetings that are referred to in this memorandum, that is meetings at MacAndrews & Forbes, on June 18th and 19th, 1998 to discuss Sunbeam corporation?
A. I am sure I did.
Q. It is stated here that the purpose of these meetings at MacAndrews & Forbes was to discuss the status of Sunbeam, given the change in management.
Is that a correct statement of the purpose of those early meetings?
A. You have me looking at 337; right?
Q. Yes. 337. That is the first document that I would like you to look at.
A. What's the question, again?
Q. Was the purpose of the meetings at MacAndrews & Forbes on those two days, June 18th and June 19th, to discuss the status of

0149-19

NOT A CERTIFIED COPY

Sunbeam?
A. Yes.
Q. Now, item number 1 lists you in attendance along with Mr. Engelman, an executive vice president of MacAndrews & Forbes. Is that M&F, MacAndrews & Forbes?
A. Yes.
Q. Holdings. And also Mr. Slotkin, senior vice president of MacAndrews & Forbes. Did they attend these meetings?
A. Yes.
Q. And did Mr. Levin and Mr. Shapiro and Mr. Martin Lipton of Wachtel Lipton attend?
A. Yes.
Q. Did Martin Lipton, he is the main partner in Wachtel Lipton; right?
A. That's right.
Q. Item number 2, which is headed "SEC Inquiry," there is, in the second sentence, a reference to the inquiry of the SEC focusing on the issues raised in the Barron's article; do you see that?
A. Aha.
Q. You have to answer Yes or No.

A. Yes.
Q. Did you see the Barron's article referred to in this paragraph?
A. The June 8th article?
Q. Yes.
A. Yes.
Q. Did you, as reflected in this memorandum, state to the banks that the questions raised in the Barron's article are without merit?
A. That is what I had been informed by Sunbeam, prior to the change of management. They had a detailed point-by-point rebuttal of the Barron's article.
Q. In any event, you did make this statement to the banks; correct?
A. Where --
Q. Based on what information you had at the time.
A. Where do you find that?
Q. In the, if you look under item 2, the third line, beginning with "article period." Do you see the sentence starting "according"?
A. What document are you looking at?

Q. 337, item 2.
A. Page?
Q. SEC inquiry. Right here.
A. Yes, I have it now.
Q. Did you make that statement to the banks that "the questions raised by the Barron's article are without merit"?
A. I don't recall saying that. I could not have possibly have said that, because I did not know whether they were or not. All I know is what the Sunbeam people were saying.
Q. Well, were the Sunbeam people telling you, at the time, that they were without merit?
A. They had told us that earlier, yes.
Q. Did you repeat anything like that to the banks?
A. I am sure I may have, but I would not have subscribed to whether it was accurate or not accurate, myself.
Q. When you made that statement, you were relying on information that somebody else gave you; correct?
A. I don't think I made the statement.
Q. Did you make -- strike that. Did

you tell the banks, including Morgan Stanley, that Arthur Andersen had confirmed to the board of directors of Sunbeam that the 1997 financial statements of Sunbeam were prepared in accordance with GAAP?
A. Yes.
Q. That turned out to be wrong; didn't it?
A. It sure did.
Q. When you made that statements, you were basing it on information that you thought to be true, but later turned out to be wrong; correct?
A. No. What I was basing it on is what Arthur Andersen told the board of directors of Sunbeam.
Q. It turned out to be wrong?
A. It sure did.
Q. You can set this document aside for now. MS 337.
Look at MS 362, which has been previously identified as the minutes of the special meetings of the executive committee and of the audit committee of the board of directors of Sunbeam Corporation, which is

NOT A CERTIFIED COPY

011820

Exhibit 262, if I misspoke, dated January 29th, 1998. Do you have that?
A. Yes.
Q. Did you attend this meeting, and you are shown in attendance in the second paragraph of the document.
A. I am sure I did.
Q. Were you present during that part of the meeting which is discussed under the heading "Discussion of Relationship with Arthur Andersen"?
A. Yes.
Q. Are the minutes accurate, to the best of your recollection as you sit here today, under that heading, "Discussion of Relationship with Arthur Andersen"?
A. It seems accurate to me.
Q. You can set that aside.
Let me show you now two documents, a document that I will ask the court reporter to mark as Exhibit 435.
(Gittis Exhibit 435, transcript of April 21, 1999, marked for identification as of this date.)
Q. I have a simple question on this.

Were you deposed in the matter that is set forth on the cover page of Exhibit 435, in re the Coleman Company shareholder litigation, on or about April 21st, 1999?
A. Yes.
Q. A transcript was made of your deposition; correct?
A. It sure was.
Q. You were represented by counsel in the deposition?
A. Yes.
Q. Is this, sir, a copy which has been produced to us by Coleman Parent Holdings, a copy of your deposition transcript?
A. I don't know. I guess it is.
Q. Do you have any reason to doubt that it is a copy of your transcript?
A. As long as you tell me, I have every reason to believe it.
Q. I will show you what has been marked as 434, the very last one. I will ask the court reporter to mark that before I give it to you.
(Gittis Exhibit 434, July 26, 2000 transcript, marked for identification as of this date.)
Q. I will hand you now the exhibit marked Exhibit 434. Do you have that in front of you?
A. I do.
MR. SOLOVY: Excuse me. I don't.
Q. I have given you Exhibit 434, which is a transcript which, of a deposition that I believe you gave on July 26th, 2000. Did you give a deposition on that date in the Albert Dunlap Russell A. Kersh Sunbeam Corporation arbitration proceeding?
A. I gave a deposition in that matter, and I assume that is the correct date.
Q. Is this document which was produced to us by Coleman (Parent) Holdings, is this a copy of your deposition transcript in that case?
A. I am sure it must be, if they gave it to you.
Q. With regard to both depositions, sir, Exhibits 434 and 435, you had counsel in both; correct?
A. Oh, yes.
Q. You were under oath; correct?

A. Yes.
Q. You told the truth in the depositions?
A. Of course.
MR. BEMIS: I have no further questions.
THE WITNESS: Thank you very much and I thank you for your courtesy of getting me out.
MR. BEMIS: I was good to my word, a half hour in getting you out.
(Continued on next page)

NOT A CERTIFIED COPY

011821

THE VIDEOGRAPHER: The time is 3:31 p.m., and this completes tape 3 and also the videotaped deposition of Mr. Howard Gittis.

(Time noted: 3:31 p.m.)

HOWARD GITTIS

Subscribed and sworn to before me this day of 20__.

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That HOWARD GITTIS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24 day of November, 2004.

_____

ROBERT X. SHAW, CSR

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
MR. GITTIS	MR. BEMIS	5

---------- INFORMATION REQUESTS ----------

DIRECTIONS:

TO BE FURNISHED:

---------- EXHIBITS ----------

GITTIS	FOR ID.
Gittis Exhibit 435, transcript of April 21, 1999	198
Gittis Exhibit 434, July 26, 2000 transcript	199

NOT A CERTIFIED COPY

011822

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

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs.

MORGAN STANLEY & CO, INC.,

Defendant.

February 12, 2004
9:30 a.m.

VIDEOTAPED DEPOSITION OF

ROBERT KITTS

Reported by: David Henry
Job Number: 156649

NOT A CERTIFIED COPY

014824

Videotaped Deposition of
ROBERT KITTS, held at the offices of Esquire Deposition Service, 216 East 45th Street, 8th Floor, New York, New York, on Thursday, February 12, 2004 before David Henry, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, LLC
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: CLARK C. JOHNSON, ESQ.
AND: DENISE BOWLER, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
Mark Randerson, Videographer

Kitts

ROBERT KITTS, called as a witness, having been duly sworn, was examined and testified as follows:

EXAMINATION BY MR JOHNSON:

Q. Good morning, Mr. Kitts.
A. Good morning.
Q. Would you kindly state your name for the record.
A. Robert Kitts.
Q. Mr. Kitts, have you ever given a deposition before?
A. No.
Q. Let me cover a few background rules that might guide our work today. First, if you don't understand one of my questions, let me know at any time. If you need me to clarify something, let me know. Also if you need to take a break at any time for any reason, just let me know that as well.
A. Okay.
Q. As you can see, the court reporter here is taking down what each of us

Kitts

say. Accordingly, you need to articulate your answers as opposed to nodding your head or shrugging your shoulders because the court reporter can't pick that up in the transcript.
A. Yes.
Q. Where do you currently reside?
A. Englewood, New Jersey.
Q. And what is your address in Englewood?
A. 27 North Woodland Street.
Q. And are you currently employed?
A. Yes.
Q. With whom?
A. Thomas Weisel Partners.
Q. How long have you been with Thomas Weisel Partners?
A. About three and a half years.
Q. You started some time in 2000, is that correct?
A. 2001.
Q. And prior to Thomas Weisel, where did you work?
A. Morgan Stanley.

NOT A CERTIFIED COPY

01-4825

Kitts

Q. Anyone in between Morgan Stanley and Thomas Weisel?

A. No formal employer, no. I consulted with certain companies that I had done business with in the past.

Q. Okay. Now, at Thomas Weisel, what is your current title?

A. Cohead of investment banking.

Q. And has that been your title during your entire tenure at Thomas Weisel?

A. No, I was promoted in the past week.

Q. Congratulations.

A. Thank you.

Q. Can you take me through the titles you have had at Thomas Weisel?

A. Up until this last promotion I've been head of mergers and acquisitions as well as cohead of east coast operations for the firm.

Q. Okay. And what are your current responsibilities then at Thomas Weisel?

A. I jointly with one of my partners on the west coast manage the entire

Kitts

investment banking operation.

Q. And how many employees does Thomas Weisel have in its investment banking operation?

A. Currently approximately 65.

Q. How many in New York?

A. Probably 30.

Q. And you have an MBA, is that correct?

A. Yes.

Q. From Harvard?

A. Yes.

Q. What year did you receive that?

A. 1987.

Q. And did you graduate from business school with any honors?

A. No.

Q. Tell me about your undergraduate degree.

A. Pace University, 1980.

Q. And what was your major?

A. Business administration.

Q. What did you do from the time you graduated Pace in 1980 until the time you

Kitts

entered business school in 85, 86?

A. 85, yes. I spent two years at Peat Marwick Mitchell & Company, the name at the time, as an accountant for two years and then three years at Morgan Stanley as an analyst, two years in the M&A department, 82 to 84, and then helped found the venture capital group at Morgan Stanley in 1985.

Q. And then went to business school?

A. Yes.

Q. And at Peat Marwick, were you auditing public companies?

A. Yes.

Q. And after business school, did you return to Morgan Stanley?

A. Returned to Morgan Stanley, yes.

Q. And when you returned to Morgan Stanley, what was your title?

A. Associate in investment banking in the M&A department.

Q. All right, could you take me through the other titles that you held at Morgan Stanley from 87 until you left in 99, 2000?

Kitts

A. Well, actually I left Morgan Stanley in 1990.

Q. Okay.

A. With my boss, Eric Gleacher, who was head of the M&A department, and he and I and two others started Gleacher & Company, which was a small M&A boutique based in New York. So as a founder I was a vice-president at Gleacher and then was promoted to partner and CFO of Gleacher at the end of 1993, and in April of 1994 I rejoined and was recruited back to Morgan Stanley. At Morgan Stanley I rejoined as a principal in the M&A department and then was promoted to managing director either in 1996 or 1997. I don't exactly recall.

Q. Okay. And did you have the title managing director when you left Morgan Stanley the second time?

A. Yes.

Q. And when did you leave the second time?

A. Well, it was actually the third time if I count business school, but I left

NOT A CERTIFIED COPY

0 1 4 8 2 6

Kitts

in July of 1999.
Q. All right. Do you have any kind of separation agreement or contractual arrangement with Morgan Stanley governing your post departure relationship?
A. I do.
Q. Okay. And does that agreement speak in any way towards your duties to provide testimony or assistance in litigation?
A. I'm not sure.
Q. Okay. When was the last time you looked at that agreement?
A. Several years ago.
Q. Are you being compensated in any way for your time spent in connection with this deposition?
A. I received with the subpoena a check for some sum of money, 18 or 19 dollars or something. That was the only -- it remains uncashed at this point.
Q. Aside from the witness fee check, you've received no compensation for your work?

Kitts

A. No.
Q. Can you tell me what you did to prepare for this deposition?
A. I met with Tom yesterday.
Q. That's Tom Clare, for the record?
A. Yes. Briefly, you know, several, 15 or 20 minute meetings during the course of the day between my other responsibilities.
Q. Okay. And other than the meetings yesterday, did you have any other substantive meetings or conversations with any attorneys?
A. No.
Q. Were you contacted by any Morgan Stanley -- excuse me, Morgan Stanley employees in connection with this deposition?
A. No.
Q. Did you look at any documents yesterday in connection with your preparation?
A. Yes.
Q. Did any of those documents

Kitts

refresh your memory about any events?
A. Somewhat.
Q. And what documents refreshed your memory?
A. Well, it's been so long since I've thought about the case or the situation, and so I reviewed the board presentation that we used to render our fairness opinion.
Q. Anything else refresh your memory about the events?
A. I reviewed the working group list, the engagement letter or some correspondence between my client and the firm.
Q. Did you look at anyone's testimony in this case so far?
A. No.
Q. Do you know who has given testimony so far?
A. No. Well, let me -- I know of one or two individuals who have been deposed as a result of Tom telling me yesterday.
Q. Okay. Have you had any

Kitts

discussions with anyone other than Tom about this deposition?
A. No.
Q. Maybe your wife knows where you are, you but aside from that?
A. Frankly I only told her about it this morning as I was leaving and she was a bit disappointed that I hadn't told her before this morning, but it didn't dawn on me to explain it.
Q. Okay, I don't want to delve into those conversations. You referred a minute ago to Sunbeam I think as your client. You used the term my client. Did you have a personal connection with anyone at Sunbeam to procure this business, so to speak?
MR. CLARE: Objection to the form. You can answer.
A. No.
Q. So when you say my client, are you using that as a proxy for Morgan Stanley's client or did you in fact have some more specific relationship?
A. No, perhaps I misspoke and would

NOT A CERTIFIED COPY

Kitts

prefer to refer to them as our client while I was a member or an employee at Morgan Stanley.

Q. But were you involved in any way in pitching Morgan Stanley's capabilities to Sunbeam?

A. Yes.

Q. And how did it come about that you were asked to make a presentation to Sunbeam concerning Morgan Stanley's capabilities?

A. From what I recall, Sunbeam had made a public announcement that they were interviewing investment banks, at which point Bill Strong from Morgan Stanley Chicago office contacted members of the M&A department, probably including Bruce Fiedorek, Jim Stynes and myself. At the time I was head of the business development group within Morgan Stanley's M&A department, and so I played an active role in soliciting new business from large corporate entities, either existing clients or potential clients of the firm. Bill I

Kitts

believe had been in contact with Al Dunlap and/or other members of senior management and secured a date for us to come down and present our credentials down in Florida.

Q. Do you recall approximately when you did go to Florida to present the firm's credentials?

A. From yesterday's materials, I seem to recall it may have been April of 1997.

Q. Okay. I'm going to show you a document that may be useful to you throughout the course of the day as far as recalling when certain events occurred. This is a document that's been marked previously as Exhibit -- CPH Exhibit 84.

A. Thanks.

Q. And for the record, CPH Exhibit 84 bears the Bates stamp Morgan Stanley confidential 0033255 through 263.

Mr. Kitts, have you ever seen Exhibit 84 previously?

A. Yesterday.

Q. Had you ever seen it prior to

Kitts

yesterday?

A. No.

Q. Do you know who prepared this document?

A. No.

Q. Do you know why this document was prepared?

A. No.

Q. Do you know whether Morgan Stanley prepared this document?

A. It would appear based on the font that it was on the Morgan Stanley system based on my recollection of what documents internally look like.

Q. And this document 84 reflects that you among others attended a presentation in Florida on April 22. Do you see that?

A. Yes.

Q. Okay. Is that consistent with your recollection?

A. Yes.

Q. What role did Mr. Stynes have in the presentation to Sunbeam in April, 1997?

Kitts

A. Well, Jim, I guess I would describe Jim as the senior partner on the transaction, and so -- and my role was more the junior partner if you will.

Q. So you had more responsibility for nuts and bolts day-to-day issues?

MR. CLARE: Objection to form. You can answer.

A. My responsibilities included at least in the context, in preparation for this meeting, really more of the generation of the themes for the presentation and the ideas, specific acquisition ideas, and Jim's role was more to present perhaps more senior level focus.

Q. And Mr. Strong was involved because of an existing relationship with Mr. Dunlap?

A. Yes.

Q. And how about Mr. Fiedorek?

A. Bruce, if not the head of M&A at that point, may have been promoted to vice-chairman, but was even more senior than anyone else there from Morgan Stanley and

NOT A CERTIFIED COPY

0015828

Kitts

was the most accomplished M&A practitioner of the group.

Q. And so his credentials would be valuable in soliciting the business?

A. Absolutely.

Q. And how about Mr. McCreery?

A. David was a principal in the business development group within M&A at Morgan.

Q. So he would be the least senior person among the Morgan Stanley personnel at the solicitation session?

A. Yes.

Q. And you would be second least senior?

A. Yes.

Q. Did Mr. McCreery have any additional responsibilities with respect to Sunbeam transactions after his initial involvement in this April meeting?

A. He may have been involved in contacting specific parties that may have been considered potential purchasers in the solicitation, given an existing contact or

Kitts

relationship he may have had.

Q. Now, you will see in Exhibit 84, at certain times the participants are noted as MS team. Do you see that?

A. Yes.

Q. Okay. And if you will turn to the last page of that document, I believe you will see a description of the members of the team.

A. Yes.

Q. Is that consistent with your understanding of the Morgan Stanley personnel primarily responsible for this engagement?

A. Yes.

Q. Okay. And let's take these in reverse order. L. Rafii, is that Lilly Rafii?

A. Yes.

Q. And what was her role on the transaction?

MR. CLARE: I object to the form.

Q. Yeah, that's a bad question.

Kitts

What was her role in connection with the Sunbeam engagement?

A. From what I recall, very limited. Without this document, I would not have recalled Lilly being an active member of the team. She was a junior analyst in the group.

Q. Had you ever worked with her prior to this Sunbeam engagement?

A. I don't believe so.

Q. Did you work on any other engagements with Ms. Rafii other than the Sunbeam engagement?

A. Probably.

Q. Can you recall any specific --

A. No, because the business development function, there were ideas presented and generated every day in the absence of specific engagements, so we may have worked together, but not on a specific engagement.

Q. Okay. How about T. Chang, that's Tyrone Chang?

A. Yes.

Kitts

Q. And what was his role in connection with the Sunbeam engagement?

A. Tyrone was the analyst and the person closest to and most responsible for the creation of analytical and financial models.

Q. And next is J. Webber, is that Josh Webber?

A. Yes.

Q. And what was Mr. Webber's role in connection with the Sunbeam engagement?

A. Again, from my recollection, very limited, so I would not have identified him as a team member in the absence of this document, similar to Lilly.

Q. And next is G. Yoo, is that Gene Yoo?

A. Yes.

Q. And what was Mr. Yoo's role in connection with the Sunbeam engagement?

A. Gene was an associate on this engagement, and was primarily responsible for dictating some of the analysis and overseeing, closely overseeing and checking

NOT A CERTIFIED COPY

014829

Kitts

a lot of Tyrone's work.

Q. Okay. Next is Alex Fuchs. What was Mr. Fuch's role in connection with the transaction? Excuse me, what was Mr. Fuch's role in connection with the Sunbeam engagement?

A. Alex was I believe a vice-president by that time in title, and was really the person day-to-day, I guess I would describe as the team leader, or primarily responsible for preparation of materials that we would present to the client.

Q. Who would have primary responsibility for materials that would be presented to third parties?

A. Alex in terms of preparation and review.

Q. So did Morgan Stanley prepare materials to provide to potential acquirers of Sunbeam?

A. Yes.

Q. And Mr. Fuchs would have primary responsibility for that?

Kitts

A. He would have primary responsibility for preparing materials.

Q. Are you aware of any other Morgan Stanley personnel who worked on any aspect of the Sunbeam engagement other than the individuals listed here as comprising the MS team?

A. Not as it relates to the merger transactions.

Q. How about the debt offering of the financing transactions? What Morgan Stanley worked on those matters?

A. There was a large group of people across all the relevant functional areas of the firm, between equity capital marks, debt capital markets, high yield, senior debt, credit.

Q. And we're going to get into this in more detail later today, I suspect, but do you recall interfacing, for lack of a better word, with any of those Morgan Stanley personnel?

A. There was a brief handoff of responsibility from what I would describe as

Kitts

my role and responsibilities were up to and including the announcement of the transactions, at which point the requirements related to obtaining the financing handed over those responsibilities to other people within Morgan Stanley.

Q. And specifically who at Morgan Stanley did you hand off the transaction to?

A. Well, from what I recall, the most -- the next transaction was the zero, the convertible preferred offering, which Ruth Porat, I believe, was responsible for overseeing.

Q. And did you have any dealings with anyone other than Miss Porat in connection with the debt offering?

A. Well, both Bram Smith as it relates to the bank debt, and I believe Brooks Harris as it related to the convert were both other senior people involved in that handoff, if you will.

Q. Did you ever have any dealings with John Tyree relating to Sunbeam?

A. I know John worked on the

Kitts

financing, but very limited interaction with John.

Q. So if you were to identify one Morgan Stanley employee as most knowledgeable about the work that Morgan Stanley did in what we would call phase one of the engagement, who would that be?

MR. CLARE: Objection to form and foundation.

Q. Let me back up. Do you know what I mean when I say phase one of the transaction?

A. I would assume phase one means the M&A aspect of the transaction.

Q. Right. The work that resulted in Sunbeam's decision to acquire three companies.

A. That would be Alex Fuchs.

Q. Okay. And would, in your view, Mr. Fuchs also be the person most knowledgeable about Sunbeam's operations in the late 1997, early 1998 time frame?

MR. CLARE: Objection to form and foundation. You can answer if you

NOT A CERTIFIED COPY

Kitts

are able.

A. I'm sorry, could you repeat the question?

Q. Sure. In your own view, is Mr. Fuchs the Morgan Stanley employee most knowledgeable about Sunbeam's operations in the late 97, early 98 time frame?

MR. CLARE: Same objections.

A. Probably.

Q. Okay. Is there anyone who might be a close second?

A. Tyrone.

Q. Tyrone Chang?

A. Yes.

Q. What did you understand about Mr. Strong's relationship with Mr. Dunlap?

A. I seem to recall that Bill indicated he had a prior relationship, working relationship with Al from some time before the solicitation dating back, something back into the mid-80's.

Q. Did you --

A. And I can't remember if it was related to Jimmy Goldsmith or what the

Kitts

nature of that connection was.

Q. By the way, one other rule that I forgot to tell you about is if I interrupt you at any point, tell me you're not finished with your answer. And likewise if later today you remember something that bears on some of our questioning this morning, feel free to go back and clarify what your earlier answer had been. That's absolutely fair game.

A. Thank you.

Q. Did you do any reading or homework so to speak on Mr. Dunlap prior to meeting with him in April, 1997?

A. The homework, preparation work that I did for the meeting was focused on Sunbeam, based on publicly available information. I through general casual observation in the financial press was somewhat familiar with Mr. Dunlap's reputation and style of management.

Q. And what at that time was his reputation and style of management?

A. From what I remember, he at that

Kitts

time was viewed as a very aggressive manager with a unique ability to extract costs out of businesses, improve operations, reduce overhead, and in a very short period of time, have a relatively dramatic improvement or effect in improving profitability of the companies that he was involved in.

Q. And did you at that time have any awareness of any companies that Mr. Dunlap had turned around, so to speak?

A. The one most recent prior to Sunbeam, I believe, was Scott Paper. I don't recall the specific entities he was involved with prior to that, but I know that it was a series of similar -- a pattern of similar significant improvements and profitability.

Q. Had you at that time heard or read anything questioning the authenticity of the turnaround at Scott Paper?

MR. CLARE: Object to the form.

A. No.

Q. Okay. As you sit here today, are you familiar with any questions about the

Kitts

authenticity of Mr. Dunlap's turnaround of Scott Paper?

MR. CLARE: Same objection.

A. From what I recall after the fraud had been claimed or accused or disclosed at Sunbeam, that it seemed that I remember some articles going back and looking into his accomplishments at Scott and other places, and questioning some of the legitimacy of the achievements he had claimed.

Q. And you understand now that Mr. Dunlap is barred from serving as an officer or director of a public company for life?

MR. CLARE: Objection.

A. Yes.

Q. I think Exhibit 84 indicates that Mr. Kersh was present during the April, 97 meeting. Was that the first time you had ever had any dealings with Mr. Kersh?

A. Yes.

Q. Did you have any familiarity with Mr. Kersh's experience or reputation prior

NOT A CERTIFIED COPY

Kitts

to meeting him?
A. No, I just seem to recall that he had been with part of Dunlap's management team at one or more of the previous employers.
Q. Okay. Did you ever meet any other senior executives at Sunbeam at any point during your work on the Sunbeam engagement?
A. Yes.
Q. Tell me which ones you can recall.
A. David Fannin, who is the general counsel, I believe, was very actively involved throughout our phase one as you described it. Don Uzzi, I don't recall his title, whether he was president or head of consumer products. In addition we met each of the heads of each of the functional business units, not at this initial meeting, but subsequently in learning more about the operations of the company.
Q. How about Mr. Goudis, do you remember meeting him at any time?

Kitts

A. Rich Goudis, yes.
Q. How about Mr. Gluck, Bob Gluck, does that name ring a bell?
A. It does. Again, he may have been more -- Tyrone and Alex may have had more interaction with Mr. Gluck, but the name does ring a bell.
Q. Okay. Anybody else as you sit here today?
A. No other names come to mind.
Q. By the way, did you use e-mail in your work for Morgan Stanley in the April, 1997 time frame?
A. Possibly, but at that point in time, voice-mail was the more relevant technology that people seemed to use.
Q. Did that change over time? In other words was the use of e-mail increasing through the 97, 98 time frame?
A. I don't recall if that was the period where it became more actively employed.
Q. Did there ever come a period in your work at Morgan Stanley where e-mail

Kitts

became on par with voice-mail for communicating?
A. Yes.
Q. And that was the case by the time you left in 99?
A. Yes. In fact where e-mail had become a more efficient form of communication than voice-mail.
Q. Do you happen to remember what your Morgan Stanley e-mail address is?
A. No. I'm sure it was RKitts@ whatever the --
Q. Well, let me see if -- this is not supposed to be a memory challenge. Let me see if I've got something that will help you remember. This will be marked as CPH Exhibit 137.
(CPH Exhibit 137, 0039543, marked for identification, as of this date.)
Mr. Kitts, I have had the court reporter provide you with a document marked CPH Exhibit 137. It's a one-page document that bears among other Bates stamps, CPH -- excuse me, Morgan Stanley confidential

Kitts

0039543.
This, as I review it, Mr. Kitts, indicates an e-mail address that appears to be KittsR@ and then it's got New York investment banking division suffixes.
A. Yes.
Q. You did have that e-mail address at one point at Morgan Stanley?
A. Yes.
Q. Do you know whether you had any other Morgan Stanley e-mail addresses? In other words did your address change over time?
A. Not that I am aware of.
Q. Okay. This appears to be two e-mails, one authored by Tyrone Chang on April 13, 1997, and then a reply that is from, it would appear, someone in France to Mr. Chang, you and Mr. Fiedorek. Does that appear to be Exhibit 137 to you?
A. Yes.
Q. The subject line is Sunbeam bake-off. What does that bake-off refer to?
A. Bake-off is a term used within

NOT A CERTIFIED COPY

Kitts

investment banking circles to describe a new business presentation.

Q. Okay. And does it have connotations of a competition for business?

A. Yes.

Q. And in fact Morgan Stanley was competing with other major investment banking firms for Sunbeam's business, is that correct?

A. Yes.

Q. Mr. Chang indicates in his e-mail that those competitors include Goldman Sachs, JP Morgan and Chase. Did you learn of any other competitors for Sunbeam's business in the 1997 time frame?

A. None that stand out prominently in my mind.

Q. What is your view why Morgan Stanley ultimately prevailed over its competitors to get Sunbeam's business?

MR. CLARE: Objection, calls for speculation, and lack of foundation. You can answer.

A. I would hope that it was based on

Kitts

the quality of our ideas.

Q. Did Mr. Dunlap or Mr. Kersh during your initial meeting in April, 1997 indicate who Morgan Stanley's competitors would be for the business?

A. I don't remember.

Q. Now, Morgan Stanley was not formally engaged by Sunbeam until several months later after the April meeting, is that correct?

A. Yes.

Q. Okay. And so any work performed through the late spring and summer of 1997 was not work for which Morgan Stanley had any arrangement to be compensated.

A. That's right. There was no formal arrangement in place.

Q. And do you recall when the engagement letter was ultimately executed? And you can feel free to look at Exhibit 84. That might refresh your memory.

A. Thank you. Based on this document, I would seem to recall September time frame.

Kitts

Q. Okay. September of 97?

A. Yes.

Q. You made several trips to Florida over the summer of 1997 to discuss possible transactions with Sunbeam, is that correct?

A. Yes.

Q. And Exhibit 84 would reflect I believe at least two trips to Florida. Is that consistent with your memory?

A. Yes.

Q. And two trips in the summer of 97?

A. Yes.

Q. The arrangements that Morgan Stanley eventually made with Sunbeam for the engagement with Morgan Stanley was in essence a contingency fee arrangement, is that correct?

MR. CLARE: Objection to form.

A. The bulk of the compensation was intended to be provided through what we would describe as a success fee.

Q. So if Morgan Stanley failed to identify a transaction that was consummated,

Kitts

Morgan Stanley wouldn't receive a fee, is that fair to say?

A. I don't remember if there was any up-front retainer which was frequently employed in these types of arrangements, but it's fair to say that the majority, if not significant majority of the consideration would have been in the form of a success fee.

Q. And the size of the success fee would turn on the size of the transaction, is that correct?

A. Yes.

Q. The bigger the deal, the bigger Morgan Stanley's compensation?

A. Usually, yes.

Q. Now, did you learn at any time that Mr. Dunlap's initial preference would be to sell Sunbeam to a third party?

A. From what I remember, I don't -- I know that they wanted us to explore a sale of the company, but we frequently discussed both buy side as well as sell side opportunities, and so the lines were

NOT A CERTIFIED COPY

Kitts

somewhat blurred between which direction he preferred, depending on the day and the opportunities that were existing.

Q. I will give you a document to look at. This is a document, Mr. Kitts, that's been marked previously as CPH Exhibit 69. If you just take a minute and look through that document, I'm going to have a series of questions relating to it.

A. Okay.

Q. Have you ever seen the document that's been marked as CPH Exhibit 69 previously?

A. Not with this handwriting on it, but a similar document.

Q. Okay. The document without the handwriting you've seen?

A. Yes.

Q. Do you have any idea whose handwriting that is?

A. No.

Q. Can you determine whether the handwriting is that of a Morgan Stanley employee?

Kitts

MR. CLARE: Objection. No foundation.

A. No.

Q. And putting aside the handwriting, can you identify what the printed matter is that's contained in Exhibit CPH 69?

A. This is a presentation that we used in working with Sunbeam management to guide our discussions on what direction the process and the project would take.

Q. Okay. And Exhibit 69 is really a sell side presentation, is that fair to say?

MR. CLARE: Objection to form.

A. Well, it contains information relating to who might buy the company, the process that they might go through, and the beginnings of an outline of how we might prepare the information for -- to present to potential buyers.

Q. Okay. And it does not contain any information on potential acquisitions to be made by Sunbeam, is that correct?

A. That's correct.

Kitts

Q. And these materials are dated for a September 11, 1997 conference call. Do you see that on the cover?

A. Yes.

Q. Were you a participant in that conference call?

A. Yes.

Q. And who else from Morgan Stanley was involved in that conference call?

A. I believe each of the members of the team as listed, as written on this page, Bill Strong, Jim Stynes, myself, Alex Fuchs, Gene Yoo and Tyrone Chang.

Q. And from Sunbeam, Mr. Kersh, Mr. Fannin and Mr. Goudis were on the call?

A. Yes.

Q. And then there were representatives of a company called Llama, is that correct?

A. Yes.

Q. What was Llama's role in the Sunbeam engagement?

A. Llama's role was, I guess I would describe it as a second advisor to the

Kitts

company, and they indicated, given Alice's background and a member I believe of the Walton family of Walmart fame, that they had unique access to executives at a number of consumer product companies.

Q. Okay. Did Llama come into the transaction at Sunbeam's initiation or Morgan Stanley's initiation?

A. I believe initially at Sunbeam's introduction or recommendation.

Q. Okay. If you'd look in the upper left of the first page, there is a handwritten note that appears to say Mark Davis, arrow, GS/being told. Do you know what that refers to?

A. Not specifically. Mark Davis was a senior banker at Chase, and so if I had to speculate, it would be that Mark Davis who I believe represented Dunlap when Al was at Scott Paper and that Goldman Sachs were both being told that Sunbeam had decided to work with Morgan Stanley.

Q. Under the next kind of asterisk point, there are a number of subpoints that

NOT A CERTIFIED COPY

Kitts

are at least partially legible, and appear to list DLJ, Oppenheimer and Salomon. Do you have any knowledge as to whether those entities were also competing for Sunbeam's business?

A. No.

Q. Okay. And then in that same quadrant of the page, the last asterisk point appears to state, Coopers & Lybrand to calibrate synergies. What does that refer to?

A. From what I recall, that Coopers & Lybrand was going to be engaged as an additional advisor to review the reasonableness and the ability to achieve synergies through some of the combination transactions we were going to explore.

Q. Okay. And at whose suggestion was Coopers & Lybrand to be retained?

A. Sunbeam's.

Q. Had you in connection with any of your Morgan Stanley work ever used an accounting firm to review synergies?

MR. CLARE: At what point in

Kitts

time?

MR. JOHNSON: At any point in time.

A. We certainly would from time to time work with consultants or other third parties in reviewing certain aspects of transactions, including synergy potential. May have included accounting firms. But I can't point to a specific engagement in which I was involved that employed those services.

Q. Okay. If you would look down in the lower left quadrant, there is a notation that appears to state, David to call Coopers, and then under that a slash that says Alex/Bob. Are the Alex and Bob there you and Mr. Fuchs?

MR. CLARE: Objection, calls for speculation.

A. Probably.

Q. Did you personally contact Coopers and interface with them in their synergies work?

A. I don't recall. They may have

Kitts

been on one or two phone calls where I was a participant, but I didn't have an active interaction with Coopers.

Q. Okay. Was there any person at Morgan Stanley who would be the point person so to speak with Coopers?

A. Probably Alex or Gene Yoo in coordinating.

Q. If you would be good enough to flip to page 3 of these discussion materials, which has the Bates stamp Morgan Stanley confidential 0003897. By the way, Morgan Stanley drafted this document, is that correct?

A. I believe so, yes.

Q. Do you know which team member had primary responsibility for drafting this document?

A. Probably Alex Fuchs.

Q. Now, in the upper left of the third page, there is a handwritten notation stating just get it done. Do you see that?

A. Yes.

Q. And do you have any idea what

Kitts

that note refers to?

A. No.

Q. And then about in the middle of the page there is a handwritten note that states, Kimberly/Scott dash won't see anything. Do you know what that refers to?

A. No.

Q. Would it be fair to infer that the Kimberly Scott there is Scott Paper and Kimberly Clark's acquisition of Scott Paper?

MR. CLARE: Objection to form and calls for speculation.

A. Probably.

Q. The first printed text under action steps is to, quote, agree on tier one list of potential buyers. How does, in this context, Morgan Stanley go about identifying who potential buyers would be?

A. The process is really multi-faceted. One step would be to query other officers within the firm, and so I believe that Tyrone Chang e-mail that was sent out to officers and the response that was received from Andre Francois Pense is an

NOT A CERTIFIED COPY

Kitts

example of the type of inquiry you would make within the firm to try and obtain knowledge and information of the Morgan Stanley network to determine if there are interested parties out there. In addition, you would -- we would review based upon the size of other companies and try to make an attempt at assessing what the strategic fit might be between the companies to try and determine a credible universe of parties to potentially consider its really, I guess I would describe it as a funnel, and so you start with a very broad universe of names and try to, as you gain a better understanding of the company, try to narrow it down to a more rational group of potentially interested parties.

Q. The third bullet point, and I think this is consistent with your funneling analogy, provides, and I quote, approach selected potential buyers to initiate discrete one on one conversations with capital I information, capital M memorandum. Do you see that?

Kitts

A. Yes.

Q. The information memorandum referred to there is a packet of information on Sunbeam?

A. Yes.

Q. Okay. And Morgan Stanley would be involved with preparing that memorandum?

A. Yes.

Q. The next major bullet point on the same page provides, obtain indication of valuation and intent. What does that refer to?

A. What that refers to is based upon the previous bullet point and subdashes regarding contacting potential buyers, to the extent there was interest, what view they had with respect to the value of Sunbeam. And intent with the two question marks would suggest whether or not they wanted to pursue a transaction in which they would take control of the combined entity. I think it really refers to intent meaning desire to acquire the company, and what the potential role of senior management of

Kitts

Sunbeam might be.

Q. Okay. And the valuation term in particular refers to what a buyer might be willing to pay for the company?

A. Yes.

Q. Okay. And depending on the transaction, that would be some premium over the then stock price?

A. Usually.

Q. Okay. Now, going back to the information memorandum, how did Morgan Stanley go about preparing that information memorandum in this case?

A. In this case, what we would usually do is have a series of meetings with senior management to try and develop a better understanding of the company and the businesses, and then work with management in preparing information that attempted to accurately reflect and describe the business.

Q. And who on the Morgan Stanley team was involved in the series of meetings that you referred to?

Kitts

A. At least myself, Alex, Jean, Tyrone, I don't recall if Bill Strong and Jim Stynes were involved, but Bill in particular tended to be very active on this engagement. And so he very well could have been.

Q. And those would be meetings I think you said with senior management?

A. With senior -- with executive management, but also then I remember, you know, discussions, whether face-to-face meetings and conference calls with a broader group of business unit level managers.

Q. And can you remember any other names?

A. No.

Q. And these calls would have occurred then in the September, 97 time frame?

A. I believe so.

Q. I believe you indicated that the purpose of the information memorandum was to compile accurate information on the company to be sold.

NOT A CERTIFIED COPY

93-1836

Kitts

A. Yes.
Q. Why is it important for the information to be accurate?
A. Well, in presenting the information to third parties, in this particular example as a public company, we were very concerned as we are in any public company situation about confidentiality. The result of that is that we chose in this case to only use publicly available information in preparing the information memorandum, or input from the management team. So a large -- you will see in the outline that much of the description was either based on publicly filed documents or on public research reports from analysts that were familiar with the company.
Q. All right. And I guess the confidentiality is one side of it, but the accuracy is another. My question is really directed to the accuracy. Why is it important for the information memorandum to be accurate?
A. Well, the purpose of the

Kitts

information memorandum is to present the opportunity to potential buyers in order to try and develop a level of interest. And presumably the desire is to obtain their level of interest based on an informed point of view.
Q. So to give the third parties a realistic assessment of the company to be sold?
A. Yes.
Q. Okay. Now, you indicated that because of confidentiality concerns, you utilized publicly available information. Did you take any steps other than what you've already testified to to determine the accuracy of the publicly available information in connection with preparing this information memorandum?
A. Not in determining the accuracy of the publicly available information, no. We relied upon public filings, audited financial statements, research reports published by other investment banks.
Q. Okay. Now, pages 5 through 10 of

Kitts

Exhibit CPH 69 lists some potential buyers that Morgan Stanley had identified, is that correct?
A. Yes.
Q. And I apologize for the small type which is not reproduced very well. If you'd look at page 8, the last listed company on page 8 is, I'm not sure whether that's SEB or S-E-B. Do you see that?
A. Yes.
Q. Do you know whether it's SEB or S-E-B?
A. No, I don't.
Q. Okay. The handwritten comment associated with S-E-B provides, was going to buy, walked away, turned off by lousy management. Do you have any recollection of what those comments refer to?
A. No.
Q. Did you in connection with the September 11 call discuss these potential buyers with the Morgan Stanley team and Mr. Kersh?
A. Yes.

Kitts

Q. As of September 11, Morgan Stanley hadn't reached out to all of these potential buyers, is that correct?
A. That's correct, we had not made contact.
Q. It was something that was just getting under way?
A. Yes. We wanted to review and have the client approve any party before they were contacted.
Q. Now, if you would flip to page 12 for me, in the upper left of this page in large type there is handwritten the word amateurs?
A. Yes.
Q. Do you have any idea what that refers to?
MR. CLARE: Objection. Calls for speculation.
A. I don't.
Q. Did anyone at Morgan Stanley have a view that Sunbeam's management were amateurs in any way?
MR. CLARE: Objection, calls

NOT A CERTIFIED COPY

Kitts

for speculation about what other people would have -- the views held by other people. You can answer if you are able.

A. No, and in fact if I had to speculate based on this call, I would believe that the reference may have been made to the Llama team.

Q. Llama was paid out of the compensation to be awarded to Morgan Stanley, is that correct?

A. I believe that's right. Bill Strong really took the active role in negotiating the engagement letter and the subsequent sharing of payments to Llama.

Q. Okay.

A. I believe that to be the case.

Q. There is a printed portion of text on page 12 stating, section Roman 6, future growth opportunities, do you see that?

A. Yes.

Q. And there is a notation to apparently move that section up. Do you see that?

Kitts

A. Yes.

Q. Do you have any recollection of the significance of Sunbeam's future growth opportunities as part of the information memorandum that will be prepared for third parties?

A. Well, I think in any information memorandum, the buyer is as focused, if not more focused on the future as the past, and so an attempt would be made by an advisor to try to make sure that potential buyers understood, you know, the potential upside opportunity and future growth opportunity.

Q. There is a note that seems to be associated with that printed text that states, beefed up sex appeal. Do you see that?

A. Yes.

Q. What does that refer to?

MR. CLARE: Objection, calls for speculation.

A. I don't know.

Q. There is yet another handwritten note associated with that printed text that

Kitts

states, that's going to sell. What does that refer to?

MR. CLARE: Same objection.

A. I don't know. If I had to speculate, I believe that as we heard more about the new product introduction cycles that Sunbeam was contemplating and the creative process that they were approaching new product introductions, you know, we as a team certainly became excited about what the future opportunity was for Sunbeam.

Q. And so you were of the view that third parties would be particularly intrigued by Sunbeam's future possibilities?

A. Yes.

Q. There is one other note on this same page towards the middle of the page that states, what happened over last the year? What's the significance of that text?

MR. CLARE: Objection, calls for speculation.

A. I don't know.

Q. Well, was Morgan Stanley in any way touting Sunbeam's improved results under

Kitts

Dunlap's management?

MR. CLARE: Objection to form.

A. We considered Dunlap's ability to cut costs to be a strategic asset of Sunbeam, and based on the information available, financial, historical financials as well as the research reports, suggested that his ability to continue to take costs out of the structure were significant. We viewed that management team ability as a selling point and a strategic asset.

Q. And in fact it was not just Dunlap's ability to cut costs, it was also to improve sales results, is that correct?

MR. CLARE: Objection to form.

A. We viewed his ability to cut costs as a more strategic asset. I think as this page suggests, as we learned more about the future growth opportunities, I'm not sure that that was a Dunlap asset or other people within the organization, Don Uzzi, whoever the others were. But what we felt was that this management team was bringing a new approach to what was considered a

NOT A CERTIFIED COPY

01-4338

Kitts

relatively mundane set of consumer product categories.

Q. And the new approach, I believe you indicated, improved the financials in several respects, is that correct?

MR CLARE: I think that misstates his prior testimony. You can answer.

A. What I would say is that the new approach, we believed that the new approach was likely to have a meaningful positive contribution to future sales.

Q. And Sunbeam's turnaround for 96 over 97, that turnaround was a result of more than just cost-cutting measures by Dunlap, is that correct?

MR CLARE: Objection, no foundation.

A. I don't remember.

Q. You personally met with a number of potential buyers of Sunbeam in the fall of 1997, is that correct?

A. Yes.

Q. Do you recall any of the

Kitts

potential buyers you met with?

A. I remember meeting with Gillette, I remember meeting with -- that's the meeting that stands out in my mind most prominently.

Q. Did Gillette tell you at that time that they thought Sunbeam was overvalued?

A. I don't remember them saying that.

Q. Okay. Do you remember any potential buyers of Sunbeam expressing the concern that Sunbeam was overvalued in the fall of 1997?

A. I don't remember any specific party indicating that Sunbeam was overvalued. My recollection is that people certainly viewed how the stock had performed, that the stock appeared to be fully valued.

Q. In addition to Gillette, you also met with Gruppo Pulsar, is that correct?

A. That's possible. I don't remember being a member of that -- attending

Kitts

that meeting.

Q. Okay, let's -- and again, I recognize this is a few years ago. If you want to look at Exhibit 84, that might, particularly in the September-October date range, that may refresh your memory a little bit.

A. Okay. I see that I'm listed. I don't honestly recall the meeting.

Q. How about meetings with Sarah Lee and Newall, do you recall those meetings?

A. Yes.

Q. And those were in Chicago and Wisconsin apparently?

A. Yes.

Q. And then Colgate Palmolive, you met with them to discuss the sell side as well?

A. Yes.

Q. And Societe Bic?

A. Yes.

Q. And Stanley Works?

A. Yes.

Q. And then flipping over to the

Kitts

next page, I think you will see some additional sell side meetings. Do you recall involved being involved in an AEA Investors discussion on the sell side?

A. I don't recall, but it's quite possible.

Q. How about Clorox, do you remember meeting with them on the sell side?

A. Yes.

Q. That was in San Francisco?

A. Yes. May have been Oakland.

Q. Now, Morgan Stanley ultimately was unable to find a buyer for Sunbeam, is that correct?

A. Through the course of these meetings, we were unable to identify a buyer.

Q. Well, ultimately a buyer was never located, is that correct?

A. Yes.

Q. And why, in your view, was Morgan Stanley unable to find someone to buy Sunbeam?

MR. CLARE: Object to the form.

NOT A CERTIFIED COPY

0149369

Kitts

A. I think there were a variety of reasons, depending on individual purchaser at the end of the day, the -- to a certain extent beauty is in the eye of the beholder. And so in this case there were, you know, multiple concerns expressed across, you know, from different parties. One was the, given the dramatic runup in the stock price, that the stock appeared to be fully valued, and so certain potential purchasers couldn't get their arms around how they could afford to pay a premium to buy the company at what would be acceptable to the shareholders. Others, other parties, there either was a limited or no strategic fit from a corporate perspective with the areas that they competed or they didn't have interest in some of the categories in which Sunbeam participated. Others thought that while the cost-cutting efforts that occurred had been impressive, there were questions raised about the ability to both cut costs and grow sales simultaneously. It seemed to me to be the three -- those were three themes. A

Kitts

fourth theme was frankly, you know, concerns about dealing with Al Dunlap.

Q. And what specifically would cause someone to have concern about dealing with Mr. Dunlap?

MR. CLARE: Objection, calls for speculation.

A. Well, some of the concerns related to the fact that he -- it appeared that he and his senior management team were clearly responsible for the dramatic change that had occurred in the results at Sunbeam, and therefore some of the larger companies we were discussing this with would expect to acquire the company and have a management team already in place that could continue to run it, and there were significant questions raised about how long would Al Dunlap ever work for someone else or stay around in running that business.

Q. Did any of the potential buyers voice any concerns about Mr. Dunlap's management style?

MR. CLARE: Object to the form.

Kitts

A. Frankly I believe that some companies may have been fearful of engaging in conversations with Sunbeam with the fear that if they didn't go well, that the tables may ultimately be turned, if Al became educated on their company and situation.

Q. That Sunbeam could buy them as opposed to them buying Sunbeam?

A. Yes.

Q. Okay. And at that point in time, Sunbeam's value had grown substantially over say the preceding 18 months?

A. Yes.

Q. So Sunbeam was a fairly large company, it's fair to say, by the fall of 1997?

A. Yes.

Q. And the value of Sunbeam as defined by its stock price was something that Dunlap could trade on to buy another company?

MR. CLARE: Objection. Lack of foundation.

A. Certainly using his stock as

Kitts

currency and as a form of consideration, was certainly a method available to him as a public company.

Q. And in fact it's a method that he ultimately used in connection with the Coleman acquisition?

A. Yes.

Q. And how did the idea of using Sunbeam stock as currency come about in connection with Morgan Stanley's work?

A. Well, I think it goes all the way back to the original solicitation meeting. Some of our proposed ideas suggested not selling the company today necessarily, but merging with another company and applying this skill set that we believed management to have of cost-cutting, applying it to someone else's cost structure.

Q. And in connection with a transaction of that sort, Sunbeam would use its stock to effect the transaction?

A. Potentially, depending on the size of the transaction. A smaller transaction, they were more likely to use

NOT A CERTIFIED COPY

Kitts

cash or borrow money. But in the context of some of the larger transactions that we were proposing, I think equity, the use of equity as consideration was considered.

Q. And that was among the ideas that Morgan Stanley presented from the outset of the engagement?

A. Yes.

Q. Was Sunbeam kept apprised of Morgan Stanley's efforts to find a buyer in the fall of 1997?

A. Yes.

Q. And were there periodic conference calls or meetings to keep Sunbeam informed as to the progress in finding a buyer?

A. Yes.

Q. Did anyone at Sunbeam ever voice any displeasure with the inability to locate a buyer?

A. Certainly during the course of the engagement, there were periods where the client was either disappointed or less than pleased with the outcomes.

Kitts

Q. Did you have any conversations with Mr. Dunlap in the fall of 97 concerning Morgan Stanley's progress in identifying a buyer?

A. Yes.

Q. And did he ever lose his temper to you as a result of learning of the sales progress?

A. He certainly could be aggressive in his communications.

Q. Raised voice?

A. Yes.

Q. Profanity?

A. Yes.

Q. Can you give me any more specific recollection of any of the calls or meetings with Al Dunlap in the fall of 97 where Morgan Stanley was advising him of the progress on locating a buyer?

A. Nothing stands out in my mind, other than going through materials not dissimilar to this and advising him. Sometimes I would communicate the message, sometimes Bill Strong would communicate the message, sometimes Jim Stynes would communicate the messages back.

Q. Taking turns with Dunlap?

A. Yes.

Q. Now, there came a time when Morgan Stanley met with representatives of McAndrews & Forbes Holding Company concerning a potential Sunbeam transaction, is that correct?

A. Yes.

Q. And you were involved in those initials meetings, is that correct?

A. I don't remember if I was involved in the initial meeting or not. Okay, I'm sorry, I was looking at December 12 where there was a meeting between Sunbeam and MAFCO, where it notes MS not present. I was certainly in some of the meetings. But again, what I can't remember is there were meetings that Jim Stynes might have attended and I didn't and vice versa.

(Recess taken.)

FURTHER EXAMINATION BY MR. JOHNSON:

Kitts

Q. Mr. Kitts, I want to go back for a minute for a little more discussion of what we've been calling the sell side efforts in the fall of 97. And in that connection, I've given you a document marked CPH Exhibit 71. If you would take a minute and look through it and then identify that for the record, I'd appreciate it.

A. Yes.

Q. Can you identify Exhibit 71 for the record?

A. Yes. The first two pages are an internal memo sent to investment banking at Morgan Stanley to -- which was standard practice any time, or the firm was publicly involved in a transaction, or in a -- representing a client to notify all investment banking of the firm's involvement and who the team members were.

Q. And this is a memorandum circulated by e-mail, is that correct?

A. Yes, it appears that way.

Q. And the memorandum itself is dated October 22, 1997?

NOT A CERTIFIED COPY

Kitts

A. Yes.
Q. Okay. There's also an attached file included within Exhibit 71, is that correct?
A. Yes.
Q. What is the attachment?
A. The attachment is intended to provide background material on a company, again to, in this case investment banking, so that they at least had some level of familiarity with the company.
Q. Is this in the nature of the information memorandum that we were talking about earlier today?
A. Yes, it appears similar in style and substance to the information, to the subset of what would be contained in an information memorandum.
Q. So this would be information that ultimately could be communicated to third parties or potential buyers of Sunbeam?
A. Yes, potentially, but again, the purpose here was for internal purposes.
Q. Do you know who drafted the

Kitts

attached file?
A. I don't. I would believe that it would have been a collaborative effort, but at the end of the day, either Tyrone or Gene Yoo would have been the person or persons typing the draft.
Q. Let's look in particular at the first page of the attachment, which appears to have the Bates stamp Morgan Stanley confidential 00005986.
A. Yes.
Q. The title is investment rationale.
A. Yes.
Q. This page in particular, is that a collaborative effort within Morgan Stanley?
A. Well, the entire document is a collaborative effort both between Morgan Stanley and in this case Sunbeam management.
Q. Did you personally have any input into the contents of the page marked investment rationale?
A. I don't remember.

Kitts

Q. And you think Mr. Chang or Mr. Yoo would have been the person, the secretary or scribe on this page?
A. Yes.
Q. Now, the first bullet point provides, Sunbeam provides an attractive growth story and investment opportunity. What was the basis for that statement as of the third week of October, 1997?
A. Well, I think each bullet point represents a theme that we tried to present factual information underneath it to support that point, and so the attractive growth story in our view was supported by the fact that they were market leader and had a leading share in each of the categories listed, you know, et cetera.
Q. The second major bullet point provides, Sunbeam has undergone a profound transformation since the arrival of new management in 1996.
Can you tell me again what the basis for that statement would be?
A. Again, I think the basis is

Kitts

underneath it in that the transformation was from, going from an unprofitable -- they've gotten rid of companies or businesses that were unprofitable, they've reduced costs, they've restructured. The company had come up with this new theme of describing themselves as a branded consumer devices company, which was a relatively unique position that they had identified, and so again, we were trying to articulate on behalf of the company what, you know, what they had described to us as the changes that they had implemented since they had arrived.
Q. Did Morgan Stanley have any obligation to confirm the authenticity of the transformation that is being described here?
MR. CLARE: Objection to form. Calls for a legal conclusion.
A. I don't know.
Q. So -- well, let me put it this way. Did Morgan Stanley undertake any steps to confirm the veracity of this stated profound transformation?

NOT A CERTIFIED COPY

Kitts

A. The team conducted due diligence and researched publicly available information that we considered to be reasonable and appropriate in determining and preparing the material that we prepared through a series of, you know, reviewing documentation but also interviews and discussions with management.

Q. We'll get into the due diligence more in a little bit. Going back up to the first bullet point, which states that Sunbeam represents an attractive growth story, same question, what did Morgan Stanley do to confirm that in fact Sunbeam did present a growth story?

A. Again, in terms of reviewing publicly available information, research reports, discussions with management, we came to believe that this new product introduction and idea generation capability that they had created would suggest that there was significant additional growth both domestically and internationally for the company.

Kitts

Q. So putting aside whether Morgan Stanley had an obligation to confirm the veracity of the statements contained on page -- the page marked investment rationale, your view is that Morgan Stanley did in fact take steps to confirm the accuracy of those statements?

A. Yes.

Q. And it did so by reviewing public filings and having discussions with management?

A. Yes.

Q. Anything else?

MR. CLARE: Beyond the other steps that he's testified to?

Q. Well, let's just have a clear record. Beyond looking at public filings and having discussions with management, what did Morgan Stanley do to confirm the accuracy of the information contained on page bearing the Bates stamp Morgan Stanley confidential 5986?

A. You'll see that we also relied in presenting the material reviewed any and all

Kitts

public commentary on the company with respect to research analyst reports, industry reports that might have been available, general industry newspapers, magazines, et cetera, to confirm, and you know, the buzz around Sunbeam at the time was, from what I remember, pretty spectacular. And so you know, for example a number of us attended a new product launch that's on this chronology on October 8, which was the air and water filters business as another example of the new product launch opportunities that they were pursuing.

Q. Did anyone from Morgan Stanley in the fall of 97 have any discussions with Sunbeam's major customers?

MR. CLARE: Objection, no foundation.

A. I don't remember.

Q. Did anyone in the fall of 97 from Morgan Stanley have any discussions with Sunbeam's outside auditors?

MR. CLARE: Same objection.

A. I don't remember, but there were

Kitts

certainly conversations and discussions and interaction with Arthur Andersen during the process.

Q. Do you remember when in the process those interactions occurred?

A. No, I think it would have been during our diligence phase in terms of some of the information requests and there may have been as part of those discussions conversations with members of Arthur Andersen.

Q. Did you personally have any discussions with anyone from Andersen at any time relating to Sunbeam?

A. Not that I remember.

Q. Can you identify any of the individuals who were on the Sunbeam account for Andersen?

A. No. Sorry, there was a name or two that I can't remember, but I seem to recall that there had been some longstanding relationship between Dunlap and certain partners at Andersen, is my recollection there.

NOT A CERTIFIED COPY

Kitts

Q. And did the fact of that relationship have any significance to you?

A. No, I viewed it as similar to, you know, Bill Strong having prior interaction with Dunlap over the years.

Q. Going back to the page entitled investment rationale, which is the first page of the attachment to Mr. Chang's e-mail in Exhibit 71, and again for the record it's page Morgan Stanley confidential 5986, in your view, would third parties be entitled to place any reliance on the information presented on this page?

MR CLARE: Objection. There is no foundation that this document was presented to third parties as an internal document on its face. You can answer.

A. Could you repeat the question?

Q. Sure. The information set forth as the investment rationale for Sunbeam, in your view would it be fair for third parties to place any reliance on the statements contained there?

A. No.

Kitts

Q. And why do you say that?

A. Because I would view this document as the introduction of an idea, and solely that, to introduce an opportunity to someone, and that to rely on a document like this would be inappropriate.

Q. So for a third party to form any opinion as to whether Sunbeam had undergone a profound transformation, for example, on the basis of the statements that Morgan Stanley drafted, that would be unreasonable?

A. Yes.

Q. Do you have any opinion as to whether Morgan Stanley had any responsibility for accurately presenting Sunbeam's financial condition?

A. Yes, based upon the information we had available to us, yes.

Q. I guess what I'm a little confused about is why is it important for Morgan Stanley to present accurate information if third parties aren't entitled to place any weight on the information Morgan Stanley provides?

Kitts

MR CLARE: Object to the form of the question. Argumentative.

A. The rest of the material that's presented is all factual in nature, based upon publicly available information. And so again, our focus was solely relying on information that either was provided to us by the company or from public filings. This investment rationale page is intended to be an accurate description in a qualitative manner of what we understood to be the opportunity. The rest of the presentation is quantitative in nature for the most part. And the qualitative assessment at the end of the day is again, falls under what I would describe as beauty being in the eye of the beholder in terms of interpreting the factual information.

Q. So it's a subjective consideration?

A. Yes.

Q. Did you personally review any public filings in connection with your collaboration on procuring this investment

Kitts

rationale?

A. I certainly reviewed any publicly available information on Sunbeam that I deemed relevant, absolutely.

Q. And so can you tell me any public filings you reviewed?

A. 10-K, annual report, 10-Q's, any research that I deemed relevant that was available to us. Internal budgets, whatever internal plans they may have provided to us.

Q. I guess I'm a little confused now. I thought you had indicated that you, in connection with preparing this document, reviewed public filings, had discussions with management, and reviewed publicly available analyst reports. And now you've mentioned internal budgeting documents. Is that something else that Morgan Stanley reviewed in connection with preparing the information memorandum?

A. What I don't -- usually any situation which we're involved in will get whatever internal documentation is available in terms of the most recent strategic plan.

NOT A CERTIFIED COPY

Kitts

I don't remember what that document looked like in this instance, but the information that was used to prepare this document was solely based on either publicly available information or information provided to us by management. Again, the focus on this was concern about confidentiality, given the fact that it was a public company, and so there were no internal forecasts presented in this document as far as I know.

Q. And again, the management that you personally spoke with were all senior officers?

A. Yes.

Q. Do you have any idea who Mr. Chang spoke with during the fall of 97 at Sunbeam?

A. No.

Q. Now, going back to the initial meetings with MAFCO that we started to talk about a little while ago, how is it that Morgan Stanley came to contact MAFCO concerning a potential transaction with Sunbeam?

Kitts

A. I don't remember.

Q. Did anyone at Morgan Stanley have a relationship with anyone at MAFCO?

A. Yes.

Q. Tell me about that.

A. Bill Reid, who was the managing director had, I believe, client responsibility for overseeing the relationship with MAFCO and any of its related entities.

Q. And was the initial contact to MAFCO made as part of the sell side efforts?

A. I don't remember.

Q. When did the idea of a transaction involving Coleman get presented to MAFCO for the first time?

A. I see it here on the chronology as November 6, but I don't remember the meeting.

Q. Okay. Do you remember how many face-to-face meetings you had in the fall of 97 with MAFCO individuals?

A. No.

Q. Who throughout phase one of the

Kitts

transaction as we've been using that term, who from MAFCO did you personally have any communications with?

A. Jim Maher and possibly Will Nesbitt.

Q. Anybody else?

A. Not that I remember.

Q. Did you ever have any communications with Ron Perlman?

A. Not that I remember.

Q. How would you characterize the initial meetings with MAFCO relating to a possible transaction?

MR. CLARE: Objection to foundation and form.

A. I don't remember.

Q. Did you have the view that the parties were making substantial progress in reaching some kind of a deal?

A. Again, I think we'd have to clarify the time frame. Because again, as I think about the fall, I don't, you know, I don't think that's the time frame. It may be, you know, my notion of fall versus

Kitts

winter, but --

Q. Well, I think we can even distinguish between 1997 and 98. In 97, did you have the view that the parties, those being MAFCO and Sunbeam, were making substantial progress in reaching some kind of an agreement?

A. Yes. My -- I mean again, late December, January, the dates kind of blur, but my understanding was that there was a meaningful dialogue occurring between Sunbeam management and Coleman management and/or MAFCO.

Q. Did you ever hear about a meeting between Mr. Perlman and Mr. Dunlap in Florida in December, 1997?

A. Yes.

Q. What did you hear about that?

A. I remember -- from what I remember hearing, there were discussions at one of the two individual's homes, I believe, and I guess it was described as the infamous fuck you meeting or something where the two parties ultimately broke off

NOT A CERTIFIED COPY

Kitts

conversations and stormed off.
Q. Morgan Stanley was not present in any capacity at that meeting?
A. No.
Q. How did it come to be that the parties made up, so to speak?
MR. CLARE: Object to the form.
A. I don't remember what triggered the re-engagement.
Q. But at some point in 98, early 97, the parties re-engaged in discussions?
A. Yes.
Q. Okay. And you personally attended meetings with MAFCO representatives in February, 1998 relating to a potential transaction involving the acquisition of Coleman?
A. Yes.
Q. Okay, who else was at those meetings?
A. Again, different meetings. There may have been different individuals, but from what I remember from Morgan Stanley, it would have been Jim Stynes, myself, possibly

Kitts

Alex Fuchs, Jim Maher and Will Nesbitt; Coleman, you know, possibly Jerry Levin, depending on what meeting, and possibly CSFB, members of CSFB.
Q. When was the first time you had any communication with Mr. Levin relating to a transaction involving Coleman?
A. I believe it was one of the diligence sessions, where we were reviewing kind of the Sunbeam, you know, business.
Q. Are those diligence sessions where Morgan Stanley was reviewing Coleman's business or Sunbeam's business?
A. Those really were meetings where Sunbeam was presenting their businesses to the Coleman representatives.
Q. And Mr. Levin was among those representatives?
A. Yes, I believe so.
Q. Who else from Coleman did you have any direct face-to-face dealings with in the early part of 1998?
A. No-one that I remember.
Q. Do you remember Mr. Page by any

Kitts

chance?
A. No.
(Begin videotape 2)
(CPH Exhibit 138, CPH 1411216-300, marked for identification, as of this date.)
Q. Mr. Kitts, I'm going to give you a document that we've marked as CPH Exhibit 138, and ask that you review it.
A. Thank you.
Q. Can you identify the document that's been marked as CPH Exhibit 138?
A. Yes.
Q. Would you do that for me?
A. Yes.
Q. Can you tell me what it is?
A. Oh, this would be a, again, it would appear to be the information memorandum style presentation that we would have used with potential buyers.
Q. So this is a document that is for distribution to third parties?
A. Yes.
Q. And for the record, CPH Exhibit

Kitts

138 has the Bates stamp CPH 1411216 through CPH 1411300. This draft is dated February, 1998, is that correct?
A. Yes.
Q. Did Morgan Stanley prepare this draft?
A. Yes.
Q. Okay. Morgan Stanley's name appears on the bottom right of the page?
A. Yes.
Q. Okay. Who at Morgan Stanley prepared this?
A. Again, it would have been a team effort.
Q. Who was the scribe, so to speak?
A. Probably Tyrone Chang.
Q. Was this information given to anyone from MAFCO or Coleman?
A. I don't know, but I would assume so.
Q. When you say this is a team effort, the preparation of this document, that's the MS team that we talked about earlier?

NOT A CERTIFIED COPY

011846

Kitts

A. Well, in reality it's really both the management team and the internal Morgan Stanley team.

Q. So the team is Sunbeam and Morgan Stanley?

A. Yes.

Q. Now, if you'd look at -- and I apologize, there are several Bates pages here, but the Bates CPH 1411220.

A. Yes.

Q. Entitled investment rationale. Do you see that?

A. Yes.

Q. I'd like you to compare that to the investment rationale page contained in what's been marked as Exhibit 71. Do those appear to be identical pages?

A. They do, other than, you know, minor. There's no Morgan Stanley in the right, lower right, but in terms of the substance of the page, yes.

Q. And just so we have a clear record, you've noted that Exhibit 71 does not include the formatting of Morgan

Kitts

Stanley, Morgan Stanley's name in the bottom right page, and Exhibit 138 does have that.

A. Yes.

Q. Okay. What did Morgan Stanley do to confirm that the statements initially made in October, 1997 remained true in February, 1998?

MR. CLARE: Object to the form. I'm not sure I understand the question.

Q. Do you understand the question or do you want me to rephrase it?

A. Could you rephrase it for me please?

Q. Sure, I will try to. You've already testified I believe that the investment rationale page contained in Exhibit 71 was created in October, 1997. And you've also testified I believe that the document marked as Exhibit 138 is dated February, 1998. And so the question is, what if anything did Morgan Stanley do to confirm that the investment rationale initially stated in October, 1997 remained the same in February, 1998?

Kitts

A. Well, the material in the document would have been updated with respect to financial information, stock price change, et cetera, and anything that was again in the public domain that would have changed would have been updated in this document. The diligence and the dialogue with the client remained ongoing throughout that period. And so, you know, we would have continued to maintain a current understanding of the company during the relevant time frame.

Q. But it's fair to say that the investment rationale that Morgan Stanley has articulated here did not change in the approximately four month period between October, 97 and February, 98?

MR. CLARE: Objection, asked and answered.

A. That's right.

Q. And is it your testimony that the investment rationale contained in CPH Exhibit 138 is not something that a third party would be entitled to rely on?

Kitts

A. Yes.

Q. But is it also your testimony that Morgan Stanley has some obligation to accurately present information and material provided to third parties?

MR. CLARE: Object to the form to the extent it calls for a legal conclusion.

A. My personal view as a professional would be that the document in terms of what information we've used here needs to be accurate. And so the financial information, the filings, et cetera.

Q. And Morgan Stanley has some obligation to confirm that the information is accurate, is that true?

MR. CLARE: Same objection.

A. I don't know what the legal requirement is or standard.

Q. Well, in your practice as an investment banker, do you believe that you have some duty to confirm the accuracy of information that's supplied to third party?

A. I don't know. Could you rephrase

Esquire Deposition Services
1-800-944-9454

NOT A CERTIFIED COPY

Kitts

that for me?

Q. I can try to. We'll see. As a general matter, do investment bankers have a duty when they are supplying information to third parties to verify the accuracy of the information provided?

MR. CLARE: Objection, calls for a legal conclusion.

A. My personal view as a practitioner is that the factual information presented should be accurate and that we at Morgan Stanley needed to, you know, take reasonable and appropriate action to verify it. And so it's in that context. Again, I view this document investment rationale page as a qualitative description which again is subject to the notion of beauty being in the eye of the beholder.

Q. Well, let's try and put that in a little more context. For example the statement contained on investment rationale page that Sunbeam has undergone a profound transformation, okay, is that simply spin or is that a factual statement?

Kitts

MR. CLARE: Objection to form.

A. Again, I think that words like attractive, profound, are subject to individual interpretations.

Q. Did Morgan Stanley have the view that Sunbeam had undergone a profound transformation?

A. I believe the team viewed that to be the case.

Q. Did you personally have that view?

A. Yes.

Q. So putting aside whether it's a qualitative statement or not, you believe that that's an accurate -- you believed at the time that that was an accurate statement?

A. Yes.

Q. Okay. And what was the basis for your belief that that was an accurate statement?

A. The basis was the review of publicly available information and discussions with management.

Kitts

Q. The senior management that you've already identified?

A. Yes.

Q. The subpoint under the first bullet point on the investment rationale page provides that Sunbeam had market share leadership in all product segments, and then provides a parenthetical. Do you see that?

A. Yes.

Q. The parenthetical is not qualitative information in any way, is it?

A. No, not the parenthetical.

Q. So the statement on this page that Sunbeam is number one in gas grills, electric blankets and clippers is an objective factual statement, is that correct?

A. Yes.

Q. And did Morgan Stanley do anything to confirm the accuracy of that statement other than review public filings and have conversations with senior management?

A. I don't think so.

Kitts

Q. Do you know sitting here today whether that statement in the parenthetical is a factually accurate statement?

A. I don't know.

Q. All right, can you take me through in general terms the development of the communications with MAFCO or Coleman to the point of reaching a handshake agreement?

A. Again, it's so long ago that I don't recall the kind of continual, or the continuum.

Q. And sorry to interrupt. If you'd care to review Exhibit 84, obviously at any time feel free to do that.

A. Okay. Well, on the chronology it indicates that preliminary handshake agreement on the exchange ratio occurred on February 19, and it says that it was at a meeting with Sunbeam. I seem to recall, you know, there were a series of telephone conversations with Jim Stynes and Jim Maher, with myself on the phone, and probably both myself and Alex Fuchs in the room on a speakerphone in Jim's office, and then

NOT A CERTIFIED COPY

Kitts

subsequent conversations going back and forth on negotiating the exchange ratio.

Q. From the time that the negotiations were rehabilitated after the Perlman Dunlap meeting until the time the handshake agreement was reached, how much time transpired?

A. Based on the chronology it would be somewhere between two and four weeks, I would suppose.

Q. As Morgan Stanley's work for Sunbeam moved into the 1998 time frame, was there any increasing urgency on the part of Sunbeam to get a deal done?

A. No.

Q. You testified earlier about conversations you had with Mr. Dunlap in the fall of 97 where he voiced displeasure with the progress of proceedings.

A. Yes.

Q. Did Dunlap's perception of Morgan Stanley's work remain the same as you entered the 1998 time frame?

MR. CLARE: Objection, calls

Kitts

for speculation about Dunlap's perception. You can answer if you can.

Q. Well, let me address that objection. Mr. Dunlap was not shy in expressing his opinion, is that fair to say?

A. Yes.

Q. Did he at any time change his expression of opinion towards Morgan Stanley's work as you entered the 1998 time frame?

A. Not that I remember.

Q. Did you review any analysis of the potential synergies that would result from a Coleman Sunbeam transaction?

A. Yes.

Q. Okay, who at Morgan Stanley had primary responsibility for preparing synergies analyses?

A. It's difficult to say. I mean, we view synergy analysis as really the responsibility of management, relevant management team, since it really requires a detailed understanding of the businesses. And so from what I recall, the preliminary

Kitts

sources of the synergy analysis were from the prospective management teams. We may have prepared schedules that outlined management's views on what the opportunities might have been, and so in terms of within Morgan Stanley, who prepared that schedule, is probably Tyrone Chang.

Q. Did Morgan Stanley have any view as to the reasonableness of the range of synergies that had been proposed?

A. In our analysis from what I recall, we reviewed what the management teams had identified on a line item basis, but then also performed sensitivities both larger and smaller amounts than what the management team believed to be, sort of what was described as the base case. In addition, we would typically compare those types of amounts with some relevant metrics as percentages of sales or cost of goods sold, et cetera, and kind of compare to determine reasonableness in that context.

Q. And Coopers & Lybrand was involved in the synergies analysis as well,

Kitts

is that correct?

A. Yes, and I believe they physically visited facilities and would comment positively and/or negatively on the ability to achieve the preliminary synergies that have been identified.

Q. Do you recall the range of potential synergies being revised downward over the course of the analysis?

A. Again, I remember looking at ranges. I don't remember the number changing dramatically.

(CPH Exhibit 139, 0026540-544, marked for identification, as of this date.)

Q. Mr. Kitts, I've given you a document marked as CPH Exhibit 139, that bears the Bates stamp Morgan Stanley confidential 0026540 through 544.

A. Yes.

Q. Is this a synergies analysis prepared by Morgan Stanley?

A. Yes.

Q. And this analysis identified

NOT A CERTIFIED COPY

Kitts

revisions to synergy assumptions such that the most recent revised number is $67 million in synergies, do you see that?

A. Yes.

Q. And at the time of the revised 198 column, there is handwritten initials, S-O-C. Do you see that?

A. Yes.

Q. That's the stock ticker for Sunbeam at the time?

A. Yes.

Q. You believe Mr. Chang would be responsible for preparing this analysis?

A. Probably.

Q. Do you have any independent recollection as you sit here today of having reviewed this document in early 1998?

A. I don't remember.

Q. Would a downward revision in the synergies be of concern to Morgan Stanley in any way?

MR CLARE: Object to the form.

A. Well, it appears from the analysis at the final page that again, we

Kitts

continued to believe, or based upon our management team's perspective, that the range of a hundred to 200 million was a reasonable range to assume in our analysis.

Q. Why would Morgan Stanley have the view that a range of 100 to 200 million dollars in synergies was reasonable when Sunbeam was revising its synergy number to $67 million?

MR. CLARE: Objection, assumes facts not in evidence.

A. I don't know.

Q. You were involved in presenting the proposed Coleman acquisition to the Sunbeam board in February, 1998, is that correct?

A. Yes.

Q. Do you know what synergies figures Morgan Stanley provided to Sunbeam's board in connection with that presentation?

A. I don't remember.

Q. Do you know whether Morgan Stanley advised the board of Sunbeam that Sunbeam's own analysis of synergies had been

Kitts

revised to $67 million?

MR. CLARE: Objection, assumes facts not in evidence.

A. I don't remember.

Q. Sunbeam would obviously be interested in the highest possible synergy numbers, is that correct?

MR. CLARE: Objection, calls for speculation.

A. I don't know.

Q. Well, what are synergies in the context of a corporate transaction?

A. Well, synergies can either be cost savings, opportunities or incremental revenue, and profit available to the parties that were not necessarily available on a stand-alone basis.

Q. And so synergies represent cost savings or revenue increases?

A. Yes.

Q. Okay. So it's fair to believe, isn't it, that Sunbeam's board would be more interested in a transaction presenting $200 million in synergies than the same

Kitts

transaction presenting $100 million in synergies?

MR. CLARE: Objection, calls for speculation about what Sunbeam's board would have wanted.

A. Yeah, I don't know.

Q. So you have no opinion on whether Sunbeam's board would be interested in more revenue and less cost?

MR. CLARE: Same objection.

A. No.

Q. Was anybody from Coopers & Lybrand at the presentation to Sunbeam's board?

A. I don't remember.

Q. Can you describe for me the next steps that Morgan Stanley took after the handshake agreement was reached on I think it was February 19?

A. Well, in referencing the chronology, there was a meeting on February 23 which was a due diligence meeting between the two sides.

Q. And there were further

NOT A CERTIFIED COPY

Kitts

discussions in the following days about the contours of the legal aspects of the transaction?

A. Yes.

Q. And were you involved in any of those conversations?

A. Yes, in some of them.

Q. And the deal was finalized and ready to announce to the public on approximately March 1, 1998, is that correct?

A. Yes.

Q. The chronology here shows that in the February 28 through March 1 time frame, you and Mr. Fuchs and Mr. Stynes worked with a PR firm and with Sunbeam personnel for the PR aspects of the transaction. Who from Sunbeam was involved in those discussions?

A. My recollection is that both Al Dunlap as well as, I mean, the senior management trio of Dunlap, Kersh, Fannin, all would have been involved in reviewing any public press release. And there was also the PR firm Hill & Knowlton involved,

Kitts

and I can't remember whether there was someone else within the Sunbeam organization that was responsible for IR.

Q. IR -- oh, investor relations?

A. Yes.

Q. Had you worked with Hill & Knowlton before?

A. Probably.

Q. Is it customary to get a PR firm involved in announcements of major transactions?

A. Yes.

Q. Now, as of this time frame, February 28 to March 1, had you heard anything from anybody concerning Sunbeam's performance in the first month or two months of 1998?

MR. CLARE: I'm sorry, what time period are we talking about?

MR. JOHNSON: As of February 28, 1998, had he been given any information relating to Sunbeam's performance in the first month or two months of 1998.

A. And I seem to recall some comment

Kitts

from Russ Kersh, that there was some softness in the first couple of months, or the first month and a half, I can't exactly remember the time frame. But there was also kind of a dismissive aspect that, but it's no big deal, it's, you know, rain, snow, whatever the reason was, but no problem for us, in, you know, getting to the quarter.

Q. When did Mr. Kersh raise this issue of some softness and sending these financial results?

A. What I can't remember is in looking at the chronology, there were these two days of meetings, one February 23 and 24, in reviewing Sunbeam's, or due diligence being performed on both sides. And so what I can't remember is whether I heard it directly in a meeting or whether, you know, Alex in passing had given me an update, because it appears that I did not -- I don't remember, but it appears from this that I did not attend the February 23 meeting. And so Alex may have reported back to me on, you know, here's everything that happened today,

Kitts

and that would have been one of the items mentioned perhaps.

Q. And Kersh indicated softness?

A. Some softness, but I didn't think it would be a big deal and that they'd be able to make it up on the back end.

Q. Did Morgan Stanley do anything to dig down, so to speak, on the softness that Mr. Kersh referred to?

A. I don't know.

Q. Did you direct anyone to get additional information on the softness when you learned this information?

A. Not that I remember.

Q. Going back to the Hill & Knowlton meetings, can you take me through how that process works? What do you need to spend two days with the PR people for?

A. Well, typically what you would do prior to the announcement of the transaction is work with the company and their PR firm in drafting a transaction announcement, press release, and then trying to in our view prepare them for, you know, what are

NOT CERTIFIED COPY

Kitts

the likely questions that investors will ask as a result of the transaction announcement and try to work with them, help them prepare in anticipating what questions might be asked.

Q. So you prepared kind of a script of how to deal with various questions?

A. Usually, I can't remember whether we had a formal script or if it was just here are the questions you should expect.

Q. And you worked on that process with Hill & Knowlton and company representatives?

A. Yes.

Q. And Mr. Fuchs and Stynes were involved in that process?

A. Yes.

Q. Do you remember any particularly hard questions that you analyzed as part of this process?

A. No.

Q. Okay. Let me see if I've got some of these.

(CPH Exhibit 140, CPH

Kitts

0483399-3407, marked for identification, as of this date.)

Q. I've given you a document we've marks as CPH Exhibit 140. And I'd like you to look through it briefly.

A. Yes.

Q. The document which bears the Bates stamp CPH 0483399 through to 3407, is this a draft of the question and answer script that you were involved in preparing in connection with the announcement of Sunbeam's acquisitions of Coleman and other companies?

A. Yes.

Q. Do you recognize the handwriting on this document?

A. No. Again, I think this does not appear to be on Morgan Stanley's system. The notation in the upper left of privileged and confidential, I don't know if this was prepared by their lawyers or by Hill & Knowlton. So we would have had input, may have been responsible for gathering some information in preparation for the answers,

Kitts

but this isn't -- doesn't appear to be a Morgan Stanley document.

Q. At this point in time, this draft bears the date February 28 at 1:07 p.m., had Morgan Stanley engaged outside counsel in connection with these transactions?

MR. CLARE: When you say these transactions, what are you referring to?

MR. JOHNSON: The acquisitions.

MR. CLARE: Objection, lack of foundation.

Q. What I'm getting at, is it possible that this is a document drafted by Morgan Stanley's outside counsel?

MR. CLARE: Same objection.

A. I doubt it. Is there any question or answer relating to the company's first quarter 1998 performance?

Q. I can tell you to the extent it gives you any comfort, I don't see any, but you tell me if you disagree.

MR. CLARE: And the question is specifically with regard to the first quarter of 1998 or 1998 in general?

Kitts

MR. JOHNSON: The first quarter of 1998.

A. I don't see any either.

Q. Let me mark one more document. This will be CPH Exhibit 141.

(CPH Exhibit 141, CPH 0483341-3350, marked for identification, as of this date.)

Mr. Kitts, I've given you a document marked CPH 141 that has the Bates stamp CPH 0483341 through 3350. Does this appear to be another draft of the question and answer script that Morgan Stanley was involved in preparing?

A. Yes.

Q. And this one in contrast to Exhibit 40 bears the subtitle hard questions. Do you see that?

A. Yes.

Q. Do you have any recollection of why the questions and answers set forth on Exhibit 141 bore that subtitle?

A. No, I just think in general that the press tried -- you know, the PR team

NOT A CERTIFIED COPY

Kitts

tries to anticipate what they would consider, quote, difficult questions.

Q. Okay. If you'd look at question number 13 which is on the third page of Exhibit 141, why would the company's first quarter results present a hard question?

MR. CLARE: Objection, foundation. You can answer if you can.

A. I don't know.

Q. The question and answer here under number 13, the question provides, what's your first quarter going to look like? Are you comfortable with analyst estimates? And the draft answer is, we're happy with our first quarter so far. We are on target. At this point I'm comfortable with the Street estimates.

Was this answer included in this draft after you learned of the softness in sales that Mr. Kersh had communicated?

A. I don't remember.

Q. Did Morgan Stanley at the point in time which this draft was being created take any steps to confirm that Sunbeam was

Kitts

in fact on target for its first quarter projected results?

A. Other than asking management the question.

Q. And management involved in this meeting would be whom?

A. Would have been Al with support from Russ and perhaps David Fannin.

Q. Let me look at one more. This will be CPH 142.

(CPH Exhibit 142, CPH 0253547-3555, marked for identification, as of this date.)

Mr. Kitts, I've given you a document marked CPH Exhibit 142, which bears the Bates stamp CPH 0253547 through 3555.

A. Yes.

Q. And this is yet another draft of the question and answer script that Morgan Stanley was involved in preparing in connection with the announcement of the acquisitions?

A. Yes.

Q. Okay. And this Exhibit 142 also

Kitts

bears the subtitle hard questions, is that correct?

A. Yes.

Q. If you'd look at question 13 for me, which is on the third page of the document, do you see the sentence we're on target has been deleted by hand?

A. Yes.

Q. Who made that deletion?

A. I don't know.

Q. Do you recall any discussion during these meetings of deleting that sentence?

A. No.

Q. Did you learn at any time that during these discussions on February 28 or March 1 that Morgan Stanley was not on target?

MR. CLARE: Objection to form. I think you misspoke. You said Morgan Stanley.

Q. Thank you. Did you learn at any time during the February 28 or March 1 meetings that Sunbeam was not on target for

Kitts

its first quarter results?

A. No.

Q. Do you recognize any of the handwriting on Exhibit CPH 142?

A. No.

Q. You don't know who the keeper of this document is? By this document I mean Exhibit 142?

A. No.

Q. It just doesn't appear to be a document kept by Morgan Stanley?

A. It does not appear to be.

Q. Let me mark one more if I could. This will be CPH Exhibit 143.

(CPH Exhibit 143, CPH 1026942-6953, marked for identification, as of this date.)

Mr. Kitts, I've given you a document we've mark as CPH Exhibit 143. It has the Bates stamp CPH 1026942 through 6953.

A. Yes.

Q. And this is another draft of the question and answer script that Morgan

NOT A CERTIFIED COPY

Kitts

Stanley was involved in preparing in connection with the announcement of the acquisitions, is that correct?

A. Well again, I guess I wouldn't characterize it as assisting in preparing, but working with the company in preparing for their, you know, public announcement.

Q. Well, you were involved in two days of meetings directed to, among other things, anticipating the questions and answers that could be expected as part of the announcement of the acquisition?

A. Yes.

Q. And this version of the question and answer reflected in Exhibit 143 also has the hard question subtitle, is that correct?

A. Yes.

Q. Question 15 on page 3 is directed to first quarter results, isn't it?

A. Yes.

Q. By the way, Exhibit 143 has a time stamp later in time than Exhibit 142, isn't that correct?

A. Yes.

Kitts

Q. Why was the answer to the question directed to first quarter results changed in this fashion?

A. I don't know.

Q. Did it have anything to do with the knowledge that first quarter results were in fact disappointing?

MR. CLARE: Objection to form and lack of foundation.

A. I don't remember.

Q. Did Morgan Stanley have any responsibility for the accuracy of the information that would be contained in these proposed answers?

MR. CLARE: Objection, calls for a legal conclusion.

A. I don't believe so.

Q. So from Morgan Stanley's perspective, the answers are ultimately irrelevant?

MR. CLARE: Objection, that misstates the prior testimony.

A. Yeah, I wouldn't say that. I wouldn't say that it's our responsibility to

Kitts

confirm the accuracy of the information that Sunbeam is ultimately responsible for.

Q. What fee, by the way, did Morgan Stanley earn in connection with phase one of the Sunbeam engagement?

A. I don't remember. I would guess five to six million dollars for the Coleman transaction and one or two million for each of the other two transactions, but I'd be guessing.

Q. So for each of the three transactions it would be something on the order of nine million dollars?

A. Something like that.

(Luncheon adjournment: 12:37 p.m.)

Kitts

AFTERNOON SESSION

(Time noted: 1:18 p.m.)

ROBERT KITTS, resumed and testified as follows:

CONTINUED EXAMINATION BY MR. JOHNSON:

Q. Mr. Kitts, I want to go back just a minute to the presentation to Sunbeam's board of directors at the end of February, and I believe you testified you were present at that meeting?

A. Yes.

Q. And did you participate in the presentation to the board in any way?

A. I didn't have the responsibility for leading the discussion, but I may have chimed in with an answer here or there.

Q. Who had responsibility for leading that discussion?

A. Jim Stynes.

Q. Was there any suggestion to the Sunbeam board as to the expected closing date for the transaction?

A. I don't remember.

Q. This is a document that's already

NOT A CERTIFIED COPY

Kitts

been marked as Exhibit 89. Mr. Kitts, can you identify for us the document that's been marked as Exhibit 89?

A. Yes. This is the presentation to the board of Sunbeam related to the acquisition of Coleman.

Q. And Morgan Stanley drafted this document?

A. Yes.

Q. If you'd look at page number 3, it's got the Bates stamp Morgan Stanley confidential 0083966.

A. Yes.

Q. In the bottom left it appears to show an expected closing date of 2 Q 98, do you see that?

A. Yes.

Q. The transaction in fact closed in the first quarter of 98, is that correct?

A. I don't remember.

Q. Do you have any recollection of moving the closing date up?

A. No.

Q. Morgan Stanley doesn't earn any

Kitts

of its fee until the closing, is that correct?

A. That's -- that may be the case. Sometimes there is an announcement fee as part of a transaction where you get a portion of the success fee upon announcement as opposed to upon closing.

Q. You don't remember which it was in this case?

A. No.

Q. Okay. Were you involved in any discussions concerning the significance of the time of the expected closing?

A. Not that I remember.

Q. This document is an analysis for Sunbeam's board as to the economics of the transaction with Coleman, is that correct?

A. Yes.

Q. If you would look at, towards the back of this document, there are what appear to be valuation matrices, I guess would be the plural, starting at page 83986. I'm sorry, 83984. It's page 18 of the presentation.

Kitts

A. Yes.

Q. Morgan Stanley presents on page 18 of the presentation and subsequent pages valuations under several different synergy scenarios, is that correct?

A. Yes.

Q. And those scenario are no synergies, 100 million in synergies, 150 million in synergies and 200 million in synergies?

A. Yes.

Q. Why did Morgan Stanley present a valuation analysis with no synergies?

A. Well, I think it was part of our practice would be to show the multiples that were being paid for Coleman both with synergies but also kind of prior to any factoring in of any synergies. So it's just kind of normal practice that we would have.

Q. And the $76 million in synergies that Sunbeam had identified that was revealed in a document that we had looked at earlier today, that's not included in any of the analyses Morgan Stanley provided to

Kitts

Sunbeam's board?

MR. CLARE: Objection, assumes facts not in evidence. You can answer if you're able to.

A. I think the four scenarios we've presented, we didn't present a scenario with a specific 67 or $76 million. I don't remember.

Q. And do you have any recollection as to why that is?

A. Again, my recollection is that at the time of the board meeting, we continued to rely upon management's view that they believed that there was between 100 and $200 million of synergies, and again, this notion of 150 million was kind of the case that seemed to be the one that management had locked on to.

Q. Didn't we look at a document earlier today that showed management revising its estimate from 150 down to 67 million?

MR. CLARE: Objection. Assumes facts not in evidence and

NOT A CERTIFIED COPY

Kitts

mischaracterizes the document. You can answer.

A. Yes, we did.

Q. Okay. All right, you've been an investment banker for approximately 20 years, is that right?

A. Yes.

Q. And where would you characterize the Sunbeam acquisitions in terms of the magnitude of the deal?

MR. CLARE: Objection to form.

Q. Let me give you a better question. Was this one of the biggest deals you've ever been involved in?

A. No.

Q. Was it on the smaller side of deals you'd been involved in?

A. The Coleman deal was probably average size. The other two were on the small side.

Q. And together they're average to slightly above average, would that be fair to say?

A. Yes.

Kitts

Q. What about the financing side of this? The debt offering, was that a large offering, to your mind?

A. Yes.

Q. Okay. And I believe you testified earlier today that you had handed off responsibility for Sunbeam, the Sunbeam engagement to some extent after the announcement of the acquisition, is that right?

A. Well, virtually completely after the announcement of the transaction.

Q. Did you get any credit so to speak for fees associated with the financing of the acquisitions?

MR. CLARE: Object to the form.

A. I don't know. I think I was viewed as a member of the team, as was Bill and Jim and myself and others.

Q. Now, the acquisitions were announced on March 2, 1998, is that right? Was there a press conference in connection with that announcement?

A. I believe so, yes.

Kitts

Q. Did you attend that?

A. I don't remember if I did. I may have, but I don't remember.

Q. Do you know whether the press conference was in New York or in Florida?

A. I remember that Al was in New York, so I would assume that the press conference would have been in New York.

Q. How many times did you travel to Florida in connection with the Sunbeam engagement?

A. I mean, I would guess four or five times.

Q. And were you on the phone with Sunbeam personnel in Florida on a regular basis?

A. Yes.

Q. Did you travel anyplace other than Florida in connection with your work on the Sunbeam litigation?

A. To visit some of the potential buyers.

Q. So San Francisco, Oakland, Chicago, Boston?

Kitts

A. Yes.

Q. Somewhere in Wisconsin?

A. Yes.

Q. Where in Wisconsin? I was curious.

A. I don't remember the name of the town.

Q. Anyplace else?

A. Not that I remember.

Q. And you had supervisory capacity over Mr. Fuchs during the engagement, is that true?

A. Yes.

Q. And Mr. Fuchs travelled to Florida?

A. Yes.

Q. How about Mr. Chang, you had at least at some level supervisory capacity over Mr. Chang?

A. Yes.

Q. And he was in Florida?

A. Yes.

Q. How about Mr. Yoo?

A. Yes.

NOT A CERTIFIED COPY

Kitts

Q. Can you tell me as a general matter what the purpose of due diligence is?

A. In my understanding of due diligence, is to gather information and perform, ask questions, solicit input, et cetera, to try and discharge your duties as an investment banker, within, you know, I guess a reasonable and appropriate standard, or within a context of reasonableness and appropriate.

Q. Have you ever been involved in any transactions involving the offering securities?

A. Yes.

Q. And in that context, is it fair to say that the underwriter is supposed to be devil's advocate of the issuer?

MR CLARE: Objection to form, argumentative.

A. I don't know.

Q. You don't agree or disagree with that statement?

A. I don't really have a view on that.

Kitts

Q. Do you understand that the underwriter is acting as an intermediary between the issuer and the investors?

MR. CLARE: Objection to form.

A. I believe so.

Q. And do you believe it's fair for investors to expect the underwriter to protect investors' interests?

MR. CLARE: Objection to form. Foundation.

A. I don't know what the legal standard is within the context of an underwritten or securities offering.

Q. Well, putting aside what the legal requirements are, in your experience as an investment banker, what is your view as to the public's right to rely on underwriters to protect investor interests?

MR. CLARE: Same objection, and lack of foundation as to what the public's view is.

A. I don't have a view.

Q. Would you agree that the participation of an underwriter is critical

Kitts

to an offering of securities?

MR CLARE: Objection to form.

A. I'm not sure.

Q. Is it fair to say that underwriters will assume an adversarial role with the issuer during a due diligence process?

MR CLARE: Objection to form.

A. I'm not sure I would characterize it or consider it as adversarial.

Q. How would you characterize the role?

MR CLARE: Asked and answered.

A. I would again consider it as an intermediary between an issuer and an investor.

Q. Do underwriters have the responsibility to prevent issuers from making unduly enthusiastic statements?

MR CLARE: Objection, calls for a legal conclusion.

A. I don't know.

Q. As an investment banker, what would you do if you determined that an

Kitts

issuer was making an unduly enthusiastic statement about its performance?

MR. CLARE: Objection, incomplete hypothetical.

A. I don't know what I would do.

Q. Do you think an underwriter can properly rely only on a company's officers in order to verify information presented to investors?

MR. CLARE: Objection, incomplete hypothetical.

A. I'm not sure.

Q. Can you think of any instance where it would be appropriate to rely solely on the company's officers to verify information presented to investors?

A. It really depends on what information is publicly available outside of the, you know, the officers.

Q. Did you ever in connection with your employment with Morgan Stanley receive any training on how to perform due diligence?

A. I don't remember.

NOT A CERTIFIED COPY

Kitts

Q. Did you receive any manuals or guides on the performance of due diligence?
A. I don't remember.
Q. This is a document that's already been marked as Exhibit 29. And for the record, CPH Exhibit 29 has the Bates stamp Morgan Stanley confidential 0080440 through 0081556. Have you ever seen this document before, Mr. Kitts?
A. I don't think so.
Q. You were at Gleacher & Company, is it called?
A. Yes, Gleacher & Company.
Q. In the period what is it, 90 to 93?
A. Through April of 94.
Q. Okay. Have you seen any documents akin to Exhibit 29 as far as manuals for due diligence?
A. I don't remember.
Q. Did Morgan Stanley have any protocol for documenting the due diligence work that it performed in the 97, 98 time frame?

Kitts

A. Not in the context of an M&A transaction.
Q. How about in the context of an offering?
A. I don't know. Again, it was outside of the scope of my responsibilities.
Q. Let me ask you to turn to page 80765, which is included within Exhibit 29. Have you ever seen that letter or its enclosure?
A. No.
Q. If you'd like at page 80770, that page begins with a subheading, independent verification.
A. Yes.
Q. Number 2 under that section provides, reasonable independent verification usually means referencing information outside the issuer, for example speaking with the issuer's customers, lenders, manufacturers, distributors, licensees, et cetera. Do you agree with that statement?
A. In the context of an equity

Kitts

underwriting, yes.
Q. Same answer with respect to a debt offering?
A. Yes.
Q. On the next page there is a paragraph 3 and 3A, which notes that independent verification can be achieved by speaking with lower level employees.
A. Yes.
Q. Do you agree with that statement?
A. Yes.
Q. In connection with the M&A transaction that you worked on for Sunbeam, do you know of any lower level employees that Morgan Stanley spoke with?
A. Well, I guess it depends on how you define lower level. I mean, I consider the trio the most senior level, my impression was Al, Russ and David Fannin, and then below that --
Q. That's the trio that you referred to?
A. Yes. That to me would be senior management. Below that would include Don

Kitts

Uzzi, Rich Goudis, and other people that we met with that were again responsible. I remember the person being responsible for international, they would come over from Asia and other levels of management below the senior management level.
Q. Can you remember any more names than the ones you've already given?
A. No. I just -- I remember a meeting in Florida where different individuals presented their business to us, including international.
Q. Did you or to your knowledge anyone on Morgan Stanley's team speak with Scott Yales?
A. I don't know. The name sounds somewhat familiar, but I'm not sure.
Q. How about Kyle Kaiser, did anybody from Morgan Stanley to your knowledge speak with Kyle Kaiser?
A. Not that I know of. I don't recognize the name.
Q. How about Kyle Sinclair?
A. Don't recognize the name.

NOT A CERTIFIED COPY

Q. Lee Griffith?
A. Don't recognize the name.
Q. Tom Hartshorne?
A. Don't know.
Q. Chuck Meyers?
A. Don't know.
Q. Bill Bloomfield?
A. Don't know.
Q. What about Bob Gluck?
A. Gluck I believe we did.
Q. Do you remember what his title was?
A. No.
Q. And nobody from Morgan Stanley spoke with any -- some customers in connection with phase one of the transaction?
MR. CLARE: Objection, no foundation.
A. I don't know.
Q. Did you speak with any customers?
A. Not that I remember.
Q. On phase one of the Sunbeam engagement, who at Morgan Stanley had

ultimate responsibility for ensuring that the due diligence was accurately and appropriately completed?
MR. CLARE: Objection to form.
A. I'm not sure.
Q. On the financing side of the Sunbeam engagement, who had ultimate responsibility for due diligence at Morgan Stanley?
MR. CLARE: Objection, no foundation.
A. I don't know who had ultimate responsibility.
Q. But Ruth Porat would be somebody involved with that process?
A. I believe so, yes.
Q. Did you form an opinion as to the environment at Sunbeam in late 97 or early 98?
MR. CLARE: Objection to form.
A. Not really.
Q. Based on your observations, did upper management at Sunbeam create or exercise undue influence over lower level

employees?
A. Not that I saw.
Q. Did you see any inordinate pressure for Sunbeam to make its numbers?
A. No.
Q. So that was there anybody out of the ordinary in Sunbeam's business environment from your observation?
A. I mean the senior management team was a demanding management team. I've worked with other demanding management teams. I think I would characterize them as having relatively high performance expectations.
Q. But you wouldn't characterize it as inordinate?
A. I would not characterize it as out of the ordinary.
MR. CLARE: Would not?
THE WITNESS: Would not.
Q. Did you ever get the impression that Sunbeam was micromanaging its results with an eye towards its earnings per share projections?

A. No.
Q. Do you have any idea of the frequency with which Sunbeam internally circulated its earnings per share estimates?
A. No.
Q. So what did you do after these transactions were announced?
A. After the announcement, I handed the transaction off to Ruth and Bram and whomever else was responsible for the other financing parts of it, and you know, asked Alex to kind of be the informational bridge, and instructed, you know, Alex and Tyrone to give the teams whatever models or information they needed that we had gathered or prepared during our process.
Q. So did a subteam so to speak get involved at morning?
A. Yeah, I would describe it not even as a subteam, but a whole new team. I mean, with Bill Strong being the only kind of link to the M&A team.
Q. And Alex's role was to provide information to the financing people?

NOT A CERTIFIED COPY

Kitts

A. It was really a transitional role, to hand it off.
Q. Did you ever review the offering memorandum for the debt offering?
A. No.
Q. Did you have any conversations with anyone as to the appropriate contents of the offering memorandum?
A. No.
Q. Do you know who at Morgan Stanley other than Ruth Porat was involved in preparing the offering memorandum?
A. I think John Tyree was involved. I'm not sure who else was on the team.
Q. Did you at any point learn that Sunbeam had issued a press release concerning its first quarter 98 results?
A. Yes.
Q. Okay. And you understood that on March 19, they issued what you would call an earnings warning?
A. I believe so, yes.
Q. And with respect to that press release, when was the first you learned of

Kitts

that press release?
A. Either the night before it was released or the morning of the release, I don't remember.
Q. How did you come to learn that there would be a press release?
A. I don't remember. Alex may have told me.
Q. Did you have any reaction to that?
A. No.
Q. Were you surprised in any way that the company was issuing this warning?
A. I'm not sure.
Q. Were you concerned that it might impede the ability to close the transaction?
A. You know, at the time I didn't think it was that significant that it would -- I don't know what the right word is, prevent the transaction from occurring.
Q. Did you participate in any way in the drafting of the press release?
A. No.
Q. Did anyone from Morgan Stanley or

Kitts

Sunbeam seek your input on whether the press release should be issued?
A. No.
Q. Did anyone seek your input on how the release should be phrased?
A. No.
Q. I give you what's been marked as CPH Exhibit 14.
MR. CLARE: Clark, we seem to go through this issue every time. 14 as originally marked is a two-page document. There is a second page to this exhibit. So I guess I would object to showing the witness half of a previously marked exhibit, and I would suggest that if you want to show him this copy, that we remark it so that we're clear about what it is that we're showing.
MR. JOHNSON: I'm happy to remark it. That is a good idea.
(CPH Exhibit 144, 0016944, marked for identification, as of this date.)
MR. CLARE: So I will revise my objection to showing the witness an

Kitts

incomplete document, withdraw my prior objection about showing, this exhibit as 14.
Q. Mr. Kitts, I've given you a document that bears the Bates stamp Morgan Stanley confidential 0016944, which we've marked as CPH Exhibit number 144.
Does this appear to be a portion of the March 19 press release?
A. Yes.
Q. And is this consistent with the draft that you saw prior to its issuance?
MR CLARE: Objection, misstates his prior testimony. He never said he saw a draft.
Q. Did you see a draft?
A. No.
Q. Okay, you heard that there was going to be a press release?
A. Yes.
Q. Okay. Did you see any drafts prior to the issuance?
A. No.
Q. Did you read the press release

NOT A CERTIFIED COPY

Kitts

when it came out?
A. Yes.
Q. Did you have any view as to the accuracy of the statement that the shortfall in sales, if any, would be due to changes in inventory management and order patterns?
A. I didn't have a view.
Q. Did Morgan Stanley have any responsibility for ensuring that the statements in the press release were accurate?
MR. CLARE: Objection, calls for a legal conclusion, and foundation, since he wasn't involved. You can answer.
A. Could you repeat the question, please?
Q. Sure. Did Morgan Stanley have any responsibility for ensuring that the statements made in this press release were accurate?
MR. CLARE: Same objection.
A. I mean, I don't know. I mean, I think that it's difficult to determine how

Kitts

they -- how Morgan Stanley could have determined the accuracy of the language in here, which again, is kind of directional and vague, maybe lower.
Q. What about the reason for the shortfall, is that something that Morgan Stanley had any responsibility to verify?
MR. CLARE: Same objection.
A. I don't have a view.
Q. Between the time that you heard that there would be a press release and March 2, did you have any conversations with anybody at Morgan Stanley about the Sunbeam engagement?
MR. CLARE: I object. Between the time that he learned there was going to be a press release and March 2?
Q. Yes, going back in time. I can phrase it differently. It's a good objection, let me clarify.
Between March 2 and March 18, did you have any conversations with anybody at Morgan Stanley concerning the Sunbeam engagement?

Kitts

A. Other than asking Alex and the team to transition the information, not that I remember.
Q. Did you participate in any way in the closing of the acquisition transaction?
A. No.
Q. Did you learn that there was an additional press release concerning first quarter results issued on approximately April 2, 1998?
A. Yeah, again, I recall seeing a press release when it was released, which I believe dealt with first quarter performance.
Q. This has been marked as Exhibit 30 previously. The document that's been placed in front of the witness has been marked CPH Exhibit 36 previously, and has the Bates stamp CPH 639323 through 327.
Mr. Kitts, this is a fax cover sheet and draft press release, is it not?
A. I'm not sure if it's a draft or the actual press release, but it is a fax cover sheet.

Kitts

Q. And it's from Mr. Fannin to you, among other people?
A. Yes.
Q. Why was Mr. Fannin sending you this press release?
MR. CLARE: Objection, calls for speculation.
A. I can only go based on what is written or typed here, that I wanted to give you a heads-up, so I take this to mean that I received it either shortly before or at the time of public dissemination.
Q. And did you have any conversations upon receiving this fax with any of the other recipients of it?
A. No, I don't remember.
Q. Did you have any reaction when you read the press release?
A. I was surprised.
Q. Why were you surprised?
A. Well, based on what had been in the prior release, you know, I was surprised that sales were now expected to be below last year's first quarter.

NOT A CERTIFIED COPY

Kitts

Q. When you say the prior release, you mean the March 19 release?
A. Yes.
Q. Did you talk to Mr. Fuchs about the April press release?
A. I probably did. I probably had, you know, my assistant copy it and make sure to get a copy of it to the rest of the team.
Q. Were you upset in any way?
A. I don't remember.
Q. Did you feel that Sunbeam had misled you in any way?
A. Probably.
Q. Did you communicate that feeling with anyone?
A. I don't remember.
Q. Did you have a person in mind at Sunbeam who had misled you?
A. My view would have been that, you know, I would have felt that Alan Russ had misled us.
Q. Did you ever talk to Al or Russ after the March 2 announcement of the transaction?

Kitts

A. I don't remember. I may have called to congratulate them on how the stock had performed, based upon the announcement.
Q. Did you see the comfort letter that Arthur Andersen issued in connection with the debt offering?
A. No.
Q. Have you ever seen that?
A. I saw it yesterday.
Q. Okay, and that's the first time?
A. Yes.
Q. Did you have any conversations with anyone at Morgan Stanley about the comfort letter at any time?
A. No.
Q. Did you have any role in bring-down due diligence for the debt offering?
A. No.
Q. Did you have any conversations with anyone at Morgan Stanley in connection with the bring-down due diligence?
A. No.
Q. Did you participate in any way in

Kitts

any of the road shows for the debt offering?
A. No.
Q. Do you know who at Morgan Stanley was involved with those road shows?
A. Convertible offering on or the senior debt?
Q. Convertible.
A. I would assume that Ruth and John Tyree may have attended some of the meetings.
Q. Did you have any involvement with making any kind of presentation to the leveraged finance committee at Morgan Stanley?
A. Yes.
Q. When did that occur?
A. I don't remember the date, but there was a memo that was written to the committee.
Q. Did you look at that yesterday?
A. Yes.
Q. Let me show you a couple of versions of that.
A. Okay.

Kitts

Q. This one has already been marked as Exhibit 76. Mr. Kitts, is Exhibit 76 the memorandum that you were just referring to?
A. Yes.
Q. And Exhibit 76 is a cover memo, and then a more detailed memo to the leveraged finance committee, is that correct?
A. Yes.
Q. Who drafted the more detailed memo which begins at page 25830?
A. Since this is to the leveraged finance committee, I would assume that someone within Michael Hart's area would have been -- had primary responsibility for preparing the memo.
Q. And where would a person from that area obtain the information necessary to complete this memorandum?
MR CLARE: Objection, calls for speculation.
A. I would think it would be a combination of John Tyree on, I think he would go to each of the relevant teams and

NOT A CERTIFIED COPY

Kitts

so Alex on the M&A piece and John Tyree on the convert.

Q. Did you participate in answering any questions of the leveraged finance committee at any time?

A. I attended the meeting. I may have asked the question, but, or answered a question rather, but I'm not sure.

Q. Was the Sunbeam sales shortfall discussed during that meeting?

A. I don't remember, so, I mean, if it's -- if it was in the document, I don't remember specifically.

Q. Were Morgan Stanley's fees discussed during that meeting?

A. I don't remember.

Q. If you'd look at the front page of Exhibit 76, there are some marginalia. Do you recognize any of those?

A. No.

Q. Do you know whose handwriting that is?

A. No.

Q. Do you know what the numbers

Kitts

signify?

A. No

Q. Does the handwritten numbers 112.5 short, is that consistent with the sales shortfall at Sunbeam?

A. I don't know.

Q. Let me show you another version of this, which I think we have to mark as a new document.

(CPH Exhibit 145, 0018885-18942, marked for identification, as of this date.)

Does CPH 145 appear to be another copy of the leveraged finance committee memo with different handwriting on it?

A. Yes.

Q. And your name appears at the top in handwriting of Exhibit 145?

A. Yes.

Q. Do you know why that is?

A. No

Q. Do you know whose handwriting this is?

A. No

Kitts

Q. There are a handful of numbered handwritten notes on the first page of Exhibit 145.

A. Yes.

Q. Number 2 states, what is our collateral worth. Do you remember any discussions with members of the leveraged finance committee concerning the value of collateral that Morgan Stanley would have on its loans to Sunbeam?

A. No.

Q. Number 5 states, will E-X-P period, and then I can't read it out, it says with all the trouble going on. What is the trouble referred to there?

MR. CLARE: Objection, calls for speculation.

A. I have no idea.

Q. Were there any discussions to your recollection during the leveraged finance committee meeting concerning troubles at Sunbeam?

A. Not that I remember.

Q. At the bottom of that page, the

Kitts

first page of Exhibit 145, it seems to state, banks will not advance without collateral. What does that refer to?

MR. CLARE: Objection, calls for speculation.

A. I don't know.

Q. Mr. Kitts, did you ever see a list of possible sales for the first quarter of 98 for Sunbeam?

A. I don't remember.

Q. Did you have any discussions at Morgan Stanley about efforts to confirm the potential sales that Sunbeam had identified?

A. No.

Q. Let me do another document from this time frame, which will be CPH 146.

(CPH Exhibit 146, 80325-333, marked for identification, as of this date.)

CPH Exhibit 146 is comprised of documents bearing the Bates range Morgan Stanley confidential 80325 through 333.

Is Exhibit 146 correspondence and invoices relating to Morgan Stanley's fees

NOT A CERTIFIED COPY

Kitts

relating to the Sunbeam transaction?
A. Yes.
Q. And the bottom of page 1, there is a handwritten notation which appears to say, 3 million 750 thousand dash equity to pass over. Do you know what that refers to?
A. No.
Q. Now, the second page of the exhibit is a letter from Mr. Fuchs to Mr. Dunlap, do you see that?
A. Yes.
Q. And you are cc'd on it?
A. Yes.
Q. Did you have any concerns relating to your ability to collect your fees in light of Sunbeam's press releases?
A. No.
Q. Now, going over to page 80328, there is a document entitled fee calculation. Do you see that?
A. Yes.
Q. And that shows fees to Morgan Stanley exceeding $42 million through the completion of the Sunbeam transactions. Is

Kitts

that correct?
A. Yes.
Q. Did Morgan Stanley in fact collect over $42 million for its work on Sunbeam matters?
MR. CLARE: Objection, no foundation.
A. I don't know.
Q. And going to the next page, which is 80329, there is some sort of ledger for use in the fee calculation. Do you see that?
A. Yes.
Q. And the first line item is the value of equity issued to MAFCO, do you see what?
A. Yes.
Q. That's the value of Sunbeam stock provided for the consideration of the sale of Coleman?
A. Yes, it appears that that's based on a ten-day average or some calculation to the left margin there.
Q. Do you know what the value of

Kitts

that equity was two weeks after of closing?
MR. CLARE: Objection, no foundation.
A. No.
Q. Do you know whether Sunbeam's stock price fell after the April 3 press release?
A. I'm sure it did.
Q. Do you know how dramatically?
A. No.
Q. You were involved in a conference call with investors and analysts in May of 1998 for Sunbeam, is that correct?
A. I don't remember.
Q. Well, before we get to that, let's try and go chronologically. After the April 3 press release, what was the next thing you did relating to the Sunbeam engagement?
A. I don't remember.
Q. Okay. Do you remember any conversations with Mr. Strong or anybody else at Morgan Stanley about the conditions at Sunbeam?

Kitts

A. It's possible, but I don't recollect.
Q. Did anyone at Morgan Stanley voice to you any concerns over litigation relating to Sunbeam?
MR. CLARE: Objection. I object to the form of the question, and I don't know what your answer is going to be, but to the extent that you had any discussions with in-house attorneys at Morgan Stanley at the time or any lawyers representing Morgan Stanley at the time, I would instruct you to exclude that from your answer.
A. I don't remember.
(CPH Exhibit 147, CPH 0324856-887, marked for identification, as of this date.)
Q. Mr. Kitts, I've given you a document we've marked as CPH Exhibit 147, which has the Bates stamp CPH 0324856 through 887.
Does this appear to be a list of participants in a May 11, 1998 Sunbeam

NOT A CERTIFIED COPY

Kitts

conference call?
A. Yes.
Q. And if you look at the last page of the document for me.
A. Yes.
Q. You are listed as an attending analyst not on the attendance list. Do you see that?
A. Yes.
Q. Along with several other Morgan Stanley personnel.
A. Yes.
Q. Why were you on this conference call?
A. I probably wanted to just try to remain informed on what was going on at the company at that point.
Q. What was going on at the company at that point?
A. I don't remember. I don't remember what the content of this analyst meeting was. So if it was regularly scheduled, I would have, you know, asked to have it on my calendar and call in to each

Kitts

drop on how business was going.
Q. Did you do anything other than listen on this conference call?
A. No.
Q. And this is a fax from a company called Sard Verbinnen?
A. Yes.
Q. Is that a PR company?
A. Yes.
Q. Why was somebody using Sard Verbinnen as opposed to Hill & Knowlton?
MR. CLARE: Objection, calls for speculation.
A. I don't know.
Q. Do you remember anything about this conference call?
A. No.
(Begin videotape 3.)
Q. Mr. Kitts, did you at some point learn that Mr. Dunlap had been fired by Sunbeam's board.
A. Yes.
Q. When did you hear that?
A. When it was publicly announced.

Kitts

Q. Did that come as a surprise to you?
A. Yes.
Q. Why is that?
A. Well, it surprised me because I didn't fully understand or appreciate the magnitude of what was going on at the company.
Q. Did you around that same time frame read a Barron's article about Sunbeam?
A. I'm sure I did. I don't recall the content of it specifically now, but I was actively involved in maintaining -- reading anything related to Sunbeam that was in the public domain.
Q. Did you have, after the March 2 announcement of the phase one progress, did you have any additional anticipated roles with M&A work for Sunbeam?
A. I believe there were discussions as to whether or not some of the smaller pieces of Coleman, I can't remember the name of the backpack company that --
Q. Eastpak?

Kitts

A. Eastpak, yes, was, you know, we were discussing whether or not we should pursue a sale of that business.
Q. And were those conversations with Sunbeam officers or were those internal at Morgan Stanley or both?
A. Both.
Q. And which Sunbeam officers were you having those conversations with?
A. Probably would have been Russ and David Fannin primarily.
Q. And is that in the April, May, 98 time frame?
A. I believe so.
Q. Did the issue of Sunbeam stock price come up at all during those conversations?
A. I don't remember.
Q. After Dunlap and Kersh were fired from Sunbeam, did you have any other responsibilities to Sunbeam in connection with your work for Morgan Stanley?
A. No.
Q. Did you attend any Morgan Stanley

NOT A CERTIFIED COPY

Kitts

meetings not involving counsel relating to Sunbeam after Dunlap and Kersh were terminated?

A. I don't remember.

Q. When was the first time you heard of litigation relating to Sunbeam?

A. Whenever it was in the public domain as to the question of fraudulent accounting practices and what was going on with the company, whenever that was publicly disclosed.

Q. Did you know there were suits filed immediately in the wake of the April 3 press release?

A. I don't remember.

Q. When is the first time that you were contacted by some lawyer, inside or outside, by Morgan Stanley and directed to retain or send to counsel any materials you had relating to Sunbeam?

A. I don't remember.

Q. Did that ever happen?

A. I think so.

Q. Can you place it at all in any

Kitts

time frame?

A. No.

Q. How confident are you that that in fact happened?

A. I don't remember, so not that confident. I would assume it happened.

Q. But you have no recollection?

A. I don't remember it happening.

Q. Did anyone from Ruth Porat's team express any dismay to you in connection with the demise of Sunbeam?

MR. CLARE: Objection to form.

A. Not that I remember.

Q. Do you know approximately how much money you were paid by Morgan Stanley in 1998?

A. Somehow I recall it not being enough.

Q. It never is.

A. Something on the order of a million two, a million four or five, something like that.

Q. For 98, total compensation package?

Kitts

A. Yes.

Q. How about 97 total package?

A. It was around the same number.

Q. Did you ever have, during your tenure at Morgan Stanley, compensation on the order of $7 million a year total package?

A. No. Not as reported in the Wall Street Journal, no.

Q. Right, that's what I'm getting at. Do you know where they got that idea?

MR. CLARE: Objection. Calls for speculation.

A. No, I don't.

Q. Was your compensation tied in any way to your work for Sunbeam?

A. No.

Q. What percentage of your compensation in 1998 was bonus?

A. The bulk of it probably, 80, 85 percent of it probably.

Q. And how was your bonus determined?

MR. CLARE: Objection, calls

Kitts

for speculation.

A. Don't know.

Q. No idea?

A. No.

Q. Do you know who is involved in setting your bonus?

A. Yes.

Q. Who is that?

A. I would believe that Bill Lewis and Gary Parr, who were coheads of M&A at the time, as well as Terry McGeed, who was the head of investment banking would have probably been the three most active determinants of that.

Q. And you have no idea what criteria they used?

A. No.

Q. Did you at that point in your career receive annual performance reviews?

A. Yes.

Q. And did any aspect of the Sunbeam engagement play a role in your annual review?

A. Well, part of the review is to

NOT A CERTIFIED COPY

Kitts

review active transactions that the bank has been involved in, so in that context, yes.

Q. Did you receive any criticisms or negative comments as a result of the ultimate result of the Sunbeam transaction?

A. Not directly from management.

Q. From whom did you receive such comments?

A. I'm sure there were, you know, comments, remarks from other bankers, junior, et cetera.

Q. Do you know any people in particular who made those remarks?

A. No.

Q. Did Morgan Stanley ever return or refund any of its fees earned on any of the Sunbeam transactions?

MR. CLARE: Objection, calls for speculation.

A. Not that I am aware of.

Q. Did the ultimate result of the Sunbeam transaction play a part in any way in your departure from Morgan Stanley?

A. No.

Kitts

Q. Do you know that Morgan Stanley now owns a substantial portion of what is now American Household, formerly Sunbeam Corporation?

MR. CLARE: Objection, calls for speculation.

A. That's what I've heard.

Q. Do you know what percentage?

A. No.

Q. Do you have any idea what that ownership interest is worth?

MR. CLARE: Objection, calls for speculation.

A. No.

Q. Did you in the 1997, 98 time frame use any timekeeping system?

A. The firm may have used timesheets as a way to measure over time for more junior people. It may have been used as a mechanism to generate a biweekly paycheck, but I didn't use it in any way to accurately determine how I spent my time, and it wasn't used for billing purposes from a client perspective.

Kitts

Q. What became of those timesheets? Did you give them to your assistant and that was the end of it?

A. Yes. I wouldn't even give them -- she would fill them out for me and would make an estimate of where I was spending my time and fill them in.

Q. Was that maintained in a computerized fashion in 1997, 98?

A. No, I seem to remember it being hard copy still and submitted.

Q. I may have asked this already, but I can't recall, I apologize. Did you have any conversations with any Morgan Stanley personnel concerning the road shows?

A. No.

(Recess taken.)

FURTHER EXAMINATION BY MR. JOHNSON:

Q. Mr. Kitts, after you learned of the termination of Mr. Dunlap and Mr. Kersh, did you have any other conversations with any other Morgan Stanley employees about the condition of Sunbeam?

A. I don't recall exactly, but I'm

Kitts

sure that Alex Fuchs and I and Jim Stynes probably would have gotten together at some moment and shock our heads and said can you believe what's happened here?

Q. And other than a conversation of that nature, any additional conversations?

A. Not that I remember.

MR. JOHNSON: No further questions.

EXAMINATION BY MR. CLARE:

Q. Mr. Kitts, I just have a few questions for you before we conclude. You testified today that you participated in certain discussions that were held between Sunbeam and Coleman, is that correct?

A. Yes.

Q. And where did those discussions take place that you participated in?

A. In New York.

Q. Were there any discussions between Sunbeam and Coleman that you participated in that took place in Florida?

A. Not that I participated in.

Q. Are you aware of any

NOT A CERTIFIED COPY

16div-021973

Kitts

conversations that occurred between anyone on the Morgan Stanley team and anyone on the Coleman team in Florida?

A. Not that I am aware of.

Q. The individuals who were on the Morgan Stanley team, where were those individuals based?

A. In New York, except for one in Chicago.

Q. Were there any members of the team who were based in Florida?

A. No.

Q. The individuals that you were dealing with from McAndrews & Forbes, where were they based?

A. In New York, except for wherever Jerry Levin was based, or the Coleman people.

Q. Did you understand that the Coleman people were based in Wichita, Kansas?

A. Yes.

Q. Are you aware of any of the individuals from McAndrews & Forbes or

Kitts

Coleman who were headquartered in Florida?

A. No.

Q. And there was a discussion this morning about one of the negotiation sessions in which first quarter 1998 performance was discussed. Do you recall that testimony generally?

A. Generally, yes.

Q. Can you describe for me in as much detail as you are able what you recall about that meeting and what was said during that meeting?

MR. JOHNSON: And just so I'm clear, had is something other than the Q and A sessions?

Q. Well, okay, let me be clear. Mr. Kitts, my questions are going to relate to meetings that were held between representatives of Sunbeam and representatives of McAndrews & Forbes during the negotiation of the Coleman acquisition, okay?

A. Yes.

Q. And this morning you testified

Kitts

that during one of those meetings, the subject of first quarter 1998 performance came up, is that right?

MR. JOHNSON: I object to the form and you're leading and mischaracterizing testimony. Subject to those objections, you can answer.

Q. This is just foundational.

A. The two days of meetings, the 23rd and 24th, again, the chronology -- of February, the chronology shows that I wasn't present on February 23, which appears to be the time at which Sunbeam reviewed its strategic plan in 1998 projections to Coleman and CSFB, and I recall probably Alex Fuchs reporting back to me or me checking in as to how the day went. I don't know where I was that day, but that, you know, to report that things went fine, that there may have been a question about the first quarter and Russ was very dismissive of yeah, things may be a little light right now, but we have every expectation of making it up. And it was relatively nonchalant, I guess is the

Kitts

way that it was described to me.

Q. That meeting at which that subject was described, was that before a definitive agreement had been signed?

A. Yes.

Q. Did you receive any inquiries from anyone at McAndrews & Forbes about that topic after the meeting?

MR. JOHNSON: Objection to form.

A. I don't remember.

Q. Did you receive any inquiries from anyone from CSFB on that subject after the meeting?

A. I don't believe so.

Q. At the time did you have any reason to doubt Mr. Kersh's statement regarding Sunbeam's expected first quarter 1998 performance?

A. No.

Q. And at the time did you have any information about Sunbeam's first quarter 1998 performance other than what Mr. Kersh had said during that meeting?

NOT A CERTIFIED COPY

89510

Kitts

A. I did not, no.

MR. CLARE: Those are all the questions I have.

MR. JOHNSON: Nothing further.

(Time noted: 2:40 p.m.)

ACKNOWLEDGMENT

STATE OF NEW YORK)
:ss
COUNTY OF)

I, ROBERT KITTS, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of February 12, 2004; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
ROBERT KITTS

Signed and subscribed to before me, this day of , 2004.

_____
Notary Public, State of New York

----------I N D E X----------

WITNESS: ROBERT KITTS
EXAMINATION BY:
MR JOHNSON..... 4
MR. CLARE..... 173

----------EXHIBITS----------

EXHIBIT NO. PAGE:
137, 0039543..... 32
138, CPH 1411216-300..... 88
139, 0026540-544..... 101
140, CPH 0483399-3407..... 110
141, CPH 0483341-3350..... 113
142, CPH 0253547-3555..... 115
143, CPH 1026942-6953..... 117
144, 0016944..... 144
145, 0018885-18942..... 155
146, 80325-333..... 157
147, CPH 0324856-887..... 161

CERTIFICATE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, DAVID HENRY, a Notary Public within and for the State of New York, do hereby certify:

That ROBERT KITTS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of February, 2004.

_____
DAVID HENRY

NOT A CERTIFIED COPY

ERRATA

PAGE LINE EMENDATION

NOT A CERTIFIED COPY

014870

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

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

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

NOT A CERTIFIED COPY

2/24/10

February 24, 2004
9:23 a.m.

Deposition of R. BRAM SMITH, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before Pamela J. Mazzella, RPR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, LLC
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
AND: CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
RUBEN MARTINEZ - Videographer

THE VIDEOGRAPHER: This is tape number 1 of the videotaped deposition of Mr. Bram Smith in the matter Coleman versus Morgan Stanley.

This deposition is being held at Esquire Deposition Services located at 216 East 45th Street, Manhattan, New York, February 24, 2004 at approximately 9:23 a.m.

My name is Ruben Martinez from the firm of Esquire Video Services. The court reporter is Miss Pam Mazzella in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. MARKOWSKI: Bob Markowski from Jenner & Block on behalf of Coleman (Parent) Holdings.

MR. O'CONNOR: Christopher O'Connor from Jenner & Block on behalf of Coleman (Parent) Holdings.

MR. CLARE: Thomas Clare, Kirkland & Ellis, LLP on behalf of the defendant Morgan Stanley and the witness.

THE WITNESS: Witness Bram --

Smith
okay.

THE VIDEOGRAPHER: Will the court reporter please swear the witness.

R. BRAM SMITH, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. MARKOWSKI:

Q. Mr. Smith, would you please state your full name for the record?
A. Richard Bram Smith.
Q. And where is your current home address, Mr. Smith?
A. 44 Drake Road, Scarsdale, New York, 10583.
Q. Who is your current employer?
A. Bear Stearns.
Q. And what is your position with Bear Stearns today?
A. I'm a senior managing director in capital markets.
Q. Do you have a particular assignment at Bear Stearns?

NOT A CERTIFIED COPY

Smith

A. Leveraged financing.
Q. And what are your general responsibilities in the leveraged finance group at Bear Stearns?
A. Loan capital markets, loan sales and distribution.
Q. Where is your office location at?
A. 383 Madison.
Q. To whom do you report?
A. I report to two people, Larry Alletto and Keith Barnish.
Q. How long have you been employed at Bear Stearns?
A. Coming up on a year.
Q. Do you have any supervisory responsibilities?
A. Yes.
Q. What are those?
A. Supervise people in loan capital markets, sales and trade.
Q. How many individuals do you supervise?
A. About eight.
Q. You previously were employed by

Smith

Morgan Stanley?
A. I was.
Q. When did that employment end?
A. About a year ago.
Q. Was there any hiatus between the end of your employment at Morgan Stanley and the start of your employment at Bear Stearns?
A. A couple of months.
Q. You did not have a position at Bear Stearns when you left Morgan Stanley?
A. No.
Q. Do you have any continuing relationship of any sort with Morgan Stanley?
A. What do you mean?
Q. Do you receive any money from Morgan Stanley?
A. No.
Q. Are you potentially entitled to receive any money from Morgan Stanley in the future?
A. I think so.
Q. What type of arrangement does that involve?
A. Some equity investments made in

Smith

some transactions I worked on.
Q. When will you know whether you will be receiving any additional funds from Morgan Stanley?
A. I have no idea.
Q. Do you know over what period of time those investments may yield returns to you?
A. No.
Q. Is it possible that some of those investments will yield returns to you in the next year?
A. Don't know.
Q. You don't know whether it's possible then?
You have to answer audibly.
A. I don't know if it is possible.
Q. You are represented today by Morgan Stanley -- is there any other financial arrangement, relationship of any sort today that you have with Morgan Stanley?
A. Nope.
Q. You are represented today by a Morgan Stanley attorney; is that correct?

Smith

A. Yes.
Q. How did that come about?
A. How did that come about? Morgan Stanley contacted me when they said I might be asked to testify, and volunteered to be my counsel.
Q. Is Morgan Stanley paying for Mr. Clare's time today?
MR. CLARE: Objection, foundation.
A. I have no idea.
Q. Are you paying for it?
A. I'm not paying for it.
Q. Who called you from Morgan Stanley to advise you that you would be deposed in this case?
A. I don't remember the exact name.
Q. Was it somebody in the law department at Morgan Stanley?
A. Somebody in the law department.
Q. What's your education, Mr. Smith?
A. In terms of degrees? BS from the -- undergraduate Air Force Academy, MA from Fletcher School at Tufts, and MBA from Harvard.

NOT A CERTIFIED COPY

Smith

Q. Can you summarize for me your employment history prior to your first employment with Morgan Stanley?

A. Employment history prior to Morgan Stanley was in the air force for six years. I was going to business school, joined Bankers Trust, I was there I think 17 or 18 years, and then Morgan Stanley.

Q. When did you leave the air force?

A. Oh, 1976.

Q. And from there you went to business school?

A. Uhm-hmm.

Q. And from business school you went to Bankers Trust?

A. Right.

Q. When would that have been?

A. 1978.

Q. And you were at Bankers Trust until 1996, approximately?

A. Yup, 1996.

Q. What were your responsibilities at Bankers Trust?

A. I was in charge of loan capital

Smith

markets and distribution.

Q. Was that your final assignment?

A. Uhm-hmm.

Q. What do you mean by "loan capital markets," what does that activity involve?

A. That activity involves structuring, pricing transactions, and then I distributed them .

Q. What kind of transactions are you referring to?

A. Mostly leveraged loans.

Q. What is a leveraged loan?

A. It would be a loan to a noninvestment grade company.

Q. And what's a noninvestment grade company?

A. It would be a company that was rated less than double -- BBB minus or BAA 3 by the two rating agencies, Moody's and S&P.

Q. You indicate that your activity also involved distributing the investment if you want, correct?

A. Uhm-hmm.

Q. What is distributing?

Smith

A. Selling.

Q. What does selling mean in this context?

A. Selling loans to potential investors.

Q. Selling participations in the loan that you've --

A. Selling either the participations or the loans themselves.

Q. Is that sometimes referred to as syndicating a loan?

A. Sometimes referred to as syndicating a loan.

Q. Syndicating meaning something distinct in this context, or is that a generic term used to describe the process of selling participations in a loan transaction?

A. I think it would probably be generic.

Q. At Bankers Trust how large would you say the largest leveraged loan transactions were that you were involved in structuring and syndicating?

A. Billions. Billions.

Smith

Q. How many billion dollar plus loan syndications were you involved in while you were at Bankers Trust?

A. I don't remember.

Q. Would it have been more than five would you say?

A. Yup.

Q. Why did you leave Bankers Trust?

A. Better opportunity at Morgan Stanley.

Q. Were you recruited at Morgan Stanley, or did you make an overture to Morgan Stanley?

A. Recruited.

Q. Who recruited you?

A. Steve Newhouse.

Q. You had known Mr. Newhouse before that?

A. No.

Q. Do you know how he came to know of you?

A. No.

Q. How did he contact you?

A. Through an executive recruiter.

NOT A CERTIFIED COPY

Smith

Q. How long before you joined Morgan Stanley do you recall being first contacted by the executive recruiting firm?
A. Gee, months.
Q. Were you being recruited to fill a particular position at Morgan Stanley?
A. Yes.
Q. What was that?
A. To get them into the loan business.
Q. What do you mean by getting them in the loan business?
A. They wanted to have a lending capability and they hired me to develop that capability for them.
Q. Is it your understanding that before you joined Morgan Stanley, Morgan Stanley did not engage in originating loans?
MR. CLARE: Objection, calls for speculation.
Q. I'm asking your understanding.
A. I don't know.
Q. Did you have an understanding one way or the other when you joined Morgan Stanley, whether Morgan Stanley at the time

Smith

you were being recruited had not engaged at all in origination of loans?
A. Again I don't know.
Q. What were you told concerning Morgan Stanley's business objectives with respect to creating a capability of being in the loan business?
A. I was told they, that they felt it was important strategically to have a loan origination distribution capability.
Q. In what way was it important strategically to Morgan Stanley to have the ability to originate and distribute loans?
A. They felt it was necessary to, they felt that was necessary to compete against the commercial banks.
Q. It was necessary to have this capability to compete against the commercial banks in what areas?
A. In leveraged finance, particularly high yield.
Q. Did you -- was it your understanding that Morgan Stanley believed it was important to have the ability to

Smith

originate and distribute loans in order to compete with commercial banks for investment banking assignments?
A. I don't know.
Q. Did Bankers Trust provide investment banking services to its clients in addition to the loan services?
A. They provided high yield.
Q. High yield investment banking services?
A. High yield debt raising capabilities.
Q. But did they engage in providing investment banking services of the same sort that firms such as Morgan Stanley provide to clients?
A. They had investment banking services.
Q. Was it your understanding that Bankers Trust used its ability to also assist clients in raising funds for purposes of financing investment banking transactions to compete for the investment banking side?
A. Is it my understanding, is that the

Smith

question?
Q. Correct. Let me take a step back, sir.
While you were at Bankers Trust you were involved in assisting Bankers Trust clients that didn't have investment grade ratings in raising funds, correct?
A. Uhm-hmm.
Q. Did those activities involve raising funds in connection with business acquisitions?
A. Normally.
Q. In those transactions was it sometimes the case that Bankers Trust was also providing investment banking services?
A. Sometimes.
Q. Was it your experience that Bankers Trust used your ability to assist clients in raising funds for purposes of financing acquisitions to also obtain the investment banking side?
A. No.
Q. You were never involved in making presentations with other Bankers Trust

NOT A CERTIFIED COPY

Smith

representatives who were seeking the investment banking assignment, in which your services were described as an additional benefit that clients could realize by retaining Bankers Trust for the investment banking?

A. No.

Q. When you went to Morgan Stanley, was it your experience that Morgan Stanley used your ability to assist in raising funds as a way in which to increase its opportunities to be retained to provide investment banking services?

A. No.

Q. When you first joined Morgan Stanley, what efforts did you engage in to assist Morgan Stanley in developing the capability of originating and distributing loans?

A. I set up the group to do that, so recruited and hired people.

Q. How large a group did you assemble?

A. Probably about 20 at the peak.

Q. What would the peak point of time

Smith

have been in terms of the staffing?

A. I would say about, probably around 2000-ish or so, plus or minus a year.

Q. When you joined Morgan Stanley what was your title?

A. Managing director.

Q. Did you have any other titles?

A. I think I was president of Morgan Stanley Senior Fund.

Q. Do you know during what time period you had that title?

A. Pretty much the whole time I was there.

Q. Did you hold any other titles?

A. No.

Q. Was Morgan Stanley Senior Funding an entity that existed when you first joined Morgan Stanley?

A. No.

Q. By what Morgan Stanley entity were you employed?

A. The dealer-broker.

Q. Do you know the name of that entity?

Smith

A. No.

Q. Do you know if it is Morgan Stanley & Company, Inc.?

A. I don't know.

Q. Do you know if you were an employee of Morgan Stanley Senior Funding?

A. No.

Q. Let me ask a better question.

Were you an employee of Morgan Stanley Senior Funding?

A. I don't know.

Q. Did you receive any compensation for Morgan Stanley Senior Funding?

A. No.

Q. What were your responsibilities and duties during the period you were employed by Morgan Stanley?

A. To manage the loan origination and distribution of it.

Q. Did you have any other duties?

A. I don't think so.

Q. Do you know if you were considered to be assigned to the Morgan Stanley Investment Banking Division?

Smith

A. We were in a joint venture between banking and fixed income.

Q. What was the nature of the joint venture?

A. It was -- what do you mean?

Q. Well, you indicated that you were involved in a joint venture between investment banking and fixed income, correct?

A. Uhm-hmm.

Q. What was that joint venture?

A. Joint venture was, was capital markets.

Q. Capital markets function was considered to be a joint venture between investment banking and fixed income?

A. Uhm-hmm.

Q. And capital markets included what, sir?

A. Included the loan origination business.

Q. Did it include anything else?

A. High yield origination, or high yield capital markets is a better word to think about it.

NOT A CERTIFIED COPY

Smith

Q. Anything else?
A. No.
Q. Loan origination would have been your function, sir?
A. Yes.
Q. High yield capital markets, would that have been part of your responsibilities also?
A. No.
Q. Who was responsible for that activity while you were at Morgan Stanley?
A. A couple of people. Steve Newhouse and Bill Kourakos.
Q. Do you know how Mr. Kourakos spells his name?
A. No. K-O-U-R-A-K-A-S.
Q. What does high yield capital markets involve?
A. They are the liaisons between the traders in high yield, the bankers that cover the clients as well as the clients.
Q. High yield --
A. Is not investment grade securities.
Q. How is it different from the

Smith

leveraged loans that you described?
A. They are securities, they weren't loans.
Q. Can you give me an example of a high yield security?
A. A bond.
Q. You indicated you were president of Morgan Stanley Senior Funding?
A. Uhm-hmm.
Q. And if I understood your testimony, Morgan Stanley Senior Funding did not exist when you first joined Morgan Stanley?
A. Right.
Q. When was it formed?
A. It was formed pretty shortly after I got there.
Q. Do you know why it was formed?
A. They -- it was felt -- we wanted, the firm wanted a separate entity through which to conduct its lending business.
Q. Whose idea was that?
A. Don't know.
Q. I take it it wasn't yours?
A. Unh-unh.

Smith

Q. Do you know what entity within Morgan Stanley owned Morgan Stanley Senior Funding?
A. Nope.
Q. Do you know if Morgan Stanley Senior Funding had any employees?
A. I don't know.
Q. What were your responsibilities as the president of Morgan Stanley Senior Funding?
A. My responsibilities was to, to manage the loan origination business, and so really nothing different than what I did.
Q. Do you know what businesses Morgan Stanley Senior Funding engaged in?
A. It was a funding vehicle for loans.
Q. Did Morgan Stanley Senior Funding engage in any business activities other than the origination and distributing, distribution of the leveraged loans that you were responsible for?
A. Not that I know of.
Q. So as far as you're aware, the entire business activity of Morgan Stanley

Smith

Senior Funding was the business activity for which you were responsible at Morgan Stanley?
A. Yes.
Q. Do you know where Morgan Stanley Senior Funding is incorporated, what state?
A. No.
Q. Do you know if it's considered to have a headquarters?
A. Do not.
Q. Do you know if it's considered to have a principal place of business in a particular location?
A. Do not.
Q. Were you ever a director of Morgan Stanley Senior Funding?
A. I don't remember.
Q. Did Morgan Stanley Senior Funding hold meetings of its board of directors?
A. Don't know.
Q. Other than yourself, do you know of any individuals who held officer positions with Morgan Stanley Senior Funding?
A. Yes, Steve Newhouse, Bill Kourakos.
Q. Anyone else?

NOT A CERTIFIED COPY

01-40978

Smith

A. I'm sure there were other names. I don't know if I remember.
Q. You know there were other officers, you just don't know who they are at this point?
A. No.
Q. Were you responsible as president of Morgan Stanley Senior Funding, for designating individuals as officers of that entity?
A. No.
Q. Do you know who was?
A. No.
Q. Were the officers of Morgan Stanley Senior Funding all employees of other Morgan Stanley entities?
A. I -- to the best of my knowledge they were all employees of Morgan Stanley. I don't know anything more about it.
Q. Did any of your business responsibilities, sir, at Morgan Stanley involve activities other than the activities of Morgan Stanley Senior Funding?
A. No.

Smith

Q. How did your employment at Morgan Stanley end?
A. What do you mean?
Q. You indicated your employment at Morgan Stanley ended a couple of months before you started at Bear Stearns, correct?
A. Uhm-hmm.
Q. And you indicated you didn't have a position at Bear Stearns at the time you left Morgan Stanley, correct?
A. Right.
Q. Were you asked to leave Morgan Stanley?
A. Yup.
Q. When were you first asked to leave Morgan Stanley?
A. Prior to Christmas of '02.
Q. Tell me the circumstances.
A. I was told that they were reducing staff and I was going to be let go.
Q. With whom did you have that conversation?
Was it a face-to-face conversation with someone?

Smith

A. No.
Q. Did you receive a written communication?
A. Nope.
Q. Telephone call?
A. Telephone call.
Q. From whom did you receive the telephone call?
A. Steve Newhouse.
Q. How long did your conversation with Mr. Newhouse last?
A. 15 minutes.
Q. Tell me everything you can recall Mr. Newhouse telling you during that 15-minute telephone call.
A. Described the situation facing the company and it was a hard decision, but they were reducing staff and that I was part of that.
Q. Did Mr. Newhouse tell you anything about how you were identified as one of the people who would be let go?
A. No.
Q. Did he tell you anything about

Smith

other people within your business group who were being let go?
A. No.
Q. Were other people within your business group at that time being let go at the same time?
A. Not at that time.
Q. Now, at this point in time, Mr. Smith, were you still president of Morgan Stanley Senior Funding?
A. I was.
Q. Were you still the person primarily responsible and in charge of the leveraged loan business at Morgan Stanley?
A. No.
Q. Who was in charge of the business at that point?
A. The fella in charge was, ultimately was a fellow named Mitch Petrick.
Q. Can you recall anything else that Mr. Newhouse told you during your 15-minute conversation with him?
A. No.
Q. Did he offer you a severance

NOT A CERTIFIED COPY

0148179

Smith

package of any sort?
A. The firm did.
Q. What was that severance package?
A. The severance package was some weeks of salary and some cash.
Q. Have you received all of those payments?
A. I have received all of those payments.
Q. Were they made as a lump sum at some point?
A. They were.
Q. Do you recall the amount of the payment?
A. I -- let's see. Yes, partially.
Q. What do you recall the lump sum severance payment being?
A. It was about -- the gross was about, I don't know, $875,000.
Q. Other than the lump sum severance payment, did you receive anything else by way of a severance package?
A. No.
Q. *Did Mr. Newhouse tell you that Mr.*

Smith

Petrick agreed with his decision?
A. No.
Q. Did Mr. Petrick's name come up during the conversation?
A. No.
Q. Before this conversation with Mr. Newhouse, had you at any point been asked to consider looking elsewhere for opportunities --
A. No.
Q. -- by anyone within Morgan Stanley?
A. No.
Q. Did this come, did Mr. Newhouse's call to you come as a surprise?
A. Yup.
Q. Had your performance at Morgan Stanley Senior Funding been criticized in any way prior to your conversation with Mr. Newhouse?
A. No.
Q. Did Mr. Newhouse explain why you were the person chosen to be let go at that point?
A. No.

Smith

Q. Do you have any understanding yourself today why you were the person chosen to be let go in December of 2002?
A. No.
Q. Do you know if Mr. Petrick agreed with Mr. Newhouse's decision to let you go?
A. No.
Q. Did you have any conversations with Mr. Petrick concerning your conversation with Mr. Newhouse?
A. Yes.
Q. When were those?
A. Right after the phone call with Mr. Newhouse.
Q. Did you call Mr. Petrick?
A. Went to see him, yes.
Q. You had a face-to-face meeting with Mr. Petrick?
A. Yes.
Q. Where was that?
A. In his office.
Q. And where is that?
A. At -- what is the address over there? *At Morgan Stanley.*

Smith

Q. It is here in Manhattan?
A. Yes.
Q. When did that meeting take place?
A. Right after the -- within a couple of days of the phone call with Mr. Newhouse.
Q. So we are still before Christmas of 2002?
A. Before Christmas of 2002.
Q. Was anyone else present for your meeting with Mr. Petrick?
A. No.
Q. Was the meeting in his personal office?
A. Yes.
Q. How long did that meeting last?
A. Probably about five minutes.
Q. How was the meeting arranged? Was there a prior arrangement? Let me ask that question first.
A. I don't remember.
Q. You don't remember calling and making an appointment to see Mr. Petrick or telling him you wanted to be seen?
A. It might have been that, but pretty

NOT A CERTIFIED COPY

Smith

informal.
Q. Tell me everything you can recall about your meeting with Mr. Petrick.
A. He asked if I had spoken to Mr. Newhouse and then we talked about the mechanics of the departure.
Q. Did you ask for an explanation for the decision?
A. No.
Q. Did he offer one?
A. No.
Q. What was the purpose for your wanting to meet with Mr. Petrick?
A. To go over the mechanics of the departure.
Q. What were the mechanics that you discussed with him?
A. When, and hand off of transactions that I was working on to other members of the team.
Q. What was agreed upon with respect to the timing?
A. The first of February departure.
Q. And who took your responsibilities

Smith

for the matters that you were handling?
A. It varied depending on who I was working with on what transaction.
Q. At that point did you have any administrative responsibilities for managing the business?
A. No.
Q. When did Mr. Petrick become president of Morgan Stanley Senior Funding?
A. I don't know. Don't know.
Q. Do you recall when he assumed your responsibilities for managing the business group?
A. It was in the middle, I think middle of '02.
Q. The middle of October 2002?
A. No, middle of '02.
Q. Oh, middle of '02, I'm sorry.
Who made that decision?
A. Don't know.
Q. Was it your choice?
A. No.
Q. Had Mr. Petrick been working within the Morgan Stanley Senior Funding business

Smith

group?
A. No, he had been in high yield.
Q. How were you advised that he would be assuming your responsibilities?
A. By one of his bosses.
Q. Do you recall who that was?
A. Zoe Cruz.
Q. Could you move your hand down from there?
A. Sure.
Q. Sorry.
Zoe Cruz you said?
A. Uhm-hmm.
Q. Is Zoe Cruz a woman?
A. Yes.
Q. What did Miss Cruz tell you?
A. That they had -- she had decided, the firm had decided to let Mr. Petrick run the loan business.
Q. Did you have a face-to-face conversation with Miss Cruz?
A. Yes.
Q. Was anyone else present for that?
A. No.

Smith

Q. How long before Mr. Petrick took over your responsibilities did this conversation occur?
A. Oh, days I guess.
Q. But very shortly?
A. Very shortly.
Q. What did Miss Cruz tell you for the reason for this change of assignment?
A. That he was very capable, that they wanted to expand the effort and that she wanted him to do it.
Q. What did she mean by "expand the effort," the firm wanted to expand the effort?
MR. CLARE: Objection, calls for speculation.
Q. What was your understanding?
A. They wanted to get into the investment grade lending business.
Q. Did she say that to you during this meeting?
A. No.
Q. That was your understanding though?
A. Uhm-hmm.

NOT A CERTIFIED COPY

Smith

Q. Were you pleased with this change of circumstances?
A. Not entirely.
Q. Did you express any disappointment to Miss Cruz?
A. Nope.
Q. Why were you not entirely pleased?
A. Because it would be a change in my situation.
Q. Did you consider this to be a demotion?
A. Yes.
Q. Did you discuss this change of assignment with anyone else in senior management Morgan Stanley, other than Miss Cruz?
A. No.
Q. Prior to the assignment, your reassignment and Mr. Petrick's appointment to the position of president of Morgan Stanley Senior Funding, had you been asked to attempt to expand the business activities of Morgan Stanley Senior Funding in ways that you had been unable to accomplish?

Smith

A. No.
Q. Who evaluated your performance at Morgan Stanley? Excuse me, during the time you were employed at Morgan Stanley, 1996 through February of 2003, who was responsible for evaluating your performance?
A. Various people.
Q. Can you identify them for me?
A. Steve Newhouse, Bill Kourakos. Take a step back. Normally I would have two evaluators, so it would be Newhouse and somebody from fixed income and Kourakos and somebody from fixed income. Towards the end it was Alan Jones and Mitch Petrick.
Q. Was Mr. Petrick the fixed income representative?
A. He was the fixed income representative.
Q. And the other person responsible for your evaluation was from what part of the business?
A. That would be from the high yield capital markets area.
Q. Were you evaluated on an annual

Smith

basis?
A. Yes.
Q. More often than annual?
A. I don't think so.
Q. What was the form this evaluation took?
A. It was written and it was a meeting.
Q. Prior to February '03 do you remember receiving any criticism relating to any aspect of your work during your annual evaluations?
A. No.
Q. Do you consider yourself to be -- let me focus on the time period that we're talking about here, Mr. Smith.
In 1998 did you consider yourself to be highly sophisticated with respect to underwriting leveraged loans?
MR. CLARE: Object to the form of the question.
A. I don't know what you mean.
Q. Had your career up until 1998, Mr. Smith, involved underwriting leveraged loans?

Smith

A. Yes.
Q. How experienced did you consider yourself to be in the first part of 1998 with respect to that business activity?
A. Pretty experienced.
Q. Would you consider yourself to be highly knowledgeable with respect to the process of underwriting large leveraged loans first quarter of 1998?
A. Yes.
Q. That had been your entire career, had it not?
A. Well, I used to fly helicopters.
Q. Subsequent to leaving the air force that had been your entire business career, correct?
A. The last half of the Morgan Stanley -- I mean the last half of Bankers Trust, yes.
Q. So approximately?
A. Ten years.
Q. Ten years at Bankers Trust?
A. Trust.
Q. Plus three years of Morgan Stanley?

NOT A CERTIFIED COPY

011882

Smith

A. Uhm-hmm.
Q. Have you ever been deposed before, Mr. Smith?
A. I have.
Q. On how many occasions?
A. I guess a couple.
Q. What did those occasions involve?
A. One was a personnel matter and the other was about this.
Q. What did the personnel matter involve?
A. Oh, lawsuit.
Q. By a Morgan Stanley employee?
A. Nothing to do with Morgan Stanley.
Q. Was it at Bankers Trust?
A. Bankers Trust.
Q. What kind of personnel lawsuit was it?
A. I don't really know. I was just called in as a witness.
Q. What was your involvement, why were you called as a witness?
A. I worked with the individual.
Q. Were any of the claims being made

Smith

in that employment dispute by the Bankers Trust employee related to your treatment of the individual?
A. No.
Q. You indicated you have been deposed previously relating to Sunbeam?
A. Uhm-hmm.
Q. When was that?
MR. CLARE: A point of clarification, I'm not sure the witness is using deposed in the same way that you are, so you may want to ask a clarifying question or give a clarifying answer to make sure we're clear about the terms we are using.
MR. MARKOWSKI: I'll try to do that.
Q. Have you testified previously relating to Sunbeam?
A. I have.
Q. What were the circumstances?
A. With the U.S. Attorney.
Q. Have you testified in a Grand Jury proceeding?
A. No.

Smith

Q. What was the nature of the U.S. Attorney's, what was the nature of the testimony you gave relating to activities of the U.S. Attorney's Office?
MR. CLARE: I'll object. Maybe I can shortcut some of this. And you're free to follow up with him. Mr. Smith gave an interview to the U.S. Attorney's Office. It was not testimony in any formal sense, it was an interview that was granted.
THE WITNESS: Thank you.
Q. Was a court reporter present?
A. No.
Q. Do you remember when this occurred?
A. Three or four years ago.
Q. How -- the Sunbeam transactions, to put this in context, closed in the first quarter of 1998?
A. Uhm-hmm.
Q. Do you recall how soon in relationship to first quarter of 1998 you were interviewed by the U.S. Attorney's Office?
A. I assume it would be three or four

Smith

years ago. It would be around '01 or '00, so it would be two or three years afterwards, but that is a very hazy recollection.
Q. So that was years after the close of the transactions that you were interviewed by the U.S. Attorney's Office?
A. Uhm-hmm.
Q. Do you know why U.S. Attorney's Office wanted to interview you?
MR CLARE: Objection, calls for speculation.
A. No.
Q. How much time did you spend in this interview?
A. About a day and a half.
Q. Were you represented by counsel?
A. I was.
Q. Was it an in-house attorney by Morgan Stanley?
A. No.
Q. Who represented you?
A. Wachtel, I think.
Q. Were any in-house Morgan Stanley lawyers present for the interview?

NOT A CERTIFIED COPY

Smith

A. I don't think so.
Q. What subjects were you interviewed about?
A. Different facets of the transaction.
Q. "The transaction" in this case being what?
A. Being the Sunbeam acquisition and financing.
Q. The Sunbeam acquisition you're referring to is what?
A. Of Coleman and the other two properties.
Q. And the financing in this context?
A. Would be the loan.
Q. The senior loan?
A. The senior loan.
Q. When you refer to "senior loan," the senior loan is the loan that Morgan Stanley Senior Funding made to Sunbeam in connection with the acquisition?
A. Along with two other existing lenders, Bank of America and Wachovia, yeah. Or First Union at the time.

Smith

Q. Were there any other matters that you were interviewed about other than those two general topics?
A. Nope.
Q. Do you know how you were chosen for this interview?
A. I have no idea.
Q. Do you know if you were volunteered by Morgan Stanley or --
A. I have no idea.
Q. Excuse me, or someone at the U.S. Attorney's Office specifically requested you?
A. Don't know.
Q. Do you know what the U.S. Attorney's Office was attempting to investigate?
MR. CLARE: Objection, calls for speculation.
A. No.
Q. What was your understanding?
A. Didn't have any.
Q. Were you told whether Morgan Stanley's conduct was in question?
MR. CLARE: Object. You can

Smith

answer the question, but I would instruct you to limit your answer to exclude any conversations or any other information that you learned from in-house Morgan Stanley counsel or outside counsel representing Morgan Stanley at the time. Those conversations are privileged, you're not required to disclose them. I'm instructing you not to disclose them.
To the extent you have an understanding outside of any of those privileged communications you are free to answer Mr. Markowski's question.
A. What is your question again?
Q. Did you have any understanding whether Morgan Stanley's conduct was in question?
A. No comment.
Q. Sorry?
A. No comment.
Q. No comment? I'm not sure I know what no comment means.
A. I guess I would be following his advice.

Smith

Q. Is your testimony that other than things you were told by Morgan Stanley's attorneys, you don't have any independent understanding whether Morgan Stanley's conduct was under investigation?
A. That would be right.
Q. Sir, I think it would be useful for the court reporter if you let me finish my questions before you start to answer them. I know it is very natural for you to anticipate where I'm going and provide the answer.
A. You're right, I'm sorry.
Q. But it is easier for the court reporter if we speak one at a time.
THE WITNESS: Do you think we can take a break now?
MR. CLARE: Sure.
THE VIDEOGRAPHER: The time is 10:21, we're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 10:26, we're back on the record.
BY MR. MARKOWSKI:
Q. Mr. Smith, other than this day and

NOT A CERTIFIED COPY

Smith

a half interview with the U.S. Attorney's Office, have you been interviewed by anybody else relating to the Sunbeam transactions?

A. No.

Q. The U.S. Attorney's Office involved in your interview, was that U.S. Attorney's Office here in Manhattan?

A. Yes.

Q. Do you know if any representatives of the Securities and Exchange Commission were present for that interview?

A. I don't recall.

Q. Do you remember with whom at U.S. Attorney's Office you met?

A. No.

Q. Did you take any notes of the discussion that you had with U.S. Attorney's Office?

A. No.

Q. Can you tell me generally what the U.S. Attorney's Office was interested in learning from you?

A. They were interested in issues surrounding the financing of the loan that

Smith

we, Bank of America and First Union, made.

Q. Do you know if this inquiry being conducted by the U.S. Attorney's Office was being initiated at the request of Morgan Stanley or Morgan Stanley Senior Funding?

MR CLARE: Objection, calls for speculation.

A. I do not know.

MR CLARE: Make sure you just give me a chance to give my objection.

THE WITNESS: I'm sorry.

Q. Do you know if it was initiated at the request of First Union or Bank of America?

MR CLARE: Same objection.

A. Don't know.

Q. During the course of the day and a half that you spent with the U.S. Attorney's Office with this interview, Mr. Smith, did you express the view that Morgan Stanley Senior Funding had been the victim of fraud in connection with the loan that it made to Sunbeam?

A. I'm sorry, say that again, please.

Smith

Q. During the course of this day and a half interview at the U.S. Attorney's Office did you express the view that Morgan Stanley Senior Funding had been the victim of fraud with respect to the loan it made to Sunbeam?

A. I don't really remember.

Q. As you sit here today, you don't remember whether during the day and a half interview with the U.S. Attorney's Office you indicated that you believe Morgan Stanley Senior Funding had been the victim of a loan, the victim of a fraud with respect to its loan to Sunbeam; is that correct?

A. Well, what, I think a better way to put it was that the three banks were -- I don't know if I ever used the word "fraud" -- were misled by what we were told with the financial condition of the company.

Q. Financial condition of the company in this context is Sunbeam?

A. Sunbeam.

Q. Do you recall that you did indicate that you believe Morgan Stanley Senior Funding had been misled by Sunbeam related to

Smith

its financial condition?

A. I think I said that Morgan Stanley and the other lenders were misled.

Q. Did you explain what, in what way you thought Morgan Stanley Senior Funding had been misled?

A. I remember that I said that I felt that the three banks were misled by the financial statements as well as representations made by the company.

Q. The financial statements you are referring to are the audited financial statements of Sunbeam?

A. Yes.

Q. What representations by management did you tell the U.S. Attorney's Office you believe were misleading?

A. I don't remember the specifics.

Q. Do you remember if you offered specifics to the U.S. Attorney's Office with respect to statements made to Morgan Stanley Senior Funding by Sunbeam management that you considered to be misleading?

A. No, I cannot remember.

NOT A CERTIFIED COPY

Smith

Q. Did you indicate to the U.S. Attorney's Office whether any of the information that Morgan Stanley had received from or relating to Coleman company was misleading?

A. I don't recall.

Q. So as you sit here today you don't recall telling the U.S. Attorney's Office that you remember receiving misleading information from Coleman?

A. I don't recall ever telling them that.

Q. Is the only misleading information you advised the U.S. Attorney's Office you believe Morgan Stanley Senior Funding had received had come from Sunbeam and related to Sunbeam; is that correct?

MR. CLARE: Objection, misstates his testimony.

A. It what?

MR. CLARE: I objected that it misstates your prior testimony. You can answer.

THE WITNESS: What was my prior

Smith

testimony?

MR. MARKOWSKI: Can you read the pending question, please.

(Record read.)

A. Well, no, because they also had the financial statements.

Q. Let me break it down.

You told the U.S. Attorney's Office that you believe Morgan Stanley Senior Funding had received misleading information from Sunbeam management, correct?

A. Yeah, the three banks had received misleading information.

Q. And that misleading information related to Sunbeam itself, correct?

A. Yes.

Q. And you also told the U.S. Attorney's Office that you believe Sunbeam's own financial statements were misleading, correct?

A. Yes.

Q. And those financial statements relate to Sunbeam itself, correct?

A. Yes.

Smith

Q. Is there any other misleading information that you recall advising the U.S. Attorney's Office of that related to the loans that Morgan Stanley Senior Funding received?

A. I don't recall anything.

Q. Are you familiar with the lawsuit that my client Coleman (Parent) Holdings has filed against Morgan Stanley, sir?

A. You mean the one we are here for now?

Q. Correct.

A. A little bit.

Q. What's your understanding of that lawsuit?

A. That you're suing Morgan Stanley, that is about it.

Q. Do you have any understanding of what the nature of the claims are that my client's asserting against Morgan Stanley?

A. Not directly.

Q. When you say "not directly," what do you mean?

A. No, not -- no.

Smith

Q. Do you understand that my client is alleging that Morgan Stanley misled Coleman (Parent) Holdings in connection with the sale of its interest in Coleman company to Sunbeam?

A. Yes, I guess I have heard that.

Q. Have you had any discussions with Morgan Stanley personnel relating to Coleman (Parent's) lawsuit?

A. No. Well, I guess we had that lawyer from Morgan Stanley, the guy who contacted me, the people who contacted me about showing up here. That would be it.

Q. Okay. Other than being advised that we wanted to take your deposition, you have not?

A. Nope.

Q. Sir, if you let me finish my questions, --

A. I'm sorry.

Q. -- we'll try and get through this.

Other than the telephone call you received from an in-house lawyer at Morgan Stanley advising you we wanted to take your

NOT A CERTIFIED COPY

Smith

deposition, you have not had any discussions with any Morgan Stanley personnel relating to my client's claims against Morgan Stanley?

A. Had a face-to-face meeting with a lawyer from Morgan Stanley.

Q. When was that?

A. It was yesterday.

Q. That was to prepare for your testimony today?

A. That was to prepare for the testimony today.

Q. Other than that conversation, have you had any discussions with anyone at Morgan Stanley relating to my client's claims?

A. No.

Q. What did you do to prepare for your testimony today, sir?

A. Sat down with counsel and reviewed documents.

Q. And on what occasions did you meet with counsel to prepare for today?

A. I'm sorry, on what occasion?

Q. Right.

A. You mean like when?

Smith

Q. Yes.

A. Yesterday.

Q. Any other occasions?

A. No.

Q. With whom did you meet yesterday?

A. With this attorney from Morgan Stanley and counsel.

Q. With Mr. Clare?

A. Mr. Clare.

Q. Do you remember the name of the in-house person at Morgan Stanley?

A. Jim Doyle?

MR. CLARE: If you remember.

A. That's all I remember.

Q. Anyone else present at the meetings?

A. No.

Q. Where did it take place?

A. It took place at Bear Stearns.

Q. How long did you meet with him?

A. About several hours.

Q. Can you tell me approximately how many?

A. Three-plus.

Smith

Q. Did they show you some documents?

A. Yes.

Q. Did any of those documents refresh your recollection on matters?

A. In a limited way I guess.

Q. What documents did they show you that refreshed your recollection?

A. There was a variety of documents. It included the offering memorandum on the bank transaction, some press releases, that type of thing.

Q. Did they review any testimony of others with you?

A. No.

Q. Did they review notes of the meeting that had taken place at the U.S. Attorney's Office?

A. No.

Q. Do you know if either Mr. Doyle or Mr. Clare had notes relating to the interview you had given to the U.S. Attorney's office?

A. No idea.

Q. Other than the documents that you were shown during the course of this session

Smith

yesterday with Mr. Doyle and Mr. Clare, did you spend any other time reviewing documents?

A. No.

Q. Did you use E-mail to communicate back in 1998, sir, while you were at Morgan Stanley?

A. No, I don't remember doing it.

Q. Did you ever use E-mail while you were at Morgan Stanley?

A. Limitly, in a limited manner.

Q. During what time period?

A. Mostly towards the last two or three years.

Q. When you left Morgan Stanley in 2003 did you have a personal computer at the office?

A. Yes.

Q. Do you know whether there were any E-mails or electronic documents on that computer that related in any way to the Sunbeam transactions?

A. I do not.

Q. So it is possible that your personal computer could have had E-mails or

NOT A CERTIFIED COPY

Smith

electronic documents relating to the Sunbeam transaction?

A. I'm not a computer genius, but the computer I had was, I only had for a couple of years, so I guess it is not.

Q. But you don't know?

A. Don't know for sure, no.

Q. When you left do you know what happened to your personal computer?

A. I do not.

Q. You didn't take it with you?

A. No, it wasn't mine.

Q. Do you know if anyone took any steps to preserve the contents of that computer when you left?

A. I do not.

Q. Do you know if that computer was reviewed at any time after my client filed its lawsuit against Morgan Stanley in 2003, to determine whether it had on it any documents relating to Sunbeam?

MR. CLARE: Objection, no foundation, calls for speculation.

A. No idea.

Smith

Q. You don't know one way or the other?

A. No.

Q. You have no knowledge of it being reviewed at least; is that correct?

A. No.

Q. Mr. Smith, when did you first become aware that a team of Morgan Stanley investment bankers was working with Sunbeam?

A. Tough to say, long time ago. My recollection would be that it would be early '98.

Q. Is there a particular event that you relate your first knowledge of Morgan Stanley investment bankers working with somebody?

A. The event would be a phone call from Bill Strong inquiring whether our interest in arranging a potential financing for Sunbeam in connection with some acquisitions.

Q. Did he identify the potential acquisitions?

A. I don't recall.

Smith

Q. Do you recall if those acquisitions turned out to be the acquisition of Coleman company, First Alert, Signature Brand?

A. Could have been. It is very general and the conversation like this I had all the time about potential acquisitions, so I think in this case it is still a formative stage.

Q. You don't recall as you sit here today whether this call from Mr. Strong related to whether you were interested in potentially structuring financing for Sunbeam's acquisition for some company other than the three companies it ended up acquiring?

A. Maybe I'll put it a different way. I think those companies were mentioned. It was unclear whether it was going to be all three, two of them or one.

Q. But it ended up being, the financing that Mr. Strong was inquiring about ended up being the financing that was in fact put in place by your group, right?

A. For those three properties.

Smith

Q. Did you have any knowledge that Mr. Strong and others were working with Sunbeam earlier with respect to other potential target companies?

A. Not then.

Q. Were you involved in any Sunbeam activities in 1997 that you can recall?

A. 1997, no. I do not recall being involved.

Q. Do you believe that you were not?

A. I believe I was not.

Q. Were you aware that Morgan Stanley's ability to arrange large amounts of financing was being promoted to Sunbeam by Morgan Stanley investment bankers as a reason for retaining Morgan Stanley to provide investment banking services?

A. I was not.

Q. Were you aware that in August of 1997 you were identified as a member of the Morgan Stanley Sunbeam team?

A. No

Q. Would it surprise you that without your knowledge you have been identified by

NOT A CERTIFIED COPY

Smith

Morgan Stanley investment bankers as being a member of the Sunbeam team?

MR. CLARE: Objection to form and foundation. You can answer.

A. I don't know how to answer. Does it surprise me? A little bit I guess.

Q. Mr. Smith, I'm going to show you what we're going to mark as Coleman (Parent) Holdings Exhibit 151, it's a document that bears Bates number Morgan Stanley confidential 65651 through 6574.

(Coleman (Parent) Holdings Exhibit 151, document that bears Bates number Morgan Stanley confidential 65651 through 6574, marked for identification, as of this date.)

Q. I would like you to look at it briefly just to tell me, first of all, whether you recall ever seeing that document before.

A. Is this all one document or is this several put together?

Q. As far as I'm aware it is one document, but I could be mistaken about that.

Smith

It is the way we received it.

A. I don't recollect seeing this.

Q. You see it's labelled in the first page "Project Laser Discussion Material August 8, 1997"?

A. Uhm-hmm.

Q. Do you recall Morgan Stanley's work for Sunbeam was referred to as Project Laser?

A. Yes.

Q. Let me direct your attention to the page where it has Bates number 65772, it is towards the end of the document.

A. Towards the end of it?

Q. 772, correct.

A. Uhm-hmm.

Q. Do you see that page is entitled "Project Laser, the Morgan Stanley team"?

A. Yes.

Q. You see in the bottom left-hand corner there is a box for debt capital markets banks?

A. Yes.

Q. And your name appears there, correct?

Smith

A. Yes.

Q. Along with Michael Hart's and Michael McLaughlin, right?

A. Yes.

Q. Can you tell me who Michael Hart and Michael McLaughlin are?

A. Michael Hart and Michael McLaughlin were vice presidents who worked as loan originators in the loan capital, for me in the loan group.

Q. They were two Morgan Stanley employees who worked for you?

A. Right.

Q. Does this refresh your recollection that you're identified Sunbeam in the summer of 1997, as part of the Morgan Stanley team for Project Laser?

A. I guess I would put it another way since I have never seen this before, so this is my first observation of this and I see my name as well as 15 other people here.

This looks very similar to a lot of the pitches Morgan Stanley put together just listing people in different areas.

Smith

You will also notice here they had people from the credit function and people from Princess Gate on this, so I would view this as a very generic pitch page.

Q. Do you know what the purpose would be of listing your group?

A. No, I would not.

Q. Let me direct your attention to the next page of this document, it bears Bates 65773. It is entitled "Project Laser Global Leveraged Lending Capabilities." It states "Morgan Stanley has the ability to provide below investment grade clients with financing at every level of the capital structure."

Do you understand that?

A. Yes.

Q. Was it your understanding that Sunbeam was a below investment grade company?

MR. CLARE: During what time period?

MR. MARKOWSKI: 1997, 1998.

A. Again I didn't know that this was done. I don't know what Sunbeam's credit ratings were at that time, investment grade,

NOT A CERTIFIED COPY

Smith

noninvestment grade.

Q. Do you see the entry that reads "seasoned leverage lending professionals"?

A. Yes.

Q. I would like you to read that, the description next to that to yourself. It has the words "Groups of 12 dedicated professionals"?

A. Uhm-hmm.

Q. Does that accurately describe your group at the time?

A. Yes.

Q. Below that there is another heading that reads "Armed With One-Stop Shopping."

Do you see that?

A. Yes.

Q. Would you read that to yourself also. Let me read it into the record, so it is clear what we're talking about.

It reads "Seamless execution coordinated among MSSF, Morgan Stanley's bridge and private equity funds and top rank high yield public equity M&A groups."

Do you see that?

Smith

A. Yes.

Q. Do you have any understanding what the reference to one-stop shopping means in the context of this statement?

A. The, again this was a standard pitch page that was included in a lot of presentations to companies.

The idea here was that a variety of services could be provided by Morgan Stanley, very similar to what our competitors were also tallying at the time.

Q. And those activities would range from what, sir, to what in this context?

A. In this context where you just read it would include Morgan Stanley Senior Funding, Morgan Stanley bridge, private equity, high yield, public equity, and M&A.

Q. The reference to M&A is to what function, sir, do you know?

Do you have any understanding?

A. I guess it would be mergers and acquisitions.

Q. Is that sometimes referred to as the investment banking function?

Smith

A. I think the investment banking function is broader, but I don't know.

Is there investment banking listed here?

Q. Was it common for Morgan Stanley investment bankers to represent to potential clients that Morgan Stanley both could provide investment banking advisory services and then assist the company directly or indirectly in raising the funds necessary to complete the acquisitions that were arranged through the investment banking group?

MR. CLARE: Objection, calls for speculation.

A. Yes, I mean I obviously wasn't on every page so I have no idea how common or uncommon it was.

Q. You were part of the financing activity. Was it something that you understood to be taking place?

A. When you say "taking place," do you mean taking place 1 percent of the time, 2 percent of the time.

Q. Common?

Smith

A. I don't know what common means.

Q. Was it your understanding that Morgan Stanley -- let me take a step back, sir.

Was it your understanding that one of the reasons why Morgan Stanley wanted you to come to Morgan Stanley to establish the ability to fund leveraged loans and to syndicate them, was to assist Morgan Stanley in obtaining investment banking related engagements?

A. My understanding was that they want to have the leverage loan capability to help them garner more high yield business per se.

Q. Did you understand another objective was to obtain more investment banking engagements as a result of the ability to provide that kind of funding?

A. No.

Q. That was never expressed to you as an objective?

A. No, it was not.

Q. Were you aware that --

A. Excuse me, are we finished with

NOT A CERTIFIED COPY

Smith

this?

Q. Yes.

Q. You were aware that the Morgan Stanley investment banking team was concerned that it might lose the financing assignments relating to any acquisitions Sunbeam obtained to Chase Securities?

A. I don't know if I would have worded it that way. I think they felt that Chase was a competitor that could get the financing business because of their existing relationship with Sunbeam.

Q. You understood that Chase Securities had an existing relationship with Sunbeam?

A. Yes, I did, as did First Union and Bank of America.

Q. What was the nature of Chase Securities' relationship with Sunbeam?

MR. CLARE: Objection. Objection, no foundation. You can answer if you know.

A. The only thing that I know that they had were they were the lead on their bank loan. And by "the lead" I mean their

Smith

agent or the administrative agent.

Q. The bank loan is what, sir?

A. They had a, I think a small revolving credit, multi-year. Chase was the admin agent. First Union, Bank America were two large lenders, participants in that, two syndicate members.

Q. Do you know who Mark Davis is?

A. From where?

Q. Chase Securities.

A. No, I don't think so.

Q. You were never told that Mark Davis of Chase Securities had a relationship with Mr. Dunlap as a result of work that Mr. Davis had done for Mr. Dunlap at other companies?

A. No.

Q. Have you ever seen the engagement letter between Morgan Stanley and Sunbeam, sir?

A. Yes.

Q. When did you see that?

A. I think at various times.

Q. What would have been your reason for seeing that engagement letter?

Smith

A. One, getting ready for this, and then when the letter was issued to, as normally as, or I think in this case so it kind of after the fact or right before they signed the final one.

Q. I show you what we marked previously as CPH Exhibit 70, it is a letter dated September 5, 1997 Morgan Stanley stationery from Bill Strong to Albert Dunlap.

A. Okay.

Q. Take a moment to look at this for me, sir.

A. Okay.

Q. Do you recall seeing the Morgan Stanley engagement letter prior to September 5, 1997, sir?

A. I do not recall seeing it prior to September 5, 1997.

Q. So is it your recollection you did not see the engagement letter prior to it being entered into?

A. Yes, that's my recollection.

Q. Do you recall now having looked at it, how soon after September 1997 you first

Smith

saw the engagement letter?

A. No.

Q. Do you recall that in fact you did see it prior to the closing of the transactions in the first quarter of 1998?

A. I'm not sure.

Q. Were you aware that as part of the Sunbeam engagement letter, Sunbeam had agreed to retain Morgan Stanley on mutually agreeable terms to assist in connection with any necessary financing?

MR. CLARE: Objection to the extent it mischaracterizes the document.

A. That's not what this says.

Q. Let me direct your attention to the second -- the first full paragraph on the third page of the letter.

A. Uhm-hmm.

Q. It reads "If in connection with this assignment Sunbeam effects a repurchase of or public sale or private placement of any equity referred or debt securities, or Sunbeam effects real estate financings, asset or property sales and some reasonable portion

NOT A CERTIFIED COPY

Smith

of investment banking services, in connection with Sunbeam agrees to offer Morgan Stanley on mutually agreeable terms to assist it with such transaction."

Is it your understanding that that did not encompass --

A. This is boilerplate. Mutually acceptable terms means you have to come with the transaction so both sides have to agree, so there is nothing that ties them, Sunbeam to Morgan Stanley, to do this.

Q. Is it your understanding this didn't create a binding obligation on Sunbeam's part?

A. Not at all. This is boilerplate.

Q. Is it your understanding that this does relate to the financing activities that Sunbeam may need in the event that it engages in an acquisition covered by the terms of this engagement letter?

A. Why don't you say that again.

Q. Is it your understanding that the language that I just read to you from this engagement letter pertains to financing

Smith

activities related to any acquisition that Sunbeam executes, that is covered by this engagement letter?

A. Well, again I guess I don't know what you're driving at or mean. One, this is boilerplate. Two, what this states is that if there is some financing by the way we, we might be able to strike a mutually acceptable deal with them to help provide the financing.

Q. Is it typical that Morgan Stanley seeks to involve itself in financing aspects of the investment banking transactions?

A. I'm sorry, do you say is it usual?

Q. Yes.

A. Don't know.

Q. Is the opportunity to provide financing another way that Morgan Stanley realizes fee income?

A. Yes, as do other institutions.

Q. You're aware, sir, that in first quarter of 1998 Sunbeam signed an agreement to acquire my client's interests in Coleman company?

A. Yes.

Smith

Q. And in connection with that transaction Morgan Stanley was in fact retained by Sunbeam to provide financing for it, correct?

A. I don't know about the chronology, but -- well, you know what, I don't know if that is right. I don't know when we were retained by them to do the financing.

Q. Do you recall that Sunbeam retained Morgan Stanley to arrange financing for its acquisition of Coleman company prior to the closing of the acquisition of my client's interest in Coleman?

A. Yes.

Q. Who within Morgan Stanley, sir, was involved in the financing arrangements relating to the acquisition of my client's interests in Coleman company?

A. The financing arrangements? Do you mean specifically the loan?

Q. Any aspect of the financing.

A. Would that include the convertibles as well?

Q. Yes.

Smith

A. Then my list would be limited because I don't know all of the people that were involved.

Conceptually there were people from our group which would be the Morgan Stanley senior loan, there would be people from credit, there would be people from high yield research, there would be people from the convertible desk, there would be people from equity capital market, and I don't even know if that is exhaustive, as well as the execution group. So to summarize, many, many people involved.

Q. Who from the leveraged finance group is involved?

A. There were probably three or four of us, myself, Michael Hart -- Michael Hart, Tom Burchill, and towards the end Simon Rankin.

Q. Do you recall who was involved in the equity capital markets group?

A. I do not.

Q. Did you have any interaction with them in connection with the underwriting of

NOT A CERTIFIED COPY

Smith

the senior loan?

A. No.

Q. So you didn't exchange information -- let me take a step back.

Do you recall if Ruth Porat was involved in convertible debt?

A. I do, yes.

Q. Did you have any communication with her at any point prior to the closing on the senior loan relating to Sunbeam?

A. Did I have any communications prior to the closing of the loan, yes.

Q. What do you recall about those communications?

A. Well, a couple of things. The -- because this was a large financing and many individuals at Morgan Stanley from many groups were involved. There was a sharing of information.

Number two, when, just before we closed the loan there was some issues regarding sales in the first quarter, some press releases and so worked with the firm I guess, and she was one of the members of the

Smith

group in terms of investigating this.

Q. Do you recall any other communications that you had with anyone else in equity capital markets relating to Sunbeam?

A. I do not.

Q. So the only point of contact you had was with Ruth Porat?

A. To the best of my recollection.

Q. Do you know if other people within leveraged finance had communications with Miss Porat?

A. I do not know.

Q. Do you know whether other people within the leveraged finance group had communications with anyone else in equity capital markets relating to this?

A. I do not.

Q. You indicated that there was sharing of information relating to the financings between leveraged finance and equity capital markets.

Did I understand that correctly?

A. Yes.

Smith

Q. What was the nature of the information being shared?

A. Let me be more specific. At Morgan Stanley there was a group, I don't know what they call it now, the execution group. I think they called it CSG then. And once the transaction was one, then they were the people that chaperoned the process, knew all of the transactions. They were the executioners as we called them.

John Tyree was the representative from CSG who was the quarterback of putting together a lot of this. And in this capacity he was the point person and we were able to, we being the loan group as well as equity capital markets, use a lot of the work that he did. And a lot of this we did together, some of it we relied on him, sometimes he relied on us.

Again it was a massive effort on the part of the firm. At any one time 10 to 20 people working on this thing.

Q. We're going to go through that in more detail.

Smith

In the first quarter of 1998 what was the nature of your personal activity relating to the underwriting of the Sunbeam loan?

A. Well, as the manager of the group, the ultimate responsibility was, and decision I guess was at least -- decision is the wrong word. The ultimate responsibility was mine. We had a very strenuous credit approval process with many of the individuals that I had mentioned before as part of the credit committee at the time that got involved with the final yes or no.

It was our group that was responsible, the people that work for me that were responsible for doing a lot of the due diligence and the structuring and then the rest on the loan. So in that way it was in a supervisory capacity.

Q. Do you recall what activities you personally engaged in?

A. Partly I guess. Worked with the, specifically on the loan side, what was the right structure, i.e., how much A loan, how

NOT A CERTIFIED COPY

Smith

much B loan, what should be the prices, what should be the fees. More generically asking questions about the credit, the combined entity.

And once when one of the team members was unable to attend I went down for a, one of the due diligence meetings down in Florida.

Q. There are two principal aspects of the Sunbeam financing which was ultimately put in place, correct, sir, the senior loan and the convertible debenture offering?

A. Uhm-hmm.

Q. You have to answer audibly.

A. I'm sorry, yes.

Q. Who was involved in the decision-making with respect to how much money would be raised through the convertible debenture offering and how much money would be provided through the senior loan?

A. I'm sorry, you say who made that decision?

Q. Yes.

A. It was kind of a group, a group

Smith

decision. Obviously people at Morgan Stanley had, were involved as well as the company.

Q. Were you involved in that process?

A. Tangentially.

Q. Did you provide a recommendation concerning how much of the debt should be raised through the senior loan and how much of it should be raised through the convertible debenture?

A. Initially we did, which was the original structure, and then when the convertible increased in size, then had input into terms of how much to take of the, or how much they should use and then how to reduce the loan to take advantage of the extra money they were able to raise in the convertible market.

Q. What you are referring to is the fact that originally it was contemplated that 500 million would be raised through the convertible debenture offering?

A. Yes.

Q. And subsequently that was changed to be something more like 750 million?

Smith

A. Yes.

Q. Were you involved in any decision-making or involved in making recommendations with respect to that change?

A. No.

Q. Do you know who made that decision?

A. I think the company eventually made that decision. It is only speculation on my part.

Q. Do you know if anyone at Morgan Stanley had a view on that issue?

A. No.

Q. Did you have a view?

A. Not really.

Q. Did you consider it to be a good development with respect to the senior loan or a negative development with respect to the senior loan, that the company had raised an additional $250 million through the convertible debenture?

A. I thought it was a positive development.

Q. Why is that?

A. Because it was more junior capital

Smith

in the, in the capital structure so the loans were, were more, were better off.

Q. Is that sometimes referred to as there being more cushion?

A. I have heard people use that expression.

Q. Is that an expression you've used?

A. I don't recall.

Q. In any event, you consider it to be the fact that the company raised an additional $250 million through the convertible debenture offering to be a positive development with respect to Morgan Stanley's exposure on the senior loan?

A. I viewed it as a positive development in terms of a senior lender to the company, which would be ourselves and Morgan Stanley Senior Funding, Bank of America and First Union. I thought it also enhanced our ability to distribute it.

Q. You thought in general senior lenders would view that as a positive?

A. As a positive outcome.

Q. What due diligence activity did you

NOT A CERTIFIED COPY

Smith

personally engage in prior to the closing of the senior loan, sir?

A. It was rather limited. We had other people tasked with the job and in my cart, but I did go on that one trip down to Florida.

Q. Do you recall if that one trip took place in early March?

A. I don't remember. That's probably about right.

Q. Let me see if we can pin this down in time a little bit.

Let me show you, sir, what was previously marked as CPH Exhibit Number 74. It is a letter dated March 5, 1998 on Morgan Stanley stationery, signed by you, directed to Russell Kersh at Sunbeam.

Can you tell me what this letter is, sir?

A. Give me a second, please.

Q. Sure.

A. This looks like a highly confident letter.

Q. Do you recall whether you provided

Smith

this letter to Sunbeam before or after your trip to Florida?

A. I don't recall.

Q. Let me show you what we marked previously as CPH Number 37. It is a two-page document bearing Bates Morgan Stanley confidential 45317 through 45318. It is an itinerary for Mr. Tyree's travel to Florida on March 4 and March 5, 1998, sir?

A. Uhm-hmm.

Q. You see that in the third line there is a reference to you, Seth Shaan, Tom Burchill and Michael Hart as part of the team?

A. I do.

Q. Do you believe this is a reference to the trip to Florida that you took?

A. Yes.

Q. Do you recall that Mr. Tyree was part of the team at the Florida meeting?

A. I do.

Q. Do you recall whether Mr. Hart was there?

A. I believe he was not.

Smith

Q. Do you recall if Seth Shaan, Tom Burchill were there?

A. I don't recall.

Q. Is the reason why you went on this trip that Michael Hart could not?

A. That is my recollection.

Q. Prior to the trip to Florida in early March where you visited Sunbeam, had Morgan Stanley Senior Funding itself done any, do any due diligence relating to the possibility of structuring a senior loan to Sunbeam?

A. I don't recall the exact sequencing of it, but we did have -- we -- so I don't remember when we started getting involved in terms of looking at the, looking at the projections and thinking about loan structures.

Q. Would it be fair to say that by the time you sent your March 5, 1998 highly confident letter to Mr. Kersh, that Morgan Stanley Senior Funding had substantially completed its due diligence related to the financing?

Smith

A. Oh, quite the contrary. We had looked at a lot of the available information and accepted it at face.

As you see here in the letter, we said there is a lot more work to do. We said this is our preliminary understanding, that we had lots of work to do to include getting, completing due diligence. That no way this was -- and that's I guess that first full paragraph on the second page where we talk about material address change in conditions and business results and the prospects of the company.

I think we also had in here someplace about the, we have to complete the due diligence. And that no way could this be construed to be a commitment by Morgan Stanley to lend the money or to underwrite the deal.

And I think the operative paragraph here is that we were highly confident that this could be syndicated in the general known market.

Q. Have you finished your answer?

NOT A CERTIFIED COPY

Smith

A. Yes.

Q. Sir, is it your testimony, sir, that Morgan Stanley Senior Funding had not substantially completed its due diligence as of the time it provided Sunbeam with a highly confident letter?

A. It is my testimony that it had not completed its due diligence prior to issuing this letter.

Q. Right.

A. With the caveats that I just mentioned.

Q. My question is whether it was substantially complete by this point in time?

A. I don't know what that might mean, but there was a lot more to do and I think this letter reflected that.

Q. Let me put it this way: Did you think that most of Morgan Stanley Senior Funding's due diligence relating to the underwriting of the senior loan was completed by the time you provided the highly confident letter to Mr. Kersh on March 5, 1998?

A. I don't think that most had been

Smith

done by then, but that is a very vague term.

Q. Was it the policy of Morgan Stanley that highly confident letters relating to financings should not be issued until substantially all necessary due diligence was completed?

A. It -- why don't we say that again. What did you say?

Q. Was it the policy of Morgan Stanley that highly confident letters relating to financings should not be issued by the firm until substantially all necessary due diligence had been completed?

A. There -- I don't follow you.

Q. Was it the policy of Morgan Stanley -- I think it is a fairly simple statement, sir.

A. Why don't you go slow.

Q. I will. Was it the policy of Morgan Stanley that highly confident letters --

A. Like this.

Q. -- relating to financing should not be issued until such time as substantially

Smith

all necessary due diligence was completed?

A. Well, I'm having a brain aneurysm, I don't know what you're trying to get to.

Q. You don't know one way or the other as you sit here today whether Morgan Stanley's policy was --

A. I'm not commenting on Morgan Stanley's policy.

Q. I'm asking you --

A. No comment, no idea.

Q. My question is this and I want your knowledge, I'm entitled to your knowledge.

A. As best as I can remember.

Q. Yes. Is it your testimony that you have no knowledge as you sit here today, whether it was the policy of Morgan Stanley in March of 1998 that the firm should not issue highly confident letters relating to potential financing until such time as substantially all necessary due diligence was completed?

A. My understanding was that there would be letters like this issued after it was vetted internally, and the amount of due

Smith

diligence completed before the issuance of this letter would vary.

Q. You have no knowledge that there was a requirement that substantially all of necessary due diligence be complete?

A. Those are your terms and I'm not aware of any of those, that concept.

Q. Who made the decision to issue the highly confident letter on March 5?

A. This was a group decision that was vetted by many of the senior people at the firm.

Q. You didn't have the authority yourself to issue the March 5 letter?

A. No.

Q. Who needed to provide approval?

A. This would --

Q. Let me ask you a different question. Who did provide approval?

A. I don't recall exactly, but it would be the people on the Credit Committee, I don't even remember who was the head then of the Credit Committee, and then other senior members of the Credit Committee.

NOT A CERTIFIED COPY

Smith

MR. MARKOWSKI: Why don't we take a break and change the tape.

THE VIDEOGRAPHER: The time is 11:26, this completes tape number 1.

(Pause in the proceedings.)

THE VIDEOGRAPHER: The time is 11:31, this begins tape number 2.

BY MR. MARKOWSKI:

Q. Mr. Smith, back to the March 5 highly confident letter.

Describe to me the process that was used at Morgan Stanley in reaching a decision to issue this letter.

A. The decision would be a, would be similar to the credit approval process, realizing that we had less than the complete information that we would need to make a credit decision.

And by that I mean that a lot of the due diligence would be ongoing, not yet complete, that our views expressed in these highly confident letters such as this, are dated March 5, would, would relate to taking a lot of the information given to us at face

Smith

value, i.e., the audited financials, i.e., the projections, and the rest.

And then based on that was our, we would then come up with a decision on the part of the firm, voiced to the Credit Committee, whether we would be authorized to send out a highly confident letter such as the one here.

Q. Was there any sign-off process in place that required that formal written approval be given for letters such as this?

A. It was not a sign-off procedure. It was a meeting that was, that we had a chairman and that approved credits as well as sending out these highly confident letters.

Q. That committee was the Leveraged Finance Committee?

A. It sounds right, but don't hold me a hundred percent for the name. It changed a lot.

Q. Were you on that committee?

A. I was on the committee.

Q. Were you the chairman?

A. I was not the chairman.

Smith

Q. Do you know who was in 1998?

A. I think it had been Mr. Steve Newhouse.

Q. How did that process work, did the committee take a vote with respect to whether a letter -- let me ask you a specific question.

Do you recall that a committee vote was taken with respect to the authorization issued on March 5 had the confident letter disseminated?

A. I don't remember specifically whether there was a vote. I don't remember.

Q. Is that typically the way the process works, the committee takes a vote with respect to whether to approve the issuance of a highly confident letter or a credit, or is it something other than that?

A. That is typically how it would work.

Q. Who initiated the process with respect to review of the question whether to issue a highly confident letter to Sunbeam; did you?

Smith

A. Initiate's a funny word. Probably Mr. Strong and myself were the, would take the lead on this.

Q. Why Mr. Strong?

A. The procedure at Morgan Stanley was that the banker, i.e., the person who was responsible for the client would be actively involved in all, in proposing extensions of credit or underwritings for their client.

Q. So Mr. Strong had to endorse this as part of the internal procedure Morgan Stanley?

A. Yes.

Q. Do you recall that Mr. Strong asked you to consider to issue a highly confident letter to Sunbeam?

A. I recall that he wanted a highly confident letter from Morgan Stanley to Sunbeam.

Q. How did you know that Mr. Strong wanted a highly confident letter?

A. I think he -- we talked about it and we thought that was helpful in helping us secure the financing.

NOT A CERTIFIED COPY

Smith

Q. So you and Mr. Strong discussed whether Morgan Stanley should issue a highly confident letter?

A. No, Mr. Strong and I discussed whether we should go seek approval from Morgan Stanley to issue a highly confident letter.

Q. And Mr. Strong wanted Morgan Stanley to issue a highly confident letter because he thought it would be helpful to Morgan Stanley in obtaining the assignment to arrange for the financing, correct?

MR. CLARE: Objection, calls for speculation.

A. I can't comment for sure what he was thinking.

Q. Did Mr. Strong say to you in words or substance I would like us to be able to issue a highly confident letter to Sunbeam in connection with the financing for the Coleman acquisition because that will be helpful to us in our efforts to obtain that engagement?

A. I think he said to the committee that form and substance about what you said,

Smith

that this would be useful in positioning ourselves to seek the financing if that's what we wanted to do.

Q. Now, was it clear to the committee in connection with the issuance of -- let me ask a foundational question.

Was there an actual meeting of the committee in connection with the decision to issue the March 5 highly confident letter?

A. Don't recall for sure, but I believe so.

Q. Do you recall being present at such a meeting?

A. I do recall, yes. If there was a meeting I was there. And I think there was a meeting.

Q. To discuss the issuance of the March 5 --

A. To discuss the issuance of this highly confident letter.

Q. Do you recall whether the committee at that meeting was advised that a substantial amount of due diligence remained to be done before Morgan Stanley could

Smith

actually commit to make the loan?

A. I don't know if I would use the word "substantial." They were certainly aware that there was ongoing work and work to be done.

And also what happened here is that once that work was complete it was understood because this was the policy, is to come back to the Credit Committee for approval of what exactly was being asked for.

Q. How would issuing a highly confident letter be helpful in Morgan Stanley's efforts to obtain the financing engagement?

MR. CLARE: Objection, calls for speculation.

A. I don't know what Bill was thinking with the company. I don't know.

Q. Did Mr. Strong explain his thinking to you?

A. No.

Q. Do you have any views of your own, based on your many years of experience in this business that would provide you with a

Smith

basis for understanding how the issuance of a highly confident letter might assist Mr. Strong in obtaining the financing engagement from Sunbeam?

A. Not really. It's also situational, so personal, and I had no knowledge of Kersh or Dunlap before that.

Q. Before this March 5 letter was issued did you have any direct communications with Mr. Kersh or Mr. Dunlap personally?

A. I'm hesitating because the -- I'm trying to remember the first time I met him and that might have been at the board meeting, and I don't remember when that day was.

Q. The itinerary for the trip to Florida indicates --

A. They might have even been there. Does it say that? I'm sorry.

Q. We'll get there. Here is my question: The itinerary for the trip to Florida indicates that the meetings were scheduled for March 4 and March 5. The date of your highly confident letter is March 5.

NOT A CERTIFIED COPY

Smith

Do you recall bringing the highly confident letter with you and delivering it personally to Mr. Kersh or Mr. Dunlap during your visit to Florida?

A. I don't think so. I think the itinerary is wrong. I think I was only there for a day in and out, I didn't spend the night, and so I don't believe I had this with me to give them when I was down there.

Q. Was there something about your trip to Florida that, on March 4 that bears on the timing of the issuance of the letter on March 5?

A. I don't recall.

Q. Do you recall you were holding onto the highly confident letter until your trip to Florida?

A. No.

Q. Do you recall how far in advance of the issuance of a highly confident letter on March 5 that Mr. Strong first approached you about his desire to have Morgan Stanley provide Sunbeam with such a letter?

A. I do not.

Smith

Q. Do you remember if it was more than a week?

A. I do not.

Q. Is it possible that it was less than a week?

A. I can't remember.

Q. Was there any disagreement on the part of any members of the committee responsible for making the decision to issue this letter, concerning whether it should be sent?

A. Not that I recall.

Q. Did you have any reservations personally about it?

A. No.

Q. I believe you testified earlier that it was your recollection, it is your recollection today that your activity relating to Sunbeam started in the first quarter of 1998?

A. That's the best of my recollection.

Q. Was it your understanding at the outset of your involvement in first quarter of 1998 relating to Sunbeam, that Mr. Dunlap

Smith

had claimed to have accomplished a significant improvement in Sunbeam's performance and prospects?

A. I'm sorry, did you say prior to my involvement?

Q. I'll ask a new question.

Was it your understanding at the time you became involved in your work relating to Sunbeam in the first quarter of 1998, that Mr. Dunlap had been claiming to have accomplished a significant improvement in Sunbeam's performance and prospects in 1997?

A. After I got involved, yes.

Q. Were you aware that Morgan Stanley's presentation to other companies concerning Sunbeam emphasized the success of Mr. Dunlap's turn-around efforts at Sunbeam?

A. I didn't have any knowledge of that.

Q. Did you ever become familiar, sir, with statements made by Morgan Stanley to my client concerning the success of Mr. Dunlap's turn-around activities of the Sunbeam?

Smith

A. No knowledge at all.

Q. Mr. Smith, I'm going to show you what we previously marked as CPH Deposition Exhibit Number 71. It's a October 22, 1997 interoffice memorandum from the Sunbeam corporation team to Morgan Stanley Worldwide IBD professionals. It bears Bates stamps Morgan Stanley confidential 5984 through 5995.

I would like you to take a look at this, sir, and tell me whether you have ever seen this document before.

A. I, I don't recall.

Q. If in fact this Morgan Stanley interoffice memorandum was sent to all Worldwide IBD professionals, would that have included you?

A. I think it might have.

Q. IBD is a reference to Investment Banking Division?

A. Uhm-hmm.

Q. You have to answer audibly.

A. I'm sorry, yes.

Q. In the ordinary course a memorandum

NOT A CERTIFIED COPY

SCI 0109

Smith

directed to all IBD professionals would have gone on to you as well?

A. That is true, as well as thousands of other things, so, so I don't remember seeing it.

Q. Let me direct your attention to the third page of the document.

A. This one?

Q. The Sunbeam corporation investment rationale.

A. Uhm-hmm.

Q. Read for me the four main bullet points on this page. "Sunbeam represents an attractive growth story in investment opportunity. Sunbeam has undergone a profound transformation since the arrival of new management in July 1996. Tremendous intrinsic value in the company. And, finally, valuable opportunity to penetrate and become a global market leader of branded consumer devices."

Do you see those four bullet points?

A. I do.

Smith

Q. Was that consistent with your understanding with the claims Sunbeam was making in the first quarter of 1998 concerning the success of its turnaround?

A. Consistent with what Sunbeam was representing? I think, yes. Probably consistent.

Q. Do you know if these statements are consistent with the statements that Morgan Stanley was making to third parties on behalf of Sunbeam?

MR CLARE: Objection.

A. I have no idea.

MR CLARE: No foundation. You can answer.

Q. Do you know if the purpose of this memorandum to all investment banking professionals was to communicate to them selling points that they should make to third parties relating to Sunbeam?

MR CLARE: Same objection, foundation, calls for speculation.

A. Don't know.

Q. Do you have any knowledge as you

Smith

sit here today, whether statements of this sort were made by Morgan Stanley to my client?

A. No idea.

Q. Were any statements of this sort, sir, relating to Sunbeam's financial condition and prospects made to you by any members of the Sunbeam investment banking -- excuse me, let me start over.

Were any statements of the sort contained in CPH Exhibit 71 which I just read to you, made to you by any Morgan Stanley personnel?

MR. CLARE: You're asking specifically with regard to the third page of the exhibit?

MR. MARKOWSKI: Yes, the third page.

A. I think that elements of the third page were, were talked about by members of the team during the process.

Q. So there were members of Morgan Stanley personnel who were involved in the investment banking activities for Sunbeam,

Smith

who made statements similar to those we see on the third page of this document to you?

A. Yes, and -- but don't forget, if you look at page 3 a lot of these are factual.

Number one market share in gas grills. So if somebody tells me they're number one in market share in gas grills, I see it in two or three other places so that's kind of a fact.

You can see what they have done in terms of improving profitability and selling some unprofitabilizations. Those are all facts so, yes, a lot of this information was shared by the team with people that weren't as close to the company.

Q. Did the members of the Morgan Stanley investment banking team say to you that Sunbeam had accomplished a successful turnaround during Mr. Dunlap's tenure?

A. I don't remember anybody saying that specifically to me in words of that. I do remember, however, conversations where we look at the financials and see that margins

NOT A CERTIFIED COPY

Smith

had improved, profits had gone up and the rest.

Q. Did anybody on the Morgan Stanley investment banking team say to you in connection with your underwriting review that Mr. Dunlap had accomplished some, Mr. Dunlap had accomplished a substantial improvement in Sunbeam's performance?

A. I don't know if anybody said it like that, but again any comments would have come up as we looked at the numbers. Again those were pretty black and white in terms of what you had been able, what the numbers represented that the company had done under his stewardship.

Q. Do you recall anybody on the Morgan Stanley investment banking team saying to you that Mr. Dunlap had accomplished great success during his tenure as the CEO of Sunbeam?

A. Never anything like that.

Q. That Sunbeam represented an attractive growth story?

A. No.

Smith

Q. That Sunbeam represented an attractive investment opportunity?

A. Never exactly I guess those words.

Q. In substance?

A. It was more again looking at the numbers, seeing what the, what that looked like and then commenting, and then commenting on the, what the numbers look like over the last couple of years that he had been there.

Q. Had anyone on the investment banking team suggested to you that Mr. Dunlap had successfully transformed Sunbeam?

A. No, I don't remember those words.

Q. That there was tremendous intrinsic value at Sunbeam?

A. I don't remember those words.

Q. Were you aware of Mr. Dunlap's prior history before becoming the CEO of Sunbeam?

A. Just very peripheral.

Q. Did you have any knowledge of his tenure at Scott Paper?

A. No, other than what I read in the newspapers.

Smith

Q. Did you have any -- what was your understanding generally of Mr. Dunlap's reputation in the first quarter of 1998?

A. Generally was that he was a, he was a -- I don't know how to put it. I think his public image was, it was my understanding his public image was he was pretty bottoms line oriented and was focused on cost-cutting and paring out unprofitable ventures in the company.

Q. Was it your understanding that Mr. Dunlap's reputation was as a turn-around specialist?

A. I guess you could use that concept, that word. I think that was his general persona. It is certainly now his general persona.

Q. That is the way he presents himself, correct?

A. Yes, in all of the public stuff.

Q. Did you prior to the close on the acquisition of my client's interest in Coleman company at the end of March 1998, have any reason to question Mr. Dunlap's

Smith

turn-around accomplishments at either Sunbeam or any of the other companies he had been previously employed at?

A. No.

Q. Did you make any inquiry concerning Mr. Dunlap's tenure at Scott Paper?

A. I did not personally.

Q. Did you have anyone do that for you?

A. I did not specifically ask anybody to do that for me.

Q. Did you receive any reports regarding Mr. Dunlap's tenure at Scott Paper?

A. Not that I recall.

Q. Did anyone at Morgan Stanley ever suggest to you that Mr. Dunlap's accomplishments at Scott Paper were phony or exaggerated?

A. Not that I recall.

Q. Let me show you, Mr. Smith, what we previously marked as CPH Exhibit Number 68. It is out of a Business Week article entitled "Did CEO Dunlap Save Scott Paper Or Just Pretty It Up."

NOT A CERTIFIED COPY

Smith

A. Is this July of '97, is that what this says at the bottom?
Q. I think there are two dates on this document, sir. The upper left-hand corner is a January 15, 1996 date.
A. Okay.
Q. And then in the bottom right-hand corner there is a July 16, 1997 date.
A. Uhm-hmm.
MR. CLARE: Bram, don't mark on the document.
Q. It bears Bates number Morgan Stanley 3995 through 4001. Take a moment to look at this.
A. Okay.
Q. Have you ever seen this before?
A. I don't recall directly. Maybe.
Q. Do you recall seeing this in connection with your review of Sunbeam prior to the close of Sunbeam's acquisition of my client, client's interests in Coleman company?
A. One, I don't remember if I saw it so you can't ask me to speculate when I might

Smith

have seen it.
Q. Did you ask, does this refresh your recollection whether you asked any members of the Morgan Stanley due diligence team to investigate reports relating to Mr. Dunlap's tenure at Scott Paper?
A. I did not ask anybody to do that.
Q. Do you recall being aware that there were questions being raised publicly relating to Mr. Dunlap's claimed accomplishments at Scott Paper?
A. I guess tangentially. I knew he was a controversial figure.
Q. At the time the transactions closed at the end of March 1998 did you have any personal reason to question on the turn-around claims that Mr. Dunlap had made at Sunbeam?
A. Did I personally have any, no.
Q. Do you have any reason to question his reputation as a turn-around specialist?
A. No.
Q. I'm sorry if I asked this previously, but did you have any personal

Smith

contact with Mr. Dunlap in connection with your Sunbeam activities?
A. I think you asked that before. I'm trying to remember the first time I met him, it might have been at a board meeting in New York.
Q. Was that the board meeting at which the Sunbeam board voted to approve the acquisition of my client's interests in Coleman company?
A. Yes, I believe it was.
Q. Other than at that meeting, did you have any personal involvement with Mr. Dunlap?
A. Did you say prior?
Q. Other than at that meeting, prior to or after.
A. Other than, yes. Probably on the phone and maybe some face to face, certainly in getting, putting together the presentation for the bank investors' meeting.
Q. Prior to March 30 when the acquisition of my client's interests in Coleman company closed, had you had any

Smith

personal contact with Mr. Dunlap other than the board meeting in February?
A. I don't recall.
Q. Is it the case that most of your contact with Mr. Dunlap postdated the acquisition of my client's interests in the Coleman company?
A. Yes, I think that is true.
Q. And that would have meant that it also postdated the closing on the senior loan facility, correct?
A. Yes.
Q. Did you speak at the February 1998 Sunbeam board meeting?
A. I did not. To the best of my knowledge, to the best of my memory I don't think I made a presentation. I might have responded to questions at the board meeting.
Q. What was the purpose for your attending the meeting?
A. I think to be there for questions regarding the doability of the financing.
Q. Who asked you to attend?
A. Mr. Strong.

NOT A CERTIFIED COPY

Smith

Q. Do you recall whether you were asked any questions relating to the doability of the financing?

A. I think I was, but I can't remember whether it was before or after the meeting. Probably both.

Q. When you say before, after the meeting, you mean before --

A. I misspoke. During the meeting and then after the meeting.

Q. Are you referring to further discussions that occurred that day?

A. That day, immediately after the meeting when the meeting broke.

Q. Who do you recall asking questions relating to the doability of the financing, whether at the meeting itself or shortly after?

A. The doability I think was maybe from one of the board members or from Al himself, and was a very short response to that which was an affirmative.

And then after the meeting it wasn't so much about the doability, it was

Smith

more tactical with Kersh.

Q. So do you recall having a more in-depth conversation with Mr. Kersh the same day as the Sunbeam board meeting relating to financing strategy?

A. Yes, and it was primarily related to financing the syndication of this loan.

Q. Who else was present for that discussion?

A. Might have been, I think it was just Bill, Bill and myself and Kersh.

Q. Bill Strong?

A. Bill Strong.

Q. Where did that discussion take place?

A. I think it happened right there in the boardroom after it broke.

Q. Was that board meeting at Morgan Stanley's office?

A. I believe it was right here in New York.

Q. Did Mr. Kersh initiate the conversation?

A. Mr. Strong and I might have

Smith

initiated the conversation as I remember.

Q. And what was the purpose for talking to Mr. Kersh on that subject?

A. The purpose was to outline or briefly outline our thoughts in terms of who would be suitable partners in the underwriting of this, of this loan. And we specifically mentioned Bank of America and First Union.

Q. What was Mr. Kersh's reaction?

A. I guess noncommittal but appreciative of the input, and I don't think he really cared or thought too much about it.

Q. Now, what would -- at that point in time, in February of 1998, what was Morgan Stanley's contemplation with respect to the potential role of Bank of America and First Union concerning the senior loan?

A. As partners.

Q. What do you mean?

A. Co-underwriters.

Q. What would that involve?

A. That would involve the three of us who would commit to lend the company the

Smith

required amount of bank debt it needed to accomplish these acquisitions. It meant that they would participate alongside us on all of the due diligence, that we could lever all of them because they had been existing more -- not more, but existing lenders and I think long-term relations.

So there was some institutional knowledge that those institutions had about a company that we could lever off of in terms of in our own due diligence as well as the marketing of the transaction.

Q. Was it contemplated that at least initially those three institutions, Morgan Stanley, Bank of America and First Union, would provide the entire senior financing?

A. When you say "was it contemplated," it was certainly our hope, our thought to have both of them there. And the idea was that we would approach both and if one said no, that was still okay.

Q. And the financing would then be provided entirely?

A. By ourselves and one of the others.

NOT A CERTIFIED COPY

Smith

Q. Is it typical that in a loan that is intended to be syndicated to a larger group of banks -- to a large group of banks, that in the first instance the financing will be entirely provided by a smaller number, in this case one or two, possibly three banks, or is the syndication usually in place before the funding occurs?

A. Well, you have asked a few questions. What would normally happen is that you would have a group of two, maybe three banks underwrite or commit to the entire loan facility. It is easier for the company because they don't have to negotiate with so many people.

And then those institutions, the underwriters would then normally syndicate for maybe a year prior to the close of the loan and then a close of the transaction.

Q. Is it more typically the place that the syndication occurs before the close?

A. Yes, it is.

Q. Is it fair to say that the situation that you were contemplating with

Smith

respect to Sunbeam, where Morgan Stanley either by itself or perhaps with one or two other banks would provide all of the financing, was unusual?

A. I don't know about unusual, but it is not the majority of the cases in the United States.

Q. Why is it more typical that the syndication takes place before the funding?

A. Because normally you have more time and it's just really driven by the time that was agreed to in the -- or the details or the requirements of the deal.

Q. Was it the case here that there wasn't sufficient time to put a syndication in place before the funding was needed?

A. Yes.

Q. Did you suggest to Mr. Strong or to anyone else that it would be preferable for the syndication to be put in place before the funding was required?

A. I don't know if I suggested. We certainly talked about it because it was a certain risk profile to close and then

Smith

syndicate than the flip, than the reverse.

But the terms of the mergers required that they needed the money by that certain date, not allowing us to syndicate.

Q. Do you know why the transactions themselves were scheduled, were structured that way?

A. I do not.

Q. Did you ask anyone why the need to rush to close the acquisitions before the funding could be obtained through the syndication?

MR. CLARE: I object to the form of the question.

A. I don't recall. I recall talking about it, but I don't remember who or I can't remember what the, you know, the final answer was other than that was the terms of the deal.

Q. Do you remember talking to -- Mr. Strong in this case was the relationship person at Morgan Stanley and Sunbeam, correct?

A. I believe so.

Smith

Q. And you indicated earlier that in terms of Morgan Stanley's internal processes, he was viewed as the responsible person with respect to significant aspects of the financing activity, correct?

MR. CLARE: Object to the form of the question. I think that misstates his prior testimony. You can answer.

A. Help me out, repeat that thing for me.

Q. Let me rephrase it.

Mr. Strong was viewed -- let me ask a more general question.

From your perspective what was Mr. Strong's responsibility for the various aspects of Morgan Stanley's work for Sunbeam?

A. He was the person responsible at the firm for the, for the Sunbeam relationship and -- full stop. So that included M&A or other products, then he was responsible to show those to the company.

Q. With respect to Morgan Stanley's internal work, what were Mr. Strong's responsibilities relating to Sunbeam?

NOT CERTIFIED COPY

Smith

A. His internal work, as I think we talked before, is that the banker, the relationship manager in this case, Mr. Strong has to be an advocate internally and endorse a transaction for his client, and in that role he did that on the senior loan.

Q. And he endorsed in this case this plan to have Morgan Stanley loan, if necessary, the entire amount of the senior financing necessary to complete the acquisition of my client, Coleman?

A. I don't know if that is exactly right. I think he advocated Morgan Stanley taking a leadership role, maybe even a majority role. I don't remember him ever suggesting that we do the whole, do the whole thing.

Q. Did you approach Mr. Strong and inquire whether it would be possible to adjust the schedule for the closing of the acquisitions to permit you the time necessary to complete a syndication of the senior financing before funding was required?

A. I remember having conversations

Smith

with the team to include Mr. Strong about the term, of why the need for the fast close.

I frankly don't remember what was driving it, whether it was a tax or regulatory or something else. But it was deemed by the group, that's the team, that it was not possible to extend, delay the close to allow for the syndication of the loan.

Q. Was it your understanding that Sunbeam wanted the transaction to close as quickly as scheduled?

A. I wasn't that close to it, do not know.

Q. But your understanding was someone wanted these transactions to close very quickly, correct?

MR. CLARE: Objection to the form.

A. Don't know.

Q. In your conversations with Mr. Dunlap, did you ever learn from Mr. Dunlap that it was Mr. Dunlap who wanted the acquisition of Coleman company to close before the first quarter of 1998 was completed?

Smith

A. No.

Q. Did you ever learn from your conversations with Mr. Kersh, that it was Mr. Kersh and Mr. Dunlap who wanted the transaction involving the acquisition of my client's interests in Coleman to close before the first quarter of 1998?

A. No.

Q. In the period leading up to the closing of the acquisition of my client's interests in Coleman company, Mr. Smith, did you have any communications on any subject with Coleman company management?

A. I don't believe so.

Q. Did you have any communications with my client, Coleman (Parent), or its representatives?

A. I don't believe so.

Q. Credit Suisse First Boston was the investment banking firm for my client.

Did you have any communications with CS First Boston?

A. I do not remember any conversations.

Smith

Q. My client is owned by McAndrews & Forbes, are you aware of that?

A. Yes.

Q. Did you have any communications with any representatives of McAndrews & Forbes prior to the close of Sunbeam's acquisition of my client's interests in Coleman company?

A. I don't believe so.

Q. Did you have any conversations with Ronald Perelman?

A. No.

Q. With Howard Gittis?

A. No.

Q. Jim Maher?

A. No.

Q. William Nesbitt?

A. No.

Q. Do you know Jim Maher?

A. I don't think so.

Q. Have you ever spoken directly with Mr. Perelman on any subject?

A. Yes.

Q. What was the nature of that?

NOT A CERTIFIED COPY

Smith

A. Gee, I can't remember all of them for various transactions or various meetings.

Q. Have you ever been involved in providing financing to any McAndrews & Forbes related entities?

A. No.

Q. Have you ever sought the business of McAndrews & Forbes?

A. Yes.

Q. Unsuccessfully I take it?

A. Unsuccessfully.

Q. For whom were you working on those occasions?

A. Morgan Stanley and Bear Stearns.

Q. On what occasions while you were at Morgan Stanley did you seek to obtain business from McAndrews & Forbes?

A. I don't recall them now, but -- I don't remember the specifics.

Q. Were you working with Morgan Stanley investment bankers in connection with that activity?

A. Yes.

Q. Do you remember who that was?

Smith

A. The one, the name was -- what was his name? I'm sorry, Bill Reid.

Q. Do you remember if that was before the Sunbeam-related one?

A. I think it was.

Q. Since going to work at Bear Stearns you have tried to get business from McAndrews & Forbes?

A. Yes, I have.

Q. What did that relate to?

A. The most recent one was a refinancing for PanaVision, a company that McAndrews & Forbes owns.

Q. When was that?

A. That was last summer and last fall.

Q. Any other occasions?

A. We're currently working on one now, trying to secure the business.

Q. Are you working with Bear Stearns investment bankers in connection with that?

A. Yes.

Q. Who is that?

A. I'm sorry?

Q. Who is that person?

Smith

A. Larry Alletto.

Q. How does he spell his last name?

A. A-L-L-E-T-T-O.

Q. Are there any other occasions that you can recall speaking to Mr. Perelman directly?

A. Just to be clear, did not speak to Mr. Perelman regarding the PanaVision and not the current transaction. But no, don't remember speaking to him.

Q. Now, you remained -- we'll get into this in some more detail, but I want to cover this point here.

After the senior loan closed in March of 1998, you had continuing involvement with respect to Morgan Stanley Senior Funding's loan to Sunbeam, correct?

A. Yes.

Q. Did you have any communications with anyone from Coleman (Parent) or McAndrews & Forbes in connection with that activity?

A. Yes.

Q. Who was that?

Smith

A. Who at McAndrews & Forbes, Howard Gittis. Who is the other guy? Irwin somebody or other. I guess those would be the major ones.

Q. I'm sorry, who was the third person?

A. His first name was Irwin. I can't remember his last name.

Q. We'll get into that in more detail.

Were you aware that in late 1997 Mr. Dunlap had had a meeting with Mr. Perelman in Florida to discuss Sunbeam's acquisition of Coleman, the possibility of that?

A. No.

Q. No one has ever reported to you on that meeting?

A. Oh, I'm sorry, I misunderstood your question. I didn't know that they had met during a, when we were doing the financing, but reviewing for this case for today found that out.

Q. Other than what you learned in preparing for your deposition, do you have

NOT A CERTIFIED COPY

0114005

Smith

any knowledge concerning Mr. Perelman's meeting with Mr. Dunlap?

A. No.

Q. Who at Morgan Stanley, sir, was responsible for making sure that all necessary due diligence was performed?

A. I think if you're going to look at it organizationally, it was probably John Tyree. And then in addition to his efforts we basically had a, a person from our group, from Morgan Stanley Senior Funding, in this case Mike Hart, assisted by Burchill and Simon to assist in that effort and do the due diligence from our vantage point, from the financing point.

Q. What individuals performed the due diligence in connection with this MSSF?

A. Those are the three I just mentioned, Mike Hart, Tom Burchill and Simon Rankin.

And I also want to add that the process also included a representative from the credit department.

Q. What was the function of the credit

Smith

department with respect to the senior loan?

A. They were a, viewing it in a more traditional credit role since our policy stated internally and externally was that we would hold a piece, sometimes a substantial piece of every loan that we made.

And it was the credit department's function, role, not only to pass on the underwriting, I need to okay that, but also the long-term view of being a long-term lender to these opportunities such as Sunbeam.

So it would not be unusual, I can't remember the name, not be unusual to have them on phone calls, show up at meetings, et cetera, to participate in the due diligence.

Q. What portion of the senior loan did Morgan Stanley Senior Funding intend to keep?

A. That's -- I'll have to think about that for a second. We committed to 40 percent of the transaction and I think we thought that it would probably end up being about 50 to $60 million.

Q. So at the end of the day after the

Smith

loan was fully syndicated, you anticipated that Morgan Stanley Senior Funding would hold about 50 or $60 million?

A. That is my recollection, at least when the syndication stopped it was completed.

Q. And how quickly was it contemplated that would occur?

A. Normally from the time you start until you are able to syndicate takes about six to eight weeks.

Q. The transactions here closed at the end of March. In terms of the schedule that you envisioned at the time the loan was closed, when did you expect the senior, that the syndication of the senior loan to be completed?

A. By the end of May.

Q. And at that point Morgan Stanley would be holding about 50 or $60 million of the debt?

A. If things went as anticipated. Could be luckier, could be a little less lucky.

Smith

Q. Luckier in this context means what, having less?

A. Yeah.

Q. Did Morgan Stanley have any obligation to Sunbeam or anybody else to hold any particular amount of the financing?

A. No, other than our stated practice which we communicated to Sunbeam and communicated to other lenders, as well as Bank of America and First Union, that we would end up holding some.

Q. But there was no commitment as to the amount?

A. No.

Q. In terms of the due diligence that Morgan, was done from Morgan Stanley Senior Funding, I don't understand how this worked.

The individuals involved were Mr. Hart and Mr. Burchill and Mr. Simon, correct?

A. Simon Rankin.

Q. Simon Rankin?

A. Assisted by a representative of the credit department.

Q. There were other people at Morgan

NOT A CERTIFIED COPY

Smith

Stanley involved in doing due diligence, correct?

A. Yes.

Q. Miss Porat's group, for example?

A. Right.

Q. Mr. Tyree?

A. Uhm-hmm.

Q. Was it the responsibility of Mr. Hart, Mr. Burchill and Mr. Rankin to independently review all of the due diligence that was being done on all aspects of Morgan Stanley's due diligence, or did it work in a different way?

A. Well, since I wasn't them it's tough to say what exactly they did. They would -- but what would normally happen is they do some of their own and then work with and look at the information that other parts of the firm had gotten.

Q. Was it their responsibility to familiarize themselves with all of the due diligence that was being done by other parts of the firm?

A. It was I guess to familiarize and

Smith

take advantage of the other due diligence done on other parts of the firm.

Q. That is what you expected of them?

A. Yes.

Q. To whom did Mr. Hart, Mr. Burchill and Mr. Rankin report relating to their due diligence work?

A. Well, they worked for me. They, however, were, in cases like this they basically report and stand behind their work to the Credit Committee, which is the final grantor, if you will, of credit authority.

Q. Were you giving them direction with respect to the due diligence activity that they were engaged in?

A. I don't know about direction. Mike was a very experienced transactor so we would consult, respond to questions from him. We would talk about specific issues that might come up.

Q. Did you give him any specific direction to investigate any particular aspect of Sunbeam?

A. Not that I recall.

Smith

Q. Did you give any specific direction to any Morgan Stanley personnel to investigate any particular aspect of Sunbeam?

A. Not that I recall.

Q. The transactions were scheduled to close before the end of the first quarter of 1998, correct, sir?

A. I believe so.

Q. Did you believe it was an important part of the financing due diligence to obtain information regarding Sunbeam's performance in the first quarter of 1998?

A. I think that was one element of the overall due diligence.

Q. To find out how Sunbeam was doing so far in the first quarter of '98, correct?

A. Sure, to get an update on their performance.

Q. Did you direct anybody to obtain information concerning Sunbeam's first quarter 1998 performance?

A. Not that I recall.

Q. Do you recall what information you received relating to Sunbeam's first quarter

Smith

1998 performance, if anything?

A. I think we had some phone calls, maybe even some documents regarding how they were doing versus the, versus plan and versus last year.

Q. When you went to Florida for the meeting at the beginning of March in 1998, did you personally receive any information from Sunbeam at that point relating to how they had done so far in the first quarter?

A. I don't believe so.

Q. Did you ask any questions on that subject while you were in Florida?

A. In Florida it was a different type of due diligence. It was more specific on the appliance business. So we were looking at more granular, different product lines and in the groups they had it then versus how they were doing versus the first two months in the year.

Q. So you don't recall asking while you were present in Florida how have you guys done so far in January or February?

A. No.

NOT A CERTIFIED COPY

014908

Smith

Q. You don't recall anybody from Sunbeam offering any information on that?
A. No.
Q. When do you recall first receiving information relating to how Sunbeam was doing in the first quarter of 1998?
A. I think it was the last half of, the last half of March.
Q. When you wrote the highly confident letter to Sunbeam on March 5 did you have any information at all about how Sunbeam had been doing in the first two months of 1998?
A. To the best of my recollection, no.
Q. Did that concern you?
A. I'm sorry, what?
Q. Were you concerned when you issued the highly confident letter on March 5, that you personally didn't have any information on how Sunbeam had done in January or February of 1998?
A. No, because again you go back to that letter, there was still a lot of due diligence to do.
We would have been -- we would

Smith

have -- that would have come up in the general course on how they were, on how they were doing.
Q. How high on your list of pieces of information to get would have been obtaining a report from Sunbeam on how they were doing in the first two months of 1998?
MR. CLARE: Object to the form of the question.
A. I don't know how you would say high. It is just one of the bits of information that go into coming up with the ultimate credit decision, so it's important. Is it more important than something else, less important than something else, it just goes into the mix.
Q. Well, did you think in light of Sunbeam's claims that it had substantially improved its performance in 1997, that it was especially important for you in connection with your review of the senior loan to obtain good information about how Sunbeam was doing in the first months of 1998?
MR. CLARE: Object to the form.

Smith

A. Again I think it was part of the overall view, the overall information we needed to come up with a credit decision on how the company was performing, whether it was a good credit.
So to isolate something like that in and of itself as being the talisman of something, that is the go or no-go decision, it is kind of tough to do that out of context.
Q. You wouldn't say it was an especially important piece of information to know?
A. I didn't say that. I said it was many bits of information that go into making the ultimate credit decision on whether you're comfortable and willing to go ahead with the underwriting.
Q. Was it an important bit or was it an important piece of information?
A. I'm not a lawyer, so maybe I would put it in between that. So I would say it is important, I would leave it at that.
Q. Would you say that knowing how

Smith

Sunbeam had done in the first weeks of 1998 was an essential thing for Morgan Stanley to know before it closed on the senior loan?
MR. CLARE: Object to the form of the question.
A. Like I think I said before, it was an important, you know, consideration to, in terms of making the overall judgment.
Q. Would you say you wouldn't agree to close on a loan unless you had that information?
A. I don't know if I would say that.
Q. Do you know that Morgan Stanley had requested a comfort letter from Sunbeam's auditors?
A. Yes, I did.
Q. When did you know that?
A. I think I knew it back then.
Q. What's the purpose for a comfort letter?
A. Well, I didn't ask for it and I'm not on the security side, so...
Q. What's your understanding?
A. I think it's part of the closing

NOT A CERTIFIED COPY

Smith

process for, involving securities.

Q. Do you know that one of the things that the auditors do in connection with the comfort letter is to report on the company's most recent financial results for periods that are not yet complete?

MR. CLARE: Objection, foundation.

A. No.

MR. CLARE: If we're getting to a transition point, maybe we should break for lunch.

MR. MARKOWSKI: We can do that if you would like.

MR. CLARE: Okay.

THE VIDEOGRAPHER: The time is 12:35, we're going off the record.

(Lunch recess: 12:35 p.m.)

Smith

AFTERNOON SESSION

(Time noted: 1:18 p.m.)

R. BRAM SMITH, resumed and testified as follows:

THE VIDEOGRAPHER: The time is 1:18, we're back on the record.

EXAMINATION BY (Cont'd.)

MR. MARKOWSKI:

Q. Mr. Smith, when we broke I had asked you whether you were aware that Morgan Stanley had requested a comfort letter from Sunbeam's outside auditor, Arthur Andersen.

Let me show you a copy of what we previously marked as CPH Exhibit Number 17. It's a letter to Morgan Stanley from Arthur Andersen dated March 19, 1998.

A. Uhm-hmm.

Q. Take a moment to look at this letter, and my first question to you is going to be whether you have ever seen it before.

A. Okay.

Q. Have you seen this letter before, sir?

A. Yup.

Smith

Q. When did you first see it?

A. I don't remember when. I do know I saw it yesterday and I don't know whether I saw all of this before or not.

Q. Could you take your hand down?

A. Oh, sorry.

Q. You're not certain as you sit here today, whether you saw this letter back in March of 1998?

A. I don't know if I saw the whole thing in March of 1998, yup.

Q. Is it possible that you saw portions of this or information drawn from it in March of 1998?

A. It might have been.

Q. There has been testimony that Mr. Tyree received the signed copy of this letter from Arthur Andersen.

Did Mr. Tyree report to you on the substance of the information contained in this March 19 letter?

A. Not that I remember.

Q. Do you know if anyone working for you received a copy of Arthur Andersen's

Smith

March 19, 1998 comfort letter?

A. No.

Q. Do you believe it to be the case that the individuals working for you did not receive a copy of the March 19 comfort letter?

A. Don't know.

Q. Do you know if the people working for you, Mr. Hart and others received a briefing from Mr. Tyree concerning the substance of the March 19 comfort letter?

A. Don't know.

Q. Did you receive a report from Mr. Hart or the other individuals conducting due diligence for Morgan Stanley Senior Funding concerning the substance of the March 19 comfort letter?

A. Did not receive a report.

Q. Let me draw your attention to paragraph 6C.

A. 6E?

Q. 6C. It is at the page 5 of the letter. Would you read that to yourself, please.

NOT A CERTIFIED COPY

Smith

Have you done it?

A. I'm just finishing up here. Okay.

Q. This portion of the March 19 comfort letter advises that Sunbeam's sales for the first two months of 1998 are substantially below Sunbeam's sales for the first two months of 1997, correct?

MR. CLARE: Objection to form.

A. Well, they list the two numbers for the two different periods, yes.

Q. Do you agree with me that the substance of this paragraph advises that Sunbeam sales for the first two months of '98 are substantially below Sunbeam sales for the first two months of 1997, or is that something about which you disagree?

A. It shows me the two numbers, 72 versus 143, so...

Q. It advises that the sales for the first two months of 1998 are about $72 million, correct?

A. Correct.

Q. And the sales for the first two months of 1997 were about 143-1/2 million,

Smith

correct?

A. Uhm-hmm.

Q. That's about, the sales for the first two months of 1998 are about half of what they had been in the first two months of 1997, correct?

A. Yup.

Q. Would you agree with me that is a substantial decline in sales for a two-month period?

A. A substantial difference in sales, yup.

Q. It's a substantial negative variance, correct, substantial decline?

A. Decline, uhm-hmm.

Q. You agree with me that the decline is substantial, or are you disagreeing?

A. I guess I agree.

Q. Were you aware that Wall Street was expecting Sunbeam to accomplish sales in the first quarter of 1998 that were substantially greater than the sales that Sunbeam had accomplished in the first quarter of 1997?

MR. CLARE: Objection to form.

Smith

Q. As of mid-March 1998?

A. No.

Q. Did anyone report to you, sir, the information that we've just read in paragraph 6C of the Andersen comfort letter, that Sunbeam sales for the first two months of 1998 were about half of what they had been in the first two months of 1997?

A. Yes.

Q. When did you first receive that report?

A. Don't remember.

Q. Was it before the close of the transaction by which Sunbeam acquired my client's interest in Coleman company?

A. Yes.

Q. From whom did you receive a report that Sunbeam sales in the first two months of 1998 were about half of what they had been in the first two months of 1997?

A. I don't know if I would use the word "report," but through the process with the team, both the leveraged finance team and others, that this issue came up.

Smith

Q. Well, who told you?

A. It's a big group so it is unclear to me, I can't remember who told me, but talked about it to several people.

Q. Do you recall that you first learned this information at a group meeting?

A. I can't recall how I or when I first learned it.

Q. So you may have learned it at a group meeting or it may have been given to you individually in some way?

A. Yes.

Q. Do you recall if it was given, this information was given to you in writing?

A. The -- no, I don't.

Q. But you do recall talking about it with others within Morgan Stanley before the closing of Sunbeam's acquisition of my client's interests in Coleman?

A. Yes.

Q. With whom within Morgan Stanley do you recall discussing the fact that Sunbeam sales in the first two months of the quarter were about half of what they had been in the

NOT A CERTIFIED COPY

Smith

first two months of '97?
A. Mike Hart for sure and maybe, probably others, but I don't recollect who those were.
Q. Do you recall discussing it with Miss Porat?
A. No.
Q. Do you believe you did not discuss this information with Miss Porat?
A. I believe I did not.
Q. Did you discuss it with Mr. Strong?
A. I believe I might have.
Q. Do you believe that Mr. Strong is the person who first advised you of this information?
A. No recollection.
Q. Do you believe it was Mr. Hart?
A. Don't recall.
Q. What do you recall discussing, what do you recall about your discussions with Mr. Hart concerning the decline in Sunbeam's sales for the first two months of 1998?
A. What I recall is the discussing what happened and the impact of this on their

Smith

projections for 1998.
Q. When did these discussions take place?
A. After we got notice that their sales were $72 million for the first two months.
Q. And that is before the closing of the transactions, correct?
A. Before the closing of the transaction.
Q. Was it your belief you discussed this with Mr. Hart privately, or was it with a larger group?
A. Probably both.
Q. How many times do you recall discussing it with Mr. Hart?
A. Gee, it's tough. I guess more than several.
Q. Do you recall over what period of time you had these conversations, what length of period of time?
A. Probably days, but that's a hazy guess.
Q. You indicated that you probably

Smith

discussed this with Mr. Hart both privately and with a larger group.
Who do you believe was involved in larger group discussions on this topic where both you and Mr. Hart participated?
A. Mr. Strong, maybe Mr. Burchill/Rankin, whoever was there at the time, probably somebody from credit, and then a -- I'm sure I kept my bosses involved too.
Q. Your bosses would be who during this time period?
A. Newhouse, Sipprelle and Rankowitz.
Q. I'm sorry, I missed the second name.
A. Mr. Sipprelle.
Q. What is Mr. Sipprelle's first name?
A. Dwight.
Q. And the third person?
A. Michael Rankowitz.
Q. Those are individuals to whom you reported during this time period?
A. Uhm-hmm. Yes.
Q. Tell me everything you can recall about your conversations on the subject of

Smith

the decline of Sunbeam sales in the first two months of 1998?
A. I think the focus of the discussion was really what had happened, what was going to happen for the first quarter, and the implications of that for the full year. When I say that, achieving their projections for the, for 1998.
Q. What do you recall being said on each of those topics?
A. A lot of questions and then -- a lot of questions and it was basically with members of the team, that would be the big Morgan Stanley team, focus on trying to find these answers.
Q. You participated in meetings where people raised questions, correct?
A. Yes.
Q. And the questions are what's happened so far in the first quarter that caused this, right?
A. Yup.
Q. What's the full quarter going to look like?

NOT A CERTIFIED COPY

Smith

A. Uhm-hmm.
Q. And what are the implications of this for 1998, correct?
A. Yes.
Q. Why were you interested in those things?
A. Just as part of our continuing due diligence to make sure we understood what happened.
Q. Do you recall getting answers to the questions?
A. I recall getting, yes, some answers to the questions from the team.
Q. Who provided answers?
A. I think it was probably Mr. Hart, who was the -- where I got most of my information. And I don't know how, where did he get it. And he didn't get his directly, I think he was relating from the bigger Morgan Stanley team.
Q. Do you recall getting information from anybody other than Mr. Hart concerning answers to these questions?
A. No.

Smith

Q. What do you recall Mr. Hart reporting to you?
A. Let me go back here. I think probably talked to Strong as well, and in terms of what, what had happened here is that, is that the understanding was that they had some anticipated revenues that were going to come in in the third quarter -- excuse me, the third month of the quarter, the third month of the quarter, and that they would make up a lot of this shortfall then.
Q. That's what Mr. Strong reported to you?
A. I think that was a combination. We were doing a lot of this in groups of people. Change in composition. So it is very difficult to recall for you exactly who was at each and every one of these meetings.
Q. But your best recollection as you sit here is that Mr. Strong said the substance of this to you?
A. No. My recollection is that was kind -- that was bits of information that came out of the Morgan Stanley due diligence

Smith

effort that would involve those two individuals at different times and different degrees of involvement as well as others.
Q. Did you attempt to speak directly with Sunbeam yourself?
A. I did not.
Q. Did you direct Mr. Hart to do that?
A. I did not.
Q. Do you know if Mr. Hart had any direct communications with Sunbeam?
A. I do not know.
Q. On this topic I'm focusing on?
A. I do not know.
Q. What do you recall Mr. Hart telling you relating to what had happened in the first two months of the quarter, what the expectations were for the rest of the quarter and what the implications were for '98?
A. It's tough for me to remember specifically what his contribution was to that. I think it's more generic, that the Morgan Stanley due diligence team came up with the answers that I described before, that the company was highly confident that

Smith

they were going to make their -- were going to achieve results that were I guess ahead of last year, and that they felt that the rest of the year would come on pretty close to where the projections that they had provided us were going to be.
Q. Those are the conclusions that had being provided to you, correct?
A. Those were the conclusions provided, yes, by the company to the Morgan Stanley team.
Q. Do you know what factual foundation Morgan Stanley had for any of those propositions?
A. I think we had gotten some additional information from them, the company, showing how the projected sales for the rest of the quarter.
Q. Did you see that information yourself?
A. I think so.
Q. I thought you had indicated previously that you understood that Miss Porat was assigned to conduct an inquiry

NOT A CERTIFIED COPY

Smith

relating to some of those issues.

Did I misunderstand you?

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

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

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

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

Smith

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

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

A. No.

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

A. Uhm-hmm.

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

Do you see that statement?

A. Uhm-hmm.

Smith

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

A. Yes.

Q. And who advised you of that?

A. Somebody from the team.

Q. What were you told?

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

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

A. 1997, yeah.

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

A. Yes.

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

A. No.

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

A. No, I don't recall.

Q. Do you know if it was Mr. Strong

Smith

who told you that?

A. Don't recall.

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

A. Don't recall.

Q. Miss Porat?

A. Don't recall.

Q. Mr. Hart?

A. Don't recall.

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

A. No.

Q. Why is that?

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

NOT A CERTIFIED COPY

Smith

Q. Did learning that Sunbeam had engaged in activities to enhance its 1997 revenues cause you to believe that Morgan Stanley needed to make further inquiry into Sunbeam's turn-around claims?

MR. CLARE: I object to the form of the question.

A. Focus of our inquiry was to test the, or to find out more information about the use of these early sales to enhance, you know, market share and total revenues of the grills. That was the emphasis of the inquiry.

Q. Did you think this was potentially good news?

A. Didn't know enough.

Q. You didn't necessarily conclude that the decline in Sunbeam sales in the first two months of 1998 was a negative development?

A. I didn't know enough. And again you want to look at this in the context of all of the information we had.

Q. In what way would a 50 percent

Smith

decline in sales of the first two months of 1998 be a potentially positive development for Sunbeam?

A. I don't know about positive. You asked me if it was potentially negative. It could be a host of things that are going on.

Again, I think you have to look at all of the facts you have available to you to come up with any view. Very difficult I think to pick out one item and then make that be the linchpin of everything you are trying to do.

Q. Is it your testimony, sir, that when you were advised that Sunbeam's net sales for the first two months of 1997 were half of what they had been in the first two months of 1997, and that the reason for that was that Sunbeam had accelerated -- did I misspeak?

MR CLARE: I think you might have said 1997 in both parts of your question.

Q. Let me start over.

Is it your testimony, sir, that when you learned that Sunbeam's sales in the

Smith

first two months of 1998 were about half of what they had been in the first two months of 1997, and that the reason for that was that Sunbeam had accelerated sales from the first quarter of 1998 into the fourth quarter of 1997, you thought that was potentially a positive piece of information relating to Sunbeam's --

MR. CLARE: I object to the form, and also to the extent it misstates his prior testimony.

Q. -- performance and financial condition?

A. Well, your first question before was did I view that negatively. I don't think I said I viewed it positively. Again it is just another bit of information that comes out in this due diligence process, and you put that together with all of the other information that we had. And again emphasize the "we" because we had a big group working on this, coming at it from many angles.

Q. Putting aside the prior testimony, I'm asking a standalone question here.

Smith

Is it your testimony, sir, that when you learned that Sunbeam sales for the first two months of 1997 were about half -- excuse me, for the first two months of 1998 were about half of what they had been in the first two months of 1997, that the reason for that was that Sunbeam had accelerated first quarter sales back into the prior fiscal period, that you thought that was potentially a good thing for Sunbeam?

A. I wouldn't characterize it. Didn't even approach it as a potentially good thing, just a potential let's find out what goes on.

Q. Because it was a potential concern, right?

A. No, because I wanted to find out what was going on.

Q. Were you concerned?

A. It could have been good, it could have been bad.

Q. Did you think it was potentially a negative development?

A. As is many things, it could be potentially good, potentially bad, just goes

NOT A CERTIFIED COPY

Smith

back into the mosaic of what we are trying to find out here and ascertain what is happening with the company.

Q. So you agree with me that when you learned this information, you recognize that it was potentially a bad piece of information, correct?

A. I didn't know enough. It could have been good, it could have been bad.

Q. That is my question.

Were you -- did you know?

A. Didn't know enough at the time.

Q. To know whether it was either potentially good or potentially bad?

A. Not on the basis of this.

Q. So why did you want to make further inquiry?

A. To find out.

Q. Because it might be potentially bad, correct?

A. And it might be potentially good. My job is to find out what is going on.

Q. You wanted to find out what was going on with respect to this particular

Smith

information because it was something potentially negative with respect to Sunbeam's --

A. Could have been potentially negative.

Q. -- condition and performance, correct?

MR. CLARE: Objection, asked and answered.

A. Could have been potentially negative.

Q. I'm sorry, could have been potentially what?

A. Whatever you said, negative.

Q. Negative. While we're waiting for a document, sir, did you wait for Mr. Hart to obtain further information relating to this so you could understand the potential significance of this disclosure?

A. We talked about it and agreed, yes, and asked him to find out as much as he could. And he wanted to do that as well, anyway.

Q. So you did ask Mr. Hart to find out

Smith

more information relating to this for you, correct?

A. Well, when you say for me, for the firm and do what he could, yes.

Q. I'm trying to understand if you spoke to Mr. Hart and said we need to get more information about this, asking him to do that?

A. You have to remember I met with Mr. Hart like 50 times a day for weeks on this thing, so I'm sure this would come up as part of the conversation.

Q. Was the information, was this information consistent with -- let me ask a foundation question.

Had you received any information prior to the time you learned that Sunbeam sales for the first two months were about half that they had been the prior fiscal year, about how Sunbeam was doing in the first quarter of 1998?

A. I don't recall. Don't think so.

Q. Do you think this was the first information you received from Sunbeam

Smith

relating to its performance in 1998?

A. I believe so.

Q. When you learned it, did you believe that you had been in some way misled by Sunbeam management concerning how things were going in the first portion of 1998?

A. I did not.

Q. Did you think that Sunbeam management should have advised you of these facts earlier?

A. I had no opinion.

Q. Did anyone express the view that Sunbeam, anyone within Morgan Stanley express the view that Sunbeam management should have advised Morgan Stanley of these facts earlier in the process?

A. I don't recall.

Q. Do you recall that Sunbeam issued a press release on March 19 relating to the status of its first quarter sales?

A. Yes.

Q. And did you have any involvement in the events relating to the issuance of that press release?

NOT A CERTIFIED COPY

Smith

A. The only involvement I may have had was, was either on the phone or walking in and out when a phone call was going on to discuss this.

Q. What phone call are you referring to?

A. A internal phone call.

Q. Who was on that phone call?

A. Members of the team. I was not directly on the call, I was walking in and out, I had other stuff going on.

Q. This occurred before the issuance of the March 19 press release?

A. It is all part and parcel of that.

Q. Do you know if anyone other than Morgan Stanley personnel were on this phone call you heard part of?

A. No, I think it was only Morgan Stanley people.

Q. Do you have any recollection of hearing Sunbeam -- let me ask a more general question.

Did you have any communications yourself directly with Sunbeam management

Smith

relating to what had happened in the first quarter of 1998 prior to the issuance of the March 19 press release?

A. No.

Q. Can you identify any of the individuals who are on the Morgan Stanley team who were part of this phone call?

A. Not with a hundred percent certainty.

Q. Who did you believe was involved?

A. I would have imagined that it would have been Mike Hart, John Tyree, Bill Strong, probably Tom Burchill/Rankin, maybe somebody from the credit department.

Q. Did you make any statements during the phone call?

A. I don't believe so.

Q. What do you remember hearing discussed?

A. I remember hearing discussed, and again in and out kind of what we were talking about, what happened, what's the impact of this for the year.

Q. Was there discussion about whether

Smith

the company would issue a press release that you heard?

A. Yes.

Q. What do you remember hearing?

A. That should the company issue a press release and what would be the impact of that.

Q. So you participated in at least a portion of a conversation where there was internal discussion at Morgan Stanley concerning whether Sunbeam should be asked to issue a press release?

MR. CLARE: Object to the form of the question, misstates his testimony about his participation.

A. Again I'm in and out. I do think that the concept of a press release was mentioned. I don't know if they were responding to some thoughts that Sunbeam had, some thoughts that they had or anything. Again, I'm not a good witness on that phone call.

Q. What do you remember being said by the participants in that phone call

Smith

concerning the pros and cons of a press release and the potential impact?

A. I know that they discussed the, discussed the press release, but it wasn't there long enough or consistently enough to pick up any of the pros or cons.

Q. What about the potential impact?

A. Not that I know of.

Q. Did you see a copy of --

Let me show you what has previously been marked as CPH Exhibit 14. It's a copy of the March 19 press release that I have been referring to.

A. Uhm-hmm.

Q. Take a moment to read it.

Did you see this press release when it was issued, sir?

A. I believe I did.

Q. Did you see it prior to its issuance?

A. I may have seen a draft.

Q. What do you remember about the possibility of seeing a draft of this press release?

NOT A CERTIFIED COPY

014917

Smith

A. Not much. The draft just before it was finalized, it was circulated among the team members.

Q. Did you offer comments to anyone concerning the draft?

A. I don't think so. But again this is from Sunbeam, right? This is a Sunbeam press release?

Q. Yes.

A. I offered no comments to Sunbeam on this.

Q. Do you recall from whom you received the draft?

A. No.

Q. Do you recall any discussions within Morgan Stanley relating to the draft press release?

A. No.

Q. Did you offer comments to anyone relating to press release of any sort of, whether it was a suggestion for a change to it or any other observation about it?

A. No. And again this is a Sunbeam press release, not a Morgan Stanley press

Smith

release.

Q. I'm asking not only for comments you may have had concerning the language, but observations you had about it.

A. No.

Q. Did you think the press release adequately disclosed the information that Morgan Stanley was aware of relating to Sunbeam's first quarter 1998 performance when you read it?

MR. CLARE: Objection to foundation. Go ahead, you can answer.

A. That is up to Sunbeam, that is their statement, have no opinion.

Q. My question to you, sir, is do you think this press release adequately disclosed the information, let me start with you, that you were aware of relating to the status of Sunbeam's first quarter 1998 performance?

A. Why don't you repeat your question again.

Q. Do you think the Sunbeam March 19, 1998 press release --

A. This thing?

Smith

Q. Correct -- fairly disclosed the information that you, Bram Smith, were aware of on March 19, 1998 concerning the status of Sunbeam's first quarter 1998 performance?

A. I think I want to take a break. I'll answer that later.

Q. No, you have to answer the question before you take a break.

A. No comment then.

MR. MARKOWSKI: Keep the camera rolling, we are still on the record.

MR. CLARE: The witness has asked to take a break. We're going to go off the record.

MR. MARKOWSKI: We're not going off the record. It is my record and this camera is going to roll until he comes back.

MR. CLARE: Okay, suit yourself.

(Witness and counsel leave the conference room at this time.)

Q. Are you prepared to answer my question, Mr. Smith?

THE WITNESS: Please repeat it.

(Record read.)

Smith

THE WITNESS: And what did I say before?

(Record read.)

A. So I said I had no opinion.

Q. Is it your testimony, sir, that you have no opinion concerning whether the March 19, 1998 press release fairly disclosed the information concerning Sunbeam's first quarter 1998 performance that you personally were aware of?

A. Yes.

Q. The press release contains no statement whatsoever that Sunbeam sales in January and February were below to any extent the sales in January and February of 1997, correct?

A. Yup.

Q. Contains no statement that Sunbeam had accelerated revenue from the first quarter of 1998 into the fourth quarter of 1997, does it?

MR. CLARE: I object. The document speaks for itself. It is a waste of time. You can answer.

NOT A CERTIFIED COPY

Smith

A. It does not relate to that.
Q. It doesn't disclose that, does it?
A. No.
Q. Those are facts you were aware of, correct, on March 19, 1998?
A. Those are facts that I was aware of.
Q. Those were facts that you were aware might be potentially significant to Morgan Stanley, correct?
MR. CLARE: Objection, argumentative and lack of foundation. You can answer.
A. Those were, as we discussed before, things we wanted to find out more about.
Q. Let me show you, sir --
MR. MARKOWSKI: Do you want to change the tape?
THE VIDEOGRAPHER: Yes. The time is 2:06, this completes tape number 2. Thank you.
(Pause in the proceedings.)
THE VIDEOGRAPHER: The time is 2:07, this begins tape number 3 of the

Smith

videotaped deposition of Mr. Bram Smith.
BY MR. MARKOWSKI:
Q. Mr. Smith, I show you a one-page document that we'll marked as CPH Deposition Exhibit Number 152. It bears Bate numbers LAB 43.
(Coleman (Parent) Holdings Exhibit 152, document bearing Bates number LAB 43, marked for identification, as of this date.)
Q. You testified earlier, sir, that you believe you received some information from Sunbeam relating to sales for the balance of the first quarter of 1998; is that correct?
A. I think I said for the balance of the quarter.
Q. If I didn't say that, that is what I meant. I'm sorry.
A. Okay.
Q. Is this the document?
A. Yes.
Q. How did you receive this?
A. From the team.

Smith

Q. Do you know when you received it in relationship to Sunbeam's press release?
A. My guess is before.
Q. Did you participate in any discussions within Morgan Stanley relating to the information contained on CPH Exhibit 152?
A. I believe I did.
Q. With whom did you discuss it?
A. Again members of the greater due diligence team.
Q. Can you identify any particular people who you have a recollection of discussing Exhibit 152 with?
A. Aside from Mike Hart, the people come and go, so no.
Q. What do you recall concerning the discussions that you had with Morgan Stanley personnel relating to the information contained on CPH Exhibit 152?
A. The discussion was seeing how they had performed and where the sales were coming from to get to their -- to exceed last year's numbers.
Q. What conclusions did you personally

Smith

come to after receiving CPH Exhibit 152?
A. I don't recall.
Q. Did you conclude, based on your review of CPH Exhibit 152, that Sunbeam would realize all of the sales listed on this page?
A. I don't recall.
Q. Did you understand that $86 million of sales listed on this page as of the date of this document had not even been ordered yet by Sunbeam customers?
A. I'm sorry, did you ask if I was aware of that?
Q. Yes. Were you aware that $86 million of sales listed on this page had not even been ordered yet by Sunbeam customers?
A. I don't recall.
Q. Did you come to any conclusions after reviewing this page, concerning how probable it was that Sunbeam would exceed its first quarter 1997 sales?
A. No.
Q. Were you able to come to any conclusion after receiving CPH Exhibit 152, concerning how likely it was that Sunbeam

NOT A CERTIFIED COPY

0194919

Smith

would exceed first quarter 1997 sales?
A. No.
Q. Did you ask for additional information?
A. I don't believe I asked for any additional information.
Q. If you couldn't come to any conclusion after reviewing CPH Exhibit 152, sir, why didn't you ask for additional information?
A. You have got to remember that I'm one of a large group and that there were other people who were taking the lead on investigating this, talking to the company and then comment back to the group, and that wasn't me.
Q. So is the reason why you didn't ask for additional information, the fact that you didn't consider it to be your responsibility to pursue this?
A. No. The reason I didn't pursue it was other people were taking the lead on this, had more day-to-day contact with the client.

Smith

Q. Do you know if Morgan Stanley sought additional information from Sunbeam, beyond the information contained on CPH Exhibit 152, concerning the likelihood that Sunbeam would exceed first quarter 1997 sales?
A. I didn't have any firsthand knowledge of that.
Q. You don't know one way or the other whether Sunbeam pursued any additional information on that subject?
MR. CLARE: Or whether Morgan Stanley.
A. Or whether Morgan Stanley.
Q. Sorry, I misspoke.
You don't have any knowledge, sitting here today, whether after receiving CPH Exhibit 152 Morgan Stanley pursued any additional information from Sunbeam in order to allow Morgan Stanley to form an opinion concerning the likelihood of Sunbeam exceeding first quarter 1997 sales in the first quarter of 1998?
A. I know that there were subsequent

Smith

phone calls with the company. I was not part of it.
Q. What do you know about those phone calls?
A. That they were had to follow up on this.
Q. Do you know whether those phone calls took place before or after the press release?
A. I think it was before the press release.
Q. Do you know who from Morgan Stanley was involved in those phone calls?
A. Again a subset of the team.
Q. You don't know any of the people?
A. Not directly, not specifically.
Q. Do you know with whom they spoke?
A. No.
Q. Do you know, other than telephone calls with Sunbeam management before the press release was issued concerning CPH Exhibit 152, Morgan Stanley received any other documentary evidence concerning Sunbeam's sales prospects for the balance of

Smith

the first quarter of 1998?
A. I am not aware.
Q. Did you ever see any?
A. No.
Q. Is CPH Exhibit Number 152 the sole piece of documentary information you received from Sunbeam relating to its sales prospects for the first quarter of 1998?
A. To the best of my memory.
Q. Did anyone within Morgan Stanley, sir, to your knowledge express doubts concerning whether Sunbeam was likely to exceed first quarter 1997 sales results in the first quarter of 1998?
A. No.
Q. Did anyone express an opinion on that subject one way or the other to you?
A. Not that I remember.
Q. Do you remember anyone saying they had concluded that it was probable or likely that Sunbeam would be able to exceed first quarter 1997 sales results in the first quarter of 1998?
A. I don't remember any individual

NOT A CERTIFIED COPY

16div-022025

Smith

saying that.
Q. Did you ask for assurances on that subject from anyone within Morgan Stanley?
A. Well, again the team was coming up with the answers and that was just part of, that was part of the process to talk to the company about their numbers and their -- and what they were, how competent, how comfortable they were in telling us this was going to happen.
Q. My question to you, sir, is whether you asked the team or any particular person on the team whether Morgan Stanley had reached a conclusion that it was probable or likely that Sunbeam would exceed its first quarter 1997 sales results in the first quarter of 1998?
A. I don't remember asking any specific member of the team.
Q. Do you remember asking the people generally for their view on that?
A. Yes.
Q. When did you ask that question?
A. As part of this process.

Smith

Q. Do you remember a specific occasion where you asked that question?
A. No.
Q. Do you remember a particular meeting where you asked that question?
A. No.
Q. Do you remember whether you asked that question before or after the press release was issued?
A. Prior to the press release.
Q. Do you remember someone responding to your question?
A. Not specifically.
Q. Do you remember receiving a response to your question?
A. I remember people talking about the issue.
Q. Do you remember whether as a group, the Morgan Stanley team reached a consensus that it was probable or likely that Sunbeam would exceed first quarter 1997 sales results?
A. Yes.
Q. Do you remember that in fact was

Smith

the conclusion reached?
A. I -- that's my recollection.
Q. But you don't remember any particular person expressing that opinion to you, correct?
A. I do not.
Q. Did you personally have enough information that would permit you to form that opinion?
A. No, again I was part of the bigger group and not directly involved with pursuing this avenue of inquiry.
Q. So you personally didn't know one way or the other whether that was a reasonable conclusion, correct?
A. Did not have any firsthand knowledge of that and was relying on greater due diligence effort of the firm.
Q. Did you offer anyone your views concerning the likelihood of Sunbeam exceeding first quarter 1997 sales results?
A. I did not because I was too far removed from the direct contact with the company to go over this particular, you know,

Smith

area of inquiry.
Q. Do you recall that there was a meeting of the Leveraged Finance Committee on March 20, 1998 to discuss whether approval would be given to underwrite the senior loan of Sunbeam?
A. Do I remember the meeting then?
Q. Yes.
A. I remember we had a meeting, I don't remember for sure when it was.
Q. I'm going to show you, Mr. Smith, what we have previously marked as CPH Exhibit Number 76. The cover page is a memorandum dated March 19, 1998 from R.B. Smith to Leveraged Finance Commitment Committee, subject Sunbeam, and it is a document that bears Bates number Morgan Stanley 25829 through 25886.
I'd like you to look at this document sufficiently, Mr. Smith, to tell me whether you have ever seen it before.
A. Yes, I have.
Q. Can you tell me what it is?
A. It is the Commitment Committee memo

NOT A CERTIFIED COPY

Smith

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

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

A. Is the senior loan, yes.

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

A. I am the sender of this, yes.

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

A. Yes.

Q. Did that meeting in fact take place?

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

Q. Did you attend the meeting?

A. I did.

Q. Now, there are a list of people on

Smith

the bottom of that memorandum under the heading Distribution.

Do you see that?

A. I do.

Q. Can you tell me who those individuals are?

A. Starting at the top?

Q. Yes.

A. Dwight Sipprelle and Mike Rankowitz were co-head of high yield sales and trading. Bill Kourakos was I think at the time the deputy head of high yield capital markets. Rick Felix was the head of the credit department. You have myself. Steve Newhouse was at the time the head of high yield capital markets. Leslie Bradford was the deputy head of the credit department. Joel Feldmann was a senior member of the high yield capital markets group. S. Brown, I don't remember that. Ralph Pellecchio was a senior lawyer. Steve Munger was one of the senior M&A professionals. Terry Mequid ran IBD. Bill Sanders was his deputy. Ann Short, I don't remember what function she

Smith

might have had. And then there is Bill Strong.

Q. Are the members of the Leveraged Finance Commitment Committee included among that list?

A. Yes.

Q. Who among this group was on the Leveraged Finance Committee?

A. To the best of my recollection it was Sipprelle, Rankowitz, Kourakos, Felix, Smith, Newhouse were the core members.

In addition to that you would have maybe Munger and -- I'm sorry, not Munger. Meguid and maybe Ralph.

Q. Why do you distinguish between those two people and the people you referred to as the core group?

A. Because they would come periodically to larger transactions or harder transactions or something. They wouldn't come all the time. Whereas the first five or six that I mentioned there were there all the time.

Q. Why were the other individuals

Smith

included on the distribution list here?

A. Because they were participating. Normally the way -- I don't know specifically why these fellows were, but normally other people would be, receive copies because they were going to participate in this particular, in a particular Leveraged Finance Commitment Committee meeting.

For example, Bill Strong doesn't show up all the time, but he would show up if it was his client.

Q. Mr. Strong is somebody who is on the Sunbeam team, correct?

A. Yes.

Q. There is no one else on this list that was part of the Sunbeam engagement team, is there?

A. I don't think so.

Q. Why then a larger group than the core group for purposes of this particular Leveraged Finance Committee meeting?

A. This was not unusual to have other people there, so I can't comment other than as a matter of fact we'd have additional

NOT A CERTIFIED COPY

Smith

faces there.

Leslie Bradford, for example, the deputy head of credit, was there most of the time anyway, whether Rick was there or not.

Q. Who made the decision whether to add additional people in this particular Leveraged Finance Commitment Committee meeting?

A. I don't know. This was pretty much boilerplate.

Q. Were you instructed to include additional people?

A. I was not to the best of my recollection.

Q. Did you make the choice?

A. No, I don't remember.

Q. Was there something about the size or nature of this loan that made it one where a group larger than the core group would be involved in the decision-making process?

A. I would say that there were -- I don't think it was size per se that got everybody's attention. Just a very, very -- what's the word, kind of a -- it was a deal

Smith

that had a lot of visibility outside and inside.

Q. Were all of these people then going to be responsible for voting yes or no with respect to this proposed credit arrangement?

A. Not all the people on the distribution.

Q. Who would have voting rights?

A. Sipprelle, Rankowitz, Kourakos, Felix, Smith and Newhouse. And then if Meguid showed up, he would have a vote too.

Q. Do you remember what the vote was with respect to this particular loan, the Sunbeam loan?

A. The vote here was unanimous to go forward.

Q. Do you recognize the handwriting on the first page of this document?

A. I do.

Q. Whose is it?

A. Mine.

Q. Do you recall when you put this handwriting on this document?

A. I think I put it on the document

Smith

during the meeting.

Q. These are notes that you took of things that were said during the Leveraged Finance Commitment Committee meeting?

A. Notes might be too strong a word. Doodling.

Q. But these are writings you added to this document --

A. Yes.

Q. -- during the course of the Leveraged Finance Commitment Committee meeting relating to the review of the Sunbeam senior loan?

A. Yes.

Q. And you believe they reflect things that were being said during the course of the meeting?

A. No.

Q. These are things that you wrote for what reason then?

A. I think it would be the combination, things that I was thinking about, things that might have been said, things to follow up on, reminders to myself.

Smith

Q. Do you recall that -- what, tell me what these notes refer to.

A. I don't know. Don Uzzi I think is somebody from the company. I don't know why that came up.

Q. It says underneath his name "VP sales"?

A. God, you have better eyes than I do. Yup. Then these look like ranges of numbers. So that might have been the street estimates and then in terms of what their first sales were going to be.

I don't know what the addition on the other side, the 21, 15 and 10 is. That could be some things that had to do with these. And then the rest of it I don't know.

Q. The first entry at the top that is circled is the number 112.5, correct?

A. Yes.

Q. And the word next to that is the word "short"?

A. That is what it looks like.

Q. Do you recall that that entry relates to the, to how short street

NOT A CERTIFIED COPY

Smith

expectations for sales Sunbeam was as of March 20?

A. No, I don't recall.

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

A. I believe that was discussed.

Q. Who made that point?

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

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

A. I do not recall who brought it up.

Q. Do you recall if it was you?

A. I believe it was not me.

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

A. I don't recall.

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

Smith

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

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

A. Yes.

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

A. Yes.

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

A. I don't remember exactly how it was

Smith

described to the committee.

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

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

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

A. Uhm-hmm.

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

A. Yes.

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

A. Yes.

Q. Do you recall if any of the

Smith

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

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

Q. Do you recall whether Mr. Strong participated?

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

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

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

Q. He might have participated by telephone?

A. He could have participated by conference call.

NOT A CERTIFIED COPY

Smith

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

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

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

A. I thought he was also.

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

A. Yes.

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

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

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

Smith

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

(Record read.)

A. No.

Q. You have never heard that from anyone?

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

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

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

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

A. Yes.

Q. Were you asked to address that?

Smith

A. Yes.

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

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

Q. One of the core group members?

A. One of the core group.

Q. Do you recall what you said?

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

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

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

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

A. Yes, it was.

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

A. I did.

Smith

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

A. The credit decision?

Q. Yes.

A. Not that I remember.

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

A. I don't recall.

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

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

Q. Other than the final vote, did anyone express any questions or concerns about proceeding that reflected in your view a reservation about the decision?

A. There were plenty of questions. I wouldn't classify any of them as any reservations.

NOT A CERTIFIED COPY

Smith

Q. Did anyone express any concerns concerning the adequacy of the March 19 press release as a disclosure to Sunbeam shareholders?

A. I don't think that came up.

Q. After, sir, you became aware of the substantial decline in Sunbeam sales in January and February of 1998, did you raise a question concerning the possibility of deferring the financing to a later point?

A. I don't know.

Q. You didn't go back to Mr. Strong, for example, and say perhaps we should consider delaying the timing of the loan to Sunbeam?

A. No.

Q. Did anyone else to your knowledge make, raise such a question?

A. No.

Q. Did you have any reservation, sir, about proceeding with the Sunbeam loan?

A. No.

Q. Did you give any thought yourself, whether you expressed it to anyone or not,

Smith

whether it might be advisable to delay the financing until Sunbeam's first quarter 1998 results were known?

A. No.

Q. Why not?

A. Because we the firm, big team, had done the due diligence and the firm with all of those resources employed was comfortable that this was the, this was a prudent decision. As part of that, but not the front line, I agreed with the decision.

Q. You would think it was a prudent decision whether or not Sunbeam in fact was able to exceed its first quarter 1997 sales results in the first quarter of 1998?

MR. CLARE: I object to the form of the question. I'm not sure I understand what you're asking.

MR. MARKOWSKI: I want to make sure I'm clear on this because it is an important question.

Q. Did you think, sir, that the loan to Sunbeam was a prudent decision even if it turned out to be the case that Sunbeam failed

Smith

to exceed its 1997 sales results in the first quarter of 1998?

A. I think whether the net exceeded or was off a little bit was just one of many factors and wouldn't have changed anybody's opinion about whether to go forward.

Q. Well, you knew based on the information we see on CPH Exhibit 152, that Sunbeam had a lot of work to do, right, in order to exceed first quarter 1997 sales results?

Is that a fair statement?

MR CLARE: Objection.

A. Sales?

Q. Yes.

MR CLARE: Object to the form of the question.

Q. A lot of orders to get and a lot of sales to make.

A. They had to make some sales to beat last year's.

Q. And they had about 10 days to get that done, right?

A. Uhm-hmm.

Smith

Q. Did you know it was uncertain at that point whether Sunbeam would have in fact exceeded its first quarter 1997 sales results in the first quarter of 1998?

A. First of all, I wasn't part of the phone call of checking with the company; and, number two, everything's uncertain so who knows.

It was represented to us, it was represented to members of the team that weren't on the phone call, by people who were on the phone call, that the company had every anticipation of achieving the numbers that they had on that piece of paper.

Q. Would you then have prepared to endorse going forward with the Sunbeam loan on March 20, sir, if you knew that Sunbeam would fail to exceed its first quarter 1997 sales results?

MR. CLARE: Objection, incomplete hypothetical and calls for speculation. You can answer if you can.

A. Tough to -- you can't make that call in a vacuum. You have to get more

NOT A CERTIFIED COPY

014926

Smith

information.
Q. What more information?
A. Why, how far were they off, what's going on, those types of issues.
Q. What if they would have been $20 million short?
A. Again it's just a -- out of context like that it's -- that doesn't mean much.
Q. What if they would have been $20 million short and the primary reason that they were $20 million short was that they had accelerated first quarter 1998 sales into the fourth quarter of 1997, under those circumstances would you have been comfortable endorsing the senior loan to Sunbeam?
MR. CLARE: Same objections.
A. Hypothetical, it's -- I don't have a view.
Q. You don't have any ability to offer a view on that?
A. No.
Q. Did you consider that possibility that Sunbeam might be $20 million short?
A. Based on what the team had found

Smith

out from the company, that while always a possibility, didn't think it was anywhere near a probability.
Q. But if Sunbeam -- your view was even though it was uncertain whether Sunbeam would exceed its first quarter 1997 sales in the first quarter of 1998, you were still comfortable recommending to the management of Morgan Stanley making this loan, correct?
A. Yes.
Q. Let me direct your attention to page 16.
A. Page 16 is it?
Q. Of the March 20 memo.
A. Yup.
Q. You see a listing at the top of this page with a heading Coleman Synergy, Synergies Rationale 118 million?
A. Yes, I do.
Q. Do you see several bullet points below that heading?
A. I do.
Q. What is your understanding of what those bullet points represent?

Smith

A. Give me a second to refresh my memory.
Q. Sure.
A. These look like -- the 118 looks like it is the synergy number and then the bullet points below that, for at least the Coleman situation, are specific actions or events that were going to happen, that the company was going to take to realize the net.
Q. So these are the synergies that this document reflects Sunbeam will realize upon the acquisition of Coleman company.
Is that what this is intended to describe to the members of the Leveraged Finance Committee?
A. Yes.
Q. And this is the -- below that $118 million total on page 16 is the detail concerning the actions or restructuring events that will generate the $118 million in synergies?
A. I wouldn't say the detail, but bullet points where they think the savings/synergies is going to come from.

Smith

Q. And these were the synergies being presented to the Leveraged Finance Committee as those that would pertain to the Coleman acquisition, correct?
A. Yes.
Q. Do you know if any of the items that are identified, the bullet point items identified there originated with Coleman company management?
A. I wasn't part to any of that. I have no idea.
Q. Do you know if any of the ideas listed there originated with my client, Coleman (Parent) Holdings?
A. No, no idea.
Q. Do you know if any of the items listed on the top of page 116 concerning potential Coleman synergies originated with McAndrews & Forbes?
A. No idea.
Q. Or Mr. Perelman personally?
A. No idea.
Q. Mr. Gittes?
A. No idea.

NOT A CERTIFIED COPY

01927

Smith

Q. Or Jerry Levin?
A. No idea.
Q. I think I mispronounced his name. Jerry Levin.
Do you know who Jerry Levin is?
A. Yes, I do.
Q. And in March of 1998, the first part of 1998 he was the chief executive officer of Coleman company, correct?
A. I believe so.
Q. Did you ever have any discussions with Jerry Levin concerning potential synergies?
A. Not until after he was in charge of the Sunbeam.
Q. After he became chief executive officer of Sunbeam you had some discussions with him about synergies?
A. A variety of discussions.
Q. But prior to the funding of the senior loan to Sunbeam, you had no discussions with Mr. Levin --
A. No discussions.
Q. -- concerning potential synergies?

Smith

A. I never met the man.
Q. Did you have discussions with any member from Coleman company regarding potential synergies before the senior loan closed?
A. I did not.
Q. Anybody with Coleman (Parent)?
A. I did not.
Q. Or McAndrews & Forbes?
A. I didn't.
Q. Do you remember anyone at the Leveraged Finance Committee -- excuse me.
Do you remember anyone at the Leveraged Finance Commitment Committee's meeting saying that with respect to the potential Coleman synergies, we're relying on Coleman management for those concepts or the values associated with them?
A. No.
Q. Do you recall there being discussion at the Leveraged Finance Commitment Committee's March 20 meeting concerning the fact that the funds raised through the convertible debenture offering

Smith

had been increased from 500 million to $750 million?
A. I think it came up during the meeting.
Q. You have expressed the view that that was a positive development with respect to the security that the senior lenders had, correct?
A. Yes.
Q. Was that, is that view also expressed at the Leveraged Finance Commitment Committee's meeting?
A. I don't know about directly, but if there is less debt and more junior capital, that's always, that's always a positive from the lender's point of view.
Q. Let me direct your attention to page 2 of this memo.
A. Page 2.
Q. It has Bates number MS 25831.
Do you see that?
A. Uhm-hmm, yes.
Q. There is a box at the bottom, it says "Expected economics."

Smith

Do you see that?
A. Uhm-hmm.
Q. Above that there is a statement in typed text that reads "We're asking the committee to approve underwriting 2 billion in senior secured credit facilities"?
A. Yes.
Q. And underneath that there are two boxes, one with the word "April" handwritten in and then an arrow to another box that has the word "mid-May," the words "mid-May" written in it.
Do you see that?
A. Yes.
Q. Is that your handwriting?
A. Yes.
Q. What is that a reference to?
A. The syndication timetable.
Q. And does April mean?
A. Starting April.
Q. What does mid-May refer to?
A. Mid-May when it finishes up.
Q. And that would be the point by which Morgan Stanley's participation in the

NOT A CERTIFIED COPY

0119928

Smith

Sunbeam loan would be reduced to the 50 to $60 million range that you referred to previously?

A. Yes, that is when the syndication should be completed.

Q. Now, there is several notes made in or around the box that is labeled "Expected Economics."

Do you see that?

A. I do.

Q. Are those your notes again?

A. Yes, they are.

Q. Can you interpret them for me?

A. The -- I think this was trying to go ahead and come up with or play with how much in terms of fees that Morgan Stanley would make for the, for entering into this underwriting.

Q. And what does this show?

A. Well, let's see. I think in the memo it shows 5-1/2 to 6. My handwriting is 6 to 9. For whatever reason I had 5 -- 8-1/2 to 9-1/2, just doing, playing around with the numbers in terms of the total compensation

Smith

for us for taking 40 percent of this loan.

Q. Does that include, does Morgan Stanley receive additional fees when the loan is syndicated?

A. No, no.

Q. Mr. Smith, let me show you what we're marking as CPH Deposition Exhibit Number 153. It's another version, another copy of your March 19 memorandum and another copy of the March 20 memorandum to the Leveraged Finance Committee. It bears Bates number Morgan Stanley 18885 through 19 -- excuse me -- 18942.

(Coleman (Parent) Holdings Exhibit 153, document bearing Bates number Morgan Stanley 18885 through 18942, marked for identification, as of this date.)

Q. My question, sir, is whether you can identify the handwriting on the first page of this exhibit?

A. I cannot.

Q. It is not your handwriting?

A. Not mine.

Smith

Q. Not any portion of it?

A. I haven't looked through every page, but certainly not the first page.

Q. I'm just talking about the first page.

Did you attend any -- did you understand Morgan Stanley assisted Sunbeam in connection with the marketing of the convertible debentures?

A. Yes.

Q. Morgan Stanley was the sole underwriting with respect to the convertible debentures, correct?

A. I believe so.

Q. And a road show was held to assist Sunbeam in marketing those securities, correct?

A. Yes.

Q. Did you attend any of the road show presentations?

A. I don't believe so.

Q. Are you aware of any statements made subsequent to the issuance of the March 19 press release, by either Morgan Stanley or

Smith

by Sunbeam representatives, that attempted to minimize the significance of the March 19 press release to potential investors and convertible debentures?

A. No, I wasn't part of.

Q. No one ever reported such statements were being made to you?

A. I didn't know.

Q. After the March 19 press release, sir, did you think it was especially important for Morgan Stanley to track Sunbeam sales activity in the closing days of the quarter?

A. I thought it was important to continue and complete our due diligence before we close the loan.

Q. Did you get any undated information after the March 19 press release concerning Sunbeam's efforts to achieve sales at least as great as the first quarter of 1997; for example, a report on how many sales had been made since the March 19 press release?

A. I don't recall seeing anything like that.

NOT A CERTIFIED COPY

Smith

Q. Did you request daily reports on Sunbeam sales activities?

A. I did not. I don't know if the team requested it.

Q. Did you receive any reports between the March 19 press release and the closing of my client, the sale of my client's interest in Coleman company, concerning the status of Sunbeam's first quarter sales efforts?

A. I don't remember what I got or what the team got.

Q. So between -- let me focus your attention to the time period I'm talking about.

Between March 19, 1998 and March 30, 1998 do you recall receiving any information concerning the status of Sunbeam's sales activities subsequent to March 19?

A. I don't -- I remember -- I don't recall getting anything written, but I think members of the teams who were spending time with the company -- maybe I should have said it before, it wasn't just us.

Smith

We focused a hundred percent on the Morgan Stanley efforts. We have two partners here, First Union, Bank of America, going through the same thing. So they, so everybody I think is talking about this and we're thinking about it.

And I don't remember any pieces of paper or being part of any particular conversations myself with anybody from the company.

Q. Well, let me make sure we're clear on this. Regardless of what the source was, whether it was Sunbeam, Morgan Stanley, Bank of America or First Union or someone else, do you recall whether you received any information subsequent to Sunbeam's March 19 press release, prior to the closing of the acquisition of my client's interest in Coleman company on March 30, relating to Sunbeam's sales efforts between March 19 and March 30?

A. I don't remember anything specific.

Q. Do you remember anything generally?

A. No

Smith

Q. Did you instruct anyone to contact any of the customers that were listed on CPH Exhibit Number 152, sir, to find out what their plans were for making purchases from Sunbeam?

A. I would not, that would not have been my function.

Q. Do you know whether anyone from Morgan Stanley was asked to do that?

A. I do not know.

Q. Do you disagree, sir, that on monitoring Sunbeam's end of the quarter sale effort should have been Morgan Stanley's highest priority at that point in time?

MR. CLARE: I object to the form of the question, argumentative.

A. I guess I do disagree.

Q. Why?

A. Because I think that is one part of the continuing due diligence that we were performing right up until the, right up until the end.

Q. As you sit here you don't have any recollection of getting any information from

Smith

any source, including the Morgan Stanley due diligence team, relating to Sunbeam's sale efforts between March 19 and March 30, correct?

A. No.

Q. You don't have any recollection of that?

A. No, I do not. But again the team, the big team is there doing that work and I have a lot of confidence in the team all the way from the leveraged finance people to the John Tyree and people from the credit department, so that I think the firm was ably served by those folks and its efforts to parse through this.

Q. Are you aware, sir, that the agenda prepared by the due diligence team for -- are you familiar with the concept of bring-down due diligence?

A. Yes, I am.

Q. And what does that term mean to you?

A. Just before you close, to get on the phone with the company, maybe sometimes

NOT A CERTIFIED COPY

016930

Smith

their auditors, to make sure and have the opportunity to ask them kind of the last questions, if there has been any changes from what we all thought had been going on in the last -- since the last time we did it.

Q. Were you advised by anyone that Sunbeam's -- that Morgan Stanley's bring-down due diligence agenda was revised after March 19 to omit the subject of Sunbeam's views concerning its prospects for the second quarter of 1998?

MR. CLARE: Object to the form of the question, lack of foundation. I think it also assumes facts not in evidence. You can answer.

A. No, no knowledge at all.

Q. No one told you that the due diligence team had been told not to make inquiry into Sunbeam's views of its prospects for the first -- second quarter of 1998 after the March 19 press release was issued?

MR. CLARE: Same objections.

A. Nobody told me that.

Q. Do you think that would be an

Smith

appropriate subject to drop?

A. I would be flabbergasted if that ever happened to Morgan Stanley.

Q. Do you think that would be an important area to keep inquiring about right up to the time the loan closed?

A. I would think that would be part of the continuing due diligence process until the loan closed.

Q. So you would be shocked if that subject was specifically omitted from the bring-down due diligence agenda?

A. Again I'm not part of the bring-down due diligence agenda process, but I would be shocked that that wasn't part of the continuing due diligence.

And again I have no knowledge of that document that you're referring to or what was in or taken out.

Q. But you didn't participate in any discussion where people discussed dropping that subject?

A. No. No, I had no knowledge of it.

Q. Well, the senior loan closed on

Smith

March 30, 1998, correct?

A. I believe that's right.

Q. Did Morgan Stanley make efforts to move forward with the syndication process at that point?

A. Yes.

Q. Had efforts been undertaken even prior to the closing of the loan, to initiate the syndication process?

A. No.

Q. And why is that?

A. We didn't have enough time. We were too busy scrambling to complete the due diligence, do all the documentation, complete the loan agreement, which was essentially before we could advance the money.

There was a time line, I mean a deadline, so that was the primary focus. Once that was completed, then we shaped our resources to putting together, to put together materials to start the syndication of the loan.

Q. When did that start?

A. Probably the day after we closed

Smith

the loan.

Q. Who was responsible for that effort?

A. It was under my supervision, then assisted by the team of Mr. Hart, I guess Mr. Rankin by then, and then we also had our two other banks that were taking pieces of the underwriting.

Q. First Union and Bank of America?

A. First Union, Bank of America.

Q. Were the efforts to syndicate the loan, the senior loan, disrupted?

A. I'm sorry, were they --

Q. Disrupted? Did something happen to affect the plan for completing the syndication of the loan by mid-May?

A. Yes.

Q. What was that?

A. Well, we had to -- we had to right the book and continue to get information. We were trying to remember what happened, it was a long time ago, six years ago, is that bits of information came out and then we started getting more and more, had more and more

NOT A CERTIFIED COPY

0119931

Smith

questions for the company back and forth.
Q. Do you recall that, do you recall if something happened that affected your objective of completing the syndication by mid-May?
A. I don't remember specifically, but there were, as I remember there were a series of events that precluded us from going right when we wanted to, which in the normal course would have been two to three weeks after we closed the loan.
Q. Do you recall that Sunbeam issued a press release on or about April 3, 1998 in which it announced that it had failed to exceed first quarter 1997 sales results?
A. I'm sure I saw it, but I don't remember what it said.
Q. Did that have, did that announcement have any effect on the timing for the syndication?
A. I think that it was part of the, part of the series of events. It could have been the first series of events. Part of the series is the 3rd is only four days after the

Smith

fact. So we are in the midst of preparing our offering memorandum and the rest.
Q. I just want to try and understand what effect that announcement had, if any, on the timing.
The objective was to complete the syndication by mid-May, correct, that is what is being told to the Leveraged Finance Committee?
A. Yes.
Q. Sunbeam issues a press release on April 3 announcing that it had failed to exceed first quarter 1997 sales results?
A. Uhm-hmm.
Q. That announcement in and of itself, did that have any effect on your views concerning the achievability of the May 15 date for completing the syndication?
A. Not then.
Q. Do you recall that in the first part of May Sunbeam and the three banks agreed to amend the senior loan agreement to reduce the amount of the financing being provided?

Smith

A. Yes.
Q. What precipitated that change in the loan arrangement?
A. Let's see. I guess they were able to raise more on the convertible so they didn't need quite so much bank debt. We -- and I think they revised the amount of revolving credit they think they needed, so we were able to reduce the bank loan accordingly. I think that's what happened then. Plus --
Q. I'm sorry, did you have something else you wanted to say?
A. No.
Q. Did Sunbeam's first quarter 1998 results have any bearing on the amendment to the credit agreement to reduce the amount of the financing?
A. It was part of the process.
Q. Did the fact that Sunbeam had failed to exceed first quarter 1997 sales cause the banks to request Sunbeam to reduce the amount of the financing from 2 billion to 1,700,000,000?

Smith

A. No, I think that is a simplistic version of it. I think as more and more information came out and more and more work was done that the banks got, and then the company agreed to reduce the amount of the facilities.
Q. What I'm trying to understand, sir, is whether -- Sunbeam, as we discussed, raised an additional $250 million through its convertible debenture?
A. Right.
Q. What I'm trying to understand is whether that was the reason why the senior loan facility was reduced by $300 million, or whether there was something about the Sunbeam's financial performance that caused the banks to reduce the amount of the financing?
A. I'm sorry, I misunderstood your question. The, they only needed so much money to make these acquisitions and the -- if they were able to raise more money in the convertible market, then they needed less bank debt, so as -- and the company made the

NOT A CERTIFIED COPY

Smith

decision to take more of the convertible, and so consequently we reduced the bank debt.

Q. So the reason why the bank debt, at least as far as you can recall, was reduced from 2 billion to 1,700,000,000 was the fact that Sunbeam had raised additional funds through the convertible debenture offering and didn't need the $2 billion until the financing?

A. Yes.

Q. Let me show you what we are marking as CPH Deposition Exhibit Number 154, sir.

(Coleman (Parent) Holdings Exhibit 154, document bearing Bates number FUNB 188 through 189, marked for identification, as of this date.)

Q. CPH Exhibit Number 154 is a two-page document that is a memorandum from Thomas L. Molitar and Andrew J. Gamble to distribution, and bears Bates number FUNB 188 through 189.

I assume you have never seen this, sir, but correct me if I'm wrong.

A. I have never seen this, this is not

Smith

one of ours.

Q. Do you know who Tom Molitar and Andrew Gamble are?

A. Yes.

Q. Who are they?

A. They worked at First Union. And Tom was on the leveraged finance as corporate side, corporate lending side, and Andrew, Andy was on the syndication side.

Q. Did you work with them in connection with the loan to Sunbeam?

A. I did.

Q. Do you see there are a series of numbered paragraphs in this memorandum?

A. I do.

Q. I want to focus your attention on the second one.

A. Uhm-hmm.

Q. It starts with the statement "The parties have agreed to amend the credit agreement that will reduce FUNB exposure from 600 million to 510 million."

Do you see that statement?

A. I do.

Smith

Q. I would like you to explain to me the different items, bullet point items that appear below that with respect to the changes to the Sunbeam senior loan arrangement.

A. Okay.

Q. The total credit line, you see that bullet?

A. Uhm-hmm.

Q. From 2 billion to 1.7 billion, that reflects the $300 million reduction we are talking about?

A. Yes.

Q. The second item, LIBOR spread, 150 EPS to 225 EPS?

A. Yup.

Q. Can you explain that to me?

A. This is the LIBOR, the spread over LIBOR. So originally LIBOR plus 150 loan to LIBOR plus 225 loan. I'm guessing here because this isn't mine, I haven't seen this before, but that's how I --

Q. That's how you interpret this?

A. Uhm-hmm.

Q. And the reference here is to the

Smith

interest rate being charged?

A. Yes, to the company.

Q. And this reflects an interest rate increase of about three-quarters of a percent?

A. It does.

Q. Do you recall why that change was made?

A. I think what happened here, I guess this is refreshing my memory a little bit, is they came out with some new numbers and new projections and so the banks were, thought it important to change the rate to enhance their ability to sell this.

Q. What -- could you move your hand down from your face, sir. I'm sorry.

What power did the banks have under the credit agreement to increase the interest rate being charged on the loan?

A. I can't remember whether we had -- I don't know what contractual right we had, but... So the, our ability to get them to agree to this, I don't remember all of the bells and whistles that we did to make this

NOT A CERTIFIED COPY

16div-022038

Smith

happen.
Q. Do you remember if it was, if there was, whether Sunbeam resisted the bank's desire to increase the interest rate on the senior loan?
A. I think they negotiated, but I don't see resisted here.
Q. You believe it is possible the banks had the right to impose an interest rate increase?
A. No, I don't think so. I don't think it was that easy.
Q. So you think there was a subsequent negotiation with Sunbeam that resulted in an increase in the interest rate?
A. Yes.
Q. What was the reason why the banks wanted to increase the interest rate?
MR. CLARE: Object to the form of the question, calls for speculation with regard to the other banks.
MR MARKOWSKI: Let me rephrase the question.
Q. Did Morgan Stanley Senior Funding

Smith

support the increase in the interest rate on the senior loan?
A. Yes, we did.
Q. And why?
A. To assist our ability to sell the loan into the market.
Q. So it would help Morgan Stanley Senior Funding and the others banks sell off their, sell off portions of their loan to Sunbeam to other banks?
A. Yes.
Q. The last statement in this section says "Our up-front fees have been affected by the facility reduction. Those are effective up-front fees, now 132 basis points up from 112.5 basis points."
Do you see that?
A. Yes, I do.
Q. Would it have been typically the case that if a facility was reduced so quickly after the loan is made, that the up-front fees would be adjusted accordingly?
MR. CLARE: Object to the form of the question.

Smith

A. Well, I guess I would argue that the up-front fees were adjusted. All that happened was they reduced the amount of the facility from 2 to 1.7 and the lenders kept a piece.
Q. Right. The up-front fees are typically a percentage of the loan amount, correct?
A. Right, the original commitment.
Q. And here the commitment is being reduced?
A. Right.
Q. Shortly after the loan was made?
A. Uhm-hmm.
Q. Would it typically be the case that the up-front fees would be adjusted under those circumstances or not?
A. Well, this is an unusual situation, so I don't know if there is anything customary or normal.
The company in Canada, as you probably know, reduced the amount of these commitments at any time and they, as part of this process they elected to do this and

Smith

that's what happened.
Q. Did Sunbeam save any money by reducing the amount of the loan commitment from a billion 7 to -- excuse me, from 2 billion to 1,700,000,000?
MR CLARE: Objection, no foundation.
A. Well, what happened is they reduced their revolving credit I guess and so they didn't have to pay any unfunded on whatever they reduced that to.
Q. Sunbeam didn't draw down the full $2 billion or the full $1.7 billion immediately, correct?
A. No.
Q. Were there fees being charged or interest being charged on the unfunded portion of the facility?
A. Yes.
Q. So by reducing the facility from 2 billion to 1.7 billion would Sunbeam realize a savings on those fees?
A. They would realize a savings on those fees, but the net total financing fees

NOT A CERTIFIED COPY

011934

Smith

on an annual basis would have gone up because of a change in the interest rates. It would far eclipse that savings.

Q. There is a statement -- let me direct your attention to the second page, Exhibit 154.

After the last numbered paragraph there is a paragraph that starts with the following sentence: "As a result of the amendments to the credit agreement, we believe that this facility will be syndicated as originally expected."

Do you see that statement?

A. I do.

Q. Was that your view also as of May 8, 1998?

A. Oh, gee, I have no idea.

Q. Mr. Smith, I'm going to show you what we're marking as Coleman (Parent) Holdings Deposition Exhibit Number 155. It's a document, it bears the cover page Sunbeam $1.7 Billion Senior Secured Credit Facilities Confidential Information Memorandum, it is dated June 1998, and it bears Bates number

Smith

FUNB 10440 through 10557.

(Coleman (Parent) Holdings Exhibit 155, document bearing Bates number FUNB 10440 through 10557, marked for identification, as of this date.)

Q. My first question, Mr. Smith, is whether you can identify this document for me.

A. It appears to be the offering memorandum that was put together for the syndication of the $1.7 billion Sunbeam loan.

Q. And the purpose of this would have been what?

A. The purpose of this would have been to provide this information to banks and institutional investors who are interested in buying, in being part of the syndicate of this loan.

Q. Let me direct your attention to page number 8 of the document.

A. I'm sorry.

Q. Page number 8 of the document.

A. Okay.

Q. There is a calendar.

Smith

A. Uhm-hmm.

Q. A schedule, correct? Timetable?

A. Yes.

Q. And the timetable reflected here is the timetable for completing the syndication, correct?

A. Yes.

Q. And it starts with a lender meeting on June 9 and it ends with the closing and funding on July 9, correct?

A. Yes.

Q. Now, this schedule is somewhat different from the one that you were contemplating when the loan was approved by the Leveraged Finance Committee on March 20, correct?

A. Yes, it is.

Q. And what caused this change in schedule to a target of completing the syndication by July 9 instead of mid-May?

A. The biggest change, as I remember, was that the company came up with a new set of projections.

Q. And how did that affect the timing?

Smith

A. Well, we wanted to make sure, this is now the three lenders, the three underwriters, that they understood completely what was going on, that they had a full knowledge of what was transpiring here, and that we felt very comfortable based on the due diligence and continued talks with the company that these projections were in fact achievable, and so we -- because we wanted that to stop moving around, so we had something we could incorporate into the offering memo to get that into the market.

Q. As of the time this document was provided to potential participants in the syndication, was it your view personally that it was still going to be possible -- well, that it would be possible to complete the syndication by July 9?

A. Yes.

Q. Was it your expectation at that point in time also that Morgan Stanley would be able to reduce its participation in the Sunbeam loan to the 50 to $60 million arrangement that you identified as your

NOT A CERTIFIED COPY

016935

Smith

objective previously?
A. Yes. And I believe it was also the view of the other two underwriters.
Q. Let me direct your attention to page 25.
A. 25? Okay.
Q. You see the second paragraph on page 25 reads as follows, at least the starting part of it. "On May 11, 1998 Sunbeam announced the integration with expected annual cost savings of $253 million to be achieved by the middle of 1999.
"The company also announced that it expects to achieve incremental revenue of $265 million as a result of revenue opportunities."
Do you see those two statements?
A. I do.
Q. Do you know what the source was of the statement here that the company expected to achieve $253 million in cost savings and $265 million in enhanced revenue through its acquisitions?
A. The source I believe was Sunbeam

Smith

because they are intimately, they, the company, the issuer, intimately involved when they put the offering memorandum together. They provided a lot of the information. In fact, most of the information, especially the nonpublic information, this is a nonpublic document. And they review all of this, oftentimes have their lawyers review it. So this to the best of my recollection came right from there.
Q. Do you know that, are you aware that Sunbeam was working with Coopers & Lybrand in the spring of 1998 to develop a restructuring plan for Sunbeam and the three companies that it had acquired?
A. I, I was aware that they were working on it. I'm not a hundred percent sure when that happened in the March, April, May context.
Q. Are you aware that it was Coopers & Lybrand that estimated that the company could expect to achieve $253 million in cost savings and $265 million in enhanced revenues as a result of its three acquisitions?

Smith

A. I may have known that then, but frankly I had forgotten it now.
Q. The 253 in cost savings and $265 million in revenue opportunities, are those synergies from the three acquisitions?
Is that what this is describing?
A. I can't remember.
Q. Do you recall that Sunbeam in the spring of 1998 announced that it expected to achieve synergies resulting from its acquisitions of Coleman company, Signature Brand, First Alert that substantially exceeded the synergies that were estimated when the acquisitions were first announced?
A. No
Q. Mr. Smith, let me show you what we're marking as CPH Deposition Number 156. It's a document that bears the cover page Sunbeam 1.7, 1,700,000,000 Senior Secured Credit Facilities Lender Meeting June 9, 1998, it bears Bates number FUNB 10583 through 10650.
(Coleman (Parent) Holdings Exhibit 156, document bearing Bates number FUNB

Smith

10583 through 10650, marked for identification, as of this date.)
Q. Have you seen this document before, sir?
A. I have.
Q. Can you tell me what it is?
A. This looks to me to be copies of the slide show that we put on for the loan syndication meeting.
Q. Was a loan syndication meeting in fact held on June 9, 1998?
A. To the best of my knowledge, yes.
Q. Did you participate?
A. I was in attendance.
Q. Who prepared this document, sir?
A. That's an interesting concept. We, the banks would be putting the pages together and then sending them to the company, that would add an awful lot of its comments to check the veracity of the numbers because it was basically their presentation to the banking community, not something for -- it is their document. We assisted.
Q. The document itself is actually

NOT A CERTIFIED COPY

Smith

assembled by the bankers; is that correct?
A. Assembled I would say in terms of printed, in terms of returns, but the information, the content, the tone and all the rest is really set by the company.
Q. And the third page of the document, sir?
A. The third page?
Q. Has the agenda for the meeting?
A. Yes, it does.
Q. It indicates that Michael Hart at Morgan Stanley make the initial remarks and also make the concluding remarks, correct?
A. Yes.
Q. Do you recall if that is in fact what took place that day?
A. I believe so.
Q. Did you speak at all at the lenders' meeting?
A. I don't think so.
Q. Do you recall how many banks attended?
A. Not specifically, but it was a lot. Many institutions. My guess was there were

Smith

50 to 75 between institutions both in person and on the phone.
Q. Was it your expectation at the end of the bankers' meeting that day that Morgan Stanley would still be able to successfully complete the syndication of the Sunbeam loan by July 9?
A. Yes, it was.
Q. Did you think the bankers' meeting went well that day?
A. I think the bankers' meeting went fine. We had $500 million worth of commitments from some of the major institutional players, so that was a very nice start to the syndication.
Q. Who had made initial commitments?
A. The testimony I'm remembering now, my recollection might have been people like VKM, Merrill Lynch, Eaton Vance, that type of institution, but I don't remember specifically.
Q. What would be the form of the commitment; how would that have been communicated to you?

Smith

A. That would have been communicated over the phone like you do for a bond.
Q. Mr. Smith, I'm going to show you what we're marking as CPH Exhibit Number 157. It is a two-page document, it bears Morgan Stanley Bates number 18702 to 703, and it appears to be a printout of a Bloomberg press announcement relating to the loan syndication.
(Coleman (Parent) Holdings Exhibit 157, document bearing Morgan Stanley Bates number 18702 to 703, marked for identification, as of this date.)
Q. Have you seen this document before, sir?
A. I don't remember. Let me familiarize myself here. Okay, I have seen this before.
Q. What is it?
A. It is a -- I guess it is a Bloomberg, right? A Bloomberg article that came out on the 11th of June, was it, regarding the loan and the syndication thereof.

Smith

Q. You are quoted in this, correct?
A. It looks like it.
Q. Do you remember making the statements attributed to you in this article?
A. Yes.
Q. Does the article accurately reflect --
A. Excuse me, can we turn this off?
MR. MARKOWSKI: Sure, we can go off the record.
THE VIDEOGRAPHER: The time is 3:34 and this completes tape number 2.
(Recess taken.)
THE VIDEOGRAPHER: The time is 3:39, this begins tape number 3 of the videotaped deposition of Mr. Bram Smith.
BY MR. MARKOWSKI:
Q. Mr. Smith, we were looking at the June 11 Blumberg article, you have it right there.
Do you have it in front of you, sir?
A. I do.
Q. And I believe you indicated that

NOT A CERTIFIED COPY

011937

Smith

the statements that are attributed to you in this article accurately reflect the statements that you made at the time?

A. Yes.

Q. The third paragraph contains a quote attributed to you that reads: "It is a very good fundamental story, said R. Bram Smith."

Do you see that?

A. Yes.

Q. The very fundamental story that you are referring to there was a reference to the bank syndication?

A. No, I was referring to the company, to the Sunbeam story with its financial strength, cash flow, good market condition in many brands.

Q. It was still your view as of June 11 that Morgan Stanley and the other two banks would be able to successfully complete the syndication by July 9?

A. Yes.

Q. Now, a couple of paragraphs further down there is a statement that the company is

Smith

being shared by shareholders.

Do you see that?

A. I do.

Q. The fact that there was a shareholder lawsuit didn't affect your thinking with respect to the ability of Morgan Stanley and the other banks that syndicated the senior debt?

A. Well, I thought that we would still be able to achieve our targets. I did mention in that paragraph that you cited before that it will be a challenge for some lenders to get approval, and that's part of the reason I thought that it might be a challenge to get some of the numbers, especially the banks to participate in this.

But we had the flexibility of increasing the terminal in B, which went to the institutional market, and reducing the amount that went into the bank market, so I think all three of us, it would be ourselves, First Union and Bank of America, felt that we would be able to achieve our syndication targets by the time advertised to, whatever

Smith

you said, July 9.

Q. Right. So the shareholder lawsuit didn't affect that in light of the flexibility you had to sell more of the loan to institutional investors?

A. I think it made it more of a challenge, but it was still achievable in our view.

Q. There is also a statement that Sunbeam stock price had fallen more than 50 percent and Sunbeam shares were trading at 18-1/2.

Do you see that?

A. Oh, yes, I do.

Q. Do you recall that Sunbeam shares had been higher than even $50 a share in March of 1998?

A. I don't recall that, but I'll take your word for it.

Q. The fact that Sunbeam share price had fallen so substantially did not mean that you would be unsuccessful in your efforts to syndicate the bank loan?

A. That was not my opinion at the

Smith

time. Again we're looking at this from a senior creditor's point of view. We thought that the cash flow story, the market story -- excuse me, the market position story, their balance sheet story and the rest were, made this a very syndicatable loan.

Q. Clearly Sunbeam's shares had been adversely affected by the news that had been coming out about the company since March of 1998, correct?

A. It looks like that.

Q. But the fact that its share price was being adversely affected did not mean that the senior lending aspect of the March transactions would be adversely affected?

A. It doesn't necessarily move in concert.

Q. And why is that?

A. Well, because banks are senior secured lenders, the leverage was relatively low on a bank basis. The equity is the, are the owners and they take all of the residual risk.

So the impact of a high stock price

NOT A CERTIFIED COPY

Smith

or a low stock price on the creditworthiness and the cash flow characteristics of the company are sometimes not related, oftentimes not related.

Q. So, for example, Sunbeam's ability to maintain a $50 share price or $40 share price wouldn't be something that was necessarily significant to you in evaluating the creditworthiness of Sunbeam for the purposes of the senior loan?

MR. CLARE: Object to the form of the question. You can answer.

A. When we evaluate the feasibility of doing these loans, we look at the balance sheet and the business position, cash flow and all the rest, not necessarily.

What's going on in the stock market, whether the stock goes up or down is not going to affect the balance sheet of the company.

Q. There is a statement right below that under Loan Division, the heading Loan Division.

Do you see that?

Smith

A. Yes, I do.

Q. The loan is divided in a $750 million portion typically sold to institutional investors and a $950 million piece that is typically sold to banks.

That is something you just alluded to, correct?

A. Yes.

Q. The portion from which you had already received an indication of interest that you referred to earlier in your testimony was which piece of this?

A. The 750 million piece.

Q. And your recollection today is that you had commitments for about 500 million of that 750?

A. Yes.

Q. Had you received any commitments for the bank piece?

A. Not to the best of my recollection. Normally the banks move much, much slower.

Q. Now, two days after this, on June 13 Mr. Dunlap was terminated.

Do you recall that happening?

Smith

A. Yes, I do.

Q. Did that have an effect on the syndication?

A. Yup.

Q. In what way?

A. Well, that would be a -- having the CEO be fired by the board makes it an extremely challenging situation, a lot of uncertainty.

Q. Do you know why Sunbeam's board determined that it was appropriate to terminate Mr. Dunlap?

MR. CLARE: Objection, no foundation, calls for speculation.

A. No.

Q. Let me show you a one-page document, sir, that we are going to mark as CPH Deposition Exhibit Number 158, it bears Bates number CPH 1392612 and it is a June 15, 1998 article from the American Banker. It bears the headline "Morgan Stanley Secures 500 Million Commitment for 1.7 Billion Sunbeam Loan."

(Coleman (Parent) Holdings Exhibit

Smith

158, document bearing Bates number CPH 1392612, marked for identification, as of this date.)

Q. Have you seen this document before, this article before, sir?

A. Yup.

Q. There are several statements attributable to you in this article.

Do they accurately report the statements that you made to the reporter?

A. Give me a second and I'll look at it. Okay.

Q. This article is dated June 15, 1998. Do you know if you made your statements before or after -- the pending question was does the article accurately reflect the statements you made to the reporter?

A. Yes.

Q. Do you know if you made those statements before or after Mr. Dunlap was terminated?

A. Don't remember.

Q. As of the time you made these

NOT A CERTIFIED COPY

0119939

Smith

statements to the American Banker reporter, were you still optimistic that Morgan Stanley would be able to complete the loan syndication successfully?

A. When was he terminated?

Q. On June 13, which was a Saturday I believe.

A. I think when you say confident we would be able to do this, I think increasing, some concern that that's going to be a challenge.

Q. Do you know if this interview took place before the news of Mr. Dunlap's termination --

A. I can't remember.

Q. -- had been disclosed?

A. Can't remember.

Q. How did you learn that Mr. Dunlap had been terminated?

A. I think I might have gotten a phone call from Bill Strong over the weekend.

Q. What did Mr. Strong tell you?

A. That he had been, that Mr. Dunlap had been terminated.

Smith

Q. Did he say anything else?

A. Not that I, not that I recall. The news was stunning and very new and I can't remember whether they picked an interim CEO or what they were going to do.

Q. Did Mr. Strong tell you how he had learned this news?

A. I don't recall.

Q. Did Mr. Strong tell you why the Sunbeam board had taken this action?

A. Not that I recall.

Q. Did he offer his thoughts concerning why it may have happened?

A. Not that I recall.

Q. Did you and Mr. Strong have any discussion about the effect this would have on the syndication?

A. Not that I recall, but I'm sure we did.

Q. Did Mr. Dunlap's termination have an immediate effect on Morgan Stanley's plans to syndicate the senior loan?

A. I'm going to confuse a little bit of the timing here, but pretty shortly or

Smith

during this period we decided, that would be the three of us, the three underwriters decided to cease the syndication of the loan.

So did that happen on the 15th or 16th or whenever I don't remember, but it was all in that period of time.

Q. Let me show you what we're going to mark as CPH Exhibit 159, it's a one-page document, it bears Bates number CPH 1392969. It appears to be an American Banker article dated June 17, 1998, and it bears the headline "Morgan Stanley Withdraws Loan To Sunbeam After CEO's Firing."

(Coleman (Parent) Holdings Exhibit 159, document bearing Bates number CPH 1392969, marked for identification, as of this date.)

Q. Have you finished reviewing it, sir?

A. I did, uhm-hmm.

Q. Have you seen this before?

A. I must have. I don't really remember.

Q. Are the statements attributed to

Smith

you in this article accurate?

A. I don't think so because I'm confused, I don't know what this one statement attributed to me means.

"*But I would say the flow of* information is typical of today's lender-borrower relationship." A better word might be disappointed, it doesn't even flow.

I'm quoted to sell down the loan eventually, I think that is kind of probably true. Am I quoted again?

I don't understand what the first one means, I don't remember saying that.

Q. You don't remember saying "But I would say the flow of information is typical of today's lender-borrower relationship"?

A. No, and then certainly not jump the position to the next sentence I'm imputed to have made when a better word might have been disappointed.

Q. What about the statement in the next paragraph that "Morgan Stanley as well as the co-syndicators, Bank of America Corp. and First Union Corp., were not giving up on

NOT A CERTIFIED COPY

Smith

the deal"?
A. That is not my statement.
Q. It says "Mr. Smith stressed."
A. But again it is not a quote, that's the writer.
Q. Do you recall saying to the author of this article that Morgan Stanley and other banks were not giving up on syndication?
A. I don't know what not giving up on the deal means. It says here in my copy not giving up on the deal versus not giving up on the syndication, so this is -- the Sunbeam had our money so it is kind of a meaningless concept, that statement.
Q. Well, let me direct your attention to the right-hand column.
A. Uhm-hmm.
Q. One, two, three, four, five, sixth paragraph. It says "Mr. Smith said his team will have to meet with Sunbeam's new management to develop a strategy. Pending that meeting a new run at the market is likely later this year he said."
Do you recall making that

Smith

statement?
A. I remember alluding to the fact that they had to get to the bottom of what was going on and then try to restart the syndication some time, yeah.
Q. So your plan as of June 17, in any event, Mr. Smith, was to attempt to go back to the syndication market at some point in the future?
A. Yes.
Q. Did you have any idea as of this point in time how quickly you would be able to do that?
A. No.
Q. Did you have any hope concerning how quickly you would be able to do that?
A. Any what?
Q. Hope.
A. I always have hope. Remember what happened here. Dunlap's fired, right, there is nothing about any numbers, so the issue is who is going to be the new CEO and what is going to be the new strategy, so we have to sort that out and see who that's going to be

Smith

and then, and then get ready and take it to market some time later. Can't do it too much in the summer, so that's what I meant.
Q. Now, Mr. Levin had been announced as Mr. Dunlap's replacement by this point; is that correct?
A. I don't remember. Is that what it says here? If not, it was pretty darn close.
Q. I'm looking for it, I think it is in here somewhere.
Putting that aside, whether it is in the article or not, do you recall that fairly shortly, within a matter of days after Mr. Dunlap was terminated, Mr. Levin was identified as the new chief executive officer of Sunbeam?
A. Yes, in the fourth paragraph. Yes, I thought it was pretty close, within days if not a week.
Q. Did you have any reaction to the appointment of Mr. Levin as the replacement for Mr. Dunlap?
A. Not really. I didn't know him.
Q. Do you recall anyone at Morgan

Smith

Stanley expressing at this point in time objections to Mr. Levin's appointment as the new chief executive officer of Sunbeam?
A. Not that I'm aware of.
Q. Or any reservations about that?
A. Not that I'm aware of.
Q. What, sir -- move to a different topic.
What did Morgan Stanley Senior Funding do to attempt to assess the potential synergies that Sunbeam could realize by acquiring Coleman company?
A. Morgan Stanley Senior Funding -- let's see -- took advantage of what the firm's effort had been on trying to understand the synergies.
Also at the time we were exploring the synergy of potential with the other two underwriting banks, because again all of the due diligence regarding the loan was done with them as well.
Q. Do you agree that the evaluation of potential synergies when combining two companies, like combining Sunbeam and Coleman

NOT A CERTIFIED COPY

011941

Smith

company, is highly dependent on the plans of management?

A. The synergy strategy and plans and the execution would rely on the management, yes.

Q. So, for example, was Morgan Stanley Senior Funding in a position where it could independently assess the potential synergies that Sunbeam could achieve by combining itself with Coleman company?

A. Morgan Stanley, the other two banks would probe the management and ask questions on their synergy plans, remember those are their plans, and therefore test, ask questions to them about their ability to execute it, those synergies on the timetable given.

Q. So Sunbeam developed its plan for combining itself with Coleman, correct?

A. That is normally how it works, and to the best of my recollection that is how it worked here.

Q. And they told Morgan Stanley what their expectations were with respect to

Smith

potential cost savings, correct?

A. And First Union and Bank of America.

Q. Do you know if any of Sunbeam's plans were estimates of potential cost savings dependent upon ideas or information that Sunbeam obtained from Coleman company?

A. I have --

MR. CLARE: Objection, foundation, call for speculation. You can answer.

A. I have no idea.

THE WITNESS: Sorry.

Q. Did you have any discussions yourself with Sunbeam on the subject of potential synergies prior to the funding of the senior loan?

A. I don't believe so.

Q. Did, do you know if Mr. Hart did?

A. I don't know.

Q. Did Mr. Hart ever tell you that Sunbeam's plans for potential cost savings had originated with Mr. Levin?

A. I don't recall that.

Q. In connection with the position you

Smith

took with the Leveraged Finance Committee concerning approval of the senior loan to Sunbeam, did you place any weight at all on any information that Sunbeam or Morgan Stanley had received from Mr. Levin concerning potential synergies?

MR. CLARE: Objection, foundation.

A. Not that I'm aware of.

Q. Do you have any basis today, sir, for saying that Morgan Stanley Senior Funding was defrauded as a result of false statements made either to it or Morgan Stanley or to Sunbeam, by Jerry Levin concerning potential synergies?

MR. CLARE: Foundation, calls for a legal conclusion.

A. I missed that, could you read that back to me.

Q. I'll state it again, sir.

As you sit here today, do you have any factual basis for -- let me start over.

As you sit here today, sir, do you believe that Morgan Stanley Senior Funding was defrauded as a result of statements made

Smith

by Jerry Levin to either Sunbeam, Morgan Stanley or Morgan Stanley Senior Funding concerning potential synergies that Sunbeam might realize by acquiring Coleman?

MR. CLARE: Same objections.

A. I have no idea.

Q. As you sit here today, sir, do you believe that Morgan Stanley Senior Funding was misled by any statements made by Jerry Levin to Morgan Stanley, to Sunbeam, or to Morgan Stanley Senior Funding concerning potential synergies?

MR. CLARE: Same objections.

A. No idea.

Q. Mr. Smith, let me show you what we're marking as CPH Deposition Exhibit Number 160, it is a one-page document that bears Bates number Morgan Stanley confidential 3143.

(Coleman (Parent) Holdings Exhibit 160, document bearing Bates number Morgan Stanley confidential 3143, marked for identification, as of this date.)

NOT A CERTIFIED COPY

Smith

Q. Have you ever seen this document before, sir?

A. I don't know. It doesn't look familiar.

Q. Put aside the handwriting. Have you ever seen the typed portion of this document before?

A. Yes, I guess I did. I guess I have.

Q. When was that?

A. I saw it yesterday. And I can't remember if I saw it when, during the transaction.

Q. As you sit here today, you have no recollection of seeing this during your work in February and March of 1998?

A. No, not really.

Q. Do you recognize the handwriting?

A. No.

Q. Looking at the, this list of 15 items, sir, --

A. Yes.

Q. -- do you know whether in connection with Morgan Stanley Senior

Smith

Funding's evaluation of potential synergies, that any of the items on this list were taken into account?

A. I really don't know.

Q. You have no knowledge that they were, correct, sir?

A. I have no knowledge they were, I have no knowledge they weren't.

Q. Do you have any information to suggest that the items on this list in any way affected the price that Sunbeam paid for Coleman company?

MR. CLARE: Objection, no foundation.

A. No, no idea.

Q. Do you have any basis for believing that the items on this list were critical to Sunbeam's assessment of Coleman's fair acquisition value?

MR. CLARE: Same objection.

A. No idea.

Q. Did anyone from Morgan Stanley or Morgan Stanley Senior Funding ever suggest to you, sir, that information that Sunbeam or

Smith

Morgan Stanley had received from Coleman relating to potential synergies was grossly overstated?

MR. CLARE: Objection to form and foundation.

A. I have no idea.

Q. Now, you indicated that the syndication was pulled from the market upon Mr. Dunlap's termination, correct?

A. It was shortly thereafter, the Monday or Tuesday after the weekend.

Q. And the reason for pulling the syndication from the market was Mr. Dunlap's termination, correct?

A. That was the, that was the catalyst.

Q. It didn't have anything to do with any information that Coleman company had provided to Sunbeam or to Morgan Stanley relating to potential synergies, did it?

A. No, not that I was aware of.

Q. Your decision to pull the syndication from the market didn't have anything to do with any information that you

Smith

had, you or anyone else from Morgan Stanley had received from the Coleman company related to the synergies?

A. No, it did not.

Q. Did you ever express to anyone that Jerry Levin should not continue to serve as the chief executive officer of Sunbeam because he had exaggerated the potential synergies that Sunbeam might achieve by acquiring Coleman company?

A. No.

Q. Do you have any knowledge concerning what synergies Sunbeam in fact did realize as a result of acquiring Coleman company?

A. I do not.

Q. Do you have any reason to believe that Mr. Perelman and others at McAndrews & Forbes did not expect Sunbeam to achieve substantial synergies from Coleman company?

A. Did you say did not?

Q. I'll ask the question over.

Do you have any reason to believe that Mr. Perelman or others at McAndrews &

NOT A CERTIFIED COPY

Smith

Forbes or Coleman (Parent) Holdings did not expect Sunbeam to achieve substantial synergies as a result of its acquisition of Coleman company?

MR CLARE: Objection, calls for speculation.

A. I really have no idea.

Q. My question is whether you have any reason to believe that today?

A. I have no reason to believe that today.

Q. In your communications with the bankers at Bank of America or First Union, did you ever indicate that the synergy figures that MSSF was relying upon in connection with evaluating the senior loan to Sunbeam had originated with Mr. Levin?

A. I don't believe so.

Q. Or the Coleman company?

A. I don't believe so.

Q. Or with McAndrews & Forbes?

A. I don't believe so.

Q. Or with Coleman (Parent) Holdings?

A. I don't believe so.

Smith

Q. Mr. Smith, let me show you what we're going to mark as Coleman (Parent) Exhibit 161, a three-page document, it bears Bates number CPH 1010442 to 444.

(Coleman (Parent) Holdings Exhibit 161, document bearing Bates number CPH 1010442 to 444, marked for identification, as of this date.)

Q. Earlier today, sir, you were attempting to recall the name of someone at McAndrews & Forbes named Irwin.

Was that Mr. Engelman?

A. I believe so. Isn't he the CFO?

Q. The reason I'm trying to assert, is this is a memo from Mr. Engelman to Mr. Levin concerning plans for a bank meeting on June 19.

Do you see that?

A. Yes.

Q. And there is a list of attendees that are anticipated to have attended that meeting from Morgan Stanley, from Bank of America and from First Union.

Do you see that?

Smith

A. I do.

Q. And you're listed as an attendee, do you see that?

A. I do.

Q. Do you recall attending a bank meeting on June 19 with representatives of McAndrews & Forbes, Mr. Levin?

A. Had a lot of meetings and my guess is I was probably there.

Q. Do you recall attending a meeting shortly after Mr. Dunlap's termination at McAndrews & Forbes offices in Manhattan where Mr. Hart, Mr. Smith, with you, Mr. Rankin and Mr. Kitts were present from Morgan Stanley?

A. I remember going to McAndrews & Forbes that week. I couldn't swear that those were the fellows in attendance.

Q. Mr. Smith, let me show you what we're going to mark for identification as CPH Exhibit Number 162. It's a document that bears Morgan Stanley Bates number 268988 through 891 and it's a Bank of America letterhead, memorandum from Deirdre Doyle to John H. Shannahan.

Smith

(Coleman (Parent) Holdings Exhibit 162, document bearing Morgan Stanley Bates number 268988 through 891, marked for identification, as of this date.)

Q. I'm not going to ask you to read the whole document, sir, but I'm going to refer you to a couple of entries in this document.

The first sentence indicates this is a report on a meeting held by McAndrews & Forbes offices on June 1998. Representatives of Bank of America, First Union and Morgan Stanley attended.

Do you see that statement?

A. Yes, I do.

Q. And there is a list of McAndrews & Forbes participants.

Do you see that?

A. Yes, I do.

Q. Does this refresh your recollection concerning your participation in a meeting at McAndrews & Forbes offices on June 1998?

Mr. Gittis, Mr. Levin, Mr. Shapiro, Mr. Engelman, Mr. Slotkin and Mr. Lipton of

NOT A CERTIFIED COPY

Smith

Wachtel Lipton were present?
A. Yes.
Q. Is it your recollection now that you were in fact present at that meeting?
A. Yes. I thought you were referring to a different meeting. I don't remember Kitts, for example, being at this meeting.
Q. Do you recall -- put the document down for a second, sir.
Do you recall at this meeting that Mr. Levin addressed his views of analysis that Coopers & Lybrand had done for Sunbeam relating to potential synergies or cost savings that Sunbeam might realize through the combination of Sunbeam and Coleman company?
A. Do I remember him commenting on it?
Q. Yes.
A. Yes.
Q. What do you remember Mr. Levin saying?
A. I think -- it is a long time ago. I think he had doubts about how realistic those were.

Smith

Q. Do you remember what words he used?
A. No.
Q. Do you remember how strongly he expressed his doubts?
A. No.
Q. Let me direct your attention to the bottom third of the first page of Exhibit 162. It starts out, there is a bullet point that starts "In reviewing Dunlap's 1998 EPS expectations for Sunbeam"?
A. Yes.
Q. I would like you to read beginning there through the bottom of the page.
A. Okay.
Q. Does this refresh your recollection at all on statements made by Mr. Levin concerning his views of the Coopers & Lybrand synergy analysis?
A. Not really. I just remembered at the meeting he was pretty derogatory toward the whole thing. I really can't say that it does jog my memory.
Q. Do you recall being advised that Coopers & Lybrand had been fired?

Smith

A. I think I do.
Q. And that the company was going to refuse to pay Coopers & Lybrand's fee?
A. I think I heard that too. I think I heard that too, yes.
Q. And the company was considering an action to recover the fees that Coopers & Lybrand had been paid?
A. I don't know about that.
Q. And did you understand, sir, from anything Mr. Levin had said concerning Coopers & Lybrand's study, that Mr. Levin was expressing the view that information or ideas that he had provided to Sunbeam concerning potential synergies before the acquisition took place were in any way exaggerated or unreasonable?
A. I don't remember him addressing that issue.
Q. When you left the meeting did you think that Mr. Levin had confessed to misleading Morgan Stanley --
MR. CLARE: Objection to form.
Q. -- relating to potential synergies?

Smith

A. I had no, no view on that. I wasn't part of the original synergy discussion way back when. He didn't comment here to the best of my recollection.
Q. I'm asking what your take-away was from the meeting.
When you walked out did you think that Jerry Levin just told us that he misled Morgan Stanley or Sunbeam concerning the potential synergies that Sunbeam might achieve by acquiring Coleman company?
A. That was not my impression.
Q. At any point, sir, after Mr. Dunlap's termination were you advised that Coleman (Parent) Holdings wanted to rescind the sale of its interest in Coleman company, get the stock back?
A. I think so.
Q. What do you recall about that?
A. Not much. Basically what you said, that is what they wanted to do.
Q. What was Morgan Stanley's or Morgan Stanley Senior Funding's position with respect to whether that was an advisable

NOT A CERTIFIED COPY

Smith

thing to do for Sunbeam?
MR. CLARE: Object to the form.
A. I don't remember.
Q. Do you recall Morgan Stanley or Morgan Stanley Senior Funding taking the position that Sunbeam should refuse to rescind the acquisition of Coleman company?
A. No.
Q. Do you recall coming to the conclusion that it would adversely affect Morgan Stanley Senior Funding's exposure on the senior loan if Sunbeam agreed to rescind the acquisition of my client's interest in Coleman?
A. No, I don't remember.
Q. When, sir, did Morgan Stanley -- let me ask a foundational question.
The Sunbeam senior loan has never been syndicated; is that correct?
A. True.
Q. When did you finally conclude that it would not be possible to syndicate the senior loan?
A. I don't know if I had posed it that

Smith

way. I think probably came to the conclusion you couldn't syndicate it in '98, sometime in the fall, and I don't know when we, when I decided that it would be very problematic to syndicate it in its current form.
Q. Do you recall whether you still thought throughout the course of 1999 that it might be possible yet to complete the syndication of the loan?
A. I didn't think it would be possible to syndicate the loan in the format that we had.
Q. And what do you mean by "the format that we had"?
A. As an all senior bank deal.
Q. What alteration did you think would be necessary?
A. I didn't know what would work, but I knew that you couldn't sell that much bank debt into the bank market, so that the bank debt was reduced by a form of, by form of capital markets, high yield or something.
Q. When did you come to that conclusion?

Smith

A. I don't remember.
Q. Do you think it was sometime in 1999?
A. It might have been.
Q. It might have been later than that?
A. I don't think so. Probably mid-'99.
Q. Did you have any continuing responsibility for monitoring the Morgan Stanley Senior Funding loan to Sunbeam after the loan closed in March of 1998?
A. The monitoring at Morgan Stanley somebody covered for it.
Q. Did you have any continuing responsibility of any sort after March of 1998 relating to the loan?
A. Yes.
Q. What was that?
A. That was to -- you said after March, so of course go through the syndication, restructuring, probably said syndicate it, pull it, talk to the other banks and to the -- to Levin about what might be -- what might be done, series of

Smith

amendments and waivers, then my involvement lessens as the credit folks and Mitch Petrick get more and more involved.
Q. Mitch Petrick's involvement was on behalf of the credit department?
A. No, it was on the part of the fixed income/high yield department. He had some, good experience on workouts, so they wanted to take advantage of that because it migrated from a distribution exercise to a recovery phase.
Q. Did you ever communicate in writing after March of 1998 relating to the Sunbeam loan?
A. I don't believe so.
Q. Did you ever communicate by E-mail?
A. I don't believe so.
Q. Did you ever receive E-mails after March of 1998 relating to the Sunbeam loan?
A. I can't recall.
Q. Is it possible that you did?
A. I guess some possibility.
Q. Did Morgan Stanley Senior Funding have any sort of system for rating the loans

NOT A CERTIFIED COPY

Smith

in its portfolio?

A. That was a credit department function, so I don't recall. I mean if it was, it was a credit department function and I don't recall.

Q. You don't recall whether there was a rating system of any sort?

A. Right.

Q. Do you know if the Sunbeam loan had some initial sort of rating or evaluation from the credit department when you first met?

A. Not specifically, but as part and parcel they would sign off and have to say that they were okay. I don't -- I can't recall what, if any, rating they put on it because I don't remember when the rating system started there.

Q. Before you left Morgan Stanley Senior Funding was there a rating system in place?

A. I believe so.

Q. How large a portfolio of loans does Morgan Stanley Senior Funding maintain?

Smith

MR. CLARE: Objection. What time period?

A. I don't know.

Q. Let's say in 1998. Apart from the Sunbeam loan, do you know how large a loan portfolio Morgan Stanley Senior Funding had at that point?

A. Not really, can't remember.

Q. Was it modest?

MR. CLARE: Object to the form.

A. I can't recall the numbers. I guess you could ask them.

Q. You just don't have a recollection one way or the other?

A. Yes, it's a long time ago.

Q. Was part of the business strategy of Morgan Stanley Senior Funding to maintain a substantial loan portfolio?

MR. CLARE: I object to the form.

A. The strategy of Morgan Stanley was to make loans, distribute them, hold a piece, that was the strategy.

Q. And the piece that you would hold would be the smallest piece you could

Smith

possibly hold?

MR. CLARE: Objection to form.

A. No, it would be a meaningful, meaningful piece.

Q. The pieces that were held after the initial syndication, were those sometimes later marketed?

A. Depending on the price, depending on the amounts, sometimes.

Q. You were the president of Morgan Stanley Senior Funding, --

A. Uhm-hmm.

Q. -- correct, sir?

But you didn't have any responsibility with respect to monitoring the performance of the loans in the Morgan Stanley Senior Funding portfolio?

A. That was a function that was the responsibility of the credit department.

Q. Who in the credit department would be responsible for evaluating the loans in, that were being carried in the Morgan Stanley Senior Funding portfolio?

A. I don't know the specific person

Smith

who was tasked with that responsibility, but the person who had the overall responsibility for the credit department to include the loan portfolio was Rick Felix.

Q. Were your views sought at any point by the credit department relating to the quality of any of the loans in the MSSF portfolio?

A. Yes.

Q. Were your views sought concerning the quality of the Sunbeam loan at any point?

A. I wouldn't say the quality. Views on what to do, sure, all the time.

Q. Was there a point, if there was a point, where Sunbeam -- excuse me, where Morgan Stanley Senior Funding wrote off some portion of the Sunbeam senior loan, took a reserve against it?

A. I think there were several points that they took off.

Q. Do you remember when that took place?

A. No, can't remember.

Q. Was your input sought at that time

NOT A CERTIFIED COPY

Smith

when the company first took a --
A. Yes.
Q. What was done, was there a write-off, was there a reserve?
A. It was a mark-to-market so we just wrote it down.
Q. Do you recall the amount of the first write-down?
A. I do not.
Q. Do you recall whether it took place in 1999?
A. Do not.
Q. Do you recall whether it took place later than that?
A. I don't remember.
Q. Let me go back to 1998. Do you recall whether Morgan Stanley wrote off any portion of the Sunbeam loan in 1998?
A. Don't know. I can't remember. Just can't remember.
Q. Have you ever seen any reports relating to how much, if any amounts Morgan Stanley Senior Funding has lost on the senior loan of Sunbeam?

Smith

A. No.
Q. Morgan Stanley Senior Funding now owns a substantial portion of Sunbeam's successor, American Household, correct?
A. Yes, to the best of my understanding.
Q. Do you know at what value Morgan Stanley Senior Funding carries its equity ownership in American Household?
MR. CLARE: Objection, no foundation, calls for speculation.
A. I have no idea.
Q. At the time you left Morgan Stanley do you know what Morgan Stanley Senior Funding's plans were for its investment in American Household?
A. No idea.
Q. You indicated that Mitch Petrick became involved in aspects of the senior loan, correct?
A. The senior loan of Sunbeam, yes.
Q. And do you know what the nature of his activities has been?
MR. CLARE: Objection.

Smith

A. Regarding the Sunbeam loan?
Q. Correct.
MR. CLARE: Objection on foundation grounds, calls for speculation.
A. Not lately.
Q. What was it prior to the time you left Morgan Stanley?
A. Don't, can't comment about that. Can comment about that summer he started to get involved with the credit people in terms of the meetings with the other banks and then McAndrew, basically Jerry and the company.
Q. That, you refer to "that summer," referring to the summer of 1998?
A. Summer of 1998.
Q. Did Mr. Petrick remain involved with Morgan Stanley Senior Funding's loan to Sunbeam through the entire time you were at Morgan Stanley?
A. To varying degrees I believe that's true.
Q. Do you know if he is still involved today?
A. Under supervisory conditions would

Smith

be my guess, but that is speculation on my part.
Q. But that's your belief, correct?
MR. CLARE: Well, objection on foundation grounds.
A. That is my speculation.
Q. That was the case when you left Morgan Stanley, correct?
A. I believe so.
Q. Did Mitch Petrick ever express the view to you that Jerry Levin had misled Morgan Stanley or Sunbeam relating to the potential synergies that Sunbeam could achieve in acquiring Coleman company?
A. No, I do not believe so.
Q. Was there ever a time, sir, where you were asked to preserve any documents or electronic records you had that related to the Sunbeam transactions?
A. I believe there were.
Q. Do you recall when that first occurred?
A. No.
Q. Do you recall who made that, gave

NOT A CERTIFIED COPY

01454918

Smith

you that direction?
A. I think it would be somebody from the legal department, so I don't have a name.
Q. Do you recall if it was shortly after the transactions closed?
A. I, my best recollection is it was late '98, but that's just an educated guess.
Q. Do you recall getting a written direction?
A. I believe so, as well as telephones, calls.
Q. What, if anything, did you do to preserve the documents and electronic records?
A. I gathered them up, gave them to whomever wanted them.
Q. Do you have a recollection as to who you gave them to?
A. Not any specific individual. I think it was somebody in the credit department. Excuse me, somebody in the legal department.
Q. Did you gather the materials personally?

Smith

A. Part of them were personal, part of them I had my assistant get.
Q. Who was your assistant back then?
A. I don't remember. The timing, I don't remember who it was.
Q. Is it someone who worked solely for you or did she work for other people also?
I'm assuming it is a woman, but I may be incorrect.
Was it a woman?
A. It was a woman and she worked for the group.
Q. Did she also work for Mr. Hart?
A. Yes, but more indirectly.
Q. Do you recall if there were other occasions after that initial inquiry, where you were asked to gather materials you had relating to Sunbeam?
A. My memory is faulty, but I would bet that I was asked at least two more times. When I say "I," anybody involved with the Sunbeam transaction.
Q. Why do you say that?
A. Why do I say everybody?

Smith

Q. No, why do you say it happened at least two more times?
A. Just my recollection that periodically something would come up from the legal department, or we get more phone calls saying are you sure you have given us everything, please double-check.
Q. Did you update your search, see if you had any new materials that you didn't have before?
A. We would research the files and the desks and all.
Q. Do you recall whether you received any such inquiry after my client filed this lawsuit against Sunbeam -- against Morgan Stanley -- I'm going to start over.
Do you recall whether you received an inquiry from the legal department after my client filed its lawsuit against Morgan Stanley in 2003, concerning whether you had any additional Sunbeam-related documents or electronic records?
A. When in 2003 was the suit filed?
Q. The spring of 2003.

Smith

A. So I was no longer there.
Q. You left Morgan Stanley?
A. First of February.
Q. February. How many communications or meetings, sir, would you say that you had with Sunbeam management in 1998 after Mr. Dunlap was terminated?
A. Probably 12 to 15.
Q. So 12 to 15 what, meetings?
A. Meetings.
Q. How many telephone conversations would you say you had?
A. Double that number probably. And let me be clear. Many of those meetings and almost all of those phone calls were conference calls, so there would be myself, two or three people from Morgan Stanley, the folks from the other banks.
Q. Were you cautioned at all, sir, by anyone not to maintain a written record of any of your communications with post Dunlap management at Sunbeam?
A. No.
Q. Did you make an effort to document

NOT A CERTIFIED COPY

Smith

in any way the substance of your communications with Sunbeam management during that time period?

A. I did not.

Q. Why was that?

A. There were other members of the team that were there to take the notes and write any memos that we wanted or needed.

Q. Who was doing that?

A. Again unclear at any particular time, but it would be folks like Michael Hart, Simon Rankin, or maybe a more junior person assigned to our group.

Q. In 1998, sir, were you expecting litigation to arise out of the loan that Morgan Stanley Senior Funding made to Sunbeam?

A. I personally was not.

Q. What about internal communications within Morgan Stanley, Morgan Stanley Senior Funding, sir, were you cautioned not to memorialize in notes or in memos internal communications relating to the Sunbeam transactions?

Smith

A. No.

Q. Were you instructed to keep any documents and notes or E-mails that you had, that you were generating and receiving in connection with your communications with Sunbeam management, after Mr. Dunlap was terminated?

A. I don't remember.

Q. It's possible that you were receiving things or generating things relating to your communications with Sunbeam management, but not preserving them --

MR. CLARE: Objection.

Q. -- during the time period after Mr. Dunlap was terminated?

MR. CLARE: Objection, foundation. Calls for speculation.

A. I don't think so.

Q. Do you think whatever you had or whatever you generated would still exist today?

A. If some -- if somebody took it or we turned it in, then they should have it.

Is that what you mean?

Smith

Q. Well, I'm asking you whether if you received any written communication of any sort relating to communications with Sunbeam management after Mr. Dunlap was terminated, took any notes relating to any of those communications, whether you believe that those materials should still exist today, or whether in the ordinary course you may have discarded them from time to time?

A. I really don't know. Anything I had when we got these requests were turned in.

Q. But in between requests if you were receiving things or generating things, were you under instruction to preserve it, or did you think if you had no need for it at that point in time for your personal use you could discard it?

A. Don't recall.

Q. Are you familiar with Morgan Stanley's policy with respect to document destruction?

A. Not really.

Q. Are you familiar with Morgan

Smith

Stanley's policy that employees are to discard drafts, notes, notebooks, diaries, telephone logs, message slips and other documents when they are no longer considered useful?

A. Yes, I guess I'm aware of that.

Q. Is that the policy that you personally followed while you were at Morgan Stanley?

A. Got rid of a lot of stuff when you no longer needed it.

Q. Do you recall doing that on any occasion relating to the work you did concerning Sunbeam?

A. No, I do not.

Q. Did you give instructions to the people in your group to maintain any documentation they had relating to any aspect of the work that was being done relating to Sunbeam?

A. No, I did not.

Q. You have indicated, sir, that you took one trip to Florida, correct?

A. I took one trip to Florida in early

NOT A CERTIFIED COPY

Smith

March, yes.

Q. Any other occasions relating to work that you did for Sunbeam where you traveled to Florida?

A. I think on at least one more occasion.

Q. When was that?

A. I think it was sometime in 1998. It could have been more, but at least one.

Q. What was the occasion for that trip?

A. The occasion was a bank meeting for the three banks and the Sunbeam management.

Q. Do you recall whether that was before or after Mr. Dunlap was fired?

A. It was after he was fired. This is with Mr. Levin and the team.

Q. Do you recall whether there were any other occasions where you visited in Florida concerning work being done for Sunbeam?

A. Like I say, at least once, could have been twice, could have been three times, but the years kind of blend.

Smith

Q. Is it the case that before the loans closed, the only occasion for you to travel to Florida was your meeting in March?

A. That is the best of my recollection.

Q. What about other forms of communication in Florida prior to the closing of the transaction at the end of March 1998?

MR. CLARE: The State of Florida?

MR. MARKOWSKI: With Sunbeam in Florida.

A. I thought we went over that a little bit before, but participate either partly in some of these conversations, conference calls with the company.

Q. So there were occasions where you spoke by telephone with people at Sunbeam?

A. Yes.

Q. Prior to the loan closing?

A. Prior to the closing.

Q. And we have seen your March 5 letter to Mr. Kersh, the highly confident letter you sent to Mr. Kersh in Florida?

A. Yes.

Smith

Q. Were there any other occasions where you corresponded with anyone in Florida prior to the closing of the loans?

A. You mean Sunbeam in Florida?

Q. Yes.

A. Not to the best of my recollection.

Q. What about receiving materials from Sunbeam prior to the closing of the loan transaction?

A. Not to the best of my knowledge, none.

Q. Sir, when you left the room earlier while I had a question pending, did you discuss with Mr. Clare how to respond to the pending question?

MR. CLARE: I instruct the witness not to answer the question.

A. So I won't.

MR. MARKOWSKI: I don't have anything further.

MR. CLARE: Neither do I.

THE VIDEOGRAPHER: The time is 4:49 and this completes the videotaped deposition of Mr. Bram Smith.

Smith

(Time noted: 4:49 p.m.)

_____

R. BRAM SMITH

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

NOT A CERTIFIED COPY

011951

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, PAMELA J. MAZZELLA, RPR, a Notary Public within and for the State of New York, hereby certify:

That R. BRAM SMITH, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of March, 2004.

PAMELA J. MAZZELLA, RPR

INDEX

WITNESS EXAMINATION BY PAGE
R. Bram Smith Mr. Markowski 5
INFORMATION REQUESTS
DIRECTIONS: 316:13
EXHIBITS
COLEMAN (PARENT) HOLDINGS FOR ID.
Coleman (Parent) Holdings Exhibit 151, document that bears Bates number Morgan Stanley confidential 65651 through 6574, marked for identification..... 66:13
Coleman (Parent) Holdings Exhibit 152, document bearing Bates number LAB 43, marked for identification..... 187:8
Coleman (Parent) Holdings Exhibit 153, document bearing Bates number Morgan Stanley 18885 through 18942, marked for identification..... 227:15
Coleman (Parent) Holdings Exhibit 154, document bearing Bates number FUNB 188 through 189, marked for identification..... 242:14
Coleman (Parent) Holdings Exhibit 155, document bearing Bates number FUNB 10440 through 10557, marked for identification.... 251:3
Coleman (Parent) Holdings Exhibit 156, document bearing Bates number FUNB 10583 through 10650, marked for identification.... 256:24
Coleman (Parent) Holdings Exhibit 157, document bearing Morgan Stanley Bates number 18702 to 703, marked for identification..... 260:11
Coleman (Parent) Holdings Exhibit 158, document bearing Bates number CPH 1392612, marked for identification..... 268:25
Coleman (Parent) Holdings Exhibit 159, document bearing Bates number CPH 1392969, marked for identification..... 272:15
Coleman (Parent) Holdings Exhibit 160, document bearing Bates number Morgan Stanley confidential 3143, marked for identification 281:21
Coleman (Parent) Holdings Exhibit 161, document bearing Bates number CPH 1010442 to 444, marked for identification..... 287:6
Coleman (Parent) Holdings Exhibit 162, document bearing Morgan Stanley Bates number 268988 through 891, marked for identification 289:2

through 10557, marked for identification.... 251:3
Coleman (Parent) Holdings Exhibit 156, document bearing Bates number FUNB 10583 through 10650, marked for identification.... 256:24
Coleman (Parent) Holdings Exhibit 157, document bearing Morgan Stanley Bates number 18702 to 703, marked for identification..... 260:11
Coleman (Parent) Holdings Exhibit 158, document bearing Bates number CPH 1392612, marked for identification..... 268:25
Coleman (Parent) Holdings Exhibit 159, document bearing Bates number CPH 1392969, marked for identification..... 272:15
Coleman (Parent) Holdings Exhibit 160, document bearing Bates number Morgan Stanley confidential 3143, marked for identification 281:21
Coleman (Parent) Holdings Exhibit 161, document bearing Bates number CPH 1010442 to 444, marked for identification..... 287:6
Coleman (Parent) Holdings Exhibit 162, document bearing Morgan Stanley Bates number 268988 through 891, marked for identification 289:2

NOT A CERTIFIED COPY

NAME OF CASE: Coleman (Parent) Holdings, Inc. -v- Morgan Stanley & Co., Inc.
DATE OF DEPOSITION: February 24, 2004
WITNESS: R. Bram Smith

ERRATA SHEET

PAGE LINE

___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____
___ ___ CHANGE: _____
___ ___ REASON: _____

Sworn to before me this _____ day of _____, 2004.

_____
(Signature of Witness)

_____
(Notary Public)
My Commission Expires:

NOT A CERTIFIED COPY

295,110

1996 Firmwide Performance Evaluations
Firmwide 360° Process

William H. Strong

North America

IBD \ Regional Coverage

Managing Director

Confidential *

NOT A CERTIFIED COPY

Evaluation Director:
Joseph R. Perella - 39214 (Primary)

011955

* Confidentiality: Specific feedback may not be attributed to an Evaluator unless you, the Evaluation Director, ask for and receive that Evaluator's permission.

EXHIBIT
tabbies
CPH 373
12/8/04 SSL

NOT A CERTIFIED COPY

014956

Self Evaluation

William H. Strong

Managing Director

BUSINESS GOALS & ACCOMPLISHMENTS

Comment on your role in achieving your business goals and objectives. Consider any of the following that are relevant: Important new business; Major new transactions; Key relationships developed/enhanced; New product development; Client upgrades/downgrade

1996 Has been my most productive year since joining the Firm in January of 1993. My personal revenue production by the end of the fiscal year will have increased for the fourth straight year to a total exceeding $70 million of Firm revenue (excludingthe revenue that results from the substantial amount of time that I spend advising other senior professionals for which I neither receive nor seek any credit). Highlights include successful completion of the Chrysler defense assignment ($4.5 million inFirmrevenue), the lead manager role for the IPO of Metromail from RR Donnelley which is the largest two-handed IPO that the Firm has completed ($7.5 million), completion of our first M&A assignment for Allstate; the divestiture of its reinsurance business ($3.5 million) and the lead manager role for the IPO of TeleTech, one of the most successful high-tech deals that we completed in 1996 ($3.3 million). In October and November, we will also complete the pricing of the following lead managed equity deals forwhich I led our efforts to be awarded the business and am participating in their execution to the extent necessary: Everen $80 million IPO, expected to price on Oct. 7 ($2 million in Firm revenue), TeleTech $125 million secondary, expected to price on Oct. 31 ($3+ million), Omniquip $100 million IPO expected to price in mid-Nov. ($3 million), and the Aftermarket Technology Corp. $70 million IPO expected to price in mid-Nov. ($2 million). I led or played a significant role in our efforts to solicit and complete first-time business for several companies including the following: Allstate-M&A, Circus Circus-investment grade debt, Figgie International-M&A, Globe Glass-M&A, Parker-Hannifin-investment grade debt and M&A defense, Primadonna Resorts-M&A, StationCasinos-high yield debt and convertible preferred stock, TeleTech-IPO, Everen-IPO, Omniquip-IPO, Aftermarket Technology Corp.-IPO, Tupperware-investment grade debt, Scotsman Industries-M&A and our first meaningful piece of business from Sam Zell- the saleof Old Orchard shopping center (a $265 million divestiture expected to close before calendar-year end) although Sam Zell also introduced me to TeleTech.While it does not appear to be recognized that I spend a substantial amount of time managing the regional offices, I feel as though many of my best accomplishments occured in this area in 1996. My 1995 Evaluation & Development Summary set out as an objective to `help get Canadian effort back on its feet` in 1996. I led our efforts in recruiting a new senior member of the Canadian effort which led to hiring Brad Crompton in February from Goldman Sachs. I played a key role in hiring Steve Mayer as an Associate fromWertheim Schroder and in facilitating the move by Eugene Siklos to Toronto.I rearranged the coverage of many of the accounts among the professionals. I kept everyone together-that is, no one quit during all of this. The result is that revenue is up over 50% (to over $30 million in Firm revenue) and we remain on track with mycommitment from the Spring of 1995 when I stated that we could get the Canadian revenue to a US$60 million run rate by fiscal 1998. In Chicago, I played the lead role in transferring Frank Oelerich to M&A from CFD (with fantastic support from Bruce Fiedorek, Brad Evans and Frank English) while assisting Frank in transitioning his accounts as well as building his group. This included playing a key role in convincing Sandy Thompsonto join the new M&A group in Chicago from JP Morgan. I also played thelead role in encouraging John Spence to establish a CSG group in Chicago as opposed to quitting and joining Merrill Lynch and doing the same thing. The result from both Frank Oelerich's and John Spence's changes is that their performances have meaningfully improved and the Firm is better for it. I also played an important role in recruiting David Togut to the Firm in equity research. I played the lead role in preventing Gordon Deanfrom leaving Morgan Stanley to join Salomon Brothers at a 60% increase in compensation as a Managing Director and to run their San Francisco office including lobbying with Gordon's wife to encourage him to stay. Lastly, I spent a substantial amount of time in April and May of 1996, in encouraging Chris Pasko to remain at the Firm in spite of `Bad Friday` and Frank Quattrone's onslought. I also managed to keep the lead manager role for both the Metromail and TeleTech IPO's even though Mark Wolfenberger wasthe analyst on both and neither deal had yet begun their roadshows. In summary, I feel an obligation to communicate withall of my `direct reports` at least once every several days (as well as many of their direct reports). This takes a substantial amountof time, but I believe leads to higher revenue (the regional offices will produce record revenue in 1996 approximating $260 million in Firm revenue, assuming we hit our targets as presented in the 90 day business reviews), lower turnover (no one quit fromthe North American regional offices in 1996), tighter budgeting, more accountabilty and better coordination on new business development as well as reporting to senior management of CFD and beyond. My 1995 Evaluation & Development Summary also set out asobjectives to `Focus on priorities-larger accounts` and `Maintain momentum in Chicago office.` In 1996, I received an incoming call from Arthur Martinez, CEO of Sears, Roebuck awarding Morgan Stanley the largest deal assignment ($1+ billion) that he willhave pursued as CEO. The transaction is ongoing. I receivedan incoming call from Allstate awarding Morgan Stanley the divestiture of its reinsurance business ($450 million deal closed on Sept. 16, 1996). We are discussing with Chrysler a significant recapitalization. The Chicago Office in 1996 will have a record year with Firm revenue exceeding $100 million for the first time from the largest number of transactions ever completed by the Office. This continues a trend I initiated in 1993 to broaden thepractice by covering a meaningfully larger number of accounts, to require each professional to cover accounts and to try to lower the percentage represented by the top five revenue-creating deals by growing the client list. This has strengthened the practice and made it less dependent on the `home run` deals. In summary, I was very pleased with my 1996 and the 1996 for my colleagues in the regional offices. Most importantly, I take great pride in being at Morgan Stanley in 1996 and being able to be a part of the tremendous success in 1996 for CFD, IBD and the entire Firm. It doesn't get alot better than this.

NOT FOR PUBLIC DISCLOSURE

01495 7

MORGAN STANLEY
CONFIDENTIAL
0085438

Self Evaluation

William H. Strong

Managing Director

CONTRIBUTION TO MS, DIVISION AND EXTERNAL/INDUSTRY-RELATED COMMUNITY

Comment on your contribution to the MS, Division and external/industry-related communities, especially in the areas of training, recruiting, Firm/divisional task forces, committees, events and administration, industry panel representation, etc.

As mentioned in Section 1, I spend a substantial amount of time in the administration of the regional North American CFD offices. Section 1 also comments on my recruiting successes in 1996 (e.g., Brad Crompton, Steve Mayer, David Togut and Sandy Thompson). In addition, I led the Firm's efforts in recruiting at the Kellogg School of Northwestern University. This led to offers and acceptances from several associates including Scott Mulcahy and Cathy Leonhardt. I also addressed the 1996 incoming AssociateClass on how to manage client relationships in the IBD. I kicked off the 1996-97 recruiting season this past week at the Kellogg School by giving the presentation on Morgan Stanley. I participated last year on the Promotion Committee. My volunteer activities include the Board of Trustees of The Bement School in Deerfield, Massachusetts and the Boards of Trustees of the Chicago Symphony Orchestra and Steppenwolf Theatre. With respect to the Chicago Symphony Orchestra, I chaired its Finance Committee this past year. This included leading the Symphony's successful effort to raise $78 million in a tax-exempt debt issue. The Symphony now has approximately $128 million of weekly-reset, floating, tax-exempt debt which I monitor for interest rate volatilityand whether or not we should hedge our floating-rate risk. I also was inducted into the Economic Club of Chicago a few weeks ago. I have agreed to address the Chicago Bar Association in January of 1997. Further, I am spending an evening at U.S. SenatorDan Coats (R-Indiana) home in November to discuss his political future regarding his re-election in 1998.

PROFESSIONAL DEVELOPMENT

What do you consider to be your three greatest strengths?

Judgement. This allows me to be value-adding to my colleagues as well as our clients. This has also served me well as a manager.–Initiative and work ethic. I work extremely hard and I like to work extremely hard. This allows me to be very responsiveand value-adding to my colleagues and our clients. This also allows me to be an effective salesman for the Firm because I do the detailed homework that is necessary.–Leadership. I lead by example. I love my job (believe it or not, I do). I earn people's trust and therefore can get them to do what they need to do to serve themselves, their clients and the Firm. This includes leadership in technical and other analytical skills. I know or get to know the details and I expect others to do so as well.

What attributes should you develop to enhance your professional effectiveness?

Greater knowledge of other areas of the Firm and what drives their success (e.g., asset management, operations).—

What skills and abilities are currently underutilized which you would put to greater use?

I believe that my management skills are underutilized and go substantially unnoticed.–My prior European experience with Salomon Brothers.–

What are you long-term career goals at Morgan Stanley?

I enjoy what I am doing and I enjoy working with virtually everyone with whom I come in contact at Morgan Stanley. I do have higher career aspirations at the Firm. However, I am not after any particular postion or job. It will happen when it happens.–Ultimately, as I have said in the past, I would like to earn my way onto the Morgan Stanley Board of Directors.–My wife and I very much enjoyed living in London. I was thrilled with my work experience in Europe. At the right time and only if it servesthe Firm's interest, I would like to move to London.

What training, other job experience(s) and/or Divisional management support would help you reach your goals and improve your effectiveness?

I believe it is primarily continued solid performance in my existing job that will help me reach my career goals at the Firm. However, other experiences always grow a person's skill set.—

What training have you participated in this past year?

I read the One Minute Manager. I regularly read (and I encourage others to read) the various memoranda that come in from Skadden, Arps; Wachtell, Simpson Thacher; Cleary, Gottlieb; et. al. No other meaningful training opportunities were made availabletome.—

NOT A CERTIFIED COPY

0014958

Review of Downward and Colleague Feedback
IBD Evaluation Form

William H. Strong

Evaluator Name	Rating	Comments
Commercial Orientation:		
		Downward Comments
		Outside IBD
Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	5	Bill is very strong at managing relationships in that he uses all the resources of the Firm to get business. He needs to be careful about conflicts; that is, he has a tendency to play out a situation that is ripe for potential conflict rather than confronting the situation. It is not going to go away and ignoring it only magnifies the potential explosion. Tireless new business solicitor.
Scott, Robert G (N) (Institutional Securities Mgmt)	5	Bill is very aggressive and he pushes clients hard to gain mandates. Bill is very bright and his approach to new opportunity is often creative. Very good record at first time business. Bill has some standing in the Chicago Market but nothing like D. Gray.
Professional Skills:		
		Downward Comments
		Outside IBD
Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	4	Very good knowledge of Firm products and services. Judgment and reasoning on potential conflicts was flawed, e.g., automotive retailing sector.
Scott, Robert G (N) (Institutional Securities Mgmt)	5	Bill has excellent business skills. He is good with equity products as well as with M&A. Bill is committed to MS and he works long hours. While Bill is bright, his judgment is sometimes flawed. He is so focused on his own agenda that he can lose perspective. He has the ability to steamroll colleagues while accomplishing his goals.
		Colleague Comments
		Within IBD
Abdel-Meguid, Tarek F (N)	4	Bill is an astute and highly effective banker, with a very high degree of commitment. Although he is quite easy to deal with, for some reason he is one of the most often complained about MDs (by his partners).
Feldman, Kirsten J (N)	5	Good overall product knowledge across the board; Bill could execute any kind of product. High level of commitment and initiative. Communicates often and well with teams. Judgment is usually very good (unless he is trying promote a specific outcome).
Kauffman, Richard L. (N)	6	Bill is extraordinarily committed to his clients and the Firm. He spends weekends entertaining clients and he works very long hours. He is an excellent project manager, keeping his fingers on appropriate details, asking the right questions, running the process nicely along. He hones in on the key client problems and attacks them.
Kirkland, Derek G. (N)	6	Outstanding professional skills at every level, from CFO communication to understanding of client politics to the mid-period discount rate adjustment of a DCF. Bill eats, sleeps, dreams about banking. The result speaks for itself.
Parr, Gary W. (N)	6	Bill knows our business as well as anyone and applies his knowledge very effectively. Initiative: Bill works very hard, constantly pushing himself to pursue more business opportunities. He communicates via voice mail more often and more effectively than anyone else in the Firm. Bill can at times impose himself into subjects where he should allow others with expertise and work effort to be the lead with the client. This desire to be the lead on some issues actually can reduce other's desires to help, which creates more work for Bill.
		Outside IBD
Alley, Steven J. (N) (Equity)	6	Bill is a great communicator. He is an excellent ambassador for the Firm. He is a tireless worker.
Gantsoudes, James G (N) (GCM - Joint Venture)	6	Bill's product knowledge across a diverse industry base is powerful when combined with his experience and market judgements. Great presentation skills, thinks well on his feet, good problem solver. Both oral and written communication skills at the highest levels.
Pasciucco, Gerard (L) (GCM - Joint Venture)		Excellent at communicating across the team on client matters. Very focused on client objectives. Hard working.

(v) - Voluntary Evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085440

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Rating	Comments
Friedman, Philip W. (N) (Global Investor Group)	5	Bill has always impressed me with his ability to quickly grasp the key issues of any industry. His presentation skills (at pitches and recruiting meetings) are very strong. My only criticism of Bill is that he needs to gain the respect of the research Analysts. He does not give them the warm and fuzzy feeling that he cares about their franchise.

Leadership and Management Skills:

Downward Comments

Outside IBD

Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	4	Strong advocate of regional offices in U.S. Took too long to clarify Canadian unit's responsibilities by individual, i.e., Crompton& Dey. Judgment and reasoning at times peculiar. Example: Told us Gordon Dean had offered to move to another firm after he (Bill) brought under control automotive retailing potential conflicts; he was just using poor judgment and infecting John Adams with it as well. Chicago team developing nicely to his credit.
Scott, Robert G (N) (Institutional Securities Mgmt)	5	Bill has good professional skills and he leads by example. He pays attention to what his people are doing and they appreciate it. He is a good communicator, frequent voice mailing. Sometimes he seems overly concerned with getting attention.

Colleague Comments

Within IBD

Abdel-Meguid, Tarek F (N)	3	I believe Bill has stature which is deserving of greater accomplishment in this arena than has been the case.
Feldman, Kirsten J (N)	4	Communicates well across the Firm. Sets a good example in terms of work ethic. Could be more straightforward and upfront with fellow MDs particularly with respect to conflicts and new business, i.e., he did not tell Munger and myself that someone else had been hired on a project we were pitching for until a week later while we were continuing to do work. The client ended up telling us, which was quite embarrassing.
Kauffman, Richard L. (N)	5	While Bill is an effective leader, I get the impression that he is a little too demanding on his direct reports. They are afraid of Bill's reaction if they do not perform. It's great to set high standards, but I hope he's not giving ulcers. The effect of this tendency is multiple asking of the same question by team members, "are you sure;" and blue books that weigh in by the pound.
Kirkland, Derek G. (N)	6	Outstanding. I would follow Bill anywhere (almost). Bill is the kind of colleague that will keep me at MSCo. long after the money is in the bank.
Parr, Gary W. (N)	4	Bill leads by example with his hard work and initiative. Others are led by this effort. See previous question.

Outside IBD

Alley, Steven J. (N) (Equity)	-	N/A
Gantsoudes, James G (N) (GCM - Joint Venture)	5	Bill gets the most out of his people. He is a good mentor; he helps develop younger professionals and is a great motivator. He knows what's going on with each of his staff and has gained their loyalty by his fair treatment.
Pasciucco, Gerard (L) (GCM - Joint Venture)	-	Leads by example; great player/coll. A pleasure to work with.
Friedman, Philip W. (N) (Global Investor Group)	5	Bill does a great job at providing leadership to the bankers in Chicago. The bankers in his region are among the hardest working I have seen. Again, my only concern is that he is not as sensitive as he should be to the research franchise of the Analysts. This is mostly true of the tech Analysts, who are admittedly the most difficult group to deal with.

NOT A CERTIFIED COPY

0 14960

(v) - Voluntary Evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

MORGAN STANLEY
CONFIDENTIAL
0085441

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Rating	Comments
Firm Contribution:		
		Downward Comments
		Outside IBD
Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	4	Makes strong effort at contributing across the Firm. Too quick to accuse others of using unfair practice to lobby for their point of view, e.g., Kirsten on auto retailing, no basis in fact. Strong salesman for regional corporate finance; supports regional offices.
Scott, Robert G (N) (Institutional Securities Mgmt)	5	While Bill is helpful to others, some question his motives. He is very ambitious and this ambition is occasionally too close to the surface. Our market share had improved in Chicago; what happened this year?
		Colleague Comments
		Within IBD
Abdel-Meguid, Tarek F (N)	4	His colleagues seem to be wary of his motives generally, I believe, because the manner in which he deals with certain external and clients' matters (i.e, with greater shrewdness) is interpreted as the way in which he deals with his colleagues.
Kauffman, Richard L. (N)	6	Bill is a franchise player. He represents the Firm well in the region. He contributes to committees, recruits and tries to build his team. He works to support other departments and tries to promote a partnership culture. He's probably the only colleague who will ask my opinion or support on a partner-to-partner basis.
Kirkland, Derek G. (N)	6	Outstanding. Bill knows our Firm, and works broadly for the franchise as well as narrowly on a deal by deal basis.
Parr, Gary W. (N)	5	Bill works hard for MS. As noted, he can at times appear to be reaching for personal gain in front of a client or colleagues rather than promoting others on the team who have expertise or have done the work. Bill represents MS well in the community, and is clearly building a reputation in the Midwest for himself and MS which will bring in business.
		Outside IBD
Alley, Steven J. (N) (Equity)	6	Excellent one Firm player.
Gautsoudes, James G (N) (GCM - Joint Venture)	6	Incredibly diligent professional who is willing to do anything to win a mandates. By virtue of this intensity Bill is recognized as someone who enhances the value of the Firm. Broad based contributor as evidenced by Firmwide activities.
Pasciucco, Gerard (L) (GCM - Joint Venture)		Very aggressive in trying to get more business across the Firm; tries to make everyone look good. A pleasure to work with.
Friedman, Philip W. (N) (Global Investor Group)	4	Bill has done a great job at the recruiting functions I have been involved with, Northwestern recruiting. Bill does not appear to be as interested in preserving the franchise of the research Analysts as he should be. He was not as sensitive as he should have been during the Metromail and Teletek transactions. Chuck was going through a difficult crunch period, and Bill was as demanding as ever.
Overall Rating and Summary Comments: Is this individual on track? What does this individual need to do to get to the next performance and/or promotion level?		
		Downward Comments
		Outside IBD
Perella, Joseph R. (N) (EvDir) (Institutional Securities Mgmt)	5	Last year I recommended Bill not try so hard, to say no once in a while to a request for his involvement. He has improved greatly and seems to be a bit more relaxed. However, there is still a tendency to be accusatory about NY colleagues, perhaps it's the pressure, but he needs to watch this.
Scott, Robert G (N) (Institutional Securities Mgmt)	5	Bill has high potential. He has some problems with senior colleagues which must be dealt with to allow him to move on.

(v) - Voluntary Evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085442

Review of Downward and Colleague Feedback

IBD Evaluation Form

William H. Strong

Evaluator Name	Rating	Comments
		Colleague Comments
		Within IBD
de Montfort, Piers (N)	4	Bill is a great team player regularly communicating updates and ensuring a cross boarder team is kept up to speed. His commitment is restricted by the time of day many of his messages are left. Strong and superlative manager of people and teams.
Kirkland, Derek G. (N)	6	See previous question.
Parr, Gary W. (N)	5	Great banker with high level of productivity. Allow others to share in light with clients a little more so that they may grow and stay motivated.
		Outside IBD
Alley, Steven J. (N) (Equity)	-	N/A
Gantsoudes, James G (N) (GCM - Joint Venture)	6	Bill is on track to be an outstanding senior banker.
Friedman, Philip W. (N) (Global Investor Group)	5	Bill is clearly on track. The only criticism I would levy is a need to be more sensitive to the Analyst franchise. This is true in general of more regional coverage Officers than the industry coverage Officers.

NOT A CERTIFIED COPY

011962

(v) - Voluntary Evaluation

Legend for degree of involvement: (E) Extensive Involvement; (N) Normal Involvement; (L) Limited Involvement; (U) Unable to Evaluate

Legend: (EvDir) Evaluation Director; (CoDir) Evaluation Co-Director; (DirMgr) Direct Manager

Review of Upward Feedback
IBD Evaluation Form

William H. Strong

Ratin	Comments

Leadership

* 6 *Bill leads by example. He is as hard working and productive as anyone I've seen in the business; anyone. He uses his time extremely efficiently. From my perspective it is a delight to work with Bill because he gets just as involved as he needs to, not too much or too little. He has made a dramatic (positive) change to the Chicago office in terms of work ethic and strategic direction. He has us focused on the right accounts and it is clearly reflected in the revenue production since 1993.*
* 6 *Sets great vision. Very clear, calm mostly. Works hard.*
* 5 *Good team leader. Treats people fairly and with respect. Is open and is a good communicator. Strong work ethic and leads by example.*
* 5 *Bill provides an excellent example of energy, commitment and motivation in developing business. Both in terms of long-term relationship building and specific transactional focus.*
* 5 *Bill is an extremely clear and focused leader who articulates the objectives for our business unit and consistently provides whatever assistance is needed to achieve those objectives. He is extremely fair while at the same time being demanding. He sets very high standards for those who work for him, but asks nothing of his subordinates that he is not prepared to do and more.*
* 5 *The vision articulated could be slightly more customized, i.e., rather than to simply dominate the market place. However Bill's energy, enthusiasm, commitment inspire people around him to dominate. Bill has reacted quickly and effectively whenever we have had an issue that could not be resolved internally, e.g., sorting out coverage (Brad C. wanted the list revised after 6 mos.). Bill's work ethic sets a terrific example and positions Bill to resolve many issues, i.e., great credibility.*
* 6 *Bill is a very hard working, outstanding banker and manager. He has all of the qualities mentioned in this category in abundance. It is hard to over-estimate the amount of respect for him based on his positive attitude and commitment to the job. He truly leads by example and has been the individual most responsible for the success of the regional offices.*
* 3 *Bill appears to generate a fierce loyalty among his troops but is quick to point fingers for missed business. Is loyalty based upon respect or fear? Will stretch the truth or omit relevant facts if it improves his position.*
* 6 *Extremely commercial. Always seeking opportunities to make money for the Firm. Bill leads very much by example; among the strongest (if not the strongest) work ethic of any MD I know. Willing to spend time coaching those who work for him.*
* 6 *Bill is an excellent leader. Always willing to help. Focused on revenues. Very good coach. Strong problem solver. Committed to leadership role. Leads by example.*
* 6 *Bill is very dedicated to building the MS regions into a much stronger and more profitable part of the Morgan Stanely I.B. universe: clearly demonstrated to date. Bill is a terrific role model, both a leader as well as a mentor and when needed, a friend. Highly respected by me, as well as the clients I cover with him. For someone so high up, Bill has spent significant time with me, grounding me in the skills I will need to progress and become a great Investment Banker. First class banker, first class person.*
* 6 *Bill is arguably the best coverage officer I have worked with. The client is always Bill's first objective. He actively seeks the opinions of other team members to come up with the right answer for the client. Bill is outstanding at dealing with difficult clients. He also has an outstanding commercial sense. Bill, despite his schedule, always makes a point of offering feedback and encouraging the team.*
* 6 *Bill is a strong leader. He communicates effectively and keeps team members informed. He clearly identifies expectations and delegates responsibility. The only deficiency is that Bill does not spend much time teaching or coaching, although that is tempered somewhat by the fact that 1996 has been an incredibly busy year for all of us.*

Management

* 6 *Bill is a compassionate manager. Despite being incredibly busy with clients and transactions, Bill takes the time to maintain a close personal relationship with everyone in the office and I believe the other regional offices as well. He is an excellent communicator, he has great judgment, he confronts conflict both internally and externally and resolves them logically. He is totally honest and trustworthy. Simply put, Bill is the best manager I've seen in my career.*
* 6 *Great delegator. Good encouragement. Insightful judgments. Helpful in Firm. Concerned with colleagues.*
* 4 *A good manager. Provides real time feedback (very unusual in my experience). Is honest and straight forward to deal with. Is a good facilitator in making sure the organization is supporting regional initiatives.*
* 5 *Bill's greatest strength as a manager is his position of full participation by mid and junior level professionals.*
* 6 *Bill does an excellent job of delegating clear and full authority and accountability. I believe that each one of his reports understands what is required of them and how they will be judged. He is particularly focused on providing whatever resources we believe the Firm needs to devote to a particular assignment and ensuring that we get them.*
* 5 *I support Bill's management style in spades. He gives us lots of room so that we can build and be accountable for one franchise while on the other hand he ensures we have the resources and is available as required to assist in resolution of office issues. Bill is a direct communicator and lets us know where we stand at all times. Bill was more involved in '96 than '95 because of recruiting etc. to the benefit of the franchise. We are increasing market share.*
* 5 *Bill is available to anyone in the office at all times. This direct participation is important to his effectiveness as a manager. He is close to what is going on and gives direction and resolves conflict before it has begun. Even when we disagree he will listen and respond thoughtfully. This is important in creating an environment of fairness.*

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085444

Review of Upward Feedback

IBD Evaluation Form

William H. Strong

Ratin	Comments
* 4	Bill is a talented manager in terms of motivating his direct subordinates but has a tendency to overstate his involvement in transactions and unilaterally make decisions about resources that are detrimental to other parts of the division. A savvy and aggressive style which manifests itself in dubious ways at times, especially with regard to trust.
* 6	Provides support internally and with clients when needed; otherwise, delegates where appropriate. Bill does an outstanding job of keeping team members informed via voice mail and cc mail.
* 6	Bill juggles many balls effectively in his management role. Has been very helpful to us in Houston in organizing our office. Has very strong natural management capabilities. Does not let management responsibilities slip due to competing time pressures.
* 5	Bill is terrific trainer and support of junior bankers. He is very demanding and can be critical. I view him as a professor, both in control of the grade as well as developing the student. He is very good at both. I enjoy working with Bill. Should encourage and participate more office functions to build strong bonds between people. I feel free to talk to Bill and he maintains an open door policy. I may have left MS without Bill's assistance and guidance.
* 6	Bill delegates full responsibility but doesn't disappear from projects. Bill always makes sure all team members are part of important decisions. While Bill pushes people hard, he does recognize other time commitments.
* 5	Bill is also an outstanding manger. He identifies the problem and assigns the tasks to be completed. He solicits input from team members and does a good job of including team members in the decision making process. He also works to provide opportunities for junior team members to take an active role in client presentations or board meetings.

Summary Comments

* 6	Bill is a great banker, a hard worker, a driven professional and a tough competitor. He should do more within MS. He should be promoted to more responsibility. He is tough but fair.
* 5	Bill is an effective leader and a good manager which is an unusual combination.
* 5	Bill is very effective in his role.
* 6	Bill is an extremely effective senior banker. His commercial orientation as well as his overall investment banking skills are outstanding. He is extremely focused and organized, and I simply don't know of any Managing Director who works harder or is more committed to his job than Bill.
* 5	Bill is tremendously effective at both a manager/overseer of our business and an advocate for additional resources. His limitation is that he is not really involved in calling on Canadian clients (not his job) and from Chicago it is sometimes difficult to generate a coordinated view amongst departments.
* 6	Bill is absolutely effective in his job. To be even more effective I would like to see him be more supportive on enhancing productivity through better utilization of resources. This is our key to growing revenue in my opinion.
* 6	Extremely.
* 6	Bill is an excellent leader/manager. Does a super job in his role as regional office head.
* 6	Extremely.
* 6	Bill is incredibly effective in his job and serves as a role model (in most respects) for all of us in the Chicago office. The one thing which he should stop doing is exaggerating the truth, particularly with clients. It hurts his credibility, particularly with junior team members who know that he is exaggerating.

NOT A CERTIFIED COPY

011964

1996 Firmwide Performance Evaluations

V. 1

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of Evaluations *	Average Rating +	Percentage of Evaluators Selecting Rating*						
						Very Good		Outstanding	
			Not Observed	Needs Improvement	Good	Top 50%	Top Third	Top 20%	Top 10%
			(-)	(1)	(2)	(3)	(4)	(5)	(6)
Downward Evaluations	2								
Commercial Orientation		5.0	-	-	-	-	-	100%	-
Professional Skills		4.5	-	-	-	-	50%	50%	-
Leadership and Management Skills		4.5	-	-	-	-	50%	50%	-
Firm Contribution		4.5	-	-	-	-	50%	50%	-
Overall Downward		5.0	-	-	-	-	-	100%	-
Colleague Evaluations	9								
Commercial Orientation		5.6	-	-	-	-	11%	22%	67%
Professional Skills		5.3	-	-	-	-	22%	22%	56%
Leadership and Management Skills		4.5	11%	-	-	11%	33%	33%	11%
Firm Contribution		5.2	-	-	-	-	22%	33%	44%
Overall Colleague		5.1	11%	-	-	-	22%	33%	33%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085446

596410

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

Not Observed = (-), Unsatisfactory=(1), Development Required=(2), Meets Requirements =(3), Exceeds Many Requirements=(4) and Consistently Exceeds All Requirements=(5)

1996 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Summary of Performance Ratings and Distribution

IBD Evaluation Form

	Number of Evaluations *	Average Rating +	Percentage of Evaluators Selecting Rating*						
			Not Observed	Needs Improvement	Good	Very Good		Outstanding	
						Top 50%	Top Third	Top 20%	Top 10%
			(-)	(1)	(2)	(3)	(4)	(5)	(6)
Upward Evaluations	13								
Leadership		5.5	-	-	-	8%	-	31%	62%
Management		5.3	-	-	-	-	15%	38%	46%
Overall Upward		5.5	-	-	-	8%	-	23%	69%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085447

001496

* Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement.

+ Excludes Not Observed ratings.

Not Observed = (-), Unsatisfactory=(1), Development Required=(2), Meets Requirements =(3), Exceeds Many Requirements=(4) and Consistently Exceeds All Requirements=(5)

1996 Firmwide Performance Evaluations

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings

IB

	Degree of Involvement	Performance Criteria: Commercial Orientation	Professional Skills	Leadership & Management	Firm Contribution	Average	Overall Rating
Downward Evaluators							
Outside Division							
Joseph R. Perella	N	5	4	4	4	4.3	5
Robert G Scott	N	5	5	5	5	5.0	5
Downward Average*		5	4.5	4.5	4.5	-	5
Colleague Evaluators							
Within Division							
Tarek F Abdel-Meguid	N	5	4	3	4	4.0	4
Piers de Montfort	N	4	4	4	5	4.3	4
Kirsten J Feldman	N	6	5	4	5	5.0	5
Richard L. Kauffman	N	6	6	5	6	5.8	6
Derek G. Kirkland	N	6	6	6	6	6.0	6
Gary W. Parr	N	5	6	4	5	5.0	5
Outside Division							
Steven J. Alley	N	6	6	-	6	6.0	-
Philip W. Friedman	N	6	5	5	4	5.0	5
James G Gantsoudes	N	6	6	5	6	5.8	6
Gerard Pasciucco	L	-	-	-	-	-	-
Colleague Average*		5.6	5.3	4.5	5.2	-	5.1

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085448

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement

Legend:
(v): Voluntary Evaluation
Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited
Rating: (-) Not Observed; (1) Needs Improvement; (2) Good; (3) Very Good-Top 50%; (4) Very Good-Top Third; (5) Outstanding-Top 20%; (6) Outstanding-Top 10%

Evaluatee: William H. Strong
Level: Managing Director
Division: IBD
Department: Regional Coverage

Detail of Performance Ratings

IBD Evaluation Form

	Degree of Involvement	Performance Criteria: Leadership	Management	Overall Rating
Upward Evaluators				
Evaluator 1	E	6	6	6
Evaluator 2	E	5	4	5
Evaluator 3	E	5	6	6
Evaluator 4	E	5	5	5
Evaluator 5	E	6	5	6
Evaluator 6	E	6	6	6
Evaluator 7	E	6	6	6
Evaluator 8	E	6	5	6
Evaluator 9	N	6	6	6
Evaluator 10	N	5	5	5
Evaluator 11	N	3	4	3
Evaluator 12	N	6	6	6
Evaluator 13	N	6	5	6
Upward Average*		5.5	5.3	5.5

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0085449

*Excludes ratings from evaluators who indicated an assessment was based on Limited Involvement

Legend:

(v): Voluntary Evaluation

Degree of Involvement: (E) Extensive; (N) Normal; (L) Limited

Rating: (-) Not Observed; (1) Needs Improvement; (2) Good; (3) Very Good-Top 50%; (4) Very Good-Top Third; (5) Outstanding-Top 20%; (6) Outstanding-Top 10%

PAGE INTENTIONALLY LEFT BLANK

NOT A CERTIFIED COPY

0114969

1996 Firmwide Performance Evaluations

Evaluatee	: Strong, William H.	**Evaluation Director :**	Perella, Joseph R.
Title	: Managing Director	**Signature:**	
Div/Dept	: IBD \ Regional Coverage	**Date:**	

Review of 1996 Firmwide Performance E Performance

Accomplishments:

Summarize what the evaluatee accomplished in 1996 relative to objectives/responsibilities. Highlight any significant contributions or business done. Comment on how this individual has improved his/her performance during 1996.

Great revenue year for Bill, for Chicago and for the regional offices. Notables: Chrysler defense, IPO Metromail, Allstate M&A, IPO Teletek, others. Hand on management of regions; always there for troops. Career saving moves: Oelerich, Spence, Dean, Pasko. Recruiting: Crompton, Sandy Thompson, David Togut. Great first-time business results. Crisis management: Wolfenberger leaves, we keep Metromail and Teletek.

Commercial Orientation:

Hungry, aggressive coverage officer; pushes hard to get mandates. Tireless new business pursuit; excellent first-time business results. Focuses on client needs, on bringing all MS resources to bear on opportunity. A tornado causes destruction; needs to be a bit more careful about conflicts. They don't go away, we have to deal with them straight up.

Professional Skills:

Knows our business as well as anyone and applies such knowledge well. Initiative: One of the hardest working MD's, tireless communicator. Presentation skills are very strong. Eats, sleeps and drinks investment banking; entertains clients on weekends. Sometimes imposes himself into subjects where others have more expertise; this can cause him more work in the end if not corrected. Steamroller okay on new business, not internally.

Leadership and Management Skills:

Strong advocate and supporter of MS regional effort. Clearly able to get his people to work hard; leads by example. Be more straight forward and upfront with other MD's. Seen to exaggerate the truth, with clients, thereby hurting his credibility with junior team members. Productivity; resource utilization; demands on direct reports; Are they then in overkill mode because they operate in fear?

Firm Contribution:

Tries hard to contribute Firm wide, e.g. PCS. Franchise player. Very active in pro bono work. Ambition can drive his to act/decide in a manner that causes some of his partners to see him as reaching for personal gain rather than promoting others who have the expertise or have done the work. A hard driving person like Bill have to continue to work hard on this. Be more sensitive to research Analyst's franchise issues.

Overall Rating and Summary Comments:

Great potential to be a Senior Banker. Deal with problems you have with senior colleagues in order to move up.

Objectives / Initiatives:

NOT A CERTIFIED COPY

014970

MORGAN STANLEY
CONFIDENTIAL
0085451

Evaluatee : Strong, William H.
Title : Managing Director
Div/Dept : IBD \ Regional Coverage

Evaluation Director : Perella, Joseph R.
Signature: _____
Date: _____

Review of 1996 Firmwide Performance E Performance

What is the Evaluatee being asked to do in 1997? Be specific about goals and responsibilities. Are there any job experiences/assignments or training activities that you would recommend to improve identified development needs and performance?

Bill should continue to enhance MS's franchise; he is one of the few who have the force of personality as well as the skills to do so. His ambition is so close to the surface, however, that it can dilute his effectiveness and trust, internally at MS. Evaluatee's Comments: I have enjoyed 1996; it has been a great year. I appreciate the candor of the comments. The issues regarding dealing with fellow partners result from one incident: Cormax-Cross Latinal, et. al. I feel I am being penalized by others when I called foul on what they were doing. It is clear to me that the fact pattern and sequence of events have never been understood. Having said that, I will redouble my efforts in 1997 to address and be sensitive to the issues. This issue stung me in the reviews as I generally strive to be a team player and demand the same from others. I look forward to a successful and fun 1997. Again, thanks for the comments.

NOT A CERTIFIED COPY

016971

MORGAN STANLEY
CONFIDENTIAL
0085452

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY
FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

VIDEOTAPED DEPOSITION OF BRUCE FIEDOREK

New York, New York

Monday, December 6, 2004

CONFIDENTIAL

Reported by: Adrienne M. Mignano
JOB NO. 168050

NOT A CERTIFIED COPY

01497

December 6, 2004
1:00 p.m.

Deposition of BRUCE FIEDOREK, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York, pursuant to Notice, before Adrienne M. Mignano, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for Plaintiffs
One IBM Plaza
Chicago, ILL 60611-7603
BY: ROBERT L. BYMAN, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Defendants
655 Fifteenth Street N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.
JIM DOYLE, ESQ.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. Bruce Fiedorek in the matter of Coleman versus Morgan Stanley.

This deposition is being held at Kirkland & Ellis located at 153 East 53rd Street, Manhattan, New York, on December 6, 2004 at approximately 12:58 p.m.

Will counsel please introduce themselves.

MR. BYMAN: My name is Bob Byman for the plaintiff.

MR. CLARE: Thomas Clare from Kirkland & Ellis, LLP here on behalf of Morgan Stanley and also the witness, Bruce Fiedorek.

I have with me Mr. Jim Doyle from Morgan Stanley's law department.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

BRUCE FIEDOREK, called as a witness, having been duly sworn by a Notary Public, was examined and

testified as follows:

EXAMINATION BY
MR. BYMAN:

Q. Would you state your full name for the record, please.

A. Bruce Fiedorek.

Q. Mr. Fiedorek, before we went on the record, I asked your lawyer to advise you that I have a learning disability about sounds. And if I mispronounce your name, I don't intend to and I don't intend to be rude. I'll do my best.

I'd also like to ask you to do your best to listen to my questions and answers them. And if for some reason you don't understand a question, will you tell me that?

A. Yes, sir.

Q. Mr. Fiedorek, would you tell the ladies and gentlemen of the jury where you reside?

You have already said that before this, but we need to do this on the sworn portion.

A. Yes, I reside in New York City.

Q. How old are you, sir?

NOT A CERTIFIED COPY

A. 53.
Q. What is your educational background?
A. Public high school; college, Yale, 1973; Columbia, MBA, 1976.
Q. Would you tell us how you have been employed since 1976?
A. I have been employed by Morgan Stanley since 1976.
Q. Can you take me through the titles you have held at Morgan Stanley?
A. I entered as an associate, became a vice-president approximately five years after entering Morgan Stanley or four years. Two years later became a principal, and two years after that, which was 1984, became a managing director. And I was a managing director through early 1997. And while maintaining that title, I was made a vice chairman of the securities business of Morgan Stanley in early 1997. And in 2003, I believe it is early 2003, I went on a revision of status to become a senior advisor.
That's my current title, senior advisor.

Q. In your current capacity, to whom do you report?
A. I actually report to Vicram Pandit, who is president of the securities business of Morgan Stanley.
Q. When you were vice chairman, to whom did you report?
A. Also to Vic.
Q. So there were no changes in your reporting duties as a result of your change in title, at least to senior advisor?
A. No, same reporting line.
Q. Were there any changes in your responsibilities?
A. My role as senior advisor simply reflects that I'm no longer spending full time on Morgan Stanley business. I'm involved in some other personal activities in addition to my continuing professional role of Morgan Stanley.
Q. Do any of those personal activities have to do with investment banking?
A. No, sir.
Q. At any point in your career at Morgan Stanley, did William Strong report to

you?
A. No, sir.
Q. Did he ever report to you through an intermediary?
A. No, sir.
Q. Did you ever have any supervisory relationship to Mr. Strong?
A. No, sir.
Q. Mr. Fiedorek, have you ever given a deposition, before?
A. Yes, sir.
Q. So I take it that you are generally familiar with the process?
A. Yes, sir.
Q. As you know, we are here today because of a lawsuit between Coleman Partners Holdings and Morgan Stanley and it involves a transaction of Sunbeam Corporation.
Are you aware of that?
A. Yes, sir.
Q. Have you ever seen any of the pleadings in this case?
A. No, sir.
Q. What, if anything, did you do to prepare yourself for today's deposition?

A. I had a meeting with counsel.
Q. Approximately how long did that take?
A. Approximately two hours.
Q. And by counsel, you mean Mr. Clare and Mr. Doyle?
A. Yes.
Q. Did that occur today?
A. Yes, sir.
Q. And was anything shown to you that refreshed your recollection?
A. I was shown some materials, yes, sir.
Q. Did any of those materials help you recall things?
A. Only in a very limited way.
Q. Well, to the extent that they refreshed your recollection at all, do you recall what it was that you saw?
A. Well, I was shown -- you want --
MR. CLARE: What he --
A. I'm not sure I understand the question. You're looking for a description of what I was shown?
MR. CLARE: His question is a

NOT A CERTIFIED COPY

little different than that, and appropriately limited to documents that you were shown that refreshed your recollection in some way about the historical events.

So to the extent that documents refreshed your recollection, you can identify the documents that you recall.

A. I would say that the documents that refreshed my recollection were limited to what my involvement with the Sunbeam transaction was, and Sunbeam as a client. It was quite limited.

Q. Do you recall any of the things that you saw that helped refresh your recollection; can you describe them to me?

A. I was shown a package of solicitation materials, which were used at a meeting where Morgan Stanley presented its credentials to give advice to Sunbeam.

MR. BYMAN: Tom, I didn't know the protocol, so I only have two copies of most of the stuff that I have here.

MR. CLARE: That's fine.

Q. Let me show you, Mr. Fiedorek, what has been previously marked as CPH-287.

Is that the package to which you just referred?

A. Yes, sir.

Q. What else did you see, if you recall, and I'm talking about this morning, to help refresh your recollection?

A. Well, really very little refreshed my recollection because I wasn't involved in the transactions that came out of this engagement.

Q. Okay. Let's start with that.

What was your involvement with this transaction?

A. I had no involvement with the transaction. My involvement with Sunbeam was simply and only at the initial solicitation meeting where I did participate.

Q. The initial meeting to which you refer was a meeting that occurred in April of 1997; is that right?

A. If that was the initial solicitation where we presented our

credentials, yes. I don't really recall the specific date.

Q. Let me show you what's previously been marked CPH-78.

This is a copy of an e-mail that shows you in the chain, and I'm really interested not so much in the e-mail that's addressed to you, but the one to which it was a reply that refers to a team from Morgan Stanley including Bruce Fiedorek and others will be meeting with Al Dunlap of Sunbeam.

Does that help refresh your recollection?

A. Yes, that's the meeting I was referring to. That was a solicitation meeting to present our credentials.

Q. What did you do to prepare for that meeting?

A. I don't recall.

Q. What was your understanding of the purpose of the meeting?

A. To present our credentials to act on Sunbeam's behalf with respect to investment banking advice.

Q. Did you have anything to do with

the preparation of the package of materials that's been marked as Exhibit 287?

A. No, sir.

Q. Did you review that package of materials?

A. I don't recall.

Q. As you looked at it today, did you have any recollection of having seen it before?

A. Vaguely.

Q. Let's turn to the second page of 287. That seems to be an organization chart or a Morgan Stanley team chart to be more precise.

A. Yes, sir.

Q. You are listed at the top of the team; is that accurate?

A. I'm listed at the top of the page, and that would reflect that I was the most senior Morgan Stanley representative at the meeting.

Q. Certainly you were senior to all of the people that are otherwise indicated on this page?

A. Yes, sir.

NOT A CERTIFIED COPY

Q. Were any of these people direct reports to you at the time?
A. Not at that time, no.
Q. Did any of these people report to you indirectly?
A. No.
Q. Who were your direct reports at the time?
A. At that time I had no direct reports.
Q. What were your duties?
A. I was a vice chairman of the securities business of Morgan Stanley with focus on the merger and acquisition business line, and I was responsible for developing merger and acquisition business, and in certain cases, executing merger and acquisition merger business. I had no management responsibilities at that point.
Q. Did the Sunbeam engagement as it was envisioned in April of 1997 fall within your portfolio?
MR. CLARE: I object to the form of the question.
A. I was at the meeting for the

solicitation part of my function. It was not envisioned that I would execute the business if we obtained the business. After we were successful in getting the business, I was not involved in the execution.
Q. Was there some vision as to who would be in charge of execution?
A. My recollection is that there was, yes.
Q. And who was to be in charge?
A. The people who would be involved in terms of the most senior people would be other people who were at the meeting with merger and acquisition background. Those included Bill Strong, Jim Stynes, Bob Kitts.
Q. Other than yourself, Mr. Stynes, Mr. Kitts and Mr. Strong, did anyone else attend the meeting in Florida?
A. I don't recall.
Q. You do recall that meeting was in Florida at Sunbeam's offices?
A. Yes, but to be honest, my recollection is pretty vague, but yes.
Q. Do you recall if it was a one day meeting or a one day trip as opposed to an

overnight trip?
A. I don't.
Q. With respect to Mr. Strong, Mr. Stynes and Mr. Kitts, they are shown, at least on this chart to the extent that this was an organizational chart, as being on the same level.
In March of 1997, was that correct, were they all of the same title and stature within Morgan Stanley?
MR. CLARE: I object to the form of the question.
A. Well, they are all managing directors of Morgan Stanley. They each had different responsibilities.
Q. Well, I guess what I'm driving at, Mr. Fiedorek, is whether or not they all have the same title. Was there any one or two of them that was senior or superior to the others?
MR. CLARE: I object to the form of the question.
A. In terms of time in the business, extent of superiors, the most experienced would have been Mr. Strong followed by

Mr. Stynes followed by Mr. Kitts.
Q. What was your understanding of Mr. Strong's background as of April of 1997?
A. He, as I recall, had been an M&A professional elsewhere on Wall Street.
Q. Was that Solomon Brothers?
A. Yes, sir.
And had been recruited to Morgan Stanley. His role at Morgan Stanley was to be a senior coverage banker with regional responsibility and I believe at that point, he was already resident in Chicago, was running the Chicago investment banking function.
Q. For Solomon Brothers?
A. No, no, for Morgan Stanley.
Q. Do you know what ROG stands for?
A. I don't. It might have something to do with regional offices, regional office group.
Q. Sounds like a fair guess, but I take it that is a guess?
A. That is a guess.
Q. Under Mr. Kitts' name, it's listed global head BDG.

NOT A CERTIFIED COPY

Page 18

Do you know what that stands for?
A. Yes, business development group.
Q. What was your understanding of Mr. Stynes' and Mr. Kitts' background as of April of 1997?
A. Mr. Stynes was managing director in the mergers and acquisitions department of Morgan Stanley. He was a generalist responsible for business development and execution across a range of industries, April of 1997. Client distribution.
Mr. Kitts was head of BDG which I described as business development group which was a business development function.
Q. Tell me everything that you recall from the visit down to Florida for the presentation to Sunbeam.
A. I have very little recollection of the meeting.
Q. Do you recall who from Sunbeam participated?
A. I recall meeting Mr. Dunlap.
Q. Do you recall Mr. Kirsch?
A. I recall meeting him, but it's a vague recollection honestly and I can't

Page 19

honestly remember whether he was in the meeting. It would make sense that he was in the meeting but I don't recall specifically.
Q. You understood that he was the chief financial officer?
A. Yes, sir.
Q. Did you meet Mr. Fannin, the general counsel?
A. I don't recall.
Q. Do you recall if there was anyone other than Mr. Dunlap there from Sunbeam?
A. It's possible Mr. Kirsch was. It's possible that others were, but I just don't recall.
Q. Do you recall how long the meeting took?
A. No.
Q. Do you recall who spoke at the meeting?
A. No.
Q. Do you recall who from Morgan Stanley took the lead, if there was somebody from Morgan Stanley that took the lead in making the presentation?
A. Well, I certainly recall that I did

Page 20

not take the lead. And I believe that much of the discussion probably would have been conducted by Messrs. Stynes and Kitts, but I really do not have much of a recollection of the meeting.
Q. Do you know how the meeting was set up, who arranged it?
A. I believe the meeting was set up through Bill Strong, who as I remember, had previously had some type of relationship or at least some basis for dialogue with Mr. Dunlap.
Q. What do you recall about Mr. Strong's prior relationship with Mr. Dunlap?
A. I really don't have any specific recollection.
Q. Do you recall if Mr. Strong participated at all?
A. I don't really have much of a recollection of the meeting. I believe he would have, but I really don't recall specifically.
Q. Other than Exhibit 287, which is in front of you, do you recall any pieces of

Page 21

paper being at the meeting or exchanged?
A. No.
Q. Do you recall if a copy of 2887 was left with Sunbeam?
A. I don't.
Q. In making similar pitches to other clients, is it typical to leave a hard copy of a presentation such as this with a client?
MR. CLARE: I object to the form of the question.
A. It wouldn't be out of the ordinary.
Q. If you would, on Exhibit 287 turn to a page that has a number 2577 on it. You'll see some handwriting.
A. 2577?
Q. Yes.
A. Yes.
Q. Do you recognize the handwriting on the document? And I recognize that it is faint, but if you're able to make it out, can you tell me?
A. Well, I can somewhat make it out.
Q. Do you recognize --
A. Do I recognize it?
Q. Yes.

NOT A CERTIFIED COPY

Page 22

A. I don't recognize it.
Q. I take it it is not yours?
A. It is not mine, no.
Q. And turn back to the previous page, 2576. Again, there is handwriting on the page. Do you recognize that handwriting?
A. No, sir.
Q. Do you recall that at the meeting in Florida in April of 1997 that three potential strategic alternatives were discussed?
A. I really have no real recollection of the discussion at the meeting.
Q. I take it that this page doesn't refresh your recollection that strategic acquisition, recapitalization, share repurchase or sale of the company were suggested as three distinct alternatives?
A. Well, the page certainly reflects those as alternatives and it would have made sense that they would be discussed but I don't recall the discussion.
Q. Do you have any recollection of there being any deviants in substance from the written presentation of what was actually

Page 23

discussed at the meeting in Florida in April of 1997?
A. I have very little recollection of the discussion let alone deviance from the materials, I'm sorry.
Q. So you have no recollection that there was a deviation, I take it?
A. No, I do not have any recollection that there was.
Q. You have no recollection of somebody during the presentation saying, whoops, we didn't mean to show that slide or ripping one or more slides out of the presentation?
MR. CLARE: I object to the form of the question.
A. No, sir.
Q. Do you recall whether or not this was presented in hard copy as opposed to somebody having a projector and throwing this up on a screen?
A. I don't recall.
Q. Do you recall if this presentation was in a book that was in color?
A. I don't recall.

Page 24

Q. Do you recall if it was a spiral bound book or loose pages?
A. I'm sorry, I don't recall.
Q. You don't have to be sorry. I'm just trying to find out what you do recall.
Prior to going to the meeting, do you recall any discussion about possible alternative potential strategic proposals to make to Sunbeam?
A. I don't recall any discussions.
Q. Did you have anything to do with doing the background or research or development of any of these slides that are in the presentation, Exhibit 285?
A. I don't recall that I did, no.
Q. Do you recall if any of the three strategic alternatives shown on page 2576 were favored over the others? In other words, did Morgan Stanley suggest our first choice would be a strategic acquisition, but here are two other alternatives or were these presented as equals?
A. I don't recall.

Page 25

Q. As you sit here today knowing what

NOT A CERTIFIED COPY

Page 25

of these have made more sense to Sunbeam than the others?
MR. CLARE: I object to the form of the question. I object to the hypothetical.
A. I really don't recall.
Q. Were you aware that after April of 1997 further meetings were held between Morgan Stanley and Sunbeam representatives in Florida?
A. Well, I was aware subsequent to this meeting that we did take on some type of engagement and had additional dialogue with the client. I don't have specific recollection of specific meetings or location of specific meeting.
Q. Sir, I'm going to show you what's been previously marked as Exhibit 67.
MR. BYMAN: Tom, I apologize. I have one copy of it marked as Exhibit 67. I have what I think is identical but it is not marked.
To the extent that they are not identical, there is no trick intended. I wanted them to be identical.

Page 26

MR. CLARE: That's fine. They have different Bates numbers on them. I wanted to make sure we had the same thing.
Q. Mr. Fiedorek, I have shown you what's marked as CPH Exhibit 67. And this at least purports to be a memorandum to a distribution list from a group of individuals including yourself.
Do you recall ever seeing this before?
A. I saw this earlier today.
Q. Prior to seeing it today, do you have any recollection of having seen it at or about the time it was issued in August of 1997?
A. I really don't have a recollection.
Q. And seeing it earlier today with your attorney, seeing it now doesn't refresh your recollection?
A. No, sir.
Q. Do you have any recollection inconsistent with anything in the document -- and let me stop for a moment.
When you saw it earlier today, did

Page 27

you read it?
A. Not really, no.
Q. Just skimmed it?
A. I really skimmed the first page basically.
Q. The record will show that you haven't read it very closely now either.
A. No, I haven't.
Q. Let me ask you to take a look at the second page of the document.
A. Okay.
Q. There is a paragraph under background and about halfway down it refers to WH Strong, W -- it should be RW Kitts, JW Stynes and AJ Fuchs met with Al Dunlap and Russ Kirsch in Florida on July 24, 1997 to discuss in detail four specific acquisition candidates, including Alpha on July 27, 1997.
And then it goes on to describe a group of individuals at another meeting.
Were you aware of those two meetings?
A. No, sir.
Q. Do you have any recollection contrary to what is stated here that these

Page 28

two meetings occurred?
MR. CLARE: I object to the form of the question and lack of foundation.
A. What was your question again? I apologize.
Q. Do you have any recollection inconsistent with the fact that there was a meeting in Florida on July 24, 1997 between Mr. Dunlap and Mr. Kirsch on the one hand and Mr. Strong, Mr. Kitts, Mr. Stynes and Mr. Fuchs on the other?
MR. CLARE: I renew my objection.
A. I have no basis for any different recollection.
Q. Do you have any recollection inconsistent with there being another meeting on July 27, 1997 between Morgan Stanley representatives and Sunbeam representatives?
MR. CLARE: Same objection.
A. I'm sorry. I think I lost track of your question. I apologize.
Q. I take it you don't recall that any such meetings occurred?
A. I don't, no.

NOT A CERTIFIED COPY

Q. I'm trying to do what we call in basketball the box out play to make sure you don't have a recollection that they didn't occur.

MR. CLARE: Objection to the form of the question.

A. I'm an old basketball player, but I'm still not sure.

I have no recollection or information about such meetings different than what's here.

Q. That's all I was trying to get.

A. If that's what you're asking.

Q. It is.

Do you have any recollection of there being discussion or consideration of a hostile acquisition by Sunbeam of Black & Decker?

A. I take it that Alpha Corporation is meant to be Black & Decker.

Q. You shouldn't take it from my saying that. Let's say hostile acquisition of anyone.

A. I have a general recollection that there was discussion about a possible hostile

acquisition at one point to be conducted on behalf of Sunbeam.

Q. And do you recall who the potential acquisition target was?

A. Actually, I don't.

Q. Could it have been Black & Decker?

A. It's possible. It could have been any one of a long list of companies.

Q. On the first page of Exhibit 67, the last sentence is styled question for the firm, does Morgan Stanley want to advise Laser and arrange the financing in a potentially hostile public offer for Alpha?

Was there some reason why a hostile offer required different conversation than a non-hostile offer?

A. Yes, sir.

Q. What was that?

A. A hostile offer is a market and public relations event and Morgan Stanley is a firm when it conducts such a transaction or a potential transaction on behalf of a client takes very seriously the relationship and reputational aspects of such an engagement. So it has been our practice to prepare

materials which are then reviewed with a senior management group and senior banker group to discuss those and determine whether it was appropriate to proceed or not.

Q. So I take it that Exhibit 67 would be a typical type of memorandum prepared whenever a hostile takeover was considered?

A. Well, I have not looked at it extensively, but it does seem to be that type of memorandum, yes.

Q. And when you say that this would be reviewed by a senior management group, what individuals would comprise such a group, would you be a member of that group?

MR. CLARE: I object to the form of the question, and also during what time period?

MR. BYMAN: I'm talking about this time period in August of 1997.

A. Typically, it would be reviewed with the senior managers of the investment banking division, so people like the individual or individuals who ran the key departments, the merger department, the corporate finance department, other

departments, the individual who ran the overall division, and then as appropriate actually senior officer of the firm including potentially the chief executive of the firm.

Q. Would that group have included you as vice chairman for securities?

A. Not formally, but as a practical matter, I would have been involved at this point in time in that type of discussion.

Q. I guess I need to back up a little bit and get a better understanding of the Morgan Stanley organization in mid 1997.

I take it there was only one chairman at the time or maybe I shouldn't take it. Was there only one chairman?

A. I'm trying to remember it myself. Yes, there was only one chairman.

Q. Was there only one president of Morgan Stanley, and I don't mean of its wholly owned subsidiary, but of the Morgan Stanley parent?

MR. CLARE: I object to the form of the question.

A. Back at that point in time, my recollection is that there were a chairman

NOT A CERTIFIED COPY

Page 33

and chief executive officer, senior officers who ran the key business units of the firm. And then under that structure would be investment banking and a head of investment banking and then various departments of investment banking such as mergers and corporate finance.

Q. How many vice chairmen were there?

MR. CLARE: Objection. No foundation.

A. At that point in time, the position that I had was the vice chairman of the securities business so it was not Morgan Stanley as a public corporation, it was the securities business. And I believe at that point in time, there was only one person who had that title, which was me.

Q. Was there a chairman of the securities business?

A. Not at that time. I don't recall there being at that time.

Q. So there was a president of the securities business and a vice chairman and the two of you were the senior officers of that business?

Page 34

A. Yes, the vice chairman title though in terms of trying to explain this to you, was important as respects a marketing title in that it was meant to give me the best marketing card, business card, if you will for carrying out what I did, which was soliciting major merger and acquisition business and in some cases executing that business.

Q. Did you have any involvement at all with Sunbeam after the April 1997 meeting that you attended in Florida?

A. No, sir, I don't recall any.

Q. Did you transition in any way to pass over any responsibilities that you had had in Sunbeam to some other individual?

A. No, a transition was not really necessary. I was there to present the credentials at the April meeting, the original solicitation meeting, help in presenting the credentials of the firm. And it was presumed going into that meeting that if we were successful in having an engagement that it was going to be carried out by others and so there was no reason to -- no necessity

Page 35

of a transition.

Q. And I guess my question is, what was the presumption as to who those others would be, who was it that was going to be in charge after you were no longer involved?

MR. CLARE: I object to the form of the question.

A. Well, it was anticipated that the senior individuals who were at that solicitation meeting other than myself would be conducting the engagement. So in other words, Bill Strong, Jim Stynes and Bob Kitts.

Q. And to the extent that Mr. Strong, Mr. Stynes and Mr. Kitts could not agree by consensus on how to handle the engagement, did one of them have the power over the others to make decisions?

MR. CLARE: Objection to form. Incomplete hypothetical and foundation.

A. I really don't have any knowledge of how they worked as a team as a practical matter.

Q. Based upon your experience with Morgan Stanley, when three individuals of

Page 36

equal rank or title within the company are in charge of execution of an engagement, I take it from time to time they don't always agree one hundred percent on a course of action; would that be fair?

A. That is fair.

Q. And when they don't agree, how are those disputes reconciled?

MR. CLARE: I renew my prior objections to form, foundation and incomplete hypothetical.

A. It would typically involve consultation with some of the operating management of the firm such as the individuals running the merger group or the corporate finance group.

Q. In this case, in 1997, who would those individuals have been either by title or by name?

A. My successors in terms of managing the merger group were Gary Parr and Gil Lewis. They were global co-heads of mergers.

Q. And in mid 1997, would Mr. Stynes and Mr. Kitts have been direct reports to Mr. Parr and Mr. Lewis?

NOT A CERTIFIED COPY

A. Yes, sir, I believe so.
Q. To whom would Mr. Strong be a direct report?
MR. CLARE: Objection. Lack of foundation.
A. I believe he would have reported to the head of corporate finance.
Q. And who is that?
A. I'm sorry, I don't recall.
Q. But I take it it was someone other than Mr. Parr or Mr. Lewis?
A. Yes.
Q. I'm going to ask you a hypothetical question which is probably going to draw a series of objections by Mr. Clare and maybe even rightfully so.
Suppose Mr. Stynes and Mr. Kitts and Mr. Strong could not agree so that it had to be resolved by going upstream in some way and then Mr. Parr and Mr. Lewis could not agree with the head of -- I'm sorry, did you say corporate finance?
A. Corporate finance, yes.
Q. If that scenario occurred, how would that conflict be resolved?

MR. CLARE: Objection to form, foundation and to the incomplete hypothetical.
A. The ultimate review of matters in the investment banking division would be the head of investment banking.
Q. And who was that in 1997?
A. That was Joseph Perella.
Actually, I believe the head of coverage was Terry Maguid now that I think about it.
Q. Now, at some point in time, did you become aware that an actual engagement letter was executed between Sunbeam and Morgan Stanley?
A. Well, I knew that we ultimately did some business and it's our policy to do business with engagement letters signed, appropriate engagement letters signed, so I would assume that that was the case. But I had no specific knowledge of it.
MR. BYMAN: Tom, I apologize, I apparently only have one copy of Exhibit CPH70, but I believe this is the engagement letter. I suspect my

questions will be brief on this, but.
Q. Mr. Fiedorek, have you ever seen a copy of Exhibit 70 before?
A. I don't believe I have.
Q. In the mid 1997 time frame, was there any such thing as a range of standard fees for transactions involving either the sale of a company of the size of Sunbeam or acquisition of companies in the 500 million plus range?
A. Well, at that time, Morgan Stanley had a merger and acquisition fee schedule, which was frequently the basis of our engagements or frequently the basis of pricing our services.
Q. This letter, if I read it correctly, provides for a fee in the event of a sale of Sunbeam in the amount of 4.25 percent of the aggregate value of the exchange.
Does that fall within the then published fee schedule or is it higher or lower?
MR. CLARE: I object to the form of the question and to foundation.

Q. I'm looking at the last paragraph of the first page for sales transaction fee.
A. I'm sorry, the question again?
Q. The 4.25 percent sales transaction fee that's reflected, does that fall within the then published fee schedule that you referred to in your earlier answer or is it higher or lower?
MR. CLARE: I renew my prior objections.
A. I don't recall the detail specifics of the fee schedule, but my sense is it would be broadly consistent with my general recollection of the schedule.
Q. If I were to represent to you, sir, that Mr. Strong had at least stated to others that he thought that he had brought in a transaction with Sunbeam at a premium to ordinary rates, would that be consistent with your recollection or inconsistent?
A. I have no recollection of that.
Q. I don't mean that he said it. I mean, would the fact of him saying that make you question whether or not this fee was greater or less than ordinary rates?

NOT A CERTIFIED COPY

014933

Page 41

A. I'm sorry. I'm not following the question.
Q. I'm asking you to accept as a given what may be incorrect because he didn't say to it me certainly, that Mr. Strong had said to others that he brought in Sunbeam business at a premium to what would otherwise be ordinary rates. Would that suggest to you, sir, that perhaps this fee in fact was a premium or does that not change your testimony?
MR. CLARE: Objection to form and to the extent that it assumes facts that are not in evidence.
A. I'm confused by the question.
Q. Then let's just move on because I can't think of another way to say it.
A. I'm sorry.
Q. With respect to the acquisition fees that are listed in the letter and those are on the next page.
A. Yep.
Q. Based upon your recollection in 1997 of what typical fees for such acquisitions might be, do these fees fall

Page 42

within the ordinary range or are they above or below?
MR. CLARE: I object to the form of the question.
A. I'm sorry, I just don't recall the specifics of the fee schedule.
MR. BYMAN: Tom, again I apologize and I hope this is the last time. I only have one copy of Exhibit 69 which I would like to show the witness.
Q. Take a look at Exhibit 69, sir, and tell me if you ever recall having seen it before.
A. I saw it earlier today in my review with counsel.
Q. When you saw it earlier today, did you recall that you had seen it before?
A. No, I did not.
Q. And you still don't have any recollection of having seen it before today?
A. I don't.
Q. Take a look at page 12 of the document. There is what appears to be a slide and some handwriting on it most notably

Page 43

because it has the word amateurs above Sunbeam Corporation?
A. Yes.
Q. Do you see that?
A. Yes.
Q. Do you recognize that handwriting?
A. No.
Q. Do you have any understanding as to what amateurs might mean?
A. No.
MR. CLARE: Objection. Calls for speculation.
Q. Towards the back of the document, there are a list of -- excuse me, there is a group of contact pages and there should be a page 3922, which is the Morgan Stanley and company contact page.
Do you see that?
A. Yes.
Q. Do you have any understanding as to why you were listed as a contact person if you had had no further involvement after April?
A. I don't know why they would have done that.

Page 44

Q. Did anyone tell you that they were still using your name at least to pitch the business to Sunbeam?
A. Well, that implies that this is a pitch book. I don't know whether it is or not.
Q. Well, I'm really asking the question not in context with this page but in general.
Did anyone ever tell you after April of 1997 that despite the fact that you weren't being asked to do anything, they were still going to use your name?
MR. CLARE: I object to the form of the question.
A. It wouldn't be typical to keep somebody's name on a working group list.
MR. BYMAN: I don't see a previous production number on this so I guess we're going to have to mark an exhibit. I have no idea what numbers I'm allowed to use. Since I only really have one exhibit, I'm not going to mark it, Tom, unless you can tell me with certainly what numbers we're

NOT A CERTIFIED COPY

Page 45

allowed to use.
Q. I'm going to show you Morgan Stanley Bates production 47951 through 953. And my question really is just to ask you, sir, if you were aware that you were still being shown as one of the people involved in the Sunbeam transaction as of March 1998?
MR. CLARE: I object to the extent that it mischaracterizes what the document says.
A. This is a transaction announcement where an investment banking team announces to the investment banking department Morgan Stanley's involvement with the transaction. Our general approach to these has been to be inclusive, ecumenical, and to make sure that people who have been involved within an account are acknowledged at the point the transaction is actually announced. So even if you had only solicitation involvement as I did at a very early stage, it would be very typical to keep my name on this kind of memo.
Q. Do you have any understanding as to why you were listed not under solicitation involvement but rather as firm management?

Page 46

MR. CLARE: Objection. It calls for speculation.
A. Well, firm management was the area of the firm I was in at that point. This is simply identifying where people resided of the --
Q. By March?
A. -- organizational chart.
Q. Had your title changed by March of 1998?
A. No.
Q. So you were still a vice chairman of the securities business?
A. Yes.
Q. Was there anything on your business card that said firm management?
A. No, this is an organizational chart box. I think it is a cost center for accounting purposes. I was accounted for in something called firm management.
Q. Was that true the entire period from the time you became vice chairman of the securities business through 2003?
A. Yes, sir.
MR. BYMAN: This one I purposely

Page 47

only brought one copy of, Tom, because it's so thick. I presume everyone has this one memorized by now.
Q. I'm showing you what's been previously marked as CPH-9, which are a set of discussion materials dated February 1998.
I'm going to presume from your earlier answers, Mr. Fiedorek, that you have never seen it before, but I need to ask you anyway: Have you ever seen it before?
A. I don't recall seeing it.
Q. Despite the fact that you didn't have any active involvement after April of 1997, did you maintain any, just overall awareness of what was going on in the Sunbeam engagement?
A. Only in the most limited fashion. I was aware that we were still involved with the company.
Q. Were you aware that Morgan Stanley was attempting to either find a buyer for Sunbeam or to find acquisition targets that Sunbeam could use its stock to acquire?
MR. CLARE: I object to the form of the question.

Page 48

A. I really have no specific recollection of what our engagement was.
Q. Were you aware that Morgan Stanley was telling potential candidates either for acquisition or for purchase, that Sunbeam was a successful turn around store?
MR. CLARE: Objection to lack of foundation.
A. I have no recollection of Morgan Stanley having conversation or dialogue in the content of dialogue.
Q. Let me show you what's previously been marked as CPH-17. Have you ever seen that document before, sir?
A. No, sir.
Q. Are you familiar with the term comfort letter?
A. Yes.
Q. Does this appear to be a comfort letter?
A. Yes, it does appear to be a comfort letter.
Q. Has anyone ever told you other than your attorneys that in mid 1998 Morgan Stanley received a copy of a comfort letter

NOT A CERTIFIED COPY

Page 49

that disclosed financial results that were less than expectations on the street for Sunbeam performance?
A. I have no knowledge or recollection.
Q. Do you recall where you were in March of 1998?
A. Physically?
Q. Yes.
A. Yes.
Q. Where?
A. New York City, well, living in New York.
Q. Do you recall if you were away for business for any extended periods of time during March of 1998?
A. No.
Q. Did anyone from the Sunbeam team contact you for any reason in March of 1998 to get your input?
A. Not that I recall.
Q. Let me show you what's been previously marked as CPH Exhibit 14, which is a copy of a press release issued by Sunbeam on March 19, 1998. Do you recall ever seeing

Page 50

that before?
A. I saw it earlier today.
Q. Do you recall seeing it at the time in March of 1998?
A. No.
Q. To the best of your recollection, had you ever seen the press release or heard of its contents prior to today?
A. No, sir.
Q. Would it be fair to say then that no one sought your input as to the contents of this press release?
A. No one did.
Q. Just to follow up, I'm going to show you two more documents, CPH-16 and 112, and just ask you if you have ever seen either of those before?
A. No, sir, I haven't.
Q. Not even this morning with Mr. Clare?
A. I don't think so. I don't recall ever seeing these before.
Q. Mr. Fiedorek, I'm going to switch gears a little bit. I'd like to ask you some questions about the Morgan Stanley evaluation

Page 51

process.
A. Yes, sir.
Q. What is your understanding of the evaluation process within Morgan Stanley with respect to evaluating performance and whether people are meeting their goals and expectations?
MR. CLARE: Currently or during a particular time period?
MR. BYMAN: I'm trying to start off with just his general understanding. Obviously, we're going to get to specific evaluations. I don't think this is going to be a surprise to anybody.
MR. CLARE: I object to the preamble to your question.
MR. BYMAN: It was a preamble to satisfy your question.
MR. CLARE: I still object.
A. Can you repeat the question?
Q. What I would like to do is start off with your general knowledge of the Morgan Stanley evaluation process.
A. There is a well organized process

Page 52

for full time investment banking professionals, associates and above up through managing directors. It's what is termed a 360 degree process, by that meaning that individuals of any seniority rank are in a position to provide input on individuals of other seniority ranks either above or below them. The process is carried out annually. It involves extensive written inputs, which are then synthesized into an overall report. The design of the evaluations is to focus on one hand on achievement and strengths of an individual and hopefully be in a position to provide positive feedback on those, but then also to identify areas where there may be developmental needs and to identify those and, hopefully, put the individual in question with management in a position to address those and improve those areas as time marches on. The evaluations are used as a management tool, a development tool, and it is also part of the process for determining compensation.
Q. What role do the evaluations play in terms of determining compensation?

NOT A CERTIFIED COPY

Page 53

A. Well, they are reflective of performance. They reflect certainly an important aspect of an individual's performance and they go into the mix, so to speak.
Q. Did the evaluations also play a role in determining retention decisions, whether to keep someone?
A. Yes, they do.
Q. Or promotion decisions?
A. Yes, sir, both.
Q. I think we have established that in 1997 no one actually reported to you. Have you ever had direct reports in the course of your Morgan Stanley experience?
A. Yes, sir.
Q. When you have direct reports, do you see a copy of the people to whom -- who report to you, do you see copies of their evaluation reports?
A. Yes.
Q. And I'm not sure I actually got that out as a question so let me try that again to make sure we're all clear.
When you have had direct reports,

Page 54

have you as a regular part of your supervisory capacity over those individuals, do you get copies of their evaluation reports?
A. Yes, sir.
Q. And when you get those copies, when you got those copies, did you review them?
A. Yes, very carefully.
Q. When evaluations were filled out for you as an employee, did you receive copies of the reports in writing?
A. Evaluations on me?
Q. Yes.
A. No, there was a confidentiality framework, so the evaluatee ultimately has a session with what is termed the evaluation director who presents to that person the key points from all of the individual evaluations synthesized, so to speak. But the confidentiality of individual evaluations on that evaluatee is maintained.
Q. Did you ever see summaries of your own evaluations? And I'm trying to draw a distinction. I assume you were given oral reports of what your evaluation was and you

Page 55

were asked for feedback; is that correct?
A. I'm sorry?
Q. I'm trying to do this -- we'll start again. Each time you were evaluated as part of the process, at some point, in part of the process, did you sit down with the evaluator director?
A. Yes.
Q. And they told you what the results of the evaluation were?
A. Yes.
Q. And you communicate the themes or the overall content of the evaluations without disclosing individual comments; is that correct?
A. It would be discussion of general themes, certain specific comments might be also referenced but without identifying from whom the specific comments came.
Q. And in addition to that oral presentation that you had, did you get anything in writing that showed the summary of the comments?
A. Yes.
Q. In what form was that?

Page 56

A. The practice was to give an evaluatee a one or two page summary report. It was felt that that was particularly important to get the individual's focus on development areas and performance objectives for the next year.
Q. Now, in addition to the reports you actually saw of persons who reported directly to you, did you ever have occasion to see a fellow employee's evaluation if they weren't reporting directly to you?
A. Yes.
Q. In what circumstance?
A. There was a period during which I ran the global merger business for Morgan Stanley, and in that capacity, as one of the senior managers of investment banking, I was in a position to basically review evaluation materials on most of the professionals in investment banking.
Q. And that would be whether or not they were direct reports to you?
A. Yes, sir.
Q. And to the best of your knowledge, would there be someone in a similar capacity

NOT A CERTIFIED COPY

Page 57

for investment banking who would have reviewed all evaluations for all employees whether or not they were direct reports?
MR. CLARE: I object to the form of the question.
Q. What I'm trying to get at, sir, and this is awkward, because I don't know what your system is.
A. I understand.
Q. In 1997, for example, I presume that any employee who went through the evaluation process, the evaluation director would certainly know what was in the evaluation and the person to whom that employee directly reported to would know what was in the evaluation. I am trying to find out if as a matter of practice, Morgan Stanley would have other people in addition to those two reviewing employees' evaluations?
A. My recollection is that there was a small senior management group in investment banking, which would include the individual running investment banking.
Q. Mr. Perella?

Page 58

A. Mr. Perella. The individual running corporate finance. The individual or individuals running mergers and then the individuals running the capital markets area. All of those individuals would have access to evaluation materials on effectively all of the professionals in the division.
Q. At any point in your career, did you see an evaluation of William Strong?
A. Yes, sir.
Q. Would that have been when you were running MARD?
A. Yes.
Q. So that would have been up through March of 1997?
A. Yeah. I think it was February of 1997. And the way the evaluation cycle goes, that means I would have seen evaluations effectively through I think it is November or December of 1996.
MR. BYMAN: Tom, I'm told that the way we have done this in the past, I think these may be newly marked exhibits that Bob Marcusky intends to use later this week so I'm supposed to

Page 59

pass them out and get them back so he can reuse them. I take it that's what you have done. If not, I'm willing to be flexible. In any event, I want to show you Exhibit 308.
Why don't you give the witness the original?
MR. CLARE: I will. There is a protective order in place that relates to the parameters with which you can show evaluations to individuals based on their having seen access to it before. I assume that.
MR. BYMAN: I thought I had just laid that foundation.
MR. CLARE: I wanted to note my continued adherence to the protective order for purposes of Morgan Stanley maintaining the confidentiality of its 360 degree review process. To the extent you lay the foundation for this particular witness to review materials that he would have had access to during a particular point in time during his career, I think that's

Page 60

appropriate under the protective order but by allowing this witness to review this exhibit or other exhibits, Morgan Stanley is not waiving its adherence to the protective order to the foundation that's been laid.
MR. BYMAN: I assume that Jim is allowed to see this under the protective order.
MR. CLARE: He is.
Q. We put Exhibit 308 in front of you and if I understand correctly from your previous answers, this is a document that you would have seen at the time. Can you confirm that for us?
A. Well, it is certainly a type of document that I would have seen. I can't say I recall specifically seeing this.
Q. So you have no actual recollection of this particular evaluation?
A. There were over a thousand individuals in investment banking, so very difficult to specifically recall any specific individuals' evaluations especially as far back as 1993.

NOT A CERTIFIED COPY

016588

Q. Recognizing that and being sympathetic to it, was there anything about Mr. Strong that stood out in your mind as him being good, bad or indifferent while he was somebody that was within your supervision?
A. I did not supervise him.
Q. I understand he was not a direct report, but he was one of the people within your area of supervision; is that fair?
A. He did not report to me. He, like many people in corporate finance, would have involvement in developing and in some cases executing merger business. To that extent, there would be a so-called dotted line to me because I had responsibility for the merger. And along with my other senior investment banking management colleagues, I would have access to these types of evaluation materials on people throughout the division, a significant majority of whom actually did not report to me.
Q. In addition to having access, did you actually avail yourself of that access?
A. Yes, sir.
Q. So you would as a matter of routine

each year look at the evaluation reports for each of the people that had dotted lines or direct responsibility?
A. Yes, sir, I would.
Q. And in addition to the formal evaluation process, I assume you would keep your ears open if someone identified someone who was a problem?
A. Yes.
Q. And my question is, during 1993, was Bill Strong somebody who stood out in any direction as being great, as being terrible or as being something in between?
A. Well, I don't recall 1993 specifically. But Bill Strong is an individual who I knew by reputation before he came to Morgan Stanley and then knew at Morgan Stanley, and the general view was that he was a strong, effective banker.
Q. Did he have a reputation of someone who brought in fee revenues for the firm?
A. That was certainly a part of his job.
Q. Was it a significant part of his goals each year to bring in fee revenue?

MR. CLARE: Objection. It calls for speculation as to what Mr. Strong's goals were.
A. As a general matter, senior bankers on line in corporate finance or mergers or capital markets had as part of their professional objectives to produce quality revenue generating business for the firm.
MR. BYMAN: Tom, I believe the 1995 evaluation would also waive sufficient foundation for us and I'm going to give you three copies of that.
MR. CLARE: Subject to my comments earlier, I will hand the witness 309.
Q. For some reason, we don't have 1994 performance evaluations so we're skipping to the 1995 which we have marked as Exhibit 309.
And in this evaluation, I take it this would have again been in the category of things that you would have reviewed in the matter of course; is that right?
A. Yes, sir.

Q. In addition, you actually included a colleague review of Mr. Strong this year and referring to the third page of the document.
Do you see that?
A. 85422?
Q. Yes.
A. Yes. Yes.
Q. Turn to 85424, if you would.
A. Yes.
Q. Do you recall reviewing Mr. Perella's comments at the top of the page that Mr. Strong has a tendency which results in others seeing him as trying to grab?
A. I don't recall specifically that comment.
Q. Do you recall reviewing Mr. Scott's notation that Bill should focus more on productivity and client business?
A. 1995 is a long time ago. I don't recall that specifically, no.
Q. Your own comments relate apparently to an incident involving a bank and SC Johnson in which you say that he and she should share the blame. What was that about?

NOT A CERTIFIED COPY

Page 65

A. I don't remember. Obviously, we tried to get some business which we were not successful in obtaining it, based on what I read here. I don't have a specific recollection.
Q. At the end of your comment, you say, Bill also needs to be consistent in seeking out Morgan Stanley quality business on acceptable Morgan Stanley commercial terms. He has a reputation in MARD administration with MARD officers and assignment officers as being too flexible.
What did you mean by that?
A. I don't recall specifically, but I would say pressure point that one would see from time to time between corporate coverage and the merger business administration was the desire on the part of coverage officers to do business but to price it below what M&A management felt was appropriate pricing for the product. That would be a comment that would apply to quite a few people based on my experience.
Q. So this was reflective of the fact that he was trying to bring in revenue

Page 66

without focusing enough on profitability?
MR. CLARE: I object to the form of the question.
A. I can't really take my comment further than I took it to be honest.
Q. In general, you make such comments, is that what it means or does it mean something else?
A. It means what I stated in the previous answer.
Q. That you sometimes price things too low without --
A. Or there is an attempt to price things too low.
Q. Do you have any recollection of what you meant by he has a reputation? Had you heard this from sources other than direct observation?
A. I don't recall.
Q. So you don't recall if you had directly observed whatever it was that led you to this comment or if you had heard it from others?
A. I don't. What's on this page would suggest that I heard it from some of the

Page 67

people in my administrative function.
Q. Were you aware that Mr. Strong had openly expressed a desire to some day be on the board of Morgan Stanley?
A. No.
Q. Take a look at page 85434, if you would.
A. 85434?
Q. I think it's the second to last page.
Under career goals, wants to be on board of Morgan Stanley. Do you recall reading that when you reviewed this back in the day?
A. I don't recall.
Q. Did Mr. Strong have a reputation of being ambitious?
A. Morgan Stanley was populated then and it is populated now by many people that are ambitious. I would say there were nothing unusual. There are quite a few people that would like to be on the board of Morgan Stanley including me.
Q. I would like to be on the board of Morgan Stanley.

Page 68

My point is, did he make his views open to the point of creating a reputation for himself?
A. Not to my knowledge.
MR. BYMAN: Tom, I confess since I don't know when the 1996 evaluation would have become available, I don't know if I have laid a foundation for this one so I'm going to ask whether you have an objection of my showing this to him to ask whether he recalls seeing it. Let me give you a copy of Exhibit 310 so you can see what I'm talking about.
MR. CLARE: Maybe while I'm reviewing it, you may want to ask him about the timing of when these type of reports may have become available and see if that advances the ball without reviewing the document.
Q. As a general process, when were annual reviews performed; in other words, for 1996, would it have been performed in 1996 or sometime in 1996?
A. Yes, for the financial year 1996

NOT A CERTIFIED COPY

the evaluation process would have been carried out from essentially September through November 1996.
Q. When would the written report be put together, in November?
A. I would imagine it would be late October into November.
Q. And at that point, they would be available to you for review?
A. Yes.
MR. BYMAN: And with that foundation, Tom, I'm going so show him Exhibit 310.
MR. CLARE: Subject to my prior comments of these type of exhibits being shown to witnesses, I'm not going to object.
Q. I want to direct your attention to page 85440.
A. Yes.
Q. Mr. Perella has a comment about Mr. Strong needs to be careful about conflicts, that is, he has a tendency to play out a situation that is ripe for potential conflict rather than confronting the

situation.
Based upon your knowledge of Mr. Strong in 1996, were you aware of any potential problem that Mr. Strong had with respect to conflicts?
A. Not that I recall.
Q. Do you have any understanding of what Mr. Perella might have been referring to?
MR. CLARE: Objection, calls for speculation.
A. I don't, and I say that also citing that as the person responsible for the merger business, I was heavily involved in conflict matters. So I was probably more responsible for conflict management than any other individual in the firm.
Q. In that role, did you ever have occasion to question Mr. Strong's abilities when it came to conflicts?
A. Not that I recall.
Q. Mr. Perella goes on a little further down in the page stating judgment and reasoning on potential conflicts was flawed, for example, automotive retailing sector.

Does that refresh your recollection about the incident he is talking about?
A. Not specifically, no.
Q. Where did Mr. Scott fit within the organization in the time period of this evaluation?
A. I think at this time in 1996, Bob Scott was head of investment banking. He was succeeded in that position by Mr. Perella in 1997, I believe.
Q. So at this point, both Mr. Perella and Mr. Scott would have been relatively senior to Mr. Strong and even to yourself?
MR. CLARE: I object to the form of the question.
A. Actually my recollection in 1996, my recollection is that Mr. Scott ran investment banking, Mr. Perella ran corporate finance and I ran M&A, so in effect, Joe and I were on the same level reporting to Mr. Scott.
Q. So Mr. Scott would have been senior, Mr. Perella and you would have been at the same level?
A. Yes.

Q. And Mr. Scott notes, "While Bill is bright, his judgment is sometimes flawed. He is so focused on his own agenda that he can lose perspective."
Do you have any understanding about what Mr. Scott might have been referring to?
MR. CLARE: Objection. Calls for speculation.
A. I'm sorry, what was the question?
Q. Do have you any understanding as to what Mr. Scott might have been referring to in that comment?
MR. CLARE: Same objection.
A. I don't really have any knowledge of that.
Q. Did you ever have any conversation with Mr. Scott or Mr. Perella or any other Morgan Stanley executive about Mr. Strong's strengths or weaknesses?
A. Well, I was involved in review discussions where we talked about effectively everyone's strengths and weaknesses. So I'm sure Bill was in that group. But I really don't have specific recollection of his individual case.

NOT A CERTIFIED COPY

Q. In 1996, what was Mr. Abdel Maguid's position?
A. This is the individual known as Terry Maguid, and I believe he was associate head of corporate finance. He was basically Mr. Perella's right hand man, so to speak.
Q. Would that have made him senior to Mr. Strong or equal or is that not something you can compare?
A. They would probably each answer that question in a different way.
Q. So at least in Mr. Maguid's mind, he might have been senior to Mr. Strong?
A. Yes.
MR. CLARE: Objection, that calls for speculation about what's in Mr. Maguid's mind.
A. I shouldn't say yes, actually perhaps.
Q. Do you have any understanding about what Mr. Maguid referred to when he said, for some reason, he is one of the most often complained about managing directors by his partners?
A. No, I don't.

Q. Take a look at the next page, 85441.
A. Yes, sir.
Q. Mr. Perella expands a bit on his comments talking about judgment and reasoning at times peculiar and gives an example. Told us Gordon Dean had offered to move to another firm after he, Bill, broadened our control of automotive retail potential conflicts. He was just using poor judgment in affecting Gordon with it as well.
Does that help refresh your recollection of any incident involving Mr. Strong that Mr. Perella was talking about?
MR. CLARE: I object to the extent that you're asking him to say what Mr. Perella was talking about. That portion of your question calls for speculation.
A. I really don't know what Mr. Perella is talking about there.
Q. In 1996, what position did Kirsten Feldman have within Morgan Stanley?
A. I believe that she was a managing

director or at least a relatively senior person in the corporate coverage group.
Q. Do you have any understanding of what she referred to in her comment. Could be more straightforward and up front with fellow managing directors particularly with respect to conflicts and new business?
MR. CLARE: Objection. Calls for speculation and I also note that the sentence you read goes on.
Q. Well, let's go on because I want to discuss that with you as well.
It goes on to say that he did not tell Munger and myself that someone else had been hired on a project we had been pitching for until a week later while we were continuing to do work. The client ended up telling us, which was quite embarrassing.
Is that a situation that you would have reviewed in your role as reviewing conflicts? Do you recall what this incident was about?
A. I don't. This does not sound like a conflict. It sounds like a communication problem.

Q. I take it you have no recollection of this event that Miss Feldman is talking about?
A. I don't.
Q. Going on to the next page, Mr. Scott notes that Mr. Strong is very ambitious?
A. I'm sorry, where are you?
Q. The next page, Mr. Scott's comment.
A. Right.
Q. He is very ambitious and this ambition is occasionally too close to the surface. Our market share had improved in Chicago, what happened this year?
Do you recall Mr. Scott expressing that Mr. Strong was very ambitious and that it was too close to the surface?
A. I don't.
Q. You have mentioned Mr. Parr's role before. At this point, was he senior to Mr. Strong?
A. No, at this point, Gary Parr would have been a senior banker. My recollection is that he actually at that point in time was in the M&A group reporting to me. It was in

NOT A CERTIFIED COPY

014992

Page 77

the next year, 1997, that he was one of the two people who succeeded me as part of the M&A department.

So in other words, he would have been essentially the same level, a senior banker.

Q. Was Mr. Parr a direct report to you in 1996?

A. I think he was. I can't recall specifically, but I believe he was, yes.

Q. When he succeeded you as one of the people to run the MARD department, was that done with your recommendation?

A. Yes.

Q. Was Mr. Parr someone in whom you had confidence?

A. Yes.

Q. Someone whose opinion of other colleagues you would pay special attention to?

MR. CLARE: I object to the form of the question.

A. He was someone whose views I took seriously.

Q. Do you recall him expressing --

Page 78

A. That doesn't necessarily translate to always agreeing or whatever.

Q. I always take my wife seriously but I don't always agree with her.

In any event, do you recall in 1996 that Mr. Parr expressed the view that Mr. Strong can at times appear to be reaching for personal gain in front of a client or colleagues rather than promoting others on the team and then it goes on.

Do you recall him voicing that concern?

A. No.

Q. So you don't recall discussing that concern with him?

A. No.

Q. Take a look at page 85444. About midway down the page, there is a number 3, and by the way, this is a group of comments that aren't attributed to any particular individuals. Would this be the sort of thing that would be shown to the evaluatee?

A. No, this particular page is -- you'll notice the title at the top is the word feedback. So these are comments from

Page 79

individuals who were junior to Mr. Strong and their identity is protected in order to have fulsome comments.

Q. And one of those comments opposite the number 3 is Bill appears to generate a fierce loyalty among his troops, but is quick to point fingers on this business. His loyalty based upon respect or fear, will stretch the truth or omit relevant facts if it improves his position.

Do you recall reading that anyone questioned whether Mr. Strong would sometimes stretch the truth?

A. I don't recall specifically. This process, which by the way I had a major role in designing, produces a lot of data and it's meant to produce a lot of data. And my experience with it is that there's a broad range of comments including negative comments about individuals of the absolute highest standing of the firm. So none of this is unusual.

Q. I think you have said that there might have been as many as a thousand of these things that you might review. Is that

Page 80

in any given year?

A. In any given year or at that time, there were approximately a thousand professionals in investment banking as I recall.

Q. And in that universe of a thousand, is it your recollection that you would get at least one comment as to every one of those thousand people that they would stretch the truth?

MR. CLARE: Objection. Lack of foundation. And I object to the form of the question.

A. I'm just saying that there are a broad spectrum of comments. Particularly my experience was with the upwards where there was no identity, sometimes there were comments that were close to the bone on just about everybody.

Q. I understand that, sir. What I'm trying to get a sense of is some comments are more negative than others. If you saw a comment that said the guy is a liar, would you be concerned about that or would you say well, gosh, in every one of these thousand

NOT A CERTIFIED COPY

Page 81

cases at least one person accuses the guy of lying so that doesn't mean anything to me, or is there something in between those two extremes?

MR. CLARE: I object to the form of the question and the incomplete hypothetical.

A. All I'm saying is the type of comments that are in his evaluation are in the fairway, so to speak, of what I saw for just about everybody.

Q. Well, I haven't asked you to review the overall content. Are you saying that you recall the overall mix of comments? I have only directed to you individual comments this afternoon.

A. I'm just talking about my general experience having spent a lot of time or a lot of years dealing with these evaluations.

Q. How many times would you have to hear that somebody stretches the truth before it becomes a concern?

MR. CLARE: Objection. Incomplete hypothetical.

A. Well, for me personally stretching

Page 82

the truth is always a concern.

Q. Were you concerned when you read this?

A. Well, I don't recall reading this until just now.

Q. But you know that you read it back in 1996, right?

A. Back in 1996, I would expect that I put it in an overall context of having pretty similar and pointed comments as was the design of the process for many individuals.

Q. Back in 1996 and the other years when you reviewed these evaluations, you weren't doing it because this made great reading, right, you were doing it because you wanted to form judgments about whether or not your people were performing as they should; is that fair?

MR. CLARE: Objection to form.

A. As I testified earlier, in the performance process, a number of objectives and performance evaluation, development of performance objectives, feedback on areas for improvement, acknowledgment of strengths, all of those were things that we were trying to

Page 83

identify through this process and did.

Q. And if you identified somebody who had problems, you wanted to know about them before the problems manifested themselves?

A. As I also testified earlier, part of the process were decisions on compensation, decisions on promotion, decisions on retention, decisions on separation.

Q. And so I guess my question is, did you have some rule of thumb by which one terrible negative comment gets tossed out because it may be at the fringes but when the comments get repeated and you get more and more of the same it becomes a problem. At what point does it become a problem?

MR. CLARE: Objection to form and the incomplete hypothetical.

A. It's all very speculative. I'm not sure how to answer that.

Q. We are agreed that any time somebody says that somebody has a tendency to stretch the truth or omit relevant facts if it improves his position is a serious comment?

Page 84

MR. CLARE: I object to the form of the question.

A. It might be. But something else is what I would call gamesmanship or gaming in these evaluations, which is one of the inherent problems with evaluation systems, particularly those that have the protection of anonymity. I have seen many comments in the anonymity base of comments which are more difficult and it's very easy to say something very negative about someone when you're not going to be identified. So I think some of that has to be part of the mix as well.

Q. What about when people are identified when their colleagues or downward comments about a lack of being straightforward, would that cause you concern?

MR. CLARE: Objection. Incomplete hypothetical.

A. It would require discussion, and as I said, all of these individuals were discussed in a senior management group.

Q. And yet you have no recollection of Mr. Strong ever being discussed?

NOT A CERTIFIED COPY

Page 85

A. I don't have specific recollection, but I do recall that Bill was retained at Morgan Stanley and indeed is still retained at Morgan Stanley and was a valued contributor of the firm so I take with that the overall conclusion of management was then and continues to be over time that if he was a quality -- he was meeting sufficient standards of quality.

Q. Take a look at page 85451.

I'm told we only have four minutes left on the tape. I don't have a great deal after this.

MR. CLARE: I'd like to take a short break anyway so good time.

THE VIDEOGRAPHER: The time is 2:46 p.m. and this is the end of tape number one.

(Recess was taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 2:57. This begins tape number two.

Q. Mr. Fiedorek, just before we broke, I had directed you to Exhibit 310, page 85451. Are you there?

Page 86

A. 85451?

Q. Yes.

A. Yes.

Q. Is this an example of one of the pages that would actually be given to an evaluatee?

A. Yes, it is the type of page that would be given to an evaluatee.

Q. So this page and the following page would under normal circumstances be given to the person being evaluated?

A. That is the procedure. I have no specific knowledge whether that in fact happened, but that is the procedure, yes.

Q. And I take it this represents a summary of the firm's perception of the overall evaluation and that it is then shared with the person being evaluated?

A. Yes, the process is that the evaluation director summarizes the file, so to speak, and then there are some group discussions about individuals and then the summary is then edited or amended to reflect anything that should be reflected from the discussions, and then the final product is

Page 87

the type of thing that is here in these two pages, and then the process is that the evaluation director sits down with the individual and discusses this, gives the person this piece of paper, may well -- probably will elaborate on what's on the summary, may well quote various things from the file. The process though is that none of the evaluations, even those that have been specifically identified to individuals are identified as to the individuals who provided the comments so all comments are anonymous in the discussion with the evaluatee.

Q. Now, I want to follow up on something that you said earlier. I think you said that you had a fairly major role in forming this entire evaluation process.

Would you describe for me what your role was?

A. At some point along the way, and I don't remember exactly when it was, but I believe it was in the early 90s, I was asked by the individual who was then running investment banking to examine the evaluation system which at that point was broadly

Page 88

perceived to be not functioning very well, and to come up with a new system. We established a committee that included various professionals of various seniority levels and various departments, retained some consultants, and developed an evaluation process that is reflected in the types of materials that you have shown me here today.

Q. And as part of that, and I didn't bring extra copies of that, but I have something called an evaluator guide. This happens to be for September 1997. Was something similar prepared, and by the way the Bates numbers are 82161 through 82220 or should be 219.

Is this the sort of materials that would be given to everybody that is doing evaluations so that they know what it is they are doing?

A. I'm sorry, what was the question?

Q. What is the purpose of these types of evaluator guides?

A. I would say the purpose is to put evaluators in a position of knowing what their jobs are, how best to perform them,

NOT A CERTIFIED COPY

what's expected of them. What the objectives of the process are, what their responsibilities are, et cetera.
Q. And by evaluators, are we talking about the evaluation director or each Morgan Stanley employee that evaluates another Morgan Stanley employee?
A. Both really.
Q. Is it fair to say Morgan Stanley takes these evaluations seriously?
A. Yes, sir.
Q. And they are an important part of Morgan Stanley's business?
A. People are the most important asset of professional organization like Morgan Stanley, and evaluation of our people and development of our people are really extremely important.
Q. Now, focusing back to page 85451 from Exhibit 310, the consensus put together under leadership and management skills was that Mr. Strong should be more straightforward and up front with other managing directors, seen to exaggerate the truth with clients thereby hurting his

credibility with junior team members. Is that an area that suggests significant concerns with Mr. Strong?
MR. CLARE: I object to the form of the question.
A. Well, I didn't write this. So I can't really say what overall context Mr. Perella was dealing with when he wrote this.
Q. This was written in the context of a summary of an overall evaluation, somebody reading it, to evaluate whether you have somebody within your ambit that is good, bad or indifferent. Does this cause you concern?
A. Well, the major purpose in the evaluation process is to identify any areas that need to be brought to the attention of the evaluatee, and that need to be worked on and need to be improved. If there were these tendencies, or some part of his track record reflected this, it would be appropriate to be focused on, so that it could be improved on.
Q. If these comments reflect an actual shortcoming then it is something that needs to be corrected; is that fair?

A. Well, as I say, the process was directed at, among other things, but very importantly, identifying things that each and every individual needed to work on. Morgan Stanley has been blessed with some outstanding performers over the year and I have seen many performance evaluations and there are always things that can be worked on.
Q. Sure. Part of the reason for this was to identify for people things that they should strive to change for themselves, right?
A. Well, for themselves and for the firm.
Q. And part of it was --
A. To be more effective professionals.
Q. Part of this was self evaluation, setting goals for yourself to change for your own betterment and the betterment of the firm and part of it was to identify for people like you, who were supervising people, whether or not you had a problem that you had to look at more closely; is that right?
A. Yes, sir.

Q. And my question is, when you read this, did you identify Mr. Strong as somebody you needed to look at more closely?
A. Well, I don't recall specifically reading this until now, which I guess would make it not a recollection that I was reading it. I'm reading it now.
Q. Are you able to put yourself back in the frame of mind that you would have been in 1996 when you were reading perhaps as many as a thousand of these reports to just get a sense of what people who were within your area were doing as to whether this would have caused you concern?
MR. CLARE: I object to the form of the question, to the hypothetical.
A. No, I would put it more that this is something he needed to improve. Bill was generally viewed as a very high quality professional and a major contributor.
Q. In any event, do you recall taking any action one way or the other after reading Mr. Strong's reviews?
A. I didn't take any action. It wouldn't have been my role to take any

NOT A CERTIFIED COPY

action.
Q. Did you direct anybody to take any action?
A. I did not. It would not have been my role.
Q. Did you make any notes to yourself to be sure and read his review next year to see if he had actually improved?
A. I made that note with respect to every individual every year.
Q. If these kinds of comments had persisted from year to year, would that cause you additional concern?
MR. CLARE: I object to the hypothetical.
A. These types of comments would have suggested to me the desirability and necessity which was there in any event to manage the individual so he could get to a more positive place on this type of issue. But the overall view on Mr. Strong was that he was an effective, aggressive coverage officer, a good leader, had done a good job helping develop more effective market and market presence in the Chicago market.

Q. Mr. Fiedorek, with respect to evaluations for 1997 and 1998, it's my understanding that you would not have reviewed those in the ordinary course of your business; is that right?
A. I was in a situation where or I had evolved to a situation in 1997 where I was no longer spending a tremendous amount of time reviewing evaluations and it marked a very happy moment in my life I will add.
Q. Without trying to take you back to a painful moment in your life, do you have any recollection of any occasion to look at performance evaluations for Mr. Strong from 1997 or 1998?
A. To look -- not specifically, no.
Q. Would there have been any circumstances?
A. To make sure I'm answering all of this carefully, there were some review forums that I was involved in for a few years post 1997 where I did get into some detailed reading of certain evaluations for different industry groups. I don't want to give you the impression that I just stopped reading

evaluations. That was certainly not involved to nearly the extent and I was not involved in an act of operating management capacity, but I still had occasion to review certain evaluations and indeed to lead some discussions in review forums in certain years post 1997. My recollection though is that none of that included -- I don't recall specifically looking at any evaluations of Bill. There tended to be more things like the technology group in California. That type of thing.
Q. Do you recall any other industry groups other than the technology group in California?
A. Certain coverage officers but below the managing director level.
Q. Okay. So you're reasonably sure you would not have looked at Mr. Strong's evaluations?
A. Pretty sure.
MR. BYMAN: And based upon that time, I take it it is your position that it would be a violation of the protective order to show him the

evaluations for 1997 and 1998?
MR. CLARE: It's my position that there has not been a foundation laid to show Mr. Fiedorek the entire unredacted version of the 1997 or 1998 evaluations of Mr. Strong. I don't have any objection, as I mentioned to you during the break, of showing him a redacted version of those evaluations or any portion of it that Mr. Fiedorek would have authored consistent with the protections by the protective order entered by the court on this subject. But in terms of an overall unredacted version, I think that would run afoul of the protective order that we are continuing to insist on compliance with the protective order.
MR. BYMAN: One or more of my partners may know more about this than I do, and I may be able to figure out why I should be able to have done more than this. I'm not going to try and violate a protective order today.
Q. I am going to read to you, because

NOT A CERTIFIED COPY

Page 97

I do not have redacted versions, comments that you made in the 1997 evaluation and I'll simply read them to you because I don't have them in a form to show them to you.

MR. CLARE: I'll say for the record I appreciate your statements and we don't have any objection to that procedure, but I do want to be clear that although we're insisting on adherence to the protective order, you do have an opportunity to ask Mr. Fiedorek about those evaluations and we're not going to bring him back about the 1997 or 1998 in written form since I'm allowing you to read portions of it today and if you have a copy --

Q. I may ask you some general questions to them as well.

MR. BYMAN: I take it you would object if I attribute specific statements to specific individuals?

MR. CLARE: Correct.

Do you have a copy of what you're going to be reading from so I can

Page 98

follow along?

MR. BYMAN: Sure. The 1997 evaluation we have marked as Exhibit 311 and I'll give you a copy now.

MR. CLARE: Thank you.

Q. Let me represent to you, Mr. Fiedorek, that in the 1997 evaluation which we have marked as Exhibit 311, but which I'm not showing you, at page 85459, a comment is attributed to you and I'm going to read it into the record. Observed a very strong relationship with the CEO and CFO of Sunbeam. These relationships were the most important factor in the firm's success in obtaining strategic mandates at Sunbeam and in working around and through a possible conflict that developed in the course of dialogue with Sunbeam. Have seen a similar pattern in a second situation in Chicago. Bill clearly has senior level client impact which helps generate business.

My first question, is it a correct statement that it was Mr. Strong's relationship with Mr. Dunlap and Mr. Kirsch of Sunbeam that helped get that business?

Page 99

MR. CLARE: Objection. That calls for speculation.

A. Well, as I testified earlier, we had the opportunity to present our credentials because of his past relationship with Mr. Dunlap, and then we were awarded a mandate, so I took from all of that positive things about Bill with respect to helping create the commercial opportunity.

Q. Has anyone ever told you who initiated the contact between Sunbeam and Morgan Stanley?

A. I don't recall.

Q. So you don't know whether or not Mr. Dunlap may have picked up the phone and called Mr. Strong or Mr. Strong may have picked up the phone and called Mr. Dunlap or some other scenario?

A. I don't know. I may have known at some point, but I have forgotten if I did.

Q. What was the possible conflict that needed to be worked around in the course of the dialogue with Sunbeam?

A. I don't recall.

Q. You have no recollection at all of

Page 100

any conflict situation with Sunbeam?

A. No.

Q. At page 45461, a comment is attributed to you and I'm going to read it into the record.

Continue to be disciplined on the quality of business variable. I did not think he was as soberly reflective on firm franchise issues as he might have been on one specific piece of business that he was pursuing a possible hostile mandate for a perspective client with a controversial image. I should note I supported taking this on, but Bill struck me as giving no weight to possible controversy.

Did that refer to the Sunbeam, Alpha or Black & Decker situation?

A. Well, the suggestion of the context is that it did, but I don't really recall specifically.

Q. Can you recall any other business that you did with Mr. Strong during 1997 other than the Sunbeam engagement?

A. I don't have any specific recollection, but I did have some level of

NOT A CERTIFIED COPY

Page 101

involvement with Bill and did call in a few other companies. The previous comment that you quoted referenced him having a very high quality relationship with a Chicago company and I did call on some important Chicago companies together with him from time to time. And it's possible that some of that took place in 1997 but I don't recall specifically.

Q. Do you recall any of the contact with Chicago companies involving a possible hostile mandate?

A. I don't.

Q. Do you recall what you meant by Bill struck me as giving no weight to possible controversy?

A. I don't recall the specifics of that situation, but the comment that you read to me indicates that despite my observation that I did agree with him on the conclusion we should do the business.

Q. Putting yourself again in the position of somebody who is reviewing the evaluations of people within your area from year to year to get a sense of who these

Page 102

people were and how they were performing, if you had someone who was told as a personal goal that he needed to work on not exaggerating the truth and then in successive years comments came from peers and from downward comments that he was sometimes over the line in similar statements, would that cause you concern about the trustworthiness of that individual?

MR. CLARE: Objection. Incomplete hypothetical.

A. Well, there was a very broad context in the evaluation assessment. There is the total history of the individual as there is a total history of the firm with the individual. There is importantly the assessment of other senior managers including the senior managers who had direct reporting responsibility from the individual. It's a very, very broad context and picking out one evaluation comment in a very broad sense, I don't think huge weight can be given to it.

Q. I may not have been clear about my comment, but let me try to expand a bit on the hypothetical.

Page 103

I'm not talking about a single comment but I'm talking about a firm wide overview evaluation that tells an employee that there is enough in the evaluations to suggest that he has a problem with exaggerating the truth and he needs to work on it. And then in follow on years, not single comments but multiple comments that suggest that he may be over the line or that he exaggerates or that he otherwise stretches things. When you have a pattern from year to year, when you have more than single comments in each of those years, would that cause you concern over that employee's performance?

MR. CLARE: Same objection.

A. I was not his evaluation director. I was not his manager. It wasn't really my -- I did not have the closest knowledge. It really was not my position to draw that conclusion. It was people like Mr. Maguid or Mr. Perella.

Q. I'm sorry, but you may have misunderstood what I was asking you to do. I wasn't asking you to sit in judgment of Mr. Strong.

Page 104

A. It sounded like it.

Q. Then let me try to be more clear. I was asking you to put yourself back in the position you were in for six or seven years when you ran the MARD division and when you evaluated people year in and year out and read all of the evaluations to get a sense of it and I'm not referring to Mr. Strong. I'm asking you this as a hypothetical. Hypothetically, if in year one you see enough comments that a firm wide evaluation is given to say this is an individual who has a problem exaggerating the truth, and in year two you see a number of comments sufficient to get a firm wide evaluation that says this individual still has a problem with exaggerating the truth, and in year three you see enough comments that there is a firm wide evaluation that the individual continues to have that problem, what would you as a manager do, if anything?

MR. CLARE: Objection. Incomplete hypothetical.

A. I can really only respond to a database on a specific individual that would

NOT A CERTIFIED COPY

include my knowledge of managing that person. Management is not about generalization. Management is about in depth knowledge of a specific individual and their history. And that's what you draw conclusions on.

Q. And who would that individual have been with respect to Mr. Strong in the period that led up to mid 1997?

A. It would have been the corporate finance managers who were at that point Mr. Perella and Mr. Maguid.

MR. BYMAN: Let me take a look at my notes.

MR. CLARE: Off the record for a minute.

THE VIDEOGRAPHER: We're going off the record. The time is 3:27.

(Discussion held off the record.)

MR. BYMAN: Back on the record.

THE VIDEOGRAPHER: We're back on the record.

MR. BYMAN: Mr. Fiedorek, thanks for your time; I've taken enough of it.

MR. CLARE: I don't have any

questions for Mr. Fiedorek.

THE VIDEOGRAPHER: The time is 3:27. This completes the videotaped deposition.

_____

BRUCE FIEDOREK

Subscribed and sworn to before me

this ___ day of _____, 2004.

_____

INDEX

WITNESS	EXAMINATION BY	PAGE
BRUCE FIEDOREK	MR. BYMAN	5

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, Adrienne M. Mignano, a Notary Public within and for the State of New York, do hereby certify:

That BRUCE FIEDOREK, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of December, 2004.

_____

ADRIENNE M. MIGNANO

NOT A CERTIFIED COPY

015000

452

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY Kelly Mans
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 5
(EXHIBITS 40-46)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

015918

970

16div-022104

TABLE OF CONTENTS
VOLUME 5

	TAB
Robert Duffy Deposition Transcript	40
MS Ex. 104	41
MS Ex. 105	42
MS Ex. 106	43
MS Ex. 107	44
MS Ex. 76	45
CPH Ex. 236	46

NOT A CERTIFIED COPY

015319

NOT A CERTIFIED COPY

015320

C O N F I D E N T I A L

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.) CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.) CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF ROBERT DUFFY

New York, New York

Thursday, July 8, 2004

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 162108

NOT A CERTIFIED COPY

015821

July 8, 2004
9:48 a.m.

Videotaped Deposition of ROBERT J. DUFFY, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York, pursuant to Notice, before TAMI H. TAKAHASHI, RPR and a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff Coleman (Parent) Holdings Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Defendant Morgan Stanley & Co., Inc.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.
RYAN PHAIR, ESQ.

VINSON & ELKINS
Attorneys for the Witness
666 Fifth Avenue
New York, New York 10103-0040
BY: STEVEN R. PARADISE, ESQ.

APPEARANCES:

ALSO PRESENT:

MARK GRANDERSON, Videographer
NOEL BOUCHE, Summer Associate

THE VIDEOGRAPHER: This is tape No. 1 of the videotaped deposition of Robert Duffy in the matter Coleman Holding, Inc., plaintiff, versus Morgan Stanley Company, Incorporated, defendant, Case No. CA 03-5045 AI;

Morgan Stanley Senior Funding, Inc., plaintiff, versus MacAndrews & Forbes Holding, Inc., et al., defendants, Case No. CA 03-5165 AI in the 15th Judicial Circuit in and for Palm Beach County, Florida.

This deposition is being held at Kirkland & Ellis, at 153 East 53rd Street, New York, New York 10017, on Thursday, the 8th of July 2004. And the time is 9:48 a.m.

My name is Mark Granderson with Esquire Deposition Services and I'm the legal video specialist. The court reporter is Tami Takahashi, also in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. CLARE: Yes. Good morning. Thomas Clare with the law firm of Kirkland & Ellis, LLP, here for Morgan Stanley &

NOT A CERTIFIED COPY

015822

Company and Morgan Stanley Senior Funding. And I have with me today my colleague, Ryan Phair, P-H-A-I-R, also with Kirkland & Ellis.

MR. BRODY: Michael Brody from Jenner & Block in Chicago, Illinois on behalf of Coleman Parent Holdings and MacAndrews & Forbes Holdings Inc.

MR. PARADISE: Steven Paradise of Vinson & Elkins on behalf of the witness, Mr. Duffy. And with me today is my colleague, Noel Bouche, who is a summer associate with our firm.

THE VIDEOGRAPHER: Will the court reporter, please, swear in the witness.

R O B E R T J. D U F F Y, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. CLARE:

Q. Good morning, Mr. Duffy.
A. Good morning.
Q. My name is Tom Clare. We met this morning when you came in. Could I get you to state your full name, please, for the record.

A. It's Robert Joseph Duffy.
Q. And what is your home address?
A. 16 St. Nicholas Road, Darien, Connecticut.
Q. Is that your principal residence?
A. Yes.
Q. Do you maintain any other residences?
A. No.
Q. And who is your current employer?
A. The General Electric Company.
Q. And what position do you hold with the General Electric Company?
A. I'm general manager of global business development.
Q. And what is your date of birth?
A. December 9, 1965.
Q. And you're represented by counsel here today?
A. Yes.
Q. And that's Mr. Paradise?
A. Yes.
Q. I understand that you're not represented by Mr. Brody or anyone from his firm; is that correct?
A. That's correct.

Q. Before today, have you met with any attorneys from Jenner & Block, Mr. Brody's firm, regarding this deposition?
A. No.
Q. The deposition today is being videotaped. You heard an introduction by the video specialist this morning. In addition, it's being taken down stenographically, and so when we -- when I ask you a question, I'm going to need to ask you to answer verbally, make sure that it gets taken down on the written record as well. Even though the video can take down if you nod your head yes or no --
A. Um-hum.
Q. -- the court reporter cannot.
So, if I see that you haven't done that, I'll try to remind you to do that.
Have you ever given a deposition before?
A. I think once before.
Q. Okay. Any other sworn testimony in court or other proceedings?
A. I don't think so.
Q. What issue or case did the other deposition involve?

A. It was another banking matter.
Q. Did it involve the -- was it when you were employed at CSFB?
A. Yes, with CSFB.
Q. Did the deposition involve the engagement that CSFB had for the Coleman Company?
A. I don't remember.
Q. Did it involve Sunbeam in any way?
A. I don't remember. It could have. I just don't remember.
Q. Approximately, what time period was the deposition? How many years ago, if you can recall?
A. It was, probably, five or six years ago.
Q. You don't recall the subject matter at all?
A. No.
Q. Regardless of whether it related to Coleman, can you recall whether it involved an engagement that CSFB had for any MacAndrews & Forbes Company?
A. I think it did.
Q. You don't recall which one?
A. No. That's -- I think the deposition

NOT A CERTIFIED COPY

015823

Page 10

was at their headquarters.
Q. Were you represented by counsel in that deposition?
A. I assume so.
Q. Have you seen a transcript of that deposition that was taken?
A. Not unless -- only if it was at the time. I have not since then.
Q. Have you ever provided a sworn written statement regarding the work that you did on behalf of CSFB related to the Coleman Company?
A. I don't think so.
Q. Or related to Sunbeam?
A. I don't remember doing that.
Q. Have you ever been interviewed by a regulatory or law enforcement agency related to the work that you or Credit Suisse First Boston did for the Coleman Company?
A. I don't think so.
Q. At the beginning of your deposition today, you took an oath. And it's the same oath that you would take as if you were testifying in court. Do you understand that?
A. Yes.
Q. And is there any reason you can't

Page 11

testify truthfully today?
A. No.
Q. Because it may have been a while since the last deposition, I want to go over a couple of ground rules that we'll follow today, make sure you're comfortable and you understand the procedure that we're going to follow.
My job is going to be to ask questions that you can understand and that are clear. And your job is to answer them truthfully and to the best of your ability.
If for some reason you can't understand my question, doesn't make sense to you, please ask me to rephrase it. But if you give me an answer, I'm going to assume that you heard my question and that you understood it. Is that okay?
A. Fair enough.
Q. I'll be happy to repeat or rephrase it if you don't.
A. Sure.
Q. If you need to correct something that you said earlier in the day, if something comes back to you or you realize that something you said was incorrect or you want to amend, just let

Page 12

me know and I'll give you an opportunity to do that. Okay?
A. Sure.
Q. Because the court reporter is taking down the testimony, we have to try not to talk over each other. If you would wait until I finish my question before you begin your answer, and I'm going to wait until you finish your answer before I begin the next question, that will help us move along and make sure we have a clear record. Okay.
And we've already discussed off the record your desire to take a couple of breaks today to handle calls. We'll certainly try to accommodate that. If you need to take a break for any reason, just let me know. And we'll try to accommodate requests for breaks for any reason.
A. Thank you.
Q. Do you have any questions about the ground rules?
A. No.
Q. How did you prepare for the deposition today?
A. I met with Mr. Paradise on Tuesday.

Page 13

Q. For how long did you meet with him?
A. Probably two hours.
Q. Besides Mr. Paradise, was anyone else present?
A. His associate, Hilary Preston.
Q. Was anyone else besides Ms. Preston and Mr. Paradise present?
A. No.
Q. Anyone from Mr. Brody's firm, Jenner & Block?
A. No.
Q. Anyone plug in by telephone to that preparation session?
A. No.
Q. Is that the only session that you had to prepare?
A. That's the only session to prepare. We spoke about the deposition a couple of times on the phone.
Q. With Mr. Paradise?
A. Yes.
Q. Have you ever spoken on the phone with anyone from Mr. Brody's firm?
A. No.
Q. What about anyone from MacAndrews &

NOT A CERTIFIED COPY

015824

Forbes?
A. No.
MR. PARADISE: About his deposition?
Q. About your deposition, of course.
MR. CLARE: Thank you.
A. No.
Q. Today, we're going to be talking principally about work that you did related to the Coleman Company. And it might make some sense to get some definitions up front so that we are using common language when we talk about it.
When I say "Coleman," what I'll be referring to is the Coleman Company, the manufacturer of camping goods equipment that was headquartered in Wichita. Is that okay?
A. Sure.
Q. And then there is another set of companies, one of which is called Coleman (Parent) Holdings Company, and that was a company that owned, along with some other holding companies, an 82 percent or some percentage of the Coleman Company prior to the acquisition from Sunbeam -- by Sunbeam.
I may refer to that as Coleman (Parent) Holdings Company or MacAndrews & Forbes,

because it's the same corporate parent. I may use those terms interchangeably. Okay?
A. That's fine.
Q. If I -- if it's unclear which one I'm referring to or if your answer would differ depending on which entity we're talking about, just let me know and we want to make sure it's very clear.
A. Okay.
Q. Did you review any documents to prepare yourself for the deposition today?
A. Yes.
Q. Did any of the documents that you reviewed refresh your recollection about the work that you had done related to Coleman?
A. Yes.
Q. What documents refreshed your recollection?
A. The investment banking memo that we prepared at First Boston, sort of had a record of what we had done.
Q. Anything else?
A. No.
Q. Did you have an opportunity to review the complaint that was filed in this case against

Morgan Stanley?
A. No.
MR. PARADISE: When you asked "anything else" before, you meant did anything refresh your recollection, or did you mean did you see any other documents?
MR. CLARE: Did anything else refresh your recollection?
MR. PARADISE: Okay. Is that what you understood the question to be?
THE WITNESS: Yes.
MR. PARADISE: Okay.
Q. Did you review any transcripts of depositions?
A. No.
Q. Did any -- were any testimony described to you?
A. No.
Q. Do you know who else, if anyone, has been deposed in this proceeding?
A. No. I know you're going to depose another CSFB person.
Q. That's Mr. Geller?
A. Yeah.
Q. Have you spoken to Mr. Geller about

the deposition?
A. No.
Q. Do you stay in contact with anyone at MacAndrews & Forbes?
A. No.
Q. When was the last time that you've spoken with someone from MacAndrews & Forbes?
A. Maybe, in 2000.
Q. And who is your point of contact at MacAndrews & Forbes?
MR. PARADISE: Generally, or for this engagement?
MR. CLARE: Generally.
A. It would have been either Jim Maher, M-A-H-E-R, or Wil Nesbitt, N-E-S-B-I-T-T.
Q. Anyone else?
A. No.
Q. Those are the individuals that were your points of contact for this engagement as well?
A. They were the principal points of contact. I mean, there were other MacAndrews & Forbes people involved.
Q. Who else did you have dealings with during your engagement from MacAndrews & Forbes?

NOT A CERTIFIED COPY

015825

A. It would have been Ron Perelman, Howard Gittis, Donald Drapkin. And there was the Coleman folks, you know, Jerry Levin, I guess Joe Page. Those are the names I remember.
Q. Of the names that you've just recited, when was the last time that you had spoken with any of those individuals?
A. Other than Will Nesbitt or Jim Maher, you know, not probably since 1998.
Q. And Mr. Maher and Mr. Nesbitt, you believe you have not spoken to since 2000?
A. That's correct.
Q. You don't have any ongoing business dealings with MacAndrews & Forbes or any of its affiliate companies?
A. No, I don't.
Q. When did you first become aware that there was a lawsuit involving Morgan Stanley and the Coleman engagement?
A. Probably a couple of months ago.
Q. So, I take it, you were not aware of it before it was filed in May of 2003 over a year ago?
A. No.
Q. I take it, then, you were not

consulted or interviewed by anyone before that case was filed?
A. No.
Q. I believe I asked you this before. You have not had an opportunity to review the complaint that was filed in that case?
A. I haven't seen it, no.
Q. Okay. Do you understand what allegations are being made in this lawsuit against Morgan Stanley?
MR. PARADISE: Just answer that yes or no for now.
A. I think so. I mean, I think so.
Q. You have a general understanding?
A. General understanding.
Q. I'll represent to you that, in the lawsuit, MacAndrews & Forbes is alleging that Morgan Stanley conspired with Sunbeam to defraud it in connection with its sale of its interest in Coleman to Sunbeam.
Do you have any reason to believe that those allegations are true?
A. I don't know.
Q. Do you have any facts that you believe would support that -- those allegations? Are you

aware of any facts?
A. I don't know. I mean, I don't know, is the answer.
Q. Do you have any reason to believe that Morgan Stanley knowingly provided false information to Coleman (Parent) Holdings in connection with the acquisition?
A. I don't -- I don't know.
Q. Or that Morgan Stanley was negligent in performing its duties in connection with its engagement for Sunbeam?
A. I don't know what Morgan Stanley did, so --
Q. We're going to talk in more detail about that, and I want to explore a little bit what you do remember about the engagement.
A. Sure.
Q. But before we do that, I'd like to get a little bit more background about you and your education.
Could you please describe your educational background.
A. Sure. I graduated from Harvard College in '87. Graduated from -- with a bachelor's degree. Graduated from University of

Wales in '88 with a master's degree. Graduated from Georgetown Law Center in '94 with a J.D.
Q. What was your major in Harvard College?
A. Economics.
Q. Did you graduate with honors?
A. Yes.
Q. And then your next degree was from Wales?
A. Yes.
Q. And that was an MBA?
A. It was a master's of science in international economics.
Q. Is there any concentration in that master's?
A. No.
Q. Did you graduate with honors with that degree?
A. No.
Q. You have a law degree from the Georgetown Law Center?
A. Yes.
Q. What year was that?
A. '94.
Q. Any honors?

NOT A CERTIFIED COPY

015826

A. Yes.
Q. Any special concentration --
A. No.
Q. -- at Georgetown?
Are you a member of the bar of any state?
A. I think I'm a member of the Massachusetts bar.
Q. Is that an active --
A. Inactive membership.
Q. -- or inactive?
Do you hold any other degrees, other than the ones that you've identified?
A. No.
Q. You don't have an MBA?
A. No.
MR. PARADISE: Isn't that enough?
MR. CLARE: That's plenty.
THE WITNESS: It's expensive.
MR. PARADISE: Man has to work.
Q. Are you admitted to practice law in any state other than Massachusetts?
A. I don't think so.
Q. Do you have any other professional certifications? Are you a CPA, anything like

that?
A. I think I have sort of a series -- you know, some of the SEC qualifications, Series 7. There may be one other.
Q. Did you have those certifications in 1998 when you were working on the Coleman engagement, or were they things you have achieved since 1998?
A. I think the Series 7 I had at the time.
Q. Any other certifications that you had at the time in 1998?
A. I'm not sure. I think there's a second certification I have. I don't know if I had it at the time or after that.
MR. PARADISE: 63?
THE WITNESS: 20.
MR. PARADISE: 24?
THE WITNESS: Something like that.
Q. Did you ever practice law?
A. No.
Q. You started working immediately upon your graduation from Georgetown?
A. Yes, I did.
Q. Did you ever serve in the military?

A. No.
Q. Could you describe your employment history starting in 1994 when you graduated from Georgetown up through the present.
A. Okay. In '94, I started as an associate at CSFB. I think I was promoted to vice president in 1997. And promoted to director in 1999. And promoted to managing director in 2001. I worked in New York from '94 to '98.
And then September of '98 moved to London. I worked there till June of 2002. Came back to New York in June of 2002. And worked till March of 2003 at CSFB, when I left to work at General Electric in the position I'm in now.
Q. And what is the position that you hold now?
A. It's general manager of global business development.
Q. Generally, what are those responsibilities?
A. I'm responsible for overseeing large acquisitions that the General Electric Company does, as well as running their divestiture processes, businesses they sell.
Q. And in connection with the work that

you do at General Motors -- General Electric -- I'm sorry -- do you have any dealings with Morgan Stanley professionally?
A. Yes.
Q. Who at Morgan Stanley do you deal with?
A. A variety of people, but including Joe Perella, Ruth Porat, Ray McGuire. And those are the three key General Electric folks that we interact with.
Q. Have you spoken with any of those individuals?
MR. PARADISE: You mean Morgan Stanley? You said General Electric. You mean Morgan Stanley?
THE WITNESS: I guess those are the people who cover General Electric from Morgan Stanley.
Q. Have you spoken with any of those individuals at Morgan Stanley about your upcoming deposition or this case in any way?
A. No, I haven't.
Q. Does General Electric -- have they engaged Morgan Stanley to assist it in connection with work they're doing?

NOT A CERTIFIED COPY

015827

A. Yes, they have.
Q. And are you responsible for those -- overseeing those engagements?
A. I can be. I haven't been for the engagements they've been doing most recently.
Q. And what is the nature of the work that Morgan Stanley provides for General Electric in your current responsibilities?
A. They will -- they can do -- they can advise us on acquisitions or divestitures. They're not doing that right now. They advised us on the underwriting of our insurance subsidiary Genworth, G-E-N-W-O-R-T-H. And they were the lead underwriter for that.
Q. Have you been satisfied with the work that they've done?
A. I haven't been directly involved.
Q. Going back to the time period of 1997 and 1998 when the engagement that you worked on for the Coleman Company, you were vice president?
A. Yes.
Q. And you were promoted to director in 1999?
A. Yes.
Q. So, in 1997 and 1998, you were vice

president at CSFB working out of the New York office?
A. Yes.
Q. What -- when you were an associate and then a vice president, did you have a particular area or division within CSFB that you worked in?
A. The mergers and acquisition group.
Q. Did you stay in that group the entire time at CSFB?
A. I did a little -- the definition of what the job was changed, so I also served in the telecom and media group as the M&A individual.
Q. So, as I understand it, at some point during your tenure at CSFB, you focused your merger and acquisition work in the telecom industry?
A. Yes.
Q. And, approximately, when did that occur?
A. Starting in 2000.
Q. After the Coleman engagement had concluded?
A. Yes.
Q. How many M&A deals had you worked on, approximately, prior to your engagement for the

Coleman Company?
A. Probably 15 to 20.
Q. And, after that engagement, while at CSFB?
A. It's hard to quantify, but probably another 20, 25 on both deals that happened and did not happen.
Q. How many of those engagements are deals that you worked on were for MacAndrews & Forbes or companies related to MacAndrews & Forbes?
A. Probably three or four.
Q. Do you recall any of the other engagements that you worked on for MacAndrews & Forbes or MacAndrews & Forbes-related companies?
A. We gave them a fairness opinion on the sales of some television stations. And we advised them when they sold some businesses to NewsCorp. -- well, actually, we did not advise them. We advised them when they tried to buy King World.
MR. BRODY: I'm sorry. Can I have that answer back.
THE WITNESS: We advised them looking at buying a business called King World, I

think.
Q. And what was the nature of the work that was done in connection with the television station?
A. We provided a fairness opinion. It was a private sale, so --
Q. And you were advising the company that was purchasing the telephone -- the television station?
A. I think we were advising the seller of the station, which was a MacAndrews & Forbes Company.
Q. And, in connection with that sale, was the MacAndrews & Forbes Company receiving -- was it a cash deal or cash and stock?
A. I think it was cash.
Q. How about in connection with the King World transaction?
A. They were a buyer.
Q. In connection with that transaction, was stock part of the consideration that was given or received?
A. Well, the deal did not happen, so --
Q. The deal that was being contemplated?
A. I don't remember.

NOT A CERTIFIED COPY

001582B

Page 30

Q. Putting aside MacAndrews & Forbes-related transactions, have you been involved in other merger and acquisition transactions where a client that you were advising is accepting stock as part of consideration?
A. Yes.
Q. And you've worked on those types of engagements before the Coleman engagement?
A. Yes.
Q. And after as well?
A. Yes.
Q. In those transactions where the client that you were advising was accepting stock, did you perform due diligence on the company that was providing the stock?
A. Yes.
Q. And for -- for which transactions can you identify where that occurred?
A. The company called Roher sold its interest to Rhone-Poulenc in 1991 or 1989. I'm not sure between '94 and '97 if there were any others. I just don't remember.
Q. And for what purpose did you conduct due diligence in connection with those

Page 31

transactions?
A. Due diligence on whom?
Q. On the company that was issuing the stock or providing the stock.
A. Just to understand the business and the company.
Q. And, as a general matter, in those types of transactions, do you think it's a good idea to conduct that due diligence?
MR. BRODY: Object to form.
A. I don't know what good idea -- I mean, I think it's appropriate.
Q. Why do you think it's appropriate?
A. I think you want to understand the company that you're doing business with.
Q. What types of due diligence did you perform in that transaction that you've described?
A. I don't remember exactly. You would have reviewed forecasts and public documents that they provided.
Q. Did you ever talk to the company?
A. Management, yes.
Q. What about visiting facilities?
A. It would depend on the transaction.

Page 32

Q. Have you ever worked on a transaction, where, as part of due diligence, you visited a facility?
A. Not on a sell side -- not advising a seller, I don't think I have. Other than, you know, the headquarters of the buyer type of --
Q. What kind of due diligence did you perform in connection with the engagement that you did for Coleman?
A. We reviewed -- due diligence on Sunbeam?
Q. Correct.
A. We met with Sunbeam management to discuss forecasts, I believe, twice. And we reviewed the forecast with them.
We would have also reviewed the public documents that Sunbeam provided, the SEC documents, as well as, you know, research reports that were out in the public domain.
Q. Anything else?
A. I don't think so.
Q. While you were at CSFB, did you work on any deals in which CSFB was serving as the underwriter of securities?
A. I don't -- I don't think so, or at

Page 33

least I was not the underwriter.
Q. Was the Coleman engagement the first engagement that you had worked on for a MacAndrews & Forbes-related company, or had you worked on prior deals with those individuals?
A. I believe I had worked on prior deals with them.
Q. So, the two deals that you described earlier --
A. I think both happened in '96, '97.
Q. Can you recall any other engagements, even those that did not involve stock being transferred, that you had done for MacAndrews & Forbes?
A. No. I mean, there were potential engagements that we would have worked on, but not any that had happened.
Q. Did -- was MacAndrews & Forbes a long-standing client of CSFB?
A. They had been -- yes, they have been a client for probably 10 years.
Q. 10 years prior to your --
A. Well --
Q. -- engagements that you worked on? And were there other individuals

NOT A CERTIFIED COPY

Page 34

within CSFB that had relationships with individuals at MacAndrews & Forbes?
A. Yes.
Q. And who at CSFB, that you know of, had dealings or engagements with MacAndrews & Forbes?
A. Gordon Rich, Tim O'Hara, I assume Chuck Ward.
Q. Do you know what type of work Mr. Rich had done for MacAndrews & Forbes?
A. He -- well, he was the primary relationship manager. And so he had done a variety of assignments for them.
Q. Prior to the Coleman engagement?
A. Yes.
Q. Do you know what the nature of those assignments were?
A. I think we took Coleman public. We would have also done some high yield transactions for them where he would have been the relationship manager for that.
We sold some businesses for Revlon, and he would have been responsible for that as well.
Q. You did not work on any of those engagements?

Page 35

A. I think I did work on the Revlon sale. That was in '91. But I left before it was completed.
Q. This was while you were in school?
A. Yes. Well, it was completed while I was in school. Before law school, I worked at First Boston.
Q. For how long?
A. '88 to '91.
Q. And what position did you hold during that time period?
A. I was an analyst.
Q. And aside from the Revlon transaction that you just described, did you work on any other MacAndrews & Forbes engagements during that time period from '88 to '91?
A. I don't think so.
Q. What was the nature of the Revlon transaction that you worked on?
A. They -- initially it was to sell the company. And then it became to sell a piece of the company to Procter & Gamble.
Q. And was that transaction ultimately consummated?
A. I believe so.

Page 36

Q. But not while you were there?
A. No.
Q. How about Mr. O'Hara, what was the nature of his work for MacAndrews & Forbes?
A. He ran the high yield department, so he oversaw high yield finances that he would have done for them.
Q. And did you work on any engagements was Mr. O'Hara for MacAndrews & Forbes or related companies?
A. No.
Q. And the other name that you mentioned was Chuck --
A. Ward.
Q. -- Ward.
A. He ran the investment banking group. And I think he met, from time to time, with the folks at MacAndrews & Forbes.
Q. Did you work on any engagements with Mr. Ward for MacAndrews & Forbes?
A. No. He was involved in this for a little bit.
Q. And what role did he play in the Coleman engagement?
A. I think he just attended some of the

Page 37

meetings.
Q. Other than the transaction that you described earlier with regard to taking Coleman public, had there been other engagements that CSFB had worked on for the Coleman Company?
A. I believe so. I think Marvel went public, and I think we were involved in that. But I don't remember.
Q. Had you had prior deals with the individuals at the Coleman Company prior to the engagement in 1997 and 1998?
A. Joe Page was involved with the television stations which would have been the prior transaction. And Jerry Levin was, probably, someone who had been at some meetings that I attended. But I don't reall -- I think he ran -- I can't remember. At one point, he ran Revlon. I don't know whether he ran it while we were involved in the sales process.
Q. What year was the engagement where Coleman was taken public?
A. I think it's 1992.
Q. From '92 to '98, were there any other engagements that you were aware of, even if you weren't personally involved, where CSFB had done

NOT A CERTIFIED COPY

015830

work for Coleman?
A. I'm sure there are. I just don't know the exact ones.
Q. At the time that you got involved in the Coleman engagement, was it your understanding that CSFB had a good working understanding of the Coleman Company and its business?
A. I don't know.
Q. The sale of the television stations that you described earlier, was that related to Panavision?
A. No.
Q. It was not a Panavision transaction?
A. No.
Q. Do you recall which MacAndrews & Forbes entity was involved in that engagement?
A. No. I think it was one station.
Q. Did you ever work on any engagement for which CSFB was a lender or issuer of a credit facility to a MacAndrews & Forbes company?
A. I don't know. I can't recall.
(Morgan Stanley Exhibit 313, Materials Prepared for Discussion MacAndrews & Forbes, February 1997, marked for identification, as of this date.)

Q. Mr. Duffy, I've handed you a document that we've marked as Morgan Stanley Exhibit 313. It's a document dated February 1997 entitled, "Materials Prepared for Discussion, MacAndrews & Forbes," and it's a four- or five-page document that bears a CSFB legend on several of the pages.
Just flip through it and let me know when you're ready to talk about it.
A. Okay.
Q. The second page of the -- first of all, have you seen this before?
A. I don't know.
Q. You don't recall?
A. I don't recall.
Q. The second page at the top indicates that -- or suggests a summary term sheet for senior secured discount notes to be issued by Revlon Worldwide Parent Corporation.
Do you have any understanding or involvement as to this engagement or this issuance that was being discussed here?
A. No.
Q. Were you involved in any discussions with MacAndrews & Forbes about financing for Revlon?

A. I don't know. I don't know.
Q. You don't recall?
A. Right. It would not have been my expertise.
Q. You don't recall being involved in any discussions related to this?
A. I don't, no.
Q. If you turn over to the next page, there's a summary term sheet for MAFCO Finance to be arranged by CSFB, a term loan and revolving credit facility. Do you see that?
A. Yes.
Q. Did you have any involvement in a credit facility or term loan engagement for MacAndrews & Forbes in or around this time period?
A. I don't know.
Q. You don't recall?
A. I don't recall, no.
Q. You'll see on this page, the -- do you know -- let me strike that.
Do you know whether the credit facilities that are being described here were ultimately --
A. I don't know if they occurred or

didn't.
Q. The -- one of the terms that is listed here on page 2 of the document under "Security," it talks about a pledge of stock occurring for all of the operating companies including shares of NewsCorp. and LabCorp.
In connection with the work that you did for Coleman, did you come to understand that the shares of Coleman owned by MacAndrews & Forbes had been pledged as security for any credit facility?
A. I don't recall.
Q. Did you work with any bankers at CSFB in terms of understanding Coleman or MacAndrews & Forbes debt obligations to CSFB in connection with the sale to Sunbeam?
A. I don't think so.
Q. Under "Conditions Precedent" here on the same page dealings with the bank term sheet, item No. 3 describes a plan for the refinancing of Coleman notes.
Do you have any understanding as to what that was referring to?
A. No.
Q. On the final page of this document,

NOT A CERTIFIED COPY

Morgan Stanley Exhibit 313, there's a summary table of collateral for the bank facilities that were being described here on the page. And it indicates a figure for Coleman, Revlon, Marvel and other MacAndrews & Forbes companies.

Did you ever have occasion in the work that you did to evaluate what collateral of operating companies had been pledged to CSFB prior to the sale of Coleman to Sunbeam?

A. No, I don't think so.

Q. Did you have -- the dealings that you described earlier with Mr. Perelman, did they all relate to the Coleman engagement?

A. No.

Q. What other dealings have you had with Mr. Perelman?

A. We would show him potential companies to buy. We would -- that is, we discussed potential acquisitions with him. And that would have been it, I think.

Q. Did you view Mr. Perelman as financially sophisticated?

A. I assume so.

Q. Well --

A. He had done well.

Q. But did you view him as financially sophisticated in your dealings with him?

A. Yes.

Q. Did he appear that way to you?

A. Yes.

Q. And was he experienced, in your judgment, in merger and acquisition transactions?

A. Yes.

Q. Did you have any direct dealings with Mr. Perelman on the Coleman engagement?

A. Yes, he was at meetings.

Q. Internal meetings that you had had --

A. Yes.

Q. -- with MacAndrews & Forbes?

Do you recall what the nature of those meetings were?

A. Not -- not all of them, no.

Q. Any of them?

A. It was -- he was asking us for arguments for higher price, how to justify the higher price for Coleman.

Q. And did you provide him with those arguments?

A. Yes, to the best of our ability.

Q. Do you recall Mr. Perelman saying

anything else at these meetings related to the Coleman engagement?

A. Not specifically, no.

Q. What about generally?

A. No. I mean, I'm sure there was -- my recollection is really of the price discussions that we had to do.

Q. Did you have any discussions with Mr. Perelman about the form of consideration that would be received in the transaction, specifically a mix of cash and stock and assumption of debt?

A. I'm sure we did. I don't recall the specifics of any discussions.

Q. Did you have dealings with Mr. Gittis on the Coleman engagement?

A. I would think so, yes.

Q. And you had dealt with him on other engagements as well?

A. Yes.

Q. Did you view Mr. Gittis to be financially sophisticated?

A. Yes.

Q. Did you view Mr. Gittis to be experienced in merger and acquisition

transactions?

A. Yes.

Q. What, if any, dealings do you remember having with Mr. Gittis relating to the Coleman engagement?

A. The same as with Mr. Perelman, how to justify the price.

Q. Any discussions about the form of compensation -- consideration that MacAndrews & Forbes would receive in connection with the merger?

A. I don't recall, no.

Q. Did you have dealings with Mr. Maher in connection with the work that you did on the --

A. Yes.

Q. Was Mr. Maher your principal point of contact for the Coleman engagement?

A. Yes.

Q. Did you have the most dealings with Mr. Maher out of any of the MacAndrews & Forbes people?

A. I would think so.

Q. Did you view Mr. Maher to be financially sophisticated?

NOT A CERTIFIED COPY

015832

A. Yes.
Q. Did you view him to be experienced in merger and acquisition transactions?
A. Yes.
Q. What, if anything, do you remember dealing with Mr. Maher on as it related to Coleman?
A. The same as Mr. Gittis and Mr. Perelman. You know, what -- he was -- you know, how do you justify higher price. And that was really it.
Q. Any discussions with Mr. Maher about the form of consideration that MacAndrews & Forbes would receive in connection with the acquisition?
A. I don't recall any specifics.
Q. Do you recall that topic being discussed with MacAndrews & Forbes?
A. I think we must have talked about the consideration, yes.
Q. Were there any discussions that you can recall regarding whether to structure the deal as an all cash deal versus a mixture of cash and stock?
A. I don't -- I don't remember. I don't

remember if all cash was ever an option.
Q. Do you recall viewpoints within MacAndrews & Forbes about whether it would be advisable or a way to achieve a higher price to get Sunbeam stock as part of the consideration?
A. I don't remember that.
Q. Do you recall any discussions with Mr. Nesbitt related to Coleman?
A. The same series of conversations -- the same series of recollections.
Q. Did you view Mr. Nesbitt to be financially sophisticated?
A. Yes.
Q. And experienced in merger and acquisition transactions?
A. Yes.
Q. Were you personally involved in performing due diligence on the transaction that you described earlier with regard to the television station sale?
A. Yes.
Q. And what role did you play in due diligence?
A. I think I interviewed somebody about the financials of the station.

Q. Anything else that you can remember?
A. No.
(Morgan Stanley Exhibit 314, Amended And Restated Credit Agreement dated as of August 3, 1995, marked for identification, as of this date.)
MR. PARADISE: Is this a good time to break, because we're going to ask for a break in 15. Did you want to go for five and break?
MR. CLARE: I think we can probably deal with this document fairly quickly and we'll take a break.
MR. PARADISE: Good.
Q. Mr. Duffy, I've just handed you what's been marked as Morgan Stanley Deposition Exhibit 314. It's a document entitled, "Amended And Restated Credit Agreement" dated as of August 3, 1995 among The Coleman Company" certain banks.
Have you ever seen this document before?
A. I don't know. I don't recognize it.
Q. The document identifies CSFB as both an agent for a group of banks and also a lender to the Coleman Company.

Did you have an understanding that Coleman had a credit relationship with CSFB at the time you were working on the deal?
A. I don't remember that.
MR. BRODY: Object to foundation.
Q. There's -- on page 96 of the document, there's an individual listed from CSFB, Kristina Catlin, who is an associate.
Did you have any dealings with Ms. Catlin as it related to the work you did for Coleman?
MR. BRODY: I'm sorry. What page, Tom?
MR. CLARE: It's page 96 of the agreement.
A. I don't know.
Q. You don't recall any?
A. I don't recall -- I don't remember her name.
Q. Do you recognize the signature which appears above Ms. Catlin's --
A. No, I don't.
Q. -- which is also under the Credit Suisse signature block?
Do you know what the status of this

NOT A CERTIFIED COPY

01583

credit agreement was in 1997, 1998 at the time Coleman was sold to Sunbeam?
A. No, I don't.
MR. CLARE: Why don't we take a break.
MR. PARADISE: Okay. Thank you.
THE VIDEOGRAPHER: The time is 10:35 and we're off the record.
(Recess taken.)
THE VIDEOGRAPHER: Time is 11:07 and we're back on the record.
Q. Mr. Duffy, before the break, I had asked you about the individuals at MacAndrews & Forbes that you had worked with on various engagements. You mentioned that you had worked with Mr. Drapkin on the Coleman engagement?
A. I believe so, yes.
Q. What dealings did you have with Mr. Drapkin on that engagement?
A. It would have been the same as Mr. Gittis and Mr. Perelman. They sort of worked as a team.
Q. Do you regard Mr. Drapkin as financially sophisticated?
A. Yes.
Q. Do you regard him as experienced in

merger and acquisition transactions?
A. Yes.
Q. And you regarded these individuals as financially sophisticated in 1998 at the time?
A. Yes.
Q. Mr. Levin, what dealings did you have with Mr. Levin on the engagement?
A. I -- I think we talked about the business, you know. That's all -- you know, he would have been the person that provided information about Coleman and about the synergies.
Q. And what specifically do you remember discussing with Mr. Levin about the synergies?
A. Nothing specific. I just think we had conversations about that.
Q. Do you view Mr. Levin as financially sophisticated?
A. That, I couldn't really -- I mean, he was the manager of the company, so I assume so.
Q. Had you had an understanding of whether Mr. Levin had prior experience in merger and acquisition transactions?
A. No.
Q. What about Mr. Page, what dealings did

you have with Mr. Page?
A. Probably just discussions around financials.
Q. Did you view Mr. Page as financially sophisticated?
A. Yes.
Q. And experienced in merger and acquisition transactions?
A. I didn't have an opinion on that.
Q. Also, before the break, we were discussing CSFB's relationship with MacAndrews & Forbes.
Do you understand, one way or another, whether CSFB had made loans to other MacAndrews & Forbes companies besides Coleman? We focused on at least one --
A. I don't know. I wouldn't be surprised if they had.
Q. But you don't have any knowledge or understanding of that?
A. No.
Q. Do you know who at CSFB would have been involved in a lending relationship with MacAndrews & Forbes and its companies?
MR. PARADISE: Assuming there was one.

Q. Assuming there was one, who would you go to to --
A. Most likely, Mr. Rich, and Tim O'Hara may have known. He would have known about underwritings.
Q. Did you ever have any discussions with Mr. Rich about the relationship between CSFB and MacAndrews & Forbes?
A. I'm sure I did, yes.
Q. Do you remember those discussions?
A. Not any specific ones.
Q. At the time you were working in the engagement, did you understand that CSFB had a long-standing relationship with MacAndrews & Forbes?
A. Yes.
Q. And that MacAndrews & Forbes had used CSFB on prior merger and acquisition transactions?
A. Yes.
Q. Did you have any understanding whether, apart from MacAndrews & Forbes, the corporate entity, whether CSFB was a lender to any MacAndrews & Forbes executives, whether there was a banking relationship individually with any

NOT A CERTIFIED COPY

015834

of those individuals?
A. No, I didn't know that.
(Morgan Stanley Exhibit 315, Letter dated March 30, 1998, from Credit Suisse First Boston to the Coleman Company, marked for identification, as of this date.)
Q. Mr. Duffy, while you're looking at the document, I'll state for the record, I've handed you what's been marked as Morgan Stanley Exhibit 315. It's a letter addressed to the Coleman Company dated March 30, 1998 from Credit Suisse First Boston.
Have you ever seen this letter before?
A. I don't think so.
Q. Now, the date on the letter is March 30, 1998, which is within a day or so of the date the acquisition transaction with Sunbeam closed.
Do you recall, at or around the time of the closing of the acquisition, working with others at CSFB on paying off loans that Coleman had outstanding to CSFB?
A. No.
Q. You'll see that the -- in the re: line of the letter it refers to the restated credit

agreement dated August 3rd, 1995. That was the document that we had looked at before the break --
A. Okay.
Q. -- Morgan Stanley Exhibit 314.
Do you understand that, as a result of the acquisition transaction, that Sunbeam would be assuming debt that Coleman had on its books at the time?
A. I believe so. I really don't recall exactly. I would have expected that.
Q. You would have expected that to be --
A. Yeah.
Q. -- part of the deal?
A. Yeah.
Q. Did you have any -- did you personally do any work on the mechanics of accomplishing that in the assumption of debt and the repayment of outstanding credit facilities?
A. No, I don't think I did.
Q. Do you know who on the M&A team at CSFB handled that aspect of it, if anyone?
A. I don't think the M&A team handled it.
Q. Do you have any understanding as to how much money at the time that the acquisition

closed was owed to CSFB by Coleman?
A. No.
Q. Even aside from the amount, did you have an understanding, at the time, that CSFB was owed money by Coleman?
A. I don't remember if I did.
Q. The names on -- signatory on page 3 of the letter --
A. Yeah.
Q. -- do you recognize the name Julia Kingsbury?
A. No.
Q. And the J. Glodster, I believe, managing director?
A. I think that's Joel Glodowski.
Q. Thank you. Your eyes are better than mine.
And who is Mr. Glodowski?
A. He would have been the -- the banking relationship from MacAndrews.
Q. Did you have any dealings with Mr. Glodowski in the Coleman engagement?
A. I don't know -- I don't recall. I doubt with respect to MacAndrews & Forbes.
Q. But not specifically --

A. Not specifically.
Q. -- with regard to Coleman?
A. I don't remember.
Q. What dealings do you have or have you had with Mr. Glodowski related to MacAndrews & Forbes that you do remember?
A. I just remember him being the MacAndrews & Forbes credit individual.
Q. Was he involved in any meetings or discussions related to the Coleman engagement?
A. I don't recall.
Q. Were you part of any discussions, prior to the acquisition -- the engagement, relating to MAFCO's compliance with financial covenants in its credit facilities?
A. I don't remember.
Q. Did you have -- let me start again.
At the time you got involved on the Coleman engagement, were you -- were you working on other MacAndrews & Forbes-related matters, or was this a new assignment for you as it at least related to MacAndrews & Forbes?
A. I don't think I was working on any -- anything else. What we -- you know, we regularly talked to them about acquisition opportunities.

NOT A CERTIFIED COPY

015835

Page 58

Q. And in the course of those discussions, did you understand that MacAndrews & Forbes was looking to divest itself of any of its holdings in order to raise money for its operations?
A. No. I was aware they had been trying to sell Coleman for a while.
Q. And had CSFB assisted MacAndrews & Forbes in those efforts?
A. I don't think so.
Q. They were independently pursuing a sale?
A. Yeah. Or they hired someone else. I don't know.
Q. Do you know who they had hired, if anyone?
A. No.
Q. And do you know who they had spoken to about a sale of Coleman?
A. No.
Q. In those discussions that you had with MacAndrews & Forbes about the sale of Coleman, did you have an understanding as to why MacAndrews & Forbes was looking to sell Coleman?
A. No. I mean, I think they just wanted

Page 59

to get out.
Q. Nothing beyond that in terms of reason -- any expression that Coleman was underperforming as part of their portfolio companies?
A. I don't remember.
Q. Did you have an understanding that MacAndrews & Forbes needed or wanted to sell Coleman in order to raise money for other MacAndrews & Forbes companies?
A. I don't remember.
Q. Did you have an understanding that the Coleman shares had been pledged to secure credit facilities that were used to fund other MacAndrews & Forbes companies?
A. I was aware that shares were pledged. I'm not sure -- to raise -- you know, for debt financing. I'm not sure where the money went.
Q. Did you have any discussion about those pledges as it relates to the sale of Coleman?
A. I believe we did, because the way we -- the transaction was structured, they bought the holding company, I think, that had pledged the shares.

Page 60

Q. Did you have any discussions with MacAndrews & Forbes about the need to -- or desire to reduce its debt load through a sale of Coleman or other companies?
A. I don't recall.
Q. I'd like to talk now specifically about what role you played on the Coleman engagement. And I'm going to have some specific questions and we're going to look at some documents to eliminate that.
But if you could describe to me as specifically as you can what your responsibilities were and activities that you performed in connection with the Coleman engagement.
A. Sure. I think, as I said before, we provided some rationales for why Coleman should deserve a higher price from Sunbeam. And support for the discussions that were going on.
We would have valued Coleman using, you know, methodologies like cash flow analysis, multiple analysis.
We, I assume, did some diligence on Coleman. To do that, we provided due diligence on Sunbeam, provided value -- fairness opinion to

Page 61

Coleman. And I believe made presentations to the board of directors on the fairness opinion.
And we would have, probably, provided support, if asked, in the discussions that went on.
Q. When you say "discussions," you mean with Sunbeam?
A. Yeah, with Sunbeam.
Q. Did you attend negotiation sessions with Sunbeam?
A. I can't remember. I'm not sure if we did or didn't.
Q. Do you remember having any meetings with Sunbeam management?
A. Yes, we had several meetings. We had diligence meetings and I think there probably was other meetings where a couple of Sunbeam people were involved.
Q. Did you attend meetings where Morgan Stanley was present?
A. Yes.
Q. Do you remember any of the individuals you dealt with from Morgan Stanley?
A. Not specifically. Bill Reid would have been the person who was usually there. He

NOT A CERTIFIED COPY

015836

was the MacAndrews sort of coverage person.
Q. When was the last time you spoke to Mr. Reid?
A. I don't think I -- since then, probably.
Q. Did you know Mr. Reid before this engagement?
A. Not personally. I knew who he was.
Q. At the time that you got involved on the Coleman engagement, had MacAndrews & Forbes already been in discussions with Sunbeam?
A. I believe so. I think that's why we were asked to get the pricing information.
Q. That's the first thing you remember, was being asked for a rationale for a higher price?
A. Yes.
Q. And who asked you for that rationale?
A. It was either Mr. Perelman or Mr. Gittis, I think.
Q. And this was a meeting that you had and Mr. Rich had with Mr. Perelman and Mr. Gittis?
A. I think so.
Q. What was discussed as a rationale for

demanding a higher price?
A. Why -- I'm sorry. What was our answer or what was -- why were they asking?
Q. Those are both good questions. Let's start with the second one first.
Did you have an understanding as to why they were asking?
A. They wanted more.
Q. They wanted a higher price for Coleman?
A. Yeah.
Q. In the course of those discussions, did they explain to you a floor at which they wanted to get price-wise?
A. I don't remember.
Q. You don't remember what the price points were?
A. I don't remember if there was a target they had in their -- you know, they were trying to get to.
Q. And what answer did you provide them rationale for higher prices?
A. I remember we did some analysis, but I don't -- I don't recall the exact specifics of it.

Q. Do you recall a discussion of potential synergies between Coleman and Sunbeam as entering into the discussion about a price?
A. It could have. I don't -- it could have. I don't remember.
Q. The second item that you described was doing evaluation of Coleman?
A. Yep.
Q. How did you go about valuing Coleman?
A. I think we would have done a DCF analysis. We would have taken whatever information Coleman gave us and prepared, you know, a DCF model, comparable company model, comparable acquisitions.
Q. It was based on information provided to you by Coleman?
A. Yes.
Q. And did that include financial projections going forward?
A. I believe so.
Q. And did you meet with Coleman management relating to that information that they had provided to you?
A. I don't recall it, but we -- I would think we did.

Q. You said that you --
MR. BRODY: I'm sorry. Can I have the answer back.
THE WITNESS: I don't recall the specific meeting, but I would have thought that we did.
MR. BRODY: Thank you.
Q. You indicated that you had performed due diligence on Coleman?
A. That would have been a discussion of their financial projections.
Q. And what diligence on Coleman did you perform?
A. As I said, I don't recall specifically, but I would have thought we discussed the projections with them and the status of their business.
Q. What discussions do you remember on those topics?
A. I don't recall any.
Q. Do you remember what Coleman's financial condition was at the time?
A. No.
Q. Do you remember who those conversations were with?

NOT A CERTIFIED COPY

015837

Page 66

A. No.
Q. Other than remembering that -- other than what you've testified, do you remember anything about those conversations?
A. No.
Q. You said you also had performed diligence on Sunbeam?
A. Yes.
Q. You had one or two meetings with Sunbeam --
A. Yes.
Q. -- to accomplish that?
A. Yes.
Q. Did you ever travel to Florida for purposes of doing due diligence on Sunbeam?
A. No.
Q. Do you understand that Sunbeam's headquarters were in Florida?
A. Yes.
Q. Did you ever -- did all of the work that you did on this engagement take place in New York?
A. Yes.
Q. Did you ever travel to Wichita?
A. No. But all the management was in

Page 67

New York.
Q. I'm sorry?
A. All the management teams were in New York.
Q. Meaning the Coleman management team?
A. And the Sunbeam management team.
Q. So, the meetings that you had with Sunbeam management all took place in New York?
A. Yes.
Q. Did you visit any data rooms that had been set up by Sunbeam for purposes of due diligence for the deal?
A. I don't recall.
Q. Sunbeam was represented by Skadden Arps here in New York in connection with the acquisition.
Did you have any dealings or discussions with lawyers from Skadden Arps about diligence on Sunbeam?
A. I don't recall.
Q. You indicated that these diligence meetings that you had with Sunbeam. Was Morgan Stanley present for those meetings?
A. I believe they were. I'm sure they were for one. I'm not sure for the second. The

Page 68

first session.
Q. We'll talk about those meetings, I think, in a little bit more detail.
You indicated earlier that you also reviewed public filings of Sunbeam's?
A. Yes.
Q. Do you -- other than the two meetings that you had with Sunbeam in reviewing public filings, is there anything else that you can recall doing due diligence on Sunbeam?
A. I would think we read research reports and press reports just for background.
Q. Do you recall having done that?
A. Not specifically, no.
Q. Were you part of any discussions with MacAndrews & Forbes about why Coleman or MacAndrews would be interested in doing a transaction with Sunbeam, the rationale for the transaction?
A. I'm sure I was. I don't recall the specifics other than, you know, the -- I don't recall the specifics.
Q. Did you ever hear anyone say, in words or substance, that Sunbeam was overpaying for Coleman?

Page 69

A. No.
Q. Did you believe that Sunbeam was overpaying for Coleman?
A. No.
Q. What discussions do you recall having related to synergies?
A. I don't recall specifics. I just -- I recall there were synergies and they were discussed.
Q. Were these part of meetings that were internal with MacAndrews & Forbes and CSFB or were these meetings where Sunbeam and its advisors were also present or both?
A. I'm sure there were meetings with Sunbeam. Whether we had separate internal meetings, I don't recall.
Q. What do you recall being said on the subject of synergies in meetings with Sunbeam?
A. Just the discussion. I don't recall the specifics.
Q. Was it -- dollar figures discussed in terms of potential synergies for the combination or line items related to synergies that might be achieved?
A. I don't remember the specifics.

NOT A CERTIFIED COPY

015838

Q. Were you involved in the negotiations between Sunbeam and Coleman regarding the form that the consideration would take?
A. I -- I don't recall.
Q. Did CSFB advise MacAndrews & Forbes on that subject?
A. I don't -- I don't recall.
Q. Do you recall MacAndrews & Forbes expressing a preferred arrangement for the form of compensation?
A. The only -- well, the only preference, I think, was that the holding company get bought as opposed to just the shares that the holding company held.
Q. Why was that?
A. I think that saved taxes.
Q. Saved taxes for MacAndrews & Forbes?
A. Yes.
Q. As it was ultimately struck, the acquisition also involved the assumption of holding company debt.
Do you remember that topic being discussed?
A. Yes. Well, I don't know -- I don't recall it being -- I recall that was -- I don't

recall specifically the discussion about the assumption of debt. The holding company had debt. So, buying the holding company required you to take the debt.
Q. Do you remember the sale of the holding company together with the debt being something that was important to MacAndrews & Forbes in your discussions?
MR. BRODY: Object to the form.
A. Yeah, I believe so because that was the tax savings.
Q. Other than tax savings, were there any other reasons that were discussed for structuring it as a sale of the holding company?
A. I don't recall.
Q. In your discussions with MacAndrews & Forbes, did anyone ever say, in words or substance, that Coleman should not accept Sunbeam stock as part of the consideration for the acquisition?
A. No.
Q. Do you recall any internal discussion or debate about that topic?
A. No.
Q. Did you ever discuss with Mr. Levin

his view on accepting Sunbeam stock as part of the consideration for the transaction?
A. I don't think so.
Q. Did anyone else in your presence ever express doubt about whether to accept Sunbeam stock as part of the consideration?
MR. BRODY: Object to the form.
A. I don't think so.
Q. Did anyone express doubts in your presence about accepting stock from a company that was run by Mr. Dunlap?
A. I don't think so.
Q. Did you know Mr. Dunlap's reputation at the time?
A. I don't -- I know he had a reputation as a cost cutter. I don't know if there was anything more about his reputation at that point, other than that of being difficult.
Q. Did -- were you aware that he had a reputation of being a turnaround specialist?
A. Yes.
Q. And did you know, at the time, that Mr. Dunlap had previously been at Scott Paper?
A. Yes.
Q. Did you have any reason to question

the authenticity of Mr. Dunlap's performance at Scott Paper?
A. No.
Q. Did you ever have any discussions with MacAndrews & Forbes about Mr. Dunlap's performance at Scott Paper?
A. I don't recall.
Q. Did MacAndrews & Forbes ask CSFB to look into Mr. Dunlap's track record at Scott Paper?
A. I don't think so.
Q. And did you do any work to look into it, regardless of whether you were asked?
A. I don't think so.
Q. Was there any reason, at the time, for -- to question Mr. Dunlap's honesty and integrity?
MR. BRODY: Object to form.
A. I don't think so.
Q. Do you recall anyone raising a question about Mr. Dunlap's honesty or integrity?
A. No.
Q. What about other members of the Sunbeam management team?
A. I don't remember.

NOT A CERTIFIED COPY

015839

Q. As you sit here today, you don't recall anyone having raised a question about the honesty and integrity of Sunbeam's management team?
A. Right, correct.
Q. Was there anyone at MacAndrews & Forbes that you dealt with, or Coleman, that was advocating accepting Sunbeam stock as part of the consideration?
A. No.
Q. Do you have any understanding as to where that idea originated?
A. No. Stock and cash, right?
Q. Correct.
Did you have any discussions with MacAndrews & Forbes about limitations on its ability to retain cash proceeds from sales of companies?
A. Not --
Q. Financial covenants that it had in place that would have limited the amount of cash that it could accept and keep as -- in connection with an acquisition transaction?
A. I don't recall that, no.
Q. Who first contacted you about working

on this engagement?
A. I assume Mr. Rich. I don't remember, though.
Q. You don't recall that?
A. (Witness shook head.)
Q. What's the first thing that you remember doing on the engagement?
A. I think the pricing arguments.
Q. Where did that conversation take place, was it over the phone or was it in person?
A. Could have been both. I don't -- you mean the first conversation? I don't remember.
Q. And what were you told about the status of discussions at that point?
A. I think that there had been some discussions between Mr. Perelman and Mr. Dunlap.
Q. Do you know what time period this was in?
A. I -- I would believe it's late 1997.
Q. We've seen a calendar entry in November of 1997, there's a lunch that took place between Mr. Maher, Mr. Rich and a John Godsman. Is Mr. Godsman -- is that a name that's familiar to you?
A. Yes.

Q. Who is Mr. Godsman?
A. He's a banker at CSFB.
Q. Did Mr. Godsman have any role on the Coleman engagement?
A. I don't think so.
Q. Do you remember whether you attended a lunch meeting in November of 1997 with those individuals?
A. I don't remember.
Q. Do you have any understanding, from any source, whether that meeting had anything to do with Sunbeam or a potential acquisition of Coleman?
A. I don't know.
Q. What role did Mr. Rich play on the engagement?
A. He was the senior banker on the engagement. He was the lead individual.
Q. And what functions did he perform in that role?
A. Well, he was responsible for the work that CSFB did. He was the main point of contact with MacAndrews & Forbes. He would have been the senior sponsor of the project within the bank.
Q. Had Mr. Rich done other deals for

MacAndrews & Forbes or affiliates?
A. I believe so, yes.
Q. Do you know any other deals that he had done?
A. I believe, you know, any of the IPO work or M&A work. He worked on the Revlon transaction. I believe he worked on the IPOs. I believe he would have been involved in any credit work that was done.
Q. Did you have discussions with Mr. Rich about the history of the relationship with MacAndrews & Forbes?
A. Sure.
Q. And what did he tell you?
A. It's a tough -- well, I don't know. He had a long working relationship with them.
Q. Was Mr. Rich simultaneously working on other engagements with MacAndrews & Forbes, other than Coleman?
A. I don't know.
Q. What role did Mr. Geller play in the engagement?
A. He was the -- either analyst or junior associate, so he did most of the analytical work, the number -- quantitative analysis.

NOT A CERTIFIED COPY

015840

Page 78

Q. Did he report to you?
A. Yes.
Q. Did Mr. Geller attend the due diligence meetings that you described?
A. I think he did.
Q. Did Mr. Geller, to your knowledge, travel to Florida to meet with Sunbeam, separately from you?
A. I don't know.
Q. Did Mr. Geller work on prior MacAndrews & Forbes-related engagements?
A. I don't remember.
Q. What role did Mr. Ward have on the Coleman engagement?
A. I think he attended some meetings that Mr. Rich couldn't attend. And I think he also knew Mr. Maher very well and the other MacAndrews folks.
Q. Did he -- so, he and Mr. Rich performed similar functions on the engagement?
A. I think he filled in for Mr. Rich for one or two meetings.
Q. Mr. Chakrapani?
A. He was the junior analyst on the transaction.

Page 79

Q. Working with Mr. Geller?
A. Yeah.
Q. Is the name Gail Zauder familiar to you?
A. Yes.
Q. Who is Ms. Zauder?
A. She was a managing director at CSFB.
Q. Did she work, in any way, on the Coleman engagement?
A. I don't think so.
Q. What about Mr. or Ms. Soss, S-O-S-S, is that a name that --
A. I don't remember the name.
Q. What did you understand the engagement to be at the time you were retained?
A. To be an advisor to Coleman and MacAndrews on the sale.
Q. Was that -- what instructions were given to you as to what functions you were to perform in carrying out that engagement?
A. Well, I think we were to be prepared to do -- provide a fairness opinion and to provide support to the deal team, if necessary.
Q. And who was the deal team that you're referring to?

Page 80

A. The Jim -- the Maher, Perelman, the MacAndrews folks who were negotiating the deal.
Q. So, when you refer to the deal team, that would be the in-house MacAndrews people?
A. Yeah.
Q. And you were supporting them in their function as the -- in the negotiation?
A. Yes. They were the -- they were the -- they were the client -- you know, they were Coleman's management.
Q. Was this the first time that CSFB had been asked to work on a possible sale of Coleman?
A. I don't know.
Q. It was the first time --
A. It was the first time I had, yes.
Q. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 169. It's a December 10, 1997 letter addressed to the Coleman Company, Inc. from Credit Suisse First Boston dated December 10, 1997.
Have you seen this document before?
A. Yes.
Q. Is this the engagement letter between CSFB and the Coleman Company for the acquisition

Page 81

transaction?
A. I think so.
Q. Were you involved in preparing this retention letter?
A. I think so.
Q. And do you recognize the signature on page 3 of the letter as Mr. Rich on behalf of CSFB?
A. Yeah.
Q. Is this a standard form, CSFB retention letter?
A. Parts of it, yes.
Q. Is there any part of it that is not --
A. Well --
Q. -- or is different?
A. Well, for each engagement, what you put in will be different.
Q. So, when you --
A. And the fee would be different, obviously.
Q. Just so I understand your testimony, this specific role that CSFB is going to perform or being asked to perform will vary depending on the engagement?
A. Yes.

NOT A CERTIFIED COPY

015841

Q. And this specific role that CSFB is being asked to play will be inserted here on page 1 of the engagement?
A. The components of the role will be inserted, yes.
Q. And when you're referring to the components of the role, you're referring on Morgan Stanley Exhibit 169 to the items identified as A through E?
A. Yes.
Q. Was the -- is there anything in your mind that stands out as different or unusual about the scope of the engagement that CSFB had in this engagement for Coleman as compared to other M&A work that you have been involved in at CSFB?
MR. BRODY: Object to form.
A. Not really, no. I mean, sometimes you might have more things to do. I mean, market the company.
Q. And that was not part of the engagement here?
A. Not on here, no.
Q. Are there other things that might be part of a merger and acquisition engagement that

were not included here?
A. I don't think so. It's just how you describe it.
Q. The first paragraph on page 1 of the December 10, 1997 engagement letter relates to a proposed transaction with a company code named Laser. Do you see that?
A. Yes.
Q. Do you understand Laser to be Sunbeam?
A. I assume so. I don't remember the name.
Q. I'll represent to you that there are documents --
A. I believe you.
Q. -- and -- where Laser has been used as a code name for the transaction.
Is that consistent with your recollection, that there was a code name assigned to the --
A. Sure.
Q. -- engagement?
I've also seen reference to a Project Violet. Is that a project name that you would associate with the work that you had done for Coleman?

A. I remember -- I don't -- I can't make a direct connection.
Q. The first paragraph of the December 10, 1997 letter confirms the engagement of CSFB to act as the exclusive financial advisor to Coleman for a proposed transaction with Laser.
Do you see that?
A. Yes.
Q. Are you aware of any other financial advisor, other than CSFB, that was engaged by Coleman or MAFCO to evaluate a proposed transaction with Sunbeam?
A. I don't think so.
Q. In your work on the engagement, did you have dealings with other financial advisors who were advising MacAndrews & Forbes or Coleman?
A. Just Morgan Stanley.
Q. It was your understanding that Morgan Stanley was advising MacAndrews & Forbes on the transaction?
A. They were not -- they were giving opinions to MacAndrews & Forbes. You know, they were giving their opinion on the deal. Not as an official advisor, but --
Q. What opinion did Morgan Stanley

provide to MacAndrews & Forbes?
A. I don't know. I think they were just -- they talked to them about the deal.
Q. Did you understand Morgan Stanley to be advising Sunbeam on the transaction?
A. Yes.
Q. Did you understand Morgan Stanley to have any contractual relationship with MacAndrews & Forbes?
A. No.
MR. PARADISE: With respect to this engagement?
MR. CLARE: With respect to this engagement.
A. No.
Q. Did you understand Morgan Stanley to be negotiating opposite of MacAndrews & Forbes in connection with the transaction?
A. No. I think they were brokering the deal. I don't recall them being the negotiating arm of Sunbeam.
Q. What role do you recall them playing in brokering the deal?
A. I think they had brought the parties together prior to -- you know, that had been the

NOT A CERTIFIED COPY

015842

origination of the discussions.
Q. And who in -- who had performed that, who at Morgan Stanley had done that?
A. I don't know specifics.
Q. Were you there when that --
A. No.
Q. -- those meetings or conversations took place?
A. No. That was just my impression.
Q. What's the basis for that impression, did somebody tell you that?
A. I can't remember. I assume so.
Q. In the meetings that you attended, was Morgan Stanley providing advice to MacAndrews & Forbes on the transaction?
A. I don't remember. I don't think so.
Q. As you sit here today, can you recall any instance in which you were present where Morgan Stanley was advising MacAndrews & Forbes with respect to the transaction?
A. No.
Q. The answer is no?
A. No.
Q. Are you aware of any financial advisor, other than CSFB, that made a

presentation to the Coleman board regarding the Sunbeam transaction?
A. No.
Q. You attended the board meeting of the Coleman Company?
A. I think so, yeah.
Q. And, at that meeting, Mr. Rich made a presentation?
A. I think so. I don't remember the meeting specifically.
Q. Were you present at any meeting of the Coleman board where Morgan Stanley had made a presentation?
A. I don't know.
Q. Are you aware of any financial advisor, other than CSFB, who rendered a fairness opinion to the Coleman board regarding the Sunbeam transaction?
A. No.
Q. Did you have an understanding as to who was paying Morgan Stanley for its work on this transaction?
A. Sunbeam.
Q. Are you aware of any payments that were made by MacAndrews & Forbes to Morgan

Stanley in connection with the Sunbeam transaction?
A. No.
Q. The engagement letter goes on to list five items that CSFB would perform, if appropriate and if requested.
First item says, "If appropriate and if requested, CSFB would assist Coleman in analyzing and evaluating the business operations and financial position of the company."
Do you see that?
A. Yes.
Q. And was CSFB, in fact, asked to do that by Coleman?
A. We were asked to provide evaluation of the company, so I would view that as falling under A.
Q. And are you aware of any other financial advisor, other than CSFB, that assisted Coleman in performing that valuation?
A. No.
Q. Did you work with Morgan Stanley on that valuation?
A. I don't think so.
Q. I'm sorry?

A. I don't think so. I don't know if we talked to them about our valuation. We might have done that.
Q. Do you recall having talked with Morgan Stanley about the valuation?
A. Not specifically.
Q. And, as you sit here today, can you recall any discussions with Morgan Stanley about the valuation that CSFB performed?
A. No.
Q. Other than the valuation that you've just described, were there any other functions that you performed that would fall under A?
A. I don't think so.
Q. The next item says, "If appropriate and if requested, CSFB would evaluate any proposal which is received from Laser or Sunbeam."
MR. PARADISE: Assist you.
MR. CLARE: Correct.
Q. Would assist Coleman in evaluating aby proposal received from Laser. Do you see that?
A. Yes.
Q. And was -- were you asked to do that?
A. I assume so. I don't recall

NOT A CERTIFIED COPY

015843

specifically. I mean, I think -- I don't recall any specific evaluation, but I assume we did.
Q. Do you recall there being back-and-forth offers related to the acquisition transaction even in terms of price or deal structure that you were asked to look at or model?
A. I think there was, but I don't recall specifics of what went back and forth.
Q. Are you aware of any financial advisor, other than CSFB, that assisted Coleman in evaluating proposals received from Sunbeam?
A. No.
Q. Would the activities described in paragraph B include evaluating statements made by Sunbeam's management team about Sunbeam's business?
A. Probably not.
Q. So, the due diligence function that you described earlier would not fit under that heading?
A. I guess I'm -- either -- it would be B or E, you know, the fairness -- as part of the fairness opinion, you would have to do that.
Q. Why would you have to -- have to do

that?
A. Well, you're looking at what the offer is at that point in deciding whether it's fair.
Q. And in a transaction that was stock and cash like this one, it would include an examination of the company that was providing the stock?
A. Yes.
Q. And it was for that purpose that you would perform due diligence on Sunbeam?
A. Yes.
Q. Item C says, "If appropriate and if requested, CSFB would assist Coleman in structuring and negotiating any proposed transaction with Laser."
Do you see that?
A. Yes.
Q. Do you recall assisting Coleman in structuring and negotiating a proposed transaction with Sunbeam?
MR. BRODY: This witness or the company? What do you mean by "you"?
Q. Do you recall CSFB being asked to perform that function?
A. No. Well, we weren't negotiating for

Coleman.
Q. MacAndrews & Forbes were doing that on their own?
A. Yeah, they were Coleman, right. I mean, they were officers of Coleman.
Q. Did you assist the deal team in negotiating strategies to present to Sunbeam?
A. I don't remember. I mean, I don't remember the details of the back and forth.
Q. Putting aside the details, do you recall any financial advisor, other than CSFB, assisting Coleman's deal team on those issues?
A. No.
Q. Item D states that, "If appropriate and requested, CSFB would be available at Coleman's request to meet with its board of directors to discuss the proposed transaction and its financial implication."
Was CSFB asked to perform that function?
A. Yes, but I think only with -- I can't remember if it was other than just the fairness opinion.
Q. Are you aware of any other financial advisor, other than CSFB, who met with the

Coleman board to discuss the Sunbeam acquisition?
A. No.
Q. The last item indicates that, "If appropriate and requested, CSFB would render a fairness opinion as to the fairness from a financial point of view to the company's stockholders other than Coleman (Parent) Holdings and its affiliates of CSFB."
Do you see that?
A. Yes.
Q. Was CSFB asked to provide a fairness opinion?
A. Yes.
Q. Are you aware of any other financial opinion -- financial advisor, other than CSFB, who rendered a fairness opinion in connection with the acquisition?
A. No.
Q. Now, that paragraph that we just looked at carves out Coleman (Parent) Holdings and its affiliates.
Do you have an understanding as to why that was excluded from the scope of the engagement?
A. I don't -- not specifically. But I

NOT A CERTIFIED COPY

015814

think we were being hired by the company and we were speaking to what the public shareholders would get.
Q. Did you understand that Coleman (Parent) Holdings owned 82 percent or -- of Coleman at the time?
A. Yes.
Q. And it was -- your work was primarily done with representatives of MacAndrews & Forbes?
A. Well, they were also officers of Coleman.
Q. Correct.
What is a fairness opinion in this context?
A. A fairness opinion speaks to the fairness of the consideration that the shareholders of the selling company are going to receive from a financial point of view.
Q. Would that include looking at the value of the consideration that was being received?
A. Yes.
Q. Including the value of the stock portion of the consideration?
A. Yes, but it wouldn't -- we wouldn't

guarantee the value of the consideration.
Q. That was not part of the engagement?
A. Right.
Q. Is that part of -- is that normally -- let me withdraw that.
Is that a function that investment bankers providing a fairness opinion normally exclude from their fairness opinion?
MR. BRODY: Object to form.
Q. In your experience?
MR. BRODY: Same.
A. They -- they normally do not speak to the valuation on the piece of equity in a fairness opinion.
Q. In your discussions with Morgan Stanley, did Morgan Stanley ever express a view as to the valuation of Sunbeam or the Sunbeam stock that was being provided?
A. I don't recall.
Q. You don't recall them doing that?
A. No.
Q. As you sit here today, do you recall Morgan Stanley making any statements that would guarantee a certain level of performance of Sunbeam stock that was being tendered to Coleman

as part of the acquisition?
A. No.
Q. Or making any predictions of growth on the part of Sunbeam?
A. Not specifically, no.
Q. Generally?
A. No.
MR. PARADISE: Tom, whenever it's convenient for a quick bathroom break.
Q. On page 2 of the engagement letter, about midway down the page, "If we are requested to render an opinion, the nature and scope of our analysis as well as the form and substance of our opinion shall be such as we deem appropriate."
I understand that to mean that CSFB determined the nature and scope of the analysis that it performed before it rendered a fairness opinion; is that correct?
A. Yes.
Q. Did anyone impose any limit on CSFB on the nature or scope of the work that it could do on its engagement?
A. I don't recall.
Q. Do you recall any instance in which CSFB requested to perform an analysis or an

evaluation that it was not permitted to perform?
A. No.
Q. Or any limits that were placed on CSFB's access to information either regarding Sunbeam or Coleman?
A. No. We got the information -- well, no. We got the information we were given.
Q. Was there any information that was requested by CSFB that was not provided?
A. I don't remember. We may have wanted projections and there wasn't -- projections had a -- you know, less years than we would have asked for. I don't remember that, though.
Q. When you talk about projections, are you talking about Coleman projections or Sunbeam projections?
A. Both.
Q. And, as you sit here today, do you recall an instance in which projections were requested but not made available to you?
A. No. I just -- no.
Q. So --
A. What I meant is, you know, we may have asked for five years of projections and got two years of projections.

NOT A CERTIFIED COPY

015845

Q. And but, as you sit here today, do you remember that specifically occurring?
A. No.
Q. Okay.
MR. CLARE: Why don't we take a break now.
MR. PARADISE: Sure.
THE VIDEOGRAPHER: Time is now 12 o'clock and we're off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 12:05 and we're back on the record.
Q. Mr. Duffy, I want to understand a little bit more your perception of Morgan Stanley's role in the transaction.
Did anyone ever tell you, in words or substance, that Morgan Stanley was playing an advisory role to MacAndrews & Forbes?
A. I think I was told that they had brought the two parties together.
Q. Okay. Beyond that, were you told that Morgan Stanley was serving as an advisor to MacAndrews & Forbes?
A. No. I knew they had a close relationship with MacAndrews & Forbes.

Q. And what was the basis of that knowledge?
A. They had done a lot of work for MacAndrews & Forbes.
Q. And how were you aware of that?
A. I'd say just general knowledge. You know, I was aware of financings they had done and that they were from our perspective at CSFB, you know, probably a competitor for business for MacAndrews & Forbes.
Q. And so you understood that Morgan Stanley had a client relationship with MacAndrews & Forbes for other transactions?
A. Yeah.
Q. Was it your understanding that Morgan Stanley had a client relationship with MacAndrews & Forbes for the Coleman engagement?
A. No. But I -- my recollection is they had sort of brokered -- brought -- brokered the deal and brought the two parties together.
Q. Did you understand that Morgan Stanley was compensated, in any way, by MacAndrews & Forbes for bringing the parties together?
A. No.
Q. Do you -- were you aware of any client

relationship that was established between MacAndrews & Forbes and Coleman as it relates to the Coleman engagement?
A. MacAndrews & Forbes and Coleman?
Q. No. I'm sorry. Let me start again. Make sure we're clear.
Are you aware of any client relationship that was established between Morgan Stanley and MacAndrews & Forbes on the -- for the Coleman/Sunbeam transaction?
A. I don't think so.
Q. Did you observe Morgan Stanley advising MacAndrews & Forbes as a financial advisor in connection with the engagement?
A. No.
Q. That work was performed exclusively by CSFB?
A. Yes.
Q. Did you observe Morgan Stanley advising MacAndrews & Forbes on the value of Sunbeam stock that Coleman ultimately received in the engagement?
A. I don't remember them doing that.
Q. Do you remember Morgan Stanley providing any opinion either formal or informal,

to MacAndrews & Forbes in connection with the transaction?
A. No.
Q. Do you recall Morgan Stanley participating in meetings with MacAndrews & Forbes and CSFB where Sunbeam was not present also?
A. I don't remember that specifically. Could have happened and I just don't remember that.
Q. Do you remember any instance in which you met with representatives of Morgan Stanley and representatives of MacAndrews & Forbes where Sunbeam was not present?
A. I think when we had the second due diligence meeting we had it at Morgan Stanley's offices. I don't remember if -- when we were waiting for the meeting to start, if Morgan Stanley was there but Sunbeam wasn't.
Q. But at least the substantive portion of the meeting Sunbeam was present?
A. Yes.
Q. Okay. Was CSFB ever asked to split any portion of its fee with Morgan Stanley?
A. I don't think so.

NOT A CERTIFIED COPY

015846

Page 102

Q. And your evaluation of the acquisition transaction, did you ever come across any documents that suggested that Morgan Stanley was receiving money from Coleman or MacAndrews & Forbes in connection with this engagement?
A. No.
Q. Were you ever told, in words or substance, that the retention letter had been modified or changed to make CSFB a nonexclusive financial advisor to Coleman on this transaction?
A. No.
Q. Was it your understanding, from beginning to end, that CSFB was the exclusive financial advisor to Coleman on this transaction?
A. From the time we started, I -- my recollection is other -- somebody else had been working to sell Coleman during this -- you know, prior to when we got involved.
Q. Some other banker?
A. Yes.
Q. Not CSFB?
A. Not CSFB.
Q. Not Morgan Stanley?
A. I don't remember.
Q. During your involvement during the

Page 103

time that CSFB was involved in the engagement, was CSFB the exclusive financial advisor to Coleman?
A. Yes.
Q. The second page of the December 10th engagement letter describes a compensation that CSFB would receive?
A. Yes.
Q. The first component is a financial advisory fee of $250,000 --
A. Yes.
Q. -- payable upon the execution of the retention agreement.
Do you see that?
A. Yes.
Q. Did CSFB receive the financial advisory fee?
A. I don't know.
Q. And then a transaction fee of $3,750,000 which is described as the transaction fee payable upon the consummation of the transaction.
Did CSFB receive that portion of --
A. I assume so, but I don't know.
Q. You don't recall anyone --

Page 104

A. I don't recall sending them a bill.
Q. Item 3 is a reimbursement of out-of-pocket expenses including fees and expenses of counsel.
A. Right.
Q. Do you recall CSFB working with counsel on this engagement?
A. Yes.
Q. And who was that counsel?
A. Shearman & Sterling.
Q. And, as a general proposition, what role did Shearman & Sterling play?
A. They would review -- they would review, probably, the investment banking memo, fairness opinion letter and ask some questions regarding that.
Q. Was -- do you recall Shearman & Sterling playing any role in the meetings that you had with MacAndrews & Forbes?
A. No.
Q. Do you recall Shearman & Sterling playing any role in any meetings that you had with Sunbeam?
A. No.
Q. Or Morgan Stanley?

Page 105

A. No.
Q. CSFB would only earn the transaction fee if an acquisition transaction ultimately closed; is that correct?
A. Yes.
Q. And is that a standard form of compensation in the investment banking industry?
A. Yes.
MR. BRODY: Object to the form.
Q. To your knowledge, was CSFB ever asked to return any portion of the fees that it earned on the Coleman transaction?
A. I don't think so.
Q. Or to perform -- or to provide a discount on future services to Coleman or MacAndrews & Forbes?
A. I don't think so.
Q. Are you aware of any other fees or benefits that CSFB earned or was paid in connection with work that they performed on the Coleman transaction?
A. No.
Q. We talked about a number of people that worked on this engagement at CSFB. Were all of those individuals based in New York?

NOT A CERTIFIED COPY

015847

A. Yes.
Q. Were there CSFB professionals from other offices outside of New York working, in any way, on this engagement?
A. I don't think so.
Q. I'm going to hand you the next document that's previously been marked as Morgan Stanley Exhibit 75.
MR. BRODY: Can we go off the record for just a second?
MR. CLARE: Sure.
THE VIDEOGRAPHER: Time is now 12:15. We're off the record.
(Discussion off the recrod.)
THE VIDEOGRAPHER: The time is 12:16. We're back on the record.
MR. BRODY: While we were off the record, we discussed briefly the implication of protective order. And Mr. Clare and I agreed that the protective order permits us to disclose confidential information to the witness during the course of the deposition and to his counsel during the course of the deposition.
Counsel agreed that he would not

retain the documents, which I think satisfies the obligation of the protective order.
We further agree that a summer associate assisting the witness's counsel here today falls within the ambit of the protective order for purposes of today's deposition. Acceptable?
MR. CLARE: That's acceptable for Morgan Stanley.
MR. BRODY: Thank you.
Q. Mr. Duffy, I've handed you what's been marked as Morgan Stanley Exhibit 75. It's a document -- a cover letter dated March 30, 1998 from the law firm of Wachtell Lipton Rosen & Katz to the SEC.
A. Um-hum.
Q. And you're welcome to review any portion of it that you want. The exhibit to the letter is a chronology that was prepared by Wachtell Lipton in response to an inquiry it received from the SEC about this transaction. And it includes several dates and references to meetings here.
And it might be a useful tool to

structure some of our discussions and recollections of meetings, and that's why I've provided it to you.
I recognize that you probably have never seen this before or not -- were not involved in the preparation, but let me ask those questions.
Have you seen this document before?
A. No.
Q. And were you ever -- were you involved in the preparation of this document, to your knowledge?
A. No.
Q. As I mentioned, letter was prepared by the firm of Wachtell Lipton Rosen & Katz.
Did you have dealings with the law firm -- that law firm during your work on the Coleman engagement?
A. I believe so.
Q. Did you understand that Wachtell Lipton had been retained by Coleman as its counsel in connection with the acquisition transaction?
A. Yes.
Q. And did you have meetings with

attorneys from Wachtell Lipton in connection with the work that you did on the engagement?
A. I don't recall specific meetings, but I think so.
Q. Do you recall dealing with them on any particular issues?
A. Probably just getting -- the board meeting and the fairness opinion.
Q. Let's start on Exhibit A. The first entry that I'd like to ask you about is the December 12th entry.
A. Um-hum.
Q. So, I'd like you to read that to yourself and let me know when you're ready.
(Witness reading document.)
A. Yeah.
Q. Okay. The first paragraph of the entry refers to a meeting between Mr. Levin, Mr. Shapiro and Mr. Page giving a presentation to Mr. Fannin, Mr. Kersh and Mr. Langerman regarding Coleman's business for potential synergies that could result from a combination of Sunbeam and Coleman.
Do you see that?
A. Yes.

NOT A CERTIFIED COPY

015848

Q. Did you attend that meeting?
A. I don't remember attending that, no.
Q. Were you involved, in any way, in preparing for a meeting where Coleman executives were going to make a presentation to Sunbeam about synergies?
MR. BRODY: Object to the form.
A. I don't remember doing that.
Q. The next paragraph indicates, later in the day, Mr. Perelman, Mr. Gittis, Mr. Maher, Mr. Rich and Mr. Levin met to discuss a potential transaction involving Coleman and Sunbeam.
A. Um-hum.
Q. Do you believe you attended that meeting with those individuals?
A. I don't -- I don't know if I did or didn't.
Q. Is this time period, the December 1997 time period, consistent with your recollection of around the time that you had gotten involved?
A. Yes.
Q. Does this document and seeing these references to the meeting refresh your recollection, in any way, about the status of discussions when CSFB was first involved?

A. No.
Q. It indicates there on the next paragraph under December 12th that Coleman retained CSFB to act as its financial advisor.
A. Um-hum.
Q. The engagement letter that we looked at is actually dated two days before December 12th.
A. Right.
Q. Does that suggest to you that CSFB had been asked to perform some work leading up to these meetings?
A. Yes. Well, it suggests, at least -- I don't know if we did work, but we had -- we would have dated the letter when we started discussions about the assignment.
Q. And what were you told -- or do you believe that you were personally asked to get involved in the engagement at around the same time period?
A. I think so, yes.
Q. And were you informed what had been discussed between Sunbeam and Coleman related to a proposed transaction?
A. I don't remember being told, but I would assume that we had been.
Q. Were you informed that the parties had discussed potential synergies from a combination of Sunbeam and Coleman?
A. I'm sorry. Say that again.
Q. Were you told that the parties, meaning Sunbeam and Coleman, had already discussed potential synergies that could result from an acquisition?
MR. BRODY: Object to the form.
A. I don't remember that.
MR. CLARE: We need to switch the videotape.
THE WITNESS: Okay.
THE VIDEOGRAPHER: The time is now 12:22 and we have reached the end of tape No. 1. And we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is now 12:34 and this is tape No. 2. And we are back on the record.
Q. Were you involved in assisting Mr. Levin or Mr. Page in preparing items of potential synergies that could be achieved through a combination?

A. I don't remember.
Q. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 78. It's a two-page document. The first page is a cover -- fax cover dated December 15, 1997 from Mr. Fannin to various individuals at Morgan Stanley. I don't have any reason to believe you've seen the cover page before.
Do you understand Mr. Fannin is a -- part of a management team at Sunbeam? Do you remember him?
A. I don't remember the name.
Q. The cover page makes reference to a "one-page list of issues which C provided to us at our meeting on Friday."
We understand that to be a reference to Coleman having provided it to Sunbeam during a meeting on Friday, which three days earlier was the December 12th meeting.
The second page of the document, have you ever seen that before?
A. I think so.
Q. Do you recall seeing this in the December 1997 time period?
A. I don't remember exactly when, but --

NOT A CERTIFIED COPY

015849

Page 114

Q. Were you involved, in any way, in preparing or assisting Coleman in the preparation of this document?
A. I don't know if they -- if they prepared it. I mean, I think I saw it. I think we discussed it. But I don't remember -- I don't remember coming up with the numbers, if that's what you're asking.
Q. What discussions do you regard -- do you remember regarding this document?
A. I just remember -- well, I think it's what was the basis of the synergies discussion. I don't recall who authored it or where it came from, but I -- I recognize or think I recognize the page.
Q. Do you remember having discussions with individuals at Coleman or MacAndrews & Forbes about the synergies that could be achieved between Coleman and Sunbeam?
A. Yeah, I remember the synergies being discussed.
Q. And, as part of that discussion, do you remember inquiring as to what the basis for their belief was about synergies?
A. I don't remember the specifics of

Page 115

that.
Q. But was that the nature of the discussion? You -- what I'm trying to get at is, a minute ago you told me that you believe you recognize this document from trying to understand what the basis was for the synergies. I'm just trying to understand what prompted -- what discussion prompted that recollection?
A. No. I guess what I'm saying is, the recollection is from seeing the page. The pages look familiar. So, I -- I imagine we had the page and we would have asked whoever gave us the page the -- you know, where the numbers came from, how they -- the logic of coming up with them.
Q. Do you recall getting satisfactory answers to those questions?
A. I don't recall the answers, so I don't recall them being satisfactory.
Q. Do you remember that Coleman and MacAndrews & Forbes believed -- or were -- had put forward the notion of $150 million in synergies for an acquisition?
MR. BRODY: Object to the form of the question.

Page 116

A. No.
Q. Do you remember that number being used?
A. No.
Q. Do you remember, at any point during the process in which you were involved, Coleman or MacAndrews & Forbes revising its estimate of the synergies that could be achieved from a combination?
A. No.
Q. Were you part of any discussions where synergies were discussed between Coleman and Sunbeam?
A. I don't recall specifically. I would have thought I was, but I don't recall.
Q. Do you remember any statements that were made in meetings by Coleman about synergies to Sunbeam or Morgan Stanley?
A. No.
Q. Were you asked, at any point during the engagement, to perform any work to determine whether the synergy figures listed on Exhibit 78 were reasonable or appropriate?
A. No.
Q. Were others at CSFB asked to perform

Page 117

that, to your knowledge?
A. I don't -- I don't recall.
Q. Take a look at the next several items listed on the chronology. There are meetings referenced on December 16th and December 17th which you're shown as attending.
I'd ike you to read those to yourself.
A. Um-hum.
Q. Do you recall attending meetings in mid-December 1997 with the individuals listed for these two entries involving a potential transaction?
A. Yes.
Q. These are meetings that took place in -- with MacAndrews & Forbes and Coleman officials, correct?
A. Yes.
Q. And these were not meetings where Sunbeam or Morgan Stanley were present?
A. No.
Q. Does -- are these the meetings that you described earlier to me about price rationale?
A. I believe so, yes.
Q. These are the individuals that were

NOT A CERTIFIED COPY

015850

Page 118

involved in those discussions?
A. Yeah.
Q. And what, if anything, do you remember about what was said during those meetings?
A. I don't recall specifics, except the topic was justifying a higher price.
Q. And did you or Mr. Rich or Mr. Geller provide advice to Coleman on that topic during the meeting, or were you asked to go back and do some work and then report back to the group on arguments that could be made to increase the price?
A. I think we did both. I think we had a discussion and we had to do some work and prepare something to give back.
Q. During the course of those discussions, or the subsequent work that you did, did the subject of synergies enter into the equation as a basis for justifying a higher price?
A. I don't remember.
Q. To the best of your knowledge, it was the valuation work that was done by CSFB as the argument that was put forward for justifying a higher price, or was there anything else that you

Page 119

remember?
MR. BRODY: Object to the form.
A. I don't -- no. I don't -- I mean, I don't remember the arguments we put forward, so I don't remember anything else.
Q. I'm going to hand you what's previously been marked as Deposition Exhibit 76. It's a compilation of documents dated December 1997 entitled, "Materials Prepared for Discussion, Sunbeam."
Do you see that?
A. Yes.
Q. Did you pull these materials together, or were you involved in pulling them together?
A. I was probably involved. I don't know if I did it.
Q. Do you know for what purpose they were pulled together?
A. Well, no. They look like they're just public documents that we were just providing information.
Q. Did you provide these documents to MacAndrews & Forbes?
A. I don't know if we provided them for ourselves or for MacAndrews & Forbes. We

Page 120

would -- it could just be an internal --
Q. Do you recall any discussions with MacAndrews & Forbes or Coleman about Sunbeam's public filings?
A. No, no -- no discussions specifically about the filings.
Q. Were there any issues that the CSFB team had identified in the public filings of Sunbeam for discussion with MacAndrews & Forbes or Coleman?
A. I don't recall that.
Q. Do you recall, later in the engagement, in the spring of 1998, reviewing Sunbeam's 10-K for 1997?
A. Not specifically, no.
Q. Would that have been a standard part of -- if a 10-K or 10-Q were issued during an engagement where CSFB were being asked to render a fairness opinion, would that be something that you would look at prior to issuing a fairness opinion?
A. If it was published before the fairness opinion, yes.
Q. Do you have a recollection of doing that with regard to Sunbeam's 10-K?

Page 121

A. No.
Q. I'd like to invite your attention to the entry for January 29th, 1998.
A. Yes.
Q. The entries between the ones we just looked at in December and the entry here, January 29, 1998, indicates some discussions between MacAndrews & Forbes and Sunbeam about price and structure of the deal.
Do you recall any involvement in those discussions?
A. No.
MR. BRODY: Object to the form.
A. No.
Q. The -- I'd like you to read the January 29, 1998 entry to yourself.
(Witness reading document.)
A. Okay.
Q. Do you recall Mr. Rich attending a meeting with MacAndrews & Forbes and Sunbeam and Morgan Stanley personnel relating to potential synergies as described here on this entry?
A. No.
Q. Do you -- do you believe you attended this meeting as well?

NOT A CERTIFIED COPY

015851

Page 122

A. I don't know. I mean, I don't know which meetings I -- I don't know if this was a meeting I attended or a different meeting I attended.
Q. The paragraph makes reference here to Mr. Stynes -- Jim Stynes. He's a Morgan Stanley employee.
Do you recall dealing with Mr. Stynes in connection with the work you had done for Coleman?
A. Not specifically.
Q. Does that name sound familiar to you?
A. No.
Q. Makes reference to a Mr. Fuchs, Alex Fuchs, also of Morgan Stanley.
Did you have any dealings with Mr. Fuchs?
A. I had dealings with the Morgan Stanley folks. I just don't remember the individuals.
Q. Do you remember any of the names of any of the Morgan Stanley people that you dealt with on the Coleman engagement?
A. Just, you know, Mr. Reid.
Q. Other than Mr. Reid -- several entries up from that early January 1998 identifies

Page 123

Mr. Reid as a managing director of Morgan Stanley, Sunbeam's financial advisor, in a conversation that Mr. Reid had with Mr. Perelman.
Is that -- does that entry describe -- or consistent with your recollection of the role that Mr. Reid played in the transaction?
MR. BRODY: Object to the form.
A. Yeah, I mean, my recollection is he was sort of there in the background as, you know, general communication.
Q. Between Sunbeam and Coleman?
A. Yeah.
Q. Do you recall a Mr. Reid being present at any of the meetings that you attended?
A. I recall him being present. I don't know which meeting it was.
Q. Did Mr. Reid ever make a presentation to Coleman or MacAndrews & Forbes about Sunbeam, in your presence?
A. I don't recall that, no.
Q. The entry for January 29th indicates that potential synergies were discussed. It also indicates there was a discussion about how the companies might proceed with due diligence and

Page 124

related matters if Sunbeam made an acceptable proposal.
Do you have an understanding of what that's referring to?
A. No.
Q. Did you ever gain an understanding as to how due diligence would proceed if Sunbeam were to make an acceptable proposal?
A. I know we had due diligence. I don't -- I don't recall how the plan came about to have --
Q. Did you -- I'm sorry. I didn't mean to interrupt.
A. I don't recall how the plan came about to have due diligence.
Q. Did you work with anyone at Morgan Stanley to facilitate due diligence meetings that you attended?
A. We may have been -- we may have organized times and place. I don't -- I don't remember.
(Morgan Stanley Exhibit 206, Wall Street Journal article dated January 29, 1998, marked for identification, as of this date.)

Page 125

Q. Mr. Duffy, I've handed you what's been marked as Morgan Stanley Exhibit 206. It's a --
MR. BRODY: I'm sorry. Tom, is this being marked new today?
MR. CLARE: It is. I don't think this has previously been marked.
MR. BRODY: Thank you.
Q. Mr. Duffy, I've handed you what's been marked as Morgan Stanley Exhibit 206. It's a January 29, 1998 article from the Wall Street Journal entitled, "Sunbeam posts profit below forecast, a stumble that sends stock down 9.5 percent."
Do you see in the first paragraph of the article indicated -- indicates that Sunbeam reported fourth quarter earnings that fell slightly short of analyst expectations.
Do you recall, in the midst of your work on the Coleman engagement, Sunbeam reporting fourth quarter earnings below analyst expectations?
A. No.
Q. Do you recall, during the discussions with Sunbeam over a proposed acquisition, that Sunbeam's stock had dropped 9.5 percent on that

NOT A CERTIFIED COPY

015852

Page 126

type of announcement?
A. No.
Q. Do you recall the stock price drop in January, February time frame, entering into discussions with MacAndrews & Forbes or Coleman about whether Sunbeam's stock should be accepted as part of the consideration?
A. No.
Q. As part of the work that you were doing on this engagement, were you monitoring public announcements from Sunbeam about its financial performance?
A. I would -- yes.
Q. That's part of your standard practice?
A. Yeah.
Q. The paragraph under "Reactions of Analysts" makes reference to analysts lowering their 1998 and 1999 earnings estimates.
Do you see that?
A. Yes.
Q. Do you recall, in the January 1998 time frame, analysts lowering their earnings estimates for Sunbeam?
A. No.
Q. Do you recall discussing that with

Page 127

MacAndrews & Forbes?
A. No.
Q. Or Coleman?
A. No.
Q. Did you ever speak with analysts about their expectation for earnings for Sunbeam for 1998 and 1999?
A. No. We would have looked at research reports, but --
Q. Do you recall specifically looking at research reports?
A. No.
Q. Do you recall speaking with anyone at CSFB who covered Sunbeam for their views on financial performance?
A. I can't recall if we did cover it or not. I don't recall a conversation with a CSFB analyst.
Q. Do you recall the name Lynn Hyman?
A. Yes.
Q. Do you recall any discussions with Ms. Hyman about Sunbeam or Coleman as it related to the work that you were doing?
A. I don't remember, no.
Q. Did you have any discussions with

Page 128

MacAndrews & Forbes or Coleman about their outlook for Sunbeam stock performance?
A. I don't remember.
Q. Do you recall them saying, in words or substance, that they thought accepting Sunbeam's stock would be a good investment for them?
A. No.
Q. Do you recall discussing with MacAndrews & Forbes or Coleman, in words or substance, that accepting Sunbeam's stock would allow them to pledge it to secure financing that they were looking to perform?
A. No.
Q. Do you recall any discussions with MacAndrews & Forbes or Coleman about their interest in obtaining Sunbeam stock as part of the transaction?
A. Not specifically. The memo -- your memo talks about it.
Q. What's -- what are you referring to?
A. Well, whether it's stock or cash.
Q. But in terms of the rationale for accepting a stock and cash deal?
A. No.
Q. The -- bear with me one second.

Page 129

Okay. The January 29th entry that we were just looking at makes reference to a confidentiality agreement that was being proposed to Sunbeam.
A. Yes.
Q. Do you have a recollection of looking at confidentiality agreements that would facilitate the exchange of information between Sunbeam and Coleman?
A. No.
Q. Is it standard in -- practice in merger and acquisition transactions to have confidentiality agreements that facilitate that exchange of information?
A. Yes, it is.
Q. I'm going to hand you what has been marked previously as Morgan Stanley Exhibit 133. It's a February 4th, 1998 letter addressed to the Sunbeam Corporation on Coleman Company letterhead.
A. Okay.
Q. Have you seen this document before?
A. I don't know.
Q. Was it your understanding that there was a confidentiality agreement in place between

NOT A CERTIFIED COPY

Page 130

Sunbeam and Coleman to facilitate the exchange of information?
A. I don't remember. I would have expected there was, but I don't remember it.
Q. Would -- were you involved in drafting and reviewing this exhibit before it was sent?
A. I don't remember.
Q. Do you recall any discussions about a confidentiality agreement that would permit Coleman to provide confidential information to Sunbeam for evaluation of the acquisition?
A. No.
Q. The first -- second paragraph of the exhibit refers to evaluation materials being provided by Coleman to Sunbeam.
A. Right.
Q. And it would include materials furnished by bankers in connection with that.
Do you see that?
A. Yeah.
Q. Is that a standard practice in merger and acquisition transactions, to cover information furnished by bankers in confidential agreements?
A. Yes.

Page 131

MR. BRODY: Object to the form.
Q. Did you understand that there was a reciprocal agreement in place that would cover information provided by Sunbeam and its bankers to Coleman and the confidentiality of that material?
MR. BRODY: Object to the form.
A. I don't remember the confidentiality agreements, so I don't remember the specifics of whether there was reciprocity or not.
Q. Do you remember being provided with information by Sunbeam about its business?
A. Yes.
Q. Do you remember being advised that that information needed to remain confidential?
A. I don't remember -- no.
Q. Do you remember anything about this engagement for Coleman that would be different from a standard engagement as far as the confidentiality of information received from a counterparty?
A. No.
MR. BRODY: Object to form.
Q. Did you understand that Sunbeam's due diligence of Coleman was being conducted pursuant

Page 132

to a confidentiality understanding or agreement?
A. I don't -- I would have assumed it, but I don't remember -- I just don't remember the specifics of the confidentiality agreement.
Q. If you look at the February 6th entry on the chronology which is on the next page, there's a reference to a meeting that took place in New York, and you're shown as having attended. I ask you to read that to yourself and let me know when you're ready.
A. Okay.
Q. Do you recall attending this meeting on February 6, 1998?
A. Not the specific meeting, but -- I can't remember which meetings were which, but I remember meetings like this, yes.
Q. Meetings where the price and deal structure were discussed?
A. Yes.
Q. Morgan Stanley, according to the February 6th entry, was -- made a presentation during this meeting for a $22 per share transaction.
A. Um-hum.
Q. Plus warrants valued at $4 per share.

Page 133

And, in response, Mr. Maher is described here as having --
A. Said no.
Q. -- said no. And indicating an interest in obtaining an offer for an all stock deal at $30 per share or stock and cash at a lower amount.
Do you recall Mr. Maher expressing a deal structure like -- as described here?
A. No, but -- I have no reason not to believe this. I just don't remember it.
Q. Do you have any understanding what the rationale would be for an all stock deal valued at $30 per share or stock and cash valued at a slightly lower amount?
A. I don't recall the specific rationale here. Normally, you would want -- you take less if you got cash because when you got stock you usually can't sell it right away. So, you want -- your value today is subject to the value of the stock in the future.
Q. But, as you sit here today, you cannot specifically recall what the rationale was for this --
A. Right.

NOT A CERTIFIED COPY

Q. -- this offer as described here on February 6, 1998?
A. That's correct.
Q. Do you recall there ever being discussion of an all cash offer?
A. No.
Q. Do you remember there ever being a discussion of an all stock offer?
A. Only what's written here.
Q. Did CSFB assist MacAndrews & Forbes or Mr. Maher in coming up with this proposal?
A. I don't know. I don't know if he -- I don't know. I don't know if he was just negotiating to say 30.
Q. Do you recall the $30 per share price point as significant for MacAndrews & Forbes or Coleman?
A. No.
Q. I'd like you to look at the entries for February 23rd, 1998. It carries over onto the next page.
A. Um-hum.
Q. Do you recall attending the meetings that are described there on February 23rd?
A. Yes.

Q. Are these the due diligence meetings that you described earlier?
A. I believe so, yes.
Q. Now, the chronology describes here a series of meetings throughout the day on the 23rd.
Is that consistent with your recollection that there were multiple meetings at which due diligence was performed?
A. Yes.
Q. And is it the case that, during one of those meetings, the focus was due diligence on Coleman and others at the meetings the focus was due diligence on Sunbeam?
A. I don't recall that, no.
Q. Do you recall, during the course of these due diligence meeting described on February 23rd there being any discussion of a confidentiality agreement under which the due diligence meetings were being performed?
A. No.
Q. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 101. It's a letter dated February 23, 1998 addressed to the Coleman Company from

Sunbeam Corporation.
A. Um-hum.
Q. Do you see that?
A. Yes.
Q. And the fax line on the top of the document indicates that it was faxed to or from MacAndrews & Forbes on February 23, 1998.
Do you see that?
A. Yes.
Q. Do you recall ever having seen this letter --
A. No.
Q. -- in any form, in draft or final form during the engagement?
A. Don't recall it, no.
Q. Do you recognize this as a form of confidentiality agreement that would govern the provision of information from Sunbeam to Coleman?
A. Yes.
Q. You don't recall any discussion of confidentiality agreement like this one at the February 23rd meeting?
A. No.
Q. Do you recall anyone from Coleman or MacAndrews & Forbes objecting to signing a

confidentiality agreement that would cover information provided by Sunbeam?
A. No.
Q. Do you have any reason to believe that Coleman or MacAndrews & Forbes did not execute a confidentiality agreement?
MR. BRODY: Object to the form.
A. I -- I -- no, I don't have any reason to believe they did not.
Q. We were looking at the February 23rd meeting. Was this meeting that you're describing the first due diligence meeting that CSFB had done on Sunbeam?
A. I believe so. I don't -- I don't remember the meetings clearly enough to say it was the first.
Q. As you sit here today, do you recall having done any meetings or due diligence prior to the meetings --
A. No.
Q. -- that you remember?
A. No.
Q. Prior to this meeting, had you or others at CSFB read Sunbeam's public filings?
A. I assume so. I don't -- again, I

NOT A CERTIFIED COPY

015855

Page 138

don't recall the sequence, but I would assume we had.
Q. Tell me what you remember of the meeting -- the due diligence meetings that you remember.
A. I don't remember the substance. I just remember meeting once at MacAndrews & Forbes' offices, I think, or Revlon's office and once at Morgan Stanley.
Q. Do you recall that the meeting took place at Revlon's or MacAndrews & Forbes' offices Mr. Levin being present and making a presentation about Coleman's business?
A. No. I mean, I don't recall the presentation. I don't recall the Coleman presentation.
Q. Do you recall the Sunbeam presentation?
A. I -- I think that was -- my recollection, I thought, was that the first meeting was more a discussion with one person at Sunbeam about something. And the second meeting was more a more formal presentation at Morgan Stanley's offices.
Q. Okay.

Page 139

A. I don't know if that's correct, but that's my recollection.
Q. Well, let's start with the first meeting that you remember. You remember a smaller meeting with a single person from Sunbeam?
A. Yes.
Q. And was it a Sunbeam officer or representative?
A. Well, it was a Sunbeam management, senior management.
Q. It wasn't somebody from Morgan Stanley?
A. Right. It wasn't -- they may have been there, but they weren't the presenter.
Q. Do you remember who that person was or what the topic was of the presentation?
A. No.
Q. Did you ever speak with Al Dunlap?
A. I don't know. I can't remember if he -- I don't think I -- I didn't have a conversation with him. I don't know if he was at the second meeting.
Q. You don't recall him being present at the second meeting?

Page 140

A. Not specifically, no.
Q. What about Mr. Kersh, do you remember Mr. Kersh as someone who was involved in these meetings?
A. Was he the CFO?
Q. Mr. Kersh, at the time, was CFO of Sunbeam?
A. I remember the name, I don't remember --
Q. What about, did you ever speak with Mr. Rich Goudis?
A. I think so, but, again, it says here -- I think I did, but I don't -- I don't recollect the specifics.
Q. I want to stay focused on the first meeting you remember.
A. Okay.
Q. To the best of your recollection, it wasn't a formal presentation, it was a discussion --
A. Discussion.
Q. -- that you and others from CSFB were having with this member of Sunbeam's management team?
A. I believe so.

Page 141

Q. And you don't remember what the discussion or topic was?
A. No.
Q. During any of the meetings that you remember on due diligence, do you recall the subject of Sunbeam's first quarter 1998 performance being discussed?
A. Not specifically. I don't -- I guess what I'm saying is I don't remember it -- I don't remember a specific conversation on the first quarter.
Q. Was that the issue that you remembered discussing with the Sunbeam management member in the first session?
A. No. I don't remember the specifics issue. If anything, I would have thought it was synergies, but I don't remember. You know, I'd be guessing it --
Q. Beyond your -- a general sense it was synergies, do you have any other recollection of what was said?
A. No.
MR. BRODY: Object to the form.
Q. Do you have -- other than what you've testified to, do you remember anything else about

NOT A CERTIFIED COPY

01-5356

Page 142

that session?
A. No.
Q. What do you remember at the formal presentation that was made by Sunbeam? Do you recall who made the presentation?
A. No.
Q. Do you remember it being somebody from Sunbeam as opposed to somebody from Morgan Stanley?
A. Yes. I think Sunbeam presented, not Morgan Stanley. Morgan Stanley was there as part of the audience.
Q. Do you recall -- this is during the due diligence meeting that you were?
A. Yes.
Q. During the due diligence meeting that you remember, do you remember Morgan Stanley -- anyone from Morgan Stanley saying anything?
A. I'm sure they did. I just don't remember.
Q. Did you take notes during the meeting?
A. I probably would have, yes.
Q. Were there documents that were handed out as part of the presentation?
A. I don't remember.

Page 143

Q. Were there -- was it, like, a Power Point presentation, was there a video projector, anything?
A. I don't remember. I don't think there was a video or -- I don't think there was something up on the wall.
Q. Were there questions and answers?
A. Yes.
Q. Do you recall asking questions?
A. Yes. But I don't remember what the questions were.
Q. Do you remember individuals from MacAndrews & Forbes asking questions?
A. Yes.
Q. Individuals from Coleman?
A. I can't distinguish between the two.
Q. Okay. And do you remember who provided those answers, whether it was Morgan Stanley or the Sunbeam presenter?
A. I don't recall specific questions. I'm not sure who answered.
Q. Is there anything else that you remember about this due diligence session that you haven't described already?
A. No.

Page 144

Q. Any topics that were discussed, any surprises or information that caused you or others to do -- or want to do additional work or due diligence?
A. I don't think so. I don't remember that.
Q. After the due diligence meeting that you remember, did you or others at CSFB perform other due diligence on Sunbeam?
A. I don't think we -- I don't remember. I don't think we had -- we -- I don't know if we had any follow-up questions and answers that we may have had, which would have been normal. Or if we looked at some financial documents or public documents after that. I don't -- I just don't recall what happened after that meeting.
Q. Do you remember doing any of those things specifically?
A. No. I think we may have had -- had a couple of telephone or follow-up questions, but I don't -- I don't recall specifically.
Q. Do you remember to whom those questions were addressed?
A. No.
Q. The reference here on page 20 --

Page 145

February 23rd, rather, refers to Sunbeam making a presentation regarding its 1998 operating projections.
Do you recall that portion of the presentation where the operating projections for 1998 were presented?
A. Not specifically.
Q. Do you remember Sunbeam's management team, during that presentation, identifying potential obstacles or risks to the transaction that was being proposed?
A. Not specifically.
Q. Do you remember a discussion during that presentation about Sunbeam's performance in the first quarter of 1998?
A. Not specifically -- I mean, not specifically.
Q. Is that a topic that you would have expected to be addressed during a due diligence session?
A. Yes.
Q. Is that a question that you would have expected to have been asked -- to have asked or to have somebody on MacAndrews & Forbes' side of the table ask in the context of this discussion?

NOT A CERTIFIED COPY

Page 146

A. Yeah.
Q. Do you recall whether the question was, in fact, asked and what answer was given?
A. No.
Q. Do you remember any discussion about Sunbeam's expected performance for the full year 1998?
A. I don't -- not specifics, no.
Q. In general?
A. No. But I would have expected that to have been discussed.
Q. Do you recall, even generally, what outlook Sunbeam management had presented for its performance for 1998?
A. No.
Q. Whether it was positive or negative?
A. No. No, I don't remember the specifics.
Q. Do you remember anything being said relating to Sunbeam's earnings in 1998 as compared to 1997?
A. No, I don't remember specifically that.
Q. Or the restructuring that was underway at Sunbeam?

Page 147

A. No.
Q. Or Sunbeam's revenues achieved from grill sales?
A. No.
Q. Or an early buy program that Sunbeam had implemented in 1997?
A. No.
Q. Was there any discussion about the value of Sunbeam stock on a going-forward basis?
A. I don't remember.
Q. Do you remember Morgan Stanley or Sunbeam providing any statements about Sunbeam's expected stock performance going forward?
A. No.
Q. Or the achievability of Sunbeam's business plan for 1998 and 1999?
A. No.
Q. What about Sunbeam's air and water products, do you recall any discussion about air and water products?
A. Not specifically, no.
Q. Generally, do you remember those topics being part of the due diligence discussion?
A. No. You just -- no. I guess -- I would say I have some recollection of products being discussed, but I can't remember, you know, the different categories of products.

Page 148

Q. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 84.
A. Um-hum.
Q. Ask you to take a look at the attachment. Do you recognize this document?
A. I think so.
Q. What do you recognize it to be?
A. I think it probably was the presentation.
Q. At the meeting that you --
A. Yes.
Q. -- attended?
Does seeing this document refresh your recollection as to who made the presentation?
A. No.
Q. Does it refresh your recollection about any other aspect of the meeting?
A. It's just more detail of what was discussed.
Q. Do you recall anyone from Morgan Stanley presenting any portion of this presentation?
A. No.
Q. Was every page of the presentation gone through, or was it presented verbally in a more overview fashion and this material was just made available?
A. I'm not sure. I don't remember.
Q. Do you recognize any of the handwriting on this document?
A. No.
Q. During the meeting that -- meetings that you remember attending, did you understand Sunbeam or Morgan Stanley to be making any promise or guarantee about Sunbeam's future performance and growth objectives?
A. I don't remember. You know, I think you would have expected the managing team to believe what they're telling you and believe they could do it.
Q. Did Morgan Stanley ever independently express a view that they believed that the management team could achieve the objectives that were being presented?
A. I don't recall.
Q. Did Morgan Stanley ever vouch for the

Page 149

NOT A CERTIFIED COPY

015858

Page 150

accuracy of Sunbeam's projections?
A. I don't recall.
Q. You don't recall them doing that?
A. No.
Q. Do you recall Morgan Stanley ever vouching for the accuracy of Sunbeam's audited financial statements?
A. No.
Q. Did you ever have any meetings or discussions with Sunbeam's auditors, Arthur Andersen --
A. I don't think so.
Q. -- as part of your due diligence?
A. I don't think so.
Q. I'd like you to turn in the exhibit to what is -- bears a Bates number CPH 1324771. It's a page entitled, "Sunbeam long-range strategic objectives earnings from continued operations."
Do you see that?
A. Yes.
Q. Down on the left-hand side, there's a number of financial metrics, net sales, gross margin, SG&A expenses, et cetera. Do you see that?

Page 151

A. Yes.
Q. And then there are actual figures and long-range strategic plan figures that are presented.
A. Yes.
Q. Do you recall looking at this information during those meetings?
A. I don't recall specifically, but I'm sure we did.
Q. There's a reference here to net sales. Just to the right of that, there's a handwritten entry, "January, Feb slow."
A. Yes.
Q. Do you recall, during any of the meetings that you attended, anyone from Sunbeam indicating that the sales in January and February of 1998 were slow in any way?
A. No.
Q. Do you recall that topic being discussed?
A. I don't recall the topic.
Q. Did you discuss with MacAndrews & Forbes or Coleman a belief as to the achievability of Sunbeam's projections as indicated in this presentation?

Page 152

A. I don't remember that, no.
Q. Do you remember utilizing Sunbeam's projections in the modeling work that CSFB did?
A. I mean, I know in our investment banking memo, we had their projections and another forecast, yes.
Q. And the other forecast, we'll look at in a little while. It was referred to as the base case?
A. I don't recall which is which, but --
Q. Do you recall taking Sunbeam's projections and discounting them and presenting a base case as well?
A. That's what we did in the memo, yes.
Q. Do you recall the process by which you did that?
A. No.
Q. Do you recall who assisted you in performing that?
A. I believe the Coleman would have helped us do that -- Coleman team would have helped us.
Q. And when you say "the Coleman team," who are you referring to?
A. Mr. Levin or someone on his staff.

Page 153

Q. Do you recall what role you played in taking the Sunbeam projections and discounting them to the base case?
A. Not specifically.
Q. Was that something Mr. Geller worked on more closely or --
A. He may have, yeah. I'm not sure if we had a set of forecasts from Coleman or if we came up with a set of forecasts, gave them to Coleman, and then they gave them back to us.
Q. At the meeting that you remember, the due diligence meeting, do you recall Morgan Stanley making any presentation, any portion of the presentation?
A. No, I don't -- I don't remember specifically who presented.
Q. Did you or other members of the CSFB team attend any of the road shows that were done in March of 1998 in connection with the convertible debenture offering that Sunbeam did?
A. I don't think so.
Q. Did you?
A. I did not. I don't think anyone else did.
Q. Were you aware that Morgan Stanley was

NOT A CERTIFIED COPY

Page 154

assisting Sunbeam in doing a debenture offering in connection with the acquisition?
A. I don't remember if I was or I wasn't.
Q. Were you aware that Morgan Stanley was assisting Sunbeam, generally, in the financing of the acquisition?
A. I don't remember that. I would -- I guess I would not have been surprised.
MR. CLARE: Let me ask you to mark this one as 317.
(Morgan Stanley Exhibit 317, Handwritten notes, marked for identification, as of this date.)
A. Um-hum.
Q. Have you ever seen this document before?
A. I saw it yesterday, yes.
Q. Is this your handwriting?
A. I believe so.
Q. Are these notes that you took during the meetings that we've been describing?
A. I'm not sure when I took them, but I'm -- I would have thought so. I don't know, though.
Q. These are notes that you made during

Page 155

the course of your work on the Coleman engagement?
A. Right.
Q. The title of the document -- or at the top, I guess, of the document, I believe it says "Major Risks." Do you see that?
A. Yeah.
Q. Do you recall, at some point during your discussions with Sunbeam's management team and Morgan Stanley, there was a discussion of risks associated with the transaction?
A. No.
Q. Do you recall any discussion -- or do you recall who was providing you the information that's reflected here in Morgan Stanley Exhibit 317?
A. I have no idea.
Q. Do you know what it's referring to when it says "Major Risks"?
A. No.
Q. Item No. 1, it says "Ability to outsource as quickly."
Do you know what that's referring to?
A. No.
Q. The references underneath it suggest

Page 156

that there's a -- going to be a reduction in facilities.
A. Yes.
Q. Is that consistent with your understanding that Sunbeam was in the course of reducing its facilities?
A. I don't know what the 26 to 8 plants -- I don't know if that's referring to Sunbeam or a combination of Sunbeam and Coleman or what.
Q. There's a reference here to closing Mexico City.
A. Yeah.
Q. Is that a -- did you understand that Coleman had -- or Coleman or Sunbeam had a facility in Mexico City?
A. I think it's on one of the synergy pages, but I don't remember whose plant it was or --
Q. Do you believe that the information on this exhibit, Morgan Stanley Exhibit 317, were risks that were identified by CSFB independently, or risks that were identified through discussions with Sunbeam?
A. I think -- well, I don't know. I

Page 157

would assume that they were notes of a discussion, so it was not something we did on our own -- or I did on my own.
Q. Do you recall discussing these risks that are identified in Morgan Stanley Exhibit 317 with MacAndrews & Forbes?
A. I don't -- no. I mean, I don't know -- for all I know, these were notes of a discussion with MacAndrews & Forbes or discussion with Sunbeam or somebody else.
Q. Item No. 2 refers to new product development.
A. Yes.
Q. That's item No. 2 under "Major Risks."
A. Yeah.
Q. There's a reference here to air and water products.
A. Um-hum.
Q. What do you remember being said about that?
A. Nothing.
Q. Do you remember air and water products being identified as a major risk?
A. No.
Q. There's a reference underneath that

NOT A CERTIFIED COPY

0159660

Page 158

subheading to management of products launched.
A. Yeah.
Q. And a reference to growth and capacity customer placement.
A. Yes.
Q. Do you remember that being identified as a risk?
A. No.
Q. Do you understand the items that are listed here as risks to be risks to Sunbeam's going forward financial performance or potential obstacles to achieving management's plans?
A. I don't remember. I don't remember.
Q. Is that the way you would read this document today?
MR. BRODY: Object to form.
A. If air and water referred to Sunbeam products, I don't -- I might read -- I think that's the way I might read it as air and water new products, you know, is a risk because they have new products built into their forecast.
Q. So if, for example, air and water products did not --
A. Produce the new products.
Q. Then Sunbeam may not achieve the level

Page 159

of financial performance that had been discussed?
MR. BRODY: Object to form.
A. That's correct.
Q. Or if Sunbeam was not able to outsource as quickly as it had hoped, that would be another risk to achieving its financial objectives?
MR. BRODY: Same objection.
A. Potentially. If that's what -- if that's what the 26 to 8 means.
Q. Well, putting aside the 26 to 8, I mean, did the topic of outsourcing and ability to outsource as quickly, do you understand that Sunbeam was in the process of outsourcing some of its previously internal functions?
A. I can't remember that specifically. If that was a synergy or that was something they were already doing.
Q. Major risk No. 3 is -- I believe that says "voids."
A. Um-hum.
Q. Is that correct, am I interpreting your handwriting correctly. Adding distribution?
A. I think it's correct. I don't --
Q. It talks about customer voids and

Page 160

product line voids. Do you see that?
A. Yeah.
Q. What's -- what is that referring to?
A. I -- I don't know. I don't understand it looking at it today.
Q. Do you recall anyone from Sunbeam or Morgan Stanley identifying customer or product line problems as a potential risk to achieving financial objectives?
A. No.
Q. There's an entry here for J.D. Edwards --
A. Yeah.
Q. -- 1/97 started from scratch.
Do you remember discussions with Sunbeam about its J.D. Edwards system and difficulties that it had had with its J.D. Edwards system as contributing to a distribution problem?
A. No. Is that what that refers to?
Q. I'm asking for -- if you know what that's referring to.
A. I don't know.
Q. The next entry, it says, "Al Dunlap."
A. Um-hum.

Page 161

Q. Can you interpret that entry for me or read it?
A. "Created negative sales impact because believed looking to sell."
Q. Do you know what that's a reference to?
A. Not specifically, no. I mean, I could guess, but I don't --
Q. What is your interpretation of that?
MR. BRODY: Object to the form.
A. Either he, himself, because he was looking to sell the company, that that impresion hurt sales. The impression that he was going to sell the company hurt sales or he reduced sales initially for some reason.
Q. Do you remember any discussion about a potential negative sales impact because the M&A process was underway at Sunbeam?
A. No.
Q. Do you remember anything being said about negative sales impact at Sunbeam?
A. No.
Q. Do you recall any follow-up questions being asked by CSFB or MacAndrews & Forbes about the impact of negative -- sorry -- about the

NOT A CERTIFIED COPY

Page 162

negative sales impact described here?
A. No.
Q. Or how to quantify it?
A. No.
Q. Or its impact in the first quarter of 1998 sales?
A. No.
Q. Looking at the second page of the document, there's a reference to deferred income tax.
A. Yes.
Q. And restructuring charges and NOL installments?
A. I think it says internationally.
Q. Internationally.
What was said about those topics?
A. I don't know.
Q. Do you remember any discussion about them?
A. No.
Q. The next item is revenue?
A. Yep.
Q. '96 versus '97, and '97 versus '98. Do you remember discussions with Sunbeam about its year-over-year revenues?

Page 163

A. No.
Q. Do you believe those topics were discussed during the due diligence meetings that you attended?
A. Yes, I would expect them to have been discussed.
Q. As you sit here today, do you remember them being discussed?
A. No.
Q. Did Sunbeam, during the due diligence meetings that you attended, provide revenue comparisons for '97 and then the -- as compared to the time to date in 1998?
A. I don't remember.
Q. The next item talks about margin improved.
A. Yeah.
Q. Do you know what that's a reference to?
A. No. I assume it's the margin -- the margins on the business went up.
Q. And there's a reference to 1998 full year of impact. Do you know what that's a reference to?
A. I believe -- I don't know

Page 164

specifically. I imagine it means '98, whatever actions they had done, they'll get a 12-month impact, '98. In 1997, they didn't have all 12 months.
Q. The next couple of entries relate to gas grill prices set finally being able to reprice grills.
Do you remember any discussion about grill pricing for Sunbeam?
A. Not specifically, no.
Q. Or generally?
A. No.
Q. Do you remember that topic being discussed?
A. No. I mean, I think it's in here somewhere.
Q. Apart from what's in the --
A. No.
Q. -- presentation, you don't remember any discussion about --
A. Not specifically, no.
Q. Underneath the text there, there's a line for 1997 -- or, I'm sorry. It says '97 and '98, and there are figures given underneath that. Do you see that?

Page 165

A. Yes.
Q. There's -- 150 is written under '97 and 75 is written under '98. Do you see that?
A. Yes.
Q. Do you know what that's a reference to?
A. No.
Q. Are those quarter-to-date sales, figures comparing the first quarter '98 sales to the first quarter '97 sales for the same period?
A. No. I think, if anything, they're costs -- I don't know if they're-- I think they're reduction in costs or something. I think the 225, the 150 and the 75 tie back to the 225 on operating income.
Q. And how do you get from that to those being cost savings?
A. Well, because they're going the wrong direction to be earnings. So, I'm -- I'm not sure. I'm -- I'm interpreting here. I just would think that 225 was the base cost and it went down by 150 through '98. And then there's other savings somewhere else to get to the 225.
Q. As you sit here today, do you have a recollection as to what these entries refer to or

NOT A CERTIFIED COPY

015962

Page 166

are you interpreting?
A. I'm interpreting what's written on the page.
Q. You don't remember that calculation being done during any of the meetings that were presented by Sunbeam?
A. Not specifically.
Q. Did anyone ever say, putting aside the document, in words or in substance, that Sunbeam's first quarter 1998 performance was slow in any way, but that the company expected to make up those sales or revenue in the full year of '98; do you remember that being discussed?
A. No.
Q. Generally or specifically?
A. No.
Q. I'm going to hand you what's been marked as Morgan Stanley Exhibit 85. Have you ever seen this document before? Feel free to take as much time as you want to flip through it.
A. I don't -- I think I've seen it before.
Q. Do you recall in what setting?
A. It might have been -- it might have

Page 167

been part of the due diligence presentation. I don't -- I don't -- I don't recall, though.
Q. When I handed you the prior exhibit, Morgan Stanley Exhibit 84, you had a recollection that that was presented during the meetings that you attended.
Do you have a recollection of this document, Morgan Stanley Exhibit 85, being presented?
A. I think I have a recollection of, at least, the beginning of it. I don't know if it was presented or -- it seemed familiar.
Q. So, you think you may have seen this before, but, as you sit here today, you can't recall in what setting or what portions of it?
A. Right.
Q. Do you recall Morgan Stanley ever making a presentation from this slide deck?
A. Not specifically.
Q. Do you recall Morgan Stanley handing out this document or presentation materials during the due diligence meetings that you recall?
A. Not specifically, no.
Q. Do you recall Morgan Stanley, even

Page 168

generally, having materials available and providing written materials during the meetings?
A. No. I can't remember if they did or didn't.
Q. I'm going to hand you what's been marked as Morgan Stanley Exhibit 88. Morgan Stanley Exhibit 88 are minutes of a meeting of the board of directors of the Coleman Company held on Wednesday, February 25, 1998 --
A. Um-hum.
Q. -- at 335 East 62nd Street, New York. And you're shown as having attended the meeting.
A. Yes.
Q. Do you recall attending a meeting or more than one meeting of the Coleman Company board?
A. Yes.
Q. Did you have a speaking role at the meeting?
A. If -- I don't recall. If it was, I just answered the question.
Q. You did not make a presentation to the board?
A. I personally did not, no.
Q. Did Mr. Rich?

Page 169

A. Yes.
Q. Did you assist him in preparing for his presentation to the board?
A. Yes.
Q. Do you recall anyone attending the meeting, other than the individuals who are listed here?
A. No, no.
Q. Did anyone, other than -- did anyone else from CSFB attend the meeting, for example?
A. I don't believe so.
Q. Did anyone from Morgan Stanley attend the meeting, that you remember?
A. I don't believe so.
Q. Do you remember anyone, even though it's not present, plugging in by telephone or video conference?
A. No.
Q. Do you remember any discussion of Morgan Stanley during the Coleman board meeting that you attended?
A. No.
Q. Do you remember Morgan Stanley having been identified to the board as Sunbeam's financial advisor?

NOT A CERTIFIED COPY

01-5863

Page 170

A. No.
Q. Do you remember any written material from Sunbeam being provided to the board?
A. No.
Q. For example, the strategic plan document that we looked at, Morgan Stanley Exhibit 84, do you recall this document being provided to the board?
A. I don't remember being provided. But I also don't remember if the -- you know, if the board had materials when they came in that had been provided before the meeting started.
Q. But during -- in terms of what was discussed during the meeting, do you recall that document, a long-range strategic plan for Sunbeam, being discussed?
A. No.
Q. What about the document that we looked at a moment ago, Morgan Stanley Exhibit 85?
A. No, I do not.
Q. I'd like you to turn to page 4 of --
A. Sure.
Q. Actually, before you do that, let me ask you to look at page 2, middle of the page.
A. Yes.

Page 171

Q. Feel free to review as much of this as you'd like for context. I'm going to specifically ask you about the third paragraph. Why don't you read that and let me know when you're ready.
(Witness reading document.)
A. Okay.
Q. There's a reference to statements made by Mr. Maher to the board.
A. Um-hum.
Q. And a reference to inquiries made by the company, meaning Coleman, to another company that was considered to be the most likely potential bidder.
Did CSFB play any role in approaching other potential bidders for Sunbeam?
MR. PARADISE: You mean for Coleman?
MR. CLARE: For Coleman. Thank you.
A. I don't believe so.
Q. Do you recall who the other bidder was that Mr. Maher is referring to?
A. I don't remember, no. I mean, I may have known at the time. But I don't remember now.
Q. The next sentence makes reference to

Page 172

questions raised by the directors and a discussion.
Do you remember any of the substance of the discussion at the board meeting about the transaction that was being proposed with Sunbeam?
A. No.
Q. Any discussion among the board of directors that you remember about the form of consideration?
A. No.
Q. Or the advisability of accepting Sunbeam stock as a portion of the consideration?
A. No, I don't remember that.
Q. I'd like you to turn, then, to page 4, beginning with the second full paragraph. I'd like you to read that summary, please, over to the next page about Mr. Rich's presentation and let me know when you're ready.
(Witness reading document.)
A. Okay.
Q. Is this an accurate summary of your recollection of the presentation that was made by Mr. Rich?
A. Yeah -- yes.
Q. In the first paragraph that I had

Page 173

asked you to look at, midway through the paragraph, there's a sentence that says, "Mr. Rich then reviewed the value of the proposed transaction as it relates to various financial indicia including historical stock trading prices and earnings, the value to the company stockholders as the price of Sunbeam stock increased or decreased."
Do you see that?
A. Yes.
Q. Do you recall Mr. Rich presenting a sensitivity analysis to the Coleman board as it related to the price of Sunbeam stock?
A. I don't recall it, but, you know, seeing it here, I don't find it surprising if that's what he did.
Q. Is that because there would be a standard presentation to make when looking at a stock transaction?
A. Yes.
Q. I'm going to hand you what's been marked as Morgan Stanley Exhibit 112. It's a document -- it says, "February 25, 1998 draft materials prepared for the board of directors of Coleman Company."

NOT A CERTIFIED COPY

015894

Page 174

And I'm going to use this in tandem with the board minutes to hopefully guide some of our questioning for the next little while.
A. Um-hum.
Q. Have you seen this document before, Morgan Stanley Exhibit 112?
A. Yeah.
Q. Do you recall that this was the form of the presentation that was made by Mr. Rich to the board of directors?
A. I assume so, yeah.
Q. I'd like you to look at page 3 of the presentation, which is the fourth page of the document. --
A. Yes.
Q. -- Bates No. CP 011056.
And it --
A. I'm sorry. Which --
Q. It's the page bearing the title "CLN Transaction Multiples"?
A. Okay.
Q. And the -- there's a table there with the heading "Valuation Sensitivity of SOC Proposal."
A. Yes.

Page 175

Q. Do you understand SOC to be the stock ticker for Sunbeam?
A. Um-hum.
Q. Does this table show the sensitivity analysis that was described in the board meeting?
A. I believe so.
Q. And is this what was presented to the board?
A. I think so, yes.
Q. Earlier, you said that it would be -- you weren't surprised that this type of analysis was presented to the board.
Why -- why is it standard for such a sensitivity analysis to be presented in a stock transaction?
MR. PARADISE: Objection.
A. Because you -- you're being asked to value -- accept a valuation that will change every day as the stock price moves. So, you want to give people a sense of -- the board members often asks, what happens if the price goes up or down. What does it look like? And a chart like this allows you to -- as the banker, to address that question.
Q. Did -- was there any discussion,

Page 176

either by the board -- was there any discussion by the board about a floor below which it would not make sense to proceed with the transaction, the value of Sunbeam stock?
A. I don't -- I don't recall, no.
Q. Did CSFB express an opinion to Coleman whether Sunbeam stock would rise or fall in the future?
A. I don't believe so.
Q. Was the transaction -- was the transaction structured, to your understanding, so that Sunbeam had guaranteed a particular level of performance of its stock on a going forward basis?
A. I don't believe so.
Q. Do you recall any discussion or questions from the board regarding Sunbeam stock price?
A. No.
Q. The next paragraph -- two paragraphs --
A. Yeah.
Q. -- discuss a portion of Mr. Rich's presentation related to the valuation methodologies?

Page 177

A. Yes.
Q. And the -- that part of the presentation begins on page 7 --
A. Yes.
Q. -- of Morgan Stanley Exhibit 112.
Were you involved in preparing this presentation to the board?
A. Yes.
Q. The information that's contained in here, the historical financials for Sunbeam, where did they come from? Where did --
A. The historical financials?
Q. Yes.
A. Would probably have come from their public -- you know, SEC documents.
Q. That's information that CSFB would have pulled out of the public filings itself?
A. Yes.
Q. Did the projections that are identified in here for Sunbeam and Coleman, those are sourced in the various footnotes to the tables; is that correct?
A. I believe so, yes.
Q. We'll look at some of them in more specifics.

NOT A CERTIFIED COPY

010585

Page 178

I'd like -- for a moment, I want to turn back to page 2 of the presentation. "Key transaction multiples."
A. Yes.
Q. There's a table on the right-hand side that shows the premium that Sunbeam is paying -- was paying for Coleman as compared to various financial indicators.
Do you see that?
A. Yes.
Q. Footnote 7 to that table suggests that it's the premium to $29.50 per share that's the implied consideration. --
A. Um-hum.
Q. -- is that correct?
And that that represented a 42.6 percent premium to the current stock price --
A. Yes.
Q. -- of Coleman?
A. Yeah. I think -- foot -- I think $29.50 is what the deal price was.
Q. Correct.
A. So, I think the footnote probably reads incorrectly.

Page 179

Q. Okay. You understand that the $29.50 was the deal price?
A. Looking at -- I believe so, yeah, doing the math in my head.
Q. Right. And the table indicates that Sunbeam was trading at about $40 per share?
A. Right.
Q. And that that represents a 42 percent, roughly, premium to the current stock price?
A. The $29.50, yes.
Q. Correct.
Was there any discussion at the board meeting about that premium that Sunbeam was paying for Coleman?
A. I would have expected there to have been, but I don't remember.
Q. What was that -- the premium attributable to?
A. Premium is attributable to changes -- what do you mean?
Q. Why -- what was your understanding of why Sunbeam was paying a premium for Coleman?
A. Well, all I can speak to is why people typically pay a premium.
Q. Okay.

Page 180

A. They pay for change in control, to get control of the company. The company, typically, trades at less than its intrinsic value in the stock market. And, you know, you expect when you sell a company, to get premium to where it trades.
Q. What about synergies as a result of a proposed acquisition, would that also factor into a -- a premium analysis?
A. People -- well, you can -- in theory, yes. You would expect that the reason people pay more than what it trades for is because they can do more with the asset once they control it than the owner can. Because you're rationalizing, businesses putting them together, you run them more efficiently.
Q. Do you recall any discussion with the Coleman board about synergies being any portion of the premium that it was receiving in consideration for Coleman shares?
A. I don't. You don't usually link -- you don't say X percent is -- X percent of the premium is synergies and X percent is something else.
Q. Based on the work that you did on the

Page 181

Coleman transaction and the meetings that you attended, do you have an understanding, one way or the other, why Sunbeam was paying a premium for Coleman?
A. I think they had to, to get the business. I mean, that's -- that's fundamentally what it came down to. I don't understand -- I don't have a recollection -- a knowledge of why they were prepared to pay the premium they were.
Q. Or whether it was synergies or control premium or some combination of both or other factors, did you ever have discussions --
A. No, I did not have any discussions with the Sunbeam folks on why they paid the premium they paid.
Q. Did CSFB have an opinion, one way or the other, or receive any input from Coleman about what a reasonable or fair premium would be, other than the pricing discussions that you alluded to earlier?
A. I don't think so.
Q. In your discussions with MacAndrews & Forbes or the Coleman board, do you remember a figure that was being discussed as the -- an acceptable premium for the company?

NOT A CERTIFIED COPY

Page 182

A. I don't remember. And I think it probably would have been an absolute share price as opposed to the premium that was the target.
Q. Let's turn over to page 7 of the presentation, which is the valuation methodology section of the presentation.
The presentation indicates that three different methodologies were presented to the board, discounted cash flow, comparable companies and comparable acquisitions.
Do you recall working on all three of those?
A. Yes.
Q. Were all three, in fact, presented to the board?
A. I think so.
Q. Do you recall them being?
A. No. I mean, I barely -- I don't really recall the board meeting, but I think, if we had them in the presentation, we would have gone through all of them.
Q. In its presentation to the board, did CSFB emphasize one of these valuation methods over another?
A. No.

Page 183

Q. Was there any discussion among the board members to suggest that the board viewed one of the valuation methodologies as more important than another?
A. I don't believe so.
Q. Is it standard practice in valuing a company in this setting to engage in all three of these methodologies?
A. Yes.
Q. Turn to the next page. It's a summary of the different analyses that CSFB had done. And it describes the applied price per share under each of those analyses.
Do you see that?
A. Yes.
Q. I want to go back for a moment to the board minutes and Mr. Rich's discussion of the valuation.
A. Okay.
MR. CLARE: For the record, we're looking at Morgan Stanley Exhibit 88.
Q. And I'm looking at the next to last paragraph in paragraph 4.
MR. BRODY: I'm sorry. Page 4?
MR. CLARE: Yes, page 4.

Page 184

MR. BRODY: Okay.
Q. "In reviewing the discounted cash flow analysis, Mr. Rich noted that First Boston used the company's 1998 estimates on earnings before interest, taxes, depreciation and amortization, which shows a significant increase over 1997 results and is higher than the company's best results in any year. Mr. Rich stated that although First Boston did not discount the 1989 EBITDA forecasts, another buyer would likely discount such estimates resulting in a lower discounted cash flow range of the values than those presented by First Boston."
Do you recall that topic being discussed with the board?
A. No.
Q. Do you recall the subject that that paragraph addresses? In other words, the source of information for the earnings estimates for 1998?
A. I guess I -- I don't -- my belief is that the source of the estimates came from Coleman management.
Q. I guess what I'm trying to understand is, what forecasts did CSFB not discount?

Page 185

A. The Coleman forecast.
Q. But he's indicating -- it's indicated here that a view was expressed to the board that another buyer would likely discount that?
A. Well, yeah. I think -- if you -- what he shows in the presentation is that the forecast for 1998 has EBITDA going up substantially. And the point that he's -- that's being made here is that, if you accept that, or if you base your valuation on that higher number, which is what we did, you come to a higher value.
But for the board members to realize that that improvement might be discounted by another person. So, the valuation they may come to is actually lower. And that's -- that, I think, is the logic that he's trying to present to the board there.
Q. Is that a -- would that be a standard approach when confronted with forecasts of that type that were higher than had been achieved in the past?
A. I don't think --
MR. BRODY: Object to the form.
A. I don't think there's a standard approach. I think the question is, what drove

NOT A CERTIFIED COPY

Page 186

the higher forecast and does the reviewer believe those reasons are appropriate.
Q. Now, earlier, we talked about Sunbeam's forecasts --
A. Um-hum.
Q. -- and projections that were made. And we talked about the process that CSFB went to discount them and present it.
Is that an example of a way in which Coleman and CSFB discounted the similar information that was being presented by Sunbeam?
A. I guess I -- I don't know about -- I guess what I say is we -- I believe what we did is with Coleman management, we came up with a revised set of forecasts for Sunbeam.
I don't think we thought it was appropriate to do that for Coleman management projections, given that they were presenting to their board and those projections probably had been before the board before.
Q. Why was that done for Sunbeam's forecasts?
A. I don't remember. Given the conversation today, it probably had something to do with the fact that the forecast may have been

Page 187

viewed as potentially aggressive. I don't -- but I don't remember.
Q. Did you have any discussions with Mr. Levin about whether Sunbeam's forecasts were aggressive?
A. I don't -- I don't remember.
Q. Or Mr. Page?
A. Don't remember.
Q. Did anyone say to you, in words or substance, that it would be appropriate to discount those forecasts in presenting information to the board?
A. I think we did present them that way, so I -- I'm sure we reviewed the fact that we were going to do that with somebody.
Q. So, that was a conscious decision to discount the Sunbeam projections as opposed to presenting them as they were presented?
A. I think we provided both, but -- I think we made a decision to present both.
Q. The decision to present both was made by CSFB or CSFB in consultation with Coleman and MacAndrews & Forbes?
A. Well, as I said, I think we developed the projections in cooperation with Coleman, so

Page 188

it would have been in cooperation with them.
Q. Okay. Let me get you to turn to page 12 of the presentation. It's entitled, "Overview From Sunbeam."
A. Yes.
Q. Under the business overview section --
A. Um-hum.
Q. -- where did that information come from?
A. I -- I don't recall. I would think it came from the public financials.
Q. From Sunbeam's public financials?
A. Probably from the 10-K.
Q. The same is true for the '97 revenue breakdown box?
A. I would believe so.
Q. And under the financial summary, it provides actual numbers for '96 and '97 and then estimates for '98 and '99.
A. Yes.
Q. And those are -- the estimates for '98 and '99 are sourced to Wall Street estimates?
A. Yes.
Q. Why were they sourced to Wall Street estimates as opposed to the estimates that had

Page 189

been provided by Sunbeam management?
A. I can't remember now, but I would imagine because that was what was in the public domain. And so I think the fact that we had two sets of forecasts, we wanted to show the board what the -- what the public thought the numbers were first and then talk about what Sunbeam management thought the numbers were.
Q. The Wall Street estimates were analyst estimates that were out on the street at the time?
A. I believe so, yes. Or they were, probably, based on analyst estimates, if it wasn't one specific analyst.
Q. If you turn to the next page, there's a summary of the valuation -- the different methods?
A. Yes.
Q. And it summarizes CSFB's valuation of Sunbeam under different valuation methodologies: Discounted cash flow, comparable company and comparable acquisitions.
The discounted cash flow analysis is broken down into two different ones, long-term strategic plan and then the base case.

NOT A CERTIFIED COPY

Page 190

A. Yes.
Q. Both cases were presented to the Coleman board --
A. Yes.
Q. -- as part of the discounted cash flow?
A. Yes.
Q. In its presentation to the board, did CSFB emphasize one of those cases over the other?
A. I don't think so. I don't recall, though.
Q. Was there any discussion from the board to suggest that the board viewed either the base case or the strategic plan case as more important than another?
A. I don't recall.
Q. Do you remember any discussions during the Coleman board meetings about Sunbeam's projections?
A. I don't recall.
Q. Any discussion or questions to suggest that Sunbeam's management's projections were being given any special weight by the board?
MR. BRODY: Object to the form.
A. I don't know about special -- I don't

Page 191

know of special weight. I don't recall that.
Q. You don't recall that being discussed at all? I'm sorry. You don't recall any discussions to suggest there it is given any more weight than any portion that was present; is that fair?
A. It's fair to say I don't recall the specifics of what the board discussed.
Q. Turn to the next page. It provides some detail on the discounted cash flow analysis.
A. Yes.
Q. And more detail about the base case and the long-term strategic plan case --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. And I'd like to look at what each one of those cases is described as.
The long-term strategic plan has a reference to footnote 2. Do you see that?
A. Yes, I do.
Q. And it's described as Sunbeam's management prediction -- projections for 1998 to 2000 and estimates for 2001 and 2002.
A. Yes.

Page 192

Q. Where -- the projections, as I understand it, were only made for the years 1998, 1999 and 2000?
A. Right.
Q. Where did the estimates for 2001 and 2002 come from?
A. Those probably came from -- from CSFB, from us, you know, extrapolating the numbers.
MR. BRODY: Object to the form.
A. But I don't recall specifically.
Q. I'm going to hand you --
MR. CLARE: Mark this one here.
(Morgan Stanley Exhibit 230, Memo dated February 25, 1998, from Rich, Duffy, Geller and Chakrapani to the Investment Banking Committee, marked for identification, as of this date.)
Q. I've handed you what's been marked as Morgan Stanley Exhibit 230. This is a memo from Gordon Rich, Robert Duffy, Steven Geller and Ramesh Chakrapani to the Investment Banking Committee dated February 25, 1998.
Is this the document that you described earlier as having refreshed your recollection about some of the work that was

Page 193

done?
A. Yes.
Q. We'll talk about this document a little bit later this afternoon, but for now, I'd like you to just look at page 7.
A. Yes.
Q. At the top, there's a reference to "discounted cash flow analysis."
Do you see that?
A. Yes.
Q. And it describes the DCF analysis as based on the set of projections provided by management of Sunbeam for '98 to 2000 and 7.5 percent growth thereafter.
Do you see that?
A. Yes.
Q. Does that refresh your recollection that CSFB applied a 7.5 percent growth factor for the years after 2000 --
A. Yes.
Q. -- for purposes of coming up with the long-range strategic plan case?
A. Um-hum, yes. I guess, you know, I'm not sure where the 7.5 percent came from.
Q. That was going to be my next

NOT A CERTIFIED COPY

015869

Page 194

question. But let's start with the -- you do remember that there was a component of the strategic plan case that was selected by CSFB; in other words, the growth component for the years beyond 2000?
A. Yes.
Q. And that decision that the 7.5 percent would be applied in those years beyond that were made by CSFB?
A. Yes.
Q. Did Morgan Stanley have any input into that 7.5 percent growth rate beyond 2000?
A. I can't remember. I mean, I don't know what discussions -- I don't remember the discussions we had about what happens outside the projection year which would normally happen in diligence, what's the steady run rate for revenue growth.
Q. As you sit here today, do you remember any discussion with Morgan Stanley about the appropriateness of the 7.5 percent beyond the year 2000?
A. Not specifically, no.
Q. Or generally?
A. No.

Page 195

Q. What about with Sunbeam, do you remember, as you sit here today, discussions with Sunbeam about applying 7.5 percent growth beyond the year 2000 of the projections?
A. No. I mean, I don't know what happened -- as I said, I don't remember what happened in the diligence meeting.
Q. But, as you sit here today, you can't recall any such discussions?
A. I can't recall, no.
Q. Do you recall any discussions internally at CSFB about only presenting the strategic plan case to the board?
A. No.
Q. Was there ever a draft or earlier iteration of the board presentation that only included the strategic plan case?
A. I don't know.
Q. From the -- do you ever recall a time when the discounted cash flow analysis was done based only on the strategic plan and not also on a base case?
MR. BRODY: Object to form.
A. I'm sorry.
Q. Do you recall, at any point during the

Page 196

analysis, where it was only done -- discounted cash flow analysis was only done on the strategic plan?
A. No. But, I mean, what probably happened is we probably did the strategic plan and then did the base case, developed that after. I mean, so I don't know that we ever presented it that way. But, I mean, our own internal workings would have required us to do the strategic plan first.
Q. Did anyone from Coleman or MacAndrews & Forbes ever say, in words or substance, that the projections and estimates in the long-term strategic plan were too aggressive or optimistic?
A. I don't remember.
Q. Was that ever expressed by anyone internally at CSFB?
A. I don't remember.
Q. The base case on page 14 of Exhibit 112 is footnoted to footnote No. 1.
A. Yes.
Q. It says, "Projections developed in conjunction with CLN management based on equity analyst research."
A. Right.

Page 197

Q. Do you see that?
A. Yes.
Q. And CLN is the --
A. Coleman.
Q. -- stock ticker for Coleman?
A. Yes, it is.
Q. So, the projections that are identified here in the base case were developed jointly between CSFB and Coleman management?
A. Yes.
Q. Who from Coleman management participated in developing those projections?
A. I can't recall, but, you know, I would have expected it was -- I mean, well, what -- I think we probably dealt with Mr. Nesbitt, and he would have dealt with Mr. Levin. Or we would have done it on the call. I don't recall. Or Mr. Page is the other person.
Q. So, it could have been Mr. Nesbitt or Page or Levin who would have been involved in those discussions?
A. Right.
Q. But, as you sit here today, you don't recall specific discussions with any of them about the development of the base case?

MDIA CERTIFIED COPY

0 1 5 8 7 0

Page 198

A. No.
Q. What is the reference to "equity analyst research" there? Do you know what research was used in developing the base case?
A. No. I don't know what specific research. I would have thought we had research reports on Sunbeam and we used those to help frame the base case forecast.
Q. Did you think that the equity analyst research reports that you had were an appropriate source to consult for information about Sunbeam?
A. Yes.
Q. Is that a customary source of information of -- for public companies?
A. Yes. I mean, yes.
Q. Now, the base case projections are across-the-board more conservative than the long-term strategic plan; is that correct?
A. Yes.
Q. And that was a conscious decision that was made that the base case would be a downward revision of the strategic plan as opposed to an increase?
A. Yes.
Q. So, it was a belief that the base case

Page 199

that needed to be presented to the board would be lower than the strategic plan case?
A. I think it was -- I don't think -- I don't think we needed -- we felt we needed to show a lower case. We just wanted to show a case that we thought more accurately reflected what the public was seeing and, maybe, calling it more less aggressive than the Sunbeam base case -- or the Sunbeam strategic plan.
Q. Was there a view that the Sunbeam strategic plan was aggressive?
A. I can't recall. I mean, I use that to compare the -- describe the comparison of the numbers.
Q. Was the base case done as a top-down analysis from the strategic plan or was it built from the ground up?
MR. BRODY: Object to the form.
A. It was -- it was -- it was built from sort of 1997 forward. If that's -- I don't think it was built as a -- I don't remember it being built as, let's say, take 20 percent off the strategic plan, if that's the meaning of your question.
Q. Yeah. When that analysis was

Page 200

completed and you looked at the base case projections going forward through 2002, was a comparison made between the base case and the strategic plan to see what percentage difference there was between them and if that was appropriate?
A. I don't think so.
Q. I've done the math and we can go through it in more detail, but even just eyeballing it, the base case on revenue figures shows it being discounted somewhere between 8 and 13 percent from the strategic plan out through 2002.
Do you remember having discussions with anyone at Coleman or MacAndrews & Forbes about whether that range of discount was appropriate for purposes of a base case presentation to the board?
A. No.
MR. BRODY: Object to the form of the question. Mischaracterizes the testimony.
A. No, I don't.
Q. And earnings figures are similarly 10 to 14 percent lower than the strategic plan case.

Page 201

Do you remember discussion with Coleman or MacAndrews & Forbes about presenting an earnings case that were 10 to 14 percent below the Sunbeam?
A. No.
MR. BRODY: Same objection.
Q. Were there any discussions internally at CSFB about whether those types of discounts or lowered estimates was an appropriate range?
A. I don't think there were any -- I don't remember discussion about discounts. You know, I'm sure we discussed whether we thought the base case was a good case to show the board.
Q. And you concluded that it was a good case to show the board?
A. Yeah.
Q. Okay. I'd like you to turn to the next page, please, which is the detail on the comparable companies analysis.
A. Yes.
Q. And the table at the top of the page, public market valuation, there's a reference to 1998 estimated EBITDA.
A. Yes.
Q. And it's a footdnote based on Wall

NOT A CERTIFIED COPY

CONFIDENTIAL
D-1581

Page 202

Street estimates?
A. Yes.
Q. There's no case that is presented here for the base case versus a strategic plan case, is there?
A. No.
Q. That was only done for the discounted cash flow?
A. Yes.
Q. That was -- the strategic plan case was only presented to the board in connection with the discounted cash flows; isn't that correct?
A. Yes.
Q. Why was the strategic plan only presented as part of the discounted cash flow analysis and not incorporated into the comparable companies analysis?
A. Because the comparable companies analysis is addressing the question of whether the stock trades fairly in the public market. And the assumption in the analysis is that the public market doesn't have access to the company's private forecasts.
So, the best information it has is

Page 203

what's in the public domain or in the analyst estimates, which is what the base case was meant to reflect.
So, the 1990 EBITDA and EPS numbers were probably -- were based on, you know, Wall Street estimates.
Q. Was there ever a discussion about presenting to the board a comparable company analysis that was based on Sunbeam's long-term plan case?
A. I can't remember. All it would have shown is that the stock was more undervalued versus what we showed here.
Q. If you look at the next page, the comparable acquisitions analysis, the 1998 revenue and EBITDA numbers are also sourced from Wall Street estimates.
Do you see that?
A. Yes.
Q. Again, there's no presentation made of a comparable acquisition analysis based on the Sunbeam strategic plan case, is there?
A. That's right.
Q. Look at the next page. There's a contribution analysis.

Page 204

A. Yes.
Q. And it contains a reference to 1998 estimated earnings results for Sunbeam. Do you see that?
A. Yes.
Q. And that's sourced to $1.99 EPS?
A. Yes.
Q. Which came from Wall Street estimates --
A. Okay.
Q. -- is that correct? If you look back at --
A. Yes.
Q. -- one of the earlier slides?
A. That looks right, yeah.
Q. It's page 15.
A. Yep.
Q. So, for purposes of the contribution analysis, that analysis performed by CSFB was also performed based on Wall Street estimates?
A. That's correct.
Q. And for purposes of the contribution analysis, there was no analysis done on the Sunbeam strategic plan case?
A. No. It would have just said that

Page 205

Coleman should have got less, so this was a more conservative approach.
Q. If you go back to the board minute presentation, the page 5 of Morgan Stanley Exhibit 88, describes Mr. Rich's overview of Sunbeam.
A. Yes.
Q. Do you see that?
A. Yes.
Q. And it describes the analysis that was performed under discounted cash flow comparable company and comparable acquisition analysis for Sunbeam.
And it says then, quote, based on such analysis, Mr. Rich stated that it was First Boston's conclusion that Sunbeam's stock was fairly valued at today's market price, approximately $41 per share.
Do you recall Mr. Rich making that statement to the Coleman board?
A. Not specifically, but I have no reason to believe he didn't say that.
Q. Do you remember any discussion about First Boston's opinion that Sunbeam's stock was fairly valued at $41 per share?

NOT A CERTIFIED COPY

015872

Page 206

A. No.
Q. Was there any discussion at the -- from the board or questions from the board about that conclusion?
A. I don't recall.
Q. Did CSFB ever retract that opinion or conclusion, to your knowledge?
A. I don't know.
Q. As you sit here today, do you ever --
A. No.
Q. -- remember that opinion or conclusion being retracted to the presentation to the Coleman board?
A. No.
Q. What, if anything, do you remember about the discussion following Mr. Rich's presentation among the board members?
A. Nothing.
Q. Did anybody on the board suggest, in words or substance, that Coleman should not accept Sunbeam's stock as part of the consideration?
A. I don't believe so.
Q. Did anyone express doubts about Mr. Dunlap or his track record?

Page 207

A. I don't recall that.
Q. Did anyone express doubts or concern about the projected growth that Mr. Dunlap was projecting?
A. I don't recall that.
MR. CLARE: Do you want to take a short break?
MR. PARADISE: Well he's got to --
MR. CLARE: Why don't we go off the record.
MR. PARADISE: That's fine.
MR. CLARE: We'll talk about it when we come back.
THE VIDEOGRAPHER: The time is 2:16 and we're going off the record.
(Luncheon recess: 2:16 p.m.)

Page 208

AFTERNOON SESSION
(Time noted: 3:36 p.m.)
THE VIDEOGRAPHER: Time is now 3:36 and we have reached the end of tape No. 2 and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is now 3:38. This is tape No. 3 and we are back on the record.
ROBERT DUFFY, resumed and testified as follows:
EXAMINATION (Cont'd.)
BY MR. CLARE:
Q. Mr. Duffy, welcome back from our lunch break.
A. Thank you.
Q. Before the break, we were talking about the February 25th, 1998 board meeting of the Coleman Company.
A. Um-hum.
Q. Do you recall that, generally, that's what we were discussing?
A. Yes.
Q. During the board meeting that you attended, do you recall there being any

Page 209

discussion of Morgan Stanley's involvement or role in the transaction?
A. I don't recall.
Q. You don't recall one way or the other or you don't recall --
A. I don't recall one way or the other.
Q. Was Mr. Reid present for that meeting?
A. I don't think so.
Q. Was there any discussion about the level of due diligence that had been performed by Coleman or CSFB with regard to Sunbeam?
A. I don't recall it.
Q. Was there any discussion about whether additional diligence of Sunbeam was warranted in light of the earnings announcement that was made in January of 2000 -- of 1998 that we looked at earlier in connection with The Wall Street Journal article?
A. I don't think so.
Q. Do you recall any discussion about the possibility of doing additional inquiry or research into Sunbeam based on the earnings in the fourth quarter falling short of analyst estimates?
A. No.

NOT A CERTIFIED COPY

015873

Page 210

Q. I'd like you to pull back out Morgan Stanley Exhibit 230, which is the investment banking memo. I handed that to you earlier.
A. Yeah.
Q. Morgan Stanley Exhibit 230, which we identified for the record earlier, is also dated February 25th, 1998. It's the same date as the board meeting that we were just looking at.
A. Um-hum.
Q. Was this document created -- "this document" meaning Morgan Stanley Exhibit 230 -- created before or after the board meeting?
A. I believe it was done before, but I'm -- I would have thought it was done before.
Q. Did you have a role in putting this document, Morgan Stanley Exhibit 230, together?
A. Yes.
Q. And what role did you play and what role did the other authors play in putting this together?
A. I would think -- well, I can't recall specifics, but I would think that myself and Mr. Geller were the primary authors. Mr. Rich would have reviewed it. And Ramesh would have been helpful in putting the analysis and

Page 211

preparing some of the analyses that go in here.
Q. There's a notation next to Mr. Geller's name. It says "document retention."
A. Yes.
Q. What does that refer to?
A. That means, on any transaction, for -- or any matter before the investment banking committee, somebody is responsible for keeping the documents as a record. And that would have been Mr. Geller's responsibility.
Q. And is that because, within CSFB and its internal procedures as it existed in February of 1998, this type of a memorandum to the investment banking committee was an important document leading to the issuance of a fairness opinion?
A. Yes. I think that he kept the documents. You wanted to keep -- you wanted to keep the records appropriately.
Q. What -- is this standard practice to create a memo for the inter -- to the investment banking committee --
A. Yes.
Q. -- when CSFB is asked to render a fairness opinion?

Page 212

A. Yes, it is.
Q. Is it -- approval required of the investment banking committee before a fairness opinion can be rendered during this time period, February 1998?
A. Yes, it is.
Q. Is it -- do you understand that the investment banking committee would be relying on the information contained in this memo in making a decision regarding whether to issue a fairness opinion or not?
A. Yes, it would.
Q. And you understood it was important to be accurate in putting a document like this together?
A. Yes.
Q. And did you try to be accurate when you put this together in connection with the Coleman acquisition?
A. Yes.
Q. If CSFB had relied on work performed by another investment bank in presenting this information, would you expect that information to be disclosed to the investment banking committee?
A. Yes.

Page 213

Q. Was there a meeting of the investment banking committee that -- where this memorandum was discussed?
A. I believe so.
Q. Did you attend that meeting?
A. I would have, yes.
Q. Do you recall anything about it?
A. No.
Q. Do you recall any questions that were asked by the committee about this transaction?
A. No.
Q. Were you a member of the investment banking committee at the time?
A. No.
Q. Were you ever a member of the committee?
A. I was a member of the committee in Europe when I was in London.
Q. During that later time period?
A. Yes.
Q. Were -- was Mr. Rich a member of the investment banking committee at the time in February of 1998?
A. Yes, he was. But he would not have been -- he would have been a presenter, not on

NOT A CERTIFIED COPY

015874

Page 214

the committee. The committee's sort of 20-ish people. And, usually, there's three of them that meet as the committee. So, he would have presented, but not been one of the members of the committee at that time.

Q. Do you recall whether this document, Morgan Stanley Exhibit 230, and the request for a fairness opinion in connection with the Coleman transaction was considered by the three-person panel?

A. I don't recall who was on it at the time.

Q. The second page of the document, Morgan Stanley Exhibit 230, at the top sets forth the, quote, question to the committee --

A. Yes.

Q. -- close quote.

It says, "Is the consideration of $6.44 in cash plus 0.5677 Sunbeam common shares fair to Coleman shareholders from a financial point of view?"

Was that the question that the investment banking committee was asked?

A. Yes.

Q. And did you and Mr. Rich receive a

Page 215

response from the committee to that question?

A. Yes.

Q. And what was the response?

A. I believe yes.

Q. And it was on the basis that CSFB, through Mr. Rich, rendered a fairness opinion to Coleman, Coleman's board of directors?

A. That's correct.

Q. The analysis that's set forth here in Morgan Stanley Exhibit 230 tracks the presentation that was made to the Coleman board --

A. Um-hum.

Q. -- is that correct?

A. Yes.

Q. I'd like you to turn, please, to page -- what I believe is page 10 of the memorandum. At the bottom it has Bates No. CPH 1121269.

A. Yes.

Q. There's a section at the bottom half of the page entitled "Synergies."

Do you see that?

A. Yes.

Q. And the first sentence reads, "Coleman

Page 216

management has estimated that the combination with Sunbeam could create up to 150 million of cost savings and revenue synergies."

Do you see that?

A. Yes.

Q. Is that consistent with your recollection of Coleman management's estimation of the synergies?

A. I believe so.

Q. Do you know what the basis for this statement is?

A. No.

Q. Where that information came from?

A. No.

Q. We looked earlier today at a one-page document that showed $150 million of synergies from the two companies.

Is this statement in Morgan Stanley Exhibit 230 based, in part, on that document, that one-page synergy list that we looked at?

MR. BRODY: Object to form.

A. It's probably -- they're probably the same number, yeah.

Q. Do you recall any discussion with the investment banking committee about synergies as

Page 217

it related to this transaction?

A. Not specifically, no.

Q. Did you or anyone from CSFB, to your knowledge, provide a copy of -- or draft of Morgan Stanley Exhibit 230 to Morgan Stanley for review prior to showing it to the investment banking committee?

A. No.

Q. That would not be something that would be typically done?

A. No.

Q. Is that because Morgan Stanley was advising Sunbeam?

A. It's because it's an internal document. We wouldn't share it with the client. We wouldn't share it with anyone.

Q. So, this document would not be shared with Coleman or MacAndrews & Forbes?

A. No.

Q. Turn to the next page of Morgan Stanley Exhibit 230. And section 10 lists the advisors --

A. Yes.

Q. -- related to the transaction.

I'd like you to read that to

NOT A CERTIFIED COPY

015875

Page 218

yourself.
A. Yeah.
Q. Let me know when you're ready.
A. Um-hum.
Q. Was there any discussion with the investment banking committee about the identity of the advisors who were involved in the transaction?
A. I don't recall. We probably would have told them that Shearman & Sterling had reviewed the memo as our advisor.
Q. Was there any discussion at the investment banking committee -- with the investment banking committee about what role Morgan Stanley had played in the transaction?
A. I don't recall.
Q. Or Mr. -- or Morgan Stanley's role in advising Sunbeam?
A. I don't recall.
Q. Did the CSFB team conduct any different due diligence or different type of due diligence on this engagement because Morgan Stanley was involved in the transaction?
A. No. I don't -- what do you mean by "different"? I mean --

Page 219

Q. Well, for example, did CSFB conduct any less searching inquiry of Sunbeam because of Morgan Stanley's involvement in the transaction?
A. No.
Q. Did CSFB conduct or not pursue normal due diligence procedures because Morgan Stanley was involved in the transaction?
A. I don't think so.
Q. Did you?
A. No.
Q. Item 11 on Morgan Stanley Exhibit 230 on the same page --
A. Um-hum.
Q. -- describes CSFB's relationship with Mr. Perelman and MacAndrews & Forbes.
Were you involved in any of the transactions that are described there, other than the ones that we may have talked about already this morning?
A. I was involved in the advisory -- in 1997 where we made a bid for a property.
Q. Is that the only one that's listed here?
A. Yes.
Q. Does this refresh your recollection,

Page 220

in any way, about other deals or transactions that CSFB had worked on for MacAndrews & Forbes?
A. No.
Q. If you look at the next page, item 12 describes the due diligence that was done on the transaction.
A. Yes.
Q. It lists meetings with Sunbeam senior management on February 23rd and February 24th to discuss Sunbeam's strategic plan and 1997 results.
Do you see that?
A. Yes, I do.
Q. What, if anything, do you recall discussing with Sunbeam senior management about its 1997 results?
A. Nothing specifically. I don't recall the discussions.
Q. Did anyone on the investment banking committee suggest, in words or substance, that Coleman should not accept Sunbeam stock as part of the consideration?
A. I don't believe so.
Q. Mr. Duffy, I'm handing you what's been marked as Morgan Stanley Exhibit 113.

Page 221

A. Okay.
MR. CLARE: For the record, Morgan Stanley Exhibit 113 are minutes of a board meeting for the Coleman Company dated February 27th, 1998.
Q. You and Mr. Rich are shown as having attended the meeting from CSFB.
Do you recall attending the February 27th board meeting of Coleman?
A. I believe so.
Q. I'm sorry. You said you do believe so?
A. Yeah. I -- I can't remember two separate board meetings.
Q. You do not remember attending two different board meetings?
A. Yeah. I'm not -- I don't -- I guess that's fair. I don't -- I didn't -- I did not realize there were two separate meetings.
Q. If you turn to the second page of Morgan Stanley Exhibit 113 --
A. Yeah.
Q. -- there's a paragraph dealing with Mr. Rich -- statements by Mr. Rich during the board meeting. I would like you to review those

NOT A CERTIFIED COPY

015876

Page 222

and let me know when you're ready.
(Witness reading document.)
A. Okay.
Q. The minutes describe a change to the mix of consideration --
A. Um-hum.
Q. -- from the board meeting that had taken place on February 25th.
Do you recall any discussions in the days before the acquisition agreement was signed about changing the cash component of the consideration that would be paid to Coleman?
A. I guess I recall that it changed. I don't recall the discussions around why it changed.
Q. That was going to be my next question.
Do you remember any discussions with Sunbeam or MacAndrews & Forbes about the reason for the change?
A. No.
Q. Do you remember any questions from the board relating to the reasons for the change or discussions about it?
A. No.

Page 223

Q. This document, Morgan Stanley Exhibit 113, indicates that Mr. Rich reviewed revised pages to the presentation.
A. Yes.
Q. I'd like you to take out for me, if you would, please, the exhibit we were looking at earlier, Morgan Stanley Exhibit 112. And I'd like you to compare the document that -- the first page of the presentation, the financial terms page --
A. Yeah.
Q. -- to the terms of the revised presentation -- the revised deal structure in 113.
A. Yeah.
Q. Specifically, the board minutes from the February 27th meeting discuss a ratio of .5677 Sunbeam shares.
A. Yes.
Q. Do you see that same number appears on page 1 of the presentation?
A. Yes.
Q. Does that suggest to you that this document, Morgan Stanley Exhibit 112, contains the updated pages for the presentation that was

Page 224

made to the board?
A. Yes, I think -- I would think it does. There's no date on the pages.
Q. Right. And the date on the first page is dated February 25th. It looks like the original presentation. And these figures appear to have been changed.
A. Updated.
Q. Did you play any role in updating the board presentation slides for the second board meeting?
A. Yes.
Q. And do you remember doing that?
A. No.
Q. Do you remember Morgan Stanley -- anyone from Morgan Stanley attending or speaking at the February 27th board meeting?
A. No.
Q. Do you remember any discussion of Morgan Stanley during that board meeting?
A. No.
Q. Do you remember any of the directors inquiring about Morgan Stanley during the February 27th board meeting?
A. No, I do not.

Page 225

Q. The next paragraph in the minutes indicate that Mr. Rich provided a fairness opinion verbally during the meeting.
Do you recall him doing that?
A. Not specifically, no.
Q. Do you recall preparing a written fairness opinion for the Coleman transaction?
A. I know there is one. You know, I'm sure I prepared it. I just don't remember the specifics of preparing it.
Q. Other than the procedures that we've just described related to the investment banking committee, are there other internal procedures at CSFB that have to be followed before a fairness opinion can be rendered?
A. No. I mean, I think it's up to the committee to make sure that the proper procedures were followed.
Q. What other procedures were there?
A. They -- there's -- there aren't any specific procedures, but they would review the work that was done to reach the opinion. And had -- you know, had a legal advisor review the opinion, have someone review the memo, have you done the appropriate analyses to come to your

IDI A CERTIFIED COPY

015877

Page 226

conclusions.
Q. In the course of preparing the presentation to the board of directors, did you work together with anyone from Coleman or MacAndrews & Forbes?
A. We probably -- most likely did. We most likely let somebody at Coleman look at the slides to review them before they went to the board.
Q. Did you let anyone from Morgan Stanley review a copy of the presentation before it went to the board?
A. I don't believe so.
Q. Do you recall receiving any synergy assumptions from Mr. Gittis related to the acquisition, have any discussions with him about synergies?
A. Not specifically, no.
Q. What about Mr. Levin?
A. I think we discussed synergies with him. I don't know if other people were in the room at the time.
Q. I'm going to hand you what we're going to mark as -- previously marked as Morgan Stanley Exhibit 120.

Page 227

Do you recognize Morgan Stanley Exhibit 120 as the written fairness opinion provided by CSFB to the Coleman board of directors?
A. Yes, I do.
Q. And do you recognize Mr. Rich's signature on the third page?
A. Yes, I do.
Q. The first paragraph of the letter tracks -- well, let me not characterize it that way.
The first paragraph of the letter indicates that CSFB had been asked to advise the board of the Coleman -- of the Coleman Company regarding the fairness from a financial point of view to the stockholders of the Coleman Company, other than Coleman Worldwide Corporation and its affiliates.
Do you see that?
A. Yes.
Q. Now, the engagement letter that we looked at earlier had excluded Coleman (Parent) Holdings, a different entity, from the consideration.
Do you remember any discussion about

Page 228

the scope of the fairness opinion and the entities to whom it would apply?
A. I think -- well, the fairness opinion was meant to apply to the public shareholders.
Q. Were there any discussions about including the MacAndrews & Forbes shareholders in the class of people that would be considered from a fairness standpoint?
A. I don't recall that.
Q. Do you know why that was done in this case?
A. I don't remember. You know, I can speculate, but I don't recall exactly why.
Q. Did MacAndrews & Forbes, to your knowledge, retain any other financial advisor to provide it a fairness opinion?
A. No.
Q. Through your discussions with MacAndrews & Forbes, in this time period, had MacAndrews & Forbes made a determination that the consideration it was receiving as part of the merger was fair to it?
A. I don't know -- I don't know what decision they had come to. They were supporting the transaction. So, that's all I can, you know,

Page 229

say.
Q. Turn to page 2, please.
A. Yeah.
Q. Third paragraph states that, "CSFB had considered financial and stock market data for the company and the acquirer and compared that data with similar data for other publicly-held companies."
A. Yes.
Q. What is that referring to?
A. That refers to the comparable company analyses in the board presentation.
Q. The next paragraph refers to financial forecasts and it states, "With respect to the financial forecasts, we have assumed that they have been reasonably prepared on basis reflecting the best currently available estimates and judgments of the managements of the company and the acquirer as to future financial performance of their respective companies and the synergies and operating cost savings to -- expected to be achieved through the combination of the operations of the company and the acquirer."
Do you see that?
A. Yes.

NOT A CERTIFIED COPY

Page 230

Q. Is that standard language in a fairness opinion?
MR. BRODY: Object to form.
A. I believe so, yes.
Q. In the course of the diligence that you had performed, did you have any reason to believe that the financial forecasts presented by Sunbeam were not reasonably prepared as in accordance with this paragraph?
A. No.
Q. Was there anything about the material presented by Sunbeam that was inconsistent with other information that CSFB had obtained through its due diligence?
A. I don't believe so. Well, the only exception is, you know, this -- their long-term forecast was higher than the research estimates.
Q. The Sunbeam projections were higher than the research estimates that were out on the street?
A. Yes.
Q. And it was for that reason that, among others, that CSFB worked with Coleman management to develop a more conservative set of projections?

Page 231

A. Yes.
MR. BRODY: Object to form.
Q. Did you review the merger documents as they were being prepared?
A. I don't recall specifically. We probably did see them. I don't think we were involved in negotiating them.
Q. Did you have an understanding that -- following the transaction, that Sunbeam's stock would continue to trade publicly?
A. Yes.
Q. Did CSFB, in reaching its fairness opinion, attempt to estimate a range of stock trading -- Sunbeam stock trading below which it would no longer be fair to the public shareholders?
A. No.
Q. In reaching its fairness opinion and rendering it to the Coleman board, did CSFB present any information that it had obtained from Morgan Stanley as opposed to Sunbeam?
MR. BRODY: Object to form.
A. I don't know, is the answer.
Q. As you sit here today, can you identify any piece of information that was

Page 232

presented to you by Morgan Stanley, apart from Sunbeam, that was part of the basis for the fairness opinion that was rendered by CSFB?
A. No.
Q. Prior to the signing of the merger agreement -- let me back up and ask a foundational question.
Do you recall that, at the end of the board meeting that you attended, the board of directors of Coleman approved the merger agreement?
A. I don't remember that, but it says it here and I have no -- I believe it.
Q. I'll represent to you --
A. I believe it.
Q. -- on February 27th, the board of directors approved the merger agreement and a merger agreement-- written merger agreements were signed that same day or the day after, February 27th or 28th, 1998.
Prior to that time, the signing of the definitive merger agreement, did you or anyone else at CSFB, to your knowledge, talk with Sunbeam's auditors, Arthur Andersen?
A. I don't believe so.

Page 233

Q. Talk with anyone at Sunbeam's in-house accounting function?
A. I don't believe so.
Q. Talk with any of Sunbeam's customers?
A. I don't believe so.
Q. Visit Sunbeam's headquarters?
A. No.
Q. Visit any of Sunbeam's manufacturing facilities?
A. No.
Q. I spoke -- I identified earlier several Sunbeam executives. And I want to go back and add to the list and see if you recall having spoken with any of them in the time period before the merger agreement was signed.
Al Dunlap, I believe you said may have been present at one of these meetings, you just don't recall?
A. That's right.
Q. As you sit here today, you don't recall having a discussion or being in a meeting with Al Dunlap?
A. No.
Q. What about Mr. Russ Kersh?
A. You know, I recognize the names, but I

NOT A CERTIFIED COPY

015879

don't -- I assume he was in the meetings at Morgan Stanley.
Q. But, as you sit here today, you don't recall specific discussions with Mr. Kersh?
A. No.
Q. Rich Goudis, G-O-U-D-I-S?
A. Sort of the same. I think I did, but I can't recall a specific meeting.
Q. David Fannin?
A. Don't -- I don't recognize the name.
Q. Don Uzzi?
A. I don't know.
Q. Does that name sound familiar to you?
A. It sounds familiar, yes.
Q. Mr. Uzzi was in the Sunbeam sales department.
Did you have any discussions with anyone in the Sunbeam's sales department leading up to the signing of the merger agreement?
A. I don't know who was at the presentations, so he may have presented at Morgan Stanley.
Q. Let me put it this way. If Mr. Uzzi or these other individuals were not at those meetings, did you have any conversations, apart

from those meetings, with them?
A. The only conversations I could have had, I think, would have been between the meeting with Morgan Stanley and the board meeting, if there was any follow-up questions on the presentation.
Q. Do you recall any of those conversations or discussions?
A. No.
Q. Do you recall the subject of any of those follow-up questions?
A. No. I just think there may have been a couple of, you know, phone calls.
Q. Did any of those phone calls that occurred between the meetings at Morgan Stanley's offices and the signing of the merger agreement relate to Sunbeam's first quarter performance?
A. I don't know.
Q. Do you recognize the name Scott Yales --
A. No.
Q. -- as somebody you would have spoken to at Sunbeam?
A. No.
Q. Kyle Kaiser?

A. I don't recognize the name.
Q. Kyle Sinclair?
A. Don't recognize the name.
Q. Deirdre DenDanto?
A. Don't recognize that name.
Q. Lee Griffith?
A. Don't recognize that name.
Q. Tom Hartshorn?
A. Don't recognize that name.
Q. Chuck Meyers?
A. Don't recognize that name.
Q. Bill Bloomfeld?
A. No.
Q. In the course of those follow-up questions that were posed to Sunbeam, were any posed -- follow-up questions posed to Morgan Stanley?
A. I don't know.
Q. As you sit here today, can you -- can you identify any questions that were posed specifically to Morgan Stanley?
A. No. We might have -- we may have put the questions to Morgan Stanley to get the -- and the answers may come back through Morgan Stanley. I don't recall the specifics.

Q. But, as you sit here today, you don't know whether that occurred or whether you dealt directly with Sunbeam management?
A. That's correct.
Q. Were any of the follow-up questions that were asked refused to be answered?
A. I don't remember that.
Q. If that had occurred, do you think you would have remembered that, or it would have been subject for further discussion?
MR. BRODY: Object to form.
A. Depending on the question.
Q. You don't remember, as you sit here today, anyone from Sunbeam refusing to answer any of your questions?
A. That's right.
Q. And, as you sit here today, do you remember anyone from Morgan Stanley ever refusing to answer any of your questions?
A. No.
Q. What, if anything, did you do related to this engagement after the merger agreements were signed?
A. I think, after they were signed, there came a time where there -- the share prices of

NOT A CERTIFIED COPY

016080

Page 238

Sunbeam dropped. And I think we reviewed our opinion at that time.
Q. Was this before the deal closed?
A. I believe so.
Q. Do you recall the circumstances that led to the drop of Sunbeam's share price?
A. Not the specifics, no.
Q. Do you recall that Sunbeam's share price declined in connection with the issuance of a press release relating to first quarter sales performance?
A. I don't remember what -- I don't remember what it was, but I'm sure there was a press release.
Q. Did you have a discussion with MacAndrews & Forbes or Coleman about your reexamination of the opinion?
A. I'm not sure if we did or we didn't.
Q. Do you know what -- whether Coleman or MacAndrews & Forbes asked CSFB to reexamine its opinion?
A. I don't think they did, but I don't -- I don't remember them asking that.
Q. As you sit here today, your best recollection is that the decision to reexamine

Page 239

your opinion was something that you and the other CSFB team members did on your own?
A. Yes.
Q. Do you recall any discussion with MacAndrews & Forbes or Coleman after the date of the merger agreement was signed?
A. Not -- I mean, I know I had conversation with folks at MacAndrews & Forbes on other topics.
Q. Okay. Fair enough.
A. But I don't -- I don't remember specific discussions around Coleman after the merger agreement was signed. I'm not saying there weren't. I just don't remember any specific discussions.
Q. So, between the time of the definitive merger agreement and the closing --
A. Right.
Q. -- you don't recall any discussions with Coleman or MacAndrews & Forbes relating to the Coleman/Sunbeam acquisition?
A. No.
Q. Did you have any discussions during that time period with individuals from Morgan Stanley?

Page 240

A. I don't know.
Q. As part of the examination of your opinion, did you make any inquiries of Morgan Stanley?
A. I'm sorry. Say that again.
Q. We were discussing a moment ago reexamination of the fairness opinion that was conducted internally at CSFB.
As part of that internal examination, did you or others at CSFB make any inquiries of Morgan Stanley?
A. I don't think so.
Q. As part of that examination, did you make any inquiries of Sunbeam?
A. I don't think so.
Q. Did you know that, after the merger agreement was signed, that Coleman and CSFB had full access to Sunbeam's books and records through the date of the closing?
MR. PARADISE: Objection.
A. Yeah. Well, I don't think CSFB ever had full access, or would have had full access to anything.
Q. Did you ever make any requests to Sunbeam under the terms of the merger agreements?

Page 241

A. I don't know.
Q. As you sit here today, do you recall having made any requests of Sunbeam pursuant to the rights accorded to Coleman in the merger agreement?
A. No.
Q. And as you sit here today, do you recall making any inquiries of Morgan Stanley pursuant to the rights accorded to Coleman under the merger agreements?
A. No.
Q. Mr. Duffy, I'm going to hand you two documents. One is Morgan Stanley Exhibit 117 and the other is Morgan Stanley Exhibit 93, two merger agreements dated February 27, 1998.
A. Okay.
Q. Do you recall having reviewed these documents in that time period as part of the work that you had done on the Coleman engagement?
A. Not specifically, but --
Q. Would that have been a standard part of what you would have done in connection with the issuance of a fairness opinion?
A. Yes.
Q. I'd like you to turn, please, to -- in

NOT A CERTIFIED COPY

Page 242

Morgan Stanley Exhibit 117, to section 7.2 of the agreement which is on page 29, Bates No. Morgan Stanley Confidential 0008043. I'd like you to read section 7.2, please, to yourself.

(Witness reading document.)

A. Yes.

Q. Are you familiar with these types of provisions in merger and acquisition agreements?

A. Yes.

Q. In your experience, is this a common or standard provision?

MR. BRODY: Object to form.

A. Yes.

Q. Did you or CSFB, to your knowledge, make any requests of Sunbeam pursuant to section 7.2 of the merger agreement, section -- Morgan Stanley Exhibit 117?

A. Not to my knowledge.

Q. And does this refresh your recollection, in any way, that Coleman and its financial advisors had full access to Sunbeam's books and records during the time leading to the closing?

MR. BRODY: Object to the form.

A. Well, no. I mean, I think it -- it

Page 243

speaks for itself.

Q. Did anyone from MacAndrews & Forbes or Coleman inform you or others at CSFB that it had the rights accorded here in section 7.2?

A. No. I mean, I guess I would have read this to mean that the company had -- Coleman has the right to allow its advisors to do something. But the advisors don't have any independent right.

Q. Okay. Fair enough.

Did the Coleman Company or MacAndrews & Forbes ever advise you that it wished to exercise its rights under section 7.2?

A. No.

Q. Or that the Coleman or MacAndrews & Forbes wanted CSFB to examine Sunbeam's books or records during the time period between the merger agreements' signing and its closing?

A. No. That's not the role that CSFB would usually or, I think, ever have.

Q. Well, I guess my question is: Did they ever advise you that they wanted you to do that during that time period?

A. No.

Q. As part of the examination that CSFB

Page 244

did internally of its fairness opinion, did CSFB ask Coleman or MacAndrews & Forbes for any additional information?

A. I don't believe so.

Q. What do you recall about that internal examination?

MR. BRODY: I'm sorry. Object to the form. What internal investigation?

MR. CLARE: The internal examination.

MR. BRODY: Point in time? I don't understand the question.

MR. CLARE: Let me rephrase it and try to avoid the objection.

MR. BRODY: Thank you.

Q. What do you recall was done in connection with CSFB's reexamination of its fairness opinion between the merger agreements' signing and the date of closing?

A. What I recall is -- and I don't recall the specifics -- was a discussion on, given what had happened to the share price, did we need to -- was our opinion -- what do we need to do about the opinion that we had given in February, whether we had to update it, whether we had to pull it. What did it mean, because it was going

Page 245

to be in a proxy statement that was going to come out, I think, in May.

And that was the topic of the discussion.

Q. And was that topic raised with the investment banking committee again?

A. I don't recall the specifics of how we dealt with it.

Q. And what conclusion was reached?

A. I think we left things as they were. We did not change the opinion.

Q. Did you or anyone else from CSFB inform Coleman that it had -- that you had reexamined your fairness opinion in this way?

A. I don't recall.

Q. Section 7.2 which we just looked at makes reference to confidentiality agreements in place between --

A. Yeah.

Q. -- Laser and Coleman, two agreements dated February 4, 1998 and February 23, 1998.

Does that refresh your recollection in any way that the discussions between the companies up to that time were governed by confidentiality agreements?

NOT A CERTIFIED COPY

015682

MR. BRODY: Object to the form of the question. Mischaracterizes. Go ahead.
A. No. I mean, as I said, I don't really have a recollection of the confidentiality agreements.
Q. One way or the other?
A. Right.
Q. The next section of the agreement, section 7.3, refers to comfort letters.
A. Yes.
Q. Do you know what a comfort letter is?
A. Yes.
Q. What's your -- what is a comfort letter?
MR. BRODY: In general or in reference to this section of the agreement?
Q. Just your understanding of what a comfort letter is.
MR. BRODY: Thank you.
A. My -- my understanding is that it's something the accountant will give the audit client that the account -- the audit is still appropriate, you know.
Q. Are you familiar with comfort letters from your involvement in other transactions that

you had done at CSFB?
A. I'm not sure where it all came from.
Q. At the time in 1998, did you have an understanding of what a comfort letter was?
A. I don't recall.
Q. Do you understand that -- generally, that comfort letters include information updating the financial information about a company from the date of the last audit?
MR. BRODY: Object to form.
MR. PARADISE: Objection.
A. Well, I don't know.
Q. Do you have an understanding that comfort letters, generally, provide negative assurances from auditors regarding -- the unaudited financials of the company?
MR. BRODY: Objection.
A. I think I -- I'm not sure exactly, but I think I agree with you.
Q. Okay. Do you recall any discussion about comfort letters in connection with the work you did on the Coleman transaction?
A. No.
Q. Did you make any requests of Sunbeam for comfort letters that Sunbeam had obtained

from its auditors Arthur Andersen?
A. No. That's not normally something the investment bank would get.
Q. Do -- I guess my question is more --
A. Did we, no.
Q. -- did -- did you have any role in obtaining from Coleman's auditors, Ernst & Young, comfort letters to provide to Sunbeam?
A. I don't -- no.
Q. And same answer, is that something that you would not, as an investment banker, generally be involved in?
A. That's correct.
Q. As part of the examination of the CSFB fairness opinion, did you or anyone else review the merger agreement to determine what, if any, rights to additional information Coleman had?
A. No. That's -- that -- that's not something that would go to the fairness of the transaction.
Q. Did anyone from Coleman or MacAndrews & Forbes contact you or anyone from CSFB, to your knowledge, during the time period between the date of the merger agreement and the date of the closing?

A. Just in general.
Q. On -- specifically, to do additional work on the Coleman transaction?
A. I don't think so. I don't recall.
Q. Mr. Duffy, I'm handing you what's been marked as Morgan Stanley Exhibit 11.
(Brief interruption.)
Q. Mr. Duffy, I've handed you what's been marked as Morgan Stanley Exhibit 11. It's a press release issued by Sunbeam on March 19, 1998.
Do you recall having seen or heard about this press release during the March 1998 time period?
A. Not specifically. I don't remember. I remember there was bad news, but I don't remember what it was regarding, so --
Q. You remember it was bad news in the time period between the execution of the merger agreement and the closing?
A. Yes.
Q. And it was that bad news that had caused the stock to drop?
A. I believe so, yes.
Q. And it was the decline in the stock

NOT A CERTIFIED COPY

Page 250

price that had caused CSFB to reexamine its fairness opinion?
A. Yes.
Q. Do you have any recollection, having now seen the March 19th press release, about any additional inquiry that was done internally at CSFB about the reason for the sales -- the stock price decline?
A. No.
Q. Did you have any discussions with Coleman or MacAndrews & Forbes about the March 19, 1998 press release?
A. I don't remember. Very well could have, but I don't remember.
Q. As you sit here today, do you remember a discussion -- any discussion with Coleman or MacAndrews & Forbes about the March 19, 1998 press release?
A. No.
Q. Do you recall Coleman or MacAndrews & Forbes contacting you or others at CSFB about the press release?
A. No.
Q. Did Coleman or MacAndrews & Forbes ask CSFB to conduct any inquiry of Sunbeam about the

Page 251

sales figures identified here in the March 19 press release?
A. I don't think so.
Q. Did Coleman or MacAndrews & Forbes ask CSFB to make any inquiry of Morgan Stanley after the March 19, '98 press release?
A. I don't think so.
Q. Having seen the March 19, '98 press release, did you or others at CSFB contact -- make any effort to contact Sunbeam to obtain additional information about the reasons for the sales shortfall identified here?
MR. BRODY: Object to the form of the question. Mischaracterizes.
A. Yeah, I don't think so, is the answer.
Q. Did CSFB, as part of its examination of its fairness opinion, go back and look at how these sales numbers reflected in the March 19, '98 press release compared to the strategic plan presented by Sunbeam during the negotiations?
A. We could have. I just don't remember specifically doing that.
Q. Or how these sales numbers would compare to the --
A. Base case.

Page 252

Q. -- base case?
A. I don't remember if we did that.
Q. Did you or others at CSFB share the results or the conclusion of leaving the fairness opinion alone with Coleman or MacAndrews & Forbes?
A. Well, I don't know that we ever told them that there was a question around the opinion. So, I mean, we gave them the opinion and we let it go be published, so -- the conclusion was shared. I don't know they realized there was a question before the conclusion.
Q. They certainly didn't raise the question with you about whether CSFB would stand behind its fairness opinion in light of the March 19th press release?
A. I don't think so. I mean, I don't remember them asking the question.
Q. And quite apart from whether they were aware of your inquiry or not --
A. Right.
Q. -- you didn't affirmatively go to Coleman or MacAndrews & Forbes and say, in words or substance, we've taken a look at this again

Page 253

and we're still fine with our fairness opinion; you don't recall having done that?
A. I don't recall that.
Q. Did you make any effort to speak with Sunbeam's auditors as part of the -- your inquiry after the March 19, '98 press release?
A. No.
Q. Or anyone at Sunbeam's in-house accounting team?
A. No.
Q. Or Sunbeam's in-house audit team?
A. No.
Q. Did you talk with any research analysts as part of that inquiry?
A. I don't know if we did.
Q. Did you make any inquiry of any of Sunbeam's customers?
A. No.
Q. Did you make a visit to Sunbeam's headquarters?
A. No.
Q. Or visit any of Sunbeam's manufacturing facilities?
A. No.
Q. Did you or anyone else from CSFB

NOT A CERTIFIED COPY

015884

Page 254

attend the closing of the merger transaction?
A. I did not. I doubt anyone else did.
Q. Did you have any discussions after the date of the merger agreement with Morgan Stanley relating to Coleman or Sunbeam?
A. Say that again.
Q. After the date of the merger agreement, February 27, 1998, did you have any discussions with anyone at Morgan Stanley about Coleman or Sunbeam?
A. I don't remember having any.
Q. Did you or others at CSFB perform any work in valuing the consideration that MacAndrews & Forbes received?
A. I think we did the exercise of applying the exchange ratio to the share price to see what the deal was worth, if that's what you mean by valuation.
Q. Did you or others at CSFB do any analysis or work to value the Sunbeam shares that MacAndrews & Forbes received as part of the consideration?
A. Again, I think it depends what you mean by valuation. We took the price of the Sunbeam shares and multiplied it by the exchange

Page 255

ratio and said, that's how much value you're getting, I believe.
Q. In terms of calculating the value of the shares as modified by the -- any lock-up that was in the merger agreement or blockage that might be associated with holding a large portion as MAFCO did, did you model any of those --
A. I don't remember that. You mean a liquidity discount or something? I don't remember doing had.
Q. That's a much better word, liquidity discount.
Do you recall doing any work on calculating a liquidity discount for MacAndrews & Forbes' shares of Sunbeam that they received?
A. I don't remember that, no.
MR. CLARE: Let's mark this as the next exhibit.
(Morgan Stanley Exhibit 277, Merger consequences model dated February 27, 1998 regarding Project Violet, marked for identification, as of this date.)
Q. I've handed you what's been marked as Morgan Stanley Exhibit 277. And you'll see in the upper left-hand corner legend that has Credit

Page 256

Suisse First Boston.
A. Yes.
Q. And on the right-hand legend it refers to Project Violet.
A. Yes.
Q. And it's dated February 27, 1998 at 5:39 a.m. --
A. Yes.
Q. -- which is the same date as the Coleman board meeting that we looked at earlier and the same date as the merger agreements.
A. Yes.
Q. Does this document look familiar to you as something you either worked on or have seen before today?
A. Yes.
Q. And can you explain to me what information is being modeled or conveyed here?
A. I believe what this is, is a merger consequences model, which ultimately shows what the earnings impact to the buyer is of an acquisition.
Q. And for what purpose would this document be created?
A. For EPS -- calculate EPS accretion and

Page 257

dilution earnings per share -- accretion and dilution.
Q. For the combined entity?
A. Yes.
Q. Was this information presented to the Coleman board?
A. I believe the EPS accretion and dilution was.
Q. As part of the presentation that we looked at earlier?
A. Yes.
Q. But this document in this form, was this presented to the Coleman board, to your knowledge?
A. I don't believe so.
Q. Is this something Mr. Geller would have been responsible for primarily?
A. He would have been -- he probably was responsible for preparing it. I mean, I would have reviewed it.
Q. The -- if you turn to page 2 of this --
A. Yes.
Q. -- Morgan Stanley Exhibit 277. The figures there that are given in the left-hand

NOT A CERTIFIED COPY

01583S

Page 258

column for projected Sunbeam stand-alone --
A. Yes.
Q. -- figures, those figures come from the base case?
A. Yes.
Q. Do you recall, for purposes of doing the merger consequences analysis, using the base case numbers for sales and revenue?
A. I don't recall it, but we very well could have.
Q. Do you recall ever doing a merger consequences analysis using the Sunbeam strategic plan case?
A. No.
Q. Did CSFB ever advise or discuss with MacAndrews & Forbes the limit -- any limitations on its sale of shares received as consideration in the transaction?
A. I don't -- I don't recall.
Q. In evaluating different lock-up scenarios?
A. I don't recall.
Q. Do you recall performing or being asked to perform any work related to the Coleman engagement after the examination of the fairness

Page 259

opinion in March of 1998?
A. No. I think -- I think -- I -- thought the examination may have gone into April. I mean, it may have been more. I'm not sure when it started and when it finished.
Q. Do you recall that the examination was the -- is that the last work that you remember performing related to the work you did on the Coleman engagement?
A. Yes.
Q. Were you ever asked to play a role or did you play any role in settlement of any litigation relating to the Sunbeam/Coleman transaction?
A. I don't believe so.
Q. Or evaluating any warrants that Coleman (Parent) Holdings received from Sunbeam in settlement of litigation?
A. I don't know. I don't know if I did or I didn't.
Q. It would have been in the August 1998 time period.
A. I don't know.
Q. As you sit here today, you don't recall having played any role in that?

Page 260

A. No. I was getting ready to go to London then.
Q. As you sit here today, is the examination of the fairness opinion that you did the last work that you can recall having done --
A. Yes.
Q. -- on the Coleman engagement?
A. Yes.
MR. CLARE: Why don't we take a five-minute break. I might be done.
THE WITNESS: Okay.
THE VIDEOGRAPHER: Time is 4:44 and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 4:46 and we are back on the record.
Q. Since 1998, did you work on any other MAFCO-related engagements, for example, while you were in London?
A. No.
Q. And then when you returned from London, did you work on any other MAFCO-related engagements?
A. No, I did not.
Q. Do you have any ongoing business or

Page 261

financial relationships with MacAndrews & Forbes or any of its executives?
A. No.
Q. Or any of its operating companies?
A. No.
MR. CLARE: Those are all the questions that I have.
THE WITNESS: Thanks very much.
MR. BRODY: Can I have the microphone, Tom.
EXAMINATION BY
MR. BRODY:
Q. Good afternoon, Mr. Duffy. As I said at the beginning, my name is Mike Brody, and I represent Coleman (Parent) Holdings and MAFCO in this case. And I believe Mr. Clare established we've not met before today; is that correct?
A. That's correct.
Q. You are here pursuant to a subpoena served by counsel for Morgan Stanley?
A. I believe so.
Q. How many subpoenas did you receive, do you remember?
A. From Morgan Stanley?
Q. Yes.

NOT A CERTIFIED COPY

015986

A. I have no idea.
Q. Do you know if you got more than one?
A. I think I got two.
Q. Okay.
MR. PARADISE: Just for the record, we had agreed -- Vinson & Elkins had agreed on behalf of the witness to accept service of the subpoenas.
So, I'm not sure that he, technically speaking, received any directly. But I believe the Credit -- Vinson Elkins received one actual subpoena.
MR. BRODY: Okay.
MR. PARADISE: I think I can verify that.
Q. Do you know if one was served on you, Mr. Duffy, perhaps at home or at work?
A. No, none was.
Q. Okay. This deposition is focused on the work you did for the Coleman Company and MacAndrews & Forbes.
Your last contact with the Coleman Company in connection with the Sunbeam engagement was in 1998; is that correct?
A. That's correct.

Q. And since then, you haven't done any further work for the Coleman Company or for MacAndrews & Forbes?
A. That's correct.
Q. And your last contact on a social or other matter with the people who worked on this matter for MacAndrews & Forbes was in 2000; is that correct?
A. That's correct.
Q. I know you spent some time yesterday preparing with your counsel for this deposition and you looked at some documents.
But is it correct to say that most of the documents you saw today were things you hadn't looked at since 1998?
A. That's correct.
Q. And you may have heard counsel talking about this. Are you aware that there's a protective order in this case that restricts the ability of lawyers to give things that are subject to the protective order to witnesses?
A. No, I was not.
Q. Okay. That may explain why you didn't get certain of these documents. We're restricted on what we can do beforehand.

I believe you testified that, in your current position at GE, you do work with Morgan Stanley; is that correct?
A. That's correct.
Q. And I believe you identified three individuals there, Mr. Perella. What's his full name?
A. I think it's Joseph Perella.
Q. Do you know what work Joseph Perella does for GE?
A. He's a senior M&A -- primarily senior M&A advisory, but senior advisor to GE.
Q. And do you know if Mr. Perella has advised General Electric in the last six months?
A. He's met with us in the last six months. And he's, I believe, participated in discussions around the IPO of Genworth, but I'm not sure of that.
Q. Okay. I believe you also identified Ms. Porat?
A. Yes.
Q. Has Ms. Porat worked with GE in the last six months?
A. She has worked with respect to the IPO of Genworth.

Q. Now, you refer to the IPO of Genworth. And I think I'm familiar with that, but what's the time frame of that IPO?
A. That happened -- it went public in May of 2004 and the work for it started, probably, August, September of 2003.
Q. And was Ms. Porat and Mr. Perella involved in that engagement from August or so of 2003 through the IPO in May of 2004?
A. I would believe so. I personally was not directly involved in that IPO.
Q. Did you see them around the office?
A. Yes.
Q. You also identified Mr. McGuire. Is it Mr. McGuire?
A. Yes.
Q. What was the nature of Mr. McGuire's engagement for GE?
A. He's the senior M&A advisor, so he would have discussed M&A transactions with us.
Q. Okay. Your involvement in the Coleman engagement back in 1998 was under the direction of Gordon Rich; is that correct?
A. That's right.
Q. And Mr. Rich was the primary contact?

NOT A CERTIFIED COPY

015887

Page 266

A. Yes, he was.
Q. I notice Mr. Rich was the gentleman who signed the fairness opinion and who appeared to speak at the board meetings; is that correct?
A. Yes.
Q. So, he was the, for lack of a better term, the lead person on this?
A. Yes.
MR. CLARE: Objection to the form.
Q. I understand that Mr. Rich was killed in an auto accident; is that correct --
A. Yes.
Q. -- several years ago?
A. In 2000.
Q. Thank you.
During Mr. Clare's examination, you testified that you had heard or you had thought that MAFCO was interested in selling Coleman before you were engaged in this matter?
A. Yes.
Q. But I believe you said you didn't remember how you learned that; is that correct?
A. Well, I guess I heard that from Mr. Rich.
Q. Okay. But aside from what you heard

Page 267

from Mr. Rich, do you have any basis for that -- saying that?
A. No.
Q. And you personally never did any work on any effort to sell Coleman or any part of Coleman, other than whatever happened in the Sunbeam transaction; is that correct?
A. Yes, although we did do some work in the -- previously on selling some of the boat companies, which may or may not have been part of Coleman.
Q. Okay. But, I mean, in selling MacAndrews & Forbes' investment in the Coleman stock, your only involvement in that was the transaction that eventually closed with Sunbeam?
A. Yes.
Q. There's a big pile of documents in front of you, sir, and I'm going to ask you to pull some of them out. I'm going to ask you to start out with the handwritten document, Exhibit 317.
A. Yes.
Q. Do you have it?
A. Yes.
Q. Great. Mr. Rich, I believe you

Page 268

testified that, as you sit here, you believe these are your notes?
A. Yes.
Q. But don't remember what they're notes of or what they mean?
MR. CLARE: Let's be clear. I think you referred to Mr. Rich.
MR. BRODY: I did. Let me rephrase that. I'm sorry.
Q. Mr. Duffy, you testified that these are your notes, correct?
A. That's right.
Q. But I believe you testified you don't remember what they're notes of?
A. That's right.
Q. And other than trying to interpret them, as you sit here, you don't know what they mean; is that correct?
A. That's right.
Q. If you turn to the -- look, rather, at the bottom of the first page, you had written "Al Dunlap created negative sales impact because believe looking to sell."
Do you understand that to mean that you were advised that Sunbeam sales, in prior

Page 269

periods, were lower than they could have been because of this effort to sell the company?
MR. CLARE: Objection to form.
A. That could be --
Q. Okay.
A. -- what it means.
Q. If you turn to the next page -- let me withdraw that.
Do you understand these notes to be things that someone told you as opposed to things that you wrote down that you had thought up?
MR. CLARE: Objection to form.
A. Yes. I believe these were notes -- I was -- notes from a meeting, so I was recording what was being said.
Q. By someone else?
A. Yeah.
Q. Turn to the second page, the reference to margin improvement. And can you read into the record, please, the next two lines underneath, what your handwriting says?
A. "Improved operating income by 225 million, '98 full year of impact."
Q. Do you understand that to mean that someone reported to you that the operating

NOT A CERTIFIED COPY

015888

Page 270

income -- that Sunbeam was going up in '98 was going to show a full year's impact of that improvement?
MR. CLARE: Objection to form.
A. Yes.
Q. Now, down below there's some numbers. There's the 225 number, the 150 number, the 75 number; do you see that?
A. Yes.
Q. And you were asked some questions about what those numbers meant? I think Mr. Clare asked if, maybe, that was sales, and you said, no, maybe, it's cost savings?
A. Yes.
Q. Do you see the word "cost savings" there in your hand to the right?
A. Yes.
Q. Does that suggest to you that someone was reporting to you that there were, in fact, cost savings at Sunbeam?
MR. CLARE: Objection to form.
A. Yes.
Q. And this may be elementary, but, if there were cost savings at Sunbeam, that would result in increased profits at Sunbeam?

Page 271

MR. CLARE: Objection. Calls for speculation.
A. Yes.
Q. Okay. You can put that document aside, Mr. Duffy.
And I ask you -- I'm going to refer to the February 23rd, 1998 letter to Coleman from Sunbeam marked as Exhibit, I believe, 101. You can pull it out, although I'm not going to ask you about the specifics of it.
You were asked if you had any reason to believe the document was not executed.
As you sit here, do you have any reason to believe that it was ever executed; that is, that it was signed?
A. I have no knowledge.
Q. One way or the other?
A. Right.
Q. Okay. Put that document aside, please.
Okay. I believe your testimony earlier in the day was that Credit Suisse First Boston was retained in December of 1997?
A. Yes.
Q. And you started working on it shortly thereafter?
A. Yes.
Q. I believe you testified that one of the things you did was to analyze or to come up with arrangements as to justify a price --
A. Yes.
Q. -- is that correct?
And I believe you said that there was some meetings and then Credit Suisse prepared some work product; is that correct?
A. Yes.
MR. BRODY: I'm going to ask the court reporter to mark an exhibit. And this will be marked as CPH Exhibit 326 -- I'm sorry -- 236. Exhibit 236.
(CPH Exhibit 236, Credit Suisse First Boston document relating to Project Violet, marked for identification, as of this date.)
Q. Mr. Duffy, do you have Exhibit 236 in front of you?
A. Yes.
Q. Do you recognize this document?
A. It's a First Boston document.
Q. And it refers to Project Violet.
Do you understand that to be a reference to work that CSFB did for Coleman; is that correct?
A. Yes.
Q. And if you turn to the first page of text, it has the production number in the lower right corner of CPH 1121207. It's entitled "Valuation Points."
A. Yes.
Q. Do you recognize that to be a summary of CPH's work on valuation?
A. I'm sorry. Summary of whose work?
Q. I said CPH. I was wrong.
Do you recognize this to be a summary of a Credit Suisse First Boston's work on the valuation of Coleman?
A. On the -- on the valuation arguments, yes.
Q. Right. And the conclusion stated in the first bullet point is that the inherent value of Coleman is in the $24.78 to $38.94 range per share; is that correct?
A. Yeah.
Q. And the reasons and methodologies and so on is contained in this document?
A. I believe so, yeah.

Page 272

Page 273

NOT A CERTIFIED COPY

015886

Q. Did you play any role in the creation of this document?
A. I'm sure I did.
Q. Is this something that you and Mr. Geller worked on?
A. Yes.
Q. And do you believe -- do you know if this document was presented to management of Coleman or MacAndrews & Forbes?
A. I believe it was.
Q. Does Exhibit 236 appear to be a true and correct copy of the project book of materials that you presented?
A. Yes.
Q. At the time CSFB was doing the work it did in this matter, MAFCO owned 82 percent, or thereabouts, of the common stock through subsidiaries of Coleman Company, correct; is that correct?
A. Yeah.
Q. And, as an 82 percent owner, it had control of the company?
A. Yes, it did.
Q. Were MAFCO to sell its interest, would it ordinarily, in your experience, receive a

control premium?
MR. CLARE: Objection to form.
A. Yes.
Q. And can you explain what a control premium is?
A. It's a premium over the trading price of the stock. And it's typical in an M&A transaction for somebody to get a premium. And if you have the controlling block, there are times where you can sell your shares for more than what the public receives.
Q. Okay. Did you hear discussion, at the time, or are you aware of the concept of MAFCO being a financial owner of Coleman?
A. Yes.
Q. What does that mean to you?
A. Well, MAFCO was not an operating company. It was -- in my experience, it was a -- it was a holding company for a series of investments by Ronald Perelman.
And so, as a financial company, it owned each of its companies, sort of as a stand-alone company. It didn't try to integrate Coleman and Revlon with Marvel and others.
Q. What does it mean to make a strategic

sale or to sell to a strategic buyer?
A. To sell to a strategic buyer means you sell one -- one operating business to another operating business, and the belief is that that buyer will have synergies by being able to run the business better, sell the products better or save costs in how they operate the business.
Q. Was it understood, at the time, that the sale to Sunbeam was the sale to a financial buyer or a strategic buyer?
A. Strategic buyer.
MR. CLARE: Objection to form.
A. Strategic buyer.
Q. Why is that?
A. Because Sunbeam was in the similar business as Coleman. And the belief was that they would be able to run the business more efficiently.
Q. Is another way of saying that to say that Coleman, owned by Sunbeam, could be worth more than Coleman owned by MacAndrews & Forbes?
MR. CLARE: Objection to form.
A. Yes.
Q. Now, we've had some discussion about the February 23rd meeting. I believe that was

the date that was identified in the chronology Mr. Clare showed you.
A. Okay.
Q. The meeting at Morgan Stanley.
A. Yes.
Q. I would like to return to that.
Do you recall attending a meeting at Morgan Stanley on or about February 23rd, 1998?
A. Yes.
Q. And I say it's at Morgan Stanley. Do you recall where that was?
A. Within Morgan Stanley?
Q. No. What office?
A. Times Square.
Q. Times Square?
A. Yes.
Q. What was the purpose of the meeting?
A. I believe it was a due diligence meeting. And I believe it was primarily for Sunbeam to present their business to MacAndrews & Forbes -- well, to Coleman and to us as the advisor.
Q. So, was it for you to learn the plans and prospects of Sunbeam?
A. Yes.

NOT A CERTIFIED COPY

015890

Page 278

MR. CLARE: Objection to form.
A. Yes.
Q. Who attended the meeting?
A. I can't say specifically, but, you know, it was myself and Mr. Geller from CSFB. And I would think it was Mr. Levin, Mr. Maher and Mr. Nesbitt from MacAndrews. And there may have been other folks from Coleman that I just don't remember.
Q. Who was there from Morgan Stanley?
A. Again, I don't really remember.
Q. But there was someone there from Morgan Stanley?
A. Yes, there were several people there.
Q. It was held in their offices?
A. Yes.
Q. And did anyone from Morgan Stanley say anything in the meeting, to your recollection?
A. I'm sure they did. But what they said specifically, I don't recall.
Q. Okay. Do you remember them, at any point in the meeting, correcting something that Sunbeam had said or saying, oh, that's not quite right?
MR. CLARE: Objection to form.

Page 279

A. I don't remember the specifics.
Q. Okay. Now, when you went in that meeting, were you expecting -- let me withdraw that.
Now, during that meeting, I believe you said some presentation slides were either put up on the wall or exhibited in some manner?
A. Actually, I said I didn't remember them being on the wall, so -- I don't know if they just gave handouts or there was something on the wall.
Q. But you believe you were given some handouts?
A. I believe so.
MR. BRODY: Can the court reporter, please, mark this Exhibit 237.
(CPH Exhibit 237, Document Bates stamped CSFBC 0001623, marked for identification, as of this date.)
(CPH Exhibit 238, Document Bates stamped CPH 1412552, marked for identification, as of this date.)
Q. Mr. Duffy, can you put those two documents in front of you, 237 and 238.
A. Yes.

Page 280

Q. And just so we're clear on the record, 237 has a Bates number that reads CSFBC 0001623 and following pages; is that correct?
A. I'm sorry. Say that again. 237.
Q. Is CSFBC 1623?
A. Yes.
Q. And 238 has a number that reads in the -- in the -- as you look at it in the landscape version to the left, CPH 1412552; is that correct?
A. 2552, yeah.
Q. Okay. Both of these documents have some handwriting on them; is that correct?
A. That's right.
Q. Can you recognize whose handwriting either of them are -- either of them contains?
A. I think 238 is my handwriting.
MR. PARADISE: 237?
THE WITNESS: No. 238.
A. And then I think the other one could be Mr. Geller's, but it's been a long time since I saw his handwriting.
MR. PARADISE: Just for the record --
MR. BRODY: I'll make that clear.
MR. PARADISE: I don't think he's been

Page 281

through every page of the document.
Did you ever go through every page of the document? Because I think there's handwriting on more than one page.
A. I guess I'm just -- the handwriting looks like mine.
MR. PARADISE: All throughout the document?
Q. Before we put it aside, can you just get 237 in front of you briefly.
A. Yes.
Q. And just tell me if, looking at that, you believe it contains any of your handwriting. I'm not going to ask you to say whether it's Mr. Geller's. I'm just looking for yours.
A. No.
Q. Okay. Put 237 aside. And we'll focus on 238.
Since you recognize this as your handwriting, do you believe that you walked away from that meeting with a copy of the slides or presentation materials?
A. Yes.
Q. And do you believe that the handwriting on here is stuff you wrote on the

NOT A CERTIFIED COPY

015961

Page 282

document during the meeting?
A. Yes.
Q. Okay. I'm not going to focus on every page. I'm just going to focus on some of them. I'm going start with the page bearing the production number in the lower left that reads CPH 14125556. It --
A. Yes.
Q. -- appears to be page 3, continually introduce innovative, and so on. Do you see that?
A. Yes.
Q. Thank you. The handwriting under the focused development resources on home runs, can you read that it into the record?
A. "5 to 10 million minimum, air/water, 100 million."
Q. Do you understand that -- do you understand this note to reflect that, during the meeting, someone from Sunbeam or Morgan Stanley indicated that the air and water products would bring in $100 million of revenue?
MR. CLARE: Objection to form.
A. I don't remember that. It implies that to me.

Page 283

Q. Okay. If you turn to the next page, item 4, optimize worldwide supply chain.
A. Yes.
Q. And there's some handwriting under the first bullet point. Can you please read that?
A. The handwritten part?
Q. The handwriting.
A. Okay. "Land worth 20 million. Close Mexico City facility, 25 million savings. Move to two facilities. Move production out from facility to third party. 2,00 employees makes everything."
Q. Okay. Does that reflect, to your knowledge, information that was communicated during the meeting?
A. Yes.
Q. If you turn to the next page -- no, I'm sorry. Not that page. Page bearing Bates number CPH 1412560.
A. Yes.
Q. This is a page about Sunbeam's health at home business.
A. Yes.
Q. And there's some handwriting there in your hand about its water products and its air

Page 284

cleaner.
A. Yes.
Q. Do you remember in that meeting Sunbeam and/or Morgan Stanley being very positive about Sunbeam's new air and water products?
MR. CLARE: Objection to form.
A. I don't recall that specifically, no.
Q. Okay. Well, if you look at the financial numbers down at the bottom, do you understand that number to project an increase from 93 million of U.S. sales to 189 million in U.S. sales between 1997 and '98?
A. Yes.
MR. CLARE: Objection to form.
A. Yes, I do.
Q. And written next to that is "98 air and water." Do you understand that to be 1998 or 98 million or something else?
MR. CLARE: Same objection.
A. I believe it to be 98 million of air and water products.
Q. Do you have a recollection that, at the meeting, that's something you were told by Sunbeam or Morgan Stanley people?
A. Not -- no.

Page 285

Q. Do you believe that these notes record the things that were told to you at the time?
A. Yes, I do.
Q. Okay. Turn a few pages ahead. More than a few, to page CPH 1412567. Are you there?
A. Let me -- yes, I am.
Q. I believe this is the page that Mr. Clare showed you earlier in which someone had written "Jan, Feb slow."
A. Yes.
Q. You didn't write anything to convey that point, did you?
MR. CLARE: Objection to form.
A. I don't think so, no.
Q. Okay. Down at the bottom line in the EPS item, you've circled the $2.20 item.
A. Yes.
Q. Is that -- can you read the handwriting underneath that?
A. I think it says "7 million of bonus if hit. Bonus tied to that."
Q. Do you have a recollection of what this meant?
A. I believe it means that the bonus -- the management bonus was tied to getting 220 of

NOT A CERTIFIED COPY

015892

Page 286

earnings.
Q. So, if management succeeded in getting 220 in earnings, there would be $7 million of bonus money available to them?
A. Yes.
Q. Do you remember that being discussed in the meeting?
A. I don't remember. But, if it's written here, I would imagine it was.
Q. Do you remember Mr. Kersh or someone else from Sunbeam or someone from Morgan Stanley talking about this 220 number that you circled?
MR. CLARE: Objection to form.
A. I don't remember specifically someone talking to that.
Q. Now, do you remember anyone stating in this meeting that Sunbeam sales were down?
A. No.
Q. Or that its sales in the first part of the year were flat or below expectations?
MR. CLARE: Objection to form.
A. No.
Q. Do you remember anyone in the meeting saying that Sunbeam's earnings or expected earnings through the first part of the year, the

Page 287

part of the year that had been experienced to date, were disappointing?
MR. CLARE: Objection to form.
A. No.
Q. Turn to the last page of this document. Can you read the handwriting in the upper left?
A. "97 new products, good orders but placement less strong."
Q. And then the items down below under "Domestic", what is that handwritten -- what does that handwriting mean?
A. It says, number of new products 89. And then 30. Then there's a -- then there's a line, new products, 190. Then 227. New and existing channels Home Depot, Costco, price 97, 3 percent worldwide.
Q. Did you understand this slide to indicate that Sunbeam's new products were contributing as shown here, 227 million of sales to the '98 sales numbers?
MR. CLARE: Objection to form.
A. Yes.
Q. How long did this meeting at Morgan Stanley take?

Page 288

A. I don't know. Probably a couple of hours.
Q. In those couple of hours, there were questions asked and answers given; is that correct?
A. Yes.
Q. And, as you sit here, do you remember any negative information that was communicated about sales or earnings or projections of Sunbeam?
MR. CLARE: Objection to form.
A. No. I mean, if we read through the notes, there may be qualifiers that are in the notes here.
Q. But do you --
A. I don't recall anything.
Q. Okay. Thank you.
Now, Mr. Clare asked you some questions about the inclusion of certain long-range strategic plan numbers in the Credit Suisse documents. I'll get to that in a moment.
But are the numbers found in Exhibit 238 the source of those numbers? Let me ask another question.
Is Exhibit 238 the long-range

Page 289

strategic plan?
A. I believe so, yeah.
Q. And that's the source of the long-range strategic plan in the Credit Suisse documents?
A. Yes.
Q. Okay. If you, please, retrieve a document Mr. Clare gave you. That's the big thick one, Exhibit 85.
MR. CLARE: Morgan Stanley Exhibit 85?
MR. BRODY: Yes. Thank you, Tom.
Q. Do you have it?
A. Yes.
Q. I believe you said that you had seen this during -- in connection with the work you did for Credit Suisse on behalf of Coleman?
A. I think I said it looked familiar, yes.
Q. And you recognize from the legend on the bottom right this is a document prepared by Morgan Stanley?
A. Yes.
Q. I believe your testimony was that you recalled seeing the early parts of the document?

NOT A CERTIFIED COPY

015893

Page 290

MR. CLARE: Objection. Misstates the testimony.
Q. Is that correct or not?
A. I said -- I think I said the early pages looked the most -- looked familiar.
Q. Okay. Then let's turn to the first page after executive summary. And by that I mean -- bears Bates numbers CP 020988.
A. Yes.
Q. Do you believe that's a page that you saw in connection with the work that you did?
A. I think so.
Q. The first bullet point refers to Sunbeam's attractive growth story and investment opportunity.
A. Yes.
Q. Do you remember any discussions with Morgan Stanley about those words?
MR. CLARE: Objection to form.
A. No.
Q. And the next item refers to the profound transformation of the company since the arrival of new management in 1996.
Do you remember any further discussions about that?

Page 291

A. No, I do not.
Q. The third item refers to tremendous intrinsic value.
Do you remember discussions with Morgan Stanley about that beyond what's in this document?
A. No, I do not.
Q. Okay. If you'll put that document aside. I may return to it later.
Okay. Mr. Clare asked you some questions about due diligence and the investigation done by you and others at CSFB.
My recollection of the chronology that Mr. Clare put in front of you was that the understanding of the exchange ratio, the agreement was struck on about February 19, 1997.
Do you remember that?
A. Not exactly.
Q. Okay. Well, that's not a fair question, then. If you could, please, retrieve Morgan Stanley Exhibit 75, which is the Wachtell document.
MR. PARADISE: This one.
A. Yeah.
Q. And if you look at the chronology,

Page 292

February 19th appears to be when the parties are at or close to an agreement?
A. Yes.
Q. And February 27th is the date the parties -- Coleman has its board meeting --
A. Yes.
Q. -- and the deal is signed up.
A. Um-hum.
Q. So, the due diligence that was done on this deal was done between the 19th and the 27th; is that correct?
MR. CLARE: Objection to form. Misstates the testimony.
A. Yes.
Q. What was CSFB's reason for doing the investigation, the diligence investigation it was doing?
MR. PARADISE: Diligence on Sunbeam or diligence generally?
MR. BRODY: We'll start with on Sunbeam.
A. To understand the business and to understand, you know, whether there's an issue with respect to the share price from a, you know, financial point of view.

Page 293

Q. Okay. And, in doing that diligence -- let me withdraw that.
Was CSFB doing an investigation in order to advise either Sunbeam or Coleman as to how these companies could best be combined?
A. That was not the purpose at that time.
Q. Okay.
A. I mean, in other transactions you might give that advice, but they had already chosen the structure they were going to proceed with.
Q. And I believe you referred to the work you were doing as work done on the sell side?
A. Yes.
Q. Can you explain to us what that means?
A. Well, we were advising the selling shareholder or selling company. And I think what I said -- I don't recall whether I said it, but one thing I did say is we were not asked to market the company.
Q. If you were advising the buyer or if you were being asked to market the company, would you have done different things?
MR. CLARE: Objection to form. Incomplete hypothetical.

NOT A CERTIFIED COPY

0158914

Page 294

A. Possibly. We probably would have done more -- well, if we were marketing the company, we probably would have gone and contacted potential buyers for Coleman.

And we may have spent more time preparing a valuation of Coleman to share with the prospective buyers to show them why we think the business is a -- you know, worth what it is.

Q. Okay. So, your task would have been different?

A. We would have had additional tasks.

Q. I understand.

In your prior testimony, I believe you said that one of the things that CSFB did was look at public documents?

A. Yes.

Q. By that, you mean financial statements and other documents that are publicly available such as filed with the SEC?

A. That's correct.

Q. And you also looked at analyst reports about the company?

A. Yes, we did.

Q. And you looked at the projections such as the ones you saw on February 23rd in the

Page 295

meeting at Morgan Stanley?

A. Yes.

Q. And you met with Morgan Stanley --

A. Those weren't public, though.

Q. I understand.

A. Yes.

Q. And you met with Morgan Stanley's management -- excuse me -- Sunbeam's management?

A. Yes.

Q. Now, in doing the due diligence, did you operate on the assumption that Morgan Stanley or Sunbeam was trying to hide the truth from you?

MR. CLARE: Objection to form.

A. No.

Q. Did you think that your purpose in doing this due diligence investigation was to determine if the parties on the other side of the transaction were involved in a fraud?

MR. CLARE: Objection to form.

A. No.

Q. I'd like to talk about the fairness opinions and the board meeting.

You testified that Credit Suisse prepared a fairness opinion and that spoke about whether the transaction was fair to the public

Page 296

shareholders?

A. Yes.

Q. It did not look at whether the transaction was fair to the MAFCO shareholders?

A. That's correct.

Q. Do you know why the board hired you to do an investigation of the fairness for the public shareholders?

MR. CLARE: Objection. Calls for speculation.

A. Yes. Well, I can -- I believe so.

Q. What's your understanding?

A. Well, the board is -- the board is there to protect the shareholder interest. And the public shareholders aren't sophisticated and, therefore, they look to the board to give them guidance.

And, therefore, the board wanted an investment bank to give them a fairness opinion.

Q. Do you understand that the consideration in this transaction paid to Mr. Perelman's company for its shares and the consideration paid to public shareholders was the same?

A. Yes. Was it the same?

Page 297

Q. Do you understand whether it was the same?

MR. CLARE: I object to the form. Go ahead.

A. I'm not sure if it was the same.

Q. Okay. Well, let me ask you to refer to the Credit Suisse investment banking memorandum that has been marked as Morgan Stanley Exhibit 230. Do you have that, Mr. Duffy?

A. Yes.

Q. Looking at the bottom of the page, the summary of the transaction --

A. Yes.

Q. -- do you understand the transaction being paid to the public and the transaction being paid to the MAFCO shareholder is the same?

MR. CLARE: I object to the form of the question.

A. I don't think it's the same.

Q. How is it different?

A. I think Sunbeam assumed debt at the deal value, so the valuation was intended to be equivalent, but part of the consideration that MAFCO got was the assumption of debt.

Q. Okay. If you -- have you done the

NOT A CERTIFIED COPY

015895

Page 298

math on whether the exchange price at the closing price is the same for the debt as it is for the shareholders?
A. Not recently.
Q. Okay. Do you have a recollection of how that comes out?
A. It should be the same.
Q. Thank you.
Now, in connection with the work that was done in this case, I think Mr. Clare showed you a document that he marked as Exhibit 112. It was the materials prepared for the board of directors. Ask you to retrieve that, please.
A. Yes.
MR. BRODY: And if you put that in front of you, I'm going to ask the court reporter to mark one more exhibit. Is this 239?
MR. PARADISE: Yes.
(CPH Exhibit 239, Materials prepared for the board of directors of Coleman Company, marked for identification, as of this date.)
Q. Mr. Duffy, if you would do what we did before and put these two documents next to each

Page 299

other, Exhibit 112 and Exhibit 239.
A. Yeah.
Q. And turn to the second page of the document, that page that reads "Preliminary Financial Terms of the Transaction."
A. Yes.
Q. I think Mr. Clare established that the document marked as Exhibit 112 reflects the final transaction terms for February 27th?
A. Yes.
Q. And the other document, Exhibit 239, reflects the transaction terms before they were changed; is that correct?
A. Yes.
Q. Okay. Does Exhibit 239, the one we just marked, appear to be a complete copy of the draft materials prepared for the board of directors reflecting those terms?
A. I believe so.
Q. Okay. Then you can put that aside. I don't need to ask you any more about that.
And we'll focus on the other document Mr. Clare showed you, Exhibit 112. And you recognize those to be the final terms -- excuse me -- the final package used for the board

Page 300

meeting on the 27th?
A. Yes.
MR. BRODY: Ask the court reporter to mark one additional exhibit as Exhibit 240.
(CPH Exhibit 240, Backup material used to prepare investment banking memorandum, marked for identification, as of this date.)
Q. I'm not going to ask you to go through this page by page, Mr. Duffy, but do you recognize Exhibit 240 as a document prepared by Credit Suisse?
A. Yes.
Q. And what it is?
A. I believe it's the backup for the investment banking memo which would be the summary of the analyses that we used to prepare the memorandum.
Q. Was this information kept in the files or was it circulated to anyone, or what happened to it?
A. It -- I don't know specifically. It should have gone with the memo to the members of the investment banking committee.
Q. And is this something that you and other individuals at Credit Suisse prepared?

Page 301

A. Yes.
Q. Does Exhibit 240 appear to be an accurate copy -- true and accurate copy of the back-up materials that went with the investment banking committee memo?
A. Yes.
Q. Thank you.
Why don't you put that document aside.
MR. BRODY: Can we go off the record. The videographer needs to change the tape.
THE VIDEOGRAPHER: The time is now 5:30. And we have reached the end of tape No. 3. And we're off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 5:35. This is tape No. 4 and we are back on the record.
Q. Mr. Duffy, when we broke we were looking at the materials presented to the board of directors and talking about the fairness opinion. I'd like to return there.
In preparing the fairness opinion, Credit Suisse looked at the fairness of the transaction to the Coleman shareholders; is that correct?

NOT A CERTIFIED COPY

015896

Page 302

A. Yes.
Q. Does that require an estimation of the value of Coleman?
A. Yes.
Q. And that calculation of value was contained in the document that's been marked as Morgan Stanley 112; is that correct?
A. Yes, it is.
Q. In looking at the value of Coleman, did Credit Suisse look at Coleman by itself, absent any synergies resulting from the transaction?
A. Yes, it did.
Q. And, based on that analysis, what was Credit Suisse's conclusion about the fairness of this transaction to the Coleman shareholders?
A. That it was fair.
Q. Credit Suisse also performed an analysis of the consequences of the merger; is that correct?
A. Yes.
Q. And to do that, did Credit Suisse look at the impact of this merger on the combined company, Sunbeam, after it acquired Coleman?
A. Yes, it did.

Page 303

Q. Is that, in effect, an estimation of the value of the future stock, the stock of the combined company?
A. It is not a valuation. It's an analysis that gives you some sense of what could happen to the share price.
Q. I understand.
Now, if you look at page 12 of the document, it reads "Overview of Sunbeam."
Mr. Clare asked you some questions starting here.
A. Yes.
Q. And there's a business overview on the left. And I believe you said that you thought some of that information may have been contained in public documents; is that correct?
A. Yes.
Q. Do you know if that information was contained in the Morgan Stanley discussion materials that you were shown earlier today marked as Exhibit 85?
A. It could have been. I don't know.
Q. If I could ask you just to pull out Exhibit 85.
A. Okay.

Page 304

Q. And if you look at the page we concentrated on earlier, the investment rationale page, which is, I think, the first page with text on it.
A. Yes.
Q. And then the following page, the business overview.
A. Yes.
Q. Doesn't that page describe Sunbeam as a leading consumer products company, describe its major brands and describe its number one or two position in a variety of products?
MR. CLARE: Objection to form.
A. Yes, it does.
Q. And if you turn, please, sir, much later in the document bearing production No. CP 021064, there's a stock chart.
A. Yes.
Q. And there's a little bullet entry for July 18. It refers to Mr. Dunlap coming in.
A. Yes.
Q. And if you look at Exhibit 112, the CSFB materials, the July 18th date is contained in that last bullet item?
A. Yes.

Page 305

Q. I'd also ask you to turn in the CSFB document to page 5.
A. Back to page 5?
Q. Back to page 5. Do you see that?
A. Yes.
Q. Okay. Now, these pages look different because the little boxes are in different places. But do you recognize the text to be the same?
MR. CLARE: Objection to form.
Q. I mean the text of the boxes.
MR. CLARE: Each and every one of them?
MR. BRODY: Well, I guess that's my question, yes.
MR. PARADISE: What page is that -- of the --
MR. BRODY: We're comparing page 5 of Exhibit 112 of the CSFB document, to page CP 021064 of the Morgan Stanley document.
MR. PARADISE: Okay.
A. They look -- they look the same.
Q. Okay. You can put aside the Morgan Stanley document, Exhibit 85.
Now, Mr. Clare asked you some

NOT A CERTIFIED COPY

01597

Page 306

questions about the difference between the base case and the long-range strategic plan case. And I'd like you to turn to page 13 of the document. I think Mr. Clare asked you some questions there.

A. Yes.

Q. The long-range strategic plan case is the case based on the information communicated on the 23rd of February?

A. Yes, it is.

Q. And the base case is based on a compilation of Wall Street estimates?

A. Yes. I think, but I think it had the input of Coleman management.

Q. Do you know if the information that was available on Wall Street had as one of its sources Sunbeam management?

MR. CLARE: Objection to form. Calls for speculation.

A. I would -- I don't know specifically. Are you -- typically, that's the way the analyst community works.

Q. Okay. Now, if you turn to the second to last page, page 18 of the Credit Suisse document, it's entitled "pro forma analysis."

Page 307

A. Yes.

Q. And that's an analysis of the combined Sunbeam and Coleman; is that correct?

A. Yes, it is.

Q. And it's based on a number of assumptions, including 100 million in pretax synergies and tax cost savings?

A. Yes.

Q. We'll come back to that. Well, why don't we do it right now. I was going to ask you to come back to that, but if you could, please, pull out the investment banking committee memo Mr. Clare showed you, Exhibit 230. I'm sorry for all the bouncing around. When you go second, you have to kind of pick up the pieces. Okay?

A. Yes.

Q. If you turn, please, to page 10 of the document, the synergies paragraph.

A. Yes.

Q. Mr. Clare asked you about the $150 million number.

A. Right.

Q. The next paragraph says, "Sunbeam management expects to estimate 100 million of cost savings in their public announcement of the

Page 308

deal. The pro forma analysis assumes 100 million of annual cost savings including 1998 which is presented on a pro forma basis."

A. Yes.

Q. So, the Credit Suisse pro forma analysis used the Sunbeam number; is that correct?

MR. CLARE: Objection to form.

A. Yes.

Q. Do you know where that number came from?

A. I don't know specifically. I think it comes from what they felt comfortable telling the street -- telling the public at the time of the transaction.

Q. Okay. And "they" meaning Sunbeam?

A. Meaning, yes.

Q. Mr. Clare asked you some questions about the way the fairness opinion worked through the investment banking committee.

A. Yes.

Q. That's a formalized process within Credit Suisse First Boston?

A. Yes, sir it, is.

Q. And, in this case, the approvals were

Page 309

given as are necessary?

A. Yes.

Q. I believe you also testified to Mr. Clare that, after some news came out, Credit Suisse reexamined the fairness opinion.

Do you remember that testimony?

A. Yes.

Q. And I believe you said that that reexamination happened before the document was to be published in a public securities filing; is that correct?

A. Yes.

Q. Now, there's -- there was a variety of bad news about Sunbeam. And I'll state for the record there was a press release Mr. Clare showed you on March 19th. There was another press release on April 3rd, which I can show you, if you'd like. And there was the 10-K, the earnings -- 10-Q, rather, the earnings announcement that came out in March -- excuse me -- May 1998.

Using those three dates, do you know when the fairness opinion was looked at again?

A. No.

Q. Could it have been the March 19th

NOT A CERTIFIED COPY

015698

date?
MR. CLARE: Objection to form.
A. My recollection was -- I thought it was more likely in April than it was in March. But I don't know that for a fact.
Q. Okay. And you testified that, whatever triggered the reexamination was some bad news about the company?
A. Yes.
Q. I've kind of lost track of the documents, but Mr. Clare may have already showed you this. If so, I'm showing you another copy. I'm giving you what's been marked as Exhibit 36, CPH Exhibit 36.
And I'm going to ask you to look at the press release attached to the document.
A. Yeah.
Q. Have you seen that document before?
A. I don't remember seeing it, but I very well could have.
Q. And it's a press release dated April 3, 1998 issued by Sunbeam --
A. Yes.
Q. -- disclosing that Sunbeam had missed its first quarter -- its first quarter sales for

1998 were actually below its 1997 levels.
A. Yes.
Q. Do you believe this was the bad news that caused the reexamination of the fairness opinion?
A. It could be. I just don't remember specifically.
Q. Okay. I'm going to show you some documents in a moment that may help you refresh your recollection on that a little bit, but we'll come back to that.
The last topic I'd like to address is the issue of comfort letter.
A. Okay.
Q. And Mr. Clare asked you some questions about the comfort letter -- about comfort letters in general.
While you were doing the work you did on this deal, did you ever see a comfort letter issued by Arthur Andersen?
A. I don't believe so.
Q. Mr. Duffy, I've given you what's previously been marked as Exhibit 17. And I'll state for the record that it is a letter dated March 19, 1998 from Arthur Andersen to Morgan

Stanley & Company.
Have you seen this document before?
A. I don't think so, no.
Q. I'm going to ask you to read it, but I'm going to focus on particular paragraphs beginning on paragraph 5. So, tell me when you're comfortable to talk about paragraph 5.
A. I'm sorry?
Q. Paragraph 5.
(Witness reading document.)
A. Okay. Yeah.
Q. Okay. In paragraph 5(b), Arthur Andersen reports that the sales in the first month of 1998 are just under $29 million, whereas the sales in the first month of 1997 were just under $73 million."
Do you see that?
A. Yes, I do.
Q. Is that information that you were aware of at the time you were doing your work?
A. No, I don't believe so, no.
Q. That information was not communicated to you at the meeting at Morgan Stanley?
A. No.
Q. The next item indicates that, in the

first month of 1998, Sunbeam has lost about $9-1/2 million, whereas in the comparable period in 1997, Sunbeam had earned approximately $5 million."
A. Yes.
Q. Had that been communicated to you?
A. No.
Q. And that wasn't discussed at the meeting at Morgan Stanley?
A. No.
Q. Turn to the next page, paragraph 6. I'm going to ask you about 6(a) and (b) and (c).
(Witness reading document.)
A. I'm sorry. 6 --
Q. 6(a), (b) and (c).
A. Okay. Okay.
Q. In 6(a), Arthur Andersen reports that the long-term debt of Sunbeam had increased by 50 percent, by $105 million.
A. Yeah.
Q. Is that information that you were aware of when you met with Morgan Stanley?
A. I -- I don't know. I don't -- I just don't know.
Q. Do you have a recollection of being

NOT A CERTIFIED COPY

0158099

Page 314

told that?
A. No.
Q. In the next paragraph, 6(b), Arthur Andersen reports that "sales had decreased as compared to the corresponding period of the preceding year primarily due to the company's new early buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997."
Do you remember any discussion about how Sunbeam had changed its sales practices and accelerated 1998 sales into 1997.
MR. CLARE: Objection to form.
A. No.
Q. Was that discussed at the meeting at Morgan Stanley on February 23rd?
A. I don't know. I don't think so.
Q. Do you remember it being discussed?
A. No.
Q. If you turn to the next page, item 6 (c) reports "a preliminary number a sales through March 1, '98 of approximately 72 million compared to approximately 143-1/2 million in the comparable period the year before."
A. Right.

Page 315

Q. Is that information you knew?
A. No.
MR. BRODY: Pass that around, please.
Q. Mr. Duffy, I'm showing you an additional comfort letter. This one is dated -- excuse me. This one bears the label CPH 112, and it's dated March 25th. It's also a letter from Arthur Andersen to Morgan Stanley.
Have you ever seen that document before?
A. No.
Q. In -- you understand this letter to update the comfort letter that I just showed you, the one dated March 19th?
MR. CLARE: Objection to form. Foundation.
Q. Let me rephrase that.
Do you understand -- just look at the first line of the letter.
A. It refers to that letter, yes.
Q. Okay, thank you.
And referring to item (e), it contains some financial information. And if you turn to the second page, it shows that sales for 1998 are, approximately, one-half what they were in

Page 316

1997 for two months?
A. Yes.
Q. And it shows a net loss of $41 million compared to a net gain of 9.7 million?
A. Yes.
Q. Recognizing that there's a $30 million charge for employment contracts?
A. Yes.
Q. Is that information that was brought to your attention --
A. No.
Q. -- at any time?
A. I don't believe so.
Q. And if you look at item (f), it refers to long-term debt and it's increased from 194.5 million to almost 310 million.
A. Right.
Q. Do you know if you were aware of that?
A. I don't think so.
Q. Now, Mr. Clare showed you a press release that was issued on March 19th, 1998. And it's been marked as Exhibit -- Morgan Stanley Exhibit 11.
A. Yeah.
Q. Do you have that? If you don't, I can

Page 317

give you another copy of it.
MR. PARADISE: Here it is.
A. Yes.
Q. Sorry about that.
A. That's all right.
Q. Was Credit Suisse consulted before this press release was issued?
A. I don't believe so.
Q. Do you know if anyone at Credit Suisse was advised about this press release before it went out or given an opportunity to comment on it?
A. I don't know.
Q. In the press release, it recites, among other things, that net sales are expected to exceed 1997 net sales. Do you see that?
A. Yes.
Q. And the next sentence says that sales at retail remain strong. Do you see that?
A. Yeah.
Q. And then the final sentence of that paragraph recites that the company is highly confident about the overall sales outlook for its products or for the entire year.
Do you see that?

NOT A CERTIFIED COPY

0159000

A. Yes.
Q. Do you see anything in the press release that recites that sales are one-half what they were in the comparable period the year before?
A. No.
MR. CLARE: Objection to form.
A. No.
Q. Or that there's a problem because of sales being accelerated for '98 into '97?
MR. CLARE: Same objection.
A. I do not.
Q. Now, after this press release marked as Exhibit 11 came out, there was some analyst reports that commented on it.
Do you remember seeing those?
A. Not specifically, no.
Q. Do you know if anyone at Credit Suisse was looking at the analyst reports that came out?
A. I don't know. I assume so, but I don't know.
Q. As you sit here, do you remember any of them?
A. No.
Q. Mr. Duffy, do you know if the

information about Sunbeam's declining sales and declining profitability were ever disclosed?
MR. CLARE: Objection to form.
MR. PARADISE: To whom?
MR. BRODY: To the public.
MR. CLARE: During what time period?
MR. BRODY: Ever.
A. Well, I think, at some point, it all came out, right?
Q. I've shown you Exhibit 36, the April 3rd press release that discloses that sales were not going to meet --
A. Right.
Q. -- the first quarter the year before.
Do you know what happened to the stock price when that information came out?
A. I think it went down significantly.
Q. Do you remember how much it went down or order of magnitude what it went down?
A. No. Just a lot.
MR. BRODY: 241. Please mark this as Exhibit 241. And I think I'm a copy short.
(CPH Exhibit 241, Daily stock price record on the New York Stock Exchange, marked for identification, as of this date.)

Q. Mr. Duffy, let me just explain what I put in front of you. I've given you what's been marked as Exhibit 241 which is a compilation I create from documents I got out of our library.
And it's a daily stock price record on the New York Stock Exchange on three separate pages, January through March of '98, April through June of '98 and July through September of '98.
And it -- I've copied the pages that contain the stock prices for Sunbeam. And I'm not asking you to attest to the accuracy of these numbers. I believe them to be publicly reported and accurate. But I'm not going to ask about that.
But I'd like to just walk through a few of them. If you could tell us based on this information the price of Sunbeam's stock on the day the merger agreement was approved, the closing price.
A. The 27th?
Q. Yes, sir.
A. It was 41-6/8.
Q. But it was between 41 and 42?
A. Yes.

Q. And then on -- I'm sorry. I'm reading this wrong. I think you are, too. No, you're not. I'm sorry. You're reading it correctly. I was reading it wrong.
And then on March 19th, when Sunbeam released the press release that Mr. Clare showed you, marked as Morgan Stanley Exhibit 11, what was the price of Sunbeam stock?
A. 45-3/8.
Q. So, even after the issuance of the press release Mr. Clare gave you, the stock price was higher than the merger price?
A. Yes.
Q. If you turn to the price on April 3rd --
A. Yeah.
Q. -- what did it drop to?
A. It dropped to 34-3/8 from 45-9/8 the day before.
Q. So, it lost --
A. $15, a third of its price.
Q. Okay. And by the end of that week, by April 9th, it was down to 30; is that correct?
A. Yeah.
Q. And if we go to the middle of May when

NOT A CERTIFIED COPY

015901

Page 322

Sunbeam released its financial results for the first quarter of 1998, it was trading in the 23 to $25 range; is that correct?
A. Yes, it is.
Q. You can put that document aside.
The information that was in the comfort letters, is that the type of information that, had you had it, you would have considered it in connection with your fairness opinions?
MR. CLARE: Objection to form.
A. Yes.
Q. And the stock price of, say $23 in mid-May, do you understand that to reflect any real premium over the Coleman stock price before the deal was announced?
MR. CLARE: Objection to the form.
A. I'm not sure.
Q. All right. We can find that some other way.
MR. BRODY: I have no further questions.
THE WITNESS: Thank you.
MR. CLARE: Mr. Duffy -- let me take the microphone back from you.
MR. BRODY: Oh, certainly.

Page 323

EXAMINATION BY
MR. CLARE:
Q. Mr. Duffy, Mr. Brody has shown you in his examination several documents from the March 1998 time period.
A. Yes.
Q. Did reviewing any of those documents refresh your recollection about any request that you or others at CSFB made to Sunbeam or Morgan Stanley for sales information in March of 1998?
A. No.
Q. Are you aware of any such request being made by CSFB?
A. No.
Q. Are you aware of any such request being made by Coleman?
A. No.
Q. Or MacAndrews & Forbes?
A. No.
Q. Mr. Brody asked you some questions about the extent of due diligence that CSFB performed in connection with rendering its fairness opinion. Do you recall that testimony?
A. Yes.
Q. In March and February of 1998, did

Page 324

CSFB have the capability in-house to conduct a more in-depth examination of Sunbeam and its business, had it been asked to do so?
MR. BRODY: Object to form.
A. Depends -- I mean, what form of examination? We're not accountants, so we wouldn't have been able to check their accounting policies.
Q. Okay. In any way more in-depth than the examination that was done as part of the due diligence, did CSFB have the capability to do a more in-depth examination of Sunbeam and its business, if it had been asked?
A. If it had been asked and if it had been given better information, we could have done more work.
Q. For example, did CSFB have the capability to conduct interviews with Sunbeam's customers in analyzing information provided to them about Sunbeam?
A. That's not something we normally do.
Q. If you had been asked to do that, is that a service that CSFB could have performed? Did you have the capability to perform it?
A. I don't think so. Well, let me say it

Page 325

this way. I don't think we're skilled in interviewing customers.
MR. PARADISE: Just for the record, when you ask about CSFB, obviously, it's a large organization. Are you focusing on the investment banking group with which Mr. Duffy was affiliated or --
MR. CLARE: I think that's an appropriate question.
Q. Do you understand CSFB, in any group or division of the bank, to have that type of capability?
A. The only people who might do that are the equity analysts sometimes interview customers of companies to get a sense of how the business is doing.
Q. Did CSFB, again, broadly defined, have the capability to conduct additional conversations with Sunbeam personnel --
A. Well --
MR. BRODY: Object to form. Go ahead.
MR. PARADISE: I'm not sure Mr. Clare finished his question.
THE WITNESS: Sorry.
MR. PARADISE: Let him finish.

NOT A CERTIFIED COPY

015902

Q. -- to understand more fully Sunbeam's business --
A. Well --
Q. -- if you had been asked to do so?
A. Yeah, but I don't think you can -- well, I guess -- let me answer -- let me add something or answer something first.
When you said CSFB broadly, but CSFB broadly wasn't hired here. It was CSFB, the investment bank. So, we weren't in a position to ask our equity analysts to go do customer surveys or whatever, corporate banking or credit group we had, restructuring group we had. That wasn't a service that was available to us.
Q. Did CSFB, the investment bank that was hired for this engagement, have the financial sophistication to conduct a more in-depth examination of Sunbeam's business than it did, if it had been asked to do so?
A. If it had been asked to do a better credit analysis and had been given access to adequate information, we could have done more analysis.
Q. Mr. Brody asked you some questions about Morgan Stanley Exhibit 112, the

presentation to the board.
A. Yes.
Q. And, in particular, he asked you some questions about the stock chart.
A. Yes.
Q. Do you recall that?
A. Yes.
Q. And the text boxes?
A. Yes.
Q. There's a source identified on page 5 of that stock chart.
A. Yes.
Q. Could you read that, please, into the record?
A. FactSet.
Q. What is that?
A. That is the source of the information for the line there, which is the share price. It's not the source of the information for the words.
Q. Did you or others at CSFB copy the information from Morgan Stanley's presentation into your own presentation?
A. It looks that way.
Q. Do you recall having done that?

A. I don't recall, but we very well could have.
Q. Did you recall having examined public records in connection with events that were underway at Sunbeam in connection with your due diligence?
A. Yes.
Q. And the events that are listed here in the Fact boxes are events that were also described in public filings; isn't that correct?
MR. BRODY: Object to form.
A. Some of them are. Maybe they all would be. I can't say specifically, but they look like they would be.
Q. Available in public documents?
A. Yeah.
MR. CLARE: Okay. I don't have any other questions.
THE WITNESS: Terrific.
MR. BRODY: Nor do I. Thank you very much.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: Okay. The time now is 6:06, and this concludes the deposition. And we are off the record.

(Discussion off the record.)
MR. PARADISE: Just, the witness would like to read and sign his transcript, please.
(Time noted: 6:06 p.m.)

_____
ROBERT J. DUFFY

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

NOT A CERTIFIED COPY

015903

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, TAMI H. TAKAHASHI, RPR and Notary Public within and for the State of New York, do hereby certify:

That ROBERT J. DUFFY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of July 2004.

TAMI H. TAKAHASHI

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
ROBERT J. DUFFY	MR. CLARE	6, 323
	MR. BRODY	261

---------- INFORMATION REQUESTS ----------

DIRECTIONS:
RULINGS:
TO BE FURNISHED: (None)
REQUESTS:
MOTIONS:

---------- EXHIBITS ----------

MORGAN STANLEY FOR ID.
Morgan Stanley Exhibit 313, Materials Prepared for Discussion MacAndrews & Forbes, February 1997..... 38
Morgan Stanley Exhibit 314, Amended And Restated Credit Agreement dated as of August 3, 1995..... 48
Morgan Stanley Exhibit 315, Letter dated March 30, 1998, from Credit Suisse First Boston to the Coleman Company..... 54

---------- EXHIBITS (Continued)----------

MORGAN STANLEY FOR ID.
Morgan Stanley Exhibit 206, Wall Street Journal article dated January 29, 1998... 124
Morgan Stanley Exhibit 317, Handwritten notes..... 154
Morgan Stanley Exhibit 230, Memo dated February 25, 1998, from Rich, Duffy, Geller and Chakrapani to the Investment Banking Committee..... 192
Morgan Stanley Exhibit 277, Merger consequences model dated February 27, 1998 regarding Project Violet..... 255

CPH FOR ID.
CPH Exhibit 236, Credit Suisse First Boston document relating to Project Violet..... 272
CPH Exhibit 237, Document Bates stamped CSFBC 0001623..... 279
CPH Exhibit 238, Document Bates stamped CPH 1412552..... 279

---------- EXHIBITS (Continued)----------

CPH FOR ID.
CPH Exhibit 239, Materials prepared for the board of directors of Coleman Company..... 298
CPH Exhibit 240, Backup material used to prepare investment banking memorandum..... 300
CPH Exhibit 241, Daily stock price record on the New York Stock Exchange.... 319

NOT A CERTIFIED COPY

015904

NOT A CERTIFIED COPY

015905

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

EXHIBIT
MS 104
Ann 9/21/04

NOT A CERTIFIED COPY

	Sunbeam	Coleman
Stock Price	$43.13	$15.25
Shares Outstanding	85,471	53,424
Market Value	3,685,937	814,716
Plus Net Debt	177,712	469,550
Enterprise Value	3,863,649	1,284,266

Sunbeam			
Year	1996	1997E	1998E
Revenues	984,300	1,165,100	1,473,900
Cost of Goods Sold	808,300	840,400	1,016,000
Gross Profit	176,000	344,700	457,900
Operating Expenses	173,800	139,300	172,200
Operating Income	2,200	205,400	285,700
Amortization	0	0	0
Interest Expense	13,600	8,500	5,600
Other Expense	1,600	-1,200	4,200
Pretax Income	-13,000	198,100	275,700
Taxes	-4,800	70,500	102,300
Net Income	-8,200	127,600	173,400
Depreciation and Amortization	47,429	57,000	65,000
EBITDA	49,629	262,400	350,700
Less Capital Expenditures	75,336	58,000	71,000
EBITDA - Capital Expenditures	-25,707	204,400	279,700

Coleman				
	1996	1997E	1998E	1998E Adj
	1,220,200	1,152,500	1,267,800	1,267,800
	884,500	805,600	862,100	873,930
	335,700	346,900	405,700	393,870
	261,500	249,500	269,200	148,121
	74,200	97,400	146,500	245,750
	10,500	11,500	12,000	12,000
	38,700	41,500	38,000	38,000
	1,200	0	0	0
	23,800	44,400	96,500	195,750
	10,800	14,300	35,900	72,823
	13,000	30,100	60,600	122,927
	36,400	40,000	44,000	44,000
	100,100	125,900	178,500	277,750
	34,300	26,000	40,000	40,000
	65,800	99,900	138,500	237,750

Using Sunbeam Margins

Sunbeam Multiples			
Year	1996	1997E	1998E
Enterprise Value/Revenues	3.9	3.3	2.6
Enterprise Value/EBITDA	77.9	14.7	11.0
Enterprise Value/EBITDA - Capex	NM	18.9	13.8
Enterprise Value/Operating Income	NM	18.8	13.5
Market Value/Net Income	NM	28.9	21.3

Coleman Multiples				
	1996	1997E	1998E	1998E Adj
	1.1	1.1	1.0	1.0
	12.8	10.2	7.2	4.6
	19.5	12.9	9.3	5.4
	17.3	13.2	8.8	5.2
	62.7	27.1	13.4	6.6

CPH2000144

016906

16div-022192

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

	Sunbeam Margins			Coleman Margins		
	1996	1997E	1998E	1996	1997E	1998E
Gross Profit	17.9%	29.1%	31.1%	27.5%	30.1%	32.0%
Operating Expenses	17.7%	11.8%	11.7%	21.4%	21.6%	20.4%
Operating Income	0.2%	17.3%	19.4%	6.1%	8.5%	11.6%
EBITDA	5.0%	22.1%	23.8%	8.2%	10.9%	14.1%
EBITDA - Capex	-2.6%	17.2%	19.0%	5.4%	8.7%	10.8%
Other Data:						
Employees	12,000	6,000		7,000		
Manufacturing Plants	26	9		16		

NOT A CERTIFIED COPY

CPH2000145

016907

16div-022193

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

MERGER CONSEQUENCES

Sunbeam Data:

Current Price	$43.13	
Shares Outstanding	85,471	
Market Value	3,685,937	
Net Debt	177,712	
Enterprise Value	3,863,649	
1998E EPS	$2.05	Goldman Est.
P/E Multiple	21.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	13.5	

Coleman Data:

Current Price	$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	27,254	29,732	32,209	34,687	37,165
Pro Forma SOC Shares	112,725	115,203	117,680	120,158	122,636
Pro Forma SOC Equity Value	4,961,265	4,968,113	5,074,961	5,181,809	5,288,657
M & F % Ownership	19.9%	21.3%	22.6%	23.8%	25.0%
Pro Forma SOC Enterprise Value	5,508,527	5,615,376	5,722,223	5,829,071	5,935,919
Pro Forma EPS:					
1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-$0.14	-$0.21	-$0.27	-$0.33	-$0.38
PF (Dilution) With Cost Savings of: 40,000	$0.08	$0.02	-$0.05	-$0.11	-$0.17
PF (Dilution) With Cost Savings of: 60,000	$0.20	$0.13	$0.06	-$0.01	-$0.07

Pro Forma EPS Excluding Goodwill:

1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	$0.17	$0.12	$0.08	$0.03	-$0.01
PF (Dilution) With Cost Savings of: 40,000	$0.40	$0.34	$0.29	$0.25	$0.20
PF (Dilution) With Cost Savings of: 60,000	$0.51	$0.46	$0.40	$0.35	$0.30

CPH2000146

16div-022194

806510 015908

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share		$22.00	$24.00	$26.00	$28.00	$30.00
Pro Forma Enterprise Value/EBITDA - Capex Multiples:						
Current EV/1998 EBITDA - Capex		13.8	13.8	13.8	13.8	13.8
Pro Forma Multiple Without Cost Savings		13.2	13.4	13.7	13.9	14.2
Pro Forma Multiple With Savings	40,000	12.0	12.3	12.5	12.7	13.0
Pro Forma Multiple With Savings	60,000	11.5	11.7	12.0	12.2	12.4

NOT A CERTIFIED COPY

CPH2000147

16div-022195

015909

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc. SUNBEAM/COLEMAN COMPARISON 2:13 PM 12/8/97

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
			Without Cost Savings		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	133,992	133,992	133,992	133,992	133,992
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	$1.91	$1.84	$1.78	$1.72	$1.67
(Dilution)/Accretion	-$0.14	-$0.21	-$0.27	-$0.33	-$0.38
EPS Before Goodwill	$2.22	$2.17	$2.13	$2.08	$2.04
(Dilution)/Accretion	$0.17	$0.12	$0.08	$0.03	-$0.01
			With Cost Savings of: 40,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	148,392	148,392	148,392	148,392	148,392
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	$2.13	$2.07	$2.00	$1.94	$1.88
(Dilution)/Accretion	$0.08	$0.02	-$0.05	-$0.11	-$0.17
EPS Before Goodwill	$2.45	$2.39	$2.34	$2.30	$2.25
(Dilution)/Accretion	$0.40	$0.34	$0.29	$0.25	$0.20
			With Cost Savings of: 60,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	155,592	155,592	155,592	155,592	155,592
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	$2.25	$2.18	$2.11	$2.04	$1.98
(Dilution)/Accretion	$0.20	$0.13	$0.06	-$0.01	-$0.07
EPS Before Goodwill	$2.68	$2.61	$2.45	$2.40	$2.36

NOT A CERTIFIED COPY

CPH2000148

016910

16div-022196

NOT A CERTIFIED COPY

– Sunkeu –

McKilly –

fee not waived

agenda – MS – get as much as possible

FU + BJA → bully MS –

covenant relief okay

→ don't try to extend – bk a read

banks not doing anything

NOT A CERTIFIED COPY

015912

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc. 4:56 PM
Will Nesbitt 12/10/97

	Sunbeam	Coleman
Stock Price	$39.00	$15.25
Shares Outstanding	85,471	53,424
Market Value	3,333,369	814,716
Plus Net Debt	177,712	469,550
Enterprise Value	3,511,081	1,284,266

	Sunbeam			Coleman			Using Sunbeam Margins
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Revenues	984,300	1,185,100	1,473,900	1,220,200	1,152,500	1,267,800	1,267,800
Cost of Goods Sold	808,300	840,400	1,016,000	884,500	805,600	862,100	873,930
Gross Profit	176,000	344,700	457,900	335,700	346,900	405,700	393,870
Operating Expenses	173,800	139,300	172,200	261,500	249,500	259,200	148,121
Operating Income	2,200	205,400	285,700	74,200	97,400	146,500	245,750
Amortization	0	0	0	10,500	11,500	12,000	12,000
Interest Expense	13,600	8,500	5,800	38,700	41,500	38,000	38,000
Other Expense	1,600	-1,200	4,200	1,200	0	0	0
Pretax Income	-13,000	198,100	275,700	23,800	44,400	96,500	195,750
Taxes	-4,800	70,500	102,300	10,800	14,300	35,900	72,823
Net Income	-8,200	127,600	173,400	13,000	30,100	60,600	122,927
Depreciation and Amortization	47,429	57,000	65,000	36,400	40,000	44,000	44,000
EBITDA	49,629	262,400	350,700	100,100	125,900	178,500	277,750
Less Capital Expenditures	75,336	58,000	71,000	34,300	26,000	40,000	40,000
EBITDA - Capital Expenditures	-25,707	204,400	279,700	65,800	99,900	138,500	237,750

	Sunbeam Multiples			Coleman Multiples			
Year	1996	1997E	1998E	1996	1997E	1998E	1998E Adj
Enterprise Value/Revenues	3.6	3.0	2.4	1.1	1.1	1.0	1.0
Enterprise Value/EBITDA	70.7	13.4	10.0	12.8	10.2	7.2	4.6
Enterprise Value/EBITDA - Capex	NM	17.2	12.6	19.5	12.9	9.3	5.4
Enterprise Value/Operating Income	NM	17.1	12.3	17.3	13.2	8.8	5.2
Market Value/Net Income	NM	26.1	19.2	62.7	27.1	13.4	6.6

EXHIBIT
MS 105
Price 8/31/98

NOT A CERTIFIED COPY

CPH 1426299

CP 038209
CONFIDENTIAL

015913

16div-022199

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

	Sunbeam Margins			Coleman Margins		
	1996	1997E	1998E	1996	1997E	1998E
Gross Profit	17.9%	29.1%	31.1%	27.5%	30.1%	32.0%
Operating Expenses	17.7%	11.8%	11.7%	21.4%	21.6%	20.4%
Operating Income	0.2%	17.3%	19.4%	6.1%	8.5%	11.6%
EBITDA	5.0%	22.1%	23.8%	8.2%	10.9%	14.1%
EBITDA - Capex	-2.6%	17.2%	19.0%	5.4%	8.7%	10.9%
Other Data:						
Employees	12,000	6,000		7,000		
Manufacturing Plants	26	9		16		

NOT A CERTIFIED COPY

CPH 1426300

CP 038210
CONFIDENTIAL

015914

16div-022200

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Sunbeam Data:

Current Price	$39.00	
Shares Outstanding	85,471	
Market Value	3,333,369	
Net Debt	177,712	
Enterprise Value	3,511,081	
1998E EPS	$2.05	Goldman Est.
P/E Multiple	19.0	
1998E Revenues	1,473,900	
1998E EBIT	285,700	Goldman Est.
1998E EBIT Margin	19.2%	
EV/EBIT Multiple	12.3	

Coleman Data:

Current Price	$15.25	
Shares Outstanding	53,424	
Market Value	814,716	
Net Debt	469,550	
Enterprise Value	1,284,266	
1998E EPS	$1.10	CSFB Est.
P/E Multiple	13.9	
1998E Revenues	1,267,800	
1998E EBIT	146,500	CSFB Est.
1998E EBIT Margin	11.6%	
EV/EBIT Multiple	8.8	

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
Current SOC Shares	85,471	85,471	85,471	85,471	85,471
New SOC Shares Issued	30,137	32,876	35,616	38,356	41,095
Pro Forma SOC Shares	115,608	118,347	121,087	123,827	126,566
Pro Forma SOC Equity Value	4,508,697	4,615,645	4,722,393	4,829,241	4,936,089
M & F % Ownership	21.5%	22.9%	24.3%	25.6%	26.8%
Pro Forma SOC Enterprise Value	5,155,959	5,262,807	5,369,655	5,476,503	5,583,351
Pro Forma EPS:					
1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
PF (Dilution) With Cost Savings of: 40,000	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
PF (Dilution) With Cost Savings of: 60,000	$0.14	$0.07	$0.00	-$0.07	-$0.13

Pro Forma EPS Excluding Goodwill:

1998E EPS (Current)	$2.05	$2.05	$2.05	$2.05	$2.05
Pro Forma (Dilution)/Accretion-No Cost Savings	$0.11	$0.06	$0.02	-$0.03	-$0.07
PF (Dilution) With Cost Savings of: 40,000	$0.34	$0.28	$0.23	$0.18	$0.13
PF (Dilution) With Cost Savings of: 60,000	$0.45	$0.39	$0.33	$0.28	$0.23

NOT A CERTIFIED COPY

CPH 1426301

CP 038211
CONFIDENTIAL

015915

16div-022201

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES

Merger Consequences Assuming Pooling Treatment Not Available:

Price Per Share		$22.00	$24.00	$26.00	$28.00	$30.00
Pro Forma Enterprise Value/EBITDA - Capex Multiples:						
Current EV/1998 EBITDA - Capex		12.6	12.6	12.6	12.6	12.6
Pro Forma Multiple Without Cost Savings		12.3	12.6	12.8	13.1	13.4
Pro Forma Multiple With Savings	40,000	11.3	11.5	11.7	12.0	12.2
Pro Forma Multiple With Savings	60,000	10.8	11.0	11.2	11.5	11.7

NOT A CERTIFIED COPY

CPH 1426302

CP 038212
CONFIDENTIAL

015916

16div-022202

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Price Per Share	$22.00	$24.00	$26.00	$28.00	$30.00
			Without Cost Savings		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	349,037	346,366	343,695	341,024	338,352
Less Income Taxes	133,992	133,992	133,992	133,992	133,992
Net Income Before Cost Savings	215,045	212,374	209,703	207,032	204,360
EPS	$1.86	$1.79	$1.73	$1.67	$1.61
(Dilution)/Accretion	-$0.19	-$0.26	-$0.32	-$0.38	-$0.44
EPS Before Goodwill	$2.16	$2.11	$2.07	$2.02	$1.98
(Dilution)/Accretion	$0.11	$0.06	$0.02	-$0.03	-$0.07
			With Cost Savings of: 40,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	40,000	40,000	40,000	40,000	40,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	389,037	386,366	383,695	381,024	378,352
Less Income Taxes	148,392	148,392	148,392	148,392	148,392
Net Income	240,645	237,974	235,303	232,632	229,960
EPS	$2.08	$2.01	$1.94	$1.88	$1.82
(Dilution)/Accretion	$0.03	-$0.04	-$0.11	-$0.17	-$0.23
EPS Before Goodwill	$2.39	$2.33	$2.28	$2.23	$2.18
(Dilution)/Accretion	$0.34	$0.28	$0.23	$0.18	$0.13
			With Cost Savings of: 60,000		
Sunbeam Pretax Income	275,700	275,700	275,700	275,700	275,700
Coleman Pretax Income	96,500	96,500	96,500	96,500	96,500
Plus Cost Savings	60,000	60,000	60,000	60,000	60,000
Less Incremental Goodwill	-23,163	-25,834	-28,505	-31,176	-33,848
Pretax Income	409,037	406,366	403,695	401,024	398,352
Less Income Taxes	155,592	155,592	155,592	155,592	155,592
Net Income	253,445	250,774	248,103	245,432	242,760
EPS	$2.19	$2.12	$2.05	$1.98	$1.92
(Dilution)/Accretion	$0.14	$0.07	-$0.00	-$0.07	-$0.13
EPS Before Goodwill	$2.50	$2.44	$2.38	$2.33	$2.28

NOT ACERTIFIED COPY

CPH 1426303

CP 038213
CONFIDENTIAL

L16910
015911

16div-022203

NOT A CERTIFIED COPY

015918

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

SUNBEAM/COLEMAN

11:49 AM
1/26/98

MERGER CONSEQUENCES ASSUMING COST SAVINGS OF: 100,000

Acquisition Price	$25.00	$25.00	$25.00	$27.50	$27.50	$27.50	$30.00	$30.00	$30.00
% Cash	0%	50%	100%	0%	50%	100%	0%	50%	100%
Pro Forma Combined Data:									
1998 EPS Accretion/(Dilution)	$0.29	$0.32	$0.35	$0.20	$0.21	$0.23	$0.12	$0.11	$0.11
1998 EPS+Goodwill Acc/(Dil)	$0.59	$0.67	$0.77	$0.52	$0.59	$0.68	$0.45	$0.51	$0.60
1998E PF EBITDA Multiple(1)	8.8x	8.8x	8.8x	9.0x	9.0x	9.0x	9.3x	9.3x	9.3x
1998E PF EBITA Multiple (2)	10.4x	10.4x	10.4x	10.7x	10.7x	10.7x	10.9x	10.9x	10.9x
Pro Forma Mkt Value	4,904,014	4,236,214	3,568,414	5,037,574	4,302,994	3,568,414	5,171,134	4,369,774	3,568,414
Pro Forma Net Debt	701,417	1,369,217	2,037,017	705,423	1,440,003	2,174,583	709,430	1,510,790	2,312,150
Pro Forma Enterprise Value	5,605,431	5,605,431	5,605,431	5,742,998	5,742,998	5,742,998	5,880,564	5,880,564	5,880,564
M & F % Ownership	22.5%	13.0%	0.0%	24.1%	14.1%	0.0%	25.8%	15.1%	0.0%
Coleman Acquisition Statistics:									
Acquisition Enterprise Value	1,859,305	1,859,305	1,859,305	1,996,871	1,996,871	1,996,871	2,134,438	2,134,438	2,134,438
1998E EBITDA Multiple	10.1x	10.1x	10.1x	10.9x	10.9x	10.9x	11.6x	11.6x	11.6x
EBITDA Mult. with 50% of Cost Savings to Coleman	7.9x	7.9x	7.9x	8.5x	8.5x	8.5x	9.1x	9.1x	9.1x

EXHIBIT
MS 106
Dec 9/1/04

(1) Sunbeam 1998E EBITDA multiple is 10.7x. Pro forma multiple is based on current Sunbeam price.
(2) Sunbeam 1998E EBITA multiple is 13.1x.

NOT A CERTIFIED COPY

CP 037827
CONFIDENTIAL

CPH 1425922

616910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	523,705
Pro Forma Debt	701,417
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,113
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued In Deal	31,990
Pro Forma Shares	117,461
Pro Forma SOC Mkt Valu	4,904,014
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	22.5%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	6,113	56,113
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	70,117	312,617
Income Taxes	70,500	14,300	38,700	123,500
Net Income	127,600	30,100	31,418	189,118
Shares Outstanding	85,471	53,424		117,461
EPS	$1.49	$0.56		$1.61
EPS Plus Goodwill	$1.49	$0.78		$1.91
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	23,269	35,269
EBIT	285,700	140,000	76,731	502,431
Interest Expense	5,800	38,000	12,313	56,113
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	64,417	442,117
Income Taxes	102,300	35,900	31,272	169,472
Net Income	173,400	66,100	33,145	272,645
Shares Outstanding	85,471	53,424		117,461
EPS	$2.03	$1.24		$2.32
EPS Plus Goodwill	$2.03	$1.46		$2.62
EBITDA Multiple	10.7x	10.1x		8.8x
EBITA Multiple	13.1x	12.2x		10.4x

NOT A CERTIFIED COPY

CPH 1425923

CP 037828
CONFIDENTIAL

015920

16div-022206

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:50 AM
1/26/98

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,191,505
Pro Forma Debt	1,369,217
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	109,537
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	15,995
Pro Forma Shares	101,466
Pro Forma SOC Mkt Valu	4,236,214
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	13.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	59,537	109,537
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	16,693	259,193
Income Taxes	70,500	14,300	19,734	104,534
Net Income	127,600	30,100	-3,041	154,659
Shares Outstanding	85,471	53,424		101,466
EPS	$1.49	$0.56		$1.52
EPS Plus Goodwill	$1.49	$0.78		$1.87
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	23,269	35,269
EBIT	285,700	140,000	76,731	502,431
Interest Expense	5,800	38,000	65,737	109,537
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	10,993	388,693
Income Taxes	102,300	35,900	12,307	150,507
Net Income	173,400	66,100	-1,313	238,187
Shares Outstanding	85,471	53,424		101,466
EPS	$2.03	$1.24		$2.35
EPS Plus Goodwill	$2.03	$1.46		$2.70
EBITDA Multiple	10.7x	10.1x		8.8x
EBITA Multiple	13.1x	12.2x		10.4x

NOT ACCERTIFIED COPY

CPH 1425924

CP 037829
CONFIDENTIAL

015921

16div-022207

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,336,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,859,305
Pro Forma Debt	2,037,017
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	162,961
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	76,231	367,531
Interest Expense	8,500	41,500	112,961	162,961
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-36,731	205,769
Income Taxes	70,500	14,300	769	85,569
Net Income	127,600	30,100	-37,499	120,201
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.41
EPS Plus Goodwill	$1.49	$0.78		$1.82
EBITDA Multiple	14.3x	14.8x		11.5x
EBITA Multiple	18.2x	19.1x		13.9x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	23,269	35,269
EBIT	285,700	140,000	76,731	502,431
Interest Expense	5,800	38,000	119,161	162,961
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-42,431	335,269
Income Taxes	102,300	35,900	-6,659	131,541
Net Income	173,400	66,100	-35,772	203,728
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.38
EPS Plus Goodwill	$2.03	$1.46		$2.80
EBITDA Multiple	10.7x	10.1x		8.8x
EBITA Multiple	13.1x	12.2x		10.4x

NOT A CERTIFIED COPY

CP 037830
CONFIDENTIAL

CPH 1425925

015922

16div-022208

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	527,711
Pro Forma Debt	705,423
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,434
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued In Deal	35,189
Pro Forma Shares	120,660
Pro Forma SOC Mkt Valu	5,037,574
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	24.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	6,434	56,434
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	66,458	308,958
Income Taxes	70,500	14,300	38,586	123,386
Net Income	127,600	30,100	27,872	185,572
Shares Outstanding	85,471	53,424		120,660
EPS	$1.49	$0.56		$1.54
EPS Plus Goodwill	$1.49	$0.78		$1.86
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	18.2x	20.5x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	12,634	56,434
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	60,758	438,458
Income Taxes	102,300	35,900	31,158	169,358
Net Income	173,400	66,100	29,599	269,099
Shares Outstanding	85,471	53,424		120,660
EPS	$2.03	$1.24		$2.23
EPS Plus Goodwill	$2.03	$1.46		$2.55
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT ACCERTIFIED COPY

CP 037831
CONFIDENTIAL

CPH 1425926

015923

16div-022209

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 100,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,650
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,262,291
Pro Forma Debt	1,440,003
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	115,200
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	17,595
Pro Forma Shares	103,066
Pro Forma SOC Mkt Valu	4,302,994
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	14.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	65,200	115,200
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	7,691	250,191
Income Taxes	70,500	14,300	17,724	102,524
Net Income	127,600	30,100	-10,033	147,667
Shares Outstanding	85,471	53,424		103,066
EPS	$1.49	$0.56		$1.43
EPS Plus Goodwill	$1.49	$0.78		$1.61
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	18.2x	20.5x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	71,400	115,200
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	1,991	379,691
Income Taxes	102,300	35,900	10,296	148,496
Net Income	173,400	66,100	-8,305	231,195
Shares Outstanding	85,471	53,424		103,066
EPS	$2.03	$1.24		$2.24
EPS Plus Goodwill	$2.03	$1.46		$2.62
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT A CERTIFIED COPY

CPH 1425927

CP 037832
CONFIDENTIAL

015924

16div-022210

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,996,871
Pro Forma Debt	2,174,583
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	173,967
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued In Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	72,892	364,192
Interest Expense	8,500	41,500	123,967	173,967
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-51,075	191,425
Income Taxes	70,500	14,300	-3,138	81,662
Net Income	127,600	30,100	-47,937	109,763
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.28
EPS Plus Goodwill	$1.49	$0.78		$1.74
EBITDA Multiple	14.3x	15.9x		11.8x
EBITA Multiple	16.2x	20.6x		14.3x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	26,608	38,608
EBIT	285,700	140,000	73,392	499,092
Interest Expense	5,800	38,000	130,167	173,967
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-56,775	320,925
Income Taxes	102,300	35,900	-10,566	127,634
Net Income	173,400	66,100	-46,209	193,291
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.26
EPS Plus Goodwill	$2.03	$1.46		$2.71
EBITDA Multiple	10.7x	10.9x		9.0x
EBITA Multiple	13.1x	13.1x		10.7x

NOT A CERTIFIED COPY

CPH 1425928

015925

CP 037833
CONFIDENTIAL

16div-022211

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	531,718
Pro Forma Debt	709,430
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,754
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued In Deal	38,389
Pro Forma Shares	123,860
Pro Forma SOC Mkt Valu	5,171,134
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	25.6%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	6,754	56,754
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	62,798	305,298
Income Taxes	70,500	14,300	38,472	123,272
Net Income	127,600	30,100	24,326	182,026
Shares Outstanding	85,471	53,424		123,860
EPS	$1.49	$0.56		$1.47
EPS Plus Goodwill	$1.49	$0.78		$1.81
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	70,053	495,753
Interest Expense	5,800	38,000	12,954	56,754
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	57,098	434,798
Income Taxes	102,300	35,900	31,045	169,245
Net Income	173,400	66,100	26,054	265,554
Shares Outstanding	85,471	53,424		123,860
EPS	$2.03	$1.24		$2.14
EPS Plus Goodwill	$2.03	$1.48		$2.48
EBITDA Multiple	10.7x	11.6x		9.3x
EBITA Multiple	13.1x	14.0x		10.9x

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

CPH 1425929

CP 037834
CONFIDENTIAL

015926

16div-022212

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:50 AM
1/28/98

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,333,078
Pro Forma Debt	1,510,790
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	120,863
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	18,194
Pro Forma Shares	104,665
Pro Forma SOC Mkt Valu	4,369,774
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	15.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	70,863	120,863
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-1,311	241,189
Income Taxes	70,500	14,300	15,714	100,514
Net Income	127,600	30,100	-17,024	140,676
Shares Outstanding	85,471	53,424		104,665
EPS	$1.49	$0.56		$1.34
EPS Plus Goodwill	$1.49	$0.78		$1.74
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	70,053	495,753
Interest Expense	5,800	38,000	77,063	120,863
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-7,011	370,689
Income Taxes	102,300	35,900	8,286	146,486
Net Income	173,400	66,100	-15,297	224,203
Shares Outstanding	85,471	53,424		104,665
EPS	$2.03	$1.24		$2.14
EPS Plus Goodwill	$2.03	$1.46		$2.54
EBITDA Multiple	10.7x	11.6x		9.3x
EBITA Multiple	13.1x	14.0x		10.9x

NOT A CERTIFIED COPY

CPH 1425930

CP 037835
CONFIDENTIAL

015927

16div-022213

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 100,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	2,134,438
Pro Forma Debt	2,312,150
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	184,972
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	282,400	125,900	100,000	488,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	69,553	360,853
Interest Expense	8,500	41,500	134,972	184,972
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-65,419	177,081
Income Taxes	70,500	14,300	-7,045	77,755
Net Income	127,600	30,100	-58,374	99,326
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.16
EPS Plus Goodwill	$1.49	$0.78		$1.65
EBITDA Multiple	14.3x	17.0x		12.0x
EBITA Multiple	18.2x	21.9x		14.6x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	100,000	634,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	70,053	495,753
Interest Expense	5,800	38,000	141,172	184,972
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	-71,119	306,581
Income Taxes	102,300	35,900	-14,473	123,727
Net Income	173,400	66,100	-56,647	182,853
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.14
EPS Plus Goodwill	$2.03	$1.48		$2.63
EBITDA Multiple	10.7x	11.6x		9.3x
EBITA Multiple	13.1x	14.0x		10.9x

NOT A CERTIFIED COPY

CPH 1425931

CP 037836
CONFIDENTIAL

015928

16div-022214

NOT A CERTIFIED COPY

015929

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

SUNBEAM/COLEMAN

11:47 AM
1/26/98

MERGER CONSEQUENCES ASSUMING COST SAVINGS OF: 150,000

Acquisition Price	$25.00	$25.00	$25.00	$27.50	$27.50	$27.50	$30.00	$30.00	$30.00
% Cash	0%	50%	100%	0%	50%	100%	0%	50%	100%
Pro Forma Combined Data:									
1998 EPS Accretion/(Dilution)	$0.57	$0.64	$0.73	$0.47	$0.53	$0.61	$0.38	$0.42	$0.49
1998 EPS+Goodwill Acc/(Dil)	$0.87	$0.98	$1.14	$0.79	$0.90	$1.06	$0.71	$0.82	$0.98
1998E PF EBITDA Multiple(1)	8.2x	8.2x	8.2x	8.4x	8.4x	8.4x	8.6x	8.6x	8.6x
1998E PF EBITA Multiple (2)	9.5x	9.5x	9.5x	9.8x	9.8x	9.8x	10.0x	10.0x	10.0x
Pro Forma Mkt Value	4,904,014	4,236,214	3,568,414	5,037,574	4,302,994	3,568,414	5,171,134	4,368,774	3,568,414
Pro Forma Net Debt	701,417	1,369,217	2,037,017	705,423	1,440,003	2,174,583	709,430	1,510,790	2,312,150
Pro Forma Enterprise Value	5,605,431	5,605,431	5,605,431	5,742,998	5,742,998	5,742,998	5,880,564	5,880,564	5,880,564
M & F % Ownership	22.5%	13.0%	0.0%	24.1%	14.1%	0.0%	25.6%	15.1%	0.0%
Coleman Acquisition Statistics:									
Acquisition Enterprise Value	1,859,305	1,859,305	1,859,305	1,996,871	1,996,871	1,996,871	2,134,438	2,134,438	2,134,438
1998E EBITDA Multiple	10.1x	10.1x	10.1x	10.9x	10.9x	10.9x	11.6x	11.6x	11.6x
EBITDA Mult. with 50% of Cost Savings to Coleman	7.2x	7.2x	7.2x	7.7x	7.7x	7.7x	8.2x	8.2x	8.2x

(1) Sunbeam 1998E EBITDA multiple is 10.7x. Pro forma multiple is based on current Sunbeam price.
(2) Sunbeam 1998E EBITA multiple is 13.1x.

EXHIBIT
MS 107
Pfer 9/16/04

NOT A CERTIFIED COPY

CPH2000086

015930

16div-022216

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $25.00

COST SAVINGS: 150,000
% CASH 0.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	523,705
Pro Forma Debt	701,417
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,113
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	31,990
Pro Forma Shares	117,461
Pro Forma SOC Mkt Valu	4,904,014
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	22.5%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	6,113	56,113
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	120,117	362,617
Income Taxes	70,500	14,300	56,450	141,250
Net Income	127,600	30,100	63,668	221,368
Shares Outstanding	85,471	53,424		117,461
EPS	$1.49	$0.56		$1.88
EPS Plus Goodwill	$1.49	$0.78		$2.18
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	18.2x	19.1x		12.4x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	23,269	35,269
	285,700	140,000	126,731	552,431
	5,800	38,000	12,313	56,113
	4,200	0	0	4,200
	275,700	102,000	114,417	492,117
	102,300	35,900	49,022	187,222
	173,400	66,100	65,395	304,895
	85,471	53,424		117,461
	$2.03	$1.24		$2.60
	$2.03	$1.46		$2.90
	10.7x	10.1x		8.2x
	13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

CPH2000087

015931

16div-022217

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	489,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,191,505
Pro Forma Debt	1,369,217
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	109,537
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	15,995
Pro Forma Shares	101,466
Pro Forma SOC Mkt Valu	4,236,214
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	13.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	59,537	109,537
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	66,693	309,193
Income Taxes	70,500	14,300	37,484	122,284
Net Income	127,600	30,100	29,209	186,909
Shares Outstanding	85,471	53,424		101,466
EPS	$1.49	$0.56		$1.84
EPS Plus Goodwill	$1.49	$0.78		$2.19
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	18.2x	19.1x		12.4x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	23,269	35,269
	285,700	140,000	126,731	552,431
	5,800	38,000	65,737	109,537
	4,200	0	0	4,200
	275,700	102,000	60,993	438,693
	102,300	35,900	30,057	168,257
	173,400	66,100	30,937	270,437
	85,471	53,424		101,466
	$2.03	$1.24		$2.67
	$2.03	$1.46		$3.01
	10.7x	10.1x		8.2x
	13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

CPH2000088

015932

16div-022218

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nechit

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $25.00 **COST SAVINGS: 150,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$25.00
Shares Outstanding	53,424
Equity Value	1,335,600
Plus Net Debt	469,550
Ent. Value B/Fees	1,805,150
Fees and Exp. @ 3.0%	54,155
Ent. Value A/Fees	1,859,305

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,859,305
Pro Forma Debt	2,037,017
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	162,961
Goodwill Created	1,410,774
Goodwill Amortization	35,269

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,605,431
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	23,769	35,269
EBIT	205,400	85,900	126,231	417,531
Interest Expense	8,500	41,500	112,961	162,961
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	13,269	255,769
Income Taxes	70,500	14,300	18,519	103,319
Net Income	127,600	30,100	-5,249	152,451
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.78
EPS Plus Goodwill	$1.49	$0.78		$2.20
EBITDA Multiple	14.3x	14.8x		10.4x
EBITA Multiple	18.2x	19.1x		12.4x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	150,000	684,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	23,269	35,269
EBIT	285,700	140,000	126,731	552,431
Interest Expense	5,800	36,000	119,161	162,961
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	275,700	102,000	7,569	385,269
Income Taxes	102,300	35,900	11,091	149,291
Net Income	173,400	66,100	-3,522	235,978
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.76
EPS Plus Goodwill	$2.03	$1.46		$3.17
EBITDA Multiple	10.7x	10.1x		8.2x
EBITA Multiple	13.1x	12.2x		9.5x

NOT A CERTIFIED COPY

CPH2000089

015933

16div-022219

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 150,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	527,711
Pro Forma Debt	705,423
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,434
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	35,189
Pro Forma Shares	120,660
Pro Forma SOC Mkt Valu	5,037,574
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	24.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	8,500	41,500	6,434	56,434
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	116,458	358,958
Income Taxes	70,500	14,300	56,336	141,136
Net Income	127,600	30,100	60,122	217,822
Shares Outstanding	85,471	53,424		120,660
EPS	$1.49	$0.56		$1.81
EPS Plus Goodwill	$1.49	$0.78		$2.13
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	16.2x	20.5x		12.7x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	26,608	38,608
	285,700	140,000	123,392	549,092
	5,800	38,000	12,634	56,434
	4,200	0	0	4,200
	275,700	102,000	110,758	488,458
	102,300	35,900	48,908	187,108
	173,400	66,100	61,849	301,349
	85,471	53,424		120,660
	$2.03	$1.24		$2.50
	$2.03	$1.46		$2.82
	10.7x	10.9x		8.4x
	13.1x	13.1x		9.8x

NOT A CERTIFIED COPY

CPH2000090

015934

16div-022220

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,262,291
Pro Forma Debt	1,440,003
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	115,200
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	17,595
Pro Forma Shares	103,066
Pro Forma SOC Mkt Valu	4,302,994
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	14.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	6,500	41,500	65,200	115,200
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	57,691	300,191
Income Taxes	70,500	14,300	35,474	120,274
Net Income	127,600	30,100	22,217	179,917
Shares Outstanding	85,471	53,424		103,066
EPS	$1.49	$0.56		$1.75
EPS Plus Goodwill	$1.49	$0.78		$2.12
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	18.2x	20.6x		12.7x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	26,608	38,608
	285,700	140,000	123,392	549,092
	6,800	38,000	71,400	115,200
	4,200	0	0	4,200
	275,700	102,000	51,991	429,691
	102,300	35,900	28,046	166,246
	173,400	66,100	23,945	263,445
	85,471	53,424		103,066
	$2.03	$1.24		$2.56
	$2.03	$1.46		$2.93
	10.7x	10.9x		8.4x
	13.1x	13.1x		9.8x

NOT ACCEPTED COPY

CPH2000091

015935

16div-022221

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $27.50 **COST SAVINGS: 150,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$27.50
Shares Outstanding	53,424
Equity Value	1,469,160
Plus Net Debt	469,550
Ent. Value B/Fees	1,938,710
Fees and Exp. @ 3.0%	58,161
Ent. Value A/Fees	1,996,871

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,996,871
Pro Forma Debt	2,174,583
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	173,967
Goodwill Created	1,544,334
Goodwill Amortization	38,608

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,742,998
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	282,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	27,108	38,608
EBIT	205,400	85,900	122,892	414,192
Interest Expense	8,500	41,500	123,967	173,967
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-1,075	241,425
Income Taxes	70,500	14,300	14,612	99,412
Net Income	127,600	30,100	-15,687	142,013
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.66
EPS Plus Goodwill	$1.49	$0.78		$2.11
EBITDA Multiple	14.3x	15.9x		10.7x
EBITA Multiple	16.2x	20.5x		12.7x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	26,608	38,608
	285,700	140,000	123,392	549,092
	5,800	38,000	130,167	173,967
	4,200	0	0	4,200
	275,700	102,000	-6,775	370,925
	102,300	35,900	7,184	145,384
	173,400	66,100	-13,959	225,541
	85,471	53,424		85,471
	$2.03	$1.24		$2.64
	$2.03	$1.46		$3.09
	10.7x	10.9x		8.4x
	13.1x	13.1x		9.8x

NOT A CERTIFIED COPY

CPH2000092

015936

16div-022222

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 150,000**
% CASH 0.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	531,718
Pro Forma Debt	709,430
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	56,754
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	38,389
Pro Forma Shares	123,860
Pro Forma SOC Mkt Valu	5,171,134
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	25.6%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	6,754	56,754
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	112,798	355,298
Income Taxes	70,500	14,300	56,222	141,022
Net Income	127,600	30,100	56,576	214,276
Shares Outstanding	85,471	53,424		123,860
EPS	$1.49	$0.56		$1.73
EPS Plus Goodwill	$1.49	$0.76		$2.07
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	18.2x	21.9x		13.0x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	29,947	41,947
	285,700	140,000	120,053	545,753
	5,800	38,000	12,954	56,754
	4,200	0	0	4,200
	275,700	102,000	107,098	484,798
	102,300	35,900	48,795	186,995
	173,400	66,100	58,304	297,804
	85,471	53,424		123,860
	$2.03	$1.24		$2.40
	$2.03	$1.46		$2.74
	10.7x	11.6x		8.6x
	13.1x	14.0x		10.0x

NOT A CERTIFIED COPY

CPH2000093

015937

16div-022223

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MAFCO Consolidated Group Inc.
Will Nesbitt

Sunbeam/Coleman

11:48 AM
1/26/98

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 150,000**
% CASH 50.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	1,333,078
Pro Forma Debt	1,510,790
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	120,863
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	19,194
Pro Forma Shares	104,665
Pro Forma SOC Mkt Valu	4,369,774
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	15.1%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	70,863	120,863
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	48,689	291,189
Income Taxes	70,500	14,300	33,464	118,264
Net Income	127,600	30,100	15,226	172,926
Shares Outstanding	85,471	53,424		104,665
EPS	$1.49	$0.56		$1.65
EPS Plus Goodwill	$1.49	$0.78		$2.05
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	18.2x	21.9x		13.0x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
	1,473,900	1,267,800	0	2,741,700
	350,700	184,000	150,000	684,700
	65,000	32,000	0	97,000
	0	12,000	29,947	41,947
	285,700	140,000	120,053	545,753
	5,800	38,000	77,063	120,863
	4,200	0	0	4,200
	275,700	102,000	42,989	420,689
	102,300	35,800	26,036	164,236
	173,400	66,100	16,953	256,453
	85,471	53,424		104,665
	$2.03	$1.24		$2.45
	$2.03	$1.46		$2.85
	10.7x	11.6x		8.6x
	13.1x	14.0x		10.0x

NOT ACCERTIFIED COPY

CPH2000094

015938

16div-022224

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

MERGER CONSEQUENCES AT $30.00 **COST SAVINGS: 150,000**
% CASH 100.0%

Acquisition Data:

Coleman Price	$30.00
Shares Outstanding	53,424
Equity Value	1,602,720
Plus Net Debt	469,550
Ent. Value B/Fees	2,072,270
Fees and Exp. @ 3.0%	62,168
Ent. Value A/Fees	2,134,438

Pro Forma Capital Structure:

Current SOC Net Debt	177,712
Incremental Acq. Debt	2,134,438
Pro Forma Debt	2,312,150
Estimated Interest Rate	8.00%
Pro Forma Interest Exp.	184,972
Goodwill Created	1,677,894
Goodwill Amortization	41,947

Pro Forma SOC Shares:

SOC Price	$41.75
Current SOC Shares	85,471
Shares Issued in Deal	0
Pro Forma Shares	85,471
Pro Forma SOC Mkt Valu	3,568,414
Pro Forma SOC Ent. Valu	5,880,564
Pro Forma M&F Ownershi	0.0%

1997E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,185,100	1,152,500	0	2,337,600
EBITDA	262,400	125,900	150,000	538,300
Depreciation	57,000	28,500	0	85,500
Goodwill Amortization	0	11,500	30,447	41,947
EBIT	205,400	85,900	119,553	410,853
Interest Expense	8,500	41,500	134,972	184,972
Other Income/(Exp)	-1,200	0	0	-1,200
Pretax Income	198,100	44,400	-15,419	227,081
Income Taxes	70,500	14,300	10,705	95,505
Net Income	127,600	30,100	-26,124	131,576
Shares Outstanding	85,471	53,424		85,471
EPS	$1.49	$0.56		$1.54
EPS Plus Goodwill	$1.49	$0.78		$2.03
EBITDA Multiple	14.3x	17.0x		10.9x
EBITA Multiple	16.2x	21.9x		13.0x

1998E Pro Forma Income Statement

	Sunbeam	Coleman	Adjustments	Combined
Revenues	1,473,900	1,267,800	0	2,741,700
EBITDA	350,700	184,000	150,000	684,700
Depreciation	65,000	32,000	0	97,000
Goodwill Amortization	0	12,000	29,947	41,947
EBIT	285,700	140,000	120,053	545,753
Interest Expense	5,800	38,000	141,172	184,972
Other Income/(Exp)	4,200	0	0	4,200
Pretax Income	276,700	102,000	-21,119	356,581
Income Taxes	102,300	35,900	3,277	141,477
Net Income	173,400	66,100	-24,397	215,103
Shares Outstanding	85,471	53,424		85,471
EPS	$2.03	$1.24		$2.52
EPS Plus Goodwill	$2.03	$1.46		$3.01
EBITDA Multiple	10.7x	11.6x		8.6x
EBITA Multiple	13.1x	14.0x		10.0x

NOT A CERTIFIED COPY

CPH2000095

015939

16div-022225

NOT A CERTIFIED COPY

015940

MS
DEPOSITION
EXHIBIT # 76
FOR ID TRN
4-8-04

CREDIT SUISSE | FIRST BOSTON

NOT A CERTIFIED COPY

December 1997

CONFIDENTIAL

Materials Prepared for Discussion

Sunbeam

015941

CP 016852
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407048

Sunbeam

Table of Contents

1. Form 10-Q
2. Form 10-K
3. Proxy
4. Research Reports

NOT A CERTIFIED COPY

015942

CREDIT SUISSE | FIRST BOSTON

CP 016853
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407049

NOT A CERTIFIED COPY

015943

CP 016854
CONFIDENTIAL

Sunbeam

1.

Form 10-Q

NOT A CERTIFIED COPY

0159414

CP 016855
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407051

Disclosure SEC EDGAR Filing

Company Name:	SUNBEAM CORP NEW
Exchange:	N
Ticker Symbol:	SOC
Company #:	S842420000
Document Type:	10-Q
Document Date:	09/28/97
Amendment:	
Document #:	97700708

NOT A CERTIFIED COPY

015945

CP 016856
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407052

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

[x] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE PERIOD ENDED SEPTEMBER 28, 1997

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____.

COMMISSION FILE NUMBER 1-52

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	25-1638266 (I.R.S. EMPLOYER IDENTIFICATION NO.)
1615 SOUTH CONGRESS AVENUE SUITE 200 DELRAY BEACH, FLORIDA (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	33445 (ZIP CODE)

(561) 243-2100
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

NOT APPLICABLE
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes [X] No [ ]

On October 15, 1997 there were 85,471,151 shares of the registrant's Common Stock ($.01 par value) outstanding.

NOT A CERTIFIED COPY

015946

CP 016857
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407053

16div-022232

SUNBEAM CORPORATION AND SUBSIDIARIES

QUARTERLY REPORT
ON FORM 10-Q

TABLE OF CONTENTS

		PAGE
PART I.	FINANCIAL INFORMATION	
	Item 1. Financial Statements	
	Condensed Consolidated Statements of Operations (Unaudited) for the three and nine months ended September 29, 1996 and September 28, 1997	2
	Condensed Consolidated Balance Sheets as of December 29, 1996 and September 28, 1997 (Unaudited)	3
	Condensed Consolidated Statements of Cash Flows (Unaudited) for the nine months ended September 29, 1996 and September 28, 1997	4
	Notes to Condensed Consolidated Financial Statements (Unaudited)	5
	Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	8
PART II.	OTHER INFORMATION	
	Item 6. Exhibits and Reports on Form 8-K	11
SIGNATURES		12

NOT A CERTIFIED COPY

015947

CP 016858
CONFIDENTIAL

PART I. FINANCIAL INFORMATION

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
	(UNAUDITED)		(UNAUDITED)	
Net sales	$ 231,778	$289,833	$715,375	$ 838,892
Cost of goods sold	282,998	208,242	591,291	599,821
Selling, general and administrative expense	49,441	33,863	120,898	98,430
Operating earnings (loss)	(28,669)	54,928	4,884	132,641
Interest expense and other net	4,424	1,503	13,123	6,898
Earnings (loss) from continuing operations before income taxes	(25,893)	53,425	(9,119)	126,543
Income taxes (benefit):				
Current	(7,898)	17,136	(4,954)	11,438
Deferred	(1,425)	1,717	2,223	33,746
	(9,323)	18,853	(2,731)	45,176
Earnings (loss) from continuing operations	(15,770)	34,572	(6,388)	81,367
Earnings (loss) from discontinued operations, net of taxes	(2,318)	—	12,866	(13,713)
Net earnings (loss)	$ (18,088)	$ 34,572	$ 6,478	$ 67,654
Net earnings (loss) per share of common stock from continuing operations	$ (0.19)	$ 0.39	$ (0.08)	$ 0.93
Net earnings (loss) per share of common stock	$ (0.22)	$ 0.39	$ 0.08	$ 0.77
Average number of common and common equivalent shares outstanding	83,578	88,233	83,793	87,884
Dividends declared per share of common stock	$ .01	$ .01	$ .03	$ .03

See Notes to Condensed Consolidated Financial Statements.

NOT A CERTIFIED COPY

015948

CP 016859
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407055

16div-022234

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

	DECEMBER 29, 1996	SEPTEMBER 28, 1997 (UNAUDITED)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 11,526	$ 22,811
Receivables, net	213,438	389,895
Inventories	162,252	298,876
Net assets of discontinued operations and other assets held for sale	182,847	2,988
Deferred income taxes	93,689	56,854
Prepaid expenses and other current assets	48,411	18,816
Total current assets	624,163	692,552
Property, plant and equipment, net	228,888	229,152
Trademarks and trade names, net	208,262	195,851
Other assets	28,196	27,516
	$1,072,709	$1,145,071
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$ 921	$ 668
Accounts payable	187,319	132,686
Restructuring accrual	63,834	28,868
Other current liabilities	99,509	92,575
Total current liabilities	271,583	245,997
Long-term debt	281,115	199,855
Non-operating and other long-term liabilities	152,451	145,589
Deferred income taxes	52,388	55,894
Shareholders' equity:		
Common stock (issued 88,441,479 and 89,925,359 shares)	884	899
Other shareholders' equity	457,756	568,848
Treasury stock, at cost (4,478,814 and 4,468,485)	(63,388)	(63,131)
Total shareholders' equity	395,252	497,816
	$1,072,709	$1,145,071

See Notes to Condensed Consolidated Financial Statements.

NOT A CERTIFIED COPY

015949

CP 016860
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407056

16div-022235

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(DOLLARS IN THOUSANDS)

	NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
	(UNAUDITED)	
OPERATING ACTIVITIES:		
Net earnings	$ 6,478	$ 67,654
Adjustments to reconcile net earnings to net cash used in operating activities:		
Depreciation and amortization	34,576	29,778
Loss on sale of discontinued operations, net of taxes	—	13,713
Deferred income taxes	2,223	33,746
Changes in working capital and other, including restructuring spending	(62,845)	(285,655)
Net cash used in operating activities	(18,768)	(60,772)
INVESTING ACTIVITIES:		
Capital expenditures	(54,985)	(40,124)
Proceeds from sale of divested operations and other assets	—	98,922
Net cash provided by (used in) investing activities	(54,985)	58,798
FINANCING ACTIVITIES:		
Net borrowings under revolving credit facility	55,000	10,000
Issuance of long-term debt	11,500	—
Payments of debt obligations	(1,383)	(11,882)
Proceeds from exercise of stock options	3,286	25,453
Sale of treasury stock	4,437	—
Other	(2,722)	(2,312)
Net cash provided by financing activities	70,118	21,259
Net increase (decrease) in cash and cash equivalents	(3,635)	11,285
Cash and cash equivalents at beginning of period	28,273	11,526
Cash and cash equivalents at end of period	$ 24,638	$ 22,811

See Notes to Condensed Consolidated Financial Statements.

-4-

NOT A CERTIFIED COPY

015950

CP 016861
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407057

16div-022236

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. OPERATIONS AND BASIS OF PRESENTATION

Sunbeam Corporation (the "Company") is a leading designer, manufacturer, and marketer of consumer branded products. The Sunbeam/registered trademark/ and Oster/registered trademark/ brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, Company-owned outlet stores, television shopping channels, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial consumers such as hotels and other institutions.

In the opinion of management, the unaudited condensed consolidated financial statements furnished herein include all adjustments (consisting only of normal recurring adjustments with the exception of the loss from discontinued operations in the first quarter of 1997) necessary for a fair presentation of the results of operations for the interim periods presented. These interim results of operations are not necessarily indicative of results for the entire year. Certain prior year amounts have been reclassified to reflect discontinued operations as described in Note 4. The condensed consolidated financial statements contained herein should be read in conjunction with the consolidated financial statements and related notes contained in the Company's 1996 Annual Report on Form 10-K ("Form 10-K").

2. SUPPLEMENTAL FINANCIAL STATEMENT DATA
(IN THOUSANDS)

	DECEMBER 29, 1996	SEPTEMBER 28, 1997
Inventories:		
Finished goods	$ 84,813	$ 179,573
Work in process	25,167	37,530
Raw materials and supplies	52,272	73,773
	$ 162,252	$ 290,876
Property, plant and equipment:		
Land	$ 2,524	$ 1,793
Buildings and improvements	95,619	86,602
Machinery and equipment	258,199	238,653
	358,342	327,048
Accumulated depreciation and amortization	(136,254)	(97,896)
	$ 220,088	$ 229,152
Trademarks and trade names:		
Gross	$ 237,054	$ 237,054
Accumulated amortization	(36,792)	(41,203)
	$ 200,262	$ 195,851

NOT A CERTIFIED COPY

015951

CP 016862
CONFIDENTIAL

NOT A CERTIFIED COPY

015952

CP 016863
CONFIDENTIAL

2. SUPPLEMENTAL FINANCIAL STATEMENT DATA—(CONTINUED)
(IN THOUSANDS)

	NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
Cash paid during the period for:		
Interest, net of $358 and $559 interest capitalized in 1996 and 1997, respectively	$8,249	$ 8,395
Income tax refunds	$ (548)	$ (44,595)

Non-Cash Transaction:

In connection with a warehouse expansion, the Company entered into a $5.8 million capital lease obligation in 1996.

3. RESTRUCTURING

During the fourth quarter of 1996, the Company initiated a restructuring and growth plan. As a result, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996 of which approximately 28% was for cash items.

During the nine months ended September 28, 1997, the restructuring accrual was reduced by $43.7 million as a result of cash and non-cash charges. The following table sets forth the details and the cumulative activity in the restructuring accrual as of September 28, 1997 (in millions):

	ACCRUAL BALANCE AT DECEMBER 29, 1996	CASH REDUCTIONS	NON-CASH REDUCTIONS	ACCRUAL BALANCE AT SEPTEMBER 28, 1997
Severance and other employee costs	$ 36.9	$ (15.9)	$ (5.5)	$ 15.5
Closure and consolidation of facilities and related exit costs	26.9	(20.6)	(1.7)	4.6
Total	$ 63.8	$ (36.5)	$ (7.2)	$ 20.1

4. DISCONTINUED OPERATIONS AND OTHER ASSETS HELD FOR SALE

In March 1997, the Company completed the sale of its furniture business (by a sale of assets) to a subsidiary of U.S. Industries, Inc. The Company initially recorded a provision for estimated losses to be incurred on the sale of the furniture business of $32.4 million, net of applicable income tax benefits, for

NOT A CERTIFIED COPY

015953

CP 016864
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407060

16div-022239

the fiscal year ended December 29, 1996. During the first quarter of 1997, upon the completion of the sale, the Company provided for additional losses on disposal of the furniture business in the amount of $13.7 million, net of applicable income tax benefits as a result of lower than anticipated sales proceeds.

In March 1997, the Company completed the sale of its time and temperature product line and in May 1997, the Company completed the sale of its Biddeford, Maine textile facility to an employee led investment group.

NOT A CERTIFIED COPY

015954

CP 016865
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407061

16div-022240

5. CREDIT FACILITIES AND LONG-TERM DEBT

In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from $588 million to $250 million. At September 28, 1997, the Company had $115 million of borrowings outstanding under the revolving credit facility. During 1997, the Company also repaid $11.9 million of other long-term borrowings related to the divested furniture operations and other assets sold.

6. EARNINGS PER SHARE

During the first quarter of 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard ("SFAS") No. 128, "Earnings Per Share", which supersedes Accounting Principles Board Opinion No. 15, "Earnings Per Share". SFAS No. 128 is effective for financial statements for both interim and annual periods after December 15, 1997. Early application is prohibited; although, footnote disclosure of proforma earnings per share ("EPS") amounts computed under SFAS No. 128 is permitted, as follows:

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
Primary EPS as reported	(.22)	.39	.88	.78
Effect of SFAS No. 128	—	.02	—	.02
Basic EPS as restated	(.22)	.41	.88	.80
Fully diluted EPS as reported	(.22)	.39	.88	.77
Effect of SFAS No. 128	—	—	—	.01
Diluted EPS as restated	(.22)	.39	.88	.78

NOT A CERTIFIED COPY

015955

CP 016866
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407062

16div-022241

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the accompanying condensed consolidated financial statements for the three and nine months ended September 29, 1996 and September 28, 1997 and the 1996 Form 10-K.

RESULTS OF OPERATIONS

The table below sets forth selected operating data of the Company for the three and nine months ended September 29, 1996 and September 28, 1997:

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of goods sold	87.6	69.3	82.7	72.2
Gross margin	12.4	30.7	17.3	27.8
Selling, general and administrative expense	21.3	11.7	15.8	11.8
Operating earnings (loss)	(8.9)%	19.0%	8.5%	15.8%

Net sales from continuing operations for the three and nine months ended September 28, 1997, were $289.8 million and $838.1 million, respectively, an increase of $57.3 million (24.7%) and an increase of $114.7 million (15.8%) over the comparable periods in the prior year. Net sales on a normalized basis, after excluding divested product lines which are not classified as discontinued operations (time and temperature products, decorative bedding and Counselor/registered trademark/ & Borg/registered trademark/ branded scales), increased 28.3% and 19.4% for the three and nine months ended September 28, 1997, respectively.

Global sales, on a normalized basis, increased during the third quarter and nine months ended September 28, 1997 in all five of the Company's product categories (Appliances, Health Care, Personal Care and Comfort, Outdoor Cooking, and Away From Home) primarily from new product introductions, improved distribution (particularly with the Company's top ten customers), international geographic expansion and improved price realization for certain products. Global sales growth on a normalized basis exceeded 30% during the third quarter of 1997 in the Appliance and Personal Care and Comfort categories and sales grew over 20% in the Outdoor Cooking category. Sales for the third quarter of 1997 in the Health at Home and Away From Home categories increased 13% and 2%, respectively. For the nine months ended September 28, 1997, sales growth in excess of 20% on a normalized basis was experienced in the Appliances (24%), Personal Care and Comfort (31%) and Away From Home (22%) product categories while sales for Outdoor Cooking and Health at Home products increased 18% and 6%, respectively. Also contributing to the Company's sales growth in 1997 were its new retail outlet stores, of which 18 were open by September 1997. International sales on a normalized basis grew over 51% during the third quarter and 31% for the nine months ended September 28, 1997, driven primarily by 58 new 220 volt product introductions and the execution of 28 new international distribution and license agreements during the past nine months. Domestic sales on a normalized basis increased 24% during the third quarter and 17% for the nine months ended September 28, 1997, primarily from new product introductions and the improved

NOT A CERTIFIED COPY

015956

CP 016867
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407063

16div-022242

distribution with the Company's top customers discussed above.

The gross margin percentage for the third quarter of 1997 increased 18.3 percentage points, to 30.7%, while the gross margin percentage for the first nine months of 1997 increased 10.5 percentage points to 27.8%. These increases reflect the results of many cost savings and margin enhancement initiatives undertaken as part of the Company's restructuring plan announced in November 1996 coupled with the incremental margin attributable to new products and higher revenues associated with the Company's growth plan. The Company's cost reduction initiatives included reducing the number of manufacturing facilities from 26 to 9 currently (with one additional manufacturing facility scheduled to be closed later in 1997).

NOT A CERTIFIED COPY

015957

CP 016868
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407064

16div-022243

In addition, the Company has taken other actions to enhance margins, including the elimination of low margin and/or unprofitable products/stock keeping units (SKU'S) and the consolidation of the Company's purchasing activities and re-negotiation of supply contracts resulting in procurement savings for raw materials and products. The third quarter 1997 gross margin was also positively impacted by improved product mix, including fewer sales of lower margin Outdoor Cooking Products compared to the first half of 1997.

The Company has essentially completed its restructuring plan and initiated a refinement program in the second quarter of 1997 targeted at aggressively improving factory productivity at all of its remaining operations, including the Neosho, Missouri Outdoor Cooking Products facility which suffered from poor productivity and operating inefficiencies during the 1997 grill season. The benefits of the refinement program began to favorably impact productivity in several factories during the third quarter of 1997. The refinement of the Neosho facility, which will be completed prior to the initiation of production for the 1998 grill season, includes a re-layout to improve material flow, increased usage of common parts in the manufacturing process and modifications to the paint system to increase capacity and throughput. These initiatives coupled with the re-negotiation of customer contracts for the 1998 grill season are expected to improve Outdoor Cooking gross margins in 1998.

Operating earnings for the quarter ended September 28, 1997 increased $75.6 million over the prior year to $54.9 million. For the nine months ended September 28, 1997, operating earnings were $132.6 million, an increase of $128.6 million over the comparable prior year period. As a percentage of sales, the operating margin of 19.0% increased 27.9 percentage points above last year's third quarter. For the nine month period of 1997, the operating margin was 16.0%, an increase of 15.5 percentage points over the comparable prior year period. The operating margin improvements for 1997 were the result of the improved gross margin discussed above and lower selling, general and administrative ("SG&A") costs in 1997 associated with the consolidation of six divisional and regional headquarters into one, reduced staffing levels, the outsourcing of certain back-office functions and a reduction in the number of warehouses. In addition, SG&A during the third quarter of 1998 included compensation costs of $7.4 million associated with restricted stock awards and other costs related to the employment of a new senior management team and bad debt expense of $3.2 million associated with the bankruptcy filings of certain of the Company's retail customers and the third quarter and nine months of 1997 included higher media advertising spending. The cost reduction initiatives and one time items in 1998 coupled with increased sales in 1997 resulted in SG&A decreasing as a percentage of sales from 21.3% and 16.8% for the three month and nine month periods ended September 28, 1998 to 11.7% and 11.9% for the comparable periods of 1997, respectively.

Interest expense and other, net decreased for the three and nine months ended September 28, 1997 by $2.9 million and $7.0 million, respectively, primarily as a result of lower borrowing levels in 1997 and higher foreign exchange losses in 1998 associated with a Venezuelan currency devaluation.

The overall effective income tax rate (related to both earnings from continuing and discontinued operations) for the nine months ended September 28, 1997 was 35.7%, a 1.3 percentage point decrease from the overall prior year effective tax rate. This decrease reflects lower foreign taxes from the utilization of foreign tax credits and loss carryforwards and lower state income taxes.

For the three months ended September 28, 1997, the Company's earnings from continuing operations were $34.6 million, an increase of $50.4 million over a loss from continuing operations of $15.8 million in 1998. For the nine months ended September 28, 1997 earnings from continuing operations increased $87.8 million to $81.4 million. Earnings per share from continuing operations for the third quarter of 1997 of $.39 per share was $.58 per share better than the loss of $.19 per share reported during the third quarter of 1998. On a year to date

NOT A CERTIFIED COPY

0159 58

basis, earnings per share from continuing operations of $.93 per share was $1.01 greater than the $.08 loss per share reported in the first nine months of 1996. The Company's share base utilized in the earnings per share calculation increased approximately 5% for both the three and nine month periods ended September 28, 1997 as a result of an increase in the number of shares of common stock and common stock equivalents outstanding due to exercises and grants of stock options and a higher market value of the Company's common stock in 1997.

NOT A CERTIFIED COPY

015959

CP 016870
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407066

16div-022245

The Company's discontinued furniture operations, which were sold in March 1997, reflect a net loss of $13.7 million in 1997 on revenues of $51.6 million. In 1996, the discontinued furniture operations experienced a net loss of $2.3 million for the third quarter and net income of $12.8 million for the nine months ended September 29, 1996, on revenues of $13.1 million and $215.3 million for the three and nine months periods, respectively. During the first quarter of 1997, upon completion of the sale of the furniture business, the Company provided for additional losses on the disposal in the amount of $13.7 million, net of applicable tax benefits, as a result of lower than anticipated sales proceeds. Including the operating results of the discontinued furniture business and the additional loss provision on the disposal recorded in the first quarter of 1997, the Company's net earnings for the nine months ended September 28, 1997 were $67.7 million, an increase of $61.2 million from the net earnings of $6.5 million in the first nine months of 1996.

LIQUIDITY AND CAPITAL RESOURCES

At September 28, 1997, the Company had cash and cash equivalents of $22.8 million and total debt of $200.5 million. Cash used in operating activities for the nine months ended September 28, 1997 was $60.6 million compared to $18.8 million for the comparable period of 1996. This decrease is primarily attributable to an increase in earnings before non-cash charges in 1997, offset by higher accounts receivable due to increased sales in 1997, increased 1997 inventory levels necessary to support anticipated fourth quarter sales growth and cash expenditures in 1997 under the Company's restructuring plan. In addition, cash used in operating activities in 1997 was favorably impacted by higher income tax refunds due to the carryback of 1996 operating losses to obtain refunds of prior year tax payments.

Capital spending totaled $40.1 million for the first nine months of 1997 and was primarily for new products, cost reduction and capacity expansion initiatives. Cash provided by investing activities reflects $90.9 million in proceeds from sales of businesses, assets, and product categories determined to be non-core to the Company's ongoing operations in conjunction with the 1996 restructuring plan. Cash provided by financing activities totaled $21.3 million in 1997 and reflects $10.0 million of borrowings under the Company's revolving credit facility, $11.9 million of debt repayments related to the divested furniture operations and other assets sold, and $25.5 million in cash proceeds from the exercise of stock options in 1997, substantially all by former employees of the Company. In 1996, cash provided by financing activities of $70.1 million was primarily from increased borrowings to support working capital and capital spending requirements. In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from $500 million to $250 million.

The Company believes that its cash flow from operations, existing cash and cash equivalent balances as well as its revolving credit facility will be sufficient to finance its requirements to support working capital needs, capital expenditures, restructuring expenditures and debt service in the foreseeable future.

CAUTIONARY STATEMENTS

Certain of the information contained herein may contain "forward-looking" information, as such term is defined by the Private Securities Litigation Reform Act of 1995 and in releases made by the Securities and Exchange Commission ("SEC"). Actual results could differ materially from those projected in the forward-looking statements as a result of various factors, including those set forth in Part I, Item 1 under the heading "Cautionary Statements" in the 1996 Form 10-K, which cautionary statements are incorporated herein by reference.

NOT A CERTIFIED COPY

015960

CP 016871
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407067

16div-022246

PART II. OTHER INFORMATION

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits

11 Calculation of Earnings Per Share of Common Stock.

27 Financial Data Schedule, submitted electronically to the Securities and Exchange Commission for information only and not filed.

99.1 Press Release dated October 13, 1997, regarding 1997 new product introductions.

99.2 Press Release dated October 22, 1997, regarding third quarter 1997 earnings.

99.3 Press Release dated October 23, 1997, announcing retention of Morgan Stanley.

(b) Reports on Form 8-K

The Company has not filed any reports on Form 8-K during the third quarter of 1997.

NOT A CERTIFIED COPY

016961

CP 016872
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407068

16div-022247

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SUNBEAM CORPORATION

Date: October 24, 1997

By: /s/ RUSSELL A. KERSH

Russell A. Kersh
Executive Vice President, Finance and Administration (Principal Financial Officer and duly authorized to sign on behalf of the Registrant)

NOT A CERTIFIED COPY

015962

CP 016873
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407069

16div-022248

EXHIBIT INDEX

EXHIBIT	DESCRIPTION
11	Calculation of Earnings Per Share of Common Stock.
27	Financial Data Schedule
99.1	Press Release dated October 13. 1997, regarding 1997 new product introductions.
99.2	Press Release dated October 22, 1997, regarding third quarter 1997 third quater earnings.
99.3	Press Release dated October 23, 1997, announcing retention of Morgan Stanley.

NOT A CERTIFIED COPY

015963

CP 016874
CONFIDENTIAL

EXHIBIT 11

SUNBEAM CORPORATION AND SUBSIDIARIES

CALCULATIONS OF EARNINGS
PER SHARE OF COMMON STOCK
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997
	(UNAUDITED)		(UNAUDITED)	
Net earnings (loss) applicable to common shareholders	$ (18,888)	$34,572	$ 6,478	$67,654
Weighted average number of common shares outstanding	83,578	85,283	82,543	84,762
Add: Common shares issuable for exercise of options, net of shares assumed to have been acquired with proceeds therefrom	—	2,958	1,258	3,122
Number of shares applicable to earnings per share calculation	83,578	88,233	83,793	87,884
Earnings (loss) per share of common stock	$ (.22)	$ .39	$ .08	$ .77

NOT A CERTIFIED COPY

0159564

CP 016875
CONFIDENTIAL

<ARTICLE> 5
<LEGEND>
THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE SUNBEAM CORPORATION FINANCIAL STATEMENTS FOR THE PERIOD ENDED SEPTEMBER 28, 1997 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.
</LEGEND>

<PERIOD-TYPE>	9-MOS
<FISCAL-YEAR-END>	DEC-28-1997
<PERIOD-END>	DEC-30-1996
<CASH>	22,811
<SECURITIES>	0
<RECEIVABLES>	309,095
<ALLOWANCES>	0
<INVENTORY>	290,878
<CURRENT-ASSETS>	692,552
<PP&E>	327,048
<DEPRECIATION>	97,898
<TOTAL-ASSETS>	1,145,071
<CURRENT-LIABILITIES>	245,997
<BONDS>	199,855
<PREFERRED-MANDATORY>	0
<PREFERRED>	0
<COMMON>	899
<OTHER-SE>	496,817
<TOTAL-LIABILITY-AND-EQUITY>	1,145,071
<SALES>	830,092
<TOTAL-REVENUES>	830,092
<CGS>	599,021
<TOTAL-COSTS>	599,021
<OTHER-EXPENSES>	0
<LOSS-PROVISION>	0
<INTEREST-EXPENSE>	6,098
<INCOME-PRETAX>	126,543
<INCOME-TAX>	45,176
<INCOME-CONTINUING>	81,367
<DISCONTINUED>	(13,713)
<EXTRAORDINARY>	0
<CHANGES>	0
<NET-INCOME>	67,654
<EPS-PRIMARY>	.78
<EPS-DILUTED>	.77

NOT A CERTIFIED COPY

015965

CP 016876
CONFIDENTIAL

EXHIBIT 99.1

[SUNBEAM LOGO]

FOR IMMEDIATE RELASE:

SUNBEAM WILL EXCEED NEW PRODUCTS
GOAL FOR 1997

DELRAY BEACH, FLORIDA OCTOBER 13, 1997 - Sunbeam Corporation (NYSE: SOC) announced today that it will exceed its original goal for new product introductions in 1997. "We originally set out to introduce 42 new international products and 30 new U.S. products as a means to rapidly expand our international breadth of product lines and to provide product differentiation within the U.S. product lines", said Al Dunlap, Sunbeam's Chairman and Chief Executive Officer. Mr. Dunlap continued, "As a result of our accelerated product development cycle and our ability to rapidly commercialize U.S. products for international use, we now expect to introduce 54 new international products and 35 new U.S. products in 1997."

Mr. Dunlap said, "Our new product development process focuses on fixing chronic consumer complaints and incorporates a tremendous amount of design concurrency to aid in accelerating products to market. Additionally, all of our U.S. new products are now designed for the global market and for ease of manufacturing." The Company expects new products will contribute over $100 million in additional revenue in 1997.

Last week in New York City, the Company unveiled two new highly differentiated products, the Allergysmart/tm/ air purification and the Freshsource/tm/ water purification products. Mr. Dunlap said, "These two new products represent the very best of the "new" Sunbeam. We were able to bring these products to market in eight months, from ideation to production, and they both solve the most significant consumer complaints associated with current products in the marketplace." Additionally, Mr. Dunlap discussed an arepa maker which was introduced in Venezuela during the third quarter, "Arepa's are a food staple in many parts of South and Central America, and we redesigned and modified our current sandwich maker to dramatically reduce the amount of time needed to prepare an arepa. Due to its success, we plan on introducing the arepa maker in North America in 1998 to take advantage of ethnic food trends throughout the United States."

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam/r/ and Oster/r/ brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

****

Contact:

Media:
Nicole Reilly
(212)885-0353

Investors:
Rich Goudis
(561)243-2100

NOT A CERTIFIED COPY

015956

CP 016877
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407073

16div-022252

EXHIBIT 99.2

[SUNBEAM LOGO]

FOR IMMEDIATE RELEASE:

SUNBEAM ANNOUNCES SALES UP NEARLY 30%,
EPS OF $0.39 EXCEEDS CONSENSUS EXPECTATIONS

DELRAY BEACH, FLORIDA OCTOBER 22, 1997 - Sunbeam Corporation (NYSE:SOC) announced today its third quarter 1997 results. Sales for the quarter were $289.0 million, reflecting a 28.3% increase over the prior year period on a comparable basis (excluding discontinued businesses and divested product lines). Earnings per share from continuing operations of $0.39 were $0.58 ahead of the loss of $0.19 reported in the third quarter of 1996. On a year to date basis, revenue of $830.1 million was 19.4% above 1996, on a comparable basis, and earnings per share from continuing operations of $0.93 was $1.01 above the loss of $0.08 reported in 1996.

In making the announcement, Al Dunlap, Sunbeam's Chairman and Chief Executive Officer, said, "I am very pleased that the rate of revenue growth has continued to accelerate, concurrent with a dramatic expansion of operating margins. Our commitment to reposition the Sunbeam(R) and Oster(R) brands, introduce new innovative products, expand our international presence, improve customer service levels and dramatically refine all operations has enabled the Company to significantly expand operating margins to 19% during the third quarter." Mr. Dunlap added, "In the past 15 months we have been able to turn around a great old company that had lost its way, reposition it for tremendous profitable growth and build a great management team that is focused on increasing shareholder value."

Mr. Dunlap attributed the impressive third quarter sales results to strong increases in all five of the Company's global business categories. International sales were up 50.8% for the quarter, driven primarily by 50 new product introductions and the signing of 20 new international distribution and license agreements during the past twelve months. Domestic sales growth of 23.7% was attributable to improved distribution and new product introductions. "Sales to our top ten domestic customers were up over 30% in the third quarter, reflecting our strategic initiative to significantly improve shipping performance and fill out of stocks at retail," Mr. Dunlap said.

"The Company successfully began shipping 10 new U.S. products in the third quarter led by our highly differentiated softserve ice-cream maker, the redesigned Oster(R) blender and our entry into the deep fryer product line. We now believe we will introduce 35 new U.S. products and 54 new international products in 1997, well surpassing our original goal," said Mr. Dunlap. Included in the 35 new U.S. products are the Freshsource(TM) water filter and Allergysmart(TM) air cleaner products which the Company unveiled on October 8, 1997 and which will begin shipping during

NOT A CERTIFIED COPY

015967

CP 016878
CONFIDENTIAL

the fourth quarter.

On a reported basis, Sunbeam's sales for the third quarter and first nine months of 1997 were up 24.7% and 16.0%, respectively because of accounting rules which require that certain divested businesses (time & temperature products, decorative bedding and Counselor(R) & Borg(R) branded scales) not be classified as discontinued operations.

Mr. Dunlap added, "This is the first time in the Company's history that it has consistently achieved double digit sales growth, each quarter, without an acquisition."

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam(R) and Oster(R) brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

CAUTIONARY STATEMENT: Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are all "forward looking statements" as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements regarding its expectations, goals or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Form 10-K, filed with the Securities and Exchange Commission on March 31, 1997.

****

Contact: Media:
Nicole Reilly
(212)885-0353

Investors:
Rich Goudis
Vice President Investor Relations
(561)243-2142

NOT A CERTIFIED COPY

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in millions, except EPS)

	NINE MONTHS ENDED		THREE MONTHS ENDED	
	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996
Net sales	$838.18	$715.48	$289.88	$231.88
Cost of goods sold	599.88	591.38	288.28	283.88
Gross profit	231.18	124.18	88.88	28.88
% of sales	8.28%	8.17%	8.31%	8.12%
Selling, general & administrative expense	98.48	128.18	33.98	49.58
Operating earnings	132.78	4.88	54.98	(28.78)
% of sales	8.16%	8.81%	8.19%	(8.89)%
Interest expense and other, net	6.18	13.18	1.58	4.48
Earnings (loss) from continuing operations before income taxes	126.68	(9.18)	53.48	(25.18)
Income taxes (benefit)	45.28	(2.78)	18.98	(9.38)
Earnings (loss) from continuing operations	81.48	(6.48)	34.58	(15.88)
Earnings (loss) from discontinued operations, net of tax	(13.78)	12.98	-	(2.38)
Net earnings (loss)	$ 67.78	$ 6.58	$ 34.58	$ (18.18)
Earnings (loss) per share from continuing operations	$ 8.93	$ (8.88)	$ 8.39	$ (8.19)
Earnings (loss) per share	$ 8.77	$ 8.88	$ 8.39	$ (8.22)
Average number of common shares outstanding	87.88	83.79	88.23	83.58

NOT A CERTIFIED COPY

015969

CP 016880
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407076

16div-022255

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(in millions)

	SEPTEMBER 28, 1997	DECEMBER 29, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$22.8	$11.5
Receivables, net	309.1	213.4
Inventories	290.9	182.3
Net assets of discontinued operations and other assets held for sale	2.9	102.8
Deferred income taxes	58.8	93.7
Prepaid expenses and other current assets	10.0	40.4
Total current assets	692.5	624.1
Property, plant and equipment, net	229.2	220.1
Trademarks and trade names, net	195.9	200.3
Other assets	27.5	28.2
	$1,145.1	$1,072.7
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$0.7	$0.9
Accounts payable	132.7	107.3
Restructuring accrual	20.1	63.8
Other current liabilities	92.5	99.5
Total current liabilities	246.0	271.5
Long-term debt	199.9	201.1
Deferred income taxes	55.9	52.3
Non-operating and other long-term liabilities	145.5	152.5
Shareholders' equity	497.8	395.3
	$1,145.1	$1,072.7

NOT A CERTIFIED COPY

015970

CP 016881
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407077

16div-022256

SUNBEAM CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW
(in millions)

	NINE MONTHS ENDED	
	SEPTEMBER 28, 1997	SEPTEMBER 29, 1996
OPERATING ACTIVITIES		
Net earnings	$67.7	$6.5
Depreciation and amortization	29.8	34.8
Deferred income taxes	33.7	2.2
Loss on sale of discontinued operations, net of taxes	13.7	-
Changes in working capital and other, including restructuring spending	(205.7)	(62.1)
	(60.8)	(18.8)
INVESTING ACTIVITIES		
Capital expenditures	(40.1)	(55.0)
Proceeds from sale of divested operations and other assets	90.9	-
	50.8	(55.0)
FINANCING ACTIVITIES		
Net borrowings under revolving credit facility	10.0	55.0
Issuance of long-term debt	-	11.5
Payment of debt obligations	(11.5)	(1.4)
Proceeds from exercise of stock option	25.5	3.3
Sale of treasury stock	-	4.4
Other	(2.7)	(2.7)
	21.3	70.1
Net increase (decrease) in cash and cash equivalents	11.3	(3.7)
Cash and cash equivalents, beginning of period	11.5	28.3
Cash and cash equivalents, end of period	$22.8	$24.6

NOT A CERTIFIED COPY

015971

CP 016882
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407078

16div-022257

EXHIBIT 99.3

FOR IMMEDIATE RELEASE

SUNBEAM CORPORATION RETAINS MORGAN STANLEY
TO EXPLORE ALTERNATIVES

Delray Beach, FL, (October 23, 1997) -- Sunbeam Corporation (NYSE:SOC) announced today that it has retained the firm of Morgan Stanley & Co. Incorporated to serve as its financial advisor in exploring strategic alternatives for the Company.

Albert J. Dunlap, Sunbeam's Chairman, stated: "I have always been a strong proponent of maximizing shareholder value at Sunbeam, as well as at the other companies which I have headed. Yesterday we released third quarter earnings which reflect solid achievement in the fifteen months since our new management team began the task of turning around the Company. Having successfully completed the turnaround of Sunbeam and being well on our way to dramatically growing the business, we feel that the timing now is right to look towards achieving the next level of value for our shareholders. As I have said on numerous occasions, we will pursue whatever course serves best to enhance shareholder value, including acquisitions, mergers or possibly a sale of the Company. We have been approached by a number of investment bankers with suggestions as to various courses of action which we should consider pursuing. Our Board felt that it was time to really focus our efforts by formally engaging a single investment banking advisor. We have worked over the years with all the major investment bankers, and we felt that for this particular assignment, Morgan Stanley would do the best job for Sunbeam and its shareholders. We are also pleased to be working with the Llama Company and its President, Alice Walton, as an advisor to Morgan Stanley, in exploring all opportunities available to Sunbeam."

Mr. Dunlap added: "We are doing what any similarly situated company should do, which is to explore all alternatives for the benefit of our shareholders. I wish to stress that we are actively pursuing all alternatives and are open to any and all types of transactions. There is, of course, no assurance as to the particular type of transaction that could occur or that any

NOT A CERTIFIED COPY

transaction will occur at all."

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name consumer products. The Company's Sunbeam/registered trademark/ and Oster/registered trademark/ brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

# # #

Contact: Media:

Nicole Reilly
(212) 885 0353
Pager 1-888-899-9629

Investor Relations:

Rich Goudis
Vice President, Investor Relations
SUNBEAM CORPORATION
(561) 243-2100

NOT A CERTIFIED COPY

015973

CP 016884
CONFIDENTIAL

NOT A CERTIFIED COPY

015974

CP 016885
CONFIDENTIAL

Sunbeam

2.

Form 10-K

NOT A CERTIFIED COPY

015975

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 29, 1996

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

FOR THE TRANSITION PERIOD FROM _____ TO _____.

COMMISSION FILE NUMBER 1-52

[SUNBEAM LOGO]

SUNBEAM CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	25-1638266
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)
1615 S. CONGRESS AVENUE, SUITE 200 DELRAY BEACH, FLORIDA (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	33445 (ZIP CODE)

(561) 243-2100
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

TITLE OF EACH CLASS:	NAME OF EACH EXCHANGE ON WHICH REGISTERED:
COMMON STOCK, $0.01 PAR VALUE	NEW YORK STOCK EXCHANGE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT: NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

The aggregate market value of all classes of the registrant's voting stock held by non-affiliates as of March 21, 1997 was approximately $2,151,896,208.

On March 21, 1997, there were 84,497,304 shares of the registrant's Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement for the 1997 Annual Meeting of Shareholders are incorporated by reference in Part III hereof.

NOT A CERTIFIED COPY

015976

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016887
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407083

16div-022262

SUNBEAM CORPORATION AND SUBSIDIARIES
ANNUAL REPORT
ON FORM 10-K

TABLE OF CONTENTS

		PAGE
PART I		
ITEM 1.	BUSINESS	
	General.	1
	Restructuring and Growth Plan	1
	Products	2
	Competitive Strengths	3
	Customers	4
	Patents and Trademarks	5
	Employees	5
	Seasonality	5
	Raw Materials	5
	Environmental Matters	5
ITEM 2.	PROPERTIES	9
ITEM 3.	LEGAL PROCEEDINGS	9
ITEM 4.	SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS	10
	EXECUTIVE OFFICERS OF THE REGISTRANT	10
PART II		
ITEM 5.	MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS	12
ITEM 6.	SELECTED FINANCIAL DATA	13
ITEM 7.	MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS	14
ITEM 8.	FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA	18
ITEM 9.	CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE	18
PART III		
ITEM 10.	DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT	19
ITEM 11.	EXECUTIVE COMPENSATION	19
ITEM 12.	SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT	19
ITEM 13.	CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS	19
PART IV		
ITEM 14.	EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K	19
SIGNATURES		22

NOT A CERTIFIED COPY

015977

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016888
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407084

16div-022263

PART I

ITEM 1. BUSINESS

GENERAL

Sunbeam Corporation (collectively with its subsidiaries, the "Company" or "Sunbeam") is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer goods through mass market and other distributors in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions (the "Away From Home" category of the business).

The Company's product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers) (2) Health Care (vaporizers, humidifiers, air cleaners, massagers, hot and cold packs, blood pressure monitors and scales) (3) Personal Care and Comfort (shower massagers, hair clipper and trimmers, electric warming blankets and throws) (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories) and (5) Away From Home (clippers and related products for the professional and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care and comfort products, professional clippers and related products and grills) in all countries other than the United States.

Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories.

The Company was organized in 1989 (as Sunbeam-Oster Company, Inc.) and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. (the "Predecessor"), an entity operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code since 1988. In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

RESTRUCTURING AND GROWTH PLAN

In the Fall of 1996, under newly elected Chairman, Albert J. Dunlap, the Company announced a major restructuring and growth plan. The restructuring portion of the plan has been substantially completed, resulting in a significant reduction in employees, facilities and costs, all of which is anticipated to generate approximately $225 million in annual savings for the Company. As a part of the restructuring plan, the Company also announced that it would divest certain lines of business. The Company has completed the sales of its furniture, time and temperature and decorative bedding businesses and anticipates the completion of the divestiture of its textile mill in Biddeford, Maine and its Counselor/Registered trademark/ and Borg/Registered trademark/ scale business in the first half of 1997.

The Company's restructuring plan includes the closure of 18 factories and 6 office facilities, resulting in the consolidation of all corporate offices into a single headquarters office located in Delray Beach, Florida and an administrative facility at its Hattiesburg manufacturing and distribution facility. The number of manufacturing facilities will be reduced from twenty-six to eight (four in the US and four international). See "Properties" below.

The Company has also consolidated all purchasing functions, substantially reduced the number of stock keeping units maintained by the Company and outsourced certain back-office administrative activities.

NOT A CERTIFIED COPY

015978

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016889
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407085

16div-022264

The Company has also developed a comprehensive three year growth plan for its core businesses. Sunbeam's goal is for revenues to double, reaching $2 billion, by 1999, with operating margins improving to 20% of sales. This revenue growth is anticipated to be derived, in large part, by the development of new innovative products and the globalization of the Company. Domestically, the goal is to introduce at least 30 new products each year. On the international side, the Company has a goal to triple international sales to $600 million by 1999. The Company expects to sign fifteen new international distributor and licensing agreements by April 1997 and many more throughout the remainder of the year. The Company has already launched 42 new 220 volt products for international markets. The Company has also identified new channels of distribution as sales growth opportunities, including commercial organizations and "direct to the consumer" channels such as catalogs, the Internet and Sunbeam/Registered trademark/ factory outlet stores.

Both international expansion and new product introductions will be supported by a significant investment in a major new advertising program that is geared to rebuilding SUNBEAM/Registered trademark/ and OSTER/Registered trademark/ brand awareness in the marketplace. The Company is well on its way to accomplishing its brand repositioning strategy, in large part due to a $12.0 million advertising campaign in the fourth quarter of 1996 which has already increased Sunbeam's brand relevance with consumers by 25%, as tabulated by a leading independent market research organization.

PRODUCTS

In connection with the Company's 1996 restructuring, the Company redefined its core product categories as specified below:

APPLIANCES

Small kitchen appliances including Mixmaster/Registered trademark/ stand mixers, hand mixers, Osterizer/Registered trademark/ blenders, food processors, toasters, can openers, coffee makers, breadmakers, waffle makers, and culinary accessories, are sold primarily under the Sunbeam/Registered trademark/, Oster/Registered trademark/ and Oster Designer/Registered trademark/ brand names. The Company holds the number one or two market positions in blenders, mixers, and breadmakers. This product category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 29% of the Company's domestic net sales in 1996.

HEALTH CARE

The Company markets its home health products under the trademark Health at Home/Registered trademark/. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. Sales of health care products accounted for approximately 11% of the Company's domestic net sales in 1996.

PERSONAL CARE AND COMFORT

The Company's personal care products include shower massagers, consumer hair clippers and trimmers and a broad line of electric blankets, comforters and Cuddle-Up/Registered trademark/ heated throws. The Company holds the number one market position in electric blankets and heated throws. Sales of personal care and comfort products accounted for approximately 21% of the Company's domestic net sales in 1996.

OUTDOOR COOKING

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share position in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the Sunbeam/Registered trademark/ and Grillmaster/Registered trademark/ brand names. Sales of outdoor cooking products accounted for approximately 29% of the Company's domestic net sales in 1996.

AWAY FROM HOME

The Company markets a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the marketing of its appliances and personal care and comfort products to institutional and commercial channels. Sales of away from home products described above accounted for approximately 5% of the Company's domestic net sales in 1996.

NOT A CERTIFIED COPY

015979

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016890
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407086

16div-022265

INTERNATIONAL

The Company markets a variety of products (primarily small kitchen appliances, personal care and comfort products, professional clippers and related products and grills) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has a manufacturing facility in Venezuela, and sales offices in the United Kingdom and Hong Kong. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 19% of the Company's total net sales in 1996.

To date, the Company's activities outside the United States have been primarily focused in Mexico, South and Central America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The Oster- brand has the leading market share in small appliances in a number of Latin American countries.The Company intends to focus on expanding its business in South and Central America by introducing broader product offerings, achieving increased market penetration and expanding geographically into South American countries where the Company has historically not been represented by introducing new 220 volt products. The Company has introduced 42 such products in the last year and continues to develop such products at an increasing rate. The Company also intends to expand its product offerings in the Far East and Europe. The Company may choose to approach these markets directly through its own operations, by acquisition, or through international joint ventures or other types of strategic alliances. The Company has recently entered into new distribution or licensing arrangements providing for the distribution of Sunbeam and/or Oster goods into additional countries in South America, Africa and the Far East.

COMPETITIVE STRENGTHS

Worldwide, Sunbeam competes in markets with a number of well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of several competitive strengths, which include the following.

DISTRIBUTION NETWORK. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio and electronic data interchange ("EDI") and just in time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores, television shopping channels, hardware stores, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange outlets.

NOT A CERTIFIED COPY

015980

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016891
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407087

16div-022266

STRONG POSITION IN CONSOLIDATING RETAIL ENVIRONMENT. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers that demand financially strong, efficient suppliers which offer a broad range of innovative, quality products with the ability to make timely shipments in large volumes and provide strong promotional and merchandising support. The Company has benefited from this trend and believes it has the opportunity to further expand distribution with a number of retailers and increase its penetration of existing accounts. In 1996, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Target Stores, Kmart, Sears, Roebuck & Co., Service Merchandise, Home Depot, Lowes, Costco, Sam's Club, Walgreens, Eckerd and Bed Bath & Beyond.

BRAND NAME RECOGNITION. The Sunbeam/Registered trademark/ and Oster/Registered trademark/ brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary names such as Mixmaster/Registered trademark/ and Osterizer/Registered trademark/ draw customers into retail stores specifically to purchase products bearing these brand names. During the past year, the Company has spent over $75 million for advertising and sales promotion to support brand recognition.

MARKET LEADERSHIP. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to retailers who are consolidating their suppliers.

CUSTOMERS

The rapid growth of large mass merchandisers and warehouse clubs and changes in consumer shopping patterns have contributed to a significant consolidation of the U.S. retail industry and the formation of dominant multi-category retailers. Sunbeam has positioned itself to respond to the challenges of this changing retail environment by pursuing strategic relationships with large, high-volume merchandisers. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, hardware stores, catalogues, television shopping channels, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and the military post exchange services. The Company's largest customer, Wal-Mart Stores, Inc., accounted for approximately 13% of sales in 1996.

Retailers are pursuing a number of strategies in their competition to deliver the highest-quality, lowest-cost brand name products. A growing trend among retailers is to purchase on a "just-in-time" basis in order to reduce inventory costs and increase returns on investment. This trend has required increased working capital investments for manufacturers and requires manufacturers to more closely

NOT A CERTIFIED COPY

015981

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016892
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407088

16div-022267

monitor consumer buying patterns as retailers shorten their lead times for orders. Currently, most Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. This enables the Company to provide rapid, reliable delivery in order to maximize customers' inventory turns. The Company intends to support its retail partners' "just-in-time" inventory strategies through investments in, among other things, improved forecasting systems, more responsive manufacturing and distribution capabilities and electronic communications. Currently, Sunbeam has approximately 75% of its U.S. customer sales on electronic data interchange (EDI) systems.

The amount of backlog orders at any point in time is not a significant factor in the Company's business.

PATENTS AND TRADEMARKS

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam/Registered trademark/ and Oster/Registered trademark/ trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, South and Central America and Europe, these registered trademarks, along with Osterizer/Registered trademark/, Mixmaster/Registered trademark/, Toast Logic/ Trademark/, Steammaster/Registered trademark/, Oskar/Registered trademark/, Grillmaster/Registered trademark/ and "Blanket with a Brain/ Trademark/" brands are important to the success of the Company's products. Other important trademarks within Sunbeam include Oster Designer /Registered trademark/ line and Cuddle-Up/Registered trademark/.

Sunbeam holds several patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on the Company's business taken as a whole.

EMPLOYEES

The Company currently has approximately 6,000 employees; as of December 29, 1996, the Company had approximately 9,000 employees. As a result of the Company's restructuring plan, employment was reduced from approximately 13,000 people to approximately 6,000 people. Other than at two facilities (both of which are expected to be sold or closed by fall of 1997), none of the Company's full-time workforce has domestic union representation. Sunbeam has had no labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

SEASONALITY

On a consolidated basis, Sunbeam sales do not exhibit substantial seasonality. However, sales of outdoor cooking products are strongest in the first half of the year, while sales of appliances and personal care and comfort products are strongest in the second half of the year. In addition, sales of a number of the Company's products, including warming blankets, vaporizers, humidifiers and grills may be impacted by weather conditions.

RAW MATERIALS

The raw materials used in the manufacture of the Company's products are available from numerous suppliers in quantities sufficient to meet normal requirements. The Company's primary raw materials include aluminum, steel, resin, copper, and corrugated cardboard for cartons.

ENVIRONMENTAL MATTERS

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sale of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all

NOT A CERTIFIED COPY

015982

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016893
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407089

16div-022268

Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1996, the Company had been identified by the United States Environmental Protection Agency ("EPA") as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant .

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at seven (7) sites, four (4) of which are among the Environmental Sites referred to above, and three (3) of which have not been designated as Superfund sites under federal or state law.

In addition, the Company is engaged in environmental remediation activities at 2 sites in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing a plan for remediation of those sites. Remediation of one of the sites, the Harvard Avenue Site, is nearly complete. Active remediation is underway at the other site-the Bert Avenue Site and is anticipated to be completed in 1997.

The Company's costs for environmental remediation activities have not had a material adverse effect on the Company's results of operations, financial condition or competitive position. The Company has established reserves to cover the anticipated probable costs of remediation, based upon periodic reviews of all sites for which the Company has, or may have, remediation responsibility. As of December 29, 1996, the amount of such reserves was approximately five percent of the Company's total liabilities as set forth in the consolidated financial statements. Such environmental reserves do not consider offsets for potential insurance recoveries from certain of the Company's liability insurance carriers which the Company continues to pursue.

Due to uncertainty over the remedial measures to be adopted at some sites, the possibility of changes in the Environmental Laws, and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 31, 1996. However, the Company believes, based on existing information, that the costs of completing the environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

In December 1996, the Company reached a negotiated settlement with the EPA with regard to a notice of violation concerning the construction and operation of two paint lines at the Company's

NOT CERTIFIED COPY

015983

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016894
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407090

16div-022269

Neosho, MO facility prior to obtaining the necessary permits for construction and operation. The original penalty proposed by the EPA was in the amount of approximately $2 million, but the Company and the EPA have negotiated a settlement of the EPA's lawsuit against the Company for a lesser amount. The settlement amount of $329,825 recognizes the benefits of a "supplemental environmental project" which consisted of the Company's installation of nominal emission powder coating lines to replace solvent paint lines. The Company is awaiting proposed settlement documentation from the EPA and anticipates formal resolution of this matter by the second quarter of 1997.

In December 1996, the Company paid a negotiated penalty to the EPA in the amount of $119,138 to settle violations arising from the Company's failure to file certain mandatory Form R reports for 1990 through 1994. The originally proposed penalties had been in the amount of $946,596, and the Company was able to negotiate a reduced penalty amount due to the fact that the EPA agreed to apply its self-policing/self-disclosure policy. The Company voluntarily notified the EPA of its deficiencies in filing the Form R reports promptly upon learning of the reporting deficiencies.

The Company is not a party to any other administrative or judicial proceeding to which a governmental authority is a party and which involves potential monetary sanctions, exclusive of interest and costs, of $100,000 or more.

CAUTIONARY STATEMENTS

Certain of the information contained herein (including Management's Discussion and Analysis of Financial Condition and Results of Operations) contains "forward-looking" information, as that term is defined in the Private Securities Litigation Reform Act of 1995, as the same may be amended (herein the "Act") and in releases made by the Securities and Exchange Commission ("SEC") from time to time.

These Cautionary Statements are being made pursuant to the Act, with the intention of obtaining the benefits of the "Safe Harbor" provisions of the Act. The Company cautions investors that any forward-looking statements made by the Company are not guarantees of future performance and that actual results may differ materially from those in the forward-looking statements as a result of various factors.

/bullet/ The Company's performance should be expected to be affected by the strength of the retail economy, primarily in the United States, but also in Canada and Latin America. Weakness in consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results.

/bullet/ The Company operates in a highly competitive environment with numerous competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated results. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ The Company manufactures most of its products, although it also sources some products from third parties. The Company's ability to realize operating profits is dependent upon its ability to timely manufacture, source and deliver products which may be sold for a profit. Labor difficulties, delays in delivery or pricing of raw materials and/or sourced products, scheduling and transportation difficulties, management dislocations and delays in development and manufacture of new products can negatively affect operating profits.

/bullet/ As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits and/or by higher than anticipated rates of warranty returns or other returns of goods.

7

NOT CERTIFIED COPY

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

0159841

CP 016895
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407091

16div-022270

/bullet/ The Company expects to substantially increase the amount of business conducted by it outside North America. If the Company fails to achieve anticipated market penetration in areas of the world into which the Company currently expects to expand its sales, such event is likely to have an adverse effect on the Company's future financial performance, which effect could be material. Expansion of the Company's sales in foreign markets depends upon many factors, including the states of economies in foreign countries, the strength of consumer demand in those countries for products which the Company sells (or expects to sell in those markets), the strength of competition from other global consumer products companies and other factors which may negatively affect the Company's anticipated performance in those markets.

/bullet/ The Company currently manufactures some products and has sales in such economies as those of Mexico and Venezuela, both of which economies have been unstable or hyperinflationary in recent years. The economies of other foreign countries important to the Company's expansion plans, including other countries in Latin America and developing countries throughout the world, could suffer similar instability in the future. Such factors as currency devaluations, new tariffs, changes in monetary policies, inflation, governmental instability and similar matters could negatively affect the Company's anticipated performance in foreign markets. The occurrence of any of these circumstances could have an adverse effect on future financial performance, which effect could be material.

/bullet/ A significant portion of the cost of goods manufactured by the Company in North America is raw material cost. The Company has implemented changes in its purchasing function which the Company anticipates will enable it to purchase raw materials more efficiently and economically than it has in the past. The success of the Company's purchasing initiatives may be affected by many factors beyond the Company's control, such as commodity pricing generally and higher prices for the specific raw materials required by the Company. In addition, the Company's initiatives to reduce the cost of raw materials simply may not achieve savings in amounts which the Company anticipates. A material failure by the Company to achieve the anticipated reductions in raw material costs would likely have an adverse effect on anticipated future financial performance, which effect could be material.

/bullet/ The Company anticipates realizing price increases for certain of its products. The Company operates in a highly competitive industry, and its ability to realize price increases may be limited due to competitive pressures. If there is a material failure to realize anticipated price increases, margins likely will be lower than anticipated by the Company, and this will likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ The Company anticipates that it will be able to more rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its more aggressive schedules for future product development. Failure to develop and manufacture new products in the amounts and with the quality anticipated or a failure to reduce the cycle time for new product introductions would likely have an adverse effect on future financial performance, which effect could be material.

/bullet/ Sales of certain of the Company's products can be negatively impacted by abnormal weather conditions during different seasons and quarters of the year.

/bullet/ The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary computer systems. Failure of any of these third party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

/bullet/ The Company's profitability may be negatively impacted by underabsorption of manufacturing costs resulting from underutilization of manufacturing capacity if the Company's sales growth is less than anticipated.

NOT A CERTIFIED COPY

0159985

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016896
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407092

16div-022271

/bullet/ The Company's ability to realize the cost savings anticipated from the restructuring plan will be affected by, among other items, the Company's ability to complete facility rationalization initiatives in a timely manner without negatively impacting production during such transition.

ITEM 2. PROPERTIES

In conjunction with the Company's formal restructuring plan and divestiture activities, Sunbeam has reduced the total square footage of active manufacturing, administrative, distribution and warehouse floorspace to 3.6 million square feet from 7.2 million square feet at the same time last year.

Active United States manufacturing, warehouse, and office locations (upon completion of the restructuring plan) are set forth below. In addition to the facilities set forth below, the Company leases warehouse space on a short-term basis when needed and leases space in various malls for its Sunbeam outlet stores. Except as otherwise noted, each location is used for manufacturing, warehousing and related administrative office space.

UNITED STATES	SQUARE FEET	TITLE
Brownsville, Texas	48,000	Leased(1)
Delray Beach, Florida	51,073	Leased(2)
Del Rio, Texas	10,560	Leased(1)
Hattiesburg, Mississippi	725,000	Owned
Hattiesburg, Mississippi	300,000	Leased(1)
McMinnville, Tennessee	169,400	Leased
Neosho, Missouri	853,714	Owned/Leased
Waynesboro, Mississippi	887,200	Leased
Total	3,044,947	

Active properties outside the United States are as follows:

INTERNATIONAL	SQUARE FEET	TITLE
Acuna, Mexico	110,000	Owned
Barquisimeto, Venezuela	75,686	Owned
Caracas, Venezuela	9,867	Leased(3)
Kowloon, Hong Kong	10,076	Leased(3)
Matamoros, Mexico	91,542	Owned
Milton Kaynes, England	5,928	Leased(3)
Tlalnepantla, Mexico	297,927	Owned
Total	601,026	

---

(1) Warehouse only
(2) Corporate headquarters
(3) Administration
(4) Warehouse and administration

The Company believes that its existing facilities will adequately provide sufficient suitable capacity to implement its operating plans.

ITEM 3. LEGAL PROCEEDINGS

The Company and its subsidiaries are involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

NOT A CERTIFIED COPY

015986

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016897
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407093

16div-022272

See "Environmental Matters" under Item 1 for a description of certain legal proceedings related to environmental matters, which provision is incorporated herein by reference.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

During the quarter ended December 29, 1996, there were no matters submitted to a vote of the Company's security holders.

EXECUTIVE OFFICERS OF THE REGISTRANT

The executive officers of the Company are as follows:

NAME	AGE	TITLE
Albert J. Dunlap	59	Chairman, Chief Executive Officer and Director
Russell A. Kersh	43	Executive Vice President, Finance and Administration
David C. Fannin	51	Executive Vice President, General Counsel and Secretary
Donald R. Uzzi	44	Executive Vice President, Consumer Products Worldwide
Jack Dailey	57	Vice President, Corporate Purchasing and Logistics
Edwin T. Derecho	39	Vice President, Treasurer
Robert J. Gluck	39	Vice President, Controller
Lee Griffith	56	Vice President, Sales
Janet G. Kelley	43	Vice President, Associate General Counsel
Gary Mask	48	Vice President, Human Resources
Kevin McBride	42	Vice President, Marketing and Product Development
Ronald L. Newcomb	53	Vice President, Manufacturing
R. Dixon Thayer	45	Vice President, International
Robert P. Totte	43	Vice President, Taxes

ALBERT J. DUNLAP has been Chairman and Chief Executive Officer of Sunbeam Corporation since July 18, 1996. From April 1994 to December 1995 he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation). Mr. Dunlap is a Director of General Oriental Investments Limited.

DAVID C. FANNIN has been Executive Vice President, General Counsel and Secretary since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

RUSSELL A. KERSH has been Executive Vice President, Finance and Administration of Sunbeam Corporation since July 22, 1996. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as the Chief Operating Officer of Addidas America from January 1993 to May 1994. He is a Director of Basic Petroleum International, Ltd. (a Guatemalan petroleum company).

DONALD R. UZZI has been Executive Vice President, Consumer Products Worldwide since January, 1997. From November 1996 to January 1997, he held the position of Senior Vice President, Global Marketing. Mr. Uzzi joined the Company in September 1996 as Vice President, Marketing and Product Development. From January 1993 to July 1996, Mr. Uzzi served as President of the Beverage Division of Quaker Oats. During 1990 to 1992, Mr. Uzzi was employed by Pepsi Cola as Senior Vice President for North America (1992) and Vice President and General Manager of the Mid-Atlantic Division (1990-1991).

JACK DAILEY has been Vice President, Corporate Purchasing and Logistics since July 1996. He was Vice President, Purchasing at Scott Paper Company from April 1994 to December 1995. Prior to that time, he was Vice President and General Manager of North American Operation for Inmac (a business computer products direct response company) from August 1988 to February 1994.

NOT A CERTIFIED COPY

015987

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016898
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407094

16div-022273

EDWIN T. DERECHO joined the Company as Vice President and Treasurer in October 1994. Prior to joining the Company, Mr. Derecho held the position of Director of Capital Markets at PepsiCo, Inc. from March 1992. From 1986 to 1992 he was employed at Citibank, N.A., most recently as a Vice President.

ROBERT J. GLUCK has been a Vice President of the Company since December 1992 and was named Vice President, Controller in February 1995. Mr. Gluck was employed by the public accounting firm of Ernst & Young from 1981 until 1992.

LEE GRIFFITH has been Vice President, Sales since September 1995. He was previously with Scott Paper Company where he served as President and Chief Executive Officer of Scott Paper Limited of Canada since January 1995. Prior to that date, Mr. Griffith was employed by Scott Paper Company as Vice President, Consumer Sales for North America (from 1994 to 1995) and Vice President, U.S. Consumer Business (from 1989 to 1994).

JANET G. KELLEY has been Vice President since February 1996 and Associate General Counsel since July 1995. She was Group Counsel from March 1994. From 1984 to 1994, Ms. Kelley was a partner in the law firm of Wyatt, Tarrant & Combs.

GARY MASK joined the Company in March 1997 as Vice President, Human Resources. He was employed as Vice President, Human Resources of Cavenham Forest Industries (the successor to Crown Zellerbach Corporation) from 1984 through February 1997.

KEVIN MCBRIDE has been Vice President, Marketing and Product Development since January 1997. From January 1994 to June 1996, he was Vice President, Marketing of Circle K Stores, Inc. From September 1991 to December 1993, he was a Managing Director of Cambridge Group East, a management consulting company.

RONALD L. NEWCOMB has been Vice President, Manufacturing since September 1996. Prior to his employment with Sunbeam, Mr. Newcomb was Vice President, Operations, Worldwide Household Products Group for Black & Decker from August 1994 to August 1996. From August 1989 to August 1994, he was Vice President of Operations and Manufacturing for Textron Lycoming.

R. DIXON THAYER has been Vice President, International since September 1996. Prior to joining Sunbeam, Mr. Thayer was Vice President, Global Research, Development Engineering and Global Growth for Kimberly Clark from December 1995. Prior to that date, Mr. Thayer held various positions with Scott Paper Company, including Vice President, New Product Development (from April to December 1995), Vice President and General Manager of Europe ASH from January 1991 to April 1995.

ROBERT P. TOTTE has been Vice President, Taxes since May 1993. He was National Tax Director for Domino's Pizza, Inc. from 1985 until 1993.

NOT A CERTIFIED COPY

015988

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016899
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407095

16div-022274

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Common Stock is listed and traded on the New York Stock Exchange under the symbol "SOC". The Company has paid quarterly cash dividends of $.01 per share since December 15, 1992. The Company presently intends to continue to pay cash dividends at a quarterly rate of $.01 per share; however, future payments of cash dividends will be at the discretion of the Company's Board of Directors and dependent upon the Company's results of operations, financial condition and other relevant factors.

The following table sets forth the high and low sale prices for the Common Stock for the calendar quarters indicated as reported by the New York Stock Exchange Composite Tape:

	MARKET PRICE	
	HIGH	LOW
1996:		
Fourth Quarter	$29 1/2	$22 3/4
Third Quarter	$24 3/4	$12 1/4
Second Quarter	$17 1/8	$13 1/2
First Quarter	$19 3/4	$15 1/8
1995:		
Fourth Quarter	$16 3/8	$13 1/2
Third Quarter	$17 1/8	$14
Second Quarter	$23 5/8	$12 1/2
First Quarter	$25 1/2	$22 3/8

On March 21, 1997 there were approximately 1,509 record holders of the Company's Common Stock.

During the fourth quarter of 1996, the Company sold 2,000 shares of Common Stock (from the Treasury account) to Director Faith Whittlesey for $27.63 per share (the market value at the date of sale on December 5, 1996) in connection with her appointment to the Board of Directors. This transaction was made pursuant to the exemption from registration provided by Section 4(2) of the Securities Act of 1933.

NOT A CERTIFIED COPY

015989

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016900
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407096

16div-022275

ITEM 6. SELECTED FINANCIAL DATA

The following is a summary of certain financial information relating to the Company. The summary should be read in conjunction with the Consolidated Financial Statements of the Company included in this report. All amounts in the table are expressed in millions, except per share data.

	FISCAL YEARS ENDED				
	JANUARY 3, 1993(1)	JANUARY 2, 1994	JANUARY 1, 1995	DECEMBER 31, 1995	DECEMBER 29, 1996(2)
STATEMENT OF OPERATIONS DATA:					
Net sales	$ 839.8	$927.5	$1,044.3	$1,016.9	$ 984.2
Cost of goods sold	615.5	674.2	764.4	809.1	900.6
Selling, general and administrative expense	121.5	119.3	129.9	137.5	215.1
Restructuring, impairment and other costs	-	-	-	-	154.8
Operating earnings (loss)	$ 102.8	$134.0	$ 151.0	$ 70.3	$(287.3)
Earnings (loss) from continuing operations before cumulative effect of accounting change	$ 53.5	$ 76.9	$ 85.3	$ 37.6	$(196.7)
Earnings from discontinued operations, net of taxes(3)	12.1	11.9	21.7	12.9	0.8
Estimated loss on sale of discontinued operations, net of taxes(3)	-	-	-	-	132.4)
Earnings (loss) before cumulative effect of accounting change	$ 65.6	$ 88.8	$ 107.0	$ 50.5	$(328.3)
Net earnings(loss)	$ 48.3	$ 88.8	$ 107.0	$ 50.5	$(328.3)
FULLY DILUTED EARNINGS PER SHARE					
Average common and equivalent shares outstanding	84.3	83.2	82.6	82.8	82.9
Earnings (loss) per share from continuing operations before cumulative effect of accounting change	$ 0.63	$ 0.87	$ 1.03	$ 0.45	$ (2.37)
Earnings (loss) per share before cumulative effect of accounting change	$ 0.77	$ 1.01	$ 1.30	$ 0.61	$ (2.75)
Earnings (loss) per share of Common Stock	$ 0.57	$ 1.01	$ 1.30	$ 0.61	$ (2.75)
Cash dividends declared per share	$ 0.01	$ 0.04	$ 0.04	$ 0.04	$ 0.04
BALANCE SHEET DATA (AT PERIOD END):					
Working capital	$ 400.2	$261.4	$ 294.8	$ 411.7	$ 352.6
Total assets	1,041.8	928.8	1,008.9	1,158.7	1,072.7
Long-term debt	133.5	133.4	124.0	161.6	231.1
Shareholder's equity	477.2	370.0	454.7	601.0	395.3

(1) Net earnings for the fiscal year ended January 3, 1993 included a $17.3 million after-tax charge attributable to the adoption of Statement of Financial Accounting Standards No. 106, EMPLOYERS ACCOUNTING FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS.

(2) Includes special charges of $337.6 million before taxes. See Notes 2 and 3 to Notes to Consolidated Financial Statements.

(3) Represents earnings from the Company's furniture business, net of income taxes and the estimated loss on disposal. See Note 3 to Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

015990

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016901
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407097

16div-022276

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

YEAR ENDED DECEMBER 29, 1996 COMPARED TO THE YEAR ENDED DECEMBER 31, 1995

On November 12, 1996 the Company announced a major restructuring and growth plan designed to massively reduce its cost structure and grow the business in order to restore higher levels of profitability for the Company. The cost reduction portion of the restructuring and growth plan is expected to result in anticipated annual savings estimated to be $225.0 million with 75% realization of these savings in 1997 and the remaining 25% in 1998. These cost savings will result primarily from the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities (including the reduction in the number of production facilities from 26 to 8 and warehouses utilized from 61 to 19), the elimination of over 6,000 positions (including 3,300 from the divestiture of non-core businesses described below and the elimination of approximately 2,800 other positions), the centralization of the Company's procurement function and the reduction of the Company's product offerings and stock keeping units ("SKU's"). The restructuring and growth plan also included a redefinition of the Company's core product categories and the elimination of those businesses and product lines that do not fit the core categories. Sunbeam's new core product categories are Appliances, Health Care, Personal Care and Comfort, Outdoor Cooking and Away From Home. Product categories and businesses which were determined to be non-core and have already been divested include the Company's furniture business and time and the temperature product line, both of which were sold in March 1997, and its decorative bedding product line, sold in December 1996. The remaining non-core product categories, which are planned for divestiture in the first half of 1997, are Counselor/Registered trademark/ and Borg/Registered trademark/ scales and the Company's textile mill in Biddeford, Maine.

The Company's operating results for 1996 include the effects of a pre-tax special charge of $337.6 million recorded in conjunction with the implementation of the restructuring and growth plan. Approximately 20% of the charge is for cash items of which $63.8 million is accrued at December 29, 1996, primarily for severance costs and lease and other facility exit costs that will be substantially expended during 1997. The special charge to earnings is included in the following categories on the consolidated statement of operations (in millions):

	PRE-TAX DOLLAR AMOUNT	AFTER-TAX PER SHARE AMOUNT
Restructuring, impairment and other costs	$154.9	$ (1.21)
Cost of sales	92.3	(0.72)
Selling, general and administrative	42.5	(0.33)
Estimated loss from discontinued operations	47.9	(0.39)
Total	$337.6	$ (2.65)

As further described in Note 3, the sale of the Company's furniture business assets (primarily inventory, property, plant and equipment) was completed on March 17, 1997. The Company received $62.1 million in cash at closing and expects to receive approximately $10.0 million by June 30, 1997. The Company retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date. The final purchase price for the furniture business is subject to post-closing adjustment based on the terms of the Asset Purchase Agreement. The Company will finalize its accounting for the loss on disposal of the furniture business in the first quarter of 1997 and could record an additional after-tax loss from discontinued operations. See discussion of Restructuring, Impairment and Other Costs in Note 2 and Discontinued Operations and Assets Held For Sale in Note 3 to the Company's consolidated financial statements for further information regarding the individual components of the special charge.

Net sales from continuing operations of $984.2 million for 1996 represents a decrease of $32.7 million, or 3.2%, from 1995. The Company experienced a loss from continuing operations of $196.7 million or $2.37 per share for 1996 versus earnings from continuing operations of $37.6 million or $.45

NOT A CERTIFIED COPY

015991

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

12-DEC-1997

CP 016902
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407098

16div-022277

per share in 1995 primarily as a result of the restructuring activities discussed above. The net loss for 1996 was $228.3 million, or $2.75 per share, compared to net earnings of $50.5 million, or $0.61 per share, for 1995. Excluding the impact of special charge items for 1996, earnings from continuing operations before income taxes decreased from $60.6 million in 1995 to a loss of $12.9 million in 1996.

Domestic sales represented approximately 80% of total sales of the Company in 1996 and decreased $28.5 million or 3.4% from 1995. This sales decline was driven by lower sales of outdoor cooking products, which declined 7.3% and lower sales of bedding products which declined 9.0% from 1995, primarily as result of lower decorative bedding sales (divested in December 1996). Domestic sales of appliance products were flat with sales increases from new products such as vegetable steamers and toaster ovens being offset by reduced pricing on breadmakers. Sales of other product categories such as health and personal care products and time and temperature products (divested in March 1997) were either flat or declined slightly from 1995 levels.

International sales decreased $4.2 million or 2.2% from 1995 primarily as a result of lower sales in Latin America due to political and/or economic instability in several countries such as Ecuador, Peru, Columbia and Venezuela (which suffered a bolivar devaluation in April 1996), a sales decline of 11.2% in Canada as a result of the bankruptcy filing of the Company's then largest Canadian customer offset by a 55.0% increase in sales in Mexico as a result of a more stable economic environment in 1996.

The Company's gross margin percentage, excluding the impact of special charges, was 17.9% of sales in 1996, down from 20.4% in 1995, primarily from the underabsorption of higher manufacturing costs and excess manufacturing capacity that has now been realigned for 1997 and beyond by the Company's restructuring and growth plan cost reduction initiatives.

Selling, general and administrative ("SG&A") expenses, excluding the impact of special charges described above, were 17.6% of sales in 1996 primarily as a result of an inflated cost structure that has now been realigned for 1997 and beyond. In addition, a $12.0 million fourth quarter 1997 media advertising campaign and one-time expenditures for market research, new packaging, and other growth plan initiatives resulted in higher than normal SG&A spending in 1996. Also included in 1995 SG&A costs were $7.7 million of compensation expense resulting from restricted stock awards made in connection with the employment of a new senior management team.

Interest expense for 1996 increased from $9.4 million in 1995 to $13.6 million as a result of increased indebtedness of the Company for working capital requirements and non-recurring capitalized interest in 1995 related to the construction of the Hattiesburg manufacturing and distribution center.

The effective income tax rate for 1996 decreased 3 percentage points from 1995 to 35.0% as a result of certain foreign and state operating losses for which no tax benefits were recorded and the non-deductibility of compensation expense related to restricted stock awards.

The Company's discontinued furniture operations had revenues of $227.5 million in 1996, up 22.6% from $185.6 million in 1995. This revenue growth was the result of the acquisition of the Samsonite/Registered trademark/ furniture business in November 1995. Excluding the impact of this acquisition, furniture business sales declined 2.1%. Earnings from the discontinued furniture operations, net of taxes, declined from $12.9 million in 1995 to $.9 million in 1996 primarily as a result of lower gross margins from reduced pricing, underabsorption of higher manufacturing costs and higher raw material costs. In addition, SG&A costs increased due to the inclusion of the Samsonite- furniture business, higher distribution and warehousing costs, particularly with resin furniture products, and higher bad debt expenses.

YEAR ENDED DECEMBER 31, 1995 COMPARED TO THE YEAR ENDED JANUARY 1, 1995

Net sales from continuing operations of $1,016.9 million for 1995 decreased $27.4 million, or 2.6%, from 1994. Earnings from continuing operations were $37.6 million or $.45 per share in 1995 compared to $85.3 million in 1994 or $1.03 per share.

NOT A CERTIFIED COPY

0159992

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016903
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407099

16div-022278

Domestic sales represented approximately 82% of total Company sales for 1995 and decreased $23.4 million or 2.7% below 1994 levels due to an 8.6% decline in sales of outdoor cooking products offset by a 5.4% increase in appliance sales from new product introductions in late 1994 and 1995 and an 11.5% increase in sales of warming blankets and heated throws. Sales of other product categories, including health and personal care products, and time and temperature products (divested in March 1997), declined 6.1% in 1995.

International sales decreased by $4.0 million or 2.1% below 1994 levels primarily as a result of a 53.8% decrease in sales in Mexico as a result of the peso devaluation in late 1994 and the 1995 recession offset by increased sales from expanded distribution in South and Central America, higher sales in Venezuela resulting from consumer anticipation of the devaluation of the bolivar and higher gas grill sales in Europe.

For 1995, the gross margin percentage decreased from 26.8% to 20.4%. The decline in margin was due primarily to (1) manufacturing inefficiencies arising from lower than planned production rates, (2) increased promotional expenses, (3) certain inventory writedowns, primarily related to outdoor products unsold from the 1995 season, (4) increased appliance warranty expenses, (5) increases in raw material prices not fully recovered by selling price increases and (6) a higher level of close-out sales of household products in connection with the transition to the Hattiesburg facility and in anticipation of new product launches planned for 1996.

Operating earnings for 1995 were $70.2 million, a decrease of $80.8 million from 1994. As a percentage of sales, operating earnings decreased 7.6 percentage points to 6.9% which is primarily attributable to the gross margin percentage decline. SG&A increased from 12.3% to 13.5% of net sales in 1995. SG&A in dollar terms increased $8.7 million in 1995 to $137.5 million primarily from (1) increased provisions for bad debts and customer deductions associated with the bankruptcy filings of certain of the Company's retail customers, (2) non-recurring costs associated with the start-up of the Hattiesburg distribution center (which caused the Company to incur additional costs for temporary distribution labor, overtime costs and costs of outside distribution services as well as delaying closure of a former warehouse), (3) costs associated with International expansion activities in the Far East and Europe, (4) increased depreciation expense related to investments in information systems and the Hattiesburg distribution center and (5) increased investments in product design engineering resources.

Interest expense for the year ended December 31, 1995 increased $2.5 million, or 35.3%, over 1994 due primarily to increased indebtedness of the Company in support of working capital and capital spending requirements.

The effective income tax rate decreased from 41.1% to 38.0%, or 3.1 percentage points, from 1994. The reduced effective tax rate was a result of (1) increased earnings of certain foreign operations and dividend payments from the Company's Venezuelan subsidiary, which allowed for the utilization of net operating loss carryforwards and foreign tax credits for which no tax benefits were recorded, and (2) state income tax benefits associated with the Hattiesburg facility.

The Company's discontinued furniture operations had revenues of $186.5 million in 1995, up 20.9% from $154.2 million in 1994. This revenue growth was the result of the acquisition of the Rubbermaid- resin furniture business in September 1994. Excluding the impact of this acquisition, furniture business sales increased 3.9% primarily from additional sales of wrought iron furniture. Earnings from the discontinued furniture operations, net of taxes, declined from $21.7 million in 1994 to $12.9 million in 1995 primarily as a result of lower gross margins from higher raw material costs, particularly resin. In addition, SG&A costs increased due to the inclusion of the resin furniture business and from higher distribution and warehousing costs associated with the resin facility. In addition, the bankruptcy filing of one large customer adversely impacted the discontinued furniture business operating results in 1995.

FOREIGN OPERATIONS

During 1996 almost 90% of the Company's business was conducted in U.S. dollars (including both domestic sales and U.S. dollar denominated export sales primarily to certain Latin American markets).

NOT CERTIFIED COPY

015993

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016904
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407100

16div-022279

The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela, Canada and Europe. Venezuela is considered a hyperinflationary economy for accounting purposes; therefore, translation adjustments related to Venezuelan net monetary assets are included as a component of net earnings. Such translation adjustments were not material to 1995 and 1996 operating results. As a result of continued inflation, Mexico will be considered a hyperinflationary economy for accounting purposes beginning in 1997.

LIQUIDITY AND CAPITAL RESOURCES

As of December 29, 1996, the Company had cash and cash equivalents of $11.5 million and total debt of $202.0 million. Cash provided by operating activities during 1996 was $14.2 million compared to $81.5 million in 1995. This decrease is primarily attributable to the reduction in earnings (loss) before non-cash charges (depreciation, restructuring and other non-cash special charges, loss on discontinued operations and deferred taxes).

Capital spending, inclusive of a $5.0 million warehouse expansion financed with a capital lease, totaled $75.3 million in 1996 (including $14.5 million related to the discontinued furniture operations) and was primarily attributable to new product development, cost reduction initiatives and warehouse expansions. Capital spending in 1995 reflected approximately $53.4 million associated with the Hattiesburg facility, $27.4 million related to new product development and $10.8 million attributable to the discontinued furniture business. The remaining 1995 spending was primarily attributable to cost reduction projects, productivity initiatives and environmental compliance including $14.4 million for a powder coat paint system for outdoor cooking products. The Company anticipates 1997 capital spending to be approximately 75% of 1996 levels and primarily related to new product introductions and certain facility rationalization initiatives.

Cash used in investing activities for 1995 and 1994 also includes the purchase of certain furniture businesses, both of which were included in the divestiture of the Company's furniture business completed in March 1997. Cash used in investing activities in 1994 is net of $23.5 million received from the surrender of certain life insurance policies on former employees of the Company.

Cash provided by financing activities in 1996 includes $30.0 million in net borrowings under the Company's $500.0 million revolving credit facility, $11.5 million in new issuances of long-term debt and $4.6 million in proceeds from the sale of treasury shares to certain executives of the Company. Cash used in financing activities in 1995 reflects $13.1 million used for the purchase of treasury stock in connection with a stock repurchase program the Company had authorized in 1995 and which it discontinued in late 1996.

The Company is a party to various environmental matters, substantially all related to previously divested operations. In connection with the Company's restructuring plan a comprehensive review of environmental exposures was undertaken and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. This review and change in strategy resulted in additional environmental reserves being recorded in 1996 as more fully described in Note 12 to the consolidated financial statements. In management's opinion, the ultimate resolution of these environmental matters will not have a material adverse effect upon the Company's financial condition.

On a limited basis, the Company selectively uses derivatives (interest rate swaps and foreign exchange option and forward contracts) to manage interest rate and foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1996 and 1995. See Note 6 to the Company's consolidated financial statements.

The Company believes its cash flow from operations, existing cash and cash equivalent balances as well as its revolving credit facility will be sufficient to finance its requirements to support working capital needs, remaining cash expenditures required to implement its restructuring and growth plan.

NOT A CERTIFIED COPY

015994

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016905
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407101

16div-022280

capital expenditures and debt service in the foreseeable future.

NEW ACCOUNTING STANDARDS

In December 1995, Statement of Financial Accounting Standard ("SFAS") No. 123, ACCOUNTING FOR STOCK-BASED COMPENSATION, was issued. SFAS No. 123 allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under APB No. 25, ACCOUNTING FOR STOCK ISSUED TO EMPLOYEES, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options and employee stock purchase plans using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 7 to the consolidated financial statements. The adoption of SFAS No. 123 will not impact the Company's results of operations, financial position or cash flows.

CAUTIONARY STATEMENTS

The Company's Cautionary Statements set forth in Part I, Item 1 of this report, under the heading "Cautionary Statements," are incorporated herein by reference.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The response to this item appears in Item 14(a) of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information regarding the Company's directors is incorporated by reference to the information set forth under the caption "Election of Directors" in the Company's Proxy Statement for the 1997 Annual Meeting of Shareholders (the "Proxy Statement"), which Proxy Statement will be filed with the Securities and Exchange Commission (the "SEC") not later than 120 days after the end of the Company's fiscal year pursuant to Regulation 14A. Information regarding executive officers of the Registrant is included under a separate caption in Part I hereof. Information regarding compliance with Section 16(a) of the Exchange Act is incorporated by references to the information included under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the Company's Proxy Statement.

ITEM 11. EXECUTIVE COMPENSATION

Information regarding this item is incorporated by reference to the information included under the captions "Executive Compensation", "Compensation Committee Interlocks and Insider Participation" and "Directors' Compensation" in the Company's Proxy Statement, which will be filed with the SEC not later than 120 days after the end of the Company's fiscal year pursuant to Regulation 14A.

NOT A CERTIFIED COPY

0159995

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016906
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407102

16div-022281

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information regarding this item is incorporated by reference to the information included under the captions "Security Ownership of Certain Shareholders" and "Security Ownership by Management" in the Company's Proxy Statement, which will be filed with the SEC not later than 120 days after the end of the Company's fiscal year pursuant to Regulation 14A.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information regarding this item is incorporated by reference to the information included under the caption "Certain Relationships and Related Transactions" in the Company's Proxy Statement, which will be filed with the SEC not later than 120 days after the end of the Company's fiscal year pursuant to Regulation 14A.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) (1) The consolidated financial statements, related notes thereto and the report of independent certified public accountants required by Item 8 are listed on page F-1 herein.

(2) The listing of financial statement schedules appears on page F-1 herein.

(3)(a) Exhibits required by Item 601 are set forth below, including the management contracts or compensatory plans or arrangements required pursuant to Item 601 which are designated as Exhibits 10a to 10i and 10s to 10cc.

EXHIBIT NO.	DESCRIPTION
2a.	Asset Purchase Agreement dated February 10, 1997, among Sunbeam Products, Inc., Sunbeam Furniture Company, OP II, Inc., Jacuzzi Outdoor Products, Inc., Sunbeam Corporation and U.S. Industries, Inc.
2b.	Amendment to Asset Purchase Agreement dated as of March 17, 1997, among Sunbeam Products, Inc., Sunbeam Furniture Company, OP II, Inc., Sunlite Casual Furniture, Inc., Sunbeam Corporation and U.S. Industries, Inc.
3a.	Amended and Restated Certificate of Incorporation of Sunbeam.(10)
3b.	By-laws of Sunbeam, as amended(11)
10a.	Employment Agreement dated as of July 18, 1996, by and between Sunbeam and Albert J.Dunlap.(10)
10b.	Employment Agreement dated as of July 22, 1996, by and between Sunbeam and Russell A. Kersh.(11)
10c.	Employment Agreement dated as of July 29, 1996, by and between Sunbeam and David C. Fannin.(11)
10d.	Employment Agreement dated as of January 1, 1997, by and between Sunbeam and Donald Uzzi.
10e.	Sunbeam Executive Benefit Replacement Plan.(7)
10f.	Amended and Restated Sunbeam Equity Team Plan.
10g.	Performance Based Compensation Plan.
10h.	Sunbeam Deferred Compensation Plan for Outside Directors dated as of December 15, 1993.(2)

NOT A CERTIFIED COPY

015996

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016907
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407103

16div-022282

EXHIBIT NO.	DESCRIPTION
10i.	Employment Agreement dated as of June 24, 1996, by and between the Company and Charles J. Thayer.(10)
10j.	Tax Sharing Agreement dated as of October 31, 1990 by and among Sunbeam, SAIL, SOHO, Montey and the subsidiaries of Sunbeam listed therein.(1)
10k.	Guarantee Agreement, dated as of June 1, 1994, between Sunbeam and Continental Bank, N.A., as Trustee.(4)
10l.	Trust Indenture, dated as of June 1, 1994, between Mississippi Business Finance Corporation ("MBFC"), and Continental Bank, N.A., as Trustee.(4)
10m.	Loan Agreement, dated as of June 1, 1994, between MBFC and Sunbeam.(4)
10n.	$75 million Sunbeam promissory note, dated as of June 21,1994, payable to MBFC.(4)
10o.	Leasehold Deed of Trust and Security Agreement, dated as of June 1, 1994, among Sunbeam, Jim B. Tohill, as Trustee, and MBFC.(4)
10p.	Credit Agreement dated as of September 16, 1996, among the Company, The Chase Manhattan Bank and the Lenders named therein.(11)
10q.	First Amendment dated as of November 21, 1996 to the Credit Agreement dated as of September 16, 1996, among the Company, The Chase Manhattan Bank and the Lenders named therein.
10r.	Second Amendment dated as of January 31, 1997 to the Credit Agreement dated as of September 16, 1996, among the Company, The Chase Manhattan Bank and the Lenders named therein.
10s.	Employment Agreement dated as of August 1, 1993, by and between Sunbeam and Roger W. Schipke.(3)
10t.	First Amendment to Employment Agreement between the Company and Roger W. Schipke dated as of June 1, 1994.(5)
10u.	Equity Award Agreement dated as of August 1, 1993, by and between Sunbeam and Roger W. Schipke.(3)
10v.	Amendment to Equity Award Agreement and Stock Pledge Agreement dated September 1, 1994, by and between the Company and Roger W. Schipke.(5)
10w.	Employment Agreement made and effective as of January 1, 1994, by and between the Company and James J. Clegg.(6)
10x.	Employment Agreement made and effective as of January 1, 1994, by and between the Company and Paul M. O'Hara.(7)
10y.	Agreement between the Company and Roger W. Schipke dated as of December 12, 1995.(9)
10z.	Agreement and Release between Roger W. Schipke and the Company dated May 22, 1996.(10)
10aa.	Agreement and Release between James J. Clegg and the Company dated July 23, 1996(10).
10bb.	Agreement and Release between Paul M. O'Hara and the Company dated August 7, 1996.(11)
10cc.	Agreement, Release, Covenant Not to Sue and Confidentiality Agreement between James D. Wilson and the Company dated March 15, 1997.
11.	Calculations of Earnings Per Share of Common Stock.
21.	Subsidiaries of the Registrant.
23.	Consent of Arthur Andersen LLP.
27.	Financial Data Schedule, submitted electronically to the Securities and Exchange Commission for information only and not filed.

---

(1) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1990.

(2) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended July 4, 1993.

NOT A CERTIFIED COPY

015997

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016908
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407104

16div-022283

(3) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended October 3, 1993.

(4) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended July 3, 1994.

(5) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended October 2, 1994.

(6) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended April 3, 1994.

(7) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended January 1, 1995.

(8) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended July 2, 1995.

(9) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 21, 1995.

(10) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1996.

(11) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 29, 1996.

(b) Reports on Form 8-K.
The registrant filed a report on Form 8-K on November 12, 1996.

(c) Exhibits
The exhibits required by Item 601 are filed herewith.

(d) Financial Statement Schedules
The Financial Statement Schedules required by Regulation S-K are filed herewith.

NOT A CERTIFIED COPY

015998

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016909
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407105

16div-022284

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SUNBEAM CORPORATION

BY: /s/ RUSSELL A. KERSH

RUSSELL A. KERSH
Executive Vice President,
Finance and Administration
(Principal Financial Officer)

Dated: March 31, 1997

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

NAME AND SIGNATURES	TITLE	DATE
/s/ ALBERT J. DUNLAP Albert J. Dunlap	Chairman, Chief Executive Officer and Director (Principal Executive Officer)	March 31, 1997
/s/ CHARLES M. ELSON Charles M. Elson	Director	March 31, 1997
/s/ RUSSELL A. KERSH Russell A. Kersh	Executive Vice President, Finance and Administration and Director	March 31, 1997
/s/ HOWARD G. KRISTOL Howard G. Kristol	Director	March 31, 1997
/s/ PETER A. LANGERMAN Peter A. Langerman	Director	March 31, 1997
/s/ CHARLES J. THAYER Charles J. Thayer	Director	March 31, 1997
/s/ FAITH WHITTLESEY Faith Whittlesey	Director	March 31, 1997
/s/ ROBERT J. GLUCK Robert J. Gluck	Vice President, Controller (Principal Accounting Officer)	March 31, 1997

NOT A CERTIFIED COPY

015999

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016910
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407106

16div-022285

SUNBEAM CORPORATION AND SUBSIDIARIES
INDEX TO FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULE

	PAGE
FINANCIAL STATEMENTS:	
Report of Independent Certified Public Accountants	F-2
Consolidated Statements of Operations for the Fiscal Years Ended January 1, 1995, December 31, 1995 and December 29, 1996	F-3
Consolidated Balance Sheets as of December 31, 1995 and December 29, 1996	F-4
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended January 1, 1995, December 31, 1995 and December 29, 1996	F-5
Consolidated Statements of Cash Flows for the Fiscal Years Ended January 1, 1995, December 31, 1995 and December 29, 1996	F-6
Notes to Consolidated Financial Statements	F-7
FINANCIAL STATEMENT SCHEDULE:*	
II. Valuation and Qualifying Accounts	F-27

---

* All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable, and therefore not included herein.

NOT A CERTIFIED COPY

016000

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

12-DEC-1997

CP 016911
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407107

16div-022286

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheets of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 31, 1995 and December 29, 1996 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 29, 1996. These consolidated financial statements and the schedule referred to below are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and schedule based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996, and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The schedule listed in the accompanying index to the financial statements and financial statement schedule is presented for purposes of complying with the Securities and Exchange Commission's rules and is not a required part of the basic financial statements. This schedule has been subjected to the auditing procedures applied in our audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
January 29, 1997, except with respect to the matters
discussed in Note 1, as to which the date is March 17, 1997.

NOT A CERTIFIED COPY

100910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016912
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407108

CONT
#970

16div-022287

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	FISCAL YEARS ENDED		
	JANUARY 1, 1995	DECEMBER 31, 1995	DECEMBER 29, 1996
Net sales	$1,044,247	$1,015,883	$ 984,216
Cost of goods sold	764,355	809,130	900,573
Selling, general and administrative expense	128,936	137,508	216,129
Restructuring, impairment and other costs	-	-	154,969
Operating earnings (loss)	151,056	70,245	(287,335)
Interest expense	6,974	9,437	13,588
Other (income) expense, net	(712)	173	1,638
Earnings (loss) from continuing operations before income taxes	144,794	60,635	(302,561)
Income taxes (benefit):			
Current	33,227	(2,105)	(28,062)
Deferred	26,283	25,146	(77,828)
	59,510	23,041	(105,890)
Earnings (loss) from continuing operations	85,284	37,594	(196,671)
Earnings from discontinued operations, net of taxes	21,727	12,917	839
Estimated loss on sale of discontinued operations, net of taxes	-	-	(32,430)
Net earnings (loss)	$ 107,011	$ 50,511	$(228,262)
Earnings (loss) per share of common stock from continuing operations	$ 1.03	$ 0.45	$ (2.37)
Net earnings (loss) per share of common stock	$ 1.30	$ 0.61	$ (2.75)
Weighted average common shares outstanding	82,553	82,819	82,925

See Notes to Consolidated Financial Statements.

F-3

NOT A CERTIFIED COPY

200910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016913
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407109

16div-022288

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

	DECEMBER 31, 1995	DECEMBER 29, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$ 28,273	$ 11,526
Receivables, net	215,195	213,438
Inventories	209,106	162,252
Net assets of discontinued operations and other assets held for sale	101,632	102,847
Deferred income taxes	26,333	93,589
Prepaid expenses and other current assets	19,543	40,411
Total current assets	601,082	624,163
Property, plant and equipment, net	287,080	220,088
Trademarks and trade names, net	214,006	200,262
Other assets	56,516	28,196
	$1,158,684	$1,072,709
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$ 1,166	$ 921
Accounts payable	94,191	107,319
Restructuring accrual	13,770	63,834
Other current liabilities	80,204	99,509
Total current liabilities	189,331	271,583
Long-term debt	161,133	201,115
Other long-term liabilities	50,089	54,376
Non-operating liabilities	80,167	88,075
Deferred income taxes	76,932	52,308
Commitments and contingencies (Notes 12 and 13)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	-	-
Common stock (issued 87,802,667 and 88,441,479 shares)	878	884
Paid-in capital	441,735	447,948
Retained earnings	266,638	35,118
Other	(24,880)	(25,310)
	694,482	458,640
Treasury stock, at cost (5,905,600 and 4,479,814 shares)	(81,449)	(63,388)
Total shareholders' equity	601,033	395,252
	$1,158,684	$1,072,709

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

016003

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016914
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407110

16div-022289

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	COMMON STOCK	PAID-IN CAPITAL	WARRANTS	RETAINED EARNINGS	OTHER (NOTE 4)	TREASURY STOCK
Balance at January 1, 1994	$876	$440,012	$ 2,368	$ 182,148	$ (14,043)	$ (174,070)
Net earnings	-	-	-	107,011	-	-
Common dividends ($.04 per share)	-	-	-	(3,169)	-	-
Exercise of stock options and warrants	56	21,864	(2,368)	-	-	-
Issuance of restricted stock	-	-	-	-	(108)	-
Amortization of unearned compensation	-	-	-	-	1,269	-
Minimum pension liability	-	-	-	-	(561)	-
Translation adjustments	-	-	-	-	(6,675)	-
Balance at January 1, 1995	932	461,876	-	285,990	(20,118)	(174,070)
Net earnings	-	-	-	50,511	-	-
Common dividends ($.04 per share)	-	-	-	(3,268)	-	-
Exercise of stock options	20	17,013	-	-	-	-
Amortization of unearned compensation	-	-	-	-	582	-
Retirement of treasury shares	(74)	(37,103)	-	(56,535)	-	103,712
Purchase of common stock for treasury	-	-	-	-	-	(13,091)
Minimum pension liability	-	-	-	-	(199)	-
Translation adjustments	-	-	-	-	(5,145)	-
Balance at December 31, 1995	878	441,786	-	266,698	(24,880)	(83,449)
Net loss	-	-	-	(228,262)	-	-
Common dividends ($.04 per share)	-	-	-	(3,318)	-	-
Exercise of stock options	6	7,313	-	-	-	-
Grant of restricted stock	-	(1,120)	-	-	(14,346)	15,466
Amortization of unearned compensation	-	-	-	-	7,707	-
Minimum pension liability	-	-	-	-	4,963	-
Retirement and sale of treasury shares	-	(31)	-	-	-	4,595
Translation adjustments	-	-	-	-	1,246	-
Balance at December 29, 1996	$884	$447,948	$ -	$ 35,118	$ (25,310)	$ (63,388)

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

0160014

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016915
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407111

16div-022290

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(DOLLARS IN THOUSANDS)

	FISCAL YEARS ENDED		
	JANUARY 1, 1995	DECEMBER 31, 1995	DECEMBER 29, 1996
OPERATING ACTIVITIES:			
Net earnings (loss)	$ 107,011	$ 50,511	$ (228,262)
Adjustments to reconcile net earnings to net cash provided by operating activities:			
Depreciation and amortization	35,756	44,174	47,429
Restructuring, impairment and other costs	-	-	154,869
Other non-cash special charges	-	-	128,800
Estimated loss on sale of discontinued operations, net of taxes	-	-	32,430
Deferred income taxes	26,283	25,146	(77,828)
Increase (decrease) in cash from changes in working capital:			
Receivables, net	(48,228)	(4,499)	(13,829)
Inventories	(36,760)	(4,874)	(11,651)
Prepaid expenses and other current assets	792	(2,498)	4,288
Accounts payable	5,567	9,245	14,735
Income taxes payable	16,818	(18,452)	(21,942)
Payment of other long-term and non-operating liabilities	(17,310)	(21,719)	(27,089)
Other, net	(9,104)	4,482	12,213
Net cash provided by operating activities	80,835	81,516	14,163
INVESTING ACTIVITIES:			
Capital expenditures	(90,929)	(140,053)	(75,336)
Decrease (increase) in investments restricted for plant construction	(46,362)	45,755	-
Purchase of businesses	(13,284)	(13,053)	-
Cash surrender value of life insurance policies	23,549	-	-
Sale of marketable securities, net	14,708	-	-
Other, net	200	-	(860)
Net cash used in investing activities	(118,118)	(107,351)	(76,196)
FINANCING ACTIVITIES:			
Net borrowings under revolving credit facility	35,000	40,000	30,000
Issuance of long-term debt	78,013	-	11,500
Payments of debt obligations	(127,446)	(5,617)	(1,794)
Proceeds from exercise of stock options and warrants	19,151	9,818	4,684
Purchase of common stock for treasury	-	(13,091)	-
Sale of treasury stock	-	-	4,578
Payments of dividends on common stock	(3,169)	(3,268)	(3,318)
Other financing activities	2,606	(264)	(364)
Net cash provided by financing activities	4,155	27,778	45,286
Net increase (decrease) in cash and cash equivalents	(33,128)	1,943	(16,747)
Cash and cash equivalents at beginning of year	59,458	25,330	28,273
Cash and cash equivalents at end of year	$ 26,330	$ 28,273	$ 11,526

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

500910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016916
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407112

16div-022291

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

ORGANIZATION

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading designer, manufacturer and marketer of branded consumer products. The Sunbeam/Registered trademark/ and Oster/Registered trademark/ brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores, television shopping channels, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

Approximately 80% of total Company sales are generated in the United States. The remaining sales are generated primarily in Latin America, Mexico, Canada and Europe.

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

PRESENTATION OF FISCAL PERIODS

The Company's fiscal year ends on the Sunday nearest December 31. Fiscal years 1994, 1995 and 1996 ended on January 1, 1995, December 31, 1995 and December 29, 1996, respectively, which encompassed a 52-week period.

USE OF ESTIMATES

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, reserves for product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures and the estimated loss on the sale of discontinued operations.

CONCENTRATIONS OF CREDIT RISK

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Latin America and Canada. Approximately 35% of the Company's sales in 1996 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 29, 1996. However, several retailers filed for bankruptcy protection and/or reported lower sales and earnings in 1996 and if retail softness occurs in 1997, it is possible that additional credit losses could be incurred.

NOT CERTIFIED COPY

900910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016917
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407113

16div-022292

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES-(CONTINUED)

INVENTORIES

Inventories are stated at the lower of cost or market with cost being determined principally by the first-in, first-out method.

PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment is stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	20 to 40 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of the useful life of the improvement or the term of the lease.

LONG-LIVED ASSETS

During 1996, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 121, ACCOUNTING FOR THE IMPAIRMENT OF LONG-LIVED ASSETS AND FOR LONG-LIVED ASSETS TO BE DISPOSED OF. See Notes 2 and 3 for a discussion of asset impairment charges as a result of the implementation of the Company's restructuring and growth plan.

CAPITALIZED INTEREST

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1995 and 1996 amounted to $12.7 million and $14.0 million, respectively, of which $3.3 million and $.4 million, respectively, was capitalized into the construction cost of the long-term assets.

AMORTIZATION PERIODS

Trademarks and trade names are being amortized on a straight-line basis over 40 years.

REVENUE RECOGNITION

The Company recognizes revenue from product sales at the time of shipment. Net sales is comprised of gross sales less provisions for expected customer returns, discounts, promotional allowances and co-operative advertising.

WARRANTY COSTS

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

NOT A CERTIFIED COPY

016007

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016918
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407114

16div-022293

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES-(CONTINUED)

ADVERTISING COSTS

Advertising costs, included in "Selling, General and Administrative Expense," are expensed as incurred. Co-operative advertising costs are expensed ratably over the year in relation to revenues.

FOREIGN CURRENCY TRANSLATION

The assets and liabilities of subsidiaries, other than those operating in highly inflationary environments, are translated into U.S. dollars at year-end exchange rates, with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary environments, specifically Venezuela, inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in results of operations.

STOCK-BASED COMPENSATION PLANS

In 1995, the Financial Accounting Standards Board ("FASB") issued SFAS No. 123, ACCOUNTING FOR STOCK-BASED COMPENSATION. SFAS No. 123 allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under Accounting Principles Board ("APB") Opinion No. 25, ACCOUNTING FOR STOCK ISSUED TO EMPLOYEES, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro-forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 7 herein. The adoption of SFAS No. 123 will not impact the Company's results of operations, financial position or cash flows.

EARNINGS PER SHARE OF COMMON STOCK

Earnings per common share calculations are determined by dividing earnings (loss) available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding. Primary and fully diluted earnings per share are equivalent for each of the fiscal years presented.

RECLASSIFICATIONS

Certain prior year amounts have been reclassified to reflect discontinued operations as described in Note 3.

3. RESTRUCTURING, IMPAIRMENT AND OTHER COSTS

On November 12, 1996, the Company announced the details of its restructuring and growth plan for the future. The cost reduction phase of the plan includes the consolidation of administrative

NOT A CERTIFIED COPY

800910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016919
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407115

16div-022294

2. RESTRUCTURING, IMPAIRMENT AND OTHER COSTS-(CONTINUED)

functions within the Company, the rationalization of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and stock keeping units ("SKU's"). The Company also announced plans to divest several lines of business which it determined are not core for Sunbeam (see Note 3).

Since the restructuring plan was announced, the Company has consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters in Delray Beach, Florida and outsourced certain back office activities resulting in a 50% reduction in total back-office/ administrative headcount. Overall, the restructuring plan calls for a reduction in the number of production facilities from 26 to 8 and warehouses from 61 to 13. The restructuring plan will result in the elimination of over 6,000 positions from the Company's workforce, including 1,300 from the disposition of non-core business operations and the elimination of approximately 2,800 other positions. The Company completed the major phases of the restructuring plan by January 1997.

In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKU's and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Notes 12 and 13) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million.

Amounts included in Restructuring, Impairment and Other Costs in the accompanying Consolidated Statement of Operations include cash items such as severance and other employee costs of $43.0 million, lease obligations and other exit costs associated with facility closures of $12.6 million, $7.5 million of start-up costs on back office outsourcing initiatives and other costs related to the implementation of the restructuring and growth plan. Expenditures for the cash restructuring items will be substantially completed in 1997. Non-cash Restructuring, Impairment and Other Costs include $91.8 million related to asset write-downs to net realizable value for disposals of excess facilities and equipment and non-core product lines, write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives and intangible, packaging and other asset write-downs related to exited product lines and SKU reductions.

3. DISCONTINUED OPERATIONS AND OTHER ASSETS HELD FOR SALE

As part of the restructuring plan and redefinition of its core businesses, the Company also announced the divestiture of the furniture business, by a sale of assets. On February 10, 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. which was completed on March 17, 1997. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received approximately $621.1 million in cash at closing and, in addition, expects to receive approximately $10.0 million by June 30, 1997. The Company retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date. The final purchase price is subject to post-closing adjustments based on the terms of the Asset Purchase Agreement.

In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of $32.4 million, net of applicable income tax benefits. The Company will

NOT A CERTIFIED COPY

016009

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016920
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407116

16div-022295

3. DISCONTINUED OPERATIONS AND OTHER ASSETS HELD FOR SALE-(CONTINUED)

finalize its accounting for the loss on disposal of the furniture business in the first quarter of 1997 and could record an additional after-tax loss from discontinued operations. Earnings from the discontinued furniture business were $21.7 million in 1994, $12.9 million in 1995 and $.8 million in 1996, net of applicable income taxes of $15.2 million, $7.9 million and $.5 million, respectively. Revenues for the discontinued furniture business were $154.2 million in 1994, $185.6 million in 1995 and $227.5 million in 1996. These revenues are not included in sales as reported in the accompanying Consolidated Statement of Operations.

In addition to the furniture business divestiture, the Company also announced its intent to sell other non-core product lines and assets as part of its restructuring plan, including time and temperature products, Counselor/Registered trademark/ and Borg/Registered trademark/ scales, decorative bedding products and a textile facility. Anticipated losses to be incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring, Impairment and Other Costs in the Consolidated Statement of Operations as described in Note 2. The Company completed the sale of its decorative bedding product line in December 1996 and its time and temperature product line in March 1997. The remaining asset divestitures are expected to be completed in the first half of 1997.

4. SHAREHOLDERS' EQUITY

The Company has 200,000,000 shares of $.01 par value common stock authorized. At December 29, 1996 there were 9,021,837 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

In June 1995, the Company retired 7,376,335 shares of common stock held in treasury, and such shares were returned to the status of authorized but unissued shares. As a result, $103.7 million assigned to treasury stock has been eliminated with a corresponding decrease to common stock, paid-in capital and retained earnings. In 1995, the Company repurchased 905,600 shares of its common stock at a total cost of $13.1 million.

In July 1996, the Company sold 321,795 shares of common stock for total proceeds of approximately $4.4 million, and granted 1,100,000 shares of restricted stock in connection with the employment of a new Chairman and Chief Executive Officer and certain other officers of the Company. Compensation expense attributable to the restricted stock awards is being amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, is equally over two years from the date of grant and in the case of the remaining restricted shares, is equally over three years from the dates of grant). Total compensation expense recognized for restricted stock grants in 1996 was $7.7 million.

NOT A CERTIFIED COPY

016010

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016921
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407117

16div-022296

4. SHAREHOLDERS' EQUITY-(CONTINUED)

Information regarding other changes in shareholders' equity is summarized below (in thousands):

	CURRENCY TRANSLATION ADJUSTMENTS	MINIMUM PENSION LIABILITY	UNEARNED COMPENSATION	TOTAL
Balance at January 2, 1994	$ (1,537)	$ (10,366)	$ (2,140)	$ (14,043)
Issuance of restricted stock	-	-	(108)	(108)
Amortization of unearned compensation	-	-	1,269	1,269
Increase in minimum pension liability (net of tax of $357)	-	(561)	-	(561)
Translation adjustments	(6,675)	-	-	(6,675)
Balance at January 1, 1995	(8,212)	(10,927)	(979)	(20,118)
Amortization of unearned compensation	-	-	582	582
Increase in minimum pension liability (net of tax of $127)	-	(199)	-	(199)
Translation adjustments	(5,145)	-	-	(5,145)
Balance at December 31, 1995	(13,357)	(11,126)	(397)	(24,880)
Grant of restricted stock	-	-	(14,346)	(14,346)
Amortization of unearned compensation	-	-	7,707	7,707
Decrease in minimum pension liability (net of tax of $2,672)	-	4,963	-	4,963
Translation adjustments	1,246	-	-	1,246
Balance at December 29, 1996	$(12,111)	$ (6,163)	$ (7,036)	$ (25,310)

5. CREDIT FACILITIES AND LONG-TERM DEBT

In June 1994, the Mississippi Business Finance Corporation ("MBFC") issued $75 million of 7.85% Industrial Development Revenue Notes (the "Notes") maturing serially in eleven equal annual installments beginning June 1999 to certain institutional investors through a private placement. The MBFC loaned the proceeds of the Notes to a subsidiary of the Company under a non-recourse loan agreement (the "Hattiesburg Loan") restricting the use of such funds to the acquisition, design, construction and equipping of the Hattiesburg, Mississippi manufacturing and distribution center. The Notes are guaranteed by the Company and the Hattiesburg Loan is secured by the Hattiesburg facility.

In September 1996, the Company entered into a $500 million syndicated unsecured five year revolving credit facility (the "Credit Agreement") which replaced a previous credit facility of $500 million. The Credit Agreement was amended in November 1996 and January 1997. Under the Credit Agreement, the Company can borrow under a competitive bid option, or at a spread above LIBOR (currently .50%) or at a bank base rate. In addition, the Company pays an annual facility fee (currently .25%). The Credit Agreement contains certain financial covenants.

The aggregate annual principal payments on long-term debt, excluding amounts outstanding under the Credit Agreement, due in each of the years 1997-2001, are $.9 million, $.7 million, $7.7 million, $7.9 million and $7.9 million, respectively.

NOT A CERTIFIED COPY

016011

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016922
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407118

16div-022297

5. CREDIT FACILITIES AND LONG-TERM DEBT-(CONTINUED)

Long-term debt at the end of each fiscal year consists of the following (in thousands):

	1995	1996
Revolving credit facility, weighted average interest rate of 5.99% and 5.68% at December 31, 1995, and December 29, 1996, respectively	$75,000	$105,000
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	75,000	75,000
Other long-term borrowings, due through 2012, weighted average interest rate of 6.84% and 4.95%, at December 31, 1995 and December 29, 1996, respectively	11,609	22,036
	$161,609	$202,036

6. FINANCIAL INSTRUMENTS

FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts of the Company's financial instruments as of December 29, 1996 approximate market based upon the following methods and assumptions:

CASH AND CASH EQUIVALENTS-The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

SHORT AND LONG-TERM DEBT-The carrying value of the Company's various debt outstanding as of December 29, 1996 approximates market. The fair value of the Company's fixed rate debt is estimated using discounted cash flow analysis, based upon the market yield of public debt securities of comparable credit quality and maturity. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements.

LETTERS OF CREDIT-The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. The contract amounts of the letters of credit approximate their fair value.

DERIVATIVE FINANCIAL INSTRUMENTS

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. The use of derivatives did not have a material impact on the Company's results of operations in either 1995 and 1996. No derivatives are entered into for trading or speculative purposes. Interest rate swaps are used to achieve or maintain a desired mix of fixed and floating rate debt in the Company's debt portfolio. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time will vary with changes in interest and/or foreign exchange rates, the difference between the carrying value and fair value of such contracts at December 31, 1995 and December 29, 1996 is not considered to be material, either individually or in the aggregate. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions.

NOT A CERTIFIED COPY

016012

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016923
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407119

16div-022298

6. FINANCIAL INSTRUMENTS-(CONTINUED)

As of December 29, 1996, $10.0 million of the Company's outstanding floating rate debt was subject to interest rate swap agreements. Under the terms of the contract, the Company receives a floating interest rate and pays a fixed interest rate. The differential to be paid or received is accrued as interest rates change and recognized as an adjustment to interest expense.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option contracts to hedge anticipated transactions. The option contracts typically expire within one year. Any realized gains on options are not deferred but are recognized in income in the period when the hedged exposure is recognized. The Company purchased options with a notional value of $11.7 million in 1995 and $19.2 million in 1996. Options with notional value of $3.2 million and $25.4 million expired in 1995 and 1996, respectively. The Company held purchased option contracts with a notional value of $8.6 million and $1.4 million at December 31, 1995 and December 29, 1996, respectively.

The Company has intercompany balances that are denominated in foreign currency. A portion of these balances are hedged using forward exchange contracts, and gains and losses on these contracts are included in the accompanying Consolidated Statement of Operations. The Company had forward exchange contracts with a notional value of $2.2 million December 31, 1995 and none outstanding at December 29, 1996.

7. EMPLOYEE STOCK OPTIONS AND AWARDS

At December 29, 1995, the Company had one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Equity Team Plan (the "Plan"). Under the Plan, all domestic employees are eligible for grants of options to purchase up to an aggregate of 11,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option generally commences on the date of grant and expires on the tenth anniversary of the date of grant. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to selected executives, employees and non-employee directors. Restrictions lapse ratably over a three to seven year period from the date of grant. In 1994, 5,000 shares of restricted stock were granted under the Plan and in 1995, 25,574 shares were granted under the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares were granted outside of the Plan (of which 2,750,000 options are outstanding at December 29, 1996) at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a new Chairman and Chief Executive Officer and certain other executive officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, are excercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding are exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. See Note 4 for a discussion of restricted stock awards made outside of the Plan.

The Company applies APB Opinion No. 25 and related Interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had

NOT A CERTIFIED COPY

016013

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016924
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407120

16div-022299

7. EMPLOYEE STOCK OPTIONS AND AWARDS-(CONTINUED)

compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net earnings (loss) and earnings (loss) per share would have been reduced to the pro forma amounts indicated below (in thousands except per share amounts):

	1995	1996
Net earnings (loss)		
As reported	$50,511	$ (228,262)
Pro forma	$47,377	$ (248,890)
Earnings (loss) per share		
As reported	$ 0.61	$ (2.75)
Pro forma	$ 0.57	$ (3.00)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions used for grants in 1995 and 1996: expected volatility of 36.78%, a risk-free interest rate of 6.34 %, a dividend yield of .1%; and an expected life of 5 years.

A summary of the status of the Company's outstanding stock options as of December 31, 1995 and December 29, 1996, and changes during the years ending on those dates is presented below:

	1995		1996	
	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	SHARES	WEIGHTED AVERAGE EXERCISE PRICE
PLAN OPTIONS				
Outstanding at beginning of year	5,330,221	$14.35	4,610,387	$ 16.67
Granted	1,928,500	18.61	4,061,450	20.39
Exercised	(1,142,348)	5.32	(622,994)	7.51
Canceled	(1,405,986)	21.06	(1,777,006)	18.64
Outstanding at end of year	4,610,387	16.67	6,271,837	19.43
Options exercisable at year-end	1,533,836	$11.47	1,655,450	$ 16.13
Weighted-average fair value of options granted during the year	$ 8.28		$ 14.76	
OPTIONS OUTSIDE PLAN				
Outstanding at beginning of year	750,000	$16.70	692,500	$ 16.70
Granted	-	-	3,000,000	12.69
Exercised	(57,500)	16.70	-	-
Canceled	-	-	(942,500)	16.27
Outstanding at end of year	692,500	16.70	2,750,000	12.43
Options exercisable at year-end	505,000	$16.70	833,333	$ 12.25
Weighted-average fair value of options granted during the year	-		$ 5.99	

NOT A CERTIFIED COPY

016014

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016925
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407121

16div-022300

7. EMPLOYEE STOCK OPTIONS AND AWARDS-(CONTINUED)

The following table summarizes information about stock options outstanding at December 29, 1996:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICES	NUMBER OUTSTANDING AT 12/29/96	WEIGHTED-AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED-AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE AT 12/29/96	WEIGHTED-AVERAGE EXERCISE PRICE
$5.00 to $14.99	1,378,417	7.6 years	$11.51	596,316	$7.80
$15.00 to $19.99	824,037	8.1 years	16.50	245,240	17.31
$20.00 to $24.99	3,657,583	8.9 years	22.24	811,894	21.96
Over $25.00	411,800	10.0 years	26.49	2,000	25.16
$5.00 to $27.38	6,271,837	8.6 years	$19.43	1,655,450	$16.13

8. EMPLOYEE BENEFIT PLANS

RETIREMENT PLANS

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Therefore no credit in the pension formula is given for service or compensation after that date. However, employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries.

The funded status of the Company's U.S. defined benefit pension plans at the end of each fiscal year follows (in thousands):

	1995	1996
Actuarial present value of benefit obligations:		
Vested	$132,755	$122,379
Non-vested	568	375
Accumulated benefit obligations	133,323	122,754
Plan assets at fair value	122,162	116,522
Accumulated benefit obligations in excess of plan assets	11,161	6,232
Unrecognized net loss	(17,891)	(19,537)
Additional minimum liability	17,891	10,255
Pension liability (prepaid) recognized on the balance sheet	$ 11,161	$ (3,050)

NOT A CERTIFIED COPY

016015

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016926
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407122

16div-022301

perform its obligations hereunder and thereunder. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements have been duly and validly authorized by all necessary corporate action on the part of Buyer and no additional corporate authorization or consent is required in connection with the execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements.

C. BINDING EFFECT. This Agreement has been duly executed and delivered by Buyer. This Agreement constitutes, and each of the Ancillary Agreements, when executed and delivered by the parties thereto, will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditor's rights and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

D. NO CONFLICT. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements does not, and the consummation of the transactions contemplated hereby and thereby, does not and will not, violate or conflict with any of the provisions of any charter instrument or bylaw of Buyer or violate or conflict with or constitute a default under any mortgage, indenture, contract, agreement, permit, license, instrument or trust or any order or ruling of any governmental authority to which Buyer is a party or by which Buyer is bound, or violate any provision of law, statute, rule or regulation to which Buyer is subject.

E. BROKERS' AND FINDERS' FEES. Except as to the engagement by Buyer of CS First Boston Corporation (whose fees and expenses shall be borne exclusively by Buyer), neither Buyer nor any of its officers, directors or employees has employed any broker, finder or financial advisor or incurred any liability for fees or commissions payable to any broker, finder or financial advisor in connection with the negotiations relating to or the transactions contemplated by this Agreement.

F. NO WARRANTIES. Other than as explicitly provided in this Section 6, neither Buyer nor any of its respective affiliates, in this Agreement or any other agreement, instrument or document contemplated by this Agreement, makes any other express or implied representation or warranty on behalf of Buyer.

NOT A CERTIFIED COPY

016916

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016927
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407123

16div-022302

Transferred Employees, necessary to conduct the Business in all respects as currently conducted and, except as set forth on SCHEDULE 5.V(1), there are no material Assets of the Business that Sellers will retain following the Closing. All services provided to the Business by (i) Sellers and Sunbeam (which are the only entities within the Sunbeam Corporate Structure which provide services to the Business) or (ii) third parties who provide services to support the operation of the business, are described on SCHEDULE 5.V(2). To the knowledge of Sellers, there are no (i) material structural defects in any of the buildings or other improvements situated on the Leased Premises or the Real Property or (ii) building systems, structures, improvements, fixed assets or equipment owned, leased or used by Seller and required for the conduct of the Business as currently conducted that are not in all material respects in good condition and working order, normal wear and tear excepted, and adequate in quality and quantity for the current normal operation of the Business.

W. KNOWLEDGE. Whenever used in this Section 5, "to the knowledge of Sellers" shall mean the actual knowledge of those persons listed on SCHEDULE 5.W.

X. NO WARRANTIES. Other than as explicitly provided in this Section 5, neither Sellers nor any of their respective affiliates, in this Agreement or any other agreement, instrument or document contemplated by this Agreement, makes any other express or implied representation or warranty with respect to the Assets or the use thereof in the Business.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Sellers as follows:

A. CORPORATE STANDING. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power to own, lease and operate its assets and to carry on its business as currently conducted. To the knowledge of Buyer, Buyer is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership of its properties or the conduct of its business requires such qualification.

B. POWER AND AUTHORITY OF BUYER: AUTHORIZATION. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to

NOT A CERTIFIED COPY

016017

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016928
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407124

16div-022303

instruments, certificates and other documents entered into or delivered by Sellers in connection with the IRB Agreements. The applicable Sellers have paid all amounts currently due and have performed all current obligations under the IRB Agreements and all other agreements, instruments, certificates and other documents entered into or delivered by Sellers in connection with the IRB Agreements. The amounts receivable relating to the bond issued by the Development Authority of Burke County in 1996, which constitutes an Asset to be transferred to Buyer, in the aggregate, will defease the amounts payable pursuant to the lease pertaining to the Waynesboro, Georgia facility, which obligation constitutes an Assumed Liability. On and after the Effective Time, no liability or obligation will exist relating to the Gaston County Flexible Rate Demand Industrial Revenue Bonds (Allibert Inc. Project), Series 1997A (the "STANLEY IRBS") which could (i) be asserted against Buyer or Buyer's assets as a result of the acquisition of the Assets or (ii) result in a lien or other encumbrance of any type on any of the Assets.

T. LICENSES OF INTANGIBLE PERSONAL PROPERTY. There are listed on SCHEDULE 5.T all material licenses or similar agreements or arrangements relating to the Business, to which any Seller is a party either as licensee or licensor, for any intangible personal property (collectively, "INTANGIBLE PERSONAL PROPERTY"). Except as set forth on SCHEDULE 5.T (i) no proceedings are pending or, to the knowledge of Sellers, threatened, that challenge the rights of Sellers in any material respect in and to or the right to make, use or sell products or processes embodying, any such Intangible Personal Property or any license thereof and (ii) there are no pending or, to the knowledge of Sellers, threatened claims, demands or proceedings, restricting the right of the applicable Sellers to use, charging Sellers with infringement of, or making any other claim with respect to, any of such Intangible Personal Property or any license thereof.

U. BROKERS AND FINDERS' FEES. Except as to the engagement by Sellers of Chase Securities, Inc. (whose fees and expenses shall be borne exclusively by Sellers), neither Sellers nor any of their officers, directors or employees have employed any broker, finder or financial advisor or incurred any liability for fees or commissions payable to any broker, finder or financial advisor in connection with the negotiations relating to or the transactions contemplated by this Agreement.

V. ENTIRE BUSINESS; CONDITION OF ASSETS. The Assets and the Ancillary Agreements constitute all of the assets, properties and rights, together with the services of the

NOT A CERTIFIED COPY

016018

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016929
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407125

16div-022304

(3) To Seller's knowledge, all Hazardous Substances that have been removed from or disposed of by Seller or its agents off the Real Estate or the Leased Premises have been handled, transported, stored, treated and disposed of in compliance in all material respects with all Environmental Laws. Neither the Business, the Real Property nor the Leased Premises is subject to any liabilities, claims, judgments, orders, notices of violation, settlements, permits, licenses, liens, writs, injunctions or decrees relating to the manufacturing, processing, use, generation, treatment, handling, storage, disposal, transportation, presence, Release, potential Release or threatened Release of any Hazardous Substance (collectively, an "ENVIRONMENTAL EVENT").

(4) Sellers and their agents have no knowledge of any claim, potential claim, action, suit, proceeding, hearing or investigation, based on or related to any Environmental Event relating to the Business, the Real Property or the Leased Premises. To the knowledge of Sellers, no notice of any Environmental Event was given to any person or entity that occupied the Leased Premises or the Real Property prior to the date said locations were occupied by or used in the Business.

(5) All permits, licenses, consents and authorizations necessary for full compliance in all material respects with Environmental Law have been obtained and are valid and in full force and effect for the Real Property and the Leased Premises. To Seller's knowledge, no application, report or other document or information filed with or furnished to any federal, state or local governmental body, authority or agency contains any material inaccuracies or false or materially misleading statements.

(6) Seller and its agents have no knowledge of the Release, potential Release or threatened Release of any Hazardous Substance on, in, under, within or around the Real Property or Leased Premises which is not in compliance in all material respects with all applicable Environmental Laws.

S. IRB AGREEMENTS. No event or condition has occurred or exists, or, to the knowledge of Sellers, is alleged by any of the other parties thereto to have occurred or existed, which constitutes, or with the lapse of time or giving of notice or both would reasonably be expected to constitute, a default or breach under any of the IRB Agreements and all other agreements.

NOT A CERTIFIED COPY

016019

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016930
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407126

16div-022305

"ENVIRONMENTAL LAWS" shall mean any and all prevailing and applicable federal, state and local statutes, codes, rules, regulations, permits, ordinances and orders of any governmental entity as of the Closing Date relating to the storage, handling, disposal, treatment, investigation, Release, potential Release, threatened Release, remediation or other regulation of Hazardous Substances in any media, including but not limited to air, groundwater, building interior, water or soil, including, by way of example and not limitation, CERCLA, RCRA, TSCA, and the Clean Water Act.

"HAZARDOUS SUBSTANCE" shall mean any substance, combination of substances, material, waste, gas or particulate matter which has been determined to be a health danger, soil, water or air contaminant or which is regulated under any prevailing and applicable Environmental Law, including, but not limited to, any material or substance which is (i) defined in any Environmental Law as a 'hazardous waste,' 'hazardous material,' 'hazardous substance,' 'extremely hazardous waste,' or 'restricted hazardous waste'; (ii) composed of petroleum or has a petroleum base; (iii) composed of asbestos or material containing asbestos in a friable form; (iv) a polychlorinated biphenyl; (v) a radioactive material; (vi) designated as a pollutant pursuant to federal law including Section 311 of the Clean Water Act, 33 U.S.C. ss. 1251 (33 U.S.C. ss. 1317); (vii) defined as a 'hazardous waste' pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. ss. 6901 et seq. (42 U.S.C. ss. 6903); or (viii) defined as a 'hazardous substance' pursuant to Section 101 of CERCLA.

"RELEASE" shall mean any dumping, pouring, pumping, emitting, leaching, spilling, disposal, spreading, leaking or discharging of any Hazardous Substance into any media, whether soil, surface water, building interior, groundwater, air or any combination of the foregoing.

Except as set forth on the Disclosure Schedule (as defined in Section 8.A):

(1) Sellers conduct and have conducted the operations of the Business, including, without limitation, with respect to the ownership, use and maintenance of the Real Property and the Leased Premises, in material compliance with all applicable Environmental Laws.

(2) To Seller's knowledge, the Real Property and the Leased Premises and their respective existing and prior uses comply in all material respects with all Environmental Laws.

NOT A CERTIFIED COPY

016020

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016931
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407127

16div-022306

requirements, and items 1.C, 1.D, 1.G and 1.H, which are for a term extending beyond the 1997 selling season (but have no minimum purchase requirements), the raw materials/commodities contracts listed on Schedule 1.C(1) do not include any minimum purchase commitments and such contracts only relate to the 1997 selling season. The purchase orders referenced in Sections 1.B and 1.C expire no later than August 31, 1997.

P. EMPLOYEE BENEFIT PLANS. SCHEDULE 5.P sets forth all "employee benefit plans," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and all other employee benefit arrangements or payroll practices, including, without limitation, severance pay, sick leave, vacation pay, salary continuation for disability, consulting or other compensation agreements, retirement, deferred compensation, bonus, stock purchase, hospitalization, medical insurance, life insurance and scholarship programs maintained by Sellers or any of their affiliates or to which Sellers or any of their affiliates contributed or is obligated to contribute thereunder with respect to which any Employee participates (the "PLANS"). True, correct and complete copies of each of the Plans and related trust documents, any amendments thereto and any summary plan descriptions thereto have been made available or delivered to Buyer by Sellers.

Q. INTELLECTUAL PROPERTY. Except as set forth on SCHEDULE 5.Q(1), (i) no person has made or, to the knowledge of the Sunbeam Transferors, threatened to make, any claims that the operations of the Business are in violation of or infringe upon any patents, trade secrets, trademarks or trade names, trademark or trade name registrations, service marks or service mark registrations, copyrights or copyright registrations or any other proprietary or trade rights of any third party and (ii) there are no actions or proceedings pending or, to the knowledge of the Sunbeam Transferors, threatened, which challenge the right of any Seller to make, use or sell products or services embodying, and, to the knowledge of the Sunbeam Transferors, no person is infringing or otherwise violating, the Intellectual Property. As of the Closing Date, all taxes, royalties, fees and other payments due and payable and necessary to maintain the ownership and license to use, as the case may be, the Intellectual Property shall have been made, except as set forth on SCHEDULE 5.Q(2) or as Buyer shall consent in connection with the consultation contemplated by Section 7.B(1)(d)(ii).

R. ENVIRONMENTAL MATTERS. The following definitions shall apply to the terms listed below when used in this Agreement:

NOT A CERTIFIED COPY

016021

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016932
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407128

16div-022307

(4) With respect to employees of Sellers engaged in the operations of the Business, Seller is in material compliance with all laws, regulations and orders relating to the employment of labor, including all such laws, regulations and orders relating to wages, hours, the Workers Adjustment and Retraining Notification Act ("WARN"), collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding and/or social security taxes and similar taxes.

(5) Except as set forth on SCHEDULE 5.N(5), with respect to the operations of the Business, there has been no "mass layoff" or "plant closing" as defined by WARN within the six (6) months prior to Closing.

O. CONTRACTS. Except as set forth on SCHEDULE 5.O(1), the Assumed Contracts do not omit any lease, contract, agreement or understanding that is material to the operation of the Business or the Assets. Each of the Assumed Contracts is a valid and binding agreement of the applicable Seller and, to the knowledge of Sellers, is in full force and effect. No event or condition has occurred or exists, or, to the knowledge of Sellers, is alleged by any of the other parties thereto to have occurred or existed, which constitutes, or with lapse of time or giving of notice or both might constitute a material default or breach by the applicable Seller or any other party under any of the Assumed Contracts or, with respect to the Assumed Contracts listed on SCHEDULE 5.O(2), any default or breach by the applicable Seller or any other party thereto. The applicable Seller enjoys peaceful and undisturbed possession under all leases or licenses with respect to any of the Assets or under which any portion of the Business is operating. No Seller is party to and the Business and the Assets are not bound by, any contract, agreement, instrument, lease, license, arrangement or understanding, or subject to any other restriction, which has had, or could reasonably be expected to have, a materially adverse effect on the operations or financial condition of the Business or the Assets. With respect to the guaranty agreements entered into or contemplated to be entered into by Sellers with certain customers (the "SUNBEAM GUARANTIES"), SCHEDULE 5.O(3) lists the following categories of matters (by category): (a) all Sunbeam Guaranties which have been signed by customers and returned to Sellers, (b) all customers to which Sellers have sent, but not yet received, a signed Sunbeam Guaranty, and (c) to Sellers' knowledge, all customers with whom Sellers have had discussions relating to the Sunbeam Guaranties. Except for items 1.A and 1.B on Schedule 1.C(1), which have minimum purchase

NOT A CERTIFIED COPY

016022

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016933
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407129

16div-022308

Assets and no written notice has been received by any Seller or the Business alleging any such violations, which could result in a material liability.

N. COLLECTIVE BARGAINING AGREEMENTS; LABOR CONTROVERSIES; ETC.

(1) The applicable Seller is a party to the collective bargaining agreements listed on SCHEDULE 5.N(1) with respect to certain employees of such Seller engaged in the operations of the Business and there are no other labor or collective bargaining agreements which pertain to any other employees of Sellers engaged in the operations of the Business. No labor organization or group of employees of Sellers engaged in the operations of the Business has made a pending demand for recognition or certification, there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority and there are no organizing activities involving the Company or any Company Subsidiary pending with any labor organization or group of employees of Sellers engaged in the operations of the Business.

(2) Except as set forth on SCHEDULE 5.N(2), there are no strikes, work stoppages, slowdowns, lockouts, material arbitrations or material grievances or other material labor disputes pending or threatened in writing against or involving the Sellers with respect to employees engaged in the operations of the Business, and there are no unfair labor practice charges, grievances or complaints pending or threatened in writing by or on behalf of any employee or group of employees of Sellers engaged in the operations of the Business which, if individually or collectively resolved against the Sellers, could result in a material liability.

(3) Except as set forth on SCHEDULE 5.N(3), with respect to employees of Sellers engaged in the operations of the Business, there are no complaints, charges or claims against the Sellers pending or threatened with any public or governmental authority, arbitrator or court based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by any Seller of any individual which, if individually or collectively resolved against the Sellers, could result in a material liability.

NOT A CERTIFIED COPY

016023

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016934
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407130

16div-022309

1.G & 1.H respectively) describe Sellers' entire interest at each facility.

(i) There are no parties that have any right of use or occupancy derived from or granted by Sellers to all or any portion of the Real Property or Leased Premises.

K. INVENTORY. Subject to any reserve or allowance shown on the Schedule of Assets and Liabilities in accordance with the Accounting Principles, the Inventory is good and useable on a normal basis in the existing product lines of the Business and is merchantable and fit for the particular purpose for which it is intended. The net book value of all inventory of Product which is located in Canada (which is not owned by Sellers or otherwise included in the Inventory) is less than $100,000. The Inventory does not include any items manufactured or sold using any RubbermaidTM trademark.

L. LEGAL PROCEEDINGS. Except as set forth on SCHEDULE 5.L, (i) there are no claims of any kind or any actions, suits, orders, notices of violation, directives, proceedings, arbitrations or investigations pending or, to the knowledge of Sellers, threatened against or affecting the Business or any of the Assets which would (a) impair or delay the ability of the Sunbeam Transferors to perform their obligations pursuant to this Agreement or the Ancillary Agreements or (b) have an effect that is, or could reasonably be expected to be, materially adverse to the value of the Assets taken as a whole, or materially adverse to the business, financial condition or results of operations of the Business taken as a whole and (ii) neither any Seller (with respect to its operation of the Business or its ownership of its Assets), the Business nor any of the Assets is subject to any order, writ, judgment, award, injunction or decree of any court or governmental or regulatory authority of competent jurisdiction or any arbitrator. This Section 5.L does not apply to legal proceedings arising under Environmental Laws.

M. LICENSES AND PERMITS; COMPLIANCE WITH LAWS. Sellers hold all permits, licenses and authorizations of all governmental entities which are material to the operation of the Business and the Assets and each Seller, the Business and the Assets is fully in compliance with the terms thereof. A correct and complete list of such material licenses, permits and authorizations is set forth on SCHEDULE 5.M(1). Except as set forth on SCHEDULE 5.M(2), neither Seller is in violation of any applicable law, regulation, ordinance, permit, license, order, or any other applicable requirement of any governmental body or court with respect to the operation of the Business or any of the

NOT A CERTIFIED COPY

016024

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016935
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407131

16div-022310

and in effect immediately prior to the enactment of the Tax Reform Act of 1986), "private activity bonds" (within the meaning of Section 141 of the Code), or other tax-exempt financings are outstanding which have been used to finance the Assets.

I. GOVERNMENTAL MATTERS. Sellers are not, on the date hereof, required to make any material capital improvements or other expenditures to comply with any Environmental Laws (as defined in Section 5.A hereof) or any law or rules, regulations, orders, or citations presently in effect of any governmental agency having jurisdiction. Except as disclosed on SCHEDULE 5.I, no unpaid fines or penalties have been assessed or notices or citations issued against Sellers pursuant to any Environmental Laws or any other rules, regulations or orders of EEOC or any other federal, state or local department or agency. To Seller's knowledge, no facts, circumstances or conditions exist which might reasonably give rise to any such material claims, investigations, orders, demands, proceedings or litigation associated with Sellers' compliance with any Environmental Laws or other laws, rules, regulations or requirements of any governmental entity with jurisdiction.

J. TITLE AND SURVEY MATTERS

(1) Sellers have delivered to Buyer each survey on the Real Property that is in the possession of Sellers.

(2) Sellers have, and will transfer to Buyer at Closing, good, valid and marketable title to the Inventory and Equipment and each Sunbeam Transferor owns its respective Assets free and clear of all liens, restrictions, claims, charges, security interests, or other encumbrances (collectively "Liens"), except for liens for taxes not yet due or being contested in good faith, other similar statutory liens for amounts not yet due, and liens securing Assumed Liabilities (collectively "PERMITTED LIENS").

(3) Sellers have good and marketable fee simple title to each Real Property, free and clear of any and all Liens other than Permitted Liens. No right of redemption or similar right exists or remains in effect with respect to any Real Property. On the Closing Date, Sellers will convey to Buyer good, marketable and indefeasible title to the Real Property, subject only to Permitted Liens. Subject to any consent identified as required herein, Sellers shall convey their interest to each Leased Premises. In each case, the legal descriptions of the Real Property and the Leased Premises (identified in Schedules

NOT A CERTIFIED COPY

016025

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016936
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407132

16div-022311

Assumed Liabilities as of February 3, 1997 (the "SCHEDULE OF ASSETS AND LIABILITIES"). The values of the Assets reflected on the Schedule of Assets and Liabilities are the carrying values of such Assets on Sellers' books and records and such Schedule of Assets and Liabilities has been prepared in accordance with accounting principles, methods and procedures which are in all respects in accordance with the accounting principles, methods and procedures set forth on SCHEDULE 5.F(2) (the "ACCOUNTING PRINCIPLES") and the Schedule of Assets and Liabilities was prepared from the same books and records used by Sunbeam in preparing its publicly reported year-end accounts.

G. ORDINARY COURSE. Since the date of the Schedule of Assets and Liabilities, except as set forth on SCHEDULE 5.G, the Business has been operated in the ordinary course of business consistent with past practice and there has been no material (i) change in the Business, the Assets or the manner of conducting the Business, (ii) transaction relating to the Assets or the Business outside of the ordinary course of business consistent with past practice or (iii) lien created or assumed with respect to any of the Assets, except Permitted Liens.

H. TAXES. Sellers have filed or will file on a timely basis all tax returns, reports and declarations required to be filed with respect to taxes pertaining to the Assets or the Business, and have paid or, will pay all taxes due and owing as of or before the Closing Date, except for such taxes, if any, that are being contested in good faith. There are no liens for unpaid taxes upon the Assets and there exist no facts which could give rise to such a lien. Except as set forth on SCHEDULE 5.H, there is no action, suit, proceeding, investigation, audit or claim now pending against or with respect to the Business or any of the Assets with regard to any tax or assessment, nor is any claim for any additional tax or assessment asserted by any governmental authority, and Sellers have not received from any governmental authority any written notice of a proposed adjustment, deficiency or underpayment of any taxes pertaining to the Assets or the Business, the non-payment of which could result in (i) a lien or other encumbrance of any type on any of the Assets, or (ii) a liability which could be asserted against Buyer or Buyer's assets as a result of the acquisition of the Assets, and which notice has not been satisfied by payment or been withdrawn. None of the Assets is property which Buyer or an affiliate of Buyer will be required to treat as "tax-exempt use property" (within the meaning of Section 168(h)(1) of the Code). Except for the IRB Agreements in connection with the Paragould, Arkansas facility, no "industrial development bonds" (within the meaning of Section 103 of the Internal Revenue Code of 1954, as amended

NOT A CERTIFIED COPY

016026

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016937
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407133

16div-022312

Transferor and no additional corporate authorization or consent is required in connection with the execution, delivery and performance by each Sunbeam Transferor of this Agreement and each of the Ancillary Agreements to which it will be a party.

C. BINDING EFFECT. This Agreement has been duly executed and delivered by each Sunbeam Transferor. This Agreement constitutes, and each of the Ancillary Agreements, when executed and delivered by the parties thereto, will constitute the legal, valid and binding obligation of the Sunbeam Transferor(s) party thereto, enforceable against such Sunbeam Transferor(s) in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

D. NO CONFLICT. The execution, delivery and performance by each Sunbeam Transferor of this Agreement and each of the Ancillary Agreements to which it will be a party does not, and the consummation of the transactions contemplated hereby and thereby, does not and will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or acceleration of any obligation under, or the creation of a lien, security interest or other encumbrance on any of the Assets (any such conflict, violation, default, right of termination or acceleration, loss or creation, a "VIOLATION") pursuant to, any provision of the Certificate of Incorporation or Bylaws of any Sunbeam Transferor or result in any Violation pursuant to any mortgage, indenture, contract, agreement, permit, license, judgment, decree, order, law or regulation applicable to any Sunbeam Transferor, the Business or the Assets.

E. CONSENTS. Except for the consents and filings listed on SCHEDULE 5.E, and the approval required by the Hart- Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR ACT"), if any, no consent, approval, waiver, or authorization of, or registration, notice, or filing with, any court, administrative agency or other governmental authority or other person is required by or with respect to any Sunbeam Transferor in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements.

F. FINANCIAL INFORMATION. Sellers have furnished to Buyer a schedule of the Assets of the Business and the Assumed Liabilities as of December 29, 1996, as set forth on SCHEDULE 5.F(1), which, at Buyer's sole option, shall be updated prior to the Closing Date to reflect the Assets of the Business and the

NOT A CERTIFIED COPY

016027

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016938
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407134

16div-022313

than 45 days following the referral of differences to such CPA Firm. The decision of the CPA Firm will be final, conclusive, and binding on the parties, and no party will institute any suit with regard to the dispute or controversy except to enforce the decision. Sellers and Buyer shall make readily available to the CPA Firm all relevant books and records and any work papers (including those of the parties' respective accountants) relating to the Statement of Assets and Liabilities and the Final Statement and all other items reasonably requested by the CPA Firm. Each party will pay an equal share of the costs, expenses and fees of the CPA Firm, and each will separately pay its own attorneys' and accountants' fees and expenses: PROVIDED, in any action to enforce the decisions of the CPA Firm, the successful party shall recover its reasonable attorney's fees from the unsuccessful party.

5. REPRESENTATIONS AND WARRANTIES OF THE SUNBEAM TRANSFERORS.

The Sunbeam Transferors represent and warrant to Buyer as follows, except that Sunbeam CP represents and warrants only as set forth in Sections A, B, C, D, E, J(2), Q, T, W and X:

A. CORPORATE STANDING. Each of the Sunbeam Transferors is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to carry on its business and to own, lease and operate its Assets, and to carry on the Business as now conducted. To the knowledge of the Sunbeam Transferors, each of the Sunbeam Transferors is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its Assets or the conduct of the Business requires such qualification.

B. POWER AND AUTHORITY OF THE SUNBEAM TRANSFERORS; AUTHORIZATION. Each of the Sunbeam Transferors has all requisite corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements (as defined in Section 7.A(5)) to which it will be a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance by each Sunbeam Transferor of this Agreement and each of the Ancillary Agreements to which it will be a party have been duly and validly authorized by all necessary corporate action on the part of each Sunbeam

NOT A CERTIFIED COPY

016028

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016939
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407135

16div-022314

(2) Promptly following receipt of the Final Statement, Buyer shall review the same and, within twenty (20) business days after such receipt, Buyer shall deliver to Sellers a certificate setting forth its acceptance of, or objections to, the Final Statement, together with a summary of the reasons therefor (which shall be limited to the mathematical accuracy of the Final Statement and any assertion that the Purchase Price as derived from the Final Statement has not been determined on the basis set forth in paragraph (1) above) and adjustments which, in its view, are necessary to eliminate such objections.

(3) If Buyer accepts the Final Statement (or does not so object within such twenty (20) business day period), the determination of the Purchase Price by Sellers shall be deemed final and binding as of such twentieth (20th) business day.

(4) To the extent Buyer objects within such twenty (20) business day period to the Final Statement, Buyer and Sellers shall use reasonable efforts during the following fifteen (15) business day period to resolve any such objections. If Buyer and Sellers resolve all such differences and each signs a certificate to that effect, the Final Statement, as so adjusted, shall be deemed final and binding for purposes of this Agreement. If Buyer and Sellers resolve some of such differences, the items as to which the parties have agreed shall be final and binding for purposes of this Agreement and the remaining items shall be determined as provided below. Notwithstanding any dispute between Buyer and Sellers described in this Section 4.E(4), Buyer or Sellers, as applicable, shall pay, in accordance with Section 4.D above, the amount of the Purchase Price that is not being disputed under this Section 4.E(4).

(5) To resolve any objections raised by Buyer that are not resolved as provided above, the parties shall refer their remaining differences to a nationally recognized firm of independent public accountants, as to which Sellers and Buyer shall mutually agree (the "CPA FIRM"), who shall, acting as experts and not as arbitrators, determine on the basis of the Accounting Principles and the formula set forth in Section 4.B hereof, and only with respect to the remaining differences so submitted, whether and to what extent, if any, the Purchase Price as derived from the Final Statement requires adjustment. Sellers and Buyer shall direct the CPA Firm to use its best efforts to render its determination as soon as practicable, but in no event later

NOT A CERTIFIED COPY

620910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016940
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407136

16div-022315

D. PAYMENT OF PURCHASE PRICE.

(1) The difference between the Estimated Purchase Price and the Purchase Price shall be paid, after determination of the Purchase Price pursuant to Section 4.E hereof, as follows:

(a) Buyer shall pay to the Sunbeam Transferors the amount by which the Purchase Price shall exceed the Estimated Purchase Price; or

(b) the Sunbeam Transferors shall pay to Buyer the amount by which the Purchase Price shall be less than the Estimated Purchase Price.

(2) Any payment required under Section 4.D(1) shall be made within ten (10) days after the determination of the Purchase Price, by payment of such amount by wire transfer of immediately available funds to an account designated in writing by the party to receive such payment not less than two business days prior to such payment. Any payment required under paragraph (1) above shall bear interest at the index rate of Chase Manhattan Bank, N.A. as of the Closing Date, from the Closing Date through the date of payment.

E. DETERMINATION OF PURCHASE PRICE.

(1) As promptly as practicable after Closing, and no later than fifteen (15) business days after the Closing Date, Sellers shall, at their expense, prepare, or cause to be prepared, and shall deliver to Buyer a statement certified by Sellers' independent auditors utilizing generally accepted auditing standards setting forth, as of the Effective Time, the Purchase Price, based upon the accounting records of the Business and supported in reasonable detail, determined on a basis consistent with the preparation of the Statement of Assets and Liabilities, subject to and in accordance with the Accounting Principles (the "FINAL STATEMENT"). Buyer and its accountants shall have the opportunity to observe the physical count of the Inventory and Equipment (which may begin prior to the Closing Date) in connection with the preparation of the Final Statement and shall have full access to all information used by Sellers in preparing the Final Statement, including the work papers of their accountants.

NOT A CERTIFIED COPY

016030

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016941
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407137

16div-022316

Closing set forth in Sections 7.D and 7.E, or at such other date and location as Buyer and Sellers may mutually agree (such date and time of closing being herein called the "CLOSING DATE").

B. PURCHASE PRICE; ALLOCATION. The aggregate purchase price for the Assets shall be a sum equal to the net result of the addition and subtraction of the following amounts derived from the Final Statement (as defined in Section 4.E):

(1) the sum of (a) the net book value of the property, plant and equipment included in the Assets plus (b) the net book value of the Inventory and (c) the amount of any security or cash deposits or accounts, including prepaid rent, if any, transferred to Buyer from Sellers, MINUS

(2) the sum of (a) $21 million dollars and, to the extent reflected on the Schedule of Assets and Liabilities, (b) indebtedness assumed by Buyer pursuant to the IRB Agreements, (c) the Employee Obligations and (d) liabilities relating to the Assumed Contracts (collectively, the "PURCHASE PRICE"). The parties agree to allocate the Purchase Price (together with the Assumed Liabilities) among the Assets, the license granted in connection with the Trademark License Agreement and the agreement of Sellers contained in Section 27.G hereof as agreed by Buyer and Seller prior to Closing in a manner consistent with Treasury Regulation ss. 1.1060-IT(f). Buyer shall prepare in a timely manner and present to Sellers for their review a Form 8594 Asset Acquisition Statement of Allocation consistent with such allocation. Buyer and the Sunbeam Transferors shall promptly confer and reach agreement regarding such form and each shall timely file such agreed-upon form and shall file a copy of such form with its federal income tax return for the period that includes the date of the Closing. Each of Buyer and the Sunbeam Transferors further agrees not to take any position inconsistent with such allocation for any tax purpose.

C. PAYMENT OF ESTIMATED PURCHASE PRICE TO THE SUNBEAM TRANSFERORS ON DATE OF CLOSING. On and at the Closing, in consideration for the sale, conveyance, transfer, assignment and delivery to Buyer of the Assets, subject to the assumption of the Assumed Liabilities, Buyer shall pay to the Sunbeam Transferors, as directed, an amount equal to $78,395,000 (the "ESTIMATED PURCHASE PRICE"), by wire transfer of immediately available funds to an account designated in writing by the Sunbeam Transferors not less than two business days prior to the Closing.

NOT A CERTIFIED COPY

016031

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016942
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407138

16div-022317

B. Purchase orders for the repair of Equipment in the ordinary course of business that shall be listed on a schedule dated as of February 3, 1997, which Sellers shall provide to Buyer no later than February 12, 1997 and which shall be updated as of the Closing Date;

C. Purchase orders for raw materials and supplies used in the Business in the ordinary course of business that shall be listed on a schedule dated as of February 3, 1997, which Sellers shall provide to Buyer no later than February 12, 1997 and which shall be updated as of the Closing Date, or with respect to raw materials and supplies which are scheduled to be or are delivered after Closing in the ordinary course of business in accordance with past practices;

D. Vacation and other benefits accrued as of the Closing Date in accordance with the Plans as reflected on the Schedule of Assets and Liabilities for the Transferred Employees (as defined in Section 27.A) and the other obligations pertaining to such employees that are expressly set forth in Section 27.A hereof (the "EMPLOYEE OBLIGATIONS");

E. All obligations relating to any return of Products by a customer of the Business after the Closing, other than in connection with a warranty claim, to the extent expressly provided in Section 27.E(5);

F. All obligations of Sellers arising out of warranty claims asserted after the Closing Date, other than personal injury claims, subject to the limited obligation of Sellers to indemnify Buyer pursuant to Section 11.A(1)(f) of this Agreement; and

G. To the extent not included in and subject to any limitations contained in Sections 3.A through 3.F, liabilities arising out of the ongoing and ordinary operation of the Business by Buyer after the Closing Date.

4. CLOSING, PURCHASE PRICE, ADJUSTMENT, ETC.

A. CLOSING. Subject to the terms and conditions of this Agreement, the sale and purchase of the Assets and the assumption of the Assumed Liabilities contemplated hereby shall take place at a closing (the "CLOSING") at the offices of Weil, Gotshal & Manges LLP, in New York, New York, on the later of (i) March 3, 1997 as of 12:01 a.m. (such time being the "EFFECTIVE TIME") and (ii) the date that is two business days following the satisfaction or waiver of all conditions to the

NOT A CERTIFIED COPY

016032

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016943
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407139

16div-022318

assignable rights) and shall provide Buyer with the practical benefit of such Assets, by operating agreements, leases, or otherwise, on terms and conditions mutually acceptable to Sellers and Buyer. If and when such consent(s) have been obtained, the applicable Seller(s) will promptly assign and convey such Asset(s) to Buyer for no additional consideration.

O. Nothing in this Agreement shall be construed as an attempt or agreement to assign any contract, agreement, license, lease or other commitment that is nonassignable without the consent of the other party or parties thereto unless such consent shall have been given, subject, however, to the covenant of Sellers in Section 1.N hereof.

2. EXCLUDED LIABILITIES.

Buyer shall not assume any liabilities or obligations of the Sunbeam Transferors (whether known or unknown and whether absolute, accrued, contingent, liquidated or unliquidated or otherwise and whether arising out of the Business or the other businesses or operations of the Sunbeam Transferors, the ownership or operation of any of the Assets or any facilities, or the manufacture or sale of any product, the consummation of the transactions under this Agreement or otherwise), except such liabilities and obligations as Buyer shall expressly assume and agree to perform pursuant to Section 3.

3. ASSUMED LIABILITIES.

On and subject to the terms and conditions of this Agreement, at the Closing, Buyer shall assume and become responsible for the following liabilities of Sellers, but only to the extent specifically set forth below and subject to any defenses or rights of offset to which any Seller is entitled or that are or may be asserted in good faith against the obligee to whom such obligations are owed (collectively, the "ASSUMED LIABILITIES"):

A. All obligations of Sellers arising under the Assumed Contracts after the Closing Date, provided, however, that Buyer does not assume any such liability or obligation arising, coming due or to be performed after the Closing Date which is attributable to any action or failure to act by the applicable Seller under any Assumed Contract prior to the Closing Date, unless and to the extent such liability or obligation is reflected on the Schedule of Assets and Liabilities (as defined in Section 5.F);

NOT A CERTIFIED COPY

016033

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

12-DEC-1997

CP 016944
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407140

16div-022319

subsidiaries, divisions or affiliates (I.E., intercompany or interdivisional accounts receivable);

(6) Cash on hand on the Closing Date, including bank accounts, cash equivalents and temporary cash investments (including petty cash) pertaining to the Business;

(7) Claims or rights of any Sunbeam Transferor against third parties relating to liabilities or obligations that do not relate to the Assets and are not Assumed Liabilities;

(8) Claims of any Seller for refunds of taxes and other governmental charges for any period, or any portion of any period, ending on or prior to the Closing Date, whether or not such Seller has filed a claim for any such refund before the Closing Date;

(9) All assets and rights of every kind and nature, real or personal, tangible or intangible, that are owned and used by Sellers in connection with their wooden outdoor furniture business;

(10) All assets and rights of every kind and nature, real or personal, tangible or intangible, relating to the Portland, Tennessee, Nashville, Tennessee and Murfreesboro, Tennessee facilities of Sellers, except (a) Equipment and Inventory located at the Portland facility, (b) administrative and office furnishings and equipment located at the Nashville facility, (c) rights under the Portland Lease (as defined in Section 7.A), (d) Equipment and Inventory located at the Murfreesboro facility and (e) rights under the Manufacturing Services Agreement (as defined in Section 7.A);

(11) All assets and rights of every kind and nature relating to the Plans (as defined in Section 5.P);

(12) Those assets utilized both in the Business and in Sellers' other businesses and identified on SCHEDULE 1.M(12); and

(13) Those assets identified on SCHEDULE 1.M(13).

N. To the extent the Assets include licenses, permits, agreements or other rights that cannot be assigned or the assignment of which requires consents which have not been obtained as of the Closing Date, Sellers will use commercially reasonable efforts to obtain such consents (with respect to any

NOT A CERTIFIED COPY

016034

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016945
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407141

16div-022320

Business, including manuals and data, sales and advertising materials, sales, distribution and purchase correspondence, all personnel and employment records relating to the Transferred Employees (as defined in Section 27.A), and any information relating to taxes imposed on the Assets;

J. All of the rights, claims, credits, causes of action or rights of set-off of the Sunbeam Transferors against third parties to the extent relating to or affecting the Assets or the Assumed Liabilities (as defined in Section 3);

K. Subject to the limitations provided for by the Trademark License Agreement (as defined in Section 7.A) all goodwill associated with the Business; and

L. All other assets and rights of every kind and nature, real or personal, tangible or intangible, that are owned and used by Sellers in connection with the Business, except for assets and rights specifically excluded pursuant to Section 1.M below.

M. The Assets shall EXCLUDE, HOWEVER, the following items (collectively, the "EXCLUDED ASSETS"):

(1) Subject to the rights to be granted pursuant to the Transition Services Agreement (as defined in Section 7.A), any computer hardware, software, supplies or other materials which are used in Sellers' other businesses and identified on SCHEDULE 1.M(1);

(2) Sellers' minute books, stock transfer records, qualifications to conduct business as a foreign corporation, and other documents relating to the organization, maintenance, and existence of each Seller as a corporation;

(3) Each Sunbeam Transferor's rights under or in connection with this Agreement;

(4) The intellectual property relating to the Business described on SCHEDULE 1.M(4);

(5) Unless otherwise mutually agreed by Sellers and Buyer prior to the Closing Date, all accounts receivable accrued on the books of Sellers resulting from the operations of the Business prior to the Closing Date, including, without limitation, all accounts receivable representing obligations of any Seller or any of its

NOT A CERTIFIED COPY

016035

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016946
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407142

16div-022321

D. All rights of Sellers in and to the product lines and inventory, including raw materials, packaging supplies, work-in-process and finished goods of the Business including, without limitation, those items to be listed on a schedule dated as of February 3, 1997, which Sellers shall provide to Buyer no later than February 12, 1997, and which shall be updated as of the Closing Date (collectively, the "INVENTORY");

E. The vendors', suppliers', manufacturers' and contractors' warranties, representations and guaranties in respect of any Asset, including, without limitation, those which are listed on SCHEDULE 1.E;

F. All patents, copyrights, trademarks, registrations, trade secrets, technology, processes, inventions, designs, drawings, blueprints, specifications, patterns, royalties, privileges, know-how, rights in research, development, and commercially practiced processes (including all such items with respect to which any Sunbeam Transferor is a sublicensee, in such case only insofar as permitted under the applicable sublicense agreement), and all other similar intangible personal property owned or licensed by any Sunbeam Transferor, in each case, relating to the Business (collectively, the "INTELLECTUAL PROPERTY"), including, without limitation, that listed on SCHEDULE 1.F, subject, however, to the provisions of Section 1.0 hereof;

G. All rights of Sellers, including any prepaid rent, security deposits and options to renew or purchase in connection therewith, in the leased real property listed on SCHEDULE 1.G, together with, to the extent owned or leased by Sellers, all buildings, fixtures and improvements erected thereon (collectively, the "LEASED PREMISES");

H. All right, title and interest of Sellers in the real property listed on SCHEDULE 1.H, together with all buildings, fixtures and improvements erected thereon, and all easements and rights-of-way and other appurtenances thereto (collectively, the "REAL PROPERTY");

I. All papers, documents, instruments, books and records, files, agreements, books of account and other records pertaining solely to the Assets or the Business, including all customer and vendor lists, and all files and documents (including credit information) to the extent pertaining solely to such customers and vendors, and other business and financial records, files, books and documents (whether in hard copy or computer format) to the extent pertaining solely to the Assets or the

NOT A CERTIFIED COPY

930910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016947
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407143

16div-022322

1. PURCHASE AND SALE OF ASSETS.

On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from the Sunbeam Transferors, and the Sunbeam Transferors agree to sell, convey, transfer, assign and deliver to Buyer, at the Closing (as defined in Section 4.A), all of the Sunbeam Transferors' direct or indirect right, title and interest in and to all of the assets relating to the Business, of every kind and description, wherever located, whether tangible or intangible, real, personal or mixed, as the same shall exist as of the Closing Date (as defined in Section 4.A), including without limitation these certain assets set forth below, but excluding the Excluded Assets (as defined in Section 1.H) (collectively, the "ASSETS"), free and clear of all liens, restrictions and encumbrances, subject only to Permitted Liens (as defined in Section 5.J(2)):

A. To the extent transferable, the government permits and licenses which are listed on SCHEDULE 1.A;

B. All robotics, equipment (including construction in progress), tools, inspection equipment and other equipment, furnishings and machinery, spare parts, furniture, office furnishings, fixtures, computer equipment, systems and software, and all other personal property and tangible property related to the Business or located at the Leased Premises or the Real Property and all such items located at the Murfreesboro, Tennessee and Portland, Tennessee facilities of Sellers and all administrative and office furnishings and equipment located at the Nashville, Tennessee facility of Sellers and those items to be listed on a schedule dated as of February 3, 1997, which Sellers shall provide to Buyer no later than February 12, 1997, and which shall be updated as of the Closing Date (collectively, the "EQUIPMENT");

C. All rights of Sellers under those contracts, licenses, leases and agreements relating to the Business that will be assigned to and assumed by Buyer at the Closing and which are listed on SCHEDULE 1.C(1) (collectively, the "ASSUMED CONTRACTS"), including, without limitation, all rights of Sellers under the loan agreements, promissory notes, guaranty agreements and reimbursement agreements listed on SCHEDULE 1.C(2) (the "IRB AGREEMENTS") entered into by Sunbeam Products in connection with the issuance of the Paragould, Arkansas and Waynesboro, Georgia industrial revenue bonds, subject, however, to the provisions of Section 1.D hereof;

NOT A CERTIFIED COPY

016037

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016948
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407144

16div-022323

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("AGREEMENT") is made February 10, 1997, by and among SUNBEAM PRODUCTS, INC., a Delaware corporation ("SUNBEAM PRODUCTS"), SUNBEAM FURNITURE COMPANY, a Delaware corporation ("SUNBEAM FURNITURE"; and together with Sunbeam Products, "SELLERS") OP II, Inc., a Florida corporation ("SUNBEAM OP"; and together with the Sellers, the "SUNBEAM TRANSFERORS") and Jacuzzi Outdoor Products, Inc., a Delaware corporation ("BUYER"). This Agreement is joined in by Sunbeam Corporation, a Delaware corporation and the indirect parent corporation of the Sunbeam Transferors ("SUNBEAM") and U.S. Industries, Inc., a Delaware corporation and the indirect parent corporation of Buyer ("USI").

W I T N E S S E T H:

WHEREAS, the Sellers are engaged in the business (the "BUSINESS") of designing, manufacturing and distributing furniture products, including aluminum style furniture, aluminum folding furniture, wrought iron furniture, cushions and pads and accessories, resin furniture, casual indoor furniture, commercial and folding furniture, and high-end patio furniture (collectively, the "PRODUCTS");

WHEREAS, the Sunbeam Transferors desire to sell, and Buyer desires to purchase, all of the assets and rights, except those assets and rights which are expressly excluded herein, employed by the Sunbeam Transferors in the operation of the Business, in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, the Sunbeam Transferors and Buyer desire to enter into certain agreements regarding transitional matters, including the license of the Sunbeam(R) trademark owned by Sunbeam OP, in connection with Buyer's purchase of assets pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations and warranties herein contained, intending to be legally bound, and subject to and on the terms and conditions herein set forth, the Sunbeam Transferors and Buyer agree as follows:

NOT A CERTIFIED COPY

016038

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016949
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407145

16div-022324

MATTERS PRIOR TO CLOSING:

Schedule 7.B(1)(e)	Compensation and Incentive Arrangements
Schedule 7.B(1)(f)	Employee Benefit Plans
Schedule 7.D(5)	Assignments of Assumed Contracts

DOCUMENT DELIVERIES:

Schedule 14.A	Record Retention Policy

POST-CLOSING MATTERS:

Schedule 27.A(1)	Employment
Schedule 27.A(2)	Key Employees
Schedule 27.E(4)	Seller's Promotional Programs
Schedule 27.E(7)	Seller's Warranty Return Policies
Schedule 27.F	Employees of Buyer, No Hire
Schedule 27.I	Guaranty Arrangements

NOT A CERTIFIED COPY

016039

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016950
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407146

16div-022325

List of Schedules

ASSETS:

Schedule 1.A	Permits
Schedule 1.C(1)	Assumed Contracts
Schedule 1.C(2)	IRB Agreements
Schedule 1.E	Warranties
Schedule 1.F	Intellectual Property
Schedule 1.G	Leased Premises
Schedule 1.H	Real Property

EXCLUDED ASSETS:

Schedule 1.M(1)	Computer Hardware, Software, Etc.
Schedule 1.M(4)	Intellectual Property
Schedule 1.M(12)	Assets Utilized in Other Businesses
Schedule 1.M(13)	Other Assets

REPRESENTATIONS AND WARRANTIES OF SELLERS:

Schedule 5.E	Consents
Schedule 5.F(1)	Assets and Assumed Liabilities
Schedule 5.F(2)	Accounting Principles
Schedule 5.G	Ordinary Course
Schedule 5.H(1)	Taxes
Schedule 5.I	Governmental Matters
Schedule 5.L	Legal Proceedings
Schedule 5.M(1)	Licenses and Permits
Schedule 5.M(2)	Compliance with Laws
Schedule 5.N(1)	Collective Bargaining Agreements
Schedule 5.N(2)	Labor Controversies (strikes, work stoppages, etc.)
Schedule 5.N(3)	Labor Controversies (complaints with governmental authorities, etc.)
Schedule 5.N(5)	Labor Controversies (mass layoffs or plant closings)
Schedule 5.O(1)	Omitted Material Assumed Contracts
Schedule 5.O(2)	Defaults on Material Contracts
Schedule 5.P	Employee Benefit Plans
Schedule 5.Q(1)	Intellectual Property Claims
Schedule 5.Q(2)	Maintenance of Intellectual Property
Schedule 5.R	Environmental Matters Disclosure Schedule
Schedule 5.T	Licenses of Intangible Personal Property
Schedule 5.V(1)	Retained Material Assets
Schedule 5.V(2)	Outsourced Services
Schedule 5.W	Individuals Charged with "Knowledge"

NOT A CERTIFIED COPY

016040

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016951
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407147

16div-022326

Exhibits

Exhibit A	--	Transition Services Agreement Term Sheet
Exhibit B	--	Manufacturing Services Agreement Term Sheet
Exhibit C	--	Form of Opinion of General Counsel of Sunbeam
Exhibit D	--	Form of Opinion of General Counsel of USI

NOT A CERTIFIED COPY

016904

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016952
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407148

16div-022327

		Page
20.	Severability	44
21.	Counterparts	44
22.	Expenses	44
23.	Further Assurances	44
24.	Schedules	44
25.	Guaranty by Sunbeam	45
26.	Guaranty by USI	45
27.	Post-Closing Matters	46
	A. Employment	46
	B. Vacations, Sick Days and Holidays	47
	C. No Third Party Beneficiaries	48
	D. Certain Tax Matters	48
	E. Accounts; Product Returns	49
	F. Confidentiality and No-Hire	51
	G. Non-Competition	51
	H. Product Marking; Burden of Proof	53
	I. Sunbeam Guaranties	53
28.	Termination	53
	A. Terms of Termination	53
	B. Effect of Termination	54

NOT A CERTIFIED COPY

016042

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016953
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407149

16div-022328

		Page
6.	Representations and Warranties of Buyer	22
	A. Corporate Standing	22
	B. Power and Authority of Buyer; Authorization	22
	C. Binding Effect	23
	D. No Conflict	23
	E. Brokers' and Finders' Fees	23
	F. No Warranties	23
7.	Matters Prior to Closing	24
	A. Ancillary Agreements	24
	B. Obligations of Seller Prior to Closing	25
	C. Obligations of Buyer Prior to Closing	28
	D. Conditions Precedent to Obligations of Buyer	28
	E. Conditions Precedent to Obligations of the Sunbeam Transferors	30
8.	Document Deliveries	31
	A. Deliveries of the Sunbeam Transferors	31
	B. Buyer's Deliveries	32
9.	Tax Returns; Bulk Transfer Laws	32
10.	Survival of Representations and Warranties	33
11.	Indemnification	33
	A. Remedies	33
	B. Third-Party Claims	36
	C. Exclusivity	37
	D. Limitations on Indemnity	37
	E. ERISA Indemnification	38
12.	Public Announcements	39
13.	Prorations and Adjustments	40
	A. Expenses	40
	B. Time of Prorations and Adjustments	40
14.	Records; Access to Information	40
15.	Notices	42
16.	Third Party Rights	43
17.	Parties in Interest; Assignment	43
18.	Construction; Governing Law	43
19.	Entire Agreement; Amendment and Waiver	43

NOT A CERTIFIED COPY

016043

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016954
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407150

16div-022329

TABLE OF CONTENTS

		Page
1.	Purchase and Sale of Assets	2
2.	Excluded Liabilities	6
3.	Assumed Liabilities	6
4.	Closing, Purchase Price, Adjustment, Etc.	7
	A. Closing	7
	B. Purchase Price; Allocation	9
	C. Payment of Estimated Purchase Price to the Sunbeam Transferors on Date of Closing	8
	D. Payment of Purchase Price	9
	E. Determination of Purchase Price	9
5.	Representations and Warranties of the Sunbeam Transferors	11
	A. Corporate Standing	11
	B. Power and Authority of the Sunbeam Transferors; Authorization	11
	C. Binding Effect	12
	D. No Conflict	12
	E. Consents	12
	F. Financial Information	12
	G. Ordinary Course	13
	H. Taxes	13
	I. Governmental Matters	14
	J. Title and Survey Matters	14
	L. Legal Proceedings	15
	M. Licenses and Permits; Compliance with Laws	15
	N. Collective Bargaining Agreements; Labor Controversies; Etc.	16
	O. Contracts	17
	P. Employee Benefit Plans	18
	Q. Intellectual Property	19
	R. Environmental Matters	18
	S. IRB Agreements	20
	T. Licenses of Intangible Personal Property	21
	U. Brokers and Finders' Fees	21
	V. Entire Business; Condition of Assets	21
	W. Knowledge	22
	X. No Warranties	22

NOT A CERTIFIED COPY

016044

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016955
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407151

16div-022330

SUNBEAM CORPORATION AND SUBSIDIARIES
SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS

FISCAL YEARS 1996, 1995 AND 1994
(DOLLARS IN THOUSANDS)

DESCRIPTION	BALANCE AT BEGINNING OF PERIOD	CHARGED TO COSTS AND EXPENSES	DEDUCTIONS	BALANCE AT END OF PERIOD
Allowance for doubtful accounts and cash discounts:				
Fiscal year ended December 29, 1996	$12,326	$23,369	$ (233) (a) 19,911 (b) - (c)	$15,017
Fiscal year ended December 31, 1995	$ 9,416	$10,651	$ 715 (a) 6,988 (b) 38 (c)	$12,326
Fiscal year ended January 1, 1995	$10,795	$ 2,996	$ 700 (a) 3,487 (b) 188 (c)	$ 9,416

Notes: (a) Reclassified to accrued liabilities for customer deductions.
(b) Accounts written off as uncollectible.
(c) Foreign currency translation adjustment.

EXHIBIT 2.a

ASSET PURCHASE AGREEMENT

among

SUNBEAM PRODUCTS, INC.

SUNBEAM FURNITURE COMPANY

OP II, INC.

and

JACUZZI OUTDOOR PRODUCTS, INC.

And Joined In By

SUNBEAM CORPORATION

and

U.S. INDUSTRIES, INC.

Dated February 10, 1997

NOT A CERTIFIED COPY

016045

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

13-DEC-1997

CP 016956
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407152

16div-022331

14. UNAUDITED QUARTERLY FINANCIAL DATA

FISCAL 1996(a)

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
	(DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)			
Net sales	$229.7	$253.9	$231.8	$ 268.8
Gross profit (loss)	48.1	47.2	28.8	(40.4)
Operating earnings (loss)	15.5	9.2	(20.7)	(291.3)(c)
Earnings (loss) from continuing operations	6.7	2.8	(15.8)	(190.4)
Earnings (loss) per share from continuing operations	.08	.03	(.19)	(2.29)
Earnings (loss) from discontinued operations, net of taxes	10.7	4.4	(2.3)	(11.9)
Estimated loss on sale of discontinued operations, net of taxes	-	-	-	(32.4)
Net earnings (loss)	17.4	7.2	(18.1)	(234.8)
Net earnings (loss) per share(b)	.21	.09	(.22)	(2.83)

FISCAL 1995(a)

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
	(DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)			
Net sales	$244.6	$241.9	$246.3	$294.1
Gross profit	58.9	49.3	53.6	46.0
Operating earnings	32.3	15.1	19.1	3.7 (d)
Earnings from continuing operations	17.9	8.1	9.9	1.7
Earnings per share from continuing operations	.22	.10	.12	.01
Earnings (loss) from discontinued operations, net of taxes	12.1	3.3	(0.9)	(1.6)
Net earnings	30.0	11.4	9.0	0.1
Net earnings per share(b)	.36	.14	.11	--

(a) Each quarter consists of a 13-week period.
(b) Primary and fully diluted earnings per share amounts are equivalent.
(c) Refer to Note 2 and 3 regarding the Company's 1995 restructuring and growth plan.
(d) Operating earnings for the Fourth Quarter of 1995 include charges related to the Company's inventory reduction initiatives which resulted in approximately $12.0 million of excess capacity costs attributable to lower production levels.

NOT A CERTIFIED COPY

016046

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016957
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407153

16div-022332

13. OTHER COMMITMENTS AND CONTINGENCIES-(CONTINUED)

predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately $20.6 million at December 29, 1996, and the corresponding receivables from the third parties, are not included in the consolidated balance sheets since these transactions occurred prior to the issuance of SFAS No. 76, EXTINGUISHMENT OF DEBT. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Letters of credit aggregating $29.2 million were outstanding as of December 29, 1996.

LITIGATION

The Company is involved in various lawsuits arising from time to time in the ordinary course of business and related to divested operations of the Company. The Company has established reserves, in accordance with SFAS No. 5, ACCOUNTING FOR CONTINGENCIES, to cover the anticipated probable costs of litigation matters, based upon periodic reviews of all cases. In the fourth quarter of 1996, the Company increased litigation reserves by approximately $17.7 million based on adverse developments in the status of certain claims, primarily related to divested operations of the Company. The Company believes, based on existing information, that anticipated probable costs of litigation matters have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

PRODUCT LIABILITY MATTERS

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1996 was comprised of a self-insurance retention of $1 million per occurrence.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relavant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a materially adverse effect on the financial position or results of operations of the Company.

NOT A CERTIFIED COPY

016047

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016958
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407154

16div-022333

12. ENVIRONMENTAL MATTERS-(CONTINUED)

Remediation at one of the two sites is essentially complete and remediation of the other site is expected to be substantially complete during 1997.

The Company has established reserves, in accordance with SFAS No. 5, ACCOUNTING FOR CONTINGENCIES, to cover the anticipated probable costs of remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. As of December 29, 1996, the amount of such reserves was approximately 5% of the Company's total liabilities as set forth in the consolidated financial statements. Liability under the Superfund law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRP's at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRP's established with respect to such sites. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 29, 1996. In connection with the Company's restructuring plan, in the fourth quarter of 1996 a comprehensive review of all environmental exposures was performed and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. As a result, the Company recorded additional environmental reserves of approximately $9.0 million. The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

13. OTHER COMMITMENTS AND CONTINGENCIES

LEASES

The Company rents certain facilities and equipment under operating leases. Rental expense for operating leases amounted to $8.8 million for 1994, $8.6 million for 1995 and $8.0 million for 1996. The minimum future rentals due under noncancelable operating leases as of December 29, 1996 aggregated $11.9 million. The amounts payable in each of the years 1997-2001 and thereafter are $1.4 million, $1.4 million, $1.3 million, $1.3 million, $1.3 million and $5.2 million, respectively.

CERTAIN DEBT OBLIGATIONS

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's

NOT A CERTIFIED COPY

016048

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016959
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407155

16div-022334

11. CUSTOMER AND GEOGRAPHIC DATA-(CONTINUED)

The Company's operations are conducted in the United States and international markets, principally in Latin America, Canada and Mexico. Information about the Company's domestic and international operations for each fiscal year is as follows (in thousands):

	1994	1995	1996
Net sales:			
Domestic	$ 852,796	$ 829,423	$ 800,969
International (includes U.S. export sales)	191,451	187,460	183,267
	$1,044,247	$1,016,983	$ 984,236
Operating earnings (loss):			
Domestic	$ 148,254	$ 70,423	$(246,577)
International (includes U.S. export sales)	29,336	24,301	(5,022)
	177,590	94,724	(251,599)
Unallocated expenses and eliminations	(26,534)	(24,479)	(35,736)
	$ 151,056	$ 70,245	$(287,335)
Identifiable assets:			
Domestic	$ 969,364	$1,040,591	$ 731,788
International	68,301	67,563	73,430
	1,038,265	1,108,154	855,218
Corporate assets	74,664	50,530	217,491
	$1,112,929	$1,158,684	$1,072,709

Unallocated expenses and eliminations include corporate administrative expenses, intangible amortization, certain pension and postretirement benefit costs or credits, and eliminations of intercompany income and expense. Identifiable assets are those used directly in the operations, and exclude non-operating, corporate and deferred tax assets. Sales between geographic areas are not material and are made primarily at cost plus a markup.

12. ENVIRONMENTAL MATTERS

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations. As of December 29, 1996, the Company had been identified as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund law and two sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a DE MINIMIS (less than 1%) participant. Substantially all of these sites relate to divested operations of the Company.

The Company currently is engaged in active remediation activities at seven sites, four of which are among the Environmental Sites referred to above, and three of which have not been designated as Superfund sites under federal or state law. In addition, the Company is engaged in environmental remediation activities at two sites in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing a plan for remediation of those sites.

NOT CERTIFIED COPY

016049

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016960
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407156

16div-022335

10. INCOME TAXES-(CONTINUED)

The major components of the Company's net current deferred tax asset and net long-term deferred tax liability at the end of each fiscal year are as follows (in thousands):

	1995		1996	
	CURRENT DEFERRED TAX ASSET	LONG-TERM DEFERRED TAX LIABILITY	CURRENT DEFERRED TAX ASSET	LONG-TERM DEFERRED TAX LIABILITY
Operating reserves and accruals	$16,389	$ 23,562	$60,307	$ 28,447
Book/tax basis difference in trademarks and trade names	-	(73,172)	-	(72,587)
Book/tax basis difference in other assets	2,036	(27,957)	19,276	(13,406)
Reserves for non-operating assets and non-operating liabilities	3,616	25,484	8,905	24,043
Other	4,292	(24,849)	5,201	(18,805)
	$26,333	$(76,932)	$93,689	$(52,308)

As of December 29, 1996, the Company is in a net deferred tax asset position of approximately $41.4 million. Management believes that it is more likely than not that the net deferred tax asset will be realized based on a combination of refund of taxes paid in prior years and available in the carryback period, reversals of existing taxable temporary differences and the generation of future taxable income. Deferred U.S. income taxes are not provided on the undistributed earnings of foreign subsidiaries, since such earnings are considered to be permanently reinvested. At December 29, 1996, the cumulative amount of undistributed earnings of foreign subsidiaries on which U.S. federal income taxes have not been provided was approximately $25.7 million. It is not practicable to calculate the amount of unrecognized deferred U.S. income tax liability on such undistributed foreign earnings because of the complexities associated with its hypothetical calculation.

11. CUSTOMER AND GEOGRAPHIC DATA

Classes of products which contributed more than 10% to consolidated sales were outdoor home use durable products and indoor home use durable products. Sales of outdoor home use durable products amounted to $294.2 million in 1994, $269.0 million in 1995 and $256.9 million in 1996. Sales of indoor home use durable products were $598.8 million in 1994, $688.3 million in 1995 and $680.7 million in 1996.

The Company's largest customer accounted for approximately 17% of consolidated sales in 1994, 13% in 1995 and 13% in 1996.

NOT A CERTIFIED COPY

016050

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016961
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407157

16div-022336

10. INCOME TAXES-(CONTINUED)

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	1994	1995	1996
Current:			
Federal	$28,769	$ (1,329)	$ (28,567)
State	3,289	(1,402)	(202)
Foreign	1,169	626	707
	33,227	(2,105)	(28,062)
Deferred:			
Federal	21,850	23,127	(65,833)
State	1,901	1,962	(11,050)
Foreign	2,532	57	(945)
	26,283	25,146	(77,828)
	$59,510	$ 23,041	$(105,890)

A reconciliation of income tax expense with the expected income tax computed by applying the federal statutory income tax rate to earnings (loss) from continuing operations before income taxes for each fiscal year is as follows (in thousands):

	1994	1995	1996
Income tax computed at the federal statutory tax rate	$50,678	$21,222	$ (105,896)
State and local taxes (net of federal benefit)	3,373	364	(7,313)
Foreign earnings and dividends taxed at other rates	2,011	413	5,967
Non-deductible expenses	2,062	872	3,373
Other, net	1,386	164	(2,021)
	$59,510	$23,041	$ (105,890)

NOT A CERTIFIED COPY

016051

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016962
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407158

16div-022337

9. SUPPLEMENTARY FINANCIAL STATEMENT DATA-(CONTINUED)

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	1994	1995	1996
Other (income) expense, net:			
Interest income	$ (3,911)	$ (3,657)	$ (1,255)
Other	3,199	3,830	2,893
	$ (712)	$ 173	$ 1,638
Advertising and sales promotion	$ 56,104	$ 62,299	$ 78,733
Cash paid (received) during the period for:			
Interest (net of capitalization)	$ 7,461	$ 12,555	$ 13,397
Income taxes (net of refunds)	$ 23,595	$ 13,936	$ (540)

Non-Cash Transactions:
In connection with the acquisition of the outdoor resin furniture business from Rubbermaid Incorporated in 1994, the Company assumed certain long-term debt in the amount of $5 million.

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a $5 million capital lease obligation in 1996.

10. INCOME TAXES

Earnings (loss) from continuing operations before income taxes for each fiscal year is summarized as follows (in thousands):

	1994	1995	1996
Domestic	$134,720	$54,646	$(285,011)
Foreign	10,074	5,989	(17,550)
	$144,794	$60,635	$(302,561)

NOT A CERTIFIED COPY

016052

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016963
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407159

16div-022338

9. SUPPLEMENTARY FINANCIAL STATEMENT DATA

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	1995	1996
Receivables:		
Trade	$ 224,201	$ 227,043
Sundry	4,320	2,412
	228,521	229,455
Valuations allowances	(12,326)	(16,017)
	$ 216,195	$ 213,438
Inventories:		
Finished goods	$ 120,018	$ 85,213
Work in process	25,609	25,167
Raw materials and supplies	63,479	52,272
	$ 209,106	$ 162,252
Property, plant and equipment:		
Land	$ 2,783	$ 2,524
Buildings and improvements	90,898	95,619
Machinery and equipment	293,985	258,199
	387,666	356,342
Accumulated depreciation and amortization	(100,586)	(136,254)
	$ 287,080	$ 220,088
Trademarks and trade names:		
Gross	$ 245,307	$ 245,307
Accumulated amortization	(31,301)	(45,045)
	$ 214,006	$ 200,262

Inventory and property, plant and equipment exclude assets of discontinued operations and other assets held for sale.

	1995	1996
Other current liabilities:		
Payrolls, commissions and employee benefits	$ 23,550	$18,536
Advertising and sales promotion	16,543	21,794
Product warranty	15,592	23,883
Other	24,519	35,296
	$ 80,204	$ 99,509
Non-operating liabilities:		
Accrued postretirement benefit obligation	$ 37,042	$ 33,527
Accrued pension	11,161	-
Other	31,964	54,548
	$ 80,167	$ 88,075

NOT A CERTIFIED COPY

016053

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016964
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407160

16div-022339

8. EMPLOYEE BENEFIT PLANS-(CONTINUED)

Net periodic postretirement benefit cost for each fiscal year includes the following components (in thousands):

	1995	1996
Interest cost	$ 1,353	$ 1,042
Amortization of reduction in prior service cost	(2,943)	(2,943)
Net periodic postretirement benefit credit	$(1,590)	$(1,901)

The assumed health care cost trend rate used in measuring the accumulated postretirement benefit obligation is 9.5% for 1997 and is assumed to decrease gradually to 6% by 2003 and remain at that level thereafter. A one percentage point increase in the assumed health care cost trend rate for each year would increase the accumulated postretirement benefit obligation as of December 29, 1996 and the net periodic postretirement benefit cost for 1996 by approximately 8%. The weighted average discount rate used in determining the accumulated postretirement benefit obligation was 7.25% at December 31, 1995 and December 29, 1996.

DEFINED CONTRIBUTION PLANS

The Company sponsors defined contribution profit sharing plans covering eligible employees. Company contributions to these plans include employer matching contributions as well as discretionary profit sharing contributions depending on both the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided $5.8 million in 1994, $4.1 million in 1995 and $1.7 million in 1996 for its defined contribution plans.

NOT A CERTIFIED COPY

016051

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016965
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407161

16div-022340

8. EMPLOYEE BENEFIT PLANS-(CONTINUED)

Net periodic pension cost for the Company's U.S. defined benefit pension plans for each fiscal year includes the following components (in thousands):

	1994	1995	1996
Service cost-benefits earned during the period	$ 396	$ 331	$ 411
Interest cost-accumulated benefit obligations	10,325	10,620	9,071
Actual return on plan assets	3,581	(20,995)	(816)
Net amortization and deferral	(13,416)	11,332	(7,518)
Net periodic pension cost	$ 886	$ 1,298	$ 1,148
Assumptions:			
Discount rate	8.75%	7.25%	7.75%
Long-term rate of return on assets	9.00%	9.50%	7.75%

The Company funds its pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds and cash equivalents.

The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

OTHER POSTRETIREMENT BENEFITS

The Company provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

Effective July 1, 1993, various amendments to the Company's postretirement benefits program were adopted. The amendments included increases in retiree contribution levels for certain retiree groups and the discontinuation of medical and/or life insurance coverage for certain retirees who qualify for Medicare. These amendments resulted in an unrecognized reduction in prior service cost which is being amortized over future years.

The following table presents the funded status reconciled with the amounts recognized in the Company's Consolidated Balance Sheet at the end of each fiscal year (in thousands):

	1995	1996
Accumulated postretirement benefit obligation	$15,127	$14,555
Plan assets	-	-
Accumulated postretirement benefit obligation in excess of plan assets	15,127	14,555
Unrecognized reduction in prior service cost	21,820	18,877
Unrecognized net gain	95	95
Accrued postretirement benefit obligation recognized on the balance sheet	$37,042	$33,527

NOT A CERTIFIED COPY

016055

PAGE 41 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997 12-DEC-1997

CP 016966
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407162

16div-022341

7. MATTERS PRIOR TO CLOSING.

A. ANCILLARY AGREEMENTS.

(1) On the Closing Date, Buyer (or a different wholly-owned subsidiary of USI designated by Buyer) and Sunbeam OP, shall execute and deliver an agreement (the "TRADEMARK LICENSE AGREEMENT") which provides for Sunbeam OP to grant to Buyer (or such other subsidiary) the exclusive right to use the Sunbeam(R) trademark in North America for indoor and outdoor furniture product categories for products sold by Buyer for a term of five (5) years following the Closing Date on a royalty-free basis. The Trademark License Agreement shall contain standard terms and conditions for a third-party intellectual property license, shall not contain any minimum sales requirements, and shall allow Buyer to utilize the Sunbeam(R) trademark in connection with line extensions which are within this Agreement's definition of "Product." In addition, the Trademark License Agreement shall provide for an option for Buyer to extend such Agreement in accordance with the terms of the Agreement, for an additional five (5) year term (with no option payment), at a then-current market royalty rate (as defined in the Agreement), subject to a minimum rate of 3% of net sales and a maximum royalty rate of 8% of net sales.

(2) On the Closing Date, Buyer and Sunbeam Products shall execute and deliver an agreement (the "TRANSITION SERVICES AGREEMENT"), including the terms set forth in EXHIBIT A hereto, pursuant to which (a) Seller will (directly or through third parties) provide administrative services to Buyer as described in Exhibit A, for fees in an amount estimated to cover the costs of providing such services by Sunbeam Products, and escalating over the term of the Transition Services Agreement, for a term as described in Exhibit A, after which Sellers will provide reasonable accommodation to Buyer to the extent necessary for Buyer to establish alternative services using its best efforts, and during which extension Buyer will cover all cost of Sellers, PROVIDED, that in no event shall such extension cause such services to be provided for a period of more than twelve (12) months following the Closing Date. Buyer will provide access and transitional services to be mutually agreed to Sellers with respect to inventory and other matters relating to items retained by Sellers which are located at facilities controlled by Buyer post-Closing.

NOT A CERTIFIED COPY

016056

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016967
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407163

16div-022342

(3) On the Closing Date, Buyer and Sunbeam Products shall execute and deliver a lease with respect to the Portland, Tennessee free-standing office facility (the "PORTLAND LEASE") of a term of three (3) months, with month-to-month tenancy thereafter which shall be terminable, after the first three (3) months of occupancy, by either party on thirty (30) days' written notice, at a market rate rental cost to be agreed by the parties.

(4) On the Closing Date, Buyer and Sunbeam Products shall execute and deliver an agreement (the "MANUFACTURING SERVICES AGREEMENT"), including the terms set forth on EXHIBIT B hereto, pursuant to which Seller, through its Murfreesboro, Tennessee facility, shall manufacture and provide Product to Buyer's requirements through June 30, 1997. The Manufacturing Services Agreement shall also provide for maintenance in the ordinary course of, and the removal by Buyer of the fixed assets, including information systems hardware and software located at the Murfreesboro facility upon the expiration of such Agreement at Buyer's cost.

(5) On the Closing Date, Buyer and Sunbeam Products shall execute and deliver an agreement (the "STANLEY DISTRIBUTION AGREEMENT"; and together with the Trademark License Agreement, the Transition Services Agreement, the Portland Lease and the Manufacturing Services Agreement, the "ANCILLARY AGREEMENTS"), pursuant to which Buyer, through the Stanley, North Carolina facility, shall provide distribution services for grills located at the Stanley North Carolina facility through September 30, 1997, for fees in an amount estimated to cover the costs of providing such services by Buyer.

B. OBLIGATIONS OF SELLERS PRIOR TO CLOSING.

From the date of this Agreement until the Closing Date, Sellers shall:

(1) Conduct the Business only in the usual, regular and ordinary course consistent with past practice, and preserve intact for Buyer the goodwill of the Business and the present relationship between the Business and the employees, suppliers, clients, customers and others having business relations with Sellers with respect to the Business. During the period from the date hereof to the Closing Date, except as otherwise provided for in this

NOT A CERTIFIED COPY

016057

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016968
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407164

16div-022343

Agreement or as Buyer shall otherwise consent, Sellers shall not, with respect to the Business:

(a) enter into commitments for new capital expenditures in excess of $500,000 in the aggregate;

(b) dispose of or incur, create or assume any lien, restriction or encumbrance on any material Asset or Assets which, in the aggregate, are material to the Business, it being agreed by Buyer that Sellers may sell obsolete or excess inventory (including raw materials and work in progress) of the Business to consolidators, liquidators or others in non-ordinary course transactions;

(c) enter into any material transaction outside of the ordinary course of business consistent with past practice;

(d) amend any term of, waive any right under or allow to lapse or expire, (i) any contract, permit, lease, arrangement or understanding which constitutes an Assumed Contract or which is material to the Business or (ii) any item of Intellectual Property, unless Buyer otherwise consents in connection with Sellers' consultation with Buyer regarding any filing or other action necessary to maintain such Intellectual Property from the date of this Agreement until the Closing Date;

(e) make any change to, or amend in any way, the contracts, salaries, wages, or other compensation of any officer, director, employee, agent, or other similar representative of Seller engaged in the operations of the Business other than changes, amendments that (i) are made in the ordinary course of business and consistent with past practice, (ii) do not and will not result in increases of more than 5% in the salary, wages or other compensation of any such Person, and (iii) do not and will not exceed, in the aggregate, 5% of the total salaries, wages, and other compensation of all employees of the Division, except that Sellers may pay or perform employee compensation and other incentive arrangements intended to facilitate the consummation of the transactions contemplated hereby, all of such compensation and incentive arrangements being described on SCHEDULE 7.8(1)(E);

NOT A CERTIFIED COPY

016058

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016969
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407165

16div-022344

(f) except as described in SCHEDULE 7.3(l)(F), adopt, enter into, amend, alter or terminate, partially or completely, any Plan;

(g) assume, enter into, amend, alter or terminate any labor or collective bargaining agreement to which the operations of the Business is affected thereby;

(h) offer any additional Sunbeam Guaranty that has not been extended to a customer prior to the Closing Date; or

(i) agree, in writing or otherwise, to do any of the foregoing.

(2) Use their best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements;

(3) Afford Buyer, its accountants, counsel, technical advisors, and other representatives free and reasonable access during normal business hours to the offices, equipment, personnel, facilities, records, files, contracts and agreements of Sellers relating to the Assets and the Business and furnish Buyer with all material information concerning the Assets and the Business;

(4) Not take any action or omit to take any action which will result in the material violation by Sellers of any law applicable to the transactions contemplated by this Agreement or the Ancillary Agreements or cause a material breach by Sellers of any of the representations and warranties of Sellers set forth in this Agreement or the Ancillary Agreements or any lease, agreement, contract or commitment to which any Seller is a party;

(5) Use their best efforts to obtain prior to Closing all consents by third parties required to be obtained by Sellers with respect to its performance of this Agreement and the Ancillary Agreements and cooperate fully with Buyer in connection with Buyer's requests and applications for the governmental authorizations, approvals and consents which are necessary for the ownership and operation of the Business following the Closing Date;

NOT A CERTIFIED COPY

016059

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016970
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407166

16div-022345

(6) Provide to Buyer a supplemental Schedule in the event of any changes taking place after the date of this Agreement which would have been reflected in any Schedule to this Agreement had such changes taken place before the preparation of the Schedule (it being understood that such supplemental Schedules shall constitute an amendment to this Agreement, except to the limited extent provided in Section 24); and

(7) Remove all Inventory from the Portland, Tennessee facility and deliver such Inventory to a facility to be transferred to Buyer (it being understood that the Murfreesboro, Tennessee facility is not being transferred to Buyer) by no later than February 28, 1997.

C. OBLIGATIONS OF BUYER PRIOR TO CLOSING.

From the date of this Agreement until the Closing Date, Buyer shall:

(1) Use its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements;

(2) Not take any action or omit to take any action which will result in the material violation by Buyer of any law applicable to the transactions contemplated by this Agreement or the Ancillary Agreements or cause a material breach by Buyer of any of the representations and warranties of Buyer set forth in this Agreement or the Ancillary Agreements; and

(3) Use its best efforts to obtain prior to Closing all consents by third parties and all governmental authorizations which are necessary for Buyer's performance of this Agreement and the Ancillary Agreements.

D. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER. The obligations of Buyer under this Agreement are subject, at the option of Buyer, to the satisfaction at or prior to the Closing Date of each of the following conditions:

(1) ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as though made at and as of that date, and Sellers shall have delivered to Buyer a

NOT A CERTIFIED COPY

016060

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

12-DEC-197

CP 016971
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407167

16div-022346

certificate to that effect dated the Closing Date and executed by a duly authorized officer of each Seller.

(2) COMPLIANCE WITH COVENANTS. Seller shall have performed and complied in all material respects with all terms, agreements, covenants and conditions of this Agreement to be performed or complied with by it at or prior to the Closing Date, and Sellers shall have delivered to Buyer a certificate to that effect dated the Closing Date and executed by a duly authorized officers of each Seller.

(3) HSR ACT. The applicable waiting period (and any extension thereof) under the HSR Act, if any, shall have expired or been terminated.

(4) LEGAL ACTIONS OR PROCEEDINGS. No court or governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order which is in effect on the Closing Date and prohibits the consummation of the Closing. No legal action or proceeding shall have been instituted or threatened seeking to restrain, prohibit, invalidate or otherwise affect the consummation of the transactions contemplated hereby or pursuant to the Ancillary Agreements or which would, if adversely decided, have a material adverse effect on the operations or financial condition of the Business.

(5) ASSIGNMENTS OF ASSUMED CONTRACTS. Sellers shall have obtained all the authorizations, consents, waivers and approvals required in connection with the assignment of the Assumed Contracts that are set forth on SCHEDULE 7.D(5).

(6) CONSENTS. Buyer shall have been furnished with written consents and permits in forms acceptable to Buyer of any and all persons, including without limitation government agencies, authorities and third parties, required to be obtained prior to the consummation of the transactions contemplated hereby or pursuant to the Ancillary Agreements.

(7) SUPPLEMENTAL SCHEDULES. Sellers shall have furnished to Buyer all supplemental Schedules, if any, required by Section 7.B(6).

(8) ANCILLARY AGREEMENTS. The applicable Sunbeam Transferors shall have duly executed and delivered to Buyer

NOT A CERTIFIED COPY

1909910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016972
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407168

16div-022347

the Ancillary Agreements and the other documents referred to in Section 8.A.

(9) REAL ESTATE MATTERS. Buyer shall have received at or prior to Closing an irrevocable commitment for title insurance covering the Real Property and Leased Premises in which Seller has an insurable interest from a title insurance company reasonably acceptable to Buyer to issue an American Land Title Association (Extended) Owner's Policy of Title Insurance in amounts to be determined by Buyer, at Buyer's expense. The commitment shall show to the reasonable satisfaction of Buyer that immediately prior to the Closing Date the appropriate Seller had good and marketable title in fee simple absolute to the Real Property, free and clear of all liens, mortgages, security interests, pledges, charges, encumbrances, covenants, conditions, restrictions and other matters of record, except for Permitted Liens. Such commitment shall not contain the standard preprinted exceptions.

(10) PARAGOULD IRB DILIGENCE. Sellers shall have provided to Buyer all documentation relating to the City of Paragould, Arkansas ARKLA Industries Project, Series 1979 Industrial Revenue Bonds. Buyer shall have completed its due diligence relating to such bonds to its reasonable satisfaction.

(11) NO MATERIAL ADVERSE CHANGE. Since the date of the Statement of Assets and Liabilities, neither the Assets nor the Business shall have suffered a change or series of related changes that individually or in the aggregate is, or could reasonably be expected to be, materially adverse to the value of the Assets taken as a whole, or materially adverse to the business, financial condition, results of operations or prospects of the Business taken as a whole, except any such change or series of related changes resulting from any substantial national or international calamity or emergency or general economic factors which are outside the control of Sellers and also affect other participants in the outdoor furniture industry.

B. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SUNBEAM TRANSFERORS. The obligations of the Sunbeam Transferors under this Agreement are subject, at the option of the Sunbeam Transferors, to the satisfaction at or prior to the Closing Date of each of the following conditions:

NOT A CERTIFIED COPY

016062

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016973
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407169

16div-022348

(1) ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as though made at and as of that date, and Buyer shall have delivered to Sellers a certificate to that effect dated the Closing Date and executed by a duly authorized officer of Buyer.

(2) COMPLIANCE WITH COVENANTS. Buyer shall have performed and complied in all material respects with all terms, agreements, covenants and conditions of this Agreement to be performed or complied with by it at or prior to the Closing Date, and Buyer shall have delivered to Sellers a certificate to that effect.

(3) HSR ACT. The applicable waiting period (and any extension thereof) under the HSR Act, if any, shall have expired or been terminated.

(4) LEGAL ACTIONS OR PROCEEDINGS. No court or governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order which is in effect on the Closing Date and prohibits the consummation of the Closing. No legal action or proceeding shall have been instituted or threatened seeking to restrain, prohibit, invalidate or otherwise affect the consummation of the transactions contemplated hereby or pursuant to the Ancillary Agreements.

(5) CONSENTS. Sellers shall have been furnished with written consents and permits in forms acceptable to Sellers of any and all persons, including without limitation government agencies, authorities and third parties, required to be obtained prior to the consummation of the transactions contemplated hereby or pursuant to the Ancillary Agreements.

(6) ANCILLARY AGREEMENTS. Buyer shall have duly executed and delivered to Sellers the Ancillary Agreements and the other documents referred to in Section 9.8.

8. DOCUMENT DELIVERIES.

A. DELIVERIES OF THE SUNBEAM TRANSFERORS. At the Closing, the Sunbeam Transferors shall deliver to Buyer the following:

NOT A CERTIFIED COPY

016063

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016974
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407170

16div-022349

(1) A bill of sale, assignments to accomplish the transfer of the Assumed Contracts and the Intellectual Property and deeds to accomplish the transfer of the Real Property, each signed on behalf of the applicable Sunbeam Transferor(s), and such other documents as Buyer may reasonably request in order to accomplish the sale of the Assets to Buyer;

(2) Each of the Ancillary Agreements, in a form reasonably acceptable to Buyer and signed on behalf of the applicable Sunbeam Transferor(s);

(3) A disclosure schedule relating to the representations and warranties of Sellers contained in Section 5.R (the "DISCLOSURE SCHEDULE");

(4) The consent of Samsonite Corporation to the assignment (and, if necessary to transfer as a matter of law, amendment) of that certain Trademark License Agreement dated November 20, 1995;

(5) A renewal of the lease pertaining to the Nacogdoches, Texas facility which is for a term of one year;

(6) All consents required pursuant to the terms of the IRB Agreements;

(7) The opinion of the General Counsel of Sunbeam, dated as of the Closing Date, addressed to USI and Buyer substantially to the effect set forth in Exhibit C hereto;

(8) The certificates described in Section 7.D(1) and (2); and

(9) Such other documents as are reasonably requested by counsel for Buyer.

B. BUYER'S DELIVERIES. At the Closing, Buyer shall deliver to Sellers the following:

(1) The Estimated Purchase Price;

(2) An assumption agreement with respect to the Assumed Liabilities signed on behalf of Buyer;

(3) Each of the Ancillary Agreements, signed on behalf of Buyer;

32

NOT A CERTIFIED COPY

016094

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016975
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407171

16div-022350

(4) The opinion of the General Counsel of USI, dated as of the Closing Date, addressed to Sunbeam and Sellers substantially to the effect set forth in Exhibit C hereto;

(5) The certificates described in Section 7.E(1) and (2); and

(6) Such other documents as are reasonably requested by counsel for Sellers.

9. TAX RETURNS; BULK TRANSFER LAWS.

Buyer agrees to waive compliance by Sellers with the requirements of any applicable Bulk Sales Act or Bulk Transfers Act.

10. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

Except with respect to Section 11.E herein, and notwithstanding any investigation made by or on behalf of Buyer, all representations and warranties contained in this Agreement by any party to this Agreement and in any contract, certificate or other instrument delivered by or on behalf of any party pursuant to this Agreement shall survive the Closing for a period of eighteen (18) months following the Closing Date, and any claims relating thereto must be asserted in writing prior to the expiration of such eighteen (18) month period; in the event that notice of any claim for indemnification is given within such eighteen (18) month period, the representations and warranties that are subject of such indemnification claim shall survive until such time as such claim is finally resolved.

11. INDEMNIFICATION.

A. REMEDIES.

(1) Subject to the limitations set forth in Section 11.D, Sellers shall defend and indemnify Buyer and its directors, officers, shareholders and other affiliates, and attorneys and agents ("BUYER INDEMNIFIED PARTIES"), and hold the Buyer Indemnified Parties harmless and reimburse the Buyer Indemnified Parties for any and all claims, suits, actions, losses, liabilities, damages, demands, orders or directives of an administrative agency, regulatory authority or court having jurisdiction over such matters (an "ENVIRONMENTAL AUTHORITY"), judgments, settlements (including, without limitation, fines, penalties, and

NOT A CERTIFIED COPY

590910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016976
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407172

16div-022351

criminal or civil judgements and settlements), costs (including, without limitation, costs of investigation or remediation of Hazardous Substances, damage to natural resources and court costs) and expenses (including, without limitation, attorneys' and accountants' fees) (hereinafter "LOSS" or "LOSSES") suffered or incurred by the Buyer Indemnified Parties, and successors or assigns thereto as a result of, or with respect to:

(a) Subject to Section 10, any breach or inaccuracy of any representation or warranty of Sellers set forth in Section 5 or in any other agreement or certificate executed by Sellers in connection herewith, including the Ancillary Agreements;

(b) Any breach of or noncompliance by Sellers with any covenant or agreement of Sellers contained in this Agreement or in any agreement executed by Sellers in connection herewith, including the Ancillary Agreements;

(c) Any liability arising out of the operation of the Business before the Closing Date other than the Assumed Liabilities, whether or not relating to the Business or the Assets including, without limitation, all liabilities for damage or injury to person or property arising on account of any products identifiable (determined as provided in Section 27.H) as manufactured by Sellers before the Closing Date, regardless of when sold and based on any theory of liability, including product warranty, and any liability relating to the Sunbeam Guaranties;

(d) Operation of the Business or use of the Real Property or Leased Premises prior to Closing pertaining to (i) the investigation, remediation or cleanup of any Hazardous Material(s) required by any Environmental Law as of the Closing Date and located at, on, in or under the Real Property, the Leased Premises or property affected by the migration of Hazardous Material(s) from the Real Property or Leased Premises ("REAL ESTATE MATTER"), (ii) fines, penalties or corrective action required to bring operations at the Real Property or Leased Premises into compliance, in all material respects, with any Environmental Law as of the Closing Date ("COMPLIANCE MATTER") and (iii) the transportation treatment and handling, recycling, sale or offsite disposal, of Hazardous Materials generated

34

NOT A CERTIFIED COPY

990910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016977
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407173

16div-022352

or otherwise used (A) by Seller with respect to the Business, or (B) by Seller at the Real Property or Leased Premises;

(e) Correction, investigation or remediation of material violations of any Environmental Laws which are identified as a consequence of any environmental regulatory audits performed by Buyer prior to the Closing Date at the Real Property and Leased Premises (the "ENVIRONMENTAL AUDITS");

(f) Any liability arising out of warranty claims (other than personal injury claims) asserted prior to the fourth anniversary of the Closing Date with respect to Products manufactured by Seller prior to the Closing Date, regardless of when sold;

(g) Any bulk sales provision contained in the Uniform Commercial Code applicable to the transactions contemplated hereby; and

(h) Any and all actions, suits, directives, orders or notices of violation issued by any Environmental Authority, proceedings, claims, demands, assessments or judgments incident to any of the foregoing.

(2) Subject to the limitations set forth in Section 11.D, Buyer shall defend and indemnify Sellers and their directors, officers, shareholders and other affiliates, and attorneys and agents ("SELLER INDEMNIFIED PARTIES"), and hold the Seller Indemnified Parties harmless and reimburse the Seller Indemnified Parties for any and all Losses suffered or incurred by the Seller Indemnified Parties or any successors or assigns thereto as a result of, or with respect to:

(a) Subject to Section 10, any breach or material inaccuracy of any representation or warranty of Buyer set forth in Section 6 or in any other agreement or certificate executed by Buyer in connection herewith, including the Ancillary Agreements;

NOT A CERTIFIED COPY

016067

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016978
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407174

16div-022353

(b) Any breach of or material noncompliance by Buyer with any covenant or agreement of Buyer contained in this Agreement or in any other agreement executed by Buyer in connection herewith, including the Ancillary Agreements;

(c) The Assumed Liabilities;

(d) The liabilities described in Exhibit B with respect to the closure of the Murfreesboro, Tennessee facility by Sellers;

(e) Except to the extent Sellers are obligated to indemnify the Buyer Indemnified Parties pursuant to Section 11.A(1), the operation of the Business by Buyer after the Closing Date; and

(f) Any and all actions, suits, proceedings, claims, demands, assessments and judgments incident to any of the foregoing.

B. THIRD-PARTY CLAIMS. (1) Any party entitled to indemnification hereunder ("INDEMNITEE") receiving notice of any third-party claim upon which indemnification may be sought hereunder shall promptly give written notice of the same to the party who is required to pay indemnification ("INDEMNITOR"), including a brief description of the claim and, where practicable, an estimate of the amount thereof. The Indemnitor shall, within ten (10) days after receipt of such notice, notify the Indemnitee as to whether the Indemnitor desires to contest the same. If the Indemnitor shall decline to contest the claim or shall fail to respond to such notice, the Indemnitee shall have the right to undertake the defense, compromise or settlement of the same (in its sole discretion) on behalf of and for the account and risk of the Indemnitor. If the Indemnitor (a) so notifies the Indemnitee that the claim is to be contested, (b) agrees in writing to be responsible for all judgments, damages, settlements, awards and other liabilities that may arise therefrom, regardless of any limitation that may apply to the obligations of the Indemnitor herein or otherwise, or any time limits that may apply to the Indemnitee's right to obtain indemnity, and (c) provides the Indemnitee with adequate security and assurance of the Indemnitor's ability to satisfy the same, then the Indemnitor shall be entitled to control the defense thereof by counsel of its own selection and at its own expense. Each party shall give the other party all information and assistance which the latter may reasonably request in defending any matter hereunder.

NOT A CERTIFIED COPY

890910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016979
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407175

16div-022354

(2) Response to any Loss or potential Loss which pertains to those matters identified as a material violation of an Environmental Law which requires corrective action as set forth in the Environmental Audits, a Real Estate Matter or Compliance Matter, shall be managed by the Buyer Indemnified Parties who shall be obligated to (i) provide Sellers with prompt written notice ("ENVIRONMENTAL CLAIM NOTICE") of each such loss for which an indemnification is claimed hereunder, (ii) provide Sellers with copies of any documents transmitted to or from any governmental entities regarding each such Loss, (iii) use commercially reasonable and cost-effective methods of satisfying the requirements of any applicable Environmental Laws, and (iv) provide Seller with true copies of invoices or other charges associated with each such Loss, which invoices shall be promptly paid by Seller in accordance with Paragraph B(3) of this Section 11. Within ten (10) days following receipt of any Environmental Claim Notice, Seller shall notify Buyer of its intent, if any, to participate in the selection of the manner, scope or detail of any remedial actions, investigations or related response actions (collectively "Environmental Response Actions"). Buyer intends to undertake in order to address any Real Estate Matter, Compliance Matter or those matters identified as a material violation of any Environmental Law which requires correction in any Environmental Audits. If Seller chooses to participate in any such Environmental Response Action, Buyer will allow Seller to consult in, contribute to or otherwise provide meaningful input to the actions required to be undertaken by Buyer. Buyer, however, will have final control over the method, scope, nature and detail of all Environmental Response Actions, PROVIDED, HOWEVER, that such actions shall be commercially reasonable and cost-effective, and PROVIDED FURTHER, that with respect to any matter identified as a material violation of an Environmental Law which requires corrective action identified in the Environmental Audits, Seller shall be given the opportunity to correct such matters prior to the Closing Date.

(3) All invoices or other costs associated with any Environmental Response Action shall be paid by Buyer, who will be reimbursed by Seller for 85% of the full amount of each such invoice or cost within thirty days of Seller's receipt of same.

NOT A CERTIFIED COPY

016069

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016980
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407176

16div-022355

C. EXCLUSIVITY. The provisions of this Section 11 shall provide the sole and exclusive remedy with respect to any of the matters referred to herein or in any certificate or document delivered pursuant hereto.

D. LIMITATIONS ON INDEMNITY. Notwithstanding anything to the contrary in this Section 11 and other than with respect to Section 11.E hereof, Seller and Buyer agree as follows:

(1) Payments by the Indemnitor pursuant to this Section 11 shall be limited to the amount of any Losses that remain after deducting therefrom any tax benefit to the Indemnitee and any insurance proceeds received by Indemnitee. A tax benefit will be considered to be recognized by the Indemnitee for purposes of this Section 11.D in the tax period in which the indemnity payment occurs;

(2) With respect to any indemnification pursuant to paragraph A(1)(a) or A(2)(a) of this Section 11, no Indemnitor will have any obligation to indemnify any Indemnitee pursuant to this Section 11 unless and until the aggregate of all Losses of the Indemnitee on account of such breaches exceeds $1 million, in which case the Indemnitor will then be obligated to indemnify the Indemnitee for all such Losses except the first $250,000, and (ii) the total obligation of either Sellers or Buyer under this Section 11 with respect to such matters shall not exceed $32.5 million, PROVIDED, that the limitations contained in this Section 11.D(2) shall not apply to Sellers' obligation to indemnify Buyer for any breach or inaccuracy of any representation or warranty of Seller set forth in Section 5.H, 5.P or 5.R.

(3) As conditions precedent to the obligation of the Seller to defend and indemnify the Buyer Indemnified Parties with respect to any Loss which pertains to those matters identified as a material violation of an Environmental Law which requires corrective action identified in the Environmental Audits, a Real Estate Matter or Compliance Matter, the Buyer Indemnified Parties shall not, other than as required by applicable law and upon as much prior written notice to the Sellers as may be practicable in the circumstances, communicate, directly or indirectly, orally or in writing, with any Environmental Authority. The foregoing shall not be construed to require prior Notice to Seller of regular communications with

NOT A CERTIFIED COPY

016070

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016981
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407177

16div-022356

Environmental Authorities required to operate the Business pursuant to applicable Environmental Laws.

(4) With respect to the Environmental Audits referred to in Section 11.A(1)(e) above, such Environmental Audits shall be conducted pursuant to a License Agreement to be executed by the parties.

(5) The indemnification obligations set forth in this Section 11, as it pertains to environmental matters, including but not limited to those arising under Section 11.A(1)(a), (d) or (e), shall expire on the tenth (10th) anniversary of the Closing Date.

E. ERISA INDEMNIFICATION. Sellers shall indemnify and hold harmless Buyer in respect of any and all Losses resulting from or relating to each of the following:

(1) any Plan and any other "employee benefit plan" within the meaning of Section 3(3) of ERISA maintained by Sellers or any trade or business (whether or not incorporated) under control or created as a single employer with Sellers under Section 414(b), (c), (m) or (o) of the Code ("ERISA AFFILIATE") or to which Sellers or any ERISA Affiliate contributed or is obligated to contribute thereunder, including any multiemployer plan, including any liability (i) to the PBGC under Title IV of ERISA; (ii) relating to a multiemployer plan; (iii) with respect to non-compliance with the notice and benefit continuation requirements of COBRA; (iv) with respect to any non-compliance with ERISA or any other applicable laws; or (v) with respect to any suit, proceeding or claim which is brought against Buyer;

(2) the employment, termination of employment, including a constructive termination, or failure to employ by Sellers of any individual (including, but not limited to, any employee of Sellers engaged in the operations of the Business) attributable to any actions or inactions prior to the Closing Date, including, without limitation, with respect to any liabilities arising under WARN; and

(3) any claims by any employee of Sellers engaged in the operations of the Business for workers compensation and medical benefits relating to such workers compensation incurred after the Closing to the extent the same relate to an injury or illness originating prior to the Closing.

NOT A CERTIFIED COPY

016071

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016982
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407178

16div-022357

Indemnification under this Section 11.E shall not be subject to any deductible or cap, and this indemnification provision shall survive until the period in which it is no longer possible for an employee or a third party to bring a claim relating to the matters covered in this Section 11.E under the applicable statute of limitations period.

12. PUBLIC ANNOUNCEMENTS. Prior to the Closing Date, neither Sunbeam or any Seller nor USI or Buyer shall, without the prior written approval of the other party, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except (1) Sunbeam and USI shall prepare mutually agreeable press releases after the signing of this Agreement, and each of Sunbeam and USI shall issue its respective press release at a mutually agreeable time, (2) Sunbeam and USI shall prepare a mutually agreeable notice to the employees of the Business concerning this Agreement, and Sunbeam and USI shall deliver the notice to the employees at a mutually agreeable time, and (3) to the extent that either party shall be so obligated by law as advised in writing by counsel, in which case the other party shall be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued. Except as provided in this Section 12, prior to the Closing Date, Sunbeam or any Seller and USI or Buyer may disclose information with respect to the transaction contemplated hereby to their respective employees, agents, consultants and third parties only to the extent such persons have a need to know such information.

13. PRORATIONS AND ADJUSTMENTS.

A. EXPENSES. To the extent, if any, that wages, current rents, security deposits, contract deposits, or advance payments, property and payroll taxes, assessments, utility charges, insurance premiums, employee benefits constituting Assumed Liabilities and any other prepaid or deferred expenses relate to the Assets purchased hereunder, they shall be prorated or reimbursed, as the case may be, as of the Closing Date, subject in the case of taxes to the provisions of Section 27.D. Sellers shall receive all revenues and shall be responsible for all expenses and liabilities, including any and all tax payments, allocable to the period prior to such date (except for the Assumed Liabilities), including payments due prior to such date under such prorated contracts, and Buyer shall receive all revenues and shall, to the extent agreed hereunder, be responsible for all expenses and liabilities, including any and all tax payments, allocable to the period subsequent to such date.

NOT A CERTIFIED COPY

0160172

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016983
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407179

16div-022358

B. TIME OF PRORATIONS AND ADJUSTMENTS. The prorations and adjustments contemplated by this Section, to the extent practicable, shall be made on and as of the Closing Date. As to those prorations and adjustments not capable of being ascertained on such date, any adjustment and proration shall be made within ninety (90) calendar days of the Closing Date, subject in the case of taxes to the provisions of Section 27.D.

14. RECORDS; ACCESS TO INFORMATION.

A. Sellers shall grant access to Buyer during normal business hours on reasonable prior request, any books and records not transferred to Buyer pursuant to this Agreement that in any manner relate to the Business, the Assets or Assumed Liabilities, and permit Buyer to make copies of the same. All books and records relating to the Business shall be retained for the applicable periods stated in the record retention policy attached as SCHEDULE 14.A hereto; provided, however, that upon the written request of the other party, the party in possession of such books and records shall retain any books and records specified in such request for any reasonable period specified in such request that is longer than the applicable period stated in SCHEDULE 14.A.

B. In order to facilitate the resolution of any governmental investigation or inquiry or of any claims made by or against or incurred by Sellers prior to or after the Closing, or for other legitimate business reasons, upon reasonable notice, Buyer shall, after the Closing: (i) afford the officers, employees and authorized agents and representatives of Sellers reasonable access, during normal business hours, to the offices, properties, books and records of Buyer with respect to the Business or the Assets, (ii) furnish to the officers, employees and authorized agents and representatives of Sellers such additional financial and other information regarding the Business or the Assets as Sellers may from time to time reasonably request and (iii) make available to Sellers, the employees of Buyer whose assistance, testimony or presence is necessary to assist Sellers in evaluating any such claims and in defending such claims, including the presence of such persons as witnesses in hearings or trials for such purposes; PROVIDED, HOWEVER, that such investigation shall not unreasonably interfere with the businesses or operations of Buyer or any of its affiliates or subsidiaries; PROVIDED FURTHER, HOWEVER, that Buyer shall not be obligated to disclose any information which it holds under a legally binding obligation of confidentiality or which is protected by any privilege.

41

NOT A CERTIFIED COPY

016073

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016984
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407180

16div-022359

In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing or for other legitimate business reasons, upon reasonable notice, Sellers shall, after the Closing: (i) afford the officers, employees and authorized agents and representatives of Buyer reasonable access, during normal business hours, to the offices, properties, books and records of Sellers with respect to the Business or the Assets for the period prior to the Closing Date, (ii) furnish to the officers, employees and authorized agents and representatives of Buyer such additional financial and other information regarding the Business and the Assets for the period prior to the Closing Date as Buyer may from time to time reasonably request and (iii) make available to Buyer, the employees of Buyer whose assistance, testimony or presence is necessary to assist Buyer in evaluating any such claims and in defending such claims, including the presence of such persons as witnesses in hearings or trials for such purposes; PROVIDED, HOWEVER, that such investigation shall not unreasonably interfere with the businesses or operations of Sellers or any of their affiliates or subsidiaries; PROVIDED FURTHER, HOWEVER, that Sellers shall not be obligated to disclose any information that it holds under a legally binding obligation of confidentiality or which is protected by any privilege.

C. Notwithstanding anything to the contrary in Section 14.A, Sellers and Buyer shall (i) each provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any tax return ("RETURN"), audit or other examination by any taxing authority or judicial or administration proceedings relating to liability for any federal, state, local or foreign taxes, and in connection with the compliance by either of them with the IRS record retention program, (ii) each retain and provide the other, and Sellers shall retain and provide Buyer, with any pre-Closing records or other information which may be relevant to such Return, audit or examination, proceeding or determination, and (iii) each provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Return of the other for any period. Without limiting the generality of the foregoing, Buyer and Sellers shall retain, until the applicable statute of limitations (including any extensions) have expired, copies of all Returns, supporting work schedules and other records or information which may be relevant to such returns for all tax periods or portions thereof ending before or including the Closing Date and shall not destroy or otherwise dispose of any such records without first providing the other party with a reasonable opportunity to review and copy the same.

NOT A CERTIFIED COPY

016074

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016985
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407181

16div-022360

15. NOTICES.

All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be mailed by first class, registered, or certified mail, postage prepaid, or sent via overnight courier service, or sent by confirmed facsimile, or delivered personally:

If to Buyer, to:

U.S. Industries, Inc.
101 Wood Avenue South
Iselin, New Jersey 08830
Attention: General Counsel
Facsimile: 908-767-2208

If to Sellers, to:

Sunbeam Products, Inc.
Suite 200
1615 South Congress Avenue
Delray Beach, Florida 33445
Attention: Janet G. Kelley
Facsimile: 561-243-2105

or to such other address of which the addressee shall have notified the sender in writing. Notices mailed in accordance with this section shall be deemed given when mailed, and notices sent by overnight courier service shall be deemed given when placed in the hands of a representative of such service.

15. THIRD PARTY RIGHTS.

It is the intention of the parties that nothing in this Agreement shall be deemed to create any right with respect to any person or entity not a party to this Agreement.

17. PARTIES IN INTEREST; ASSIGNMENT.

All covenants and agreements contained in this Agreement by or on behalf of either of the parties to this Agreement shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not. No party to this Agreement may assign its rights or delegate its obligations under this Agreement to any other person or entity without the express prior written consent of the other party, except that Buyer may assign its rights and delegate its obligations to a subsidiary or affiliated corporation of Buyer, provided that such assignment

NOT A CERTIFIED COPY

016075

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016986
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407182

16div-022361

and delegation shall not relieve Buyer of its obligations under this Agreement.

18. CONSTRUCTION; GOVERNING LAW.

The section headings contained in this Agreement are inserted as a matter of convenience and shall not affect in any way the construction of the terms of this Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware.

19. ENTIRE AGREEMENT; AMENDMENT AND WAIVER.

This Agreement, including the Schedules hereto, constitutes and contains the entire Agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes any prior writing by the parties. The parties may, by mutual agreement in writing, amend this Agreement in any respect, and any party, as to such party, may in writing (1) extend the time for the performance of any obligations of any other party; (2) waive any inaccuracies in representations and warranties by any other party, or; (3) waive performance of any obligations by any other party; and (4) waive the fulfillment of any condition that is precedent to the performance by such party of any of its obligations hereunder. No such waiver shall be deemed to constitute the waiver of any other breach of the same or of any other term or condition of this Agreement. Any such amendment or waiver must be signed by an officer of the parties or party to such amendment or waiver.

20. SEVERABILITY.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

21. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party but all of which taken together shall constitute one and the same Agreement.

44

NOT A CERTIFIED COPY

016076

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016987
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407183

16div-022362

22. EXPENSES.

Each party to this Agreement shall pay any and all fees and expenses that such party may incur in connection with the transactions contemplated by this Agreement except as otherwise provided pursuant to that certain letter agreement, dated January 23, 1997, between Sunbeam Products, Inc. and Buyer.

23. FURTHER ASSURANCES.

At and after the date hereof, Buyer and the Sunbeam Transferors will, without further consideration, promptly execute and deliver such other instruments and documents and do all other acts and things as the other party or parties may reasonably request in order to effect or confirm the transactions or obtain the benefits contemplated by this Agreement. Buyer shall allow Sellers access to, and otherwise cooperate with Sellers with respect to, the assets retained by Sellers following the Closing Date. Buyer shall use its reasonable commercial efforts to arrange for release or replacement of guarantees of Sellers relating to the Assumed Liabilities which are in effect on the Closing Date. In the event Buyer is unable to cause such guarantees to be released or replaced, Buyer shall reimburse Sellers for all amounts, costs and expenses reasonably paid or incurred by Sellers with respect thereto.

24. SCHEDULES.

The Schedules attached to this Agreement, including and any supplements to such Schedules made by Sellers after the date of this Agreement as provided in Section 7.8(6), and the Disclosure Schedule delivered by Sellers, including any supplements to such Disclosure Schedule constitute a part of this Agreement and are incorporated herein by reference in their entirety as if fully set forth in this Agreement at the point where first mentioned. Notwithstanding the foregoing, any supplements to such Schedules made by Sellers after the date of this Agreement shall not be deemed to modify any representation or warranty set forth herein for purposes of Section 7.E(1) (it being understood that such supplements shall modify the representations and warranties set forth herein for all purposes following the Closing Date). The disclosure of any matter in any schedule to this Agreement shall expressly not be deemed to constitute an admission by any Sunbeam Transferor or to otherwise create a presumption that any such matter is material for the purposes of this Agreement or any other purpose.

NOT A CERTIFIED COPY

016077

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016988
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407184

16div-022363

25. GUARANTY BY SUNBEAM.

By joining in this Agreement, Sunbeam guarantees to Buyer the full and prompt payment and performance by Sellers of all of Sellers' covenants and obligations under this Agreement and the Ancillary Agreements, including payment of any indemnification. If Sellers do not perform a covenant or obligation under this Agreement or any Ancillary Agreement, Sunbeam shall promptly perform the covenant or obligation. This guaranty is an absolute, irrevocable, primary, continuing, unconditional, and unlimited guaranty of performance and payment, and is not a guaranty of collection. This guaranty shall remain in full force and effect (and shall remain in effect notwithstanding any amendment to this Agreement) until all of Sellers' obligations under this Agreement and all Ancillary Agreements have been paid, observed, performed or discharged in full. Sunbeam has full capacity, power and authority to enter into this Agreement and to carry out the covenants and agreements specifically made by Sellers in this Agreement, and this Agreement is binding on Sunbeam and enforceable against Sunbeam in accordance with the terms of this Agreement.

26. GUARANTY BY USI.

By joining in this Agreement, USI guarantees to Sellers the full and prompt payment and performance by Buyer of all of Buyer's covenants and obligations under this Agreement and the Ancillary Agreements, including payment of any indemnification. If Buyer does not perform a covenant or obligation under this Agreement or any Ancillary Agreement, USI shall promptly perform the covenant or obligation. This guaranty is an absolute, irrevocable, primary, continuing, unconditional, and unlimited guaranty of performance and payment, and is not a guaranty of collection. This guaranty shall remain in full force and effect (and shall remain in effect notwithstanding any amendment to this Agreement) until all of Buyer's obligations under this Agreement and all Ancillary Agreements have been paid, observed, performed or discharged in full. USI has full capacity, power and authority to enter into this Agreement and to carry out the covenants and agreements specifically made by Buyer in this Agreement, and this Agreement is binding on USI and enforceable against USI in accordance with the terms of this Agreement.

NOT A CERTIFIED COPY

016078

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016989
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407185

16div-022364

27. POST-CLOSING MATTERS.

A. EMPLOYMENT.

(1) Buyer shall offer employment, effective upon the Closing Date, to all the persons actively employed by Sellers and engaged in the Business as of the Closing Date, except those engaged in the Business at the Murfreesboro, Tennessee facility (other than those Murfreesboro employees described on Exhibit B hereto, who shall be offered employment). In addition, Buyer shall offer employment to those persons employed by Sellers and engaged in the Business, except those engaged in the Business at the Murfreesboro, Tennessee facility (other than those Murfreesboro employees described on Exhibit B hereto, who shall be offered employment) who are inactive as of the Closing Date (collectively with the active employees referred to above, the "EMPLOYEES") in accordance with its standard hiring procedures, subject to the following conditions: (i) if on medical leave, such individual is released by his or her physician to return to active employment, (ii) such individual actually reports for active employment with Buyer immediately upon (a) the end of the approved leave of absence pursuant to the Family Medical and Leave Act or (b) such medical release and (iii) the facility of the Business such person is employed with is then operating; and PROVIDED, HOWEVER, no individual shall be offered employment under this provision after six (6) months from the Closing Date or after the expiration of any applicable federal or state law period, if later. Sellers shall retain liability and responsibility for any benefits in accordance with the Plans with respect to such inactive employees until, and if, any such employee shall be employed by Buyer. Those Employees who accept such offer of employment by Buyer are herein referred to as "TRANSFERRED EMPLOYEES." With respect to Employees, Buyer agrees to make such offers of employment, which shall include compensation rates that are no less than those provided by Sellers, as of the Closing Date, and Buyer shall provide to the Transferred Employees as of the Closing Date (a) employee benefit plans, programs or arrangements, including, but not limited to, a severance plan, reasonably equivalent in the aggregate to those maintained by Sellers with respect to the Business on the date of Closing for the benefit of Employees, as listed on SCHEDULE 27.A(1) hereto, or (b) at Buyer's option, a benefit plan consisting of plans, programs and arrangements, including but not limited to, a severance plan, of equal or greater total benefit in the aggregate for all Employees, it

NOT A CERTIFIED COPY

016079

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016990
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407186

16div-022365

being understood that Buyer shall have the right to amend or terminate any and all such plans, programs and arrangements. With respect to the Employees named on SCHEDULE 17.A(2), Buyer shall not terminate the employment of such Employees for a term of six (6) months following the Closing Date, except for cause (it being understood that any cessation of employment following a diminution in or a relocation of duties shall not be deemed to be a constructive termination not for cause by Buyer).

(2) Buyer shall indemnify and hold harmless Sellers from any and all claims by such Employees for damages resulting from an employment decision made by Buyer with respect to such Employees, including, without limitation, with respect to any liabilities arising under WARN or the Family Medical and Leave Act, and from any and all costs (including counsel fees) associated with defending same.

(3) Sellers and Buyer agree that Buyer has purchased substantially all the property used in Sellers' trade or business, and in connection therewith, Buyer shall employ individuals who immediately before the Closing Date were employed in such trade or business by Sellers. Accordingly, pursuant to Rev. Proc. 84-77, provided that Sellers provide Buyer with all necessary payroll records for the calendar year which includes the Closing Date, Buyer shall furnish a Form W-2 to each employee employed by Buyer who had been employed by Sellers disclosing all wages and other compensation paid for such calendar year, and taxes withheld therefrom, and Sellers shall be relieved of the responsibility to do so.

B. VACATIONS, SICK DAYS AND HOLIDAYS. As of the Closing Date, Buyer shall adopt, at its expense, vacation, sick day and holiday plans for Transferred Employees to succeed Sellers' vacation, sick day and holiday plans. For the remainder of the calendar year in which the Closing occurs, such plans shall be equal to and in place of what Sellers would have provided to such Transferred Employees. Thereafter, such plans shall be equal to the plans that Buyer generally provides for its employees except that such plans shall provide vacation, sick day and holidays to each eligible Transferred Employee on the basis of his or her continuous service with Sellers and Buyer. As of the Closing Date, Sellers shall provide Buyer with a list of their employees engaged in the Business and their vacations and sick days for the remainder of the year in which the Closing occurs.

NOT A CERTIFIED COPY

016080

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016991
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407187

16div-022366

C. NO THIRD PARTY BENEFICIARIES. No provision contained in Sections 27.A or 27.B above shall create any third party beneficiary or other rights in any employee or former employee of Sellers (or any beneficiary or dependent thereof) in respect of continued employment or resumed employment with either Buyer or the Business and no provision of said Sections 27.A or 27.B shall create any such rights in any such persons in respect of any benefits that may be provided under any employee benefit plan or arrangement that may be established by Buyer.

D. CERTAIN TAX MATTERS.

(1) All transfer, sales, use, recording, stamp and other similar transaction taxes ("TRANSACTION TAXES") imposed upon or incurred by either of the parties hereto in connection with this Agreement and the transactions contemplated hereby shall be shared equally by the Sunbeam Transferors, on the one hand, and the Buyer, on the other hand. Sellers and Buyer shall jointly prepare and file, or cause to be prepared and filed, all necessary Transaction Tax returns and other documents with respect to all Transaction Taxes, and each party shall bear its own expense in a connection therewith. Sellers and Buyer agree to cooperate in any endeavor to effect a reduction in any such Transaction Taxes, and shall provide each other with all applicable exemption certificates associated with any Transaction Taxes on or prior to the Closing Date.

(2) Notwithstanding anything contained herein to the contrary, all property taxes, personal property taxes and similar ad valorem obligations (including, without limitation, any such taxes which Sellers are contractually obligated to pay under any lease agreement) in respect of the Assets that relate to periods beginning prior to the Closing Date and ending after the Closing Date ("STRADDLE PERIODS") shall be prorated in accordance with the rules provided in Section 164(d) of the Code. Sellers shall prepare and file, or shall cause to be prepared and filed, on a timely basis, all Straddle Period tax returns, to the extent a return is required. Sellers shall provide each such Straddle Period tax return to Buyer for its review and consent not less than ten (10) business days in advance of the due date thereof, or shall give written notice to Buyer of the amount due if a return is not required, and, upon Buyer's review and consent to the amount thereof, Buyer shall pay to Sellers its prorated portion of the tax shown to be due on each such return or in such notice not less

NOT A CERTIFIED COPY

180910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016992
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407188

16div-022367

than five (5) business days before the due date of such payment.

(3) Except as provided in Sections 27.D(1) and (2) above, (x) Sellers shall be responsible for and shall pay any and all taxes with respect to the Business related to all periods prior to (and up to and including) the close of business on the Closing Date, and (y) Buyer shall be responsible for and shall pay any and all taxes with respect to the Business relating to all periods after the close of business on the Closing Date.

E. ACCOUNTS; PRODUCT RETURNS.

(1) (a) In the event that accounts receivable of the Business which are Excluded Assets are collected by the Business or Buyer, Buyer shall pay, within ten (10) days following the end of each calendar month with respect to amounts received and identified, any and all such accounts receivable to Sellers.

(b) In the event that accounts receivable of the Business which are not Excluded Assets are collected by Sellers, Sellers shall pay, within ten (10) days following the end of each calendar month with respect to amounts received and identified, any and all such accounts receivable to Buyer. In the event that accounts payable of the Business which are not Assumed Liabilities are paid by Buyer, Sellers shall reimburse, within ten (10) days following the end of each calendar month, any and all such amounts paid to Buyer.

(2) With respect to accounts receivable of the Business which are Excluded Assets, Sellers will utilize collection practices and procedures which are consistent with those utilized in the other businesses of Sellers in the ordinary course of such businesses with respect to accounts of the same status.

(3) All offsets or charges (including without limitation those relating to volume rebates and cooperative advertising) against any accounts receivable of the Business by customers, which are allocable to sales of the Business from January 1, 1997 until September 30, 1997, except any such offsets or charges relating to the Sunbeam Guaranties, shall be borne two-thirds by Buyer (up to a maximum of $2.5 million) and one-third by Sellers. Notwithstanding the foregoing, offsets or charges directly attributable to sales

NOT A CERTIFIED COPY

280910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016993
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407189

16div-022368

made by Sellers or Buyer, respectively, shall be borne by Sellers or Buyer, respectively. All offsets or charges relating to the Sunbeam Guaranties shall be fully directly attributable to sales made by Sellers for purposes of this Agreement. Sellers or Buyer, respectively, shall reimburse to the other party, by October 10, 1997, the amount attributable to Sellers or Buyer, respectively, pursuant to this Section 27.E(3). Until September 30, 1997, Buyer shall offer programs involving volume rebates and cooperative advertising substantially in accordance with the past practices of Sellers, which practices are described on SCHEDULE 27.E(3), unless Sellers otherwise consent.

(4) In the event that non-defective Products manufactured and sold prior to the Closing Date are returned to the Business or Buyer for any reason whatsoever (such Products being "SELLER NDRS"), Buyer agrees to process return authorizations for such Seller NDRs in accordance with Sellers' ordinary course practices as in effect prior to the Closing Date. Buyer shall pay to Sunbeam Products sixty percent (60%) of the standard cost, as of the Closing Date, of such Seller NDRs to the extent Sellers have a related offset to their accounts receivable. Promptly upon their receipt of such payment, Sellers shall release the entire claim relating to such Seller NDRs against the appropriate account debtor. In the event that Buyer has an offset to its accounts receivable relating to Seller NDRs, Sellers shall pay to Buyer the amount of such offset minus sixty percent (60%) of the standard cost, as of the Closing Date, of such Seller NDRs. Buyer shall present Sunbeam Products with a statement of charges and related reimbursement obligations on a monthly basis (when applicable). Sellers shall have the right of reasonable access, with prior notice, to Buyer's books and records relating to the calculation of reimbursements for the Seller NDRs.

(5) (a) In the event that Products manufactured and sold by the Business after the Closing Date are returned to any Seller, Sellers agree to promptly forward all such returned Products to Buyer, at Buyer's expense.

(b) In the event that any item not constituting a Product included in the Assets is returned to Buyer, Buyer agrees to promptly forward all such returned items to Seller, at Seller's expense.

NOT A CERTIFIED COPY

016083

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016994
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407190

16div-022369

(6) For a period of four (4) years following the Closing Date, Buyer shall process warranty return authorizations in accordance with the past practices of Sellers, which practices are described on SCHEDULE 27.E(6), unless Sellers otherwise consent. Sellers shall have the right of reasonable access, with prior notice, to Buyer's books and records relating to the processing of warranty return authorizations during such four (4) year period.

F. CONFIDENTIALITY AND NO-HIRE. The terms of the letter agreement dated as of November 12, 1996 (the "CONFIDENTIALITY AGREEMENT") between Sunbeam Products and USI are hereby incorporated by reference and shall continue in full force and effect until the Closing. Sellers shall not, and shall not permit any of their affiliates to, knowingly provide or make available, directly or indirectly, any confidential or proprietary information used primarily in the Business to any third party. Sellers shall cooperate with Buyer in any efforts by Buyer to enforce any non-disclosure or confidentiality agreements included in the Assumed Contracts, including without limitation any confidentiality agreements with employees or agents of Sellers and with any prospective purchasers of the Business. If any confidentiality or nondisclosure agreements of Sellers relating to the Business are, by their terms, non-assignable, Seller shall, at the request of Buyer, take all actions reasonably requested by Buyer to enforce such agreement. Buyer hereby agrees that for a period of two (2) years from the Closing Date, Buyer will (i) keep confidential and not disclose to others any information provided to it by Sellers and not related to the Business, and (ii) except as provided in Section 27.A(1), not hire any of the management or other employees of Seller without obtaining prior written consent of Sellers, which consent may be withheld in the sole discretion of Sellers. Sellers shall not, and shall not permit any of their affiliates to, hire, offer to hire, or solicit for employment any person who has been an employee of Buyer engaged in the Business and is listed on SCHEDULE 27.F, without the consent of Buyer, until such person has been separated from employment by Buyer for at least one (1) year, except in the event that such person's employment was terminated at the sole election of Buyer or a different subsidiary of USI.

G. NON-COMPETITION. For a period of five (5) years from the Closing Date, neither Sellers nor any of their affiliates will directly or indirectly engage in any Competitive Activities (as hereinafter defined). The term "COMPETITIVE ACTIVITIES" shall mean:

NOT A CERTIFIED COPY

016084

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016995
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407191

16div-022370

(i) engage in, continue in or carry on any business which competes with the Business or is substantially similar thereto, including owning or controlling any financial interest in any corporation, partnership, firm or other form of business organization which is so engaged; PROVIDED, HOWEVER, that nothing herein shall prohibit (i) the acquisition by any Seller or any of its affiliates of a diversified company having not more than 30% of its sales (based on its most recent annual financial statements) attributable to the marketing, production or sale of products which compete directly with those sold by the Business, PROVIDED, that if the annual sales so attributable exceed $35 million, Buyer will cause such sales to not exceed $35 million within 18 months; or (ii) the acquisition of any Seller or any of its affiliates by a company (A) having not more than 20% of its sales (based on its most recent annual financial statements) attributable to the marketing, production or sale of products which compete directly with those sold by the Business or (B) with respect to which such competing business units are divested within 18 months so that such Seller or affiliate could comply with clause (ii)(A) hereof; and PROVIDED FURTHER that ownership by any Seller or any affiliate of securities having no more than 5% of the outstanding voting power of a company listed on any national securities exchange or traded actively in the national over the counter market shall not be deemed a violation of this Section 27.G.

(ii) consult with, advise or assist, whether or not for consideration, any corporation, partnership, firm or other business organization which is now or becomes a competitor of Buyer in any aspect with respect to the Business if such advice, consultation or assistance relates to such competitor's activities in relation to the Business, including, but not limited to, promoting or otherwise endorsing the products of any such competitor; soliciting customers or otherwise serving as an intermediary for any such competitor; lending money or rendering any other form of financial assistance to or engaging in any form of business transaction on other than an arm's length basis with any such competitor; or

NOT A CERTIFIED COPY

016085

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016996
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407192

16div-022371

(iii) engage in any practice, the purpose of which is to evade the provisions of this covenant not to compete.

The parties agree that the geographic scope of this covenant not to compete shall extend throughout North America. In the event a court of competent jurisdiction determines that the provisions of this covenant not to compete are excessively broad as to duration, geographical scope or activity, it is expressly agreed that this covenant not to compete shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such over-broad provision shall be deemed, without further action on the part of any person, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable in such jurisdiction.

H. PRODUCT MARKING; BURDEN OF PROOF. Buyer shall stamp or otherwise mark all Products manufactured by Buyer after the Closing Date so as to enable such Products to be distinguished from Products manufactured by or for Sellers prior to the Closing Date. After Closing, Buyer shall promptly provide an officer's certificate to Sellers certifying that Buyer has complied with this Section 27.H, which certificate shall be accompanied by an example or examples of the stamps or other marks applied to such Products by Buyer. Buyer shall mark such Products in accordance with the methods set forth on SCHEDULE 27.H, or such other methods to which Sellers consent in writing, such consent not to be unreasonably withheld.

I. SUNBEAM GUARANTIES. Buyer shall use its commercially reasonable efforts to comply with the terms of delivery set forth in the purchase orders of customers of the Business which are covered by the Sunbeam Guaranties. Buyer shall treat the purchase orders of customers which are covered by the Sunbeam Guaranties no less favorably than the purchase orders of customers which are not covered by the Sunbeam Guaranties.

J. PAYMENTS ON ACCOUNTS. Sellers shall pay, in accordance with their terms, all accounts payable outstanding on the Closing Date, except those which constitute Assumed Liabilities or payables being disputed by Sellers in good faith.

K. PARAGOULD GRILL PRESS. Sellers shall remove the press used in manufacturing outdoor grills from the Paragould, Arkansas facility in compliance with the terms of the lease (including, without limitation, restoration provisions thereof) pertaining to such facility, by May 31, 1997.

NOT A CERTIFIED COPY

980910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016997
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407193

16div-022372

L. REMOVAL OF TRANSFERRED EQUIPMENT. Buyer shall remove (1) all Equipment from the Portland, Tennessee manufacturing facility and the Nashville, Tennessee facility by March 31, 1997 and (2) all administrative and office furnishings and equipment located at the Portland free-standing office facility promptly following the termination of the Portland Lease.

28. TERMINATION.

A. *TERMS OF TERMINATION.* This Agreement may be terminated at any time prior to the Closing Date:

(1) by Buyer, if the conditions set forth in Section 7.D shall not have been complied with or performed in any material respect and such noncompliance or nonperformance shall not have been waived, cured or eliminated (or by its nature cannot be cured or eliminated) by Sellers on or before March 15, 1997;

(2) by Sellers, if the conditions set forth in Section 7.E shall not have been complied with or performed in any material respect and such noncompliance or nonperformance shall not have been waived, cured or eliminated (or by its nature cannot be cured or eliminated) by Buyer on or before March 15, 1997; or

(3) by Buyer or Sellers, in the event the Closing Date has not occurred on or prior to the close of business on March 15, 1997 or such later date as the parties hereto may agree in writing (unless such event has been caused by the breach of this Agreement by the party seeking such termination).

B. EFFECT OF TERMINATION. In the event of the termination of this Agreement pursuant to Section 28.A hereof, this Agreement shall thereafter become void and have no effect, and no party hereto shall have any liability to any other party hereto or its stockholders or directors or officers in respect thereof, except as provided in Section 22 hereof and except that

NOT A CERTIFIED COPY

016087

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016998
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407194

16div-022373

nothing herein shall relieve any party from liability for any breach hereof.

(SIGNATURES BEGIN ON NEXT PAGE)

56

NOT A CERTIFIED COPY

016988

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 016999
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407195

16div-022374

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed by their duly authorized officers as of the day and year first written above.

SUNBEAM PRODUCTS, INC.

By: /s/ DAVID C. FANNIN

Name: David C. Fannin
Title: Executive Vice President

SUNBEAM FURNITURE COMPANY

By: /s/ JANET KELLEY

Name: Janet Kelley
Title: Vice President

OP II, INC.

By: /s/ JANET KELLEY

Name: Janet Kelley
Title: Vice President

JACUZZI OUTDOOR PRODUCTS, INC.

By: /s/ GEORGE H. MACLEAN

Name: George H. MacLean
Title: Vice President

Agreed and Acknowledged

SUNBEAM CORPORATION

By: /s/ DAVID. C. FANNIN

Name: David C. Fannin
Title: Executive Vice President

U.S. INDUSTRIES, INC.

By: /s/ JOHN A. MISTRETTA

Name: John A. Mistretta
Title: Group Vice President

EXHIBIT 2.b

AMENDMENT TO ASSET PURCHASE AGREEMENT

AMENDMENT (this "Amendment"), dated as of March 17, 1997, to the Asset Purchase Agreement (the "Agreement"), dated February 10, 1997, among SUNBEAM PRODUCTS, INC., a Delaware corporation ("Sunbeam Products"), SUNBEAM FURNITURE COMPANY, a Delaware corporation ("Sunbeam Furniture"), OP II, INC., a Florida corporation ("Sunbeam OP"; and, together with Sunbeam Products and Sunbeam Furniture, the "Sunbeam Transferors"), and SUNLITE CASUAL FURNITURE, INC. (as assignee of Jacuzzi Outdoor Products, Inc.), a Delaware corporation (the "Buyer"), and joined in by Sunbeam Corporation, a Delaware corporation and the indirect parent corporation of the Sunbeam Transferors and U.S. Industries, Inc., a Delaware corporation and the indirect parent corporation of Buyer.

NOT A CERTIFIED COPY

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017000
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407196

16div-022375

W I T N E S S E T H:

WHEREAS, the parties hereto desire to amend the Agreement; and

WHEREAS, Section 19 of the Agreement permits amendments to the Agreement by written instrument signed by the parties to such amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I.

AMENDMENTS TO THE AGREEMENT

1.1. PURCHASE AND SALE OF ASSETS. (a) Section 1.B of the Agreement is hereby amended by (i) inserting the clause "(except for the Murfreesboro Assets, as defined in the Manufacturing Services Agreement (as defined in Section 7.A), subject, however, to the rights to purchase the Murfreesboro Assets pursuant to the Manufacturing Services Agreement)" after "Business", (ii) deleting the words "Murfreesboro, Tennessee and", (iii) changing the word "facilities" on the eighth line to "facility" therein and (iv) adding the words "provided to Buyer within five business days after the Closing Date" and after the words "Closing Date".

(b) Section 1.C of the Agreement is hereby amended by deleting the words "Paragould, Arkansas and" from such Section.

(c) Section 1.D of the Agreement is hereby amended by (i) inserting the clause "(except such inventory located at the

NOT A CERTIFIED COPY

016090

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017001
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407197

16div-022376

Murfreesboro facility, subject, however, to the rights granted pursuant to the Manufacturing Services Agreement)" after "Business" and (ii) adding the words "and provided to Buyer within five business days after the Closing Date" after the words "Closing Date".

(d) Section 1.M(10) of the Agreement is hereby amended by replacing subsection 1.M(10)(d) therein with the following: "(d) rights to purchase Equipment and Inventory included in the Murfreesboro Assets pursuant to the Manufacturing Services Agreement".

1.2. *ASSUMED LIABILITIES.* (a) Section 3.B is hereby amended by inserting the clause "(except such purchase orders relating to Equipment located at the Murfreesboro facility)" after "in the ordinary course of business" therein.

(b) Section 3.C of the Agreement is hereby amended by inserting the clause "(except such purchase orders relating to raw materials and supplies to be delivered to the Murfreesboro facility)" after "Business" and after "in accordance with past practices" therein.

(c) Sections 3.B and 3.C of the Agreement are amended by adding the words "and provided to Buyer within five business days after the Closing Date" (i) at the end of Section 3.B and (ii) after the words "Closing Date" in the fifth line of Section 3.C.

1.3. CLOSING. Section 4.A of the Agreement is hereby amended by substituting "March 17, 1997" in place of "March 3, 1997."

1.4. PURCHASE PRICE. The first sentence in Section 4.B(2) of the Agreement is hereby amended by (i) substituting "$31" in place of "$21" (ii) deleting clause (b) in its entirety, (iii) renumbering clauses (c) and (d) therein as (b) and (c).

1.5. ESTIMATED PURCHASE PRICE. (a) Section 4.C of the Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

> "On and at the Closing, in consideration for the sale, conveyance, transfer, assignment and delivery to Buyer of the Assets, subject to the assumption of the Assumed Liabilities, Buyer shall pay $62,137,000 (the "ESTIMATED PURCHASE PRICE", which has been calculated based on ANNEX A hereto) in the manner set forth below:
>
> (i) If Sellers have satisfied the closing condition set forth in Section 7.D(10) hereof, Buyer shall

NOT A CERTIFIED COPY

160910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017002
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407198

16div-022377

pay to the Sunbeam Transferors, as directed, an amount equal to $62,137,000 by wire transfer of immediately available funds to an account designated in writing by the Sunbeam Transferors no less than two business days prior to the Closing; or

(ii) If Buyer has waived the closing condition set forth in Section 7.D(10), Buyer shall pay: (a) to the Sunbeam Transferors, as directed, an amount equal to $42,137,000 by wire transfer of immediately available funds to an account designated in writing by the Sunbeam Transferors no less than two business days prior to the Closing and (b) to the Escrow Agent (as defined in Section 8.A(9)), an amount equal to $20,000,000 (the "Escrow Amount") by wire transfer of immediately available funds to an account designated in writing by the Escrow Agent."

(b) Section 4.E(1) of the Agreement is hereby amended by (i) substituting "thirty (30)" in place of "fifteen (15)" and (ii) deleting the parenthetical in the last sentence thereof and replacing it with "(which has occurred prior to the Closing Date)".

1.6. FINANCIAL INFORMATION. Section 5.F of the Agreement is hereby amended by inserting "(1)" before "Sellers have furnished" at the beginning therein and by adding the following subsection (2) at the end thereof:

(2) Sellers have furnished to Buyer Statements of Operations for the Business (including separate Statements of Operations relating to the Sunbeam Furniture Business and the Samsonite Business) for the two months ended March 2, 1997, as set forth on SCHEDULE 5.F(1). Such Statements of Operations were derived from Sellers' books and records and are true and correct in all material respects as to the matters presented therein. Such Statements of Operations have been prepared on a basis which is consistent with the past practices of Sellers.

1.7. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER. Section 7.D of the Agreement is hereby amended by (a) adding the following language to the end of the first sentence thereof:

"PROVIDED, that Buyer agrees that it shall waive the closing condition set forth in Section 7.D(10) if Sellers fail to deliver the documents referenced in

NOT A CERTIFIED COPY

260910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017003
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407199

16div-022378

Section 8.A(9)(i) through (iv) despite the exercise of best efforts by Sellers; and

(b) deleting subsection (10) in its entirety and replacing it with the following:

(10) Sellers shall have provided to Buyer evidence of the defeasance of all obligations relating to the City of Paragould, Arkansas ARKLA Industries Project, Series 1979 Industrial Revenue Bonds (the "PARAGOULD IRBS"). The City of Paragould shall have delivered to Buyer a warranty deed sufficient to deliver marketable title to the Paragould, Arkansas facility formerly subject to lease in connection with the Paragould IRBs.

1.8. DOCUMENT DELIVERIES. Section 8.A of the Agreement is hereby amended by (a) amending subsection (5) thereto to add the following language at the end thereof: "at an annual rental rate of $512,500" and (b) adding the following subsections thereto immediately following subsection (8) and prior to subsection (9), which is renumbered (11):

(9) Copies of the following items relating to the Paragould IRBs: (i) documents evidencing the defeasance of the Paragould IRBs, (ii) the redemption notice to be sent to holders of the Paragould IRBs, (iii) a warranty deed to accomplish the transfer of the Paragould facility formerly subject to lease to Buyer signed by the City of Paragould, (iv) such other documents as Buyer may reasonably request in order to accomplish the delivery of the Paragould facility to Buyer free and clear of all Liens; PROVIDED, if Sellers despite the exercise of their best efforts are unable to deliver the documents referenced in clauses (i) through (iv) above by the close of business on the Closing Date, then in lieu of the foregoing Sellers shall instead deliver at the Closing copies of the following items relating to the Paragould IRBs: (i) an escrow agreement (the "Escrow Agreement") in form mutually agreeable to Sellers, Buyer and Friday, Eldredge & Clark (the "Escrow Agent") providing for the payment of the Escrow Amount to Sellers upon (x) the defeasance of the Paragould IRBs and (y) the transfer to Buyer of all real property in Paragould, Arkansas currently leased and owned by Sunbeam Products (it being understood that title to the owned parcel shall not be transferred to Buyer until such time as title to the leased parcel may be transferred), (ii) a sublease in form mutually agreeable to

NOT A CERTIFIED COPY

016093

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017004
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407200

16div-022379

Sunbeam Products and Buyer of the parcel at the Paragould Facility currently leased by Sunbeam Products and a lease in form mutually agreeable to Sunbeam Products and Buyer of the parcel at the Paragould facility currently owned by Sunbeam Products, each for a term equal to the term of the Escrow Agreement with an alternative term of six months, with an option to renew at Buyer's sole discretion for an additional term of one year if Sunbeam Products fails to deliver good marketable title by March 31, 1997 and (iii) forms of all documents and certificates necessary to accomplish the defeasance of the Paragould IRBs and delivery of title after the Closing Date.

(10) Copies of an irrevocable redemption notice given by Sunbeam Products in relation to the Stanley IRBs; and

1.9. INDEMNIFICATION. Section 11.A(1) of the Agreement is hereby amended by adding the following subsection (i) thereto:

(i) Any matter or thing or action or failure to act by Sunbeam Products, Arkla Industries, Arkla, Arkla Products, Preway, Alibert, Inc., any guarantor of the Paragould IRBs, any transferee of any of the foregoing, or any other person or entity, whether in suit or not, arising out of, under, or in connection in any way with the Paragould IRBs or the Stanley IRBS, or any of the documents, instruments or agreements executed in connection therewith (collectively, the "BOND DOCUMENTS") whenever arising or accruing or resulting in any way from any action or failure to act by Sunbeam Products, Arkla Industries, Arkla, Arkla Products, Preway, Alibert, Inc., any guarantor of the Paragould IRBs, any transferee of any of the foregoing, or any other person or entity, including, without limitation, any and all losses, claims, demands, damages, liabilities or expenses whatsoever caused by any breach or alleged breach by Sunbeam Products, Arkla Industries, Arkla, Arkla Products, Preway, Alibert, Inc., any guarantor of the Paragould IRBs, or any such person or entity or any agent thereof under any of the respective Bond Documents or resulting from any claim against any Indemnified Party by the bond trustee under the indenture relating to the Paragould IRBs or the Stanley IRBs, the holders of any Paragould IRBs or Stanley IRBs, or any other party to or beneficiary of any of the other Bond Documents with respect thereto.

5

NOT A CERTIFIED COPY

0160914

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017005
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407201

16div-022380

1.10. LIMITATIONS ON INDEMNITY. Section 11.D(2) of the Agreement is hereby amended by inserting "5.F(2)," before "5.H" therein and by adding the following clause at the end thereof:

> or for any liabilities arising out of the matters referenced on SCHEDULE 11.D(2).

1.11. FURTHER ASSURANCES. Section 23 of the Agreement is hereby amended by inserting the following sentence after the first sentence therein:

> Sellers shall cooperate with, and use their commercially reasonable efforts to assist, Buyers in obtaining substitute hazardous waste generator E.P.A. identification numbers, solid waste registration numbers and other permits and licenses listed on Schedule 1.M(13).

1.12. POST-CLOSING MATTERS. Section 27 of the Agreement is hereby amended by adding the following Sections M and N at the end thereof:

M. REDEMPTION OF THE STANLEY IRBS. On the Closing Date, Sunbeam Products shall deliver irrevocable notice to the bond trustee for the Stanley IRBs exercising its right to call the Stanley IRBs for redemption on the earliest practicable date for which notice can be given in accordance with the terms of the indenture, which in any event shall not be more than 15 business days after the Closing Date. Sunbeam Products shall take all necessary action to insure that the Stanley IRBs are redeemed, in whole, within 15 business days after the Closing Date.

N. JOINT USE OF SPACE IN THE MCCORMICK CENTER. Seller has leased or entered into a license agreement for space at the McCormick Place in Chicago, Illinois for the 1997 National Hardware Show (running from August 10, 1997 to August 13, 1997). Subject to Seller obtaining any necessary consents, Sellers and Purchasers agree that they will share the space on the third floor so leased on an equal square footage basis for the 1997 show. Sellers and Purchasers further agree that the respective portions of the space will be separated by a ten foot aisle taken equally from each party's space. Purchasers agree to reimburse Sellers for Sellers actual cost on a per foot basis, to lease or license the space in amount proportionate to the space used by Purchaser plus one-half of the aisle. Each party shall be responsible for the cost of its respective display at the show.

NOT A CERTIFIED COPY

016095

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017006
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407202

16div-022381

ARTICLE II.
MISCELLANEOUS

2.1. INTENT OF THE PARTIES WITH RESPECT TO CERTAIN MATTERS.

(a) Sellers and Buyer agree that it is their intent (notwithstanding any failure to amend any provisions of the Agreement herein to express such intent) that the Paragould IRBs are not included in the Assets, and the obligations of Sellers under the Paragould IRBs are not included in the Assumed Liabilities, and any provision in the Agreement that is not so amended herein shall be deemed amended to express such intent.

(b) Sellers and Buyer agree that it is their intent (notwithstanding any failure to amend any provisions of the Agreement herein to express such intent) that the Murfreesboro Assets (as defined in the Manufacturing Services Agreement) are not included in the Assets, and shall not be purchased and sold under the Agreement on the Closing Date; that the Murfreesboro Assets shall instead be purchased and sold at the times and for the consideration described in the Manufacturing Services Agreement; and that any provision in the Agreement that is not so amended herein shall be deemed amended to express such intent.

2.2. DEFINITIONS. Capitalized terms used in this Amendment and not defined herein shall have the meanings ascribed thereto in the Agreement.

2.3. EFFECT OF AMENDMENT; RESTATEMENT. Except as amended by this Amendment, the Agreement shall be unamended and remain in full force and effect. The Agreement, as amended by this Amendment, is hereinafter referred to as the "Agreement", and the parties hereto hereby agree that the Agreement may be restated to reflect the amendments provided for in this Amendment.

2.4. GOVERNING LAW. This amendment shall be governed by and interpreted in accordance with the laws of the State of Delaware.

2.5. COUNTERPARTS. This Amendment may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument.

(SIGNATURES BEGIN ON NEXT PAGE)

NOT A CERTIFIED COPY

016096

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017007
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407203

16div-022382

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers as of the date first written above.

SUNBEAM PRODUCTS, INC.

By: /s/ DAVID C. FANNIN
Name: David C. Fannin
Title: Executive Vice President

SUNBEAM FURNITURE COMPANY

By: /s/ DAVID C. FANNIN
Name: David C. Fannin
Title: Vice President

OP II, INC.

By: /s/ JANET KELLEY
Name: Janet Kelley
Title: Vice President

SUNLITE CASUAL FURNITURE, INC.

By: /s/ JOHN A. MISTRETTA
Name: John A. Mistretta
Title: Vice President

Agreed and Acknowledged

SUNBEAM CORPORATION

By: /S/ DAVID C. FANIN
Name: David C. Fannin
Title: Executive Vice President

U.S. INDUSTRIES, INC.

By: /s/ JOHN A. MISTRETTA
Name: John A. Mistretta
Title: Vice President

NOT A CERTIFIED COPY

016097

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017008
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407204

16div-022383

ANNEX A

SUNBEAM FURNITURE
PURCHASE PRICE ADJUSTMENT WORKSHEET

The Outdoor, Samsonite, and Consolidated information is derived from Schedule S.F(1), "Statements of Assets and Liabilities", as provided in the executed purchase agreement dated February 10, 1997, as amended as of March 17, 1997. This statement is adjusted to exclude inventory and fixed asset values associated with the Murfreesboro facility not being immediately transferred to the purchasers, and the additional discount.

NOTE THAT PURCHASER REALIZES THE BENEFIT OF THE EXCESS AND OBSOLETE RESERVE AT MURFREESBORO AT TIME OF SALE.

$Thousands

	Outdoor	Samsonite	Consolidated	Less: Discount	Amended Purchase Agreement Total	Less: Murfreesboro Inventory/FA	Less: Additional Discount	Re
Petty Cash	2	2	4					
Inventory:								
Raw Materials	8,621	4,924	13,545			(3,739)		
Work in Process	5,989	3,596	9,585			(2,719)		
Finished Goods	30,266	1,806	32,072			(1,706)		
Other (a)	562	-	562			-		
Seasonal Variance	7,282	-	7,282			-		
Excess and Obsolete	(7,300)	(1,068)	(8,368)			-		
Shrink/BTP	(500)	(145)	(645)			-		
Standards Revaluation	(3,042)	55	(2,987)			(55)		
Net Inventory	41,978	9,168	51,046			(8,219)		
Prepaid Expenses								
Rents	213	118	331					
Deposits	15	-	15					
Other (b)	47	97	144					
Net PP&E	51,070	2,870	53,940			(2,529)		
Total Assets	93,225	12,255	105,480			(10,748)		
Accrued Payroll & Vacation	1,209	386	1,595					
IRB (c)	-	-	-					
Total Liabilities	1,209	386	1,595					
Net Amount	$ 92,016	$11,869	$103,885	$ (21,000)	$ 82,885	$(10,748)	$ (10,000)	$62,

(a) Includes raw materials in transit ($559K) and repack parts ($3K)
(b) Includes prepaid royalty, holiday, and other
(c) To be paid by Sunbeam outside of closing

EXHIBIT 10.d

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, effective as of January 1, 1997 (the "Effective Date"), by and between DONALD R. UZZI (the "Executive") and SUNBEAM CORPORATION, a Delaware corporation (the "Company").

RECITALS

WHEREAS, the Executive is currently employed by the Company; and

WHEREAS, Company desires to retain the Executive and the Executive desires to furnish services to the Company on the terms and conditions hereinafter set forth; and

WHEREAS, the parties desire to enter into this Agreement setting forth the revised terms and conditions of the employment relationship of the Executive with the Company;

NOW, THEREFORE, in consideration of the premises and the mutual

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016098

CP 017009
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407205

16div-022384

agreements set forth below, the parties hereby agree as follows:

1. EMPLOYMENT. The Company hereby agrees to employ the Executive, and the Executive hereby accepts such employment, on the terms and conditions hereinafter set forth.

2. EMPLOYMENT PERIOD. The period of employment of the Executive by the Company hereunder (the "Employment Period") shall commence on the Effective Date and shall end on December 31, 1999 (or the Date of Termination (as defined in Section 6 below), if earlier).

3. POSITION AND DUTIES. The Executive shall serve as Executive Vice President, Worldwide Consumer Products, and shall have such responsibilities, duties and authority as are consistent with such position and such other duties as may from time to time be assigned to him by the Chief Executive Officer. The Executive agrees to devote substantially all his working time, attention and energies to the performance of his duties for the Company.

4. PLACE OF PERFORMANCE. The principal place of employment of the Executive shall be at the Company's principal executive offices in Palm Beach County, Florida, or such other location as may be agreed to by the Board. In the event that the Company's principal executive offices are moved from Palm Beach County, Florida, the Company shall promptly pay, or reimburse the Executive for, all reasonable expenses incurred by the Executive relating to any change of the Executive's residence from Palm Beach County, Florida, in connection with his employment hereunder, including, without limitation, reasonable expenses for himself and his family of travel, moving, storage and suitable lodging and maintenance, and the Company shall reimburse the Executive on a grossed up basis in the event that any tax is assessed upon him in relation to any such expenses. The Company shall pay or reimburse the Executive for all reasonable costs and expenses of residential relocation incurred by him in connection with each and every additional change, if any, in the location of the principal executive offices of the Company, and the Executive shall be reimbursed by the Company on a grossed up basis in the event that any tax is assessed upon him in relation to any such costs or expenses.

5. COMPENSATION AND RELATED MATTERS.

(a) BASE SALARY. As compensation for the performance by the Executive of his duties hereunder, during the Employment Period the Company shall pay the Executive a base salary

NOT A CERTIFIED COPY

016099

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017010
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407206

16div-022385

at an annual rate of $400,000 (the "Base Salary"), which Base Salary shall be payable in substantially equal semi-monthly installments. It is agreed that there shall be no increase or decrease in the Base Salary during the Employment Period. The parties agree that the Executive shall not be entitled to participate in any other bonus or incentive compensation programs of the Company.

(b) STOCK OPTION GRANTS. Effective as of the Effective Date, by action of the Executive Development and Compensation Committee of the Board of Directors, the Executive has been granted (in addition to options previously granted to him) a stock option (the "Option Award") to purchase 100,000 shares of Common Stock pursuant to the Company's Equity Team Plan ("Option Plan"), which options are granted upon the terms and conditions as set forth in the Option Plan (at an exercise price of $25.73 per share). Such Option Award shall vest in equal increments on the first, second and third anniversaries of the grant date and shall be subject to and modified by all other terms and provisions of this Agreement, as expressly set forth herein. In the event of any conflict between any terms of the Option Plan and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall take precedence and shall be controlling as between such documents.

(c) EXPENSES. During the Employment Period, the Company shall reimburse the Executive for all reasonable business expenses in accordance with applicable policies and procedures then in force.

(d) VACATION AND OTHER ABSENCES. The Executive shall be entitled to paid vacation and other paid absences, whether for holidays, illness, personal time or any similar purposes, during the Employment Period in accordance with policies applicable generally to other Executive Vice Presidents of the Company; provided, however, that the Executive shall always be entitled to at least six weeks of paid vacation in each calendar year and pro rata for part of a year. Up to four weeks per year of unused vacation may be maintained by the Executive on a cumulative basis and may be subsequently used in any year or if not so used, the Executive shall be compensated for any unused vacation days upon the termination of this Agreement for any reason.

(e) TAX PLANNING SERVICES. During the Employment Period, the Company shall provide the Executive with tax-related advice and services without cost or expense to him and shall reimburse the Executive on a grossed up basis in the event that any tax is assessed upon him in relation to such services.

(f) OTHER BENEFITS. During the Employment Period, the Executive shall be eligible to participate at no cost or expense to him in welfare plans and programs (including any tax-deferred savings plan, group life insurance plan, medical and dental insurance plan, and accident and disability insurance plan) ("Benefit Plans") applicable generally to employees and/or senior executives of the Company. The Company will waive, or obtain the waiver of, any waiting periods for eligibility under the Benefit Plans or will provide comparable benefits to the Executive without cost to him during the waiting period.

6. TERMINATION. The Executive's employment hereunder may be terminated as follows:

(a) DEATH. The Executive's employment shall terminate upon his death, and the date of his death shall be the Date of Termination.

NOT A CERTIFIED COPY

016100

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017011
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407207

16div-022386

(b) DISABILITY. If, as a result of the Executive's incapacity due to physical or mental illness, the Executive shall have been absent from his duties hereunder on a full-time basis for one hundred and twenty (120) consecutive days and, within thirty (30) days after written Notice of Termination (as defined in Section 6(g) hereof), shall not have returned to the performance of his duties hereunder on a full-time basis ("Disability"), the Company may terminate the Executive's employment hereunder. In this event, the Date of Termination shall be thirty (30) days after Notice of Termination is given (provided that the Executive shall not have returned to the performance of his duties on a full-time basis during such thirty (30) day period).

(c) CAUSE. The Company may terminate the Executive's employment hereunder for Cause. For purposes of this Agreement, the Company shall have "Cause" to terminate the Executive's employment hereunder:

(i) upon the Executive's conviction for the commission of a felony (or a plea of nolo contendere thereto);

(ii) willful failure by the Executive substantially to perform his duties hereunder (other than any such failure resulting from the Executive's incapacity due to Disability). For purposes hereof, no act or failure to act by the Executive shall be considered "willful" unless done or omitted to be done by him not in good faith or without reasonable belief that his action or omission was in the best interests of the Company or contrary to written instructions of the Chief Executive Officer or the Board of Directors; or

(iii) failure of the Executive to meet the performance objectives prescribed for him by the Company's Chief Executive Officer, in good faith, from time to time. In event termination for Cause is premised on this subsection (c)(iii), the Executive shall be given written notice of his performance deficiencies and a thirty (30) day period within which to correct or overcome those deficiencies. If the Executive shall be unable or unwilling to correct such deficiencies in performance during such thirty (30) day period, then his Date of Termination shall be the date following such thirty (30) period on which the Company's Chief Executive Officer advises the Executive in writing (in a Notice of Termination) that he has failed to correct the deficiencies in performance, providing in reasonable detail the reasons for such determination by the Chief Executive Officer.

The Date of Termination shall be the date specified in the Notice of Termination; provided, however, that, in the case of a termination for Cause under clause (ii) above, the Date of Termination shall not be earlier than 30 days after delivery of the Notice of Termination. Anything herein to the contrary notwithstanding, if, following a termination of the Executive's employment by the Company for Cause based upon the conviction of the Executive for a felony, such conviction is overturned in a final determination on appeal, the Executive shall be entitled to the payments and the economic equivalent of the benefits the Executive would have received if his employment had been terminated by the Company without Cause.

(d) TERMINATION BY THE EXECUTIVE FOR GOOD REASON. The Executive may terminate his employment hereunder for Good Reason, provided that the Executive shall have delivered a Notice of Termination (as defined in Section 5(g) hereof) within ninety (90) days after the occurrence of the event of Good Reason giving rise to such termination. For purposes of this

NOT ACCREDITED COPY

101910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017012
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407208

16div-022387

Agreement. "Good Reason" shall mean the occurrence of one or more of the following circumstances, without the Executive's express written consent, which are not remedied by the Company within thirty (30) days of receipt of the Executive's Notice of Termination:

(i) an assignment to the Executive of any duties materially inconsistent with his positions, duties, responsibilities and status with the Company or any material limitation of the powers of the Executive not consistent with the powers of the Executive contemplated by Section 3 hereof; or

(ii) any removal of the Executive from, or any failure to re-elect the Executive to, the executive officer position specified in Section 3 of this Agreement (or to another senior executive position with the Company at no decrease in compensation); or

(iii) any other material breach by the Company of this Agreement.

In the event of a termination for Good Reason, the Date of Termination shall be the date specified in the Notice of Termination, which shall be no more than thirty (30) days after the Notice of Termination.

(e) OTHER TERMINATIONS. The Company may terminate the Executive's employment hereunder at any time, subject to the provisions of Section 7(e) hereof. The Executive may terminate his employment at any time subject to the provisions of Section 7(d) hereof. If the Executive's employment is terminated hereunder for any reason other than as set forth in Sections 6(a) through 6(d) hereof, the date on which a Notice of Termination is given or any later date (within 30 days) set forth in such Notice of Termination shall be the Date of Termination.

(f) TERMINATION BY THE EXECUTIVE UPON CHANGE IN CONTROL. Upon a Change in Control (as defined below), the Executive shall have the right, upon delivery to the Company of a Notice of Termination (which shall specify a Date of Termination not less than 30 days after such Notice of Termination), to terminate his employment under this Agreement and to receive the payments provided pursuant to Section 7(f) below. If the Executive shall elect to terminate his employment with the Company other than upon a Change in Control, he shall receive only the compensation referred to in Section 7(d) below. For purposes of this Agreement, a Change in Control shall mean the occurrence of any one of the following events:

(i) any "person" as such term is used in Sections 3(a)(9) and 13(d) of the Securities Exchange Act of 1934, as amended, becomes a "beneficial owner," as such term is used in Rule 3d-3 promulgated under that Act, of 25% or more of the voting stock of the Company (other than a person that is currently the beneficial owner of such percentage of the Company's voting stock);

(ii) the majority of the Board consists of individuals other than Incumbent Directors, which term means the members of the Board on the date of this Agreement and the individuals designated as directors by the Chief Executive Officer of the Company; provided that any person becoming a director subsequent to such date whose election or nomination for election was supported by two-thirds of the directors who then comprised the Incumbent Directors shall be considered to be an Incumbent Director;

(iii) the Company, without the Executive's consent, adopts any

NOT A CERTIFIED COPY

201910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017013
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407209

16div-022388

plan of liquidation providing for the distribution of all or substantially all of its assets; or

(iv) all or substantially all of the assets or business of the Company are disposed of pursuant to a merger, consolidation or other transaction (unless the shareholders of the Company immediately prior to such merger, consolidation or other transaction beneficially own, directly or indirectly, in substantially the same proportion as they owned the voting stock of the Company, all of the voting stock or other ownership interests of the entity or entities, if any, that succeed to the business of the Company).

(g) NOTICE OF TERMINATION. Any termination of the Executive's employment hereunder by the Company or by the Executive (other than termination pursuant to Section 6(a) hereof) shall be communicated by written Notice of Termination to the other party hereto in accordance with Section 13 hereof. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated. If any dispute concerning a Notice of Termination of the Executive's employment under Section 6(b), 6(c) or 6(d) hereof results in a determination that a proper basis for such termination did not exist under such section, the Executive's employment under this Agreement shall be treated, with respect to a Notice of Termination pursuant to Section 6(b) or 6(c) hereof, as having been terminated pursuant to Section 6(e) hereof or, with respect to a Notice of Termination pursuant to Section 6(d) hereof, as having not been terminated.

7. COMPENSATION UPON TERMINATION OR DURING DISABILITY.

(a) DISABILITY PERIOD. During any period during the Employment Period that the Executive fails to perform his duties hereunder as a result of incapacity due to physical or mental illness ("Disability Period"), the Executive shall continue to (i) receive his full Base Salary and (ii) participate in the Benefit Plans. Such payments made to the Executive during the Disability Period shall be reduced by the sum of the amounts, if any, payable to the Executive at or prior to the time of any such payment under disability benefit plans of the Company or under the Social Security disability insurance program, and which amounts were not previously applied to reduce any such payment.

(b) DEATH. If the Executive's employment hereunder is terminated as a result of death, then:

(i) the Company shall pay the Executive's estate or designated beneficiary, as soon as practicable after the Date of Termination, any Base Salary installments due in the month of death and any reimbursable expenses, accrued or owing the Executive hereunder as of the Date of Termination; and

(ii) the Options granted to the Executive pursuant to the Option Award shall become vested and exercisable, as of the Date of Termination, to the extent such Option Award would have otherwise become vested on or before the first anniversary of the Date of Termination, and all vested Options shall remain exercisable for a period of one year following such Date of Termination and shall thereafter be completely forfeited and canceled; any Options that would not have become vested and exercisable on or before the first anniversary of the Date of Termination shall terminate and be forfeited as of the

NOT ATTESTED COPY

016103

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017014
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407210

16div-022389

Date of Termination.

(c) DISABILITY. If the Executive's employment hereunder is terminated as a result of Disability, then:

(i) the Company shall pay the Executive, as soon as practicable after the Date of Termination, any Base Salary and any reimbursable expenses, accrued or owing the Executive hereunder for services as of the Date of Termination; and

(ii) the Options granted to the Executive pursuant to the Option Award shall become vested and exercisable, as of the Date of Termination, to the extent such Option Award would have otherwise become vested on or before the first anniversary of the Date of Termination, and all vested Options shall remain exercisable for a period of three years following such Date of Termination and shall thereafter be completely forfeited and canceled; any Options that would not have become vested and exercisable on or before the first anniversary of the Date of Termination shall terminate and be forfeited as of the Date of Termination.

(d) CAUSE OR BY EXECUTIVE OTHER THAN FOR GOOD REASON. If the Executive's employment hereunder is terminated by the Company for Cause or by the Executive other than for Good Reason, then:

(i) the Company shall pay the Executive, as soon as practicable after the Date of Termination, any Base Salary and any reimbursable expenses accrued or owing the Executive hereunder for services as of the Date of Termination; and

(ii) the Executive shall immediately forfeit any unvested portion of the Option Award. In the event of termination by the Company for Cause, the Executive shall have the right to exercise the vested unexercised portion of the Option Award for a period of ninety (90) days after the Date of Termination, and the unexercised portion of such Option Award shall be forfeited thereafter. In the event of termination by the Executive other than for Good Reason the Executive shall have the right to exercise the vested unexercised portion of the Option Award for a period of one year following the Date of Termination and the unexercised portion of such Option Award shall be forfeited thereafter.

(e) TERMINATION BY COMPANY WITHOUT CAUSE OR BY THE EXECUTIVE WITH GOOD REASON. If the Executive's employment hereunder is terminated by the Company (other than for Cause or Disability) or by the Executive for Good Reason, then:

(i) the Company shall pay the Executive, as soon as practicable after the Date of Termination, any Base Salary and any reimbursable expenses, accrued or owing the Executive hereunder for services as of the Date of Termination;

(ii) the Company shall immediately pay to the Executive as liquidated damages and not as a penalty a lump sum amount equal to the total Base Salary that would have otherwise been payable to the Executive with respect to the period commencing immediately following the Date of Termination and ending on July 29, 1999, at the annualized rate in effect at the time Notice of Termination is given;

NOT A CERTIFIED COPY

0161104

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017015
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407211

16div-022390

(iii) the Options granted to the Executive pursuant to the Option Award shall become fully vested and exercisable, as of the Date of Termination, and the Option Award shall remain exercisable for the balance of its original 10-year term; and

(iv) the Executive shall continue to participate in all employee benefit plans and programs in which the Executive was entitled to participate immediately prior to the Date of Termination, in accordance with the terms of such plans and programs as in effect from time to time, through December 31, 1999; provided that the Executive's continued participation is permitted under the general terms and provisions of such plans and programs. In the event that the Executive's participation in any such plan or program is barred, the Company shall arrange to provide the Executive and his dependents with benefits substantially the same as those which the Executive and his dependents would otherwise have been entitled to receive under such plans and programs from which their continued participation is barred or provide their economic equivalent.

(f) TERMINATION UPON CHANGE IN CONTROL. If the Executive shall elect to terminate his employment under this Agreement upon a Change in Control, the Company shall pay to the Executive the payments described in Sections 7(e)(i), (ii), (iii) and (iv) above.

8. GROSS-UP FOR EXCISE TAX. In the event that the Executive receives any payment or benefit (including but not limited to the payments or benefits pursuant to Section 7 of this Agreement) (a "Payment") that is subject to the excise tax (the "Excise Tax") under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive, as soon thereafter as practicable, an additional amount (a "Gross-Up Payment") such that the net amount retained by the Executive, after deduction of any Excise Tax imposed upon the Payment and any federal, state and local income tax and Excise Tax imposed upon the Gross-Up Payment shall be equal to the Payment. The determination of whether an Excise Tax is due in respect of any payment or benefit, the amount of the Excise Tax and the amount of the Gross-Up Payment shall be made by an independent auditor (the "Auditor") jointly selected by the Company and the Executive and paid by the Company. If the Executive and the Company cannot agree on the firm to serve as the Auditor, then the Executive and the Company shall each select one nationally recognized accounting firm and those two firms shall jointly select the nationally recognized accounting firm to serve as the Auditor. Notwithstanding the foregoing, for purposes of determining the Gross-Up Payment in respect of any Payment, (i) any other payments or benefits received or to be received by the Executive in connection with a Change in Control or the Executive's termination of employment (whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement with the Company, any person whose actions result in a Change in Control or any person affiliated with the Company or such person) shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G of the Code shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by the Auditor, such other payments or benefits (in whole or in part) do not constitute parachute payments, or are otherwise not subject to the Excise Tax, and (ii) the Executive shall be deemed to pay federal income tax at the highest marginal rate applicable in the calendar year in which the Gross-Up Payment is made, and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive's residence on the Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. In the event the actual Excise Tax or such income tax is more or less than the amount used to calculate the Gross-Up Payment, the

NOT A CERTIFIED COPY

016105

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017016
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407212

16div-022391

Executive or the Company, as the case may be, shall pay to the other an amount reflecting the actual Excise Tax or such income tax0 , plus interest on the amount of such repayment at the rate provided in Section 1274(b)(2)(B) of the Code.

9. MITIGATION. The Executive shall not be required to mitigate amounts payable pursuant to Section 7 hereof by seeking other employment or otherwise, nor shall there be any offset against such payments on account of (a) any remuneration attributable to any subsequent employment that he may obtain or (b) any claims the Company may have against the Executive.

10. CONFIDENTIAL INFORMATION, REMOVAL OF DOCUMENTS, NON-COMPETITION.

(a) CONFIDENTIAL INFORMATION. The Executive shall hold in a fiduciary capacity for the benefit of the Company and its subsidiaries (the "Sunbeam Entities") all trade secrets, confidential information, and knowledge or data relating to the Sunbeam Entities and the businesses and investments of the Sunbeam Entities, which shall have been obtained by the Executive during the Executive's employment by the Company, including such information with respect to any products, improvements, formulas, designs or styles, processes, services, customers, suppliers, marketing techniques, methods, future plans or operating practices ("Confidential Information"); PROVIDED, HOWEVER, that Confidential Information shall not include any information known generally to the public (other than as a result of unauthorized disclosure by the Executive) or any specific information or type of information generally not considered confidential by persons engaged in the same business as the Company, or information disclosed by the Company or any officer thereof to a third party without restrictions on the disclosure of such information. Except as may be required or appropriate in connection with his carrying out his duties under this Agreement, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such Confidential Information to anyone other than the Company and those designated by the Company.

(b) REMOVAL OF DOCUMENTS. All records, files, drawings, documents, models, and the like relating to the business of the Sunbeam Entities, which the Executive prepares, uses or comes into contact with and which contain Confidential Information shall not be removed by the Executive from the premises of any Sunbeam Entity (without the written consent of the Company) during or after the Employment Period unless such removal shall be required or appropriate in connection with his carrying out his duties under this Agreement, and, if so removed by the Executive, shall be returned to such Sunbeam Entity immediately upon termination of the Executive's employment hereunder.

(c) NON-COMPETITION. During (i) the Executive's employment with the Company and (ii) the two (2) year period immediately following the Executive's Date of Termination, the Executive (A) shall not engage, anywhere within the geographical areas in which any Sunbeam Entity is then conducting its business operations, directly or indirectly, alone, in association with or as a shareholder, principal, agent, partner, officer, director, employee or consultant of any other organization, in any business (a "Competitive Business") which competes with any business then being conducted by such Sunbeam Entity; (B) shall not solicit or encourage any officer, employee or consultant of any of the Sunbeam Entities to leave the employ of any of the Sunbeam Entities for employment by or with any Competitive Business; and (C) shall not solicit, divert or take away, or attempt to divert or to take away, the business or patronage of any of the customers or accounts, or prospective customers or accounts, of any Sunbeam Entity, which were contacted, solicited or served by the Executive while employed by the Company; provided, however,

NOT A CERTIFIED COPY

901910

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017017
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407213

16div-022392

that nothing herein shall prohibit the Executive from owning a maximum of two percent (2%) of the outstanding stock of any publicly traded corporation. Following the Date of Termination, ownership by the Executive of not more than five percent (5%) of any publicly traded corporation shall not constitute a violation hereof. If, at any time, the provisions of this Section 10(c) shall be determined to be invalid or unenforceable, by reason of being vague or unreasonable as to area, duration or scope of activity, this Section 10(c) shall be considered divisible and shall become and be immediately amended to only such area, duration and scope of activity as shall be determined to be reasonable and enforceable by the court or other body having jurisdiction over the matter; and the Executive agrees that this Section 10(c) as so amended shall be valid and binding as though any invalid or unenforceable provision had not been included herein. For purposes of this Section 10(c), the design, manufacture and marketing of outdoor barbecue grills, casual outdoor and indoor furniture and small kitchen appliances shall be construed to be a Competitive Business; provided, however, that the gross revenues derived from sales of such products by such competitor are greater than the lesser of (i) 10% of its total revenues and (ii) $500,000,000.

(d) REMEDIES. In the event of a breach or threatened breach of this Section 10, the Executive agrees that the Company shall be entitled to apply for injunctive relief in a court of appropriate jurisdiction to remedy any such breach or threatened breach, the Executive acknowledging that damages would be inadequate and insufficient.

(e) CONTINUING OPERATION. Any termination of the Executive's employment or of this Agreement shall have no effect on the continuing operation of this Section 10.

11. INDEMNIFICATION. The Company shall indemnify the Executive to the full extent permitted by law and the By-laws of the Company for all expenses, costs, liabilities and legal fees which the Executive may incur in the discharge of all his duties hereunder, including, without limitation, the right to be paid in advance by the Company for his expenses in defending a civil or criminal action, proceeding or investigation prior to the final disposition thereof. The Executive shall be insured under the Company's Directors' and Officers' Liability Insurance Policy as in effect from time to time. Notwithstanding any other provision of this Agreement to the contrary, any termination of the Executive's employment or of this Agreement shall have no effect on the continuing operation of this Section 11.

NOT A CERTIFIED COPY

019107

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017018
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407214

16div-022393

12. SUCCESSORS; BINDING AGREEMENT.

(a) COMPANY'S SUCCESSORS. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred pursuant to a merger or consolidation in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the business and/or assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the business and/or assets of the Company and such assignee or transferee assumes the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law. The Company will require any such successor to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement (except in the definition of Change in Control), "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which executes and delivers the agreement provided for in this Section 12 or which otherwise becomes bound by all the terms and provisions of this Agreement or by operation of law.

(b) EXECUTIVE'S SUCCESSORS. This Agreement shall not be assignable by the Executive. This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. Upon the Executive's death, all amounts to which he is entitled hereunder, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to the Executive's devisee, legatee, or other designee or, if there be no such designee, to the Executive's estate.

NOT A CERTIFIED COPY

016108

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017019
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407215

16div-022394

13. NOTICE. For the purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Donald R. Uzzi

If to the Company:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

Attn: General Counsel

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

14. MISCELLANEOUS. No provisions of this Agreement may be modified unless such modification is agreed to in writing signed by the Executive and an authorized officer of the Company. Any waiver or discharge must be in writing and signed by the Executive or such an authorized officer of the Company, as the case may be. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law principles.

15. WITHHOLDING. Any payments provided for in this Agreement shall be paid net of any applicable withholding of taxes required under federal, state or local law.

16. ARBITRATION.

(a) Except as otherwise provided herein, all controversies, claims or disputes arising out of or related to this Agreement shall be settled under the rules of the American Arbitration Association then in effect in the State of Florida, as the sole and exclusive remedy of either party, and judgment upon such award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. The costs of the arbitration shall be borne as determined by the arbitrators PROVIDED, HOWEVER, that if the Company's position is not substantially upheld, as determined by the arbitrators, the expenses of the Executive (including, without limitation, fees and expenses payable to the AAA and the arbitrators, fees and expenses payable to witnesses, including expert witnesses, fees and expenses payable to attorneys and other professionals, expenses of the Executive in attending the hearings, costs in connection with obtaining and presenting evidence and

NOT A CERTIFIED COPY

016109

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017020
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407216

16div-022395

costs of transcription of the proceedings), as determined by the arbitrators, shall be reimbursed to him by the Company.

(b) Notwithstanding the provisions of Section 16(a) above, the parties agree that nothing contained herein shall preclude the Company from bringing an action in a court of competent jurisdiction (whether prior to or during any arbitration proceeding) seeking to specifically enforce the provisions of Section 10 hereof by means of seeking an injunction or other equitable relief.

17. ENTIRE AGREEMENT; COUNTERPARTS. This Agreement and the terms of the Option Plan set forth the entire agreement of the parties hereto in respect of the subject matter contained herein, supersede all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto; and any prior agreement of the parties hereto or thereto in respect of the subject matter contained herein or therein, including but not limited to that certain Employment Agreement between the Company and the Executive dated January 1, 1995, is hereby terminated and canceled. This Agreement may be signed in counterparts.

18. CONFLICT WITH OPTION PLAN. To the extent, if any, of any inconsistency or conflict between the terms and provisions of this Agreement and the Option Plan, this Agreement shall control in all matters.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on August 7, 1996 to be effective as of the Effective Date.

SUNBEAM CORPORATION

By:_____
Name: ALBERT J. DUNLAP
Title: CHAIRMAN & CEO

_____
Donald R. Uzzi

EXHIBIT 10.[illegible]

AMENDED AND RESTATED
SUNBEAM CORPORATION
EQUITY TEAM PLAN

(Amended as of December 5, 1996)

1. PURPOSE.

The purpose of the Sunbeam Corporation Equity Team Plan is to provide incentives for selected executives, key employees, Outside Directors and Designated Others to promote the financial success and progress of Sunbeam Corporation. Capitalized terms used throughout this Plan shall have the meanings ascribed to them in Section 16 hereof.

2. STOCK SUBJECT TO THE PLAN.

(a) Subject to the provisions of this Section and Section 9, the maximum number of shares of Stock that may be issued under the Plan is 11,500,000 shares, to be allocated as follows:

(i) 11,300,000 shares may be issued in connection with the grant of Options pursuant to Section 3; and

(ii) 200,000 shares may be issued in connection with the grant of Restricted Stock Awards pursuant to Section 3.

Such shares may be either authorized but unissued shares or treasury shares.

(b) The number of shares subject to an Option or a Restricted Stock Award that has been granted under the Plan shall no longer be charged against the limitation provided in Section 2(a), and may again be made subject to Options or Restricted Stock Awards, as the case may be, to the extent that Options expire unexercised or are terminated, surrendered or canceled before exercise or Restricted Stock Awards are forfeited, terminated, surrendered or canceled due to a Participant's termination of employment or service as an Outside Director or for any other reason.

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016110

CP 017021
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407217

16div-022396

3. GRANTS OF OPTIONS AND RESTRICTED STOCK AWARDS.

(a) Subject to the provisions of the Plan, the Committee may at any time, or from time to time, grant Options to officers, key employees, Outside Directors of the Company (or its subsidiaries) and Designated Others.

(b) Subject to the provisions of the Plan, the Committee may at any time, or from time to time, grant shares of Stock which are subject to the Restrictions set forth in Section 4(b) ("Restricted Stock") to officers, key employees and Outside Directors of the Company (or its subsidiaries) and Designated Others.

(c) The Committee shall cause shares of Restricted Stock to be issued to each Outside Director immediately and automatically upon his or her election, re-election or appointment as a Director of the Company. If such Outside Director is elected at an Annual Meeting of the Shareholders of the Company (the "Annual Meeting"), the number of shares of Restricted Stock to be issued shall

NOT A CERTIFIED COPY

016111

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017022
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407218

16div-022397

be 1,500. The number of shares of Restricted Stock to be issued to an Outside Director who is elected or appointed at any time other than at an Annual Meeting shall be 1,500 multiplied by a fraction, the numerator of which shall be the number of days after the date of such election to and including the date of the next Annual Meeting (which for such purpose shall be assumed to be the next May 15) and the denominator of which shall be 365; provided, however, (i) that in the case of an Outside Director elected to the Board for the first time during the period beginning August 1, 1996 and ending December 31, 1996, the number of such shares shall not be prorated, and each such Outside Director shall receive 1,500 shares for the period of his service between the date of his election and the date of the next Annual Meeting (assumed to be May 15, 1997); and (ii) that each incumbent Outside Director, elected prior to August 1, 1996, shall receive that number of shares of Restricted Stock which results from applying to 1,500 such shares the proration formula provided above, using for such calculation the period from August 6, 1996 until and including the date of the next Annual Meeting (assumed to be May 15, 1997).

(d) Deleted.

(e) Each Option shall be evidenced by a Stock Option Agreement, and each Restricted Stock Award shall be evidenced by a Restricted Stock Award Agreement, each in a form approved by the Committee or by a Company officer designated by the Committee.

(f) Notwithstanding any other provision of the Plan, no person shall be granted Options for more than 250,000 shares of Stock or Restricted Stock Awards for more than 25,000 shares of Stock in any single fiscal year of the Company.

4. TERMS AND CONDITIONS.

(a) OPTIONS.

(i) An Option shall entitle the Participant who holds it to exercise the Option on and subject to the terms, conditions and restrictions of the Plan (as the Plan may be amended from time to time) and such additional terms, conditions and restrictions as may be imposed by the Committee at the time of grant.

(ii) Unless otherwise specified by the Committee, the term of each Option granted prior to May 15, 1996 (herein the "1996 Amendment Date") and which is In-the-Money as of the 1996 Amendment Date shall commence on the date of grant of the Option and shall expire at the close of business on the earlier of (A) the tenth anniversary of the date of grant or (B) the 45th day following the termination of the Participant's employment with, or service as director of, the Company (or a subsidiary). Unless otherwise specified by the Committee, the term of each Option granted on or after the 1996 Amendment Date and the term of each Option granted prior to the 1996 Amendment Date which is Out-of-the- Money as of the 1996 Amendment Date, shall commence on the Grant Date of the Option and shall expire at the close of business on the earliest of (A) the tenth anniversary of the Grant Date; or (B) the third anniversary of the date of termination of the Participant's employment with, or service as a director of, the Company (or a subsidiary), in the case of retirement or termination by the Company without Cause; or (C) 90 days after the date of termination of employment in the case of resignation, voluntary departure or

NOT CERTIFIED COPY

016112

 (C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017023
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407219

16div-022398

termination by the Company with Cause; or (D) in the case of a Designated Other, the date specified in the Stock Option Agreement. Notwithstanding the foregoing sentence, Participants who are subject to Section 16(b) of the Exchange Act shall have until the earlier of (A) the tenth anniversary of the Grant Date; or (B) the third anniversary of the date of termination of their employment with, or service as a director of the Company, regardless of the cause, within which to exercise Options which are granted on or after the 1996 Amendment Date and Options which are Out-of-the-Money as of the 1996 Amendment Date; provided, however, that no such Option may be exercised by any such person during the period beginning on the date of termination and ending on the six month anniversary of the date of termination.

(iii) All Restrictions shall lapse with respect to the Restricted Stock subject to a Restricted Stock Award made to an Outside Director pursuant to Section 3(c) hereof immediately and automatically upon the Director's acceptance of election or appointment as a Director of the Company, as evidenced in such manner as may be established by the Committee. Unless otherwise specified by the Committee (which is empowered to provide different vesting schedules with respect to any grant of Options or Restricted Stock), all other Options granted under the Plan shall become exercisable with respect to 20% of the shares subject to the Option beginning on the first anniversary of the Grant Date and as to an additional 20% on each of the second, third, fourth and fifth anniversaries of the Grant Date (each twelve month period ending on an anniversary of a Grant Date being referred to herein as an "Option Year"), provided in each case that the Participant shall have remained an employee or a director of the Company (or a subsidiary), or in the case of a Designated Other, shall have remained in the position set forth in the Stock Option Agreement, continuously since the Grant Date. Notwithstanding the foregoing, during the remaining term of any Options (if not already so exercisable) : (A) if a Participant's employment or service as a director, or in the case of a Designated Other, the period of service as defined in the Stock Option Agreement, terminates due to death, all Options held by the Participant at death shall become immediately exercisable in full; (B) upon a Change in Control, coupled with a Change in Status of a Participant, all Options held by such Participant who is then an employee or director of the Company (or a subsidiary) shall become immediately exercisable in full; and (C) in the event that the exercisability of an Option accelerates due to a Change in Control and a Change in Status, Participants who are subject to Section 16(b) of the Exchange Act may not sell the shares acquired upon such accelerated exercise within six months of the Grant Date of such Option.

(iv) Except to the extent permitted by Rule 16b-3 or its successor, Options shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of, except by will or the laws of descent and distribution, pursuant to a qualified domestic relations order ("QDRO") as defined in the Code or ERISA (or the rules thereunder) or as otherwise set forth in this Section 6(a)(iv). Each Option shall be exercisable during the lifetime of a Participant only by the Participant to whom it was granted, and after the Participant's death only by the Participant's estate or legal representative. To the extent exercisable, an Option may be exercised in whole at any time, or in part from time to time, during the term of the Option.

(v) Any Option may be converted, modified, forfeited or canceled, prospectively or retroactively, in whole or in part, by the Committee in its sole discretion; provided,

NOT CERTIFIED COPY

016113

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017024
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407220

16div-022399

however, that no such action shall adversely affect the rights of any Participant under any Option granted prior to such action without his consent. Except as may be otherwise provided in an Agreement, the Committee may, in its sole discretion, in whole or in part, waive any restrictions or conditions applicable to, or accelerate the vesting of, any Option.

(b) STOCK AWARDS.

(i) Upon the grant of a Restricted Stock Award, a stock certificate representing a number of shares of Stock equal to the number of shares of Restricted Stock granted to a Participant shall be registered in the Participant's name but shall be held in custody by the Company for the Participant's account. The Participant shall generally have the rights and privileges of a stockholder as to such Restricted Stock, including the right to vote such Restricted Stock, except that the following restrictions (the "Restrictions") shall apply: (A) the Participant shall not be entitled to delivery of the certificate until the Restricted Period (set forth in paragraph (iii) below) applicable to such Restricted Stock has expired or terminated and until any other conditions prescribed by the Committee are satisfied; (B) none of the Restricted Stock may be sold, transferred, assigned, pledged, or otherwise encumbered or disposed of during the Restricted Period applicable to such Restricted Stock and prior to the satisfaction of any other conditions prescribed by the Committee; and (C) shares of Restricted Stock shall be forfeited and all rights of the Participant to such Restricted Stock shall terminate without further obligation on the part of the Company unless the Participant has (1) remained an employee or a director of the Company (or a subsidiary) until the expiration or termination of the Restricted Period applicable to such Restricted Stock (or in the case of a Designated Other, the duration specified in the Restricted Stock Award Agreement) and (2) satisfied any other conditions prescribed by the Committee applicable to such Restricted Stock. At the discretion of the Committee, cash and stock dividends with respect to the Restricted Stock may be either currently paid or withheld by the Company for the Participant's account. Cash dividends so withheld by the Committee shall not be subject to forfeiture. Upon the forfeiture of any shares of Restricted Stock, such forfeited Restricted Stock shall be transferred to the Company without further action by the Participant. The Participant shall have the same rights and privileges, and be subject to the Restrictions, with respect to any shares or other property received pursuant to Section 9.

(ii) Upon the expiration or termination of the Restricted Period with respect to shares of Restricted Stock and the satisfaction of any other conditions prescribed by the Committee, the Restrictions applicable to such Restricted Stock shall lapse and a stock certificate for the number of shares of Stock with respect to which the Restricted Period has lapsed shall be delivered, free of all restrictions, except any that may be imposed by law, to the Participant or the Participant's beneficiary or estate, as the case may be. The Company shall not be required to deliver any fractional share of Stock but will pay, in lieu thereof, the Fair Market Value (determined as of the date the Restricted Period expires or terminates) of such fractional share to the Participant or the Participant's beneficiary or estate, as the case may be. No payment will be required from the Participant upon the issuance or delivery of any shares of Stock under this paragraph, except that any amount necessary to satisfy applicable federal, state or local tax requirements shall be withheld or paid promptly upon notification of the amount due and prior to or concurrently with the issuance or delivery of a certificate representing such shares.

NOT AUTHENTICATED COPY

016114

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017026
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407221

16div-022400

(iii) Unless otherwise specified by the Committee at the time of the award and included in the Restricted Stock Award Agreement, the Restrictions shall also lapse with respect to one-fifth of the Restricted Stock subject to all other Restricted Stock Awards on each of the first through the fifth anniversaries of the Grant Date, provided in each case that the Participant shall have remained an employee or a director of the Company (or a subsidiary) continuously since the date of grant (or in the case of a Designated Other, shall have complied with the terms and conditions of the Restricted Stock Award Agreement). Notwithstanding the foregoing: (A) if a Participant's employment or service as a director, or in the case of a Designated Other, the period defined in the Restricted Stock Award Agreement, terminates due to death, the Restrictions shall lapse with respect to all Restricted Stock Awards held by the Participant at death (if not already so lapsed); (B) upon a Change in Control, coupled with a Change in Status of a Participant, the Restrictions shall lapse with respect to all Restricted Stock Awards held by such Participant who is an employee or director of the Company (or a subsidiary) (if not already so lapsed); and (C) in the event of an accelerated lapse of Restrictions due to a Change in Control and a Change in Status, Participants who are subject to Section 16(b) of the Exchange Act may not sell the shares of Stock whose Restrictions have so lapsed within six months of the Grant Date of the Restricted Stock Award pursuant to which such Stock was received. The "Restricted Period" as to any shares constituting part of a Restricted Stock Award shall be the period of time commencing with the Grant Date of a Restricted Stock Award and ending with the date on which the Restrictions lapse with respect to any such shares, or any portion thereof.

(c) In the event that the acceleration of (i) the exercisability of an Option or (ii) the lapse of Restrictions relating to Restricted Stock upon a Change in Control and a Change in Status results in excise tax pursuant to Section 4999 of the Code, or any successor or similar provision thereto, or comparable state or local tax laws, the Company shall pay to the Participant such additional compensation as is necessary (after taking into account all Federal, state and local income and excise taxes payable by the Participant as a result of the receipt of such compensation) to place the Participant in the same after-tax position he would have been in had no such excise tax (or any interest or penalties thereon) been paid or incurred. The amount of such payment shall be determined by the independent accounting firm serving as the Company's outside auditor immediately prior to the Change in Control.

5. EXERCISE OF OPTIONS.

(a) The Exercise Price of the shares purchasable under an Option shall be the Fair Market Value per share on the Grant Date of such Option, subject to subsequent adjustment pursuant to the provisions of Section 9.

(b) Options shall be considered exercised (herein the "Exercise Date") on the date written notice, in such form as the Committee may prescribe, is received by the Option Plan Administrator of the Company, advising of the exercise of an Option and either transmitting payment of the total Exercise Price for the number of shares of Stock involved or electing one of the alternative payment procedures set forth in Section 5(c) below.

NOT A CERTIFIED COPY

016115

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017026
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407222

16div-022401

(c) The Exercise Price shall be paid in cash (including cash obtained through a margin loan on the shares as to which the Option is being exercised) or (and provided (x) the use of the following procedure by a Participant would comply with safeguards established by the Committee designed to avoid "short-swing" profits to the Participant under Section 16(b) of the Exchange Act, and (y) does not otherwise violate any applicable laws) through (i) a broker-assisted cashless exercise program established by the Committee, based on the actual proceeds from the sale of share of Stock; or (ii) in shares of Stock, valued on the basis of the closing market price of the Stock on the Exercise Date.

(d) Subject to the provisions of Section 6 and the other provisions of the Plan, the Stock Option Agreement and the Option, the Company shall issue shares of Stock in the Participant's name as soon as practicable (but in no event later than 30 days) after the Exercise Date. The Participant shall not be deemed to be a holder of any shares pursuant to an Option, and shall not have any rights as a stockholder in connection with such shares, until the date of transfer of shares of Stock to the Participant. The Company shall have no liability of any nature whatsoever to any Participant by reason of any change in the market price of the Stock during the period of time between the Exercise Date and the date on which any shares of Stock resulting from the exercise are issued or sold.

6. RESTRICTIONS.

(a) Notwithstanding any other provision of the Plan, an Option or Restricted Stock Award to the contrary, no Option shall be exercised, and the Company shall not be obligated to issue or transfer shares of Stock under any Option or Restricted Stock Award, until the Company shall have received such assurances as the Company may reasonably request from its counsel that the exercise of the Option and the issuance and transfer of shares pursuant to the Option or Restricted Stock Award will not violate the Securities Act of 1933, as amended, or any other applicable Federal or state laws. In connection with any such issuance or transfer, the Participant shall, if requested by the Company, give assurances satisfactory to counsel to the Company, in respect of the Participant's investment intent or such other matters as counsel to the Company may deem necessary or desirable to assure compliance with all applicable legal requirements.

(b) No provisions of the Plan or any Option or Restricted Stock Award shall be interpreted or construed to obligate the Company to register any Stock under Federal or state law.

(c) The Company and the Committee reserve the right to investigate at any time the circumstances surrounding any exercise of Options, including any investigation regarding whether a Participant is in compliance with the provisions of Section 13 hereof (or has threatened or is reasonably believed to intend to violate the provisions of Section 13 hereof), and the Company and the Committee shall have no liability or responsibility to any Participant for any alleged damage sustained by the Participant by reason of any delay in the implementation of an Option exercise during the pendency of any such investigation, whether by reason of any change in the market price of the Stock or otherwise.

(d) Notwithstanding any other provision hereof, the Committee shall have the right at any time to deny or delay a Participant's exercise Options if such Participant is reasonably believed by the Committee (i) to be engaged in material conduct adversely affecting the Company or (ii) to be

NOT AUTHENTICATED COPY

016116

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017027
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407223

16div-022402

contemplating such conduct, unless and until the Committee shall have received reasonable assurance that the Participant is not engaged in, and is not contemplating, such material conduct adverse to the interests of the Company.

(e) Participants are and at all times shall remain subject to the trading window policies adopted by the Company from time to time throughout the period of time during which they may exercise Options or sell Restricted Stock granted pursuant to the Plan. Participants may request at any time a copy of any calendar of scheduled open windows by contacting the Option Plan Administrator.

7. FAIR MARKET VALUE.

(a) During any period that the Company's Stock is Actively Traded, Fair Market Value shall equal the arithmetic average of the closing prices of a share of Stock on the exchange or national market system on which the Stock is traded, for the last twenty market trading days prior to the date of determination of Fair Market Value, or pursuant to such other method as the Committee may reasonably specify for determining the Stock's Fair Market Value.

(b) During any period during which the Company's Stock is not Actively Traded, Fair Market Value shall be determined by the Committee.

8. TERM.

This Amended and Restated Plan shall be effective as of the date set forth on the first page hereof. No Option or Restricted Stock Award shall be granted under the Plan after February 12, 2006, but the Plan shall continue in effect thereafter with respect to any previously granted Options and Restricted Stock Awards that remain outstanding and the duration of any such grant or award shall not be affected by the expiration of the Plan.

9. ADJUSTMENTS.

In the event that any recapitalization, or reclassification, split-up or consolidation of shares of Stock shall be effected, or the outstanding shares of Stock shall, in connection with a merger or consolidation of the Company or a transaction or series of related transactions that results in the sale of all or substantially all of the Company's assets, be exchanged for a different number or class of shares of stock or other securities or property of the Company or any other Person, or a record date or dates for determination of holders of Stock entitled to receive a dividend payable in stock or a liquidating dividend (or series of dividends) shall occur, equitable and proportional adjustments aimed at preventing the inequitable enlargement or dilution of any rights hereunder shall be made to (i) the number and class of shares or other securities or property that may be issued or transferred pursuant to the Plan and any outstanding Options and Restricted Stock Awards and (ii) the Exercise Price to be paid per share under any outstanding Options; PROVIDED, HOWEVER, that in the event of a merger or consolidation of the Company, or similar transaction pursuant to which the outstanding Stock is exchanged for cash or other property, the unexercised Options shall thereafter be exercisable for, and the Restricted Stock Awards shall entitle the Participant to receive, the cash or other property which an Option or Restricted Stock Award holder, as the case may be, would have been entitled to receive had the Options been exercised, or the Restrictions relating to the Restricted Stock Award lapsed, immediately prior to the record date for such merger, consolidation or similar transaction except to the extent that provision is made in writing in connection with such transaction for (1) the assumption of the Options by, or the substitution for the Options of new options covering the stock of, a successor acquiring

NOT CERTIFIED COPY

016117

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017028
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407224

16div-022403

corporation, in each case providing terms no less favorable to the holder of such Options than would an assumption or substitution described in Treasury Regulation ss.1.425-1(a) that would not constitute a "modification" for purposes of Code ss.424(a), and (2) the substitution for Restricted Stock Awards of stock of a successor or acquiring corporation having terms no less favorable to the holder thereof than the terms of the Restricted Stock Award in effect before such transaction.

10. ADMINISTRATION.

(a) The Plan shall be administered by the Committee. The Committee shall, subject to the provisions of the Plan, have full power and authority to administer the Plan, to select the Participants in the Plan, and, except for grants and awards which are automatically made to Outside Directors as provided pursuant to Section 3 of the Plan, to determine the number of shares to be made subject to each Option and Restricted Stock Award and all terms and conditions of each Option and Restricted Stock Award. The Committee shall have the power to interpret the Plan and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee shall be final and binding upon all Participants, the Company and all other interested persons, absent a determination by a court of competent jurisdiction that the Committee has acted in bad faith or has engaged in reckless or willful misconduct.

(b) Members of the Committee and the Board and officers administering this Plan shall be fully protected in taking actions under the Plan or in relying upon the advice of counsel and shall incur no liability except for bad faith, recklessness or willful misconduct in the performance of their duties.

(c) Except as required by Rule 16b-3 with respect to grants of Options to individuals who are subject to Section 16 of the Exchange Act, or as otherwise required for compliance with Rule 16b-3 or other applicable law, the Committee may delegate all or any part of its authority under the Plan to an employee, employees or committee of employees.

(d) To the extent the Committee deems it necessary, appropriate or desirable to comply with foreign law or practices and to further the purpose of the Plan, the Committee may, without amending this Plan, establish special rules applicable to Options granted to Participants who are foreign nationals, are employed outside the United States, or both, including rules that differ from those set forth in the Plan, and grant Options to such Participants in accordance with those rules.

(e) Determinations by the Committee under the Plan relating to the form, amount and terms and conditions of grants and awards need not be uniform, and may be made selectively among persons who receive or are eligible to receive grants and awards under the Plan, whether or not such persons are similarly situated.

11. GENERAL PROVISIONS.

(a) Nothing in this Plan or in any instrument executed pursuant hereto shall confer upon any Person any right to continue in the employment or other service of the Company (or any subsidiary), or shall affect the right of the Company (or any subsidiary) to terminate the employment or other service of any person at any time with or without Cause.

NOT A CERTIFIED COPY

01618

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017029
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407225

16div-022404

(b) The Company may make appropriate provisions for the withholding of any taxes which the Company determines it is required to withhold in connection with any Option or Restricted Stock Award including, at the request of a Participant and provided that it does not violate any applicable laws, the payment of such withholding taxes through a broker-assisted sale of a sufficient number of shares underlying the Option or subject to the Restricted Stock Award or by delivery to the Company of shares of Stock previously owned by the Participant, in either case having an actual sale price equal to the amount of such taxes. Notwithstanding the foregoing, a Participant whose transactions in Stock are subject to Section 16(b) of the Exchange Act may make a share withholding election only if it complies with safeguards established by the Committee designed to avoid "short swing" profits to the Participant under Section 16(b) of the Exchange Act. The certificates evidencing a Restricted Stock Award made to an Outside Director pursuant to Section 3(c) hereof shall be automatically reduced by 28% to provide for the estimated Federal income tax payment obligation of the Outside Director, or by such other higher percentage as may be required by law to be withheld, with the Company remitting to the appropriate tax authorities the fair market value of the Restricted Stock Award for which the certificates are not so delivered.

(c) By accepting any benefits under the Plan, each Participant, and each Person claiming under or through the Participant, shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, all provisions of the Plan. Each Participant hereby further agrees that amendments and modifications to the Plan, which may be adopted from time to time by the Committee and/or the Board of the Corporation (as set forth in Section 12 hereof), shall be binding upon such Participant and upon all Options or Restricted Stock which the Participant may hold, including (with retroactive effect) Options or Restricted Stock previously granted to the Participant, except to the extent set forth in Section 12 hereof.

(d) With respect to Participants subject to Section 16 of the Exchange Act, transactions under the Plan are intended to comply with all applicable provisions of Rule 16b-3 or its successor. To the extent any provision the Plan or action by the Plan administrators fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee.

(e) A Participant shall have no rights as a stockholder of the Company with respect to any Shares to be issued upon exercise of an Option until such Participant has exercised such Option and becomes a holder of such Shares.

12. AMENDMENTS; MODIFICATION AND TERMINATION.

This Plan may be amended or modified by the Committee, with ratification by the Board, or terminated by the Board, at any time and in any respect, except that no amendment shall be made without the approval of the shareholders of the Company if shareholder approval would be required by Rule 16b-3 under the Exchange Act or any other law or rule of any governmental authority, stock exchange or other self-regulatory organization to which the Company is subject. No such amendment, modification or termination shall have effect to reduce the number of shares as to which any Option or Restricted Stock Award previously has been granted to a Participant; to extend the vesting schedule with respect to any Option or Restricted Stock Award or to extend the period of non-competition or confidentiality as set forth in Section 13 hereof. In the event of the passage of any law, rule or regulation or a determination by any regulatory agency or court, requiring an adverse change in the Company's accounting or tax treatment relating to the

NOT CERTIFIED COPY

016119

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017030
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407226

16div-022405

Plan, the Committee shall have the right to modify the terms of outstanding Options and Restricted Stock Awards to the extent necessary to avoid the adverse consequences of such change.

13. CONFIDENTIALITY AND NON-COMPETITION; CONDUCT NOT IN THE INTEREST OF THE CORPORATION.

By accepting Options or Restricted Stock Awards under the Plan and as a condition to the exercise of Options and the enjoyment of any of the benefits of the Plan, each Participant agrees as follows:

(a) CONFIDENTIALITY -- During the period of each Participant's employment or service as a director with the Company (or the Participant's engaging in any other activity with or for the Company) and for a two year period thereafter, each Participant shall treat and safeguard as confidential and secret all Confidential Information received by such Participant at any time. Without the prior written consent of the Company, except as required by law, such Participant will not disclose or reveal any Confidential Information to any third party whatsoever or use the same in any manner except in connection with the businesses of the Company and its subsidiaries. In the event that a Participant is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose (i) any Confidential Information or (ii) any information relating to his opinion, judgment or recommendations concerning the Company or its subsidiaries as developed from the Confidential Information, Participant will provide the Company with prompt written notice of any such request or requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions contained herein. If, failing the entry of a protective order or the receipt of a waiver hereunder, Participant is, in the reasonable opinion of his counsel, compelled to disclose Confidential Information, Participant shall disclose only that portion of the Confidential Information which his counsel advises that he is compelled to disclose and will exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.

(b) NON-COMPETITION -- During the period of employment with the Company or its subsidiaries of any Participant (other than a director) compensated at a rate (including bonuses) in excess of $75,000 per year in cash compensation from his employment with the Company or any of its subsidiaries (determined as of the most recently completed fiscal year of the Company), and, for a two-year period thereafter (the "Non-Compete Period"), each such Participant shall not, without prior written consent of the Committee, do, directly or indirectly, any of the following:

(1) own, manage, control or participate in the ownership, management, or control of, or be employed or engaged by or otherwise affiliated or associated with, any other corporation, partnership, proprietorship, firm, association or other business entity, or otherwise engage in any business which competes with the business of the Company or any of its subsidiaries (as such business is conducted during the term of such Participant's employment with the Company or its subsidiaries) in the geographical regions in which such business is conducted; PROVIDED, HOWEVER, that the ownership of a maximum of one percent of the outstanding stock of any publicly traded corporation shall not violate this covenant; or

(2) employ, solicit for employment or assist in employing or soliciting for employment any present, former or future employee, officer or agent of the Company or any of its subsidiaries.

NOT A CERTIFIED COPY

016120

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017031
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407227

16div-022406

In the event any court of competent jurisdiction should determine that the foregoing covenant of non-competition is not enforceable because of the extent of the geographical area or the duration thereof, then the Company and the affected Participant hereby petition such court to modify the foregoing covenant to the extent, but only to the extent, necessary to create a covenant which is enforceable in the opinion of such court, with the intention of the parties that the Company shall be afforded the maximum enforceable covenant of non-competition which may be available under the circumstances and applicable law.

(c) Each Participant acknowledges that remedies at law for any breach by him of this section 13 may be inadequate and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, each Participant acknowledges that upon his violation of any provision of this Section 13, the Company will be entitled to immediate injunctive relief and may obtain an order restraining any threatened or future breach. Each Participant further agrees, subject to the proviso at the end of this sentence, that if he violates any provision of this Section 13, he shall immediately forfeit any rights and benefits under this Plan and shall return to the Company any unexercised Options and forfeit the rights under any Restricted Stock Awards and shall return any shares of Stock held by such Participant received upon exercise of any Option or the lapse of the Restrictions relating to Restricted Stock Awards granted hereunder, together with any proceeds from sales of any shares of Stock received upon exercise of such Options or the lapse of Restrictions of such Restricted Stock Awards: PROVIDED, HOWEVER, that upon violation of subsection (b) of this Section, the forfeiture and return provisions contained in this sentence shall apply only to Options which have become exercisable, and Restricted Stock, the Restrictions with respect to which have lapsed, and in any such case the proceeds of sales therefrom, during the two year period immediately prior to termination of the Participant's employment. Nothing in this Section 13 will be deemed to limit, in any way, the remedies at law or in equity of the Company, for a breach by Participant of any of the provisions of this Section 13.

(d) Each Participant agrees to provide written notice of the provisions of this Section 13 to any future employer of Participant, and the Company expressly reserves the right to provide such notice to the Participant's future employer(s).

(e) If any provision or part of any provision of this Section 13 is held for any reason to be unenforceable, (i) the remainder of this Section 13 shall nevertheless remain in full force and effect and (ii) such provision or part shall be deemed to be amended in such manner as to render such provision enforceable.

14. GOVERNING LAW.

The validity, construction and effect of the Plan and any rules relating to the Plan shall be determined in accordance with the laws of the State of Delaware and applicable Federal law.

15. ARBITRATION.

The Company and each Participant hereby agree that in the event of any dispute or controversy arising with respect to the Plan, any Stock Option Agreement, the exercise of any Option (or the disallowance of any exercise at any time, for any reason) or any other matter relating to Options or Restricted Stock Awards, then such dispute or controversy shall be submitted by the parties to mandatory and binding arbitration

NOT A CERTIFIED COPY

121610

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017032
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407228

16div-022407

before a panel of arbitrators appointed by the American Arbitration Association ("AAA"), each of whom shall be knowledgeable in matters of securities in general and, if possible, the administration of stock option programs similar to the Plan. The arbitration proceedings shall be conducted in whichever of the following cities is closest to the work location of the affected Participant: Fort Lauderdale, Florida; Chicago, Illinois; New York, New York; Kansas City, Missouri; Jackson, Mississippi; Nashville, Tennessee or Atlanta, Georgia. The decision of the Company as to which city is closest to the work location of the Participant shall be conclusive and binding, except for manifest error. The decision of the arbitrators shall be rendered in writing, shall be promptly rendered after a hearing on the matter and shall be final, conclusive and binding and may be incorporated in a final judgment rendered by any court of competent jurisdiction.

Notwithstanding the foregoing, nothing contained herein shall preclude the Company from seeking injunctive or other relief from any court of competent jurisdiction to enforce the provisions of Section 13 hereof.

16. DEFINITIONS.

The following terms, when used in the Plan, shall have the meanings set forth below:

ACTIVELY TRADED: Trading of Company Stock on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System in an average weekly volume that equals at least 0.20% of the then outstanding Company Stock for each of at least four weeks in a row.

BENEFICIAL OWNER: With respect to any securities of the Company, any Person who is a beneficial owner of such securities as defined in rule 13d-3 under the Exchange Act. The Committee may from time to time adopt interpretations or pronouncements as to who shall be deemed to be Beneficial Owners of the Company's outstanding voting securities as of a given date, which interpretation shall be final and binding on all Participants, the Company and all other interested Persons.

BOARD: The Board of Directors of the Company.

CAUSE: Any cause stated in an employment agreement between the Company and the Participant and/or material violations of employment agreements or the terms of this Plan, acts of dishonesty with respect to the Company, insubordination, divulging confidential information about the Company, interference with the relationship between the Company and any supplier, client, customer, similar person, or performance of any act or omission which the Committee, in its sole discretion, deems to be sufficiently injurious to the interest of the Company to constitute cause.

CHANGE IN CONTROL: The occurrence of any of the following: (i) a merger or consolidation to which the Company is a party if the individuals and entities who were stockholders of the Company immediately prior to the effective date of such merger or consolidation are Beneficial Owners of less than 50% of the total combined voting power for election of directors of the surviving corporation following the effective date of such merger or consolidation; or (ii) any Person becomes the Beneficial Owner in the aggregate of securities of the Company representing 50% or more of the total combined voting power of the Company's then issued and outstanding securities unless such Person (or a Person owned directly or indirectly by such Person) was the Beneficial Owner, directly or indirectly, as of the Grant Date applicable to the affected Participant, of more than 50% of the Company's voting securities outstanding as of such Grant Date; or (iii)

NOT CERTIFIED COPY

016122

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017033
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407229

16div-022408

the sale of all or substantially all of the assets of the Company to any person or entity that is not a wholly-owned subsidiary of the Company; or (iv) the stockholders of the Company approve any plan or proposal for the liquidation of the Company.

CHANGE IN STATUS: The occurrence with respect to a Participant, of any of the following (but only if such event occurs within two (2) years following a Change in Control): (i) any reduction in the aggregate annual compensation paid or payable to a Participant, or any material reduction in the aggregate benefit coverages provided to such Participant under the Company's standard benefit package for all employees; (ii) the assignment to the Participant of any duties inconsistent in any material respect with the Participant's position (including status, offices, titles and reporting responsibilities), authorities, duties or responsibilities as in effect immediately prior to the date of the Change in Control; (iii) the Company's requiring the Participant to be based at any office, facility or location other than the office, facility or location at which the Participant was based immediately prior to the date of the Change in Control; (iv) if the Participant is a party to any employment agreement with the Company, any material breach by the Company of such agreement, or any purported termination by the Company of the Participant's employment otherwise than as permitted by such employment agreement; or (v) in the case of a director, the removal of a director or the failure to nominate the director for reelection.

CODE: Internal Revenue Code of 1986, as amended.

COMMITTEE: A committee designated by the Board consisting of not less than two members of the Board who are "disinterested persons," as defined in Rule 16b-3 under the Exchange Act, to administer the Plan.

COMPANY: Sunbeam Corporation (formerly known as Sunbeam-Oster Company, Inc.)

CONFIDENTIAL INFORMATION: Any information not generally known to the public, including, without limiting the generality of the foregoing, any customer lists, supplier lists, trade secrets, invention, formulas, methods or processes, whether or not patented or patentable, channels of distribution, business plans, pricing policies and records, financial information of any sort and inventory records of the Company or any affiliate (and such other information normally understood to be confidential or otherwise designated as such in writing by the Company or its subsidiaries). It is not necessary, however, that any information be formally designated as "confidential" if it falls within any of the foregoing categories and is not generally known to the public.

DESIGNATED OTHER: Any consultant, advisor, contractor or agent of the Company or its subsidiaries, who is not an employee, officer or Outside Director of the Company and who is granted Options or a Restricted Stock Award pursuant to this Plan.

EFFECTIVE DATE: January 1, 1991; Amended and Restated as of May 15, 1996.

ERISA: Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended.

EXCHANGE ACT: The Securities Exchange Act of 1934, as amended.

EXERCISE PRICE: The Exercise Price of shares purchasable upon exercise of an Option, as

NOT A CERTIFIED COPY

0161123

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017034
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407230

16div-022409

determined pursuant to the terms of Section 5(a).

FAIR MARKET VALUE: The fair market value of a share of Stock, as determined pursuant to the terms of Section 7.

GRANT DATE: The date as of which the Committee (or such other committee of the Board of Directors of the Company as shall be empowered to grant Options or to make awards of Restricted Stock) shall grant Options or Restricted Stock, as the case may be, to a Participant under the Plan, as so designated by such Committee.

IN-THE-MONEY: Options to acquire Stock are considered to be "in-the-money" if the exercise price of the Option is less than the current market price of the Stock.

NEXT OPTION INCREMENT: This term shall have the meaning ascribed to it in Section 4(a)(iii).

OPTION: An option, granted under the Plan, to purchase shares of Stock at the Exercise Price. Options granted under the Plan shall not be incentive stock options pursuant to Section 422 of the Code.

OPTION YEAR: This term shall have the meaning ascribed to it in Section 4(a)(iii).

OUT-OF-THE-MONEY: Options to acquire Stock are considered to be "out-of-the-money" if the exercise price is equal to or greater than the current market price of the Stock.

OUTSIDE DIRECTOR: A director of the Company who is not either: (i) an officer or employee of the Company, or (ii) a Beneficial Owner of, or an officer or employee of any Person which is a direct or indirect Beneficial Owner of, more than 10% of the outstanding Stock.

PARTICIPANT: An officer, employee, Outside Director of the Company (or a subsidiary of the Company) or Designated Other who is granted an Option or a Restricted Stock Award under the Plan by the Committee. Upon the death of a Participant, the "Participant" shall be deemed to mean the Participant's estate or legal representative.

PERSON: Any individual, corporation, partnership, association, company, trust, joint venture or other organization or entity or group of associated persons or entities acting in concert. As used herein, references to the male gender shall include the female gender or the neuter, as applicable.

PLAN: The Equity Team Plan herein set forth, as it may be amended from time to time.

RESTRICTED PERIOD: This term shall have the meaning ascribed to it in Section 4(b)(iii).

RESTRICTED STOCK: Shares of Stock granted pursuant to Section 3(b) or (c) of the Plan.

RESTRICTED STOCK AWARD: The grant of Shares of Restricted Stock to a Participant pursuant to Section 3(b) or 3(c) of the Plan.

RESTRICTED STOCK AWARD AGREEMENT: The agreement described in Section 3(e).

NOT A CERTIFIED COPY

016124

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017035
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407231

16div-022410

1997 SUNBEAM BONUS PLAN
Self Funding Structure

EPS*	Available % of Target Bonus
$1.39 or less	0%
$1.40 - $1.49	75%
$1.50 - $1.59	85%
$1.60 - $1.69	100%
$1.70 - $1.79	120%
$1.80 - $1.89	140%
$1.90 - $1.99	160%
$2.00 - $2.09	180%
$2.10 or more	200%

* Earnings per share (EPS): Basically, net sales minus total cost of doing business (overhead, materials, direct labor) equals operating profit. operating profit minus taxes and debt expense equals net earnings. Net earnings divided by outstanding shares of stock equals EPS.

What does this mean to me? If our sales go up and/or if our expenses and debt are reduced, then earnings per share (and the value of Sunbeam stock) goes up.

EXAMPLES:

At the end of 1997, the EPS is $1.65. 100% of the target bonus is available for payout.

If the EPS is $1.37, then our minimum threshold was not reached and therefore, there will be no bonuses.

If the EPS is $2.58, then the maximum 200% of target bonus will be available for payout.

Remember, once the Company performance has established the available bonus amount (e.g., 100% of target in our first example and 200% of target in our third example), your INDIVIDUAL bonus will be determined by your performance on your four (4) objectives.

EXHIBIT 10.q

FIRST AMENDMENT dated as of November 21, 1996 (this "AMENDMENT") to the Credit Agreement dated as of September 15, 1996 (the "AGREEMENT"), among SUNBEAM CORPORATION (the "Company"), the Borrowing Subsidiaries (as such term is defined therein; together with the Company, the "Borrowers"), the Lenders listed in Schedule 2.01 thereof (the "Lenders") and THE CHASE MANHATTAN BANK, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). Capitalized terms used herein and defined in the Agreement have the meanings set forth in the Agreement.

WHEREAS the Borrowers have requested and the Administrative Agent and the Lenders are willing to amend a certain provision of the Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree, on the terms and subject to the conditions set forth herein, as follows:

SECTION 1. AMENDMENT. Section 6.06 of the Agreement is hereby amended by deleting therefrom the reference to "$250,000,000" and replacing it with a reference to "$300,000,000".

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016125

CP 017036
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407232

16div-022411

SECTION 2. REPRESENTATIONS AND WARRANTIES. The Company represents and warrants to each of the Lenders and the Administrative Agent that as of the date hereof:

(a) The representations and warranties set forth in Article III of the Agreement are true and correct in all material respects with the same effect as if made on the date hereof, except to the extent such representations and warranties expressly relate to an earlier date.

(b) No Event of Default or Default has occurred and is continuing.

SECTION 3. CONDITIONS TO EFFECTIVENESS. This Amendment shall become effective on the date that the Administrative Agent shall have received duly executed counterparts of this Amendment that, when taken together, bear the signatures of the Company and the Required Lenders.

SECTION 4. AGREEMENT. Except as specifically stated herein, the provisions of the Agreement are and shall remain in full force and

NOT A CERTIFIED COPY

016126

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017037
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407233

16div-022412

effect. As used therein, the terms "Agreement", "herein", "hereunder", "hereinafter", "hereto", "hereof" and words of similar import shall, unless the context otherwise requires, refer to the Agreement as amended hereby.

SECTION 5. APPLICABLE LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. COUNTERPARTS. This Amendment may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract.

SECTION 7. EXPENSES. The Company agrees to reimburse the Administrative Agent for its reasonable out-of-pocket expenses in connection with this Amendment, including the reasonable fees, charges and disbursements of Cravath, Swaine & Moore, counsel for the Administrative Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the date first written above.

SUNBEAM CORPORATION,

by

/S/ EDWIN T. DERECHO

Name: Edwin T. Derecho
Title: Vice President
Treasurer

THE CHASE MANHATTAN BANK,
individually and as Administrative Agent,

by

/S/ ELLEN GERTZOG

Name: Ellen Gertzog
Title: Vice President

NOT A CERTIFIED COPY

016127

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017038
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407234

16div-022413

BANK OF AMERICA ILLINOIS,

by

/S/ LAURENS F. SCHAAD, JR.

Name: Laurens F. Schaad, Jr.
Title: Vice President

THE BANK OF NEW YORK,

by

/S/ DAVID C. SIEGEL

Name: David C. Siegel
Title: Assistant Vice President

THE BANK OF NOVA SCOTIA,

by

/S/ FRANK F. SANDLER

Name: Frank F. Sandler
Title: Relationship Manager

NORTHERN TRUST COMPANY,

by

/S/ JAMES F. T. MONHART

Name: James F. T. Monhart
Title: Vice President

PNC BANK, KENTUCKY, INC.,

by

/S/ JIM NEIL

Name: Jim Neil
Title: Jim Neil

THE FUJI BANK LIMITED,

by

/S/ MASANOBU KOBAYASHI

Name: Masanobu Kobayashi
Title: Vice President & Manager

NOT A CERTIFIED COPY

016128

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017039
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407235

16div-022414

CREDIT SUISSE,

by

/S/ JAN KOFOL

Name: Jan Kofol
Title: Jan Kofol

by

/S/ KRISTINN R. KRISTINSSON

Name: Kristinn R. Kristinsson
Title: Associate

CREDIT LYONNAIS, NEW YORK BRANCH,

by

/S/ JACQUES-YVES MULLIEZ

Name: Jacques-Yves Mulliez
Title: Senior Vice President

NATIONSBANK,

by

/S/ RICHARD M. STARKE

Name: Richard M. Starke
Title: Vice President

THE FIRST NATIONAL BANK OF CHICAGO,

by

/S/ ROBERT H. WOLOHAN

Name: Robert H. Wolohan
Title: Corporate Banking Officer

WACHOVIA BANK OF GEORGIA, N.A.,

by

/S/ PATRICK A. PHELAN

Name: Patrick A. Phelan
Title: Assistant Vice President

NOT A CERTIFIED COPY

016129

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017040
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407236

16div-022415

FIRST UNION NATIONAL BANK OF FLORIDA.

by

/S/ MARY A. MORGAN

Name: Mary A. Morgan
Title: Vice President and Senior Portfolio Manager

THE BANK OF TOKYO-MITSUBISHI TRUST LTD.,

by

/S/ RANDY L. GLASS

Name: Randy L. Glass
Title: Vice President

SAKURA BANK, LIMITED.

by

/S/ HIROYASU IMANISHI

Name: Hiroyasu Imanishi
Title: V.P. & Senior Manager

EXHIBIT 10.r

SECOND AMENDMENT dated as of January 31, 1997 (this "Amendment") to the Credit Agreement dated as of September 16, 1996 (as amended, the "Credit Agreement"), among SUNBEAM CORPORATION (the "Company"), the BORROWING SUBSIDIARIES (as defined therein), the LENDERS (as defined therein), and THE CHASE MANHATTAN BANK, as Administrative Agent.)

A. Pursuant to the Credit Agreement, the Lenders have agreed to extend credit to the Borrowers, in each case pursuant to the terms and subject to the conditions set forth therein.

B. The Company has requested that certain provisions contained in the Credit Agreement be waived and amended as set forth herein.

C. The Lenders are willing to so waive and amend the Credit Agreement pursuant to the terms and subject to the conditions set forth herein.

D. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement.

In consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree, on the terms and subject to the conditions set forth herein, as follows:

SECTION 1. WAIVER OF SECTION 6.05 OF THE CREDIT AGREEMENT. The Required Lenders hereby waive compliance with Section 6.05(b) of the Credit Agreement for the quarter ended December 29, 1996.

SECTION 2. AMENDMENT TO DEFINITION OF CONSOLIDATED INTEREST COVERAGE RATIO. The Definition of "Consolidated Interest Coverage Ratio" is hereby amended and restated as follows:

"CONSOLIDATED INTEREST COVERAGE RATIO" means, as of the last day of any fiscal quarter, for the four fiscal quarters then ended (or such fewer number of full quarters as have elapsed since December 30, 1996 to the date of determination), the ratio of (a) Consolidated EBIT to

NOT A CERTIFIED COPY

0161130

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017041
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407237

16div-022416

(b) Consolidated Interest Expense, in each case for such period.

SECTION 3. AMENDMENT TO SECTION 6.05(B) OF THE CREDIT AGREEMENT. Section 6.05(b) of the Credit Agreement is hereby amended and restated as follows:

(b) The Consolidated Interest Coverage Ratio as of the last day of any fiscal quarter, commencing with the fiscal quarter ending on March 30, 1997, will not be less than 2.0 to 1.0.

SECTION 4. ACKNOWLEDGEMENT OF INCURRENCE OF SPECIAL CHARGES. The Company acknowledges and agrees that, as of the last day of the fiscal quarter ended December 29, 1996, the Company had incurred special charges in excess of $300,000,000, and that any special charges incurred after such date shall be included in determining compliance with the covenants set forth in Article VI of the Credit Agreement.

SECTION 5. REPRESENTATIONS AND WARRANTIES. The Company represents and warrants to each of the Lenders and the Agent that:

(a) Before and after giving effect to this Amendment, the representations and warranties set forth in Section 3 of the Credit Agreement are true and correct in all material respects with the same effect as if made on the date hereof, except to the extent such representations and warranties expressly relate to an earlier date (specifically excluding herefrom representations and warranties required to be made only as of the date of the Credit Agreement).

(b) After giving effect to this Amendment, no Event of Default or Default has occurred and is continuing.

SECTION 6. CONDITION TO EFFECTIVENESS. This Amendment shall become effective as of the date when the Agent shall have received counterparts of this Amendment that, when taken together, bear the signatures of the Company and the Required Lenders.

SECTION 7. CREDIT AGREEMENT. Except as specifically stated herein, the provisions of the Credit Agreement are and shall remain in full force and effect. As

NOT A CERTIFIED COPY

0161131

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017042
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407238

16div-022417

used therein, the terms "Agreement", "herein", "hereunder", "hereinafter", "hereto", "hereof" and words of similar import shall, unless the context otherwise requires, refer to the Credit Agreement as amended hereby.

SECTION 8. APPLICABLE LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 9. COUNTERPARTS. This Amendment may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract.

SECTION 10. EXPENSES. The Company agrees to reimburse the Agent for its out-of-pocket expenses in connection with this Amendment, including the reasonable fees, charges and disbursements of Cravath, Swaine & Moore, counsel for the Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first written above.

SUNBEAM CORPORATION,

by
/S/ EDWIN T. DERECHO

Name: Edwin T. Derecho
Title: Vice President and Treasurer

THE CHASE MANHATTAN BANK,
individually and as Administrative Agent.

by
/S/ ELLEN GERTZOG

Name: Ellen Gertzog
Title: Vice President

NOT A CERTIFIED COPY

0161132

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017043
CONFIDENTIAL

CPH 1407239

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022418

BANK OF AMERICA ILLINOIS,

by
/S/ LAURENS F. SCHAAD, JR.

Name: Laurens F. Schaad, Jr.
Title: Vice President

NATIONSBANK,

by
/S/ RICHARD M. STARKE

Name: Richard M. Starke
Title: Vice President

THE BANK OF NEW YORK,

by
/S/ DAVID C. SIEGEL

Name: David C. Siegel
Title: Assistant Vice President

THE BANK OF NOVA SCOTIA,

by
/S/ FRANK F. SANDLER

Name: Frank F. Sandler
Title: Relationship Manager

CREDIT LYONNAIS, NEW YORK BRANCH,

by
/S/ ALAIN PAPIASSE

Name: Alain Papiasse
Title: Executive Vice President

NOT A CERTIFIED COPY

016133

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017044
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407240

16div-022419

THE FIRST NATIONAL BANK OF CHICAGO,

by
/S/ ROBERT H. WOLOHAN

Name: Robert H. Wolohan
Title: Corporate Banking Officer

FIRST UNION NATIONAL BANK OF FLORIDA,

by
/S/ MARY A. MORGAN

Name: Mary A. Morgan
Title: Vice President and Senior Portfolio Manager

NORTHERN TRUST COMPANY,

by
/S/ JOHN J. CONWAY

Name: John J. Conway
Title: Vice President

WACHOVIA BANK OF GEORGIA, N.A.,

by
/S/ PATRICK A. PHELAN

Name: Patrick A. Phelan
Title: Assistant Vice President

THE BANK OF TOKYO-MITSUBISHI TRUST LTD.,

by
/S/ RANDY L. GLASS

Name: Randy L. Glass
Title: Vice President

NOT A CERTIFIED COPY

0161134

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017045
CONFIDENTIAL

CPH 1407241

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022420

CREDIT SUISSE,

by
/S/ C. ELDIN

Name: C. Eldin
Title: Director

by
/S/ T. MUOIO

Name: T. Muoio
Title: Associate

THE FUJI BANK LIMITED,

by
/S/ MASANOBU KOBAYASHI

Name: Masanobu Kobayashi
Title: Vice President and
Manager

PNC BANK, KENTUCKY, INC.,

by
/S/ JAMES D. NEIL

Name: James D. Neil
Title: Vice President

SAKURA BANK, LIMITED,

by
/S/ HIROYASU IMANISHI

Name: Hiroyasu Imanishi
Title: Vice President and
Senior Manager

THE YASUDA TRUST AND BANKING
COMPANY, LIMITED, NEW YORK BRANCH,

by
/S/ NORIKAZU KIMURA

Name: Norikazu Kimura
Title: Chief Representative

EXHIBIT 10.cc

AGREEMENT, RELEASE, COVENANT NOT TO SUE
AND CONFIDENTIALITY AGREEMENT

The undersigned employee ("Employee") of Sunbeam Corporation (the "Company") has been advised that Employee's employment is being terminated, as of March 15, 1997. For the sole consideration of (i) twelve (12) months continuation of base salary, less required deductions (the "Severance Payment"), payable in a lump sum, and (ii) the continuation of the Company's current level of contribution to medical and dental insurance coverages for a period of twelve (12) months (provided Employee elects to continue coverage under the provisions of COBRA and continues to make the Employee's required contribution towards the cost of such coverages) [(i) and (ii) herein are collectively the "Benefits"], Employee (including all successors and assigns) hereby:

RELEASES, FOREVER DISCHARGES and COVENANTS NOT TO SUE the Company and any affiliated company, their predecessors, past and present officers, directors, shareholders, agents, employees, attorneys, successors and assigns (individually and collectively "SUNBEAM"), of and from (and does hereby WAIVE), any and all rights, contracts, claims (including claims sounding in tort), damages, attorney fees, causes of action, rights to future employment or reinstatement and suits (collectively "Claims") (whether or not presently known, suspected or claimed), relating to, directly or indirectly, Employee's hiring, employment with or separation from employment by SUNBEAM, under any federal, state or local law, ordinance, regulation or rule, or under any court decree.

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016135

CP 017046
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407242

16div-022421

Employee also WAIVES ANY AND ALL RIGHTS under the laws of any jurisdictions in the United States that would limit the foregoing Release, Waiver and Covenant. Employee is releasing SUNBEAM from any and all Claims for pain and suffering, emotional distress, compensatory and punitive damages, attorney fees and for employment discrimination based on age (including claims under the federal Age Discrimination in Employment Act ("ADEA") and any comparable state or local laws), sex, national origin, race or color, mental or physical handicap or disability, sexual orientation or religious belief. Employee agrees that SUNBEAM, by offering the Severance Payment and this Agreement, does not hereby admit that it violated any of Employee's rights in any way. THIS RELEASE BY EMPLOYEE DOES NOT SERVE TO RELEASE OR WAIVE ANY RIGHTS OF EMPLOYEE TO INDEMNIFICATION AS A FORMER OFFICER OF SUNBEAM, AND ALL OF SUCH RIGHTS TO INDEMNIFICATION SHALL CONTINUE IN FORCE AND EFFECT.

EMPLOYEE ALSO UNDERSTANDS AND AGREES:

1) THIS IS OUR ENTIRE AGREEMENT. AND I HAVE UP TO 45 DAYS TO REVIEW AND CONSIDER IT. I HAVE BEEN TOLD TO CONSULT A LAWYER BEFORE SIGNING THIS AGREEMENT. I ENTER INTO THIS AGREEMENT FREELY AND VOLUNTARILY;

2) I HAVE 7 DAYS FOLLOWING SIGNING THIS AGREEMENT TO REVOKE OR CANCEL IT (BUT ONLY WITH RESPECT TO CLAIMS UNDER ADEA);

3) THIS AGREEMENT DOES NOT RELEASE OR WAIVE ANY RIGHTS OR CLAIMS THAT MAY ARISE AFTER THIS DOCUMENT IS SIGNED BY ME;

4) THIS AGREEMENT SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL AFTER THE 7 DAY PERIOD DURING WHICH I CAN REVOKE OR CANCEL IT; AND

5) I AM SUBJECT TO THE CONFIDENTIALITY AND NON-DUPLICATION OF BENEFITS PROVISIONS SET FORTH BELOW AS A FURTHER CONDITION TO THE RECEIPT OF BENEFITS UNDER THIS AGREEMENT.

SUBJECT TO FURTHER TERMS ON THE SECOND PAGE OF THIS DOCUMENT

NOT A CERTIFIED COPY

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017047
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407243

16div-022422

(ADDITIONAL TERMS)

1. CONFIDENTIALITY - As a participant in the SUNBEAM CORPORATION EQUITY TEAM PLAN (Option Plan), the confidentiality and non-competition provisions of that Plan are incorporated by reference herein, and I acknowledge my obligation to abide by the terms thereof. If I am a party to any other specific undertaking of confidentiality and/or non-competition in connection with my employment by SUNBEAM, I hereby acknowledge my obligation to abide by the terms thereof and agree that such agreement or undertaking is not superseded in any manner by this Agreement. In all events, whether I am a party to any such other agreement or not, I hereby agree as follows:

That from and after the date hereof, I shall treat as confidential all "Confidential Information" in my possession or to which I have been provided access during my employment by SUNBEAM. I will not reveal or disclose any such Confidential Information to any party without the prior written consent of SUNBEAM, except as required by law. If I am required by legal process, subpoena or otherwise legally required to disclose any Confidential Information, I will immediately contact SUNBEAM and advise it of such requirement and will cooperate with SUNBEAM in protecting its Confidential Information. I understand that a breach of this Confidentiality Agreement shall be grounds for forfeiting any Benefits provided by this Agreement or any other benefit which SUNBEAM may provide to me.

As used herein, the term CONFIDENTIAL INFORMATION means: any information about SUNBEAM, its products or business, which is not generally known to the public, including without limitation any customer lists, supplier lists, trade secrets, inventions, formulas, methods or processes, whether or not patented or patentable, channels of distribution, business plans, pricing policies and records, financial information of any sort and inventory records of SUNBEAM or any affiliate (and such other information normally understood to be confidential or otherwise designated as such in writing by SUNBEAM). It is not necessary, however, that any information be formally designated as "confidential" if it falls within any of the foregoing categories and is not generally known to the public, in order to be covered by this Confidentiality Agreement.

2. NON-DUPLICATION OF BENEFITS - The amount of Severance Payment hereunder shall be reduced on a dollar for dollar basis by any disability, severance, separation or termination pay benefits that the Company pays or is required to pay to Employee through insurance or otherwise under any plan or contract or under any federal or state law, or by any amount Employee owes the Company; provided, however, that the Severance Payment shall never be less than two (2) weeks' base salary, and such amount is acknowledged to be full and adequate consideration for this Agreement.

EMPLOYEE

/s/ James Wilson

Name: James D. Wilson
Date: March 17, 1997

SUNBEAM CORPORATION

/s/ David C. Fannin

Title:Executive Vice President
Name:David C. Fannin
Date: March 19, 1997

WITNESSED AS TO EMPLOYEE BY:

/s Karl Schinn

By: Karl Schinn
Date: March 17, 1997

EXHIBIT 11.

SUNBEAM CORPORATION AND SUBSIDIARIES

CALCULATION OF EARNINGS (LOSS)
PER SHARE OF COMMON STOCK
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	FISCAL YEARS ENDED		
	JANUARY 1 1995	DECEMBER 31, 1995	DECEMBER 29, 1996
Net earnings (loss) applicable to common shareholders	$107,011	$50,521	$ (228,262)
Weighted average number of common shares outstanding	79,180	81,625	82,926
Add:			
Common shares issuable for exercise of warrants and options, net of shares assumed to have been acquired			

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016137

CP 017048
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407244

16div-022423

with proceeds therefrom	3,373	1,193	-
Number of shares applicable to earnings per share calculation	82,553	82,819	82,325
Earnings (loss) per share of Common Stock	$ 1.30	$ .61	$ (2.75)

EXHIBIT 21.

SUNBEAM CORPORATION AND SUBSIDIARIES

SUBSIDIARIES OF THE REGISTRANT

COMPANY NAME	JURISDICTION OF INCORPORATION	DOING BUSINESS AS
Sunbeam Americas Holdings, Ltd.	Delaware	-
Goose Holdings, Inc.	Delaware	-
Sunbeam Products, Inc.	Delaware	Sunbeam Consumer Products Worldwide
OP II, Inc.	Florida	-
Duck Holdings, Inc.	Delaware	-

EXHIBIT 23.

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

As independent certified public accountants, we hereby consent to the incorporation of our report included in this Form 10-K, into the Company's previously filed Registration Statement File Nos. 33-61610, 33-87950 and 333-21413.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
March 27, 1997

<TYPE>EX-27
<SEQUENCE>13
<TEXT>

<TABLE> <S> <C>

<ARTICLE> 5
<MULTIPLIER> 1,000

<S>	<C>
<PERIOD-TYPE>	12-MOS
<FISCAL-YEAR-END>	DEC-29-1996
<PERIOD-START>	JAN-01-1996
<PERIOD-END>	DEC-29-1996
<CASH>	11,526
<SECURITIES>	0
<RECEIVABLES>	229,455
<ALLOWANCES>	16,017
<INVENTORY>	162,252
<CURRENT-ASSETS>	624,163
<PP&E>	356,342
<DEPRECIATION>	136,254
<TOTAL-ASSETS>	1,072,709
<CURRENT-LIABILITIES>	271,583
<BONDS>	201,115
<PREFERRED-MANDATORY>	0
<PREFERRED>	0
<COMMON>	884
<OTHER-SE>	394,368
<TOTAL-LIABILITY-AND-EQUITY>	1,072,709
<SALES>	984,216
<TOTAL-REVENUES>	984,216
<CGS>	900,573
<TOTAL-COSTS>	900,573
<OTHER-EXPENSES>	0
<LOSS-PROVISION>	0
<INTEREST-EXPENSE>	13,588
<INCOME-PRETAX>	(302,561)
<INCOME-TAX>	(105,890)
<INCOME-CONTINUING>	(196,671)
<DISCONTINUED>	(31,591)
<EXTRAORDINARY>	0
<CHANGES>	0

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

NOT A CERTIFIED COPY

016138

CP 017049
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407245

16div-022424

<NET-INCOME>	(228,262)
<EPS-PRIMARY>	(2.75)
<EPS-DILUTED>	(2.75)

NOT A CERTIFIED COPY

016139

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017050
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407246

16div-022425

</TABLE>
</TEXT>
</DOCUMENT>
</SUBMISSION>

NOT A CERTIFIED COPY

016140

(C) COPYRIGHT FACTSET RESEARCH SYSTEMS, INC. 1997

CP 017051
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407247

16div-022426

NOT A CERTIFIED COPY

016141

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

3.

Proxy

NOT A CERTIFIED COPY

016142

Disclosure SEC EDGAR Filing

Company Name:	SUNBEAM CORP NEW
Exchange:	N
Ticker Symbol:	SOC
Company #:	S842420000
Document Type:	PROXY
Document Date:	06/11/97
Amendment:	
Document #:	97581882

NOT A CERTIFIED COPY

016143

CP 017054
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407250

16div-022429

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant (x)
Filed by a Party other than the Registrant ( )

Check the appropriate box:

( ) Preliminary Proxy Statement
(x) Definitive Proxy Statement
( ) Definitive Additional Materials
( ) Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12
( ) Confidential, For Use of the Commission Only
(as permitted by Rule 14a-6(e)(2))

SUNBEAM CORPORATION
(Name of Registrant as Specified in Its Charter)

SUNBEAM CORPORATION
(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

(x) No fee required.

( ) Fee computed on the table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

( ) Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

NOT A CERTIFIED COPY

0161144

CP 017055
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407251

16div-022430

(SUNBEAM LOGO)

SUNBEAM CORPORATION
SUITE 200, 1615 SOUTH CONGRESS AVE.
DELRAY BEACH, FLORIDA 33445

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD JUNE 11, 1997

To The Shareholders of Sunbeam Corporation:

Notice is hereby given that the Annual Meeting of Shareholders of Sunbeam Corporation (the "Company") will be held at the Boca Raton Marriott, 5150 Town Center Circle, Boca Raton, Florida 33486 on Wednesday, June 11, 1997, at 9:00 a.m. (local time), for the following purposes:

1. To elect Seven (7) directors for a term of one year (Proposal No. 1); and

2. To transact such other business as may properly come before the meeting or any adjournment thereof, including matters incident to the conduct of the meeting.

The close of business on April 14, 1997, has been fixed as the record date for the determination of the shareholders entitled to notice of and to vote at the meeting, and only shareholders of record at that time will be entitled to notice of and to vote at the meeting and at any adjournment thereof.

Shareholders who do not expect to attend the meeting in person are urged to sign, date and promptly return the Proxy that is enclosed herewith.

By Order of the Board of Directors.

David C. Fannin
Secretary and General Counsel

April 17, 1997

NOT A CERTIFIED COPY

016145

CP 017056
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407252

16div-022431

SUNBEAM CORPORATION

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON JUNE 11, 1997

This Proxy Statement is furnished in connection with the solicitation by the Board of Directors and management of Sunbeam Corporation, a Delaware corporation (the "Company" or "Sunbeam"), of proxies for use at the Annual Meeting of Shareholders of the Company (the "Annual Meeting") to be held at the Boca Raton Marriott, 5150 Town Center Circle, Boca Raton, Florida 33486 on June 11, 1997, at 9:00 a.m. (local time), and at any and all postponements or adjournments thereof, for the purposes set forth in the accompanying Notice of Annual Meeting. This Proxy Statement, Notice of Annual Meeting and accompanying proxy card are first being mailed to shareholders on or about April 17, 1997.

VOTING SECURITIES

As of the close of business on April 14, 1997, the date fixed by the Board of Directors as the record date for determining the shareholders to receive notice of, and to vote at, the Annual Meeting or any postponements or adjournments thereof, the Company had outstanding 84,544,104 shares of common stock, par value $.01 per share (the "Common Stock"). Each share of Common Stock entitles the holder thereof to one vote on each matter to be considered at the Annual Meeting. The presence at the Annual Meeting, in person or by proxy, of a majority of the issued and outstanding shares of Common Stock entitled to vote will constitute a quorum.

If the accompanying proxy card is properly signed and returned to the Company, the shares of Common Stock represented thereby will be voted as specified therein, and if no specification is made, the shares will be voted in accordance with the recommendations of the Board of Directors. The proxy may, nevertheless, be revoked prior to its exercise by delivering written notice of revocation to the Secretary of the Company, by executing a later dated proxy or by attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not in itself constitute a revocation of a proxy.

ELECTION OF DIRECTORS
(PROPOSAL NO. 1)

The Company's By-Laws provide that the Board of Directors will consist of not less than three nor more than twelve persons as fixed from time to time by a vote of a majority of the entire Board of Directors. At its meeting held on February 7, 1997, the Board of Directors established the number of Directors at seven. At the Annual Meeting, Directors will be elected to serve one year terms expiring at the 1998 Annual Meeting or until their successors are elected and have been qualified. The Board of Directors has no reason to believe that any of the nominees will not serve if elected, but if any of them should become unavailable to serve as a Director, and if the Board of Directors designates a substitute nominee, the persons named as proxies will vote for the substitute nominee designated by the Board of Directors.

Directors will be elected by the vote of a majority of the shares of Common Stock present in person or represented by proxy at the Annual Meeting and entitled to vote on the election of Directors. Votes which are withheld with respect to a nominee and broker non-votes will be excluded from the vote and have no effect on the outcome of the election of Directors. The Funds Group (as described

NOT A CERTIFIED COPY

016146

CP 017057
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407253

16div-022432

below), the beneficial owner of an aggregate of approximately 21% percent of the outstanding shares of Common Stock, has indicated its intention to vote for the election of all of the nominees. See "SECURITY OWNERSHIP OF CERTAIN SHAREHOLDERS"

The names of the nominees, their principal occupations and the year in which each Director initially joined the Board, are set forth below.

ALBERT J. DUNLAP, age 59, has been Chairman of the Board of Directors and Chief Executive Officer of Sunbeam Corporation since July 18, 1996. From April 1994 to December 1995 he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation). Mr. Dunlap is a Director of General Oriental Investments Limited.

CHARLES M. ELSON, age 37, has been a Director since his appointment to the Board on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a member of the American Law Institute and the Advisory Council and Commissions on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation.

RUSSELL A. KERSH, age 43, has been Executive Vice President, Finance and Administration of Sunbeam Corporation since July 22, 1996, and has been a Director since August 6, 1996. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as the Chief Operating Officer of Adidas America from January 1993 to May 1994. He is a Director of Basic Petroleum International, Ltd. (a Guatemalan petroleum company).

HOWARD G. KRISTOL, age 59, has been a Director since his appointment on August 6, 1996. He has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.

PETER A. LANGERMAN, age 41, has been a Director of the Company since 1990 and served as Chairman of the Board from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been a Senior Vice President of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to 1996, and a Vice President and Director of Mutual Series Fund Inc. since 1988. He has been a Director of Franklin Mutual Series Fund Inc. since 1988.

WILLIAM T. RUTTER, age 66, has been a Director since his appointment on April 8, 1997. He is a Senior Vice President/Managing Director, Private Banking, First Union National Bank of Florida, a position he has held since 1986.

FAITH WHITTLESEY, age 58, has been a member of the Board of Directors since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE "FOR" THE ELECTION OF SUCH NOMINEES AS DIRECTORS OF THE COMPANY

NOT A CERTIFIED COPY

016147

CP 017068
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407254

16div-022433

DIRECTORS' COMPENSATION

Pursuant to the Sunbeam Corporation Amended and Restated Equity Team Plan (the "Option Plan") Directors who are not employees of the Company or an affiliate of the Funds Group, the Company's largest shareholder ("Outside Directors") are automatically granted 1,500 shares of restricted stock upon their initial election or appointment to the Board and upon each subsequent re-election to the Board (prorated in case of an election or appointment at any time other than at an annual meeting of shareholders, except that each Outside Director elected or appointed between August 1, 1996 and December 31, 1996 received 1,500 shares of restricted stock on the date of the Director's election or appointment to the Board). Such restricted stock vests immediately upon the Director's acceptance of his or her election or appointment. In addition, effective as of August 15, 1996 each Outside Director elected or appointed prior to August 1, 1996 received an initial grant of 1,500 restricted shares pursuant to the Company's Option Plan, prorated as though each such Outside Director was first elected or appointed as of August 6, 1996. Prior to August 15, 1996, the Option Plan provided for the automatic grant to each Outside Director of 5,000 restricted shares of Common Stock upon initial election to the Board and of options to acquire 1,000 shares of Common Stock upon each election and subsequent re-election to the Board.

Outside Directors do not receive any compensation for Board service (other than the 1,500 share restricted stock award), but are reimbursed for all ordinary and necessary out-of-pocket expenses incurred by them in attending meetings of the Board or its Committees. Prior to August 15, 1996, each Outside Director received an annual director's fee of $20,000 plus $1,000 for each meeting of the Board or any Committee of the Board (of which the Director is a member) attended in person and $500 for each such meeting participated in by telephone.

On August 6, 1996, the Board of Directors adopted a resolution pursuant to which, effective as of August 6, 1996, each Outside Director is expected to acquire (and may purchase from the Company at fair market value on the date of purchase), and thereafter to maintain ownership of, a minimum of 2,000 shares of Common Stock. Such purchase is expected to be made as soon as practicable following each Outside Director's first election or appointment and, with respect to persons who were Outside Directors on August 6, 1996, within thirty days from such date. In compliance with that resolution, each of the Company's Outside Directors, Messrs. Elson, Kristol and Rutter and Mrs. Whittlesey has purchased 6,000, 6,000, 2,000 and 2,000 shares of Common Stock respectively.

COMMITTEES OF THE BOARD OF DIRECTORS; BOARD AND COMMITTEE MEETINGS

During 1996, the Board of Directors held fifteen meetings and acted by unanimous written consent six times. As permitted by the By-Laws of the Company, the Company has several standing committees, including an Audit Committee, an Executive Committee and a Compensation Committee. The Executive Committee also serves as the Nominating Committee.

The Executive Committee of the Board of Directors currently consists of Messrs. Dunlap (Chairman), Langerman, Kristol and Kersh. The Executive Committee has the authority to act in place of the Board of Directors on all matters which would otherwise come before the Board of Directors, except for such matters which are required by law or by the Company's Certificate of Incorporation or By-Laws to be acted upon exclusively by the Board of Directors. The Executive Committee met twice and acted by unanimous consent eight times in 1996.

The Audit Committee of the Board of Directors currently consists of Messrs. Rutter (Chairman), Elson and Kristol. The Audit Committee's primary responsibilities are to review the Company's financial statements and accounting controls, to recommend the appointment of the Company's independent auditors and to review the overall scope of the audit. The Audit Committee met

NOT A CERTIFIED COPY

one time during 1996.

At its May 16, 1995 meeting, the Board of Directors established a Nominating Committee which is responsible for submitting nominees for election as directors and proposed committee appointments to

NOT A CERTIFIED COPY

016149

CP 017060
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407256

16div-022435

the Board. No meetings of the Nominating Committee were held during 1996. By action taken at the May 15, 1996 meeting of the Board of Directors, the Executive Committee is currently acting as the Nominating Committee. The Nominating Committee will not consider recommendations by stockholders for nominees for election as Directors, except for recommendations made by the Funds Group. See "SECURITY OWNERSHIP OF CERTAIN SHAREHOLDERS."

Compensation issues are the responsibility of the Compensation Committee, consisting of Directors Langerman (Chairman), Elson and Whittlesey. This Committee is responsible for establishing the general compensation policies of the Company and specific compensation levels for its executive officers and administering the Company's Option Plan and incentive compensation plan. The Compensation Committee met once during 1996 and acted by unanimous consent thirteen times.

Each of the Company's incumbent Directors attended (either in person or by telephone) at least 75% of the aggregate number of 1996 meetings of the Board and the respective Committee(s) of which they were members.

NOT A CERTIFIED COPY

016150

CP 017061
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407257

16div-022436

SECURITY OWNERSHIP OF CERTAIN SHAREHOLDERS

The following table sets forth information as of April 1, 1997, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP	PERCENTAGE OF COMMON STOCK
Franklin Mutual Series Fund Inc.,	17,541,398(1)	28.8%
Including: Mutual Shares Fund	11,268,174(1)	13.3%
Mutual Qualified Fund	4,888,554(1)	5.7%
Franklin Mutual Advisers, Inc.	17,541,398(1)	28.8%
Franklin Resources, Inc. Charles B. Johnson Rupert H. Johnson, Jr.	17,541,398(1)	28.8%
Alpha Assurances I.A.R.D. Mutuelle and Alpha Assurances Vie Mutuelle 100-101 Terrasse Boieldieu 92042 Paris La Defense France	8,967,782(2)	18.61%
AXA Assurances Vie Mutuelle and AXA Assurances I.A.R.D. Mutuelle 21, rue de Chateaudn 92042 Paris France	8,967,782(2)	18.61%
AXA Courtage Assurance Mutuelle 26, rue Louis le Grand 75002 Paris France	8,967,782(2)	18.61%
AXA 23, avenue Matignon 75008 Paris France	8,967,782(2)	18.61%
The Equitable Companies Incorporated 787 Seventh Avenue New York, New York 10019	8,962,482(2)	18.61%
FMR Corp., Edward Johnson 3d, and Abigail P. Johnson	8,419,315(3)	18.8%
Including: Fidelity Management & Research Company	7,317,908(3)	8.66%

(1) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Advisers, Inc. is 51 John F. Kennedy Parkway, Short Hills, NJ 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of the Company's Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund

NOT CERTIFIED COPY

016151

CP 017062
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407258

16div-022437

Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole shareholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal shareholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock.

NOT A CERTIFIED COPY

016152

CP 017063
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407259

16div-022438

Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock. Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson, and Rupert H. Johnson, Jr. disclaim beneficial ownership of these shares.

(2) Information reflected in this table and the notes thereto with respect to Alpha Assurances I.A.R.D. Mutuelle, Alpha Assurances Vie Mutuelle, AXA Assurances Vie Mutuelle, AXA Assurances I.A.R.D. Mutuelle and AXA Courtage Assurance Mutuelle (as a group, collectively, the "Mutuelles AXA"), AXA and The Equitable Companies Incorporated is derived from the Schedule 13G/A, dated January 9, 1997, filed by and on behalf of them. The Mutuelles AXA beneficially owns a majority interest in AXA, which in turn beneficially owns a majority interest in The Equitable Companies Incorporated. The listed shares of Common Stock represent 5,300 shares owned by an AXA entity, AXA Re United States, with sole voting and dispositive power, and 8,962,482 shares owned by subsidiaries of The Equitable Companies Incorporated as follows: 8,447,582 shares by Alliance Capital Management L.P. on behalf of client discretionary investment advisory accounts, with the shared right to vote 93,800 of those shares and otherwise sole voting and dispositive power; 18,100 shares by Donaldson, Lufkin & Jenrette Securities Corporation, with shared dispositive power and no indicated voting power; and 496,800 shares by The Equitable Life Assurance Society of the United States, with sole voting and dispositive power. The Mutuelles AXA and AXA do not admit beneficial ownership of the listed shares.

(3) Information reflected in this table and the notes thereto with respect to FMR Corp., Fidelity Management & Research Company ("Fidelity"), Edward Johnson 3d, and Abigail P. Johnson is derived from the Schedule 13G/A, dated February 14, 1997, filed by FMR Corp., Edward Johnson 3d, and Abigail P. Johnson. The address of FMR Corp., Edward Johnson 3d, Abigail P. Johnson and Fidelity is 82 Devonshire Street, Boston, Massachusetts 02109. FMR Corp. has sole voting power over 158,515 shares and sole dispositive power over 8,419,315 shares of the Common Stock listed, and Mr. Johnson and Ms. Johnson have sole dispositive power over 8,419,315 shares of the Common Stock listed. The listed shares include: (a) 7,317,900 shares beneficially owned by Fidelity as an investment adviser to various investment companies and subadviser to Fidelity American Special Trust, with Mr. Johnson, FMR Corp., through its control of Fidelity, and the funds each having sole dispositive power and the boards of trustees of the funds having the power to direct voting by Fidelity with respect to 7,314,400 shares and Fidelity, Fidelity International Limited and FMR Corp., through its control of Fidelity, each having sole voting and dispositive power with respect to 3,500 shares; and (b) 1,101,415 shares beneficially owned by Fidelity as investment manager of institutional accounts, with Mr. Johnson and FMR Corp., through its control of Fidelity, each having sole dispositive power over all 1,101,415 shares, sole voting power over 155,015 shares and no voting power over 946,400. Members of Mr. Johnson's family and trusts for their benefit are the predominant owners of shares of Class B Common Stock of FMR Corp. Mr. Johnson, Chairman, and Ms. Johnson, a director, own, respectively, 12.0% and 24.5%, of the aggregate outstanding voting stock of FMR Corp. and all Class B shareholders of FMR Corp. are parties to a shareholders' voting agreement.

NOT A CERTIFIED COPY

016153

CP 017064
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407260

16div-022439

SECURITY OWNERSHI[redacted]NEFICIAL OWNERS AND MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of April 1, 1997, of Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director; (2) the Company's Chief Executive Officers during 1996; (3) the Named Executives (the "NEOs"), as defined herein under the caption "EXECUTIVE COMPENSATION"; and (4) the executive officers and directors of the Company as a group.

NAME	AMOUNT AND NATURE OF BENEFICIAL OWNERSHIP(1)(2)	PERCENTAGE OF COMMON STOCK(2)
DIRECTORS		
Albert J. Dunlap	1,324,898(3)(7)	1.5%
Charles M. Elson	7,500(5)	*
Russell A. Kersh	148,817(3)(4)(9)	*
Howard G. Kristol	7,500(5)	*
Peter A. Langerman	0(6)	0
William T. Rutter	2,000(5)	*
Faith Whittlesey	3,500(5)	*
CURRENT EXECUTIVE OFFICERS		
David C. Fannin	68,599(3)	*
Donald R. Uzzi	0	0
PREVIOUS CEO AND NEOS		
Roger W. Schipke	0	*
James D. Wilson	60,666	*
James J. Clegg	0(8)	0
Paul M. O'Hara	0	*
All Directors and current executive officers as a group (19 persons)	2,512,737(9)	2.9%

* Less than one percent.

(1) All Directors and NEOs have the sole power to vote and to dispose of the shares listed above, except for Mr. Kersh.

(2) Includes shares which Directors and executive officers have an option to acquire if such option is currently exercisable (including options which may be exercised within the next sixty days). Includes 833,333, 52,999 and 59,666 shares which may be acquired by Messrs. Dunlap, Fannin and Wilson, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable are not included in the table.

(3) Includes 666,667, 200,000 and 18,000 restricted shares held by Messrs. Dunlap, Kersh and Fannin, respectively, that are subject to restrictions.

(4) Shares held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary. The power to vote and to dispose of the listed shares is held by Howard G. Kristol, Trustee of such Trust.

(5) Includes 1,500 shares of restricted stock granted to each of Directors Elson, Kristol and Whittlesey upon their respective election or appointment to the Board, all of which shares immediately vested. Director Rutter agreed that he would not receive an award of restricted stock upon his appointment to the Board in consideration of his brief incumbency period prior to the

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Annual Meeting. See "Director Compensation."

(6) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "SECURITY OWNERSHIP OF CERTAIN SHAREHOLDERS."

(7) See "Employment Agreement with Mr. Dunlap" below.

(8) Based solely upon the filings made by Mr. Clegg with the SEC and the Company's internal records regarding stock option exercises.

(9) Includes shares which all executive officers and Directors have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

NOT A CERTIFIED COPY

016155

CP 017066
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407262

16div-022441

EXECUTIVE COMPENSATION

SUMMARY COMPENSATION TABLE

The following table sets forth for the years ended December 29, 1996, December 31, 1995 and January 1, 1995, the compensation for services rendered to the Company in all capacities of those persons who, during 1996, (i) served as chief executive officer ("CEO") of the Company and (ii) were the four most highly compensated executive officers of the Company, other than the CEO, as of the Company's fiscal year end and up to two additional executive officers who were among the four most highly compensated officers but did not serve as executive officers as of the Company's fiscal year end (collectively the "Named Executives"). Each of Messrs. Dunlap, Kersh and Uzzi joined the Company during 1996. Messrs. Schipke, Clegg and O'Hara's employment with the Company was terminated during 1996; Mr. Wilson's employment was terminated in March 1997.

		ANNUAL COMPENSATION		
NAME AND PRINCIPAL POSITION	YEAR	SALARY	BONUS	OTHER ANNUAL COMPENSATION
CURRENT OFFICERS				
Albert J. Dunlap, CEO	1996	$ 587,054(3)	$ 0	$ 63,858(4)
Russell A. Kersh, EVP, Admin. and Finance	1996	198,384	125,000	(5) 248,598 (6)
David C. Famsin, EVP, General Counsel	1996	272,112	0	0
	1995	222,917	51,271	0
	1994	200,000	95,000	21,685 (7)
Donald R. Uzzi, EVP, Consumer Products Worldwide	1996	94,904	0	100,456(9)
PREVIOUS CEO AND NEOS				
Roger W. Schipke, CEO	1996	418,893	0	625,000(11)
	1995	1,000,000	0	16,836(10)
	1994	1,000,000	500,000	0
James Wilson, VP. Human Resources	1996	238,000	0	0
	1995	210,000	0	0
	1994	200,000	92,500	8,356 (7)
James J. Clegg, EVP, Vice President and COO North America	1996	289,076	0	400,000(11)
	1995	391,250	7,825	0
	1994	341,667	71,067	0
Paul M. O'Hara, EVP and CFO	1996	240,769	0	400,000(11)
	1995	363,333	0	0
	1994	291,667	225,000	(12) 15,813(7)

	LONG-TERM COMPENSATION AWARDS		
NAME AND PRINCIPAL POSITION	RESTRICTED STOCK AWARD(1)	SECURITIES UNDERLYING OPTIONS/SARS	ALL OTHER COMPENSATION(2)

NOT A CERTIFIED COPY

CP 017067
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407263

16div-022442

CURRENT OFFICERS			
Albert J. Dunlap, CEO	$12,500,000	2,500,000	$6,070
Russell A. Kersh, EVP, Admin. and Finance	1,812,500	500,000	2,659
David C. Fannin, EVP, General Counsel	191,250	75,000	5,343
	0	65,000(8)	14,064
	0	60,000	20,228
Donald R. Uzzi, EVP, Consumer Products Worldwide	0	250,000	5,014
PREVIOUS CEO AND NEOS			
Roger W. Schipke, CEO	0	0	2,975
	0	0	39,900
	0	0	7,620
James Wilson, VP, Human Resources	0	0	4,868
	0	65,000(8)	13,582
	0	0	20,248
James J. Clegg, EVP, Vice President and COO North America	0	0	3,616
	0	70,000(8)	37,703
	0	210,000	5,526
Paul M. O'Hara, EVP and CFO	0	0	3,642
	0	162,500(8)	36,382
	0	325,000	5,495

---

(1) Represents the value of Messrs. Dunlap, Kersh and Fannin's restricted stock holdings of 1,000,000, 100,000 and 10,000 shares respectively (based on the closing market price of $121/2, $181/8 and $191/8 per share as of the respective grant dates of July 18, 22 and 29, 1996). With respect to Mr. Dunlap's restricted stock, one third of such shares vested as of the grant date and the remaining two thirds vest in equal increments on each anniversary of the grant date if he remains employed by the Company through such date or upon the occurrence of certain events. The restricted stock held by Messrs. Kersh and Fannin will vest in equal increments on the first, second and third anniversaries of their respective grant dates if they remain employed by the Company through such dates or upon the occurrence of certain events. Dividends are paid on all such restricted shares. At December 27, 1996, the value of the restricted stock held by each of Messrs. Dunlap, Kersh and Fannin was $25,000,000, $2,500,000 and $250,000 respectively (based on the market price of $25.00 per share).

NOT A CERTIFIED COPY

016157

CP 017068
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407264

16div-022443

(2) The Company adopted an Executive Benefit Replacement Plan (the "Replacement Plan") in 1994 to restore the amount of benefits payable to certain highly compensated employees of the Company who would otherwise be subject to certain limitations on the amount of benefits payable under the Company's 401(k) Savings and Profit Sharing Plan. Amounts of All Other Compensation include the following amounts accrued for all Named Executives in 1994, 1995 and 1996 under the Company's Replacement Plan (including the Company's profit sharing allocation):

NAME	1996	1995	1994
Mr. Dunlap	$4,750	$ 0	$ 0
Mr. Kersh	2,098	0	0
Mr. Fannin	4,749	13,536	19,628
Mr. Uzzi	4,750	0	0
Mr. Wilson	4,314	13,054	19,648
Mr. Schipke	1,875	20,760	4,620
Mr. Clegg	3,000	20,390	4,500
Mr. O'Hara	3,000	19,153	4,620

In addition, the amount of All Other Compensation includes a profit sharing allocation in the amount of $16,140 made to the Replacement Plan in 1995 for 1994 services rendered by each of Messrs. Schipke, Clegg, and O'Hara.

All Other Compensation also includes payments of insurance premiums for term life insurance on behalf of the CEOs and Named Executives in each year as follows:

NAME	1996	1995	1994
Mr. Dunlap	$1,320	$ 0	$ 0
Mr. Kersh	561	0	0
Mr. Fannin	594	528	600
Mr. Uzzi	264	0	0
Mr. Wilson	554	528	600
Mr. Schipke	1,100	3,000	3,000
Mr. Clegg	616	1,173	1,026
Mr. O'Hara	642	1,089	875

(3) Includes $51,923 paid in lieu of vacation in accordance with Mr. Dunlap's Employment Agreement.

(4) Includes $17,250 for the value of a Company provided automobile and $27,345 as reimbursement for taxes paid on the value of such automobile and other Company provided benefits including financial consulting services, health and dental care premiums and payments and membership in a country club.

(5) One time bonus payable pursuant to Mr. Kersh's employment agreement.

(6) Represents a discount on the purchase of stock from the Company in the amount of $239,800 and premiums paid by the Company for health and dental insurance coverage.

(7) Tax gross-up payments made for the amount of tax payable on reimbursement for moving expenses.

NOT A CERTIFIED COPY

016158

CP 017069
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407265

16div-022444

(8) Includes options awarded in exchange for the cancellation of certain outstanding options, a portion of which were granted in 1995. Shares underlying option grants previously made which were cancelled in exchange for new option awards are also included.

(9) Includes $100,000 paid in a lump sum in lieu of reimbursement for moving expenses and premiums paid by the Company for health and dental insurance coverage.

(10) Includes (i) imputed interest income of $9,325 with respect to the extension of the December 31, 1995 due date of certain interest free loans made by the Company and (ii) a tax gross-up payment on tax on imputed interest of $6,711.

(11) Represents payments made upon termination of employment. See "Agreements with Named Executive Concerning Termination of Employment" and "Compensation of Chief Executive Officers-Compensation of Roger W. Schipke."

(12) Includes a one time bonus payment of $50,000 in connection with initial employment.

NOT A CERTIFIED COPY

016159

CP 017070
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407266

16div-022445

OPTION/SAR GRANTS IN LAST FISCAL YEAR

The following table sets forth information with respect to the options to purchase shares of the Company's Common Stock granted to the CEO and Named Executives during 1996. All of the option grants set forth below were made pursuant to the terms of each officers' respective Employment Agreement with the Company. The option grant made to Mr. Dunlap and the option grant for 250,000 shares made to Mr. Kersh were approved by the shareholders at a Special Meeting of the Shareholders held on September 27, 1996 (the "Special Meeting"). All other option grants were made pursuant to the Company's Option Plan. No option grants were made during 1996 to any of Messrs. Schipke, Wilson, Clegg or O'Hara.

NAME	NUMBER OF SECURITIES UNDERLYING OPTIONS/SARS GRANTED	% OF TOTAL OPTIONS/SARS GRANTED TO EMPLOYEES IN FISCAL YEAR	EXERCISE OR BASE PRICE ($/SH)	EXPIRATION DATE	GRANT DATE VALUE(3)
Albert J. Dunlap	2,500,000(1)	35.48	$12.25	7/18/2006	$13,372,750
Russell A. Kersh	500,000(2)	7.08	14.26	7/22/2006	4,647,450
David C. Fannin	75,000(2)	1.06	15.32	7/29/2006	738,477
Donald R. Uzzi	150,000(2)	2.12	21.74	9/15/2006	1,523,595
	100,000(2)	1.42	25.34	11/19/2006	1,272,050

(1) These options have a term of ten years and become exercisable in equal annual increments, commencing on the grant date and thereafter on each of the first and second anniversaries of the grant date.

(2) These options have a term of ten years and become exercisable over three years in equal annual increments commencing on the first anniversary of the grant date.

(3) Grant date values were calculated using the Black-Scholes options pricing model which has been adjusted to take dividends into account. USE OF THIS MODEL SHOULD NOT BE VIEWED IN ANY WAY AS A FORECAST OF THE FUTURE PERFORMANCE OF THE COMPANY'S COMMON STOCK. The estimated present value of each stock option as set forth above is based on the following inputs:

GRANT DATE	7/18/96	7/22/96	7/29/96	9/15/96	11/19/96
Stock Price at date of Grant	$ 12.50	$18.125	$19.125	$22.750	$ 28.00
Exercise Price	$ 12.25	$ 14.26	$ 15.32	$ 21.74	$ 25.34
Risk Free Interest Rate	6.5000%	6.9050%	6.7800%	6.4818%	5.9318%
Stock Price Volatility	36.78%	37.80%	37.84%	37.46%	37.87%
Dividend Yield	.32%	.22%	.21%	.18%	.14%

The exercise price is the amount set forth in Mr. Dunlap's employment agreement or, in all other cases, the fair market value of the Common Stock computed in accordance with the Option Plan. The model assumes: (a) an Expected Option Term of 5 years which reflects the actual 10 year life of the option discounted for factors such as the expected time until exercise; (b) a Risk-Free Interest Rate that represents the interest rate on a U. S. Treasury Bill with a maturity date corresponding to that of the Expected Option Term; and (c) no forfeitures. Stock Price Volatility is calculated using stock prices for a

NOT A CERTIFIED COPY

CP 017071
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

period selected by the Company and believed to reflect volatility in the absence of unusual corporate transactions. Dividend Yield is calculated using the annual dividend rate in effect at date of grant ($.04 per share). Notwithstanding the fact that these options are, with limited exceptions, non-transferable, no discount for lack of marketability was taken.

NOT A CERTIFIED COPY

191910

CP 017072
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407268

16div-022447

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FISCAL YEAR-END OPTION/SAR VALUES

The following table sets forth information with respect to option exercises occurring during 1996 and the number of options held by the CEOs and NEOs at the Company's fiscal year end. The options to purchase 2,500,000 and 250,000 shares of the Company's Common Stock were granted to Messrs. Dunlap and Kersh, respectively, pursuant to their employment agreements and approved by the shareholders of the Company at the Special Meeting. All other option grants were made pursuant to the Option Plan.

NAME	SHARES ACQUIRED ON EXERCISE	VALUE REALIZED(1)	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS HELD AT DECEMBER 29, 1996		VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT DECEMBER 29, 1996(2)	
			EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Albert J. Dunlap, CEO	0	$ 0	833,333	1,666,667	$10,624,995	$21,250,004
Russell A. Kersh	0	0	0	500,000	0	5,375,000
David C. Fannin	0	0	42,999	157,001	242,796	1,375,004
Donald R. Uzzi	0	0	0	250,000	0	489,000
James D. Wilson	0	0	59,665	65,334	372,463	609,337
Roger C. Schipke	0	0	0	0	0	0
James J. Clogg	20,000	182,600	57,400	0	111,954	0
	10,000	92,500				
	70,979	985,898				
	10,500	77,288				
Paul M. O'Hara	0	0	127,771	0	781,316	0

(1) Based on the difference between the exercise price and the price at the date of actual exercise.

(2) Based on the difference between the exercise price of the options and the closing price on the New York Stock Exchange of the Company's Common Stock on December 27, 1996 ($25).

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

INDEBTEDNESS OF MANAGEMENT

The Company made loans to its former CEO, Mr. Schipke, on August 31, 1993 (the "August Loan") and on December 31, 1993 (the "December Loan"), in the amounts of $663,749 and $586,663, respectively. The largest aggregate amount of indebtedness outstanding on these notes at any time during 1996 was $669,638. The loans were repaid in full by Mr. Schipke in May 1996. See "Arrangements with Named Executives concerning Termination of Employment."

MANAGEMENT TRANSACTIONS

Pursuant to the terms of his Employment Agreement with the Company, Russell Kersh purchased 48,817 shares of Common Stock from the Company for a purchase price of $12.25 per share, an aggregate discount of $239,888 from the market price of such shares at the date of such purchase. Directors Elson and Kristol purchased 3,000 and 5,000 shares respectively of Common Stock from the Company in connection with the Company's adoption of a policy requiring stock ownership by all Directors; such purchases were made at the current market price as of the

NOT A CERTIFIED COPY

291916

CP 017073
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407269

16div-022448

date of the purchase.

The Company has employed the law firm of Reboul, MacMurray, Hewitt, Maynard and Kristol, of which Director Kristol is a partner, to perform legal services for the Company during 1996 and 1997. The Company also has employed the law firm of Holland & Knight, of which Director Elson is Of Counsel, during 1996 and 1997; the employment of Holland & Knight occurred prior to Mr. Elson's appointment to the Board. Mr. Elson has not been involved in the provision of legal services to the Company and the Company no longer utilizes the services of Holland & Knight.

NOT A CERTIFIED COPY

0161910

CP 017074
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407270

16div-022449

EMPLOYMENT CONTRACTS AND TERMINATION OF
EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS

EMPLOYMENT AGREEMENT WITH MR. DUNLAP

On July 18, 1996, the Company entered into an Employment Agreement with Mr. Dunlap (the "Dunlap Agreement") pursuant to which the Company agreed to employ Mr. Dunlap as Chairman of the Board and Chief Executive Officer, and Mr. Dunlap agreed to serve in such capacities, for an initial period of three years ending July 17, 1999, and for successive one-year renewal periods unless advance notice of termination is given by either party by no later than April 1 of the immediately preceding year. The Dunlap Agreement may not be renewed beyond July 17, 2001.

COMPENSATION

Under the Dunlap Agreement, Mr. Dunlap will be paid a base salary at an annual rate of $1,000,000. The Company may increase Mr. Dunlap's base salary, but may not reduce it after any such increase. Mr. Dunlap is eligible to participate immediately in the other benefit plans available generally to employees or other senior executives of the Company. However, he is not eligible to participate in any incentive (i.e. bonus) plan of the Company. The Company also provides Mr. Dunlap with various perquisites on a grossed up basis.

CERTAIN EQUITY PURCHASES AND EQUITY GRANTS

Mr. Dunlap invested $3,000,000 in the Company on July 18, 1996, by purchasing 244,898 shares of Common Stock from the Company at a price of $12.25 per share (the closing price of the Company's Common Stock on the NYSE on July 17, 1996). Mr. Dunlap received a one-time grant on July 18, 1996, of 1,000,000 restricted shares (the "Restricted Shares"). One-third of such Restricted Shares vested on July 18, 1996 and the remainder will vest in two equal installments on each of the first and second anniversaries of the grant date. Mr. Dunlap also received a one-time grant effective as of July 18, 1996 of options to purchase 2,500,000 shares of Common Stock at a price of $12.25 per share (the "Dunlap Options") which grant was approved by the shareholders at the Special Meeting. The term of the Dunlap Options is ten years, and they vest with respect to one-third of the shares subject thereto on the grant date and an additional one-third on each of the first and second anniversaries of the grant date. Upon the occurrence of a Change in Control of the Company (as defined below), the Dunlap Options and Restricted Shares will vest in full. On February 13, 1997, Mr. Dunlap purchased an additional $2 million of Common Stock in an open market purchase.

TERMINATION AND CHANGE IN CONTROL PROVISIONS

The Company may terminate Mr. Dunlap's employment under the Dunlap Agreement at any time, or due to his disability, or for Cause. As defined in the Dunlap Agreement, "Cause" means (i) willful failure substantially to perform Mr. Dunlap's duties under the Dunlap Agreement, except if such failure results from disability, or (ii) his conviction for a felony (or a plea of guilty or nolo contendere thereto). Mr. Dunlap may terminate his employment under the Dunlap Agreement at any time. In addition, he may terminate his employment for Good Reason by notifying the Company within 90 days after any of the following events occurring without his consent, unless remedied by the Company within 30 days after receiving such notice:

(i) any change in Mr. Dunlap's title as Chairman of the Board and Chief Executive Officer or his removal from, or the failure to re-elect him to, such positions;

(ii) any assignment of duties materially inconsistent with his positions or any material limitation of his powers as contemplated by the Dunlap

NOT CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Agreement;

(iii) any requirement that Mr. Dunlap be based without his consent anywhere other than at the Company's principal executive office in Palm Beach or Broward County, Florida;

NOT A CERTIFIED COPY

591910

CP 017076
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407272

16div-022451

(iv) any reduction in Mr. Dunlap's base salary;

(v) any failure to continue in effect any fringe benefit plan in effect at the date of the Dunlap Agreement or to provide Mr. Dunlap equivalent benefits;

(vi) the failure of the Company, within 60 days after the date of the Dunlap Agreement, to have Mr. Dunlap duly elected as a Director and thereafter to maintain his status as a Director while he serves as Chief Executive Officer;

(vii) the failure of the Company to have three individuals (or their successors) designated by Mr. Dunlap elected and reelected as Directors;

(viii) a Change in Control of the Company; or

(ix) any other material breach of the agreement by the Company.

As defined in the Dunlap Agreement, a "Change in Control" means the occurrence of any one of the following events:

(i) any "person" as such term is used in Sections 3(a)(9) and 13(d) of the Securities Exchange Act of 1934, as amended (the "Act"), becomes a "beneficial owner," as such term is used in Rule 13d-3 promulgated under that Act, of 25% or more of the voting stock of the Company;

(ii) the majority of the Board of Directors consists of individuals other than Incumbent Directors, which term means the members of the Board on the date of the Dunlap Agreement and any individuals designated by Mr. Dunlap; provided that any person becoming a Director subsequent to such date whose election or nomination for election was supported by two-thirds of the Directors who then comprised the Incumbent Directors is considered to be an Incumbent Director;

(iii) the Company, without Mr. Dunlap's consent, adopts any plan of liquidation providing for the distribution of all or substantially all of its assets; or

(iv) all or substantially all of the assets or business of the Company are disposed of pursuant to a merger, consolidation or other transaction (unless the persons who were shareholders of the Company immediately prior to such merger, consolidation or other transaction beneficially own, directly or indirectly, in substantially the same proportion as they owned the voting stock of the Company, all of the voting stock or other ownership interests of the entity or entities, if any, that succeed to the business of the Company).

The Dunlap Agreement provides that, if the Company terminates Mr. Dunlap's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason, (i) he will receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the period ending June 17, 1999, or any then applicable renewal period, (ii) the Dunlap Options and Restricted Shares will become fully vested, and he will be entitled to exercise the Dunlap Options for the balance of the original ten-year term, and (iii) he will be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, for three years after termination, or to receive substantially equivalent benefits.

The Dunlap Agreement provides that, if the Company terminates Mr. Dunlap's employment for Cause or if he terminates his employment other than for Good Reason, all obligations (other than accrued obligations) of the Company will cease, except that Mr. Dunlap will be able to exercise the Dunlap Options which

NOT A CERTIFIED COPY

0116966

are exercisable on the date of termination within 90 days, if the termination is for Cause, and within one year, if it is by Mr. Dunlap without Good Reason. The Dunlap Agreement provides that, if Mr. Dunlap's employment is terminated due to his death, his estate or legal

NOT A CERTIFIED COPY

016167

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

representative will be entitled to exercise within one year after the date of death the Dunlap Options which are then exercisable or which would have become exercisable within one year after the date of death and, further, the portion of then unvested Restricted Shares equal to the number of such unvested Restricted Shares multiplied by a fraction, the numerator of which is 24 minus the number of months remaining in the first two years of the employment term and denominator of which is 24, will become vested as of the date of death. If his employment is terminated due to disability, he will be entitled to exercise within three years all Dunlap Options which are then exercisable or which would have become exercisable within one year after the date of termination and the portion of Restricted Shares determined in accordance with the procedure described in the immediately preceding sentence will become vested as of the date of termination.

In addition, the Dunlap Agreement provides that Mr. Dunlap will be entitled to receive a gross-up with respect to any excise tax applicable under the Code to "excess parachute payments."

EMPLOYMENT AGREEMENTS WITH MESSRS. KERSH, FANNIN AND UZZI

The Company entered into employment agreements with Messrs. Kersh and Fannin in July 1996 and with Mr. Uzzi in January 1997. Messrs. Kersh, Fannin and Uzzi are referred to as the "Executives". The agreements with Messrs. Kersh and Fannin are for an initial period of three years ending on the third anniversary of the date the applicable agreement was executed; the agreement with Mr. Uzzi also has a term of three years ending on December 31, 1999.

COMPENSATION

Under the agreements, Messrs. Kersh, Fannin and Uzzi will be paid a base salary at annual rates of $425,000, $300,000 and $400,000, respectively. The base salaries will not be increased during the term of the agreements. In addition, Mr. Kersh received an initial signing bonus of $125,000 and Mr. Uzzi was paid $100,000 in lieu of reimbursement for relocation expenses. The Executives will also be eligible to participate in the other benefit plans available generally to employees or other senior executives of the Company. However, they will not be eligible to participate in any cash incentive (i.e. bonus) plan of the Company.

CERTAIN EQUITY PURCHASES AND EQUITY GRANTS

Messrs. Kersh and Fannin have invested approximately $500,000, and $100,000, respectively, in shares of Common Stock of the Company. Messrs. Kersh and Fannin each received a one-time grant of 100,000 and 10,000 Restricted Shares, respectively. Such Restricted Shares will vest in three equal installments on each of the first, second and third anniversaries of the grant date. Messrs. Kersh and Fannin received grants, effective as of July 22 and July 29, 1996, respectively, of options to purchase 250,000 and 75,000 shares, respectively, of Common Stock at a price of $14.26 and $15.32 per share, respectively, under the Option Plan. In addition upon approval by the Company's shareholders at the Special Meeting, Mr. Kersh received, effective as of July 22, 1996, a one-time grant of options to purchase 250,000 shares, at a price of $14.26 per share. Mr. Uzzi has received grants effective as of September 15 and November 19, 1996 and January 1, 1997, of options to purchase 150,000, 100,000 and 100,000 shares of Common Stock at prices of $21.74, $25.24 and $25.73 respectively. The term of such options is ten years, and they will vest with respect to one-third of the shares subject thereto on each of the first, second and third anniversaries of the grant date.

TERMINATION AND CHANGE IN CONTROL PROVISIONS

The Company may terminate an Executive's employment under the agreements at any time, or due to the Executive's disability, or for Cause (as defined above). Each Executive may terminate his employment under the agreement at any

NOT CERTIFIED COPY

016168

time. In addition, he may terminate his employment for Good

NOT A CERTIFIED COPY

016169

CP 017080
CONFIDENTIAL

Reason by notifying the Company within 90 days after any of the following events occurring without his consent, unless remedied by the Company within 30 days after receiving such notice:

(i) any assignment of duties materially inconsistent with his positions or any material limitation of his powers as contemplated by the agreement;

(ii) any removal of the Executive from, or any failure to reelect the Executive to the executive officer position specified in the agreement; or

(iii) any other material breach of the agreement by the Company.

The agreements provide that, if the Company terminates an Executive's employment other than for Cause and not due to his disability, or if he terminates his employment for Good Reason or following a Change in Control (as defined above), (i) he will receive as liquidated damages a lump sum payment in an amount equal to the base salary that would have been payable through the end of the employment term, (ii) the options and Restricted Shares will become fully vested, and he will be entitled to exercise the options for the balance of the original ten-year term, and (iii) he will be entitled to continue participating in the employee benefit plans in which he had been entitled to participate before termination, through the end of the employment term, or to receive substantially equivalent benefits.

The agreements provide that, if the Company terminates an Executive's employment for Cause or if he terminates his employment other than for Good Reason or following a Change in Control, all obligations (other than accrued obligations) of the Company will cease, except that he will be able to exercise the options which are exercisable on the date of termination within 90 days, if the termination is for Cause, and within one year, if it is by the Executive other than for Good Reason or following a Change in Control.

The agreements provide that, if an Executive's employment is terminated due to his death, his estate or legal representative will be entitled to exercise within one year after the date of death the options which are then exercisable or which would have become exercisable within one year after the date of death and, further, the portion of then unvested Restricted Shares equal to the number of such unvested Restricted Shares multiplied by a fraction, the numerator of which is 36 minus the number of months remaining in the first three years of the employment term and denominator of which is 36, will become vested as of the date of death. If his employment is terminated due to disability, he will be entitled to exercise within three years all options which are then exercisable or which would have become exercisable within one year after the date of termination and the portion of Restricted Shares determined in accordance with the procedure described in the immediately preceding sentence will become vested as of the date of termination.

In addition, the agreements provide that each Executive will be entitled to receive a gross-up with respect to any excise tax applicable under the Code to "excess parachute payments."

ARRANGEMENTS WITH NAMED EXECUTIVES CONCERNING TERMINATION OF EMPLOYMENT

In connection with Mr. Schipke's resignation and the terminations of employment with the Company of Messrs. Clegg and O'Hara, the Company entered into certain arrangements with each of them, providing that, pursuant to the terms of their respective employment agreements and in consideration of the execution of the agreements and of a release and covenant not to sue contained therein, they would receive payments equal to, in the case of Mr. Schipke, the base salary remaining under his employment agreement (until December 31, 1996), and, in the case of each of Messrs. Clegg and O'Hara one year's base salary at their then current rate of compensation, less applicable withholding taxes. In addition, Mr. Schipke also received continuation of health, dental and life insurance coverage, on the same basis as prior to termination of employment.

NOT A CERTIFIED COPY

016170

until December 31, 1997. The agreement with Mr. Schipke also provided for immediate repayment by him of the balance then outstanding on the August Loan and the December Loan. See "Certain Relationships and Related

NOT A CERTIFIED COPY

016171

CP 017082
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Transactions-Indebtedness of Management." The termination agreement with Mr. Schipke also provided for immediate vesting of all of his then outstanding Restricted Shares.

Mr. Wilson was a party to an Employment Agreement with the Company, the term of which expired as of December 31, 1996. Upon his termination in March 1997, he was paid one year's salary and provided with continuation of medical benefits for one year in exchange for a complete release of the Company.

REPORT OF THE COMPENSATION COMMITTEE ON EXECUTIVE COMPENSATION

The Company's executive compensation policy and administration of its various compensation plans are the responsibility of the Compensation Committee of the Board of Directors (the "Committee"). Prior to August 6, 1996, the Committee was known as the Executive Development and Compensation Committee.

The Committee is responsible for establishing the general compensation policies of the Company and administering the Company's Option Plan. The Committee reviews and/or approves specific compensation levels for the Company's senior officers and other key operating and corporate management personnel (collectively the "executive officers" or singularly an "executive officer").

EXECUTIVE OFFICER COMPENSATION

PHILOSOPHY

It is the philosophy of the Company that executive compensation be directly linked to the interests of the Company's shareholders and therefore to financial objectives that the Company believes are primary determinants of long-term shareholder value. The Committee's objectives in administering the Company's executive compensation plans are to ensure that pay levels and incentive compensation are: (1) properly linked to shareholder value, (2) are competitive in attracting, retaining and motivating the best personnel and (3) are simple in design and easily understood. The compensation plan for the Company's executive officers emphasizes the importance of stock options as providing a direct correlation between executive compensation and shareholder interests. In addition to an emphasis on stock options, the Company pays competitive base salaries, bonuses linked directly to overall Company performance and periodic additional grants of stock options pursuant to the Option Plan. The stock option element of compensation, together with the Company's stock purchase plan (described below) and its use of Company stock as matching contributions and profit sharing contributions to the Company's 401(k) Plan are all intended to encourage ownership and retention of Company stock by all employees, and especially executive officers. This provides executive officers and other employees with the opportunity to build, through the achievement of financial goals that benefit all shareholders, a meaningful ownership stake in the Company.

The Company's four most senior officers are excluded from the Company's programs of base compensation increases and bonuses. Their sole incentive beyond base salary is based upon substantial grants of stock options, ownership of stock and increases in shareholder value. These persons are heavily dependent upon an increase in the price of the Company's shares to realize the potential of their compensation packages.

FINANCIAL CRITERIA

For other executive officers, the most substantial motivator also is increasing shareholder value, as all of them are heavily dependent upon significant option grants for ultimate realization of their compensation goals. In addition, however, each of them also is a participant in the Sunbeam Bonus Plan which was established by the Committee at its meeting on January 30, 1997 (the "Bonus Plan"). Under

NOT A CERTIFIED COPY

016172

NOT A CERTIFIED COPY

0161173

CP 017084
CONFIDENTIAL

the Bonus Plan, executive officers (other than the Company's CEO and three Executive Vice Presidents, who constitute the Operating Committee of the Company and are ineligible to participate in the Bonus Plan) are eligible to receive bonuses based upon two factors: (1) Company performance as measured by earnings per share ("EPS") and (2) individual performance against quantifiable measurement criteria established with each such officer. Company performance must reach targeted levels or NO BONUSES WILL BE PAID TO ANY EXECUTIVE OFFICER. If Company performance is achieved, then individual achievement of measurement criteria will determine the amount of any bonus payable to an executive officer for 1997.

Overall, the Company's compensation philosophy de-emphasizes base salary and increases in base salary, and places a greater emphasis upon incentive compensation in the form of stock appreciation and incentive performance bonus compensation. This places a greater percentage of compensation "at risk" and in line with the Company's shareholders. Base salaries for the Company's executives, many of whom were hired in 1996 after the employment of Mr. Dunlap, were established based in large part upon their salaries at prior positions. The Company does not attempt to match executive compensation to the compensation levels at those companies which are included in the Company's self-constructed shareholder return peer group (the "Shareholder Return Peer Group"). See "SHAREHOLDER RETURN PERFORMANCE PRESENTATION" for a description of the Company's Shareholder Return Peer Group.

For 1996, only nominal salary increases were awarded to the Company's executive officers as a group who were employed throughout the year. In addition, as a result of the Company's restructuring activity in the third and fourth quarters of 1996, many of the Company's executive officers were terminated. Most key management positions were filled from outside the Company with persons who have a demonstrated track record of performance in their prior positions.

For 1996, executive officers had a cash bonus potential based upon specific goals previously established by the Compensation Committee. Due to the Company's lack of positive earnings in 1996, no management incentive bonuses were paid to any executive officers for 1996.

For 1997, the Committee has adopted the Bonus Plan which is intended to motivate the Company's key employees to increase shareholder wealth by maximizing earnings per share of the Company's common stock, which the Committee believes is the key driver in determining share value. In addition to executive officers (other than members of the Company's Operating Committee, who are not eligible to participate in the Bonus Plan) all salaried employees of the Company are eligible to participate in the Bonus Plan.

The Bonus Plan's design provides that during each fiscal year, the Operating Committee of the Company will recommend to the Compensation Committee a minimum level of performance (measured by EPS of the Company's Common Stock for such year), below which no Bonus Plan participant shall receive any bonus. At the minimum level of acceptable Company EPS performance, Bonus Plan participants will be eligible to receive up to 75% of their individual bonus target (a percentage of base salary in the case of management and professional employees and a flat dollar amount in the case of administrative employees). At another, higher level of EPS performance, participants will be entitled to receive up to 100% of their individual bonus target. At even higher levels of EPS performance ("stretch targets"), participants may receive up to 200% of their individual bonus target. The plan also provides for percentage gradations between these key milestones, so that a bonus recipient may receive varying percentages of his or her bonus targets between 75% and 200%.

While the Company must achieve the prescribed EPS performance levels before any Bonus Plan participant is eligible to receive any bonus, this does not guarantee that a participant necessarily will receive a bonus. In order to receive a bonus, a participant must achieve at least four (4) individual

NOT CERTIFIED COPY

performance goals established with the concurrence of his or her supervisor. These performance goals are oriented towards quantitative objectives, such as cost savings or earnings enhancement.

The Committee believes that this combination of requiring a minimum overall Company performance, measured by EPS performance requirements before any bonuses are paid, coupled with

NOT A CERTIFIED COPY

016175

CP 017086
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407282

16div-022461

individual goals which are quantitative in nature and calculated to increase productivity, reduce costs or otherwise enhance profitability of the Company, assures that the Company's compensation system, especially the performance bonus program, aligns the interests of the Company's executive officers and other employees with the interests of its shareholders.

EXTENSION OF OPTIONS TO ALL COMPANY EMPLOYEES; STOCK OWNERSHIP PLAN; 401(K) PLAN CHANGES

Since the Company's change in senior management in July 1996, the Company's compensation philosophy for all employees, not just executive officers, has broadened to include greater participation by Company employees at all levels in the stock option and stock ownership programs of the Company. Effective January 1, 1997, the Company broadened the Option Plan to provide for the grant of options to all levels of Company employees, including factory workers in the Company's United States facilities, U.S. clerical personnel and others who had not previously been participants in the Option Plan.

In addition, on January 1, 1997, the Company instituted a stock purchase program for all U.S. Company employees. This plan permits employees to designate a portion of each paycheck for deposit into a stock purchase account. Once each month, the administrator of the plan (currently Smith Barney, Inc.) uses funds in the stock purchase account to purchase shares of Company stock in the open market. Participants in this plan do not pay any commissions to Smith Barney with respect to the purchase of these shares. Participants otherwise receive no discount or other incentive for participation in the plan.

The Company also, as of January 1, 1997, has instituted changes in the its 401(k) savings plan to provide that all Company matching contributions are to be made in shares of Company stock and that any profit sharing contributions also are to be made in shares of Company stock. Due to the fact that the Company did not generate a profit in the year ending December 29, 1996, the Company has determined that it will not make any profit sharing contribution under the 401(k) Plan in 1997, attributable to 1996 results.

DISCUSSION OF AMENDMENTS IN THE COMPANY'S OPTION PLAN

The Compensation Committee, acting pursuant to its authority under the terms of the Company's Option Plan, has acted to amend the Plan in two respects, and the Committee's actions have been ratified by the Company's Board of Directors. First, provisions of the Option Plan which provided for monthly vesting of options held by executive officers elected by the Board in the event of termination of employment of any such officer have been deleted. The Committee determined that there was no justification for a provision which favored executive officer participants over other Plan participants in terms of option vesting in the year of termination of employment.

Secondly, the Option Plan has been amended to change the normal vesting schedule for option grants and awards of restricted shares under the Option Plan to three years, rather than the five years that formerly applied. All options and awards of restricted shares granted to participants since July 18, 1996 have, and all future grants of options and restricted shares will have, a vesting schedule which provides that one-third of the shares will fully vest on each one year anniversary of the grant date. This vesting schedule remains subject to the rights of the Committee under the Plan to designate a different vesting schedule for any particular grant, in its discretion.

COMPLIANCE WITH CERTAIN TAX LAWS

Section 162(m) of the Internal Revenue Code limits to $1 million the Company's federal income tax deduction for compensation paid in any year to its CEO and each of its four highest paid executive officers, to the extent that such compensation is not "performance based" compensation within the meaning of Section 162(m). The Company does not anticipate that bonus payments

NOT A CERTIFIED COPY

0161176

CP 017087
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407283

16div-022462

will be made to Mr. Dunlap (the sole executive officer whose compensation is anticipated to exceed $1 million). The Company's award of options (both pursuant to the Option Plan and as approved by the shareholders) is expected to qualify as "performance based" compensation pursuant to Section 162(m). The vesting of

NOT A CERTIFIED COPY

0161177

CP 017088
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

one-third of the respective awards of restricted stock to Messrs. Dunlap and Kersh are expected to exceed the $1 million compensation level (together with their base salaries) and will not be deductible by the Company to the extent in excess of $1 million.

COMPENSATION OF CHIEF EXECUTIVE OFFICERS

COMPENSATION OF ALBERT J. DUNLAP

As of July 18, 1996, the Company employed Albert J. Dunlap as its Chairman and Chief Executive Officer pursuant to an employment agreement and compensation package which were negotiated at the time of such employment. See "Employment Agreement with Mr. Dunlap." At Mr. Dunlap's request and with full agreement of the Company's Board of Directors, Mr. Dunlap's compensation package is heavily oriented towards stock based compensation. Mr. Dunlap receives a base salary of $1 million per year for each year of the employment agreement but is not eligible for any bonus payment. Mr. Dunlap's potential increases in compensation will result from increases in the value of his stock investment in the Company. Mr. Dunlap holds 1 million restricted shares (one third of such shares vested immediately upon issuance, and the remaining two thirds shall vest in equal increments on each of the first and second anniversary dates of the effective date of the employment agreement) and an option to acquire up to 2.5 million shares of the Company's Common Stock (one third of such options vested immediately upon issuance, and the remaining two thirds shall vest in equal increments on each of the first and second anniversary dates of the effective date of the employment agreement).

COMPENSATION OF ROGER W. SCHIPKE

The Company's previous CEO, Roger W. Schipke, was employed until May 1996. His compensation during 1996 was based upon his August 1993 Employment Agreement. No bonus payments were made to Mr. Schipke for 1995 or 1996 in light of the Company's poor performance. In connection with his resignation from the Company, and in consideration of the execution of a termination agreement including a release and covenant not to sue, Mr. Schipke was paid the base salary remaining under his Employment Agreement, was immediately vested in all of his then outstanding restricted stock, and received continuation of health, dental and life insurance coverage until December 31, 1997.

The foregoing report is furnished by the Compensation Committee of the Board of Directors and the members of the Committee.

COMPENSATION COMMITTEE
Peter Langerman, Chairman
Charles Elson
Faith Whittlesey (elected to the Committee February 7, 1997)

NOT A CERTIFIED COPY

016178

CP 017089
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407285

16div-022464

SHAREHOLDER RETURN PERFORMANCE PRESENTATION

The following graph compares the cumulative total shareholder return on the Company's Common Stock for the period August 19, 1992 (the date the Company's stock became actively publicly traded) through March 31, 1997, with the cumulative total return of the Standard and Poors Composite-500 Stock Index and a Company constructed index of peer companies. The graph also presents the value of the Common Stock on the date of Mr. Dunlap's employment with the Company. Included in the Company constructed peer group index are Rubbermaid Incorporated, Newell Co. and The Gillette Company, Inc. all of which are engaged in retail sales of consumer goods. The graph assumes that the value of the investment in Common Stock was $100 on August 19, 1992, and that all dividends were reinvested quarterly.

COMPARISON OF TOTAL RETURN SINCE PUBLIC OFFERING OF SUNBEAM CORPORATION COMMON STOCK, S&P 500, AND PEER GROUP COMPANIES

	8/19/92	12/31/92	12/31/93	12/31/94	12/31/95	7/18/96	12/31/96	3/31/97
SUNBEAM	$100	$140	$177	$207	$123	$181	$206	$242
PEER GROUP	$100	$105	$111	$127	$163	$189	$224	$216
S&P 500	$100	$106	$117	$119	$163	$172	$201	$200

NOT A CERTIFIED COPY

016179

CP 017090
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407286

16div-022465

OTHER MATTERS

As of the date of this Proxy Statement, the Board of Directors knows of no business that will be presented for consideration at the Annual Meeting other than that which has been referred to above. Proxies in the enclosed form will be voted in respect of any other business that is properly brought before the Annual Meeting in accordance with the judgment of the person or persons voting the proxies.

The Company is not aware of any substantial interest, direct or indirect, by holders of Common Stock or otherwise, of any officer, Director or associate of the foregoing persons in any matter to be acted on, as described herein, other than elections to offices.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's Directors, executive officers and persons who own more than 10% of a registered class of the Company's equity securities to file certain reports regarding ownership of the Company's Common Stock with the SEC and the New York Stock Exchange. These insiders are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms they file. As of the date of this Proxy Statement, the Company does not have sufficient information to determine whether Mr. Clegg, a former officer of the Company, was required to file any such forms with the SEC after his departure from employment with the Company.

INDEPENDENT AUDITORS

The firm of Arthur Andersen, LLP has been retained by the Company as independent auditors to audit the financial statements of the Company. Representatives of Arthur Andersen, LLP will be present at the Annual Meeting and will be afforded the opportunity to make a statement if they desire to do so and to respond to appropriate questions.

COST OF SOLICITATION

The cost of soliciting proxies in the accompanying form has been or will be borne by the Company. In addition to solicitation by mail, arrangements may be made with brokerage houses and other custodians, nominees and fiduciaries to send proxies and proxy material to their principals, and the Company may reimburse them for any attendant expenses.

1998 SHAREHOLDER PROPOSALS

Any shareholder proposal intended to be presented for consideration at the 1998 Annual Meeting of Shareholders and to be included in the Company's Proxy Statement for that meeting must be received by the Secretary at the Company's corporate office, Suite 200, 1615 South Congress Avenue, Delray Beach, FL 33445, on or before January 31, 1998.

COPIES OF FORM 10-K

THE COMPANY WILL PROVIDE A COPY OF THE COMPANY'S FORM 10-K, INCLUDING FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULES, TO ANY SHAREHOLDER UPON REQUEST. REQUESTS SHOULD BE SENT TO JOHN G. DESIMONE, DIRECTOR, INVESTOR RELATIONS, FOR THE COMPANY, AT SUITE 200, 1615 SOUTH CONGRESS AVENUE, DELRAY BEACH, FLORIDA 33445 - TELEPHONE: (561) 243-2100.

NOT A CERTIFIED COPY

016180

CP 017091
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407287

16div-022466

SUNBEAM CORPORATION
SUITE 200, 1815 S. CONGRESS AVENUE
DELRAY BEACH, FL 33445

THIS PROXY IS SOLICITED ON BEHALF OF THE COMPANY'S BOARD OF DIRECTORS

The undersigned hereby appoints Janet G. Kelley and Edwin T. Derecho as Proxies, each with the power to appoint his or her substitute, and hereby authorizes them, and each of them, to represent and vote, as designated below, all the shares of Common Stock of Sunbeam Corporation (the "Company") held of record by the undersigned on April 14, 1997, at the Annual Meeting of Shareholders of the Company to be held on June 11, 1997, or any adjournment thereof.

This proxy, when properly executed, will be voted in the manner directed herein by the undersigned shareholder. If no direction is made, this proxy will be voted FOR the election of all director nominees.

(Continued and to be dated and signed on the reverse side.)

SUNBEAM CORPORATION
P.O. BOX 11223
NEW YORK, N.Y. 10203-0223

NOT A CERTIFIED COPY

016181

CP 017092
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1. Election of Directors (Proposal No. 1) — FOR all nominees listed below ( ) — WITHHOLD AUTHORITY to vote for all nominees listed below ( ) — *EXCEPTIONS ( )

Nominees: Albert J. Dunlap, Charles M. Elson, Russell A. Kersh, Howard G. Kristol, Peter A. Langerman, William T. Rutter and Faith Whittlesey

(INSTRUCTIONS: TO WITHHOLD AUTHORITY TO VOTE FOR ANY INDIVIDUAL NOMINEE, MARK THE "EXCEPTIONS" BOX AND WRITE THAT NOMINEE'S NAME IN THE SPACE PROVIDED BELOW.)

EXCEPTIONS _____

2. To transact such other business as may properly come before the meeting at any adjournment thereof, including matters incident to the conduct of the meeting.

CHANGE OF ADDRESS AND OR COMMENTS MARK HERE ( )

When shares are held by joint tenants, each should sign. When signing as as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by the President or other authorized officer. If a partnership, please sign in partnership name by authorized person.

Dated: _____ 1997

_____
SIGNATURE

_____
SIGNATURE, IF HELD JOINTLY

VOTES MUST BE INDICATED (x) IN BLACK OR BLUE INK. ( )

PLEASE MARK, SIGN, DATE AND RETURN THE PROXY CARD PROMPTLY, USING THE ENCLOSED ENVELOPE

NOT A CERTIFIED COPY

0161810

CP 017093
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407289

16div-022468

NOT A CERTIFIED COPY

016183

CP 017094
CONFIDENTIAL

4.

Research Reports

NOT A CERTIFIED COPY

016184

Prudential Securities

Sunbeam Corp.

Company Update

Research

Susan Q. Gallagher, CFA (212) 778-8379
Nicholas P. Heymann (212) 778-1467
Lawrence Feiler (212) 778-1486

Rating: BUY *(High Risk)*

- ☐ Expect actions to further enhance shareholder value.
- ☐ 3Q97 slightly ahead of expectations.
- ☐ during the quarter, SOC unveiled 10 new U.S. products.

SOC (46 15/16)—NYSE October 30, 1997

	Earnings Per Share Fiscal Year Ending			P/E	Ind.		Shares	52-
	12/96	12/97E	12/98E	12/98E	Div.	Yield	O/S (Mil.)	Week Range
New	$0.05	$1.40	$2.10	22.4X	$0.04	0.1%	88.0	52-24
Old								

DJIA: 7506.67
S&P 500: 919.16

Priced as of the close, October 29, 1997.

Reiterate Buy Rating; Expect Actions To Further Enhance Shareholder Value Over Next 6-9 Months

We are reiterating our Buy rating on Sunbeam shares with a 12-month price target of $55 based on our current 1999 EPS estimate of $2.50 and a P/E multiple of 22X, at the upper end of the stock's historical P/E multiple range and a modest premium to projected long-term earnings growth of 20%. Sunbeam's solid 3Q97 EPS of $0.39 was a penny ahead of consensus as well as our estimate of $0.38. More importantly, sales growth, at 24.7% (28.3% excluding divested and discontinued businesses and product lines), accelerated versus 2Q97 and 1Q97 sales growth, clearly demonstrating the success of the company's growth strategies. The company remains very well positioned to continue to accelerate sales growth in 4Q97 driven by innovative new products, increased penetration of existing customers, improved customer service levels, international expansion (SOC signed 20 new international distribution and license agreements during the past 12 months) and new domestic distribution (SOC has opened 14 outlet stores in U.S. and 4 outlet stores in Canada year-to-date). We are maintaining our 1997 and 1998 EPS estimates of $1.40 and $2.10, respectively, however, we believe our 4Q97 forecast could ultimately prove too conservative. In addition, beyond restructuring and currently announced growth strategies, by 1H98 we believe the company will move to further enhance shareholder value and seek to make a major acquisition significantly enhancing long term earnings power. We believe the stock will consolidate at current levels in the near term and believe the catalysts to drive the stock higher near term will be the delivery of strong fundamental sales and earnings growth and longer term a major acquisition.

3Q97 Slightly Ahead Of Expectations; Success of Growth Strategies Strongly Evident. Sunbeam reported that 3Q97 EPS rose to $0.39 from a loss of $0.19 in the prior year period (excluding a loss of $0.03 from discontinued operations), just ahead of our $0.38 estimate and Street consensus of $0.38. Demonstrating the success of Sunbeam's growth initiatives, sales rose a strong 24.7%

NOT A CERTIFIED COPY

016185

CP 017096
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH.1407292

16div-022471

Prudential Securities

versus the prior year (up 28.3% excluding divested product lines and discontinued businesses) and operating income was $54.9 million up from a loss of $20.7 million as operating margins rose to 19.0% reflecting the benefits of the company's restructuring efforts. Interest expense declined 66% due to lower debt levels and the effective tax rate fell to 35.4% from 37.1% as a result of the mix shift in production to Hattiesburg where the company enjoys a favorable tax rate and the use of foreign NOLs. Net income therefore rose to $53.4 million from a loss of $25.1 million. Key highlights of the quarter included:

- **Sales** - As clear evidence that Sunbeam's growth initiatives (new products, improved customer service levels, new distribution and international expansion) are beginning to bear fruit reported sales rose 24.7% (up 28.3%, excluding divested businesses and discontinued operations) ahead of 2Q97's sales growth of 13.3% (16.6% adjusted for divested businesses and discontinued operations) with domestic sales up 24% and international sales up 51%. All product categories reported higher sales. Importantly, appliance sales rose strongly as a result of new product introductions and strong sales of core product categories, also indicating share gains. Sales at Sunbeam's top ten largest retailers rose over 30% due to the success of new products and the company's focus on improving service levels ("ship on time, all the time"). Sunbeam plan's to continue to improve sales to these top ten largest customers.

- **Operating Margin** - Benefiting from the restructuring, gross margins rose to 30.7% from 12.4% in 3Q96 and SG&A as a percent of sales declined to 11.8% from 21.3%, operating margins therefore rose to 19.0% in 3Q97 vs. (8.9%) in 3Q96. In addition, operating margins rose sequentially to 19.0% in 3Q97 from 14.9% in 2Q97 and 13.7% in 1Q97.

- **Balance Sheet** - Total debt was $201 million at the end of the quarter, flat versus $202 million at the end of the year, and up from $176 million at the end of 2Q97. Total debt/capital declined to 28.7% from 33.8% at year end 1996. Cash use (from operations less capital expenditures) for the first nine months totaled $101 million versus cash use of $74 million as a result of increased working capital related to inventory build due to the significant number of new products scheduled for launch in 4Q97, as well as the preparation for the holiday season, the company's focus on improving service levels and in anticipation of strong sales in 4Q97 and 1998. Management remains confident that SOC will be net debt free by year end.

Maintaining 1997 and 1998 EPS Estimates of $1.40 and $2.10, respectively, However, Our 4Q97 EPS Could Prove Conservative. We are maintaining our 1997 and 1998 EPS estimates of $1.40 and $2.10, respectively, but believe that our 4Q97 estimates could ultimately prove too conservative as a result of the following: 1) better-than-expected sales growth - Our upper 20% sales growth projection could be exceeded depending on the success of new products and ability of Sunbeam to continue to increase penetration of existing customers. During the quarter, Sunbeam unveiled 10 new U.S. products, including a soft serve ice cream/frozen yogurt machine, Oster blenders with a thermal carafe and milk shake blade (which can be sold separately), high end stainless steel grill, and deep fryer. In the fourth quarter, Sunbeam will begin shipping Freshsource water filter and Allergysmart air cleaner. These two products should combine for $100 million in sales in 1998. Sunbeam also hopes to sell a bundled package (e.g., hair dryer, iron, shower massagers, coffee makers) into the hotel market. The fourth quarter is traditionally a strong quarter for Sunbeam, with October and November being the strongest months. Therefore, by mid-November, we should have a better sense of the strength of sales growth. In addition, about 70% of Sunbeam sales force has been replaced with new aggressive sales people who are effectively

NOT A CERTIFIED COPY

0196

CP 017097
CONFIDENTIAL

CPH 1407293

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022472

Prudential Securities

increasing penetration of existing retailers by offering the full line of Sunbeam and Oster branded products and the company's focus on improving service levels should further enable gains in shelf space. 2) better-than-expected operating margins - As a result of the restructuring we expect operating margins to continue to sharply increase versus 4Q96 (and sequentially versus 3Q97) reaching an estimated 20% in 4Q97. However, the company is in the midst of a process of refinement, identifying further areas for cost reduction or manufacturing optimization. Sunbeam has already improved the efficiency of its Waynesboro, MISS clipper facility and Hattiesburg, MISS appliance facility, reconfiguring some manufacturing lines, relocating low value added content to lower cost facilities, reducing headcount, and is in the process of optimizing manufacturing efficiency at it's Mexican plants. These actions could further enhance profitability and allow margins to rise beyond our estimated 20% in 4Q97.

Additional Steps to Shareholder Value Creation Likely Early 1998. Our 1998 and 1999 EPS estimates of $2.10 and $2.50, respectively, are based on the expected success of the company's restructuring and growth strategies (however, we have conservatively estimated that Sunbeam reaches $1.6 billion in sales in 1999, while the company's target is $2 billion) and do not include any benefit from potential share repurchase or acquisition. We continue to strongly believe that the company will move to make an acquisition sometime early 1998 further enhancing earnings power. Management has not been shy in stating that by early 1998 the company will be well positioned to consider making an acquisition. We believe that the company is now positioned to complete the third leg of its three prong strategy to create shareholder value. The restructuring is complete, sales growth strategies are beginning to pay dividends with sequential sales growth and margin growth and we now believe that the company will move to pursue an acquisition in 1H98. However, in the absence of an acquisition, with a net debt free balance sheet (projected by year end 1997) and estimated $600 million of free cash flow over the next three years, Sunbeam could also consider a meaningful share repurchase as a means to further enhance shareholder value.

Risks to our forecasts include a severe consumer downturn in the United States affecting the near-term fundamental outlook for Sunbeam.

Any OTC-traded securities or non-U.S. companies mentioned in this report may not be cleared for sale in all states. See BLUE on ERA.
©Prudential Securities Incorporated, 1997, all rights reserved. One Seaport Plaza, New York, NY 10292
Information contained herein is based on data obtained from recognized statistical services, issuer reports or communications, or other sources, believed to be reliable. However, such information has not been verified by us, and we do not make any representations as to its accuracy or completeness. Any statements nonfactual in nature constitute only current opinions, which are subject to change. Prudential Securities Incorporated (or one of its affiliates) or their officers, directors, analysts, or employees may have positions in securities or commodities referred to herein, and may, as principal or agent, buy and sell such securities or commodities. An employee, analyst, officer, or a director of Prudential Securities Incorporated, or its affiliates, may serve as a director for companies mentioned in this report. Neither the information nor any opinion expressed shall constitute an offer to sell or a solicitation of an offer to buy any securities or commodities mentioned herein. There may be instances when fundamental, technical, and quantitative opinions may not be in concert. This firm (or one of its affiliates) may from time to time perform investment banking or other services for, or solicit investment banking or other business from, any company mentioned in this report.
There are risks inherent in international investments, which may make such investments unsuitable for certain clients. These include, for example, economic, political, currency exchange rate fluctuations, and limited availability of information on international securities. Prudential Securities Incorporated and its affiliates make no representation that the companies which issue securities which are the subject of their research reports are in compliance with certain informational reporting requirements imposed by the Securities Exchange Act of 1934. Sales of securities covered by this report may be made only in those jurisdictions where the security is qualified for sale. The contents of this publication have been approved for distribution by Prudential-Bache Securities (U.K) Inc., which is regulated by The Securities and Futures Authority Limited. We recommend that you obtain the advice of your Financial Advisor regarding this or other investments.
Additional information on the securities discussed herein is available upon request.

CP 017098
CONFIDENTIAL

016187

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407294

NEA CERTIFIED COPY

Prudential Securities

Table 1. Sunbeam Company—Financial Statements

(Dollars in millions)

Income Statement	------1996------		------1997E------		------1998E------		------1999E------	
Segment Breakdown:	Sales	Est. Op. Profits	Sales	Est. Op. Profits	Sales	Est. Op. Profits	Sales	Est. Op. Profits
Kitchen Appliances	$325.0	$18.0	$386.0	$71.0	$460.0	$87.0	$530.0	$102.0
Outdoor Cooking	$250.0	$8.0	$300.0	$48.0	$355.0	$78.0	$410.0	$92.0
Personal Care & Comfort	$200.0	$11.0	$245.0	$47.0	$300.0	$59.0	$345.0	$69.0
Health Care	$129.0	$9.0	$150.0	$27.0	$180.0	$35.0	$210.0	$41.5
Professional Pdt's	$80.0	$7.0	$95.0	$22.0	$110.0	$27.0	$125.0	$31.0
Corp/other		($48.8)		($15.0)		($12.0)		($12.0)
Total	**$984.0**	**$2.2**	**$1,176.0**	**$200.0**	**$1,405.0**	**$274.0**	**$1,620.0**	**$323.5**
Pretax Income		($12.7)		$182.3		$258.0		$347.0
Taxes		($5.0)		$68.5		$102.5		$0.5
Net Income		**($7.7)**		**$123.8**		**$185.5**		**$223.5**
Shares Outstanding		85.0		88.0		88.5		90.0
Diluted EPS		($0.09)		$1.41		$2.10		$2.48
Cash Flow								
Sources:								
Net Income		($7.7)		$123.8		$185.5		$223.5
Depr. & Amort.		46.5		51.0		50.0		50.0
Deferred income taxes		(77.1)		20.0		15.0		10.0
Change in W.C.		(43.0)		35.0		(85.0)		(80.0)
All Other		83.3		(25.0)		0.0		0.0
From Operations		**$2.0**		**$204.8**		**$185.5**		**$203.5**
Net Debt Financing		39.7		(85.0)		(25.0)		5.0
Net Equity		9.3		15.0		20.0		25.0
Total Sources		**$51.0**		**$134.8**		**$180.5**		**$233.5**
Uses:								
Capital Spend-Net		$75.3		$50.0		$53.0		$55.0
Dividends		3.2		3.2		3.2		3.2
Acquisitions-Net		(1.0)		(140.0)		0.0		0.0
Other		2.5		0.0		0.0		0.0
Total Uses		**$80.0**		**($86.8)**		**$56.2**		**$58.2**
Change in Cash		**($29.0)**		**$221.8**		**$124.3**		**$175.3**
Capitalization								
Short-Term Debt		$0.9		$5.7		$0.7		$5.7
Long-Term Debt		201.1		114.0		94.0		94.0
Shareholders' Equity		395.3		330.0		350.0		385.0
Total Capitalization		**$597.3**		**$449.7**		**$444.7**		**$484.7**
Cash & Equivalents		$11.5		$233.1		$357.4		$532.7
T. Debt/T. Capital		33.8%		26.6%		21.3%		20.8%
Return on Equity		-1.5%		34.1%		54.6%		60.8%

Significant cash flow generation and underleveraged balance sheet, Sunbeam gives tremendous financial flexibility

Sunbeam Cash Flow Projections				
Free Cash Flow (cash from opers - cap.ex.)	($73.3)	$154.8	$132.5	$148.5
p/share	($0.86)	$1.76	$1.50	$1.65
Dividends	3.2	3.2	3.2	3.2
EBITDA	$48.7	$251.0	$324.0	$373.5
(EBITDA-cap ex)/int. exp.	-2.0	21.2	45.2	57.9
Free Cash Flow Less Acquisitions	($72.3)	$294.8	$132.5	$148.5

Source: Company Reports and Prudential Securities estimates; 1998 excludes $300 million pretax ($2.35 per share after tax) restructuring charge.

NOT A CERTIFIED COPY

CP 017099
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407295

016188

16div-022474

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEC-12-1997 13:29 THOMSON FINANCIAL 1 617 428 5152 P.07

Table 3. Sunbeam Corporation Model - Sales and Earnings Projections 1996-1999E

($ millions)

SALES:	1996	1997E	vs-vy % Chg	1998E	y/-vy % Chg	1999E	vs-vy % Chg	(R) y2-vv C.G.R.
Kitchen Appliances	$325.0	$388.0	19.8%	$460.0	19.2%	$530.0	15.2%	17.7%
Outdoor Cooking	250.0	300.0	20.0%	355.0	18.3%	410.0	15.5%	17.9%
Personal Care & Comfort	200.0	245.0	22.5%	300.0	22.4%	345.0	15.0%	19.8%
Health Care	129.0	150.0	16.3%	180.0	20.0%	210.0	16.7%	17.6%
Professional Pdt's	80.0	95.0	18.8%	110.0	15.8%	125.0	13.6%	16.0%
TOTAL	$984.0	$1,178.0	19.5%	$1,405.0	19.5%	$1,620.0	15.3%	18.1%
Operating Profits:								
Kitchen Appliances	$16.00	$71.00	343.8%	$87.00	22.5%	$102.00	17.2%	85.4%
Outdoor Cooking	8.0	48.0	500.0%	78.0	62.5%	92.0	17.9%	125.7%
Personal Care & Comfort	11.0	47.0	327.3%	59.0	25.5%	69.0	16.9%	84.4%
Health Care	9.0	27.0	200.0%	35.0	29.6%	41.5	18.6%	66.4%
Professional Pdt's	7.0	22.0	214.3%	27.0	22.7%	31.0	14.8%	64.2%
(Corp Exp.)	(48.8)	(15.0)	-69.8%	(12.0)	-20.0%	(12.0)	0.0%	-37.4%
Operating Profits:	$2.2	$200.0	8990.9%	$274.0	37.0%	$323.5	18.1%	1278%
Operating Margin (%)	0.2%	17.0%		19.5%		20.0%		
Other Income/(Expense)	($1.3)	$1.8	-238.5%	$20.0	NM	$29.0	45.0%	-381.5%
Interest Expense	($13.6)	($9.6)	-30.1%	($6.0)	-36.8%	($5.5)	-8.3%	-28.0%
Pretax Income	($12.7)	$192.2	NM	$288.0	49.8%	$347.0	20.5%	-401.2%
Pretax Margin (%)	-1.3%	16.4%		20.5%		21.4%		
Income Tax	($5)	$69	NM	$103	49.6%	$124	20.5%	-261.2%
Income Tax Rate (%)	39.4%	35.6%		35.6%		35.6%		
Earnings from Cont. Ops.	($7.7)	$123.8	NM	$185.5	49.8%	$223.5	20.5%	-407.3%
Earnings from Disc. Ops.	$9.2	NA		NA		NA		
EPS from Cont. Ops.	($0.09)	$1.41	NM	$2.10	49.0%	$2.48	18.5%	-401.5%
EPS from Disc. Ops.	$0.11	NA		NA		NA		
Shares Outstanding. (mil.)	85.0	88.0	3.6%	88.5	0.6%	90.0	1.7%	1.9%

Note: 1996 proforma for divestiture of assets and rationalization of SKU's; EPS excludes $300 million pretax ($200 million after tax or $2.53 per share) restructuring charge.

Source: Company reports and Prudential Securities estimates.

If SOC is successful in meeting targets of $2 billion in sales and 20% operating margin in 1999 - and assuming no share repurchase EPS would be close to $2.95. Assuming 11 million share repurchase - EPS would be $3.25+.

MARGINS:	1996	1997E	1998E	1999E
Kitchen Appliances	4.9%	18.4%	18.9%	19.2%
Outdoor Cooking	3.2%	16.0%	22.0%	22.4%
Personal Care & Comfort	5.5%	19.2%	19.7%	20.0%
Health Care	7.0%	18.0%	19.4%	19.8%
Professional Pdt's	8.8%	23.2%	24.5%	24.8%
Operating Margin	0.2%	17.0%	19.5%	20.0%
Pretax Margin	NM	16.4%	20.5%	21.4%
Effective Tax Rate	NM	35.6%	35.6%	35.6%
Net Margin	NM	10.5%	13.2%	13.8%

NOT A CERTIFIED COPY

CP 017100
CONFIDENTIAL

681910

CPH 1407296

16div-022475

Oppenheimer & Co., Inc.
Members of all principal U.S. Exchanges ©1997

October 22, 1997

Sunbeam Corporation

Household Durables

Scott Graham (212) 667-7258

3Q97 EPS Better than Expected; Raising Estimates; Target Now $58–$60

Investment Conclusion

Sunbeam Corp. reported 3Q97 EPS of $0.39 vs. a ($0.19) loss a year ago; this was $0.02 better than we expected. The company's 25% sales increase and margin growth were both slightly better than we had forecast. Continuing operations sales increased 28% vs. last year's third quarter and included three key components:

- A year-over-year domestic sales increase of 24%;
- An over-30% increase in sales to its top 10 domestic customers;
- An international sales increase of 51%.

These increases are all better than last quarter's respective increases and reflect that sales growth is accelerating. More to the point, new product sell-in is strong and we now believe the company has begun to gain market share. The international sales increase indicates that execution under its 20 distribution/licensing agreements is going well and that the Sunbeam and Oster brands have equity in markets outside the U.S. That the company's operating margin ran above its 20% goal in September is another positive, which also drove explosive margin growth.

We are raising our 1997 EPS estimate $0.05 to $1.45, our 1998 estimate by $0.07 to $2.22, and are establishing a 1999 estimate of $2.70. We are also raising our one-year target price by $6–$8 to $58–$60 per share and reiterating our BUY rating. This new target does not include additional shareholder enrichment that we expect to come from Phase III of this story—a merger, acquisition, or sale of the company.

Rating: BUY

SOC-NYSE (10/22/97):	$47 5/16
52-week Range:	$50-24
Shares Outstanding:	88 Million
Float:	84 Million Shares
Market Capitalization:	$4.2 Billion
Dividend/Yield:	$0.04/0.1%
Fiscal Year Ends:	December
Book Value:	$5.65 per Share
1997E ROE:	26.0%
LT Debt:	$200 Million
Preferred:	Nil
Common Equity:	$499 Million

Earnings per Share	Prior	Current
1996	—	($0.10)
1997E	$1.40	$1.45
1998E	$2.15	$2.22
1999E	—	$2.70
P/E Ratio		
1996	—	NM
1997E	33.8X	32.6X
1998E	22.0X	21.3X
1999E	—	17.5X

*All EPS are operating (excl. one-time charges) and pro forma (excl. divestitures).

Company Description:
Sunbeam manufactures small electric appliances for the kitchen, and for health and personal care purposes. It also produces barbecue grills and accessories.

NOT A CERTIFIED COPY

CP 017101
CONFIDENTIAL

97-7288

016190

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407297

16div-022476

Quarter Better Than Expected

The following analyzes the company's reported results vs. our projections:

- Sales increased 25% year-over-year. This was better than our 23% growth expectation. Sales were up in all categories and regions, and new product sell-in was strong.
- The 30.7% gross margin was 80 bps better than we expected. The strong U.S. sales growth drove more manufacturing efficiencies than we had expected. The gross margin was, as expected, well above the year-ago's 12.4% rate due to manufacturing efficiencies from better volumes, mix, and—of course—the massive restructuring of this company.
- The SG&A rate of 11.7% was 20 bps higher than we expected, but this is an immaterial variance.
- The company's $55 million operating income result was $3 million higher than we expected. This drove the $0.02 positive EPS variance from our forecast. Non-operating items, interest, taxes, and shares washed vs. our estimates.

Underlying Numbers Point to an Acceleration in Story

We believe several underlying numbers were noteworthy.

Domestic sales increased 24% and sales to top 10 customers increased over 30%. These increases were better than last quarter's 14% and 20+%, respectively. Since its top-10 customers dominate the small appliance category, we firmly believe the company has begun to gain share. We attribute this share gain to its new product flow, higher advertising, and its customer service improvements. This category has long been starved for each of these components.

International sales increased 51%. This growth eclipsed last quarter's 26 % growth and is reflective of Sunbeam's—and its distributors'—strong execution under newly signed agreements. It also indicates the equity the Sunbeam and Oster brands have in the new markets the company is targeting.

Balance Sheet Being Managed

Receivables increased 23% from the second-quarter despite a nominal sequential sales increase. However, one-half of the quarter's sales were made in September. Moreover, when we consider the sales increase to its top ten customers as well (they are extremely creditworthy), this does not concern us today. And the following evidence further mitigates any receivables concerns that we may have had: 77% of total balance is on 60 days or less terms; 75% of September's receivables are 30 days or less; 67% of the total balance is 30 days or less.

Inventories increased 40% vs. 2Q97 but we expected a big increase. Our 4Q97 sales expectations of over $350 million and the company's need to build inventory this year to better support its customers both offer good reasons for the increase.

Odds & Ends

NOT ACCEPTED COPY

This document is for informational purposes only. No part of this report may be reproduced in any manner without the written permission of Oppenheimer & Co., Inc. The information and any statistical data contained herein have been obtained from sources which we believe to be reliable, but we do not represent that it is accurate or complete, and it should not be relied upon as such. All opinions expressed and data provided herein are subject to change without notice. Oppenheimer & Co., Inc., its affiliated companies, or their respective shareholders, directors, officers and/or employees, may have a long or short position or deal as principal in the securities discussed herein, related securities or in options, futures or other derivative instruments based thereon. Oppenheimer & Co., Inc., or one of its affiliated companies, may have acted as initial purchaser or placement agent for a private placement of any of the securities of any issuer mentioned in this document, or may from time to time perform investment banking or other services for, or solicit investment banking or other business from, any company mentioned in this document. The securities mentioned in this document may not be eligible for sale in some states or countries, nor suitable for all types of investors; their value and the income they produce may fluctuate and/or be adversely affected by exchange rates.
Copyright © 1997 Oppenheimer & Co., Inc. All Rights Reserved. Member SIPC.
For U.K. (exclusions clause): This document (and any attachments or exhibits hereto) may not be issued or passed on to any person in the United Kingdom except (a) a person who is of a kind described in Article 9(3) of The Financial Advertisements (Exemptions) order 1996 as amended, or (b) in any other circumstances falling within Section 58 of the U.K. Financial Services Act 1986 or any Orders made thereunder. This report has been issued in the U.K. through Oppenheimer International Ltd., which is regulated by The Securities & Futures Authority.

Pricing was +3%. The company's primary price realization was *in its* electric blankets business in which it has a dominant share position. Some of its clippers, distinctive appliances, some grills and international products also had positive price realizations.

The Neosho facility (grills) began to operate again on October 1. The company expects its $8m–$10m investment to revamp the facility to double its operating margin. The Outdoor Cooking business was 26% of 1996's sales.

The AMA agreement is being litigated. We continue to expect that a settlement will occur in Sunbeam's favor but that the AMA will weasel out of this. Our estimates do not include any AMA-related volumes.

Raw Materials costs are largely benign, though Sunbeam is keeping an eye on aluminum prices.

Valuation:
New Target:
$58–$60

We have raised our EPS estimates by $0.05 in 1997 to $1.45 and $0.07 in 1998 to $2.22.

In establishing a 1999 estimate of $2.70, we have raised our one-year target price to $58–$60. To get to this valuation, we apply a 20X P/E, which conservatively values this high-octane story at the 1998 market multiple, to our 1999 estimate, and add the $5 per share in EOY 1999 cash we are estimating.

NOT A CERTIFIED COPY

CP 017103
CONFIDENTIAL

0161910

CPH 1407299

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022478

Our quarterly EPS estimates are shown below.

		1 Qtr.	2 Qtr.	3 Qtr.	4 Qtr.	Year
1996	Actual	$0.21	$0.09	($0.22)	($0.03)	($0.10)
1997E	Prior	$0.24A	$0.30A	$0.37E	$0.49E	$1.40E
1997E	Current	$0.24A	$0.30A	$0.39A	$0.52E	$1.45E
1998E	Prior	—	—	—	—	$2.15E
1998E	Current	—	—	—	—	$2.22E
1999E	Current	—	—	—	—	$2.70E

NOT A CERTIFIED COPY

016193

CP 017104
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407300

16div-022479

($Millions)
10/23/97

	1991	1992	1993	1994A	1995	1996	1997E	1998E	1999E
% Change		9.2	10.2	—	(2.6)	(3.2)	20.9	52.8	24.8
Cost of Sales	665.2	713.6	777.9	764.6	899.1	898.3	646.9	1,083.1	1,360.7
% Change		7.3	8.9	—	6.9	(0.1)	6.7	20.0	24.8
% of Sales	76.1	73.8	72.9	73.2	79.6	82.1	71.1	68.7	68.7
% Change		10.0	13.8	—	(25.8)	(16.3)	35.8	43.6	24.8
Gross Margin %	24.9	26.2	27.1	26.8	20.4	17.9	28.9	31.3	31.3
Selling, General and Admin.	124.4	134.0	133.9	129.8	137.6	173.6	126.9	179.6	219.1
% Change		4.6	3.0	—	6.7	26.2	(26.9)	27.2	23.6
% of Sales	14.0	13.4	12.6	12.3	13.6	17.6	11.7	11.3	11.1
Operating Income									
% Change	—	28.6	25.2	—	(88.6)	(98.6)	5,469.3	64.6	23.2
Operating Margin %	10.8	12.6	14.8	14.6	0.9	0.2	17.3	20.1	20.2
Interest Expense, Net	(15.6)	(9.3)	(8.5)	(7.0)	(9.4)	(13.7)	(9.9)	(8.0)	(8.0)
Other, Net	(2.0)	(2.7)	4.8	0.7	0.2	(1.3)	2.7	3.6	4.6
Pretax Income									
% Change		42.0	37.0	—	(87.8)	(120.7)	(1,670.8)	58.8	24.8
Pretax Margin %	8.9	11.5	14.3	13.9	0.0	(1.3)	16.7	19.9	20.1
Income Taxes	31.8	46.8	53.9	58.5	23.0	(6.1)	71.0	114.8	146.9
Tax Rate %	39.6	41.1	41.6	41.1	37.8	32.8	33.8	36.8	37.0
% Change		36.8	35.4	—	(55.6)	(182.4)	(1,546.0)	56.9	24.8
Net Margin %	5.4	6.9	8.3	8.2	3.7	(0.9)	10.7	12.7	12.7
Preferred Stock Dividends	(5.3)	(0.6)							
Discontinued Operations				21.7	12.9	(31.8)	(13.7)		
Nonop Chgs (Accty Rests)		(17.2)				(188.0)			
Average Shares Outstanding	76.8	84.9	88.2	88.6	92.8	93.0	87.9	88.8	92.1
% Change		10.8	4.0	(0.4)	0.3	0.2	5.8	2.3	2.6
% Change		29.7	31.5		(56.7)	(122.4)	—	53.4	21.7
Discontinued Operations				$0.28	$0.18	($0.38)	($0.16)		
Nonop Chgs (Accty Rests)		($0.20)				($2.27)			

*: Excludes 4Q96 pretax restructuring charge of $300 million, 1994 and forward restated for sale of furniture business.

Source: Company data; Oppenheimer & Co., Inc. estimates.

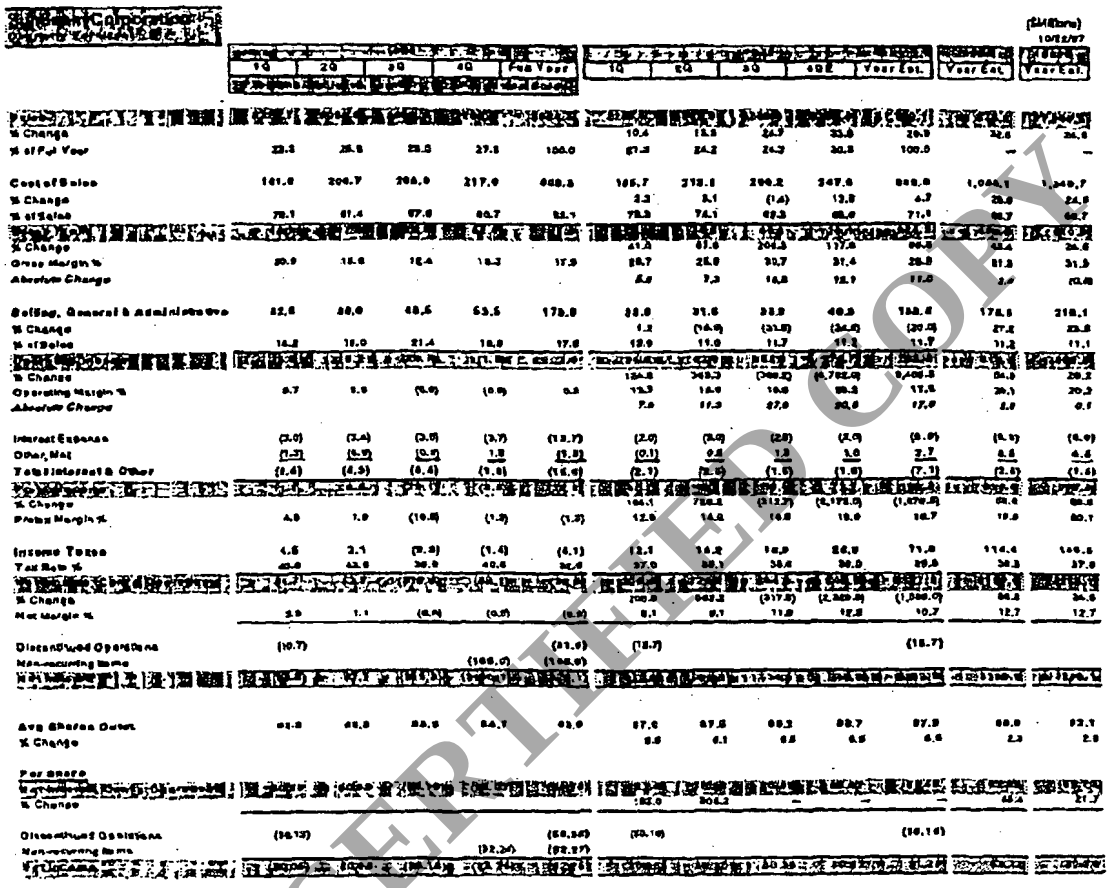
NOT A CERTIFIED COPY

0161914

CP 017105
CONFIDENTIAL

CPH 1407301

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER



Sunbeam Corporation

($Millions)

	1Q	2Q	3Q	4Q	Full Year	1Q	2Q	3Q	4Q	Year Est.	Year Est.	Year Est.
												10/12/97
% Change						10.4	13.8	24.9	33.8	20.9	32.6	26.6
% of Full Year	23.3	25.5	23.5	27.5	100.0	21.3	24.2	24.2	30.3	100.0	–	–
Cost of Sales	161.0	204.7	208.0	217.0	688.5	185.7	212.1	200.2	247.6	845.6	1,066.1	1,340.7
% Change						2.3	3.1	(1.4)	13.8	4.7	25.0	24.8
% of Sales	70.1	61.4	67.0	69.7	66.1	70.3	74.1	68.3	68.0	71.1	66.7	66.7
Gross Profit						61.2	61.0	104.5	117.0	343.8	534.4	670.8
% Change						29.7	25.8	33.7	31.4	29.9	51.3	31.3
Gross Margin %	29.9	15.6	16.4	16.3	17.9	5.0	7.3	16.8	12.7	11.0	2.0	(0.8)
Absolute Change												
Selling, General & Administrative	52.6	50.0	48.5	53.5	175.0	38.0	31.6	38.9	40.5	150.0	175.5	210.1
% Change						1.2	(14.9)	(31.8)	(34.0)	(20.8)	27.2	23.8
% of Sales	16.2	15.0	21.4	16.9	17.0	12.9	11.0	11.7	11.3	11.7	11.2	11.1
Operating Profit						134.5	349.3	(298.3)	(5,782.0)	2,496.5	84.0	29.2
% Change						13.3	13.0	14.0	19.3	17.5	20.1	20.3
Operating Margin %	6.7	5.9	(5.9)	(0.9)	0.3	7.0	17.3	27.0	20.6	17.0	2.0	0.1
Absolute Change												
Interest Expense	(3.0)	(3.4)	(3.5)	(3.7)	(13.7)	(2.0)	(3.0)	(2.5)	(2.5)	(9.9)	(9.1)	(6.9)
Other, Net	(1.3)	(1.5)	(0.9)	1.8	(1.9)	(0.1)	0.5	1.3	1.0	2.7	0.5	0.5
Total Interest & Other	(2.4)	(4.9)	(4.4)	(1.9)	(15.6)	(2.1)	(2.5)	(1.1)	(1.5)	(7.1)	(2.5)	(1.4)
Pretax Profit						132.1	766.3	(313.7)	(5,775.5)	(1,079.8)	81.5	88.8
% Change						12.5	14.0	16.8	19.9	16.7	19.9	20.7
Pretax Margin %	4.8	1.9	(10.8)	(1.9)	(1.7)							
Income Taxes	1.5	2.1	(2.3)	(1.4)	(0.1)	12.1	14.2	14.9	56.9	71.9	114.4	146.5
Tax Rate %	40.0	43.8	30.0	40.0	36.4	37.0	38.1	38.4	38.0	38.8	38.3	37.0
Net Income						200.0	648.2	(317.8)	(2,329.8)	(1,386.0)	66.8	84.6
% Change						8.1	9.1	11.8	12.8	10.7	12.7	12.7
Net Margin %	2.5	1.1	(6.8)	(0.8)	(0.8)							
Discontinued Operations	(10.7)				(21.0)	(13.7)				(13.7)		
Non-recurring Items				(166.0)	(166.0)							
Net Income												
Avg Shares Outst.	91.0	88.0	88.0	84.7	89.9	87.0	87.5	88.3	88.7	87.9	88.0	93.1
% Change						0.0	0.1	0.5	0.5	0.0	2.3	2.0
Per share												
Net Income						2.30	7.41	(3.60)	(26.27)	(15.78)	0.76	0.91
% Change						8.0	9.0	–	–	–	48.4	21.7
Discontinued Operations	(0.12)				(0.24)	(0.16)				(0.16)		
Non-recurring Items				(2.24)	(2.27)							
Net Income												

* Sales of Time & Temp business, which will be sold, and eliminated SKUs are included in these sales.

Source: Company data; Oppenheimer & Co., Inc. estimates.

NOT A CERTIFIED COPY

CP 017106
CONFIDENTIAL

016195

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407302

16div-022481

[redacted]

($ Millions)
10/23/97

	1991	1992	1993	1994	1995	1996	1997E	1998E	1999E
[redacted]									
Depreciation & Amortization	24.6	26.2	32.3	35.8	44.2	47.4	55.0	66.0	70.0
Deferred Taxes	19.6	23.6	28.7	20.3	25.1	(77.8)	50.0		
Other (incl non-cash restructuring)	2.1	5.3	(14.7)	12.6	17.0	108.4	6.0	6.0	6.0
Gross Cash Flow, Operations	93.1	122.5	138.0	166.8	126.3	66.6	247.2	309.6	316.1
Changes in Working Capital	29.9	(56.4)	(100.0)	(79.1)	(42.8)	(56.6)	(20.0)	(25.0)	(25.0)
Cash From Operations	123.1	66.1	38.0	60.9	81.6	10.0	227.2	284.6	291.1
Capital Expenditures	18.7	18.8	28.7	30.8	140.1	76.3	60.0	70.0	80.0
Dividends	5.6	1.7	3.2	3.2	3.3	3.3	3.6	3.6	3.4
[redacted]									
Investing Activities									
Sales of Businesses	32.8	8.8	2.0	0.2			66.0		
(Purchases) of Product Lines		(7.4)	(20.3)	(19.7)	(19.1)				
Cash Surrender Value Life Policies		0.2		23.6					
Restricted for Future Capital Expnds				(46.4)	46.7				
Marketable Securities Transactions		(27.5)	12.2	14.7		(0.9)			
	32.8	(26.4)	(6.1)	(27.3)	32.9	(0.9)	66.0		
Financing Activities									
Change in Debt, Net	(39.1)	25.4	(0.2)	(14.4)	34.6	39.7	(127.0)		
Change in Common, Net	(69.9)	138.2	(166.3)	19.2	(3.8)	9.3	20.0		
Change in Other Cap. Securities, Net		(19.6)							
Other, Net	(2.8)	(2.8)	2.3	2.8	(0.1)	(0.4)	(70.0)		
	(102.0)	141.0	(164.2)	7.6	31.2	48.6	(177.0)		
[redacted]									
Cash, BOY	43.4	74.1	230.5	69.6	26.3	29.8	11.4	83.1	284.1
[redacted]									
EBITDA	$120.6	$161.6	$159.6	$166.8	$114.4	$48.8	$270.3	$381.6	$468.6
[redacted]									
Shares Outstanding	70.8	84.8	66.2	62.6	62.6	63.0	67.9	68.9	67.1
Cash, BOY	$1.06	$2.72	$0.57	$0.32	$0.84	$0.14	$0.89	$2.63	$5.10
Free Cash Flow	$1.41	$0.42	($0.01)	($0.16)	($0.75)	($0.78)	$1.88	$1.90	$2.34
EBITDA	$1.70	$1.79	$2.12	$2.26	$1.38	$0.60	$3.06	$4.28	$5.07
Changes in Working Capital									
Receivables	$26.3	($6.3)	($43.7)	($48.5)	($4.8)	($13.4)			
Inventories	(12.1)	(23.6)	(34.1)	(26.4)	(4.9)	(11.7)			
Prepaids and Other Assets	1.9	(1.4)	(10.0)	0.8	(2.6)	4.3			
Accounts Payable	7.7	(44.1)	25.2	6.8	9.2	16.7			
Other Current Liabilities	3.1	9.3	(37.4)	10.5	(40.2)	(40.0)			
	$29.9	($66.4)	($100.0)	($79.1)	($42.8)	($56.6)	($20.0)	($25.0)	($25.0)

Source: Company data;
Oppenheimer & Co., Inc. estimates.

NOT A CERTIFIED COPY

016196

CP 017107
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407303

16div-022482

[redacted] ($Millions)
10/23/97

	1991	1992	1993	1994	1995e	1996	9/30/97
Assets							
Cash	$74.1	$230.6	$68.5	$26.3	28.3	11.6	22.6
Marketable Securities		27.6	16.1				
Receivables, Net	122.0	127.5	170.7	214.2	216.2	218.4	309.1
Inventories	162.8	192.2	226.7	271.4	206.1	162.3	290.9
Net Assets of Discont Operations					101.6	102.8	2.9
Deferred Income Taxes	50.6	55.1	59.6	45.7	28.3	93.7	56.6
Prepaids & Other Current Assets	4.3	6.6	19.0	8.2	19.8	40.4	10.0
Total Current Assets	413.9	639.6	547.6	566.9	601.1	624.2	691.6
PP&E, Net	148.5	136.2	163.2	233.7	267.1	220.1	229.2
Intangibles, Net	226.6	220.2	226.1	220.0	214.0	209.8	185.9
Other	60.8	76.8	68.1	95.3	58.5	28.2	27.6
Total Assets	[redacted]						
Liabilities & Shareholders' Equity							
Liabilities							
Accounts Payable	$86.6	$56.0	$81.1	$86.8	94.2	107.3	132.7
Short-term Debt	1.5	0.6	2.7	5.5	1.2	0.9	0.7
Current Portion, LTD		0.2	38.6	1.0			
Other Current Liabilities	131.8	160.6	119.3	121.4	96.9	163.5	112.6
Total Current Liabilities	220.0	217.4	242.0	214.7	169.4	271.6	246.0
Long-term Debt	101.6	133.3	93.6	123.1	161.1	201.1	199.9
Other Long-term Liabilities	169.7	179.5	171.9	151.1	130.3	162.8	148.5
Deferred Income Taxes	23.3	57.9	60.4	58.4	76.9	53.3	55.9
Total Liabilities	514.4	588.1	568.0	548.2	537.6	677.4	647.3
Shareholders' Equity							
Preferred Stock	23.7						
Common Stock	0.6	0.9	0.9	0.9	0.9	0.9	
Additional Paid-in Capital	261.7	426.9	440.0	461.9	441.8	442.8	
Warrants	8.2	3.6	2.4				
Retained Earnings	50.2	99.8	182.1	286.0	286.7	35.1	
Other	0.4	(1.3)	(14.0)	(20.1)	(24.8)	(26.3)	
	344.8	524.0	611.4	728.7	684.8	456.7	
Treasury Stock			(174.1)	(174.1)	(63.4)	(63.4)	
Shareholders' Equity	344.8	524.0	437.8	554.6	601.0	395.3	497.8
Total Liabilities & Shareholders' Equity	[redacted]						
Debt	$103.1	$134.1	$136.1	$129.5	$162.3	$202.0	$200.6
Equity	344.8	524.0	437.8	554.6	601.0	395.3	497.8
Capital	448.0	658.1	573.4	684.1	763.3	597.3	698.4
Debt:Capital	23.0%	20.4%	23.7%	18.9%	21.3%	33.8%	28.7%

Source: Company data.

NOT A CERTIFIED COPY

016197

CP 017108
CONFIDENTIAL

CPH 1407304

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022483

[redacted]

Segment	Products Manufactured / Brand Names	Primary Channel of Distribution	[redacted] Sales	% Total
[redacted]	Stand mixers, multi-purpose appliances, food processors, toasters, breadmakers, wafflemakers, juicers, can openers, culinary appliances *Sunbeam, Oster*	Mass merchandisers, Specialty hard lines, Home Centers	$375	38%
[redacted]	Propane, natural gas, charcoal grills. Burners, elements. *Sunbeam, Charmglow, Arkla matic, Embermatic*	Home Centers, Mass merchandisers,	$258	26%
[redacted]	Heating pads, massagers, vaporizers, blood pressure devices, thermometers, dental care products *Sunbeam*	Mass Merchandisers, Specialty hard lines, Home Centers, Drugstores, Supermarkets	$103	10%
[redacted]	Electric blankets, etc. *Sunbeam*	Hotels, institutions	$192	20%
[redacted]	Appliances for commercial use *Sunbeam*		$56	6%
[redacted]	Appliances ($125), Pers. care ($10), Health Care ($25), Personal care ($15), Grills ($10)		$185 —included in above—	19%
[redacted]				100%

Source: Company data.

NOT A CERTIFIED COPY

016198

CP 017109
CONFIDENTIAL

CPH 1407305

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022484

Rating Change
Household Products

PaineWebber

Sunbeam

Beaming in on Phase III; upgrade to buy

Buy

- We upgraded Sunbeam to buy (1) from attractive (2) on October 28, as the stock dipped temporarily into the high $30s. We believe the recent sluggishness in Sunbeam's stock price is due to profit-taking (which we believe is premature) in the wake of the market sell-off, not deteriorating fundamentals at Sunbeam.
- One day prior to the start of the stock market's wild ride, Sunbeam reported a blowout third quarter: sales up 25%, operating margin of 19%, EPS of $0.39 versus $0.19 loss per share in year-ago period.
- Despite the strong quarter, Sunbeam's stock is down nearly 7% since the day of the announcement, as it now appears investors are taking good quarters for granted. Shareholders want to know what's next.
- Sunbeam gave a clue regarding what's next by announcing on the day after its earnings release the hiring of Morgan Stanley to explore strategic alternatives.
- With an advisor now officially hired, Sunbeam, as well as every other consumer durable goods company, may now be "in play." Patient Sunbeam investors may get two chainsaw turnarounds for the price of one.

Price target

We have raised our 12-month price target for the shares of Sunbeam to $56 from $52, representing the same 20-21x multiple on our new 1999 EPS estimate of $2.60-2.65 (up from $2.50). Our new 12-month price target represents 20-25% upside from current trading levels. However, with Sunbeam's October 23 announcement that an investment banker has been hired to explore "Phase III" (merge or acquire), we believe that both our 1999 estimate and price target may be understated if "Dunlap & Co." find a partner willing to enter an accretive combination, which we believe is sure to result in another round of slashing as well as another round of upward revisions to earnings estimates.

10/28 price $45 11/16 NYSE — SOC 52-week range $50 7/16-24

FY	1996A	1997E	1998E
Q1	$0.08	$0.24A	—
Q2	0.03	0.30A	—
Q3	(0.19)	0.39A	—
Q4	(0.02)	0.48	—
Year	$(0.10)	$1.41	$2.00-2.05
P/E	—	32.4	22.3-22.8
Div	—	—	—
Yield	—	—	—
Secular Growth Rate (1997-2001)			26-28%

NOT A CERTIFIED COPY

CP 017110
CONFIDENTIAL

0116199

October 29, 1997
SOC1029 A3

Andrew Shore (212) 713-2452
Hari Chandra, Associate Analyst
R. T. Quinn, Associate Analyst

CPH 1407306

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

2

PaineWebber

Chart1

Third quarter snapshot

Dollars in millions except per share data

Income Statement

	Year-to-Year Comparison			Sequential Comparison		
	3Q97	3Q96	Pct. Change	3Q97	2Q97	Pct. Change
Net Sales	289.0	231.8	24.7%	289.0	287.6	0.5%
Cost of Goods Sold	200.2	203.0	(1.4%)	200.2	213.1	(6.1%)
Gross Profit	88.8	28.8	208.3%	88.8	74.5	19.2%
SG&A Expenses	33.9	49.5	(31.5%)	33.9	31.6	7.3%
Operating Expenses	33.9	49.5	(31.5%)	33.9	31.6	7.3%
Operating Income	54.9	(20.7)	NM	54.9	42.9	28.0%
Interest expense and other, net	1.5	4.4	(65.9%)	1.5	2.5	(40.0%)
Total Other	1.5	4.4	(65.9%)	1.5	2.5	(40.0%)
Pretax Income	53.4	(25.1)		53.4	40.4	
Taxes	18.9	(9.3)		18.9	14.2	
Net Income Cont. Opers	34.5	(15.8)	NM	34.5	28.2	21.7%
Earning (loss) from discont. oper, net	0.0	(2.5)		0.0	0.0	
Net Income	$34.5	($18.1)		$34.5	$26.2	
EPS Cont. Opers-prim. (PW est. was $0.38)	$0.39	($0.18)	NM	$0.39	$0.30	30.0%
Avg. Com. Shs-primary	88.2	83.6	5.5%	88.2	87.5	0.8%

Normalized Stock Appl	9197	9297	9397E
Appliance	20%	24%	33%
Outdoor Cooking	3%	11%	26%
Health and Home Care	15%	1%	15%
Personal Care	100%	29%	30%
Away from Home	40%	22%	2%
Total U.S.	13%	14%	24%
Total Int'l	15%	26%	51%

Margin Analysis			Change			Change
Gross Margin	30.7%	12.4%	18.3 pts	30.7%	25.9%	4.8 pts
SG&A Exp.	11.7%	21.4%	(9.6) pts	11.7%	11.0%	0.7 pts
Operating Margin	19.0%	(8.9%)	27.9 pts	19.0%	14.9%	4.1 pts
Pretax Income	18.5%	(10.8%)	29.3 pts	18.5%	14.0%	4.4 pts
Tax Rate	35.4%	37.1%	(1.7) pts	35.4%	35.1%	0.2 pts
Net Margin	11.9%	(6.8%)	18.8 pts	11.9%	9.1%	2.8 pts

Source: PaineWebber Inc. and company reports

Balance Sheet

	Year-to-Year Comparison		Pct. Change	Sequential Comparison		Pct. Change
	3Q97	1996		3Q97	2Q97	
ASSETS						
Current assets						
Cash & equivalents	22.8	11.5	98.3%	22.8	58.0	-60.7%
Receivables, net	308.1	218.4	64.8%	308.1	252.0	22.3%
Inventories	280.8	162.9	78.2%	280.8	208.4	39.8%
Net assets of discontinued ops.	2.9	102.8	-97.2%	2.9	5.5	-47.1%
Deferred income taxes	56.8	93.7	-39.4%	56.8	58.6	-3.1%
Prepaid exp. & other current assets	10.0	40.8	-75.2%	10.0	52.3	-80.9%
Total current assets	692.5	624.1	11.0%	692.5	634.8	9.1%
PP&E, net	229.2	220.1	4.1%	229.2	229.3	0.0%
Trademarks and tradenames, net	195.9	200.3	-2.2%	195.9	197.7	-0.9%
Other assets	27.5	28.2	-2.5%	27.5	27.5	0.0%
	1,145.1	1,073.7	6.7%	1,145.1	1,089.3	5.1%
LIABILITIES & SHAREHOLDERS' EQUITY						
Current liabilities						
Short-term & curr. portion of LT debt	0.7	0.9	-22.2%	0.7	0.7	0.0%
Accounts payable	132.7	107.3	23.7%	132.7	136.5	-2.8%
Restructuring accrual	20.1	63.8	-68.5%	20.1	31.2	-35.6%
Other current liabilities	92.5	99.3	-7.0%	92.5	91.7	1.1%
Total current liabilities	246.0	271.5	-9.4%	246.0	258.1	-4.7%
Long-term debt	199.9	201.1	-0.6%	199.9	174.9	14.3%
Deferred income taxes	55.9	52.3	6.9%	55.9	55.9	0.0%
Non-operating and other LT liabilities	145.5	152.5	-4.6%	145.5	144.7	0.6%
Shareholders' equity	497.8	395.3	25.9%	497.8	455.7	9.2%
	1,145.1	1,072.7	6.7%	1,145.1	1,089.3	5.1%

Source: PaineWebber Inc. and company reports

NOT A CERTIFIED COPY

CP 017111
CONFIDENTIAL

Third quarter highlights

Best consensus by a penny (not a dime, like some were whispering)

Sunbeam reported third quarter EPS of $0.39, a penny better than our as well as Street estimates and a remarkable $0.58 better than the $0.19 loss per share reported in third quarter 1996. Initial Street reaction to this news was not as warm as we expected, as there was one Street estimate in the low $0.40s, and some talk of a "whisper number" in the mid-$0.40s. The stock closed down 5/8 on the day of the announcement, giving back some of the prior day's $2 ¼ gain in anticipation of earnings. We believe the quarter and the $0.39 reported were very solid.

Raised estimates; we're now in line with the Street

With results a penny better this quarter, our 1997 EPS estimate moves to $1.41 from $1.40. We have taken our 1998 estimate up $0.10-0.15, to a range of $2.00-2.05. The only material change we have made to arrive at our new estimates is to sales growth, which we have raised to 25% from 20% for 1998. We believe that our previous 20% estimate did not fully account for the incremental sales potential from the re-vamped grill line-up, the "Air & Water" pipeline sales, and anticipated better order fulfillment at the company's major accounts. In rough terms, we expect sales growth to be more explosive in the first half of the year (around 30%), given easier comparisons and the peak grill season, and then to tail off to around 20% in the second half of the year. (However, we would be surprised if second half 1998 comparisons do not become clouded by Phase III, "merge or acquire." See "What about Phase III" section of this report.) Our new 1998 estimate only brings us more in line with Street consensus of $2.06. There are currently Street estimates as high as $2.30.

25% sales growth—"they said it couldn't be done"

Most important, sales growth (the one thing people doubted Dunlap could do) was 25% in the quarter (28% excluding divested product lines and businesses). Overall, reported sales for the quarter rose to $289 million from $232 million in the year-ago period. International sales rose 51%, with domestic sales up 24%. The 28% normalized sales growth was driven by New Products (+13%), International/Geographic expansion (+7%), Pricing (+3%) and Core Units (+5%).

Evenly distributed 25% growth—blankets, blenders and barbecues

The quarter's two biggest contributor's to sales, Appliances (42% of third quarter sales) and Personal Care & Comfort (30% of third quarter sales), also led the way in sales growth. Detailed below is a breakdown of Sunbeam's sales growth by segment.

Segment	Percent Growth	Description/Growth Drivers
Appliances	27%	Led by soft-serve ice cream maker, new deep fryer, re-designed Oster blender. Almost all Sunbeam appliances were up year-over-year.
Outdoor Cooking	26%	Extended traditional selling season with more ads and promos.
Health & Home	7%	Led by air cleaners, vaporizers, humidifiers and health monitoring products. "Air & Water" start in fourth quarter.
Personal Care/Comfort	27%	Led by electric blankets, clippers and shower massagers.
Away from Home	2%	Professional clippers strong, but temporary dislocation caused by shift of production to Mexico City.

Quality of sales growth

Sales to the company's top-ten accounts increased over 30% (this surpasses the 20% gain registered in the second quarter). Management has noted that these are channels that cannot be stuffed as products to these customers are shipped to order and these customers pick up products from their own warehouses with their own trucks.

A glimpse of that 20% operating margin the company has talked about

The 20% operating margin that sounded like "the impossible dream" a few quarters ago is fast becoming a reality, with operating margins coming in at 19% for the quarter. This compares to an operating loss in the year-ago period and a 15% operating margin in second quarter 1997. Operating margin improvement was driven by the continuing benefits of the restructuring including headquarter and warehouse consolidation and headcount reduction as well as extensive manufacturing facility refinements, which resulted in all-time-high capacity utilization rates during the quarter. Gross margin improved to 30.7% from 25.9% last quarter and a dismal 12.4% in the year-ago quarter, due to the above-mentioned items as well as better product mix in the quarter.

NOT A CERTIFIED COPY

0162011

CP 017112
CONFIDENTIAL

CPH 1407308

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONT #970

16div-022487

Balance sheet raises a couple of questions

In the quarter, $11.1 million of the restructuring accrual was used up. The restructuring accrual balance at quarter-end stood at $20.1 million, down $43.7 million from year-end 1996. Also of note in the quarter (not a particularly positive note) was a $57.1 million jump in receivables versus last quarter and a $82.5 million jump in inventories versus last quarter. We raised this issue to Sunbeam management and, not surprisingly, they had an answer. Detailed here is a quick analysis of these issues.

- **Receivables:** Given that the holiday sell-in period does not really begin until September, roughly half, or about $140-145 million, of Sunbeam's third quarter sales were not shipped until September. This is the primary reason for the uptick in receivables. The company stated that 77% of third quarter sales were on terms of net 60-days or better and 75% of September's sales were on terms of net 30-days or better, indicating that the company believes that the large majority of receivables outstanding at the end of the third quarter will be collected in the fourth quarter. We essentially can only go on Sunbeam's "word" on this issue for now and watch this trend in the fourth quarter. On a positive note, we have found that Sunbeam's "word" has been gold since Al Dunlap took the reigns in July 1996.
- **Inventory:** Inventory build-up relates to an expectation of a continued very strong holiday selling season, with fourth quarter sales expected to accelerate ahead of the third quarter's 25% (we are modeling for 26% growth). Management also commented that all of the $82.5 million sequential jump in inventory relates to finished goods inventories as these are the products that it plans to ship in October and November for the Christmas season. Raw material and work in progress inventory actually declined versus the second quarter. Sunbeam's somewhat bloated inventory is also a function of its initiatives to improve its "on-time and complete" delivery record, as this is a top priority to "win over" top accounts and gain a greater share of retail shelves. At quarter-end, Sunbeam estimated its "on-time and complete" deliveries to be in the mid-70% range. The industry averages 60-70% and Sunbeam's long-term goal is to be above 90% (as per "Project Full Time"). Management commented that, barring grills, inventory levels across all of its divisions should be down in the fourth quarter.

Investment opinion

Proof is in the numbers

A little over one year into the Sunbeam turnaround, Al Dunlap and his Sunbeam team are putting up numbers (25% sales growth, 20% operating margins) that many naysayers (ourselves included) once believed to be laughable.

Story (excluding Phase III) still has momentum

While the sustainability of these types of numbers may be questionable absent restructuring accounting and international pipeline filling, we believe what has been accomplished to date is remarkable and that there is room for further improvement over the next couple of quarters (even without Phase III, merge or acquire).

Strong first half 1998 "one-two" punch

Sunbeam enters 1998 with a potent combination: 1) two exciting and innovative new products, *Freshsource* and *Allergenat*, which, even if they are not absolute home runs, should provide completely incremental sales at better than corporate average operating margins; and 2) an enhanced grill line-up against a weak grill showing in first half 1997. Management commented that with a substantially improved mix of grill offerings and a completely redesigned Neosho grill manufacturing facility, grill margins could be as much as 8 points higher in 1998 than they were in 1997.

Momentum (as we see it now) slows in second half 1998

In the first half of 1998, Sunbeam's much-improved cost structure should be leveraged to the max. After first half 1998, comparisons should get somewhat tougher, which is why we fully expect Phase III, merge or acquire, to be consummated by second half 1998.

Even without Phase III, our 12-month price target is $56

Given Sunbeam's continued momentum, coupled with the recent pull-back in the stock, we upgraded our rating to buy (1) from attractive (2) on October 28, with a 12-month price target of $56 based on a 20-21x multiple on our $2.60-2.65 1999 EPS estimate. Upside potential exists, if Sunbeam management identifies a solid Phase III partner that delivers substantial accretion potential above our current estimates. With tough comparisons currently being created for second half 1998, we are not at all surprised that Sunbeam is currently actively evaluating what partners might fit the above description.

NOT A CERTIFIED COPY

0162202

CP 017113
CONFIDENTIAL
CPH 1407309

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022488

What about Phase III?

Little projection visibility beyond 1997

With the October 23 announcement that Sunbeam has already signed on Morgan Stanley, Dean Witter to explore strategic alternatives/Phase III, it is very likely that the "quantum leap" we and the Street have been writing about may well come in the next three to six months, indicating that projections and subsequent price targets beyond 1997 may well be irrelevant.

Some say Sunbeam is overvalued at current levels

It is no secret that Sunbeam's nearly 80% year-to-date rise is due more in anticipation of the consummation of Phase III than due to Sunbeam's solid financial performance over the last several quarters. At its current price of $45 11/16, Sunbeam trades at roughly 32x our 1997 EPS estimate of $1.41 and 23x our $2.02 1998 estimate. These are very reasonable multiples for the consumer non-durable companies we track, such as Gillette, Colgate, Procter & Gamble and Clorox. But, last we checked, the replacement cycle and subsequent predictability of razors, toothpaste, soap and bleach was a little bit better than it is for blenders and grills. The group of somewhat less predictable, somewhat more cyclical consumer durable goods companies that we track tend to trade at roughly a 20-25% discount to the non-durable types. This is why many of the more bearish voices out there often refer to Sunbeam as overvalued.

We would disagree

We disagree with the above-mentioned bear argument, for one reason: while the consumer durables may be somewhat unpredictable, Al Dunlap has been very predictable. From the day Dunlap has taken the reigns at Sunbeam, he has delivered on every promise and then some. No talk about inventory adjustments at the retail level, no talk about sluggish demand in Europe or Japan, no talk about currency losses, and certainly no talk about the weather; just solid results, quarter after quarter. We understand that Sunbeam has had the benefit of a restructuring reserve, international pipeline filling and asset sales. But Sunbeam management was also well aware of this when it laid out its aggressive plan roughly 12 months ago. A year ago the plan sounded crazy. Today it is a reality. But today is already the past, and Sunbeam, like any other security, is valued based on future expectations. As we have stated previously, unless Sunbeam has Thomas Edison stashed away in the "secret room," momentum should slow for Sunbeam in the second half of 1998. We believe Sunbeam management is well aware of this potential slowdown and we also believe this is why Morgan Stanley has been retained. As we would expect, Sunbeam management is not going to watch the clock run down and try to score Phase III at the buzzer. Instead, Sunbeam is well into the process, as we would suspect Morgan Stanley didn't land the Sunbeam assignment at 8:10 on the morning of October 23 as Dunlap let the cat out of the bag on CNBC's "Squawk Box." We believe that Sunbeam is well into the process and a Phase III partner may be announced some time between now and first quarter 1998, but definitely before comparisons get tougher in second half 1998. While we do not wish to speculate here about who that partner may be, we believe one thing is certain: any deal consummated should deliver meaningful shareholder value (upside potential) if Sunbeam shareholders hold their shares from the announcement to the closing of the transaction. History indicates that Al Dunlap does not enter into agreements unless he is fairly certain that this is the case.

So is Sunbeam a seller or a buyer?

We believe that Sunbeam would love to be a seller, but due to the above-mentioned overvalued argument, it is going to be difficult to find a strategic suitor that could absorb the potential dilution that would come from such a transaction. Embedded in the Sunbeam share price is an intangible asset, Al Dunlap, and again, as history would indicate, it is unlikely that this intangible asset would be around long enough post-deal to make the economics of such a transaction work. This is why we believe that the most likely route for Sunbeam will be an acquisition, probably a blockbuster acquisition of the "minnow swallowing the whale" proportion, using Sunbeam stock as the currency. We envision a scenario as follows:

- Sunbeam approaches Target with an offer it (or at least its board) can't refuse.
- Target haggles over the exchange ratio based on the belief that Sunbeam stock is overvalued.
- Sunbeam convinces Target the deal is fair because the value is in what the potential of the combined company (with Dunlap's direction) can be, not what Sunbeam is offering for Target now.
- Target agrees to terms and merges with Sunbeam. Dunlap stays on as chairman, although probably not CEO, to complete another of his patented one-year restructurings. Sunbeam stock price rises, again.

Of course this is just one of the countless possible outcomes, but we believe this type of scenario would make the most sense for all parties involved. Several factors

NOT A CERTIFIED COPY

016203

CP 017114
CONFIDENTIAL
CPH 1407310

would determine how much value this type of transaction could deliver to Sunbeam shareholders, such as 1) price/premium Sunbeam pays for Target, 2) willingness on the part of Target management to enter agreement, 3) synergies between Sunbeam and Target, 4) cost-cutting opportunities at Target, 5) how long Al Dunlap sticks around post-deal, and 6) who is slated to succeed Dunlap post-deal. As of now, it is Morgan Stanley's job to figure out most of these details, not ours. But again we should reiterate, we are reasonably certain that significant shareholder value will be created.

Just how "expensive" is Sunbeam at these levels?

For some perspective, we believe it would be helpful to list the trading multiples of some other solid consumer durable goods companies. This helps to illustrate why we do not believe Sunbeam will be on the sell side of the transaction. If any of the companies mentioned below were to make an offer for Sunbeam, even at its current price, without any premium, most would need to rent Dunlap's chainsaw for a year just to offset all of the dilution in the transaction. The following list is just to offer some trading multiple perspective. Yes, many of the names below have been mentioned as potential Sunbeam targets and/or suitors. We are not calling them either, although anything is possible. The names are listed alphabetically, so nothing should be read too much into this list.

Table2

Large/mid-cap consumer durable goods companies

(Dollars in billions)

	Entprse Value	LTM Sales	TEV/ Sales	Price/ '97E	Price/ '98E
Sunbeam	$4.1	$1.1	3.7x	32.4x	22.5x
Black & Decker	$5.5	$4.9	1.1x	16.8x	14.6x
Brunswick	$3.7	$3.5	1.1x	15.5x	13.5x
Coleman	$1.3	$1.2	1.1x	26.5x	14.3x
Electrolux	$8.7	$14.8	0.6x	17.1x	13.6x
Honeywell	$10.2	$7.8	1.3x	19.0x	16.4x
Maytag	$3.9	$3.2	1.2x	17.8x	15.1x
Newell	$7.1	$3.1	2.3x	20.4x	17.7x
Rubbermaid	$4.0	$2.4	1.7x	25.8x	21.1x
Stanley Works	$3.9	$2.7	1.4x	19.5x	17.2x
Tupperware	$1.8	$1.3	1.4x	13.7x	13.1x
Whirlpool	$7.5	$8.2	0.9x	19.4x	14.6x
Mean	$5.2	$4.8	1.3x	19.2x	15.8x

Source: Company reports. Earnings estimates from First Call.

The above table illustrates that in rough terms, Sunbeam trades at 3.0 times the mean sales multiple, 1.7 times the mean 1997 P/E and 1.4 times the mean 1998 P/E for the consumer durable goods companies we have selected. While this may make Sunbeam an unlikely takeover candidate, on the flip-side it conveys the potential for a very accretive transaction if Sunbeam can strike a stock deal as an acquirer at a reasonable premium to the potential target. This immediate accretion, coupled with Dunlap's cost-cutting prowess, could lead to substantial upward revision in Sunbeam earnings estimates.

A bit of history

With the pursuit of Phase III in full gear, we believe it would be helpful to provide a brief chronology of Dunlap's last "quantum leap," the merger of Scott Paper with Kimberly Clark. So far the Sunbeam story has played out roughly along the same lines as the Scott paper turnaround. We are not implying that the "quantum leap" will occur in the same fashion as Scott. In fact, we already have indicated that we believe the Sunbeam leap will have Dunlap on the buy-side this time, not the sell-side. But overall, the stories seem very similar at this point, 12-15 months into the story: Dunlap at the head of what people are starting to view as an expensive company, exploring the next course of action.

As a bit of background, recall Dunlap took over at Scott Paper in April 1994, with the Scott stock price at $18 ¾ (split-adjusted). He proceeded to slash 11,000 jobs, sell off over $2 billion worth of assets and direct the company along a new course of growth. As would be expected, Scott Paper's stock price and resulting valuation took off like a rocket. We start our chronology roughly 11 months into the Scott turnaround (recall, we are 15 months into the Sunbeam turnaround).

March 8, 1995

- **Dorfman Comments:** CNBC correspondent, Dan Dorfman, reports that sources have told him Scott is a target of a buyout by either Kimberly-Clark or KKR. Scott shares hit a 52-week high of $41 11/16 during the day and close at $40 11/16. S.G. Warburg paper industry analyst comments, "The idea of Kimberly-Clark buying Scott Paper borders on the ludicrous," citing anti-trust concerns among other reasons. The analyst further comments that Scott shares may also be priced too high to make the company an attractive takeover candidate.

April 5, 1995

- **PaineWebber downgrades Scott on valuation:** PaineWebber paper industry analyst downgrades Scott to neutral from buy following Scott's Analysts Presentation in New York. Analyst states, "Clearly Scott Paper has made a remarkable turn in the last year, moving from a paper company to more of a consumer

NOT A CERTIFIED COPY

0016204

CP 017116
CONFIDENTIAL
CPH 1407311

products company. However, the valuation seems to reflect that." At the time, Scott's valuation of 25.5 times trailing earnings surpassed some other blue-chip consumer non-durable companies, such as Clorox (17.7 times), Colgate (17.1 times) and Kimberly-Clark (15.7 times).

April 18, 1995

- **Scott reports blowout first quarter 1995 earnings:** Scott reports a tripling in EPS to $1.28 in the quarter, $0.08 ahead of Street expectations of $1.20. Revenues rose 21%. Stock actually closes down for the day. Investors point to inventory build-up at Scott just as the paper cycle may be turning downward. The S&P Paper & Forest Products Index fell 4.6% in the three days leading up to the Scott Paper earnings, as most paper stocks plummeted despite strong earnings. Scott stock closes at $42 9/16 for the day. Dunlap stands by his mantra, "The best is yet to come."

June 23, 1995

- **Wall Street Journal reports Scott in talks with Kimberly:** While the deal is still not official, The Journal reports that a deal is in the works and provides what turns out to be very accurate specifics. Kimberly to offer 0.78 Kimberly-Clark share for each Scott share. Offer is at no premium to Scott share price at the time. Kimberly shares close up $2 ¼, at $62 ½. Scott shares close up $1 1/8, at $48.

July 17, 1995

- **Kimberly/Scott merger officially announced:** Terms of the deal are officially disclosed; Kimberly to exchange 0.765 Kimberly-Clark share for each Scott share. Transaction valued at $6.8 billion. Ratio moves to 0.78 if Kimberly's tobacco assets are spun-off prior to the closing of the Scott transaction (this does happen; final ratio is 0.78). Some disappointment on the part of Scott shareholders on the news. Scott shares fall $2 7/8, to $46 ¼. Kimberly shares jump $5 1/8, to $63 ¾. Brown Brothers paper industry analyst says, "Some people may feel the price is too low." Scott shareholder from PNC Bank states, "I thought Scott would have gotten a better price." Following the announcement, Kimberly-Clark CFO, Wayne Sanders, states that he sees $400 million of annual savings by 1998 as a result of the deal.

December 12, 1995

- **Kimberly/Scott merger closes:** Nearly five months later, as the market has had time to assess the business combination and get a feel for cost cutting and synergy potential, the merger closes with Kimberly-Clark shares at $78 ½ and Scott shares at 78% of that amount, or $61 1/8, up 226% from the day Dunlap took control 20 months earlier (up 32% from date merger was announced). Final transaction size, $9.4 billion. Kimberly CEO, Wayne Sanders, was to announce a sweeping restructuring the next day at a much-anticipated investor presentation, with Al Dunlap to continue as a consultant to Kimberly-Clark. Dunlap was signed as an advisor to the Kimberly board for five years and was to receive 5,000 Kimberly shares per year for each year of the agreement. As a result of the merger, Dunlap already owned over a million shares of Kimberly-Clark.

In sum, regarding Phase III

We agree with much of what already has been said in the press regarding Phase III. We agree that Sunbeam may be too rich to be taken over, but we do not believe that this means Sunbeam is overvalued. Sunbeam possesses an intangible asset, the Dunlap factor, that none of its potential targets possesses...yet. We believe this is where the real kicker in the Sunbeam story exists. Certainly a move to $56 from $45 would be nice without Phase III, but we do not believe this is why investors are still buying Sunbeam shares at these levels. The real potential for another round of meteoric stock price appreciation comes if Sunbeam can makes a strategic acquisition, using Sunbeam stock as the currency, at a modest premium that doesn't already factor in all of the cost-cutting potential. If Sunbeam can pull this off, Sunbeam shareholders may be getting two Dunlap turnarounds for the price of one. Now that's a bright idea.

Risks

The Sunbeam story certainly is not without risks. While it appears the second half of 1997 is coming along according to plan, the company has in no way "lowered the bar" in 1998. Timing and consumer acceptance (at higher-than-average price points) are crucial to the company delivering both accelerated top-line growth and margin expansion. Longer term (6 to 12 months), management must come up with the next "quantum leap" (Phase III, merge or acquire) that the investment community has come to expect from Al Dunlap in order for SOC's price to trade above our price target. Any prolonged delay or failure to execute this "leap" could result in a pull-back in the stock from its current levels.

NOT A CERTIFIED COPY

016205

PaineWebber

Additional information is available upon request.

Prices of companies mentioned as of 10/28/97:

Black & Decker[1] BDK $40.938
Brunswick BC $32.875
Clorox[1] CLX $66.938
Coleman CLN $15.063
Colgate[1] CL $70.375
Electrolux[2] ELUXY $73.25
Gillette[1] G $90.125
Honeywell[1] HON $68.5
Kimberly-Clark[1] KMB $51.625
Maytag[1] MYG $32.313
Newell NWL $37.313
Procter & Gamble[1] PG $70.125
Rubbermaid RBD $24.813
Stanley Works[1] SWK $42.563
Sunbeam[3] SOC $45.688
Tupperware TUP $25.75
Whirlpool[1] WHR $60.188

[1] A subsidiary of PaineWebber Incorporated acts as a specialist that makes a market in this security. At any given time the specialist may have a position, either long or short, in the security, and as a result of the associated specialist's function as a market maker, such a specialist may be on the opposite side of orders executed on the floor of a national securities exchange.

[2] PaineWebber Incorporated makes a market in this security.

[3] PaineWebber Incorporated has acted in an investment banking capacity for this company.

NOT A CERTIFIED COPY

9021910

CP 017117
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1407313

16div-022492

PaineWebber

Table3

Sunbeam quarterly income statement

Dollars in millions except per share data

Historical data is pro forma (excluding furniture)

	1995A	Q196A	Q296A	Q396A	Q496A	1996A	Q197A	Q297A	Q397E	Q497E	1997E	1998E	1999E
Net sales													
U.S.						804.2	203.5	230.1	229.0	266.7	927.3	1110.4	1267.3
% sales						100.0%	79.5%	80.0%	79.2%	78.7%	79.3%	76.0%	71.4%
International						180.0	52.0	57.5	60.0	72.0	241.5	350.2	507.8
% sales						100.0%	20.5%	20.0%	20.8%	21.3%	20.7%	24.0%	28.6%
Total sales	$1,018.9	$228.7	$253.8	$231.8	$268.9	$984.5	$255.5	$287.6	$288.0	$338.7	$1,168.8	$1,460.6	$1,775.0
% yoy sales growth						-2.7%	12.3%	13.3%	24.3%	26.0%	18.7%	25.0%	21.5%
% of annual sales	100.0%	23.3%	25.8%	23.5%	27.3%	100.0%	21.7%	24.6%	24.7%	29.0%	100.0%	100.0%	100.0%
Cost of goods sold	809.1	181.6	206.7	203.0	217.0	808.3	185.7	213.1	200.2	233.7	832.7	1010.6	1215.9
Gross profit	207.8	48.1	47.2	28.8	51.9	176.0	67.8	74.5	88.8	105.0	336.1	449.9	559.1
% margin	*20.4%*	*20.9%*	*18.6%*	*12.4%*	*19.3%*	*17.9%*	*26.7%*	*25.9%*	*30.7%*	*31.0%*	*28.8%*	*30.8%*	*31.5%*
SG&A expenses	137.5	32.6	38.0	49.5	53.7	173.8	53.0	31.6	33.9	38.6	137.1	174.1	204.1
	13.5%	*14.2%*	*15.0%*	*21.4%*	*20.0%*	*17.7%*	*19.0%*	*11.0%*	*11.7%*	*11.4%*	*11.7%*	*11.9%*	*11.5%*
Operating profit	$70.3	$15.5	$9.2	-$20.7	-$1.8	$2.3	$14.8	$42.9	$54.9	$66.4	$199.0	$275.8	$355.0
% margin	*6.9%*	*6.7%*	*3.6%*	*-8.9%*	*-0.7%*	*0.2%*	*13.7%*	*14.9%*	*19.0%*	*19.6%*	*17.0%*	*18.9%*	*20.0%*
Interest expense (income)	9.4					13.6	2.0	3.0	3.0	1.0	8.9	0.5	0.5
Other expense (income), net	0.2					1.6	0.1	-0.5	-1.5	-0.5	-2.3	-1.4	-3.0
Pretax income	60.7					-13.0	32.7	40.4	53.4	65.9	192.4	276.7	357.5
% margin	*6.0%*					*-1.3%*	*12.8%*	*14.0%*	*18.5%*	*19.5%*	*16.5%*	*18.9%*	*20.1%*
Income tax	23.1					-4.8	12.1	14.2	18.9	23.1	68.3	98.2	125.5
% tax rate	*38.1%*					*36.8%*	*37.0%*	*35.1%*	*35.4%*	*35.1%*	*35.5%*	*35.5%*	*35.1%*
Net income (continuing operations)	$37.6	$6.7	$2.8	-$15.8	-$1.6	-$8.2	$20.6	$26.2	$34.5	$42.8	$124.1	$178.5	$232.0
% margin	*3.7%*	*2.9%*	*1.1%*	*-6.8%*	*-0.7%*	*-0.8%*	*8.1%*	*9.1%*	*11.9%*	*12.6%*	*10.6%*	*12.2%*	*13.1%*
Extraordinary items													
Restructuring						-100.8							
Special charges						-87.8							
Earnings from discontinued operations	12.9					0.8	-13.7						
Loss on sale of discontinued operations						-32.4							
Total net income	50.5					-228.4	6.9	26.2	34.5	42.8	110.3	178.5	232.0
EPS (continuing operations)	$0.45	$0.08	$0.03	-$0.19	-$0.02	-$0.10	$0.24	$0.30	$0.38	$0.48	$1.41	$2.02	$2.62
EPS (reported)	$0.61					-$2.75							
Shares outstanding	82.8	82.5	82.5	83.6	84.1	83.0	87.0	87.5	88.2	88.5	87.8	88.5	88.5

Source: PaineWebber Inc. estimates and company reports.

Sales Breakdown	Q196E	Q296E	Q396E	Q496E	1996E	Q197E	Q297E	Q397E
Sales by Segment								
Appliances	$78	$84	$97	$121	$380	$89	$101	$124
Outdoor Cooking	98	115	25	19	257	100	128	32
Health & Home	25	20	25	30	100	26	18	27
Personal Care & Comfort	16	18	69	89	192	19	21	90
Away from Home	14	16	16	11	56	19	19	16
Total Sales	$231	$254	$232	$270	$987	$253	$287	$289
Percent of Sales								
Appliances	34%	33%	42%	45%	39%	35%	35%	43%
Outdoor Cooking	42%	45%	11%	7%	26%	40%	45%	11%
Health & Home	11%	8%	11%	11%	10%	10%	6%	9%
Personal Care & Comfort	7%	7%	30%	33%	19%	7%	7%	31%
Away from Home	6%	6%	7%	4%	6%	8%	7%	6%
Total Sales	100%	100%	100%	100%	100%	100%	100%	100%
% Growth*								
Appliances						15%	20%	28%
Outdoor Cooking						3%	11%	27%
Health & Home						4%	-10%	9%
Personal Care & Comfort						18%	13%	30%
Away from Home						40%	22%	2%
Total Sales						10%	13%	25%

* Numbers may not foot precisely to management's commentary due to estimated allocation of certain sales (around 1% of Q3 sales) and rounding.

Source: PaineWebber Inc. estimates and company reports.

NOT A CERTIFIED COPY

016207

CP 017118
CONFIDENTIAL

CPH 1407314

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Merrill Lynch

Comment

United States
Household Products

24 October 1997

John A. Gibbons III
(1) 212 449-8173

Sunbeam Corp

Strong Sales and Margin Gains Drive Q3 EPS ACCUMULATE

Reason for Report: Analysis of Q3 EPS

Long Term
BUY

Price: $47 13/16

Estimates (Dec)	1996A	1997E	1998E
EPS:	-0.10	$1.30-1.50	$1.70-1.90
P/E:	NM	34.2x	26.6x
EPS Change (YoY):		NM	28.6%
Consensus EPS:		$1.42	$2.02
(First Call: 14-Oct-97)			
Q4 EPS (Dec):	(0.03)	$0.48	
Cash Flow/Share:	$0.46	$2.05	$2.50
Price/Cash Flow:	103.9x	23.3x	19.1x
Dividend Rate:	Nil	$0.04	$0.04
Dividend Yield:	Nil	0.1%	0.1%

Opinion & Financial Data

Investment Opinion:	B-2-1-7
Mkt. Value / Shares Outstanding (mn):	$4,217.1 / 88.2
Book Value/Share (Sep-97):	$5.66
Price/Book Ratio:	8.4x
ROE 1997E Average:	27.0%
LT Liability % of Capital:	44.6%
Est. 5 Year EPS Growth:	15.0%

Stock Data

52-Week Range:	$50-$24
Symbol / Exchange:	SOC / NYSE
Options:	AMEX
Institutional Ownership-Spectrum:	77.2%
Brokers Covering (First Call):	9

ML Industry Weightings & Ratings**

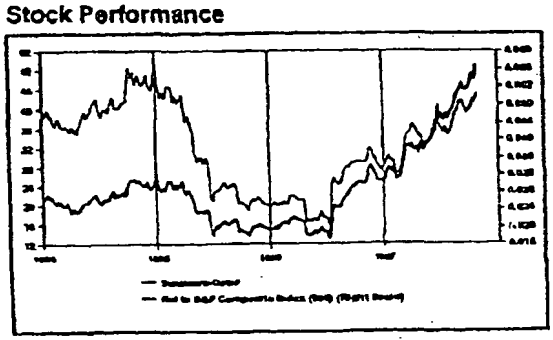
Strategy; Weighting Rel. to Mkt.:		
Income:	Overweight	(07-Mar-95)
Growth:	In Line	(07-Mar-95)
Income & Growth:	Overweight	(07-Mar-95)
Capital Appreciation:	In Line	(16-Jul-96)
Market Analysis Technical Rating:	Below Average	(26-Aug-97)

**The views expressed are those of the macro department and do not necessarily coincide with those of the Fundamental analyst.
For full investment opinion definitions, see footnotes.

Investment Highlights:

- **Sunbeam reported solid third quarter EPS of $0.39 vs. $(0.19), which beat our estimate by a penny.**
- **Earnings were driven by stronger than expected sales growth. New products, distribution gains, and geographical expansion drove sales up 25% to $289 million.**
- **The operating margin of 19% was just shy of management's 20% long-term objective. We would expect Sunbeam to hit this goal in Q4.**
- **Although inventory and receivables were both up significantly at quarter end, management attributes these increases to timing and the seasonal build for the fourth quarter. Management still expects working capital to be a source of cash in 1997.**
- **Looking for the next "Quantum Leap". On a fundamental basis, Sunbeam shares are not cheap. However, we continue to recommend the stock, believing Al Dunlap is strongly bent on creating additional shareholder value.**

Stock Performance



Merrill Lynch & Co.
Global Securities Research & Economics Group
Global Fundamental Equity Research Department

239207/239200/239197/235100/229000

ROI#20129713

NOT A CERTIFIED COPY

016208

CP 017119
CONFIDENTIAL

CPH 1407315

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022494

Quantum Leap Coming Soon?

Part of Al Dunlap's blueprint for fixing companies entails taking companies through quantum leaps. What this means is that after turning a business around, he typically sells it for a significant premium above current market value.

Sunbeam shares have had quite a run under Mr. Dunlap's tenure, increasing over 4-fold since he took over in August 1996. Currently, Sunbeam is trading at 27x the mid-point of our 1998 estimate, which puts it at the upper end of valuations in the consumer products universe. However, we continue to recommend the stock, believing Mr. Dunlap will do everything in his power to create additional shareholder value (i.e. take the company through the next quantum leap).

We continue to think that this process is more likely to entail buying and restructuring another company using Sunbeam as his currency than selling Sunbeam outright. We are unsure what companies Mr. Dunlap has in his sights, but we would not be surprised if he aims for a large target.

In any event, we get the sense that Mr. Dunlap is pleased with the turnaround he has engineered at Sunbeam, and that he is itching to do something more. Although we have no proof, he could be getting close to taking the company to the next level. Stay tuned.

Strong Q3 Results

Sunbeam reported third quarter EPS of $0.39 vs. $(0.19), which beat our estimate by $0.01.

Sales advanced 24.7% to $289 million. Excluding all divested business from last year's results, sales rose 28%. U.S. sales increased 24%, while international was up 51%. Sales to Sunbeam's top-10 customers advanced 30%.

Appliances (42% of total) rose 33% on the introduction of a number of new products, including a softserve ice cream maker, a redesigned Oster blender, and a deep fryer.

Sales of outdoor products (11% of total) increased 26% as Sunbeam was successful in extending the selling season in grills.

Health at home products (9% of total) rose 13% on sales of air cleaners, vaporizers, and humidifiers. Management is clearly excited about this category's potential in the fourth quarter given the recent unveiling of Sunbeam's new air filter and water purifier products.

Personal care and comfort (30% of total) rose 30% behind strong electric blanket sales. Away from home (6% of total) increased 2%.

Margins continued to expand strongly, reflecting the benefits from last year's restructuring. In addition, capacity utilization rates are much higher. The gross margin expanded to 30.7% from 12.4%. Operating profit was $55 million up from a loss last year of $21 million. The operating margin hit 19.0% in the quarter, coming close to matching management's long-term goal of 20%.

Inventories and receivables increased significantly in the fourth quarter. From the end of the second quarter, inventories jumped 40% or $82.5 million to $291 million, while receivables were up 23% or $57.1 million to $309 million. While alarming, management attributes the receivable increase mostly to timing differences, as a significant portion of the quarter's sales were shipped in September. The inventory build reflects management's anticipation of strong fourth quarter sales. Management is confident both of these levels will drop significantly in the fourth quarter and that working capital will still be a source of cash in 1997. Given the strong sales momentum, we are given to believe management's conviction.

Q4 Outlook

We estimate fourth quarter EPS of $0.48 vs. $(0.03). We forecast a sales increase of 20% to $323 million driven by new products and international expansion. However, Sunbeam has consistently beaten our sales expectations all year, so we would not be surprised if we are low. If sales are higher than expected, Sunbeam's earnings could hit the high-end of our $1.30-$1.50 EPS range for 1997. We look for continued margin expansion. Thus, the operating margin could hit 20%-21% in the quarter. For 1998, we continue to estimate EPS of $1.70-$1.90.

NOT A CERTIFIED COPY

Sunbeam Corporation
Earnings Model (MMS)
(Year Ends Dec)

	1993	1994	1995	% INC 95/94	1995R	1996R	% INC 96/95	1997E	% INC 97/96	1998E	% INC 98/97
UNITED STATES	$885	$1,000	$1,015	1%	$1,015	$797	-21%	$923	16%	$1,061	15%
INTERNATIONAL	$181	$198	$188	-5%	$188	$187	-1%	$230	23%	$288	25%
TOTAL SALES	$1,066	$1,198	$1,203		$1,017	$984	-3%	$1,153	17%	$1,349	17%
COST OF GOODS SOLD	$778	$872	$957	10%	$809	$808	0%	$811	0%	$920	13%
% OF SALES	72.9%	72.7%	79.5%		79.6%	82.1%	–	70.4%	–	68.2%	–
GROSS MARGIN	27.1%	27.3%	20.5%		20.4%	17.9%		29.6%		31.8%	
S, G & A EXPENSE	$126	$131	$147	12%	$129	$165	28%	$134	-19%	$162	20%
% OF SALES	11.8%	10.9%	12.2%		12.7%	16.8%	–	11.7%	–	12.0%	–
AMORTIZATION	$8	$8	$8	2%	$8	$8	2%	$8	-5%	$8	0%
% OF SALES	0.8%	0.7%	0.7%		0.8%	0.9%	–	0.7%	–	0.6%	–
OPERATING PROFITS	$155	$188	$91	-52%	$70	$2	-97%	$199	NM	$259	30%
OPERATING MARGIN	14.5%	15.7%	7.6%		6.9%	0.2%	–	17.3%	–	19.2%	–
INTEREST EXPENSE	($6)	($7)	($9)	85%	($9)	($14)	45%	($7)	-49%	($3)	-57%
INTEREST INCOME	$6	$4	$4		$3	$0		$3		$3	
OTHER EXPENSE, NET	($2)	($3)	($3)		($4)	($2)		($2)		($5)	
PRETAX INCOME	$153	$182	$82	-55%	$61	($13)	-121%	$193	NM	$254	32%
PRETAX MARGINS	14.3%	15.2%	6.8%		6.0%	-1.3%	–	16.7%	–	18.8%	–
TAXES	$64	$75	$31	-58%	$23	($5)	-120%	$69	NM	$95	38%
TAX RATE	41.8%	41.1%	37.9%		38.1%	34.9%	–	35.8%	–	37.5%	–
NET INCOME	$89	$107	$51	-52%	$38	($8)	-122%	$124	NM	$159	28%
NET MARGIN	8.3%	8.9%	4.2%		3.7%	-0.8%	–	10.7%	–	11.8%	–
Restructuring						($101)					
Special Charges						($38)					
Earnings from discont. ops					$13	$1					
Est. loss on sale of discont. ops.						($32)					
Total Net Income					$50	($228)					
EPS (FULLY DILUTED) from Ops.	$1.01	$1.30	$0.61	-53%	$0.45	($0.10)	-122%	$1.41	NM	$1.80	28%
Total EPS					$0.61	($2.75)					
SHARES OUTSTANDING (A)	88.2	82.6	82.6		82.8	83.0	0%	87.6	6%	88.0	0%

(A) COMPUTED USING TREASURY STOCK METHOD.
(B) 1996 OTHER EXPENSES INCLUDE $18 MIL IN REALIGNMENT CHARGES, WHICH WILL FINALLY BE PART OF OPERATING EXPENSES.
R restated for divested furniture business

NOT A CERTIFIED COPY

016210

Sunbeam Corporation
Cash Flow Analysis ($Mil)

	1993	1994	1995	1996	1997E	1998E
SOURCES						
NET INCOME	$89	$107	$88	($6)	$124	$159
DEPRECIATION & AMORT.	$32	$36	$44	$47	$55	$55
PROCEEDS FROM OFFERING	$0	$0	$0	$0	$0	$0
BUSINESS SALES					$190	
DEFERRED INCOME TAXES	$23	$25	$28	($78)	$80	$10
TOTAL	$144	$168	$110	($38)	$369	$224
USES						
CAPITAL EXPEND INCL ACQ	$47	$110	$153	$75	$55	$55
CASH AMOUNT OF RESTRUCTURING				$8	$75	
PAYMENT FOR RESTRUCTURING	$8	$8	$0	$0	$0	$0
PAYMENT FOR PREFERRED	$0	$0	$0	$0	$0	$0
DIVIDENDS	$3	$3	$3	$3	$3	$3
SHARE BUYBACK	$174	$0	$18	$0	$0	$0
CHANGE IN WORKING CAP.	$100	$77	$29	$28	($30)	$0
TOTAL	$332	$199	$199	$115	$103	$58
FREE CASH FLOW	($188)	($31)	($89)	($154)	$265	$165
SHORT TERM DEBT	$42	$6	$1	$1	$0	$0
LONG TERM DEBT	$94	$123	$161	$201	$0	$0
STOCKHOLDERS EQUITY	$437	$555	$601	$395	$516	$671
TOTAL DEBT % CAP	24%	19%	21%	34%	0%	0%
PROFITABILITY RATIOS						
RETURN ON AVG. EQUITY	18.5%	21.6%	6.5%	-1.7%	27.2%	26.8%
RETURN ON AVG. CAPITAL	15.0%	17.7%	5.2%	-1.2%	22.3%	26.8%
RETURN ON AVG. ASSETS	9.5%	10.1%	3.3%	-0.8%	11.0%	12.8%
AVG CASH/SECURITIES	$166	$50	$27	$20	$43	$158
TOTAL CAPITAL	$531	$678	$762	$596	$516	$671
TOTAL ASSETS	$1,006	$1,113	$1,159	$1,073	$1,180	$1,298
EST YEAR END CASH & SECURITIES	$75	$26	$28	$12	$75	$240
NET CASH (CASH-DEBT)	($62)	($104)	($134)	($191)	$75	$240

NOT A CERTIFIED COPY

CP 017122
CONFIDENTIAL

[EOQ: MLPF&S was a manager of the most recent public offering of securities of this company within the last three years.

Opinion Key [Definitions]: Investment Risk Rating(IQ): A - Low, B - Average, C - Above Average, D - High. Appreciation Potential Rating (a: Int. Term - 0-12 mo.; b: Long Term - >1 yr.): 1 - Buy, 2 - Accumulate, 3 - Neutral, 4 - Reduce, 5 - Sell, 6 - No Rating. Income Rating (i): 7 - Above Higher, 8 - Below/Lower, 9 - No Cash Dividend.

Copyright 1997 Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S). This report has been issued and approved for publication in the United Kingdom by Merrill Lynch, Pierce, Fenner & Smith Limited, which is regulated by SFA and has been considered and issued in Australia by Merrill Lynch Equities (Australia) Limited (ACN 006 276 795), a licensed securities dealer under the Australian Corporations Law. The information herein was obtained from various sources; we do not guarantee its accuracy or completeness. Additional information available.

Neither the information nor any opinion expressed constitutes an offer, or an invitation to make an offer, to buy or sell any securities or any options, futures or other derivatives related to such securities ("related investments"). MLPF&S and its affiliates may trade for their own accounts as odd-lot dealer, market maker, block positioner, specialist and/or arbitrageur in any securities of this issuer(s) or in related investments, and may be on the opposite side of public orders. MLPF&S, its affiliates, directors, officers, employees and employee benefit programs may have a long or short position in any securities of the issuer(s) or in related investments. MLPF&S or its affiliates may from time to time perform investment banking or other services for, or solicit investment banking or other business from, any entity mentioned in this report.

This research report is prepared for general circulation and is circulated for general information only. It does not have regard to the specific investment objectives, financial situation and the particular needs of any specific person who may receive this report. Investors should seek financial advice regarding the appropriateness of investing in any securities or investment strategies discussed or recommended in this report and should understand that statements regarding future prospects may not be realized. Investors should note that income from such securities, if any, may fluctuate and that each security's price or value may rise or fall. Accordingly, investors may receive back less than originally invested. Past performance is not necessarily a guide to future performance.

Foreign currency rates of exchange may adversely affect the value, price or income of any security or related investment mentioned in this report. In addition, investors in securities such as ADRs, whose values are influenced by the currency of the underlying security, effectively assume currency risk.

CPH 1407318

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022497

NOT A CERTIFIED COPY

016212

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PLAINTIFF'S EXHIBIT

NOT A CERTIFIED COPY

December 17, 1997

CONFIDENTIAL

Materials Prepared for Discussion

Project Violet

CONFIDENTIAL
CSFBC 0001493

012913

CPH 121203

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

Table of Contents

1. Valuation Overview

2. Comparable Companies Analysis

   A. C

   B. S

3. Comparable Acquisitions Analysis

4. Discounted Cash Flow Analysis

   A. C

   B. S

5. Merger Consequences

6. Large Premium Deals

7. Analyst Estimates

8. Relative Contribution Analysis

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001494

CPH 121204

712910

NOT A CERTIFIED COPY

016215

CONFIDENTIAL
CSFBC 0001495

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

1.

Valuation Overview

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001496

917910

CPH 121206

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Valuation Points

- The inherent value of C is approximately $24.78 to $38.94 per share based on a discounted cash flows analysis of a moderate base case (7.5% CAGR of revenue and EBITDA).
- The synergies created by the transaction are estimated by both management teams to be $100 to $150 million pre-tax or $60 to $90 million after-tax:
  - $60 to $90 million at S's 1998E P/E of 20.3x translates into $1,200 million to $1,800 million of value or $21.00 to $32.00 per share
  - At 18.0x (the average of S&C's 1998 P/E), this implies a value of $1,100 to $1,600 million or $19.00 to $28.00 per share.
- The equity analysts that cover C expect it to trade to $22.00 to $23.00 per share over the next twelve months, which implies a public trading market value of $20.26 today, which at a 40-50% takeover premium implies $28.00 to $30.00 per share prices.
- At current stock prices, an acquisition of C at $30.00 per share would be breakeven with only $92 million of pre-tax synergies in an all-stock deal or $88 million of pre-tax synergies in an all-cash deal.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001497

CPH 121207

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Recent Comments on S

S's share price has been supported by the market's expectation that management would deliver on its promises of $2,000 million in sales and operating margins of 20.0% by 1999.

Recent Analyst Comments

- "... market watchers said S must step up to the plate and deliver the goods, which includes sales growth of 20% or more, one of the targets the Company has set. That goal may be tough to achieve next year now that the outlook has dimmed with the currency turmoil in Asia and slow growth in Brazil."

- "S management must come up with the next 'quantum leap' (Phase III, merge or acquire) that the investment community has come to expect from Al Dunlap in order for S's price to trade above our price target. Any prolonged delay or failure to execute this "leap" could result in a pull-back in the stock from its current levels."

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001498

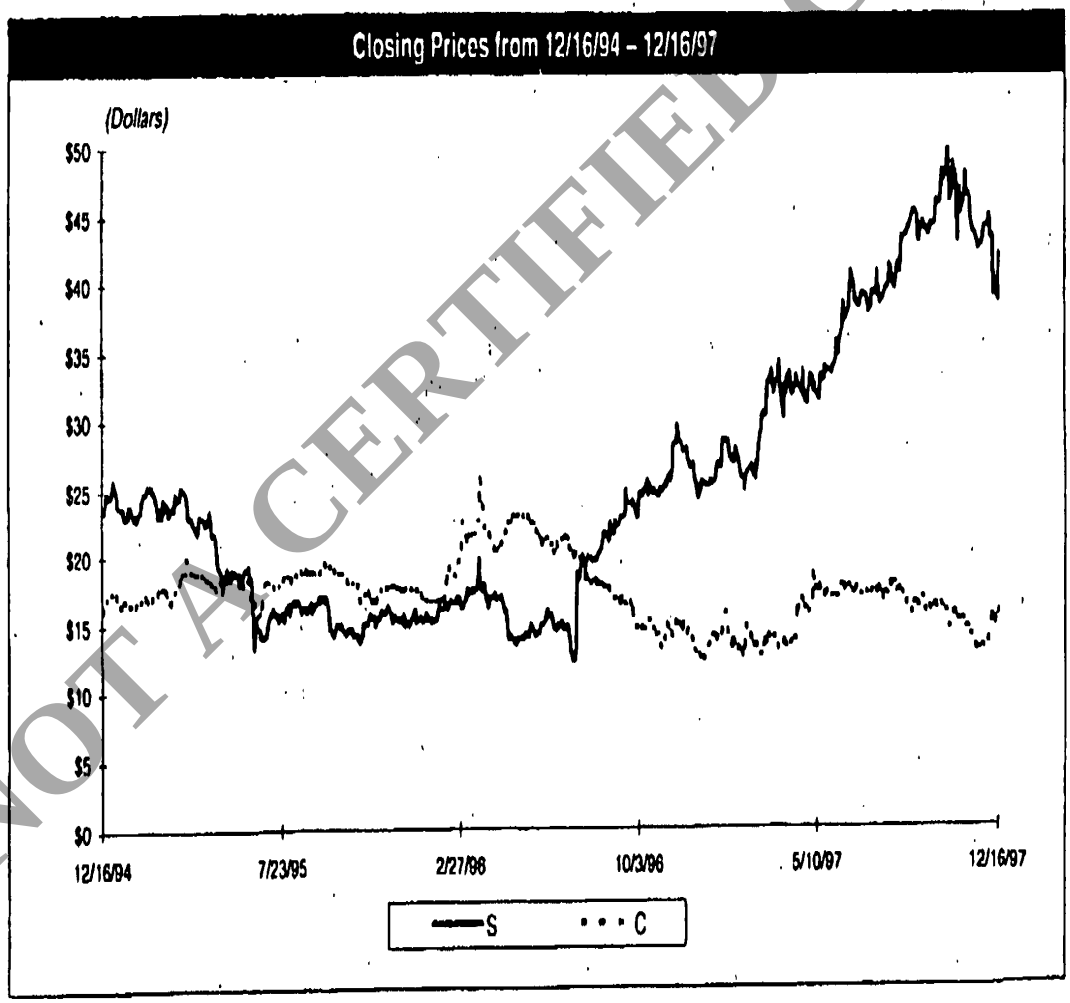
CPH 1121208

16div-022504

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Share Price Performance



NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001499

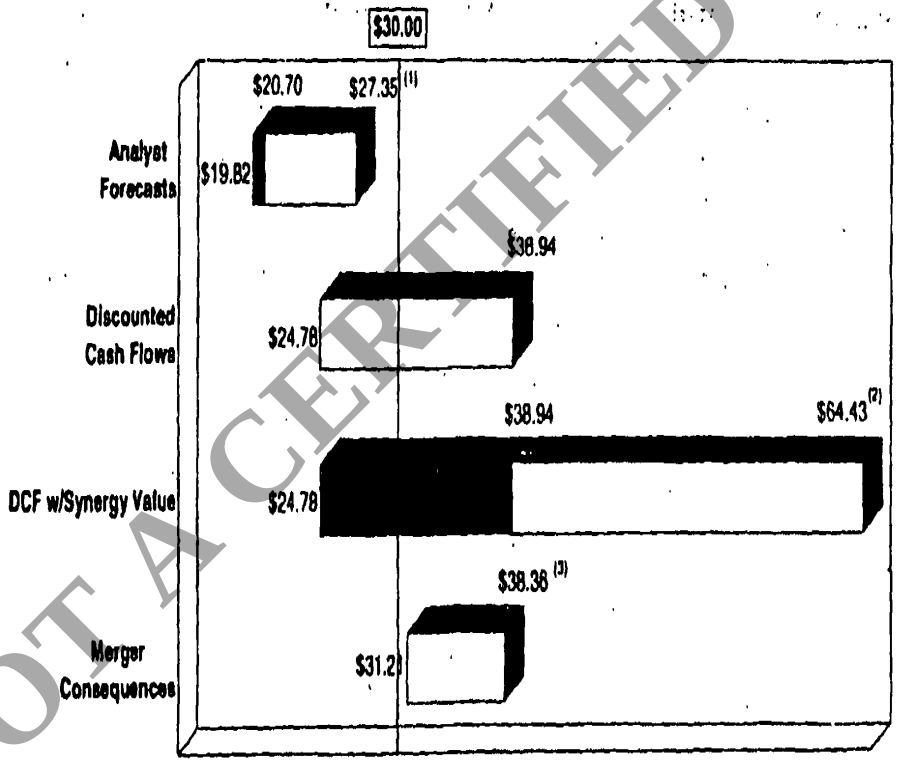
CPH 1121209

016219

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Summary Valuation of C



(1) Represents 35% premium to midpoint.

(2) Assuming $90 million of annual after-tax ($150 million pre-tax) synergies capitalized at 20.0x and a DCF based on a terminal multiple of 11.5x EBITDA.

(3) Assuming $100 million - $150 million of annual pre-tax synergies, stock-for-stock transaction and 0% dilution in 1998.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001500

CPH 1121210

016220

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Acquisition Matrix

(Dollars In Millions, except per Share and Multiples)

		CURRENT MARKET[1][2]	OFFER PRICE PER SHARE				
PREMIUM TO CURRENT MARKET[2]		$15.56 0.0%	$24.00 54.2%	$27.00 73.5%	$30.00 92.8%	$33.00 112.0%	$36.00 131.3%
Number of Shares Offered (mm) [3]		54.8	56.4	56.4	56.4	56.4	56.4
Options Proceeds [4]		$19.1	$47.8	$47.8	$47.8	$47.8	$47.8
Equity Purchase Price		$833.7	$1,306.8	$1,476.2	$1,645.5	$1,814.8	$1,984.1
+ Net Debt [5]		511.7	511.7	511.7	511.7	511.7	511.7
Adjusted Purchase Price		$1,345.4	$1,818.5	$1,987.8	$2,157.1	$2,326.5	$2,495.8
Adjusted Purchase Price as a Multiple of:							
1997E	Net Sales	$1,152.5	1.2x	1.6x	1.7x	1.9x	2.0x	2.2x
	EBITDA	125.9	10.7	14.4	15.8	17.1	18.5	19.8
	EBIT	85.9	15.7	21.2	23.1	25.1	27.1	29.1
1998E	Net Sales	$1,267.8	1.1x	1.4x	1.6x	1.7x	1.8x	2.0x
	EBITDA	178.5	7.5	10.2	11.1	12.1	13.0	14.0
	EBIT	134.5	10.0	13.5	14.8	16.0	17.3	18.6
Equity Purchase Price as a Multiple of:							
1997E	Net Income	$30.1	27.7x	43.4x	49.0x	54.7x	60.3x	65.9x
1998E	Net Income	60.6	13.8	21.6	24.4	27.2	29.9	32.7

(1) 52 Week High/Low: $18.50 (5/6/97)/$12.25 (2/11/97).
(2) Current market price of $15.56 as of 12/16/97.
(3) 53.4 million Common Shares outstanding as of Form 10-Q dated 9/30/97 plus Options outstanding if "in-the-money."
(4) Options Proceeds related to exercised Options which are "in-the-money."
(5) Net Debt as of Form 10-Q dated 9/30/97. Includes Long-Term Debt of $479.4 million, Minority Interest of $1.6 million, estimated Notes Payable of $39.8 million based on year-end figures, estimated Current Portion of Long-Term Debt of $0.7 million based on year-end figures less Cash of $9.9 million.

Note: Expected figures as of CSFB research dated 11/18/97.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001501

CPH 1121211

016221

16div-022507

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Discounted Cash Flow Valuation Summary – C

NOT A CERTIFIED COPY

(Dollars In Millions)

	PRESENT VALUE OF CASH FLOW	PRESENT VALUE OF TERMINAL EBITDA VALUE		NET DEBT LESS OPTIONS PROCEEDS[1]	PRESENT VALUE PER SHARE[2]	
Base Case		9.5x	11.5x		9.5x	11.5x
9.0%	$638	$1,373	$1,662	$464	$27.41	$32.53
10.0%	609	1,253	1,517	464	24.78	29.45
		12.0x	14.0x		12.0x	14.0x
9.0%	$638	$1,735	$2,024	$464	$33.81	$38.94
10.0%	609	1,583	1,847	464	30.62	35.29

(1) Net Debt estimated as of September 30, 1997. Includes LTD of $479.4 mm, Minority Interest of $1.6 mm, estimated Notes Payable of $39.8 mm, estimated CPLTD of $0.7 mm less Cash of $9.9 mm and estimated Options proceeds of $47.8 mm.

(2) Includes 53.4 mm shares and 3.0 mm options.

CONFIDENTIAL CSFBC 0001502

CPH 121212

222910

16div-022508

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Discounted Cash Flow Valuation with Synergies – C

Inherent Valuation with Synergies

		PER SHARE VALUE(1)	
Discounted Cash Flow Value		9.5x – 11.5x	12.0x – 14.0x
		$24.78 – $32.53	$30.62 – $38.94
Present Value of Synergies	$1,000mm – $1,800mm	17.72 – 31.89	17.72 – 31.89
	Based on 17.0x – 20.0x after-tax Synergies range of $60mm – $90mm(2)		
Total Value of C with:	33% of Synergies	$30.68 – $43.16	$36.53 – $49.57
	67% of Synergies	36.59 – 53.79	42.43 – 60.20
	100% of Synergies	42.49 – 64.43	48.34 – 70.83

(1) Includes 53.4mm Shares outstanding plus 3.0mm Options outstanding.
(2) Pre-tax synergies range of $100mm – $150mm.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 00015O3

CPH 121213

016229

16div-022509

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Appreciation Potential Analysis

The identified synergies create significant stock price appreciation for S's shareholders at a $30.00 per share acquisition price.

Assumptions ($mm)

Pre-Announcement Equity Value[1]	
C	$ 833
S	3,657
Total	$ 4,490
Pre-Announcement Shares[1]	
C (mm)	53.5
S (mm)	87.1
S Share Price	$42.00
Acquisition Price	30.00
Exchange Ratio	0.7143x
Newly Issued S Shares (mm)	38.2
Pro Forma S Shares (mm)	125.3

(1) Includes outstanding Shares plus exercisable Options less Shares repurchased under the treasury method.

Implied Post-Merger Share Price

	PRE-TAX/AFTER-TAX SYNERGIES		
	$100/$60	$125/$75	$150/$90
P/E Multiple 17.0x			
Value of Synergies ($mm)	$1,020	$1,275	$1,530
Pro Forma Equity Value ($mm)	5,510	5,765	6,020
Pro Forma Shares (mm)	125.3	125.3	125.3
Implied S Price	$43.98	$46.01	$48.05
S Appreciation	4.7%	9.6%	14.4%
P/E Multiple 20.0x			
Value of Synergies ($mm)	$1,200	$1,500	$1,800
Pro Forma Equity Value ($mm)	5,690	5,990	6,290
Pro Forma Shares (mm)	125.3	125.3	125.3
Implied S Price	$45.41	$47.81	$50.20
S Appreciation	8.1%	13.8%	19.5%

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001504

CPH 112121

16div-022510

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Relative Contribution Analysis

(Dollars In Millions, except per share amounts)

	OPERATING RESULTS		IMPLIED	IMPLIED C	
	B	C	EX. RATIO	PRICE [1]	OWNERSHIP
Pre-Synergies					
1997E					
Net Income	$128	$30	0.3840x	$16.13	19.1%
1998E					
Net Income	173	61	0.5688	23.89	25.9
Assuming Synergy Allocation					
1997E					
Net Income	155	83	0.9770	41.03	37.5
1998E					
Net Income	200	123	1.0015	42.06	38.1
			Average	$30.78	30.1%
			Median	$32.46	31.7%

[1] Assuming B Price at $42.00.

Note: Per share figures include shares outstanding plus exercisable Options less Shares repurchased under the treasury method.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001505

CPH 121215

016225

16div-022511

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Synergies Allocation

(Dollars in Millions)

SYNERGY	TOTAL	% ALLOCATION C	% ALLOCATION S	$ ALLOCATION C	$ ALLOCATION S
1. Transfer BBQ License	$15.0				
Lost Royalties	2.0				
	$13.0	50.0%	50.0%	$6.5	$6.5
2. Synergies RE CG BBQ	1.5	50.0%	50.0%	0.8	0.8
3. Corporate Staff	15.0	100.0%	0.0%	15.0	0.0
4. International Group Staff	2.0	100.0%	0.0%	2.0	0.0
5. Latin America Staff	2.0	100.0%	0.0%	2.0	0.0
6. C Europe Network Sells S Products	20.0	50.0%	50.0%	10.0	10.0
7. C Japan Network Sells S Products	5.0	50.0%	50.0%	2.5	2.5
8. Factory Outlet Staff	1.0	100.0%	0.0%	1.0	0.0
9. S Catalytic Appliance Line	2.0	0.0%	100.0%	0.0	2.0
10. Consolidate Division HQ to DBF					
Eastpak	3.0	100.0%	0.0%	3.0	0.0
Powermate	5.0	100.0%	0.0%	5.0	0.0
COR	25.0	100.0%	0.0%	25.0	0.0
11. Consolidate Domestic Salesforces	20.0	50.0%	50.0%	10.0	10.0
12. Eliminate $20 mm Oracle Expense	6.5	50.0%	50.0%	3.3	3.3
13. Additional $25 mm Writeoff	8.5	100.0%	0.0%	8.5	0.0 Non-Cash
14. Global Sourcing Raw Materials	10.0	50.0%	50.0%	5.0	5.0
15. Consolidation Logistics & Warehousing	10.0	50.0%	50.0%	5.0	5.0
	$149.5			$104.50	$45.00 EBIT Adjustment
				62.70	27.00 Net Income Adjustment (taxed @ 40%)
				96.00	45.00 EBITDA Adjustment

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001506

CPH 1121216

16div-022512

NOT A CERTIFIED COPY

016227

CONFIDENTIAL
CSFBC 0001507

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

2.

Comparable Companies Analysis

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001508

016228

CPH 1121218

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Relative Trading Statistics

	C	S
Closing Price (12/16/97)	$15.56	$42.00
1997 High	18.50 (5/6/97)	49.81 (10/13/97)
1997 Average	15.37	37.03
1997 Low	12.25 (2/11/97)	24.75 (2/11/97)
Multiples		
1997E AMV/EBITDA	10.7x	14.6x
1998E AMV/EBITDA	7.5	10.9
1997E P/E	32.4x	29.5x
1998E P/E	15.5	20.3

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001509

CPH 1121219

16div-022515

016230

NOT A CERTIFIED COPY

A

CONFIDENTIAL
CSFBC 0001510

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

A.

C

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001511

162910

CPH 121221

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Comparable Company Analysis
Consumer Goods

1997E Results
(In millions ex. per share)

COMPANY	EQUITY VALUE	ENTERPRISE VALUE	1997E RESULTS: SALES	EBITDA	EBIT	NET INCOME	BOOK VALUE	ENTERPRISE VALUE AS A MULTIPLE OF: SALES	EBITDA	EBIT	EQUITY VALUE AS A MULTIPLE OF: NET INCOME	BOOK VALUE
S Company	3,657.4	3,835.1	1,185.1	262.4	205.4	127.6	541.9	3.2x	14.6x	18.7x	28.7x	6.7x
C Company	832.6	1,344.3	1,152.5	125.9	85.9	30.1	NA	1.2x	10.7x	15.6x	27.7x	NA
Huffy Corp.	177.9	207.7	700.0	40.6	17.6	10.0	112.3	0.3x	5.1x	11.8x	17.8x	1.6x
Kellwood Co.	709.8	1,048.8	1,700.0	122.4	92.4	41.5	392.7	0.6x	8.6x	11.4x	17.1x	1.8x
Russell Corp.	1,028.3	1,538.7	1,275.0	210.4	135.4	70.5	707.4	1.2x	7.3x	11.4x	14.6x	1.5x
Newell Co.	6,748.5	7,889.8	3,200.0	688.0	548.0	295.0	1,688.0	2.5x	11.5x	14.4x	22.9x	4.0x
Rubbermaid Inc.	3,613.8	3,954.0	2,425.0	412.3	267.3	150.0	1,020.0	1.6x	9.6x	14.8x	24.1x	3.5x
Johnson Worldwide	137.1	241.3	303.1	24.2	12.3	2.4	120.0	0.8x	10.0x	19.5x	57.1x	1.1x
V F Corporation	2,914.7	3,398.6	5,375.0	774.0	609.0	343.8	2,065.9	0.6x	4.4x	5.6x	8.5x	1.4x
Brunswick Corp	2,877.2	3,557.0	3,605.0	522.7	367.7	215.0	1,373.3	1.0x	6.8x	9.7x	13.4x	2.1x

Multiple Range, excludes S Company and C Company					
High	2.5x	11.5x	19.5x	57.1x	4.0x
Average	1.1	7.9	12.3	21.9	2.1
Median	0.9	7.9	11.8	17.4	1.7
Low	0.3	4.4	5.6	8.5	1.1

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001512

016232

CPH 1121222

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Comparable Company Analysis
Consumer Goods

1998E Results
(In millions ex. per share)

COMPANY	EQUITY VALUE	ENTERPRISE VALUE	1998E RESULTS: SALES	EBITDA	EBIT	NET INCOME	BOOK VALUE	ENTERPRISE VALUE AS A MULTIPLE OF: SALES	EBITDA	EBIT	EQUITY VALUE AS A MULTIPLE OF: NET INCOME	BOOK VALUE
S Company	3,857.4	3,835.1	1,473.9	350.7	285.7	173.4	706.9	2.6x	10.9x	13.4x	21.1x	5.2x
C Company	832.6	1,344.3	1,267.8	178.5	134.5	60.6	NA	1.1x	7.5x	10.0x	13.7x	NA
Huffy Corp.	177.9	207.7	740.0	42.9	18.9	10.5	112.3	0.3x	4.8x	11.0x	16.9x	1.6x
Kellwood Co.	709.6	1,048.8	1,900.0	140.6	107.6	46.5	427.7	0.6x	7.5x	9.7x	14.6x	1.7x
Russell Corp.	1,028.3	1,538.7	1,350.0	229.5	149.5	79.0	767.4	1.1x	6.7x	10.3x	13.0x	1.3x
Newell Co.	6,748.5	7,889.8	3,600.0	792.0	632.0	340.0	1,918.0	2.2x	10.0x	12.5x	19.8x	3.5x
Rubbermaid Inc.	3,613.8	3,954.0	2,550.0	510.0	325.0	185.0	1,100.0	1.6x	7.8x	12.2x	19.5x	3.3x
Johnson Worldwide	137.1	241.3	345.0	29.3	16.8	4.9	127.3	0.7x	8.2x	14.3x	28.0x	1.1x
V F Corporation	2,914.7	3,396.6	5,680.0	823.6	653.6	363.8	2,175.9	0.6x	4.1x	5.2x	8.0x	1.3x
Brunswick Corp	2,877.2	3,557.0	4,050.0	587.3	422.3	250.0	1,568.3	0.9x	6.1x	8.4x	11.5x	1.8x

Multiple Range, excludes S Company and C Company					
High	2.2x	10.0x	14.3x	28.0x	3.5x
Average	1.0	8.9	10.5	16.4	2.0
Median	0.8	7.1	10.6	15.8	1.6
Low	0.3	4.1	5.2	8.0	1.1

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001513

016233

CPH 1121223

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet
Comparable Company Analysis
Consumer Goods

16-Dec-97
10:10 pm

(In millions ex. per share)	S Company	C Company	Hutty Corp.	Kellwood Co.	Russell Corp.	Newell Co.	Rubbermaid Inc.	Johnson Worldwide	V F Corporation	Brunswick Corp
Ticker/Exchange	SOC/NYSE	CLN/NYSE	HUF/NYSE	KWD/NYSE	RML/NYSE	NWL/NYSE	RBD/NYSE	JWAIA/NASDAQ	VFC/NYSE	BC/NYSE
Currency	US$	US$	US$	US$	US$	US$	US$	US$	US$	US$
Share Price: 12/16/97	42.00	15.56	13.94	32.56	26.13	42.25	24.13	16.75	48.38	26.63
Fiscal Year End	Dec 29	Dec 31	Dec 31	Apr 30	Jan 4	Dec 31	Dec 31	Sep 27	Jan 4	Dec 31
Shares Outstanding	85.5	53.4	12.8	21.5	38.5	159.2	149.8	8.1	62.8	99.7
Balance Sheet Date	9/26/97	9/30/97	9/30/97	7/31/97	10/5/97	9/30/97	10/30/97	9/27/97	10/4/97	9/30/97
Total Debt (1)	200.5	520.0	47.2	358.4	524.0	1,446.8	390.2	114.8	539.3	761.8
Preferred Stock	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Cash & Cash Equivalents	22.8	8.9	17.5	19.4	13.8	313.7	50.0	10.6	57.4	81.8
Options In-the-Money	2.5	0.5	0.2	0.7	0.9	1.0	0.0	0.2	0.3	2.0
Average Price	14.8	13.0	13.3	17.7	25.3	18.0	0.0	10.6	32.8	16.9
Option Proceeds	36.9	6.8	2.3	12.0	22.4	18.0	0.0	2.3	9.1	33.3
Minority Interest	0.0	1.6	0.0	0.0	0.0	8.3	0.0	0.0	0.0	0.0
Total Book Value (2)	534.7	255.6	115.9	369.5	681.8	1,861.8	1,052.0	120.1	1,832.3	1,331.2
Equity Value (3)	3,657.4	832.6	177.9	709.8	1,028.3	6,746.5	3,613.8	137.1	2,914.7	2,677.2
Enterprise Value (4)	3,835.1	1,344.3	207.7	1,048.8	1,538.7	7,889.8	3,954.0	241.3	3,396.8	3,557.0
Total Debt / Total Capital (6)	27.3%	66.9%	28.9%	49.2%	43.5%	46.4%	27.1%	48.9%	21.8%	36.4%
1997E Operating Results (7)										
Sales	1,165.1	1,152.5	700.0	1,700.0	1,275.0	3,200.0	2,425.0	303.1	5,375.0	3,505.0
EBITDA	262.4 22.5%	129.9 11.3%	40.6 5.8%	122.4 7.2%	210.4 16.5%	688.0 21.5%	412.3 17.0%	24.2 8.0%	774.0 14.4%	522.7 14.9%
EBIT	205.4 17.6%	69.9 6.1%	17.6 2.5%	92.4 5.4%	135.4 10.6%	548.0 17.1%	267.3 11.0%	12.3 4.1%	609.0 11.3%	367.7 10.5%
Net Income (5)	127.6 10.9%	30.1 2.6%	10.0 1.4%	41.5 2.4%	70.5 5.5%	295.0 9.2%	150.0 6.2%	2.4 0.8%	343.8 6.4%	215.0 6.1%
Book Value	641.9	NA	112.3	392.7	707.4	1,668.0	1,020.0	120.0	2,065.9	1,373.3
1998E Operating Results (7)										
Sales	1,473.9	1,267.8	740.0	1,900.0	1,350.0	3,600.0	2,550.0	345.0	5,680.0	4,050.0
EBITDA	350.7 23.8%	178.5 14.1%	42.9 5.8%	140.6 7.4%	229.5 17.0%	792.0 22.0%	510.0 20.0%	29.3 8.5%	823.6 14.5%	587.3 14.5%
EBIT	265.7 18.0%	134.5 10.6%	18.9 2.6%	107.6 5.7%	149.5 11.1%	632.0 17.6%	325.0 12.7%	16.8 4.9%	653.6 11.5%	422.3 10.4%
Net Income (5)	173.4 11.8%	80.6 6.4%	10.5 1.4%	48.5 2.6%	79.0 5.9%	340.0 9.4%	185.0 7.3%	4.9 1.4%	363.8 6.4%	250.0 6.2%
Book Value	706.9	NA	112.3	427.7	787.4	1,918.0	1,100.0	127.3	2,175.9	1,568.9
L-T Future Growth Estimate (8	20.3%	16.7%	10.0%	15.0%	11.0%	14.6%	13.5%	NA	10.0%	15.0%
EPS / (8) LTM	0.90 48.7 x	0.04 NM	0.67 20.8 x	1.89 17.2 x	1.92 14.0 x	1.77 23.9 x	0.81 29.8 x	0.25 67.0 x	2.59 17.8 x	2.11 12.6 x
P/E Multiples 1997E	1.43 29.3 x	0.48 32.4 x	0.73 19.2 x	1.99 16.3 x	1.87 14.1 x	1.84 23.0 x	0.94 25.8 x	0.63 26.6 x	2.65 17.6 x	2.14 13.4 x
1998E	2.07 20.3 x	1.01 15.5 x	0.90 15.5 x	2.40 13.6 x	2.17 13.0 x	2.12 19.9 x	1.20 20.1 x	NA NA	2.92 16.6 x	2.45 11.7 x

See following page for notes.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 00011514

016234

CPH 1121224

16div-022520

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Consumer Goods

NOTES:

(1) Includes long-term debt (including current portion), short-term debt, "out of the money" convertible debt and capitalized lease obligations.
(2) Includes common shareholders' equity, "in the money" convertible debt/convertible preferred stock and option/warrant proceeds.
(3) Share price multiplied by fully diluted shares outstanding less option/warrant proceeds. Fully diluted shares outstanding includes primary shares, "in the money" exercisable options/warrants and shares from conversion of "in the money" convertible debt/preferred stock.
(4) Enterprise value equals equity value plus net debt. Net debt is defined as total debt plus preferred stock and "out of the money" convertible preferred stock plus minority interest less cash and cash equivalents.
(5) Excluding extraordinary items.
(6) Total capitalization includes total debt, minority interest and preferred stock.
(7) Estimates based on equity research reports.
(8) First Call estimates as of 12/12/97.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001515

016235

CPH 1121225

NOT A CERTIFIED COPY

B

016236

CONFIDENTIAL
CSFBC 0001516

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

B.

S

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001517

016237

CPH 121227

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Comparable Company Analysis
Consumer Goods

1997E Results
(In millions ex. per share)

COMPANY	EQUITY VALUE	ENTERPRISE VALUE	1997E RESULTS SALES	EBITDA	EBIT	NET INCOME	BOOK VALUE	ENTERPRISE VALUE AS A MULTIPLE OF: SALES	EBITDA	EBIT	EQUITY VALUE AS A MULTIPLE OF: NET INCOME	BOOK VALUE
S Company	3,657.4	3,835.1	1,185.1	262.4	205.4	127.8	541.9	3.2x	14.6x	18.7x	28.7x	6.7x
C Company	832.6	1,344.3	1,152.5	125.9	85.9	30.1	NA	1.2x	10.7x	15.6x	27.7x	NA
Tupperware Corporation	1,567.2	1,827.5	1,233.7	249.8	179.6	114.4	NA	1.5x	7.3x	10.2x	13.7x	NA
Whirlpool Corporation	4,253.0	7,249.0	8,300.0	913.0	553.0	235.0	2,203.4	0.9x	7.9x	13.1x	18.1x	1.9x
The Black & Decker Corp.	3,798.6	5,651.3	4,925.0	714.1	489.1	225.0	1,875.2	1.1x	7.9x	11.6x	16.9x	2.0x
The Stanley Works	4,013.9	4,254.7	2,650.0	344.5	267.5	187.0	734.8	1.6x	12.4x	15.9x	21.5x	5.5x
The Gillette Company	58,877.5	61,024.3	10,550.0	2,743.0	2,313.0	1,427.5	6,034.3	5.8x	22.2x	NM	41.2x	9.8x
Newell Co.	6,748.5	7,889.8	3,200.0	688.0	548.0	295.0	1,688.0	2.5x	11.5x	14.4x	22.9x	4.0x
Rubbermaid Inc.	3,813.8	3,954.0	2,425.0	412.3	267.3	150.0	1,020.0	1.6x	9.6x	14.8x	24.1x	3.5x
Brunswick Corp	2,877.2	3,557.0	3,605.0	522.7	367.7	215.0	1,373.3	1.0x	6.8x	9.7x	13.4x	2.1x

Multiple Range, excludes S Company and C Company					
High	5.8x	22.2x	15.9x	41.2x	9.8x
Average	2.0	10.7	12.8	21.5	4.1
Median	1.5	8.8	13.1	19.8	3.5
Low	0.9	6.8	9.7	13.4	1.9

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001518

016238

CPH 1121228

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Comparable Company Analysis
Consumer Goods

1998E Results
(In millions ex. per share)

COMPANY	EQUITY VALUE	ENTERPRISE VALUE	1998E RESULTS SALES	EBITDA	EBIT	NET INCOME	BOOK VALUE	ENTERPRISE VALUE AS A MULTIPLE OF: SALES	EBITDA	EBIT	EQUITY VALUE AS A MULTIPLE OF: NET INCOME	BOOK VALUE
S Company	3,857.4	3,835.1	1,473.9	350.7	285.7	173.4	706.9	2.6x	10.9x	13.4x	21.1x	5.2x
C Company	832.6	1,344.3	1,267.8	178.5	134.5	60.6	NA	1.1x	7.5x	10.0x	13.7x	NA
Tupperware Corporation	1,567.2	1,827.5	1,260.0	258.0	183.0	120.6	NA	1.5x	7.1x	10.0x	13.0x	NA
Whirlpool Corporation	4,253.0	7,249.0	8,800.0	1,038.4	668.4	285.0	2,433.4	0.8x	7.0x	10.8x	14.9x	1.7x
The Black & Decker Corp.	3,796.6	5,651.3	5,300.0	795.0	560.0	255.0	2,080.2	1.1x	7.1x	10.1x	14.9x	1.8x
The Stanley Works	4,013.9	4,254.7	2,750.0	426.3	346.3	215.0	874.8	1.5x	10.0x	12.3x	18.7x	4.6x
The Gillette Company	58,877.5	61,024.3	11,800.0	3,127.0	2,667.0	1,677.5	7,119.3	5.2x	19.5x	22.9x	35.1x	8.3x
Newell Co.	6,748.5	7,889.8	3,600.0	792.0	632.0	340.0	1,918.0	2.2x	10.0x	12.5x	19.8x	3.6x
Rubbermaid Inc.	3,613.8	3,954.0	2,550.0	510.0	325.0	185.0	1,100.0	1.6x	7.8x	12.2x	19.5x	3.3x
Brunswick Corp	2,877.2	3,557.0	4,050.0	587.3	422.3	250.0	1,568.3	0.9x	6.1x	8.4x	11.5x	1.8x

Multiple Range, excludes S Company and C Company					
High	5.2x	19.5x	22.9x	35.1x	8.3x
Average	1.8	9.3	12.4	18.4	3.8
Median	1.5	7.4	11.5	16.8	3.3
Low	0.8	6.1	8.4	11.5	1.7

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001519

016239

CPH 1121229

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet
Comparable Company Analysis
Consumer Goods

16-Dec-97
10:14 pm

(In millions ex. per share)	S Company	C Company	Tupperware Corporation	Whirlpool Corporation	The Black & Decker Corp.	The Stanley Works	The Gillette Company	Newell Co.	Rubbermaid Inc.	Brunswick Corp
Ticker/Exchange	SOC/NYSE	CLN/NYSE	TUP/NYSE	WHR/NYSE	BDK/NYSE	SWK/NYSE	G/NYSE	NWL/NYSE	RBD/NYSE	BC/NYSE
Currency	US$	US$	US$	US$	US$	US$	US$	US$	US$	US$
Share Price: 12/16/97	42.00	15.88	25.69	58.25	39.31	44.19	102.00	42.25	24.13	28.63
Fiscal Year End	Dec 29	Dec 31	Dec 28	Dec 31	Dec 31	Dec 28	Dec 31	Dec 31	Dec 31	Dec 31
Shares Outstanding	85.5	53.4	61.0	75.0	94.8	69.3	568.3	159.2	149.8	99.7
Balance Sheet Date	9/28/97	9/30/97	9/27/97	9/30/97	9/28/97	9/27/97	9/30/97	9/30/97	10/30/97	9/30/97
Total Debt (1)	200.5	520.0	299.0	2,955.0	2,042.0	387.5	2,212.7	1,446.8	390.2	761.6
Preferred Stock	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Cash & Cash Equivalents	22.8	9.9	38.7	90.0	187.3	146.7	102.8	313.7	50.0	81.8
Options In-the-Money	2.5	0.5	0.0	2.4	3.4	2.8	15.7	1.0	0.0	2.0
Average Price	14.8	13.3	0.0	42.4	19.1	19.5	30.9	18.0	0.0	16.9
Option Proceeds	36.9	6.6	0.0	103.4	65.2	54.8	485.7	18.0	0.0	33.9
Minority Interest	0.0	1.6	0.0	131.0	0.0	0.0	38.9	6.3	0.0	0.0
Total Book Value (2)	534.7	259.6	243.5	1,814.4	1,758.6	694.9	5,568.4	1,661.6	1,052.0	1,331.2
Equity Value (3)	3,657.4	832.6	1,567.2	4,253.0	3,796.6	4,013.9	58,877.5	6,748.6	3,813.6	2,877.2
Enterprise Value (4)	3,835.1	1,344.3	1,827.5	7,249.0	5,651.3	4,254.7	61,024.3	7,889.8	3,954.0	3,557.0
Total Debt / Total Capital (6)	27.3%	66.8%	55.1%	60.3%	53.7%	35.8%	28.3%	46.4%	27.1%	36.4%
1997E Operating Results (7)										
Sales	1,185.1	1,152.6	1,233.7	8,300.0	4,925.0	2,650.0	10,550.0	3,200.0	2,425.0	3,605.0
EBITDA	262.4 22.1%	125.9 10.9%	249.6 20.2%	913.0 11.0%	714.1 14.5%	344.5 13.0%	2,743.0 26.0%	668.0 21.5%	412.3 17.0%	522.7 14.5%
EBIT	205.4 17.3%	85.9 7.5%	179.6 14.6%	553.0 6.7%	489.1 9.9%	267.5 10.1%	2,313.0 21.9%	548.0 17.1%	267.3 11.0%	367.7 10.2%
Net Income (5)	127.6 10.8%	30.1 2.6%	114.4 9.3%	235.0 2.8%	225.0 4.6%	167.0 7.1%	1,427.5 13.5%	295.0 9.2%	150.0 6.2%	215.0 6.0%
Book Value	541.9	NA	NA	2,203.4	1,878.2	734.9	6,034.3	1,668.0	1,020.0	1,373.3
1998E Operating Results (7)										
Sales	1,473.9	1,267.8	1,260.0	8,800.0	5,300.0	2,750.0	11,800.0	3,600.0	2,550.0	4,050.0
EBITDA	350.7 23.8%	178.8 14.1%	258.0 20.5%	1,038.4 11.8%	795.0 15.0%	426.3 15.5%	3,127.0 26.5%	792.0 22.0%	510.0 20.0%	587.3 14.5%
EBIT	285.7 19.4%	134.5 10.6%	183.0 14.5%	668.4 7.6%	560.0 10.6%	346.3 12.6%	2,667.0 22.6%	632.0 17.6%	325.0 12.7%	422.3 10.4%
Net Income (5)	173.4 11.8%	60.6 4.8%	120.6 9.6%	285.0 3.2%	255.0 4.8%	215.0 7.8%	1,877.5 14.5%	340.0 9.4%	185.0 7.3%	250.0 6.2%
Book Value	706.9	NA	NA	2,433.4	2,080.2	874.8	7,118.3	1,918.0	1,100.0	1,568.3
L-T Future Growth Estimate (8	20.3%	16.7%	15.0%	13.5%	17.5%	11.3%	16.0%	14.6%	13.5%	16.0%
EPS / (9) LTM	0.90 46.7 x	0.04 NM	2.27 11.3 x	2.90 10.4 x	2.25 17.6 x	2.04 21.7 x	2.43 42.0 x	1.77 23.0 x	0.81 29.8 x	2.11 13.6 x
P/E Multiples 1997E	1.43 29.3 x	0.48 33.4 x	1.85 13.9 x	3.14 17.9 x	2.28 17.2 x	2.12 20.9 x	2.55 40.0 x	1.84 23.0 x	0.94 25.8 x	2.14 13.4 x
1998E	2.07 20.3 x	1.01 15.5 x	1.94 13.2 x	4.02 14.6 x	2.65 14.8 x	2.40 18.4 x	2.99 34.1 x	2.12 19.9 x	1.20 20.1 x	2.45 11.7 x

See following page for notes.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001520

016240

CPH 1121230

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Consumer Goods

13c

NOTES:

(1) Includes long-term debt (including current portion), short-term debt, "out of the money" convertible debt and capitalized lease obligations.
(2) Includes common shareholders' equity, "in the money" convertible debt/convertible preferred stock and option/warrant proceeds.
(3) Share price multiplied by fully diluted shares outstanding less option/warrant proceeds. Fully diluted shares outstanding includes primary shares, "in the money" exercisable options/warrants and shares from conversion of "in the money" convertible debt/preferred stock.
(4) Enterprise value equals equity value plus net debt. Net debt is defined as total debt plus preferred stock and "out of the money" convertible preferred stock plus minority interest less cash and cash equivalents.
(5) Excluding extraordinary items.
(6) Total capitalization includes total debt, minority interest and preferred stock.
(7) Estimates based on equity research reports.
(8) First Call estimates as of 12/12/97.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001521

CPH 1121231

162910

NOT A CERTIFIED COPY

016242

CONFIDENTIAL
CSFBC 0001522

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

3.

Comparable Acquisitions Analysis

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001523

016243

CPH 1121233

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Selected Comparable Acquisitions

(Dollars in Millions)

ANNOUNCEMENT DATE	ACQUIROR/ TARGET	DESCRIPTION OF TARGET BUSINESS	ENTERPRISE VALUE[1]	TRANSACTION VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBITA	EBITA MARGIN
4/97	Brunswick Corporation/ Mongoose (Bell Sports)	Bicycle manufacturer	$ 43.0	0.72x	NA	NA	NA
1/97	Brunswick Corporation/ Igloo Holdings Inc.[1]	Manufactures ice chests	154.0	1.00x	7.7x	10.3x	9.7%
9/96	Rubbermaid Inc./ Graco Childrens Products, Inc.[1]	Manufactures plastic toys	320.0	1.07x	7.5x	10.0x	10.0%
8/96	Kohlberg Kravis Roberts & Co./ E&S Holding Corporation (Evenflo & Spalding Holding Corporation)[1]	Sporting goods and juvenile products	1,006.0	1.37x	12.1x	14.8x	9.3%
3/95	Jordan Industries/ RockShox, Inc.	Suspension products for bicycles	50.0	1.32x	6.8x	7.0x	18.8%
1/96	Brunswick Corporation/ Nelson/Weather-Rite	Manufactures camping gear	120.0	1.20x	12.0x	NA	NA
12/95	Management & CINVEN/ Dunlop Slazenger	Tennis balls, racquets & golfballs	503.0	1.10x	NA	10.4x	10.6%

(1) Credit Suisse First Boston estimates.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001524

CPH 1121234

16div-022530

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Selected Comparable Acquisitions

(Dollars in Millions)

ANNOUNCEMENT DATE	ACQUIROR/ TARGET	DESCRIPTION OF TARGET BUSINESS	ENTERPRISE VALUE	TRANSACTION VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBITA	EBITA MARGIN
12/95	American Brands, Inc./ Cobra Golf Inc. II	Manufactures golf equipment	$ 643.0	3.60x	11.5x	11.7x	30.0%
2/95	Bell Sports Corporation/ American Recreation Company	Manufactures bicycles and components	152.6	1.03x	11.1x	11.9x	8.7%
12/94	Sogedim of Belgium/ Adidas Int'l Hldg.	Manufactures athletic footwear	690.0	2.30x	NA	12.8x	18.0%
11/93	Forstmann Little & Co./ Aldila, Inc.	Manufactures graphite golf shafts	80.4	1.95x	7.5x	8.1x	24.0%
11/93	Bain & Affiliates/ GT Bicycles, Inc.	Manufactures bicycles	96.2	0.78x	11.3x	12.7x	6.1%

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001525

CPH 1121235

016245

16div-022531

NOT A CERTIFIED COPY

016246

CONFIDENTIAL
CSFBC 0001526

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

4.

Discounted Cash Flow Analysis

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001527

L42910

CPH 1121237

NOT A CERTIFIED COPY

016248

CONFIDENTIAL
CSFBC 0001528

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

A.

C

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001529

672910

CPH 1121239

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet - Discounted Cash Flow Analysis

Segment:	Consolidated	Case:	C Base Case

(Dollars in Millions)

	1995	1996	1997P	CAGR	1998E	1999E	2000E	2001E	2002E	2003E	2004E	2005E	2006E	2007E	CAGR
Sales	$933.8	$1,220.2	$1,152.5	11.1%	$1,207.9	$1,302.8	$1,405.0	$1,574.9	$1,653.0	$1,920.0	$1,996.9	$2,103.3	$2,261.0	$2,430.6	7.5%
EBITDA	$129.3	$160.1	$126.9	-0.9%	$178.5	$191.9	$206.3	$231.7	$238.0	$256.2	$276.5	$296.1	$318.3	$342.2	7.5%
Depreciation	18.8	25.8	29.5	23.7%	32.0	34.4	37.0	39.8	42.7	45.9	49.4	53.1	57.1	61.3	7.5%
EBITA	$108.5	$134.3	$97.4	-5.7%	$146.5	$157.5	$169.3	$192.0	$195.6	$210.3	$226.1	$243.0	$261.3	$280.9	7.5%
Taxes	41.6	59.2	37.0	-5.7%	55.7	59.9	64.3	69.2	74.3	79.9	85.9	92.4	99.3	106.7	7.5%
Amortization	7.7	10.5	11.5	21.9%	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	0.0%
Unlevered Net Income	$59.1	$64.6	$48.9	-6.0%	$78.8	$85.6	$93.0	$110.8	$109.3	$118.4	$128.2	$138.7	$150.0	$162.1	8.3%
Adjustments															
(-) Net Capital Expenditures	$29.1	$38.4	$26.0	-3.6%	$40.0	$43.0	$46.2	$49.7	$53.4	$57.4	$61.7	$66.4	$71.3	$76.7	7.5%
(+) Depreciation & Amortization	26.6	36.4	40.0	22.8%	44.0	46.4	49.0	51.8	54.7	57.9	61.4	65.1	69.1	73.3	6.6%
(-) Inc./(Dec.) In Working Investment	77.2	53.0	(30.3)	NM	(27.9)	14.3	15.3	16.5	17.7	19.0	20.5	22.0	23.7	25.4	NM
Unlevered Free Cash Flow	($18.7)	($21.5)	$53.2	NM	$118.7	$74.8	$80.4	$96.4	$92.9	$99.9	$107.6	$115.4	$124.1	$133.4	3.1%
EBIT	$101.7	$93.8	$85.9	-4.1%	$134.5	$145.5	$157.3	$179.0	$183.6	$198.3	$214.1	$231.0	$249.3	$268.9	6.9%

Note: 1996 results exclude $44.0 million and $30.2 million of one-time restructuring charges which are included in 1996 Annual Report under COGS and S,G&A, respectively.

Key Ratios

Sales Growth	-	30.7%	-5.5%	10.0%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	
EBITDA Margin	13.7%	13.2%	10.9%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%	14.1%
Tax Rate	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%
EBITA Margin	11.7%	11.1%	8.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%
EBIT Margin	10.9%	8.2%	7.5%	10.5%	10.7%	10.7%	10.5%	10.5%	10.5%	10.5%	10.7%	11.0%	11.0%	11.1%
Capital Expenditures (% of Sales)	3.0%	3.1%	2.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
Depreciation (% of Cap Ex)	64.3%	64.7%	153.9%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Amortization (Growth)	-	35.2%	9.5%	4.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Chng. in WiChng. in Sales	-	10.2%	44.7%	-64.2%	13.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001530

016250

CPH 1121240

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet - Valuation Matrix

(Dollars in Millions)	Terminal Value as Multiple of 2007 EBITDA				Case: C Base Case
	9.5 x	11.5 x	12.0 x	14.0 x	
8.0%	$ 668.9	$ 668.9	$ 668.9	$ 668.9	Present Value of Free Cash Flow
	1,505.9	1,822.9	1,902.1	2,219.2	Present Value of Terminal Value
	$ 2,174.8	$ 2,491.8	$ 2,571.1	$ 2,888.1	Enterprise Value
	511.7	511.7	511.7	511.7	Net Debt
	$ 1,663.1	$ 1,980.1	$ 2,059.4	$ 2,376.4	Equity Value
	$ 47.8	$ 47.8	$ 47.8	$ 47.8	Options Proceeds
	56.4	56.4	56.4	56.4	Shares
	$30.31	$35.93	$37.33	$42.95	Value Per Share
					Enterprise Value as a Multiple of:
	1.7x	2.0x	2.0x	2.5x	1998 Sales
	12.2	14.0	14.4	16.2	1998 EBITDA
	16.2	18.5	19.1	21.5	1998 EBIT
9.0%	$ 637.8	$ 637.8	$ 637.8	$ 637.8	Present Value of Free Cash Flow
	1,373.3	1,662.4	1,734.7	2,023.8	Present Value of Terminal Value
	$ 2,011.1	$ 2,300.2	$ 2,372.5	$ 2,661.6	Enterprise Value
	511.7	511.7	511.7	511.7	Net Debt
	$ 1,499.4	$ 1,788.5	$ 1,860.8	$ 2,149.9	Equity Value
	$ 47.8	$ 47.8	$ 47.8	$ 47.8	Options Proceeds
	56.4	56.4	56.4	56.4	Shares
	$27.41	$32.53	$33.87	$38.99	Value Per Share
					Enterprise Value as a Multiple of:
	1.6x	1.8x	1.9x	2.1x	1998 Sales
	11.3	12.9	13.3	14.9	1998 EBITDA
	15.0	17.1	17.6	19.8	1998 EBIT
10.0%	$ 608.9	$ 608.9	$ 608.9	$ 608.9	Present Value of Free Cash Flow
	1,253.4	1,517.3	1,583.3	1,847.1	Present Value of Terminal Value
	$ 1,862.3	$ 2,126.2	$ 2,192.1	$ 2,456.0	Enterprise Value
	511.7	511.7	511.7	511.7	Net Debt
	$ 1,350.6	$ 1,614.5	$ 1,680.5	$ 1,944.3	Equity Value
	$ 47.8	$ 47.8	$ 47.8	$ 47.8	Options Proceeds
	56.4	56.4	56.4	56.4	Shares
	$24.71	$29.65	$30.82	$35.29	Value Per Share
					Enterprise Value as a Multiple of:
	1.5x	1.7x	1.7x	1.9x	1998 Sales
	10.4	11.9	12.3	13.8	1998 EBITDA
	13.8	15.8	16.3	18.3	1998 EBIT
11.0%	$ 581.9	$ 581.9	$ 581.9	$ 581.9	Present Value of Free Cash Flow
	1,145.0	1,396.0	1,446.3	1,697.3	Present Value of Terminal Value
	$ 1,726.9	$ 1,967.9	$ 2,028.2	$ 2,269.2	Enterprise Value
	511.7	511.7	511.7	511.7	Net Debt
	$ 1,215.2	$ 1,456.3	$ 1,516.5	$ 1,757.6	Equity Value
	$ 47.8	$ 47.8	$ 47.8	$ 47.8	Options Proceeds
	56.4	56.4	56.4	56.4	Shares
	$22.38	$26.65	$27.71	$31.99	Value Per Share
					Enterprise Value as a Multiple of:
	1.4x	1.6x	1.6x	1.8x	1998 Sales
	9.7	11.0	11.4	12.7	1998 EBITDA
	12.8	14.6	15.1	16.9	1998 EBIT

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001531

016251

CPH 1121241

16div-022537

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Weighted Average Cost of Capital Analysis
Consumer Goods

9:56 pm

Assumptions

Tax Rate	38.00%
Risk Free Rate	6.03% (1)
Equity Risk Premium	7.40% (2)

Industry Statistics

	Beta (3)	Debt / Mkt Equity	Levering Factor (4)	Unlevered Beta (5)
S Company	0.96	5.5%	1.03	0.93
C Company	0.82	62.5%	1.39	0.59
Huffy Corp.	0.54	26.5%	1.18	0.46
Kellwood Co.	0.69	50.5%	1.31	0.53
Russell Corp.	0.67	51.0%	1.32	0.51
Newell Co.	0.85	21.4%	1.13	0.75
Rubbermaid Inc.	0.86	10.8%	1.07	0.81
Johnson Worldwide	0.52	63.7%	1.52	0.34
V F Corporation	0.82	18.5%	1.11	0.74
Brunswick Corp	0.93	26.5%	1.16	0.80
Average (9)		38.1%		0.62

Cost of Capital

Pre-tax Cost of Debt	5.0%	5.5%	6.0%	6.5%	7.0%	7.5%	8.0%	8.5%	9.0%	9.5%	10.0%
After-tax Cost of Debt	3.1%	3.4%	3.7%	4.0%	4.3%	4.7%	5.0%	5.3%	5.6%	5.9%	6.2%

Debt/ Capital	Debt/ Equity	Average Unlev'd Beta	Levering Factor	Levered Beta (6)	Cost of Equity (7)	Debt/ Capital
0.0%	0.0%	0.62	1.00	0.62	10.6%	0.0%
5.0%	5.3%	0.62	1.03	0.64	10.7%	5.0%
10.0%	11.1%	0.62	1.07	0.66	10.9%	10.0%
15.0%	17.6%	0.62	1.11	0.68	11.1%	15.0%
20.0%	25.0%	0.62	1.16	0.71	11.3%	20.0%
25.0%	33.3%	0.62	1.21	0.74	11.5%	25.0%
30.0%	42.9%	0.62	1.27	0.78	11.8%	30.0%
35.0%	53.8%	0.62	1.33	0.82	12.1%	35.0%
40.0%	66.7%	0.62	1.41	0.87	12.5%	40.0%
45.0%	81.8%	0.62	1.51	0.93	12.9%	45.0%
50.0%	100.0%	0.62	1.62	1.00	13.4%	50.0%

WEIGHTED AVERAGE COST OF CAPITAL (8)

10.6%	10.6%	10.6%	10.6%	10.6%	10.6%	10.6%	10.6%	10.6%	10.6%	10.6%
10.4%	10.4%	10.4%	10.4%	10.4%	10.4%	10.5%	10.5%	10.5%	10.5%	10.5%
10.1%	10.2%	10.2%	10.2%	10.2%	10.3%	10.3%	10.3%	10.4%	10.4%	10.4%
9.9%	9.9%	10.0%	10.0%	10.1%	10.1%	10.2%	10.2%	10.3%	10.3%	10.4%
9.7%	9.7%	9.8%	9.8%	9.9%	10.0%	10.0%	10.1%	10.2%	10.2%	10.3%
9.4%	9.5%	9.6%	9.7%	9.7%	9.8%	9.9%	10.0%	10.0%	10.1%	10.2%
9.2%	9.3%	9.4%	9.5%	9.6%	9.7%	9.8%	9.8%	9.9%	10.0%	10.1%
9.0%	9.1%	9.2%	9.3%	9.4%	9.5%	9.6%	9.7%	9.8%	9.9%	10.0%
8.7%	8.9%	9.0%	9.1%	9.2%	9.3%	9.5%	9.6%	9.7%	9.8%	10.0%
8.5%	8.6%	8.8%	8.9%	9.1%	9.2%	9.3%	9.5%	9.6%	9.7%	9.8%
8.3%	8.4%	8.6%	8.7%	8.9%	9.0%	9.2%	9.3%	9.5%	9.7%	9.8%

(1) Yield on 30-year US Treasury Bonds, December 12, 1997.

(2) The average historic spread between the return on stocks and Hi bonds (Ibbotson Ass.)

(3) Barra U.S. Equity Beta Book predictions or MWE/S.

(4) Levering Factor: 1 + [[1 - tax rate] * (debt / equity ratio)]

(5) Unlevered Beta: (Beta / Levering Factor)

(6) Levered Beta: (Beta * Levering Factor)

(7) Cost of Equity: Rf + B (Rm - Rf), or the risk-free rate plus the beta * the equity risk premium.

(8) WACC: Rd = Return on Debt Re = Return on Equity

[Rd * (1 - tax rate) * (D / (D + E)] + [Re * (E / (D+E)]

(9) Averages exclude S Company and C Company.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001532

016252

CPH 1121242

NOT A CERTIFIED COPY

B

016253

CONFIDENTIAL
CSFBC 0001533

[redacted] Project Violet

B. S

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001534

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Project Violet - Discounted Cash Flow Analysis

Segment: Consolidated **Case:** 8 Base Case

(Dollars in Millions)

	1995	1996	1997P	CAGR	1998E	1999E	2000E	2001E	2002E	2003E	2004E	2005E	2006E	2007E	CAGR
Sales	$1,018.9	$984.2	$1,185.1	8.0%	$1,473.9	$1,584.4	$1,703.3	$1,831.0	$1,968.3	$2,116.0	$2,274.7	$2,445.3	$2,628.7	$2,825.8	7.5%
EBITDA	$114.4	$49.8	$262.4	51.4%	$350.7	$377.0	$405.3	$435.7	$468.3	$503.5	$541.3	$581.8	$625.5	$672.4	7.5%
Depreciation & Amortization	44.2	47.4	57.0	13.6%	65.0	48.5	50.7	54.5	58.6	63.0	67.7	72.7	78.2	84.1	2.9%
EBIT	$70.2	$2.3	$205.4	71.0%	$285.7	$328.5	$354.6	$381.2	$409.8	$440.5	$473.6	$509.1	$547.3	$588.3	8.4%
Taxes	26.7	0.9	78.1	71.0%	108.6	124.8	134.7	144.9	155.7	167.4	180.0	193.5	208.0	223.6	8.4%
Unlevered Net Income	$43.6	$1.4	$127.3	71.0%	$177.1	$203.7	$219.9	$236.3	$254.1	$273.1	$293.6	$315.6	$339.3	$364.8	8.4%
Adjustments															
(-) Net Capital Expenditures	$140.1	$75.9	$58.0	-33.6%	$71.0	$55.5	$59.6	$64.1	$68.9	$74.1	$79.6	$85.6	$92.0	$98.9	3.9%
(+) Depreciation & Amortization	44.2	47.4	57.0	13.6%	65.0	48.5	50.7	54.5	58.6	63.0	67.7	72.7	78.2	84.1	2.9%
(-) Inc./(Dec.) In Working Investment	21.1	28.4	5.0	-51.2%	43.3	16.6	17.8	19.2	20.6	22.1	23.8	25.6	27.5	29.6	-4.2%
Unlevered Free Cash Flow	($73.4)	($54.9)	$121.3	NM	$127.8	$180.1	$193.1	$207.6	$223.1	$239.9	$257.9	$277.2	$298.0	$320.3	10.7%

Note: 1996 results exclude $92.3 million and $42.6 million of one-time restructuring charges which are included in 1996 Annual Report under COGS and S,G&A, respectively.

Key Ratios

Sales Growth	-	-3.2%	20.4%	24.4%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%
EBITDA Margin	11.3%	5.1%	22.1%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%	23.8%
Tax Rate	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%
EBIT Margin	6.9%	0.2%	17.3%	19.4%	20.7%	20.8%	20.8%	20.8%	20.8%	20.8%	20.8%	20.8%	20.8%	20.8%
Capital Expenditures (% of Sales)	13.8%	7.7%	4.9%	4.8%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
Depreciation (% of CapEx)	31.5%	63.0%	98.3%	91.5%	87.5%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%
Chng. in WC/Chng. in Sales	-	-87.0%	2.5%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%

CONFIDENTIAL
CSFBC 0001535

016255

CPH 121245

16div-022541

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet - Valuation Matrix

(Dollars in Millions)	Terminal Value as Multiple of 2007 EBITDA				Case: 5 Base Case
	9.5 x	11.5 x	12.0 x	14.0 x	
8.0%	$ 1,479.3	$ 1,479.3	$ 1,479.3	$ 1,479.3	Present Value of Free Cash Flow
	2,958.7	3,581.6	3,737.3	4,360.2	Present Value of Terminal Value
	$ 4,438.0	$ 5,060.9	$ 5,216.6	$ 5,839.5	Enterprise Value
	177.7	177.7	177.7	177.7	Net Debt
	$ 4,260.3	$ 4,883.2	$ 5,038.9	$ 5,661.8	Equity Value
	$ 156.0	$ 156.0	$ 156.0	$ 156.0	Options Proceeds
	94.5	94.5	94.5	94.5	Shares
	$46.74	$53.33	$54.98	$61.87	Value Per Share
					Enterprise Value as a Multiple of:
	3.0x	3.4x	3.5x	4.0x	1998 Sales
	12.7	14.4	14.9	16.7	1998 EBITDA
	15.5	17.7	18.3	20.4	1998 EBIT
9.0%	$ 1,405.8	$ 1,405.8	$ 1,405.8	$ 1,405.8	Present Value of Free Cash Flow
	2,698.2	3,266.2	3,408.2	3,976.3	Present Value of Terminal Value
	$ 4,104.0	$ 4,672.0	$ 4,814.0	$ 5,382.0	Enterprise Value
	177.7	177.7	177.7	177.7	Net Debt
	$ 3,926.2	$ 4,494.3	$ 4,636.3	$ 5,204.3	Equity Value
	$ 156.0	$ 156.0	$ 156.0	$ 156.0	Options Proceeds
	94.5	94.5	94.5	94.5	Shares
	$43.20	$49.21	$50.71	$56.73	Value Per Share
					Enterprise Value as a Multiple of:
	2.8x	3.2x	3.3x	3.7x	1998 Sales
	11.7	13.3	13.7	15.3	1998 EBITDA
	14.4	16.4	16.8	18.8	1998 EBIT
10.0%	$ 1,337.4	$ 1,337.4	$ 1,337.4	$ 1,337.4	Present Value of Free Cash Flow
	2,462.7	2,981.1	3,110.8	3,629.2	Present Value of Terminal Value
	$ 3,800.1	$ 4,318.5	$ 4,448.2	$ 4,966.6	Enterprise Value
	177.7	177.7	177.7	177.7	Net Debt
	$ 3,622.4	$ 4,140.8	$ 4,270.4	$ 4,788.9	Equity Value
	$ 156.0	$ 156.0	$ 156.0	$ 156.0	Options Proceeds
	94.5	94.5	94.5	94.5	Shares
	$39.99	$45.07	$46.84	$52.33	Value Per Share
					Enterprise Value as a Multiple of:
	2.6x	2.9x	3.0x	3.4x	1998 Sales
	10.8	12.3	12.7	14.2	1998 EBITDA
	13.3	15.3	15.6	17.4	1998 EBIT
11.0%	$ 1,273.7	$ 1,273.7	$ 1,273.7	$ 1,273.7	Present Value of Free Cash Flow
	2,249.6	2,723.2	2,841.6	3,315.2	Present Value of Terminal Value
	$ 3,523.3	$ 3,996.9	$ 4,115.3	$ 4,588.9	Enterprise Value
	177.7	177.7	177.7	177.7	Net Debt
	$ 3,345.6	$ 3,819.2	$ 3,937.6	$ 4,411.2	Equity Value
	$ 156.0	$ 156.0	$ 156.0	$ 156.0	Options Proceeds
	94.5	94.5	94.5	94.5	Shares
	$37.06	$42.07	$43.32	$48.33	Value Per Share
					Enterprise Value as a Multiple of:
	2.4x	2.7x	2.8x	3.1x	1998 Sales
	10.0	11.4	11.7	13.1	1998 EBITDA
	12.3	14.0	14.4	16.1	1998 EBIT

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001536

016256

CPH 1121246

16div-022542

NOT A CERTIFIED COPY

016257

CONFIDENTIAL
CSFBC 0001537

Project Violet

5. Merger Consequences

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Merger Consequences – Stock-for-Stock

	CURRENT MARKET[1]	PREMIUM OVER MARKET PRICE				
		54.2%	73.5%	92.8%	112.0%	131.3%
C Acquisition Price Per Share	$15.56	$24.00	$27.00	$30.00	$33.00	$36.00
C Equity Value	$833.7	$1,308.8	$1,476.2	$1,645.5	$1,814.8	$1,984.1
New Fully Diluted Shares Issued by S	19.9	31.1	35.1	39.2	43.2	47.2
C Shareholders' Ownership of Combined Company	18.3%	26.0%	28.4%	30.7%	32.8%	34.8%
1998E						
S Net Income	$183.2	$183.2	$183.2	$183.2	$183.2	$183.2
C Net Income	60.6	60.6	60.6	60.6	60.6	60.6
After-Tax Interest Expense[2]	0.0	0.0	0.0	0.0	0.0	0.0
Goodwill Amortization[3]	14.1	26.0	30.2	34.4	38.7	42.9
Pro Forma Combined Net Income[4]	$229.7	$217.8	$213.6	$209.4	$205.1	$200.9
S Stand-Alone Shares Outstanding	88.5	88.5	88.5	88.5	88.5	88.5
Pro Forma Shares Outstanding	108.4	119.6	123.6	127.7	131.7	135.7
S Stand-Alone EPS	$2.07	$2.07	$2.07	$2.07	$2.07	$2.07
Pro Forma EPS	2.12	1.82	1.73	1.64	1.56	1.48
EPS Accretion/(Dilution)	2.4%	(12.0%)	(16.5%)	(20.8%)	(24.8%)	(28.5%)
Incremental EBIT Required for 0% Dilution[5]	N.M.	$49.8	$70.6	$91.6	$112.5	$133.5
Percentage of C's Sales	N.M.	3.9%	5.6%	7.2%	8.9%	10.5%

(1) As of 12/16/97.
(2) Assumes tax rate of 40.0%.
(3) Assumes book value of $268.0 million. Goodwill is amortized over 40 years.
(4) Assumes no synergies, transaction costs or non-recurring items.
(5) Assumes tax rate of 40.0%.
Note: Fully Diluted Shares by Treasury Method.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001539

CPH 1121249

16div-022545

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Merger Consequences – All Cash

	CURRENT MARKET[1]	PREMIUM OVER MARKET PRICE				
		54.2%	73.5%	92.8%	112.0%	131.3%
C Acquisition Price Per Share	$15.56	$24.00	$27.00	$30.00	$33.00	$36.00
C Equity Value	$833.7	$1,306.8	$1,476.2	$1,645.5	$1,814.8	$1,984.1
New Fully Diluted Shares Issued by S	0.0	0.0	0.0	0.0	0.0	0.0
C Shareholders' Ownership of Combined Company	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
1998E						
S Net Income	$183.2	$183.2	$183.2	$183.2	$183.2	$183.2
C Net Income	60.6	60.6	60.6	60.6	60.6	60.6
After-Tax Interest Expense[2]	40.0	62.7	70.9	79.0	87.1	95.2
Goodwill Amortization[3]	14.1	26.0	30.2	34.4	38.7	42.9
Pro Forma Combined Net Income[4]	$189.6	$155.1	$142.7	$130.4	$118.0	$105.7
S Stand-Alone Shares Outstanding	88.5	88.5	88.5	88.5	88.5	88.5
Pro Forma Shares Outstanding	88.5	88.5	88.5	88.5	88.5	88.5
S Stand-Alone EPS	$2.07	$2.07	$2.07	$2.07	$2.07	$2.07
Pro Forma EPS	2.14	1.75	1.61	1.47	1.33	1.19
EPS Accretion/(Dilution)	3.5%	(15.3%)	(22.1%)	(28.8%)	(35.6%)	(42.3%)
Incremental EBIT Required for 0% Dilution[5]	N.M.	$46.8	$67.4	$88.0	$108.6	$129.2
Percentage of C's Sales	N.M.	3.7%	5.3%	6.9%	8.6%	10.2%

(1) As of 12/16/97.
(2) Assumes purchase price financed wholly with 8% debt. Assumes tax rate of 40.0%.
(3) Assumes book value of $268.0 million. Goodwill is amortized over 40 years.
(4) Assumes no synergies, transaction costs or non-recurring items.
(5) Assumes tax rate of 40.0%.
Note: Fully Diluted Shares by Treasury Method.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001540

CPH 1121250

092910

16div-022546

NOT A CERTIFIED COPY

016261

CONFIDENTIAL
CSFBC 0001541

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted]

Project Violet

6.

Large Premium Deals

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001542

292910

CPH 1121252

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Premiums Paid Over 100%

DATE ANNOUNCED	ACQUIROR NAME	TARGET NAME	TRANSACTION VALUE ($ IN MIL)	PREMIUM TO ANNOUNCEMENT 1 WEEK	PREMIUM TO ANNOUNCEMENT 4 WEEKS	ACQUIROR APPRECIATION 4 WEEKS	ACQUIROR APPRECIATION 3 MONTHS	ACQUIROR APPRECIATION 6 MONTHS	S&P 500 APPRECIATION 4 WEEKS	S&P 500 APPRECIATION 3 MONTHS	S&P 500 APPRECIATION 6 MONTHS
11/27/96	Cardinal Health Inc.	Owen Healthcare Inc.	461.7	100.9%	87.2%	(1.5%)	10.3%	0.7%	1.0%	9.2%	12.4%
04/02/96	Allegheny Ludlum Corp.	Teledyne Inc.	2,442.4	115.1%	109.0%	6.0%	2.0%	12.8%	0.2%	2.4%	4.6%
08/14/95	Federated Department Stores	Broadway Stores (Federated Dep.)	1,668.5	392.3%	56.1%	0.4%	(5.2%)	(10.3%)	2.5%	5.1%	11.5%
03/31/95	Horizon Healthcare Corp.	Continental Medical Systems	919.6	135.0%	121.9%	(21.6%)	(22.5%)	(16.0%)	2.7%	9.7%	16.4%
03/02/95	Homedco Group Inc.	Abbey Healthcare Group Inc.	925.5	118.5%	118.5%	28.3%	21.4%	NA	3.1%	8.6%	14.8%
06/01/94	Corning Inc.	Nichols Institute	311.5	169.4%	176.4%	0.0%	(13.3%)	(6.7%)	(1.9%)	2.8%	2.0%
06/16/92	Tyson Foods Inc.	Arctic Alaska Fisheries Corp.	373.5	104.0%	100.0%	(2.0%)	3.3%	26.5%	1.9%	1.1%	5.1%
12/20/91	NBD Bancorp, Detroit, Michigan	Summcorp, Fort Wayne, Indiana	2,591.5	105.6%	114.7%	6.3%	8.6%	5.4%	8.9%	5.6%	7.5%
09/12/91	First of Amer. Bank, Kalamazoo, MI	Security Bancorp, Southgate, MI	2,725.2	125.4%	113.8%	(13.7%)	(5.6%)	(0.4%)	(2.2%)	(3.0%)	6.4%
07/22/91	Chiron Corp.	Cetus Corp.	678.4	165.0%	203.7%	(9.3%)	18.6%	11.8%	(1.5%)	1.1%	9.3%
12/02/90	American Telephone & Telegraph	NCR Corp.	7,812.5	134.4%	108.5%	(7.0%)	3.1%	11.6%	3.9%	15.5%	17.7%
				High	392.3%	203.7%	28.3%	21.4%	26.5%	8.9%	15.5%	17.7%
				Low	100.9%	56.1%	(21.6%)	(22.5%)	(16.0%)	(2.2%)	(3.0%)	2.0%
				Median	125.4%	113.8%	(1.5%)	3.1%	3.0%	1.9%	8.1%	9.3%
				Mean	151.4%	119.1%	(1.3%)	1.9%	3.5%	1.7%	8.3%	9.8%

Source: Securities Data Company.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001543

C92910

CPH 1121253

16div-022549

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Premiums Paid: Case Studies

DATE ANNOUNCED	ACQUIROR NAME	TARGET NAME	TRANSACTION VALUE ($ IN MIL.)	PREMIUM TO ANNOUNCEMENT		ACQUIROR APPRECIATION			S&P 500 APPRECIATION		
				1 WEEK	4 WEEKS	4 WEEKS	3 MONTHS	6 MONTHS	4 WEEKS	3 MONTHS	6 MONTHS
8/25/97	Cardinal Health Inc.	Bergen Brunswig Corp.	$2,857.3	68.0%	68.7%	22.2%	30.5%	28.5%	4.7%	3.7%	4.6%
6/11/97	Lennar Corp.	Pacific Greystone Corp.	247.2	83.3	98.4	23.7	40.8	99.9	6.0	10.4	13.3
6/10/97	Halliburton Co.	Numar Corp.	336.5	99.3	95.7	0.7	18.4	29.4	8.7	9.7	12.5
5/14/97	National-Oilwell	Dreco Energy Services Ltd.	354.7	60.2	67.3	28.5	53.8	95.0	6.6	17.7	12.7
5/13/97	Tyco International Ltd.	Inbrand Corp.	367.4	78.3	107.2	0.6	27.0	25.2	4.5	15.1	11.4
5/5/97	Northrop Grumman Corp.	Logicon Inc.	949.9	94.2	102.7	(1.0)	32.7	42.7	9.5	21.2	23.6

Source: Securities Data Company.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001544

CPH 1121254

16div-022550

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Premiums Paid: Case Studies

8/25/97 **Cardinal Health Inc. Acquires Bergen Brunswig (Premium 58.0%):** Cardinal is a U.S. healthcare service provider and Bergen is a U.S. distributor of pharmaceuticals and medical-surgical supplies. Transaction value is $2.8 billion. Synergies in excess of $100 million were expected, through consolidation of distribution centers and reduction in capital expenditures. Value of synergies does not include cross-selling ancillary services to a larger customer base.

6/11/97 **Lennar Corp. Acquires Pacific Greystone Corp. (Premium 83.3%):** Both companies are involved in the home building industry. Lennar's shares rose 16% after announcement. Combined company is the fifth-largest home builder, based on revenues and homes sold. Market consensus indicated good strategic fit, due to Pacific Greystone's operating depth in California and Lennar's significant lot inventory in the area.

6/10/97 **Halliburton Co. Acquires Numar Corp. (Premium 99.3%):** Halliburton is an oil field services company and Numar is a manufacturer of devices used to evaluate rock formations that contain oil and natural gas. Numar had posted losses since 1992 and the transaction was expected to be dilutive in the first year. Halliburton expects high growth from the new products resulting from Numar's R&D investments.

5/14/97 **National Oilwell Inc. Acquires Dreco Energy Services Ltd. (Premium 80.2%):** Both are manufacturers of equipment for the oil and gas industry. National Oilwell experienced share price appreciation of 24.0% within a week. Integration and cross-marketing expected to drive sales growth and reduce costs.

5/13/97 **Tyco International acquires Inbrand Corp. (Premium 78.3%):** Inbrand is a manufacturer of disposable absorbent products. Tyco is fueling growth through a series of acquisitions. Experienced 25.2% appreciation in first six months after announcement of the acquisition versus S&P 500 appreciation of 11.4%.

5/03/97 **Northrop Grumman acquires Logicon Corp. (Premium 64.2%):** Logicon supplies computer systems to the military. Northrop experienced appreciation of 42.7% in the first six months after announcement. Rationale for deal was to achieve mass quickly in the defense electronics and missile business. Combined entity expected to have revenues of about $1 billion.

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001545

CPH 112125

592910

16div-022551

NOT A CERTIFIED COPY

7

016266

CONFIDENTIAL
CSFBC 0001546

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

[redacted] Project Violet

7.

Analyst Estimates

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001547

L92910

CPH 1121257

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Equity Research Q4 Estimates – S

FIRM	REPORT DATE	1997E Q4 SALES	IMPLIED Q4 SALES GROWTH Q4'97E/Q4'96A	Q3 GROWTH Q3'97A/Q3'96A
CIBC Oppenheimer	10/22/97	$360.0	33.9%	24.7%
Merrill Lynch	10/24/97	323.0	20.1	24.7
PaineWebber	10/29/97	338.7	26.0	24.7

FIRM	Q4E EPS		
CIBC Oppenheimer	$0.52		
Merrill Lynch	0.48	First Call – Avg.	$0.50
PaineWebber	0.48	I/B/E/S – Avg.	0.51
Goldman	0.52	Nelson – Avg.	0.52
Prudential	0.47		
Buckingham Research	0.48	S's forecast	$0.43
McDonald & Co.	0.47	Implied 1997E EPS	1.36
Bear Stearns	0.55	First Call	1.43

NOT A CERTIFIED COPY

CONFIDENTIAL CSFBC 0001548

CPH 112258

092910

16div-022554

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Project Violet

Equity Research Price Targets

C

CURRENT DATE	RESEARCH HOUSE	REPORT DATE	TARGET DATE	TARGET PRICE	DAYS DISCOUNTED	RISK FREE	BETA	MARKET PREMIUM	DIVIDEND YIELD	DISCOUNT RATE	NPV
12/16/97	CSFB	11/18/97	11/18/98	$23.00	341	6.03%	0.82	7.40%	0.00%	12.10%	$20.70
	Prudential	11/14/97	11/14/98	$22.00	337						$19.82
										Average	$20.26

Acquisition Premiums[1]		Implied Price
1997 YTD	33.7%	$27.09
1996-1997 YTD	34.2%	$27.19

(1) Premiums based on stock swaps with transaction values above $1,000 million. Source: Securities Data Company.

S

CURRENT DATE	RESEARCH HOUSE	REPORT DATE	TARGET DATE	TARGET PRICE	DAYS DISCOUNTED	RISK FREE	BETA	MARKET PREMIUM	DIVIDEND YIELD	DISCOUNT RATE	NPV
12/16/97	Prudential	12/10/97	12/10/98	$55.00	363	6.03%	0.86	7.40%	0.10%	13.03%	$48.76
	PaineWebber	10/29/97	10/29/98	$56.00	321						$50.35
	Oppenheimer	10/22/97	10/22/98	$59.00	314						$53.17
										Average	$50.76

CONFIDENTIAL CSFBC 0001549

NOT A CERTIFIED COPY

CPH 1121259

697910

16div-022555

473

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 8
(EXHIBITS 75-94)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

011137

473

TABLE OF CONTENTS
VOLUME 8

	TAB
John Tyree Deposition Transcript (9/15/03)	75
CPH Ex. 16	76
Heather Stack Deposition Transcript	77
CPH Ex. 384	78
CPH Ex. 14	79
William Wright Deposition Transcript	80
Dennis Pastrana Deposition Transcript	81
William Pruitt Deposition Transcript	82
CPH Ex. 33	83
CPH Ex. 34	84
CPH Ex. 35	85
CPH Ex. 76	86
Michael Hart Deposition Transcript (5/19/04)	87
CPH Ex. 112	88
CPH 1241513	89
CPH 1039208	90
CPH 1059641	91
CPH Ex. 380	92
CPH Ex. 146	93
Morgan Stanley Written Response to Rule 1.310 Topics, Dated November 19, 2004 (*Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co. Inc)*	94

NOT A CERTIFIED COPY

01713

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

----------x
COLEMAN (PARENT) HOLDINGS, INC.)
Plaintiff,)
vs.)
MORGAN STANLEY & CO, INC.,)
Defendant.)
----------x

September 15, 2003
9:40 a.m.

VIDEOTAPED DEPOSITION OF
JOHN TYREE

Reported by: David Henry
Job Number: 152526

Videotaped Deposition of JOHN TYREE, held at the offices of Shapiro Mitchell, 380 Madison Avenue, 23rd Floor, New York, New York, on Monday, September 15, 2003, before David Henry, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, LLC
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
AND: CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
MARCELLO RIVERA, Videographer
JAMES J. DOYLE, Morgan Stanley
(p.m. only)

Tyree

JOHN D. TYREE, called as a witness, having been duly sworn, was examined and testified as follows:

EXAMINATION BY MR MARKOWSKI:

Q. Mr. Tyree, would you please state your fall name?

A. John D'Arcy Tyree.

Q. And would you spell that, please.

A. Do you want me to spell the whole name?

Q. Yes.

A. J-O-H-N, D-'-A-R-C-Y, T-Y-R-E-E.

Q. And where do you currently reside, Mr. Tyree?

A. In London.

Q. What's your address there?

A. 27 Neville Street, SW73AS, London, United Kingdom.

Q. Mr. Tyree, as I just indicated, I represent Coleman Parent Holdings in a lawsuit against Morgan Stanley and Company.

Let me show you a copy of the complaint we filed against Morgan Stanley.

NOT A CERTIFIED COPY

017140

Tyree

Have you seen that before?
A. No, I have not.
Q. You have not had an opportunity to review the complaint?
A. I haven't had an opportunity to review this document as it stands, no.
Q. Are you aware of the nature of the lawsuit that Coleman Parent filed against Morgan Stanley?
A. Can you be a little more clear about the nature of the lawsuit.
Q. Are you aware of the claims that Coleman Parent has asserted against Morgan Stanley?
A. I am aware that certain claims have been made against Morgan Stanley in regards to Sunbeam's issuance of convertible notes.
Q. What's your understanding?
MR. CLARE: I will object to the question and I will instruct you, Mr. Tyree, in answering the question, if you have an understanding apart from your conversations with counsel, people representing Morgan Stanley, that you can answer the question,

Tyree

but I would instruct you to limit your answer and exclude any conversations that you would have had with counsel for Morgan Stanley, inside or outside counsel.
A. The only understanding that I have in regards to this case arose from dialogue that I have had with either Morgan Stanley counsel other external third party counsel.
Q. All right. You have had an opportunity to meet with counsel to prepare for your deposition today, is that correct?
A. Yes, I have.
Q. When were you born, Mr. Tyree?
A. I was born August 23, 1965.
Q. You graduated from West Point in 1987?
A. That's correct.
Q. What was your degree?
A. Well, I actually had a double degree, or dual degree as it were, a Bachelor of Science. Everyone at West Point gets that degree. And then also Bachelor of Arts in English literature.
Q. Did your science degree have a

Tyree

particular specialty?
A. General engineering.
Q. Did you enter the army after graduating from West Point?
A. No.
Q. What happened?
A. Well, actually you are in the army when you're at West Point, so you're sworn in your first day as a freshman.
Q. All right. Did you continue your military service after you graduated from West Point?
A. Yes, I did.
Q. And what was your starting rank?
A. Second lieutenant.
Q. And how long did you serve?
A. You need to be a little bit more specific. Do you mean in what capacity?
Q. Well, are you currently in the army?
A. I am not in the army now, no.
Q. How long did you continue after your graduation from West Point to serve in the army?

Tyree

A. I was an active duty army officer for approximately five and a half to six years.
Q. And did your army service continue after that?
A. Yes.
Q. In what status?
A. The individual ready reserve.
Q. And how long did that continue?
A. I don't remember exactly the length of time.
Q. Do you know approximately?
A. Approximately five years.
Q. So you were in active service until approximately 1993, is that right?
A. I believe it was closer to 1992. And the other point I would make is active service is defined from the date when I started the Academy, which is active service.
Q. The five and a half years you're counting from the time you started at West Point?
A. Active duty, yes.
Q. So your active duty service after

NOT A CERTIFIED COPY

01714

Page 9

Tyree
you left West Point was approximately a year and a half to two years?
A. No. To be more clear, I consider the time when I started the Academy going forward as active duty service.
Q. All right, I'm focussing on the time after you left West Point. You stayed in active service with the army until approximately 1992?
A. That's correct.
Q. And what was your rank when you left the army in 1992, left active service in 1992?
A. I was a captain.
Q. What assignments did you have between the time you left West Point in 1987 and the time you left active service in approximately 1992?
A. Just to be clear, when you say assignments, do you mean geographic or what branch of the service I was in?
Q. However you want to characterize it.
A. I was an armored tank platoon

Page 10

Tyree
leader for several years, company executive officer, and following that head of an army program which trained allied military personnel.
Q. How long were you a tank platoon leader?
A. I was a tank platoon leader for approximately two years.
Q. Where were you stationed when you had that assignment?
A. Initially I was stationed in Fort Knox Kentucky for my training as a tank platoon leader, and then joined my unit in Schweinford, Germany.
Q. Did you see any combat duty during that time period?
A. Not during that period, no.
Q. And then you became a company executive officer?
A. That's correct.
Q. And where was that assignment?
A. The same location, Schweinford, Germany.
Q. And what were your responsibilities

Page 11

Tyree
there?
A. They were extensive.
Q. Can you give me an overview?
A. I was responsible for, among other things, maintenance of the vehicle. I was second in command of the company. I was responsible for numerous personnel issues, pay and allowances, et cetera.
Q. How many personnel are assigned to the company?
A. It's dependent. I was an executive officer for two different types of companies.
Q. And how large were each of them?
A. The first company I was an executive officer for was a line tank company with approximately 80 people assigned to it. The second was a headquarters company with approximately 350 people assigned to it.
Q. How long were you the company commander for the tank line company?
A. I don't remember exactly.
Q. Was it a matter of months or longer?
A. It was a matter of months.

Page 12

Tyree
Q. Was it a promotion to be assigned the responsibility as the company commander for the headquarters unit?
A. If you can define promotion a little more clearly.
Q. I'm sorry, I guess your title was company executive officer, is that correct?
A. That is correct.
Q. Was it a change in rank for you?
A. No, it was not a change in rank.
Q. Was it a more significant set of responsibilities?
A. Yes, it was.
Q. And how long did you remain the company executive officer for the headquarters company?
A. Again, I don't remember the exact amount of time.
Q. Can you approximate it for me?
A. Approximately a year.
Q. And where was that assignment at?
A. Schweinford, Germany.
Q. Did you see any combat service during the period of time when you were the

NOT A CERTIFIED COPY

017142

Tyree

executive, the company executive officer for either the line tank company or the headquarters company?

A. I was not involved in combat during that period of time.

Q. And your next assignment was to head an army program where you trained allied military personnel?

A. That's correct.

Q. Where did that assignment take place?

A. Fort Knox, Kentucky.

Q. Over what period of time?

A. Again, I don't recall the exact period of time.

Q. Approximately.

A. Approximately late 1990 to 1992.

Q. Was that your final active duty assignment?

A. Yes.

Q. And tell me in general terms what your responsibilities were.

A. Again, there were numerous responsibilities. I hesitate, it could be a

Tyree

lengthy conversation.

Q. Okay, just start and I'll tell you when you've given me enough detail.

A. My duties involved managing training and overseeing the well-being of allied army officers over the period described.

Q. How large was the training program itself?

A. It varied in size during the period I was managing it.

Q. From what size to what size?

A. I don't know the exact numbers, people involved. It varied.

Q. Approximately.

A. It varied from less than 15 to less than a hundred officers.

Q. Is there a particular focus to this training program?

A. No, no particular focus.

Q. What was the purpose for it?

A. There were many purposes.

Q. Give me some of them.

A. To train our allies in American

Tyree

military tactics and strategy, among other things.

Q. What different allied countries were involved in this training program?

A. There were many.

Q. How many approximately?

A. I really can't recall.

Q. Can you give me some examples?

A. Yes. We had students from Saudi Arabia, students from France, among others.

Q. Were the allied personnel all officer personnel?

A. I can't recall exactly if everyone was at the officer rank.

Q. Was it all classroom training?

A. No.

Q. Were you actually involved in providing instruction as part of the program?

A. I would characterize it differently.

Q. How would you characterize it?

A. I served in oversight function to ensure they received instruction.

Q. And who were you supervising?

Tyree

A. I thought I answered that earlier. I was supervising these students.

Q. Well, were you supervising instructors as well?

A. I wouldn't characterize my role as supervising instructors.

Q. Did you have any US personnel that reported to you in connection with this assignment?

A. Yes, I did.

Q. What were the responsibilities of those people?

A. I can't remember exactly.

Q. What kind of personnel?

A. Military personnel.

Q. What was their rank, job descriptions? You didn't supervise the instructors, right?

A. I didn't have direct supervisory responsibilities over the instructors.

Q. Were there people in connection with this assignment that you did have supervisory responsibility for, US personnel?

A. Yes.

NOT A CERTIFIED COPY

01143

Tyree

Q. And what was the nature of the responsibilities to those people?
A. To my recollection, it was primarily administrative.
Q. When did you get your promotion to the rank of captain?
A. I can't remember exactly.
Q. Were you in Germany?
A. I don't believe I was promoted to captain in Germany.
Q. Your best recollection is that your promotion came when you were serving in this assignment in Fort Knox in Kentucky?
A. Again, I just don't realize when the actual ceremony I took place, but I don't believe it happened in Germany.
Q. Did you receive any awards or commendations while were you in the army, in the active service?
A. Yes, I did.
Q. And what were they?
A. I received a number of awards when I was in the service.
Q. Which can you remember?

Tyree

A. I remember the army achievement medal.
Q. Any others?
A. There were others.
Q. Do you recall any others?
A. I received the army commendation medal.
Q. Anything else that you recall?
A. I received the airborne badge.
Q. Any others?
A. Those are really all that I recall.
Q. What was the army achievement medal awarded for?
A. I can't exactly remember.
Q. Do you have a general recollection?
A. Yes.
Q. And what's your general recollection of why you received that medal?
A. My general recollection, it was a long time ago, was for excellence in gunnery skills for myself and my platoon.
Q. And the second one that you recall was the army commendation medal, is that correct?

Tyree

A. That is correct.
Q. And what was this awarded for?
A. That was for, and again, this is a vague recollection, that was for excellence in regards to the conduct of my final assignment as I described earlier.
Q. That's the training assignment at Fort Knox?
A. That's correct.
Q. And what's the airborne badge awarded for?
A. Successful completion of airborne school.
Q. And when did you go to airborne school?
A. I don't remember the exact date.
Q. Was it while were you in Germany?
A. No.
Q. Was it while were you at the Academy?
A. As I recollect, yes, it was.
Q. And what's the nature of that training?
A. Can you be more specific?

Tyree

Q. What do they train you to do at airborne school?
A. To parachute out of combat aircraft.
Q. Why did you leave active service?
A. There were many reasons.
Q. Tell me what they were.
A. Because I intended to pursue a career in business.
Q. Anything else?
A. Yes.
Q. What else?
A. Because I intended to attend business school.
Q. Any other reasons?
A. Yes.
Q. What?
A. It was just time for me to move on to something new.
Q. Any other reasons?
A. No.
Q. Did you go immediately into business school after you left active service in the army?

NOT A CERTIFIED COPY

017144

Page 21

Tyree
A. No, not immediately.
Q. What did you do immediately after leaving active service?
A. I went home.
Q. And where is that?
A. Today it's in London.
Q. Well, home, you said you went home after you left active service. Did you go to London?
A. No, I did not.
Q. Where did you go?
A. I went to Pauling, New York.
Q. How long were you there before you went into business school?
A. I can't remember exactly.
Q. Do you remember the date you left active service?
A. Not exactly, no.
Q. Approximately how long was it between the time you left active service and the time you started business school?
A. It was a matter of months.
Q. Did you have any employment between those two time periods?

Page 22

Tyree
A. Not that I recall.
Q. Do you remember what your class rank was at West Point?
A. No.
Q. Did you receive any honors or awards there for academic performance?
A. Yes.
Q. What were they?
A. It was a long time ago. Can you repeat the question?
Q. Did you receive any academic awards or honors at West Point for your academic performance?
A. I was on the equivalent of the honor roll, and that's probably the wrong terminology, but the equivalent that West Point offers for several semesters.
Q. Anything else?
A. I think there was, but I just don't recall what they were.
Q. Does West Point award honors at graduation such as cum laude or summa cum laude?
A. It presents academic honors at

Page 23

Tyree
graduation, yes.
Q. Did you receive any such award?
A. Not that I recall.
Q. You went to the Tuck School of Business at Dartmouth?
A. Yes, I did.
Q. When did you start there?
A. I don't remember the exact date.
Q. Do you remember the year?
A. I attended Tuck from 1992 to 1994, as I recall.
Q. You were a full-time student during that period?
A. No.
Q. What else were you doing?
A. There was time off. I did an internship during that period.
Q. Where was the internship at?
A. The internship was at Morgan Stanley.
Q. Is that Morgan Stanley's offices in Manhattan?
A. Part of the time was spent there, yes.

Page 24

Tyree
Q. How long was the internship?
A. I can't recall exactly.
Q. Was it a summer internship?
A. Yes.
Q. Which summer was it?
A. My recollection was it was the summer of 1993.
Q. Other than your internship, did you have any other employment while were you at Tuck?
A. Yes.
Q. What was that?
A. I was hired by the admissions office to interview incoming candidates.
Q. Any other employment during that time period?
A. Not that I recall.
Q. How did you get the internship at Morgan Stanley?
A. Can you be more clear in terms of how did I get the internship?
Q. How did it come to be that you got an internship at Morgan Stanley?
A. I applied for the internship and I

NOT A CERTIFIED COPY

01715

Tyree

received it.
Q. Did anyone recommend you for the position?
A. Can you clarify what you mean by recommend?
Q. Did anyone recommend to Morgan Stanley that Morgan Stanley hire you for this summer internship?
A. Yes.
Q. Who?
A. My recollection is a gentleman by the name of John Paul.
Q. Anyone else?
A. There may have been others, but I don't recall.
Q. Who is John Paul?
A. At the time John was an employee of the firm.
Q. An employee of Morgan Stanley?
A. That's correct.
Q. How did you happen to know him?
A. I had met him socially.
Q. What was Mr. Paul's job back in 1993 at Morgan Stanley?

Tyree

A. I don't remember exactly what his position was.
Q. Do you know what department he worked in?
A. Again, it was a long time ago. I believe he was in the real estate area of the firm.
Q. Did you receive any academic honors at the Tuck Graduate School of Business?
A. No, other than the diploma.
Q. And you got a Master's in business administration, right?
A. Yes.
Q. What was the nature of the internship at Morgan Stanley?
A. Again, could you just --
Q. What kinds of things did you do?
A. I worked on investment banking transactions.
Q. Anything else?
A. No, I think that's what I did.
Q. What kinds of responsibilities did you have?
A. A myriad of different

Tyree

responsibilities.
Q. Give me some examples.
A. I would assist in the preparation of client presentations.
Q. What kinds of assistance did you provide?
A. It varied significantly.
Q. Give me some examples.
A. I would help to process changes to the document.
Q. What does that mean?
A. It varied significantly, depending on who might be asking to have changes made to the document.
Q. What's the range of things that that would involve?
A. It's a very broad range.
Q. Tell me what it was.
A. Well, this won't be all-inclusive, but a senior person at the firm might look at a presentation and want to either amend it in terms of substance and would annotate by hand those amendments. I would then take that up to processing and have it turned from

Tyree

handwritten comments to typed neat comments.
Q. That sounds pretty basic, right?
A. Yes, it was.
Q. How much more extensive would your responsibilities with be respect to processing other than seeing that the handwriting got changed into typing?
A. I might update the financial numbers in a presentation.
Q. Other than working on client presentations, can you recall anything else you did while working as a client intern?
A. Yes.
Q. What?
A. We would participate in briefings, receive briefings from representatives of various parts of the firm.
Q. What was the nature of those briefings?
A. It varied significantly.
Q. From what to what?
A. We could receive a briefing on approaches to company valuation.
Q. What else?

NOT A CERTIFIED COPY

011746

Tyree

A. Again, it was a long time ago, so -- I recall a presentation on administrative matters at Morgan Stanley.

Q. What do you mean by administrative matters?

A. It varied extensively, how to go to word processing and process changes would be one, how to learn how to use different client billing numbers and cost centers might be another.

Q. Would you characterize any of the activity as instructional in terms of how to perform investment banking services for clients?

A. I'm sorry, are you referring to the comments I made there or the broad base of instruction that I received?

Q. You referred generally to receiving briefings from different departments of Morgan Stanley.

A. That's correct.

Q. Would you characterize any of that as instructional in terms of how to perform investment banking services for Morgan Stanley

Tyree

clients?

A. I would characterize it as an introduction, among other things, to investment banking services provided by Morgan Stanley.

Q. Let me put it this way. I'm envisioning two kind of presentations. One is a presentation where someone comes in and says here's what we do in our department, the kinds of services we perform, to give you an overview of what kinds of activities that group engages in. Another kind of instruction would be for someone in that group to come in and try to teach people how to do some aspect of the services that that department performs. Would you characterize any of the presentations you received as more like the latter in terms of substantive instruction on how to perform a service?

A. I believe there were elements of both in the training we received.

Q. So you did receive training on how to perform certain kinds of functions for clients during your summer internship?

Tyree

A. Again, I would characterize it as an introductory training as it were, to investment banking services that Morgan Stanley provides to clients.

Q. And when did you start full-time employment at Morgan Stanley?

A. Are you defining full-time employment as after my summer internship?

Q. Correct. I wouldn't consider a summer internship to be full-time employment.

A. I started full-time employment in 1994 at Morgan Stanley.

Q. Do you remember the month?

A. I don't remember the exact month.

Q. Do you remember the time of year?

A. I believe it was either in the summer or the fall.

Q. And you completed your studies at Dartmouth in the fall of -- in 1994, excuse me, let me rephrase that.

You finished your MBA program at Dartmouth in 1994, is that correct?

A. I believe that's correct.

Q. How long between the time you

Tyree

completed your class studies and the time you started work at Morgan Stanley was it?

A. I don't remember.

Q. Did you take some time off?

A. Yes, I did.

Q. What did you do?

A. Among other things, I travelled with friends.

Q. When were you offered your job at Morgan Stanley?

A. I don't remember the exact date when I received the offer.

Q. Was it some time shortly after the summer internship completed itself?

A. I just don't remember if it was shortly after the summer internship was completed.

Q. Did you have to reapply for employment at Morgan Stanley after the summer internship concluded?

A. I did not have to reapply, as you put it, per se.

Q. Was it the case that Morgan Stanley made job offers to people based on their

NOT A CERTIFIED COPY

017147

Tyree
performance in the summer internship program?
A. Among other variables, yes.
Q. And that's how you got your job at Morgan Stanley?
A. I just don't understand the question.
Q. Well, you were in the summer internship program at Morgan Stanley.
A. Yes.
Q. Was it in connection with that program's activities that Morgan Stanley offered you a full time position at the firm?
A. You'd have to talk to the people who hired me, you know, to dictate why I received the offer.
Q. Well, did you go through another round of interviews after the summer internship concluded?
A. I don't recall going through another round of interviews.
Q. All right, so up finished the internship, you went back to school and at some point Morgan Stanley made you a job offer?

Tyree
A. That's right, that's correct.
Q. Was the job offer to work in a particular department at Morgan Stanley?
A. Yes, it was.
Q. What department was it?
A. It was in the investment banking division.
Q. Was it to work with a particular group in the investment banking division?
A. No.
Q. Had you sought employment in the investment banking division?
A. Yes.
Q. That was the department you wanted to go to work for?
A. That is correct.
Q. When you started at Morgan Stanley in the investment banking division in 1994, was there an initial training program that you were put through?
A. As I recall there was a training program.
Q. How long did that last?
A. I don't remember exactly.

Tyree
Q. Approximately.
A. I believe it lasted more than a month.
Q. Where was that at?
A. It took place at a training center just outside of New York, New York City.
Q. Is this a training center owned by Morgan Stanley?
MR. CLARE: Objection, calls for speculation. You can answer if you know.
A. I don't know if it's owned by Morgan Stanley today.
Q. I'm talking about at the time.
A. At the time I believe it was owned by IBM.
Q. Who provided the training?
A. Again, I don't remember. There were numerous classes so I don't remember who provided the training.
Q. Was the training provided by Morgan Stanley employees?
A. There were some Morgan Stanley employees who provided training during this period of time.

Tyree
Q. Some of the training is by Morgan Stanley staff?
A. I believe that there were some third parties who participated in the training.
Q. What subjects were covered?
A. A myriad of subjects.
Q. Which do you remember?
A. I actually remember many of the topics I've already mentioned to you in regards to the summer associate training.
Q. I'm sorry, I don't understand your answer.
A. You asked me earlier when presentations were given to the summer associates, what the content of some of those presentations were. This in part included some of those same topics that were covered with us as summer associates.
Q. So there was some repetition of the topics?
A. That's correct.
Q. All right, what topics do you remember though?

NOT A CERTIFIED COPY

017148

Tyree

A. Administrative issues at Morgan Stanley, approaches to valuation, and a broad array of other topics and I just can't recall the specifics.

Q. You can't remember any of the other things that were covered?

A. No, I said I can't recall the specifics. A number of other investment banking related topics.

Q. Is this training program all directed to people who are starting work in the investment banking division of Morgan Stanley?

A. As I recall, this training that I participated in was designed for associates who were going to be joining the firm in the investment banking division.

Q. All right, other than administrative issues and valuation issues, what other specific investment banking related subjects do you remember being covered during this training program?

A. I recall discussing case studies of different transactions that Morgan Stanley had

Tyree

participated in.

Q. Anything else?

A. I recall discussions regarding the functioning of the debt capital markets and the equity capital markets.

Q. Anything else?

A. That's really all I can remember specifically.

Q. Do you remember any discussion about the due diligence process that would be involved in public offerings that Morgan Stanley underwrote?

A. I don't regard any specific instruction on due diligence during this training session, no.

Q. You said you don't regard it. Do you mean you don't recall it?

A. My mistake. I don't recall.

Q. You don't recall any training with respect to how to conduct due diligence during this initial training session?

A. That is correct. It's not to say it didn't happen, I just didn't recall it.

Q. When this training session was

Tyree

completed, this month or so long training program was completed, what happened next in terms of your Morgan Stanley employment?

A. We began work at the firm.

Q. What was your first assignment?

A. I don't remember my first assignment.

Q. Where was it at?

A. Morgan Stanley's headquarters in New York.

Q. But you don't remember what your first job was?

A. No, I don't remember my first assignment.

Q. Well, by assignment I mean your first position at the firm. I don't mean your first piece of work that day, I mean were you assigned to a particular position in the firm?

A. Other than being assigned as associate in the investment banking division, no.

Q. Who did you report to?

A. I reported to a number of different people within the investment banking division

Tyree

and obviously at the senior levels of the firm.

Q. Was there someone who directly supervised your day-to-day work?

A. Yes, there was.

Q. Who was that?

A. I don't recall his name.

Q. How did you get your work assignments?

A. This individual would assign you.

Q. What was the nature of your early work at Morgan Stanley as an associate in investment banking?

A. It was effectively the same as my work when I was a summer associate that we discussed earlier.

Q. Is there a particular group within investment banking that you were assigned to at that initial point?

A. If you can clarify what you mean by group.

Q. Was the investment banking division at Morgan Stanley divided into different functions?

NOT A CERTIFIED COPY

017149

Page 41

Tyree
A. It is divided into different groups, part of the it is, yes.
Q. And what are those different groupings?
A. There are a number of different groups.
Q. Can you tell me what they are?
A. Not all of them, no.
Q. Can you tell me what some of them are?
A. Yes.
Q. Would you, please.
A. At the point when I started work at Morgan Stanley as an associate, there was a real estate group, general industrial group, mergers and acquisitions group and a number of other specific industry coverage groups.
Q. Now, initially you were not assigned to any of those specialty groups?
A. That is correct.
Q. Was there a point in time when did you get assigned to a particular specialty or function?
A. Yes.

Page 42

Tyree
Q. And what was that first assignment?
A. Not to be cute, but first assignment or first group?
Q. First group.
A. The first group that I was assigned to was the general industrial group.
Q. And how long after you started did you get assigned to the general industrial group?
A. I don't remember exactly.
Q. Was it weeks or months or years?
A. Years.
Q. All right let's spend a little more time on the period before that. What kind of things were you doing during the period before you were assigned to the industrial group?
A. Again those tasks we discussed when I was a summer associate, basically the same sorts of tasks.
Q. So were you working on client presentations?
A. Among other things, yes.
Q. Did your responsibilities grow over the period of time that you were in the

Page 43

Tyree
general investment group.
A. Yes, they did.
Q. And what did they begin to include that they didn't earlier?
A. That's a difficult question the way you phrased it, because I was often part of many aspects of investment banking work, but you asked if my responsibilities grew, and they did, but I still worked within those same general parameters and the same sorts of projects.
Q. Well, give me a sense of how your responsibilities changed then.
A. Again we're talking many years ago, but in lieu of just, as we discussed earlier, making changes to presentations that were given to me by other people, I would be more actively making those changes myself, as I increased my levels of responsibility.
Q. Anything else?
A. Yes.
Q. What?
A. I would work more in a senior role relative to the analysts who work at Morgan

Page 44

Tyree
Stanley as opposed to being more of an equal, as my responsibilities grew within the firm.
Q. Okay, anything else?
A. Yes.
Q. What?
A. I would with greater frequency interact with clients.
Q. Anything else you can recall in terms of increased responsibilities during this initial phase before you were assigned to the general industrial group?
A. I think that gives you a good overview.
Q. So you began to supervise analysts, is that a fair statement, in connection with some activities?
A. I wouldn't characterize it that way. I approach my work at Morgan Stanley in a team function, so the way I would characterize it is they increasingly looked to me for guidance in some issues.
Q. What's the function of an analyst?
A. They have many functions.
Q. Give me examples of that.

NOT A CERTIFIED COPY

011150

Tyree

A. Among other things, they will conduct financial modelling.
Q. Anything else?
A. They will on occasion assist in logistical matters.
Q. What do you mean by logistics in that context?
A. If a Morgan Stanley team is travelling to a certain location, the analyst in many cases will ensure that the logistical issues involved in that travelling are taken care of and run smoothly.
Q. Airplane and hotel arrangements, things of that nature?
A. On occasion.
Q. You indicated that your responsibilities more and more included interaction with clients, is that correct?
A. As my responsibilities increased within the firm, I would more frequently interact with clients.
Q. And during this initial phase, we're still focussing on this initial phase before you went to work for the general

Tyree

industrial group, what kinds of client interaction would you have?
A. Again, a wide array of interactions. Can you be a little more specific?
Q. Well, I need to hear from you I guess what, in general terms, the kinds of client responsibility you had.
A. I hesitate somewhat because it very much depends upon what the purpose of the work is that I'm doing at the time.
Q. Did you make presentations to prospective clients?
A. I would very rarely, if ever, make presentations to clients on my own at this stage of my career.
Q. Did you make presentations to clients in connection with equity offerings?
A. Again, at this point in my career I would very rarely make presentations to clients about anything on my own.
Q. Did you interact with clients in connection with due diligence activities during that time period?

Tyree

A. I can't remember if I did or didn't.
Q. What kinds of client interaction can you recall?
A. I can recall attending client presentations with senior members of the firm - and being in a support role during those presentations.
Q. Do you remember when it was that you moved into the general industrial group?
A. Not exactly.
Q. How did that come about?
A. Can you be an a little more specific when you ask how did it come about?
Q. Well, you got assigned to the general industrial group at some point, correct?
A. Yes, I did.
Q. And how did that assignment come to occur?
A. I received a call saying that -- asking me if I'd like to join the general industrial group, and I said yes and started business with them, started work the next day.

Tyree

Q. Was that a different location from where you had been working?
A. Yes.
Q. Where was this location?
A. It was on a different floor from where I was. I don't recall the exact floor it was on.
Q. But you're still working at Morgan Stanley's New York headquarters?
A. That is correct, at this time.
Q. Do you remember who called you?
A. No.
Q. Had you sought a position in the general industrial group?
A. I had sought a position in a number of different groups and the general industrial group was one of them.
Q. How long were you in that group?
A. I don't know exactly.
Q. Can you approximate it for me?
A. I believe I was in the general industrial group for between one and two and a half years.
Q. For between one and two and a half

NOT A CERTIFIED COPY

017151

Page 49

Tyree
years?
A. Yes.
Q. What was your title while you were in that group, did you have one?
A. Yes, I did.
Q. What was it?
A. I was an associate.
Q. That was the same title you had as a starting employee, is that correct?
A. That's correct.
Q. Did your title ever change while you were in that group?
A. I do not believe my title changed during my time in the general industrial group, no.
Q. To whom did you report in the general industrial group?
A. Again, I reported to a number of different people.
Q. Was there a particular person who supervised your daily activities, gave you assignments?
A. In the general industrial group?
Q. Correct.

Page 50

Tyree
A. There were people who fulfilled both of those roles, separate people.
Q. Who supervised your daily activity?
A. As I recall, the individual who was quoted as head of the group I believe was Richard Swift at the time that I was in that group.
Q. And who gave you your assignments?
A. I can't remember the name of the assignments officer at the time that I was in the group.
Q. Did your responsibilities differ in the general industrial group than they had previously been?
A. I don't characterize it that way.
Q. Was the nature of your work the same?
A. The basic nature of the investment banking services that I was providing and the work that I was doing did not change dramatically.
Q. What was different then about being in the general industrial group?
A. The clients that we focused on,

Page 51

Tyree
among other things.
Q. Did your responsibilities increase in the general industrial group over time?
A. Yes.
Q. And what did your new responsibilities begin to include then?
A. They included again more direct interaction with clients, more frequent interaction with clients, among other things.
Q. Anything else?
A. I increasingly worked with more senior people within the firm.
Q. Did there come a point where you left the general industrial group to go to work for another group or division, department within Morgan Stanley?
A. Yes.
Q. And what was the next group that you worked for?
A. At the time it was known as the client services group.
Q. Do you recall approximately when you started to work for the client services group?

Page 52

Tyree
A. I believe that I started working for the client services group in approximately 199 -- I'm sorry, either between 1996 or 1997.
Q. How did your move to that position take place?
A. Can you be a little more specific?
Q. Well, one day you're working in the industrial services group, right? Did I get that name wrong? The general industrial group.
A. That's correct.
Q. And you started working for the client services group?
A. That's right.
Q. How did that occur?
A. I asked to move to the client services group.
Q. Why did you make that request?
A. A number of reasons.
Q. What were they?
A. I was -- I sought to broaden my professional exposure.
Q. What else?
A. I found that I had a good rapport

NOT A CERTIFIED COPY

017152

Tyree

with the professionals within the client services group.

Q. Any other reasons why you made that request?

A. I found the work that they did stimulating.

Q. Any other reasons?

A. I think those were the main reasons.

Q. What is the function of the client services group or what was it back in 1996 or 1997?

A. It has many -- or correction, it had many functions.

Q. What were they back at that time?

A. The broad function of the group is to assist in the management and execution of Morgan Stanley financing transactions.

Q. I'm sorry, what kinds of transactions?

A. Financing transactions.

Q. What's a Morgan Stanley financing transaction?

A. It can be one of many things.

Tyree

Q. What are those things?

A. Again, I will give you an example. An equity issuance by a client is a financing transaction.

Q. What else besides issuing equity?

A. A debt issuance by a client is a financing transaction.

Q. Does it essentially include any transactions by which Morgan Stanley assists clients in raising money?

A. I'm sorry, could you repeat?

Q. Does a Morgan Stanley financing transaction basically include any transaction by which Morgan Stanley assists a client in raising money by means of debt or equity?

A. I would not characterize it that way, no.

Q. In what way did I misdescribe the nature of the transactions?

A. I wouldn't want to characterize how you misconstrue them. I think one major component that I would include is assisting major shareholders of companies in selling portions of their stakes in companies, which

Tyree

is not unto itself a capital raising event for the company.

Q. But that would still be something that the client services group would be involved in?

A. At this point in time we did work on those sorts of transactions.

Q. Now, when you indicated that the responsibility of the group would be to assist in managing and executing those kinds of transactions, what does that involve?

A. Again, it involves a number of different tasks and subtasks.

Q. Tell me what they are.

A. It involves advising clients on issues regarding documentation of transactions, among other things.

Q. Anything other than documentation?

A. Yes.

Q. What?

A. It involves managing the assets of Morgan Stanley, the resources of Morgan Stanley to bring them to bear at the correct times and places during the course of the

Tyree

transaction.

Q. What does that mean?

A. It means what I said. Are you looking for --

Q. Well, --

A. You want an example?

Q. I want some sense of the specifics underlying managing the assets and resources of Morgan Stanley to bring them to bear at the right time and place.

A. Pricing the transaction is an important part of it, advising a client on what they can sell their given securities for in the marketplace is an important part of the transaction. The client services group would interact with our debt or equity capital market area to, among other things, advise a client on the proper pricing for a transaction potentially.

Q. How long were you in the client services group?

A. I don't know the exact amount of time that I was in the group for.

Q. Can you tell me approximately how

NOT A CERTIFIED COPY

017153

Tyree
long you were in that group?
A. Between three and four years.
Q. And what was your next assignment?
A. My next assignment was working in the Morgan Stanley telecommunications group.
Q. When you were in the client services group, were you still located at Morgan Stanley's headquarters in Manhattan?
A. Yes, I was.
Q. How long were you in the telecommunications group?
A. I was in the telecommunications group for approximately two years.
Q. And why did you go to work for that group, was it at your request?
A. It was at my request.
Q. And why did you request to go into the telecommunications group?
A. Very similar reasons to those I described for my move to the client services group. I had a good rapport with the people in the group and wanted to broaden my professional experience.
Q. Was that assignment still in

Tyree
Manhattan?
A. No.
Q. Where was that located?
A. In London.
Q. Had you moved to London immediately upon joining that group?
A. No. I actually moved to London and joined the group at the same time basically.
Q. That's what I was trying to understand. Was there a period of time while you were working in a group but still working out of Morgan Stanley's offices in New York?
A. No, there was not.
Q. So when you moved to London, that was contemporaneous with your joining the telecommunications group?
A. Yes, it was.
Q. Do you remember when you moved to London?
A. In 2000.
Q. Is there a time in this process that your title did change from associate to something else?
A. Yes.

Tyree
Q. And what titles have you held?
A. I've held the title since I've been at Morgan Stanley of associate, vice-president and executive director.
Q. When did you receive the vice-president title?
A. I don't remember the exact date.
Q. Was it while you were in client services?
A. I believe it was while I was in the client services group.
Q. And when did you become an executive director?
A. I became an executive director while I was in London in the telecommunications group.
Q. And that's the title you hold today?
A. That is correct.
Q. Is your employer still Morgan Stanley & Company?
A. I still regard myself as an employee of Morgan Stanley, the parent company. I am unsure what is on the books

Tyree
today in terms of whether or not I am an employee of Morgan Stanley and Co. or Morgan Stanley International.
Q. So you are not sure if you are a Morgan Stanley & Company, Inc. -- well, a Morgan Stanley & Company employee?
A. I know I regard myself as a broader Morgan Stanley employee. What I am not sure of is whether administratively I am counted against the books of Morgan Stanley International or Morgan Stanley and Co., which are two different subsidiaries.
Q. What does it say on your paycheck?
A. I don't receive a paycheck.
Q. Your income is directly deposited into a bank account for you?
A. That's correct.
Q. Do you know if Morgan Stanley & Company pays your salary?
A. Again, I don't know exactly what pool of funds provide my salary, but I know that it comes from a Morgan Stanley entity.
Q. Do you know if the service that you are performing now, the time that you are

NOT A CERTIFIED COPY

0117154

Tyree
spending in London counts against your years of service as a Morgan Stanley employee for any purpose?
A. I believe it does.
Q. Do you receive any compensation from Morgan Stanley & Company to compensate you for the expense of residing in London?
A. I receive various subsidies and allowances from Morgan Stanley the parent as do all of my ex-patriot colleagues to varying degrees.
Q. And those are paid to you because of your service in this group in London, is that correct?
A. That's not how I would characterize it.
Q. How would you characterize it?
A. I would characterize those pay and allowances being paid to me to account for the differential that exists associated with living in London versus living in New York.
Q. That's what I was trying to say.
A. Sorry.
Q. That's fine. Your e-mail address

Tyree
in London is JohnTyree@Morgan Stanley.com?
A. No.
Q. What is it?
A. It's John.Tyree at Morgan Stanley.com.
Q. You are represented today at this deposition by Morgan Stanley & Company's counsel. How did that come about?
A. Can you be a little more specific?
Q. Well, Mr. Clare represents Morgan Stanley & Company, the defendant in the lawsuit that we filed. Is he representing you here today at the deposition?
A. Yes, he is.
Q. And how did that come about?
MR. CLARE: I'm going to object and ask the witness to, in providing an answer if you are able, to exclude conversations with counsel revealing the substance of conversations again with in-house Morgan Stanley attorneys or outside counsel. If you are able to answer Mr. Markowski's question without revealing the substance of those conversations, you

Tyree
can do so. If you're not, then I would instruct you not to answer.
A. I don't know the process through which Mr. Clare came to represent me specifically with regards to his role within Morgan Stanley and Co.
Q. Well, did Mr. Clare call you?
MR. CLARE: That's a yes or no question.
A. No.
Q. Did somebody in the in-house legal department at Morgan Stanley tell you that Mr. Clare would represent you at this deposition?
MR. CLARE: Objection. That would require him to reveal the substance of an attorney-client conversation and I instruct you not to answer.
MR. MARKOWSKI: Well, it's really a yes or no answer.
MR. CLARE: As phrased, your question was not. If you are asking a yes or no question of did an in-house Morgan Stanley lawyer call you, if that's the

Tyree
question, you can answer that question. If the question is beyond that and did an in-house Morgan Stanley call you and say X, Y or Z, I would instruct you not to answer the part of the question that would require you to divulge what you discussed, if anything, with Morgan Stanley counsel. So subject to that limitation you can answer the question.
A. I received a call from an internal lawyer at Morgan Stanley in regards to this situation.
Q. And who was that? Was it a man or a woman?
A. It's a man, Jim Doyle.
Q. When did you first speak to anyone from Kirkland & Ellis about the matters that bring us here today?
A. I don't remember the exact date we had our first discussion.
Q. Do you remember approximately?
A. I have a vague recollection of a telephone call more than a month ago, but I wouldn't represent that as the only dialogue.

NOT A CERTIFIED COPY

0171551

Tyree
That's what I remember.
Q. Can you tell me how you are compensated now, what the basis for your compensation is?
A. There are numerous variables that go into the calculation of the compensation of someone in my position.
Q. Is there a certain amount of it that's a base salary.
A. Yes, there is.
Q. And you indicated that you get some cost of living allowances, is that correct?
A. That is correct.
Q. What else?
A. I receive an annual bonus and certain other benefits.
Q. What types of other benefits do you get besides cash compensation? Let me strike that.
The cash compensation that you get, is that made up of the base salary and the cost of living allowance and the annual bonus or is there something else?
A. I would characterize my base salary

Tyree
and the cost of living allowances as you put it as to my knowledge all cash.
Q. And the bonus, is that cash?
A. The bonus is a mix of cash, stock and options typically, which varies.
Q. Stock and options is stock in Morgan Stanley?
A. Yes.
Q. You're not given stock or options in other businesses as part of your compensation package, I take it?
A. No, I am not.
Q. Is there any other cash compensation you receive other than what we've just specified?
A. No, not that I know of.
Q. The other benefits include what kinds of things?
A. 401K, charitable donation matching plan, and a number of other rather classic company benefits.
Q. What percentage of your base salary can your annual bonus be? Is there a specified range?

Tyree
A. To my knowledge there is no specified range of bonus relative to base salary.
Q. So is the potential bonus limited in some respect? At the beginning of the year, for example, are you told that you are eligible for a bonus within a certain range, either as a percentage of your salary or in total dollars?
A. I don't recall having been told that my -- at the beginning of the fiscal year that my bonus could be within any certain range relative to my pay.
Q. Were you told that at any point during the year?
A. Not that I recall.
Q. So at this point you have no idea what your possible bonus would be for this year?
A. No, I didn't say that.
Q. Okay, give me some sense of how you have a sense of that.
A. There are many variables that go into bonuses. One of those is the firm's

Tyree
performance. If the firm is doing well, typically bonuses may be good. If the firm is not doing well, bonuses may not be that high. So one can use that to a varying degree along with a number of other variables to determine what their expectations should be.
Q. Let's go back to the time that you were in -- well, let's focus on the time period while you've been in London. What has been the annual bonus you've received each year that you've been in London as a percentage of your base salary?
A. It has varied dramatically.
Q. Can you tell me what the range is?
A. I can't tell you exactly what the range is.
Q. Well, in 2000 you were working in London, correct?
A. Yes.
Q. What was your bonus at the end of that year as a percentage of your salary?
A. Again, I don't know exactly what my bonus was at the end of that year.
Q. Can you tell me approximately?

NOT A CERTIFIED COPY

017156

Tyree

A. It was approximately as a percentage of my base pay, between 500 and 800 percent, that bonus as defined by cash, stock and options received for that year.

Q. And what was your total compensation in 2000?

A. My total compensation in 2000 was between -- correction, my total compensation as based upon base pay and bonus alone was between 800 thousand and 950 thousand dollars, approximately.

Q. And can you give me the same figures for 2001?

A. For 2001, I believe that my bonus was approximately 300 to 400 percent of my base salary, and the total compensation was approximately 500 to 600 thousand dollars.

Q. And what about last year?

A. Last year as a percentage it was between 250 and 350 percent, and the total all in was approximately 350 thousand, I believe.

Q. You indicated the bonus varies in part depending upon the performance of the firm, correct?

Tyree

A. That is correct, I did say that.

Q. I also assume the bonus depends on your personal performance in some respect, is that correct?

A. It does.

Q. Who determines -- who makes the determination of what bonus to award based on your personal performance?

A. A number of people make that determination.

Q. While you were in the client services group you received a bonus and base salary in connection with your performance as an employee of Morgan Stanley as well?

A. Yes, I did.

Q. Let's focus on that time period. Who determined your bonus then?

A. Again, it was a number of people.

Q. Who would they be?

A. I actually don't know.

Q. Would those people all be within the client services group or did they include people who were outside the client services group?

Tyree

A. They would include people both inside and outside of the client services group.

Q. In connection with the bonus you receive now as an employee within the telecommunications group, are the people who determine your bonus all within the telecommunications group or are some of them outside of that?

A. I'm not in the telecommunications group now.

Q. I'm sorry, you went to London and were initially employed in the telecommunications group, is that right?

A. That is correct.

Q. And now you're in a different group now?

A. That's right.

Q. What's your group now?

A. My group now is called the general industrial group.

Q. When did you transition into that group?

A. I transitioned into that group

Tyree

approximately a year ago.

Q. Now, is that the same general industrial group that you were assigned to earlier on in your career at Morgan Stanley?

A. No, this is the European general industrial group.

Q. Is that a part of the general industrial group you were employed in earlier or is it a completely separate group?

A. I don't quite understand what you mean.

Q. Well, earlier in your career you indicated that you were employed in the general industrial group while you were at Morgan Stanley's headquarters in New York, correct?

A. That is right.

Q. Was a component of that group the general industrial group in Europe or is that considered a distinct organization?

A. I think it depends on your perspective.

Q. Well, for example, is there a person who, in the general industrial group in

NOT A CERTIFIED COPY

Tyree
New York, has responsibility for the general industrial group in Europe?
A. That's not how I would characterize it.
Q. Let me go back to my initial question. I was trying to ascertain whether or not the people who determine your bonus currently are part of the group that you currently work for or whether some of them are outside your group. Your current employment is in the general industrial group in Europe. Who determines your bonus, people within that group exclusively or are there people from outside of that group as well who are involved in that process?
A. There are people both within this group and outside of this group who determine my bonus at the end of the year.
Q. Are all those people in Europe?
A. No.
Q. Are some of them in New York?
A. Yes.
Q. Who in New York would be involved in determining your personal bonus for this

Tyree
year?
A. Again, I don't know.
Q. Well, how do you know that there are people in New York who are involved in that process then?
A. I know it because the decisions in regards to compensation at Morgan Stanley are typically made by committees which consist of representatives from both Europe and the United States.
Q. Do you remember working on Morgan Stanley's engagement with Sunbeam Corporation in 1998?
A. I remember working on a convertible notes issuance with Sunbeam as the client, yes.
MR. CLARE: Bob, I'm not sure if you're transitioning to a different area of questioning, but we've been going for a couple of hours. If we get to a point where we could take a short break.
MR. MARKOWSKI: If you want to take a break now that would be fine.
(Recess taken.)

Tyree
(Begin Videotape 2.)
FURTHER EXAMINATION BY MR. MARKOWSKI:
Q. Mr. Tyree, do you have any plans to leave employment with Morgan Stanley?
A. No, I do not.
Q. Do you have any plans to return to the United States?
A. No, not as of now, no. For work, no.
Q. I don't mean on a trip, I mean for an assignment, to work permanently?
A. No.
Q. You spent some time preparing for your testimony today?
A. I did.
Q. Tell me what you did to prepare yourself for today.
MR. CLARE: Again, you can provide general contours, but do not disclose substance or communications. You can answer.
A. I tried to remember events that occurred during the course of the convertible bond offering, had general discussions with

Tyree
counsel. That was pretty much it.
Q. So you spent some time reflecting on the events back in 1998, correct, by yourself?
A. That is correct.
Q. And you spent some time in meetings with counsel for Morgan Stanley, correct?
A. That is correct.
Q. With which attorneys did you meet? Let me include phone calls within that as well.
MR. CLARE: And the answer calls for the names of the individuals only.
Q. Let me ask you a clear question first. With which Morgan Stanley attorneys did you communicate in connection with your preparation pour today's deposition?
A. The only one I recall is Jim, who I mentioned before, in terms of Morgan Stanley.
Q. Kirkland & Ellis, I include outside counsel within the definition.
A. Oh, I'm sorry, then Tom, Tom Clare.
Q. Anyone else?
A. Those are the only names that I

NOT A CERTIFIED COPY

011158

Tyree
recall, lawyers who I met with.
Q. Are there any other people who you met or spoke with in connection with your preparation today whose names you can't recall?
A. There was one other person.
Q. Is that a Kirkland & Ellis employee?
A. I believe so. I just actually recalled, there were two other people who I met or met with briefly.
Q. In addition to Mr. Clare?
A. Yes.
Q. And you believe both of them were Kirkland & Ellis?
A. One was a Kirkland & Ellis employee and one was an employee of a local law firm whose name I can't recall.
Q. When you say a local law firm, a local New York law firm?
A. No.
Q. A local what law firm?
A. A local Florida firm.
Q. Describe for me the sessions that

Tyree
you had with Mr. Doyle in connection with your preparation for today.
MR. CLARE: I would make the same objection and the same instruction with regard to the substance of your conversations with Mr. Doyle. You can describe at a very general level times, dates, places and the like, but do not disclose the substance of what you discussed with Mr. Doyle.
A. I met several times with Mr. Doyle and we discussed --
MR. CLARE: No, do not disclose what you discussed with Mr. Doyle.
Q. Where were the meetings at?
A. The locations varied.
Q. What were the locations?
A. I recall the locations being in Manhattan and being in West Palm Beach.
Q. Did you have any conference calls, telephone calls with Mr. Doyle in connection with your preparation for today or were all your preparations with him face-to-face?
A. I believe we had either one or two

Tyree
conference calls.
Q. Was Mr. Doyle the only participant?
A. No.
Q. Who else was on the phone?
A. I don't remember who the other attendees were.
Q. Were they attorneys?
A. I believe there were other attorneys on the calls.
Q. Were there some non-attorneys on the calls?
A. Not that I recall.
Q. Were any of your former colleagues at Morgan Stanley on the phone? Anyone in the client services group or the investment banking group?
A. Not that I recall.
Q. How many meetings have you had with Mr. Doyle in preparing for today that occurred in Manhattan?
A. Two or three.
Q. How many total hours would you say you spent with Mr. Doyle at those meetings?
A. For the meetings in Manhattan, we

Tyree
spent maybe four hours.
Q. Total?
A. Total in Manhattan. That could be off, that's a best guess.
Q. How many meetings did you have with him at West Palm Beach?
A. I recall two meetings with him in West Palm Beach.
Q. And how many hours did you spend with him there?
A. Between ten and 15 hours.
Q. Other than you and Mr. Doyle, did anyone else participate in the Manhattan meetings?
A. Yes.
Q. Who?
A. There were in addition to Tom Clare, I believe there was either one or two other lawyers. I don't recall their names.
Q. Do you believe they were Kirkland & Ellis employees?
A. I believe they were.
Q. How about the meetings in West Palm Beach, other than Mr. Doyle, did anyone else

NOT A CERTIFIED COPY

017159

Tyree

participate in those meetings?
A. Yes, someone else did participate in those meetings.
Q. Who was that?
A. Mr. Clare participated in those meetings and the two other individuals I referred to earlier whose names I cannot recall.
Q. Are those the same people that participated in the New York meetings?
A. I don't believe they were.
Q. So there are one or two people who participated in the Manhattan meetings whose names you can't recall and one or two others that participated in the West Palm Beach meetings whose names you can't recall?
A. That's correct.
Q. Did you review documents at any of those meetings?
A. Yes.
Q. Did you review testimony that other people had given?
A. Yes.
Q. Were you asked to review materials

Tyree

outside of these meetings?
A. Not that I recall.
Q. No-one gave you any homework, here's something I want to you read?
A. Not that I recall.
Q. You weren't given any transcripts to take home and read.
A. I don't recall being given any transcripts to take home and read, no.
Q. Whose testimony did you read in connection with these sessions?
MR. CLARE: I'm going to instruct you not to answer the question on the basis of work product.
Q. Were any other Morgan Stanley employees involved in these meetings other than Mr. Doyle?
A. I don't recall any other Morgan Stanley employees participating in these meetings.
Q. How did it come to be that some of these sessions occurred in West Palm Beach?
A. When you say how did it come to be --

Tyree

Q. Right. Why are you meeting in West Palm Beach?
A. That's just where we agreed to meet.
Q. You didn't have other business that brought you to West Palm Beach?
A. I did not have other business that brought me to West Palm Beach, no.
Q. Can you give me the dates for these meetings?
A. I can't give you the exact dates for the meetings.
Q. Approximately. Maybe you can first give me the sequence. Did you have the New York meetings first, the West Palm Beach meetings afterward?
A. I had the West Palm Beach meetings just prior to the last Manhattan meeting. That's probably not as clear as it should be. I had either one or two meetings in Manhattan that I recall, meetings in Palm Beach and then one brief meeting in Manhattan that I remember.
Q. When was the most recent Manhattan

Tyree

meeting?
A. This morning.
Q. And when were the two Palm Beach meetings?
A. The two Palm Beach meetings were Thursday and Friday of last week.
Q. And then where were the initial one or two sessions in New York?
A. They were in Manhattan. I cannot recall where specifically in Manhattan they were held.
Q. I'm sorry, if I asked where, I didn't intend to. When was my question.
A. They were held, I believe one was held a couple of weeks ago and the other one a couple of weeks before that. But again, my recollection isn't perfect on this.
Q. How frequently do you come to New York on business?
A. It varies.
Q. How many times in the last 12 months would you say?
A. I would say that in the last 12 months, I have visited New York between five

NOT A CERTIFIED COPY

017160

Tyree
and ten times.
Q. Did you have any copies of documents in your personal possession relating to the work that Morgan Stanley did for Sunbeam?
A. I'm sorry, you said did I?
Q. Yes.
A. As of what?
Q. Well, in connection with the preparations for your deposition, were you asked to determine whether or not you had documents relating to the work that Morgan Stanley had done for Sunbeam in your personal possession?
MR. CLARE: I think those are two different questions.
A. Do you want to repeat the question just for the sake of clarity?
Q. Let me ask a couple of different questions.
Our lawsuit against Morgan Stanley was filed on May 8, 2003. Since that time, has anyone asked you whether you have in your personal possession copies of any documents

Tyree
relating to the work that Morgan Stanley did for Sunbeam back in 1998?
A. Since that time I have been asked if I had personal possession as you put it of documents that relate to the Sunbeam convertible bond transaction.
Q. And what was the answer to that?
A. I can't remember exactly what the words were that I used to answer.
Q. Did you have any?
A. I believe at that time I did not have any documents in regards to that -- to this transaction.
Q. You focused on the convertible bond offering.
A. That's correct.
Q. Morgan Stanley did a variety of things for Sunbeam back in 1997 and 1998. Are you aware of that generally?
A. I am generally aware of that, yes.
Q. Were you asked whether you had any documents relating to any of the work that Morgan Stanley did for Sunbeam during that time period?

Tyree
A. What I was asked as I recall was do you have any documents that relate to the Sunbeam transactions or the Sunbeam situation. I don't recall what the language was. I interpreted that to mean the broad array of transactions that you -- I believe that you are speaking of.
Q. And you did not have any documents in your possession at that point relating to those services?
A. I do not recall having any documents relating to the Sunbeam transactions at that point in time.
Q. Did you subsequently discover or obtain possession of such documents?
A. I did not subsequently discover in my possession any additional documents that relate to the Sunbeam transactions that we're discussing.
Q. All right, did you subsequently gain possession of some?
A. For a brief period of time I reviewed documents associated with the Sunbeam transaction, transactions, excuse me.

Tyree
Q. What were those circumstances?
A. Provided this is not privileged, during the course of the review of documents we discussed earlier.
Q. So you were shown some documents in connection with your meetings with lawyers to prepare for today, correct?
A. Yes, I was.
Q. Other than that, have you received any documents relating to the work that Sunbeam did -- excuse me, other than your review of documents in connection with the preparation sessions that you have had with your lawyers, have any documents come into your possession since May of 2003 relating to the services that Morgan Stanley did for Sunbeam in 1997, 1998?
A. Other than the documents that we reviewed during the sessions that we discussed, I don't recall coming into contact with any additional Sunbeam or Sunbeam transaction related documents since the date that you gave in 2003.
Q. In connection with the balance of

NOT A CERTIFIED COPY

011961

Page 89

Tyree
the deposition, there are a couple of terms I may use and I want to make sure you and I are on the same wavelength with respect to what I mean by these terms. If I refer to a document, I'm not ascribing any particular degree of formality to the material that I am referring to or inquiring about. In my mind, and my intention when I use the phrase document is to include anything that memorializes information in any form whatsoever, whether it's a formally published document, handwritten notes, an e-mail communication, an electronic file. So I include within my use of the term document all of those kinds of materials and any other that I haven't thought of at the moment in which information is memorialized, okay?
A. I understand.
Q. And when I refer to a communication, I may from time to time ask if you have had communications with anybody. I intend to include within that absolutely any kind of exchange of information between you and someone else or communication between you

Page 90

Tyree
and the file, for example, on whatever subject I am inquiring about.
A. I'm sorry, when you say communication --
Q. If you sent a memo to a file, if there is a process at Morgan Stanley, I don't know if there is or not, where you may record information and send a memo that just goes to a file so that it's recorded for purposes of having a record of it, I include that within what I mean by a communication with anyone.
A. I understand.
Q. So if it's a telephone call, if it's a face-to-face meeting, if it's an e-mail, a Post-It note left on somebody's chair, I include that within what I mean by the term communication.
I don't think it's disputed that Morgan Stanley was engaged by Sunbeam in 1997 to perform a variety of services. When is it that you first began to perform services of any sort, or to become involved in any way in connection with Morgan Stanley's engagement with Sunbeam?

Page 91

Tyree
A. My recollection, a long time ago, is that my first exposure that Sunbeam as a client came in early 1998.
Q. What was the exposure?
A. It took numerous forms.
Q. What's the initial involvement that you had that you can recall in connection with the Sunbeam engagement?
A. The initial communication I received in regards to Sunbeam was from an individual, it may have been my group head, I can't recall, effectively assigning me to work on the convertible notes transaction for Sunbeam.
Q. Would the assignment have come from within the client services group? You said you can't recall who made the call. It might have been your group head, but would it have definitely come from a person within the client services group?
A. I believe it came from someone within the client services group. I just don't want to say what would or would not have happened, but I believe it did.

Page 92

Tyree
Q. Was the assignment specifically to work only on the convertible note transaction?
A. I don't recall how the assignment was communicated to me at the time exactly.
Q. Well, I may have misunderstood. I thought the phone call that you described was a phone call where you were told that you were to work on the convertible note transaction.
A. That's what I recall.
Q. Is it possible that the assignment was broader than that?
A. It's possible.
Q. Let me take a step back. Do you have a specific memory of what was said to you on this initial phone call, the scope of your assignment?
A. I do not have a specific memory of what was said to me when I was assigned to this transaction, no.
Q. All right, is it your testimony that your best recollection is that the initial assignment that you received was to work on the convertible note aspect of the Sunbeam transactions?

NOT A CERTIFIED COPY

01762

Tyree

A. The way I would put it is my testimony is that I have a vague recollection of receiving a phone call in which I was asked to work on the convertible notes transaction for Sunbeam.

Q. Now, you said it was in early 1998. Can you be more precise?

A. It was after Christmas -- correction, obviously it was after Christmas. Between either February or March, I believe, right around that time. Again, I can't be exactly sure, but right around there.

Q. The convertible note transaction closed on March 25, 1998. Do you recall that?

A. Do I recall it closing on that day? I don't recall that exact day, the closing date.

Q. Does that sound about right to you?

A. My recollection was that that transaction closed in the March, April time frame.

Q. How long before the closing of the transaction do you believe you got this initial telephone call assigning you to assist

Tyree

in that project?

A. Between a month and two months before it closed, somewhere around there.

Q. Did the scope of the assignment include ultimately work on aspects of the Sunbeam engagement beyond the convertible note debenture transaction?

A. I don't recall exactly what the subsidiary elements of the assignment did or did not include. But I will make the point that we work in a team environment, so I had dialogue with a host of people who were working on various parts of the transaction.

Q. In terms of your personal responsibility, did it include performing services on aspects of the Sunbeam engagement other than the convertible note transaction?

A. My recollection is that the great majority of the work that I did in regards to the Sunbeam client revolved around the convertible notes transaction.

Q. From the time you got this initial telephone call to the time the transaction closed, what percentage of your time was

Tyree

dedicated to this assignment?

A. I can't remember exactly.

Q. Was it a high percentage?

A. I just don't remember exactly. Well, two points. Number one, I don't remember how much, and number two, transactions like this ebb and flow, so it's difficult to characterize what the workload is, which is what I think you're asking, during the course of the entire transaction.

Q. Well, do you have a memory of being very busy with the Sunbeam convertible note transaction?

A. I remember being busy with the Sunbeam convertible notes transaction as I remember being busy with most transactions that I worked on at Morgan Stanley.

Q. I'm just trying to get a sense of during that month or two month period of time, whether this was the primary thing that you were employed in doing or whether it was a small portion of the work that you were doing during that period.

A. I would characterize it as an

Tyree

important project that I was working on at the time, and one that demanded a good amount of my time.

Q. Do you think it was 50 percent of your time during that period?

A. Again, I just want to be precise, and I can't characterize if it was 50 percent of my time, 1.90 at another and 10 at the other. It's important to be clear that transactions, depending on typically the stage that you are at, the activity level will ebb and flow. So I can't really say it took 50 percent of my time or 70 percent of my time because it varied over the course of the transaction.

Q. But do you think in total over that month or two month period of time that the percentage of your working time devoted to that assignment was 25 percent of it, 50 percent of it, 75 percent of?

A. I would characterize this as being an important transaction that took, again, a good percentage of my time. I just don't want to put an exact number on it because I don't

NOT A CERTIFIED COPY

011763

Tyree
know that exact number.
Q. Well, would you say it's in excess of 25 percent?
A. It's in excess of 25 percent.
Q. Would you say it's in excess of 50 percent?
A. That's where I get uncomfortable. I don't know within that time frame exactly how much time I was devoting to Sunbeam verses my other duties.
Q. All right, so in your mind you're comfortable saying it was at least 25 percent?
A. I think that's fair.
Q. And it may have been more than 50 percent but you're not sure?
A. I just stick with more than 25 percent.
Q. So it was certainly more than 25 percent?
A. It was more than 25 percent.
Q. Did you record your time during that time period in some way, you worked eight hours today on Sunbeam, something of that sort?

Tyree
A. I honestly don't recall if we had the equivalent of timesheets as you're asking at that point in time.
Q. Is there any way in which you keep a record for administrative purposes or department management purposes of the time you're spending each day on various projects?
A. You're speaking about today?
Q. No, back in 1998.
A. Again, I don't recall if at that point we had some kind of time management system. I know that over the last couple of years, we have not. I just can't remember if back then we had one.
Q. Have there been points in your career where you did in some way keep track of the hours that you were spending on a particular project during the course of a day?
A. Yes.
Q. Do you have any memory of whether that was true at least during some period of time when you were at client services?
A. I do not.
Q. Did you have a calendar that you

Tyree
used to keep track of appointments, activities, back then?
A. I recall my assistant helping me maintain my calendar. I can't -- I honestly don't remember if it was computerized or not at the time.
Q. Have you looked to see whether you have a paper calendar record from 1998?
A. Yes, I have.
Q. Do you have a 1998 calendar?
A. Not to my recollection, no.
Q. Well, when you say not to your recollection, did you look for a 1998 calendar?
A. I looked for all materials associated, as we said before, with the Sunbeam transactions.
Q. And you couldn't find a 1998 calendar?
A. I don't recall what I found at the time.
Q. Well, you indicated you didn't find any documents that related to the work that Morgan Stanley did for Sunbeam, correct?

Tyree
MR. CLARE: Objection. That misstates the witness' testimony. You can answer.
A. No, what I stated was in the time period that you gave, I said that I didn't discover.
Q. All right, thanks for that. I had focused on the time period after May of 2003. Were there earlier time periods when you were asked to gather documents that you had relating to Morgan Stanley's work for Sunbeam?
A. There may have been. I don't recall exactly.
Q. Do you recall ever being asked to provide before our lawsuit was filed in May of 2003 any documents that you had relating to Morgan Stanley's work for Sunbeam to someone?
A. I recall being asked to provide any and all documents I had relating to Sunbeam at some point in time. And the I can't remember the exact date when that request -- when I received that request.
Q. Who made that request to you?
A. I can't remember the exact

NOT A CERTIFIED COPY

Tyree

individual.
Q. Was it somebody in the in-house law department at Morgan Stanley?
A. It may have been, I just don't remember exactly who it was.
Q. Did you find anything back then?
A. I have a vague recollection of providing whatever was in my file at the time in regards to the Sunbeam transaction.
Q. So you do have a memory that you had some materials that were responsive to that request?
A. I have a memory that I had some materials that I submitted that related to the Sunbeam transactions.
Q. Did you keep a copy?
A. Not that I recall.
Q. Did you get a copy back?
A. Again, not that I recall.
Q. Do you remember the kinds of material you have that were responsive?
A. I don't remember exactly what was in the materials that I turned in.
Q. Do you remember anything about

Tyree

those materials?
A. Yes.
Q. What do you remember?
A. Is --
Q. I asked you if you remembered anything about the materials that you discovered in response to the request for all documents relating to any of the work done for Sunbeam by Morgan Stanley.
A. And I do, I just want to know, what are you looking for in regards to what I remember?
Q. Any recollection you have about what you found.
A. I remember submitting a working group loan.
Q. Anything else?
A. I believe that I submitted what we call an equity commitment committee memorandum. Beyond that, I just don't recall what was in those materials.
Q. Do you recall the volume of them in any way? Was it a box or an inch of paper? Can you give me any approximation of the

Tyree

volume of materials?
A. I don't recall it being a box.
Q. Do you recall anything about the volume?
A. No, I don't.
Q. Is it more than these two documents?
A. Yes, I believe it was.
Q. Do you recall whether it included any of your personal notes relating to the Sunbeam engagements?
A. I don't recall if it did or not. Remember it was five years ago. Oh, correction --
Q. Well, the request for documents wasn't five years ago, right? Or was it?
A. You are correct. I was referring to the transaction.
Q. Do you recall how far back this request for documents was, how close in time to the transaction?
A. No.
Q. Was it soon after the transaction in 1998?

Tyree

A. Not that I recall.
Q. Were you in London or were you still in New York when you got the request?
A. I was in New York.
Q. Did you get any souvenirs or mementos, anything like that, relating to the Sunbeam work?
A. Oh, sorry, when you say souvenirs?
Q. Anything by way of a memento with respect to the transaction.
A. I don't recall any memento for the Sunbeam convertible notes offering. That's not to say we didn't receive it, I just don't recall.
Q. From time to time when a deal you are involved in closes, do you get mementos?
A. It varies, depending on the transaction.
Q. And do you keep those?
A. Again, it varies.
Q. Do you have them on a bookshelf in your office or something like that?
A. I have some, what we call lucites in my office in London.

NOT A CERTIFIED COPY

017165

Tyree

Q. Is the one for Sunbeam sitting there?
A. I don't recall it being there.
Q. You attended the February 27, 1998 Sunbeam board of directors meeting. Do you recall that?
A. Again, I don't remember the exact date. I recall attending a Sunbeam board of directors meeting at Morgan Stanley.
Q. It's the meeting where the Sunbeam board approved the acquisition of Coleman Company, correct?
A. A number of things were decided at that meeting.
Q. That's one of them, right?
A. That was one of them as I recall, yes.
Q. And Morgan Stanley made a presentation to the Sunbeam board with respect to the fairness of the transaction, correct?
A. I don't recall if the presentation revolved around fairness or not.
Q. Tell me what remember about that meeting.

Tyree

A. Can you be a little more specific.
Q. I'd like to know everything you can remember about that February 27 board of directors meeting.
A. I remember attending a board meeting at Morgan Stanley with members of Sunbeam's management team, board members, and Morgan Stanley representatives. I remember that at that board meeting a number of topics were discussed, including several acquisitions, and the financing that was to go along with those transactions, and I recall votes being taken and made and concluded at that meeting.
Q. Do you remember any of the discussion?
A. I don't remember the exact verbiage.
Q. Or the substance.
A. Beyond what I just described, which is discussions, broad based discussions about the acquisitions and the financing, I don't recall a lot of specifics.
Q. Well, you've identified some

Tyree

topics. Do you remember the substance of any of the discussion, whether you can remember it specifically or verbatim or not, do you have any recollection of the substance of the discussion, for example, of the acquisitions?
A. I really don't. I don't have recollections of points that were made in regards to the acquisitions, concerns that were raised, anything of that nature, I really don't have a strong recollection of.
Q. Do you remember what the acquisitions were of?
A. I do.
Q. What companies?
A. Coleman was one, First Alert was the second, and the third has escaped me now.
Q. Signature Brands?
A. Signature Brands, that's correct.
Q. Do you remember anything about the acquisition of the Coleman Company?
A. No.
Q. Do you remember if the Coleman acquisition was an all cash acquisition?
A. I don't remember what the

Tyree

consideration was that was discussed at that meeting.
Q. What was your purpose for being there?
A. As part of the team.
Q. Was there a reason for having you attend?
A. Yes.
Q. What was it?
A. As I recall, I had helped to prepare one of the presentations that was being discussed in that meeting so I would characterize the role as I remember it as being a supporting role.
Q. What was the nature of that presentation?
A. The nature of that presentation was, as I recall, the financing associated with the acquisitions we've discussed.
Q. Do you remember what the presentation entailed?
A. I'm sorry, when you say entailed, you mean --
Q. What was the substance or gist of

NOT A CERTIFIED COPY

017166

Tyree

the presentation? What was presented?
A. I remember there was a presentation. I remember there were discussions in regards to market conditions at the time. There may have been discussions, I can't recall exactly, I think there might have been discussions in regards to pricing expectations, and I believe there were discussions in regards to timing.
Q. Who made the presentation to the board that you assisted in preparing?
A. I can't recall exactly who gave it.
Q. Do you remember who the principal speakers for Morgan Stanley were at the board meeting?
A. I don't remember who -- I don't remember exactly who -- let me rephrase that. There were a number of speakers from Morgan Stanley and I don't recall exactly who spoke to what issue.
Q. Do you recall who the principal speakers were for Morgan Stanley?
A. The way I would characterize it is I remember some people who spoke.

Tyree

Q. Who?
A. I believe that Ruth Poratt spoke.
Q. Do you remember anyone else speaking?
A. I believe Bob Kitz spoke. Those are the only two that I remember speaking.
Q. Do you remember Bill Strong?
A. I remember Bill.
Q. Do you remember him speaking at that meeting?
A. I don't remember him speaking, but that's not to say he didn't, I just don't recall.
Q. Do you remember him being there?
A. I have a vague recollection of Bill being there as well. That could go wrong, I'm just not sure.
Q. Do you remember if it was Ms. Poratt or Mr. Kitz who addressed the financing issues that were the subject of the preparation had you done?
A. I believe that Ruth Poratt spoke about some of the financing issues. I can't recall if she captained the presentation or

Tyree

not.
Q. Do you recall Morgan Stanley advising the Sunbeam board at that meeting that Morgan Stanley was confident of its ability to arrange the financing that Sunbeam needed in order to complete these three transactions?
A. I don't recall that comment being made.
Q. Do you recall any discussion with respect to the question whether Sunbeam would be able to obtain the necessary financing?
A. Can you be a little more specific?
Q. Well, at the board meeting the board is approving the acquisition of three corporations, correct? Coleman Company, First Alert and Signature Brands, correct?
A. At I recall that was one of the topics discussed.
Q. And at that board meeting they're voting on whether to approve the acquisition of those three businesses, correct?
A. I believe that's one of the topics they voted on.

Tyree

Q. And Sunbeam needed substantial financing assistance in order to consummate those transactions, correct?
MR. CLARE: Objection to form.
A. What exactly is your question?
Q. Sunbeam needed substantial financing assistance in order to consummate those transactions?
MR. CLARE: Same objection, vague.
A. I don't recall how much financing they needed exactly.
Q. I'm not asking if you remember it exactly. I'm asking you if sitting there at that board meeting you knew that Sunbeam needed to raise a substantial amount of money in order to consummate the three acquisitions.
A. How I would characterize it is we discussed a financing transaction, or actually a series of transactions that would help Sunbeam acquire the entities you mentioned. That's what I remember.
Q. Do you have any recollection of the order of magnitude of the financing that was

NOT A CERTIFIED COPY

001167

Tyree
being discussed?
A. I have a recollection that it was -- the answer is yes, I do have a recollection.
Q. It's well in excess of a billion dollars, correct?
A. I recall it being in excess of a billion dollars.
Q. Closer to two billion dollars, correct?
A. I recall it being in excess of a billion dollars.
Q. You don't remember it being two billion?
A. I don't remember it being exactly two billion, no.
Q. Approximately. I'm asking order of magnitude.
A. Again, I recall it being in excess of a billion dollars.
Q. I consider that to be substantial. Do you?
A. I do.
Q. Now, with respect to your work

Tyree
relating to Sunbeam, can you explain to me the reporting relationship or supervision relationship you had with the various people that were involved? Was there somebody -- let me ask you a better question hopefully.
Is there somebody who was supervising the performance of the work you were doing?
A. I would not say there was one person who was supervising me as my key contact as it were in the context of this transaction.
Q. Did you have anyone supervising you?
A. Yes, I had a number of people supervising me.
Q. And who were they?
A. Can you be a little more specific? I at that point in time was supervised by a variety of people within the firm.
Q. I'm talking about in connection with your Sunbeam work. Who was supervising the work that you did in connection with Morgan Stanley's work for Sunbeam?

Tyree
A. I will name a few of the people. I was working with Bill Strong, who had a varying oversight, Ruth Poratt, Andy Savari, the head of equity capital markets whose name I can't recall, was obviously in a supervisory role, my group head, William Wright. Then you would go up the whole chain of Morgan Stanley, but those were some of the people who were in a degree of an oversight role.
Q. In connection with the specific work you were doing for Sunbeam?
A. Well, in connection with the specific work I'm doing with Sunbeam and in some cases my broader work as well.
Q. I'm focusing on one thing. You were involved in performing work on the Sunbeam transaction, right?
A. That's correct.
Q. And what I want to understand is who did you consider to be the person or persons responsible for supervising that activity? Did you consider Mr. Strong responsible for supervising your work in connection with the Sunbeam engagement?

Tyree
A. He was one of the people, yes.
Q. And Ms. Poratt?
A. Yes.
Q. And Mr. Savari?
A. Yes.
Q. You considered him to be a supervisor?
A. Yes, at that time.
Q. The head of equity capital markets, you can't remember who that was?
A. No.
Q. Is that Bram Smith?
A. I do not believe Bram was head of equity capital markets then, no.
Q. Do you consider that person to be supervising your specific assignment on Sunbeam?
A. To a certain degree, yes.
Q. And William Wright?
A. Yes.
Q. William Wright was the person managing -- he was the managing director of the client services group, is that correct?
A. That is correct.

NOT A CERTIFIED COPY

017158

Page 117

Tyree
Q. To what extent was Mr. Wright involved in connection with supervising the work that you were doing on Sunbeam?
A. As the head of our group at that point in time, Bill would ask us periodically how things are going. He would talk on an ongoing basis with many other senior people in the firm, some of the other people on that list that we just went through to see if there were any issues with what I was doing, any concerns. You'd really have to ask Bill though exactly what dialogue he was having, who he was speaking with or what not. I gave you his name as a general --
Q. Well, do you remember Mr. Wright giving you some instruction with respect to your Sunbeam work?
A. I don't remember Mr. Wright specifically commenting to me on the Sunbeam transaction with regards to my performance or my responsibilities, no.
Q. What about the head of equity capital markets, do you remember that person giving you any guidance or instruction with

Page 118

Tyree
respect to the work you were performing on Sunbeam?
A. I remember having some discussions with him at the time. I just can't remember who it was. And I'm not sure if in the context of those discussions he was giving me a directive or if we were just discussing the transaction.
Q. What about Mr. Savari? Can you remember Mr. Savari giving you some specific supervision with respect to the work?
A. We could go through the whole list. The way it works at Morgan Stanley is more of a co-operative team approach. So when you ask if Andy Savari gave me any specific directives, oversight was not typically exercised that way. It was exercised in a more co-operative fashion, saying John, you're going to do that, how are things going, that sort of thing. It wasn't Andy saying, do this today, and I have no recollection of him telling me to do that today.
Q. All right. Was Mr. Savari responsible for monitoring your work?

Page 119

Tyree
A. To a certain extent, yes.
Q. You were reporting to him what you were doing?
A. Among other people, yes.
Q. What about Ms. Poratt? Did Ms. Poratt give you instruction with respect to the projects that you were doing on sunbeam?
A. Very similar to my comment on Mr. Savari, which is she did give me some instruction, but we worked in a co-operative fashion, so typically we would sit down and discuss things that related to her area of expertise, and to the extent there were certain things she suggested I do, she'd suggest them and I'd go and do them.
Q. Can you remember any specifically?
A. I have a recollection of Ruth mentioning to me that I should attend the board meeting in question, or the board meeting we discussed earlier. That's one thing I remember.
Q. Anything else?
A. I don't remember her giving me any

Page 120

Tyree
other specific directives during the course of the transaction.
Q. What about Mr. Strong?
A. I remember Bill Strong mentioning to me that I should participate in a conference call, which I think was one of the initial dialogues we had, or I had, on the sunbeam transaction. I don't really remember him giving me other specific directives than that.
Q. The conference call you are referring to is early on in your assignment?
A. I can't recall exactly when that conference call happened.
Q. And what was the subject matter?
A. It was a long time ag. I don't remember exactly what the subject matter was of the call.
Q. The person in equity capital markets that you couldn't recall, is it Brooks Harris?
A. Brooks at that point in time worked in equity capital markets, but to my recollection he was not the head of equity

NOT A CERTIFIED COPY

017159

Page 121

Tyree
capital markets.
Q. You are thinking of somebody else?
A. Yes.
Q. How much of your activity, Mr. Tyree, on this engagement was in Florida?
A. Not very much.
Q. How many times did you travel to Florida in connection with the Sunbeam engagement?
A. I can't recall exactly how many times I went to Florida in regard to this transaction.
Q. Can you remember going to Florida at all?
A. Yes.
Q. Can you remember going to Florida on more than one occasion?
A. I only remember going to Florida once in regard to this transaction.
Q. Do you remember how much time you spent there?
A. Not exactly.
Q. Do you remember approximately?
A. I remember spending approximately a

Page 122

Tyree
day. It could be a little more, I just don't recall.
Q. Did you have communications with people in Florida in connection with this work?
A. I don't personally recall myself having communications with people in preparation for that meeting. But again, that's not to say it didn't happen, I just don't recall.
Q. I'm not limiting myself to the Sunbeam board meeting, if that's what you thought I was referring to.
A. No.
Q. In connection with the work that you did in 1998 relating to the Sunbeam engagement, did you have communications with people in Florida other than the one trip to Florida that you can recall?
A. I believe I had communications with people in Florida who worked for Sunbeam in addition to the one day meeting that we discussed during the period of time that I worked on the convertible notes offering.

Page 123

Tyree
Q. Can you remember with whom you spoke?
A. No, I cannot. What's your question?
Q. Can you remember the names of any of the people in Florida with whom you spoke while were you performing services relating to Morgan Stanley's work for Sunbeam?
A. I'm sorry, just to be clear, when you say people in Florida, are you referring to the whole of the Sunbeam management team or --
Q. I'm referring to anybody in Florida relating to this project. It could be Morgan Stanley, it could be Sunbeam, it could be one of Sunbeam's outside professional firms, anybody. The only stipulation is that they're in Florida and you're talking to them or communicating with them in some way.
A. Other than our visit that we discussed for one day for due diligence, it may have been more than one day, I don't have a recollection of discussions with other people in Florida, specific discussions with

Page 124

Tyree
other people in Florida.
Q. Well, do you have a memory of speaking to anybody in Sunbeam management in Florida in connection with the work you were doing?
A. Well, yes, I do.
Q. Other than this one trip?
A. Other than this one trip, I don't recall having discussions with members of Sunbeam management that were in Florida at the time. Again, what's not to say it didn't happen, I just don't recall.
Q. As you sit here, you don't remember any telephone calls to someone in sunbeam management?
A. No, I do remember telephone calls to people in Sunbeam management.
Q. While they're in Florida and you're somewhere else?
A. The issue is I just don't recall if they were in Florida at the time.
Q. Whether the Sunbeam managers were in Florida, is that what you're not recalling?
A. Yes.

NOT A CERTIFIED COPY

01770

Page 125

Tyree

Q. So you remember phone calls with people in Sunbeam management, correct?
A. I do remember calls with people in Sunbeam management, yes.
Q. And at the moment you are not certain whether they were present in Florida at the time of your phone call.
A. Exactly.
Q. Who do you remember speaking to?
A. I remember speaking to Russ Kirsch on occasion on the phone. I believe I spoke to other representatives of Sunbeam, but I just can't recall their names.
Q. Were there other Morgan Stanley people who went down to Florida in connection with the work on this deal?
MR. CLARE: Objection, calls for speculation.
A. If you could rephrase it, or what exactly are you referring to, when --
Q. In connection with Morgan Stanley's work for Sunbeam, do you know whether any Morgan Stanley personnel travelled to Florida.
A. They may have, but I don't -- I

Page 126

Tyree

can't represent that I know what other Morgan Stanley people did. I can only represent who I was with when I went, and when I went, yes, a member of -- at least one person from Morgan Stanley went with me.
Q. Do you remember others from Morgan Stanley being there on that trip?
A. If you want to show me some documents that might refresh my memory, but I specifically remember -- I believe I remember one person.
Q. And who is that?
A. I believe it was Michael Hart. It was a long time ago, so -- but I think it was Michael Hart.
Q. And you don't have any personal knowledge of other people from Morgan Stanley traveling to Florida in connection with this engagement?
A. I don't remember it to the extent that I'd be comfortable saying for sure that certain individuals came with me on that trip to visit Sunbeam.
Q. That wasn't my question. My

Page 127

Tyree

question was, other than yourself, and perhaps Mr. Hart, you don't have any personal knowledge of any Morgan Stanley personnel travelling to Florida in connection with the Sunbeam engagement, is that your testimony?
A. I don't recall people travelling other than people I've mentioned down with me to that trip. That's my testimony.
Q. Did you do any work on the materials that Morgan Stanley prepared for purposes of making presentations to my client, Coleman Parent Holdings in connection with the sale of its interest in Coleman Company?
A. I'm sorry, just to be clear, could you repeat the question?
Q. Yes. Coleman Parent Holdings owned something in excess of 80 percent of the Coleman Company, do you recall that?
A. I recall in general the relationship you described.
Q. Did you have any involvement in the preparation of any materials that were used in connection with any presentations to representatives of Coleman Parent Holdings

Page 128

Tyree

relating to the proposed transaction with Sunbeam?
A. When you define the proposed transaction, which transaction are you referring to?
Q. The sale of Coleman Parent Holdings' interest in Coleman to Sunbeam.
A. I don't believe that I participated in the drafting or development of any presentations that specifically related to the Coleman transaction as it were.
Q. Let me show you a document.
(Exhibit CPH-9, CP026286-026370, marked for identification, as of this date.)
Mr. Tyree, I'm going to show you a copy of what's been marked as 9, Sunbeam Corporation discussion materials, February, 1998. I will give you a moment to just peruse the document for a second.
Do you see that Morgan Stanley's name is on the bottom right hand corner of the first page?
A. I do see that.
Q. And on the bottom right hand corner

NOT A CERTIFIED COPY

017171

Tyree
of most pages of this document, correct?
A. Yes, it appears to be so.
Q. Have you seen this document before?
A. I don't recall ever seeing this document.
Q. Looking at the contents of the document, do you recall being involved in the development of any of the materials that are contained in this?
A. First of all, I've never seen this document before. I don't know where it comes from. But no, I don't recall having been involved in the drafting of any of this.
Q. Let me direct your attention to the page that is Bates numbered CP26289. Do you see the numbers in the bottom right hand corner?
A. Yes.
Q. It's entitled executive summary, correct?
A. Yes, it is.
Q. I direct your attention to the next page, investment rationale, do you see that?
A. Yes.

Tyree
Q. Would you read the first bullet point for me.
A. Sunbeam represents an attractive growth story and investment opportunity.
Q. And the words attractive growth story are in bold, correct?
A. On this page, yes, they are.
Q. Do you have any knowledge that Morgan Stanley representatives were involved in communicating to Coleman Parent Holdings that Sunbeam represented an attractive growth story?
MR. CLARE: Objection, form and foundation.
Q. Let me put the question this way. During the course of your work on the Sunbeam transaction, did you come to learn that Morgan Stanley had represented to the Coleman Parent Holdings company that Sunbeam represented an attractive growth story?
A. I don't recall anyone saying to me specifically, and I can only count on what was said to me, that Sunbeam represents an attractive growth story and investment

Tyree
opportunity. I don't remember anyone telling me that.
Q. Your testimony is that you are unaware that Morgan Stanley was involved in communicating to Coleman Parent Holdings that Sunbeam represented an attractive growth story, is that correct?
A. No, that's not my -- my testimony is I have no idea, nor could I have an idea, what Morgan Stanley as an entity was communicating to Sunbeam or to Coleman. I can only comment on what I know.
Q. That's my question. My question is to your knowledge -- my question is did you learn, you personally, you John Tyree, learn at any time during your work in connection with the Sunbeam engagement that Morgan Stanley had communicated to Coleman Parent Holdings that Sunbeam represented an attractive growth story?
A. And I don't recall anyone telling me that Morgan Stanley was communicating to Coleman that Sunbeam was an attractive growth story.

Tyree
Q. You've inserted something in here. I'm not sure whether it makes a difference. My question is did you learn from any source, whether it's somebody telling you it or in some other way, during the course of the work you did for Morgan Stanley in connection with the Sunbeam engagement, that Morgan Stanley had communicated to Coleman Parent Holdings that Sunbeam was an attractive growth story.
MR. CLARE: Objection to form.
A. I want to answer your question. I don't recall anyone, hearing that anyone was communicating anything from Morgan Stanley to Coleman or that anyone communicated to me that quote unquote Sunbeam represents an attractive growth story.
Q. Were you involved in preparing materials at any point that contain that same message, that described Sunbeam in connection with the work you were doing as an attractive growth sorry?
A. I don't recall drafting material personally that had that phraseology in it.
Q. Do you recall reading material that

NOT A CERTIFIED COPY

Page 133

Tyree
had that representation in it?
A. I don't recall reading material that had that representation in it until you handed this to me.
Q. Let me direct your attention to the second major bullet point. Can you read that for me, please?
A. Sunbeam has undergone a profound transformation since the arrival of new management in July of 1996.
Q. Were you aware during the time period that you were working on the Sunbeam engagement, that Morgan Stanley was representing to Coleman Parent Holdings that Sunbeam had undergone a profound transformation since the arrival of new management in July of 96?
A. I was not aware, I don't recall being aware, that anyone at Morgan Stanley was communicating to Coleman that quote Sunbeam has undergone a profound transformation since the arrival of new management in 1996.
Q. Were you involved in preparing materials to communicate that same message to

Page 134

Tyree
anyone?
A. I don't recall being involved in the preparation of materials that had this specific phraseology in it.
Q. Or the substance of that representation.
A. I don't recall participating in the preparation of materials that had the substance of this as you put it in it, but I don't really know how you define substance. It would help if I saw the document.
Q. I'm just asking what you can remember at this point. We'll get to some materials as we go forward.
A. I don't remember.
Q. Do you remember being involved in the preparation of materials that represented to potential investors that Sunbeam had undergone a profound transformation since Al Dunlap had become the chief executive officer in July of 1996?
A. I don't recall that specific phraseology being in the documents that I worked on, but again I don't recall the

Page 135

Tyree
specifics of those documents, what's exactly in there.
Q. I'm not asking about specific phraseology. I'm not asking if these words were in -- if you can remember today that these words verbatim appeared in some document that you read or helped prepare. My question is whether sitting here today, you can recall that you were involved in preparing documents that communicated to potential investors the proposition that Sunbeam had undergone a profound transformation since Al Dunlap had become the chief executive officer in July of 96.
A. I don't recall being involved in documents that make reference to a profound transformation or words to that effect since Al Dunlap and team, you know, joined Sunbeam.
Q. Can you read the third bullet point for me.
A. Tremendous intrinsic value in the company.
Q. And then it goes on to say growth and profitability that outpace the nearest

Page 136

Tyree
competitors. Do you see that language?
A. Yes, I do.
Q. And the last bullet point in that group is strong management team that is opportunistic but disciplined. Do you see that?
A. Yes, I do.
Q. Do you have any recollection of learning at any time during the work you did for Morgan Stanley in connection with the Sunbeam engagement that Morgan Stanley was making representations to Coleman Parent Holdings to the effect of the statements that we've just read, that there was tremendous intrinsic value in Sunbeam, that its growth and profitability outpaced its nearest competitors and that its management team was strong, opportunistic but disciplined?
MR. CLARE: Objection, compound.
You can answer.
A. Because I wasn't involved in the strategic part of this transaction, I have no recollection of anything similar to what you just described being communicated directly

NOT A CERTIFIED COPY

011713

Page 137

Tyree
from Morgan Stanley to Coleman.
Q. Do you have any recollection of being involved in communicating this same message in substance to other potential investors?
A. I believe that the offering memorandum, Sunbeam's offering memorandum makes reference to the strength of its management team. That has obviously been communicated to a wide array of investors. I do recall that there was reference in that document to the strength of Sunbeam's management team.
Q. At any time prior -- let me rephrase that. At any time during the work that you were doing for Sunbeam in 1998, did you come to have reason to question the accuracy of any of the statements that are contained on page CP26290 that we've been talking about?
A. Well, as I said before, I haven't seen this before.
Q. My question is different. Let me be clear.

Page 138

Tyree
MR. CLARE: I think you need to finish your answer first, unless you want to withdraw the question.
Q. Go ahead and finish.
A. It's important to be clear. This relates to, I believe relates to the mergers and acquisitions side of the Sunbeam transactions. I focused on the financing side. So when you ask me about what was and was not communicated to Coleman and words to that effect, I can't comment on that one way or another because I have no basis. I have no basis of knowledge.
Q. Are you finished?
A. Yes.
Q. Let me clarify what I was trying to get at. I'll try to ask you a different question, okay?
A. Okay.
Q. We've just reviewed five different factual statements, right? Sunbeam represents an attractive growth story, Sunbeam has undergone a profound transformation, there is tremendous intrinsic value in the company,

Page 139

Tyree
Sunbeam has growth and profitability that outpace the nearest competitors, and Sunbeam has a strong management team that is opportunistic, but disciplined, right?
A. Yes.
Q. At any time during the period you were working on the Sunbeam transaction, did you come to question the accuracy of any of the statements that I've just read? Did you come to believe that one or more of these statements was not true?
A. If we're defining the time I worked on the Sunbeam transaction as being from the point at which we've already discussed I became involved to the closing of the transaction, then during that period of time I cannot recall ever coming into the possession of any information that would cause me to doubt any of the comments here.
Q. Was there a point after that that you did come to doubt the accuracy of these statements?
A. Yes.
Q. When? When was the first time?

Page 140

Tyree
A. I don't remember an exact date.
Q. What was it that caused you to question the accuracy of one or more of these statements?
A. There were a number of factors.
Q. What was the first that came to your attention?
A. I don't remember exactly the first.
Q. Tell me as best you can when it was that you first came to question the accuracy of one of these statements.
A. I don't remember the exact date. Vaguely it was when I came to find out that it appeared that the Sunbeam management team had engaged in fraud.
Q. When was that?
A. I don't remember exactly.
Q. How close was it to the closing of the debenture offering?
A. I believe it was well after the closing of the debenture offering.
Q. Was it within days, weeks, years?
A. Again, it wasn't within years. But beyond that, I don't recall exactly.

NOT A CERTIFIED COPY

Page 141

Tyree
Q. Do you recall that Mr. Dunlap was terminated by the Sunbeam board in June of 1998?
A. I recall him being terminated. I don't recall the date at which he was terminated.
Q. All right, can you place the time when you first began personally to have concerns about the accuracy of these statements in relationship to Mr. Dunlap's termination?
A. Well, first, I never had any concern about the accuracy of these statements because I have just seen them. So are you asking a different question?
Q. Well, I'm asking you, you see these statements?
A. Yes.
Q. I'm asking you if there came a time when information came into your possession that would have caused you to doubt the accuracy of the statements here, and you've indicated that the answer to that is yes because at some time information came to your

Page 142

Tyree
attention that caused you to believe that the Sunbeam management team may have committed fraud, is that correct?
MR. CLARE: Objection. Misstates the prior testimony. Incomplete and out of context. You can answer the question if you understand it.
A. That is not how I would characterize it, so I'll try and characterize it. Over a period of time, I became aware that it appeared that the Sunbeam management team had engaged in fraud. That period of time was sometime well after the closing of the Sunbeam convertible notes offering. I can't define for you one point in time when I came to that conclusion. It came over a period of time.
Q. Did that process begin before Mr. Dunlap was terminated?
A. I don't remember when it began.
Q. So you can't relate your first concerns about the truthfulness or the accuracy of these statements to the time when Mr. Dunlap was terminated?

Page 143

Tyree
MR. CLARE: Objection to form.
A. I stick with what I just said, which is there was a period of time over which I became concerned in regards to potential fraud by the Sunbeam management team. I can't define for you the exact time when that occurred.
Q. Was it in 1998?
A. It may have been.
Q. Let me direct your attention to page CP26296. That page is entitled Sunbeam Corporation consolidated net sales 1994-1998E. Do you see that?
A. It has that heading, yes.
Q. Did you have any involvement in preparing this, that you can recall?
A. Again, I don't have any recollection of preparing any of this presentation at all.
Q. I want to ask you if you can tell me what your understanding is of the column that appears over the heading 1997.
A. My understanding of it?
Q. Yeah, how would you interpret that?

Page 144

Tyree
A. I don't know if I have a lot to add to what's on the page. There is a bar above 1996 that has --
Q. 1997 is the year I'm asking about.
A. Correction, there is a bar above 1997 that has a number above it that appears to be a net sales figure for that year.
Q. And that net sales figure is what?
A. I'm looking for the units here. The number itself on the page is 1,168.2. I can't really tell -- it looks like the units are in millions, so 1,168,200 -- correction, 1,168,200,000.
Q. So this summary reports that Sunbeam's net sales in 1997 were 1 billion 168 million, correct?
A. If that's what you say. This is the first time I've seen this document.
Q. That's how you would interpret this though, right?
A. The way I would interpret it is that that bar appears to lay out a potential net sales figure, I can't tell whether it's historical or not, for consolidated net sales

NOT A CERTIFIED COPY

01715

Page 145

Tyree
for, potentially for Sunbeam.
Q. And the column next to it, can you interpret that to reflect the estimate for net sales for 1998 for Sunbeam?
A. It could be.
Q. And the percentage growth from 1997 to 1998 that this chart reflects is 33.8 percent, correct?
A. That's what this chart reflects. That's the number.
Q. Do you have any recollection of being aware that Sunbeam or Morgan Stanley on behalf of Sunbeam communicated to Coleman Parent the expectation that Sunbeam's net sales in 1998 would increase by almost 34 percent over Sunbeam's net sales in 1997?
MR. CLARE: Objection, lack of foundation.
A. I have no recollection of that.
Q. Do you have any recollection that Sunbeam in 1998 when you were working on the convertible debenture offering was forecasting a substantial increase in its net sales in 1998 over its 1997 net sales?

Page 146

Tyree
A. I don't recall what the sales estimates were for Sunbeam in that period of time.
Q. That's not my question. My question is do you recall that Sunbeam was communicating that it expected to accomplish a substantial increase in its net sales in 1998 over 1997?
MR. CLARE: Objection to form.
A. Can you just be a little more specific in terms of what you are asking? You're asking do I recall that Sunbeam was communicating to the market a degree of growth?
(The record was read.)
MR. CLARE: Objection, vague.
THE WITNESS: What I recall is that Sunbeam was expecting at the time of this transaction, Sunbeam management team was expecting that their sales were going to grow. That is what I recall.
Q. Do you recall being told that the expectation was sales would grow substantially over 1997?

Page 147

Tyree
MR. CLARE: Objection vague.
A. I don't recall being told that.
Q. Do you recall being told that Sunbeam was communicating to potential investors that it expected to accomplish a substantial increase in its net sales in 1998 over 1997 net sales?
MR. CLARE: Objection. Vague. Substantial is too broad a term.
Q. Well, something in excess of 30 percent.
A. I don't recall that.
Q. Do you recall something in excess of 20 percent?
A. Again, it was five years ago. I can't recall if it was 20, 25 percent, 30 percent. I don't know exactly what the figures were that Sunbeam was projecting for that time.
Q. Well, do you recall that Sunbeam was communicating to potential investors or to the market generally that it expected to increase its 1998 net sales by something between 20 and 30 percent?

Page 148

Tyree
A. No, I don't recall that.
Q. Let me direct your attention to the next page, CP26297.
A. Yes.
Q. Let me ask you a question about just one piece of this, the next income box on the lower right hand corner.
A. Yes.
Q. The net income for 1997 according to this chart that Sunbeam had realized was 123.1 million, is that correct?
A. That's what this chart says.
Q. And this chart also reflects an estimated net income result for 1998 of 199.4 million for Sunbeam, correct?
A. That's what this chart shows.
Q. An increase of about 75 million?
A. Roughly.
Q. Were you aware that Morgan Stanley was communicating to Coleman Parent figures like these?
MR. CLARE: Objection. No foundation.
A. I have no recollection of that.

NOT A CERTIFIED COPY

017176

Tyree
MR. CLARE: Are we at a stopping point for lunch?
MR. MARKOWSKI: Yeah, we are.
(Luncheon adjournment: 1:10 p.m.)

Tyree
AFTERNOON SESSION
(Time noted: 2:05 p.m.)
JOHN D. TYREE, resumed and testified as follows:
EXAMINATION BY (Cont'd.)
MR. MARKOWSKI:
(Exhibit CPH-10, CP 033169-240, marked for identification, as of this date.)
Q. Mr. Tyree, let me show you what we've marked as deposition Exhibit CPH 10. It bears Bates number 33169 through 33240. Do you recognize that document?
MR. CLARE: Take a chance to look at it first.
A. It looks like an offering memorandum for issuance by Sunbeam of zero coupon convertible notes, the debentures.
Q. This is a debenture offering that you referred to earlier as your principal Sunbeam related offering, correct?
A. I don't remember the entire thing, but it is not dissimilar to that document.
Q. Well, your principal document was Sunbeam zero coupon senior subordinated

Tyree
debenture offering, correct?
MR. CLARE: Object to the form.
You can answer.
A. The area that I worked on, that I focused on during the Sunbeam transactions was in fact an issuance of zero coupon convertible subordinated debentures.
Q. Does this appear to be the offering memorandum that was used in connection with that offering?
A. As I said, it's not dissimilar to the offering memorandum that I recall, but it's a very big document so I haven't checked every page.
Q. My question is whether it appears to be that document.
A. It appears to be that document.
Q. You don't know of any other zero coupon debenture offering that Morgan Stanley was doing for Sunbeam in March of 1998 other than the one you were working on, do you?
A. I don't know of any, but again, I don't know if this is complete or not.
Q. Subject to that caveat, this looks

Tyree
like the offering memorandum for the debenture offering on which you worked, correct?
A. It's not dissimilar to it.
Q. Well, when you say it's not dissimilar to it, I'm not sure what that means. Does that mean to you that this appears to be the document?
A. It means to me that I hesitate to give you any degree of certainty because I haven't read through the entire document and I don't remember exactly what the text was in the offering memorandum that I worked on for the Sunbeam transaction. But as I look at this today, it does not look dissimilar to the document that I worked on five years ago.
Q. And it appears to be the document that was used in connection with that offering, correct?
A. I prefer the phraseology that I used.
Q. Does it appear to you to be something else?
A. That is a pretty broad based question. I don't know how to answer that,

NOT A CERTIFIED COPY

011177

Page 153

Tyree
does it appear to be something else. It doesn't appear -- I don't know how you want me to answer that.
Q. Well, I'm trying to get to something, I think it's a fairly basic question, but we're having a little trouble with it.
Does this look like the document that was used by Sunbeam and Morgan Stanley in connection with Sunbeam's zero coupon debenture offering in March of 1998? I realize you haven't read it word for word, but given the opportunity you have had to look at it just now, does this appear to be that offering memorandum?
A. I will rephrase. It appears to be similar in appearance to that document.
Q. Is there any reason that you have to believe that this is something other than the offering memorandum that Sunbeam used in connection with the debenture offering on which you worked?
A. I have no reason to believe that it is not that document.

Page 154

Tyree
Q. Okay. And the debenture offering was the sale ultimately of about $2 billion in face value of subordinated debentures, correct?
A. As I recall the time, it was more than a billion dollars in size. This document says whatever 2 billion, 14 million.
Q. Does this refresh your memory?
A. Does this refresh my memory as to the exact amount?
Q. To the approximate amount, that it was approximately $2 billion.
A. I have no reason to believe that it wasn't approaching $2 billion.
Q. And do you recall that the offering was used by Sunbeam to raise approximately $750 million in cash?
A. I don't remember exactly the amount of cash that they raised in the offering.
Q. That's not my question. I asked you if it was your recollection that Sunbeam raised approximately $750 million in cash through this offering.
A. I don't have a recollection of

Page 155

Tyree
exactly what the amount was that Sunbeam raised in cash through this offering.
Q. But that again wasn't my question.
A. Sorry.
Q. My question was whether it's your recollection that Sunbeam raised approximately $750 million through this offering.
A. It's not my recollection that Sunbeam raised approximately $750 thousand.
Q. 750 million, was my question.
A. Correction, $750 million in this transaction.
Q. How much do you recall Sunbeam raising?
A. I don't recall how much of it was cash, or how much was raised in cash.
Q. What is your recollection concerning the amount of money that Sunbeam raised through the debenture offering on which you worked?
A. I don't have an exact recollection.
Q. Do you have a recollection of approximately? We're going to have trouble if every time I say approximately, you say you

Page 156

Tyree
don't remember exactly. It's going to really prolong this.
A. Okay, let me put it this way. I'm not comfortable giving you a number with any degree of exactitude in regard to what they raised without having those exact -- those documents in front of me. I don't think that's unreasonable. It was five years ago.
Q. You have the document right in front of you.
A. No, I don't know what the basis is for this document. If you want me to read off the page what this says, I'm happy to do that. But I need to be specific. I want to be specific with you and reasonably detailed with the information I know and that I remember.
Q. So as you sit here today after 20 hours of preparation for this deposition or more and having been involved in this transaction as a significant part of your work for a period of time, you don't remember approximately how much in cash Sunbeam raised through the debenture offering on which you worked?

NOT A CERTIFIED COPY

017178

Page 157

Tyree
MR. CLARE: Objection, argumentative, and objection to form. You can answer.
A. I don't remember within a reasonable range how much was raised in the course of this Sunbeam convertible notes transaction.
Q. And none of the preparation that you engaged in to get ready for today refreshed your memory about that?
A. No, actually it did not.
Q. What is your recollection of the range?
A. Broadly more than 500 million, less than a billion or a billion and a half.
Q. Morgan Stanley was the sole underwriter on the offering?
A. Morgan Stanley was the sole underwriter on the Sunbeam convertible debentures offering, yes.
Q. You were involved in the preparation of the offering memorandum itself, correct?
A. I advised Sunbeam on the

Page 158

Tyree
preparation of the offering memorandum.
Q. You were involved in the drafting process, correct, for the offering memorandum?
A. I advised Sunbeam during the drafting process of the offering memorandum.
Q. You were involved in the drafting process of preparing the offering memorandum, correct?
MR. CLARE: Objection, asked and answered.
A. Let me just be very clear. This is a Sunbeam document. I advised them on the drafting of this. I did not myself draft this document. I just want to be clear on what my participation was this that process.
Q. You reviewed the document in draft form as it was being finalized, correct?
A. I did review this document.
Q. In draft form?
A. Correct. I did review the Sunbeam offering memorandum in draft form.
Q. And made comments on it, correct?
A. I believe I did make comments on it, yes.

Page 159

Tyree
Q. You suggested specific language changes, correct?
A. I don't recall the extent to which I suggested language changes. I may have.
(Exhibit CPH 11, SASMF10699-10705 marked for identification, as of this date.)
Q. Let me show you a document we'll mark as CPH Exhibit number 11.
What we've marked as CPH 11 is SASMF 10699 through 10705. Take a moment ot look at that.
Have you had a chance to go through it?
A. I haven't read it in detail, but I've looked through it.
Q. CPH Exhibit 11 is a March 9, 1998 fax from you to Janet Kelly, Bob Gluck, Alan Dean and Gregory Fernicola, is that correct?
A. I don't know. I don't recall this document.
Q. That's what it says on its face, correct?
A. That's what the paper says, yes.
Q. And the subject is riders to

Page 160

Tyree
offering memorandum?
A. The subject of this, yes, is riders to offering memorandum.
Q. And is it your testimony that you don't remember this fax?
A. Yes, it is my testimony.
Q. Do you have any reason to believe this document isn't what it appears to be, a fax of riders for the offering memorandum from you to people at Sunbeam?
A. Well, I guess I point out two points. First of all, it's not just to people at Sunbeam, it's also to Alan Dean, I recognize as having been I believe Davis Polk counsel during this transaction. I have no reason to believe or not to believe that this is in fact a fax that was sent to the people in the address line.
Q. Alan Dean was a lawyer for Morgan Stanley, correct, in this transaction?
A. Alan Dean does not work at Morgan Stanley.
Q. Alan Dean was Morgan Stanley's lawyer in connection with this transaction.

NOT A CERTIFIED COPY

017179

Tyree

A. Alan Dean was a Davis Polk representative who worked on Morgan Stanley's behalf on the Sunbeam transaction.

Q. I call that being Morgan Stanley's lawyer. Do you call it something else?

A. Yes.

Q. What do you call it? Alan Dean didn't represent Morgan Stanley?

A. He represented Morgan Stanley on this transaction, yes.

Q. Well, I call that being Morgan Stanley's lawyer.

MR. CLARE: Objection, move to strike.

Q. I guess I'm not quite clear on what your answer was. I asked you whether you had any reason to believe that this document isn't a fax from you to the people that are indicated on this document, Ms. Kelly, Mr. Gluck, Mr. Dean and Mr. Fernicola. And you said you had no reason to believe it was.

A. No, I have no reason to believe it was or was not because I don't recognize it.

Q. So you have no reason to believe

Tyree

this document is in fact a fax from you on March 9, 1998 to the four people that are listed here?

A. Again, I have no reason to believe it is or is not because I do not recognize the document.

Q. Well, do you have reason to believe that somebody created a phoney document, put your name on it and put it in Skadden Arps files?

MR. CLARE: Objection to form and argumentative.

A. I only want to represent to you what I know to you true. And when you ask if I can represent if I have any reason to believe this is what it looks to be, I hesitate because I don't recognize the document.

Q. My question was different. My question was do you have any reason to believe it's not an authentic document?

A. And my answer is to say no, I also have to reason to believe that it is an authentic document.

Tyree

Q. And your reason for saying you have no reason to believe it is authentic is what?

A. Because I've never seen it before, or I don't -- correction, I don't recall seeing it before.

Q. Well, let's move forward on it. The memorandum on its face indicates it's transmitting three proposed riders for the offering memorandum, correct?

A. That's what it appears to indicate, yes.

Q. And a rider in this context is what?

A. You would have to talk to the author.

Q. I think I am, but go ahead.

A. Again, you would have to talk to the author. What is your question?

Q. Well, have you used the term rider in referring to providing proposed language for a document such as CPH Exhibit 10 before?

A. I have uses that term before, yes.

Q. And how have you used it?

A. I've used it in the context of

Tyree

annotating comments that could be provided to a document.

Q. Providing insertions for a document?

A. It depends on the context.

Q. But that's one way in which you've used it, right?

A. I don't think I would ever characterize it as insertions coming to me into a document.

Q. Well, maybe I'm not using language that's understandable to you, but would you use the term rider to refer to language that you proposed including in an offering memorandum that you were involved in working in?

A. Let me see if I can characterize this right. I don't propose language to go directly into an offering document. What I do on occasion is provide alternative language which management can then use to put in their document and that's how I'd like to characterize it.

Q. Let me have you read the first line

NOT A CERTIFIED COPY

Tyree
of the text of this memo. It begins with the word attached.
A. Yes.
Q. Read it.
A. Attached please find three riders that Morgan Stanley would propose incorporating into the Sunbeam offering memorandum.
Q. You used the words would propose, is that right?
A. Yes.
Q. Let me have you read the description of rider number one.
A. We would propose inserting this rider into the summary section directly following the company's strength section and before the acquisition section to communicate to the investor the recent restructuring success of the management team.
Q. He uses the words we propose, right?
A. Would propose.
Q. We would propose, right?
A. Yes.

Tyree
Q. The description of rider number 2 uses the phrase we would propose, correct?
A. That's correct.
Q. And the language in connection with rider number 3 says we would propose to insert this rider, correct?
A. That's right.
Q. But that's not language you use, right?
A. I don't --
MR. CLARE: Objection to form.
Q. You said you don't use that language. You don't say here's what we propose.
MR. CLARE: Objection, that misstates the testimony.
A. I don't believe that's what I said.
Q. Well, I thought you said you don't propose language to be included in an offering memorandum.
A. Perhaps you can read back my response. But if you want me to repeat it, I'm happy to do that.
Q. Well, do you propose language for a

Tyree
Morgan Stanley client to include in an offering memorandum or not?
A. What I do on occasion is I will propose language to a management team and to the rest of the operational group for them to look at and determine whether that is the appropriate language or language that should be changed that can then be included in an offering memorandum. What I do not do is simply launch language directly into an offering memorandum without them having looked at it, agreed with it, commented on it, added to it, taken away.
Q. So you do propose language to be included in offering memorandas, correct?
MR. CLARE: Objection. Misstates the prior testimony.
A. I think you have to be more specific. When you say propose, who do you -- who are you intending to propose it to?
Q. What do you understand the word propose to mean? Maybe that's our stumbling block.
A. It has a number of different

Tyree
meanings, but broadly give to someone for consideration.
Q. All right, I will accept that. Do you propose language to be included in offering memoranda being prepared on behalf of Morgan Stanley's investment banking clients?
A. I understand your question, and I want to be specific in my answer. And my answer is that on the occasions when I do provide language, I provide it to a management team, their designated representatives to look at it and determine whether or not it is appropriate to go into an offering memorandum prospectus or whatever the document is that you are referring to. I insist on that degree of specificity in my comment because when you say propose, you are not dictating who or what I propose it to.
Q. Does CPH Exhibit 11 appear to be such a proposal?
A. Can you define such a proposal? You mean a proposal to management?
Q. A proposal to Sunbeam management to include additional language that Morgan

NOT A CERTIFIED COPY

017181

Tyree
Stanley has prepared into the debenture offering memorandum.
A. What this document appears to be is a memorandum with some potential language, riders as you call it, that are sent to a number of representatives. Alan Dean is one whose name I recognize, Greg Fernicola, I recognize the name, I'm not sure exactly who it is. And I've heard the name Janet Kelly. I believe she's associated with Sunbeam. So it went to a bunch of people, potentially went to a bunch of people who I believe were participating in the Sunbeam convertible.
Q. All right. The memorandum on its face states that the purpose of the first rider is to communicate to the investor the recent restructuring success of the management team. Do you see that?
A. I see that language.
Q. In connection with the description for the purpose for proposing rider number 1.
A. I'm sorry, I lost your question. Can you just repeat it one more time?
Q. In the description associated with

Tyree
rider number 1, the March 9 memorandum states that the reason for suggesting rider number 1 is to communicate to the investor the recent restructuring success of the management team, correct?
A. That's what the language says.
(Begin Videotape 2.)
Q. Mr. Tyree, you've got CPH Exhibit number 11 in front of you?
A. Yes.
Q. Let me ask you to turn to page 10700, which has the text for rider number 1. Do you see that?
A. Yes.
Q. Let me direct your attention to Exhibit number 10 also, if you can put that side by side. Exhibit number 10 is the offering memorandum.
A. Yes.
Q. And I'm going to ask you to turn to page number 6 of the offering memorandum, Bates numbered CP 33174. Have you got that page in front of you?
A. I do.

Tyree
Q. I'm going to ask you to compare the text of the offering memorandum under the heading restructuring and growth plan to the text of rider number 1, and my question is whether it's correct that rider number 1 appears verbatim in -- on page 6 of the offering memorandum.
MR. CLARE: Object to the question. The documents Exhibit 11 and 10 will speak for themselves, and this is a waste of time, to have the witness go through and do the comparison you've requested.
A. I'm sorry, can you repeat your question.
Q. Is the text of rider number 1 included verbatim in the offering memorandum?
A. No, it doesn't appear to be.
Q. What are the differences?
A. There are several language differences as can you see on the two page s.
Q. Can you identify them for me?
MR. CLARE: I'm going to make the same objection as before. The differences

Tyree
between the two documents will speak for themselves.
A. Okay, difference number 1 is restructuring growth plan versus restructuring plan. Difference number 2 is the title of Albert Dunlap, chairman and chief executive officer, Albert Dunlap versus chairman Albert Dunlap. Difference number 3 is the restructuring which was recently completed, included the redefinition, et cetera, in comparison to the restructuring plan has been substantially completed with only, et cetera. We go on to the redefinition of Sunbeam's core products in the document, Exhibit 10, versus a new sentence that says the restructuring included the redefinition of Sunbeam's core products. Exhibit 10 says and the closing of 18 factories. This just says closing of 18 factories. Exhibit 10 says 43 warehouses and five headquarters offices. This says 43 warehouses and five headquarters. When I refer to this, I refer to Exhibit CPH 11. There is a new sentence in CPH 10 that says the company also consolidated all purchasing

NOT A CERTIFIED COPY

011782

Tyree

functions, reduced the number of stock-keeping units, et cetera. In this version, CPH 11 says and a large reduction in the number of SKU's offered. And there is a difference in the location where SKU's is defined. Exhibit 10 doesn't have, I believe it doesn't have units maintained by the company, which is in Exhibit 11, I believe. Exhibit 10 says and outsource certain of the administrative manufacturing distribution activities. Exhibit 11 says and outsourced much of the administrative manufacturing and distribution activities. Exhibit 10 concludes a sentence, approximately 6,000 jobs, then continues with the restructuring -- correction, it concludes a section after -- a sentence after approximately 6,000 jobs continues in 1997, net sales grew, et cetera. Exhibit 11 concludes that same sentence, 6,000 jobs and then states, this restructuring is expected to result in, it looks like an effort was made to combine the two paragraphs in Exhibit 11 into one, which is to a varying extent incorporated in the last sentence of Exhibit number 10.

Tyree

I've gone through this kind of quickly. I may have missed something, but those were the major differences that I identified.

Q. You agree with me that the substance of rider number 1 was included in the text at the top of page 6 of the offering memorandum under the heading restructuring and growth plan?

MR. CLARE: Objection to form.

A. You immediate to be more specific on substance.

Q. You believe that the principal message of rider number 1 and almost all of its text was included in the text on page 6 of the offering memorandum?

MR. CLARE: Same objection.

Q. And that the changes that you have identified are immaterial.

MR. CLARE: Same objection and vague as to immaterial or material. Calls for a legal conclusion.

A. I view in documents such as this in particular in the executive summary, because it is a summarized version of the rest of the

Tyree

document, some of the changes I have talked about as being material. That is not a legal conclusion, that is my view as someone who would advise a management team on the text that would be put in their offering memorandum, which this may or may not be.

Q. Why do you say that?

A. Why do I say the entire --

Q. Why do you say what you just said?

A. Because I believe that language is very important in terms of communicating messages to potential investors.

Q. It's very important to be accurate in documents of this sort, correct?

MR. CLARE: Object to the form of the question.

A. What I said was that I believe language, in particular language in the executive summary of an offering memorandum is very important to communicate a message to investors.

Q. Do you disagree with what I just said?

MR. CLARE: Same objection.

Tyree

A. Could you repeat what you just said?

Q. It's very important to be accurate in documents such as Exhibit number 10, the offering memorandum.

A. I believe it is important to be as accurate as one can be, given what one knows at the time in a document such as this one.

Q. Because people are going to be relying on it in making investment decisions, correct?

MR. CLARE: Objection, calls for speculation.

A. What is your question?

Q. Because people are going to be relying on the language included in documents such as this in making investment decisions?

MR. CLARE: Same objection.

A. I would put it differently. I think that if, and again, I do not want to speculate, but there are a number of variables that people consider when they make an investment decision. An offering memorandum is certainly not the only one.

Q. I'm not saying it's the only one.

NOT A CERTIFIED COPY

017183

Page 177

Tyree
Do you agree with me that a reason why it is important to be accurate in documents such as CPH Exhibit number 10 is that investors will be relying on the statements contained in this document in determining whether to make an investment?
MR. CLARE: Same objection.
A. I would characterize as it is important when a management team puts together their offering memorandum that they are as accurate as they can be in that disclosure.
Q. Because people will be reviewing that document in connection with making investment decisions, correct?
MR. CLARE: Objection, calls for speculation.
A. That's one potential reason. There are others.
Q. That's why the document is being prepared, right? It's to provide information to people in connection with making an investment decision.
A. The document is being prepared for a number of reasons, but one of them is to

Page 178

Tyree
assist investors in making an investment decision, an offering memorandum.
Q. The purpose of the offering memorandum is to provide them with information relating to the company offering the security, correct?
A. That's one purpose of the document.
Q. That was the purpose of the offering memorandum that Sunbeam used in connection with the zero coupon debenture offering on which you worked, correct?
A. That was one purpose for that document.
Q. And you said it was important for the company to be accurate. Is it important that the document be accurate based on the knowledge that the investment banker underwriting the offering has?
A. If you could clarify your question a little bit.
Q. Is it important that the underwriter make certain to the best of its ability that the information contained in the offering memorandum is accurate to the best of

Page 179

Tyree
its knowledge?
A. I would characterize it differently.
Q. How would you characterize it?
A. I would say that it is important that the investment banker or the investment banking representative make sure to the extent possible that the management team understands how critical it is that the information in their offering memorandum is accurate.
Q. So it's not important for the investment banker to make certain that the offering memorandum is consistent with the underwriter's knowledge?
A. I did not say that.
MR. CLARE: Objection, it misstates the prior testimony.
THE WITNESS: I didn't say that. This is or this appears to be similar to a document that Sunbeam management, an offering memorandum that Sunbeam management put in front of investors. Investment bankers in the case of the Sunbeam transaction advise that management team on this document. What they

Page 180

Tyree
don't -- what they can't advise on with any degree of certainty is the absolute truth because -- of the document because they in large part rely on the management team as well as their other third party advisors.
Q. I just want to make sure you're done.
A. I'm done.
Q. Here's my question. Is it important that the offering memorandum be accurate based on the information that the investment banker actually possesses relating to the matters that are addressed in the memorandum?
MR. CLARE: Objection, asked and answered. You can answer again.
A. I stick with what I said before, which is that it is important that in their advisory capacity the investment banker advises the client, third parties involved, of the importance that what they put in their document is accurate. That's a major part of their job.
Q. Well, there is a name at the bottom

NOT A CERTIFIED COPY

011784

Page 181

Tyree
of this document. Read it for me. The name of a firm.
A. Which exhibit is this?
Q. CPH Exhibit number 10.
A. The name is Morgan Stanley Dean Witter.
Q. Right. Morgan Stanley Dean Witter is the entity that employed you in connection with this transaction, right?
A. That's not how I would characterize it.
Q. Who employed you in connection with this? Whose interests were you representing?
A. It's different. Morgan Stanley employed a number of people in the context of this transaction. I was one.
Q. And Morgan Stanley's name is on this document, correct?
A. This exhibit CPH 10, Morgan Stanley's name is on the bottom, yes.
Q. Did you have any responsibility in connection with your work on this document to make certain based on the information in your possession that the statements contained in

Page 182

Tyree
this document were true?
A. If I knew of a statement at that time to be false, I personally, John Tyree, that was put into this prospectus, I would have done several things, among them bring it to the attention of the client, bring it to the attention of my colleagues who I work with and resolve it one way or another, at that time.
Q. So you had responsibility in connection with your work on this, if you identified some statement in this document as being inconsistent with what you believe to be true, to make certain that that concern was properly addressed, correct?
MR. CLARE: Objection. Asked and answered.
A. I would say again, a number of people had that -- had a responsibility in the context of this document. But again, that's what I would have done, or I believe I would have done at the time. But again, you're asking me to comment on this document. I don't know if it is in fact our document, or

Page 183

Tyree
the document in the offering memorandum that I worked with on Sunbeam. I've told you how I would approach it, how I believe I would approach it, and I hesitate to give you hypotheticals because I don't know exactly what this situation is that you are outlining.
Q. Well, I want to be fair with you about this, and I'm not asking about other people's responsibility, I'm only asking about you, so I'm going to make it simple for you. If there was some statement that you saw in this document that you believe to be false, did you believe it was your responsibility to make sure that your concerns were properly addressed before this document was finalized?
A. I think I've already answered that.
Q. The answer is yes?
A. No, the answer is what I gave earlier.
Q. Well, I'm entitled to an answer to this question, because I don't know what you said before. I'm asking about your personal responsibility. If there was a statement contained in the Sunbeam debenture offering

Page 184

Tyree
memorandum that you John Tyree believed to be false, did you John Tyree believe you had responsibility to make sure that your concerns about the truthfulness of the matters contained in here was properly addressed before this offering document was finalized?
MR. CLARE: Objection to the form of the question, asked and answered, and I move to strike counsel's comments at the beginning.
A. Well, I'm going to try and go through what I said before, which is you are giving me a hypothetical. I don't know what the quote unquote misstatement might have been. I don't know the degree to which it was important. So I will tell you what I would do right now today, which is if I had an offering memorandum and I was working in the same capacity I was working with then when we worked on the Sunbeam transaction, and I found there to be a significant misstatement or a misstatement as it were in the offering memorandum, I would bring it to the attention of management, I would bring it to the

NOT A CERTIFIED COPY

017185

Page 185

Tyree
attention of my senior colleagues and we would resolve it. That is what I believe I would do today.
Q. I'm not asking about what you would do in 2003, I'm asking whether back in 1998 when you were working on this debenture offering, you understood that if there was a statement contained in the offering memorandum that Sunbeam was preparing and in which you were involved in providing advice, that you personally believe to be false, that you had responsibility personally to make certain that any concerns you had with respect to that were properly addressed before the memorandum was published to investors.
MR. CLARE: I'm going to object again, asked and answered several times now.
A. I would, I believe, and again, this is a hypothetical where you haven't really laid out exactly going on in this quote unquote process. But I believe I would have handled it back then in the same way I've described to you that I would handle it today.
Q. So would you have acted on it,

Page 186

Tyree
correct?
A. I've already said what I would do.
Q. One of your responsibilities, Mr. Tyree, in connection with the offering memorandum was to go to the printer in connection with finalizing the document the day it was published, correct?
A. It was going to the printer the day the Sunbeam offering memorandum was published, to my recollection was something that I did.
Q. All right. Do you have a memory as you sit here today of going to the printer the night the Sunbeam debenture offering memorandum was finalized?
A. I have a vague recollection of doing that, yes.
Q. And it was your responsibility that night to do the various things that needed to be done for the memorandum to be finalized and for the document to be published for investors, is that correct?
A. No.
MR. CLARE: Object to the form of the question.

Page 187

Tyree
Q. How have I misdescribed your responsibilities?
A. You have described what is more the company's responsibilities. My responsibilities were to be there in an advisory role to assist the company in accomplishing most of the tasks you've just laid out.
Q. Who else was present at the printer that night?
A. Myself from Morgan Stanley for a period of time. I don't recall exact names, but there were representatives there from Davis Polk. I believe there were representatives there at differing times. We were there for a fairly lengthy period of time. Representatives there from Sunbeam counsel, as I recall.
Q. Do you remember who that was?
A. I don't, unfortunately. And people were in and out during that period of time. There were representatives there from Sunbeam's management team; there were representatives there from the auditors,

Page 188

Tyree
Sunbeam's auditing firm.
Q. Do you remember what firm that was?
A. Arthur Andersen. There were obviously representatives of the printer there. Those are the key groups that were represented, as I recall.
Q. Was there anyone from Morgan Stanley other than you present that day, at the printer?
A. I don't recall that there was anyone there from Morgan Stanley. I just don't remember if there was anyone there in addition to myself.
Q. Do you remember that Global Financial Press was the printer on this offering memorandum?
A. I believe that was the printer.
Q. Do you recall where you were at, what Global Financial facility you were at that evening?
A. I'm sorry, are you asking me for the geographic location?
Q. Yes.
A. It was in Manhattan, and I could be

NOT A CERTIFIED COPY

011786

Page 189

Tyree
wrong, I believe it was on the west side of Manhattan.
Q. Had you had responsibilities like this before, to go to the printer the night an offering document is being finalized?
A. I had gone to -- I'd been to the printer before.
Q. The night it's been finalized?
A. I don't remember in advance of that date having been at a printer on the night it was being finalized, but that's not to mean I hadn't been there, I just don't recall it.
Q. Well, let me ask the question this way. Do you have some memory that this was the first experience you had in being at the printer the night an offering memorandum was being finalized?
A. No, I don't have that.
Q. And as far as you can recall, you are the only Morgan Stanley representative present, correct?
A. As far as I can recall.
Q. And you don't have any recollection of the names of the people from Davis Polk who

Page 190

Tyree
were there that night?
A. I recall the name, I hesitate because I'm not sure, but I recall the name Lurie, and I believe there was another female from Davis Polk there, but I just don't remember her name.
Q. When you say you recall the name Lurie, do you believe Mr. Lurie was present at the printer that night?
A. He may have been. I don't remember specifically.
Q. Do you remember a man and a woman from Davis Polk being present that evening?
A. I remember a woman being present. And the rest of my memory is a group of people who were there. Frankly I say Lurie because his name sticks out in my mind. I don't remember him in particular.
Q. Do you know Mr. Lurie? Do you know who he is?
A. Yes, I do.
Q. Have you dealt with him on other transactions besides the Sunbeam debenture offering?

Page 191

Tyree
A. I don't recall having dealt with him on other transactions other than the Sunbeam convertible transaction.
Q. Sunbeam's counsel, you said you can't remember what law firm that was?
A. It may have been Skadden.
Q. That's your best recollection, it was Skadden Arps?
A. That's my best recollection.
Q. Do you remember the names of the people who were there representing Sunbeam? Sunbeam's counsel, excuse me?
A. No, I don't.
Q. Is the name Todd Fried a familiar name?
A. I've heard the name before, but it doesn't bring to mind a face.
Q. You don't remember Mr. Fried being present at the printer that night?
A. No, I do not.
Q. Adrian Dietz?
A. Again, I have heard the name before, but I don't remember Mr. Dietz being there physically at the firm, or at the

Page 192

Tyree
printer firm.
Q. Do you recall Mr. Dietz and Mr. Fried being involved in the Sunbeam debenture offering?
A. I recall their names associated with the transaction, but beyond that, I don't have a strong recollection of either of them.
Q. And you indicated that there were people there from Arthur Andersen, correct?
A. I believe there were, yes.
Q. Do you remember the names of those people?
A. No, I don't.
Q. Does the name Lawrence Bornstein refresh your memory?
A. I've heard the name before.
Q. Do you remember Mr. Bornstein being at the printer that night?
A. I don't have a specific recollection of him being at the printer.
Q. Do you recall Mr. Bornstein generally?
A. I recall that -- I believe he was on the transaction working for Arthur

NOT A CERTIFIED COPY

0171187

Tyree
Andersen, but that's about the extent of my recollection.
Q. You don't have any memory of Mr. Bornstein being at the printer on the evening of March 19?
A. No, I do not.
Q. Is the name Todd Brockelman familiar to you?
A. I don't have a strong recollection of that name.
Q. Actually I think I might have misspoken. It's I believe Mark Brockelman. Is that a familiar name to you?
A. You know, it's really not.
Q. You don't remember Mr. Brockelman working on the debenture offering for Arthur Andersen?
A. I don't.
Q. Who from Sunbeam management was there. Did you indicate to me that there were people from Sunbeam management present at the printer that night?
A. I did, but I think I said I don't remember what their names were.

Tyree
Q. But you have a definite memory that there were people from Sunbeam itself present?
A. I believe there were representatives of Sunbeam there.
Q. But you're not certain?
A. I'm not absolutely positive.
Q. Was this the only time you went to the printer in connection with the Sunbeam debenture offering, the night it was being finalized, or were you there on some prior occasion?
A. Well, I don't have a specific recollection of being at Global Financial Press on a different occasion. You know, I don't have that specific a recollection of another period when I was there at the printer.
Q. Now, were you aware that in the days prior to March 19, Sunbeam and Morgan Stanley had been engaged in a road show to attract interest in the debenture offering on the part of investors?
A. I was aware that the Sunbeam management team was conducting a meeting with

Tyree
investors in regards to the convertible notes offering, yes.
Q. Were you aware that there was a series of meetings across the country for that purpose?
A. Yes.
Q. And were you aware that Morgan Stanley representatives were attending along with Sunbeam those meetings?
A. I believe that there were Morgan Stanley representatives along.
Q. Were you aware that Morgan Stanley had assisted Sunbeam in preparing materials for use at the road show presentations to potential investors?
A. I recall that -- what I recall is that Morgan Stanley provided logistical assistance in the context of the road show. I can't remember if that was printing books, I can't remember if it was just travel arrangements or what have you.
Q. Did you assist in any way with respect to the preparation of road show materials?

Tyree
A. I don't recall having done specific work on the convertible -- Sunbeam convertible notes transaction road show presentation.
Q. Well, when you say you don't recall having done specific work, is it your belief that you were involved in some aspect of the preparations associated with the road show presentations?
A. It is my belief -- correction, it's my recollection that I reviewed some travel arrangements associated with the road show presentation and that I attended a road show presentation I believe in New York, in New York City. Beyond that, I don't have a recollection of having worked on the roadshow presentation materials.
Q. You don't have any recollection as you sit here of being involved in assisting in the process of drafting the presentation materials that were used at the road show?
A. I don't have a recollection of that, no.
Q. You said you have a memory of attending at least one of the group road show

NOT A CERTIFIED COPY

017188

Tyree
presentations, correct?
A. That's correct.
Q. And you think that was in Manhattan?
A. I believe it was in Manhattan.
Q. Do you remember where that presentation took place?
A. It took place at a hotel in Manhattan. I'm not exactly sure of the name of that hotel.
Q. Was that a lunch presentation?
A. As I recall it was a lunch presentation.
Q. Do you recall who else from Morgan Stanley was there?
A. I don't recall all the attendees from Morgan Stanley.
Q. Who do you remember being there from Morgan Stanley?
A. I believe that Ruth Poratt was there. That's the only representative I can recall specifically.
Q. Do you remember a Jim Steins being there?

Tyree
A. I don't have that recollection.
Q. Why were you there?
A. I was there because I was curious to see the road show presentation, among other reasons.
Q. What other reasons were there?
A. I'm sure there were other reasons. I just can't remember what they were.
Q. Why were you curious to see it?
A. Because I had been, among other things, advising the company on their offering memorandum, participated in the logistics of the road show presentation. That's my recollection as to why I wanted to be there to see it.
Q. Did someone invite you to attend?
A. I don't remember anyone specifically inviting me.
Q. Do you recall that was the day before the offering memorandum was finalized?
A. I don't recall exactly what day it was. I think it was near that date.
Q. Do you recall the roadshow ended on March 19?

Tyree
A. Again, I don't recall the exact date when the roadshow ended.
Q. Do you recall that the final pricing of the debentures took place on the evening of March 19?
A. Similar to the roadshow, I don't recall the exact date when the pricing occurred. That may be right, I'm just not absolutely sure of the exact date.
Q. Would it be typical for the final pricing to take place the same day that the offering memorandum is itself finalized?
MR. CLARE: Objection to form.
A. I wouldn't characterize it that way.
Q. How have I misstated it?
A. Perhaps the perception, typically what happens is the pricing occurs, and then, and I hesitate to use typically, in many of the situations I've worked on, the pricing occurs, and then the offering memorandum, the company finalizes their offering memorandum.
Q. That's what I was trying to say.
A. I'm sorry.

Tyree
Q. And that that would happen the same day.
A. Not always.
Q. But typically.
A. It depends. It depends on the timing of pricing.
Q. Well, is it typically the case that once final pricing is completed, that the effort is made to immediately finalize the offering memorandum?
MR. CLARE: Same objection to form.
A. I would characterize it differently. I'd say once the pricing is completed, in many of the situations I've been part of, a final offering memorandum can be published soon, as soon as practicable thereafter.
Q. Do you know why Arthur Andersen would have been present at the printer on the evening the debenture offering was being finalized?
A. I'm sure there are a number of reasons they might be present.

NOT A CERTIFIED COPY

017189

Page 201

Tyree
Q. Well, I want to talk specifically about Sunbeam because that's what brings us here. You recall Arthur Andersen being present the night the offering memorandum was finalized?
A. I do.
Q. Do you recall what specific purposes Arthur Andersen was there for?
MR. CLARE: I'm going to object to the extent the question asks the witness to speculate.
A. You would have to ask Arthur Andersen why they were there.
Q. What was your understanding?
A. My understanding as to what?
Q. Why Arthur Andersen was present the night the offering memorandum is being finalized.
A. Again, I don't see that I am in the place to tell you why Arthur Andersen was there at the printer.
Q. You're the only person that can tell me why John Tyree thinks they were there and what's what my question is.

Page 202

Tyree
A. Well, I think they were there for a number of different reasons. Do you want me to give you --
Q. Yes. That's what I'm asking.
A. Okay, I think they were there because their name is in this document, and prior to the printing of the document, they likely would want to make sure that they were comfortable with its content. That's one reason. They were there because I -- because we had to speak in regards to what's called bring down due diligence during that time at the printer as I recall. And I'm sure there were other reasons. Those are two.
Q. Those are the ones you can recall?
A. Those are the -- you asked what John Tyree thinks.
Q. That's all I'm asking.
A. Those are two that John Tyree thinks. You'd have to talk to them if they had others.
Q. Do you recall any others?
A. No, those are the two that I recall.

Page 203

Tyree
Q. Do you recall that Morgan Stanley had asked Arthur Andersen for a comfort letter in connection with this offering?
A. I do not recall personally asking Arthur Andersen for a comfort letter in regards to this Sunbeam convertible notes debentures transaction.
Q. All right, that's a little bit different than my question. My question was do you recall that Morgan Stanley asked Arthur Andersen for a comfort letter in connection with this offering?
A. I don't recall that Morgan Stanley asked for a comfort letter in regards to the Sunbeam convertible debentures transaction.
(Exhibit CPH 12, CPH12526-27, marked for identification, as of this date.)
Q. Mr. Tyree, let me show you what we've marked as CPH Exhibit number 12, a document that bears Bates number CPH12526 through 27. Exhibit number 12, Mr. Tyree, is a letter on Morgan Stanley stationery dated March 11, 1998 from John D. Tyree to Arthur Andersen. Take a moment to look at it,

Page 204

Tyree
please. Have you had a chance to look at it?
A. I have.
Q. Does this refresh your recollection that you personally on behalf of Morgan Stanley had written to Arthur Andersen to request that they provide a comfort letter in connection with the subordinated debenture offering?
A. No, it does not.
Q. So you have no memory of this document?
A. I have no memory of this letter in particular, no.
Q. Does that appear to your signature on the second page?
A. It does.
Q. Do you have any reason to think this is not what it appears to be, a letter from you to Arthur Andersen on March 11, 1998 requesting a comfort letter from Arthur Andersen?
A. Again, I have no reason to believe it is or it isn't. It's just the document that you just put in front of me.

NOT A CERTIFIED COPY

017190

Page 205

Tyree
Q. You don't have any reason to think that somebody is fabricating documents that have your name on them, do you?
A. I don't know. I don't know if they would have reason to or not. You'd have to ask them.
Q. Well, that's my question, Mr. Tyree. If you have some reason to think that somebody is fabricating documents with your name on it, which is what you are implying, I think, I'd really like to know what the basis for that is. If you don't, that's a simple thing to say as well. So my question is, do you as you sit here have reason to believe that someone has fabricated documents and put your name on it?
MR. CLARE: Objection to form and I move to strike the preamble to the question.
A. The reason that I phrase my answer in the way that I do is because I don't know this document. I didn't know the one you laid out in front of me before, I don't remember it, is the right term. So when you ask me if

Page 206

Tyree
I have reason to believe if someone at Sunbeam has created fraudulent files or what have you, I don't know, I don't work at Sunbeam. I don't see how I can make an informed judgment on that. I don't know the situation at Sunbeam today.
Q. You seem to be struggling with some of my questions. I'm asking you what you know. That's what we're here for today. And my question is whether John Tyree has some reason to believe that someone has fabricated documents and put his name on it. So that's my question. Did you have some reason to believe that somebody has falsified and created Exhibit number 12?
MR. CLARE: Objection to form and move to strike the preamble.
A. It is a very broad question. There has obviously been a lot going on at Sunbeam, which is why I hesitate. I don't know all the details. So when you ask if I have any reason to believe, I don't think it would be appropriate for me to make a direct claim to you one way or the other because I don't know

Page 207

Tyree
all the facts.
Q. Well, what you know is what you know. And I'm asking you whether you have some reason to believe somebody has falsified documents and put your name on it. If the answer to that is no, great, we can move on. If you think there is some reason to believe this is a fraudulent document, I need to pursue that.
MR. CLARE: I'm going to make the same objection.
A. No individual, no person has told me that there is any reason I should be concerned with fraudulent documentation. Beyond that, I hesitate to make a judgment one way or another as to whether or not there is a reason for someone at Sunbeam or another entity to draft fraudulent documents such as this one because do I not know what the situation is at Sunbeam.
Q. So you have no reason to believe that somebody has done that, right?
A. And I have no reason to believe that they have not. I don't see what's wrong

Page 208

Tyree
with having -- to say both. I have said to you, I don't have any reason to believe that they have and I don't have any reason to believe that they have not.
Q. Let's move on. But that appears to you to be your signature on this page, right?
A. It does.
Q. And would it have been within the scope of the responsibilities you had on this transaction to prepare a letter such as Exhibit 12 to the auditor requesting a comfort letter?
A. I have prepared letters like this in the past for other transactions.
Q. All right, so this doesn't surprise you as something we'd find in the file for this transaction, correct?
A. No, I'm not surprised.
Q. Does this refresh your memory that one of the reasons Arthur Andersen was at the printer on the night of the finalization of the Sunbeam offering memorandum was so that it could also finalize its comfort letter to Morgan Stanley?

NOT A CERTIFIED COPY

017191

Tyree

A. I don't necessarily view physically being at the printer as a necessity to finalizing your comfort letter. There are a number of other reasons why they might have been there or might be there.

Q. Do you have a memory that night of getting the final version from Arthur Andersen of the comfort letter?

A. No, I do not.

Q. Now, during the course of the evening of March 19, you got into a heated discussion with the Arthur Andersen representatives who were present that night, is that correct?

A. No. Not to my recollection.

Q. Do you recall that the Arthur Andersen representatives who were present that night objected to some of the statements that were contained in the offering memorandum?

A. No. I don't recall that.

Q. You have no recollection as you sit here that Larry Bornstein from Arthur Andersen objected to statements contained in the offering memorandum that was being finalized

Tyree

that night?

A. I have no recollection of that.

Q. Let me direct your attention to Exhibit number 10. Do you have that in front of you, the offering memorandum?

A. I do.

Q. Let me direct your attention to page number 8 of that document, the recent announcement section at the bottom.

A. Yes.

Q. I want you to read those two paragraphs to yourself.

Have you had an opportunity to read those two paragraphs?

A. Yes.

Q. Those two paragraphs describe an announcement that Sunbeam made on March 19, correct, in a press release?

A. I don't remember exactly what their press release was on that date.

Q. That wasn't what I asked. I asked whether the paragraphs that I've asked you to read in the offering memorandum on page 8 describe a Sunbeam press release that was

Tyree

issued on March 19.

A. I wasn't clear. Because I don't have a direct recollection of that press release, I can't opine as to whether this text reflects it.

Q. Let me ask the question a little bit differently and maybe we can move along. The paragraphs on page 8 of the offering memorandum purport to describe a press release that Sunbeam issued on March 19, correct?

A. That's what they purport to describe, yes.

Q. Do you recall reading the Sunbeam March 19 press release before the offering memorandum was finalized?

A. I don't recall reading the press release. I recall there being a press release but I don't recall sitting down and reading through and having a strong recollection of the press release itself.

Q. Well in fact you had the press release before it was issued, isn't that correct?

A. I believe that I did, yes.

Tyree

Q. Are you testifying that you had it but you didn't read it?

A. No, what I said was that I don't have a specific recollection of reading it. So I can't quote to you line and verse what the content of it was.

Q. So as you sit here today you couldn't recite from memory the contents of Sunbeam's March 19 press release, correct?

A. Exactly.

Q. But on March 19 you had as of that point in time read the press release, correct?

A. I don't have a specific recollection of reading the press release, but yes, I did have the press release.

Q. You had possession of it. You got it the night before, right?

A. I don't remember exactly when the final version of the press release was delivered to me.

(Exhibit CPH 13, SASMF10808-807, marked for identification, as of this date.)

Q. Mr. Tyree, let me show you what we're marking as CPH Exhibit number 13. It's

NOT A CERTIFIED COPY

017192

Tyree
a two-page document, it bears Bates numbers SASMF10808 and 10807.
(Recess taken.)

FURTHER EXAMINATION BY MR. MARKOWSKI:
Q. Mr. Tyree, let me put CPH Exhibit number 13 in front of you again. Do you have that?
A. I do.
Q. It's a two-page document, a fax cover sheet and a confirmation sheet on Skadden Arps letterhead, correct?
A. That's what it appears to be.
Q. And on its face anyway it purports to be a fax from Todd E. Fried to John D. Tyree, correct?
A. Again, that's what it appears to be.
Q. Would you read the message that appears in the message portion of the fax cover page?
A. Please see the attached press release. Under no circumstances should this press release be disseminated prior to its

Tyree
sign off by Albert J. Dunlap and/or David C. Fannon.
Q. Does this refresh your recollection that you personally received a copy of the March 19 press release that Sunbeam issued before that press release was publicly announced?
A. I don't think it needed refreshing. I knew I had the press release in advance.
Q. Okay, I was unclear about that. You have a memory of having a copy of the Sunbeam press release in your personal possession before it was released to the public?
A. No, my memory is of having the press release in advance of the drafting session that we've been discussing.
Q. And I'm asking a slightly different question. This fax is dated March 18, correct?
A. The date, March 18, yes.
Q. And the confirmation sheet attached to it is dated March 18 as well, correct?
A. It is.

Tyree
Q. And the time associated with the message on the confirmation sheet is 2341, correct?
A. It is.
Q. And I'm sure you're better than I am with those kinds of numbers, but that's 11:41 in the evening, correct, 2341?
A. Yes.
Q. Do you have a memory of receiving a copy of the Sunbeam press release late in the evening of March 18 before it was publicly released?
A. No.
Q. So this message doesn't refresh your recollection that Skadden Arps had faxed a copy of the press release to you personally on the evening of March 18?
A. It doesn't refresh my memory as to when I received the press release for Sunbeam
(Exhibit CPH 14, Morgan Stanley Confidential 16944-945, marked for identification, as of this date.)
Q. All right, let me show you a copy of what we've marked as CPH Exhibit 14. Again

Tyree
a two-page document. It bears Bates number Morgan Stanley confidential 16944-945. Take a moment to look at that.
Does this appear to be the press release that is referred to on page 8 of the offering memorandum?
A. It appears to be a Sunbeam press release. It appears that a portion of this has been copied into this document.
Q. By this you are referring to --
A. Exhibit 14.
Q. It appears that a portion of Exhibit 14 has been copied and repeated as the text on page 8 of the offering memorandum, correct?
A. That's correct.
Q. Do you know how physically that came about?
A. No.
Q. Do you recall personally being involved in taking the text from the Sunbeam press release and preparing language based on that press release that was inserted into the offering memorandum?

NOT A CERTIFIED COPY

D 1793

Tyree

A. I do not recall doing that.
Q. Do you recall receiving that in some form from Sunbeam so that it could be inserted into the offering memorandum?
A. Could be repeat your question, receive what exactly?
Q. Let me take a step back. I'm talking logistics at the moment with respect to the preparation of the final language, in particular the final language that appears into the recent announcement section on page 8. The Sunbeam press release on its face indicates it was released on March 19, correct? The offering memorandum, am I correct about that?
A. You are correct that this document has a March 19 date on it.
Q. And do you recall that the press release was issued the same day the offering memorandum was finalized? Is that something that sticks in your mind?
A. I believe that was correct. That is correct.
Q. So the recent announcement section

Tyree

of this offering memorandum would not have had this language in it prior to at some point in the day on March 19 presumably, correct?
A. Again, that's a hypothetical. Can you be more clear with a specific question?
Q. Well, do you think this language in the offering memorandum appeared in prior drafts before the final version?
A. I do not recall there being a present announcement section in the preliminary offering circular.
Q. Since this describes an event that took place on March 19, isn't it the case that this language would have had to be added to the offering memorandum at some point during the day on March 19?
A. The dates here would imply that.
Q. And do you have any memory as you sit here how that occurred during the course of events at the printer that evening?
A. Again, I don't recall how the text from the Sunbeam press release was logistically, as you put it, put into the executive summary of the Sunbeam offering

Tyree

circular.
Q. Is it possible that you were involved in that process or do you rule that out?
A. It's possible.
Q. So it's possible you were the person involved in taking this language and adapting it for use in the offering memorandum?
A. I would say it is highly unlikely that I was the only one involved in putting this language into this prospectus.
Q. I'm not asking if you were the only one involved, but somebody had to be the person who took language, put it together, and had someone type it into the offering memorandum. I'm asking if that person might have been you.
A. No, I would not have typed this information into the offering memorandum.
Q. Given it to someone to be typed into the offering memorandum.
A. There were a number of people at the printer who could have potentially given

Tyree

the Sunbeam press release and given them a directive to incorporate into the offering circular.
Q. And one of those possibilities is you, correct?
A. Anything is possible.
Q. I'm not asking if anything is possible. Do you -- based on the manner in which the memorandum was being finalized, is it possible in your mind that you were the person who caused this language to be included in the typed portion of the offering memorandum on page 8?
A. I believe it is highly unlikely. I don't like to say impossible, it's highly unlikely that I was the person who insisted that this language be put in this document.
Q. I'm not talking about insisting and I'm not at this moment talking about the decision-making. I'm talking about the physical act of including it in the document.
A. Yes.
Q. Is it possible that you were the person who handled that aspect of that task?

NOT A CERTIFIED COPY

0117194

Page 221

Tyree
A. And as I said, it's highly unlikely I was the one who typed this in. If you can be more specific about the process that you are referring to.
Q. Well, I assume it's somebody at the printer that actually is preparing the text that we see on page 8, physically preparing that, is that correct?
A. That's likely.
Q. Do you recall taking a copy of the press release, marking it up in some way, handing it to someone at the printer and saying this is the language we want to include in this section of the document?
A. I do not recall doing that.
Q. Do you recall somebody else doing that?
A. I do not recall anyone else doing that.
Q. You knew it was happening that night, correct?
A. Can you repeat the question.
Q. You knew that the substance of the March 19 press release was being included in

Page 222

Tyree
the recent announcement section of the offering memorandum, correct?
A. My memory of that night is vague, but I do recall the management team putting the, or approving as it were putting the contents of a press release, the Sunbeam press release in the offering memorandum.
Q. Who do you recall discussing that with?
A. I don't have a specific recollection of an individual.
Q. Do you recall discussions about that decision with anyone at Morgan Stanley before the offering memorandum was finalized?
A. I don't recall having a discussion with anyone at Morgan Stanley in regards to incorporating the Sunbeam press release into the Sunbeam offering memorandum.
Q. Did somebody from Morgan Stanley before you went to the printer that day say to you, John, here's what we want to include. Here's what the company wants to include in the recent announcement section. It's going to be the text of the press release that went

Page 223

Tyree
out this morning.
A. I don't recall that.
Q. When you got to the printer, did you have discussions with anyone about the fact that the press release information was going to be included in the recent announcement section of the offering memorandum?
A. I don't recall having a specific conversation with any individual about the press release going into the Sunbeam offering memorandum.
Q. You said you don't have a recollection of a specific discussion. Do you recall in general that that issue was discussed at some point during the course of the evening on March 19?
A. I have a vague recollection that during that evening at the Global Financial Press, that the decision was made to put the Sunbeam press release or a derivation of it into the recent development section, or correction, recent announcement section of the Sunbeam offering memorandum. That's the

Page 224

Tyree
extent of my recollection.
Q. Do you remember someone objecting to that?
A. No, I do not.
Q. Do you remember Mr. Bornstein objecting to including the language from the press release in the offering document?
A. I do not remember that.
Q. Do you remember Mr. Bornstein in particular objecting to including any statement in the offering memorandum that indicated that the company expected in the first quarter of 1998 to have net sales that exceeded its first quarter 1997 net sales?
A. Not only do I not remember that, I do remember a representative of Arthur Andersen confirming, I can't remember who it is, confirming they were comfortable with the contents of the offering memorandum, of the Sunbeam offering memorandum. That I do remember.
Q. Who was that?
A. As I said, I can't remember who the individual was.

NOT A CERTIFIED COPY

0117195

Tyree
Q. When was that?
A. It was during that evening that we're discussing, the evening in question.
Q. Is your testimony that you specifically -- let me put it this way.
Do you deny that someone from Arthur Andersen objected to including the statement in the offering memorandum that is contained in the first sentence of the press release, that Sunbeam corporation said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analyst estimates of 285 to 295 million, but net sales are expected to exceed 1997 first quarter net sales of 253.4 million?
A. I do not deny that.
(The record was read.)
Q. So it's your testimony that you do not deny that Arthur Andersen objected to including that language in the offering memorandum?
MR. CLARE: Objection. I think it misstates the testimony in context of his

Tyree
prior answers. You can answer.
A. I cannot deny it because I don't recall.
Q. Well, if that had happened that night, if Arthur Andersen, Mr. Bornstein had come up to you and said John, I object strongly to including the substance of the first sentence of the press release in the offering memorandum because it's not reasonable for Sunbeam to say such a thing, what would you have done?
MR. CLARE: Objection, incomplete hypothetical.
A. I don't know what I would have done. There are a number of other factors that would have played into that decision.
Q. Would you have called somebody? If you were the only Morgan Stanley person present there, would you have called someone more senior at Morgan Stanley?
MR. CLARE: Same objection.
A. Again, I do not know what I would have done. It would depend on a number of different factors.

Tyree
Q. By March 19, Sunbeam's first quarter of 1998 is almost completed, correct?
MR. CLARE: Object to the form.
A. Can you be a little bit more specific about what you mean by almost completed?
Q. Well, Sunbeam's first quarter started December 30, I believe, of 1997. Do you recall that? Sunbeam wasn't a calendar year reporter?
A. I don't recall the exact reporting dates for Sunbeam.
Q. We'll pin it down a little bit more precisely later. But by March 19 of 1998, about 80 days of Sunbeam's first quarter had been concluded, correct?
A. If I don't know the reporting dates, how can I -- sorry, without knowing the reporting dates, I can't answer that question.
Q. Well, did you know at the time you were working on the offering memorandum what the starting and ending dates were for Sunbeam's physical periods?
A. I believe that I did.

Tyree
(Exhibit CPH 15, Sunbeam 1997 10-K, marked for identification, as of this date.).
Q. It's a big document for a simple point. You don't have to open it up. I'm just going to ask you to look at the first page of CPH Exhibit 15. And I will represent to you that this is a copy of Sunbeam's 1997 10-K. Do you see at the bottom of the page, it indicates the fiscal reporting period that's covered by this document?
A. Yes.
Q. What does it say?
A. It says for the fiscal year ended December 28, 1997.
Q. Does that refresh your memory that Sunbeam's 1997 fiscal year ended on December 28?
A. It indicates that their fiscal year ended on December 28, 1997.
Q. Right. But does it bring back a memory on your part?
A. Yes, I think I recall that this dictates the appropriate reporting period for

NOT A CERTIFIED COPY

0117196

Tyree

Sunbeam.

Q. Sunbeam was unusual, wasn't it, in that it didn't have a calendar fiscal year, correct?

A. Somewhat. Some companies don't.

Q. It's not typical though, right?

MR. CLARE: Objection to form.

Q. Most companies don't?

MR. CLARE: Same objection, calls for speculation.

A. As I said, it's not standard.

Q. And it's something you remember?

A. No, it's something this document says.

Q. But I asked you whether it brought back a memory that that was case and you I thought indicated it did.

A. It brought back the memory as to what the fiscal reporting period was at Sunbeam to me.

Q. And this indicate that Sunbeam's 1997 year ended on December 28, right?

A. That's what this document indicates.

Tyree

Q. So the first quarter of 98 would start on December 29 of 1997, correct?

A. That would follow logically.

Q. And by March 19 of 1998, approximately 80 days of Sunbeam's first quarter would have been completed, correct?

A. That's what that math implies.

Q. You agree with my calculation?

A. Give or take a few days.

Q. And that would leave approximately 10 days left this Sunbeam's first quarter as of March 19, correct?

A. Making all the assumptions you laid out, give or take a few days, yes.

Q. And do you recall that Mr. Bornstein said to you based on the information he had, it was unreasonable for Sunbeam to say that it expected in the first quarter of 1998 to have sales that exceeded $253.4 million dollars?

A. And again, no. I don't recall anything like that.

Q. You knew that on March 19, Sunbeam -- let me focus on the press release

Tyree

for just a moment, okay? Do you have it in front of you.

A. I do.

Q. Sunbeam in the first sentence says that it is possible its net sales for the first quarter may be lower than Wall Street's estimates of 285 to 295 million, correct?

A. That's what this document says.

Q. You knew as of March 19 that Sunbeam was approximately $190 million short of those totals, correct?

A. No, that's not that's correct

(Exhibit CPH-16, SB 18286, marked for identification, as of this date.)

Q. CPH Exhibit number 16 is a one-page document that bears Bates number SB 18286. Take a moment to look at it.

You had this document in your possession prior to March 19, did you not?

A. I don't recall having this document in my possession prior to that date.

Q. Is it your testimony that you've never seen this document before?

MR. CLARE: Objection, that

Tyree

misstates his testimony.

A. I don't know where this document came from.

Q. You've never seen it?

A. I've never seen this document, no.

Q. Let me walk you through some of the numbers on this document.

A. Okay.

Q. I don't know how good you are at math, but I'm going to ask you to add two or three numbers in your head, or if you want a piece of paper, let me know, okay?

Do you see the statement in the first line for January consolidated net sales, actual?

A. Yes, I do.

Q. Okay. It's 29, correct?

A. That's what it says on the page, yes.

Q. And February consolidated net sales actual, 43?

A. That's what it says, yes.

Q. What's the total of those two numbers?

NOT A CERTIFIED COPY

0117197

Tyree
A. Seventy-two.
Q. So if you add those two numbers, the total for consolidated net sales for January and February actual are $72 million, correct?
A. The way I'd look at it is the two numbers that you just added up on this page equal 72.
Q. Well, let me direct your attention to the third line, March international net sales through March 15. Do you see that?
A. Through March 15, 1998, yes.
Q. 6.9?
A. That's correct.
Q. And so the total of those three numbers is what?
A. 78.9.
Q. And let me direct your attention to the fourth line, March domestic net sales through March 17. Do you see that?
A. Yes.
Q. And the total for that is 22.7?
A. Yes.
Q. And 79 plus 22.7 is what?

Tyree
A. So are we adding 78.9 or 79?
Q. 78.9, I'm sorry.
A. May I use this pencil?
Q. Sure.
A. So your question was 78.9.
Q. Yeah, what I'm really asking you to do is add up the four figures for total net sales that are on this document.
MR. CLARE: And I want to just object to this whole line of questioning as wasteful and inefficient. The document obviously speaks for itself and the numbers obviously can be added without requiring the witness to go through this exercise.
Q. Do you have the total?
A. I'm sorry, so 78.9, and you wanted me to add to that, was it 22.7?
Q. Here's what I want you to do. I want you to add the totals for January net sales, February net sales, March international net sales through March 15 and March domestic net sales through March 17. Those four figures.
A. Okay, 29 plus 43 plus 6.9 plus

Tyree
22.7, I get 101.6.
Q. And that's about 185 to $195 million less than the 285 million to $295 million numbers referred to in the March 19 press release, correct?
MR. CLARE: Object to form.
A. Can you just repeat your findings again.
Q. Well let's make sure you have the press release in front of you.
A. I have the press release right here.
Q. It says there that Sunbeam announces that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall street analyst estimates of 285 million to 295 million. And what I'm asking you is how far away from 285 to 295 million is 101.6?
MR. CLARE: Same objection as before regarding the wastfulness of this questioning.
A. The math I come up with is, if you use the upper edge of the range, two

Tyree
ninty-five, and you subtract 101.6, I come up with 193.4.
Q. You knew on March 19 that Sunbeam was approximately $195 million short of the upper range of Wall Street analyst estimates for net sales for the first quarter?
A. I think I answered that already, but I don't recall knowing anything like that as of March 19.
Q. And it's your testimony that Sunbeam did not provide you with a copy of CPH Exhibit 16 on March 18?
MR. CLARE: Objection, that misstates the prior testimony.
A. My testimony was I have not seen, I believe I said I had not seen this document before. That remains my testimony.
Q. Let me make sure we're on the same page with respect to CPH Exhibit 16. There is some handwriting on there, right? And there is some fax lines on there. Do you see those things?
A. I do.
Q. I'm excluding those things. Have

NOT A CERTIFIED COPY

017198

Page 237

Tyree
you seen the typed portion of CPH Exhibit 16 before today?
A. Again, I don't recall receiving a document, receiving this document because I don't remember all these numbers, I can't confirm that.
Q. Do you remember that on March 18, Sunbeam management provided you with a one-page summary of Sunbeam's total net sales through mid-March of 1998?
A. On what date did you ask?
Q. March 18.
A. I recall on March 18 seeing a document that was faxed to representatives of Morgan Stanley, that Sunbeam management claimed at the time walked through their historical and projected financial performance for this quarter in question. That's what I recall.
Q. And do you recall understanding based on your review of that document that Sunbeam's net sales through mid-March of 1998 totalled approximately $100 million?
A. Again, I don't remember exactly

Page 238

Tyree
what the numbers were that came out of that document.
Q. That wasn't my question. My question was do you recall concluding based on your review of that document that Sunbeam's net sales through mid-March of 1998 were approximately $100 million?
A. I do not recall that.
Q. Do you recall that Sunbeam was substantially short of the 285 million to $295 million in net sales that Wall Street had been led to expect from the company?
MR. CLARE: Objection to form.
A. I wouldn't characterize my recollection that way.
Q. I'm sorry, you wouldn't?
A. I would not.
Q. What do you recall Sunbeam's net sales were through mid-March of 1998?
A. I don't recall what Sunbeam's net sales were through that period.
Q. Is it your testimony that you recall being provided a sheet of paper that had that information on it the day before the

Page 239

Tyree
offering memo was finalized?
A. I think I mentioned this before, but I recall Sunbeam management sending a document to representatives of Morgan Stanley that walked through their historical and forecasted financial performance for the quarter in question.
Q. And do you recall that it had net sales numbers through mid-March on it?
A. I believe that it did.
Q. So whatever those net sales were, they were, but you recall that you were advised of them, correct, as of March 18?
A. I recall that the management team walked through in detail what their historical and forward looking financial performance would be purported to be within a range for the quarter in question.
Q. All right. So it's true that as of March 18, you knew what Sunbeam's net sales had been through mid-March of that quarter.
A. The way I would characterize is we had been told by management what they recorded as the historical financial performance for

Page 240

Tyree
that quarter to date at that time.
Q. And that time is March 18 approximately, correct?
A. I believe it was on or about that date.
Q. Do you recall at the printer Mr. Bornstein, when he saw the language in the recent announcement section of the offering memorandum said, just do the math. There is no reasonably way that they're going to get to those totals?
A. No, I do not recall that.
Q. Do you recall him saying the company has done a million to a million and a half dollars a day in sales so far for the first 80 days of the quarter and that they're going to have to do 10 to $15 million a day in sales for the rest of the month to hit those figures?
A. No, I do not recall that.
Q. Let's assume my number is correct for a moment, the $101.6 million that you added up from Exhibit number 16. Let's assume for present purposes that that really was

NOT A CERTIFIED COPY

017199

Page 241

Tyree
Sunbeam's net sales through mid-March, okay?
A. Yes.
Q. Now let's assume that Sunbeam's quarter was ending on March 29. What would Sunbeam have to average in net sales over the remaining period of the quarter to reach 254 million?
MR. CLARE: Object to the premise of the question and I object to the improper and incomplete hypothetical.
A. Are you asking me to walk through the math?
Q. Yeah, I'm asking you to tell me what you think the total would have to be.
A. May I just go through your assumptions one more time?
Q. Sure.
A. Net sales through mid-March for, you had 101.6, correct?
Q. Correct.
A. And you want to know what average sales need to be to have a final quarter financial performance for the entity on this page to equal --

Page 242

Tyree
Q. Two fifty-four.
A. Two fifty-four. And when you say the average, do you mean daily, weekly, what do you mean?
Q. Daily average.
A. So the daily average, so okay. And sorry, this was through mid-March, March 17?
Q. Well, let's pick March 17.
A. Okay, and how many days do we have in March?
Q. Well, the quarter ends on the 29th.
A. On the 29th, so we have 12 days remaining. I just want check my work. During those 12 days, to reach the 254 number that you laid out you would have to sell between, or make between 12 and 13, whatever the units is, of revenue per day.
Q. Net sales?
A. If that's what this document says, then so be it.
Q. That's what we're focusing on, net sales. To roach 285 to 295 million, I won't make you go through the computation, but it's going to be even higher, right? It's another

Page 243

Tyree
30 to 40 million dollars in sales over that 12-day period.
A. Not necessarily, and just to clarify a little bit, when we talk about net sales one of the questions you need to ask is what do you mean by make. Do you mean book sales or do you mean actually operationally achieve sales? Because I don't know what net sales reflect in this document.
Q. I'm talking about booking the net sales. Do you have an accounting background? Have you had any accounting?
A. Yes, I have.
Q. Do you know what companies need to do in order to be able to book a sale for financial accounting purposes?
MR. CLARE: Object, lack of foundation.
A. I know that it varies depending on the industry that the company is in.
Q. Do you know what Sunbeam's revenue recognition policy was with respect to booking net sales?
MR. CLARE: Same objection.

Page 244

Tyree
A. Off the top of my head, no, I don't know what it is.
Q. Did you know it back then?
A. I don't recall what I knew back then exactly.
Q. Do you recall Mr. Bornstein telling you that this is math you needed to do before you made a final decision about including the statement that's contained in the offering memorandum in the recent announcement section?
A. I don't recall anything like that.
Q. Do you recall doing that computation that night?
A. No, I do not.
Q. Do you recall doing that computation at any point before the offering memorandum was finalized?
A. I don't recall doing that computation.
Q. Do you recall Mr. Bornstein telling you that you had better pray that Sunbeam at least achieves 254 million in net sales or everybody in the room was going to get themselves sued?

NOT A CERTIFIED COPY

0017200

not going to meet our earnings, our targets that we had said or what we had communicated to Emerald" and just leave it at that. I mean, why say --

BY MS. BROWN:

Q. Did you ever communicate with anyone your opinion concerning --

A. I think we had conversations about it internally at Andersen. I never communicated outside of, you know, the people that I was directly responsible to or I reported to, those feelings.

Q. Were you aware that Sunbeam provided to Morgan Stanley and then to Arthur Andersen a buildup of sales it expected to achieve at the end of March, 1998?

A. I was aware that Larry had gotten something, Bomstein, while he was at the printers to corroborate what management thought they were going to achieve from the sales standpoint, whether it was existing orders or something, some kind of form or something like that.

Q. Did you see that document?

A. I did not. I did not.

Q. Who would be in a better position to know the outstanding orders that Sunbeam had on hand at the end of or toward the end of 1998, Sunbeam or Arthur Andersen?

A. I would think Sunbeam.

Q. Who would be in a better position to project the

sales that Sunbeam was going to make at the end of 1990 -- the first quarter of 1998, Sunbeam or Arthur Andersen?

A. Sunbeam.

Q. And you in this period in March of 1998 had no reason for concern that the 1998 plans with respect to the grill season in particular would not materialize, correct?

A. Correct, with regard to the grill season I had no reason to not believe what they were saying.

Q. And you understood that Sunbeam still believed that they were going to meet their sales goals for the 1998 season, correct?

A. Correct.

Q. I'll hand you what has been marked as Morgan Stanley Exhibit 9. This is the comfort letter that Arthur Andersen issued to Morgan Stanley on or around March 19, 1998, correct?

A. Right.

Q. But Arthur Andersen had the sales numbers for February of 1998 prior to issuing this comfort letter, correct?

A. I think that's correct. I'm not certain.

Q. Do you know -- did you have any discussions with anyone at Arthur Andersen why those numbers were not included in the March 19th, 1998 comfort letter?

A. I did not. You know, the February numbers have a

date on them. We looked at them a little earlier, and I don't know right now why the February numbers aren't in here unless we weren't given those numbers until after that date at some point and time. There should be a representation letter from management. Do you have that that goes with this? It should be dated -- it should be dated actually March 16th. It may actually be here.

MR. JOHNSON: MS 30, I think.

THE WITNESS: Actually those February statements that we looked at earlier were not given to us until some time after March 16, the date of our cutoff. I mean, here's a letter signed by management dated March 16th that says, "No consolidated financial statements are available as of any date or for any period subsequent to February 1st, 1998."

So on March 16th management was still saying that the February numbers were not available. They had not completed their January close yet. So I think that's what we were aware of. Am I wrong about that?

MR. MOSCATO: It's very confusing.

THE WITNESS: Actually the comfort letter does disclose the sales figure through February which is in Note 6-C, so apparently we had some sales information. I don't know if we had full income statements.

BY MR. BROWN:

Q. I'm sorry, where were you referring to? Six what?

A. 6-C on Page 5 of the March 19th comfort letter.

Q. So you think the distinction between Paragraph 5-B and 6-C is what? Why the numbers were not placed in Paragraph 5-B?

A. Paragraph 5-B relates to the latest available financial statements of the company, so in this particular case it's March 16th and the company is telling us the latest financial they have available are as of February 1st. However, even though we don't have financial statements at the end of February, we will still make inquiries or perform other procedures for the period subsequent to February 1st, so one of the steps is to make an inquiry of management and get some information regarding sales and 6-C is what they informed us about sales during that period.

Q. So the March 13th and March 16 PARs that we looked at, those were not closed numbers essentially?

A. The PARs look at numbers that --

MR. JOHNSON: I object to the form of the question but you may answer.

THE WITNESS: The PARs were performed on numbers that were closed as of the date of those PARs, so either the January or the February. Whatever closed numbers were

NOT A CERTIFIED COPY

01740

CONT #973

available at that time. Does that make sense?
So, anyway, even though on March 16th, February -- complete February closing was not available, sales for the period were available, and management provided that information and we included it.
BY MR. BROWN:
Q. There were -- as you mentioned, there was a bring down comfort letter?
A. Yes.
Q. And for that bring down comfort letter there was also a bring down management representation letter; is that correct?
A. Correct.
Q. And you drafted both of those?
A. Yes.
Q. You've been handed what has been marked as Morgan Stanley Exhibit 32, and for the record it's CPH 0041650 to 61. Can you identify these documents for the record?
A. This is appears to be an early draft of the March 19th comfort letter and then a later draft of the same letter.
Q. Referring to the document that begins on Bates -- ending in 51, that's a draft of the representation letter from management, correct?

A. I beg your pardon, you're right. You're right.
Q. And then the document that begins on Page 55 is a draft of a comfort letter, correct?
A. Right.
Q. And these documents are attached to an e-mail that you sent to Mr. Bornstein; is that correct?
A. Right.
Q. Dated March 21, 1998?
A. Right.
Q. Turn, if you would, please to the last page of the draft of the representation -- second to the last page of the draft of the representation letter which ends in Bates 53. I refer you there to Paragraph 10 in Morgan Stanley Exhibit 32. This draft representation letter from management states, "Despite the decrease in net sales described in the preceding paragraph, management believes that net sales for the first quarter of fiscal 1998 will exceed the net sales for the first quarter of fiscal 1997"; do you see that?
A. Yes.
Q. Did you place that text in this draft letter?
A. It's quite possible.
Q. Do you recall anyone directing you to place that text in the draft management representation letter?
A. No, I don't recall.

Q. Do you recall any of the circumstances surrounding how that was placed in the draft representation letter?
A. No, I don't.
Q. That paragraph is not something that was in the March 16th management representation letter, correct?
A. Correct.
Q. So it appears as though that was something that was added subsequently; is that correct?
A. It appears it was something that was deleted subsequently.
Q. Deleted?
A. Did I misspeak? It appears that it's not in the final copy of the letter.
MR. MOSCATO: It was added then deleted?
THE WITNESS: It was added and then it was not included in the final letter.
BY MR. BROWN:
Q. The document you are looking at which is Morgan Stanley Exhibit 32 is attached to an e-mail dated March 21st, 1998, correct?
A. Correct.
Q. Which is after management had issued their first representation letter to Morgan Stanley -- to Arthur Andersen in association with the comfort letter dated March

19th, correct?
A. Correct.
MR. MOSCATO: I object to the last comfort letter.
BY MS. BROWN:
Q. Correct, it was after the March 19th, 1998 comfort letter?
A. Added after -- are you sure these e-mails goes with these? I guess so, zero update -- go ahead.
Q. There was a subsequent management letter, correct?
A. Yes.
Q. I hand you what's been marked as -- what we will mark as Exhibit 33.
You have been handed what's marked as Morgan Stanley Exhibit 33 which, for the record, is Bates CPH 0038712 to 15 and this is a document bearing a fax header of March 23rd, 1998, "Arthur Andersen, Fort Lauderdale"; do you see that?
A. Yes.
Q. What does that fax header in terms of -- was that sent from Fort Lauderdale or received from Fort Lauderdale?
A. Frankly, I don't know.
Q. Is it Mr. Harlow that was based in Fort Lauderdale?

NOT A CERTIFIED COPY

017402

A. Yes.
Q. Now, Morgan Stanley Exhibit 33, which has the fax date of March 23rd, 1998, also has Paragraph 10 which we referred to in Morgan Stanley Exhibit 32; do you see that?
A. Yes.
Q. And in Morgan Stanley Exhibit 33 there's a handwritten edit to the Paragraph 10?
A. Uh-huh.
Q. Do you recognize the handwriting?
A. Yes, I think it's Mr. Bornstein but I'm not certain of that.
Q. *Do you recall any discussions concerning this* edit?
A. No. Is the cover not available?
Q. I don't believe it is. I don't know. Do you recall any discussions about that paragraph at any point?
A. I don't.
Q. You've been handed what's been marked as Morgan Stanley Exhibit 34, and, for the record, it's CPH 0129642 to 44. Mr. Pastrana, do you recognize this document?
A. This is the March 23rd management representation letter.
Q. This letter bears the same date as the fax header in Morgan Stanley Exhibit 33, correct?
A. That's right.

Q. And if you turn to Bates ending in 44, the last page of Morgan Stanley Exhibit 34, what had previously been Paragraph 10 in the draft management representation letter has been deleted or is no longer in the document; do you see that?
A. Uh-huh. Let me take a look at this just for a second, okay? (Reading) Okay, correct.
Q. And do you have any understanding as to who it was that deleted or removed what in Morgan Stanley Exhibit 33 was Paragraph 10 from the final representation letter, Morgan Stanley Exhibit 34?
A. No, I don't.
Q. Do you recall any discussion whatsoever about the removal of that paragraph from the management representation letter?
A. No.
Q. So you don't recall there being any concern that *that had been removed*?
A. I don't recall any concern or any discussion about it. I don't know who did it or what the circumstances were.
Q. In the previous drafts of the management representation letter, for example, Morgan Stanley 33, those, to your knowledge, were not provided to Morgan Stanley, correct?

A. Correct. Nor the final one dated March 23rd. None of these were provided to Morgan Stanley. These are internal Arthur Andersen work papers.
Q. Do you know whether anyone from Morgan Stanley told -- strike that.
Do you know whether anyone from Arthur Andersen told Morgan Stanley that that paragraph had been deleted from the management representation letter?
A. No, I would have no reason to expect anyone to tell Morgan Stanley that.
Q. Between the post-audit review work that you did *for the first comfort letter -- strike that.*
After Arthur Andersen provided to Morgan Stanley the bring down comfort letter dated March 25th 1998, did you between that period and the end of -- first quarter of 1998 have any further conversations with Sunbeam concerning their expected sales for the first quarter of 1998?
A. I don't recall any.
Q. Now, you said with regard to the March 19th press release that Sunbeam issued, you did not see that press release before it was issued, correct?
A. Correct.
Q. And you did not discuss that press release with Morgan Stanley, correct?

A. Correct.
Q. You were aware in March of 1998 that the company had adopted an aggressive marketing strategy?
A. At what period I was aware of that?
Q. March of 1998?
A. What marketing strategy was that?
Q. For instance, it's referred to in the Note A to one of your post-audit reviews -- to one of your P&L programs?
A. To early buy program?
MR. MOSCATO: No. Are you referring to the business about the radio?
THE WITNESS: Oh, the advertising in the USA Today ads and stuff like that? Correct, I was informed that the company was undertaking those efforts to improve sales.
BY MS. BROWN:
Q. In March of 1998?
A. Yes, whatever the time frame was on that note; that's right.
Q. And when the press release was issued, there was nothing in there that you thought was untrue, correct?
A. We're back to the March 19th press release again?
Q. Correct.
A. You know, untrue? No, I mean, as far as I knew

NOT A CERTIFIED COPY

it was true. I mean, I guess management thought they would achieve the sales of the previous year.
Q. And you didn't know one way or the other whether Sunbeam was going to make its 1998 budget, correct?
A. That's correct.
Q. And from working at Sunbeam, were you aware that their sales tended to increase at the end of the first quarter or at the end of the quarter?
A. Yes.
Q. Now, Sunbeam held inventory in third party warehouses, correct?
A. Right.
Q. And they held not only their own inventory but then the bill of hold inventory at third party warehouses?
A. Right.
Q. When Sunbeam made a bill and hold sale of inventory that it had in a third party warehouse, in order to recognize that revenue as Sunbeam had been for bill and hold, they simply had to segregate that inventory in their records and then they would physically segregate it, correct?
A. Correct. Physically and in the accounting records.
Q. So, for instance, in order to make their sales at the end of the first quarter of 1998 -- you were aware that

Sunbeam was engaging in bill and hold sales in the first quarter of 1998, correct?
A. Correct.
Q. And in making sales under bill and hold in the first quarter of 1998, Sunbeam didn't actually have to ship that product if the product was already at a third-party warehouse, correct?
A. Correct.
Q. So whatever volume Sunbeam needed to sell in order to make their first quarter 1998 projection, that was not inventory that they actually had to ship out of their own docks if they already existed at third party warehouses?
A. That's correct, provided, of course, they did these other things. They physically segregated from their own inventory, couldn't be used to fill out their orders, blah, blah, blah. There were a number of other things they had to do, so to speak, but, yes.
Q. Now, you were aware that the company felt at least -- the company felt in the first quarter 1998 that they were going to achieve their sales goals?
A. Yes.
Q And you stated when we were talking earlier that Mr. Bornstein had some concern or skepticism as to whether Sunbeam would be able to make that sort of shipment in order to make their first quarter 1998 sales?

A. Yes.
Q. But at the end -- at that time, it still did not call into question for Mr. Bornstein, to your knowledge, the integrity of Sunbeam's manage?
MR. MOSCATO: Objection. How can he answer that question?
BY MR. BROWN:
Q. Mr. Bornstein did not communicate to you that he had any question about Sunbeam's management?
A. Correct.
Q. And Mr. Bornstein didn't communicate to you in the first quarter of 1998 that he had any concern about fraud at Sunbeam?
A. Not that I can recall.
Q. You had performed cutoff testing for Sunbeam at the end of 1997, correct, Arthur Andersen?
A. Arthur Andersen, correct.
Q. Did you personally have any communications with Morgan Stanley about the fact that you were going to perform first quarter of 1998 cutoff testing at Sunbeam?
A. No.
MR. MOSCATO: Is that a you, Dennis Pastrana, or --
MS. BROWN: You, Dennis Pastrana.
A. That's correct. Me personally, no.

Q. And once you received the memos concerning the cut off testing that had been observed at the end of first quarter 1998, there is nothing there that caused you concern about Sunbeam's cutoff for the end of the quarter, correct?
A. No.
Q. Now, you testified earlier that you're familiar with the Barron's article that came out in June of 1998?
A. Uh-huh.
Q. In fact, you put together a memo addressing the points in the Barron's article, correct?
A. Uh-huh.
Q. And you said that there were discussions concerning the Barron's article?
A. Yes.
Q. At the time that you put together the memo addressing the points in the Barron's article, did you personally at that point question the integrity of the management at Sunbeam?
A. I'd have to go back and look at the memo.
Q. The memo that you wrote?
A. Yes, memo, schedule, whatever it was. I remember that some kind of document was compiled that went through item by item the items identified in the Barron's article but I don't remember exactly the results of that.
Q. Do you remember having an impression of being

NOT A CERTIFIED COPY

concerned about --
A. Oh, yeah, I mean by that point I think we were concerned.
Q. By June of 1998?
A. Yes.
Q. But prior to June of 1998, do you recall having any concerns about the accuracy of Sunbeam's financial statements or the integrity of Sunbeam management?
A. No.
Q. Now, in June of 1998 you were actually -- and I think you personally, but you were actually working toward the registration of the notes that had been issued in March, correct?
A. That's probably correct.
MR. MOSCATO: You just said "you," and I think you personally. I'm assuming and I'm not object. I'm assuming when you say "you," you mean Dennis Pastrana, and if you mean Arthur Andersen, you will say Arthur Andersen.
MS. BROWN: Yes.
MR. MOSCATO: We're clear on that.
BY MS. BROWN:
Q. You personally were not involved in the decision of Arthur Andersen to withhold its consent in June of 1998?
A. No.
Q. Did anyone have discussions with you as to

whether Arthur Andersen should withhold its consent in June of 1998?
A. No.
Q. In June of 1998, Arthur Andersen learned that return authorizations had been deleted from the Sunbeam system during the 1997 audit, correct?
A. Correct. I mean, actually I don't know -- we learned the return authorizations had been deleted. I don't know the timing of it but, sure, yes.
Q. And in June of 1998 Arthur Andersen also learned about additional guaranteed or right of return sales?
A. Correct.
Q. But that's information that was new to Arthur Andersen and that Arthur Andersen did not have available to it any time prior to the close of the first quarter of 1998, correct?
A. Correct.
Q. And that's true even though you had spent the majority of your time on-site at Sunbeam throughout that period, correct?
A. Right.
Q. Now, the restatement that took place of Sunbeam's financials, you were involved in that work, correct?
A. Yes.
Q. And were you aware that Arthur Andersen spent

over 10,000 hours on that work?
A. I don't recall being aware of that. I might have been.
Q. If that is in a report to the Sunbeam board, would you have any reason to disagree with that?
A. No, no.
MR. MOSCATO: Is the 10,000 hour figure Andersen or Andersen and Sunbeam combined?
MS. BROWN: I think it's Andersen and Sunbeam combined.
MR. MOSCATO: I thought you had said you would apply to Andersen 10,000 hours. It doesn't matter. I should stop interrupting probably.
BY MS. BROWN:
Q. The procedures that you performed during the restatement were much more expansive than anything that you had performed during the regular audit, correct?
A. Correct.
Q. And you had never seen anything like the level of detail work that was performed during the restatement, correct?
A. Correct.
Q. And restatement took place over a period of four to five months without regard to materiality, cost or the level of resources that were going to be required, correct?

A. Yes.
Q. And as a result of those unlimited -- well, strike that. In addition, in June or July of 1998, the SEC also began an investigation of Sunbeam, correct?
A. Correct. I don't know exactly the timing of when they started, but, yes.
Q. You were aware that that investigation was ongoing at the time you were performing the restatement?
A. Correct.
Q. And as a result of your work -- Arthur Andersen's work during the restatement, Arthur Andersen learned information that had not been available to you during the 1997 audit and through the first quarter of 1998, correct?
MR. JOHNSON: Objection, form.
THE WITNESS: I think that's true, yes.
BY MS. BROWN:
Q. As a result of the work that you did -- and I'll refer to you personally now -- during the restatement, are you aware of any information that was withheld from Arthur Andersen but that was provided to Morgan Stanley?
MR. JOHNSON: Object to the form of that as well.
THE WITNESS: I'm not aware of any information withheld from Andersen that was provided to Morgan Stanley. I'm not aware of what was provided to Morgan Stanley, if anything.

NOT A CERTIFIED COPY

0174

BY MS. BROWN:
Q. That wasn't something is that you were interested in when you were performing the restatement procedures, correct?
A. No. That's correct.
Q. And despite the hundreds of hours that you performed on the 1997 audit and the work on the Q1 1998 financial for Sunbeam, you personally have no fraudulent knowledge of any fraudulent conduct by Sunbeam, correct?
A. State that again. As a result of what work?
Q. In spite of the hundreds of hours that you had spent at Sunbeam in 1997 and 1998 and the audit work that you performed, you had no personal knowledge of any fraudulent conduct by Sunbeam?
A. That includes the restatement work as well.
Q. Let's go up to June of 1998 first.
A. Correct, I had no knowledge of any fraud.
Q. Today do you have personal knowledge of fraud by Sunbeam?
A. I don't have personal knowledge but, you know, I have concerns.
Q. I'm just asking about your personal knowledge.
A. Sure.
Q. The restatement work that you performed and that Arthur Andersen performed was conducted after Mr. Dunlap had

been fired, correct?
A. Yes, that's probably true.
Q. After Mr. Kersh had also been fired?
A. When were they fired, do you remember?
Q. I can provide you documents.
MR. MOSCATO: June 25th.
BY MS. BROWN:
Q. No later than.
A. Hypothetically?
MR. MOSCATO: Hypothetically June 25th.
THE WITNESS: The restatement work was done after that, correct.
BY MR. BROWN:
Q. And the restatement work was done after Mr. Uzzi had been fired, correct?
A. Yes.
Q. So all the interviews that you conducted were after there had been a change in management at Sunbeam?
A. Yes.
Q. Were you aware of or familiar with what was referred to as an amnesty program that the new Sunbeam management put into place?
A. No, I was not aware of that.
Q. Were you aware that the new Sunbeam management encouraged its employees to assist in the restatement work?

A. I was not aware of that.
Q. Did you have a sense --
A. I mean, encourage meaning giving them an incentive for assistance. I mean, people were generally cooperative. It was very difficult but they had somehow been coaxed or incentivised or something to be extra helpful or something like that. I was not aware of anything like that.
Q. You weren't aware that they were discouraged in any way from assisting in the restatement, correct?
A. Correct, and I was aware that they had absolutely nothing to protect in restating or making adjustments to prior year end financial statements. I mean, it didn't matter to them either way.
Q. From your own personal observations from the hundreds of hours that you spent on site at Sunbeam in '97 and the first quarter of '98 and then the however many hours you spent to the restatement, did you observe a difference in the corporate culture at Sunbeam between the two managements?
A. I mean, there was clearly a change in culture, in the environment and the attitude, but, you know, I was there for such a short period of time after new management came in that I don't know how much of it was just -- I don't know what to attribute the change to necessarily.

Q. Did you have a sense when you were performing the interviews during the restatement that the employees were relieved by the change in management?
A. Yes, I did.
Q. Did you have a sense that when you were performing the interviews that the employees felt they could provide you with information that they were concerned about providing earlier?
A. Yes.
Q. When you perform an audit, you assume that the company is being operated properly and that the management has integrity and there is not a conscience effort to misstate or manage their earnings, correct?
A. Correct.
Q. And you believe that those assumptions were correct while you were performing the 1997 audit for Sunbeam?
A. Yes, I believed that at the time of the audit.
Q. At the time that you were performing the procedures related to Q1 98 for Sunbeam, you still believed that to be correct?
A. Yes.
Q. Now, when you're performing audit procedures, in some instances you do rely upon the information provided to you by management, correct?

NOT A CERTIFIED COPY

01-1796

A. Yes.
Q. So, for instance, when management told you that there was a no-return policy, you did not go out and verify that information with Sunbeam's customers, correct?
A. Correct.
Q. Do you recall performing in first quarter of 1998 some due diligence work on behalf of Sunbeam for an entity that they were considering acquiring?
A. Yes, I don't remember exactly the time frame. What quarter did you say?
Q. It was in the first quarter of 1998.
A. Yes.
Q. Do you remember it was related to a Black & Decker unit?
A. Yes.
Q. The purpose of due diligence is different than the purpose of an audit, correct?
A. Correct.
Q. When you perform due diligence, you don't design all of the tests and whatnot to test the representations or the financials, correct?
A. Correct.
MR. MOSCATO: Dennis, give her a second and let me object if I need to. Give me a second before you answer. It's getting late in the day and I'm not as quick

as I once was.
THE WITNESS: Okay.
BY MS. BROWN:
Q. Do you understand the purpose of due diligence to be different than the purpose of an audit?
A. Yes.
Q. Have you -- other than the due diligence work that you performed for Sunbeam on the Black & Decker unit, have you performed due diligence in other context as well?
A. I have not.
Q. That was the only due diligence work that you performed?
A. Yes.
Q. When you performed the due diligence work, you also assumed that the management was forthright and had integrity?
MR. MOSCATO: I'm sorry, what management are you talking about?
BY MS. BROWN:
Q. The management of the company that you are performing the due diligence on.
MR. MOSCATO: I'll let this go for another question or two but you are not going to try to put him as an expert on due diligence I hope since he's only done it once in his life.

Answer that question and then I'm going to ask her to move on to another question.
THE WITNESS: What was the question? I'm sorry.
BY MS. BROWN:
Q. When you were performing due diligence on an entity that was considering -- Sunbeam was considering purchasing, you also expect or anticipate, assume that management of the company you were performing the due diligence on is honest and has integrity, correct?
MR. JOHNSON: I'm going to object to the form of that putting aside Mike's substantive objection.
THE WITNESS: In that process we did not really presume anything. We showed up in a data room and there was information that Black & Decker management had prepared in a room and we reviewed the information, "we" being Phil Harlow and I, over the course of -- I don't remember if it was a day or two days, something of that sort, and we prepared a factual summary of what we observed and observations that we had.
You know, we are not really saying that it's right or wrong or anything like that, so, you know, I suppose if Sunbeam were to use that information to make an acquisition, they would be relying on the accuracy of the information that we reviewed but not us. We're not issuing an opinion on it so the purpose is different.

BY MS. BROWN:
Q. And the extent of the work in the due diligence you performed was less than the extent of the work that you would do if you were auditing those same financials, correct?
A. Sure.
Q. And ultimately when you were working on the restatement or at the end of the restatement you did reach the conclusion, you yourself, that there had been facts that were misrepresented to you during the audit, correct?
A. Yes.
Q. Do you have any reason to believe that Sunbeam, while they misrepresented facts to Arthur Andersen, was forthright or accurately represented those same facts to Morgan Stanley?
MR. JOHNSON: Objection, form.
THE WITNESS: I have no knowledge of the communications between Sunbeam and Morgan Stanley.
BY MS. BROWN:
Q. Do you have any reason to think that Sunbeam lied to Arthur Andersen but they were truthful with Morgan Stanley?
MR. JOHNSON: Objection to form.
MR. MOSCATO: Don't even answer that question. I'm instructing you not to answer that question.

NOT A CERTIFIED COPY

BY MS. BROWN:
Q. When you were performing your restatement work, did you learn of anything that Arthur Andersen had told Morgan Stanley that it had not told -- strike that.
When you were performing your restatement work, did you learn of anything that Sunbeam had told Morgan Stanley that it had not told Arthur Andersen?
A. As I said, I have no knowledge of the communications between Morgan Stanley and Sunbeam.
Q. So --
A. The answer is no.
Q. During all the time that you were at Sunbeam from October of '97 through the end of first quarter of '98, did you have any contact with anyone from Coleman or Coleman (Parent) Holdings?
A. No.
Q. Did you have any contact during that time with anyone from Mathco?
A. No.
Q. Did you have any contact during that --
A. What's the period of time again? I beg your pardon.
Q. Any time in '97 through the first quarter of '98?
A. No.
Q. Have you subsequently had any conversations with

anyone from Coleman (Parent) concerning Sunbeam?
A. No. I mean, during the restatement procedure -- after Dunlap and Kersh were terminated, there were some former members of Coleman or Mathco Management that got involved with Sunbeam and I met them in that process and interacted with them occasionally but that was it.
Q. So up to the end of the first quarter of 1998, you had no communications --
A. Correct, none.
Q. And you had no communications with CSFB, Credit Swiss First Boston concerning Sunbeam?
A. No.
Q. You had no communications up to the end of the first quarter of 1998 with Wachtell Lipton concerning Sunbeam?
A. No.
Q. You said you personally did not communicates with Morgan Stanley. Were you aware of anyone else from Arthur Andersen that communicated with Morgan Stanley other than the comfort letters concerning the due diligence that Morgan Stanley did in 1998?
MR. JOHNSON: Object to form.
THE WITNESS: I'm not aware of any conversations.
BY MS. BROWN:
Q. So you're not aware one way or the other whether

they happened?
A. Correct.
Q. Are you aware of any due diligence effort undertaken by Coleman up to the end of the first quarter of 1998 concerning Sunbeam?
A. I'm not aware of any.
Q. Are you aware of any due diligence effort undertaken by Coleman (Parent) Holdings or Mathco up to the end of the first quarter of 1998 concerning Sunbeam?
A. I'm not aware of any.
Q. Are you aware of any due diligence effort by Credit Swiss First Boston or Wachtell up to the end of the first quarter of 1998 concerning Sunbeam?
A. No.
Q. Have you spoken with anyone representing Coleman (Parent) Holdings concerning your testimony here prior to your testimony today?
A. No.
Q. I'd like to refer you to the exhibits that were marked previously, in particular CPH Exhibits 101 through 105.
MR. MOSCATO: These are the interview memos?
MS. BROWN: Correct.
THE WITNESS: It's in my stack.
///

BY MS. BROWN:
Q. They should be the first exhibits marked today.
A. Here they are. Okay.
Q. When you performed the interviews of Sunbeam personnel during the restatement work, did you tell the personnel that you were interviewing that you were only interested in their personal knowledge?
A. No, I don't recall whether we did or didn't, let me say that.
Q. During the interviews some of the people that you interviewed and some of what you recorded was conversations or things that they had overheard, correct?
A. Correct.
Q. For instance, with regard to Mr. Yales and CPH Exhibit 101, when you interviewed him, you suspected that he was just speculating about things that he had heard from others, correct?
A. Like what, for example?
Q. When you interviewed Mr. Yales, you felt that he didn't have in-depth understanding of the Sunbeam operations because he was new to the company, correct?
A. I mean, it seemed he had a pretty good knowledge. I didn't assume that, no.
Q. I'm handing you your testimony from November 21, of 2000 and if you would look at Page 876.

NOT A CERTIFIED COPY

Referring to your testimony on November 21 2000, 876 and going on to 877, and with regard to Mr. Yales you state there that he didn't have, in your view, an in-depth understanding of the operations of the company?
A. Yes, I did testify to that before.
Q. And that he really just performed very -- kind of clerical role in budgeting and planning process?
A. I think clerical understates his role. I mean, he was a financial analyst.
Q. And you stated in your prior testimony that to a certain extent you thought that he was just speculating about things that he may have heard from other people or whatever, that he had not been with the company very long. Do you see that?
A. Uh-huh, yes, I see that in my prior testimony. I did testify that way before. I mean, reading the memo, and having read it over the weekend, I guess that's not the impression I got from it, but I did testify that way previously. It's been a while.
Q. You don't recall --
A. My recollection now is different than my recollection was then so.
Q. And your recollection of Mr. Yales -- have you spoken to Mr. Yales since 2000?
A. No.

MR. MOSCATO: Since 2000?
MS. BROWN: Since 2000.
Q. Since your testimony in the last case.
A. I haven't spoken to Mr. Yales since this interview was conducted that I can remember.
Q. And so your recollection of Mr. Yales was probably more fresh in 2000 than it is in 2004, correct?
A. Probably was, yes.
Q. Now, when you conducted these interviews, you didn't take them down verbatim as testimony is being taken today, correct?
A. Correct.
Q. And you took down handwritten notes of what was being said during the interview, correct?
A. Correct.
Q. And then your secretary typed those notes?
A. Yes.
Q. And you discarded the handwritten notes?
A. Correct.
Q. And so what's written here is not verbatim reports, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Correct.
BY MS. BROWN:
Q. And that's true with regard to CPH Exhibit 101,

102, 103, 104 and 105, none of those are verbatim accounts --
A. Right, those are just summaries.
Q. And the phraseology that's used is not necessarily the exact phraseology used by the Sunbeam employee, correct?
A. Correct.
Q. The information -- some of the information at least that was provided to you during these interviews is information that was not available to you during your audit work in 1997, correct?
A. At least some, sure.
Q. With regard to, for instance, CPH Exhibit 101 where there's notes about "need to make numbers and a big push," it's common, is it not, that public companies want to make their public numbers?
A. Yes.
Q. These headings, for instance, on the second page of Exhibit 101 where you have troublesome items, that's also not a verbatim bullet provided by the employee that you interviewed, correct?
A. Correct.
Q. And when all the testimony that you've provided concerning these interviews the Sunbeam employees gave, do you, as you sit here today, actually remember those

interviews or was your testimony based on what's documented in these exhibits?
A. I think the testimony is based largely on what's documented. That's what I think.
Q. Do you have any specific recollection of the interview with Mr. Yales as you sit here today?
A. I mean, I do, I can generally picture him. I can generally remember where we had it in the building.
Q. Do you have any memory specifically of what was said?
A. No. In terms of the conversation that was exchanged, no.
Q. And you have no specific memory of what was said during the interview of Mr. Kaiser other than what's documented in CPH Exhibit 102?
A. Correct.
Q You have no specific memory of what was said by Mr. Bloomfield other than what's documented in Exhibit 103?
A. Correct.
Q. No specific memory of Mr. Jim Job other than what's documented in 104?
A. Correct.
Q. No specific memory of exactly what was said by Mr. Jeffcoat who's interview notes are in CPH 105?
A. Correct.

NOT A CERTIFIED COPY

Q. And with regard to each of these, you were asked previously whether the interviewees told you that Morgan Stanley had spoken with them, did you ask any of these people whether Morgan Stanley had spoken with them?
A. No, I did not ask that.
Q. Did anyone that you're aware of ask that in the interview?
A. Not that I'm aware of, no.
Q. Was that something -- was that an objective of the restatement, to determine what Morgan Stanley knew?
A. No.
Q. And none of these people that you interviewed, Mr. Yales, Kaiser, Bloomfield, Job or Jeffcoat indicated that they had spoken with Coleman (Parent) Holdings during the '97 or the first quarter of '98, correct?
A. Correct.
Q. Some of what the employees told you were impressions that they had rather than direct factual experiences that they had, correct? For instance, I refer you to CPH Exhibit 104, the final sentence.
MR. MOSCATO: Which one is that?
MS. BROWN: Jim Job.
Q. Where it states, "I guess they didn't want to receive the goods."
A. Yes.

Q. You don't understand that he had personal knowledge of the decision-making process that went into whether Sunbeam would accept returns, correct?
A. Correct.
Q. With regard to -- strike that.
Did anyone from Coleman (Parent) Holdings, to your knowledge, ask anyone from Arthur Andersen in 1998, first quarter, for Arthur Andersen's work papers from their work audit?
A. Say the question again. I'm sorry.
Q. Are you aware of anyone from Coleman (Parent) Holdings requesting Arthur Andersen work papers prior to the end of the first quarter of 1998?
A. No.
Q. With regard to others exhibits, for example, CPH Exhibit 108 which is the March 13th, 1998 P&L, you were asked previously whether Morgan Stanley had asked for this. Do you know one way or another whether Morgan Stanley requested that directly from the company?
A. I don't know. I have no knowledge.
MS. BROWN: If we can take a five-minute break, I'm probably done.
THE VIDEOGRAPHER: Going off the record. The time is 3:47.
(Time noted: 3:47 p.m. to 3:53 p.m.)

THE VIDEOGRAPHER: We are back on the record. The time is 3:53.
BY MS. BROWN:
Q. Mr. Pastrana, I have a couple of more questions. With regard to the March 19, 1998 comfort letter that Arthur Andersen provided to Morgan Stanley, did you have any discussions with Mr. Bornstein or anyone else at Arthur Andersen concerning the manner in which that letter would be transmitted to Morgan Stanley?
A. No.
Q. Did you have any conversation with Mr. Bornstein or anyone else at Arthur Andersen concerning whether the letter would be discussed with Morgan Stanley rather than provided to Morgan Stanley?
A. No.
Q. And your prior testimony about whether or when that letter was provided to Morgan Stanley, you don't have any personal knowledge yourself of when that letter was actually provided to Morgan Stanley, correct?
A. Correct.
MS. BROWN: No further questions at this time.
MR. JOHNSON: No questions.
THE VIDEOGRAPHER: This is the end of this deposition. We are going off the record. The time is 3:54.
(Evening recess: 3:54 p.m.)

ACKNOWLEDGMENT

STATE OF FLORIDA)
) ss.
MIAMI-DADE COUNTY)

I, Dennis Pastrana, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of January 12, 2004; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

_____
Dennis Pastrana

Subscribed and sworn to before me on this _____ day of _____, _____.

_____
NOTARY PUBLIC

01710

NOT A CERTIFIED COPY

ERRATA SHEET

PAGE LINE SHOULD READ:

CERTIFICATE

STATE OF FLORIDA)
) ss.
MIAMI-DADE COUNTY)

I, ANA REID, a Shorthand Reporter and Notary Public within and for the State of Florida, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or by marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this day of January 14, 2003.

ANA REID
Commission Number: DD232432
Commission Expires: July 15, 2007

NOT A CERTIFIED COPY

0174111

IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03 CA-00504 AL

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & COMPANY, INC.,
Defendant.) January 13, 2003
)9:02 a.m.

WILLIAM D. PRUITT

VIDEOTAPED DEPOSITION taken pursuant to Notice at the office of Esquire Deposition Services, 44 West Flagler, Ste. 1400, Miami, Florida, before Ana Reid, a Shorthand Reporter and Notary Public within the State of Florida.

APPEARANCES:

FOR THE PLAINTIFF:
JENNER & BLOCK
BY: CLARK C. JOHNSON, ESQ.
STEPHEN P. BAKER, ESQ.
One IBM Plaza
Chicago, Illinois 60611

FOR THE DEFENDANT:
KIRKLAND & ELLIS, LLP
BY: ZHONETTE M. BROWN, ESQ.
655 Fifteenth Street, N.W.
Washington, D.C. 20005

FOR THE DEPONENT, DENNIS PASTRANA:
CURTIS, MALLET, PROVOST, COLT & MOSIE
BY: MICHAEL MOSCATO, ESQ.
101 Park Avenue
New York, New York 10178

EXAMINATION BY: PAGE:
MR. JOHNSON 5
MS. BROWN 40

CPH EXHIBIT:
NUMBER: PAGE: DESCRIPTION:
114 27 Bates MS 0027048 to MS 0027059
3-31-98 Bornsten Memo re Zero Coupon Bonds

CPH EXHIBIT:
NUMBER: PAGE: DESCRIPTION:
35 57 Bates CPH 0129979 to CPH 12988
Form AP-187 3-13-98 Post Audit Review

36 72 Bates CPH 0021819
3-20-98 Newspaper "Clippings"

37 75 Bates CPH 0083764 to CPH 0083765
7-1-98 to 12-15-98 Restatement

38 81 Bates CPH 2004703 to CPH 2004722
Personnel Memorandum - William Pruitt

THE VIDEOGRAPHER: Good morning. We are now on the video record. This is the Videotape No. 1. Today is Tuesday the 13th day of January, 2004. The time is 9:02 a.m. We are here at 44 West Flagler Street, Miami, Florida for the purpose of taking the videotape deposition of William Pruitt in the matter of the Case No. 03 CA 00504 AI, Coleman versus Morgan Stanley.

The court reporter is Ana Reid and the videographer is Alejandro Montalvo, both of Esquire Deposition Service.

Will counsel introduce yourselves. After this, the court reporter will swear the witness.

MR. JOHNSON: Clark Johnson, Jenner & Block Chicago, for plaintiff Coleman (Parent) Holdings.

MR. BAKER: Stephen Baker, Jenner & Block Chicago, for the plaintiff.

MS. BROWN: Zhonette Brown, Kirkland & Ellis, on behalf of Morgan Stanley.

MR. MOSCATO: Michael Moscato, Curtis Mallet, on behalf of Mr. Pruitt.

MR. PRUITT: I'm William D. Pruitt.

WILLIAM D. PRUITT

was called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

///

NOT A CERTIFIED COPY

EXAMINATION
BY MR. JOHNSON:
Q. Mr. Pruitt, can I ask you to state your name again for the record?
A. William D. Pruitt.
Q. And where do you reside?
A. 274 Valeros Court, Coral Gables, Florida, 33143.
Q. Are you employed today?
A. I'm self employed.
Q. Do you work as an accountant?
A. No, I'm a consultant.
Q. And are you affiliated with any consulting firm?
A. No, just my own.
Q. How long have you been self employed?
A. I retired from Arthur Andersen on August 31, 1999 so I've been basically self employed since that time.
Q. Do you consult on a full-time basis?
A. No, part time, although substantially full time now.
Q. And how long did you work for Arthur Andersen?
A. 33 years.
Q. Could you just take me through the various titles you held with Arthur Andersen?
A. I started in June of 1966 with Arthur Andersen. I became a partner with Andersen in 1975. I became managing

partner for Arthur Andersen in South Florida in 1980, and before I retired I was the managing partner for Florida, the Caribbean and Venezuela.
Q. Are you a CPA today?
A. I'm an inactive CPA.
Q. When did you become inactive?
A. The year 2000.
Q. Were you an active CPA the entire time you were at Andersen?
A. Yes.
Q. And were you resident in the Miami office of Arthur Andersen during your entire career with Arthur Andersen?
A. Yes.
Q. And you were the concurring partner on the Sunbeam engagement for Andersen?
A. Yes.
Q. When did you assume that role?
A. Probably around 1995 to 1998 -- actually I'll take that back. Until I retired in 1999.
Q. So about four years?
A. Yes.
Q. How did you come to be the concurring partner on that engagement?
A. Sunbeam, of course, was a high profile company

and the audit division had assigned me to be the concurring partner after another senior partner left the firm and went with another company.
Q. And is the audit division head Mr. Denkhaus?
A. Yes.
Q. So he assigned you to be the concurring partner?
A. Yes.
Q. Who was the engagement partner?
A. Phil Harlow.
Q. Had you worked with Mr. Harlow before?
A. Yes.
Q. He was in the Miami office as well?
A. He was in the Fort Lauderdale office but he was under my direction.
Q. And can you tell me as a general matter what the role of the concurring partner is?
A. Well, basically you take a cold look at a job. You have to be independent of a job to be the concurring partner. In other words, you can't do the audit work and also be the concurring partner. There are a number of steps you take. You look at the planning for the job. You look at the materiality. When you finish the job, you look at a draft of the financial statements. You look at legal letters on occasion. If you have material issues, they're brought to you and then you either -- well, you concur with

the engagement team's decisions on those issues.
Q. When you say material issues brought to you, can you tell me what you mean by that?
A. Well, if the engagement team believes there's issues that are sensitive that could materially effect the financial statements or even doing the audit, they bring the issues to the concurring partner.
Q. And do you recall any of the material issues that were brought to you during the time you served as concurring partner at Sunbeam?
A. I'll give you a couple of large ones. There was a restructuring reserve that was set up in 1996 which was a material issue. In 1997 we had bill and hold sales which was a material issue. Those are the two large ones that I recall.
Q. Were you involved in the client intake process for Sunbeam?
A. Well, since I was managing partner of the firm in South Florida, I did get involved with retaining, firing clients. We went through that once a year.
Q. And do you know what the smart form is at Arthur Andersen?
A. Yes.
Q. What is that?
A. Basically that's a form that you fill out to get

NOT A CERTIFIED COPY

information together to decide whether you want to retain a client or resign from a client. We set fees at the same time, rank them as high risk.

Q. And you do that on an annual basis?

A. Yes.

Q. Do you remember the last smart form that you completed for Sunbeam? Let me back up. That's a hard question given the time frame.

Did you complete a smart form for the 1997 audit work?

A. Yes.

Q. Was there a smart form after that that you're aware of?

A. I don't recall, although I think in '98 we were doing the restructuring and so forth and we didn't do the audit in 1998.

MR. MOSCATO: You said restructuring. Did you mean restatement?

THE WITNESS: Restatement, yes. I'm sorry. Restatement not restructuring.

BY MR. JOHNSON:

Q. Mr. Pruitt, I'm going to give you a document that's been marked in this case already as CPH Exhibit 23 and I'd like you to flip through that and see if that looks familiar.

A. (Reading)

Q. Mr. Pruitt, can you tell us what Exhibit 23 is?

A. Well, it looks like a couple of things, two or three things. One looks like you have a work program copy. It looks like the front of a -- probably the front of a work paper file. I would guess it's number one. And you have a work program of some kind. Probably for file one, it looks like, and then you have a smart form.

Q. And the smart form is for the 1997 audit work; is that correct?

A. Yes, it looks like '97.

Q. And you're listed as the concurring partner on the smart form?

A. I don't know -- yes, yes, I am.

Q. And were you involved in getting the smart form completed and approved?

A. I didn't complete it. I signed it when it was finished approving -- we made it a high risk job and I signed it as other approver which means I was the managing partner which is the reason why I signed it.

Q. I wonder if you could look at Page 2 of the smart form which has the Bates stamp on the bottom right, CPH 1184893.

A. I can't find that but I see Page 2.

Q. That will be fine. In the middle of that page

there's a box of text that has a title "Accounting and Financial Reporting Risk." The last section of that box states in italicized text, "Management has set aggressive earnings expectations and may be inclined to recognize revenue for transactions and events when the earning process is not complete." Do you know what the basis for Arthur Andersen's statement there is?

A. I think that's just the facts as we saw it. Dunlap had made a bunch of press releases saying that earnings were going to go up significantly and he did a restructuring and there was a lot of expectations that Sunbeam was going to do very well in the future.

Q. And so from your perspective that increased the risk of misstatement?

A. Yes.

Q. I wonder if you could flip over to Page 9 of the report for us. Paragraph No. 23 provides for an assessment of management's attitude and behavior toward subordinates and Andersen has ranked that fair?

A. Yes.

Q. Can you tell me why that ranking was applied there?

A. Well, Dunlap was domineering toward not only his own people but most of the world so we felt that it made this answer fair.

Q. And that would increase the overall risk of misstatement?

A. Yes, possibly, possibly.

Q. Flip over to Page 10 of the smart form for me, Mr. Pruitt. This page is directed to "Financial Statement, Misstatement Risk"; do you see that?

A. Are you on Page 10?

Q. I believe so.

A. And again "Overall Assessment," is that where you are?

Q. I was just confirming that the title of this page is "Financial Statement, Misstatement Risk."

A. Yes.

Q. Under 2-B there's an assessment category entitled "Form Over Substance Transactions."

A. Right.

Q. And the rank is significant. Can you tell me what the basis of that ranking is?

MR. MOSCATO: If you remember.

THE WITNESS: I don't recall exactly why they said that.

BY MR. JOHNSON:

Q. Can you tell me just as a general matter what the term "Form Over Substance Transactions" refers to?

A. Sure, maybe they would try to make sales that --

NOT A CERTIFIED COPY

near the end of the year to pump up revenues.
Q. And by that you mean sales that didn't actually occur?
A. Well, maybe they occurred but, you know, they go out of their way to make sure that they got the sales this year as opposed to next year.
Q. The transactions significantly directed to timing?
A. Possible.
Q. Now, this form indicates that Andersen would charge $500,000 for its auto work; is that correct?
A. What page are you on?
Q. Look at Page 13.
A. Yes.
Q. Now, I believe you mentioned earlier this morning that one of your duties as a concurring partner was to weigh in all the materials issues that the audit team brought to you?
A. Right.
Q. And you mentioined that one of the material issues brought to you was the issue of bill and hold sales?
A. That's correct.
Q. Do you remember approximately when that issue was first brought to you?
A. When we were doing the counting inventory year end, someone in our audit team discovered that there was

inventory in a warehouse somewhere else besides the Sunbeam locations, and when we asked why, we found out that it was bill and hold sales and the inventory had been sent to this warehouse rather than to the client.
Q. This is late '97, early '98?
A. They were doing it year end probably around, December 28, December 15th. Somewhere near year end.
Q. Do you know which member of the audit team brought the bill and hold issue to your attention?
A. I know who -- it was either Larry Bornstein or Phil Harlow called me with the issue.
Q. And what was your initial reaction to the issue?
A. Well, you know, bill and hold sales are very unusual and so we were skeptical that you could recognize a revenue in 1997 so we started doing work on it to see if it was a good sale.
Q. Did you have any opinion about bill and hold sales in terms of business practices?
A. Well, usually there's more chance of fraudulent sales when they're bill and hold sales.
Q. And getting to the form over substance issue we were just talking about, is there a concern that a sale is designed simply to accelerated the recognition of revenue?
A. Yes.
MS. BROWN: Objection.

BY MR. JOHNSON:
Q. And did bill and hold sales raise issues with you with respect to the possibility of channel stuffing?
MS. BROWN: Objection.
MR. MOSCATO: Objection.
THE WITNESS: I don't recall if that was the issue. It was more at first trying to determine if it was a correct sale in 1997.
BY MR. JOHNSON:
Q. And did Andersen make itself comfortable that the sales were, in fact, legitimate sales?
A. We did a lot of work on it and at the end we felt like the revenues should have gone into 1997.
Q. Were you involved in the restatement work?
A. I was the concurring partner but again I did not do the audit work or the restatement work.
Q. Can you give me an estimate of how much time in hours you worked on addressing the bill and hold issue?
A. I don't recall.
Q. Did Andersen continue to scrutinize bill and hold transactions into the first quarter of 1998?
A. Yes.
Q. Now, as concurring partner did you work at all on the comfort letter that was prepared in connection with the Sunbeam debt offer in the first quarter of 1998?

A. I reviewed it.
Q. And when was the last time you looked at that letter?
A. Probably when I was doing the deposition somewhere. I don't recall. A couple of years ago.
Q. Did you look at any documents within the past few days to prepare for this deposition?
A. I looked at some things like my deposition, the SEC part of it.
Q. But the comfort letter was not among the things you looked at?
A. Well, there was a bunch of them so I don't think so.
Q. How did you first get involved in reviewing the comfort letter for the March 1998 debt offer?
A. Someone, either Bornstein or Harlow, someone sent me a draft of it to look at it.
Q. Do you recall how far in advance of the March 19 date of the letter you saw drafts?
A. No, I can't recall exactly but it was before it was issued, I know that.
Q. It was at least several days before it was issued?
A. I don't know how many days but it was before it was issued, yes.
Q. Do you know how many different drafts you saw of

NOT A CERTIFIED COPY

the comfort letter?
A. I can't recall. They did have updates so I looked at probably two or three probably.
Q. And was Sunbeam's first quarter interim sales information included from the first draft that you saw?
A. Probably the first, maybe the second draft. I don't recall.
Q. I'm going to show you what's already been marked as CPH Exhibit 17 which is the final version of the March 19 comfort letter, and, Mr. Pruitt, I'm going to direct your attention to --
A. Let me just see if this was signed. Yes. So this isn't a draft but the signed letter.
Q. I believe this is the final version. Directing your attention to Paragraphs 5-B, 6-B and 6-C, if you just read those for me and I'll have some questions about those.
A. (Reading) Okay.
Q. Did you have any discussions with Mr. Bornstein or Mr. Harlow concerning whether it would be appropriate to include the sales information in the comfort letter?
A. No, when I saw the draft, it was in the draft.
Q. And at any time did you learn whether Morgan Stanley had been provided with the sales information that's represented in Paragraphs 5-B and 6-C?
MS. BROWN: Objection.

MR. MOSCATO: You can answer.
THE WITNESS: I know when I received a draft of the comfort letter that had this information in it, I called either Harlow or Bornstein and told them that they needed to talk to the underwriters, let them know that this would be in the comfort letter so it wouldn't be a surprise.
BY MR. JOHNSON:
Q. And that was during the drafting process?
A. When I got the draft of the comfort letter.
Q. Did you feel adamant that that information needed to be provided to Morgan Stanley right away?
A. Well, I mean, I just told them to do it and they did it. I didn't have to argue with our people to talk to the underwriters because you always -- you know, if there's something unusual about the comfort letter you always talk to the underwriters and let them know that they were going to get a comfort letter that will have some kind of issue in it or something that's unusual.
Q. What's unusual about paragraphs 5-B and 6-C?
MS. BROWN: Objection.
THE WITNESS: Almost always sales increase and earnings increase when you're doing some kind of an offering, but once in a while you get one that goes the other way and that's unusual.
///

BY MR. JOHNSON:
Q. Do you know whether drafts of this comfort letter were provided to Morgan Stanley prior to the final version going to Morgan Stanley?
MS. BROWN: Objection.
THE WITNESS: No, I don't know.
BY MR. JOHNSON:
Q. Is that something, in your experience, that's typical to occur during the process of providing a comfort letter?
MS. BROWN: Objection.
THE WITNESS: Probably if there's no unusual items. You probably don't give them a draft note. If there's unusual items in there, you either discuss it or give them a copy of the draft either way.
BY MR. JOHNSON:
Q. Did you have any conversations with Mr. Bornstein or Mr. Harlow concerning Morgan Stanley's reaction to this sales information that's represented in Paragraphs 5-B and 6-C before the letter was finalized?
A. Not that I recall. I may have, though. I just don't recall.
Q. Did you personally have any reaction to the fact that Sunbeam's sales were less than half of what they were for the prior year's quarter through March 1 of 1998?

MR. MOSCATO: I object to that. This letter doesn't deal with the whole quarter. I'd ask you to rephrase the question, if you don't mind.
BY MR. JOHNSON:
Q. Let me give you a specific question. Paragraph 6-C indicates that for the first two months of 1998 sales were about half of what they were as compared to the first two months of 1997, and the question is whether you had any reaction when you read that information?
A. Well, I thought that we had an offering memorandum that we were working on also. When I looked at the draft of the offering memorandum, there was no disclosure regarding the reduction in sales and I thought there should be some disclosure.
Q. Did you tie in your own mind these reduced sales figures to bill and hold in any way?
A. Well, they had disclosed that because of the early-buyer program, I think they called it, which included bill and hold, it could affect first quarter sales. That was in the 10-K, I believe, or maybe the annual report, and so it looked like it had happened to some extent.
Q. During the entire process of getting this offering memorandum finalized, did you have any conversations with anyone at Morgan Stanley?
A. Directly, no.

NOT A CERTIFIED COPY

Q. Did you have any conversations with anyone from the law firm of Davis Polk & Wardwell?
A. Directly, no.
Q. Through whom would you have had any indirect conversations with either Morgan Stanley or Davis Polk?
MS. BROWN: Objection.
THE WITNESS: Well, all of my conversations were with Phil Harlow or Larry Bornstein.
BY MR. JOHNSON:
Q. Did you at any time see a press release that someone issued on March 19, 1998?
A. Not the -- let me see what you have to make sure it's what I'm thinking.
Q. This has been marked as CPH Exhibit 14 previously. Let me get you a copy for you.
A. No, I didn't see this press release before it went out.
Q. Do you know whether anyone at Andersen approved this press release before it was issued?
A. I'm almost certain we did not.
Q. Did you see the press release shortly after it issued?
A. Probably not the press release but they printed something like this in the offering memorandum.
Q. And did you see drafts of the offering memorandum

that included disclosure of that sort?
A. Not until after it was issued.
Q. Did you have any discussions with Mr. Bornstein or Mr. Harlow about this press release within several days after it issued?
A. Yes, we had discussions about it.
Q. And you had discussions with both Mr. Harlow and Mr. Bornstein?
A. I don't know which one.
Q. And what was the substance of those discussions?
A. My thoughts were that this is a forward looking statement and I felt like they probably shouldn't have forward looking statements in the offering memorandum, that they should just -- my thoughts were just put the facts in there.
Q. So your perspective was the company should not be saying that its net sales for the first quarter of 1998 would be expected -- would be expected to exceed the 1997 first quarter net sales?
MS. BROWN: I'm going to object as vague.
THE WITNESS: Well, if I was giving them advice, I would tell them don't give that kind of a statement in the offering memorandum. Just stick to what has happened so far.
BY MR. JOHNSON:
Q. Did you have any discussions with Mr. Bornstein

or Mr. Harlow about the company's ability to, in fact, make sales for the first quarter of 1998 that would exceed sales for the first quarter of 1997?
A. Well, before all of this happened and we were talking about disclosure in the offering memorandum, if you look at sales up through the end -- actually to, let's see, it would be first day or two of March, they were having sales of about a million dollars a day, and to exceed or meet expectations, they would probably -- Anderson's expectations they would have to sell probably 10 to 15 million a day for the rest of the quarter.
Q. So Andersen had serious concerns about its ability to make those sales?
MS. BROWN: Objection.
MR. MOSCATO: About Sunbeam's ability?
MR. JOHNSON: Yes.
THE WITNESS: We were skeptical they would be able to do it.
BY MR. JOHNSON:
Q. Did you have any conversations with anyone at Sunbeam concerning this press release?
A. Me personally?
Q. Yes.
A. No.
Q. As concurring partner, did you as a general

matter not communicate directly with the client?
A. That's correct, concurring partners usually work through the engagement manager.
Q. Did you have any conversations with Mr. Bornstein while Mr. Bornstein was in New York to finalized the offering memorandum?
A. Yes, I'm pretty sure I did.
Q. And what can you tell me about those conversations?
A. Nothing. I think he was up there at the printers, you know, looking at changes and trying to get the offering memorandum completed and we had discussions back and forth about disclosure --
Q. And that particular disclosure --
A. -- following the sales.
Q. Concerning first quarter sales?
A. No, up through at least March 1st there was a shortfall compared to the prior year, the same timeline.
Q. Did you and Mr. Bornstein have any disagreement about what the nature of the disclosure should be?
A. I don't recall any disagreements.
Q. Did Mr. Bornstein indicate that there was any resistance to including information as to first quarter sales?
MS. BROWN: Objection, vague.

NOT A CERTIFIED COPY

THE WITNESS: You know, there was a number of conversations so I don't know, you know, whether I was talking to him when he was in New York or if I was talking to Phil Harlow or who, but I know at first the company felt like they didn't need any disclosure and they felt strongly that they could make the quarter.

BY MR. JOHNSON:

Q. Do you know whether anyone from Andersen voiced Andersen's view that there should not be any statement with respect to the company's ability to meet or exceed 1997 results?

MS. BROWN: Objection.

THE WITNESS: I can't recall that. I think my discussions were more along the line of what we knew at that time. The first couple of months were short compared to the first two months of the last year.

BY MR. JOHNSON:

Q. Did Mr. Bornstein indicate to you in any way that he had asked anyone at the printer to limit the disclosure to the historical information, as you put it?

A. I don't recall that. We were bringing the issue to the company's...

Q. If you would look at Paragraph 6-B of Exhibit CPH 17 for me.

A. (Reading.)

Q. The letter there indicates that "Sales decreased primarily due to the early-buy program which accelerated outdoor grill sales into the fourth quarter of 1997"; do you see that?

A. Yes.

Q. Do you think that was information that should be disclosed to persons receiving the offering memorandum?

MR. MOSCATO: Objection.

MS. BROWN: Objection.

THE WITNESS: Well, they had disclosed that in the 10-Q.

MR. MOSCATO: You mean the 10-K.

THE WITNESS: I'm sorry, the 10-K.

BY MR. JOHNSON:

Q. They disclosed what in the 10-K?

A. That the early-buyer program could affect the first quarter of 1998.

Q. So do you think that's information that should be included in the offering memorandum to the debt offering?

MR. MOSCATO: I object. He's not an expert witness. The offering memorandum was not an Andersen document. There's no basis for asking him his opinion on that question. He's not sitting here as an expert witness. He's sitting here as a fact witness.

MR. JOHNSON: That's a fair objection. Let me strike that.

Q. Why did Andersen include the text contained in 6-B in the comfort letter?

A. This was information that was given to us by the management of Sunbeam as to why the sales were lower in '98 as compared to '97 so we were putting that information into this comfort letter for the use of the investment bankers.

Q. Did Mr. Bornstein ever have any discussions with you after the offering memorandum was completed concerning what happened during his time in New York?

A. I think he wrote a memorandum about it.

Q. And did you at any point review that memorandum?

A. Yes, I did. I can't recall exactly what it said but I know he wrote one.

Q. Let me see if I got it here.

MR. JOHNSON: We'll mark this as CPH Exhibit 114.

Q. If you would take a minute to read through that memorandum, Mr. Pruitt.

A. (Reading) Okay.

Q. Did you have any discussions with Mr. Bornstein as to why he prepared the document that's been marked as CPH Exhibit 114?

A. I can't recall.

Q. Do you recall when you first saw this memorandum?

A. No, I don't recall.

MR. JOHNSON: For the record, this is a three-page document dated March 31, 1998, a memorandum from Lawrence Bornstein to the files, West Palm Beach, with Bates stamp Morgan Stanley 002048 through 2050.

Q. Look at the last page -- I'm sorry 27048 through 27050. Look at the last page of this exhibit, Mr. Pruitt. Have you ever seen that schedule before?

A. I believe I have.

Q. Do you recall when you first saw it?

A. No, I don't recall.

Q. Mr. Bornstein states in this memo at several points that it was Arthur Andersen's recommendation to eliminate the statement in the offering memorandum concerning the company's ability to exceed the prior year first quarter sales. Is that consistent with your recollection of the events during the middle of March, 1998?

MS. BROWN: Objection, vague.

THE WITNESS: I just can't recall exact details of our discussions.

BY MR. JOHNSON:

Q. Is there anything in Exhibit 114 that is inconsistent with your recollection?

MS. BROWN: Objection.

NOT A CERTIFIED COPY

017419

THE WITNESS: The only thing that I don't believe is correct is it mentions that I talked with him with Mr. Gluck and I didn't. I think just Harlow and Bornstein would have talked to Mr. Gluck. I don't recall talking to Mr. Gluck directly.
BY MR. JOHNSON:
Q. So the first paragraph where Mr. Bornstein states that Mr. Harlow, Mr. Pruitt and Mr. Bornstein talked to Mr. Gluck on March 16th, you don't believe you were on that conversation?
A. I wasn't on that conversation. Obviously I was talking to Bornstein and Harlow and we agreed that's what we were going to do but I don't think I talked to Gluck directly.
Q. Anything else in this memorandum that seems inconsistent or incorrect with your recollection?
A. No, I don't think so. I think that's basically what happened.
Q. Are you familiar with the term "bring down letter"?
A. Yes.
Q. Did you look at any drafts for the bring down letter on the March debt offering that we've been talking about?
A. I can't swear that I saw it but I'm sure I did

but I can't swear that I saw it. I should have.
Q. Let's look at that and see if that helps your recollection in any way. Bear with me one minute here. If you go through the stack there, Mr. Pruitt, you'll see a document marked CPH Exhibit 112. If you'll take and minute to look through Exhibit CPH 112 for me.
A. Okay.
Q. Does that refresh your memory in any way that you saw a draft of this bringing down letter before it was finalized?
A. I can't recall. I should have but I can't swear to it.
Q. Did you have any discussions with Mr. Bornstein or Mr. Harlow concerning the updated net sales and net income information that's contained on Page 2 of Exhibit 114?
A. Well, it's all mixed together with what we've been talking about. We knew that for the first two months sales were short and they had been selling like a million a day for the first two months, and they'd have to sell 15 million or 10 million in the last months to meet expectations.
Q. Were there any discussions to the specific issue that for the first two months of 1998 the company was showing a loss of $41 million?
A. Well, as this letter says, a lot of it was

because they had given options to Dunlap and Kersh I guess and had expensed the items because they must have been below market so that was part of it.
Q. And another part of the loss would be the decline in sales?
MS. BROWN: Objection.
THE WITNESS: Let's see what they say here. They give an explanation to some extent.
BY MR. JOHNSON:
Q. Let me start the question. Putting aside the $30 million charge for compensation, the company was still showing a loss of over $10 million for the period; is that correct?
A. Yes, roughly.
Q. As compared with a profit of almost $10 million for the comparable period 1997?
A. That's correct.
Q. Did you have any discussions with Mr. Bornstein or Mr. Harlow concerning that fact?
A. I can't recall.
Q. Did the company, meaning Andersen, continue to monitor Sunbeam's sales progress through the end of March?
A. I know sometime the first part of the April obviously the company knew what the sales were and they put out a press release at some point saying they had a

shortfall compared to the prior year.
Q. So that their results were less than the 1997 results?
A. Yes.
Q. And that's despite the press release on March 19 indicating that they expected to exceed 1997 results?
A. Yes.
Q. And did you have any reaction to that announcement?
MR. MOSCATO: The April 3 announcement?
MR. JOHNSON: Correct.
THE WITNESS: No, we continued to do significant work on Sunbeam looking at bill and hold and all of those kind of issues because they were working on a registration statement also so we continued to be involved in monitoring Sunbeam.
BY MR. JOHNSON:
Q. Did you have any discussions with anyone at Andersen concerning the March 3 announcement?
MR. MOSCATO: April 3.
MR. JOHNSON: I'm sorry. Thank you.
Q. April 3 announcement.
A. No, I don't recall. I probably did but I don't recall what we said.
Q. Do you remember whether the price of Sunbeam's

NOT A CERTIFIED COPY

stock fell as a result of that announcement?
A. I don't recall.
Q. Did you have any discussions with anyone at Andersen concerning whether the actual first quarter 1998 results would result in litigation?
MS. BROWN: Objection, vague.
THE WITNESS: No, I don't recall talking about that.
BY MR. JOHNSON:
Q. Have you ever talked to anyone at Morgan Stanley about Sunbeam?
A. Directly, no.
Q. And have you ever talked to anybody at Davis Polk & Wardwell about Sunbeam?
A. Directly, no.
Q. Did you ever speak directly with any Sunbeam employees or officers during your time as concurring partner?
A. You mean, period or --
Q. Period.
A. Yes.
Q. Let's focus on the 1997/98 time frame. Can you identify any Sunbeam officers who you spoke to directly?
A. Not before, say, June of 1998.
Q. So prior to June of '98 you didn't have --

A. May or June of '98. Prior, no.
Q. So May or June of '98 was the first time in the 97/98 time frame that you had any direct contact with Sunbeam officers or employees?
MS. BROWN: Objection.
THE WITNESS: Except at a football game. I saw them at a football game and talked to them, nothing about Sunbeam's financial statement.
BY MR. JOHNSON:
Q. Dolphins?
A. Yes. They lost that day I think.
Q. And in the May, June 1998 time frame, which Sunbeam officers did you speak with?
A. I don't recall but I went up there when -- let's see. There was an article that came out in Barron's alleging a number of things and I know that one of our consultants in Chicago called us and they were doing some work for Sunbeam and they indicated that they had discovered that there was a lot of inventory coming back and then, of course, it progressed to where Dunlap was fired and when that happened I went up to talk to some audit committee members and officers there at Sunbeam about what should be done.
Q. At that point and time, did you believe that -- strike that. Did you believe those audit committee members

were forthright with you during that meeting?
A. I don't know. It was more to find out -- it was to do a review, an investigation and what we came up with was Don Denkhaus could do this work and they approved it and thought it was a good idea.
Q. Is it fair to say that no Sunbeam employee or officer ever gave to you directly any false or misleading information?
MS. BROWN: Objection.
THE WITNESS: Person to person you mean?
BY MR. JOHNSON:
Q. Correct.
A. Yes. I didn't talk to anyone directly.
Q. Did you form the conclusion at any point that some members of Sunbeam's management has provided false and misleading information to Andersen?
A. Well, when we did the investigation, we did a lot of interviews and some of the employees at Sunbeam started alleging that they did give false information initially.
Q. And can you identify which Sunbeam employees provided false information to Andersen?
MS. BROWN: Objection.
THE WITNESS: I can't really recall. There are memos about the interviews and a lady, McDonald -- I think I remember McDonald and some others but I'd have to go back

and look at the work papers.
MR. MOSCATO: And you're not offering to do that.
BY MR. JOHNSON:
Q. Did Mr. Harlow ever give you his own assessment of whether Sunbeam had given Andersen false and misleading information?
A. Well, you know, he believed the people in their interviews. He felt like they were telling us the facts and so.
Q. So you believed that --
A. Yes, that they told us things that weren't true or hid things from us.
Q. So the information that's contained in the restatement memoranda is accurate information?
MS. BROWN: Objection.
THE WITNESS: Well, I don't know that.
BY MR. JOHNSON:
Q. Let me put it this way --
A. It's believable, I guess.
Q. Did Mr. Harlow believe that the information obtained during the restatement interviews was accurate?
MS. BROWN: Objection.
MR. MOSCATO: Objection.
THE WITNESS: He never said.

NOT A CERTIFIED COPY

011421

BY MR. JOHNSON:
Q. Did you have any reason to disbelief the accuracy of any information obtained during the restatement interviews?
A. I couldn't tell you. So many people were interviewed and some of them are probably still covering themselves.
MR. MOSCATO: And you did not participate in the process?
THE WITNESS: No, I did not.
BY MR. JOHNSON:
Q. You just read --
A. I just read.
Q. You read the restatement interviews?
A. Uh-huh.
Q. When was the last time you spoke to Mr. Bornstein?
A. Probably, maybe two months ago.
Q. And how did you happen to speak to him two months ago?
A. Well, we're still friendly with each other and he actually left his job. He was trying to figure out what he wanted to do next and he called me and we talked.
Q. Did you talk about Sunbeam in any way?
A. I don't think so. I don't recall it. Maybe we

did but I don't recall it.
Q. When was the last time you recall talking to Mr. Bornstein about Sunbeam in any way?
A. I went up to see him when he was working with American Media and there were a few people in the room. He made a comment about if he hadn't done such a great job at Sunbeam and I hadn't supported him that it probably never would have been uncovered or something like that. That's about the last thing I remember talking to Mr. Bornstein about in connection with Sunbeam.
Q. Other than the March 1998 discussions with Mr. Bornstein that we've already talked about, when is the last time you talked to Mr. Bornstein relating to the debt offering?
A. The debt offer? I can't recall, you know. When we went through all of this investigation, I'm sure Bornstein and I talked a lot but I don't recall all the details.
Q. But that would have been 1998?
A. Probably.
Q. And --
A. June. Of course, these conversations were in '98 also. It was in March of '98.
Q. Right. Have you had any conversations since 1998 with Mr. Bornstein concerning Morgan Stanley?

A. Not that I can recall.
Q. Other than Mr. Harlow and Mr. Bornstein, did you have direct contact with any other members of the Sunbeam audit team?
A. I may have. I just don't recall.
Q. You had contact with Mr. Denkhaus during the restatement process?
A. Yes, and others on the team. I just don't recall. It was a big team. Pastrana, I'm sure, others.
Q. Have you spoken to Mr. Pastrana about Sunbeam since 1998?
A. I'm doing a consulting job at Ernst & Young and he works for Ernst & Young so I see him all the time, but I don't recall us talking to any great extent about Sunbeam.
Q. Did you have a conversation about giving a deposition today?
A. I knew he was going to because we were switching dates and so forth to help me out.
Q. Did you talk to him at all about what this lawsuit would be about?
A. No, I didn't talk to him about it.
Q. Did you talk to him about any of the work you did for Sunbeam in 1998 within the past --
A. Not that I recall.
MR. JOHNSON: Want to switch places?

MS. BROWN: Want to take a break?
THE WITNESS: Sure.
THE VIDEOGRAPHER: Going off the record. The time is 10:10.
(Time noted: 10:10 a.m. to 10:17 a.m.)
THE VIDEOGRAPHER: We are back on the record. The time is 10:17.

EXAMINATION

BY MS. BROWN:
Q. Good morning, Mr. Pruitt. My name is Zhonette Brown. I'm with Morgan Stanley, representing Morgan Stanley.
A. Okay.
Q. You talked earlier today about the smart form and the smart form that Arthur Andersen uses when looking at an engagement addresses certain risks associated with the engagement, correct?
A. Correct.
Q. And once Arthur Andersen decides to accept the engagement, Arthur Andersen then addresses those risks when it performance the audit?
A. Yes.
Q. And the objective of an audit is to be able to issue an opinion that the company's financials, in this case Sunbeam, fairly state the company's financial position and

NOT A CERTIFIED COPY

its results of operations and cash flows in conformity with generally accepted accounting principles, correct?
A. Yes.
Q. Now, at the time that you were the concurring partner for the 1997 audit for Sunbeam, you had been with Arthur Andersen for over 30 years, correct?
A. That's correct.
Q. And you would not knowingly take any steps that would expose Arthur Andersen to liability, correct?
A. Yes, at least knowingly.
Q. And as concurring partner you would not allow anyone to take steps that would expose Arthur Andersen to liability?
A. That's correct.
Q. Nor would you allow anyone else to take steps that would expose Arthur Andersen to damage to its reputation?
A. That's correct.
Q. As an auditor, its Arthur Andersen's job and the people on the engagement, its their job to have a skepticism when approaching their examination of the company's financial statements?
A. Healthy skepticism is correct.
Q. Auditors are trained to have healthy skepticism, correct?

A. That's correct.
Q. It's part of their job?
A. That's correct.
Q. With regard to the 1997 audit -- and Sunbeam did more than simply audit the year end -- excuse me, Arthur Andersen did more than simply audit the year end financials for Sunbeam in 1997, correct?
A. Well, yeah, we were doing a number of things. We had three acquisitions going on right after year end and, of course, the stuff we talked about, the offering memorandums --
MR. MOSCATO: I'm sorry, the question was '97, though, right?
MS. BROWN: Right.
THE WITNESS: Just the year 1997?
BY MS. BROWN:
Q. 1997.
A. I mean, the timeline is '97 or the financials are '97? What are we talking about?
MR. MOSCATO: Can you restate your question please?
BY MS. BROWN:
Q. In 1997, in addition to doing the audit work for the year-end financial, Arthur Andersen did quarterly examinations for Sunbeam, correct?

A. Yes, the fiscal year end '97, yes. We did quarterly reviews.
Q. And Arthur Andersen had been engaged by Sunbeam for a number of years preceding 1997, correct?
A. Yes.
Q. The engagement team spent several hundred or a few thousand hours on the work that they did for Sunbeam in 1997, correct?
A. Yes.
Q. And as concurring partner you examined planning documents. Did that include, for instance, the work program?
A. Probably not the detail work programs but planning. Discussed what should be in the work program to mitigate risk.
Q. And you were satisfied as a result of that that Arthur Andersen was adequately addressing all the risk that they had identified with regard to the Sunbeam financials?
A. The known risk, yes.
Q. And at the end of the 1997 audit, Arthur Andersen had satisfied themselves that they had met their objective and that they would be able to give the opinion that Sunbeam's financials were fairly stated, correct?
A. Yes.
Q. And they didn't have any reason -- did you

personally have any reason in that time frame, that is January of 1998 when they signed off on the financials, to question the integrity of management at Sunbeam?
A. No, we talked about this morning. We knew Dunlap was domineering and those kind of things but we felt like we were aware of those risks so when we were ready to sign off, we felt comfortable signing off.
Q. Dunlap was well known in the business community, correct?
A. Yes, he was a big name.
Q. At the time of the 1997 audit he was seen to have been successful in the -- as a successful businessman, correct?
A. Yes.
Q. He was -- I think you referred to him in prior testimony as a hero in the business community, correct?
A. Yes, he was looked upon as -- yeah, as far as in the business community.
Q. And when the question of bill and hold sales came up during the 1997 audit, ultimately Arthur Andersen satisfied itself that those were legitimate sales and the revenue could be recognized in 1997, correct?
A. That's correct.
Q. And up until June of 1998, are you -- Arthur Andersen had no reason that you're aware of to question the

NOT A CERTIFIED COPY

1997 financial statements?
A. That's correct. Things started being uncovered subsequent to the audit.
Q. Subsequent to the audit being in June of 1998, correct?
A. Yes, around June.
Q. Arthur Andersen, as you mentioned, continued to do work for Sunbeam in the first quarter of 1998, correct?
A. That's correct.
Q. And during that time period you're not aware of any reason that Arthur Andersen had to question the integrity of the management?
A. Not that I can recall. We were obviously -- because of bill and hold and other things, we were doing additional work. We were monitoring the situation but we didn't find anything until June that made us believe that they were dishonest or the financials were a problem.
Q. And that includes the first quarter of 1998, correct?
A. As best I recall, yes.
Q. Let's go ahead and look at the CPH Exhibit 23 that you looked at a bit earlier this morning. It was the document that included the smart form. That's it right there.
A. This one?

Q. Yes. And turning to the smart form itself, on Page 2 where you discussed with my colleague earlier that the text in the box that management had set aggressive earnings expectations, "might be inclined to recognize revenue for transaction and events where the earning process is not complete. Also reserves can be expected to be thin." You were satisfied that Arthur Andersen had addressed that issue when it signed off on Sunbeam's 1997 financial statements, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes, the auditing team was satisfied. Ultimately its their responsibility, not mine. A concurring partner can give advice and talk about the issues, but ultimately the engaging partner has the responsibility to decide to sign the opinion.
BY MS. BROWN:
Q. You didn't have any difficulties or reservations about Arthur Andersen signing that opinion?
A. Not at that time.
Q. On the next page, Page 3, under "Risk Classification" where it says, "Final risk classification high," again the risk classification and each one of the risks identified in this document had been addressed by Arthur Andersen of their audit of the 1997 financials, correct?

MR. JOHNSON: Objection, form.
THE WITNESS: Yes, that was the idea, to find the risk and try to address the risk as part of the audit. When the team completed their work, they felt comfortable signing the opinion.
BY MS. BROWN:
Q. And as concurring partner did you concur or sign off before they signed their opinion?
A. Yes, I have to concur on certain things like major issues that they bring to my attention, a few things like that, yes.
Q. And with the 30 years of experience that you had at that time, you were comfortable signing off with the 1997 financial statements for Sunbeam, correct?
A. Well, as concurring partner. Again I didn't sign the opinion. It's not my responsibility. But the issues that they brought to me, which was basically bill and hold, by the time we finished with that work I felt the revenues should be in 1997, and I still feel that way probably.
MR. MOSCATO: Feel free to respond to questions that aren't asked.
THE WITNESS: Yes, I thought I'd throw that in. He was about to fall asleep. That's off the record.
BY MS. BROWN:
Q. You testified that you had not had any previous

discussions with Morgan Stanley during the 1997, 1998 time frame concerning Sunbeam. Did you have any conversations with anyone representing Morgan Stanley senior funding during that period concerning Sunbeam?
A. No, not directly.
Q. Did you have any conversations prior to June of 1998 with anyone from Skadden Arps concerning Sunbeam?
A. As part of the investigation, I think they were involved, I believe. I believe, that's the firm. Were they involved in the investigation?
MR. MOSCATO: When you say "investigation," you mean the restatement.
THE WITNESS: The restatement. I think they were involved. Maybe I said hi to somebody but again I didn't do the work.
BY MS. BROWN:
Q. And prior to the restatement or the investigation, did you have contact with anyone from Skadden Arps?
A. About Sunbeam?
Q. About Sunbeam.
A. Not that I recall.
Q. You were actually on vacation in June of 1998 when Arthur Andersen determined that it would withhold its consent from the SEC registration for the notes, correct?

NOT A CERTIFIED COPY

0 7424

A. That's correct.
Q. So you personally were not involved in that decision or were you?
A. No, I was out of the country and they were working with a practice director.
Q. Mr. Costello?
A. Yes. You know, I found out about it. I've forgotten whether they left me a message. Somehow they got in touch with me. I was aware of it.
Q. But you weren't involved in making the decision?
A. Not directly.
Q. And as concurring partner, any of the work -- any of the information that you have about the work that was done during the audit is secondhand that you got from Mr. Bornstein or Mr. Harlow, correct?
A. Well, I could look at the work that was done, but again I didn't interact with the client directly.
Q. And you also didn't interact with the client directly on the restatement procedures, correct?
A. That's correct.
Q. And any information you have about what anyone from Arthur Andersen may have said to anyone from Morgan Stanley also would be secondhand?
A. Secondhand.
Q. Prior to June of 1998, did anyone from Arthur

Andersen tell you that any representative of Sunbeam had expressed hesitation about the legitimacy of the bill and hold sale?
MR. JOHNSON: Could I have that read back?
(The record was read.)
MR. JOHNSON: I'm going to object to the form of that.
THE WITNESS: I believe it was in June that Griffith or someone came to us and told us -- or they said that there could be problems with some of the sales but I'm not even sure it was bill and hold sales any more. We had picked up some sales that were not legitimate sales when we did our investigation of the bill and hold at the audit time at year end and we had proposed adjustments to reverse the sale.
MR. MOSCATO: What was your question again? Was your question prior to June?
MS. BROWN: My question was prior to June of 1998.
MR. MOSCATO: Why don't you restate the question? I don't think it was responsive.
THE WITNESS: It would be May or June. I don't know. I think it probably had to be in June but I'm not certain. Again I was out of the country. I don't know exactly what was going on.

BY MS. BROWN:
Q. So prior to May of 1998, you're not aware of anyone from Sunbeam expressing to Arthur Andersen any concerns about the legitimacy of the bill and hold sales?
A. Not that I can recall.
Q. And the bill and hold sales, you mentioned earlier, were disclosed in Sunbeam's 10-K for 1997; is that correct?
A. That's correct.
Q. And, to your knowledge -- let me just ask you personally. Were you satisfied with that disclosure of the bill and hold sales in Sunbeam's 10-K?
MR. JOHNSON: Objection to form, foundation.
THE WITNESS: Yes, I think it disclosed they had bill and hold sales and they had an early-buy program and we had -- I had felt that it had to be disclosed if they were going to put bill and hold sales in their financials in 1997 and they did.
BY MS. BROWN:
Q. So whatever connotations you may feel go with bill and hold sales, those were disclosed in the 10-K, correct?
A. Yes.
Q. You discussed earlier the comfort letters that Arthur Andersen provided to Morgan Stanley in March of 1998?

A. Yes.
Q. And Arthur Andersen performs post audit reviews prior to providing comfort letters, correct?
A. As part of it, yes. Actually the comfort letters are requested by the investment banker as part of their due diligence.
Q. Right, but before Arthur Andersen will provide that comfort letter, Arthur Andersen itself does post-audit review procedures, correct?
A. Normally. They can ask for anything. I guess an investment banker -- I've seen them just ask if we're independent, you know, so we don't have to do anything if you don't want to, I guess, given the comfort letter, but normally they ask for things that you need to do some work on.
Q. So what Morgan Stanley asked for this time required you to do more than simply state you were independent?
A. Yes.
Q. Now, with regard to the debt offering and the comfort letters that went with that, eventually you were aware that Sunbeam would want to register with the SEC concerning the debt, correct?
A. I knew at some point that, yes, they were working on an S4 registration.

NOT A CERTIFIED COPY

Q. And in order to file an S4 registration with the SEC, Sunbeam has to get consent from Arthur Andersen to use Arthur Andersen's opinion concerning Sunbeam's financials?
A. That's correct. You can ask for it but you don't need it on an offering memorandum.
Q. Would Arthur Andersen provide its consent for the S4 registration if it felt that the offering memorandum was false and misleading?
A. Well, I know if we felt like the S4 was misleading, we wouldn't give a consent.
MR. MOSCATO: Is the question if they thought it was false and misleading when issued? It's a little confusing. You could have a situation where the offering memorandum says something that everyone believes is accurate at the time that it turns out that it's not accurate, say a forward looking statement.
THE WITNESS: If you fix it in the S4, I guess, then, if you were satisfied, you could go ahead and give a consent on the S4 if the S4 was correct.
BY MS. BROWN:
Q. My question is in March Sunbeam was working on the offering memorandum. Arthur Andersen was aware that eventually they would want to file an S4 with the SEC If Arthur Andersen knew in March that the offering memorandum as of March was false and misleading and that Arthur

Andersen would withhold -- therefore would withhold its consent, would Arthur Andersen tell Sunbeam that as a matter of courtesy?
MR. JOHNSON: Objection to form.
MR. MOSCATO: It's so hypothetical. I don't know how he can answer that.
If you feel comfortable answering it, answer it. If it's too hypothetical to answer --
THE WITNESS: The issue would be known in April anyhow. I mean, you would know what the sales would be in the first quarter. The S4 is not going to be completed before April anyhow, April 1st, so we're going to know the answer by the time the S4 comes around. Either they're right and there's no problem or they're wrong and you know it.
BY MS. BROWN:
Q. When you read the offering memorandum prior to -- you read drafts of the offering memorandum prior to it being published correct?
A. Yes.
Q. As a courtesy or service to Arthur Andersen -- to Sunbeam, if you noticed anything that you felt was false and misleading you would bring that to the attention of Sunbeam, correct?
MR. JOHNSON: Objection.

THE WITNESS: If it was false and misleading, we would bring it to their attention. It's hypothetical.
MR. MOSCATO: It was all hypothetical.
BY MS. BROWN:
Q. You have in front of you or you and your counsel have in front of you a stack of documents that have previously been marked and I'd like to refer you to what was marked yesterday as Morgan Stanley Exhibit 25. Morgan Stanley Exhibit 25 is a post-audit review form that Arthur Andersen uses, correct?
A. Yes.
Q. And turn, if you would, to the last few pages of Morgan Stanley Exhibit 25 and on the last two pages at the end, is that your initials and then your signature?
A. Yes.
Q. And it appears as though -- even though this post-audit review is dated March 5th of '98 that your signature is May of '98. Do you know what the circumstance was that you signed it a couple of months later?
A. I do remember. They didn't get it to me right at the end of the audit to sign and we were going to get a work paper review and they were going to get jigged for that so I put the right date so they would get jigged.
Q. In the text --
A. The work was done timely. I guess they didn't

give me this form in time, so I signed it when they got me the form as opposed to when the work was done.
Q. So under "Procedure," for instance, where it says "Read the report to be issued and the related financial statements" and then it has "Done by" and your initials, what's the indication of when that was done? Was that done in March or was that done in May?
A. It was done before they filed the 10-K.
Q. So you reviewed this document contemporaneously with it being created?
MR. MOSCATO: This document or 10-K?
THE WITNESS: The 10-K itself was filed March 5th and I did the review and so forth before they filed it.
BY MS. BROWN:
Q. So you reviewed this document in early March of 1998?
MR. MOSCATO: You keep saying this document. He thinks you're talking about the 10-K.
THE WITNESS: Yes, I'm talking about the 10-K. No, they did not send me this form until March -- I'm sorry, May 29th to review. I did the work but I did not fill out this form until May 29th.
BY MS. BROWN:
Q. So you reviewed the 10-K in early March of 1998?
A. Before it was filed.

NOT A CERTIFIED COPY

Q. But you did not review this form itself until May of 1998?
A. That's correct.
Q. You stated before that you did the work. What does that mean?
A. When you say "this form," to be honest with you --
MR. JOHNSON: For the record, it's not the form 10-K. It's --
MR. MOSCATO: It's ARQ, they call it. I may have looked at the front part of this thing but I did not fill this out until May 29th. My part of it I didn't fill in.
MR. MOSCATO: When you say you did the work, you mean you read the 10-K?
THE WITNESS: The 10-K and did all the other things. I obviously talked to the audit team about bill and hold and all those kind of things. I did all those things before we filed the 10-K. They didn't give me this form on May 29th and I signed it May 29th rather than when I did the work.
BY MS. BROWN:
Q. You've been handed what's been marked as Morgan Stanley 35. For the record, it's CPH 0129979 through 988. Morgan Stanley Exhibit 35 is another Arthur Andersen post-audit review form, correct?

A. Yes.
Q. And at the last couple of pages of Morgan Stanley Exhibit 35 there are also your initials and your signature?
A. Yes.
Q. You also stated this document, May 29th of 1998?
A. That's correct.
Q. Now, under procedure number one on the second to the last page of Morgan Stanley Exhibit 35 where it states, "Read the report to be issued and related financial statements," what does that refer to?
MR. MOSCATO: It says read the report to be reissued.
THE WITNESS: To be reissued. Let me look and see. What this is talking about is reissuing our order on -- I think it's December 28th, 1997 opinion in the financial statements and the registration statements.
BY MS. BROWN:
Q. And the registration statement?
A. I don't know what registration they are talking about, to be honest with you. I'm trying to remember what it was for.
Q. On Item 2 --
A. It may be an S8. I don't know. I don't recall it.
Q. On Item 2 --

A. It should say it. I can't find it. It's so close after the 10-K was filed, it must be an S8 or something. I don't think it's the S4.
MR. MOSCATO: Do you have a question, counsel?
MS. BROWN: Yes.
Q. When you look at Page 9, again the second to the last page of Exhibit 35, under "Reviewed the results of the post-audit review" which is Number 2, what does that refer to?
A. Basically this form -- the work is done in this form. There could be work papers that they're preparing in doing the work, but it's basically this work on this form.
Q. And so when you initialed there, what does that indicate?
A. Well, I read the reissue report and reviewed the results of this post-audit review, and I discussed any significant accounting and auditing issues with the engagement team and I'm satisfied.
Q. And you did that work in March of 1998 rather than in May of 1998?
A. Yes. This looks like it's some kind of -- it may be an S8 which is like pension plans and stuff like that. It's called -- it could be. I just don't know which registration statement this was, but since it is so soon after we filed the 10-K.

Q. Look if you would at Morgan Stanley Exhibit 28 which was marked yesterday. And Morgan Stanley Exhibit 28 is a post-audit review form that Arthur Andersen uses, correct?
A. Yes.
Q. And under SEC filing form Morgan Stanley Exhibit 28 --
A. Zero coupon, okay.
Q. -- it states sale of 2.014 billion zero coupon senior subordinated debentures due 2018.
A. Right.
Q. And now when you look at the last two pages of Morgan Stanley 28, again are those your initials and your signature?
A. Yes.
Q. Looking at this post audit report when it states that you reviewed -- read the report to be reissued and related financial statements, what does that refer to?
A. In this case it's zero coupon -- it's actually the offering memorandum, is what they're talking about, I'm pretty sure.
MR. MOSCATO: Just for your edification, read that. See if you can make out the handwriting.
THE WITNESS: I can't read it worth a flip but I think they're saying what I just said, that they're talking

NOT A CERTIFIED COPY

about the work they did on the offering memorandum and they did this work although this is not an offering.
MR. MOSCATO: I just asked you to read it to yourself. You don't have to discuss it unless she wants to ask you about it.
BY MS. BROWN:
Q. Number 2 on the second to the last page of Morgan Stanley Exhibit 28, states "Principal Considerations. Whether that review has revealed any subsequent events or transactions that might affect our report and/or the financial statements being reissued"; do you see that?
A. Give me the page.
Q. It's Page 9 of the PAR, Number 2, "Principal Considerations"?
A. Okay. Right.
Q. And my question is what does that mean?
A. We didn't find anything that would change the December 28th, 1997 financial statements.
Q. So as of this date, which is March 16th 1998, Arthur Andersen was satisfied that the financial statements were still not materially misstated?
MR. JOHNSON: Objection to form.
THE WITNESS: Fairly presented, yes.
BY MS. BROWN:
Q. And this was after the additional work that

Arthur Andersen had done up to March 13th -- March 16th of 1998, correct?
A. Right. And again this is me talking. As concurring partner, I didn't see anything that I felt would change the December 28, 1997 financial statement.
Q. You stated earlier that you directed either Mr. Bornsten or Mr. Harlow to speak to Morgan Stanley about what they expected to put in the comfort letter; do you recall that testimony?
MR. MOSCATO: I'm not sure that's accurate
BY MS. BROWN:
Q. Do you recall testifying this morning that you directed Mr. Bornstein or Mr. Harlow to tell Morgan Stanley in advance of getting the comfort letter --
A. What would be in the comfort letter, yes.
Q. Do you have any personal knowledge of that communication taking place? You didn't participate in such communication, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: No, I did not directly talk to the investment bankers. I know it was done because Bornstein, you know, did it, told me he had talked to the investment bankers.
BY MS. BROWN:
Q. Did he tell you that before or after March 19,

1998?
A. I don't know what date it was.
Q. Did he tell you that before or after he was in New York at the press?
A. I don't recall but I think he did talk to the investment bankers when he was in New York.
Q. Do you recall ever saying to anyone from Arthur Andersen that if Sunbeam did not make a disclosure of the decline in sales, Arthur Andersen would withhold the consent from registration for the notes?
A. Well, again we were talking about this offering memorandum when this was all going on and you don't need a consent so they could tell us to shove it, put out the offering memorandum. They don't need our consent on offering memorandum.
Q. But I'm not sure that answers my question. They would eventually need a consent for the S4 registration, correct.
A. Yes.
MR. MOSCATO: Let's not argue. She asked the specific question, did you say a particular thing, and you want an answer to that question.
THE WITNESS: Give me the question again.
BY MS. BROWN:
Q. My question was do you recall saying to anyone in

March of 1998 that if Sunbeam did not disclosure its decline in sales, Arthur Andersen would withhold its consent?
MR. MOSCATO: And the answer is yes or no.
THE WITNESS: On the S4 registration? In the registration statement?
BY MS. BROWN:
Q. Yes.
A. Not the offering memorandum? No, I don't recall saying that.
Q. Do you recall ever conveying that sentiment to anyone at any time prior to June of 1998?
A. I don't recall tying the S4 to this time period when we were working on the offering memorandum. Again, before the S4 would be filed we would know one way or the other because the quarter would be over. I mean, it was only a few days left. We'd know one way or the other.
Q. So the answer is no, you don't recall discussing that with anyone prior to June of 1998?
A. I don't recall. Not June. Did you say June?
Q. Prior to June.
A. Prior to June? I thought we were talking about March.
MR. MOSCATO: It's all very confusing.
THE WITNESS: This was all going on in March, the first quarter in the shortfall, and we would know by the

NOT A CERTIFIED COPY

first part of the April whether they made it or not.
BY MS. BROWN:
Q. But in June --
A. It wouldn't be an issue one way or the other by the time April gets here because we'll know what the sales are for the first quarter at that point, so it won't be an issue any more.
Q. In June of 1998, Arthur Andersen withheld its consent for the registration, right?
A. Yes.
Q. Do you remember discussing that as a possibility with anyone from Arthur Andersen prior to June of 1998?
A. Withholding the consent?
Q. Yes.
A. No, not that I can recall.
Q. When you talked with Mr. Harlow and Mr. Bornstein about wanting Sunbeam to make a disclosure about the decrease in net sales in March of 1998, do you recall them telling you that Sunbeam was resisting making that disclosure because they believed they'd make a their quarter numbers?
A. Yes. Yes, they resisted the disclosure.
Q. When you told Mr. Harlow or Bornstein to tell Morgan Stanley what was going to be in the comfort letter, do you know whether they told Sunbeam first that they were

going to convey that information to Morgan Stanley?
A. I don't know who they told first or second.
Q. As a courtesy, would you expect them to have told the client before they told the underwriter?
MR. MOSCATO: I object.
THE WITNESS: I don't think it would have come to my mind because everybody is working on the thing. They're all in the same room probably.
BY MS. BROWN:
Q. As part of the procedure for providing a comfort letter, Arthur Andersen gets a representation letter from management before they provide the comfort letter, correct?
A. That's correct.
Q. Do you recall discussing the representation letters -- management representation letters in March of 1998?
A. I don't recall.
Q. I'd like you to take a look at what's been previously marked as Morgan Stanley Exhibit 30, and if you would just turn to the last page of Morgan Stanley Exhibit 30 there are signatures there that purport to be from Mr. Dunlap, Kersh, Fanin and Gluck, do you see that?
A. Yes.
Q. Is this the type of management representation letter that Arthur Andersen would receive prior to issuing a

comfort letter?
A. Yes.
Q. We might as well get what has been marked as Morgan Stanley Exhibits 32, 33 and 34. You testified that you recall that there was a bring down comfort letter, correct?
A. Yes.
Q. And prior to providing a bring down comfort letter, there would be a subsequent representation letter from management, correct?
A. Yes.
Q. On Morgan Stanley Exhibit 30, the date of the first management representation letter is March 16th, 1998 and then you're aware that the Arthur Andersen comfort letter -- initial comfort letter is dated March 19, 1998; do you recall that?
A. I don't recall.
MR. MOSCATO: We'll stipulate.
THE WITNESS: It may have been it's dated the 19th. It goes through the 16th, probably.
BY MS. BROWN:
Q. Now, if you look at Morgan Stanley Exhibit 32, the first page is an e-mail dated March 21, 1998. And attached to that right after is a draft representation letter from management. I'd like you to turn, if you would,

to the Bates page and the Bates is the little number at the bottom that ends in 1653.
A. Okay.
Q. And on Morgan Stanley Exhibit 32 there's a Paragraph 10 there. I'll ask you just to review Paragraph 10.
A. Okay.
Q. What do you understand Paragraph 10 to accomplish?
MR. JOHNSON: Objection to form.
THE WITNESS: Since I wasn't involved in, you know, preparing these comfort letters and letters and all that kind of stuff and the timeline and what they were talking about, I can't answer that, except what it says is that management believes that the sales in '98 will exceed the same time period in '97.
BY MS. BROWN:
Q. Do you recall discussing putting that paragraph in the management letter?
MR. MOSCATO: Objection.
THE WITNESS: Me asking for this or --
BY MS. BROWN:
Q. Do you recall having any discussions about it being put into the management letter with anyone at --
A. I don't recall, no.

NOT A CERTIFIED COPY

0 7129

Q. If you look at the next exhibit which is Morgan Stanley 33, there's a fax cover -- or fax line at the top that's dated March 23rd, 1998 and I'd ask you to look at that same paragraph, Paragraph 10 or Morgan Stanley Exhibit 33, and now someone has made some handwritten edits to that paragraph. Do you know whose handwriting that is?

A. No, I don't.

Q. Did you discuss this edit with anyone?

A. I don't recall. I may have.

Q. And I'd like you to please look at Morgan Stanley Exhibit 34. Morgan Stanley Exhibit 34 is dated March 23rd, 1998 and if you will turn to the final page, bears the signatures of Mr. Dunlap, Kersh, Fanin and Gluck. And if you would observe by comparing this final management representation letter to the previous two drafts represented in Morgan Stanley Exhibits 32 and 33, you will notice that the paragraph we have been discussing has been removed. Do you see that?

A. Yes. It's covered somewhere else. When did they put out that press release? What was the date of that?

MR. MOSCATO: March 19. She just asked the question did you notice -- it's pretty self explanatory. She's asking you if you look at this document, if you noticed that this paragraph which was in here is not in here.

THE WITNESS: That's correct.

MR. MOSCATO: Next question please.

BY MS. BROWN:

Q. Did you discuss with anyone the fact that the Paragraph 10 which previously stated, "Despite the decrease in net sales described in the preceding paragraph, management believes that net sales for the first quarter of fiscal 1998 will exceed net sales for the first quarter of fiscal 1997." Did anyone discuss with you the fact that that paragraph had been -- was not in the final management representation letter?

A. Not that I recall.

Q. Did anyone bring that to you as a concern?

A. They may have but I don't recall.

Q. Now, you stated that from your point of view management was telling you in March of 1998 that they still expected to make their numbers for the first quarter of 1998, correct, indirectly?

MR. MOSCATO: I object to that. Can you restate the question?

BY MS. BROWN:

Q. The information that you had in the first quarter of 1998 was that the company still expected -- company Sunbeam still expected to make their numbers for the first quarter of 1998, correct?

A. Yes, based on the first two months, the information that they had at that point, yes.

Q. And did you personally have any reason -- did you have any sense that Sunbeam was not sincere when they were representing that they believed that they would make their numbers for the first quarter of 1998?

MR. JOHNSON: Objection to form.

THE WITNESS: I have no way of knowing. Personally, as I said, I was skeptical.

BY MS. BROWN:

Q. But did you have any sense that the company itself had reservations or did not believe it would make its numbers.

MR. JOHNSON: Objection to form.

THE WITNESS: Again I didn't deal directly with them so I can't answer the question.

BY MS. BROWN:

Q. Did anyone from Arthur Andersen tell you that they felt that Sunbeam would not -- they felt that Sunbeam itself believed that Sunbeam would not make its numbers for the first quarter of 1998?

MR. JOHNSON: Objection to form.

THE WITNESS: Not that I recall.

THE VIDEOGRAPHER: This is the end of Videotape No. 1. We are going off the record. The time is 11:08.

(Brief recess)

THE VIDEOGRAPHER: We are back on the record. This is the beginning of the Videotape No. 2. The time is 11:12.

BY MS. BROWN:

Q. Mr. Pruitt, you said that you had reviewed or seen the substance of the press release that Sunbeam issued in March 1998 indicating that they may not meet analysts' expectations but they still expected to beat first quarter 1997?

A. They had included it in the offering memorandum and I saw a draft of the offering memorandum but I don't know whether they put the forward thinking information in there and all that stuff.

Q. So you don't recall -- okay.

A. Whatever was in the memorandum is what I saw.

Q. At the time you saw that, you could not say, based on your own knowledge, that that information was inaccurate, correct?

A. No.

Q. Let me hand you what we will mark as Morgan Stanley 36. Morgan Stanley Exhibit 36 for the record is Bates CPH 0021819. At the top it indicates "Clippings," Arthur Andersen to Phil Harlow, yourself and Mr. Pastrana from Mr. Bornstein date, March 20, 1998. Do you recall

1-30

NOT A CERTIFIED COPY

receiving this from Mr. Bornstein?
A. I can't recall.
Q. Do you recall any discussions about the fall of Sunbeam stock after the issuance of the press release in 1998?
A. No, I don't recall discussing it. We may have. I don't recall.
Q. At the time you that reviewed the offering memorandum -- draft offering memorandum that included the substance of the press release, do you recall from your own review anything that you thought was inaccurate or misleading in the offering memorandum?
A. I don't recall anything I could say was wrong. Again, as I testified, I was against forward looking statements.
Q. Is that something you're just generally would be against, forward looking statements in an offering memorandum?
A. In this situation.
Q. What do you mean in this situation?
A. In this situation I was against it. Maybe in another situation it would be fine. I don't know. It's hypothetical.
Q. But there was nothing that you thought, based on your own knowledge at the time, was inaccurate, correct?

MR. MOSCATO: You've asked this question probably 15 different ways in the last half hour. I'm going to start objecting and I'm going to start instructing him not to answer. He's made his position as crystal clear as a human being can possibly make that position.
Answer the question one more time and that's it.
MS. BROWN: Well, strike it. That's fine.
Q. There was no way for you to know on March 19, 1998 what was going to happen at Sunbeam by the close of the quarter, correct?
A. That's correct.
Q. And you were previously provided with Mr. Bornstein's memo, CPH Exhibit 114?
A. Yes.
Q. And you just look again at the last page of CPH Exhibit 114. It was your understanding that this is information that Sunbeam provided to indirectly someone from Arthur Andersen; is that correct?
MR. JOHNSON: Objection to form. Lack of foundation.
THE WITNESS: I'm not sure what this is. I know that at the time someone put together kind of a schedule of sales to certain clients but I don't know if that's it or not.

BY MS. BROWN:
Q. And by someone, you mean someone from Sunbeam?
A. Yes. Uzzi, I believe.
Q. And who would be in a better position to know what sales Sunbeam had but had not recorded it at the end of February 1998, Sunbeam or Arthur Andersen?
MR. JOHNSON: Objection to form.
THE WITNESS: Well, I think Sunbeam.
BY MS. BROWN:
Q. Mr. Bornstein never told you that he was concerned about Sunbeam's ability to physically ship the amount of inventory that they said they were going to be able to ship, correct?
A. I don't recall that conversation at all.
Q. The restatement was much more detailed in scope than the initial audit; is that correct?
A. That's correct.
MS. BROWN: Let's mark Morgan Stanley Exhibit 37.
MR. JOHNSON: Is this the same one you marked yesterday?
MS. BROWN: No.
Q. You have been handed Morgan Stanley Exhibit 37, which for the record is CPH 0083764 and 65. At the top of the document, Sunbeam Corporation, Arthur Andersen fees and

expenses, restatement and other accounting services from July 1, 1998 through December 15 1998. What services did Arthur Andersen provide to Sunbeam after the restatement work had been completed?
A. I know they were trying to file the S4 registration statement and I believe we worked on that after the restatement to get it filed.
Q. Was there anything else?
A. I can't recall. May have been.
Q. But Arthur Andersen, you said, did not do the audit for Sunbeam's 1998 financials?
A. I'm sure we did not. Again I retired in August of '99 and this was still going on after I retired. What they did afterwards, I don't know.
Q. When you look at Morgan Stanley Exhibit 37, the total hours for July 1, 1998 to December 15, 1998 is 16,324. Do you see that on the second page?
A. Yes.
Q. The vast majority of those hours would have been spent on the restatement work, correct?
A. I believe so.
Q. Indeed Arthur Andersen and Sunbeam at a minimum spent 10,000 hours working on the restatement, correct?
A. I believe so.
Q. During the restatement -- there had been a change

NOT A CERTIFIED COPY

in management; I believe you testified to that previously?
A. Yes, they fired Dunlap.
Q. And not today but you've testified previously that during the restatement there was also an informal SEC investigation proceeding, correct?
A. Yes, that's correct.
Q And, in fact, it was your understanding that when Mr. Bornstein interviewed some of the Sunbeam personnel -- salespersonnel, he informed it was in their best interest to be truthful because of the SEC investigation, correct?
A. That's correct.
Q. That's a fact that did not exist during the 1997 audit, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: That's correct.
BY MS. BROWN:
Q. And as a result of the restatement and the thousands of hours and whatever other factors may have existed, Arthur Andersen learned things during the restatement that Arthur Andersen had not been aware of during June of 1998, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: That's correct.
BY MS. BROWN:
Q. You were aware that in the first quarter of 1998

Morgan Stanley was conducting due diligence at Sunbeam?
A. I believe I knew it was Morgan. I mean, maybe there was more than one investment banker doing due diligence. I don't recall.
Q. Do you have any knowledge personally of anyone from Coleman (Parent) Holdings doing due diligence at Sunbeam prior to June of 1998?
A. Personally?
Q. Yes.
A. No.
Q. Do you have any knowledge personally of anyone from Mathco doing due diligence at Sunbeam prior to June 1998?
A. No.
Q. Do you have any knowledge of anyone from Credit Swiss First Boston doing due diligence at Sunbeam prior to June of 1998?
A. Again, I knew that investment bankers were probably doing due diligence but I didn't know who it was.
Q. Do you have any information concerning anyone from Wachtell Lipton doing due diligence at Sunbeam in 1998?
A. Again, I knew law firms were working on the offering memorandum and the registration but I didn't know who it was. I can't recall who it was.

Q. Did you personally have any conversations with anyone from Coleman, Coleman (Parent) or Mathco prior to June of 1998 concerning Sunbeam?
A. Directly, no.
Q. Did you personally have any conversations with anyone from Credit Swiss First Boston or Wachtell prior to June 1998 concerning Sunbeam?
A. Directly, no.
Q. Indirectly were you aware of any conversations that anyone from Arthur Andersen had with any of those entities, Coleman, Coleman (Parent), Mathco, Credit Swiss First Boston or Wachtell?
A. I don't recall. Again Bornstein and Harlow were having conversations but I don't know who they were talking to.
Q. You weren't present at Global Financial Press in March 1998, correct?
A. No.
Q. And you weren't involved in any discussions directly with the company in March 1998?
A. No.
Q. Now, Sunbeam moved to Florida and became a client of the Metro Florida area in approximately 1993, correct?
A. It must have been around 1993, yes.
Q. And Sunbeam at the time was one of Arthur

Andersen's largest clients in Metro Florida?
A. One of them. In the top 10.
Q. In 1995 the South Florida Arthur Andersen practice had lost a number of big clients to merger, correct?
A. I think we lost Blockbuster. Yes, we lost some.
Q. And do you recall that in 1996 and seven the Metro Florida practice was behind the Arthur Andersen average for units per share earnings?
A. I don't recall whether we were or not. We could have been because of the loss of Blockbuster and a couple of other things. It's possible.
Q. Do you recall in one of your last evaluations that you received a reduction in units because of the difference in income for the South Florida office as oppose to the average Arthur Andersen?
A. Yes, I don't know if that was South Florida or Florida, the Caribbean or all of them. I can't recall. Probably because I was -- most partners retire from Andersen at 56 and I didn't so they start reducing your units after 56 if you don't retire. I couldn't retire until I was 59 because the guy that was going to take over for me went with our biggest client.
MR. MOSCATO: It's a tough business.
THE WITNESS: But I made plenty of money so I

NOT A CERTIFIED COPY

can't complain.
BY MS. BROWN:
Q. You've been handed what's been marked as Morgan Stanley 38 which is Bates CPH 2004703 to 722. Do you just generally recognize this document?
A. Yes.
Q. Can you for the record identify what it is?
A. Looks like an annual review of me by Bob Grafton who was by boss.
Q. I just want you to look at the second paragraph on Page 3, states, "Bill understands need for the Metro Florida practice to get its earnings up to the US average. If the office meets its plan for 1997, there will still be approximately $100 per unit behind the US average for audit and approximately $150 per unit behind for tax. And while I do not believe we can get to the US average in 1997, it should be our goal to get there in 1998."
A. Okay.
Q. Does that refresh your recollection that the Metro Florida practice was behind the Arthur Andersen US average for earnings?
A. Yes. Actually the big problem was Tampa and not South Florida. This is Metro Florida which is all of Florida, but, yes, I remember now.
Q. And you were responsible for Metro Florida?

A. Yes, Florida, the Caribbean and Venezuela.
Q. Do you recall that in 1997 Sunbeam cut the fees that it was providing to Arthur Andersen?
A. Yes. I believe. I believe I recall that they did.
Q. Do you recall the fees were cut almost in half?
A. I don't recall that. I know that they had big restructuring, got rid of a lot of their businesses. They brought everything to South Florida, consolidated everything so it was a smaller job anyhow, but I don't recall the fees. In fact, in 1996 most of the work was done in Pittsburgh and Mississippi rather than South Florida. We did very little of the work in South Florida in 1996. We just consolidated everything. In 1997 when he got rid of the lot of the businesses and consolidated everything, we did more of the work so it's a different entity really.
Q. During the restatement Arthur Andersen had no objective to determine what due diligence had been performed by any of the investment bankers in 1998, correct?
A. I can't think of a reason why.
Q. Do you personally have any information that would cause you to believe that Sunbeam had provided information to Morgan Stanley that it had not provided to Arthur Andersen?
A. No, not that I'm aware of.

Q. Do you personally have any reason to believe yourself that Morgan Stanley was involved in any way in the accounting improprieties at Sunbeam in 1997 and 1998?
MR. JOHNSON: Objection to form.
THE WITNESS: Not that I know of.
BY MS. BROWN:
Q. Do you have any reason personally to believe that Morgan Stanley was aware of those accounting improprieties in June of 1998?
MR. MOSCATO: Objection.
MR. JOHNSON: I'll join.
THE WITNESS: Do I answer?
MR. MOSCATO: You can answer.
THE WITNESS: Not that I know of.
MS. BROWN: No further questions at this time.
MR. JOHNSON: Nothing.
THE VIDEOGRAPHER: This is the end of this deposition. We are going off the record. The time is 11:34.
(Adjournment: 11:34 a.m.)

ACKNOWLEDGMENT

STATE OF FLORIDA)
) ss.
MIAMI-DADE COUNTY)

I, William D. Pruitt, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of January 13, 2003; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

_____
William D. Pruitt

Subscribed and sworn to before me on this _____ day of _____, _____.

_____
NOTARY PUBLIC

0117433

NOT A CERTIFIED COPY

ERRATA SHEET

PAGE LINE SHOULD READ:

CERTIFICATE

STATE OF FLORIDA)
) ss.
MIAMI-DADE COUNTY)

I, ANA REID, a Shorthand Reporter and Notary Public within and for the State of Florida, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or by marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this day of January 15, 2003.

ANA REID
Commission Number: DD232432
Commission Expires: July 15, 2007

NOT A CERTIFIED COPY

017434

MORGAN STANLEY *MEMORANDUM*

TO: Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 19, 1998

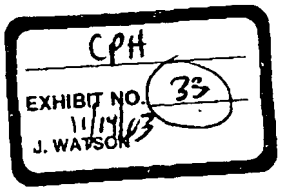
FROM: John Tyree
Johannes Groeller

SUBJECT: Bring-down due diligence

Here are some of the areas we would like to cover during our bring-down due diligence call:

- Top and bottom line outlook for first quarter, first half and the year
- Any further information on the impact of Asian crisis on the overall business?
- Any significant customer account wins? Losses?
- Any indications of a management change/departure in the near future?
- What is the status of the acquisitions? Hart Scott?
- Are the expected synergy estimates for the three acquisitions still up-to-date?
- Any issues with the bank financing? Still on target? Disclosure still accurate?
- Any material business or litigation issues that have arisen at the three acquisitions that you are aware of?
- Any additional acquisitions/dispositions pending?
- Any material developments in litigation?
- Any other regulatory developments not covered above?
- When will the 10-Q be filed? Is there likely to be any disclosure in the 10-Q that is not covered in the Offering Memo?

NOT A CERTIFIED COPY



0171436

MORGAN STANLEY
CONFIDENTIAL
0029176

** TOTAL PAGE.02 **

MORGAN STANLEY *MEMORANDUM*

TO: Russell Kersh
David Pannin
Janet Kelly
Donald Uzzi
Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 20, 1998

2:00

FROM: Ruth Porat
Brooks Harris
John Tyree
Johannes Groeller

SUBJECT: Bring-down due diligence

EXHIBIT NO. 74
11/14/08
J. WATSON
CPH

Here are some of the areas we would like to cover during our bring-down due diligence call:

- Please update us on the build-up of the first quarter revenues and earnings
  - booked revenues
  - probable orders (degree of probability?)
  - potential orders
  - domestic/international mix
- Are you still comfortable with the market update in the March 19 press release?
- Are you still comfortable with a 1998 earnings estimate of $1.80?
- Any further information on the impact of the Asian crisis on the overall business?
- Any significant customer account wins? Losses?
- Any indications of a management change/departure in the near future?
- What is the status of the acquisitions? Hart Scott approval?
- Are the expected synergy estimates for the three acquisitions still up-to-date?
- Any issues with the bank financing? Still on target? Disclosure still accurate?
- Any material business or litigation issues that have arisen at the three acquisitions that you are aware of?
- Any additional acquisitions/dispositions pending?
- Any material developments in litigation?
- Any other material developments that we should be aware of?

NOT A CERTIFIED COPY

REDACTED

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MORGAN STANLEY & CO.
Incorporated
Client Services Group (CSG)
1585 Broadway
33rd Floor
New York, NY 10036-8293

TO: Janet Kelly DATE: March 23
COMPANY: Sunbeam PHONE: (561) 243-2127
FAX: (561) 243-2263
FROM: Joe Tyrer PHONE: (212) 761-7738
PAGES: 2 (Including Cover Sheet)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL:
FAXES OVER 15 PAGES SEND TO (212) 761-0260.

COMMENTS:

As per our discussion

IMPORTANT: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If the reader of this message is not the intended recipient, or the person responsible for delivering the message to the intended recipient, you are hereby notified that any copying or distribution of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and destroy this communication. Thank you.

NOT A CERTIFIED COPY

017439

REDACTED

SB 286349

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

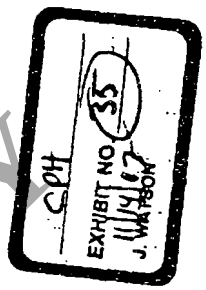
CPH0520974

16div-022654

MORGAN STANLEY *MEMORANDUM*

TO: Russell Kersh
David Fannin
Janet Kelly
Donald Uzzi
Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 23, 1998



FROM: John Tyree
Johannes Groeller
Shanj Boone

SUBJECT: Sunbeam Bring-down due diligence

Here are some of the areas we would like to cover during our bring-down due diligence call:

- Please update us on the build-up of the first quarter revenues and earnings
  - booked revenues
  - probable orders (degree of probability?)
  - potential orders
  - domestic/international mix
- Are you still comfortable with the market update in the March 19 press release?
- Are you still comfortable with a 1998 earnings estimate of $1.80?
- Any further information on the impact of the Asian crisis on the overall business?
- Any significant customer account wins? Losses?
- Any indications of a management change/departure in the near future?
- What is the status of the acquisitions? Hart Scott approval?
- Are the expected synergy estimates for the three acquisitions still up-to-date?
- Any issues with the bank financing? Still on target? Disclosure still accurate?
- Any material business or litigation issues that have arisen at the three acquisitions that you are aware of?
- Any additional acquisitions/dispositions pending?
- Any material developments in litigation?
- Any other material developments that we should be aware of?

NOT A CERTIFIED COPY

017141

2358
EXHIBIT NO.
MAYWISE

MORGAN STANLEY *INTEROFFICE MEMORANDUM*

TO: Leveraged Finance Commitment Committee

DATE: March 19, 1998

DEPARTMENT: GHYCMS

FROM: RBSmith

SUBJECT: Sunbeam

There will be a Leveraged Finance Commitment Committee meeting re: Sunbeam on Friday March 20th at 7:30am in Conference room 2L. The commitment committee memorandum is enclosed.

Dial in #'s

International: 212-803-2992
Domestic: 800-736-5695
Reservation #: 4031446

Michael Hart is the chair.

Distribution

DDSipprelle
MLRankowitz
WKourakos
RBFelix
RBSmith
SNewhouse
LBradford
JFeldmann
SBrown
RLPellecchio
SMunger
TAMeguid
WSanders
AShort
WStrong - by fax

112.5 short

5 1/25

5/

285 - 295 | 21 →
267 - 295 | 15
10
45

REDACTED

CPH DEP EX. NO. 176
FOR ID., AS OF CB 12/4/13

MORGAN STANLEY
CONFIDENTIAL
0025829

017443

NOT A CERTIFIED COPY

MORGAN STANLEY *INTEROFFICE MEMORANDUM*

TO: The Leveraged Finance Committee DATE: March 20, 1998

FROM:

CFD - Chicago		MARD		Leveraged Finance		ECMS	
WHStrong	3-726-4400	RWKim	x4822	BSmith	x2660	RMPrest	x5430
ABSavaris	3-726-4412	JBStynes	x7772	MHart	x1052	WBHarris	x5462
		AJFuchs	x6094	RGilbert	x2677	JHWoodworth	x5464
		GKYoo	x7937	TBurchill	x2924	SSPrasad	x5468
		JDWebber	x4570	ISeth	x1286		
		TChang	x8571				
		LRafil	x8179				

Equity Research		CSG		Credit		High Yield Research	
AJConway	x6394	WHWright	x7922	CMWhelan	x4241	JFoley	x1598
JDonner	x6293	JDTyree	x7738	JCKunreuther	x4981	KEkrich	x1575
		JGroeller	x7314				
		BDerito	x4303				
		SBooma	x4941				

SUBJECT: SUNBEAM CORP. – $2.0 BILLION SENIOR SECURED CREDIT FACILITIES

I. BACKGROUND

Sunbeam Corp. ("SOC", NYSE) is a leading worldwide manufacturer of a wide range of household and specialty brand name consumer products. As of March 6, 1998, the Company had an equity market value of $4.4Bn. Morgan Stanley became involved with Sunbeam through the relationship between Bill Strong and Al Dunlap. Bill Strong first met Al Dunlap in 1986 when Al Dunlap worked for Sir James Goldsmith. Bill Strong has been involved with three transactions for Al Dunlap and Sir James Goldsmith. The last transaction was a $275MM Regulation S sale of Newmont Mining common stock in 1993 successfully executed by Morgan Stanley. The Firm began soliciting a strategic relationship with Al Dunlap in April 1997 and was retained as sole strategic advisor to Sunbeam in early September 1997. Since that time, we have been exploring various strategic alternatives for the Company, with the active participation of Sunbeam's management team. Such advisory reviews have included potential acquisitions, a sellside process for the Company and the recently announced buyside transactions. As a consequence of these projects, the Firm has developed strong relationships with both the CEO and senior management at the Company. Furthermore, Andrew Conway expects to initiate equity research.

II. THE TRANSACTION

Morgan Stanley is advising the Company in its pending acquisitions of Coleman, Signature Brands and First Alert with a total $2.5Bn in aggregate value, including assumption of $1.6Bn in debt at the three entities. The Sunbeam common stock price has risen by $8.31 per share, from $41.75 to $50.06 (a 20% increase) since the transactions were announced. To finance these acquisitions, Sunbeam has asked Morgan Stanley to underwrite $2.0Bn in Senior Secured Credit

MORGAN STANLEY
CONFIDENTIAL
0025830

NOT A CERTIFIED COPY

0017444

16div-022657

Facilities and to sole-manage a $500MM Zero Coupon Convertible Subordinated Debenture (plus a $75MM greenshoe) to be issued pursuant to Rule 144A. These financings, combined with the $888MM Sunbeam equity being provided to the seller of Coleman (MAFCO and minority shareholders), complete the financing of the acquisition. Morgan Stanley has signed a "Highly Confidear" letter in reference to the financing of these acquisitions.

The proposed Senior Secured Credit Facilities will be structured as follows:

($ in millions)

Tranche	Amount	Tenure	LIBOR Spread at Close
Revolving Credit	$ 500	7 years	1.25%
Term Loan A	1,000	7 years	1.25%
Term Loan B	500	8 ½ years	1.75%
	$ 2,000		

While Morgan Stanley seeks the Committee's approval to underwrite the entire $2.0 billion amount of the Facilities, Morgan Stanley Senior Funding (MSSF) has already approached Bank of America and First Union, two of Sunbeam's relationship lenders, and has asked each of them to underwrite 30% of the Facilities. B&A and First Union are still in the process of gaining internal credit approvals. The anticipated senior-most credit rating for the pro forma Sunbeam is expected to be [BB/Ba2]. Due to the accelerated timing of the transaction, it is MSSF's intention to first close the acquisitions at the end of March, and then syndicate its position. On a pro forma basis, Bank Debt to EBITDA is 3.97x, Total Debt to EBITDA is 5.14x and EBITDA to Cash Interest is 3.54x.

The convertible transaction was launched on Thursday, March 12, to be priced on Thursday, March 19 and closed on Tuesday, March 24 in advance of the closing of the Coleman, Signature and First Alert acquisitions. MS believes Sunbeam's rating on this security would be B+/B1, pro forma and as adjusted for the acquisition strategy and financing plan as described above, although we do not believe that the security will be rated until several weeks after pricing.

We are asking the Committee to approve underwriting 2.0Bn in Senior Secured Credit Facilities.

Expected Economics

($ in Millions)

Arrangement Fee	$2.0Bn @ [0.125% - 0.25%]	=	$ 2.5	- $ 5.0
Net Underwriting Fee	$2.0Bn x 40% x [0.375% - 0.50%]	=	~~$ 3.2~~	~~$ 4.0~~
			~~$ 5.7~~	$ 9.0

MORGAN STANLEY
CONFIDENTIAL
0025831

NOT A CERTIFIED COPY

16div-022658

III. ACQUISITION STRUCTURE

On Monday, March 2, the Company announced three acquisitions in the consumer durables sector: Coleman, Signature Brands and First Alert. The total aggregate value of these acquisitions is $2.5Bn. With these acquisitions, the Company is endeavoring to take the first step in the consolidation of the consumer durables sector.

Structure

The transaction will be financed with $2.0Bn of Bank Debt, $888MM in Sunbeam common equity (issued to MAFCO (Ron Perelman) as part of Coleman purchase) and $500MM in Zero Coupon Convertible debt. The Bank Debt will consist of $1.5Bn in term debt and a $500MM revolver (only about $100MM drawn down initially). The transactions will be structured as follows:

- Coleman Acquisition: The transaction, valued at $2,114MM aggregate value, will be consummated in two steps (i) acquisition of Coleman Holdings (owner of 82.4% of Coleman Operating Co. stock) from MAFCO affiliates and (ii) minority repurchase of Operating Co. public shareholders
  - The shares issued to MAFCO (14.1MM shares, $589MM) will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months. The minority shareholders will also receive the same mix of 21% cash and 79% stock. This acquisition is expected to close on March 30.
- Signature Brands Acquisition: Cash acquisition of all outstanding stock of Signature Brands by Sunbeam resulting in aggregate value of $249MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998
- First Alert Acquisition: Cash acquisition of all outstanding stock of First Alert by Sunbeam resulting in aggregate value of $175MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025832

011446

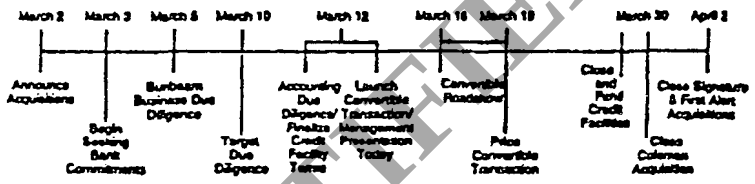
16div-022659

SOURCES ($MM)	Amount	% of Total
Cash	56.3	0.2%
Bank Debt	1,611.4	53.6
Zero Coupon Convertible	~~500.0~~ 750	16.6
Equity	887.9	29.5
TOTAL	$3,005.6	100.0%

USES ($MM)	Amount	% of Total
Purchase Equity		
Purchase Coleman Equity	$1,108.4	36.9%
Purchase First Alert Equity	137.9	4.6
Purchase Signature Brands Equity	94.2	3.1
Total Equity Purchased	1,340.4	44.6
Option (Proceeds) Costs	24.7	0.8
Assumption of Debt		
Redeem Coleman Debt	1,061.6	35.3
Redeem First Alert Debt	45.5	1.5
Redeem Signature Brands Debt	173.8	5.8
Total Assumed Debt	1,280.9	42.6
Refinance Sunbeam Debt	317.0	10.5
Transaction Fees	42.5	1.4
TOTAL	$3,005.6	100.0%

BB 1BA2

Transaction Timeline



IV. DUE DILIGENCE

Morgan Stanley's M&A group has been working closely with Sunbeam for almost one year, and was appointed Sunbeam's sole strategic advisor in September 1997. In that regard, the M&A group has gained an extremely sound knowledge of the Company.

The Financing and Execution teams conducted their first due diligence session at Sunbeam's headquarters in Delray Beach, Florida on March 4, 1998. Representatives from MSSF, Client Services Group, Credit and Corporate Finance, met with Sunbeam's Director of Strategic Planning, Treasurer and Legal Counsel (or participated via conference call.) Also in attendance were representatives from Bank of America, First Union, and Davis Polk (Lender's Counsel).

Subsequently, the above mentioned groups have participated in due diligence conference calls with management teams from Coleman, Signature Brands and First Alert.

In addition, a due diligence team visited the Coleman facilities in Wichita, Kansas on March 12. Another tentative due diligence trip is planned for Signature Brands and First Alert site visits.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025833

01744

16div-022660

Additionally, comprehensive accounting due diligence was conducted with Sunbeam's and all the targets' auditors, on March 12.

V. COMPANY OVERVIEW

General

Sunbeam, with 1997 sales of $1,168MM, is one of the largest manufacturers and marketers of household and specialty consumer products. The Company's products are sold through mass retailers, including WalMart, KMart and Home Depot, and other distributors in the U.S. and internationally. The Company also sells its products to commercial end-users such as hotels.

The Company has five core product categories: Kitchen Devices, Health at Home Devices, Personal Care and Comfort Devices, Outdoor Cooking, and Professional Care Devices. An international group is responsible for selling to countries other than the U.S.

Sunbeam - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Kitchen Devices	$ 467.3	*40.0%*	Domestic	$ 950.9	*81.4%*
Health at Home	105.1	*9.0*	International	217.3	*18.6*
Personal Care & Comfort	186.9	*16.0*			
Outdoor Cooking	327.1	*28.0*			
Professional Care	70.1	*6.0*			
Outlet Sales	11.7	*1.0*			
Total	$1,168.2	*100.0%*	Total	$1,168.2	*100.0%*

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025834

CONFIDENTIAL MS 0025834

16div-022661

Sunbeam - Selected Financials
($ in MM)

	Actual		
	1995	1996	1997
Sales	$1,016.9	$984.2	$1,168.2
% Growth		*-3.2%*	*18.7%*
Cost of Goods Sold	809.1	808.3	837.7
% of Sales	*79.6%*	*82.1%*	*71.7%*
Gross Profit	207.8	176.0	330.5
% of Sales	*20.4%*	*17.9%*	*28.3%*
SG&A Expense	137.5	173.6	131.1
% of Sales	*13.5%*	*17.6%*	*11.2%*
Advertising & Promotion	0.0	0.0	0.0
% of Sales	*0.0%*	*0.0%*	*0.0%*
Research & Development	0.0	0.0	0.0
% of Sales	*0.0%*	*0.0%*	*0.0%*
Operating Income	70.2	2.3	199.4
% of Sales	*6.9%*	*0.2%*	*17.1%*
% Growth		*-96.7%*	*8445.1%*
Goodwill Amortization	0.0	0.0	0.0
Other Expense/(Income)	0.2	1.6	(1.2)
% Margin	*0.0%*	*0.2%*	*-0.1%*
EBIT	70.1	0.7	200.7
% Margin	*6.9%*	*0.1%*	*17.2%*
Depreciation & Amortization	47.4	47.4	38.6
EBITDA	117.5	48.1	239.3

Business Divisions

Kitchen Devices

- Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances
- Brands: *Mixmaster, Oster, Sunbeam, Osterizer*
- Market Position: #1, 2 or 3 depending on product category
- Major competitors include Black & Decker, Hamilton Beach/Proctor Silex (Nacco), and *KitchenAid* (Whirlpool)

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025835

01719

16div-022662

Health at Home Devices

- Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners
- Brand: *Health at Home*
- Market Position: #1, 2 or 3 in most categories
- Major competitors include Duracraft, Braun (Gillette) and Health O'Meter

Personal Care and Comfort Devices

- Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters
- Brands: *Cuddle-Up, Oster*
- Market Position: #1 in electric blankets, #1 in clippers
- Major competitors include Wahl, Andis and Teledyne

Outdoor Cooking Devices

- Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories
- Brands: *Sunbeam, Grillmaster*
- Market Position: #1 in gas grills
- Major competitors include Charbroil, Thermos and Weber

Professional Care Devices

- Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
- Brand: *Oster*
- Market Position: #1 in clippers
- Major competitors include Wahl and Andis

Restructuring

In the fall of 1996, after several years of disappointing results, Sunbeam announced a major restructuring and growth plan under newly appointed chairman Albert Dunlap. The restructuring portion of the plan has been substantially completed with only the final "refinement" stage remaining. It included the redefinition of Sunbeam's core products, divestiture of non-core businesses, hiring a new management team, closing of warehouses and consolidation of headquarters, elimination of production facilities, and a large reduction in unprofitable products. The actions led to a reduction of approximately half the work force (about 6,000 jobs). Cost reductions are expected to result in annual savings of $225MM, most of which were already realized in 1997.

The restructuring resulted in double-digit sequential sales growth throughout 1997 with annual sales growth of 18.7% and an operating margin improvement from 0.2% in 1996 to 17.1% in 1997, and with operating margins reaching 20% by the fourth quarter of 1997. Sunbeam's share price increased from the $15 range before the appointment of Al Dunlap to $41.75 before the announcement of the recent acquisitions.

MORGAN STANLEY
CONFIDENTIAL
0025836

NOT A CERTIFIED COPY

017450

16div-022663

Pre-Acquisition Strategy/Goals

Prior to the acquisition announcements, Sunbeam management outlined the following goals for growth in 1998:

- 25% top line and 40% EPS growth based on new innovative products, successful roll out of *air and water filtration products, higher advertising levels and increased penetration of* international markets
- Expansion of global distribution by adding 30 new global products as well as international distribution/licensing agreements
- *Project Full Time: Strategic initiative to improve customer service levels and therefore* enhance growth (initiated 2Q 1997)
- Merger or acquisitions: Management will continue to examine strategic alternatives to strengthen the business and create shareholder value

Following the acquisition, the Company is going to pursue a strategy focused on the consolidation of the consumer durables sector. With the significant number of underperforming companies in this sector (Black & Decker, Rubbermaid, etc.), the Company believes it will have a *significant opportunity to make additional future acquisitions.*

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025837

01745

16div-022664

VI. SUMMARY OF TERMS AND CONDITIONS

Borrower:	Sunbeam Corporation and its successors.
Syndication Agent & Arranger:	Morgan Stanley Senior Funding, Inc. ("MSSF")
Purpose:	To provide part of the financing required to consummate the Acquisition, to refinance certain existing indebtedness, to pay related fees and expenses, and to finance ongoing working capital, permitted acquisitions and other general requirements of the Borrower.
Types and Amounts of Senior Facilities:	Revolving Credit Facility: $500,000,000 Term Loan A Facility: $1,000,000,000 Term Loan B Facility: $500,000,000
Final Maturity:	Seven years from the Initial Closing Date.
Amortization:	Revolving Credit Facility: The revolving credit loans shall be repaid in full upon, and all letters of credit shall expire thirty days prior to, Final Maturity. Term Loan A Facilities: Amortized in quarterly installments to be determined. Term Loan B Facilities: Nominal amortization in years 1-7 with the balance amortizing in year 8½.
Availability:	Revolving Credit facility drawings may be made at anytime during life of Facility. Term loans A and B are allowed multiple drawings on the relevant Closing Dates.
Interest Margins:	Term Loan A: L+125 Term Loan B: L+175
Default Interest:	2.00% per annum in excess of the rate (including the applicable interest margin).
Mandatory Prepayments:	Shall include the net proceeds of all asset sales, the issuance of additional debt and 75% of Excess Cash Flow.
Letter of Credit Fees:	The applicable margin for LIBOR loans, less the fronting fee payment to the issuing bank.
Security:	The Senior Facilities will be secured by perfected first priority (i) pledges of the stock of the Borrower's direct and indirect subsidiaries, and security interests in all obligations owned to the Borrower from any of its direct of indirect subsidiaries, whether outstanding on the Initial Closing Date or made thereafter, and (ii) security interests in and liens upon substantially all other assets now or hereafter owned by the Borrower.
Guarantees:	The Senior Facilities will be guaranteed, on a joint and several basis, by all of the Borrower's direct and indirect subsidiaries.
Conditions Precedent:	To include receipt of cash proceeds of (i) $500MM from issuance of Convertible Debentures and (ii) at least $811.5MM in common equity securities as partial consideration for Coleman
Covenants:	Customary and appropriate affirmative and negative covenants, including but not limited to financial covenants related to maximum leverage, minimum interest coverage and minimum fixed charge coverage. Other covenants will include limitations on restricted payments, liens, merger and acquisitions, capex asset sales, dividends, indebtedness, and transaction with affiliates.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025838

CONFIDENTIAL MS 0007210

011452

16div-022665

VII. THE TARGETS

Coleman ("CLN")

- Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. Its products have been sold domestically and internationally under the *Coleman* brand name since 1920s. Coleman attributes its market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise

- *Outdoor Recreation:* This business segment includes lanterns and stoves, fuel, coolers and jugs, recreational soft goods, outdoor furniture, electric lights, spas and camping accessories. Products sell under the *Coleman* and *Camping Gaz* brand names in a highly competitive market

- *Hardware:* After the recent divestiture of the safety and security products business on 2/18/98, this business segment includes portable generators, air compressors and pressure washers. Products sell under the *Coleman* brand name in a highly competitive market

Coleman - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Outdoor Recreation	$ 815.5	*76.5%*	Domestic	$ 867.7	*81.4%*
Hardware	250.5	*23.5*	Europe	159.9	*15.0*
			ROW	191.9	*18.0*
			Eliminations	(153.5)	*-14.4*
Total	$1,066.0	*100.0%*	Total	$1,066.0	*100.0%*

Coleman - Selected Financial Information
($ in MM)

	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	$933.6	$1,220.2	$1,066.0
% Change	*62.2%*	*30.7%*	*-12.6%*
EBITDA	127.9	99.0	99.0
% Margin	*13.7%*	*8.1%*	*9.3%*
EBIT	101.4	62.6	62.8
% Margin	*10.9%*	*5.1%*	*5.9%*
Net Income	50.0	11.3	14.3
% Margin	*5.4%*	*0.9%*	*1.3%*
Capital Expenditures	29.1	41.3	27.0

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025839

01753

16div-022666

Signature Brands ("SIGB")

- Signature Brands designs, manufactures, markets and distributes a comprehensive line of consumer and professional products. It purchased certain operating assets of Pelouze Scale Co. in 1992 and acquired all of the outstanding shares of common stock of Mr. Coffee, Inc. in 1994
- *Consumer Products:* This division includes coffeemakers, hot and iced teamakers, coffee filters, replacement decanters and accessories and consumer scales under the *Mr. Coffee* and *Health O'Meter* trademarks
- *Professional Products:* This business segment includes professional scales (medical, office, food) and commercial coffee brewers. Products are sold under the *Pelouze* and *Health O'Meter* trademarks

Signature Brands - 1997 Sales Breakdown ($ In MM)					
Business Segment			Geographic		
Consumer Products	$ 236.0	*85.6%*	Worldwide	$ 275.7	*100.0%*
Professional Products	39.7	*14.4*			
Total	$ 275.7	*100.0%*	Total	$ 275.7	*100.0%*

Signature Brands - Selected Financial Information ($ in MM)			
	Fiscal Years Ended September 29,		
	1995	1996	1997
Revenues	$267.9	$283.0	$275.7
% Growth	*NA*	*5.6%*	*-2.6%*
EBITDA	32.5	37.4	31.0
% Margin	*12.1%*	*13.2%*	*11.2%*
EBIT	22.6	26.6	19.7
% Margin	*8.5%*	*9.4%*	*7.1%*
Net Income	1.0	2.7	0.1
% Margin	*0.4%*	*1.0%*	*0.1%*
Capital Expenditures	4.6	4.4	5.7

NOT ACCERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025840

011454

16div-022667

First Alert ("ALRT")

- First Alert manufactures and markets a broad range of residential safety products. It distributes its products through leading retailers mainly under the *Sentinel* premium brand name and the complementary *Family Gard* value brand name. Products are also distributed through electrical wholesalers under the *BRK* brand name for sale to professional contractors

- *Smoke Detectors:* This segment includes smoke detectors for residential application. Products are sold under the *First Alert, Family Gard* and *BRK* brand names and hold the #1 market share (75%) with American Sensor, Fymetics/Kidde and Coleman being the main competitors

- *Carbon Monoxide Detectors:* This segment includes carbon monoxide detectors with biometrics sensor sold under the *First Alert* and *Family Gard* brand names. The company holds #1 market position (49%) with Nighthawk (Kidde), American Sensor and Jameson as main competitors

- *Fire Extinguishers:* This segment includes fire extinguishers for use in kitchen, garage, workshop, auto and boat. Products are sold under the *Sure Grip* brand name and hold #2 market share (31%) behind Kidde (63%)

- Other manufacturing activities include miscellaneous product lines, including #4 market position in flashlights

First Alert - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Smoke Detectors	$ 75.7	*40.5%*	US	$ 148.8	*79.6%*
CO Detectors	36.2	*19.4*	International	38.1	*20.4*
Fire Extinguishers	15.1	*8.1*			
Other - US	21.8	*11.7*			
International	38.1	*20.4*			
Total	$ 186.9	*100.0%*	Total	$ 186.9	*100.0%*

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025841

017455

16div-022668

First Alert - Selected Financial Information ($ in MM)			
	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	$246.3	$205.6	$186.9
% Change	*-0.9%*	*-16.5%*	*-9.1%*
EBITDA	27.9	(18.3)	(2.7)
% Margin	*11.3%*	*-8.9%*	*-1.4%*
EBIT	20.5	(24.6)	(9.5)
% Margin	*8.3%*	*-12.0%*	*5.1%*
Net Income	11.4	(17.3)	(7.8)
% Margin	*4.6%*	*-8.4%*	*-4.2%*
Capital Expenditures	10.6	5.3	NA

VIII. SUMMARY OF PROJECTIONS AND ASSUMPTIONS

- The financial projections that appear below are based on a Morgan Stanley Financing Base Case. The MS Base Case was developed by significantly reducing revenue growth rates and synergy assumptions that were provided in an original Management Case.
- The Sales CAGR 1996-01 was reduced from almost 14% in the Management Case, to 9.4% on the MS Base Case.
- Synergies were also reduced on the MS Base Case, to $60.0MM in Year 1 (a 40% reduction from the Management Case) and to $150.0MM in the years thereafter (approximately 23% reduction from the Management Case).
- An MS Downside Case has also been presented in the Appendix. This case assumes Sales CAGR 1996-01 reduced to 4.4%, and assumes no synergies.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025842

017456

16div-022669

Pro Forma Capitalization (PF 1997)

($ in millions)

	Amount	%
Existing Long-Term Debt	$86.9	2.5%
Revolver	111.4	3.2
Term Loans	1,500.0	43.3
Zero Coupon Convertible Debt	500.0	14.4
Total Debt	2,198.4	63.5
Minority Interest	1.2	0.0
Common Equity	1,262.8	36.5
Total Equity	1,264.0	36.5
Total Capitalization	$3,462.4	100.0%

	Actual Pro Forma		Projected Pro Forma					
Income Statement Data	1996	1997	1998	1999	2000	2001	2002	2003
Sales	$2,682.7	$2,700.1	$3,041.3	$3,403.8	$3,739.9	$4,051.6	$4,390.7	$4,644.1
% Growth		*0.6%*	*12.6%*	*11.9%*	*9.9%*	*8.3%*	*8.4%*	*5.8%*
Cost of Goods Sold(1)	2,036.0	1,930.2	2,130.0	2,347.5	2,571.7	2,776.1	3,007.2	3,181.6
% of Sales	*75.9%*	*71.5%*	*70.0%*	*69.0%*	*68.8%*	*68.5%*	*68.5%*	*68.5%*
Gross Profit	646.8	769.9	911.3	1,056.3	1,168.2	1,275.5	1,383.5	1,462.5
% of Sales	*24.1%*	*28.5%*	*30.0%*	*31.0%*	*31.2%*	*31.5%*	*31.5%*	*31.5%*
Operating Income	80.0	293.1	377.1	473.8	536.6	597.4	655.2	693.7
% of Sales	*3.0%*	*10.9%*	*12.4%*	*13.9%*	*14.3%*	*14.7%*	*14.9%*	*14.9%*
% of Growth		*266.5%*	*28.7%*	*25.6%*	*13.3%*	*11.3%*	*9.7%*	*5.9%*
Pre-tax Synergies	(60.0)	(60.0)	(60.0)	(150.0)	(150.0)	(150.0)	(150.0)	(150.0)
% of Sales	*2.2%*	*2.2%*	*2.0%*	*4.4%*	*4.0%*	*3.7%*	*3.4%*	*3.2%*
EBIT	75.4	290.1	375.6	562.3	625.1	685.9	744.6	783.1
% of Sales	*2.8%*	*10.7%*	*12.4%*	*16.5%*	*16.7%*	*16.9%*	*17.0%*	*16.9%*
Depreciation & Amortization	139.7	138.0	146.6	174.1	194.6	220.3	250.4	265.8
EBITDA	215.1	428.1	522.2	736.5	819.8	906.3	995.0	1,048.9
Net Interest	144.2	144.2	143.4	134.7	116.5	95.0	68.7	8.1
Net Income	(565.0)	574.5	$130.4	$257.4	$310.1	$363.6	$418.8	$483.2
% of Sales	*-2.4%*	*2.8%*	*4.3%*	*7.6%*	*8.3%*	*9.0%*	*9.5%*	*10.4%*

	Actual	Pro Forma	Projections					
Balance Sheet Data	1996	1997	1998	1999	2000	2001	2002	2003
ASSETS (selected accounts)								
Accounts Receivable	293.6	605.2	674.9	736.7	809.5	876.9	950.3	1,005.1
Inventories	256.2	633.0	645.5	690.5	756.4	816.5	884.5	935.8
Net Property, Plant and Equipment	240.9	325.6	358.6	384.5	409.2	430.2	444.8	454.3
Trademarks & Tradenames	194.4	194.4	186.5	178.7	170.8	163.0	155.1	147.3
Total Assets	1,120.3	4,225.9	4,296.1	4,374.7	4,482.9	4,575.2	4,678.9	4,884.3
LIABILITIES + EQUITY (selected accounts)								
Accounts Payable	105.6	233.3	257.7	284.0	311.1	335.8	363.8	384.9
Existing Long Term Debt	194.6	86.9	85.0	0.0	0.0	0.0	0.0	0.0
New Bank Debt	NA	1,611.4	1,611.4	1,407.8	1,114.4	732.0	333.7	0.0
Zero Coupon Con.	0.0	500.0	525.3	551.9	579.8	609.2	0.0	0.0
Total Debt	194.6	2,198.4	2,201.7	1,959.8	1,694.3	1,341.2	333.7	0.0
Common Equity	531.9	1,262.8	1,253.5	1,472.1	1,777.4	2,136.2	3,190.2	3,668.6

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025843

01715?

16div-022670

	PF 1997[2]	1998	1999	2000	2001	2002	2003
Credit Statistics							
Synergies							
Synergies Realized ($'s)	-	$60.0	$150.0	$150.0	$150.0	$150.0	$150.0
% of Pro Forma Revenue	-	2.0%	4.6%	4.0%	3.7%	3.4%	3.2%
Credit Statistics[2]							
Cash Interest Expense							
EBITDA/Interest	3.54x	4.34x	6.64x	9.03	13.34x	24.82x	83.83x
(EBITDA-CapEx)/Interest	2.75	3.43	5.50	7.34	10.84	19.94	67.33
Total Interest Expense							
EBITDA/Interest	2.93x	3.59x	5.38x	6.90x	9.33x	14.03x	83.83x
(EBITDA-CapEx)/Interest	2.28	2.83	4.43	5.65	7.56	11.27	67.33
Total Fixed Charges							
EBITDA/(Interest+Pref. Divs. [Pre-Tax])	2.93x	3.59x	5.38x	6.90x	9.33x	14.03x	83.83x
(EBITDA-CapEx)/(Interest+Pref. Divs. [Pre-Tax])	2.28	2.83	4.43	5.65	7.56	11.27	67.33
Leverage							
Senior Debt/EBITDA	3.97x	3.21x	1.91x	1.36x	0.83x	0.34x	0.00x
Total Debt (Excl. Pref.)/EBITDA	5.14	4.22	2.66	2.07	1.30	0.34	0.00
Senior Debt/Book Cap.	49.1%	48.8%	41.0%	32.1%	21.5%	9.5%	0.0%
Total Debt (Include. All Pref.)/Book Cap.	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%
Total Debt (Excl. Pref.)/Book Cap.	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%
Funds Flow from Operations / Total Debt (Excl. Pref.)	13.6%	7.3%	21.9%	32.2%	46.2%	213.2%	N.M.
Cumulative Free Cash Flow	-	$223.0	$283.0	$376.4	$938.8	$1,357.2	$1,840.6
% of PF Bank Debt Outstanding:	100.0%	100.0%	87.4%	69.2%	44.7%	20.7%	0.0
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.
Rev/Net PP&E	8.29x	8.48x	8.83x	9.14x	9.42x	9.87x	10.33

Notes: (1) Pro Forma 1997 includes $60MM in pre-tax synergies.
(2) Pro Forma 1997 includes pro forma 1997 operating statistics, pro forma interest expense assuming no debt paydown, and pro forma EOY/BOY 1998 capitalization.
(3) Pro Forma 1997 includes pro forma 1997 operating statistics, pro forma interest expense assuming no debt paydown, and pro forma EOY/BOY 1998 capitalization.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025844

CONFIDENTIAL MS 0025844

017458

16div-022671

Coleman Synergies Rationale ~$118MM

- Outsource or move the crew machine plant to main Wichita plant
- Consider closing or downsizing the Lyon plant
- Sell the gas cylinder operation
- Move all of coolers to Texas plant
- Close one sleeping bag plant
- Sell Powermate
- Rationalize product line. Review the value of furniture, boats, shoes
- Rationalize SKUs, especially the accessories
- Create a central customer service center for the combined company
- Create a shared service center for the combined company
- Leverage purchasing power of the whole company — presently little has been done to purchase centrally
- Leverage trucking for the combined company
- Reduce inventories by improving manufacturing supply chain
- COGS savings opportunity is $54 million (Materials @ $29 million), Labor @8 million, and overhead @ $17 million)
- SGA savings opportunity is $68 million (Corporate & International @ $11 million, Sales and marketing @$36 million, and other @$17 million)

First Alert Synergies Rationale ~$19MM

- Eliminate domestic and international sales/marketing groups and sales representatives organization and use Sunbeam current sales force for a savings of 60 FTEs and $2.8M in commissions
- Shared services and management in administration functions for a savings of 15 FTEs
- Combine Test & QA engineering organization within new company for a savings of 30 FTEs (50% HQ, 50% Juarez)
- Rationale non-core product lines (safes, night lights, etc.)
- Eliminate Aurora distribution network be integrating into Sunbeam network
- Move Fire Extinguisher manufacturing out of Aurora – Harrisburg or Mexico
- Consolidate injection molding operations of First Alert and Sunbeam or outsource
- Leverage additional purchasing volume between two companies
- Reduce material shortages on the shortages on the shop four
- Improve inventory turns – currently 2
- Balance manufacturing lines – capacity improvements
- Quality is questionable – returns 1.8% of sales $3.3 million
- SF&A potential opportunity is $11.1 million ($3.1 million in people and $8 million in controllables)
- CGS potential opportunity is $8.3 million ($3.6 million in people and $8.3 million in direct materials purchase price)

Signature Brands Synergies Rationale ~$25-30MM

- Close the Cleveland facility
- Move the coffee maker assembly to Harrisburg
- Source the injection molded parts from Harrisburg
- Outsource the coffee filter manufacturing
- Rationalize SKUs – especially the scales
- Create a central customer service center and a shared service center for the combined company
- Leverage purchasing power of the combined company – little has been done to purchase centrally
- Leverage trucking for the entire company for $1 million in annual savings
- Reduce inventories by improving manufacturing supply chain
- Estimated staff reduction of about 200 FTEs for $9 million savings
- Estimated controllable expense reduction opportunity of $9 million
- Halt implementation of JBA software project ($.05 - $1.0 remaining to be spent)

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025845

CONFIDENTIAL MS 0025845

01745'9

16div-022672

IX. EQUITY VALUATION

- As of February 27, 1998, Sunbeam shares were trading at $41.75 per share (a market capitalization of over $3.6 billion) and were valued at the low end of its comparable range.
  - 20.9x 1998 median I/B/E/S estimate of $2.00 (versus 22.4x for comparables)
  - 15.2x 1999 median I/B/E/S estimate of $2.75 (versus 19.2x for comparables)
- After the transaction announcement, Sunbeam's share price has experienced an increase of $8.31, rising from $41.75 to $50.06, a 20% increase.
- The Company's current trading levels are warranted given the level of expected synergies ($150MM, pre-tax) and investors' confidence in Sunbeam's management team and proven ability to turn around companies and leverage undervalued brand names.
- Investors also view there to be other, significant acquisition opportunities for Sunbeam to capitalize on in its new role as an industry consolidator
- Investors focus on the 1999 P/E multiple (the first full year of ownership and of full cost savings) and currently price Sunbeam at a discount reflecting execution risk for the integration

		Earnings		Price/Earnings	
Company	3/11 Close	1998E	1999E	1998E	1999E
Black & Decker	$49.250	$2.61	$3.09	18.9x	15.9x
Fortune Brands	40.562	1.70	1.94	23.9	20.9
Newell	47.875	2.10	2.37	22.8	20.2
Rubbermaid	28.437	1.18	1.44	24.1	19.7
			Mean	22.4x	19.2x
Sunbeam	$41.750 (1)	$2.00	$2.75	20.9x	15.2x
Pro Forma Sunbeam (2)	49.375	1.80	2.85	27.4	18.1

Notes: (1) Closing share price before the announcement of the recent acquisitions.
(2) Adjusted for $66MM pre-tax synergies in 1998, and $150MM annual pre-tax synergies in 1999.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025846

CONFIDENTIAL MS 00025846

011460

16div-022673

X. INVESTMENT CONSIDERATIONS

- Sunbeam

  - SUCCESSFUL RESTRUCTURING; CREATION OF A GROWTH COMPANY
    - During 1997, Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth, with operating margins reaching 20% in 4Q 97, up from 0.2% before the turnaround
    - The Company exited all of its non-core businesses, closed 18 factories, 43 warehouses and 5 headquarters, reduced employment by 50% and significantly reduced its number of SKUs offered (by about 80%)
    - The Company added 25 international distribution/licensing agreements which added $35MM in revenue, introduced 89 new products (35 U.S., 54 international) which added $150MM in revenue
    - Significant expansion of distribution with key retailers such as WalMart, KMart, Target, Costco and Home Depot
    - The Company improved capacity utilization to 75% in 1997 (50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing process
    - New product development time was decreased to 6 months from over 2 years (e.g., AllergySmart)
    - Sunbeam gained market share in every product category in 1997
  - EXPERIENCED AND COMMITTED MANAGEMENT TEAM
    - Al Dunlap has brought in an experienced management team with a history in similar turnaround situations
    - Management incentive systems, including the newly signed management employment agreements, are designed to ensure commitment to the turnaround process
    - Market has strongly endorsed the turnaround and acquisitions through strong stock price appreciation, which is expected to continue as the recent acquisitions are integrated
  - CONSERVATIVELY ESTIMATED SYNERGIES OF $150MM FROM COMBINATION
    - Substantial Functional Redundancies/Cost Savings
      - Sales and Marketing
      - Finance and Administration Management
      - Information Systems
      - Consumer Research
      - Product Development

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025847

011961

16div-022674

- Operational Functional Redundancies
  - Distribution & Warehousing
  - Operations Management
  - Procurement Savings
  - Quality/Inspection
- The combined company sales will also benefit from dual branding of product lines as well as complementary strengths in specific European, Asian and emerging markets

- Unmatched Market Share Strength

  - In addition to the creation of a strong, international growth platform, these three acquisitions greatly enhance Sunbeam's already robust market positions.

Products	Pro Forma Market Position
Outdoor Cooking	#1
Coffee Makers	#1
Blenders	#1
Bread Makers	#1
Mixers	#1
Hair Clippers	#1
Electric Blankets	#1
Heating Pads	#1
Smoke Alarms	#1
CO Detectors	#1
Rechargeable Flashlights	#1
Scales	#1

- The Coleman Acquisition

  - STRONG, ESTABLISHED BRAND EQUITY VALUE
    - Near 40% market share in industry, nearest competitor has only 10%
    - Untapped strength in the *Coleman* brand name
    - Increased leverage over distribution channels
  - OPPORTUNITY TO STREAMLINE OPERATIONS AND UTILIZE EXPERTISE IN COST CUTTING
    - Current businesses are operating efficiently, however, operational redundancies will result in the potential to realize substantial synergies and improve margins
    - Capacity available at current facilities to absorb significant production responsibilities of Coleman

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025848

CONFIDENTIAL MS 0007223

011462

16div-022675

- Coleman has grown rapidly through acquisitions without associated operations rationalization, leaving significant opportunity for business re-engineering

– CONSOLIDATION OF OUTDOOR RECREATIONAL PRESENCE

- Combination results in less seasonal product mix in outdoor segment
- Acquired brands expected to maintain sales levels during economic downturns
- Increased critical mass for major innovation and advertising initiatives

- **The Signature Brands Acquisition**

– ACCELERATED GROWTH IN REVENUES AND EARNINGS

- This product line acquisition will be easily assimilated into the Sunbeam system, *allowing for immediate recognition of significant synergies*
- Strong brand names will complement existing brands and remove major competitors in certain areas (*Health o Meter*)
- Strong parent will be able to strengthen relationship with major retailers and help to gain additional shelf space

– COMMITMENT TO NEW STRATEGIC PLAN

- The transaction proves the willingness by Sunbeam to make fold-in acquisitions
- Will lead to additional attractive acquisition opportunities

- **The First Alert Acquisition**

– ENHANCES EXISTING PORTFOLIO OF HOME DEVICES PRODUCTS

- Strengthens the home/kitchen device segment by capitalizing on complementary distribution channels
- Strong brand recognition and #1 market share in smoke alarms and carbon monoxide alarms
- Long-term relationship with major retailers

– SIGNIFICANT GROWTH POTENTIAL OF HOME SAFETY MARKET

- Strong momentum in alarms replacement with $850MM untapped retail market for replacing existing 10-year old alarms

– OPPORTUNITY FOR BUSINESS RE-ENGINEERING AND COST CUTTING

- Unsatisfactory performance mainly due to manufacturing inefficiency, poor customer service and shipping delays
- Sunbeam's experience in streamlining operations opens up significant re-engineering and cost cutting opportunities
- Redundancies in business model create the opportunity to realize significant potential synergies
- Better purchasing power to improve margins
- Strong parent to build relationships with major retailers and gain additional shelf space

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025849

01719363

16div-022676

- Pro Forma Sunbeam

  - EXTREMELY STRONG CREDIT PROFILE OF COMBINED COMPANY

    - Pro forma for the acquisitions, Sunbeam will generate 1998 revenues of over $3 billion and EBITDA of $522 million.
    - Total Debt to EBITDA PF1997 is 5.14x, while Senior Leverage is only 3.97x. Senior Leverage drops to 1.36x within three years of the transaction.
    - Cash Interest Coverage is 3.5x for PF1997, and is 2.75x (subtracting CapEx from EBITDA).
    - Senior Debt to Book Capitalization never exceeds 49% and the Company will generate approximately $2.4 billion in cumulative free cash flow over the life of the bank debt. The loans all amortize comfortably over six years.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025850

0117464

16div-022677

XI. POTENTIAL INVESTOR CONCERNS

- **Significant Dependence on Management Team, Particularly Al Dunlap**

  Sunbeam's recent turnaround performance appears to be due more to the capability of its management team in cost-cutting than to the innate strength of the Company's core business or growing demand for Sunbeam's products. What if the CEO and his team do not stay to fully implement Phase III of the Company's strategic plan?

  Response: Al Dunlap and his senior management team recently signed new, three year employment contracts. These agreements are primarily stock and option based, and incorporate a vesting feature which encourages management tenure. In addition, Al Dunlap has publicly stated (on several occasions) that he is committed to Sunbeam and "this new employment agreement will put to rest any rumors that I [he] would leave the Company." Finally, the Company has already begun to search for other managers from within the industry who would add further depth and operational expertise to this team.

- **Fourth Quarter Earnings**

  The Company recently reported fourth quarter earnings that were $0.03 below consensus expectations, resulting in a 9% share price decline on the day of the announcement. Is this indicative of a slowdown in the double digit growth that Al Dunlap has declared is his ongoing goal?

  Response: Business has shown significant improvement from the recent restructuring very quickly. Fourth quarter sales jumped 31%, excluding divestitures, from last year's numbers. Sales growth had, in fact, accelerated all year. Fourth quarter results were broad-based with all businesses, except for blankets, showing healthy gains. Operating margins hit an unprecedented 20%. EPS were $0.47 vs. $(0.03) in 4Q97. In short, the Sunbeam management team sets extremely high goals and, even when they fall slightly short, it is still a significant achievement.

- **Integration of Recent Acquisitions and Future Acquisitions**

  The Company is facing a significant challenge in integrating three separate companies concurrently. In addition, given the Company's new strategy of adopting the role of industry consolidator, it is likely that the Company will make additional acquisitions in the future. How can the Company be sure this integration effort will be successful?

  Response: Sunbeam management plans to integrate these acquisitions with immediate focus on cost synergies and brand development. Their acquisition strategy essentially involves acquiring undervalued, unmarketed brand names, and leveraging this established brand equity while combining administration, marketing, finance and other corporate functions more efficiently. This is a strategy that Al Dunlap and his team have successfully utilized at a number of companies before Sunbeam, including Scott Paper. In addition, revenue synergies derived from increasing geographical breadth, greater penetration of product offerings to major customers (i.e. WalMart) and the potential for dual branding will also generate substantial benefits through the combination.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025851

011465

16div-022678

- Ability to Attain Synergies

The synergies anticipated from these combinations are sizable (over $150MM in the first full year). How attainable are these synergies? What will be the cost of achieving these synergies?

Response: Morgan Stanley and Coopers & Lybrand (special acquisition consultants to Sunbeam) have had extensive discussions with the management of Coleman, Signature Brands and First Alert, as well as the Sunbeam management regarding the potential synergies. Following these discussions and the subsequent due diligence performed prior to the announcement of these transactions, the Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately $150MM by the end of 1999 due to 10 years experience. They, in fact, have stated that it is not unlikely that they could achieve even greater synergies in a shorter period of time. In addition, while Andrew Conway has modeled $150MM in synergies in 1998, he feels that there could be upside to this figure.

- Dependence on One Major Customer, WalMart

The Company presently attributes over 20% of its total revenues to WalMart. Following the acquisition, this concentration will increase to approximately 25%. Isn't this dependence on one major customer dangerous for the Company?

Response: WalMart is widely recognized as the industry leader in mass retailing. In addition, WalMart offers all of the types of products manufactured by all five of Sunbeam's primary product lines, and WalMart (like Sunbeam) is aggressively expanding overseas. These characteristics make WalMart an excellent partner for the Company. However, Sunbeam is also aggressively expanding its distribution channels with other key retailers such as KMart, Target, Costco and Home Depot, and the Company now advertises on QVC. Sunbeam also has 22 factory outlet stores which are designed to sell surplus or discontinued merchandise. Moreover, these acquisitions also seem to make Sunbeam an increasingly important supplier to all the major retailers.

APPENDICES

1. Projected Financials
2. Comparable Company Analysis
3. Summary Business Overview
4. Sunbeam Annotated Price Graph
5. Pro Forma Fold-Out

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025852

0117466

16div-022679

BASE FINANCING CASE.

PROJECT LASER

Pro Forma Sources & Uses

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warranty; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case;
Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;

Step #1 - Purchase of Camper For $34.031 per Share - Alternative Structure #1

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	$6.3	0.3%	1.0x	Pur. Equity	$1,148.4	61.1%
Bank Loans	1,141.3	61.1%	1.8x	Option Cash	48.8	2.6%
Sen. Bank	0.0	0.0%	0.0x	Option Debt	454.9	24.2%
High Yield	0.0	0.0%	0.0x	Exist Debt to Pmts.	206.7	11.0%
Preferred Stock	0.0	0.0%	0.0%	Trans. Fees	31.0	1.6%
Zero Coup.	100.0	10.1%	5.1%	Min. Pmts	0.0	0.0%
Convertible Preferred	0.0	0.0%	0.0%	Retained Debt	0.0	0.0%
Equity	617.7	31.1%		Ret. Camper Option Pmts	111.0	11.1%
Total	$1,141.1	100.0%		Total	$1,141.1	100.0%

Pro Forma Primary Shares	
Camper Shares (Primary) (MM)	33.7
Exchange Ratio	0.7x10
% Purchased	100.0%
Camper Shares Repurchased (Treasury)	0.0
Camper Shares Retained (Holding Co.)	11.9
Camper Shares Retained (Common, Pref.)	0.0
Camper Shares Ret. (NYSE Assets)	11.9
Camper Shares Outstanding	0.0
Laser Shares Issued, Net (Stage 1)	23.2
Existing Shares	44.5
Pro Forma Shares (MM)	101.9
% Camper Interest	33.9%

Transaction Assumptions		
Accounting:	Purchase	
Pro Tax Synergies ($ of Target Sales)		
1998	30.0	6.7%
1999	100.0	8.8%
2000	100.0	8.1%
Equity Value		$1,077.3
Aggregate Value		2,111.4

Step #2 - Purchase of Java For $8.250 per Share

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	$0.0	0.0%	0.0x	Pur. Equity	$94.1	56.6%
Bank Loans	161.1	100.0%	7.0x	Option Cash	(10.0)	-6.1%
Sen. Bank	0.0	0.0%	0.0x	Ref. Debt	33.1	46.1%
High Yield	0.0	0.0%	0.0%	Trans. Fees	4.0	2.5%
Preferred Stock	0.0	0.0%	0.0%	Min. Pmt	0.0	0.0%
Zero Coup.	0.0	0.0%	0.0%			
Convertible Preferred	0.0	0.0%	0.0%			
Equity	0.0	0.0%				
Total	$161.1	100.0%		Total	$161.1	100.0%

Pro Forma Primary Shares	
Java Shares (Mid) (MM)	11.4
Exchange Ratio	0.0x
% Purchased	0.0%
Java Shares Issued, Class	0.0
Java Shares Repurchased	0.0
Java Shares Repurchased (Holding Co.)	0.0
Java Shares Repurchased (Common, Pref.)	0.0
Java Shares Issued, Net	0.0
Existing Shares	101.9
Pro Forma Shares (MM)	101.9
% Java Interest	0.0%

Transaction Assumptions		
Accounting:	Purchase	
Pro Tax Synergies ($ of Target Sales)		
1998	0.0	0.0%
1999	0.0	0.0%
2000	0.0	0.0%
Equity Value		0.0
Aggregate Value		140.3

Step #3 - Purchase of Sentinel For $5.250 per Share

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	$0.0	0.0%	0.0x	Pur. Equity	$137.9	56.0%
Bank Loans	100.0	100.0%	3.9x	Option Cash	(1.0)	-1.0%
Sen. Bank	0.0	0.0%	0.0x	Ref. Debt	0.0	0.0%
High Yield	0.0	0.0%	0.0%	Trans. Fees	3.7	1.5%
Preferred Stock	0.0	0.0%	0.0%	Min. Pmt	0.0	0.0%
Zero Coup.	0.0	0.0%	0.0%			
Convertible Preferred	0.0	0.0%	0.0%			
Equity	0.0	0.0%				
Total	$100.0	100.0%		Total	$100.0	100.0%

Pro Forma Primary Shares	
Sentinel Shares (Mid) (MM)	26.3
Exchange Ratio	0.0x
% Purchased	0.0%
Laser Shares Issued, Class	0.0
Laser Shares Repurchased	0.0
Laser Shares Repurchased (Holding Co.)	0.0
Laser Shares Repurchased (Common, Pref.)	0.0
Laser Shares Issued, Net	0.0
Existing Shares	101.9
Pro Forma Shares (MM)	101.9
% Sentinel Interest	0.0%

Transaction Assumptions		
Accounting:	Purchase	
Pro Tax Synergies ($ of Target Sales)		
1998	11.0	0.0%
1999	21.0	11.3%
2000	21.0	10.1%
Equity Value		111.7
Aggregate Value		174.7

Net Consideration

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	$6.3	0.3%	1.0x	Pur. Equity	$1,148.4	64.1%
Bank Loans	1,241.3	53.6%	7.0x	Option (Funds)/Uses	34.2	0.6%
Sen. Bank	0.0	0.0%	0.0x	Ref. Debt	1,319.0	43.9%
High Yield	0.0	0.0%	0.0%	Trans. Fees	41.3	1.7%
Preferred Stock	0.0	0.0%	0.0%	Min. Pmt -	0.0	0.0%
Zero Coup.	100.0	10.1%	5.1%	Retained Pmt	0.0	0.0%
Convertible Preferred	0.0	0.0%	0.0%	Ret. Laser Units	111.0	10.1%
Equity	617.7	31.1%				
Total	$1,971.3	100.0%		Total	$1,971.3	100.0%

Pro Forma Primary Shares	
Laser Shares Issued Step #1	11.4
Laser Shares Issued Step #2	0.0
Laser Shares Issued Step #3	0.0
Total Laser Shares Issued	11.4
Initial Laser Shares Outstanding	44.5
Pro Forma Shares (MM)	101.9

Transaction Assumptions		
Pro Tax Synergies ($ of Pro Forma Sales)		
1998	30.0	2.1%
1999	121.0	6.3%
2000	121.0	4.1%

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 0025853

L97L10

16div-022680

PROJECT LASER

Credit Statistic Analysis - With New Mgmt. Contract

Laser; Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case;
Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;
($ MM)

Pro Forma Credit Statistic Analysis

	PF 1997 (2)	PF 1998 (3)	1998	1999	2000	2001	2002	2003	2004	
Credit Statistics (1)										
Cash Interest Expense										
EBITDA/Interest	3.54 x	4.71 x	4.54 x	6.68 x	9.09 x	13.36 x	24.83 x	83.83 x	N.M.	x
(EBITDA-Capex)/Interest	2.75	3.41	3.43	5.50	7.38	10.84	19.94	67.35	N.M.	
Total Interest Expense										
EBITDA/Interest	2.83 x	3.57 x	3.59 x	5.38 x	6.90 x	9.33 x	14.03 x	83.83 x	N.M.	x
(EBITDA-Capex)/Interest	2.28	2.83	2.83	4.43	5.65	7.56	11.27	67.35	N.M.	
Total Fixed Charges										
EBITDA/(Interest+Pref. Divs. [Pre-Tax])	2.83 x	3.57 x	3.59 x	5.38 x	6.90 x	9.33 x	14.03 x	83.83 x	N.M.	x
(EBITDA-Capex)/(Interest+Pref. Divs. [Pre-Tax])	2.28	2.83	2.83	4.43	5.65	7.56	11.27	67.35	N.M.	
Leverage										
Senior Debt / EBITDA	3.97 x	3.33 x	3.21 x	1.91 x	1.36 x	0.83 x	0.34 x	0.00 x	0.00 x	
Total Debt (Excl. Pref.) / EBITDA	5.14	4.21	4.22	2.66	2.07	1.50	0.34	0.00	0.00	
Senior Debt / Book Cap.	49.1%	49.1%	48.8%	41.0%	32.1%	21.5%	9.5%	0.0%	0.0%	
Total Debt (Incl. All Pref.) / Book Cap.	63.5%	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%	0.0%	
Total Debt (Excl. Pref.) / Book Cap.	63.5%	63.5%	64.1%	57.1%	48.8%	38.9%	9.5%	0.0%	0.0%	
Funds Flow from Operations / Total Debt (Excl. Pref.)	13.4%	9.3%	9.3%	23.9%	32.2%	48.2%	213.2%	N.M.	N.M.	
Cumulative Free Cash Flow	-	$22.0	$22.0	$283.0	$576.4	$938.9	$1,357.2	$1,840.6	$2,369.4	
% of PF Bank Debt Outstanding:	100.0%	100.0%	100.0%	87.4%	69.2%	44.7%	20.7%	0.0%	0.0%	
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Rawhide EBITDA	8.29 x	9.34 x	8.48 x	8.85 x	9.14 x	9.42 x	9.87 x	10.23 x	10.71 x	

Notes: (1) Pro forma 1997 includes $60MM in pre-tax synergies.
(2) Pro forma 1997 includes pro-forma 1997 operating statistics, pro-forma interest expense assuming no debt paydown, and pro-forma EOY 1997/BOY 1998 capitalization.
(3) Pro forma 1998 includes pro-forma 1998 operating statistics, pro-forma interest expense assuming no debt paydown, and pro-forma EOY 1997/BOY 1998 capitalization.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025854

017468

16div-022681

PROJECT LASER

Pro Forma Income Statements - With New Mgmt. Contract

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case; Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;

	Actual Pro Forma		Projected Pro Forma								CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	1996-1	2001-05
Sales	$3,682.7	$3,784.1	$3,901.3	$4,083.8	$4,279.9	$4,451.1	$4,596.7	$4,651.1	$4,995.6	$5,193.3	$5,464.4	
% Growth		0.6%	12.6%	11.9%	9.9%	8.1%	6.4%	5.9%	5.6%	5.5%	9.4%	6.0%
Cost of Goods Sold (1)	2,836.8	2,939.3	3,130.0	3,347.3	3,511.7	3,774.1	3,907.3	3,101.6	3,341.3	3,511.4	3,744.3	
% of Sales	77.0%	77.7%	70.0%	82.0%	82.1%	84.1%	85.0%	66.7%	66.9%	67.6%	68.5%	70.6%	69.5%
Gross Profit	846.8	769.9	911.3	1,056.5	1,168.2	1,375.5	1,513.5	1,492.5	1,544.3	1,650.8	1,719.9	
% of Sales	24.1%	20.3%	30.0%	31.0%	31.1%	31.5%	31.5%	31.3%	31.5%	31.5%	31.5%	29.4%	31.5%
SG&A Expense (2)	496.9	413.7	534.1	581.4	631.5	678.0	721.1	766.7	810.7	873.7	931.9		
% of Sales	14.1%	11.4%	17.6%	17.1%	16.9%	16.7%	16.6%	16.6%	16.5%	16.9%	16.1%	17.0%	16.6%
Advertising & Promotion	31.8	31.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	2.1%	1.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Research & Development	11.1	9.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.3%	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Operating Income	98.9	315.1	377.1	475.1	536.6	697.6	692.3	725.7	733.5	777.0	837.9		
% of Sales	2.6%	10.9%	12.4%	13.0%	14.1%	14.7%	14.9%	15.6%	15.0%	14.6%	15.3%	11.3%	14.9%
% Growth		264.1%	16.7%	23.6%	12.1%	11.3%	6.7%	5.0%	5.7%	5.7%	10.7%	11.3%	6.4%
Net New Goodwill Amortization	41.3	41.3	41.3	41.3	41.3	41.3	41.3	41.3	41.3	41.3	41.3		
Old Goodwill Amortization	13.6	13.5	16.1	16.1	16.1	16.1	16.1	16.1	16.1	16.1	16.1		
Financing Fee Amortization	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	0.0		
Advisory Fees Amortization	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2		
Other (Expense)/Income	3.0	1.5	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)		
% of Sales	0.1%	0.1%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	0.0%	-0.0%
Pre-Tax Synergies	(66.0)	(66.0)	(66.0)	(116.0)	(116.0)	(166.0)	(166.0)	(166.0)	(166.0)	(166.0)	(166.0)		
% of Sales	1.7%	1.7%	1.0%	2.8%	2.7%	3.7%	3.6%	3.6%	3.3%	3.2%	3.0%		
EBIT	75.4	290.1	375.5	383.3	431.1	488.9	744.8	778.1	822.9	846.4	928.3		
% of Sales	2.0%	10.7%	12.0%	14.1%	14.7%	15.9%	17.0%	16.9%	16.5%	16.3%	17.0%	12.7%	16.1%
Depreciation & Amortization	119.7	130.0	146.6	174.1	194.5	210.3	230.4	245.5	261.5	295.5	303.9		
EBITDA	195.1	420.1	522.2	556.4	625.6	699.3	975.2	1,023.5	1,084.4	1,141.9	1,232.1		
Net Interest	144.3	144.3	143.4	134.7	116.3	93.0	64.7	0.1	(14.0)	(30.0)	(48.4)		
Earnings Before Taxes	(68.8)	145.9	232.2	437.6	568.6	598.9	673.9	778.0	837.3	877.3	977.7		
Tax Provision	(3.7)	71.4	101.8	170.2	198.5	227.4	237.1	291.8	313.7	327.6	362.7		
Effective Tax Rate	5.4%	48.9%	43.8%	38.8%	34.9%	38.0%	37.8%	37.5%	37.5%	37.3%	37.1%		
Marginal Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%
Net Income	(65.0)	74.5	130.4	267.4	370.1	371.5	436.8	486.2	523.5	549.7	615.0		
% of Sales	-1.8%	2.0%	3.3%	6.6%	8.6%	8.3%	9.5%	10.5%	10.5%	11.0%	11.3%	4.9%	10.1%
Minority Interest	1.9	1.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	(66.9)	73.1	130.0	267.0	369.7	371.1	436.4	485.8	523.1	549.3	614.6		
% of Sales	-1.8%	1.9%	3.3%	6.5%	8.6%	8.3%	9.5%	10.4%	10.5%	10.6%	11.2%	4.9%	10.1%
% Growth		-209.1%	78.0%	97.7%	38.3%	17.3%	17.6%	11.3%	7.7%	5.0%	11.9%	NM	4.1%

Notes: (1) Includes $4.3 MM of depreciation related expenses due to established PP&E write-off post transaction starting 1998
(2) Includes additional cost impact of $1.745MM related to new mgmt. contracts starting 1998.
(3) Includes above impact of related to new mgmt. contracts.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025855

694L10

16div-022682

PROJECT LASER

Pro Forma Combined Cash Flow Statements

Laser; Laser Fin. Base Case; Camper; Laser Fin. Base Case - Without Warrants; Java; Laser Fin. Base Case; Sentinel; Laser Fin. Base Case; Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;

	Actual Pro Forma 1997	Projected Pro Forma 1998	1999	2000	2001	2002	2003	2004	2005	2006	CAGR/Ave 1997-1	1998-06
Net Income	$73.0	$130.6	$197.0	$309.7	$343.5	$416.4	$493.8	$553.4	$549.3	$614.6		
Depreciation (1)	69.8	74.6	104.1	124.6	150.3	181.5	194.7	212.4	224.7	234.7		
% of Cap Ex	72.3%	68.9%	80.1%	82.4%	87.7%	92.6%	93.4%	94.3%	99.1%	100.0%	78.7%	95.3%
Total Goodwill Amortization	54.9	57.5	57.5	57.5	57.5	57.5	57.5	57.5	57.5	57.5		
Trademark Amortization	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9		
Financing Fee Amortization	3.5	3.5	3.5	3.5	3.5	3.6	3.6	3.6	3.6	3.6		
Advisory Fee Amortization	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3		
Deferred Taxes	57.5	7.1	10.4	12.5	15.0	18.1	19.7	21.2	21.5	23.7		
% Depreciation	82.4%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	34.8%	10.0%
Minority Interest	1.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4		
Non Cash Int. Exp.	33.3	33.3	34.6	37.9	39.4	38.8	0.0	0.0	0.0	0.0		
Non-Time Related Cash Restruct. Charges	0.0	(150.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other Non-Cash Exp.(Inc.)	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Cash Flow	301.3	160.0	466.4	545.1	621.3	710.1	769.7	826.4	864.8	943.5		
% of Sales	16.9%	8.1%	12.9%	14.6%	15.5%	16.4%	16.6%	16.9%	16.7%	17.1%	12.0%	16.3%
Investment in Non-Cash Working Capital	34.2	(34.1)	(65.7)	(97.9)	(90.7)	(93.0)	(74.7)	(77.1)	(91.3)	(93.7)		
% of Change in Sales	-107.6%	7.1%	32.1%	29.1%	28.9%	29.1%	29.5%	29.5%	29.3%	29.5%	-22.9%	29.4%
Capital Expenditures	(95.0)	(109.6)	(136.9)	(149.4)	(171.3)	(195.2)	(204.2)	(216.3)	(228.8)	(234.7)		
% of Sales	5.3%	5.6%	5.8%	4.8%	4.2%	4.3%	4.1%	4.1%	4.1%	4.1%	5.8%	4.4%
Other Long Term Investments	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Common Dividends	(4.3)	(4.3)	(4.3)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)		
Dividends Per Share	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04		
Payout Ratio	5.7%	3.3%	2.2%	1.4%	1.3%	1.1%	0.9%	0.8%	0.8%	0.7%		
Mandatory Debt Retirements	0.0	0.0	(7.5)	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Payment of Redemption Premium	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Free Operating Cash Flow	330.4	21.0	251.0	293.4	343.4	418.3	488.4	528.8	531.3	611.7		
% of Sales	4.5%	0.7%	7.7%	7.0%	8.0%	8.5%	10.4%	10.8%	10.7%	11.1%	6.7%	10.1%
Free Op. Cash Flow Avail to Pay Down Debt		$21.0	$243.5	$293.4	$343.4	$418.3	$488.4	$528.8	$1,331.3	$1,611.5		
Total Debt Automatically Added/(Reduced)	0.0	(71.0)	(243.5)	(293.4)	(343.4)	(418.3)	(311.7)	0.0	0.0	0.0		
Excess Cash	330.4	0.0	0.0	0.0	0.0	0.0	176.7	528.8	1,331.3	1,611.5		

Note: (1) Pro forma and projections adjust for FFAS write-offs related to restructuring (assumed 10 year depreciable life).

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025856

01714 70

16div-022683

PROJECT LASER

Pro Forma Non-Cash Working Capital

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case; Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;

	Actual Pro Forma	Projected Pro Forma							
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Current Assets										
Account Receivable	$625.2	$674.9	$734.7	$809.5	$876.9	$950.2	$1,001.2	$1,061.8	$1,121.6	$1,181.1
Days Outstanding	81.8	81.8	79.0	79.0	79.0	79.0	79.0	79.0	79.0	79.0
Inventory	$653.0	$645.5	$698.5	$756.4	$816.5	$884.5	$933.0	$985.6	$1,040.5	$1,101.9
Turnover	3.0	3.3	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
Other	$118.9	$134.0	$145.9	$164.7	$178.5	$193.4	$204.6	$216.1	$228.3	$240.8
% of Sales	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%
Total Current Assets	$1,377.1	$1,454.4	$1,577.1	$1,730.6	$1,871.9	$2,028.2	$2,141.5	$2,263.5	$2,390.4	$2,523.9
Current Liabilities										
Accounts Payable	$333.5	$337.7	$364.9	$311.1	$335.8	$363.8	$384.9	$406.6	$429.6	$453.2
Days Outstanding	44.3	44.3	44.3	44.3	44.3	44.3	44.3	44.3	44.3	44.3
Other	$329.9	$337.9	$388.6	$317.1	$343.8	$373.3	$393.8	$416.0	$439.4	$463.3
% of Sales	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%
Total Current Liabilities	$663.4	$675.6	$753.5	$628.2	$679.4	$737.1	$778.7	$822.6	$869.0	$916.7
Total Working Capital	$713.7	$778.8	$823.6	$1,102.4	$1,192.5	$1,291.1	$1,362.8	$1,440.9	$1,521.4	$1,607.1
Investment in Working Capital		$65.1	$44.7	$277.9	$90.2	$98.6	$71.7	$77.1	$81.5	$85.7
% of Change in Sales		3.1%	13.1%	23.1%	21.9%	21.1%	21.1%	21.1%	21.1%	21.1%

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025857

017471

16div-022684

PROJECT LASER

Pro Forma Balance Sheets

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case; Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;

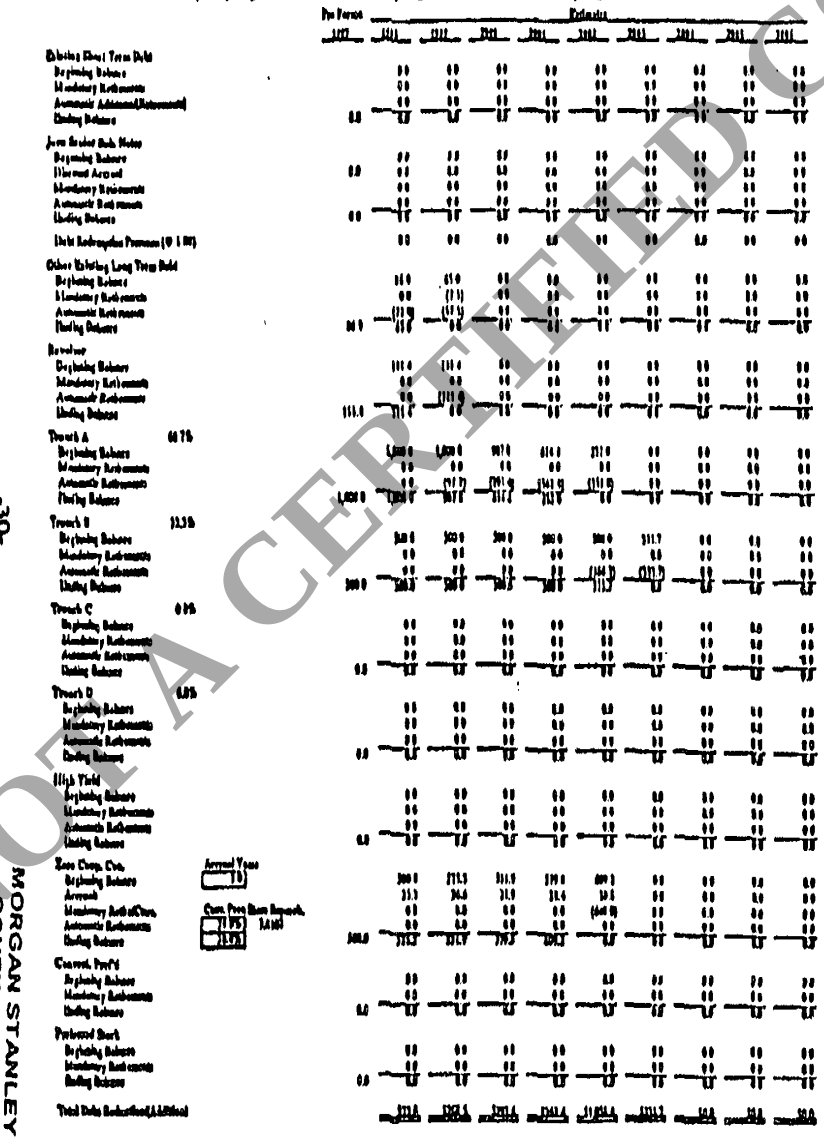
	Actual 1996	Pro Forma 1997	Projections 1998	1999	2000	2001	2002	2003	2004	2005	2006
ASSETS											
Cash	$72.4	$72.5	$72.5	$72.5	$72.5	$72.5	$72.5	$72.5	$72.5	$72.5	$72.5
Interest Cash	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	147.7	674.5	1,231.8	1,849.5
Accounts Receivable	295.6	465.2	674.9	736.7	809.5	876.9	950.3	1,001.2	1,061.3	1,121.6	1,181.1
Inventories	254.2	453.0	643.5	690.5	736.9	818.5	884.5	933.0	988.6	1,044.5	1,101.9
Other Current Assets	53.9	111.9	134.0	149.9	164.7	177.5	192.4	204.6	216.1	228.3	240.8
Total Current Assets	676.0	1,419.6	1,524.9	1,649.6	1,803.1	1,944.4	2,100.7	2,367.5	3,017.5	3,691.8	4,447.9
Net Property, Plant and Equipment	340.9	335.6	350.6	364.5	409.5	430.2	444.8	454.3	458.3	460.5	460.5
Old Goodwill	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
New Goodwill	0.0	2,104.0	2,044.5	1,949.8	1,911.5	1,874.0	1,836.5	1,799.0	1,761.5	1,644.0	1,526.5
Prepaid Pens & Expenses	0.0	46.6	41.9	37.3	32.6	28.0	24.2	20.4	16.6	12.8	11.0
Trademarks & Tradenames	194.4	194.4	184.5	174.7	170.8	163.0	155.1	147.2	139.4	131.5	123.7
Other Non-Current Assets	27.0	133.7	133.7	133.7	133.7	133.7	133.7	133.7	133.7	133.7	133.7
TOTAL ASSETS	$1,139.3	$4,233.9	$4,279.1	$4,310.4	$4,431.8	$4,573.3	$4,675.9	$4,934.3	$5,468.9	$6,053.1	$6,703.1
LIABILITIES & EQUITY											
Existing Short Term Debt	$0.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Accounts Payable	103.6	233.3	257.7	284.0	311.1	335.8	363.8	384.9	406.6	429.6	453.2
Other Current Liabilities	91.9	229.0	257.9	288.6	317.1	341.6	372.2	393.1	416.0	438.4	463.5
Total Current Liabilities	196.1	462.4	515.6	572.6	628.2	679.4	736.1	778.7	822.6	868.0	916.7
Deferred Tax Liability	34.6	59.4	67.1	77.5	90.0	105.0	123.1	142.8	164.0	186.5	210.2
Other Non-Current Liabilities	161.1	371.6	376.6	290.6	290.6	290.6	290.6	290.6	290.6	290.6	290.6
Existing Long Term Debt	194.6	16.9	65.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Revolver	0.0	111.4	111.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
All Tranches	0.0	1,900.0	1,900.0	1,497.1	1,114.4	732.0	333.7	0.0	0.0	0.0	0.0
High Yield	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Preferred Stock	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Cvts.	0.0	206.0	512.3	531.9	579.8	609.2	0.0	0.0	0.0	0.0	0.0
Current. Pref'd	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	194.6	2,198.0	2,201.7	1,959.1	1,694.3	1,341.3	333.7	0.0	0.0	0.0	0.0
Minority Interest	0.0	1.3	1.6	2.0	2.4	2.8	3.3	3.8	4.3	4.8	4.8
Common Equity	571.9	1,241.1	1,333.5	1,472.1	1,777.4	2,134.3	2,519.2	2,664.4	3,187.6	3,703.3	4,347.7
TOTAL LIABILITIES & EQUITY	$1,139.3	$4,233.9	$4,279.1	$4,310.4	$4,431.8	$4,573.3	$4,675.9	$4,934.3	$5,468.9	$6,053.1	$6,703.1

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 025858
017172
16div-022685

PROJECT LASER

Pro Forma Debt Paydown Schedule

Laser; Laser Fin. Base Case; Casper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case; Casper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM;



NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
002585

017473

16div-022686

PROJECT LASER

Interest Expense Schedule

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case; Camper Synergies of $100.0MM; Java Synergies of $25.0MM; Sentinel Synergies of $25.0MM

		Pro Forma 1997	1998	1999	2000	2001	Estimates 2002	2003	2004	2005	2006
Interest Expense											
Existing Short Term Debt	6.5%	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Java Senior Sub. Notes	11.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Existing Long Term Debt	6.6%	3.7	3.0	2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Revolver	7.0%	7.3	7.3	3.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Tranch A	7.0%	70.0	70.0	66.0	53.3	30.3	0.0	0.0	0.0	0.0	0.0
Tranch B	7.3%	37.5	37.5	37.5	37.5	37.5	31.3	12.5	0.0	0.0	0.0
Tranch C	7.5%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Tranch D	7.5%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
High Yield	10.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Obs.	5.06%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Cash Interest		121.0	120.3	110.3	90.8	67.8	40.1	12.5	0.0	0.0	0.0
Java Senior Sub. Notes		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Obs.	5.06%	25.3	25.3	24.6	27.9	29.4	30.8	0.0	0.0	0.0	0.0
Total Non-Cash Interest		25.3	25.3	24.6	27.9	29.4	30.8	0.0	0.0	0.0	0.0
TOTAL INTEREST EXPENSE		$146.3	$145.6	$134.9	$118.7	$97.2	$70.9	$12.5	$0.0	$0.0	$0.0
Average Cost of Debt (pt)		8.6%	8.5%	8.0%	8.9%	9.3%	56.3%	NM	NM	NM	NM
Interest Income											
Cash and Excess Cash	3.0%	2.2	2.2	2.2	2.2	2.2	2.2	4.4	14.6	29.2	43.8
TOTAL INTEREST INCOME		$2.2	$2.2	$2.2	$2.2	$2.2	$2.2	$4.4	$14.6	$29.2	$43.8
Preferred Dividends											
Preferred Stock	6.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Common Profit	4.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025860

017474

16div-022687

[redacted]\Laser\valinvest\laserwb Full_011.wk4 Run Time: 9:49:22 am on 03/16/98 Preliminary Draft

PROJECT LASER

Warrants Pricing and E.P.S. Analysis

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Net Income Used in E.P.S. Calculation									
Pro Forma Net Income	$130.0	$257.8	$305.7	$343.3	$418.4	$412.8	$523.4	$549.3	$614.6
Pro Forma Net Inc. after Div. Adj. and Int. from Conversion	$144.4	$274.3	$327.8	$387.3	$438.4	$431.8	$533.4	$549.3	$614.6
Diluted Shares Used in E.P.S. Calculation									
Laser Steel Alone Diluted Shares (MM)	90.5	91.6	92.9	93.0	93.0	93.0	93.0	93.0	93.0
Pro Forma Shares Issued (MM)	19.6	19.6	19.4	19.4	19.4	19.4	19.4	19.4	19.4
Net Shares from New Common (MM)	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Pro Forma Diluted Shares (MM) (Def. Warrant)	110.1	111.3	112.7	112.8	112.8	112.8	112.8	112.8	112.8
Net Shares Iss. From Conv Notes (MM)	0.0	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
Net Shares Iss. From New Transaction Warrants (MM) (1)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Net Shares Iss. From New Mgmt Warrants (MM) (1) [redacted]	1.1	2.2	3.7	3.1	3.4	3.6	3.7	3.8	3.9
Diluted Shares Outstanding (MM)	111.2	121.3	123.8	123.7	124.0	124.2	124.3	124.4	124.4
E.P.S. Calculation									
E.P.S Assuming Conversion	$1.31	$2.26	$2.65	$3.09	$3.54	$3.89	$4.21	$4.41	$4.94
E.P.S Assuming No Conversion	$1.18	$2.31	$2.73	$3.23	$3.71	$4.28	$4.64	$4.87	$5.45
Diluted E.P.S. (Dividend Reversed) to be Used	$1.18	$2.26	$2.65	$3.09	$3.54	$3.89	$4.21	$4.41	$4.94
Accretion / (Dilution)	-16.9%	-4.4%	-2.9%	1.5%	6.7%	8.1%	8.9%	8.1%	12.3%
Meterel?	No	No	No	No	Yes	Yes	Yes	Yes	Yes
Forward PE		24.3 x	24.3 x	24.3 x	24.3 x	24.3 x	24.3 x	24.3 x	24.3 x
Projected Pro Forma Stock Price									
Implied Beginning of Year Laser Stock Price	$53.83	$53.96	$63.23	$74.19	$87.34	$91.26	$100.25	$108.26	$122.76
Average Laser Stock Price	$53.79	$69.89	$71.16	$81.81	$91.30	$100.25	$100.76	$110.71	$122.14

Note: (1) Assumes exercise of warrants in year under year shown: Impact of warrants exercised does not accumulate year to year; amounts counted in year when proceeds data.

-32-

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025861

017475

16div-022688

PROJECT LASER

Alternative #1 Pro Forma Balance Sheet - Sale of Camper Safety & Security

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Base Case Synergies of $100.0MM - Without Warrants

	Camper HoldCo 1997	Laser 1997	Combined	Purchase of HoldCo. Adjustments (1)	1997 NewCo. Pro-Forma	1997 Shares by Security & G.E.	Other Restruct. Charges	1997 Pro-Forma
ASSETS								
Cash	$15.0	$37.0	$52.0	$0.0	$52.0	$0.0		$52.0
Excess Cash	6.3	0.0	6.3	(6.3)	0.0	0.0		0.0
Accounts Receivable	457.0	334.0 (2)	791.0	0.0	791.0	0.0		791.0
Inventories	318.0	356.3 (2)	674.3	0.0% 0.0	674.3	0.0		674.3
Other Current Assets	46.0	53.0	99.0	0.0	99.0	0.0		99.0
Total Current Assets	842.3	780.3	1,622.6	(6.3)	1,616.3	0.0		1,616.3
Net Property, Plant and Equipment	190.9	340.0	530.9	0.0% 0.0	530.9	0.0	(40.0)	490.9
Old Goodwill	391.1	0.0	391.1	(391.1)	0.0	0.0		0.0
New Goodwill	0.0	0.0	0.0	1,511.3	1,511.3	391.7		1,903.0
Prepaid Pen & Expense	0.0	0.0	0.0	31.0	31.0	2.0		33.0
Trademarks & Tradenames	0.0	194.4	194.4	0.0% 0.0	194.4	0.0		194.4
Other Non-Current Assets	100.0	37.0	137.0	0.0% 0.0	137.0	0.0		137.0
TOTAL ASSETS	$1,524.3	$1,711.7	$3,236.0	$1,137.2	$3,373.2	$393.6	($40.0)	$3,726.8
LIABILITIES & EQUITY								
Existing Short Term Debt	367.3	30.7	397.8	(367.8)	30.0	0.0		30.0
Accounts Payable	90.3	101.0	191.3	0.0	191.3	0.0		191.3
Other Current Liabilities	86.4	31.9	118.3	0.0	118.3	0.0		118.3
Total Current Liabilities	543.2	163.1	706.3	(367.8)	339.6	0.0		339.6
Deferred Tax Liability	0.0	54.4	54.4	0.0	54.4	0.0		54.4
Other Non-Current Liabilities	73.0	142.0	215.0	0.0% 0.0	215.0	0.0	30.0	245.0
Existing Long Term Debt	1,051.3 (4)	324.6 (727)	1,375.9	(1,310.9)	65.0	0.0		65.0
Bank Loan	0.0	0.0	0.0	1,064.3 (3)	1,064.3	104.8		1,169.1
Int. Bank	0.0	0.0	0.0	0.0	0.0	0.0		0.0
High Yield	0.0	0.0	0.0	0.0	0.0	0.0		0.0
Preferred Stock	0.0	0.0	0.0	0.0	0.0	0.0		0.0
Term Comp. Con.	0.0	0.0	0.0	300.0	300.0	0.0		300.0
Convert. Pref's	0.0	0.0	0.0	0.0	0.0	0.0		0.0
Minority Interest	43.4	0.0	43.4	0.0	43.4	(43.1)		0.3
Common Equity	(147.0)	314.9 (7)	77.9	1,091.1 (1)	1,169.0	331.0	(10.0)	1,319.0
TOTAL LIABILITIES & EQUITY	$1,524.3	$1,711.7	$3,236.0	$1,137.2	$3,373.2	$393.6	($40.0)	$3,726.8

Notes: (1) We made restructuring charges assumed yet.
(2) Additional $12.0MM in diverse questions added with a $10.0MM adjustment to inventory and a $2.0MM adjustment to accounts receivable.
(3) Includes $7.0MM assets which adjustment related to Industrial development revenue notes.
(4) Does not include debt due beyond five years.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025862

01746

16div-022689

PROJECT LASER

Pro Forma Laser Balance Sheet Post Step #2

Laser: Laser Fin. Base Case; Java: Laser Fin. Base Case - Base Case Synergies of $25.1MM

	Java 1997	Laser W/ Canopy 1997	Combined	Adjustments (1)		1997 Pro-Forma
ASSETS						
Cash	$4.1	$14.4	$69.5		$0.0	$69.5
Short Cash	0.0	0.0	0.0		0.0	0.0
Accounts Receivable	47.3	484.0	531.3		0.0	531.3
Inventories	37.9	574.9	612.7	0.0%	0.0	611.9
Other Current Assets	0.3	102.1	106.1		0.0	106.3
Total Current Assets	119.7	1,174.3	1,343.0		0.0	1,343.0
Net Property, Plant and Equipment	16.5	280.6	297.1	0.0%	0.0	297.5
Old Goodwill	134.9	0.0	134.9		(134.9)	0.0
New Goodwill	0.0	1,334.9	1,334.9		675.3	2,010.3
Prepaid Rent & Expenses	4.1	33.0	38.9		0.0	43.1
Trademarks & Tradenames	0.0	104.6	104.6	0.0%	0.0	111.4
Other Non-Current Assets	1.5	117.6	119.2	0.0%	0.0	119.2
TOTAL ASSETS	$273.1	$3,117.5	$3,991.7		$541.3	$4,017.0
LIABILITIES & EQUITY						
Existing Short Term Debt	$0.0	$0.0	$0.0		$0.0	$0.0
Accounts Payable	31.0	193.7	317.0		0.0	317.0
Other Current Liabilities	77.5	177.3	254.9		0.0	311.3
Total Current Liabilities	31.5	370.0	429.4		0.0	429.4
Deferred Tax Liability	0.0	54.5	54.5		0.0	54.5
Other Non-Current Liabilities	6.5	265.0	271.5	0.0%	0.0	271.5
Existing Long Term Debt	173.5	96.5	340.0		(173.5)	66.5
Bank Loan	0.0	1,169.1	1,169.1		361.4	1,430.5
Int. Bank	0.0	0.0	0.0		0.0	0.0
High Yield	0.0	0.0	0.0		0.0	0.0
Preferred Stock	0.0	0.0	0.0		0.0	0.0
Zero Coup. Cm.	0.0	300.0	300.0		0.0	300.0
Current, Prefs	0.0	0.0	0.0		0.0	0.0
Minority Interest	0.0	1.3	1.3		0.0	1.3
Common Equity	43.3	1,257.5	1,300.8		(49.3)	1,251.5
TOTAL LIABILITIES & EQUITY	$273.1	$3,117.5	$3,991.7		$541.3	$4,017.0

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025863

LL7L10

PROJECT LASER

Pro Forma Laser Balance Sheet Post Step #3

Laser: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case - Base Case Synergies of $27.5MM

	Sentinel 1997	Laser 1997	Combined	Adjustments (1)	1997 Pro-Forma
ASSETS					
Cash	23.0	248.3	271.3	16.0	287.3
Short-Term Investments	0.0	0.0	0.0	0.0	0.0
Accounts Receivable	73.7	226.9	300.5	0.0	300.5
Inventories	46.3	65.7	112.0	0.0	112.0
Other Current Assets	10.2	101.7	111.9	0.0	111.9
Total Current Assets	153.2	642.6	795.8	16.0	811.8
Net Property, Plant and Equipment	38.2	287.5	325.8	0.0	325.8
Old Goodwill	33.0	0.0	33.0	(27.5)	5.5
New Goodwill	0.0	2,118.2	2,118.2	71.0	2,189.2
Prepaid Fees & Expenses	0.0	47.0	47.0	2.3	49.3
Technology & Technology	0.0	194.0	194.0	0.0	194.0
Other Non-Current Assets	6.3	134.3	140.7	0.0	140.7
TOTAL ASSETS	234.6	3,427.8	3,662.4	61.8	3,724.2
LIABILITIES & EQUITY					
Existing Short Term Debt	34.0	10.0	44.0	(34.0)	10.0
Accounts Payable	13.3	217.0	230.3	0.0	230.3
Other Current Liabilities	17.1	211.0	228.0	0.0	228.0
Total Current Liabilities	64.4	438.0	502.3	(34.0)	468.4
Deferred Tax Liability	4.0	36.0	40.0	0.0	40.0
Other Non-Current Liabilities	0.2	271.0	271.2	0.0	271.2
Existing Long Term Debt	0.0	66.9	66.9	(0.9)	66.0
Bank Loan	0.0	1,438.5	1,438.5	102.9	1,541.4
Sub. Debt	0.0	0.0	0.0	0.0	0.0
High Yield	0.0	0.0	0.0	0.0	0.0
Preferred Stock	0.0	0.0	0.0	0.0	0.0
Trust Chgs. Cum.	0.0	200.0	200.0	0.0	200.0
Common, Par/S	0.0	0.0	0.0	0.0	0.0
Minority Interest	0.0	1.2	1.2	0.0	1.2
Common Equity	83.5	1,397.5	1,481.0	(68.0)	1,413.0
TOTAL LIABILITIES & EQUITY	234.6	3,427.8	3,662.4	61.8	3,724.2

MORGAN STANLEY CONFIDENTIAL 0025864

NOT A CERTIFIED COPY

017478

16div-022691

PROJECT LASER

Laser Stand Alone Income Statements

Laser Fin. Base Case

	Actual		Projections								CAGR/AM	
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	1998-3	1999-07
Sales	$998.8	$1,141.3	$1,278.7	$1,394.5	$1,511.1	$1,636.4	$1,771.9	$1,918.3	$2,077.1	$2,249.7		
% Growth		14.3%	26.6%	13.9%	12.1%	12.9%	12.9%	5.0%	5.0%	5.0%	5.0%	16.7%	5.7%
Cost of Goods Sold	382.5	433.7	1,353.9	1,399.7	1,364.7	1,413.3	1,376.7	1,417.7	1,340.3	1,411.5	1,414.9		
% of Sales	61.1%	71.7%	75.7%	64.7%	64.7%	64.7%	64.7%	64.7%	64.7%	64.7%	64.7%	71.6%	64.7%
Gross Profit	616.0	708.3	449.7	548.8	606.4	669.3	734.1	771.9	811.6	853.2	894.8		
% of Sales	37.9%	38.1%	35.0%	35.3%	35.9%	35.9%	35.9%	35.9%	35.9%	35.9%	35.9%	35.6%	35.9%
SG&A Expense	173.6	171.1	177.4	206.6	215.2	243.4	271.2	284.6	298.2	316.3	331.0		
% of Sales	17.4%	15.2%	13.9%	13.5%	13.5%	13.5%	13.5%	13.5%	13.5%	13.5%	13.5%	13.7%	13.5%
Advertising & Promotion	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Research & Development	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Income	2.3	199.8	243.3	342.2	391.3	425.9	462.9	484.1	513.4	536.9	563.8		
% of Sales	0.2%	17.5%	17.0%	24.5%	25.9%	26.0%	26.1%	25.2%	25.0%	25.0%	25.0%	15.9%	25.9%
% Growth		8441.1%	21.8%	29.1%	14.3%	8.8%	8.7%	4.6%	6.0%	5.0%	5.0%	112.7%	5.7%
Goodwill Amortization	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other (Income)/Income	1.0	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)	(1.3)		
% of Sales	0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.0%	-0.0%
EBIT	1.3	200.7	244.5	343.4	392.5	427.2	464.2	485.3	514.8	538.3	565.0		
% of Sales	0.1%	17.6%	17.9%	24.6%	26.0%	26.1%	26.2%	25.3%	25.1%	25.1%	25.1%	15.9%	25.9%
Depreciation & Amortization	47.4	58.8	53.8	52.7	50.8	113.3	130.8	148.7	167.3	173.1	165.7		
EBITDA	48.7	259.5	298.3	396.1	443.4	540.5	595.0	634.0	682.1	711.4	730.7		
Net Interest	(1.4)	(1.4)	(2.2)	(2.3)	(2.3)	(11.2)	(19.1)	(27.1)	(33.0)	(37.7)	(38.6)		
Earnings Before Taxes	(11.7)	199.3	246.8	345.8	394.8	438.4	483.4	512.4	541.8	564.5	612.6		
Tax Provision	(4.7)	66.2	99.9	119.8	136.3	151.8	167.2	166.2	192.8	204.6	217.9		
Effective Tax Rate	34.1%	33.2%	33.0%	33.0%	33.0%	33.0%	33.0%	33.0%	33.0%	33.0%	33.0%	33.1%	33.0%
Net Income	(10.2)	$133.1	$146.9	$221.8	$258.6	$286.5	$316.2	$346.2	$379.0	$404.7			
% of Sales	-0.9%	10.3%	11.3%	15.9%	17.1%	17.5%	17.8%	18.0%	18.2%	18.4%	18.1%	13.9%	
Minority Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	(10.2)	$133.1	$146.9	$221.8	$258.6	$286.5	$316.2	$346.2	$379.0	$404.7			
% of Sales	-0.9%	10.3%	11.3%	15.9%	17.1%	17.5%	17.8%	18.0%	18.2%	18.4%	18.1%	13.9%	
% Growth		-1401.6%	10.4%	51.0%	16.6%	10.8%	10.3%	9.5%	9.5%	6.7%	NM	1.4%	
Basic E.P.S.	($0.10)	$1.45	$1.59	$2.40	$2.80	$3.11	$3.43	$3.76	$4.11	$4.39	$4.67		
% Growth		-1502.9%	10.1%	51.1%	16.6%	11.2%	10.3%	9.5%	9.5%	6.7%	NM	7.1%	
Wtd Avg Shares Outstanding (1)	92.9	91.9	92.3	92.3	92.4	92.4	92.4	92.4	92.4	92.4	92.4		
% Growth		-1.0%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.5%	-0.0%
Fully Diluted E.P.S.	($0.10)	$1.41	$1.53	$2.32	$2.71	$3.03	$3.38	$3.69	$4.03	$4.31	$4.59		
% Growth		-1522.4%	10.1%	51.1%	16.6%	11.2%	11.1%	9.1%	9.1%	6.9%	NM	7.1%	
Wtd Avg Shares Outstanding (1)	92.9	87.5	96.1	91.8	91.8	91.8	91.8	91.8	91.8	91.8	91.8		
% Growth		-5.6%	9.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.1%	0.0%

Notes: (1) Assumes 92.3 MM diluted shares outstanding in 1998 growing to 97.3 MM diluted shares in 2005 and held constant thereafter; projected basic shares held as a constant spread to diluted shares.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025865

017479

16div-022692

PROJECT LASER

Camper Stand Alone Income Statements - Sale of Safety & Security

Laser Fin. Base Case

	Actual (1)		Projections (2)								CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	1996-1	2001-05
Sales	$1,220.2	$1,044.9	$1,044.9	$1,111.9	$1,221.2	$1,295.6	$1,343.9	$1,444.9	$1,554.9	$1,671.1		
% Growth		-14.4%	0.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	2.5%	6.0%
Cost of Goods Sold	834.5	760.0	750.1	815.3	854.1	900.1	954.9	1,012.3	1,077.9	1,157.5	1,205.5	
% of Sales	72.1%	71.3%	70.1%	70.1%	69.9%	69.0%	69.0%	69.0%	69.0%	69.0%	70.5%	69.0%
Gross Profit	335.7	284.9	315.9	346.8	371.5	404.1	429.0	454.7	477.0	513.7	541.8	
% of Sales	27.5%	24.7%	29.6%	29.6%	30.5%	31.0%	31.0%	31.0%	31.0%	31.0%	29.5%	31.0%
SG&A Expense	191.6	169.6	291.2	347.3	260.9	273.3	290.3	304.3	321.5	340.1	341.6	
% of Sales	15.7%	15.9%	21.7%	31.3%	21.3%	21.1%	21.0%	20.9%	20.8%	21.1%	19.6%	20.9%
Advertising & Promotion	14.8	51.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
% of Sales	4.8%	4.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.6%	0.0%
Research & Development	11.1	9.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
% of Sales	0.9%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%
Operating Income	79.2	75.5	24.7	77.5	110.7	130.8	138.7	150.5	155.5	173.6	200.2	
% of Sales	6.5%	7.2%	2.4%	7.1%	9.1%	9.9%	10.3%	10.4%	10.0%	10.4%	8.1%	10.1%
% Growth		-4.7%	-67.3%	213.5%	42.9%	18.1%	6.1%	8.5%	3.3%	11.6%	-12.6%	7.4%
Goodwill Amortization	10.5	10.5	11.3	11.3	11.3	11.3	11.3	11.3	11.3	11.3		
Other (Income)/Expense	1.3	2.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	
% of Sales	0.1%	0.3%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
Pre-Tax Synergies	(40.0)	(40.0)	(41.0)	(160.0)	(160.0)	(160.0)	(160.0)	(160.0)	(160.0)	(160.0)	(160.0)	
% of Sales	-3.3%	-3.8%	-3.9%	-8.6%	-8.1%	-7.7%	-7.1%	-6.9%	-6.6%	-6.4%	-5.7%	
EBIT	107.3	102.1	113.5	197.1	259.4	277.5	286.3	298.0	303.3	321.5	347.3	
% of Sales	8.8%	9.8%	10.9%	16.1%	16.1%	16.6%	16.7%	16.1%	15.6%	14.3%	16.1%	15.9%
Depreciation & Amortization	36.8	36.2	34.1	41.3	41.3	50.3	53.4	57.8	60.2	63.2	66.7	
EBITDA	144.0	138.8	147.6	238.4	300.7	327.7	339.8	355.8	363.4	384.7	414.0	
Net Interest	38.7	40.9	32.6	58.8	19.3	10.1	1.2	(4.3)	(9.0)	(14.0)	(19.2)	
Earnings Before Taxes	68.6	61.2	80.1	168.2	181.1	267.3	285.0	340.7	355.6	373.4	386.9	
Tax Provision	10.8	21.7	28.0	54.1	67.4	72.5	79.8	84.3	89.3	88.4	107.4	
Effective Tax Rate	16.9%	35.0%	35.0%	32.0%	37.0%	35.0%	35.0%	33.0%	33.0%	33.0%	33.0%	32.0%	35.0%
Net Income	$57.8	$40.3	$52.0	$114.2	$113.7	$194.8	$205.2	$256.4	$266.3	$285.0	$279.5	
% of Sales	4.7%	3.8%	4.9%	9.9%	9.0%	10.1%	10.6%	10.7%	10.7%	10.0%	11.4%	9.0%	10.6%
Minority Interest	1.9	1.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Net Income Avail. to Common	$55.9	$38.8	$51.6	$113.8	$113.3	$194.5	$204.8	$256.1	$265.9	$284.6	$279.1	
% of Sales	4.6%	3.7%	4.9%	9.9%	9.3%	10.0%	10.2%	10.7%	10.7%	9.9%	11.2%	8.9%	10.6%
% Growth		-30.6%	33.0%	120.9%	-0.4%	71.8%	5.3%	25.1%	3.8%	7.0%	-1.9%	21.6%	23.7%	1.0%
E.P.S.	$0.84	$0.57	$0.77	$1.54	$1.51	$2.51	$2.73	$3.33	$3.46	$3.67	$3.73	
% Growth		-32.1%	33.0%	100.0%	-2.0%	66.2%	8.7%	22.0%	3.8%	6.1%	-1.9%	21.6%	23.7%	1.0%
Wtd Avg Shares Outstanding	73.2	73.4	73.6	73.6	73.4	73.4	73.4	73.4	73.4	73.4	73.4	
% Growth		0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%

Notes: (1) 1997A estimates pro-forma for sale of Safety & Security
(2) Pro-forma for sale of Safety & Security.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025866

017480

16div-022693

PROJECT LASER

Java Stand Alone Income Statements (1)

Laser Fin. Base Case

	Actual 1996	Actual 1997	Projections 1998	1999	2000	2001	2002	2003	2004	2005	2006	CAGR/Avg 1996-1	CAGR/Avg 2001-06
Sales	$372.9	$378.9	$398.8	$418.8	$439.7	$461.7	$484.8	$509.0	$534.4	$561.1	$589.1		
% Growth		1.5%	5.1%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	4.9%	5.0%
Cost of Goods Sold	137.3	139.4	146.8	154.0	161.8	169.8	178.3	187.2	196.6	206.4	216.7		
% of Sales	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%	36.8%
Gross Profit	235.6	239.5	252.0	264.7	277.9	291.8	306.5	321.8	337.8	354.7	372.4		
% of Sales	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%	63.2%
SG&A Expenses	79.0	80.8	83.8	87.9	92.3	96.9	101.8	106.9	112.2	117.8	123.7		
% of Sales	21.2%	21.3%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%	21.0%
Advertising & Promotion	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Research & Development	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Income	34.3	35.7	36.4	38.1	39.3	41.4	43.7	46.1	48.7	51.3	54.1		
% of Sales	8.7%	8.7%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%	8.1%
% Growth			2.7%	4.4%	3.1%	5.3%	5.5%	5.5%	5.5%	5.5%	5.5%	4.6%	5.5%
Goodwill Amortization	4.0	3.9	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8		
Financing Fee Amortization	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9		
Other (Expense)/Income	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)		
% of Sales	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
Pre-Tax Earnings	29.7	31.2	32.0	33.7	35.0	37.0	39.3	41.7	44.3	47.0	49.9		
% of Sales	7.9%	8.2%	8.0%	8.1%	8.0%	8.0%	8.1%	8.2%	8.3%	8.4%	8.5%		
EBIT	33.0	34.3	35.3	37.0	38.3	40.3	42.7	45.2	47.8	50.6	53.4		
% of Sales	8.8%	9.0%	8.9%	8.8%	8.7%	8.7%	8.8%	8.9%	8.9%	9.0%	9.1%	8.8%	8.8%
Depreciation & Amortization	11.1	11.2	11.1	11.2	11.3	11.4	11.7	11.8	12.1	12.3	12.5		
EBITDA	43.1	45.5	46.3	48.1	49.6	51.6	54.1	57.0	59.8	62.9	65.9		
Net Interest	19.0	18.9	18.9	18.8	18.7	18.7	18.7	18.8	18.8	18.8	18.9		
Earnings Before Taxes	10.8	12.3	13.3	15.2	17.2	21.3	24.1	26.7	28.9	31.1	33.4		
Tax Provision	4.7	4.7	4.7	5.8	6.4	7.9	8.8	9.8	10.5	11.3	12.1		
Marginal Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%		
Effective Tax Rate	43.5%	37.9%	35.0%	38.0%	36.6%	36.9%	36.6%	36.6%	36.4%	36.3%	36.2%	38.3%	36.5%
Net Income	$16.2	$16.1	$8.6	$10.3	$11.9	$13.5	$15.3	$16.9	$18.3	$19.8	$21.3		
% of Sales	4.3%	3.6%	2.0%	2.5%	2.7%	2.9%	3.2%	3.3%	3.4%	3.5%	3.6%	3.3%	3.3%
Minority Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	16.2	16.1	8.6	10.3	11.9	13.5	15.3	16.9	18.3	19.8	21.3		
% of Sales	4.3%	3.6%	2.0%	2.5%	2.7%	2.9%	3.2%	3.3%	3.4%	3.5%	3.6%	3.3%	3.3%
% Growth		-0.8%	-46.8%	19.7%	15.7%	13.0%	13.6%	10.5%	8.3%	8.1%	7.6%	12.9%	9.9%
E.P.S.	$1.34	$1.07	$0.91	$1.16	$1.43	$1.71	$1.96	$2.21	$2.47	$2.77	$3.07		
% Growth		-20.1%	-15.0%	26.7%	23.7%	19.9%	14.6%	12.6%	11.7%	12.2%	10.8%	22.1%	12.1%
Wtd Avg Shares Outstanding	12.1	15.1	9.4	8.9	8.3	7.9	7.8	7.6	7.4	7.1	6.9		
% Growth		24.7%	-37.9%	-5.4%	-6.7%	-4.8%	-1.3%	-2.6%	-2.6%	-3.8%	-3.8%	-1.6%	-2.6%

Note: (1) Financial results for years ended on a December 31 year end.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025867

01748

16div-022694

PROJECT LASER

Sentinel Stand Alone Income Statements (1)

Laser Fin. Base Case

	Actual 1996	Actual 1997	Projections 1998	1999	2000	2001	2002	2003	2004	2005	2006	CAGR/Avg 1998-03	2001-06
Sales	$100.0	$140.0	$210.0	$315.0	$378.0	$397.9	$537.5	$644.0	$709.2	$816.0	$916.0		
% Growth		40.0%	50.0%	50.0%	20.0%	5.0%	35.0%	20.0%	10.0%	15.0%	12.0%	39.5%	18.1%
Cost of Goods Sold	55.5	140.1	105.0	142.0	170.1	210.0	229.3	257.5	283.7	326.4	366.4		
% of Sales	71.0%	70.0%	70.0%	71.0%	71.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%	70.0%
Gross Profit	45.5	60.0	105.0	173.1	108.0	187.9	308.3	386.4	425.5	489.6	549.6		
% of Sales	29.0%	30.0%	30.0%	29.0%	30.0%	30.0%	30.0%	30.0%	30.0%	30.0%	30.0%	30.0%	30.0%
SG&A Expense	72.7	94.2	60.0	63.0	75.6	79.1	94.3	90.2	94.3	102.3	106.1		
% of Sales	23.0%	28.0%	28.0%	27.0%	20.0%	20.0%	23.0%	23.0%	24.0%	24.0%	24.0%	23.0%	23.0%
Advertising & Promotion	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Research & Development	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Income	(13.9)	(7.4)	(3.3)	1.3	4.3	9.8	14.3	17.6	19.3	22.3	24.4		
% of Sales	-17.1%	-3.9%	-1.1%	0.4%	1.1%	2.5%	4.1%	4.8%	5.1%	5.4%	5.5%	-1.7%	4.1%
% Growth			-30.1%	-139.9%	276.9%	32.1%	44.9%	22.5%	14.1%	14.6%	7.9%	NM	19.3%
Goodwill Amortization	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1		
Financing Fee Amortization	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other Expense/(Income)	0.5	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.7%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Pre-Tax Synergies	(11.0)	(11.0)	(10.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)		
% of Sales	-5.2%	-3.2%	-4.8%	-4.8%	-3.2%	-3.8%	-2.8%	-2.3%	-2.1%	-1.8%	-1.6%		
EBIT	(14.5)	0.5	5.7	25.3	34.1	33.7	34.1	41.3	43.5	45.7	47.3		
% of Sales	-7.1%	0.3%	2.7%	8.0%	11.1%	11.6%	11.6%	11.3%	11.3%	11.1%	10.9%	4.9%	11.3%
Depreciation & Amortization	4.4	4.8	5.0	5.0	7.2	7.5	8.0	8.7	10.2	11.4	11.8		
EBITDA	(9.7)	5.3	10.6	30.1	41.2	41.2	42.0	51.0	53.6	57.0	59.1		
Net Interest	3.4	3.4	3.5	3.7	3.1	1.6	0.1	0.0	(0.0)	(1.3)	(1.3)		
Earnings Before Taxes	(15.7)	(3.1)	2.3	21.5	31.0	32.0	33.3	41.3	44.4	47.0	48.4		
Tax Provision/(Benefit)	(13.2)	(1.3)	1.7	8.3	10.1	11.5	11.4	14.5	15.9	17.2	18.0		
Marginal Tax Rate	38.5%	38.5%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%		
Effective Tax Rate	84.4%	41.5%	74.7%	38.5%	32.5%	36.0%	34.2%	35.0%	35.8%	36.6%	37.2%	44.2%	35.9%
Net Income	(2.5)	(1.8)	0.6	13.2	20.9	20.5	21.9	26.8	28.5	29.8	30.4		
% of Sales	-2.5%	-1.3%	0.3%	4.2%	5.5%	5.2%	4.1%	4.2%	4.0%	3.7%	3.3%	3.1%	4.2%
Minority Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	(2.5)	(1.8)	0.6	13.2	20.9	20.5	21.9	26.8	28.5	29.8	30.4		
% of Sales	-2.5%	-1.3%	0.3%	4.2%	5.5%	5.2%	4.1%	4.2%	4.0%	3.7%	3.3%	3.1%	4.2%
% Growth		-28.0%	-133.3%	2,100.0%	58.3%	-1.9%	6.8%	22.4%	6.3%	4.6%	2.0%	NM	8.2%
E.P.S.	($0.07)	$0.03	$0.01	$0.38	$0.60	$0.59	$0.63	$0.77	$0.82	$0.86	$0.88		
% Growth		-128.6%	-133.3%	2,100.0%	58.3%	-1.9%	6.8%	22.4%	6.3%	4.6%	2.0%	NM	8.2%
Wtd Avg Shares Outstanding	34.5	34.5	34.5	34.5	34.5	34.5	34.5	34.5	34.5	34.5	34.5		
% Growth		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025868

017482

16div-022695

CREDIT
DOWNSIDE

PROJECT LASER

Pro Forma Sources & Uses

Laser; Laser Fin. Base Case; Camper; Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case;

Step #1 - Purchase of Camper For $34.031 per Share - Alternative Structure #1

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	30.0	0.6%	1.0x	Pur. Equity	$1,398.4	47.6%
Bank Loans	962.2	41.1%	1.0x	Option Cash	48.4	1.7%
Int. Bank	0.0	0.0%	1.0x	Opt.Liq. Debt	453.0	19.3%
High Yield	0.0	0.0%	11.0x	Debt Under Purch.	481.7	11.5%
Preferred Stock	0.0	0.0%	0.0x	Trans. Fees	31.0	1.1%
Zero Coup.	160.0	11.1%	1.1x	Misc. Fees	0.0	0.0%
Convertible Preferred	0.0	0.0%	0.0x	Escrows, Fees	0.0	0.0%
Equity	777.0	31.7%		Ref. Lease Debt	153.7	5.1%
Total	$2,134.3	100.0%		Total	$2,134.3	100.0%

Pro Forma Shares Data

Target Shares Outstanding (Basic)	71.3
Exchange Ratio	0.7150
% Purchased	100.0%
Target Shares Repurchased (Purchase)	0.0
Target Shares Redeemed (Existing Debt)	(19.7)
Target Shares Redeemed (Warrants, Pref.)	0.0
Target Shares Red. (FY'98 Amort)	(1.1)
Target Shares Outstanding	50.5
Laser Shares Issued, Net (Step 2)	19.4
Existing Shares	91.3
Pro Forma Shares (MM)	109.8
% Target Interest	46.0%

Transaction Assumptions

Assumptions	Purchase
Pro Tax Synergies ($ of Target Sales)	
1997	4.0%
1998	5.0%
2000	5.0%
Equity Value	$1,704.0
Aggregate Value	$2,134.3

Step #2 - Purchase of Java For $8.250 per Share

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	30.0	0.9%	1.0x	Pur. Equity	$94.3	80.1%
Bank Loans	106.3	90.0%	1.0x	Option Cash	(10.6)	-9.0%
Int. Bank	0.0	0.0%	1.0x	Ref. Debt	30.1	25.5%
High Yield	0.0	0.0%	11.0x	Trans. Fees	2.3	1.9%
Preferred Stock	0.0	0.0%	0.0x	Misc. Fees	0.0	0.0%
Zero Coup.	0.0	0.0%	1.1x			
Convertible Preferred	0.0	0.0%	0.0x			
Equity	0.0	0.0%				
Total	$136.3	100.0%		Total	$118.1	100.0%

Pro Forma Shares Data

Java Shares (MM) (LTM)	11.4
Exchange Ratio	1.0x
% Purchased	0.0%
Laser Shares Issued, Class	0.0
Laser Shares Repurchased	0.0
Laser Shares Repurchased (Existing Debt)	0.0
Laser Shares Repurchased (Warrants, Pref.)	0.0
Laser Shares Issued, Net	0.0
Existing Shares	101.0
Pro Forma Shares (MM)	101.0
% Java Interest	0.0%

Transaction Assumptions

Assumptions	Purchase
Pro Tax Synergies ($ of Target Sales)	
1998	4.0%
1999	5.0%
2000	5.0%
Equity Value	$1.0
Aggregate Value	$40.3

Step #3 - Purchase of Sentinel For $5.250 per Share

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	0.0	0.0%	1.0x	Pur. Equity	$111.9	94.1%
Bank Loans	0.0	0.0%	1.0x	Option Proceeds	(1.0)	-1.0%
Int. Bank	0.0	0.0%	1.0x	Ref. Debt	4.1	3.5%
High Yield	0.0	0.0%	11.0x	Trans. Fees	1.7	1.5%
Preferred Stock	0.0	0.0%	0.0x	Misc. Fees	0.0	0.0%
Zero Coup.	0.0	0.0%	1.1x			
Convertible Preferred	0.0	0.0%	0.0x			
Equity	0.0	0.0%				
Total	$118.8	100.0%		Total	$118.8	100.0%

Pro Forma Shares Data

Sentinel Shares (MM) (LTM)	10.3
Exchange Ratio	1.0x
% Purchased	0.0%
Laser Shares Issued, Class	0.0
Laser Shares Repurchased	0.0
Laser Shares Repurchased (Existing Debt)	0.0
Laser Shares Repurchased (Warrants, Pref.)	0.0
Laser Shares Issued, Net	0.0
Existing Shares	101.0
Pro Forma Shares (MM)	101.0
% Sentinel Interest	0.0%

Transaction Assumptions

Assumptions	Purchase
Pro Tax Synergies ($ of Target Sales)	
1998	4.0%
1999	11.0%
2000	16.0%
Equity Value	$11.7
Aggregate Value	$19.8

Net Consideration

Sources & Uses / Capital Structure

Sources	Amount	%	Mult.	Uses	Amount	%
Cash	30.0	0.9%	1.0x	Pur. Equity	$1,548.4	48.1%
Bank Loans	1,111.5	49.0%	1.0x	Option Proceeds	34.2	0.1%
Int. Bank	0.0	0.0%	1.0x	Ref. Debt	1,719.2	44.0%
High Yield	0.0	0.0%	10.0x	Trans. Fees	36.3	1.1%
Preferred Stock	0.0	0.0%	0.0x	Misc. Fees	0.0	0.0%
Zero Coup.	160.0	11.1%	1.1x	Escrows, Fees	0.0	0.0%
Convertible Preferred	0.0	0.0%	0.0x	Ref. Lease Debt	153.7	4.1%
Equity	777.0	31.9%				
Total	$2,771.1	100.0%		Total	$2,771.1	100.0%

Pro Forma Shares Data

Laser Shares Issued Step #1	19.4
Laser Shares Issued Step #2	0.0
Laser Shares Issued Step #3	0.0
Total Laser Shares Issued	19.4
Initial Laser Shares Outstanding	91.3
Pro Forma Shares (MM)	101.0

Transaction Assumptions

Assumptions	Purchase
Pro Tax Synergies ($ of Pro Forma Sales)	
1998	2.7%
1999	3.1%
2000	4.0%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025869

017483

16div-022696

PROJECT LASER

Accretion/Dilution and Credit Statistic Analysis - With New Mgmt. Contract

Laser; Laser Fin. Base Case; Camper; Laser Fin. Base Case - Without Warrants; Java; Laser Fin. Base Case; Sentinel; Laser Fin. Base Case;

($ MM)

	Pro Forma EPS Analysis									'96-'01
	PF 1997 (3)	PF 1998 (4)	1995	1999	2000	2001	2002	2003	2004	CAGR
Diluted E.P.S. Accretion/(Dilution)										
Laser Stand Alone Diluted EPS (1)	$1.41	$1.85	$1.83	$2.43	$2.73	$3.03	$3.38	$3.66	$3.83	16.3%
% change	--	--	31.2%	31.1%	12.6%	11.1%	11.5%	8.3%	6.8%	
Pro Forma Diluted EPS After Camper, Java & Sentinel (2)	--	--	$1.54	$2.19	$3.49	$4.19	$4.81	$5.14	$5.51	37.4%
% Accr./(Dil.) to Stand Alone EPS	--	--	-8.8%	-9.8%	9.5%	9.9%	6.7%	7.7%	28.3%	
% change	--	--	--	34.3%	19.0%	19.9%	14.8%	6.9%	7.3%	
Pro Forma Diluted EPS After Exit (1)	--	--	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
% Accr./(Dil.) to EPS after Camper, Java & Sent.	--	--	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
% change	--	--	--	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Synergies										
Synergies Realized (pt)	--	--	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	
% of Pro Forma Revenue	--	--	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Incr. Syn. Req. to Break Even Aft. Camper, Java & Sentinel (pt)	--	--	$0.0	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
% of Pro Forma Revenue	--	--	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Credit Statistics (5)										
Cash Interest Expense										
EBITDA/Interest	3.42 x	3.59 x	3.45 x	3.82 x	4.16 x	4.62 x	5.18 x	5.86 x	6.72 x	
(EBITDA-Capex)/Interest	2.54	2.57	2.47	2.59	2.90	3.23	3.62	3.41	3.91	
Total Interest Expense										
EBITDA/Interest	2.72 x	2.90 x	2.81 x	3.05 x	3.37 x	3.75 x	3.87 x	3.86 x	4.72 x	
(EBITDA-Capex)/Interest	2.05	2.08	2.01	2.07	2.12	2.19	2.25	2.41	2.91	
Total Fixed Charges										
EBITDAR/Interest+Pref. Divs. (Pre-Tax)	2.72 x	2.90 x	2.81 x	3.05 x	3.37 x	3.75 x	3.87 x	3.86 x	4.72 x	
(EBITDA-Capex)/Interest+Pref. Divs. (Pre-Tax)	2.05	2.08	2.01	2.07	2.12	2.19	2.25	2.41	2.91	
Leverage										
Senior Debt / EBITDA	3.83 x	3.63 x	3.98 x	3.71 x	3.54 x	3.00 x	2.66 x	2.34 x	2.02 x	
Total Debt (Incl. Pref.) / EBITDA	5.38	5.12	5.51	5.07	4.71	4.16	3.66	3.24	2.82	
Senior Debt / Book Cap.	43.4%	41.4%	46.7%	46.4%	44.1%	41.5%	39.0%	36.1%	33.1%	
Total Debt (Incl. All Pref.) / Book Cap.	60.9%	60.5%	64.7%	63.4%	62.0%	60.1%	57.0%	54.3%	51.1%	
Total Debt (Incl. Pref.) / Book Cap.	60.9%	60.5%	64.7%	63.4%	62.0%	60.1%	57.0%	54.3%	51.1%	
Funds Flow from Operations / Total Debt (Incl. Pref.)	15.4%	3.9%	3.4%	12.5%	14.0%	16.0%	17.5%	21.1%	27.0%	
Cumulative Free Cash Flow	--	($118.8)	($138.8)	($101.7)	($29.2)	$55.4	$149.0	$248.8	($58.1)	
% of PF Bank Debt Outstanding	100.0%	100.0%	109.6%	100.6%	104.7%	100.3%	93.6%	86.1%	78.7%	
% of PF High Yield Debt Outstanding	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Revolver EBAR	0.56 x	0.71 x	0.88 x	2.90 x	2.77 x	2.77 x	2.89 x	0.11 x	0.44 x	

Notes: (1) Laser stand alone EPS from PLATS. Pro forma EPS excludes costs associated with restructurings.
(2) Pro forma 1997 includes $30MM in pre-tax synergies.
(3) Pro forma 1997 includes pro-forma 1997 operating statistics, pro-forma interest expense assuming no debt paydown, and pro-forma EOY 1997/BOY 1998 capitalization.
(4) Pro forma 1998 includes pro-forma 1998 operating statistics, pro-forma interest expense assuming [illegible] paydown, and pro-forma EOY 1997/BOY 1998 capitalization.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025870

0171184

16div-022697

PROJECT LASER

Pro Forma Income Statements - With New Mgmt. Contract

Credit Downside Case

	Actual Pro Forma		Projected Pro Forma									CAGR/Avg	
	1Q00	1Q01	2001	2002	2003	2004	2005	2006	2007	2008	2009	2001-04	2005-09
Sales	$3,443.7	$3,704.1	$3,811.1	$3,974.8	$4,155.7	$4,181.9	$4,448.8	$4,611.2	$4,799.3	$4,999.2	$5,119.7		
% Growth		8.0%	2.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	4.1%	3.9%
Cost of Goods Sold (1)	2,934.0	3,158.2	3,251.1	3,388.8	3,543.0	3,613.8	3,793.3	3,931.3	4,091.3	4,261.2	4,363.3		
% of Sales	71.5%	71.1%	71.2%	71.2%	71.0%	71.1%	71.1%	71.1%	71.1%	71.1%	71.0%	71.0%	71.1%
Gross Profit	646.1	745.9	807.0	813.1	844.9	868.1	855.5	917.8	961.0	1,001.1	1,061.4		
% of Sales	28.5%	28.9%	28.8%	27.3%	27.0%	28.9%	28.8%	28.9%	28.9%	28.9%	28.9%	27.0%	28.9%
SG&A Expenses (2)	494.9	431.7	436.5	454.4	474.3	502.5	508.6	527.1	549.0	571.9	595.8		
% of Sales	14.3%	11.6%	11.5%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%
Advertising & Promotion	53.1	51.4	51.9	54.5	59.3	62.9	65.8	68.8	71.3	73.9	76.7		
% of Sales	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
Research & Development	11.1	9.7	10.3	10.7	11.2	11.8	12.4	13.0	13.6	14.3	14.8		
% of Sales	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%
Operating Income	86.8	253.1	308.3	293.1	251.9	268.8	268.8	308.8	327.0	340.8	373.7		
% of Sales	2.5%	10.9%	10.6%	9.9%	8.9%	8.9%	8.9%	8.9%	7.9%	7.9%	7.9%	6.7%	7.9%
% Growth		264.1%	2.9%	-4.9%	-14.0%	-13.9%	3.9%	3.1%	6.0%	4.0%	9.7%	30.9%	5.7%
Net New Deal-Of Amortization	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1	39.1		
Old Goodwill Amortization	13.6	13.5	14.1	14.1	14.2	14.2	14.3	14.3	14.3	14.3	14.3		
Financing Fee Amortization	3.2	3.1	3.3	3.2	3.3	3.3	3.3	3.3	3.3	3.3	9.6		
Advisory Fees Amortization	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1		
Other Expense/(Income)	3.8	1.5	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)		
% of Sales	0.1%	0.1%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	-0.0%	0.0%	-0.0%
Pre-Tax Synergies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%		
EBIT	31.9	215.8	251.3	234.1	233.9	230.5	231.8	239.8	248.9	311.3	343.2		
% of Sales	0.9%	5.8%	6.6%	5.9%	5.6%	5.5%	5.2%	5.2%	5.2%	6.2%	6.7%	5.7%	5.5%
Depreciation & Amortization	113.3	115.3	144.1	171.7	193.1	217.9	247.9	263.3	279.8	791.4	301.7		
EBITDA	145.2	331.1	395.5	405.8	426.1	448.3	479.8	503.2	528.7	1,102.8	644.9		
% of Sales		11.9%	11.9%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%	11.4%		
Net Interest	120.1	120.1	113.3	120.2	121.9	122.1	119.1	91.8	74.4	66.4	57.1		
Earnings Before Taxes	(113.2)	101.9	142.2	113.4	106.0	105.3	112.7	148.1	164.3	166.0	212.2		
Tax Provision	(39.9)	33.3	57.1	36.8	36.3	36.9	35.7	51.6	57.5	64.8	94.8		
Effective Tax Rate	35.0%	34.3%	33.3%	34.3%	34.3%	35.0%	34.3%	34.3%	35.0%	41.0%	44.3%		
Marginal Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%
Net Income	($73.3)	$68.7	$85.0	$76.6	$69.7	$68.3	$77.0	$96.5	$106.8	$101.1	$117.3		
% of Sales	-2.1%	1.9%	2.2%	1.9%	1.7%	1.6%	1.7%	2.1%	2.2%	2.0%	2.3%	0.1%	2.1%
Minority Interest	1.9	1.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	($75.2)	$67.3	$84.6	$76.2	$69.3	$67.9	$76.6	$96.1	$106.4	$100.7	$116.9		
% of Sales	-2.2%	1.8%	2.2%	1.9%	1.7%	1.6%	1.7%	2.1%	2.2%	2.0%	2.3%	0.1%	2.1%
% Growth		-189.5%	25.9%	-9.9%	-9.1%	-2.1%	12.8%	25.4%	10.7%	-5.4%	16.1%	NM	11.9%
Basic E.P.S.	($0.52)	$0.45	$0.55	$0.53	$0.49	$0.47	$0.53	$0.69	$0.79	$0.81	$0.97		
Accretion/(Dilution)	-	-	-21.2%	-21.2%	-21.2%	-21.2%	-27.5%	-27.5%	-27.5%	-28.1%	-28.1%	-28.1%	-28.1%
% Growth		-186.7%	6.0%	-4.0%	-3.1%	-4.1%	12.8%	31.1%	11.0%	2.7%	19.7%	NM	11.7%
WM Avg Shares Outstanding (3)	143.1	134.5	137.7	136.1	135.1	135.1	135.1	135.1	135.1	135.1	135.1	NM	35.1%
Diluted E.P.S. (Combined Co.)	-	-	$0.39	$0.39	$0.39	$0.39	$0.39	$0.39	$0.39	$0.39	$0.39		
Accretion/(Dilution)	-	-	-21.2%	-21.2%	-21.2%	-21.2%	-27.5%	-27.5%	-27.5%	-27.5%	-27.5%		
Primary Shares Outstanding (3)	-	-	135.1	135.1	135.1	135.1	135.1	135.1	135.1	135.1	135.1		

Notes: (1) Includes $4.1MM of depreciation related expense due to additional PP&E under old post transaction starting 1Q01

(2) Includes additional cost impact of $1.2-1.6MM related to new mgmt. contracts starting 1Q01.

(3) Includes shares impact of related to new mgmt. contracts.

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 0025871
017485
16div-022698

PROJECT LASER

Pro Forma Combined Cash Flow Statements

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case;

	Actual Pro Forma 1997	Projected Pro Forma 1998	1999	2000	2001	2002	2003	2004	2005	2006	CAGR/Avg 1997-03	CAGR/Avg 1998-06
Net Income	$45.3	$49.5	$57.8	$69.3	$48.6	$44.4	$74.1	$86.6	$100.7	$117.7		
Depreciation (1)	66.6	76.6	104.1	124.6	150.3	181.3	196.7	212.4	234.7	236.7		
% of CapEx	72.7%	69.9%	69.1%	83.4%	87.7%	92.6%	95.4%	88.2%	99.1%	100.0%	78.7%	91.5%
Total Goodwill Amortization	54.8	55.4	55.4	55.4	55.4	55.4	55.4	55.4	55.4	55.4		
Trademark Amortization	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9		
Financing Fee Amortization	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3		
Advisory Fee Amortization	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1		
Deferred Taxes	17.3	7.7	10.4	17.5	15.8	18.1	19.7	21.2	23.5	23.7		
% Depreciation	26.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	34.8%	10.0%
Minority Interest	1.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4		
Non Cash Int. Exp.	23.5	23.5	25.8	27.9	29.4	30.8	0.0	0.0	0.0	0.0		
Non-Trans. Related Cash Restruct. Charges	0.0	(150.0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other Non-Cash Itms.(Inc.)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Cash Flow	241.3	77.2	256.3	311.5	311.3	343.9	358.5	387.2	415.0	445.5		
% of Sales	9.8%	2.7%	6.6%	9.0%	8.1%	10.0%	9.9%	10.2%	10.4%	10.6%	7.9%	10.1%
Investment in Non-Cash Working Capital	34.8	(91.4)	(13.2)	(47.7)	(50.9)	(54.1)	(57.8)	(56.4)	(56.5)	(61.3)		
% of Change in Sales	411.8%	87.7%	8.3%	32.1%	32.6%	33.0%	31.2%	31.3%	30.8%	30.7%	-14.2%	31.6%
Capital Expenditures	(95.9)	(109.4)	(130.0)	(149.4)	(171.3)	(199.0)	(206.2)	(224.3)	(237.8)	(236.7)		
% of Sales	2.5%	3.9%	4.1%	4.8%	5.3%	5.7%	5.7%	5.7%	5.7%	5.7%	4.1%	5.6%
Other Long Term Investments	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Common Dividends	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)		
Dividends Per Share	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04	$0.04		
Payout Ratio	9.8%	8.7%	8.1%	6.3%	9.1%	9.9%	5.9%	5.1%	4.4%	3.7%		
Mandatory Debt Retirements	0.0	0.0	(74.9)	(7.5)	0.0	0.0	0.0	0.0	0.0	0.0		
Payment of Redemption Premium	0.0	0.0	(5.6)	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Free Operating Cash Flow	$91.3	($131.5)	$1.3	$72.5	$84.6	$81.5	$91.1	$110.1	$118.3	$141.1		
% of Sales	7.1%	-4.7%	0.2%	2.1%	2.6%	2.4%	2.6%	2.9%	3.1%	3.4%	1.8%	2.1%
Total Debt Automatically Added/(Retired)	0.0	115.0	(14.1)	(77.1)	(14.6)	(33.6)	(95.1)	(110.1)	(118.3)	(141.1)		
Excess Cash	$91.3	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0		

Notes: (1) Pro forma and projections adjust for FY 97 write-offs related to restructuring (assumed 15 year depreciation life).

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT REQUESTED BY MORGAN STANLEY
CONFIDENTIAL
0025872

017486

16div-022699

PROJECT LASER

Pro Forma Non-Cash Working Capital

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants; Java: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case;

	Actual Pro Forma 1997	Projected Pro Forma 1998	1999	2000	2001	2002	2003	2004	2005	2006
Current Assets										
Account Receivable	$376.8	$539.3	$644.3	$676.5	$710.3	$745.8	$783.1	$822.3	$863.4	$906.6
Days Outstanding	78.0	81.0	78.0	79.0	79.0	79.0	79.0	79.0	79.0	79.0
Inventory	$559.3	$646.1	$634.7	$692.0	$719.0	$733.3	$791.6	$832.7	$874.8	$918.6
Turnover	3.5	3.5	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
Other	$124.3	$133.5	$139.1	$146.1	$153.4	$161.1	$169.1	$177.6	$186.4	$195.8
% of Sales	4.7%	4.7%	4.7%	4.7%	4.7%	4.7%	4.7%	4.7%	4.7%	4.7%
Total Current Assets	$1,262.4	$1,377.7	$1,418.1	$1,493.6	$1,572.7	$1,650.1	$1,743.8	$1,832.6	$1,924.6	$2,021.0
Current Liabilities										
Accounts Payable	$228.7	$248.9	$251.7	$270.3	$284.1	$301.1	$316.9	$335.5	$352.3	$370.1
Days Outstanding	43.3	42.3	43.3	43.3	43.3	43.3	43.3	43.3	43.3	43.3
Other	$235.5	$247.3	$259.6	$272.6	$286.3	$300.6	$315.6	$331.4	$347.9	$365.3
% of Sales	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%
Total Current Liabilities	$464.2	$496.3	$511.4	$542.9	$570.3	$601.7	$632.5	$666.9	$700.3	$735.5
Total Working Capital	$798.1	$881.5	$906.7	$950.6	$1,002.4	$1,048.5	$1,109.3	$1,165.7	$1,224.3	$1,285.5
Investment in Working Capital		$83.4	$25.2	$43.9	$51.8	$46.1	$60.8	$56.4	$58.5	$61.3
% of Change in Sales		67.1%	9.3%	31.1%	72.6%	33.0%	31.2%	31.2%	30.8%	30.1%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025873

017687

16div-022700

PROJECT LASER

Alternative #1 Pro Forma Balance Sheet - Sale of Camper Safety & Security

Laser: Laser Fin. Base Case; Camper: Laser Fin. Base Case - Without Warrants

	Camper HoldCo 1/1/97	Laser 1/1/97	Combined	Purchase of HoldCo. & Quarterwide (1)	1997 NewCo. Pro-Forma	1997 Security Spectrum (2)	Other Restruct. Charges	1997 Pro-Forma
ASSETS								
Cash	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Interest Cash	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Accounts Receivable	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Inventories	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Other Current Assets	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Total Current Assets	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Net Property, Plant and Equipment	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Old Goodwill	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
New Goodwill	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Prepaid Pen & Expenses	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Trademarks & Tradenames	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Other Non-Current Assets	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
TOTAL ASSETS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LIABILITIES & EQUITY								
Existing Short Term Debt	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Accounts Payable	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Other Current Liabilities	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Total Current Liabilities	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Deferred Tax Liability	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Other Non-Current Liabilities	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Existing Long Term Debt	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Bank Loan	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Int. Bank	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
High Yield	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Perkamp Bank	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Zero Coup. Cos.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Chrysler, Pacific	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Minority Interest	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]
Shareholders Equity	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL LIABILITIES & EQUITY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Notes: (1) No cash transaction by the pro narrowed pd.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025874

017488

16div-022701

PROJECT LASER

Pro Forma Laser Balance Sheet Post Step #2

Laser: Laser Fin. Base Case; Java: Laser Fin. Base Case

	Java 1997	Laser W/ Comper 1997	Combined		Adjustments (1)	1997 Pro-Forma
ASSETS						
Cash	84.3	234.6	278.9		52.0	330.9
Restrict Cash	0.0	0.0	0.0		0.0	0.0
Accounts Receivable	417.3	462.0	879.3		0.0	879.3
Inventories	311.9	412.5	724.3	0.0%	0.0	724.3
Other Current Assets	0.3	194.3	112.5		0.0	112.5
Total Current Assets	813.3	1,313.5	2,127.1		0.0	2,127.1
Net Property, Plant and Equipment	16.0	373.3	389.3	0.0%	0.0	389.3
Old Goodwill	134.9	0.0	134.9		(134.9)	0.0
New Goodwill	0.0	1,713.9	1,713.9		139.5	1,853.4
Prepaid Pen & Expenses	4.1	33.0	37.3		2.5	39.7
Trademarks & Tradenames	0.0	194.6	194.6	0.0%	0.0	194.6
Other Non-Current Assets	1.6	197.1	198.7	0.0%	0.0	198.7
TOTAL ASSETS	971.1	2,529.9	3,734.9		111.5	3,913.3
LIABILITIES & EQUITY						
Existing Short Term Debt	23.0	93.0	93.0		20.0	93.0
Accounts Payable	317.3	197.3	314.3		0.0	314.3
Other Current Liabilities	99.0	105.0	213.3		0.0	213.3
Total Current Liabilities	51.3	377.3	429.3		0.0	429.3
Deferred Tax Liability	0.0	54.6	54.6		0.0	54.6
Other Non-Current Liabilities	4.5	243.6	248.2	0.0%	0.0	248.2
Existing Long Term Debt	140.3	93.0	244.1		(100.1)	144.0
Bank Loan	0.0	963.3	963.3		184.3	1,113.3
Sub. Debt	0.0	0.0	0.0		0.0	0.0
High Yield	0.0	0.0	0.0		0.0	0.0
Preferred Stock	0.0	0.0	0.0		0.0	0.0
Zero Comp. Con.	0.0	200.0	200.0		0.0	200.0
Common, Par/0	0.0	0.0	0.0		0.0	0.0
Minority Interest	0.0	1.3	1.3		0.0	1.3
Common Equity	40.0	1,349.2	1,317.0		(40.0)	1,349.2
TOTAL LIABILITIES & EQUITY	971.1	2,529.9	3,734.9		111.5	3,913.3

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025875

017689

16div-022702

PROJECT LASER

Pro Forma Laser Balance Sheet Post Step #3

Laser: Laser Fin. Base Case; Sentinel: Laser Fin. Base Case

	Sentinel 1997	Laser W/ Changes 1997	Combined	Adjustments (1)	1997 Pro Forma
ASSETS					
Cash	$3.3	$30.0	$60.0	$0.0	$60.0
Short Term Investments	0.0	0.0	0.0	0.0	0.0
Accounts Receivable	43.3	230.7	274.0	0.0	274.0
Inventories	47.3	240.3	287.5	0.0% 0.0	287.5
Other Current Assets	11.0	123.3	134.3	0.0	134.3
Total Current Assets	104.9	1,124.3	1,349.3	0.0	1,349.3
Net Property, Plant and Equipment	35.7	281.3	317.0	0.0% 0.0	317.0
Old Goodwill	3.1	0.0	3.1	(77.7)	0.0
New Goodwill	0.0	1,911.4	1,911.4	74.0	1,985.3
Prepaid Fees & Expenses	0.0	49.7	49.7	1.7	51.4
Investments & Deferrals	0.0	194.4	194.4	0.0% 0.0	194.4
Other Non-Current Assets	0.7	110.7	111.3	0.0% 0.0	111.3
TOTAL ASSETS	$144.0	$3,671.9	$4,016.0	$1.7	$4,017.7
LIABILITIES & EQUITY					
Existing Short Term Debt	$43.3	$0.0	$43.3	($43.3)	$0.0
Accounts Payable	14.4	224.3	238.7	0.0	238.7
Other Current Liabilities	26.4	72.7	99.1	0.0	99.1
Total Current Liabilities	84.3	297.0	381.3	($43.3)	338.0
Deferred Tax Liability	0.0	34.6	34.6	0.0	34.6
Other Non-Current Liabilities	3.4	288.2	291.6	0.0% 0.0	291.6
Existing Long Term Debt	0.0	144.0	144.0	0.0	144.0
Bank Loan	0.0	1,155.3	1,155.3	168.6	1,323.9
Bank Bank	0.0	0.0	0.0	0.0	0.0
High Yield	0.0	0.0	0.0	0.0	0.0
Preferred Stock	0.0	0.0	0.0	0.0	0.0
New Corp. Com.	0.0	350.0	350.0	0.0	350.0
Common Stock	0.0	0.0	0.0	0.0	0.0
Minority Interest	0.0	1.3	1.3	0.0	1.3
Common Equity	56.0	1,200.2	1,256.2	56.0	1,200.2
TOTAL LIABILITIES & EQUITY	$144.0	$3,671.9	$4,016.0	$1.7	$4,017.7

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025876

0179190

16div-022703

PROJECT LASER

Pro Forma Balance Sheets

Laser: Laser Fin, Base Case; Camper: Laser Fin, Base Case - Without Warrants; Java: Laser Fin, Base Case; Sentinel: Laser Fin, Base Case;

	Actual 1996	Pro Forma 1997	Projections 1998	1999	2000	2001	2002	2003	2004	2005	2006
ASSETS											
Cash	$53.4	$30.1	$40.8	$30.1	$30.5	$30.1	$30.0	$40.0	$40.0	$40.0	$30.0
Short Term Investments	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Accounts Receivable	293.6	376.0	629.2	644.3	674.5	710.3	741.9	772.1	822.3	863.4	906.6
Inventories	354.2	559.1	616.1	634.3	670.1	710.0	752.3	791.6	831.7	874.0	918.4
Other Current Assets	33.9	126.2	132.5	139.1	146.1	153.4	161.1	169.1	177.6	186.4	195.8
Total Current Assets	633.0	1,341.2	1,458.5	1,478.9	1,519.2	1,614.5	1,719.9	1,774.6	1,911.4	2,003.4	2,101.8
Net Property, Plant and Equipment	340.9	317.0	350.7	378.6	401.4	422.1	446.9	468.4	490.4	457.5	432.5
Old Goodwill	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
New Goodwill	0.0	2,076.5	1,977.0	1,917.4	1,861.0	1,806.6	1,751.3	1,695.0	1,640.4	1,585.0	1,529.6
Prepaid Fees & Expenses	0.0	63.4	29.1	34.9	30.6	26.3	22.9	19.5	16.1	12.6	10.9
Trademarks & Tradenames	194.4	194.4	194.4	194.7	179.9	163.8	155.1	147.2	139.4	131.5	123.7
Other Non-Current Assets	37.9	115.3	115.3	115.3	115.3	115.3	115.3	115.3	115.3	115.3	115.3
TOTAL ASSETS	$1,120.2	$4,042.3	$4,125.1	$4,119.4	$4,119.4	$4,158.1	$4,221.6	$4,240.9	$4,313.0	$4,305.5	$4,313.8
LIABILITIES & EQUITY											
Existing Short Term Debt	$0.7	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Accounts Payable	103.6	223.7	368.9	355.7	379.3	346.1	303.1	314.9	335.5	313.5	370.1
Other Current Liabilities	91.9	239.5	247.3	259.6	272.6	286.3	300.6	315.6	331.4	347.9	365.3
Total Current Liabilities	196.1	464.2	616.3	615.4	652.0	632.3	603.7	630.5	666.9	700.4	735.5
Deferred Tax Liability	54.6	54.6	62.2	72.6	85.1	100.1	118.3	137.9	159.3	181.6	205.3
Other Non-Current Liabilities	141.5	277.6	277.6	291.6	291.6	291.6	291.6	291.6	291.6	291.6	291.6
Existing Long Term Debt	194.5	144.3	144.3	41.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Revolver	0.0	(64.1)	64.0	64.0	23.1	0.0	0.0	0.0	0.0	0.0	0.0
All Tranches	0.0	1,400.0	1,400.0	1,400.0	1,400.0	1,340.4	1,250.9	1,155.2	1,045.7	939.4	779.3
High Yield	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Preferred Stock	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Cons	0.0	300.0	313.5	331.9	379.8	409.2	0.0	0.0	0.0	0.0	0.0
Convert. Perfd	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	194.5	1,979.9	2,121.8	2,037.1	2,004.9	1,949.6	1,250.9	1,155.2	1,045.7	939.4	779.3
Minority Interest	0.0	1.2	1.6	2.0	2.4	2.8	3.2	3.6	4.0	4.4	4.8
Common Equity	531.9	1,369.1	1,160.0	1,102.1	1,277.4	1,371.6	1,913.9	2,015.4	2,107.4	2,204.0	2,317.3
TOTAL LIABILITIES & EQUITY	$1,120.2	$4,042.3	$4,125.1	$4,119.4	$4,119.4	$4,158.1	$4,221.6	$4,240.9	$4,313.0	$4,305.5	$4,313.8

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025877

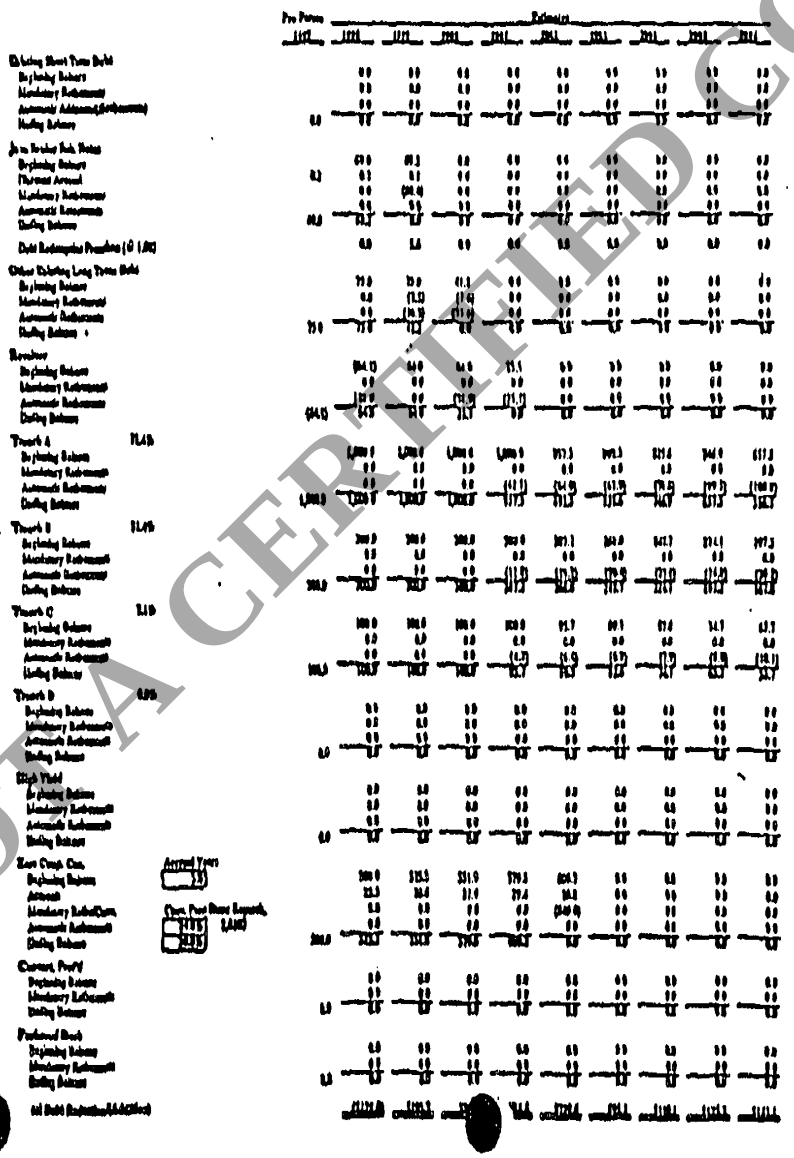
16417 10

16div-022704

PROJECT LASER

Pro Forma Debt Paydown Schedule

Laser; Laser Fin, Base Case; Camper; Laser Fin, Base Case - Without Warrants; Java; Laser Fin, Base Case; Sentinel; Laser Fin, Base Case;



NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025878

017492

16div-022705

PROJECT LASER

Interest Expense Schedule

Laser; Laser Fin. Base Case; Camper; Laser Fin. Base Case - Without Warrants; Java; Laser Fin. Base Case; Sentinel; Laser Fin. Base Case;

		Pro Forma	Estimates								
		1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Interest Expense											
Existing Short Term Debt	6.5%	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
Java Senior Sub. Notes	11.0%	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Existing Long Term Debt	6.6%	4.9	4.9	1.8	1.4	0.0	0.0	0.0	0.0	0.0	0.0
Revolver	7.0%	(4.7)	(0.9)	4.1	3.1	0.9	0.0	0.0	0.0	0.0	0.0
Tranch A	7.5%	95.0	90.0	70.0	70.0	64.3	64.3	60.2	53.0	49.2	42.1
Tranch B	7.0%	31.0	31.0	31.0	31.0	29.6	19.4	15.1	16.5	14.7	12.7
Tranch C	7.0%	7.0	7.0	7.0	7.0	6.9	6.1	6.0	5.3	4.9	4.2
Tranch D	7.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
High Yield	10.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Cas.	5.06%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Cash Interest		107.6	112.0	106.3	102.5	94.8	90.7	84.2	77.1	68.8	59.1
Java Senior Sub. Notes		0.2	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Cas.	5.06%	23.3	25.3	26.6	27.9	29.6	30.1	0.0	0.0	0.0	0.0
Total Non-Cash Interest		23.5	25.5	26.8	27.9	29.6	30.1	0.0	0.0	0.0	0.0
TOTAL INTEREST EXPENSE		$133.1	$137.6	$133.1	$130.4	$124.1	$121.8	$84.2	$77.1	$68.8	$59.1
Average Cost of Debt (pct)		8.4%	8.6%	8.0%	7.9%	7.5%	12.1%	9.0%	9.1%	9.1%	9.1%
Interest Income											
Cash and Excess Cash	3.0%	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
TOTAL INTEREST INCOME		$2.4	$2.4	$2.4	$2.4	$2.4	$2.4	$2.4	$2.4	$2.4	$2.4
Preferred Dividends											
Preferred Stock	6.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Convert. Pref'd	4.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025879

01749310

16div-022706

PROJECT LASER

Warrants Pricing and E.P.S. Analysis

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Net Income Used in E.P.S. Calculation									
Pro Forma Net Income	$45.5	$47.0	$48.7	$48.5	$46.6	$76.1	$86.6	$100.7	$117.7
Pro Forma Net Inc. after Pfd. Div. Adj. and Int. from Conversion	$45.9	$47.3	$48.8	$49.7	$46.6	$76.1	$86.6	$100.7	$117.7
Diluted Shares Used in E.P.S. Calculation									
Laser Stand Alone Diluted Shares (MM)	90.5	91.5	91.9	91.9	91.9	91.9	91.9	91.9	91.9
Pro Forma Shares Issued (MM)	19.4	19.4	19.4	19.4	19.4	19.4	19.4	19.4	19.4
Net Shares from New Contract (MM)	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Pro Forma Diluted Shares (MM) (Incl. Warrants)	110.1	111.1	111.7	111.9	111.8	111.8	111.5	111.5	111.5
Net Shares Iss. From Convertibles (MM)	0.0	0.0	0.0	0.0	0.0	7.5	7.5	7.5	7.5
Net Shares Iss. From New Transaction Warrants (MM) (1)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Net Shares Iss. From New Mgmt Warrants (MM) (1) $34.375	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Diluted Shares Outstanding (MM)	110.1	111.1	111.7	111.9	111.8	119.4	119.0	119.0	119.0
E.P.S. Calculation									
E.P.S Assuming Conversion	$0.60	$0.58	$0.59	$0.60	$0.59	$0.63	$0.72	$0.84	$0.98
E.P.S Assuming No Conversion	$0.41	$0.43	$0.43	$0.43	$0.41	$0.67	$0.77	$0.89	$1.04
Diluted E.P.S. (Cashless Exercise) to be Used	$0.41	$0.43	$0.43	$0.43	$0.41	$0.63	$0.72	$0.84	$0.98
Accretion / (Dilution)	-73.7%	-42.1%	-64.3%	-63.5%	-67.8%	-52.3%	-47.3%	-99.5%	-77.6%
Metered?	No	No	No	No	Yes	Yes	Yes	Yes	Yes
Hurdle?		$4.0 x	$4.0 x	$4.0 x	$4.0 x	$4.0 x	$4.0 x	$4.0 x	$4.0 x
Projected Pro Forma Stock Price									
Implied Beginning of Year Laser Stock Price	$31.83	$10.76	$10.89	$10.86	$10.22	$13.62	$17.71	$20.61	$24.76
Average Laser Stock Price	$31.84	$10.97	$10.66	$10.79	$12.91	$16.69	$19.21	$22.61	$24.14

Note: (1) Assumes exercise of warrants in particular year shown. Impact of warrants exercise does not accumulate year to year; assumes created impact after notice by date.

NOT ACERTIFIED COPY

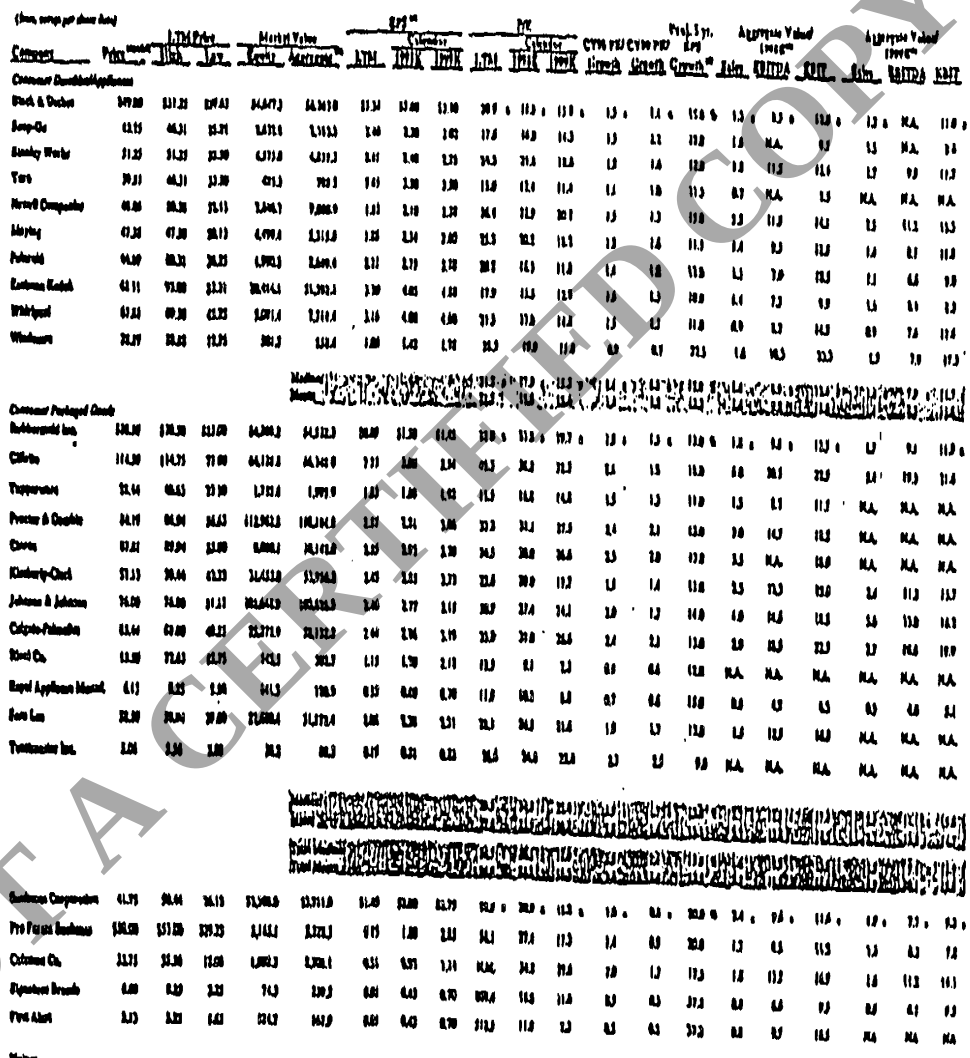
MORGAN STANLEY
CONFIDENTIAL
0025880

01764

16div-022707

SUNBEAM CORPORATION

Market Statistics for Selected Comparable Companies



Notes:

(1) Closing prices as of 3/13/96, 3/6/96 and four represent the latest 52 week highs

(2) Aggregate value equals market value of equity plus debt less cash, long-term debt, minority interests and any capital leases and unconsolidated investees, as appropriate

(3) EPS excludes EPS estimates as of 3/13/96 and 1997

(4) EPS excludes long-term growth estimates as of 3/13/96

(5) Based on estimates from various research reports; Coleman estimates based on Prudential research report dated 1/30/96; Sunbeam based estimates based on Management projections and Pro Forma estimates based on Management projected

(6) Closing share price for Sunbeam is before the announcement of the recent acquisitions

(7) Closing share price for Pro Forma Sunbeam adjusted for 3/96/96 proceeds spreading to 1996, and $1,000/96 annual proceeds spreading to 1997

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025881

017495

16div-022708

SUNBEAM BUSINESS OVERVIEW

Sunbeam

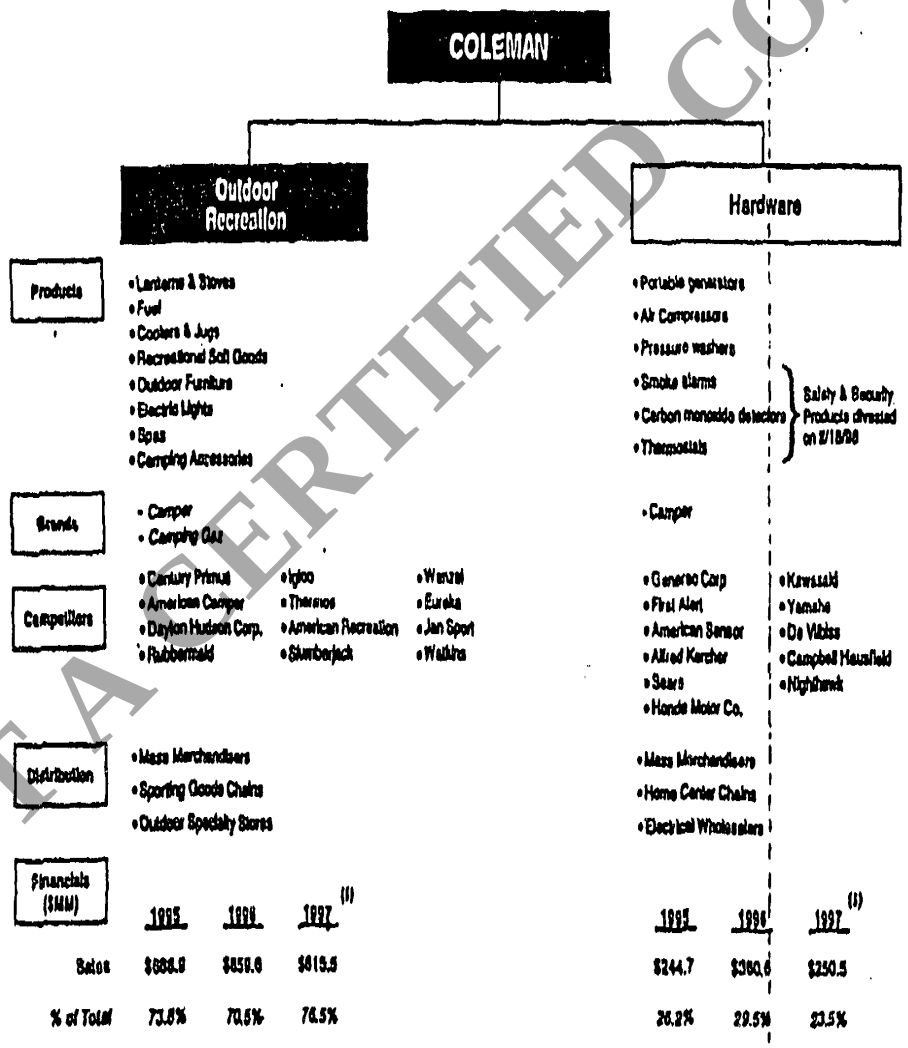
	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	• Mixmaster • Sunbeam • Oster • Osterizer	• Health at Home	• Cuddle-Up • Oster	• Sunbeam • Grillmaster	• Oster
Market Position	• #1, 2 or 3 depending on product category	• #1, 2 or 3 in most categories	• #1 in electric blankets • #1 in clippers	• #1 in gas grills	• #1 in clippers
Major Competitors	• Black & Decker • Hamilton Beach/Proctor Silex (Nacco) • KitchenAid (Whirlpool)	• Durace ll • Braun (Gillette) • Health O'Meter	• Wahl • Andis • Teledyne	• Charbroil • Thermos • Weber	• Wahl • Andis
Distribution	• Mass merchandisers • Department stores • Specialty stores	• Mass merchants • Drug stores	• Mass merchants • Drug stores	• Mass merchants • Hardware/Home centers	• Mass merchants • Drug stores • Specialty stores • Professional distributors
1996 Net Sales:[1]	$383.9MM	$38.4MM	$187.0MM	$255.9MM	$59.1MM
% of Total	39%	10%	19%	26%	6%
1997 Net Sales:[1]	$455.6MM	$104.0MM	$180.4MM	$325.9MM	$72.4MM[2]
% of Total	40%	9%	16%	28%	6%

Notes: (1) 1997 sales breakdown from company and does not add to 100% due to outlet sales.
(2) 1997 sales includes the away-from-home category.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025882

COLEMAN BUSINESS OVERVIEW



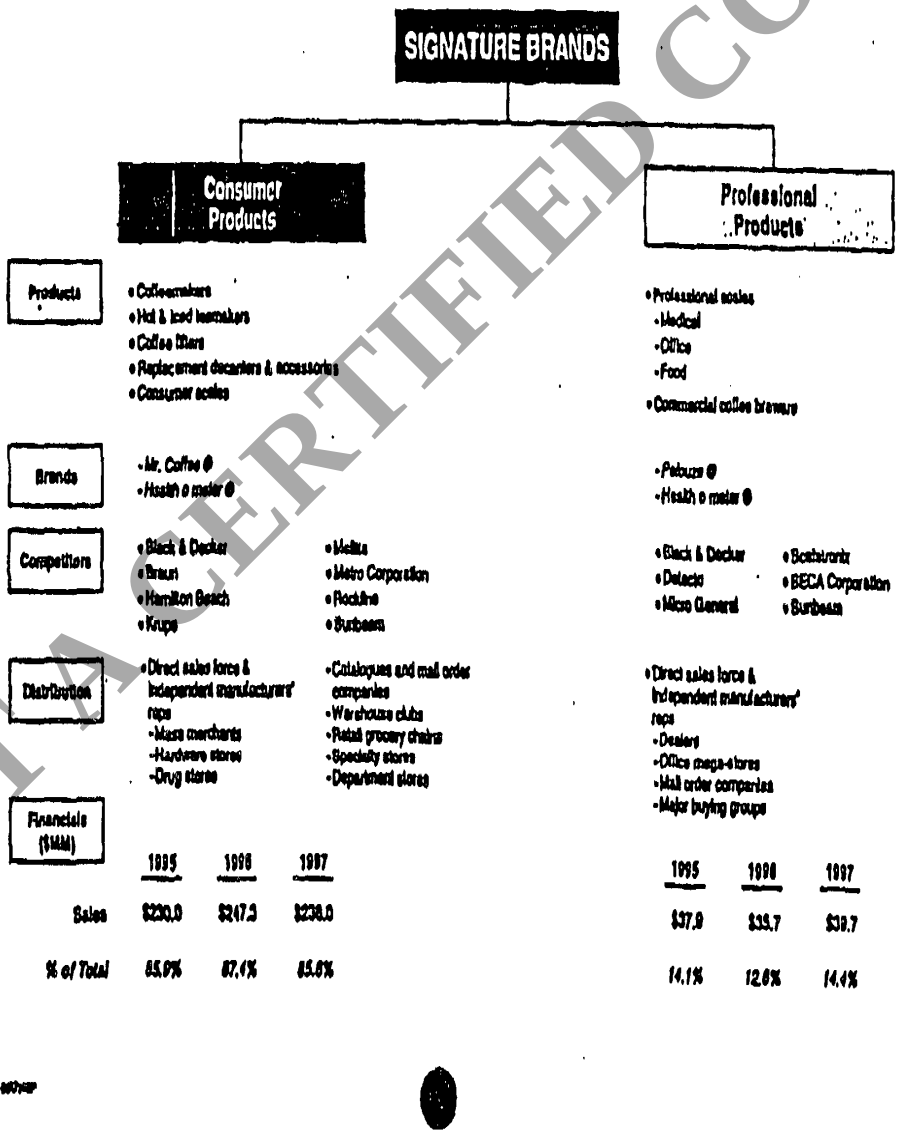
Note: (1) Percentage breakdown of 1997 segment sales based on Prudential Securities research report dated 1/14/97.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0025883

L69L10

SIGNATURE BRANDS BUSINESS OVERVIEW



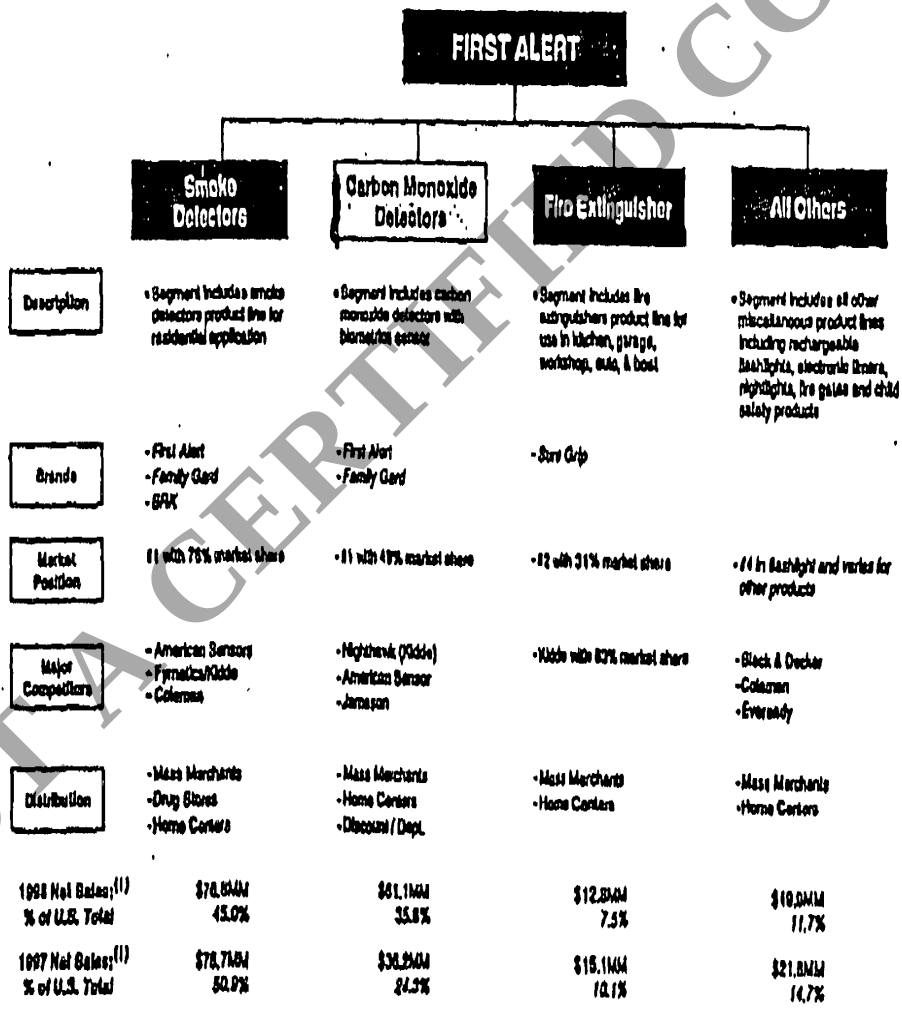
NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0025884

017498

16div-022711

FIRST ALERT BUSINESS OVERVIEW



Note: (1) Excludes international sales.

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 0025885

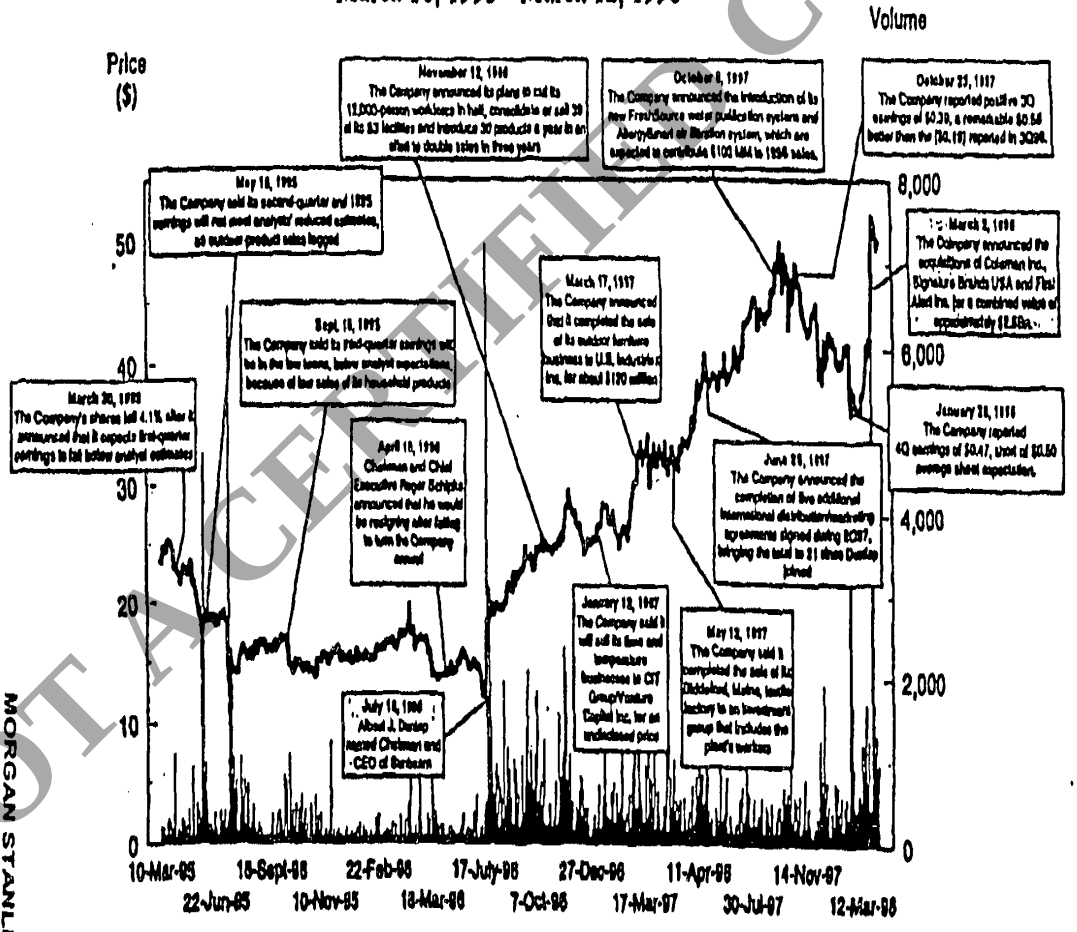
669L10

16div-022712

SUNBEAM CORPORATION

Annotated Closing Share Price and Volume Analysis

March 10, 1995 - March 12, 1998



NOT ACCEPTED FOR FILING COPY

MORGAN STANLEY CONFIDENTIAL 0025886

19624A

017500

C O N F I D E N T I A L

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC., Plaintiff, vs. MORGAN STANLEY & CO., INC., Defendant.	CA 03-5045 AI
MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff, vs. MACANDREWS & FORBES HOLDINGS, INC., Defendant.	CA 03-5165 AI

DEPOSITION OF MICHAEL HART

New York, New York

Wednesday, May 19, 2004

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 160655

NOT A CERTIFIED COPY

01/5/02

May 19, 2004
9:28 a.m.

Videotaped Deposition of MICHAEL HART, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before TAMI H. TAKAHASHI, RPR and a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff Coleman (Parent) Holdings Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Defendant Morgan Stanley & Co., Inc. and the Witness
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
RUBEN MARTINEZ, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Michael Hart in the matter Coleman versus Morgan Stanley. This deposition is being held at Esquire Deposition Services located at 216 East 45th Street Manhattan, New York on May 19, 2004 at approximately 9:38 a.m.

Will counsels, please, introduce themselves.

MR. MARKOWSKI: Bob Markowski on behalf of the plaintiff Coleman Parent Holdings.

MR. O'CONNOR: Christopher O'Connor, Jenner & Block, on behalf of plaintiff Coleman Parent Holdings.

MR. CLARE: Tom Clare, Kirkland & Ellis LLP, on behalf of Morgan Stanley and the witness, Mr. Hart.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness

MICHAEL HART, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

MR. MARKOWSKI:

Q. Mr. Hart, would you please state your full name for the record.

A. I'm sorry?

Q. Your full name for the record.

A. Michael Anthony Hart.

Q. What is your current home address?

A. 178 Fairmount Avenue, Chatham, New Jersey 07928.

Q. Who is your current employer, Mr. Hart?

A. Morgan Stanley.

Q. Are you employed by any particular Morgan Stanley entity?

A. No, Morgan Stanley & Co.

Q. Is that Morgan Stanley & Company, Inc.?

A. Yeah.

Q. What is your position?

A. I'm a managing director.

Q. Where is your office located?

A. 1585 Broadway.

Q. What are your current responsibilities at Morgan Stanley & Company, Mr. Hart?

CONFIDENTIAL - Hart

A. I'm currently the head of the Loan Products Group.

Q. What is the function of the Loan Products Group?

A. Its primary responsibility is the origination and execution of senior lending and bridge loan opportunities for our clients.

Q. Do you hold any titles, other than managing director?

A. I believe I have a variety of vice president titles at some of our subsidiaries.

Q. Can you tell me what those are?

A. I believe vice president at Morgan Stanley Senior Funding, and a vice president of Morgan Stanley Bank.

Q. The name of that entity is Morgan Stanley Bank?

A. To the best of my knowledge, yes. I might be missing an, Inc. or a Co. on that.

Q. To whom do you report?

A. Mitch Petrick.

Q. What is Mr. Petrick's title?

A. Title? Managing director.

Q. What are his responsibilities?

CONFIDENTIAL - Hart

A. He is -- he has reporting to him the Loan Products Group, as well as High Yield and Leveraged Finance.

Q. Is Mr. Petrick president of Morgan Stanley Senior Funding?

A. Present?

Q. President. Is he president of Morgan Stanley Senior Funding?

A. I don't believe so.

Q. Do you know who he is?

A. I don't.

Q. You're vice president of Morgan Stanley Senior Funding, but you don't know who the president is?

A. No.

Q. What are your -- do you have any supervisory responsibilities, sir?

A. Yes.

Q. What are those?

A. I oversee the individuals that have primary responsibility of originating and syndicating our loan positions.

Q. How many employees do you supervise in that capacity?

CONFIDENTIAL - Hart

A. Approximately, 30.

Q. You've been deposed previously, have you not, sir?

A. I have.

Q. On how many occasions?

A. Once.

Q. And that was in connection with matters relating to Sunbeam's acquisition of Coleman Company, correct?

A. In part. I'm aware that it was having to do with a credit committee. I don't know specifically.

Q. It dealt -- your deposition dealt, generally, with Sunbeam; is that correct?

A. Yes.

Q. Morgan Stanley Senior Funding's loan to Sunbeam?

A. In part, yes.

Q. And Morgan Stanley Senior Funding's loan to Sunbeam was in connection with financing that Sunbeam obtained in order to acquire Coleman Company and two other entities; is that correct?

A. It was used in that transaction, yes.

Q. Other than your testimony in those

NOT A CERTIFIED COPY

04-7504

CONFIDENTIAL - Hart

proceedings, have you ever been interviewed by anyone regarding the Sunbeam-related transactions?

A. No, not to my knowledge.

Q. Are you familiar, sir, with the claims brought by my client, Coleman Parent Holdings, in this lawsuit?

A. Not with any degree of specificity.

Q. What is your understanding of that?

A. That there's a lawsuit filed from Coleman against Morgan Stanley.

Q. Do you understand that my client is accusing Morgan Stanley & Company of fraud?

A. Wasn't aware of that.

Q. What did you do to prepare for today's deposition, sir?

A. Met with Tom Clare and Jim Doyle, our internal counsel.

Q. Were those separate meetings?

A. It was not.

Q. How many times did you meet with Mr. Clare and Mr. Doyle to prepare for today?

A. We had -- I -- I met Tom on two occasions. And Jim on one.

CONFIDENTIAL - Hart

Q. Do I understand it's the case that Mr. Doyle participated in one of your two meetings with Mr. Clare?

A. Correct.

Q. When was your first meeting with Mr. Clare to prepare for today?

A. Probably six weeks ago we spent 15 minutes together.

Q. Where was that?

A. At Morgan Stanley.

Q. The entire meeting lasted 15 minutes?

A. About that. It was an introductory meeting.

Q. Was anyone else present?

A. A colleague of Tom's.

Q. Did Mr. Clare give you any documents at that time?

A. I don't recall seeing any documents at that time.

Q. Other than Mr. Clare's colleague, was anyone else present?

A. No.

Q. When was your next meeting with Mr. Clare to prepare for today?

CONFIDENTIAL - Hart

A. Yesterday.

Q. Where was that meeting?

A. At the Kirkland & Ellis offices in New York.

Q. And Mr. Doyle was present?

A. He was.

Q. How long did that meeting last?

A. Four hours.

Q. Other than Mr. Doyle and Mr. Clare, was anyone else present?

A. Tom's colleague that was present at the first meeting.

Q. Do you remember the name of that person?

A. First name, I don't.

Q. Your understanding is that person was a Kirkland & Ellis lawyer?

A. That was my understanding.

Q. And did Mr. Clare give you an opportunity to review documents yesterday?

A. He did.

Q. Other than your meetings with Mr. Clare and Mr. Doyle, did you do anything else to prepare for today, sir?

CONFIDENTIAL - Hart

A. No.

Q. Did you read the deposition that you gave previously?

A. I did.

Q. Did you do that during these meetings or did you do that separately?

A. I saw part of it in the meeting yesterday and a part outside of that meeting.

Q. All right. So, you do recall doing something other than meeting with Mr. Clare to prepare for today. You spent some time on your own reviewing your prior deposition, correct?

A. Yeah.

Q. Is there anything else that you did --

A. No.

Q. -- other than your meetings with Mr. Clare and the separate review of your deposition?

A. Not that I recall.

Q. You said, sir, you're a vice president at Morgan Stanley Senior Funding; is that correct?

A. Um-hum.

Q. What is the purpose of Morgan Stanley

NOT A CERTIFIED COPY

CONFIDENTIAL 017505

Senior Funding?
A. It's primarily a booking unit, a subsidiary in which we book our loan business.
Q. What do you mean by "a subsidiary in which we book our loan business"?
A. Morgan Stanley Senior Funding is a subsidiary that's been established for both regulatory and tax purposes to most efficiently book that type of business.
Q. And by book it, you mean what?
A. That is the lender of record, if you will, when we extend the loan, or can be.
Q. Morgan Stanley Senior Funding is the entity that enters into the loan transactions?
A. Correct.
Q. Does Morgan Stanley Senior Funding have any employees of its own?
A. No, not that I'm aware of.
Q. Does it have a board of directors?
A. Yes, I believe it does.
Q. Are you on the board of directors of Morgan Stanley Senior Funding?
A. Yes, I believe I am.
Q. Is there a chairman of the board of

Morgan Stanley Senior Funding?
A. There is.
Q. Do you know who that is?
A. I don't.
Q. Are there any points in the past when you knew who the chairman of Morgan Stanley Senior Funding was?
A. Not to my recollection, no.
Q. Do you know who other -- the other directors currently of Morgan Stanley Senior Funding are?
A. I'm aware that Mitch Petrick is. Walid Chammah is a director.
Q. I'm sorry?
A. Walid Chammah and George James. I'm not aware of the others.
Q. Do you think there are others?
A. I think there are.
Q. Did you ever attend a board meeting for Morgan Stanley Senior Funding?
A. I have not.
Q. How long have you been a director?
A. My recollection is about a year.
Q. Do you know if Morgan Stanley Senior

Funding has had any board meetings during the period in which you've been a director?
A. I'm not aware that a board meeting has occurred.
Q. How long have you been a vice president of the Morgan Stanley Senior Funding?
A. 1996.
Q. Have you been a vice president continuously since 1996 at Morgan Stanley Senior Funding?
A. Yes.
Q. There was a period of time in which you were assigned to a European office of Morgan Stanley, correct?
A. Correct.
Q. London; is that correct?
A. Um-hum.
Q. Did you remain a vice president of Morgan Stanley Senior Funding during that time period?
A. That's my understanding, yes.
Q. Were your functions, while you were assigned to London, related to Morgan Stanley Senior Funding's business?

A. Repeat the question, please.
Q. While you were assigned to the Morgan Stanley London office, were your activities there related to the business of Morgan Stanley Senior Funding?
A. Yes. In that it was simply the European -- European focus on that side of the business as opposed to U.S.-focused.
Q. You've never been an employee of Morgan Stanley Senior Funding, I take it?
A. Not that I'm aware of.
Q. Your employment with Morgan Stanley began in 1996, is that correct, sir?
A. That's correct.
Q. Have your business activities since then always related to the business of Morgan Stanley Senior Funding?
A. Primarily, yes.
Q. What other responsibilities have you had?
A. The primary responsibilities have been the origination and execution of loans that would be booked through Morgan Stanley Senior Funding, as well as bridge loans that may be booked

NOT A CERTIFIED COPY

017506

CONFIDENTIAL - Hart

through Morgan Stanley & Co. But the functional responsibilities, the functional scope of the work has remained the same.

Q. Were you involved, sir, in any aspect of the event of the -- of the events relating to Sunbeam's acquisition of Coleman Company?

A. Was I -- could you specify that?

Q. Well, you're aware that Sunbeam acquired Coleman Company, correct?

A. Yes.

Q. Were you involved in any aspect of the events relating to Sunbeam's acquisition of Coleman?

A. I was involved in the financing aspects -- the senior bank financing of that transaction.

Q. Morgan Stanley Senior Funding provided Sunbeam a loan in connection with its acquisition of Coleman Company, correct?

A. In part, yes.

Q. That's the senior financing you're referring to, right?

A. That's correct.

Q. In general, what were your

CONFIDENTIAL - Hart

responsibilities with respect to the senior loan?

A. Primary responsibilities were the structuring and negotiation of the credit agreement and participation in some aspects of diligence -- due diligence around the senior loan.

Q. Were you also involved in efforts to syndicate the loan?

A. Yes.

Q. Can you explain to me what a loan syndication means in this context?

A. Sure. The market convention for large senior loans would be for an underwriter or a group of underwriters to initially commit to underwrite the facility and then distribute it or syndicate it to other participants.

Q. What does it mean to distribute it or syndicate it to other participants?

A. Assign it, pass on the obligation to another party through assignment.

Q. In this case, the loan was funded prior to the loan being syndicated to other participants, correct?

A. That's correct -- no. In part.

CONFIDENTIAL - Hart

The -- the senior loan was underwritten by Morgan Stanley, First Union and B of A. That was the underwriting group that then took the loan to market.

Q. And it was funded by those three entities before it being syndicated to others, correct?

A. That's correct.

Q. In your experience, is that typical, that the loan -- a loan of this size would be funded prior to it being syndicated to other participants?

MR. CLARE: Objection to form. You can answer.

A. There is no typical, Bob, to be honest with you. It's done both ways.

Q. Is one way more common than the other?

A. I'm not aware of it being more common than the other.

Q. So, it's your testimony that it is equally common for Morgan Stanley Senior Funding to fully fund a loan -- a senior loan prior to syndication as it is for Morgan Stanley Senior Funding to underwrite the loan, syndicate it, and

CONFIDENTIAL - Hart

then have the syndicated group fund the loan?

A. That's incorrect. What a more accurate representation is, is that it is my testimony that we distribute it or brought in partners in the form of B of A and First Union prior to the subsequent syndication or second round syndication of that loan.

Q. Did Morgan Stanley Senior Funding agree to underwrite the entire senior loan facility to Sunbeam?

A. We did not.

Q. The Morgan Stanley commitment was for 40 percent of the senior loan, correct, Morgan Stanley Senior Funding loan?

A. That's my recollection, yes.

Q. And Morgan Stanley Senior Funding funded the 40 percent of the senior loan prior to any additional syndication occurring, correct?

A. Correct.

Q. And your testimony is that that's a common occurrence?

A. My testimony is that it is not unusual for us to do that.

Q. Is it your testimony that it is

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

equally common for Morgan Stanley Senior Funding to fund a portion of the -- the entire portion of the loan that it has agreed to underwrite in advance to syndication activities?

A. I don't know, at this point, exactly how that would break down.

Q. Who is Bram Smith, sir?

A. Bram Smith is -- do you want what he -- what capacity?

Q. Do you know who he is?

A. Yes, sir, I do.

Q. What was his -- did he have involvement in the underwriting activities relating to the Morgan Stanley Senior Funding's loan to Sunbeam?

A. Yes, he did.

Q. And what were his responsibilities?

A. I reported to Bram. And he would be characterized as the lead person in his role as managing director within Leveraged Finance, responsible for the loan.

Q. The events we've been talking occurred back in 1998. Do you recall that, sir, the Morgan Stanley Senior Funding's loan to Sunbeam?

CONFIDENTIAL - Hart

A. I recall that that's, generally, the time period in which this transpired, yes.

Q. Do you know who Mr. Smith reported to at that time in 1998?

A. Not specifically, no.

Q. Do you know what his position was at the time?

A. Managing director.

Q. Do you recall that he was president of Morgan Stanley Senior Funding at the time?

A. I don't know if that was the case.

Q. Now, Bram Smith has since been fired by Morgan Stanley. Are you aware of that?

MR. CLARE: Objection to form.

A. I would not characterize -- I don't know how -- firing is not a term that I'm familiar with, his termination.

Q. Are you aware that Bram Smith's employment was involuntarily terminated by Morgan Stanley?

A. I don't know any of the circumstances around Bram's termination, if what you're saying was involuntarily.

Q. Do you know -- Mr. Smith no longer

CONFIDENTIAL - Hart

works at Morgan Stanley & Company, correct?

A. I do know that.

Q. Are you aware that his departure from Morgan Stanley was not voluntary?

A. I'm not aware of any of the aspects of Bram's departure from Morgan Stanley.

Q. Were you involved in any discussions relating to whether Mr. Smith should be asked to leave Morgan Stanley?

A. I was involved in no discussions around Bram Smith's termination from Morgan Stanley.

Q. Is there anything about Mr. Smith's performance at Morgan Stanley that you're aware of, sir, that would have been a basis for terminating his employment involuntarily?

MR. CLARE: Objection to form and foundation.

You can answer.

A. I'm not aware of any factors that would fit that question, request.

Q. Mr. Hart, have you -- are you familiar with the complaint that Morgan Stanley Senior Funding filed against my clients?

CONFIDENTIAL - Hart

A. I'm not familiar with that.

Q. Have you ever read it?

A. I have not read it.

MR. CLARE: Let's mark, as CPH Exhibit No. 197, a copy of the complaint filed in the Circuit Court of the 15th Judicial District in and for Palm Beach County, Florida, bearing the caption Morgan Stanley Senior Funding, Inc., plaintiff, versus MacAndrews & Forbes Holdings, Inc., and Coleman (Parent) Holdings, Inc.

(Plaintiff's Exhibit 197, Complaint, marked for identification, as of this date.)

Q. Mr. Hart, were you involved in any of the discussions relating to whether to file -- for Morgan Stanley Senior Funding to file a lawsuit against my clients, MacAndrews & Forbes Holdings and Coleman Parent Holdings?

MR. CLARE: Object.

Mike, that's a yes or no question that he's asking you.

A. No.

Q. The lawsuit was filed on May 12, 2003, sir. Were you aware that Morgan Stanley Senior

NOT A CERTIFIED COPY

01750B

CONFIDENTIAL - Hart

Funding intended to file a lawsuit against MacAndrews & Forbes and Coleman Parent Holdings at any time prior to May 12, 2003 when the suit was filed?

A. I was not.

Q. Were you asked to review or comment on any aspect of the complaint before it was filed?

MR. CLARE: Again, that's a yes or no question.

A. No.

MR. MARKOWSKI: Could you move your hand away from your face, sir. We're being videotaped here.

THE WITNESS: Certainly.

Q. Prior to the filing of CPH Exhibit 197 against my client, sir, did you have any discussions with anyone within any of the Morgan Stanley entities, including Morgan Stanley Senior Funding, concerning whether to file suit against my clients?

A. No.

Q. Do you know who at Morgan Stanley Senior Funding made the decision to file suit against my clients?

CONFIDENTIAL - Hart

A. I do not.

Q. Have you ever spoken to Mr. Petrick relating to Morgan Stanley Senior Funding's lawsuit against my clients?

A. I have not.

Q. Do you know if Mr. Petrick agreed with the filing of Morgan Stanley Senior Funding, Inc.'s lawsuit against my clients?

MR. CLARE: Objection. No foundation. Calls for speculation.

You can answer.

A. No.

Q. Do you have any understanding, sir, as you sit here, of the nature of Morgan Stanley Senior Funding's claims as set forth in the complaint filed against MacAndrews & Forbes and Coleman Parent Holdings?

A. No, I'm not familiar with the complaint.

Q. You have no, even general, understanding of the nature of the allegations made in the complaint?

A. I have not seen the complaint in any regard.

CONFIDENTIAL - Hart

Q. That's not quite my question.

Did you have any general understanding of the nature of the claims or allegations contained in Morgan Stanley Senior Funding's lawsuit against my clients, MacAndrews & Forbes Holdings and Coleman Parent Holdings?

A. No.

Q. Let me direct your attention, sir, to paragraph 21 of Exhibit 197. Do you see it there at the bottom of page 7?

A. I do.

Q. Take a moment and read that to yourself.

(Witness reading document.)

Q. Have you had an opportunity to read paragraph 21?

A. I have.

Q. The reference to defendants here, sir, is a reference to MacAndrews & Forbes Holdings, Inc. and Coleman Parent Holdings, Inc., as you'll see from the first page of the complaint. Do you understand that?

A. Um-hum.

Q. You have to answer audibly.

CONFIDENTIAL - Hart

A. I'm sorry. Yes.

Q. Do you see that paragraph 21 states that, "Defendants made a series of false statements to Sunbeam and its financial team (including MS & Co.) regarding the post-closing synergies that Sunbeam would achieve annually if it proceeded with the proposed acquisition of Coleman."

Do you see that statement?

A. Yes.

Q. Do you have any information, sir, to support that allegation?

MR. CLARE: I object to the form of the question.

A. Could you repeat that question.

MR. MARKOWSKI: Could you read it back, please.

(Record read.)

A. The allegation being which sentence?

Q. Let me start over. I want to make sure you understand.

A. Thanks.

Q. Do you see -- the reference that we've established to Defendants in paragraph 21 is to

NOT A CERTIFIED COPY

my clients, Coleman Parent Holdings and MacAndrews & Forbes Holdings. Do you understand that?

A. Yes.

Q. Paragraph 21 alleges that Coleman Parent Holdings and MacAndrews & Forbes Holdings, "made a series of false statements to Sunbeam and its financial team (including MS & Co.) regarding the post-closing synergies that Sunbeam would achieve annually if it proceeded with the proposed acquisition of Coleman."

Do you see that statement?

A. Um-hum.

Q. My question to you, sir is: Do you have any information, as you sit here today, to support that allegation?

A. I'm not in possession of that information.

Q. Do you have any knowledge, sir, concerning who supposedly or allegedly provided or made the false statements referred to in that statement?

MR. CLARE: Object to the form.

Q. Let me ask it, hopefully, in a more

articulate question.

Do you have any understanding, sir, concerning who allegedly made the series of false statements to Sunbeam and its financial team referred to in the sentence in paragraph 21 that we've been addressing?

A. The -- the synergies were -- the synergy numbers were given to Morgan Stanley from, broadly speaking, Sunbeam management, which included various members of Sunbeam management and the acquisitions which were Coleman -- which included Coleman.

Q. Well, paragraph 21, sir, states that the "Defendants made a series of false statements to Sunbeam and its financial team, (including MS & Co.)"

Do you understand MS & Co. to refer to Morgan Stanley & Company?

A. Um-hum.

Q. You have to answer audibly.

A. Yes.

Q. Do you have any knowledge, sir, concerning who allegedly made false statements to Morgan Stanley & Company from either MacAndrews &

Forbes or Coleman Parent Holdings regarding potential synergies that could be achieved by Sunbeam's acquisition of Coleman?

A. The people that represented, through my involvement in diligence, the synergy numbers including Al Dunlap, Kersh and Jerry Levin.

Q. Mr. Kersh and Mr. Dunlap were executives at Sunbeam, correct?

A. That's my understanding.

Q. And Mr. Levin was the chief executive officer at Coleman Company, correct?

A. That's my understanding.

Q. None of those individuals were employed by MacAndrews & Forbes Holdings or Coleman Parent Holdings, were they, sir?

MR. CLARE: Objection. Calls for speculation. No foundation.

A. I'm -- I don't know the answer to that.

Q. You don't have any knowledge that they were, do you?

A. I do not.

Q. Do you know Jerry Levin, sir?

A. I have met him on occasion.

Q. Do you know what his position with Coleman Company was in 1998?

A. I do not.

Q. Do you know what his position is today?

A. Not specifically, no.

Q. Do you understand that he is the chief executive officer of American Household Products?

A. I understood that he was working for American Household. I didn't know in what capacity.

Q. Do you understand he's a senior executive at American Household?

A. I didn't know -- I don't know specifically what role he plays.

Q. Are you familiar with the history of American Household, sir?

MR. CLARE: Objection to form.

Q. Let me ask a different question, a little bit more direct.

Do you understand American Household to be the successor to Sunbeam?

A. I'm aware of that, yes.

Q. Sunbeam went into bankruptcy at some

NOT A CERTIFIED COPY

point; is that correct, sir?
A. Yes.
Q. And when it emerged from bankruptcy, it renamed itself American Household; is that correct?
A. I don't know. I'm not familiar with the sequence of emergence and renaming.
Q. But it's your understanding that American Household is a successor to Sunbeam Company?
A. That's my general understanding, yes.
Q. Do you know who owns American Household Products today?
A. I do not.
Q. Do you know that Morgan Stanley Senior Funding has a significant equity interest in American Household?
MR. CLARE: Objection to form.
A. I understand that we have a position.
Q. Do you understand who the other owners of American Household are?
A. I do not.
Q. You don't -- it's not -- you're not aware of the fact that the other senior lenders,

Bank of America and First Union, are the other primary equity holders in American Household?
A. I'm not.
Q. Are you aware that Morgan Stanley Senior Funding owns, approximately, 40 percent of American Household?
A. I'm not.
Q. Do you have any general understanding of the percentage ownership interest that Morgan Stanley Senior Funding has currently in American Household?
A. No.
Q. Mr. Hart, do you personally believe that Jerry Levin intentionally lied to Sunbeam in connection with Sunbeam's acquisition of Coleman Company?
A. I do not have an opinion on that.
Q. Do you have any knowledge -- any factual knowledge that would support an allegation that Jerry Levin intentionally lied to Sunbeam in connection with Sunbeam's acquisition of Coleman Company?
A. I personally am not aware of that.
Q. Do you believe that Jerry Levin

defrauded Sunbeam in connection with its acquisition of Coleman Company?
A. I don't have an opinion on that.
Q. Do you have any information to support such an allegation?
A. I personally don't have any information, no.
Q. Do you believe that Jerry Levin intentionally lied to Morgan Stanley representatives in connection with Sunbeam's acquisition of Coleman Company?
A. I have no opinion on that.
Q. Do you have any information to support that allegation?
A. I do not personally.
Q. Do you believe that Jerry Levin lied to Morgan Stanley Senior Funding in connection with Sunbeam's acquisition of Coleman Company or in connection with Morgan Stanley's -- Morgan Stanley Senior Funding's loan to Sunbeam?
A. I don't have an opinion on that.
Q. Do you have any information to support such an allegation?
A. I do not personally.

Q. Have you ever expressed the view to anyone that you have reason to believe that Jerry Levin lied to Morgan Stanley Senior Funding in connection with its loan to Sunbeam?
A. Have I ever -- could you -- Bob, could you help me out. Could you repeat the front end of that question, please.
Q. Yes. Mr. Hart, have you ever expressed the view to anyone that Jerry Levin lied to Morgan Stanley Senior Funding in connection with either Sunbeam's acquisition of Coleman Company or Morgan Stanley Senior Funding's loan to Sunbeam?
A. I don't recall having discussions of that nature.
Q. You don't recall ever saying that to anyone, do you?
A. I do not recall having that -- that discussion, no.
Q. Has anyone at Morgan Stanley -- excuse me -- has anyone at Morgan Stanley & Company ever expressed the view to you that they believed that Jerry Levin defrauded Morgan Stanley Senior Funding in connection with its loan to Sunbeam?

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

A. I don't recall if anyone ever had that discussion with me or made that statement to me.

Q. Has anyone at Morgan Stanley Senior Funding ever expressed the view to you that they believed that Jerry Levin lied to Sunbeam or to Morgan Stanley Senior Funding in connection with its loan to Sunbeam?

A. I don't recall whether that statement was ever made to me or not.

Q. You have no recollection, as you sit here today, of anyone at Morgan Stanley Senior Funding ever saying to you that they believed that Jerry Levin lied in connection with Morgan Stanley Senior Funding's loan to Sunbeam?

A. As I sit here today, I don't have that recollection.

Q. Has anyone at Bank of America -- Bank of America was one of the three senior lenders, correct, to Sunbeam?

A. That's correct.

Q. Has anyone at Bank of America ever expressed the view to you that they have reason to believe that Jerry Levin lied in connection with any aspect of the events leading up to the

CONFIDENTIAL - Hart

senior loan to Sunbeam?

A. I don't recall discussion with B of A to that effect, no.

Q. You don't recall anyone at Bank of America ever indicating to you that they believed that Jerry Levin had lied in connection with the senior fund -- the senior financing?

A. I don't recall that discussion occurring.

Q. First Union Bank was one of the other three senior lenders, correct?

A. That's correct.

Q. First Union is now named Wachovia; is that correct?

A. I believe so, yes.

Q. Has anyone at First Union or Wachovia ever expressed the view to you that they believed that Jerry Levin lied in connection with any aspect of the discussions leading up to the senior loan facility?

A. I don't recall that discussion, no.

Q. Sir, prior to -- do you recall that the senior financing loan closed at the end of March 1998?

CONFIDENTIAL - Hart

A. Yes, yes.

Q. Prior to the loan closing, sir, did you have any personal knowledge concerning statements made by Coleman Company, Coleman Parent Holdings or MacAndrews & Forbes Holdings concerning synergies that Sunbeam might achieve if it acquired Coleman Company?

A. What were the parties you were --

MR. CLARE: Read the question back, please.

(Record read.)

A. My only recollection was participation in a diligence call where Jerry Levin was present and there was a discussion of synergies.

Q. When was that call?

A. At some period leading up to the closing of the loan.

Q. This is a single telephone call?

A. My recollection is that was a one -- one of a series of diligence calls, but, yes, his participation was one on that call.

Q. Do you recall who else, if anyone, was on the phone?

A. Al Dunlap was on the phone.

CONFIDENTIAL - Hart

Q. Anyone else?

A. Not to my knowledge, not to my recollection.

Q. It's your recollection there was a call with just you?

A. No. There were other members of the diligence team. I don't recall exactly who that would have been.

Q. You recall -- your recollection is that there were other representatives of Morgan Stanley Senior Funding on the telephone call?

A. The scope of the diligence team would have expanded beyond Morgan Stanley Senior Funding. So, there would have been other members of the firm, be it Corporate Finance, M&A or, potentially, CSG, the Diligence Execution Group.

Q. Do you remember the identity of any of the other individuals who participated in the call with Mr. Levin and Mr. Dunlap to which you've referred?

A. Not specifically.

Q. You say "not specifically" --

A. I couldn't give you, from the team list, who would or wouldn't have been on that

NOT A CERTIFIED COPY

01751-2

particular call.
Q. Do you remember how many people were on the call other than, you, Mr. Levin, Mr. Dunlap?
A. Not a specific number.
Q. Where were you at?
A. I was at Morgan Stanley -- 1585 Broadway.
Q. Do you know where Mr. Dunlap was?
A. Not specifically, no.
Q. Do you know if he was in his office in Florida?
A. I do not know the answer to that.
Q. Do you know where Mr. Levin was?
A. I do not know where Mr. Levin was.
Q. How long did the call last?
A. Don't recall.
Q. Did you make any notes of the call?
A. Don't recall.
Q. Would it be your practice in circumstances like this to take notes?
A. It would vary. I may have taken notes, I may not have. It would depend on the circumstances.

Q. Do you know whether notes taken by you of this telephone call with Mr. Levin and Mr. Dunlap exist today?
A. I do not know whether they exist today or not.
Q. Have you ever seen notes by any other person taken of the discussion that took place during this telephone call with Mr. Levin and Mr. Dunlap?
A. I don't recall having seen those notes.
Q. Have you ever seen any summary or memo referring to any aspect of the telephone conversation with Mr. Levin and Mr. Dunlap to which you've referred?
A. I don't recall if I've seen a summary of that nature.
Q. Or any reference to it in any written document?
A. I don't recall if I've seen that reference.
Q. I'm sorry. Did I ask you how long the call lasted?
A. You did.

Q. Did you tell me? I forgot.
A. I'm not sure how long it lasted. I don't recall how long it lasted.
Q. And do you recall whether it lasted more than 30 minutes?
A. No.
Q. Do you recall whether it lasted half a day?
A. No.
Q. It could have possibly been a half day long call?
A. Could possibly have lasted that long.
Q. Tell me everything you can recall about that conference call.
A. My participation in it was a general discussion on the synergy numbers. And they were going through and talking about the achievability of them. That was the -- that was my recollection of my involvement for the period that I was on the call.
Q. Did you stay on the phone for the entire telephone call?
A. I don't know if I was on for the entire duration or not.

Q. Is there anything else you recall about the call?
A. Not really.
Q. Is there anything you recall being discussed during of the course of the telephone call?
A. Not while I was involved, no.
Q. So, your testimony is that the only thing you recall being discussed during that telephone call was a general discussion of the achievability of synergy numbers?
A. Correct.
Q. Is it your testimony that you're the person who raised that topic?
A. It is not my testimony.
Q. Do you have a recollection one way or the other whether you're the person who raised that topic?
A. I don't have a recollection one way or the other.
Q. Who do you recall speaking on this subject?
A. My recollection is that Al Dunlap and Jerry Levin spoke on the topic.

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

Q. What do you recall Mr. Dunlap saying?
A. My take-away from the call was a support for the synergy number that was put forth.
Q. Do you recall what that synergy number was at that point?
A. Not specifically.
Q. Do you recall what its elements were?
A. No. There were many.
Q. I want to make sure I was clear with respect to that question. By "elements," I meant what actions would be taken that would generate synergies?
A. I understood the question. Yes. And there were many.
Q. Do you remember --
A. I don't recall those.
Q. You don't remember what they were?
A. No, I don't.
Q. Do you remember any of the elements?
A. No, not sitting here today.
Q. Do you have any general recollection of what the order of magnitude was for either all of the elements or any of them?

CONFIDENTIAL - Hart

A. A general recollection was that we were looking at a variety of ranges of synergies. And I, generally, recall synergies from 100 to $150 million.
Q. Is it your testimony that that's the range that was discussed during this telephone call?
A. My testimony is that's my recollection -- that's my general recollection. I -- my clear recollection is that we were dealing in a variety of ranges with respect to synergies. That's my best guess as to what that range was.
Q. During this particular telephone call?
A. As I sit here today.
Q. Let me make sure I'm clear, sir. You're -- you don't have a recollection, as you sit here today, of what the -- let me start over.
As you sit here today, sir, is it the case that you cannot recall what range of synergy numbers were discussed during this call with Mr. Dunlap and Mr. Levin?
A. My testimony would be that my general

CONFIDENTIAL - Hart

recollection, as I sit here today, is the range of synergies that we discussed were 100 to 150 million.
Q. During this call?
A. During that call.
Q. Do you know who -- whether Sunbeam or Coleman or some third party developed the elements that went into the synergy ranges that were being discussed during this conference call with Mr. Levin and Mr. Dunlap?
A. It was my understanding that it was Sunbeam management, broadly defined.
Q. When you say "Sunbeam management, broadly defined," sir, what do you mean by that?
A. I would have included Sunbeam management, as well as the target companies that they were looking to acquire.
Q. So, your reference to Sunbeam management included Coleman management?
A. Yes.
Q. Why do you include Coleman management in your reference to Sunbeam management? Coleman Company had not been acquired by Sunbeam; is that correct?

CONFIDENTIAL - Hart

A. That's correct. The very nature of synergies require you to have an understanding of what can be accomplished upon integration.
The -- a working assumption from my vantage point was that they had discussed with the appropriate parties the achievability of those synergies.
Q. That was your assumption during the course of the telephone call?
A. Yes.
Q. Did anyone --
A. Not so much during the telephone call. That would have been my assumption on a management team developing synergies, general practice.
Q. Let me ask a more specific question, sir.
As you sit here today, do you have any recollection of being told who developed the synergy elements that were the basis of the discussion that took place during your conference call with Mr. Levin and Mr. Dunlap?
A. Sitting here today, I do not have a specific recollection.

NOT A CERTIFIED COPY

017514

CONFIDENTIAL - Hart

Q. Do you have a general recollection of that?

A. Sunbeam management, broadly defined.

Q. My question is whether you recall being told, not what your assumption was.

But do you recall someone, during the course of the telephone call or at some other point, advising you who prepared, who developed the elements that were the basis of the discussions concerning synergies that you had with Mr. Dunlap and Mr. Levin?

A. I don't recall a specific conversation where they told us that.

Q. Do you recall -- do you recall anything else that Mr. Dunlap said during the course of the telephone call?

A. No.

Q. Did Mr. Dunlap make any reference to Coopers & Lybrand's involvement in the development of a synergies analysis or structuring project?

A. I don't recall if he ever made reference to them.

Q. Were you aware that Coopers & Lybrand

CONFIDENTIAL - Hart

had been engaged by Sunbeam to develop an estimate of potential synergies relating to the acquisition of Coleman Company?

A. I was aware of that report. I saw the report.

Q. What do you recall Mr. Levin saying?

A. Don't have specific recollection of the details of the call.

Q. As you sit here today, sir, can you remember any words that Mr. Levin used during the telephone call?

A. Not specific words.

Q. As you sit here today, sir, do you have any recollection of Mr. Levin making any statements relating to the achievability of synergies that Sunbeam estimated it would achieve upon the acquisition of Coleman Company?

A. Do I have a specific recollection of what he said?

Q. We'll start there.

A. I do not have a specific recollection, no.

Q. Do you have any recollection of any sort?

CONFIDENTIAL - Hart

A. The nature of the call with respect to synergies was general support for the achievability of the synergies.

Q. Do you recall what Mr. -- do you recall that Mr. Levin offered general support for the achievability of synergies in this telephone call?

A. That was my recollection.

Q. That is your recollection, as you sit here today?

A. That is my recollection.

Q. Do you recall how he expressed that?

A. I do not recall how he expressed that.

Q. Prior to the loan closing, sir, did you have an understanding that Mr. Levin would be replaced as the chief executive officer of Coleman Company upon its acquisition by Sunbeam?

A. I did not.

Q. You didn't -- is it your testimony, sir, you didn't know one way or the other whether Mr. Levin would stay involved in the management of Coleman?

A. If I could clarify that last answer. I was not aware -- I don't recall whether I was

CONFIDENTIAL - Hart

aware of that fact or not.

Q. You know that Mr. Levin was relieved of his responsibilities as chief executive officer of Coleman upon its acquisition by Coleman -- by Sunbeam?

A. I don't recall whether I was aware of that or not.

Q. Do you agree, generally, sir, that what synergies can potentially be achieved is entirely dependent upon the plan actually implemented by company management?

MR. CLARE: Object to the form.

You can answer.

A. I don't have an opinion based on the way you worded it, no.

Q. Let me try to rephrase the question, sir.

Do you agree that management's plans, with respect to the manner in which Coleman Company and Sunbeam were combined, would determine what synergies might potentially be achieved?

A. How I would characterize it is that management's actions would be an element as to

NOT A CERTIFIED COPY

01-7515

CONFIDENTIAL - Hart

the achievability of a synergy number.

Q. Do you remember anything else about this conference call with Mr. Levin and Mr. Dunlap, other than what you've already testified to?

A. No.

Q. Other than the single conversation which Mr. Levin was a participant, do you have any knowledge concerning any statements made by Coleman Parent or MacAndrews & Forbes concerning potential synergies?

A. I don't recall any other statements made by those parties.

Q. Let me ask a slightly different question, sir.

You had this one conversation with Mr. Levin in which the subject of synergies came up, correct, this conversation with Mr. Levin and Mr. Dunlap?

A. That we just referred to, yes.

Q. Did you have any other conversations with Mr. Levin or anyone else from Coleman Company relating to potential synergies?

A. I'm not aware of myself having any

CONFIDENTIAL - Hart

other conversations with those parties.

THE VIDEOGRAPHER: The time is 10:44. We're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 10:45. We're back on the record.

Q. You recommended -- let me -- strike that.

Did you have any conversations of any sort, sir, with anyone you understood to be representing Coleman Parent Holdings relating to potential synergies?

A. I don't recall having those conversations.

Q. Do you remember any conversations, as you sit here today, sir, with anyone who you understood to be representing MacAndrews & Forbes Holdings concerning potential synergies?

A. I don't recall if I had a conversation about that.

Q. You don't recall any, as you sit here today, correct?

A. Correct.

Q. You recommended that Morgan Stanley

CONFIDENTIAL - Hart

Senior Funding participate in the senior loan to Sunbeam?

A. I wouldn't characterize -- as a vice president, I performed the work on the execution of that loan.

Q. Did you offer any opinion to decision makers at Morgan Stanley Senior Funding concerning whether to participate in the senior loan to Sunbeam?

A. I don't recall providing my opinion to any of them.

Q. Did you have one?

A. As I sit here today, I don't recall that opinion.

Q. I'm not sure what your answer means, sir.

Do you recall, as you sit here today, whether you had an opinion one way or the other concerning whether Morgan Stanley Senior Funding should participate in the senior loan to Sunbeam?

A. My recollection is that I believed we should proceed with the senior loan based upon the work that had been done.

Q. Did you ever offer that opinion, that

CONFIDENTIAL - Hart

view to Mr. Smith?

A. I don't recall if I offered that to Bram or not.

Q. Do you recall offering that view to anyone else at Morgan Stanley Senior Funding?

A. I don't recall if I offered that opinion or not.

Q. Do you recall offering that view to anyone else at Morgan Stanley & Company, Inc.?

A. I don't recall offering that opinion.

Q. In coming to the opinion that you held, sir, did you rely on any statements made by my clients, Coleman Parent Holdings or MacAndrews & Forbes Holdings, concerning potential synergies?

A. I don't recall the specifics as to whether or not that included conversations with those parties.

Q. You don't remember having any conversations with anyone representing Coleman Parent Holdings or MacAndrews & Forbes Holdings concerning potential synergies, as you sit here today, do you?

A. I don't recall whether or not I had

NOT A CERTIFIED COPY

01/516

conversations with those parties.
Q. And so, as you sit here today, you don't recall relying on any statements made by Coleman Parent Holdings or MacAndrews & Forbes Holdings relating to potential synergies in coming to your view that Morgan Stanley Senior Funding should proceed with the senior loan to Sunbeam?
A. I recall relying on -- as I characterize Sunbeam management, broadly defined, as the providers -- the providers and the primary source of achievability of the synergy numbers.
Q. And you've already testified concerning one conversation with Mr. Dunlap and Mr. Levin where that came up, correct?
A. That's correct.
Q. And you've testified to everything you can recall relating to Mr. Levin's participation in that telephone call, correct?
A. I have.
Q. Let me direct your attention to paragraph 32 of the complaint, sir. For the moment read paragraph 32 to yourself.
(Witness reading document.)

A. Okay.
Q. Among other things, paragraph 32 alleges that, "Defendants" -- let me start over.
Do you see the allegation in paragraph 32, sir, first sentence that states that "defendants admit that" --
A. Apologies, Bob. When you directed me, I read 33. Could I take a moment to read 32.
Q. Take a moment to paragraph 32. That's what I'm focusing on.
(Witness reading document.)
A. Okay.
Q. Do you see the paragraph 32 refers to a $2.2 billion purchase price for Coleman Company?
A. I see that, yes.
Q. Do you see that paragraph 32 alleges that the "Defendants have admitted that the $2.2 billion purchase price for Coleman Company was fraudulently inflated"?
A. I see the words there.
Q. Do you have any knowledge, sir, or information to support that allegation, that the defendants, my clients, MacAndrews & Forbes

Holdings, Inc. and Coleman Parent Holdings, Inc. have admitted that the $2.2 billion purchase price referenced in paragraph 32 was, in some manner, fraudulently inflated?
A. I wasn't party to either the creation -- the creation of this document, nor did I have any conversations to that effect. So, I'm in no position to render an opinion.
Q. You don't have any knowledge, sir, information to support that allegation, do you?
A. I do not have -- I don't recall having any knowledge. I don't have any knowledge today.
Q. To support that allegation?
A. Yes.
Q. Just so we've got one clear, stand-alone question and answer, sir: You don't have any knowledge, as you sit here today, that my clients, at any point, have admitted that the purchase price paid by Sunbeam for Coleman Company was, in any way, fraudulently inflated?
A. I'm not aware that your defendant has admitted that.
Q. Do you have any information, sir, to support the allegation that the price paid by

Sunbeam for Coleman Company was, in any way, fraudulently inflated?
A. I do not have information.
Q. You don't have any information to support that allegation?
A. To support that allegation.
Q. Let me direct your attention, sir, to paragraph 47. Would you take a moment to read paragraph 47 of the Morgan Stanley Senior Funding complaint to yourself.
(Witness reading document.)
A. Okay.
Q. The first sentence in paragraph 47 states, "Repeatedly and on several different occasions, Defendants provided Sunbeam and its financial team with false information regarding the synergies that Sunbeam would achieve from its acquisition of Coleman."
Do you see that statement, sir?
A. Um-hum.
Q. Do you have any information, as you sit here today, sir, to support the allegation that my clients provided Sunbeam and its financial team with false information regarding

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

the synergies that Sunbeam would achieve from its acquisition of Coleman?

A. The information that I have is that we received synergy numbers from Sunbeam management, as I broadly defined it, in the amount of numbers that were not achieved.

Q. Do you have any information, sir, to support the allegation that my clients provided Sunbeam and its financial team with false information regarding the synergies that Sunbeam would achieve?

MR. CLARE: Objection. Asked and answered.

A. What I -- what I know is that we received synergy numbers from Sunbeam management, broadly defined, that were not achieved.

Q. Do you have any information to support the allegation that the information provided was false at the time it was provided?

A. What I know is that the information that was provided turned out to be false.

Q. Well, the synergy numbers weren't achieved according to you; is that correct, sir? That's your understanding?

CONFIDENTIAL - Hart

A. That's my understanding.

Q. The event -- let me ask that foundational question.

Do you have any knowledge, as you sit here today, sir, concerning what synergies were achieved as a result of Sunbeam's acquisition of Coleman?

A. Not specifically.

Q. Are you able to testify concerning what synergies were achieved or not achieved?

A. I am not.

Q. Do you know why the synergies -- is it your understanding that certain synergies were not achieved that had been expected prior to the acquisition of Coleman?

A. I'm not aware as to what synergies were or were not achieved post-acquisition.

Q. Maybe I misunderstood you. I thought you were stating that it's your understanding that the synergies that had been expected upon the acquisition of Coleman were not, in fact, achieved?

A. Right. As a general matter, yes, that was -- they were not achieved at the level that

CONFIDENTIAL - Hart

were projected.

Q. How do you know that?

A. Just based on the performance, as I was involved in the monitoring of the loan for up to, I guess, a year or so after it closed.

Q. Do you know why they weren't achieved?

A. I do not. I don't recall why they were not -- why they were achieved -- why they were not achieved.

Q. Do you have any information, sir, as you sit here today, to support the allegation that my clients knowingly provided Sunbeam and its financial team with false information regarding synergies that Sunbeam would achieve from its acquisition of Coleman?

MR. CLARE: Objection. Asked and answered.

A. What I do know is that the synergy numbers that were provided by Sunbeam and its management team, broadly defined, were not achieved.

Q. Do you have any information to support the allegation that my clients knew that at the time they made statements to Sunbeam and its

CONFIDENTIAL - Hart

financial team relating to the potential synergies?

A. I don't -- I'm not party to any information that, at that time, they knew it was false.

Q. The second sentence in paragraph 47 states, "Defendants also omitted material facts about Coleman's business required to make the synergy information they provided to Sunbeam and its financial team not misleading."

Do you see that statement, sir?

A. Um-hum.

Q. You have to answer audibly.

A. Yes.

Q. Do you have any understanding or knowledge concerning -- strike that.

Do you have any knowledge, sir, that -- do you have information that supports that allegation?

A. I don't have that knowledge personally.

Q. Has anyone ever expressed to you the view that my clients, Morgan Stanley -- excuse me -- my clients, MacAndrews & Forbes Holdings

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

and Coleman Parent Holdings, omitted material facts about Coleman's business required to make synergy information they provided to Sunbeam and its financial team not misleading?

A. I don't recall having that conversation with anyone.

Q. As you sit here, sir, do you have any understanding of what the omitted material -- material facts refer to in this sentence pertains to?

MR. CLARE: Objection. Lack of foundation.

You can answer.

A. I don't have -- I don't have knowledge of what they're referring to here. As I said, I wasn't party to the development of this document.

Q. Let me direct your attention to paragraph 44.

A. 44?

Q. 44. It's a couple of paragraphs earlier in the document. Starts at the bottom of page 15. I'd like you to read paragraph 44 of the Morgan Stanley Senior Funding complaint to yourself, sir.

CONFIDENTIAL - Hart

(Witness reading document.)

A. Okay.

Q. Let me direct your attention to the last sentence. It states, "Thus, MSSF has suffered hundreds of millions of dollars in damages as a result of Defendants' fraudulent scheme."

Do you see that statement, sir?

A. I do.

Q. MSSF is a reference to Morgan Stanley Senior Funding?

A. That's correct.

Q. Let me take this in two pieces.

There's a reference to a fraudulent scheme by the defendants, my clients, MacAndrews & Forbes Holdings and Coleman Parent Holdings, sir.

Do you have any knowledge to support the allegation that my clients engaged in a fraudulent scheme relating to Sunbeam's acquisition of Coleman Company?

A. I'm not party to the -- the -- I'm not aware of the elements that were -- that were contemplated in arriving at this statement.

CONFIDENTIAL - Hart

Q. My question is different. My question is: Do you have any knowledge, as you sit here today, of anything supporting the allegation that my clients, MacAndrews & Forbes Holdings and Coleman Parent Holdings, engaged in a fraudulent scheme relating to Sunbeam's acquisition of Coleman Company?

MR. CLARE: Objection. Calls for a legal conclusion.

A. I have no opinion.

Q. The question is not whether you have an opinion. It's whether you have any information supporting the allegations that my clients engaged in a fraudulent scheme relating to Sunbeam's acquisition of Coleman.

A. What do you mean by "information"?

Q. Do you have any knowledge of facts supporting the allegation that my clients engaged in a fraudulent scheme relating to Sunbeam's acquisition of Coleman Company?

A. As I sit here today, I'm not aware of -- I do not have information on that with respect to that.

Q. Let me ask you about the other aspect

CONFIDENTIAL - Hart

of this allegation.

This sentence alleges that "MSSF has suffered hundreds of millions of dollars in damages." Do you see that statement?

A. Yes.

Q. Do you have any information concerning or supporting that allegation?

A. I have a general understanding of the markdowns that occurred in the position.

Q. What's your understanding?

A. That it was, in fact, hundreds of millions of dollars.

Q. What do you mean by "markdowns"?

A. When you book an asset, as you determine it to be some -- worth something less than what you originally planned, you would mark it down and take a loss.

That is the practice that we would have done with that loan.

Q. Do you know when Morgan Stanley Senior Funding first marked down the value of its loan to Sunbeam?

A. I don't know.

Q. Do you know if it occurred in 1998?

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

A. I don't know.
Q. Do you know what the total amount of markdown has been with respect to the Morgan Stanley Senior Funding loan to Sunbeam?
A. I do not know the exact number.
Q. Do you know it approximately?
A. Approximately -- no, I don't have an exact -- I don't have an exact number or an approximate number.
Q. Do you know what value Morgan Stanley Senior Funding attributes to its equity interest in Sunbeam's successor, American Household Products?
A. I do not.
Q. Have you been involved in any discussions relating to possible sale of Morgan Stanley Senior Funding's interest in American Household Products?
A. I've not been involved in any discussions relating to that.
Q. Are you aware of any consideration that either is or has been given to the possible sale of some or all of Morgan Stanley Senior Funding's interest in American Household

CONFIDENTIAL - Hart

Products?
A. I have no involvement in monitoring the position at this point.
Q. That's not quite my question. My question is: Do you have any knowledge of any consideration being given to Morgan Stanley Senior Funding selling all or some part of its ownership interest in American Household Products?
A. No, I do not.
Q. Mr. Hart, as you sit here today, have you come to the view that Morgan Stanley Senior Funding has been defrauded in connection with its loans to Sunbeam?
MR. CLARE: Objection to form. Calls for a legal conclusion.
A. What I believe is that we were not dealt with truthfully by management.
Q. When did you come to that conclusion?
A. It's unclear to me as to when I came to that conclusion. I don't recall the exact point in time.
Q. Who do you believe did not deal truthfully with Morgan Stanley Senior Funding in

CONFIDENTIAL - Hart

connection with its senior loan to Sunbeam?
A. I would characterize the group as Sunbeam management.
Q. Do you include Coleman management within that definition of Sunbeam management?
A. As a -- as a broad matter, yes, during the diligence process.
Q. What do you believe -- who do you believe at Coleman Company -- strike that.
Who at Coleman Company do you believe did not give truthful information to Morgan Stanley Senior Funding?
A. I'm not -- I did not have specific conversations, with the exception of the conversation that we discussed on the conference call with Jerry Levin, with any individuals from Coleman.
Q. I think you previously testified you have no basis for saying that Mr. Levin ever lied to Morgan Stanley Senior Funding, correct, sir?
MR. CLARE: Objection. Misstates the prior testimony.
MR. MARKOWSKI: Well, let me ask the question just to make sure it doesn't.

CONFIDENTIAL - Hart

Q. Do you have any basis, as you sit here today, sir, to say that Jerry Levin lied to Morgan Stanley Senior Funding with respect to any aspect of the acquisition of -- Sunbeam's acquisition of Coleman Company?
A. I'm in no position to make that. I had one conversation with Jerry Levin.
Q. So, you're not in a position, as you sit here today, sir, to say that you have come to the conclusion that Jerry Levin lied to you during that telephone call; is that correct?
A. I don't recall with an -- with sufficient specificity as to the details of that call to know whether Jerry Levin lied.
Q. My question is: As you sit here today, sir, you're not in a position to say that Jerry Levin lied to you in connection with that single telephone call you had with him?
A. And what I'm saying is that I don't recall the facts and circumstances around it as to remember whether or not he lied to me.
Q. Well, let me make sure I'm clear, sir.
As you sit here today, are you saying Jerry Levin lied to you during that telephone

NOT A CERTIFIED COPY

01752D

CONFIDENTIAL - Hart

call, yes or no?

MR. CLARE: Objection. Asked and answered several times now.

A. What I said is that I don't remember with enough specificity about the details of the call to remember whether Jerry Levin lied or not.

Q. So, as you sit here today, you cannot say that Jerry Levin lied to you in that telephone call, correct?

MR. CLARE: Same objections.

A. I don't recall the specifics of it to determine whether or not he lied.

Q. And my question to you, sir -- I think I'm entitled to a direct answer to this question: As you sit here today, you're not in a position to say that Jerry Levin lied to you during that telephone call, correct?

MO MR. CLARE: Objection. And I move to strike the preamble to the question. And asked and answered.

A. The answer that I would give is the consistent one. I'm not in a position to remember -- I do not recall the details of the conversation to remember whether Jerry Levin lied

CONFIDENTIAL - Hart

or not.

Q. Well, as you sit here today, sir, do you believe that Jerry Levin has lied to you with respect to any aspect of Sunbeam's acquisition of Coleman Company or Morgan Stanley Senior Funding's loan to Sunbeam?

A. And when you ask me if I believe, I tell you that I don't recall whether or not he did or not, so I don't believe one way or the other.

Q. So, you've not come to the conclusion, as you sit here today, sir, that Jerry Levin lied to you in connection with any aspect of your discussions with him relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't recall whether Jerry Levin ever lied to me or not.

Q. Have you ever told anyone at Morgan Stanley & Company, sir, or anyone else, that you believe that Jerry Levin may have lied to you at some point in connection with your discussions with him relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't recall ever having that

CONFIDENTIAL - Hart

discussion.

Q. Have you ever brought that to the attention of Mr. Petrick?

A. I don't recall whether I've ever had that discussion with Mitch.

Q. You don't have any recollection saying that to Mr. Petrick, correct, sir?

A. I don't recall whether I ever made that -- had that discussion with him.

Q. Have you ever brought it to the attention of any members of the board of directors of American Household Products that you believe that Jerry Levin may have lied to you in connection with Morgan Stanley Senior Funding's loan to Sunbeam?

A. I have not had any discussion with members of the board of American Household.

Q. Did you ever tell Bram Smith that Jerry Levin lied to you in connection with your discussions with him relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't recall if I ever had that conversation with Bram.

MR. CLARE: Bob, we've been going for

CONFIDENTIAL - Hart

about an hour and a half. If you get to transition point, take a short break. When you get to a stopping point.

MR. MARKOWSKI: We can take a break now.

MR. CLARE: Okay.

THE VIDEOGRAPHER: Time is 11:14. This completes tape number one.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:19. This begins tape number two of the videotaped deposition of Mr. Michael Hart.

Q. Mr. Hart, do you recall that, when you testified previously relating to Morgan Stanley Senior Funding's loan to Sunbeam, that you testified that you had not come to the view that Morgan Stanley had been defrauded in its connection with its loan to Sunbeam?

MR. CLARE: Object to the form of the question. The document speaks for itself.

A. I don't -- I don't recall the content of that, or the, you know, answer.

Q. I'll show you a copy of your testimony.

NOT A CERTIFIED COPY

01752

CONFIDENTIAL - Hart

A. Okay.

Q. Mr. Smith, let me show you what we'll mark for identification as CPH Deposition Exhibit No. 198. It's a transcript. The caption of the matter is: In the matter of: In re: Sunbeam Corporation. And it reflects that it's the June 12, 2001 deposition of Michael Hart.

MR. CLARE: Bob, I think you misspoke. It's Mr. Hart here with you, not Mr. Smith.

MR. MARKOWSKI: Did I say Smith?

MR. CLARE: Yes.

MR. MARKOWSKI: At the beginning of the question, did I say Mr. Smith?

MR. CLARE: Yes.

Q. I'm sorry, Mr. Hart. I didn't mean to refer to you as Mr. Smith. He and I spent some time in the same room together not too long ago.

(CPH Exhibit 198, Deposition transcript of Michael Hart taken on 6/12/01, marked for identification, as of this date.)

Q. Mr. Hart, do you recognize this as the transcript of your June 12, 2001 deposition?

A. Yes.

CONFIDENTIAL - Hart

Q. Let me direct your attention to page 109. Page 109 of the transcript.

A. Got it.

Q. And let me direct your attention to the question that begins on line 8.

A. Yes.

Q. Would you read through line 12.

A. Yes.

Q. Does that refresh your recollection that, when you were deposed in June of 2001, you testified that you had not come to the view that Morgan Stanley had been defrauded in connection with its loans to Sunbeam?

A. Yeah, it refreshes my recollection.

Q. And that was your view in June of 2001, correct?

A. I assume it was.

Q. Well, you made an effort to testify truthfully?

A. Of course, that's what I meant.

Q. Has your view changed with respect to that since your testimony in June 2001, sir?

MR. CLARE: Bob, I'm going to object to this line of questioning. I think it's

CONFIDENTIAL - Hart

misleading for you to ask Mr. Hart about an isolated Q and A in his prior deposition and suggest that he's changed his testimony when, in fact, there's additional testimony surrounding it that you have not asked him to read or has not been read into the record.

So, I object on the grounds the question is misleading and I think it's a proper impeachment.

Q. My question, sir, is whether you've changed your view since June of 2001 on that issue?

A. I don't think I've changed my view. I don't -- I mean, I'm not in a position to deem us to have been defrauded, if that's a legal determination.

Q. Well, I'm not -- I know you're not a lawyer, sir. I'm just asking whether you've come to the view that Morgan Stanley was defrauded -- Morgan Stanley Senior Funding was defrauded in connection with its loan to Sunbeam.

A. I haven't come to that -- I haven't come to a determined view.

CONFIDENTIAL - Hart

Q. As you sit here today?

A. As I sit here today.

Q. Now, I want to keep straight, at least as straight as I can, sir, a distinction between Sunbeam management and Coleman management in the next series of questions that I'm asking you.

A. Okay. Are we done with this?

Q. Yes.

So, when I refer to "Sunbeam management," I'm referring to the management of Sunbeam Company in place prior to the acquisition of Coleman Company.

A. Okay.

Q. Mr. Dunlap was the CEO, Mr. Kersh was the CFO, correct?

A. That's my understanding.

Q. And management of Coleman Company, at that time, were -- I'll represent to you Mr. Levin, if you don't recall it, was the chief executive officer of Coleman Company.

A. Um-hum.

Q. All right?

A. Okay.

Q. Is it your testimony, sir, using --

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

are you comfortable with that distinction, do you understand the distinction I'm trying to make?

A. I understand the distinction.

Q. Is it your testimony, sir, that it's your belief, as you sit here today, that Sunbeam management was not truthful with Morgan Stanley Senior Funding in connection with its loan to Sunbeam?

A. I think it would be too narrow to say in connection with its loan to -- what -- what proved to be incorrect or where there were, I believe, misstatements were throughout the broader due diligence. But, clearly, that diligence was utilized in conjunction with executing the senior loan.

Q. And it's your -- it's your personal belief, as you sit here today, that Sunbeam management was, in some way, not truthful with either Morgan Stanley & Company in connection with its due diligence or Morgan Stanley Senior Funding?

A. I think that's fair.

Q. Is it your testimony, sir, that you have come to the view that Coleman management was

CONFIDENTIAL - Hart

not truthful with either Morgan Stanley & Company or Morgan Stanley Senior Funding in connection with the events preceding Morgan Stanley Senior Funding's loan to Sunbeam?

A. I have not come to that view one way or the other.

Q. So, you have formed an opinion that Sunbeam management was not truthful in connection with its discussions with Morgan Stanley & Company or Morgan Stanley Senior Funding. But you have not come to that same view with respect to Coleman management; is that fair?

A. I think that's fair.

Q. Mr. Hart, I'm going to show you what we're marking for identification as CPH Deposition Exhibit No. 199. It's a document filed by Morgan Stanley Senior Funding in the lawsuit filed by Morgan Stanley Senior Funding against my clients.

The caption of the document is "Morgan Stanley Senior Funding, Inc.'s Responses and Objections to Defendant Coleman (Parent) Holding's First Set of Interrogatories".

(CPH Exhibit 199, Morgan Stanley

CONFIDENTIAL - Hart

Senior Funding, Inc.'s Responses and Objections to Defendant Coleman (Parent) Holding's First Set of Interrogatories, marked for identification, as of this date.)

Q. Mr. Hart, could you take a moment -- I'm not going to ask you to read the whole document at this point, but have you seen this before?

A. I don't recall having seen this.

Q. Let me direct your attention to page 15. Do you see page 15?

A. Yes.

Q. May I see what you have, sir.

A. Sure.

Q. Let me --

MR. MARKOWSKI: Let's go off the record a second, please.

THE VIDEOGRAPHER: Time is 11:29. We're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: Time is 11:30. We're back on the record.

Q. Mr. Hart, let me start over. We've had a little mix-up with the exhibit, and we've

CONFIDENTIAL - Hart

provided you with a different copy of what we've now marked as CPH Exhibit No. 199.

Do you recall seeing this document before, sir?

A. Now that I've had another couple of minutes to look at it, I do recall seeing this, yes.

Q. All right. Let me direct your attention to page 15.

A. Yes.

Q. Do you see your signature there?

A. Yes.

Q. And the date of your signature is what, sir?

A. October 7, 2003.

Q. And what does it say above your signature, sir?

A. "I hereby declare that the foregoing answers are true and correct upon information and belief and to the best of my knowledge."

Q. And your signature is then notarized; is that correct, sir?

A. Correct.

Q. Did you understand that you were

NOT A CERTIFIED COPY

01-1525

signing this under oath?
A. Yes.
Q. Do you recall when you first received a copy of CPH Exhibit No. 199 for your review?
A. I do not.
Q. Let me ask you to turn to page 14.
A. Um-hum.
Q. Do you see Mr. Clare's signature there, sir?
A. I do.
Q. And do you see the date next to his signature?
A. Yes.
Q. And the date of his signature -- next to his signature is October 6, 2003?
A. Yes.
Q. The day before your signature is dated?
A. Um-hum.
Q. Do you recall that, when you received this document for your review, whether it had been signed by Mr. Clare at that time?
A. I don't recall.
Q. Do you recall whether you received CPH

Exhibit No. 199 for the first time on the day which you signed your verification?
A. I don't recall that.
Q. Do you recall whether you had it for some period of time before you signed it?
A. I don't.
Q. It's possible that you signed it the day -- excuse me -- is it possible, sir, in your mind, that you signed the verification the day that you first received a copy of CPH Exhibit No. 199 for your review?
A. It's possible.
Q. Do you recall -- when you signed the verification, sir, what did you do before you signed it?
A. I read through the exhibit -- the document.
Q. Do you recall making any changes to the document before you verified it?
A. I don't recall if I made any changes or not.
Q. Who do you recall -- did you discuss it with anyone?
A. I don't recall if I had discussions

with anyone on this.
Q. Do you recall who provided it to you?
A. Not specifically, no.
Q. Do you recall whether it came to you from someone at Kirkland & Ellis?
A. No.
Q. Do you recall whether it came to you from someone within a Morgan Stanley entity?
A. I do not.
Q. Do you recall any discussions with in-house counsel at Morgan Stanley concerning any aspect of this document, CPH Exhibit No. 199?
MR. CLARE: It's a yes or no question he's asking you.
A. No.
Q. Do you recall any discussions with anyone at Kirkland & Ellis relating to any aspect of CPH Exhibit No. 199?
A. I don't recall those.
Q. Were you involved, in any way, sir, in the preparation of the answers or statements that are contained within Morgan Stanley Senior Funding's responses to Coleman Parent Holdings' first set of interrogatories?

A. I don't recall my involvement, no.
Q. Do you recall -- let me make sure I understand what your answer is intended to mean, sir.
Did you -- let me ask a direct question. Did you have any involvement in the preparation of the answers or any of them that appear within CPH Exhibit No. 199 to Coleman Parent Holdings' first set of interrogatories?
A. I don't recall if I had any involvement or not.
Q. Other than reading the document before you verified it, sir, can you recall any other activity that you engaged in relating to this?
A. I don't recall any other activity or the extent of it.
Q. Do you recall how much time you spent with the document before you verified it?
A. I don't recall how much time I spent with it.
Q. Do you recall reviewing any other materials in connection with your verification of this document?
A. I don't recall whether I reviewed any

NOT A CERTIFIED COPY

01/52/4

CONFIDENTIAL - Hart

other materials.

Q. Let me direct your attention to the response to interrogatory No. 1. It appears at the bottom of page 2 and continues over to page 3, sir. Do you see that?

A. Yes.

Q. Why don't you read interrogatory No. 1 and the response there to yourself for a moment. Tell me when you're done.

(Witness reading document.)

A. And 2? Or just 1?

Q. Just the response to interrogatory No. 1. It continues over onto page 2.

A. Yes, yes, okay.

Q. Have you finished that?

A. Um-hum.

Q. Interrogatory No. 1 asks for the identification of any individuals who conducted due diligence or who -- or whom are knowledgeable about due diligence conducted by or on behalf of MSSF in connection with its loan to Sunbeam; is that correct, sir?

A. Yes.

Q. That's your understanding of what it

CONFIDENTIAL - Hart

is inquiring about?

A. That's my understanding.

Q. And the answer, at least by my count, lists 17 names. Do you see those names on page 3?

A. I do.

Q. My first question about the -- this answer, sir, relates to the statement at the very bottom of the answer. It states, "MS & Co.'s investigation is ongoing."

Do you see that?

A. Um-hum.

Q. MS & Co. is a reference to Morgan Stanley & Company, correct, not Morgan Stanley Senior Funding?

A. I wouldn't -- I don't know. I don't know what they were trying to get at there.

Q. Well, let me direct your attention to the first page of the document, sir. Do you see the statement at the beginning, "Plaintiff, Morgan Stanley Senior Funding, Inc. ('MSSF')."

Do you see that?

A. Yes.

Q. So, you understand this document, sir,

CONFIDENTIAL - Hart

to define Morgan Stanley Senior Funding as MSSF?

A. That would be my understanding.

Q. Let me turn to interrogatory No. 1 again, response to interrogatory No. 1.

A. Um-hum.

Q. It does not state that MSSF's investigation is ongoing correct, sir? It states that MS & Co.'s investigation is ongoing.

A. That's what that says.

Q. Do you understand -- is that a -- my question is this: Is that a mistake? Was the investigation being conducted by MSSF with respect to providing this information, or was Morgan Stanley & Company involved in the investigation that resulted in providing the information that's contained in Morgan Stanley Senior Funding's response to interrogatory No. 1?

A. I don't know.

MR. CLARE: I object to the form.

A. I don't know.

Q. You don't know whether it's a mistake or whether that's --

A. Correct.

Q. -- said that way purposefully?

CONFIDENTIAL - Hart

A. Correct.

Q. Sir, what did you do to determine whether the list of 17 names provided in the response to interrogatory No. 1 was correct?

A. I don't recall what I did to arrive -- or to verify that.

Q. Did you do anything?

A. I said I don't recall.

Q. Well, it's possible that you didn't do anything; is that correct, sir?

MR. CLARE: I'm going to object to the form of the question.

A. I don't think I would have done nothing to review, but I don't specifically remember the actual steps that I went through.

Q. Let's take them one at a time. Do you know what Shani Boone -- strike that.

Do you know why Shani Boone's name is listed here?

A. I recall her as being a member of the Sunbeam team.

Q. Do you know whether she conducted due diligence?

A. My belief is that she did, working

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart
with John Tyree.
Q. Do you know what due diligence she did perform?
A. Not specifically. I don't recall today what specifically she did.
Q. Let me try to short-circuit this, sir.
A. Okay.
Q. Do you have any personal knowledge concerning the due diligence activities of any of the people listed in the response to interrogatory No. 1?
A. Could you help me out with what you mean by "personal experience."
Q. If I use the -- let me make sure my question is clear.
Do you have any personal knowledge, sir, concerning what due diligence activities any of the individuals listed in the response to interrogatory No. 1 performed in connection with Morgan Stanley Senior Funding's loan to Sunbeam?
A. The approach that Morgan Stanley takes with respect to diligence would draw on people from all of these various divisions.

CONFIDENTIAL - Hart
So, my recollection is, I have participated in some diligence sessions with them. So, I would have to say that, yes, with respect to that, I have personal knowledge of knowing that they were involved in diligence.
Beyond that, I just don't recall, six years later, what specifically someone may have been doing with -- with respect to conducting the actual diligence.
Q. So, it's your testimony, sir, that you participated in meetings with each of the people listed here concerning their due diligence activities relating to Morgan Stanley Senior Funding's loan to Sunbeam?
MR. CLARE: Objection. Misstates the prior testimony.
A. No.
MR. CLARE: You can answer.
A. No, that is not my testimony.
Q. Well, I'm just trying to understand.
A. Um-hum.
Q. What -- what knowledge do you have, sir -- let me go back to what the interrogatory asks about, sir, just so we have that in focus.

CONFIDENTIAL - Hart
The inquiry was for the identification of individuals who conducted due diligence or who are knowledgeable about the due diligence conducted by or on behalf of Morgan Stanley Senior Funding in connection with the senior loan. Do you understand that?
A. Um-hum, yes.
Q. Is it your testimony, sir, that all the individuals listed in response to interrogatory No. 1 were involved in, or knowledgeable of, the due diligence activities related to Morgan Stanley Senior Funding's loan to Sunbeam?
A. Given -- given Morgan Stanley's approach to diligence, it would be my belief that these people had involvement in what is broadly described as being knowledgeable about due diligence or conducted due diligence, as they were all active members of the team.
Q. I'd like to distinguish between knowledgeable of and involved in.
A. Um-hum.
Q. Do you know whether all of the individuals listed in response to interrogatory

CONFIDENTIAL - Hart
No. 1 were involved themselves in the due diligence relating to Morgan Stanley Senior Funding's loan to Sunbeam?
A. You're splitting the question; is that the intent?
Q. I'm trying to distinguish, at this point, between those who were knowledgeable of the due diligence and those who were actually involved in performing them.
A. I have not made that determination.
Q. So, do you know which of the individuals listed here were actively involved in performing due diligence related to Morgan Stanley Senior Funding's loan to Sunbeam?
A. I'd be unable to make that determination at this point.
Q. For any of them?
A. No. I could name some.
Q. All right. That's what I'm asking. Can you tell me which, if any, of the individuals listed in response to interrogatory No. 1 are known to you to have been actively involved in performing due diligence relating to the Morgan Stanley Senior Funding's loan to Sunbeam.

NOT A CERTIFIED COPY

017526

CONFIDENTIAL - Hart

A. I would include myself on that list. I would include Bram Smith. I would include John Tyree. I would include Shani Boone.

I couldn't draw -- I couldn't specifically say the other members one way or the other. May have been, may not have been.

Q. But, as you sit here today, you don't have any recollection of any of the others being actively involved in performing due diligence relating to Morgan Stanley Senior Funding's loan?

A. I don't recall whether they were specifically involved while I was involved. Understand, in my capacity, I would not have been involved in all aspects of the diligence.

So, it's quite possible that any number of these people participated in various diligence sessions when I wasn't a party to it.

Q. Right. I'm just asking what you know. That's what I'm trying to focus on.

A. And that's what I'm trying to tell you.

Q. You've identified four people that are known to you to have been actively involved in performing due diligence relating to Morgan

CONFIDENTIAL - Hart

Stanley Senior Funding's loan, correct?

A. Just so I'm clear, that is -- that is -- they're the individuals that I have a clear recollection of being on a call with or having a discussion with. And so I'm not excluding the others as possibilities. They all, in fact, could have been involved.

I'm just trying to be specific to your request, which is identifying those that I, sitting here today, and knowingly know participated in the diligence process.

Q. What did Shani Boone do by way of due diligence concerning Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't know the specifics.

Q. How do you know -- why is she one of the four people you identified?

A. I recall her being on calls that I was on.

Q. Was she participating at your request in those calls?

A. I don't recall.

Q. Other than being a participant in calls that you were a party to, do you recall

CONFIDENTIAL - Hart

Shani Boone doing anything else with respect to Morgan Stanley Senior Funding due diligence?

A. Do not recall.

Q. What do you recall Mr. Smith doing in connection with performing due diligence related to Morgan Stanley Senior Funding's loan to Sunbeam?

A. Generally, involved in calls and/or diligence trips. Nothing more specific.

Q. Can you recall specific calls that Mr. Smith participated in -- specific due diligence calls?

A. Not specifically.

Q. Do you believe that Mr. Smith made a due diligence -- one or more due diligence trips in connection with Morgan Stanley Senior Funding's loan?

A. I don't have a clear recollection of it. I believe he made -- I believe he made one.

Q. What trip are you recalling?

A. There was a diligence trip to Florida.

Q. Is that a trip that Mr. Smith attended when you were unable to?

A. I believe that's the case.

CONFIDENTIAL - Hart

Q. Is that why that sticks in your mind?

A. Correct.

Q. Do you recall Mr. Smith -- any other due diligence activity that Mr. Smith did?

A. Not specifically.

Q. Or generally?

A. Generally involved.

Q. Other than being on calls or, perhaps, being involved in a due diligence trip, do you have any general recollection of any due diligence activities in which Mr. Smith was engaged relating to the Morgan Stanley Senior Funding's loan to Sunbeam?

A. A -- a general recollection, yes.

Q. What do you recall?

A. That he was involved in the diligence process.

Q. Well, I'm trying to understand what activities.

A. Um-hum.

Q. You've testified that he may have taken a trip to Florida.

A. Um-hum.

Q. You testified that he may have been

NOT A CERTIFIED COPY

01-1527

CONFIDENTIAL - Hart

involved in telephone calls. I'm trying to understand if there's any other activity that you have a general recollection that Mr. Smith performed relating to the due diligence associated with Morgan Stanley Senior Funding's loan to Sunbeam.

A. I don't have any more specific recollection.

Q. Do you have any other kind of activity?

A. No, not specifically.

Q. What due diligence activity do you recall John Tyree engaging in relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. Similar to my description of Bram, a participation on calls. I don't specifically recall whether John took trips, but, you know, similar -- similar types of activities.

Q. Is there -- did you specifically direct anyone, Mr. Hart, to perform any activities relating to -- any due diligence activities relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't recall whether I directed

CONFIDENTIAL - Hart

anyone or not.

Q. Do you recall giving any direction to Mr. Tyree to perform some particular tasks or ask him specific questions, particular questions?

A. I don't recall whether I made that request or not.

Q. Or investigate some particular issue?

A. I don't have a recollection of me asking him that.

Q. Do you recall giving any specific direction to Shani Boone to engage in any particular due diligence activity associated with Morgan Stanley Senior Funding's due diligence?

A. I don't recall directing Shani in any regard.

Q. Do you recall asking Mr. Smith to engage in any particular due diligence activity relating to Morgan Stanley Senior Funding's loan to Sunbeam?

A. I don't recall making a request of Bram.

Q. Tell me what due diligence activity you engaged in.

A. My general recollection is that I

CONFIDENTIAL - Hart

participated in certain diligence calls and reviewed various financial models.

Q. Can you tell me what calls you engaged in?

A. I don't recall specifically, away from the one call that we've talked about earlier.

Q. So, you remember a call with Mr. Dunlap and Mr. Levin and others, but you don't recall any other calls?

A. Not with any great degree of specificity, no.

Q. Well, do you recall any -- anything about any other calls that you engaged in relating to the due diligence associated with Morgan Stanley Senior Funding's loan to Sunbeam, other than the call that you have testified about earlier concerning conversation with Mr. Dunlap, Mr. Levin and others?

A. Not specific details, no.

Q. I didn't ask for specific details. I asked if you recall anything.

A. No.

Q. You said you reviewed various financial models. What is that a reference to?

CONFIDENTIAL - Hart

A. In analyzing an underwriting commitment, you'll put financial models together to evaluate the overall creditworthiness.

Q. Who prepared the models that you reviewed?

A. I don't know who prepared them. I don't recall who prepared them.

Q. Were they prepared by someone at Morgan Stanley & Company?

A. The -- the models themselves, the actual code writing, my belief is that they were put together by Morgan Stanley. An important distinction there is that the actual writing of the Lotus or Excel spreadsheet --

Q. I'm sorry?

A. -- as opposed to the content.

Q. Assembling the model was done by someone at Morgan Stanley & Company, that's your recollection?

A. That's my recollection, yes.

Q. Do you recall reviewing any models that were assembled by anyone other than Morgan Stanley & Company?

A. I don't have a recollection. But just

NOT A CERTIFIED COPY

Page 106

CONFIDENTIAL - Hart

to be clear, because I'm not sure it comes through in your question, the model is a Morgan Stanley-generated product. The content, i.e., the historical information and the projections that appear in it, are not Morgan Stanley's.

Q. But you don't have any recollection of reviewing any models that were put together -- let me use that phrase here -- by anyone other than Morgan Stanley & Company, putting aside where the information contained in the model came from?

A. I don't recall whether I looked at different models or not.

Q. Does this conversation refresh your recollection with respect to any other due diligence activities that any other individuals listed in interrogatory No. 1 engaged in relating to the Morgan Stanley Senior Funding loan to Sunbeam?

A. No.

Q. Do you know whether -- as you sit here, sir, is this, to the best of your recollection, a complete list of individuals who were involved in performing due diligence

Page 107

CONFIDENTIAL - Hart

relating to Morgan Stanley Senior Funding's loan or knowledge of that due diligence?

A. To the best of my knowledge.

Q. Did you make any effort to verify with any of the other participants in -- let me strike that.

Did you attempt to verify, sir, with anyone else at Morgan Stanley Senior Funding or Morgan Stanley & Company the accuracy or completeness of the response to interrogatory No. 1?

A. I don't recall the procedures that I went through to get comfortable with that list.

Q. Do you know whether you're the original source of this list?

A. I don't know that I'm the original source of this list.

Q. Can you recall anyone asking you to prepare such a list?

A. I don't recall being asked to prepare this list.

Q. I'm going to ask you a series of questions, sir, about interrogatory No. 2 -- the response to interrogatory No. 2.

Page 108

CONFIDENTIAL - Hart

A. Um-hum.

Q. It's lengthy, but I want you to read to yourself the entire response to interrogatory No. 2 before I start my questions so you can have the benefit of that.

A. Okay.

Q. So, read interrogatory No. 2 and the response which continues on through the top of page 8.

(Witness reading document.)

A. Okay.

Q. My question, Mr. Hart, is whether you have any personal knowledge concerning any of the statements contained in the response to interrogatory No. 2?

A. Perhaps I should go back. I was -- I do not have personal knowledge, no.

Q. That's your answer?

A. Yeah.

Q. How, then, were you able, sir, to verify under oath that the statements contained in this interrogatory answer were true to the best of your knowledge and belief?

A. To the best of my knowledge and

Page 109

CONFIDENTIAL - Hart

belief, they were true.

Q. Do you have any basis for making that statement?

MR. CLARE: I will object to the form of the question. I'll instruct the witness to exclude from your answer any conversations that you would have had with Morgan Stanley's attorneys, either in-house counsel or outside counsel, in responding to the question.

Subject to that limitation, you can answer the question.

A. I did, in reviewing it, to the best of my knowledge, at the time, sign this document.

Q. Right. I understand you signed it. And you said under oath that it was -- the statements contained in the document were true to the best of your knowledge and belief, correct?

A. Correct.

Q. And my question, sir, is: With respect -- with respect to the statements contained in response to interrogatory No. 2, you've -- you said you have no personal knowledge of the information contained in that

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

interrogatory response, correct?

A. Reading it quickly, in the interest of time, but I was not in attendance at a Sunbeam/Coleman/MAFCO meeting. So, I think I can say that. I can also say that, to the best of my knowledge, this was correct.

Q. I don't want to hurry you, sir. So, I want you to take whatever time you need.

A. I'm sorry. You don't --

Q. Want to hurry you.

A. Oh.

Q. I want you to take whatever time you need. It's -- this is important. I want to understand whether you're a witness or knowledgeable of the facts relating to any of the statements that are contained in the response to interrogatory No. 2. I don't want to be surprised later. Do you understand that?

A. I got you.

MO MR. CLARE: I object and move to strike the preamble to the question.

MR. MARKOWSKI: I'm just explaining to Mr. Hart why I want him to be careful.

Q. So, I'd like you to go through it with

CONFIDENTIAL - Hart

as much time as you need. I want you to tell me whether you have personal knowledge with respect to the -- any of the statements contained in the response to interrogatory No. 2.

MR. CLARE: Bob, maybe it would clarify things if you ask Mr. Hart to go through the interrogatory response and identify which, if any, of the events or conversations that he was in attendance.

I don't know if that's a different question than the one you're asking, but I think that may be part of the difficulty.

MR. MARKOWSKI: I don't want to limit myself in that way.

Q. I just want to know -- I want to know generally whether you have any knowledge, sir, personal knowledge, to support any of the allegations or statements contained in the response to interrogatory No. 2.

A. I will stand by my statement that, as a general matter, no.

Q. Well, when you say "as a general matter," is there anything --

A. Those were your words. I mean,

CONFIDENTIAL - Hart

obviously, we talked about the synergy number. I certainly was not a party to the MAFCO/Sunbeam meeting. So, I would stand by my answer.

Q. So, you have no personal knowledge of those things.

What did you do, sir, in order to form a belief that the statements contained in this interrogatory answer are true?

MR. CLARE: Other than consultations with counsel.

MR. MARKOWSKI: No. If that's what it is, I want to hear it.

A. Don't recall.

Q. So, you don't recall anything, as you sit here today, that you did to verify for yourself that the statements contained in the response to interrogatory No. 2 were true; is that your testimony?

A. I don't have a recollection, no.

Q. Including any discussions you may have had with counsel, you don't recall having any discussions with counsel on that subject?

A. I don't today, no.

Q. Can you recall, sir, why you felt it

CONFIDENTIAL - Hart

was appropriate to make a statement under oath that you believed the statements contained in interrogatory No. 2 -- response to interrogatory No. 2 to be true?

A. As I said, and what I signed was that, when I signed this under oath, I believed that, to the best of my belief -- or to the best of my knowledge, this was true and that was correct.

Q. Did you have information in your possession, sir, that caused you to believe that the statements contained in response -- the response in interrogatory No. 2 were, in fact, true?

A. I don't recall the steps that I took to get myself comfortable with interrogatory 2. But what I did do is sign this with the belief that, to the best of my knowledge, it was true.

Q. I'm trying to understand what information you had in your possession, since you didn't have any personal knowledge, that put you in a position where you could say that.

A. And what I'm trying to tell you is that I don't recall what I did, at that point, to put myself into that position.

NOT A CERTIFIED COPY

01753

CONFIDENTIAL - Hart

Q. Let me ask you this question, sir: What do you understand it to mean -- to say that "The foregoing answers are true and correct upon information and belief and to the best of my knowledge"? What do you understand that phrase to mean?

MR. CLARE: I object to the form of the question.

A. Exactly what it says, that I believe it to be true and correct upon information and belief and to the best of my knowledge.

Q. My question to you, sir, is, what information you had and what belief did you have concerning the factual accuracy of the statements contained in interrogatory No. 2?

MR. CLARE: Ask --

Q. Are you simply taking it on faith that, because counsel provided you this, that it was safe for you to assume that the statements contained in response to interrogatory No. 2 were true and correct?

MR. CLARE: Object to the form of the question.

A. As I've said to you, Bob, I don't

CONFIDENTIAL - Hart

recall what I did to get myself comfortable with that. But I believe, when I signed it, that it was true to the best of my knowledge at that time.

Q. Did someone provide you with information, sir, that caused you to conclude that the statements contained in interrogatory No. 2 were true?

A. I don't recall if anybody provided me with information.

Q. Let me direct your attention to the page 4 of the document you have in front of you, CPH Exhibit 199, Morgan Stanley Senior Funding's first set of interrogatory answers.

A. Um-hum.

Q. You have page 4 in front of you?

A. Page 4.

Q. Second paragraph, first sentence it states, "MAFCO and its wholly-owned subsidiary, CPH, provided Sunbeam and its lenders with a series of false information about the 'synergies' that Sunbeam could expect to achieve from an acquisition of Coleman."

Do you see that statement, sir?

CONFIDENTIAL - Hart

A. Yes.

Q. MAFCO here is a reference, I'll represent to you, to MacAndrews & Forbes Holdings, sir. And CPH is a reference to Coleman Parent Holdings.

As you sit here, sir, do you know what the reference to "a series of false information" is a reference to?

A. Not specifically today.

Q. You don't know what that phrase means?

A. I don't recall what exactly was encompassed in a series of false information.

Q. It's an oddly-phrased statement, is it, sir? Are those words you would use, a series of false information?

MO MR. CLARE: I object to the form of the question. Move to strike the preamble.

A. I don't have an opinion as to whether it's an odd way of phrasing it. What I -- there was an enormous amount of information -- or there was information flow on more than one account of synergy calculations.

Q. Did you ask anyone what the statement referred to before you signed the verification?

CONFIDENTIAL - Hart

A. I don't recall if I asked anyone about the series of false information terminology.

Q. Do you have any knowledge, sir, as you sit here today, concerning who at MAFCO or who at Coleman Parent Holdings supposedly provided Sunbeam and its lenders with a, quote, series of false information with, quote, synergies, close quote?

A. Personally, I don't have that information.

Q. Let me direct your attention to page 5, sir. It's the -- there's a statement that begins on the third line on page 5. "MAFCO and CPH presented these fraudulent synergy representations to Sunbeam and MSSF verbally and in writing during the negotiations leading up to the acquisition."

Do you see that statement, sir?

A. Yes.

Q. Do you have any knowledge, sir, as you sit here today, concerning who at MAFCO or who at CPH provided fraudulent synergy representations to the Sunbeam and MSSF verbally and in writing?

A. Personally, myself, no.

NOT A CERTIFIED COPY

01753

CONFIDENTIAL - Hart

Q. Do you have any knowledge, as you sit here today, sir, concerning what writings this statement refers to?

A. Not specifically.

Q. Do you have any knowledge, sir, concerning whom at MSSF supposedly received fraudulent synergy representations, either verbal or in writing, from MacAndrews & Forbes or Coleman Parent Holdings?

A. If they're referring to the synergy analysis, everyone on the team that performed diligence would have received them.

Q. My question, sir, relates specifically to the statement contained here. Whom at MSSF -- let me strike that.

As you sit here today, sir, do you have any knowledge concerning the identity of the individual or individuals at MSSF that received, either verbally or in writing, from MacAndrews & Forbes or Coleman Parent Holdings fraudulent synergy representations during the negotiations leading up to Sunbeam's acquisition of Coleman?

A. I personally don't know who received that.

CONFIDENTIAL - Hart

Q. Sir, page 5 refers to a December 12, 1997 meeting between Sunbeam and Coleman representatives. Do you see that?

A. I do.

Q. Has anyone ever described to you or reported to you anything concerning the December 12 meeting that's referred to on page 5?

A. I don't recall if anybody described that meeting to me or not.

Q. You weren't present for it, correct?

A. I don't believe I was present.

Q. Did you ever receive anything in writing from anyone relating to any aspect of the discussions at that December 12 meeting?

A. I don't recall if I ever received anything in writing.

Q. The participants that this interrogatory identifies as having attended the December 12 meeting are Jerry Levin, Coleman's chairman and chief executive officer; Joseph Page, Coleman's chief financial officer; and Paul Shapiro, Coleman's general counsel. Do you see that?

A. Yes.

CONFIDENTIAL - Hart

Q. And representatives of Sunbeam are identified as Russell A. Kersh, Sunbeam's chief financial officer; David Fannin, Sunbeam's chief legal officer; and Peter Langerman, a director of Sunbean.

Do you see that?

A. Yes.

Q. Did you ever have any discussions with any of those individuals concerning the December 12th meeting between Sunbeam and Coleman?

A. I don't recall whether I had any conversations with any of those individuals.

Q. As you sit here today, you don't have any recollection of that, correct?

A. As I sit here today, I don't remember if I had any discussions with any of those individuals about the December 12th meeting.

Q. The interrogatory answer refers to a list of -- let's see how the interrogatory characterizes it. The interrogatory refers to a detailed -- at the bottom of page 5, a detailed written schedule identifying 15 different areas of synergies. Do you see that phrase?

CONFIDENTIAL - Hart

A. Yes.

Q. And then there's a chart on page 6, sir. Do you see that?

A. Yes.

Q. I'm going to show you a document -- Mr. Hart, let me show you what we're marking as CPH Exhibit No. 200. It's a two-page document. It bears Bates No. SB 237661 through 7662. The cover page is a fax cover sheet on Sunbeam stationery from David C. Fannin. And the recipients are identified as William Strong, James Stynes and Robert Kitts.

(CPH Exhibit 200, Fax dated 12/15/97, from Fannin to Strong, Stynes and Kitts, marked for identification, as of this date.)

Q. Take a moment to look at the document, sir. My first question is going to be whether you've ever seen it before.

(Witness reading document.)

A. I -- okay.

Q. Have you ever seen it before, sir?

A. I don't recall having seen this document.

Q. Have you ever seen -- let me direct

NOT A CERTIFIED COPY

017532

CONFIDENTIAL - Hart

your attention to the second page. Second page has a list of 15 numbered items. Do you see that?

A. Yes.

Q. Putting aside the handwriting, have you ever seen this document before, this single page?

A. I don't recall having seen it, no. I just don't recall having seen this.

Q. Do you recognize the handwriting?

A. No.

Q. Mr. Strong, Mr. Stynes and Mr. Kitts are Morgan Stanley employees, correct, Morgan Stanley & Company employees?

A. Mr. Strong is. I don't believe Mr. Stynes or Mr. Kitts are employees.

Q. They were back in 1998; is that correct?

A. Yes, that's correct.

Q. Do you know if anyone at Morgan Stanley Senior Funding ever saw this list, sir? By "the list," I mean the list of 15 items attached as the second page of Exhibit CPH Exhibit 200.

CONFIDENTIAL - Hart

MR. CLARE: Objection. Calls for speculation. You can answer.

A. I'm not in a position to know if anyone else ever received it.

Q. Did you engage in any discussion, sir, with Sunbeam relating to the items that are on this list prior to Morgan Stanley Senior Funding's loan being funded?

A. I don't recall the specifics of any conversations that I may have had on the synergy numbers.

Q. Do you recall any communications between yourself and anyone at Coleman Company relating to this list or any items on it?

A. I don't recall any communications to that effect.

Q. Did you have any communications with my clients, Coleman Parent Holdings or MacAndrews & Forbes Holdings, relating to this list or any of the items on it?

A. I don't recall having that conversation.

Q. Any communications of any sort?

A. I don't recall any communications of

CONFIDENTIAL - Hart

any sort with respect to the items on this list.

Q. With either Coleman Parent Holdings or MacAndrews & Forbes, correct?

A. Correct.

Q. Let me direct your attention to -- back to CPH Exhibit No. 199, sir. Direct you to page 7 of that document. These, again, are Morgan Stanley Senior Funding's first set of interrogatory responses.

A. Page 7?

Q. Page 7, correct. Let me direct your attention to the first sentence on the last paragraph at the bottom of the page. "The synergy figures presented by CPH and MAFCO were false."

Do you see that?

A. Yes.

Q. As you sit here today, do you have any knowledge concerning the way in which the synergy figures presented by CPH and MAFCO are -- were allegedly false?

A. It's my belief that they weren't achieved.

Q. Do you believe that the failure to

CONFIDENTIAL - Hart

achieve the synergy -- a synergy number is the same as the synergy number being false?

MR. CLARE: Object to the form of the question.

Q. Do those two things mean the same to you?

A. Perhaps not in certain circumstances.

Q. So, my question here, sir is: The statement is made that the synergy figures presented by my clients, Coleman Parent Holdings and MAFCO, were false. And my question to you, sir, is whether you have any knowledge concerning the manner in which synergy figures presented by my clients are supposedly false in the view of Morgan Stanley Senior Funding?

A. I don't have specific knowledge of the individual items that may have been false.

Q. You, in fact, don't have any knowledge that the synergy figures were false; is that correct?

MR. CLARE: Objection. Asked and answered.

A. I don't have knowledge of the specifics. You had used the phraseology in your

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

first question that I answered. Then you reworded it. So, I answered the first one. I'm not sure what the gist of the second is.

Q. My question is -- my -- let me make sure we're clear. I want to make sure that you're comfortable with your answers.

My first question was whether you had any knowledge concerning any manner or way in which synergy figures provided by my clients are, according to Morgan Stanley Senior Funding, purportedly false?

A. I'm not personally aware of the manner in which any of the synergy figures presented by CPH and MAFCO were false.

Q. And, in general, more generally, you're not aware personally, sir, are you, that my clients, in fact, provided any synergy information to Morgan Stanley Senior Funding that was in any manner false, correct?

A. I'm not in a position to make that determination.

Q. Let me direct your attention to interrogatory No. 4, sir, in CPH Exhibit No. 199.

A. Um-hum, yes.

CONFIDENTIAL - Hart

Q. Take a moment to read the question and response.

(Witness reading document.)

A. Okay.

Q. Interrogatory No. 4 calls for the identification of each individual involved in developing, preparing, analyzing or reviewing potential synergies that might result from the business combination of Sunbeam, Coleman Company, First Alert and/or Signature Brands.

Is that correct, sir? Is that your understanding what the interrogatory calls for?

A. Yeah.

Q. And there are a series of names listed in the response to interrogatory No. 4, correct?

A. Correct.

Q. My question to you, sir, is, what knowledge you have concerning the activities of any of those individuals that -- in the -- in the development and preparation or analyzing -- analysis of synergies associated with the potential combination of Sunbeam, Coleman Company, First Alert and Signature Brands?

A. I would go back to my comment with

CONFIDENTIAL - Hart

respect to people involved in diligence, as -- this was a primary topic of diligence.

And my -- my view is that those individuals that I identified as being involved in the diligence would have been involved in some aspect of reviewing the potential synergies, given it was critical to the overall diligence process.

Q. Let me -- let's try to go through them.

Do you know what, if anything, Shani Boone did with respect to synergies?

A. Not specifically.

Q. Do you know what, if anything, Tyrone Chang did with respect to synergies?

A. No.

Q. Do you know what, if anything, Andrew Conway did with respect to synergies?

A. No.

Q. Do you know what, if anything, Benjamin Derito did with respect to synergies?

A. No.

Q. Do you know what, if anything, Alex Fuchs did with respect to synergies?

CONFIDENTIAL - Hart

A. No.

Q. Do you know what, if anything, Johannes Groeller did with respect to synergies?

A. No.

Q. I'm going to skip you for a moment.

Do you know what, if anything, Roberts Kitts did with respect to synergies?

A. Not specifically.

Q. Do you have something general with respect to Mr. Kitts' activities relating to synergies?

A. He's an addressee on that fax that we talked about earlier.

Q. But other than the fact that you've seen -- now seen his name on CPH Exhibit No. 200, you have no knowledge concerning what Mr. Kitts did with respect to synergies?

A. Correct.

Q. Do you know what, if anything, Ruth Porat did with respect to synergies?

A. No.

Q. Do you know what, if anything, Lily Rafii did with respect to synergies?

A. No.

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

Q. Do you know what, if anything, Andrew Savarie did with respect to synergies?
A. No.
Q. Do you know what, if anything, Bram Smith did with respect to synergies?
A. No.
Q. Do you know what, if anything, William Strong did with respect to synergies?
A. Same comment for Kitts.
Q. Mr. Strong's name appears on CPH Exhibit No. 200, which you've now seen, correct?
A. Yes.
Q. Other than the fact that you've now seen Mr. Strong's name on CPH Exhibit No. 200, do you have any knowledge concerning what Mr. Strong did, if anything, relating to synergies?
A. No.
Q. Do you have any knowledge concerning what Mr. Stynes did with respect to synergies?
A. Same comment as Kitts and Strong.
Q. Mr. Stynes's name also appears on CPH Exhibit No. 200, correct?
A. Correct.
Q. Other than the fact you've now seen

CONFIDENTIAL - Hart

Mr. Stynes's name on CPH Exhibit No. 200, do you have any knowledge concerning anything that Mr. Stynes did with respect to synergies?
A. No.
Q. John Tyree, do you have any knowledge concerning what, if anything, John Tyree did with respect to synergies?
A. You know, I would say this for all of these, because I think it's important to caveat the important role that John played in the overall diligence. I don't recall what the specifics were of his involvement in analyzing synergies.
I think that's a fair representation for, certainly, the individuals that I listed as participating in diligence, having active knowledge of participating in the diligence.
Q. As you sit here, you don't have any knowledge, recollection, today concerning what, if anything, Mr. Tyree did concerning --
A. I don't have any recollection.
Q. Joshua Webber, do you have any knowledge today concerning what Mr. Webber did with respect to synergies?

CONFIDENTIAL - Hart

A. I don't have a recollection.
Q. Do you have any knowledge concerning what Mr. William Wright did with respect to synergies?
A. I don't have a recollection.
Q. Do you have any knowledge, as you sit here today, concerning what Gene Yoo did with respect to synergies?
A. Don't have a recollection.
Q. How were you able to sign an interrogatory answer, sir, which you've said under oath that you, based upon information and belief, believe that each of these individuals were involved in developing, preparing, analyzing or reviewing potential synergies?
A. At the time, as I've said to you, of signing this, I don't recall exactly what I did at that point to get myself comfortable.
I did have the benefit of seeing these individuals -- or seeing and participating in the overall general diligence. And I would go back to the fact that what I signed was to the best of my knowledge, and that is correct.
Q. Putting aside yourself -- you're

CONFIDENTIAL - Hart

listed as one of the people who participated in this activity, correct, sir?
A. Correct.
Q. Putting aside you -- you're not a witness today to the activities that any of these individuals did with respect to developing, preparing, analyzing or reviewing potential synergies associated with Sunbeam's acquisition of Coleman Company; is that correct?
A. I'm not a witness to?
Q. You don't have any personal knowledge of.
A. I don't recall what specifically they may have done with respect to synergies.
Q. In fact, you're not in a position to say today that, of your own personal knowledge, that any of these people, other than yourself, did anything with respect to developing, preparation, analyzing or reviewing potential synergies associated with Sunbeam's potential acquisition of Coleman Company?
A. Not on a specific basis.
MR. MARKOWSKI: Could you read my question back, please.

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart
(Record read.)
Q. And the answer was what?
A. Not specifically.
Q. I don't understand what you mean by "not specifically."
A. I couldn't describe to you what -- specifically what any of these individuals may have done in getting themselves comfortable with the overall synergies.
Q. In fact, you can't say under oath that you have any knowledge that any of these people did anything with respect to the activity of developing, preparing, analyzing or reviewing potential synergies that might be associated with Sunbeam's acquisition of Coleman Company?
MR. CLARE: Objection. Argumentative and misstates the prior testimony.
A. What I have knowledge of is the participation and diligence of which understanding of the synergies was a primary focus. And I have knowledge that the individuals that I listed were actively involved and I had personal knowledge of that.
And I stand by my sworn testimony

CONFIDENTIAL - Hart
that, to the best of my knowledge, that's what I knew at the time.
Q. My question, sir, is: As you sit here today, you can't say that you have knowledge or recollection that any of the individuals listed in the response to interrogatory No. 4 did anything with respect to developing, preparing, analyzing or reviewing potential synergies associated with Sunbeam's potential acquisition of the Coleman Company?
MR. CLARE: Putting aside Mr. Mart?
Q. Putting aside yourself.
A. Sitting here today, I don't recall the specifics of what any of these individuals may have done with respect to evaluating the synergies.
Q. Well, I'm not asking for the specifics. I'm asking whether, under oath, you are in a position to testify today that any of the individuals listed in the response to interrogatory No. 4, excluding yourself, did anything with respect to developing, preparing, analyzing or reviewing potential synergies associated with Sunbeam's acquisition of the

CONFIDENTIAL - Hart
Coleman Company.
A. I don't know that I'm in that position.
Q. I'm not sure what that answer means, sir.
A. I wouldn't draw that conclusion because of the fact that the analysis of the synergies were critical to our due diligence. And I know for a fact that Bram Smith, Shani Boone and John Tyree were intimately involved in diligence.
Q. I thought -- I don't mean to interrupt. Go ahead.
A. I'm done.
Q. But, as you sit here today, you don't know or -- or can't recall what any of the individuals, whether it's those individuals that you've just identified or any of the other individuals whose names appear in response to interrogatory No. 4, did with respect to the evaluation of the synergies that might result from Coleman -- the acquisition of Coleman Company by Sunbeam; is that correct, sir?
A. I did not recall -- I cannot recall

CONFIDENTIAL - Hart
the specific steps that these individuals took in their work of reviewing potential synergies.
Q. I don't want to get hung up on the word "specific," sir.
Can you recall, in general, what any of these individuals did with respect to the evaluation of the synergies that Sunbeam might achieve in connection with its acquisition of Coleman Company?
A. Bob, that's where I have an issue with the word "general," because I think general moves into the realm of broader diligence. That's where I guess we're getting hung up.
Q. Well, let's persevere. I want to know, sir, what knowledge, if any, you have concerning any activities that any of the individuals listed in response to interrogatory No. 4 engaged in with respect to developing, preparing, analyzing or reviewing potential synergies associated with Sunbeam's potential acquisition of Coleman Company.
MR. CLARE: Beyond what he's already testified to?
Q. Putting yourself aside for the moment.

NOT A CERTIFIED COPY

16div-022748

CONFIDENTIAL - Hart

A. Nothing beyond what I've already testified to.

Q. Well, what is that in this context, sir?

THE WITNESS: Do you want to read it back?

Q. No. I want an answer to this question, because I don't want to get hung up on semantics.

I want to understand if you have any knowledge or recollection today, as you sit here, of any activities that any of the individuals identified in response to interrogatory No. 4 did with respect to the evaluation of synergies that Sunbeam might realize if it acquired Coleman Company.

MR. CLARE: Objection. Asked and answered now several times.

A. And I would say that -- as I have said, that, with respect to Shani Boone, Bram Smith and John Tyree, I have knowledge that they had conducted work that would have evaluated the potential synergies through their diligence work.

CONFIDENTIAL - Hart

Q. What potential synergies were they evaluating?

A. The synergies that appeared on the management-provided synergy list.

Q. Do you know if they spent time analyzing the potential synergies identified in CPH Exhibit No. 200?

MR. CLARE: Objection. No foundation. Calls for speculation.

Q. I'm asking what he knows.

A. I don't recall whether I knew that or not.

Q. So, as you sit here today, you don't have any knowledge that any of the individuals identified in response to interrogatory No. 4 -- for this purpose, I'm going to include you -- did any work in evaluating the synergies identified in CPH Exhibit No. 200?

A. As it relates to those specific synergies, I would agree with that statement.

Q. I believe you indicated earlier, sir, that you were aware that Sunbeam retained Coopers & Lybrand to, among other things, evaluate the synergies that might be realized upon the

CONFIDENTIAL - Hart

combination of Sunbeam and Coleman Company; is that correct?

A. I, generally, recall a Coopers report. I don't know the specifics of who engaged who.

Q. Did -- were you aware, prior to the closing of Morgan Stanley Senior Funding's loan to Sunbeam, that Coopers & Lybrand had been involved in evaluating the synergies that Sunbeam might achieve upon its acquisition of Coleman Company?

A. I was aware of a report.

Q. Prior to closing the loan?

A. Yes, I believe so. I believe so.

Q. I want to make sure we're clear.

Your awareness predates the closing of the Morgan Stanley Senior Funding loan?

A. And I believe I was aware of that before the closing of the senior loan.

Q. Did you read any reports from Coopers & Lybrand relating to potential synergies prior to the closing of Morgan Stanley Senior Funding's loan?

A. I don't recall my evaluation of that

CONFIDENTIAL - Hart

particular report.

Q. You don't recall the timing of it?

A. I don't recall the timing.

Q. You did read it at some point, correct?

A. I don't recall whether I read it or not.

Q. Did you understand that Coopers & Lybrand -- the Coopers & Lybrand analysis was based on information that Coopers & Lybrand -- strike that.

Did you have any understanding, sir, that Coopers & Lybrand's evaluation of synergies relied upon any of the information contained in CPH Exhibit No. 200?

MR. CLARE: Objection. Calls for speculation.

Q. Do you have CPH Exhibit 200, sir? I want to make sure you understand what document I'm referring to.

THE WITNESS: Could you read back that question.

(Record read.)

A. I don't recall whether I knew that or

NOT A CERTIFIED COPY

Page 142

CONFIDENTIAL - Hart

not.

Q. Did anyone from Coopers & Lybrand ever advise you that they had relied on statements made to them from Mr. Levin concerning potential synergies?

A. I don't recall if those representations were made or not.

MR. MARKOWSKI: Could you read the question back, please.

(Record read.)

Q. I guess I don't understand your response in the context of that question, sir.

My question was whether you were ever advised by Coopers & Lybrand that they had relied on information they had received from Mr. Levin concerning potential synergies?

A. And I don't recall whether we were advised to that matter or not.

Q. Looking at the list of items contained in CPH Exhibit No. 200, sir, do you have any recollection, as you sit here, whether the Coopers & Lybrand evaluation of potential synergies included any or all of these potential actions?

Page 143

CONFIDENTIAL - Hart

A. I don't have a recollection.

Q. Let me direct your attention to interrogatory No. -- response to interrogatory No. 6, sir, in CPH Exhibit No. 199.

A. Okay.

Q. It's at the bottom of page 11. Take a moment to read that question and the response to yourself.

(Witness reading document.)

A. Okay.

Q. Interrogatory No. 6 calls for the identification of each individual involved in the decision to approve the credit agreement and/or bank facility.

Do you see that?

A. Yes.

Q. And that's a -- you understood that to be a reference to what we've been referring to as the senior loan?

A. Correct.

Q. Turn to the list of individuals that appears on page 12. From this list of 16 individuals, by my count, can you tell me who -- which of these individuals, in fact, authorized

Page 144

CONFIDENTIAL - Hart

the Morgan Stanley Senior Funding loan to Sunbeam?

MR. CLARE: I object to the form of the question.

A. Authorized? What do you mean by "authorized"?

Q. Okay. That's, I think, a fair question.

What I'm inquiring about -- was it the case that Morgan Stanley Senior Funding had a procedure in place that required authorization from one or more individuals prior to entering into a commitment to loan money to Sunbeam?

A. Yes, there's a procedure in place.

Q. Was that procedure followed in this case, to your knowledge?

A. To my knowledge, it was followed.

Q. And what did that procedure involve?

A. A presentation to the Leveraged Finance Commitment Committee.

Q. Was it the Leveraged Finance Commitment Committee that had the final decision making authority concerning whether Morgan Stanley Senior Funding would make the senior loan

Page 145

CONFIDENTIAL - Hart

to Sunbeam?

A. That's my understanding, yes.

Q. Can you identify for me which of the individuals on this list participated in that decision or made that decision?

A. Made the decision by virtue of being on the committee?

Q. Well, was there a vote taken, is that the way the process works? Are there members of the Leveraged Finance Committee?

A. There are members of the Leveraged Finance Commitment Committee.

Q. And did those individuals vote with respect to whether or not to approve Morgan Stanley Senior Funding's participation in the senior loan to Sunbeam?

A. There is -- voting, per se, isn't done. It's a consensus. There's a unanimous consensus. And that was reached.

Q. Is it always the case that there has to be a consensus before Morgan Stanley Senior Funding is authorized to make loans of this sort?

A. I'm not aware of -- I -- I guess one thing that I should make clear, I'm not a

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

member -- at this point in time, I was not a member of the Leveraged Finance Commitment Committee. So, I would not have been privy to the actual -- to use your words, the vote taking or the decision.

I'm not aware of inconsistencies in terms of whether or not there's a dissent or what have you. My understanding is that it's a unanimous approval. I'm not aware -- I'm -- what follows is, I guess, I'm not aware of a situation where there wasn't unanimous approval.

Q. With respect to any Morgan Stanley Senior Funding loan?

A. I'm not aware of that occurring, no.

Q. Do you know which of these individuals participated as a member of the Leveraged Finance Commitment Committee?

A. Who were present at that meeting? My -- my recollection is that Steve Newhouse was there and Mike Rankowitz was there. Bill Strong was calling in via phone. And I'm not certain as to the other parties. They may or may not have been there.

Q. Was Mr. Strong a voting member of the

CONFIDENTIAL - Hart

committee?

A. I don't believe he was.

Q. Was Mr. Newhouse a voting member of the committee?

A. My understanding is that he was.

Q. Was Mr. Rankowitz a voting member of the committee?

A. Yes.

Q. Are there any individuals, other than Mr. Newhouse and Mr. Rankowitz, who were on this list because they participated in the approval of the Morgan Stanley Senior Funding loan to Sunbeam as a voting member of the Leveraged Finance Commitment Committee?

MR. CLARE: Objection to form and foundation.

A. I'm -- I apologize. I missed that question. Is there -- were there others present?

Q. No. On this list, is there anyone, other than Mr. Newhouse and Mr. Rankowitz, whose name appears on this list because he or she was a voting member of the Leveraged Finance Commitment Committee?

CONFIDENTIAL - Hart

A. I got you. My understanding -- I believe Rick Felix was a voting member. And I'm not sure of the other parties.

Q. Maybe the interrogatory answer tells me something I haven't noticed.

Do you see, sir, beneath the list of name it says, "Each of the above persons was a member of the Leveraged Finance Commitment Committee."

Do you see that?

A. Yes.

Q. Is it your understanding that all of the individuals that appear on this list were, in fact, members of the Leveraged Finance Commitment Committee in March of 1998?

A. The -- I'm unsure of the others, with the exception of me. And I was not a member, so that is --

Q. So, that's wrong?

A. -- a correction in that respect.

Q. But you didn't note that when you reviewed this and signed that this was true and correct, to the best of your information and belief?

CONFIDENTIAL - Hart

A. Yes, I -- that was an oversight on my part. My apologies.

Q. Is there anyone, other than yourself, on this list who you know was not a member of the Leveraged Finance Commitment Committee in March of 1998?

A. Not to my knowledge.

Q. Putting yourself aside, about -- do you know whether Bram Smith was a member of the Leveraged Finance Commitment Committee in March of 1998?

A. I don't know for certain.

Q. Mr. Smith was working on the Sunbeam loan directly, correct?

A. Correct.

Q. And Mr. Strong was the client relations managing director at Sunbeam -- for Morgan Stanley with Sunbeam, correct?

A. I think, yes, that's fairly accurate.

Q. And you were working on the Sunbeam loan, correct?

A. Yes.

Q. Are any of the other people that are listed on this list in response to item No. 6

NOT A CERTIFIED COPY

CONFIDENTIAL 01/13/99

CONFIDENTIAL - Hart

people who were directly working on the Sunbeam transactions?

A. I'm not aware of any of those individuals as being directly involved in the transaction.

Q. Putting aside yourself, Mr. Smith and Mr. Strong, do you know what, if anything, the other individuals whose names appear in response to interrogatory No. 6 did in connection with the evaluation of whether to approve a loan from Morgan Stanley Senior Funding to Sunbeam?

A. I was -- I was present in the meeting, the Leveraged Finance Commitment Committee meeting, where the transaction would have been presented.

The discussion of the business, discussion of the overall transactions would have occurred. And those individuals would have had the benefit of that in making their decision.

Q. Do you know if all these people were present at the meeting?

A. I don't recall. I -- the individuals that I mentioned to you are the ones that I have a distinct recollection. The others, I don't

CONFIDENTIAL - Hart

remember whether or not they were there or not.

Q. Other than attending the meeting, do you have any knowledge concerning what, if anything, any of the individuals whose names appear on -- in response to interrogatory No. 6 did in connection with their decision to approve the loan to Sunbeam? Again, excluding, you, Mr. Smith and Mr. Strong.

A. Beyond the meeting, no, I don't know what they may have done.

MR. MARKOWSKI: This is a good breaking point for me.

MR. CLARE: Okay.

THE VIDEOGRAPHER: Time is 1:00 p.m. and this completes tape number two.

(Luncheon recess: 1:00 p.m.)

CONFIDENTIAL - Hart

AFTERNOON SESSION

(Time noted: 1:35 p.m.)

THE VIDEOGRAPHER: The time is 1:35. We're back on the record. This begins tape number three of the videotaped deposition of Mr. Michael Hart.

MICHAEL HART, resumed and testified as follows:

EXAMINATION (Cont'd.)

BY MR. MARKOWSKI:

Q. Mr. Hart, let me show you what we're going to mark as CPH Deposition Exhibit No. 201. It's a document filed by Morgan Stanley Senior Funding in the lawsuit that Morgan Stanley Senior Funding filed against MacAndrews & Forbes and Coleman Parent Holdings. It's entitled, "Morgan Stanley Senior Funding's -- Funding Inc.'s Responses and Objections to Defendant Coleman Parent Holdings, Inc.'s Second Set of Interrogatories."

(CPH Exhibit 201, Morgan Stanley Senior Funding, Inc.'s Responses and Objections to Defendant Coleman (Parent) Holdings, Inc.'s Second Set of

CONFIDENTIAL - Hart

Interrogatories, marked for identification, as of this date.)

Q. Mr. Hart, can you tell me whether you've seen this document before?

A. I do recall seeing it.

Q. Let me direct your attention to page 11 of the document.

A. Um-hum.

Q. Is that your signature?

A. It is.

Q. And were you verifying under oath in signing this document that the answers to the interrogatories given in this document were, quote, true and correct upon information and belief and to the best of my knowledge, close quote?

A. Yes.

Q. The date of your signature is October 7, 19 -- 2003; is that correct?

A. That's what it says, yes.

Q. Do you recall how long you had this document to review prior to your signing the verification?

A. I don't.

NOT A CERTIFIED COPY

01-7540

CONFIDENTIAL - Hart

Q. Let me ask this question, Mr. Hart: Did you, in fact, have a copy of the interrogatory answers at the time you signed the verification that appears on page 11, or did you simply sign a verification form and provide it to counsel?

MR. CLARE: Object to the form of the question.

A. I'm not aware that I didn't have the -- the interrogatories, if that's what these are.

Q. Interrogatory answers?

A. Interrogatory answers, yeah.

Q. Your recollection is that you had a copy of the interrogatory answers to review prior to signing the verification?

A. That's my recollection, yes.

Q. Are you certain of that?

A. Not certain, no.

Q. So, it's possible, in your mind, that you signed the verification form without reviewing the interrogatory answers?

MR. CLARE: Objection to form. Argumentative.

CONFIDENTIAL - Hart

A. I don't think it's possible. I think I did have the answers at the time of signature.

Q. But you don't recall how long you had them before you verified them?

A. I don't recall how long I had them.

Q. Do you recall what, if anything, you did to -- well, strike that.

Do you recall what, if anything, you did in connection with verifying the interrogatory answers that are contained in CPH Exhibit 201?

A. I don't recall what I did -- what I had done.

Q. Did you read them?

A. It's my recollection that I did read them.

Q. Is it possible that you didn't read them?

MR. CLARE: Objection to form and argumentative.

A. I don't think it's possible that I didn't read them.

Q. Did you read them carefully?

MR. CLARE: Objection to form.

CONFIDENTIAL - Hart

A. My recollection is that I did read them carefully.

Q. Do you know whether you supplied -- strike that.

Do you know whether you were the source of any of the information contained in the -- in these interrogatory answers?

A. I'm not aware of whether or not I was. I don't recall if I was.

Q. Let me direct your attention to the response to interrogatory No. 1. Strike that.

Let me -- let's skip to interrogatory No. 2. I have a fairly simple question about that one.

Interrogatory No. 2 appears on page 4 of the exhibit. Read the response to yourself, please.

(Witness reading document.)

A. Okay.

Q. Interrogatory No. 2 calls for the identification of each instance in which an MSSF employee or representative traveled to Florida in connection with the senior bank loan, correct?

A. The credit agreement and the bank

CONFIDENTIAL - Hart

facility.

Q. And that's what we've been referring to today is the senior bank loan, correct?

A. Credit agreement is specific. Credit agreement is the negotiation of the document. And the bank facility, that's a -- the facility itself.

Q. Do you understand that to mean something other than the -- what we've been referring to today as the senior bank loan?

A. It could be construed to be that, yeah.

Q. Now, the response states that, "No MSSF employee or representative traveled to Florida in connection with the Credit Agreement or The Bank Facility." Correct?

A. That's what it states, yes.

Q. It's not a correct statement, is it?

A. I think we talked a little earlier about Bram Smith traveling to Florida on a diligence trip.

Q. And Mr. Smith made that trip as a representative of MSSF, correct?

MR. CLARE: Objection. No foundation.

NOT CERTIFIED COPY

Page 158

CONFIDENTIAL - Hart
A. Mr. Smith was an employee of Morgan Stanley & Co., Inc.
Q. Did you understand that -- excuse me. I didn't mean to interrupt you.
MR. MARKOWSKI: I cut off the last part of his answer. Did you get that.
THE WITNESS: Doesn't matter. There's no other answer.
Q. I'm sorry. I didn't hear you.
A. There is none. That was it.
Q. Did you understand that the purpose of Mr. Smith's trip to Florida was in connection with the evaluation whether Morgan Stanley Senior Funding would participate in the senior bank loan to Sunbeam?
A. My understanding, it was -- that it was a diligence trip. And that's the extent of my knowledge. When it was determined that I wasn't going on it, I really don't have any other knowledge as to what went on or what took place with respect to it.
Q. The only responsibilities that Mr. Smith had at Morgan Stanley, Mr. Hart, were as -- or in connection with the business of

Page 159

CONFIDENTIAL - Hart
Morgan Stanley Senior Funding, were are they not?
MR. CLARE: Objection. No foundation. These questions are more appropriately directed to Mr. Smith.
A. I don't know.
Q. Well, let me just ask you a very direct question, sir.
You knew that Mr. Smith had made a trip to Florida in connection with matters related to Morgan Stanley Senior Funding's loan to Sunbeam, correct?
A. I recall that it did.
Q. And I just want to understand what the failure to disclose that in this interrogatory answer reflects.
Is it a mistake, or did you interpret this as not calling for you to disclose to us that Mr. Smith had made a trip to Florida?
MR. CLARE: I object to the form of the question. And, Bob, I really think it's inappropriate for you to be asking these questions.
The interpretation of the interrogatories is not something this

Page 160

CONFIDENTIAL - Hart
witness is here qualified to do. Nor is it a proper question of examination.
The interrogatory answers says that, based on the investigation to date, that was the information that was being provided. And I think it's inappropriate for you to suggest otherwise to the witness.
So, I object on the grounds it's argumentative and I think this whole line of questioning is a wasteful of time of the witness's information about his personal involvement.
Subject to that, you can answer.
A. I -- I -- as I've said, I answered these to the best of my knowledge at this point in time. And, if it was an oversight, it was an oversight.
Q. I'm just trying to understand whether it was an oversight or not.
A. Well, I believe, to the best of my recollection, at this point, Bram did make a trip to Florida for diligence.
Q. And re -- go ahead. I didn't mean to cut you off. I'm sorry.

Page 161

CONFIDENTIAL - Hart
A. I'm done.
Q. You swore that, to the best of your knowledge and belief, the response provided here in interrogatory No. 2 is true and correct, correct?
A. That's right, with the information available to my recollection at the time. And that was the case.
Q. Is it your testimony that, in verifying that the statement that no MSSF representative traveled to Florida in connection with the bank facility, that you forgot that Mr. Smith had made a trip to Florida in your place in connection with the loan?
MR. CLARE: Objection to form.
A. I will say that what I -- what I signed here was true, to the best of my understanding at this point in time, based upon the information, my belief.
Q. I'm just trying to understand whether you forgot it or whether you didn't think it was called for or whether you signed it knowing it wasn't correct?
MR. CLARE: Objection to the form of

NOT A CERTIFIED COPY

017542

CONFIDENTIAL - Hart

the question. And I object to the suggestion in the question. It's improper.

A. I did not sign it knowing it to be incorrect. I signed it to the best of my abilities based upon the information and belief -- and to the best of my knowledge on October 7.

Q. Do you agree today that it's incorrect?

A. It would appear to be incorrect if, in fact, Bram Smith took that trip.

Q. Now, is there any reason why you were able to remember today, when I asked you about Mr. Smith's activities, that Mr. Smith had made a trip to Florida on your behalf and that you didn't remember that in October of 2003 when you verified this statement, that no one from MSSF and no representatives of MSSF had traveled to Florida?

A. Not in particular, other than it's -- there's more information that we've gone through today that, obviously, makes it -- or responds a response.

Q. Let me direct your attention back to

CONFIDENTIAL - Hart

interrogatory No. 1?

A. Okay.

Q. It's on page 2 toward the bottom. For the moment, I'm just going to ask to you read the interrogatory itself. You don't need to look at the response for the moment.

(Witness reading document.)

A. Okay.

Q. Did you do anything, sir, in an effort to determine what information was available that might be responsive to the inquiry in interrogatory No. 1 for the identification of communications between MSSF employees or representatives in Florida concerning the credit agreement or the bank facility?

A. In terms of identifying what exactly the communication was?

Q. In terms of trying to determine what information might be available, whether it would be responsive.

A. I don't recall if I did anything with respect to that or not.

Q. You personally had engaged in communications with individuals in Florida

CONFIDENTIAL - Hart

concerning the Morgan Stanley Senior Funding loan to Sunbeam, had you not?

A. I believe I had, yes.

Q. Did you suggest that your own activities be disclosed in this interrogatory answer when you reviewed it?

MR. CLARE: Objection to form.

A. I don't recall if I offered that as a suggestion.

Q. Did -- with whom, Mr. Hart, do you recall discussing Exhibit 201 prior to the time you verified it?

A. I don't recall discussions.

Q. You don't recall any discussions with anyone at Kirkland & Ellis?

A. I don't recall them, no.

Q. Do you recall any discussions with any in-house Morgan Stanley attorneys?

A. I don't recall them, no.

Q. Do you recall any discussions with anyone else at Morgan Stanley & Company or Morgan Stanley Senior Funding?

A. No, I don't recall having that discussion or not.

CONFIDENTIAL - Hart

Q. Sorry. Did you ask anyone else to assist you in reviewing the accuracy of the statements contained in Morgan Stanley Senior Funding's second set of interrogatories?

A. Don't recall if I did or not.

Q. I misspoke. Let me rephrase the question.

Do you recall asking anyone else to assist you in determining the accuracy of the responses of Morgan Stanley Senior Funding to Coleman Parent's second set of interrogatories?

A. I don't recall if I made that request.

Q. Let me direct your attention to pages 6 and 7 of the document. Do you see the boxed material at the bottom of page 6 and the top of page 7?

A. Yes.

Q. Do you see the reference above that box to the 15 areas of purported synergies totaling $150.5 million?

A. Yes.

Q. Do you see the box only contains 12 items?

A. Yes.

NOT A CERTIFIED COPY

017543

Page 166

CONFIDENTIAL - Hart

Q. Did you review this carefully enough to note and call to the attention of someone that the box itself was incomplete?

A. I don't recall if I had any discussion on that specific item or not.

Q. Did you note it before you verified it as true and correct, to the best of your knowledge and belief?

A. Don't recall if I did note that.

Q. Mr. Smith -- excuse me, I'm sorry. Mr. Hart, let me show you what we previously marked as CPH Exhibit No. 160.

A. Um-hum.

Q. Do you have CPH Exhibit 200 handy, sir? It's the two-page fax.

A. Yes.

Q. Turn to the second page of CPH Exhibit No. 200. Does the typed material on the second page of CPH Exhibit No. 200, the fax from Mr. Fannin to Messrs. Strong, Stynes and Kitts appear to be the same as the typed information on CPH Exhibit No. 160 to you?

MR. CLARE: Objection. Waste of time.

A. It looks the same, but for the

Page 167

CONFIDENTIAL - Hart

handwriting.

Q. And my question is going to be about the handwriting.

A. Okay.

Q. I wanted to connect the two documents in your mind. Do you recognize any of the handwriting on CPH Exhibit No. 160, sir?

A. No, I don't.

Q. Do you see the boxed handwritten item in the upper left-hand corner, "Ready, Fire, Aim"?

A. Yes.

Q. Do you know what that expression means?

A. No idea.

Q. You've never heard anyone use that expression?

A. No, I haven't.

Q. Do you know, sir -- do you see several of the dollar values that appear on the typed portion of CPH Exhibit No. 160 has been stricken with handwritten lines?

A. Yes.

Page 168

CONFIDENTIAL - Hart

Q. And, in some cases, they been stricken entirely and some cases another number has been written next to the item. Do you see that?

A. Um-hum.

Q. In some cases, the number that's written is zero. Do you see that?

A. Yes.

Q. Do you know, sir, what, if any, credit either Morgan Stanley or Sunbeam management gave to the 15 items that appear on CPH Exhibit No. 160?

MR. CLARE: Objection to form. Calls for speculation.

A. I don't have a view there.

Q. By "credit" I just want to make sure you understand what I'm driving at. Whether Sunbeam management or Morgan Stanley concluded that the item reflected an appropriate action that might be taken if Morgan Stanley -- if Sunbeam acquired Coleman Company and what value, in terms of synergies, might be realized if that action was taken? Did you understand my question to call for that?

A. No.

Page 169

CONFIDENTIAL - Hart

Q. Do you know what items on CPH Exhibit No. 160 that Sunbeam management believed would be appropriate actions to take, if Sunbeam acquired Coleman Company?

A. I don't recall the specifics, and I'm not familiar with this -- having not prepared or received it, I'm not familiar with these, no.

Q. Did anyone advise you, sir, that Sunbeam management had concluded that some or all of the synergy ideas that had been suggested by Mr. Levin at the December 12, 1997 meeting had been rejected by Sunbeam management?

A. I was not aware that that had occurred. Or at least I don't recall that I had been made aware of that.

Q. Do you know whether anyone at Morgan Stanley & Company had come to the conclusion that the -- some or all of the items that were identified by Mr. Levin as potential areas for synergies should not be given any dollar value?

A. I don't know if anyone else had come to that conclusion, no.

Q. Mr. Hart, let me show you what we're marking for identification as CPH Exhibit No.

NOT A CERTIFIED COPY

017544

CONFIDENTIAL - Hart

202. It's a one-page document. It bears Bates No. Morgan Stanley Confidential 3931.

(CPH Exhibit 202, Document entitled, "Project Laser Key Synergies Assumptions", marked for identification, as of this date.)

Q. Take a moment, sir, and look at this document.

(Witness reading document.)

Q. My first question is going to be whether you've seen it before, either with or without the handwriting.

A. I don't recall having seen this.

Q. Do you recognize the handwriting?

A. No, I do not.

Q. Does it appear to be -- do you recognize Project Laser as the code name within Morgan Stanley for its work for Sunbeam?

A. Yes.

Q. Do you see the title of this document is "Key Synergy Assumptions"?

A. Um-hum.

Q. You have to answer audibly.

A. I'm sorry. Yes.

Q. Do you see the -- there are three

CONFIDENTIAL - Hart

columns of numbers in the middle of the page?

A. Yes.

Q. One -- the first column is entitled "Original," the second column is entitled "Rev (12/97)" and the right-hand column is entitled "Rev (1/98)"?

A. Yes.

Q. Do you see that?

Do you see that the first column of numbers totals, according to the document, 150.5 million? There's a grand total line at the bottom.

A. Yes.

Q. And the middle column totals 107.5 million. Do you see that?

A. I do.

Q. And the far right-hand column, the Rev 1/98 number total 67 -- looks like 67.8 million. Do you see that?

A. I do.

Q. Did anyone at Morgan Stanley advise you, sir, in connection with your evaluation of the Morgan Stanley Senior Funding loan to Sunbeam, that Morgan Stanley personnel, in

CONFIDENTIAL - Hart

working with Sunbeam management, had determined that the $150 million in potential synergy ideas identified by Mr. Levin in December 1997 should be valued at something approximating $67 million?

MR. CLARE: Objection to form.

A. I don't recall being made aware of that.

Q. Did anyone advise you, generally, sir -- does this refresh your recollection -- let me put it that way -- that you were made aware that Morgan Stanley analysts and investment bankers had determined that most of the synergy ideas suggested by Mr. Levin in December 1997 to Sunbeam management should not be credited?

A. I don't recall being made aware of that, no.

Q. Is that something that would have been of interest to you in connection with the work you were doing?

MR. CLARE: Objection to form.

A. It's impossible for me to tell whether that was a relevant data point or not in the absence of context and other information.

Q. So, as you sit here today, it doesn't

CONFIDENTIAL - Hart

jump out at you as something you would have wanted to know in connection with your evaluation of whether Morgan Stanley Senior Funding should participate in the senior loan to Sunbeam?

MR. CLARE: Objection to form. And asked and answered.

A. I don't have any recollection as to being made aware of that. And I don't know what the source or -- the source of this is. And so, if you're hypothetically asking would I be interested in that, it's not something that I have an opinion on. It would be -- it would take far more analysis for me to determine whether or not that would be a factor in the analysis.

Q. Let me give you a couple of assumptions. You tell me whether they matter to you in terms of whether this is a significant piece of information to you.

Let's assume that Mr. Levin met with Sunbeam management in December of 1997 and provided the list that you see attached -- that you see in Exhibit -- CPH Exhibit 160.

And let's assume that CPH Exhibit No. 202 is an internal Morgan Stanley analysis as of

NOT A CERTIFIED COPY

017345

CONFIDENTIAL - Hart

December 1998 that attributes, approximately, $67 million in value to the items that Mr. Levin discussed with Sunbeam management in December 1997 rather than 150.5 million.

With those assumptions, sir, is that analysis something that you would have wanted to know in connection with your evaluation whether Morgan Stanley Senior Funding should participate in the senior loan to Sunbeam?

MR. CLARE: Objection to form. Incomplete hypothetical.

A. In isolation, I can't draw that conclusion. Synergies alone were not the factor that would have been determined -- that would have been determined.

Q. So, as you sit here, you are not in a position to form an opinion whether that's an analysis that you even would have been interested in knowing about in connection with the work you were doing?

A. Given the number of assumptions that you made, yes, it's impossible.

Q. You can put those documents aside for the moment, sir.

CONFIDENTIAL - Hart

A. Okay.

Q. When do you recall, Mr. Hart, first becoming involved in anything relating to the work that Morgan Stanley & Company was doing for Sunbeam?

A. General recollection, February -- I believe it was February '87.

MR. CLARE: '97 or --

A. Feeling a little --

Q. Where were you in February of '87?

A. Yes, February of '97.

Q. Your first recollection is being involved in February of 1997.

Let me give you a date and time and see if that affects your answer.

The Morgan Stanley Senior Funding loan closed at the end of March 1998.

A. I'm sorry. Yes. I'm missing a year. Yes. February of '98. Thank you.

Q. Now, I'll represent something to you, sir. The Morgan Stanley investment bankers began working with Sunbeam in the first part of 1997 concerning potential investment banking transactions. Were you aware of that?

CONFIDENTIAL - Hart

A. No, I was not.

Q. Were you aware, sir, that you were identified in connection with work that Morgan Stanley & Company was doing for Sunbeam in 1997 as a member of the Morgan Stanley/Sunbeam team?

A. I'm, generally -- I'm, generally, not aware of it, although I did review a document yesterday that had a deal team sheet on it that included me on it.

So, as a result of that review, I can surmise that, you know, that, in fact, was -- that was, in fact, put together.

Q. Let me show you what's previously been marked as CPH Exhibit No. 69.

THE WITNESS: Does this go to you?

MR. MARKOWSKI: No, it's previously marked.

THE WITNESS: Oh, great.

Q. Is this the document that you saw in preparing for your deposition to which you just referred?

A. Yeah, this looks familiar.

Q. Let me direct your attention to the page that bears Bates No. Morgan Stanley 3924.

CONFIDENTIAL - Hart

Do you have that page in front of you?

A. I do, yes.

Q. It's entitled "Project Laser Working Group List." Do you see that?

A. Um-hum.

Q. I'm sorry. Did you answer, sir? Do you see that?

A. Yes, I did.

Q. As of September 11, 1997, correct?

A. Yes.

Q. Your name appears on this page, correct?

A. It does, yes.

Q. Under "Debt Capital Markets: Bank Loan"?

A. Yeah.

Q. Your name appears along with Bram Smith and Michael McLaughlin, correct?

A. Correct.

Q. And it has your name, it has your office, telephone number, fax and pager number, your home telephone number and your home address, correct?

A. Correct.

NOT A CERTIFIED COPY

Page 178

CONFIDENTIAL - Hart

Q. Does this refresh your recollection, in any way, that you were involved, prior to February 1998, in connection with some aspect of the work that Morgan Stanley was doing for Sunbeam?

A. No. It wouldn't be uncommon to have a working group list that would have any number of components pulled together.

For instance, Mike McLaughlin was included, but I don't believe he worked on the transaction. It would be more of a generic collection of people that could potentially work on the deal.

Q. Was Mike McLaughlin somebody who had responsibilities for Morgan Stanley Senior Funding?

A. He worked with the Morgan Stanley Senior Funding -- or, again, sorry. I probability should -- nobody works within Morgan Stanley Senior Funding. Morgan Stanley Senior Funding is the booking unit for our loans. Mike McLaughlin was within the bank loan group, if you will.

Q. How would you refer to that group of

Page 179

CONFIDENTIAL - Hart

people?

A. Technically, at that point in time, they were within -- we were within Leveraged Finance, which was the organizational structure.

Q. Do you know who would have made the decision to include you and Mr. McLaughlin, along with Mr. Smith, in the working group list for September 1997?

A. No, I don't specifically know.

Q. That doesn't affect your thinking with respect to when you started working?

A. It doesn't, no.

Q. How do you recall becoming involved in -- let me ask a better -- hopefully a better question.

You indicated that you first became involved in the Sunbeam project in, approximately, February of 1998.

A. Yeah.

Q. What do you recall your first involvement to be?

A. Becoming generally aware that there was a potential acquisition and a financing opportunity.

Page 180

CONFIDENTIAL - Hart

Q. Do you recall how you first became aware that Morgan Stanley was performing work for Sunbeam that might potentially involve a senior loan component?

A. No, not specifically.

Q. Did Mr. Smith come to you and ask you to work on the project?

A. I don't recall if Bram contacted me or not.

Q. Would that be the normal way things worked back in the first part of 1998?

MR. CLARE: Objection to form.

A. One potential way I could have been involved would have been Bram requesting my involvement.

Q. It's possible that someone else could have done that?

A. Possibly.

Q. Who -- so, Mr. Smith was the person to whom you reported, correct?

A. Correct.

Q. But others could involve you on projects without first going to Mr. Smith and asking for you to be assigned to a matter?

Page 181

CONFIDENTIAL - Hart

A. No. I was answering the question, how did I first become aware of the transaction. And that could be through a different forum.

Q. Okay. I'm sorry. I'm -- we were ships passing in the night.

A. Sure.

Q. You're not certain whether it was Mr. Smith or someone else who first advised you of a potential senior loan to Sunbeam, correct?

A. Not specifically, no.

Q. Do you recall how you first became assigned to work on the project?

A. No. Other than you properly pointed out, Bram Smith would have assigned me to the transaction.

Q. Can you recall what your first activities were?

A. No, not really.

Q. At that point in 1998, did you keep any record of your activities during the course of the day at Morgan Stanley?

A. Generally, during the course of the day?

Q. Yes. Would you somehow keep a record

NOT A CERTIFIED COPY

01754

of what you were spending your time on?
A. Not in the context of a time sheet or something like that, no.
Q. Would you keep some -- a log of some sort that reflected what projects you were working on during the course of a particular day?
A. No, no.
Q. Did you keep a personal calendar or business calendar?
A. I have a calendar. I have -- you know, our system that has the calendar that would have on it some of the meetings that I attend.
Q. Do you know if the record of your activities, your calendar for March and February of 1998 at Morgan Stanley, still exist?
A. I don't know if it exists or not.
Q. Do you have a copy of any form of calendar for that time period?
A. I'm not aware that I have a copy of any of that.
Q. Over what period of time did you continue to work on the Sunbeam-related project?
A. In its entirety?
Q. Yes, your entire involvement.

A. From that period of time through, I believe, my departure to London, which I want to say January -- January 2000.
Q. When you were assigned to London, did you have any continuing involvement of any sort in any aspect of the work that Morgan Stanley had done for Sunbeam?
A. Not to my recollection. I did -- I was deposed during that time, subsequent to that, but that's my recollection of what my involvement was.
Q. When did you return to the United States?
A. 2000 -- beginning of 2002. I spent two years in London.
Q. Since your return, have you had any involvement in any --
A. I have not been, no. I haven't -- haven't been close to the situation. I run the Loan Products Group. And I'm just trying to think if there was any -- no, I haven't had involvement whatsoever.
Q. You kind of jumped the gun on me there, but I was going to ask you if you had any

involvement in connection with Sunbeam, the loan to Sunbeam. And that's what you were answering, correct?
A. I was just trying to think if there was any overlap in the general course. And, no, that responsibility had been shifted -- the responsibility for monitoring had been shifted to Mitch Petrick.
Q. How did you find yourself with the assignment of verifying the interrogatory answers in this case, then?
A. Don't know how I was chosen.
Q. When you became involved in work relating to possible loan from Morgan Stanley Senior Funding to Sunbeam, sir, were you aware that Morgan Stanley or Morgan Stanley Senior Funding was potentially going to find itself competing with other financial institutions for the financing-related assignments?
A. I don't recall exactly what the competitive dynamic was on the -- with respect to the financing.
Q. Were you aware that there was some concern that Chase Securities might compete for

the financing?
A. I don't specifically recall them as -- as a -- as a competitor for the financing.
Q. Was it certain in your mind, at the time that you first became involved in the project, that Sunbeam would retain Morgan Stanley Senior Funding to provide the senior bank financing if Morgan Stanley Senior Funding was willing to make the loan?
MR. CLARE: I object to the form.
A. Again, I don't recall what the terms of the engagement were that either locked up or had us competing for the financing. So, I am unclear on that at this point.
Q. So, you don't know one way or the other -- did you know that Morgan Stanley had an engagement letter with Sunbeam in connection with the work that was being performed?
A. I understood there to be an M&A engagement letter, yes.
Q. Did you have an understanding whether that obligated Sunbeam to use Morgan Stanley to provide financing services as well?
A. I'm not aware as to what the

NOT A CERTIFIED COPY

01/5/18

CONFIDENTIAL - Hart

provisions were around locking up financing. I don't recall that.

Q. Now, I'll give you another date, sir. The agreement between -- the agreements between Sunbeam and Coleman Company for the acquisition -- and my clients as well -- concerning the acquisition by Sunbeam of Coleman Company were entered into on February 27th, 1998.

Do you recall what, if any, active work you did relating to potential financing activities prior to that time?

A. Financing activities around the -- the provisioning of the loan?

Q. Yes.

A. As I said, I participated in some elements of diligence and worked on the negotiation of the credit agreement.

Q. Your recollection is that -- those activities occurred prior to February 27th of '98?

A. February -- oh, I'm sorry. No, those would have -- those would have occurred leading up to the closing of the transaction, which I believe was March 31.

CONFIDENTIAL - Hart

Q. I'm trying to work this in segments.

A. Sure.

Q. You first became aware, you said, of potential financing involving Sunbeam in early February?

A. Right.

Q. The contracts relating to Coleman -- the acquisition of Coleman by Sunbeam were entered into in late February.

I'm trying to understand if you have any recollection of your activities relating to Sunbeam between the time you first became aware of it and when you were advised that agreements had been reached for Sunbeam to acquire Coleman.

A. Don't recall. Don't recall what that involvement may have been.

Q. Mr. Hart, let me show you what we previously marked as CPH Exhibit No. 37.

A. Okay.

(Witness reading document.)

A. Okay.

Q. It's a document entitled, "Itinerary John Tyree," and it covers the period from Wednesday, March 4, 1998 through Thursday, March,

CONFIDENTIAL - Hart

5, 1998. Do you see that?

A. Yes, I do.

Q. Do you see a reference to the MS team meeting with Mr. Tyree at the company in the second line of the document?

A. Yes.

Q. And do you see a reference to the MS team members on the following line?

A. Yes.

Q. And the names listed are Bram Smith, Seth Ishaan, Thomas Burchill and Michael Hart. Do you see that?

A. Yes.

Q. Did you, in fact, attend a meeting at Sunbeam in early March 1998?

A. It's my recollection that I didn't attend it, did not.

Q. Do you know why?

A. Not specifically.

Q. Do you know what the purpose for the -- your attending the trip would have been?

A. I don't recall.

Q. Do you know what work you had done relating to the Sunbeam project prior to March 4,

CONFIDENTIAL - Hart

1998?

A. I don't recall what I would have done prior to that, no.

Q. Mr. Hart, let me show you what we marked previously as CPH Exhibit No. 74. That's a document on Morgan Stanley stationery dated March 5, 1998. It bears Bates No. Morgan Stanley Confidential 80356 through 358.

And it's a letter addressed to Sunbeam Corporation, attention Russell A. Kersh, vice chairman and chief financial officer. And it's signed on behalf of Morgan Stanley & Company, Inc. by R. Bram Smith.

Take a moment to review the March 5 letter for a moment, from Mr. Smith to Mr. Kersh, if you would, sir.

(Witness reading document.)

A. Okay.

Q. Can you tell me what this letter is -- strike that. Let me ask a foundational question.

Have you seen this before, sir?

A. I have not. I don't recall having seen it, no.

Q. Are you familiar with this type of

01754

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

letter?

A. It appears to be some sort of a -- I'm looking for the proper term. Bear with me. Yeah, it's form of a highly confident letter.

Q. What's a highly confident letter?

A. It's a letter that's used to express a view as to the doability of a particular financing subject to a number of conditions.

Q. Did Mr. Smith have authority on behalf of Morgan Stanley & Company or Morgan Stanley Senior Funding to issue highly confident letters?

MR. CLARE: Objection. No foundation. Calls for speculation.

A. I don't know if he had authority or not.

Q. Are you -- do you know whether there is a process, or was a process in March of 1998, that required Mr. Smith to obtain approval from others before issuing a letter of the sort that you wrote to Mr. Kersh on March 5, 1998?

A. I'm not aware of a process that may have been in place or not.

Q. I'm sorry. You had indicated earlier that Leveraged Finance Committee approval was

CONFIDENTIAL - Hart

required to authorize Morgan Stanley Senior Funding to enter into a loan commitment, correct?

A. Correct.

Q. Are you aware of whether there was a similar process or some alternative process relating to the issuance of highly confident letters in advance of such financings?

A. I'm not aware of the process that would have existed for the issuance of a highly confident letter.

Q. Did Mr. Smith consult with you, in any way, concerning the appropriateness of issuing a highly confident letter to Sunbeam on March 5, 1998?

A. I don't recall having any conversations with Bram regarding the issuance of this letter.

Q. Do you know whether it was at Mr. Strong's -- strike that.

Do you know whether Mr. Strong was the person within Morgan Stanley & Company that requested that a highly confident letter be issued concerning the senior bank facility?

A. I'm not aware that Bill requested that

CONFIDENTIAL - Hart

or was involved in that decision to issue it.

Q. Did anyone suggest to you that competitive pressures concerning Sunbeam might turn to another financing source caused Mr. Smith to send this letter?

A. I'm not aware of that -- those factors, no.

Q. Did anyone -- did you ever suggest to Mr. Smith that it would be a good idea to send Sunbeam a highly confident letter to increase the likelihood that Sunbeam would use Morgan Stanley & Company or Morgan Stanley Senior Funding to provide the senior bank facility?

A. I don't recall ever making that comment to Mr. Smith.

Q. Are you aware, sir, of any requirement within Morgan Stanley & Company or Morgan Stanley Senior Funding that due diligence be substantially complete prior to the issuance of a highly confident letter relating to a senior bank loan?

A. I'm not aware of policies or procedures that speak to that, no.

Q. Is that the case even today?

CONFIDENTIAL - Hart

A. I'm not aware of the specific procedures around that.

Q. Do you know if there are any written procedures relating to the issuance of highly confident letters relating to senior bank loans?

MR. CLARE: During what time period?

MR. MARKOWSKI: In existence in 1998.

A. I'm not aware as to whether or not they existed or not.

Q. Who would be knowledgeable about that, whether such policies existed, do you know?

A. Not really, no.

Q. Do you know what the purpose of a highly confident letter is?

A. Generally, or in this specific instance?

Q. Generally.

A. It can have a any number of means. It can be used for any number of purposes.

Q. Can you tell me what those are?

A. One could be to express interest in doing a financing and present a preliminary view.

Q. Are there others? I'd like you to tell me all the reasons that you can think of.

NOT A CERTIFIED COPY

01/350

Page 194

CONFIDENTIAL - Hart
A. That's the primary one.
Q. Is one of the reasons that a highly confident letter would be issued is to increase the chance that the business would be awarded to Morgan Stanley or Morgan Stanley Senior Funding?
A. I'm not aware of that as -- my -- my perception, my understanding of the use of highly confident is to express a view on the doability of a financing for the benefit of your client.
Q. Do you have any view concerning whether it would be inappropriate to issue a highly confident letter primarily for competitive reasons?
MR. CLARE: Objection to form. Incomplete hypothetical.
Q. By "competitive reasons," I mean to increase the chance that the loan business will be awarded to Morgan Stanley & Company or Morgan Stanley Senior Funding.
MR. CLARE: Same objection.
A. I -- I'm struggling with -- I'm not -- I'm struggling because I don't think of that as a use of a highly confident letter. So, I -- it's difficult for me to assess something being used

Page 195

CONFIDENTIAL - Hart
in that manner.
Q. That's why -- when you said that, that's what caused me to ask whether you thought that would be an inappropriate use for a highly confident letter.
A. I really don't have an opinion of that.
Q. Mr. Hart, let me show you what we're marking as CPH Exhibit 203. It's a set of Morgan Stanley employee expense reports bearing Bates No. Morgan Stanley 5614 through 5627.
(CPH Exhibit 203, Morgan Stanley employee expense reports, marked for identification, as of this date.)
Q. Mr. Hart, can you tell me what this document is?
A. It looks to be a time and expense report, one of mine, from February to -- February 1st to February 19th, '98.
Q. My questions are going to focus on the first two pages of the document, sir.
A. Okay.
Q. The first page of the document -- actually let me start with the second page.

Page 196

CONFIDENTIAL - Hart
A. Okay.
Q. It bears Bates No. 5615. Do you see that? There's an entry date of departure, February 19, 1998; cities visited, San Diego, California; purpose of trip, lodging Marriott Hotel. Then handwritten next to that entry the words "Project Laser, business." I'm not sure what that last word is. Development, perhaps?
A. Um-hum.
Q. Do you see that?
A. I do.
Q. Do you recognize the handwriting?
A. I don't.
Q. That is your signature on the first page --
A. It is.
Q. -- of the exhibit, is it not, sir?
A. Yes.
Q. Did you engage in activity in San Diego, California related to the work that Morgan Stanley was doing for Sunbeam in February of 1998?
A. Not to my knowledge, no.
Q. Do you think this is a mistake?

Page 197

CONFIDENTIAL - Hart
A. It's the only thing I can think of. I'm wracking my brain to figure out what I would have been doing in San Diego. I don't know. Could have been a mistake. I don't know who wrote the "Project Laser business development." Probably a mistake.
Q. Let me show you another set of expense reports that we're marking as CPH Exhibit No. 204. They bear Bates No. Morgan Stanley Confidential 42328 through 42341.
(CPH Exhibit 204, Morgan Stanley employee expense reports, marked for identification, as of this date.)
Q. My comments, again -- my questions, again, at this point, Mr. Hart, are going to focus on the first couple of pages.
A. Okay.
(Witness reading document.)
A. Okay.
Q. Is that your signature on the first page of Exhibit 204?
A. Yes, it appears to be.
Q. It's your expense report for the period February 25, 1998 to March 17, 1998, sir?

NOT A CERTIFIED COPY

16div-022763

CONFIDENTIAL - Hart

A. Looks like it, yeah.
Q. There's a reference on the first page to a mileage charge --
A. Um-hum.
Q. -- on March 17, 1998. Do you see that?
A. March 17th? Yes.
Q. It's the last item on the column.
A. Yes.
Q. And the charge for that expense is $135. Do you see that?
A. Yes.
Q. And on the first page, it's -- it reflects, as I read this, that is being billed to Project Laser. Do you see that?
A. Um-hum.
Q. You have to answer audibly.
A. Oh, I'm sorry. Yes.
Q. Am I interpreting the document correctly?
A. Yes, you are.
Q. And then the second page has "Expense Report Detail." Do you see that?
A. Yes.

CONFIDENTIAL - Hart

Q. March 17, 1998, date of departure, mileage driven, 450. Cities visited, the letters U.S. appear underneath that column. Purpose of trip, the entry is "mileage, New York to Massachusetts." Amount $135. Did you see that?
A. Yes.
Q. Do you recall driving from New York to Massachusetts in mid-March 1998 in connection with work that was being done by you on Project Laser?
A. I don't recall that.
Q. Can you think, as you sit here today, of any reason why you would have driven to Massachusetts in connection with work being done on the senior loan to Sunbeam?
A. No, I cannot.
Q. Is there anything elsewhere in this document, sir, that refreshes your recollection with respect to that?
A. I'll take a look. It could be a mis-code on the project name. I'm trying to think what -- no.
Q. Do you recall, Mr. Smith -- Mr. Hart, excuse me, traveling in connection with the work

CONFIDENTIAL - Hart

that you did on behalf of Morgan Stanley Senior Funding to visit other banks or institutional investors with respect to discussions with them about potentially participating in the senior bank facility?
A. I don't recall traveling for that reason.
Q. Do you recall that, in addition to the senior bank facility, Morgan Stanley & Company was retained by Sunbeam as the underwriter with respect to a convertible debenture offering to obtain financing to be used in connection with Sunbeam's acquisition of Coleman Company?
A. I'm aware of that, yes.
Q. Did you participate in any of the road -- are you aware of the fact that Morgan Stanley participated with Sunbeam in road show presentations relating to the convertible debenture offering?
A. In a general sense, I knew that was the marketing process.
Q. Did you participate in any of those meetings?
A. Not to my knowledge.

CONFIDENTIAL - Hart

Q. Did you participate -- strike that.
Did you have any involvement, Mr. Hart, in Morgan Stanley & Company's marketing efforts with respect to the convertible debentures?
A. Not to my knowledge. Not to my recollection.
Q. Mr. Hart, let me show you what we've previously marked as CPH Exhibit No. 17. It's a March 19 -- excuse me -- a March 19, 1998 letter from Arthur Andersen to Morgan Stanley & Company, Inc. It bears Bates No. MS 375 through MS 381. Take your time in reviewing it, sir.
A. Okay.
(Witness reading document.)
A. Okay.
Q. Have you ever seen this March 19, 1998 letter from Arthur Andersen to Morgan Stanley & Company, Inc., sir?
A. I don't recall having seen it, no.
Q. Are you familiar with this type of document?
A. It would appear to be a comfort letter, although it's a document I'm vaguely

NOT A CERTIFIED COPY

017552

CONFIDENTIAL - Hart

familiar with in that it doesn't have great applicability to the bank loan market.

Q. Do you recall, sir, whether you reviewed, prior to the closing of the Morgan Stanley Senior Funding's loan to Sunbeam, any comfort letters that Arthur Andersen provided to Morgan Stanley & Company relating to Sunbeam?

A. I don't recall having reviewed those letters.

Q. Do you recall anyone reporting to you on any information contained in any comfort letters that Arthur Andersen provided to Morgan Stanley & Company prior to the closing of the Morgan Stanley Senior Funding loan?

A. I don't recall anybody reporting the results from those comfort letters to me prior to the closing.

Q. Did Mr. Tyree, sir, ever advise you that he had received -- he, personally, had received a comfort letter that Morgan Stanley had requested from Arthur Andersen relating to Sunbeam?

A. I don't recall John having that conversation with me.

CONFIDENTIAL - Hart

Q. How close were you in contact with Mr. Tyree during the period in which you were involved in the Sunbeam project up to the time the loan closed at the end of March?

A. I don't have a clear recollection as to how closely we were involved in terms of the day-to-day working relationship.

Q. Do you recall talking to him frequently during that time period relating to Sunbeam?

A. I don't recall talking to him frequently, no.

Q. Were you in touch with him daily relating to work that Mr. Tyree was doing or that you were doing relating to Sunbeam?

A. I don't recall talking to him daily, no.

Q. Can you estimate for me how many times you believed -- you believe you were in communication with Mr. Tyree between the time you first became involved in the Sunbeam-related work up to the time the loan closed?

A. No, not really.

Q. Was it infrequent?

CONFIDENTIAL - Hart

A. I just don't have a recollection.

Q. Do you know whether Mr. Tyree was communicating with others at Morgan Stanley Senior Funding concerning his due diligence work?

A. I don't have specific information as to that occurring.

Q. Was somebody within Morgan Stanley -- was a Morgan Stanley Senior Funding representative identified as the contact person for Mr. Tyree in connection with his work?

A. Not an individual person. All members of the team would have had some contact with John throughout the process.

Q. You've had an opportunity to review the March 19 Andersen letter?

A. In a quick fashion, yes.

Q. Well, I don't want to rush you with this document, so take your time to take a look at it.

A. Okay.

(Witness reading document.)

A. Okay.

Q. Do you agree with me, sir, that Andersen's March 19, 1998 letter to Morgan

CONFIDENTIAL - Hart

Stanley & Company reports that Sunbeam's performance for the first two months of 1998 had been very poor?

MR. CLARE: Objection to form.

A. I'm not in a position to draw that conclusion.

Q. Let me direct your attention to paragraph 6(c) of the Andersen letter.

A. Okay.

Q. It's on page 5 of the letter.

A. Yeah.

Q. It states, "Although the Company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to 143 -- $143,499,000 for the corresponding period -- for the corresponding period of the preceding year."

Do you see that statement?

A. Where are you reading?

Q. 6(c) at the top, page 5.

A. Yes, I see that.

NOT A CERTIFIED COPY

017553

CONFIDENTIAL - Hart

Q. So, this letter was reporting that, for the first two months of 1998, Sunbeam's net sales were about half of what they had been for the first two months of 1997, correct? Let me restate the question so you can hear it.

Do you agree with me, sir, that this letter states that Sunbeam's net sales for the first two months of 1998 are about half of what Sunbeam's net sales had been for the first two months of 1997?

MR. CLARE: Objection to the form. The document speaks for itself.

You can answer.

A. I would agree that those numbers would be about half of one another.

Q. Do you know what the financial community's expectations were for Sunbeam sales for the first quarter of 1998 as they related to Sunbeam's sales for the first quarter of 1997?

A. I don't recall what those expectations were.

Q. Do you recall that the financial community was expecting Sunbeam to realize sales in the first quarter of 1998 that were

CONFIDENTIAL - Hart

substantially higher than Sunbeam's net sales in the first quarter of 1997?

MR. CLARE: Objection to form. Calls for speculation.

A. I don't have a recollection to that degree.

Q. Did you become aware, sir, in mid-March 1998, that Sunbeam's net sales for the first two months of the quarter were substantially below Sunbeam's net sales for the first two months of 1997?

MR. CLARE: Objection to form.

A. I don't recall becoming aware of that in that time period.

Q. Do you recall that you had several conversations with Bram Smith relating to that subject?

A. I don't recall the conversations occurring or not occurring.

Q. Now, if Mr. Smith has testified that he had several conversations with you on that subject, do you deny that those conversations took place?

MR. CLARE: Objection to form.

CONFIDENTIAL - Hart

A. I wouldn't deny. I said I don't recall whether they occurred or not.

Q. Would you agree with me that -- well, let me ask a different question, sir.

Had you had any discussions with Sunbeam management, prior to mid-March 1998, concerning how Sunbeam was doing in the first portion of the quarter?

A. I specifically don't recall having those conversations.

Q. You don't remember anyone from Sunbeam making any statements to you, or any statements that were made in your presence, concerning the status of Sunbeam's first quarter results prior to mid-March 1998?

A. Not that I recall.

Q. Did you make any inquiry, in connection with the due diligence work that you were doing on behalf of Morgan Stanley Senior Funding, concerning how Sunbeam was performing in the first months of the quarter?

A. I don't recall whether I specifically made that inquiry or not.

Q. Did anyone report to you any

CONFIDENTIAL - Hart

information, whether it came directly from Sunbeam or from some other source, concerning how Sunbeam was doing in the first months of 1998?

A. I don't recall whether or not someone reported that to me or not.

Q. Is that something that you would have wanted to know in connection with the evaluation whether to recommend that Morgan Stanley Senior Funding participate in the senior loan facility?

A. What I would say is the first quarter results would be one of the many elements that we would have evaluated in determining the viability of the loan.

Q. But, as you sit here, you do not recall asking for or receiving any information relating to Sunbeam's first quarter results prior to the middle of March 1998?

A. Sitting here today, I don't recall, myself, receiving that information or inquiring.

Q. Did you become aware, at some point prior to the loan closing, sir, that Sunbeam's performance in the first two months of 1998 was, in fact, substantially below Sunbeam's performance in the first two months of 1997?

NOT A CERTIFIED COPY

01/15/04

CONFIDENTIAL - Hart
MR. CLARE: Objection to form.
A. I have a general recollection that that did, in fact, occur, that the first quarter performance was less than the prior quarter -- or the prior year's quarter.
Q. I'm going to make sure we're focusing on the same piece of information.
A. Um-hum.
Q. Was there a point, sir, before the Morgan Stanley Senior Funding loan closed that you became aware that Sunbeam's performance in the first two months of 1998 was substantially below Sunbeam's performance for the first two months of 1997?
A. Thank you for that clarification.
I don't recall, at this point, as to the specific timing -- as to the specific time when I found out that that performance was going to be along those lines.
Q. Do you recall, sir, any discussion, prior to the Morgan Stanley Senior Funding loan closing at the end of March, concerning Sunbeam's net sales for the first two months of 1998?
A. I don't recall the specific discussion

CONFIDENTIAL - Hart
around that involving myself or not.
Q. Well, do you have any general recollection, sir, of becoming aware, prior to the Morgan Stanley Senior Funding loan closing, that Sunbeam's net sales performance in the first two months of 1998 was below Sunbeam's net sales for the first two months of 1997?
A. I don't have a general recollection, no.
Q. Do you have any recollection, sir, prior -- of there being any concern raised at Morgan Stanley & Company or at Morgan Stanley Senior Funding relating to Sunbeam's sales for the first quarter of 1997 -- excuse me -- for the first quarter of 1998 prior to the time the Morgan Stanley Senior Funding loan closed at the end of March?
MR. CLARE: Objection to form.
THE WITNESS: Could you read that question back to me.
(Record read.)
A. I don't have a recollection of that, no.
Q. Do you remember it being -- do you

CONFIDENTIAL - Hart
remember Sunbeam's sales for the first quarter of 1998 being the subject of any discussion at Morgan Stanley & Company or Morgan Stanley Senior Funding prior to the Morgan Stanley Senior Funding loan closing at the end of March 1998?
A. I can only speak to the conversations involving myself. And I don't recall whether they occurred or not.
Q. Well, whether you were in the conversations or not, sir, do you have any knowledge of others raising concerns relating to Sunbeam's sales performance for the first quarter of 19989 prior to the time the Morgan Stanley Senior Funding loan closed?
A. I don't recall whether I knew of other conversations occurring or not.
Q. You don't recall Mr. Smith, for example, alerting you to the fact that this was becoming an issue and he was involved in discussions about it?
A. I don't recall that, Bob, no.
Q. Did you have an understanding, prior to the time that the Morgan Stanley Senior Funding loan closed that Sunbeam was doing poorly

CONFIDENTIAL - Hart
in the first quarter of 1998?
MR. CLARE: Objection to form.
A. I don't recall whether I had that understanding or not. I certainly wouldn't have been in a position to deem it poorly.
Q. Let me direct your attention to another portion of --
A. Okay.
Q. -- Arthur Andersen's March 19 letter, sir.
Let me refer you to paragraph 6(b).
A. 6(b).
Q. It appears on page 4 of the letter.
A. Okay.
Q. The first sentence in paragraph 6(b) states, "For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early-buy program for outdoor grill sales which accelerated outdoor grill sales into the fourth quarter of 1997 -- of fiscal 1997."
Do you see that statement, sir?
A. Yes.

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

Q. Were you aware, prior to the Morgan Stanley Senior Funding loan closing, that Sunbeam had engaged in business practices that resulted in the movement of sales from the first quarter of 1998 into the fourth quarter of 1997?

MR. CLARE: Objection to form.

A. I don't recall being aware of that -- that occurring.

Q. And I assume you weren't aware that those practices, in Arthur Andersen's view, were having a significant adverse effect on Sunbeam's net sales for the first two months of 1998; is that correct?

MR. CLARE: Objection to form. Foundation. Also mischaracterizes the document.

A. Yeah, I -- I don't have a -- I don't have a view on what Arthur Andersen was getting at here.

Q. No. Put the document aside for a second, sir.

Were you aware that Arthur Andersen had formed a view that Sunbeam had moved sales from the first quarter of 1998 into the fourth

CONFIDENTIAL - Hart

quarter of 1997 and that that practice was having a significant adverse effect on the net sales that Sunbeam was reporting in the first quarter of 1998?

MR. CLARE: Same objections.

A. I was not aware or don't recall being aware of Arthur Andersen forming that view.

Q. Did anyone within Morgan Stanley & Company or Morgan Stanley Senior Funding express their own conclusion to you that Sunbeam's first quarter results were being adversely affected because it had moved sales from the first quarter of 1998 into the fourth quarter of 1997?

A. I don't recall anybody expressing that view to me or not.

Q. Let me show you, sir, what we previously marked as CPH Exhibit No. 14. It's a Sunbeam press release from March 19, 1998.

A. Thank you.

(Witness reading document.)

A. Okay.

Q. Have you seen this document before, sir?

A. I don't recall seeing this document.

CONFIDENTIAL - Hart

Q. Were you aware, prior to the close of Morgan Stanley Senior Funding's loan to Sunbeam, that Sunbeam had issued a press release in mid-March concerning the status of its first quarter sales?

A. I don't recall whether I was aware of that or not at that time.

Q. Do you have any involvement, sir, in discussions within Morgan Stanley & Company or Morgan Stanley Senior Funding relating to or concerning the issuance of this press release?

A. I don't believe I had any role whatsoever in the issuance of this press release.

Q. My question was a little bit different, but I appreciate that answer.

Did you have any involvement, sir, in -- that you can recall in any discussions within Morgan Stanley & Company or Morgan Stanley Senior Funding relating to whether Sunbeam would issue a press release concerning its first quarter sales?

A. I don't recall being involved in those discussions.

Q. Do you see -- let me focus your

CONFIDENTIAL - Hart

attention, sir, in the first sentence of the press release. It states, "Sunbeam Corporation said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of 285 million to 295 million but net sales are expected to exceed 1997 first quarter net sales of $253.4 million."

Do you see that sentence?

A. I do.

Q. In connection with the work you were doing, were you aware that Wall Street analysts were estimating that Sunbeam would achieve between 285 million and $295 million in net sales for the first quarter of 1998 as of mid-March 1998?

A. I don't recall if I was aware of the Wall Street analysts' estimates in that range.

Q. Did Sunbeam make you aware, sir, of its own estimates, prior to March 19, 1998, of its sales performance for the first quarter of 1998?

A. We had projections for the first year. I don't recall what those were.

NOT A CERTIFIED COPY

Page 218

CONFIDENTIAL - Hart
Q. Do you recall whether you had any projections for the first quarter of 1998 separately?
A. Not specifically, no. I don't recall if we had them or not.
Q. Now, sir, if you don't recall, we can go back to it. The Andersen March 19 letter reported that Sunbeam's sales for the first two months of 1998 were $72,018,00. Do you recall that?
A. I recall, yes, from my reading of this letter.
Q. Right.
A. Yes right.
Q. Sunbeam in this press release is stating that its net sales are expected to exceed at least $253.4 million -- do you see that -- for the first quarter --
A. Yes.
Q. -- of 1998?
Do you have any knowledge, sir, concerning any communications between Sunbeam and Morgan Stanley & Company or Morgan Stanley Senior Funding relating to how Sunbeam would accomplish

Page 219

CONFIDENTIAL - Hart
the sales in March 1998 necessary to exceed at least $253 million in sales for the quarter?
A. I don't recall being a part -- a party to those discussions.
Q. Did you give anyone direction to obtain information for you on that subject?
A. I don't recall giving anyone direction on that matter.
Q. Does seeing the March 19 press release, sir, refresh your recollection that there were concerns being raised within Morgan Stanley & Company or Morgan Stanley Senior Funding relating to Sunbeam's sales results for the first quarter of 1998?
MR. CLARE: Objection to form and foundation.
A. It doesn't trigger any better remembrance, no.
Q. Did anyone ask you, sir, whether you had a view concerning whether Sunbeam should disclose to the public that its net sales for the first two months of 1998 were substantially below its sales for the first two months of 1997?
A. I don't recall having been asked to

Page 220

CONFIDENTIAL - Hart
express my view.
Q. Looking at the March 19, 1998 Andersen letter to Morgan Stanley & Company, sir, do you have any opinion on that, as you sit here today?
A. I don't, no.
Q. Mr. Hart, let me show you what we've previously marked as CPH Exhibit No. 76. It bears Bates No. Morgan Stanley Confidential 25829 through 25886. It consists of two memos. One, a one-page memo dated March 19, 1998 from R.B. Smith to Leveraged Finance Commitment Committee. And the second memo dated March 20, 1998, also to the Leveraged Finance Committee.
I'm not going to ask you to read this whole thing at this point, sir, but have you seen these documents before?
A. I have.
Q. Can you tell me what they are?
A. They would be the memorandum that's put together for the committee to evaluate a commitment request.
Q. And it indicates that a Leveraged Finance Commitment Committee meeting regarding the potential loan to Sunbeam had been scheduled

Page 221

CONFIDENTIAL - Hart
for Friday, March 20. Do you see that?
A. Yes, I do.
Q. And it also indicates that Michael Hart is the chair.
A. Yes.
Q. What role, sir, did you have in preparing materials for the Leveraged Finance Commitment Committee meeting on March 20?
A. I would have, perhaps, although I can't recall exactly, provided some of the input, perhaps on distribution or structure of the loan. It's a bit of a collaborative effort in pulling this together, usually coordinated through corporate finance.
Q. Spend a moment with me, sir. Page through the document and tell me whether there are any portions of that that you were responsible yourself for preparing.
A. Nothing really jumps out as something that I definitively know that I authored.
Q. Do you know who the authors are of any portions of this?
A. Not with certainty.
Q. The purpose of presenting this

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

information to the Leveraged Finance Commitment Committee was what, sir?

A. To give them an understanding of the transaction and to provide them a basis to render a decision as to whether or not this is a commitment that should be made.

Q. So, the Leveraged Finance Commitment Committee has ultimate responsibility for deciding whether the loan to Sunbeam will be made?

A. I think that's a fair characterization, yes.

Q. Tell me what you can recall about the -- well, let me ask a background question.

Why were you selected to chair the meeting?

A. If I could clarify what that chair means. That's, typically, the guy that makes sure the dial-in numbers work. It's nothing more important than that. I wish it had been.

Steve Newhouse was the chair of the Leveraged Finance Commitment Committee.

Q. So, you didn't serve as the chairman of this aspect of the committee's meeting?

CONFIDENTIAL - Hart

A. No. If you look, the dial-in numbers require a chair -- the call-in system requires a chair. I acted in that capacity when you would dial in.

Q. Did you have any specific responsibilities for this meeting, sir, other than arranging for the call-in?

A. Not specifically. Deal team members that are there are expected to be available to answer questions that may come up in their area.

Q. Did you have a planned speaking responsibility at the meeting, presentation responsibility?

A. I don't recall having a planned speaking responsibility, no.

Q. Was the March 20 meeting one where the sole subject on the agenda was the potential loan from Morgan Stanley Senior Funding to Sunbeam?

A. I don't recall if there were any other items on the docket.

Q. Did you attend the March 20 meeting?

A. My recollection is that I did attend.

Q. Does looking at the list of recipients of Mr. Smith's March 19 memorandum refresh your

CONFIDENTIAL - Hart

recollection concerning who, in fact, participated in the March 20 meeting?

A. Not really. I recall Steve Newhouse, as I said. I recall Mike Rankowitz. And I recall Rick Felix. The other members I don't specifically recall them being in attendance.

Q. Do you recollect handwriting on the first page of this document, sir?

A. I don't recognize the handwriting.

Q. Tell me what you can recall concerning the March 20 Leveraged Finance Committee meeting.

A. What I can recall are the people that were in attendance. I recall Bill Strong was the primary presenter of the overall transaction. Beyond that, I don't recall specifics about the elements of the discussion.

Q. Do you recall how long the meeting took place -- how long the meeting took?

A. I don't know. I don't remember.

Q. Do you recall if it was more or less than half an hour?

A. I believe it was more than a half an hour.

CONFIDENTIAL - Hart

Q. Do you recall if Mr. Strong was present in person?

A. My recollection is that Bill dialed in.

Q. Why was Mr. Strong the primary presenter?

A. I believe he was the primary presenter because of his primary relationship with the company. He was the primary CFD coverage officer.

Q. CFD is corporate finance division?

A. Corporate finance division, yes.

Q. Do you recall what Mr. Strong's responsibilities, generally, within Morgan Stanley were in early 1998?

A. I don't know what those were specifically in '98.

Q. Did you understand him to be one of the more senior investment bankers in the firm?

A. I understand that to be the case, yes.

Q. What can you recall Mr. Strong saying?

A. I don't have a good recollection, other than him leading the discussion or the presentation.

NOT A CERTIFIED COPY

017553

CONFIDENTIAL - Hart

Q. Was he recommending that the committee approve the loan?

A. Yes, he would have -- he would have been an advocate for the transaction.

THE VIDEOGRAPHER: I'm going to need to change the tape, Counsel. The time is 3:30. This completes tape number three.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:31. This begins tape number four of the videotaped deposition of Mr. Michael Hart.

Q. Mr. Hart, did the subject of Sunbeam's first quarter sales come up during the March 20 Leveraged Finance Commitment Committee meeting?

A. I don't recall if that was discussed.

Q. Did the subject of Sunbeam's March 19 press release come up?

A. I don't recall that being a point of discussion or not.

Q. Do you recall whether Mr. Strong explained any -- strike that.

Do you recall Mr. Strong saying anything to the members of the Leveraged Finance Commitment Committee concerning his

CONFIDENTIAL - Hart

communications with Sunbeam management relating to Sunbeam's first quarter sales?

A. I don't recall that as part of his presentation or not.

Q. Do you recall anyone at the Leveraged Finance Commitment Committee meeting on March 20 briefing the members of the committee on any communications that Morgan Stanley & Company or Morgan Stanley Senior Funding representatives had had with Sunbeam management relating to Sunbeam's first quarter sales?

A. I don't recall if that was discussed.

Q. Do you recall any issues of concern being raised during the course of the meeting of any sort either by the members of the committee or by others relating to Sunbeam?

A. The -- the nature of the discussion would lead people through a discussion through the credit and the potential risks. I don't recall specifically individual items within that, but they followed pretty standard form.

Q. But do you -- my question is this: Do you recall anyone articulating a concern about Sunbeam that related to whether Morgan Stanley

CONFIDENTIAL - Hart

Senior Funding should enter into the loan commitment?

A. I don't recall that being a specific question of concern.

Q. I'm asking a very general question, so I want to make sure you and I are communicating on this.

A. Um-hum.

Q. Did anyone, whether it was Mr. Strong, a member of the committee itself, someone else from the deal team who was here, someone else on the staff who might have been present for the meeting, raise any issues of concern relating to Sunbeam in connection with the committee's discussion relating to whether to approve the loan?

A. I don't recall that occurring, no.

Q. Do you recall discussion of the plan to syndicate the loan position?

A. I don't recall that as -- I don't recall the specifics of that.

Q. Do you recall that topic came up?

A. That would have been a topic of discussion, yes.

CONFIDENTIAL - Hart

Q. Do you recall Mr. Smith addressing questions put to him concerning how quickly the syndication could be completed so that Morgan Stanley Senior Funding could reduce its exposure to Sunbeam?

A. I don't recall the specifics of the syndication discussion, no.

Q. Do you recall any discussion -- any questions being raised about how quickly the syndication could be completed?

A. I don't recall the specifics of that, no.

Q. Do you recall discussion about Morgan Stanley Senior Funding's fees?

A. No, not as a specific item.

Q. Do you recall Mr. Strong making any presentation relating to the overall fees that Morgan Stanley & Company and Morgan Stanley Senior Funding would realize from the investment banking assignment, the convertible debenture offering and the senior loan facility?

A. I don't recall Bill speaking specifically on that matter.

Q. Whether you recall what he said

NOT A CERTIFIED COPY

specifically, do you recall generally that that subject came up?

A. As I said, a -- it's a fairly regimented walk through a number of topics during which compensation to be paid is -- consideration to be paid is part of the transaction would typically be covered.

Q. So, you would expect that issue to come up?

A. I would expect that to come up.

Q. Do you recall Mr. Smith speaking at the meeting?

A. Not specifically.

Q. So, you don't have any recollection of Mr. Smith making comments or answering questions?

A. Not away from the general discussion, no.

Q. Well, I'm not sure what you mean by "not away from the general discussion."

Did Mr. Smith talk at the meeting, is my question.

A. I don't recall if he did or not.

Q. Did you?

A. I don't recall if I did or not.

Q. So, no one from the committee turned to you and said, Michael, what do you think, should we approve this loan?

A. Not that I remember, no.

Q. Were you present when the committee voted?

A. I do not believe I was present then.

Q. Explain to me what the process is. Does the committee take information from people and then exclude nonmembers when there's a discussion?

A. Correct.

Q. How did you learn the results of the meeting?

A. I don't remember specifically. It would be passed along by someone coming out the committee to one of the deal team members under the normal --

Q. How quickly was the decision reached, do you know?

A. I don't remember. I don't remember.

Q. Do you remember whether it was reached that day?

A. No.

Q. So, you're not certain whether the committee took additional time beyond March 20 to decide whether to authorize Morgan Stanley Senior Funding to enter into the loan?

A. I don't recall with certainty, no.

Q. In your experience -- had you made -- had you participated -- excuse me -- in meetings of the Leveraged Finance Commitment meeting -- let me start over.

Had you participated in meetings of the Leveraged Finance Commitment Committee prior to the March 20 meeting relating to the Sunbeam loan?

A. Yes.

Q. In your experience, had the committee ever taken -- had the committee ever failed to make a decision on the day the presentation was made to the committee?

A. I don't know the results of -- I don't recall the ones that I was involved in. I don't know whether or not there's other instances where they took more time than the day of the committee.

Q. Is there anything else you can recall

relating to the events of the committee meeting itself?

A. Not beyond what we discussed already, no.

Q. As far as you know, sir, is this the -- is CPH Exhibit No. 76 the entire package of material that was presented to the committee relating to the Sunbeam loan?

A. I'm not aware of anything else that would have been included. There could have been exhibits, but I have no reason to believe there would be other items.

Q. Once the Leveraged Finance Commitment Committee authorizes -- let me ask a more specific question.

The Leveraged Finance Commitment Committee, in fact, authorized Morgan Stanley Senior Funding to enter into the senior loan facility with Sunbeam, correct?

A. Yes, to my understanding.

Q. Once that occurred, was the committee's involvement in this process concluded, or was there some other involvement of the Leveraged Finance Commitment Committee prior

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

to the time of funding?

A. I don't know specifically in this situation. I don't know if they had further involvement here.

Q. Is there a procedure within Morgan Stanley that provides for further involvement of the Leveraged Finance Commitment Committee between the time of its approval of the loan and the time of funding?

A. Not without changes to that commitment.

Q. So, if the terms of the loan somehow changed, the Leveraged Finance Commitment Committee might again become involved in the process?

A. Could, yes.

Q. Let me direct your attention to the handwritten notes on the front of the exhibit again, sir. You've told me that you don't recognize the handwriting.

A. Right.

Q. Do you see the -- in the left-hand corner of the document, there's a handwritten entry that reads "Don Uzzi VP sales"?

CONFIDENTIAL - Hart

A. Yes, that's what that says, yes.

Q. Do you know that Don Uzzi was the vice president of sales at Sunbeam?

A. I recognize the name of Don Uzzi as a Sunbeam employee.

Q. Did you ever have, yourself, any communications with Mr. Uzzi of any sort?

A. I think Don presented at the bank meeting and I probably met him there. Away from that, I'm not sure.

Q. "The bank meeting" meaning the syndication loan meeting?

A. Correct.

Q. And that would have been sometime in June?

A. I believe that's correct.

Q. So, after the loan was funded?

A. Correct.

Q. Prior to the time the Morgan Stanley Senior Funding loan was funded, do you recall any communications of any sort between yourself and Mr. Uzzi?

A. I don't recall having a conversation with Don.

CONFIDENTIAL - Hart

Q. Looking at the handwritten -- the other handwritten entries on the page, do you know what any of those other entries pertains to?

A. No.

Q. Let me take you back to the Sunbeam March 19 press release, sir.

A. Okay.

Q. It's CPH Exhibit 14.

A. Yeah.

Q. Do you see that the press release indicates that Wall Street analysts' estimates -- excuse me -- that -- I'm going to start over.

Do you see, sir, that the March 19 press release states that Wall Street analysts' estimates for Sunbeam's first quarter 1998 sales were between 285 million and $295 million?

A. I see that, yes.

Q. And then let me turn your attention back to CPH Exhibit No. 76. Do you see the one set of figures on this page, it's handwritten in on the first page, are the numbers 285 to 295?

A. Yes.

Q. Does that refresh your memory, in any way, sir, that the subject of either Sunbeam's

CONFIDENTIAL - Hart

March 19 press release or Sunbeam's first quarter 1998 sales came up during the course of the Leveraged Finance Commitment Committee's discussion of the Sunbeam loan?

A. It doesn't refresh my memory, no.

Q. And do you recall there being any reference to Mr. Uzzi at the March 20 meeting?

A. I don't recall that as part of the meeting.

Q. Do you recall, sir, whether, during the course of the March 20 meeting, whether anyone suggested that the decision whether to commit to a loan to Sunbeam be delayed for any reason?

A. I don't recall that being discussed.

Q. Did anyone raise the question whether it would be more prudent under the circumstances to wait until Sunbeam's first quarter 1998 results were known before proceeding with the transactions?

A. I don't recall if that was the subject of discussion or not.

Q. Did you ever make that suggestion to anyone, sir?

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

A. I don't recall whether I made that suggestion or not.

Q. Did anyone ever raise that topic in conversation with you?

A. I don't recall that that topic was ever raised to me or not.

Q. Did anyone at the Leveraged Finance Commitment Committee meeting on March 20 raise any concerns, sir, relating to the sufficiency of Sunbeam's public disclosures relating to its first quarter performance?

A. I don't recall that that topic was raised or not -- whether it was discussed.

Q. Do you recall that topic coming up in any other conversations in which you were involved?

A. Not that I was involved in, no, I'm not aware of any.

Q. Did you ever comment to anyone concerning the sufficiency of Sunbeam's disclosures relating to its first quarter sales situation?

A. Not to my recollection.

Q. Let me direct your attention, sir, to

CONFIDENTIAL - Hart

page 16 of the March 20 memorandum. Bears Bates No. 25845, Morgan Stanley Confidential. Take a moment, sir, to look at page 16 of the exhibit.

A. Okay.

Q. Can you tell me, generally, what the information contained on this page relates to?

A. It would appear to be the detailed breakdown of the synergy numbers.

Q. The top portion of the page has a heading "Coleman synergies rationale - $118 million."

Do you see that?

A. Yes.

Q. And there's several bullet points underneath that, sir?

A. Yes.

Q. Do you recall whether there was any discussion at the Leveraged Finance Commitment Committee meeting on March 20 on the subject of potential Coleman synergies?

A. I don't recall whether that was specifically discussed.

Q. Do you recall whether there was any discussion of the source of the information

CONFIDENTIAL - Hart

contained in this document relating to potential Coleman synergies?

A. I don't recall if that was a point of discussion.

Q. Do you recall whether -- well, let me ask this question: Was Mr. Levin identified to the Leveraged Finance Commitment Committee as a source of information relating to Morgan Stanley & Company's views relating to potential synergies associated with the Coleman acquisition?

A. I don't recall whether Mr. Levin was specifically mentioned as the source.

Q. Do you know, sir, whether any of the items that appear here under "Coleman synergies rationale" are the same items as Mr. Levin identified to Sunbeam management as potential areas for synergies in his December meeting with Sunbeam management?

A. Sitting here today, I'm not aware of the relationship, no.

Q. As you sit here today, you can't identify any of these items as ones that originated with an idea that Mr. Levin suggested?

A. No.

CONFIDENTIAL - Hart

Q. Let me show you, sir, a document that we will going to mark as CPH Exhibit 205. It's a three-page document that bears Bates No. Morgan Stanley Confidential 4005 through 4007. The first page of which bears the heading, "Coleman Potential Opportunities are $118 million."

(CPH Exhibit 205, Document entitled, "Coleman Potential Opportunities are $118 million", marked for identification, as of this date.)

Q. I'm going to note, sir, that the document appears to be out of sequence. You'll see in the bottom right-hand corner the page No. 2 and then page No. 1 and then page No. 3.

A. Um-hum.

Q. But the Bates numbering is in sequence, 4005 through 4007. That's the way it was produced to us.

A. Okay.

Q. Take a moment, sir, to look at the three pages of Exhibit 205, if you would.

(Witness reading document.)

A. Okay.

Q. Have you seen this document before,

NOT A CERTIFIED COPY

2/3/10

Page 242

CONFIDENTIAL - Hart
sir?
A. I'm not aware of having seen this before.
Q. I direct your attention to the right-hand margin of the document. There's a fax line.
A. Yes.
Q. Do you see that? Sent by C&L on 2/27/98, at 12:48: Coopers & Lybrand.
A. Um-hum.
Q. Do you see that? Then there's a telephone number.
A. Yes.
Q. You are aware, in February of 1998, that Coopers & Lybrand had been retained to advise Sunbeam with respect to potential synergies on the three acquisitions that Sunbeam was making?
A. I was, generally, aware that Coopers & Lybrand was involved in providing a report. I'm unclear as to the time and the nature of the hiring relationship.
Q. Now, the document bears Morgan Stanley's name. Do you see that, sir?

Page 243

CONFIDENTIAL - Hart
A. I see that.
Q. On the bottom corner on each page?
A. Yes, sir, I see that.
Q. Do you know why Coopers & Lybrand would have been faxing this document to Morgan Stanley, if that's what was occurring here?
MR. CLARE: Objection. Calls for speculation.
A. I don't have an opinion on that.
Q. With respect to the potential opportunities relating to Coleman, the total figure is $118 million. Do you see that?
A. I see that.
Q. That's the same as the synergy figure that appears on page 16 of the presentation that was made to the Leveraged Finance Commitment Committee, correct?
A. Yes, they look to be the same.
Q. And the items, the bullet items underneath $118 million, sir, they're the same also, are they not?
MR. CLARE: Objection to form. It's a waste of time. Documents are speaking for themselves.

Page 244

CONFIDENTIAL - Hart
A. They look to be the same.
Q. Was it your understanding, sir, with respect to the presentation that was being made to the Leveraged Finance Commitment Committee that the source of the $118 million synergy figure used in the presentation of the committee was Coopers & Lybrand?
A. I don't have a recollection as to whose specific number this was represented to be. I don't recall what was said there.
Q. And CPH Exhibit No. 205 doesn't refresh your recollection in that regard, sir?
A. It does not.
Q. Do you recall anyone saying to the Leveraged Finance Commitment Committee that Coopers & Lybrand is the source of the estimated synergies for Coleman Company?
A. I don't recall that being mentioned specifically or not.
Q. Do you remember the subject of synergies coming up at all, as you sit here?
A. Not specifically.
Q. I'm referring to a Leveraged Finance Commitment Committee meeting.

Page 245

CONFIDENTIAL - Hart
A. Correct. I assumed that. Not specifically.
Q. Mr. Hart, has anyone at Morgan Stanley & Company or Morgan Stanley Senior Funding ever express the view to you that you needed to speak up more frequently or more forcefully if you had reservations about a potential transaction?
A. I guess the only thing that I could -- we have a fairly rigorous performance review process. And I think, as I developed as a professional, people wanted for me to be more vocal. And that could have come up in the context of a performance evaluation.
I don't -- I don't recall it ever coming up in the context of anything else.
Q. Has a colleague ever visited you, or a senior person at Morgan Stanley ever visited you and said, there was a problem with this deal. We've understood subsequently that you had some reservations about it. You should have spoken up sooner or more forcefully?
MR. CLARE: Objection. When you say "this deal," are you referring to Sunbeam or are you referring to any deal?

NOT A CERTIFIED COPY

16div-022775

Page 246

CONFIDENTIAL - Hart
MR. MARKOWSKI: Just generally.
MR. CLARE: Okay.
A. I don't recall that -- that kind of conversation occurring, no.
Q. Was there ever a situation when someone told you that they thought something had gone wrong because you had failed to speak up?
A. I'm not aware of that situation occurring. I don't recall that situation occurring.
Q. Did anyone ever express the view to you that you should have been more active with respect to expressing concerns relating to the loan to Sunbeam?
A. I'm not aware of that comment being made to me. I don't recall it.
Q. Did anyone ever express the view to you, sir, that there was any shortcoming that they perceived with respect to the work that you had done relating to the Sunbeam transaction?
A. I don't recall that comment ever being made to me.
Q. Let me show you sir, what we have previously marked as CPH Exhibit No. 153. The

Page 247

CONFIDENTIAL - Hart
typed text is, I think, the same. I'm not going to ask you to verify it.
But is the document we were looking at previously, the CPH Exhibit No. 76, the presentation materials for the Leveraged Finance Commitment Committee meeting? My questions aren't going to relate to the text, but instead to the handwriting.
A. Okay.
Q. Do you recognize the handwriting on the first page of this document, sir? Looks to me like there may be more than one person's handwriting on it.
A. Yeah, I don't recognize any of it.
Q. I take it that you're certain it's not yours?
A. I'm certain it's not mine.
Q. I'd ask you to page through it. There's handwriting on other pages, Bates No. 18888.
A. Yes.
(Witness reviewing document.)
A. Okay.
Q. Do you recognize any of the

Page 248

CONFIDENTIAL - Hart
handwriting?
A. I don't.
Q. Between the time of the Leveraged Finance Commitment Committee meeting on March 20, sir, and the closing of the Sunbeam loan at the end of March, do you recall any activities in which you engaged relating to Sunbeam?
A. A general recollection of working on the credit agreement.
Q. Anything else?
A. No.
Q. Do you recall with whom you were working?
A. That would have involved our counsel, the company, and B of A, First Union.
Q. When you say your counsel, who would that have been?
A. Davis Polk.
Q. Were there in-house Morgan Stanley or Morgan Stanley Senior Funding lawyers involved in work on the credit agreement?
A. No. That would have been outside counsel.
Q. Who specifically at Davis Polk did you

Page 249

CONFIDENTIAL - Hart
work with on the credit agreement?
A. I believe it was Peter Levin, primarily.
Q. L-E-V-I-N?
A. L-E-V-I-N, yes.
Q. Anyone else at Davis Polk who you dealt with directly on the credit agreement issues?
A. Not that I recall. I'm sure he had an associate that was involved.
Q. Who at Bank of America was involved?
A. My recollection was -- the name that comes to mind is Chuck Francavilla.
Q. Anyone else?
A. Not that I can recall. They had a team.
Q. What about First Union?
A. The primary point person would have been Tom Molitor.
Q. And with whom at Sunbeam were you dealing with for the credit agreement issues?
A. The primary point person was a guy by the name of Steve Dalbreth.
Q. Were there others within Morgan

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

Stanley & Company or Morgan Stanley Senior Funding who were involved in this activity, too?

A. Yes, there would have -- Bram would have been involved and the two individuals that were listed, Tom Burchill, and to a much lesser extent Ishaan, Seth, the analyst.

Q. What aspect of the credit agreement were you dealing with?

A. Negotiating the -- working on the entirety of it.

Q. Were you involved in any due diligence activities after the management -- the Leveraged Finance Commitment Committee meeting on March 20?

A. I don't recall specifically if I was involved in this -- in those meetings, those subsequent meetings.

Q. I take it, you didn't walk out of the Leveraged Finance Commitment Committee meeting with some specific due diligence assignment from the committee?

A. I don't recall whether I was charged with a due diligence assignment, no.

Q. Is there anything else, as you sit here today, that you can recall doing relating to

CONFIDENTIAL - Hart

Sunbeam between the time of the committee's meeting and the time the loan closed, other than the work that you've described relating to the credit agreement?

A. No. That would encompass my responsibilities, to my recollection.

Q. Do you recall that Sunbeam issued a press release shortly after the close of its first quarter relating to its first quarter sales results?

A. I don't recall that.

Q. I'm going to show you, Mr. Hart, what we previously marked as CPH Exhibit No. 36.

A. Thank you.

Q. The first page of this exhibit is a fax cover page on Sunbeam stationery from David Fannin to William Strong, Jim Stynes, Robert Kitts and John Tyree, with carbon copies to Fin Fogg and Rich Easton.

And the second page of the document begins a four-page April 3, 1997 -- it's dated 1997, I think, by mistake -- press release from Sunbeam Corporation relating to its first quarter sales results. I believe that's a typo. The

CONFIDENTIAL - Hart

1997 date is a typographical error.

I'd like you to read the press release to yourself. I have some questions on that.

THE WITNESS: Would you mind, prior to me reading this, if I just popped out for a break?

MR. MARKOWSKI: Not a problem.

MR. CLARE: You don't have any objection to that?

MR. MARKOWSKI: No.

THE WITNESS: Great. Thanks so much.

THE VIDEOGRAPHER: The time is 4:12. Going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 4:14. We're back on the record.

(Witness reading document.)

A. Okay.

Q. Did anyone share with you, Mr. Hart, this fax?

A. I don't recall having this fax shared with me.

Q. Do you know who David Fannin was?

A. Generally, that he was somebody

CONFIDENTIAL - Hart

working at Sunbeam. I didn't have a relationship with him.

Q. He was the general counsel of Sunbeam. Does that refresh your memory of his role?

A. Yeah, that sounds right.

Q. Whether you saw it by way of receiving a copy of this fax or otherwise, do you recall reading a press release that Sunbeam issued in the first days of April relating to its performance in the first quarter of 1998?

A. I don't recall specifically reading this press release, no.

Q. Do you recall seeing news reports concerning the press release?

A. I don't recall that, no.

Q. Do you recall that Sunbeam announced, just immediately upon the end of the first quarter of 1998, that its sales for the first quarter fell below its net sales for the first quarter of 1997?

A. Not that -- with that level of specificity. I recall, at some point during this period, an adjustment being made to that -- the

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

first quarter forecast.

Q. I'm asking about something that happened after the quarter was completed.

A. Right.

Q. Do you recall that, shortly after Sunbeam's first quarter 1998 was completed, that Sunbeam announced that, contrary to the statements made in its March 19 press release, that Sunbeam had fallen short in that sales for the first quarter of 1998 of the net sales that Sunbeam had achieved in the first quarter of 1997?

A. I, generally, recall that occurring, yes.

Q. How do you -- how do you -- how did you learn that?

A. I can't recall.

Q. Do you recall if a colleague told you that?

A. No, I don't know if it was a colleague.

Q. Did you get a call from someone at Sunbeam?

A. I don't recall getting a call from

CONFIDENTIAL - Hart

Sunbeam.

Q. Did somebody at Davis Polk call you?

MR. CLARE: Yes or no?

A. No. I don't recall it being Davis Polk.

Q. Was it from a newspaper account, a television report?

A. I don't recall.

Q. What do you remember?

A. Becoming -- at some point around this period, becoming aware that that was actually the -- that was the disclosure, that were -- those were the results that they achieved the first quarter.

Q. You recall, generally, being aware that Sunbeam hadn't accomplished the results that it said it would accomplish in the March 19 press release?

MR. EURBGS: Objection to form.

A. I recall this being -- I recall being aware -- becoming aware of that result.

Q. Do you recall becoming aware of it very shortly after funding of Morgan Stanley's Senior Funding's loan occurred?

CONFIDENTIAL - Hart

A. I don't recall the specific sequence.

Q. What was your reaction?

A. I don't recall what my reaction was.

Q. Were you surprised by the information?

A. I don't recall what sort of emotion I would have felt in receiving a piece of information like that.

Q. Were you upset?

A. I don't recall being upset.

Q. Did you express to anyone disappointment in Sunbeam's failure to achieve the results that it had promised in its March 19 press release?

A. I don't recall expressing disappointment to anybody as a result of that.

Q. Did you have any follow-up conversations with anyone at Sunbeam on this subject when you became aware that they had not achieved the results promised on the March 19 press release?

A. Not specifically. I know as a general matter we did, but I can't remember a specific conversation that we had.

Q. By "we" -- I'm focusing on you.

CONFIDENTIAL - Hart

A. That I was involved in.

Q. Did -- when you became aware, sir, that Sunbeam had fallen short in its performance for the first quarter of what it had promised in the March 19 press release, do you know what effect that had on Sunbeam's stock price?

A. I don't recall what effect that had, no.

Q. Did it cause you concern with respect to Morgan Stanley Senior Funding's plans to proceed immediately to syndicate the senior loan facility?

A. I don't recall that being a critical element in the timing in which we were going to go market for the bank facility.

Q. Do you recall thinking this was going to make the syndication more difficult?

A. I don't recall drawing that conclusion, no.

Q. Did Sunbeam's announcement that it had failed to achieve the results promised in the March 19 press release have any effect on the schedule for the syndication?

MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

017566

Page 258

CONFIDENTIAL - Hart
Mischaracterizes the document.
A. I'm not aware of it having any effect one way or the other, at this point. I don't recall it having an effect one way or the other, I should more properly state.
Q. When you became aware that Sunbeam had failed to achieve the sales results that the March 19 press release had predicted, did you have any -- did you come to the conclusion that you had been, in any way, misled in the communications between Sunbeam and Morgan Stanley?
A. Bob, could you repeat the middle part of that, please.
Q. When you learned that Sunbeam had failed to achieve the first quarter's sales results that the March 19 press release predicted, did you have any sense that Morgan Stanley & Company had been misled, in any way, by Sunbeam with respect to those matters?
A. I don't recall, at that time, drawing that conclusion, given that set of circumstances.
Q. Have you subsequently come to that conclusion with respect to statements that

Page 259

CONFIDENTIAL - Hart
Sunbeam made to Morgan Stanley relating to its first quarter sales performance, that Sunbeam mislead Morgan Stanley?
A. I think it's fair to say, perhaps, moving away from first quarter, but, in general, we had been mislead by Sunbeam management.
Q. I'm focusing on the first quarter situation.
A. Today, I would believe that we had been mislead.
Q. And on what do you base that?
A. Overall, the things that have occurred subsequent to that.
Q. You didn't have any communications with Sunbeam yourself relating to Sunbeam's first quarter sales performance; is that -- is that correct?
A. Not that I recall, no.
Q. Now, the -- I believe I'm correct about this, Mr. Hart, but my understanding is that the last stop on the Sunbeam convertible debenture road show was in Boston.
MR. CLARE: Objection.
Q. And that the Boston road show

Page 260

CONFIDENTIAL - Hart
presentation took place on March 19.
MR. CLARE: Objection. No foundation.
Q. The day that the Sunbeam press release was issued.
We saw your expense reports an entry for 450 miles in mileage charges for a trip to Boston -- to Massachusetts from New York on March 17th.
Is it possible, sir, that the purpose for that trip related to the -- that was charged to Project Laser, is it possible that the purpose of that trip related in some way to the March 19 Boston road show?
A. I have no recollection of being involved any aspect of that road show.
Q. I'm going to show you something to see if it refreshes your memory. Let me show you what we previously marked as CPH Exhibit No. 75.
A. Okay.
Q. It's a document that -- the cover page bears Morgan Stanley's name.
A. Um-hum.
Q. And it bears Bates No. SB 18203 through a number that's so small I can't read

Page 261

CONFIDENTIAL - Hart
it. So, I can't tell you what the last Bates number is.
A. Okay.
Q. The second page of the document is entitled, "Sunbeam Roadshow Presentation Speaking Points, March 15, 1998."
A. Um-hum.
Q. Do you see that?
A. Yes, I do.
Q. I'd ask you to page through this, sir, and tell me whether you've ever seen this before. There's some places where handwriting appears. You can exclude --
A. Okay.
Q. -- the handwriting for my question for the moment.
(Witness reviewing document.)
Q. My focus is really on the speaking points at the front end.
A. Okay.
Q. So, if you've gone through that --
A. Sure.
Q. Do the speaking points portion of this document appear familiar to you? Is that

NOT A CERTIFIED COPY

Page 262

CONFIDENTIAL - Hart
something you've seen before?
A. I don't recall having seen these before.
Q. Let me direct your attention to the page that bears Bates No. SB 18225.
A. 225? Okay.
Q. There's handwriting at the bottom of the page, sir. And I'm going to ask you to read that to yourself, try to parse your way through it.
A. Okay.
Q. And see whether that refreshes your memory that you were present for a presentation where Mr. Kersh addressed the press release that Sunbeam issued on March 19.
A. And this was the Boston road show, this was the Boston stop?
Q. My understanding, sir, is that Boston was the last stop. It's the only stop that occurred after the press release was issued. And these notes address the press release.
And so my question is whether you remember being -- this refreshes your recollection of being present at the Boston road

Page 263

CONFIDENTIAL - Hart
show where Mr. Kersh addressed -- made comments relating to the press release that Sunbeam issued relating to the situation concerning its first quarter sales.
A. No, it doesn't.
Q. Mr. Hart, you attended the February 27 meeting with the Sunbeam board of directors in which the board approved the acquisition of Coleman Company; is that correct?
A. I believe -- yeah, I did.
Q. That is an event that sticks in your mind?
A. To -- to a certain degree.
Q. Why were you there?
A. As a representative from the financing side supporting Bram Smith.
Q. Do you remember where the meeting took place?
A. My recollection is that it was in -- it was at Morgan Stanley.
Q. Do you remember what time of day the meeting occurred?
A. I don't.
Q. Do you remember who asked you to

Page 264

CONFIDENTIAL - Hart
attend?
A. I don't.
Q. Were you asked to prepare any of the presentation for the board meeting?
A. I don't recall if I was asked to participate -- asked to prepare any element of it, no.
Q. Who do you recall being present from Morgan Stanley & Company or Morgan Stanley Senior Funding?
A. Myself, Bram Smith, Bill Strong, and I want to say Ruth Porat. I'm not -- I believe there were others. I'm just not sure. I just don't recall at this point.
Q. Do you remember Mr. Stynes and Mr. Kitts being there?
A. Not specifically.
Q. Mr. Fuchs?
A. Not specifically.
Q. Do you recall how long the meeting took?
A. No.
Q. Tell me everything you can recall about the Sunbeam February 27 board meeting.

Page 265

CONFIDENTIAL - Hart
A. The individuals that I listed were present. My recollection was that Bill Strong had a primary speaking role from Morgan Stanley. Bram Smith talked about the financing. And that's about it.
Q. Do you remember anything being said to the Sunbeam board regarding Mr. Levin's views of potential synergies?
A. I don't recall whether that was a subject of discussion or not.
Q. Do you remember the subject of synergies coming up, in any way, at the board meeting?
A. I don't recall that as a specific -- as a specific discussion item.
Q. You don't remember Mr. Strong or Mr. Smith making any comments about synergies?
A. I don't recall them making comments one way or the other with respect to synergies.
Q. Do you remember if Mr. Dunlap spoke?
A. Yes.
Q. What do you remember Mr. Dunlap saying?
A. Don't remember the content. Just

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

remember him speaking, him being present.
Q. Other than the fact you remember him speaking, do you remember anything else about the way Mr. Dunlap conducted himself at the meeting?
A. Not specifically, no.
Q. Did you speak?
A. I'm not aware that I spoke during the meeting.
Q. Before the meeting began, were there any discussions in which you were involved either with members of the Sunbeam board or with Sunbeam management?
A. Before the meeting?
Q. Yes.
A. I'm not aware -- I don't recall being a party to those discussions.
Q. The meeting was taking place in Morgan Stanley's offices, correct?
A. Correct.
Q. You don't recall participating in any pre-board meeting discussions with Sunbeam management concerning the nature of the presentation, any issues that might arise?
A. I don't recall being a party to those,

CONFIDENTIAL - Hart

no.
Q. You don't remember any discussions, I take it, with any members of Sunbeam management before the board meeting started that day, about the status of your review of potential financing?
A. No, I don't recall that.
Q. Let me show you a copy of the minutes of the board meeting. We'll mark them as CPH Deposition Exhibit 206. They bear Bates No. DTCO 4796 through 4808.
(CPH Exhibit 206, Minutes of a Special Meeting of the Board of Directors of Sunbeam Corporation, February 27, 1998, marked for identification, as of this date.)
Q. I'm going to ask you to read the introductory material at the beginning and the description of the presentation made relating to the Coleman acquisition.
A. Okay.
Q. You can stop when you get to the resolution on the second page.
A. Okay.
(Witness reading document.)
A. Okay.

CONFIDENTIAL - Hart

Q. Does any of the material that you've read on the first two pages of this document refresh your recollection concerning the meeting or the individuals from Morgan Stanley who participated in it?
A. Not really, no.
Q. Let me direct you to page 11. There's a heading that reads "Financing"?
A. Um-hum.
Q. I'd like you to read that paragraph. It carries over onto the next page.
(Witness reading document.)
A. Stop at "Resolved"?
Q. Yes.
A. Okay.
Q. This indicates that Mr. Strong made a presentation relating to the proposed financing structure. In fact, it refers that there was an extensive presentation. Do you see that?
A. I do.
Q. Is that your recollection of the events that day, that Mr. Strong made an extensive presentation of financing options?
A. As I said, I -- my recollection was

CONFIDENTIAL - Hart

that Bill made a presentation. My recollection is that, as he went through the various options, he would turn to, in this case, Bram to talk about the bank financing. That was my recollection.
Q. Did -- did Mr. Strong make any statements to the board relating to the interest of Morgan Stanley to participate in providing the necessary financing to Sunbeam?
A. I don't recall if that statement was made in that forum.
Q. Did Mr. Strong make any statement, that you can recall, relating to the prospects for arranging the financing necessary to achieve the -- finance the three acquisitions that Sunbeam was -- Sunbeam board was being asked to address?
A. Could you clarify "prospects" for me.
Q. The likelihood of being able to arrange the necessary financing.
A. I don't recall whether he opined on that or offered a view.
Q. Do you recall -- what do you recall Mr. Smith saying to the Sunbeam board relating to

NOT A CERTIFIED COPY

Page 270

CONFIDENTIAL - Hart
the bank financing issues?
A. What I recall is a walk-through, a term sheet. I don't recall a great deal more than that.
Q. Did Mr. -- do you recall Mr. Smith making any statements to the Sunbeam board relating to the achievability of the necessary bank financing for the transaction?
A. I don't recall whether he made those statements or not.
Q. Now, at the time, sir, that you first became involved in the -- let me, before I move on -- do you recall anything else, sir, about the events of the February 27 Sunbeam board meeting?
A. No, not the board meeting, no.
Q. Do you recall that, after the Sunbeam board meeting concluded that afternoon at Morgan Stanley's offices, that there were further discussions with Morgan Stanley management relating to the financing issues?
MR. CLARE: I'm sorry. Do you mean to say Morgan Stanley management?
MR. MARKOWSKI: No.
MR. CLARE: Okay.

Page 271

CONFIDENTIAL - Hart
MR. MARKOWSKI: Did I say Morgan Stanley management?
MR. CLARE: You did.
MR. MARKOWSKI: I didn't mean to say that, so let me ask a different question I'm interested in.
Q. Do you recall whether, after the Sunbeam board meeting concluded, whether representatives of Morgan Stanley, Morgan Stanley Senior Funding engaged in further discussions with Sunbeam management relating to financing issues?
A. The only discussion that I'm aware of was an impromptu discussion post-board meeting that involved, my recollection was, Kersh, Bram and myself, where there was a discussion as to who would be likely partners in the financing.
Q. How did that impromptu discussion come about, did Mr. Kersh approach you, or did Morgan Stanley --
A. I don't recall.
Q. -- participants approach Mr. Kersh?
A. I don't recall.
Q. Had there been discussion among the

Page 272

CONFIDENTIAL - Hart
Morgan Stanley -- I'm sorry. You said that a conversation involved you, Mr. Smith?
A. Mr. Smith.
Q. And was Mr. Strong part of this, too?
A. Don't recall.
Q. So, your recollection is that you and Mr. Smith approached Mr. Kersh?
A. I don't recall whether we approached, he approached or whether we just sort of arrived at the spot together.
Q. All right. Your recollection, though, is that it was the three of you discussing that issue, correct?
A. They're the three parties that I remember being involved.
Q. Do you recall any discussions with Mr. Smith, prior to this conversation with Mr. Kersh, where the two of you discussed the possibility of including other participants in the initial funding of the Sunbeam senior bank facility?
A. We would have had those discussions. I don't remember them specifically.
Q. Do you remember what potential

Page 273

CONFIDENTIAL - Hart
candidate banks you considered?
A. Not specifically, no.
Q. Were there any banks considered, other than Bank of America and First Union?
A. I'm not aware -- I don't recall whether others were considered.
Q. Tell me what you can recall of the conversation with Mr. Kersh that day on that subject?
A. The general conversation was Mr. Kersh offering B of A and First Union as potential partners because of the relationship that either they have -- they had developed through calling on them or an existing relationship, which I understood First Union had with the company.
Q. By "partners," you mean potential participants in the senior bank facility at Morgan Stanley Senior Funding?
A. Potential underwriters of the facility, yes.
Q. And it's your testimony that it was Mr. Kersh that mentioned those two banks as opposed to you and -- you or Mr. Smith mentioning them?

NOT A CERTIFIED COPY

CONFIDENTIAL - Hart

A. That was my recollection.

Q. Was Morgan Stanley Senior Funding prepared to underwrite the entire senior bank facility without the participation of any other banks in the initial funding?

MR. CLARE: Objection. Asked and answered. And no foundation.

A. The only way that I can answer -- I don't know, other than that we had received approval for a $2 billion commitment.

Q. So, your understanding is that the Leveraged Finance Committee, at its March 20 meeting, authorized Morgan Stanley Senior Funding to provide the entire $2 billion senior bank facility?

A. I don't have a recollection as to -- if that ever became offered, because the timing of bringing in partners was very quick. So, I don't know whether that ever became an operative underwriting commitment.

Q. I'm not asking whether it became a commitment. But it's your recollection that the Leveraged Finance Committee authorized Morgan Stanley Senior Funding to provide the entire

CONFIDENTIAL - Hart

$2 billion in financing?

A. I don't recall -- my recollection -- my testimony is that I don't recall whether or not that ever became an -- an authorized commitment, whether they ever approved that amount.

Q. Okay. Did you and Mr. Smith -- di you or Mr. Smith -- let me put it that way -- have a view concerning whether it would be preferable for Morgan Stanley Senior Funding to provide the entire $2 billion in financing initially, or whether it would be preferable to have other banks participating in the initial funding?

MR. CLARE: Objection. Calls for speculation with regard to Mr. Smith.

A. I had no view.

Q. Did Mr. Smith express one to you?

A. Not that I'm aware of. Not that I recall, I should say.

Q. I take it that Morgan Stanley Senior Funding was financially capable of providing the entire $2 billion in financing?

A. That would be my understanding.

Q. Would it be more profitable to Morgan

CONFIDENTIAL - Hart

Stanley Senior Funding if it provided the entire $2 billion in financing and then syndicated the loan as opposed to including Bank of America and First Union in the initial financing?

MR. CLARE: Objection to form. Incomplete hypothetical.

A. It's -- it's impossible to tell. A bank distribution can take many different forms -- it's impossible to tell profitability on one versus the other because you have to make a number of assumptions based upon what you will pay underwriters versus what you'll pay the market.

Q. Your testimony is you had no preference concerning whether Morgan Stanley Senior Funding provided the entire $2 billion in financing or whether First Union and Bank of America participated along with Morgan Stanley Senior Funding?

A. What my testimony is, is that I don't recall having a view. And it wasn't my -- it wasn't within my scope or responsibility to determine that.

MR. MARKOWSKI: I'm looking for

CONFIDENTIAL - Hart

something we can do in the next 10 minutes.

THE WITNESS: Okay.

Q. Let me ask you a few questions about Mr. Dunlap.

How much contact did you have with Mr. Dunlap before the Sunbeam loan closed at the end of March?

A. Before the Sunbeam loan closed? I had met him at the board meeting and had participated in a call or two in which he was present.

Q. Is it the first -- is it the case that the first time you met Mr. Dunlap was at the -- in any context was at the February 27 board meeting?

A. I believe that's the first time I ever met him.

Q. And you had no other face-to-face meetings with him prior to the time the loan closed?

A. I'm not aware of ever having met him prior to that -- oh, face-to-face?

Q. I may be unclear here. Let me make sure we're clear.

You had one face-to-face meeting with

NOT A CERTIFIED COPY

Mr. Dunlap before the loan closed at the February 27 board meeting?

A. Right.

Q. My question is, prior to the loan closing, did you have any other face-to-face contact with Mr. Dunlap --

A. I don't --

Q. -- before the loan closed at the end of March?

A. I don't recall having a face-to-face with him prior to that point and post the board meeting.

Q. You've already testified this morning about one conversation -- telephone conversation that you had with Mr. Dunlap, the one involving Mr. Levin, correct?

A. Correct.

Q. You've just referred to a call or two when Mr. Dunlap was on the phone.

Do you believe you participated in any other phone conversations with Mr. Dunlap, other than the one where Mr. Levin participated, prior to the loan closing?

A. I don't recall having had another

conversation, no.

Q. Did you have any knowledge concerning Mr. Dunlap's reputation as a -- a chief executive officer?

A. I don't recall having a -- having knowledge of his reputation prior to that, no.

Q. Did you develop an understanding of Mr. Dunlap's reputation before the Morgan Stanley Senior Funding loan closed at the end of March?

A. Help me with what you mean by "his reputation."

Q. Well, it's a very general question.

Did you have any information, from whatever source, relating to Mr. Dunlap's capabilities or accomplishments or strategy or style, personality as a chief executive officer?

A. I don't recall learning anything more about Mr. Dunlap during that period.

Q. Did you understand that Mr. Dunlap was considered to be a turnaround specialist?

MR. CLARE: Objection to form.

A. I wouldn't throw around that term. I have no opinion on whether or not he was a turnaround artist.

Q. Did you consider him to be a capable chief executive officer?

A. I didn't formulate that opinion one way or the other.

Q. Did you hear reports from other people that bore on that, or read things about Mr. Dunlap that bore on that?

A. Not that I recall.

Q. Before the Morgan Stanley Senior Funding loan closed, did you, yourself, make any inquiry into Mr. Dunlap's performance as a corporate executive?

A. I don't recall me personally making that inquiry.

Q. Did you ask anyone to make that inquiry on your behalf?

A. I don't recall asking anyone to make that inquiry on my behalf.

Q. Did anyone make any reports to you of any sort relating to Mr. Dunlap's capabilities or accomplishments or reputation?

A. I don't recall receiving a report like that.

Q. Did you understand that Mr. Strong

knew Mr. Dunlap well?

A. I understood Bill Strong to have a relationship with Mr. Dunlap.

Q. Did Mr. Strong ever offer, in your presence, any views relating to Mr. Dunlap?

A. Not that I recall.

Q. Were you aware that Mr. Dunlap had come to Sunbeam from Scott Paper?

A. Yes, I believe I was aware of that.

Q. Did you have any knowledge of Mr. Dunlap's tenure or accomplishments at Scott Paper?

A. I don't recall if I had knowledge of his accomplishments at Scott Paper.

Q. Were you aware that Mr. Dunlap was credited with turning around Scott Paper and making it a more valuable business before it was acquired by Kimberly-Clark?

A. I wasn't aware of that. I don't recall being aware of that.

Q. Did anyone ever suggest to you, sir, that Mr. Dunlap's accomplishments at Scott Paper were phony or in some way exaggerated?

MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

011572

CONFIDENTIAL - Hart

A. I don't recall ever hearing that -- that supposition put forth to me.

Q. Let me show you what we previously marked as CPH Exhibit No. 68. It's a Business Week article from January 15, 1996. It bears the Bates No. Morgan Stanley Confidential 3995 through 4001.

My first question, sir, is going to be whether you've seen this document before. Look at it sufficiently to be able to tell me.

A. I don't recall having seen this document.

Q. Did you have -- let me put the question to you this way, sir: Morgan Stanley Senior Funding was going to be loaning a substantial amount of money to Sunbeam, at least for a short while, before the syndication was finalized.

Did you have any concerns in that regard relating to Mr. Dunlap's capability or integrity?

MR. CLARE: I object to the form of the question and the preamble to it.

Q. Prior to the loan closing?

CONFIDENTIAL - Hart

MR. CLARE: Same objections.

A. I don't recall having concerns about his integrity prior to the loan closing.

Q. What about his capability as an executive?

A. I don't recall forming an opinion on that --

Q. So, you had no --

A. -- prior.

Q. I'm sorry. You had no concerns about his integrity?

A. I would -- I don't recall having any concerns about his integrity prior to the loan closing.

Q. Do you have any knowledge, sir, of statements made by representatives of Morgan Stanley to my clients relating to Mr. Dunlap's accomplishments at Sunbeam?

A. I don't -- I don't recall having any sort of knowledge of that, no.

MR. MARKOWSKI: This is a breaking point for me.

MR. CLARE: Okay. Before we conclude, I just want to put on the record, you know,

CONFIDENTIAL - Hart

our position is that the deposition of Mr. Hart should have been concluded in one day. And, on a break, I offered to stay around with Mr. Hart for as long as necessary tonight to conclude the deposition.

And I understand, because of scheduling reasons, that Mr. Markowski is not availing himself of that offer. So, we'll take up the continuation of his deposition at another time.

(Continued on next page to include jurat.)

CONFIDENTIAL - Hart

MR. MARKOWSKI: We were prepared to continue tomorrow and we had been initially advised Mr. Hart would be available tomorrow. And we were told now that he is not, so we made our plans accordingly.

MR. CLARE: Okay. Well, we also advised you by letter last week we thought it could be concluded in a single day. We'll deal with it.

THE VIDEOGRAPHER: The time is 5:04. This videotaped deposition of Mr. Michael Hart will be adjourned.

(Time noted: 5:04 p.m.)

_____

MICHAEL HART

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

NOT A CERTIFIED COPY

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, TAMI H. TAKAHASHI, RPR and Notary Public within and for the State of New York, do hereby certify:

That MICHAEL HART, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May 2004.

_____
TAMI H. TAKAHASHI

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
MICHAEL HART	MR. MARKOWSKI	5

---------- INFORMATION REQUESTS ----------

DIRECTIONS:
RULINGS:
TO BE FURNISHED:
REQUESTS:
MOTIONS: 74, 110, 116

---------- EXHIBITS ----------

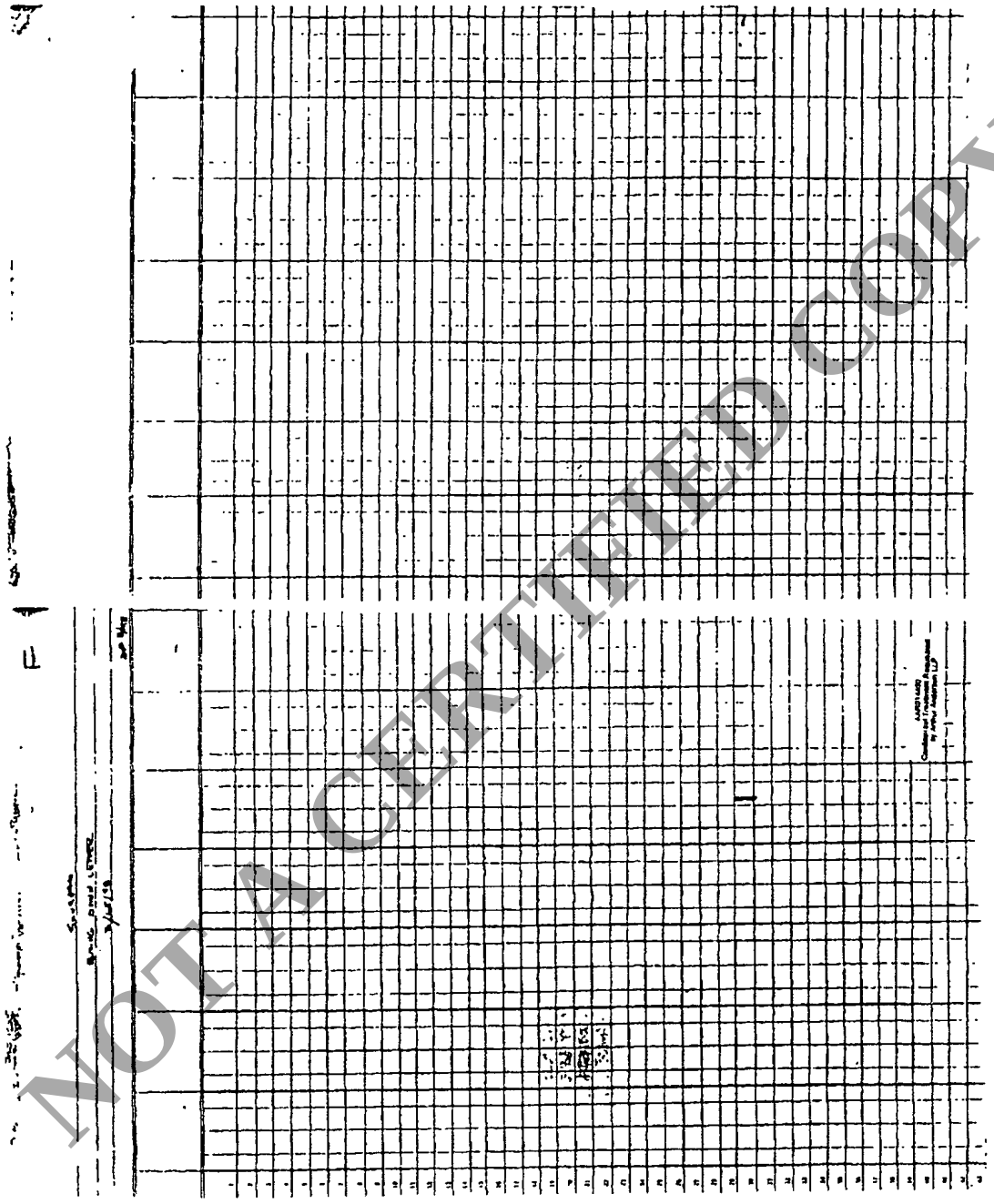
CPH FOR ID.

CPH Exhibit 197, Complaint..... 25
CPH Exhibit 198, Deposition transcript of Michael Hart taken on 6/12/01..... 78
CPH Exhibit 199, Morgan Stanley Senior Funding, Inc.'s Responses and Objections to Defendant Coleman (Parent) Holding's First Set of Interrogatories..... 83
CPH Exhibit 200, Fax dated 12/15/97, from Fannin to Strong, Stynes and Kitts.. 121
CPH Exhibit 201, Morgan Stanley Senior Funding, Inc.'s Responses and Objections to Defendant Coleman (Parent) Holdings, Inc.'s Second Set of Interrogatories..... 152
CPH Exhibit 202, Document entitled, "Project Laser Key Synergies Assumptions"..... 170
CPH Exhibit 203, Morgan Stanley employee expense reports..... 195
CPH Exhibit 204, Morgan Stanley employee expense reports..... 197

---------- EXHIBITS (Continued) ----------

CPH FOR ID.
CPH Exhibit 205, Document entitled, "Coleman Potential Opportunities are $118 million"..... 241
CPH Exhibit 206, Minutes of a Special Meeting of the Board of Directors of Sunbeam Corporation, February 27, 1998... 267

NOT A CERTIFIED COPY



NOT A CERTIFIED COPY

Bloomberg No. 5110

EXHIBIT 12
1-12-04
CRH 112

ARTHUR ANDERSEN

March 25, 1998

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036-8293

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4433

NOT A CERTIFIED COPY

Gentlemen:

We refer to our letter of March 19, 1998, relating to the offering memorandum for the sale of $2,014,000,000 of Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Offering Memorandum"). We reaffirm as of the date hereof (and as though made on the date hereof) all statements made in that letter except that, for the purposes of this letter –

a. The Offering Memorandum to which this letter relates is as amended on March 25, 1998.

b. The reading of minutes described in paragraph 4 of that letter has been carried out through March 23, 1998.

c. The procedures and inquiries covered in paragraph 4 of that letter were carried out to March 23, 1998 (our work did not extend to the period from March 23, 1998, to March 25, 1998, inclusive).

d. The period covered in paragraph 4a of that letter is changed to the period from December 29, 1997 to March 1, 1998, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to March 1, 1998, were available.

e. The references to February 1, 1998, in paragraph 5 of that letter are changed to March 1, 1998, and the tables included in that paragraph are modified as follows:

Table in paragraph 5a (in thousands) –

	December 28, 1997	March 1, 1998
Common stock	$ 900	$ 913
Long-term debt	194,580	279,580
Shareholders' equity	531,937	522,843

AAR014491
Confidential Treatment Requested
by Arthur Andersen LLP

011757

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0129614

16div-022788

Table in paragraph 5b (in thousands) –

	For the Period	
	December 30, 1996 through March 2, 1997	December 29, 1997 Through March 1, 1998
Net sales	$ 143,499	$ 72,018
Net income (loss)	9,765	(41,190)

The net loss for the period from December 29, 1997 through March 1, 1998 includes a compensation charge of approximately $30.2 million recorded in February 1998 from restricted stock issued in connection with new employment agreements with key officers.

f. The references to February 1, 1998, and March 16, 1998, in paragraph 6 of that letter are changed to March 1, 1998, and March 23, 1998, respectively. Paragraph 6a has been modified to read as follows:

Between December 29, 1997 and March 23, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased from $194,580,000 to $ 309,580,000 as a result of drawings on the Company's credit facility and (iii) consolidated shareholders' equity has decreased primarily because of net losses during the period offset, in part, by contributions received for stock option exercises.

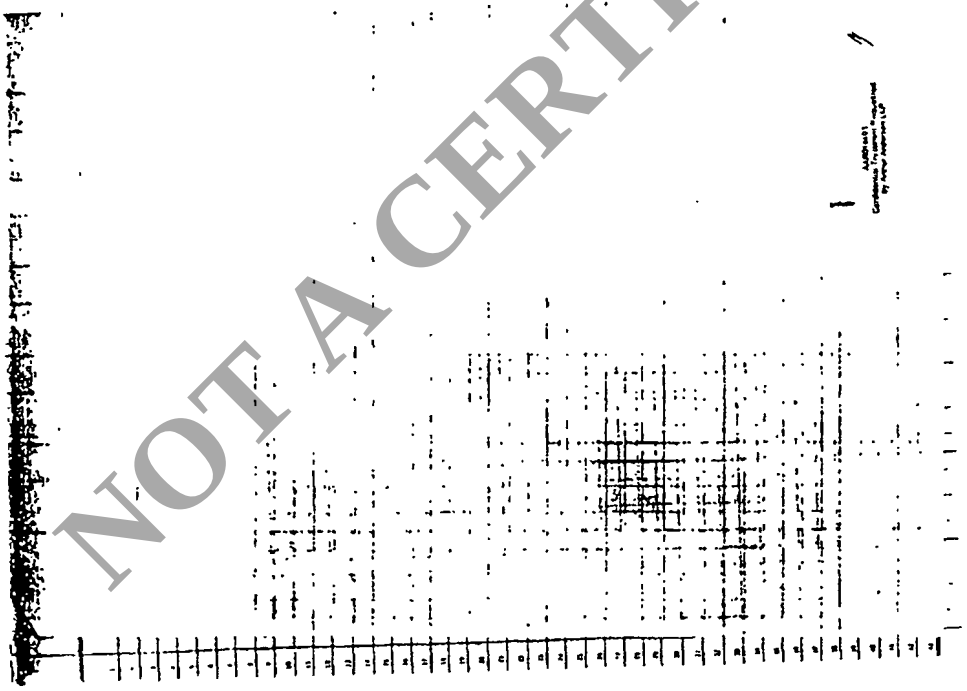
g. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Arthur Andersen LLP

NOT A CERTIFIED COPY

AAR014492
Confidential Treatment Requested
by Arthur Andersen LLP



NOT A CERTIFIED COPY

017579

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0129616

07:12am EST 20-Mar-98 Bear Stearns (Maneaty, C/Pahlavi,P 212/272-4249) SOC CLN
SOC: 41/2 Point Drop Unwarranted;Buy Reaffirmed;One Year Target Remains $60

Constance M. Maneaty (212) 72-4249 cmaneaty@bear.com
3/19/98 Parinaz Pahlavi (212)272-4026
ppahlavi@bear.com

Subject: Company Update
Industry: Household Appliances

BEAR, STEARNS & CO. INC.
EQUITY RESEARCH

Sunbeam (SOC-45) - BUY

4 1/2 Point Drop Unwarranted; Buy Reaffirmed; One Year Target Remains $60
1998 EPS Lowered to $1.80 to Include Shares Issued in Transaction
No Change to 1999 Estimate of $3.00

***Price Drop Unwarranted: We think that yesterday's price drop of over 4 points was an over reaction and we reiterate our buy rating on the shares. Our one year target remains $60 as Sunbeam integrates the acquisitions it has announced and 1999 earnings approach $3.00. At 15x 1999 estimates, the shares are valued at a 30% discount to the market.

***1998 EPS Lowered to $1.80 from $2.05: We are lowering our 1998 Sunbeam estimates to $1.80 from $2.05 on the assumption that the three transactions announced at the beginning of the month (the acquisitions of Coleman, Signature Brands and First Alert, with total sales of about $1.6 billion) close in the near future. As we wrote in our note of March 2, the acquisitions could dilute EPS by $0.05-$0.07 in 1998. In addition, Sunbeam will issue 19.4 million shares to Coleman shareholders bringing the 1999 share base to 108 million shares (which includes the options tied to Mr. Dunlap's new employment agreement at the current stock price); assuming a mid-year close, the 1998 share base would increase to about 98 million. The combination of the new shares and modest dilution create the estimate reduction; on our new forecast EPS should increase about 30% over the $1.41 recorded in 1997. (Reported EPS will also include the restructuring which is expected to be announced after the transactions close.)

MARKET CAPITALIZATION $4.0 (b)

DILUTED EPS	Q1 Mar	Q2 Jun	Q3 Sep	Q4 Dec	Year	P/E
Current 1996	$0.08A	$0.03A	$(0.19)A	$(0.03)A	$(0.10)A	NC
Current 1997	$0.24A	$0.30A	$ 0.39A	$0.47A	$ 1.41A	26.7x
Current 1998	$0.31E				$1.80E	18.4x

-- FIRST CALL --

NOT A CERTIFIED COPY

017581

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Previous 1998 $2.05E

Current 1999 $3.00E 14.2x

***Press Release Spooks the Stock: In conjunction with the pricing of a convertible offering, Sunbeam yesterday issued a press release that said that first quarter sales may be lower than analysts estimates of $285-$295 million. The notice sent the stock price into a tailspin with the suggestion that the tone of business might be weakening. We do not think this is the case. Rather, Sunbeam's order book at this point does not fully cover the growth expectations (12%-15%) that are implied by the estimated sales range. This is not unusual, even at this late stage in the quarter. March is the most important month of the quarter in terms of sales, and orders routinely come in with an expected turnaround time of as little as 72 hours. Sunbeam will continue to get orders and ship through the rest of the quarter and sales should be near the expected range. Nonetheless, we think the timing of the pricing of the convertible deal so close to the end of the quarter, coupled with orders now on the books prompted the company's press release.

***Current Tone of Business is Healthy: The press release prompted us to review the current tone of business, and it seems to be in good shape. So far, sales appear to be pretty close to budget. Last year, production did not meet demand in clippers, blenders, blankets and grills. The capacity issues have been solved, and Sunbeam believes that it is able to meet demand with improving levels of service.. Grills are an important component of first quarter sales, and we think they were close to budget until the beginning of March when the weather turned abruptly cooler in many parts of the country. Sunbeam expects healthy grill sales during the last two weeks of March, but it is possible that some sales would slip into April. The cold snap has had a silver lining; electric blankets sold well at retail and there have been no significant returns. The new air and water filters started to ship in volume in March, a bit later than management had expected, and they should pick up steam in the June quarter. To accommodate all the moving pieces, we have lowered our Q1 total sales growth forecast to 12% ($284 million) from 15% ($295 million); our EPS estimate is $0.31, a 29% increase.

Companies Mentioned: Sunbeam (SOC), Coleman (CLN); First Alert (ALRT); Signature Brands (SIGB)

First Call Corporation - all rights reserved. 617/345-2500

-> End of Note <-

-- FIRST CALL --

NOT A CERTIFIED COPY

017582

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-022792

THE BUCKINGHAM RESEARCH GROUP

Research Notes for March 24, 1998

SOC	Target: $64	EPS (FY Dec.)			P/E Ratios		3-Year	Debt/	Shares
$45 15/16	1Q98E EPS	1997A	1998E	1999E	1998E	1999E	Growth	Capital	(mil.)
BUY	$0.30E/$0.24A	$1.40	$1.90	$2.85	24.2	16.1	28%	26.8%	88.4

William H. Steele (415) 893-9073

We reiterate our Buy rating on Sunbeam, taking advantage of the recent weakness in share price to increase positions. Last week, the company announced that 1Q98 sales MAY fall short of analysts' estimates. We contend that the cautious comment was driven by Sunbeam's legal staff, which worried about potential disclosure problems since Sunbeam's management was talking to investors about a convertible bond issue. It is our opinion that Sunbeam's legal staff decided if there was ANY possibility (no matter how small) that the company could fall short of sales estimates, then it had to be disclosed before the convertible bond issue was priced. We believe these comments were purely cautionary and we continue to project that 1Q98 sales will increase 15%, to $291 million. We are encouraged by the strong orders the company has received over the last five days (which will be shipped in this quarter). However, our 1Q98 EPS estimate has been trimmed $0.01 to $0.30 versus $0.24 last year, due to more conservative margin assumptions. Our operating margin has been reduced 0.5 point, to 15.3%, primarily due to a reduction in projected gross margin. We have re-examined the sales mix in the quarter and given the large percentage that outdoor product sales (which we believe is the company's lowest-margin business) represent, we have reduced our gross margin assumption 1.0 point, to 27.4%. Partially offsetting this decline, we are reducing SG&A as a percent of sales 0.5 point, to 12.1%, recognizing that Sunbeam has gotten significantly leaner in the past year. Despite the $0.01 per share reduction in 1Q98 EPS estimates, our full-year 1998 EPS forecast remains $1.90, our 1999 EPS estimate remains $2.85, and our target price remains $64 per share. Based on our target price, the company has a total return potential of almost 40% -- which is certainly enough to warrant a Buy rating.

ANN	Target: $19		EPS (FY Jan.)			P/E Ratios		3-Year	Debt/	Shares
$14 9/16	1Q98E EPS	1996A	1997A	1998E	1999E	1998E	1999E	Growth	Capital	(mil.)
BUY	$0.19E/$0.25A	$0.53	$0.46	$1.20	$1.74	12.1	8.4	15%	26%	25.8

Catherine DePuy (212) 922-2103

AnnTaylor reported fully diluted 4Q97 EPS of $0.09 versus $0.20 in the year-ago quarter. The company's full-year 1997 EPS came in at $0.47 (fully diluted) versus $0.53 in 1996. Sales in 4Q97 came to $211.8 million versus $213.1 million a year ago. More details to follow. A rebroadcast of the company's 8:00 AM (EST) conference call will be available today and tomorrow. The replay number is (402) 351-9977.

MUEI	Target: $18	EPS (FY Aug.)			P/E Ratios		3-Year	Debt/	Shares
$11 1/2	3Q98E EPS	1997A	1998E	1999E	1998E	1999E	Growth	Capital	(mil.)
BUY	$0.04E/$0.20A	$0.92	$0.39	$1.00	29.5	11.5	22%	5%	95.6

Peter Labé (212) 922-5506

We are hosting a breakfast here at Buckingham for Micron Electronics on Tuesday, April 7. Joel Kocher, president, and Steven Laney, vice president corporate communications, will represent the company. The conference call-in number for this meeting will be (212) 346-6476.

This report is based upon information available to the public. No representation is made that it is accurate or complete. The Buckingham Research Group, and others associated with it, may have positions in, and may effect transactions in, the securities of the companies mentioned herein and may also perform or seek to perform investment banking services for those companies.

EXHIBIT 367

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEFENDANT'S EXHIBIT 856 JR 7/19/00

Goldman, Sachs & Co. Investment Research

Sunbeam Corporation

* * Trimmed Q1:98E/1998E on Potential Q1 Sales Shortfall; RL * *

Elisabeth Fontenelli (New York) 1-212 902-8192 - NY Equity Research

========== NOTE 12:06 PM March 20, 1998 ==========

	Stk Rtg	Latest Close	52 Week Range	Mkt Cap (mm $)	YTD Pr Change	Cur Yield
Sunbeam Corporation	RL	45.38	53-29	3947.6	7%	0.1%

		Earnings Per Share					
SOC		Mar	Jun	Sep	Dec	FY	CY
	1999 FY					3.00	
	1998 FY	0.28				2.00	
	1997 FY(A)	0.24	0.30	0.39	0.47	1.41	

		-Abs P/E on-		-Rel P/E on-		EV/NxtFY	LT EPS
		Cur	Nxt	Cur	Nxt	EBITDA	Growth
SOC	FY	22.7X	15.1X	1.1X	0.8X	NA X	20%

==========

* Continue to recommend purchase of SOC. 1998E reduced to $2.00 fm $2.05. 1999E of $3.00 unchanged. Spoke with company. By our model, potential Q1 revenue shortfall could place Q1 EPS in $0.25 to $0.30 range. New est is $0.28ps v. $0.24, down from previous $0.32 est. We continue to believe the long-term consolidation strategy should create significant value not reflected in SOC shares today. Price target on $3.00 estimate in 1999 is unchanged at $60-$65. We believe short-term issues are far outweighed by the longer-term benefits.

* Q1:98 revenue estimates were in a range of $285-$295 million, about a 15% increase from Q1:97. Our new revenue target is 10% growth to $275-$280 million. The company stated that Q1 revenue 'MAY fall below Wall Street estimates of $285 million to $295 million, but should exceed year ago sales of $253.4 million.' Reasons for the shortfall 'IF ANY, would be retail order patterns and inventory management', not point of sale related. March is the most significant contributor to first quarter sales and profits. As such, these last two weeks of the month will be crucial to determining Q1 results.

* Our rating on Sunbeam has been and remains a U.S. Recommended List rating. Within that rating we have, in the last year and a half, taken long and short-term postures at different points in time. Current events place our rating emphasis on the twelve-month view. We expect near-term volatility around these fundamental issues until Sunbeam reports earnings in late April.

==========

Important Disclosures (code definitions attached or available upon request)
SOC : M,CP

NOT A CERTIFIED COPY

GS 1202.24
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PLAINTIFF'S EXHIBIT
CPH 380
12-10-04 LS

CONFIDENTIAL
83358a

Sunbeam

FOR IMMEDIATE RELEASE

SUNBEAM CORPORATION ANNOUNCES SUCCESSFUL PRIVATE PLACEMENT OF $750 MILLION OF CONVERTIBLE DEBENTURES

. Delray Beach, FL, (March 25, 1998) -- Sunbeam Corporation (NYSE:SOC) announced that it closed today a private placement of $750 Million ($2.014 billion principal amount at maturity) Zero Coupon Convertible Debentures. Net proceeds to Sunbeam will be approximately $727 Million. The Debentures were offered and sold only to qualified institutional buyers and other institutional accredited investors at a price of $372.43 per $1,000 principal amount at maturity, representing an original issue discount of 62.757%. The Debentures have a yield to maturity of 5% per annum and are convertible into Sunbeam common shares at a conversion rate of 6.575 shares per $1,000 principal amount of Debentures at maturity.

Proceeds of the offering will be used to finance a portion of the acquisition costs of the Company's recently announced acquisitions of The Coleman Company, First Alert, Inc. and Signature Brands USA, Inc. and for other corporate purposes, including the repayment of outstanding indebtedness.

Al Dunlap, Sunbeam's Chairman and CEO, stated, "The overwhelming response of the investment community to this offering reflects a high level of confidence in Sunbeam's strategic direction and its prospects for the future. The initial offering of Debentures was substantially over-subscribed, and the Company decided to increase the size of the offering by 50% from $500 Million in gross proceeds to $750 Million. We are in the process of creating a powerful 'house

NOT A CERTIFIED COPY

017583

CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED

SB 251292

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0485991
16div-022795

of brands' at Sunbeam with the recently announced acquisitions of Coleman, Signature Brands and First Alert, and obviously the markets agree with our strategy to become the global leader in durable branded consumer products through acquisitions which are selective, opportunistic and accretive."

The balance of the debt financing for the acquisitions of Coleman, First Alert and Signature Brands will be in the form of a senior credit facility through a syndicate being led by Morgan Stanley Dean Witter, Bank of America and First Union. The credit facility, which will consist of $1.4 Billion in term loans and a $600 Million revolving credit facility, is expected to close in the next several days. In addition to financing the three acquisitions, proceeds of all components of the Company's financings will be available to invest in the business, as well as for possible future acquisitions.

The Debentures have not been registered under the Securities Act of 1933 and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Form 10-K for the year ended December 28, 1997, filed with the Securities and Exchange Commission.

NOT A CERTIFIED COPY

017589

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 251293

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0485992
16div-022796

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name consumer products. The Company's Sunbeam® and Oster® brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

# # #

Contact: Rich Goudis
Sunbeam Corporation
(561) 243-2142

NOT A CERTIFIED COPY

017590

CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED

SB 251294

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0485993
16div-022797

MORGAN STANLEY

MORGAN STANLEY & CO.
INCORPORATED
1585 BROADWAY
NEW YORK, NEW YORK 10036

Job No. 4814-053

Sunbeam Corporation
7615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

March 31, 1998

Attention: Mr. Albert J. Dunlap
Chairman and Chief Executive Officer

INVOICE M 05944

For financial advisory services rendered in connection with Phase I of the Coleman transaction of PROJECT LASER	$ 9,369,425	00
Out-of-Pocket Expenses	232,088	99
Total	$ 9,601,513	99

Kindly wire funds to the following account:

Citibank NYC
Account: Morgan Stanley & Co.
Account # 400-72-442
ABA # 021-000089
Reference # 38-09720-0
Project # 4814-053

Please wire U.S. Dollars only.

PAID
APR 10 1998

→ $5,851,513.99

Success - March

DEPOSITION EXHIBIT
GPH 1/16

SENDER'S COPY

3,750,000 - Equity
TO PASS over

MORGAN STANLEY
CONFIDENTIAL
0080325

16div-022798

NOT A CERTIFIED COPY

MORGAN STANLEY

MORGAN STANLEY & CO.
INCORPORATED
1585 BROADWAY
NEW YORK, NEW YORK 10036
(212) 761-4000

NOT A CERTIFIED COPY

March 31, 1998

Mr. Albert J. Dunlap
Chairman & CEO
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

Dear Al:

Enclosed, please find an invoice for the financial advisory services rendered in connection with Phase I of the Coleman transaction of Project Laser. We look forward to the successful completion of Phase II of the Coleman transaction as well as the closing of the Signature Brands USA and First Alert transactions. It has been a great pleasure assisting Sunbeam achieve its strategic growth objectives, and we look forward to assisting you in our continuing endeavors.

Very truly yours,

Alexandre Fuchs
Vice President

cc: WStrong
JStynes
RKitts

017593

MORGAN STANLEY
CONFIDENTIAL
0080326
16div-022799

MORGAN STANLEY

MORGAN STANLEY & CO.
INCORPORATED
1585 BROADWAY
NEW YORK, NEW YORK 10036

Job No. W814-053

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

March 31, 1998

Attention: Mr. Albert J. Dunlap
Chairman and Chief Executive Officer

INVOICE M 05944

For financial advisory services rendered in connection with Phase I of the Coleman transaction of PROJECT LASER	$ 9,369,429	00
Out-of-Pocket Expenses	232,084	99
Total	$ 9,601,513	99

Kindly wire funds to the following account:

Citibank NYC
Account: Morgan Stanley & Co.
Account # [redacted]
ABA # [redacted]
Reference # 88-0072C-0
Project # W814-053

Please wire U.S. Dollars only.

NOT A CERTIFIED COPY

017594

CLIENT COPY

MORGAN STANLEY
CONFIDENTIAL
0080327

16div-022800

Client file
SUNBEAM

PROJECT LASER

Fee Calculation

	Transaction Value (MM)	Total Fee Calculation Basis	Fees to Morgan Stanley Gross	Credit	Net	Fees Paid to other Banks	Total Fees Paid by Laser
oupon Convertible (1)	$750,074,020						
uancing Fee		3.0% of gross proceeds	$22,502,221				
		0.5% Credit		$3,750,370			
		Total			$18,751,851		$18,751,851
Financing	2,000,000,000	1/8 structuring fee					
ucturing Fee		1/8 on $2.0Bn	$2,500,000		$2,500,000		$2,500,000
s Underwriting fee (1)		1 1/8 on $800MM	$9,000,000		$9,000,000		$9,000,000
es to MS for sell down (estimate)		3/8 on $700MM			($2,625,000)		
ndicate Banks Underwriting fee		1 1/8 on $1.2Bn				$13,500,000	$13,500,000
e/Post Commitment Fees (2)			$576,000		$576,000		$576,000
				Total	$9,451,000		$25,576,000
rs and Acquisitions							
leman Company (3)	2,208,606,187	0.4737% of Aggregate Value	$10,463,091		$10,463,091		$10,463,091
gnature Brands	239,412,592	1.3522% of Aggregate Value	$3,237,344	$500,000	$2,737,344		$2,737,344
st Alert	175,271,027	1.6236% of Aggregate Value	$2,845,779		$2,845,779		$2,845,779
		10% of M&A fee to Llama Co.		$1,604,621	($1,604,621)	$1,604,621	$1,604,621
				Total	$14,441,593		$17,650,835
				Total	$42,644,443	Total	$61,978,686

→ Alice walton -10% M+A Fee

NOT A CERTIFIED COPY

Notes: (1)
(1) Assumes exercise of the 112.5MM Green shoe
(2) Based on current estimates, actual fees could change
(3) Assumes Laser stock price of 43.4375, March 25 close.

$500 K. credit for Signature verbal agreement - above discount.

MORGAN STANLEY CONFIDENTIAL 0080328

017595

16div-022801

ays SOC Price o Close			Price	Shares	Value
16-Mar-98	50.2500	Value of Equity Issued to Mafco:	$46.7875	14,099,749	$659,692,006
17-Mar-98	50.4375	Cash Issued to Mafco:			159,956,756
18-Mar-98	50.0625	Cash out of Options:			40,561,581
19-Mar-98	45.3750	Book Value of HoldCo Notes (May)			524,430,000
20-Mar-98	46.0000	Premium on HoldCo Notes			76,150,000
23-Mar-98	45.9375	LYONS (from banks)			3,000,000
24-Mar-98	45.5000	LYONS Escrow (from banks)			(6,200,000)
25-Mar-98	45.4375	Senior Credit Facility (Net of Cash proceeds of $95 MM) (from banks)			74,600,000
26-Mar-98	44.3750	Series A Notes (from banks)			85,000,000
27-Mar-98	44.5000	Series B Notes (from banks)			75,000,000
		Senior Notes (from banks)			200,000,000
Average	46.7875	Make Whole on Senior Notes (from banks)			20,300,000
		Foreign Debt (from banks)			76,700,000
		Aggregate Value Of First Step:			$1,989,190,343
		Value of Equity Issued to Minority	$46.7875	5,336,721.0	$249,691,834
		Cash Issued to Minority			60,543,244
		Total Aggregate Value:			$2,299,425,421
		Fees			
		Step 1 Agg. Value	$1,989,190,343	2,000,000,000	0.48%
		Percentage	0.47%	2,299,425,421	0.47%
		Fees Step 1	$9,369,429	3,000,000,000	0.45%

MORGAN STANLEY CONFIDENTIAL 0080329

NOT A CERTIFIED COPY

Client paid - Fee - 5,619,429 - 4/10/98

3,750,000 - unpaid -

965110

BStrong - MNA should receive 3,750,000 from ECMS for unpaid (OK. R. Brat)

Days SOC : Price to Close			Price	Shares	Value
16-Mar-98	50.2500	Value of Equity Issued to Mafco:	$46.7875	14,099,749	$659,692,006
17-Mar-98	50.4375	Cash Issued to Mafco:			159,956,756
18-Mar-98	50.0625	Cash out of Options:			40,561,581
19-Mar-98	45.3750	Book Value of HoldCo Notes (May)			524,430,000
20-Mar-98	46.0000	Premium on HoldCo Notes			76,150,000
23-Mar-98	45.9375	LYONS (from banks)			3,000,000
24-Mar-98	45.5000	LYONS Escrow (from banks)			(6,200,000)
25-Mar-98	45.4375	Senior Credit Facility (Net of Cash proceeds of $95 MM) (from banks)			74,600,000
26-Mar-98	44.3750	Series A Notes (from banks)			85,000,000
27-Mar-98	44.5000	Series B Notes (from banks)			75,000,000
		Senior Notes (from banks)			200,000,000
Average	46.7875	Make Whole on Senior Notes (from banks)			20,300,000
		Foreign Debt (from banks)			76,700,000
		Aggregate Value Of First Step:			$1,989,190,343
		Value of Equity Issued to Minority	$46.7875	5,336,721.0	$249,691,834
		Cash Issued to Minority			60,543,244
		Total Aggregate Value:			$2,299,425,421

Fees			
Step 1 Agg. Value	$1,989,190,343	2,000,000,000	0.48%
Percentage	0.47%	2,299,425,421	0.47%
Fees Style 1	$9,369,429	3,000,000,000	0.45%

MORGAN STANLEY CONFIDENTIAL 00080330

NOT A CERTIFIED COPY

Client paid - Fee - $619,429 - 4/10/98
3,750,000 - unpaid -

L6SL10

1 BStrong - MFA should receive 3,750,000 from ECMS for unpaid (OK. R. Porat)

SUNBEAM

OUT-OF-POCKET EXPENSES

As of March 31, 1998

ACCOUNT	ACCOUNT NUMBER	PROJECT LASER W814-053	CLIENT BUS. DEVLPT. 0726-098	GRAND TOTAL
INTERNAL EXPENSES:				
M&A CLERICAL SERVICES		$2,552.40	$2,877.36	$5,429.76
M&A WORD PROCESSING		36,555.34	14,727.86	51,283.20
LIBRARY SERVICES		--	4,331.00	4,331.00
PRIVATE DINING SERVICE		$249.00	--	249.00
SUB-TOTALS:		$39,356.74	$21,936.22	$61,292.96
DIRECT EXPENSES:				
TRAVEL AIRFARE		$30,010.48	($560.57)	$29,449.91
TRAVEL TAXI		10,536.78	1,502.94	12,039.72
TRAVEL LODGING		4,826.56	875.57	5,702.13
TRAVEL MEALS		703.21	822.51	1,525.72
TRAVEL OTHER		58.25	10.45	68.70
OTHER TRANS.		1,719.24	--	1,719.24
ENT. MEALS		2,837.64	--	2,837.64
ENT. OTHER		27.00	--	27.00
COURIER		368.38	40.41	408.79
OVERTIME		12,285.15	1,452.54	13,737.69
O/T MEALS		--	143.28	143.28
R.R. DONNELLY - PRINTING		7,157.75	2,624.29	9,782.04
POSTAGE		585.00	--	585.00
OTHER SUPPLIES		108.14	--	108.14
TYPESETTING		88.80	--	88.80
MESSENGERS		177.85	--	177.85
BOOKS		48.72	--	48.72
INFO. / DOC. RETR.		189.55	170.49	360.04
EDP TIME SHARE		30,534.78	14,511.08	45,045.86
CONSULTING FEE		450.00	--	450.00
QUOTATION SERV.		470.00	--	470.00
LOCAL TEL. CALL		45.69	2,510.24	2,555.93
LONG DIST. DOM.		1,987.33	--	1,987.33
CALLING CARD		1,516.04	--	1,516.04
OTHER EXPENSES		1,278.03	--	1,278.03
SUB-TOTALS:		$108,007.97	$24,103.23	$132,111.20
TOTALS:		$147,364.71	$46,039.45	$193,404.16

MISCELLANEOUS TELECOMMUNICATIONS, DATA RETRIEVAL, MAIL AND MESSENGERS SERVICES AND PROFESSIONAL SERVICES $38,880.83

NOT A CERTIFIED COPY

017598

MORGAN STANLEY
CONFIDENTIAL
0080331

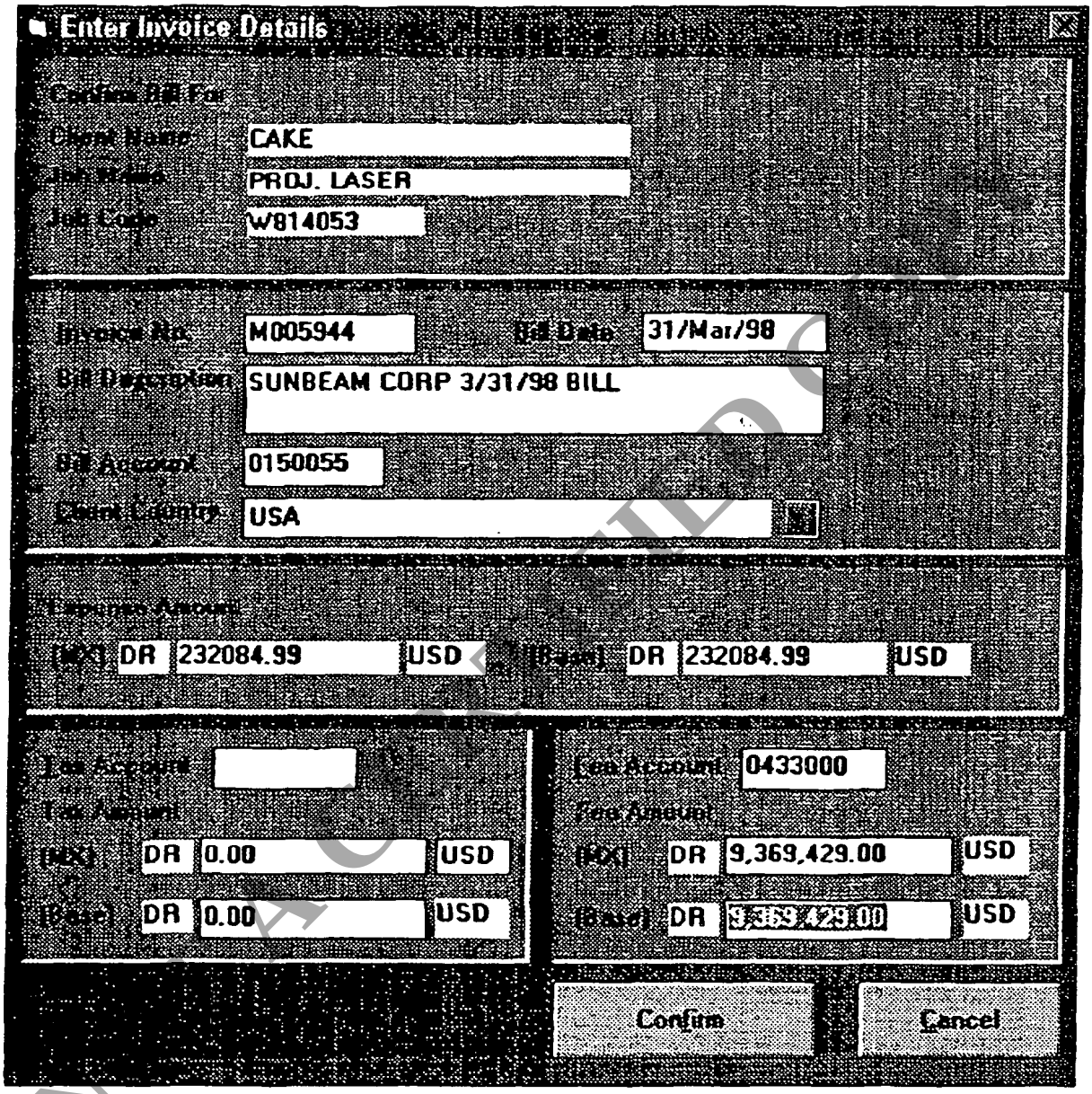
16div-022804

Client	Job	Account Description	Center	Employee Name	Service Date	Total 97/98
W814	053	CARS-CREATIVE SVCS-BANKING	8179		11/28/1997	48.60
W814	053	CARS-CREATIVE SVCS-BANKING	9621		03/28/1998	77.17
W814	053	CARS-CREATIVE SVCS-BANKING	9651		10/28/1997	2,793.90
W814	053	CARS-CREATIVE SVCS-BANKING	9651		11/28/1997	8,165.20
W814	053	CARS-CREATIVE SVCS-BANKING	9651		12/28/1997	3,197.10
W814	053	CARS-CREATIVE SVCS-BANKING	9651		01/28/1998	6,132.54
W814	053	CARS-CREATIVE SVCS-BANKING	9651		02/28/1998	4,279.93
W814	053	CARS-CREATIVE SVCS-BANKING	9651		03/28/1998	8,909.71
W814	053	CARS-CREATIVE SVCS-BANKING	9659		02/28/1998	1,516.83
W814	053	CARS-CREATIVE SVCS-BANKING	9668		03/28/1998	47.05
W814	053	CARS-CREATIVE SVCS-BANKING	9681		01/28/1998	69.09
W814	053	CARS-CREATIVE SVCS-BANKING	9681		03/28/1998	298.94
W814	053	CARS-CREATIVE SVCS-BANKING	9761		03/28/1998	1,021.06
W814	053	CARS-CREATIVE SVCS-BANKING				36,555.34
W814	053	CARS-IBD CLERICAL SERVICE	9651	CHANG,TYRONE	10/28/1997	113.32
W814	053	CARS-IBD CLERICAL SERVICE	9651	CHANG,TYRONE	11/28/1997	379.76
W814	053	CARS-IBD CLERICAL SERVICE	9651	CHANG,TYRONE	12/28/1997	147.84
W814	053	CARS-IBD CLERICAL SERVICE	9651	CHANG,TYRONE	01/28/1998	224.96
W814	053	CARS-IBD CLERICAL SERVICE	9651	CHANG,TYRONE	02/28/1998	377.12
W814	053	CARS-IBD CLERICAL SERVICE	9651	FUCHS,ALEXANDRE J.	12/28/1997	16.20
W814	053	CARS-IBD CLERICAL SERVICE	9651	FUCHS,ALEXANDRE J.	01/28/1998	12.60
W814	053	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	10/28/1997	258.72
W814	053	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	11/28/1997	327.52
W814	053	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	12/28/1997	53.64
W814	053	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	01/28/1998	180.04
W814	053	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	02/28/1998	128.24
W814	053	CARS-IBD CLERICAL SERVICE	9651	YOO,GENE K.	10/28/1997	38.40
W814	053	CARS-IBD CLERICAL SERVICE	9651	YOO,GENE K.	11/28/1997	14.16
W814	053	CARS-IBD CLERICAL SERVICE	9651	YOO,GENE K.	01/28/1998	53.04
W814	053	CARS-IBD CLERICAL SERVICE	9685	YOO,GENE K.	10/28/1997	103.80
W814	053	CARS-IBD CLERICAL SERVICE	9685	YOO,GENE K.	11/28/1997	9.36
W814	053	CARS-IBD CLERICAL SERVICE	9685	YOO,GENE K.	01/28/1998	13.04
W814	053	CARS-IBD CLERICAL SERVICE				2,445.76
W814	053	CARS-PRIVATE DINING SERV	9651	STYNES,JAMES B	02/28/1998	249.00
W814	053	CARS-PRIVATE DINING SERV				249.00
W814	053					39,250.10
W814	055	CARS-IBD CLERICAL SERVICE	9651	RAFII,LILY	12/28/1997	106.64
W814	055	CARS-IBD CLERICAL SERVICE				106.64
W814	055					106.64
Grand						39,356.74

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0080332

017599



MACHINE

017600

Tyree
A. No, I do not remember that.
Q. Do you recall telling Mr. Bornstein that you weren't going to recommend to the company that it modify the recent announcement language in the offering memorandum?
A. No.
Q. Do you recall you became upset with Mr. Bornstein that night?
A. No.
Q. Do you recall using foul language in referring to Mr. Bornstein?
A. No.
Q. Do you recall directing profanity at Mr. Bornstein?
A. Absolutely not.
Q. Is using profanity in a context like this out of character for you?
MR. CLARE: Object to the form of the question.
A. My answer would be using profanity is out of character for me, period.
Q. You don't use profanity in a business context?
MR. CLARE: Same objection.

Tyree
A. No, I said that I try not to use profanity.
Q. Do you sometimes use profanity in talking to other professionals?
A. I may have used profanity before, but I don't recall it right now specifically.
Q. Do you recall using profanity at any point in the evening of the finalization of the offering memorandum at Global Financial Press to refer to any of the Arthur Andersen people who were present that night?
A. Absolutely not.
Q. Excuse me, whether directly at them or in referring to them in speaking to other people.
A. No, I do not.
Q. Do you use profanity when you get angry?
MR. CLARE: Object to the hypothetical, and I just think it's a ridiculous question. But you can answer it.
A. In my lifetime I have used profanity before.
Q. My question was whether you use it

Tyree
when you get angry.
A. You need to be a little more specific.
Q. Well, is it common for you when you get angry, very angry, to use profanity?
MR. CLARE: Objection to form.
A. I wouldn't characterize it as common for me, no.
Q. Is it rare?
A. I would characterize it as out of character for me to use profanity, whether angry or not.
Q. Okay, out of character to me means that person wouldn't do it at all. Is that how you intend to mean it?
A. No, I don't intend to mean it that way.
Q. There are occasions where you use profanity when you get angry, correct?
A. In my life, I have used profanity.
Q. Well, let's go back to 1998.
A. Yes.
Q. Is that a point in your life where you may have used profanity in a business

Tyree
context where you got angry?
A. I don't recall using profanity in a business context in 1998.
Q. Do you recall that when you got upset with Mr. Bornstein, that he said to you that he intended to send Andersen auditors out to every Sunbeam shipping dock at the end of the first quarter of 1998 to make sure that Sunbeam properly cut off its recognition of sales for the first quarter?
MR. CLARE: I object to the premise of your question as inconsistent with the witness's prior testimony.
A. I don't recall Mr. Bornstein being present at the printer.
Q. Is the answer to my question no?
A. No, your premise is not in accordance with my previous testimony. I don't remember him being at the printer so I couldn't have used profanity, or at least I don't recall using profanity.
Q. We're on to something else right now.
A. Okay.

NOT A CERTIFIED COPY

017201

CONT #973

Tyree

Q. The something else we're on to is whether Mr. Bornstein told you on the night of March 19 that he intended to send Andersen audit personnel out to every Sunbeam loading dock at the end of the first quarter to make sure that Sunbeam properly cut off its recognition of sales for the first quarter. Do you remember Mr. Bornstein telling you that?

A. No.

Q. Do you remember Mr. Bornstein telling you that whether it was on March 19 at the printer or on some other occasion that he intended to do that?

A. No, I do not.

Q. Do you remember anyone from Arthur Andersen on the night of March 19 telling you that Anderson intended to have audit personnel on every Sunbeam loading dock at the end of the first quarter?

A. No, the only explicit recollection I have was the confirmation they were comfortable with the information in the offering memorandum.

Tyree

Q. And you've testified earlier that you don't recall who said that, correct?

A. No, I do not.

Q. Do you recall discussing with anyone at the printer that night any concerns about including the language on page 8 of the offering memorandum that summarized Sunbeam's March 19 press release?

MR. CLARE: Objection, asked and answered.

A. No.

Q. Do you recall discussing it with anybody by telephone that evening?

A. I don't recall having a discussion on the telephone in regards to Sunbeam press release that evening.

Q. Mr. Tyree, do you recall during the course of the events leading up to the finalization of the offering memorandum any event happening that evening that caused you any concern relating to any aspect of the offering memorandum?

A. No.

(Exhibit CPH 17, MS375-381, marked

Tyree

for identification, as of this date.)

Q. Let me show you what we've marked as CPH Exhibit number 17, a document that bears Bates number MS 375 through 381. I'd just like you to review the document to let me know whether you recall seeing this previously.

Have you had a chance to look at it?

A. I skimmed it.

Q. Do you recall seeing this document before? It's a letter dated March, 19, 1998 from Arthur Andersen to Morgan Stanley and Company, Inc.

A. I do not.

Q. Do you recall that the evening -- do you recall when during the work on the -- when the work on the offering memorandum was actually concluded on the night of March 19, and what time of the evening?

A. I don't remember exactly when that evening.

Q. Do you recall that it went into the early morning hours of March 20?

Tyree

A. I recall that it went late into the evening, I just don't know if it was morning or --

Q. Do you recall that before you left Global Financial Press that night or early the next morning if it continued to the next morning, you had in your hands a signed copy of the Arthur Andersen comfort letter?

A. I don't recall if I had that with me when I departed Global Financial Press.

Q. Is it possible or do you believe that that was not the case?

A. I don't recall.

Q. Do you recall at some point you did receive a copy of the comfort letter, the final version of the comfort letter, you personally?

A. Again, I don't recall receiving this document.

Q. Ever?

A. Ever.

Q. Let me direct your attention to page 3, and I'd ask you to read paragraph 5B *to yourself.*

NOT A CERTIFIED COPY

017202

Tyree
A. Okay.
Q. That paragraph compares -- the table in that paragraph compares Sunbeam's performance in the first month of 1998 to the first month in 1997, correct?
A. I don't know.
Q. That's what it purports to do, correct?
A. I believe that's what it purports to do.
Q. And what it reports is that in the first month of 1997, Sunbeam had $72,945,000 in net sales, correct?
A. That's what's on the page.
Q. And it reports that in the first month of 1998, Sunbeam's net sales were $28,984,000, correct?
A. Again, yes, that's on the page.
Q. And Sunbeam's net income in the first month of 1997 was 4,786,000, correct?
A. That's on the page.
Q. And that Sunbeam in the first month of 1998 had suffered a loss of 9,510,000 thousand, correct?

Tyree
A. That's what's written here.
Q. When did you first receive any information reflecting that Sunbeam's results in January of 1998 were substantially below Sunbeam's results in January of 1997?
MR. CLARE: Objection to form and foundation.
A. I don't remember when I received that information.
Q. Was there a point where you did receive that information?
A. I believe there was a point where we received information in regards to their historical performance in that month, in the month of January.
Q. January of 1997 or January of 1998?
A. January of 1998.
Q. Did you compare that result to Sunbeam's performance in January of 1997?
A. I don't recall.
Q. Did someone provide you with that comparison?
A. I don't recall. That's not to say it didn't happen, I just don't recall.

Tyree
Q. Let me direct your attention to page 5 of Exhibit 17. Let me ask you to read paragraph C to yourself at the top of the page.
What does paragraph 6C tell you concerning the comparison of Sunbeam's performance in the first two months of 1998 to the first two months in 1997?
A. I really don't have anything to add to what's written on the page.
Q. Well, I want to make sure that I understand your ability to interpret this.
A. Shall I read it?
Q. If you can't explain it.
A. I think the page does a good job of explaining it.
Q. All right, what does it say?
A. Although the company has not provided us with any financial statements as of any date or for any period subsequent to February 1 of 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were 72,018,000 as compared to 143,499,000 for the corresponding period of

Tyree
the preceding year.
Q. The corresponding period of the preceding year would be the first two months of 1997?
A. That's what this says.
Q. So this advised the reader of this document that Sunbeam's net sales in the first two months of 1998 were about half of what they had been in the first two months of 1997, correct?
MR. CLARE: Objection. The document speaks for itself.
A. That's the math on the page.
Q. My interpretation of that is fair, correct?
A. Your interpretation of the math is correct.
Q. Let me direct you to page 4. Paragraph 6B, would you read that to yourself.
This indicates that the primary reason for difference in Sunbeam's performance in the first two months of 97 -- excuse me, the first two months of 1998 to its performance in the first two months of 97 was

NOT A CERTIFIED COPY

01720

Page 257

Tyree
that in 98 Sunbeam had accelerated outdoor grill sales into the fourth quarter of 1997, correct?
MR. CLARE: I object to the form of the question and the characterization of the document, which speaks for itself.
A. I think this does a good job of -- I don't have anything to add to this.
Q. Well, this indicates that the primary reason for the shortfall or the difference in Sunbeam's performance in the first two months of 1998, which involved sales that were about half of the sales that it achieved in 1997 during the first two months was due to the fact that in 1997 in the fourth quarter Sunbeam had accelerated its sales of outdoor grills into the fourth quarter of 1997, correct?
MR. CLARE: Objection to form.
A. Again, I really do think that this text speaks for itself.
Q. When were you first advised that the reason why Sunbeam was doing so poorly in the first quarter of 1998 was that it had

Page 258

Tyree
accelerated the sale of products into the fourth quarter of 1997 so that the numbers in that quarter would look better?
MR. CLARE: Objection to form and no foundation.
A. I don't recall any individual specifically advising me of that fact.
Q. Do you recall learning that fact at some point in time?
A. It was a long time ago. I believe there was something about an early buy program in their publicly available documents.
Q. Well, let's take a look at one publicly available document. Let's take a look at the offering memorandum that you worked on.
A. I wouldn't characterize that as a publicly available document, but --
Q. Okay. Well, let's take a look at that document anyway. Do you have it in front of you, Exhibit number 10.
Well, actually let's use a document that was publicly available, Exhibit number 14, the press release. Do you have that?

Page 259

Tyree
A. Fourteen?
Q. Yeah, it's the two-page press release.
The press release doesn't say that Sunbeam will not achieve Wall Street's expectations of 285 to 295 million in net sales in the first quarter of 1998, does it?
A. This document, I don't see that it makes reference to that.
Q. All right, it doesn't say we are not going to achieve that expected result, correct?
A. I don't see that written on the page here.
Q. All right, it doesn't even say that Sunbeam expects to miss that result, right?
A. Again, I don't see that written here.
Q. It doesn't say that Sunbeam's January sales were of 60 percent below its 1997 January sales, does it?
MR. CLARE: I object to this questioning. The document speaks for itself. It also doesn't say a lot of

Page 260

Tyree
things.
A. It's not on this page.
Q. You knew that, didn't you? You knew that Sunbeam's 1997 sales were -- excuse me, Sunbeam's January, 1998 sales were 60 percent lower than Sunbeam's January, 1997 sales, correct?
MR. CLARE: Objection, no foundation.
A. I think I have made this comment before. I don't recall having that recollection at all.
Q. If you had the Andersen comfort letter as of March 1, you knew that information, correct?
MR. CLARE: Objection, hypothetical.
A. Can you clarify your question, please.
Q. Well, we were just locking at Exhibit number 17 and the information that was contained in it, right?
A. Yes.
Q. It's the March 19, 1998 Andersen

NOT A CERTIFIED COPY

011204

Tyree
comfort letter.
A. Yes.
Q. If you had this document or the information that was contained in this document in your possession on March 19, you knew that Sunbeam's January, 1998 sales were 60 percent lower than Sunbeam's January, 1997 sales, correct?
A. Could I see that document again?
Q. Page 3.
A. What this document says seems to speak for itself again.
Q. Well, you knew looking at what you see, if you had this information in your hands on March 19, you knew that Sunbeam's January, 1998 sales were 60 percent lower than Sunbeam's January, 1997 sales, right?
MR. CLARE: Same objection.
A. I would characterize it differently.
Q. Is the answer to my question yes or no? It's a piece of math, it seems to me.
A. Again, I would characterize my response differently.

Tyree
Q. Well, let's answer my question, and then I'll find out what else you have to say.
If you had these numbers in your hands on March 19, 1998, you knew that Sunbeam's January, 1998 sales were 60 percent lower than its January, 1997 sales, correct?
A. I wouldn't necessarily say that.
Q. You couldn't do that computation?
A. That's not what you asked.
Q. Well, what's incorrect about my statement?
A. What's incorrect about your statement, I don't know if there's anything incorrect about your statement, but you are making reference to Sunbeam. I'm just referencing a page that has some numbers on it. That's all I have in front of me.
Q. You can make a couple of assumptions for me here, okay? Let's assume this is Andersen's comfort letter and it's reporting on Sunbeam's 1998 first quarter results, okay?
A. Okay.
Q. And if you had this information in your hands on March 19, 1998, you would have known that Sunbeam's January, 1998 sales were 60 percent lower than Sunbeam's January, 1997 net sales, correct?
A. Because I haven't done the math, what I would have known had I had this in my hands is that it appears that this document says that net sales for January of 98 were twenty-eight nine eight four versus the similar month, January of 97, seventy-two nine four five.
Q. Substantially less than half, right?
A. It appears that way.
(Recess taken.)

(Begin Videotape 4.)
FURTHER EXAMINATION BY MR. MARKOWSKI:
Q. Mr. Tyree, going back to the statements contained in the press release and the comfort letter, the press release, March 19, 1998 press release, CPH Exhibit 14, does not advise its readers that Sunbeam's net sales in the first two months of 1998 are

Tyree
approximately 50 percent of the net sales that Sunbeam had realized in the first two months of 1997, does it?
MR. CLARE: Same objection as before. The press release speaks for itself.
A. I don't see that language in this document.
Q. The comfort letter advises of that fact, correct?
MR. CLARE: Object to the form of the question.
A. You are referring to this document?
Q. CPH Exhibit 17 at the top of page 5.
A. And your question in regards to this?
Q. The comfort letter advises that Sunbeam's net sales for the first two month of 1998 are approximately 50 percent of Sunbeam's net sales for the first two months of 1997, the top of page 5.
A. I think the language speaks for itself. Really nothing to add.

NOT A CERTIFIED COPY

017205

Page 265

Tyree
Q. And that information advised the reader of the comfort letter that Sunbeam's net sales in the first two months of 1998 were approximately half of what they had been in the first two months of 1997, correct?
MR. CLARE: Same objection.
A. It advises the reader of what's written here.
Q. Well, read it then. Read it into the record again if you don't want to agree with my statement.
A. I didn't draft it. Although the company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998 which were 72,018,000 as compared to 143,499,000 for the corresponding period of the preceding year.
Q. And I'm right that that's a dropoff of about 50 percent in those two months in net sales, correct?
A. That's what the approximate math implies.

Page 266

Tyree
Q. And that statement doesn't find its way into the March 19 press release, correct?
MR. CLARE: Objection, argumentative.
A. That statement from this document is not in this document, Exhibit 14.
Q. In fact the press release doesn't disclose that there has been any problem with Sunbeam's net sales in the first two months of 1998, correct?
MR. CLARE: Objection, that mischaracterizes the document.
A. I think the document CPH 14 speaks for itself.
Q. Is there any statement that you can find in the March 19 press release that indicates that Sunbeam's net sales in the first two months of the quarter are below its 1997 results for those two months?
A. In this exhibit I don't see that language.
Q. It doesn't say anything in the March 19 press release about Sunbeam having problems in its performance in the first

Page 267

Tyree
quarter of 1998 because it had accelerated the sale of products into the fourth quarter of 1997, does it?
MR. CLARE: Object to form.
A. Again, I have nothing -- I don't see anything about that in this document.
Q. And it doesn't say anything in the March 19, 1998 press release about Sunbeam's earnings for the first two months of 1998 being below its earnings for the comparable period in 1997, does it?
A. I don't see any reference to what you said in this document.
Q. Do you know Sunbeam didn't come close to achieving 285 to 295 million in net sales for the first quarter of 1998?
MR. CLARE: Object to the form of the question.
A. I'm sorry, is that a question?
Q. Yes.
A. Can you repeat the question?
Q. Do you know that Sunbeam did not come close to achieving 285 to 295 million in net sales for the first quarter of 1998?

Page 268

Tyree
MR. CLARE: I will make the same objection.
A. Beyond knowing that Sunbeam missed their numbers in that period, I don't have any more specifics to add to that.
Q. Well, they didn't even achieve the first quarter 1997 sales results, did they, in the first quarter of 98?
A. I don't recall exactly what their financial performance was for the quarter five years ago.
Q. You don't recall even in general terms that Sunbeam fell short of achieving the minimum results that the press release assured that Sunbeam would achieve?
MR. CLARE: I object to the characterization of the press release, which speaks for itself. You can answer.
A. Again, I don't recall exactly what the financial performance was of Sunbeam five years ago.
Q. Let me just focus on one aspect of the press release. The press release says net sales expected to exceed 1997 first quarter

NOT A CERTIFIED COPY

017206

Tyree
net sales of 253.4 million. Do you see that phrase?
A. That's on this exhibit.
Q. Do you have a recollection as you sit here today that Sunbeam didn't accomplish that?
A. I don't have a specific recollection as to exactly what they did or did not accomplish in this period.
Q. That's not my question. My question is do you remember that Sunbeam did not achieve net sales in the first quarter of 1998 that exceeded net sales in the first quarter of 1997?
A. I'm sorry, I want to get your question right. Could you repeat that back.
(The record was read.)
THE WITNESS: I have a vague recollection that their quarterly financial performance that we're discussing for 98 was I think below that of the similar period for 1997.
Q. When did you first learn, if we touched on this earlier I apologize, but when

Tyree
did you first learn that Sunbeam's January results in 1998 were so low?
MR. CLARE: Object to the form of the question.
A. If you could be more specific about your question.
Q. Well, January -- we've gone through this a number of times now, but January, 1998 net sales at Sunbeam were significantly below January, 1997 net sales. When did you first become aware of that?
MR. CLARE: I object to the preamble to the question and to the form.
A. I don't remember when I first became aware of that.
Q. Do you recall that you became aware of that at some point before the offering memorandum was finalized?
A. Again, I don't recall the time when I became aware of that.
Q. Do you recall if you became aware of it in February?
A. February of what year?
Q. Ninety-eight.

Tyree
A. I don't recall becoming aware of that in February of 1998.
Q. Do you recall when you first learned that Sunbeam's February net sales were so low?
MR. CLARE: Object to the form of the question.
A. When you say so low, can you clarify?
Q. So far below the performance Sunbeam had achieved in February of 1997.
A. I don't recall when I became aware of that.
Q. Was there some point when someone from Sunbeam reported to you that Sunbeam's performance in the first two months of the quarter were below Sunbeam's business plan?
A. I don't recall a time when someone reported -- from Sunbeam reported to me in regards to their financial performance for January and February of 98.
Q. Let me ask you this. When you did become aware that Sunbeam's performance in January and February of 98 was as poor as it

Tyree
had been, were you surprised by that? Was that inconsistent with things you had been told previously by people at Sunbeam?
MR. CLARE: Objection to form and to the compound question.
A. Can you clarify what you mean by poor?
Q. Well, I don't want to pull out the comfort letter again and go through that exercise. You've seen it enough times. I want you to accept for the moment that those were Sunbeam's net sales for January and February of 1998. At some point did someone at Sunbeam advise you that Sunbeam's performance in the first two months of the quarter was disappointing?
A. And again, I don't recall a time when someone from Sunbeam advised me that their quarterly performance was going to be poor.
Q. Had you been led to believe by people at Sunbeam that Sunbeam's performance in the first two months of 1998 was on target?
A. I don't recall exactly what they

NOT A CERTIFIED COPY

017207

Tyree
led me to believe five years ago.
Q. What I'm trying to understand is whether or not there was a point in time where you had been led to believe one thing by Sunbeam about how things were going in the first quarter and you subsequently learned something that was inconsistent with that. Did that sequence of events occur?
A. Can you just clarify for me when you say that sequence of events.
Q. Where you had been led to believe one thing by Sunbeam about how the first quarter was going and subsequently you learned something that was inconsistent with that.
A. I don't recall a given point in time where that transition occurred.
Q. So you don't recall being told by Sunbeam at some earlier point in time that sales in January and February were fine?
A. I don't recall that, but that doesn't mean it didn't happen.
Q. So it's possible that Sunbeam told you earlier that net sales in January and February of 98 were on target or fine or words

Tyree
to that effect?
A. It is possible.
Q. Do you remember reviewing drafts of the Arthur Andersen audit letter? Excuse me, the Arthur Andersen comfort letter?
A. No.
Q. Do you agree that in connection with the debenture offering that Sunbeam was undertaking in March of 1998 that it was important that Sunbeam report good results in the fourth quarter of 1997?
A. Can you just be a little more specific with your question?
Q. Well, do you remember that Sunbeam was touting the success of the turnaround of the company by Al Dunlap in 1997?
MR. CLARE: Object to the form.
A. I don't have a specific recollection of Al Dunlap touting the turnaround of the company.
Q. Well, that was Sunbeam's story in the first quarter of 1998, wasn't it, that Dunlap had accomplished a major restructuring of the company and that Sunbeam was now

Tyree
positioned for substantial growth on a going forward basis?
A. I wouldn't call that the story.
Q. You don't remember that being Sunbeam's theme in connection with the offering memorandum?
A. I would -- again, I wouldn't characterize it as the story.
Q. Well, maybe -- I don't mean to imply something pejorative in using the term story, but that was the message that Sunbeam was telling people about where the company stood and the investment value of buying Sunbeam stock or the Sunbeam convertible debentures, that Dunlap had restructured the company, that the results in 1997 proved that he had turned the company around and that the company was poised for substantial growth on a going forward basis.
MR. CLARE: Objection to form. Compound.
A. Is that a question?
Q. Yes.
A. My recollection is that there were

Tyree
numerous aspects to communicating information to investors in regards to Sunbeam.
Q. Do you remember that being one of the themes?
A. I remember in the offering memorandum discussion in regards to a restructuring.
Q. And that the restructuring had succeeded, correct?
A. I don't recall that.
Q. And that the company had accomplished substantial improvement in its results in 1997, correct, over 1996 results?
A. I have a vague recollection that there was an improvement in their financial performance.
Q. A substantial improvement, right?
MR. CLARE: Objection to form.
A. I don't recall it being substantial.
Q. Do you recall the company characterizing it in that way?
A. No.
Q. Do you recall the company

NOT A CERTIFIED COPY

007208

Tyree
indicating that it was poised for substantial growth in 1998 over its 1997 results?
A. I just don't remember that.
Q. Did you know at the time you were doing your work on the convertible debenture offering that in early March, Morgan Stanley had provided a letter to Sunbeam advising that it was highly confident that it could arrange the financing that Sunbeam needed to complete the three acquisitions that it was undertaking in the first quarter of 1998?
A. I don't recall any discussion in regards to such a letter.
Q. Did you know that Morgan Stanley had advised Sunbeam that it was highly confident that it could arrange the necessary financing?
A. The term highly confident has a relatively unique meaning in investment banking. Can you clarify if that's your meaning?
Q. That's my meaning.
A. Again, I wasn't aware of any discussions, I don't -- correction, I don't

Tyree
recall any discussions between representatives of Morgan Stanley and Sunbeam in regards to a highly confidence opinion. But again, that's just me. I just don't recall.
Q. My question was a little bit different. Do you recall knowing at the time you were doing your work on the convertible debenture offering that Morgan Stanley had indicated to Sunbeam that Morgan Stanley was highly confident that it could arrange the necessary financing?
A. No.
MR. MARKOWSKI: We can break here for today. As we've indicated, Tom, we're going to need additional time with Mr. Tyree to conclude his deposition. So we're not concluding today, and we will reopen it at a date to be agreed upon.
MR. CLARE: Okay.
(Time noted: 5:05 p.m.)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA
----------x
COLEMAN (PARENT) HOLDINGS, INC.)
Plaintiff,)
vs.)
MORGAN STANLEY & CO, INC.,)
Defendant.)
----------x
I, JOHN TYREE, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of September 15, 2003; that the transcript is a true, complete and correct record of my testimony, except for the corrections, if any, listed on the attached errata sheets.

_____
JOHN TYREE
Signed and subscribed to before me, this day of , 2003.

_____
Notary Public

----------EXHIBITS----------

EXHIBIT NO.	PAGE:
CPH-9, CP026286-026370	128
CPH-10, CP 033169-240	150
CPH 11, SASMF10699-10705	159
CPH 12, CPH12526-27	203
CPH 13, SASMF10808-807	212
CPH 14, Morgan Stanley Conf. 16944-945	215
CPH 15, Sunbeam 1997 10-K	228
CPH-16, SB 18286	231
CPH 17, MS375-381	250

NOT A CERTIFIED COPY

017209

CERTIFICATE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, DAVID HENRY, a Notary Public within and for the State of New York, do hereby certify:

That JOHN TYREE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of September, 2003.

DAVID HENRY

ERRATA

PAGE LINE EMENDATION

NOT A CERTIFIED COPY

017210

Kevin fax 212-761-0539
Alan 212 450-4990
David 212 735-3597

January Consolidated Net Sales Actual	29.0
February Consolidated Net Sales Actual	43.0
March International Net Sales thru 3/15/98(1)	6.9
March International Net Sales Forecast 3/16/98 thru 3/29/98 (1)	39.5
March Domestic Net Sales thru 3/17/98 (2)	22.7
March Domestic Open Orders @ 3/17/98 Net Sales (2)	27.6
	168.7

72m 29. Mark
15 days
15 days

Potential Orders

Home Depot	14.8
Menard's	11.7
WalMart	9.4
Sears	7.5
Costco	4.0
Service	3.3
Lowes	2.7
KMart	2.5
PHD	2.3
Hills	2.3
QVC	2.2
Caldor	2.1
M-Bloc	2.0
Target	1.7
Ward's	1.4
Scotty's	1.1
Rose's	0.8
Bradlees	0.8
AAFES	0.7
Ames	0.7
Pergament	0.6
Amer Drug	0.5
BJ's	0.5
Other	10.4
	86.0

Sears down

86.0

Estimate	254.7	0.5%
Low	267.0	5.3%
High	293.0	15.6%
Plan Q1'99	253.5	

% multiply

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

2365
EXHIBIT NO.
MAG WISE

DEPOSITION
EXHIBIT
Cpt 16

CONFIDENTIAL

IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF HEATHER M. STACK

New York, New York

Wednesday, May 25, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 160895

NOT A CERTIFIED COPY

017214

May 25, 2004
9:50 a.m.

Videotaped Deposition of HEATHER M. STACK, held at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York, pursuant to Notice, before Wendy D. Boskind, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for Coleman (Parent) Holdings Inc., MacAndrews & Forbes, and the witness
One IBM Plaza
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Morgan Stanley and the Witness
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

DAVIS POLK & WARDWELL
Attorneys for the Witness in her individual capacity
450 Lexington Avenue
New York, N.Y. 10017
BY: ROBERT F. WISE, ESQ.

APPEARANCES: (Cont'd)

ALSO PRESENT: Mark Granderson, The Legal Video Specialist

THE LEGAL VIDEO SPECIALIST: This is tape number one of the videotaped deposition of Heather Stack, in the matter Coleman Holdings, Inc. versus Morgan Stanley, Index Number CA 03-5045 AI, Morgan Stanley Senior Funding, Inc. versus MacAndrews & Forbes Holdings, Inc., Index Number CA 03-5165 AI. This matter is being held In the Fifteenth Judicial Court In and For Palm Beach County, Florida.

This deposition is being held at Davis Polk, at 450 Lexington Avenue, New York, New York, on Tuesday, May 25th, 2004, and the time is 9:50 a.m. My name is Mark Granderson, with Esquire Deposition Services, and I am the legal video specialist. The court reporter is Wendy Boskind, also in association with Esquire Deposition Services.

Will counsel please introduce themselves.

NOT A CERTIFIED COPY

01715

Page 6

MR. BRODY: Good morning. Michael Brody, for Coleman (Parent) Holdings and MacAndrews & Forbes Holdings, Inc.

MR. CLARE: Good morning. Thomas Clare, Kirkland & Ellis LLP, here for Morgan Stanley & Company, Morgan Stanley Senior Funding, and also appearing on behalf of the witness, Heather Stack.

MR. WISE: I am Bob Wise, of Davis Polk & Wardwell, representing Ms. Stack in her individual capacity.

THE LEGAL VIDEO SPECIALIST: Will the court reporter please swear in the witness.

H E A T H E R M. S T A C K , business address at Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004, having been first duly sworn by the Notary Public, (Wendy D. Boskind), was examined and testified as follows:

Page 7

Stack

EXAMINATION BY
MR. BRODY:

Q. Good morning, Ms. Stack.
Will you please state your name and spell your last name for the court reporter?

A. Heather Stack, S-T-A-C-K.

Q. Ms. Stack, have you gone by any other names?

A. No.

Q. I understand you are a practicing attorney?

A. Yes.

Q. Does your practice involve the litigation of cases?

A. No.

Q. Have you ever participated in a deposition, like we are doing today, before?

A. No.

Q. Well, I assume your counsel told you about it, but during this session I will be asking questions, and it's your responsibility to answer them to the best

Page 8

Stack

of your ability. If at any time you don't understand my questions, let me know and I will try to clarify them. If you need to take a break, also let us know and we will find a convenient time to do that. And for the benefit of the court reporter, (indicating the court reporter), you and I have to try hard not to step on each other's questions and answers. So I will try not to interrupt you and you try not to interrupt me.
Are those all acceptable?

A. Yes.

Q. Thank you. I take it you have never been deposed before?

A. No, I haven't.

Q. Have you ever provided any testimony under oath in any context?

A. Actually, when I was 12 years old I did once, (smiling). It's been a long time.

Q. I take it it did not involve Morgan Stanley, Davis Polk, or the practice of law.

Page 9

Stack

A. No.
(Laughter.)

Q. Well, then, I won't ask you about it. I once had a witness who was asked to explain that, and he explained how he found a dead body in the woods, and the deposition got off to a bad start. Okay, we won't go there.
Ms. Stack, have you provided any documents to your attorneys in connection with this case?

A. No, I haven't.

Q. I take it you are no longer with Davis Polk?

A. No.

Q. At the time you left Davis Polk, did you take any or retain any documents relating to your employment there?

A. I may have kept some closing sets from some transactions that I worked on, but....

Q. Do you recall retaining any documents relating to Davis Polk's representation of Morgan Stanley in

NOT A CERTIFIED COPY

011216

Stack

connection with the Sunbeam transactions?
A. No.
Q. Do you remember retaining any documents relating to how to conduct due diligence or how to conduct -- how a lawyer is to conduct an offering?
A. Um -- I may have kept some training materials like that.
Q. Training materials from Davis Polk?
A. Yes, yes.
Q. So we don't get bogged down in abbreviations, I represent Coleman (Parent) Holdings.
Are you familiar with that company?
A. Sure, yeah.
Q. If I were to refer to them as "CPH", would that be acceptable?
A. That's fine.
Q. I also represent MacAndrews & Forbes Holdings, Inc. If I refer to them as "MAFCO", would that be an understandable abbreviation?

Stack

A. Sure.
Q. Ms. Stack, you are represented by both these counsel today?
A. Yes.
Q. When did you first retain Mr. Clare as one of your counsel?
A. Yesterday.
Q. Who is paying for Mr. Clare's services on your behalf today?
MR. CLARE: Objection, calls for speculation.
You can answer.
THE WITNESS: Oh, okay, yeah.
A. Actually, I assume Morgan Stanley is but I don't know the answer to that.
Q. You are not?
A. No, I am not, sorry, I am not.
Q. And Mr. Wise is here also on your behalf?
A. Yes.
Q. And he is with your former law firm?
A. Yes.

Stack

Q. Are you paying for his services?
A. No, I am not.
Q. When did you retain, to your knowledge, Mr. Wise in connection with this deposition?
A. Um -- a few months ago, I was contacted by Mr. Wise to tell me that this may happen and, so, around that time.
Q. And since that time you have been working with him.
A. Yes.
Q. Have you spoken with any other lawyers in Mr. Clare's firm, Kirkland & Ellis, about this case?
A. I don't think so.
We had a call, a few months ago, where there were -- where Mr. Clare was on, and Mr. Wise was on and I was on, and there may have been other lawyers on the phone, but I don't remember.
Q. What was the subject matter of that call?
A. We discussed what I remembered from this situation.

Stack

Q. Do you remember what Mr. Clare or Mr. Wise asked you?
MR. WISE: I am going to object to that. I think the substance of the conversation goes to a conversation that we would claim is privileged under a joint-interest privilege, since Davis Polk at the time represented Morgan Stanley, I understand Mr. Clare represents Morgan Stanley, so we would object to the substance of the conversation.
MR. CLARE: Morgan Stanley joins in that objection.
MR. BRODY: Is that an instruction?
MR. WISE: Yes.
MR. BRODY: Just so we can make this move along, I don't have to ask her if she's going to follow your instruction in each instance?
MR. WISE: You can ask her, but I think --
A. I am going to follow.

NOT A CERTIFIED COPY

011717

Stack

MR. WISE: -- she's going to follow each instruction.

MR. BRODY: And that dispenses with the need to keep asking that litany?

MR. WISE: That's correct.

Q. The call that you said was a few months ago, about how long did it take?

A. Maybe 25 minutes, 30 minutes.

Q. Before that call, did you review any materials, any documents, to refresh your recollection?

A. No.

Q. After that call, did you review any documents about this case that refreshed your recollection?

A. Not until yesterday, when I saw a few documents.

Q. We will get to that in a moment. Aside from that call with Mr. Clare and others, a few months ago, until yesterday, did you have any other communications with Mr. Clare or attorneys in his office?

Stack

A. No.

Q. You may have answered this, but was it your conversation with Mr. Wise a few months ago that you learned that your deposition was being sought in this case?

A. I think we thought that we might need to -- I might need to give a deposition, so it was sort of the first time I heard of it, and I guess then maybe a month ago I heard that it was -- that you-all were seeking to do the deposition.

Q. Prior to the first conversation a few months ago with Mr. Wise, were you aware of this lawsuit between Coleman (Parent) and Morgan Stanley?

A. I wasn't aware of this specific lawsuit. I knew there had been issues with Sunbeam and had read things in the newspaper about it.

Q. In the prior Sunbeam litigation, were you ever interviewed or asked for information about your work on the matter?

A. No, hmm-mm.

Q. Aside from contacts with

Stack

Mr. Clare and Mr. Wise, have you had any contacts with attorneys for Morgan Stanley who may work in-house for Morgan Stanley?

A. Actually, I think that there was one guy on the call that we had a few months back, and I don't remember his name, Jim something.

Q. Mr. Doyle?

A. Yes, that's the right name.

Q. Aside from that conversation with Mr. Doyle, have you had any other communications with in-house Morgan Stanley lawyers?

A. No.

Q. Ms. Stack, what did you do to prepare for today's deposition?

A. I came here yesterday afternoon and (indicating) met with Mr. Clare and Mr. Wise, and we talked a little bit about what today would be like, and I looked at a few documents relating to the transaction.

Q. The meeting was here at Davis Polk?

Stack

A. Yes.

Q. How long did it take for the meeting to end?

A. About three hours, I think.

Q. Do you know of anyone who participated in person, besides Mr. Clare and Mr. Wise?

A. Billy Frendrich, who is an associate here, was also there.

Q. Is that Mr. or Ms. Frendrich?

A. Mr.

Q. Do you know if Mr. Frendrich had any involvement in the underlying transaction?

A. No, he did not.

Q. During that conversation yesterday, did others participate by telephone?

A. No.

Q. I believe you testified earlier that you reviewed some documents yesterday?

A. Yes.

Q. Did you review any documents

NOT A CERTIFIED COPY

017218

Stack

that refreshed your recollection about events in this matter?

A. Yeah, a couple of them. A few of them I looked at and probably had looked at in the past, but didn't really remember them.

Q. Which documents, if any, refreshed your recollection?

A. There was one sheet of paper that had a list of sales numbers on it for Sunbeam for I think the first part of the first quarter of I guess 1998, and when I saw that I remembered that it had -- we had looked at that as a part of a series of conference calls to discuss Coleman -- or, I'm sorry, Sunbeam's numbers for that quarter.

Q. Any other documents that you remember that refreshed your recollection?

A. You know, some of the others looked familiar but nothing specific came to mind.

Q. Okay. Aside from the documents that you reviewed in the meeting

Stack

yesterday, have you reviewed any other documents in preparation for this session?

A. No.

Q. And have you discussed the upcoming deposition with anyone else, other than Mr. Wise and Mr. Clare?

A. No, other than the fact that I was going to be out of work today.

Q. I understand.

A. Yeah.

Q. In connection with your preparation, did you review any transcripts of prior depositions?

A. No.

Q. Are you aware of any testimony given by other witnesses that has been described to you?

A. Um -- yeah, a few bits and pieces here and there.

Q. Any that come to mind?

A. Um -- I know there is some dispute as to what took place at the printer one night and that one of the accountants has said that there was an

Stack

argument at the printer surrounding something that they said.

Q. Anything else that was related to you from prior testimony?

A. Nothing really specific comes to mind.

I think others have been asked about the same thing and heard bits and pieces of their responses.

Q. Are you aware what any of the Morgan Stanley witnesses have testified about that evening at the printer?

A. Actually, nothing specific.

Q. When did you leave Davis Polk?

A. August of 2000.

Q. Since August of 2000, have you spoken with any people at Morgan Stanley about -- aside from Mr. Clare, as counsel, about the Sunbeam transaction?

A. No.

Q. And since August of 2000, have you spoken with anyone at Davis Polk, again, aside from Mr. Wise, about the Sunbeam transaction?

Stack

A. No. I may have mentioned to Alan Dean that I had got a call on Sunbeam, because he was the partner on the transaction, and I work with him from time to time, but other than that no.

Q. You continue to work with Mr. Dean?

A. Yeah, once in a while he represents -- I currently work at Goldman Sachs, and he has served as underwriter's counsel on other transactions that I have worked on there.

Q. In your current position at Goldman Sachs, do you have responsibility for retaining outside counsel?

A. Sometimes I do sort of the task of making the call to outside counsel, and sometimes I give suggestions on who to hire for outside counsel, but I wouldn't say I have responsibility for it.

Q. Have you ever suggested Mr. Dean or others at Davis Polk to assist Goldman Sachs in transactions?

A. Actually, no.

NOT A CERTIFIED COPY

017219

Stack
(Laughter.)
THE WITNESS: I'm sorry.
MR. WISE: You put her on the spot.
Q. Okay. Aside from your communications with Mr. Dean from time to time on transactions, have you remained in contact with other lawyers at Davis Polk that worked on the Sunbeam deal?
A. No. I have actually -- also, Jim Lurie, who was also on the Sunbeam transaction, is at another firm now, and I have been on the opposite side of transactions from him, so I have had to negotiate against him from time to time, but otherwise no.
Q. And you have not discussed the Sunbeam transaction with Mr. Lurie?
A. No.
Q. After yesterday's meeting, did you take with you or retain any documents that you were shown?
A. No. There may have been a copy of a protective order.

Stack
Q. Did you sign that protective order?
A. I did.
Q. Now, before we get into the specifics of your work on the Sunbeam transaction, I would like to address your background a little.
Where did you go to college?
A. Duke University.
Q. And when did you receive a degree from Duke?
A. 1994.
Q. In what area?
A. Political science and German.
Q. After you graduated from Duke, did you go the next year to law school?
A. I did.
Q. And where did you attend law school?
A. Duke.
Q. And when did you graduate?
A. 1997.
Q. At Duke in law school, did you have any particular area of study that you

Stack
concentrated?
A. No. I took a variety of courses.
Q. I understand.
A. Mm-hmm.
Q. After you graduated from Duke with your law degree, were you first employed in the practice of law at Davis Polk?
A. Yes.
Q. And you were at Davis Polk from sometime in 1997?
A. Yeah, I think it was the end of September of 1997 I started.
Q. Until August of 2000.
A. Yes. And I also was a summer associate at Davis Polk, after my second year.
Q. So that would be the summer of '96?
A. Yes.
Q. Throughout that three-year tenure at Davis Polk, you were an associate?

Stack
A. Yes.
Q. I am not sure how Davis Polk organizes its practice, were you assigned to a particular area?
MR. WISE: Sometimes we are not sure how we organize our practice.
MR. BRODY: Badly, I think is the answer.
A. At the time, I was in the corporate department, and then I spent one year in the capital markets and securities group, one year in the mergers and acquisitions group, and then the third year I came back to the securities and capital markets group.
Q. So are the capital market and securities group and the M&A group parts of the corporate department?
A. Yeah, they are all under the corporate department.
They are two separate groups within the corporate department, and there is a third group, that's the credit department I think.

NOT A CERTIFIED COPY

017220

Stack

Q. You didn't spend time in that group.

A. No.

Q. Using September '97 as your approximate start date, you started in the capital markets group?

A. Yes.

Q. Approximately how long did you remain in that until you rotated to the M&A group?

A. About a year.

Q. So roughly the fall of '97 to the fall of '98?

A. Right.

Q. And then how long were you in the M&A group?

A. Again, about a year.

Q. That would be approximately the fall of '99?

A. Yeah.

Q. And then back in the capital markets group?

A. Yes.

Q. Why did you make those changes?

Stack

A. There was a rotation system, as a junior associate, so I chose two different groups in the corporate department to rotate through and then decided to permanently assign to the capital markets security group after the second year.

Q. When you were in the M&A group, so beginning in the fall of '98 --

A. Mm-hmm.

Q. -- did you do any work for Morgan Stanley?

A. I don't remember anything specifically.

It's certainly possible, but I don't remember anything specific.

Q. Okay. What is your current position?

A. I am vice president and assistant general counsel at Goldman Sachs & Co.

Q. Within Goldman Sachs, is there a particular area that you are assigned to?

A. I cover the investment banking

Stack

division and work on securities and capital markets transactions as well as limited involvement with M&A transactions, working on engagement letters and confidentiality agreements with clients.

Q. Within the securities and capital markets work in the investment banking division, what are your duties and responsibilities at Goldman Sachs?

A. I am sort of a -- the in-house lawyer, someone in my group is staff to each underwriting transaction that comes through the firm, and we serve as sort of supervisor liaison to outside counsel, consulting on certain issues of, you know, significance and reputational issues and policy issues relating to Goldman Sachs as well as reviewing certain documents in each transaction, like the underwriting agreement, the opinions, comfort letters, and any other documents that pertain specifically to our underwriting obligations.

Q. In connection with the work that

Stack

you do, are you always counsel to Goldman Sachs, as opposed to its clients?

A. Yes, yes.

Q. In connection with the position you are now in, do you consult on disclosure issues?

A. Yes.

Q. I assume some of that is in conjunction with outside counsel.

A. It's almost always in conjunction with outside counsel.

Q. Goldman Sachs is a competitor of Morgan Stanley's?

A. Yes.

Q. Do you currently have business dealings with Morgan Stanley?

A. We are often co-underwriters on the same transaction and, so, once in a while I will have to talk to an in-house lawyer at Morgan Stanley and often on those transactions outside counsel is representing both of us as part of the underwriting syndicate.

Q. Ms. Stack, I would like to focus

NOT A CERTIFIED COPY

017221

Stack

on the work you did at Davis Polk. I assume it's primarily the work in that first year you were in the capital markets securities area. In that '97 and '98 time frame, did you work on Morgan Stanley engagements other than the Sunbeam transaction?

A. Yes.

Q. Approximately how many?

A. Maybe three or four.

That's really a guess, it's hard to remember. There have been a lot of transactions.

Q. Aside from the Sunbeam transaction, do any come to mind by name?

A. There is one that I worked on, just prior to the Sunbeam transaction, which was an IPO for a company called Unicapital.

Q. Unit Capital?

A. Unicapital, U-N-I-C-A-P-I-T-A-L, all one word.

Q. And Morgan Stanley was the underwriter?

Stack

A. They were.

I don't --

Q. Any others that you remember?

A. I don't remember any others by name.

Q. In any of the other transactions that you worked on, for Morgan Stanley, did you work with the same Morgan Stanley bankers that worked on the Sunbeam deal?

A. I don't think so. The teams that come to mind on the other transactions are not the same as the folks from Sunbeam.

Q. Now, the transactions that you worked on for Morgan Stanley during this time period, did they all close?

A. The one I mentioned did.

Q. That's Unicapital?

A. Yeah, Unicapital did.

I don't remember if they closed or not.

Q. Do you remember any that did not close, any come to mind?

A. No, none come to mind that did not close, but it wouldn't be unusual to have something not close.

Stack

Q. I understand.

During this time frame, the '97 and '98 time frame, was Morgan Stanley a major client of Davis Polk?

A. Yes.

Q. Do you have an understanding as to how much legal work Davis Polk provided for Morgan Stanley during that time frame?

A. Certainly in the securities and capital markets area, we represented Morgan Stanley quite often as -- when they were underwriting transactions. I don't really have a sense as to how that relates to, you know, any other parts of the firm or to Morgan Stanley as business generally.

Q. I understand.

Do you have an understanding that Davis Polk was a counsel of choice for Morgan Stanley?

A. Yeah, I thought that they were.

Q. At the time, in '97 and '98, do you have any understanding as to how much Davis Polk was billing Morgan Stanley?

Stack

A. I have no idea how much they were billing.

Q. Do you know what Davis Polk's fee was on this particular engagement?

A. Actually, I don't.

Q. Okay.

A. I don't remember.

Q. One more billing question. At the time, in the '97/'98 time frame, do you know if Davis Polk typically billed Morgan Stanley on an hourly basis or on a deal charge?

A. I believe it was an hourly basis, although, you know, there may have been arrangements by partners and other staff that I didn't know about.

Q. I understand.

Now, focusing on the work on the Sunbeam transaction, do you remember when your work on Sunbeam started?

A. Just from looking at documents yesterday, it seems like, you know,

NOT A CERTIFIED COPY

017222

Stack
February of I guess '98.
Q. And do you know when it ended?
A. I think the transaction closed the end of March.
Q. Let me ask it a little differently.
Did you personally work on any matters relating to Sunbeam, that is, Morgan Stanley's work for Sunbeam, after the deal closed?
A. Not that I recall.
Q. Okay. Well, focusing on the -- sometime in February to the end of March time period, can you estimate what percentage of your time was spent on the Sunbeam transaction?
A. It was certainly a significant percentage of my time. And it was probably the transaction that I was most involved in at that time. I can't remember what else I was working on, but it would be unusual for me to only have been working on one thing, so there was probably something else, so, but it would

Stack
be a majority, certainly, of my time.
Q. So more than 50 percent of your time.
A. Yes.
Q. And I know this is going back into the past, but do you recall how many hours you spent on the deal?
A. I don't.
I know there were many and many into the night, but no, I don't, I don't remember.
Q. Okay. All right. At Davis Polk, I take it there were some transactions where the firm charged a certain amount, flat rate, for the deal; is that correct?
A. Yes, there were some repeat issuers that I did work for where there would be a flat rate for each transaction --
Q. Okay.
A. -- because they would happen often.
Q. On those transactions in which

Stack
there was a flat rate, did you, nonetheless, keep track of the time you spent?
A. Yes, I did.
Q. Did you keep track of it any differently than if it were a charge-by-the-hour matter?
A. No.
Q. I mean -- by that I mean, less specificity in what you wrote down, that sort of thing.
A. No, I often didn't -- I guess when I first started doing those transactions that I am thinking of I didn't even know it was a flat rate, so no, exactly the same.
Q. Okay. Now, during that first year of your tenure at the law firm, when you were in the securities group, can you estimate what percentage of your time was spent on Morgan Stanley matters?
A. Um -- I did a significant amount of work for them.
I mean, I could guess around 50

Stack
percent, but it certainly could be more or less.
Q. I understand.
Was there an attorney at Davis Polk that had overall responsibility for the relationship with Morgan Stanley?
A. I don't know. I don't know.
Q. You don't know if there was a particular person that received the fee credit or was the main relationship person for Davis Polk with Morgan Stanley?
A. I actually don't know. As a first-year, those were things I wasn't very focused on.
Q. I understand. Okay.
I am going to focus, primarily, on the February/March time period that you were working on this transaction.
A. Mm-hmm.
Q. And I believe you testified your work on the Sunbeam matter began in February of 1998?
A. I think so, yes.
Q. Do you remember what was the

NOT A CERTIFIED COPY

0117223

Stack
beginning of your involvement, what you were asked to do at the beginning?
A. You know, I don't have a lot of specific recollections.
I know that I did a lot of documentary due diligence. So I read many documents. I think a lot of it was done at the offices of Skadden, Skadden, Arps, but I don't remember specifically, you know, from the first few days exactly what we did.
Q. Okay. And the matter continued through the closing, your involvement continued --
A. Yes.
Q. -- through the closing.
A. Yes.
Q. You have described some of this but what were your job responsibilities on the deal?
A. Well, certainly, the due diligence, and I, you know, remember going through documents -- I don't remember a lot of specifics as to exactly what I did.

Stack
I can say that generally, as a first-year associate, I would review documents for due diligence and participate in drafting sessions for the offering memorandum and handle sort of logistical items, like closing and going to the printer, and that sort of thing, but I don't remember a lot of specifics from this particular transaction.
Q. Did you have any involvement in the road-show?
A. Um -- I certainly didn't attend any road-show meetings, and I don't remember reviewing any road-show presentations.
Q. Did you travel for this matter? Did you go to meetings or sessions outside of New York City?
A. I don't remember leaving New York for this one.
Q. For example, did you ever go to Sunbeam's offices in Florida?
A. Not that I remember.
Q. Fair enough.

Stack
Now, you said you did documentary due diligence.
A. Mm-hmm.
Q. Explain to us what that means.
A. Boxes of documents in a room and, you know, reading through material contracts to make sure that any of the -- you know, that the transaction we were about to undertake wouldn't somehow affect the validity of the contract or call anything into question, reading board minutes of the company, you know, to make sure that we had all the material information we needed in order to disclose it in the offering memorandum, just reviewing any other sort of general -- you know, I think we asked -- we would ask for a list of documents relating to the business.
Q. And, when you refer to "the business", are you referring to Sunbeam?
A. Yes, yes. And I -- you know.
Q. Did you do any due diligence of Coleman?

Stack
A. I think so, because I know they were being acquired and, so, there was information about them in the offering memorandum, so it was part of the overall documentary due diligence that I did, though I don't really remember anything specific about it.
Q. Do you know where you did that document review?
A. I don't, I don't remember where.
Q. Do you remember doing any due diligence of the other acquisition companies, First Alert or Signature Brands?
A. Those names definitely sound familiar. We would have asked to see all those. I don't remember anything specific.
Q. Fair enough.
Aside from the work you have described -- the documentary due diligence, participation in drafting sessions, the logistical work you did -- do you remember anything else you did on

NOT A CERTIFIED COPY

011724

Stack
the transaction?
A. I helped in drafting certain documents, I think the registration rights agreement, probably helped in turning drafts of the underwriting agreement. I don't remember anything specific. I can tell you what I think I probably would have done, but I don't specifically remember.
Q. Okay. Well, I appreciate that.
The work that you did on the transaction, was it limited to the financing of the transaction or did you also get involved in the negotiation of the -- or consummation of the mergers between Morgan Stanley -- excuse me, between Sunbeam and Coleman and the other companies?
A. It was limited to the financing transaction.
Q. Okay. At the time you worked on this deal, you were within your first year of beginning legal practice?
A. Yes.

Stack
Q. Did you report to people in the law firm who were more senior than you?
A. Yes.
Q. Who did you report to on this transaction?
A. On this transaction, Jim Lurie and Alan Dean.
Q. At the time, was Mr. Lurie an associate or a partner?
A. He was an associate. He may have been a sort of senior counsel level associate.
Q. And Mr. Dean was a partner?
A. Yes.
Q. Did you report to anyone else, besides those two individuals?
A. Not that I remember, those were the only two.
Q. Did anyone, to your knowledge, report to you?
A. We may have had a paralegal, but I was generally the bottom of the chain of lawyers, (laughing).
Q. Okay. Now, when you were at

Stack
Davis Polk, did you understand that there was a policy on keeping or not keeping documents relating to deals that you worked on?
A. Um -- there was certainly guidance given by various partners, and we certainly kept all the final deal documents. I think, generally, drafts of things were not retained.
Q. When you said there was "guidance given", what do you mean by that?
A. I actually don't remember specifically if we were sort of given that guidance formally or not, but often, at the end of transactions, I would ask the partner involved, you know, which documents we should retain and which we should give back or, you know, destroy.
Q. Do you remember having that conversation about this transaction?
A. I don't specifically remember talking about that here.
Q. Now, at the time of this

Stack
transaction, the spring of 1998, do you know if you used e-mail?
A. Yes, yes.
Q. Do you know if you used it to communicate with people outside of Davis Polk concerning the transaction?
A. I would think that we did, although I think at that time we were still doing sort of hard copies of documents and hand-delivering them every where.
It's hard to remember when that exact transition was, but there came a point when everything was done by e-mail, and I don't think it was yet on this transaction, but I can't say for sure.
Q. Okay. Do you know what happened to e-mails relating to this case? Do you know -- this matter, do you know if they were saved or archived?
A. I don't know.
Q. Okay. Your involvement in the Sunbeam transaction was in connection with the financing; is that correct?

NOT A CERTIFIED COPY

017225

Stack

A. Yes.
Q. Do you know if others at Davis Polk did work on behalf of Morgan Stanley on this transaction relating to the merger agreement?
A. Not that I am aware of.
Q. Do you know if others at Davis Polk did work for Morgan Stanley in this matter relating to anything else for Sunbeam?
A. I think there was a bank loan at the same time that I did not work on, but I think there were others at Morgan Stanley -- I'm sorry, at Davis Polk who were working on that.
Q. Do you know who worked on that?
A. I think the associate was Bill Megevick.
Q. Did Mr. Megevick also report to Mr. Lurie and Mr. Dean?
A. No, I think there was another partner on it. And, actually, just from looking through a few things yesterday, I think Peter Levin was the partner.

Stack

Q. Did you do any work on the bank loan?
A. No.
Q. Were Mr. Megevick and Mr. Levin in the corporate and securities -- excuse me, the capital markets and securities area, as you were?
A. No, I think they were both in sort of that credit department, both still in the corporate department.
Q. I understand.
Do you know if anyone from Davis Polk was involved in Morgan Stanley's efforts to try to find a buyer for Sunbeam?
A. I don't know. I don't know.
Q. Now, in the work that you did on the Sunbeam transaction, did you ever meet Al Dunlap?
A. No.
Q. Who from the client -- excuse me, who from Sunbeam did you meet, if anyone?
A. You know, I don't remember

Stack

meeting anyone specifically in person. I remember talking to Janet Kelley, I guess, a few times, following up on due diligence items, and a few other names ring a bell, but I don't remember specifically who I met or....
Q. Did you ever speak with Mr. Uzzi?
A. Yeah, that name sounds familiar. I believe that he was on at least one conference call that I remember.
Q. Did you speak with Ms. MacDonald, Deborah MacDonald?
A. That name doesn't sound familiar.
Q. Mr. Kersh, Russell Kersh?
A. That name sounds familiar. He may have been on the conference calls I am thinking of, but....
Q. Mr. Goudis, G-O-U-D-I-S?
A. Also, sounds familiar.
I don't have any specific recollection of sort of meeting these people but, you know, the names -- I

Stack

recognize the names.
Q. I understand.
Now, when you refer to Mr. Uzzi and perhaps Mr. Kersh or Mr. Goudis being on conference calls, do you remember one conference call or more than one conference call?
A. I am certain there were many conference calls that I was on for this, but the one that I specifically remember relates to their first quarter, I guess, sales numbers, and I remember a series of conference calls and I believe that at least Mr. Uzzi was on that call and probably the others.
Q. You said "a series of calls". Were they all in one day?
A. The ones that I remember, yes.
Q. When you were working on this deal, did you have an understanding of Mr. Dunlap's reputation?
A. A little bit, and mostly just from reading about him in the newspapers, and I think he had -- might have had a

NOT A CERTIFIED COPY

011726

Stack

book out.
Q. Did you read Mr. Dunlap's book?
A. I did not.
Q. Were you given a copy?
A. No. I think I saw it in the windows of bookstores, so....
Q. Did you read any of the books about him?
A. No.
Q. Based on what you read or heard, what was your understanding of Mr. Dunlap's reputation?
A. Well, I think he had sort of just turned around another company and was known for sort of cutting the bottom line and firing a lot of people. I think they called him "chain saw Al", from what I remember, and that pretty much sums up his reputation I think.
Q. Did you have an understanding of what he was like to work for?
A. I didn't have any personal understanding, but just from what I read in the newspaper I imagine he would be

Stack

somewhat difficult.
Q. Okay, but you never encountered that.
A. No.
Q. You referred to his prior experience. Are you familiar, that was at a company called Scott Paper?
A. Yeah, I think I have heard about that, I don't remember much specifically about it.
Q. Aside from what you have heard since, when you were working on the transaction, did you do any investigation or due diligence into what had happened at Scott Paper?
A. Not that I recall, not that I recall.
Q. Did you ever hear anyone, in connection with this transaction, question whether Mr. Dunlap's turnaround at Scott Paper was real?
A. Not that I remember.
Q. At the time you were working on this deal, did you keep notes or calendars

Stack

showing the work that you had done?
A. Yes. I mean, I kept time sheets and certainly took notes from time to time in the due diligence investigation.
Q. Did you retain any of those notes when the deal was over?
A. I don't have them now, and I don't remember if I kept any of them.
Q. Okay, and let me refine that question a little.
I am not asking whether you --
A. Mm-hmm.
Q. -- have them in your possession, but at the time when the deal was over, did you keep in the file notes showing the due diligence work that you had done?
MR. WISE: What do you mean "the file"?
Q. Whatever documents were retained by the law firm?
A. I don't remember, I don't remember.
Q. Was it your practice to keep a due diligence file, a file reflecting the

Stack

due diligence work that you had done?
A. I think often I would keep a list of all the documents reviewed. I don't think I generally kept handwritten notes after the transaction was completed, although I don't remember specifically on this one.
Q. And the list of documents that you reviewed, do you know if that was retained by Davis Polk after the deal was over?
A. I don't know.
And I, frankly, don't remember preparing one specifically for this deal, either, so....
Q. I understand.
Now, have you, in connection with your tenure at Davis Polk, through August of 2000, ever been asked to contribute to a calendar or chronology of the events?
A. No.
Q. Have you seen a chronology prepared by Davis Polk of what transpired

NOT A CERTIFIED COPY

1727

Stack

on this deal?
A. I did yesterday, I saw a short chronology.
Q. Prior to yesterday, had you seen it before?
A. No.
Q. Prior to yesterday, were you aware that it even existed?
A. No.
Q. So you weren't, to your recollection, consulted in connection with putting it together?
A. No, I don't think so.
Q. When the transaction was concluded, was there a closing dinner?
A. I don't -- I don't remember going to one. I don't remember going to one. I don't know if they had one or not.
Q. Is it customary that there is one?
A. Probably about 50/50 --
Q. Okay.
A. -- on the deals I have worked on.

Stack

Q. You are aware that the financing that you worked on was, among other things, to help finance an acquisition by Sunbeam of certain interests in Coleman.
A. Mm-hmm, yes.
Q. And I believe, from your prior answers, you testified that you were not involved with negotiating or advising concerning that merger.
A. Right.
Q. In connection with the work that you did on this transaction, did you have any contact with anyone from Coleman?
A. I don't remember anything specific.
Q. Do you remember any contact with anyone from MacAndrews & Forbes or its companies?
A. No, I don't remember anything.
Q. Any contact with the lawyers for MacAndrews & Forbes?
A. Who were the lawyers?
Q. Wachtell.
A. Wachtell -- no, I don't remember

Stack

anything.
Q. Do you recall any contact in connection with this transaction with investment bankers from Credit Suisse First Boston?
A. No, no.
Q. I believe you testified earlier that you had done some due diligence of Coleman, you believed you tracked down some information relating to the offering memorandum. Do you know where you did that work?
A. I don't remember.
Q. Was that work limited to the review of documents or did you talk to individuals?
A. I don't remember.
I wouldn't be surprised if we had due diligence meetings or calls with folks from Coleman and Sunbeam, but I don't remember anything specific.
(Deposition Exhibit 24, chronology prepared by Davis Polk, previously marked for

Stack

identification.)
Q. Ms. Stack, I am going to give you what's previously been marked in a prior deposition as Exhibit 24.
Do you recognize this as the chronology prepared by Davis Polk?
A. Yes, I saw this yesterday, this one.
Q. And it says at the beginning that it was prepared in response to a June 30 subpoena, and the first line recites that it was prepared in August 2000.
At that time, you were still employed at Davis Polk?
A. Yes, I left in I think the middle of August, if I remember.
Q. You don't remember being consulted about the preparation of this document?
A. I don't remember.
Q. And, likewise, prior to yesterday, you have not seen it before?
A. Right.
Q. Did this document, when you

NOT A CERTIFIED COPY

017228

Stack
reviewed it yesterday, refresh your recollection as to certain events or things that took place in this matter?
A. It looked about right. There wasn't anything specific in here that sort of jogged any memories, it's sort of a relatively general --
Q. Okay.
A. -- chronology.
Q. The first entry, at the bottom of the first page, refers to a February 25 call and introductory telephone calls. I take it those were received by people other than you?
A. I don't remember specifically, but I am sure that the first call wouldn't have gone to me.
Q. I understand.
A. So....
Q. Now, using the February 25th entry and the ones that are after, does that help refresh your recollection as to when you became involved in this transaction?

Stack
A. Yeah, I don't really remember specific dates, but seems about right.
Q. Okay. The next entry, the item at the top of the second page for March 2, refers to an organizational call with Skadden Arps.
Do you remember that call?
A. I don't remember that call, although it would have been normal for me to have been on it.
Q. Okay. Well, let me show you a document, Ms. Stack, that may refresh your recollection about it.
MR. BRODY: Oh, this has not been marked. Please mark this as Exhibit 207.
(Deposition Exhibit CPH 207, document which looks like something you would see at the beginning of most transactions, the third page of the exhibit, in the bottom right, it has a production number ending with 16, marked for identification, as of this date.)

Stack
Q. Ms. Stack, the court reporter has given you what's been marked as Exhibit 207. Have you ever seen that before, to your recollection?
A. I don't remember seeing it specifically, but it looks like something you would see at the beginning of most transactions.
Q. Okay. Having now seen this document, does it refresh your recollection whether you actually did participate in an organizational call or not?
A. Actually, it doesn't, I don't remember that specific call.
Q. I'm sorry, you said it does not?
A. It does not.
Q. If you turn to the -- actually, the third page of the exhibit, in the bottom right it has a production number ending with 16.
Are you there?
MR. WISE: (Indicating), talking about this.

Stack
THE WITNESS: Am I on the wrong page?
A. Yes, I was on the wrong page. Got it.
Q. The document has two lists of tasks, one for the zero coupon convertible and the other for the senior credit facility.
You worked on the zero coupon convertible?
A. Yes.
Q. And you did not work on the senior credit.
A. No.
Q. The second item is the size of the offering, 500 million net proceeds.
Do you see that?
A. Mm-hmm.
Q. Do you remember any discussions at any time in this transaction about the size of the offering?
A. I don't remember anything about that.
Q. Do you understand that at some

NOT A CERTIFIED COPY

017229

Stack

point the anticipated size of the offering changed?

A. Yeah. I mean, I saw a copy I think of the final offering memorandum yesterday, and it was much larger, but I don't remember any discussions about it.

Q. Okay, you have no understanding as to how the number increased from 500 to whatever it finished at?

A. I don't.

Q. In the structure of a deal such as this, who decides what the size of the offering is going to be? Is that a decision for the underwriter or a decision for the issuer, a decision for counsel?

A. In a deal like this, it would generally be a decision made between the company and the underwriters and counsel would be consulted, but generally the underwriters and the company would probably make the decision.

Q. And, as you sit here, you don't remember any of those conversations.

A. No.

Stack

Q. If you turn to the next page of the document, the tentative time schedule portion.

Do you see that?

A. Mm-hmm.

Q. You participated in items A and B, due diligence and drafting sessions?

A. Yes, I think so, yeah.

Q. Did you participate in any of the meetings of the boards of directors?

A. No.

Q. Did you participate in any events concerning quarterly earnings announcements?

A. No, no.

Q. Are you aware of whether Sunbeam made a quarterly earnings announcement during this offering?

A. I don't remember it.

I would think that they wouldn't have, just because we were so far into the first quarter, but I don't remember specifically.

Q. I don't necessarily mean an

Stack

announcement about the first quarter but perhaps an announcement about the fourth quarter --

A. Prior year.

Q. -- of '97.

A. I don't.

Q. Fair enough.

The next item refers to ratings agency -- rating agency presentations. Did you do any work on the rating agencies?

A. Not that I remember, no.

Q. The next item is sales force presentation. Do you remember doing any work in connection with the presentation of this deal to Morgan Stanley's sales force?

A. No, and we typically wouldn't be involved in that.

Q. Item G, it refers to institutional investor conference calls. Did you participate in or were you a witness to any such calls?

A. No.

Stack

Q. Between counsel for Sunbeam and counsel for Morgan Stanley, how was division of responsibility made for the drafting of the documents in this transaction?

A. I don't remember specific conversations about this, but typically, in a transaction like this, issuer's counsel, so Sunbeam's counsel, would take primary responsibility for drafting the offering memorandum, and then we would have drafting sessions where the underwriters and underwriters' counsel and the company all participated in it and talked about what it should say. Underwriter's counsel would typically have responsibility for drafting the underwriting agreement, the registration rights agreement, indenture, those sort of -- actually, indenture -- I think the indenture, too -- yeah, documents, governing the underwriting obligations.

Q. Do you have a recollection in this transaction of whether that division

NOT A CERTIFIED COPY

017230

Stack

of responsibility was followed?

A. Um -- I think it generally was.

I remember that we worked on the underwriting agreement and the registration rights agreement. I know that we all participated in drafting sessions. I think Skadden, primarily, did the actual pen-to-paper drafting of those -- of the offering memorandum. I am sure there may have been sections -- there is probably an underwriting section in there that Morgan Stanley or Davis Polk, on Morgan Stanley's behalf, may have drafted or provided.

Q. You can put document 207 aside.

A. Okay.

Q. Ms. Stack, I am going to show you some documents that I think we can make quick work of.

(Deposition Exhibit 140, document with handwriting, previously marked for identification.)

Q. The first document I have given you has previously been marked as Exhibit

Stack

140. Have you seen that document before? And exclude -- I mean prior to yesterday, if you had seen it yesterday.

A. Um -- I do not remember seeing it.

Q. Do you recognize the handwriting on the document as being the handwriting of someone you know?

A. No.

Q. In your work at Davis Polk, were you ever involved -- do you know if your firm was ever involved in reviewing proposed questions and answers for a company to use in communication with the press or with investors?

A. Um -- I don't remember on this transaction.

I, frankly, don't ever really remember looking at questions for the press you said?

Q. The press or institutional investors or analysts, people outside the company.

A. I don't remember ever having

Stack

done this.

Q. Okay.

A. I wouldn't -- it's probably something more the company's counsel would do, and I was usually on the underwriter's side, so....

Q. You can put that document aside.

A. Okay.

(Deposition Exhibit 141, draft document with handwriting, previously marked for identification.)

Q. I show you another draft of the document, that same document, Ms. Stack.

A. Thanks.

Q. And my question for you is similar. Have you ever seen this document before?

A. I don't think so, no.

Q. And, again, do you recognize the handwriting on the document?

A. No.

Q. Okay. Put that one aside, please.

A. Okay.

Stack

Q. I have two more. -- I'm sorry, I may not have explained, for the record, the document I have just given you. It's previously marked as Exhibit 141.

(Deposition Exhibit 142, document with handwriting, previously marked for identification.)

Q. And now I have given you what's been marked as 142.

Do you recognize this as something you have seen before?

A. Not before today, no.

Q. And do you recognize the handwriting?

A. No.

Q. Okay, put Exhibit 142 aside.

(Deposition Exhibit 143, document which has no handwriting, it appears to be a final or near-final version of previous marked documents, previously marked for identification.)

And the last one in the series is Exhibit 143, marked in prior

NOT A CERTIFIED COPY

017231

Stack

depositions. The document has no handwriting, it appears to be a final or near-final version of the other ones I have shown you.

A. Mm-hmm.

Q. Have you ever seen this before?

A. No.

Q. Okay. You can put that aside.

Now, we have -- in some of your prior answers, you have talked about the work that was done in drafting. And I believe you said that Skadden Arps, as the company counsel, was primarily responsible for the offering memorandum?

A. Yes.

Q. And Davis Polk participated in drafting sessions and made suggestions.

A. Yes.

Q. Who on behalf of Davis Polk participated in those drafting sessions?

A. I think generally Alan, Jim, and myself were probably all there. I think Alan and Jim did most of the talking.

Q. Do you remember whether you ever

Stack

spoke up at any of those meetings?

A. I don't remember anything specific.

Q. Do you know if employees of Morgan Stanley ever attended any drafting session?

A. Um -- yeah, I remember that John Tyree was generally around at most meetings that we had. He is the person that I remember most from Morgan Stanley.

Q. Aside from Mr. Tyree, do you remember any other Morgan Stanley individuals attending a drafting session?

A. I don't.

I think there may have been a junior person with him, but I don't remember who, who that was. I don't remember anybody else.

Q. Okay. Let me mention some names, and see if you remember them attending drafting sessions.

Do you remember Mr. Webber, Joshua Webber?

A. I don't remember.

Stack

Q. Tyrone Chang?

A. That name sounds familiar. I can't tell you if he was at any drafting sessions, I don't know.

Q. Andrew Savarie, or Savarie?

A. I don't remember that one.

Q. Aside from Mr. Tyree, do you remember meeting any other Morgan Stanley individuals in connection with this deal?

A. Not that I -- there was -- there was a junior person, I think Shawnee?

Q. Shawnee Boone?

A. Yeah, yeah, and I think she was generally around. I wouldn't have remembered her name but for the fact that I saw it yesterday on a list, I think, but otherwise I don't remember anyone specifically.

Q. Okay. And I take it no one from MacAndrews & Forbes or Coleman attended these sessions.

A. I don't think so.

Q. Ms. Stack, if you look at the chronology that's been marked as Exhibit

Stack

24, there are a number of entries that reference drafting sessions. And I refer you to -- there is a reference on March 12, I believe there are earlier references, March 5th there is a reference to a draft offering memorandum being communicated.

Do you remember --

MR. WISE: March 5th says that Davis Polk transmitted an underwriter-prepared portion of the draft offering memorandum.

MR. BRODY: Thank you.

Q. Do you remember participating in any drafting sessions on any particular dates?

A. No, I don't.

Q. As your counsel pointed out, on March 5, Davis Polk communicated -- transmitted certain underwriter-prepared portions of the draft offering memorandum. Did you have any role in drafting those portions?

A. I don't remember.

NOT A CERTIFIED COPY

017232

Stack

Q. Do you remember any discussions about them?

A. No, I don't remember anything about that.

(Deposition Exhibit CPH 11, March 9, communication from Mr. Tyree, previously marked for identification.)

Q. Ms. Stack, I have given you what has been marked in a prior deposition as CPH Exhibit 11, which is a March 9, communication from Mr. Tyree.

Have you ever seen this before?

A. (Pause.)

I don't remember it. I wouldn't be surprised to know that I had seen it, but I don't remember this.

Q. Well, it's shown as being sent to Mr. Dean, who was the partner in your firm.

A. Mm-hmm.

Q. Do you remember receiving any draft riders from Mr. Tyree?

A. Not specifically, but it

Stack

wouldn't be unusual.

Q. Do you know what involvement Mr. Tyree had in proposing language to the offering memorandum? Mr. Tyree or others at Morgan Stanley.

A. Um -- I don't really remember anything specifically.

I mean, typically, we would all sort of participate in drafting together and the bankers often put together certain pieces of disclosure for everyone's consideration.

Q. Do you remember if Mr. Tyree or others at Morgan Stanley were concerned about particular points in the offering memorandum?

A. I don't remember anything specific.

MR. BRODY: Please mark this as 208.

(Deposition Exhibit CPH 208, document, on the second page there is a distribution list, with a lengthy attachment provided, marked for

Stack

identification, as of this date.)

MR. BRODY: Sorry, counsel, I only have one extra copy of that, but I don't expect to spend a lot of time.

Q. Ms. Stark, I have given you what's been marked as Exhibit 208. And I am just going to ask you some questions primarily about the beginning although, as you see, there is a lengthy attachment provided.

A. Mm-hmm.

Q. If you turn to the second page of the document, there is a distribution list, and you were one of the individuals on the distribution list from Davis Polk; is that correct?

A. Yes.

Q. And you have previously described Mr. Dean, Mr. Levin, Mr. Lurie, Mr. Megevick. I would like to ask you about a couple of the other individuals.

A. Okay.

Q. Who is Po Sit, P-O S-I-T?

Stack

A. He is a tax partner at Davis Polk.

Q. Do you know what Mr. Sit's responsibility was on this transaction?

A. I don't remember specifically, but I think there are certain tax consequences to this sort of security that we had to consult with him on.

Q. Do you remember if he attended any of the drafting sessions?

A. I don't remember.

Q. The next individual I would like to ask you about is Alexander Kwit, K-W-I-T.

Is Mr. Kwit a Davis Polk person?

A. Yeah, he was an associate, I think maybe a year or two senior to me, although I don't remember him being very involved in this transaction.

Q. Do you know if he is still with Davis Polk?

A. I don't know.

Q. Do you remember what involvement he had in the deal, if any?

NOT A CERTIFIED COPY

017233

Stack

A. I don't. I don't -- I don't remember him being involved in this one, actually.

Q. Okay. The two individuals below you, Charles -- how is that pronounced, Si --

A. Yeah, I don't know him, I don't remember who he is.

Q. You don't remember his involvement in the deal?

A. No.

Q. And Gail Flesher?

A. Gail, she is a partner at Davis Polk in the environmental group. I don't remember specifically consulting her, but it would be pretty typical to have an environmental person consulting on due diligence issues or disclosure issues, if that were appropriate.

Q. Okay. Two groups above you, Sunbeam and Morgan Stanley, do you remember the Sunbeam people, either Mr. Gluck or Ms. Kelley or others, attending the drafting sessions?

Stack

A. You know, I don't remember specifically if they were at the sessions. I remember Janet Kelley's name came up quite a lot, so it's possible she was there, I just don't remember.

Q. Do you remember her position at the time?

A. I think she was a lawyer at Sunbeam in-house.

Q. And then the next group is the Morgan Stanley individuals. Looking at those names, has that refreshed your recollection as to who attended the drafting sessions?

A. John Tyree is really the only name on there that I remember as having a lot of involvement.

Q. Okay. Then you go to the bottom of this list, Arthur Andersen is identified, the names Phil Harlow and Larry Bornstein.

A. Mm-hmm.

Q. Do you remember if individuals from Arthur Andersen actually attended the

Stack

drafting sessions?

A. I don't remember specifically if they were there. It would have been pretty common for them to have been there, but --

Q. But you don't know, one way or the other?

A. I don't remember.

I remember that -- I remember they were at the printer, I remember Larry Bornstein.

Q. Do you remember ever meeting Mr. Harlow?

A. Not specifically.

Q. Okay, fair enough.

Turn to the beginning of this document, the first page, sent from the letters at Skadden Arps. It recites that it's a first draft, and then, in the second sentence, it states that: "The various sections of the offering memorandum prepared by Skadden Arps and Davis Polk have not been reviewed or discussed with their respective clients",

Stack

and so on.

Is it your understanding that portions of the offering memorandum were drafted by Davis Polk?

A. I don't remember specifically. Again, it would have been pretty common for at least the underwriting section to have come from Davis Polk, and maybe in the form of the cover (indicating) page, that sort of thing.

Q. Did you personally draft them?

A. I don't remember.

Q. Do you remember any portion of the offering memorandum that you were initially charged with drafting?

A. I don't remember.

Q. Now, turning to the drafting sessions that you do remember, do you remember any particular issues being raised by Morgan Stanley as items that needed to be put in the draft or taken out of the draft?

A. I really don't remember anything specific.

NOT A CERTIFIED COPY

017234

Stack
I have been to many many drafting sessions on many deals.
Q. I understand.
A. It's hard to remember specifically.
Q. If you return to the chronology that we have marked, at March 12 there is a reference to a drafting session at Skadden and accounting due diligence calls.
Did you participate in those accounting due diligence calls, to your recollection?
A. I don't remember specifically, but it would have been pretty ordinary course for me, or at least others from Davis Polk, to have participated.
Q. I will have some documents about that in a moment, but do you remember any issues raised by the accountants that found their way into the offering memorandum that were discussed, as insertions or deletions from the offering memorandum?

Stack
A. I don't remember anything specific.
Q. The next item on your chronology -- on the Davis Polk chronology, says: "Offering memorandum" -- "Offering memo reds subject to completion distributed". Do you know what that means?
A. Yes, it's the preliminary offering circular that you send to investors.
Q. And, by "red", do you have an understanding what that means?
A. Yes, the -- well, it's not on here.
There is a -- there is usually a red type along the side that says it's subject to the completion, and that's why they are called "reds".
MR. BRODY: I have to mark that one, too, I'm sorry. I thought everything had been previously marked.
Can we mark that as whatever our

Stack
next number is, 209?
(Deposition Exhibit CPH 209, preliminary version of the prospectus, marked for identification, as of this date.)
Q. Ms. Stack, I have given you what has been marked as Exhibit 209. Do you recognize this as the preliminary version of the prospectus?
A. Yeah, it looks like the red herring, yes.
Q. And the type on the left, which is a little chopped off by copying, that's the indication that it's a preliminary draft?
A. Right, that and the (indicating) "subject to completion" line at the top in the center.
Q. Okay. And you understand this to be the -- what's referred to as the "red herring"?
A. Yes, it looks like it, yeah. They are usually -- it's usually a book taped down, so it's hard to tell, but I

Stack
assume this is it.
Q. I understand.
If you look at this document at the top, it indicates that the total amount is $1.3 billion. Do you understand that to be the amount of the securities at maturity?
A. Yes, I think that's what is offered.
Q. And the proceeds to Sunbeam obviously from the offering would be less; is that correct?
A. Yes. It depends on what they sell the prices to the public of those securities.
Q. Well, these bonds were zero coupon bonds?
A. Mm-hmm.
Q. So the amount at issuance would be substantially less than the total value of the bonds?
A. Yeah, I believe that's right.
Q. And if you turn to the page that's page 23 of the document, it's Bates

NOT A CERTIFIED COPY

017235

Stack

stamped CPH 1348426.

A. Okay.

Q. There is a table setting forth the use of proceeds, the sources and uses of proceeds, and the proceeds from this debenture offering as of the date of the red herring was $500 million; is that correct?

A. Yes.

Q. So between the time you guys first started working on the deal and the date the red herring was distributed, the amount of the offering had not changed, it was still 500 million.

A. Well, I think -- I mean, they are offering $1.3 billion of bonds; right? I think the proceeds --

Q. I asked the question badly.

A. Sorry.

Q. From the beginning of the deal until the date of this red herring, the proceeds were anticipated to be 500 million; is that correct?

A. Gosh, I don't remember, but I

Stack

think I just saw something that said that.

Q. Okay.

A. One of the things -- sorry.

Q. Let me ask the question a little less -- with less complexity.

As of the date this offering memorandum was issued in its preliminary form, on March 16, 1998, the parties were still anticipating raising $500 million for Sunbeam through this offering.

A. Yes, about 500 million, that's what it looks like.

MR. WISE: You are basing that on what you are reading?

THE WITNESS: Yes, exactly.

MR. WISE: You can -- obviously, this is your deposition, you can take it any way you want. Ms. Stack worked on this transaction some six years ago, and it should be apparent, from the last hour's worth of questioning, her recollection of this as opposed to the scores of other transactions she has worked on since

Stack

then is rather vague. I am wondering whether she is the best witness to get this sort of information as to what people attended and what the amounts of the offering were. She was the junior associate at underwriter's counsel. I assume you are taking witnesses who actually know the answers to these questions.

MR. BRODY: Well, we are taking witnesses who should know the answers to these questions.

MR. WISE: Well, you have got someone here who was in her first year with the firm. Obviously, you are free to ask her her recollections of any events or meetings she attended, maybe she will remember something that somebody else hasn't, but questions going to the structure of the deal and so on, I -- again, if you want to, we are here, but I think it's a little bit of a waste of all of our time, because she is probably

Stack

one of the least able to answer those questions.

MR. BRODY: I understand your statement. I will be coming back to this point when I show her other documents that were circulated to her, and we will see what she remembers about the changes.

MR. WISE: Okay.

Q. Ms. Stack, do you remember any conversations with individuals from Morgan Stanley about whether this offering was fully subscribed?

A. No, I don't remember.

Q. You can put that document aside for a moment.

You referred to documentary due diligence that you performed in this transaction. What does it mean to you to perform due diligence?

A. Again, just to, you know, read through documents, contracts, to make sure that the transaction we are about to perform doesn't have any impact on it, to

NOT A CERTIFIED COPY

017236

Stack

make sure that we have all the material information that we need to include in the offering memorandum.

Q. And do you have an understanding as to what the purpose is for the due diligence that you performed in this transaction?

A. Again, I think it's, you know, to make sure and confirm that everything we have got in the offering document is correct and make sure we have got everything for investors.

Q. I'm sorry, I didn't hear the last part.

A. Make sure that we have got everything that investors needs to know.

Q. Okay.

A. You know, there are obviously many conversations with the company, as well, the documentary due diligence is sort of in addition to that to confirm everything that's said.

Q. Okay, and your involvement was limited to the documentary due diligence;

Stack

is that correct?

A. I don't really remember. It wouldn't have been unusual for me to also have participated in the management discussions and meetings, but I don't remember anything specific.

Q. I'm sorry, did you say would or would not have?

A. It would have been pretty normal for me to have participated --

Q. Okay.

A. -- along with the more senior members of the Davis Polk team.

Q. Now, at the time you were working on this transaction, you represented the investment banker.

A. Yes, the bank, Morgan Stanley.

Q. How did the responsibility for performing due diligence -- how was it divided between Morgan Stanley and Davis Polk?

A. We all -- we all performed due diligence.

Q. Were there particular areas of

Stack

due diligence that were the responsibility of the law firm and others that were the responsibility of the bank?

A. We generally participated in things together. As far as reviewing documents, certainly the lawyers were involved in that. I don't remember if there may have been a person from Morgan Stanley participating in that or not. Sometimes you would have a junior person from the investment bank come to the -- do the document review as well. I don't remember if that happened here.

Q. Before you began working on this deal, what training had you received in how to perform due diligence?

A. We had a general training session when we first arrived at Davis Polk. They talked about, you know, the things to do and look for, one of those things that's hard to teach you how to do until you have actually done it once, but I had worked on a few transactions before the Sunbeam transaction, so....

Stack

Q. Do you remember issues coming up in performing due diligence that you had to take to someone more senior than you at the law firm?

A. In due diligence generally or due diligence on this transaction?

Q. On this transaction.

A. I don't remember anything specific, but it was often the case that I would see something and hadn't have heard a reference to it before, so I would raise it to the attention of someone more senior or I had to ask for additional documentation to clarify it, so that would have been pretty standard, but I don't remember it specifically on this one.

Q. So you don't remember any issues that came up?

A. No.

Q. Did you ever review or were you made aware of whether Morgan Stanley had manuals or procedures for performing due diligence?

A. I don't know.

NOT A CERTIFIED COPY

017237

Stack

MR. BRODY: We have been going for a while. Why don't we take a break now, if that's acceptable.

MR. WISE: Sure.

THE LEGAL VIDEO SPECIALIST: Okay. The time is now 11:13, and we are off the record.

(Recess taken.)

THE LEGAL VIDEO SPECIALIST: The time is 11:25, and we are back on the record.

Q. Ms. Stack, before we broke, we were talking about due diligence --

A. Yes.

Q. -- and the division of responsibility on due diligence between Morgan Stanley and its counsel.

Who at Morgan Stanley performed due diligence on this deal that you remember?

A. I don't remember specifically. Again, I remember that John Tyree was around at most meetings and calls, so, presumably he was a part of it, but I

Stack

don't remember anyone else.

Q. Aside from Mr. Tyree, you don't remember anyone else involved in due diligence?

A. I just don't remember, no.

Q. Do you know what due diligence Morgan Stanley performed?

A. Um -- again, there were definitely sort of meetings, management, due diligence meetings, where we asked questions. I think Morgan Stanley typically sent over a request list of financial items that they reviewed, that we had less of a role in reviewing, just by the nature of our jobs but, otherwise, I don't remember specifically anything else.

Q. You referred to meetings of management. As you sit here, do you remember who from management Morgan Stanley and/or Davis Polk met with in connection with due diligence on this deal?

A. I really don't remember the

Stack

specifics of it.

Q. Do you remember the names of any management people you met with?

A. No. Again, you know, I remember -- recognized some of the names you read earlier from the phone calls, but I don't remember who was present at any of the sessions.

Q. I am going to ask you about some specific topics, and my question is going to be do you remember what due diligence was done in these areas.

A. Okay.

Q. What due diligence do you remember being done into Sunbeam's sales?

A. The only thing that I specifically remember is a phone call on the night before pricing, talking about how their sales were going to go in the first quarter.

Otherwise, I don't remember specifically all the meetings or anything leading up to that.

Q. Okay, we will return to that

Stack

call in a moment. But, aside from that, do you remember anything else --

A. No.

Q. -- about sales?

A. No, nothing specific, no.

Q. Do you remember any due diligence into Sunbeam's earnings per share or earnings?

A. I don't remember anything, no.

Q. Do you remember any due diligence into Sunbeam's practices involving revenue-recognition or bill-and-hold transactions?

A. I don't remember anything specific about it.

Q. Do you remember anything in general on that topic?

A. I think I remember it being mentioned but, beyond that, I just don't remember.

Q. Do you remember any due diligence done into whether Sunbeam had accelerated sales from 1998 into prior periods?

NOT A CERTIFIED COPY

017238

Stack

A. You know, I think I looked -- I may have looked at something yesterday that talked about that but, beyond that, I didn't really remember anything from that time.

Q. Do you remember what you looked at that referenced that?

A. Actually, I don't.

I just looked at that yesterday, if that tells you anything, but I think there was an issue if they had sold some things that were recognized in the fourth quarter that may have been accelerated sales, I don't remember exactly.

Q. But, as you sit here, do you remember any work that was done -- due diligence work that was done, at the time of the deal on that topic?

A. No, no.

Q. Do you know if anyone from Morgan Stanley or Davis Polk did any investigation into the extent to which Sunbeam was managing its earnings?

A. I don't know. But, again, as

Stack

the junior person, I probably wouldn't have been involved in those discussions.

Q. Okay. And you testified earlier about Mr. Dunlap's reputation with companies. Do you know if anyone did any work, either at Davis Polk or at Morgan Stanley, looking into how Mr. Dunlap and his management team had restructured Sunbeam in his time there?

A. I don't know. I don't know.

Q. Now, if you look at the document that's been marked as Exhibit 24, there are a number of entries that refer to due diligence meetings, and I am just going to ask you what you remember about them, if anything.

March 6 references: "Due diligence conference calls with Sunbeam re: acquisitions and environmental issues". Do you remember anything that was discussed at that meeting?

A. No.

Q. The next entry is March 8. It refers to: "Due diligence review of

Stack

documents at Skadden". I believe you testified that you reviewed documents at Skadden?

A. Yes, that was probably me, but --

Q. Was there a document repository there?

A. Um -- I think there was a room set up where they had a lot of documents, yes.

Q. Having seen that document, does that refresh your recollection as to who else might have been involved in that due diligence effort, either for Morgan Stanley or Sunbeam or anyone else?

A. I just don't remember who else was there.

Q. The next item on March 9th: "Due diligence meeting at Skadden". Do you remember a due diligence meeting at Skadden?

A. Um -- yeah, I vaguely remember a meeting there.

I mean, you have a big due

Stack

diligence meeting on every deal that you work on, so it's hard to distinguish.

Q. Focusing on this deal --

A. Mm-hmm.

Q. -- do you remember who was there?

A. I don't remember specifically. I mean, I could speculate but I don't remember.

Q. Do you remember anything that was discussed at that meeting?

A. Again, I could tell you those are types of things that we would typically discuss, but I don't remember anything specific.

Q. I am asking for your recollection, your recollection is what I am asking.

A. No.

Q. Are there any documents, notes or documents, that you are aware of that would refresh your recollection as to what was discussed at the due diligence meetings we have addressed?

NOT A CERTIFIED COPY

017239

Stack

A. Not that I am aware of, no.
Q. The next item on March 10th refers to: "Due diligence conference calls with First Alert, Signature, and Sunbeam".
Do you remember if you participated in those calls?
A. I don't. I don't remember specifically.
It sounds like something I probably would have done, but....
Q. Focusing on the call with Sunbeam, do you remember anything that was discussed with Sunbeam?
A. No.
Q. And are there any documents that would refresh your recollection as to what happened in that call, that you are aware of?
A. Not that I am aware of, no.
Q. Okay. March 11, there is a reference to an additional due diligence call with Skadden. Do you remember if you were on that call?

Stack

A. I don't remember.
Q. And, again, anything that might refresh your recollection about that?
A. Not that I am aware of.
Q. The March 12th entry refers to: "Coleman due diligence calls". Do you remember any Coleman due diligence calls?
A. Again, not specifically.
Q. Do you remember anything in general that was discussed with Coleman?
A. No, no.
Q. And then the last sub-entry of March 12th refers to "accounting due diligence calls". Based on your experience in doing transactions, what are "accounting due diligence calls"?
A. Um -- generally, calls that the underwriters and their counsel have with the company's accountants, often outside the presence of the company, so that you can hopefully get a more robust answer to the questions and just ask about the company's accounting practices generally and any issues that the accountants see.

Stack

Q. Do you recall participating in an accounting due diligence call in this matter?
A. I don't remember it, no.
Q. Do you know if it was held?
A. I don't remember it specifically.
I would assume that it was, but it's pretty standard on deals.
(Deposition Exhibit 123, document, the first two pages is a memorandum from Lawrence A. Bornstein, at Arthur Andersen, previously marked for identification.)
Q. Ms. Stack, let me show you another Exhibit. It's previously marked as Exhibit 123.
MR. BRODY: Counsel.
Q. And before you spend a lot of time looking at it, let me just walk you through it.
The first two pages of this exhibit is a memorandum from Larry

Stack

Bornstein, Lawrence A. Bornstein, at Arthur Andersen, and then the third and fourth pages of the exhibit is something else, and I would like you to start there.
A. On the third page?
Q. Third and fourth.
A. Okay.
Q. It appears to be some sort of agenda or list.
A. Correct.
Q. Starting on the third and fourth page, have you ever seen that before?
A. I don't remember this one specifically, but it looks like a lot of accounting due diligence-type questions that we would ask.
Q. Having seen this document, does it refresh your recollection whether, in fact, you participated in an accounting due diligence call on this transaction or not?
A. (Pause.)
No, I am afraid not.
Q. Do you recognize the

NOT A CERTIFIED COPY

017240

Stack

handwriting?
A. No.
Q. Now, if you turn to the first two pages of the document, and I would ask you to read to yourself the first three paragraphs. And then tell me when you have done that.
A. (Pause.)
Okay.
Q. Okay. Now, having read that, does that refresh your recollection whether, in fact, you participated in the accounting due diligence calls?
A. I don't remember participating.
Q. Do you remember being advised by Mr. Lurie, Mr. Tyree, or others about what happened in that call, if indeed it took place?
A. No, I don't remember.
Q. I am going to ask you about a couple of items here, and let me just indicate what I understand to be the testimony of others, but the numbered items here, 1 through 17, appear to

Stack

correspond to the numbered items in the agenda. And, you know, since I was not on the call I can't represent to you that that, in fact, was the case, but I am going to ask you about item 3 and item 8. And item 3 appears to relate to the question: "Anything peculiar to the company that is not generally the way the industry accounts for: A, revenue recognition; B, capitalizing costs versus expensing deferring costs", and you see the answers on the first page of the exhibit.
Does that refresh your recollection about any discussion in connection with this deal relating to Sunbeam's bill-and-hold practices?
A. No.
Q. Do you know if anyone at Morgan Stanley or Davis Polk was charged with doing further investigation into bill-and-hold?
A. I don't know.
Q. You don't remember being given

Stack

that task yourself?
A. No.
Q. Item 8 appears to relate to the question: "How aggressive is the company in its accounting policies?" To which the answer appears: "On a scale of 1 to 10, around a 5 or 6." Do you remember that type of discussion being held in connection with this deal?
A. No, I don't.
Q. Do you remember any follow-up by Davis Polk or Morgan Stanley into Arthur Andersen or the company's accounting policies or practices?
A. No, I don't remember anything about this.
Q. Now, the document I have given you, marked as Exhibit 123, recites that the accounting due diligence call was on March 12, which is the same date in the Davis Polk chronology, that we have marked as Exhibit 24.
A. Mm-hmm.
Q. You previously, in one of your

Stack

answers, described a "comfort letter". What is a "comfort letter"?
A. A "comfort letter" is a letter issued by the accountants stating that they audited the company's financials for the prior year and saying that they reviewed the company's interim financials since their audit and have performed certain procedures on them, and then they also go through the document, the offering document, and circle various numbers and tie those back to either the company's accounting policy -- or, accounting records or do some sort of calculation on them to make sure that they tie to the company's numbers.
Q. In your experience at Davis Polk, were comfort letters typically provided in connection with offerings?
A. Yes.
Q. Do you know if a comfort letter -- if Arthur Andersen provided comfort letters in connection with the zero coupon convertible senior

NOT A CERTIFIED COPY

011241

Stack

subordinated debentures?
A. Yes, they did. I actually saw it yesterday.
Q. Do you know when Morgan Stanley or Davis Polk received the comfort letter?
A. I don't know when we received it.
It's typically dated the same date as the final offering memorandum, which is the pricing date.
Q. Is it typical that the accountants provide a draft prior to pricing?
A. Generally, yes.
Q. Do you know if, in this case, Arthur Andersen provided a draft of its comfort letter to Morgan Stanley or to Davis Polk?
A. I don't remember.
Q. Aside from any due diligence that was done in connection with this call, (indicating) -- well, let me withdraw that.
We have now had a chance to look

Stack

at the Davis Polk chronology in Exhibit 123. After having looked at those, does that refresh your recollection about any accounting due diligence done on this deal by you or others?
A. No, it doesn't.
Q. Aside from what may be recited in the documents I have shown you, do you have any understanding of any follow-up or accounting due diligence done in connection with this deal?
A. No. As I said before, the only thing I remember is that call the night before pricing about the company's sales. I suppose you could classify that as "accounting due diligence".
Q. Okay, we are going to get to that momentarily. We have one more document to show you before we finish up on this topic.
MR. BRODY: 210?
THE COURT REPORTER: Yes.
MR. BRODY: Please mark that as Exhibit 210.

Stack

(Deposition Exhibit CPH 210, fax Ms. Stack sent to Mr. Freed at Skadden Arps, marked for identification, as of this date.)
MR. BRODY: Counsel.
Q. Ms. Stack, I have given you what's been marked as Exhibit 210. Do you recognize this as a document that you sent?
A. It looks like a document I sent. I don't remember it, but yes.
Q. Do you understand it to be a fax you sent to Mr. Freed at Skadden Arps?
A. Yes.
Q. The document recites what you are asking for. Do you have a recollection as to why you requested the information that you requested in Exhibit 210?
A. I don't remember it but, in reading it, it's just probably things that were missing from the due diligence room or items that were mentioned that I didn't get to read while I was there.

Stack

Q. In your first sentence, you say that: These are certain things you would like to obtain today "in order to finish our due diligence review before pricing."
What do you mean by that?
A. We wanted to make sure before we priced the deal that we had all the information that we were requesting.
Q. Do you recall whether you received them or not?
A. I don't remember.
Q. If you look at the top of the document, it appears to have been sent at 2:11 in the afternoon; is that correct?
A. Yes, that's what it says.
Q. And is that the day, March 19th, the day the deal was priced?
A. Uh -- I believe so, yes.
Q. On the day of pricing, were you at the printer?
A. Um -- yes, I was there that night, I think, yes.
Q. Do you know when you went to the printer?

NOT A CERTIFIED COPY

017242

Stack

A. Um -- I don't remember specifically. It was sometime in the evening, after pricing.

Q. I'm sorry, you said "after pricing"?

A. Yeah, I think.

Q. Pricing took place somewhere else?

A. Yeah, generally there is a conference call between the bankers and the company to price the deal that I would not typically have participated in.

Q. I'm sorry, can you repeat what you said?

A. I'm sorry. Generally, where would be a conference call between the bankers and the company to decide on the price for the transaction and I would not typically have participated in that.

Q. Okay, you don't recall participating in that?

A. Yeah, I don't remember.

Q. Fine. Do you know if between 2;11 in the afternoon and whenever the

Stack

deal was priced you got the materials you request here in Exhibit 210?

A. I don't remember. I would assume that we did --

Q. Okay.

A. -- but....

Q. You have testified that you were aware of some conference calls or calls in which Sunbeam sales in the first quarter were discussed.

A. Mm-hmm.

Q. Do you recall the day on which those calls took place?

A. I believe it was the day before pricing.

Q. So if we use the chronology Davis Polk prepared, indicating pricing was on the 19th, the calls were on the 18th?

A. Yes, I think so.

Q. Prior to the 18th, did you have any knowledge of how Sunbeam's first quarter 1998 sales were performing?

A. Not that I remember, no.

Stack

Q. Do you remember any work you did to look into that, you or others?

A. No.

Q. Was this call that you referenced the first time you learned of how Sunbeam's sales were proceeding in the first quarter of 1998?

A. I think I learned of it just prior to those calls on that day.

Q. How?

MR. WISE: I caution the witness to be careful not to reveal any material that is subject to the attorney/client privilege.

Can you answer the question without revealing a communication that was had with Morgan Stanley or internally at Davis Polk for purposes of giving Morgan Stanley advice?

THE WITNESS: No.

MR. WISE: So I object to the question, and direct her not to answer.

(DIRECTION NOT TO ANSWER.)

Stack

Q. Well, without disclosing the substance of the conversation, with whom did you have communications about the first quarter sales on the 18th of March?

THE WITNESS: Is it okay for me to answer that?

MR. WISE: Yes, you can answer that question.

A. Alan Dean, I think.

Q. Was there anyone else in the conversation besides Mr. Dean?

A. When I first heard it, I don't think so.

Q. Okay, so it was just the two of you.

A. Possibly Jim Lurie, but I just don't remember specifically.

Q. In that communication or conversation with Mr. Dean and possibly Mr. Lurie, did Mr. Dean or Mr. Lurie advise you the source of his information about first-quarter sales?

A. I don't remember, actually.

Q. Did Mr. Lurie or Mr. Dean advise

NOT A CERTIFIED COPY

017213

NOT A CERTIFIED COPY

Page 118

Stack

you that this information had come from Morgan Stanley?

MR. WISE: I am going to object, and direct her not to answer that, it calls for the substance of the conversation.

(DIRECTION NOT TO ANSWER.)

MR. BRODY: Okay. And, just so we are clear here, Tom, are these objections that Morgan Stanley is joining, as well?

MR. CLARE: Yes.

MR. WISE: As a matter of fact, my objections are based upon the privilege which belongs to Morgan Stanley.

MR. BRODY: I understand.

MR. WISE: It's not to Davis Polk.

MR. BRODY: I understand that. Let me just put my cards on the table.

If we have to litigate these instructions, I would rather litigate

Page 119

Stack

them with Morgan Stanley, who I am suing, than you.

MR. WISE: That's correct, you are welcome to do that and, as a matter of fact, I encourage you --

MR. BRODY: I am sure you would.

MR. WISE: -- to direct any dispute towards Mr. Clare and Morgan Stanley.

MR. BRODY: Right. But I just want the --

MR. WISE: As counsel for Ms. Stack here and, also, for the firm Davis Polk, given that the subject matter here relates to a representation that Davis Polk had of Morgan Stanley at the time, we are bound to respect the attorney/client privilege on behalf of our client, Morgan Stanley. We have been advised that Morgan Stanley is not waiving that privilege and, therefore, we must respect it.

MR. BRODY: I understand but,

Page 120

Stack

just so that my position is clear, I am asking Mr. Clare that in the event you believe, Mr. Clare, that counsel has overstated Morgan Stanley's privilege and objected to things that you don't believe are privileged, I would ask you to say so, so that we don't find out a month from now that: Oh, gee, Morgan Stanley doesn't believe that conversation was privileged.

MR. CLARE: If you would like, I would be happy to join in each of the objections that Mr. Wise makes. I think, for economy, we can assume going forward, and with -- objections and instructions that Mr. Wise has made, that Morgan Stanley joins in the instructions and concurs in them, but if you would like me to state specifically Morgan Stanley's position with respect to each, we would be happy to do that.

MR. BRODY: Oh, I don't think we

Page 121

Stack

need to burden the record, as long as I have your assurance that I've just received that you join in the objections and if for some reason you don't you tell me.

MR. CLARE: I certainly will.

Q. The conversation you indicated that you indicated you learned certain facts from Mr. Dean, was that on the telephone or in person?

A. In person.

Q. Do you know how long -- do you remember how long that conversation took?

A. No. I mean, there were hours of calls that evening.

Q. Do you know if any of the information that Mr. Dean gave you had been provided to him by Arthur Andersen?

A. I don't know.

Q. Do you know if any of the information that Mr. Dean provided to you in that conversation had been provided to him by someone at Sunbeam, directly or indirectly?

01724

Stack
A. Yeah, not that I recall.
Q. How long after the communication with Mr. Dean and perhaps Mr. Lurie did you participate in the first call?
A. I think we quickly got on the phone with our client, and then sometime after that there was a larger call involving the company and Sunbeam and Skadden and us and Morgan Stanley.
Q. I'm sorry, you said --
A. I'm sorry.
Q. -- Sunbeam, Skadden, Davis Polk?
A. Davis Polk, Morgan Stanley.
Q. Thank you.
A. I don't remember if anyone else was on it.
Q. The communication, the larger call, with Sunbeam and Morgan Stanley and Skadden, and so on, was that one call or more than one call?
A. I don't remember specifically.
There were communications going on all evening.
Q. What was the result of all these

Stack
calls?
What was done as a result of all these calls?
A. I think the group decided that the best course of action was for Sunbeam to issue a press release, telling the market that their -- I guess their numbers that the street expected were not going to be met, and to put that out prior to pricing so that the market had the information.
Q. Are you aware whether, prior to your conversation with Mr. Dean, Arthur Andersen had provided a draft of its comfort letter?
A. I just don't remember.
Q. If we refer to the chronology that's been marked as Exhibit 24, the March 18 entry, among other things, says: "Review of draft comfort letters from Arthur Andersen and KPMG."
I am not going to ask you about KPMG. Do you remember -- let me withdraw that.

Stack
Does that entry refresh your recollection that, in fact, on or before the 18th, Davis Polk had a copy of the draft comfort letter?
A. I don't have any reason to believe this isn't true, but I just don't remember it.
Q. I understand.
(Deposition Exhibit 110, draft comfort letter, and it bears a fax transmittal of 3-17-98 at what appears to be about 8:30 at night, previously marked for identification.)
Q. Ms. Stack, I have handed you what's previously been marked as Exhibit 110, CPH Exhibit 110, which is a draft comfort letter, and it bears a fax transmittal of 3-17-98 at what appears to be about 8:30 at night.
My first question is, have you ever seen this before? Again, excluding communications with counsel yesterday.
A. I just don't remember it. I

Stack
wouldn't -- I probably did see it, but I just don't remember it.
Q. There is some handwriting on the document on the first page --
MR. WISE: Are you representing, by the way, that the fax transmittal time at the top of the page was to anybody in particular? Because I see that the number is an area code, I believe that's 561?
MR. BRODY: That's South Florida. I am not sure if that's the sending fax or the receiving fax, and I am not sure if it was faxed on to others. I am not making any representations about it.
MR. WISE: I also notice that a little bit further to the right there is an abbreviation SBA, Inc. I assume, without knowing, that that's one of the Sunbeam entities?
MR. BRODY: (Gesturing.) I can't speak to that.
MR. WISE: All right.

NOT A CERTIFIED COPY

017215

Stack
MR. BRODY: Okay.
Q. The first page of the document, there is some handwriting. Do you recognize it?
A. No.
Q. On the third page of the document, there is some additional handwriting. Do you recognize that?
A. No.
Q. Having flipped through this document, as you have, do you have any recollection of whether you saw this document at any time?
A. Yeah, I just don't remember.
Q. Would you please turn to the third page of the document. There is a paragraph 5, and I am referring in particular to 5 B. And it recites -- it compares Sunbeam's net sales and net income and loss from two periods, basically January of '97 to January of 1998.
Do you see that?
A. Yes.

Stack
Q. Do you know if you had received that information prior to the conference calls on the 18th of March?
A. I don't know. I don't know.
Q. If you turn a couple of pages further -- I'm sorry, one page further, page 4 of the document, paragraph 6, and in particular paragraph 6 B, it describes, and I am paraphrasing, that consolidated net sales decreased as compared to the corresponding prior period due to the early buy program, and then it describes why net income decreased.
A. (Nodding.)
Q. Do you know if you received that information prior to the conference calls on the 18th?
A. I don't know.
MR. BRODY: Do we need to go off the record?
THE LEGAL VIDEO SPECIALIST: Yes.
MR. BRODY: We need to go off the record for a moment to change the tapes.
THE LEGAL VIDEO SPECIALIST: The time is now 11:57, we have reached the end of tape number one, and we are off the record.
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: Okay. The time is now 11:59, this is tape number two, and we are back on the record.
Q. We were looking at the draft of the comfort letter.
In your experience on doing transactions, is it customary to receive the comfort letter prior to the day before pricing?
A. It depends.
It's customary to see it prior to the day of pricing, because that's the day it's delivered. It just depends on how the transaction is getting done as to when exactly that is prior to pricing.
Q. Do you know if, in this transaction, if someone at Sunbeam or

Stack

Stack
Morgan Stanley or Davis Polk asked Andersen for the comfort letter or did Andersen just send it?
A. I don't remember specifically, but you almost always have to ask the accountants for letters, so....
Q. But, in this case, you don't remember any conversations in which it was requested.
A. No.
Q. You have testified that you learned of the events of -- let me withdraw that.
You testified that you learned about Sunbeam's sales on the 18th and you have identified a conversation with Mr. Dean and some later calls. Aside from what you learned in that conversation with Mr. Dean and in the later calls, did you ever learn any other information from any other source about how Sunbeam's sales were going in the first quarter?
A. Not that I remember.
That general discussion is

NOT A CERTIFIED COPY

0172146

Stack

really the source of my knowledge on the subject.

Q. Do you remember any other source of information that you had for -- let's me withdraw that.

Okay. Returning to the night of the 18th. I believe you indicated that you called -- excuse me, you had a conversation with Mr. Dean. We have talked about that. There was later a call with the client. That's Morgan Stanley?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Who was on the call with Morgan Stanley?

A. I think -- I believe John Tyree was on the call. I also looked at a piece of paper I looked at yesterday, and that caused me to remember that Ruth Porat was on some of the calls. And I don't know if it was the calls just between Davis Polk and Morgan Stanley, or on the later calls, but I remember she -- I remember that she

Stack

participated.

Q. Do you remember anyone else from Morgan Stanley on the call?

A. There may have been others, but I don't remember specifically.

Q. You said you saw a piece of paper that said Ms. Porat participated. Do you remember what that piece of paper was?

A. It was actually a sheet of paper that listed the sales for Sunbeam, and I think her name might have been handwritten on it and then I saw that name and remembered.

Q. Okay. Aside from Ms. Porat's participation in that conference call, did you have any other conversations with Ms. Porat about this deal?

A. I didn't specifically that I remember, but I was the junior person, so I probably would not have had those conversations.

Q. Do you know if Mr. Strong, William Strong or Bill Strong,

Stack

participated in the call?

A. That name sounds very familiar -- yeah, that name sounds familiar, although I can't tell you for sure.

Q. Mr. Stynes, S-T-Y-N-E-S?

A. I don't remember that one.

Q. Mr. Kitts, K-I-T-T-S?

A. I also don't remember that.

Q. Fair enough.

Or Mr. Fuchs, F-U-C-H-S.

A. That name sounds familiar, but I don't remember for sure if he was on.

Q. So, as you sit here, you recall Mr. Tyree and Ms. Porat and you are not certain about Mr. Strong, Mr. Fuchs, and perhaps others.

A. Right, right.

Q. Who participated in the call on behalf of Davis Polk?

A. Alan Dean, Jim Lurie, and myself were on the call, although I am sure I didn't say anything, (smiling).

Q. Did Mr. Dean and Mr. Lurie do

Stack

the talking?

A. Yes, yes.

Q. Aside from individuals from Morgan Stanley and individuals from Davis Polk, were there any other individuals on the call?

This is the initial call.

A. Oh, the initial call?

Q. Yes.

A. No, I don't think so.

I think there was one call between us and then there was a larger all-hands call.

Q. Okay, I am referring to the call before the all-hands call.

A. Yeah, I don't think so.

Q. Do you recall, in words or substance, what was discussed in the call, the initial call?

MR. WISE: You can answer that "Yes" or "No".

MR. BRODY: That's my intention.

A. Vaguely, yes.

Q. Did you take any notes of that

NOT A CERTIFIED COPY

017247

Stack

call?
A. I don't remember, I don't remember.
Q. Do you know if anyone else took notes?
A. I don't remember.
Q. You have no reason to think that it was recorded or transcribed by anyone?
A. No, no.
Q. How long did the call take? This is the initial call.
A. I don't remember. It's hard to divide it up.
Q. Can you estimate? More than an hour? Less than an hour?
A. I just don't remember --
Q. Fair enough.
A. -- the time.
Q. What do you recall -- I believe you said your recollection was vague, but what do you recall about the substance of the call?
MR. WISE: I am going to object, and direct her not to answer. It's a

Stack

privileged conversation.
(DIRECTION NOT TO ANSWER.)
Q. Do you have an understanding as to what the -- let me withdraw that.
As a result of the call, was it decided between the two of you to take certain action?
A. Uh --
MR. WISE: Why don't you just ask her what happened next.
MR. BRODY: Well, okay.
Q. What happened next?
A. We got on a call with the company and their lawyers.
Q. Okay. Whose idea was it to have that call? Was it Davis Polk's idea or had it been set up by the company or someone else? If you remember.
A. I don't remember.
Q. Now, referring to the second call, I think you earlier called that the "all-hands call"?
A. (Nodding.)
Q. Is that a fair shorthand?

Stack

A. Yeah -- yes.
Q. And this is a call on the 18th?
A. Yes, the night before pricing, yes.
Q. Do you know when it started, what hour?
A. I would have to say sometime in the evening, but I don't know exactly when.
Q. I assume close to printing people working on these deals were putting in pretty long hours?
A. Yes.
Q. And that's customary on a transaction such as this?
A. Yes.
Q. Do you recall if it was before or after dinner?
A. I don't, I don't remember.
Q. Who was on the call, the "all-hands call"?
A. The people from Davis Polk that I mentioned, Alan and Jim Lurie, and then the Morgan Stanley team, and I think that

Stack

John and Ruth were on, and then, as to others, I can't speak to who else was on, but I wouldn't be surprise but I would guess that there were others, and then there were some folks from Skadden, but I don't really remember names of those people. Then there were some people from Sunbeam.
Q. Let me just mention some --
A. Okay.
Q. -- names from Skadden Arps. Todd Freed, was he on the call?
A. You know, he was probably my counterpart junior associate, from the things I have seen, so he may have been, and he probably didn't say anything, either.
Q. Adrian Dietz?
A. Yeah, that name sounds familiar.
Q. Gregory Fernicola, F-E-R-N-I-C-O-L-A?
A. Yes, that name sounds familiar, too.
Q. You believe Mr. Fernicola was on

NOT A CERTIFIED COPY

017218

Stack

the call?

A. Yeah. There were a couple of -- I wouldn't say -- there was at least one partner from Skadden and maybe two, and that name sounds like it may have been him, I can't be sure.

Q. Peter Neckles, N-E-C-K-L-E-S?

A. I don't remember that one.

Q. Michele Gartland?

A. I don't remember that name.

Q. Leander Gray?

A. Hmm -- that sounds familiar, but I don't -- I couldn't tell you whether he was on the call or not.

Q. How about Bill Weiss?

A. Bill Weiss -- also, I don't know.

Q. Who from Sunbeam was on the call?

A. Just from yesterday, I remembered that the name Uzzi was familiar to me. I remember him, I think, talking quite a lot. And there were a few other names that I heard yesterday that sounded

Stack

familiar. Janet Kelley sounds familiar. I don't know whether she was on that call. And there were a couple of other names that now I am not remembering.

Q. Okay. Mr. Kersh?

A. Yes, that name sounds familiar.

Q. You believe Kersh was on the call?

A. I think so. I believe so.

Q. Mr. Gluck, G-L-U-C-K?

A. Yeah, that name sounds familiar, as well. I can't tell you for sure whether he was on it.

Q. Do you know if Mr. Dunlap was on the call?

A. I don't think so.

Q. Mr. Goudis?

A. Goudis sounds familiar, as well.

Q. Ms. MacDonald, Deborah MacDonald?

A. Yeah, that name just doesn't ring a bell with me.

Q. How long did the call or series of calls last?

Stack

A. I think it went on for a couple of hours.

Q. And do you know when it finished?

A. I don't know, I don't know the exact time.

Q. During the call, did you review any papers or documents that had been sent to you?

A. Yesterday, I saw that sheet of paper that has the list of sales on it, and I didn't remember until then, but that looked like -- I think I remembered seeing that during those series of calls.

(Deposition Exhibit CPH 16, document, previously marked for identification.)

(Deposition Exhibit CPH 63, document, previously marked for identification.)

(Deposition Exhibit CPH 64, document, previously marked for identification.)

(Deposition Exhibit CPH 65,

Stack

document, previously marked for identification.)

(Deposition Exhibit CPH 66, document, previously marked for identification.)

Q. Okay. Ms. Stack, I am giving you a slug of documents that have been marked in prior depositions. And let me just recite, for the record, what I have done, and then I will ask you a question about it.

Various versions of a document similar to what I think you described have been marked in other depositions, and I have given you copies of documents that have been previously marked as CPH Exhibit 16, CPH Exhibit 63, CPH Exhibit 64, CPH Exhibit 65, and CPH Exhibit 66. From looking at those documents, can you tell me if any of them were, in fact, the document that you saw that evening.

MR. CLARE: Are you asking exclusive of the handwriting or inclusive?

NOT A CERTIFIED COPY

011749

Stack
MR. BRODY: In the form in which I have given it to her or -- well, let me ask that question. Thank you, Tom.
Q. The document that you saw that evening, did it have handwriting on it?
A. Um -- I don't remember, when I saw it, if it did.
Q. Okay. Well, then, looking at these documents, do any of them strike you as the document that you saw that evening?
A. Um -- yeah, I mean, the first one looked familiar to me when I saw it yesterday. It's possible that the last one almost looks like my handwriting, not on the sort of the stuff that's very hard to read.
Q. And the other ones, do you believe those were ones that you saw that evening?
Obviously, there are great similarities between the documents.
A. Yeah, they all look generally the same.

Stack
The first one sort of looks the most familiar to me. I am not sure about that next -- I guess it's 63 --
Q. Yes.
A. That looks like more detail of the same thing.
I don't specifically remember that, but, you know, it could have been there.
Q. Okay. Well, let's focus on the first one and the last one, on CPH Exhibit 16 and CPH Exhibit 66. If I could ask you, we will just talk about the last one first --
A. Okay.
Q. -- the CPH Exhibit 66.
The handwriting at the top that appears to be some phone numbers, that's not your handwriting.
A. No, no.
Q. The other handwriting that is fainter, is that what you believe may be your handwriting?
A. Yeah, that could be mine.

Stack
Q. Can you read into the record what it says, to the best of your knowledge?
A. That looks like over on the sides it says: "25 million on" something "grills", and then I see a number "60" and the word "more", but I can't really read the rest of it.
Q. Does the word before it -- is the word before it "expect", as in "expect 60 more"?
A. Yeah, that could be "expect", "expect 60 more".
Q. And is there a question mark after "60"?
A. Yeah, it looks like there could be.
Q. Having read through that, do you now believe that is your handwriting or you are still not certain?
A. You know, it looks a lot like mine. I wish I could see it. It's just very hard to read.
Q. I understand. I don't know who

Stack
has the original, but we do not.
Okay. The writing at the bottom, can you read that?
A. It looks like "plus 30 million", and then there is an arrow, and it says something that I just can't make out.
Q. And the items below that?
A. Yeah, and it's again "plus", I don't know if that's "35" or "15", and then, down below that, it looks like it says "5" I guess "million", maybe "Latin America", so it looks like just trying to come up with numbers and they must have been telling us on the call.
Q. Do you believe those are notes that you took on the evening of the call?
A. Yeah, I think it probably is.
Q. And then looking at the document that's marked as Exhibit 16, the first one, I believe, that appears to be the same document --
A. Right.
Q. -- without the handwriting.
A. Right.

NOT A CERTIFIED COPY

017250

Stack

Q. And then, is that the copy -- the document, rather, you believe that you saw that evening?

A. Sorry, it's -- it looks like it's the same as the document in the back, it's just that there is some additional handwriting on it.

Q. Okay.

A. That is -- I guess has come from someone else.

Q. And by that, you are referring to the reference to "Porat" in the middle?

A. Right, and then that circle of that number with the question mark and the reference at the top to "72".

Q. That's not your handwriting.

A. No.

Q. Okay. One last thing on Exhibit 66, the one that you thought may be your handwriting.

A. Mm-hmm.

Q. To the left of the list of names, there is some handwriting, it's difficult to read. Do you recognize that?

Stack

A. No, I can't.

Q. Okay.

A. No, I don't know what that says.

Q. Aside from the documents that we have just looked at -- Exhibit 16 and Exhibit 66 -- do you remember any other documents you looked at that evening during the call, during the all-hands call?

A. No, not that -- I don't remember anything else.

Q. Okay. What do you remember being discussed in the all-hands call?

A. The night I generally remember, and I have to say I don't remember the specifics of the conversation, but I remember that we had learned that Sunbeam wouldn't be -- hit their sales numbers for the first quarter or were going to be lower, I guess, than the expectations on the street and, so, we discussed how we should -- you know, what we should do about that, given that we were supposed to price a deal the next day. And we talked

Stack

about, you know, where they stood at their numbers at the time. And I think that's where this (indicating) piece of paper comes in, and how they expected to get to whatever number they expected to get to, which I believe was something in excess of the same quarter from the prior year. And, so, we -- I think we walked through a lot of that detail. And then, at the end of the day, all determined that the best way to go was to put out a press release to let the market know that they were not going to hit that first quarter target that was out there and let the market react to that before pricing the transaction.

Q. During the call, did anyone from Morgan Stanley -- let me withdraw that.

During the call, did you learn when this news had reached Morgan Stanley and/or Davis Polk?

MR. WISE: I'm sorry, do you understand that question?

THE WITNESS: I am not exactly

Stack

sure --

Q. Then let me ask it.

A. Yeah.

Q. Was it a surprise to people on the call that Sunbeam was not going to meet the street's expectations?

MR. WISE: She can answer as to her own reaction to it. Obviously, I am not sure how she can react -- or, I am not sure how she can answer as to whether the other people were surprised.

A. Yes, it was a surprise.

Q. Was it a surprise to you?

A. To me, yes.

Q. Did others express in the meeting that this was news to them, that they didn't know this before?

A. Um --

THE WITNESS: I think that might go to some privileged conversations.

MR. WISE: This is --

Q. I am not asking --

MR. WISE: No, no, only during

NOT A CERTIFIED COPY

017251

Stack
the course of the call --
THE WITNESS: Oh.
MR. WISE: -- did anybody say anything in front of all the other people --
THE WITNESS: I see, surprise.
MR. WISE: -- expressing surprise.
A. Gosh, I don't remember specifically.
I think that was the general tone of the discussions.
Q. Who in the call was answering questions about Sunbeam's sales to date and sales prospects?
Who provided that information?
A. You know, I can't say for certain.
It was definitely a man from Sunbeam and, upon hearing the names yesterday, I guess Uzzi and Goudis and Kersh, I believe it was some combination of the three of them.
Q. Okay. What did the Sunbeam

Stack
man -- either Mr. Uzzi, Goudis, or Kersh -- represent or state about the state of Sunbeam's first quarter sales?
A. Again, I can't tell you specifically but, you know, generally, it was that they were lower than expected and that, you know, these were the (indicating) numbers that they had gotten to, and I think everybody was looking at sort of this sheet of paper, and then there was a general explanation of how they expected to get to that -- I think what they had told us was that they weren't going to hit the numbers that the street had out there currently, but they would still be in excess of the sales from the prior year during that period. And, so, I believe that's what went out in the press release and, so, there was an explanation to how they were going to get from the numbers here, (indicating), which were the actual sales, I guess, as of -- it looks like March 17th on here, to I guess the end of March to get to those --

Stack
to get to that number. And there was a lot of discussion around that topic.
I don't remember a lot of specifics.
Q. Turn to the document marked as Exhibit 66.
The numbers at the top, January consolidated net sales actual, February consolidated net sales actual, and March international net sales through 3-15. Do you remember any discussion about those numbers that appear to be actual numbers?
A. Yeah, again, I mean, I remember general discussions of what they had sold to date so, presumably, those are the actual numbers listed here.
Q. The next item is March international net sales forecast. And I believe it's 3-16-98 through 3-28 or 29, '98.
Do you remember any discussions about that nearly $40 million in sales?
A. Yeah, not specifically on international sales. Presumably, it was

Stack
part of the discussion of how they were going to get to that number, but I don't remember specifically talking about that one.
Q. You don't remember anyone asking questions about that number or whether that forecast was going to happen or not?
A. I am sure that those questions were asked, I just don't remember the detail of it.
Q. The next item refers to March domestic net sales through 3-17-98. Do you remember any discussion about that number?
A. Again, I think it was the general discussion of how they would get to the number they were going to tell the market and -- but I don't remember specifically --
Q. I understand.
A. -- conversations.
Q. And the next item is March domestic open orders. Do you have an understanding of what it meant to be an

NOT A CERTIFIED COPY

017252

Stack
"open order"?
Do you remember what they said?
A. I don't. I don't remember what the explanation was, no.
Q. Do you understand that those items were orders that Sunbeam had already received or were they orders to be expected?
A. Frankly, I just don't remember.
Q. Okay. The next -- excuse me, I skipped over something.
The international net sales item and the domestic net sales and open order items have little notes, "1" and "2", after them, which refer down to the bottom of a "waterfall". Do you recall what a "waterfall" is or means in this context?
A. You know, I could guess, but I don't remember.
Q. I am not asking you to guess.
A. Yeah, I just don't remember what that means.
Q. Do you remember any discussion in the meeting, the all-hands call, about

Stack
what that "waterfall" meant and whether it would require deduction from those sales that are referenced?
A. Not specifically, I don't.
Q. Okay. Now, the items below, under Potential orders, list a variety of customers, and they appear to total 86.0.
Do you see that?
A. Mm-hmm.
Q. Do you recall any discussion about what it meant to be a "potential order"?
A. Again, I am sure it was discussed, but I just don't remember it specifically.
Q. Do you have an understanding whether these were orders that Sunbeam had actually received or whether they were orders they hoped to receive, fill, and ship in the next 10 or 11 days?
A. I actually don't remember.
Q. Do you remember if anyone on the call asked questions about that, about whether those were real orders or

Stack
potential orders?
A. Again, I am sure they did, this was a source of great concern for everybody, but I don't remember it specifically.
Q. Okay. Now, there is an identification of a variety of customers, starting at Home Depot and going through other. Do you remember any discussion about any of those particular customers?
A. No.
Q. Do you remember anyone raising at the meeting whether some or all of these customers had existing inventory of Sunbeam products or not?
A. No, I don't remember that.
Q. Do you remember any discussion in the meeting -- in the conference call, rather, about whether some of these individual customers would require discounts from Sunbeam in order to make additional purchases?
A. I don't remember anything specific about that, no.

Stack
Q. Do you recall any discussion in the conference call or questions being asked by anyone about whether, in order to make these sales, Sunbeam would have to offer price discounts?
A. I just don't remember.
Q. Do you remember any discussion in the conference call about Sunbeam's expected earnings for the first quarter?
A. You know, we were very focused on these sales numbers. I wouldn't be surprised to hear the earnings was also -- I mean, obviously, that's also an important metric, but I don't remember specific conversations about it.
Q. Do you remember if anyone asked, you know: We have been talking about what the street expects on sales, will you meet what the street expects on earnings?
A. I don't remember.
Q. You have discussed in general terms -- or, rather, your general recollection of what you recall from this conversation. Do you remember anything

NOT A CERTIFIED COPY

017253

Stack

else that was said, in words or in substance, in the call?

A. I think I have given you everything that I remember.

Q. You indicate that, as a result of this conversation, it was resolved to send -- to issue a press release?

A. Yes.

Q. Who made that decision?

A. I mean, it was a decision made by I think everyone on the call jointly thought it was the best -- the best action to take.

I can't remember if somebody pushed it more than others, but at the end of the day it was decided by everyone to do that.

Q. And do you recall who was charged with drafting the press release?

A. I think it was probably Skadden, as the company's counsel.

Q. Do you recall --

A. Yeah, I am probably just speculating, I don't remember

Stack

specifically.

Q. Do you know if Morgan Stanley or its counsel, Davis Polk, reviewed drafts of the press release?

A. I am sure that we did. I don't remember reviewing it myself. But, again, as the junior person, it probably would have gone to the more senior people.

Q. In the conversation, the "all-hands" conference call, did anyone state what they expected Mr. Dunlap's reaction would be to this?

A. I don't remember specifically anybody saying anything about it.

Q. Do you remember anyone saying: Oh, gee, we are going to have to talk to Dunlap about this, or: I need to talk to Dunlap?

A. It sounds like something that might have been said, but I just don't remember it specifically.

Q. Do you remember anyone saying that Dunlap would be upset or disappointed if this press release were issued?

Stack

A. Again, I just don't remember a specific conversation about it.

Q. Now, the document that we have been looking at, marked as Exhibit 66, reflects some numbers about actual sales to date and some numbers about expected sales, that is, sales between that point and the end of the quarter.

From the point of this all-hands conference call on, do you know if anyone at Davis Polk or Morgan Stanley did anything to see if those sales actually materialized?

A. I don't, no.

Q. Did you?

A. Not that I recall. I mean, there is typically a bringing-down due diligence call where I am sure this was asked about, but I don't remember specifically.

Q. In the conference call, did Mr. Uzzi or Mr. Goudis or Mr. Kersh or any other participant refer to what information Sunbeam kept track of on a

Stack

daily basis to show how its sales were going?

A. That was the sort of information I feel like we were discussing, but I don't remember specifics.

Q. But did they report to you, for example, that, in fact, they kept track of sales on a daily basis, they had a daily scorecard?

A. I just don't remember specifically.

Q. Do you remember ever looking at any daily scorecards or daily sales reports for Sunbeam?

A. I don't, no.

Q. Now, aside -- do you remember anything else that took place in this all-hands conference call?

A. No, I don't.

Q. Aside from the conference call, do you remember any other discussions about Sunbeam's first-quarter sales between that point and the closing?

A. Um -- I think there were

NOT A CERTIFIED COPY

017254

Stack

probably privileged discussions about it -- um -- I guess at the printer that evening, the evening of pricing, so it would be the day after the set of conference calls went on, there was a brief mention of it.

Q. Okay, I will return to that in a moment.

Aside from the conversations at the printer --

A. Mm-hmm.

Q. -- and other conversations with individuals within your law firm, do you remember any other conversations about the first quarter sales?

A. No.

Q. Now, the conversations within your law firm that you identified as "privileged communications", I want to establish some foundation on those, see the nature of the privilege.

Can you identify a specific conversation that you recall?

A. Not specifics.

Stack

You know, they are sort of the wrap-up that you have after a large conference call like that, that sort of thing.

Q. Okay. So after you had the all-hands conference call, you recall that you had a wrap-up with Davis Polk lawyers?

A. Mm-hmm.

Q. Aside from that conversation, do you recall any other conversations within the firm about Q 1 sales?

A. Um -- I mean, not specifically.

Obviously, it was sort of a big issue that had come up and everyone was very focused on it, so it was mentioned from time to time, but nothing -- no sort of specific large conversations come to mind.

Q. And do you remember anyone within Davis Polk or within Morgan Stanley being tasked to follow the first quarter sales after that conference call?

A. I don't remember.

Q. Now, the wrap-up conversation

Stack

that you remembered, was that just yourself, Mr. Lurie, and Mr. Dean?

A. Um -- yeah -- Morgan Stanley may have been a part of it, as well, I just don't remember.

Q. Do you remember -- and this can be answered "Yes" or "No" -- do you remember, in words or substance, what was discussed in that call -- in that conversation?

A. Yes, substance.

Q. What is the substance of the call that -- let me ask one more question.

Did that call --

MR. WISE: (Laughing.) You can ask as many questions as you like, you are anticipating that I will have an objection I guess to the one you were going to ask.

MR. BRODY: I saw you shake your head.

Q. In that wrap-up call, did you discuss things that people had said in the all-hands call?

Stack

MR. WISE: I am going to object, and direct her to not answer as to what anybody discussed in the wrap-up call.

(DIRECTION NOT TO ANSWER.)

MR. BRODY: Okay, I think that calls for her to disclose non-privileged communications, so I guess I would ask you to withdraw that objection.

MR. WISE: I think the communication itself was a communication, if I understood her testimony, that occurred after the persons outside the privilege were no longer participating in the conversation, so all of that communication is privileged.

MR. BRODY: I don't know if I agree with that, but I understand --

MR. WISE: That's okay, I don't need you to agree with it, I am just telling you she is not going to answer that question.

NOT A CERTIFIED COPY

01725

Stack
MR. BRODY: Fair enough.
Q. Well, let me the more general question. What do you recall being discussed in substance in that wrap-up call?
MR. WISE: Same direction, same instruction, same objection.
(DIRECTION NOT TO ANSWER.)
Q. Now, after the all-hands call, it was decided to issue a press release; is that correct?
A. Yes.
Q. Aside from the press release, were there any other action items or any other actions taken as a result of the conference call?
A. That's the one that I remember.
Q. In the conference call, the all-hands call, did the parties discuss the Arthur Andersen comfort letter?
A. I don't remember.
Q. In the all-hands call, did the parties discuss the size of the offering?
A. I don't remember that, either.

Stack
Q. At the time this conference call was taking place, Sunbeam and Morgan Stanley were in the middle of the road-show; weren't they?
A. Yes, I think so, just from the way deals work. I don't remember specifically that they were on the road, but....
Q. Do you recall any discussions -- I'm sorry, I didn't mean --
A. No, go ahead.
Q. Do you recall any discussions during the all-hands conference call about the road-show, how it was going?
A. I don't remember.
Q. Do you recall any discussions within that all-hands conference call about how the press release or the information that gave rise to the press release would affect the road-show going forward?
A. I really don't remember anything about the road-show or talking about it.

Stack
Q. Was there any discussion, in that conference call, about whether companies that had attended prior sessions of the road-show would have to get a call and receive information about this?
A. I don't remember.
It sounds like a reasonable thing to do, but I don't remember if we talked about it.
Q. Okay. Now, aside from the all-hands call, and the pre-meeting and the post-meeting that you have testified about, do you recall discussing -- and the event at the printer that we will come to, do you recall discussing the first quarter sales issue with anyone else?
A. No, nothing specific comes to mind.
MR. BRODY: Why don't we go off the record, we will take a break, maybe a lunch break.
THE LEGAL VIDEO SPECIALIST: The time is now 12:38, and we are off the record.

Stack
(Luncheon recess: 12:38 p.m.)

NOT A CERTIFIED COPY

017256

Stack

AFTERNOON SESSION
(1:34 p.m.)

HEATHER M. STACK,
resumed, having been previously duly sworn, was examined and testified as follows:

CONTINUED EXAMINATION
BY MR. BRODY:

THE LEGAL VIDEO SPECIALIST: The time is 1:34, and we are back on the record.

Q. Ms. Stack, before we broke for lunch, we were talking about the conference calls on the 18th and some related topics. I would just like to return briefly to the all-hands call.

In that conversation, did Mr. Uzzi or anyone else from Sunbeam indicate why there had been a sale shortfall in the first quarter?

A. I am sure that was something that was discussed, I don't remember

Stack

specifically.

Q. And we looked at Exhibit -- a variety of exhibits.

I think you have Exhibit 66 in front of you?

A. Correct.

Q. We talked about the category of "potential orders". Do you remember any conversation in that conference call about how likely it was that those potential orders would become actual fulfilled orders?

A. Again, I don't remember specifically. It was probably discussed.

Q. Do you remember anyone giving assurances in that call that all of those sales would be accomplished?

A. Not specifically.

We certainly discussed how they planned to get from the number they were currently at, at that date, to the number that was in line with the prior period's numbers. So, you know, I am sure there were some assurances given in connection

Stack

with that, but I don't remember with respect to these potential orders specifically.

Q. What assurances do you remember they gave about getting to last year's numbers?

A. Again, I don't remember specifically.

It was, you know, a general topic of discussion, that I remember.

Q. Do you remember beyond the fact that it was discussed what was discussed in substance?

A. No.

Q. Looking at Exhibit 66 briefly, if you look at the numbers at the top, they appear to total around $169 million?

A. Mm-hmm.

Q. And then the potential orders appear to be 86 million or so?

A. Right.

Q. And then you see the numbers below those, and the bottom one appears to refer to Q1 '97, 253.-something, .5, I

Stack

believe?

A. Right.

Q. Do you remember any discussion about where in relation to 253.5 Sunbeam expected to land?

A. As I recall, they expected that they were going to at least meet the prior quarter -- or the prior period's numbers. So, if that 253.5 is the first quarter of '97, I think we are now talking about the first quarter of '98, I think they expected to be in line or exceed that number.

Q. Okay. And if you look at the numbers here, the 168.7 at the top, plus the 85, totals 254.7, which is a little over a million dollars more than the prior quarter; correct?

A. Right.

Q. So, in order to -- on these numbers, in order to get to a number in excess of the prior quarter, all of those potential orders would have to come in and all of the open orders at the top would

NOT A CERTIFIED COPY

011257

Stack

have to be filled; isn't that correct?
A. Yeah, I guess that's right, if there was nothing else.
Q. Do you remember any discussion about that or how likely that was?
A. Again, I remember the general topic being discussed, but I just don't remember the substance.
Q. Okay. We have spent a fair amount of time talking about that all-hands conference call. Do you remember anything else, as you sit here, that was discussed in that conference call?
A. I think we have covered everything that I can remember.
Q. Okay. Now, we also talked some, before the break, about the comfort letter, and I would like to return to that topic.

Are you aware that, in the course of preparing comfort letters, accountants sometimes receive representation letters or some letter from

Stack

the management of the company as to what they expect their numbers to be?
A. Yes.
Q. Did you see any such -- does that type of letter have a name?
A. I think they usually just call them "rep letters from management".
Q. Okay. I have heard a similar name.

Are you aware of any rep letter or management letter being issued in this case?
A. Um --
Q. In connection with the comfort letter.
A. Yeah, I don't think we ever saw one.

I think that the accountants have to get them to issue comfort letters, so they probably did but --
Q. Okay.

(Deposition Exhibit 120, letter signed by Mr. Dunlap, Mr. Kersh, Mr. Fannin, and Mr. Gluck, previously

Stack

marked for identification.)
Q. Well, let me show you a previously-marked Exhibit, a document marked as Exhibit 120, which is a letter signed by Mr. Dunlap, Mr. Kersh, Mr. Fannin, and Mr. Gluck. And my question is, do you know if Morgan Stanley or its counsel received this document prior to closing.
A. I don't know.
Q. You can put that aside.

Before the break, I showed you a draft of the comfort letter that had a fax transmittal of the 17th of March.
A. Right.
Q. I would like to show you one additional draft of the comfort letter to see if that refreshes your recollection any.

(Deposition Exhibit Morgan Stanley 48, draft of the comfort letter, previously marked for identification.)

MR. BRODY: Counsel.

Stack

Q. I have shown you what's previously been marked as Morgan Stanley Exhibit 48, which also appears to be a draft.

Do you know if you have ever seen this document before?
A. Again, I don't remember specifically looking at the comfort letter in this case.
Q. Okay. I believe you testified that -- let me withdraw that.

Is the comfort letter typically delivered in final signed form at the printer?
A. Yeah, it often is.
Q. Do you know if the comfort letter in this case was delivered in final form at the printer?
A. I don't remember.
Q. Now, you previously testified that, as a result of the conference calls on the 18th of March, a press release was issued. Do you recall reviewing drafts of the press release personally?

NOT A CERTIFIED COPY

017258

Stack
A. I don't remember personally reviewing drafts.
Q. Do you recall giving any comments on a draft of the press release?
A. I don't.
Probably the more senior people at Davis Polk did.
Q. Well, that was going to be my next question. Who at Morgan Stanley or Davis Polk do you know was actually involved in the process of preparing the press release?
MR. WISE: I don't know that anybody was in the process of preparing it. You mean reviewing it?
Q. Let's start with preparing it, putting pen to paper, writing it.
A. As I recall, I think Skadden prepared it and then I think others commented on it but I, frankly, don't have any specific knowledge of who those persons might have been.
Q. Well, I think you answered my next question. You don't know who at

Stack
Morgan Stanley or Davis Polk reviewed the Skadden Arps draft of the press release?
A. No, I don't know who it was. I could probably guess.
Q. I am not asking you to guess here.
A. Yeah.
Q. Do you know if a draft was, in fact, circulated on the night of the 18th of March?
A. I think it must have been, because I think it went out first thing the next morning, but I don't remember. I don't remember seeing it, so....
(Deposition Exhibit CPH 13, document which appears to transmit to Mr. Tyree a draft press release, previously marked for identification.)
Q. Ms. Stack, I am showing you what's previously been marked as Exhibit 13, CPH Exhibit 13.
MR. BRODY: And I will state,

Stack
for the record, the document was marked this way, although it's somewhat out of order, but the production number appears to be reversed. But, in any event, Exhibit 13 appears to transmit to Mr. Tyree a draft press release.
Q. Have you ever seen this before?
A. I don't remember seeing it.
Q. I'm sorry?
A. I don't remember seeing it.
Q. Do you remember any discussions with Mr. Freed at Skadden Arps about the press release or its content?
A. I don't remember.
Q. If you look at the fax transmittal message from Mr. Freed to Mr. Tyree, it refers to the fact that the press release should not be disseminated prior to its sign-off by Mr. Dunlap and/or Mr. Fannin. Do you remember any conversation about whether that was necessary for the press release?
A. I don't remember any

Stack
conversation.
Q. Okay. And did you have any conversation with Mr. Fannin about the press release?
A. I don't think so. I don't remember any.
Q. Do you recall any discussions, either on the conference call or at a later time, about any wording or content in the press release?
A. I think on the conference call generally the content of it was discussed, but I don't remember specific conversations about it.
Q. When the conference call was over, had the parties drafted a press release or had they just discussed types of things to include in there?
A. I think we had just discussed it. I think a draft was circulated. It must have been later, because I don't remember seeing it.
Q. And I may have touched on this but, do you recall any conversations with

NOT A CERTIFIED COPY

017259

Stack

anyone at Skadden Arps or at Sunbeam about what should be in the press release or should not be in the press release?

A. Again, I don't remember the specifics.

I remember it was generally discussed on the conference call.

Q. After the press release was issued, did you participate in any conversations that you recall about the accuracy of the press release?

A. No.

Q. Do you know if anyone involved in the deal raised questions about whether the press release was accurate or not?

A. Not that I remember. And people were very focused on it that night, so....

Q. Okay.

(Deposition Exhibit CPH 14, final version of the press release, previously marked for identification.)

MR. BRODY: Counsel.

Q. Ms. Stack, I have given you

Stack

what's previously been marked as Exhibit 14 in this case, CPH Exhibit 14. Do you recognize this as the final version of the press release?

A. Yeah, it looks like the final version.

Q. And having now seen that and reviewed it, does that refresh your recollection about any substance or matter within the press release that was discussed by the group beyond the fact that -- the fact that the press release was discussed?

A. I am just going to take a second and read it.

Q. Of course.

A. (Pause.)

Okay. I don't think I remember anything more than....

Q. Do you know if anyone from Arthur Andersen was consulted about the press release?

A. I don't remember, and I don't remember if they were on the calls that we

Stack

had, either.

Q. Do you remember any discussion about whether they should be consulted or not?

A. Again, I just don't remember.

Q. Okay. Do you remember any discussion in the call or after about whether the press release should disclose the actual sales for January and February of 1998?

A. I don't remember.

Q. Do you remember anyone in the conference call or thereafter suggesting the press release should contain additional disclosures, should have disclosed additional stuff?

A. Not that I recall.

Q. Do you remember anyone saying it shouldn't contain some of the disclosures that it did?

A. No.

Q. After the press release was issued -- the press release issued on the morning of the 19th?

Stack

A. I think that's right.

Q. And the final offering memorandum was printed that day?

A. Right, that night.

Q. From March 19th until closing, was there anyone at Morgan Stanley or Davis Polk who was responsible for monitoring Sunbeam's sales to see if, in fact, they were hitting their numbers?

A. Yeah, I don't remember anything specifically about that.

Q. I know we have talked some, or you have talked some, about the events at the printer, and I believe you testified that you were at the printer; is that correct?

A. Yes.

Q. And you arrived there at some point in the afternoon or evening of the 19th?

A. Yes.

Q. Do you remember when?

A. Um -- I don't remember when. It was probably in the evening, sometime

NOT A CERTIFIED COPY

017260

Stack

after pricing.
Q. Who was there?
A. Um -- I think that Jim Lurie was there with me. I think John Tyree was there. I think there was an associate from Skadden there, although I am not sure which one it was or if there were more than one. And I think there were two guys from Arthur Andersen there, and I think one of them was Larry. I remember a Larry, I guess Bornstein is his last name.
Q. Do you remember the name of the other one?
A. You know, after seeing it here a couple of times, Phil, or something, but I wouldn't have --
Q. You think Mr. Harlow was there?
A. Oh, gosh, I wouldn't know.
I know there was a second person with Larry, and it could have been someone different.
Q. Okay.
A. I don't remember.
I have just seen Phil Harlow's

Stack

name, I guess.
Q. Are you familiar with an Arthur Andersen accountant named Mark Brockelman?
A. That sounds familiar, as well. I suppose it could have been.
Q. But you are not sure.
A. No.
Q. How long were you at the printer?
A. Probably well into the late hour, probably early morning the next morning. I don't remember. Usually, we stay there until we sign off on the book completely.
Q. Could it have been six hours or more?
A. Sure.
Q. What was the physical layout of the printer?
Were you all in one room or did you have separate rooms?
A. There was one large conference room where I think most things happened. There is definitely -- I mean, at a

Stack

printer, there is definitely smaller break-out rooms all over the place, but I think there was one room that people were generally organized in here, as I recall.
Q. Were you there the whole time that Mr. Lurie was there?
Did you arrive together and leave together.
A. Um -- I think I was probably there till the very end, and he may have left a little before that. I believe we arrived together or somewhere around the same time.
Q. What conversations do you remember taking place at the printer?
A. I guess I remember, you know, general conversations about just the pricing and how the evening was going to go.
Specifically, I do remember one comment made by one of the guys from Arthur Andersen, I believe it was Larry, who was sort of a gregarious gentleman, and sort of made a joke about: Oh, yeah,

Stack

those guys, those guys aren't going to hit their numbers, or something like that, and made a comment like that, to which we all sort of responded: What are you talking about? Why would you say that? And then he said: Oh, no, I was just joking. And that was sort of the end of it. And we moved on from there. Everybody was obviously very focused on this press release and the contents of it and, so, when he made sort of a comment, an offhanded comment, people paid attention, and then he said he was joking, and that was sort of the end of it. And that was sort of in line with the interaction of the personality that went on there. And then I really don't have a lot of other specific recollections of what was said as of the printer, other than being there and....
Q. Okay. You believe Mr. -- let me withdraw that.
When Mr. Bornstein made his comment, who was he making it to?

NOT A CERTIFIED COPY

017261

Stack

A. I was definitely in the room, I think -- I think Jim was probably in the room.
Q. Jim Lurie?
A. Yeah, Jim Lurie. I can't say for sure who else was in the room at the time.
Q. Were other representatives of Skadden Arps there?
A. You know, they were there that evening, I don't know if they were in the room at the time.
Q. What about Mr. Tyree?
A. I also don't remember. He was probably in there, but I don't remember for sure.
Q. Okay. And before Mr. Bornstein made his comment, were people talking about the press release?
A. Um -- not that I recall.
Q. So he was the one who initiated the topic of conversation?
A. Yeah, as far as I remember.
For some reason, that exchange

Stack

just stuck out in my head but I, frankly, don't remember a lot of the surrounding discussions on it, of that, really, or anything else.
Q. Do you remember the precise words that Mr. Bornstein used?
A. No, but it was something along the effect of as I described earlier.
Q. That Sunbeam would not hit its numbers?
A. Yeah, something like that.
Q. Did he say that if Sunbeam didn't hit its numbers everybody there would be in trouble?
A. I don't remember those words.
It really was sort of an offhanded -- uh -- as I remember, it was sort of an offhanded remark, like: Oh, come on, you guys, they are not going to hit their numbers. You know: What do you mean by that?
Q. And then, after he made that comment, who asked for clarification?
A. I am not sure if it was me or

Stack

Jim or -- I mean, we all sort of had the same reaction.
Q. And what did he say?
A. And he said: No, no, I am just kidding, don't worry about it, or something along those lines.
Again, the specific words I don't remember, I just remember the general exchange.
Q. Thereafter, did Mr. Bornstein make phone calls to other people at Arthur Andersen, to your knowledge?
A. I don't know, I don't know.
Q. Do you know if Mr. Bornstein said in that conversation that he didn't think the press release was accurate? Do you remember that?
A. No. I mean, really, the only thing I remember is what he said and, really, it was very clear that he wasn't serious, so....
Q. Okay. And why was it that it was clear to you that he wasn't serious?
A. Well, if he had been serious, it

Stack

would have been a -- a huge issue for all of us, and we would have sort of dropped everything and focused on that, I think. And it was also -- I mean, I just remember that sort of character, tone of the conversation, and the way that it was sort of very consistent with the way he had behaved and how all of our interactions had gone throughout the transaction.
Q. When had you worked with Mr. Bornstein prior to this?
A. It was just in other conversations in the transaction.
Q. Do you remember any of those?
A. No, not specifically, no.
Q. Had you ever met him personally, seen him?
A. I think I had probably met him at the printer when we printed the reds, because I remember he was familiar when I saw him at the printer again.
Q. So that would be around the 16th of March.
A. Yeah, whatever date the --

NOT A CERTIFIED COPY

0117262

Stack

probably the night before that or something, yeah.

Q. Did anyone raise his or her voice in this conversation?

A. Not that I recall, no.

Q. Did anyone use profanity?

A. Not that I remember, no.

Q. Did Mr. Bornstein -- do you recall Mr. Bornstein stating to anyone in attendance at the meeting that he didn't think Sunbeam was going to meet its numbers?

A. I mean, only in the manner that I have already described.

Q. Did he repeat that in the meeting -- do you recall him stating in the meeting, to you or to others, that he was going to send auditors to all of Sunbeam's loading docks to make sure that it was correct? Do you remember that?

A. No, no.

Q. While at the printer, do you know if anyone from Davis Polk or Morgan Stanley had conversations with people from

Stack

Sunbeam who were not present?

A. I don't remember.

Q. Do you recall any calls being made by anyone to people who were not present, such as Mr. Harlow or Mr. Gluck or people at Sunbeam?

A. I don't remember anything specifically.

It wouldn't be unusual for that to happen, but....

Q. And do you remember Mr. Bornstein reporting back what others not in the meeting had said about the press release or the deal?

A. No, I don't.

Q. At the meeting at the printer, do you remember Mr. Bornstein delivering the -- Mr. Bornstein or someone else delivering the final version of the comfort letter?

A. I just don't remember if it was delivered that night or not.

Q. Do you remember any changes being made to the comfort letter at that

Stack

time?

A. No, I don't.

Q. Do you remember discussions with Mr. Bornstein or others at the printer to the effect that the amount of the offering had changed?

A. No, no.

Q. Ms. Stack you previously looked at a copy of the comfort letter, marked Morgan Stanley Exhibit 48.

A. Mm-hmm.

Q. And if you look at the text of the comfort letter, it recites that it's for a $1.3 billion offering.

Do you see that?

A. Right.

MR. CLARE: Mike, I just want to correct, you described this as "the comfort letter". I think you had previously described it as a "draft" of it, 48. Did you intend to describe this as the final comfort letter?

MR. BRODY: No.

Stack

MR. CLARE: Okay.

(Deposition Exhibit 111, document which appears to have been faxed from Global Financial Press on the night of the printing, previously marked for identification.)

Q. I am going to show you now what's been previously marked as Exhibit 111.

Have you ever seen that document before?

A. Not that I remember.

Q. It appears to have been faxed from Global Financial Press on the night of the printing.

Do you see that at the top?

A. Yes.

Q. And if you look on the first page, the amount of the offering is changed from 1.3 billion to 2.014 billion.

A. Yes, I see that.

Q. Does that refresh your recollection that there was conversation with the Anderson people on the night of

NOT A CERTIFIED COPY

017263

Stack
the visit to Global Financial Press that the amount of the offering had changed?
A. I don't remember discussing that, no.
(Deposition Exhibit CPH 17, document, which appears to be the final version of the comfort letter dated on the 19th of March 1998, previously marked for identification.)
Q. A draft of a letter -- I have given you what's previously been marked as CPH Exhibit 17. Does that appear to be the final version of the comfort letter dated on the 19th of March 1998 -- excuse me, yes, 1998.
A. Yes, that looks like it.
Q. And that shows the change to the amount of the offering?
A. Yes, it reflects the 2 billion number.
Q. And it contains on the last two pages, handwriting and tick marks to reference the items in the offering

Stack
memorandum?
A. Right.
Q. So this is the final.
A. It looks like, it's signed as well.
Q. Do you know if this was, in fact, delivered at the printer?
A. I don't remember.
Q. Do you remember any discussions about the form of the comfort letter or its content at the printer?
A. I don't.
Q. Do you remember any other discussions at the printer on the night of the -- I guess it was the 19th.
A. Other than what I have -- we have already discussed, I don't remember anything else specific.
(Deposition Exhibit CPH 114, document, previously marked for identification.)
Q. You can take that, please.
MR. BRODY: Counsel.
Q. I am showing you, Ms. Stack,

Stack
what's previously been marked as CPH Exhibit 114. I think my questions are going to be brief about this.
A. Okay.
Q. Have you ever seen it before?
A. Uh -- no.
Q. I'm sorry?
A. No -- well, I have seen -- I guess the back page I have seen.
Q. I'm sorry, you are correct, that is one we have talked about already. Okay. You can put that document aside.
Beginning with the events on the 18th of March, and following up until closing, do you remember any discussion in which anyone suggested that perhaps the deal should not go forward?
A. Um -- no. I mean, there was discussion that evening on those -- on that series of conference calls on the 18th about what we ought to do, and I am sure the possibility of not going forward was brought up, but I think that because we were going to put the information out

Stack
and give it to investors, people felt comfortable moving forward.
Q. Do you remember what anyone said with regard to whether the deal should or should not go forward?
A. Nothing specific, no.
Q. Do you remember any conversation beginning on the 18th and continuing until the closing of the deal about whether anyone ought to call up MacAndrews & Forbes and provide information such as the exhibits we have seen that showed the potential orders?
A. No.
Q. Do you recall any discussion, beginning on the 18th and continuing until the closing, about whether any additional disclosure should be made to the public about Sunbeam and its sales and earnings?
A. No, other than those conference calls where we talked about with what the press release ought to say, no.
Q. Okay. Now, we have looked at some earlier documents that showed the

NOT A CERTIFIED COPY

011264

Stack

amount of the offering was for 1.3 billion which would result in proceeds to Sunbeam of 500 million?

A. Mm-hmm.

Q. And you are aware that it was later raised to 2 billion. Do you recall what proceeds would result to Sunbeam from that amount?

A. No, I don't.

(Deposition Exhibit 10, final offering memorandum, previously marked for identification.)

Q. Let me show you what has previously been marked as Exhibit 10. And I apologize for the size of the document, I am not going to ask you to look at much of it, but you recognize this as the final offering memorandum?

A. (Nodding.)

Q. Is that correct?

A. Right.

Q. And you see the amount at the top identifies 2.0 billion?

A. Right.

Stack

Q. And you recognize this as the document that went to the printer on the night of the 19th; is that correct?

A. Yeah, this looks like what it is, yeah.

Q. And if you turn to what appears to be page 23 of the document, the production number in the corner ends with the numbers 191.

A. Right.

Q. You see the total debentures offered is 750 million?

A. Correct.

Q. So when the deal was increased from 1.3 to 2.0 billion, it resulted in an increase in proceeds to Sunbeam from 500 to 750; is that correct?

A. Yes, that's what it is, I guess.

Q. Now, do you remember any discussions within the group working on the deal about increasing the amount by -- that increase, by a 50 percent increase?

A. I don't remember.

Q. Do you remember when the

Stack

decision was made to increase the amount of the offering?

A. I don't. It must have been sometime after we printed the reds, because the reds said 1.3 but I don't remember when that was.

Q. Do you remember who, if anyone, was involved in that decision?

A. I don't know.

MR. BRODY: Can we mark this, please, as our next exhibit.

(Deposition Exhibit CPH 111, document which appears to be a fax to Ms. Stack, which was sent to Ms. Stack at about 10:23 p.m. on the night of the 19th at Global Financial Press, and it was sent to Mr. Lurie and Mr. Dietz, marked for identification, as of this date.)

MR. BRODY: And for you two, I have two copies, one appears to be stapled and one does not. I think they are identical. If one has handwriting, let me know, but that

Stack

was unintentional.

I'm sorry, this is marked as Exhibit 2--

THE COURT REPORTER: 211.

MR. BRODY: Thank you.

Q. Ms. Stark, I have given you what has been marked as Exhibit 211.

A. Yes.

Q. This appears to be a fax to you; correct?

A. Yes.

Q. And it was sent to you at about 10:23 p.m. on the night of the 19th at Global Financial Press.

A. Yes.

Q. And it was sent to Mr. Lurie and Mr. Dietz --

A. Right.

Q. -- as well?

A. Right.

Q. And I think you testified earlier that Mr. Lurie was present. Does this refresh your recollection that Mr. Dietz, in fact, was there?

NOT A CERTIFIED COPY

017265

Stack

A. I am sure he was.
I just don't have a real memory of who he was or having interaction with him.
Q. Fine. If you turn to the second page of the document, it's a memorandum from Nicole Duncan. Who is Nicole Duncan? What was her role?
A. She was another associate at Davis Polk, and I think she helped out on drafting a couple of documents. Maybe -- I sort of remember her drafting the indenture, maybe, and I worked on -- we sort of split up some documents at one point, and she helped out.
Q. And the document that is attached it the Sunbeam Corporation purchase agreement. Can you describe, just briefly, what the purpose of the purchase agreement was?
A. Yeah. This is the document where Morgan Stanley agrees to buy the securities from Sunbeam and then they will go and resell them to the market.

Stack

Q. Yes, and you are shown as having received a cc of this memo as, in fact, you did at Global Financial Press; correct?
A. Correct.
Q. Now, Ms. Duncan's memorandum states that she has attached the purchase agreement, and that the document was marked to show changes from the draft from this morning.
Do you see that?
A. Yes.
Q. And "this morning" would obviously be the morning of the 19th; correct?
A. Right.
Q. If you turn to the first page of text of the document, it appears to be a black-lined draft showing changes.
A. Correct.
Q. And the change at item 4 and at item -- item 4, the third line of the text, shows the change in the amount --
A. Right.

Stack

Q. -- to $2 billion. Does that refresh your recollection that, in fact, the amount was increased on the morning of the 19th?
A. Um --
MR. WISE: You are asking about her recollection or are you asking her to go through the deductive process which, obviously, you are going through to --
MR. BRODY: I am asking --
MR. WISE: -- to try to deduce whether or not that occurred.
MR. BRODY: I am asking for her recollection.
MR. WISE: I think she's already told you she doesn't remember.
A. I just don't remember.
Q. And this doesn't refresh your recollection?
A. No.
Q. Does this document lead you to the conclusion that the amount was changed the morning of the 19th or between the

Stack

morning of the 19th and the evening of the 19th?
MR. WISE: What's the difference whether it does or it doesn't? She's sitting here today, six years after the fact. Presumably, what's important is whether it leads the trier of fact to that conclusion, not whether it leads Ms. Stack one way or another to that conclusion.
MR. BRODY: I will take that as an objection to form.
Q. You can answer the question.
A. Yeah, it looks like that's exactly what happened.
Q. Does it lead you to any other possible conclusion?
A. Um -- I mean, it could have -- the amount could have changed prior to this date. You don't always send around a revised document every day. Um -- and maybe -- in fact, it looks like it says what was deleted back here is all zeros. So, I don't know what was in here before.

NOT A CERTIFIED COPY

017266

NOT A CERTIFIED COPY

Page 210

Stack

Q. Okay. Turn to page 5 of the text. And the production number at the end ends 33019?
A. Okay.
Q. And you see the insertion to paragraph L.
A. Yes.
Q. Just read that to yourself, please, I am going to ask you some questions about it.
A. (Pause.)
Okay.
Q. You understand that provision to state that the information set forth in the press release shall not in and of itself constitute a material adverse change?
A. Yes, that's what it says.
Q. Do you recall any discussion about that term or including that term in this document?
A. I don't recall the discussion but, I mean, this is the material adverse change, it looks like we are all just

Page 211

Stack

being clear that the press release which we all knew about and participated in making the decision to release isn't going to be -- wouldn't contravene this representation.
Q. Do you know who asked for or insisted upon that language?
A. I don't know specifically.
I assume it came from the company.
Q. Pardon me?
A. I assume it came from the company or its lawyers.
Q. Do you remember anyone expressing the view that, absent this language, someone could interpret the press release as a material adverse change?
A. I, again, don't remember specific discussions about this.
Q. Okay, you can put that document aside.
You have discussed, in general terms, the pricing of the offering. You

Page 212

Stack

were not involved in pricing?
A. No.
Q. Do you know who was?
A. The company and the bankers, I think.
Q. Do you know which bankers?
A. I don't.
Q. Was it reported to you what happened in the pricing conference call?
A. Not that I remember.
Q. Do you have any understanding or recollection of what was discussed -- what issues were raised in the pricing conference call?
A. I mean, the pricing terms obviously came out of it, the amount at which the public paid for the notes and that sort of thing, but I don't remember anything specific, other than that.
Q. That answered my question, thank you.
Following the events at the printer, what additional work, if any, did you do on this transaction?

Page 213

Stack

A. I coordinated documents for the closing, so there were lots of deliverables that we needed to get from both sides for the closing, their opinions and, you know, copies of certificates and all that sort of thing, and I coordinated that and coordinated the transfer of the funds and the securities and that sort of thing.
Q. Well, when you say you "coordinated" the documents, what does that mean?
A. Basically, collected copies of them after they had been finalized from everyone, collected the actual signature pages, had them all laid out on a big conference table for people to review, really coordinated the closing efforts.
Q. It doesn't mean that you drafted all of those documents.
A. No, no.
MR. WISE: (Laughing.)
Q. You have described already the work you have done on drafting.

017267

Stack

A. Correct.
Q. Where did the closing take place?
A. Gosh -- you know, I don't remember.
It could have been here, and it could have been at Skadden's offices, but I actually don't remember where it took place, I don't know.
Q. And when you refer to "the closing", you are referring to the closing of the financing or the closing of the merger or both?
A. The financing.
Q. Did you participate in the closing of the transaction whereby Sunbeam acquired from MacAndrews & Forbes certain interests in companies that owned interests in Coleman?
A. I was not involved in that part of the transaction.
Q. Okay, thank you.
Between the 19th and the closing, there was bring-down due

Stack

diligence?
A. Yeah, I don't remember it specifically, but there -- I am sure that there was.
Q. Do you remember -- you don't remember participating in any bring-down due diligence?
A. I don't.
Q. Are you aware of -- please return to Exhibit 24, the chronology we have spent much time today on.
It references March 24th, 1998 bring-down due diligence conference call pre-closing.
A. (Nodding.)
Q. Do you believe you were on that call or not on that call or do you just not remember?
A. I just -- I just don't remember.
Q. Okay. Well, let me show you a couple of documents, and we will see if they assist your recollection.
A. Okay.
MR. BRODY: We are going to have

Stack

to mark this as 212.
(Deposition Exhibit CPH 212, document, which in the corner states DPW 10, marked for identification, as of this date.)
A. (Pause.)
Q. Ms. Stack, I have given you what the court reporter has marked as Exhibit 212, and I see you have had a chance to look at it; is that correct?
A. Yes.
MR. BRODY: And I will state, for the record, for Mr. Clare's benefit, this document, in a slightly different form, has been marked as Exhibit CPH 33, but this document, however, was produced in this case by your former law firm. You see in the corner DPW 10 indicates it came from Davis Polk, so I have remarked it.
Q. Have you ever seen this before?
A. I don't remember it specifically, but it looks relatively similar to a lot of due diligence

Stack

questions.
Q. Having looked at this, does this refresh your recollection about whether, in fact, you did participate in a bring-down due diligence call?
A. I just don't remember.
Q. In the firm, it's from Mr. Tyree, who you have talked about, and also Mr. Groeller, G-R-O-E-L-L-E-R.
Do you remember doing any work with Mr. Groeller on this transaction?
A. I don't, I don't remember.
Q. You can put that aside.
(Deposition Exhibit CPH 35, document, a little different draft of CPH, 212, previously marked for identification.)
Q. And let me show an additional document, previously marked as CPH Exhibit 35.
Have you ever seen that before, Exhibit 35?
A. I know it looks like a little different draft of the last one. Let me

NOT A CERTIFIED COPY

017268

Stack

just look at it.
Q. It is.
A. Yeah.
(Pause.)
Q. Do you remember --
A. Oh, I'm sorry.
Q. Do you remember having seen it before?
You may have answered, I just missed it.
A. No, I don't remember.
Q. And having seen this again, does it refresh your recollection as to whether you participated in any bring-down calls?
A. You know, I probably participated, I just don't remember --
Q. Okay.
A. -- being on them.
Q. The first item here asks for there to be an update on build-up of the first quarter revenues and earnings, and there is some items underneath that.
Do you remember having any discussions within Davis Polk or with

Stack

Morgan Stanley or with anyone else about first quarter revenues and earnings after the 19th of March?
A. I don't remember.
Q. Are you aware that, in connection with bring-down calls, there is frequently a bring-down letter from the accountants?
A. Yes.
Q. Do you know if you saw the bring-down letter in this case?
A. I don't remember seeing one, although I am sure that one was delivered.
Q. Do you remember any discussions with the accountants or with Morgan Stanley or with Sunbeam about the representations contained in the bring-down letter?
A. No, I don't.
(Deposition Exhibit CPH 112, bring-down comfort letter, previously marked for identification.)
Q. Let me show you one additional comfort letter, previously marked as CPH

Stack

Exhibit 112.
Do you recognize this as the bring-down letter?
A. Yeah, it looks like the bring-down comfort letter. I don't remember seeing it.
Q. Okay. I think you may have answered my next question. Having now seen this, does it refresh your recollection whether you saw it at the time?
A. Yeah, I still don't remember.
Q. Okay. Do you remember any conversations or work in tracking down the numbers in the bring-down letter?
A. I don't remember.
Q. Turn to page 2 of the bring-down letter. It refers to some sales numbers and some net income numbers through March of 1998.
A. (Nodding.)
Q. Do you see that?
A. Yes.
Q. Do you recall any discussion

Stack

about whether those numbers ought to be disclosed to the public?
A. I don't remember.
Q. Do you remember if there ever was any public disclosure in any context about the fact that through the first two months of '98 Sunbeam was running at a pretty substantial loss?
MR. CLARE: Object to the form of the question.
You can answer.
A. I guess other than all those calls that we had on the night of the 18th, that we have already talked about, I don't remember anymore discussion about this.
Q. Okay. Did you participate in any calls with analysts or calls with anyone else outside of the Morgan Stanley/ Davis Polk group about the offering before it went -- before it closed?
A. Uh -- no, other than, you know, the company and their counsel during those calls on the 18th.

NOT A CERTIFIED COPY

017269

Stack

Q. Okay. And after the closing, did you participate in any -- do any work on this deal or for Sunbeam -- withdraw that.

After closing of the public offering we have been talking about, did you do any work for Davis Polk on behalf of Morgan Stanley in connection with Sunbeam?

A. Not that I recall.

I may have helped put together sort of the documents for the closing sets and that sort of stuff but -- mmm -- nothing else, no.

Q. Are you aware that, shortly after the deal closed, Sunbeam announced that, in fact, it had not made its numbers?

A. Yeah, I am aware of that.

Q. How did you become aware of that?

A. I think I probably -- I remember it happening at the time the press release came out and we were -- I was surprised.

Stack

Q. Were there any discussions that you are aware of about how Sunbeam got to that point, how it happened?

A. I don't think I had any specific discussions about it, no.

Q. Do you remember anyone asking or suggesting that Morgan Stanley or Davis Polk could have done something differently after that information came out?

A. No, not that I remember.

Q. You don't remember anyone questioning or saying: We should have done something differently, or held up on the deal?

A. Yeah -- no, I mean, I remember that I was surprised by it, but no, I don't remember discussions about that.

Q. Okay. Ms. Stack, I have asked you some questions about the road-show and I believe you said you had no involvement in the road-show.

A. No.

Q. This is going to be a slightly different question.

Stack

Did anyone report back to you or did you hear it reported to you what had been discussed at the road-show or any of the road-shows?

A. No, not that I remember, no.

Q. Are you aware that there was a road-show after the press release came out?

MR. WISE: Which press release?

MR. BRODY: I'm sorry.

Q. The March 19th press release.

MR. BRODY: Thank you, counsel.

A. Yeah, I guess, I mean, it was the last day of the road-show before pricing, so it's pretty typical there would be a meeting that day.

Q. Did anyone report to you, or say in your presence, what had happened at that road-show or statements that were made?

A. I don't remember any, no.

Q. Did you ever hear it reported to you that Mr. Dunlap or others at Sunbeam said publicly that the only reason they

Stack

issued the press release is the lawyers made them do it?

A. No, actually, I don't remember that.

Q. Okay. In connection with the work that you did on this transaction, did you review any documents reflecting -- let me withdraw that.

In connection with the work you did on this transaction, did you ever look at any proformas or estimates of what a Coleman/Sunbeam combination would look like?

A. I think there are probably some included in the offering memorandum, so I am sure that I saw them. Frankly, as a first-year associate, they would have been a little more complicated than I would have had expertise in, I think, at the time.

Q. Do you remember any discussions within Morgan Stanley, with Morgan Stanley or within Davis Polk, about any synergies or advantages from this combination that

NOT A CERTIFIED COPY

011270

Stack

would flow to Sunbeam?
A. I don't remember any specific conversations.
Q. And I believe you said there was a different group at Morgan Stanley working on the bank loan. Do you remember any conversations with them about --
A. At Davis Polk --
Q. Thank you.
A. Sorry.
Q. I knew I had made that mistake. I probably made it more than you have caught.
You said there was a different team at Davis Polk working on the bank loan.
A. Yes.
Q. Did you have any conversations with them about the bank loan or the work they were doing?
A. No, nothing specific.
I think we may have had to coordinate some things, but I don't really remember any specifics of it.

Stack

Q. Did any members of the bank loan team participate in the conference calls on the 18th?
A. You know, I don't remember any of them being there, but....
Q. Do you remember any conversations between members of your group and anyone else about the impact of the events of the 18th and 19th and the press release on the bank loan?
A. I don't remember, no.
MR. BRODY: Why don't we go off the record.
MR. WISE: Sure.
THE LEGAL VIDEO SPECIALIST: The time is 2:29, and we are off the record.
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: The time is 2:31, and we are back on the record.
MR. BRODY: Thank you.
Q. Ms. Stack, we have talked a fair amount today about the events at the

Stack

printer, at the Global Financial Press, and you have testified about your recollection. Do you recall any other events or conversations that took place at the printer?
A. Um -- nothing that we haven't already discussed.
Q. Do you recall any notes or documents that you created or saw at the time that would refresh your recollection about what happened at the printer?
A. I don't remember anything else now.
Q. Do you recall any documents, whether you created them there or not, that would refresh your recollection about what happened?
A. No, nothing specific, no.
Q. Okay.
MR. BRODY: I have no further questions. I thank you for your time.
THE WITNESS: Thanks.
MR. CLARE: I have no questions

Stack

at this time.
MR. WISE: That's it.
MR. BRODY: Okay.
THE LEGAL VIDEO SPECIALIST: Okay. The time is now 2:32, we have reached the end of the deposition, and we are off the record.
(Time noted: 2:32 p.m.)

_____
HEATHER M. STACK

Subscribed and sworn to before me this ____ day of _____, 2004.

_____
Notary Public

011271

NOT A CERTIFIED COPY

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, WENDY D. BOSKIND, an RPR and Notary Public within and for the State of New York, do hereby certify:

That HEATHER M. STACK, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true and accurate record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of May, 2004.

WENDY D. BOSKIND, RPR

May 25, 2004

INDEX

WITNESS PAGE
Heather M. Stack

EXAMINATION BY
MR. BRODY:..... 7:2

----------EXHIBITS----------
24, chronology prepared by Davis Polk, previously marked for identification..... ..... 56:23
CPH 207, document which looks like something you would see at the beginning of most transactions, the third page of the exhibit, in the bottom right, it has a production number ending with 16... 59:18
140, document with handwriting, previously marked for identification..... 66:21
141, draft document with handwriting, previously marked for identification..... ..... 68:10
142, document with handwriting, previously marked for identification..... 69:6

143, document which has no handwriting, it appears to be a final or near-final version of previous marked documents, previously marked for identification..... ..... 69:18
CPH 11, March 9, communication from Mr. Tyree, previously marked for identification..... 74:6
CPH 208, document, on the second page there is a distribution list, with a lengthy attachment provided..... 75:22
CPH 209, preliminary version of the prospectus..... 84:3
123, document, the first two pages is a memorandum from Lawrence A. Bornstein, at Arthur Andersen, previously marked for identification..... 104:11
CPH 210,..... 112:2
110, draft comfort letter, and it bears a fax transmittal of 3-17-98 at what appears to be about 8:30 at night, previously marked for identification..... 124:10
CPH 16, document, previously marked for identification..... 140:16

CPH 63, document, previously marked for identification..... 140:19
CPH 64, document, previously marked for identification..... 140:22
CPH 65, document, previously marked for identification..... 140:25
CPH 66, document, previously marked for identification..... 141:4
120, letter signed by Mr. Dunlap, Mr. Kersh, Mr. Fannin, and Mr. Gluck, previously marked for identification..... ..... 175:23
Morgan Stanley 48, draft of the comfort letter, previously marked for identification..... 176:21
CPH 13, document which appears to transmit to Mr. Tyree a draft press release, previously marked for identification..... 179:17
CPH 14, final version of the press release, previously marked for identification..... 182:20

NOT A CERTIFIED COPY

017272

111, document which appears to have been faxed from Global Financial Press on the night of the printing, previously marked for identification..... 197:3
CPH 17, document, which appears to be the final version of the comfort letter dated on the 19th of March 1998, previously marked for identification..... 198:6
CPH 114, document, previously marked for identification..... 199:20
10, final offering memorandum, previously marked for identification..... 202:11
CPH 111, document which appears to be a fax to Ms. Stack, which was sent to Ms. Stack at about 10:23 p.m. on the night of the 19th at Global Financial Press, and it was sent to Mr. Lurie and Mr. Dietz... ..... 204:13
CPH 212, document, which in the corner states DPW 10..... 216:3
CPH 35, document, a little different draft of CPH, 212, previously marked for identification..... 217:15

CPH 112, bring-down comfort letter, previously marked for identification..... ..... 219:21

(Exhibits retained by counsel.)

(DIRECTION NOT TO ANSWER.)..... 116:25
(DIRECTION NOT TO ANSWER.)..... 118:8
(DIRECTION NOT TO ANSWER.)..... 135:3
(DIRECTION NOT TO ANSWER.)..... 165:6
(DIRECTION NOT TO ANSWER.)..... 166:9

ERRATA SHEET

STATE OF NEW YORK) Pg__of__Pgs
ss:
COUNTY OF NEW YORK)

I wish to make the following changes, for the following reasons:
PAGE LINE
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____

NOT A CERTIFIED COPY

017273

Sunbeam Corporation (545100)
Time Detail: 3/01/98 to 3/31/98

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
6	Corporate Advice	Associate	Heiman LA	3/26/1998	0.40	EMPLOYMENT AGREEMENTS.
6	Corporate Advice	Legal Asst Special II	Crooks H	3/2/1998	0.20	RESEARCH RE SEARCH FOR INFORMATION ON A COMPANY.
6	Corporate Advice	Legal Asst Special II	Crooks H	3/2/1998	0.50	RESEARCH RE SEC DOCUMENTS.
9	Shareholder Meeting	Partner	Amorison AL	3/2/1998	6.80	TC W/ J. KELLEY RE: D & O QUESTIONNAIRE; DRAFT D & O QUESTIONNAIRE; TC W/ F. FOGG; BANK FINANCING; CONFERENCE CALL; ANALYST CONFERENCE CALL; TC RE: 8-K AND 10-K; SCHEDULE OF SEC FILINGS; TC W/ F. MILLER.
9	Shareholder Meeting	Partner	Amorison AL	3/5/1998	7.20	REVISE 13D; TC RE: PROXY; REVIEW PROXY; REVIEW 10-K; MEETING W/ R. EASTON; TC W/ J. KELLEY; REVIEW EMPLOYMENT AGREEMENT; REVIEW 13G; MEMO; REVIEW SEC RULES RE: SCHEDULE 13E-3 AND 14(F); TC W/ R. OLSHAN.
9	Shareholder Meeting	Partner	Amorison AL	3/8/1998	3.60	REVIEW AND REVISE BOARD RESOLUTIONS; PROXY.
9	Shareholder Meeting	Partner	Easton RL	3/8/1998	1.75	REVIEWING ANNUAL PROXY STATEMENT
9	Shareholder Meeting	Partner	Easton RL	3/12/1998	4.50	WORK ON RESOLVING ANNUAL MEETING PROXY STATEMENT LIST APPLICATION; NUMEROUS T/CS
9	Shareholder Meeting	Partner	Easton RL	3/31/1998	3.50	T/C WITH J. KELLEY, A. AMORISON, BRADLEY AND PETER RE: [redacted] T/C WITH S. DANIELS RE: MY COMMENTS; CONFERENCE WITH P. NECKLES AND F. FOGG.
9	Shareholder Meeting	Associate	Daniels SJ	3/6/1998	14.25	EDITED AND REVISED SUNBEAM PROXY;STATEMENT DRAFTED BENEFICIAL OWNERSHIP TABLE; REVIEW OF CORPORATE DOCUMENTS; REDRAFTED BOARD RESOLUTIONS, MINUTES AND CONSENTS; DISTRIBUTED DOCUMENTS INTERNALLY; CONFERENCES W/ C. ANDERSON RE: PROXY STATEMENT.
9	Shareholder Meeting	Associate	Daniels SJ	3/10/1998	11.70	CONTINUED EDITS TO SUNBEAM 1998 ANNUAL PROXY STATEMENT; FINAL READ OF PROXY STATEMENT AND CONFIRMATION OF ALL STOCK OWNERSHIP NUMBERS; CONVERSATIONS W/ J. KELLEY, C. ANDERSON AND R. OLSHAN RE: [redacted] FINALIZED SECTIONS 14(F) NOTICE AND DISTRIBUTED TO WLR&K/COLEMAN; DISCUSSIONS W/ M. GREENBERG RE: SUBSEQUENT LISTING APPLICATION.
9	Shareholder Meeting	Associate	Daniels SJ	3/11/1998	5.95	REVIEWED AND EDITED SUBSEQUENT LISTING APPLICATION; EDITED AND REVISED PROXY STATEMENT.
9	Shareholder Meeting	Associate	Daniels SJ	3/30/1998	4.20	REVISIONS TO PROXY STATEMENT; DRAFTED AMENDMENT TO SCHEDULE 13D.
11	Avedesian	Legal Assistant	Mills AL	3/31/1998	0.25	FILE CREATION/MAINTENANCE UPDATED FILE
12	Strategy	Partner	Amorison AL	3/3/1998	10.40	REVIEW AND REVISE BOARD AND STOCKHOLDERS RESOLUTIONS; DRAFT 10-K RECENT DEVELOPMENTS SECTION; TC RE: FORMS 4 & 3; REVIEW RULE 13D, RULE 16B, 14F; REVIEW FORM 13(A) AND FORM 4; TC W/ B. WEISS; TC W/ J. KELLEY; MEETING W/ R. EASTON; REVIEW INDENTURE.
12	Strategy	Partner	Amorison AL	3/4/1998	8.20	DRAFT 13D; REVIEW PROXY; TC W/ J. KELLEY; REVIEW FORMS 3 & 4; MEETING W/ R. EASTON; TC RE: 14(F) FILING; TC W/ B. WEISS.
12	Strategy	Partner	Amorison AL	3/6/1998	3.80	MEETING W/ R. EASTON; REVISE 13D; TC W/ B. WEISS; TC W/ P. NECKLES; TC W/ J. KELLEY; COMMENTS TO 13I REVIEW TENDER OFFER FILINGS.

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT
Fogg 384
12/17/04

CONFIDENTIAL

SASMF 19645

16div-022878

01275

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Partner	Amorison AL	3/9/1998	4.70	REVISE SCHEDULE 13D; COVER MEMO; TC W/ J. KELEY; MEETING W/ R. EASTON; REVIEW 14(F); REVIEW RESOLUTIONS.
12	Strategy	Partner	Amorison AL	3/10/1998	3.20	TC W/ R. EASTON; TC W/ H. STACK; TC W/ S. DANIELS; REVIEW AND REVISE 14(F) INFORMATION; REVISE RESOLUTIONS.
12	Strategy	Partner	Amorison AL	3/11/1998	13.60	REVIEW 14(F); PREPARE AND FILE AMENDMENT TO 13D; MEMO; REVISE BOARD AND STOCKHOLDERS RESOLUTIONS; MEETING W/ R. EASTON; REVIEW AND REVISE NYSE LISTING APPLICATION, COVER MEMO AND LEGAL OPINION.
12	Strategy	Partner	Amorison AL	3/12/1998	5.10	REVISE NYSE LISTING APPLICATION; REVIEW NYSE LISTING APPLICATION; DRAFT LEGAL OPINION AND TRANSMITTAL LETTER; REVISE STOCKHOLDER AND BOARD RESOLUTIONS.
12	Strategy	Partner	Amorison AL	3/13/1998	8.10	NYSE LISTING APP. & OPINION AND LETTER; REVIEW BY LAWS; TCS W/F. F. FOGG, R. EASTON; TC W/T. FREED RI 144A OFFERING; TC W/F. MILLER, S. COHEN RE 228 NOTICE; TC W/NYSE; REVIEW 144A OFFERING MEMO.
12	Strategy	Partner	Amorison AL	3/17/1998	4.20	NYSE LISTING APPLICATION, LEGAL OPINION; TC W/ NYSE; TC W/ F. FOGG; REVIEW AND COMMENTS TO 14(F NOTICE; TC W/ A. DEITZ RE: 144A OFFERING; TC W/ J. KELLEY; TC W/ R. EASTON; TC W/ F. MILLER; REVIEW CHRONOLOGY; TC W/ J. NISA.
12	Strategy	Partner	Amorison AL	3/18/1998	6.80	TC W/ F. FOGG; REVIEW MEMO; NYSE LISTING APPLICATION AND OPINION; TC W/ NYSE; DRAFT MEMO TC W/ J. KELLEY; REVIEW AND COMMENT TO SECTION 14(F) NOTICE; TC W/ F. MILLER; MEETING W/ S. DANIELS RE: MERGER PROXY AND INFORMATION STATEMENT; T W/ M. GARTLAND; TC W/ A. DEITZ; TC W/ H. STACK; TC W T. FREED; MEETING W/ C. ANDERSON; TC W/ B. WEISS.
12	Strategy	Partner	Amorison AL	3/20/1998	0.50	TC W/ R. EASTON; TC W/ NYSE RE: LISTING APPLICATION; TC W/ A. DEITZ RE: 144A.
12	Strategy	Partner	Amorison AL	3/21/1998	0.40	TC W/ S. COHEN RE: BANK REPAYMENT; 10-K.
12	Strategy	Partner	Amorison AL	3/23/1998	5.90	TC W/ B. GLUCK, J. KELLEY, R. EASTON, C. ANDERSON, NISA, S. COHEN, F. MILLER; REVIEW COLEMAN 10-K LANGUAGE; TC W/ A. DEITZ; TC W/ M. GARTLAND; TC W T. FREED; REVIEW BANK MEMO; TC W/ R. GORDON; REVIEW AND REVISE 144A NYSE LISTING APPLICATION TC W/ NYSE.
12	Strategy	Partner	Amorison AL	3/24/1998	11.80	FINALIZE LEGAL OPINIONS; DRAFT CERTIFICATE OF MERGER; REVISE CLOSING CHECKLIST; TC W/ F. MILLE TC W/ T. FREED; TC W/ J. KELLEY; TC W/ M. SHEHAN; TC W/ M. GARTLAND; TC W/ R. EASTON; TC W/ NYSE; REVIEW S-4.
12	Strategy	Partner	Amorison AL	3/25/1998	13.10	TC W/ S. BANKER; TC W/ J. KELLEY; TC W/ S. COHEN; TC W/ F. MILLER; TC W/ R. EASTON; REVIEW AND REVISE FORM S-4; REVISE CERTIFICATE OF MERGER; TC W/ D. REUSCH RE: CERTIFICATE OF MERGER; REVIEW FINAL NYSE FORM; TC W/ JON KIESEL; DISTRIBUTE MEMO; TC W/G. FERNICOLA; TC W/ B. WEISS; TC W/ T. FREED; TC W/ C. ARONSON.

NOT A CERTIFIED COPY

011276

CONFIDENTIAL SASMF 19646

16div-022879

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Partner	Amorison AL	3/26/1998	16.70	REVIEW S-4; REVISIONS TO S-4; TC W/ A. EMMERICH RE: SIDE LETTER; REVISE CERTIFICATE OF MERGER AND CROSS RECEIPT; TC W/ J. KELLEY; TC W/ S. COHEN; TC W/ F. MILLER; TC W/ R. EASTON; TC W/ A. DEITZ; TC W/ J. NISA; TC W/ M. SHEHAN; REVIEW AND COMMENTS TO SIDE LETTER; AMENDMENT TO MERGER AGREEMENT; AMENDMENT TO ACCESS AGREEMENT; TC RE: MERGER AGREEMENT AND ACCESS AGREEMENT; TC W/ B. WEISS RE: TAX RIDER; TC W/ D. REUSCH; TC W/ S. DALBERT RE CLOSING AND WIRE TRANSFER; TC W/ M. GARTLAND; TC W/ BANK OFNEW YORK RE: STOCK CERTIFICATES.
12	Strategy	Partner	Amorison AL	3/27/1998	12.90	PREPARE FOR CLOSING; MEETING W/ M. GREENBERG AND S. DANIELS RE: S-4; MEETING W/ J. KELLEY RE: CLOSING; PREPARE DOCUMENTS FOR EXECUTION; TC W/ J. KELLEY; TC W/ S. DALBERTH; TC W/ M. GARTLAND; TC W/ A. DEITZ, M. SHEHAN, C. ARONSON; J. NISA; R. EASTON;TC W/ R. CHIANESE RE: STOCK CERTIFICATE; TC W/ S. COHEN AND A. EMMERICH RE: CLOSING.
12	Strategy	Partner	Amorison AL	3/29/1998	4.10	TC W/ A. DEITZ; TC W/ M. GARTLAND; TC W/ C. ANDERSON; TC W/ M. PLANTE; REVIEW S-4; TC W/ R. EASTON.
12	Strategy	Partner	Amorison AL	3/30/1998	11.80	CLOSING FOR HOLDINGS MERGER; REVIEW 8-K; PREPARE BOARD RESOLUTIONS; TC W/ F. MILLER; TC W S. COHEN RE: S-4; TC W/ R. CHIANESE; S. DALBERTH; J. KELLEY; REVIEW PRESS RELEASE; TC W/ N. LEFF; T. NELSON RE: BENEFITS AGREEMENT; TC W/ J. KELLEY; B GLUCK;MEETING W/ R. EASTON; REVIEW S-4; RULES CHECK.
12	Strategy	Partner	Amorison AL	3/31/1998	9.10	REVIEW 13D; REVIEW BOARD RESOLUTIONS; TC W/ J. KELLEY; TC W/ F. FOGG; TC W/ R. EASTON; REVISE FORI S-4; REVIEW AND REVISE BOARD RESOLUTIONS; NYSE LETTERS; TC W/ T. GOWAN; M. PLANTE; M. GARTLAND; REVIEW AND REVISE 13E-3; REVIEW INDENTURE PROVISIONS; TC W/ B. GLUCK.
12	Strategy	Partner	Aronson CH	3/16/1998	0.80	MARY LOU RE STATUS.
12	Strategy	Partner	Aronson CH	3/18/1998	3.10	MTG.; JANET KELLY RE GRILLS; SHSEEHAN.
12	Strategy	Partner	Aronson CH	3/23/1998	0.75	COLEMAN TRANSACTION; MICHELLE GORTLAND AND DEL. OFFICE RE TRANSACTION.
12	Strategy	Partner	Aronson CH	3/24/1998	0.75	WACHTELL AND NISA AND KELLEY RE FIREWALLS.
12	Strategy	Partner	Aronson CH	3/25/1998	6.50	FTC; CLIENT; RULES; WACHTELL.
12	Strategy	Partner	Aronson CH	3/26/1998	1.75	CHANGES TO RULES; JANET; MATERIALS.
12	Strategy	Partner	Aronson CH	3/27/1998	1.75	DEAL W/FTC AND MARK.
12	Strategy	Partner	Deitz AS	3/29/1998	1.00	REVIEW CLOSING DOCUMENT LIST AND SIGNED DOCUMENTS.
12	Strategy	Partner	Deitz AS	3/30/1998	4.00	T/C/W F. SGARAGTINO, FIRST TRUST. VARIOUS T/C/W WITH A. AMORRISON. ATTEND TO CCLOSING OF FIRST STEP CLN HOLDINGS MERGER.
12	Strategy	Partner	Easton RL	3/1/1998	1.50	T/C WITH M. SHEHAN, F. FOGG, A. AMORISON, S. DANIELS, D. FANNIN; REVIEWING PRESS RELEASE; CALLS TO D. FANNIN AND GOUDIS
12	Strategy	Partner	Easton RL	3/2/1998	3.50	ANALYST CALL; PREPARE CHECKLIST; NUMEROUS T/C AND CONFERENCES
12	Strategy	Partner	Easton RL	3/3/1998	4.00	WORK ON RIDERS FOR 10-K; FOREIGN COMPETITION FILES; 13-D; CONFERENCES
12	Strategy	Partner	Easton RL	3/4/1998	3.75	NUMEROUS T/CS WITH JANET, PETER, DAVID, FIN AND MARK; WORK ON 13-D; CONFERENCES WITH ALLISON
12	Strategy	Partner	Easton RL	3/5/1998	3.50	WORK ON 13-D, 14F, ETC; T/C WITH NISA RE: HSR FILINGS; T/C WITH LANGERMAN, KELLEY AND FOGG

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19647

16div-022880

MATERIAL
REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Partner	Easton RL	3/6/1998	1.50	CONFERENCE WITH C. ANDERSON RE: PROXY STATEMENT; REVIEWING REVISED 13D; T/C WITH FOGG RE: [redacted]
12	Strategy	Partner	Easton RL	3/9/1998	3.75	CONFERENCES WITH C. ANDERSON RE: PROXY STATEMENT; CONFERENCE WITH S. DANIELS RE: 13D AND 14F
12	Strategy	Partner	Easton RL	3/10/1998	4.50	REVIEWING FINAL 13D; WORK ON 14F AND PROXY; CONFERENCE WITH S. DANIELS AND C. ANDERSON; T/C WITH D. KRAUS AND A. FUCHS RE: TRADING INQUIRY; T/C WITH FOGG AND FERNICOLA
12	Strategy	Partner	Easton RL	3/11/1998	3.50	REVIEWING WEISS TAX MEMO; REVIEWING 14F, 144A TRANSACTION DESCRIPTIONS AND FOGG FINANCING MEMO; NUMEROUS T/CS
12	Strategy	Partner	Easton RL	3/13/1998	4.00	REVIEWING LISTING APPLICATION; NUMEROUS T/CS WITH FIN, ALLISON, CANDEE ETC.
12	Strategy	Partner	Easton RL	3/14/1998	1.00	REVIEWING AND MARK UP OF 4F; FAX COMMENTS TO A. AMORISON
12	Strategy	Partner	Easton RL	3/19/1998	0.50	T/CS
12	Strategy	Partner	Easton RL	3/22/1998	0.50	T/C WITH FOGG AND A. AMORISON
12	Strategy	Partner	Easton RL	3/23/1998	0.50	T/C WITH TEAM
12	Strategy	Partner	Easton RL	3/24/1998	0.75	T/C WITH A. AMORISON, CLIFF AND GREGG
12	Strategy	Partner	Easton RL	3/25/1998	0.75	T/C WITH A. AMORISON, C. ANDERSON AND GREGG
12	Strategy	Partner	Easton RL	3/26/1998	0.75	T/C WITH A. AMORISON RE: TIMING OF CLOSING AND RELATING ISSUES; T/C WITH WEISS RE: DIRECTION OF MERGER
12	Strategy	Partner	Easton RL	3/27/1998	0.50	T/C WITH A. AMORISON RE: CLOSING
12	Strategy	Partner	Easton RL	3/28/1998	0.50	T/C WITH A. AMORISON RE: CLOSING
12	Strategy	Partner	Easton RL	3/29/1998	1.00	T/C WITH A. AMORISON RE: TOMORROW'S CLOSING AND PRESS RELEASE; T/C WITH C. ANDERSON RE: PROXY STATEMENT; T/C WITH FOGG
12	Strategy	Partner	Easton RL	3/30/1998	5.00	NUMEROUS T/CS; WORK ON DEAL
12	Strategy	Partner	Finkelstein SM	3/12/1998	0.50	MTG. W/B. WEISS RE: SECTION 279
12	Strategy	Partner	Gonzalez EE	3/17/1998	0.25	MISCELLANEOUS CONFERENCE.
12	Strategy	Partner	Gonzalez EE	3/18/1998	0.25	CONFERENCE WITH B. WEISS.
12	Strategy	Partner	Gonzalez EE	3/19/1998	0.75	REVIEW OF DISCLOSURE; CONFERENCE.
12	Strategy	Partner	Hamilton SW	3/3/1998	0.70	FIND CONFIDENTIALITY REQUEST LETTERS AND FAX TO R. EASTON; TELEPHONE CONFERENCE WITH R. EASTON.
12	Strategy	Partner	Hawk BE	3/3/1998	0.40	SUNBEAM/PENDING: TC AND CONFERENCE WITH H. HUSER RE NON-U.S. APPROVALS; REVIEW OF FACTS.
12	Strategy	Partner	Hawk BE	3/5/1998	0.60	TC WITH HENRY HUSER RE EUROPEAN APPROVALS; REVIEW OF FACTS.
12	Strategy	Partner	Hawk BE	3/6/1998	0.40	REVIEW OF MEMO AND TC RE EUROPEAN ANTITRUST APPROVAL.
12	Strategy	Partner	Hawk BE	3/9/1998	0.40	TC WITH HENRY HUSER RE EUROPEAN APPROVALS; REVIEW OF MEMOS.
12	Strategy	Partner	Hawk BE	3/10/1998	0.70	TC AND REVIEW OF FILINGS IN EUROPE.
12	Strategy	Partner	Hawk BE	3/11/1998	0.80	REVIEW OF MEMO RE NON-U.S. APPROVALS AND TC WITH IOANNIS ZERVAS.
12	Strategy	Partner	Hawk BE	3/24/1998	0.20	REVIEW OF C AND MEMOS RE EUROPEAN APPROVALS.
12	Strategy	Partner	Hawk BE	3/25/1998	0.30	TC W/I ZERVAS
12	Strategy	Partner	Hawk BE	3/27/1998	0.20	REVIEW OF CORRESPONDENCE AND MEMOS RE EUROPEAN APPROVAL.
12	Strategy	Partner	Huser HL	3/3/1998	1.25	[SUNBEAM/SUSPENSE] CONFERENCE WITH B. HAWK AND I. ZERVAS AND REVIEW DATA RE: NON-U.S. ANTITRUST ANALYSIS; NON-U.S. ANTITRUST ANALYSIS AND DATA REQUESTS ISSUES
12	Strategy	Partner	Huser HL	3/4/1998	0.25	[SUNBEAM] CONFERENCE WITH I. ZERVAS AND CLIENT RE: [redacted]

NOT A CERTIFIED COPY

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Partner	Huser HL	3/5/1998	2.75	CONFERENCES WITH I. ZERVAS RE: NON-U.S. ANTITRUST FILINGS; REVIEW AND EDIT NON-U.S. ANTITRUST ANALYSIS; NON-U.S. FILING ISSUES
12	Strategy	Partner	Huser HL	3/6/1998	2.75	CONFERENCE WITH I. ZERVAS RE: EUROPEAN FILINGS STATUS; NON-U.S. ANTITRUST FILING ISSUES; REVIEW AND EDIT DRAFT GERMAN FILING; NON-U.S. ANTITRUST FILINGS
12	Strategy	Partner	Huser HL	3/8/1998	1.00	NON-U.S. ANTITRUST ANALYSIS
12	Strategy	Partner	Huser HL	3/9/1998	1.75	REVIEW AND EDIT REVISED GERMAN FILING; CONFERENCE WITH I. ZERVAS RE: SAME; REVIEW AND EDIT REVISED GERMAN FILING
12	Strategy	Partner	Huser HL	3/10/1998	1.75	REVIEW AND EDIT NON-U.S. PREMERGER ANALYSIS (COLEMAN)
12	Strategy	Partner	Huser HL	3/11/1998	0.25	REVIEW AND EDIT UK/FRANCE MEMO TO CLIENT
12	Strategy	Partner	Huser HL	3/16/1998	1.75	REVIEW AND EDIT DRAFT GERMAN FILING FOR FIRST ALERT & SIGNATURE BRANDS; REVIEW REVISED DRAFT GERMAN FILING
12	Strategy	Partner	Huser HL	3/18/1998	1.25	CONFERENCES WITH I. ZERVAS RE: GERMAN ANTITRUST FILINGS (TIMING STRATEGY AND MERITS); CONFERENCES WITH I. ZERVAS RE: GERMAN FILINGS; REVIEW FINAL DRAFT GERMAN FILINGS
12	Strategy	Partner	Kence AS	3/4/1998	0.25	CALL FROM B. WEISS.
12	Strategy	Partner	Kence AS	3/5/1998	1.00	CALL FROM M. SOLOMON REGARDING MIDCO TRANSACTIONS.
12	Strategy	Partner	Kraus DM	3/10/1998	2.00	REVIEW NYSE AND SEC LETTERS; CONFS/TEL. CONFS. W/RLE, BVF, A. FUCHS, R. BOGDAN.
12	Strategy	Partner	Kraus DM	3/11/1998	1.50	REVIEW DRAFT FUCHS CHRONOLOGY; CONFS. W/RG; TEL. CONF. W/MACPHAIL.
12	Strategy	Partner	Kraus DM	3/26/1998	0.75	TEL. CONFS./CONFS. W/RG, MCPHAIL RE: CHRONOLOG
12	Strategy	Partner	Kraus DM	3/30/1998	1.00	CONFS./TEL. CONFS. W/RG, J. KELLEY, RLE.
12	Strategy	Partner	Kraus DM	3/31/1998	0.50	CONFS./TEL. CONFS. W/R. BOGDAN, RG RE: CHRONOLOGY.
12	Strategy	Partner	Leff NM	3/25/1998	2.10	CONF. W/NELSON RE: ASSUMPTION AGREEMENT.
12	Strategy	Partner	Leff NM	3/26/1998	1.50	T/C W/NELSON RE: ASSUMPTION AGREEMENT.
12	Strategy	Partner	Leff NM	3/27/1998	4.80	CONF. W/KATZKE, FLEDER AND NELSON RE: ASSUMPTION AGREEMENT.
12	Strategy	Partner	Leff NM	3/30/1998	0.70	FINAL REVIEW OF ASSUMPTION AGREEMENT.
12	Strategy	Partner	Olshan R	3/3/1998	6.50	PROXY
12	Strategy	Partner	Olshan R	3/4/1998	8.00	PROXY
12	Strategy	Partner	Olshan R	3/9/1998	6.00	EMPLOYEE BENEFITS ISSUES
12	Strategy	Partner	Olshan R	3/10/1998	6.00	EMPLOYEE BENEFITS ISSUES
12	Strategy	Partner	Solomon MJ	3/31/1998	4.50	CONF W/B. WEISS, ANALYSIS, 1504-5YRS, OPINION
12	Strategy	Of Counsel	Fogg BV	3/2/1998	2.50	REVIEW DRAFT OF OFFER; DO MARKUP, ETC.
12	Strategy	Of Counsel	Fogg BV	3/3/1998	1.00	REVIEW HOLDINGS, WORLDWIDE AND COLEMAN DEBT DOCUMENTS.
12	Strategy	Of Counsel	Fogg BV	3/6/1998	2.00	REVIEW DRAFTS OF 13D; TCS WITH EASTON, SHEHAN; VM TO AMORISON, ETC.
12	Strategy	Of Counsel	Fogg BV	3/10/1998	0.50	TCS WITH EASTON AND KRAUS AND CHECK DIANE'S R [redacted]
12	Strategy	Of Counsel	Fogg BV	3/11/1998	1.00	REVIEW WEISS MEMO; EMAIL WEISS; TC WITH EASTON REVIEW AND COMMENT ON FUCH'S CHRONOLOGY FO TRADING INQUIRIES, ETC.
12	Strategy	Of Counsel	Fogg BV	3/13/1998	1.50	TCS WITH NISA, EASTON, AMORISON; CONF. WITH EASTON; VM TO FANNIN, ETC., ETC.
12	Strategy	Of Counsel	Fogg BV	3/14/1998	1.00	WORK ON 14(F), ETC
12	Strategy	Of Counsel	Fogg BV	3/16/1998	1.00	TCS WITH AMORISON, NISA, ETC.; REVIEW RESOLUTIONS, 14F
12	Strategy	Of Counsel	Fogg BV	3/17/1998	1.00	REVIEW 14F AND TC WITH AMORISON; MEMO TO WORKING GROUP; ETC.
12	Strategy	Of Counsel	Fogg BV	3/18/1998	0.50	TCS WITH AMORISON, EMMERICH, ETC.
12	Strategy	Of Counsel	Fogg BV	3/19/1998	0.50	REVIEW MATEIRAL FROM EMMERICH; MEMO TO EMMERICH, ETC.

NOT A CERTIFIED COPY

11279

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Of Counsel	Fogg BV	3/30/1998	0.50	TCS WITH FANNIN, EASTON
12	Strategy	Of Counsel	Fogg BV	3/31/1998	0.50	TCS WITH AMORISON; CONF. WITH EASTON
12	Strategy	Of Counsel	Levitan JA	3/3/1998	0.50	DISCUSSION WITH MITCH SOLOMON AND BILL WEISS R TRANSACTION
12	Strategy	Of Counsel	Steptoe M	3/2/1998	1.50	CALLS TO C. ARONSON, J. KELLY, J. FISHER, BRAD KURTZ (LEFT MESSAGE) -- BEGIN DATA COLLECTION.
12	Strategy	Of Counsel	Steptoe M	3/4/1998	1.30	DOCUMENT REVIEW.
12	Strategy	Of Counsel	Steptoe M	3/5/1998	4.00	DATA REVIEW; CALLS TO J. NISA, C. RONAN.
12	Strategy	Of Counsel	Steptoe M	3/6/1998	3.50	REVIEW BACKGROUND MATERIALS; FORMULATE STRATEGY.
12	Strategy	Of Counsel	Steptoe M	3/11/1998	4.50	DOCUMENT REVIEW; B. KURTZ INTERVIEW.
12	Strategy	Of Counsel	Steptoe M	3/12/1998	1.40	REVIEW NEW MATERIAL FROM B. KURTZ. CALL J. NISA RE: FILING; MESSAGE TO F. FOGG.
12	Strategy	Of Counsel	Steptoe M	3/13/1998	0.40	PHONE CALL WITH F. FOGG; CONFERENCE WITH C. ARONSON.
12	Strategy	Of Counsel	Steptoe M	3/16/1998	5.50	INTERVIEW COMPANY PERSONNEL; FACT AND STRATEGY DEVELOPMENT.
12	Strategy	Counsel	Cutrone RM	3/12/1998	0.75	TELEPHONE CALL RE: TIMING FOR LEGISLATION.
12	Strategy	Counsel	Gordon RW	3/17/1998	3.00	[redacted]: CONF. DELILA WENDLNDT FROM ROPES & GRAY
12	Strategy	Counsel	Gordon RW	3/23/1998	8.00	[redacted]
12	Strategy	Counsel	Gordon RW	3/24/1998	8.50	[redacted]
12	Strategy	Counsel	Gordon RW	3/25/1998	7.50	[redacted]
12	Strategy	Counsel	Gordon RW	3/26/1998	6.00	[redacted]
12	Strategy	Counsel	Gordon RW	3/27/1998	4.00	[redacted]
12	Strategy	Counsel	Gordon RW	3/28/1998	4.00	[redacted]
12	Strategy	Counsel	Gordon RW	3/30/1998	4.00	[redacted] TEL ALEX FUCHS; TEL. PAUL ROWE WACHTELL
12	Strategy	Counsel	Gordon RW	3/31/1998	4.00	[redacted]
12	Strategy	Counsel	Nisa JP	3/5/1998	7.00	HSR PREPARATION, FIRST ALERT/SIGNATURE
12	Strategy	Counsel	Nisa JP	3/6/1998	4.00	HSR PREPARATION AND FILING
12	Strategy	Counsel	Nisa JP	3/9/1998	4.00	HSR FOLLOWUP. REDO ITEM 5
12	Strategy	Counsel	Nisa JP	3/10/1998	2.00	HSR FOLLOWUP. ITEM 5
12	Strategy	Counsel	Nisa JP	3/25/1998	1.00	HSR FOLLOWING, C.A. M. JABAHE
12	Strategy	Counsel	Weiss WJ	3/1/1998	0.50	T/C W/D. PAUL
12	Strategy	Counsel	Weiss WJ	3/2/1998	9.00	T/C W/B. TOTTE; REVIEW AGREEMENTS; RESEARCH TREATMENT OF OPTIONS; DRAFT SUMMARY MEMO
12	Strategy	Counsel	Weiss WJ	3/31/1998	5.00	T/C W/B. TOTTE; T/C W/M. SOLOMON; T/C W/R. EASTON RESEARCH CONSOLIDATION AND STOCK OPTION EXERCISE ISSUES; REVIEW INTERCOMPANY NOTES
12	Strategy	Associate	Anderson CC	3/6/1998	4.00	REVIEWED PROXY STATEMENT.
12	Strategy	Associate	Anderson CC	3/9/1998	1.90	REVISED PROXY STATEMENT.
12	Strategy	Associate	Brown SD	3/5/1998	3.00	RESEARCHING INCORPORATION BY REFERENCE UND THE SECURITIES EXCHANGE ACT AND WAITING TO DISCUSS WITH ALLISON AMORISON
12	Strategy	Associate	Brown SD	3/24/1998	3.00	PREPARED OFFICER'S CERTIFICATE AND BEGAN PREPARING CLOSING CHECKLIST
12	Strategy	Associate	Brown SD	3/25/1998	7.00	PREPARED CLOSING CHECKLIST USING PRECEDENT AND READING THROUGH AGREEMENT AND PLAN OF MERGER
12	Strategy	Associate	Daniel AI	3/8/1998	1.20	REVIEW TRANSLATION OF BKA-FILING. TELS W/ I. ZERVS. CONF. W/ H. RISCHBIETER.
12	Strategy	Associate	Daniel AI	3/9/1998	1.90	REVISE BKA-FILING. FILE PRE-CLOSING NOTIFICATIO TELS W/ I. ZERVAS. CONF. W/ H. RISCHBIETER.
12	Strategy	Associate	Daniel AI	3/16/1998	0.70	TEL. W/ I. ZERVAS RE: CLEARANCE. CALL THE BKA.
12	Strategy	Associate	Daniel AI	3/17/1998	0.90	REVIEW TRANSLATION OF BKA FILING.
12	Strategy	Associate	Daniel AI	3/18/1998	1.30	TELS. W/ I. ZERVAS RE: BKA FILINGS. REVISE TRANSLATION OF BKA FILING. SEND FAX TO I. ZERVA

NOT A CERTIFIED COPY

017230

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Daniel Al	3/19/1998	0.90	REVISE BKA FILINGS. FILE NOTIFICATION. PURSUANT TO SECTION 24A OF THE BKA. TELS. W/ ZERVAS.
12	Strategy	Associate	Daniel Al	3/20/1998	0.60	TELS. W/ I. ZERVAS AND THE BKA RE; CLEARANCE OF THE TRANACTION. RREVIEW CLEARANCE LETTER. SEND FAX TO I. ZERVAS.
12	Strategy	Associate	Daniel Al	3/25/1998	2.60	TELS. W/ I. ZERVAS RE: FIRST ALERT AND SIGNATURE BRANDS. REVIEW LETTERS FROM THE BKA. PREPARE SUMMARIES FOR CLIENT.
12	Strategy	Associate	Daniel Al	3/26/1998	0.20	TEL W/ I. ZERVAS RE: CLEARANCE BY THE BKA
12	Strategy	Associate	Daniel Al	3/31/1998	1.10	REVIEW FAX FRON THE BKA RE: FEES. SUMMARIZE FAX. TELS W/ I. ZERVAS.
12	Strategy	Associate	Daniels SJ	3/3/1998	8.60	DRAFTED SCHEDULE 13D; MEETINGS W/ A. AMORISON AND M. GREENBERG RE: TRANSACTION REQUIREMENTS; CONFERENCE CALL W/ A. AMORISON AND F. MILLER RE: DIVISION OF RESPONSIBILITIES.
12	Strategy	Associate	Daniels SJ	3/4/1998	11.15	EDITED AND REVISED SCHEDULE 13D; DRAFTED SECTIONS OF SECTION 14(F) NOTICE AND PREPARED SHELL DOCUMENTS; REVIEWED PRECEDENTS RE: 13D AND 14(F) NOTICE; CONVERSATIONS W/ M. GREENBERG RE:BOARD RESOLUTIONS AND SCHEDULE 13E-3.
12	Strategy	Associate	Daniels SJ	3/5/1998	13.15	EDITED AND REVISED RESOLUTIONS, MINUTES AND CONSENTS; REVIEWED SUNBEAM ANNUAL MEETING PROXY; RULES CHECK ON PROXY STATEMENT; REVISIONS TO SECTION 14(F) NOTICE; CONVERSATION W/ A. AMORISON AND J. KELLEY RE: [redacted]
12	Strategy	Associate	Daniels SJ	3/9/1998	11.30	EDITED AND REVISED SECTION 14(F) NOTICE; CONTINUED EDITING SUNBEAM 1998 PROXY STATEMENT; CONVERSATIONS W/ F. MILLER, A. AMORISON AND R. EASTON RE: TRANSACTION STATUS AND REQUIREMENTS; CONVERSATIONS W/ C. ANDERSON, R. OLSHAN AND J. KELLEY RE: [redacted] CONVERSATION W/ W. WEISS RE: TAX CONSEQUENCES OF OPTION GRANTS TO SUNBEAM EXECUTIVES; DISCUSSIONS W/ M. GREENBERG RE: SUBSEQUENT LISTING APPLICATION.
12	Strategy	Associate	Daniels SJ	3/11/1998	-	REVIEWED AND EDITED SUBSEQUENT LISTING APPLICATION; EDITED AND REVISED PROXY STATEMENT.
12	Strategy	Associate	Daniels SJ	3/11/1998	3.15	REVIEWED AND EDITED SUBSEQUENT LISTING APPLICATION; EDITED AND REVISED PROXY STATEMENT.
12	Strategy	Associate	Daniels SJ	3/12/1998	2.80	REVISIONS TO SUNBEAM PROXY STATEMENT IN PREPARATION FOR FILING; REVIEW OF EDGAR VERSK OF OPTION PLAN; INCORPORATED COMMENTS OF R. EASTON.
12	Strategy	Associate	Daniels SJ	3/15/1998	2.40	RULES CHECK AND REVIEW OF SECTION 14(F) NOTICE
12	Strategy	Associate	Daniels SJ	3/16/1998	10.30	PREPARED OUTLINE OF SUNBEAM FORM S-4; REVIEW PROXY RULES AND FORM S-4 IN PREPARATION FOR DRAFTING; CONFERENCE W/ M. GREENBERG RE: DIVISION OF RESPONSIBILITIES; BEGAN DRAFTING FO S-4.
12	Strategy	Associate	Daniels SJ	3/17/1998	11.75	DRAFTED SUNBEAM FORM S-4 RIDERS INCLUDING STOCKHOLDER LETTER; PROSPECTUS COVER PAGE; SUMMARY; CONFERENCES W/ M. GREENBERG RE: DRAFTING ISSUES; REVIEW AND EDITS TO SECTION 14(F) NOTICE.

NOT A CERTIFIED COPY

0172381

CONFIDENTIAL

SASMF 19651

16div-022884

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Daniels SJ	3/18/1998	11.80	CONTINUED DRAFTING SUNBEAM FORM S-4; DRAFTED RISK FACTORS; RECEIVED FINANCIAL STATMENTS; REVIEW OF 144A OFFERING MEMORANDUM AND OTHER DOCUMENTS RE: USE OF INFORMATION IN S-4; REVIEW OF SECTION 14(F) NOTICE.
12	Strategy	Associate	Daniels SJ	3/19/1998	11.50	DRAFTED SUNBEAM SORM S-4; DRAFTED BACKGROUN AND REASONS FOR THE MERGER RIDER; CONVERSATIONS W/ F. MILLER RE: DIVISION OF RESPONSIBILITIES.
12	Strategy	Associate	Daniels SJ	3/20/1998	8.10	FINALIZED FIRST DRAFT OF SUNBEAM S-4; INCORPORATED RIDERS PREPARED BY M. GREENBERG AND FINANCIAL STATEMENT RIDERS; DRAFTED REMAINING SECTIONS.
12	Strategy	Associate	Daniels SJ	3/22/1998	6.25	EDITED AND REVISED FORM S-4; REVIEWED AND EDITE RIDERS PREPARED BY M. GREENBERG.
12	Strategy	Associate	Daniels SJ	3/23/1998	10.20	EDITED AND REVISED FORM S-4; DRAFTED RIDERS TO COMPLY W/ SCHEDULE 13E-3.
12	Strategy	Associate	Daniels SJ	3/24/1998	7.20	CONTINUED DRAFTING FORM S-4; REVIEWED ADDITIONAL RIDERS FROM M. GREENBERG; DRAFTED ADDITIONAL RIDERS REQUIRED BY SCHEDULE 13E-3.
12	Strategy	Associate	Daniels SJ	3/25/1998	7.80	EDITED AND REVISED FORM S-4; DISCUSSIONS W/ A. AMORISON AND EDITS TO DOCUMENT RELATED THERETO.
12	Strategy	Associate	Daniels SJ	3/26/1998	10.10	EDITED AND REVISED FORM S-4; COMPLETED SPECIAL FACTORS RIDER; CONVERSATION W/ J. WEBBER RE: BUSINESS OPINION.
12	Strategy	Associate	Daniels SJ	3/27/1998	9.20	EDITED AND REVISED SUNBEAM FORM S-4; DRAFTING SESSION W/ M. GREENBERG AND A. AMORISON; REVISIONS TO SUNBEAM PROXY STATEMENT; MEETIN W/ J. KELLEY; DRAFTED CROSS-RECEIPT.
12	Strategy	Associate	Daniels SJ	3/31/1998	7.50	EDITED AND REVISED SUNBEAM 1998 ANNUAL MEETIN PROXY STATEMENT AND DISTRIBUTED FOR COMMENT DISTRIBUTED PROXY STATEMENT TO EVACO FINANCI PRINTERS FOR TYPESETTING; CONVERSATIONS WITH *PRESENTS OF EVACO AND I. CANZIUS OF BANK OF NE* YORK RE: TIMING AND LOGISTICS; CONVERSATIONS WITH R. EASTON, J. KELLEY AND M. DEAKS RE: [redacted] DRAFTED FORM 8 FOR COLEMAN AND WORLDWIDE RE: CONSUMMATION OF HOLDINGS MERGER.
12	Strategy	Associate	Gonzalez Quinso Y	3/12/1998	2.50	MEET W/BILL WEISS RE RESEARCH ISSUE; RESEARCH RE SECTION 279
12	Strategy	Associate	Gonzalez Quinso Y	3/13/1998	3.00	RESEARCH RE SECTION 279
12	Strategy	Associate	Gonzalez Quinso Y	3/16/1998	1.50	RESEARCH RE SECTION 279
12	Strategy	Associate	Gonzalez Quinso Y	3/17/1998	0.50	PREPARE RESEARCH MATERIALS FOR DISTRIBUTION CLIENT
12	Strategy	Associate	Greenberg MM	3/2/1998	13.40	DRAFT MINUTES OF THE BOARD OF DIRECTORS FOR SUNBEAM, LASER ACQUISITION CORP. AND CAMPER ACQUISITION CORP; DRAFT RESOLUTIONS FOR FOR SUNBEAM, LASER ACQUISITION CORP. AND CAMPER ACQUISITION CORP; DRAFT FORM 8-K DISCUSSING MERGER; MEETING WITH R. EASTON, A. AMORISON.
12	Strategy	Associate	Greenberg MM	3/3/1998	9.25	DRAFT BOARD MINUTES AND BOARD RESOLTUIONS (SUNBEAM, LASER ACQUISITION CORP, CAMPER ACQUISITION CORP., DRAFT ACTION BY WRITTEN CONSENT SOLE STOCKHOLDER OF EACH OF THE SUBSIDIARY COMPANIES; DRAFT SUPPLEMENTAL LISTING APPLICATION FOR NYSE.

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19652

16div-022885

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Greenberg MM	3/4/1998	8.75	DRAFT BOARD RESOLUTIONS AND MINUTES OF MERGER SUBS; DRAFT SUPPLEMENTAL LISTING APPLICATION AND LEGAL OPINION TO NYSE.
12	Strategy	Associate	Greenberg MM	3/5/1998	10.60	RESEARCH ISSUES RELATING TO SUNBEAM'S 13E-3 FILING WITH TH SEC; DRAFT 13E-3; REVISE BOARD RESOLUTIONS; DRAFT PROXY CARD AND REVISE PROXY STATEMENT.
12	Strategy	Associate	Greenberg MM	3/6/1998	5.70	RESEARCH 13E-3 ISSUES; DRAFT 14A INFORMATION PAGE; CALL NYSE REGARDING LISTING APPLICATION; REVISE OPINION OF COUNSEL RE: LISTING APPLICATION.
12	Strategy	Associate	Greenberg MM	3/7/1998	2.75	DRAFT 13E-3 FILING ON BEHALF OF SUNBEAM FOR COLEMAN ACQUISITION.
12	Strategy	Associate	Greenberg MM	3/9/1998	6.20	RESEARCH SCHEDULE 13E-3 AND INFORMATION STATEMENT ISSUES; REVISE SUPPLEMENTAL LISTING APPLICATION OPINION; REVIEW PROXY AND REVISE PROXY CARD.
12	Strategy	Associate	Greenberg MM	3/10/1998	7.90	DRAFT OPINION LETTER TO NYSE ON BEHALF OF SUNBEAM TO LIST SHARES ON EXCHANGE; PREPARE CHECKLIST OF SCHEDULE 13E-3 REQUIREMENTS; DRAFT SCHEDULE 13E-3.
12	Strategy	Associate	Greenberg MM	3/11/1998	6.70	DRAFT SCHEDULE 13E-3 CHECKLIST AND DRAFT SCHEDULE 13E-3; REVISE LISTING APPLICATION; TELECONFERENCE WITH NYSE; REVISE LEGAL OPINION PER A. AMORISON COMMENTS.
12	Strategy	Associate	Greenberg MM	3/12/1998	7.75	MEETING WITH A. AMORISON RE: SUPPLENTAL LISTING APPLICATION; TELEPHONE CONFERENCE WITH NYSE REGARDING NEW LISTING PROCEDURES; DRAFT LETTER TO NYSE REGARDING ISSUANCE OF TREASURY SHARES; RESEARCH ISSUES FOR S-4 FILING WITH SEC.
12	Strategy	Associate	Greenberg MM	3/13/1998	6.80	DRAFT SCHEDULE 13E-3; REVIEW TENDER OFFER DOCUMENTS TO INCORPORATE INTO 13E-3; MEETING WITH A. AMORISON REGARDING SUPPLEMENTAL LISTING APPLICATION TO NYSE; TELEPHONE CALLS TO NYSE REGARDING LISTING APPLICATION.
12	Strategy	Associate	Greenberg MM	3/16/1998	13.70	MEETING WITH A. AMORISON AND S. DANIELS; DRAFT INFORMATION STATEMENT ON SCHEDULE 14C; DRAFT SCHEDULE 13E-3; REVIEW 144A FILING WITH SEC; RESEARCH SCHEDULE 14C ISSUES.
12	Strategy	Associate	Greenberg MM	3/17/1998	16.25	DRAFT INFORMATION STATEMENT AND S-4; MEETINGS WITH S. DANIELS.
12	Strategy	Associate	Greenberg MM	3/18/1998	14.80	DRAFT INFORMATION STATEMENT, PROSPECTUS AND S-4; MEETINGS WITH S. DANIELS.
12	Strategy	Associate	Greenberg MM	3/19/1998	12.40	DRAFT INFORMATION STATEMENT AND S-4
12	Strategy	Associate	Greenberg MM	3/20/1998	9.30	DRAFTED INFORMATION STATEMENT/PROSPECTUS; DRAFTED PART 2 OF FORM S-4; MEETINGS WITH STEVE DANIELS.
12	Strategy	Associate	Greenberg MM	3/21/1998	6.70	REVISE INFORMATION STATEMENT/PROSPECTUS; DRAFT SCHEDULE 13E-3.
12	Strategy	Associate	Greenberg MM	3/22/1998	4.25	REVISE INFORMATION STATEMENT/PROSPECUTS; DRAFT SCHEDULE 13E-3
12	Strategy	Associate	Greenberg MM	3/23/1998	9.70	DRAFT INFORMATION STATEMENT/PROSPECUTS; DRAI SCHEDULE 13E-3; REVIEW OFFERING MEMORANDUM; MEETINGS WITH A. AMORISON AND STEVE DANIELS.
12	Strategy	Associate	Greenberg MM	3/24/1998	10.75	DRAFT INFORMATION STATEMENT/PROSPECUTS; DRAI SCHEDULE 13E-3; REVIEW OFFERING MEMORANDUM; MEETINGS WITH A. AMORISON AND STEVE DANIELS; REVIEW COLEMAN 10-K.
12	Strategy	Associate	Greenberg MM	3/25/1998	9.25	DRAFT INFORMATION STATEMENT/PROSPECTUS; DRA SCHEDULE 13E-3; MEETINGS WITH A. AMORISON AND DANIELS.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 19653

16div-022886

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Greenberg MM	3/26/1998	13.60	REVISE INFORMATION STATMENT PROSPECTUS; REVISE SCHEDULE 13E-3; DRAFT BOARD RESOLTUTIONS FOR MERGER; DRAFT BOARD RESOLUTIONS FOR NAME CHANGE; DRAFT STOCKHOLDER RESOLUTIONS FOR NAME CHANGE; RULE CHECK FORM S-4.
12	Strategy	Associate	Greenberg MM	3/27/1998	11.70	PREPARE CLOSING MATERIALS FOR FIRST STEP MERGER INVOLVING LASER ACQUISITION CORP.; RULES CHECK FORM S-4; REVISE FORM S-4; MEETINGS WITH A AMORISION/S. DANIELS.
12	Strategy	Associate	Greenberg MM	3/30/1998	11.25	DRAFT AMENDMENT NO. 2 TO SCHEDULE 13D; DRAFT RIDERS TO FORM S-4; DRAFT WRITTEN CONSENT OF COLEMAN REGARDING OFFICERS; DRAFT LETTER TO NYSE REGARDING CHANGE IN DIRECTORS AND OFFICERS; DRAFT MEMO TO J. KELLEY REGARDING SCHEDULE 13D; DRAFT LETTER TO MAFCO REGARDING CANCELLATION OF LEASE.
12	Strategy	Associate	Greenberg MM	3/31/1998	12.60	DRAFT AMENDMENT NO. 2 TO SCHEDULE 13D ON BEHALF OF LASER AND SUNBEAM; DRAFT WRITTEN CONSENT RE: FISCAL YEAR FOR SUNBEAM; DRAFT RESULTUIONS FOR SUBSIDIARIES OF SUNBEAM RE: OFFICERS AND DIRECTORS; DRAFT WRITTEN CONSENT OF SOLE STOCKHOLDERS OF SUNBEAM SUBSIDIARIES; AMEND SUNBEAM BY-LAWS
12	Strategy	Associate	Harris SL	3/13/1998	0.75	SUNBEAM - SUNBEAM ACQUISITION OF COLEMAN; [redacted]
12	Strategy	Associate	Heiman LA	3/2/1998	3.00	DRAFT MEMO
12	Strategy	Associate	Johnson NH	3/5/1998	0.25	CONFERENCE WITH HENRY HUSER AND IOANNIS ZERVAS
12	Strategy	Associate	Johnson NH	3/6/1998	1.25	CONFERENCE WITH HENRY HUSER + IOANNIS ZERVAS; PULL OUT FILES TO IDENTIFY FINAL ANTITRUST FILINGS MADE (SUBMISSION LANGUAGE AND ENGLISH); SHOW IOANNIS ZERVAS PUBLIC CATALOGUES TO DESCRIBE PRODUCTS SOLD BY COLEMAN/ADG
12	Strategy	Associate	Morgan PJ	3/2/1998	1.80	BENEFITS & EXEC. COMP. ISSUES.
12	Strategy	Associate	Munshi PS	3/3/1998	3.75	RESEARCH SECTION 16 RE: FILING REQUIREMENTS FO GRANT OF STOCK OPTIONS; DRAFT FORM 3 FOR SUNBEAM; REVIEW RULES RE: REPORTING OF BENEFICIAL HOLDINGS; CONF. W. A. AMORISON RE: SAME
12	Strategy	Associate	Munshi PS	3/4/1998	5.30	REVIEW PREVIOUSLY FILED FORM 4'S; DRAFT FORM 4'S FOR A. DUNLAP, R. KERSH AND D. FANNIN; T/C W. A. AMORISON AND R. OLSHAN RE: VOLUNTARY REPORTING; REVIEW FROM 3 FOR SUNBEAM; T/C W. J. KELLEY RE: [redacted]; DRAFT MEMO RE FORM 3 AND FORM 4'S
12	Strategy	Associate	Munshi PS	3/6/1998	1.30	T/C W. J. KELLEY RE: COMMENTS TO FORM 3 AND FOR 4'S, FILING OF FORM 3 AND FORM 4'S; T/C W. A. AMORISON RE: SCHEDULE 13D; T/C W. J. KELLEY RE: COMMENTS TO SCHEDULE 13D;
12	Strategy	Associate	Munshi PS	3/9/1998	1.10	T/C W. DC OFFICE RE: FILING OF FORM 3 AND FORM 4'S DRAFT LETTER RE: COPIES OF FORM 3 AND FORM 4'S
12	Strategy	Associate	Nelson TF	3/25/1998	2.30	BENEFITS ASSUMPTION AGREEMENT
12	Strategy	Associate	Nelson TF	3/26/1998	3.00	BENEFITS ASSUMPTION AGREEMENT
12	Strategy	Associate	Nelson TF	3/27/1998	7.35	BENEFITS ISSUES IN CLOSING - ASSUMPTION AGREEMENT
12	Strategy	Associate	Nelson TF	3/30/1998	1.00	BENEFITS ISSUES FOR CLOSING
12	Strategy	Associate	Pashman DJ	3/24/1998	3.50	RESEARCH PRODUCT MARKET AND DO BACKGROUND READING.
12	Strategy	Associate	Pashman DJ	3/25/1998	5.00	RESEARCH PRODUCT MARKET AND DID BACKGROUN READING.

NOT A CERTIFIED COPY

CONFIDENTIAL

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Yu WL	3/2/1998	0.50	RESEARCHED [redacted] DISCUSSED ISSUES W/BILL WEISS.
12	Strategy	Associate	Zervas I	3/3/1998	7.00	RESEARCH ON THE INTERNET TO RETRIEVE THE PARTIES' ANNUAL REPORTS AND FORMS 10-K; REVIEW OF PARTIES' ANNUAL REPORTS AND FORMS 10-K; CONFERENCE CALL WITH HUSER AND STRASSER IN WACHTEL ON THE SUNBEAM/COLEMAN TRANSACTION; PREPARATION OF DATA REQUESTS FOR COLEMAN AND SUNBEAM.
12	Strategy	Associate	Zervas I	3/4/1998	4.50	CONFERENCE CALL WITH KELLEY AND SINCLAIR ON DATA REQUESTED; MEETING WITH HUSER; PREPARATION OF DATA REQUESTS FOR TARGETS; CONFERENCE CALL WITH WACHTELL; COMMENCEMENT OF PRE-MERGER ANALYSIS.
12	Strategy	Associate	Zervas I	3/5/1998	11.00	CONTINUATION OF PREMERGER ANALYSIS ON COLEMAN TRANSACTION; CONFERENCE CALLS WITH HUSER AND WACHTELL; PREPARATION OF PREMERGER ANALYSIS ON FIRST ALERT TRANSACTION.
12	Strategy	Associate	Zervas I	3/6/1998	12.00	MEETINGS WITH H. HUSER AND DISCUSSION OF ACTIONS TO BE TAKEN ON THE CASE; REVIEW OF FIRST ALERT INFORMATION AND REVISION OF RELEVANT PRE-MERGER ANALYSIS; REVIEW OF SUNBEAM INFORMATION AND REVISION OF COLEMAN PRE-MERGER ANALYSIS; CONFERENCE CALLS WITH KAYLE SINCLAIR, DAVID RAWSSON, SARRA STRASSER AND MARK ROHL ON COLLECTION OF INFORMATION FOR DETERMINING THE VARIOUS NATIONAL FILINGS; PREPARATION OF FIRST DRAFT GERMAN FILING FOR THE COLEMAN TRANSACTION.
12	Strategy	Associate	Zervas I	3/7/1998	3.00	REVIEW OF WACHTELL'S AND COLEMAN'S COMMENTS AND REVISION OF GERMAN DRAFT FILING.
12	Strategy	Associate	Zervas I	3/8/1998	2.00	NEW REVISION OF PREMERGER ANALYSIS ON COLEMAI TRANSACTION.
12	Strategy	Associate	Zervas I	3/9/1998	12.00	CONFERENCE CALL WITH DAN PETERSEN OF COLEMAN EUROPE AND KATE SIZER OF SUNBEAM EUROPE TO COLLECT INFORMATION FOR GERMAN FILING AND EUROPEAN PRE-CLOSING ANALYSIS; REVIEW OF AGREEMENT AND PLAN OF MERGER SENT BY EASTON; REVISION OF GERMAN DRAFT AND EUROPEAN PRE-MERGER ANALYSIS ACCORDINGLY; MEETINGS AND COOPERATION WITH H. HUSER ON FINALIZING THE TEXTS; CONFERENCE CALLS WITH WACHTELL AND EASTON ON INFORMATION USEFUL FOR THE GERMAN FILING AND THE CANADIAN FILING; REPEATED COMMUNICATIONS WITH ISKO, S.STRASSER AND H. HUSER ON REVISED VERSIONS OF THE GERMAN DRAF AND FINALIZATION OF THE NOTIFICATION; CONFERENC CALL WITH CANADIAN COUNSEL ON CANADIAN PRE-CLOSING NOTIFICATION; REVIEW OF LIST OF QUESTIONS FOR CANADIAN PRE-CLOSING FILING; PREPARATION OF MEMO TO SUNBEAM ON COLLECTIO OF INFORMATION FOR CANADIAN FILING; NEW CONFERENCE CALL WITH WACHTELL ON LIST OF NATIONAL FILINGS.
12	Strategy	Associate	Zervas I	3/10/1998	1.50	REVISION OF COLEMAN PREMERGER ANALYSIS ON TH BASIS OF NEW INFORMATION RECEIVED BY COLEMAN EUROPE.

NOT A CERTIFIED COPY

0172385

CONFIDENTIAL

SASMF 19655

16div-022888

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Associate	Zervas I	3/11/1998	2.00	REVISION OF COLEMAN PRE-MERGER ANALYSIS PURSUANT TO H. HUSER'S COMMENTS; PREPARATION OF MEMO TO SUNBEAM SUMMARIZING THE CONCLUSIONS OF OUR ANALYSIS.
12	Strategy	Associate	Zervas I	3/13/1998	2.50	PREPARATION OF PRE-CLOSING GERMAN NOTIFICATIONS FOR THE FIRST ALERT AND SIGNATURE BRANDS TRANSACTIONS.
12	Strategy	Associate	Zervas I	3/16/1998	2.50	REVISION OF THE TWO DRAFT GERMAN NOTIFICATIONS FOR THE FIRST ALERT AND THE SIGNATURE BRANDS TRANSACTIONS; MEETING WITH H. HUSER AND DISCUSSION OF FILINGS; REVISION OF DRAFTS IN ACCORDANCE WITH HIS COMMENTS.
12	Strategy	Associate	Zervas I	3/17/1998	3.00	CONFERENCE CALL WITH SUNBEAM EUROPE ON INFORMATION NEEDED FOR THE SIGNATURE BRANDS' NOTIFICATION; MEETING WITH H. HUSER AND DISCUSSION OF NOTIFICATION; REVISION OF NOTIFICATION IN ACCORDANCE WITH NEW INFORMATION; COORDINATION WITH FRANKFURT OFFICE ON SUBMITTING THE LETTERS TO THE FEDERAL CARTEL OFFICE; CONFERENCE CALL WITH WACHTELL, ON COLEMAN FILING.
12	Strategy	Associate	Zervas I	3/18/1998	4.00	MEETING WITH H. HUSER; REVIEW OF CONTRACTS ON SIGNATURE BRANDS AND FIRST ALERT DEALS IN ORDE TO DETERMINE THE CLOSING DATES; CONFERENCE CALLS WITH FIRST ALERT EUROPE TO DETERMINE GERMAN MARKET POSITIONS OF COLEMAN AND FIRST ALERT; CONFERENCE CALLS WITH MARK SHEHAN, JANET KELLY, STEVEN ISKO ON CORPORATE ASPECTS OF THE TRANSACTION; NEW REVISION OF THE SIGNATURE BRANDS AND FIRST ALERT NOTIFICATIONS
12	Strategy	Associate	Zervas I	3/20/1998	1.00	CONFERENCE CALLS WITH THE FRANKFURT OFFICE; COORDINATION OF THE APPROACH TO BE TAKEN TOWARDS [redacted] PREPARATION OF NOTE TO PARTIES ON CLEARANCE C THE COLEMAN TRANSACTION.
12	Strategy	Associate	Zervas I	3/26/1998	1.00	COORDINATION WITH M. SHEHAN AND ANGELA DANIEL ON NEW CLEARANCES AND THE FILING FEE THAT MUS BE PAYED TO THE FEDERAL CARTEL OFFICE.
12	Strategy	Summer/Winter Assoc	Fischer BS	3/24/1998	0.75	RESEARCH ON LEXIS
12	Strategy	Summer/Winter Assoc	Fischer BS	3/25/1998	0.50	REQUESTING 10K'S
12	Strategy	Summer/Winter Assoc	Fischer BS	3/26/1998	2.00	PREPARING LIST OF ALL SKADDEN EMPLOYEES WHO HAVE WORKED ON COLEMAN DEAL
12	Strategy	Summer/Winter Assoc	Fischer BS	3/30/1998	1.00	GATHERING REQWUESTED 10K'S
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/2/1998	3.50	CONFS. WITH ALLISON AMORISON AND MATT GREENBERG; T/CS WITH MARY KEOGH RE CORPORAT KITS AND ORGANIZATIONAL DOCUMENTS; REVISIONS SOLE INCORPORATOR DOCUMENTS; PULLING 13D PRECEDENTS; PREPARATION OF FILES
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/3/1998	2.00	CONFS. WITH RICH EASTON; ALLISON AMORISON AND MATT GREENBERG; T/C WITH TODD FREED; PREPARATIONS FOR SHIPPING DATA ROOM MATERIAL TO NYO; RECEIPT OF D & O QUESTIONNAIRES; PREPARATION OF FILES
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/4/1998	2.00	RECEIPT AND REVIEW OF D & O QUESTIONNAIRES; ASSISTING ALA WITH VARIOUS MATTERS FOR 13D

NOT A CERTIFIED COPY

11236

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/5/1998	6.00	CONFS. WITH ALLISON AMORISON AND STEVE DANIELS T/C WITH MEG BLACK AT THE SEC RE INCORPORATING DOCUMENTS BY REFERENCE TO 13D; ORGANIZING DOCUMENTS; WORKING ON SCHEDULE 13D AND PROX STATEMENT MATTERS WITH ALA AND SD
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/6/1998	4.00	ASSISTING ALLISON AMORISON AND CANDACE ANDERSON WITH SCHEDULE 13D AND PROXY STATEMENT MATTERS
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/9/1998	9.00	RECEIPT AND REVIEW OF SCHEDULE 13D; PROOFING AND REVISIONS TO EDGAR VERSION; FINALIZATION OF SCHEDULE 13D AND PREPARATIONS FOR FILING; T/CS WITH WASHINGTON OFFICE AND JANET KELLEY RE FORMS 3/4 FILING PACKAGES; T/CS WITH SYLVIA INMAN RE D & O QUESTIONNAIRES; PREPARATION OF TRANSMITTAL PACKAGES TO EXCHANGES OF SCHEDULE 13D AND TO CLIENT, ETC.
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/11/1998	7.00	CONFS. WITH ALA RE SCHEDULE 13D/A; PROOFING AND REVISING EDGAR VERSION OF THE SCHEDULE 13D/A; T/CS WITH NYO EDGAR DEPARTMENT; PREPARATION O FINAL EDGAR PACKAGE AND FILING DOCUMENT; PREPARATION OF TRANSMITTAL PACKAGES TO CLIENT AND EXCHANGES, ETC.
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/12/1998	7.00	T/CS WITH SYLVIA INMAN, TODD FREED AND HEATHER STACK RE MANAGEMENT AUDIT LETTERS AND BOARD MINUTES; CONFS. WITH STEVE DANIELS, CANDEE ANDERSON RE PROXY MATTERS; T/CS WITH SEC RE DIRECTOR INFORMATION; DRAFTING TRANSMITTAL LETTER TO SEC FOR PRELIMINARY PROXY MATERIALS; UPDATING FILES
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/13/1998	8.00	CONFS. WITH CCA, ALA AND SD; READING HOLDINGS MERGER AGREEMENT AND PREPARATION OF DRAFT CLOSING CHECKLIST; RECEIPT AND REVIEW OF EDGAR VERSION OF PRELIMINARY PROXY MATERIALS; PROOFING EDGAR, REVISIONS TO AND FINALIZATION FOR FILING WITH SEC; TRANSMITTAL PACKAGES, UPDATING FILES
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/16/1998	0.50	CONFS. WITH ALA AND CCA RE VARIOUS MATTERS; PULLING 13D PRECENTS AND FORWARDING TO DOUG YABLONSKI
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/17/1998	2.00	CONFS. WITH ALA AND CCA RE LISTING APPLICATION; T/C WITH SYLVIA INMAN AT COMPANY REGARDING DOCUMENTS FOR LISTING APPLICATION; PREPARATIO OF FILING PACKAGE TO NYSE AND UPDATING FILES
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/18/1998	2.00	ASSISTING ALA WITH LISTING APPLICATION MATERIAL ETC.
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/19/1998	2.00	CONFS. WITH ALA; ORGANIZING DOCUMENTS
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/26/1998	0.75	ASSISTING ALA WITH VARIOUS MATTERS AND PULLIN PRECEDENTS FOR MATT GREENBERG AND SPENCER BROWN
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/27/1998	4.50	ASSISTING ALA WITH CLOSING DOCUMENTS AND TRANSMITTAL OF PACKAGES TO NYO; REVIEWING MERGER PROXY STATEMENTS FOR INFORMATION STATEMENTS;
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/28/1998	1.00	T/CS WITH ALA; RECEIPT AND REVIEW OF ORIGINAL SIGNATURES; PREPARATION OF FEDEX PACKAGES TO M. PLANTE IN CONNECTION WITH CLOSING; DELIVERY TO FEDEX
12	Strategy	Legal Assistant Specialist-III	Davies RV	3/31/1998	1.00	CONFS. WITH STEVE DANIELS; T/CS WITH NYO EDGAR RE EDGARIZING PRESS RELEASE FOR 8-K; PROOFING K AND EDGARIZED VERSION OF 8-K

NOT A CERTIFIED COPY

01128?

CONFIDENTIAL

SASMF 19657

16div-022890

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Legal Assistant	Choi SJ	3/19/1998	5.25	INTERNET RESEARCH REGARDING BATHROOM SCALE MANUFACTURERS.
12	Strategy	Legal Assistant	Poe CD	3/5/1998	3.00	ASSEMBLE CLIENT DOCUMENTS FOR HSR FILING; COORDINATE WITH WACHTELL, LIPTON, ROSEN & KATZ NY OFFICE.
12	Strategy	Legal Assistant	Ronan CV	3/4/1998	3.00	ASSEMBLE HSR. RECEIVE COLEMAN, JAVA, FIRST ALER 4C DOCS. CALL FROM J. NISA RE TX, WACHTELL CONTACTS RE ITEM 9. ASSEMBLE CLIENT HSR. COORDINATE WACHTELL HSR (NOT FILED). CALL TO J. NISA, POUCH CLIENT HSR.
12	Strategy	Legal Assistant	Ronan CV	3/5/1998	5.75	ASSEMBLE COORDINATE WACHTELL RE NEW HSR CHANGES / CLIENT HSR RE NEW 4C'S, ETC. DRAFT NEW CLIENT HSR LETTERS. COPY NEW CERTIFICATIONS, NEW HSR PAGES. ARRANGE COURIER. CALL FROM M. PLANTE NYO RE 14D-1 STATUS. POUCH TO NYO, DISTRIBUTION TO WACHTEL
12	Strategy	Legal Assistant	Ronan CV	3/6/1998	5.25	ASSEMBLE HSRS (JAVA, FIRST ALERT). COORDINATE COPY OF JAVA 4C PER ML STEPTOE. PULL/PRINT/COPY/LABEL JAVA, SENTINEL 14D-1S FROM NET. ARRANGE COURIER. CALLS/POUCH TO NYO.
12	Strategy	Legal Assistant	Ronan CV	3/10/1998	1.00	ASSEMBLE CLIENT CORRECTED ITEM 5 PAGES, NEW CERTIFICATIONS. PRINT LETTERS. ARRANGE COURIER CALL/POUCH TO NYO.
12	Strategy	Legal Assistant	Shaw CL	3/4/1998	1.30	DISTRIBUTE/MAIL CORPORATE DOCUMENTS FROM CONFERENCE ROOM IN NEW YORK TO JANET KELLEY VIA FEDERAL EXPRESS. ORGANIZE FORM 3 AND FORM FROM PARTH MUNSHI WITH MEMO FOR DISTRIBUTION.
12	Strategy	Legal Assistant	Shaw CL	3/9/1998	0.60	DISTRIBUTE/MAIL PREPARE FEDERAL EXPRESS PACKAGES FOR DISTRIBUTION. PHOTOCOPY DOCUMENTS TO BE DISTRIBUTED.
12	Strategy	Legal Assistant	Shaw CL	3/11/1998	3.00	PROOFREAD DOCUMENTS AND AGREEMENTS FOR SUNBEAM. ASSIDST BOBBIE DAVIES IN PROOFING EDGAR DOCUMENTS, PREPARING FEDERAL EXPRESS PACKAGES AND DO DISTRIBUTION.
12	Strategy	Legal Assistant	Shaw CL	3/12/1998	0.80	PROOFREAD DOCUMENTS AND AGREEMENTS RELATI TO SUNBEAM CORPORATION.
12	Strategy	Legal Assistant	Shaw CL	3/13/1998	1.50	PROOFREAD EDGARIZED DOCUMENTS BEING FILED WITH THE SEC.
12	Strategy	Legal Assistant	Slater JW	3/3/1998	4.25	PHOTOCOPY AND LABEL ATTACHMENTS FOR HSR FILING; PAGECHECK DOCS; COORDINATE W/ XEROX DEPT COLOR COPIES OF PIE CHARTS AND GRAPHS, ETC.; COLLATE COLOR PAGES IN BANKER'S BOOKS/4(ATTACHMENTS; PREPARE PACKAGES FOR DEL'Y TO D OFFICE; ETC.
12	Strategy	Legal Assistant	Slater JW	3/4/1998	1.25	PHOTOCOPY AND LABEL 4(A) AND 4(B) DOCS FOR FIR ALERT AND SIGNATURE HSR FILINGS
12	Strategy	Legal Assistant	Slater JW	3/5/1998	1.75	PHOTOCOPY AND LABEL ATTACHMENTS FOR 2 HSR FILINGS (FIRST ALERT AND SIGNATURE); DISTRIBUTE FILE-STAMPED RECEIPT COPIES OF HSR FILING TO ATTYS & CLIENTS; PREPARE COVER MEMOS
12	Strategy	Legal Assistant	Slater JW	3/6/1998	1.25	DISTRIBUTE/MAIL COPY AND SEND 4(C)(2) BOOK TO M STEPTOE IN DC OFFICE
12	Strategy	Legal Assistant	Slater JW	3/11/1998	1.00	DISTRIBUTE/MAIL FILE-STAMPED RECEIPT COPIES OF HSR FILINGS TO CLIENTS, ATTYS; PREPARE COVER MEMOS
12	Strategy	Legal Assistant	Temp L	3/8/1998	4.00	(HENNING RISCHHIETER) TRANSLATION BKA- FILING
12	Strategy	Legal Assistant	Temp L	3/9/1998	3.25	(HENNING RISCHHIETER) TRANSLATION BKA-FILING

NOT A CERTIFIED COPY

017238

CONFIDENTIAL SASMF 19658

16div-022891

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Legal Assistant Special I	Keogh ME	3/2/1998	0.50	REVIEW DRAFT FOR ACTION OF SOLE INCORPORATOR FOR LASER ACQUISITION AND CAMPER ACQUISITION; EXECUTE AND FORWARD TO BOBBIE DAVIES; ORDER CORPORATE KIT FOR EACH
12	Strategy	Legal Assistant Special I	Keogh ME	3/3/1998	0.50	WORD PROCESSING FOR OT AMORISON - 14(F)(1) NOTICE
12	Strategy	Legal Assistant Special I	Keogh ME	3/16/1998	0.20	WORD PROCESSING FOR CAMPER AND LASER ACQUISITION CORPS - REVISE ACTIONS, RE-EXECUTE AND FORWARD TO B. DAVIES
12	Strategy	Legal Assistant Special I	Keogh ME	3/30/1998	0.20	FORWARD EVIDENCE FOR CLN HOLDINGS/LASER ACQUISITION CORP. MERGER TO A. AMORISON
12	Strategy	Legal Assistant Special I	Reusch D	3/25/1998	1.00	REVIEW DRAFT FOR LASER ACQUISITION - REVIEWED MERGER AND CALLS TO STATE RE FILING TERMINATIO
12	Strategy	Legal Assistant Special I	Reusch D	3/27/1998	1.25	REVIEW DRAFT FOR LASER ACQUISTION - PRECLEARE MERGER WITH STATE; CALLS.
12	Strategy	Legal Assistant Special I	Reusch D	3/30/1998	1.50	FILE DOCUMENT WITH SECY OF STATE FOR... LASER ACQUISTION - MERGER IN DE; CALLS.
12	Strategy	Legal Asst Special II	Ariza RN	3/13/1998	1.00	PULL PRECEDENT DOCUMENTS RE ARTICLES
12	Strategy	Legal Asst Special II	Baroni ML	3/4/1998	0.25	RESEARCH RE CORPORATE MATTER FOR WILMINGTON
12	Strategy	Legal Asst Special II	Bogdanovic P	3/5/1998	1.00	RESEARCH RE S.E.C. DOCUMENTS
12	Strategy	Legal Asst Special II	Bogdanovic P	3/12/1998	1.00	RESEARCH RE S.E.C. DOCUMENTS
12	Strategy	Legal Asst Special II	Bogdanovic P	3/13/1998	0.20	RESEARCH RE S.E.C. DOCUMENTS
12	Strategy	Legal Asst Special II	Crooks H	3/4/1998	0.75	RESEARCH RE SEARCH FOR EXAMPLES OF 14F NOTICES.
12	Strategy	Legal Asst Special II	Crooks H	3/6/1998	0.50	RESEARCH RE SEARCH FOR EXAMPLES OF PROXY PROPOSALS.
12	Strategy	Legal Asst Special II	Crooks H	3/6/1998	0.30	RESEARCH RE SEC DOCUMENTS.
12	Strategy	Legal Asst Special II	Crooks H	3/12/1998	0.30	RESEARCH RE SEARCH FOR SEC DOCUMENTS.
12	Strategy	Legal Asst Special II	Crooks H	3/23/1998	1.00	RESEARCH RE SEC DOCUMENTS.
12	Strategy	Legal Asst Special II	Crooks H	3/25/1998	1.00	RESEARCH RE SERACH FOR EXAMPLES OF S-4'S.
12	Strategy	Legal Asst Special II	Crooks H	3/30/1998	0.30	RESEARCH RE SERACH FOR 13E-3'S.
12	Strategy	Legal Asst Special II	Crooks H	3/31/1998	0.75	RESEARCH RE SEARCH FOR LETTERS OF TRANSMITT/
12	Strategy	Legal Asst Special II	Davis D	3/16/1998	2.00	RESEARCH RE 4 TO 5 EXAMPLES OF CONVERTABLE DEBT TRANS.; ORIG ISSUE DISCOUNT (OID) FROM TA SECTION
12	Strategy	Legal Asst Special II	Davis D	3/17/1998	2.00	RESEARCH RE CONT RESEARCH FROM 3/16
12	Strategy	Legal Asst Special II	Guthrie EC	3/6/1998	1.00	RESEARCH RE SEARCHING FOR 13E3 DEALS
12	Strategy	Legal Asst Special II	Guthrie EC	3/31/1998	1.00	RESEARCH RE FIND 13E3 PRECEDENT
12	Strategy	Legal Asst Special II	Lagamma AP	3/6/1998	1.00	LOCATE ALL THE COMPETITORS OF SUNBEAM, AND A MUCH INFO AS POSIBLE ON EACH ONE
12	Strategy	Legal Asst Special II	Leach LC	3/2/1998	0.20	READ/SCAN ELECTRONIC RESOURCES
12	Strategy	Legal Asst Special II	Leach LC	3/3/1998	0.60	READ/SCAN ELECTRONIC RESOURCES MERGER SUB
12	Strategy	Legal Asst Special II	Leach LC	3/3/1998	0.20	READ/SCAN ELECTRONIC RESOURCES FILINGS
12	Strategy	Legal Asst Special II	Leach LC	3/5/1998	0.10	READ/SCAN ELECTRONIC RESOURCES SUNBEAM
12	Strategy	Legal Asst Special II	Leach LC	3/5/1998	0.10	READ/SCAN ELECTRONIC RESOURCES
12	Strategy	Legal Asst Special II	Leach LC	3/6/1998	0.40	READ/SCAN ELECTRONIC RESOURCES ROHM & HAAS
12	Strategy	Legal Asst Special II	Leach LC	3/6/1998	0.90	READ/SCAN ELECTRONIC RESOURCES FRANKLIN MUTUAL FUND
12	Strategy	Legal Asst Special II	Leach LC	3/7/1998	3.00	READ/SCAN ELECTRONIC RESOURCES SC 13E
12	Strategy	Legal Asst Special II	Leach LC	3/9/1998	0.10	READ/SCAN ELECTRONIC RESOURCES COLEMAN
12	Strategy	Legal Asst Special II	Leach LC	3/10/1998	0.30	READ/SCAN ELECTRONIC RESOURCES VALASSIS CO
12	Strategy	Legal Asst Special II	Leach LC	3/10/1998	0.30	READ/SCAN ELECTRONIC RESOURCES VALASSIS COMM/FRANKLIN MUTUAL
12	Strategy	Legal Asst Special II	Leach LC	3/10/1998	0.20	READ/SCAN ELECTRONIC RESOURCES SUNBEAM
12	Strategy	Legal Asst Special II	Leach LC	3/11/1998	0.10	READ/SCAN LEGAL/BUSINESS LITERATURE SUNBEAM

NOT A CERTIFIED COPY

017289

CONFIDENTIAL SASMF 19659

16div-022892

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Legal Asst Special II	Leach LC	3/12/1998	0.70	READ/SCAN ELECTRONIC RESOURCES PROXIES PERFORMANCE GRAPHS
12	Strategy	Legal Asst Special II	Leach LC	3/16/1998	0.70	OBTAIN/ORDER DOCUMENTS AND PRECEDENT FROM SERVICE
12	Strategy	Legal Asst Special II	Leach LC	3/17/1998	2.10	READ/SCAN ELECTRONIC RESOURCES S-4
12	Strategy	Legal Asst Special II	Leach LC	3/20/1998	0.30	READ/SCAN ELECTRONIC RESOURCES SUNBEAM
12	Strategy	Legal Asst Special II	Leach LC	3/23/1998	0.20	READ/SCAN ELECTRONIC RESOURCES
12	Strategy	Legal Asst Special II	Leach LC	3/24/1998	0.60	READ/SCAN ELECTRONIC RESOURCES
12	Strategy	Legal Asst Special II	Leach LC	3/30/1998	0.20	READ/SCAN ELECTRONIC RESOURCES SUNBEAM
12	Strategy	Legal Asst Special II	Leach LC	3/31/1998	0.10	READ/SCAN ELECTRONIC RESOURCES SUNBEAM LIST
12	Strategy	Legal Asst Special II	Poggioli C	3/24/1998	0.25	DOCUMENT ORDER
12	Strategy	Legal Asst Special II	Poggioli C	3/25/1998	0.50	DOCUMENT ORDER
12	Strategy	Legal Assistant Support	Balazs KJ	3/23/1998	0.50	PROOFREAD PROOFREADING
12	Strategy	Legal Assistant Support	Balazs KJ	3/31/1998	1.25	PROOFREAD PROOFREADING
12	Strategy	Legal Assistant Support	Bovshow B	3/29/1998	0.75	DISTRIBUTION OF DOCUMENT, INTERNAL AND VIA FAX.
12	Strategy	Legal Assistant Support	Genger TW	3/9/1998	1.50	GOVT AGENCY FILING WITH SEC OF RELEVANT DOCUMENTS
12	Strategy	Legal Assistant Support	Hauck LL	3/3/1998	0.50	PROOFREAD MEMO AND QUESTIONNAIRE
12	Strategy	Legal Assistant Support	Hauck LL	3/4/1998	0.50	PROOFREAD MEMO AND INSERT
12	Strategy	Legal Assistant Support	Hauck LL	3/5/1998	4.50	PROOFREAD PROXY STATEMENT AND 13D; AWAITED CHANGES
12	Strategy	Legal Assistant Support	Hauck LL	3/6/1998	0.25	PROOFREAD SCHEDULE 13D
12	Strategy	Legal Assistant Support	Hauck LL	3/9/1998	1.00	PROOFREAD COMPARED 13D TO EDGAR VERSION
12	Strategy	Legal Assistant Support	Hauck LL	3/10/1998	0.50	PROOFREAD INFORMATION STATEMENT
12	Strategy	Legal Assistant Support	Hauck LL	3/11/1998	4.25	PROOFREAD PRESS RELEASE, PROXY STATEMENT, AMENDED & RESTATED STOCK OPTION PLAN AND AGREEMENT AND PLAN OF MERGER
12	Strategy	Legal Assistant Support	Hauck LL	3/12/1998	3.00	PROOFREAD LISTING APPLICATION, 2 LETTERS, NOTICE PROXY STATEMENT AND RESOLUTIONS
12	Strategy	Legal Assistant Support	Hauck LL	3/13/1998	0.50	PROOFREAD RESOLUTIONS
12	Strategy	Legal Assistant Support	Hauck LL	3/16/1998	0.25	PROOFREAD 2 LETTERS AND LISTING APPLICATION
12	Strategy	Legal Assistant Support	Hauck LL	3/17/1998	1.75	PROOFREAD 14(F) NOTICE
12	Strategy	Legal Assistant Support	Hauck LL	3/18/1998	0.25	PROOFREAD LETTER RE: LISTING APPLICATION
12	Strategy	Legal Assistant Support	Hauck LL	3/23/1998	0.50	PROOFREAD FORM S-4
12	Strategy	Legal Assistant Support	Hauck LL	3/25/1998	0.50	PROOFREAD FINANCIALS TO OFFERING MEMORANDUM
12	Strategy	Legal Assistant Support	Hauck LL	3/26/1998	6.00	PROOFREAD HIGHLIGHTED DEFINED AND UPPER CASE TERMS IN INFORMATION STATEMENT/PROSPECTUS; CROSS-CHECKED DEFINITIONS
12	Strategy	Legal Assistant Support	Hauck LL	3/27/1998	1.50	PROOFREAD REGISTRATION STATEMENT
12	Strategy	Legal Assistant Support	Hauck LL	3/30/1998	0.25	PROOFREAD PRESS RELEASE
12	Strategy	Legal Assistant Support	Pennington JF	3/2/1998	0.25	PROOFREAD CHANGES ON D&O QUESTIONNAIRE.
12	Strategy	Legal Assistant Support	Pennington JF	3/3/1998	1.00	PROOFREAD REVISIONS TO SCHEDULE 13D; MAKE SOME W/P CHANGES AND RETURN CLEAN. (FULL-REAI RIDERS)
12	Strategy	Legal Assistant Support	Pennington JF	3/4/1998	2.00	PROOFREAD REVISIONS TO SCHEDULE 13-D, AND FULI READ RIDERS. DOWN TIME BETWEEN VERSIONS OF DOC.
12	Strategy	Legal Assistant Support	Pennington JF	3/11/1998	5.00	PROOFREAD SUNBEAM PROXY STATEMENT, WITH CHARTS. ALSO PROOF ACTION BY BD. OF DIR. (2 DOC AND ACTION BY SOLE STOCKHOLDER (2 DOCS); PROO REVISIONS TO BOARD RESOLUTIONS OF SUNBEAM.
12	Strategy	Legal Assistant Support	Pennington JF	3/12/1998	1.75	PROOFREAD REVISIONS TO SUNBEAM PROXY STATEMENT AND NOTICE TO STOCKHOLDERS; MAKE SOME W/P REVISIONS AND RETURN CLEAN.
12	Strategy	Legal Assistant Support	Pennington JF	3/22/1998	5.00	PROOFREAD SUNBEAM REGISTRATION STATEMENT, S
12	Strategy	Legal Assistant Support	Pennington JF	3/25/1998	5.75	PROOFREAD EXTENSIVE REVISIONS AND RIDERS TO SUNBEAM S-4 REGISTRATION STATEMENT.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 19660

16div-022893

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
12	Strategy	Legal Assistant Support	Pennington JF	3/26/1998	3.75	PROOFREAD REVISIONS TO SUNBEAM'S S-4 REGISTRATION STATEMENT; FULL-READ RIDERS.
12	Strategy	Legal Assistant Support	Pennington JF	3/27/1998	3.75	PROOFREAD REVISIONS TO SUNBEAM REGISTRATION STATEMENT, S-4; FULL-READ RIDERS. MAKE WORD PROCESSING CHANGES; RUN COPIES -- CLEAN AND COMPARERITE. CALL COURIER AND ARRANGE FOR SAT. A.M. DELIVERY TO ATTY.'S HOME.
12	Strategy	Legal Assistant Support	Pennington JF	3/30/1998	2.50	PROOFREAD REVISIONS TO SUNBEAM S-4 REGIS. STATEMENT; ALSO, PROOF NOTICE TO STOCKHOLDERS. MAKE WORD PROCESSING CHANGES AND RETURN CLEAN. PROOF OTHER DOCS RE: SUNBEAM, INCL. LETTERS.
12	Strategy	Legal Assistant Support	Simon GJ	3/3/1998	1.50	PROOFREAD CORPORATE DOCUMENTS
12	Strategy	Legal Assistant Support	Simon GJ	3/4/1998	0.50	PROOFREAD CORPORATE DOCUMENT
12	Strategy	Legal Assistant Support	Simon GJ	3/5/1998	1.50	PROOFREAD CORPORATE DOCUMENTS
12	Strategy	Legal Assistant Support	Simon GJ	3/6/1998	0.50	PROOFREAD CORPORATE DOCUMENTS
12	Strategy	Legal Assistant Support	Simon GJ	3/9/1998	3.75	PROOFREAD RESOLUTIONS AND RIDERS
12	Strategy	Legal Assistant Support	Simon GJ	3/12/1998	0.50	PROOFREAD CONSENTS
12	Strategy	Legal Assistant Support	Simon GJ	3/16/1998	2.00	PROOFREAD MEMORANDA AND LETTERS AND OTHER CORPORATE DOCUMENTS
12	Strategy	Legal Assistant Support	Simon GJ	3/18/1998	1.00	PROOFREAD VARIOUS CORPORATE DOCUMENTS
12	Strategy	Legal Assistant Support	Temp P	3/10/1998	0.25	(ISABELLE FISHER) #562 REVISIONS
12	Strategy	Legal Asst Support	McCabe ME	3/29/1998	1.00	DISTRIBUTION OF DOCUMENTS TO ATTY.
13	Creditor	Partner	Galardi GM	3/3/1998	0.50	TELEPHONE CALL WITH J. ELLMAN RE: [redacted] (.4); TELEPHONE CALLS TO B. HANSON RE: [redacted] (.1)
13	Creditor	Partner	Galardi GM	3/12/1998	0.50	TELEPHONE CALL WITH J. ELLMAN RE: [redacted] (.3); WORK WITH B. HANSON ON ISSUES RE: [redacted] (.1); TELEPHONE CALL WITH DEBTOR'S COUNSEL RE: RECLAMATION CLAIN AND INVOICE DEADLINE (.1)
13	Creditor	Partner	Galardi GM	3/13/1998	0.60	[redacted]
13	Creditor	Partner	Galardi GM	3/18/1998	0.10	[redacted]
13	Creditor	Partner	Galardi GM	3/19/1998	0.90	REVIEW [redacted] WITH CLIENT (.4); SUGGEST CHANGES TO COUNSEL TO MW (.2); TELEPHONE CONFERENCE CALL WITH B. HANSON AND J. RICHARDSON RE: [redacted] (.3)
13	Creditor	Partner	Galardi GM	3/20/1998	1.10	[redacted]
13	Creditor	Partner	Galardi GM	3/26/1998	0.10	TELEPHONE CALL TO B. HANSON RE: [redacted] (.1)
13	Creditor	Associate	Bab Rosen KM	3/2/1998	0.80	REVIEW CORRESPONDENCE [.20]; EDIT NOTICES OF FILING OF PROOFS OF CLAIM [.30]; DRAFT LETTERS TO C. ANGELOU, B. HANSON & T. MACRI [.30].
13	Creditor	Legal Assistant Support	LaManna WK	3/2/1998	0.50	FILE/SERVE/DISTRIBUTE NOTICE OF FILING OF PROOF OF CLAIM IN MONTGOMERY WARD BANKRUPTCY CASE.
13	Creditor	Legal Assistant Support	Simon GJ	3/26/1998	2.00	PROOFREAD CORPORATE DOCUMENTS
13	Creditor	Legal Assistant Support	Simon GJ	3/27/1998	1.50	PROOFREAD PROSPECTUS REVISIONS
15	Boston	Partner	Aronson CH	3/13/1998	1.25	MARY LOU RE STRATEGY.
15	Boston	Partner	Aronson CH	3/17/1998	2.50	F. FOGG RE STATUS; MARY LOU RE APPROACH.
15	Boston	Partner	Aronson CH	3/19/1998	3.25	CALLS W/FINN; UZZI; MLS RE MTG.
15	Boston	Partner	Aronson CH	3/20/1998	7.50	PREPARE FOR MTG.; PREPARE CLIENT; CALL FTC; RECAP; FIN AND MARK; CALL SIGNATURE

NOT A CERTIFIED COPY

17291

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
15	Boston	Partner	Aronson CH	3/23/1998	2.25	SIG'S COUNSEL; CATHY MOSCATELLI; SHEEHAN AND EASTON; JANET KELLY.
15	Boston	Partner	Aronson CH	3/25/1998	0.50	SECOND REQUEST.
15	Boston	Partner	Aronson CH	3/26/1998	0.10	ECKLUND.
15	Boston	Partner	Solomon MJ	3/25/1998	1.00	CONF W/B. WEISS, ANALYSIS
15	Boston	Of Counsel	Fogg BV	3/2/1998	2.50	REVIEW DRAFT OF OFFER; DO MARKUP, ETC.
15	Boston	Of Counsel	Fogg BV	3/3/1998	6.00	GIVE COMMENTS ON TENDER OFFERS TO SHEHAN, JOHNSON AND TURNER; WORK ON LANGUAGE REGARDING FINANCING; REVIEW FIRST DRAFT AND SIGNATURE BRANDS DEBT DOCUMENTS; REVIEW AND MARK-UP NEW DRAFTS OF TENDER OFFERS, ETC.
15	Boston	Of Counsel	Fogg BV	3/4/1998	2.50	WORK ON OFFERS, OPINION TO DEALER MANAGER; CONFS. WITH SHEHAN; TC WITH EASTON, ETC.
15	Boston	Of Counsel	Fogg BV	3/5/1998	4.50	REVIEW AND MARKUP OFFERS; REVIEW 14D-9S; REVIEW MS HIGHLY CONF. LETTER; CONFS. WITH SHEHAN; TC WITH FANNIN
15	Boston	Of Counsel	Fogg BV	3/18/1998	0.50	TCS WITH ARONSON, STEPTOE; CONF. FANNIN, ETC.
15	Boston	Of Counsel	Fogg BV	3/19/1998	0.50	TCS WITH SHEHAN, ETC.
15	Boston	Of Counsel	Fogg BV	3/20/1998	1.50	REVIEW AND COMMENT ON SUPPLEMENTS TO TENDER OFFERS; PRESS RELEASE ON HSR; TCS WITH SHEHAN, ARONSON, TURNER
15	Boston	Of Counsel	Fogg BV	3/30/1998	1.50	TCS WITH SHEHAN, EASTON; REVIEW SUPPLEMENTS; DRAFT PRESS RELEASES
15	Boston	Of Counsel	Fogg BV	3/31/1998	2.50	TCS WITH NECKLES, GARTLAND, JOHNSON AND TURNER; CONF. WITH EASTON; PRESS RELEASES, ETC.; EMAILS TO GARTLAND, JOHNSON AND TURNER; CONF. WITH JOHNSON; REVIEW NOTICE OF MERGER, ETC.
15	Boston	Of Counsel	Steptoe M	3/3/1998	1.00	DEVELOP DATA REQUEST; PHONE BRAD KURTZ RE: SAME.
15	Boston	Of Counsel	Steptoe M	3/17/1998	5.00	[redacted]
15	Boston	Of Counsel	Steptoe M	3/18/1998	9.00	[redacted]
15	Boston	Of Counsel	Steptoe M	3/19/1998	7.00	CALL C. ARONSON, J. KELLY, JOHN ECKLUND. REVIEW FURTHER DOCUMENTS.
15	Boston	Counsel	Nisa JP	3/2/1998	4.00	HSR PREPARATION, COLEMAN
15	Boston	Counsel	Nisa JP	3/3/1998	6.00	HSR PREPARATION, COLEMAN, FIRST ALERT, SIGNATURE
15	Boston	Counsel	Nisa JP	3/4/1998	8.00	HSR PREPARATION, COLEMAN, FA, SIGNATURE
15	Boston	Counsel	Nisa JP	3/24/1998	0.50	HSR FOLLOWUP, I. GOTZ, M. JABAHE
15	Boston	Counsel	Weiss WJ	3/3/1998	4.00	REVIEW AND MARK UP TENDER OFFER MATERIALS (JAVA AND SENTINEL); T/C W/A. JOHNSON
15	Boston	Counsel	Weiss WJ	3/4/1998	1.50	REVIEW TENDER OFFER MATERIALS
15	Boston	Counsel	Weiss WJ	3/5/1998	1.30	REVIEW AND MARK UP TENDER OFFER MATERIALS
15	Boston	Associate	Fenton LI	3/2/1998	0.60	CONF WITH B WRUBEL RE CORPORATE ISSUES; TEL CONF WITH J KELLY RE CORPORATE STRUCTURE
15	Boston	Associate	Johnson AB	3/1/1998	18.00	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/2/1998	18.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/3/1998	17.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/4/1998	20.00	WORK ON DEALS
15	Boston	Associate	Johnson AB	3/5/1998	20.50	WORK ON DEALS
15	Boston	Associate	Johnson AB	3/6/1998	9.50	WORK ON DEALS
15	Boston	Associate	Johnson AB	3/9/1998	4.00	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/16/1998	4.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/17/1998	2.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/18/1998	4.00	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/19/1998	3.00	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/20/1998	3.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/23/1998	8.50	WORK ON DEAL.

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19662

16div-022895

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
15	Boston	Associate	Johnson AB	3/24/1998	9.00	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/25/1998	13.00	WORK ON DEAL/PRINTER.
15	Boston	Associate	Johnson AB	3/26/1998	9.50	WORK ON DEAL; PRINTER.
15	Boston	Associate	Johnson AB	3/27/1998	0.50	WORK ON DEAL.
15	Boston	Associate	Johnson AB	3/30/1998	5.50	WORK ON DEAL
15	Boston	Associate	Johnson AB	3/31/1998	9.00	WORK ON DEAL
15	Boston	Associate	Niebisch SA	3/17/1998	1.50	[redacted]
15	Boston	Associate	Niebisch SA	3/18/1998	1.60	[redacted]
15	Boston	Associate	Niebisch SA	3/19/1998	4.75	[redacted]
15	Boston	Associate	Niebisch SA	3/20/1998	4.50	[redacted]
15	Boston	Associate	Shehan MT	3/1/1998	7.50	DISCUSSION RE DESCRIPTION OF TRANSACTION AND PRESS RELEASE CALLS RE MECHANICS.
15	Boston	Associate	Shehan MT	3/2/1998	16.20	WORK ON TENDER OFFERS; FINANCING ORGANIZATIONAL MEETING.
15	Boston	Associate	Shehan MT	3/3/1998	12.90	REVIEW OF DEPOSITORY; INFORMATION AGENT; OBTAINING STOCKHOLDER DATES; RETAINING DEPOSITORS; INFORMATION AGENT.
15	Boston	Associate	Shehan MT	3/4/1998	14.50	WORK ON OPINIONS, DEALER MANAGER MEETING WITH FANNIN.
15	Boston	Associate	Shehan MT	3/5/1998	18.70	WORK ON OFFERS, OPINIONS, DEALER MANAGER AGREEMENT, REVIEW AT PRINTER OF OFFERS.
15	Boston	Associate	Shehan MT	3/6/1998	8.10	FOLLOW UP ON TENDER OFFER DOCUMENTS AND MAILING; DELER MANAGER AGREEMENT; HIGHLY CONFIDENT LETTER, COLEMAN 13D.
15	Boston	Associate	Shehan MT	3/9/1998	8.10	CLEAN UP OF FILES; REDRAFT OF SCHEDULE 13D-SALES RE TRADING DEALER MANAGER AGREEMENT.
15	Boston	Associate	Shehan MT	3/10/1998	7.90	REDRAFT OF SCHEDULE 13D, FINALIZING DEALER MANAGER AGREEMENT, DISCUSSION W KRAUS RE [redacted]
15	Boston	Associate	Shehan MT	3/11/1998	8.70	CALLS RE SHARE TENDER BY THOMAS LEE; DRAFT OF DESCRIPTION FOR 144A OFFERING; REVIEW OF DEBT RESTRICTIONS AND BANK PROCEEDS MEMOS. DISCUSSION W NECKLES, GARTLAND AND FREED.
15	Boston	Associate	Shehan MT	3/12/1998	7.90	REVIEW OF 144A OFFERING MEMO; REVIEW OF MINUTES; DISCUSSION W EASTON AND AMORISON; MARK-UP OF CHRONOLOGY.
15	Boston	Associate	Shehan MT	3/13/1998	8.20	REVIEW OF 144A; COMMENTS & CORRECTIONS ON DESCRIPTION OF TRANSACTION & FINANCING.
15	Boston	Associate	Shehan MT	3/16/1998	3.60	DRAFT OF SOURCE OF FUNDS DISCLOSURE. DISCUSSION W JANET KELLEY RE: [redacted]
15	Boston	Associate	Shehan MT	3/17/1998	8.20	REDRAFT OF SOURCE OF FUNDS DISCLOSURE; DISCUSSION RE: TIMING FOR BANK APPROVAL; CALL FROM SHARI WOLKAN RE: SHARE PAYMENT.
15	Boston	Associate	Shehan MT	3/18/1998	12.10	MEMO RE: MEETA VYAS EMPLOYMENT CONTRACT; MEETINGS RE: EARNINGS AND SALES RELEASE; DISCUSSION WITH MORGAN STANLEY.
15	Boston	Associate	Shehan MT	3/19/1998	9.90	CALL RE: PRESS RELEASE; REDRAFT OF SUPPLEMENT; DISCUSSION W/ HILL KNOWLTON, JANET KELLEY; SENDING OUT MARK-UP OF MEETA VYAS NON-COMPETE; CALLS RE: FINANCING.
15	Boston	Associate	Shehan MT	3/20/1998	7.90	REVIEW OF 14D-1 SUPPLEMENTS; REDRAFT OF SOURCE OF FUNDS; DISCUSSION W FOGG; CALL FROM DON QUATRELLA RE TELEPHONE SOLICITATION; REDRAFT O PRESS RELEASE.
15	Boston	Associate	Shehan MT	3/23/1998	7.60	REDRAFT TO SUPPLEMENTS. CALLS FROM KELLEY & FOGG; DISCUSSION RE: BOARD REPLACEMENT.

NOT A CERTIFIED COPY

017293

CONFIDENTIAL

SASMF 19663

16div-022896

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
15	Boston	Associate	Shehan MT	3/24/1998	8.80	DISCUSSION RE: COLEMAN AND FIRST QUARTER CLOSING; CALLS TO ADRIAN; DISCUSSION WITH FOGG; CALLS TO ALLISON AMORISON.
15	Boston	Associate	Shehan MT	3/25/1998	7.50	REVIEW AND REWRITE OF PRESS RELEASES; DISCUSSION AND CHANGES TO SUPPLEMENTS TO OFFERS TO PURCHASE; CALLS RE TENDER OFFER SHARE STATUS.
15	Boston	Associate	Shehan MT	3/26/1998	3.10	CALLS RE: SUPPLEMENTS; NON-COMPETE SITUATION; REVIEW OF CONFIDENTIALITY AGREEMENTS; CALLS FROM WOLKON, PECK; DISCUSSION W NECKLES AND GARTLAND.
15	Boston	Associate	Shehan MT	3/27/1998	4.00	CALLS RE: HART-SCOTT & COLEMAN RE: STOCK CERTIFICATES; REVIEW & DISCUSSION ON CONFIDENTIALITY; CALLS FROM INFORMATION AGENT
15	Boston	Associate	Shehan MT	3/30/1998	7.80	CALLS FROM DON AT HILL & KNOWLTON; REVIEW OF NOTICE OF MERGER; DRAFT OF CHECKLIST; DISCUSSION W/FOGG & EASTON
15	Boston	Associate	Shehan MT	3/31/1998	0.50	CALLS TO ALEX JOHNSON & CLEM TURNER RE: STATUS OF TENDER OFFERS
15	Boston	Associate	Turner CG	3/1/1998	18.50	DRAFT OFFER TO PURCHASE
15	Boston	Associate	Turner CG	3/2/1998	16.50	PROOF/UPDATE OTP; DRAFT 14D-1 AND 13D; BEGIN DRAFT OF ENGAGEMENT LETTER
15	Boston	Associate	Turner CG	3/3/1998	16.00	DISCUSS, UPDATE, PROOF AND DISTRIBUTE OFFER TO PURCHASE; DRAFT DEALER MANAGER AGREEMENT FOR JAVA AND SENTINEL; DRAFT OPINION FOR JAVA AND SENTINEL; DRAFT WRITTEN CONSENT FOR JAVA AND SENTINEL; FINISH 14-D-1; CONVERT DOCUMENTS TO DISK AND SEND WITH HARD COPIES TO PRINTER
15	Boston	Associate	Turner CG	3/4/1998	16.00	UPDATE OTP; DISTRIBUTE/RECEIVE VARIOUS DOCUMENTS; DISCUSSIONS; FINALIZE; DLR/MGR AGREEMENT; SASM&F OPINION; GENERAL COUNSEL OPINION; 14D-1; INTERNAL DISTRIB OF UPDATED OTP; PREPARATIONS FOR PRINTER
15	Boston	Associate	Turner CG	3/5/1998	20.00	PRINTER- PROOF DOCUMENTS; UPDATE DOCUMENTS
15	Boston	Associate	Turner CG	3/6/1998	13.00	PRINTER- PROOF AND UPDATE DOCUMENTS; FILE WITH SEC; DISTRIBUTION TO NASD, NYSE
15	Boston	Associate	Turner CG	3/9/1998	6.00	DRAFT/UPDATE 13-D; RESEARCH 13D-1 AND SCH 13-D; COORDINATE FILING WITH PRINTER
15	Boston	Associate	Turner CG	3/10/1998	5.50	UPDATE 13D; GO TO PRINTERS; FILE 13D; 14D1/D9 DISTRIBUTION (MAKE COVER LETTER)
15	Boston	Associate	Turner CG	3/11/1998	4.00	PROOF AND UPDATE COVER LETTER FOR DISTRIBUTION; PROOF 13D FOR TABLE BOOKS; DISTRIBUTION; DRAFT SUPPLEMENT FOR 14D-AMENDMENT
15	Boston	Associate	Turner CG	3/12/1998	2.00	SEARCH FOR PRECEDENT-SUPPLEMENT TO OFFER; RESEARCH RULE 13 RE: SUPPLEMENTS
15	Boston	Associate	Turner CG	3/13/1998	1.00	REVIEW DISKS SENT BY PRINTER TO BE PUT ON SYSTEM; REVIEW SUPPLEMENT TO OFFER PRECEDENT
15	Boston	Associate	Turner CG	3/16/1998	2.00	SEARCH FOR PRECEDENTS FOR SUPPLEMENT TO OTP INITIAL DRAFT OF SUPPLEMENT; DISCUSSIONS WITH ALEX JOHNSON AND MARK SHEHAN
15	Boston	Associate	Turner CG	3/17/1998	4.00	REVIEW PRECEDENT FOR SUPPLEMENT; SELECT BEST 3, FORWARD TO MARK; FORMAT AND DRAFT FIRST ALERT SUPPLEMENT
15	Boston	Associate	Turner CG	3/18/1998	5.00	DRAFT SHELL SUPPLEMENT FOR JAVA; REVIEW DEBENTURE FOR ZERO-COUPON OFFERING; DRAFT SOURCE OF FUNDS SECTION FOR SUPPLEMENT; DISCUSSION WITH ALEX JOHNSON

NOT A CERTIFIED COPY

7294

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
15	Boston	Associate	Turner CG	3/19/1998	4.50	UPDATE/PROOF AND DISTRIBUTE SENTINEL SUPPLEMENT TO OTP; DRAFT JAVA SUPPLEMENT TO OTP; DRAFT JAVA AND SENTINEL 14D-1
15	Boston	Associate	Turner CG	3/20/1998	3.00	UPDATE ANCILLARIES; DISTRIBUTE; DISCUSSION WITH MARK SHEHAN
15	Boston	Associate	Turner CG	3/23/1998	2.00	DISCUSSIONS WITH ALEX JOHNSON AND MARK SHEHAI AND LEANDER; REVIEW 14D-1 AMENDMENTS; REVIEW MERGER CERTIFICATE PRECEDENT SEND TO ALEX JOHNSON
15	Boston	Associate	Turner CG	3/24/1998	4.00	DISCUSSION WITH ALEX JOHNSON AND MARK SHEHAN; UPDATE DOCUMENTS; DISTRIBUTE EXTERNALLY
15	Boston	Associate	Turner CG	3/25/1998	3.00	UPDATE DOCUMENTS; PRINT/FORWARD TO PRINTER; DISCUSSIONS WITH MARK SHEHAN AND ALEX JOHNSOI
15	Boston	Associate	Turner CG	3/26/1998	1.00	COORDINATE WITH ALEX JOHNSON AT THE PRINTER
15	Boston	Associate	Turner CG	3/31/1998	4.00	DRAFT: CERTIFICATE OF MERGER; NOTICE OF MERGEI LETER OF TRANS; PRESS RELEASE; DISCUSSION WITH ALEX JOHNSON, M. GAITLAND
15	Boston	Legal Assistant	Dwyer KJ	3/2/1998	0.50	PROOFREAD ALL NEW INPUT OF COMPANY DESCRIPTION RIDER, 2PGS.; WORD PROCESSED PROOFER'S CORRECTIONS AND REPROOFED
15	Boston	Legal Assistant	Kaplan JM	3/4/1998	3.00	PHOTO AND FAX
15	Boston	Legal Assistant	Kaplan JM	3/5/1998	23.50	FINANCIAL PRINTERS ON FIRST ALERT
15	Boston	Legal Assistant	Kaplan JM	3/6/1998	6.00	CLEANING UP
15	Boston	Legal Assistant	Kaplan JM	3/8/1998	4.00	ORGANIZATION OF FILES; PHOTOCOPY
15	Boston	Legal Assistant	Kaplan JM	3/9/1998	2.75	INTERNAL DISTRIBUTION
15	Boston	Legal Assistant	Kaplan JM	3/10/1998	1.25	INTERNAL DISTRIBUTION
15	Boston	Legal Assistant	Kaplan JM	3/11/1998	2.00	INTERNAL DISTRIBUTION
15	Boston	Legal Assistant	Plante MJ	3/1/1998	16.25	READ FOR SUBSTANCE , COPY, FAX
15	Boston	Legal Assistant	Plante MJ	3/2/1998	11.50	READ FOR SUBSTANCE , REVISE PRECEDENT DOCUMENTS TO REFLECT THIS DEAL
15	Boston	Legal Assistant	Plante MJ	3/3/1998	13.50	READ FOR SUBSTANCE , DISTRIBUTE
15	Boston	Legal Assistant	Plante MJ	3/4/1998	15.50	WORK AT FINANCIAL PRINTER ON 14D-1
15	Boston	Legal Assistant	Plante MJ	3/5/1998	19.25	WORK AT FINANCIAL PRINTER ON 14D-1
15	Boston	Legal Assistant	Plante MJ	3/17/1998	1.25	DISTRIBUTE/MAIL ORGANIZE INTERNAL DISTRIBUTION
15	Boston	Legal Assistant	Plante MJ	3/18/1998	3.00	ASSIST CLIENT AND DISTRIBUTE DOCUMENTS
15	Boston	Legal Assistant	Plante MJ	3/20/1998	2.50	PROOFREAD DOCUMENTS
15	Boston	Legal Assistant	Plante MJ	3/23/1998	6.00	PROOFREAD DOCUMENTS AND DRAFT PORTION OF DISCLOSURE SCHEDULE
15	Boston	Legal Assistant	Plante MJ	3/24/1998	1.50	EDIT/REVISE DISCLOSURE SCHEDULE
15	Boston	Legal Assistant	Plante MJ	3/26/1998	10.50	WORK AT FINANCIAL PRINTER ON AMENDMENT TO SCHEDULE 14D-1, PHOTOCOPY
15	Boston	Legal Assistant	Plante MJ	3/29/1998	5.00	ASSEMBLE CLOSING DOCUMENTS FOR AND EDITED DOCUMENT
15	Boston	Legal Assistant	Plante MJ	3/30/1998	12.25	ATTEND CLOSING OF COLEMAN DEAL AND PREPARE CLOSING SETS
15	Boston	Legal Assistant	Plante MJ	3/31/1998	3.00	ASSEMBLE CLOSING DOCUMENTS FOR COLEMAN DEA
15	Boston	Legal Assistant	Pressman SL	3/6/1998	3.00	PROOFREAD ASSIST ALEX JOHNSON WITH TENDER OFFER. PROOFREAD
15	Boston	Legal Assistant	Pressman SL	3/30/1998	3.00	PROOFREAD
15	Boston	Legal Assistant Special I	Buckley LT	3/3/1998	1.50	PREPARE ORGANIZATIONAL DOCUMENTS FOR JAVA ACQUISITION AND SENTINEL ACQUISITION ASI'S, ORDE CORPORATE KITS, FORWARD EVIDENCE
15	Boston	Legal Assistant Special I	Buckley LT	3/4/1998	0.50	PROCESS DOCUMENT REQUEST FOR SUNBEAM CORF
15	Boston	Legal Asst Special II	Baroni ML	3/2/1998	0.40	RESEARCH RE COPORATE MATTER.
15	Boston	Legal Asst Special II	Bogdanovic P	3/3/1998	0.30	RESEARCH RE S.E.C. DOCUMENTS
15	Boston	Legal Asst Special II	Bogdanovic P	3/6/1998	0.30	RESEARCH RE S.E.C. DOCUMENTS
15	Boston	Legal Asst Special II	Bogdanovic P	3/18/1998	1.00	RESEARCH RE S.E.C. DOCUMENTS
15	Boston	Legal Asst Special II	Bogdanovic P	3/19/1998	0.50	RESEARCH RE S.E.C. DOCUMENTS, PRESS RELEASES

NOT A CERTIFIED COPY

017295

CONFIDENTIAL SASMF 19665

16div-022898

Sunbeam Corporation (545100)
Time Detail: 3/01/98 to 3/31/98

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
15	Boston	Legal Asst Special II	Bogdanovic P	3/31/1998	0.50	RESEARCH RE S.E.C. DOCUMENTS
15	Boston	Legal Asst Special II	Bogdanovic P	3/31/1998	1.00	RESEARCH RE S.E.C. DOCUMENTS
15	Boston	Legal Asst Special II	Crooks H	3/5/1998	0.30	RESEARCH RE HISTORICAL PRICING INFORMATION.
15	Boston	Legal Asst Special II	Crooks H	3/5/1998	0.30	RESEARCH RE HISTORICAL PRICING INFORMATION.
15	Boston	Legal Asst Special II	Lyon JW	3/18/1998	0.40	RESEARCH RE PROXY RES/RET
15	Boston	Legal Asst Special II	Lyon JW	3/18/1998	0.70	RESEARCH RE E.G. AMENDED OFFER TO PURCH WHERE MORE CLEAR INFO DESCRIBED IN SOURCE OF FUNDS SECTION.
15	Boston	Legal Asst Special II	Poggioli C	3/4/1998	0.50	DOCUMENT ORDER
15	Boston	Legal Asst Special II	Poggioli C	3/9/1998	0.25	DOCUMENT ORDER
15	Boston	Legal Asst Special II	Poggioli C	3/17/1998	1.00	RESEARCH RE FIND AND PRINT PRECEDENT TENDER DOCUMENTS
15	Boston	Legal Asst Special II	Poggioli C	3/19/1998	0.15	DOCUMENT ORDER
15	Boston	Legal Asst Special II	Silverman HB	3/4/1998	0.05	EXCHANGE IDENTIFICATION.
15	Boston	Legal Asst Special II	Silverman HB	3/9/1998	0.10	ARTICLE RETRIEVAL, FROM DJ BROAD TAPE : SUNBEAM
15	Boston	Legal Asst Special II	Silverman HB	3/11/1998	0.10	PROVIDE HISTORICAL QUOTES FROM ADP: ALRT AND SIGB.
15	Boston	Legal Asst Special II	Stone M	3/1/1998	0.25	RESEARCH RE SIGNATURE BRANDS OUTSTANDING
15	Boston	Legal Asst Special II	Stone M	3/1/1998	0.50	RESEARCH RE PROXY SUNBEAM CORP AND FIRST ALERT HI LO 96-97 QUARTERS
15	Boston	Legal Asst Special II	Stone M	3/2/1998	0.50	RESEARCH RE SIGNATURE BRANDS QUARTERLY 1997.
15	Boston	Legal Assistant Support	Ashby PA	3/1/1998	4.00	PROOFREAD CHANGES TO MERGER AGMT.
15	Boston	Legal Assistant Support	Bona DC	3/1/1998	2.50	PROOFREAD CHANGES TO OFFER TO PURCHASE
15	Boston	Legal Assistant Support	Bona DC	3/21/1998	1.50	ASSIGNED/AWAITING WORK FROM ASSIGNED/WAITING
15	Boston	Legal Assistant Support	Buchwald MP	3/5/1998	0.25	GENERAL ASSISTANCE: TELEPHONE RE: CONFIDENTIALITY AGREEMENT.
15	Boston	Legal Assistant Support	Davis RG	3/21/1998	10.00	DISTRIBUTION OF MISC. DOCUMENTS;MADE 8 COPIES OF 5 DOCUMENTS AND DISTRIBUTED VIA BY-HAND
15	Boston	Legal Assistant Support	Falzoi JC	3/5/1998	2.00	PROOFREAD PROOFREAD MANY FORMATTING CHANGES IN SUNBEAM DOCUMENT.
15	Boston	Legal Assistant Support	Kolula L	3/25/1998	0.25	CHECKED OFFICE FOR TEL NUMBER
15	Boston	Legal Assistant Support	Loehr RC	3/2/1998	0.75	PROOFREAD JOB 669, MULTIPLE DOCS
15	Boston	Legal Assistant Support	Malranga NF	3/18/1998	1.25	PROOFREAD NEW INPUT OF SUPP OTP RIDER
15	Boston	Legal Assistant Support	Naaman RM	3/3/1998	0.25	PROOFREAD PRESS RELEASE AND LETTER
15	Boston	Legal Assistant Support	Pennington JF	3/16/1998	0.50	PROOFREAD REVISIONS TO SUNBEAM DOCS.
15	Boston	Legal Assistant Support	Pike F	3/28/1998	2.25	PROOFREAD NEW INPUT, PROJECT TOOL DUE DILIGENCE OUTLINE. MINOR EDITS FOR CONSISTENCY FORMAT, ETC.
15	Boston	Legal Assistant Support	Pike F	3/29/1998	0.50	PROOFREAD PROOFER'S CORRECTIONS, OUTLINE
15	Boston	Legal Assistant Support	Pizarro RR	3/18/1998	0.25	PROOFREAD JOB # 170. READ FOR CHANGES.
15	Boston	Legal Assistant Support	Robinson SJ	3/3/1998	0.50	GENERAL ASSISTANCE: RESEARCH INFORMATION FOR WORKING GROUP LIST, PUT INTO WORDPROCESSING.
15	Boston	Legal Assistant Support	Rockness D	3/4/1998	2.25	GENERAL ASSISTANCE: PHOTOCOPYING; 9-PARTY DISTRIBUTION OF DRAFT PROSPECTUS.
15	Boston	Legal Assistant Support	Temp P	3/3/1998	0.50	#109 REVISIONS (ISABELLE FISHER)
15	Boston	Legal Assistant Support	Temp P	3/3/1998	0.50	(BEHR AMOS) JOB #62
15	Boston	Legal Assistant Support	Temp P	3/3/1998	0.50	(JAMES BEHR) JOB #62
15	Boston	Legal Assistant Support	Temp P	3/28/1998	2.25	(MURIEL SCHMIDT). #342.
15	Boston	Legal Assistant Support	Temp P	3/28/1998	1.50	(ANDREW WALKER) JOB #342 FULL PROOF
15	Boston	Legal Assistant Support	Temp P	3/28/1998	0.50	(ANDREW WALKER) 342 RE PROOF
15	Boston	Legal Assistant Support	White SD	3/2/1998	2.00	PROOFREAD FOR CHANGES OFFER TO PURCHASE
15	Boston	Legal Asst Support	Gaylord MH	3/25/1998	0.50	GENERAL ASSISTANCE: CHECK OUT PRESS RELEASES TO DISK, PRINT, SEND TO GLOBAL PRINTERS

NOT CERTIFIED COPY

017296

CONFIDENTIAL

SASMF 19666

16div-022899

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Partner	Deitz AS	3/27/1998	7.00	T/C/W P. NECKLES REGARDING, SUPPLEMENTAL INDENTURE. T/C/W G. JORDAN FIRST TRUST. DRAFT SUPPLEMENTAL INDENTURE, CERTIFICATES, T/C/W F. SGARAGHONM, M. GARTLAND. T/C/W S. COHEN, WACHTELL.
16	Bank Financing	Partner	Deitz AS	3/28/1998	2.00	DISCUSS L. GRAY, CLOSING. DISCUSS T. GOWAN, CLOSING. T/C/W A. AMORRISON. REVIEW COMMENTS OF TRUSTEE'S COUNSEL. FAX TO TRUSTEE'S COUNSEL REGARDING CERTIFICATE.
16	Bank Financing	Partner	Deitz AS	3/29/1998	2.00	REVISE SUPPLEMENTAL INDENTURE, OPINION AND OFFICER'S CERTIFICATE. DISCUSS M. GARTLAND. T/C/W F. SGARAGTINO, FIRST TRUST.
16	Bank Financing	Partner	Deitz AS	3/31/1998	1.50	T/C/W T. GOWAN, M. GARTLAN RE IRBS. REVIEW LOAN AGREEMENT AND INDENTURE.
16	Bank Financing	Partner	Easton RL	3/2/1998	1.75	ORGANIZE FINANCIAL TEAM; ORGANIZATION CALLS; T/CS WITH MORGAN STANLEY AND DAVIS POLK FOLKS
16	Bank Financing	Partner	Easton RL	3/3/1998	1.00	FINANCING CONFERENCE; COORDINATE LEGAL DUE DILIGENCE
16	Bank Financing	Partner	Gowan TW	3/18/1998	3.20	DUE DILIGENCE; REVIEW DOCUMENTS.
16	Bank Financing	Partner	Gowan TW	3/19/1998	3.50	DUE DILIGENCE DOCUMENTS. REVIEW IRB DOCUMENTS; DRAFT WAIVER.
16	Bank Financing	Partner	Gowan TW	3/20/1998	4.50	REVIEW IRB DOCUMENTS, DRAFT WAIVER, REVIEW WARNER/PAY-OFF LETTERS REQUIRED. REVIEW T/S.
16	Bank Financing	Partner	Gowan TW	3/21/1998	5.20	REVIEW LOAN AGREEMENT, REVIEW IRB DOCUMENTS RE: DEFAULT CARE PROVISIONS, REVIEW PAY-OFF PROVISION OF BANK AGREEMENT.
16	Bank Financing	Partner	Gowan TW	3/22/1998	4.50	REVIEW LOAN AGREEMENT, C/C WITH M. GARTLAND AND P. NECKLES.
16	Bank Financing	Partner	Gowan TW	3/23/1998	6.60	NUMEROUS T/C'S WITH RE: TO PAY-OFF OF EXISTING BANK AGREEMENTS, REVIEW IRB WAIVER AND DRAFT COMMENTS, T/C'S WITH B. LAZARUS, A. DIETZ, DRAFT COMMENTS ON LOAN AGREEMENT, REVIEW EXISTING FACILITIES.
16	Bank Financing	Partner	Gowan TW	3/24/1998	8.50	NUMEROUS T/C'S WITH LENDERS RE: PAYOFF, NOTICES AND WAIVERS, DRAFT NOTICES AND PAYOFF LETTERS, REVIEW AND DRAFT COMMENTS ON SIGNATURE BRANDS, DRAFT NOTICE AND PAYOFF FOR SUNBEAM AGREEMENT, REVIEW LOC'S AND DISCUSS REPLACEMENT ISSUES WITH CREDIT SUISSE, REVIEW FIRST ALERT COLALTERAL DOCUMENTS, REVIEW LOAN AGREEMENT COMMENTS.
16	Bank Financing	Partner	Gowan TW	3/25/1998	7.50	REVIEW FIRST ALERT COLLATERAL DOCUMENTS, NUMEROUS T/C'S AND DRAFTING DOCUMENTS RE: PAYOFF ISSUES; REVIEW LOAN AGREEMENTS.
16	Bank Financing	Partner	Gowan TW	3/26/1998	6.30	NUMEROUS T/C'S RE: FACILITY TERMINATION, DRAFT AND REVISE TERMINATION NOTICES AND PAYOFF LETTERS, T/C'S WITH S. DALBERTH AND W. DURAL RE: LOC COLLATERALIZATION, REVIEW REVISED LOAN DOCUMENTS.
16	Bank Financing	Partner	Gowan TW	3/27/1998	4.30	REVIEW REVISED DOCUMENTS, NUMEROUS T/C'S WITH SUNBEAM, COLEMAN, FIRST ALERT, AND SIGNATURE BRANDS PERSONNEL RE: TERMINATION OF CREDIT FACILITIES, REVIEW PAYOFF LETTERS, DRAFT CASH COLLATERAL AGREEMENT, T/C'S WITH CSFB COUNSEL RE: PAYOFF ISSUES.

NOT A CERTIFIED COPY

011297

CONFIDENTIAL SASMF 19667

16div-022900

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Partner	Gowan TW	3/28/1998	6.20	REVIEW REVISED LOAN DOCUMENTS, REVISE CSFB PAYOFF LETTER AND CASH COLLATERAL AGREEMENT. DISTRIBUTE TO WORKING GROUP, T/C: WITH COUNSEL TO CSFB. DUE DILIGENCE, REVIEW OF CW HOLDINGS INDENTURE RE: ASSIGNMENT AND ASSUMPTION; T/C: WITH S. DALBERTH.
16	Bank Financing	Partner	Gowan TW	3/29/1998	5.70	C/C WITH PETER NECKLES AND M. GARTLAND RE: AFFILIATE TRANSACTION UNDER CLN INDENUTRE. DRAFT NOTICE OF REDEMPTION, REVIEW SCHEDULE OI COLEMAN NOTE HOLDINGS, REVIEW REVISED CA DOCS C/C WITH BANK GROUP, REVIEW PAYOFF DOCUMENTS.
16	Bank Financing	Partner	Gowan TW	3/30/1998	6.50	NUMEROUS T/C'S WITH COLEMAN, SUNBEAM AND CSFB RE: CLOSING AND PAYOFF ISSUES; NUMEROUS DRAFT OF PAYOFF LETTER AND CASH COLLATERAL AGREEMENT, REVIEW DOCUMENTS AND T/C'S WITH RE: TO SIGNATURE BRANDS AND FIRST ALERTY PAYOFFS, DRAFT NOTICES FOR REDEMPTION OF CLN HOLDINGS INDENTURE.
16	Bank Financing	Partner	Gowan TW	3/31/1998	5.20	NUMEROUS T/C'S WITH COUNSEL TO FIRST ALERT AND SIGNATURE BRAND'S BANK GROUP.. REVIEW PAYOFF LETTERS AND CREDIT DOCUMENTS, T/C'S WITH B. MEGAVICK, REVISE CASH COLLATERAL AGREEMENT, T/C'S WITH J. KELLEY AND S. DALBERTH, REVISE CLN HOLDINGS NOTICES. REVIEW CLN INDENTURE FOR A. AMORISON RE: REPORTING COMPANY REQUIREMENTS REVIEW IRB REDEMPTION WITH A. DIETZ.
16	Bank Financing	Partner	Hayman LC	3/16/1998	0.40	T/C MICHELLE GARTLAND RE: PROTECTED PURCHASE OPINION.
16	Bank Financing	Partner	Hayman LC	3/18/1998	0.20	T/C R. OLSON.
16	Bank Financing	Partner	Hayman LC	3/23/1998	0.30	T/C SOORYUN YOUN
16	Bank Financing	Partner	Hayman LC	3/25/1998	0.40	T/C NECKLES; T/C NULTY.
16	Bank Financing	Partner	Hayman LC	3/26/1998	0.90	T/C S. YOUN RE: UCC ISSUES; STRUCTURE.
16	Bank Financing	Partner	Hayman LC	3/27/1998	0.50	T/C S. YOUN.
16	Bank Financing	Partner	Hayman LC	3/29/1998	0.40	T/C S. YOUN.
16	Bank Financing	Partner	Hayman LC	3/30/1998	0.50	MEETING WITH S. YOUN.
16	Bank Financing	Partner	Hayman LC	3/31/1998	1.50	T/C S. YOUN RE: OPINION; T/C P. NECKLES.
16	Bank Financing	Partner	Neckles PJ	3/2/1998	4.50	CONFERENCES WITH F. FOGG, R. EASTON, AND G. FERNICOLA; CONFERENCE CALL WITH F. FOGG, R. EASTON, G. FERNICOLA, MORGAN STANLEY, AND DAVI POLK TO DISCUSS SCHEDULE.
16	Bank Financing	Partner	Neckles PJ	3/3/1998	5.00	REVIEW DOCUMENTS; PARTICIPATE IN CONFERENCE CALL WITH MORGAN STANLEY AND THE COMPANY; CONFERENCE WITH L. GRAY, F. FOGG, AND G. FERNICOLA REGARDING TRANSACTION.
16	Bank Financing	Partner	Neckles PJ	3/4/1998	7.00	MEETINGS WITH L. GRAY AND M. GARTLAND; CONFERENCE WITH G. FERNICOLA.
16	Bank Financing	Partner	Neckles PJ	3/5/1998	6.00	CONFERENCES WITH L. GRAY, M. GARTLAND, AND D. FISHER.
16	Bank Financing	Partner	Neckles PJ	3/6/1998	8.00	REVIEW DOCUMENTS; CONFERENCES WITH F. FOGG, GRAY, M. GARTLAND, P. LEVIN, M. SHEEHAN, AND B. WEISS.
16	Bank Financing	Partner	Neckles PJ	3/8/1998	8.00	MEETING WITH M. GARTLAND AND L. GRAY REGARDIN ANALYSIS OF EXISTING CREDIT AGREEMENT; BEGIN PREPARATION OF [redacted]

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19668

0172988

16div-022901

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Partner	Neckles PJ	3/9/1998	10.00	CONFERENCES WITH R. EASTON, F. FOGG, AND M. GARTLAND; CONFERENCE CALL WITH M. GARTLAND, J. KELLY, AND S. DALBERTH [redacted]
16	Bank Financing	Partner	Neckles PJ	3/10/1998	8.00	CONFERENCE WITH F. FOGG, P. LEVIN, M. GARTLAND, G FERNICOLA, AND S. DALBERTH [redacted]
16	Bank Financing	Partner	Neckles PJ	3/11/1998	6.00	CONFERENCES WITH M. GARTLAND AND M. SHEEHAN REGARDING CASH NEEDS MEMORANDUM.
16	Bank Financing	Partner	Neckles PJ	3/12/1998	8.00	CONFERENCES WITH M. GARTLAND AND G. FERNICOLA REVIEW AND REVISE DRAFT OF [redacted]
16	Bank Financing	Partner	Neckles PJ	3/13/1998	4.00	CONFERENCES WITH F. FOGG AND M. GARTLAND; REVIEW, REVISE AND DISTRIBUTE MARK-UP OF [redacted]
16	Bank Financing	Partner	Neckles PJ	3/16/1998	7.50	CONFERENCES WITH M. GARTLAND, F. FOGG, AND G. FERNICOLA; REVIEW REVISED TERM SHEET AND BANK CREDIT FACILITY; [redacted]
16	Bank Financing	Partner	Neckles PJ	3/17/1998	7.00	CONFERENCE WITH F. FOGG, G. FERNICOLA, AND M. GARTLAND; CONFERENCE CALL WITH M. GARTLAND, S DALBERTH AND J. KELLEY.
16	Bank Financing	Partner	Neckles PJ	3/18/1998	9.00	REVIEW DOCUMENTS; CONFERENCES WITH M. SHEEHAN, M. GARTLAND, G. FERNICOLA, AND T. GOWAN.
16	Bank Financing	Partner	Neckles PJ	3/19/1998	9.00	REVIEW DOCUMENTS; CONFERENCES WITH M. GARTLAND AND M. SHEEHAN.
16	Bank Financing	Partner	Neckles PJ	3/20/1998	7.50	CONFERENCE WITH G. FERNICOLA, M. GARTLAND, AND J. KELLEY.
16	Bank Financing	Partner	Neckles PJ	3/22/1998	1.00	CONFERENCE CALL WITH M. GARTLAND AND T. GOWAI REGARDING CREDIT AGREEMENT COMMENTS.
16	Bank Financing	Partner	Neckles PJ	3/23/1998	7.00	CONFERENCE WITH G. FERNICOLA, M. GARTLAND, AND J. KELLEY; CONFERENCE CALL WITH M. GARTLAND, S. DALBERTH, AND J. KELLEY REGARDING COMMENTS OI CREDIT AGREEMENT.
16	Bank Financing	Partner	Neckles PJ	3/24/1998	7.50	CONFERENCE WITH M. GARTLAND, G. FERNICOLA, M. SHEEHAN, AND A. EMMERICH, OF WACHTELL; CONFERENCE REGARDING BOND CLOSING.
16	Bank Financing	Partner	Neckles PJ	3/25/1998	7.50	REVIEW DOCUMENTS; CONFERENCE WITH M. GARTLAND, T. GOWAN, G. FERNICOLA, M. SHEEHAN, AND J. KELLEY.
16	Bank Financing	Partner	Neckles PJ	3/26/1998	6.50	CONFERENCES WITH M. SHEEHAN, J. HALLIDAY, M. GARTLAND; REVIEW DOCUMENTS.
16	Bank Financing	Partner	Neckles PJ	3/27/1998	7.00	CONFERENCES WITH J. KELLEY, C. ARONSON, M. GARTLAND, J. HALLIDAY, G. FERNICOLA, AND M. SHEEHAN REGARDING HART SCOTT APPROVAL, TIMIN OF CLOSING AND BANK DOCUMENTS; CONFERENCE CALL TO REVIEW DRAFT OF BANK LOAN AGREEMENT WITH REPRESENTATIVES OF SUNBEAM, DAVIS POLK AND THE BANKS.
16	Bank Financing	Partner	Neckles PJ	3/28/1998	3.50	REVIEW DOCUMENTS AT HOME; PARTICIPATE IN CONFERENCE CALL REGARDING BANK CREDIT AGREEMENT WITH REPRESENTATIVES OF SUNBEAM, DAVIS POLK AND THE BANKS.

NOT A CERTIFIED COPY

011299

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Partner	Neckles PJ	3/29/1998	8.00	REVIEW DOCUMENTS; CONFERENCES REGARDING PRE CLOSING MATTERS; CONFERENCE CALLS WITH SUNBEAM AND SUBSEQUENT CONFERENCE CALL WITH REPRESENTATIVES OF SUNBEAM, DAVIS POLK, AND TH BANKS TO FINALIZE CREDIT AGREEMENT; REVIEW LEGAL OPINION AND DISCUSS THE SAME WITH J. HALLIDAY.
16	Bank Financing	Partner	Neckles PJ	3/30/1998	8.00	CONFERENCES WITH M. GARTLAND; REVIEW LEGAL OPINION AND OTHER DOCUMENTS IN CONNECTION WITH PRE-CLOSING OF BANK FINANCING.
16	Bank Financing	Partner	Neckles PJ	3/31/1998	8.00	REVIEW, REVISE, AND NEGOTIATE LEGAL OPINION; CONFERENCES WITH L. HAYMAN, M. GARTLAND, P. LEVINE, AND B. MEGEVICH REGARDING THE SAME; CONFERENCES WITH M. GARTLAND IN CONNECTION WITH CLOSING UNDER BANK AGREEMENT.
16	Bank Financing	Of Counsel	Fogg BV	3/2/1998	1.00	CNOF. CALL; MEET WITH FANNIN, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/3/1998	1.00	CONFERENCE CALL, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/5/1998	0.25	TCS WITH NECKLES, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/6/1998	2.50	REVIEW MATERIALS FROM DAVIS, POLK; TCS WITH NECKLES; DRAFT OUTLINE, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/9/1998	1.25	REVIEW AND COMMENT ON NECKLES MEMO; TCS WITH NECKLES, EASTON AND FERNICOLA; REVIEW INDENTURES, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/10/1998	3.50	CONF. CALL WITH NECKLES AND LEVIN; TCS WITH EASTON, FERNICOLA, NECKLES; WORK ON OUTLINE OF BANK FACILITY STRUCTURE; CONF. CALL WITH NECKLE AND DOUGLAS, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/11/1998	2.00	WORK ON TERM SHEET; EMAILS; TCS WITH EASTON, SHEHAN, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/12/1998	0.25	TCS WITH NECKLES, EASTON, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/13/1998	1.50	TC WITH NECKLES, REVIEW TERM SHEET
16	Bank Financing	Of Counsel	Fogg BV	3/16/1998	1.00	TCS AND E-MAILS NECKLES, WEISS, ETC.; REVIEW TER SHEET, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/18/1998	0.50	REVIEW TERM SHEET, COMMITMENT LETTER, ETC.
16	Bank Financing	Of Counsel	Fogg BV	3/19/1998	0.25	TCS WITH NECKLES, GARTLAND
16	Bank Financing	Of Counsel	Fogg BV	3/20/1998	2.00	TC WITH NECLES;REVIEW AND COMMENT ON DRAFT CREDIT AGREEMENT, SOURCES AND USES; ETC.
16	Bank Financing	Of Counsel	Halliday JW	3/11/1998	0.60	TCW JIM DOUGLAS RE MARGIN QUESTIONS.
16	Bank Financing	Of Counsel	Halliday JW	3/24/1998	0.80	LENGTHY TCW PETE NECKLES; CONFERENCE WITH MICHELE GARTLAND; TCW PETE NECKLES.
16	Bank Financing	Of Counsel	Halliday JW	3/26/1998	0.50	TCW PETER NECKLES; CONVERSATION WITH MICHELE GARTLAND; REVIEW OF OPINION ISSUE.
16	Bank Financing	Of Counsel	Halliday JW	3/27/1998	0.40	SEVERAL TCW PETE NECKLES.
16	Bank Financing	Of Counsel	Halliday JW	3/29/1998	1.50	TCW PETE NECKLES AND MICHELE GARTLAND; REVIEV OF OPINION.
16	Bank Financing	Counsel	Maddox JE	3/27/1998	0.20	T/C WITH YOUN RE: OPINION FOR SEC. ACCT. WITH NC COLLATERAL.
16	Bank Financing	Counsel	Testani RA	3/31/1998	0.75	SPOKE WITH ALLISON AMORRISON RE GENERAL QUESTIONS RE COLEMAN FINANCINGS
16	Bank Financing	Counsel	Youn S	3/23/1998	1.60	TELEPHONE CALL LEANDER GRAY AND MICHELE GARTLAND RE: SEARCHES; CONFERENCE CALL L. GRA RE: OPINION AND PROGRAM NON-THIRD.
16	Bank Financing	Counsel	Youn S	3/24/1998	1.20	T/C L. GRAY AND CONF. A. ROCHE RE: SEARCHES.
16	Bank Financing	Counsel	Youn S	3/25/1998	1.30	T/C L. GRAY AND A. ROCHE RE: SEARCHES.
16	Bank Financing	Counsel	Youn S	3/26/1998	4.50	T/C A. ROCHES RE: SEARCHES; REVIEW PLEDGE AGREEMENTS; E-MAIL TO M. GARTLAND RE: UCC ISSUES.
16	Bank Financing	Counsel	Youn S	3/27/1998	4.60	T/C M. GARTLAND; CONF. A. ROCHE RE: SEARCHES; REVIEW OPINION; RUN OPINION PROGRAM.

NOT A CERTIFIED COPY

017300

CONFIDENTIAL SASMF 19670

16div-022903

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Counsel	Youn S	3/29/1998	1.40	TELEPHONE CALL M. GARTLAND AND P. NECKLES RE: FLA. STAMP FAX; TELEPHONE CALL R. OLSON; TELEPHONE CALL M. GARTLAND RE: REVISED OPINION; REVIEW REVISED OPINION.
16	Bank Financing	Counsel	Youn S	3/30/1998	4.60	CONFERENCE A. ROCHE RE: SEARCHES; TELEPHONE CALL M. GARTLAND RE: OPINION. CONFERENCE R. OLSON RE: REVISED OPINION ISSUES.
16	Bank Financing	Counsel	Youn S	3/31/1998	4.80	CONFERENCE L. HAYMAN, CONFERENCE R. OLSON, TELEPHONE CALL P. NECKLES AND L. HAYMAN, TELEPHONE CALL M. GARTLAND RE: OPINION; MARK UP ADDITIONAL LANGUAGE TO OPINION.
16	Bank Financing	Associate	Carvalho G	3/17/1998	4.70	BEGIN REVIEW OF SUNBEAM DOCUMENTS FOR NO-CONFLICTS OPINION
16	Bank Financing	Associate	Carvalho G	3/18/1998	2.20	CONTINUE REVIEW OF DOCUMENTS
16	Bank Financing	Associate	Carvalho G	3/20/1998	1.20	REVIEW DOCUMENTS FOR NO-CONFLICT
16	Bank Financing	Associate	Carvalho G	3/21/1998	3.50	DRAFT BOARD RESOLUTIONS FOR CREDIT DOCUMENTS
16	Bank Financing	Associate	Carvalho G	3/23/1998	2.70	FINISH REVIEWING EMPLOYMENT DOCUMENTS, CHECK RECEIVABLE AGREEMENTS, BEGIN DRAFT RESOLUTIONS, REVISE RESOLUTIONS, PREPARE DD DOCUMENTS FOR MGARTLAND
16	Bank Financing	Associate	Carvalho G	3/25/1998	2.20	TURN RESOLUTIONS, DRAFT FOR SB + 5 SUBS
16	Bank Financing	Associate	Carvalho G	3/26/1998	2.90	FINSIH REVIEW FOR NO-CONFLICTS, TURN RESOLUTIONS, DISTRIBUTE
16	Bank Financing	Associate	Carvalho G	3/27/1998	1.50	SIGNATURE PAGES TO SB AT GOLDMAN SACHS
16	Bank Financing	Associate	Gartland MD	3/4/1998	8.90	MET W/ P. NECKLES AND LEANDER GRAY TO DISCUSS TRANSACTION. BEGAN REVIEW OF THE VARIOUS DEBT DOCUMENTS TO BE REFINANCED. DRAFTED INFORMATION REGARDING DEFAULTS, REPAYMENT PROVISIONS, NOTICE PROVISIONS AND COVENANTS TO INCLUDE IN CHART. PROOFREADING AND REVISION OF CHART.
16	Bank Financing	Associate	Gartland MD	3/5/1998	7.50	ADDITIONAL REVIEW OF RELEVANT DEBT DOCUMENTS. ANALYSIS OF REPAYMENT PROVISION, COVENANTS, DEFAULTS, DEFEASANCE AND NOTICE SECTIONS. PROOFREADING AND REVISION OF CHART. REVIEW OF DAVIS POLK SUMMARY SHEETS AND COMPARISON WITH SASM&F ANALYSIS. CALL WITH DAVIS POLK RE: TRANSACTION. DRAFTED DESCRIPTION OF DEBT FOR BOND OFFERING MEMORANDUM.
16	Bank Financing	Associate	Gartland MD	3/6/1998	3.20	SEVERAL CONFERENCE CALLS RE: REFINANCING. ADDITIONAL REVIEW OF REPAYMENT OPTIONS. REVIEW OF CHART SENT BY DAVIS POLK.
16	Bank Financing	Associate	Gartland MD	3/8/1998	8.00	MEETING WITH L.G. AND P. NECKLES TO REVIEW DEBT DOCUMENTS. DRAFTED SUMMARIES OF SEVEN DEBT AGMTS. DRAFTED CONCLUSION PARAGRAPHS FOR MEMO TO F. FOGG. REVIEW OF SELECTED PROVISIONS AMONG THE 13 DEBT AGREEMENTS. PROOFREAD AND REVISED MEMO AND SUMMARY SHEETS. NUMEROUS CONVERSATIONS WITH LG AND PN RE: REFINANCING.
16	Bank Financing	Associate	Gartland MD	3/9/1998	5.80	FINALIZATION OF CONCLUSION MEMO AND SUMMARY SHEETS. DISTRIBUTION INTERNALLY ND TO SUNBEAM CONFERENCE CALL WITH SUNBEAM TO DISCUSS DEBT REFINANCING. CONFERENCE CALL WITH DAVIS POLK. REVISED SUMMARY SHEETS. DRAFTED MEMO TO DAVIS POLK. ADDITIONAL DOCUMENT REVIEW.

NOT A CERTIFIED COPY

017301

CONFIDENTIAL SASMF 19671

16div-022904

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Associate	Gartland MD	3/10/1998	8.70	ATTENTION TO MEMO TO DAVIS POLK AND SUMMARY SHEETS. DISTRIBUTION OF THE SAME. CALLS WITH CFOS RE: OUTSTANDING DEBT AMOUNTS. CALLS ITH B. MEGEVICK. DISCUSSION OF [redacted] DISTRIBUTION OF DUE DILIGENCE REQUEST. REVIEW OF CA TERM SHEET. REVIEW OF F. FOGG MEMORANDA. PREPARATION FOR CLOSING. DISCUSSIONS WITH B. WEISS RE: [redacted]
16	Bank Financing	Associate	Gartland MD	3/11/1998	8.30	CONFERENCE CALL WITH S. DALBERTH AND EACH OF THE TARGET CFOS DISCUSSING REPAYMENT OF OUTSTANDING DEBT OBLIGAITONS. DRAFTED TIMING AND AMOUNT OF DEBT REPAYMENT MEMO. REVISED SUMMARY SHEETS TO INCLUDE NEW INFORMATION. PROOFREAD AND REVISED. DISCUSSED [redacted] WITH PETER NECKLES AND P. LEVIN. DISCUSSED TERM SHEET WITH S. DALBERTH AND P. NECKLES. ATTENTION TO [redacted]. CALLS WITH M. SHEHAN.
16	Bank Financing	Associate	Gartland MD	3/12/1998	7.70	ATTENTION TO [redacted]. NUMEROUS CALLS AND CONVERSATIONS IN CONNECTION WITH TRANSACTION. ATTENTION TO [redacted]
16	Bank Financing	Associate	Gartland MD	3/13/1998	8.00	CALL WITH S. DALBERTH TO DISCUSS TERM SHEET COMMENTS. MARKED TS. DISCUSSED MARKUP W/PN. REVIEWED S. DALBERTH FUNDS FLOW MEMO. MAD CONFORMING CHANGES TO TIMING MEMORANDUM. PROOFREED AND REVISED COVER MEMO, TIMING MEMO AND TS RIDERS. ATTENTION TO DISTRIBUTION TO SUNBEAM, MS, DPW AND SA WORKING GROUP. REVISED DEBENTURE OFFERING MEMO AND MARKED RELEVANT SECTIONS. CALL WITH B. MEGEVICK TO DISCUSS CA DESORPTION. FAXED MARKUP TO T. FREED AND S. DALBERTH. CONFERENCE WITH L. GRAY RE: OPINIONAND DUE DILIGENCE MATTERS. CALL WITH B. MEGEVICK RE: TS COMMENTS. REVIEWED OPINION FORM.
16	Bank Financing	Associate	Gartland MD	3/16/1998	4.10	CALLS WITH S. DALBERTH TO DISCUSS TS. NUMEROUS CALLS IN CONNECTION WITH CLOSING. ATTENTION TO VARIOUS ASPECTS OF TRANSATION.
16	Bank Financing	Associate	Gartland MD	3/17/1998	9.80	BEGAN DRAFTING SOURCES & USES FOR TRANSACTION. [redacted] ATTENTION TO MATERIAL CONTRACTS. CALLS WITH B. MEGEVICK. CALL WITH SUNBEAM AND PN RE: TERM SHEET COMMENTS. MARKED TS. REVIEWED INTERVAL MEMOS. NUMEROUS CALLS AND CONVERSATIONS IN CONNECTION WITH TRANSACTION.
16	Bank Financing	Associate	Gartland MD	3/18/1998	8.40	DISTRIBUTED TERM SHEET. DISTRIBUTED SOURCES AND USES INTERNALLY. CALLS WITH B. MEGEVICK RE: TS COMMENTS. ATTENTION TO NUMEROUS PRE-CLOSING DETAILS.
16	Bank Financing	Associate	Gartland MD	3/19/1998	10.50	MARKED REVISED TS. REVIEWED CL&FL AND MARKED FOR CHANGES. DISCUSSED WITH P. NECKLES AND S. DALBERTH. ATTENTION TO MATERIAL K. DISCUSSED ISSUES RELATED TO IRB AND DEBENTURES. ATTENTION TO [redacted] REVISED SOURCES AND USES. BEGAN REVIEWING CA. PREPARATION FOR ALL ASPECTS OF CLOSING. CALLS WITH B. MEGEVICK.

NOT A CERTIFIED COPY

7302

MATERIAL
REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Associate	Gartland MD	3/20/1998	8.30	ATTENTION TO CA. ATTENTION TO IRB AND SUNBEAM EXISTING CA. NUMEROUS CALLS WITH S. DALBERTH, P. NECKLES, G. FERNICOLA, M. SHEHAN, L. GRAY AND B. MEGEVICK. DISTRIBUTION TO TS MARKUP. DISTRIBUTION OF SOURCES AND USES MEMO.
16	Bank Financing	Associate	Gartland MD	3/22/1998	8.50	CONTINUED REVIEW OF CA. COMPARED AGAINST TS. BEGAN MARKING CA. CALL WITH T. GOWAN & P. NECKLES. COMPARED CA AGAINST CURRENT SUNBEAM CA AND PRECEDENTS. CALLS WITH MEGEVICK AND L. GRAY.
16	Bank Financing	Associate	Gartland MD	3/23/1998	14.10	ATTENTION TO [redacted]. DRAFTED WAIVER NOTICE RE: IRB. CONFERENCE CALL WITH SUNBEAM TO DISCUSS CA COMMENTS. MARK UP OF CA. REVIEW OF SIGNATURE HEALTH & METER[redacted]
16	Bank Financing	Associate	Gartland MD	3/24/1998	8.70	REVIEW OF DPN CLOSING MEMORANDUM. ATTENTION TO [redacted] AND WAIVERS. ATTENTION TO DEBENTURE CLOSING. ATTENTION TO DISTRIBUTION O CA MARK UP. DRAFTED COVER MEMO. NUMEROUS CALLS AND CONVERSATIONS RELATED TO TRANSACTION.
16	Bank Financing	Associate	Gartland MD	3/25/1998	11.70	REVIEWED RESOLUTIONS, CLOSING CERTIFICATES, GENERAL COUNSEL OPINION AND SASM&F OPINION ANI MARKED FOR CHANGES. ATTENTION TO DEBENTURE CLOSING. ATTENTION TO REPAYMENT OF CHASE FACILITY. ATTENTION TO [redacted]. REVIEW OF TARGET MATERIAL CONTRACTSWITH J. KELLEY. CALLS WITH M. SHEHAN RE: TENDER OFFER SUPPLEMENT. ATTENTION TO COMMITMENT LETTER. NUMEROUS CALLS WITH SUNBEAM. REVIEW OF CA WITH R. RICHTER.
16	Bank Financing	Associate	Gartland MD	3/26/1998	11.60	CONFERENCE CALL WITH SUNBEAM RE: ADDITIONAL C COMMENTS. REVISED CHASE NOTICE OF TERMINATION LETTER. REVIEWED CA AND COMPARED AGAINST PRIO MARKUP. REVIEWED RESOLUTIONS. MARKED CERTIFICATES. ATTENTION TO [redacted] PREPARED PACKAGE FOR J. KELLEY. NUMEROUS CALLS WITH SUNBEAM AND DPW.
16	Bank Financing	Associate	Gartland MD	3/27/1998	12.70	CONFERENCE CALL TO DISCUSS SUNBEAM COMMENTS TO CA. MARKED UP CA AND DISTRIBUTED. ATTENTION TO CLOSING DETAILS INCLUDING OBTAINING SIGNATURES ETC. ATTENTION TO CLN NOTES [redacted]. REVIEWED SECURITY DOCUMENTS AND GTY. ATTENTION TO NUMEROUS PRE-CLOSING DETAILS.
16	Bank Financing	Associate	Gartland MD	3/28/1998	13.30	ATTENTION TO GC AND SASM&F OPINIONS. REVIEW OI CA COMMENTS WITH DPW, J. KELLEY AND WORKING GROUP. ATTENTION TO SCHEDULES. RESOLUTIONS CERTIFICATES AND SCHEDULES TO DPW. FINAL MARK UP OF SECURITY AGEMT COMMENTS. DISTRIBUTED MARK UP TO DPW. DISCUSSION OF FUNDS FLOW.

NOT A CERTIFIED COPY

017303

MATERIAL
REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Associate	Gartland MD	3/29/1998	13.50	REVIEWED REVISED CA. CONFERENCE CALLS WITH ALL PARTIES TO DISCUSS TRANSACTION. REVISED OPINIONS. DISCUSSED [redacted] WITH J. KELLEY AND REVISED. CALLS WITH JWH AND PN. ATTENTION TO SCHEDULES. PREPARED DISTRIBUTION TO BANK AND DPW. ATTENTION TO NUMEROUS CLOSING DETAILS. REVIEW OF CLN NOTES INDENTURE AND TRANSACTIONS WITH AFFIDIATES LANGUAGE.
16	Bank Financing	Associate	Gartland MD	3/30/1998	15.20	REVIEWED CA CHANGES. ATTENTION TO CLOSING [redacted] NUMEROUS CALLS WITH SUNBEAM AND DPW. ATTENTION TO [redacted] ISSUES. REVISION OF DOCUMENTS. [redacted] ISSUES. REVIEWED CLOSING CONDITIONS WITH DPW.
16	Bank Financing	Associate	Gartland MD	3/31/1998	9.80	ATTENTION TO SASM&F. ATTENTION TO DEFEASANCE LANGUAGE. NUMEROUS CALLS WITH SUNBEAM AND DPW RE: CLOSING DETAILS AND EFFECTIVENESS OF CA. REVIEW OF SUNBEAM, FIRST ALERT AND SIGNATURE DOCUMENTS RE: BORROWING SUBSIDIARY ISSUE. CALLS WITH BOB TOTTERE: TAX ISSUES.
16	Bank Financing	Associate	Gray LC	3/2/1998	2.50	CONFERENCE CALL WITH SKADDEN WORKING GROUP, MORGAN STANLEY, DAVIS POLK, AND SUNBEAM CORPORATION OFFICERS RE: ACQUISITIONS OF COLEMAN, SIGNATURE BRANDS, AND FIRST ALERT.
16	Bank Financing	Associate	Gray LC	3/3/1998	11.00	REVIEWED DEBT DOCUMENTS; CONFERENCE CALL W/MORGAN STANLEY, DAVIS POLK AND SUNBEAM OFFICERS.
16	Bank Financing	Associate	Gray LC	3/4/1998	17.00	REVIEWED AND ANALYZED DEBT AGREEMENTS; MEETING W/ M. GARTLAND AND P. NECKLES.
16	Bank Financing	Associate	Gray LC	3/5/1998	8.75	REVIEWED AND ANALYZED DEBT DOCUMENTS.
16	Bank Financing	Associate	Gray LC	3/6/1998	10.25	DRAFTED DESCRIPTIONS OF DEBT DOCUMENTS; MEETING W/ M. GARTLAND, P. NECKLES AND DAVIS POLK RE: OUTSTANDING INDEBTEDNESS.
16	Bank Financing	Associate	Gray LC	3/7/1998	12.00	ANALYZED DEBT OBLIGATIONS AND DRAFTED REPAYMENT TABLE.
16	Bank Financing	Associate	Gray LC	3/8/1998	14.00	ANALYZED DEBT OBLIGATIONS AND DRAFTED DEBT REPAYMENT TABLE
16	Bank Financing	Associate	Gray LC	3/9/1998	8.00	ANALYZED DEBT REPAYMENT OBLIGATIONS AND OPTIONS
16	Bank Financing	Associate	Gray LC	3/10/1998	10.00	COORDINATED CONFIRMATION OF OUTSTANDING DEBT LEVELS: RESEARCHED [redacted] PROVISIONS; CONFERENCE CALL W/S. DALBERTH AND M.GARTLAND RE: DEBT REPAYMENT OPTIONS
16	Bank Financing	Associate	Gray LC	3/11/1998	10.00	CONFERENCE CALL W/ S.DALBERTH, M.GARTLAND, K.CLARK, R.BELZINSKAS, AND FIRST ALERT CFO RE: OUTSTANDING DEBT AND REPAYMENT OPTIONS; COMPILED LEVERAGED BORROWER RATING INFORMATION; DRAFTED DISCLOSURE MEMO
16	Bank Financing	Associate	Gray LC	3/12/1998	10.00	COORDINATED DISCLOSURE REQUESTS AND DOCUMENTS; MARKED UP OFFERING MEMO
16	Bank Financing	Associate	Gray LC	3/13/1998	8.00	COORDINATED DISCLOSURE REQUESTS; STARTED OPINION PROCESS; COMPILED BOARD RESOLUTIONS, MARKED UP DEBT SCHEDULES AND CASH REPAYMENT MEMO; MARKED UP OFFERING MEMO
16	Bank Financing	Associate	Gray LC	3/14/1998	4.00	DRAFTED SUNBEAM LEGAL OPINION; DRAFTED OFFERING MEMORANDUM
16	Bank Financing	Associate	Gray LC	3/15/1998	4.00	DRAFTED SUNBEAM LEGAL OPINION; REVIEWED TERM SHEET

NOT A CERTIFIED COPY

017304

CONFIDENTIAL

SASMF 19674

16div-022907

MATERIAL
REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Associate	Gray LC	3/16/1998	9.00	REVISED OPINION; RESEARCHED COLEMAN COMPANY FOREIGN SUBSIDIARIES; RETRIEVED INFO ON SUNBEAM MATERIAL CONTRACTS, THE WAYNESBORO GENERAL OBLIGATION BONDS AND COLEMAN'S [redacted] REVIEWED DISCLOSURE SCHEDULES, DRAFTED MEMO RE: STOCK OWNERSHIP.
16	Bank Financing	Associate	Gray LC	3/17/1998	10.65	CONFERENCE CALL WITH S. ISKO AND K. CLARK RE: COLEMAN'S FOREIGN SUBSIDIARIES; REVISED STOCK OWNERSHIP MEMO; REVIEWED MATERIAL CONTRACTS; DRAFTED MEMO RE: WAIVERS.
16	Bank Financing	Associate	Gray LC	3/18/1998	10.75	REVIEWED LOAN DOCUMENTS; REVISED WAIVER MEMOS; REVIEWED DISCLOSURE DOCUMENTS; REVIEW 10-KS.
16	Bank Financing	Associate	Gray LC	3/19/1998	11.75	COMPILED INFORMATION NECESSARY TO ORDER LONG FORM GOOD STANDING CERTIFICATES AND FOREIGN QUALIFICATIONS; REVIEWED DISCLOSURE DOCUMENTS REVIEWED SUNBEAM HATTISBURG IRB INDENTURE; REVIEWED TERM SHEET AND REVISED LEGAL OPINION.
16	Bank Financing	Associate	Gray LC	3/20/1998	9.25	REVISED FIRST ALERT ACQUISITION/ORGANIZATIONAL CHART; REVISED SUNBEAM'S GOOD STANDING LIST; COMPILED INFO FOR COLEMAN GOOD STANDINGS AND FOREIGN QUALIFICATIONS; CONFIRMED FIRST ALERT STOCK OWNERSHIP WITH HAL GRANT; REVIEWED COVENANT DEFEASANCE MECHANICS OF SIGNATURE NOTES.
16	Bank Financing	Associate	Gray LC	3/21/1998	4.50	REVIEWED COVENANT DEFEASANCE MECHANICS OF SIGNATURE NOTES; DRAFTED MEMO OUTLINING STEPS FOR COVENANT DEFEASANCE.
16	Bank Financing	Associate	Gray LC	3/22/1998	7.00	DRAFTED LEGAL OPINION, OFFICERS' CERTIFICATE, CERTIFICATE OF SATISFACTION AND DISCHARGE, AND MEMO OUTLINING STEPS FOR COVENANT DEFEASANCE OF SIGNATURE NOTES.
16	Bank Financing	Associate	Gray LC	3/23/1998	11.50	ORGANIZED INFORMATION FOR LIEN SEARCHES; DRAFTED SCHEDULES; DRAFTED LEGAL OPINION; DRAFTED NOTICES OF PREPAYMENT;
16	Bank Financing	Associate	Gray LC	3/24/1998	9.80	PREPARED SUNBEAM CREDIT AGREEMENT DISTRIBUTION; RESEARCHED INFO FOR LIEN SEARCHES; REVIEWED DOCUMENTS RE: COLEMAN'S FOREIGN SUBSIDIARIES' CREDIT LINES; ORGANIZED MORE INFO FOR GOOD STANDING CERTIFICATES.
16	Bank Financing	Associate	Gray LC	3/25/1998	12.50	GATHERED LIEN SEARCH INFORMATION; PREPARED DOCUMENTS FOR CLOSING; ANALYZED SUNBEAM DEB AGREEMENTS [redacted] REVIEWED DRAFT SECURITY AGREEMENTS; PREPARED INFORMATION FO GOOD STANDING CERTIFICATES.
16	Bank Financing	Associate	Gray LC	3/26/1998	18.50	COORDINATED LIEN SEARCH INFORMATION; DRAFTED PREPAYMENT NOTICES AND OFFICERS' CERTIFICATES PREPARED SCHEDULES.
16	Bank Financing	Associate	Gray LC	3/27/1998	12.50	DRAFTED NOTICES AND SCHEDULES; PREPARED DOCUMENTS FOR CLOSING.
16	Bank Financing	Associate	Gray LC	3/28/1998	9.75	DRAFTED SCHEDULES AND OTHER CLOSING DOCUMENTS.
16	Bank Financing	Associate	Gray LC	3/29/1998	10.00	PREPARED SCHEDULES AND OTHER DOCUMENTS FO CLOSING.
16	Bank Financing	Associate	Gray LC	3/30/1998	18.00	PREPARED DOCUMENTS FOR CLOSING; COORDINATE COLEMAN PREPAYMENT NOTICES.
16	Bank Financing	Associate	Gray LC	3/31/1998	15.00	COORDINATED PREPAYMENT NOTICE OF COLEMAN COMPANY DEBT; PREPARED DOCUMENTS FOR CLOSING.

NOT A CERTIFIED COPY

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Associate	Olson RE	3/13/1998	0.40	O/CS MICHELLE GARTLAND RE: TRANSACTION AND UCC ISSUES.
16	Bank Financing	Associate	Olson RE	3/18/1998	0.40	OFFICE CONFERENCE WITH TOM GOWAN RE SECURITY AGREEMENT, BRIEFLY REVIEW CERTAIN PROVISIONS.
16	Bank Financing	Associate	Olson RE	3/27/1998	0.30	NUMEREOUS OFFICE CONFERENCES WITH S. YOUN RE UCC ISSUES AND SECURITY INTEREST OPINIONS.
16	Bank Financing	Associate	Olson RE	3/28/1998	0.40	PHONE CALL WITH SOORYUN YOUN RE SECURITY INTEREST ISSUES.
16	Bank Financing	Associate	Olson RE	3/29/1998	0.30	PHONE CALL WITH SOORYUN YOUN RE UCC ISSUES.
16	Bank Financing	Associate	Olson RE	3/30/1998	0.70	OFFICE CONFERENCE WITH S. YOUN RE SECURITY INTEREST OPINION ISSUES.
16	Bank Financing	Legal Assistant	Apostolatos NA	3/30/1998	13.42	WORK ON CLOSING. PROVIDE GENERAL ASSISTANCE.
16	Bank Financing	Legal Assistant	Roche AA	3/24/1998	4.50	CREATING SEARCH SUMMARY CHART BASED ON MEMOS AND INFORMATION PROVIDED BY L. GRAY. LOOKING UP LOCAL COUNTIES IN BUSINESS CONTROL ATLAS.
16	Bank Financing	Legal Assistant	Roche AA	3/25/1998	3.50	DISCUSSING SEARCH ORDER WITH S. YOUN AND L. GRAY. EDIT SEARCH SUMMARY CHART. REVIEWING LIST OF PROPERTIES FROM COLEMAN COMPANIES. ORDERING SEARCHES FROM LEXIS. PREPARING CORRESPONDENCE TO ORDER SEARCHES AND FORWARD COPIES OF SEARCH ORDER TO ATTORNEYS AND FILES.
16	Bank Financing	Legal Assistant	Roche AA	3/26/1998	1.00	RESEARCHING SEARCH JURISDICTIONS AND ANALYZIN DOCUMENTS TO DETERMINE LOCATIONS OF INVENTORY, REAL ESTATE AND FIXTURES. DISCUSSIN PENDING SEARCHES WITH L. GRAY AND S. YOUN.
16	Bank Financing	Legal Assistant	Roche AA	3/27/1998	1.67	RESEARCHING AND ANALYZING MATERIALS TO DETERMINE LOCATIONS OF INVENTORY, FIXTURES AND PROPERTY. MEET WITH S. YOUN AND PLACE CONFERENCE CALL TO M. GARTLAND RE UCC SEARCHES.
16	Bank Financing	Legal Assistant	Roche AA	3/30/1998	1.25	SORT, RECORD AND PHOTOCOPY SEARCH RESULTS. EDIT AND REVISE SEARCH SUMMARY CHART. PREPAR CORRESPONDENCE AND DISTRIBUTION OF SEARCH RESULTS.
16	Bank Financing	Legal Assistant	Roche AA	3/31/1998	3.00	SORT, RECORD AND PHOTOCOPY SEARCH RESULTS. EDIT AND REVISE SEARCH SUMMARY CHART. PREPAR CORRESPONDENCE AND DISTRIBUTION OF SEARCH RESULTS.
16	Bank Financing	Legal Assistant	Saborio L	3/12/1998	0.75	PROVIDED GENERAL ASSISTANCE FOR FEDEX DISTRIBUTION.
16	Bank Financing	Legal Assistant	Saborio L	3/13/1998	1.00	PROVIDED GENERAL ASSISTANCE FOR HAND-DELIVER DISTRIBUTION.
16	Bank Financing	Legal Assistant	Saborio L	3/16/1998	1.00	DISTRIBUTION
16	Bank Financing	Legal Assistant	Saborio L	3/20/1998	2.75	DISTRIBUTED SIGNATURE BRANDS DISCLOSURE DOCUMENTS
16	Bank Financing	Legal Assistant	Saborio L	3/31/1998	1.00	PROVIDED GENERAL ASSISTANCE DURING DISTRIBUTION
16	Bank Financing	Legal Assistant Special I	Buckley LT	3/27/1998	0.50	PROCESS DOCUMENT REQUEST FOR SIGNATURE BRANDS USA ET AL
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/20/1998	1.50	PROCESS DOCUMENT REQUEST FOR SUNBEAM CORPORATION, ET AL. FOR LEANDER GRAY; CHECK STATUS OF ENTITIES; ORDER DOCUMENTS FOR NON-DELAWARE ENTITIES; CALLS, ETC.
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/23/1998	1.25	PROCESS DOCUMENT REQUEST FOR COLEMAN COMPANY, ET AL. - ORDER ADDITIONAL DOCUMENTS, CHECK STATUS OF DE ENTITIES; FOLLOWUP ON PROBLEMS; L. GRAY

NOT A CERTIFIED COPY

017306

CONFIDENTIAL SASMF 19676

16div-022909

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/23/1998	1.25	MISC. CALLS INFO/FOLLOW-UP FOR SUNBEAM CORPORATION, ET AL. - REVIEW INCOMING DOCUMENTS; FOLLOWUP WITH LEANDER GRAY AND CT RE PROBLEMS
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/24/1998	2.20	SUNBEAM/COLEMAN DOCUMENT REQUEST - REVIEW INCOMING DOCUMENTS, ETC.; CALLS WITH CT AND LEANDER GRAY RE PROBLEMS; FORWARD DELINQUENT REPORTS TO LEANDER, ETC.
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/25/1998	1.50	REVIEW INCOMING DOCUMENTS; [redacted] RE SUNBEAM/COLEMAN ENTITIES; ORGANIZE AND CHECK OFF LIST; CALLS WITH CT AND LEANDER GRAY
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/26/1998	1.30	REVIEW INCOMING GOOD STANDINGS/CHARTER DOCUMENTS FOR LARGE DOCUMENT REQUEST FOR SUNBEAM/COLEMAN; ORGANIZE AND FORWARD ALL DOCUMENTS TO LEANDER GRAY; CALLS
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/27/1998	1.00	MISC. CALLS INFO/FOLLOW-UP FOR SUNBEAM/COLEMAN DOCUMENT REQUEST; REVIEW INCOMING DOCUMENTS; CALLS WITH CT AND LEANDER GRAY
16	Bank Financing	Legal Assistant Special I	Keogh ME	3/30/1998	1.50	VERIFY STATUS FOR SUNBEAM/COLEMAN CLOSING - PROCESS BRINGDOWNS AND FORWARD WITH VERBALS TO LEANDER GRAY; PROCESS REQUEST FOR ADDITIONAL DOCUMENT; CALLS
16	Bank Financing	Legal Asst Special II	Crooks H	3/4/1998	0.50	RESEARCH RE SEC DOCUMENT. SEARCH FOR A PRESS RELEASE.
16	Bank Financing	Legal Asst Special II	Crooks H	3/16/1998	0.75	RESEARCH RE SEC DOCUMENTS.
16	Bank Financing	Legal Asst Special II	Davis D	3/22/1998	2.50	RESEARCH RE EXAMPLES OF SUPPLEMENTAL INDENTURES THAT ARE [redacted]
16	Bank Financing	Legal Asst Special II	Lyon JW	3/17/1998	1.00	RESEARCH RE SEVERAL EXHIBITS FROM CO. 10K: EXTRACTIONS
16	Bank Financing	Legal Asst Special II	Lyon JW	3/26/1998	0.60	RESEARCH RE DOC. RET. + EXHIBIT EXTRACTS/RES
16	Bank Financing	Legal Asst Special II	Poggioli C	3/9/1998	0.25	DOCUMENT ORDER
16	Bank Financing	Legal Asst Special II	Poggioli C	3/17/1998	0.25	DOCUMENT ORDER
16	Bank Financing	Legal Asst Special II	Poggioli C	3/27/1998	0.25	DOCUMENT ORDER
16	Bank Financing	Legal Asst Special II	Poggioli C	3/31/1998	0.50	DOCUMENT ORDER
16	Bank Financing	Legal Assistant Support	Arthur VV	3/30/1998	6.75	CLOSING/PRE-CLOSING WORK: WORKED ON CLOSING DOCUMENTS.
16	Bank Financing	Legal Assistant Support	Beckwith SE	3/29/1998	0.50	PROOFREAD PROOFERS CHANGES TO OPINION LETTE MAKE CORRECTIONS
16	Bank Financing	Legal Assistant Support	Carrillo KJ	3/7/1998	1.50	PROOFREAD PROOF SIGNATURE ORGANIZATION CHART AND FIRST ALERT ORGANIZATION CHART FOR CORRECTIONS
16	Bank Financing	Legal Assistant Support	Day SE	3/23/1998	1.00	PROOFREAD NEW INPUT – SCHEDULES, 5 PP.
16	Bank Financing	Legal Assistant Support	Jackson WC	3/31/1998	7.25	GENERAL ASSISTANCE: ASSISTED ATTNY, WITH VARIOUS TASKS. XEROXED DOCUMENTS, PREPARED FAX COVER SHEET, PREPARED DISTRIBUTION PACKAGES.
16	Bank Financing	Legal Assistant Support	Jahn CJ	3/26/1998	0.75	EDIT DOCUMENT: WORD PROCESSED & PROOFED PROOFREADER'S CORRECTIONS TO 10 PG. EXHIBIT U
16	Bank Financing	Legal Assistant Support	Kennedy PJ	3/8/1998	8.50	BINDERS: CREATED FOUR SETS OF THREE 3 BINDERS EACH WITH TABS AND INDEX. PHOTOCOPYING, PAGE CHECKING, PULLING TABS, CREATED INDICES AND ASSEMBLED BINDERS.
16	Bank Financing	Legal Assistant Support	Kennedy PJ	3/19/1998	0.25	PROOFREAD VISO FILE.
16	Bank Financing	Legal Assistant Support	Leach TL	3/12/1998	1.50	PROOFREAD FULL READ OF SUMMARY OF LITIGATION MATTERS (JOB #212)
16	Bank Financing	Legal Assistant Support	MacDonald HL	3/28/1998	9.75	GENERAL ASSISTANCE: PROOFREADING, FAXING, ERRANDS, ON CALL FOR 2 ATTY'S
16	Bank Financing	Legal Assistant Support	Matranga NF	3/16/1998	0.25	PROOFREAD CHANGES TO OPINION LETTER

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19677

16div-022910

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
16	Bank Financing	Legal Assistant Support	Malranga NF	3/25/1998	0.50	PROOFREAD CHANGES TO GC CREDIT AGREEMENT OPINION
16	Bank Financing	Legal Assistant Support	Newman GB	3/29/1998	8.25	GENERAL ASSISTANCE: FAXING VARIOUS DOCUMENTS TO SEVERAL MEMBERS ON THE DIST. LIST - TYPING UP FAX SHEETS - XEROXING NUMEROUS INCOMING FAXES AND DELIVERING THEM INTERNALLY AROUND THE FIRM PROOFREADING SEVERAL DIFFERENT PAGES OF NEW IMPUT THAT WAS SHEPPED THROUGH A WORD PROCESSOR
16	Bank Financing	Legal Assistant Support	Newman GB	3/31/1998	1.25	GENERAL ASSISTANCE: TYPING UP SEVERAL FED EX LABELS USING THE FED EX MACHINE FOR A FUTURE DISTRIBUTION
16	Bank Financing	Legal Assistant Support	O'Neill AC	3/26/1998	5.25	DISTRIBUTION OF CREDIT AGREEMENT AND RELATED DOCUMENTS; EDIT AND PROOFREAD DOCUMENTS; PHOTOCOPY; PREPARE LABEL FOR DISTRIBUTION; HAND DELIVER TO CLIENT.
16	Bank Financing	Legal Assistant Support	Pennington JF	3/5/1998	0.75	PROOFREAD REVISIONS TO SCHEDULE 13D; FAX TO SUNBEAM WHEN CLEAN.
16	Bank Financing	Legal Assistant Support	Peterson KJ	3/11/1998	2.00	DISTRIBUTION OF 4 PAGE DOCUMENT WITH COVER MEMO TO A DOZEN INTERNAL RECIPIENTS, ONE BY FAX AND ONE THROUGH THE WILMINGTON OFFICE. PROOFREAD CHANGES TO DOC. COPIED, DISTRIBUTED.
16	Bank Financing	Legal Assistant Support	Pizarro RR	3/26/1998	0.50	PROOFREAD JOB # 298. READ FOR CHANGES.
16	Bank Financing	Legal Assistant Support	Rockness D	3/30/1998	6.50	GENERAL ASSISTANCE: PROOFREADING; PHOTOCOPYING; WORD PROCESSING: PREPARATION OF CLEAN & COMPARERITE DRAFTS OF 12-14 CLOSING DOCUMENTS.
16	Bank Financing	Legal Assistant Support	Sanchez KH	3/27/1998	6.50	CLOSING/PRE-CLOSING WORK: DISTRIBUTION OF CREDIT AGREEMENT (25 PERSON), COPYING, CREATING AND EDITING DOCUMENTS IN WP.
16	Bank Financing	Legal Assistant Support	Santana I	3/10/1998	0.25	PROOFREAD THE NEW INPUT TO THE SUNBEAM CORP. ORG. CHART; ONE PAGE
16	Bank Financing	Legal Assistant Support	Santana I	3/26/1998	2.50	PROOFREAD THE NEW INPUT TO THE FOR OF CASH COLLATERAL; 10 PAGES;
16	Bank Financing	Legal Assistant Support	Sullivan MP	3/21/1998	0.50	GENERAL ASSISTANCE: GET DOCUMENTS FROM ATTORNEY'S OFFICE AND SEND TO HER AT HOME VIA DIAL
16	Bank Financing	Legal Assistant Support	Temp P	3/8/1998	1.25	(ISABELLE FISHER) #498 REVISIONS
16	Bank Financing	Legal Assistant Support	Temp P	3/9/1998	1.25	(MARILYN BRISKIN) 591
16	Bank Financing	Legal Assistant Support	Temp P	3/27/1998	0.75	(ISABELLE FISHER). #377 REVISIONS.
16	Bank Financing	Legal Assistant Support	Temp P	3/28/1998	1.00	(PATRICIA HAWKINS). #381.
16	Bank Financing	Legal Assistant Support	Temp P	3/28/1998	1.00	(ANDREW WALKER) JOB #416 FULL READ
16	Bank Financing	Legal Assistant Support	Temp P	3/28/1998	0.50	(ANDREW WALKER) JOB #415 PROOF
16	Bank Financing	Legal Assistant Support	Temp P	3/28/1998	1.25	(VIOLA COBB) JOB 415
16	Bank Financing	Legal Asst Support	Albano AG	3/29/1998	3.50	GENERAL ASSISTANCE: PROOFREAD, XEROX, DROP OI FAX, PICK UP CLOSING RACKS, DISTRIBUTE PACKAGES & HELP SET CLOSING RACK
16	Bank Financing	Legal Asst Support	McCabe ME	3/12/1998	0.75	PROOFREAD FOR CHANGES.
16	Bank Financing	Legal Asst Support	McCabe ME	3/29/1998	4.00	DISTRIBUTION OF 2-3 DOCUMENTS 10 3 EXTERNALS. COORDINATED WITH ATTORNEY, WORD PROCESSING, DIST. PREP.
16	Bank Financing	Legal Asst Support	McCabe ME	3/31/1998	2.00	DISTRIBUTION OF DOCS. FED EX LABELS
16	Bank Financing	Legal Asst Support	Morgan AS	3/27/1998	0.75	TYPE COVER MEMO AND DISTRIBUTE.
17	Rule 144A	Partner	Amorison AL	3/15/1998	4.80	NYSE LISTING APP., LETTER AND OPINION; REVIEW AN COMMENTS TO SECTION 14(F) NOTICE; REVIEW MEMO RE BANK FINANCING; REVIEW CHRONOLOGY AND TAX MEMO.
17	Rule 144A	Partner	Amorison AL	3/16/1998	4.70	TC W/NYSE RE LISTING APP; TCS W/F. FOGG, J. KELLE FINALIZE NYSE LISTING APP; REVIEW AND COMMENTS TO SECTION 14(F) NOTICE; TCS W/F. WEISS F. FOGG R SAME.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 19678

16div-022911

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Partner	Chilstrom RM	3/23/1998	0.90	CONF. W. FERNICOLA; CALLS W. DEITZ; REVIEW & REVISION OF OPINION.
17	Rule 144A	Partner	Deitz AS	3/3/1998	4.00	CONFERENCE CALL. DISCUSS [redacted] T. FREED, B. WEISS. DISCUSS [redacted], T. FREED. REVIEW DRAFT 97 10-K. REVIEW BACKGROUND DOCUMENTS.
17	Rule 144A	Partner	Deitz AS	3/4/1998	1.50	DISCUSSION OF [redacted] CONTENTS T. FREED, [redacted] REVIEW OUTLINE AND DRAFT 10-K LANGUAGE.
17	Rule 144A	Partner	Deitz AS	3/5/1998	2.50	DISCUSSION G. FERNICOLA, T. FREED. PREPARE CAPITALIZATION TABLE FOR OM. REVIEW DRAFT OM. DISCUS T. FREED.
17	Rule 144A	Partner	Deitz AS	3/6/1998	0.75	DISCUSS [redacted] T. FREED. MARK UP PRO FORMA SECTION.
17	Rule 144A	Partner	Deitz AS	3/8/1998	2.00	REVIEW AND COMMENT ON DRAFT OM.
17	Rule 144A	Partner	Deitz AS	3/9/1998	9.50	ATTEND DRAFTING SESSION AT SASM&F WITH MORGAN STANLEY AND DAVIS POLK. REVISE RISK FACTORS AND OTHER SECTIONS OF DRAFT OM. DISCUSS T. FREED.
17	Rule 144A	Partner	Deitz AS	3/10/1998	4.00	DRAFT PORTIONS OF OM. DISCUSS PRO FROMUS G. FERNICOLA, T. FREED. FIRST ALERT DILIGENCE CALL. T/C/W AAS RE PRO FROMAS. DISCUSS OM T. FREED.
17	Rule 144A	Partner	Deitz AS	3/11/1998	1.50	DISCUSS OM T. FREED. MEETING G. FERNICLA, T. FREED. T/C/W B. WEISS.
17	Rule 144A	Partner	Deitz AS	3/12/1998	1.00	REVIEW 10-K QS FOR COLEMAN, SIGNATURE BRANDS AND FIRST ALERT. DISCUSS [redacted] WITH G. FERNICOLA.
17	Rule 144A	Partner	Deitz AS	3/14/1998	17.00	ATTEND PRINTERS TO PRINT RED.
17	Rule 144A	Partner	Deitz AS	3/16/1998	7.00	DISCUSS DTC AND RESOLUTIONS WITH T. FREED. REVIEW AND COMMENT ON PURCHASE AGREEMENT. REVIEW COMMENTS AN OPINION OF G. FERNICOLA AND PREPARE FORM OF SKADDEN OPINION. DISTRIBUTE COMMENTS TO SUNBEAM. DISCUSS TAX OPINION B. WEISS.
17	Rule 144A	Partner	Deitz AS	3/17/1998	5.00	DISCUSS T. FREED RESOLUTIONS. DISCUSS OPINION G. FERNICOLA. DISCUSS PURHASE AGREEMENT J. KELLEY REVISE COMMENTS AND DISTRIBUTE TO WORKING GROUP. REVIEW NYSE LISTING DOCUMENTS.
17	Rule 144A	Partner	Deitz AS	3/19/1998	22.00	REVIEW OFFERING MEMORANDUM FOR FINAL. T/C/W J. KELLEY RE PURCHASE AGREEMENT. REVIEW REVISED PURCHASE AGREEMENTS. T/C/W J. LURIE RE INDENTURE AND PURCHASE AGREEMENT. NEGOTIATE OPINIONS AND PURCHASE AGREEMENT WITH DAVIS POLK. DISCUSSION WITH B. CHILSTROM, G. FERNICOLA RE OPINION. DISCUSS T. FREED RESOLUTIONS AND PREPARE RESOLUTIONS. ATTEND PRINTERS TO PRINT FINAL OM. DISCUSS PRESS RELEASE. PRICING DUE DILIGENCE CALL.
17	Rule 144A	Partner	Deitz AS	3/20/1998	6.00	DISCUSS [redacted], GREGG FERNICOLA. DISCUSS OPINION GREG FERNICOLA. REVISE FROM OF OPINION OF J. KELLEY. DISCUSS [redacted], G. FERNICOLA, M GARTLAND, J. LURIE AND A. DEAN.
17	Rule 144A	Partner	Deitz AS	3/21/1998	3.00	REVIEW AND COMMENT ON CLOSING MEMO. REVIEW AND COMMENT ON EMMET, MARVINS COMMENTS ON INDENTURE. T/C/W S. COHEN, WACHTELL RE COLEMN 10-K
17	Rule 144A	Partner	Deitz AS	3/22/1998	2.50	T/C/W S. COHEN, WACHTELL RE COLEMAN 10-K. REVIEW AND COMMENT ON DRAFT REGISTRATION RIGHTS AGREEMENT.

NOT A CERTIFIED COPY

7309

MATERIAL
REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Partner	Deitz AS	3/23/1998	12.00	PREPARE RIDERS FOR REGISTRATION RIGHTS AGREEMENT AND DISTRIBUTION. REVISE OPINION. DISCUSS G. FERNICOLA [redacted] DISCUSS L. GRAY [redacted] PREPARE CERTIFICATES TO BACK UP OPINION. REVIEW FAX FROM WACHTELL RE COLEMAN CLN 10-KS. WORK ON WAIVER LETTER WITH M. GALLAND, G. FERNICOLA. T/C/W L. KUSCH, FIRST TRUST. T/C/W S. DALBERTH REGARDING INVESOTRS. DISTRIBUTE DRAFT WAIVER LETTER. T/C/W J. LURIE DPW RE INDENTURE COMMENTS. T/C/W J. LURIE DPW RE OPINION. T/C/W G. FERNICOLA, J. TYREERE IRB ISSUES. T/C/W H. STACK, RE REG. RIGHTS AGREEMENT. DISCUSS T. FREED CLOSING DOCUMENTS AND DTC LETTER. T/C/W J. LURIE RE CLOSING CERTIFICATES.
17	Rule 144A	Partner	Deitz AS	3/24/1998	17.00	REVIEW REVISED DRAFT OF REGISTRATION RIGHTS AGREEMENT. T/C/W S. DULBERTH RE CONSENT. CALL INVESTORS. T/C/W BOB LAZAROS, GINA JACOBS, RE NOTICE OF PREPAYMENT. T/C/W G. JORDON, FIRST TRUST RE WAIVERS. NUMEROUS TELEPHONE CALLS WITH INVESTORS, TRUSTEE, WATKINS LUDHAM AND S. DALBERTH RE CONSENTS. REIVEW AND NEGOTIATE INDENTURE. PREPARE RELIANCE LETTER AND DISCUSS T. FREED TRUSTEE OPINION. DISCUSS SKADDEN OPINION, G. FERNICOLA. REVIEW DPW COMMNTS ON SKADDEN OPINION. BRING DOWN DILIGNEC CALL. ATTEND PRE CLOSING.
17	Rule 144A	Partner	Deitz AS	3/25/1998	6.50	ATTEND CLOSING. DISCUSS [redacted] WITH M. GARTLAND.
17	Rule 144A	Partner	Deitz AS	3/26/1998	0.75	T/C/W G. FERNICOLA RE FLORIDA STATE TAX. REVIE MEMO FROM SUNBEAM RE [redacted]
17	Rule 144A	Partner	Easton RL	3/2/1998	1.75	ORGANIZE FINANCIAL TEAM; ORGANIZATION CALLS; T/CS WITH MORGAN STANLEY AND DAVIS POLK FOLKS
17	Rule 144A	Partner	Easton RL	3/3/1998	1.00	FINANCING CONFERENCE; COORDINATE LEGAL DUE DILIGENCE
17	Rule 144A	Partner	Easton RL	3/6/1998	0.50	T/C WITH FERNICOLA AND MORGAN STANLEY GUYS RE: DUE DILIGENCE
17	Rule 144A	Partner	Easton RL	3/13/1998	1.25	WORK WITH GREG RE: SHARE CONTRIBUTIONS AND DISCLOSURE ISSUES
17	Rule 144A	Partner	Fernicola GA	3/2/1998	4.75	CONFERENCE AND MEETINGS RE: STRUCTURE AND TERMS OF RULE 144A TRANSACTION; REVIEW BACKGROUND MATERIALS.
17	Rule 144A	Partner	Fernicola GA	3/3/1998	5.25	REVIEW DEBT INSTRUMENTS; CONFERENCE CALLS, MEETING RE: STRUCTURE, TIMING AND OFFERING MEMO CONTENTS; MEETING WITH 144A TEAM RE: OFFERING MEMO AND PRO FORMAS; DRAFT DISCLOSURE RE: 144A DEAL.
17	Rule 144A	Partner	Fernicola GA	3/4/1998	4.75	ATTENTION TO O.M. AND PRO FORMAS; [redacted] CONFERENCE WITH F. FOGG, P. NECKLES, T. FREED AND DAVIS POLK.
17	Rule 144A	Partner	Fernicola GA	3/5/1998	5.25	REVIEW FIRST ALERT AND SIGNATURE BRANDS OFFERS TO PURCHASE; CONFERENCE CALL WITH WORKING GROUP RE: O.M.; ATTENTION TO O.M.; MEETING WITH T. FREED AND A. DIETZ RE: SAME.
17	Rule 144A	Partner	Fernicola GA	3/6/1998	7.50	ATTENTION TO O.M.; ATTENTION TO [redacted] ISSUES; CONFERENCE WITH F. FOGG; MEETING WITH T. FREED.
17	Rule 144A	Partner	Fernicola GA	3/8/1998	2.75	REVIEW OFFERING MEMO.

NOT A CERTIFIED COPY

0017310

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Partner	Fernicola GA	3/9/1998	7.25	DRAFTING SESSION; CONFERENCE WITH F. FOGG, P. NECKLES RE: EXISTING [redacted] REVIEW MEMO RE: SAME; MEETING WITH P. NECKLES
17	Rule 144A	Partner	Fernicola GA	3/10/1998	6.25	REVIEW PRO FORMAS, DAVIS POLK COMMENTS AND MEETING WITH A. DIETZ RE: SAME; DUE DILIGENCE CONFERENCE CALLS ON FIRST ALERT AND SIGNATURE BRANDS; REVIEW REVISED O.M.; CONFERENCE WITH J. KELLY RE: [redacted] ISSUES; CONFERENCE WITH MORGAN AND DAVIS POLK RE: ISSUES AND TIMING.
17	Rule 144A	Partner	Fernicola GA	3/11/1998	5.25	REVIEW REVISED OFFERING MEMO; CONFERENCE WITH COMPANY, MEETING WITH A. DEITZ AND T. FREED; CONFERENCE WITH EASTON AND NECKLES.
17	Rule 144A	Partner	Fernicola GA	3/12/1998	12.25	[redacted] DRAFTING SESSION; REVIEW MARK-UP OF O.M.; REDRAFT O.M.; PRINTER.
17	Rule 144A	Partner	Fernicola GA	3/13/1998	13.50	REVIEW REVISED PPM; DRAFTING SESSION; PRINTER.
17	Rule 144A	Partner	Fernicola GA	3/14/1998	7.50	OFFERING MEMORANDUM.
17	Rule 144A	Partner	Fernicola GA	3/16/1998	2.75	CONFERENCE WITH P. NECKLES RE: [redacted] ISSUE AND [redacted] REVIEW PURCHASE AGREEMENT AND MEETING WITH A. DIETZ RE: SAME; CLOSING MECHANICS REVIEW AND REVISE SKADDEN OPINION;
17	Rule 144A	Partner	Fernicola GA	3/17/1998	2.75	WORK ON DEAL; RESOS, ETC.
17	Rule 144A	Partner	Fernicola GA	3/18/1998	8.50	CONFERENCE WITH T. FREED, A. DIETZ, M. GARTLAND, J KELLY RE: RESOS, CLOSING DOCS, ETC; CONFERENCE WITH F. FOGG RE: [redacted] AND TENDER OFFER; CONFERENCE WITH P. NECKLES RE: [redacted] ISSUES; REVIEW TENDER OFFER DOCS; ATTENTION TO [redacted] ISSUE.
17	Rule 144A	Partner	Fernicola GA	3/19/1998	4.25	ATTENTION TO [redacted] ISSUES AND DOCUMENTS.
17	Rule 144A	Partner	Fernicola GA	3/20/1998	4.75	CONFERENCE WITH T. FREED, A. DIETZ RE: RESOS, CLOSING DOCUMENTS; REVISE PRICING COMMITTEE RESOLUTIONS; CONFERENCE WITH F. FOGG AND COMPANY RE: PUBLICITY ISSUES, ETC.; REVIEW FUNDS FLOW ISSUES.
17	Rule 144A	Partner	Fernicola GA	3/22/1998	1.25	READ IRB DOCUMENTS; DISCUSSIONS RE: SAME.
17	Rule 144A	Partner	Fernicola GA	3/23/1998	7.50	[redacted] ISSUES; CONFERENCE WITH R. CHILSTROM RE: SAME; CONFERENCE WITH EASTON ,ET AL; ATTENTION TO [redacted] ISSUES; VARIOUS CONFERENCE CALLS RE: FUNDS [redacted] ISSUE, ETC; REVIEW WAIVER LETTER; REVIEW INDENTURE; CONFERENCE WITH M. GARTLAND, P. NECKLES, A. DEITZ, S. DALBET; CONFERENCE WITH DAVIS POLK RE: PRE-CLOSING ISSUES.
17	Rule 144A	Partner	Fernicola GA	3/24/1998	8.25	CONTINUE REVIEW OF INDENTURE; [redacted]; PRE CLOSING MATTERS; DUE DILIGENCE CONFERENCE CALL; FINALIZE DOCUMENTS; PRESS RELEASE, ETC.
17	Rule 144A	Partner	Fernicola GA	3/25/1998	4.75	CLOSING; FINALIZE CLOSING DOCS; CONFERENCE WIT R. EASTON; CONFERENCE ITH SKADDEN TEAM RE: [redacted]; FINALIZE PRESS RELEASE.
17	Rule 144A	Partner	Fernicola GA	3/26/1998	2.25	POST CLOSING CLEAN-UP; CONFERENCE WITH J. KELL FLORIDA STAMP TAX ISSUE AND REVIEW MEMO RE: SAME; CONFERENCE WITH A. DEITZ RE: SAME.
17	Rule 144A	Partner	Fernicola GA	3/27/1998	2.50	CONFERENCE WITH P. NECKLES RE: REPAYMENT OF EXISTING DEBT, DEFEASANCE ETC.; CONFERENCE WI A. DEITZ RE: SAME; ATTENTION TO POST BOND [redacted] ISSUES.

NOT A CERTIFIED COPY

01731 1

CONFIDENTIAL

SASMF 19681

16div-022914

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Partner	Ranney-Marinell A	3/4/1998	0.50	CALL W/W. WEISS RE CONSOLIDATION, DEBT ALLOCATION.
17	Rule 144A	Partner	Ranney-Marinell A	3/5/1998	0.20	CALL W/BILL WEISS RE [redacted] ISSUES.
17	Rule 144A	Partner	Ranney-Marinell A	3/6/1998	0.40	CALLS W/W. WEISS, R. TOTTE RE [redacted] ISSUES.
17	Rule 144A	Partner	Ranney-Marinell A	3/13/1998	0.40	REVIEW LETTERS, DOCUMENTS AND CALL TO W. WEISS RE SAME.
17	Rule 144A	Partner	Solomon MJ	3/2/1998	0.50	CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/3/1998	3.00	CONF W/B. WEISS, G. FERNICOLA, DOCS, ANALYSIS
17	Rule 144A	Partner	Solomon MJ	3/4/1998	2.00	CONF W/B. WEISS, [redacted], ANALYSIS
17	Rule 144A	Partner	Solomon MJ	3/5/1998	4.75	CONF AND MTG W/B. WEISS, A. LEVINE, DOCS, STRUCTURING, ANALYSIS
17	Rule 144A	Partner	Solomon MJ	3/6/1998	3.00	CONFS W/B. WEISS, A. MARINELLI, PETER NECKLES, DOCS, STRUCTURING
17	Rule 144A	Partner	Solomon MJ	3/8/1998	1.25	CONF W/P. NECKLES, DOCS
17	Rule 144A	Partner	Solomon MJ	3/9/1998	3.00	DOCS, CONF W/B. WEISS, P. NECKLES, MEMO
17	Rule 144A	Partner	Solomon MJ	3/10/1998	1.50	DOCS, CONF W/B. WEISS, ANALYSIS
17	Rule 144A	Partner	Solomon MJ	3/11/1998	0.50	DOCS, CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/12/1998	2.75	MTGS W/G. FERNICOLA, B. WEISS, LANGUAGE, DOCS
17	Rule 144A	Partner	Solomon MJ	3/13/1998	1.25	CONF W/B. WEISS, DOCS, LANGUAGE
17	Rule 144A	Partner	Solomon MJ	3/14/1998	3.75	DOCS, CONFS W/B. WEISS, LANGUAGE
17	Rule 144A	Partner	Solomon MJ	3/15/1998	0.50	CONF W/B. WEISS, DOCS
17	Rule 144A	Partner	Solomon MJ	3/16/1998	1.25	CONF W/B. WEISS, DOCS
17	Rule 144A	Partner	Solomon MJ	3/17/1998	1.50	ANALYSIS, STRUCTURING, DOCS, CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/18/1998	1.25	CONF W/B. WEISS, P. NECKLES, MTG W/B. WEISS, DOCS
17	Rule 144A	Partner	Solomon MJ	3/19/1998	2.00	DOCS, CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/20/1998	3.50	CONF W/B. WEISS, ANALYSIS, STRUCTURING, DOCS
17	Rule 144A	Partner	Solomon MJ	3/24/1998	1.00	CONS W/B. WEISS, DOCS, ANALYSIS
17	Rule 144A	Partner	Solomon MJ	3/26/1998	1.50	CONF AND MTG W/B. WEISS, OPINION
17	Rule 144A	Partner	Solomon MJ	3/27/1998	1.50	ANALYSIS, OPINION, DOCS, CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/28/1998	0.25	CONF W/B. WEISS
17	Rule 144A	Partner	Solomon MJ	3/30/1998	2.50	CONF W/B. WEISS, OPINION, MEMO
17	Rule 144A	Of Counsel	Fogg BV	3/2/1998	1.00	CONF. CALL; MEET WITH FANNIN, ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/3/1998	1.00	CONFERENCE CALL, ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/4/1998	1.00	TCS WITH EASTON, FERNICOLA, KELLEY AND WEIS RE [redacted] ISSUE AND [redacted] RESTRICTIONS; ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/5/1998	0.25	TCS WITH KELLY AND FERNICOLA, EGC.
17	Rule 144A	Of Counsel	Fogg BV	3/6/1998	2.00	TCS WITH EASTON, FERNICOLA, DEAN, KELLY, GOUDIS RE QUIET PERIOD ; DRAFT EXPENSE ALLOCAITON AGREMEENT; ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/9/1998	0.25	TCS WITH EASTON AND FERNICOLA
17	Rule 144A	Of Counsel	Fogg BV	3/12/1998	0.25	TC WITH EASTON, FERNICOLA, ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/13/1998	3.00	CONF. CALL WITH EVERYONE ON NYSE; REVIEW OFFERING CIRCULAR; TCS WITH EASTON, FERNICOLA SHEHAN, ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/16/1998	0.50	REVIEW AND COMMENT ON PURCHASE AGREEMENT
17	Rule 144A	Of Counsel	Fogg BV	3/18/1998	8.50	THE FIRST QUARTER PROBLEM
17	Rule 144A	Of Counsel	Fogg BV	3/19/1998	1.75	DINNER, ETC.
17	Rule 144A	Of Counsel	Fogg BV	3/20/1998	1.50	TCS WITH FERNICOLA, GOODIS, KELLEY, FANNIN; REVIEW DOW JONES AND BLOOMBERG STORIES; ADVICE ON DISCLOSURES
17	Rule 144A	Counsel	Weiss WJ	3/3/1998	5.00	REVIEW AND MARK UP DOCUMENTS; ANALYZE [redacted] ISSUES RE DEBT
17	Rule 144A	Counsel	Weiss WJ	3/4/1998	10.00	DRAFT MEMO RE STRUCTURE; ANALYZE [redacted] RE [redacted] SOLUTION
17	Rule 144A	Counsel	Weiss WJ	3/5/1998	9.20	STRUCTURE DEBT; ANALYZE [redacted] DRAFT NOTE DISCLOSURE; T/C'S W/B. TOTTE, M. SOLOMON, J. KELLY, A. RANNEY-MARINELLI, B.V. FOG

NOT A CERTIFIED COPY

0017312

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Counsel	Weiss WJ	3/6/1998	4.50	REVIEW AND MARK UP DEBENTURES DRAFT OFFERING MEMO; T/C W/A. RANNEY-MARINELLI
17	Rule 144A	Counsel	Weiss WJ	3/9/1998	4.50	DRAFT MEMO RE STRUCTURE; MARK UP DEBENTURES OFFERING MEMO; T/C'S W/M. SOLOMON, A. DEITZ, T. FREED, S. DANIELS
17	Rule 144A	Counsel	Weiss WJ	3/10/1998	6.00	REVISE MEMO; REVIEW AND MARK-UP COMPENSATION INFORMATION (FOR PROXY); REVIEW AND MARK-UP DEBENTURES DISCLOSURE; T/C W/M. GARTLAND; REVIEW COVENANTS IN INDENTURES; T/C W/P. SIT
17	Rule 144A	Counsel	Weiss WJ	3/11/1998	10.00	REVIEW AND MARK-UP DEBT MATERIALS; REVIEW INDENTURE; FINALIZE AND DRAFT MEMOS; T/C W/C. HSIEH
17	Rule 144A	Counsel	Weiss WJ	3/12/1998	12.00	MARK-UP DEBENTURES CIRCULAR; RESEARCH [redacted] ISSUES AND DISCLOSURE ISSUES; T/C W/R. CUTRONE; T/C W/B. TOTTE; O/C W/G. FERNICOLA AND M. SOLOMON; T/C'S W/P. SIT; T/C W/M. WEINBERGER (.20)
17	Rule 144A	Counsel	Weiss WJ	3/13/1998	7.00	REVIEW AND MARK UP OFFERING MEMO (NOTES); T/C W/P. SIT; O/C W/M. SOLOMON; RESEARCH [redacted] ISSUES; O/C W/Y. QUINSON; T/C W/B. TOTTE RE [redacted]
17	Rule 144A	Counsel	Weiss WJ	3/14/1998	3.50	T/C W/M. SOLOMON; T/C'S W/A. DEITZ; REVISE AND MARK UP OFFERING MEMO (NOTES)
17	Rule 144A	Counsel	Weiss WJ	3/15/1998	1.00	REVIEW AND MARK UP REDS VERSION OF OFFERING CIRCULAR
17	Rule 144A	Counsel	Weiss WJ	3/16/1998	6.00	O/C W/M. GARTLAND; T/C W/P. NECKLES; T/C W/F. FOGG; T/C W/A. DEITZ; RESEARCH [redacted] ISSUES; REVIEW DRAFT OPINION AND PURCHASE AGREEMENT
17	Rule 144A	Counsel	Weiss WJ	3/17/1998	9.00	O/C W/M. GARTLAND RE [redacted] ON SR. FACILITY; REVIEW FORM 14(F); T/C W/D. PAUL; T/C W/A. AMORISON T/C W/M. SHEHAN RE FORM 1001; RESEARCH [redacted] ISSUES
17	Rule 144A	Counsel	Weiss WJ	3/18/1998	8.00	RESEARCH [redacted] ISSUES; DRAFT TAX DISCLOSURE; O/C W/M. SOLOMON; O/C W/M. GARTLAND
17	Rule 144A	Counsel	Weiss WJ	3/19/1998	8.40	RESEARCH AND NEGOTIATE [redacted] ISSUES; REVIEW AND MARK UP INDENTURE; T/C W/E.GONZALEZ
17	Rule 144A	Counsel	Weiss WJ	3/20/1998	8.00	RESEARCH [redacted] ISSUES; DRAFT SECTION 279 MEMO; ANALYZE [redacted] ISSUES
17	Rule 144A	Counsel	Weiss WJ	3/22/1998	1.00	REVIEW OFFERING CIRCULAR FOR DEBENTURES
17	Rule 144A	Counsel	Weiss WJ	3/23/1998	4.00	RESEARCH [redacted] ISSUES; REVIEW DEBENTURES MATERIALS
17	Rule 144A	Counsel	Weiss WJ	3/24/1998	7.00	RESEARCH [redacted] ISSUES; STRUCTURE FINANCING
17	Rule 144A	Counsel	Weiss WJ	3/25/1998	5.50	RESEARCH [redacted] ISSUES RELATING TO [redacted] AND [redacted]; REVIEW INDENTURES; DRAFT [redacted] MEMO; T/C W/A. JOHNSON; T/C W/M. GARTLAND; T/C W/A. AMORISON
17	Rule 144A	Counsel	Weiss WJ	3/26/1998	6.00	T/C W/B. TOTTE; O/C W/M. SOLOMON; RESEARCH COVENANCE DEFEASANCE OPINION; RESEARCH AND ANALYZE [redacted] ISSUES; T/C W/A. AMORISON; DRAFT S-4 TAX LANGUAGE
17	Rule 144A	Counsel	Weiss WJ	3/27/1998	7.00	RESEARCH [redacted] ISSUES; REVIEW FINANCING DOCUMENTS
17	Rule 144A	Counsel	Weiss WJ	3/30/1998	4.10	DRAFT [redacted] MEMO; REVIEW FINANCING MATERIALS; DRAFT COVENANT DEFEASANCE OPINION; RESEARCH [redacted] ISSUES
17	Rule 144A	Associate	Daniels SJ	3/13/1998	-	FINALIZED PROXY STATEMENT AND FILED W/ SEC; DRAFTED NYSE LISTING APPLICATION RE: SUNBEAM COMMON STOCK RESERVED FOR CONVERSION OF 144 DEBT SECURITIES; REVIEW OF SECTION 14(F) NOTICE.

NOT A CERTIFIED COPY

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Associate	Daniels SJ	3/13/1998	3.60	FINALIZED PROXY STATEMENT AND FILED W/ SEC; DRAFTED NYSE LISTING APPLICATION RE: SUNBEAM COMMON STOCK RESERVED FOR CONVERSION OF 144A DEBT SECURITIES; REVIEW OF SECTION 14(F) NOTICE.
17	Rule 144A	Associate	Daniels SJ	3/13/1998	3.60	FINALIZED PROXY STATEMENT AND FILED W/ SEC; DRAFTED NYSE LISTING APPLICATION RE: SUNBEAM COMMON STOCK RESERVED FOR CONVERSION OF 144A DEBT SECURITIES; REVIEW OF SECTION 14(F) NOTICE.
17	Rule 144A	Associate	Daniels SJ	3/14/1998	3.20	DRAFTED SUBSEQUENT LISTING APPLICATION FOR SHARES OF SUNBEAM COMMON STOCK RESERVED FOR CONVERSION OF 144A DEBT SECURITIES.
17	Rule 144A	Associate	Freed TE	3/2/1998	4.00	MEETING WITH PARTNER RE: SUNBEAM OFFERING MEMO
17	Rule 144A	Associate	Freed TE	3/2/1998	4.00	REVIEWING PRECEDENT FOR STRUCTURE OF THE SUNBEAM TRANSACTION
17	Rule 144A	Associate	Freed TE	3/3/1998	15.00	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/4/1998	13.00	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/5/1998	14.00	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/6/1998	13.50	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/7/1998	7.00	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/8/1998	8.25	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/9/1998	16.00	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/10/1998	15.25	DRAFTING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/11/1998	14.50	DRAFTING AND REVISING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/12/1998	17.00	DRAFTING AND REVISING SUNBEAM OFFERING MEMORANDUM
17	Rule 144A	Associate	Freed TE	3/13/1998	18.00	DRAFTING AND REVISING SUNBEAM OFFERING MEMORANDUM AT THE GLOBAL PRINTERS
17	Rule 144A	Associate	Freed TE	3/14/1998	24.00	DRAFTING AND REVISING SUNBEAM OFFERING MEMORANDUM AT GLOBAL FINANCIAL PRINTERS
17	Rule 144A	Associate	Freed TE	3/15/1998	7.50	REVIEWING SUNBEAM OFFERING MEMORANDUM & DISCUSSING THE TIME TABLE FOR THE SUNBEAM OFFERING.
17	Rule 144A	Associate	Freed TE	3/16/1998	14.00	DRAFTING, REVISING AND CONFERENCE CALLS IN CONNECTION WITH THE OFFERING MEMORANDUM FOR SUNBEAM CORPORATION.
17	Rule 144A	Associate	Freed TE	3/17/1998	12.80	DRAFTING, REVISING AND CONFERENCE CALLS IN CONNECTION WITH THE OFFERING MEMORANDUM FOR SUNBEAM CORPORATION.
17	Rule 144A	Associate	Freed TE	3/18/1998	10.50	DRAFTING, REVISING AND CONFERENCE CALLS IN CONNECTION WITH THE OFFERING MEMORANDUM FOR SUNBEAM CORPORATION.
17	Rule 144A	Associate	Freed TE	3/18/1998	3.00	READING AND COMMENTING ON THE PURCHASE AGREEMENT FOR THE SUNBEAM CORPORATION DEBT OFFERING.
17	Rule 144A	Associate	Freed TE	3/18/1998	1.00	REVIEWING THE INDENTURE FOR THE SUNBEAM CORPORATION DEBT OFFERING.
17	Rule 144A	Associate	Freed TE	3/19/1998	15.00	DRAFTING AND REVISING THE OFFERING MEMORANDU AT THE PRINTER FOR THE SUNBEAM CORPORATION DEBT OFFERING.
17	Rule 144A	Associate	Freed TE	3/20/1998	17.50	DRAFTING AND REVISING THE OFFERING MEMORANDU FOR THE SUNBEAM CORPORATION DEBT OFFERING.
17	Rule 144A	Associate	Freed TE	3/21/1998	8.00	READING AND COMMENTING ON THE INDENTURE AND THE REGISTRATION RIGHTS AGREEMENT FOR THE SUNBEAM CORPORATION DEBT OFFERING.
17	Rule 144A	Associate	Freed TE	3/23/1998	16.00	PREPARING DOCUMENTS FOR SUNBEAM CORPORATI DEBT OFFERING
17	Rule 144A	Associate	Freed TE	3/24/1998	17.50	PREPARING DOCUMENTS FOR SUNBEAM CORPORATI DEBT OFFERING CLOSING

NOT A CERTIFIED COPY

017314

CONFIDENTIAL SASMF 19684

16div-022917

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Associate	Freed TE	3/25/1998	6.00	MEETING AT DAVIS POLK & WARDWELL FOR CLOSING OF SUNBEAM CORPORATION DEBT OFFERING
17	Rule 144A	Associate	Freed TE	3/25/1998	3.50	PREPARING DOCUMENTS FOR SUNBEAM CORPORATION DEBT OFFERING CLOSING
17	Rule 144A	Associate	Freed TE	3/26/1998	10.50	PREPARING AND REVISING CLOSING SETS FOR EXECUTION ALONG WITH MEMOS FOR SUNBEAM CORPORATION DEBT OFFERING
17	Rule 144A	Associate	Freed TE	3/27/1998	2.50	CONFERENCE CALLS WITH SUNBEAM CORPORATION AND DAVIS POLK & WARDWELL TO COORDINATE EXECUTION OF ORGINAL SIGNATURES FOR DOCUMENTS FOR THE SUNBEAM CORPORATION DEBT OFFERING
17	Rule 144A	Associate	Freed TE	3/30/1998	3.00	PREPARING CLOSING SETS FOR SUNBEAM DEBT OFFERING
17	Rule 144A	Associate	Freed TE	3/31/1998	3.00	PREPARING CLOSING SETS FOR SUNBEAM DEBT OFFERING
17	Rule 144A	Summer/Winter Assoc	Will NM	3/6/1998	6.50	ANALYZE PROOFREAD DOCUMENT; FAXING; PREPARED LARGE DISTRIBUTION; PHOTOCOPYING
17	Rule 144A	Legal Assistant	Cahaly S	3/3/1998	1.50	COPY AND DISTRIBUTE
17	Rule 144A	Legal Assistant	Kahn LP	3/9/1998	11.00	PHOTOCOPY PREPARE DISTRIB,XEROX,PROOFREAD,
17	Rule 144A	Legal Assistant	Kahn LP	3/10/1998	4.00	PHOTOCOPY FOR A DISTRIBUTION, PROOFREAD
17	Rule 144A	Legal Assistant	Kahn LP	3/12/1998	5.00	PROOFREAD RIDERS IN A DRAFTING SESSION
17	Rule 144A	Legal Assistant	Kahn LP	3/12/1998	5.00	PHOTOCOPY PHOTOCOPY AND ERRANDS-RETRIEVE SUPPLIES
17	Rule 144A	Legal Assistant	Kahn LP	3/13/1998	14.50	WORK AT FINANCIAL PRINTER ON PROOFREADING, CHECKING IN/OUT DOCUMENTS
17	Rule 144A	Legal Assistant	Kahn LP	3/14/1998	9.00	WORK AT FINANCIAL PRINTER ON PROOFREADING, CHECKING DOCUMENTS IN/OUT
17	Rule 144A	Legal Assistant	Kahn LP	3/19/1998	3.00	DISTRIBUTE/MAIL PREPARE AND DISTRIBUTE DOCUMENTS-
17	Rule 144A	Legal Assistant	Kahn LP	3/19/1998	1.00	TRAVEL TO/FROM GLOBAL FINANCIAL-WAIT-CALLED AN TOLD TO LEAVE
17	Rule 144A	Legal Assistant	Lewis MM	3/4/1998	0.50	DELIVER DOCUMENTS INTERNALLY.
17	Rule 144A	Legal Assistant	Manny AL	3/11/1998	3.50	PROOFREAD SECTIONS OF DOCUMENT ON SYSTEM AGAINST EDGARIZED VERSION, DISTRIBUTED WORKING GROUP LIST IN-HOUSE
17	Rule 144A	Legal Assistant Special I	Buckley LT	3/23/1998	0.50	PROCESS DOCUMENT REQUEST FOR SUNBEAM CORP AND SUNBEAM PRODUCTS
17	Rule 144A	Legal Assistant Special I	Keogh ME	3/24/1998	0.30	VERIFY STATUS FOR SUNBEAM CORPORATION AND SUNBEAM PRODUCTS - PROCESS BRINGDOWNS AND FORWARD TO TODD FREED
17	Rule 144A	Legal Asst Special II	Bogdanovic P	3/9/1998	0.30	RESEARCH RE S.E.C. DOCUMENTS
17	Rule 144A	Legal Asst Special II	Crooks H	3/13/1998	0.30	RESEARCH RE HISTORICAL PRICING INFORMATION.
17	Rule 144A	Legal Asst Special II	Crooks H	3/19/1998	0.50	RESEARCH RE CHARTER AND BYLAWS OF A COMPANY
17	Rule 144A	Legal Assistant Support	Angilella F	3/4/1998	1.50	PROOFREAD CHANGES TO OFFERING MEMO, 53 PP.
17	Rule 144A	Legal Assistant Support	Bankole A	3/7/1998	0.50	GENERAL ASSISTANCE: SENT OUT A DOCUMENT TO TWO RECIPIENTS.
17	Rule 144A	Legal Assistant Support	Blunk JA	3/5/1998	2.50	PROOFREAD RUSH FULL READ 8PP S/S SMALL FONT AGAINST PRINTER'S PROOF, MARKING CHANGES, CONFORM FORMATTING; REVIEW W/ ATTORNEY; GEN. ASSIST.
17	Rule 144A	Legal Assistant Support	Bona DC	3/12/1998	2.25	GENERAL ASSISTANCE: GENERAL ASSISTANCE; PROOFREADING
17	Rule 144A	Legal Assistant Support	Brown KA	3/18/1998	0.50	SEND FAX OUT FOR MR. FREED AND RETRIEVE FAX CONFIRMATION SHEET WHEN ASKED;
17	Rule 144A	Legal Assistant Support	Buchwald MP	3/7/1998	0.25	PROOFREAD RETRIEVE KEY.
17	Rule 144A	Legal Assistant Support	Buchwald MP	3/19/1998	7.75	PROOFREAD AT PRINTERS.
17	Rule 144A	Legal Assistant Support	Colahan EG	3/14/1998	7.25	PROOFREAD AT GLOBAL FIN. PRESS (75 NINTH AVE., 4 7300)

NOT A CERTIFIED COPY

017315

CONFIDENTIAL SASMF 19685

16div-022918

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Legal Assistant Support	Culhane D	3/10/1998	6.50	DISTRIBUTION OF OFFERING MEMORANDUM AND RELATED DOCUMENTS VIA UPS, LOCAL COURIER, INTERNAL AND FAX; MADE PHOTOCOPIES.
17	Rule 144A	Legal Assistant Support	Flanders KL	3/6/1998	0.75	GENERAL ASSISTANCE: LABELS AND AWAITING WORK
17	Rule 144A	Legal Assistant Support	Harris LR	3/23/1998	5.50	PREPARE WORK INCLUDED MAKING COPIES FOR CLOSING, PREPARING FOLDERS AND ASSISTANCE.
17	Rule 144A	Legal Assistant Support	Harris LR	3/24/1998	13.00	DELIVER DOCS/OBTAIN SIGNATURES WORK INCLUDED OBTAINING SIGNATURES AND PROVIDING ASSISTANCE FOR AND AT THE PRECLOSING.
17	Rule 144A	Legal Assistant Support	Harris LR	3/25/1998	7.25	ATTEND CLOSING OF WORK INCLUDED GENERAL ASSISTANCE AT CLOSING
17	Rule 144A	Legal Assistant Support	Harris LR	3/26/1998	1.25	DISTRIBUTE/MAIL WORK INCLUDED PREPARING AND DISTRIBUTING DOCUMENTS WITHIN THE OFFICE.
17	Rule 144A	Legal Assistant Support	Heide HM	3/19/1998	0.25	DISTRIBUTION OF INTERNAL DISTRIBUTION OF 1 DOCUMENT.
17	Rule 144A	Legal Assistant Support	Kennedy PJ	3/12/1998	6.75	PROOFREAD AT GLOBAL PRINTING. ON-GOING PROOFING AS PAGES WERE COMPLETED.
17	Rule 144A	Legal Assistant Support	Link A	3/13/1998	5.00	PROOFREAD DOCUMENT AT PRINTER FOR DISTRIBUTION
17	Rule 144A	Legal Assistant Support	Loehr RC	3/11/1998	0.75	PROOFREAD JOB 215, 16988/8A
17	Rule 144A	Legal Assistant Support	Matranga NF	3/9/1998	5.00	PROOFREAD CHANGES TO AN OFFERING MEMO; LEFT MARKS WITH TTORNEY
17	Rule 144A	Legal Assistant Support	Montgomery RL	3/12/1998	8.25	GENERAL ASSISTANCE: PROOFREADING, XEROXING, DISTRIBUTIONS.
17	Rule 144A	Legal Assistant Support	Newman GB	3/10/1998	1.50	GENERAL ASSISTANCE: IMPUTTING NUMBERS TO TWO DIFFERENT CHARTS
17	Rule 144A	Legal Assistant Support	Pizarro RR	3/19/1998	0.50	GENERAL ASSISTANCE: TRYING TO LOCATE SIGNATURE PAGES THAT WERE IN MANILA FOLDER, WITH NO SUCCESS.
17	Rule 144A	Legal Assistant Support	Rockness D	3/13/1998	6.50	PROOFREAD DRAFT PROSPECTUS, AT GLOBAL PRINTERS (75 NINTH AVE.).
17	Rule 144A	Legal Assistant Support	Salkind JA	3/4/1998	0.25	PROOFREAD REPROOF JOB #193. WP CORRECTIONS.
17	Rule 144A	Legal Assistant Support	Sanchez KH	3/24/1998	0.75	GENERAL ASSISTANCE: RETRIEVING FAX, TYPING LABELS.
17	Rule 144A	Legal Assistant Support	Santana I	3/14/1998	9.75	PROOFREAD RECEIVED INSTRUCTIONS FROM THE PREVIOUS L/A; WITH ANOTHER L/A PROOFED 172 PAGES OF THE OFFERING MEMO; PROOFED TIL CLEAN; CONFORMED TOC; SLUGGED THE 'BLUE PAGES' AND THE PAGE BREAKS JUST TO BE SURE THAT THERE WAS NO TEXT MISSING; TRAVEL TO AND FROM THE PRINTER
17	Rule 144A	Legal Assistant Support	Smarr SM	3/13/1998	7.00	PROOFREAD AT THE FINANCIAL PRINTERS
17	Rule 144A	Legal Assistant Support	Sullivan MP	3/6/1998	4.50	GENERAL ASSISTANCE: MAKE WORD-PROCESSING CHANGES TO COVER MEMO; MAKE PHOTOCOPIES OF COVER MEMO; MAKE COPIES OFFERING MEMO; ASSEMBLE PACKAGES; DISTRIBUTE VIA UPS
17	Rule 144A	Legal Assistant Support	Sullivan MP	3/21/1998	0.50	DISTRIBUTION OF DOCUMENTS VIA DIAL CAR
17	Rule 144A	Legal Assistant Support	Sweat EE	3/14/1998	8.50	DOCUMENT PRODUCTION: ASSIGNED TO THE GLOBAL PRINTER FOR THE ENTIRE SHIFT TO PROOF READ THE ONGOING CHANGES MADE TO PRODUCE IN FINALITY A ONE HUNDRED AND SEVENTY-SIX PADE CONFIDENTIAL OFFERING MEMORANDUM.
17	Rule 144A	Legal Assistant Support	Trotman JS	3/13/1998	7.25	PROOFREAD A DOCUMENT APPROXIMATELY 95 PAGES PROOFREADING WAS DONE AT THE PRINTERS, DOCUMENT WAS HAVILY MARKED UP WITH SEVERAL REVISIONS.
17	Rule 144A	Legal Assistant Support	White SD	3/13/1998	5.00	PROOFREAD TAG TEAM PROOFING OF PROSPECTUS / GLOBAL PRINTING.
17	Rule 144A	Legal Asst Support	Albano AG	3/12/1998	7.25	GENERAL ASSISTANCE: GO TO PRINTERS TO PROOF, OFFERING MEMO

NOT A CERTIFIED COPY

017316

CONFIDENTIAL SASMF 19686

16div-022919

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Legal Asst Support	Albano AG	3/12/1998	0.50	GENERAL ASSISTANCE: GO TO PRINTERS TO PROOF – OFFERING MEMO
17	Rule 144A	Legal Asst Support	Gaylord MH	3/19/1998	6.00	PROOFREAD AT GLOBAL PRINTERS [REGISTRATION STATEMENT]
17	Rule 144A	Legal Asst Support	Gaylord MH	3/19/1998	1.00	GENERAL ASSISTANCE: ASSIST IN PREPARATION OF BOARD RESOLUTIONS
18	Mercer	Partner	Wrubel B	3/20/1998	3.40	[redacted]
18	Mercer	Partner	Wrubel B	3/23/1998	2.40	[redacted]
18	Mercer	Partner	Wrubel B	3/24/1998	3.30	TEL. CONFS. W/J. KELLEY AND HANK MARSHALL RE: [redacted]; CONF. RE: [redacted] CONF. W/H. MARSHALL & M. EATON RE: [redacted]
18	Mercer	Partner	Wrubel B	3/25/1998	2.30	[redacted] CONF. W/M. EATON AND H. MARSHALL RE: [redacted]
18	Mercer	Associate	Lay WD	3/16/1998	2.50	CONF. W/B. WRUBEL; [redacted]
18	Mercer	Associate	Lay WD	3/23/1998	4.30	[redacted]
19	M.D. Corp.	Of Counsel	Fogg BV	3/31/1998	1.00	TCS WITH FANNIN; REVIEW MATERIAL FROM BDK ON IRONS; VMS TO ARONSON AND STEPTOE
19	M.D. Corp.	Associate	Johnson AB	3/27/1998	9.00	DILIGENCE.
19	M.D. Corp.	Associate	Johnson AB	3/30/1998	1.25	DILLIGENCE RELATED WORK
19	M.D. Corp.	Associate	Shehan MT	3/27/1998	4.10	DISCUSSION W/SCOTT SCOTT; REDRAFT OF STOCKHOLDERS' AGREEMENT
19	M.D. Corp.	Associate	Shehan MT	3/29/1998	0.20	[redacted]
19	M.D. Corp.	Associate	Turner CG	3/27/1998	10.00	DUE DILIGENCE
19	M.D. Corp.	Legal Assistant	Plante MJ	3/27/1998	11.75	CONDUCT DUE DILIGENCE

NOT A CERTIFIED COPY

CONFIDENTIAL

FOR IMMEDIATE RELEASE

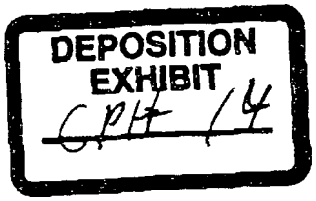
Sunbeam States that First Quarter Revenues
May Be Lower than Street Estimates

Delray Beach, Florida; March 19, 1998 - - Sunbeam Corporation (NYSE: SOC) said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam® and Oster® brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

NOT A CERTIFIED COPY

017319



Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Annual Report on From 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

Contact:

Richard Goudis
(561) 243-2100

NOT A CERTIFIED COPY

017320

MORGAN STANLEY CONFIDENTIAL

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED CONFIDENTIAL DEPOSITION
OF WILLIAM H. WRIGHT, II
New York, New York
Thursday, July 1, 2004

CONFIDENTIAL

0173322

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162364

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
VS.
MORGAN STANLEY & CO., INC.,
Defendant.

VIDEOTAPED CONFIDENTIAL DEPOSITION
OF WILLIAM H. WRIGHT, II
New York, New York
Thursday, July 1, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162364

July 1, 2004
9:33 a.m.

Videotaped Confidential Deposition of WILLIAM H. WRIGHT, II, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: CLARK C. JOHNSON, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
Ruben Martinez, Videographer

THE VIDEOGRAPHER: Stand by.
This is tape number 1 of the videotaped deposition of Mr. William Wright, in the matter of Coleman Holdings Inc., versus Morgan Stanley & Company, Inc., also Morgan Stanley Senior Funding, Inc., versus MacAndrews and Forbes Holdings, Inc.
This deposition is being held at Esquire Deposition Services, located at 216 East 45th Street, Manhattan, New York, on July 1st, 2004, at approximately 9:33 a.m.
My name is Ruben Martinez from the firm of Esquire Video Services.
The court reporter is Mr. Bob Shaw, in association with Esquire Deposition Services.
Will counsel please introduce themselves.
MR. JOHNSON: Yes. Clark Johnson, Jenner & Block, Chicago, for Coleman Parent Holdings and MacAndrews and Forbes

NOT A CERTIFIED COPY

017323

Holdings.

MR. CLARE: Thomas Claire from the Washington office of Kirkland & Ellis, LLP here for Morgan Stanley & Company, Morgan Stanley Senior Funding and the witness, Mr. Bill Wright.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

WILLIAM H. WRIGHT, having been first duly sworn by the Notary Public, testified as follows:

THE WITNESS: I do.

EXAMINATION BY
MR. JOHNSON:

Q. Good morning, Mr. Wright. Would you please state your full name for the record.

A. My name is William Henry Wright, II.

Q. Where do you reside?

A. 993 Park Avenue, New York, New York.

Q. Have you ever given a deposition before?

A. Yes, I have.

Q. On how many occasions?

A. Once before.

Q. When was that deposition?

A. Two years ago, 2002.

Q. Did that concern a Morgan Stanley transaction?

A. It was a Morgan Stanley transaction.

Q. Which transaction was that?

A. It was the Ziff Davis initial public offering.

Q. Was that a shareholder lawsuit?

A. It was a shareholder lawsuit against Ziff Davis. Morgan Stanley was not named.

Q. Do you know what the nature of the allegation was against Ziff?

A. I don't recall.

Q. Given that you are a deposition veteran, I won't belabor going over the rules of the process here, but we have a stenographer here who is taking down what each of us says and, as a result, I need to finish my question before you answer; and, likewise, I will let you finish your answer before I ask another question.

If you don't understand one of my questions, let me know and I will try to

rephrase it.

If you need to take a break, let me know and we will try to accommodate that.

A. Sure.

Q. Could you tell me about your educational background, beginning with your undergraduate degree to the present.

A. I have a BA degree from Yale University. I graduated in 1982. I was a history major in college. I have a masters in business administration from the University of Virginia's Darden School of Graduate Business Administration. I completed that degree in 1987.

Q. How were you employed between finishing at Yale and starting at UVA?

A. I was an employee of Morgan Stanley in the investment banking division.

Q. Since graduating from Yale, have you worked at any place other than Morgan Stanley?

A. No, save for a summer job at American Express, between my years of business school.

Q. Could you take me through, starting

at Morgan Stanley in 1982 to the present, the positions you have held with the company.

A. Sure. From 1982 to 1985, I was an analyst in the mergers and acquisitions department. I spent my first year as a generalist in New York.

I spent my second year in the financial institutions group within the mergers and acquisition department.

I spent my third year, 1984, '85 in London, as a generalist in mergers.

In 1987, when I returned to the firm, I was in the associate pool, which I was in for, I believe, two years. And I was then associate in the general industrial group for approximately a year and a half, and I spent six months working in our telecom group.

And then, in 1990 I joined what is the client services group, now called the client -- I mean, the corporate finance execution group.

I was in that group from 1990 until 2002.

From 1996 to 2002, I ran that group

NOT A CERTIFIED COPY

as its group head, and in 2002 I became the global director of corporate relationships for investment banking and the retail business of Morgan Stanley. And that is my current position.

Q. So that I am clear on this, when you started in 1990 with, I think you called it the corporate finance and execution group --

A. At the time it was called the financing services group.

Q. Okay.

A. It has gone through several name changes. From that it became the client services group, and now it is called the corporate finance execution group.

Q. Okay.

A. I joined that group in 1990.

Q. Okay. Why did you leave that group in 2002?

A. I was asked to take on the senior managerial role as liaison between the two divisions.

Q. By "two divisions," you mean retail and --

A. And investment banking.

Q. Who runs the client services group, or whatever it is called now?

A. Bill Salisbury.

Q. Did Mr. Salisbury replace you, or has there been someone else in that --

A. He replaced me in that position.

Q. You mentioned the titles that you have held, analyst and associate. You also held the title of managing director?

A. Yes. I currently hold the title of managing director. I have been a managing director since 1997.

Q. You were an associate, prior to that?

A. I was an associate from 1987 until 1990, became a vice president in 1990 or '91, and a principal in 1993 or '94.

Q. And then, an MD in 1997?

A. Yes.

Q. You are an MD today?

A. Yes.

Q. What did you do to prepare for your deposition today?

A. I met with my counsel.

Q. When did you do that?

A. Yesterday.

Q. How long was your meeting?

A. Two and a half hours.

Q. Did you review any documents?

A. Yes.

Q. What documents did you review?

DI MR. CLARE: Objection to the question, and I instruct the witness not to answer.

Q. Did anything that you looked at refresh your memory about the events from six years ago?

A. No.

Q. Do you have an understanding of who has given testimony in this litigation?

A. No, I do not.

Q. Do you know if you are the first deposition in the case?

A. I do know that I am not the first deposition in the case.

Q. Do you know how many other depositions have occurred?

A. No, I do not.

Q. Do you have any idea who from Morgan Stanley has given testimony?

A. No, I do not.

Q. When was the last time that you spoke with Mr. Tyree?

A. It has been more than a year ago.

Q. Have you spoken to Mr. Tyree about this litigation in any way?

A. No, I have not.

Q. Have you spoken to anyone at Morgan Stanley about this litigation?

A. No, I have not.

Q. Mr. Doyle, perhaps?

A. Well, yes. Jim Doyle. Okay. But no one in investment banking.

Q. Mr. Doyle is the only person at Morgan Stanley?

A. Yes.

Q. Have you spoken to anyone at Morgan Stanley about Sunbeam, as a general matter, in the past, say, two years?

A. No, I have not.

Q. When was the last time you had any

NOT A CERTIFIED COPY

017325

dealings with Ruth Porat?
A. I last saw Ruth two nights ago.
Q. In connection with a work event?
A. Yes.
Q. That is the transaction that you are working on together now?
A. No. It was a social event.
Q. Do you see her on a regular basis?
A. Yes, I do.
Q. But you have not talked to her about Sunbeam in any way?
A. No, I have not.
Q. You did not mention that you were giving a deposition when you saw her?
A. No, I did not.
Q. Do you know whether she has given a deposition?
A. No, I do not.
Q. I wonder if you could tell me, in general terms, initially, the purpose of the client services group.
A. By "purpose," what do you mean?
Q. What role does client services group perform at Morgan Stanley?

A. Sure. The client services group is an execution group, modeled on our mergers and acquisitions group, which assists and collaborates with the financing area of the firm, be it equity capital markets or debt capital markets and the corporate finance department, to get financing transactions completed.
Q. When you say it is "an execution group," what do you mean by that?
A. By "execution," I mean things ranging from being part of due diligence to being in drafting sessions, to working with management, prior to their going on the road show, and coordinating all of those aspects of transactions for the firm.
Q. The nuts and bolts of getting a deal done?
A. Yes.
Q. You said, I think, that it is modeled on the M&A group?
A. That is correct.
Q. Can you tell me what that means?
A. We seek to provide turnkey

execution, if you will, which is to say, assisting the relationship bankers by bringing forth a team that is working on these nuts and bolts aspects of transactions.
Q. It is, essentially, the service clients that M&A has been working with?
A. No. It is for financing transactions; so, be it equity or fixed income capital raising.
Q. I guess I am confused about your use of the phrase "current," a turnkey operation.
A. Aha.
Q. I wonder if you can elaborate on that in any way.
A. Well, you have experts in execution who come in and assist the client team in getting the transaction done.
Q. Okay. And the client team could be from across different groups within Morgan Stanley?
A. Absolutely.
Q. So, how would clients service group differ in its mission than, say, equity capital markets?

A. Equity capital markets specifically is focused on giving advice about the capital markets, about how transactions should be structured, about the market environment, and how to market the offering.
Q. And the client services group executes that advice?
A. Exactly.
Q. The same answer of the relationship between debt capital markets and the client services group?
A. Absolutely
Q. In the late '90s was there any system for coordination of activities between these groups?
A. I don't understand what you mean.
Q. Well, I guess, to put it in kind of colloquial phrase, how does the left hand know what the right hand is doing?
MR. CLARE: Objection to the form of the question.
You can answer, if you understand the question.
A. Again, I don't understand what you

NOT A CERTIFIED COPY

mean by "left hand" and "right hand."
Q. Let me try to put it in for examples.
When the client services group is working on the execution of a transaction, are there regularly scheduled meetings with members of other groups within Morgan Stanley?
MR. CLARE: Objection to the form of the question. Hypothetical.

You can answer.
A. I would say this: Any transaction that is done involves a team, and the team is comprised of people from the client services group, from equity capital markets, or one of the capital markets groups, and from corporate finance. There is complete and implicit collaboration of all that is done. There is that. That becomes the team that does the transaction.
Q. Okay.
A. So, there is no wall if you will.
Q. And the members of the team share information on a constant basis; is that fair

to say?
A. Yes, they do.
Q. Both formally and informally?
A. Yes, they do.
Q. E-mail?
MR. CLARE: During what time period?
MR. JOHNSON: The late '90s.
A. Yes.
Q. Going back to the titles that you have held at Morgan Stanley previously, managing director, management director is one of the most senior titles at the company?
A. That is correct.
Q. What's above managing director, if anything?
A. We used the title. It is more of honorific of vice-chairman, but managing director is the senior-most title at the firm on an operative basis.
Q. We are obviously here to talk primarily about the Sunbeam transaction; so, I want to get a little background on that, if I could, and then we will get into some particulars.

How is it that client services group got involved with the Sunbeam transaction?
A. How do you mean, how is it that we got involved?
Q. Well, we know that client services group participated in the convertible offering.
A. Okay.
Q. How did that come to pass?
A. The corporate finance team and the M&A team had worked on transactions that led to the need for financing to pay for those transactions.
And client services group was then called in to deal with the financing execution necessary for Sunbeam.
Q. And did you receive a call saying, hey, Mr. Wright, Bill, we need your team to help us get this deal done?
A. I did receive a call.
Q. From whom?
A. I believe it was from Bill Strong.
Q. Had you worked with Mr. Strong before?

A. Yes, I have.
Q. On how many occasions?
A. I can't recall.
Q. Since the Sunbeam transaction, have you had any dealings with Mr. Strong?
A. Yes.
Q. Have you ever questioned his business ethics in any way?
A. No, I have not.
Q. Have you ever heard anything to the effect that Mr. Strong is less than forthcoming?
A. No.
Q. Did you get this call, before or after the public announcement of Sunbeam's acquisition of Coleman and the other companies?
A. I don't remember.
Q. Was it fair to say that it would be close in time to that announcement?
A. I don't remember.
MR. CLARE: Objection to form.
Q. What did Mr. Strong say?
A. I don't remember.

NOT A CERTIFIED COPY

017327

Q. What did you do in response to his call?
A. Staffed the transaction.
Q. With whom?
A. John Tyree, the analysts who were on the transaction, and what I cannot recall is whether there was associate out of our group or elsewhere who worked on the transaction beyond John Tyree.
Q. Was Johannes Groeller in your group?
A. He was not directly a part of my group. He could have been associate out of the pool rotating through my group.
Q. Did you have any say in the analysts that would be assisting Mr. Tyree in the execution?
A. Well, Mr. Tyree and I would have collaborated on the staffing.
Q. How did you come to select Mr. Tyree to be involved in the execution?
A. At this point in time, I can't remember.
Q. How many other associates at his level did you have available to you at that

time?
A. I don't remember.
Q. At that time, did you have any feeling that your group was understaffed?
A. No.
Q. Overworked?
A. I would say we were busy.
Q. A managing director doesn't want to go on record suggesting that anyone has ever overworked?
MR. CLARE: Objection to the form of the question. I will move to strike.
MR. JOHNSON: I will join your motion.
MR. CLARE: Thank you.
Q. Did you have any interactions with Bob Kitts on the Sunbeam transaction?
A. I don't remember.
Q. Have you worked with Mr. Kitts on other matters?
A. We worked together as analysts in the early '80s.
Q. Since then?
A. No.

Q. Did you understand that he was involved in the M&A side of the Sunbeam transaction?
A. Yes.
Q. Have you ever questioned Mr. Kitts' judgment in any way?
A. No.
Q. How about Mr. Stynes, Jim Stynes; did you understand that he was involved in the Sunbeam transaction?
A. I don't recall at this point.
Q. Have you worked with Mr. Stynes on other matters?
A. No, I have not.
Q. Do you know, today, who the analysts from client services group were who were assigned to the Sunbeam execution?
A. Yes, I do.
Q. Who were they?
A. Shani Boone and Ben Derito.
Q. Did the time frame for the execution seem accelerated to you in any way?
A. I don't remember.
Q. Does two-and-a-half weeks, as you

sit here today, seem like a sufficient amount of time to prepare an offering memorandum and price it?
MR. CLARE: Objection to form. Assumes facts not in evidence.
You can answer.
A. I do believe it is a sufficient amount of time.
Q. Would you characterize it as an accelerated schedule?
A. As compared to?
Q. A typical offering.
A. No.
Q. Have you ever heard the term "fast track due diligence"?
A. No.
Q. You never heard that term at Morgan Stanley?
A. No.
Q. How about "piggybacking due diligence"; do you know what that means?
A. No.
Q. You have not heard that term at Morgan Stanley?

NOT A CERTIFIED COPY

A. No.
Q. Did you understand that the M&A group had been working with Sunbeam for some period of time prior to their request that you help execute the financing?
A. I don't remember now.
Q. You think, at the time, you probably were aware of whether M&A had spent a lot of time with the company?
A. I probably was.
Q. What I am trying to get at is whether the client services group relied on information from the M&A group or, instead, went out and did its diligence from scratch.
A. I am not in a position to determine that.
Q. You don't -- you don't know the answer is --
A. Yes.
Q. Would there be anything unusual about relying on the M&A group's work?
A. I don't think you can generalize about that.
Q. In the abstract you don't have an

opinion about the propriety of that?
A. No, I do not.
Q. I think one of the responsibilities that you mentioned earlier this morning already was the client services group would be involved in drafting the offering memorandum, the convertible offering?
A. Assisting in the drafting.
Q. Assisting who?
A. The company counsel, their outside counsel, and the company.
Q. What are Morgan Stanley's responsibilities in assisting in the drafting of the offering memorandum?
A. What do you mean by what are our responsibilities?
Q. I will back up.
What's the purpose of the offering memorandum?
A. It is the sole document by which you are going to offer securities.
Q. So, it shows, fairly and accurately describes the issuer and the securities?
A. That is correct, yes.

Q. And does Morgan Stanley have any responsibility to determine that the offering memorandum is fair and accurate?
MR. CLARE: Objection to the form of the question, and to the extent that it calls for a legal conclusion.
You can answer.
A. I believe that Morgan Stanley attempt to ensure that the company and its counsel have drafted a document that is accurate and complete.
Q. That is, that it contains all material information?
A. That is correct.
Q. Morgan Stanley performed the due diligence to determine that the offering memorandum and its opinion is reasonably fair and accurate?
A. Morgan Stanley does due diligence, yes. Ah, I don't think Morgan Stanley forms an opinion.
Q. What is the purpose of due diligence?
A. To the best of the ability of the

firm, to ensure that the document is accurate and complete, relying on management, their counsel and other outside experts.
Q. Would you agree that it is not appropriate for an investment banker to take the company at its word?
MR. CLARE: Objection to the form.
A. I don't understand your point.
Q. Well, you said that due diligence involves relying on management, counsel of the company and other outside experts, and what I am getting at is whether that, alone, is sufficient.
A. It is difficult for me to make that judgment in the abstract.
Q. So, in the context of some transactions, that would be an appropriate course of proceeding?
A. Yes.
Q. Do you understand the client services group to be performing a role as an intermediary between the issuer and the investors?
A. Restate that question for me.

NOT A CERTIFIED COPY

017329

Q. Okay. This will be a slightly different question, rather than a restated version.
A. Sure.
Q. Should the public take any comfort from the role of Morgan Stanley and the offering of securities?
MR. CLARE: Objection. Calls for speculation.
A. I cannot put myself in the role of the investor.
Q. Okay. So, you don't have an opinion on whether the underwriter's role serves as a check on the issuer?
MR. CLARE: Objection to the form of the question.
A. I think you need to be more specific for me to answer.
Q. Let me go back to my original question, then.
Does the underwriter owe any obligation to anyone other than the company?
MR. CLARE: Objection. Calls for a legal conclusion, and to form.

A. I think that the underwriter attempts to make sure that the document is accurate and complete, which, in turn, is going to be presented to potential investors.
Q. Morgan Stanley performs its duties, cognizant that investors will be relying on the offering memorandum?
A. That is correct.
Q. Does the investment banker have an obligation to play the devil's advocate with the issuer?
MR. CLARE: Objection. Vague.
A. What do you mean by "devil's advocate"?
Q. Does the investment banker need to determine whether the issuer is making unduly optimistic statements?
A. I think the investment banker, in trying to ensure that the document is accurate and complete, will test various things that are being told to them.
Q. Does the extent of the testing depend on the context of the transaction?
A. The specifics of a particular

transaction.
Q. And so, the testing would increase if the investment banker comes across information inconsistent as to what senior management is saying?
MR. CLARE: Objection to the form.
A. I don't understand what you are saying.
Q. Does the investment banker have any obligation to dig down when it comes across information that is inconsistent with what senior management is telling them?
MR. CLARE: Objection. Hypothetical.
A. You can't generalize on these things.
Q. The answer may be No?
A. It depends.
Q. But there are circumstances where the investment banker has no obligation to dig down?
MR. CLARE: The same objection. Objection to form and calls for a legal conclusion, to the extent that you are

asking about obligation.
You can answer.
A. I don't think you can generalize. And I don't understand the use of the word "obligation."
Q. Would you agree that the investment banker underwriting an offering has unique access to information?
MR. CLARE: Objection. Vague.
A. Unique as compared to?
Q. The investing public.
A. I don't know if I would say that they have unique information.
Q. How about unique access?
A. They have a higher degree of access. I don't know that I would say it is unique.
Q. Is it common, in any respect, to talk to customers of the issuer as part of the due diligence?
A. Yes.
Q. How about talking to lower level employees -- meaning, people other than senior management?
A. What do you mean by "senior

NOT A CERTIFIED COPY

management" and "lower level employees"?
Q. Okay. Is it common to talk to employees other than the head of any group within the company?
A. It is hard to generalize.
Q. Sometimes it happens and sometimes it doesn't?
A. It depends on the situation.
Q. The investment banker's obligation continues through the close of the transaction; is that correct??
A. By "obligation," again, what do you mean?
Q. I will try to rephrase the question, although I don't know that we need to, necessarily, have a complete meeting of minds on that term, because I don't know that we could ever get to that point.
Is the underwriter's responsibility finished when the offering is priced?
A. No.
Q. What are the responsibilities after pricing?
A. In essence, the deal is not

completed until closing.
Q. What does Morgan Stanley have to do, as a professional matter, between pricing and closing?
A. Well, there are a number of things, operationally, that go on, such as what goes on as far as delineating certificates or whatever, if it is not a certificated deal, delineating accounts.
Additionally, additional due diligence is done between pricing and closing, as part of the continuum of due diligence.
Q. And the purpose of that is to make sure that nothing material has changed since the pricing?
A. That is correct.
Q. How many offerings have you been involved in at Morgan Stanley?
A. Hundreds.
Q. Maybe over 1,000?
A. No. I would say hundreds.
Q. Has there ever been an occasion where, with hindsight, you have determined that Morgan Stanley did not perform

appropriate due diligence?
A. No.
Q. That's not to say that you have not learned things from transactions?
A. Yes. One learns from every transaction.
Q. Sure.
What did you learn from the Sunbeam transaction?
A. I don't know what you are getting at.
Q. Well, you just said that you learned from every transaction, which makes sense -- as I learn from every lawsuit that I am involved in.
And the question is: What did you learn from the Sunbeam transaction?
A. My involvement was relatively minor; so, I would not say, specifically, that I learned things from the Sunbeam transaction.
Q. With hindsight, do you wish that you had been more involved in the transaction?
A. No.
Q. As you sit here, can you identify

anything that you wish that Morgan Stanley had done differently in connection with the execution?
A. No, I can't.
Q. Well, let's get into your involvement a little bit more and -- let's see, maybe we will move through this fairly quickly, from what I understand.
Did you make any trips to Florida in connection with this?
A. No, I did not.
Q. Did you talk to Mr. Tyree about any trips to Florida?
A. Not that I can recall.
Q. Would you expect Mr. Tyree or the analysts to travel to Florida in connection with due diligence?
A. Would I expect them to have done so?
Q. Yes.
A. Yes.
Q. But you just don't recall how many times or --
A. Exactly.
Q. Or who, for that matter?

NOT A CERTIFIED COPY

017331

A. Exactly.
Q. Did you, personally, ever have any conversation -- telephonic, in person, or otherwise -- with anyone from Sunbeam?
A. No, I did not.
Q. You never talked on the phone with Al Dunlap?
A. No, I did not.
Q. Russ Kersh?
A. I don't know the name.
Q. David Fannin?
A. No, I did not.
Q. Bob Gluck?
A. No, I did not.
Q. Don Uzzi?
A. No, I did not.
Q. This is a Yes or No question: Did you have any conversations with Skadden Arps relating to this transaction?
A. Not that I can recall, specifically.
Q. Do you recall, generally, having conversations with Skadden in connection with the execution?
A. I believe I was involved on one

phone call with John Tyree with both Skadden Arps and Davis Polk.
Q. Who from Davis Polk?
A. I can't recall.
Q. And the same answer for Skadden?
A. Yes.
Q. Was anyone from the company on that call?
A. I don't remember.
Q. Was the subject of that call first quarter sales results?
A. I don't remember.
Q. Do you remember the time of the day of the call?
A. No.
Q. Was the call in connection with any type of crisis or problem with the transaction?
A. I don't recall.
Q. Do you remember anything about the call?
A. No, I don't.
Q. Were you in New York?
A. I was in New York.

Q. Okay. Was Ruth Porat on that call?
A. Not that I remember.
Q. Besides Mr. Tyree, was anyone else from Morgan Stanley?
A. Again, I don't remember.
Q. Were you familiar with Mr. Dunlap's reputation when you were working on the execution?
A. No, I was not.
Q. You had not heard of "Chainsaw Al" at that point?
A. No, I hadn't.
Q. Is it common to look into the background of an issuer's senior management as part of the due diligence?
A. You cannot generalize about that.
Q. As you sit here today, do you understand that Mr. Dunlap had a reputation as being a turnaround specialist?
MR. CLARE: You are asking him today what his understanding was, in 1998, or whether his understanding today is -- what his understanding today is? The time frame is confusing to me.

THE WITNESS: Likewise.
MR. JOHNSON: Good objection.
Q. At the time of the execution, did you understand that Mr. Dunlap was regarded as a turnaround specialist?
A. I did not, personally.
Q. I take it from that answer, though, that you believe that Morgan Stanley was familiar with that perception?
A. Perhaps.
Q. To the extent that the offering memorandum touted Mr. Dunlap's turnaround success in other companies, is that something that Morgan Stanley should investigate?
MR. CLARE: Objection. Objection to form.
A. I don't understand your point.
Q. Well, putting aside that, if you don't understand the question -- that is one thing.
A. Well, the question --
By "point," I mean the direction of the question.
Q. Okay. To the extent that the

NOT A CERTIFIED COPY

offering memorandum referred to Mr. Dunlap's successes at other companies, did Morgan Stanley have any obligation to investigate the authenticity of the claimed successes at other companies?

A. That sounds very hypothetical to me, and again, I don't think that you can generalize about transactions.

Q. So, it is possible that Morgan Stanley had no duty to determine whether, say, Mr. Dunlap's success at Scott Paper was legitimate?

A. You are asking me whether or not Mr. Dunlap's success at Scott Paper should be investigated?

Q. If it is touted in the offering memorandum.

A. I think, again, that is hypothetical. I can't answer that.

Q. So, you don't know -- well, I guess -- let me see if I can put it more directly.

Did anyone in the client services group do anything to determine that

Mr. Dunlap's turnaround of Scott Paper was authentic?

A. I don't know.

Q. And, at the present time, you don't have an opinion as to whether that investigation would be appropriate?

A. It would be a case for, I guess, offering a specific decision.

Q. Right.

A. Not a generic decision.

Q. In the context of this offering.

A. I don't have a view point on that.

Q. By the way, we have been talking about client services group and the due diligence process a little bit.

Do you have an opinion about whether the investment banker in an M&A context has different duties?

A. With respect to due diligence?

Q. Yes.

A. As compared to --

Q. As compared to what the client services group does.

A. I believe the firm has a due

diligence standard.

Q. And so, it is not variable, depending on whether you are in the client services group or M&A or ECM or --

A. No.

Q. Is one of the purposes of due diligence to get a sense of the culture of the issuer?

A. The "culture" meaning?

Q. The business culture. Have you ever heard the term "business culture" before?

A. Yes. But I am trying to -- in the context of due diligence -- to understand what you are saying.

Q. Is that a --

A. How they represent their brand?

Q. Slightly different. Is business culture a specific due diligence concern?

A. I would say, no more so than any other aspect of the business.

Q. I will jump around a little bit. My notes are a little bit disorganized.

Getting back to due diligence and the client services group, when you were the

head of that group, was there any kind of training program for analysts, or others, as to how due diligence should be performed?

A. There was training, not merely for the client services group. There was training for all new analysts and new associates about due diligence.

Q. No matter what group they are in?

A. No matter what group they are in. Throughout all of investment banking.

In addition, if not on an annual, on a biannual basis, there are refresher courses, if you will, on due diligence that all professionals at all levels attend.

Q. Do you teach those courses?

A. I have taught some of them. And we also bring in outside experts, also.

Q. Was that training protocol in place in the late '90s?

A. Yes.

Q. Was it in place when you joined the firm in 1982?

A. Yes.

Q. Did you have any participation in

NOT A CERTIFIED COPY

017333

any accounting due diligence?
A. No, I did not.
MR. CLARE: I assume that you are referring back to the Sunbeam transaction?
MR. JOHNSON: That was an example of us talking over each other. I don't know whether the reporter got the end of my question or not, but it was coming out.
Q. I was about to say "on Sunbeam," and then you answered.
A. No, I did not.
Q. Now we have a clean record.
Did you have any conversations with Mr. Tyree about the accounting due diligence call?
A. No, I did not.
Q. At any time prior to the closing of a financing transaction, did you hear that Sunbeam engaged in bill and hold transactions?
A. No, I did not.
Q. Have you ever heard that term, "bill and hold"?
A. No, I have not.

Q. Have you heard the term "channel stuffing"?
A. I have.
Q. Do you know what due diligence Morgan Stanley performed to determine whether Sunbeam had engaged in channel stuffing?
A. No, I do not.
Q. Would you expect that to be something that would be investigated?
A. When you say that to be something that was investigated --
Q. Let me start over.
Would you expect Morgan Stanley to investigate whether Sunbeam had engaged in channel stuffing?
A. You are speaking theoretically?
Q. Ah, in a sense.
A. So, in essence, your question is: If the allegation had been made that channel stuffing was done, would Morgan Stanley have investigated that; is that your question?
Q. No. Slightly different.
Without regard to whether there were allegations of channel stuffing, would you

expect Morgan Stanley to look into whether any channel stuffing had occurred, as part of its due diligence on Sunbeam?
A. I really don't know. Again, it is hard to answer that in the abstract.
Q. Let's change that. Based on your earlier question, if there were allegations of channel stuffing, would you expect Morgan Stanley to investigate that?
A. Yes.
Q. Okay. So that we are on the same page, what do you understand "channel stuffing" to mean?
A. In the abstract?
Q. Yes.
A. If a company, either through discounting or other promotional means, fills the retail channels with its products for sale.
Q. So that it creates unusually high inventory in its customers?
A. Typically, yes.
MR. JOHNSON: I will show you what has been marked previously as Exhibit 32.

Q. And I will ask you just to look through that.
A. All right.
Q. Mr. Wright, have you ever seen what has been marked as Exhibit 32 before?
A. No, I have not.
Q. Does this look like a fairly typical accounting due diligence call agenda?
A. It looks like the outline for an accounting due diligence call, yes.
Q. You have seen similar documents, but not this document?
A. Yes.
Q. I wonder if you would look at number 8 on the list for me.
A. Yes.
Q. Which states: "How aggressive is the company in its accounting policies?"
A. Yes.
Q. What's the purpose of that inquiry?
A. Specific to this, or in general?
Q. In general.
A. In general, we do want to understand how the company deals with various accounting

NOT A CERTIFIED COPY

17334

policies, as assessed by its auditors.
MR. JOHNSON: Off the record.
(Discussion off the record.)
THE VIDEOGRAPHER: We are going off the record.
The time is 10:32.
(Recess.)
THE VIDEOGRAPHER: Back on the record. The time is 10:38 and we are back on the record.
Q. Before the break, Mr. Wright, we were looking at Exhibit 32, the accounting due diligence.
A. Yes.
Q. In particular, we were looking at question 8.
And I believe you told me that Morgan Stanley would be interested in the various accounting practices of the company as part of its due diligence. Is that fair?
MR. CLARE: I think that misstates the testimony.
Q. Why don't you restate it for me.
A. What I said was that Morgan Stanley

would be interested in the company's outside auditors' expert assessment of how the company executed on its accounting policies, and their assessment as to whether they were aggressive or not.
Q. Why would Morgan Stanley be interested in whether the company was aggressive in its accounting policies?
MR. CLARE: Your question has now misstated the answer about what Morgan Stanley was interested in. I object, to that extent.
Q. Is Morgan Stanley uninterested in whether the company engages in aggressive accounting policies?
A. I think you can't answer that question in the abstract.
Q. So, in the abstract, the possibility is yes, they are uninterested in that?
A. No. I said you cannot answer that in the abstract.
Q. Why not?
A. I think you have to be very company-specific about what the interest is.

We are interested in the assessment of the external auditor in the company's accounting policies.
Q. Why?
A. Because it is a gauge of the engagement between the auditor and the company, and also gives us some level of comfort in the assessment that we rely upon from the auditors as part of due diligence.
Q. So, your concern for this, if I understand it, is because it eliminates the relationship between the outside auditor and the issuer, and because it gives you some insight into whether you are reasonably relying upon the outside expert?
A. I think we have to reasonably rely on the outside expert.
Q. I think you lost me on that one. You --
A. At all times we must reasonably rely upon the outside expert.
Q. Meaning, that your reliance on them must be reasonable?
A. No. We have nothing beyond being

able to look to the outside expert in our practice of due diligence.
Q. Well, let's be specific on auditors, if we can. Couldn't Morgan Stanley talk to the company's internal auditors, as part of due diligence?
A. Internal auditors?
Q. Yes.
A. Meaning, their accounting staff?
Q. Yes.
A. One arguably does in due diligence.
Q. What do you mean by "arguably does"?
A. From company to company different roles have different titles, different functions. It is hard to generalize.
Q. Do you know whether Morgan Stanley spoke with anyone in the internal audit department of Sunbeam?
A. I don't know.
Q. Do you have any opinion as to whether that would be an appropriate step in due diligence?
A. It would be an appropriate step in due diligence to talk to the principal

NOT A CERTIFIED COPY

01733
01733

accounting group within a company.
Q. The last question on Exhibit 32, it is number 18, "Provides anything not asked that should have been asked." Is that a standard question in accounting due diligence?
A. Yes.
Q. The purpose of that is simply to give the auditor an opportunity to raise any issues that they have?
A. Are you asking me to say what you said is correct or are you asking me to -- what would be my view of the purpose of it?
Q. I guess what I am ultimately trying to do is save time, but it is not working.
Let me ask it differently.
What's the purpose of question number 18?
A. To my mind, the purpose of question 18 is, this is an outline of a conversation or a due diligence session and it is meant to allow for a discussion beyond what is on the outline, to ensure that if things did not appear on the outline, they can be and should be raised.

Q. Do you have any view as to the amount of time that Morgan Stanley should spend with the companies, with Sunbeam's auditors in connection with due diligence?
A. Do I have a view today or --
Q. That's fair. Let's start it that way.
Do you have a view as to the amount of time that would be appropriate for Morgan Stanley to spend with Arthur Andersen in connection with accounting due diligence on Sunbeam?
A. I don't have a view as to time.
Q. Would a half hour seem sufficient to you to do a comprehensive accounting due diligence?
A. I think you have to understand due diligence, which is to say that due diligence goes on throughout an offering.
You might have a phone call or a meeting on due diligence with a specific outline in front of you, but as part of drafting sessions, as part of other meetings, as you come upon things, due diligence takes

place. So, it is not a start stop or hard start hard stop aspect of an offering.
Q. I take it from your answer, though, that it is something that cumulatively involves a substantial amount of time?
A. Cumulatively, yes.
Q. Including cumulatively with outside auditors?
A. Yes.
Q. The purpose of the accounting due diligence call is to have a part of the diligence focused specifically on that issue?
A. That is correct.
Q. And do you have a view as to the amount of time that it is appropriate to provide as a focus time on accounting?
A. I think it has to be very specific to the particular company and the particular offering.
Q. With respect to Sunbeam, do you have a view as to what --
A. I don't. I don't.
Q. I take it you are familiar with the comfort letter process?

A. Yes.
Q. You have seen hundreds of comfort letters, if you have been involved in hundreds of offerings?
A. Yes, I have.
Q. Is it fair to say that you have seen at least dozens of comfort letters from Arthur Andersen?
A. I can't specifically think of them, but yes.
Q. Did you have any conversations with anyone at Morgan Stanley about requesting a comfort letter for the Sunbeam execution?
A. No, I did not.
Q. So, Mr. Tyree or someone else requested the letter on his own initiative?
A. To the best of my knowledge, yes.
MR. JOHNSON: I will show you what has been marked previously as CPH Exhibit 12.
THE WITNESS: Thank you.
Q. I will ask you a question which will hopefully -- your reading of it -- is there anything out of the ordinary about this

NOT A CERTIFIED COPY

comfort letter request?
A. Out of the ordinary in the sense of -- that a letter was sent?
Q. Let's back up.
It is common, as part of the comfort letter process, for the underwriter to request that a comfort letter be issued?
A. It is common that a letter like this letter be issued by an underwriter requesting a comfort letter in 144A offerings. And so, because this offering was a 144A offering, versus a registered securities offering, yes, this is a standard form letter.
Q. You have read it sufficiently to --
A. I cannot, here, look at this letter and say that it is a standard form.
Q. That's not what I am asking you to do. What I am asking is, given that you have seen numerous 144A comfort letter requests, whether there is anything about this letter that jumps out at you as different.
A. No. No.
Q. The last sentence on the first page -- which, as it turns out, is the last

sentence of the letter -- states: "We will contact you to identify the procedures we wish to follow in the form we wish the comfort letter to take."
Did you have any conversations with Mr. Tyree about the form of the comfort letter that should be requested?
A. No.
Q. Did you see any drafts of the comfort letter on this execution?
A. No, I did not.
Q. Is it common for the auditor to provide drafts during the execution process?
A. It is common.
Q. Do you have any understanding as to what Mr. Tyree is referring to when he refers to "the form we wish the comfort letter to take"?
MR. CLARE: Objection. Calls for --
Q. Put slightly differently, do comfort letters, in the rule 144A context, have variable forms?
A. Not to my knowledge.
Q. Did you see the comfort, the final

comfort letter that issued in connection with this execution?
A. No, I did not.
Q. Did you have any discussions with anyone about the comfort letter?
A. No, I did not.
Q. You are not aware of anyone being troubled by any information in it?
A. I don't recall that.
Q. Do you recall there being any crisis arising during the execution process?
A. What do you mean by "crisis"?
Q. Serious problems.
A. Well, I cannot recall the time.
I remember there being some concern about earnings or sales, at some point in the deal.
Q. But prior to close?
A. Again, I cannot remember the time.
Q. Do you think that concern would be brought to your attention after close?
A. As compared to?
Q. Before close.
A. It depends. I think it would have

been brought to my attention at the time it was an issue.
Q. We can go through all of the who, what, when, why, but I just want to get what you can recall about that concern. You have already told me that you are not sure when you were made aware of it.
A. Sure.
Q. How were you made aware of it?
A. As best I can recall, John Tyree informed me of it.
Q. What did he say?
A. I don't remember.
Q. But it was something about a potential problem with earnings or sales?
A. Yes. That is what I recall.
Q. Could it have been both earnings and sales?
A. It could have been. I don't recall.
Q. Did it concern Sunbeam showing a loss for the quarter?
A. I don't recall.
Q. It could have, you just don't know?
A. I just don't know.

NOT A CERTIFIED COPY

017337

Q. After Mr. Tyree brought this concern to your attention, did you do anything about it?
A. I cannot specifically remember what I did, but I would say we talked about it, certainly.
Q. Did you determine any course of action?
A. Not that I can recall now.
Q. Other than talking to Mr. Tyree, did you, either by yourself or with Mr. Tyree, talk to anybody else?
A. Not that I remember now.
Q. So, other than the occasional -- when this was brought to your attention by Mr. Tyree, you don't have any other recollection of any reaction to it?
A. No, I don't.
Q. Were you involved at all in the issuance of a press release?
A. No, I was not.
Q. Do you understand, as you sit here today, that Sunbeam executed a press release during the execution process relating to first

quarter sales?
A. Yes, I do.
Q. Did you know that at the time or is that something that you learned subsequently?
A. I believe I knew it at the time.
Q. Did you have any conversations with anyone about the press release?
A. Not that I recall now.
Q. So, you don't recall talking to Ruth Porat or Davis Polk about the press release?
A. No, I don't.
Q. Do you think you were consulted prior to the issuance of the press release?
A. I would suspect I was and, as I said before, I can't recall the time.
MR. JOHNSON: I will show you a few documents that might -- this has been marked previously as CPH Exhibit 16.
THE WITNESS: Thank you.
Q. Have you ever seen a copy of this document, either with or without the handwriting?
A. No, I have not.
Q. You did not even see it yesterday?

A. Well, you are saying prior to yesterday.
Q. I said at any time.
A. I saw it yesterday.
Q. You told Mr. Clare that you had never seen it before?
A. That is correct.
MR. CLARE: I instruct the witness not to answer what we discussed.
Q. Did you have any conversations with anyone concerning Sunbeam's potential orders for the second half of March of 1998?
A. No, I did not.
Q. You see the, some of the handwriting at the top, it says "Ruth," and it has a fax number. And then, midway down, it says "Porat."
Do you know what Ruth Porat was doing on this transaction in the middle of March of 1998?
A. No, I do not.
Q. Did you have any interaction with her in any way on the Sunbeam execution?
A. Not that I can recall.

Q. She was in equity capital markets at that time?
A. Yes, she was.
Q. Is convertible viewed as an equity product?
A. Yes, it is.
MR. JOHNSON: This has been marked previously as Exhibit 17. I will ask this question a little more delicately, to accommodate Mr. Clare.
Q. Prior to yesterday, have you ever seen the document that we marked as CPH 17?
A. No, I have not.
Q. I want to call your attention to paragraph 6(c), which is on initial numbering page 5 of this exhibit, and Bates page MS 00379.
A. All right.
Q. This shows that sales in the first two months of 1998 were running at approximately half of sales for the first two months of 1997; do you see that?
A. Aha.
Q. Do you think that is information

NOT A CERTIFIED COPY

that could be material to investors?
MR. CLARE: Objection. Calls for speculation and an incomplete hypothetical.
A. I cannot answer your question out of context.
Q. Okay. How about in the context of a company that is being touted as a growth company? With that context, does it inform the materiality of the information in any way?
MR. CLARE: I will make the same objections.
A. I repeat, I cannot answer your question out of context.
Q. This letter is addressed to Morgan Stanley and Company.
A. Yes.
Q. That is because Morgan Stanley had requested the comfort letter?
A. The way the procedure works on 144A transactions, accounting firms, including Arthur Andersen, require a letter from Morgan Stanley, the form of which we saw as a prior exhibit, before they will issue a comfort

letter on a 144A offering. Principally because they do not feel they are required to issue a letter on something that is not a registered offering.
So, we send a letter because they require it to get the comfort letter.
Q. And then, in turn, the letter is addressed to Morgan Stanley?
A. That is correct.
Q. Do you know, one way or the other, whether the information set forth in paragraph 6(c) was known to anyone other than the company Arthur Andersen or Morgan Stanley?
A. I do not know.
MR. JOHNSON: This has been marked previously as Exhibit CPH 14.
Q. Mr. Wright, was it your testimony that you believe that you were aware of this press release at the time that it issued?
A. I was aware of the press release. I don't recall when I was aware of the press release.
Q. Okay. Were you aware that there had been a press release or were you familiar with

the substance?
A. I was aware that there had been a press release.
Q. And that related to sales?
A. Yes.
Q. Did you have any discussions with anyone concerning the impact of a press release on your ability to execute the deal?
A. Not that I can recall.
Q. Would you view that as a conversation that you expect to happen, even if you don't recall it, as you sit here today?
A. To happen specifically with me, or to happen within the firm?
Q. Let's start with you.
A. Given that I ran my group, I typically would be brought into a situation like this.
Q. Right. And by "situation like this," you mean the issuance of a potentially negative press release?
A. Yes.
Q. As you sit here today, you don't remember, one way or the other?

A. No, I do not.
Q. Were there any discussions, involving you, concerning whether Sunbeam's first quarter earnings situation should be included in the press release marked as Exhibit 14?
A. Not that I remember.
Q. Do you recall the market reaction to the press release?
A. No, I do not. No.
Q. Do you think you would recall it, if it were dramatic?
A. That would be speculative for me to say.
Q. Sure. If it were sufficiently dramatic, it would impact your ability to finish execution; is that fair to say?
A. In a general way, with regard to all transactions, yes.
MR. JOHNSON: Let's go back to the comfort letter, if we could, Exhibit 17.
Q. And, in particular, I want to call your attention to paragraph 6(b). That is on the initial page 4, Bates stamped MS 00378.

NOT A CERTIFIED COPY

017339

A. Yes.
Q. At any time prior to closing, did you have any discussions with anyone concerning Sunbeam's acceleration of sales into the four quarter of 1997?
A. No, I did not.
Q. Did you have any discussions at a more general level about the quality or sustainability of Sunbeam's sales?
A. No, I did not.
Q. Do you know whether anyone within Morgan Stanley investigated the sustainability of Sunbeam's financial performance?
A. No, I do not.
Q. Do you have an opinion as to whether that would be something you would expect to be investigated?
MR. CLARE: Objection. Incomplete hypothetical.
A. You are asking me to speculate?
Q. What I am asking is: Would you expect your team in the client services group to investigate whether Sunbeam's performance was sustainable?

A. When you say "sustainable," you mean as compared to --
Q. To its recent historic performance.
A. Looking at the past performance, is it sustainable?
Q. Correct.
A. I think that would be a matter of due diligence that the whole team would focus on.
Q. Would you also expect your team, at the outset of its execution duties, to inquire how the company was doing in the current quarter?
A. I would expect that, and you say my team -- ah, I want to make it clear, as I said quite early on, that the team of a transaction would be the equity capital markets group, in this particular instance, client services group and the banking group. So, that team, I would expect, would focus on these things.
Q. So, is the client services group not the point person on the execution itself?
A. They are point people on the execution.

Q. Co-point people, maybe?
A. Well, it is very much like that. And, really, organize everything, but importantly -- the relationship anchors are the closest relationship with the company, are in a lead position with due diligence.
Q. That, in this context, was Mr. Strong?
A. And his team out of corporate finance.
Q. They would be having conversations, as well, about how the current quarter was?
A. Well, they -- I don't think, to be clear again, you can make a distinction between corporate finance, client services, equity capital markets. The team formed for this transaction out of those three areas would be focused on this.
Q. Morgan Stanley would be?
A. Exactly. That is the way to think of it.
Q. Did you learn about a potential sales or earnings problem early in your involvement in the transaction?

A. No.
Q. Is that a No, or I don't know?
A. Well, first of all, "early," what do you mean?
Q. Okay. How soon after you spoke with Mr. Strong did you hear about a potential sales or earnings problem at Sunbeam?
A. I don't remember. And I said that as much when I talked to you about the press release.
Q. Did the information strike you as inconsistent with what the company had been telling Morgan Stanley otherwise?
A. I had no basis to make that judgment.
Q. Were you aware of any resistance by any party to the issuance of the press release?
A. No, I was not.
Q. Did you tell Mr. Tyree to get to the bottom of the sales and earnings situation?
A. No, I did not.
Q. I think we talked about this as a general matter, but I want to get a better

NOT A CERTIFIED COPY

sense of your interaction with Mr. Tyree in the March, '98 time frame.
A. Yes.
Q. In particular, how he interacted with you on this transaction.
A. Yes.
Q. Did he give you frequent status reports on how the execution was going?
A. I don't recall, eight years later or six years later -- about eight.
Q. Was that your practice when you were the head of the group --
A. Right.
Q. You had several people like Mr. Tyree, presumably --
A. That's right.
Q. -- essentially, in charge of the execution?
A. Exactly.
Q. Okay. Did they have, did Mr. Tyree have any system for letting you know what was going on?
A. I don't recall him having a specific system.

As head of the group, I was consulted by many people in the group about various aspects of their transactions.
Q. Do you think you would talk to Mr. Tyree on a daily basis about the execution, or was it more if there was a problem or a question, he would come to you?
A. I think it was more -- and, again, I am recalling this more -- if there were issues that he wanted to raise.
Q. Okay. You were comfortable letting him run with the deal --
A. Absolutely.
Q. -- unless you had a question?
A. Absolutely.
Q. Did you attend any road shows?
A. No, I did not.
Q. Do you know who from Morgan Stanley attended any road shows?
A. No, I do not.
Q. You don't know whether Mr. Tyree attended any?
A. I suspect he did, but no, I don't.
Q. Did you ever hear anything about how

the road shows went or anything that happened in any road shows?
A. No, I did not.
Q. Do you recall that the offering was very successful in subscription?
A. Yes, I do.
Q. In fact, it increased in size from 500 million to 750 million?
A. I don't recall that.
Q. But you recall that it was oversubscribed?
A. Yes, I do.
MR. JOHNSON: This has been marked previously as Exhibit 100.
Q. Can you tell us, Mr. Wright, what Exhibit 100 is?
A. This is the selling memorandum for the convertible bond offering, convertible debt offering, which would have been distributed to the institutional sales force.
Q. Was client services group involved in preparing this document?
A. I cannot specifically say, because I don't know, but I would suspect, yes.

Q. And do you know whether you, yourself, saw this document in the March, 1998 time frame?
A. I don't recall now. I suspect that I did.
Q. You say this was designed for the institutional sales force?
A. Yes.
Q. And that is to enable them to help sell the offering?
A. That is correct.
Q. And Morgan Stanley would, as a result, have an obligation to satisfy itself reasonably that the information in this document is fair and accurate?
A. That is correct.
Q. There is a section in this document, beginning on page 15, called "key selling points."
A. Yes.
Q. Is this what is referred to as how to position the company?
A. Yes. It would be part of the positioning of the company.

NOT A CERTIFIED COPY

017341

Q. Okay. And this would be prepared by people in cross-groups at Morgan Stanley?
A. That is correct.
Q. The first bullet point describes successful restructuring, creation of a growth company?
A. Yes.
Q. Were you involved at all in the creation of these selling points?
A. No, I was not.
Q. Did you have any discussions with anyone about how to position Sunbeam as a growth company?
A. No, I did not.
Q. But it was Morgan Stanley's judgment that that positioning would be the most effective in selling the convertible?
MR. CLARE: Objection.
A. I don't know.
Q. And the simple placement of that bullet point in the key selling point section doesn't inform your view of that?
A. No. I don't think you can take one point, as opposed to any others.

Q. Okay. The third bullet point, the last major bullet point on page 16, states: "conservatively estimated synergies of $150 million combination." Do you see that?
A. Yes.
Q. Were you involved in any way in estimating or analyzing the synergies that might be obtained from the combinations?
A. No, I was not.
Q. Did you know, one way or the other, what Morgan Stanley expected the synergies to be from Sunbeam's combination with Coleman, First Alert and Signature Brands?
A. No, I did not.
Q. You did not have any conversations with anyone about synergies on this deal?
A. No, I did not.
Q. Section 4 of Exhibit 100, which begins on page 20, is entitled "potential investor concerns." Do you see that?
A. Yes.
Q. Is that a standard section in a selling memo?
A. Yes, it is.

Q. And what's the purpose of this section?
A. The purpose of this section, generally, is to provide those questions we think investors might ask of the institutional sales force, along with answers to those questions.
Q. To prepare them to be helpful to the investors?
A. Exactly.
Q. And, again, this section, section 4, would be compiled across groups within Morgan Stanley?
A. Yes. That is correct.
Q. The second bullet point, fourth quarter earnings, do you see that?
A. Yes.
Q. Do you recall any discussion within Morgan Stanley, at any time, concerning the four quarter '97 earnings?
A. No, I do not.
Q. Notwithstanding this document, you don't have an opinion today about whether fourth quarter earnings were a potential

investor concern?
A. I don't understand your question.
Q. What I am trying to get at is, a moment ago when we were looking at the first bullet point under key selling points, you, I believe, testified that you did not know whether that was a key selling point or not.
A. No. I said -- you asked if I understood you correctly whether it stood out as more of a selling point than the others, and I said, one cannot take it or any other selling point out of context, it is the totality of the selling points that positions the company.
Q. I think we are two ships passing in the night a little bit on that one.
Just so we are clear on that one, on the key selling points, your testimony is that not one of these points is more significant than another, but that they are all the key selling points?
A. That is correct.
Q. Now I have got you.
Going back to the potential investor

NOT A CERTIFIED COPY

Wright - Confidential

concerns, the fourth quarter earnings point, is it your testimony that that is a potential investor concern, but not one any more significant than the others listed in the document?

A. That is correct.

Q. On the second page of section 4, page 22, there is a bullet "dependence on one major customer, Walmart."

A. Yes.

Q. I may have asked this already.

Did Morgan Stanley have any communications with Walmart in connection with this transaction?

MR. CLARE: Objection. Calls for speculation.

A. I don't know.

Q. You, personally, did not?

A. I did not.

Q. Do you know of any customers that Morgan Stanley contacted in connection with this?

A. I don't know of any customers.

Q. Do you know whether any customers

Wright - Confidential

were contacted?

A. I don't specifically know, no.

Q. As Mr. Clare would tell you, whenever you answer specifically, that makes me think that maybe there is something else.

A. It would be my judgment that they would have been contacted, but I don't know that for a fact is my point.

Q. Why do you say it would be your judgment that they would be?

A. That tends to be a part of our due diligence practice.

Q. Do you think that the potential sales issue would be added reason to talk to a customer?

A. The potential sales issue meaning?

Q. The sales shortfall.

MR. CLARE: Objection.

Q. Let me see if I can clean that up a little bit.

We were speaking a few moments ago about a potential sales shortfall at Sunbeam, and the press release?

A. This being the press release.

Wright - Confidential

Q. The press release and the comfort letter.

A. Aha.

Q. The question for you is whether that information would be added reason to contact customers.

MR. CLARE: Objection to the form and foundation, given his prior testimony about his involvement in this.

You can answer, if you are able to.

A. I would say, I cannot answer specifically to Sunbeam.

But, procedurally, yes.

MR. JOHNSON: This has been marked already as Exhibit 76.

MR. CLARE: Thank you.

THE VIDEOGRAPHER: Five minutes.

Q. I recognize, Mr. Wright, that this is a fairly lengthy document and you can feel free to take as much time as you like to look through it, but I will tell you that my questions are going to be fairly limited and if at any time during the questions if you want to further consult it, that is fine.

Wright - Confidential

The first question is a preliminary one. On the cover page it says "department: GHYCMS." What is that?

A. Global high yield capital market services.

Q. The cover memo here -- I will back up.

Have you ever seen this document before?

A. No, I have not.

Q. The covering memo refers to a leveraged finance meeting.

A. Yes.

Q. Did you participate in that meeting?

A. No, I did not.

Q. Did you ever learn about anything that happened at that meeting?

A. Not that I recall. No.

Q. You don't know what was discussed at the meeting?

A. Not beyond what I could divine from this document.

Q. You assumed Sunbeam was discussed?

A. Yes.

NOT A CERTIFIED COPY

017343

Q. Beyond that, you don't really know?
A. No.
Q. You don't know whether Sunbeam's first quarter sales situation was discussed in this?
A. No, I do not.
Q. The second page of Exhibit 76 appears to be a memo listing you among the 20 or so authors; do you see that?
A. Yes.
Q. And, again, this would be a document like the selling memo prepared across groups within Morgan Stanley?
A. That is correct.
Q. So, as you sit here today, you couldn't tell me which section of this document was prepared by which group?
A. No. No.
Q. And, in particular, you don't know whether CSG was responsible for one part of this, as opposed to the other?
A. That is correct.
Q. Under page 4 of the memo, which is -- the Bates stamp 25833, there is a

section Roman 4, (IV) due diligence.
A. Yes.
Q. The first paragraph, it is noted that the M&A group has gained an extremely sound knowledge of the company.
A. Aha.
Q. We touched on this a little earlier today, but I guess the question is: How did the M&A group's knowledge get conveyed to the rest of Morgan Stanley?
A. I can't answer that question specifically to this transaction.
Q. That is because M&A was still involved?
A. Exactly.
Q. So, they would be commenting constantly?
A. Absolutely.
Q. M&A would know the first quarter sales situation, for example, as well or better than anyone else in the company?
MR. CLARE: Objection. Calls for speculation. And lack of foundation.
A. I would be speculating.

Q. Would you look at 13, page 13, which is the Bates stamp 25842.
A. Yes.
Q. There are a series of projections and assumptions stated there, under section 8?
A. Yes.
Q. The third bullet point states: "Synergies were also reduced on the MS base case to 60,000,000 in year 1, and to 150 million in years thereafter." Do you know what the "MS base case" refers to?
A. Beyond what's in this document, no.
Q. Have you prepared memoranda to the leveraged finance committee on other occasions?
A. Yes, I have.
Q. In those memoranda have there been included synergies assumptions?
A. Depending on the nature of the transaction, if a combination of mergers were a part of it, perhaps. If it were leveraged finance for an extant company, the chances are not.
Q. Sure.

As you sit here today, going back to the third bullet point, you don't really have an understanding or sense of a reduction to the base case?
A. No, I do not.
MR. JOHNSON: The time is 11:34 and this completes tape number 1.
(Recess.)
THE VIDEOGRAPHER: Back on the record.
The time is 11:44 and this begins tape number 2 of the videotaped deposition of Mr. William Wright, II.
BY MR. JOHNSON:
Q. Mr. Wright, did you attend any of the drafting sessions at the printer in connection with the Sunbeam offering memorandum?
A. No, I did not.
Q. Did you ever have any conversations with Mr. Tyree concerning events at the printer?
A. Not that I recall.
Q. I will give you what has been marked

NOT A CERTIFIED COPY

previously as Exhibit 112.
A. Yes.
Q. Mr. Wright, prior to yesterday, had you ever seen what has been marked as CPH Exhibit 112?
A. Not prior to yesterday.
Q. Is this what is known as a bring-down comfort letter?
A. Yes, it is.
Q. Did you have any conversations with Mr. Tyree concerning the substance of the bring-down comfort letter?
A. No, I did not.
Q. Did you have any conversations with anyone within Morgan Stanley about the content of the bring-down comfort letter?
A. No, I did not.
Q. Did you know, during the last week of March of 1998, that Sunbeam was showing a loss of $40,000,000 through the first two months of the quarter?
A. No, I did not.
Q. Is that information surprising or alarming in any way?

MR. CLARE: Objection to form. Incomplete hypothetical.
A. It is out of context.
Q. Within the context of the documents you have looked at just this morning, does the fact of a $40,000,000 loss to the first two quarters trouble you in any way?
MR. CLARE: Same objections.
A. I would want to do more investigation.
Q. Do you know what, if any, investigation Morgan Stanley did during the last week of March of 1998?
A. No, I do not.
Q. Do you understand that Sunbeam, in fact, did show a loss for the full quarter?
A. I did not know that until you said it.
Q. So, you don't recall hearing that at the time?
A. No, I don't.
Q. Did you participate in any bring-down due diligence conference calls?
A. No, I did not.

Q. I will state this as broadly as possible, now, I think. Did you, personally, perform any due diligence of any sort on Sunbeam?
A. Not directly with management.
Q. Or outside experts.
A. Or outside experts.
Q. Indirectly in conversations with Morgan Stanley personnel?
A. I would consider some of the conversations that I had with a John Tyree to be a part of --
Q. Did you, personally, review any of Sunbeam's public filings?
A. No, I did not.
Q. Would you expect "a John Tyree," to use your phrase, to be familiar with, say, the company's most recent 10K filing?
A. As part of due diligence, the team would.
Q. And that is a slightly different answer than I think I asked.
A. I use "a John Tyree" to say, someone as part of the team at his level or greater

seniority, absolutely.
Q. Do you recall any discussions within Morgan Stanley about any aspects of Sunbeam's most recent 10K?
A. No, I do not.
Q. You don't recall anyone raising concerns about any feature in the 10K?
A. No, I do not.
Q. Do you have an opinion as to whether Sunbeam was candid with Morgan Stanley?
A. I don't have a view.
Q. You couldn't tell me that Sunbeam lied to Morgan Stanley?
A. I am not in a position to do that.
Q. And that is because you, yourself, did not have any conversations with Sunbeam?
A. I would say, yes.
Q. Did anyone within Morgan Stanley ever tell you that Sunbeam had lied to it?
A. Not that I recall.
Q. Did you do any kind of a post mortem on the execution?
A. I was not involved in a post mortem on the execution.

NOT A CERTIFIED COPY

0173145

Q. But there was a post mortem?
A. I don't know, because I was not involved.
Q. Do you have an opinion as to whether the offering memorandum fairly and accurately apprised investors of the risks of investing in Sunbeam?
A. I, at this point --
MR. CLARE: Would you repeat the question for me. I missed the last part of it.
(Record read.)
MR. CLARE: Objection. Lack of foundation.
You can answer.
A. I would say -- I don't know that I am in a position to make that judgment.
Q. Did you ever read the offering memorandum?
A. I reviewed some draft of it, along the way.
I cannot recall, now, whether I looked at the final offering memorandum.
Q. You say that you are not in a

position to answer my prior question. Why do you say that?
A. I was not involved in due diligence, as I told you before.
Q. You don't know whether Morgan Stanley, in fact, performed appropriate due diligence on Sunbeam?
MR. CLARE: Objection to the form of the question.
A. I don't feel that I can answer that question.
Q. You cannot answer because you don't have an opinion, one way or the other, or why can't you answer the question?
A. I don't know what my basis would be for forming an opinion.
Q. Because you don't know what was done or because you don't know what is appropriate?
A. I would say, I know what our standard of due diligence is, and I believe our standard was met.
Q. What is the standard?
A. As I said before, relying on the issuer, in this context the company, and its

expert outside advisers -- be it legal, the auditors or other advisers doing our investigation with all of the -- in the context of the offering.
Q. Do you know what conversations Mr. Tyree had, if any, relating to the substance of either the comfort letter or the bring-down comfort letter?
A. No, I do not.
Q. Do you have a view as to whether Morgan Stanley had any responsibility for ensuring that the press release on March 19th was fair and accurate?
MR. CLARE: Objection to form, and also to the extent, that it calls for a legal conclusion.
A. I don't think I am in the position to answer that.
Q. And that is because you think it, indeed, calls for a legal conclusion?
A. I do think it calls for a legal conclusion.
Q. You don't know what the legal requirements are in connection with the

issuance of a press release during the execution process?
A. What type of press release?
Q. Let's talk specifically about the March 19th press release.
Do you have any understanding of Morgan Stanley's obligations, be it legal or otherwise, to ensure that the press release is fair and accurate?
A. I think, as part of due diligence, we would look to the company, to their counsel and to the auditors to assist us in assessing the accuracy and completeness of the press release.
Q. So, you would expect Morgan Stanley to talk to the auditors in connection with the issuance of the press release?
A. Yes.
MR. CLARE: Objection. Incomplete hypothetical.
Q. This has been marked already as Exhibit 36.
Prior to yesterday, Mr. Wright, have you ever seen what we marked as Exhibit 36?

NOT A CERTIFIED COPY

A. I have never seen this.
Q. Did you have any conversations with Mr. Tyree or anyone at Morgan Stanley concerning the announcement of Sunbeam's first quarter results?
A. Not that I recall, no.
Q. The cover page of this exhibit, 36, is directed to Mr. Strong, Mr. Stynes, Mr. Kitts and Mr. Tyree. Do you see that?
A. Yes.
Q. Do you have any idea why that is?
A. Um, because they were members of the transaction team.
Q. So, they were involved at that point?
A. That is what I would expect, yes.
Q. Did you have any discussions with anyone at Morgan Stanley about the company's exposure in connection with the offering?
A. What do you mean by "exposure"?
Q. Liability.
A. Ah, no, I did not.
Q. How about exposure in terms of reputational damage?

A. No, I did not.
Q. Was the execution viewed as a disappointment in any way?
A. What do you mean by "a disappointment"?
Q. Well, that is why I added the "in any way" qualifier.
In the months following the closing, did anyone express unhappiness with Morgan Stanley's involvement?
A. Not to my knowledge.
Q. Morgan Stanley earned its fees, to your knowledge?
A. Yes.
Q. Did Morgan Stanley lose any money in connection with Sunbeam?
A. I believe so.
Q. What's the basis for that belief?
A. The fact that, ultimately, the company was in bankruptcy.
Q. Do you know which Morgan Stanley entity, if any, lost money?
A. No, I don't.
Q. Why did Sunbeam's bankruptcy cause

you to believe that Morgan Stanley lost money?
A. Because, at some level, we were a lender to Sunbeam.
Q. Let's talk about that side of the financing for a minute.
Did you have responsibility for executing that side of it?
A. No, I did not.
Q. That is the leveraged finance side?
A. Exactly.
Q. Do you have any understanding as to the value of Morgan Stanley's security in connection with that financing?
A. No, I do not.
Q. Then you would not be able to say, for a fact, that Morgan Stanley lost money?
A. That is correct.
Q. I will ask this as broadly as possible, hopefully in an effort to save time:
Have you ever had any business dealings of any sort with anyone from MacAndrews and Forbes Holdings?
A. Not to my knowledge.
Q. Specifically in the context of the

Sunbeam transaction, you don't recall any interaction with anyone from MacAndrews and Forbes?
A. No.
Q. Did you have any interaction with anyone from the Wachtel Lipton law firm in connection with the Sunbeam transaction?
A. No.
Q. How about CSFB? Did you have any dealings with CSFB?
A. No, I did not.
Q. That saves us a lot of time.
Anderson I think we already talked about.
Did you ever, yourself, talk to any of Sunbeam's outside auditors?
A. No, I did not.
Q. Did you ever talk to Coopers & Lybrand in connection with this Sunbeam --
A. No, I did not.
Q. Did you, or anyone from client services group, have any role in connection with the public announcement of the acquisitions?

NOT A CERTIFIED COPY

011347

A. Ah, no.
Q. Do you know who within Morgan Stanley was involved in that?
A. No, I do not.
Q. As a general matter, putting aside this transaction --
A. Aha.
Q. -- is there part of the team that would be responsible for the public announcement?
A. A merger transaction?
Q. Correct.
A. It would be the M&A team, the mergers team, typically.
Q. You have served as a director during the evaluation process of your colleagues and lower level employees at Morgan Stanley?
A. Yes, I have.
Q. Can you tell me how the evaluation process works when you are the director?
A. In what sense?
Q. Well, let's see how I can shorten this. I have a sense, I think, but I am not sure; so, let me just test my sense, and you

can tell me whether I have got it wrong.
A. Sure. Sure.
Q. When a person is subject to a valuation, individuals throughout the firm who have worked with that individual can submit comments about the individual. That is correct?
A. Yes. And, specifically, there is both the opportunity for an individual to request evaluations, and people can also submit evaluations.
Q. Unsolicited.
A. Exactly.
Q. The director's role is to compile all of those comments --
A. Well, the comments come to the valuation director in a package that is consolidated by the human resources group.
Q. When you say "consolidated," you mean, put into a single document?
A. Yes.
Q. The director's role is to summarize that information?
A. Correct.

Q. And to convey the summary to the evaluated employee?
A. That is correct.
Q. Very good. And when an evaluator is a lower level employee, the evaluator's identity does not appear in the compiled information?
A. That is correct. It is anonymous.
Q. Although, when the information is from a higher level employee, at least you get to see who made the comment?
A. That is correct.
Q. You were Mr. Tyree's evaluation director for his 1998 evaluation?
A. That is correct.
MR. JOHNSON: Would you mark this as Exhibit CPH 232.
(CPH Exhibit 232, evaluations, marked for identification as of this date.)
Q. Mr. Wright, does Exhibit 232 appear to be the compiled evaluations of Mr. Tyree for 1998?
A. Yes, it does appear to be that.

Q. One of the parts of the evaluation process that I guess we did not cover was, I guess, the self-evaluation.
A. Yes.
Q. Tell me what that is?
A. Each individual is asked to prepare a self-evaluation. There are questions that are asked of the individual and it is meant to be your assessment of your performance for the year.
Q. If you look at Mr. Tyree's self-evaluation, which appears to be part 2, page 1, and continuing on to part 2, page 3, the last section of this self-evaluation calls for the candidate to identify the biggest disappointments -- in particular, in developing new business.
If you would be kind enough to read Mr. Tyree's response to that, I will have a few questions.
A. Beginning on 2-2?
Q. Correct. And, for the record, that is the Bates stamp page 0085592, continuing on to '593.

NOT A CERTIFIED COPY

A. All right.
(Pause.)
Q. Focusing particularly on the Sunbeam component of his disappointments for 1998, did you discuss that part of the self-evaluation with Mr. Tyree?
A. I don't recall particularly, but I am sure that I did as part of his evaluation.
Q. It would be customary to talk about those aspects of his self-evaluation?
A. Sure.
Q. As you sit here, you don't remember the substance of the conversation?
A. Yes.
Q. Do you have any sense of why the transaction was a disappointment to him in any way?
MR. CLARE: Objection. Calls for speculation.
A. I would have to get into his psyche.
Q. He did not tell you why he was disappointed?
A. Ah, I would say not beyond what is here.

Q. Was there any discussion with Mr. Tyree, at any point, as to whether, in fact, appropriate levels of due diligence were undertaken in connection with the transaction?
A. In the context of his evaluation?
Q. Or otherwise.
A. Ah, not to my knowledge, no.
Q. Mr. Tyree writes here that there were "serious issues" -- or, I will be more complete -- he refers to a variety of events that "can cause serious issues with transactions."
What were the "serious issues" with respect to Sunbeam?
MR. CLARE: Objection. Calls for speculation about what Mr. Tyree was referring to.
A. I would be speculating about what he would be referring to, to answer that. Again, these are his words. I would be getting into his psyche.
Q. I guess I am trying to be both narrow and broad at the same time, which is probably our problem.

In the context of conveying Mr. Tyree's evaluation to him, did Mr. Tyree say anything that would inform you as to what he viewed to be the serious issues?
A. Ah, not that I can recall now. As I said before, I am almost certain we talked about this as part of his evaluation, but that was six years ago.
Q. Was the possibility that Morgan Stanley made any mistakes in connection with Sunbeam ever discussed?
A. Not that I recall, no.
Q. As you sit here today, would you acknowledge that possibility?
MR. CLARE: Objection to the form of the question. And lack of foundation.
A. I don't think I am in a position to make that assessment.
Q. I will see if I can accommodate his objection and your answer at the same time. This will be a fool's errand, I am sure.
You would acknowledge that Morgan Stanley, like any entity, could make a mistake?

MR. CLARE: Objection to the form of the question. Incomplete hypothetical. No context.
A. I don't understand your line of questioning.
Q. Here is what I am trying to get at.
I will back up further -- and this is a Yes or No question.
Do you have any sense of the nature of the claims by Coleman Parent Holdings against Morgan Stanley?
A. No, I don't.
Q. You have no idea what this lawsuit is about?
A. Only in the most generic sense.
Q. Again, to the extent that your understanding is also based upon what you heard from your counsel, I don't want to hear about that, okay.
But informed by that, I guess, is the only way I can put it.
Do you recognize that Morgan Stanley is accused of committing a fraud in connection with the Sunbeam transaction?

NOT A CERTIFIED COPY

017349

MR. CLARE: Let's be clear about what the question was and the instruction was.

He asked you a specific question, which you can have the court reporter read back. If your only understanding of what the nature of the allegations is through your conversations with attorneys from Morgan Stanley, either in-house lawyers or outside counsel, then I am instructing you not to answer the question.

If you have an understanding from another source, generally, about what the nature of the allegations is, then you are free to answer Mr. Johnson's question.

I also want to interpose an objection to the form of the question.

A. I have no other basis for information than what I received from Morgan Stanley counsel.

Q. Let's go back to the original question, which got us into the nature of the

claims.

A. Sure.

Q. And, in particular, you know, your comment, which was, essentially, I am not sure what you are trying to get at --

A. Aha.

Q. Trying to tell you --

A. Aha.

Q. What I am trying to get at is whether Morgan Stanley, at any point, considered that it made a mistake in connection with the Sunbeam transaction.

MR. CLARE: Objection to form, to the extent that you are -- and to foundation, to the extent that you are asking him what other folks may have done or considered.

A. I have no basis for making that assessment.

Q. You, personally, never were involved in any discussions that were directed in any way whether Morgan Stanley made a mistake in connection with the Sunbeam transaction?

A. No, I was not.

Q. You are not aware of any such discussion happening at Morgan Stanley?

A. No, I am not.

Q. To your knowledge, did anyone within Morgan Stanley consider delaying closing of the offering?

A. Not to my knowledge.

Q. Based on your conversations with Mr. Tyree, do you have any basis to understand his reference to "other internal issues"?

A. No, I do not.

Q. So, as you sit here, you have no idea what he is referring to there?

A. Beyond the words on the page? No.

Q. Did you have a general understanding of the demise of Sunbeam in the months after the closing of the offering?

A. What do you mean by "the demise of Sunbeam"?

Q. Well, you mentioned earlier that Sunbeam ended up in bankruptcy.

A. Yes.

Q. Did you also understand that Mr. Dunlap was terminated by the board?

A. Yes.

Q. And that Arthur Andersen withheld its consent?

A. I was not aware of that, or I don't recall it now. I was probably aware at the time.

Q. Okay. You read the Wall Street Journal every day?

A. Pardon?

Q. Do you read the Wall Street Journal every day?

A. I do not read the Wall Street Journal every day.

Q. You are under oath, sir.

A. I am being honest. I don't read it every day.

Q. But you keep up, as a general matter, with business publications?

A. Absolutely. And it is through those means that I knew a lot of this information.

Q. Did you discuss any of that information within Morgan Stanley?

A. Not that I can recall now, but I would imagine that I did.

NOT A CERTIFIED COPY

Q. But you don't recall any specific discussions with anyone at Morgan Stanley about, say, the termination of Mr. Dunlap?
A. No, I do not.
Q. If you flip over to the section 3, page 2, which has the Bates stamp 85595.
A. Yes.
Q. There is a set of comments by you that I would ask you to review.
A. All right.
(Pause.)
Q. You refer there to the "madness" of the CEO of Sunbeam. What are you referring to there?
A. Six years later, I can't specifically say, but I would imagine that it was about things that I was hearing around the deal and what Mr. Dunlap was doing around the deal.
Q. Your speculation is that you were referring to things that you were hearing during the execution process concerning his behavior?
A. Absolutely. Yes.

Q. Do you have any more specific recollection about his behavior?
A. No, I really don't. And while madness might be used as a psychological or psychiatric term, that is not what I meant, I am certain.
Q. I appreciate that. You referred to Sunbeam as one of the most challenging clients of the year. What was challenging about Sunbeam?
A. I think, getting the deal done, and the challenges, as exhibited by all you put before me around the deal.
Q. When you say "getting the deal done" and the exhibits we have looked at -- are you referring to the sales shortfall issue that we have been talking about?
A. I would say so, yes.
Q. What was challenging about that issue?
A. Well, the fact of it becoming a fact, if you will.
Q. Now I have to ask you for a clarification.

You mean, the fact of it becoming a fact?
A. In the context of doing an offering, to have a press release like that that you have to deal with.
Q. And the facts underlying the press release, itself, to deal with?
MR. CLARE: Objection to the form.
A. I would say, the press release as part of the deal. I can't speak to underlying facts, as I told you before.
Q. Right. I guess what I am really trying get at is your language here about this being a challenging client.
A. Well, I list more than one client in this paragraph.
Q. Absolutely.
A. Tropicana is listed here -- on that, and also Omnicon.
Q. Although you do also say "most notably Sunbeam."
A. That's right. Yes.
Q. What I am trying to get at is precisely the challenge presented by Sunbeam.

A. Again, I think it was, as I said before, dealing with the press release as an issue as part of the transaction.
Q. Why is it challenging to issue a press release as part of a transaction?
A. It depends on the content, the nature of the press release. If you are announcing something that the market doesn't expect, that does pose a challenge in a transaction.
Q. It did not, though, impose an impediment to the transaction in this context?
MR. CLARE: Objection to the form of the question.
A. I don't think I am in a position to say that.
Q. I think we covered this already. You don't know how the market reacted to the March 19th press release?
A. No, I do not.
Q. Do you know how the market reacted to the April 3rd press release?
A. No, I do not.
Q. Based on your experience, do you

NOT A CERTIFIED COPY

017351

have an expectation as to the reaction to each of the press releases?

MR. CLARE: Objection. Calls for speculation.

A. I would only be speculating.

Q. Would you agree that the market reaction would be a fair gauge of the materiality of the information?

MR. CLARE: Objection to form. Calls for speculation.

A. I would be speculating to say that.

Q. If you would flip over to III, page 4.

A. Yes.

Q. For the record, that is Bates 0085597. Mr. Strong has submitted some comments, which I will ask you to review.

A. Yes.

Q. We touched on this a little bit already today, but, in particular, I mentioned Mr. Strong's comment concerning the design of the comfort letter.

Do you have any idea what Mr. Strong is referring to there?

MR. CLARE: Objection. Calls for speculation.

A. No, I do not.

Q. Having looked at the comfort letter briefly today, do you have any opinion as to whether the design of the comfort letter is noteworthy?

MR. CLARE: Objection to form.

A. In the summary review, having to do with the comfort letter, I see nothing to make it unique, if you will.

Q. Or worthy of particular comment?

A. I would still say nothing that makes it unique.

Q. Mr. Strong also states that: "Mr. Tyree made the proper judgment, under high pressure conditions, with respect to customer due diligence."

A. Yes.

Q. Do you have any idea what Mr. Strong is referring to?

MR. CLARE: Same objection.

A. I would only be speculating.

Q. So, the answer is, you don't know

what Mr. Strong is referring to?

A. I don't. You could draw inferences from the words on the page, but I don't specifically know.

Q. What do you infer from the words on the page?

A. That due diligence was done and John did a good job of organizing it.

Q. Your comment on this same page is a little longer. If you would look at that for me, I would appreciate it.

A. All right.

(Pause.)

Q. You refer to John putting the past behind him.

A. Yes.

Q. What is that referring to?

A. Prior, prior to being in my group, he was in what was called the general industrial group, which was a business development group. And John, the assessment was made that John was better at doing execution than business development. So, in essence, putting his business development past

behind him where he was not deemed to be as effective as he was in doing transaction execution.

Q. You say most people would be bitter about the past?

A. Aha.

Q. Did John not leave the general industrial group on good terms?

A. I would not say that it was good terms.

Again, I would say he was assessed as being not a business development person, and much more of an execution person.

So, in CSG, that was the better home, if you will.

Q. He had a better future in CSG?

A. Yes.

Q. Is he in CSG now?

A. I don't know. He is in London now and I don't know specifically what his duties are.

Q. In '98 how many people were within the CSG group?

A. I don't remember exactly. Probably

NOT A CERTIFIED COPY

017352

15 or 20-some people.
Q. Those are people all under you?
A. Yes. Aha.
Q. Did John Tyree leave CSG at any time that you were the head of CSG?
A. He did leave CSG while I was head of CSG.
Q. Why was that?
A. He wanted an international experience and an opportunity became available for him to go to London, and he did so.
Q. Were you disappointed by his departure?
A. I was, because I viewed him as a great resource.
Q. If you would flip over to III, page 6. For the record, 0085599. And, again, there are comments by Mr. Strong and by you that I will ask you about. I will ask you to read them.
A. Okay.
(Pause.)
Q. Mr. Strong refers to Mr. Tyree jumping to incorrect conclusions because of

the high pressure on him.
A. Aha.
Q. Do you know what that refers to?
A. No, I do not.
Q. Are you aware of Mr. Tyree jumping to any incorrect conclusion on the Sunbeam execution?
A. I am not.
Q. Do you believe that you spoke with Mr. Strong in connection with finalizing Mr. Tyree's evaluation?
A. I don't recall doing so.
Q. As a general matter, would you expect that to happen?
A. Um, typically the package is considered to be complete.
Q. But you may pick up the phone, maybe not?
A. Maybe, maybe not.
Q. Your comment on Mr. Tyree in this section, again, refers to issues with Sunbeam. What is that?
A. Again, I think it refers to what I said earlier about the challenging client.

And the point I make here really ties back to what you see in this self-evaluation, which is to say there was a team, very senior level team, a very big team working on this deal, and he was not alone.
Q. Was he beating himself up over the Sunbeam execution?
A. I would say, again, my comment as to what he says is that, you know, it was a great disappointment for him. That is something he expressed to me.
Q. Right. But you don't have a sense of why it was a disappointment?
A. Not anything more specific than that.
Q. Did he ever convey to you, in words or substance, that somebody had put one over on him in connection with the Sunbeam execution?
A. No.
Q. You mentioned at a couple of points in Exhibit 232 that Mr. Tyree became an OPS officer?
A. Yes.

Q. What is that?
A. The operations officer is a position, in groups within the investment banking division for someone, where someone is responsible for administrative duties, including the staffing of transactions.
Q. He is the CSG traffic cop?
A. I would say, more like CSG chief of staff.
Q. I am sure that he would appreciate that.
If you flip over to Roman 4, page 2 which has the Bates stamp 85602, these are what are called upward comments.
A. That is correct.
Q. That means it is someone who reports to John?
A. Yes.
Q. As valuation director, do you know who has made any of these comments?
A. No, I do not. And I should go so far as to say that the way the system works, if you do not have more than three upward evaluators, none of the comments print out, as

NOT A CERTIFIED COPY

017353

to keep it anonymous.
Q. Not the case here with Mr. Tyree.
A. He had many -- yes.
Q. Around the middle of the page there, under the title "managing performance" --
A. Yes.
Q. The second bullet point, that is a fairly lengthy set of comments. If you read that for me, I will ask you a few questions.
A. All right.
Q. The comment states, among other things: "On the Sunbeam deal, when that turned sour, I had tons of questions for John -- i.e., what does this mean for the firm, the research analyst, how will we be affected, et cetera."
Did you ever get the sense that the Sunbeam deal turned sour?
MR. CLARE: Objection to form.
A. What do you mean -- beyond the words here -- are you saying in the context of the words here or --
Q. Well, what I am getting at is, obviously, the page says that the deal turned

sour. I am getting at whether that is consistent with your view of the transaction.
A. As I have said previously, I think the deal had challenges.
Um, and ultimately, after the closing of the deal, you know, the company went bankrupt.
Turn sour, not my words, but ah, one could use those words to describe that type of situation.
Q. Did you have any conversations with Mr. Tyree about what the Sunbeam transaction meant for the firm?
A. Not that I can recall, but I believe I would have.
Q. Do you have any understanding about what the demise of Sunbeam meant for the research analyst at Morgan Stanley?
MR. CLARE: Objection to form.
A. No, I do not.
Q. Do you know who the research analyst was?
A. Yes, I do.
Q. Who was it?

A. Andy Conway.
Q. Do you know whether he actually initiated any coverage on Sunbeam?
A. No, I do not.
Q. Did you ever talk to Mr. Conway at all about Sunbeam?
A. No, I did not.
Q. Was there any concern among the members of client services group about negative repercussions for them in connection with the execution?
A. When you say "negative repercussions," what are you asking?
Q. Whether their stature or compensation within the company would be adversely affected.
A. No. No.
Q. So, when the comment here on page 85602 refers to "how will we be affected," you weren't involved in any of those conversations?
A. I don't know what that "we" refers to.
Q. It could be Morgan Stanley. It

could be client services group.
A. Absolutely.
Q. So, it could be duplicative of: What does this mean for the firm?
A. Exactly.
MR. CLARE: Objection. Calls for speculation. He did not write this.
A. I would be speculating, yes. But it could be.
Q. Was there any sentiment of worry among your charges in the months following the closing?
MR. CLARE: Objection. Calls for speculation.
A. "Sentiment of worry" meaning?
Q. I will state it more directly.
Did anyone ever express any worry or concern to you about the demise of Sunbeam?
A. Worry or concern, in what sense?
Q. The implication for Morgan Stanley.
A. Not that I recall now, no.
Q. By the way, if you look at the cover of Exhibit 232, the title "notes" under Mr. Tyree's name, "Europe IBD/industrials

NOT A CERTIFIED COPY

group," what does that refer to?
A. Europe -- well, first of all, this has been printed out subsequent to the 1998 review process, and the date at the top suggests it was printed out on March 4th of this year.
The way the system works, when you pull it out of the system, retrospectively, it shows your current location, and John is currently in Europe and, as informed by this, he must be in the investment banking industries group, which would be the general industrial group in Europe. And he is now an executive director.
Q. It is not that he had that position at the end of 1998?
A. That is correct.
MR. JOHNSON: Would you mark this as Exhibit 233, for identification.
(CPH Exhibit 233, four-page evaluation document, marked for identification as of this date.)
Q. Mr. Wright, I am giving you a redacted copy of what appears to be the 1998

compiled evaluation of Ruth Porat, and I will show it to your counsel first, so that he can review the redactions and make sure that they are acceptable to him.
MR. JOHNSON: I will state, for the record, while he is reviewing it, that what was marked as Exhibit 233 is comprised of four pages, page 85274, 85279, at 5284, and 5283.
MR. CLARE: All right.
MR. JOHNSON: I will state, further, for the record, that what we have done with the compiled evaluation is eliminate all comments from other personnel besides you.
A. Okay.
Q. So that only your comments appear.
MR. CLARE: Do you want him to read all of the passages now, or particular ones?
MR. JOHNSON: I will ask about the first one, which is on the second page of the exhibit.
MR. CLARE: All right.

MR. JOHNSON: But he is free to read the others.
MR. CLARE: Of course.
Q. You are making downward comments here?
A. No. That is really, it should be colleague comments, because we are both managing directors, in the same tenure.
Q. Do you have any understanding as to whether this appears in downward comments?
A. I would imagine, again, it is, again -- this is a 1998 evaluation that is being pulled out of the system, as dated here -- February 27th of this year. So, I am sure it is a computer --
Q. So that the order and placement of comments changes over time?
A. Well, it could, is my speculation, but -- my comments would be colleague comments.
Q. Okay. In 1998, you viewed her as on an equal plane?
A. Yes. We were both managing directors. We both started out of business

school at the firm at the same time, and we were both elected managing directors at the same time.
Q. And you have already testified that you were close with Mr. Porat?
A. I know her well.
Q. You see her frequently?
A. Yes. Aha.
Q. Your comment on page 85279, the second sentence --
A. Yes.
Q. This states: "While she is always striving to push the edge of the envelope in getting the deal done, it is always with the firm's franchise and interest in mind."
A. Yes.
Q. What are you referring to there when you say, "pushing the edge of the envelope"?
A. I think you are looking at something six years later. I am speaking to the fact of being creative, whether it is deal structure or how to get the deal done. And in putting it in the context of always with the firm's franchise and interest in mind. When we refer

NOT A CERTIFIED COPY

011355

to the firm's "franchise," we speak of our reputation.
Q. Your best interest?
A. No. Our reputation, which is really about our perception by the outside.
Q. Would you let me see that answer on the screen.
(Pause.)
Q. So, your phrase there "pushing the edge of the envelope" is directed to her creativity?
A. I would say her creativity, yes.
Q. Is it directed, at all, to aggressiveness?
A. No.
Q. Can you give me an example in 1998 of Ms. Porat pushing the edge of the envelope?
A. Not with the passage of six years.
Q. Did she push the edge of the energy in connection with the Sunbeam execution?
A. I would not say that I was in a position to say.
Q. So, you don't know?
A. I don't know.

(CPH Exhibit 234, evaluation, marked for identification as of this date.)
Q. Mr. Wright, you were also the director of Shani Boone's evaluation?
A. Yes.
Q. And that involved the same process that we talked about with Mr. Tyree?
A. That is correct.
Q. I will give you a copy of Exhibit 234.
As Tom knows, I have a bad habit of giving my personal, marked-up copy to witnesses.
MR. CLARE: Are there portions of this that you want him to focus on?
MR. JOHNSON: Let's start, as an initial matter:
Q. Can you identify, for the record, what has been marked as CPH Exhibit 234?
A. Would you like me to describe it; is that what you are saying?
Q. What does it appear to be?
A. It is an analyst's year-end

evaluation for the period '97, '98 for Shani Boone.
Again, given that it was pulled in this year, March 3rd, it looks like, from the date, it shows her as being in M&A within IBD as a third-year analyst.
She worked there as a third-year analyst, having spent two years working in CSG.
Q. Do you know that she is no longer with Morgan Stanley?
A. Yes.
Q. Do you know where she is now?
A. I believe she is in business school, but I am not 100 percent certain of that.
Q. What I am getting at is, essentially, how the system operates when you pull this up. This would be her last title at Morgan Stanley?
A. This is her last title at Morgan Stanley, prior to leaving firm.
Q. You are listed on Exhibit 234 as primary evaluation director?
A. That is correct.

Q. If you would look at page 84776 and Mr. Savarie's and Mr. Strong's comments for me, please.
A. All right.
(Pause.)
Q. Mr. Savarie and Mr. Strong use words like "extraordinary" and "difficult" in connection with the Sunbeam transaction; do you see that?
MR. CLARE: Sorry, you referred to Mr. Strong's comments?
Q. Mr. Savarie and Mr. Strong.
MR. CLARE: Where's Mr. Strong's comment?
MR. JOHNSON: The bottom of page 84776.
MR. CLARE: I only heard the part where you asked him to read Mr. Savarie's comment.
MR. JOHNSON: I intended him or asked him to read both.
THE WITNESS: Okay.
Q. Do you understand those references to mean anything other than what we have

NOT A CERTIFIED COPY

017356

already talked about, and that is the problems associated with issuing the press release?

MR. CLARE: Objection to the form of the question. The prior testimony will speak for itself.

MR. JOHNSON: Let me honor that objection and rephrase the question.

Q. Do you have any understanding of what is being referred to as "extraordinary and high pressure circumstances and difficult situations"?

A. Beyond what I read on the page -- reading these people's comments, no. However, it is interesting to note that both of them speak about the CEO, Mr. Savarie, saying quite surly and difficult at times.

Q. When you say "it is interesting to note" --

A. You asked me what was difficult, or -- I fail to remember the other word you picked out of Mr. Savarie's comment, but they both make reference to the CEO.

Q. If you flip over into the next page, you will see Mr. Tyree's comment.

A. Yes.

Q. Mr. Tyree refers to a notoriously difficult client and seemingly impossible time demands.

A. Yes. All right.

Q. Together with Mr. Savarie's and Mr. Strong's comments, we see Mr. Tyree noting a difficult client.

A. Aha.

Q. As you, yourself, pointed out.

A. Aha.

Q. How does that inform what Morgan Stanley's due diligence program would be?

A. I don't know that I can answer that question out of context, because "difficult client" can mean many different things.

Q. Do you have any understanding as to what these gentlemen were referring to when they called Sunbeam a difficult or surly, I think, is another word that is used?

MR. CLARE: Objection. Calls for speculation.

A. What I read here refers specifically to the chairman as being surly and difficult,

and beyond what's on the page, no.

Q. Backing up a second, to Mr. Savarie, did you have any interaction with him on this execution?

A. No, I did not.

Q. Have you dealt with him in other contexts?

A. I have worked on other transactions with him.

Q. Do any come to mind?

A. Ah, I think I can think of two. Metro Mail which was an IPO. And, I believe, Right Choice, which was an IPO.

Q. Metro Mail was a year or two prior to Sunbeam?

A. I can't tell you the exact times.

Q. Do you have any recollection of earnings problems with Metro Mail?

A. No, I do not.

Q. Or a delay in the offering?

A. No.

MR. JOHNSON: Would you mark this as CPH Exhibit 235.

(CPH Exhibit 235, evaluation,

marked for identification as of this date.)

MR. JOHNSON: As we did with one of the other exhibits, what we are marking as Exhibit 235, I will show your counsel, too. It is intended to be, I will tell you, your self-evaluation for 1998.

THE WITNESS: Mine?

MR. JOHNSON: Yes. But, as a result, it comes from compiled material which you are not allowed to review, as I understand it.

I will note, for the record, that the document that we marked as Exhibit 235 is compiled of two pages, bearing the Bates stamp 85726 and 27.

MR. CLARE: Okay.

Q. All right, if you would look at that for me.

A. All right.

(Pause.)

Q. As with the other documents that we have looked at, feel free to read the entire document. I am going to ask you only about

NOT A CERTIFIED COPY

017357

Wright - Confidential

the last section, which is the biggest disappointment section.

A. Aha. Okay.

Q. A few preliminaries first, and then I will get to that section.

Does what we marked as Exhibit CPH 235 appear to be your self-evaluation for 1998?

A. Yes, it does.

Q. I will have to retract what I said earlier. I have a question about the first section on page 58727.

A. Yes.

Q. If you would give that a close read.

A. All right.

Q. You refer in that section to your "incredibly overworked group and inhuman work levels."

Did you have a perception at that time that CSG worked harder than other groups in Morgan Stanley?

A. I would not say we worked harder than other groups, but we were working extremely hard. It was a very busy time

Wright - Confidential

throughout the firm.

Q. It was the late '90s?

A. Yes.

Q. We talked, in general terms, about the number of offerings that you have been involved in in your career.

A. Aha.

Q. Do you have any sense of the number of offerings that CSG was executing, say, in 1998?

A. I say here, that -- are you asking what of the 126 that had been executed, year to date, were ongoing? Or what are you asking?

Q. It is a good comment.

You told me earlier that you had 15 or 20 people on staff?

A. That's right.

Q. So, those 15 or 20 people withheld from other groups -- had, in the first eight months of 1998, executed 126 transactions?

A. That is correct.

Q. That is inhuman?

MR. CLARE: Objection to the form

Wright - Confidential

and move to strike counsel's characterization.

Q. Back at the biggest disappointment section that I raised initially. You referred there to your best people being the target of poaching.

And having to stave off dumping poor performers into your group.

Did you have the sense that CSG was getting inferior treatment among the groups within Morgan Stanley at that time?

MR. CLARE: Objection to the form.

A. No. I would say this about my comment. As I said previously, the whole firm was very busy at that time. All of Wall Street was very busy at that time.

I was trying to build a group, and the ability to get resources, be it internally or externally, was a challenge. And then, other groups were also trying to get resources.

I was viewed as a person who trained people very well; so, people wanted to poach my people. And, on the other side of it,

Wright - Confidential

people wanted to put people with me to get them trained. So, that is all wrapped up in that comment.

Q. You did not feel as if you were getting less than the cream of the crop for your group?

MR. CLARE: Objection to form, and asked and answered.

A. I would agree that I have answered that.

Q. Unfortunately, that is not one that he instructed on.

MR. CLARE: You get to answer it again.

A. As I said, I think, I was not in any way marginalized as against other groups, getting quality resources. And, indeed, in one of these comments I speak to the fact that I had the assistance of a search firm to find additional resources. So, the firm was supportive of my group and what we were doing.

MR. JOHNSON: If you want to take a five-minute break, I may be finished.

THE WITNESS: Okay.

NOT A CERTIFIED COPY

017269

THE VIDEOGRAPHER: The time is 1:14, and we are going Off the record.
(Recess.)
MR. JOHNSON: Back on the record.
THE VIDEOGRAPHER: The time is 1:19, and we are back on the record.
MR. JOHNSON: I have no further questions.

EXAMINATION BY
MR. CLARE:

Q. Mr. Wright, earlier Mr. Johnson asked you some questions about the issuance of press releases generally. Do you recall that testimony?
A. Yes, I do.
Q. And in the course of the questioning you discussed an expectation that auditors would be consulted generally in connection with the issuance of a press release by a company.
A. That is correct.
Q. In your experience, is that consultation with the auditors a job that would necessarily fall to a Morgan Stanley, as

an underwriter, as opposed to other parties?
MR. JOHNSON: Objection. Leading.
A. My view is that it would be the company that would engage, you know, their auditors, in working on a press release.
MR. CLARE: Those are all of the questions that I have.
One housekeeping item that I want to note, for the record, that a number of the exhibits that were marked and used during today's deposition and a number of the, or a portion of the testimony referring to those exhibits are subject to confidential treatment, both by a court order, specifically dealing with personnel evaluations, and also pursuant to the stipulated protective order in the case.
Morgan Stanley intends to designate those exhibits which are already deemed confidential, but also the portions of the testimony that deal with those exhibits, as confidential under the protective order, at a minimum, and will

comply with the protective order in other respects if there are additional portions of the transcript that we wish to designate as confidential.
MR. JOHNSON: Obviously, the protective order speaks to the procedure for designating depositions after the fact; so, I expect both parties to comply with that.
MR. CLARE: Sure.
I just wanted to make clear that, even failing additional designations by Morgan Stanley, that those portions addressing the personnel evaluation exhibits will be designated as confidential by Morgan Stanley, starting today.
We are done.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: The time is 1:21, and this completes the videotaped deposition.
MR. JOHNSON: Thank you for your time.

THE WITNESS: Thank you.
(Time noted: 1:21 p.m.)

WILLIAM WRIGHT

Subscribed and sworn to before me
this day of 2004.

NOT A CERTIFIED COPY

01785

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That WILLIAM WRIGHT, II, the witness whose deposition is hereinbefore set forth,was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6 day of July, 2004.

_____
ROBERT X. SHAW, CSR

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
MR. W. WRIGHT, II	MR. JOHNSON	5
	MR. CLARE	145

---------- INFORMATION REQUESTS ----------

DIRECTIONS: 11
TO BE FURNISHED:
REQUESTS:

---------- EXHIBITS ----------

CPH (W. Wright)	FOR ID.
CPH Exhibit 232, evaluations	103
CPH Exhibit 233, 4 page evaluation document	129
CPH Exhibit 234, evaluation	134
CPH Exhibit 235, evaluation	139

NOT A CERTIFIED COPY

017360

IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03 CA-00504 AL

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & COMPANY, INC.,
Defendant.) January 12, 2003
9:03 a.m.

DENNIS PASTRANA

VOLUME I

VIDEOTAPED DEPOSITION taken pursuant to Notice at the office of Esquire Deposition Services, 44 West Flagler, Ste. 1400, Miami, Florida, before Ana Reid, a Shorthand Reporter and Notary Public within the State of Florida.

APPEARANCES:

FOR THE PLAINTIFF:
JENNER & BLOCK
BY: CLARK C. JOHNSON, ESQ.
STEPHEN P. BAKER, ESQ.
One IBM Plaza
Chicago, Illinois 60611

FOR THE DEFENDANT:
KIRKLAND & ELLIS, LLP
BY: ZHONETTE M. BROWN, ESQ.
655 Fifteenth Street, N.W.
Washington, D.C. 20005

FOR THE DEPONENT, DENNIS PASTRANA:
CURTIS, MALLET, PROVOST, COLT & MOSIE
BY: MICHAEL MOSCATO, ESQ.
101 Park Avenue
New York, New York 10178

CPH EXHIBITS:

NUMBER:	PAGE:	DESCRIPTION:
101	16	Bates CPH 0062693 to CPH 0062697 Scott Yales Interview
102	30	Bates CPH 0062688 to CPH 0062672 Kyle Kaiser Interview
103	36	Bates CPH 0062672 to CPH 0062677 Bill Bloomfield Interview
104	43	Bates CPH 0062685 to CPH 0062686 Jim Job Interview
105	46	Bates CPH 62606 to CPH 0062610 Kevin Jeffcoat Interview
106	48	Bates CPH 1192163 to CPH 1192164 "Review of significant transactions near year end"
107	61	Bates CPH 00013023 to CPH 00013027 Sunbeam's Comparative Income Statements Reporting Period: January 1998
108	66	Bates CPH 1056009 to CPH 1056010 Sunbeam's Comparative Income Statements Reporting Period: February 1998
109	73	Bates CPH 0129926 to CPH 0129936 Form AP-187 3-16-98 Post Audit Review
110	83	Bates CPH 0038670 to CPH 0038676 3-19-98 Draft Comfort Letter
111	87	Bates CPH 0038700 to CPH 0038706 3-19-98 Draft Comfort Letter Faxed from Global Financial Press
112	91	Bates CPH 0129614 to CPH 0129616 3-25-98 Bring Down Letter
113	100	Bates CPH 0129271 to CPH 0129275 4-19-98 Memo from Holman to Pastrana

THE VIDEOGRAPHER: Good morning. We are now on the video record. This is Videotape No. 1. Today is Monday January 4th, 2004. The time is 9:03 a.m. We are here at 44 West Flagler Street, Miami, Florida for the purpose of taking the videotape deposition of Dennis Pastrana in the matter of Case No. 03 CA 00504 A1, Coleman (Parent) Holding versus Morgan Stanley.

The court reporter is Ana Reid. The videographer is Alejandro Montalvo, both of Esquire Deposition Service.

Will counsel please introduce yourselves after which the court reporter will swear the witness.

MR. JOHNSON: Clark Johnson, Jenner & Block Chicago, for the plaintiff, Coleman (Parent) Holding.

MR. BAKER: Stephen Baker, also of Jenner & Block in Chicago, also on behalf of Coleman (Parent).

MS. BROWN: Zhonette Brown of Kirkland & Ellis, Washington D.C., on behalf of Morgan Stanley, Incorporated.

MR. MOSCATO: Michael Moscato from the firm of Curtis Mallet representing Dennis Pastrana.

DENNIS PASTRANA

was called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

///

NOT A CERTIFIED COPY

01-13622

EXAMINATION

BY MR. JOHNSON:

Q. Good morning, Mr. Pastrana.

A. Good morning.

Q. Will you please state your name for the record.

A. Dennis Pastrana.

Q. And where do you reside?

A. 3948 Southwest 60th Court, Miami, Florida, 33135.

Q. How long have been at that address?

A. Five years.

Q. Where are you currently employed?

A. Ernst & Young, LLP.

Q. How long have you been with Ernst & Young, LLP?

A. Since May of 2001.

Q. And prior to May 2001, where were you employed?

A. With Arthur Andersen, LLP.

Q. And are you a CPA in the State of Florida?

A. Yes.

Q. How long have you held a CPA license?

A. About 11 years.

Q. And do you have a Bachelor's Degree?

A. Yes, I do.

Q. When did you receive your Bachelor's Degree?

A. 1991.

Q. And did you go to work for Andersen after

receiving a Bachelor's Degree?

A. I worked for about a year at a local firm and then I went to Andersen in 1993.

Q. So you were at Andersen about eight years?

A. Correct.

Q. What are your current responsibilities at Ernst & Young LLP?

A. I'm a senior manager in the firm's audit practice where I work -- basically manage audits of various clients.

Q. Including public companies?

A. Yes.

Q. Can you sketch for us the titles that you've held during your approximately eight years at Arthur Andersen?

A. Staff, senior, manager and experienced manager.

Q. During what time frame approximately were you a senior?

A. Up until 1998 beginning at about 1995.

Q. And then you became a manager at some point around 1998; is that correct?

A. Correct. I believe it was middle of 1998, July, something like that, August.

Q. And when did you gain the title experienced manager?

A. In 2000, about the same time, middle of the year, 2000.

Q. Were you a resident in the Miami office for Arthur Andersen during your entire employment with Arthur Andersen?

A. Yes. Excuse me.

Q. And performed services for Sunbeam during your work at Arthur Andersen?

A. Yes.

Q. When did you begin doing any work for Sunbeam?

A. In approximately October of 1997.

Q. And what was the nature of that work?

A. My first involvement was in preparing -- or performing the SAS 71 review for the third quarter of 1997.

Q. And did you continue to perform services for Sunbeam after completing that review?

A. Yes.

Q. You worked on the 1997 audit; is that correct?

A. Yes.

Q. Did you devote a substantial part of your work to that audit?

A. Yes.

Q. What work did you perform for Sunbeam after the 1997 audit?

A. I participated or performed the SAS 71 review for the first quarter of 1998. I participated in the performance of post report review procedures and the

preparation of a comfort letter in connection with the issuance of some bonds or debt, and subsequent to that also participated in the Andersen's restatement audit work, if you will.

Q. And that was in the time frame of summer 1998 and the fall of 1998?

A. Correct.

Q. How is it that you came to work on Sunbeam matters? Was there a colleague that asked you to work out on those matters?

A. Really just in the normal course. The engagement senior who was on the job previously on the engagement left the firm and I was assigned just by the normal practice of identifying people and assigning people to engagements.

Q. And to whom did you report at Andersen concerning your work for Sunbeam?

A. Directly to Larry Bornstein.

Q. Indirectly did you report to anyone?

A. Pardon me?

Q. Indirectly did you report to anyone?

A. Indirectly I was kind of accountable to the partners as well which would have been Phil Harlow but most of my day-to-day interaction was with Mr. Bornstein.

Q. Did you have any primary contacts with Sunbeam that you dealt with on a regular basis?

NOT A CERTIFIED COPY

01736 3

A. Primarily dealt with a man by the name of Don -- I can't remember -- Don Jackson who was accounting manager at the time and also dealt quite a bit with John Gluck who was also in control.

Q. In connection with today's deposition, did you review any prior testimony that you've given relating to Sunbeam?

A. I did. I read some testimony and reviewed some documents.

Q. And you gave testimony to the Securities and Exchange Commission; is that correct?

A. Yes.

Q. And you also gave a deposition -- or several days of deposition in various civil litigations; is that correct?

A. Yes.

Q. Did you give any other testimony relating to Sunbeam?

A. No.

Q. And other than any conversations you may have had with Mr. Moscato or family members, have you spoken to anyone about this deposition?

A. No.

Q. When was the last time you had any conversation with Mr. Bornstein?

A. It's been more than two years.

Q. How about Mr. Pruitt, have you had any conversations with him over the past two years?

A. Not related to Sunbeam. I do -- Mr. Pruitt is currently working out of the same office that I work at and we do know each other so we do talk occasionally.

Q. But you haven't talked about Sunbeam in any way?

A. No, no.

Q. Have you had any conversations with Mr. Denkhaus within the last few years?

A. Yes.

Q. Let me narrow it down. Did any of those conversations relate to Sunbeam in any way?

A. No, not that I can recall.

Q. How about Mr. Harlow, have you spoken to him about Sunbeam at any point in the past two years?

A. Not that I can recall. I've spoken to him, I would say, infrequently over the past few years and not about Sunbeam that I can remember at all.

Q. Now, I believe you indicated that you worked on the additional procedures that led to the restatement of Sunbeam's financial statement, is that correct?

A. Yes.

Q. How did you first get involved in working on those additional procedures?

A. I think it just happened naturally. I mean, I

was the senior on the account in 1997 and when the restatement procedures came up in the summer of 1998 and they were looking for people to work on that engagement, I was a logical choice to participate.

Q. When you say "they were looking for people" --

A. "They" meaning the firm.

Q. Any particular person within the firm contact you to ask you to work on those procedures?

A. No, I was assigned to the account as it was so my time was, you know, in large part already assigned to Sunbeam.

Q. Was Sunbeam your most significant client in terms of your work in the 97/98 time frame?

A. In terms of me personally, yes.

Q. How did you go about performing the additional procedures? Strike that. What additional procedures did you perform in connection with the restatement?

MR. MOSCATO: When you say "you," you mean him personally?

MR. JOHNSON: Yes.

MR. MOSCATO: That's kind of a broad question.

MR. JOHNSON: Let's see if he can answer it.

THE WITNESS: I mean, I probably have to go back to the restatement report to refresh my recollection. I know I worked on areas related to international sales that

we were looking at at the time.

I did some work in certain areas of the inventory, going back and looking at the historical accounting for capitalized variances.

A fairly meticulous part of the additional procedure was tracking numerous adjustments that had been identified over a period of time and kind of tracking those on a quarter-by-quarter basis so I was responsible for that part of the work. Offhand, I don't remember what other areas I worked on.

BY MR. JOHNSON:

Q. Did you have any responsibility for interviewing Sunbeam personnel?

A. Yes, I did conduct interviews of some people, that's right.

Q. Do you know who else from Andersen was responsible for conducting interviews?

A. I know Mr. Harlow did some interviews, Mr. Bornstein did some and there was generally, as far as I remember, two of us present at each of the interviews, Mr. Denkhaus did some interviews. I don't know who else. Those are the three I can remember.

Q. What was the purpose of having these interviews?

A. I think just to try to get some information about people's roles, what they might have known about different

NOT A CERTIFIED COPY

events that transpired. It's really information gathering.
Q. Why is it that Andersen determined to conduct the additional procedures in the first place?
MS. BROWN: Objection.
THE WITNESS: I don't know. I didn't make that decision.
BY MR. JOHNSON:
Q. Had you heard anything concerning potential frauds at Andersen prior to the commencement of the additional procedures?
MS. BROWN: Objection.
MR. MOSCATO: I'm sorry, wait. You said -- I think the syntax was a little weird. You said, "Did you hear anything about potential frauds at Andersen." You don't mean Andersen committing fraud?
MR. JOHNSON: Thank you. That's correct.
Q. Have you heard in the media or otherwise any reports of potential fraud occurring at Sunbeam?
A. I mean, I had heard general discussion about, you know, the term "fraud" being used in the context of Sunbeam, but in terms of any specific area or any specific instance where something fraudulent was done, I had no knowledge or had not heard anything.
Q. Did you ever read an article in Barron's in approximately June of 1998 relating to Sunbeam's accounting?

A. I did actually.
Q. Did you read that at approximately the time it was published?
A. Yes.
Q. Did you have any discussions about that article with anyone at Andersen?
A. Yes.
Q. With whom did you have any of those discussions?
A. I can remember having a discussion about that with Mr. Harlow and Mr. Bornstein and, in fact, Mr. Denkhaus as well.
Q. Was that in June of '98?
A. Thereabouts, yes.
Q. And was this a single conversation?
A. It was probably one or two conversations.
Q. And what did each of those individuals say about the article?
A. I don't remember what the specifics were of what was said at this point. You know, we did go through for each of the areas that were identified, see what was in our audit work papers.
Q. Was that article one of the reasons that Arthur Andersen decided to conduct additional procedures?
MS. BROWN: Objection.
THE WITNESS: I don't know the basis for the decision.

BY MR. JOHNSON:
Q. Do you recall any of the Sunbeam employees that you interviewed as part of the additional procedures?
A. I do only because I reviewed some of the documents.
Q. Did you review -- I'm sorry, did you finish your answer?
A. Over the weekend I looked at a few of the notes that I had written so I recall some.
Q. Did you review any of the interview memorandum that you prepared?
A. Yes.
Q. And was Scott Yales one of the persons that you interviewed?
A. Yes.
MR. JOHNSON: Let's mark the interview memorandum. This will be CPH 101. Instead of bringing the entire set down I brought the handful that I'm going to use.
Q. Mr. Pastrana, if you will take a minute to look at that document. I'm going to ask you a handful of questions about it.
A. Okay.
Q. Is this a memorandum that you prepared to the

files dated September 1, 1998?
A. Yes.
Q. And it concerns an interview with Scott Yales?
A. Yes.
Q. And, for the record, Exhibit 101 has the Bates stamp CPH 0062693 through 697. Mr. Pastrana, who is Scott Yales?
A. He, as best I can remember, worked in Sunbeam's planning and financial analysis function.
Q. And was he employed in the Delray Beach office of Sunbeam?
A. Yes.
Q. Why did you determine to interview Mr. Yales as part of the additional procedures?
MR. MOSCATO: Objection.
THE WITNESS: I didn't determine. I mean, he was just one of people I was assigned to interview.
BY MR. JOHNSON:
Q. Someone told you to interview Mr. Yales?
A. Somebody put together a list of who was going to be interviewed and who was going to conduct what interview.
Q. Did you have a role in preparing the list of people to interview?
A. No.
Q. Who prepared that list?

NOT A CERTIFIED COPY

MS. BROWN: Objection.
THE WITNESS: I don't know. At this point I don't remember. I might have been asked questions about who did what function or whatever. I just can't remember the specifics.
BY MR. JOHNSON:
Q. About halfway down the first page of this exhibit there's a sentence fragment that states, "Needed to make numbers." The line starting with --
A. Uh-huh.
Q. What does the "Needed to make numbers" phrase refer to?
A. I think it's this interviewee's sense of the fact that it was very important at this organization that they achieve their financial targets for revenues and income.
Q. Is that the same import of the bullet point under Q4 97, the bullet provides, "In Q4 1997 there was a big push" and "push" is underlined.
A. Yes.
Q. That also signifies a push to make numbers?
A. Yes.
Q. And "numbers" means financial targets?
A. Yes.
Q. Do you recall how long after the interview with Mr. Yales you prepared this memorandum?

A. I don't recall.
Q. Do you know who else was present at that interview, if anyone?
A. I believe Mr. Bornstein was present, and there was always an attorney that was present, too, usually one of the attorneys from Skadden Arms was also there as well.
Q. If you turn to the second page, the first line of text provides "Profit Assurance Plan"?
A. Yes. And incidentally where you are reading, "Profit Assurances," says, "LAB showed the schedule to Skadden." That means Mr. Bornstein.
Q. That's what I was going to ask you. Thank you. The second bullet point under the heading provides, "This is common at all companies but not to the extent that Sunbeam does it."
A. Uh-huh.
Q. What are you referring to there?
MS. BROWN: Objection.
MR. MOSCATO: I object to that. You mean, what was the witness referring to? What was Yales referring to?
MR. JOHNSON: That's exactly right.
MR. MOSCATO: If you remember.
MS. BROWN: I still object.
THE WITNESS: My recollection of this was that the company had a schedule that said, you know, "These are

kind of the goals in a number of areas that we need to achieve in order to make our earnings goals for the year," and Sunbeam had one of those that upper management used to manage the business as well, and I think he was saying, the way I read it now, was that this was common at most companies but, you know, that Sunbeam was fairly aggressive in applying these goals.
BY MR. JOHNSON:
Q. The next bullet point, "Everyone had their," quote, "go gets." Do you know what Mr. Yales is referring to with "go gets"?
A. Everybody had targets that they were responsible for achieving.
Q. And why did you determine that that information from Mr. Yales was something that ought to be noted in the interview memorandum?
A. You know, as the interview progressed, I pretty much noted everything he said so I don't think I weeded stuff out. I think this was everything that was discussed.
Q. So it was Mr. Yales who determined who said that Sunbeam did it -- had profit sharing plans to a greater extent than other companies?
A. Yes, that was his statement, yes, sir.
MS. BROWN: Objection for the record.
MR. MOSCATO: Was there confusion about that in

any of the prior things? My understanding is all of this is Yales.
MR. JOHNSON: I agree. I don't think there was confusion.
BY MR. JOHNSON:
Q. Did you attribute any significance to Mr. Yales' remark about the extent to which Sunbeam has profit sharing plans?
A. I don't recall if I did or I didn't. I just made a note of it.
Q. On that same page, there's a sentence that says, "Certain schedules were not to be shown to anybody." What schedules is Mr. Yales referring to there?
A. I mean, I really don't know. I know that Mr. Bornstein, as I summarized here, showed him some schedules. I don't know if he was referring specifically to those schedules or if there were other internal management reports that they had been instructed not to share with people outside the company.
Q. And did Mr. Yales indicate who was instructing him not to share those schedules with people outside the company?
MS. BROWN: Objection.
THE WITNESS: I don't recall at this point. I didn't include it in the memo.

NOT A CERTIFIED COPY

BY MR. JOHNSON:
Q. The bullet that provides, "Scott was not the keeper of such schedules," do you have any idea who the keeper was at that time?
A. I don't know. I know that Scott reported to a couple of women at the company, Deb McDonald, and I don't remember their title exactly. And Deb's predecessor was this woman, Lisa Dalberth. I don't know if they were the keeper but that's who he reported to.
Q. If you look at the next bullet point, it provides, "Lisa was the keeper at that time"?
A. Oh, okay.
Q. That's Lisa Dalberth?
A. I stopped at the first.
Q. I asked -- focused you on one bit of --
A. Sorry about that. Yes, that refers to Lisa Dalberth.
Q. And at that time is that in the first quarter or is that as of September of 1998?
A. This would have been prior to September of 1998. I never really knew who Lisa was. I don't remember ever meeting her. I do remember her successor Deb, but this Lisa Dalberth, I never met her. She left the company sometime prior. I don't know if it was in 1997 or in 1998. But by September of 1998, I don't think Ms. Dalberth was there.

Q. The third bullet point refers to a schedule that Mr. Bornstein showed to Mr. Yales during this interview; do you see that?
A. Uh-huh.
Q. Do you know where Mr. Bornstein received that schedule?
A. I don't know. I mean, Mr. Bornstein spent, I don't know, several days or longer going through a series of documents that had been gathered from the company and I know he found a number of schedules in that process of going through those documents.
Q. So you don't know when Mr. Bornstein first received a copy of that schedule?
A. I don't.
Q. The last bullet point under that heading provides, "Bob was aware of all this push." Is that Bob Gluck?
A. Yes.
Q. And the "push" again is a push to make numbers?
A. Right.
Q. Under the heading "Troublesome Items," there's a bullet that provides, "Sales waterfall items," what does that refer to?
A. Those are deductions from gross revenue to arrive at the net revenue and those would have been -- I'd need to look at a paper to tell you exactly but, for example, cooperative advertising, discounts that are being paid to the client or an allowance for returns or something. Items that are deducted from the gross amount of revenues.
Q. You also provide under that section that "Lower returns is a troublesome item." Why is that troubling?
MS. BROWN: Objection.
THE WITNESS: I think properly -- probably better stated would have been "returns," so achieving a lower returns is what they are trying to do.
BY MR. JOHNSON:
Q. Now, did Mr. Yales identify these items as troubling or are these items that you determined to be troubling?
A. No, all this came from Mr. Yales.
Q. So Mr. Yales indicated that lower returns were a troubling item?
MS. BROWN: Objection.
THE WITNESS: I think Mr. Yales indicated that these were some of the areas of this plan that we were talking about that seemed to make it challenging to achieve the plan or these were some of the more challenging components of that plan.
BY MR. JOHNSON:
Q. If you flip over to Page 3 of that exhibit which

has the Bates stamp CPH 62695, under the heading "Gross Sales," if you would read Number 3 for me.
A. "Sales were being pulled forward" --
MR. MOSCATO: Wait, wait. You want him to read it out loud?
MR. JOHNSON: Either way.
THE WITNESS: I beg your pardon. I'm sorry.
MR. MOSCATO: Read it to yourself.
THE WITNESS: Yes, thanks. Okay.
BY MR. JOHNSON:
Q. Mr. Yales indicated to you that Sunbeam was pulling forward sales. Is that what this sentence indicates?
A. Correct.
Q. Mr. Yales stated that "The VPs and GMs were uncomfortable with the sales targets"?
MS. BROWN: Object.
BY MR. JOHNSON:
Q. Is that correct?
A. Correct.
Q. Do you know how many VPs and GMs Mr. Yales was referring to there?
A. No, I don't.
Q. In that same numbered paragraph there's a reference to -- and it's italicized, "the untenability" of

NOT A CERTIFIED COPY

11367

that. What is the untenability referring to?
A. Honestly, I don't know right now.
Q. Was that a phrase or a word that Mr. Yales used?
A. I believe so, yes.
Q. The same numbered paragraph, "As an example, pulling Q1, Q2 '98 sales into Q4," is that Q4 of 1997?
A. Yes.
MS. BROWN: Just for the record, I object to this entire line of questioning as Mr. Yales has already been deposed himself.
MR. MOSCATO: He has been deposed in this case?
MS. BROWN: Yes.
BY MR. JOHNSON:
Q. Number 6 under that heading provides, "Everyone knew that in practice the no-returns policy was," quote, "total BS" and "total BS," that's Mr. Yales' phrase for the no-returns policy?
A. I believe so.
Q. Do you have an understanding of why Mr. Yales stated that the no-returns policy was total BS?
MS. BROWN: Objection.
THE WITNESS: Yes, I don't know what his frame of mind was.
BY MR. JOHNSON:
Q. Number 5 provides, "Scott was aware of a,"

underlined, "stated no-returns policy." Why did you underline "stated" in this memo?
MR. MOSCATO: If you remember.
THE WITNESS: I don't remember. I think what I'm saying in the memo or what Mr. Yales is saying that there was a no-return policy that was communicated within the organization. In other interviews that came out, someone had said that similar policies had been tried in the past without success so it seems like he doubted whether it would stick.
BY MR. JOHNSON:
Q. In other words, that Sunbeam was not following the stated policy?
MS. BROWN: Objection.
MR. MOSCATO: I object to that.
THE WITNESS: I don't think that's what this means. I think what this means is that the policy was being followed. I think there was question as to how long it would continue to be followed for.
BY MR. JOHNSON:
Q. So the reference to the no-returns policy as being total BS was a matter of how long the policy could remain in force?
MS. BROWN: Objection.
THE WITNESS: I mean, I understood it to mean

that they didn't think that could apply permanently.
BY MR. JOHNSON:
Q. In the middle of this page there's a text box that provides in quotes, "It was known among planning group that restructuring reserves were being used to benefit our earnings." Who's the planning group that Mr. Yales referred to there?
MS. BROWN: Objection.
THE WITNESS: Yes. I mean, I think this is just a group that he was a part of. He worked for Deb McDonald and Lisa Dalberth and whoever else was in that department that they oversaw.
BY MR. JOHNSON:
Q. The last line on this page provides, "By early February, it was apparent that Sunbeam would not make Q1 numbers." That's the Q1 '98 numbers?
A. Correct.
Q. And then on the next page of this memorandum, CPH 62696, Number 6 on that page refers -- states, "The schedule was 'absolutely' a reach." Do you know what schedule Mr. Yales was referring to there?
MR. MOSCATO: You're looking at Number 6?
MR. JOHNSON: Yes.
THE WITNESS: I don't recall Number 5 refers to a schedule for the first quarter forecast. I would imagine

it's that schedule that's being referred to.
BY MR. JOHNSON:
Q. Do you know approximately how many people worked in Scott Yales' department at Sunbeam?
A. I don't remember.
Q. And then the last numbered paragraph on this page under the heading "First and Second Quarter 1998," if you would just read that to yourself.
A. (Reading)
Q. The text J/E; is that journal entries?
A. Yes.
Q. Do you know what journal entries were made for profit protection?
MS. BROWN: Objection.
THE WITNESS: I don't know.
BY MR. JOHNSON:
Q. Do you know what this is referring to, this paragraph?
A. I mean, it sounds like he's saying that some entries were recorded to improve the profits of the company, but it's just a summary of what he said. I don't know specifically why entries are being referred to.
Q. Do you know the magnitude of the entries?
A. I don't, no.
Q. Do you know who determined to reverse those

NOT A CERTIFIED COPY

entries in March of 1998?
MS. BROWN: Objection.
THE WITNESS: No.
BY MR. JOHNSON:
Q. Do you know when in March of 1998 Sunbeam determined that it would not make the numbers for Q1?
A. I don't know that either.
Q. You interviewed Mr. Kaiser as well; is that correct?
A. Yes.
MR. JOHNSON: Let's mark this as CPH 102.
Q. Mr. Pastrana, could you identify Exhibit 102 for the record?
A. This is a memorandum I prepared of a July 21st interview with Kyle Kaiser.
Q. And Kyle Kaiser was a Sunbeam employee?
A. Yes, he was the director of customer services.
Q. Was he in Delray Beach?
A. No, he worked in Hattisburg, Mississippi.
Q. If you flip to the third page of this Bates stamp, CPH 62690, there's a section called bill and hold. Can you tell us what bill and hold refers to?
A. Bill and hold in an accounting transaction refers to a revenue transaction where the seller records a sale and bills the customer but the goods haven't been physically

shipped to the customers -- directly to the customer's location.
Q. They're shipped to a warehouse or third party?
A. Could be to a warehouse, third party. Could be segregated within the seller's own warehouse for that customer.
Q. There's a sentence under the section that states, "Gluck was being forced. Was not a proponent of it." Did Mr. Kaiser indicate who was forcing Gluck to presumably do bill and hold sales?
MS. BROWN: Objection.
THE WITNESS: I don't recall if it's not here. I don't remember.
BY MR. JOHNSON:
Q. And just above that it states, "Decision to do bill and hold was executed abruptly at the end of fourth quarter, 1997." Did you know that Sunbeam was engaging in bill and hold sales at the end of the fourth quarter, 1997?
A. We did.
Q. There's a reference to "Lack of procedures here." Do you know what that refers to?
A. Yes, I believe that prior to the fourth quarter of 1997 the company had not done bill and hold sale transactions before and did not have formal procedures in place for how to handle that type of transaction.

Q. Did you ever gain an understanding as to why the company determined to begin engaging in bill and hold sales at that time?
A. I did get an understanding or at least I thought I understood what the reason for it was.
Q. And what were those reasons?
A. The way I understood it --
MR. MOSCATO: Go ahead. I'm just making myself comfortable because it's probably going to be a long explanation but go ahead.
THE WITNESS: Want me to keep it short?
MR. JOHNSON: Answer the question.
THE WITNESS: My understanding of it was that in the 1997 season for selling grills, the company missed an opportunity to fill more customer orders because there were certain limitations in terms of the capacity of grills that its plant could produce, so the idea for the 1998 selling season was to start producing the grills earlier, start selling the grills earlier, and hopefully that way have time to produce ultimately a higher number -- larger number of grills and sell more grills.
And then what happened was at the time that the company was ready to start selling its grills, that it produced enough grills that the customers didn't have available space at that time for the grills, so the decision

was made that the customers would take the inventory -- would go ahead and purchase the inventory but that it would be placed in a warehouse until the customers were ready to take delivery.
BY MR. JOHNSON:
Q. Is the early-buy program at Sunbeam the same as bill and hold?
A. I understood the two to be related but not necessarily the same thing.
Q. So early buy, a customer could, in fact, take possession of the product?
A. Yes.
Q. And bill and hold was not limited to grills, was it?
A. As far as I knew at that time, it was limited to grills. As far as I knew at that time. I think I learned subsequently, maybe when we were doing the restatement work, that it might have been applied on a limited basis to other types of goods.
Q. Let's flip to the next page of Exhibit 102 for me. That's got the Bates stamp CPH 62691. There's a heading, "Pressure to Make Sales Numbers at End of Q1 98"; do you see that?
A. Yes.
Q. One of the provisions of that heading states,

NOT A CERTIFIED COPY

01379

"They (top management) were planning to close the company. Anyone hired after October of 1996 were told this is an 18-month deal and when we sell, you will be fully vested." What is Mr. Kaiser referring to there?

MS. BROWN: Objection.

THE WITNESS: I think he's referring to a knowledge that he had, that the intention of senior management was to eventually sell the company.

BY MR. JOHNSON:

Q. "This is an 18-month deal," does that refer to how long the business model needed to be sustained?

MS. BROWN: Objection.

THE WITNESS: Yes, I understood it to mean that, you know, after kind of Dunlap and the people he brought in got involved that the goal was to restructure the company and sell it within 18 months.

BY MR. JOHNSON:

Q. When did you first hear that Sunbeam might be sold?

A. I don't recall.

Q. I think you indicated you began working in earnest around October of '97?

A. Yes.

Q. Was the information that Sunbeam might be sold known to you at that time?

A. Not that I can remember.

Q. The next provision under that heading states, "Kyle: 'Nobody would put up with his bull if not for the options.'" Do you have any idea what Mr. Kaiser was referring to there?

A. I think he meant that he was under a lot of pressure to do whatever his role was.

Q. And what are the options referred to there?

A. Employee stock options.

Q. If you would flip over to -- I'm sorry. That's all I have on this exhibit.

And Mr. Bloomfield is also one of the employees that you interviewed at Sunbeam during the initial proceedings?

A. Yes.

MR. JOHNSON: Let's mark this Exhibit 103.

Q. Mr. Pastrana, can you identify Exhibit 103 for the record?

A. This is a memorandum I prepared of an interview with Bill Bloomfield.

Q. And you interviewed Mr. Bloomfield the same day you interviewed Mr. Kaiser?

A. Yes.

Q. I take it, then, Mr. Bloomfield is in Mississippi as well?

A. I think we interviewed Mr. Bloomfield in Mississippi. I'm not sure he was actually based in Mississippi but I don't recall.

Q. Were all of your interviews for the additional procedures conducted in person?

A. No, one or two of them might have been telephonic.

Q. Do you remember which ones might have been telephonic?

A. I know that the interview was an interview of Lisa Dalberth that was telephonic. I don't remember which other ones were.

MR. MOSCATO: If it was telephonic, would you have said it was telephonic in the interview memo?

THE WITNESS: You know, I think I did in the Lisa Dalberth memo. I can't say I necessarily would have done that. I should have but I don't know that I did.

BY MR. JOHNSON:

Q. Turn to the second page of this exhibit, CPH 103, the fourth line down, fourth text section down states, "Don Uzzi's philosophy - load the pipeline and we'll deal with the customers later." What is Mr. Bloomfield referring to there?

MS. BROWN: Objection.

THE WITNESS: Just in the context in reading it

now, I mean, I understand it to mean that they were taking sales that -- orders that might have been first quarter sales and pulling them forward and perhaps shipping them to customers in advance of the customers' desired date for the merchandise. And I think what this statement is referring to is the fact that these employees were given instructions to just go ahead and ship that merchandise and then they will deal with the customer complaints on -- you know, when the merchandise comes back or when the customers complain.

BY MR. JOHNSON:

Q. So the pipeline is the shipping --

A. The distribution channel, distribution of goods.

Q. So is load the pipeline, is that the same thing as stuffing the channel?

MS. BROWN: Objection.

THE WITNESS: I think --

MR. MOSCATO: I'm sorry, I'm a little confused. Are you asking him whether it's the same in his mind, whether it's the same in Mr. Bloomfield's mind? I'm not trying to be a pain. It's getting a little fuzzy as to what you're asking.

MR. JOHNSON: That's a fair statement.

Q. Did you understand Mr. Bloomfield to be indicating that Sunbeam was stuffing the channel?

MS. BROWN: Objection.

NOT A CERTIFIED COPY

017370

THE WITNESS: I'm not sure that I necessarily correlated this with stuffing the channel. I mean, I think -- I suppose you could interpret those to mean similar things. I really don't know.
BY MR. JOHNSON:
Q. But you did understand Mr. Bloomfield to be indicating that Sunbeam was shipping product in the fourth quarter despite the customers hadn't ordered the product?
A. Correct. Or at least if customers had ordered the product in advance of the targeted delivery date, that the customer had specified.
Q. About two thirds of the way down the page there's a provision that provides, quote, "Each quarter it went deeper. Everyone was telling our operating committee this has to stop. Lee Griffith said this can't go on." What was Mr. Bloomfield referring to there?
A. I believe this was just the pressure to increase sales at the end of each quarter and in particular to -- you know, to make deliveries in advance of the dates that customers requested. That's what I understood it to mean. So they did some on the fourth quarter and then they had to go a little bit more into the first quarter of '98 and, you know, kind of progressed.
Q. And you understood Mr. Bloomfield to be indicating that the purpose of shipping prior to a

customer's desire ship date was to recognize revenue earlier than what Sunbeam otherwise would be able to do?
MS. BROWN: Objection.
THE WITNESS: It was to recognize revenue on product that otherwise would have been revenue on the subsequent quarter, would have been delivered in a subsequent quarter.
BY MR. JOHNSON:
Q. So it's accelerating recognition of revenue?
A. Yes.
Q. And the last line on this page indicates, "Every quarter there was a significant push to pull forward sales." That's a reference to accelerating the recognition of income?
A. That's right.
Q. If you would be good enough to flip to the second to the last page of Exhibit 103, CPH 62676, under the heading "The Neosha bill and hold"; do you see that?
A. Uh-huh.
Q. About two thirds of the way down that section there's a sentence that provides, "Gluck said AA Partners had a problem with B&H and the SEC wasn't going to like it"; do you see that sentence?
A. Yes.
Q. Was that consistent with your understanding of

Andersen's reaction to bill and hold?
MS. BROWN: Objection.
THE WITNESS: You know, I don't recall. I can remember, when we first learned of the bill and hold, there was concern about it because it's an unusual type of revenue arrangement. I don't recall ever necessarily hearing we had a problem with it provided they had the appropriate documentation to support the transaction.
BY MR. JOHNSON:
Q. Did you ever hear from anyone whether the SEC wasn't going to like Sunbeam's bill and hold practices?
MR. MOSCATO: You mean, this is back when they first found out about it? Is this what you are talking about?
MR. JOHNSON: Right.
MR. MOSCATO: So back in -- you know, when you are doing the year-end audit, use that as the time frame for his question, if that helps.
THE WITNESS: I don't remember anybody -- could you repeat the question just to make sure?
BY MR. JOHNSON:
Q. And let me put a time frame just so we are all clear as to when you heard this. When Andersen first learned that Sunbeam was engaging in bill and hold sales, did you have any conversations with anyone to the effect

that the SEC would be disappointed or troubled in any way about those sales?
A. No, not at that time.
Q. Flip to the next page which is the last page of that memo. At the top it provides, "As early as September 1997 the sales org knew that the stores were stuffed with product, e.g., Wal-Mart had 42 weeks of product. Talked to Chuck Myers." To your knowledge, did anyone at Andersen talk to Chuck Myers about this issue?
A. I didn't. I don't know if anyone did.
Q. Do you know why Mr. Bloomfield is conveying this information to you?
A. I think just in response to our questions, he was giving us his impressions of what he knew.
Q. Do you know how many people were in the sales org that Mr. Bloomfield is referring to there?
A. I don't know.
Q. By the way, did Mr. Bloomfield ever indicate to you that anyone from Morgan Stanley had ever attempted to contact him?
A. No.
Q. How about Mr. Kaiser, did Mr. Kaiser ever tell you that Morgan Stanley attempted to contact him at any point?
A. No.

NOT A CERTIFIED COPY

Q. Same question for Mr. Yales, did Mr. Yales ever tell that you Morgan Stanley had attempted to contact him at any point?
A. No.
Q. Did you interview Jim Job?
A. Yes.
Q. Is that Jim Job or Job?
A. Job.
Q. A difficult name, I'm sure.
MR. JOHNSON: Let's mark the Job interview as CPH 104.
Q. Mr. Pastrana, will you identify CPH 104 for the record?
A. This is a memorandum I prepared summarizing an interview with Jim Job on July 20 of 1998.
Q. And the interview -- the memo is dated August 30, 1998?
A. That's right.
Q. Did you keep your notes from any of these interviews, by the way?
A. No, I did not.
Q. The last bit of text on this memo, which is the second page, is in quotes and it states, "I guess they didn't want to receive the goods because they wanted to make the first quarter look as good as possible." What is

Mr. Job referring to there?
A. I think he's talking about the fact that they were turning away -- his impressions about the company turning away customer merchandise returns at the return locations.
Q. So customer sent goods back on the first quarter of 1998 but the company wouldn't accept them; is that correct?
A. That's correct.
Q. Did you have any understanding as to why the company wanted to make the first quarter look as good as possible?
MS. BROWN: Objection.
MR. MOSCATO: I object to that.
THE WITNESS: Other than trying to achieve guidance that they had given, the market, I didn't know.
BY MR. JOHNSON:
Q. Do I understand that when unauthorized returns were delivered to Mississippi, they sat in trucks until some point and time?
A. That was my understanding.
Q. And Sunbeam paid the charges associated with having the trailers stored?
MS. BROWN: Objection.
THE WITNESS: That was my understanding obtained

as part of these interviews that I did.
BY MR. JOHNSON:
Q. Do you know what volume of returns Mr. Job was talking about?
A. I don't know.
Q. Toward the bottom of the first page he refers to 75 to 100 trucks. Do you have any idea what volume of sales would be contained within 75 to 100 trucks?
MS. BROWN: Objection.
THE WITNESS: I have no idea.
BY MR. JOHNSON:
Q. Would it be several million dollars?
MR. MOSCATO: I object. Doesn't it kind of depend what's in the trucks?
MR. JOHNSON: Within reason, sure.
THE WITNESS: Without knowing how full the trucks are, what the nature of the merchandise that's in there, and even at this point I wouldn't know what the value of the truck is of any kind of merchandise.
BY MR. JOHNSON:
Q. Did you find this information concerning returns significant?
MS. BROWN: Objection.
THE WITNESS: I mean, the information gleamed in this particular interview, I don't remember this being a

very helpful interview, but in general the information that there were -- you know, learned subsequently that there were trucks filled with merchandise that customers were attempting to return, that the company was not accepting, yes, I mean, that was certainly noteworthy from our standpoint.
BY MR. JOHNSON:
Q. Did Mr. Job ever indicate in any way that Morgan Stanley had attempted to contact him?
A. No.
Q. You interviewed Mr. Jeffcoat as well?
A. Yes.
MR. JOHNSON: Exhibit 105.
Q. Exhibit 105, Mr. Pastrana, appears to consist of two memoranda.
A. Yes.
Q. One you authored and one Mr. Harlow authored?
A. Uh-huh.
Q. Why is it that there are two memoranda?
A. I don't know. I was not aware of the one authored by Mr. Harlow or, if I was aware of it, I don't remember being aware of it.
Q. Can you tell where these memoranda concern the same interview?
A. Yes, I think it's the same interview.

NOT A CERTIFIED COPY

01737

Q. Did Mr. Jeffcoat ever tell you that Morgan Stanley had attempted to contact him?
A. No.
Q. Mr. Jeffcoat refers, according to this memorandum, to the pulling forward of sales?
A. Where is that?
Q. For example, on Page 1 at 9/97?
A. Uh-huh.
Q. "Was aware that orders were pulled forward"?
A. Yes.
Q. What is the "pull forward of sales" referred to there?
MS. BROWN: Objection.
THE WITNESS: This is again accelerating delivery dates on orders that had been placed by customers. Instead of delivering them in the fourth quarter of '97, deliver the order in the third quarter of '97.
BY MR. JOHNSON:
Q. Now, I believe you told me already but I don't have a good note on this, what particular aspects of Sunbeam's finances were you focused on in connection with the 1997 audit?
A. Say that again.
MR. MOSCATO: He didn't answer that.
///

BY MR. JOHNSON:
Q. Were there any particular aspects of Sunbeam's financial statements that you focused on in connection with the 1997 audit?
MR. MOSCATO: The original audit.
THE WITNESS: Yeah. You know, without going back, it's hard to give you a complete list. I did work in a number of different areas. I may not have done all the work in a given area that I would name but, for example, accounts receivable, I did some of the work related to accounts receivable. I did some work related to inventory. I can't remember doing too much related to inventory. Some of the accrued liabilities like the accrual for returns and warranty, cooperative advertising, credits due to customers, the overall analytical review.
BY MR. JOHNSON:
Q. Now, you say accounts receivable, did that include examination of bill and hold practices?
A. Examination of some of the documents related to the bill and hold transactions, yes.
Q. And are you familiar with the EPI transaction?
A. I am. It's been a while since I've looked at information, but I do recall the EPI transaction.
Q. And you looked at that in connection with the 1997 audit?

A. I think so. I'd have to look at some documents.
Q. Let me give you one that might help you.
MR. JOHNSON: This will be CPH 106.
Q. Mr. Pastrana, could you identify Exhibit CPH 106 for us?
A. This is a memo I authored entitled "Review of significant sales transactions near year end."
Q. And this is one of the documents that you reviewed this past weekend?
A. No.
Q. Take a minute to review it, if you would please.
A. (Reading) Okay.
Q. The subject line of this memorandum states, "Review of significant sales transactions near year end." Why were you looking at transactions near year end?
A. I mean, it's a standard audit procedure that you perform to look for any kind of unusual large transactions that might take place near the end of a period to search for cutoff issues, issues of sales occurring in one period that maybe should have been sales of subsequent period.
Q. And there are three categories of transactions listed in this memorandum; is that correct?
A. Correct.
Q. To whom was this memorandum circulated, Exhibit 106?

A. This memorandum was placed in the audit files, the work papers that would have been review by Mr. Bornstein and Mr. Harlow. Let me say, at minimum it would have been reviewed by Mr. Bornstein. It's possible Mr. Harlow might have reviewed it.
Q. The memorandum indicates that Andersen proposed an adjustment with respect to the EPI transactions; is that correct?
A. Yes.
Q. Did Sunbeam accept that adjustment?
A. I think the way I recall it, they decided not to record the adjustment. They waived the adjustment.
Q. And the adjustment was for three million dollars; is that correct?
A. Correct.
Q. And with respect to the Encore, Andersen proposed an adjustment on that transaction as well?
A. Correct.
Q. And Sunbeam waived that proposed adjustment?
A. Correct.
Q. To your knowledge, did anyone from Morgan Stanley ever ask anyone at Andersen about any waived or past adjustments?
A. Not to my knowledge.
Q. Does Sunbeam have access to your work papers

NOT A CERTIFIED COPY

during the normal course of an audit?
A. No.
Q. In the first section of this memorandum concerning bill and hold sales, you distinguish, it appears, between early buy sales and bill and hold sales?
A. Uh-huh.
Q. Can you tell us again what the distinction between those two type of sales may be?
A. Well, early buy is a program -- you know, could be different at different companies. I mean, at Sunbeam, the way I understand it, was a program to encourage customers to purchase their grills early in the season where Sunbeam would offer the company perhaps an incentive in the form of a discount and also allow them to have extended credit terms, so instead of paying in 30 days, maybe pay in 90 days. Something like that.
The bill on hold was a different arrangement although the two may have happened often in the same transaction, but bill and hold was different where the customer wanted to take advantage of the early-buy program but perhaps didn't have the warehousing space, and then the parties reached agreement to go ahead and sell/purchase the goods on a bill and hold basis.
Q. The first paragraph under the bill and hold states, "Pursuant to SEC regulations, said sales are

permissible only under a handful of criteria." The last of those listed in the memorandum is that the buyer has a business reason placing the order well in advance of his needs. Would to obtain a price discount be a legitimate business reason for placing --
A. I believe that was the research and the conclusion we reached at the time. I think that's right.
Q. Were you involved in the confirmation process with respect to the bill and hold sales?
A. Yes.
Q. Did you have any in-person or telephonic conversations with any customers relating to the bill and hold sales?
A. I did not.
Q. Do you know whether anyone at Andersen did have those calls?
A. I am aware that Mr. Harlow had some discussions with some of the customers.
Q. Your involvement consisted of mailing confirmation requests?
A. Correct.
MR. MOSCATO: Was the question that his only involvement was mailing or was that among his activities?
MR. JOHNSON: The question wasn't specific. Thank you.

Q. Did you have any other duties with respect to confirming the bill and hold sales?
A. Well, I mean, we mailed out the letters, followed up pretty much on a daily basis to see if we had gotten the letters back. I reconciled the responses that came back in those letters to the company's accounting records. I think I prepared a summary of the results of the confirmation requests. And I might have also done some research to determine exactly what conditions needed to be satisfied and needed to be confirmed with the third parties in order to have a valid bill and hold sale.
Q. I believe you stated earlier that bill and hold sales were unusual in your experience?
A. Well, I had never had experience with them before and I knew it wasn't a common sales practice.
Q. Did that, the fact that Sunbeam was engaging in bill and hold sales, cause Andersen to bring a heightened skepticism to its auto work?
A. Yes, I believe so.
Q. How about the EPI transaction, did that raise any eyebrows, so to speak, at Andersen?
MR. MOSCATO: Objection. You don't have to adopt his terminology, Dennis, to answer that question.
THE WITNESS: I mean, I think it certainly prompted a response. I mean, The EPI arrangement was a

little bit, again, unusual, involved entering into a contract with this company, EPI. We reviewed the contract and then I know that Mr. Bornstein and Mr. Harlow had specific discussions with members of senior management about that transaction and the existence of any other transactions that might have similar characteristics. That's what I know about it.
BY MR. JOHNSON:
Q. With respect to these proposed adjustments, are you aware of any conversations between Andersen personnel and Sunbeam personnel with respect to whether these adjustments should be made?
A. I didn't participate in any of those discussions. I know that those discussions were had because we summarized our adjustments on a list and then proposed them to senior management.
Q. Do you know who was involved in those discussions?
A. I don't know. It would be either Mr. Bornstein or Mr. Harlow or both.
Q. How about on the Sunbeam side?
A. You know, again I don't know. I mean, at minimum it may have been communicated to Mr. Kersh and I would think Al Dunlap as well.
Q. Was there anything about the management style or

NOT A CERTIFIED COPY

culture at Sunbeam that caused Andersen to bring a heightened skepticism to the audit?

MS. BROWN: Objection.

THE WITNESS: You know, in the role that I was in and what I was doing, my role at the job at the time, I don't remember anything out of the ordinary in the conduct of the 1997 audit.

You know, I knew that the company had undertaken a fairly aggressive restructuring plan and just by "aggressive," I mean involving a substantial amount of change in terms of closing locations, selling of furniture division, reducing employees and things of that sort that I knew certainly impacted the way we designed our audit but to say that it resulted in heightened skepticism or anything of that sort, I think it impacted the way we designed our audit plan.

MR. MOSCATO: Dennis, if there comes a time you want a break, just say so.

MR. JOHNSON: The same goes for you, Mike.

MR. MOSCATO: I know that. I can speak for myself. I'm comfortable. I just want to make sure Dennis is comfortable.

MR. JOHNSON: Actually a few more minutes on this topic and I will propose one myself.

Q. During the course of any of your audits -- excuse

me. During the course of the your 1997 audit, did you ever receive any information from Sunbeam employees as to Chainsaw Al's management tactics?

MS. BROWN: Objection.

THE WITNESS: No.

BY MR. JOHNSON:

Q. Did you hear during the 1997 audit that it was a very high pressure environment?

A. There were certainly indications that there was considerable amount of pressure but, you know, honestly, my experience with other companies, there was also pressure to meet earnings, to achieve goals every year and things of this sort so probably at my level of experience, I wouldn't have thought that was necessarily unusual or strange.

Q. Did you ever get the sense that anyone at Sunbeam was uncomfortable speaking with you during the 1997 audit?

A. No.

Q. So, as far as you knew, during that audit employees were available to speak with you and were candid in giving you information?

MR. MOSCATO: I object. I mean, you're asking him what he was thinking at the time of the audit, right?

MR. JOHNSON: Correct.

Q. As far as you knew --

MR. MOSCATO: You have to put yourself back to

the time frame that you were conducting the audit and answer accordingly.

THE WITNESS: At the time I was conducting the audit, I don't remember ever having a problem meeting with someone I wanted to meet with. I wouldn't go knock on Al Dunlap's door to ask him a question about something, but the people were available.

BY MR. JOHNSON:

Q. Were you aware during the 1997 audit of the company's financial forecast?

A. You know, in our audit and our work papers we probably have a forecast or a budget for the following year which we would typically look at. I don't recall being aware, at the time that I was actually conducting the audit, of what that budgeted forecast was.

Q. So you didn't have a sense of whether it was a very aggressive forecast or not?

A. For the following year, no. I just didn't have that sense.

Q. Auditors look retrospectively; is that correct?

A. Yes, we are kind of stuck in the past.

Q. In connection with the '97 audit, did you become aware at any point during that audit that there was a possibility of Sunbeam being sold to another company?

A. What was the time frame again?

Q. At any point during the 1997 audit.

A. You've actually asked me that question before and I said no. I think there was some discussion late in the year. Maybe in December I heard some employees saying something to the effect that management was trying to sell the company, but I can't really state what the timing was of when I learned that idea.

Q. Would that cause you to bring any type of heightened skepticism to the audit?

A. I don't think so. I mean, I think that our plan was based on our understanding of the company and what had transpired in 1997. I'm not sure that -- and I think it was responsive to what we identified as being the audit risk irrespective of what the plan was to sell the company or not. I don't think so.

Q. One more question on this Exhibit 106. What is the scope of the adjustment that was proposed on the Encore transaction?

A. When you say what is the scope --

Q. I guess the accountant's way of putting it I think is what would be the net effect of that adjustment?

A. It seems it would be $500,000.

MR. JOHNSON: Do you want to take a short break or do you want to keep going?

MR. MOSCATO: Sure.

NOT A CERTIFIED COPY

THE WITNESS: Whatever you guys want.
MR. MOSCATO: Let's take a break.
THE VIDEOGRAPHER: We are going off the video record. The time is 10:37.
(Recess noted: 10:37 a.m. to 10:49 a.m.)
THE VIDEOGRAPHER: We're back on the record. The time is 10:49.
BY MR. JOHNSON:
Q. Mr. Pastrana, during the first quarter of 1998 did you review any of Sunbeam's interim sale results for the first quarter of 1998?
A. Yes.
Q. How is it that you came to do that?
A. Sometime in the first quarter of 1998 the company decided to purchase several companies of which I think Coleman was the most significant, and in order to finance that purchase they were going to be issuing some debt that was going to -- and the document to sell the debt was going to include the financial statements, that Arthur Andersen had authored it. So, as a matter of policy or practice, we performed what's called a post-audit review where we reviewed the results of the company subsequent to the date of the audited financial statements and it was in connection with that process.
Q. Did anyone in particular at Arthur Andersen

direct you to begin those post audit procedures?
A. Sure, it would have been Larry Bornstein.
Q. Do you recall approximately when he asked you to start that work?
A. I really don't remember what the time frame was. It would have been February, March, something like that.
Q. How did you go about getting the financial information that you needed to conduct those post-audit procedures?
A. We put together a list usually of the things we need and give it to someone at the company.
Q. And who was your contact person at Sunbeam in connection with those procedures?
A. It would have been either Bob Gluck or Don Jackson.
Q. And one of the things you asked for is sales, current sales figures?
A. Right.
MS. BROWN: Object.
THE WITNESS: Yes, revenue. One of the things we would have asked for, if I can back up, would have been the income statement for January and February which would have contained sales and we have may have requested more information with regard to sales.
///

BY MR. JOHNSON:
Q. Did Sunbeam provide that information to you?
A. Yes.
MR. JOHNSON: Let's mark this as Exhibit 107, I guess it is.
Q. Mr. Pastrana, giving you a document which has been marked as CPH 107, Bates stamp 0013023 through 027, can you identify that document for the record?
A. This is the schedule which shows comparative income statements for Sunbeam comparing the period 1998 to the period 1997 and contains some notation of explanation of reasons for changes from one period to the other in certain amounts, certain line items.
Q. And on the first page of the exhibit on the upper right corner there's a notation "DP 3/98." Does that refer to you, Dennis Pastrana?
A. Yes.
Q. Are those your handwritten notes on the second page of the exhibit?
A. Yes.
Q. Can you recall more specifically whether it was Mr. Jackson or Mr. Gluck who provided you this detailed income statement?
A. I can't tell from here. I can't remember.
Q. And can you tell from this document when it was

provided to you?
A. It looks like I got it on or about March 5th of '98. I think it says '97 but it should say '98.
Q. You are looking at the first page of the exhibit?
A. I'm looking at the first page. I'm just guessing that that's -- it says R35. Should be '98 again so I assume that's approximately the date it was done.
Q. R means received?
A. R typically stands for review. This wasn't really a review but the post-report review that we were doing in early March.
Q. And this detailed income statement provides that for January of '97 as compared for January of '98, sales were down 43 -- approximately $44 million, am I reading this correctly?
A. Yes.
Q. And for the period January 1998, Sunbeam was showing an operating loss of over $11 million; is that right?
A. Correct. Well, at the operating profit line, I think is where you are looking.
Q. Right.
A. Correct.
Q. And the net loss for the period January 1998 was nine and half million dollars approximately?

NOT A CERTIFIED COPY

A. Correct.
Q. Did you share this income statement with anyone at Andersen?
A. Well, I placed it in the work papers and it was reviewed.
Q. Did you have any discussions with anyone at Andersen about these figures?
A. I may have. I don't remember right now the specifics of any discussions.
Q. Your handwritten notes, Note A -- I think I can read your writing, but if you could read it for the record, that would be great.
A. "Decrease mainly due to impact of fourth quarter early buy grill sales of approximately 50 million. In prior year, these sales occurred in the first quarter."
Q. And Note A on the Income Statement appears on the gross trade sales line; is that correct?
A. Right.
Q. And so that's an explanation as to why gross sales were less than half in January of '98 than what they were in 1997?
A. Right.
Q. Who provided that explanation to you?
A. Again, I don't know. I think it would have been Mr. Gluck. I'm not certain.

Q. Did he have any reaction to that sales information provided?
A. No, I think it made sense.
Q. The numbers made sense or the explanation made sense?
A. The explanation made sense.
Q. So but for the early-buy program, these sales -- these $50 million in sales would have been first quarter sales?
MS. BROWN: Objection.
MR. MOSCATO: Objection.
BY MR. JOHNSON:
Q. Is that your understanding?
MR. MOSCATO: Your testimony is that's what was told to you by someone at Sunbeam, right?
THE WITNESS: Correct.
MR. MOSCATO: I don't think this witness has an understanding one way or the other as to what would have happened in that situation.
BY MR. JOHNSON:
Q. So someone at Sunbeam indicated to you that the sales decline was as a result of the early-buy program?
A. Correct. I guess I would say it differently.
Q. How would you say it?
A. The way the early-buy program was done in 1990 --

say 1997/1998 period -- I mean, early buy I think existed in the previous year. Customers, say, the first quarter of '97 purchased grills and had extended terms and had whatever. I mean, it's still early in the grill season. Not too many people buy grills in January, but I think it started a little bit earlier for the 97/98 year, and so that first wave of sales that took place in the first quarter of '97, the customers were not ready to replace that yet. That's the way I understood it.
Q. And you understood it that 50 million in sales occurred in the fourth quarter of '97 that otherwise would have occurred in the first quarter of '98?
MS. BROWN: Objection.
THE WITNESS: Yes. I mean, my understanding was that those orders, correct, that were shipped in the fourth quarter of '97, had the program not been structured that way, I assume that that's right, they would have been 1998 sales.
BY MR. JOHNSON:
Q. Your Note C provides -- maybe you ought to read it again. I think I can read it but I'm not sure.
A. Do you want me to read it?
Q. Yes.
A. Oh, I'm sorry. "Decrease due to lower January grill margins. Standard grill margins are approximately 21

percent."
Q. Do I read this income statement correctly that January '98, margins on all goods were 5.7 percent?
A. Correct.
Q. Did you get any updated sales information from Sunbeam for the first quarter of 1998 interim periods?
A. Yes, I think we carried this forward at some point and actually got sales information through February.
MR. JOHNSON: This will be Exhibit CPH 108.
Q. Mr. Pastrana, I've given a document we marked CPH 108, Bates stamp CPH 1056006 through 6010. Could you identify that for us?
A. This is similar to the last exhibit we looked at except this is a comparative income statement comparing the year-to-date period ending February of 1998 to the same year-to-date period of the prior year.
Q. So this is the first two thirds of the first quarter of 1998?
A. Right.
Q. And this shows that sales for 1998 year-to-date were almost 71 million less than sales for the same period in 1997?
A. Yes.
Q. And that as of March 1, Sunbeam was showing a net loss of approximately $15 million; is that correct?

NOT A CERTIFIED COPY

A. That's correct.
Q. And that compared with a profit for the comparable period of 1997 of almost $10 million; is that correct?
A. Correct.
Q. Who provided this Profit and Loss Statement contained in Exhibit 108 to you?
A. Again, somebody at the company. Most likely Mr. Gluck or Mr. Jackson.
Q. Did you have any conversations with them concerning the information contained in the Profit and Loss Statement?
A. I probably would have directed some questions at them concerning some of the changes.
Q. And that would --
A. At them as well as others.
Q. And that would have been the basis of your notes that's contained in this exhibit?
A. Yes.
Q. We'll look at those in one second. Did you have any reaction to Sunbeam's results for this period?
A. Well, it seem that they weren't doing as well as they had hoped to or anticipated in terms of revenues and profits.
Q. Do you know what Sunbeam had forecast for its

first quarter 1998 as a result?
A. I don't know right now.
Q. Do you know whether they forecast to do --
A. I'm sorry, for what period, did you say?
Q. For the first quarter of 1998, were you aware of what Sunbeam's forecasted goals were?
MS. BROWN: Objection.
THE WITNESS: Let me say I'm aware right now from some of the documents I reviewed over the weekend. I don't remember at that time exactly if I was aware of what they were projecting for the first quarter.
BY MR. JOHNSON:
Q. Did you at least have a general sense that they anticipated doing at least as well as the prior year?
MS. BROWN: Objection.
THE WITNESS: I did following reading a press release which I can't remember if and when I read at that time, so I may have looked at the press release yesterday. I'm aware of it now.
BY MR. JOHNSON:
Q. Did you have any conversations with anyone at Arthur Andersen concerning the information contained in the Profit and Loss Statement contained in Exhibit 108?
A. I don't recall any specific conversations. Mr. Bornstein and I worked pretty close on the accounts so

we probably nad discussions about it.
Q. And this would have been placed in the work papers as well?
A. Yes, this was placed in the work papers and he reviewed it.
Q. The first page, upper right again, bears your initials BP?
A. Uh-huh.
Q. Just above that the initials PBC, it appears to be. What does that refer to?
A. "Prepared by client" so this is a schedule that was given to us by the company.
Q. And again can you give me your best estimate of when this schedule was given to you by the company?
A. Just by looking at these documents, I think it was about March 13th. It looks like that's when I set it up and the document actually has a little footer in it that has the same date.
Q. You are looking at Bates CPH 1056009?
A. Yes.
Q. Can you tell from any of the information who at Sunbeam prepared the statement?
A. No, I can't tell.
Q. Did you have any conversations during the first quarter of 1998 with anyone at Sunbeam relating to whether

Sunbeam would be able to improve its financial performance during that quarter?
A. I don't remember having any discussion with anyone at Sunbeam about that.
Q. Let's look at the notes to the statements which are at the second page of the exhibit, 1056007. Did you type these notes up, Mr. Pastrana?
A. Yes.
Q. Note A here indicates that the decrease in first quarter sales is as a result of early buy and poor weather. How did you learn that poor weather was one of the reasons for the sales decrease?
A. I don't remember. I refer in the same note to a discussion that I had with Lee Griffith and Al Lefevre about their expectation for their sales to recover. I don't remember if it came on the same conversation or if that was a separate conversation with somebody.
Q. Mr. Griffith and Mr. Lefebvre, according to your notes, indicated that the sales were recovered in the second quarter; is that correct?
A. Right, uh-huh.
Q. Did anyone indicate to you that sales would recover in the first quarter?
A. No, not that I can remember.
Q. Your Note B indicates that Bob Gluck stated that

NOT A CERTIFIED COPY

the higher freight charges existed despite lower sales because the company was paying more freight as an incentive?
A. Yes.
Q. Did you have any reaction to that explanation?
MR. MOSCATO: Objection.
THE WITNESS: I don't remember. I don't remember any reaction necessarily.
BY MR. JOHNSON:
Q. Your Note J refers to increase in warehouse and distribution cost, do you see that note?
A. Uh-huh.
Q. Do you understand whether the increase in those costs was associated with bill and hold sales?
MS. BROWN: Objection.
THE WITNESS: I understood it to be due to the production of grill inventory, whether it was inventory that had been segregated for customers or the company's own inventory. I didn't know what portion of that related to which piece.
Q. To your knowledge, did anyone from Morgan Stanley ask for either of the interim income statements or Profit and Loss Statements that are contained in Exhibit 107 and 108?
MS. BROWN: Objection.
THE WITNESS: When you say "asked for," nobody

asked me directly for them. There is certain information that's derived from there that's delivered to them in a comfort letter as part of preparation of offering document or at least our role in that.
BY MR. JOHNSON:
Q. Short of the comfort letter?
A. No, nobody ever asked me.
THE VIDEOGRAPHER: I'm going to change the tape.
MR. JOHNSON: Go ahead.
THE VIDEOGRAPHER: This is the end of Videotape No. 1. We are going off the record. The time is 11:14.
(Tape change)
THE VIDEOGRAPHER: We are back on the record. This is the beginning of the Videotape No. 2. The time is 11:15.
BY MR. JOHNSON:
Q. Mr. Pastrana, are you familiar with a form AP-187?
A. Yes.
Q. And did you prepare such a form in connection with your work for Sunbeam?
A. Yes.
Q. I'd like to have you identify that for me, if you would.
MR. JOHNSON: This will be Exhibit 109.

Q. Mr. Pastrana, is CPH Exhibit 109 the form AP-187 that you prepared?
A. Yes.
Q. And what is the purpose of the form AP-187?
A. This is used to document our post report review procedures.
Q. This indicates that the date of the report is January 28, 1998 except for certain matters in Note 14. Do you see that listed on Page 1?
A. Yes.
Q. Is there any reason why the P&L that's contained in Exhibit 108 which goes through February was not used in connection with this form?
MR. MOSCATO: Huh?
BY MR. JOHNSON:
Q. Let me put it more simply. Why does this report stop in the middle of January when it appears you may have had a Profit and Loss Statement going through the end of February?
MR. MOSCATO: I think you are misreading the report.
MR. JOHNSON: Let's let the witness explain.
MR. MOSCATO: Why don't you explain what the date of order is, Dennis.
THE WITNESS: This is the date on the audit

opinion that's contained in the 10-K, so the purpose of this post report review form is to document review procedures that we performed subsequent to the date of that opinion or that report. So I mean this would indicate that the 10-K probably was completed, filed, sometime on or about March 2nd.
BY MR. JOHNSON:
Q. If you flip to the third page of the exhibit which is Page 2 of the form, as I understand Paragraph 2 indicates that the financial statements -- the interim financial statements are as of February 1, 1998; is that correct?
A. Correct.
Q. And I guess that brings me back to the original question of doesn't the Profit and Loss Statement contained in Exhibit 108 go through the end of February?
A. It does.
Q. And do you recall any reason why that statement was not used in connection with this form?
A. Just a second. You know, there are a couple of -- let me, and without having all the documents I'm not going to be able to explain it to you accurately. There are a couple of post report review procedures that got performed and they probably were done on a couple of these forms. I mean, this performance review was completed through March

NOT A CERTIFIED COPY

16th -- hold on a second. These financials are dated, what, March 13? I'm going to stop talking until I figure this out.

Q. Let me point one thing out to you that might help you answer. If you look at Page 4 of your report.

A. Okay.

Q. Under Paragraph 4-A you refer through -- you refer to results through the second period of the first quarter, I believe, and so you appear to be using the later P&L although you don't refer to it in the preamble of the report.

A. That was my guess. I was just trying to go to the documents and figure it out. We did a couple of these which is why you saw two P&L's, one through January, one through February. It's possible we used this preliminary using the January report. When they finished closing the month of February, we got the February report and this is updated based on that, and we just did not correct the dates on that box which I think is what happened.

Q. So this report does include at least some information concerning results through the end of February?

A. Correct.

Q. If you look back again at Page 2 of the report, under Paragraph 2-A it's indicated that work was done by DP. Again that's you?

A. Yes.

Q. You indicate there that there's a decline in sales trends due to, one, early-buy program for outdoor grills which accelerated sales into the fourth quarter. Again that's the end of the fourth quarter 1987?

A. Correct.

MR. MOSCATO: Again it continues.

MR. JOHNSON: Sure.

MR. MOSCATO: But that's neither here nor there. It is what it is but it does give a second reason.

MR. JOHNSON: Thanks.

MR. MOSCATO: You're welcome.

BY MR. JOHNSON:

Q. If you go to Page 4 of the report, Mr. Pastrana, and read Paragraph 4-A to yourself.

A. (Reading) Okay.

Q. Do you know who provided you with the budgeted Sunbeam net sales and net income for the first quarter of 1998?

A. I don't remember.

Q. And do you know the basis for the statement here, quote, "such targets may be unattainable"?

A. I believe it's just comparing the 309 million revenue target or net sales target for the first quarter to the 72 million which, as you said, they had achieved two

thirds of that quarter. You know, based on that we thought it may be that they're not going to achieve those targets.

Q. I guess another way to put the question is the unattainability of those targets Andersen's conclusion or information that somebody provided to Andersen?

MS. BROWN: Objection.

THE WITNESS: That, to the best of my knowledge, is Andersen's conclusion or my conclusion written here and, you know, I don't know that it's a conclusion. It's just a statement of circumstances.

BY MR. JOHNSON:

Q. And the column heading for the column where that statement is made provides "Comments and Disposition of Items Requiring Consideration." Why did you determine that the unattainability of those sales and income targets were an item needing consideration?

MS. BROWN: Objection.

MR. MOSCATO: I object. I characterize it as possible unattainability. He does say "may be unattainable."

MR. JOHNSON: Sure.

MR. MOSCATO: Go ahead, Dennis.

THE WITNESS: You know, I kind of have to put myself back to what role I played in that process. I mean, the role that I play as a senior would be to look at the

financial statements and look for anything that's unusual, what changed, big firm, the previous year, what might be an item worth noting, and then summarize it on this form which I did, and then really -- you know, probably the form should be better titled "Items Potentially Requiring Consideration," but then Mr. Bornstein or Mr. Harlow would review this and determine what action was necessary to take.

BY MR. JOHNSON:

Q. Did you have any conversations with anyone at Andersen about this form?

A. I may have but I don't recall the specifics of any at this point.

Q. Did anyone suggest any revisions to the form after you circulated it to them?

A. It's quite possible. That would have been normal in the process of preparing this.

Q. I take it from your answer you don't recall any specific revisions that were made?

A. I don't recall anything specific. It's six years ago now? Five years?

MR. MOSCATO: Five.

BY MR. JOHNSON:

Q. The first page of the report, there's some handwriting at the bottom. Can you read that writing?

A. "N17, no consent required in section 144

NOT A CERTIFIED COPY

017380

offering. However, post audit review work and AP 187 work done in its entirety with" -- "as the firm's name appears in the" -- in the something "included in this document" -- "financial statements included in this document. Work done herein sufficient as if we were to issue our consent."

Q. Do you know who's handwriting that is?

A. Larry Bornstein. I believe he signed it.

Q. And that's Mr. Harlow's signature below Mr. Bornstein?

A. Yes.

Q. Although it appears you did all the work that went into the report, if I look at the initials columns.

A. All the documentation. I didn't review all that work.

Q. I believe you testified earlier that this was prepared in connection with issuing a comfort letter; is that correct?

A. Right.

Q. Do you know whose initials are on the front of this document, KK in the upper right, Exhibit 109?

A. KK is a work paper reference number. It's our initials contained in the KK section of the work papers.

Q. Now, did you draft the comfort letter to Morgan Stanley in this case?

A. Yes.

Q. And how did you come to do that?

A. You know, my job, as I can remember it, was to complete these post review procedures and to draft the form of the comfort letter. And then the form is guided, as you probably know, by a specific statement on auditing standards that governs the form of comfort letters. So I drafted it, probably took an initial pass of customizing any sections that would have had to be customized for the situation, and then I would have just passed it on to Mr. Bornstein and Mr. Harlow to review. That was kind of my role.

Q. And were you the keeper of the documents, so to speak, until it was finalized?

A. I did keep the draft and made revisions as the drafting process took place, yes.

Q. Aside from Mr. Bornstein and Mr. Harlow, did anyone else at Andersen provide comments directly to you?

A. No.

Q. Do you know whether -- one way or the other, whether anyone in the firm -- in the Andersen firm provided comments to Mr. Bornstein or Mr. Harlow?

A. I don't know whether or not, in fact, that happened. I do know that as a matter of practice another partner would also have reviewed the comfort letter.

Q. And that's a concurring partner?

A. That's correct.

Q. And that's Mr. Pruitt on this engagement?

A. Right.

Q. Do you know when you prepared the first draft of the comfort letter?

A. Based on some of the documents I reviewed over the weekend, the first one was done -- I believe dated March 13th, something like that, so it would have been probably the week leading up to March 19th that it would have been drafted.

Q. When you say the first one, you mean the first -- you mean the final comfort letter?

A. The main body of the comfort letter was subsequently updated by a short term or bring down comfort letter.

Q. Did you include the first quarter '98 sales information that you had in your initial draft of the comfort letter?

A. The first quarter sales, yes, through February, I think it was.

Q. So you put that in the draft that you prepared before you circulated it to Bornstein and Harlow?

A. Yes. In the draft I would have put whatever was available. I assume when I started, February was available but if it would have been January, it would have been January.

Q. Was there ever any discussion with Mr. Bornstein or Harlow about whether that was information that should or should not be contained in the comfort letter?

A. It's required to be contained.

Q. But why do you say that?

A. In terms of the net sales? I guess you could say required. The AICPA, statement on auditing standards that govern comfort letters, in this case requires disclosure if there has been decrease in sales during that period following the last audited set of financials, so it's kind of governed by the professional standards more so than firm policy.

(CPH 110 was marked for identification.)

Q. Let me show you draft the comfort letter, if I could. Mr. Pastrana, could you identify Exhibit 110 for the record please?

A. This is a draft of the comfort letter dated March 19th.

Q. If you look at the fax header at the top of the document for me, that reflects a date of March 17, 1998?

A. Uh-huh.

Q. Do you know what the SBA, Inc. reference is?

A. SBA, Inc. was another of the Andersen clients, SBA Communications, which is also a client of Mr. Bornstein. It could be that, you know, in the review

NOT A CERTIFIED COPY

process we just faxed these back and forth to wherever he was.
Q. Can you tell in any way whether this is a markup of the first draft that you prepared or a later draft?
A. Yes, I can't tell which draft this was. This a draft. I mean, this is kind of the draft. We just kind of were updating it as we went along.
Q. If you look at Page 3 of the letter, and, for the record, this exhibit has Bates stamp CPH 0038670 through 676. We're looking at 38672. If you look at the bottom of that page, there's some handwriting. It seems to indicate, "We had fire sale of inventory."
A. Uh-huh.
Q. Do you know who's handwriting that is?
A. I don't know. I mean, from the context, it looks like it's Gluck, Bob Gluck, because this draft, for example, doesn't disclose in '97 the company had sold some obsolete inventory. We would have provided a draft of this to Mr. Gluck and he might have made a comment that he wanted to make some clarifying explanation as to the reasons why this was happening which I think was included in the final.
Q. Why don't you look at the next page under 6-B. 6-B provides an explanation as to the decline in net sales in the '98 time frame as compared with the '97 time frame?
A. Uh-huh.

Q. Was that information that was contained in the draft comfort letter from its initial draft?
A. Again, I don't know if this is the initial draft. I don't know at what point that information got into the comfort letter.
Q. But your recollection is that the sales information did go in the first draft?
A. Yes, yes. In the prior 5-B, yes, that would have been there from the beginning with whatever sales information was available at that time.
Q. And you just don't recall whether 6-B was in the first draft or was added along the way?
A. That's correct. Well, 6-B was there, you know. But whether the substance of what the statement says, you know, was there, I don't know. In other words, the standard comfort letter would have a standard 6-B. What it says is guided by the circumstances.
Q. Again you noted that sales decreased primarily due to the early-buy program which accelerated sales into the fourth quarter of fiscal 1997?
A. Right.
Q. Could you look at Page 6 of this letter. I don't know whether you can read. Next to one of the tick marks there's a handwriting in the margin area. Can you read that?

A. It looks like "were used."
Q. And that's a reference to limited use of unaudited financials for the period indicated, as I understand it; is that correct?
A. For a limited use?
Q. I guess the question is what does the "where used" signify?
A. This is kind of a standard listing of procedures that we would perform and some may not apply in all cases so in the draft I may have listed out all the standard procedures and maybe someone in review pointed out that this one is not being used in the comfort letter, so I don't know if that stayed in or we did use it or ultimately we may have taken it out. It looks like just a reviewer's question.
Q. Do you know how many days you spent working on the draft that culminated in the March 19 comfort letter?
A. I mean, I really don't. You know, I know that this letter here contains sales prior to February so I think this has the January sales -- right? -- basically through February 2nd. And I know that the February sales information was available on March 13th so I must have started this -- must have been working on this before March 13th, I would imagine.
Q. Let's look at another draft if we could.

Before we get to this next exhibit, one more on 110. Do you know whether this comfort letter was provided in draft form to Morgan Stanley at any point?
A. I don't know.
Q. Could you look at what we've marked as Exhibit CPH 111 and identify that for us?
A. This looks like another draft of the same comfort letter.
Q. And, for the record, this has Bates stamp CPH 0038700 through 706. The top of this document, Mr. Pastrana, indicates that it's from Global Financial Press, New York. Do you know what that is?
A. I think that's the printer that they were using, Morgan Stanley, whoever, to prepare the Offering Memorandum and Larry was at the printer so we may have been faxing this back and forth. This looks like his handwriting with comments on it. I can't be sure of that.
Q. And this shows a fax date time stamp of March 19th at about a quarter to midnight; is that correct?
A. Right.
Q. Were you in the office at Andersen that night to receive his edits?
A. I don't remember. I don't remember.
Q. And Mr. Bornstein notes the offering has increased in size from 1.3 billion to $2 billion; is that

NOT A CERTIFIED COPY

0117382

right?
A. Right.
Q. He also adds or I should say notes that there's a Paragraph 2 that is new. You see that on Paragraph 2 of the letter?
A. Uh-huh.
Q. Do you know how that paragraph was added to the letter or at whose suggestion it was added?
A. I don't know if he's asking or -- I think he's just asking and what changed between the two drafts is one letter assumes that the earlier draft that we looked at, CPH 110 assumes that this is a comfort letter related to an SEC filing.

The second one that we're looking at assumes that this is a non-SEC or -- I think it's Section 144, basically a private placement, and so the wording of the first two paragraphs is a little bit different. And if you look, the first paragraph changed, the second paragraph changed a little bit in the wording, but I think he was just asking about why did it change, but I think the second one is correct in terms of the professional guidance.
Q. And your understanding as to the change is that the updated version reflected that this would be a private placement?
A. Correct or that this was -- I don't know if

private placement. This was a type of offering that would not require the language that was in the prior letter so this is the type of language that was required, but I think it's referred to as a private placement.
Q. And this draft continues to include sales information for January as well as an explanation for the decline in sales; is that correct?
A. Right, right.
Q. Did you have any discussions with Mr. Bornstein concerning what happened at Global Financial Press?
MS. BROWN: Objection.
THE WITNESS: No.
BY MR. JOHNSON:
Q. Do you recall -- I think you indicated that he was at Global Financial Press?
A. Correct.
Q. How do you know that?
A. I mean, we communicated a couple of times. I know that he had to travel there. I think he went with someone else from our firm. That's it.
Q. Do you know who he went with?
A. I think he went with Mark Brockelman.
Q. And do you recall Mr. Bornstein calling you from Global Financial Press?
A. No.

Q. Did Mr. Bornstein or Mr. Brockelman ever convey to you anything that happened at Global Financial Press?
A. Not that I can recall.
Q. And you don't recall whether you were in the office in the evening to receive these changes?
A. I'm not sure that this -- received from. Yes, I don't recall whether I received them when they got there or not.
Q. This is a document that was previously marked as CPH 17. Could you identify that document for the record, Mr. Pastrana?
A. This looks like the comfort letter that we issued on March 19th from Morgan Stanley.
Q. So this is the culmination of the two drafts we just looked at, Exhibit 110, Exhibit 111?
A. Correct.
Q. And do you know who signed on behalf of Arthur Andersen?
A. No, I would imagine Mr. Bornstein and Mr. Harlow. Normally it would be Mr. Harlow who would sign it.
Q. Do you know, as between the two of them, who signed it?
A. I don't know.
Q. Do you know when this letter was, in fact,

provided to Morgan Stanley?
A. It's usually delivered on the day it's dated. I would imagine March 19th.
Q. Do you know how it was transmitted to Morgan Stanley?
MS. BROWN: Objection.
THE WITNESS: I don't know. I can tell you typically a copy is sent via facsimile and the originals are mailed or next day.
BY MR. JOHNSON:
Q. Do you recall any discussions with anybody at Arthur Andersen concerning the sales information contained in CPH Exhibit 17?
A. No.
MR. JOHNSON: 112.
Q. Mr. Pastrana, could you identify CPH Exhibit 112 for us?
A. It's a copy of the March 25th bring down letter that we prepared.
Q. And did you draft this letter as well?
A. I believe so, yes.
Q. And on the front page of the exhibit, it appears your initials DP3 98; do you see that?
A. Yes.
Q. Now, this comfort letter provide sales

NOT A CERTIFIED COPY

01733

information through March 1 -- strike that. This bring down letter provides sales information through March 1, 1998; is that correct?

A. Yes.

Q. So it updates the information provided in the March 19 letter?

A. Correct.

Q. And it shows that Sunbeam's loss had, in fact, widened between February 1 and March 1?

A. Yes.

Q. Did you have any conversation with anyone at Arthur Andersen about the further deterioration of Sunbeam's financial results as reflected in this letter?

A. I can't recall any specific conversations. I certainly would have discussed it.

Q. Were you troubled by those results?

MS. BROWN: Objection.

MR. MOSCATO: Objection.

THE WITNESS: I mean, to say trouble, I don't know -- I mean, when you look at the widening loss, a significant portion of that widening is this $30.2 million compensation charge that they took related to some restricted stock orders that they gave to the officers, you know. The balance of it or at least a portion of it was due to continue to -- that second or next wave of grill sales

seemed to be pushed out. I don't know that I was troubled by it but it certainly heightened our awareness that it was going to be difficult to make this the first quarter sales numbers.

BY MR. JOHNSON:

Q. Did Arthur Andersen take any steps to guarantee that Sunbeam had a proper close of its first quarter?

A. We performed an SAS 71 review in terms of making sure that they had a proper close. We performed a standard SAS 71 review but what we did do in addition to the normal -- which we normally see in this type of review was that we observed the shipping cutoff and we went to several warehouse locations to observe bill and hold inventory that had been segregated for customers. Now, this isn't our first quarter review so now you are talking about the end of March which is a different time period than the letters, right?

Q. Well --

A. Did I miss the question?

Q. No, I think you got the question right but then you added something at the end of it that confused me and let me see if I can clear it up. Let's back up even further. On the bring down letter, were there multiple drafts of that letter?

A. There may have been. I don't remember.

Q. Do you recall any comments that Mr. Bornstein or Mr. Harlow provided to you relating to the bring down letter?

A. No.

Q. Did anyone besides Mr. Bornstein or Mr. Harlow provide comments on their bring down letter?

A. Not that I can remember.

Q. Did you ever speak with anyone outside of Andersen about the need to get either -- any comfort letter or bring down letter finished?

A. Anyone outside of Andersen about the need to get a comfort letter. I can't remember any discussions that I had to that effect.

Q. So no lawyers from an outside firm ever called you to find out where a copy of a bring down letter was?

A. No, not that I can recall specifically.

Q. Do you know -- well, that begs the question about general recollection. Do you recall dealing with outside law firms in connection with the work on the debt offer?

A. I don't and normally, I mean -- and I think maybe it was because Larry was at the printers and maybe he was dealing directly with them. Normally in this process, if you go back to the original letter that was issued, there are these little procedures that you perform that have these little marks and normally I would have fairly involved

discussions with attorneys about what number gets what mark and why didn't you put a mark on this number or that number, whatever, and discussions about, well, what's the status? When are we going to get the comfort letter? I never had those discussions myself and I think it was probably that Mr. Bornstein was having them directly with the people at Sunbeam.

Q. Did you ever -- you're assuming Mr. Bornstein had those conversation; is that correct?

A. Correct. I don't know that factually.

Q. Did you ever have any conversations with Mr. Bornstein about his dealings with outside lawyers in connection with the work on the debt offer?

A. No, not that I can remember.

Q. You referenced earlier in the testimony today a press release that you saw and you looked at that press release over the weekend?

A. Yes.

Q. Did you have any occasion to review that press release before it went out?

A. Did I review it before it went out?

Q. That's correct.

A. I don't remember if I did.

Q. Did you have any conversations with Mr. Bornstein about the press release either before or after it went out?

NOT A CERTIFIED COPY

A. I had discussions with Mr. Bornstein about the contents of the press release. I can't remember if it was -- certainly it was not before it went out. I never saw it before it went out. And I can't remember, you know, what the substance of those discussions was but I became aware of the press release from Mr. Bornstein.
Q. Do you recall anything he said about the press release?
A. I remember him being concerned about the language in the press release. You know, the press release said something to the effect that they were not going to meet their sales targets. They would still exceed the sales of the previous year for the same period and, you know, based on what they had sold in the quarter up to that point, he had some concern about whether they were going to be able to achieve those sales.
Q. Did you share that concern?
A. With who?
Q. With Mr. Bornstein?
A. No, he shared the concern with me.
Q. Did you agree with his concerns?
A. Yes, I thought it was a legitimate concern, sure.
Q. Now, you mentioned that Andersen undertook additional procedures relating to the first quarter with you, that's the dock watching?

A. Right.
Q. That was not a usual procedure to conduct in connection with the quarterly review; is that correct?
A. Right.
MS. BROWN: Objection.
THE WITNESS: Yes. I mean, in my experience I haven't done that before in a quarterly review. I would characterize it as unusual.
BY MR. JOHNSON:
Q. Whose idea was it to conduct this additional step?
A. I believe it was Mr. Bornstein. You know, the instruction was given to me by him. Whether it was his idea or somebody else's, I don't know.
Q. And what did Mr. Bornstein tell you to do?
A. He told me to have people standing on the shipping docks at midnight to observe the sales cutoff.
Q. And the shipping docks were located in Mississippi, Missouri and Oklahoma; is that correct?
A. Shipping docks were in Mississippi and Missouri. Oklahoma I think they had some warehouses that they were using. I don't think -- let me take that back. Maybe they had a shipping facility in Oklahoma. I don't remember if it was a shipping facility.
Q. Did you personally attend one of those observations?

A. Yes.
Q. Which one?
A. The one in Neosha, Missouri.
Q. And who observed -- let me back that up. Did any other Andersen personnel participate in the Neosha observation with you?
A. There was another person that was present in Missouri. I think he was at a different warehouse location. He was counting Sunbeam inventory that existed at another warehouse so he was not on the shipping dock at midnight.
Q. What is that individual's name?
A. It was a staff person in the office.
Q. Does Bob Holman ring a bell, Ben?
A. Ben, yes.
Q. How about Mississippi? Who from Andersen was responsible for watching the docks in Mississippi?
A. I don't remember the name of the person. There I think we sent someone from our St. Louis office.
Q. I'm going to give you what was previously marked as Exhibit 18 in this case. Mr. Pastrana, could you identify Exhibit CPH 18 for the record?
A. Yes, these are some instructions that I prepared to other Arthur Andersen personnel that were going to

observe the shipping cutoff or inventory in certain locations.
Q. And do you know when you prepared the instructions?
A. I don't know exactly.
Q. It was after the bringing down letter?
A. I would -- that would be my guess. I don't remember factually.
Q. It was after the press release anyway, right?
A. Right.
Q. To whom was -- let me back up. Did you send a draft of this instruction sheet to anyone at Andersen?
A. I think I would have given it to somebody to review, probably Mr. Bornstein.
Q. Do you recall anyone having any comments on the draft?
A. No.
Q. Who is the memo sent to?
A. The people that were assigned to help on these observations, so the Ben Holman that you mentioned would have been one.
Q. And those were assignments that were made by someone else; is that right?
A. Correct, we would normally call another office looking for a person of a certain level and experience and

NOT A CERTIFIED COPY

they would assign the person.
Q. And if you look at the last page of the document which is CPH 15113, you request a documentation of the observation to be sent to you.
A. Uh-huh.
Q. Did you, in fact, receive documentation of the observation from anyone?
A. Yes, I believe so.
Q. Let's look quickly at those if we could.
Q. Mr. Pastrana, could you identify Exhibit 113 for us?
A. This is a memo prepared by the Andersen staff person who observed shipping cutoff at one of the company's warehouses and then counted some of the bill and hold inventory that had been segregated from the warehouse for the customers.
Q. Mr. Holman's memo, Exhibit 113, refers to observation on the evening of March 31st. Your instruction memo called for observation on March 29. Do you know why there's that discrepancy?
A. I think that I do recall why there is this discrepancy.
Q. Why is that?
A. I think that they changed their quarter end in March, if I recall correctly.

Q. They added two days to the quarter in 1998?
A. That's correct.
Q. And do you know when the decision to do that was made?
A. I thought that was after the Coleman acquisition.
Q. Did you find any of the information that Mr. Holman is sending to you in Exhibit 13 to be problematic in any way?
A. Let me take a minute to read this document.
Q. Sure.
A. (Reading) What was your question?
Q. The question is whether anything in Mr. Holman's letter struck you as problematic in any way.
MS. BROWN: Objection.
THE WITNESS: In terms of my thoughts at that time, I can't really remember. I mean, right now I think we would have done something to address the fact that they apparently had not done a very good job of identifying and segregating the quantities by customers, you know.
BY MR. JOHNSON:
Q. In other words, that the procedures relating to bill and holds weren't completed as of the cutoff?
MS. BROWN: Objection.
MR. MOSCATO: I'll object to that.
THE WITNESS: I think that the inventory was

identified systemically. I think that inventory that needed to be moved was moved. What they hadn't done was completed the process of the physical segregation that I think happened within a couple of days later on. I mean, if I recall, I think we actually went through a process where we looked in detail at all their locations and how they reconciled all that.
BY MR. JOHNSON:
Q. One more document for you which was previously marked as Exhibit 20. Mr. Pastrana, is Exhibit 20 dated April 1, 1998?
A. Uh-huh.
Q. Did you receive this memo on or about April 1, 1998?
A. I'm not sure. I was probably still in Neosha but shortly thereafter.
Q. Did you have any conversations with Mr. Kistler before, during or after his cutoff testing relating to the testing procedure or rationales?
A. I don't recall.
Q. Have you ever spoken to Mr. Kistler?
A. Have I ever spoken to him in my life?
Q. That's the question.
A. Yes.
Q. You just don't recall whether you spoke to him in

connection with these procedures?
A. Right. Let me read through this.
Q. Sure, absolutely.
A. Make sure it doesn't answer the question.
(Reading)
Q. And I don't want to interrupt your reading, Mr. Pastrana, but I'm going to ask you the similar question I asked on the last memo which is is there anything in this memorandum that struck you as troubling at the time you received it?
MS. BROWN: I'll object.
BY MR. JOHNSON:
Q. You can read the memo and let me know when you're finished.
A. (Reading) Okay, and the question is what?
Q. The question is did anything in Mr. Kistler's memo strike you as troubling when you received this memo?
MS. BROWN: Objection.
THE WITNESS: I don't know. Did I see anything troubling? You know, there seems to be --
MR. MOSCATO: Dennis, the question was -- he's asking you to remember at the time you received this memo, is there anything that you recall being troubling to you, not now, but do you have a recollection of receiving this and being troubled by anything?

NOT A CERTIFIED COPY

01738

THE WITNESS: I wouldn't say troubled by anything. I think there's some things in here that indicates some sloppiness by the company but, I mean, at the end of the day it looks like -- if you quantify everything, it looks pretty small.
BY MR. JOHNSON:
Q. If you look at Page 2 of this memo, there's some handwriting underneath the paragraph that begins "Overall Inventory Quantities." Is that your handwriting?
A. Yes, I think so.
Q. Can you read that for me?
A. "Considered shipped when sealed and moved off the dock. Ready for carrier to move away."
Q. And that's referring to 65 trailers in the yard?
A. Right.
Q. And those 65 trailers are quantified as just under four million dollars worth of inventory; is that correct?
A. Right. Of which, though, of the 65, 40 of them related to this one transaction discussed in the preceding paragraph.
Q. That's the Menards transaction?
A. Yes.
Q. Did you ever -- it indicates here that the bills of lading on the Menards transaction were generated

manually. Did you ever learn why that was?
A. No, I don't know why but it's common that bills of lading can be generated manually.
Q. You indicated that prior to the evening of March 31, 1998 you had never previously engaged in any cutoff testing of this sort for a quarterly review?
A. That's correct.
Q. Have you in your accounting career since then engaged in a similar type of operation for a quarterly review?
A. No. I mean, you know, as a firm I know we do quarterly inventory accounts for Intel which is a client of the firm. I mean, we don't do it out of here but I know that the other office uses our people every quarter to check inventory so I know it's done. I haven't done it.
Q. But would you characterize it as a usual procedure to look at shipping docks in the middle of the night at the end of the quarter?
MS. BROWN: Objection.
THE WITNESS: I wouldn't.
MR. MOSCATO: Is the question "usual" or "unusual"?
BY MR. JOHNSON:
Q. Would you characterize it as a usual procedure and I think you said, "I would not" --

A. Correct.
Q. -- is that correct?
A. Right, I would not characterize it as usual or typical.
Q. Now, did you learn at any time after this cutoff testing at the end of the first quarter of 1998 that, in fact, Sunbeam did not reach sales or income figures exceeding the 1997 first quarter results?
A. Yes.
Q. How did you come to learn that?
A. I was in Neosha the morning of the first and one of the people there that I was dealing with asked me if I had heard the news and I said, "What news?" and he said, "Oh, we didn't make the sales number and Don Uzzi has been fired."
Q. Do you know who in Neosha you had that conversation with?
A. No.
Q. And what was your reaction to that news?
A. I think my reaction was, "Wow, Don Uzzi got fired" but that they didn't make sales was not surprising.
Q. Did you have any conversations with anyone from Arthur Andersen about Sunbeam's failure to make its numbers the first quarter of 1998?
A. No, not -- I mean, I can't recall a specific

conversation. I'm sure we talked about it.
Q. When you say "we," who are you referring to?
A. Just the engagement team, Larry and myself and whoever else was involved at the time.
Q. Can you recall any general substance of those conversations?
A. No.
Q. Was anyone at Andersen upset with the company for failing to make its numbers?
MS. BROWN: Objection.
THE WITNESS: Not that I have any knowledge of.
BY MR. JOHNSON:
Q. Mr. Bornstein never gave you any reaction to the earnings announcement?
A. If he did, I don't remember.
Q. Have you ever spoken to anyone from Morgan Stanley relating to Sunbeam?
A. Never.
Q. Do you know anyone from Morgan Stanley who worked on the debt offering?
A. No.
Q. Do you believe that anyone at Sunbeam provided you with false information at any time during the 1997 audit or post audit procedures?
A. Ask the question again.

NOT A CERTIFIED COPY

Q. Sure. Let's have the court reporter read it back.

(The record was read.)

A. I certainly didn't believe that to be the case at any time during the time I performed those procedures, you know.

Q. Now, with hindsight have you concluded that certain individuals at Sunbeam provided you with false information?

A. With hindsight, I think we were given false information.

Q. Let's focus on you, meaning Dennis Pastrana first, and then we will go on the broader scope. Who provided you individually with false information?

A. Well, just focusing on me, the one specific thing that I can remember is in connection with the 1997 audit. One of the things that as a matter of practice we request is a listing of returns -- product returns after the end of the period and I was involved in making that request.

I don't remember -- I think I asked Bob Gluck and, you know, he told me that there were no returns. And I said, "What do you mean there are no returns?" He said, "Well, there's a no-return policy" and, you know, I said, "Well, okay. Fine, you have this no-return policy. Can you give me just a list of the return authorizations in

the system?" He said, "There are no return authorizations in the system." That was the extent of my discussion.

I think Mr. Bornstein and Mr. Harlow followed up further on that and there were no return authorizations, and then after the fact we learned that there was this list of return authorization. It was not a systemic list. It was some kind of manual list but I think it was probably not -- I think it was probably untrue what they told us.

Q. So that would be Mr. Gluck relating to return authorizations?

A. Correct.

Q. Any other specifics instances you can give me where a Sunbeam employee gave you personally false information?

A. No.

MR. MOSCATO: I just object and would like to say it's a little unfair to ask him to categorize every instance of that. I don't think he has reviewed the restatement work papers, for example, for a number of years and, you know, I just don't want there to be a statement on the record that there were no other instances. Maybe he can't remember any now, and I think the only fair thing would be if he had the opportunity to spend a couple of days looking at the restatement work papers which was not

the purpose of this.

MR. JOHNSON: I know we would all hate to come back to Florida after having a chance to do that.

MR. MOSCATO: We won't all.

MR. JOHNSON: And that's a fair clarification, Mike.

Q. I'm asking for your recollection as you sit here, and I understand some years have gone by but to the extent you can recall anything else right now that would constitute a Sunbeam employee giving you false information, I'd like to know about it.

A. In hindsight and, you know, without going back and rereading everything, that was the only instance that I can recall that I was involved in that I was given misleading information. And Mr. Bornstein may have had other conversations with sales guys about the existence of right to return and things like where I know from conversations that he or others may have had a sense that we were given misleading information. I was not a part of those conversations.

Q. So we will ask Mr. Bornstein about this?

A. I think so.

Q. But to the extent you can recall Mr. Bornstein identifying specific Sunbeam personnel than provided false information, I'd like to know that. Do you recall

Mr. Bornstein identifying specific Sunbeam employees who provided false information?

A. I think he identified Al Lefebvre and Lee Griffith in discussions he had about the existence of sales transactions. Whether there were other things that might have been considered improper, fraudulent, I can't remember any. I just remember the returns and the sales with rights of return or guaranteed sales.

Q. Did Mr. Harlow ever indicate to you that he believes specific Sunbeam employees have given false information?

A. Not that I can recall any specific conversation.

MR. JOHNSON: I think that's all I've got. Just a second. Yes, that's all I've got.

MR. MOSCATO: Don't get excited because she's going to ask you questions probably after lunch or do you want to go forward now?

MS. BROWN: It makes sense to take a lunch break and it will go faster that way.

THE VIDEOGRAPHER: Going off the record. The time is 12:31.

(Noon recess: 12:31 p.m.)

(Transcript resumes at Page 109, Volume II; nothing omitted.)

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03 CA-00504 AL

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & COMPANY, INC.,
Defendant.) January 12, 2003 1:19 p.m.

DENNIS PASTRANA

VOLUME II

VIDEOTAPED DEPOSITION taken pursuant to Notice at the office of Esquire Deposition Services, 44 West Flagler, Ste. 1400, Miami, Florida, before Ana Reid, a Shorthand Reporter and Notary Public within the State of Florida.

APPEARANCES:

FOR THE PLAINTIFF:
JENNER & BLOCK
BY: CLARK C. JOHNSON, ESQ.
STEPHEN P. BAKER, ESQ.
One IBM Plaza
Chicago, Illinois 60611

FOR THE DEFENDANT:
KIRKLAND & ELLIS, LLP
BY: ZHONETTE M. BROWN, ESQ.
655 Fifteenth Street, N.W.
Washington, D.C. 20005

FOR THE DEPONENT, DENNIS PASTRANA:
CURTIS, MALLET, PROVOST, COLT & MOSIE
BY: MICHAEL MOSCATO, ESQ.
101 Park Avenue
New York, New York 10178

119 Bates CPH 1032125 to CPH 1032126
Sunbeam Schedule of Personnell
120 Bates CPH 0011408 to CPH 0011468
Work Program - Core Operations
122 Bates CPH 0011752 to CPH 0011754
Work Program - Consolidation and Financial Reporting
123 Bates CPH 0011144 to CPH 0011152
1-30-98 Memo from Pastrana re: Residual audit risk reduction approach
125 Bates CPH 0010964 to CPH 0010971
Preliminary Materiality Assessment
132 Bates CPH 0244904 to CPH 0244915
12-28-97 Blueback Clearance Form
139 Bates CPH 0130041 to CPH 0130050
Form AP-187 3-5-98 Post Audit Review
140 Bates CPH 0013023 to CPH 0013027
January 1998 Profit & Loss Statement
142 Bates CPH 0012963 to CPH 0012967
February 1998 Profit & Loss Statement
143 Bates CPH 0129926 to CPH 0129936
Form AP-187 3-16-98 Post Audit Review
143 Bates CPH 0129992 to CPH 0130013
Sunbeam 1998 Budget
147 Bates CPH 0129687 to CPH 0129689
3-16-98 Management Representation Letter
148 Bates CPH 0041641 to CPH 0041648
3-18-98 Comfort Letter
161 Bates CPH 0041650 to CPH 0041661
3-21-98 Comfort Letter

MORGAN STANLEY EXHIBIT:

NUMBER: PAGE: DESCRIPTION:
33 164 Bates CPH 1032125 to CPH 1032126
Draft Letter of Exhibit 34
34 165 Bates CPH 0129642 to CPH 0129644
3-23-98 Sunbeam to Arthur Andersen Letter

WITNESS INSTRUCTED NOT TO ANSWER:
PAGE: 184 LINE: 24

0017389

NOT A CERTIFIED COPY

THE VIDEOGRAPHER: Good afternoon. We are back on the record. The time is 1:19 p.m.

EXAMINATION

BY MS. BROWN:

Q. Good afternoon, Mr. Pastrana. Again I'm Zhonette Brown on behalf of Morgan Stanley.

Can you tell me generally what the purpose of an audit is?

A. The purpose of the audit is to -- for the auditor to issue a report basically stating that the financials are fairly stated in accordance with GAAP. So an audit is performed in accordance with generally accepted auditing standards, certain procedures that are defined by the professional standards in order to be able to attest that the financial statements are fairly presented in accordance with GAAP.

Q. And following the 1997 audit that Arthur Andersen performed for Sunbeam, Arthur Andersen issued opinions to the effect that Sunbeam's financial statements presented fairly in all material respects the financial position of the company and the results of its operations and cash flow in conformity with GAAP, correct?

A. Right.

Q. I think you mentioned before but auditors, as you said, sort of live in the past. They look at past results

rather than future projections, correct?

MR. JOHNSON: Objection to form.

THE WITNESS: Generally speaking we focus on historical transactions.

BY MS. BROWN:

Q. What incentives are there for an auditor such as Arthur Andersen in 1997 to perform the audit well?

MR. JOHNSON: I'm going to object to the form.

MR. MOSCATO: I don't understand at all. If you can answer it, Dennis, go ahead if you can.

THE WITNESS: I mean, incentives. I think professional standards simply require that we conduct the audit in a particular manner.

BY MS. BROWN:

Q. So there are professional standards that govern how you conduct an audit require a certain amount of work, correct?

A. Correct.

Q. If an audit is not performed to those standards, there's a risk of, for example, liability, correct?

A. There certainly is.

Q. And there are --

A. But, I mean, even when you do perform the audit in according with the standards, there's a substantial risk of liability.

Q. But that's motivation to perform your job well, correct?

A. GAAP standards are better.

Q. And there's regulations, SEC regulations and whatnot, that motivate you to perform your job well, correct?

MR. JOHNSON: Objection to form.

THE WITNESS: Correct.

BY MS. BROWN:

Q. And your interest in your professional reputation motivates you to perform your job well, correct?

A. Correct.

Q. And those motivations existed for you and for Arthur Andersen in 1997 and 1998, correct?

A. Sure.

Q. And then or now you wouldn't knowingly take any risk or action that would expose your employer to liability or a loss of reputation, correct?

A. Correct.

Q. And you wouldn't knowingly allow anyone else that would take an action that would expose your employer to risk of liability or loss of reputation, correct?

A. Correct.

Q. When you're preparing to perform an audit, you prepare a work program, correct?

A. Yes.

Q. And one of the objectives in planning the work for the audit is to identify areas of risk; is that true?

A. Yes.

Q. And when you've identified areas of risk, then you plan steps to account for that risk so that you can satisfy yourself that the financial statements are fairly stated, correct?

A. Yes.

Q. And you did that in preparation for the 1997 audit of Sunbeam, correct?

MR. MOSCATO: Objection. When you say "you," do you mean him personally or Arthur Andersen?

BY MS. BROWN:

Q. Initially I mean Arthur Andersen.

A. Yes.

Q. And you yourself worked on the work program for the 1997 audit for Sunbeam, correct?

A. Right.

Q. And in that process you also identified risks and identified steps to satisfy yourselves that the financial statements were fairly stating the financial position of Sunbeam, correct?

A. Right.

Q. And as an auditor, it's your job, is it not, to

NOT A CERTIFIED COPY

apply professional skepticism to the representations and the statements of your client, correct?
A. That's right.
Q. Indeed, you're trained to have such professional skepticism when you're performing an audit?
A. Right.
Q. And you applied that professional skepticism to the work that you performed for Sunbeam in 1997 and 1998, correct?
A. Yes.
Q. You also apply your independent judgment during audit procedures, correct?
A. Yes.
Q. And you apply that independent judgment to the work that you were performing on Sunbeam matters in 1997 and 1998?
A. Yes, I mean, to some degree. I mean, independent judgment with the consultation of others that are also responsible for the engagement.
Q. But independent of your client?
A. As a firm we apply judgment in what we do and how we do it.
Q. And so when an auditor states that they're skeptical of statements made by their client, that's essentially their job, correct?

A. Yes.
Q. You stated previously that you began working on Sunbeam matters in approximately October of 1997; is that correct?
A. Right.
Q. And Sunbeam was your principal engagement from that time through some period after the restatement; is that correct?
A. Yes, I think that's exactly right.
Q. And you were on site at Sunbeam the majority of time from at least October of '97 through late January of 1998, correct?
A. Right.
Q. Were you also --
A. Late January -- yes, yes, that's fair.
Q. Were you also on site at Sunbeam in February and March of 1998?
A. Yes.
Q. Approximately what percentage or portion of time were you on site at Sunbeam during those two months?
A. I couldn't say. It's still a substantial amount of my time. I had one or two other clients that I worked on during that time frame but the majority of the time was spent on Sunbeam.
Q. And was it spent at Sunbeam locations?

A. I would say so, yes.
Q. So the majority of your time from October '97 through March of '98 was spent on site at Sunbeam?
A. Yes.
Q. And you yourself personally spent approximately 942 hours on matters related to Sunbeam's 1997 financials; is that correct?
A. I mean, I don't remember the number. If you want to show me a time detail or if you have a time detail, I'm sure that's right.
MS. BROWN: We'll mark Morgan Stanley 19.
Q. You've been handed what's been marked as Morgan Stanley Exhibit 19. And I believe this was shown to you, as indicated there, in a prior deposition. Does this refresh your recollection that you spent approximately 942 hours on issues related to Sunbeam's 1997 financials?
A. Yes.
Q. And, indeed, this shows the time for the engagement team for Arthur Andersen for 1997 financials, and I won't ask you to calculate it but it's more than 3,000 hours; is that right?
MR. MOSCATO: Can't he just take your word for it, that the document says what it says, rather than have him add up all the numbers?
MS. BROWN: He can take my word for it that it's

more than 3,400 hours, yes.
THE WITNESS: Okay.
BY MS. BROWN:
Q. Does that seem approximately correct to you?
A. Approximately, yes.
Q. Now, you mentioned that in preparation for an audit, you perform or you create a work program, correct?
A. Right.
MS. BROWN: Let's mark Morgan Stanley 20.
Q. You've been handed what's been marked as Morgan Stanley Exhibit 20. Do you recognize this document?
A. Yes, this is the work program from the 1997 audit.
Q. This program is essentially an outline, is it not, of the work to be performed during the 1997 outline -- 1997 audit?
A. Yes.
Q. And the steps that are listed in this document -- which for the record is CPH 0011408 to 468. The steps that are listed here are not a complete listing of all the steps that were taken during the 1997 audit? The steps actually performed are greater than those in the outline, correct?
A. Let me say this is a detailed list of the steps to be performed. There may be tests performed that are not on this listing, so in addition to what's in here, there may

NOT A CERTIFIED COPY

be tests on this listing that in the content of the audit are not necessary to perform and, therefore, may not be performed but this is to guide the conduct of the audit, correct.

Q. And I think you just sort of mentioned, let me clarify, if you identify additional steps that need to be taken in order for you to give your opinion on the financials, you perform those steps during the audit, correct?

A. Correct.

Q. And, indeed, in 1997 you did identify and perform additional procedures in December of '97 or January of '98 in addition to those that are identified in the work program, correct?

A. Yes, I think that's right.

Q. But just for my own knowledge, there are other documents that are labeled work program that have steps written out and then they list who performed the steps, and those titles in those work programs don't always conform to the work program that is MS 20. Does that indicate that those are additional steps that are not identified here?

MR. JOHNSON: Objection.

MR. MOSCATO: Objection.

THE WITNESS: If I could take a look at the papers again.

MS. BROWN: Let's mark this Morgan Stanley 21.

Q. You've been handed what has been marked as Morgan Stanley Exhibit 21 and the title of that document is "Sunbeam Corporation Work Program," and then it says "Consolidation and Financial Reporting." And, for the records, the Bates is CPH 0011752 to 54.

Now, in Morgan Stanley Exhibit 20 there is subtitles to the work program but there is no subtitle matching the consolidation and financial reporting. So my question for you is whether this is additional steps -- additional to those identified in Morgan Stanley 20 that were taken during the 1997 audit of Sunbeam?

A. I wouldn't characterize them as additional. I would say that -- I mean, for some reason the steps in MS 21 should be in the document that you have at MS 20, and if for one reason or another they weren't included in that document, then I don't know why but -- hold on just a second. I mean, these steps that are on MS 21 would be standard steps that we would performed in any audit.

Q. And the fact that there are initials in the right-hand column and a line drawn through the center column indicates that this is work that was actually performed --

A. Right.

Q. -- along with the signatures on the final page?

A. Right, right. And there would be copies of these

steps as well with the appropriate signatures and the work paper.

Q. "These steps" referring to Morgan Stanley Exhibit 20?

A. Yes.

MS. BROWN: Mark this Morgan Stanley 22.

Q. You've been handed what has been marked Morgan Stanley Exhibit 22. Morgan Stanley Exhibit 22 for the record is a document that begins at Bates CPH 0011144 to 52. For the record, could you identify this document?

A. What's the last Bates stamp which you referred to?

Q. I believe the last one is 52.

A. The first document is a memorandum that I prepared summarizing by risk that we identified in planning our audit, kind of the steps that we performed to address those risks. And then the second piece of which you gave me which starts on the Bates stamp CPH 11151 is a summary of our certain reserves that were set up in the '96 restructuring charge were utilized during the year. Okay.

Q. This document is a document that you -- the first document, the memo-to-file, the document that you created in January of 1998, correct?

A. Correct.

Q. And if you turn to Bates Page 49 -- ends in 49,

it identifies additional steps that you took -- you, Arthur Andersen, took with regard to bill and hold sales under the early buy program, correct?

A. Right.

Q. So this document, at least in part, identifies additional steps that you took in addition to the original plan steps that are memorialized in Morgan Stanley Exhibit 20, correct?

A. Yes.

Q. And during the audit there was no limitation placed on who you could speak with at Sunbeam, correct?

A. I mean, as a firm, yes, we could speak to anybody we wanted to.

Q. And there was no limitation -- there was no audit step that you wanted to take that you were not permitted to take; is that correct?

A. That's correct.

Q. When you're performing an audit, you identify, at least initially, a materiality threshhold, correct?

A. Correct.

Q. And for the 1997 audit of Sunbeam, as a preliminary matter you had identified a materiality threshhold of 11 -- just over $11 million, correct?

A. I'd have to see. I don't recall but I'm sure it's probably accurate.

NOT A CERTIFIED COPY

CPH 11738

MR. MOSCATO: Well, don't take anyone's word for it. Just look at the document.
BY MS. BROWN:
Q. You've been handed what's been marked as Morgan Stanley Exhibit 23. For the record, that begins on Bates CPH 0010963 through 971. Mr. Pastrana, could you identify this document?
A. This is a form that Andersen used to document the calculation of materiality for its audits which I filled out for Sunbeam, for the Sunbeam engagement.
Q. And the form starts at Bates Page 966, correct?
A. That's right.
Q. And Page 964 is the subsequent calculation that you performed, correct?
MR. MOSCATO: 960?
MS. BROWN: Four. Two pages in advance.
THE WITNESS: Let me take a look at it. It's not really a subsequent calculation. It's just a summary of what results from the information in the form.
BY MS. BROWN:
Q. Do you recall that you performed or Arthur Andersen had performed a preliminary materiality assessment and then in January of 1988 a memo was circulated from Mr. Denkhaus clarifying the use of certain tools to calculate materiality and listing scopes?

A. I have some recollection of that but I'd have to look at the documents again.
Q. Do you generally recall that when the document was circulated by Denkhaus, it indicated that during the 1997 audit you had actually tested to a scope of a finer detail than what was required by the Denkhaus clarification?
A. I don't recall that.
Q. Do you recall that you initially -- you, Arthur Andersen, initially tested to identify errors of $6 million -- of $1.5 million and subsequently the clarification indicated that you could have tested to a greater detail or a coarser scope of $6 million?
A. I don't recall. If you have the initial materiality calculation and the Denkhaus memo and this one, maybe I can just put it all together. I can certainly recall at the time the firm changing its guidance and there being some difficulty understanding exactly what that guidance meant and some interpretive guidance that came out. I don't remember specifically how it impacted the findings that we had on Sunbeam.
Q. Do you recall that as a result of the clarification from Mr. Denkhaus you were not required to perform any additional audit procedures?
A. I just don't remember at this point.
MR. MOSCATO: Do you have the Denkhaus memo?

MS. BROWN: I don't have the Denkhaus memo.
MR. JOHNSON: What transcript are you looking at?
MS. BROWN: I'm looking at the November 15, 2000 transcript in the in re: Sunbeam securities case. I'm not going to mark it as an exhibit but I'm looking at that deposition.
Q. I'll hand it to you. I'll refer you to Page 129 of the deposition which is CPH Page 1031672. If you will look at deposition Page 129 and 130, it may refresh your recollection.
MR. MOSCATO: So you don't have CUB 16 because that's what this -- this note says "Reconciliation of materiality in accordance with revised firm guidance as follows," and it says, "CUB 16."
MS. BROWN: I don't.
THE WITNESS: I remember this now.
BY MS. BROWN:
Q. So does this refresh your recollection that initially when you performed the preliminary materiality assessments you had designed a work program to test -- to detect error in excess of 1.5 million?
A. That's right.
Q. And subsequently you determined that Arthur Andersen procedures as clarified by Denkhaus would have allowed you to design procedures intended to detect an error

of $6 million?
A. That's correct.
Q. So the work program that you designed for the 1997 audit of Sunbeam tested to a finer detail than what was actually required at the time of Arthur Andersen policy, correct?
A. That's correct.
Q. And at the conclusion of the 1997 audit after you had spent several months on site at Sunbeam and the engagement team had spent a few thousand hours on the 1997 financials for Sunbeam, Arthur Andersen had satisfied itself that Sunbeam's financials were -- fairly represented the results of the company, correct?
A. Right.
Q. And at that time you did not believe that there were any material misstatements to the financials?
A. Correct.
Q. And at that time you had no reason to question the integrity of management, correct?
A. Correct.
Q. One of the risks that you had recognized in performing the work for the 1997 audit for Sunbeam in designing the work was the pressure to meet sales and revenue numbers, correct?
A. Right.

NOT A CERTIFIED COPY

Q. And you designed work procedures to address the risk that you identified, correct?
A. Correct, I would think -- but without seeing some documents, I just need to make sure.
Q. You don't recall identifying any risk that you had not addressed, correct?
A. Correct.
Q. And at the end of the first quarter of 1998, you also didn't have any reason to question the integrity of management, correct?
A. Right.
Q. Even though you had spent an additional three months at Sunbeam and working with Sunbeam personnel, right?
A. Right.
Q. And at the end of 1997 you had no reason to believe that Sunbeam was stuffing the channel personally, correct?
A. Yes.
Q. That's also true at the end of -- first quarter of 1998, you had no reason to believe that Sunbeam was stuffing the channel, correct?
A. Correct.
Q. And you also performed work for the closing of Sunbeam's first quarter '98 for filing of the 10-Q?
A. Yes.

Q. And at that time you had no reason to question the materiality or whether there were any material misstatements to Sunbeam's financials, correct?
MR. MOSCATO: I need to hear that again.
MS. BROWN: I'll strike that.
Q. When you were working on the close of Sunbeam's financials for the first quarter of 1998 and the 10-Q, at that time you had no reason to question the integrity of Sunbeam's management, correct?
A. I didn't, no. Not that I can think of.
Q. You've already testified, I think, that you didn't have any contact with Morgan Stanley in the first quarter of 1998, correct?
A. Correct.
Q. Did you have any contact with Morgan Stanley prior to 1997 concerning Sunbeam?
A. Not that I can remember, no.
Q. And you didn't have any contact with Morgan Stanley senior funding in 1997 or 1998 concerning Sunbeam?
A. No.
Q. You did not have any contact with Davis Polk in 1997 or 1998 concerning Sunbeam?
A. The name rings a bell, law firm, but I don't remember any specific contact.
Q. Davis Polk was underwriter's counsel to Morgan

Stanley in 1998. Did you have --
A. I don't think I had any direct contact with them.
Q. Do you recall having any contact with Skadden Arps, counsel for Sunbeam, in 1997 or '98 concerning Sunbeam prior to the restatement effort?
A. No, not prior to the restatement effort.
Q. After the bill and hold transactions had been identified at Sunbeam in 1997, those transactions were disclosed in Sunbeam's 10-K that they filed for 1997, correct?
A. Yes.
Q. And I think you testified earlier that 10-K was filed with the SEC in early March of 1998; is that correct?
A. Right.
Q. And Arthur Andersen was satisfied with the disclosure that Sunbeam had made of the bill and hold?
A. That's my understanding.
Q. You personally were satisfied with the bill and hold disclosure in the 10-K, correct?
A. I read it. Yeah, I thought it was okay.
Q. The 10-K for Sunbeam for 1997 also disclosed the early buy program, correct?
A. I believe so, yes.
Q. And do you recall having any reservation or problems with the way that that was disclosed in Sunbeam's

10-K for 1997?
A. I don't recall having any.
Q. Do you recall Arthur Andersen ever recommending to Sunbeam prior to the restatement that they discontinue bill and hold sales?
A. I'm sorry, say that again.
Q. Do you recall Arthur Andersen ever recommending to Sunbeam prior to the restatement that Sunbeam discontinue bill and hold sales?
A. No, I don't.
Q. Do you ever remember Arthur Andersen recommending to Sunbeam prior to June of 1998 that Sunbeam discouraged customers from asking for bill and hold?
A. I don't recall anything like that.
Q. What are blueback clearance forms?
A. Blueback is a term that was used at Andersen to refer to the management letter and those forms are just -- if you had a management letter comment, you would write it down on the form. Just gave you something later on to discuss with management and they were suppose to sign off on it. It wasn't a required procedure but it was just a format for communicating management letter comments.
Q. I'm handing you what has been marked as Morgan Stanley Exhibit 24. For the record, the Bates is CPH 0244904 to 915. Can you identify this document?

NOT A CERTIFIED COPY

A. This appears to be a listing of our management letter comments that I faxed to Bob Gluck on May 21 of '98 I guess to solicit his responses.
Q. Had these, to your knowledge, blueback clearance forms been submitted to Sunbeam prior to this date?
A. Not that I'm aware of. I don't know if they were or not.
Q. You're not aware of these forms being transmitted to Morgan Stanley, correct?
A. I am not.
Q. Ask you to look at what is Page 2 of the memo, three of the document, Bates ending in 906.
A. Uh-huh.
Q. And there in the last sentence states, "We recommend that management take steps to discourage customers from placing bill and hold orders," and I encourage you to read the paragraph or the paragraphs before that and my question would be whether that recommendation related to the manual labor involved rather than to concerns about the legitimacy of bill and hold sales?
A. (Reading) Yes, I don't remember exactly -- could you ask the question again please?
Q. Yes. My question was the recommendation that they discouraged bill and hold sales, what the basis for that recommendation was?

MR. MOSCATO: Objection. Did you make the recommendations? Did you write this?
THE WITNESS: I played some role in drafting it. I don't know if I actually conceived the whole thing.
MR. MOSCATO: Answer to the best you can, if you can recall.
THE WITNESS: As I read this, I mean, the tone of what's here -- and it's been a long time -- is more that it requires a lot of effort, causes a lot of system problems, there's a lot movement and stuff back and forth. Logistically it's difficult, it's time consuming, it's resource consuming, it doesn't seem to make a whole lot of sense, the tone of this comment, but it also points out that from a kind of a GAAP or SEC compliance standpoint that these transactions are looked at very, how should I say, skeptically by the SEC.
Q. But at the end of 1997 Arthur Andersen had satisfied itself that the bill and hold sales met SEC requirements?
A. That's correct.
Q. And in the end of Q1 98 when you observed the cutoff testing in the bill and hold segregation, Arthur Anderson also was satisfied that those bill and hold sales were legitimate sales according to SEC guidelines, correct?
A. Correct.

Q. And, indeed, even after the restatements you personally thought that the bill and hold sales met the SEC guidelines, correct?
A. That's correct.
Q. And no one at Sunbeam during 1997 or the first quarter of 1998 expressed concern to you concerning about the legitimacy of the bill and hold sales?
A. Correct.
Q. You testified earlier about the comfort letters that Arthur Andersen provided to Morgan Stanley in March of 1998; do you recall that?
A. Yes.
Q. What is the purpose of the comfort letter?
MR. MOSCATO: From whose perspective?
MS. BROWN: From the witness' perspective.
MR. MOSCATO: You mean, why does an auditor send the comfort letter? Is that the question?
MS. BROWN: My question is --
MR. MOSCATO: I mean, it could have different purposes. The receiver could have a purpose for receiving it. The sender could have a purpose for sending it. I'm just unclear what you mean by "the purpose."
MS. BROWN: Strike that.
Q. What do you understand -- or what did you understand Morgan Stanley's purpose to be in requesting the

comfort letter?
A. My understanding was that -- whatever role Morgan Stanley played in this deal as the banker, that it's apparent in this offering memorandum that they have responsibility for performing some level of due diligence which would include something to satisfy itself that financial numbers included in the document are accurate. And as part of that responsibility, usually the underwriters will request us as the auditors to perform certain procedures to ensure that the numbers contained in the offering memorandum are accurate and are derived from the financial statements of the company either that we've audited or reviewed in the past and that's what we document in the comfort letter and deliver to the underwriters or to the bankers.
Q. And you identified in previous testimony certain steps that Arthur Andersen takes before issuing a comfort letter. What is the purpose of the steps that Arthur Andersen takes before issuing a comfort letter?
A. It kind of depends on the situation but the— purpose generally of post report review procedures is to gain information about events that have happened after the date of the auditor's report that might indicate that something either in the auditor's report as it was completed or in the current document -- the current offering

NOT A CERTIFIED COPY

memorandum may be inaccurate or misleading, and, if so, that normally the auditor would not consent -- although I'm not sure that we issued a consent in this case, but if it were misleading, then we would not consent to the inclusion of our report in their document or we would refuse to deliver the comfort letter.

Q. So you understood that those -- for example, refusing to deliver a comfort letter was an option available to Arthur Andersen?

A. Yes, stepping back, actually I didn't understand that to be an option. I don't know. As far as I know, we could have not delivered the comfort letter.

Q. And you mentioned a consent. Even though a consent wasn't required in March of 1998, did you understand that eventually, when there was a registration with the SEC, that Arthur Andersen would have to give its consent to allow its opinion to be used in that registration?

A. At that time I didn't understand how that was going to happen so it wasn't my understanding that eventually we would issue a consent, no.

Q. You understand, though, that in June of 1998 Arthur Andersen actually did withhold its consent from the use of financial statements when Sunbeam was seeking to register file registration with the SEC?

A. You refreshed my memory now. Yes, I'm aware of

that.

THE VIDEOGRAPHER: Excuse me. I need to change the tape.

MS. BROWN: We can go off the record.

THE VIDEOGRAPHER: This is the end of Videotape No. 2. We are going off the record. The time is 2:04.

(Tape change)

THE VIDEOGRAPHER: We are back on the record. This is the beginning of the Videotape No. 3. The time is 2:05.

BY MS. BROWN:

Q. So now that you've been refreshed about Arthur Andersen withholding its consent, did you have an understanding in March of 1998 that Arthur Andersen would eventually need to consent to the use of its financial statements in the registration of the notes associated with the offering memorandum?

MR. JOHNSON: Objection to form.

THE WITNESS: I do not recall understanding that at the time of March '98. I'm sure that others I worked with understood how this process would work. At that time, I don't think I understood that.

BY MS. BROWN:

Q. But you did understand that Arthur Andersen's financials and opinions were going to be included in the

offering memorandum, correct?

A. Yes.

Q. And you understood that the offering memorandum would be distributed to investors?

A. Yes.

Q. And you reviewed at least portions of the offering memorandum, correct?

A. Yes.

Q. And according to the post-audit review form, others reviewed the offering memorandum at Arthur Andersen as well, correct?

A. Yes.

Q. From your recollection, was there anything in the offering memorandum that you recall being misleading or false?

A. No.

Q. When you were performing the post audit reviews, you were communicating your findings with Mr. Bornstein on a near daily basis, correct?

A. Yes.

Q. You've been handed what's been marked as Morgan Stanley Exhibit 25. I think it's probably the same as one of the other exhibits you've looked at today. For the record, it's CPH 01300341 to 50. And can you identify this document for the record?

A. This is a checklist we filled out for one of our post audit reviews in the first quarter of 1998 sometime, similar to the one we spoke about earlier.

Q. And if you look at the SEC filing on the second line of the first page of this document, states "10-K"; do you see that?

A. Yes.

Q. It's Arthur Andersen's policy, correct, to perform a post-audit review prior the filing of 10-K?

A. Correct.

Q. And if you look at the second page, Number 2 and 2-A, there's no notation there regarding declining sales, correct?

A. Correct.

Q. And those initials in the first column "Work Done By," those are your initials?

A. Correct.

Q. And all the handwriting after the first page, is that your handwriting?

A. Yes.

Q. Except for the signature at the end.

I'm going to hand you what will be marked Morgan Stanley Exhibit 26. Morgan Stanley Exhibit 26 is the P&L that you looked at earlier today and I think you identified the second two pages of that document or the last two

NOT A CERTIFIED COPY

pages -- I'm sorry, 26 to 27 were provided to you by Sunbeam; is that correct?
A. Right.
Q. And, for the record, this document is CPH 0013023 to 27. But you do have a note on the second page of this document concerning decrease in sales?
A. Uh-huh, okay.
Q. So you were aware as of March 5, 1997 of the decrease in sales at Sunbeam for January '98 as compared to January of '97, correct?
MR. MOSCATO: I object to that.
THE WITNESS: Can you repeat the question again?
BY MS. BROWN:
Q. Sure. Let me strike it and I'll ask a different question.
As of March 5, 1998 you were aware of the decrease in sales of approximately a little over $43 million comparing January of '97 and January of '98, correct?
A. Right.
Q. And you provided this information to Mr. Bornstein?
A. Right.
Q. Did you provide this information to Morgan Stanley as of this date?
A. As of March 5th. I mean, I didn't provide it to

them as of this date. I mean, I would imagine the first draft of the comfort letter that went that had the January numbers, the information was provided to them. We reviewed a draft of a comfort letter earlier that had sales information in it, and the first draft that was circulated had January sales information.
Q. Did you personally circulate that draft to Morgan Stanley?
A. I did not.
Q. Are you personally aware of anyone providing that draft to Morgan Stanley?
A. No.
Q. Now, the March 5th, post-audit review that you performed was for the filing of the 10-K of Sunbeam, correct?
A. Correct.
Q. And you performed subsequent post audit review forms after that for purposes of the comfort letter?
A. Correct.
Q. Again this is similar to a document that you were shown earlier today. For the record, Morgan Stanley Exhibit 27 is CPH 0012963 to 67. And you testified about this document previously. I'd just like you to look at the second page, Note A. You make reference there to a discussion with Lee Griffith and Al Lefebvre, correct?

A. Yes.
Q. Notes that "the company expects sales to recovery in the second quarter." Do you recall that discussion?
A. No, I don't.
Q. Also notes here that "The company has undertaken an aggressive marketing campaign, radio plus large ads in USA Today." Do you recall being informed by the company that they had taken steps such as this to address flagging sales?
A. Other than recalling it by reading what I'm reading here, I don't recall the specific discussion where that information was told to me.
Q. But you believe --
A. I believe this is accurate, yes.
Q. This P&L that's dated March 13, 1998, did you personally provide this document to Morgan Stanley?
A. I did not, no.
Q. Are you personally aware of anyone else from Arthur Andersen providing this document to Morgan Stanley?
A. No.
MS. BROWN: I'll mark two exhibits, 28 and 29.
Q. You've been handed Morgan Stanley Exhibit 28 and 29. For the record Morgan Stanley 28 is CPH 0129926 through 936 and Morgan Stanley Exhibit 29 is CPH 0129992 through 013. And you testified earlier about an exhibit similar to

Morgan Stanley 28. This is a post audit review that you performed in approximately March 16th of 1998 for Sunbeam, related to Sunbeam, correct?
A. Yes.
Q. And Morgan Stanley Exhibit 29, can you identify what that document is?
A. Appears to be the company's 1998 budget.
Q. This is a document that was provided to you by Sunbeam; is that correct?
A. Right.
Q. Do you recall who provided you with this document?
A. No.
Q. Looking at the second page of this document under Q1, do you see the company's budget for Q1 of 1998 for net sales was 308.5 million?
A. Correct.
Q. Now, referring back to Morgan Stanley Exhibit 28, you testified earlier about the entry that you made on Page 4 of the memo which is at Bates Page 930 of Morgan Stanley Exhibit 28.
A. Uh-huh.
Q. And the entries there on that last column in Morgan Stanley Exhibit 28, are those entries that you typed in?

NOT A CERTIFIED COPY

A. Yes.
Q. You typed in "Such targets may be unattainable." When you were referring to "such targets" in terms of sales, you were referring to the 309 million, correct?
A. Right.
Q. You were not referring to the Wall Street analysts' projections for first quarter of 1998 for Sunbeam, correct?
A. Correct.
Q. And you were not referring to the net sales that Sunbeam had achieved in the first quarter of 1997, correct, when you said that such targets may be unattainable?
A. Correct.
Q. These post-audit review forms that you've looked at, Morgan Stanley Exhibit 28 and Morgan Stanley Exhibit 25, those are not documents that you provided to Morgan Stanley, correct?
A. Correct.
Q. And you're not personally aware of anybody else providing it to Morgan Stanley, correct?
A. Correct.
Q. Indeed you would not have expected anybody to have provided those documents to Morgan Stanley, would you?
A. No.
MR. MOSCATO: I'm sorry, which document are you

referring to? Are they Andersen work papers?
MS. BROWN: The Anderson post-audit review forms that are Morgan Stanley Exhibits 25 and 28.
MR. MOSCATO: Okay.
BY MS. BROWN:
Q. You also drafted the representation letter that Sunbeam management would supply to Arthur Andersen before Arthur Andersen issued its comfort letter, correct?
A. I probably did that, that's correct.
Q. Who else would have been involved in drafting those letters?
A. Mr. Bornstein might have been involved, Mr. Harlow might have reviewed them and provided some comments, but generally I would have drafted the majority of them.
Q. Did you yourself provide that draft to Sunbeam for them to then execute of the representation letter from Sunbeam management to Arthur Andersen?
A. I can't recall if I provided it to them or if Larry did, Mr. Bornstein, excuse me.
Q Do you recall any discussion letters with Sunbeam -- anyone at Sunbeam concerning the representation letter that they provided to Arthur Andersen in connection with the work that Arthur Andersen is doing for the comfort letters in March of 1998?

MR. JOHNSON: Can I hear that one back?
(The record was read.)
THE WITNESS: Was there a question for me?
BY MS. BROWN:
Q. Let me simplify.
A. I don't remember any discussions with anybody about the management letter that we presented them to sign. I think that was the question, right, more or less the gist?
Q. You've been handed what has been marked as Morgan Stanley Exhibit 30. For the record, this is CPH 0129687 to 89. Can you identify this document?
A. This is a copy of the management representation letter that we received in connection with issuing the March 19th comfort letter.
Q. And one of your previous statements may have been broad but I don't know if you covered this. Do you recall receiving -- did you personally receive this letter from Sunbeam?
A. I don't recall if I did or someone else did.
Q. Do you recall any discussions internally at Arthur Andersen concerning the representation letter that you received from Sunbeam management dated March 16, 1998?
A. No.
MS. BROWN: This exhibit will be two documents together.

Q. You've been handed what's been marked as Morgan Stanley Exhibit 31, which for the record is CPH 0041641 through 48. Can you identify this document?
A. This is a draft comfort letter, draft of the March 19th comfort letter.
Q. And this is a draft that you were e-mailing to Mr. Harlow, Mr. Bornstein and Mr. Brockelman?
A. Right.
Q. On the second page of Morgan Stanley Exhibit 31 there's some text at the top beginning with "This draft is furnished," etcetera; do you see that?
A. Uh-huh.
Q. And I believe it's the second sentence states, "Based on our discussions with Morgan, it's our understanding that the procedures outlined in this draft are those they wish us to follow." Based on your prior testimony, I take it those are not your discussions with Morgan Stanley, correct?
A. Correct.
Q. And is this text at the top of the second page of Morgan Stanley Exhibit 31 a standard text that goes on a draft?
A. Yes.
Q. You don't know, for instance, that this reference to discussions with Morgan Stanley refers to actual

NOT A CERTIFIED COPY

discussions that occurred, correct?
A. It does refer to discussions. I mean, Morgan Stanley takes a copy of the offering document and circles all the numbers that they want us to comfort and what they want us to do, and then there's a dialogue that takes place about what the auditors can and can't do. So somewhere in the process that discussion was had. I didn't have it but there would have been a discussion. I personally did not have it, right.
Q. Did anyone relate to you the contents of such discussion?
A. No, other than handing me a copy of the document with the numbers circled to provide comfort on.
Q. And when you refer to someone handing you a copy of the document, you are referring to someone handing you a copy of the draft offering memorandum?
A. Correct.
Q. I think you've already testified but you personally did not provide a draft of the comfort memo to anyone outside of -- comfort letter to anyone outside of Arthur Andersen, correct?
A. That I can recall. I mean, somebody would have provided a draft to Morgan Stanley in advance of issuing the March 19th letter. That's normal practice, to give the underwriter a draft that would include this language.

Whether I delivered it via fax or Larry did or Mr. Brockelman did, or whoever did, you know, I don't know who it was. I don't recall doing it myself but one would have been delivered in advance.
Q. You're assuming that, correct? You don't have personal knowledge that that happened?
A. I don't have personal knowledge that that happened. I have knowledge that its suppose to happen in the process. It's normal that it does happen. I don't know that it actually did happen.
Q. Now, it was your understanding that the work that you had done in the post audit reviews in identifying the decline in sales prompted Arthur Andersen to say that it wouldn't be willing to issue a consent for the note offering if Sunbeam didn't add a recent development section to the offering memorandum, correct?
MR. MOSCATO: I object to that. I thought he was testifying before that the consent -- that he didn't have an understanding that there was a consent necessary for this part of the offer. That's why I'm objecting to the question. Maybe I heard it wrong. If you want to read it back.
(The record was read.)
THE WITNESS: Issue a consent to the offering memorandum? What are we talking about now? The offering

memorandum was completed without a consent having been issued, right? We agreed the consent didn't have to be issued?
MR. MOSCATO: That's why I was objecting.
THE WITNESS: Are we in June now of '98?
BY MS. BROWN:
Q. No, we are talking in March of '98.
A. Okay.
MR. JOHNSON: What date do you have there?
MS. BROWN: April 29, 1999.
MR. MOSCATO: Are you going to ask him to -- are you going to refresh his recollection with something in the transcript that's demonstratively wrong because -- based on what we have talked about today? I don't understand where this is going. I mean, we've established that there wasn't a consent necessary. Everyone agrees to that. Now, if he said something erroneously in a prior transcript, I just don't see the point of this.
BY MS. BROWN:
Q. There wasn't a consent necessary in March of '98, but you do understand that Arthur Andersen withheld the consent in June of 1998, correct?
A. Right.
Q. And if Arthur Andersen was going to withhold its consent based on what was in the text of the offering

memorandum, it would have to inform Sunbeam of that prior to the offering memorandum being published, correct?
MR. MOSCATO: I object to that.
BY MS. BROWN:
Q. If it knew in March of '98?
A. I mean, if it knew, Andersen should inform them in March that its going to withhold its consent, but it doesn't have to. I mean, Arthur Andersen can issue its comfort letter and express its opinion and people can go against that opinion. It's up to Arthur Andersen later on whether or not they want to issue a consent, right?
Q. But if Arthur Andersen expected, based on what it saw in the offering memorandum in March of 1998, that it could not based on that text issue a consent when the notes were eventually registered, then as a service or courtesy Arthur Andersen would tell Sunbeam that before the offering memorandum was published?
A. And maybe they did. Maybe they did and someone decided, well, let's just publish any way and maybe it will never get registered. I don't know. I just don't know about that. If they knew --
MR. MOSCATO: You've answered the question.
THE WITNESS: I'm done?
MR. MOSCATO: Yes. Wait for another question to be posed.

NOT A CERTIFIED COPY

THE WITNESS: How about a coffee break?
MS. BROWN: Okay. Let's go off the record.
THE VIDEOGRAPHER: We are going off the record. The time is 2:32.
(Time noted: 2:32 p.m. to 2:34 p.m.)
THE VIDEOGRAPHER: We are back on the record. The time is 2:43.
BY MS. BROWN:
Q. Mr. Pastrana, do you recall a conversation with Mr. Bornstein where he told you that after reviewing the comfort letter -- draft comfort letter and the draft offering memorandum Arthur Andersen said that there was no way they would issue a consent unless Sunbeam added a recent events -- recent development section to the offering memorandum?
A. I do remember a conversation, something to that effect.
Q. And that conversation took place prior to the issuance of the press release by Sunbeam on March 19, 1998, correct?
A. I don't recall the timing. I believe it was prior to the issuance of the press release.
Q. Do you recall having any discussion after the issuance of the press release to the effect that Arthur Andersen still intended to withhold its consent from --

ultimately for the registration statement because it felt the offering memorandum was inaccurate?
A. I never heard anything one way or the other, whether Andersen intended to issue a consent or not issue a consent.
Q. Do you recall any follow-up conversation whatsoever to the conversation that you had with Mr. Bornstein where he initially indicated that unless Sunbeam added a recent development section to the offering memorandum, Arthur Andersen would withhold its consent?
A. I remember no conversation. Could you repeat the question again? I don't understand how that differs from the prior question.
Q. The prior question was you did recall a conversation with -- an initial conversation with Mr. Bornstein, correct?
A. That's correct.
Q. And my question --
MR. MOSCATO: I don't think that was the prior question he was talking about but go ahead.
BY MS. BROWN:
Q. And my question was after that conversation with Mr. Bornstein where he initially said that Arthur Andersen would hold their consent, was there any subsequent conversation regarding that topic that you recall?

A. Subsequent to the press release, I don't recall any conversation.
Q. And you recall that Sunbeam put the substance of the press release into the offering memorandum?
MR. JOHNSON: Objection to form.
THE WITNESS: I recall something was put in the offering memorandum very similar to the wording in the press release, yes.
BY MS. BROWN:
Q. I think you already said but let me clarify. There was nothing in the offering memorandum that you reviewed that you thought was false or misleading, correct?
A. I don't recall anything that was false or misleading.
Q. And you didn't make any comments on the offering memorandum other than verifying the numbers, correct?
A. That's right.
MR. MOSCATO: Well, I object to that. I think there needs to be some clarification. The thing where he verified numbers, I'm not sure was the final offering memorandum, was it?
MS. BROWN: I was referring to a draft.
MR. MOSCATO: To a draft, okay, that's fine. But for the record, I don't think that draft had the recent developments section but you guys can work that out.

BY MS. BROWN:
Q. After the inclusion of the recent development section with substance or language similar to what was in the press release, you still had the opinion that there was nothing false or misleading about the offering memorandum, correct?
MR. JOHNSON: Objection to form.
THE WITNESS: In regard to -- like the historical financial numbers that were in there? I mean, I think it was all accurate.
BY MS. BROWN:
Q. Do you recall anything that you read with regard to the final offering memorandum that you thought was false or misleading?
A. Yeah, I mean, management's statement to the effect that they thought they were going to exceed sales for what they had achieved in the previous year. I mean, whether it's false or misleading, I really didn't know enough to judge but I certainly thought it was fairly bold to make that kind of a statement given what the results were at that point of the month but that was their choice.
Q. But you didn't think it was false or misleading?
MR. MOSCATO: Objection to form.
THE WITNESS: I thought they could have worded it differently. I thought they could have just said, "We're

NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

MORGAN STANLEY'S WRITTEN RESPONSES TO RULE 1.310 TOPICS

Pursuant to the agreement of the parties, Morgan Stanley & Co. Incorporated ("Morgan Stanley") provides the following written response to the following corporate deposition topic set forth in the Notice of Deposition issued by Coleman (Parent) Holdings, Inc. The written response is based on current knowledge and a good faith search for information.

Corporate Deposition Topic

All fees, expenses, other compensation, or assets billed by or otherwise due to Morgan Stanley & Co., Inc. ("MS&Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), or any of the their affiliates concerning or on behalf of Sunbeam Corp. (including American Household, Inc.) and all fees, expenses, other compensation, or assets paid or provided by or on behalf of Sunbeam Corp. (including American Household) to MS&Co., MSSF, or any of their affiliates.

Response

Morgan Stanley earned revenue from Sunbeam in three principal areas: (1) revenues earned through the provision of financial advisory services rendered in connection with Sunbeam's acquisitions of Coleman, First Alert, and Signature Brands ("M&A Revenues"); (2) revenues earned through the underwriting of Sunbeam's offering of Zero-Coupon Convertible Debentures ("Underwriting Revenues"); and (3) revenues earned through Morgan Stanley's loan

NOT A CERTIFIED COPY

to Sunbeam ("Loan Revenues"). In some instances, Morgan Stanley also billed Sunbeam for expenses incurred in connection with these engagements. Each of these three revenue categories are addressed below.

M&A Revenue – Morgan Stanley's records reflect that it earned a total of *$13,540,047* from the provision of financial advisory services to Sunbeam in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Morgan Stanley recorded $9,369,000 of this M&A Revenue in March 1998, and the remaining $4,171,000 in April 1998. In addition, Morgan Stanley invoiced Sunbeam for $264,863.60 in out-of-pocket expenses incurred in connection with the provision of these M&A services.

Morgan Stanley's records reflect the following M&A Revenues:

Coleman Acquisition	$9,369,429	Invoiced 3/31/98
Signature Brands Acquisition	$3,308,110	Invoiced 5/5/98
First Alert Acquisition	$2,866,958	Invoiced 5/5/98
Subtotal from all acquisitions	**$15,544,497**	
Volume credit (3 transactions)	($500,000)	Invoiced 5/5/98
Subtotal	**$15,044,497**	
10% paid to Llama Company	($1,504,450)	Paid 4/98 and 12/98
Total MS M&A Revenues	**$13,540,047**[1]	

Morgan Stanley's records do not reflect any payments from Sunbeam in connection with the sale of Coleman Spas or the second stage of the Coleman acquisition. Morgan Stanley's records reflect that it did issue an invoice in the amount of $603,000 for fees and expenses related to the sale of Coleman Spas, but that invoice was never paid, and Morgan Stanley subsequently wrote off that amount.

NOT A CERTIFIED COPY

017603

[1] The M&A fees reflect an internal credit in the amount of $3,750,370 which was internally deducted from the underwriting fees for the convertible offering. This amount reflects an internal re-allocation of revenue between Equity Capital Markets and M&A. (*See* MSC0107432.)

The foregoing information was compiled by Morgan Stanley's controllers from the Company's books and records. Other documents reflecting fee information (including Morgan Stanley Confidential 0080421) appear to reflect a calculation of fees payable to Morgan Stanley under certain assumptions or scenarios. Those documents do not reflect the revenues actually invoiced or received by Morgan Stanley.

Underwriting Revenues – Morgan Stanley's records reflect that it earned a total of $18,178,185 in connection with the services it performed as the underwriter of Sunbeam's Zero-Coupon Convertible Debenture Offering. The Underwriting Revenues earned by Morgan Stanley are summarized in the following table:

Management Fees	$4,501,290
Underwriting Fees	$751,290[2]
Gross Selling Concessions	$15,549,030
Less Losses On Cover of Oversell	($2,049,188)
Less Expenses	($598,449)
Total	$18,153,973

As set forth in the table, the gross selling concessions from the offering were $15,549,030. However, the Sunbeam debenture offering was oversubscribed. To cover the oversubscription, Morgan Stanley purchased debentures in the secondary market, realizing losses of $2,049,188 in connection with these efforts. This resulted in net selling concessions of $13,499,842.

Loan Revenues – Morgan Stanley's records reflect that it earned the following revenues in connection with its loan to Sunbeam:

1998	1999	2000	2001	2002	2003	9/30/2004

[2] The M&A fees reflect an internal credit in the amount of $3,750,370 which was internally deducted from the underwriting fees for the convertible offering. This amount reflects an internal re-allocation of revenue between Equity Capital Markets and M&A. (*See* MSC0107432.)

NOT A CERTIFIED COPY

011604

Underwriting Fees	$0	$11,566,667	$3,390,000	$2,485,200	$0	$0	$0
Net Carry	$7,850,778	$13,917,365	$19,415,981	($20,838,136)	($11,716,177)	($14,733,529)	($380,537)
Other Fees	$542,009	$757,895	$867,052	$781,214	$2,795,512	$110,992	$0
	$8,392,787	$26,241,927	$23,673,033	($17,571,722)	($8,920,665)	($14,622,537)	($380,537)

The underwriting fees earned by Morgan Stanley in 1999 and 2000 ($14,956,667) relate to the 1998 Credit Agreement. The underwriting fees earned by Morgan Stanley in 2001 ($2,485,200) relate to the revolving credit facility (DIP) financing extended to Sunbeam in connection with its bankruptcy filing.

NOT A CERTIFIED COPY

017605

"Net carry" represents interest income less internal financing costs. Morgan Stanley's records show the following breakdown of net carry:

		Net Carry
SUNBEAM CORPORATION	REVOLVER[3]	$2,403,677
SUNBEAM CORPORATION	SUPPLEMENTAL REVOLVER	$78,676
SUNBEAM CORPORATION	TERM LOAN - TRANCHE A	($618,587)
SUNBEAM CORPORATION	TERM LOAN - TRANCHE B	($8,026,298)
SUNBEAM CORPORATION (DIP)	REVOLVING CREDIT FACILITY	$809,086
AMERICAN HOUSEHOLD INC	PIK NOTE	($797,452)
AMERICAN HOUSEHOLD INC	STOCK	($333,357)
		($6,484,255)

The "other fees" described above include commitment, facility, amendment, and other undifferentiated fees earned by Morgan Stanley. Morgan Stanley's records reflect the following breakdown of such fees:

		Other Fees
SUNBEAM CORPORATION	REVOLVER	$1,977,352
SUNBEAM CORPORATION	SUPPLEMENTAL REVOLVER	$13,911
SUNBEAM CORPORATION	TERM LOAN - TRANCHE A	$56,598
SUNBEAM CORPORATION	TERM LOAN - TRANCHE B	$0
SUNBEAM CORPORATION (DIP)	REVOLVING CREDIT FACILITY	$3,806,814
AMERICAN HOUSEHOLD INC	PIK NOTE	$0
AMERICAN HOUSEHOLD INC	STOCK	$0
		$5,854,675

NOT A CERTIFIED COPY

017606

3 Due to system limitations, the 1998 information cannot be segregated by tranche. In the analysis above, the 1998 amounts are included in the Revolver.

VERIFICATION

I, James F. Doyle, being duly sworn, depose and say that I have read the forgoing Written Responses to Rule 1.310 Topics, and based on information and belief and to the best of my knowledge, the response is true and correct.

James F. Doyle

NOT A CERTIFIED COPY

017607

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 19th day of November 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for
Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____

NOT A CERTIFIED COPY

017608

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

017609

280

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 10
(EXHIBITS 109-112)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

017944

925

TABLE OF CONTENTS
VOLUME 10

	TAB
Mark Brockelman Deposition Transcript	109
Joshua Webber Deposition Transcript	110
CPH 1393269	111
In re Worldcom decision	112

NOT A CERTIFIED COPY

017945

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No.CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-vs-

MORGAN STANLEY & CO., INC.,

Defendant.

DEPOSITION OF MARK J. BROCKELMAN
(Videotaped)

Wednesday, January 14, 2004
9:09 a.m.- 1:25 p.m.

2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Reported By:
Rachel W. Bridge, RMR, CRR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office
Phone: 800.330.6952
561.659.4155

APPEARANCES:
On behalf of the Plaintiff:
MICHAEL T. BRODY, ESQUIRE
CHRISTOPHER M. O'CONNOR, ESQUIRE
JENNER & BLOCK, LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Phone: 312.222.9350

On behalf of the Defendant:
THOMAS A. CLARE, ESQUIRE
KATHRYN REED DEBORD, ESQUIRE
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Phone: 202.879.5078

On behalf of the Witness:
MICHAEL MOSCATO, ESQUIRE
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
101 Park Avenue
New York, New York 10178-0061
Phone: 212.696.8817
ALSO PRESENT:
EITAN ROSEN, VIDEOGRAPHER

INDEX

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Mark Brockelman				
By Mr. Brody	5	174		
By Mr. Clare		57	181	

EXHIBITS

EXHIBIT	PAGE
CPH Exhibit 115	22
CPH Exhibit 116	37
CPH Exhibit 117	55
MS Exhibit 39	91
MS Exhibit 40	96
MS Exhibit 41	122
MS Exhibit 42	144
MS Exhibit 43	147
MS Exhibit 44-47	150
MS Exhibit 48	155
MS Exhibit 49-54	160

PROCEEDINGS

Deposition taken before Rachel W. Bridge, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

THE VIDEOGRAPHER: We are now going on video record. This is tape number one. The time on the monitor is 9:09 a.m.

(Thereupon, the case was introduced by the court reporter.)

MR. BRODY: Yes, Michael Brody and Christopher O'Connor for Coleman (Parent) Holdings, the plaintiff.

MR. CLARE: Thomas Clare and Katie Debord with Kirkland & Ellis for the defendant, Morgan Stanley.

MR. MOSCATO: Michael Moscato from the law firm of Curtis Mallet for the witness, Mark Brockelman.

Thereupon,

(MARK J. BROCKELMAN)

having been first duly sworn or affirmed, was examined and testified as follows:

NOT A CERTIFIED COPY

017947

Page 5

DIRECT EXAMINATION

BY MR. BRODY:

Q. Good morning, Mr. Brockelman. As I explained, my name is Mike Brody. I represent Coleman (Parent) Holdings in this case. I'm going to ask you some questions this morning.

Would you please state your name and spell your last name for the court reporter.

A. Mark Brockelman, B-r-o-c-k-e-l-m-a-n.

Q. And, Mr. Brockelman, I understand you have been deposed before?

A. Yes, I have.

Q. So you're aware that you're under oath just as if you were at trial?

A. Yes.

Q. I will be asking you some questions today on behalf of my client. I represent Coleman (Parent) Holdings, which is an affiliate of MacAndrews & Forbes Holdings, Inc.

Are you familiar with MacAndrews & Forbes and Coleman (Parent)?

A. Yes, I am.

Q. And Mr. Clare is here on behalf of Morgan Stanley.

You're aware that Morgan Stanley operated as

Page 6

Sunbeam's investment bank in some transactions that closed in 1998?

A. Yes, I am aware.

Q. Are you aware that there is a lawsuit between Coleman (Parent) Holdings and Morgan Stanley arising out of that transaction?

A. Yes.

Q. Your testimony is being taken in connection with that case, sir.

The sale of Coleman (Parent) Holdings' interest in Coleman to Sunbeam took place in the first quarter of 1998. Do you recall that?

A. Yes.

Q. Okay. And at that time, early 1998, Sunbeam was based here in Florida; is that correct?

A. That is correct.

Q. Do you remember where their office was?

A. In Delray Beach.

Q. And at that time, in 1998, did Arthur Andersen provide accounting services to Sunbeam?

A. Yes.

Q. And, sir, did you work on that engagement?

A. Yes, I did.

Q. Before we focus on the work you did on that engagement for Sunbeam, I'd like to ask you some

Page 7

questions about your background and what you did before March of 1998.

Mr. Brockelman, where did you attend high school? Where did you grow up?

A. Luther North, which is in Chicago, Illinois.

Q. Did you then attend college?

A. Yes, I did. I went to Marquette University in Milwaukee, Wisconsin.

Q. Did you receive a degree from Marquette?

A. Yes, I did.

Q. What degree did you receive?

A. Bachelor of arts in accounting.

Q. When did you receive that degree?

A. 1992.

Q. You're laughing. I recall in a prior deposition there was some confusion about that date.

A. That's correct.

MR. MOSCATO: That's putting it mildly.

BY MR. BRODY:

Q. Mr. Brockelman, when you were in school at Marquette, did you work in the field of accountancy?

A. Yes, I did.

Q. What did you do?

A. I had an internship at Johnson Controls.

Q. In Milwaukee?

Page 8

A. In Milwaukee, Wisconsin.

Q. When you graduated from college, did you take a job in the accounting field?

A. Yes, I did.

Q. And where did you take that job?

A. Arthur Andersen.

Q. In what city?

A. In Chicago, Illinois.

Q. Since then, since you graduated from school, have you become certified as a certified public accountant?

A. In Illinois.

Q. What does one need to do to become a certified public accountant?

A. Sit for the examination and have two years' experience.

Q. And you passed that examination and had the required experience?

A. Yes, I did.

Q. You were certified as a CPA in Illinois?

A. In Illinois, that's correct.

Q. Is that where you were when you sat for the exam?

A. That's correct.

Q. Now did there come a time after you started

NOT A CERTIFIED COPY

0179148

Page 9

at Arthur Andersen that you moved to a different office within the company?
A. Yes.
Q. What office did you move to?
A. West Palm Beach, Florida.
Q. And when did you move to West Palm Beach, approximately?
A. Approximately -- let me back up my time frame here real quickly. I believe that was 1996.
Q. And did you remain -- let me state that differently.
Did you stay in the West Palm Beach office of Arthur Andersen for the remainder of your tenure at Arthur Andersen?
A. Yes, I did.
Q. You didn't move to any other offices?
A. That's correct.
Q. Now what was your initial position when you joined Arthur Andersen? What was your job title?
A. Staff.
Q. And how long approximately were you a staff accountant at Arthur Andersen?
A. For two years.
Q. So that would be '92 to '94, about?
A. That's correct.

Page 10

Q. Were you then promoted?
A. Yes, I was promoted.
Q. What was the next position you held?
A. Senior.
Q. What's the difference in responsibility between a staff accountant and a senior accountant?
A. A senior will supervise the staff on an audit engagement.
Q. And how long were you a senior?
A. For three years.
Q. Were you then promoted again?
A. Yes, I was.
Q. To what position?
A. Audit manager.
Q. And what are the differences of responsibilities for an audit manager as opposed to a senior?
A. Audit manager will supervise the entire engagement from the planning to the actual audit procedures to the actual wrap-up of the audit and will report directly to the partner of engagement.
Q. Did you remain an audit manager for the remainder of your tenure at Arthur Andersen?
A. Yes, I did.
Q. At the time you did work on the Sunbeam

Page 11

matter in the first half of 1998, were you an audit manager?
A. I was a senior at the very beginning of my Sunbeam work.
Q. And then you became a manager?
A. That is correct.
Q. When did you leave Arthur Andersen?
A. It was June of 2000.
Q. After you left Arthur Andersen, what position did you take?
A. Vice-president of finance with American Media Operations.
Q. Where is American Media Operations based?
A. Our headquarters is in Boca Raton, but I work out of our Delray Beach office.
Q. Are you still with American Media?
A. Yes, I am.
Q. And what is your current position?
A. Vice-president of finance.
Q. Can you just briefly describe for us what the responsibilities of the vice-president of finance are at American Media?
A. Run the day-to-day finance, budgeting and the cash flows of the company, supervise the accounting closes and so forth.

Page 12

Q. Okay. To whom do you report? What position do you report?
A. The CFO of the company.
Q. That's the chief financial officer?
A. That's correct.
Q. Okay. Returning to the work that Arthur Andersen did for Sunbeam back in the 1998 time frame, are you aware that Arthur Andersen performed audit services for Sunbeam?
A. Yes.
Q. Did you participate in the audit of -- the audit that Arthur Andersen performed of Sunbeam in 1996?
A. No.
Q. Did you participate in Arthur Andersen's audit of Sunbeam in 1997?
A. No.
Q. Focusing on the work that Arthur Andersen did for Sunbeam, when did you become involved in that work?
A. I'm sorry, can you repeat the question one more time?
Q. Sure. When did you become involved in the work that Arthur Andersen performed for Sunbeam?
A. It was during the bond offering for the Coleman deal.

NOT A CERTIFIED COPY

017949

Page 13

Q. If I were to tell you that the bond offering closed at the end of March, 1998, would that be consistent with your recollection of when you worked?
A. That's my recollection.
Q. Do you remember how soon before the bond offering you started working on the Sunbeam matter?
A. Approximately two months before.
Q. And how long did you work on the project?
A. Until the close of the bond offering.
Q. Okay. With whom did you work? What other accountants at Arthur Andersen?
A. Worked primarily with Larry Bornstein. I also worked with Dennis Pastrana, but I reported directly to Larry Bornstein.
Q. What projects do you recall working on in connection with the bond offering?
A. I helped draft the pro forma financial results which went into the bond offering.
I also verified the historical data within the bond offering.
Q. Any other projects you remember working on?
A. We're just talking about the bond offering at this point?
Q. Yes, sir.
A. Yes, that's it.

Page 14

Q. In connection with the work you did on the bond offering, did you do any due diligence?
A. No, I did not.
Q. That was done by others; is that right?
A. That's correct.
Q. You mentioned the pro formas and said you helped draft the pro formas.
Can you explain what a pro forma is?
A. Pro forma basically means as if. You take the historical information and adjust them for the transaction at hand.
Q. And what is it that you did in working on the pro formas?
A. With the help of the Sunbeam company, Bob Gluck actually created a spreadsheet for the various periods, the balance sheets and income statements, and adjusted them for the transactions based on the accounting rules and guidelines.
Q. Did those pro forma documents that you worked on find their way into the offering memorandum?
A. Yes, that's correct.
Q. All right. You also indicated that you did some work in verifying historical data?
A. That's correct.
Q. What do you mean by that?

Page 15

A. Any information that was in the bond offering that related to historical data, it was verified by me. And also I maintain a file that supported the historical data within the bond offering.
MR. MOSCATO: Mark, I just want to clarify, when you say historical information in the bond offering, do you mean in the offering memorandum?
THE WITNESS: In the offering memorandum, excuse me, let me rephrase that. Within the offering memorandum.
BY MR. BRODY:
Q. And just so we're clear, by offering memorandum, you mean the document that was used to sell the securities to the people who bought them?
A. That is correct, yes.
Q. Now in connection with the work that you did with the bond offering, did you do any work on Arthur Andersen's comfort letter?
A. Yes, I did.
Q. What is a comfort letter?
A. Comfort letter is a letter provided by the auditors in connection with a registration statement.
Q. And who do they provide it to?
A. It's provided, I believe, if I recall correctly, to the company. And also to the

Page 16

underwriters.
Q. Okay. Do you recall what your involvement was in connection with the comfort letter?
A. Yes.
Q. What was that?
A. Primarily related to the tick marks that are within the comfort letter. By the tick marks, they are defined work that is performed by the auditors on the actual offering memorandum such as tracing to company-provided documentation.
Q. Who else was involved with the comfort letter?
A. To my knowledge, Larry Bornstein and Dennis Pastrana.
Q. Do you recall when the drafting of the comfort letter began?
Do you remember the date on which it began?
A. Not exactly.
Q. I may show you some documents, sir, that will refresh your recollection. We'll come back to that.
Did you provide any of, to your recollection, did you provide any of the information that was put into the comfort letter?
A. What do you mean by information?
Q. Well, the comfort letter contained data and

NOT A CERTIFIED COPY

017950

Page 17

information about the company, didn't it? Do you recall?
MR. MOSCATO: Would it be helpful if you saw the comfort letter, Mark, to answer this question?
THE WITNESS: Yeah, potentially that may help.
BY MR. BRODY:
Q. I think that's a good way to go. Let me provide that.
Mr. Brockelman, I'm giving you what previously has been marked as CPH Exhibit 17. That's a letter on the letterhead of Arthur Andersen dated March 19.
I'm going to ask you just to look at that and tell me if that's a comfort letter.
A. Yes, this is a comfort letter.
Q. And is this the comfort letter that was sent to Morgan Stanley in connection with the bond offering, to your recollection?
A. To my recollection, yes.
Q. Sir, is this the final version, the final version of the letter?
MR. CLARE: Objection to the form.
MR. BRODY: Let me withdraw that.

Page 18

BY MR. BRODY:
Q. Do you know if any comfort letters were sent after this one?
A. Yes, I do know.
Q. Was a comfort letter sent in connection with this transaction after the draft that you see as -- excuse me, the version marked as Exhibit 17?
A. Yes.
Q. When was that sent?
A. It's called a bring-down letter when it finalizes. I don't know the exact date of that.
Q. Okay. We'll come back to that. Thank you.
This document is signed by someone on behalf of Arthur Andersen.
A. Yes.
Q. Do you know who put pen to paper and signed the document, do you recall?
A. To my recollection, it was Larry Bornstein who had the authorization from the partner, Phil Harlow, to sign on his behalf.
Q. Do you know, were you present when Mr. Bornstein signed the comfort letter?
A. Yes, I was.
Q. And when was that, to your recollection?
A. I don't know the exact date. It was the

Page 19

night at the printer's.
Q. And after Mr. Bornstein signed the document at the printer's, do you know what he did with it? Did he give it to somebody?
A. Yes, he did. I don't recall who received copies.
Q. Do you know if at that time a copy was given to someone for or on behalf of Morgan Stanley?
A. Yes, correct.
Q. The question that caused me to show you this document related to the date, or information rather, contained in the information.
I'd ask you please to turn to page three of the document we have marked as Exhibit 17.
For example, paragraph 5A and 5B contains information about the operations of Sunbeam.
Do you see that?
A. Yes, I do.
Q. Is that information that you collected?
A. No.
Q. Is it information that you were responsible for putting into the document?
A. No.
Q. Do you know who provided that information?
A. Dennis Pastrana.

Page 20

Q. Prior to this comfort letter being signed and given to Morgan Stanley at the printer, do you know if a draft was sent to Morgan Stanley?
A. Yes.
Q. And was a draft sent to Morgan Stanley?
A. To my knowledge.
Q. Do you know when that was sent?
A. No, I do not.
Q. Do you know how long in advance of the meeting at the printer's it was sent?
A. No, I do not.
Q. Could you estimate in terms of days or weeks?
MR. CLARE: Objection.
BY MR. BRODY:
Q. Anything?
A. No, I really can't.
Q. Prior to Mr. Bornstein delivering the signed copy of the letter to Morgan Stanley at the printer's, do you know if Morgan Stanley had a copy of the comfort letter?
MR. CLARE: Objection, calls for speculation.
THE WITNESS: I do not know.
BY MR. BRODY:
Q. Did you ever see someone from Morgan Stanley or their lawyers with a copy?

NOT A CERTIFIED COPY

017951

Page 21

A. No.
Q. Returning to the letter, sir, paragraph 6C, paragraph six begins on page four, but paragraph 6C is on page five, contains additional information about the status of the company.
Do you see that?
A. Yes.
Q. Did you collect the information that is found in paragraph 6C?
A. No.
Q. Did you do anything to analyze or prepare that portion of the letter?
A. No.
Q. Do you know who prepared the information or collected the information that's found in paragraph 6C?
A. Dennis Pastrana.
MR. MOSCATO: Let me just have a word. There is no question pending.
MR. BRODY: Correct. That's fine.
(witness confers with counsel).
MR. BRODY: Are you all set?
MR. MOSCATO: Yes.
If it comes up --
THE WITNESS: Okay.
MR. BRODY: Please mark this as our next

Page 22

exhibit, which I believe is Exhibit 115.
(CPH Exhibit No. 115 was marked for identification.)
BY MR. BRODY:
Q. Mr. Brockelman, I've asked the court reporter to mark and have given to you a document marked as CPH Exhibit 115. Do you have that in front of you?
A. Yes, I do.
Q. Do you recognize that this is a draft of the comfort letter?
A. Yes, it has the stamp on top.
Q. By that, you mean the Preliminary, Intended For Discussions Only stamp?
A. That's correct.
Q. Aside from discussions with your counsel, have you ever seen this document before?
A. I've seen several draft versions of the offering memorandum. I couldn't tell you if I actually saw this specific version.
MR. MOSCATO: You said of the offering memorandum again.
THE WITNESS: I'm sorry, the comfort letter.
BY MR. BRODY:
Q. The comfort letter that was done in connection with the offering memorandum?

Page 23

A. That's correct.
Q. Okay. You indicated that you've seen several drafts. Did you make revisions to drafts?
A. Yes, I did.
Q. Do you remember anything that you changed or added?
A. Several things. I couldn't name one specific item, but certainly several items changed throughout the drafting of the comfort letter.
Q. Do you remember anything that you changed as opposed to things that might have just been changed in the process?
A. Nothing specifically.
Q. Okay. Focusing on the draft we've marked as Exhibit 115, there is some handwriting on it. Do you recognize any of that handwriting?
A. Yes, I do.
Q. Is any of it yours?
A. No.
Q. Do you know whose handwriting it is?
A. Yes.
Q. And whose is it?
A. Larry Bornstein's.
Q. The document on its first page contains a fax tag line indicating it was faxed from Global Financial

Page 24

Press on the 19th of March in 1998.
Do you see that?
A. Yes.
Q. Do you believe that's the night or the evening that you were at the printer?
A. Yes, I do.
Q. And it was sent at almost midnight, 12 minutes to midnight.
Were you at the printer at that time?
A. Yes, I was.
Q. Do you remember any discussions, sir, at the printer about a draft of the comfort letter or making any changes to the comfort letter?
MR. CLARE: Objection to the form.
THE WITNESS: Yes.
BY MR. BRODY:
Q. With whom were those discussions? Who participated in those discussions?
A. Larry Bornstein.
Q. Anyone else?
A. I don't recall anybody else. I know there were discussions. I couldn't tell you names of anybody else.
Q. And focusing on discussions about the comfort letter as opposed to other discussions at the printer

NOT A CERTIFIED COPY

017952

Page 25

that evening, what do you remember being discussed?
A. With regard to changes to the comfort letter?
Q. Yes, sir.
A. My specific part was to ensure that all the numbers were correct. My job was to place all the tick marks throughout the actual exhibit part of the comfort letter.
I wanted to point out this wasn't the entire comfort letter, so specifically that was my job to change the comfort letter in that fashion, to dropping the tick marks on the exhibits.
Q. Just so we're clear, the document we've marked as Exhibit 115 doesn't have the tick marks on it, does it?
A. It has the, the narrative on it, but it does not have the actual comfort letter pages that had the tick marks on it.
Q. And if we return to the document that had been marked as Exhibit 17, the signed copy of the comfort letter.
A. Yes.
Q. And turn to page six and seven of the document.
A. Yes.
Q. Does that have the key for the tick marks?

Page 26

A. That is correct.
Q. And was it your job to place those appropriate marks on the exhibits in the areas to which they correspond?
A. That's correct.
Q. And is that something you did the evening you were at the printer?
A. That is correct.
Q. Do you remember any discussions, aside from that topic, do you remember any discussions about the language of the comfort letter or the statements made in the comfort letter at the printer?
A. I do.
Q. What do you recall being discussed?
A. I do want to preface that my knowledge is a little bit hazy at this point, but I do remember discussions regarding disclosure.
Q. Disclosure of what?
A. Are we talking about the comfort letter or the offering memorandum in general?
Q. Let's just try to narrow it first to the comfort letter.
A. To the comfort letter itself.
As far as the comfort letter, no, no significant discussions related to the comfort letter.

Page 27

Q. Okay, thank you.
Okay. Now let's talk a little more generally about the discussions that took place that evening at the printer's. You've already testified that you were present at the printer's?
A. Yes.
Q. And the printer's name was Global Financial Press?
A. Yes.
Q. Where, what city is Global Financial Press located in?
A. New York City.
Q. And who did you attend that meeting with? Who went with you to that meeting?
A. Larry Bornstein.
Q. Now for those not familiar with an evening at the printer's, what is it like? Do you go to a print shop or do you go to offices?
What type of facility did you visit?
MR. CLARE: Objection to form.
THE WITNESS: It was a print facility, and we were in a conference room.
BY MR. BRODY:
Q. Were there more rooms than just the one conference room?

Page 28

A. Yes, correct.
Q. How long were you there, from the time you arrived to the time you left?
A. I don't recall precisely, but I estimate about ten hours.
Q. And what was your purpose in going to the printer's that evening?
A. To update the comfort letter.
Q. Anything else?
A. No.
Q. Did you look at draft documents that the printer had prepared and decide whether they were appropriate or not?
A. Yes, as part of the comfort letter.
Q. Can you explain how it is you did that, what you were doing?
A. A final update to the pro forma information. As pages turned, you would compare what you submitted to the final version.
Q. Okay.
MR. BRODY: Can we go off the record for just a second.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 9:38 a.m.
(Discussion held off the record.)

NOT A CERTIFIED COPY

017953

Page 29

THE VIDEOGRAPHER: We are now back on video record. The time on the monitor is 9:44 a.m.
BY MR. BRODY:
Q. Mr. Brockelman, before we went off the record, we were talking about the evening at the printer's. I'd like to return to that topic.
What document was being printed?
A. The offering memorandum.
Q. And that was the offering memorandum by which Sunbeam raised money to finance its acquisitions?
A. That's correct.
Q. And was the pro forma that you worked on being included in that offering memorandum?
A. Yes, it was.
Q. Now you indicated in a response to a prior question that as certain pages were turned, you checked them.
What was it that you meant by that? What did you do?
A. The historical and pro forma financial information that was in the document, if there was any changes or adjustments to those numbers, I would check and ensure that they were properly changed.
Q. So as the printer prepared draft pages, you checked them to make sure they were still accurate?

Page 30

A. That's correct.
Q. Now at the time of this meeting at the printer in New York, you were officed in Florida; is that correct?
A. Yes.
Q. And you traveled to New York to go to the printer's?
A. Yes, I did.
Q. Did you travel with Mr. Bornstein?
A. Yes.
Q. Are you aware that the day you visited the printer, Sunbeam issued a press release about its sales results?
A. Yes, I am.
Q. And did you have any involvement in drafting or revising the press release?
A. No, I did not.
Q. Were you aware of the press release before it was issued?
A. No, I was not.
Q. Do you remember where you were when you learned that Sunbeam had issued the press release?
A. Yes.
Q. And where was that?
A. At the hotel. I do not recall what hotel I

Page 31

was staying at with Larry Bornstein, but we were in his room in the hotel.
Q. Then how did you learn about the press release?
A. We saw on a news channel the disclosure on the press release.
Q. What do you remember the news channel or the news story reported about Sunbeam's press release?
A. It gave a forecasted number. That's all I recall.
Q. Do you remember after you and Mr. Bornstein saw the mention of the press release whether you had a discussion about it at that time in the hotel?
A. Yes.
Q. What do you remember discussing?
A. Larry made a comment that he didn't believe the number that was disclosed would be obtainable.
Q. And that was after Mr. Bornstein saw the press release?
MR. CLARE: Objection to form.
MR. MOSCATO: I object to that. It's inconsistent with his testimony.
BY MR. BRODY:
Q. When was that discussion with Mr. Bornstein?
A. After we saw the news report.

Page 32

Q. Okay.
MR. MOSCATO: Did you see the press release at all?
THE WITNESS: No, I just want to make sure we're talking about a news release, not a press release.
BY MR. BRODY:
Q. I understand. You didn't see the actual press release?
A. That's correct.
Q. Released at that time.
I'd now like to focus on -- let me withdraw that.
Did you go from the hotel to the printer?
A. Yes.
Q. I'd now like to focus on the events that took place at the printer.
Sir, was the, were these events at the printer the same day as the press release came out?
A. Again, I don't recall a press release. The same day of that news release, yes.
Q. Okay. And who participated in these meetings at the printer? Who was there?
A. I was there certainly, Larry Bornstein. We were the team from Arthur Andersen.

NOT A CERTIFIED COPY

017954

Page 33

There was representatives from Morgan Stanley. Several attorneys. I couldn't name everybody. That really wasn't my job there.
Q. Sure. Do you know who was there from Morgan Stanley?
A. I don't recall any names, no.
Q. If I mentioned name John Tyree, does that refresh your recollection?
A. Yes, John Tyree was there.
Q. Do you remember if there was anyone else there from Morgan Stanley?
A. There was. Again, I don't recall any names.
Q. Were there lawyers there on behalf of Morgan Stanley?
A. Yes.
Q. Were there lawyers there on behalf of Sunbeam?
A. Yes.
Q. Do you know if there was any business person there on behalf of Sunbeam?
A. No, there was not.
Q. As you sit here, do you remember the names of the lawyers there on behalf of either Sunbeam or Morgan Stanley?
A. No, I do not.

Page 34

Q. And do you remember the names of their law firms?
A. No, I do not.
Q. If I were to suggest that attorneys from Scadden Arps represented Sunbeam, would that refresh your recollection?
A. Yes, that does.
Q. Were there lawyers from Scadden there?
A. There was.
Q. Do you remember the names?
A. No, I do not.
Q. Are you familiar with the firm of Davis Polk?
A. Yes, they were the attorneys for the underwriters, I believe.
Q. Again, do you remember the names of the individuals lawyers?
A. No, I do not.
Q. At the printer's that evening, do you recall discussion about what disclosure should be put in the offering memorandum?
MR. CLARE: Objection to form.
THE WITNESS: Yes, I remember a discussion, yes.
BY MR. BRODY:
Q. Who participated in this discussion?

Page 35

A. Larry Bornstein to myself.
Q. So Mr. Bornstein discussed with you?
A. That's correct.
Q. What do you remember Mr. Bornstein saying?
A. I don't recall the exact substance of the conversation. Just it related to disclosures in the offering memorandum.
Q. Do you remember Mr. Bornstein participating in a discussion with the Morgan Stanley representatives about disclosures in the offering memorandum?
A. Yes.
Q. Would this be between Mr. Bornstein and Mr. Tyree?
A. Yes. There were also other people involved in the conversation. He's the only one I remember.
Q. What do you remember being discussed?
A. I don't recall specifically. It just again related to disclosures within the offering memorandum.
Q. Do you remember what position Mr. Bornstein was taking?
A. No, I do not.
Q. Do you remember what position Mr. Tyree was taking?
A. No, I do not.
Q. Mr. Brockelman, this conversation at the

Page 36

printer's took place in 1998; is that correct?
A. Yes.
Q. And we're now sitting here in 2004. Between then and now, did you give other testimony in which you described what happened that evening at the printer's?
A. Yes, I did.
Q. All right. And it's correct, sir, isn't it, that you were deposed in connection with other litigation arising out of this transaction in which you testified about a number of topics, including the events at the printer's?
A. Yes, I did.
Q. Do you remember when that deposition took place?
A. It was a couple of years ago.
MR. BRODY: Do you need a copy?
MR. MOSCATO: I wouldn't mind if you have an extra one.
BY MR. BRODY:
Q. Mr. Brockelman, I'm giving you -- may I have that back? I'm going to mark it.
THE WITNESS: Certainly.
MR. BRODY: Ask the court reporter to mark this, please, as our next exhibit.

NOT A CERTIFIED COPY

01795S

Page 37

(CPH Exhibit No. 116 was marked for identification.)
BY MR. BRODY:
Q. Mr. Brockelman, I've given you what's been marked as CPH Exhibit 116, which appears to be a transcript of the deposition you gave nearly three years ago on January 23rd, 2001. Is that correct?
A. Yes, correct.
Q. And at the time you gave that testimony, the events of March 1998 were closer in time; is that correct?
A. Yes, correct.
Q. I'd ask you, please, to review your prior testimony and then I'm going to ask if it refreshes your recollection of the events of that evening. So if you would please turn to page 190. Let me give you a more specific page and line, and see if you recall.
I believe you might want to start reading on either page 190 or beginning on page 191.
MR. MOSCATO: Why don't you start at the top of 190.
MR. BRODY: That would be fine.
THE WITNESS: Okay.
MR. MOSCATO: How far do you want him to go?
MR. BRODY: Well, I'm going to ask you to

Page 38

read to page 202.
MR. MOSCATO: 202?
MR. BRODY: Yes, sir.
MR. MOSCATO: Off the record.
(Discussion held off the record.)
BY MR. BRODY:
Q. Have you had a chance to look at those pages, sir?
A. Yes, I did.
Q. Does reviewing your testimony from 2001 refresh your recollection about the events of the evening of March 19, 1998?
A. To a certain extent.
Q. Do you recall, having refreshed your recollection to that extent, do you recall what discussion Mr. Bornstein and Mr. Tyree had on the evening of March 19 about what should be disclosed in the offering memorandum concerning Sunbeam sales?
MR. MOSCATO: Mark, why don't you close the thing and then tell him.
BY MR. BRODY:
Q. I think that's a good idea.
A. Yeah. Honestly, I still do not recall the exact conversations held there.
Q. Do you remember in substance the

Page 39

conversations held there?
A. It generally related to the projections for the first quarter, but as far as the actual figures and amounts, I don't recall.
Q. Putting aside the figures and amounts, did Mr. Bornstein express a view about whether the projections of sales for the first quarter should be included or not?
A. He felt that they should not be included and that they were not going to make analyst expectations for the first quarter.
Q. Do you remember anything else Mr. Bornstein said in words or in substance about that subject?
A. No. That's the extent of my knowledge.
Q. Do you remember what Mr. Tyree from Morgan Stanley said in response to what Mr. Bornstein said?
A. No.
Q. Did there come a time that evening in which Mr. Tyree discussed Mr. Bornstein out of the presence of Mr. Bornstein; that is, in your presence, but while Mr. Bornstein was not there?
A. Yes.
Q. What do you remember happening in that conversation?
A. I wasn't involved in the conversation, but I

Page 40

was in the same conference room when he was making the comments.
Basically John Tyree was very upset and used certain profanity directed at Larry Bornstein.
Q. Do you remember what he was upset about?
MR. CLARE: Objection, calls for speculation.
MR. MOSCATO: I object to that.
MR. BRODY: Let me rephrase it.
BY MR. BRODY:
Q. Did, in that conversation did Mr. Tyree communicate what he was upset about?
A. Yes.
Q. And what was that?
A. It related to disclosure in the offering memorandum.
Q. Was he upset with Mr. Bornstein?
MR. CLARE: Objection, calls for speculation.
THE WITNESS: It appeared he was upset at Larry Bornstein, yes.
BY MR. BRODY:
Q. Do you remember in words or substance what he said in that conversation?
A. No, I do not.
Q. As you sit here, I know it's been a number of years, do you remember any of the precise things that

NOT A CERTIFIED COPY

017956

Page 41

he said?
A. All I could remember is, you know, him saying Larry Bornstein is a fucking asshole. That's the extent of my recollection of the words he used.
Q. So those words stuck with you?
A. Yeah, exactly.
Q. Do you remember other participants in this conversation? Let me withdraw that.
Do you remember other participants at the printer's aside from Mr. Tyree, for example, the Scadden lawyers, the Davis Polk lawyers, saying anything about the disclosure issue?
A. No, I don't recall.
Q. Was Mr. Tyree upset about the things that Mr., the position Mr. Bornstein was taking?
MR. CLARE: Objection, calls for speculation.
THE WITNESS: He appeared upset.
BY MR. BRODY:
Q. On what do you base that? Why do you believe he appeared upset?
A. Profanity he used.
Q. Did he raise his voice?
A. Yes.
Q. When Mr. Tyree made these comments, you were in the conference room; is that correct?

Page 42

A. Yes.
Q. Were the comments directed to you or were they directed to others?
A. Directed to others.
Q. Do you know to whom they were directed?
A. No, I do not.
Q. One or another of the lawyers?
A. The other attorneys, that's correct.
Q. At the time Mr. Tyree made these statements, was Mr. Bornstein present?
A. No.
Q. Did Mr. Bornstein later return to the room?
A. Yes, he did.
Q. And did you relate what Mr. Tyree had said to Mr. Bornstein?
A. Yes.
Q. Do you know how the disclosure issue was resolved?
MR. CLARE: Objection to form.
MR. BRODY: Let me withdraw that.
BY MR. BRODY:
Q. Do you know how the issue that Mr. Bornstein and Mr. Tyree discussed that evening was resolved in the offering memorandum?
A. I don't recall.

Page 43

Q. Aside from the discussions you've recounted so far, do you recall any other discussions that evening at the printer?
A. Not specifically.
Q. Do you remember when in the evening or in the morning hours you and Mr. Bornstein left the printer? Was it the following morning or was it --
A. It was in the morning time. I'm not quite sure what exact time.
Q. Now, Mr. Brockelman, a moment ago you had a chance to review the testimony you gave in 2001 about this subject; is that correct?
A. Yes.
Q. And having done that, that refreshed your recollection to an extent and you've testified about that; is that correct?
A. To a certain extent, yes.
Q. And it's my understanding you don't recall anything else concerning those events?
A. That's correct.
Q. At the time you gave the testimony that you gave in 2001, did you testify based on your recollection of the events at that time?
A. Yes, I did.
Q. And does the transcript I showed you, the

Page 44

transcript from 2001 contain your testimony, record your past recollection about those events?
A. Yes, it does.
MR. CLARE: Objection to form.
MR. BRODY: And what's that objection?
MR. CLARE: You only asked him to read a few pages of his deposition transcript, and I think it's improper to ask him whether the entire transcript is consistent with his current recollection.
MR. BRODY: Okay, well, I don't think that was my question.
MR. CLARE: Or whether it was based on his recollection at that point in time, when he's only had a chance to review a few pages of it.
BY MR. BRODY:
Q. Have you reviewed the transcript of your 2001 deposition at any time within the last six months?
A. No.
Q. Sir, to deal with Mr. Clare's objection, I'd ask you to go back, and I hate to do this to you but just to read a few additional pages of the transcript.
I'd ask you to read your transcript beginning at page 187. I believe you started reading at 190. So just read from 187 to 190, and I'm going to ask you a

NOT A CERTIFIED COPY

017957

Page 45

couple of questions?
MR. MOSCATO: I don't want to be an obstructionist, but what's the purpose of his reading?
MR. BRODY: Just to establish past recollection recorded.
MR. MOSCATO: I object. I don't think that's the proper way to do it, but it's your deposition, so do what you think is best.
BY MR. BRODY:
Q. Okay, you've had a chance to read that?
A. Yes.
Q. Okay. And Mr. Bornstein -- excuse me, Mr. Brockelman, at the time you gave the testimony you gave in 2001, you testified based on your recollection of those events?
A. Yes, I did.
Q. And as I believe you testified today, you no longer have recollection of those specific events beyond what you've testified about in your prior testimony?
A. That's correct.
Q. You've had a chance to review pages 187 through 202 of your transcript from 2001; is that correct?

Page 46

A. Yes.
Q. And aside from the extent to which it has refreshed your recollection, you do not have recollection of those events; is that correct?
A. That's correct.
Q. At the time you testified in 2001, the events were sufficiently fresh in your memory that your testimony was, to your knowledge, true and correct?
A. Yes.
Q. And does those pages from Exhibit 116 correctly reflect the testimony you gave in 2001 concerning the events at the printer?
MR. CLARE: Objection to form.
THE WITNESS: Yes.
BY MR. BRODY:
Q. Sir, after the, after you gave your testimony in 2001, do you know if you had an opportunity to review the transcript?
A. It was provided to me, but I did not review it.
Q. As you sit here, do you recall ever making any changes or corrections in the transcript to change things that were not correct?
A. I did not.
Q. After the events at the printer, did you

Page 47

return to Florida?
A. Yes.
Q. Did you continue to work on the Sunbeam transaction?
MR. MOSCATO: I'm sorry, continue to work on what?
MR. BRODY: On the Sunbeam -- I said transaction. I should have said Sunbeam engagement.
THE WITNESS: Only from an administrative standpoint, making sure the proper documents were filed and so forth.
BY MR. BRODY:
Q. After the events of March 19, did you ever review a memorandum prepared by Mr. Bornstein describing what happened that evening?
A. Yes, I did.
Q. I'm going to show you what's previously been marked as Exhibit 114, and I'd ask you just to look at that.
MR. BRODY: And, counsel, I'm going to give you copies of the identical document, but it bears a different exhibit stamp on it. We've not had a chance to recopy the one --
MR. MOSCATO: That's fine. Appreciate it.

Page 48

MR. CLARE: That was marked as CPH 114?
MR. BRODY: Yes, I'm going to describe that. I'm sorry, sir, could I have Exhibit 114 back just so I can make my statement on the record.
Just for the record, Exhibit 114 which was previously marked is another version of the document I've given counsel a copy of, the one that was marked for purposes of the deposition exhibit, bears a Bates stamp Morgan Stanley confidential 0027048 through 50.
The one I've handed to counsel is slightly different dates, but it appears to be the same document. You can check.
MR. CLARE: I'll note for the record CPH Exhibit 114 bears some fax transmittal pages from the 2001 time period that I believe were there in connection with the prior litigation. It's not on the copy that was provided to counsel, but I don't think it's material.
MR. BRODY: I don't think so either, and I don't intend to ask about that, but thank you, Tom.
BY MR. BRODY:
Q. Mr. Brockelman, I've given you what's been marked as Exhibit 114. Did you see this at or about

NOT A CERTIFIED COPY

0017958

Page 49

March 31, 1998?
A. Yes, I did.
Q. And it's a memorandum drafted by Mr. Bornstein?
A. That is correct.
Q. Concerning the events at the printer?
A. Yes.
Q. Did you read the document back in March of 1998 or thereabouts?
A. Yes, I did.
Q. And at the time did you form an opinion as to whether it correctly stated what happened at the printer or not?
A. Yes, I did.
Q. And what view did you form?
A. That this was the proper events that unfolded that evening.
Q. And we've already asked you to testify about your recollection of that event.
Does this document refresh your recollection further about what happened that evening?
A. It does not refresh my recollection, but at the time I confirmed to Larry Bornstein that I agree with this memo.
Q. And at the time, you mean back in March of

Page 50

1998?
A. That's correct.
Q. And at that time the events were fresh in your mind?
A. That is correct.
Q. And to your recollection, does Exhibit 114 accurately describe the events that took place that evening?
MR. CLARE: Objection to form.
MR. MOSCATO: To the extent you had involvement in those events.
MR. BRODY: Thank you for that. I'll accept that friendly amendment.
THE WITNESS: Yes, to the extent I had involvement, I confirmed at that time this was the proper discussion.
BY MR. BRODY:
Q. And by the, to the extent you have involvement, there are certain conversations in here that Mr. Bornstein relates that took place out of your presence?
A. That is correct.
Q. And as to those, you can neither confirm nor deny them?
A. That's correct.

Page 51

Q. Okay. Thank you. You can put that document aside, sir.
Earlier in your testimony today, Mr. Brockelman, you described the bring-down letter which you I believe said was part of the work you did in this matter.
A. Yes.
Q. Am I referring to it by a name you understand, the bring-down letter?
A. Yes, you are.
Q. Were you involved in the preparation of the bring-down letter?
A. Yes, I was.
Q. What was the nature of your involvement?
A. To check it with accuracy to our professional standards.
Q. What was involved in checking the letter, to make sure it was accurate in keeping with your professional standards?
A. There is certain prescribed standards for the letter. It was drafted by Dennis Pastrana, and I checked the narrative to ensure it matched our accounting guidance for that.
Q. Mr. Brockelman, I'm going to show you what was marked previously as Exhibit 112.

Page 52

Are the second and third pages of this exhibit the bring-down letter?
A. Yes, it is.
Q. And the first and the fourth pages of those just part of the work papers of Arthur Andersen?
A. It appears to be.
Q. Focusing on the letter portion, the second and third pages, do you believe that was sent to Morgan Stanley on or about March 25th, 1998?
A. Yes.
Q. Looking at item E, which begins on the bottom of the first page and continues to the top of the second page, do you see that?
A. Yes.
Q. And that item E was intended to amend prior statements contained in the March 19th letter; is that correct?
A. Yes, that is correct.
Q. And turning to the second page of the document, sir -- excuse me, the third page of the document, page two of the letter, it recites the net sales and net income through March 1997 for one period and through March 1998 in the other period for Sunbeam; is that correct?
MR. CLARE: I object. Mischaracterizes the

NOT A CERTIFIED COPY

Page 53

document.
MR. BRODY: Let me just ask it differently.
BY MR. BRODY:
Q. What are those numbers at the top of the second page of your letter intended to show? By your letter, I meant the Arthur Andersen letter.
MR. MOSCATO: He's objecting because you gave the wrong dates. If you try again with the right dates --
MR. BRODY: Okay.
BY MR. BRODY:
Q. Mr. Brockelman, does this letter show the net sales and net income figures for the period December 30, 1996 through March 2, 1997, and December 29, 1997, through March 1, 1998, for Sunbeam?
A. Yes, it does.
Q. Do you know where that information came from?
A. Came from the company, from Sunbeam.
Q. Did you have anything to do with collecting those numbers?
A. No.
Q. In the text after the numbers I just recited, it refers to a one-time charge for, of $30 million for compensation.
Do you see that?

Page 54

A. Yes, I do.
Q. Is that information that you had anything to do with collecting?
A. No.
Q. Net of that $30 million charge, this letter shows Sunbeam suffering a loss of nearly $11 million through the first two months of 1998; is that correct?
A. Yes.
Q. Did you have any discussions with anyone at Morgan Stanley about this letter or the subject matter, the contents of the letter?
A. No, I did not.
Q. Did anyone from Morgan Stanley ever call you and ask you a question about this letter or the prior comfort letter that you looked at?
MR. CLARE: Objection to form.
THE WITNESS: I don't recall.
BY MR. BRODY:
Q. Do you know if anyone at Morgan Stanley ever called anyone at Arthur Andersen to discuss the sales and net income figures for these months that are contained in Exhibit 112?
MR. CLARE: Objection, foundation.
THE WITNESS: Not to my knowledge.

Page 55

BY MR. BRODY:
Q. Do you know if a draft of this bring-down due diligence letter was provided to Morgan Stanley prior to March 25th?
A. I don't know.
Q. Do you know if you personally worked on or made changes to prior drafts?
A. Yes.
Q. What changes do you -- excuse me, let me withdraw that.
What work do you remember doing on those prior letters?
A. I don't recall specifically, but it related to making changes to the narrative in the letter.
Q. And when you refer to the narrative, any particular --
A. The nonnumerical tables.
Q. I understand. As you sit here and with this letter in front of you, do you remember any changes that you personally made?
A. No, I do not.
MR. BRODY: Please mark that as Exhibit 117.
(CPH Exhibit No. 117 was marked for identification.)

Page 56

BY MR. BRODY:
Q. Mr. Brockelman, I've given you what's been marked as Exhibit 117. Do you recognize the handwriting on this document?
A. No, I do not.
Q. I take it none of it is yours?
A. It is not.
Q. Does any of this reflect the changes that you personally made on the document?
A. I don't recall.
Q. Okay. You can put that document aside.
After the bring-down due diligence letter that we've marked as Exhibit 112 was sent to Morgan Stanley, do you remember anything else that you did in connection with the bond offering or the transaction by which Sunbeam acquired its interest in Coleman?
MR. MOSCATO: Sunbeam acquired its interest?
MR. BRODY: Yes.
MR. MOSCATO: Sorry.
MR. BRODY: That's okay.
THE WITNESS: I don't recall.
MR. BRODY: Can we go off the record for a second.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 10:22 a.m.

NOT A CERTIFIED COPY

017960

Page 57

(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor is 10:33 a.m.
BY MR. BRODY:
Q. Mr. Brockelman, during this deposition I've asked you a number of questions about the events at the printer. You testified based on your recollection and your recollection as refreshed by your prior testimony and by Mr. Bornstein's memorandum.
Are you aware of anything else out there, piece of paper, notes, anything, that might refresh your recollection of what happened at the printer aside from the things that I've already shown you?
A. No.
MR. BRODY: Thank you, Mr. Brockelman. I have no further questions.
CROSS (MARK BROCKELMAN)
BY MR. CLARE:
Q. Hi, Mr. Brockelman. We met this morning. My name is Tom Clare. I'm here representing Morgan Stanley, and I have some questions for you this morning.
I'd like to proceed in two parts. I'm going to ask you some follow-up questions to the questions Mr. Brody asked you this morning, and then I have some

Page 58

additional questions. We might get into a couple of different areas that Mr. Brody didn't touch on.
You mentioned to Mr. Brody this morning that you worked on the pro forma financials in connection with the bond offering; is that correct?
A. That's correct.
Q. Did Morgan Stanley provide any information to you in connection with the pro forma financial work that you did?
A. No.
Q. All of the information that you received for your work on the pro forma financials came from Sunbeam?
A. That's correct.
Q. In the course of your work on the bond offering, did you discuss with anybody at Morgan Stanley the pro forma financials that you were preparing?
A. No.
Q. You also indicated that you verified the historical financial information that would be included in the offering memorandum; is that correct?
A. Yes.
Q. Did Morgan Stanley provide any of the historical financial information to you in connection

Page 59

with your work on the bond offering memo?
A. No.
Q. All of that information was provided by Sunbeam to you, correct?
A. Yes.
Q. How many days were you in New York, the events surrounding the evening at the printer that you discussed with Mr. Brody this morning?
A. Approximately 24 hours.
Q. So it was just the one day?
A. That's correct.
Q. And the work that you did in connection with the March 19th comfort letter, was all of that work done in New York or was a portion of it done in Florida?
A. Most was done in Florida.
Q. And then a draft of it was brought to New York with you and Mr. Bornstein, and you continued to work on it in New York?
A. Yes, that's correct.
Q. Was there any work that was done on the comfort letter in New York before you arrived at the printer?
A. No.
Q. The pro forma review that you had done, did

Page 60

any of that work take place in New York?
A. Yes.
Q. Again, that evening at the printer, that was part of the duties that you were there to perform?
A. Yes, that's correct.
Q. Did Morgan Stanley provide you with any information to be included in the comfort letter that was delivered to it that night?
A. No.
Q. All of that information came from Sunbeam, correct?
A. Yes, that's correct.
Q. Other than the discussion at the printer, did you have any other face-to-face meetings with anyone from Morgan Stanley?
A. No, I did not.
Q. So in connection with all of your work on Sunbeam-related engagements, the only time you were ever in the same room as anybody from Morgan Stanley was that night at Global Financial Press in New York; is that correct?
A. That's correct.
Q. Did you attend any drafting session related to the offering memo other than the one that occurred at the printer that evening in New York?

NOT A CERTIFIED COPY

016961

Page 61

A. I believe that's the only drafting session I attended.
Q. Do you know if Mr. Bornstein had attended other drafting sessions related to the offering memo?
A. Yes, he did.
Q. Was Mr. Bornstein in New York already and did you fly up from Florida to join him, or did you travel from Florida together?
A. I believe we traveled together.
Q. Do you know if these additional drafting sessions that you think Mr. Bornstein attended, can you place them in time to the evening at the print shop that we've been discussing?
A. It preceded.
Q. For some number of days?
A. Certainly.
Q. And Mr. Bornstein had then returned to Florida to your recollection and then you traveled up together?
MR. BRODY: Objection to foundation, form.
THE WITNESS: Yes, that's correct.
BY MR. CLARE:
Q. If you have the exhibits that Mr. Brody marked this morning in front of you, I'd like you to look at CPH Exhibit 115.

Page 62

Do you have that in front of you?
A. Yes, I do.
Q. You've already testified about the handwriting on the document. There is a fax line on CPH Exhibit 115 which indicates that it was faxed from Global Financial Press in New York.
Do you recall that evening a draft of the comfort letter being faxed to somebody else that wasn't there that night?
A. Yes.
Q. Do you know who CPH Exhibit 115 was faxed to that night?
A. It was either Phil Harlow or Bill Pruitt. I don't recall which one, but it was a two-way partner with Arthur Andersen.
Q. To your recollection, were there multiple copies of the comfort letter that were faxed to partners at Arthur Andersen that evening or was it one draft as reflected here in CPH 115?
A. I don't recall.
Q. You don't remember there being a series of them, but you do remember the fact that a draft was at one point faxed to a partner at Arthur Andersen?
A. That's correct, yes.
Q. What was the purpose, to the best of your

Page 63

recollection, in faxing a draft of the comfort letter to either Mr. Harlow or to Mr. Pruitt?
A. For their review of the changes that we made that night.
Q. Mr. Bornstein was the person in charge on site, correct?
A. That is correct.
Q. And you were junior to him at that point?
A. Yes.
Q. You testified that Mr. Bornstein had authorization to sign the comfort letter on behalf of Arthur Andersen; is that correct?
A. Yes.
Q. And you were present when he signed it?
A. Yes.
Q. And you signed it there in the offices of Global Financial Press in New York, correct?
A. Yes.
Q. You indicated that Mr. Bornstein had authorization from a partner or the partners to sign the comfort letter; is that correct?
A. Yes.
Q. Is it, is partner authorization required under the rules of Arthur Andersen internal procedures before a comfort letter like the one that was delivered

Page 64

to Morgan Stanley can be signed and delivered?
A. Yes, it is.
Q. Do you have an understanding as to why partner authorization is required?
A. Yes.
Q. Can you tell me why?
A. Certainly. Partners are the only people allowed to sign opinions or reports, and having authorization basically is as if the partner is signing, you're signing in their place.
Q. So the comfort letter that was delivered to Morgan Stanley on March 19th, 1998, was considered to be an opinion or report that required partner approval at Arthur Andersen within the internal procedures?
A. Yes, that's correct.
Q. And without that authorization or approval, Mr. Bornstein could not have signed it on behalf of Arthur Andersen?
A. Well, I don't know if he could not, but it would be against our internal control procedures if he had signed on behalf.
Q. And that's because a comfort letter like the one that was delivered to Morgan Stanley is deemed to be an opinion or report of Arthur Andersen?
A. Yes, that's correct.

NOT A CERTIFIED COPY

017962

Page 65

Q. That's why it requires partner approval?
A. Yes.
Q. That evening at the printer you indicated that you reviewed the financial information contained in the offering memo.
Did you review any of the narrative portions of the offering memo as well?
A. No. Only the numerical information.
Q. We'll look at some documents in a few minutes and I'll get you to go through and maybe you can identify for us the sections that you looked at. That will probably be a more efficient way to proceed.
I'd like you to look at CPH Exhibit 114 that Mr. Brody showed you this morning, a copy of Mr. Bornstein's March 31st, 1998, memo.
Do you have that in front of you?
A. Yes, I do.
Q. And you testified that to the best of your knowledge, this is an accurate account of the events of that evening; is that correct?
A. At that time, best of my knowledge, yes, correct.
Q. But if I understand your testimony correctly, CPH Exhibit 114 makes reference to a number of conversations and telephone conversations that you were

Page 66

not a party to; is that right?
A. That's correct.
Q. And do you have any basis one way or the other to say or comment on the accuracy of CPH Exhibit 114 with regard to those conversations that you were not a part of?
A. No.
Q. So to the extent that CPH 114 reflects those conversations, you can't comment one way or the other as to whether or not it's accurate?
A. That's correct.
Q. And we would have to ask Mr. Bornstein about those conversations to the extent that he was a party to them?
A. Yes.
Q. I'd like to look at CPH Exhibit 114 in a little bit of detail and understand which of the conversations that you were present for and which ones you weren't.
There is a reference to some post audit review work in the first paragraph where conversations with Mr. Gluck, Mr. Harlow, and Mr. Pruitt preceding the events of March 19th.
Do you see that?
A. Yes, I do.

Page 67

Q. Were you part of any of those discussions?
A. No, I was not.
Q. The second paragraph talks about Sunbeam having issued a press release. And I believe you testified this morning, previously testified that you had no involvement or discussion in any of the meetings or telephone conferences that led to the issuance of the press release; is that correct?
A. That's correct.
Q. Third paragraph talks about the evening of March 19th and the drafting session at Global Financial Press in New York. And that we've talked about some this morning and we'll talk about a little bit more, that you were present for at least portions of the discussions that took place there?
A. Yes, that is correct.
Q. And the fourth paragraph makes reference to a telephone conversation between Mr. Bornstein and Mr. Harlow. And it appears that that conversation took place on the evening of March 19th while Mr. Bornstein and you were at the print shop.
Were you part of that conversation that Mr. Bornstein is recording here with Mr. Harlow?
A. No, I was not.
Q. Am I correct that Mr. Bornstein called

Page 68

Mr. Harlow or spoke with Mr. Harlow from the print shop that evening?
A. That's what Mr. Bornstein told me.
Q. Did you see Mr. Bornstein on the phone that evening?
A. He left the room and told me he was going to call, but I did not see him on the phone.
Q. Okay. And you don't know who he was talking to or have any knowledge about what was said on that telephone call?
A. That's correct.
Q. You were not only not on the line for the phone call, but you were not even in the same room with Mr. Bornstein when he was on the phone?
A. That's correct.
Q. So you couldn't even hear what Mr. Bornstein was saying on his half of the conversation?
A. That's correct.
Q. There is a reference in that same paragraph to a conversation, a telephone conversation between Mr. Harlow, Mr. Bornstein and Mr. Gluck that evening.
Were you a part of that telephone conversation?
A. No, I was not.
Q. Was that part of the telephone conversation

NOT A CERTIFIED COPY

017963

Page 69

that Mr. Bornstein told you he was placing that evening?
A. That's what Mr. Bornstein told me, yes.
Q. Did he tell you this the night of March 19th? In other words, did he come back into the room and said, "I just spoke with Mr. Harlow and Mr. Gluck," or was it at some point after?
A. He told me that night.
Q. There is references here to conversations that took place between Mr. Harlow, Mr. Fanin, Mr. Kersh, and Janet Kelly, and it's unclear from the memo whether Mr. Bornstein was even a part of those conversations.
On the night of March 19th, were you part of any conversation or telephone conversation with Mr. Harlow, Mr. Fanin, Mr. Kersh or Miss Kelly?
A. No.
Q. So you can't testify one way or the other whether or not the conversation that's reflected here in CPH 114 that relate to those individuals is accurate or correct?
A. That's correct.
Q. And there is a reference here about Mr. Harlow being advised something about Mr. Izzi. I think that's a typo error. I think it's Mr. Uzzi.

Page 70

But you have no recollection of any discussion with Mr. Uzzi that night?
A. That's correct.
Q. Now Mr. Brody showed you a copy of your deposition transcript from 2001, and you indicated that the pages he referred you to refreshed your recollection to an extent.
And I just want to understand as you sit here today in 2004, are there any other -- have we exhausted the extent of your recollection of that evening at the print shop, even as refreshed by your deposition testimony that Mr. Brody showed you and also the memorandum that we just looked at, CPH 114?
A. Yes.
Q. So even as refreshed, you are unable to testify today or presumably at any point in the future from your current recollection about any additional detail or events from that evening; is that correct?
MR. BRODY: Object to the form.
MR. MOSCATO: Wait a minute, I object, because I don't understand the question.
BY MR. CLARE:
Q. Okay, let me withdraw and make, ask a better question. I don't intend to confuse.
What I'm trying to understand is you have in your mind as you sit here today some recollection of the events of March 19th, correct?
A. That's correct.
Q. And that recollection was refreshed to some extent by some of the materials that Mr. Brody showed you; is that correct?
A. I agree.
Q. Okay. Is there anything else that you remember currently about the events of that evening that we haven't discussed this evening?
A. No.
Q. Now, Mr. Brody showed you a deposition transcript from --
(Thereupon, a cellphone rang.)
MR. CLARE: Let's go off the record.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 10:50 a.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 10:52 a.m.
BY MR. CLARE:
Q. Thank you, Mr. Brockelman. Before the break, I was about to ask you about your prior deposition.
Mr. Brody showed you a transcript from January 2001, and you recall giving that deposition?

Page 71

Page 72

A. Yes, I do.
Q. Do you recall that it was multiple days? It was a two-day deposition?
A. Yes, I do.
Q. Other than those two days of deposition testimony, were you ever deposed in any other proceeding relating to Sunbeam-related work?
A. No, I was not.
Q. And other than that deposition testimony, have you brought in any other sworn testimony in any other setting about your Sunbeam-related work?
A. No.
Q. Or submitted any sworn written declarations or affidavits?
A. No.
Q. Have you ever been asked to provide a sworn written declaration relating to your Sunbeam-related work?
A. No.
Q. Were you ever interviewed by the SEC or any other law enforcement authority related to your Sunbeam-related work?
A. No.
Q. What did you do to prepare for your deposition today?

NOT A CERTIFIED COPY

017964

Page 73

A. Nothing. I was provided a package by Mike Moscato, but I reviewed it maybe in about two minutes and didn't take much time, quite honestly.
Q. Did you review any of your prior deposition testimony, either the portion that Mr. Brody showed you this morning or any other portion?
A. No, I did not.
Q. In preparing for your deposition, did you speak with anybody from Mr. Brody's firm, Jenner & Block, in Chicago?
A. No, I did not.
Q. Have you spoken with anyone from Mr. Brody's firm at any time this year or last year in 2003?
A. No, I did not.
Q. Does Mr. Bornstein also work at American Media?
A. No.
Q. At one point did he?
A. Yes.
Q. And you worked with him?
A. Yes, that is correct.
Q. We'll have a chance to talk with Mr. Bornstein separately.
When did Mr. Bornstein leave American Media?
A. Approximately four and a half months ago.

Page 74

Q. And while he was at American Media, what position did you have?
A. He was the vice-president, general manager of American Media.
Q. Did you report to him?
A. No.
Q. Were you equal within the company?
A. Yes.
Q. When was the last time you spoke with Mr. Bornstein?
A. Last night at about 10:30.
Q. About your deposition today?
A. No. We maintain friendly relationships.
Q. When was the last time you spoke to Mr. Bornstein about the work that the two of you did on Sunbeam-related matters?
A. I don't recall. We did talk that we both were being deposed, but we didn't talk about the actual events on Sunbeam.
Q. So other than the fact that you both were, had been asked to be deposed in this lawsuit, there was no discussion with you and Mr. Bornstein about the events that took place in 1998 that you were a part of?
A. I'm sure there were. I don't recall any discussions, but I'm sure we had some discussion since

Page 75

then, but nothing specifically that I recall.
Q. As you sit here today, you don't remember any discussion with Mr. Bornstein about the night at the printer's specifically, since 1998?
A. That's correct.
Q. And in the discussion that had you with Mr. Bornstein last evening, any discussion of events of 1998 in any way?
A. No.
Q. You're a certified public accountant in Illinois?
A. I believe my -- it's lapsed. I haven't had the proper CPE credit, so I need to have that renewed.
Q. So it's on basically an inactive status?
A. Exactly, yes.
Q. But you are licensed as a certified public accountant?
A. Yes, that's correct.
Q. And you went to Andersen directly after college?
A. Yes, that's correct.
Q. And you worked at Andersen for eight years, approximately?
A. Approximately, yes.
Q. Started off as a staff accountant and then

Page 76

were promoted through the ranks as you described for Mr. Brody?
A. Yes, correct, to manager.
Q. And while you were at Andersen, did you think it was a good company?
A. Absolutely.
Q. Did you think it was an ethical company?
A. Absolutely.
Q. You thought the people you worked with were competent?
A. Very.
Q. And you thought the company did good work in serving its clients?
A. Yes.
Q. While you were at Andersen, did you have an opinion about Andersen's reputation for competence?
A. Yes, I felt we had the best reputation.
Q. Did you form an opinion about Andersen's reputation for integrity?
A. Yes, extremely high.
Q. So you felt that Andersen had a strong reputation for integrity and competence?
A. Yes, certainly.
Q. And in 1998 while you were working on the Sunbeam-related engagements that we discussed, you had

NOT A CERTIFIED COPY

017965

Page 77

the title of manager, correct, for a portion of it at least?
A. I'm sorry, for the restatement work or for the --
Q. Well --
A. During the restatement work I was promoted to manager, but during the offering memorandum, I was senior.
Q. Senior --
A. I was a senior accountant.
Q. Okay, thank you for that clarification.
At the time that you were at Sunbeam, did you -- I'm sorry, withdraw, strike that.
At the time that you were at Andersen working on Sunbeam-related engagements, were you, did you have aspirations to become a partner at Andersen?
A. Yes.
Q. And that's what you were working towards?
A. At the time, yes.
Q. And when you were promoted to manager in 1998, you had managerial tasks, internal firm administrative tasks in addition to client-related work; is that correct?
A. Yes.
Q. Did you have similar internal

Page 78

management-related tasks when you were a senior? In other words, did you supervise other Andersen personnel on client-related engagements?
Did you do reviews for other people?
A. Yes.
Q. That type of work?
And in 1997 and in 1998 your responsibilities included -- would you agree that your responsibilities included carrying out client-related work in a professionally competent manner?
A. Yes.
Q. And following Andersen's internal policies and procedures?
A. Yes.
Q. Protecting Andersen's reputation that you described?
A. Yes.
Q. And protecting Andersen's integrity?
A. Yes.
Q. While at Anderson, did you ever knowingly take any action that violated Andersen's internal policies or procedures?
A. No.
Q. Or take any action that, where you would knowingly damage Andersen's reputation?

Page 79

A. No.
Q. Or knowingly damage Andersen's integrity?
A. No.
Q. What does it mean for, at the time that you were working at Andersen, what did it mean for Andersen to consent? Is that a term that's familiar to you?
A. Yes.
Q. Can you explain to me what that means in your own words?
A. Consent in context with an opinion or a letter means that we give the authorization to release that opinion or letter in a filing.
Q. And the comfort letter that we've been describing, the March 19th, is that a form of consent?
A. Yes.
Q. And there are procedures that have to be followed before a consent can be issued by Andersen?
A. Yes, there are.
Q. And partner approval is required for the reasons we talked about earlier?
A. Yes.
Q. In the circumstances of the comfort letter, is a concurring partner approval required for that type of a consent?
A. For consents, yes.

Page 80

Q. Do you recall who the concurring partner was for the comfort letters that we've been discussing?
A. Yes.
Q. Who was that?
A. Bill Pruitt.
Q. Mr. Harlow was the partner and Mr. Pruitt was the concurring partner?
A. That is correct.
Q. And the reason that a concurring partner approval is also required is because it's important when Andersen issues a consent?
A. A consent or opinion, any kind of report to have a concurring partner for internal control purposes.
Q. The reason is because it's a statement that's being made on behalf of Arthur Andersen?
MR. BRODY: Object to the form.
BY MR. CLARE:
Q. Is that fair?
A. Yes, that's fair.
Q. And in issuing a consent, is it fair to say that Anderson would want to know how its financial statements or how the opinion -- let me withdraw that.
In issuing a consent, is it fair to say that Andersen wants to be informed as to how its opinion is

NOT A CERTIFIED COPY

017966

Page 81

going to be used?
A. Yes.
Q. The decision internally at Andersen to issue a consent, it's not a decision that's delegated to the client; is that correct?
A. That's correct.
Q. It's a decision that retains solely at Andersen?
A. Yes.
Q. It's not delegated to the client's attorneys?
A. No.
Q. Not delegated to the management of the company?
A. No.
Q. Or not delegated to the company's investment bank?
A. Only to Arthur Andersen.
Q. But not to the investment banks of the company?
A. That's correct.
Q. We looked earlier at what's been marked as CPH Exhibit 114, which is Mr. Bornstein's memo dated March 31st. We've already been through that document. I'm not going to ask you much more about it.
Did you prepare any documentation of your

Page 82

own, a similar memo to the one that Mr. Bornstein prepared describing the events of that evening at the print shop?
A. No, I did not.
Q. Did you take any notes or make any record of it in any way in March or thereafter?
A. No.
Q. In '98?
A. No.
Q. Have you seen in your time at Andersen either on your work on the restatement or on any other work any other documentation of the events of that evening other than Mr. Bornstein's March 31st, '98 memo?
A. No.
Q. I want to go back and talk in a little bit more detail about the events of that afternoon and into the evening, and I'm going to try to take it one step at a time, just to make sure that we've exhausted your knowledge and recollection of those events.
You testified that the first mention that you heard of a Sunbeam press release was on a news show in Mr. Bornstein's hotel room?
A. Yes.
Q. And this was, do you remember what time of day this was?

Page 83

A. Approximately 11, 12:00.
Q. And you and Mr. Bornstein were waiting to go to the printer that evening?
A. Yes, correct.
Q. Was there a designated time that everybody was going to convene at the printer?
A. Afternoon is all I recall.
Q. And what do you recall was reported -- and there was a telephone news report, correct?
A. Yes, correct.
Q. So earlier when you referred to a news release, it wasn't a written document?
A. That's correct.
Q. It was a verbal, a report that you saw on some financial television show that you were watching?
A. Yes.
Q. Do you recall what exactly was reported on the news show?
A. No, I don't.
Q. You just remember there was a figure given?
A. Yes, correct.
Q. Do you recall whether the news show reported that Sunbeam was announcing that it would not meet analyst expectations for the first quarter of 1998?
Do you remember that in substance?

Page 84

A. Generally, yes.
Q. Do you remember whether the news account that you heard in the hotel room also included any information about how first quarter 1998 sales might relate to first quarter 1997 sales?
Do you remember whether that was a part of the news report that you heard?
A. I don't recall.
Q. You don't know one way or the other?
A. No.
Q. Was there any mention of Morgan Stanley in the news report?
A. I don't recall any mention.
Q. Was there any mention of the bond offering?
A. I don't recall any mention.
Q. Any mention of the pending acquisitions that related to the bond offering?
A. No.
Q. Did the news report include a report on how the market was reacting to the news?
A. Not that I recall.
Q. Do you remember independently how the market was reacting to the news?
A. No.
Q. Are you aware generally that the stock of

NOT A CERTIFIED COPY

017967

Page 85

Sunbeam was trading down on this announcement?
A. I didn't have knowledge on that day.
Subsequent to the bond offering, I have knowledge that the stock decreased.
Q. Based on your experience in the business world, was the kind of announcement that you heard that day good news or bad news for the financial market?
MR. BRODY: Object to the form, foundation.
MR. MOSCATO: For the financial market, you said?
MR. CLARE: Correct.
THE WITNESS: For the financial market as a broad or is as it related to Sunbeam?
BY MR. CLARE:
Q. Let me ask a better question.
Based on your experience in the business, was the type of announcement that you heard good news or bad news?
MR. BRODY: Same objection.
THE WITNESS: Certainly bad news for the company.
BY MR. CLARE:
Q. Is this the kind of announcement that's known as an early warning?
A. Yes, correct.

Page 86

Q. Is there anything else that you remember about the press report that you heard in Mr. Bornstein's hotel room?
A. No.
Q. What was your reaction to hearing the report? Again, we're still in Mr. Bornstein's hotel room.
A. I didn't have a basis for reaction.
Q. One way or the other?
A. That's correct.
Q. Now at that point did you already know that Sunbeam sales for the first quarter of 1998 were soft?
A. I didn't have a basis.
Q. So in connection with the work that you had done getting ready for this printer meeting, you didn't have any knowledge one way or the other as to whether or not Sunbeam's first quarter 1998 sales were -- what they were?
A. No.
Q. Did you know, as a result of the work that you had done on the comfort letter, that Sunbeam sales for the first two months of the first quarter of 1998 were lower than they were in the previous period?
A. I believe that was in the comfort letter, yes.
Q. That information was ultimately contained in

Page 87

the comfort letter that was issued. In connection with your work on preparing drafts, was that information in the drafts that you had been working on?
A. Yes.
Q. Prior to the 19th?
A. Yes.
Q. So you did have some information about first quarter sales prior to that day?
A. That's correct, as it was in the comfort letter.
Q. Had you focused on that issue at all in internal discussions with Andersen?
Had you been part of any discussions where that concept or that subject was discussed?
A. No.
Q. Are you aware one way or the other whether Andersen had previously told Sunbeam that that information about first quarter sales needed to be disclosed to Morgan Stanley?
MR. BRODY: Object to the form.
THE WITNESS: Previous to the --
BY MR. CLARE:
Q. The events of the 19th.
A. Not that I recall.
Q. You weren't part of any of those discussions?

Page 88

A. No, I was not.
Q. If they took place.
So you don't know one way or the other what Andersen might have said to Sunbeam about disclosures that needed to be made to Morgan Stanley about first quarter 1998 sales?
A. No.
Q. Did you have an understanding that day about who had drafted the press release?
A. Sunbeam. I don't know who at Sunbeam.
MR. BRODY: I'm sorry, I'm going to object to foundation and form on that.
BY MR. CLARE:
Q. Were you ever told that anybody from Morgan Stanley had a role in drafting the press release?
A. No.
Q. Were you ever told or informed by any source what role, if any, Morgan Stanley had in the decision to issue the press release or its content?
A. No.
Q. Other than what you described for Mr. Brody this morning, was there any discussions about the press release that took place in Mr. Bornstein's hotel room that you can recall?
A. Not that I recall.

NOT A CERTIFIED COPY

017968

Page 89

Q. There has been some testimony that from his hotel room, Mr. Bornstein placed a telephone call to others at Andersen after hearing the news report.

Do you have any recollection of Mr. Bornstein placing a telephone call in your presence from the hotel room to discuss a news report that you had heard?

A. I remember Larry making a telephone call. I don't recall who he called, but he was on the phone afterwards.

Q. Do you recall anything that was said at least on Mr. Bornstein's side?

A. No, I do not.

Q. And you don't have any understanding or knowledge as to who he spoke to?

A. No, I do not.

Q. Do you recall that his telephone conversation was about the press release?

A. I don't recall.

Q. So it might have been, might not have been?

A. I assume it was right after the press, after we saw the news release.

Q. Did he say anything to you before he placed the phone call like "We have to talk to Harlow about this," or anything that might indicate who he talked to or what his purpose was in having that conversation?

Page 90

A. I don't recall.

Q. And how about after he got off the phone, did he relate to you the substance of any discussion that he had with the person he was talking to?

A. Again, I don't recall.

Q. At this point, you're still in Mr. Bornstein's hotel room.

Did you have an actual hard copy, a paper document of the press release?

A. I did not.

Q. Do you know if Mr. Bornstein did?

A. I don't know.

Q. When Mr. Bornstein finished with his telephone conversation, did he indicate to you that he had more information about what the press release said or what the contents of it was other than what was on the news report?

A. I don't recall.

Q. When was the first time you did see a hard copy of the press release, if you ever did?

A. I don't recall seeing any press release. I might have. I don't recall seeing one.

Q. Okay. In all the time that you were at the print shop, spilling over now into the next morning, you don't recall ever having been provided with a hard

Page 91

copy, a paper copy of the press release?

A. That's correct.

Q. Okay.

MR. CLARE: Let's mark this as Morgan Stanley Exhibit 39.

(MS Exhibit No. 39 was marked for identification.)

BY MR. CLARE:

Q. Mr. Brockelman, I've handed you what's been marked as Morgan Stanley Deposition Exhibit 39 and ask you to take a look at it. It's a press release on Sunbeam paper dated March 19, 1998.

Now you've had a chance to look at a hard copy of the press release. Does this refresh your recollection in any way about ever having seen a hard copy of the press release?

A. No, it does not.

Q. Okay. Do you recall whether there were copies of it at the printer that evening?

In other words, as part of any of the discussions that took place that evening, do you remember ever seeing copies, whether or not you ever actually looked at it?

A. No, I don't remember seeing a copy of this.

Q. And do you know if Mr. Bornstein had a hard

Page 92

copy of it during the course of events that you've described this morning?

A. Not to my knowledge.

Q. You just don't know one way or the other?

A. That's correct.

Q. Okay. Does Morgan Stanley Exhibit 39, the press release, is this in substance the press release that you recall was summarized in the news report that you heard in Mr. Bornstein's hotel room?

In other words, this was the announcement that was being reported on?

A. Yes.

Q. Does seeing Morgan Stanley Exhibit 39 refresh your recollection in any way about what was being reported that day; in other words, what portion of the announcement was summarized in the news report?

A. No. My recollection is the same.

Q. There is a contact person at the bottom, Richard Goudis. Do you see that?

A. Yes.

Q. Did you know Mr. Goudis to be a Sunbeam employee?

A. No, I did not.

Q. Do you know who he was?

A. No, I do not.

NOT A CERTIFIED COPY

Page 93

Q. So as far as you are aware, Mr. Brockelman, that during the events at the printer at the print shop that evening, nobody from Andersen had a hard copy of the entire press release; is that correct, to your knowledge?
MR. BRODY: Object to the form of the question.
THE WITNESS: To my knowledge, yes.
BY MR. CLARE:
Q. Was there additional discussion at the print shop about what was being said in the presence release?
MR. BRODY: What had been said or what was --
MR. CLARE: What had been said in the press release. In other words -- let me withdraw that and ask a better question.
BY MR. CLARE:
Q. As part of the discussions, did Mr. Bornstein or you ask anyone else present or discuss with those present what had been disclosed in the press release other than what you had heard on the news show?
A. Mr. Bornstein discussed the press release. I don't recall the exact discussion held, but he did discuss it.
Q. Okay. Do you remember anything about those discussions?

Page 94

A. No, I do not.
Q. Did -- on March 19th at Global Financial Press, did you think that Sunbeam had issued a false press release? Did that thought ever occur to you that evening?
A. I had no basis.
Q. No basis one way or the other to know whether it was false or not?
A. That's correct.
Q. Did you have any basis to form an opinion as to whether or not Sunbeam had issued a misleading press release?
A. I had no basis except for talking to Larry Bornstein.
Q. Did you have a discussion with Mr. Bornstein about that topic, about whether the press release was misleading?
A. Larry Bornstein told me he felt it was misleading.
Q. What did he tell you?
A. That he felt it was misleading.
Q. Was there any discussion that had you with Mr. Bornstein or anybody else at Andersen about asking Sunbeam to retract or withdraw the press release that it had issued?

Page 95

A. No, I did not.
Q. You were not part of any of those discussions?
A. I was not part of the discussion.
Q. Are you aware from any source whether any discussion like that took place?
A. Only through Larry Bornstein.
Q. Did Mr. Bornstein tell you that he had asked the company to withdraw or retract its press release?
A. That I don't recall. I know he had a discussion with Mr. Harlow relating to that context that I heard secondhand from Larry Bornstein.
Q. And he told you, again, secondhand, that one of the topics was discussed as to whether or not Sunbeam should withdraw or retract the press release?
A. That's correct.
Q. Did you have an opinion in that regard?
A. No.
Q. Did you have any basis to --
A. No basis for an opinion.
Q. Did Mr. Bornstein tell you that he felt the press release ought to be withdrawn or retracted?
A. That I don't recall.
Q. Did he tell you whether Mr. Harlow had a view as to whether or not Sunbeam ought to withdraw or

Page 96

retract the press release?
A. That I don't recall either.
MR. CLARE: Mark this as the next exhibit, Morgan Stanley 40.
(MS Exhibit No. 40 was marked for identification.)
BY MR. CLARE:
Q. Mr. Brockelman, we've handed you what's been marked as Morgan Stanley Deposition Exhibit 40, and it's a fairly thick document. Feel free to take as much time as you want to review it. I'm only going to ask you questions about a certain number of pages of it and I'll identify them for you and give you an opportunity to look at it, but if you want to take the time to read any portion of it, let me know and we'll make sure you have that opportunity.
Do you recognize Morgan Stanley Exhibit 40 as the offering memo for the bond offering that Sunbeam was making in March of 1998?
A. Yes, I do.
Q. And is this the document that you were there at the print shop that evening to work on?
A. Yes.
Q. I'd like you to turn if you would, please, to the table of contents, which is page three of Morgan

NOT A CERTIFIED COPY

017970

Stanley Exhibit 40.
And I'd like you to identify for me to the best that you can which sections of the offering memo that you read or worked on in any way at the printer's that evening.
MR. BRODY: Object to the form.
THE WITNESS: I couldn't tell you which sections. Again, any historical financial information within here, I verified that night. Throughout each one of these sections there is historical information contained.
BY MR. CLARE:
Q. Okay. That's fair, and I appreciate that.
So if I understand you correctly, that through the course of that day and into the next morning, that part of your task was to essentially read through the entire offering memorandum and verify any historical information that was contained in the offering memo; is that correct?
A. That's correct, and also the pro forma information, which of course is not historical.
Q. Thank you. Thank you for that clarification.
And that includes the entire content of the offering memo, because historical information, financial information is contained in various sections?

A. Yes, that's correct.
Q. So it's not limited to an appendix to the report or what I believe are the F1 pages that are pages that come after?
A. That's correct. Throughout the document is historical information.
Q. This was, was this the first time that evening at the print shop that you had seen a copy of the offering memo?
A. No.
Q. You had seen copies of it prior to arriving in New York that day?
A. Yes.
Q. And you had been performing that same function that you've described?
A. Yes, correct.
Q. Do you have any information as you sit here today about the content of the offering memo; in other words, who supplied the content of it, the narrative, other than the financial information that you worked on?
MR. BRODY: The entire document?
MR. CLARE: Any portion of it.
MR. BRODY: Object to the form.

BY MR. CLARE:
Q. In other words, were you part of discussions where the contents of it, particular paragraphs were discussed or edited back and forth? Was that, were those conversations or meetings that you were a part of?
A. Certainly that night there were discussions on the narrative.
Q. But prior to that evening, were there any discussions about the narrative that you were involved in?
A. Not that I recall.
Q. And do you recall as you sit here today any discussions about the narrative other than the one at the print shop that evening?
A. No, I don't.
Q. Throughout your work on the offering memo, do you remember any discussion of errors or inconsistencies in the offering memo?
MR. BRODY: Prior drafts or in the final product?
MR. CLARE: In prior drafts.
THE WITNESS: Yes.
BY MR. CLARE:
Q. Do you remember any specific errors or

inconsistencies?
A. Nothing specifically, but there is numerous numbers throughout here. And as I would find something, I would make a correction to a number.
Q. And it needed to be corrected?
A. That's correct.
Q. To your knowledge, were all the errors and inconsistencies that you identified actually corrected in the final version of the offering memo?
A. Yes.
Q. Were there any unresolved errors or inconsistencies in the offering memo that were not resolved when you left the print shop that evening?
A. No.
MR. CLARE: We have to take a short break to change the videotape and we'll reconvene.
THE VIDEOGRAPHER: We are now going off the video record on tape number one. We'll be back on tape number two. The time on the monitor, 11:25 a.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. This is tape number two. The time on the monitor, 11:26 a.m.
MR. MOSCATO: I'm going to run get a cup of

NOT A CERTIFIED COPY

017971

Page 101

coffee. Do you want some coffee?
THE WITNESS: No, thanks.
MR. MOSCATO: Sorry about that, go ahead.
BY MR. CLARE:
Q. Mr. Brockelman, before the short break, we were talking about errors and inconsistencies in the offering memo. And you testified that to your knowledge, that evening when the offering memo was finalized and you left the print shop, that all errors and inconsistencies that you were aware of had been resolved to your satisfaction.
A. That's correct.
Q. Now there was this issue with regard to disclosures that would be made in the offering memo related to first quarter sales. Do you recall that?
A. Roughly.
Q. Mr. Brody asked you some questions about that this morning.
A. Yes.
Q. Was that issue resolved before the print shop, before you and Mr. Bornstein left the print shop that morning?
MR. MOSCATO: I'm sorry, I missed something. Can you be specific as to when you say that issue?
MR. CLARE: Sure.

Page 102

BY MR. CLARE:
Q. There was a discussion that you've testified about regarding what disclosure would be made in the offering memo as it related to the events that were reported in the press release; is that correct?
A. That's correct.
Q. Had that discussion been resolved and a decision made at the time that you and Mr. Bornstein left the print shop the next morning?
MR. BRODY: Object to the form of the question.
THE WITNESS: It wasn't a part of the resolution, but I can only assume it was resolved as we gave our consent that night.
BY MR. CLARE:
Q. Okay. So if that issue had not been resolved and there was still a disagreement between Andersen and the company about the disclosures to be made, the consent would not have been issued?
MR. BRODY: Object to the form of the question, foundation.
THE WITNESS: Yes.
BY MR. CLARE:
Q. That's correct?
A. Yes, it's correct.

Page 103

MR. MOSCATO: I'd like to make a clarification. I'm not trying to be an obstructionist. When you use the word consent, is that synonymous in your mind with the conform letter.
THE WITNESS: Releasing the opinion report, allowing the use of the financial statements that were referred to in the registration statement.
BY MR. CLARE:
Q. So again, I'm trying to make sure I understand your testimony, that it's your understanding that the disclosure issue that you've testified about was resolved to Andersen's satisfaction because the comfort letter was issued that night?
MR. BRODY: Object to the form.
THE WITNESS: Yes.
BY MR. CLARE:
Q. And it's been your experience that the comfort letter, a comfort letter is not issued until all outstanding issues are resolved to Andersen's satisfaction?
A. Any material or significant issues certainly.
Q. Okay. Now this discussion about disclosures came up in the context of what would be put in the Recent Developments section of the offering memo; is

Page 104

that correct?
A. To my recollection, yes.
Q. Now can you place in time for me when that issue came up in the course of the evening?
In other words, was this the first topic of discussion when you and Mr. Bornstein arrived at the printer's, or did it come up in the ordinary course of working on the offering memo that evening?
A. I don't recall when.
Q. You don't recall one way or the other?
A. That's correct.
Q. Did you, Mr. Brockelman, as opposed to Mr. Bornstein, have a view one way or the other on what ought to be included in the Recent Development section of the offering memo?
A. I had no basis for an opinion one way or another.
Q. Did you express a view that evening?
A. I did not.
Q. Mr. Bornstein did all the talking on that issue?
A. That's correct.
Q. Do you remember whether Mr. Bornstein objected to including the entire press release in the Recent Development section or just a portion of it that

NOT A CERTIFIED COPY

017972

Page 105

he was objecting to?
A. I don't recall one way or another.
Q. Let's look at what we have just marked as Morgan Stanley Exhibit 39, which is the hard copy of the press release.
I invite your attention to the first four or five lines of the press release.
There is an announcement here by Sunbeam that net sales for the first quarter may be lower than analysts estimates of 285 million to 295 million.
Do you see that?
A. Yes.
Q. Do you recall any discussions about whether it was appropriate to include that piece of information in the offering memo?
A. Yes, I believe our opinion was to have that in the offering memorandum.
Q. Okay. And you remember Mr. Bornstein expressing that view that evening?
A. Somewhat, yes.
Q. So there was no discussion or disagreement between Andersen and anybody else who was present that evening about whether that piece of information ought to be included in the offering memo?
A. I don't totally recall, but I believe that's

Page 106

correct.
Q. Do you recall anything else about that topic about whether that specific piece of information should be included in the offering memo?
MR. BRODY: Object to the form. By that topic of information, you refer to --
MR. CLARE: The statement that first quarter sales for 1998 may be lower than analysts' estimates.
MR. MOSCATO: I'm sorry, could we have the question back?
MR. CLARE: Sure.
BY MR. CLARE:
Q. Other than what we have discussed, do you recall any other discussion about whether the disclosure that net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates ought to be included in the offering memo?
A. No.
Q. And the press release goes on. There is an additional 15 words in that same sentence that describes an expectation by Sunbeam that net sales would, for 1998, first quarter, would exceed 1991 first quarter net sales of 253.4 million.
Do you see that?

Page 107

A. Yes.
Q. Do you recall any discussion at the printer that evening about whether that additional topic, Sunbeam's expectation about its first quarter sales exceeding the first quarter prior year sales, should be included in the offering memo?
A. I don't recall discussions on that portion of the announcement.
Q. So as you sit here today, you don't have a recollection one way or the other as to what the basis of discussion was about what ought to be included in the offering memo, what portion of the press release?
You couldn't differentiate between different portions of the press release?
A. That's correct.
Q. So your recollection is not detailed enough to permit you to testify today or at trial in this matter about which portion of the press release would be included in the offering memo in the different views that were expressed this evening?
MR. BRODY: Object to the form.
THE WITNESS: That's correct.
MR. MOSCATO: That's a little inconsistent with his testimony. I thought he said that the first part of the sentence was okay.

Page 108

THE WITNESS: Yeah, I just can't confirm the second part, whether that should or should not be in the offering memo.
BY MR. CLARE:
Q. You don't remember Mr. Bornstein expressing the view on whether the comparison to prior year sales ought to be included or not?
You don't have a recollection?
A. Yeah, I don't have a recollection.
Q. You don't have a recollection of what Mr. Bornstein's view on that topic was?
A. No, I do not.
Q. And you don't have a recollection of what Morgan Stanley's view on that topic was?
A. No, I do not.
Q. There is some cautionary language at the bottom of the press release. You see there is two paragraphs labeled Cautionary Statements.
Do you see that?
A. Yes.
Q. Did you see that language or language like that on March 19th when you were at the printer in connection with this press release?
A. I didn't see the press release that night is what I stated earlier.

NOT A CERTIFIED COPY

017973

Page 109

Q. But was there any discussion that evening about whether cautionary language like this ought to be included in the offering memo?
A. I don't recall.
Q. Have you seen language like this in other press releases?
A. Yes, I have.
Q. And do you have experience in drafting or reviewing disclosures as part of your business?
A. At American Media I draft press releases for our company, yes.
Q. And you are familiar with cautionary statements of this kind?
A. Yes.
Q. Do you have an understanding what the purpose of these kind of cautionary statements are?
A. Yes.
Q. What's your understanding?
MR. BRODY: Object to the form, foundation.
THE WITNESS: To provide prospective financial information. Obviously the actual results could differ from those prospective numbers you provide.
BY MR. CLARE:
Q. Do you have a view as you sit here today

Page 110

about whether it is appropriate to include cautionary statements like this on Morgan Stanley Exhibit 39 in a press release of this kind?
MR. BRODY: Same objection.
MR. MOSCATO: I object. I made the same objection as to Mr. Pruitt yesterday, so I'm not playing favorites. Mr. Brockelman is appearing here as a fact witness. He's not appearing as an expert witness. We can negotiate his fee for expert testimony if you want to pursue this, but as it stands now, I really don't want him testifying on matters such as this.
If we could keep it to the facts, I'd appreciate it, and I would prefer not to have a fight over it. I would prefer if you can move on to something else.
MR. CLARE: I don't think it's necessary to have a fight over it.
BY MR. CLARE:
Q. I guess let me put it this way, Mr. Brockelman. I've now provided you with a copy of Morgan Stanley 39, which is the Sunbeam press release.
Is this the first time that you've seen a hard copy of the press release other than in connection with your prior depositions?

Page 111

A. I believe so.
Q. When you were provided with a hard copy of the March 19th press release, were you surprised to see cautionary statements like this in the press release?
MR. BRODY: Object to the form of the question.
MR. MOSCATO: I'm confused.
BY MR. CLARE:
Q. Does it surprise you that Morgan Stanley Exhibit 39 includes two paragraphs of cautionary statements?
MR. BRODY: Same objection.
THE WITNESS: It doesn't surprise me, because there is prospective --
MR. MOSCATO: That's the answer. Just keep your answer short in this connection.
BY MR. CLARE:
Q. It doesn't surprise you?
A. No, it does not surprise me.
Q. And the forward-looking statements that are referred to here, the statement about the expectations for first quarter 1998 sales, is that an example of the type of forward-looking statement?
MR. BRODY: Object to the form of the question.

Page 112

MR. MOSCATO: I object to that.
BY MR. CLARE:
Q. Let me ask you this way. Do you recall any discussion about whether it was appropriate to include cautionary language like this in the offering memo?
A. I don't recall.
Q. One way or the other?
A. One way or another.
Q. Mr. Bornstein and Mr. Tyree had a conversation about the Recent Development section of the offering memo, correct?
A. Yes.
Q. And you testified about that conversation already.
Other than -- after that conversation took place, did Mr. Bornstein leave the room?
A. Yes.
Q. And did he go by himself?
A. Yes.
Q. Did he tell you where he was going?
A. Yes, to a conference room.
Q. And to make a telephone call?
A. Yes, correct.
Q. Now did Mr. Tyree or any of the other attorneys go with him?

NOT A CERTIFIED COPY

017974

A. No.
Q. Was there ever a point in time where Mr. Tyree or any of the other attorneys who were present that evening joined Mr. Bornstein in the conference room outside of your presence?
A. Not to my knowledge.
Q. Some your recollection is that Mr. Tyree and the other individuals who were present stayed in the room with you the entire time and Mr. Bornstein then rejoined?
A. To my knowledge, yes.
Q. You don't have a recollection of Mr. Bornstein having a conversation with Mr. Tyree or anybody else outside of your presence, out in the hallway or in a conference room?
MR. BRODY: Object to the form and foundation.
THE WITNESS: Not that I had knowledge of.
BY MR. CLARE:
Q. You testified this morning that Mr. Tyree was using profanity while Mr. Bornstein was out of the room. Do you recall that?
A. Yes.
Q. And I believe you said he called him a fucking asshole.

A. That's correct.
Q. Do you recall anything else that Mr. Tyree said besides that phrase?
A. No, I don't.
Q. Did Mr. Tyree direct his comments at you or were they directed more generally to those present in the room?
A. They were not directed towards me.
Q. They were directed towards the lawyers and the other people that were present there?
A. That's correct.
Q. Did you have an understanding or a belief about what Mr. Tyree was upset about? I recognize I'm not asking you to put yourself in his mind or speculate about it, but as you sat there in the press release -- I'm sorry, strike that and withdraw.
As you sat there listening to this, did you have an understanding about what Mr. Tyree was upset about?
A. Only generally. It related to the disclosures in the offering memorandum.
Q. Was it your understanding that Mr. Tyree was upset about the position that Mr. Bornstein was taking, or was it that he was upset about the timing of this issue coming to his attention?

A. It was the timing.
Q. So at least from your perspective, your understanding was Mr. Tyree was unhappy that he was finding out about this at such a late date?
MR. MOSCATO: I object.
MR. BRODY: Join.
MR. MOSCATO: You can testify based on words you heard, all right? Don't try to put yourself into someone else's mind.
BY MR. CLARE:
Q. No, that's fair. I'm not asking you to do that.
You formed an impression, sir, as you sat there about what was happening, right?
A. That's correct.
Q. And I think you testified your impression was that Mr. Tyree was unhappy with the timing of this issue being raised with him. That was your impression?
A. That's correct.
Q. Was it your impression that Mr. Tyree was unhappy with the position that Mr. Bornstein was taking on disclosure?
A. It appeared to me it was more based on the timing of the events.
Q. Do you recall Mr. Tyree using any other

profanity other than the phrase that you just described?
A. Not that I can recall right now.
Q. There was some discussion, there has been some testimony that Mr. Tyree said that evening to Mr. Bornstein, "Are these guys fucking with me? Are they going to make their numbers or not?"
Do you recall Mr. Tyree saying anything like that in words or substance?
A. I only heard that secondhand from Larry Bornstein.
Q. So you were not present when that conversation took place?
A. Not that I recall.
Q. Does that refresh your recollection at all about whether or not there were conversations that took place outside of your presence or in a different room?
A. No.
Q. There were attorneys there representing Morgan Stanley, I believe you said you thought they were from Davis Polk?
A. That's correct.
Q. Do you remember the names James Lurie? Is that one of the names of the individuals that you remember?

NOT A CERTIFIED COPY

017975

Page 117

A. I only know that by reading the memo you provided me. That's the only recollection I have.
Q. Putting the names aside, do you remember anything that was said by any of the lawyers from Davis Polk that evening on this topic of disclosures?
A. Not that I recall.
Q. Do you remember any comments or statements that were made by any of the lawyers that were there representing Sunbeam?
A. No.
Q. Was there anybody else present that evening from the printer who was working in the room with you that evening?
A. At various times, yes. They would come in and out of the conference room.
Q. These would be Global Financial Press employees?
A. That's correct.
Q. Do you remember whether any of those individuals were present for this discussion about the disclosures?
A. No, I do not.
Q. Can you place a time frame for this conversation for us?
In other words, how long did it last from

Page 118

beginning to end, the whole topic of disclosures?
A. Unfortunately, I cannot.
Q. Do you have a, even a general sense of whether this was a topic that was discussed on and off throughout the evening or was it bounded in some finite period of time?
A. It was on and off throughout the evening, yes.
Q. At any point that evening at the print shop, did you join Mr. Bornstein in a telephone conference?
A. No, I did not.
Q. There has been testimony that Mr. Bornstein talked that evening with Mr. Harlow and Mr. Gluck, and it's recorded in his memo.
And I apologize if I've asked you this before, but you were not part of any telephone conversations that Mr. Bornstein had that evening on this topic of disclosures?
A. That's correct.
Q. Mr. Bornstein returned, came back to the conference room at some point, correct?
A. Yes.
Q. And you had a side conversation with him?
A. Yes, I did.
Q. You told him that Tyree was upset?

Page 119

A. Yes, I did.
Q. Is there anything else that you remember about that conversation with Mr. Bornstein?
A. Not that I currently recall.
Q. Did he tell you what he had been doing outside of the room?
A. He had mentioned he was on the phone with, with Gluck and with Harlow. That's all I recall.
Q. Did he tell you what position Mr. Gluck or Mr. Harlow had taken on this, on the issue that was being discussed?
A. Not that I recall.
Q. What was his reaction when you told him that Tyree was upset?
A. Mr. Bornstein was also upset.
Q. Did you communicate to Mr. Bornstein in words or in substance that Mr. Tyree appeared to be upset because of the timing of the issue?
A. I don't recall.
Q. So you don't recall being more specific with Mr. Bornstein one way or the other about what Tyree was saying?
A. That's correct.
Q. After Mr. Bornstein rejoined the folks in the conference room, did Mr. Bornstein say in words or in

Page 120

substance that Mr. Gluck did not agree with how the press release had been worded?
A. I don't recall.
Q. Do you recall him saying anything like that?
A. No, no.
Q. Do you recall Mr. Bornstein saying in words or in substance that Mr. Harlow did not agree with how the press release had been worded?
A. Again, I don't recall.
Q. Do you recall him saying anything like that?
A. I don't recall one way or another.
Q. Do you recall Mr. Bornstein relaying a view by Mr. Gluck that forward-looking statements should not be included in the offering memo?
A. That I do recall. That did refresh my memory. I remember Larry making such a comment to me, but not -- this is all secondhand.
Q. Okay. You recall Mr. Bornstein telling that to you?
A. That's correct.
Q. That evening at the print shop or at some later --
A. That evening at the print shop.
Q. Did he, Mr. Bornstein, make that comment to anybody other than you in your presence?

NOT A CERTIFIED COPY

017976

Page 121

MR. BRODY: Can we define what that comment is?
MR. CLARE: Sure, the comment about Mr. Gluck's view on forward-looking statements appearing in the offering memo.
THE WITNESS: No, I don't remember.
BY MR. CLARE:
Q. So to your recollection, Mr. Bornstein expressed that view to you, but to nobody else, to the best of your recollection?
A. Best of my recollection, yes.
Q. Did Mr. Bornstein also tell you that Mr. Harlow did not think that forward-looking statements should appear in the offering memo?
A. Yes. What I recall now is that Mr. Gluck and Mr. Harlow both agreed that forward-looking statements should not be in the offering memorandum.
Q. Okay. Do you recall Mr. Bornstein being that specific with Mr. Tyree or any of the other individuals in the room about Mr. Gluck's view or Mr. Harlow's view?
A. That I don't recall.
Q. Do you recall Mr. Tyree asking in words or in substance whether Sunbeam would meet or exceed the prior year's first quarter sales numbers?

Page 122

A. No.
Q. Do you recall Mr. Tyree asking in words or in substance whether Andersen had a view as to whether or not Sunbeam would meet analysts' expectations?
A. No.
Q. Do you recall Mr. Tyree asking Mr. Bornstein any questions at all?
A. Only generally, but I don't recall the questions.
Q. Do you recall the topics of the questions that Mr. Tyree asked that evening, any of the questions that he asked?
A. No, I don't.
Q. Do you remember whether they related in any way to Sunbeam's first quarter '98 sales?
A. No, I don't.
MR. CLARE:
(MS Exhibit No. 41 was marked for identification.)
BY MR. CLARE:
Q. This is Morgan Stanley Exhibit 41.
Mr. Brockelman, I'm handing you what's been marked as Morgan Stanley Deposition Exhibit 41 and asking you to take a look at it.
Have you seen this document before?

Page 123

MR. MOSCATO: Let me just interrupt. When you say this document, you mean this particular one with this particular handwriting or some iteration of this document?
MR. CLARE: Let's start with some particular iteration of this handwriting -- of this document without the handwriting.
MR. BRODY: Any iteration?
MR. CLARE: Any iteration of this document.
THE WITNESS: No, I did not.
BY MR. CLARE:
Q. Do you recall seeing a document that looked like this the night at the print shop?
A. No.
Q. Do you remember that evening whether Mr. Tyree provided any documents to Mr. Bornstein or to you?
A. Not to my knowledge.
Q. Was there a discussion about a schedule of actual and anticipated first quarter 1998 sales? Putting aside whether a document was discussed or not.
A. Not to my knowledge.
Q. Do you recall Mr. Tyree saying that Sunbeam had provided Morgan Stanley with information about first quarter 1998 sales?

Page 124

A. Not to my knowledge.
Q. Do you recall Mr. Bornstein making any comments about first quarter 1998 sales?
A. Not to my knowledge.
Q. Do you remember Mr. Bornstein saying he was skeptical of Sunbeam's first quarter 1998 sales objectives?
MR. MOSCATO: I'm sorry, can you repeat that question?
MR. CLARE: Sure. Can you read it back?
(Thereupon, a portion of the record was read by the reporter.)
MR. MOSCATO: That's a little vague.
You can answer, I guess.
BY MR. CLARE:
Q. Are you able to answer the question or would you like me to rephrase it?
MR. MOSCATO: I have a problem with -- which sales objectives? There has been some testimony about some sales objectives, but that's such a broad term, but go ahead. I mean if you want an answer to that question, you can answer it. I'm suggesting it's fairly vague.
THE WITNESS: Do you mean comparatively to the prior year as far as --

NOT A CERTIFIED COPY

Page 125

BY MR. CLARE:
Q. Well, I want to start broad and I'll work my way more narrow.
Do you remember Mr. Bornstein saying he was skeptical of any Sunbeam sales objectives?
A. Yes.
Q. What do you remember about Mr. Bornstein's comments in that regard?
A. I know he made a comment to me. As far as who he made a comment to in the group, I don't recall.
Q. What do you remember about his comment?
A. That he was skeptical that Sunbeam would be beat the prior year's first quarter results.
Q. Other than what you just testified to, do you remember anything else about Mr. Bornstein's comments to you about that topic?
A. No.
Q. And as you sit here today, do you have a recollection one way or the other about whether Mr. Bornstein addressed those or similar comments to others in the room?
A. I don't recall.
Q. So as you sit here today, you don't recall a discussion between Mr. Tyree and Mr. Bornstein about Mr. Bornstein's skepticism?

Page 126

A. That's correct.
Q. Did Mr. Bornstein ever say to you in words or in substance that it would be impossible for Sunbeam to exceed first quarter 1997 sales numbers?
A. I don't recall the exact words he used. I know he was skeptical.
Q. Do you recall him saying the word skeptical?
A. That's correct.
Q. Do you recall Mr. Bornstein saying to anyone in the room that he was skeptical about Sunbeam's ability to ship any particular quantity of product on a per-day basis?
A. No.
Q. Do you remember Mr. Bornstein addressing comments like that to you?
A. No, I don't recall.
Q. Did you ever discuss with Mr. Bornstein that evening the impact of Sunbeam's bill and hold practices on its ability to meet sales objectives for the first quarter of 1998?
A. No.
Q. Do you remember that topic being discussed at all that evening?
A. No.
Q. Do you remember it being discussed at any

Page 127

other time?
A. Yes.
Q. Tell me what you remember.
A. As part of the first quarter procedures, I know Dennis Pastrano was performing certain procedures related to the bill and hold. I wasn't party to that, but I know just generally that was a discussion leading up to the night at the printer's.
Q. Okay. Do you know what additional procedures Mr. Pastrana was performing leading up to the night at the printer's?
A. No, I do not.
Q. Did you ever discuss with Mr. Bornstein whether or not Sunbeam's bill and hold practices might make it easier or more difficult for Sunbeam to exceed or meet its prior year first quarter sales numbers?
A. No.
Q. Did Mr. Bornstein say what his skepticism was based on?
A. I believe he did, but I don't recall.
Q. Did Mr. Bornstein say that his skepticism was based on any study or analysis that he had done of Sunbeam's sales trends?
A. Again, I don't recall.
Q. Or something that he knew about a particular

Page 128

Sunbeam customer?
A. I don't recall.
Q. Or anything he knew about the likelihood of potential orders?
A. I don't recall.
Q. Or anything that he knew about the timing of potential orders?
A. I don't recall.
Q. Or any conversations that he had had with people in the Sunbeam sales team about the likelihood of future orders?
A. I don't recall.
Q. Did Mr. Bornstein say that evening in words or in substance that Sunbeam was intentionally misleading Morgan Stanley about its sales objectives for the first quarter 1998?
A. I don't recall him saying that.
Q. Do you recall Mr. Bornstein saying that privately to you?
A. No.
Q. In any setting?
A. No.
Q. That evening at the print shop, did you have any reason to think that Sunbeam was intentionally misleading Morgan Stanley about its sales objectives

NOT A CERTIFIED COPY

017978

Page 129

for first quarter 1998?
A. I had no basis one way or another.
Q. Do you remember Mr. Bornstein saying something to the effect of if Sunbeam is going to make its first quarter revenue number, they are going to make it, because I'm going to be sending people to shipping docks at the end of the quarter to enforce the cutoffs?
A. Mr. Bornstein said that?
Q. Yes.
A. No, I don't recall that being said.
Q. Did Mr. Bornstein suggest that night in words or in substance that the bond offering ought to be cancelled as a result of his skepticism?
A. No, I don't recall that.
Q. Did Mr. Bornstein ever suggest that evening in words or in substance that the bond offering ought to be delayed as a result of this skepticism?
A. I don't recall that either.
Q. Was there any discussion that you can remember even at a different time period about whether the bond offering ought to be delayed or cancelled as a result of this information about first quarter 1998 sales?
A. No, I don't recall.

Page 130

Q. Turning back to Morgan Stanley Exhibit 40, I'd like to, which is the offering memo, I'd like to invite your attention to page eight, the Recent Announcement section.
Compare it to Morgan Stanley Exhibit 39, the press release.
Do you recall who made the final decision about what the content of the Recent Announcement section would be?
A. No, I do not.
Q. Do you recall whether Mr. Bornstein had another telephone conversation that evening with Janet Kelly?
A. No.
Q. Do you remember Mr. Bornstein telling you that he had spoken with Miss Kelly?
A. No.
Q. Did Mr. Bornstein ever tell you whether his concerns about disclosure had been overruled by anyone at Sunbeam?
A. No.
Q. Did Mr. Bornstein tell you that he was satisfied with the way the issue had been resolved?
A. I don't recall one way or another.
Q. After this discussion where Mr. Tyree used

Page 131

profanity, you continued to work on the offering memo for the remainder of the evening and into the next morning; is that correct?
A. That's correct.
Q. Can you describe what the atmosphere of the room was like?
In other words, did you continue to work amicably together on the rest of the offering memo that evening?
A. Yes, we continued to work together on it.
Q. So whatever tension there had been as it relates to the disclosure issue had been resolved by the time the offering memo was finalized?
MR. BRODY: Object to the form, foundation.
THE WITNESS: I don't recall if it was resolved, but it appeared everything was professional and continued to work on the offering memorandum.
BY MR. CLARE:
Q. As far as you could tell, was there, were there any other heated discussions that evening other than the one that you've described?
A. Not that I recall.
Q. Prior to your providing the comfort letter to Morgan Stanley that evening, were there any discussions

Page 132

internally about how the comfort letter ought to be provided to Morgan Stanley?
MR. BRODY: Object to the form.
BY MR. CLARE:
Q. In other words, was there any discussion about who would provide the comfort letter, who would physically hand it to or deliver it at the print shop that evening?
A. Who, you mean me versus Larry?
Q. Correct.
A. It really didn't matter, although Larry was authorized to sign. Once it's signed, I believe I handed it to them.
Q. Now you testified earlier that there were drafts of the comfort letter that were being worked on prior to the print shop, correct?
A. Correct.
Q. And I believe you testified in response to a question from Mr. Brody that a draft of the comfort letter was provided to Morgan Stanley prior to March 19th in the print shop; is that correct?
A. I believe I said I didn't recall if a draft was provided.
Q. Okay.
A. Typically one is, but --

NOT A CERTIFIED COPY

017979

Page 133

Q. That's what I'm trying to get at. Do you have a recollection of in this case, as opposed to what's typically done, about whether a draft of the press release was ever provided to Morgan Stanley?
MR. MOSCATO: You misspoke.
MR. BRODY: Object to form. You said press release.
MR. CLARE: Appreciate that, thank you.
BY MR. CLARE:
Q. I want to put aside what's typically done and I want to focus specifically on this comfort letter and any comfort letter that was provided by Andersen to Morgan Stanley in connection with the Sunbeam bond offering.
Do you have any personal knowledge about whether a draft of the comfort letter was sent to Morgan Stanley before March 19th?
A. No firsthand knowledge.
Q. Do you have any second-hand knowledge? Have you ever heard that it was?
A. Yes, through Dennis Pastrana.
Q. Did Mr. Pastrana ask you to send it? In other words, did you physically send it to them?
A. I recall that Dennis sent it to them.
Q. Mr. Pastrana told you that he had?

Page 134

A. That's correct.
Q. Did you ever see the copy that Mr. Pastrana said that he had sent to Morgan Stanley?
A. Not the actual final draft copy that was sent to them, no.
Q. Am I correct then that the only comfort letter that you're aware of having been delivered to Morgan Stanley was the final signed version that night at Global Financial Press?
MR. MOSCATO: I object to that, but go ahead.
THE WITNESS: The only firsthand knowledge report that was sent to them.
BY MR. CLARE:
Q. Okay. How did the subject come up with Mr. Pastrana about whether a draft comfort letter would be provided to Morgan Stanley before the evening at the print shop?
A. It's part of our typical procedures to send a draft version to the underwriter and their attorney.
Q. Do you know who at Morgan Stanley it was sent to?
A. No, I do not.
Q. Do you know whether a copy was also sent to Davis Polk?
A. Yes, yes.

Page 135

Q. Mr. Pastrana told you that?
A. Mr. Pastrana told me that, yes.
Q. But you don't have any firsthand knowledge of a draft of the comfort letter being sent to Davis Polk?
A. That's correct.
Q. And again, no firsthand knowledge of it being sent to Morgan Stanley?
A. That's correct.
Q. And Mr. Pastrana didn't tell you the individual at Morgan Stanley that he had sent it to?
A. That's correct.
Q. Or the individual at Davis Polk that he had sent it to?
A. That's correct.
Q. And you don't recall the context of this discussion with Mr. Pastrana?
A. No.
Q. About how this topic came up?
Mr. Bornstein signed the comfort letter on behalf of Arthur Andersen at the printer's?
A. Yes.
Q. And then provided a copy to Morgan Stanley?
A. I believe Morgan Stanley and their attorneys.
Q. Do you recall him doing that? Do you recall him physically handing the comfort letter to --

Page 136

A. I believe I handed it to them after Larry signed it.
Q. Was there any discussion about the contents of the comfort letter at the printer's that evening with Morgan Stanley or its attorneys?
MR. MOSCATO: I'm sorry, repeat the question, please.
BY MR. CLARE:
Q. Was there any discussion about the contents of the comfort letter with Morgan Stanley or its attorneys that evening at the print shop?
A. Yes, there was.
Q. What do you recall?
A. I don't recall the conversations.
Q. The comfort letter that you were working on at the print shop, was it a collaborative effort in drafting that document between Andersen and Morgan Stanley or was it Andersen's work?
A. Andersen's work.
Q. So with regard to the offering memo, Morgan Stanley was working on it and Andersen was working on it together, correct?
A. And the company.
Q. And the company, yes, thank you.
A. Certainly mostly the company.

NOT A CERTIFIED COPY

017980

Page 137

Q. So the offering memo was a collective effort between Morgan Stanley, Andersen and the company?
A. That's correct.
Q. But the comfort letter, you and Mr. Bornstein were working on, correct?
A. Along with several other people, yes, correct.
Q. Several other Andersen people?
A. Andersen people, correct.
Q. Prior to the time that you handed the comfort letter to Morgan Stanley, had Mr. Tyree or any of the attorneys representing Morgan Stanley looked at a copy that evening at the print shop?
A. I believe so. I don't recall, though, who looked at it.
Q. Do you recall generally, though, reviewing iterative drafts of it with Morgan Stanley and its attorneys that evening at the print shop before the final version was handed to them?
A. Yes. Again, I don't recall who from each team looked at it, but yes, I do recall.
Q. Did Andersen -- I'm sorry, strike that.
Do you recall any discussion about the comparison of first quarter 1998 sales to first quarter 1997 sales with Morgan Stanley or its attorneys as it

Page 138

relates to the information disclosed in the comfort letter?
A. No, I don't recall.
Q. Do you remember specifically flagging that issue for Morgan Stanley or its attorneys?
A. No.
Q. Do you remember Mr. Bornstein doing that?
A. No.
Q. Do you recall what time you left Global Financial Press that evening or the next morning?
A. It was the next morning. I'm not quite sure what time.
Q. Did you stay there with Mr. Bornstein the entire time or did you leave at separate times?
A. We left together, but I believe I took a nap for an hour or two.
Q. That evening?
A. That evening, as I was separate from him for a little period of time.
Q. Do you recall at the time that you took a nap whether the question of the recent development section had been resolved or not at that time?
A. I assume so. We delivered the comfort letter with our consent.
MR. MOSCATO: No, the question was at the

Page 139

time you took your nap.
THE WITNESS: My nap followed the release of the comfort letter.
BY MR. CLARE:
Q. So that issue had been resolved?
A. That's correct.
Q. And then you took your nap, and then at some point you and Mr. Bornstein left together?
A. That's correct.
Q. Did Mr. Bornstein talk to you about any events that had taken place during your nap?
A. I'm sorry? Repeat one more time.
Q. Did Mr. Bornstein tell you what had happened or any discussions that occurred while you were taking a nap and out of the room?
A. No.
MR. CLARE: Why don't we take a few-minute break and see if I can streamline some of this.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 12:13 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor is 12:22 p.m.
BY MR. CLARE:
Q. Mr. Brockelman, I'm going to show you what's

Page 140

previously been marked as Morgan Stanley Deposition Exhibit Number 9. It's a copy of the March 19, 1998, comfort letter. I'd like you to turn to page three, please.
Do you recall any discussion with Morgan Stanley or its attorneys at the printer's about paragraph 5B of the March 19, 1998, press release?
A. No, I do not.
Q. Do you recall whether you or Mr. Bornstein identified paragraph 5B to Morgan Stanley and its attorneys as an issue they should focus on?
A. No, I don't recall.
Q. Same question with regard to paragraph 6B.
A. I don't recall.
Q. Do you recall any discussion about paragraph 6B with Morgan Stanley or its attorneys on March 19th?
A. No.
Q. Same question with regard to paragraph 6C. Do you remember any discussion with Morgan Stanley or its attorneys about paragraph 6C?
A. No.
Q. After March 19th, you returned to Florida?
A. Yes, correct.
Q. Did you recall any discussions with anyone at Arthur Andersen about additional procedures or testing

NOT A CERTIFIED COPY

017981

Page 141

with regard to first quarter 1998 Sunbeam sales?
A. With regard to what?
Q. Any aspect of it.
A. The first quarter review?
Q. What do you mean by first quarter review? You money after the end of the first quarter?
A. Yes, that's correct.
Q. And I appreciate that clarification. Let's say between March 19th, 1998, and the end of the quarter, did you have any discussions or involvement with any additional procedures or testing with regard to Sunbeam's first quarter 1998 sales?
A. No, I did not.
Q. Are you aware of any additional procedures or testing that Andersen performed on Sunbeam's sales to date in the first quarter of 1998 at that point?
A. Sales to date through the end of the first quarter?
Q. Well, through that point in the first quarter.
A. Through the point as of the end of February?
Q. Yes.
A. No.
Q. Or were you aware from any source about whether Andersen obtained information about any time

Page 142

period after the end of February about Sunbeam's sales in the first quarter?
A. For the first quarter, yes.
Q. Okay. What do you recall about that?
A. In connection with the first quarter review. I thought we're not talking about that.
Q. Yeah, let me ask it this way.
Did you get involved in any procedures or testing to obtain information about Sunbeam's first quarter 1998 sales for the time period after February 1st, 1998, which is the period that's discussed in the comfort letter?
A. I was not involved, that's correct.
Q. Were you involved in drafting the bring-down comfort letter?
A. Yes.
Q. And the sales figures that are reflected in the bring-down comfort letter when provided by Mr. Pastrana?
A. Provided by the company to Mr. Pastrana.
Q. Thank you. And did you have any discussions or involvement in determining what sales Sunbeam had made in March of 1998 up to the point of the bring-down comfort letter?
A. I had no involvement.

Page 143

Q. Do you have any knowledge about whether anything was done?
MR. BRODY: Object, foundation.
THE WITNESS: No, I don't have knowledge what was done.
BY MR. CLARE:
Q. Is there -- at the time that -- let's mark this.
I hand you what's been previously marked as Morgan Stanley Deposition Exhibit 10. Is this what you referred to as the bring-down comfort letter?
A. Yes.
Q. And did you have any discussions with Morgan Stanley about the information contained in the bring-down letter?
A. No, I did not.
Q. Did you have any discussions with Morgan Stanley after that evening at the print shop on any topic?
A. No.
Q. Paragraph E of the bring-down letter, and specifically the updated information for paragraph 5B which you see at the top of the second page --
A. Yes.
Q. Did you have an understanding from any source

Page 144

as to Sunbeam's sales for any time period after March 1st, 1998?
A. At that time?
Q. At that time.
A. No.
Q. It was not until the first quarter review that you obtained information about Sunbeam sales for effectively March 1998?
A. That's correct.
(MS Exhibit No. 42 was marked for identification.)
BY MR. CLARE:
Q. Mr. Brockelman, I'm handing you what's been marked as Morgan Stanley Deposition Exhibit 42, a document entitled Form for Documentation of Referencing Procedures.
Do you recognize this document?
A. This specific document or the form?
Q. This form of document.
A. Yes, I recognize the form.
Q. Okay. Can you tell me briefly how this document is used internally at Andersen?
MR. BRODY: How the form is used?
MR. CLARE: How this form is used, thank you.
THE WITNESS: An independent person within

NOT A CERTIFIED COPY

01 7982

Page 145

Arthur Andersen will reference the opinion or letter or report being issued to ensure they match our professional standards, make sure they're accurate, and independently verify numerical data in the report, and this form is their documentation of that review.

BY MR. CLARE:

Q. Does the review that you just described take place before the opinion is issued?

A. Yes, correct.

Q. And this is one of the procedures that we talked about earlier that Andersen does prior to issuing an opinion?

A. Yes.

Q. Did you have any involvement with the preparation of the procedures here in Morgan Stanley Exhibit 42?

A. No, I believe Larry Bornstein directly supervised the person referencing this.

Q. And the person referencing it is somebody who is independent of the group of Andersen team members who were working on the actual opinion?

A. That's correct.

Q. Do you know who was the person listed here as the referencer? Do you recognize that signature or

Page 146

handwriting on page three?

A. No.

Q. Do you recognize the signature at the bottom of the page under engagement partner or manager of Mr. Bornstein's?

A. Yes, I do.

Q. That is consistent with your testimony that Mr. Bornstein supervised the referencing procedures that you described?

A. Yes.

Q. On page two of Morgan Stanley Exhibit 42 there is a reference to management representation letters in item four.

A. Yes.

Q. Do you see that?

A. In item four? Oh, yes, yes, I see.

Q. It says, "If applicable, trace information regarding contingencies, litigation or uncertainties to the financial statements and to legal or management representation letters or other source documents in the working papers."

Did you have any involvement with the management representation letters that were prepared for the comfort letters that were provided to Morgan Stanley as part of the bond offering?

Page 147

A. No.

Q. You weren't involved in drafting them or reviewing them or providing comments on them?

A. That's correct.

Q. Do you know who was?

A. No, I do not.

(MS Exhibit No. 43 was marked for identification.)

BY MR. CLARE:

Q. I'm handing you what's been marked as Morgan Stanley Exhibit 43. It's a document entitled Post Audit Review For Subsequent Material Transactions and Events After the Date of the Auditor's Report.

Are you familiar with this form of document?

A. Yes, I am.

Q. Can you tell me how this form of document is used at Arthur Andersen?

A. Yes. If our opinion is to be used in a registration statement subsequent to its initial issuance, this form is required to be used to basically bring our report more current, to identify any significant events or items that might impact our opinion of the audited financial statements.

Q. In connection with the registration of it?

A. Yes, that's correct.

Page 148

Q. Did you have any involvement in completing the procedures that are described here in Morgan Stanley Exhibit 43 for the registration of the bond offering?

A. No, I did not.

Q. Is any of the handwriting on Morgan Stanley Exhibit 43 yours?

A. No.

Q. Was it your understanding in the first quarter of 1998 when you were working on the comfort letters for the bond offering that the bond offering memo and offering materials would be registered and that these type of procedures would be required?

A. Yes.

Q. Do you see the handwriting at the bottom of the first page?

A. Yes.

Q. Do you recognize that as Mr. Bornstein's handwriting?

A. Yes, I do.

Q. Okay. Mr. Gluck and Miss Kelly are identified by name here.

Did you have any discussions with Mr. Gluck or Miss Kelly about any of the comfort letters that were provided to Morgan Stanley in connection with the

NOT A CERTIFIED COPY

017983

Page 149

bond offering?
A. I had some discussions with Mr. Gluck.
Q. And what was the context of those discussions?
A. I don't recall. Mostly it related to the tick marks that I applied on the exhibit, the offering memorandum itself.
Q. So these were discussions that took place after the events at the print shop?
A. No, before, in the actual drafting.
Q. I see. In the drafting of the offering memo?
A. That's correct.
Q. Prior to going to New York?
A. Yes, that's correct.
Q. Do you recall any specifics about the topics that you discussed with Mr. Gluck?
A. No, I don't.
Q. Did Mr. Gluck have a copy of the offering memo in draft form when you had those discussions with him?
A. Yes, he did.
Q. Were these in-person meetings or telephone conferences?
A. In person.
Q. Who during that time period had document

Page 150

control, if you will, of the offering memorandum?
MR. BRODY: Object to foundation.
BY MR. CLARE:
Q. If you know.
A. Yeah, I don't recall.
Q. Do you remember who you provided your edits and comments to prior to the evening at the print shop?
A. To Larry Bornstein.
Q. And you don't know to whom he provided the comments in order to get the document changed and fixed to reflect your edits?
A. No, I do not.
MR. CLARE: Mark these as the next four in sequence, and I'll give you each a set.
(MS Exhibit Nos. 44-47 were marked for identification.)
BY MR. CLARE:
Q. Mr. Brockelman, I've handed you four documents, and we have had them marked as deposition exhibits.
To make sure everybody is on the same page, Morgan Stanley Exhibit 44 is a March 16, 1998, letter on Sunbeam letterhead.
Morgan Stanley Exhibit 45 is an undated document that appears to be -- with Bates number CPH

Page 151

0041651 through 654.
Morgan Stanley Exhibit 46 is a document with Bates numbers CPH 0038712 through 15.
And then Morgan Stanley Exhibit 47 is a March 23rd, 1998, letter on Sunbeam letterhead addressed to Arthur Andersen.
I'd like you to first look at Morgan Stanley Exhibit 44, which is a March 16, 1998, letter from a group of individuals at Sunbeam to Arthur Andersen.
Do you recognize Morgan Stanley Exhibit 44 as being in the form of a management representation letter?
A. Yes, I do.
Q. Have you ever seen Exhibit 44 before today?
A. I don't recall seeing it before.
Q. Did you have any involvement in drafting it or reviewing it or receiving it on behalf of Andersen?
A. No.
Q. Okay. Look at the next document, which is a, appears to be a draft of a management representation letter in connection with the Sunbeam bond offering.
Have you seen this document before, Exhibit 45?
A. No.
Q. It appears to be a draft of a management

Page 152

representation letter.
A. No.
Q. In a typical engagement, does Andersen get involved in drafting the management representation letter for its client?
A. Yes.
Q. And have you done that in connection with other engagements?
A. Yes.
Q. But not the Sunbeam-related matter?
A. That's correct.
Q. You had no involvement in that?
A. That's correct.
Q. Do you recall any discussion about the contents of the management representation letter internally at Andersen during the first quarter of 1998?
A. No.
Q. If you'd look at the last -- sorry, next-to-the-last page of Exhibit 45, paragraph ten of this draft, it's a paragraph that reads, "Despite the decrease in net sales described in the preceding paragraph, management believes that net sales for the first quarter of fiscal 1998 will exceed net sales of the first quarter of fiscal 1997."

NOT A CERTIFIED COPY

017984

Page 153

Do you recall any discussion at Andersen about including that statement in a management representation letter for the Sunbeam bond offering?
A. No.
Q. Do you recall any discussions with anyone from Sunbeam about whether that was a true statement or not?
A. No.
Q. About whether Sunbeam management had that belief?
A. No.
Q. If you look at the next exhibit, Morgan Stanley Exhibit 46, similar draft of a management representation letter for the Sunbeam bond offering. You see there is some handwritten edits.
Is that your handwriting?
A. No.
Q. Do you recognize the handwriting?
A. Yes.
Q. Is that Mr. Bornstein's handwriting?
A. Yes, it is.
Q. Did Mr. Bornstein ever discuss with you the contents of the management representation letter for the Sunbeam bond offering?
A. No.

Page 154

Q. Or any views that he had about what ought or ought not to be included in them?
A. No.
Q. If you look at the next-to-the-last page of Exhibit 46, Mr. Bornstein made some comments on the paragraph ten that we looked at a minute ago.
Do you recall any discussions about Mr. Bornstein's view on that paragraph?
A. No.
Q. And whether it ought to be included in the engagement letter?
A. No.
Q. I'm sorry, not the engagement letter, in the management representation letter.
A. I understand.
Q. Okay, but no, the answer is --
A. The answer is no.
Q. Okay. If you look at Morgan Stanley Exhibit 47, it's a signed version of a management representation letter dated March 23rd, 1998.
And going back to Morgan Stanley Exhibit 44, the March 16th version of the final representation letter, you see neither of these exhibits have that paragraph that we just looked at regarding management's expectations for first quarter 1998 sales.

Page 155

Do you have any knowledge one way or the other as to why that paragraph was not included in the final version of the representation letters?
A. No.
(MS Exhibit No. 48 was marked for identification.)
BY MR. CLARE:
Q. Mr. Brockelman, I've handed you what's been marked as Morgan Stanley Deposition Exhibit 48, appears to be a draft of the March 19, '98 comfort letter.
Have you seen this document before?
A. Yes, I believe I have.
Q. And when do you recall having seen it before?
A. Prior to the release of the offering memorandum.
Q. You see that this draft of the March 19, '98 comfort letter has a header on it.
Did you draft any portion of this document?
A. Yes.
Q. Did you draft this first paragraph of Morgan Stanley Exhibit 48?
A. Yes.
Q. And do you know to whom this document was provided?
A. I believe I provided it to Larry Bornstein.

Page 156

I only have secondhand knowledge it was provided to Morgan Stanley.
Q. Again, that was the conversation we talked about earlier with Mr. Pastrana?
A. That's right.
Q. But you didn't send it to Morgan Stanley?
A. No, I did not.
Q. And you didn't send it to Davis Polk?
A. No, I did not.
Q. And you didn't provide it to Scadden Arps?
A. No, I did not.
Q. Did you provide a draft of a comfort letter to anybody at Sunbeam?
A. No, I did not.
Q. So as far as your own personal knowledge goes, you can only testify about providing drafts of the comfort letter to other people at Arthur Andersen?
A. To Larry Bornstein, yes.
Q. Okay. Do you recall any discussions with Mr. Bornstein about this draft, Morgan Stanley Exhibit 48?
A. Not any specific discussion.
Q. Any changes or comments about what additional information to be included or not included in here?
A. No.

NOT A CERTIFIED COPY

017985

Page 157

Q. You described some work on the first quarter review that you did after the close of the first quarter 1998.
A. Not that I did.
Q. Okay. You had no involvement in the first quarter review?
A. That's correct. Only knowledge of it.
Q. You worked on the restatement investigation at Sunbeam?
A. Yes.
Q. And you were assigned to work on specific areas by Mr. Denkhaus; is that correct?
A. Yes, correct.
Q. You worked on customer chargeback deductions? That's one of the topics that you worked on?
A. Yes, I did.
Q. Co-op advertising?
A. Yes.
Q. Bill and hold?
A. I served in certain parts of bill and hold, yes.
Q. Warranty reserves?
A. Yes.
Q. Freight analysis?
A. Yes.

Page 158

Q. Shipment confirmations and analysis?
A. Yes.
Q. Sales return reserves?
A. Yes.
Q. Are there any other areas as you sit here today that you remember working on in connection with the restatement investigation?
A. Not without refreshing my memory.
Q. And you reported to Mr. Denkhaus in the performance of those duties?
A. Yes.
Q. Can you approximate for me how much time you spent working on the restatement investigation? Hundreds of hours? Thousands of hours? Do you have any sense?
A. I would say hundreds of hours.
Q. We've seen some time reports, and I'll just represent to you it shows more than 600 hours that you worked on.
Does that sound about right to you?
A. Sounds reasonable, yes.
MR. MOSCATO: Tom, I trust you don't have a lot to cover.
MR. CLARE: I do not.

Page 159

BY MR. CLARE:
Q. Mr. Brockelman, I understand that you were not involved in the decision to recommend the restatement to Sunbeam; is that correct?
A. That's correct.
Q. That decision was made by other people at Andersen?
A. Yes.
Q. And your role was limited to investigation and procedures in some of the areas that we've talked about and documenting that, providing it to other people at Andersen to make decisions on; is that a fair summary?
A. That's correct, yes.
Q. In connection with your work on the restatement, did you ever discuss any of those areas with Morgan Stanley?
A. No.
Q. As a result of your work on the restatement, did you ever discover any information that Morgan Stanley was involved in any way in any of those areas?
A. No.
MR. BRODY: How many exhibits is this?
MR. CLARE: It's one, two, three, four, five, six.

Page 160

MR. MOSCATO: Mr. Clare is going to proceed very briefly through these documents.
MR. CLARE: I actually only have one question.
(Discussion held off the record.)
(MS Exhibit Nos. 49-54 were marked for identification.)
BY MR. CLARE:
Q. Mr. Brockelman, I've handed you what's been marked as Morgan Stanley Exhibits 49, 50, 51, 52, 53, and 54. They are a series of memos you are shown as an author or a coauthor of.
Do you recognize these documents, Exhibit 49 through 54 as memos that you prepared in connection with your work on the restatement?
A. Yes.
Q. Is any of the handwriting that appears on any of these exhibits yours?
A. Yes.
Q. Can you just identify for me briefly?
A. Which handwriting?
Q. Correct, on which exhibits?
A. Exhibit MS 49. Do you want me to actually say each --
Q. No, I don't think it's necessary.

NOT A CERTIFIED COPY

017986

16div 023050

Page 161

A. Okay. On Exhibit 50 is mine.
Exhibit 51 is mine. Let me flip the pages also.
Exhibit 51 is mine. I don't know if I mentioned that.
Exhibit 52 at the top is mine and at the bottom.
Exhibit 53 at the very top is not mine.
And Exhibit 54 is mine.
Q. As a result of the work that you did on the restatement, did you learn information from Sunbeam that you determined was not previously known to Andersen?
MR. MOSCATO: Objection.
THE WITNESS: Well, certainly, because we were using hindsight. It wasn't known to either party.
BY MR. CLARE:
Q. As a result of the work that you did on the restatement, did you form an opinion whether Sunbeam's internal controls were adequate in 1997 or in the first quarter of 1998?
MR. MOSCATO: Objection.
THE WITNESS: No.

Page 162

BY MR. CLARE:
Q. Did you have --
MR. MOSCATO: No, you didn't form an opinion?
THE WITNESS: No, I didn't form an opinion, correct.
BY MR. CLARE:
Q. Do you have an opinion as to whether or not Sunbeam was able to produce accurate financial statements in 1997?
A. No, I didn't form an opinion.
Q. Or in the first quarter of 1998?
A. At that time either.
Q. Did not form an opinion?
A. Did not form an opinion.
Q. Did you form an opinion as to whether or not Sunbeam had withheld information from Andersen during the 1997 audit?
A. No, I did not form an opinion.
Q. Or during the first quarter of 1998?
A. I did not form an opinion at that time either.
Q. As a result of the work that you did on the restatement, did you identify any information to suggest that Morgan Stanley had conspired with Sunbeam employees with respect to any of the issues identified

Page 163

in the restatement?
A. No, I did not form an opinion.
Q. My question was did you learn any information?
A. Did I learn? I'm sorry, no, I did not learn any information.
Q. Did you learn any information as a result of your work on the restatement that Morgan Stanley had conspired with Sunbeam in connection with the bond offering to provide misleading information?
A. No.
Q. Or did you uncover any information that Morgan Stanley had conspired with Sunbeam to defraud Coleman (Parent) Holdings Company in connection with the acquisition of Coleman?
A. No.
Q. Did you have any involvement with the management letter that was provided by Andersen to Sunbeam in October of 1998?
A. No.
Q. At any point in the first quarter of 1998, did you ever talk to anyone representing the Coleman company?
A. I don't recall the timing, but I did have discussions with people at the Coleman company. I just

Page 164

don't recall what time that was. It was prior to the acquisition.
Q. And what was the purpose of those discussions?
A. I don't recall. There is certain due diligence procedures that I was directed to perform, but I don't recall the substance of it.
Q. So this was a due diligence that you were asked to perform on Coleman on behalf of Sunbeam; is that correct?
A. To what I recall, yes.
Q. Were you part of any discussions or meetings that were due diligence performed by Coleman on Sunbeam?
A. No.
Q. Did you ever talk with anybody representing the Coleman company about Sunbeam?
A. Not that I recall, no.
Q. Did you ever talk with anyone who identified themselves as being from Coleman (Parent) Holdings Company?
A. Not that I recall.
Q. Or MacAndrews & Forbes?
A. No.
Q. Do you have an understanding that MacAndrews

NOT A CERTIFIED COPY

017987

Page 165

& Forbes was the ultimate parent of Coleman, at least for a portion of the stock?
A. I understand that.
Q. Okay. And you don't recall having spoken with anybody from MacAndrews & Forbes about Sunbeam?
A. That's correct.
Q. Did you have any conversations with anyone from Credit Suisse First Boston about Sunbeam?
A. No.
Q. Did you know or understand that Credit Suisse First Boston was advising Coleman in connection with the acquisition?
A. No.
Q. Did you have any discussion or conversation or meetings with anybody from the law firm of Watchell, Lipton, Rosen & Katz in connection with the acquisition?
A. No.
Q. Are you aware of any due diligence that anybody representing Coleman did on Sunbeam?
A. No.
Q. Not aware of any in-person meetings for that purpose?
A. No.
Q. Are you aware of any accounting due diligence

Page 166

for that purpose?
A. No.
Q. Are you aware of any inquiries by Coleman about Sunbeam's bill and hold practices?
A. No.
Q. Are you aware of any inquiries by Coleman about Sunbeam's Early Buy program?
A. No.
Q. Are you aware of any inquiries by Coleman after the press release dated March 19th, 1998?
A. No.
Q. Did you understand that as part of the acquisition, that Coleman would be receiving Sunbeam stock?
A. Yes.
Q. Did you have a view or expectation that Coleman would or should be conducting due diligence on Sunbeam as a result of taking Sunbeam stock?
MR. MOSCATO: I object. I'm going to instruct him not to answer that.
MR. CLARE: On what basis?
MR. MOSCATO: He's not an expert witness. You can take it to the court. I instructed Mr. Pruitt not to answer a very similar question that was directed towards what Morgan Stanley

Page 167

should be doing yesterday.
I'm not playing favorites. This is across the board. These guys are fact witnesses and that's it. That's my basis.
BY MR. CLARE:
Q. Let me ask it this way to try and avoid the objection and an unnecessary dispute that we don't need to have.
Did the thought ever occur to you in the first quarter of 1998 regarding the due diligence that was or was not performed by Coleman on Sunbeam?
MR. MOSCATO: Answer that yes or no.
THE WITNESS: No.
BY MR. CLARE:
Q. You didn't think about that topic?
A. Didn't have any thought about it.
Q. Am I correct that you had no involvement in the accounting due diligence that was conducted by Morgan Stanley with Andersen in connection with the Sunbeam transactions?
MR. MOSCATO: I'm sorry. You have to -- the word with Andersen threw me.
BY MR. CLARE:
Q. Were you involved in any way with the accounting due diligence that Morgan Stanley performed

Page 168

in the first quarter of 1998?
A. No.
Q. On Sunbeam?
A. No.
Q. Are you aware that Morgan Stanley had a telephone conference with individuals from Andersen to conduct accounting due diligence on Sunbeam?
A. I recall somewhat hearing secondhand from Larry Bornstein.
Q. You recall hearing that back in the first quarter of 1998?
A. That's right.
Q. What did he tell you about it?
A. I don't recall, just that they had the conversation.
Q. Did he tell you any specifics about it?
A. No.
Q. Were you involved in any way in preparing for that telephone call?
A. No.
Q. Were you involved in any way in documenting the telephone call after the fact?
A. No.
Q. Other than what you told me about your conversation with Mr. Bornstein, did you have any

NOT A CERTIFIED COPY

017988

Page 169

involvement in the accounting due diligence that was perform by Morgan Stanley --
A. No.
Q. -- in the first quarter of 1998?
A. No.
Q. I know I asked you earlier whether you had any meetings or telephone conversations with anyone from Morgan Stanley after the evening at Global Financial Press. I'm not sure I asked you the other question.
Did you have any meetings or conversations with Morgan Stanley prior to that point?
A. No.
Q. Do you have an opinion on the quality of due diligence that was conducted by Morgan Stanley with regard to Sunbeam?
MR. MOSCATO: Answer that yes or no.
THE WITNESS: Do I have an opinion? No.
BY MR. CLARE:
Q. Do you have any basis for forming an opinion?
A. No basis.
Q. Because you weren't involved in any aspect of it?
A. That's correct.
Q. Have you had other dealings with Morgan

Page 170

Stanley outside of the Sunbeam engagement?
A. Yes.
Q. Business dealings?
A. Yes.
Q. Do you have, have you ever had dealings with Morgan Stanley as an underwriter?
A. Yes.
Q. In what context?
A. I believe they are the underwriter on one or two other deals while I was at Arthur Andersen. I don't recall which deals. I did several while I was at Arthur Andersen.
Q. Based on those other deals, did you have more involvement with Morgan Stanley in connection with the due diligence that were performed as underwriter?
A. No.
Q. Did you perform a similar function on those deals as you did on the Sunbeam bond offering?
A. Yes.
MR. MOSCATO: Just about finished on that topic?
MR. CLARE: Yes, we are. Why don't we take five minutes and then come back on. I think I'm either done or essentially done. I just want to consult for a minute.

Page 171

MR. MOSCATO: Can we do it even shorter than five minutes?
MR. CLARE: I hope so.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 1:08 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 1:11 p.m.
BY MR. CLARE:
Q. Mr. Brockelman, I asked you earlier whether at any point after the evening at Global Financial Press you obtained any information about Sunbeam's first quarter sales. Do you remember generally me asking you those questions?
A. Yes.
Q. And you indicated that not until the first quarter review.
Is that correct?
A. That's correct, yes.
Q. And then I asked you whether you were involved in the first quarter review, and I think you said no.
A. Not in performing procedures, that's correct, yes.
Q. But you later became aware of the first

Page 172

quarter review that was done; is that right?
A. Yes.
Q. And that was in connection with your work on the restatement?
A. Yes, correct.
Q. So it was not contemporaneous with the first quarter review being done?
A. Yes.
Q. It was months after the fact, while you were working on the restatement?
A. That's correct.
Q. You also testified that you remember being involved in a meeting with people from Coleman or telephone conversation with people from Coleman in performing due diligence on Coleman; is that correct?
A. Yes.
Q. Is it just a single meeting or telephone conference that you remember?
A. No. Actually it was numerous meetings over the course of a couple of days.
Q. And where were the meetings located?
A. I forgot where Coleman's headquarters were.
Q. Wichita?
A. I believe it was via telephone conference to their headquarters.

NOT A CERTIFIED COPY

017989

Page 173

Q. So you were -- do you recall who at Coleman you spoke to?
A. No, I don't recall.
Q. Any names?
A. No names whatsoever.
Q. Who else at Andersen was participating in those meetings?
A. I don't recall.
Q. During those series of telephone video conferences, do you recall whether --
A. It was a telephone conference, not a video. I don't know if that was invented at the time.
Q. Sorry. Do you recall those telephone conferences that you had with Coleman, do you recall whether there were any advisors to Coleman that were on the call as well?
I mentioned CSFB and a law firm of Watchell Lipton. Do you recall them being participants in those telephone conversations?
A. Not that I recall, no.
Q. As you sit here today, you don't recall any inquiries that were directed to Andersen by Coleman about Sunbeam during those telephone conferences?
A. That's correct.
MR. CLARE: That's all I have.

Page 174

REDIRECT (MARK BROCKELMAN)
BY MR. BRODY:
Q. Mr. Brockelman, I'll try your patience with just a few follow-up questions.
Sir, is it correct to say that in connection with your work on the transaction that led to the bond offering, you only worked on limited projects that were assigned to you?
A. That's correct.
Q. Prior to that point, you weren't generally assigned to the Arthur Andersen engagement for Sunbeam; is that correct?
A. Yes.
Q. That's correct?
A. That's correct, yes.
Q. Okay. Mr. Clare asked you some questions about trips to New York and so on.
Is it correct that during the work you did in connection with the transaction, not the restatement, but the transaction, you made only one visit to New York?
A. I'm a little hazy on that, quite honestly. There is a potential I might have had a second trip before the finalization of the bond offering. I'm not too sure on that point. Certainly my time reports and

Page 175

expense reports would reflect whatever reality was.
Q. But the rest of the work that you did over the month or two that you worked on the project, you did in Florida?
A. That's correct, yes.
Q. And on the night of the 19th from the printer's when someone called, I guess it was Mr. Bornstein called Mr. Harlow and Mr. Pruitt, they weren't in New York, were they?
MR. CLARE: Objection, no foundation.
THE WITNESS: I did know they were in Florida.
BY MR. BRODY:
Q. How do you know that?
A. Just from knowing their schedule.
Q. Mr. Brockelman, I'm going to give you copies of several of the exhibits that have already been marked. And we'll just walk through a couple of things.
Exhibit 114, which I believe is at the top, Mr. Clare took you through there and asked you about certain things in that meeting and whether you were -- excuse me, in that memorandum and whether you were present when the referenced conversations took place, but he didn't ask you about all of them. I'd like to

Page 176

ask you about a couple more.
On the first page of the document, the third paragraph that begins with the text "On the evening of March 19," do you see that?
A. Yes, I do.
Q. You were present for those conversations, correct?
A. Yes.
Q. And on the following page, I believe it's the first full paragraph, begins with "Mr. Tyree and Mr. Lurie were very upset," you were present for those conversations as well, were you not?
A. Yes.
Q. Okay. You can put that document aside.
You were asked some questions by Mr. Clare and by me about the comfort letters. And I believe in your testimony you indicated that typically Arthur Andersen would send drafts of comfort letters and get comments from the underwriter; is that correct?
A. Yes, that is correct.
Q. And I believe you said that Mr. Pastrana, you learned secondhand that Mr. Pastrana had indeed sent the drafts?
A. Yes.
Q. Can you explain the basis for your

NOT A CERTIFIED COPY

16div-023054

Page 177

understanding that Mr. Pastrana sent the drafts?
A. He told me that.
Q. Do you know when he told that you?
A. No, I don't recall.
Q. Okay. But in March 1998?
A. Approximate to the date of the draft version that I was presented.
Q. Okay. And after Mr. Pastrana told you that, that was the sort of information you relied on; is that correct?
A. Absolutely, yes.
Q. Now, I believe, sir, in front of you are Morgan Stanley Exhibits 9 and 10 Mr. Clare showed you, and I think I showed you other versions of some of those letters, maybe the same thing, but let's use those for the time period.
Exhibits 9 and 10 are the final versions of the comfort letter from the 19th and the bring-down letter from the 25th; is that correct?
A. That's correct.
Q. Minus their exhibits?
A. Yes.
Q. Did you participate in any conversations with Morgan Stanley in which it was discussed that the information in these letters should be put in the

Page 178

offering memorandum?
MR. CLARE: Object to the form.
THE WITNESS: I'm sorry, ask one more time.
BY MR. BRODY:
Q. After these letters were transmitted, did you participate in any conversations with anyone from Morgan Stanley in which Morgan Stanley or anyone else suggested putting this information, the information from these letters, in the offering memorandum?
MR. CLARE: Object to the form.
THE WITNESS: The actual comfort letter into the offering memo?
BY MR. BRODY:
Q. For example, that would be one thing, put the comfort letter in in toto.
A. I wasn't part of any such discussions.
Q. Or if you turn to the comfort letter, for example, on page three of Exhibit 9 towards the bottom, in paragraph 5B there is discussion about sales through February 1, 1998, and then on page five of that document at the top, paragraph 6C, there is mention of sales through March 1.
Did anyone at Morgan Stanley discuss with you whether that information should be put in the offering memorandum?

Page 179

A. No.
Q. And likewise, on Exhibit 10 at the top of the second page, there are sales and net loss information for '97 and '98.
Anyone at Morgan Stanley discuss with you or Arthur Andersen to your knowledge putting that information in the offering memorandum?
A. No.
Q. After the comfort letters were delivered, did you ever hear anyone from Morgan Stanley suggest that Morgan Stanley would withdraw the offering?
A. No.
Q. Or delay it?
A. No.
Q. Mr. Clare also showed you the management rep letter, and I've pulled out of the stack Exhibit 47, which is one of the versions that he showed you.
This document is signed by four very senior executives at Sunbeam, is it not?
MR. CLARE: Object to the form.
THE WITNESS: Yes, it is.
BY MR. BRODY:
Q. For example, Mr. Dunlap and Mr. Kersh are the number one and number two most senior people there?
MR. CLARE: Object to the form.

Page 180

BY MR. BRODY:
Q. Is that correct?
A. I don't know who number two is. Certainly I consider Dunlap number one.
Q. Mr. Kersh was an executive vice-president?
A. Yes, correct.
Q. And Mr. Fanin was the head lawyer for the company?
A. Yes, that's correct.
Q. And Mr. Gluck was the chief accounting officer?
A. Yes.
Q. And they signed this letter that they sent to Arthur Andersen on the 23rd; is that correct?
MR. CLARE: Objection, foundation.
THE WITNESS: It appears to be.
BY MR. BRODY:
Q. Okay. What I believe is finally -- Mr. Clare and I have both had discussions about the meetings at the printer and the print shop.
Just for people who are not familiar with how transactions like this have a better understanding, when you went to the print shop, were you in the vicinity of the printing presses?
A. No.

NOT A CERTIFIED COPY

016991

Page 181

Q. You weren't looking at the guys wearing the hats made out of news print stopping the presses?
A. Yes, correct.
Q. You were in a series of conference rooms and executive offices?
A. That's correct.
Q. And information was brought to you, copies of draft pages were brought to you for your review?
A. That's correct.
Q. One moment.
MR. BRODY: I have no further questions. Thank you, Mr. Brockelman.

RECROSS (MARK BROCKELMAN)

BY MR. CLARE:
Q. Very briefly returning to CPH Exhibit 114, Mr. Bornstein's memo.
Mr. Brody had directed your attention to two paragraphs. The third paragraph on the first page, paragraph beginning "On the evening of March 19th."
A. Yes.
Q. You indicated that you were present for that conversation, correct?
A. Yes.
Q. Do you recall Mr. Bornstein making the statements that are reflected in this conversation --

Page 182

in this paragraph?
MR. BRODY: Objection, asked and answered.
BY MR. CLARE:
Q. Well, what I'm trying to get at is you just testified in response to Mr. Brody's question that you were present for the conversation that's described here, but I've asked you a series of questions today about whether you remember Mr. Bornstein making certain statements or taking certain positions, and you've said that you couldn't recall.
So what I'm trying to understand is in response to Mr. Brody's question, were you saying that you were present for these conversations or that you recall them exactly as Mr. Bornstein has relayed them?
A. I was present for that paragraph, what's being described in that paragraph. Also I confirmed the events of that paragraph at the time this memo was written.
MR. MOSCATO: But that's not his question. Why don't you answer his question?
THE WITNESS: Yes, I was present at that time.
MR. MOSCATO: That wasn't his question.
BY MR. CLARE:
Q. Do you recall Mr. --

Page 183

MR. MOSCATO: I give up.
BY MR. CLARE:
Q. Do you recall Mr. Bornstein telling Mr. Lurie that the caveat that the company would still exceed prior year first quarter sales was a forward-looking statement and was not appropriate for an offering document?
Do you recall Mr. Bornstein making that statement?
A. No.
Q. And then on the second page of CPH Exhibit 114, do you recall Mr. Bornstein stating that it was Andersen's recommendation to eliminate that statement in the offering memorandum?
A. No.
MR. CLARE: Thank you. That's all I have.
MR. BRODY: Thank you, Mr. Brockelman.
THE VIDEOGRAPHER: This is the conclusion of the videotaped deposition of Mr. Brockelman. We are now going off video record. The time on the monitor, 1:25 p.m.

(Witness excused.)
(Deposition was concluded.)

Page 184

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that the witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 16th day of January, 2004.

Rachel W. Bridge
Notary Public - State of Florida
My Commission Expires: 1/15/07
My Commission No.: DD164752

NOT A CERTIFIED COPY

017992

Page 185

CERTIFICATE

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachel W. Bridge, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of January, 2004.

_____
Rachel W. Bridge
Notary Public State of Florida
My Commission Expires: 1/15/07
My Commission No.: DD164752

Page 186

CERTIFICATE

- - -

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ___ day of _____, 2004.

_____
Mark J. Brockelman

Page 187

ERRATA SHEET

IN RE: Coleman vs. Morgan Stanley & Co., Inc.
DEPOSITION OF: Mark Brockelman TAKEN: 1-14-04
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

PAGE #	LINE #	CHANGE	REASON

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE: _____

SIGNATURE OF DEPONENT: _____

NOT A CERTIFIED COPY

017993

A
ability 126:11 126:19
able 124:16 162:8
Absolutely 76:6 76:8 177:11
accept 50:12
account 65:19 84:2
accountancy 7:21
accountant 8:11 8:14 9:22 10:6,6 75:10 75:17,25 77:10
accountants 13:11
accounting 6:20 7:12 8:3 11:24 14:18 51:23 165:25 167:18,25 168:7 169:1 180:10
accuracy 51:15 66:4
accurate 29:25 51:18 65:19 66:10 69:20 145:4 162:8
accurately 50:7
acquired 56:16 56:17
acquisition 163:15 164:2 165:12,17 166:13
acquisitions 29:10 84:16
action 78:21,24 185:12,13
actual 10:19,20 16:9 25:6,16 32:8 39:3 74:18 90:8 109:21 123:20 134:4 145:22 149:10 178:11
added 23:6
addition 77:22
additional 21:4 44:22 58:1 61:10 70:17 93:10 106:21 107:3 127:9 140:25 141:11 141:14 156:23
addressed 125:20 151:6
addressing 126:14
adequate 161:21
adjust 14:10
adjusted 14:17
adjustments 29:22
administrative 47:10 77:22
advance 20:9
advertising 157:17
advised 69:24
advising 165:11
advisors 173:15
affidavits 72:14
affiliate 5:18
affirmed 4:24
aforementioned 185:5
afternoon 82:16 83:7
ago 36:15 37:7 43:10 73:25 154:6
agree 49:23 71:7 78:8 120:1,7
agreed 121:16
ahead 101:3 124:21 134:10
AI 1:2
allowed 64:8
allowing 103:7
amend 52:15
amendment 50:13
American 11:11 11:13,16,22 73:15,24 74:1 74:4 109:10
amicably 131:8
amounts 39:4,5
analysis 127:22 157:24 158:1
analyst 39:10 83:24
analysts 105:10 106:8,17 122:4
analyze 21:11
Andersen 6:20 8:6 9:1,13,14 9:19,22 10:23 11:7,9 12:7,8 12:12,18,23 13:11 17:12 18:14 32:25 52:5 53:6 54:20 62:15 62:18,23 63:12,24 64:14,18,24 75:19,22 76:4 76:15,21 77:14,16 78:2 79:5,5,17 80:11,16,25 81:3,8,17 82:10 87:12 87:17 88:4 89:3 93:3 94:23 102:17 105:22 122:3 133:12 135:20 136:17,21 137:2,8,9,22 140:25 141:15 141:25 144:22 145:1,12,21 147:17 151:6 151:9,17 152:3,16 153:1 156:17 159:7,12 161:13 162:16 163:18 167:19 167:22 168:6 170:10,12 173:6,22 174:11 176:18 179:6 180:14
Andersen's 12:15 15:18 76:16,18 78:12,15,18 78:21,25 79:2 103:13,20 136:18,19 183:13
Anderson 78:20 80:22
and/or 185:15
announcement 85:1,6,17,23 92:10,16 105:8 107:8 130:4,8
announcing 83:23
answer 17:4 111:15,16 124:14,16,22 124:22 154:16 154:17 166:20 166:24 167:12 169:17 182:20
answered 182:2
anticipated 123:20
anybody 24:21 24:22 58:16 60:19 73:9 88:14 94:23 105:22 113:14 117:11 120:25 156:13 164:16 165:5,15,20
apologize 118:15
appear 121:14
APPEARAN... 2:1
appeared 40:18 41:17,20 115:23 119:17 131:16 184:5
appearing 110:7,8 121:5
appears 37:5 48:12 52:6 67:19 150:25 151:20,25 155:9 160:17 180:16
appendix 98:2
applicable 146:17
applied 149:6
apply 185:14
appreciate 47:25 97:13 110:14 133:8 141:8
appropriate 26:3 28:13 105:14 110:1 112:4 183:6
approval 64:13 64:16 65:1 79:19,23 80:10
approximate 158:12 177:6
approximately 9:7,8,21 13:7 59:9 73:25 75:23,24 83:1
areas 26:3 58:2 157:12 158:5 159:10,16,21
arising 6:5 36:9
Arps 34:5 156:10
arrived 28:3 59:22 104:6
arriving 98:11
Arthur 6:19 8:6 9:1,13,14,19 9:22 10:23 11:7,9 12:6,8 12:12,15,18 12:23 13:11 15:17 17:12 18:14 32:25 52:5 53:6 54:20 62:15 62:18,23 63:12,24 64:14,18,24 80:16 81:17 135:20 140:25 145:1 147:17 151:6,9 156:17 170:10 170:12 174:11 176:17 179:6 180:14
arts 7:12
aside 22:15 26:9 39:5 41:10 43:1 46:2 51:2 56:11 57:12 117:3 123:21 133:10 176:14
asked 22:5 44:6 49:18 57:6,25 72:16 74:21 95:8 101:17 118:15 122:11 122:12 164:9 169:6,9 171:10,20 174:16 175:21 176:15 182:2 182:7
asking 5:16 94:23 114:14 115:11 121:23 122:2,6,24 171:14
aspect 141:3 169:22
aspirations 77:16
asshole 41:3 113:25
assigned 157:11 174:8,11
assume 89:20 102:13 138:23
atmosphere 131:5
attend 7:3,6 27:13 60:23
attended 61:2,3 61:11
attention 105:6 114:25 130:3 181:17
attorney 134:19 185:11,12
attorneys 33:2 34:4,13 42:8 81:10 112:25 113:3 116:19 135:23 136:5 136:11 137:12 137:18,25 138:5 140:6 140:11,16,20
audit 10:7,14,16 10:18,19,20 10:22 11:1 12:8,11,12,16 66:20 147:12 162:17
audited 147:23
auditors 15:22 16:8
Auditor's 147:13
author 160:12
authority 72:21 184:4
authorization 18:19 63:11 63:20,23 64:4 64:9,16 79:11
authorized 132:12 185:6
Avenue 2:14
avoid 167:6
aware 5:13,25 6:3,4 12:8 30:11,18 57:10 84:25 87:16 93:1 95:5 101:10 134:7 141:14 141:24 165:19 165:22,25 166:3,6,9 168:5 171:25
a.m 1:14 4:10

NOT A CERTIFIED COPY

017994

16div-023058

28:24 29:2 56:25 57:3 71:17,20 100:20,24

B

B 3:7
Bachelor 7:12
back 9:8 12:7 16:20 18:12 29:1 36:21 44:21 48:3 49:8,25 57:2 69:5 71:19 82:15 99:4 100:18,22 106:11 118:20 124:10 130:1 139:22 154:21 168:10 170:23 171:7
background 7:1
bad 85:7,18,20
balance 14:16
bank 6:1 81:16
banks 81:18
base 41:19
based 6:15 11:13 14:17 43:22 44:13 45:15 57:7 85:5,16 115:7 115:23 127:19 127:22 170:13
basically 14:9 40:3 64:9 75:14 147:20
basis 66:3 86:7 86:12 94:6,7 94:10,13 95:19,20 104:16 107:10 126:12 129:2 166:21 167:4 169:20,21 176:25
Bates 48:9 150:25 151:3
Beach 1:1,17,17 1:23 6:18 9:5 9:6,12 11:15 184:2 185:3 186:5
bears 47:22 48:9,15
beat 125:13
began 16:16,17
beginning 11:3 37:19 44:23 118:1 181:19
begins 21:3 52:11 176:3 176:10
behalf 2:2,7,12 5:17,23 18:13 18:20 19:8 33:13,16,20 33:23 63:11 64:17,21 80:16 135:20 151:17 164:9
belief 114:12 153:10 186:10
believe 9:9 15:24 22:1 24:4 31:16 34:14 37:18 41:19 44:24 45:18 48:16 51:5 52:8 61:1,9 67:4 75:12 86:23 98:3 105:16 105:25 111:1 113:24 116:20 127:20 132:12 132:18,22 135:23 136:1 137:14 138:15 145:18 155:12 155:25 170:9 172:24 175:20 176:9,16,21 177:12 180:18
believes 152:23
best 45:9 62:25 65:18,21 76:17 97:3 121:10,11 186:10
better 70:23 85:15 93:15 180:22
beyond 45:20
bill 62:13 80:5 126:18 127:6 127:14 157:19 157:20 166:4
bit 26:16 66:17 67:13 82:15
Block 2:4 73:10
board 167:3
Bob 14:14
Boca 11:14
bond 12:24 13:1 13:5,9,16,18 13:20,22 14:2 15:1,4,6,17 17:18 56:15 58:5,15 59:1 84:14,17 85:3 96:18 129:13 129:17,22 133:13 146:25 148:3,11,11 149:1 151:21 153:3,14,24 163:9 170:18 174:6,24
Bornstein 13:12 13:14 16:13 18:18,22 19:2 20:17 24:19 27:15 30:9 31:1,11,18,24 32:24 35:1,2,4 35:8,12,19 38:16 39:6,12 39:16,19,20 39:21 40:4,16 40:19 41:3,15 42:10,12,15 42:22 43:6 45:13 47:15 49:4,23 50:20 59:18 61:3,6 61:11,17 63:5 63:10,19 64:17 66:12 67:18,20,23 67:25 68:3,4 68:14,16,21 69:1,3,12 73:15,23,24 74:10,15,22 75:3,7 82:1 83:2 89:2,4 90:11,13 91:25 93:17 93:21 94:14 94:15,18,23 95:7,8,12,21 101:21 102:8 104:6,13,20 104:23 105:18 108:5 112:9 112:16 113:4 113:9,13,21 114:23 115:21 116:6,11 118:10,12,17 118:20 119:3 119:15,16,21 119:24,25 120:6,12,18 120:24 121:8 121:12,18 122:6 123:16 124:2,5 125:4 125:20,24 126:2,9,14,17 127:13,18,21 128:13,18 129:3,9,12,16 130:11,15,18 130:22 135:19 137:4 138:7 138:13 139:8 139:10,13 140:9 145:18 146:8 150:8 153:22 154:5 155:25 156:18 156:20 168:9 168:25 175:8 181:24 182:8 182:14 183:3 183:8,12
Bornstein's 23:23 57:9 65:15 81:22 82:13,22 86:3 86:6 88:23 89:11 90:7 92:9 108:11 125:7,15,25 146:5 148:18 153:20 154:8 181:16
Boston 165:8,11
bottom 52:11 92:18 108:17 146:3 148:15 161:7 178:18
bought 15:14
Boulevard 1:17
bounded 118:5
break 71:22 100:15 101:5 139:18
Bridge 1:21 4:3 184:11 185:4 185:20
briefly 11:20 144:21 160:2 160:20 181:15
bring 147:21
bring-down 18:10 51:4,9 51:12 52:2 55:2 56:12 142:14,18,23 143:11,15,21 177:18
broad 85:13 124:21 125:2
Brockelman 1:11 3:4 4:21 4:23 5:3,9,10 7:3,20 17:10 22:5 29:4 35:25 36:20 37:4 43:10 45:14 48:24 51:4,24 53:12 56:2 57:5,15 57:17,19 71:22 91:9 93:1 96:8 101:5 104:12 110:7,21 122:22 139:25 144:13 150:18 155:8 159:2 160:9 171:10 174:1,3 175:16 181:12 181:13 183:17 183:19 186:20 187:3
Brody 2:3 3:4 4:13,13 5:2,4 7:19 15:11 17:7,24 18:1 20:14,23 21:19,21,25 22:4,23 24:16 27:23 28:21 29:3 31:23 32:7 34:24 36:16,19,23 37:3,22,25 38:3,6,21 40:8 40:9,20 41:18 42:20,21 44:5 44:11,16 45:5 45:10 46:15 47:7,13,21 48:2,20,23 50:12,17 53:2 53:3,10,11 54:18 55:1,22 56:1,18,20,22 57:4,15,25 58:2,3 59:8 61:20,23 65:14 70:4,12 70:19 71:5,12 71:24 73:5 76:2 80:17 85:8,19 87:20 88:11,21 93:6 93:12 97:6 98:22,24 99:20 101:17 102:10,20 103:15 106:5 107:21 109:19 110:4 111:5 111:12,24 113:16 115:6 121:1 123:8 131:14 132:3 132:19 133:6 143:3 144:23 150:2 159:23 174:2 175:13 178:4,13 179:22 180:1 180:17 181:11 181:17 182:2 183:17
Brody's 73:9,12 182:5,12
brought 59:17 72:10 181:7,8
budgeting 11:23
business 33:19 85:5,16 109:9 170:3
Buy 166:7
B-r-o-c-k-e-l-... 5:9

C

C 4:1 185:1,1 186:1,1
call 54:13 68:7 68:10,13 89:2 89:5,7,23 112:22 168:19 168:22 173:16
called 18:10 54:20 67:25 89:8 113:24 175:7,8
calls 20:21 40:6 40:17 41:16
cancelled 129:14,22
carrying 78:9
case 1:2 4:11 5:5 6:9 133:2
cash 11:24
cause 4:6
caused 19:10
cautionary

NOT CERTIFIED COPY

017995

108:16,18 109:2,12,16 110:1 111:4 111:10 112:5
caveat 183:4
cellphone 71:14
certain 29:16 38:13 40:4 43:17 50:19 51:20 96:12 127:5 157:20 164:5 175:22 182:8,9
certainly 23:8 32:24 36:22 61:16 64:7 76:23 85:20 99:7 103:22 136:25 161:15 174:25 180:3
certification 185:14
certified 8:10 8:10,14,20 75:10,16
certify 184:4 185:5,8,11 186:7
certifying 185:15
CFO 12:3
chance 38:7 43:11 44:15 45:11,23 47:24 73:22 91:13
change 25:10 46:22 100:16 187:5
changed 23:5,8 23:10,11 29:23 150:10
changes 24:13 25:2 29:22 46:22 55:7,9 55:14,19 56:8 63:3 156:23 187:4,20
channel 31:5,7
charge 53:23 54:5 63:5
chargeback 157:14
check 29:22 48:13 51:15
checked 29:16 29:25 51:22
checking 51:17
Chicago 2:5 7:5 8:8 73:10
chief 12:4 180:10
Christopher 2:3 4:14
CIRCUIT 1:1,1
circumstances 79:22
city 8:7 27:10 27:12
Clare 2:8 3:5 4:16,16 5:23 17:23 20:13 20:21 24:14 27:20 31:20 34:21 40:6,17 41:16 42:19 44:4,6,13 46:13 48:1,14 50:9 52:25 54:16,23 57:18,20 61:22 70:22 71:15,21 80:18 85:11 85:14,22 87:22 88:13 91:4,8 93:9,13 93:16 96:3,7 97:12 98:23 99:1,22,24 100:15 101:4 101:25 102:1 102:15,23 103:9,17 106:7,12,13 108:4 109:24 110:17,19 111:8,17 112:2 113:19 115:10 121:3 121:7 122:17 122:20 123:5 123:9,11 124:10,15 125:1 131:19 132:4 133:8,9 134:13 136:8 139:4,17,24 143:6 144:12 144:24 145:7 147:9 150:3 150:13,17 155:7 158:24 159:1,24 160:1,3,8 161:18 162:1 162:6 166:21 167:5,14,23 169:19 170:22 171:3,9 173:25 174:16 175:10,21 176:15 177:13 178:2,10 179:15,20,25 180:15,18 181:14 182:3 182:24 183:2 183:16
Clare's 44:20
clarification 77:11 97:22 103:2 141:8
clarify 15:5
clear 15:12 25:12
client 5:17 81:5 152:5
clients 76:13
client's 81:10
client-related 77:22 78:3,9
close 13:9 38:19 157:2
closed 6:2 13:2
closer 37:10
closes 11:25
coauthor 160:12
coffee 101:1,1
Coleman 1:3 4:14 5:4,17,21 6:5,10,11 12:25 56:16 163:14,15,22 163:25 164:9 164:13,17,20 165:1,11,20 166:3,6,9,13 166:17 167:11 172:13,14,15 173:1,14,15 173:22 187:2
Coleman's 172:22
collaborative 136:16
collect 21:8
collected 19:19 21:15
collecting 53:19 54:3
collective 137:1
college 7:6 8:2 75:20
COLT 2:13
come 8:25 16:20 18:12 39:18 69:5 98:4 104:7 117:14 134:14 170:23
comes 21:23
comfort 15:18 15:20,21 16:3 16:7,11,16,23 16:25 17:4,15 17:16,17 18:2 18:5,22 20:1 20:19 22:10 22:22,24 23:9 24:12,13,24 25:2,6,9,10,16 25:20 26:11 26:12,19,22 26:23,24,25 28:8,14 54:15 59:13,22 60:7 62:8,17 63:1 63:11,21,25 64:11,22 79:13,22 80:2 86:20,23 87:1 87:9 103:14 103:19,19 131:24 132:1 132:6,15,19 133:11,12,16 134:6,15 135:4,19,25 136:4,10,15 137:4,10 138:1,23 139:3 140:3 142:12,15,18 142:24 143:11 146:24 148:10 148:24 155:10 155:17 156:12 156:17 176:16 176:18 177:18 178:11,15,17 179:9
coming 114:25
commenced 185:9
comment 31:16 66:4,9 120:16 120:24 121:1 121:3 125:9 125:10,11
comments 40:2 41:24 42:2 114:5 117:7 124:3 125:8 125:15,20 126:15 147:3 150:7,10 154:5 156:23 176:19
Commission 184:12,13 185:21,21
communicate 40:11 119:16
company 9:2 11:24 12:3 14:14 15:25 17:1 21:5 53:18 74:7 76:5,7,12 81:13,19 85:21 95:9 102:18 109:11 136:23,24,25 137:2 142:20 163:14,23,25 164:17,21 180:8 183:4
company's 81:15
company-pro... 16:10
comparatively 124:24
compare 28:18 130:5
comparison 108:6 137:24
compensation 53:24
competence 76:16,22
competent 76:10 78:10
completed 185:10
completing 148:1
concept 87:14
concerning 38:18 43:19 46:12 49:6
concerns 130:19
concluded 183:24
conclusion 183:18
concurring 79:23 80:1,7,9 80:13
conduct 168:7
conducted 167:18 169:15
conducting 166:17
conference 27:22,25 40:1 41:25 112:21 113:5,15 117:15 118:10 118:21 119:25 168:6 172:18 172:24 173:11 181:4
conferences 67:7 149:23 173:10,14,23
confers 21:20
confidential 48:10
confirm 50:23 108:1
confirmations 158:1
confirmed 49:23 50:15 182:16
conform 103:4
confuse 70:24
confused 111:7
confusion 7:16
connected 185:12
connection 6:8 13:16 14:1 15:16,22 16:3 17:18 18:5 22:25 36:8 48:17 56:15 58:4,8,25 59:12 60:17 86:13 87:1 108:23 110:24 111:16 133:13 142:5 147:24 148:25 151:21 152:7 158:6 159:15 160:14 163:9,14 165:11,16 167:19 170:14 172:3 174:5 174:19
consent 79:6,10 79:14,17,24 80:11,12,21

NOT CERTIFIED COPY

017996

80:24 81:4 102:14,19 103:3 138:24
consents 79:25
consider 180:4
considered 64:12
consistent 13:3 44:9 146:7
conspired 162:24 163:9 163:13
consult 170:25
contact 92:18
contain 44:1
contained 16:25 19:12 52:16 54:22 65:4 86:25 97:11 97:18,25 143:14 186:9
contains 19:15 21:4 23:24
contemporan... 172:6
content 88:19 97:23 98:18 98:19 130:8
contents 54:11 90:16 96:25 99:3 136:3,9 152:15 153:23
context 79:10 95:11 103:24 135:15 149:3 170:8
contingencies 146:18
continue 47:3,5 131:7
continued 59:18 131:1,10,17
continues 52:12
control 64:20 80:13 150:1 185:15
controls 7:24 161:21
convene 83:6
conversation 35:6,15,25 39:24,25 40:10,22 41:8 67:18,19,22 68:17,20,20 68:23,25 69:15,15,19 89:16,25 90:14 112:10 112:13,15 113:13 116:13 117:24 118:23 119:3 130:12 156:3 165:14 168:15,25 172:14 181:22 181:25 182:6
conversations 38:24 39:1 50:19 65:25 65:25 66:5,9 66:13,18,21 69:9,13 99:5 116:16 118:17 128:9 136:14 165:7 169:7 169:11 173:19 175:24 176:6 176:12 177:23 178:6 182:13
copies 19:6 47:22 62:17 91:19,22 98:11 175:16 181:7 187:17
copy 19:7 20:18 20:19,25 25:19 36:16 48:7,18 65:14 70:4 90:8,20 91:1,1,14,16 91:24 92:1 93:3 98:8 105:4 110:21 110:24 111:2 134:2,4,23 135:22 137:12 140:2 149:18
correct 6:15,16 7:17 8:21,24 9:17,25 11:6 12:5 14:5,21 14:24 15:15 19:9 21:19 22:14 23:1 25:5 26:1,5,8 28:1 29:11 30:1,4 32:10 35:3 36:1,7 37:7,8,11,12 41:25 42:8 43:12,16,20 45:22,25 46:4 46:5,8,23 49:5 50:2,5,22,25 52:17,18,24 54:7 58:5,6,14 58:22 59:4,11 59:20 60:5,11 60:12,21,22 61:21 62:24 63:6,7,12,17 63:21 64:15 64:25 65:20 65:22 66:2,11 67:8,9,16,25 68:11,15,18 69:21,22 70:3 70:18 71:2,3,6 73:21 75:5,18 75:21 76:3 77:1,23 80:8 81:5,6,20 83:4 83:9,10,13,21 85:11,25 86:9 87:9 91:2 92:5 93:4 94:9 95:16 97:19,20 98:1 98:5,16 100:6 101:12 102:5 102:6,24,25 104:1,11,22 106:1 107:15 107:22 112:11 112:23 114:1 114:11 115:15 115:19 116:22 117:18 118:19 118:21 119:23 120:20 126:1 126:8 131:3,4 132:10,16,17 132:21 134:1 134:6 135:5,8 135:11,14 136:22 137:3 137:5,7,9 139:6,9 140:23 141:7 142:13 144:9 145:10,23 147:4,25 149:12,14 152:11,13 157:7,12,13 159:4,5,14 160:22 162:5 164:10 165:6 167:17 169:24 171:18,19,23 172:5,11,15 173:24 174:5 174:9,12,14 174:15,18 175:5 176:7 176:19,20 177:10,19,20 180:2,6,9,14 181:3,6,9,22 185:7 186:9 187:19
corrected 100:5 100:8
correction 100:4
corrections 46:22 186:11
correctly 15:25 46:11 49:12 65:23 97:14
correspond 26:4
counsel 21:20 22:15 47:21 48:7,11,18 185:11,12
COUNTY 1:1 184:2 185:3 186:5
couple 36:15 45:1 58:1 172:20 175:18 176:1
course 58:15 92:1 97:15,21 104:4,7 172:20
court 1:1 4:12 5:8 22:5 36:23 166:23
cover 158:23
Co-op 157:17
CPA 8:20
CPE 75:13
CPH 3:10,11,12 17:11 22:2,6 37:1,5 48:1,14 55:23 61:25 62:5,11,19 65:13,24 66:4 66:8,16 69:20 70:13 81:22 150:25 151:3 181:15 183:11
created 14:15
credit 75:13 165:8,10
CROSS 3:3 57:17
CRR 1:21
CSFB 173:17
cup 100:25
current 11:18 44:9 70:17 147:21
currently 71:9 119:4
Curtis 2:13 4:20
customer 128:1 157:14
cutoffs 129:8

D

D 3:1 4:1
damage 78:25 79:2
data 13:19 14:23 15:2,4 16:25 145:4
date 7:16 16:17 18:11,25 19:11 115:4 141:16,17 147:13 177:6 187:21
dated 17:12 81:22 91:12 154:20 166:10 186:14
dates 48:12 53:8,9
Davis 34:12 41:11 116:21 117:4 134:24 135:4,12 156:8
day 30:11 32:19 32:21 59:10 82:25 85:2,7 87:8 88:8 92:15 97:15 98:12 184:7 185:17 186:14
days 20:12 59:6 61:15 72:2,5 172:20
day-to-day 11:23
DD164752 184:13 185:21
deal 12:25 44:20
dealings 169:25 170:3,5
deals 170:10,11 170:13,18
Debord 2:8 4:16
December 53:14,15
decide 28:12
decision 81:3,4 81:7 88:18 102:8 130:7 159:3,6
decisions 159:12
declaration 72:17
declarations 72:13
declare 187:19
decrease 152:22
decreased 85:4
deductions 157:14
deemed 64:23
defendant 1:9 2:7 4:17
define 121:1
defined 16:8
defraud 163:13
degree 7:9,11 7:13
delay 179:13
delayed 129:18 129:22
delegated 81:4 81:10,12,15
deliver 132:7
delivered 60:8 63:25 64:1,11 64:23 134:7 138:23 179:9
delivering 20:17
Delray 6:18 11:15
Denkhaus 157:12 158:9
Dennis 13:13 16:13 19:25 21:16 51:21 127:5 133:21 133:24
deny 50:24
DEPONENT 187:23
deposed 5:11 36:8 72:6 74:18,21
deposition 1:11 1:22 4:3 7:16 36:13 37:6 44:7,18 45:8 48:8 57:5

NOT CERTIFIED COPY

017997

70:5,11 71:12 71:23,25 72:3 72:5,9,25 73:4 73:8 74:12 91:10 96:9 122:23 140:1 143:10 144:14 150:19 155:9 183:19,24 185:6,8,8,9 186:8 187:3 187:19
depositions 110:25
describe 11:20 48:2 50:7 131:5
described 36:5 51:4 76:1 78:16 88:21 92:2 98:15 116:2 131:22 145:8 146:9 148:2 152:22 157:1 182:6 182:16
describes 106:22
describing 47:16 79:14 82:2
designated 83:5
Despite 152:21
detail 66:17 70:18 82:16
detailed 107:16
determined 161:12
determining 142:22
development 104:14,25 112:10 138:21
Developments 103:25
differ 109:22
difference 10:5
differences 10:15
different 9:1 47:23 48:12 58:2 107:13 107:19 116:17 129:21
differentiate 107:13
differently 9:11 53:2
difficult 127:15
diligence 14:2 55:3 56:12 164:6,8,13 165:19,25 166:17 167:10 167:18,25 168:7 169:1 169:15 170:15 172:15
direct 3:3 5:1 114:5 185:15
directed 40:4 42:2,3,4,5 114:6,8,9 164:6 166:25 173:22 181:17
direction 185:15
directly 10:21 13:14 75:19 145:18
disagreement 102:17 105:21
disclosed 31:17 38:17 87:19 93:19 138:1
disclosure 26:17,18 31:5 34:19 40:14 41:12 42:17 102:3 103:12 106:16 115:22 130:19 131:12
disclosures 35:6 35:10,18 88:4 101:14 102:18 103:23 109:9 114:21 117:5 117:21 118:1 118:18
discover 159:20
discuss 54:20 58:16 89:6 93:18,23 126:17 127:13 153:22 159:16 178:23 179:5
discussed 25:1 26:14 35:2,16 39:19 42:23 59:8 71:10 76:25 87:14 93:21 95:14 99:4 106:14 118:4 119:11 123:21 126:22 126:25 142:12 149:16 177:24
discussing 31:15 61:13 80:2
discussion 28:25 31:13 31:24 34:19 34:22,25 35:9 38:5,16 50:16 57:1 60:13 67:6 70:2 71:18 74:22 74:25 75:3,6,7 90:3 93:10,22 94:15,22 95:4 95:6,11 99:18 100:21 102:2 102:7 103:23 104:6 105:21 106:15 107:2 107:11 109:1 112:4 116:4 117:20 123:19 125:24 127:7 129:20 130:25 132:5 135:16 136:3,9 137:23 140:5 140:15,19 152:14 153:1 156:22 160:5 165:14 178:19
discussions 22:13,15 24:11,17,18 24:22,24,25 26:9,10,17,25 27:3 43:1,2 54:9 67:1,15 74:25 87:12 87:13,25 88:22 91:21 93:17,25 95:3 99:2,7,10,14 105:13 107:7 131:21,25 139:14 140:24 141:10 142:21 143:13,17 148:23 149:2 149:4,8,19 153:5 154:7 156:19 163:25 164:4,12 178:16 180:19
dispute 167:7
distributed 187:17
docks 129:7
document 15:13 18:13,17 19:2 19:11,14,22 22:6,16 23:24 25:12,18,23 29:7,21 47:22 48:7,13 49:8 49:20 51:1 52:20,21 53:1 56:4,9,11 62:4 81:23 83:12 90:9 96:10,21 98:5,22 122:25 123:2 123:4,6,9,12 123:21 136:17 144:15,17,18 144:19,22 147:11,14,16 149:25 150:10 150:25 151:2 151:19,22 155:11,18,23 176:2,14 178:21 179:18 183:7
documentation 16:10 81:25 82:12 144:15 145:6
documenting 159:11 168:21
documents 14:19 16:19 28:11 47:11 65:9 123:16 146:20 150:19 160:2,13
doing 28:16 55:11 119:5 135:24 138:7 167:1
draft 13:17 14:7 18:6 20:3,5 22:9,17 23:14 24:12 28:11 29:24 55:2 59:17 62:7,19 62:22 63:1 109:10 132:19 132:22 133:3 133:16 134:4 134:15,19 135:4 149:19 151:20,25 152:21 153:13 155:10,16,18 155:20 156:12 156:20 177:6 181:8
drafted 49:3 51:21 88:9
drafting 16:15 23:9 30:15 60:23 61:1,4 61:10 67:11 88:15 109:8 136:17 142:14 147:2 149:10 149:11 151:16 152:4
drafts 23:3,3 55:7 87:2,3 99:20,22 132:15 137:17 156:16 176:18 176:23 177:1
dropping 25:10
due 14:2 55:2 56:12 164:5,8 164:13 165:19 165:25 166:17 167:10,18,25 168:7 169:1 169:14 170:15 172:15
duly 4:24 184:5 185:5
Dunlap 179:23 180:4
duties 60:4 158:10
D.C 2:10

E

E 3:1,7 4:1,1 52:11,15 143:21 185:1 185:1 186:1,1 187:1,1,1
earlier 51:3 79:20 81:21 83:11 108:25 132:14 145:12 156:4 169:6 171:10
early 6:14 85:24 166:7
easier 127:15
edited 99:4
edits 150:6,11 153:15
effect 129:4
effectively 144:8
efficient 65:12
effort 136:16 137:1
eight 75:22 130:3
EITAN 2:17
either 33:23 37:19 48:20 62:13 63:2 73:5 82:10 96:2 129:19 161:16 162:12 162:21 170:24
eliminate 183:13
Ellis 2:9 4:17
else's 115:9
employee 92:22 185:12
employees 117:17 162:25
enforce 129:7
enforcement 72:21
engagement 6:22,25 10:8 10:19,21 47:9 146:4 152:3 154:11,13 170:1 174:11
engagements 60:18 76:25 77:15 78:3 152:8
ensure 25:4 29:23 51:22 145:2
ENTER 187:4
entered 187:20
entire 10:18 25:8 44:8 93:4 97:17,23 98:22 104:24 113:9 138:14
entitled 144:15 147:11
equal 74:7
errata 186:11 187:17
error 69:25
errors 99:18,25 100:7,11 101:6,9
Esquire 1:22 2:3,3,8,8,13
essentially 97:16 170:24
establish 45:5

NOT A CERTIFIED COPY

017998

estimate 20:12 28:4
estimates 105:10 106:9 106:18
ethical 76:7
evening 24:5 25:1 26:6 27:3,16 28:7 29:5 34:18 36:5 37:15 38:12,17 39:18 42:23 43:3,5 47:16 49:17,21 50:8 59:7 60:3,25 61:12 62:7,18 65:3,20 67:10 67:20 68:2,5 68:21 69:2 70:10,18 71:9 71:10 75:7 82:2,12,17 83:3 91:19,21 93:3 94:5 96:22 97:5 98:8 99:9,15 100:13 101:8 104:4,8,18 105:19,23 107:3,20 109:1 113:4 116:5 117:5 117:11,13 118:5,7,9,13 118:17 120:21 120:23 122:11 123:15 126:18 126:23 128:13 128:23 129:16 130:12 131:2 131:9,21,25 132:8 134:16 136:4,11 137:13,18 138:10,17,18 143:18 150:7 169:8 171:11 176:3 181:19
event 49:19
events 32:16,18 36:11 37:10 37:15 38:11 43:19,23 44:2 45:16,19 46:4 46:6,12,25 47:14 49:6,16 50:3,7,11 57:6 59:7 65:19 66:23 70:18 71:2,9 74:19 74:23 75:7 82:2,12,16,19 87:23 92:1 93:2 102:4 115:24 139:11 147:13,22 149:9 182:17
everybody 33:3 83:5 150:21
exact 18:11,25 35:5 38:24 43:9 93:22 126:5
exactly 16:18 41:6 75:15 83:17 182:14
exam 8:23
examination 5:1 8:15,17
examined 4:25
example 19:15 41:10 111:22 178:14,18 179:23
exceed 106:23 121:24 126:4 127:15 152:24 183:4
exceeding 107:5
exception 186:10
excuse 15:9 18:7 45:13 52:20 55:9 175:23
excused 183:23
executed 186:12
executive 180:5 181:5
executives 179:19
exhausted 70:9 82:18
exhibit 3:9,10 3:11,12,13,14 3:15,16,17,18 3:19,20 17:11 18:7 19:14 22:1,1,2,7 23:15 25:6,13 25:19 36:24 37:1,5 46:10 47:19,23 48:3 48:5,9,15,25 50:6 51:25 52:2 54:22 55:22,23 56:3 56:13 61:25 62:5,11 65:13 65:24 66:5,16 81:22 91:5,6 91:10 92:6,13 96:3,5,9,17 97:1 105:4 110:2 111:10 122:18,21,23 130:1,5 140:2 143:10 144:10 144:14 145:17 146:11 147:7 147:11 148:3 148:7 149:6 150:15,22,24 151:2,4,8,10 151:14,22 152:20 153:12 153:13 154:5 154:19,21 155:5,9,21 156:21 160:6 160:13,23 161:1,2,4,6,8 161:9 175:20 178:18 179:2 179:16 181:15 183:12
exhibits 25:11 26:3 61:23 150:20 154:23 159:23 160:10 160:18,22 175:17 177:13 177:17,21
expectation 106:22 107:4 166:16
expectations 39:10 83:24 111:21 122:4 154:25
expense 175:1
experience 8:16 8:18 85:5,16 103:18 109:8
expert 110:9,10 166:22
Expires 184:12 185:21
explain 14:8 28:15 79:8 176:25
explained 5:4
express 39:6 104:18
expressed 107:20 121:9
expressing 105:19 108:5
extent 38:13,15 39:14 41:4 43:15,17 46:2 50:10,14,18 66:8,13 70:7 70:10 71:5
extra 36:18
extremely 76:20

F

F 185:1 186:1
face-to-face 60:14
facility 27:19,21
fact 62:22 74:20 110:8 167:3 168:22 172:9
facts 110:13
fair 80:19,20,21 80:24 97:13 115:11 159:12
fairly 96:10 124:23
false 94:3,8
familiar 5:20 27:16 34:12 79:6 109:12 147:14 180:21
Fanin 69:10,16 180:7
far 26:24 37:24 39:3 43:2 93:1 124:25 125:9 131:20 156:15
fashion 25:10
favorites 110:7 167:2
fax 23:24 48:15 62:4
faxed 23:25 62:5,8,11,17 62:23
faxing 63:1
February 141:21 142:1 142:11 178:20
fee 110:9
Feel 96:10
felt 39:9 76:17 76:21 94:18 94:21 95:21
few-minute 139:17
field 7:21 8:3
Fifteenth 1:1 2:9
fight 110:15,18
figure 83:20
figures 39:3,5 53:13 54:21 142:17
file 15:3
filed 47:12
filing 79:12
final 17:21,21 28:17,19 99:20 100:9 130:7 134:4,8 137:19 154:22 155:3 177:17
finalization 174:24
finalized 101:9 131:13
finalizes 18:11
finally 180:18
finance 11:11 11:19,21,23 29:10
financial 12:4 13:17 23:25 27:7,10 29:20 58:8,21,25 60:20 62:6 63:17 65:4 67:11 80:22 83:15 85:7,9 85:12 94:2 97:8,25 98:20 103:7 109:21 117:16 134:9 138:10 146:19 147:23 162:8 169:9 171:11
financially 185:12
financials 58:4 58:12,17
find 14:20 100:3
finding 115:4
fine 21:19 37:22 47:25
finished 90:13 170:20
finite 118:5
firm 4:20 34:12 73:9,13 77:21 165:15 173:17
firms 34:2
first 4:24 6:11 11:1 23:24 26:21 39:3,7 39:11 52:4,12 54:7 66:21 82:20 83:24 84:4,5 86:11 86:16,21,21 87:7,18 88:5 90:19 98:7 101:15 104:5 105:6,9 106:7 106:16,23,23 107:4,5,25 110:23 111:22 121:25 122:15 123:20,25 124:3,6 125:13 126:4 126:19 127:4 127:16 128:16 129:1,5,23 137:24,24 141:1,4,5,6,12 141:16,17,19 142:2,3,5,9 144:6 148:9 148:16 151:7 152:16,24,25 154:25 155:20 157:1,2,5 161:21 162:11 162:19 163:21 165:8,11 167:10 168:1 168:10 169:4 171:13,16,21 171:25 172:6 176:2,10 181:18 183:5 185:5
firsthand 133:18 134:11 135:3,6
fiscal 152:24,25
five 21:4 105:7 159:24 170:23 171:2 178:20
fixed 150:10
flagging 138:4
flip 161:2
Florida 1:1,17 1:22 4:5 6:15 9:5 30:3 47:1 59:15,16 61:7 61:8,18 140:22 175:4 175:12 184:1

NOT CERTIFIED COPY

017999

184:12 185:2 185:5,20 186:4
flows 11:24
fly 61:7
focus 6:24 32:12,16 133:11 140:11
focused 87:11
focusing 12:18 23:14 24:24 52:7
folks 119:24
followed 79:17 139:2
following 43:7 78:12 176:9
follows 4:25
follow-up 57:24 174:4
Forbes 5:18,20 164:23 165:1 165:5
forecasted 31:9
foregoing 185:7 185:14 186:8
forgot 172:22
form 17:23 24:14 27:20 31:20 34:21 42:19 44:4 46:13 49:11 49:15 50:9 54:16 61:20 70:19 76:18 79:14 80:17 85:8 87:20 88:12 93:6 94:10 97:6 98:24 102:10 102:20 103:15 106:5 107:21 109:19 111:5 111:24 113:16 131:14 132:3 133:6 144:15 144:18,19,20 144:23,24 145:5 147:14 147:16,20 149:19 151:11 161:20 162:3 162:4,10,13 162:14,15,18 162:20 163:2 178:2,10 179:20,25 187:20
forma 13:17 14:8,9,19 28:17 29:12 29:20 58:4,8 58:12,17 59:25 97:20
formas 14:6,7 14:13
formed 115:13
forming 169:20
forth 11:25 47:12 99:4 185:9
forward 187:17
forward-looki... 111:20,23 120:13 121:4 121:13,16 183:5
found 21:8,15
foundation 54:23 61:20 85:8 88:12 102:21 109:19 113:17 131:14 143:3 150:2 175:10 180:15
four 21:3 73:25 105:6 146:13 146:16 150:13 150:18 159:24 179:18
fourth 52:4 67:17
frame 9:8 12:7 117:23
free 96:10
Freight 157:24
fresh 46:7 50:3
friendly 50:13 74:13
front 22:7 55:19 61:24 62:1 65:16 177:12
fucking 41:3 113:25 116:6
full 176:10
function 98:15 170:17
further 49:21 57:16 181:11 185:8,11
future 70:16 128:11
F1 98:3

G

G 4:1
general 26:20 74:3 118:3
generally 27:2 39:2 84:1,25 114:6,20 122:8 127:7 137:16 171:13 174:10
getting 86:14
give 19:4 36:4 37:16 47:21 79:11 96:13 150:14 175:16 183:1
given 19:7 20:2 22:6 37:4 48:7,24 56:2 83:20 186:8
giving 17:10 36:20 71:25
Global 23:25 27:7,10 60:20 62:6 63:17 67:11 94:2 117:16 134:9 138:9 169:8 171:11
Gluck 14:15 66:22 68:21 69:7 118:13 119:8,9 120:1 120:13 121:15 148:21,23 149:2,16,18 180:10
Gluck's 121:4 121:20
go 17:8 27:17 27:18 28:21 30:6 32:14 37:24 44:21 56:22 65:10 71:15 82:15 83:2 101:3 112:18,25 124:21 134:10
goes 106:20 156:16
going 4:8 5:5 17:14 28:6,23 36:21 37:14 37:25 39:10 44:25 47:18 47:21 48:2 51:24 56:24 57:23 68:6 71:16 81:1,24 82:17 83:6 88:11 96:11 100:17,25 112:20 116:7 129:4,5,6 139:19,25 149:13 154:21 160:1 166:19 171:4 175:16 183:20
good 5:3 17:8 38:22 76:5,12 85:7,17
Goudis 92:19 92:21
graduated 8:2,9
group 125:10 145:21 151:9
grow 7:4
guess 110:20 124:14 175:7
guidance 51:23
guidelines 14:18
guys 116:6 167:3 181:1

H

H 3:7 187:1
half 11:1 68:17 73:25
hallway 113:15
hand 14:11 132:7 143:9 184:7 185:17
handed 48:11 91:9 96:8 132:13 136:1 137:10,19 150:18 155:8 160:9
handing 122:22 135:25 144:13 147:10
handwriting 23:15,16,20 56:4 62:4 123:3,6,7 146:1 148:6 148:15,19 153:16,18,20 160:17,21
handwritten 153:15
happened 36:5 47:16 49:12 49:21 57:12 139:13
happening 39:23 115:14
hard 90:8,19,25 91:13,15,25 93:3 105:4 110:24 111:2
Harlow 18:20 62:13 63:2 66:22 67:19 67:23 68:1,1 68:21 69:6,10 69:16,24 80:6 89:23 95:11 95:24 118:13 119:8,10 120:7 121:13 121:16 175:8
Harlow's 121:20
hate 44:21
hats 181:2
hazy 26:16 174:22
head 180:7
header 155:17
headquarters 11:14 172:22 172:25
hear 68:16 179:10
heard 82:21 84:3,7 85:6,17 86:2 89:6 92:9 93:20 95:12 115:8 116:10 133:20
hearing 86:5 89:3 168:8,10
heated 131:21
held 10:3 28:25 38:5,24 39:1 57:1 71:18 93:22 100:21 160:5
help 14:14 17:6
helped 13:17 14:7
helpful 17:3
hereinabove 185:9,10
hereunto 185:16
Hi 57:19
high 7:3 76:20
hindsight 161:16
historical 13:19 14:10,23 15:2 15:4,6 29:20 58:21,25 97:8 97:11,18,21 97:24 98:6
hold 126:18 127:6,14 157:19,20 166:4
Holdings 1:3 4:15 5:5,18,19 6:5,10 163:14 164:20
honestly 38:23 73:3 174:22
hope 171:3
hotel 30:25,25 31:2,13 32:14 82:22 84:3 86:3,6 88:23 89:2,6 90:7 92:9
hour 138:16
hours 28:5 43:6 59:9 158:14 158:14,16,18
hundreds 158:14,16

I

IBM 2:4
idea 38:22
identical 47:22
identification 22:3 37:2 55:24 91:7 96:6 122:19 144:11 147:8 150:16 155:6 160:7
identified 100:8 140:10 148:22 162:25 164:19
identify 65:11 96:13 97:2 147:21 160:20 162:23
Illinois 2:5 7:5 8:8,12,20,21 75:11
impact 126:18 147:22
important 80:10
impossible 126:3
impression 115:13,16,18 115:20
improper 44:8

NOT CERTIFIED COPY

018000

inactive 75:14
include 84:19 105:14 110:1 112:4
included 29:13 39:8,9 58:21 60:7 78:8,9 84:3 104:14 105:24 106:4 106:18 107:6 107:11,19 108:7 109:3 120:14 154:2 154:10 155:2 156:24,24
includes 97:23 111:10
including 36:10 104:24 153:2
income 14:16 52:22 53:13 54:21
inconsistencies 99:19 100:1,8 100:12 101:6 101:10
inconsistent 31:22 107:23
independent 144:25 145:21
independently 84:22 145:4
indicate 89:24 90:14
indicated 14:22 23:2 29:15 58:20 63:19 65:3 70:5 171:16 176:17 181:21
indicates 62:5
indicating 23:25
individual 135:10,12
individuals 34:16 69:20 113:8 116:24 117:20 121:19 151:9 168:6
information 14:10 15:1,6 16:22,24 17:1 19:11,12,16 19:19,21,24 21:4,8,14,15 28:17 29:21 53:17 54:2 58:7,11,21,25 59:3 60:7,10 65:4,8 84:4 86:25 87:2,7 87:18 90:15 97:9,11,18,21 97:24,25 98:6 98:17,20 105:14,23 106:3,6 109:21 123:24 129:23 138:1 141:25 142:9 143:14,22 144:7 146:17 156:24 159:20 161:11 162:16 162:23 163:4 163:6,7,10,12 171:12 177:9 177:25 178:8 178:8,24 179:3,7 181:7
informed 80:25 88:17
initial 9:18 147:19
inquiries 166:3 166:6,9 173:22
instruct 166:20
instructed 166:23
integrity 76:19 76:22 78:18 79:2
intend 48:21 70:24
intended 22:12 52:15 53:5
intentionally 128:14,24
interest 6:11 56:16,17
interested 185:12
internal 63:24 64:14,20 77:21,25 78:12,21 80:13 87:12 161:21
internally 81:3 132:1 144:22 152:16
internship 7:24
interrupt 123:1
interviewed 72:20
introduced 4:11
invented 173:12
investigation 157:8 158:7 158:13 159:9
investment 6:1 81:15,18
invite 105:6 130:3
involved 12:19 12:22 16:11 35:14 39:25 51:11,17 99:10 142:8 142:13,14 147:2 152:4 159:3,21 167:24 168:18 168:21 169:22 171:21 172:13
involvement 16:2 30:15 50:11,15,19 51:14 67:6 141:10 142:22 142:25 145:15 146:22 148:1 151:16 152:12 157:5 163:17 167:17 169:1 170:14
in-person 149:22 165:22
issuance 67:7 147:20
issue 41:12 42:17,22 81:3 87:11 88:19 101:13,20,24 102:16 103:12 104:4,21 114:25 115:18 119:10,18 130:23 131:12 138:5 139:5 140:11
issued 30:12,19 30:22 67:4 79:17 87:1 94:3,11,25 102:19 103:14 103:19 145:2 145:9
issues 80:11 103:20,22 162:25
issuing 80:21,24 145:13
item 23:8 52:11 52:15 146:13 146:16
items 23:8 147:22
iteration 123:4 123:6,8,9
iterative 137:17
Izzi 69:24

J

J 1:11 4:23 186:20
James 116:23
Janet 69:11 130:12
January 1:13 37:7 71:25 184:8 185:17
Jenner 2:4 73:9
job 8:3,5 9:19 25:5,9 26:2 33:3
John 33:7,9 40:3
Johnson 7:24
join 61:7 115:6 118:10
joined 9:19 113:4
JUDICIAL 1:1
June 11:8
junior 63:8

K

KATHRYN 2:8
Katie 4:16
Katz 165:16
keep 110:13 111:15
keeping 51:18
Kelly 69:11,16 130:13,16 148:21,24
Kersh 69:11,16 179:23 180:5
key 25:25
kind 80:12 85:6 85:23 109:13 109:16 110:3
Kirkland 2:9 4:17
knew 127:25 128:3,6
know 18:2,4,11 18:16,21,25 19:3,7,24 20:2 20:7,9,19,22 21:14 23:20 24:21 33:4,19 40:24 41:2 42:5,17,22 46:17 53:17 54:19 55:2,5,6 61:3,10 62:11 64:19 68:8 80:22 84:9 86:10,19 88:3 88:10 90:11 90:12 91:25 92:4,21,24 94:7 95:10 96:15 117:1 125:9 126:6 127:5,7,9 134:20,23 145:24 147:5 150:4,9 155:23 161:4 165:10 169:6 173:12 175:11 175:14 177:3 180:3
knowing 175:15
knowingly 78:20,25 79:2
knowledge 16:13 20:6 26:15 39:14 46:8 54:24 65:19,21 68:9 82:19 85:2,3 86:15 89:14 92:3 93:5,8 100:7 101:8 113:6,11,18 123:18,22 124:1,4 133:15,18,19 134:11 135:3 135:6 143:1,4 155:1 156:1 156:15 157:7 179:6 186:10
known 85:23 161:12,16

L

labeled 108:18
Lakes 1:17
language 26:11 108:16,21,21 109:2,5 112:5
lapsed 75:12
Large 4:5 185:5
Larry 13:12,14 16:13 18:18 23:23 24:19 27:15 31:1,16 32:24 35:1 40:4,19 41:3 49:23 89:7 94:13,18 95:7 95:12 116:10 120:16 132:9 132:11 136:1 145:18 150:8 155:25 156:18 168:9
late 115:4
laughing 7:15
law 4:19 34:1 72:21 165:15 173:17
lawsuit 6:4 74:21
lawyer 180:7
lawyers 20:25 33:13,16,23 34:8,16 41:11 41:11 42:7 114:9 117:4,8
leading 127:7 127:10
learn 31:3 161:11 163:3 163:5,5,7
learned 30:22 176:22
leave 11:7 73:24 112:16 138:14
led 67:7 174:6
left 11:9 28:3 43:6 68:6 100:13 101:9 101:21 102:9 138:9,15 139:8
legal 146:19
letter 15:18,20 15:21,21 16:3 16:7,12,16,23 16:25 17:4,12 17:15,16,17 17:22 18:5,10 18:22 20:1,18 20:20 21:2,12 22:10,22,24 23:9 24:12,13 24:25 25:2,7,9 25:10,16,20 26:11,12,19 26:22,23,24

NOT A CERTIFIED COPY

CONT #975

018001

26:25 28:8,14 51:4,9,12,17 51:21 52:2,7 52:16,21 53:5 53:6,6,12 54:5 54:10,11,14 54:15 55:3,14 55:19 56:12 59:13,22 60:7 62:8,17 63:1 63:11,21,25 64:11,22 79:11,12,13 79:22 86:20 86:23 87:1,10 103:5,14,19 103:19 131:24 132:1,6,15,20 133:11,12,16 134:7,15 135:4,19,25 136:4,10,15 137:4,11 138:2,23 139:3 140:3 142:12,15,18 142:24 143:11 143:15,21 145:2 150:22 151:5,8,12,21 152:1,5,15 153:3,14,23 154:11,13,14 154:20,23 155:10,17 156:12,17 163:18 177:18 177:19 178:11 178:15,17 179:16 180:13

letterhead 17:12 150:23 151:5

letters 18:2 55:12 80:2 146:13,20,23 146:24 148:11 148:24 155:3 176:16,18 177:15,25 178:5,9 179:9

let's 26:21 27:2 71:15 91:4 105:3 123:5 141:8 143:7 177:15

licensed 75:16

likelihood 128:3 128:10

likewise 179:2

limited 98:2 159:9 174:7

line 23:25 37:17 62:4 68:12 187:5

lines 105:7

Lipton 165:16 173:18

listed 145:24

listening 114:17

litigation 36:9 48:17 146:18

little 26:16 27:2 66:17 67:13 82:15 107:23 124:13 138:19 174:22

LLP 2:4,9,13

located 27:11 172:21

long 9:21 10:9 13:8 20:9 28:2 117:25

longer 45:19

look 17:14 28:11 38:7 47:19 61:25 65:9,13 66:16 91:11,13 96:14 105:3 122:24 151:7 151:19 152:19 153:12 154:4 154:18

looked 54:15 65:11 70:13 81:21 91:23 123:12 137:12 137:15,21 154:6,24

looking 52:11 181:1

loss 54:6 179:3

lot 158:23

lower 86:22 105:9 106:8 106:17

Lurie 116:23 176:11 183:3

Luther 7:5

M

M 2:3

MacAndrews 5:18,20 164:23,25 165:5

maintain 15:3 74:13

making 24:12 40:1 46:21 47:11 55:14 89:7 96:19 120:16 124:2 181:24 182:8 183:8

Mallet 4:20

MALLET-PR... 2:13

management 81:12 146:12 146:19,23 151:11,20,25 152:4,15,23 153:2,9,13,23 154:14,19 163:18 179:15

management's 154:24

management-... 78:1

manager 10:14 10:16,18,22 11:2,5 74:3 76:3 77:1,7,20 146:4

managerial 77:21

manner 78:10

March 7:2 13:2 17:13 24:1 37:10 38:12 38:17 47:14 49:1,8,25 52:9 52:16,22,23 53:14,15 55:4 59:13 64:12 65:15 66:23 67:11,20 69:4 69:14 71:2 79:14 81:23 82:6,13 91:12 94:2 96:19 108:22 111:3 132:21 133:17 140:2,7,16,22 141:9 142:23 144:2,8 150:22 151:5 151:8 154:20 154:22 155:10 155:16 166:10 176:4 177:5 178:22 181:19

mark 1:11 3:4 4:20,23 5:9 15:5 17:4 21:25 22:6 36:21,23 38:19 55:22 57:17 91:4 96:3 143:7 150:13 174:1 181:13 186:20 187:3

marked 17:11 18:7 19:14 22:2,6 23:14 25:13,19 37:1 37:5 47:19 48:1,6,8,25 51:25 55:23 56:3,13 61:24 81:21 91:6,10 96:5,9 105:3 122:18,23 140:1 143:9 144:10,14 147:7,10 150:15,19 155:5,9 160:6 160:10 175:18

market 84:20 84:22 85:7,9 85:12

marks 16:6,7 25:6,11,13,17 25:25 26:3 149:6

Marquette 7:7 7:9,21

match 145:2

matched 51:22

material 48:19 103:22 147:12

materials 71:5 148:12

matter 11:1 13:6 51:6 54:10 107:18 132:11 152:10

matters 74:16 110:12

mean 14:25 15:7,13 16:24 22:12 49:25 79:4,5 123:2 124:21,24 132:9 141:5

means 14:9 79:8,11 185:14

meant 29:18 53:6

Media 11:11,13 11:16,22 73:16,24 74:1 74:4 109:10

meet 83:23 121:24 122:4 126:19 127:16

meeting 20:10 27:13,14 30:2 86:14 172:13 172:17 175:22

meetings 32:22 60:14 67:6 99:5 149:22 164:12 165:15 165:22 169:7 169:11 172:19 172:21 173:7 180:19

members 145:21

memo 49:24 59:1 60:24 61:4 65:5,7,15 69:12 81:22 82:1,13 96:18 97:3,19,24 98:9,18 99:17 99:19 100:9 100:12 101:7 101:8,14 102:4 103:25 104:8,15 105:15,24 106:4,18 107:6,12,19 108:3 109:3 112:5,11 117:1 118:14 120:14 121:5 121:14 130:2 131:1,8,13 136:20 137:1 148:12 149:11 149:19 178:12 181:16 182:17

memorandum 14:20 15:7,8 15:10,13 16:9 22:18,21,25 26:20 29:8,9 29:13 34:20 35:7,10,18 38:18 40:15 42:24 47:15 49:3 57:9 58:22 70:13 77:7 97:17 105:17 114:21 121:17 131:18 149:7 150:1 155:15 175:23 178:1,9,25 179:7 183:14

memory 46:7 120:16 158:8

memos 160:11 160:14

mention 31:12 82:20 84:11 84:13,14,15 84:16 178:21

mentioned 14:6 33:7 58:3 119:7 161:5 173:17

met 57:19

Michael 2:3,13 4:13,19

midnight 24:7,8

Mike 5:4 73:1

mildly 7:18

million 53:23 54:5,6 105:10 105:10 106:24

Milwaukee 7:8 7:25 8:1

mind 36:17 50:4 71:1 103:4 114:14 115:9

mine 161:1,2,4 161:6,8,9

Minus 177:21

minute 70:20 154:6 170:25

minutes 24:8 65:9 73:2 170:23 171:2

Mischaracteri... 52:25

misleading 94:11,17,19 94:21 128:15 128:25 163:10

missed 101:23

misspoke 133:5

moment 43:10 181:10

money 29:10 141:6

monitor 4:10 28:24 29:2 56:25 57:3

NOT CERTIFIED COPY

018002

71:17,20 100:19,24 139:20,23 171:5,8 183:21
month 175:3
months 13:7 44:18 54:7,21 73:25 86:21 172:9
Morgan 1:7 4:17 5:23,25 6:5 17:18 19:8 20:2,3,5 20:18,19,24 33:1,4,11,13 33:23 35:9 39:15 48:9 52:8 54:10,13 54:19 55:3 56:13 57:20 58:7,16,24 60:6,15,19 64:1,12,23 84:11 87:19 88:5,14,18 91:4,10 92:6 92:13 96:4,9 96:17,25 105:4 108:14 110:2,22 111:9 116:20 122:21,23 123:24 128:15 128:25 130:1 130:5 131:25 132:2,20 133:4,13,17 134:3,8,16,20 135:7,10,22 135:23 136:5 136:10,17,20 137:2,11,12 137:17,25 138:5 140:1,5 140:10,16,19 143:10,13,17 144:14 145:16 146:11,24 147:10 148:2 148:6,25 150:22,24 151:2,4,7,10 153:12 154:18 154:21 155:9 155:20 156:2 156:6,20 159:17,20 160:10 162:24 163:8,13 166:25 167:19 167:25 168:5 169:2,8,12,15 169:25 170:6 170:14 177:13 177:24 178:7 178:7,23 179:5,10,11 187:2
morning 5:3,6 43:6,7,8 57:19 57:22,25 58:3 59:8 61:24 65:14 67:5,13 73:6 88:22 90:24 92:2 97:16 101:18 101:22 102:9 113:20 131:3 138:10,11
Moscato 2:13 4:19,19 7:18 15:5 17:3 21:17,22 22:20 31:21 32:2 36:17 37:20,24 38:2 38:4,19 40:7 45:2,7 47:5,25 50:10 53:7 56:17,19 70:20 73:2 85:9 100:25 101:3,23 103:1 106:10 107:23 110:5 111:7,15 112:1 115:5,7 123:1 124:8 124:13,18 133:5 134:10 136:6 138:25 158:22 160:1 161:14,23 162:3 166:19 166:22 167:12 167:21 169:17 170:20 171:1 182:19,23 183:1
MOSLE 2:13
move 9:4,6,16 110:15
moved 9:1
multiple 62:16 72:2

N

N 3:1 4:1
name 5:4,7,8 23:7 27:7 33:2,7 51:8 57:20 148:22
names 24:22 33:6,12,22 34:1,10,15 116:23,24 117:3 173:4,5
nap 138:15,20 139:1,2,7,11 139:15
narrative 25:15 51:22 55:14 55:15 65:6 98:19 99:8,10 99:14
narrow 26:21 125:3
nature 51:14
nearly 37:6 54:6
necessary 110:17 160:25
need 8:13 36:16 75:13 167:7
needed 87:18 88:5 100:5
negotiate 110:9
neither 50:23 154:23
net 52:21,22 53:12,13 54:5 54:21 105:9 106:16,22,24 152:22,23,24 179:3
New 2:14,14 27:12 30:3,6 59:6,14,17,19 59:22 60:1,20 60:25 61:6 62:6 63:17 67:12 98:12 149:13 174:17 174:20 175:9
news 31:5,7,8 31:25 32:5,21 82:21 83:9,11 83:18,22 84:2 84:7,12,19,20 84:23 85:7,7 85:17,18,20 89:3,6,21 90:17 92:8,16 93:20 181:2
next-to-the-last 152:20 154:4
night 19:1 24:4 60:8,20 62:9 62:12 63:4 69:4,8,14 70:2 74:11 75:3 97:9 99:7 102:14 103:14 108:24 123:13 127:8,10 129:12 134:8 175:6
nonnumerical 55:17
North 7:5
Nos 150:15 160:6
Notary 1:22 4:4 184:12 185:4 185:20
notations 186:11
note 48:14
notes 57:11 82:5 185:7
No.CA 1:2
number 4:9 31:9,17 36:10 40:24 57:6 61:15 65:24 96:12 100:4 100:18,19,23 129:5 140:2 150:25 179:24 179:24 180:3 180:4
numbers 25:5 29:22 53:4,20 53:22 100:3 109:23 116:7 121:25 126:4 127:16 151:3
numerical 65:8 145:4
numerous 100:2 172:19
N.W 2:9

O

O 4:1
oath 5:13
object 31:21 40:7 45:7 52:25 70:19 70:20 80:17 85:8 87:20 88:11 93:6 97:6 98:24 102:10,20 103:15 106:5 107:21 109:19 110:5 111:5 111:24 112:1 113:16 115:5 131:14 132:3 133:6 134:10 143:3 150:2 166:19 178:2 178:10 179:20 179:25
objected 104:24
objecting 53:7 105:1
objection 17:23 20:13,21 24:14 27:20 31:20 34:21 40:6,17 41:16 42:19 44:4,5 44:20 46:13 50:9 54:16,23 61:20 85:19 110:4,6 111:12 161:14 161:23 167:7 175:10 180:15 182:2
objectives 124:7 124:19,20 125:5 126:19 128:15,25
obstructionist 45:3 103:3
obtain 142:9
obtainable 31:17
obtained 141:25 144:7 171:12
Obviously 109:21
occur 94:4 167:9
occurred 60:24 139:14
October 163:19
offering 12:24 13:1,6,9,16,18 13:20,22 14:2 14:20 15:1,4,7 15:7,8,10,12 15:17 16:9 17:18 22:18 22:20,25 26:20 29:8,9 29:13 34:20 35:7,10,18 38:18 40:14 42:24 56:15 58:5,16,22 59:1 60:24 61:4 65:5,7 77:7 84:14,17 85:3 96:18,18 97:3,17,19,24 98:9,18 99:17 99:19 100:9 100:12 101:7 101:8,14 102:4 103:25 104:8,15 105:15,17,24 106:4,18 107:6,12,19 108:3 109:3 112:5,11 114:21 120:14 121:5,14,17 129:13,17,22 130:2 131:1,8 131:13,17 133:14 136:20 137:1 146:25 148:4,11,11 148:12 149:1 149:6,11,18 150:1 151:21 153:3,14,24 155:14 163:10 170:18 174:7 174:24 178:1 178:9,12,24 179:7,11 183:6,14
office 1:23 6:17 9:1,4,12 11:15 187:17
officed 30:3
officer 12:4 180:11
offices 9:16 27:18 63:16 181:5
official 184:7
Oh 146:16
okay 6:14 12:1 12:6 13:10 16:2 18:12 21:24 23:2,14 27:1,2 28:20 32:1,22 37:23 44:11 45:11 45:13 51:1 53:10 56:11

NOT CERTIFIED COPY

018003

56:20 68:8 70:23 71:8 77:11 90:23 91:3,18 92:6 93:24 97:13 102:16 103:23 105:18 107:25 120:18 121:18 127:9 132:24 134:14 142:4 144:21 148:21 151:19 154:16 154:18 156:19 157:5 161:1 165:4 174:16 176:14 177:5 177:8 180:18
Once 132:12
ones 66:18
one-time 53:23
operated 5:25
operations 11:12,13 19:16
opinion 49:11 64:13,24 76:16,18 79:10,12 80:12,23,25 94:10 95:17 95:20 103:6 104:16 105:16 145:1,9,13,22 147:18,23 161:20 162:3 162:4,7,10,13 162:14,15,18 162:20 163:2 169:14,18,20
opinions 64:8
opportunity 46:17 96:14 96:16
opposed 10:16 23:11 24:25 104:12 133:2
order 150:10
orders 128:4,7 128:11
ordinary 104:7
original 187:17
ought 95:22,25 104:14 105:23 106:18 107:11 108:7 109:2 129:13,17,22 132:1 154:1,2 154:10
outside 113:5 113:14 116:17 119:6 170:1
outstanding 103:20
overruled 130:19
O'Connor 2:3 4:14

P

P 4:1
package 73:1
page 3:9 19:13 21:3,4 23:24 25:22 37:16 37:17,19,19 38:1 44:24 52:12,13,19 52:20,21 53:5 96:25 130:3 140:3 143:23 146:1,4,11 148:16 150:21 152:20 154:4 176:2,9 178:18,20 179:3 181:18 183:11 187:5
pages 25:16 28:18 29:16 29:24 38:7 44:7,15,22 45:23 46:10 48:15 52:1,4,8 70:6 96:12 98:3,4 161:2 181:8 185:7
Palm 1:1,17,17 1:23 9:5,6,12 184:2 185:3 186:5
paper 18:16 57:11 90:8 91:1,12
papers 52:5 146:21
paragraph 19:15 21:2,3,3 21:9,15 66:21 67:3,10,17 68:19 140:7 140:10,13,15 140:18,20 143:21,22 152:20,21,23 154:6,8,24 155:2,20 176:3,10 178:19,21 181:18,19 182:1,15,16 182:17
paragraphs 99:3 108:18 111:10 181:18
parent 1:3 4:14 5:5,17,21 6:5 6:10 163:14 164:20 165:1
Park 2:14
part 25:4,6 28:14 51:5 52:5 60:4 66:6 67:1,22 68:22,25 69:12,14 74:23 84:6 87:13,25 91:20 93:17 95:2,4 97:16 99:2,5 102:12 107:25 108:2 109:9 118:16 127:4 134:18 146:25 164:12 166:12 178:16
participants 41:7,9 173:18
participate 12:11,15 177:23 178:6
participated 24:18 32:22 34:25
participating 35:8 173:6
particular 55:16 99:3 123:2,3,5 126:11 127:25
parties 185:11 187:18
partner 10:21 18:19 62:14 62:23 63:20 63:23 64:4,9 64:13 65:1 77:16 79:19 79:23 80:1,6,7 80:9,13 146:4
partners 62:18 63:20 64:7
parts 57:23 157:20
party 66:1,13 127:6 161:17 185:12
passed 8:17
Pastrana 13:13 16:14 19:25 21:16 51:21 127:10 133:21 133:22,25 134:2,15 135:1,2,9,16 142:19,20 156:4 176:21 176:22 177:1 177:8
Pastrano 127:5
patience 174:3
pen 18:16
penalty 187:19
pending 21:18 84:16
people 15:14 35:14 64:7 76:9 78:4 114:10 128:10 129:6 137:6,8 137:9 156:17 159:6,12 163:25 172:13 172:14 179:24 180:21
perform 60:4 164:6,9 169:2 170:17
performance 158:10
performed 12:8 12:12,23 16:8 141:15 164:13 167:11,25 170:15
performing 98:14 127:5 127:10 171:23 172:15
period 48:16 52:22,23 53:13 86:22 118:6 129:21 138:19 142:1 142:10,11 144:1 149:25 177:16
periods 14:16
perjury 187:19
permit 107:17
person 33:19 63:5 90:4 92:18 144:25 145:19,20,24 149:24
personal 133:15 156:15
personally 55:6 55:20 56:9 184:5
personnel 78:2
perspective 115:2
per-day 126:12
Phil 18:19 62:13
phone 1:23 2:5 2:10,15 68:4,7 68:13,14 89:8 89:23 90:2 119:7
phrase 114:3 116:1
physically 132:7 133:23 135:25
piece 57:11 105:14,23 106:3
place 6:11 25:5 26:2 27:3 32:17 36:1,14 50:7,20 60:1 61:12 64:10 67:15,20 69:10 74:23 88:2,23 91:21 95:6 104:3 112:16 116:13 116:17 117:23 139:11 145:9 149:8 175:24 185:9
placed 89:2,22
placing 69:1 89:5
plaintiff 1:5 2:2 4:15
planning 10:19
playing 110:7 167:2
Plaza 2:4
please 5:7 19:13 21:25 36:24 37:13,16 55:22 96:24 136:7 140:4 187:17
point 13:23 25:8 26:16 44:14 62:23 63:8 69:7 70:16 73:18 86:10 90:6 113:2 118:9 118:21 139:8 141:16,19,21 142:23 163:21 169:12 171:11 174:10,25
policies 78:12 78:22
Polk 34:12 41:11 116:21 117:5 134:24 135:4,12 156:8
portion 21:12 52:7 59:14 73:5,6 77:1 92:15 96:15 98:23 104:25 107:7,12,18 124:11 155:18 165:2
portions 65:6 67:14 107:14
position 9:18 10:3,13 11:9 11:18 12:1 35:19,22 41:15 74:2 114:23 115:21 119:9
positions 182:9
post 66:20 147:11
potential 128:4 128:7 174:23
potentially 17:5
practices 126:18 127:14 166:4
preceded 61:14
preceding 66:22 152:22
precise 40:25
precisely 28:4
preface 26:15
prefer 110:14 110:15
Preliminary 22:12
preparation 51:11 145:16
prepare 21:11 72:24 81:25
prepared 21:14 28:12 29:24

NOT A CERTIFIED COPY

018004

16div-023068

47:15 82:2 146:23 160:14
preparing 58:18 73:8 87:2 168:18
prescribed 51:20
presence 39:19 39:20 50:21 89:5 93:11 113:5,14 116:17 120:25
present 2:16 18:21 27:5 42:10 63:14 66:18 67:14 93:18,19 105:22 113:4 113:8 114:6 114:10 116:12 117:11,20 175:24 176:6 176:11 181:21 182:6,13,15 182:21
presented 177:7
press 24:1 27:8 27:10 30:12 30:16,18,22 31:3,6,8,12,19 32:2,5,9,19,20 60:20 62:6 63:17 67:4,8 67:12 82:21 86:2 88:9,15 88:19,22 89:17,20 90:9 90:15,20,21 91:1,11,14,16 92:7,7 93:4,13 93:19,21 94:3 94:4,11,16,24 95:9,15,22 96:1 102:5 104:24 105:5 105:7 106:20 107:12,14,18 108:17,23,24 109:6,10 110:3,22,24 111:3,4 114:15 117:16 120:2,8 130:6 133:4,6 134:9 138:10 140:7 166:10 169:9 171:12
presses 180:24 181:2
presumably 70:16
previous 86:22 87:21
previously 17:11 47:18 48:6 51:25 67:5 87:17 140:1 143:9 161:12
primarily 13:12 16:6
print 27:17,21 61:12 67:21 68:1 70:11 82:3 90:24 93:2,10 96:22 98:8 99:15 100:13 101:9 101:20,21 102:9 118:9 120:21,23 123:13 128:23 132:7,16,21 134:17 136:11 136:16 137:13 137:18 143:18 149:9 150:7 180:20,23 181:2
printed 29:7
printer 20:2 24:5,9,12,25 26:7,12 28:12 29:24 30:3,12 32:14,17,19 32:23 43:3,6 46:12,25 49:6 49:13 57:7,12 59:7,23 60:3 60:13,25 65:3 83:3,6 86:14 91:19 93:2 107:2 108:22 117:12 180:20
printer's 19:1,3 20:10,18 27:4 27:5,7,17 28:7 29:6 30:7 34:18 36:1,5 36:11 41:10 75:4 97:4 104:7 127:8 127:11 135:20 136:4 140:6 175:7
printing 180:24
prior 7:15 20:1 20:17 29:15 37:13 45:20 48:17 52:15 54:14 55:3,7 55:12 57:8 71:23 73:4 87:5,8 98:11 99:9,20,22 107:5 108:6 110:25 121:25 124:25 125:13 127:16 131:24 132:16,20 137:10 145:12 149:13 150:7 155:14 164:1 169:12 174:10 183:5
privately 128:19
pro 13:17 14:6 14:7,8,9,13,19 28:17 29:12 29:20 58:4,8 58:12,17 59:25 97:20
probably 65:12
problem 124:18
procedures 10:20 63:24 64:14,20 78:13,22 79:16 127:4,5 127:9 134:18 140:25 141:11 141:14 142:8 144:16 145:11 145:16 146:8 148:2,13 159:10 164:6 171:23
proceed 57:23 65:12 160:1
proceeding 72:7
process 23:12
produce 162:8
product 99:21 126:11
profanity 40:4 41:21 113:21 116:1 131:1
professional 4:4 51:15,19 131:17 145:3 185:4
professionally 78:10
program 166:7
project 13:8 175:3
projections 39:2,7
projects 13:15 13:21 174:7
promoted 10:1 10:2,11 76:1 77:6,20
proper 45:8 47:11 49:16 50:16 75:13
properly 29:23
prospective 109:20,22 111:14
protecting 78:15,18
provide 6:20 15:23 16:21 16:22 17:9 58:7,24 60:6 72:16 109:20 109:23 132:6 156:10,12 163:10
provided 15:21 15:24 19:24 46:19 48:18 55:3 59:3 73:1 90:25 110:21 111:2 117:2 123:16 123:24 132:2 132:20,23 133:4,12 134:16 135:22 142:18,20 146:24 148:25 150:6,9 155:24,25 156:1 163:18
providing 131:24 147:3 156:16 159:11
Pruitt 62:13 63:2 66:22 80:5,6 110:6 166:24 175:8
public 1:22 4:4 8:10,14 75:10 75:16 184:12 185:4,20
pulled 179:16
purpose 28:6 45:3 62:25 89:25 109:15 164:3 165:23 166:1
purposes 48:8 80:14
pursue 110:10
put 16:22 18:16 34:19 51:1 56:11 103:24 110:20 114:14 115:8 133:10 176:14 177:25 178:14,24
putting 7:18 19:22 39:5 117:3 123:21 178:8 179:6
p.m 1:14 139:20 139:23 171:5 171:8 183:21

Q

quality 169:14
quantity 126:11
quarter 6:12 39:3,7,11 83:24 84:4,5 86:11,16,21 87:8,18 88:6 101:15 105:9 106:7,16,23 106:24 107:4 107:5 111:22 121:25 122:15 123:20,25 124:3,6 125:13 126:4 126:20 127:4 127:16 128:16 129:1,5,7,23 137:24,24 141:1,4,5,6,10 141:12,16,18 141:20 142:2 142:3,5,10 144:6 148:10 152:16,24,25 154:25 157:1 157:3,6 161:22 162:11 162:19 163:21 167:10 168:1 168:11 169:4 171:13,17,21 172:1,7 183:5
question 12:20 17:4 19:10 21:18 29:16 44:12 54:14 70:21,24 85:15 93:7,15 102:11,21 106:11 111:6 111:25 124:9 124:16,22 132:19 136:6 138:21,25 140:13,18 160:4 163:3 166:24 169:10 182:5,12,19 182:20,23
questions 5:6,16 7:1 45:1 57:6 57:16,21,24 57:24 58:1 96:12 101:17 122:7,9,10,11 171:14 174:4 174:16 176:15 181:11 182:7
quickly 9:9
quite 43:8 73:3 138:11 174:22

R

R 4:1 185:1 186:1 187:1,1
Rachel 1:21 4:3 184:11 185:4 185:20
raise 41:22
raised 29:10 115:18
rang 71:14
range 106:17
ranks 76:1
Raton 11:14
reacting 84:20 84:23
reaction 86:5,7 119:13
read 38:1 44:6 44:22,23,25 45:11 49:8 96:15 97:4,16 124:10,12 186:7 187:19
reading 37:18 44:24 45:4 117:1
reads 152:21
ready 86:14
real 9:9
reality 175:1
really 20:16 33:3 110:11

NOT ACCEPTED COPY

018005

16div-023069

132:11
reason 80:9,15 128:24 187:5
reasonable 158:21
reasons 79:20
recall 6:12 7:15 13:15 15:24 16:2,15 17:2 18:17 19:5 24:21 26:14 28:4 30:25 31:10 32:20 33:6,12 34:18 35:5,17 37:17 38:14,15,23 39:4 41:13 42:25 43:2,18 46:21 54:17 55:13 56:10 56:21 62:7,14 62:20 71:25 72:2 74:17,24 75:1 80:1 83:7,8,17,22 84:8,13,15,21 87:24 88:24 88:25 89:8,10 89:16,18 90:1 90:5,18,21,22 90:25 91:18 92:8 93:22 95:10,23 96:2 99:12,13 101:15 104:9 104:10 105:2 105:13,25 106:2,15 107:2,7 109:4 112:3,6 113:22 114:2 115:25 116:3 116:8,14 117:6 119:4,8 119:12,19,20 120:3,4,6,9,10 120:11,12,15 120:18 121:15 121:18,22,23 122:2,6,8,10 123:12,23 124:2 125:10 125:22,23 126:5,7,9,16 127:20,24 128:2,5,8,12 128:17,18 129:11,15,19
129:25 130:7 130:11,24 131:15,23 132:22 133:24 135:15,24,24 136:13,14 137:14,16,20 137:21,23 138:3,9,20 140:5,9,12,14 140:15,24 142:4 149:5 149:15 150:5 151:15 152:14 153:1,5 154:7 155:13 156:19 163:24 164:1 164:5,7,11,18 164:22 165:4 168:8,10,14 170:11 173:1 173:3,8,10,13 173:14,18,20 173:21 177:4 181:24 182:10 182:14,25 183:3,8,12
receive 7:9,11 7:13
received 19:5 58:11
receiving 151:17 166:13
recess 139:21 171:6
recited 53:22
recites 52:21
recognize 22:9 23:16 56:3 96:17 114:13 144:17,20 145:25 146:3 148:18 151:10 153:18 160:13
recollection 13:3,4 16:20 16:21 17:19 17:20 18:18 18:24 33:8 34:6 37:15 38:11,15 41:4 43:15,23 44:2 44:10,14 45:6 45:15,19 46:3 46:4 49:19,20 49:22 50:6 57:7,8,12 61:18 62:16
63:1 70:1,7,10 70:17 71:1,4 82:19 89:4 91:15 92:14 92:17 104:2 107:10,16 108:8,9,10,13 113:7,12 116:15 117:2 121:8,10,11 125:19 133:2
recommend 159:3
recommendat... 183:13
reconvene 100:16
recopy 47:24
record 4:9 28:21,24,25 29:2,5 38:4,5 44:1 48:4,5,14 56:22,25 57:1 57:3 71:15,17 71:18,20 82:5 100:18,21,23 124:11 139:20 139:23 160:5 171:5,8 183:20
recorded 45:6 118:14
recording 67:23
recounted 43:1
RECROSS 3:3 181:13
REDIRECT 3:3 174:1
REED 2:8
refer 55:15 106:6
reference 65:24 66:20 67:17 68:19 69:23 145:1 146:12
referenced 175:24
referencer 145:25
references 69:9
referencing 144:15 145:19 145:20 146:8
referred 70:6 83:11 103:8 111:21 143:11
referring 51:8
refers 53:23
reflect 46:11 56:8 150:11 175:1
reflected 62:19 69:19 142:17 181:25
reflects 66:8
refresh 16:20 33:8 34:5 38:11 49:20 49:22 57:11 91:14 92:13 116:15 120:15
refreshed 38:14 43:14 46:3 57:8 70:6,11 70:15 71:4
refreshes 37:14
refreshing 158:8
regard 25:2 66:5 95:17 101:13 125:8 136:20 140:13 140:18 141:1 141:2,11 169:16
regarding 26:17 102:3 146:18 154:24 167:10
registered 4:4 148:12 185:4
registration 15:22 103:8 147:19,24 148:3
rejoined 113:10 119:24
relate 42:14 69:20 84:5 90:3
related 15:2 16:6 19:11 26:25 35:6,18 39:2 40:14 55:13 60:23 61:4 72:21 84:17 85:13 101:15 102:4 114:20 122:14 127:6 149:5
relates 50:20 131:12 138:1
relating 72:7,17 95:11
relationships 74:13
relative 185:11
relayed 182:14
relaying 120:12
release 30:12,16 30:18,22 31:4 31:6,8,12,19 32:2,5,6,9,19 32:20,21 67:4 67:8 79:11 82:21 83:12 88:9,15,19,23 89:17,21 90:9 90:15,20,21 91:1,11,14,16 92:7,7 93:4,11 93:14,19,21 94:4,12,16,24 95:9,15,22 96:1 102:5 104:24 105:5 105:7 106:20 107:12,14,18 108:17,23,24 110:3,22,24 111:3,4 114:15 120:2 120:8 130:6 133:4,7 139:2 140:7 155:14 166:10
Released 32:11
releases 109:6 109:10
Releasing 103:6
relied 177:9
remain 9:10 10:22
remainder 9:13 10:23 131:2
remember 6:17 13:5,21 16:17 23:5,10 24:11 25:1 26:9,10 26:16 30:21 31:7,11,15 33:10,22 34:1 34:10,15,22 35:4,8,15,16 35:19,22 36:13 38:25 39:12,15,23 40:5,21,25 41:2,7,9 43:5 55:11,19 56:14 62:21 62:22 71:9 75:2 82:24 83:20,25 84:2 84:6,22 86:1
89:7 91:22,24 93:24 99:18 99:25 104:23 105:18 108:5 116:23,25 117:3,7,19 119:2 120:16 121:6 122:14 123:15 124:5 125:4,7,11,15 126:14,22,25 127:3 129:3 129:21 130:15 138:4,7 140:19 150:6 158:6 171:13 172:12,18 182:8
renewed 75:13
rep 179:15
repeat 12:20 124:8 136:6 139:12
rephrase 15:9 40:8 124:17
report 10:21 12:1,2 31:25 64:13,24 74:5 80:12 83:9,14 84:7,12,19,19 86:2,5 89:3,6 90:17 92:8,16 98:3 103:6 134:12 145:2 145:5 147:13 147:21 185:6
reported 1:21 13:13 31:8 83:8,17,22 92:11,15 102:5 158:9
reporter 4:4,12 5:8 22:5 36:23 124:12 185:4,15
reports 64:8 158:17 174:25 175:1
represent 5:4 5:17 158:18
representation 146:12,20,23 151:11,20 152:1,4,15 153:3,14,23 154:14,20,22 155:3
representatives

NOT CERTIFIED COPY

018006

33:1 35:9
represented 34:5
representing 57:20 116:19 117:9 137:12 163:22 164:16 165:20
reproduction 185:14
reputation 76:16,17,19 76:22 78:15 78:25
required 8:18 63:23 64:4,13 79:19,23 80:10 147:20 148:13
requires 65:1
reserves 157:22 158:3
resolution 102:13
resolved 42:18 42:23 100:13 101:11,20 102:7,13,16 103:13,20 130:23 131:12 131:16 138:22 139:5
respect 162:25
response 29:15 39:16 132:18 182:5,12
responsibilities 10:16 11:21 78:7,8
responsibility 10:5
responsible 19:21
rest 131:8 175:2
restatement 77:3,6 82:11 157:8 158:7 158:13 159:4 159:16,19 160:15 161:11 161:20 162:23 163:1,8 172:4 172:10 174:19
result 86:19 129:14,18,23 159:19 161:10 161:19 162:22 163:7 166:18
results 13:18 30:13 109:22 125:13
retains 81:7
retract 94:24 95:9,15 96:1
retracted 95:22
return 25:18 29:6 42:12 47:1 158:3
returned 61:17 118:20 140:22
returning 12:6 21:2 181:15
revenue 129:5
review 37:13 43:11 44:15 45:23 46:18 46:19 47:15 59:25 63:3 65:6 66:21 73:4 96:11 141:4,5 142:5 144:6 145:6,8 147:12 157:2 157:6 171:17 171:21 172:1 172:7 181:8
reviewed 44:17 65:4 73:2
reviewing 38:10 109:9 137:16 147:3 151:17
reviews 78:4
revising 30:16
revisions 23:3
Richard 92:19
right 14:4,22 36:7 53:8 66:1 89:20 115:8,14 116:3 156:5 158:20 168:12 172:1
RMR 1:21
role 88:15,18 159:9
room 27:22,25 31:2 40:1 41:25 42:12 60:19 68:6,13 69:6 82:22 84:3 86:3,6 88:23 89:2,6 90:7 92:9 112:16,21 113:5,9,15,22 114:7 116:17 117:12,15 118:21 119:6 119:25 121:20 125:21 126:10 131:6 139:15
rooms 27:24 181:4
Rosen 2:17 165:16
Roughly 101:16
rules 14:18 63:24
run 11:23 100:25

S

S 3:7 4:1 187:1
sale 6:10
sales 30:12 38:18 39:7 52:22 53:13 54:20 84:4,5 86:11,16,20 87:8,18 88:6 101:15 105:9 106:8,16,22 106:24 107:4 107:5 108:6 111:22 121:25 122:15 123:20 123:25 124:3 124:6,19,20 125:5 126:4 126:19 127:16 127:23 128:10 128:15,25 129:24 137:24 137:25 141:1 141:12,15,17 142:1,10,17 142:22 144:1 144:7 152:22 152:23,24 154:25 158:3 171:13 178:19 178:22 179:3 183:5
sat 8:22 114:15 114:17 115:13
satisfaction 101:11 103:13 103:21
satisfied 130:23
saw 17:3 22:19 31:5,12,18,25 83:14 89:21
saying 35:4 41:2,11 68:17 116:8 119:22 120:4,6,10 123:23 124:5 125:4 126:7,9 128:17,18 129:3 182:12
says 146:17
Scadden 34:5,8 41:11 156:10
schedule 123:19 175:15
school 7:4,20 8:9
seal 184:7
SEC 72:20
second 28:22 52:1,7,13,19 53:5 56:23 67:3 108:2 143:23 174:23 179:3 183:11
secondhand 95:12,13 116:10 120:17 156:1 168:8 176:22
second-hand 133:19
section 103:25 104:14,25 112:10 130:4 130:9 138:21
sections 65:11 97:3,8,10,25
securities 15:14
see 18:6 19:17 20:24 21:6 24:2 32:2,8 37:17 48:25 52:13 53:25 66:24 68:4,7 90:19 92:19 105:11 106:25 108:17,19,21 108:24 111:3 134:2 139:18 143:23 146:15 146:16 148:15 149:11 153:15 154:23 155:16 176:4
seeing 90:21,22 91:22,24 92:13 123:12 151:15
seen 22:16,17 23:2 82:10 91:15 98:8,11 109:5 110:23 122:25 151:14 151:22 155:11 155:13 158:17
sell 15:13
send 133:22,23 134:18 156:6 156:8 176:18
sending 129:6
senior 10:4,6,7 10:9,17 11:3 77:8,9,10 78:1 179:18,24
sense 118:3 158:15
sent 17:17 18:2 18:5,9 20:3,5 20:7,10 24:7 52:8 56:13 133:16,24 134:3,4,12,20 134:23 135:4 135:7,10,13 176:22 177:1 180:13
sentence 106:21 107:25
separate 138:14 138:18
separately 73:23
sequence 150:14
series 62:21 160:11 173:9 181:4 182:7
served 157:20
services 1:22 6:20 12:9
serving 76:13
session 60:23 61:1 67:11
sessions 61:4,11
set 21:21 150:14 185:9,10,16
setting 72:11 128:21
seven 25:22
sheet 186:11 187:17
sheets 14:16
ship 126:11
Shipment 158:1
shipping 129:7
shop 27:18 61:12 67:21 68:1 70:11 82:3 90:24 93:2,11 96:22 98:8 99:15 100:13 101:9 101:21,21 102:9 118:9 120:21,23 123:13 128:23 132:7,16,21 134:17 136:11 136:16 137:13 137:18 143:18 149:9 150:7 180:20,23
short 100:15 101:5 111:16
shorter 171:1
shorthand 185:7
show 16:19 19:10 47:18 51:24 53:5,12 82:21 83:15 83:18,22 93:20 139:25
showed 43:25 65:14 70:4,12 71:5,12,24 73:5 177:13 177:14 179:15 179:17
shown 57:13 160:11
shows 54:6 158:18
side 89:11 118:23
sign 18:20 63:11,20 64:8 132:12
signature 145:25 146:3 187:23
signed 18:13,16 18:22 19:2 20:1,17 25:19 63:14,16 64:1 64:17,21 132:12 134:8 135:19 136:2 154:19 179:18 180:13 187:17
significant 26:25 103:22 147:22
signing 64:10 64:10
similar 77:25 82:1 125:20

NOT CERTIFIED COPY

018007

170:17
single 172:17
sir 6:9,22 13:24 16:19 17:21 21:2 24:11 25:3 32:18 36:7 38:3,8 44:20 46:16 48:3 51:2 52:20 115:13 174:5 177:12
sit 8:15 33:22 40:24 46:21 55:18 70:8 71:1 75:2 98:17 99:13 107:9 109:25 125:18,23 158:5 173:21
site 63:6
sitting 36:3
six 21:3 25:22 44:18 159:25
skeptical 124:6 125:5,12 126:6,7,10
skepticism 125:25 127:18 127:21 129:14 129:18
slightly 48:11
soft 86:11
solely 81:7
somebody 19:4 62:8 145:20
somewhat 105:20 168:8
soon 13:5
sorry 12:20 22:22 47:5 48:3 56:19 77:3,13 88:11 101:3,23 106:10 114:16 124:8 136:6 137:22 139:12 152:19 154:13 163:5 167:21 173:13 178:3
sort 177:9
sound 158:20
Sounds 158:21
source 88:17 95:5 141:24 143:25 146:20
speak 73:9
specific 22:19 23:7 25:4 37:17 45:19 99:25 101:24 106:3 119:20 121:19 144:18 156:22 157:11
specifically 23:13 25:9 35:17 43:4 55:13 75:1,4 100:2 133:11 138:4 143:22
specifics 149:15 168:16
speculate 114:14
speculation 20:21 40:6,17 41:16
spell 5:7
spent 158:13
spilling 90:24
spoke 68:1 69:6 74:9,14 89:14 173:2
spoken 73:12 130:16 165:4
spreadsheet 14:15
stack 179:16
staff 9:20,21 10:6,7 75:25
stamp 22:11,13 47:23 48:9
standards 51:16 51:19,20 145:3
standpoint 47:11
stands 110:11
Stanley 1:7 4:18 5:24,25 6:5 17:18 19:8 20:2,3,5,18,19 20:24 33:2,5 33:11,14,24 35:9 39:16 48:9 52:9 54:10,13,19 55:3 56:14 57:21 58:7,17 58:24 60:6,15 60:19 64:1,12 64:23 84:11 87:19 88:5,15 88:18 91:4,10 92:6,13 96:4,9 96:17 97:1 105:4 110:2 110:22 111:9 116:20 122:21 122:23 123:24 128:15,25 130:1,5 131:25 132:2 132:20 133:4 133:13,17 134:3,8,16,20 135:7,10,22 135:23 136:5 136:10,18,21 137:2,11,12 137:17,25 138:5 140:1,6 140:10,16,19 143:10,14,18 144:14 145:16 146:11,25 147:11 148:3 148:6,25 150:22,24 151:2,4,7,10 153:13 154:18 154:21 155:9 155:21 156:2 156:6,20 159:17,21 160:10 162:24 163:8,13 166:25 167:19 167:25 168:5 169:2,8,12,15 170:1,6,14 177:13,24 178:7,7,23 179:5,10,11 187:2
Stanley's 108:14
start 37:18,20 123:5 125:2
started 8:25 13:6 44:24 75:25
state 1:22 4:5 5:7 9:10 184:1,12 185:2,5,20 186:4
stated 49:12 108:25
statement 15:22 48:4 80:15 103:8 106:7 111:21,23 147:19 153:2 153:6 183:6,9 183:14
statements 14:16 26:11 42:9 52:16 80:23 103:7 108:18 109:13 109:16 110:2 111:4,11,20 117:7 120:13 121:4,14,16 146:19 147:23 162:9 181:25 182:9 186:9
stating 183:12
status 21:5 75:14
stay 9:12 138:13
stayed 113:8
staying 31:1
stenotype 185:7
step 82:17
stock 84:25 85:4 165:2 166:14,18
stopping 181:2
story 31:8
streamline 139:18
Street 2:9 106:17
strike 77:13 114:16 137:22
strong 76:21
stuck 41:5
study 127:22
subject 39:13 43:12 54:10 87:14 134:14 187:19
submitted 28:18 72:13
subsequent 85:3 147:12 147:19
substance 35:5 38:25 39:13 40:21 83:25 90:3 92:7 116:9 119:17 120:1,7 121:24 122:3 126:3 128:14 129:13,17 164:7 187:20
suffering 54:6
sufficiently 46:7
suggest 34:4 129:12,16 162:24 179:10
suggested 178:8
suggesting 124:23
Suisse 165:8,10
summarized 92:8,16
summary 159:13
Sunbeam 6:11 6:14,20,25 10:25 11:4 12:7,9,12,16 12:19,23 13:6 14:14 19:16 29:10 30:12 30:22 33:17 33:20,23 34:5 38:18 47:3,7,8 52:23 53:15 53:18 54:6 56:16,17 58:13 59:4 60:10 67:3 74:19 77:12 82:21 83:23 85:1,13 86:11 86:20 87:17 88:4,10,10 91:12 92:21 94:3,11,24 95:15,25 96:18 105:8 106:22 110:22 117:9 121:24 122:4 123:23 125:5,12 126:3 127:15 128:1,10,14 128:24 129:4 130:20 133:13 141:1 142:22 144:7 150:23 151:5,9,21 153:3,6,9,14 153:24 156:13 157:9 159:4 161:11 162:8 162:16,24 163:9,13,19 164:9,14,17 165:5,8,20 166:13,18,18 167:11,20 168:3,7 169:16 170:1 170:18 173:23 174:11 179:19
Sunbeam's 6:1 31:8 86:16 107:4 122:15 124:6 126:10 126:18 127:14 127:23 141:12 141:15 142:1 142:9 144:1 161:20 166:4 166:7 171:12
Sunbeam-rela... 60:18 72:7,11 72:17,22 74:16 76:25 77:15 152:10
supervise 10:7 10:18 11:24 78:2
supervised 145:19 146:8
supplied 98:19
supported 15:3
sure 12:22 29:25 32:4 33:4 43:9 47:11 51:18 74:24,25 82:18 96:16 101:25 103:10 106:12 121:3 124:10 138:11 145:3 150:21 169:9 174:25
surprise 111:9 111:13,18,19
surprised 111:3
surrounding 59:7
sworn 4:24 72:10,13,16 184:5 185:6
synonymous 103:4

T

T 2:3 3:7 185:1 185:1 186:1,1 187:1,1
table 96:25
tables 55:17
tag 23:25
take 8:2,5 11:10 14:9 56:6 60:1 73:3 78:21,24 82:5 82:17 91:11 96:10,14

NOT ACCEPTED FOR FILE COPY

018008

100:15 122:24 139:17 145:8 166:23 170:22
taken 4:3 6:8 119:10 139:11 139:21 171:6 185:9 187:3
talk 27:2 67:13 73:22 74:17 74:18 82:15 89:23 139:10 163:22 164:16 164:19
talked 67:12 79:20 89:24 118:13 145:12 156:3 159:10
talking 13:22 26:19 29:5 32:5 68:8 90:4 94:13 101:6 104:20 142:6
talks 67:3,10
tape 4:9 100:18 100:19,23
task 97:16
tasks 77:21,22 78:1
team 32:25 128:10 137:21 145:21
telephone 65:25 67:7,18 68:10 68:20,22,25 69:15 83:9 89:2,5,7,16 90:14 112:22 118:10,16 130:12 149:22 168:6,19,22 169:7 172:14 172:17,24 173:9,11,13 173:19,23
television 83:15
tell 13:1 17:15 22:18 24:22 38:20 64:6 69:4 94:20 95:8,21,24 97:7 112:20 119:5,9 121:12 127:3 130:18,22 131:20 135:9 139:13 144:21 147:16 168:13
telling 120:18 130:15 183:3
ten 28:5 152:20 154:6
tension 131:11
tenure 9:13 10:23
term 79:6 124:21
terms 20:12
testified 4:25 27:4 36:10 43:15 45:15 45:18,20 46:6 57:7 62:3 63:10 65:18 67:5,5 82:20 101:7 102:2 103:12 112:13 113:20 115:16 125:14 132:14 132:18 172:12 182:5
testify 43:22 49:18 69:18 70:16 107:17 115:7 156:16 185:6
testifying 110:12
testimony 6:8 31:22 36:4 37:9,14 38:10 43:11,21 44:1 45:14,21 46:8 46:11,16 51:3 57:8 65:23 70:12 72:6,9 72:10 73:5 89:1 103:11 107:24 110:10 116:5 118:12 124:19 146:7 176:17
testing 140:25 141:11,15 142:9
text 53:22 176:3
thank 18:12 27:1 48:21 50:12 51:1 57:15 71:22 77:11 97:22 97:22 133:8 136:24 142:21 144:24 181:12 183:16,17
thanks 101:2
thereabouts 49:9
thick 96:10
thing 38:20 177:15 178:14
things 23:7,11 40:25 41:14 46:23 57:13 175:19,22
think 17:8 38:22 44:7,11 45:7,9 48:19 48:20 61:11 69:25,25 76:4 76:7 94:3 110:17 115:16 121:13 128:24 160:25 167:15 170:23 171:21 177:14
third 52:1,8,20 67:10 176:2 181:18
Thomas 2:8 4:16
thought 76:9,12 94:4 107:24 116:20 142:6 167:9,16
Thousands 158:14
three 10:10 19:13 37:6 96:25 140:3 146:1 159:24 178:18
threw 167:22
tick 16:6,7 25:5 25:11,13,17 25:25 149:6
time 4:9 6:14,19 8:25 9:8 10:25 12:7,21 19:7 24:9 28:2,3,24 29:2 30:2 31:13 32:11 37:9,10 39:18 42:9 43:8,9,21,23 44:14,18 45:14 46:6 48:16 49:11 49:23,25 50:3 50:15 56:25 57:3 60:18 61:12 65:21 71:17,20 73:3 73:13 74:9,14 77:12,14,19 79:4 82:10,18 82:24 83:5 90:19,23 96:11,15 98:7 100:19,23 102:8 104:3 110:23 113:2 113:9 117:23 118:6 127:1 129:21 131:13 137:10 138:9 138:12,14,19 138:20,22 139:1,12,20 139:23 141:25 142:10 143:7 144:1,3,4 149:25 158:12 158:17 162:12 162:20 164:1 171:5,8 173:12 174:25 177:16 178:3 182:17,22 183:20 185:9
times 117:14 138:14
timing 114:24 115:1,17,24 119:18 128:6 163:24
title 9:19 77:1
today 5:16 45:18 51:3 70:9,16 71:1 72:25 74:12 75:2 98:18 99:13 107:9 107:17 109:25 125:18,23 151:14 158:6 173:21 182:7
told 68:3,6 69:1 69:3,8 87:17 88:14,17 94:18 95:13 118:25 119:13 133:25 135:1 135:2 168:24 177:2,3,8
Tom 48:22 57:20 158:22
top 22:11 37:20 52:12 53:4 143:23 161:6 161:8 175:20 178:21 179:2
topic 26:10 29:6 94:16 104:5 106:2,6 107:3 108:11,14 117:5 118:1,4 118:18 125:16 126:22 135:18 143:19 167:15 170:21
topics 36:10 95:14 122:10 149:15 157:15
totally 105:25
toto 178:15
touch 58:2
trace 146:17
tracing 16:9
trading 85:1
transaction 6:6 14:11 18:6 36:9 47:4,8 56:15 174:6 174:19,20
transactions 6:1 14:17 147:12 167:20 180:22
transcript 37:6 43:25 44:1,7,9 44:17,22,23 45:24 46:18 46:22 70:5 71:13,24 185:14 187:4
transcription 185:7
transmittal 48:15
transmitted 178:5
travel 30:9 61:7
traveled 30:6 61:9,18
trends 127:23
trial 5:14 107:17
trip 174:23
trips 174:17
true 46:8 153:6 185:7 186:9 187:19
trust 158:22
truth 185:6
try 26:21 53:8 82:17 115:8 167:6 174:3
trying 70:25 103:2,10
turn 19:13 25:22 37:16 96:24 140:3 178:17
turned 28:18 29:16
turning 52:19 130:1
two 8:15 9:23 13:7 52:21 54:7 57:23 72:5 73:2 74:15 86:21 100:19,23 108:17 111:10 138:16 146:11 159:24 170:10 175:3 179:24 180:3 181:17
two-day 72:3
two-way 62:14
type 27:19 78:6 79:23 85:17 111:23 148:13
typical 134:18 152:3
typically 132:25 133:3,10 176:17
typo 69:25
Tyree 33:7,9 35:13,22 38:16 39:15 39:19 40:3,10 41:10,14,24 42:9,14,23 112:9,24 113:3,7,13,20 114:2,5,13,18 114:22 115:3 115:17,20,25 116:5,8 118:25 119:14 119:17,21 121:19,23 122:2,6,11 123:16,23 125:24 130:25 137:11 176:10

U

ultimate 165:1
ultimately 86:25
unable 70:15
uncertainties

NOT CERTIFIED COPY

600810

146:18
unclear 69:11
uncover 163:12
undated 150:24
undersigned 184:4
understand 5:10 32:8 51:9 55:18 65:23 66:17 70:8,21,25 97:14 103:11 154:15 159:2 165:3,10 166:12 182:11
understanding 43:18 64:3 88:8 89:13 103:11 109:15 109:18 114:12 114:18,22 115:3 143:25 148:9 164:25 177:1 180:22
underwriter 134:19 170:6 170:9,15 176:19
underwriters 16:1 34:14
unfolded 49:16
Unfortunately 118:2
unhappy 115:3 115:17,21
University 7:7
unnecessary 167:7
unresolved 100:11
update 28:8,17
updated 143:22
upset 40:3,5,11 40:16,18 41:14,17,20 114:13,18,23 114:24 118:25 119:14,15,17 176:11
use 103:3,7 177:15
Uzzi 69:25 70:2

V

vague 124:13 124:23
various 14:15 97:25 117:14
verbal 83:14
verified 13:19 15:2 58:20 97:9
verify 97:17 145:4
verifying 14:23
version 17:21 17:22 18:7 22:19 28:19 48:6 100:9 134:8,19 137:19 154:19 154:22 155:3 177:6
versions 22:17 177:14,17 179:17
versus 132:9
vice-president 11:11,19,21 74:3 180:5
vicinity 180:24
video 4:8 28:23 29:1 56:24 57:2 71:16,19 100:18,22 139:19,22 171:4,7 173:9 173:11 183:20
VIDEOGRA... 2:17 4:8 28:23 29:1 56:24 57:2 71:16,19 100:17,22 139:19,22 171:4,7 183:18
videotape 100:16
videotaped 1:12 183:19
view 39:6 49:15 95:24 104:13 104:18 105:19 108:6,11,14 109:25 120:12 121:4,9,20,21 122:3 154:8 166:16
views 107:19 154:1
violated 78:21
visit 27:19 174:20
visited 30:11
voice 41:22
vs 1:6 187:2

W

W 1:21 4:3 184:11 185:4 185:20
Wait 70:20
waiting 83:2
walk 175:18
Wall 106:17
want 15:5 26:15 32:4 37:18,24 45:2 70:8 80:22 82:15 96:11,14 101:1 110:10 110:11 124:21 125:2 133:10 133:11 160:23 170:24
wanted 25:8
wants 80:25
warning 85:24
Warranty 157:22
Washington 2:10
wasn't 25:8 33:3 39:25 62:8 83:12 102:12 127:6 161:16 178:16 182:23
Watchell 165:15 173:17
watching 83:15
way 14:20 17:8 45:8 65:12 66:3,9 69:18 75:8 82:6 84:9 86:8,15 87:16 88:3 91:15 92:4,14 94:7 97:4 104:10,13,16 105:2 107:10 110:20 112:3 112:7,8 119:21 120:11 122:15 125:3 125:19 129:2 130:23,24 142:7 155:1 159:21 167:6 167:24 168:18 168:21
wearing 181:1
Wednesday 1:13
weeks 20:12
went 7:7 13:18 27:14 29:4 75:19 180:23
weren't 66:19 87:25 147:2 169:22 174:10 175:9 181:1
West 1:17,23 9:5,6,12
we'll 16:20 18:12 65:9 67:13 73:22 96:15 100:16 100:18 175:18
we're 13:22 15:12 25:12 32:5 36:3 86:6 142:6
we've 23:14 25:12 47:23 49:18 56:13 61:13 67:12 79:13 80:2 81:23 82:18 96:8 158:17 159:10
whatsoever 173:5
WHEREOF 185:16
Wichita 172:23
Wisconsin 7:8 8:1
withdraw 17:24 32:12 41:8 42:20 55:10 70:23 77:13 80:23 93:14 94:24 95:9,15 95:25 114:16 179:11
withdrawn 95:22
withheld 162:16
witness 2:12 3:3 4:20 15:8 17:5 20:22 21:20,24 22:22 24:15 27:21 32:4 34:22 36:22 37:23 40:18 41:17 46:14 47:10 50:14 54:17,24 56:21 61:21 85:12,20 87:21 93:8 97:7 99:23 101:2 102:12 102:22 103:6 103:16 107:22 108:1 109:20 110:8,9 111:13 113:18 121:6 123:10 124:24 131:15 134:11 139:2 143:4 144:25 161:15,24 162:4 166:22 167:13 169:18 175:11 178:3 178:11 179:21 180:16 182:21 183:23 184:5 184:7 185:5 185:16
witnesses 167:3
word 21:17 103:3 126:7 167:22
worded 120:2,8
words 39:13 40:21 41:4,5 69:5 78:2 79:9 91:20 92:10,15 93:14 98:19 99:2 104:5 106:21 115:7 116:9 117:25 119:16,25 120:6 121:23 122:2 126:2,5 128:13 129:12 129:17 131:7 132:5 133:23
work 6:22,24 7:21 10:25 11:4,14 12:6 12:18,19,23 13:8,10 14:1 14:23 15:16 15:17 16:8 47:3,5 51:5 52:5 55:11 58:8,12,15 59:1,12,13,19 59:21 60:1,17 66:21 72:7,11 72:18,22 73:15 74:15 76:12 77:3,6 77:23 78:6,9 82:11,11 86:13,19 87:2 96:22 99:17 125:2 131:1,7 131:10,17 136:18,19 157:1,11 159:15,19 160:15 161:10 161:19 162:22 163:8 172:3 174:6,18 175:2
worked 13:3,12 13:13 14:19 29:12 55:6 58:4 73:20 75:22 76:9 97:4 98:20 132:15 157:8 157:14,15 158:19 174:7 175:3
working 13:6 13:15,21 14:12 76:24 77:14,18 79:5 87:3 104:8 117:12 136:15 136:21,21 137:5 145:22 146:21 148:10 158:6,13 172:10
world 85:6
wouldn't 36:17
wrap-up 10:20
WRITE 187:4
written 72:13 72:17 83:12 182:18
wrong 53:8

X

X 3:1,7

Y

Yeah 17:5 38:23 41:6 108:1,9 142:7 150:5
year 73:13,13 107:5 108:6 124:25 127:16 183:5
years 8:15 9:23 10:10 36:15

NOT CERTIFIED COPY

018010

16div-023074

37:7 40:25 75:22
year's 121:25 125:13
yesterday 110:6 167:1
York 2:14,14 27:12 30:3,6 59:6,14,18,19 59:22 60:1,20 60:25 61:6 62:6 63:17 67:12 98:12 149:13 174:17 174:21 175:9

$

$11 54:6
$30 53:23 54:5

0

0027048 48:10
0038712 151:3
0041651 151:1
03-5045 1:2

1

1 53:15 178:20 178:22
1st 142:11 144:2
1-14-04 187:3
1/15/07 184:12 185:21
1:08 171:5
1:11 171:8
1:25 1:14 183:21
10 143:10 177:13,17 179:2
10:22 56:25
10:30 74:11
10:33 57:3
10:50 71:17
10:52 71:20
101 2:14
10178-0061 2:14
11 83:1
11:25 100:20
11:26 100:24
112 51:25 54:22 56:13
114 47:19 48:1 48:3,5,15,25 50:6 65:13,24 66:5,8,16 69:20 70:13 81:22 175:20 181:15 183:12
115 3:10 22:1,2 22:7 23:15 25:13 61:25 62:5,11,19
116 3:11 37:1,5 46:10
117 3:12 55:22 55:23 56:3
12 24:7
12:00 83:1
12:13 139:20
12:22 139:23
122 3:15
14 1:13
144 3:16
147 3:17
15 106:21 151:3
150 3:18
155 3:19
16 150:22 151:8
16th 154:22 184:7 185:17
160 3:20
17 17:11 18:7 19:14 25:19
174 3:4
181 3:5
187 44:24,25 45:23
19 17:13 38:12 38:17 47:14 91:12 140:2,7 155:10,16 176:4
19th 24:1 52:16 59:13 64:12 66:23 67:11 67:20 69:4,14 71:2 79:14 87:5,23 94:2 108:22 111:3 132:21 133:17 140:16,22 141:9 166:10 175:6 177:18 181:19
190 37:16,19,21 44:24,25
191 37:19
1991 106:23
1992 7:14
1996 9:9 12:13 53:14
1997 12:16 52:22 53:14 53:15 78:7 84:5 126:4 137:25 152:25 161:21 162:9 162:17
1998 6:2,12,14 6:19 7:2 11:1 12:7 13:2 24:1 36:1 37:10 38:12 49:1,9 50:1 52:9,23 53:15 54:7 64:12 65:15 74:23 75:4,8 76:24 77:21 78:7 83:24 84:4 86:11,16,21 88:6 91:12 96:19 106:8 106:16,23 111:22 123:20 123:25 124:3 124:6 126:20 128:16 129:1 129:23 137:24 140:2,7 141:1 141:9,12,16 142:10,11,23 144:2,8 148:10 150:22 151:5,8 152:17,24 154:20,25 157:3 161:22 162:11,19 163:19,21 166:10 167:10 168:1,11 169:4 177:5 178:20

2

2 53:14
2000 11:8
20005 2:10
2001 37:7 38:10 43:11,22 44:1 44:17 45:15 45:24 46:6,11 46:17 48:16 70:5 71:25
2003 73:13
2004 1:13 36:3 70:9 184:8 185:17 186:15
202 38:1,2 45:24
202.879.5078 2:10
212.696.8817 2:15
2139 1:17
22 3:10
23rd 37:7 151:5 154:20 180:14
24 59:9
25th 52:9 55:4 177:19
253.4 106:24
285 105:10
29 53:15
295 105:10

3

30 53:14
31 49:1
31st 65:15 81:23 82:13
312.222.9350 2:5
33409 1:17
37 3:11
39 3:13 91:5,6 91:10 92:6,13 105:4 110:2 110:22 111:10 130:5

4

40 3:14 96:4,5,9 96:17 97:1 130:1
41 3:15 122:18 122:21,23
42 3:16 144:10 144:14 145:17 146:11
43 3:17 147:7 147:11 148:3 148:7
44 150:22 151:8 151:10,14 154:21
44-47 3:18 150:15
45 150:24 151:23 152:20
46 151:2 153:13 154:5
47 151:4 154:19 179:16
48 3:19 155:5,9 155:21 156:21
49 160:10,13,23
49-54 3:20 160:6

5

5 3:4
5A 19:15
5B 19:15 140:7 140:10 143:22 178:19
50 48:10 160:10 161:1
51 160:10 161:2 161:4
52 160:10 161:6
53 160:10 161:8
54 160:11,14 161:9
55 3:12
561.659.4155 1:24
57 3:5

6

6B 140:13,16
6C 21:2,3,9,15 140:18,20 178:21
600 158:18
60611-7603 2:5
654 151:1
655 2:9

8

800.330.6952 1:23

9

9 140:2 177:13 177:17 178:18
9:09 1:14 4:10
9:38 28:24
9:44 29:2
91 3:13
92 9:24
94 9:24
96 3:14
97 179:4
98 82:8,13 122:15 155:10 155:16 179:4

NOT CERTIFIED COPY

16div-023075

A. No, I don't.

MR. BRODY: Thank you, I have nothing further.

MS. BROWN: We have a standing order.

(Whereupon, the deposition concluded at 2:53 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

I, Mary P. Peacock, a Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that JOSHUA A. WEBBER, the witness whose examination is hereinbefore set forth, was duly sworn by me and that such examination is a true and accurate record to the best of my knowledge, skills and ability of the testimony given by such witness.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of May, 2004.

_____

Mary P. Peacock, Notary Public
My Commission Expires
November 29, 2007

ERRATA SHEET DISTRIBUTION INFORMATION
DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS

ERRATA SHEET DISTRIBUTION INFORMATION

The original of the Errata Sheet has been delivered to Attorney Brown.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL forwarded to Attorney Brody, to whom the original deposition transcript was delivered.

INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, please indicate any corrections or changes to your testimony and the reasons therefore on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself. Add additional sheets if necessary. Please refer to the above instructions for Errata Sheet distribution information.

PLEASE ATTACH TO THE DEPOSITION OF JOSHUA A. WEBBER
CASE: COLEMAN HOLDINGS VS. MORGAN STANLEY
DATE TAKEN: 5-18-04

ERRATA SHEET

Please refer to Page 192 for errata sheet instructions and distribution instructions.

PAGE	LINE	CHANGE	REASON

I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Executed this _____ day of _____, 2004.

_____

JOSHUA A. WEBBER

018013

NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH,
COUNTY, FLORIDA
C.A. No.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s),
_____/

MORGAN STANLEY SENIOR FUNDING, INC.
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

VIDEO TAPED DEPOSITION OF JOSHUA A. WEBBER, a witness called on behalf of the Plaintiff, pursuant to the Florida Rules of Civil Procedure, before Mary P. Peacock, Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Esquire Deposition Services, 175 Federal Street, Boston, Massachusetts, on May 18, 2004, commencing at 9:30 a.m.

NOT A CERTIFIED COPY

018014

APPEARANCES:

REPRESENTING THE PLAINTIFF:
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611-7603
312-222-9350
BY: MICHAEL T. BRODY, ESQ.

REPRESENTING THE DEFENDANT:
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
202-879-5108
BY: ZHONETTE M. BROWN, ESQ.

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JOSHUA A. WEBBER				
By Mr. Brody:	5	189		
By Ms. Brown:		188		

EXHIBITS

Exhibit No.	Description	Page
Exhibit 187,	Plan	83
Exhibit 188,	Fax	87
Exhibit 189,	Fax	90
Exhibit 190,	Letter	129
Exhibit 191,	Letter	134
Exhibit 192,	Part of Archives	163
Exhibit 193,	Fax	164
Exhibit 194,	Draft Section	170
Exhibit 195,	Agenda	174
Exhibit 196,	Documentation	178

(THE ORIGINAL EXHIBITS WERE RETAINED BY ATTORNEY BRODY.)

PROCEEDINGS

JOSHUA A. WEBBER, the witness having been duly cautioned and sworn testified as follows:

DIRECT EXAMINATION BY MR. BRODY:

Q. Good morning, Mr. Webber, would you please state your name and spell your name for the court reporter.
A. Joshua A. Webber, W-E-B-B-E-R.
Q. Mr. Webber, do you -- or have you ever gone by any other names?
A. No.
Q. Have you ever been deposed before?
A. No.
Q. Do you understand how this process is to work?
A. I think so, yes.
Q. What is your understanding?
A. That you're going to ask me questions about the transactions, and I'm going to answer the best I can.
Q. That sounds great.
Let me just fill in a couple of things.
Because this is being taken down by a court reporter it's important that you and I wait for each

NOT A CERTIFIED COPY

018015

other to finish before we start. So I will try not to step on your answers and you try not to step on my questions, or else the court reporter will tell us about it.

If you don't understand any of my questions, ask for a clarification. The record won't reflect your lack of understanding, and it's important that you understand before you answer.

If you need to take a break at any time, just say so. We may need to finish up a few questions to get to a logical breaking point, but we will accommodate your schedule.

Are those acceptable?

A. Yes.

Q. Okay, you said, sir, you have never been deposed before.

Have you ever testified under oath in any setting?

A. No.

Q. In connection with the work you did at Morgan Stanley, did you ever submit an affidavit or a signed statement for any reason?

A. No.

Q. Mr. Webber, do you have any documents in your possession, not necessarily with you right now, but

maybe at home or at another office, relating to the work that you did at Morgan Stanley?

A. Yes.

Q. Do any of them concern the work done on the Sunbeam-Coleman transaction?

A. No.

Q. What was -- what were the dates of your tenure at Morgan Stanley?

A. I started in August of 1997, and I left in May of 2001.

Q. When you were there, were you aware that there had been litigation filed concerning the Sunbeam-Coleman transaction?

A. No.

Q. When was the first time you learned that there had been litigation filed?

A. I don't recall specifically, but it was in the last couple of years.

Q. Okay.

At any time did anyone at Morgan Stanley, be it an outside counsel, or a member of the legal department, or anyone else, ask you to collect any documents that you might have had at Morgan Stanley concerning the Sunbeam-Coleman transaction?

A. No, I don't recall that.

Q. Mr. Webber, are you represented by counsel?

A. Yes.

Q. And Ms. Brown is your lawyer?

A. Yes.

Q. When did you first become represented by Ms. Brown or her firm?

A. It was probably the last sixth to eight weeks.

Q. Did you contact them or did they contact you?

A. They contacted me.

Q. And who is paying for their representation of you?

A. Morgan Stanley.

Q. What do you understand to be the nature of your arrangements with her firm?

Do you have any other understanding other than that Morgan Stanley pays?

A. That she is representing me and not Morgan Stanley. That is about it.

Q. You're aware that her firm also represents Morgan Stanley?

A. Yes, yes.

Q. Mr. Webber, how did you learn that a party in this case wished to take your deposition?

A. I was informed by Tom Clare.

Q. Do you know when that was?

A. As I said, it was probably six or eight weeks ago.

Q. Okay.

Is that the first time that you were aware of the lawsuit between Coleman Parent and Morgan Stanley?

A. The specifics, yes, or -- I believe I knew -- I had heard that something was transpiring, but I was not really familiar with the details.

Q. Do you remember how you had heard that something was going on?

A. No, no.

Q. Aside from your contact with Mr. Clare, -- let me withdraw that.

When did you retain Mr. Clare's firm or Ms. Brown to represent you in this matter?

A. I had a second conversation -- a second conversation with Tom, perhaps a week to two weeks after the first one in which I agreed to be represented by his firm.

Q. Had Mr. Clare offered to represent you in the first conversation?

MS. BROWN: Objection.

A. Yes.

Q. Have you had any contact with Morgan Stanley in-house lawyers concerning this case?

NOT A CERTIFIED COPY

QL80116

Page 10

A. No.
Q. Mr. Webber, do you have any -- you're no longer at Morgan Stanley?
A. Correct.
Q. Do you have any continuing contact with Morgan Stanley in a business nature?
A. No, not in a business nature.
Q. Are you invested in any deals were Morgan Stanley?
A. No.
Q. Do you have -- are you -- does Morgan Stanley continue to pay you under any pay-outs or deals from your employment there?
A. I continue to hold some Morgan Stanley stock that will be -- as part of a -- some kind of performance plan that has not vested yet, that will vest soon.
Q. And when it's vested you will be able to sell it if you wish?
A. Correct.
Q. Aside from the stock that you have in Morgan Stanley, that non-vested plan, do you have any other business relationship -- or relationship under which Morgan Stanley is paying you anything?
A. No.
Q. Do you maintain personal contact with individuals at

Page 11

Morgan Stanley?
A. Yes.
Q. In connection with that personal contact, have you ever discussed this lawsuit?
A. No.
Q. Mr. Webber, what did you do to prepare for today's deposition?
A. I met yesterday with my lawyer.
Q. Anything else?
A. No.
Q. Approximately how long did your meeting take?
A. I would say five hours.
Q. In connection with that meeting, or in that meeting, did counsel show you any documents?
A. Yes.
Q. Did any of those documents refresh your recollection about events that took place during the Morgan Stanley Sunbeam-Coleman transaction?
A. Yes.
Q. What documents refreshed your recollection?
A. There were documents related to a -- another acquisition that Morgan Stanley was contemplating that I had forgotten about -- I'm sorry, that Sunbeam was contemplating that I had forgotten about.

Page 12

Q. Any others that refresh your recollection?
A. I saw documents that help crystallize what had happened. Since it was so long ago I had, you know, forgotten specifics of the transaction, and members of the team, having looked at those documents, it is more clear than it once was.
Q. Any other documents that you remember refreshing your recollection?
A. No.
Q. The other acquisition that you referred to, was that First Alert or Signature Brands?
A. No, the one I was just referring to was -- it was a Black & Decker subsidiary.
Q. And the documents that helped crystallize your recollection of the events or the team, what documents were those?
A. The merger models, the -- some other Excel spread sheets that I created, other Sunbeam management presentations.
Q. Any others that come to mind?
A. No.
Q. When you say "the merger models," what do you mean by that?
A. While we were analyzing these transactions we

Page 13

created -- I was responsible for creating an extensive Excel model which evaluated the financials of these transactions.
Q. And that is the document that you're referring to?
A. Yes.
Q. Is that the same as the Excel spread sheet that you created, or are those separate?
A. There was also a spread sheet which calculated the fees associated with the transaction.
Q. You prepared that?
A. Yes.
Q. The merger model that you created, who did you do that work with?
A. Tyrone Chang, primarily.
Q. Did you work with anyone at Sunbeam on that project?
A. No, we showed the results to the members of the Sunbeam team, but they were not involved in creating the model.
Q. Okay, did you receive inputs from anyone at Sunbeam to create the model?
A. I don't recall. I think most of the inputs were based on publicly-available information.
Q. Okay, just so I make sure I'm thinking of the right document, what was the end product of the merger model

NOT A CERTIFIED COPY

Page 14

you created?
A. There was several pages, cash flow statements, earnings, accretion/dilution analysis, balance sheets, income statements.
Q. Was it a tenure-perspective estimate?
A. That was part of it, yes.
Q. Okay.
Okay, in connection with your preparation for this deposition, did you review any transcripts of any other depositions?
A. No.
Q. Did you talk to anyone other than Ms. Brown?
A. No.
Q. For example, Mr. Chang? Have you spoken with Mr. Chang?
A. No.
Q. Did you review videotapes of depositions?
A. No.
Q. Did you review any Morgan Stanley personnel evaluation forms to your recollection?
A. Yes.
Q. Which ones did you review?
A. My own.
Q. Do you remember what portions you reviewed?

Page 15

MS. BROWN: I'm going to object to the extent that this isn't going into a document to refresh his recollection, and it goes into work product of what was done during the deposition preparation, so I'm going to instruct him not to answer.
BY MR. BRODY:
Q. Are you going to follow your counsel's instruction?
A. Yes.
Q. The document -- the personnel evaluation form that you saw, had you seen it before?
A. Let's see, I -- I don't think I had seen the document before, but as part of the year-end evaluation process we are read pieces of the document. So I guess I did hear what was in it several years ago.
Q. Comparing what you saw yesterday to what you heard several years ago, did you see, yesterday, portions that you had not heard several years ago?
MS. BROWN: Same objection and instruction.
BY MR. BRODY:
Q. Are you going to follow your counsel's instruction?
A. Yes.
MS. BROWN: For the record, just so we're not called back on this, if you want to ask that same type of question in a different way, it can be done so it

Page 16

does not get into privileged information.
MR. BRODY: Well, I don't think it got into privileged information the way I asked it.
The question is have you waived an argument you made by showing him the document, so I think I'm entitled to ask him what you showed him.
MS. BROWN: Okay, I disagree, but I think that you can do the question -- that type of question differently by looking at the document asking if the portions that you're interested in you have seen before.
MR. BRODY: Okay, but I can't ask for the document because of the Order you got from the Court.
MS. BROWN: You can ask him about portions. You're entitled to show him portions of the document.
MR. BRODY: Yes, will show him portions. I will do that later. I can ask him if he saw something else.
MS. BROWN: In any event.
MR. BRODY: I think the objection is not well taken.
BY MR. BRODY:

Page 17

Q. Since you left Morgan Stanley have you been contacted by anyone outside of Morgan Stanley about the Sunbeam transaction, other than the events that -- other than the events that gave rise to this deposition?
A. No, no.
Q. You indicated you maintain personal relationships with individuals at Morgan Stanley.
A. Yes.
Q. Who?
A. John Collins.
Are you interested in people who are still at Morgan Stanley?
Q. We will start with that.
A. He is the only one who is still at Morgan Stanley that I have been in contact with in the last year.
Q. Do you remain in contact with any individual at Morgan Stanley who worked on the Sunbeam transaction?
A. No.
Q. Mr. Webber, as you probably, know we're going to focus primarily today on the Sunbeam transaction. I would like to address your background before we get into that.
What area of the country were you born and raised?
A. In Massachusetts.

NOT A CERTIFIED COPY

Page 18

Q. Did you attend high school in Massachusetts?
A. Yes, I did.
Q. After high school did you attend college?
A. Yes.
Q. Where?
A. Kenyon College.
Q. Did you graduate from Kenyon?
A. Yes.
Q. When?
A. May of 1991.
Q. With a degree in what?
A. Economics and math.
Q. What did you do after you graduated from Kenyon?
A. I worked for Shearson Leeman Brothers, which through a series of mergers eventually became Smith Barney.
Q. Where?
A. In New York.
Q. What was your position at the time you left Smith Barney?
A. At the time I left Smith Barney I was a financial consultant.
Q. What did you do as a financial consult at that point in time?
A. A stockbroker.

Page 19

Q. On the retail side?
A. Yes.
Q. Were all of your positions at Shearson Leeman and Smith Barney on the retail side of the business?
A. No, most of my time there was as a -- in systems software.
Q. And then after a time you changed from systems to the retail side of the business?
A. Yes.
Q. When did you leave Smith Barney?
A. Spring of 1995.
Q. And where did you go then?
A. Graduate school, University of Virginia.
Q. In the business school?
A. Yes.
Q. Did you receive an MBA?
A. Yes.
Q. When?
A. May of 1997.
Q. You came to Morgan Stanley in August of that year?
A. Yes.
Q. Did you have any employment between graduation and Morgan Stanley?
A. No.

Page 20

Q. So you were hired by Morgan Stanley in August of '97, also in New York?
A. Yes.
Q. In what position?
A. Investment Banking Associate.
Q. How long were you an associate in investment banking?
A. I was an associate until December of 2000 when I was promoted to Vice President.
Q. Are there any steps in between associate and Vice President?
A. No.
Q. And you left Morgan Stanley in May of the following year?
A. May of 2001.
Q. Okay, in your undergraduate education did you take any business courses?
A. Economics courses.
Q. Okay, in your graduate work at the University of Virginia did you have an area of concentration?
A. Yes.
Q. What was that?
A. Finance and accounting.
Q. You're not a CPA?
A. No.

Page 21

Q. Have you ever sat for the CPA exam?
A. No.
Q. After you left Morgan Stanley in 2001, what position did you hold?
A. I currently run my family's businesses.
Q. And what are those businesses?
A. They are fairly diverse, but they are owning a restaurant, a function hall, real estate development, cell-tour business, and a cattle farm.
Q. That is rather diverse.
Where are these business located?
A. In Groton, Massachusetts.
Q. And you have been doing that since May of 2001?
A. August.
Q. Okay.
I would like to concentrate on the work that you did at Morgan Stanley.
You arrived there in August of 1997?
A. Yes.
Q. And were assigned to the investment banking division?
A. Yes.
Q. What were your responsibilities in investment banking division in August of '97?
A. In the first year all first-year investment bankers

NOT A CERTIFIED COPY

018019

are in what is called "the associate pool," and we go through rotations in different groups.

The first group I was in was the Media Corporate Finance Group.

Q. How long did that rotation last?

A. Approximately four months.

Q. Did you work on the Sunbeam deal when you were in the Media Corporate Finance Group?

A. No.

Q. What was your next rotation?

A. Mergers and acquisitions.

Q. Do you know when you started in mergers and acquisitions?

A. I don't know specifically, but it -- I think it was around January 1st.

Q. And how long were you in that department?

A. Until I left in 2001.

Q. When you were first -- excuse me, when you were first assigned to the M&A department, to whom did you report?

A. Well, it -- you report to different people on different deal teams.

Q. Well, let me ask another question.

A. Okay.

Q. How many deals -- in the 1997, '98 time period, so when you started in the M&A, be it late '97 or early '98, throughout the remainder of 1998, did you work on deals other than the Sunbeam engagement?

A. Yes.

Q. I'm not going to ask a lot about it, but were the names of the other deals, if you recall?

A. I worked on GECs, acquisition of Tracor, I worked on the sale of Red Line Healthcare by Novardis.

Those are the only two I recall for sure that closed during that time.

Q. And you worked on the Sunbeam deal?

A. Yes.

Q. And I asked you to exclude that before.

What percentage of your time in 1998 was on the Sunbeam deal?

A. From when I started on the Sunbeam deal through --

Q. Through when you stopped working on the Sunbeam deal?

A. Probably three quarters of my time.

Q. And approximately when did you stop working on Sunbeam matters?

A. I don't recall specifically, but approximately June, July, perhaps.

Q. Okay.

Okay, focussing on the Sunbeam engagement, I don't need to know about the other ones you just identified, to whom did you report?

A. There were several people on the deal senior to me that I reported to, including Jim Stynes, Bob Kitts, Bill Strong and Alex Fuchs, F-U-C-H-S.

Q. Any others?

A. That I reported to?

Q. Yes.

A. No, I don't believe so.

Q. Okay, in connection with the Sunbeam matter did you work with Mr. Tyree?

A. Only peripherally. He was on the financing side, I was on the M&A side. Virtually all of my work was on the M&A side.

Q. Same with Mr. Savary? Do you know him?

A. I know who he is. I don't think I ever worked with him at all.

Q. You said you had peripheral contact with Mr. Tyree. Do you remember what it was?

A. I don't recall specifically what I did with him. He was working on the financing, and my recollection is that he from time to time would consult with me on Sunbeam since I was familiar with the client.

Q. You have identified the people you reported to. Did anyone report to you?

A. Yes, Tyrone Chang and Lili Rafi.

Q. Lili Rafi?

Their position at the company was as an analyst?

A. Correct.

Q. You said you became a Vice President at the end of 2000?

A. Yes.

Q. You were not a Vice President during the course of this deal?

A. No.

Q. You left Morgan Stanley in May of 2001?

A. Yes.

Q. Why did you leave the company?

A. Because I had had enough of living in New York and wanted to move back home.

Q. Did your work on Sunbeam have anything to do with your decision to leave?

A. No.

Q. Now, Mr. Webber, I'm going to focus primarily on the time period you were working on Sunbeam, so late '97, early '98, at the start, until June or July of '98, at the finish; is that correct?

NOT A CERTIFIED COPY

Page 26

A. I don't believe I started working on Sunbeam until -- certainly til '98, but I believe it was, you know, prior on February 1st, 1998.
Q. Until June or July of '98?
A. Correct.
Q. At the time you were an associate in the Investment Banking Group?
A. Yes.
Q. You were assigned to the New York office?
A. Yes.
Q. The number of people that you've identified, such as Mr. Strong, had offices elsewhere?
A. He was the only one identified that did have offices elsewhere.
Q. How often did you see Mr. Strong?
A. I don't recall, but a few times a month.
Q. Would he come to New York, or would you go to Chicago?
A. He came to New York.
Q. Did you communicate with individuals such as Mr. Strong from other offices by telephone?
A. Yes.
Q. And by e-mail?
A. I don't recall using e-mail in 1998. It certainly was not used as it is today.

Page 27

Q. When you were at Morgan Stanley did you have an e-mail account in the 1998 time frame?
A. I believe I did, yes.
Q. Do you know if that was run through Morgan Stanley, or do you use something like Bloomberg?
A. No, it was run through Morgan Stanley.
Q. You never had a Bloomberg account?
A. No.
Q. You identified a number of individuals you reported to, Mr. Stynes, Mr. Kitts, Mr. Strong and Mr. Fuchs on this transaction.
From your perspective how was the hierarchy of the transaction organized?
A. Mr. Strong, Mr. Kitts and Mr. Stynes were Managing Directors, and they were ultimately in charge of the transaction.
Mr. Fuchs was a Vice President who was working for them, and I was working for Mr. Fuchs as well as the three managing directors.
Q. And then Mr. Chang and Ms. Rafi were working for you?
A. Correct.
Q. Between Strong, Kitts and Stynes, how was the authority divided, or the responsibility divided?
MS. BROWN: Objection. Foundation.

Page 28

A. Mr. Stynes and Mr. Kitts were M&A professionals whose responsibility was primarily on the three M&A transactions that we were working on.
Q. And Mr. Strong?
A. Mr. Strong had a relationship -- had a corporate-finance relationship with the client.
Q. Mr. Webber, what was your area of responsibility on the Sunbeam transaction?
A. I had a variety of responsibilities, however, primarily it was financial analysis of the three transactions, as well as preparing presentations to Sunbeam management from Morgan Stanley, as well as presentations to the Sunbeam Board of Directors.
Q. What presentations do you remember developing to Sunbeam management?
A. I did several pieces of analysis of the three targets that actually closed, accretion and dilution analysis, primarily, and I also evaluated several -- I evaluated other transactions that did not close and presented financial analysis on those.
Q. Such as the Black & Decker deal that you mentioned?
A. Yes.
Q. And when you say accretion and dilution analysis, accretion and dilution of earnings?

Page 29

A. Yes.
Q. The presentation to the Sunbeam Board of Directors, was that more than one presentation, or only one?
A. It was a presentation that we did presenting all three targets, but it was at one meeting we presented all three.
Q. Did you prepare any presentations that were given to people outside of Sunbeam management?
MS. BROWN: Or the Board of Directors?
BY MR. BRODY:
Q. Or the Board of Directors?
A. No.
Q. For example, I know that Morgan Stanley made presentations to MacAndrews and Forbes. Do you know if you prepared any of those?
A. I don't recall preparing any of those, however, I -- it's reasonable to assume that I did, given that I was on the transaction.
Q. Okay, and then the financial analysis of the three transactions, you had spoken earlier of the Excel modeling.
A. Yes.
Q. Do you recall any work you did besides that modeling?
A. Well, in preparing the presentations to the Board of

NOT A CERTIFIED COPY

Page 30

Directors there were pages in the presentation that were not solely Excel spread sheets, so I was assisting in preparing those pages.
Q. Right.
In preparing the presentations that you did, what sources of data did you use?
A. We used information that was publicly available through other research analysts, and we also received some input from Sunbeam management.
Q. Did you, personally, ever speak with anyone at Sunbeam?
A. Yes.
Q. With whom did you speak?
A. Several people.
The names that I recall are Al Dunlap, Russ Kersh, David Fannin, Deb McDonald, Rich Goudis.
I believe that is all I recall.
Q. Did you deal with Don Usi?
A. No.
Q. Lee Griffith?
A. No.
Q. Scott Yales?
A. No.
Q. Dixon Thayer?

Page 31

A. No.
Q. How frequently did you speak with Mr. Dunlap?
A. I would guess over the months that I was working on the transaction I probably spoke with him five or six times.
Q. Among those people that you identified, Dunlap, Kersh, Fannin, McDonald and Goudis, was there one individual that was your primary source of contact of information, or your primary contact?
MS. BROWN: Objection to form.
A. Initially -- well, I would say Deb MacDonald was the one I spoke with the most, however, most of the work I did with her was on transactions other than -- potential transactions other than the three that actually closed.
I wouldn't say that I had regular contact with anyone from Sunbeam related to the Coleman or other -- Coleman acquisitions, or the other two targets.
Q. Okay.
Did you ever travel to Florida?
A. No.
Q. Did you speak to these individuals when they were in Florida? For example, call Ms. MacDonald while she was in Florida?

Page 32

A. Yes.
Q. Did you send her information by fax, or Fed/Ex, or by mail?
A. I don't recall doing that, although I suspect I did.
Q. And she sent you information?
A. I suspect she did.
Q. You talked to her and the others by telephone when they were in Florida?
A. Yes.
Q. Did you ever meet with any of the Sunbeam people in New York?
A. Yes.
Q. How many times?
A. Again, I would guess five or six times.
Q. Okay, we will come back to those in a second. Let me just ask you one other thing. Maybe I should have done this earlier.
When you were at Morgan Stanley did you understand there to be a policy of the company, or a practice of the company for retaining or destroying documents?
A. No.
Q. Were you ever instructed as to what you should do with documents from the deals that you worked on?
A. I don't recall being instructed.

Page 33

Q. You don't remember anyone talking to you about that?
A. No.
Q. Was there a -- to your knowledge, a document retention or destruction policy ever communicated to you?
A. I don't recall it being communicated to me.
Q. What was your personal practice on keeping or discarding files on matters that you worked on?
A. I kept -- I usually kept only finished products in an effort to keep my files manageable, meaning when presentation of books were created I would keep the book but I would discard most of the other materials.
Q. Where would you keep those materials?
A. I had a filing cabinet.
Q. In your office?
A. Well, no, not in my office, but on the floor.
Q. Okay.
When you left the company what happened to the files that you had kept?
A. I don't recall what happened to those files.
Q. I may have asked you this earlier, sir, but between the beginning of 1998, and May of 2001, when you left, did anyone ever come and ask to see your files or to collect your files?
A. No -- I don't recall that.

NOT A CERTIFIED COPY

010023

Page 34

Q. Let me show you, Mr. Webber, what was previously marked as Plaintiff Exhibit No. 6. We describe it as "CPH Exhibit No. 6," and it's an expert from a document produced to us by Morgan Stanley.
Have you ever seen this document, or something like it describing file maintenance practices?
A. I don't recall seeing this.
Q. It starts at the beginning by saying, "Files should be kept lean and unnecessary materials should be discarded on a regular basis."
Was that ever communicated to you as being the practice or policy?
A. I don't recall that being communicated to me.
Q. Was that in fact what you did?
A. Yes.
Q. When a deal was over, when a deal closed, did you have a practice of keeping certain materials in an archive or a set of files?
A. I usually kept finished products, finished presentations in a filing cabinet.
Q. And do you believe you did that on the Sunbeam deal?
A. I don't recall what I kept. I suspect I did.
Q. As you were keeping finished products it was your practice not to keep draft materials; is that correct?

Page 35

A. Correct.
Q. Would you discard the drafts after the deal had closed, or would you do it along the way?
A. Probably both, but certainly when the deal had closed, but a tremendous amount of paperwork accumulates on a deal like this, and so I throw away quite a bit as a deal was going.
Q. Now, we talked a little bit earlier about e-mail. While you were at Morgan Stanley did you ever try to retrieve e-mail from archives, or from some storage facility?
A. No.
Q. The lawsuit that brings us here today was filed in the scheme of things relatively recently. There was prior litigation involving Sunbeam. While you were still at Morgan Stanley were you aware of any litigation involving Sunbeam?
A. I don't recall if I was aware of the litigation or I wasn't.
Q. Okay.
Okay, returning to the work that you did for the Sunbeam transaction, at the time you came to the M&A Department Morgan Stanley had already been retained on the transaction?

Page 36

A. Yes.
Q. At the time that you first worked on the Sunbeam matter, what did you understand to be Morgan Stanley's assignment or role?
A. We were evaluating acquiring -- I don't recall if it -- the transaction that I worked on was the acquisition involved three targets, Coleman's, Signature Brands and First Alert, and I don't recall when I started if all three were under consideration.
Q. So you worked on the buy side of transactions?
A. Correct.
Q. And the terminology, "buy side," refers to the work of your business in assisting a company that was buying another company?
A. Correct.
Q. Are you aware that Morgan Stanley also did work with Sunbeam on the sell side?
A. Yes.
Q. Did you have anything to do with that?
A. No.
Q. Was that done before you came to the M&A group?
A. Yes.
Q. And the sell-side work did not result in a transaction, did it?

Page 37

A. No.
Q. Do you know why?
A. No.
Q. Were you ever told a reason why Sunbeam had been unable to sell itself to close a sale?
A. No. Not specifically, no.
Q. Do you have a general understanding as to why that happened?
A. I don't think they found a price that was acceptable.
Q. At the time you came to work in the M&A group, was there any sell-side work continuing?
A. I don't recall any sell-side work continuing, however, as a regular course of business Morgan Stanley would talk to Sunbeam management about other companies in the consumer-products world, and there would be brief discussions about those companies and potential combinations, more just gathering thoughts, just, you know, passing ideas around rather than any specific transaction.
Q. Did you ever hear it suggested that the sell-side transaction was not practical because the Sunbeam stock price was too high?
A. I don't recall hearing that.
Q. Was the Sunbeam transaction a difficult assignment?

NOT A CERTIFIED COPY

I 8023

Page 38

MS. BROWN: Objection to form.
A. Difficult in what way?
Q. Well, were -- was Sunbeam a difficult client to work with?
A. Yes.
Q. In what way?
A. They were very demanding.
Q. In what way?
A. They would -- it was their wish that we would spend an usually large percentage of our time on their transaction.
Q. So they assigned things to you with short-time deadlines, --
MS. BROWN: Objection.
Q. -- as an example?
A. That did occur.
Q. In what way did they express their demand that you work a large percentage your time on their deal?
A. I don't recall specifics, however, they were in constant contact with us requesting new work, or additional work to be done. They frequently called us and asked for more work to be done, I guess.
Q. Were the people at Sunbeam interested in closing these deals quickly?

Page 39

MS. BROWN: Objection to form.
A. I don't recall them being any more interested in closing quickly than any M&A transaction -- quicker than any other M&A transaction.
It's always in the best interest of everyone to close an M&A transaction as quickly as possible and this was no different.
Q. Can you think of any other ways in which the Sunbeam people were demanding of Morgan Stanley?
A. They expressed displeasure aggressively and loudly.
Q. They yelled at you?
A. Yes.
Q. Who do you remember being the yellers?
A. Primarily Al Dunlap and Russ Kersh.
Q. What sort of things set them off?
MS. BROWN: Objection to form.
A. I don't recall specifically what set them off.
Q. Could be anything?
MS. BROWN: Objection, mischaracterizes.
A. We were working on a very complicated series of transactions, and every -- a lot of things happened everyday, and when things did not go -- when things weren't going the way that they wanted them to go, they got angry and yelled at us.

Page 40

Q. I take it there were occasion when they yelled at you?
A. Not so much me, more the senior people on the team.
Q. Mr. Kitts, Mr. Fuchs, Mr. Strong, Mr. Stynes?
A. Yes.
Q. Do you remember any other ways in which this became a difficult client or difficult matter?
MS. BROWN: Objection to form.
A. It -- no, primarily it was their personalities and the amount of work that they asked us to do in a short period of time.
Q. I believe you testified that you spoke with Mr. Dunlap on five or six occasions?
A. Yes.
Q. Were those in person, on the telephone, or both?
A. Those were in person. I was probably on other conference calls that he was on -- more conference calls that he was on.
Q. All right, when you were on the conference calls were there other people from Morgan Stanley on them as well?
A. Yes, yes.
Q. What do you remember meeting with Mr. Dunlap in person about?
A. I don't recall the specifics of the meetings, however,

Page 41

they centered around the three acquisitions that closed, as well as looking at other potential transactions.
Q. As you sit here do you remember any particular meeting with Mr. Dunlap, a meeting in which Mr. Dunlap was in attendance?
A. Yes.
Q. Okay, if you can separate them in your mind, what is the first one you remember?
A. I'm sorry, I don't recall the specifics -- I don't recall what was discussed at the -- I recall a few meetings specifically where he was in attendance. I don't remember what we talked about, you know, other than -- I don't remember what the primary reason for us meeting was.
Q. Do you remember anything that was communicated in those meetings, in words or in substance?
A. I recall a couple of -- I recall one meeting in which we were -- in which Sunbeam was considering acquiring another target, and we were discussing what we should offer.
Q. Do you remember the target?
A. Yes, Toastmaster.
Q. Aside from the meeting on the Toastmaster transaction,

NOT A CERTIFIED COPY

Page 42

do you remember anything else -- any other meetings with Mr. Dunlap and the matters that were discussed?
A. I do recall one other meeting with Mr. Dunlap, and I don't recall the specifics of what was said -- of what we were discussing at that meeting.
Q. What do you remember about the meeting?
A. It was a day that Sunbeam's stock was performing particularly well, and Mr. Dunlap was in an unusually good mood, and he would ask me to leave the room every 15 minutes or so to go see where Sunbeam's stock was, and then he would announce how much money he had just made based on his contract that he had just signed.
Q. I take it it was a lot of money?
A. It was. I don't recall how much it was.
Q. Do you remember any other meetings that Mr. Dunlap was in?
A. No.
Q. When you worked on the Sunbeam deal did you understand that Mr. Dunlap had a reputation within his company of being a difficult person to work with?
MS. BROWN: Objection to form.
A. I -- my understanding of Mr. Dunlap was that he had a successful track record of turning around companies, and often he did that through laying off employees, so

Page 43

he was in many -- he was often feared because of his history of firing people.
Q. Have you heard him described as "overbearing"?
A. I don't recall hearing him described as that, but my experience with him was that he was.
Q. Did people describe to you instances in which he had been verbally abusive to people in his company?
A. I don't recall hearing those stories.
Q. Did you ever read his book?
A. I recall reading pieces of the book. I did not read the whole thing.
Q. Did somebody give you a copy?
A. Yes.
Q. Do you know who gave you a copy?
A. I recall Mr. Dunlap had several copies of his book sent to me and asked me to distribute them.
Q. And did you that?
A. Some of them.
Q. You kept one?
A. No, I don't have one -- I don't believe I still have one.
Q. Do you know how many copies Mr. Dunlap sent you, approximately?
A. No, it was several dozen.

Page 44

Q. I assume there were enough copies floating around Morgan Stanley that anyone who wanted one could get one?
A. If they knew that they were there, yes.
Q. You talked about Mr. Dunlap's prior representation, his track record in turning around companies.
Are you aware that Mr. Dunlap, prior to Sunbeam, had been at Scott Paper?
A. I'm aware of that, yes.
Q. All right, did you ever look into the track record of Mr. Dunlap at Scott Paper, what he had done there, how successful it had been?
A. No.
Q. Do you know of anyone at Morgan Stanley that did that?
A. No.
Q. Did you ever hear anyone say or suggest that the turn around at Scott Paper wasn't as good as Mr. Dunlap said it was?
A. No.
Q. Did you ever hear anyone say or suggest that Mr. Dunlap had just made Scott Paper look good so it could be sold?
A. No.
Q. The expression "prettied it up for sale," did you ever

Page 45

hear that?
A. I don't remember hearing that.
Q. Now, we talked some about the buy side and the sell side differences, and I believe you said you worked primarily on buy-side transactions.
Did you participate in any meetings with other companies, third parties, in which a sell-side transaction was discussed, that is selling Sunbeam to those companies?
A. No.
Q. Now, while you worked at Morgan Stanley did you have a calendar in which you kept track of your meetings and an appointments?
A. No.
Q. You did not have a calendar at all?
A. Not at that time, no.
Q. How did you keep track of things you needed to do?
A. Things were day-to-day as a first-year associate n investment banking. There were very few meetings planned for the future.
Q. Did you have a -- any system whereby you kept track of what you had done? Did you have to do a time sheet?
A. Yes.
Q. Okay, what did you put down on your time sheet?

NOT A CERTIFIED COPY

010025

Page 46

A. I would put down how many hours I worked on which -- on what transaction.
Q. Aside from the number of hours, was there any description of what you did?
A. No.
Q. Any codes you put down to indicate what types of matters you were working on?
A. Just the client code.
Q. What happened to the time sheets after you finished them? Where did they go?
A. I believe the practice was that they went to the M&A -- what is called "M&A Admin."
Q. Did you ever receive reports on how many hours you worked on particular matters?
A. While I was working on that transaction?
Q. Yes.
A. No.
Q. After the transaction?
A. No.
Q. When it came time to do your evaluation form at the end of the year was there some information to you to indicate what you had worked on and how much time?
A. No, not how much time.
Q. Okay, what purpose -- let me withdraw that.

Page 47

Do you have any understanding of what use was made of the time sheets and the information there on that you prepared?
A. I'm not sure what they were used for.
Q. Okay, were you ever told while you were working on this transaction that your hours were high, or low, or in between? I mean, anything like that?
A. I don't recall being told that, no.
Q. Okay, in connection with the work that you did for Sunbeam, did you ever put together a calendar or chronology of various events performed by Morgan Stanley?
A. I don't personally recall putting together such a calendar.
Q. Have you ever seen one?
A. Sure.
Q. When did you see it, while you were working on the deal?
MS. BROWN: Any time you ask him about documents he saw, he will exclude any documents that he saw in preparation for his deposition.
MR. BRODY: Well, we will get to that.
BY MR. BRODY:
Q. Did you see the chronology or calendar while you were working on the deal?

Page 48

A. Yes.
Q. Do you know why the chronology or calendar was put together?
A. I don't -- I don't specifically recall why it was put together, however, we were -- I would suspect that we were trying to keep track of when things happened.
Q. Mr. Webber, I have given you what has been previously marked as Exhibit No. 84. Have you seen that document before?
MS. BROWN: Other than yesterday?
A. I don't recall seeing this before.
Q. Is this the type of chronology or calendar that you believe you saw while you were working on the deal?
A. Yes.
Q. Does this appear to be a Morgan Stanley document?
A. Yes.
Q. You recognize the form?
A. Yes.
Q. Having looked at this document do you have any understanding as to why Morgan Stanley would prepare such a document?
A. I don't recall specifically why we rated this document.

Page 49

Q. Did you have anything to do with the creation of this document, Exhibit No. 84?
A. I don't recall having anything to do with the creation of this.
Q. If you look at the last page of the document there is a little footnote, "Footnote A."
A. (Witness complying.)
Q. It refers to the MS Team consisting of B. Strong, J. Stynes, R. Kitts, A. Fuchs, G. Yoo, Webber, T. Chang and L. Rafi.
A. Correct.
Q. Mr. Yoo is a name that I don't think we mentioned today.
A. Correct, Gene Yoo.
Q. Did you work with Mr. Yoo?
A. He -- not very much. He was an associate on the transaction who worked on the transaction primarily before I came on, and I think when I came on to the transaction it was largely as a replacement for him as the day-to-day person on the transaction.
Q. Do you know where Mr. Yoo went at the time?
A. He was still at the M&A department, and he still had some limited involvement with Sunbeam.
Q. Now, I'm going to refer you to that note, and I ask

NOT A CERTIFIED COPY

Page 50

you to flip back to the first page of the document, and if you look on the August 5th entry it refers to a letter to Lester Crown, and the participants are shown as the MS Team, and the little "a" there I assume is meant to refer to the note that I just read to you.
Is it correct, sir, that in August of '97 you were not working on the matter?
A. That's correct.
Q. Notwithstanding the fact you're in the note here?
A. Correct.
Q. And so you would not be working on this matter until some time after the first of the year?
A. Correct.
Q. We will return some more to this document, sir, but I would ask you to put it -- well, before you put it aside, sir, the chronology runs through March 2, the announcement of the transaction.
A. (Witness complying.)
Q. Morgan Stanley's work continued after March 2nd?
A. Yes.
Q. Do you have any understanding as to why the chronology stopped on March 2nd?
A. No.
Q. Having seen that it stopped on March 2nd, does that

Page 51

refresh your recollection or inform you as to what purpose the document was prepared for?
A. No.
Q. Okay, as I said, we will return to that document.
Focussing on the Coleman transaction, Sunbeam's acquisition of its interest in Coleman, did you have any meetings with individuals from either Coleman or MacAndrews and Forbes?
A. Yes.
Q. How many?
A. I specifically remember one meeting in which there were members present from Coleman, and MacAndrews and Forbes, and I believe I was in at least one more meeting. It's very vague, I don't recall the specifics, or even where that meeting was, the second one.
Q. The second meeting.
A. Yes.
Q. In addition to meetings did you have telephone calls with people from Coleman or MacAndrews and Forbes?
A. I participated in conference calls. I don't recall ever having one-on-one contact with any members.
Q. Do you recall the subject matter of any of those conference calls?

Page 52

A. I recall the negotiations of the Coleman -- I recall negotiations of an exchange ratio, or a price to be paid for Coleman shares -- let me take that back.
I believe it was for Coleman shares.
Q. It could have been one of the other deals?
A. Actually, I don't -- I don't recall, specifically.
I believe the other deals were cash, so it couldn't have been the other deals, it must have been Coleman.
Q. Who do you remember being on the call?
A. I recall Alex Fuchs and Bob Kitts being on the call, and, actually, it was several calls over the course of a day. We were in contact periodically throughout the day.
Q. Aside from Mr. Fuchs and Mr. Kitts, do you remember anyone else being on the call?
A. I don't recall anyone else being on the call.
Q. Who from MacAndrews or Coleman?
A. I don't remember.
Q. Do you remember the substance of the questions?
MS. BROWN: Asked and answered.
MR. BRODY: I'm sorry?
MS. BROWN: Asked and answered.
BY MR. BRODY:

Page 53

Q. Well, beyond that do you remember anything else that was discussed, any specifics, or prices, or --
A. It was a negotiation.
Q. Did the negotiation conclude in the calls that you were on?
A. I don't believe I was on the final call in which an agreed upon exchange ratio was reached.
Q. These were all on the telephone, you did not participate in any in-person negotiations?
A. Correct.
Q. I think we may spend some more time on that later, but let's return to these meetings with Coleman and Mafco.
A. Okay.
Q. You said you remember one meeting?
A. Yes.
Q. When was that?
A. I don't recall the date.
Q. Where was it?
A. I believe it was at MacAndrews and Forbes, I know -- I believe it was on -- I believe it was in the mid down, on the east side, which is where I believe their headquarters are, so I believe that is where it was.
Q. Who was that?
A. I recall from Morgan Stanley Alex Fuchs being there,

NOT A CERTIFIED COPY

018027

Page 54

myself, for sure, and I believe there were -- I believe Tyrone Chang was there as well, but I'm not certain.
Q. Perhaps others?
A. From Morgan Stanley, perhaps. I don't recall any others.
Q. And who was there from the Coleman/MacAndrews side?
A. I recall Jerry Levin was there, Joe Page was there, and there were -- there were others, probably three to six other people, but I don't -- I know that a few of them were from MacAndrews and Forbes, I don't recall their names.
Q. Was anyone there from Sunbeam?
A. I don't recall anyone being there from Sunbeam.
Q. What do you remember being discussed at the meeting?
A. I don't recall the specifics of what was discussed at the meeting.
Q. Do you remember in general what was discussed?
A. No, I don't.
Q. Do you have notes of the meeting?
A. No.
Q. Would anything refresh your recollection of what happened at the meeting, what you're aware of?
Anything I can show you that might bring it back?

Page 55

A. I can't say. Perhaps.
Q. As you sit here, you don't recall any of the substance of the conversation?
A. No, I recall looking at financials, but I don't recall whose financials they were, and what we were doing.
Q. Okay, you said you believe there might have been one additional meeting. What do you recall about that additional meeting?
A. I recall being -- I believe we were at Ron Pearlman's offices, and the only reason I'm remembering this is because of the offices themselves.
Q. What do you remember about the offices?
A. They were very nice. I don't remember what we were doing there.
Q. Do you remember anything about the physical layout of the room you were in, or --
A. I remember it being more like a town house than actually an office building.
Q. Okay, in this meeting at Mr. Pearlman's office, who was there?
A. I don't recall.
Q. Was Mr. Pearlman there?
A. I don't recall.
Q. You don't remember meeting him?

Page 56

A. I don't remember ever meeting him.
Q. Okay, and you don't remember the substance of any communications?
A. No, no.
Q. Okay, why don't retake our first break.

(Brief break.)

BY MR. BRODY:
Q. Mr. Webber, turning to the chronology that was marked as Exhibit No. 84, which is in front of you, I'm going to ask you to start on Page 4 of the document, and it says "December 12th" at the top.
A. Okay.
Q. I ask you to look through there and tell me what is the first event on the chronology that you recall having participated in as a Morgan Stanley employee?
A. I don't recall being involved in any of these meetings.
Q. That is on Page 4?
A. Yes.
Q. You can turn to the next page.
A. (Witness complying.)
Q. Just so you know, your name first appears at the

Page 57

February 11th entry.
A. Yes.
I do recall being at that February 11th meeting. I don't recall anything prior to that.
Q. And the February 11th meeting is with T.H. Lee, that involves a different transaction?
A. That involves the acquisition of Signature Brand and First Alert.
Q. Okay, turning to the page before, the page you didn't remember, down the bottom there is a meeting with Mafco, which it says, "reinitiate talks, re: Coleman."
You weren't involved in that meeting?
A. I don't recall being involved.
Q. Do you have a recollection of why talks needed to be reinitiated?
A. No.
Q. I think that is the fact that that was before your time?
A. I believe that was before my time, yes.
Q. Okay.
The February 11th entry involves First Alert a Signature Brands.
Turning to the next entry, the February 12th, Conair, do you recall doing any work on a Conair deal?

NOT A CERTIFIED COPY

018028

Page 58

A. I don't recall doing any work on Conair.
Q. Now, if you turn to the next page, February 13th, meeting with Sunbeam, you understand "SOC" to refer to Sunbeam?
A. Yes.
Q. "Meeting with Sunbeam, discuss Coleman transaction and tactics negotiated with J. Maher via telephone."
Do you believe you participated in such a meeting or negotiations?
A. I don't recall being part of that meeting.
Q. Do you ever remember any conversations with Mr. Maher, M-A-H-E-R?
A. No, I remember his name being on the transaction. I don't recall specifically speaking with him.
Q. The February 19th entry identifies a meeting with Sunbeam, and among other participants you were listed. Do you have a recollection of that meeting?
A. No.
Q. Okay, the third entry says, "Preliminary handshake agreement on 0.745 exchange ratio."
Did you participate in any conversations in which that arrangement was reached?
A. I believe that was the arrangement that I discussed earlier when we reached -- when an agreement was

Page 59

reached on a price for Coleman.
Q. Did you participate in a discussion in which the agreement was reached?
A. I was not an active participant in a discussion. I believe I was on the line as part of conference call n some of the conversations. As I said, it was a series of conversations throughout the day.
Q. And aside from the fact that those conversations took place, did you have any recollection of what was discussed in words or in substance in those negotiations?
A. I recall it being a negotiation on the price for Coleman.
Q. Do you remember the range that was being discussed?
A. No.
Q. In those negotiations that you were aware of, was anything being negotiated other than a stock-exchange ratio?
A. I don't recall the specifics.
Q. So, maybe, yes; maybe, no?
A. I don't recall.
Q. Do you remember in the conversation with representatives with MacAndrews and Forbes, any discussion about how things were going with Sunbeam?

Page 60

MS. BROWN: Objection to form.
A. I don't recall the specifics of any conversations with MacAndrews and Forbes?
Q. Okay, you can put that document aside for a bit.
Are you familiar with the term "due diligence"?
A. Yes.
Q. What does that term mean to you?
MS. BROWN: Objection to form.
A. Are you talking about due diligence for an M&A banker, or for -- I think it means different things for different -- in different roles.
Q. What does it mean to an M&A banker?
A. It means -- it means the gathering of information through as many sources as is reasonable to become as familiar with a company as possible.
Q. Does THE term "due diligence" have different meaning for someone outside of the M&A field?
A. I suspect it does.
Q. Do you have any understanding of what it means to do due diligence in a public offering, or the underwriting of a public offering?
A. I didn't work on public offerings, or securities transactions, so I would be uncomfortable saying what it involves.

Page 61

Q. Do you understand it to mean something different to a public offering underwriter as opposed to an M&A banker?
A. Well, what I understand is they are different types of transactions, so I suspect that a due diligence process might be different depending on the type of transaction that you're working on, however, I didn't work on a securities transaction, so I'm not -- I don't want to -- I feel uncomfortable speaking about the specifics of a due-diligence session.
Q. Okay.
In the M&A circumstance I believe you testified that it was the gathering of information from as many sources as is reasonable, and then you continued.
What sources does an M&A banker gather information from in the course of doing due diligence?
A. From public information, such as an annual report or a 10-K, from other -- from research analysts who write reports on a company, and from company management.
Q. And the Sunbeam engagement, you gathered information from all of those?
A. I don't recall the specifics of the due diligence that was done on Sunbeam.
Q. All right, I believe you testified that it's the

NOT A CERTIFIED COPY

018029

Page 62

gathering of information from as many sources as is reasonable.

How do you determine what is reasonable?

A. Well, I think an M&A banker would do the best job they could gathering information. You need to rely on other parties as well, such as the company management, to provide you with information, auditors provide you with information, and you compile all of those sources and try to become as informed as you can.

Q. But as an investment banker, the job you performed, how did you determine what was a reasonable amount of investigation at which point you could stop, or what was the amount of investigation that required you to do more?

A. We would do a through job, but we would also rely on information that was provided to us by the company, and we rely on -- and we would use information or -- that was created by outside parties, such as other research analysts.

Q. When you received information from the company -- let me withdraw that.

You referred to receiving information from the company. From whom at the company do you receive information?

Page 63

A. On a typical M&A project?

Q. Yes.

A. It could come from any number of sources, quite often the financial division of the company, or perhaps the CFO, or sometimes even the President or the CEO of the company, depending on what information it is.

Q. In performing due diligence of an M&A client, did you ever speak to customers of the client?

A. It would not be typical in an M&A transaction to speak to customers. I don't believe I ever did.

Q. Did you ever talk to other third parties outside of the company, vendors, for example?

A. I don't recall speaking to vendors.

Q. In dealing with people at the company did you ever speak to employees below the senior management level, below the CFO, CEO --

A. Yes.

MS. BROWN: Objection to form.

BY MR. BRODY:

Q. At what level? Who did you speak with?

A. Are you talking about somebody specifically?

Q. Sure, specifically.

A. I don't recall doing any -- I don't specifically recall due diligence on Sunbeam itself, the company itself.

Are we talking about other targets that Sunbeam was looking at?

Page 64

Q. We will get to that, but let's focus on Sunbeam.

A. All right.

I don't recall the due diligence process that occurred on Sunbeam itself.

Q. Is that because it was done by others, or you don't recall?

A. Again, I was -- I joined the team quite late into the process, and it's quite possible that the due diligence was done before I arrived, but I don't recall.

Q. Who was in charge, or who was responsible for doing due diligence from Sunbeam from the M&A side of Morgan Stanley?

A. The senior people on the team would be responsible for all activities.

Q. Well, I assume Mr. Strong, as the most senior person was ultimately responsible, but who did the work?

A. I don't recall the specific due diligence on Sunbeam, so I don't know who did the work.

Q. When Morgan Stanley did due diligence of a company, did it collect a file of information, or a repository

Page 65

information about the company?

MS. BROWN: Objection to form.

A. I don't think there was any one way in which we collected information that was consistent.

Q. Okay, well, in the Sunbeam transaction did Morgan Stanley collect information and put it somewhere where it could be consulted by others?

A. I'm not familiar with the due diligence process on Sunbeam.

Q. When you were doing the analysis and presentations that you were doing, where did you go for information about the company?

A. From the targets?

Q. No, let's focus on Sunbeam.

A. For the work that I specifically did, which was primarily financial analysis of the combination of Sunbeam with other targets, I used -- I used estimates for Sunbeam earnings, which are --

Q. That is I/B/E/S?

A. Which are publicly available estimates that are compiled by research analysts.

Q. That was the source of information that you used about Sunbeam?

A. Yes.

NOT A CERTIFIED COPY

0018030

Page 66

Q. Did you ever speak to the people at Sunbeam about how accurate that information was?
A. I don't recall speaking to them about it.
Q. You're aware that there was some public offering of subordinated debentures in connection with financing the acquisitions?
A. Yes.
Q. Did you have any role in that financing effort?
A. Virtually none.
The only role I would have had would be supporting -- answering questions here or there for John Tyree as he prepared the materials, but it was very, very limited.
Q. Do you know who was in charge of doing the due diligence in connection with that transaction?
A. No.
Q. Judging by your earlier answers, is it correct to say that the due diligence done in the financing may involve different efforts than the due diligence you did?
A. It may. I am not familiar with it, so I cannot comment.
Q. So you can't speak as to what the responsibilities of an investment banking professional are in that

Page 67

circumstance?
A. No.
Q. What training did you receive in performing due diligence?
A. I don't recall specific training in due diligence, however, I was part of -- I was a junior member of teams on several transactions, not just Sunbeam, in which due diligence efforts were underway, and I learned from the people senior to me.
Q. I'm sorry, you --
A. I learned from the people senior to me who are in charge of the process.
Q. So you learned on the job?
A. Yes, and I don't recall -- I don't recall any specific training on due diligence, however there may have been some.
Q. Do you ever see any manuals or program materials by Morgan Stanley on how to perform due diligence or how not to perform due diligence?
A. I don't recall seeing anything.
Q. All right.
In the M&A business at Morgan Stanley, was there a practice or a policy of what sort of due diligence materials to keep, a file to keep?

Page 68

A. I don't recall there being a specific policy, no.
Q. If in the course of performing due diligence about a company, you, as an investment banker, uncovered some bad news about the company, what are you supposed to do with that information?
MS. BROWN: Objection to form.
A. I think it's -- it would be my role to understand the news, understand -- understand what we uncovered, why it's happening.
Q. And beyond that what would you do with it? What is your understanding?
MS. BROWN: Objection to form, hypothetical.
A. Well, it depends. Specifically what situation am I in?
Q. Well, let me ask it a little differently.
In the Sunbeam transaction did you ever uncover any bad news about Sunbeam?
MS. BROWN: Objection to form.
A. No, I did not uncover that. I was not involved in the due diligence process for Sunbeam.
Q. Can you identify anyone at Morgan Stanley in the investment banking department on the M&A side that was involved in due diligence of Sunbeam?
A. I can't. I don't recall the due diligence efforts on

Page 69

Sunbeam.
Q. Can you identify anyone on the underwriting side, the pub securities side that was involved in the due diligence?
A. No.
Q. Do you know if anyone at Morgan Stanley looked at Sunbeam's use of restructuring reserves, as part of its reinstructing?
A. No.
Q. Do you know if anyone at Sunbeam -- excuse me.
Do you know of anyone at Morgan Stanley, in the course of this transaction, contacted any of Sunbeam's customers.
A. I don't know if that happened.
Q. Do you me anyone at Sunbeam -- I keep saying "Sunbeam." Let me withdraw that.
Do you know of anyone at Morgan Stanley that did any investigation of due diligence into Sunbeam's first-quarter sales?
A. I don't recall any investigation.
Q. Do you know of anyone at Morgan Stanley that looked into how Sunbeam budgeted its 1998 budget?
A. I don't recall anyone looking into that.
Q. In the course of the work that you did at Morgan

NOT A CERTIFIED COPY

Stanley on the Sunbeam transaction, did you have any contact with Sunbeam's auditors?
A. I don't recall any contact.
Q. Were you aware that Arthur Andersen was Sunbeam's auditor?
A. Yes.
Q. Did you ever have any communication with them?
A. I don't recall any.
Q. Let me just mention some names and see if they refresh your recollection.
Mr. Harlow?
A. No.
Q. Mr. Bornstein?
A. I remember that name. I don't believe I ever talked to him.
Q. Mr. Rockleman?
A. No.
Q. Mr. Pastrano?
A. No.
Q. Okay, you said you remembered Mr. Bornstein's name.
A. Yes.
Q. Do you have any recollection about what?
A. No.
Q. And you never visited Sunbeam's offices in Florida?

A. No.
Q. Have you ever visited any of their facilities or factories?
A. I don't believe I did, no.
Q. Did you do any investigation or work into looking at how Sunbeam had accomplished its restructuring, its -- its reinstructing under Mr. Dunlap?
A. No, I did not look into that.
Q. Do you know of anyone at Morgan Stanley that did that?
A. I'm not familiar with the due diligence process. I don't know.
Q. Okay.
Returning to our -- the chronology that Morgan Stanley prepared, sir, I would like to refer you to a couple of other entries.
There is an entry on February 23rd which appears to be the sixth page of the document.
A. (Witness complying.)
Q. You see your name listed there?
A. Yes.
Q. And at the location of the meeting is MCO, HQ, New York.
A. (No response.)
Q. Do you have an understanding as to what that means?

A. I suspect that means MacAndrews and Forbes Headquarters.
Q. Does that refresh you recollection that -- let me withdraw that.
I believe you testified that you remember one meeting at MacAndrews and Forbes Headquarters in New York?
A. Yes.
Q. And there is a number of names there, Mr. Levin and Mr. Page are among them.
A. Yes.
Q. And there are a bunch of other names including some Sunbeam people, and some Morgan Stanley people?
A. Yes.
Q. Does that refresh your recollection as to who attended the meeting that you attended?
A. It doesn't refresh my memory, however, I -- I suspect this is the meeting that I intended.
Q. Among the attendees, in addition to Mr. Levin and Mr. Page, are Mr. Nezbit. Do you ever remember speaking with Mr. Nezbit?
A. No, I do not.
Q. Mr. Goudis, I think you earlier testified you spoke with him?

A. Yes, I did.
Q. Do you remember meeting with Mr. Goudis and the Mafco people?
A. I don't recall Mr. Goudis being at the meeting that I was at.
Q. Fair enough.
It also identified an entry for CSFBT. Do you recall that Credit Suits, First Boston was involved in this transaction?
A. Yes.
Q. Do you remember who they did work for?
A. They were on the other side from us, so I'm not sure if they worked for MacAndrews and Forbes, or they worked for Coleman, specifically, or Ron Pearlman, but the other side.
Q. Okay, do you remember who worked on the deal from CSFB?
A. No.
Q. Do you remember Mr. Gordon Rich?
A. No.
Q. As you sit here do you recall any meetings with anyone from CSFB?
A. No.
Q. If you look at the entry here, it refers to strategic

NOT A CERTIFIED COPY

008032

Page 74

due diligence meeting with CLN, or Coleman.
A. Yes.
Q. Do you believe that is the meeting you attended?
A. I don't recall the specifics of the meeting, however, based on the attendees and the location I suspect it was the meeting that I attended.
Q. Having seen this, does it refresh your recollection that in fact one of the things discussed was what was going on at Coleman?
A. It does not.
Q. Did you do any due diligence of Coleman?
A. I don't recall doing any due diligence.
Q. Do you know who did?
A. Well, let me take that back.
That is not entirely true. I did do some due diligence on Coleman.
Q. What did you do?
A. I worked extensively on the potential sale of East Pack, and I did due diligence on -- as related to that transaction.
Q. Anything else that you recall doing?
A. I don't recall doing any due diligence.
Q. Do you recall if the East Pack transaction closed before or after the Sunbeam acquisition of stock in

Page 75

Coleman?
A. To my recollection it didn't close.
Q. Referring to this entry on the 23rd, do you recall after that meeting, perhaps on the same day, a further meeting at Morgan Stanley's offices?
A. I do not.
Q. Do you remember any meeting at Morgan Stanley S offices in which the MacAndrews and Forbes people, and the Sunbeam people were present?
A. I do not.
Q. Have you ever come to learn, sir, that one of the things Sunbeam did was accelerate sales from 1998 into 1997, which had an impact on '97 and '98 financials?
MS. BROWN: Objection to form.
A. Could you be more specific as to when you're asking me if I knew that?
Q. At any time did you come to learn that?
A. I -- yes, I understand now that that has happened.
Q. When did you learn that that had happened?
A. I don't recall specifically when I learned when it happened.
Q. Did you learn before or after the closing of the Coleman transaction?
A. I don't recall when I learned.

Page 76

Q. Do you remember how you learned?
A. No, I do not.
Q. Are you familiar with the term "bill and hold sales"? "Bill and hold"?
A. I'm not familiar with the term.
Q. Were you familiar with the term "bill and hold sales" while you were working on the transaction?
A. I don't believe I was, no.
Q. In the work that you did for Sunbeam, and the modeling, and so on, that you did, did you ever look at the affect of Sunbeam's sales practices on its profit margin?
MS. BROWN: Objection to form.
A. I don't recall it. I don't recall ever looking at that.
Q. Now you're aware that Mr. Dunlap had come to Sunbeam and made changes to decrease costs and improve the profitability of the company?
A. Yes.
Q. And that was one of the things he was famous for?
A. Yes.
Q. Did you or anyone else, to your knowledge, at Morgan Stanley, look at how Sunbeam lowered its costs and whether that policy would be sustainable?

Page 77

A. I don't recall looking into that.
Q. Okay, and I may have asked you this, sir, but did you do any investigation, or do any analysis of Sunbeam's reserves and how those reserves were used in 1997?
A. I don't recall ever looking at those.
Q. Do you know if anyone at Morgan Stanley looked at that?
A. I don't recall if anyone did that.
Q. Do you remember any discussion prior to the Sunbeam-Coleman transaction within Morgan Stanley about bill and hold or the acceleration of sales from one year into the prior year?
A. I don't recall when I heard about those discussions -- I heard those discussions.
Q. I may have asked you, but do you remember from whom?
A. No, I don't.
Q. Now, one other topic relating to the work that was done at the time.
Did you do any investigation or analysis of Sunbeam's 1998 earnings or earnings per share -- projections of earnings?
A. I don't recall ever doing that. We -- earnings per share estimates that we used were from I/B/E/S.
Q. And the source of the I/B/E/S information was analyst

NOT A CERTIFIED COPY

018033

Page 78

reports prepared by others?
A. Correct.
Q. And at the time of this transaction did Morgan Stanley do its own research on Sunbeam?
MS. BROWN: Objection to form.
MR. BRODY: Let me withdraw that.
BY MR. BRODY:
Q. At the time of this transaction did Morgan Stanley do equity research? Did it follow the stock of Sunbeam?
A. I don't recall if it did or not.
Q. Do you remember using any information from Morgan Stanley's equity analysts, or that department, in the work that you did?
A. I don't recall using that.
Q. Okay, the next entry on this -- the Morgan Stanley chronology is a meeting, again, with Sunbeam at MSHQ, New York, and also identifies a conference call, and you were identified as a participant.
Having seen this, does it refresh your recollection any about whether there was a meeting at Morgan Stanley Headquarters that you attend?
A. It does not.
Q. The chronology identifies meetings with Wachtell. Do you remember who, or what party Wachtell represented?

Page 79

A. No, I don't.
Q. Do you remember any meetings from individuals with Wachtell?
A. No.
Q. And SASM, I will state for the record that that is a reference Skadden Arps.
Do you remember who Skadden Arps represented?
A. No, I don't.
Q. Do you remember any meetings with them?
A. No.
Q. Okay.
Mr. Webber, I have given you what has previously been marked as CPH Exhibit No. 9, and it's identified as "Sunbeam Corporation Discussion Materials, February, 1998."
If you look down at the bottom, the bottom, right, it has the word "Morgan Stanley."
A. Yes.
Q. Do you recognize this as a Morgan Stanley presentation book?
A. Yes.
Q. Did you have a role in the preparation of any of this document -- preparation, revision, organization?
A. I don't recall having any role in this document.

Page 80

Q. Is this -- let me withdraw that.
Have you seen this document prior to today, excluding your preparation session?
A. I don't recall ever seeing this document, however, given -- I suspect that I did.
Q. Do you suspect also that you had some role in creating or editing this document?
A. I probably did.
Q. What do you recognize this book as?
A. As I look through this document it appears to be a book which summarizes the Sunbeam company, and could possibly be used in discussing a sale of Sunbeam, and based on what I'm seeing, I would like to take back what I said, that I probably did have some input in creating this document, because I'm not sure that is true. I may not have had any.
Q. Okay.
This is the sort of material that would be shown in this form to a potential business combination target?
A. Yes.
Q. And it's prepared by Morgan Stanley?
A. Yes.
Q. Within Morgan Stanley, before material such as this

Page 81

are shown outside of the company, do they have to be approved by someone, or is there a practice on how they are prepared or approved?
MS. BROWN: Objection to form.
A. It's created by Morgan Stanley, and -- but there is no formal practice on how they are eventually approved.
Q. It's not as if it has to be signed off on by a Vice President?
A. There is no specific rules.
Q. Okay.
If you turn to the page bearing the production number in the corner, 26,290, it's about the fifth page in, it is the fifth page in within the executive summary, and it's entitled "Investment Rational."
A. Okay.
Q. Have you ever seen this page before, either in this document, or any other?
A. This specific page I do not recall having seen. I am familiar with an investment rational concept.
Q. What is your familiarity with an investment rational presentation?
A. It would be outlined -- specific reasons why a company would be an attractive investment target.
Q. Do you have any recollection or understanding as to

NOT A CERTIFIED COPY

Page 82

who at Morgan Stanley prepared this page?
A. I don't recall who would have prepared this page.
Q. Do you think it was you?
A. I do not think it was me.
Q. Looking at the -- at just the bullet points, the first bullet point states that "Sunbeam represents an attractive growth story and investment opportunity."
Do you know who at Morgan Stanley did any work or investigation into that?
A. I don't know who created this page, and I don't know who investigated Sunbeam.
Q. Referring to the second one, "Sunbeam has undergone a profound transformation."
Do you know anyone at Morgan Stanley that did investigation into what that transformation was, and how successful it was?
A. I don't recall being part of such an investigation, and I don't know who at Morgan Stanley performs such an investigation.
Q. Okay.
Do you recall being present at any meetings in which this document, or ones like it, a presentation booklet about Sunbeam were presented to third parties, including MacAndrews and Forbes?

Page 83

A. I don't recall being in any meeting when this document or a document like this was used.
Q. Okay, you can put that document aside.
MR. BRODY: Can we mark this as our first deposition today, "CPH 187."

(Exhibit 187, Plan, marked for identification.)

BY MR. BRODY:
Q. Mr. Webber we gave you what has been marked as Exhibit No. 187, and I will state for the record there are a variety of copies of this document floating around the case, others have been marked at prior depositions, but I believe this one has not.
Okay, having said that, have you seen this document before, sir?
A. I don't recall seeing this document.
Q. Okay, do you remember being at any meeting at which Mr. Goudis or Mr. Kersh, or Mr. Dunlap made presentations about this document containing this information?
A. I don't recall.
Q. If you turn to the page using the production number, in the far right corner, 254636, --

Page 84

A. (Witness complying.)
Q. -- and it describes projected earnings under the long range plan. Do you see this?
A. Yes.
Q. Have you ever seen this page before? Do you recall seeing this before?
A. I don't recall ever seeing this before.
Q. If you look at the 1998 earnings per share projection of $2.20, do you remember that being discussed that Sunbeam expected $2.20 per share?
A. I don't recall that.
Q. Do you remember Mr. Kersh or anyone else talking about how well Sunbeam was doing in the first quarter of 1998 in terms of a achieving that earnings per share?
A. I don't recall any of those -- any discussions along those lines.
Q. Do you remember anyone from Sunbeam talking about how sales were going, or how earnings were going in 1998?
A. No.
Q. Do you remember anyone from Morgan Stanley ever asking?
A. No.
MS. BROWN: Objection.

Page 85

A. I don't recall those discussions.
Q. Okay, turn to the last page of this document.
A. (Witness complying.)
Q. It is a description of first quarter 1998 earnings, comparing 1997 to the plan for 1998.
Does this refresh your recollection -- or based on this do you recall that Sunbeam was projecting earnings in the first quarter of 1998 of 32 cents per share?
A. I don't recall that number.
Q. You don't recall any discussion about those projected numbers?
A. No, I do not.
Q. Now, you testified earlier that you and Mr. Chang worked on a model of how well Sunbeam would do as a combined company, and I cannot remember the term you applied to that. A "merger model"?
A. Yes.
Q. Collection of pro formas; is that correct?
A. Correct.
Q. Did you ever compare those pro formas to what was actually happening at the company?
MS. BROWN: Objection to form.
A. What I recall doing is comparing them to I/B/E/S'

NOT A CERTIFIED COPY

018035

Page 86

estimates.
Q. And those are estimates of people outside of the company?
A. Correct.
Q. Now, returning to our chronology, sir, on the February 24th -- as on some of the others, there is reference about the terms and the final structure of the transaction, and I believe you testified you participated in one of those transactions -- one of those sets of calls, negotiations?
MS. BROWN: Objection to form, misstates.
BY MR. BRODY:
Q. Well, let me state it differently.
You participated in some calls in which the terms of the transaction was discussed?
A. The exchange ratio.
Q. Did you ever prepare term sheets or summaries of what those terms would be?
A. I recall preparing term sheets. I believe they were for Signature Brands and First Alert. I may or may not have created term sheet for Coleman. I don't recall.
MR. BRODY: Please mark this as Exhibit No. 188.

Page 87

(Exhibit 188, Fax, marked for identification.)

BY MR. BRODY:
Q. Mr. Webber, the court reporter has given you what has been marked as Exhibit No. 188.
Please look at it and I will be asking you some questions.
A. (Witness complying.)
Q. Turning to the cover of the document, it's a fax transmittal from you to Mr. Emmerich.
A. Yes.
Q. Is that your handwriting?
A. Yes.
Q. Do you remember who Mr. Emmerich was?
A. No.
Q. If I told you he was a lawyer involved in this matter, this transaction, would that refresh your recollection any?
A. It doesn't refresh my memory, but I believe you --
Q. Okay.
Do you have a recollection as to why you sent this to Mr. Emmerich?

Page 88

A. No.
Q. Turn to the term sheet that follows.
A. (Witness complying.)
Q. Do you believe that this is something you drafted?
A. I believe this is something I had -- I was involved in creating, yes.
Q. What do you mean by that?
A. I think there was more than one person who did this. I think it was -- I was part of a -- my recollection is that Alex Fuchs and I created this document together.
Q. If you look at the structure of the transaction, and there is Consideration Package One, and Consideration Package Two -- do you see that?
A. Yes.
Q. Does that refresh your recollection of what was discussed in the calls?
A. No.
Q. Do you ever remember a time where MacAndrews and Forbes was being given a choice to take either Package A, or what is behind the box of Carol Merel standing in front of sort of thing?
MS. BROWN: Objection.
A. I remember them having a choice.

Page 89

Q. What do you remember them discussing about the choice?
A. Nothing other than the fact that there were two options -- more than one option, actually.
Q. As the negotiations went on there were discussions about the amount of cash and the amount of stock, more cash, less cash; more stock, less stock.
Do you remember the position taken by MacAndrews and Forbes about whether it would take more cash or more stock?
A. I don't.
Q. Do you remember any discussion within the Morgan Stanley-Sunbeam side about whether it wanted to offer more stock or more cash?
A. I do not.
Q. If you turn to the last page of this document there is a transaction pricing calculation. Is that something that you prepared?
A. (Witness complying.)
I don't recall preparing this.
Q. The last column refers to implied price per Camper share. Do you recognize Camper as Coleman?
A. Yes.
Q. What does that imply-price column mean?
MS. BROWN: Objection, foundation.

NOT A CERTIFIED COPY

018036

A. If I'm reading this correctly, it means that is the value to be received for a share of Coleman stock.
Q. So as of the time --
A. As of the time of the transaction, right.
Q. So as of the time this document was created, if the structure helps way, the implied price of the stock would be 28/68?
MS. BROWN: Objection, foundation.
A. According to this document, and that Laser share price, shareholders of Coleman would receive $28.68 worth of value for each share Coleman had.
Q. And the laser share price is the Sunbeam?
A. Right, correct.
Q. And just looking at this model of the transaction, if the Laser share price went up, the implied price per Camper share would also increase?
A. Correct.
MR. BRODY: Mark this, please, as 189.

(Exhibit 189, Fax, marked for identification.)

BY MR. BRODY:
Q. Mr. Webber, I have asked the court reporter to give

you what has just been marked as Exhibit No. 189, and the cover page is a fax transmittal from yourself to Alison Amorison.
A. Yes.
Q. Is that your handwriting?
A. Yes.
Q. Do you recognize the name Alison Amorison?
A. I do recall that name.
Q. Do you know what her role was in this deal?
A. I do not.
Q. If I were to tell you that she was also a lawyer, and a lawyer at the law firm of Skadden Arps, does that refresh your recollection?
A. It doesn't refresh my recollection.
Q. Having seen these two documents, they appear to have been sent on the same day, is that correct, roughly the same time?
I'm just looking at the transmittal at the top.
A. I don't seem to have dated the cover sheet.
Q. I'm referring to the fax cover lines on the first page of each.
MS. BROWN: Objection.
A. It appears they were sent at the same time.
Q. Having seen that, does that refresh your recollection

any as to why you were sending these documents to those people at those times?
A. No, it does not.
Q. The final structure -- do you have a recollection as you sit here what the final structure was for the transaction with Coleman?
MS. BROWN: Objection to form.
A. I don't have a recollection, but as I sit here, as I read these documents, I recall what the documents say, but I don't recall if this was the final structure used.
Q. I guess you're getting at what I was asking about.
The -- you're aware that as part of this transaction -- are you aware that as part of this transaction Sunbeam paid some cash to Coleman, or to Mafco?
A. I'm actually not. I don't recall if that cash was part of the transaction or not.
Q. Are you aware that as part of the final consideration Sunbeam assumed some debt at the holding-company level?
A. I'm not aware that that was part of the final transaction.
Q. And do you remember any discussions within Morgan

Stanley with Sunbeam, or with MacAndrews and Forbes about those components of the transaction, the amount of cash or the assumption of debt?
A. I recall that there were discussions on the structure of the deal that included non stock -- included items other than solely common stock.
Q. Do you remember the positions taken by anyone in those discussions?
A. No.
Q. Turning to the chronology, sir, what we marked as Exhibit No. 184, you can put those other documents aside --
A. (Witness complying.)
Q. -- I refer you to the document, and it's Page No. 7, the second to last page of the document.
A. (Witness complying.)
Q. I ask you to look at the entry for February 25th at the top.
A. (Witness complying.)
Q. It shows a meeting with Sunbeam at Morgan Stanley Headquarters in New York, and you're listed as a participant, or an attendee.
Does that refresh your recollection that perhaps you did attend a meeting on the 25th with some or all

NOT A CERTIFIED COPY

018037

Page 94

of those people?
A. It does not, no.
Q. Do you remember any meetings with Mr. Dunlap, personally, at Morgan Stanley where he came there?
A. Yes.
Q. How many?
A. That I was a part of?
Q. Yes, that you were at.
A. I specifically -- I recall being in a conference room at Morgan Stanley with Mr. Dunlap. I don't recall how many times that occurred, or what was discussed at those meetings.
Q. Aside from the time he sent you out to get the stock price, do you remember any things that were discussed in words or in substance in those meetings?
A. In meetings at Morgan Stanley?
Q. With Mr. Dunlap.
A. With Mr. Dunlap?
No, I do not.
Q. Okay.
Turning to the next entry here, sir, the entry for the 26th, it's another meeting with Sunbeam at Morgan Stanley Headquarters. The description is the same as the prior one, and you were shown as an attendee.

Page 95

Do you remember attending that meeting?
Does that refresh your recollection, sir?
A. No, it does not.
Q. Okay, the next entry refers to the board meeting.
Do you remember attending a Sunbeam board meeting at which these transactions were approved?
A. I do, and this refreshes my memory that there was a second meeting Mr. Dunlap attended at Morgan Stanley, which was this board meeting.
Q. Okay, so the Board of Directors' meeting -- Sunbeam Board of Directors' meeting at which the transactions were approved was held at Morgan Stanley?
A. Yes.
Q. The entry here lists a bunch of people attending the MS Team, and then some others.
B. Smith. Do you know who B. Smith is?
A. Bram Smith.
Q. Do you know what his role was in this deal?
A. He works for Morgan Stanley in their Bank-Debt Division.
Q. Did you have any dealings with Mr. Smith concerning this transaction?
A. No, I did not.
Q. The next person is R. Porat. I understand that to be

Page 96

Ruth Porat?
A. Yes.
Q. Do you know what her role was in the transaction?
A. I don't recall her being involved in the transaction.
Q. Okay, did you work with her on other matters?
A. Yes, in my career at Morgan Stanley I worked with her on other matters.
Q. And what part of Morgan Stanley was she involved with?
A. I believe she was involved with Equity Capital Markets, although she had a number of rolls at Morgan Stanley.
Q. There is also an M. Hart. Do you understand who M. Heart is?
A. Yes, I believe that is Mike Hart. I don't recall -- I don't recall specifically what he did.
Q. And then finally John Tyree. We talked about Mr. Tyree.
A. Yes.
Q. Do you remember Mr. Smith, Ms. Porat, Mr. Hart and/or Mr. Tyree being present at the board meeting?
A. I don't recall them being there.
Q. Do you remember them saying anything?
A. No.
Q. How long did the Board of Directors meeting take?

Page 97

A. I don't recall specifically how long it took.
Q. Fifteen minutes, five hours?
A. It was -- my guess would be it was a couple of hours.
Q. Did you speak at the meeting?
A. No.
Q. Do you remember who spoke from Morgan Stanley?
A. I recall Jim Stynes speaking at the meeting.
Q. Anyone else?
A. I don't recall anyone else speaking.
Q. Did Mr. Strong speak?
A. I don't recall him speaking.
Q. Do you remember others besides Mr. Stynes speaking at the meeting? I don't did mean Morgan Stanley people. Anyone.
A. I recall Mr. Dunlap speaking.
Q. Anyone else? Any of the lawyers?
A. No.
Q. Do you remember what Mr. Stynes said?
A. Mr. Stynes -- Mr. Stynes went through the presentations that I had helped create with the Board of Directors explaining the transactions.
Q. At that Board meeting did Morgan Stanley present Fairness Opinion?
A. I don't recall presenting a Fairness Opinion.

NOT A CERTIFIED COPY

018038

Page 98

Q. Do you know if Morgan Stanley ever presented a Fairness Opinion?
A. I don't recall if we did or not.
Q. I'm going to show you that presentation in a moment, sir, but before I do, do you remember anything else being said or discussed at the meeting, the Board of Directors' meeting?
A. The only thing I recall -- the only other thing that I recall, other than the presentation materials that were discussed, I recall Mr. Dunlap being unhappy with several board members who were late.
Q. What do you remember him doing, saying, or expressing?
A. I remember him telling people that they should get their own time and -- I don't remember the specifics of what he said.
Q. Okay.
MR. BRODY: Here is one for you, and one for Mr. Webber.
BY MR. BRODY:
Q. Mr. Webber, I have given you what has been previously marked as Exhibit No. 89, and it has handwriting on it that says "Tyrone Chang," and I believe Mr. Chang testified that that was his handwriting, and it's a copy of a presentation.

Page 99

Do you recognize this as the presentation to the Board of Directors at Sunbeam about the Coleman acquisition?
A. It appears to be.
Q. And is this a document you helped to create?
A. Yes, if this is in fact our presentation then I did help create it.
Q. At the top it says "preliminary draft." Do you know if this document was ever put in final form?
A. I don't recall if that draft stamp was ever taken off.
Q. If indeed this was presented to the Board of Directors, that would be the final copy, wouldn't it?
You wouldn't keep working on it after you presented it to the Board?
A. That's correct.
Q. I believe Mr. Chang testified that this was the copy of the presentation that he saved from that meeting, but I can't tell you that is the fact, that is just what he said.
This is a document -- let me withdraw that.
Aside from you, who else worked on this document, the preparation of this document?
A. Given the fact that there were three of these documents that needed to be created on a very short time frame, we solicited the help of a few people who were not on the Project Laser Team to help us with -- to prepare this document.

Page 100

Q. Do you remember who those people were?
A. I remember Davis Wang helped, and I remember Ed Lam, Assistant Manager, helped, but there were always -- they were not familiar with transactions, they were primarily always processing and, you know, work that was -- that didn't involve the knowledge of the transactions.
Q. Were they -- Mr. Wang and Mr. Lam associates or analysts?
A. Mr. Wang was an associate, Mr. Lam was an analyst.
Q. And who Mr. the Morgan Stanley team worked on preparing this besides yourself?
A. I believe Tyrone Chang.
I recall working on this with Tyrone Chang. I suspect Lili Rafi worked on it as well, but I don't recall working with her on it.
Q. Okay.
At the time this was presented --
A. Sorry, and Alex Fuchs worked on it as well.
Q. Did Mr. Fuchs review the work?
A. He reviewed the work, correct.

Page 101

Q. Did he make suggestions on things to change or improve?
A. I don't recall his comments.
Q. At the time this was presented to the Board of Directors, Sunbeam, did you believe it to be correct and accurate?
A. Yes.
Q. After that meeting were you ever advised that there was something in here that was wrong?
MS. BROWN: Objection. Compound and form.
A. I don't recall being advised that anything in this document was wrong.
Q. Okay, and I showed you the document that relates to the acquisition of Coleman. There were similar documents for the First Alert and the Signature Brand deal?
A. Yes.
Q. Let's focus on this. That should be enough.
If you turn to the page bearing the internal pagination No. 2, the first page was real tex'd up; do you see that?
A. Yes.
Q. Is that a page that you prepared?
A. I don't recall preparing this.

NOT A CERTIFIED COPY

OIB039

Page 102

Q. It describes the strategic rationale of the acquisition of Camper?
A. Yes.
Q. Is this to tell the Board of Directors of the potential up side of acquiring Coleman?
MS. BROWN: Objection, foundation.
A. I don't recall creating this document, but it appears to outline the strengths of an acquisition of Coleman.
Q. Okay, if you turn to the next page of text with internal pagination No. 3, it's entitled "Transaction Summary."
Do you know if this is a document you prepared, or perhaps Mr. Fuchs or Mr. Chang?
A. I don't recall who prepared this page.
Q. If you look down the bottom of the first column it refers to an expected closing in the second quarter of 1998.
A. Yes.
Q. The transaction was in fact closed in the first quarter of 1998; isn't this correct?
A. I believe it was.
Q. Do you know why that happened, why it was closed in the first quarter?
A. No, I don't.

Page 103

Q. Do you remember any discussions about that?
A. No, I don't.
Q. Up at the top of this page it refers to a two-step transaction, first the acquisition of the stock owned by MacAndrews and Forbes, and second the purchase of the public shareholders stock.
A. Okay, yes.
Q. Did you participate in negotiations in which that structure was laid out?
A. I don't believe I actively participated in that, no.
Q. Fair enough.
If you turn, please, to the document bearing the Bates Number, the production number, Morgan Stanley Confidential 83,979, the heading is "Preliminary Evaluation of Camper Company."
A. Yes.
Q. And what follows is a number of pages valuating Coleman.
Is that something you prepared?
A. I don't recall preparing this, but I suspect I was involved in preparing it.
Q. And at the time this was presented to the Board, this was Morgan Stanley's view as to the value of Coleman at that time?

Page 104

MS. BROWN: Objection, foundation.
A. Based on reading this document it appears to be.
Q. Well, let me ask it a little differently.
Do you remember Morgan Stanley giving any other information to the Board of Directors of Sunbeam about the value of Coleman, other than this document that has been marked as Exhibit No. 89?
A. No.
Q. Now, the methodology is described on the next page as "Four Valuation Methodologies." Do you see that?
A. I do see that.
Q. And maybe to just clear something up for me, there appear to be only three of them?
A. You're right there do appear to be only three.
Q. So that is a typo, it should be three valuation methodologies?
A. I suspect they are including LTM trading range as one of the valuation methodologies on the next page.
Q. Okay, and "LTM"?
A. Last 12 months.
Q. Do you know if this page is -- this page marked 83,980 is one you prepared?
A. I don't recall if I prepared this one or not.
Q. Well, turn to the next page.

Page 105

A. (Witness complying.)
Q. 83,981, the Summary Evaluation Analysis. Do you know who prepared this document?
A. I don't know who prepared this.
Q. Do you believe it's something you at least had some involvement in?
A. Yes.
Q. Let's go through those four methodologies.
The LTM trading range is the -- is what?
A. That is the price of publicly traded Coleman shares over the 12 preceding months. The range -- the low is $12.06, apparently, and the high was $20.88.
Q. And that is just the price you find at the back of "The Wall Street Journal"?
A. Yes.
Q. The next item is "Public Market Trading Analysis;" what is that?
A. That methodology is applying the earnings multiples that other similar companies are trading at to Coleman's specific earnings numbers.
Q. Is that an analysis that you did?
A. I don't recall doing that.
Q. And the -- where would the earnings multiples come from? Is that I/B/E/S?

NOT A CERTIFIED COPY

018040

Page 106

A. Of the other companies?
Q. Yes.
A. It would come from some form of publicly available research.
Q. There are three sub categories here, the first one is "Without Syn." Do you understand that to be synergies, S-Y-N?
A. Yes.
Q. And, "no control premium."
A. Right.
Q. And then the second one is, "without synergies and 50% control premium"?
A. Right.
Q. And the third one is with "P/T synergies of 50 million;" is that correct?
A. Correct.
Q. What does "P/T" stand for?
A. I suspect it's "pre tax."
Q. Do you know who within Morgan Stanley decided to use for this analysis a 50 percent control premium and synergies of 50 million?
A. I don't know who decided on those numbers.
Q. Did you?
A. I don't recall deciding on it, and probably not. It

Page 107

would probably be someone more senior.
Q. Have you done analysis of this kind in other instances?
A. Yes.
Q. Or other companies?
A. Yes.
Q. And you have used control premiums?
A. Yes.
Q. And have you used a control premium of 50 percent in other --
A. I don't recall specifically, but I suspect I probably did.
Q. That doesn't strike you as unreasonable?
A. I --
MS. BROWN: Objection to form.
A. I would not say "unreasonable," but it -- I would say that it's higher than is typically used.
Q. There is a reference to synergies of $50 million. Do you know where that came from?
A. No, I don't.
Q. Do you know who within Morgan Stanley did analysis of the synergies that could or might result from a combination of Coleman and Sunbeam?
MS. BROWN: Objection to form.

Page 108

A. I did not know.
Q. Did you?
A. I don't recall ever doing that.
Q. Having looked at this document today, and perhaps yesterday, if you looked at it in preparation for today, do you have any recollection of where that $50 million synergy number came from?
A. I do not.
Q. The next item refers to "President Transactions Analysis." Is that another methodology?
A. Yes.
Q. And what does that mean?
A. That is applying earnings multiples that were paid in president M&A transactions to the earnings of Coleman.
Q. And the president transactions are contained in this document; is that correct?
A. I'm not sure. Typically they are.
Q. If you turn to the appendix of the document towards the end bearing Bates No. 84021 and following.
A. (Witness complying.)
Yes.
Q. Are those the presidents that were used?
MS. BROWN: Objection, foundation.
A. They appear to be.

Page 109

Q. Well, this is a document you created, isn't it sir, or you were involved in?
A. I believe I was involved in this. These appear to be transactions paid -- transactions that would have been used to base our president transaction analysis on.
Q. Okay, and then the next entry is a discounted cash-flow analysis?
A. Yes.
Q. Do you remember working on a discounted cash flow analysis?
A. I remember one being contained in our merger model.
Q. Was there a person within Morgan Stanley that was responsible for doing that discounted cash flow?
A. Tyrone Chang was primarily responsible for the model.
Q. The DCF model, or the whole model?
A. The whole model including the DCF.
Q. And you and Mr. Change imported that analysis?
A. Yes.
Q. Now, there are three cases, the laser management case with 100 million of pre-tax synergies, with 150 million of pre-tax synergies, 200 million of pre-tax synergies.
What do you understand the Laser management case to be?

NOT A CERTIFIED COPY

Page 110

A. That appears to be -- I don't recall where that case comes from, however, I would suspect it's Sunbeam's estimates of Coleman's Company's projected financials.
Q. And the synergies, do you know where those came from?
A. No.
Q. Do you remember being told to use synergies of that amount?
A. I don't.
Q. These are the three numbers that -- let me withdraw that.
Do you remember if Morgan Stanley presented any other estimates of synergies, other than what is contained in this document, to the Board of Directors when they made their decision to go forward with this deal?
A. I don't recall.
Q. Looking at this document, sir, and this page, does this attempt to show a range of values for Coleman using each of these methodologies, and then compare them to the offer price as contained in the potential merger?
A. What this page does is lays out a range of values for Coleman, and plots them on a chart, and then compares them to -- it appears to be four different prices, one

Page 111

is a market price on February 19th, and one is a current, and then the offer price of February 19th, and the current offer.
Q. Okay, and by the "offer price" does that just apply the exchange ratio to the Coleman -- excuse me, to the Sunbeam stock price?
A. It does that as well as I -- I suspect include any non stock consideration that is paid for the shares.
Q. If you turn to the next page of the document, sir, that is the numerical back up for the drafts and the information contained on the summary evaluation that we just discussed?
A. Yes.
Q. Turn to the page -- several pages later bearing the internal pagination No. 18.
A. (Witness complying.)
Q. It describes the Camper valuation matrix without synergies, and the Laser management case without synergies.
If you take a second to look at that and see if that refreshes your recollection as to what the Laser management case meant.
A. (Witness complying.)
That does not refresh my memory.

Page 112

Q. Okay, look at the next three pages, Mr. Webber, they show that case with synergies of 100, 150 and 200 million.
Does that refresh your recollection as to where those numbers came from?
A. No.
Q. At the Board meeting at which this presentation -- this analysis was presented, you said Mr. Stynes did most of the talking for Morgan Stanley?
A. Yes.
Q. Do you remember Mr. Stynes walking through any of these numbers with the Board?
A. I don't recall.
Q. Do you remember any questions from the Board about the numbers, or their accuracy, or where they came from?
A. No.
Q. If you turn further in the document to the number -- excuse me, the page numbered 84,007.
A. (Witness complying.)
Q. It's entitled, "Review of Anticipated Combination Synergies."
Who prepared this section?
A. I don't recall.
Q. Did you?

Page 113

A. I don't recall.
Q. Do you have any understanding or recollection as to where the information contained in this section came from?
A. No, I do not.
Q. Are you aware that Sunbeam retained Coopers and Lybrand to help it analyze the synergies from this transaction, among other things?
A. I do recall Coopers & Lybrand being involved in the transaction; I do not recall what they were doing.
Q. Did you have any communications or contact with Coopers?
A. None that I recall. I may have been on a call with him, but I don't recall what was discussed.
Q. Okay, if you turn several pages further, internal pagination Page 44, also Page No. 84,011, there is a page about Scott Paper.
Did you insert this page in the document?
A. I don't recall it was me putting this in a document.
Q. Do you know who created this page?
A. No.
Q. Do you know why it was put in this document?
A. No.
Q. Do you remember it being discussed at the Board

NOT A CERTIFIED COPY

Page 114

meeting?
A. No.
Q. Now, if you turn to the next page there is a description of the pro forma combination analysis. Is that the analysis that you worked on?
A. It appears to be, although, I don't recall creating this page.
Q. Okay, prior to presenting this document to the Board of Directors, do you remember discussing it with individuals from Sunbeam?
A. No, I do not.
Q. Do you know if anyone at Morgan Stanley discussed it with individuals from Sunbeam?
A. No, I don't.
MR. BRODY: We can go off the record for a second.

(Brief break.)

BY MR. BRODY:
Q. Good afternoon, Mr. Webber.
Before we broke we were talking about the Board meeting at which Exhibit 89, your presentation at the Board was of discussed.

Page 115

After having looked at that do you remember anything that was discussed at that meeting about the content of Exhibit No. 89?
A. I don't remember the specifics of the conversation, all I recall is Jim Stynes going through the presentation and explaining the pages to the group.
Q. Okay.
Now, I think I asked you this before, but do you remember Morgan Stanley presenting a fairness opinion at that meeting?
A. I don't recall whether -- if we did or not.
Q. Do you know if a fairness opinion was ever presented?
A. I don't know if it was presented or not.
Q. Mr. Webber, let me show you what has been previously marked as Exhibit No. 90 --
A. (Witness complying.)
Q. -- which appears to be an unsigned copy of a fairness opinion.
Have you ever seen that before?
A. (Witness complying.)
I do recall this document. I don't -- but I don't recall -- I do recall the document.
Q. Do you ever recall seeing a signed copy?
A. No, I do not.

Page 116

Q. Okay, typically in a transaction does Morgan Stanley present a signed copy of its fairness opinion? Does it sign it?
A. Typically if a fairness opinion is asked for it would be signed.
Q. And then it would then be printed on letterhead and signed?
A. Yes.
Q. Do you remember ever seeing a signed copy of the Fairness Opinion?
A. I don't.
Q. If you turn to the second page of the Fairness Opinion.
A. (Witness complying.)
Q. It recites, among other things, that "For purposes of the opinions set forth herein we have," and then it lists a variety of things, 15 of them.
I'm not going to ask you about all of them, but I'm going to ask you about a few them, and my question is going to be, did you do this, or did somebody else do this?
Turning to Item No. 4 -- no, excuse me, Item No. 2, "Reviewed certain internal financial statements and other financial and operating data concerning the

Page 117

company and the buyer prepared by the management of the company and I buyer." Did you do that?
A. I don't recall ever doing that.
Q. Item No. 3 -- no, excuse me, No. 4, "Reviewed certain financial projections prepared by the management of the company and the buyer respectively."
Did you do that?
A. I don't -- I don't recall doing that other than looking at the East Pack financials.
Q. I understand. You talked about that earlier.
"Item No. 6, reviewed with the management of the buyer, the buyer being defined as Sunbeam, their estimates of the synergies and the cost savings expected to be achieved from the merger." Did you do that?
A. I don't recall doing that.
Q. "Item No. 7, discussed the past and current operations and financial conditions and the prospects of the buyer with senior executives of the buyer."
Again, did you do that?
A. I don't recall doing that.
Q. "Item No. 12, participated in discussions and negotiations among representatives of the company and the buyer and their financial and legal advisors."

NOT A CERTIFIED COPY

018043

Page 118

Aside from the conference calls you may have been on where the exchange ratio was discussed, did you do any of that?
A. Well, at the meeting that I did attend, I suppose I did participate in a discussion among representatives -- actually, I take that back, because I don't know if Sunbeam was at that meeting or not, but we did take part in discussions among representatives of the company, Sunbeam, so I did do that as well.
Q. Okay, No. 13, reviewed the merger -- excuse me, the Company Merger Agreement and Holdings Merger Agreement. Did you look at those documents?
A. I don't recall looking at those documents.
Q. And then 14, "Reviewed evaluations prepared by Coopers & Lybrand of the potential synergy opportunities present in the mergers."
A. I don't recall looking at those estimates.
Q. Do you know if by February 27th Coopers had provided any evaluations of the potential synergies present in the mergers?
A. I don't know if they had or hadn't.
Q. Now having seen this -- if you turn to the next page of the document.

Page 119

A. (Witness complying.)
Q. You see at the end this document states that, "Morgan Stanley is of the opinion that the merger agreement is fair from a financial point of view of the buyer"?
Do you see that to be the concluding paragraph?
A. Yes, I see that.
Q. Do you know if that opinion in words or in substance was delivered to the Board of Directors of Sunbeam?
A. I don't know if it was or wasn't.
Q. You don't know remember that from the meeting that you attended?
A. I don't recall that occurring at the meeting I attended.
Q. Fair enough.
The Fairness Opinion that is in front of you, is that something that you had any role in drafting or revising?
A. I don't recall if I did or did not.
Q. Now this morning, Mr. Webber, you had discussed merger modeling that you had done, and I would like to show you a document that was previously marked in Mr. Chang's deposition -- Exhibit No. 61 in Mr. Chang's deposition.
A. (Witness complying.)

Page 120

Q. And I am going to apologize in advance for its copy quality, it's been faxed, and refaxed, and copied, so it's a little hard to make out.
I'm asking you if this appears to reflect the merger modeling that you and Mr. Chang did?
A. Yes, it does.
Q. Do you recognize this as the final draft, the final merger document?
A. I don't know which draft -- draft of the merger document this was.
Q. Okay.
If you look at the cover, there is a fax transmittal to Mr. Chang from Ms. MacDonald on March 11th.
As you sit here do you remember if you did any work on the merger model after March 11th?
A. On this -- we did financial modeling after March 11th when we looking at other targets.
Q. I'm focussing on Coleman.
A. Okay, I don't recall if I did any work on Coleman after March 11th.
Q. Okay.
And Ms. MacDonald, what involvement did you have with Ms. MacDonald on the merger model?

Page 121

A. Only with Coleman?
Q. With Coleman, yes.
A. I don't recall speaking with Ms. MacDonald about Coleman at all.
Q. Okay, if you look at the document that we have marked, about halfway through the document, let me give you the page number, Page 84,993, do you see the words "down side case"?
A. Yes.
Q. That is Mr. Chang's handwriting, not yours?
A. It's not my handwriting.
Q. Okay, fair enough.
Do you recognize the first half of this document, that is up to the page identified as "one case," and then the second case thereafter, "a second case"?
MS. BROWN: Objection to form.
A. Yes, the first page appears to be, let's call it "the base case," and the rest appear to be a "down side case."
Q. In what ways does the base case and the down-side case differ?
A. I don't recall how they differ without looking through this document. I would not be able to tell you how they differ.

NOT A CERTIFIED COPY

018044

Page 122

Q. Well, in looking at the documents can you asses differences? Can you determine differences?
A. The down side of the case appears to have slower revenue growth and lower operating margins than the base case.
Q. If you look at the heading of the two models they also reflect different synergies, don't they?
A. Yes, they do.
Q. Do you know where those differences and assumptions came from?
Is that a Morgan Stanley difference, or a Sunbeam difference, or both?
MS. BROWN: Objection to form.
A. I don't know where that came from.
Q. If you look at the base case, and, you know, I confess this is difficult to read, but if you look at the 1998 projected pro forma for the company, and this is the combined companies, all three -- all four --
A. They appear to be all four companies together, correct.
Q. And if you look at the 1998 projected pro forma it has a basic earnings per share of $1.30?
A. That appears to be correct.
Q. And if you look at the same line on the down-side

Page 123

case, again, this is difficult to read, but it appears to be $1, right, earnings per share?
A. It's tough to read, but it could be $1.
Q. Okay, do those numbers -- are those numbers consistent with your recollection of the results of your financial model?
A. I don't recall the results of the financial model.
Q. Who did the quantitative mathematical work, the result of what we're seeing here in Exhibit No. 61? Is that Mr. Change, or by you?
A. Primarily done by Mr. Chang. I supervised.
Q. What guidance did you give Mr. Chang in developing this model?
A. I don't recall specifically what guidance I gave him. He was a very competent modeler, so in terms of -- I don't recall what I gave him.
Q. Fair enough.
Was this all done on an Excel Spread Sheet, or was there a different program used to develop it?
A. I didn't recall whether this was on Excel or Lotus 123. It might have been Lotus.
Q. Do you have a recollection of who, if anyone, the results of your modeling were shared with?
MS. BROWN: Objection to form.

Page 124

A. I recall sharing the results of this with Morgan Stanley team members, and I also recall sharing some results of the merger analysis with Sunbeam management, although I don't recall if it was this -- I recall showing them pages that resulted from our models, but I don't recall if they were these pages, and I don't recall when we showed it to them.
Q. Starting with the Morgan Stanley team members, who on the Morgan Stanley team did you share the results with?
MS. BROWN: Objection to form.
A. I recall instances where we -- where results of the model were discussed at team meetings with several team members involved, but I don't recall specifically who was there.
I know Alex Fuchs was -- saw the results of these, and I suspect Jim Stynes and Bob Kitts did as well, but I cannot be sure we showed it to anybody else.
Q. Do you know if it was shown to any of the people working on the underwriting, the public offering portion?
A. I don't know. I don't recall ever doing that.
Q. Do you know what was shown to people in other branches of Morgan Stanley in terms of financing the deal?

Page 125

A. I don't recall it being shown to anyone other than --
Q. You said you recall sharing results with Sunbeam management. Do you recall what you shared with them?
A. I recall sharing accretion/dilution analysis, or the affect that the transactions would have on earnings per share with Russ Kersh.
Q. Do you remember when you did that?
A. No.
Q. Perhaps using this document as an example, what was the result of your accretion/dilution analysis?
MS. BROWN: Objection to form.
A. The result of the accretion/dilution analysis would depend on several inputs, and I'm not sure, you know, what the specific results were.
I'm not sure what the specific results were, and I'm -- and to know what they were would have to depend on what the individual inputs were.
Q. So it depended on which way you run the model?
A. It would depend on assumptions.
Q. Do you know if the results of this modeling was ever shared with MacAndrews and Forbes?
A. I don't recall.
Q. Were any of the runs of the model -- did any of the runs of the model show an increase in earnings for

NOT A CERTIFIED COPY

Page 126

1998?
A. I don't recall if they did or not.
Q. Did any of them show decrease in 1998?
A. I don't recall.
Q. Your testimony earlier was that you shared the accretion/dilution analysis with Mr. Kersh. Was that done in person?
A. Yes.
Q. Where?
A. I recall doing that at Morgan Stanley offices.
Q. What do you remember discussing with Mr. Kersh?
A. I recall showing him accretion/dilution analysis. I'm not -- I don't recall specifically which transaction we were looking at, and I don't recall -- and, obviously, I don't recall the inputs that were used to generate that accretion/dilution analysis.
Q. Do you remember anything that you discussed with Mr. Kersh in words or in substance?
A. All I recall is being in a meeting with Mr. Kersh, discussing a potential transaction, and him asking to see what the results of that transaction would be on Sunbeam's earnings, and Tyrone and I left the meeting, calculated it, and came back and showed it to Mr. Kersh.

Page 127

Q. Do you remember his reaction to that?
A. No.
Q. When you completed work on the Morgan Stanley transaction, certain hard copies of the models remain -- certain print out remain; is that correct?
MS. BROWN: Objection to form.
A. Apparently.
Q. And also, did the model continue to reside on the servers of the computers at Morgan Stanley?
A. I'm not sure if it did or not.
Q. Did you ever have an occasion to consult it thereafter, after that deal was over?
A. After the Coleman deal was over we continued to use the merger model from time to time to evaluate other potential acquisitions.
So I suppose that it did reside, at least for a while.
Q. Other transactions for Morgan Stanley -- for Sunbeam?
A. For Sunbeam, yes.
Q. At the team meetings in which you presented the merger model, or portions of the merger model, do you remember any discussion about what the model was showing, it's impact on the deal?
A. I don't remember a discussion.

Page 128

Q. You can put that back on the side for the time being.
A. (Witness complying.)
Q. Mr. Webber, you were not involved in the financing of the transaction; is that correct?
A. That's correct.
Q. Are you aware that at some point in time Morgan Stanley prepared and sent a highly-confident letter?
A. I am aware that there was discussion about a highly-confident letter, I'm not aware of what the results of those discussions were and whether or not one was ever delivered.
Q. What do you recall about the discussions about a highly-confident letter?
A. I remember the concept of the highly-confident letter, and I -- but I don't recall that one was ultimately provided.
Q. With whom did you have those discussions?
A. I remember discussing -- or I remember it was discussed with Mr. Stynes in the room, but I don't remember who else was in the room.
Q. Do you remember any representatives from Sunbeam in that room?
A. No.
Q. What do you remember being discussed about the

Page 129

highly-confident letter?
A. I don't recall. I just remember the concept of a highly-confident letter.
Q. Do you remember if it was something that was requested by Morgan Stanley -- excuse me, by Sunbeam?
A. I don't know if it was or was not.
Q. Do you remember a discussion of whether it would be in Morgan Stanley's interest?
A. I don't remember.
Q. Let me show you a couple of documents. I start with Exhibit No. 74, two copies.
I will state for the record that that has been identified as a letter sent by Sunbeam on March 5th signed by Mr. Smith -- Bram Smith.
I ask you if you have ever seen it before?
A. I don't recall seeing this before.
Q. Do you have any recollection of working on it or doing anything on it?
A. I do not.
MR. BRODY: Please mark this as Exhibit No. 190.
(Exhibit 190, Letter, marked for identification.)

NOT A CERTIFIED COPY

0180496

Page 130

BY MR. BRODY:

Q. Mr. Webber, are you familiar with the concept of Metadata on certain word processing documents?

A. No.

Q. Okay, certain computer systems keep track of data other than the document itself, when it was last edited, who did the last edit, and so on.

In some systems that is called "Metadata."

Your counsel produced to us certain documents from Morgan Stanley that were accompanying with things done by Metadata, and I am giving you what has been printed out as the Metadata and the accompanying letter that the Metadata is associate waited with, and they have been marked together as Exhibit No. 190.

Let me ask you first to look at the letter. Do you recognize the attached letter there as a draft of a highly-confident letter?

A. It appears to be a -- similar to the letter that you showed me.

Q. Okay, and then turning to the first page of the document, and I have no reason to think -- the cover, sir.

I have no reason to think you have ever seen this

Page 131

before, and I will represent that this has been described to me as the Metadata associated with the following draft.

And the Metadata recites the author as "Webber, J."

Are you aware of any other Webbers at Morgan Stanley that were involved in the investment banking?

A. No.

Q. Now, having listened to the speech I just gave you about Metadata, and seeing this document, does that refresh your recollection that at any point in time you did work on a highly-confident letter?

A. No, it does not.

Q. Have you worked on highly-confident letters for other transactions?

A. I don't recall working on another highly-confident letter.

Q. Okay, you can put those two documents aside.

A. (Witness complying.)

Q. Now, within Morgan Stanley, do you know if there is an approval process required to get a highly-confident letter out the door?

A. I believe there is, yes.

Q. What is that process?

Page 132

A. I'm not familiar with the process other than typically in -- well, I don't want to pretend to understand the capital market side of the business, I don't understand it.

However, I know that there are committees that need to approve items such as -- I believe they need to approve items such as a highly-confident letter.

Q. But you're not involved in that?

A. I'm not involved in that, no.

Q. Mr. Webber, were you involved in any of the efforts to -- let me withdraw that.

If you go back to the document that we marked as Exhibit No. 84, the chronology.

A. (Witness complying.)

Q. I think we're just about done with this document.

A. Okay.

Q. The second to last page, the entry for March 2 describes an event as "Announcement of Transactions."

Using that as a reference point, were you involved in any efforts, on or around March 2, to announce the transactions, to publicize the transactions, to make contacts with the press, and so on, about the transactions?

A. I was not involved in any of that.

Page 133

Q. Okay, are you aware whether others at Morgan Stanley were involved in those efforts?

A. I recall Rich Goudis, from Sunbeam, at Morgan Stanley's offices, working to prepare for the announcement of the transactions.

I don't recall if he was assisted by Morgan Stanley or not, but I -- I did not assist him, personally.

Q. Have you been involved in other transactions, or for other clients in which Morgan Stanley has assisted in preparing a Q & A, questions and answers, to go along with a public announcement?

A. I recall -- I recall working on other transactions where we had conversations with senior management about the impacts -- or a reaction that the press might have to a transaction.

Q. And in those circumstances have you ever been involved in drafting questions and proposed answers, or reviewing them?

A. I don't recall personally ever reading that.

Q. But you're aware that Morgan Stanley has done that?

MS. BROWN: Objection, mischaracterizes.

A. I'm not aware of specifically preparing questions and answers for -- Morgan Stanley specifically preparing

NOT A CERTIFIED COPY

0804

questions and answers for a client.
Q. Okay, have you been involved in assisting clients in dealing with the press and the public after their announcement of earnings or other information?
MS. BROWN: Objection to form.
A. As an M&A banker, I don't recall doing that.
Q. Do you know if others at Morgan Stanley have been involved in that effort?
A. I am aware that investment bankers talk to senior management teams about -- about how events will be seen in the press and how to react to news.
Q. Okay, do you know if senior bankers or others at Morgan Stanley have assisted the company management in preparing for those sessions, doing draft questions draft answers?
MS. BROWN: Asked and answers. Objection.
A. I don't know of any specific instance where Morgan Stanley bankers prepared questions or answers for clients.
Q. And that is not something you have done?
A. I have not done that.

(Exhibit 191, Letter, marked for identification.)

BY MR. BRODY:
Q. I have given you what has been marked as Exhibit No. 191. You can look at the whole thing if you want, but I'm trying to focus your attention on just a couple of things.
First, have you ever seen this before?
A. No.
Q. Turn to the second page under the entry of "1:15 p.m.," there is a reference to an interview with Suzanne Prat, a business report, and it says in the second column, "Contact Josh Webber."
Does that refresh your recollection of any involvement you may have had with the press in connection with this deal?
A. No, it does not.
Q. Do you remember speaking with Ms. Prat, or anyone else about this?
A. No, I don't.
Q. Do you remember Mr. Dunlap spending time at Morgan Stanley on March 1 or 2 in connection with public announcements of this transaction?
A. No, I don't.
Q. That is not a time that you remember having

conversations with them?
A. Correct.
Q. Put that aside, please.
A. (Witness complying.)
Q. I am going to show you some additional documents, and I think we can move through them quickly given your last testimony.
I am showing you what has been marked as Exhibit No. 140. Have you ever seen that before?
A. No, I don't recall seeing this before.
Q. Do you recognize the handwriting?
A. No, I do not.
Q. It's not yours?
A. No, it's not.
Q. Okay, you can put that document aside.
A. (Witness complying.)
Q. Another document previously marked as Exhibit No. 141, have you ever seen that before?
A. No, I have not -- I don't recall seeing this one.
Q. If you turn to the second page of the document.
A. (Witness complying.)
Q. There is some handwriting, and it continues on the third page.
Have you ever seen that before?

A. The handwriting?
Q. Yes, sir.
A. No, I have not.
Q. Turn to the third page.
A. (Witness complying.)
Q. Question No. 13, "What's your first quarter going to look like? Are you comfortable with analysts estimates"?
The answer is, "We're happy with our first quarter so far, we're on target. At this point I'm comfortable with the estimates."
Do you remember any discussion within Morgan Stanley, or with Sunbeam, at any time prior to the announcement of the first quarter results about how the first quarter was going?
A. I do not recall any such conversations.
Q. You don't remember any questions being asked?
A. No.
Q. Or any answers being given?
A. No.
Q. Okay, you can put that aside.
A. (Witness complying.)
Q. I now have given you what has been marked as Exhibit No. 142, additional handwriting. My question is going

NOT A CERTIFIED COPY

018048

Page 138

to focus on the handwriting, sir.
Do you recognize that?
A. No, I do not.
Q. Okay, Mr. Webber, are you aware that in March of 1998 Arthur Andersen provided Morgan Stanley with a comfort letter concerning this transaction?
A. I'm not aware that that happened specifically, but I do remember the concept of a letter.
Q. What is it you remember about the concept?
A. Only that a comfort letter was discussed by the team members. I don't recall which team members, but I don't know the results of that conversation, I don't know whether or not we received a comfort letter.
Q. When you say "a comfort letter was discussed," do you remember anything more about that discussion?
A. No, I don't.
Q. Do you remember who was involved in the discussion?
A. No, I don't.
Q. In person, on the telephone?
A. I don't.
Q. You previously mentioned that the name "Larry Bornstein" sounded familiar to you.
Do you remember if Mr. Bornstein's name came up in connection with the comfort letter?

Page 139

A. No, I don't.
Q. Let me show you a copy of a comfort letter.
I'm sorry, I keep throwing those at you.
A. That is all right.
Q. This is CPH 17. There are various drafts of this document, but this appears to be a signed copy.
Have you ever seen this before?
A. I don't recall ever seeing this before.
Q. Do you remember -- just take a look at it and see if it refreshes your recollection about a discussion that you had.
A. (Witness complying.)
This doesn't mark any memories for me.
Q. If you turn to the third page the document, Paragraph 5, Item B, it discloses that for the first month of the year, essentially, from late December through the beginning of February, sales for Sunbeam are less than one half what they were the prior year.
Do you remember any discussions within the company, within Morgan Stanley about that?
A. When? Discussions at what times?
Q. Prior to the closing of the transaction.
A. No.
Q. Do you remember discussions after the closings?

Page 140

A. I do recall discussions after the closing about the fact that -- after events that had occurred and Sunbeam had underperformed, I remember discussing that with members of Morgan Stanley's team.
Q. What do you remember discussing?
A. Just the fact that -- I don't remember the specifics of the conversation, but it became very public that Sunbeam was having problems, and as a team we discussed those.
Q. Did you ever discuss within the team about how or why Sunbeam happened to underperform? The reasons for it?
MS. BROWN: Objection.
A. I don't recall if we were -- if we spoke about specific reasons.
Q. Did you ever discuss with the team -- within the team, anything that could be done about it to make Sunbeam a better-performing company?
A. I don't recall any of those conversations.
Q. The next line in Paragraph 5-B, in addition to showing sales being 50 percent or less what they were the year before, it says -- it shows net income, it shows that in '97 in the first month it was a gain of about $5 million, and through this roughly same period in '98, it's a loss of about $10 million.

Page 141

Do you remember any discussion about that prior to the closing?
A. No, I do not.
Q. Do you know if either of those pieces of information, the fact that sales were down and the fact that earnings were negative was there disclosed to my client, MacAndrews and Forbes?
A. I don't know if it was or it wasn't.
Q. If you turn to the fifth page of the letter, it's Paragraph No. 6-C, it's at the top.
A. (Witness complying.)
Q. I would like you to read that to yourself.
A. (Witness complying.)
Q. And, again, it shows that sales for the first two months of the year are still running low, they are at one half of what they were the year before.
Do you remember any discussions within the company prior to the closing about that?
A. No, I do not.
Q. And, again, do you remember if that information was ever shared with MacAndrews and Forbes?
A. I don't know if it was or if it wasn't.
Q. I may have asked you this before, sir, but do you remember any discussions within the company prior

NOT A CERTIFIED COPY

Page 142

to -- within Morgan Stanley, prior to the closing of the Coleman transaction, about the first quarter results at Sunbeam?
A. I don't recall any discussions about the first quarter.
Q. Based on your experience at Morgan Stanley, and your, you know, involvement in the business world, what is your understanding of what Morgan Stanley -- Morgan Stanley's practice was when learning of the fact that a company that it was doing a deal for was showing bad results?
MS. BROWN: Objection to form.
A. What stage of the deal would we be in --
Q. Prior to closing.
So prior to closing --
A. But after announcing?
Q. After announcing, prior to closing.
A. Well, I don't know if there is a policy. I think it would depend on the specific situation, and it would depend on what was in the contract that was signed between the two parties.
Q. Can you explain what you mean by that, how would it depend?
A. Well, if there was a merger agreement that was signed,

Page 143

that would dictate what, if anything, I assume, but not being a lawyer, I would assume what if anything would need to be done if we came to realize that sales were underperforming.
Q. Okay, i guess my question -- I appreciate your answer. I'm not asking you to give me a legal opinion. Ms. Brown and I can argue about that.
I'm asking you what, as an investment banker, an investment banker ought to do when it discoverers that the preliminary results, the first two months, for example, for a company, that has signed a definitive merger agreement in which doc. is going to be exchanged, shows that the company's sales are not doing well and it's earnings are doing worse?
MS. BROWN: Objection, form, speculation, hypothetical.
A. I don't -- I'm not sure what an investment banker's responsibility would be. I suspect it would depend on the document signed between the two parties.
Q. Meaning between its client and --
A. Meaning if a merger agreement is already signed --
Q. Yes.
A. -- then Morgan Stanley my or may not have responsibility -- its responsibilities, I suspect,

Page 144

would be laid out in the merger document.
Q. There came a point in time in March when Morgan Stanley -- and Morgan Stanley assisted Sunbeam in making public announcements about its prospects for the first quarter, were you involved at all in that discussion, or in that announcement?
MS. BROWN: Objection to the extent it mischaracterizes the record, and also to form.
A. I don't recall being involved in those discussions.
Q. Are you aware they have gone on?
A. Repeat --
Q. Well, I will show you the press release in a second. We will get to that.
A. Okay.
Q. In the training and other education that you received either at college, your graduate program, or on the job, or in training programs at Morgan Stanley, were you ever instructed or taught what an investment banker should do when learning of news that might be unfavorable to a company that it was doing work for?
MS. BROWN: Objection. Form.
A. I -- I don't recall ever receiving specific instructions. I think the proper response would be, depending on a case-by-case basis.

Page 145

Q. Having seen this comfort letter, does that refresh your recollection any about further contacts with Arthur Andersen, or discussions with Andersen about the work they did in this case?
A. No, it does not.
Q. I may have asked you this, but you had no communications with Andersen?
A. I don't recall any conversations with them.
Q. Are you familiar with the term "road show"?
A. Yes.
Q. Are you aware that there was a road show for the offering of the Sunbeam securities in this case?
A. I'm not sure if there was a road show or not.
Q. Did you attend any road show presentations?
A. I don't recall doing that.
Q. Do you remember any discussions about the road show, what is it going in it, what is being discussed at it, how it is going, that sort of thing?
MS. BROWN: Objection. Compound.
A. I don't, no.
Q. Do you remember attending a lunch after a road show presentation in New York about this deal?
A. I vaguely do recall attending a lunch at a hotel in New York, and it may have been on this deal, it may

NOT A CERTIFIED COPY

018050

not have. I don't recall.
Q. Do you remember anything that happened at it?
A. No.
Q. After the definitive merger agreements were signed, and the Board of Directors meeting was held on February 27th, do you know what work, if any, you did on the work going forward?
A. Coleman deal?
Q. Yes, sir.
A. I don't recall any work that I did going forward on Coleman.
Q. Now, Mr. Webber, I previously averted to this, but I'm showing now what is marked as CPH Exhibit No. 14, which is a Press Release issued by Sunbeam on March 18, 1998.
I'm going to ask you if you recall seeing this before?
A. I don't recall having seen this before.
Q. Do you recall any discussions within Morgan Stanley prior to the issuance of this press release about whether to issue it?
A. I don't recall.
Q. Do you remember any discussions after the press release about the press release or it's impact on the

deal?
A. I do not recall.
Q. As you sit here do you have any views as to whether the press release is or was accurate?
MS. BROWN: Objection to form.
A. I don't have any view on whether or not at this time -- at the time of this Press Release whether or not it was accurate or not.
Q. As you sit here now do you have a different -- do you have a view?
A. Well, about the actual results compared to what they were predicting here? Is that what you're asking?
Q. Well, sure.
MS. BROWN: Objection to form.
A. I believe that this -- ended up being an incorrect statement that 1997 first quarter sales would exceed $253.4 million, but I don't know whether or not -- but I don't have any reason to believe that it's inaccurate that they expected it to look --
Q. If at the time this Press Release was issued in March of 1998, Morgan Stanley knew that it was inaccurate and had reason to believe that it was false or misleading, what should Morgan Stanley have done?
MS. BROWN: Objection, hypothetical,

calls for speculation, facts not in evidence, and also to the extent that it calls for a legal conclusion.
A. I don't think I'm qualified to answer what Morgan Stanley should or shouldn't have done.
Q. You have no views on that?

(Brief break.)

MR. BRODY:
Q. Mr. Webber, if at the time this press release was issued on March 19th, 1998, Morgan Stanley knew or had reason to believe that the press release was false or misleading, what should it have done?
MS. BROWN: Same objection, sworm, speculation, hypothetical, and I think legal conclusion, to the extent it calls for a legal conclusion.
A. Hypothetically if I knew this to be false, I would have consulted an attorney about what to do.
Q. Do you remember reading this press release after it was issued?
A. No, I don't recall reading this press release.
Q. Did you see it come across the wire, or circulating within the company, or anything like that?

A. I don't recall it coming across. I don't recall seeing it.
Q. Is it customary, or at least frequent in your business that after a major deal closes there is a closing dinner, or some event to thank people for their hard work on the deal?
A. That does often happen.
Q. Do you know if there was one on this deal?
A. I don't believe there was.
Q. Do you have an understanding of why not?
A. I don't know why there wasn't.
Q. Are you aware of anyone at Morgan Stanley who after March 19th, the date of this Press Release, performed or conducted any due diligence into either Sunbeam or Coleman?
MS. BROWN: Objection to form.
A. Can you repeat that question?
Q. Sure.
Do you know of anyone at Morgan Stanley who after March 19th, 1998 did any due diligence, any factual investigation concerning Sunbeam or Coleman between that time and the closing of the deal.
MS. BROWN: Same objection.
A. I'm not aware of any due diligence or fact finding

NOT A CERTIFIED COPY

0180-51

Page 150

that was done by anyone at Morgan Stanley.
Q. Okay.
Do you know of anyone at Morgan Stanley that requested updates from Sunbeam at any time during the first quarter on their actual sales?
A. I don't recall any inquiries about sales.
Q. Do you know of anyone at Morgan Stanley that did inquiries of Sunbeam into its January close, or its February close, that is the close of its books after each month?
A. I don't recall any investigation into the first-quarter numbers.
Q. Do you know anyone who did any look at projected earnings per share after January, or after February, or as March was proceeding?
A. I don't recall any such analysis.
Q. Are you familiar with the concept of a "bring-down due diligence call"?
A. I believe I am. It's vague, but I believe I recall -- I know what that is.
Q. Is that something done by corporate finance rather than M&A?
A. I'm not sure -- I'm not sure I entirely know what it is, so I don't know that I can actually answer that

Page 151

question.
Q. Okay, well, let me show you a -- well, let me withdraw that.
Do you remember in part whether you participated in a phone call with the auditors, either Arthur Andersen, or the auditors of Coleman, First Alert, or Signature, shortly before closing, about the statements contained in the merger documents?
A. I recall being on a conversation -- on a conference call with Alex Fuchs, the subject -- and we were -- it the a bring-down due diligence call. However, I don't remember who we were talking to, and I don't remember what we were discussing.
Q. Do you remember any of the substance of the call?
A. No.
Q. Do you remember how long it took?
A. No, I don't.
Q. Let me show you what has been previously marked as Exhibit No. 112.
A. (Witness complying.)
Q. Have you ever seen that document before?
A. I don't recall ever seeing this document.
Q. If you turn to the second page there is additional information about the sales -- declining sales and net

Page 152

loss of Sunbeam through March 1, 1998.
Do you remember that being discussed in the bring-down call that you remember participating in with Mr. Fuchs?
A. I do not.
Q. Have you seen that document -- does it refresh your recollection any of what you or Mr. Fuchs or others may have discussed?
A. No, it does not.
Q. Now, at some point did you learn that Sunbeam's first quarter sales for 1998 actually did fall short of their first quarter sales for 1997?
A. I eventually found that out. I don't recall when I found that out.
Q. Do you think you learned it before or after the deal closed?
A. I don't recall.
Q. Do you remember how you learned it?
A. No, I don't.
Q. Did you discuss it with anyone, the fact that sales were off?
A. I do remember it being a discussion at Morgan Stanley amongst the team members, but I don't specifically remember when it happened, and I don't remember who on

Page 153

the team was in the conversation.
Q. In that discussion, were you ever advised that Arthur Andersen had objected to statements made by Morgan Stanley and some of the public filings it made?
A. I was not aware of that.
Q. Were you aware that Arthur Andersen, through Mr. Bornstein; and Morgan Stanley, through Mr. Tyree, had an argument about whether certain statements that Morgan Stanley made were correct or not?
A. I was not aware of that.
MS. BROWN: Objection to the characterization of the question.
BY MR. BRODY:
Q. In connection with this discussion that you had about the fact that sales were off, that you can't place in time or can't identify the individuals who were on, did the fact that the sales were off come as a surprise to you? Do you remember that?
A. I don't remember -- I remember at some point being surprised that the company -- that the numbers were as -- were such that they were, but I don't remember when that was, but I do remember being surprised at one point.
Q. Were there any follow-up discussions within Morgan

NOT A CERTIFIED COPY

2508052

Page 154

Stanley about how did this come to be, and what could we do differently so this does not happen again?
MS. BROWN: Objection, form.
A. I don't recall any such discussion.
Q. Do you remember ever being told by Mr. Stynes, or Mr. Fuchs, or Mr. Kitts, or Mr. Strong that the banking team should have done something differently in this case?
A. I don't recall that.
Q. Did you ever -- did you or anyone else at Morgan Stanley ever state that Sunbeam had withheld information from Morgan Stanley?
A. I don't recall stating that.
Q. Do you remember others saying that in your presence?
A. No.
Q. Did you ever come to the conclusion that Morgan Stanley -- excuse me, that Sunbeam had lied to Morgan Stanley?
A. I would not use the word "lie," but as I sit here today it appears that -- that Sunbeam was at least being aggressive with their predictions for the quarter.
Q. Do you remember any conversations with Morgan Stanley about whether Sunbeam lied or had been too aggressive

Page 155

in its predictions?
A. I don't remember.
Q. Anyone at Morgan Stanley ever state or suggest that Sunbeam had provided false information to you or to others in connection with this deal?
A. I don't recall that ever happening.
Q. Now, after these three acquisitions closed at the end of March, what work did you continue to do on the Morgan Stanley engagement?
A. I continued to look at a potential acquisitions for Sunbeam within a consumer products industry, and we continued to keep an eye on other companies within the consumer products industry that could potentially partner up with Sunbeam in some kind of business combination.
Q. What sort of business combinations were you looking at?
A. I specifically recall looking at a subsidiary of Black & Decker, and I recall looking at Toastmaster, and I don't --
Q. Go ahead.
A. I don't recall any others, but there may have been others.
Q. Were those companies that Sunbeam would acquire?

Page 156

A. Yes.
Q. Not that would acquire Sunbeam?
A. No.
Q. Do you remember doing any work in estimating the synergies, or the cost savings that would result from the combination of these companies?
A. I don't recall looking at any such estimates.
Q. Did you have any further discussions with Coopers?
A. I don't recall anymore discussions with Coopers.
Q. In the realm of Morgan Stanley that you worked in, did you ever submit or prepare memorandum to more senior people to seek approval for Morgan Stanley to participate in this transaction?
MS. BROWN: Objection to form.
A. Which transaction?
Q. The Coleman Acquisitions.
A. Did I prepare a document?
Q. Yes, let me -- that was an unclear question.
I guess what I'm getting at is, in order for the merger and acquisition work to go forward with Morgan Stanley as an investment banker, did there need to be approval by senior people within the company, to your knowledge?
MS. BROWN: Same objection, form.

Page 157

A. Before any client is -- before Morgan Stanley agrees to represent any client an engagement letter would need to be signed.
Q. That was done before your time?
A. Yes.
Q. Aside from that, are you aware of any approvals that were needed for the M&A work to go forward?
MS. BROWN: Same objection.
A. I'm not aware of any approvals that were needed, however, you know, if a fairness opinion was provided, and I can't recall if one was or not, then it would have to go through the Fairness Committee.
Q. Now, if a fairness opinion were provided, you said it would have to go through the Fairness Committee. What does that entail?
A. Before issuing Fairness Opinions the transaction would need to be presented to a committee that consisted of senior bankers who would need to approve the transaction and agree with the conclusion that it was fair to Morgan Stanley's client.
Q. Was there a procedure for presenting the transaction to the committee? Was that done in writing, orally?
A. In general?
Q. Yes.

NOT A CERTIFIED COPY

Page 158

A. In general it would be -- a presentation book would be distributed to the team members, they would be walked through the transaction, and a copy of the fairness opinion would be supplied as well, and they would have the chance to review --
Q. When you say "team members," do you mean the committee --
A. Committee members. Sorry.
Q. Do you know who sat on the Fairness Committee?
A. In general?
Q. Yes.
A. In general it was a combination of managing directors, there was -- there wasn't a specific committee, it was rather a certain number of managing directors needed to be present in order to form a committee, and there was also members of what was called MNA admin., which is the management group that ran the department.
Q. Do you know if the fairness opinion for the Coleman transaction was ever presented to committee?
A. I don't know if it was or wasn't.
Q. Did you have any involvement in trying to put together a committee meeting or presenting it?
A. For Coleman?
Q. Yes.

Page 159

A. I don't recall ever doing that.
Q. On the financing side we've heard testimony of presentation of this deal to be Equity Committee and the Leverage Finance Committee. Did you have any role in that?
A. No.
Q. Did you ever see any memos or other documents that were submitted to those committees about this transaction?
A. I don't recall ever seen one.
Q. Were you involved in any way in efforts to sell the subordinated debentures?
A. No, I was not.
Q. Do you know in anyone from the finance side of the business asked you for input in connection with the sale of the subordinated debentures?
A. I don't recall ever being asked for input, however, I would be at least the logical point of contact so they might have asked me something.
Q. You previously looked at the merger model result, I think it was Exhibit No. 61.
Do you recall presenting those to anyone in connection with the sales efforts?
A. No, I don't.

Page 160

Q. Mr. Webber, I have given you an exhibit that was previously marked Exhibit No. 36, which is a lengthy Morgan Stanley Press Release issued on April 3 -- excuse me, let me withdraw that -- it is a lengthy Sunbeam Press Release issued on April 3rd, 1998.
I'm going to ask you to look at that, but my first question is going to be, have you seen that before, so let me know when you have read it.
A. (Witness complying.)
I don't recall having seen this before.
Q. Either before or after it was issued?
A. Correct.
Q. In the memo it refers to Rich Goudis leaving the company.
A. Yes.
Q. Were you aware of that?
A. Yes.
Q. When did you learn that Mr. Goudis was leaving the company?
A. I don't remember when I learned, but I -- I do recall learning fairly soon after it happened.
Q. Do you know who you learned it from?
A. No, I don't.
Q. Did you ever speak to Mr. Goudis again after you

Page 161

learned that he was leaving the company?
A. I don't recall.
Q. In this document, sir, Sunbeam reports that its first quarter sales are actually going to be below the first quarter sales from the year prior.
Prior to the issuance of this Press Release, April 3, were you aware of that fact?
A. I don't recall being aware of that fact.
Q. We talked earlier about certain discussions you had about the last press release. Does this press release help you place in time or identify the individuals with whom you had those discussions?
MS. BROWN: Objection to form.
A. Discussions about the quarter?
Q. About the quarter?
A. It does not, no.
Q. So having seen this you still don't remember when you had the discussions about the quarter?
A. The only thing I recall is I believe I recall having a discussion with Jim Stynes about the fact that the quarter was not going to hit the projections.
Q. Do you remember when?
A. No.
Q. Do you remember where those discussions took place?

NOT A CERTIFIED COPY

0180538

A. I remember having that discussion at Morgan Stanley.
Q. So it was face to face?
A. Yes.
Q. Do you believe that discussion about the view that the quarter was not going to hit projections, did you say -- was that before the announcement on April 3rd that in fact it had not hit projections?
A. I don't recall when it was, but I -- I don't recall having that information prior than when it was released.
Q. As you sit here do you remember anything in words or in substance about your conversation with Mr. Stynes?
A. I recall that Mr. Stynes was surprised that they were missing a quarter.
Q. Do you remember anything else being said or expressed?
A. No.

(Brief break.)

BY MR. BRODY:
Q. Okay, Mr. Webber, are you aware that in connection with the contemplated second half of this transaction, that is the acquisition of the public shares, there was to be a filing of an S-4, or a Registration

Statement?
A. I don't recall that happening.
Q. Do you recall working at all on in reviewing an S-4 or a public securities document?
A. I guess I do vaguely remember that, but I don't recall what work I did.
Q. Well, I just want to ask you about one aspect of it. Well, maybe more than one, but it's primarily one.
Can we mark this as our next exhibit.

(Exhibit 192, Part of Archives, marked for identification.)

BY MR. BRODY:
Q. Mr. Webber, this a very lengthy document, and I'm going to only ask you about bits and pieces of it, and I will represent for the record that this is printed off of the government's Edgar Archives and the S-4 filed with the SEC on May 11th, 1998, and if you have seen this document, you may have seen it in a different form, but just having glanced at this, does this remind you of the work you did in connection with this document?
A. No, it does not.

Q. Do you remember -- let me mark one additional exhibit that may refresh your recollection.

(Exhibit 193, Fax, marked for identification.)

BY MR. BRODY:
Q. Looking at Exhibit No. 193, sir, it's a fax from Richard Easton at the Skadden Arps Law Firm, and if you look at the last two pages, the memo that apparently goes with it from Mr. Easton to the attached distribution list about the S-4, if you look at the distribution list you are the individual as the sole distrubtee at Morgan Stanley.
Now, does that refresh your recollection of what you might have done on this deal?
A. No, it does not.
Q. And looking at Mr. Easton's memo that he had received a telephone call from Anita Karu, K-A-R-U, of the SEC staff who was assigned to review the S-4, she indicated that she intended to give it and Sunbeam's 1997 form a full review. Do you remember that?
A. No, I do not.
Q. Please put Exhibit No. 193 aside.

A. (Witness complying.)
Q. Looking at the S-4 itself, if you turn to Page 15 of the document.
A. (Witness complying.)
Q. Beginning on Page 15, and going for a couple of pages, there is a description of results for the first quarter, and then it incorporates a Press Release that had been issued on May 11th.
Did you have anything to do with that press release on May 11th?
A. I don't recall having anything to do with the press release.
Q. Okay.
If you turn to the section on Page 32, there is a description about the background of the merger. We talked about that, and I'm not going to ask you about that in detail, but my question is, did you have any involvement in drafting or revising this section entitled "Background of the Merger"?
A. I don't recall having any input in drafting this.
Q. Do you remember any discussions about this or where the information that is found in here came from?
A. No, I don't.
Q. Okay, if you look on Page 34 there is a description of

NOT A CERTIFIED COPY

GI 18054

Page 166

Coleman's reasons for the Coleman merger and approval by the Coleman Board, and you will see it goes on for several pages, and on Page 36 there is a reference to a Credit Suites First Boston Opinion.
A. Okay.
Q. Did you ever review the Credit Suites First Boston Opinion?
A. I don't recall having ever reviewed it.
Q. You don't remember looking at that and reviewing it before or after it was issued?
A. No, I don't.
Q. Now, if you turn to Page 42 of the document, down at the bottom of the page, the last line, and it carries over on to the next page, it refers to the opinion of the financial advisor of Sunbeam, and that is Morgan Stanley, correct?
A. Yes.
Q. And in the second paragraph it recites that Morgan Stanley -- excuse me, on February 27th, 1998 Morgan Stanley rendered to the Sunbeam Board an oral opinion which was later confirmed in writing, and it continues.
That is a reference to the Fairness Opinion, correct?

Page 167

A. Yes.
Q. Does that refresh your recollection any as to whether there was actually a written opinion -- fairness opinion?
A. No, it does not.
Q. Is it customary for the fairness opinion to be first delivered orally, and then later to be confirmed in writing, or are they usually oral and written at the same time?
A. I don't know whether it's customary or not.
Q. In your employment at Morgan Stanley did you see any other instance where the fairness opinion was delivered orally before it was delivered in writing?
A. I don't recall when this is typically delivered. I don't recall another instance where we did that, but I don't know -- on the other instances that I delivered a Fairness Opinion, I don't recall when they were delivered.
Q. I understand.
I believe you testified earlier today that you had reviewed a spread sheet describing the fees that Morgan Stanley received in connection with this engagement?
Maybe I'm misremembering your testimony.

Page 168

In connection with your preparation, sir, you looked at some information about fees?
A. I have.
Q. As you sit here do you remember what the total fees that Morgan Stanley received in this transaction were?
MS. BROWN: Objection, foundation.
A. Actually received?
Q. Yes.
A. I don't know the amount of fees that were actually received by Morgan Stanley.
Q. Do you have a recollection of the amount of fees that Morgan Stanley was to receive in connection with this engagement?
MS. BROWN: Objection to form.
A. I do have a recollection of estimates that were created on the total amount of fees.
Q. And what was that amount, sir?
A. I recall it being approximately 55 million.
Q. 55 million?
A. Yes -- I'm sorry, I'm talking about all the transactions combined when I say "55 million."
Q. Okay.
Do you have a recollection of what percentage of that was attributed to the financing?

Page 169

A. My recollection is that the M&A piece was somewhere in the neighborhood of 15 million, and the remaining piece would have, I suppose, been some form of financing.
Q. And the 15 million is the M&A for all three transactions?
A. All three transactions.
Q. Was there to be an additional fee for doing the second stage of the transaction, that is the takeout of the public shares?
A. I'm not sure how that was -- my recollection is that the fee would have been based on the total value of the transaction, and I'm not sure whether we were to receive the fee in two stages or one.
Q. Okay, if you turn to Page 51 of this document --
A. (Witness complying.)
Q. -- there is a reference to certain fees and expenses that will be incurred in connection with the Coleman merger, and there is a reference to a $15 million financial advisory fee.
Is that the same amount that you recall being associated with the merger?
A. I had recalled that all three transactions were -- would have been a total of 15 million, but that was an

NOT A CERTIFIED COPY

018057

Page 170

estimate, so I can believe this (indicating).
Q. Okay.
Having, you know, flipped as we did briefly through this document, does that refresh your recollection as to any work you did in connection with the S-4?
A. No, it does not.
Q. Do you know if any lawyers for Morgan Stanley were involved in the S-4?
A. I don't know of any lawyers being involved.
Q. When going through the S-4, sir, I showed you some sections that involved the work that Morgan Stanley did, and we referred to the Fairness Opinion.
Do you remember revising or drafting that section in any way?
A. In the S-4?
Q. Yes.
A. I do not.
MR. BRODY: Can we mark this as the next exhibit, Exhibit No. 194.

(Exhibit 194, Draft Section, marked for identification.)

Page 171

BY MR. BRODY:
Q. Mr. Webber, I have given you what has been marked as Exhibit No. 194, and it appears to be a draft, or a section that may have been intended to go in the S-4, and it's also preceded by some Metadata that identifies the document, and it's a Tommy Hill opinion, and it shows that it was last saved by you, and that you were the author.
It refers to the -- the third page of the exhibit, second paragraph, refers to the Fairness Opinion, the Oral Fairness Opinion that we had seen referenced to in the S-4.
Having looked at this document, and the accompanying Metadata, does that refresh your recollection that in fact you did draft something about the fairness agreement?
A. I do recall -- I recall looking at a Tommy Hilfiger -- Tommy Hilfiger transaction as a way to -- as a format to help me draft something. I don't remember if it was for the S-4 or not.
Q. Okay, and if you look at the third page -- excuse me, the second page of this text where the reference begins "Comparable Company Analysis."
A. Yes.

Page 172

Q. The paragraph that follows describes a clothing company, not Sunbeam; is that correct?
A. Correct.
Q. So if you were in the process of revising this, that part hadn't been revised; is that correct?
A. That's correct.
Q. Now having seen that, and made that connection, does that refresh your recollection any about work that you may have done on the S-4, particularly the description of the work done by Morgan Stanley?
A. It does refresh my recollection that I did alter the Tommy Hilfiger wording -- or I did use the Tommy Hilfiger document as a guideline to create another document.
I don't recall what I was creating. I don't recall that it was the S-4.
Q. Okay.
You indicated that you continue to work on Sunbeam matters until, I believe, June or July of 1998?
A. Yes.
Q. What caused you to cease working on them?
A. I don't recall the specific circumstances that led to me stopping work, however, with the change of management at Sunbeam I think it -- I don't want to

Page 173

speculate, but -- so I don't recall why I stopped working.
Q. Well, did it -- were you at one point asked to stop working?
Was Morgan Stanley asked to stop working?
A. I don't recall.
MS. BROWN: Objection, compound, foundation.
A. I don't recall that happening.
Q. Do you recall how it was you came to be working on it one day and then stopped working on it thereafter?
A. No, I don't.
Q. Okay, do you know if Morgan Stanley was ever criticized by the work it had done on this matter by Sunbeam?
A. On which matter?
Q. On the Coleman acquisition.
A. I don't recall that.
Q. That was never expressed to you if it was?
A. No.
Q. Now we have talked some about the estimates of synergies. Do you remember any work done by anyone at Morgan Stanley to estimate or calculate the synergies that would result from a combination of Coleman?
MS. BROWN: Asked and answered.

NOT A CERTIFIED COPY

018056

Page 174

A. No, I don't.
Q. I show you one more document that relates to that, sir.
MR. BRODY: Please mark this as Exhibit No. 195.

(Exhibit 195, Agenda, marked for identification.)

BY MR. BRODY:
Q. Before I present the document to you, sir, do you remember participating in a meeting of analysts about Sunbeam in the second quarter of 1998?
A. I remember being in a presentation that was done to analysts. I don't recall when it was.
Q. Do you remember where that was?
A. I remember being in what I believe was a hotel in Manhattan.
Q. Do you know if that presentation took place after the Coleman transaction closed?
A. I don't know whether it was after it closed, but I do recall being after it was announced, at least.
Q. Was Mr. Dunlap in attendance?
A. I remember Russ Kersh presenting. I don't recall

Page 175

Mr. Dunlap specifically being there.
Q. Do you remember any questions or discussion that took place at the analysts' meeting?
A. No, I don't.
Q. Do you remember any arguments that took place between people from Sunbeam and analysts?
A. Yes, I do.
Q. What do you remember?
A. I recall Mr. Dunlap becoming agitated at a person in the audiance.
Q. What do you remember?
A. I don't remember what -- I don't remember what was said, or what Mr. Dunlap was upset about, but I do remember him raising his voice to that person.
Q. Was it in a public gathering in front of others?
A. It was in front of others, yes.
Q. Do you know the name of the analyst?
A. I'm not sure it was an analyst.
Q. The person?
A. I don't know.
Q. Do you know an individual by the name of Andrew Shore?
A. No.
Q. What do you remember about this conversation between Mr. Dunlap and the member of the audiance, other than

Page 176

Mr. Dunlap raised his voice?
A. All I recall is that the person -- I believe what occurred is the person asked Mr. Dunlap a question in the formal presentation, and then was confronted by Mr. Dunlap after the presentation.
Q. Do you -- did you witness the confrontation?
A. I believe I did.
Q. What did you see?
A. Mr. Dunlap raising his voice at the person.
Q. Do you remember what he said?
A. No.
Q. Do you remember what the person said back?
A. No.
Q. Okay, now I'm going to show you what we have marked as Exhibit No. 195.
A. (Witness complying.)
Q. I'm going to ask you to look at the first couple of pages, the introduction of the individuals, and the agenda, and ask you if that appears to be presentation materials from a meeting that you attended.
A. I don't recall this presentation.
Q. Fair enough.
If you turn to page -- I'll use the Morgan Stanley number at the very bottom, 3546.

Page 177

A. (Witness complying.)
Oh, that one?
Q. I'm sorry about that, there are too many numbers in these documents.
A. Okay.
Q. Do you see there is an estimate of synergies, original estimate, and then an actual estimate, or an actual?
A. Yes.
Q. Do you have any understanding of what those numbers mean, or where they came from?
A. No.
Q. Do you remember any discussion within Morgan Stanley about those numbers or any other synergy numbers?
MS. BROWN: Objection to form.
A. No, I don't.
Q. If you turn to Page 3549, something entitled "Sources Of Growth."
They are additional estimates of synergies -- do you have any understanding as to where those came from?
A. No, I do not.
Q. Do you know if you saw these presentation slides before they were given?
A. I don't recall seeing them before.

NOT A CERTIFIED COPY

018057

Page 178

Q. Do you know if anyone at Morgan Stanley did?
A. I don't know that anyone did.
Q. Do you remember who else from Morgan Stanley was at the presentation where Mr. Dunlap and the member of the audiance got into their little argument?
A. No, I do not.

(Exhibit 196, Documentation, marked for identification.)

BY MR. BRODY:
Q. Mr. Webber, I am giving you what has been marked as Exhibit No. 196.
At our last break I exhibited this to your counsel, and we have a Court Order about what we can show to people, and what we can't show to people, and she had no objection to me showing this to you.
Have you ever seen these two pages that we have marked as Exhibit No. 196 before?
A. I believe I authored them.
Q. And you authored them back in 1998?
A. Yes.
Q. At the top it refers to you as a Vice President.
A. Yes.

Page 179

Q. In 1998 you were not a Vice President?
A. No, I was not.
Q. Do you remember seeing that form come back with you as a Vice President on it?
A. No.
Q. Do you have any understanding how that mistake was made?
A. Are we sure that -- when I left the firm I was a Vice President. Are we sure that when this was printed it did not just insert my current title?
Q. I don't know. It was printed within the last few of months.
A. I don't know how it happened.
Q. Okay. Fair enough.
In your preparation session yesterday did you review this document?
MS. BROWN: Objection, I instruct you not to answer.
BY MR. BRODY:
Q. In your preparation session yesterday did you review pages of your Performance Evaluation from 1998, other than this?
MS. BROWN: Same instruction.
BY MR. BRODY:

Page 180

Q. Sir, in your preparation sessions yesterday, did you review performance evaluation pages that refresh your recollection about work that you had done or things that you had written in 1998?
A. Yes.
Q. Okay, did those documents that you reviewed that refreshed your recollection include these two pages?
A. Yes.
Q. Okay, did they include documents other than these two pages?
A. Did I review any other documents yesterday that refreshed my memory?
Q. That were documents in connection with your performance that refreshed your recollection.
A. Oh, I don't recall anything yesterday that -- regarding my performance -- any documents on my performance evaluation that sparked any memories, other than these pages (indicating).
Q. Do you recall -- this is a "yes" or "no" answer, I don't think it can be objected to.
Do you recall whether you looked at portions of your performance evaluation other than these two pages?
MS. BROWN: Yes, I can. Objection,

Page 181

instructed not to answer.
MR. BRODY: I'm asking if he recalls, not if he did or not. Either he recalls or he doesn't. If he doesn't recall, well, then I'm done.
BY MR. BRODY:
Q. Do you understand the distinction I'm making?
A. You're asking if I recall looking at something yesterday?
Q. Looking at pages of your performance evaluation other than these two pages.
MS. BROWN: No.
MR. BRODY: Are you instructing him?
MS. BROWN: Yes.
BY MR. BRODY:
Q. Are you going to follow your counsel's instruction?
A. Yes.
Q. In this document, sir, the first entry refers to how did you enhance the firm's franchise, Item No. 3, Sunbeam. Would you read that into the record.
A. "It's hard to make an argument that Sunbeam has enhanced the firms franchise, in fact I will not even try. However, having spent 80 percent of my time for three or four months, I think I deserve some credit."
Q. Okay, what did you mean by that?

NOT A CERTIFIED COPY

018058

Page 182

A. I believe what I meant was that Morgan Stanley lost a lot of money as a result of the Sunbeam transaction through the Sunbeam's bankruptcy, and so my opinion was that the transaction did not enhance the firm's franchise because it lost money.
Q. Now, in 1998 Sunbeam was still several years from bankruptcy, right?
A. Maybe it was not bankruptcy, but it had become clear, I believe, at the time, that Morgan Stanley's capital was at risk, and I believe it was well known or -- well, it was believed throughout Morgan Stanley that our money was at risk as a result of the Sunbeam transaction.
Q. At the time at Morgan Stanley did you think that Morgan Stanley was going to lose money on its bank loan?
A. At the time that I wrote this I believe that I thought there was a risk that Morgan Stanley was going to lose money in the bank, yes.
Q. Well, there is always a risk a bank is going to lose money on a loan. Did you think it was anything more than the typical credit risk in association with lending money?
MS. BROWN: Objection to form.

Page 183

A. I believe I had the timing right in that it had become clear by the time I had written this that Sunbeam looked like it was in trouble, and -- and as a result of Sunbeam being in trouble, I was concerned that Morgan Stanley might lose the money that it had invested.
Q. Do you remember when you wrote this?
A. It would have been, I believe, October of 1998.
Q. Okay, the evaluation cycle called for that to be done in the fall?
A. Yes.
Q. Looking back, do you think there is anything that Morgan Stanley could have done differently to achieve a more positive result on its franchise?
MS. BROWN: Objection, form.
BY MR. BRODY:
Q. "Morgan Stanley's franchise," the words that you used.
A. At the time -- well, obviously knowing what has happened, now, had we not taken on this assignment we would have been better off.
However, at the time I don't know of anything that Morgan Stanley should have done differently based on current information that was available to them at the time.

Page 184

Q. In the portion you just read, you said, having spent the time you did on the deal, "I think I deserve some credit."
Do you think you got some credit?
MS. BROWN: Objection to form.
A. I don't know.
Q. Is your compensation determined in part by these evaluations?
A. Yes.
Q. Did you receive a bonus after this evaluation?
A. Yes.
Q. What was that bonus as a percentage of your income -- percentage of your base income?
A. It was more than double my base income.
Q. So if your base income was X, your bonus is more than 2X?
A. No, it was slightly less than 2X, if I recall.
Q. Okay.
Do you recall what your compensation was, what your bonus was?
A. In the first year -- in that year I believe my salary was $75,000, and my total compensation was $210,000.
Q. Within the realm of Morgan Stanley, was that a good bonus, or did it reflect that you were not being given

Page 185

credit for work that you had done?
MS. BROWN: Objection, form, foundation.
A. If I -- I believe that as a first-year associate, which I was at that time, virtually all investment banking first-year associates received the same bonus, which I received, and I don't believe there are any higher than that. There were a few that were lower.
Q. Okay, that answered my question, thank you.
On the next page of the document, in the big paragraph at the beginning, right in the middle it says, "two deals in particular, the Sunbeam acquisitions and the Tracor acquisition required a significant amount of fairly complicated, quantitative work. I was very successful in working with the analysts to produce accurate work that helped to provide insight, and eventually lead to successful transactions." Did I read that correctly?
A. Yes.
Q. What did you mean by that?
A. I think I was trying to communicate that I had strong quantitative skills and I used them in my job successfully.
Q. What do you mean by "successful transactions"?
A. Completed transactions.

NOT A CERTIFIED COPY

018059

Page 186

Q. In -- this is the performance evaluation for 1998. Did you also receive a performance evaluation for 1999 or 2000?
A. Yes.
Q. Did those performance evaluations make any reference to Sunbeam, or the work you had done on Sunbeam?
A. I don't -- I didn't see them, but I doubt that they would.
Q. Okay, let's go off the record for a second.

(Brief break.)

BY MR. BRODY:
Q. Subject to potential rulings on the instructions, and any later produced documents, I have no further questions. I thank you for your cooperation and patients, Mr. Webber.
A. Thank you.

CROSS EXAMINATION BY MS. BROWN:

Q. I have just a couple of quick questions. You testified -- I believe you said that you didn't get on the Sunbeam-Coleman deal until January,

Page 187

February of 1998; is that correct?
A. That's correct.
Q. As you sit here today do you know what due diligence had been done by the M&A team prior to your getting on to the deal?
A. No, I do not.
Q. And were you involved in the due diligence on the underwriting side of the bank financing side?
A. No, I was not.
Q. So in the testimony you recall that there was a number of questions by Mr. Brody concerning the due diligence by Morgan Stanley on the Coleman acquisitions?
A. Yes.
Q. Your testimony was limited to your personal knowledge and involvement?
A. Yes.
Q. And when you testified, for instance, that you weren't aware of anyone from Morgan Stanley talking to customers, was it your understanding that that did not occur, or are you -- or could you clarify your testimony?
MR. BRODY: Objection. Leading.
A. I don't know whether that occurred or not. I know that I didn't do it.

Page 188

It may have occurred. I'm not familiar with the due diligence that occurred.
Q. When you say you're not familiar with the due diligence that occurred, are you referring both to due diligence prior to your involvement and on the underwriting side?
MR. BRODY: Objection, same.
A. That's correct, I'm not familiar with the due diligence that occurred prior to me being placed on the deal team, and I'm also not familiar with the due diligence that occurred on the underwriting side.
Q. When you testified that you weren't aware of whether anyone contacted Sunbeam's customers, are you aware one way or the other whether or not that happened?
A. No.
MR. BRODY: Objection. Leading.
BY MS. BROWN:
Q. When you testified that -- with regard to any of the due diligence, other than your own personal involvement, are you aware one way or the other whether that due diligence occurred?
A. I don't specifically know which -- what due diligence was done by Morgan Stanley if I was not involved in it.

Page 189

MS. BROWN: No further questions.
MR. BRODY: I have a couple.

REDIRECT EXAMINATION BY MR. BRODY:

Q. In the course of the work that you did in this transaction, did you ever look at a file that reflected the due diligence done by others?
A. I don't recall looking at a file.
Q. Do you know if there was one?
MS. BROWN: Asked and answered.
A. I don't know if -- I don't know that there was a file.
Q. And in response to some prior questions you referred to the fact that there were occasionally team meetings or meetings of people that worked on the team.
In connection with any of those team meetings, did anyone ever say that they had done or going to do any due diligence or other factual investigation about the first quarter of '98?
A. I don't recall the specifics of those team meetings, but I don't recall whether that topic was discussed at these team meetings or not.
Q. You don't remember anyone ever raising that topic?
MS. BROWN: Objection, asked and answered.

NOT A CERTIFIED COPY

A. No, I don't.

MR. BRODY: Thank you, I have nothing further.

MS. BROWN: We have a standing order.

(Whereupon, the deposition concluded at 2:53 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

I, Mary P. Peacock, a Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that JOSHUA A. WEBBER, the witness whose examination is hereinbefore set forth, was duly sworn by me and that such examination is a true and accurate record to the best of my knowledge, skills and ability of the testimony given by such witness.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of May, 2004.

_____

Mary P. Peacock, Notary Public
My Commission Expires
November 29, 2007

ERRATA SHEET DISTRIBUTION INFORMATION
DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS

ERRATA SHEET DISTRIBUTION INFORMATION

The original of the Errata Sheet has been delivered to Attorney Brown.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL forwarded to Attorney Brody, to whom the original deposition transcript was delivered.

INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, please indicate any corrections or changes to your testimony and the reasons therefore on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself. Add additional sheets if necessary. Please refer to the above instructions for Errata Sheet distribution information.

PLEASE ATTACH TO THE DEPOSITION OF JOSHUA A. WEBBER
CASE: COLEMAN HOLDINGS VS. MORGAN STANLEY
DATE TAKEN: 5-18-04

ERRATA SHEET

Please refer to Page 192 for errata sheet instructions and distribution instructions.

PAGE	LINE	CHANGE	REASON

I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Executed this _____ day of _____, 2004.

_____

JOSHUA A. WEBBER

019081

NOT A CERTIFIED COPY

SANDS BROTHERS & CO., LTD.
INVESTMENT BANKERS
MEMBER NYSE
90 PARK AVENUE, NEW YORK, N.Y. 10016
(212) 697-5200 Toll Free (800) 866-6116 Fax (212) 682-8799

March 19, 1998

David G. Buck

SUNBEAM CORPORATION (NYSE: SOC) --$50 1/16

SOC Pre-Announces 1Q Sales Shortfall Due to Timing of Customer Buying; Focus on Bigger Picture, Namely Pending Acquisitions, Price Weakness Represents Buying Opportunity

Recommendation: Strong Buy

3/18/98 Closing Price:	$50 1/16
52 Week Price Range:	$53 -- $29 3/4
Price Target:	$70

FYE (12/31)	1996A	1997A	1998E	1999E
EPS	($0.11)	$1.41	$2.00	$2.80
P/E	NM	35.5X	25.0X	17.9X

Qtrly EPS*	1Q	2Q	3Q	4Q
1996A	$0.08	$0.03	($0.19)	($0.03)
1997A	$0.24	$0.30	$0.39	$0.47
1998E	$0.28	$0.46	$0.58	$0.58
	$0.32	$0.45	$0.56	$0.58

*Quarterly numbers may not add to full year due to rounding or differences in shares outstanding

Diluted Shares O/S (mm):	87.5
Est. LT Earnings Growth Rate:	25%
Dividend/Yield:	$0.04/0.1%
Market Cap. (mm):	$4,380

Company Description: *Sunbeam Corporation (NYSE: SOC) designs, manufactures, and markets consumer products. The Company had 1997 sales of $1.1 billion and net income of $123 million. SOC's products are primarily sold through mass merchants and other distributors in the United States and internationally. Key product categories include Appliances (25% of sales); Health and Home (8.3% of sales); Personal Care and Comfort (15% of sales); Outdoor Cooking (23% of sales and Away from Home (4.3% of sales). Wal-Mart (NYSE: WMT) is SOC's largest customer, accounting for about 19% of sales. During 1996, the Company installed a new management team led by Al Dunlap as Chairman. Also in 1996, the Company completed a restructuring and growth plan that should lead to annual cost savings on the order of $225 million.*

Investment Highlights

- **Company pre-announces sales shortfall for first quarter.** Today the Company indicated that its sales for 1Q 1998 *may* be below "Street" estimates of $285 million to $295 million, but would be higher than last year's $253 million. SOC indicated that any shortfall would be due to changes in retail customers' buying patterns including increased inventory management. While we do not yet know the products that have been impacted, retail customers may have sharply drawn down inventories of electric blankets, due to warmer-than-expected weather. The Company expressed confidence in its full year revenue outlook due to new product launches and confidence in its brand strength. In reaction to today's announcement, we have cut our 1Q sales assumption to $259 million from $290 million, and we have reduced our EPS estimate by $0.04 to $0.28. We are maintaining our $2.00 EPS estimate for the full year for several reasons. First, our $2.00 estimate was back-weighted towards the second half. Secondly, we expect new products to boost sales, along with increased distribution strength from the Coleman (NYSE: CLN) acquisition. The Company should benefit from increased sourcing of its manufacturing in lower-cost Asia/Pacific countries. **Furthermore, SOC should realize cost synergies from an increased focus on outsourcing, with a year-end goal of 50% outsourced product versus 30% at the end of 1997.**
- **Focus on the big picture.** We believe it makes sense to look beyond the first quarter's likely earnings disappointment and focus on value-creation through pending acquisitions of CLN, Signature Brands (NASDAQ: SIGB) and First Alert (NASDAQ: ALRT). Post-transactions, SOC should post 1999 revenues on the order of $4.1 billion, versus $2.1 billion in 1997. SOC should achieve at least $150 million in cost-savings in the acquired companies. Additionally, the acquired companies should be platforms for international growth. SOC has a weak presence in Asia/Pacific and Europe, although its Oster brand has strong recognition in Latin America. **Combining forces with CLN should provide SOC with a platform for distribution in Europe and Asia. Our 1999 EPS estimate does not include any further acquisitions, although we expect Al Dunlap to pursue additional accretive acquisitions.**
- **We recommend buying on weakness.** After today's announcement, SOC shares hit an intra-day low of $45 3/4, a drop of 8.6% from yesterday's close. That level implied a valuation of just 16X our 1999 EPS estimate. In our view, SOC shares still warrant a 25X multiple of our 1999 EPS estimate of $2.80, a sharp discount to its growth rate. We expect the Company's shares to recover from recent weakness and we believe they can reach $70 over the next 12 months. **We reiterate our Strong Buy rating.**

The information set forth herein was obtained from primary and secondary sources which Sands Brothers & Co., Ltd. believes to be reliable, but we do not guarantee its accuracy or completeness. None of the information contained herein nor any opinion expressed constitutes a solicitation by us for the purchase or sale of any securities, but is provided for the information of our clients and customers. Officers, employees and other affiliates of Sands Brothers & Co., Ltd., or members of their families, may hold positions in these securities and may make purchases and/or sales from time to time in the open market or otherwise. This report may not be duplicated without the express permission of Sands Brothers & Co., Ltd.Member SIPC.

NOT A CERTIFIED COPY

018063

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLDCOM, INC. SECURITIES LITIGATION	MASTER FILE 02 Civ. 3288 (DLC)
This Document Relates to:	
ALL ACTIONS	OPINION AND ORDER

Appearances:

For Lead Plaintiff in the Securities Litigation:
Max W. Berger
John P. Coffey
Steven B. Singer
Chad Johnson
Beata Gocyk-Farber
John C. Browne
Jennifer L. Edlind
David R. Hassel
Bernstein Litowitz Berger & Grossman LLP
1285 Avenue of the Americas
New York, New York 10019

Leonard Barrack
Gerald J. Rodos
Jeffrey W. Golan
Mark R. Rosen
Jeffrey A. Barrack
Pearlette V. Toussant
Barrack, Rodos & Bacine
3300 Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19103

For Underwriter Defendants:
Jay B. Kasner
Susan L. Saltzstein
Cyrus Amir-Mokri
Steven J. Kolleeny
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036

Thomas J. Nolan
Jason D. Russell
300 South Grand Avenue
Los Angeles, California 90071-3144

NOT A CERTIFIED COPY

018065

For amici curiae the Securities Industry Association and The Bond Market Association:
George R. Kramer
Securities Industry Association
1425 K Street, N.W.
Washington, D.C. 20005

Marjorie E. Gross
The Bond Market Association
360 Madison Avenue
New York, New York 10017

Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

NOT A CERTIFIED COPY

990810

TABLE OF CONTENTS

Introduction.....1

Background.....3
Procedural History.....3
WorldCom and its Role in the Telecommunications Industry...9
Ebbers' Dependence on WorldCom Stock.....11
WorldCom's Accounting Strategies.....14
Andersen and the 1999 Form 10-K.....21
2000 Offering.....27
Late 2000 Investment Banking Transactions.....37
The Underwriter Defendants' Credit Assessment of WorldCom as of Early 2001.....37
2000 Form 10-K.....43
2001 Offering.....44

Discussion.....51
I. Legal Framework.....53
A. Section 11.....53
B. Section 12.....60
II. Lead Plaintiff's Motion for Partial Summary Judgment..62
III. The Underwriter Defendants' Motion for Summary Judgment: The Financial Statements.....65
A. Role of the Underwriter.....66
B. The "Due Diligence" Defenses.....68
C. Accountants as Experts.....71
D. Integrated Disclosure, Shelf Registration, and Rule 176.....78
E. Case Law: Reliance Defense.....90
F. Case Law: Due Diligence Defense.....96
G. The Application of the Law to This Motion.....107
1. Audited Financial Statements.....108
a. 2000 Registration Statement.....108
b. 2001 Registration Statement.....112
i. Goodwill and Asset Impairment.....113

NOT A CERTIFIED COPY

018067

16div-023129

ii. Ebbers' Personal Finances.....114
iii. E/R Ratio.....115
2. Interim Financial Statements.....116
IV. The Underwriter Defendants' Motion for Summary Judgment: Omissions.....123
A. 2000 Registration Statement.....124
1. Sprint Merger.....128
2. Conflicts of Interest.....132
3. Risk Factors.....136
B. 2001 Registration Statement.....141
1. Downgrading WorldCom as a Credit Risk.....149
2. Use of Proceeds.....151
3. Risk Factors.....153

Conclusion.....155

NOT A CERTIFIED COPY

890810

DENISE COTE, District Judge:

This Opinion addresses issues related to an underwriter's due diligence obligations. Following the conclusion of fact discovery, several of the parties in this consolidated securities class action arising from the collapse of WorldCom, Inc. ("WorldCom") have filed for summary judgment. This Opinion resolves the motions for summary judgment filed by Lead Plaintiff for the class, who seeks a declaration that certain of the WorldCom financials incorporated in the registration statements for two WorldCom bond offerings contained material misstatements; and by the underwriters for those same bond offerings, who seek a declaration that they have no liability for any false statements in the WorldCom financials that accompanied the registration statements or for the alleged omissions from those registration statements.

It is undisputed that at least as of early 2001 WorldCom executives engaged in a secretive scheme to manipulate WorldCom's public filings concerning WorldCom's financial condition. Because those public filings were incorporated into the registration statements for the two bond offerings, the underwriters are liable for those false statements unless they can show that they were sufficiently diligent in their investigation of WorldCom in connection with the bond offerings. Through these motions, the Lead Plaintiff emphasizes that the

NOT A CERTIFIED COPY

018069

underwriters did almost no investigation of WorldCom in connection with their underwriting of the bond offerings for the company, and because they did essentially no investigation, will be unable to succeed with their defense that they were diligent. The Lead Plaintiff contends moreover that there were "red flags" that should have led the underwriters to question even the audited financials filed by WorldCom.

For their part, the underwriters emphasize that WorldCom management concealed the fraud from almost everyone within WorldCom, from WorldCom's outside auditor, and from the underwriters themselves. They assert that they were entitled to rely on WorldCom's audited financial statements as accurately describing the company's financial condition, and also on the comfort letters that WorldCom's outside auditor provided for the unaudited financial statements. While they have not moved for summary judgment on the adequacy of their due diligence efforts per se, they do argue that those efforts should not be measured solely by the work that they undertook in connection with the bond offerings themselves, but should be assessed against a background of their long term familiarity and work with the company. They also argue that much of the information that was allegedly omitted from the bond registration statements was already known to the public.

NOT A CERTIFIED COPY

018070

For the following reasons, the Lead Plaintiff's motion is granted in part. The underwriters' motion is also granted in part.

Background

These summary judgment motions require, in varying amounts of detail, an understanding of the industry in which WorldCom operated, some of the accounting issues that affected the reliability of the WorldCom financial statements, and the due diligence work performed by the underwriters in connection with the two bond offerings. The facts recited here are either undisputed or as shown by the party resisting summary judgment, unless otherwise identified. A brief description of the history of this litigation and the context for the summary judgment motions precedes the factual recitation.

Procedural History

WorldCom announced a massive restatement of its financials on June 25, 2002. It reported its intention to restate its financial statements for 2001 and the first quarter of 2002. According to that announcement, "[a]s a result of an internal audit of the company's capital expenditure accounting, it was determined that certain transfers from line cost expenses[1] to capital accounts during this period were not made in accordance

[1] Line costs, which are transmission costs, are described below. They were the single largest operating expense incurred by WorldCom.

NOT A CERTIFIED COPY

018071

16div-023133

with generally accepted accounting principles (GAAP)." The amount of transfers was then estimated to be over $3.8 billion. Without the improper transfers, the company estimated that it would have reported a net loss for 2001 and the first quarter of 2002. On July 21, it filed for bankruptcy. A restatement of WorldCom's financials was issued in 2004 in connection with WorldCom's emergence from bankruptcy. WorldCom restated its financial information for the years ending 2000 and 2001. The restatement included approximately $76 billion in adjustments, which reduced WorldCom's net equity from approximately $50 billion to approximately minus $20 billion.

Securities litigation addressing the accuracy of WorldCom's financial statements commenced in the Spring of 2002. Those class actions filed in this district were consolidated on August 15, 2002. The Judicial Panel on Multi-District Litigation ("MDL Panel") transferred the securities litigation pending in federal courts to this district and all of the actions, both individual ("Individual Actions") and class actions, were consolidated for pre-trial purposes on December 23, 2002. In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2002 WL 31867720 (S.D.N.Y. Dec. 23, 2002). This litigation is referred to as the Securities Litigation.[2]

[2] The MDL Panel also transferred all litigation concerning WorldCom raising issues under the Employment Retirement Income Security Act, 29 U.S.C. § 1001 et seq., to this district. It has been consolidated and is referred to as the ERISA Litigation.

NOT A CERTIFIED COPY

018072

16div-023134

The consolidated class action complaint in the Securities Litigation was filed on October 11, 2003, and the first wave of motions to dismiss that pleading were resolved in an Opinion of May 19, 2003. In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 392 (S.D.N.Y. 2003). Fact discovery in the Securities Litigation concluded on July 9, 2004.[3] Before its conclusion, Citigroup, Inc., Citigroup Global Markets Inc. f/k/a/ Salomon Smith Barney Inc. ("SSB"), Citigroup Global Markets Limited f/k/a/ Salomon Brothers International Limited, and Jack B. Grubman ("Grubman") (collectively "Citigroup Defendants") settled the class action lawsuit. A fairness hearing on the $2.575 billion settlement was held on November 5, 2004, and the settlement was approved. In re WorldCom Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 2591402 (S.D.N.Y. Nov. 12, 2004).

SSB had functioned was the co-lead underwriter for the two bond offerings issued by WorldCom that are at issue in the class action: one in May 2000 ("2000 Offering") and one in May 2001 ("2001 Offering"). Grubman, an SSB employeé, was the leading telecommunications analyst covering WorldCom and it is alleged that he had issued reports urging investors to purchase WorldCom securities when he knew that WorldCom's financial statements did not accurately disclose information that was material to investors. The plaintiffs asserted that SSB's desire to obtain

[3] Fact discovery of the plaintiffs in the Individual Actions remains to be done.

NOT A CERTIFIED COPY

018073

WorldCom's investment banking business caused it to issue misleading analyst reports that urged investors to purchase WorldCom securities. The class action complaint alleged that the Citigroup Defendants violated not just the strict liability statutes governing securities offerings, but also the securities statutes that forbid fraud, including Section 10(b) of the Securities Exchange Act of 1934 ("Section 10(b)" and "Exchange Act").

The defendants in the class action, as named in a Corrected First Amended Class Action Complaint of December 1, 2003, include former WorldCom executives Bernard J. Ebbers ("Ebbers"), WorldCom's CEO, and Scott Sullivan ("Sullivan"), WorldCom's CFO; members of WorldCom's Board of Directors ("Director Defendants"), investment banks that underwrote the 2000 and 2001 Offerings,[4] and Arthur Andersen LLP ("Andersen"), WorldCom's former auditor. The plaintiffs allege that the Underwriter Defendants violated

[4] The underwriters consist of Salomon Smith Barney, Inc., now d/b/a/ Citigroup Global Markets Inc. and Salomon Brothers International Limited (collectively "SSB"); J.P. Morgan Chase & Co., J. P. Morgan Securities, Ltd., & J.P. Morgan Securities, Inc. (collectively "J.P. Morgan"); Banc of America Securities LLC; Chase Securities Inc.; Lehman Brothers Inc., Blaylock & Partners, L.P.; Credit Suisse First Boston Corp.; Deutsche Bank Alex. Brown, Inc., now known as Deutsche Bank Securities, Inc.; Goldman, Sachs & Co.; UBS Warburg LLC; ABN/AMNRO Inc.; Utendahl Capital; Tokyo-Mitsubishi International plc; Westdeutsche Landesbank Girozentrale; BNP Paribas Securities Corp.; Caboto Holding SIM S.p.A.; Fleet Securities Inc.; and Mizuho International plc. Some of the Underwriter Defendants participated in only one of the two Offerings. For purposes of this Opinion, it is unnecessary to distinguish among them. As used in this Opinion, the term "Underwriter Defendants" refers to all underwriters except for SSB.

NOT A CERTIFIED COPY

0180174

16div-023136

Sections 11 and 12(a)(2) of the Securities Act of 1933 ("Section 11", "Section 12(a)(2)", and "Securities Act"), 15 U.S.C. § 77k and § 77*l*, and that Andersen violated Section 11 of the Securities Act and Section 10b of the Exchange Act.

On August 20, 2004, summary judgment motions were filed by parties to the class action. The trial is scheduled to begin on February 28, 2005.

The Lead Plaintiff has moved for partial summary judgment, and the Underwriter Defendants have moved for complete summary judgment.[5] The Lead Plaintiff moves for summary judgment on its Sections 11 and 12(a)(2) claims with respect to certain statements in WorldCom's financial filings that the Lead Plaintiff contends are indisputably false and material. WorldCom's financial filings were incorporated into the registration statements for the 2000 and 2001 Offerings. The allegedly false statements on which the Lead Plaintiff's motion is based relate to the reporting of WorldCom's line costs, capital expenditures, depreciation and amortization, assets, and goodwill.

[5] With one exception, all of the material misstatements in the 2000 and 2001 offerings outlined by Lead Plaintiff in its responses to the Underwriter Defendants' second set of interrogatories are grounded in WorldCom's financial statements. The sole exception relates to statements in the May 2001 Registration Statement as to how proceeds from the offering would be used. This alleged misstatement is similar to an alleged omission in the registration statement, and the Underwriter Defendants have presented arguments in their briefs that address either characterization.

NOT A CERTIFIED COPY

018075

16div-023137

The Underwriter Defendants move for summary judgment on the Sections 11 and 12(a)(2) claims against them with the argument that it is undisputed that they conducted reasonable due diligence with respect to the WorldCom financial statements that were incorporated into the registration statements for the 2000 and 2001 Offerings. They argue in particular that they were entitled to rely on WorldCom's audited financial statements and had no duty to investigate their reliability unless they had reasonable grounds to believe that they were not accurate, and that they were also entitled to rely on the "comfort letters" from WorldCom's auditor for the interim unaudited WorldCom financial statements. With respect to the alleged material omissions that are also a basis for those same Securities Act claims, the Underwriter Defendants contend that none of the omissions are actionable, for instance, because the information was already publicly disclosed or was not material.

The parties have made extensive submissions in connection with these competing motions. Because of the analysis which follows, it is only essential to set forth a small portion of the factual material presented through these motions. The essential facts as shown through the evidence presented with these motions include the following.

NOT A CERTIFIED COPY

018076

WorldCom and its Role in the Telecommunications Industry

Ebbers founded a long-distance telephone service provider in 1983 in Mississippi. His company grew by purchasing other small long-distance companies throughout the late 1980s and early 1990s. The company went public in 1989, and by 1993 it was the fourth largest long-distance carrier in the United States. It took the name WorldCom in 1995.

Congress enacted the Telecommunications Act in 1996, 47 U.S.C. § 251 et seq., which encouraged competition in local and long-distance telephone services. At this same time, the Internet was expanding rapidly and there was a demand for increased bandwidth.[6] To meet that demand and in response to the intense competition, telecommunications companies made substantial capital investments in fiber optic networks and telecommunications infrastructure.

Between 1996 and 1999, WorldCom completed several major acquisitions that helped diversify or enlarge its business. Through a merger with MFS Communications, Inc., WorldCom acquired UUNET Technologies Inc., which was the world's largest Internet service provider and which had a substantial fiber optic cable network. It acquired CompuServe Corporation and ANS Communications Inc., which gave WorldCom a large Internet dial-up

NOT A CERTIFIED COPY

018077

[6] Bandwidth is used to mean the rate of data transmission and refers to the maximum amount of information that can be sent along a particular communications circuit per second.

communications network. The acquisition of SkyTel Communications, Inc. gave WorldCom an expertise in the wireless business. In 1998, WorldCom acquired MCI Communications ("MCI"), a company whose revenues were more than two and half times greater than WorldCom's. With that acquisition WorldCom became the second largest telecommunications company in the world. Its share price, which had been approximately $8 per share in 1994, increased to $48 per share by September 1999.

As noted, by the late 1990s, the telecommunications industry was growing increasingly competitive. Regional companies were entering the long-distance market, long-distance carriers were entering the local call market, and many companies were seeking to provide Internet services. Some analysts expressed concerns about WorldCom's weakness in wireless technologies and the increased competition it faced in the long-distance telephone service market, where competition was driving prices down.

On October 5, 1999, WorldCom announced that it had agreed to merge with Sprint in a transaction valued at $129 billion. With this acquisition, WorldCom would get Sprint's wireless business and address some of the concerns expressed about its competitive posture in the telecommunications market. The market initially reacted enthusiastically to the announcement, but as time passed WorldCom's share price fell dramatically. On May 18, 2000, attorneys in the Antitrust Division of the United States Department of Justice formally recommended to their division

NOT A CERTIFIED COPY

018078

chief that the merger be blocked. On July 13, WorldCom announced that it was terminating its merger agreement with Sprint. By the end of August 2000, WorldCom's stock was trading in the low $30s.

On September 5, 2000, WorldCom announced that it had entered into a $6 billion merger agreement with Intermedia. Intermedia had a local exchange carrier business and owned a web hosting business, Digex. WorldCom hoped to sell the local carrier business and to take advantage of the Digex Internet business. With the acquisition of Intermedia, WorldCom assumed massive debt obligations. WorldCom paid approximately $250 million a quarter to fund Intermedia's business and approximately $300 million a year to support Digex's capital expenditure needs. WorldCom was unable to find a buyer for the Intermedia local carrier business.

On November 1, 2000, WorldCom announced that its revenues for 2001 would not be as high as previously estimated. WorldCom indicated it was issuing "new financial guidance due to continuing competitive pressures in the telecommunications industry, increased spending to support the Company's growth initiatives and other economic factors."

NOT A CERTIFIED COPY

018079

Ebbers' Dependence on WorldCom Stock

Ebbers' personal finances were dependent on the rise and fall of WorldCom's stock price. The majority of his wealth was concentrated in his holdings of WorldCom stock. He pledged essentially all of his WorldCom stock to secure loans that he

used to acquire other businesses and to fund their operations. Most of his personal debt was held by affiliates of Citibank and Bank of America.

As described above, WorldCom's stock price fell during 2000. By the Fall of 2000, Ebbers began receiving substantial margin calls from Bank of America's private bank. Because Ebbers had already pledged all of his holdings to secure his personal debt, he was unable to pledge any additional stock. On September 6, WorldCom agreed to extend Ebbers a $50 million loan to cover the margin calls. Within a few weeks, Ebbers faced additional margin calls. When WorldCom refused a request for an additional loan, Ebbers entered into a forward sale of three million WorldCom shares to raise $70 million. The sale was reported by the media on October 4, and WorldCom's stock price dropped nearly 8%, to $24.93.

In early October 2000, Citibank issued margin calls to Ebbers. Its affiliate SSB had a significant investment banking relationship with WorldCom, and SSB agreed to guarantee payment of Ebbers' personal debt to Citibank.[7]

[7] A November 21, 2000 SSB memorandum explains that the SSB private banking group held approximately $50 million of margin loans to Ebbers and certain of his companies which were secured by WorldCom stock. At the then current price of WorldCom stock, this gave Citigroup an unsecured exposure of $5 million. The memorandum explained, "[o]n the strength of the corporate finance relationship between SSB and [WorldCom], SSB effectively guaranteed the Private Bank's exposure, and has elected not to enforce the margin call provisions or the demand feature of our loan documents. We are, however, in the process of taking liens

NOT A CERTIFIED COPY

018080

On October 27, WorldCom agreed to loan Ebbers an additional $25 million and to guarantee an additional $75 million of Ebbers' debt to Bank of America, staving off additional margin calls. In mid-November, the guarantee was increased to $100 million. By the end of 2000, WorldCom had extended a total of $200 million in loans and guarantees to Ebbers. The loans increased to over $250 million by May 2001.

On April 11, 2001, Ebbers met with the private banking arm of J.P. Morgan and requested a loan of $40 million to refinance $20 million of his debt to Bank of America relating to his investment in a yacht building business, and to invest another $20 million in building additional yachts. The investment bankers encouraged their bank to accommodate Ebbers, and in June, J.P. Morgan gave Ebbers a personal line of credit of $20 million. An April 26 memorandum analyzing Ebbers' personal financial situation noted that "Ebbers has used his wealth in WCOM to fund his investments," principally in a yacht building business, timber, motels, a trucking company and the largest working ranch in North America. The memorandum continued,

> Unusual for a CEO of this type, he has virtually no other marketable securities. . . . To finance these private investments, Ebbers has accumulated substantial margin loans against his WCOM shares. Last fall, when the share price of WCOM declined substantially, his largest lender, Bank of America, issued some well-publicized margin calls. In order to forestall a sale

---

on the client's vacation condo and his yacht which reportedly have aggregate value sufficient to cover our clean exposure."

NOT A CERTIFIED COPY

018081

> of the Chairman's shares and risk further downward pressure on the share price[,] WCOM stepped in and replaced Bank of America as lender on $75 million and provided an additional guaranty on the remaining $186 million loans outstanding. . . . While Bank of America seems comfortable for the moment, the current margin structure of his debt and the illiquid nature of his other assets provides little room for movement in the WCOM share price.

(Emphasis supplied.) The memorandum added that Ebbers had a "highly leveraged balance sheet with $315 million in debt structured as margin loans against his [WorldCom] shares. 80% leverage against WCOM shares."

WorldCom's Accounting Strategies

WorldCom's single largest operating expense was its line costs. This item accounted for roughly half of its expenses and was so material that it was reported as a separate line item on its financial statements. WorldCom's ratio of line cost expense to its revenue was called the E/R ratio, was used as a measurement of its performance, and was also publicly reported in its SEC filings. The lower the ratio, the better the performance.

The parties dispute the extent to which WorldCom's financial statements were intentionally and materially false before the first quarter of 2001. They do not dispute, however, that senior management in WorldCom manipulated the public reports of WorldCom's line costs beginning in the first quarter of 2001 through shifting a portion of them to capital expenditures

NOT A CERTIFIED COPY

018082

16div-023144

accounts, and that this manipulation was criminal.[8] The manipulation reduced the reported line costs and resulted in a lower E/R ratio.

Before capitalizing the line costs in 2001, WorldCom had engaged in other strategies to reduce the apparent magnitude of its line costs. One example will suffice. During 2000, WorldCom released reserves or accruals that had been set aside to cover anticipated costs, and used them to offset line costs. These reserves had been maintained to cover additional bills that WorldCom had estimated it might receive from outside service providers.[9] By releasing these reserves, line costs appeared smaller. Prior to 2000, WorldCom had a 24-month billing reserve for invoices it had not yet received. This reserve covered its estimated exposure for a rolling 24-month period. In the first quarter of 2000, WorldCom management decided to reduce the period

NOT A CERTIFIED COPY

---

[8] On July 9, 2004, the Underwriter Defendants refused, when responding to the Lead Plaintiff's Requests for Admission, to admit that any of WorldCom's financial disclosures contained misstatements. The Underwriter Defendants maintained this position during a telephone conference with the Court and other parties on August 18, 2004, noting that Andersen had taken an identical stance. Two days later, however, the Underwriter Defendants filed their motion for summary judgment, in which they represent that they are reviewing their responses to Lead Plaintiff's Requests for Admission "to determine the extent to which amendment of any denial is required by the fact that WorldCom improperly accounted for $771 million in line costs in the first quarter of 2001."

[9] A reserve was created when WorldCom received a bill that was smaller than the bill it had estimated it would receive. The statute of limitations on submitting a corrected bill, or "backbilling," was understood to be 24 months.

018083

of time covered by the reserve from 24 to twelve months. WorldCom divided the impact from this change in policy between the first and second quarters of 2000: $59 million was released in the first quarter; $77 million was released in the second quarter. In the last quarter of 2000, WorldCom reduced the period from twelve months to 90 days and released $70 million in reserves in that quarter.

Unable to reduce reserves further, and still wishing to conceal the magnitude of WorldCom's expenses and artificially inflate WorldCom's reported income, senior management of WorldCom started in 2001 to capitalize WorldCom's line costs. They would review WorldCom's financial results toward the end of each quarter in order to decide how much of the line cost expenses to capitalize. The capitalization of line costs was unsupported by any contemporaneous analysis or records, and was a violation of GAAP. It is undisputed that it constituted fraud.

The capitalization fraud began on Friday, April 20, 2001, when Troy Normand, WorldCom's Director of Legal Entity Reporting in General Accounting, directed that line costs be reduced by $771 million by booking that amount of line costs in an entry labeled "prepaid capacity." Between that day and Tuesday, April 24, WorldCom personnel allocated the line costs expenses to WorldCom's two tracker stocks[10] and other business units. This

[10] On November 1, 2000, WorldCom announced a plan to separate its businesses and create two publicly traded tracking

NOT A CERTIFIED COPY

018084

manipulation was necessary to make the E/R ratio for the first quarter of 2001 "fairly consistent" with the E/R ratio for the prior quarter.

Andersen was unaware of the manipulation of line costs through this capitalization scheme. On April 26, WorldCom issued a Form 8-K.[11] That Form 8-K falsely represented WorldCom's financial condition.

The Lead Plaintiff contends that two WorldCom documents from March and April 2001, if reviewed, would have revealed the discrepancy between WorldCom's actual financial condition and its public reports.[12] A March 20, 2001 document, which is labeled "2001 Line Cost Budget/Final Pass/Corporate Financial Planning," reveals that WorldCom internally projected line costs to be materially higher than what it was reporting for line costs in 2001. The document projects line costs for the first quarter at

---

stocks: WorldCom, which would reflect the performance of WorldCom's "core high-growth data," Internet, hosting and international businesses; and MCI, which would reflect the performance of its high cash flow consumer, small business, wholesale long-distance voice and dial-up Internet access operations.

[11] A Form 8-K is the SEC form used for companies' current reports pursuant to Sections 13 and 15(d) of the Exchange Act, 15 U.S.C. §§ 78m(a)(2), 78o(d). A Form 8-K must be filed upon the occurrence of certain significant corporate events as defined by the SEC and may be filed with respect to any other matter the company considers of material importance.

[12] The Underwriter Defendants argue that these documents have never been authenticated.

NOT A CERTIFIED COPY

018085

16div-023147

$4.65 billion. On April 26, 2001, it publicly reported in its Form 8-K first quarter line costs of only $4.1 billion, or half a billion dollars less.

The 2001 Line Cost Budget document also showed that WorldCom expected an E/R ratio of 47.6% for 2001, based on $19.2 billion of line costs on $40.3 billion of revenue. WorldCom had reported an E/R ratio of 39.6% in 2000. The document attributes the difference to several factors, including the fact that WorldCom could no longer release line cost reserves.[13] The document cryptically lists dollar values as "tasks" and computes the effect of the "task" on WorldCom's E/R ratio. For instance, a "Task of $100M improves E/R to 40.7%." Overall, the document reflects a "proposed 2001 task" in the amount of $471 million.

WorldCom's Capital Expenditure Report, prepared on a monthly and quarterly basis by its Financial Planning Department, described its capital expenditures. The March 2001 Capital Expenditure Report was distributed on April 20, 2001. It reported that WorldCom's capital expenditures (excluding software) were $1.691 billion for the first quarter. On April 26, however, WorldCom's Form 8-K publicly reported that the first

NOT A CERTIFIED COPY

980810

[13] The 2001 Line Cost Budget reads in this connection: "YOY change in E/R largely impacted by: Increase in submitted E/R in domestic voice/data: . . . Depletion of reserve liabilities . . . ." (emphasis supplied).

quarter capital expenditures were $544 million more or $2.235 billion.[14]

The significance of the Capital Expenditure Report was self-evident. On May 1, 2002, after the March 2002 report was distributed, one co-conspirator e-mailed a colleague: "Where do I sign my confession?" Another complained, "Why did you distribute this report? I thought we were never again distributing this. . . . No need to reply but do not distribute again."

The improper capitalization of line costs continued through the first quarter of 2002. WorldCom's internal audit department had completed its last audit of WorldCom's capital expenditures in approximately January of 2002, and had not uncovered any evidence of fraud. In May of 2002, it began another audit of the company's capital expenditures. The fraudulent capitalization of line cases was uncovered as a result of a May 21 meeting between the company's internal auditors and the WorldCom director in charge of tracking capital expenditures. During that meeting the

---

[14] The Underwriter Defendants contend that the Lead Plaintiff has focused on the wrong page of the document and should focus on the last page "which shows actual capital expenditures of less than what WorldCom actually reported." It is the Lead Plaintiff's contention, however, that the Capital Expenditure Report does in fact reflect "actual capital expenditures of less than what WorldCom actually reported." It would appear, therefore, that the parties are reading the document in a similar way.

NOT A CERTIFIED COPY

018087

director used the term "prepaid capacity" to explain the difference between two sets of schedules that he was being shown. The auditors were unfamiliar with the term. After asking questions of several people about "prepaid capacity," Eugene Morse, a member of WorldCom's internal audit group, used a new software tool to investigate WorldCom's books and was able to uncover the transfer of line costs to capital accounts in a matter of hours.[15]

On June 17, David Myers, WorldCom's former controller, admitted to the internal audit team that there was "no support" for the prepaid capacity entries and that there was "no standard" supporting the entries. He explained that the "entries had been booked based on what they thought the margins should be." Myers told the team, "if we couldn't get the costs down that we might as well shut the doors of the business, that we can't continue." On June 20, during a meeting in which Sullivan was confronted with the fraud, Myers told internal audit that the capitalization of line costs had started in the first quarter of 2001. As of that time, the internal audit team thought that the

[15] Morse testified that without that software tool and without access to the general ledger (which the internal audit department did not have), it would have taken him weeks of digging to uncover the fraud. In his opinion, someone with access to the general ledger or someone who asked those who made the questionable entries for the documentation to support the entries, could also have uncovered the fraud.

NOT A CERTIFIED COPY

018088

16div-023150

capitalization of line costs had begun in the second quarter of 2001, and was no longer trying to find out how far back the entries went.

Andersen and the 1999 Form 10-K[16]

Andersen had been the auditor for WorldCom or its predecessors for almost twenty years. It issued an unqualified or "clean" opinion for the WorldCom annual financial statements for 1997 through 2000[17] After the public disclosure of the accounting fraud, Andersen withdrew its support for the WorldCom 2001 Form 10-K, but it never withdrew its audit opinions for the 1999 or 2000 Form 10-Ks.

The WorldCom 1999 Form 10-K, for the year ending December 31, 1999, was dated March 30, 2000. It included detailed discussions of a number of the items that are central to the parties' motions for summary judgment. Its description of the business of WorldCom included the following: "MCI WorldCom

---

[16] A Form 10-K is an SEC form used to file a company's annual report pursuant to Sections 13(a)(2) and 15(d) of the Exchange Act, 15 U.S.C. §§ 78m(a)(2), 78o(d).

[17] "An unqualified opinion, the most favorable report an auditor may give, represents the auditor's finding that the company's financial statements fairly present the financial position of the company, the results of its operations, and the changes in its financial position for the period under audit, in conformity with consistently applied generally accepted accounting principles." United States v. Arthur Young & Co., 465 U.S. 805, 818 n.13 (1984).

NOT A CERTIFIED COPY

018089

leverages its facilities-based networks to focus on data and the Internet. MCI WorldCom provides the building blocks or foundation for the new e-economy. . . . MCI WorldCom provides the broadest range of Internet and traditional, private networking services available from any provider." The 10-K described nine mergers since 1995. In describing the merger agreement with Sprint, it defined its strategy as an effort

> to further develop as a fully integrated telecommunications company positioned to take advantage of growth opportunities in global telecommunications. Consistent with this strategy, the Company believes that transactions such as the MCI Merger, the CompuServe Merger, the AOL Transaction, the SkyTel Merger and, if consummated, the Sprint Merger, enhance the combined entity's opportunities for future growth, create a stronger competitor in the changing telecommunications industry and allow provision of end-to-end bundled services over global networks, which will provide new or enhanced capabilities for the Company's residential and business customers. In particular, the Company believes that if consummated, the Sprint Merger will enable the combined company to: (i) offer a unique broadband access alternative to both cable and traditional telephony providers in the United States through a combination of digital subscriber line ("DSL") facilities and fixed wireless access using the combined company's "wireless cable" spectrum; (ii) continue to lead the industry with innovative service offerings for consumer and business customers; and (iii) continue as an effective competitor in the wireless market in the United States.

In a section labeled "transmission facilities," the 1999 Form 10-K explains that it owns long-distance, international and multi-city local service fiber optic networks with access to additional fiber optic networks through lease agreements with

NOT A CERTIFIED COPY

018090

other carriers. It also owns and leases trans-oceanic cable capacity. WorldCom uses what it calls "ring topology." The network backbones for this system are installed in conduits owned by WorldCom or leased from third parties. The lease arrangements "are generally executed under multi-year terms with renewal options and are non-exclusive." To serve its customers in buildings that are not located directly on the fiber network described in the Form 10-K, WorldCom leases lines from local exchange carriers and others.

The 1999 Form 10-K described WorldCom's ability to generate profits as depending in part "upon its ability to optimize the different types of transmission facilities used to provide communications services." While the Company's own networks were "typically" the most effective transmission routes, "a variety of lease agreements for fixed and variable cost (usage sensitive) services" ensured "diversity and quality of service." The "rapid and significant" changes in technology were also discussed.

In describing rates and charges, the Form 10-K explained that its rates "are generally designed to be competitive." It reported that to date, "continued improvement in the domestic and international cost structures" had allowed the Company to maintain "acceptable margins."

The topics of competition and regulation were discussed at length. WorldCom represented that it expected that competition,

NOT A CERTIFIED COPY

160810

which was already extreme, would "intensify in the future." After discussing different business competitors, the 1999 Form 10-K reported that "WorldCom may also be subject to additional competition due to the development of new technologies and increased availability of domestic and international transmission capacity." It noted that the desirability of its fiber optic network could be adversely affected by changing technology, and that it could not predict which of many future product options would be important. It noted that the Telecommunications Act of 1996 had removed barriers to competition. Once the Bell operating companies were allowed to offer long-distance services, they would be in a position "to offer single source local and long-distance service similar to that being offered" by WorldCom. It predicted that the increased competition would result in increased pricing and margin pressures. As for its data communications services, including Internet access, that was also extremely competitive. "The success of MCI WorldCom will depend heavily upon its ability to provide high quality data communications services, including Internet connectivity and value-added Internet services at competitive prices."

In its lengthy description of the regulatory environment, the 1999 Form 10-K noted that access charges are a principal

NOT A CERTIFIED COPY

018092

WorldCom expense. WorldCom was attempting to bring access charges down to cost-based levels.

Voice revenues for 1999 were described as having increased by 6% over the prior year because of a 10% gain in traffic. "These volume and revenue gains were offset partially by anticipated year-over-year declines in carrier wholesale traffic as well as federally mandated access charge reductions that were passed through to the consumer."

Line costs "as a percentage of revenues" for 1999 were reported to be 43% as compared to 47% for 1998. "Overall decreases are attributable to changes in the product mix and synergies and economies of scale resulting from network efficiencies achieved from the continued assimilation of MCI," and other companies into the Company's operations.

> Additionally, access charge reductions that occurred in January 1999 and July 1999 reduced total line cost expense by approximately $363 million for 1999. While access charge reductions were primarily passed through to customers, line costs as a percentage of revenues were positively affected by over half a percentage point for 1999.

The report explained that the "principal components of line costs are access charges and transport charges." It added that WorldCom's "goal is to manage transport costs through effective utilization of its network, favorable contracts with carriers and

NOT A CERTIFIED COPY

018093

network efficiencies made possible as a result of expansion of the Company's customer base by acquisitions and internal growth."

WorldCom's total debt was reported to be $18.1 billion. It had available liquidity of $8.7 billion under its credit facilities and commercial paper program and from cash. Its aggregate credit facilities were $10.75 billion.

WorldCom represented that the development of its business "will continue to require significant capital expenditures." Failure to have access to sufficient funds for capital expenditures on acceptable terms or other difficulties in managing capital expenditures "could have a material adverse effect on the success" of WorldCom.

Andersen consented to the inclusion of its March 24, 2000 audit report in the Form 10-K. In that report, Andersen represented that it had audited WorldCom's balance sheets, and statements of operations, shareholders' investment and cash flows. It reported that

> [w]e conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our

NOT A CERTIFIED COPY

018094

audit . . . provide[s] a reasonable basis for our opinion.

In our opinion, based on our audit . . ., the financial statements referred to above present fairly, in all material respects, the financial position of MCI WorldCom, Inc. and subsidiaries as of December 31, 1999 . . ., in conformity with accounting principles generally accepted in the United States.

2000 Offering

On May 24, 2000, WorldCom conducted a public offering of debt securities by issuing approximately $5 billion worth of bonds ("2000 Offering"). It filed a registration statement dated April 12, 2000, and prospectus supplement dated May 19, 2000 (collectively "2000 Registration Statement") that incorporated by reference among other things the WorldCom Form 10-K for the year ending December 31, 1999, and its Form 10-Q[18] for the quarter ended March 31, 2000. SSB was the book runner and, with J.P. Morgan, was the co-lead manager.[19]

NOT A CERTIFIED COPY

[18] A Form 10-Q is the SEC form used for quarterly reports under Sections 13(a)(2) and 15(d) of the Exchange Act, 15 U.S.C §§ 78m(a)(2), 78o(d).

[19] A book runner is responsible for pricing the offering and allocating shares to institutional and retail investors. A lead manager determines the amount of shares reserved for its own sales efforts and the amount of the offering for other members of the syndicate.

018095

16div-023157

The April 12, 2000 Registration Statement[20] began with a warning that

> [w]e have not authorized anyone to give any information or to make any representations concerning the offering of the debt securities except that which is in this prospectus or in the prospectus supplement. . . . You should rely only on the information contained in or incorporated by reference into this prospectus.

The document then explained that it was part of a registration statement that was filed with the SEC using a "'shelf' registration process."

> Under this process, we may sell any combination of the debt securities described in this prospectus in one or more offerings up to a total dollar amount of $15,000,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus.

In describing recent developments, the 2000 Registration Statement focused exclusively on the merger agreement with Sprint. It warned that consummation of the merger was subject to various conditions, including regulatory approval.

In describing how the proceeds would be used from the sale of debt securities, it represented that the proceeds would be used "for general corporate purposes. These may include, but are

---

[20] As described below, a registration statement is composed of two documents: a prospectus, and other information the SEC regulations require an issuer to disclose.

NOT A CERTIFIED COPY

018096

not limited to, the repayment of indebtedness, acquisitions, additions to working capital, and capital expenditures."

The 2000 Registration Statement included a section labeled "experts." It explained that the year-end WorldCom consoldiated financial statements

> have been audited by Arthur Andersen LLP, independent public accountants, as indicated in their report with respect thereto, and are included in the MCI WorldCom's Annual Report on Form 10-K for the year ended December 31, 1999, and are incorporated herein by reference, in reliance upon the authority of such firm as experts in accounting and auditing in giving such reports.

Among the "undertakings" contained in the 2000 Registration Statement was the obligation to file during the period in which sales were being made, a post-effective amendment to "reflect in the prospectus any facts or event arising after the effective date of this registration statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement."

The May 19, 2000 Prospectus Supplement explained that the net proceeds from the $5 billion offering would be used to "repay commercial paper, which was issued for general corporate purposes." It announced that following that repayment, WorldCom expected "to incur additional indebtedness. . . ." The document briefly explained WorldCom's business. The bulk of the document

NOT A CERTIFIED COPY

018097

addressed the proposed Sprint merger, described Sprint, and presented an unaudited pro forma condensed combined financial statement for the merged entity. It warned that "the merger is subject to the receipt of consents and approvals from various government entities, which may jeopardize or delay completion of the merger or reduce the anticipated benefits of the merger."

The document also included the following explanation of the relationship between the Underwriter Defendants and WorldCom:

> The underwriters and their affiliates have performed certain investment banking and advisory and general financing and banking services for us from time to time for which they have received customary fees and expenses. The underwriters and their affiliates may, from time to time, be customers of, engage in transactions with and perform services for us in the ordinary course of their business. Salomon Smith Barney Inc. has acted as financial advisor to WorldCom in connection with the Sprint merger, for which it has received certain fees and for which it expects to receive additional fees upon the closing of the Sprint merger. In addition, Salomon Smith Barney will receive a financial advisory fee in connection with this offering.

Each of the Underwriter Defendants involved in the 2000 Offering has stated that it relied on the due diligence performed by SSB. Many of the Underwriter Defendants had underwritten prior WorldCom offerings or had other dealings with WorldCom prior to the 2000 Offering. For example, J.P. Morgan was involved in an offering of WorldCom securities in 1998 and participated in syndicating credit extended to WorldCom that same

NOT A CERTIFIED COPY

860810

year. Bank of America had a web of relationships with WorldCom and considered itself the "leading capital provider" to WorldCom since 1990. Among other things, it participated in the securitization of WorldCom's accounts receivable and a private placement for WorldCom in the 1990s, participated in an April 1998 bond offering by WorldCom, and was a lead manager of the WorldCom acquisition of MCI in 1998.

The prospectus supplement for the 2000 Offering did not include a section labeled "risk factors." Several weeks earlier, on April 30, an investment banker at SSB sent a draft prospectus supplement to a more senior SSB banker with a detailed list of risk factors included in it. Under the heading "Risk Factors," the draft itemized risk factors relating to the Sprint merger, WorldCom's business, and competition in the telecommunications

NOT A CERTIFIED COPY

660810

industry, among other things.[21] At the request of WorldCom, the risk factors section was removed.[22]

The only written record of due diligence performed by the Underwriter Defendants for the 2000 Offering is a May 26 memorandum prepared by Cravath, Swaine & Moore ("Cravath"), counsel to the Underwriter Defendants. The memorandum reflects due diligence conducted from May 15 to 23.[23] It describes a May 17 telephone conversation in which Sullivan was asked questions about the Sprint merger, whether WorldCom had experienced problems integrating either SkyTel or MCI, and whether there were

---

[21] The draft document noted, for instance, that the development of the business of WorldCom required "significant capital expenditures" and that it planned to "access" the debt market to meet its needs to the extent that its cash flow, credit facilities, and commercial paper program were insufficient. It warned that the "effect of technological changes, including changes relating to emerging wireline and wireless transmission and switching technologies, on the businesses of MCI WorldCom cannot be predicted." It described legislation and court rulings that were affecting its business. On the issue of competition, the draft document noted over the course of a several page detailed discussion that WorldCom expected that competition would intensify, including competition "due to the development of new technologies."

[22] WorldCom explained that it "no longer disclose[d]" risk factors related to the business of WorldCom in its SEC filings. Insofar as the regulatory environment was concerned, it noted that it updated its regulatory information each quarter in its "34 Act filings." WorldCom did, however, want to consider whether risks associated with the Sprint merger should be included.

[23] The memorandum indicated that due diligence for WorldCom for the period prior to August 17, 1999 was contained in a document of that date.

NOT A CERTIFIED COPY

018100

16div-023162

any other material issues.[24] In that conversation, Sullivan predicted overall growth for the year 2000 would be about 14%, represented that the proceeds for the 2000 Offering would be used to repay "commercial debt," reported that WorldCom was experiencing a very competitive environment but that there were no changes in that environment since 1999, and stated that there were no other material issues than the ones he described in the call. The memorandum then outlines the board minutes for WorldCom, lists its public filings, refers to its press releases, and discusses Sprint documents.

J.P. Morgan's 1998 Overview of the Debt Underwriting Process was still in effect in 2000 and contained the following descriptions of an underwriter's responsibility.

> In our role as an underwriter or distributor of securities, performance by J.P. Morgan entities of an appropriate due diligence investigation of the issuer serves a variety of important purposes. The most obvious key advantage of proper due diligence is protection against unexpected news regarding the issuer or its business having an adverse effect of the pricing and/or placement of the offered securities during the primary distribution and in the immediate aftermarket.
>
> From a legal perspective, under the securities laws of the U.S. and several other jurisdictions, due diligence creates an affirmative defense to underwriter/distributor liability for misstatements or omissions of material facts in offering documents. In practical terms, this means that if the market value of the offered securities declines weeks, months or years

[24] The memorandum does not identify who participated in the conversation with Sullivan.

NOT A CERTIFIED COPY

01810I

after closing and unhappy investors sue the issuer and the underwriters, on the theory that the underlying reason for such market decline should have been disclosed in the offering document, then J.P. Morgan should be able to avoid an expensive adverse judgment, so long as we can demonstrate that we conducted an appropriate due diligence investigation of the issuer and its business in connection with the offering. . . .

At least as importantly, due diligence reduces the possibility of commercial and reputational losses arising out of such misstatements and provides us with an opportunity to demonstrate to the issuer client our professionalism, our understanding of its business and our commitment to the transaction.

In order to successfully establish a due diligence defense, underwriters and securities distributors may not take at face value representations made to them by the issuer and its representatives, but rather must demonstrate they made a reasonable investigation of the facts to ensure there is no misstatement or omission of a material fact in the offering documents. . . .

Generally such investigation will focus on discussions with and information provided by the issuer and its counsel and accountants, although it may be appropriate, in the case of some issuers and industries, to include meetings with outsiders, such as consultants with industry expertise, major suppliers or dominant customers.

(Emphasis supplied.)

Andersen created an undated worksheet in connection with WorldCom's first quarter 2000 unaudited financial statement. The worksheet was an eleven-page Andersen form entitled "U.S. GAAS Review of Interim Financial Statements of a Public Company," and was a vital step in preparing a "comfort letter" for a company and underwriters. The form reflects tasks to be performed, with

NOT A CERTIFIED COPY

018102

16div-023164

boxes to indicate whether the task had been "done" or was "N/A." Most of the tasks had one of those two boxes checked, some had both boxes checked, and one task -- reading the financial statements and disclosures in the client's draft Form 10-Q -- was left blank. Brief comments were handwritten next to some of the tasks. The form paragraph that appears directly above the engagement partner's signature, states: "Based on the results of the review procedures, we are not aware of any material modifications that should be made to the interim financial statements for them to be in conformity with generally accepted accounting principles consistently applied."

A "comfort letter" for the first quarter 2000 unaudited financial statement is dated May 19, is eight pages long, and indicates that it is written at the request of WorldCom. In it, Andersen reaffirms its audits, including those incorporated in the 2000 Registration Statement. It warns that having not audited any financial statements for any period subsequent to December 31, 1999, it is unable to express any opinion on the unaudited consolidated balance sheet of WorldCom as of March 31, 2000, or the results of operations or cash flows as of any date subsequent to December 31, 1999. The letter indicates, however, that Andersen had performed the procedures specified by the American Institute of Certified Public Accountants for a review

NOT A CERTIFIED COPY

018103

of interim financial information as described in SAS No. 71 on the unaudited condensed consolidated balance sheet as of March 31, 2000, and related statements, and had made certain inquiries of WorldCom officials who have responsibility for financial and accounting matters. Andersen represented that nothing had come to its attention as a result of that work that caused Andersen to believe that "[a]ny material modifications should be made to the unaudited condensed consolidated financial statements [for the first quarter of 2000], incorporated by reference in the Registration Statement, for them to be in conformity with generally accepted accounting principles" or that "[t]he unaudited condensed consolidated financial statements . . . do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations." The letter concludes that it is offered to "assist the underwriters in conducting and documenting their investigation" of the affairs of WorldCom in connection with the offering of securities covered by the 2000 Registration Statement. A two page May 23 Andersen letter reaffirmed the May 19 letter.

NOT A CERTIFIED COPY

018104

Late 2000 Investment' Banking Transactions

As already described, in November 2000, WorldCom announced that it would be creating two tracking stocks. J.P. Morgan and SSB were involved in this project.

On December 14, 2000, WorldCom conducted a $2 billion private placement of debt. J.P. Morgan was the lead manager and sole book runner for that private placement.

The Underwriter Defendants' Credit Assessment of WorldCom as of Early 2001

In February 2001, several of the Underwriter Defendants downgraded WorldCom's credit rating due to their assessment of WorldCom's deteriorating financial condition. Then, during the weeks that followed, several of the Underwriter Defendants made a commitment to WorldCom to help it restructure its massive credit facility. In doing so, there is evidence that at least some of the Underwriter Defendants internally expressed concern again about WorldCom's financial health. WorldCom had required the banks to participate in the restructuring of the credit facility if a bank wished to play a significant role in its next bond offering, the 2001 Offering. That offering turned out to be the largest public debt offering in American history. The Lead Plaintiff contends that the evidence of the Underwriter

NOT A CERTIFIED COPY

018105

Defendants' concerns about WorldCom's financial condition in the months immediately preceding the 2001 Offering undercuts their contention that the due diligence that they performed in connection with the 2001 Offering was reasonable.

As noted, several of the Underwriter Defendants downgraded WorldCom as a credit risk in February 2001. At the same time, one of the major credit rating agencies publicly announced that it was downgrading long-term WorldCom debt.

On February 22, Bank of America downgraded WorldCom's credit rating from 3 to 4, citing its lack of revenue growth, margin deterioration, the likelihood that WorldCom revenue from its long-distance business would continue to decline, the increasing competitive landscape, WorldCom's increasing debt load, and concerns regarding its strategic direction following the failure of the merger with Sprint.

On February 27, a J.P. Morgan document reflects that the bank reduced its internal "senior unsecured" risk rating for WorldCom from A2 to BBB1 because of WorldCom's "weakened credit profile and continued pressure on its MCI long-distance business segment."[25] The internal report noted that WorldCom's cash flow had moved from a positive to a "Cash Burn" of negative $137

[25] By February 21, 2001, a J.P. Morgan banker described the burden of carrying the debt associated with the Intermedia business as "a serious risk factor" for WorldCom.

NOT A CERTIFIED COPY

018106

16div-023168

million. It also emphasized WorldCom's high ratio of debt. The report observed that "[i]t remains to be seen if WCOM can stabilize cash flows and increase profitability in its MCI segment while supporting the capital requirements for the high growth data business in an increasingly competitive environment."[26]

On February 27, Standard & Poor's ("S&P") also downgraded WorldCom's credit rating, albeit just its ratings on WorldCom's long-term debt instruments. Those were downgraded from a rating of A- to BBB+. S&P simultaneously removed WorldCom from its previously imposed "creditwatch." S&P did not revise its ratings for WorldCom's short-term debt. S&P explained that the downgrade reflected WorldCom's "heightened business risk profile" because of competitive challenges and pricing pressures in the voice and data markets. It observed that the risk was "somewhat offset by the company's financial flexibility and experienced management." It described the outlook for WorldCom as "stable."

In late February, Deutsche Bank downgraded WorldCom as part of a global credit review because of price declines in the long-distance market and WorldCom's need to generate cash. The credit review listed WorldCom's credit status as "[p]erformance

NOT A CERTIFIED COPY

018107

[26] The Underwriter Defendants contend that at this point in time the author no longer had the responsibility for assigning a credit rating to WorldCom.

concerns" and the bank's credit strategy and risk appetite as "[r]isk appetite reduced."

Within weeks of these decisions to downgrade WorldCom's credit rating, the Underwriter Defendants had to consider whether to participate in WorldCom's restructuring of its credit facility, which was a line of credit extended to WorldCom by several of the banks, and whether to compete for investment banking positions in the bond offering that WorldCom hoped to undertake that Spring. WorldCom had a $10.25 billion credit facility with affiliates of some of the banks and it wanted to restructure that facility in a $8 to 10 billion transaction. WorldCom informed banks that they could only participate as an underwriter on the 2001 Offering if they agreed to participate in the restructuring. WorldCom also let banks know that the greater a bank's commitment to the credit facility, the greater the role it could have in the offering. With a commitment of at least $800 million to the new credit facility, a bank was promised a role as "joint book running manager" in the offering.[27] Bank of America calculated that if it were successful in becoming a joint

[27] According to a March 28, 2001 Bank of America memorandum, "[b]ecause WCOM needs to refinance its existing Bank Facilities in a tough bank environment, the Company has stated that it will tie the bank refinance with its new $10 billion bond deal. Specifically, the Company stated it plans to only ask a few players (including BAS) to hold $800 million in the new Bank Facilities for Joint Book Running Manager on the bonds."

NOT A CERTIFIED COPY

018108

book running manager, it could earn 20 to 25% of an expected investment banking fee of $10 to 12.5 million.

There is evidence that several of the Underwriter Defendants[28] decided to make a commitment to the restructuring of the credit facility and to attempt to win the right to underwrite the 2001 Offering, while at the same time reducing their own exposure to risk from holding WorldCom debt by engaging in hedging strategies, such as credit default swaps.[29] For example, as early as March 23, J.P. Morgan identified one of its three key objectives in connection with the restructuring of the credit facility and its participation in the 2001 Offering as: "to minimize exposure after $800MM initial commitment. . . ." The memorandum recommended developing a strategy that would give up some participation in the 2001 Offering in return for reducing the bank's exposure under the credit facility down to $600 million. It concluded, "Lets [sic] make this a true team effort: first class execution for the client, attractive economics for

---

[28] This Opinion does not discuss similar evidence regarding SSB, on this and other points, since it has settled with the Lead Plaintiff. That evidence will be admissible at trial, however, to the extent that SSB's due diligence is at issue.

[29] A credit default swap enables a lender to hedge its exposure to a borrower. The lender enters into a swap contract and pays a premium for credit default protection to the swap seller. In the event of a failure to pay, the swap seller agrees to pay the lender the value of the loan. If there is no failure to pay, the lender has lost only the premium.

NOT A CERTIFIED COPY

018109

16div-023171

JPM and the minimum credit exposure." (Emphasis supplied.) Within less than a month, J.P. Morgan wanted to reduce its exposure to $500 million. By May 22, through a carefully managed entry into the market, J.P. Morgan had entered a $150 million credit default swap, out of a goal of $200 million, to reduce its exposure in the event of a default by WorldCom. J.P. Morgan personnel structured its activities so that neither WorldCom nor any of J.P. Morgan's investment banking rivals would learn what it was doing. A May 16 e-mail captured the problem with these words: "if WCOM gets any sense that we're laying off exposure DURING the syndication process (and wouldn't SSB love to pass that along), it would not be good news. Understandably" this point is "Jennifer's greatest and principal concern." (Emphasis in original.) Jennifer Nason was the bank's due diligence team leader for the 2001 Offering.

Bank of America was in a particularly precarious position. It had been the sole lead arranger and sole book manager for a $10.75 billion senior credit facility for WorldCom in August 2000. It was one of five arrangers for a $2 billion WorldCom trade receivable securitization program. As of March 2001, it had an exposure of approximately $1.5 billion to WorldCom. This exposure was concentrated in a syndicated credit facility of about $600 million, an accounts receivable securitization of $306

NOT A CERTIFIED COPY

018110

million, and a commitment of $175 million to Intermedia. Bank of America sought to make a commitment of $800 million to the restructured credit facility and yet reduce its overall exposure to WorldCom to no more than $500 million through credit default swaps and other devices, again, without telling WorldCom.[30] Those within Bank of America, who were recommending that the bank participate in the restructuring of the credit facility in order to be eligible to play a lead investment banking role in the 2001 Offering, argued in a March 28 memorandum that it was likely that WorldCom would never need to draw on its credit facility -- in their words: "No funding anticipated."

2000 Form 10-K

The April 26, 2001 WorldCom Form 10-K for the year ending 2000 explained that, if approved by WorldCom's shareholders, the company would create two separately traded tracking stocks to correspond to "the distinct customer bases" served by its businesses. It advised shareholders that if they did not approve

[30] The Bank of America communication reflecting this plan reads: "we will get down in this facility to $500MM (through syndication, secondary sales or 364 day credit default swaps) . . .we are telling the company $800MM hold though." A February 2 Bank of America memorandum put the problem succinctly: "If we try (and successfully win) Joint Books this quarter of a potential . . . Bond deal and then try and exit the Securitization (we are one of the Leads) or significantly lower commitment as the Lead in one of the larger Bank deals out there at $10.25BN . . . WCOM should go nuts." (Emphasis supplied.)

NOT A CERTIFIED COPY

018111

the creation of the two stocks, the company would still realign its businesses into the two distinct service entities.

With respect to long-distance services, the document reported that revenue fell in 2000 in absolute terms and as a percentage of total WorldCom revenues. In its description of operations, line costs were shown as a decreasing percentage of revenues for each year from 1998 to 2000, beginning with 45.3% in 1998, and ending at 39.6% in 2000. The Form 10-K explained that the improvement was a result of increased data and dedicated Internet traffic.

2001 Offering

Through the 2001 Offering WorldCom issued $11.9 billion worth of notes. The May 9, 2001 registration statement and May 14, 2001 prospectus supplement (collectively, "2001 Registration Statement") for the 2001 Offering incorporated WorldCom's 2000 10-K and first quarter 2001 Form 8-K dated April 26, 2001.

J.P. Morgan and SSB served as co-book runners. Each of the Underwriter Defendants for the 2001 Offering have stated that they relied on the due diligence performed by SSB and J.P. Morgan. Cravath again represented the Underwriter Defendants.

NOT A CERTIFIED COPY

018112

A May 16, 2001 memorandum prepared by Cravath describes the due diligence conducted from April 19[31] through May 16, 2001 in connection with the 2001 Offering.[32] On April 23, the Underwriter Defendants forwarded due diligence questions to WorldCom. The due diligence for the 2001 Offering included telephone calls with WorldCom on April 30 and May 9, and a May 9 telephone call with Andersen and WorldCom. The due diligence inquiry also included a review of WorldCom's board minutes, 1998 revolving credit agreement, SEC filings, and press releases from April 19 to May 16, 2001.

During the April 30 telephone call, two bankers from J.P. Morgan and SSB, and two attorneys from Cravath spoke with Sullivan. Sullivan explained that WorldCom intended to use half of the proceeds from the 2001 Offering "to repay the balance of its outstanding commercial paper, to retire debt and to fund a portion of the Company's negative free cash flow." When asked whether WorldCom had significant reserves for bad receivables, Sullivan responded that WorldCom had a general $1.1 billion reserve. Sullivan indicated that WorldCom was comfortable with the current earnings per share, that there were no issues that

[31] The memorandum lists the date as April 19, 2000. It is assumed that it should be April 19, 2001.

[32] The memorandum indicates that the due diligence for WorldCom for the period from August 16, 1999 to May 23, 2000 is contained in a memorandum of May 26, 2000.

NOT A CERTIFIED COPY

018113

could affect the company's credit rating, and that the company had nothing material to disclose that had not been discussed with the investment bankers. When asked about the competitive environment, Sullivan answered that

> the general economic slowdown has not had a material impact on the Company's business, however the telecommunication environment has affected the Company. In particular, he was surprised that receivables declined in the first quarter. Despite this, the Company is selling through the rough parts of the telecommunications slowdown and the number of new installations is still strong.

On May 9, Sullivan confirmed that there were no material changes since the April 30 telephone call.

On May 9, a banker from J.P. Morgan and two Cravath attorneys spoke by telephone with Sullivan and Stephanie Scott of WorldCom and with representatives of Andersen. Andersen indicated that it had not issued any management letters to WorldCom and that there were no accounting concerns. WorldCom and Andersen assured J.P. Morgan that there was nothing else material to discuss. In neither the April 30 due diligence telephone call nor the May 9 call did Sullivan disclose the $771 million capitalization of line costs.

On May 9 and 16, Andersen issued comfort letters for the WorldCom first quarter 2001 financial statement. The 2001 comfort letters stand in contrast to the 2000 comfort letter, which expressed that nothing had come to Andersen's attention to

NOT A CERTIFIED COPY

018114

cause it to believe that "[a]ny material modifications should be made to the unaudited condensed consolidated financial statements described in 4(a)(1), incorporated by reference in the Registration Statement, for them to be in conformity with generally accepted accounting principles" or that "[t]he unaudited condensed consolidated financial statements . . . do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations." In 2001, by comparison, the letters indicated that nothing had come to Andersen's attention that caused it to believe that the financial statements "were not determined on a basis substantially consistent with that of the corresponding amounts in the audited consolidated balance sheets of WorldCom as of December 31, 2000 and 1999, and the consolidated statements of operations, shareholders' investment and cash flows for each of the three years in the period ended December 31, 2000 . . . ." A J.P. Morgan banker and a Cravath attorney noticed the absence of the "negative GAAP assurance" in the 2001 comfort letter. An SSB banker noted that the issue was important to understand but advised against getting "too vocal" about it since "WorldCom's a bear to deal with on that subject."

Some of the investment bankers responsible for performing due diligence in connection with the 2001 Offering were aware of

NOT A CERTIFIED COPY

018115

16div-023177

their own bank's credit concerns regarding WorldCom, and some were not. For instance, the lead investment banker for J.P. Morgan testified that she was unaware of her bank's memorandum downgrading WorldCom's risk rating. Two investment bankers at Deustche Bank testified that they were aware that their bank had downgraded WorldCom's credit rating. One testified that he believed that the downgrading was "too early"; the other testified that the downgrading was not inconsistent with the information that was in the public domain.[33]

The 2001 Offering was preceded by a road show in America and Europe in which WorldCom, J.P. Morgan, and SSB made presentations to convince potential investors to purchase the bonds. A script for that presentation begins with the following statement:

> Welcome to WorldCom's Multi-billion Global Debt Offering Roadshow presentation. . . . On behalf of J.P. Morgan and SSB as joint bookrunners, our joint lead managers, and co-managers, we are excited about the WorldCom credit story and this debt offering. . . . We value WorldCom's senior debt at low single A with a stable credit trend. . . . WorldCom's financial position gives it the strongest credit profile of any of the largest broadband providers.

---

[33] The Lead Plaintiff contends that the lead investment banker for Bank of America was aware that her bank's credit experts had downgraded WorldCom, and that she testified that that knowledge did not influence her due diligence and that she did not advise any other Underwriter Defendant or Cravath that her bank had downgraded WorldCom. The Lead Plaintiff has not included with its summary judgment papers the deposition pages that would confirm that description.

NOT A CERTIFIED COPY

018116

16div-023178

Later in the script, there were representations about WorldCom's revenue in 2000 and a representation that the peak in the company's capital expenditures was behind it. The script included a comparison of 1999 and 2000 credit ratios for WorldCom. This comparison suggested an improving trend in revenues and in the "EBITDA[34] coverage ratio" from 1999 to 2000. The comparison of 1999 and 2000 credit ratios appears in the script despite an April 24 comment by a J.P. Morgan analyst that those credit ratios were "misleading" because WorldCom's "financial profile will be more leveraged in 2001." She suggested substituting long term target ratios.

The May 9 Prospectus for the 2001 Offering explained that it was part of a registration statement filed with the SEC using a "'shelf' registration process" that permitted it to sell any combination of debt securities in one or more offerings up to a total remaining dollar amount of just under $12 billion. It warned that the investor "should rely only on the information incorporated by reference or provided in this prospectus and any supplement. We have not authorized anyone else to provide you with different information." It described the use of proceeds as "for general corporate purposes," which may include "repayment of indebtedness, acquisitions, additions to working capital, and

NOT A CERTIFIED COPY

018117

[34] EBITDA stands for earnings before interest, taxes, depreciation, and amortization.

capital expenditures." The remainder of the prospectus described the debt securities that would be offered. At the end of the document, it advised that WorldCom's year-end financial statements for each of the years in the three-year period ending December 31, 2000 had been audited by Andersen, and were incorporated by reference "in reliance upon the authority of such firm as experts in accounting and auditing in giving such reports."

The Prospectus Supplement contained information about WorldCom, including selected financial information. Under a section labeled "recent developments," it announced that the WorldCom group revenue increased over the same period in 2000, but that the MCI group's revenues had declined. It described the use of proceeds as "for general corporate purposes, including to repay commercial paper, which was issued for general corporate purposes."[35]

After describing the underwriters' commitments to buy portions of the 2001 Offering, the 2001 Registration Statement advised that

> the underwriters and their affiliates have performed certain investment banking, advisory and general financing and banking services for us from time to time for which they have received customary fees and

[35] In working on the draft of this document, a Cravath attorney had opined that this description was "too broad" and needed to be revised to add more detail of WorldCom's intentions.

NOT A CERTIFIED COPY

018118

expenses. The underwriters and their affiliates may, from time to time, be customers of, engage in transactions with and perform services for us in the ordinary course of their business. Certain of the underwriters and their affiliates have in the past and may in the future act as lenders in connection with our credit facilities.

Discussion

Summary judgment may not be granted unless the submissions of the parties taken together "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), Fed. R. Civ. P. The moving party bears the burden of demonstrating the absence of a material factual question, and as such, "always bears the initial responsibility of . . . identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrates the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)); accord Koch v. Town of Brattleboro, 287 F.3d 162, 165 (2d Cir. 2002). In making this determination the court must view all facts in the light most favorable to the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex, 477 U.S. at 323. "A dispute regarding a material fact is genuine if the evidence is such that a reasonable jury could return a verdict

NOT A CERTIFIED COPY

0118119

for the nonmoving party." Mount Vernon Fire Ins. Co. v. Belize NY, Inc., 277 F.3d 232, 236 (2d Cir. 2002).

When the moving party has asserted facts showing that it is entitled to summary judgment, the opposing party must "set forth specific facts showing that there is a genuine issue for trial," and cannot rest on the "mere allegations or denials" of the movant's pleadings. Rule 56(e), Fed. R. Civ. P.; accord Burt Rigid Box, Inc. v. Travelers Prop. Cas. Corp., 302 F.3d 83, 91 (2d Cir. 2002). While evidence as a whole must be assessed to determine whether there is a trial-worthy issue, Bickerstaff v. Vassar Coll., 196 F.3d 435, 448 (2d Cir. 1999), conclusory statements are insufficient to defeat a motion for summary judgment. Opals on Ice Lingerie v. Body Lines, 320 F.3d 362, 370 n.3 (2d Cir. 2003). Throughout its consideration of a motion for summary judgment, a court "may rely only on admissible evidence." Ehrens v. Lutheran Church, 385 F.3d 232, 235 (2d Cir. 2004). Thus, in determining whether to grant summary judgment, this Court must (1) determine whether a genuine factual dispute exists based on the admissible evidence in the record; and (2) determine, based on the substantive law at issue, whether the fact in dispute is material.

NOT A CERTIFIED COPY

018120

I. Legal Framework

The "primary innovation" of the Securities Act was the creation of duties in connection with public offerings, principally "registration and disclosure obligations." Gustafson v. Alloyd Co., 513 U.S. 561, 571 (1995). The Securities Act "was designed to provide investors with full disclosure of material information concerning public offerings of securities in commerce, to protect investors against fraud and, through the imposition of specified civil liabilities, to promote ethical standards of honesty and fair dealing." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (1976). The purpose of the Act was to "eliminate serious abuses in a largely unregulated securities market." United Hous. Found., Inc. v. Forman, 421 U.S. 837, 849 (1975). Liability under Section 11 of the Securities Act flows from the requirements for filing a registration statement. Liability under Section 12(a)(2) flows from the requirement to distribute prospectuses.

A. Section 11

Section 11 of the Securities Act provides that any signer, director of the issuer, preparing or certifying accountant, or underwriter may be liable if "any part of the registration statement, when such part became effective, contained an untrue

NOT A CERTIFIED COPY

0181210

statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading." 15 U.S.C. § 77k(a).[36] Purchasers of securities issued pursuant to a registration statement may sue if they purchased at the time of the initial public offering, or if they are "aftermarket purchasers who can trace their shares to an

---

[36] Section 11 states in pertinent part:

> In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may . . . sue -
>
> (1) every person who signed the registration statement;
>
> (2) every person who was a director of . . . the issuer . . .;
>
> . . . .
>
> (4) every accountant . . . who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement . . .;
>
> (5) every underwriter with respect to such security.
>
> If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

15 U.S.C. § 77k(a).

NOT A CERTIFIED COPY

018122

allegedly misleading registration statement." DeMaria v. Andersen, 318 F.3d 170, 178 (2d Cir. 2003).

A registration statement "means a filing that includes the prospectus and other information required by section 7 of the Securities Act." 12 C.F.R. § 16.2(m). A prospectus is defined as "an offering document that includes the information required by section 10(a) of the Securities Act." 12 C.F.R. § 16.2(*l*).

Section 7(a) of the Securities Act provides that registration statements must be accompanied by the information and documents specified in Schedule A of the Act, which sets forth thirty-two items that must be included in a registration statement. 15 U.S.C. §§ 77g(a), 77aa. Section 7(a) also authorizes the SEC to enact "rules or regulations" so that "disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement." 15 U.S.C. § 77g(a). Pursuant to Section 7(a), the SEC issued Regulations S-X, 17 C.F.R. § 210 et seq., and S-K, 17 C.F.R. § 229 et seq. Regulation S-X governs the form and content of financial statements required to be included in a registration statement. Regulation S-K dictates the non-financial information that must be included in a registration statement.[37] In a catch-

[37] Regulations S-X and S-K, which were developed as parts of the "integrated disclosure system," which is described below, also address the form and content of disclosure under the Exchange Act. See, e.g., 2 Louis Loss & Joel Seligman,

NOT A CERTIFIED COPY

018123

all provision, the SEC regulations also provide that "[i]n addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading." 17 C.F.R. § 230.408 (emphasis supplied). See DeMaria, 318 F.3d at 180.

Section 11 of the Securities Act "was designed to assure compliance with the disclosure provisions of the Act by imposing a stringent standard of liability on the parties who play a direct role in a registered offering." Herman & MacLean v. Huddleston, 459 U.S. 375, 381-82 (1983). This design reflects Congress' sense that underwriters, issuers, and accountants bear a "moral responsibility to the public [that] is particularly heavy." Gustafson, 513 U.S. at 581 (1995) (quoting H.R. Rep. No. 85, 73d Cong., 1st Sess., at 5 (1933)). As a result, such parties will be found to have violated Section 11 whenever "material facts have been omitted or presented in such a way as to obscure or distort their significance." I. Meyer Pincus & Assoc. v. Oppenheimer & Co., 936 F.2d 759, 761 (2d Cir. 1991) (citation omitted).

NOT A CERTIFIED COPY

018124

Securities Regulation 607 (3d ed. 1999).

In determining whether a registration statement is materially misleading, the "central inquiry" is "whether defendants' representations, taken together and in context, would have misled a reasonable investor about the nature of the investment." I. Meyer Pincus, 936 F.2d at 761 (citation omitted).[38] A material fact is one that "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." DeMaria, 318 F.3d at 180 (citation omitted). See also Ganino v. Citizens Util. Co., 228 F.3d 154, 162 (2d Cir. 2000). Material facts may "include not only information disclosing the earnings and distributions of a company but also those facts which affect the probable future of the company and those which may affect the desire of investors to buy, sell, or hold the company's securities." Kronfeld v. Trans World Airlines, Inc., 832 F.2d 726, 732 (2d Cir. 1987) (citation omitted).

An omitted fact may be immaterial if it is "trivial," or "so basic that any investor could be expected to know it." Ganino, 228 F.3d at 162 (citation omitted). In a similar vein, a misrepresentation may be immaterial as a matter of law where "adequate cautionary language [is] set out in the same offering."

[38] The standard for materiality under Sections 11 and 12 of the Securities Act is "identical to that under Section 10(b)" of the Exchange Act. Rombach v. Chang, 355 F.3d 164, 178 n.11 (2d Cir. 2004).

NOT A CERTIFIED COPY

018125

Rombach, 355 F.3d at 173 (citation omitted). Materiality remains, however, "a mixed question of law and fact." Ganino, 228 F.3d at 162. Since materiality is necessarily a "fact-specific inquiry," Basic, Inc. v. Levinson, 485 U.S. 224, 240 (1988), courts within the Second Circuit have "consistently rejected a formulaic approach to assessing the materiality" of misrepresentations. Ganino, 228 F.3d at 162.

Because of the fact-intensive inquiry that accompanies any analysis of materiality, a registration statement or prospectus must be read "as a whole." DeMaria, 318 F.3d at 180 (citation omitted). See also Rombach, 355 F.3d at 172 n.7; Olkey v. Hyperion 1999 Term Trust, Inc., 98 F.3d 2, 5 (2d Cir. 1996). "The touchstone of the inquiry is not whether isolated statements within a document were true, but whether defendants' representations or omissions, considered together and in context, would affect the total mix of information and thereby mislead a reasonable investor regarding the nature of the securities offered." Halperin v. eBanker USA.COM, Inc., 295 F.3d 352, 357 (2d Cir. 2002). Or, as the Second Circuit has explained even more recently, the inquiry must focus not on whether "particular statements, taken separately, were literally true, but whether defendants' representations, taken together and in context, would have misled a reasonable investor about the nature of the

NOT A CERTIFIED COPY

018126

securities." DeMaria, 318 F.3d at 180 (citation omitted). A prospectus violates Section 11 "if it does not disclose material objective factual matters, or buries those matters beneath other information, or treats them cavalierly." Id. (citation omitted).

Section 11 provides two affirmative defenses. First, the statute provides an affirmative defense where a defendant can prove that the loss in value of a security is due to something other than misleading statements within a registration statement. Specifically, Section 11(e) provides:

> [I]f the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable.

15 U.S.C. § 77k(e). A defendant's burden in establishing this defense is heavy since "the risk of uncertainty" is allocated to defendants. Akerman v. Oryx Comm., Inc., 810 F.2d 336, 341 (2d Cir. 1987); see also McMahan & Co. v. Wherehouse Entm't, Inc., 65 F.3d 1044, 1048-49 (2d Cir. 1995).

In addition, Section 11 provides an affirmative defense of "due diligence," which is available to defendants other than the issuer of the security. See Huddleston, 459 U.S. at 382; Chris-Craft Indus., Inc. v. Piper Aircraft Corp., 480 F.2d 341, 370-71

NOT A CERTIFIED COPY

018127

(2d Cir. 1973). The standard that applies to this defense varies depending on whether the misleading statement in the registration statement is or expressly relies on an expert's opinion. The due diligence defense is discussed further below.

B. Section 12

Section 12(a)(2) of the Securities Act (formerly Section 12(2)) allows a purchaser of a security to bring a private action against a seller that "offers or sells a security . . . by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements . . . not misleading." 15 U.S.C. § 77*l*(a)(2). The section entitles the buyer

> to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

Id.; Commercial Union Assurance Co. v. Milken, 17 F.3d 608, 615 (2d Cir. 1994); see also Randall v. Loftsgaarden, 478 U.S. 647, 655 (1986) ("§ 12(2) prescribes the remedy of rescission except where the plaintiff no longer owns the security.").

Section 12 turns on status, not scienter: It imposes liability without requiring "proof of either fraud or reliance." Gustafson, 513 U.S. at 582; see also Rombach, 355 F.3d at 164. A plaintiff need only show "some causal connection between the

NOT A CERTIFIED COPY

0181128

alleged communication and the sale, even if not decisive." Metromedia Co. v. Fugazy, 983 F.2d 350, 361 (2d Cir. 1992) (citation omitted). "Reliance by the buyer need not be shown, for § 12(2) is a broad anti-fraud measure and imposes liability whether or not the purchaser actually relied on the misstatement." Id. (citation omitted).

Defendants may be liable under Section 12(a)(2) either for selling a security or for soliciting its purchase. First, Section 12 creates a cause of action against sellers who "passed title, or other interest in the security, to the buyer for value." Pinter v. Dahl, 486 U.S. 622, 642 (1988); see also Wilson v. Saintine Exploration & Drilling Corp., 872 F.2d 1124, 1126 (2d Cir. 1989) (applying Pinter's § 12(1) analysis to what is now § 12(a)(2)); Capri v. Murphy, 856 F.2d 473, 478 (2d Cir. 1988) (same). To be liable as a seller, the defendant must be the "buyer's immediate seller; remote purchasers are precluded from bringing actions against remote sellers. Thus, a buyer cannot recover against his seller's seller." Pinter, 486 U.S. at 644 n.21. As underwriters in a firm commitment underwriting become the owners of any unsold shares, they may be liable as sellers for direct sales to the public. In re WorldCom Sec. Litig., 219 F.R.D. at 283.

NOT A CERTIFIED COPY

018129

Second, persons who are not in privity with the plaintiff may be liable if they "successfully solicit[ed] the purchase, motivated at least in part by a desire to serve [their] own financial interests or those of the securities owner." Pinter, 486 U.S. at 647; see also Commercial Union Assurance Co., 17 F.3d at 616. In finding that Section 12 included liability for solicitation, the Supreme Court observed that "[t]he solicitation of a buyer is perhaps the most critical stage of the selling transaction. . . . [and] the stage at which an investor is most likely to be injured." Pinter, 486 U.S. at 646.

Section 12(a)(2) provides affirmative defenses that parallel those available for a Section 11 claim. First, the statute prohibits recovery to the extent that

> the person who offered or sold such security proves that any portion or all of the amount recoverable . . . represents other than the depreciation in value of the subject security resulting from such resulting from such part of the prospectus or oral communications, with respect to which liability of that person is asserted. . . .

15 U.S.C. § 77l(b). In addition, Section 12(a)(2) provides an affirmative defense of reasonable care. See Royal Am. Managers, Inc. v. IRC Holding Corp., 885 F.2d 1011, 1019 (2d Cir. 1989).

II. Lead Plaintiff's Motion for Partial Summary Judgment

Lead Plaintiff moves for partial summary judgment on the issue of whether certain statements regarding WorldCom's

NOT A CERTIFIED COPY

018130

financial condition in its financial statements, that were incorporated into the 2000 and 2001 Registration Statements, were false. With respect to the 2000 Registration Statement, the Lead Plaintiff's motion is addressed to the reporting of line costs and depreciation and amortization. With respect to the 2001 Registration Statement, the Lead Plaintiff's motion is addressed to the reporting of line costs, capital expenditures, and assets and goodwill.

The Underwriter Defendants concede that the reporting of line costs and capital expenditures for the first quarter of 2001 was false. They resist summary judgment regarding the falsity of any other line of financial reporting with respect to the 2000 and 2001 Registration Statements. They assert that Andersen's professional judgment regarding certain items has not been shown to be unreasonable. For example, they argue that Andersen used reasonable judgment in deciding that MCI's workforce and customer base should be included in goodwill. They also assert that there are disputed issues of fact regarding the materiality of certain of the alleged false statements. For example, they argue that only those statements that are relevant to cash flow would be material to bondholders since bondholders are entitled to be paid principal and interest regardless of the price movements in a company's stock.

NOT A CERTIFIED COPY

018131

The Underwriter Defendants argue in addition that the Lead Plaintiff's motion does not address their affirmative defense of due diligence and their entitlement to rely on Andersen's audits and comfort letters. They argue that they are entitled to further discovery of Lead Plaintiff's experts and of ten "embargoed" witnesses,[39] the latter of whom they contend will agree that no amount of due diligence would have uncovered the accounting fraud.[40]

---

[39] Although fact discovery closed on July 9, 2004, the parties in the Securities Litigation were permitted to reserve time to depose ten witnesses that the Government deems critical to its prosecution of Ebbers following their testimony in Ebbers' criminal trial. Ebbers' trial is scheduled to begin on January 17, 2005.

[40] As described below, the Underwriter Defendants are entitled to rely on the due diligence defense whether or not it would have uncovered the fraud. Conversely, they must shoulder the burden of establishing their due diligence even if that due diligence would not have revealed the existence of fraudulent conduct. The parties have not addressed whether the Underwriter Defendants' argument in this regard would be more persuasive under Section 12(a)(2). Compare 5 Arnold S. Jacobs, Disclosure and Remedies Under the Securities Laws § 3:158 (West 2004) (contending that a defendant could successfully establish a reasonable care defense under Section 12(a)(2) "if he does not exercise reasonable care but would have been unable to ascertain the falsity even if he had used reasonable care") with 3B Harold S. Bloomenthal & Samuel Wolff, Securities & Federal Corporate Law § 12:6 (2d ed. 1998) ("Given the role of an underwriter, in order to avoid Section 12(a)(2) liability it must make a reasonable investigation in order to establish that it used reasonable care.").

In Demarco v. Edens, 390 F.2d 836 (2d Cir. 1968), the Court of Appeals affirmed a judgment following trial that an issuer had used "reasonable care" in selecting an underwriter and did not know that the underwriter would not remit the proceeds of the sale of securities. Id. at 842. The court observed both that the issuer had taken the steps necessary to show its reasonable

NOT A CERTIFIED COPY

018132

Since there is no material issue of fact in dispute regarding the falsity of WorldCom's first quarter financial statement for 2001 insofar as it reported WorldCom's line costs, or the materiality of that false statement to investors purchasing notes in the 2001 Offering, the Lead Plaintiff is entitled to summary judgment on the issue of whether the Registration Statement for the 2001 Offering was false and misleading. The Lead Plaintiff's motion for summary judgment on the 2000 Offering, and on any other purported false statement made in connection with the 2001 Offering is denied.

III. The Underwriter Defendants' Motion for Summary Judgment: The Financial Statements

The Underwriter Defendants move for summary judgment with respect to the financial statements that were incorporated into the Registration Statements. They assert that there is no dispute that they acted reasonably in relying on Andersen's audits and comfort letters. The Underwriter Defendants contend that they were entitled to rely on WorldCom's audited financial statements and had no duty to investigate their reliability so long as they had "no reasonable ground to believe" that such financial statements contained a false statement. They also

---

care but also that it did not need to "probe[] more deeply into the background and affairs" of the underwriter as "[f]urther inquiry . . . would have disclosed nothing." Id. at 843.

NOT A CERTIFIED COPY

0181133

assert that they were entitled to rely in the same way on Andersen's comfort letters for the unaudited quarterly financial statements incorporated into the Registration Statements.

Before analyzing the Underwriter Defendants' arguments, it will be helpful to describe the legal and regulatory framework surrounding the "due diligence defenses," which are in turn composed of a reliance defense and a due diligence defense. Following a brief description of the role of the underwriters, the Opinion will discuss the due diligence defenses under Sections 11 and 12(a)(2); the role of accountants as experts; the enactment in the 1980s of integrated disclosure, shelf registration, and SEC Rule 176, as well as their impact on underwriters' due diligence obligations; the reliance defense as described in case law and the impact on that defense of the existence of red flags; and the case law regarding the due diligence defense. With that background, the specific argument presented by the Underwriter Defendants will be addressed.

A. Role of the Underwriter

An underwriter is commonly understood to be a "person who buys securities directly or indirectly from the issuer and resells them to the public, or performs some act (or acts) that facilitates the issuer's distribution." In re WorldCom Sec. Litig., 308 F. Supp. 2d 338, 343 (S.D.N.Y. 2004) (citation

NOT A CERTIFIED COPY

018134

omitted). As the SEC has observed, in enacting Section 11, "Congress recognized that underwriters occupied a unique position that enabled them to discover and compel disclosure of essential facts about the offering. Congress believed that subjecting underwriters to the liability provisions would provide the necessary incentive to ensure their careful investigation of the offering." The Regulation of Securities Offerings, SEC Release No. 7606A, 63 Fed. Reg. 67174, 67230, available at 1998 WL 833389 (Dec. 4, 1998) ("SEC Rel. 7606A"). At the same time, Congress specifically rejected the notion of underwriters as insurers. H.R. Conf. Rep. No. 73-152, at 277 (1933); SEC Rel. 7606A, 63 Fed. Reg. at 67230. Rather, it imposed upon underwriters the obligation to "exercise diligence of a type commensurate with the confidence, both as to integrity and competence," placed in them by those purchasing securities. H.R. Conf. Rep. No. 73-152, at 277.

Underwriters must "exercise a high degree of care in investigation and independent verification of the company's representations." Feit v. Leasco Data Processing Equip. Corp., 332 F. Supp. 544, 582 (E.D.N.Y. 1971). Overall, "[n]o greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter." Chris-Craft, 480 F.2d at 370. Underwriters function as "the first line of defense" with respect to material

NOT A CERTIFIED COPY

018135

misrepresentations and omissions in registration statements. 2 Gary M. Lawrence, Due Diligence in Business Transactions § 2.03A (2004) ("Lawrence, Due Diligence"). As a consequence, courts must be "particularly scrupulous in examining the[ir] conduct." Feit, 332 F. Supp. at 581; see also In re Enron Corp. Sec., Derivative & ERISA Litig., 235 F. Supp. 2d 549, 612-13 (S.D. Tex. 2002).

B. The "Due Diligence" Defenses

The phrase "due diligence" does not appear in the Securities Act, but two of the affirmative defenses available under Section 11(b) are collectively known as the "due diligence" defense. See Lawrence, Due Diligence § 2.03A. The first such defense provides that "as regards any part of the registration statement not purporting to be made on the authority of an expert," a defendant will not be liable upon a showing that

> he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

15 U.S.C. § 77k(b)(3)(A) (emphasis supplied). This defense is understood as "a negligence standard." Hochfelder, 425 U.S. at

NOT A CERTIFIED COPY

018136

208. The SEC has described the duty of an underwriter to conduct a reasonable investigation as follows:

> By associating himself with a proposed offering [an underwriter] impliedly represents that he has made such an investigation in accordance with professional standards. Investors properly rely on this added protection which has a direct bearing on their appraisal of the reliability of the representations in the prospectus. The underwriter who does not make a reasonable investigation is derelict in his responsibilities to deal fairly with the investigating public.

41 SEC 398 [1961-1964 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,904 (Feb. 27, 1963).

There is a different standard that applies when a Section 11 defendant is entitled to rely upon the opinion of an expert. "[A]s regards any part of the registration statement purporting to be made on the authority of an expert," a defendant other than that expert will not be liable if he demonstrates that

> he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

15 U.S.C. § 77k(b)(3)(C) (emphasis supplied).[41]

---

[41] Section 11 also provides a defense to an expert as concerns "any part of the registration statement purporting to be made upon his authority as an expert." The expert must prove that

> he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such

NOT A CERTIFIED COPY

018137

Although the requirements of due diligence vary depending on whether the registration statement has been made in part or in whole on the authority of an expert, the standard for determining what constitutes a reasonable investigation and reasonable ground for belief is the same: "[T]he standard of reasonableness shall be that required of a prudent man in the management of his own property." 15 U.S.C. § 77k(c).

Courts have distinguished between these two standards by labeling them the due diligence defense and the reliance defense, referring in the latter case to the reliance permitted by the statute on an expert's statement. See, e.g., Kaplan v. Rose, 49 F.3d 1363, 1371 (9th Cir. 1994); In re Worlds of Wonder Sec. Litig., 35 F.3d 1407, 1421 (9th Cir. 1994); Ackerman v. Schwartz, 947 F.2d 841, 845 (7th Cir. 1991); Feit, 332 F. Supp. at 576.

Section 12(a)(2) has a defense of reasonable care that is less demanding than the duty of due diligence imposed under Section 11. Section 12(a)(2) provides that a defendant shall not be liable if he "sustain[s] the burden of proof that he did not know, and in the exercise of reasonable care could not have

---

> part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

15 U.S.C. § 77k(b)(3)(B) (emphasis supplied).

NOT A CERTIFIED COPY

018138

known, of such untruth or omission" which is "necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77*l*(a)(2).

Thus, while Section 11 imposes a duty to conduct a reasonable investigation as to any portion of a registration statement not made on the authority of an expert, Section 12(a)(2) does not make any distinction based upon "expertised" statements and only requires the defendant to show that it used reasonable care. This difference is attributable to the emphasis placed on the importance of registration statements and the underwriter's vital role in assuring their accuracy. See John Nuveen & Co. v. Sanders, 450 U.S. 1005, 1009 (1981) (Powell, J., dissenting from denial of cert.). Because Section 11 imposes a more exacting standard, this Opinion principally addresses the law that applies to Section 11.

C. Accountants as Experts

Although Section 11(b) furnishes different standards, depending on whether a statement is made on the authority of an expert, the statute does not define the term "expert." Section 11(a)(4) lists professions that give a person authority to make a statement, which on consent can be included in a registration statement. 15 U.S.C. § 77k(a)(4). The list of professions includes an accountant. Id. Thus, while Section 11(b) does not

NOT A CERTIFIED COPY

018139

define the term expert or explain what sort of documents and/or work constitutes that "made on an expert's authority," it is settled that an accountant qualifies as an expert, and audited financial statements are considered expertised portions of a registration statement. See, e.g., In re Software Toolworks Inc. Sec. Litig., 50 F.3d 615, 623 (9th Cir. 1994); Enron, 235 F. Supp. 2d at 613; SEC Rel. 7606A, 63 Fed. Reg. at 67233.

Not every auditor's opinion, however, qualifies as an expert's opinion for purposes of the Section 11 reliance defense. To distinguish among auditor's opinions, some background is in order. While financial statements[42] are prepared by the management of a company, an accountant serving as the company's auditor may give an opinion as to whether the financial statements have been presented in conformity with GAAP. This opinion is given after the accountant has performed an audit of the company's books and records. Audits are generally completed once a year, in connection with a company's year-end financial statements. There are ten audit standards with which an auditor must comply in performing its annual audit. They are known as Generally Accepted Auditing Standards ("GAAS"). If an auditor signs a consent to have its opinion on financial statements

[42] Financial statements are generally understood to include a balance sheet, an income statement, a statement of changes in stockholders' equity, a statement of cash flow, and related note disclosures.

NOT A CERTIFIED COPY

018140

incorporated into a company's public filings, the opinion may be shared with the public through incorporation.

Public companies are also required under the Exchange Act to file quarterly financial statements, which are referred to as interim financial statements. While not subject to an audit, interim financial statements included in Form 10-Q quarterly reports are reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by GAAS. The standards for the review of interim financial statements are set forth in Statement of Auditing Standards No. 71, Interim Financial Information ("SAS 71"). When a public company files a registration statement for a sale of securities, the auditor is customarily asked by underwriters to provide a comfort letter. The comfort letter will contain representations about the auditor's review of the interim financial statements. Guidance about the content of comfort letters is contained in the Statement on Auditing Standards No. 72, Letters for Underwriters and Certain Other Requesting Parties ("SAS 72"). There is frequently more than one comfort letter for a transaction: an initial comfort letter, and a second or "bringdown" comfort letter issued closer to the time of closing.

NOT A CERTIFIED COPY

018141

In order for an accountant's opinion to qualify as an expert opinion under Section 11(b)(3)(C), there are three prerequisites. First, it must be reported in the Registration Statement. Second, it must be an audit opinion. Finally, the accountant must consent to inclusion of the audit opinion in the registration statement.

In an effort to encourage auditor reviews of interim financial statements, the SEC acted in 1979 to assure auditors that their review of unaudited interim financial information would not subject them to liability under Section 11. See Accountant Liability for Reports on Unaudited Interim Financial Information, SEC Release No. 6173, 1979 WL 169953, at *1 (Dec. 28, 1979)("SEC Rel. 6173"). The SEC addressed the circumstances in which an accountant's opinion can be considered an expert's opinion for purposes of Section 11(b) and made it clear that reviews of unaudited interim financial statements do not constitute such an opinion. Under Rule 436, where the opinion of an expert is quoted or summarized in a registration statement, or where any information contained in a registration statement "has been reviewed or passed upon" by an expert, the written consent of the expert must be filed as an exhibit to the registration statement. 17 C.F.R. § 230.436(a), (b). Yet written consent is not sufficient to convert an opinion or review into an expertised

NOT A CERTIFIED COPY

018142

statement. Rule 436 provides that notwithstanding written consent, "a report on unaudited interim financial information . . . by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11" of the Securities Act. 17 C.F.R. § 230.436(c)(emphasis supplied).

Rule 436 also defined the term "report on unaudited interim financial information." It consists of a report that contains the following five items:

> (1) A statement that the review of interim financial information was made in accordance with established professional standards for such reviews;
> (2) An identification of the interim financial information reviewed;
> (3) A description of the procedures for a review of interim financial information;
> (4) A statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and
> (5) A statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

17 C.F.R. § 230.436(d).[43]

[43] SAS 71 states that an accountant's "report accompanying interim financial information that he or she has reviewed should consist of" the five components of the Rule 436 definition as

NOT A CERTIFIED COPY

0181743

In promulgating Rule 436, the SEC contrasted accountants' review of year-end financial statements with those of interim financial data, remarking that

> The objective of a review of interim financial information differs significantly from the objective of an examination of financial statements in accordance with generally accepted auditing standards. The objective of an audit is to provide a reasonable basis for expressing an opinion regarding the financial statements taken as a whole. A review of interim financial information does not provide a basis for the expression of such an opinion, because the review does not contemplate a study and evaluation of internal accounting control; tests of accounting records and of responses to inquiries by obtaining corroborating evidential matter through inspection, observation, or confirmation; and certain other procedures ordinarily performed during an audit. A review may bring to the accountant's attention significant matters affecting the interim financial information, but it does not provide assurance that the accountant will become aware of all significant matters that would be disclosed in an audit.

Accountant Liability for Reports on Unaudited Interim Financial Information Under Securities Act of 1933, SEC Release No. 6127, 1979 WL 170299 (Sept. 20, 1979), at *3 (citation omitted) ("SEC Rel. 6127") (emphasis supplied).

Rule 436 underscores that SAS 71 reports and SAS 72 letters are not expertised statements within the meaning of the Section

---

well as three additional requirements, such as a statement that the financial information is the responsibility of the company's management. Statement on Auditing Standards 71, Codification of Auditing Standards and Procedures, "Interim Financial Information" (AICPA, Professional Standards, vol. 1, AU § 722).

NOT A CERTIFIED COPY

0181144

11 reliance defense. Specifically, in finalizing Rule 436, the SEC directed that

> [i]n any suit for damages under Section 11(a), the directors and underwriters should not be able to rely on SAS No. [71] reports on interim financial data included in a registration statement as statements "purporting to be made on the authority of an expert . . . which they had no ground to believe . . . were untrue . . ." under Section 11(b)(3)(C). Rather, underwriters and directors should be required, as has previously been the case whenever unaudited financials are included in a registration statement, to demonstrate affirmatively under Section 11(b)(3)(A) that, after conducting a reasonable investigation, they had reasonable ground to believe, and did believe, that the interim financial data was true.[44]

SEC Rel. 6173, 1979 WL 169953, at *4 (emphasis supplied). Given this, the SEC expects that "underwriters will continue to exercise due diligence in a vigorous manner with respect to SAS No. [71] reports." Id. at *4.

In sum, underwriters can rely on an accountant's audit opinion incorporated into a registration statement in presenting a defense under Section 11(b)(3)(C). Underwriters may not rely on an accountant's comfort letters for interim financial statements in presenting such a defense. Comfort letters do not "expertise any portion of the registration statement that is

---

[44] At the time that Rule 436 was implemented, SAS 24 was the governing standard for auditors' reviews of unaudited interim financial statements. In 1992, it was superceded by SAS 71, which was in effect during the events at issue here. See John J. Huber et al., An Underwriter's Due Diligence in the Permitted Absence of an Expert's Consent, Insights, Aug. 2002, at 2 n.23.

NOT A CERTIFIED COPY

018145

otherwise non-expertised." William F. Alderman, Potential Liabilities in Initial Public Offerings, in How To Prepare an Initial Public Offering 2004 405-06 (2004); see also Committee on Federal Regulation of Securities, Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws, 48 Bus. Law. 1185, 1210 (1993) ("Task Force Report") (underwriters "remain responsible" for unaudited interim financial information as in the case of other non-expertised information).

D. Integrated Disclosure, Shelf Registration, and Rule 176

Beginning in the late 1960s, the SEC embarked on a "program to integrate the disclosure requirements of the Securities Act and the Securities Exchange Act of 1934." See Circumstances Affecting the Determination of What Constitutes Reasonable Investigation and Reasonable Grounds for Belief Under Section 11 of the Securities Act, SEC Release No. 6335, 1981 WL 31062, at *1 (Aug. 6, 1981) ("SEC Rel. 6335"). The chief purpose of the integrated disclosure system was to furnish investors with "meaningful, nonduplicative information both periodically and when securities distributions are made to the public," while decreasing "costs of compliance for public companies." Reproposal of Comprehensive Revision to System for Registration

NOT A CERTIFIED COPY

018196

of Securities Offerings, SEC Release No. 6331, 1981 WL 30765, at *2 (Aug. 6, 1981) ("SEC Rel. 6331").

Although earlier steps toward integration had been taken, the SEC aimed in the early 1980s to integrate the two acts, "primarily by incorporating by reference Exchange Act reports into Securities Act registration statements." SEC Rel. 6335, 1981 WL 31062, at *3. The push to incorporate by reference was motivated by the growing recognition that "for companies in the top tier, there is a steady stream of high quality corporate information continually furnished to the market and broadly digested, synthesized and disseminated." Shelf Registration, SEC Release No. 6499, 1983 WL 408321, at *2 (Nov. 17, 1983) ("SEC Rel. 6499"). The SEC reasoned that top-tier companies should be able to incorporate their Exchange Act filing by reference, since these disclosures, along with "other communications by the registrant, such as press releases, ha[ve] already been disseminated and accounted for by the market place." SEC Rel. 6331, 1981 WL 30765, at *4. Those eligible include issuers who, among other things, either have substantial equity "floats" or rated debt securities. Incorporation by reference was implemented by introducing a new, shortened registration form -- Form S-3 -- for use by "companies which are widely followed by professional analysts." Id. In a Form S-3 registration, the

NOT A CERTIFIED COPY

018147

registrant's Form 10-K from the most recently concluded fiscal year and all subsequent periodic Exchange Act filings between the end of that fiscal year and the termination of the offering are required to be incorporated by reference. Given the reduced length of the form, the process of filing a Form S-3 is known as short-form registration.

Short-form registration was accompanied by related changes in shelf registration, the process by which securities are registered to be offered or sold on a delayed or continuous basis. The purpose of shelf registration is to allow a single registration statement to be filed for a series of offerings. SEC Rel. 6499, 1983 WL 408321, at *4. Shelf registration aims to afford the issuer the "procedural flexibility" to vary "the structure and terms of securities on short notice" and "time its offering to avail itself of the most advantageous market conditions." Id. More concretely, shelf registration enables

> an issuer that wishes to sell some or all of the registered securities at any point during the two year period to contact the several managing underwriters named in the registration statement, determine which underwriter will give it the best terms, and offer the security to the market through that underwriter in a matter of hours.

Merritt B. Fox, Shelf Registration, Integrated Disclosure, and Underwriter Due Diligence: An Economic Analysis, 70 Va. L. Rev. 1005, 1005 n.4 (1984).

NOT A CERTIFIED COPY

018148

Although shelf registration had been available prior to the introduction of integrated disclosure, integrated disclosure mandated a reexamination of which securities could be offered on a continuous or delayed basis. Under Rule 415, which was finalized in 1983, all registrants eligible to use Form S-3 may engage in shelf registration "in an amount . . . reasonably expected to be offered and sold within two years from the initial effective date of the registration."[45] 17 C.F.R. §§ 230.415(a)(1)(x), (a)(2). As amended in 1992, Rule 415 allows registration of shelf offerings without requiring registrants to allocate the total amount to specific classes of securities. As a result, issuers can "decide as late as the point of sale which of its securities to use." SEC Rel. 7606A, 63 Fed. Reg. at 67179.

---

[45] Although Rule 415 was not finalized until 1983, it was proposed concurrently with the development of Form S-3 and Rule 176, which is discussed below. See generally SEC Rel. 6335, 1981 WL 31062, at *2 (listing a "three tier system for the registration of securities, Forms S-1, S-2 and S-3" and "a new rule governing registration of securities to be sold in a continuous or delayed offering" among several rulemaking proposals announced on the same day as Rule 176).

Rule 415 does not limit shelf registration to those issuers eligible to use Form S-3, but also permits shelf registration for "traditional primary and secondary shelf offerings," including "those where securities are sold to employees, customers or existing shareholders; those involving interests in limited partnerships; those related to acquisitions and other business combinations; and those of securities underlying options, warrants, rights or conversions." SEC Rel. 6499, 1983 WL 408321, at *7; see generally 15 C.F.R. § 230.415.

NOT A CERTIFIED COPY

018149

Together, the mechanism of incorporation by reference and the expansion of shelf registration significantly reduced the time and expense necessary to prepare public offerings, thus enabling more "rapid access to today's capital markets." SEC Rel. 6335, 1981 WL 31062, at *4. As the SEC recognized, these changes affected the time in which underwriters could perform their investigations of an issuer. Underwriters had weeks to perform due diligence for traditional registration statements. By contrast, under a short-form registration regime, "[p]reparation time is reduced sharply" thanks to the ability to incorporate by reference prior disclosures. Id. at *5.

These two innovations triggered concern among underwriters. Members of the financial community worried about their ability "to undertake a reasonable investigation with respect to the adequacy of the information incorporated by reference from periodic reports filed under the Exchange Act into the short form registration statements utilized in an integrated disclosure system." Id. at *1. Specifically, underwriters expressed concern that

> this reduction in preparation time, together with competitive pressures, will restrict the ability of responsible underwriters to conduct what would be deemed to be a reasonable investigation, pursuant to Section 11, of the contents of the registration statement. . . . [I]ssuers may be reluctant to wait for responsible underwriters to finish their inquiry, and

NOT A CERTIFIED COPY

018150

> may be receptive to offers from underwriters willing to do less.

Id. at *5. Because an underwriter could select among competing underwriters when offering securities through a shelf registration, some questioned whether an underwriter could "afford to devote the time and expense necessary to conduct a due diligence review before knowing whether it will handle an offering and that there may not be sufficient time to do so once it is selected." SEC Rel. 6499, 1983 WL 408321, at *5. Others doubted whether they would have the chance "to apply their independent scrutiny and judgment to documents prepared by registrants many months before an offering." Id.

Because of concerns like those described here, the SEC introduced Rule 176 in 1981 "to make explicit what circumstances may bear upon the determination of what constitutes a reasonable investigation and reasonable ground for belief as these terms are used in Section 11(b)." SEC Rel. 6335, 1981 WL 31062, at *1. Rather than give underwriters a "safe harbor from liability for statements made in incorporated Exchange Act reports,"[46] id. at *7, as some suggested should happen, the SEC turned to the

[46] Academic assessments of Rule 176 have often observed that Rule 176 does not provide a safe harbor. See, e.g., Donald C. Langevoort, Deconstructing Section 11: Public Offering Liability in a Continuous Disclosure Environment, 63 Law & Contemp. Probs. 45, 63 (2000) (Rule 176 does not furnish a "true safe harbor, providing immunity to underwriters who follow its guidelines.").

NOT A CERTIFIED COPY

0181511

American Law Institute's proposed Federal Securities Code for guidance. Rule 176, which largely mirrors Section 1704(g) of the Code, provides in relevant part:

> In determining whether or not the conduct of a person constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in section 11(c), relevant circumstances include, with respect to a person other than the issuer. [sic]
>
> (a) The type of issuer;
> (b) The type of security;
> (c) The type of person;
> . . . .
> (f) Reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing);
> (g) When the person is an underwriter, the type of underwriting arrangement, the role of the particular person as an underwriter and the availability of information with respect to the registrant; and
> (h) Whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated.

17 C.F.R. § 230.176.

Although "[n]o court has ever been called upon to interpret Rule 176," the SEC's own commentary on the rule makes clear that Rule 176 did not alter the fundamental nature of underwriters' due diligence obligations. Langevoort, 63 Law & Contemp. Probs. at 65; Task Force Report, 48 Bus. Law. at 1210. At the time Rule 176 was finalized, the SEC took care to explain that integrated

NOT A CERTIFIED COPY

018152

disclosure was intended to "simplify disclosure and reduce unnecessary repetition and redelivery of information," not to "modify the responsibility of underwriters and others to make a reasonable investigation." SEC Rel. 6335, 1981 WL 31062, at *10. Instead, emphasizing that "nothing in the Commission's integrated disclosure system precludes conducting adequate due diligence," the SEC advised underwriters concerned about the time pressures created by integrated disclosure to "arrange [their] due diligence procedures over time for the purpose of avoiding last minute delays in an offering environment characterized by rapid market changes." Id. It also reminded them that an underwriter is "never compelled to proceed with an offering until he has accomplished his due diligence." Id. (emphasis supplied). And the SEC warned underwriters that the verification "required by the case law and contemplated by the statute" would still be required in appropriate circumstances. Id. at *10-11. As recently as December 1998, the SEC recalled that it "expressly rejected the consideration of competitive timing and pressures when evaluating the reasonableness of an underwriter's investigation." 63 Fed. Reg. at 67231.

The SEC's intent to maintain high standards for underwriter due diligence is confirmed by its many discussions of appropriate due diligence techniques in the integrated disclosure system. In

NOT A CERTIFIED COPY

018153

proposing Rule 176, the SEC acknowledged that different investigatory methods would be needed "in view of the compressed preparation time and the volatile nature of the capital markets." SEC Rel. 6335, 1981 WL 31062, at *11. Nonetheless, it emphasized that such techniques must be "equally thorough." Id. (emphasis supplied). Among the strategies recommended by the SEC were the development of a "reservoir of knowledge about the companies that may select the underwriter to distribute their securities registered on short form registration statements" through a "careful review of [periodic Exchange Act] filings on an ongoing basis," consultation of analysts' reports, and active participation in the issuer's investor relations program, especially analysts and brokers meetings. Id. at *11-12.

At the time the SEC finalized the shelf registration rule two years later, it again recognized that "the techniques of conducting due diligence investigations of registrants qualified to use short form registration . . . would differ from due diligence investigations under other circumstances." SEC Rel. 6499, 1983 WL 408321, at *6. Nonetheless, it stressed the use of "anticipatory and continuous due diligence programs" to augment underwriters' fulfillment of their due diligence obligations. Id. Among other practices, the SEC approvingly noted the increased designation of one law firm to act as underwriters'

NOT A CERTIFIED COPY

0181154

counsel, which "facilitates continuous due diligence by ensuring on-going access to the registrant on the underwriters' behalf"; the holding of "Exchange Act report 'drafting sessions,'" which allow underwriters "to participate in the drafting and review of periodic disclosure documents before they are filed"; and "periodic due diligence sessions," such as meetings between prospective underwriters, their counsel, and management shortly after the release of quarterly earnings. Id.

In 1998, the SEC proposed expanding Rule 176 to "identify six due diligence practices that the Commission believes would enhance an underwriter's due diligence investigation when conducting an expedited offering." SEC Rel. 7606A, 63 Fed. Reg. at 67231. Among these six practices were the underwriter's receipt of a SAS 72 comfort letter. Yet the SEC emphasized that "these practices in no way constitute an exclusive list or serve as a substitute for a court's analysis of all relevant circumstances." Id. The 1998 proposal has never been finalized. Even if the proposed changes had been enacted, however, the SEC cautioned that "only a court can make the determination of whether a defendant's conduct was reasonable under all the circumstances of a particular offering." SEC Rel. 6335, 1981 WL 31062, at *13.

NOT A CERTIFIED COPY

018155

It must be noted that academics and practitioners alike have asserted that the current regime for underwriter liability under Section 11 no longer makes sense. Professor Coffee, for one, has observed that "it is not clear that the underwriter today still performs the classic gatekeeping function. . . . Many argue that serious due diligence efforts are simply not feasible within the time constraints of shelf registration. Given these constraints, they claim that the solution lies in downsizing the threat under section 11." John C. Coffee, Jr., Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation, 52 Bus. Law. 1195, 1211 (1997). Another professor has remarked that "there is a strong practical case to be made for absolving underwriters of all inquiry obligations short of recklessness. . . . As underwriter involvement diminishes in significance relative to the deal as a whole, it becomes that much more problematic to apply a negligence-based standard in the first place." Langevoort, 63 Law & Contemp. Probs. at 67. A third asserts that in today's capital markets, "it is reasonable to question whether the underwriter's 'due diligence' role is justified at all. . . . [F]or shelf registrations, disinterested advance due diligence is the exception not the rule." Frank Partnoy, Barbarians at the Gatekeepers?: A Proposal for a

NOT A CERTIFIED COPY

018156

16div-023218

Modified Strict Liability Regime, 79 Wash. U. L.Q. 491, 522 (2001) (citation omitted) ("Barbarians at the Gatekeepers").

In a related vein, a Task Force of experienced counsel to underwriters concludes that the "'integrated disclosure system' and the expansion of shelf registration statements have called into question whether underwriters any longer 'sponsor' an issue in a meaningful way, as opposed to delivering advice and distribution services." Task Force Report, 48 Bus. Law. at 1239. Similarly, the ABA Committee on Federal Regulation on Securities has complained to the SEC that

> [t]he benefits of 'on demand' financing . . . are undermined by contiuning to impose on financial intermediaries and other 'gatekeepers' the responsibility to take the time necessary to do a sufficient due diligence investigation to assure quality disclosure without recognizing and making allowances for their difficulty or even inability to do so. It is not possible for underwriters and others to meet this standard in the current financing environment.

Letter from ABA Committee on Federal Regulation on Securities, Business Law Section, to David B.H. Martin, Director, Division of Corporation Finance, SEC, Aug. 22, 2001. Thus, academics and practitioners have called for a reexamination of underwriters' liability under Sections 11 and 12(a)(2) on the grounds that "Congress's assumptions in 1933 and 1934 about registrants working with individual underwriters in a relatively leisurely atmosphere are at odds with today's competition by multiple

NOT A CERTIFIED COPY

018157

underwriters for high-speed transactions." Id. Implicit in these calls for a legislative change is the recognition that current law continues to place a burden upon an underwriter to conduct a reasonable investigation of non-expertised statements in a registration statement, including an issuer's interim financial statements.

E. Case Law: Reliance Defense

Over thirty-five years ago, the Honorable Edward C. McLean of this District observed that "there is little or no judicial authority" on how a defendant can successfully establish his affirmative defenses under Section 11. Escott v. BarChris Constr. Corp., 283 F. Supp. 643, 683 (S.D.N.Y. 1968). This remains true today. Neither the Supreme Court nor the Second Circuit has explored this area of law in any significant way. Justice Powell, however, reflected on the reliance defense in his dissent from the Court's denial of certiorari in John Nuveen & Co. v. Sanders, 450 U.S. at 1005, a case addressed to the requirements of Section 12(a)(2)'s reasonable care defense. According to Justice Powell, Section 11

> explicitly absolve[s] [an underwriter] of the duty to investigate with respect to "any part of the registration statement purporting to be made on the authority of an expert" such as a certified accountant if "he had no reasonable ground to believe and did not believe" that the information therein was misleading.

NOT A CERTIFIED COPY

018158

> This provision is in the Act because, almost by definition, it is reasonable to rely on financial statements certified by public accountants.

Id. at 1010 (emphasis supplied) (citation omitted). Justice Powell further explained that underwriters' reliance on certified financial statements is not only reasonable but also, in his view, "essential to the proper functioning of securities marketing, to the trading in securities, to the lending of money by banks and financial institutions, and to the reliance by stockholders on the reports of their corporations." Id. n.4. He observed that "where breaches by accountants occur, it is the accountants themselves -- not those who rely in good faith on their professional expertise -- who are at fault and who should be held responsible." Id.; see also Worlds of Wonder, 35 F.3d at 1421, Software Toolworks, 50 F.3d at 623; Griffin v. PaineWebber, Inc., 84 F. Supp. 2d 508, 512-13 (S.D.N.Y. 2000).

Nevertheless, underwriters' reliance on audited financial statements may not be blind. Rather, where "red flags" regarding the reliability of an audited financial statement emerge, mere reliance on an audit will not be sufficient to ward off liability.

The concept of red flags primarily appears in cases arising under Section 10(b) of the Exchange Act. See, e.g., LC Capital Partners, LP v. Frontier Ins. Group, Inc., 318 F.3d 148, 154 (2d

NOT A CERTIFIED COPY

018159

Cir. 2003); Chill v. Gen. Elec. Co., 101 F.3d 263, 269 (2d Cir. 1996); In re Ames Dep't Stores, Inc. Note Litig., 991 F.2d 968, 981 (2d Cir. 1993); Mosesian v. Peat, Marwick, Mitchell & Co., 727 F.2d 873, 877 (9th Cir. 1984); In re Philip Servs. Corp. Sec. Litig., No. 98 Civ. 0835 (MBM), 2004 WL 1152501, at *9-10 (S.D.N.Y. May 24, 2004); In re Global Crossing, Ltd. Sec. Litig., 322 F. Supp. 2d 319, 347 (S.D.N.Y. 2004); In re WorldCom Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 21488087, at *9 (S.D.N.Y. June 25, 2003); In re Complete Mgmt. Inc. Sec. Litig., 153 F. Supp. 2d 314, 334 (S.D.N.Y. 2001).

In these cases, the phrase "red flags" can be used to describe two different concepts. First, red flags can be those facts which come to a defendant's attention that would place a reasonable party in defendant's position "on notice that the audited company was engaged in wrongdoing to the detriment of its investors." In re Sunterra Corp. Sec. Litig., 199 F. Supp. 2d 1308, 1333 (M.D. Fl. 2002). In contrast to Section 11 and Section 12(a)(2) claims, which do not require a showing of scienter, in a Section 10(b) case, the plaintiff must sufficiently plead that the defendant acted with "an intent to deceive, manipulate or defraud." Kalnit v. Eichler, 264 F.3d 131, 138 (2d Cir. 2001) (citation omitted). One way of meeting this standard is to allege facts showing that the defendant's

NOT A CERTIFIED COPY

018160

conduct was "highly unreasonable, representing an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." Rothman v. Gregor, 220 F.3d 81, 90 (2d Cir. 2000) (citation omitted). Therefore, in an attempt to demonstrate recklessness, plaintiffs in Section 10(b) cases often assert that a defendant ignored "red warning flags" of another actor's wrongdoing. Chill, 101 F.3d at 269. See also Philip Servs., 2004 WL 1152501, at *9; Complete Mgmt., 153 F. Supp. 2d at 334.

The phrase "red flags," or "storm warnings," may also describe facts or circumstances that "would suggest to an investor of ordinary intelligence the probability that she has been defrauded." Frontier Ins., 318 F.3d at 154 (citation omitted); see also Ames Dep't Stores, 991 F.2d at 981, Complete Mgmt., 153 F. Supp. 2d at 337. The Second Circuit, for example, has found that a company's taking three substantial reserve charges over four years should have "alert[ed] any reasonable investor that something is seriously wrong." Frontier Ins., 318 F.3d at 155. Where such red flags arise, a duty of inquiry arises and knowledge of the fraud is imputed to the investor with consequences as to whether or not a claim has been filed within

NOT A CERTIFIED COPY

191810

the statute of limitations. Id. at 154; see also 15 U.S.C. § 78i(e).

While the existence of red flags is principally discussed in the Section 10(b) context, courts have also used this concept to inform their analysis of Section 11 claims. In Software Toolworks, 50 F.3d 615, for example, the plaintiffs asserted that the underwriter defendants were not entitled to "blindly rely" on the audited financial statements in light of "red flags" suggesting that the recognition of revenue for certain sales was improper. Id. at 623. Among other assertions, the plaintiffs alleged that the underwriter defendants' discovery of a memorandum that revealed the backdating of a sales contract so that Toolworks could recognize revenue in a particular fiscal year constituted a "red flag" that should have deprived the defendants of their reliance defense. Id. at 624. Finding that the underwriters demanded an explanation from the auditor about its accounting, insisted on written confirmations of particular contracts, and confirmed the auditor's accounting method with other accounting firms, the Ninth Circuit upheld the district court's holding that the underwriters' "investigation . . . was reasonable" as a matter of law. Id. Nevertheless, it noted that "[i]f the Underwriters had done nothing more" than simply discover the red flag, the plaintiffs' contention that the

NOT A CERTIFIED COPY

0118162

underwriter could no longer rely on the audit would be correct. Id.

Given the difference between the contexts in which the term "red flag" is used, a particular fact that is deemed to constitute a red flag in a Section 10(b) claim may not be a red flag in a Section 11 inquiry, and vice versa. An example from Mosesian, 727 F.2d 873, may be instructive here. At trial, to support its argument that a Section 10(b) claim was time-barred, the auditor identified seven "red flag" events that it contended should have "alert[ed] a reasonably prudent investor of wrongdoing on [its] part." Id. at 877. The court rejected the auditor's argument, finding that a company's "[f]inancial problems . . . do not necessarily suggest accounting fraud." Id. at 878. The court's conclusion in Mosesian does not mean, however, that financial problems cannot constitute red flags in Section 11 cases. Rather, as outlined above, in order to be entitled to the reliance defense under Section 11, a defendant must show that he had "no reasonable ground to believe and did not believe" that the statements within the registration statement that were made on an expert's authority were untrue. 15 U.S.C. 77k(b)(3)(C). Any information that strips a defendant of his confidence in the accuracy of those portions of a registration statement premised on audited financial statements

NOT A CERTIFIED COPY

018163

is a red flag, whether or not it relates to accounting fraud or an audit failure. What is at stake under Section 11 is not an auditor's scienter, but the accuracy and completeness of the statements in the registration statement.

It is equally important to note that what constitutes a red flag depends on the facts and context of a particular case. For instance, this Circuit asserted in a recent Section 10(b) case that its determination of whether storm warnings exist would "depend in large part on how significant the company's disclosed problems are, how likely they are of a recurring nature, and how substantial are the 'reassuring' steps announced to avoid their recurrence." Frontier Ins., 318 F.3d at 155. In a similar vein, "[t]he question of what a reasonably prudent [man] should have known is particularly suited to a jury determination." Mosesian, 727 F.2d at 879.

F. Case Law: Due Diligence Defense

Just as there is little judicial elaboration of the reliance defense, so too there is "little judicial gloss" on the due diligence defense afforded to underwriters for non-expertised portions of a registration statement. Feit, 332 F. Supp. at 576. See also Glassman v. Computervision Corp., 90 F.3d 617, 628 (1st Cir. 1996) ("The law on due diligence is sparse. . . ."); John C.

NOT A CERTIFIED COPY

018164

Coffee, Jr., A Statutory and Case Law Primer on Due Diligence Under the Securities Law, 886 P.L.I./Corp 11, 17 (1995) ("Few decisions have wrestled with the concepts in §§ 11(b) and 11(c)."); Joseph McLaughlin, Some Challenges to Underwriters and Their Counsel in the Modern Capital Markets Environment, 28 Wake Forest L. Rev. 61, 67 (1993) (noting "relative paucity of judicial interpretations of the underwriters' 'due diligence' defense"); Partnoy, Barbarians at the Gatekeepers, 79 Wash. U. L.Q. at 514 (2001) (Section 11 due diligence defense has generated "little case law."). While there is a paucity of caselaw, "two early cases," Escott v. BarChris Construction Corp., 283 F. Supp. at 643, and Feit v. Leasco Data Processing Equipment Corp., 332 F. Supp. at 544, "remain the major polestars" in defining what constitutes a reasonable investigation. Coffee, 886 P.L.I./Corp. at 17 (citation omitted).

Faced with "no judicial decision defining the degree of diligence which underwriters must exercise to establish their defense under Section 11," in 1968, the BarChris court contemplated whether "it is sufficient [for an underwriter] to ask questions, to obtain answers which, if true, would be thought satisfactory, and to let it go at that, without seeking to ascertain from the records whether the answers in fact are true

NOT A CERTIFIED COPY

018165

and complete." BarChris, 283 F. Supp. at 696. The lead underwriter or its counsel read annual reports and prospectuses of other companies within the industry; perused the issuer's prior prospectuses, annual reports, and most recent unaudited interim financial statements, as well as its minutes from the previous five years and its major contracts; and attended several meetings with the issuer at which underwriter and underwriters' counsel asked "pertinent questions and received answers which satisfied them" and in which "extensive, successive proofs of the prospectus were considered and revised." Id. at 693-95.

Rendering his opinion following a bench trial, Judge McLean noted the impossibility of establishing "a rigid rule suitable for every case defining the extent to which such verification must go. It is a question of degree, a matter of judgment in each case." Id. at 697 (emphasis supplied). Nonetheless, he held the underwriters had not conducted a "reasonable investigation of the truth of those portions of the prospectus which were not made on the authority of [the auditor] as an expert" because they made "almost no attempt to verify management's representations." Id. at 697 (emphasis supplied). In determining that an underwriter's due diligence obligations include efforts to verify information supplied by the issuer, the BarChris court relied heavily on the purpose of Section 11 and

NOT A CERTIFIED COPY

0181691

underwriters' role within the statutory scheme. As Judge McLean observed,

> The purpose of Section 11 is to protect investors. To that end the underwriters are made responsible for the truth of the prospectus. If they may escape that responsibility by taking at face value representations made to them by the company's management, then the inclusion of underwriters among those liable under Section 11 affords the investors no additional protection. To effectuate the statute's purpose, the phrase "reasonable investigation" must be construed to require more effort on the part of the underwriters than the mere accurate reporting in the prospectus of "data presented" to them by the company. It should make no difference that this data is elicited by questions addressed to the company officers by the underwriters, or that the underwriters at the time believe that the company's officers are truthful and reliable. In order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them. They may not rely solely on the company's officers or on the company's counsel. A prudent man in the management of his own property would not rely on them.

Id.

Three years later, the Honorable Jack B. Weinstein further expounded on the due diligence defense in Feit, 332 F. Supp. at 544. Like the BarChris opinion before it, which refused to set forth a "rigid rule" for reasonable investigation, Feit insists that "[w]hat constitutes 'reasonable investigation' and a 'reasonable ground to believe' will vary with the degree of involvement of the individual, his expertise, and his access to the pertinent information and data." Id. at 577. Yet Feit

NOT A CERTIFIED COPY

018167

16div-023229

places great emphasis on the underwriters' role in a securities offering, observing that "the underwriter is the only participant in the registration process who, as to matters not certified by the accountant, is able to make the kind of investigation which will protect the purchasing public." Id. at 581 (citation omitted).

Given the underwriter's independence from the issuer, Judge Weinstein affirmed that while an underwriter is not "expected to possess the intimate knowledge of corporate affairs of inside directors," his obligation is to conduct a meaningful investigation, "not merely . . . listen[] to management's explanations of the company's affairs." Id. at 581-82 (citation omitted). "Tacit reliance on management assertions is unacceptable; the underwriters must play devil's advocate." Id. at 582 (citation omitted). Rendering his decision following a bench trial, Judge Weinstein found that the Feit underwriters had "just barely" satisfied this standard by completing a "thorough review of all available financial data," including an examination of the issuer's audit, "searching inquiries" of the issuer's major bank, and a study of the issuer's corporate minutes, records, and major agreements; attending due diligence meetings at which the proposed registration statement was reviewed "line by line"; reviewing correspondence pertinent to the omission at

NOT A CERTIFIED COPY

018168

issue; and remaining in "constant contact" with the issuer. Id. at 582-83.

The years following BarChris and Feit have been marked by considerable change in the regulatory framework governing securities registration. Specifically, short-form registration, the expansion of shelf registration, and Rule 176 were each introduced well after these two cases were decided. Recent Section 11 case law, however, shows no signs of abandoning the early courts' demand that underwriters employ "a high degree of care in investigation and independent verification of the company's representations." Feit, 332 F. Supp. at 582.

The most prominent recent discussion of an underwriter's due diligence obligation appears in Software Toolworks, 50 F.3d at 615. In Software Toolworks, the Ninth Circuit partially affirmed a decision granting summary judgment to the underwriter defendants on the basis of their due diligence defense, specifically, that they had sufficiently investigated the issuer's business with Nintendo. In conducting that investigation, the underwriters obtained written representations from the auditor and issuer as to the prospectus's accuracy, confirmed the issuer's return policy with its customers, and surveyed retailers regarding pricing and other relevant details. Software Toolworks, 50 F.3d at 622-23. The Software Toolworks

NOT A CERTIFIED COPY

018169

court reversed the district court's grant of summary judgment with respect to other aspects of the underwriters' due diligence efforts. Notably, it found that there were questions of fact as to whether underwriters performed adequate due diligence on the issuer's post-prospectus entry of $7 million in large consignment sales, which were later reversed in the final financial statements for the quarter. Id. at 626. Rather than play's "devil's advocate," as Feit requires an underwriter to do, the Software Toolworks underwriters "did little more than rely on Toolworks' assurances that the transactions were legitimate," making summary judgment in their favor inappropriate. Id.

The Honorable Robert W. Sweet of this District, citing Feit, asserted in 1993 that "reasonably due diligence will normally involve a careful review of the issuer's financial statements and important contracts." Ades v. Deloitte & Touche, Nos. 90 Civ. 4959 (RWS), 90 Civ. 5056 (RWS), 1993 WL 362364, at *19 (S.D.N.Y. Sept. 17, 1993) (emphasis supplied). The court denied summary judgment for the underwriter defendant, which had argued that it was entitled to rely upon the interim financial statements despite having not performed "line-by-line scrutiny" of the same. Id. at *21. While acknowledging that a "private placement agent need not duplicate accounting procedures in evaluating a firm," the court found that the underwriter's inquiries as to certain

NOT A CERTIFIED COPY

018170

major contracts and its reliance on the interim financial statements presented factual issues as to the adequacy and reasonableness of its due diligence investigation. Id.

Where district courts have granted summary judgment for underwriters in recent years, the underwriters have demonstrated extensive due diligence efforts. As one court recounted in granting summary judgment,

> The underwriters had over twenty meetings with various management personnel, covering all aspects of the company's business. Company personnel were specifically questioned about the development and scheduled availability of products, related operating systems and applications software. The underwriters also contacted many of [the issuer's] suppliers, customers, and distributors, who were asked extensive questions about the company's operations. The underwriters reviewed company documents including operating plans, product literature, corporate records, financial statements, contacts, and lists of distributors and customers. They examined trade journals and other industry-related publications to ascertain industry trends, market trends and competitive information. . . . When any negative or questionable information was developed as a result of their investigation, the underwriters discussed it with the appropriate persons and arrived at informed decisions and opinions.

Weinberger v. Jackson, No. C-89-2301-CAL, 1999 U.S. Dist. LEXIS 18394, at *7-8 (N.D. Cal. Oct. 11, 1990) (emphasis supplied). Another court granted summary judgment for the underwriter defendant only after establishing that the underwriters conducted an "unquestionably extensive" investigation. In re Int'l Rectifier Sec. Litig., No. CV91-3357-RMT, 1997 U.S. Dist. LEXIS

NOT A CERTIFIED COPY

018171

23966, at *7 (C.D. Cal. 1997). Among other things, their diligence included a review of the issuer's "internal financial forecasts, contracts, and other important documents"; interviews of the issuer's major customers, outside quality consultants, attorneys, auditor, and nearly a dozen of the issuer's managers; "written verification from [the issuer's] management that the information in the prospectus was correct"; and "a 'cold comfort' letter from [the issuer's] outside accountants indicating that there had been no material changes in [the issuer's] financial position since its last audit." Id. at *20-21.

Similarly, the court in Phillips v. Kidder, Peabody & Co., 933 F. Supp. 303 (S.D.N.Y. 1996), aff'd, 108 F.3d 1370 (2d Cir. 1997), found that the underwriter defendant had conducted extensive due diligence, which included "reviewing the [issuer's] financial statements, forecasts, budgets, and accounting controls, including discussions and/or meetings with management, outside directors, accountants, suppliers, and lending banks." Phillips, 933 F. Supp. at 318. Moreover, although the underwriters "relied in large part on the cold comfort letters provided by Arthur Andersen," those comfort letters did not concern unaudited interim financial information. Id. at 323. Rather, the detailed comfort letter in Phillips recited specific steps taken to confirm the adequacy of the issuer's internal

NOT A CERTIFIED COPY

0181172

inventory and accounting controls in the wake of a major supplier's reduction of prices on certain products, and was only one part of the underwriters' due diligence on the issue of inventory shrinkage. Id. at 319 n.11.

Thus, courts have continued to insist that underwriters demonstrate that they have conducted a meaningful investigation before granting summary judgment. That includes a reasonable investigation of unaudited financial information. See Glassman, 90 F.3d at 629 ("[A] failure by the underwriters either to verify a company's statements as to its financial state or to consider new information up to the effective date of an offering would almost certainly constitute a lack of due diligence."). In addition, an underwriter conducting a due diligence investigation must "look deeper and question more" where confronted with red flags. Enron, 235 F. Supp. 2d at 707; see also Univ. Hill Found. v. Goldman, Sachs & Co., 422 F. Supp. 879, 900 (S.D.N.Y. 1976) (whether or not underwriter conducted "reasonable investigation" depends on "the presence or absence of 'warning signals' to [underwriter] that something more might be in order.") (citation omitted).

While none of these courts have employed principles of statutory construction to reach their holdings, our role here, as always, is "to interpret the language of the statute enacted by Congress." Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438, 461

NOT A CERTIFIED COPY

018173

16div-023235

(2002). Such statutory interpretation must "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756, 1761 (2004) (citation omitted). In the Section 11 context, this presumption is heightened by the fact that "in the securities Acts Congress has used its words with precision." Nuveen, 450 U.S. at 1009 (Powell, J., dissenting from denial of cert.).

Section 11(b) plainly commands that underwriters conduct an investigation as to portions of a registration statement not made on the authority of an expert. "When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning." Smith v. United States, 508 U.S. 223, 228 (1993). Today, as in 1933 when Section 11 became law, the word "investigation" connotes a "thorough" or "searching inquiry." Compare Webster's New International Dictionary of the English Language 1306 (2d ed. 1934) ("Webster's 1934") with Webster's Third New International Dictionary of the English Language 1189 (1993) ("Webster's 1993"). Then and now, it can also mean the process of investigating. See Webster's 1934 at 1306; Webster's 1993 at 1189. Under this latter definition, an investigation is no less demanding, as the word "investigate" is defined as "to inquire and examine into with systematic attention to detail and

NOT A CERTIFIED COPY

0118174

relationship." Webster's 1934 at 1306; see also Webster's 1993 at 1189 ("to inquire into systematically.")

G. The Application of the Law to This Motion

The Underwriter Defendants have moved for summary judgment on each of the alleged misstatements in the 2000 and 2001 Registration Statements. The Underwriter Defendants analyze each of the misstatements (as opposed to the omissions) that the Lead Plaintiff has alleged as quintessentially matters of accounting. Most of the misstatements are financial figures from WorldCom's Exchange Act reports that were incorporated by reference into the Registration Statements. Additional misstatements include management's comparison of financial figures from one period to the next, statements by WorldCom's management describing accounting policies and future expectations, and the use of proceeds. The Underwriter Defendants contend that they are entitled to summary judgment on their affirmative defenses of reliance and due diligence because they were entitled to rely on Andersen's audits and comfort letters. The analysis that follows distinguishes between the expertised and non-expertised statements which are the subject of this motion.

NOT A CERTIFIED COPY

1. Audited Financial Statements

The Underwriter Defendants contend that they were entitled to rely on Andersen's unqualified "clean" audit opinions for WorldCom's 1999 and 2000 Form 10-Ks as expertised statements under Section 11(b)(3)(C). Their motion for summary judgment on their reliance defense is denied.

a. 2000 Registration Statement

The Lead Plaintiff points to one issue that it contends gave the Underwriter Defendants a reasonable ground to question the reliability of WorldCom's 1999 Form 10-K. According to the computations presented by the Lead Plaintiff, WorldCom's reported E/R ratio was significantly lower than that of the equivalent numbers of its two closest competitors, Sprint and AT&T.[47] The Lead Plaintiff argues that, in the extremely competitive market in which WorldCom operated, that discrepancy triggered a duty to investigate such a crucial measurement of the company's health. The Lead Plaintiff has shown that there are issues of fact as to whether the Underwriter Defendants had reasonable grounds to believe that the 1999 Form 10-K was inaccurate in the lines related to the E/R ratio reflected in that filing.

[47] WorldCom's E/R ratio was 43%. The expert for the Lead Plaintiff calculates that AT&T's equivalent ratio was 46.8% and Sprint's was 53.2%.

NOT A CERTIFIED COPY

018176

16div-023238

The Underwriter Defendants argue that the difference in the E/R ratios was insufficient as a matter of law to put the Underwriter Defendants on notice of any accounting irregularity. In support of this, they point to the fact that this difference was publicly available information and no one else announced a belief that it suggested the existence of an accounting fraud at WorldCom.

The fact that the difference was publicly available information does not absolve the Underwriter Defendants of their duty to bring their expertise to bear on the issue. The Underwriter Defendants do not dispute that they were required to be familiar with the Exchange Act filings that were incorporated by reference into the Registration Statement. If a "prudent man in the management of his own property," 15 U.S.C. § 77k(c), upon reading the 1999 Form 10-K and being familiar with the other relevant information about the issuer's competitors would have questioned the accuracy of the figures, then those figures constituted a red flag and imposed a duty of investigation on the Underwriter Defendants. A jury would be entitled to find that this difference was of sufficient importance to have triggered a duty to investigate the reliability of the figures on which the ratio was based even though the figures had been audited.

The Underwriter Defendants contend that an audited figure can never constitute a red flag and impose a duty of investigation. This argument mischaracterizes the Lead

NOT A CERTIFIED COPY

018177

16div-023239

Plaintiff's position. The Lead Plaintiff has pointed to facts extraneous to WorldCom's audited figures to argue that a reasonable person would have inquired further about the discrepancy between the audited figures and the comparable information from competitors.[48] As discussed above, the existence of red flags can create a duty to investigate even audited financial statements.

The Underwriter Defendants argue that the standard that should apply is whether they had "clear and direct notice" of an "accounting" problem. They argue that case law establishes that "ordinary business events" do not constitute red flags. They are wrong. There is no basis in law to find a requirement that a red flag arises only when there is "clear and direct" notice of an accounting issue. The standard under Section 11 is whether a defendant has proven that it had "no reasonable ground to believe and did not believe" that a registration statement contained material misstatements, a standard given meaning by what a "prudent man" would do in the management of his own property. Nor is the bar lowered because there is an expert's opinion on which an underwriter is entitled to rely. The "prudent man"

---

[48] The Underwriter Defendants assert that they were extremely knowledgeable about the telecommunications industry and had a sophisticated understanding of it and WorldCom's place within that industry due to their continuous due diligence over the years. They do not deny that they were, and were required to be, in a position to understand and analyze the significance of a variation in E/R ratios.

NOT A CERTIFIED COPY

018178

standard applies to Section 11(b)(3)(C). Finally, what constitutes an ordinary business event and what constitutes a red flag is an issue of fact. These are exquisitely fact intensive inquiries that depend on the circumstances surrounding a particular issuer and the alleged misstatement. There is no category of information which can always be ignored by an underwriter on the ground that it constitutes an ordinary business event. What is ordinary in one context may be sufficiently unusual in another to create a duty of investigation by a "prudent man."

In their analysis of the E/R ratio discrepancy itself, the Underwriter Defendants contend that a difference in ratios is not necessarily suspicious in a competitive industry and that the Lead Plaintiff's expert has incorrectly calculated the comparable ratios for AT&T and Sprint.[49] Each of these arguments raises questions of fact that must be resolved at trial.

---

[49] The Underwriter Defendants contend that the Lead Plaintiff's expert has included costs AT&T and Sprint incurred to operate their own lines, while WorldCom's E/R ratio is based solely on the amount it pays to others for access to lines. In their reply brief, the Underwriter Defendants represent that Lead Plaintiff's expert calculates that the line costs for 1999 were understated by $60 million, which would have had a minimal effect on the E/R ratio. They argue that this discrepancy was not material. Arguments made for the first time in reply will not be considered.

NOT A CERTIFIED COPY

0181179

16div-023241

b. 2001 Registration Statement

The Lead Plaintiff points to three issues that it contends imposed upon the Underwriter Defendants a duty to investigate the reliability of WorldCom's 2000 Form 10-K. They are the discrepancy between WorldCom's E/R ratio and that of its competitors; the deterioration in the MCI long-distance business, which the Lead Plaintiff alleges should have caused them to question the accuracy of WorldCom's reported assets;[50] and Ebbers' personal financial situation, which gave him both the motive and opportunity to inflate WorldCom's stock price through manipulation.

The Underwriter Defendants' general arguments about the nature of the reliance defense insofar as it concerns audited information have already been addressed. The arguments that are particular to the individual red flags identified by the Lead Plaintiff are addressed below. The Underwriter Defendants have shown that they are entitled to summary judgment on the issue of whether Ebbers' financial situation constituted a red flag that imposed upon them the duty of inquiry.

NOT A CERTIFIED COPY

018180

[50] When WorldCom acquired MCI for $47 billion, $29 billion of that purchase price was attributed to goodwill, which is treated as an intangible asset.

16div-023242

i. Goodwill and Asset Impairment

The Underwriter Defendants make several arguments concerning the issue of goodwill and asset impairment. They contend that it was public knowledge that AT&T and Sprint took asset impairment charges to their core networks in 2000 while WorldCom did not, that the telecommunications sector was in decline, and that analysts had described the equity value of the MCI tracking stock as close to zero. To the extent that these arguments are meant to suggest that bondholders cannot show that they relied on any misstatement in the WorldCom financials, there is no requirement of such a showing under either Section 11 or Section 12(a)(2). Furthermore, the issue in connection with the reliance defense is not whether the red flag information was well known, but whether the red flags existed and imposed a duty upon the Underwriter Defendants under the "prudent man" standard to inquire of WorldCom and/or Andersen about the reporting of WorldCom's assets because the Underwriter Defendants had a reasonable ground to believe that the reporting of assets may have been inaccurate.

The Underwriter Defendants next contend that WorldCom's treatment of the accounting issue was defensible.[51] The Underwriter Defendants may be able to establish at trial that there was no misrepresentation of WorldCom's assets, but they

[51] The Underwriter Defendants principally rely on a reading of correspondence between WorldCom and the SEC regarding WorldCom's use of a forty-year useful life depreciation curve for goodwill and industry practice.

NOT A CERTIFIED COPY

018181

16div-023243

have not moved for summary judgment on that ground. Instead, they have moved for summary judgment on their reliance defense by arguing that they had no duty to make any inquiry regarding the accuracy of WorldCom's statement of its assets. The Lead Plaintiff has shown that there are issues of fact regarding WorldCom's statement of its assets that a jury may find raised a red flag and imposed upon the Underwriter Defendants the obligation to inquire.

ii. Ebbers' Personal Finances

The Underwriter Defendants are entitled to summary judgment on the issue of whether Ebbers' personal financial situation, and in particular the extent to which his wealth was dependent on WorldCom's stock price, imposed upon them an obligation to inquire. The Lead Plaintiff has shown that the Underwriter Defendants were well aware of the complexity of Ebbers' personal finances and the extraordinary extent to which those finances were dependent on the movement in WorldCom's stock price. They had access to information which painted a much starker picture in this regard than the public record. The Lead Plaintiff has also shown that the Underwriter Defendants should have understood that Ebbers was in a position to affect the integrity of WorldCom's financial reporting. What the Lead Plaintiff has not shown is that the Underwriter Defendants had any reason to believe that Ebbers would use his access and power to commit fraud.

NOT A CERTIFIED COPY

018182

16div-023244

The "motive and opportunity" cases that arise in the context of Section 10(b) of the Exchange Act have limited relevance here. The issue under Section 10(b) is whether a plaintiff has adequately pleaded an officer's motive and opportunity to engage in fraud such that the defendant's scienter has been adequately alleged. See, e.g., Acito v. IMCERA Group, 47 F.3d 47, 54 (2d Cir. 1995). The issue here is whether the Underwriter Defendants' knowledge of Ebbers, incldiing his financial circumstances, gave them reason to believe the WorldCom audited financial statements were inaccurate. Without some evidence that the Underwriter Defendants had reason to believe that Ebbers was untrustworthy, his dependence on WorldCom's financial health, even though extraordinary, is insufficient to constitute a red flag that he may have caused a manipulation of WorldCom's financial statements.

iii. E/R Ratio

The Underwriter Defendants rely on many of the arguments that they made regarding the E/R ratio in connection with the 2000 Registration Statement. The Lead Plaintiff has shown that there are issues of fact as to whether the discrepancy in the WorldCom E/R ratio, when compared to comparable companies' E/R ratios, was sufficient to cause a prudent man to make an inquiry regarding the accuracy of the 2000 Form 10-K.

NOT A CERTIFIED COPY

018183

2. Interim Financial Statements

The Underwriter Defendants contend that, pursuant to Sections 11(b)(3)(A) and 12(a)(2), they were entitled to rely on Andersen's comfort letters for WorldCom's unaudited interim financial statements for the first quarter of 2000 and 2001 so long as the Lead Plaintiff is unable to show that the Underwriter Defendants were on notice of any accounting red flags. They argue that this statement of the due diligence defense is particularly appropriate because WorldCom was a seasoned issuer and the Registration Statements were part of the integrated disclosure system that allowed the Exchange Act periodic reports to be incorporated by reference. The Underwriter Defendants contend that "Form S-3 issuers" like WorldCom are only required to include transaction-related information in a Form S-3 prospectus and that the information contained in the Exchange Act filings which are incorporated by reference do not need to be repeated. They argue that in the context of integrated disclosure for shelf registrations, and as a result of SEC Rule 176, the focus is on an underwriter's continuous learning about an "industry" and reasonable reliance on other professionals, such as an issuer's auditor. As a consequence, they contend that there is no difference from the point of view of the underwriter between audited and unaudited financial statements so long as the underwriter receives an auditor's comfort letter. According to the Underwriter Defendants, so long as there are no red flags

NOT A CERTIFIED COPY

018184

16div-023246

that bring the auditor's assessment into question, the receipt of a comfort letter "goes a long way to establish" due diligence with respect to all matters of accounting. They ask for a legal ruling that "an underwriter's investigation of accounting issues is reasonable when it rests on the independent auditor's SAS 71 review for interim financial statements," at least in the context of seasoned issuers engaged in a shelf registration. Finally, they argue that it is material that no amount of reasonable diligence could have uncovered the capitalization of line costs since the WorldCom management deliberately concealed it from Andersen and every other outsider and would never have given them any documents or information that would have revealed the fraud.

Andersen issued a May 19 comfort letter and May 23 bringdown comfort letter for the 2000 Offering. Andersen issued comfort letters on May 9 and 16 for the 2001 Offering. These comfort letters addressed the only interim financial statements that were incorporated by reference in the Registration Statements. In connection with the latter Offering, the Underwriter Defendants emphasize that J.P. Morgan and SSB had recently had occasion to work closely with WorldCom on other projects. The two firms had participated in the two tracking stock realignment of WorldCom announced in November 2000, and J.P. Morgan had acted as a lead manager and sole book-runner for WorldCom's $2 billion private placement in December 2000. They point to these activities as part of their continuous due diligence for WorldCom.

NOT A CERTIFIED COPY

018185

To prevail on their due diligence defense at trial, the Underwriter Defendants must show that they conducted a reasonable investigation and that after such an investigation that they had reasonable ground to believe that the statements in the Registration Statements, including the information in the unaudited interim financial statements, were true. See 15 U.S.C. § 77k(b)(3)(A). In judging that investigation, a jury will have to consider the non-exclusive list of factors enumerated in Rule 176. Insofar as Rule 176 is concerned, there does not appear to be any dispute that WorldCom was a "well-established" issuer, that the notes at issue were investment-grade debt securities, that SSB and J.P. Morgan assigned experienced personnel to the due diligence teams, that they spoke to the issuer's CFO and in 2001 also spoke to Andersen, that the underwriting was a firm commitment underwriting, that the underwriting was through a shelf registration, that many analysts and credit reporting agencies followed and reported on WorldCom, that the issuer and not the Underwriter Defendants had responsibility for preparing the interim financial statements, and that Andersen and not the Underwriter Defendants had responsibility for reviewing the interim financial statements.

The Lead Plaintiff has shown that there are questions of fact, however, as to whether the Underwriter Defendants conducted a reasonable investigation in either 2000 or 2001. It points to what it contends is evidence of the limited number of

NOT A CERTIFIED COPY

98181O

conversations with the issuer or its auditor, the cursory nature of the inquiries, the failure to go behind any of the almost formulaic answers given to questions, and the failure to inquire into issues of particular prominence in the Underwriter Defendants' own internal evaluations of the financial condition of the issuer or in the financial press. It argues in particular with respect to 2001, that having internally downgraded WorldCom's credit rating and having taken steps to limit their exposure as WorldCom creditors, the Underwriter Defendants were well aware that WorldCom was in a deteriorating financial position in a troubled industry, and that a reasonable investigation would have entailed a more searching inquiry than that undertaken by the Underwriter Defendants. Given the enormity of these two bond offerings, and the general deterioration in WorldCom's financial situation, at least as of the time of the 2001 Offering, they argue that a particularly probing inquiry by a prudent underwriter was warranted. These issues of fact require a jury trial.[52]

---

[52] To the extent that the Lead Plaintiff seeks to find an issue of fact from the differences between the comfort letters provided in 2000 and 2001, that argument does not seem particularly strong. The 2001 Registration Statement incorporated WorldCom's Form 8-K for the first quarter of 2001, while the 2000 Registration Statement incorporated Worldcom's Form 10-Q for the first quarter. The Underwriter Defendants appear to have shown that in 2001 Andersen gave the appropriate form of comfort letter for a Form 8-K.

NOT A CERTIFIED COPY

018187

16div-023249

The Underwriter Defendants have framed their summary judgment motion in a way that is incompatible with their burden of proving their due diligence defense under Section 11. They seek to restrict the inquiry on their due diligence solely to the work undertaken with respect to the interim financial statements and therefore to restrict it to a determination of whether any red flags existed that would put them on notice of a duty to make an inquiry of the interim financial statements. This formulation converts the due diligence defense into the reliance defense and balkanizes the task of due diligence.

In order to succeed with a due diligence defense, the Underwriter Defendants will have to show that they conducted a reasonable investigation of the non-expertised portions of the Registration Statements and thereafter had reasonable ground to believe that the interim financial statements were true. In assessing the reasonableness of the investigation, their receipt of the comfort letters will be important evidence, but it is insufficient by itself to establish the defense.

It is important to note that even if no reasonable investigation would have uncovered a fraud, an underwriter will prevail on its defense if can show it did conduct a reasonable investigation. Conversely, an underwriter must conduct a reasonable investigation to prevail on the due diligence defense, even if it appears that such an investigation would have proven futile in uncovering the fraud. Without a reasonable

NOT A CERTIFIED COPY

018188

investigation, of course, it can never be known what would have been uncovered or what additional disclosures would have been demanded.

The Underwriter Defendants argue that if they are not entitled to rely on a comfort letter, the costs of capital formation in the United States will be substantially increased since underwriters will have to hire their own accounting firms to rehash the work of the issuer's auditor. Nothing in this Opinion should be read as imposing that obligation on underwriters or the underwriting process. The term "reasonable investigation" encompasses many modes of inquiry between obtaining comfort letters from an auditor and doing little more, on one hand, and having to re-audit a company's books on the other. Nonetheless, if aggressive or unusual accounting strategies regarding significant issues come to light in the course of a reasonable investigation, a prudent underwriter may choose to consult with accounting experts to confirm that the accounting treatment is appropriate and that additional disclosure is unnecessary. See Software Toolworks, 50 F.3d at 624.

Underwriters perform a different function from auditors. They have special access to information about an issuer at a critical time in the issuer's corporate life, at a time it is seeking to raise capital. The public relies on the underwriter to obtain and verify relevant information and then make sure that

NOT A CERTIFIED COPY

018189

essential facts are disclosed.[53] Acting with the degree of diligence that applies to a prudent man when managing his own property, underwriters should ask those questions and seek those answers that are appropriate in the circumstances. They are not being asked to duplicate the work of auditors, but to conduct a reasonable investigation. If their initial investigation leads them to question the accuracy of financial reporting, then the existence of an audit or a comfort letter will not excuse the failure to follow through with a subsequent investigation of the matter. If red flags arise from a reasonable investigation, underwriters will have to make sufficient inquiry to satisfy themselves as to the accuracy of the financial statements, and if unsatisfied, they must demand disclosure, withdraw from the underwriting process, or bear the risk of liability.

An underwriter should, and the Underwriter Defendants here certainly did, have the "business and financial expertise to identify the weak points in an issuer's business and financial condition and to assess the adequacy of an issuer's disclosure in this regard." Task Force Report, 48 Bus. Law. at 1222. It is in part because underwriters have taken their responsibilities seriously in this regard that, from the perspective of over

---

[53] Reflecting on underwriters' role as the procurer and verifier of critical issuer-specific information, some academic commentators describe them as "reputational intermediaries" or "gatekeepers." See, e.g., John Coffee, Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms, 84 B.U. L. Rev. 301, 302 n.1, 308 nn.13-14 (2004).

NOT A CERTIFIED COPY

018190

seventy years, the Securities Act has been an effective instrument of regulation. The question the jury will have to decide here is whether the Underwriter Defendants have fulfilled that obligation in the context of the two WorldCom Offerings.

The Underwriter Defendants contend that they will be able to show at trial that the continuous due diligence that they performed with respect to WorldCom amounted to a reasonable investigation for both Offerings. This Opinion does not address the likelihood of that showing because the Underwriter Defendants have not moved for summary judgement on that ground. For that reason, it is also unnecessary to address their arguments about the difficulty of meeting the traditional standard for due diligence in the context of integrated disclosure and shelf registrations. In any event, the Underwriter Defendants have not shown that the prudent man standard in Section 11 has been diluted by any regulatory changes. The processes through which and the timing in which due diligence is performed have changed, but the ultimate test of reasonable conduct in the specific circumstances of an offering remains unchanged.

IV. The Underwriter Defendants' Motion for Summary Judgment: Omissions

The Underwriter Defendants have also moved for summary judgment on each of the omissions from the Registration Statements that underlie the Securities Act claims. The alleged

NOT A CERTIFIED COPY

018191

omissions are numerous. The Lead Plaintiff has identified twenty omissions from the 2000 Registration Statement, and forty-two from the 2001 Registration Statement.[54] The Underwriter Defendants have shown that they are entitled to summary judgment on some of these alleged omissions.

A. 2000 Registration Statement

The identified omissions from the 2000 Registration Statement are that it:

1. Failed to disclose WorldCom's lack of a strategic plan if the Sprint merger failed, leaving the Company without a wireless business.

2. Failed to disclose WorldCom's serious problems with obtaining the requisite regulatory approvals for the Sprint merger, including the fact that on May 18, 2000, a committee of the Department of Justice recommended that the Department block the merger.

3. Failed to disclose adequately that WorldCom was experiencing continued difficulty with its MCI long-distance business segment.

NOT A CERTIFIED COPY

[54] This list is taken from the June 4, 2004 Response by the Lead Plaintiff to the Underwriter Defendants' Second Set of Interrogatories. On June 14, 2004, the Lead Plaintiff supplemented that response. The June 14 document principally adds detail for some of the items in the June 4 document.

018192

16div-023254

4. Failed to disclose adequately that the proliferation of new competitors in the voice long-distance business was having a negative impact on WorldCom's revenue and cash generation.

5. Failed to disclose adequately that the WorldCom Group's stated plan of focusing on high-growth data and Internet segments was almost entirely dependent on the Company's ability to stabilize cash flows in its long-distance business.

6. Failed to disclose the extent to which consumer and wholesale long-distance revenue was declining and was expected to decline.

7. Failed to disclose adequately that, while the Company intended to increase revenues by focusing on providing data services, this segment of WorldCom's business required large infusions of capital.

8. Failed to disclose adequately that WorldCom's future performance was contingent upon the success of its data and IP [Internet portal] initiatives.

9. Failed to disclose that certain of the Underwriter Defendants suffered from conflicts of interest that affected their ability to conduct a reasonable due diligence investigation in connection with the May 2000 Offering, including the following:

a. The fact that WorldCom selected the Underwriter Defendants for the May 2000 Offering based, at least in part, on the amount of credit that the Underwriter Defendants' commercial banking affiliates agreed to extend to WorldCom, rather than on the basis of merit;

NOT A CERTIFIED COPY

018193

b. The fact that WorldCom selected the Underwriter Defendants for the May 2000 Offering based, at least in part, on the ratings that the Underwriter Defendants' research analysts had provided WorldCom;

c. The fact that certain of the Underwriter Defendants, and their corporate affiliates, extended millions of dollars in loans to WorldCom's CEO Bernie Ebbers in exchange for WorldCom's investment banking business; and

d. The fact that Salomon Smith Barney allocated numerous shares of initial public offering[s] to WorldCom officers and directors - enabling them to make millions of dollars in risk-free profits - in exchange for WorldCom's investment banking business.

10. Failed to include a risk factor section, despite the fact that WorldCom's business was facing a number of significant risks.

11. Failed to disclose that Ebbers was encumbered with a staggering amount of personal debt - much of which was extended by certain of the Underwriter Defendants and their affiliates and much of which was guaranteed by Ebbers' WorldCom shares - such that he faced personal financial ruin if the price of WorldCom stock dropped.

12. Failed to disclose the numerous outside business ventures in which Ebbers was involved, in addition to what was supposed to be

NOT A CERTIFIED COPY

018194

his full-time job as WorldCom's CEO, and that he undoubtedly was distracted by the demands of those other businesses.

13. Failed to disclose the lack of any meaningful internal accounting controls at WorldCom.

14. Failed to disclose the lack of Board oversight at WorldCom, including the Board's failure to carefully consider large corporate transactions and its abdication of authority to Ebbers and Sullivan.

15. Failed to disclose that personnel assigned by the Underwriter Defendants to conduct due diligence on the Company were not able to form a view about what events or conditions were material to WorldCom.

16. Failed to disclose that the Underwriter Defendants had failed to conduct a reasonable investigation to determine whether WorldCom had the ability to service the debt it was assuming in the May 2000 Offering.

17. Failed to disclose that the audit committee of WorldCom's Board of Directors was not actively involved in discharging its duty to oversee the auditing of the Company's financial statements.

18. Failed to disclose that WorldCom provided significantly less financial information regarding its business segments to the public than its competitors.

NOT A CERTIFIED COPY

018195

19. Failed to disclose the lack of meaningful debt planning by the Company or its advisors, including the lack of analysis to assess whether the Company could maintain the debt it incurred.

20. Failed to disclose that WorldCom's acquisition of SkyTel Communications ("SkyTel") had not been properly considered by WorldCom's Board and that it was not a sound business decision.

The Underwriter Defendants seek summary judgment on all of these purported material omissions. The Lead Plaintiff opposes summary judgment with respect to three groups of the listed omissions from the 2000 Registration Statement: the Sprint merger, the conflicts of interest, and risk factors. The last category encompasses several of the separately listed omissions. Because the Lead Plaintiff has not addressed the Underwriter Defendants' arguments in support of summary judgment on omission items 12-18, and 20, summary judgment is granted with respect to them. Summary judgment is denied on the items related to the remaining three issues.

1. Sprint Merger

The 2000 Registration Statement did not discuss the May 18 decision by officials in the antitrust division of the Department of Justice to recommend against approval of the merger or the impact that a failure to merge would have on WorldCom. The 2000 Registration Statement did disclose that "the merger is subject

NOT A CERTIFIED COPY

018196

to the receipt of consents and approvals from various government entities, which may jeopardize or delay completion of the merger." The Underwriter Defendants argue that they had no duty to handicap the chances that the merger would be approved, and that many articles on May 18 discussed the antitrust decision and the likelihood that it would be reversed or upheld.

A duty to disclose exists "when disclosure is necessary to make prior statements not misleading." In re Time Warner Sec. Litig., 9 F.3d 259, 268 (2d Cir. 1993) (citation omitted). Once a potential merger is disclosed by an issuer, there is a duty to "update opinions and projections . . . if the original opinions or projections have become misleading as the result of intervening events." Id. at 267.

Moreover, cautionary language within a registration statement indicating that a merger is subject to certain conditions does not necessarily mean that an underwriter has satisfied its disclosure duties. A defendant may not be liable for misrepresentations in a registration statement if they were "sufficiently balanced by cautionary language within the same prospectus such that no reasonable investor would be misled about the nature and risk of the offered security." P. Stolz Family P'ship, L.P. v. Daum, 355 F.3d 92, 96 (2d Cir. 2004); see also Halperin, 295 F.3d at 357. Yet "the misrepresentation of present or historical facts cannot be cured by cautionary language."

NOT A CERTIFIED COPY

018197

Daum, 355 F.3d at 96-97. The type of cautionary language that gives shelter to Section 11 and 12(a)(2) defendants is that

> aimed at warning investors that bad things may come to pass -- in dealing with the contingent or unforeseen future. Historical or present fact -- knowledge within the grasp of the offeror -- is a different matter. Such facts exist and are known; they are not unforeseen or contingent. It would be perverse indeed if an offeror could knowingly misrepresent historical facts but at the same time disclaim those misrepresented facts with cautionary language.

Id. at 97. "When objectively verifiable factors cause a significant change in a party's attitude toward a merger . . . the securities laws may require that previously disclosed intentions be corrected." In re Gulf Oil/Cities Serv. Tender Offer Litig., 725 F. Supp. 712, 748 (S.D.N.Y. 1989).

An underwriter can be relieved of a duty to disclose when certain developments affecting a corporation become "matters of general public knowledge." Seibert v. Sperry Rand Corp., 586 F.2d 949, 952 (2d Cir. 1978). As the Second Circuit stated in Seibert, "there is no duty to disclose information to one who reasonably should already be aware of it"; rather, "where information is equally available to both parties, a defendant should not be held liable to the plaintiff under the securities laws for failure to disclose." Id. (citation omitted). In Seibert, for instance, the Second Circuit granted summary judgment for the defendants, who were accused of violating Section 14(a) of the Exchange Act, on the grounds that "any reasonable shareholder who was not already familiar with [the

NOT A CERTIFIED COPY

018198

allegedly omitted information] had this information readily available to him" in the form of a nationwide consumer boycott accompanied by "massive media advertising," pervasive press coverage, congressional debate, and administrative and judicial opinions. Id.

Nonetheless, the Second Circuit has more recently found that there are "serious limitations" on a Section 11 defendant's ability to "charge its stockholders with knowledge of information omitted from a . . . prospectus on the basis that the information is public knowledge and otherwise available to them." Kronfeld, 832 F.2d at 736. Moreover, sporadic press reports or reports published in other contexts may "not be considered to be part of the information that was reasonably available" to investors. United Paperworkers Int'l Union v. Int'l Paper Co., 985 F.2d 1190, 1199 (2d Cir. 1993).

The Sprint merger was a principal focus of the 2000 Registration Statement, in particular the May 19 Prospectus Supplement,[55] which contained a pro forma consolidated financial statement for the post-merger company. Given that the announcement of the antitrust division posed a serious obstacle

[55] The Underwriter Defendants contend that the Prospectus Supplement was filed on May 12 and not May 19. They are wrong. There is a Prospectus that is dated May 12, 2000. This document is attached to the Prospectus Supplement dated May 19, 2000. On its first and last pages, the Prospectus Supplement indicates that its date of filing is May 19, and that it includes the May 12 Prospectus.

NOT A CERTIFIED COPY

0181991

to obtaining the requisite regulatory approvals for the Sprint Merger, Lead Plaintiff may be able to show that the failure to describe those problems and their impact on WorldCom was a material omission and that the boilerplatebn language in the Registration Statement warning investors that the merger was subject to regulatory approval was inadequate. While the May 18 decision may have been a matter of wide public knowledge, there is an issue of fact as to whether WorldCom's own failure to describe those problems and their impact on WorldCom was material.

2. Conflicts of Interest

The Underwriter Defendants contend that the amalgam of conflict of interest allegations omitted from the 2000 Registration Statement should be dismissed principally because there was no duty to disclose these facts. They point out that it is not illegal for banks to lend money, to underwrite bonds, to issue research reports, or to make a profit from doing each of these activities. They urge that it is a matter of opinion rather than fact as to whether their agreement to lend money to WorldCom or to Ebbers, their issuance of favorable analyst reports about WorldCom, or their decision to give WorldCom

NOT A CERTIFIED COPY

018200

16div-023262

officers IPO shares[56] was behind their selection as underwriters. The Underwriter Defendants also point out that many of these industry practices were the subject of press reports.

The primary function of a registration statement is to disclose information about the issuer, not its underwriters. Indeed, the regulations governing the form and content of registration statements do not require many underwriter-specific disclosures. Regulation S-K, for example, simply "requires an issuer to identify each underwriter with a material relationship with the issuer and the nature of the relationship, the underwriter's obligation to take securities, the underwriter's compensation, the existence of any underwriter's representatives on the issuer's board of directors, and any indemnity provided to the underwriter." Degulis v. LXR Biotech., Inc., 928 F. Supp. 1301, 1314 (S.D.N.Y. 1996); see also 17 C.F.R. § 229.508(a),(e), (f), (g). It is also worth noting that although Item 508(a) of Regulation S-K requires each underwriter with a material relationship with a "registrant" to "state the nature of the relationship," 17 C.F.R. § 229.508(a), the term "registrant" refers only to an issuer of securities and not to its employees, officers, or directors. See, e.g., 17 C.F.R. § 230.100(a)(4) ("[a]s used in the rules and regulations prescribed in this part

[56] The parties dispute whether the "spinning" of IPO shares to Ebbers and other WorldCom executives was publicly disclosed during the class period.

NOT A CERTIFIED COPY

018201

CONT #975

by the Securities and Exchange Commission pursuant to the Securities Act of 1933," registrant means the "issuer of securities for which a registration statement is filed" unless context requires otherwise).

While Regulation S-K requires disclosure of limited underwriter-related information, "no authority suggests that Regulation S-K is preemptive of the materiality requirement." Degulis, 928 F. Supp. at 1314. As stated previously, the regulations accompanying Section 11 include a catch-all provision, Rule 408, that requires registration statements to contain, "in addition to the information expressly required to be included in a registration statement. . . such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading." 17 C.F.R. § 230.408.

Information regarding relationships that undermine the independence of an underwriter's judgment about the quality of the investment can be material to an investor. As a consequence, non-disclosure of an underwriter or issuer's conflicts of interest can constitute material omissions, even where no regulation expressly compels the disclosure of such conflicts. SEC v. Softpoint, Inc., 958 F. Supp. 846, 863 (S.D.N.Y. 1997) (corporation paid money to brokerage firms in exchange for their cooperation in illegally liquidating unregistered stock); SEC v.

NOT A CERTIFIED COPY

018202

Scott, 565 F. Supp. 1513, 1527 (S.D.N.Y. 1983) (kickback agreement between the issuer and the underwriter), aff'd sub nom, SEC v. Cayman Islands Reins. Corp., 734 F.2d 118 (2d Cir. 1984). See also Jenny v. Shearson, Hammill, & Co., No. 74 Civ. 3526, 1981 WL 1611, at *5 (S.D.N.Y. Mar. 20, 1981) (brokerage's failure to disclose investment banking relationship with issuers).

The Lead Plaintiff has presented sufficient information to raise questions of fact as to the adequacy of the disclosures in the 2000 Registration Statement concerning the relationship between certain of the underwriters, including the co-lead underwriters, and WorldCom. The jury will have to determine whether press reports about such topics as the spinning of IPO shares and bankers' dual roles as analysts and underwriters were sufficient to make it unnecessary to provide further disclosure within the Registration Statement. The jury will also have to determine whether the relationships between Ebbers and the bankers were so significant, given Ebbers' prominent position within the registrant and his power to affect their selection as underwriters for a bond offering, that a description of that relationship was material and required to be disclosed by Rule 408.[57]

[57] The Underwriter Defendants contend that any ruling that it is for the jury to decide whether it was a material omission to fail to disclose their economic entanglements with Ebbers will require disclosure in every underwriting of home mortgages, student loans, and checking and savings accounts. This very list

NOT A CERTIFIED COPY

018203

16div-023265

3. Risk Factors

The Lead Plaintiff contends that the 2000 Registration Statement was required by Item 503(c) of Regulation S-K to include a risk factors section that discussed WorldCom's ability to sustain its debt load, its reliance on borrowed money to fund its operations, its problems placing its commercial paper, its lack of positive cash-flow, and its underperforming stock.[58] The Underwriter Defendants contend that as an investment grade company, WorldCom only had to describe in a risk factors section those "special circumstances" that had arisen since its last public filing and that the 2000 Registration Statement did so in its detailed discussion of the Sprint merger. They also assert that each of the risk factors identified by the Lead Plaintiff was in any event adequately disclosed, albeit not in a section denominated for risk factors.

---

underscores the difference between ordinary arrangements between employees and banks and the extraordinary financial relationships between the Underwriter Defendants and Ebbers. The Lead Plaintiff has presented sufficient evidence for a fact finder to conclude that Ebbers' arrangements with the Underwriter Defendants were of a magnitude and complexity to be both extraordinary and material to investors. Should the jury agree, such a decision should not be read as indicating that there is a duty to disclose an executive's ordinary banking arrangements and relationships.

[58] This list is taken from the Lead Plaintiff's June 14, 2004 Supplemental Responses to Underwriter-Related Defendants' Second Set of Interrogatories. The list omits those items where the Lead Plaintiff did not respond to the arguments made by the Underwriter Defendants.

NOT A CERTIFIED COPY

018204

16div-023266

Item 503(c) of Regulation S-K requires that a registration statement "must" include "where appropriate. . . a discussion of the most significant factors that make the offering speculative or risky." 17 C.F.R. § 229.508(c). With respect to the form and scope of a risk factors section, Item 503 directs that the risk factors discussion "be concise and organized logically. Do not present risks that could apply to any issuer or any offering. Explain how the risk affects the issuer or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk." Id. In addition, Item 503 provides some guidance as to the issues that merit discussion in a risk factors section, explaining that

> The risk factors may include, among other things, the following:
>
> (1) Your lack of an operating history;
>
> (2) Your lack of profitable operations in recent periods;
>
> (3) Your financial position;
>
> (4) Your business or proposed business;
>
> (5) The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

Id. (emphasis supplied.)

SEC guidance surrounding the content of Item 503 has been limited. For instance, in proposed rules released last month, the SEC briefly stated that a risk factors discussion under Item 503 is intended to "describe the most significant factors that may adversely affect the issuer's business, operations, industry

NOT A CERTIFIED COPY

018205

or financial position, or its future financial performance." Securities Offering Reform, SEC Release No. 8501, 2004 WL 2610458, at *86 (Nov. 3, 2004). Similarly, in providing guidance to issuers as to what they should disclose regarding their readiness for Y2K issues, the SEC advised in 1998 that a discussion of risk factors must be "specific to the particular company and its operations, and should explain how the risk affects the company and its operations, and should explain how the risk affects the company and/or the securities being offered. Generic or boilerplate discussions do not tell the investors how the risk may affect their investment." 'Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers, SEC Release No. 7558, 1998 WL 425894, at *14 (July 29, 1998).

When and if a prospectus must include a risk factor disclosure pursuant to Item 503 does not appear to have been discussed within the case law. Securities law commentators have noted that "even though the inclusion of a risk factors section in a prospectus filed under the 1933 Act is technically voluntary under Item 503(c) of Regulation S-K . . . this inclusion has become widely accepted as a sound and prudent defensive measure in an era marked by class action lawsuits." 2 Alan R. Bromberg & Lewis D. Lowenfels, Bromberg & Lowenfels on Securities Fraud and

NOT A CERTIFIED COPY

002810

Commodities Fraud § 5:280 (2d ed. 2001). The SEC itself, however, has issued conflicting statements. While stating in 1983 that the disclosure of risk factors is "optional, at the discretion of the registrant," Registration Form Used by Open-End Management Investment Companies; Guidelines, SEC Release No. 6479, 1983 WL 35814, at *5 (Aug. 12, 1983), the SEC has suggested more recently that a risk factor discussion may be a necessity. Specifically, in 1998, the SEC proposed requiring risk factor disclosure in annual and quarterly reports filed pursuant to the Exchange Act and allowing reporting companies to incorporate risk factor disclosure into Securities Act registration statements. SEC Rel. 7606A, 63 Fed. Reg. at 67239. In so doing, it noted that

> [m]ost Securities Act registration statements currently require an analysis of the risks associated with an investment in a company's securities. Item 503 of Regulation S-K describes that required disclosure as a "discussion of the most significant factors that make the offering speculative or risky." The Commission promulgated this requirement because it assists investors in comprehending more fully whether the securities present an appropriate level of risk for them as an investment.

Id. (emphasis supplied); see also Form S-3, Registration Statement Under the Securities Act of 1933, Item 3 ("Furnish the information required by Item 503 of Regulation S-K.").

The Lead Plaintiff has identified a constellation of material omissions from the 2000 Registration Statement that

NOT A CERTIFIED COPY

018207

16div-023269

concern the profitability of WorldCom's long-distance voice business and the impact that decreasing profit margins in that part of its business were having and would have on WorldCom's ability to compete, in particular on its ability to pour capital into its data services and Internet portal initiatives. While the Registration Statement discusses repeatedly and in many contexts the intense competition that WorldCom was facing, the Lead Plaintiff has shown that there is a question of fact as to whether it adequately disclosed even to a careful reader the alleged precarious state of WorldCom's profit margins in a major component of its business -- the long-distance voice business -- and the impact of that problem on its business as a whole, including its ability to service its debt.[59] It has shown that

[59] Among the passages in the 1999 Form 10-K and first quarter 2000 Form 10-Q on which the Underwriter Defendants rely as evidence of the adequacy of the disclosures in the 2000 Registration Statements are descriptions of increases in "voice revenues" that were partially offset by declines in "wholesale traffic" and federally mandated access charge reductions. They also point to descriptions in the 1999 Form 10-K of a number of factors that could impact WorldCom's ability to compete successfully in its data and Internet portal business and the statement that "[t]he success of MCI WorldCom will depend heavily upon its ability to provide high quality data communications services, including Internet connectivity and value-added Internet services at competitive prices." The Form 10-K added that "the Company's pursuit of necessary technological advances may require substantial time and expense," and devoted an entire paragraph to an explanation of the necessity for significant capital expenditures to develop a competitive business.

NOT A CERTIFIED COPY

018208

16div-023270

similar questions of fact exist at least as to WorldCom's disclosures regarding the burden of its debt load.[60]

The Underwriter Defendants contend that public reports from rating agencies described the competition that WorldCom faced from other carriers in the long-distance market and that WorldCom's revenue from that line of business was declining. The Lead Plaintiff has shown that the issue of the condition of WorldCom's long-distance business was of sufficient importance to the overall economic health of WorldCom that a fact-finder could determine that it was appropriate under Item 503, as well as material to investors, to have a more complete description from WorldCom itself of the state of that business.

B. 2001 Registration Statement

The Lead Plaintiff has identified forty-two purported material omissions from the 2001 Registration Statement. They are, that the document:

1. Failed to disclose that WorldCom was improperly capitalizing line costs in violation of GAAP.

NOT A CERTIFIED COPY

[60] Because the parties addressed so many issues in their papers, they did not address the remaining risk factor issues in sufficient detail to allow a reasonable assessment to be made as to them.

018209

16div-023271

2. Failed to disclose that WorldCom had fraudulently under-reported its line costs in 2000 and the first quarter of 2001 by billions of dollars through the improper release of reserves.

3. Failed to disclose that WorldCom's business plan, in light of its failure to acquire Sprint, lacked a wireless strategy needed to compete effectively.

4. Failed to disclose adequately that the proliferation of new competitors in the voice long-distance business was having a negative impact on WorldCom's revenue and cash generation.

5. Failed to disclose that the WorldCom Group's stated plan of focusing on high-growth data and Internet segments was almost entirely dependent on the Company's ability to stabilize cash flows through the MCI Group.

6. Failed to disclose adequately that WorldCom was experiencing continued difficulty with its MCI long-distance business segment.

7. Failed to disclose the extent to which consumer and wholesale long-distance revenue was declining and was expected to decline.

8. Failed to disclose adequately that certain of the proceeds of the offering would be used to fund the Company's negative free cash flow.

9. Failed to disclose that certain of the Underwriter Defendants extended credit to WorldCom based on the promise of significant investment banking fees, planning immediately to reduce this

NOT A CERTIFIED COPY

018210

exposure through transactions hidden from the Company and the investing public.

10. Failed to disclose that, while the Company intended to increase revenues by focusing on providing data services, this segment of WorldCom's business required large infusions of capital.

11. Failed to disclose that WorldCom's future performance was contingent upon the success of its data and IP initiatives.

12. Failed to disclose adequately the rapid rate at which WorldCom's debt leverage was rising and the effect this would have on the Company's liquidity.

13. Failed to disclose adequately the effect that the lack of a wireless component was having on WorldCom's business.

14. Failed to disclose adequately the liquidity threat from continuing pricing pressures in long-haul transport, consumer long distance and other business segments.

15. Failed to disclose adequately that the slowdown in corporate telecom spending due to a weakening global economy was adversely affecting WorldCom's financial health.

16. Failed to disclose that WorldCom provided significantly less financial information regarding its business segments to the public than its competitors.

NOT A CERTIFIED COPY

018211

17. Failed to disclose that WorldCom had not had a permanent Treasurer for many months and that the newly appointed Treasurer lack relevant experience.

18. Failed to disclose that personnel assigned by the Underwriter Defendants to conduct due diligence on the Company were not able to form a view about what events or conditions were material to WorldCom.

19. Failed to disclose there were concerns among certain of the Underwriter Defendants that the Company would be downgraded by Moody's.

20. Failed to disclose concerns among certain of the Underwriter Defendants that WorldCom would be unable to maintain its credit ratings after assuming the debt from the May 2001 Offering as well as the debt from the acquisition of Intermedia.

21. Failed to disclose that certain of the Underwriter Defendants suffered from conflicts of interest that affected their ability to conduct a reasonable due diligence investigation. . . .

22. Failed to disclose that several of the Underwriter Defendants had, in the months immediately preceding the May 2001 Offering, internally downgraded the Company's credit rating in recognition of WorldCom's deteriorating financial condition, and other Underwriter Defendants had expressed significant concerns about the Company's creditworthiness.

NOT A CERTIFIED COPY

018212

23. Failed to disclose that WorldCom would be required to fund Digex's significant operating losses, which would have a material adverse effect on WorldCom's financial condition.

24. Failed to disclose that Intermedia was subject to a going concern letter from its auditor Ernst & Young.

25. Failed to disclose that the Company would need to expend significant amounts of cash to fund Intermedia as a going concern, despite the absence of any meaningful return on this investment of cash.

26. Failed to disclose that there was no sound business reason for WorldCom to acquire Digex.

27. Failed to disclose that the Intermedia acquisition was not properly considered by WorldCom's Board of Directors prior to committing the Company to a purchase agreement.

28. Failed to disclose that WorldCom did inadequate due diligence on Intermedia before agreeing to purchase the company.

29. Failed to disclose the likelihood that the Company would not be able to sell the non-Digex assets of Intermedia, as required by the Department of Justice, for any material amount.

30. Failed to include a risk factor section, despite the fact that WorldCom's business was facing a number of significant risks.

NOT A CERTIFIED COPY

018213

31. Failed to disclose certain of the Underwriter Defendants' belief that WorldCom's institution of tracker stocks served no legitimate business purpose, and was done merely to attempt to disguise the deterioration in the business of WorldCom, Inc.

32. Failed to disclose the lack of any meaningful internal accounting controls at WorldCom.

33. Failed to disclose the lack of Board oversight at WorldCom, including the Board's failure to carefully consider large corporate transactions and its abdication of authority to Ebbers and Sullivan.

34. Failed to disclose the lack of meaningful debt planning by the Company or its advisors, including the lack of analysis to assess whether the Company could maintain the debt it incurred.

35. Failed to disclose that WorldCom's acquisition of SkyTel Communications had not been properly considered by WorldCom's Board and that it was not a sound business decision.

36. Failed to disclose that WorldCom's commercial paper credit rating prevented it from using commercial paper to fund its business plan and service its debt in the future.

37. Failed to disclose adequately the significant risk that WorldCom did not have the ability to service the debt it was assuming in the May 2001 Offering.

NOT A CERTIFIED COPY

018214

38. Failed to disclose that Ebbers was encumbered with a staggering amount of personal debt - much of which was extended by certain of the Underwriter Defendants and their affiliates and much of which was guaranteed by Ebbers' WorldCom shares - such that he faced personal financial ruin if the price of WorldCom stock dropped.

39. Failed to disclose the numerous outside business ventures in which Ebbers was involved, in addition to what was supposed to be his full-time job as WorldCom's CEO, and that he would undoubtedly be distracted by the demands of running these businesses.

40. Failed to disclose that certain Underwriter Defendants were concerned about Ebbers' long-term objectives and the depth of senior management on WorldCom's future financial health.

41. Failed to disclose that the Underwriter Defendants did not conduct an adequate investigation into Ebbers' ability to repay his personal loans, much of which was guaranteed by WorldCom.

42. Failed to disclose that the audit committee of WorldCom's Board of Directors was not actively involved in discharging its duty to oversee the auditing of the Company's financial statements.

NOT A CERTIFIED COPY

018215

16div-023277

The Underwriter Defendants have moved for summary judgment with respect to each of these alleged omissions. The Lead Plaintiff argues in response that the 2001 Registration Statement should have included discussions of the Underwriter Defendants' conflicted relationship with WorldCom and Ebbers, their decision to downgrade WorldCom as a credit risk and to hedge their own financial exposure to WorldCom, WorldCom's intent to use the proceeds of the offering to fund negative cash flow, and WorldCom's cash flow needs and ability to service its debt, as well as a risk factor section.[61]

For reasons similar to those discussed in connection with the 2000 Registration Statement, the motion for summary judgment on the claims based on the conflicts of interest, and WorldCom's cash flow and debt problems are denied. Because the Lead Plaintiff has not responded sufficiently to the arguments made by the Underwriter Defendants, or for the reasons explained herein,

---

[61] Although the Lead Plaintiff also refers to the problems that plagued the Intermedia acquisition, it does not respond to the detailed arguments made by the Underwriter Defendants outlining the disclosures about those problems in, inter alia, Intermedia's and WorldCom's public filings, including WorldCom's May 9, 2001 Form S-4 filed in connection with that merger. Similarly, although the Lead Plaintiff refers to the fact that the creation of the tracker stocks had no legitimate business purpose, it does not respond to the Underwriter Defendants' recitation of the extensive disclosures about these stocks and WorldCom's concommitant realignment of its business units. The Underwriter Defendants have shown that, given the extensive disclosures by WorldCom, they are entitled to summary judgment on the omissions relating to Intermedia and the tracker stocks.

NOT A CERTIFIED COPY

018216

the Underwriter Defendants' motion is granted for listed omissions 8, 16-20, 22-29, 31-33, 35, and 39-42. The motion is granted as to the omission of any disclosure that the Underwriter Defendants had internally downgraded WorldCom as a credit risk, and the omission from the use of proceeds section of the Registration Statement.

1. Downgrading WorldCom as a Credit Risk

In February 2001, several of the Underwriter Defendants internally downgraded their credit ratings for WorldCom and some of them took steps to minimize or hedge their own exposure stemming from their participation in WorldCom credit facilities. While the Underwriter Defendants did not publicly disclose their ratings during this same period S&P publicly downgraded its credit rating for WorldCom.

The SEC regulations do not include, in their lengthy and detailed description of facts to be disclosed in a registration statement, any requirement to disclose an underwriter's internal credit ratings for the issuer or an underwriter's management of its own exposure on loans to an issuer. See Schedule A to Section 7(a) of the Securities Act, 15 U.S.C. §§ 77g(a), 77aa, and Reg. S-K, 17 C.F.R. § 229.10, et seq. The limited disclosures that the regulations do require regarding an underwriter have already been described.

NOT A CERTIFIED COPY

018217

Regulation S-K permits the disclosure of an issuer's credit ratings but does not compel it. The SEC initially discouraged the disclosure of credit ratings publicly reported by credit agencies since the "rating represents the subjective opinion of the rating organization that cannot be verified or even explained by the issuer of the securities." Disclosure of Security Ratings in Registration Statements, SEC Release No. 6336, 1981 WL 30768, at *3 (Aug. 6, 1981) ("SEC Rel. 6336"). In 1981, however, the SEC revised its policy to "permit[] registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities . . . in registration statements and periodic reports." 17 C.F.R. § 229.10(c) (emphasis supplied). In so doing, the SEC noted the "significance and usefulness" of ratings to investors, market professionals, and regulatory bodies alike. SEC Rel. 6336, 1981 WL 30768, at *3. The SEC further emphasized that by enabling registrants to include security ratings assigned to a class of debt securities in a registration statement, it was not imposing "a mandatory rule in this area nor . . . indicating that issuers should disclose security ratings." Id. at *4.

The Underwriter Defendants had no obligation to disclose in the WorldCom Registration Statement information about their own internal credit ratings for WorldCom or their own hedging strategies for WorldCom debt that they held. These facts were

NOT A CERTIFIED COPY

0118218

unknown to WorldCom, and the Lead Plaintiff has not shown that the registration process requires disclosure of such facts.

This does not mean, however, that the Underwriter Defendants' internal credit ratings and hedging strategies are irrelevant to the issues to be tried. An underwriter's perception of the nature of the risks faced by a WorldCom creditor is some evidence of the existence of such risks, and thus reflects on the quality of disclosures that an underwriter was required to ensure were made through a registration statement.[62] Even if these internal downgrades and hedging activities need not be disclosed, the Lead Plaintiff has shown that they help to raise material issues of fact as to whether the 2001 Registration Statement adequately described the risk of investing in WorldCom.

2. Use of Proceeds

The Lead Plaintiff contends that it was a material omission not to disclose, in the "use of proceeds" section of the 2001 Registration Statement, that the proceeds would be used to fund

---

[62] The Underwriter Defendants' internal credit ratings for WorldCom and their hedging activities are also relevant to the due diligence defense that the Underwriter Defendants intend to proffer at trial. While the Underwriter Defendants argue that it is always prudent to hedge one's investments, it will be a question of fact for the jury whether the hedging activity undertaken here was in the ordinary course or because of special concern over WorldCom's economic health.

NOT A CERTIFIED COPY

018219

16div-023281

WorldCom's "negative cash flow." The Prospectus Supplement disclosed that the proceeds would be used for general corporate purposes, including "to repay commercial paper, which was used for general corporate purposes."

Item 504 of Regulation S-K requires a registration statement to disclose the "principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose." 17 C.F.R. § 229.504 (emphasis supplied). While "[d]etails of proposed expenditures need not be given," the Instructions to Item 504 direct a registrant to consider "the need to include a discussion of certain matters addressed in the discussion and analysis of [the] registrant's financial condition." Id. Moreover, the Instructions explain that a registrant "may reserve the right to change the use of proceeds, provided that such reservation is due to certain contingencies that are discussed specifically and the alternatives to such use in that event are indicated." Id.

Last year, the Second Circuit affirmed the dismissal of a claim that a prospectus that stated that the proceeds would primarily be used as working capital for business expansion, including for "general corporate purposes," was false and misleading. DeMaria, 153 F. Supp. 2d at 313. The issuer's "alleged use of the proceeds in part to repay [] losses does not

NOT A CERTIFIED COPY

018220

constitute a misstatement because a function of working capital is to fund operations." DeMaria, 153 F. Supp. 2d at 313. In contrast, an issuer's declaration in a prospectus that a portion of the proceeds from a debt offering would be used to repay in full certain short-term bank borrowings was actionable when substantially all of the proceeds were used for this purpose. Beecher v. Able, 374 F. Supp. 341, 355 (S.D.N.Y. 1974).

The disclosure that the proceeds would be used for "general corporate purposes" was broad enough to include the funding of negative cash flow. There is no misrepresentation about the use of proceeds, and Item 504 does not require disclosure of details. Whether the Registration Statement otherwise adequately disclosed material information about WorldCom's cash flow is more appropriately addressed in the context of its omission of a risk factors section.

3. Risk Factors

The Lead Plaintiff asserts that Item 503(c) of Regulation S-K required the 2001 Registration Statement to include a risk factors section that discussed WorldCom's ability to satisfy its debt burden and its lack of planning in that regard, the fact that it was not cash-flow positive, the problems it was experiencing placing its commercial paper, WorldCom's renegotiation of its credit facilities, and the fall in

NOT A CERTIFIED COPY

018221

16div-023283

WorldCom's stock price.[63] The Underwriter Defendants rely on their argument that it is unnecessary to include a risk factors section in the Registration Statement unless there are "special circumstances" and that none existed here.

This prong of the Lead Plaintiff's case rests on its overarching argument that the 2001 Registration Statement did not adequately describe critical financial information about WorldCom that any reasonable investor would have wanted to have and that should have been included in the Registration Statement in a complete and accessible manner. Whether, when read as a whole, the 2001 Registration Statement adequately described WorldCom's financial position and the risks attendant to a purchase of WorldCom bonds is a question for the jury. In the event that the 2001 Registration Statement did adequately describe the risks, albeit not in a section labeled "risk factors," that description would ameliorate if not eliminate any argument that the failure to include the description a section labeled "risk factors" was material. The Lead Plaintiff has shown that there are questions of fact as to whether material information regarding WorldCom's

---

[63] This list of omitted risk factors is taken from the Lead Plaintiff's Supplemental Responses to the Underwriter-Related Defendants' Second Set of Interrogatories. The list omits certain items which are not discussed in the Lead Plaintiff's opposition to summary judgment. It also omits the fact that several of the senior underwriters had recently lowered their internal credit ratings for WorldCom. For reasons already discussed, there was no duty to disclose this last fact.

NOT A CERTIFIED COPY

018222

16div-023284

financial condition was omitted from the 2001 Registration Statement, and as to whether that omitted information was of the kind that should have been highlighted by including it in a section labeled "risk factors."

Conclusion

The motion by the Securities Industry Association and the Bond Market Association to appear as amici curiae is granted.

For the reasons stated herein, the parties' motions for summary judgment are each granted in part and denied in part.

The Lead Plaintiff's motion is granted as to WorldCom's 2001 Registration Statement insofar as it reported line costs in WorldCom's first quarter financial statement for 2001. The Underwriter Defendants' motion is granted as to listed omissions 12-18 and 20 for the 2000 Registration Statement, and 8, 16-20, 22-29, 31-33, 35, and 39-42 for the 2001 Registration Statement.

SO ORDERED:
Dated: New York, New York
December 15, 2004

DENISE COTE
United States District Judge

NOT A CERTIFIED COPY

018223

16div-023285

334

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 9
(EXHIBITS 95-108)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

017510

974

16div-023286

TABLE OF CONTENTS
VOLUME 9

	TAB
MS Ex. 93	95
Choice of Law Order, Dated August 11, 2004	96
Donald Drapkin Deposition Transcript	97
CPH Ex. 110	98
CPH Ex. 255	99
CPH Ex. 10	100
CPH Ex. 75	101
CPH Ex. 114	102
CPH Ex. 70	103
SASMF 19679	104
CPH Ex. 121	105
CPH Ex. 118	106
CPH Ex. 119	107
Order of the Court re Punitive Damages dated November 19, 2004	108

NOT A CERTIFIED COPY

017611

DEPOSITION
EXHIBIT # 93
FOR ID TRN
4-8-04

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

LASER ACQUISITION CORP.

CLN HOLDINGS INC.

and

COLEMAN (PARENT) HOLDINGS INC.

Dated as of

February 27, 1998

NOT A CERTIFIED COPY

017913

TABLE OF CONTENTS

PAGE

ARTICLE I
DEFINITIONS AND TERMS

Section 1.1. Certain Definitions 1
Section 1.2 Other Terms 7

ARTICLE II
THE HOLDINGS MERGER

Section 2.1 The Holdings Merger 7
Section 2.2 Closing 7
Section 2.3 Effective Time of the Holdings Merger 7
Section 2.4 Certificate of Incorporation 7
Section 2.5 By-Laws 7
Section 2.6 Directors 8
Section 2.7 Officers 8
Section 2.8 Holdings Merger Election 8

ARTICLE III
CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock 8
Section 3.2 Exchange of Certificates 9

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Section 4.1 Organization and Qualification 9
Section 4.2 Capitalization 9
Section 4.3 Authority Relative to this Agreement and the Registration Rights Agreement 10
Section 4.4 No Business Activities of Holdings and Worldwide 10
Section 4.5 Consents and Approvals; No Violations 11
Section 4.6 No Litigation 11
Section 4.7 SEC Reports 11
Section 4.8 Acquisition of Shares for Investment 12
Section 4.9 Taxes 12
Section 4.10 Affiliate Agreements 13

NOT A CERTIFIED COPY

011914

16div-023289

PAGE

Section 4.11 Brokers....13
Section 4.12 LYONs Escrow Fund....14

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER

Section 5.1 Laser Merger Sub....14
Section 5.2 Authority Relative to this Agreement....14
Section 5.3 Consents and Approvals; No Violations....15
Section 5.4 Acquisition of Shares for Investment....15

ARTICLE VI
COVENANTS

Section 6.1 Conduct of Business....15
Section 6.2 Reasonable Best Efforts....17
Section 6.3 Consents....17
Section 6.4 HSR Notification....18
Section 6.5 LYONs Refund....18
Section 6.6 Listing Application....18
Section 6.7 Access to Information; Confidentiality....18
Section 6.8 Advice of Changes....19
Section 6.9 Affiliate Agreements; Intercompany Accounts....19
Section 6.10 Registration Rights Agreement....19

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1 Sales of Laser Shares....19
Section 7.2 Restrictive Legend....20

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Holdings Merger....20
Section 8.2 Conditions to Obligation of Holdings to Effect the Holdings Merger....21
Section 8.3 Conditions to Obligation of Laser to Effect the Holdings Merger....22

ARTICLE IX
TAX MATTERS

Section 9.1 Taxes....22

NOT A CERTIFIED COPY

017615

MORGAN STANLEY CONFIDENTIAL 0007949

16div-023290

PAGE

Section 9.2 Tax Returns 24
Section 9.3 Tax Claims 25
Section 9.4 Assistance and Cooperation 26
Section 9.5 Adjustment to Merger Consideration 27
Section 9.6 Survival of Obligations 27
Section 9.7 Reorganization 27
Section 9.8 Tax Sharing Agreements 27
Section 9.9 Information 27

ARTICLE X
INDEMNIFICATION: SURVIVAL

Section 10.1 Parent Holdings' Agreement to Indemnify 27
Section 10.2 Conditions of Indemnification With Respect to Third-Party Claims 28
Section 10.3 Survival of Representations; Covenants 29

ARTICLE XI
TERMINATION

Section 11.1 Termination 29
Section 11.2 Effect of Termination 30

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices 30
Section 12.2 Amendment 31
Section 12.3 Extension; Waiver 31
Section 12.4 Assignment 31
Section 12.5 Entire Agreement 31
Section 12.6 Parties in Interest 31
Section 12.7 Expenses 31
Section 12.8 Governing Law 32
Section 12.9 Counterparts 32
Section 12.10 Headings 32
Section 12.11 Further Assurances 32
Section 12.12 Specific Performance 32
Section 12.13 Certain Terms 32
Section 12.14 Interpretation 32

NOT A CERTIFIED COPY

017516

MORGAN STANLEY CONFIDENTIAL 0007950

16div-023291

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among Sunbeam Corporation, a Delaware corporation ("Laser"), Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser ("Laser Merger Sub"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc. ("Holdings"), a Delaware corporation and a wholly owned subsidiary of Parent Holdings.

WHEREAS, the Boards of Directors of Laser, Laser Merger Sub, Parent Holdings and Holdings deem it advisable and in the best interests of their respective stockholders that Laser Merger Sub merge with and into Holdings (the "Holdings Merger"), and such Boards of Directors have approved the Holdings Merger upon the terms and conditions set forth herein;

WHEREAS, Parent Holdings, as the sole stockholder of Holdings, and Laser, as the sole stockholder of Laser Merger Sub, have approved this Agreement and the transactions contemplated hereby;

WHEREAS, at the Closing (as hereinafter defined), Laser and Parent Holdings shall enter into a registration rights agreement (the "Registration Rights Agreement") relating to the registration of the Laser Shares (as hereinafter defined) issuable to Parent Holdings in the Holdings Merger, in the form of Exhibit A hereto;

WHEREAS, for United States federal income tax purposes, it is intended that the Holdings Merger provided for herein shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a plan of reorganization; and

WHEREAS, Laser, Laser Merger Sub and Holdings desire to make certain representations, warranties, covenants and agreements in connection with the Holdings Merger and also to prescribe certain conditions to the Holdings Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1. Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"1998 Notes" shall have the meaning set forth in Section 4.4(a) hereof.

NOT A CERTIFIED COPY

017517

16div-023292

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall have the meaning set forth in Section 4.10 hereof.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in the City of New York are authorized or obligated by law or executive order to close.

"Cash Payment" shall have the meaning set forth in Section 3.1(a) hereof.

"Certificate of Incorporation" shall have the meaning set forth in Section 2.4 hereof.

"Certificate of Merger" shall have the meaning set forth in Section 2.3 hereof.

"Closing" shall mean the closing of the transactions contemplated by this Agreement, as provided for in Section 2.2 hereof.

"Closing Date" shall have the meaning set forth in Section 2.2 hereof.

"Code" shall have the meaning set forth in the recitals hereof.

"Company" shall mean The Coleman Company, Inc., a Delaware corporation.

"Company Common Stock" shall mean the common stock, par value $.01 per share, of the Company.

"Company Merger" shall mean the consummation of the merger contemplated by the Company Merger Agreement.

"Company Merger Agreement" shall mean the Agreement and Plan of Merger among Laser, Merger Sub, and the Company, dated as of the date hereof.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

NOT A CERTIFIED COPY

0017618

"Confidentiality Agreements" shall have the meaning set forth in Section 6.7 hereof.

"Consents" shall mean any consent, approval, waiver, authorization or permit of, or to make any filing with or notification to, any Governmental Entity or third party.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, or other agreement or other instrument or obligation.

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"Damages" shall have the meaning set forth in Section 10.1(a) hereof.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Filed Holdings SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Filed Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Holdings" shall have the meaning set forth in the recitals hereof.

"Holdings Common Stock" shall mean the common stock, par value $1.00, of Holdings.

"Holdings Disclosure Schedule" shall mean the disclosure schedule being delivered by Holdings concurrently with the execution of this Agreement.

"Holdings Effective Time" shall have the meaning set forth in Section 2.3 hereof.

"Holdings Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Holdings and its subsidiaries, taken as a whole.

"Holdings Merger" shall have the meaning set forth in the recitals hereof.

"Holdings SEC Reports" shall have the meaning set forth in Section 4.7(a) hereof.

NOT A CERTIFIED COPY

017519

"Holdings Shares" shall have the meaning set forth in Section 4.2(a).

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person that is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (d) all liabilities secured by any Lien (as hereinafter defined) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (e) all direct or indirect guarantees of any of the foregoing for the benefit of another Person.

"Indemnifying Party" shall have the meaning set forth in Section 9.2(c) hereof.

"Indenture" shall mean the Indenture between Holdings, as successor to Coleman Escrow Corp., and First Trust National Association dated May 20, 1997 relating to the Notes.

"IRS" shall mean the Internal Revenue Service of the United States.

"Laser" shall have the meaning set forth in the recitals hereof.

"Laser Common Stock" shall mean the common stock, par value $.01 per share, of Laser.

"Laser Designees" shall have the meaning set forth in Section 8.3(d) hereof.

"Laser Group" shall have the meaning set forth in Section 10.1(a) hereof.

"Laser Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Laser and its subsidiaries, taken as a whole.

"Laser Merger Sub" shall have the meaning set forth in the recitals hereof.

"Laser Merger Sub Common Stock" shall mean common stock, par value $.01 per share, of Laser Merger Sub.

"Laser Shares" shall have the meaning set forth in the first clause of Section 3.1 hereof.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

NOT A CERTIFIED COPY

01 7620

"Liens" shall mean any lien, security interest, mortgage, pledge, charge or similar encumbrance.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"LYONs Escrow Fund" shall mean the funds held in the escrow account established in connection with the redemption and exchange of the LYONs.

"Mafco Demand Note" shall mean the demand note issued by an Affiliate of Parent Holdings, and held by Worldwide on the date hereof, in connection with the Tax Sharing Arrangement among certain Affiliates of Parent Holdings.

"Merger Consideration" shall have the meaning set forth in Section 3.1(a)(i) hereof.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"Notes" shall mean the Senior Secured First Priority Discount Notes due 2001, Senior Secured Second Priority Discount Notes due 2001, Senior Secured First Priority Discount Exchange Notes due 2001, and Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings, as successor to Coleman Escrow Corp.

"NYSE" shall mean the New York Stock Exchange, Inc.

"Parent Holdings" shall have the meaning set forth in the recitals hereof.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Pre-Closing Period" shall mean any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to end on and include the Closing Date.

"Post-Closing Period" shall mean any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to begin after the Closing Date.

"Registration Rights Agreement" shall have the meaning set forth in the recitals hereof.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Straddle Period" shall mean any taxable year or period beginning before and ending after the Closing Date.

NOT A CERTIFIED COPY

0117621

16div-023296

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning set forth in Section 2.1 hereof.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean:

(i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"Tax Claim" shall have the meaning set forth in Section 9.3(b) hereof.

"Tax Proceeding" shall have the meaning set forth in Section 9.3(a) hereof.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" shall mean any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"Termination Date" shall have the meaning set forth in Section 11.1(b) hereof.

"Third-Party Claims" shall have the meaning set forth in Section 10.2 hereof.

"Transfer" shall have the meaning set forth in Section 7.1 hereof.

"Treasury Regulations" shall mean the regulations promulgated by the Treasury Department with respect to the Code.

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

NOT A CERTIFIED COPY

017522

16div-023297

"Worldwide Common Stock" shall mean the common stock, par value $1.00 per share, of Worldwide.

"Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Worldwide Shares" shall have the meaning set forth in Section 4.2(b).

Section 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

ARTICLE II

THE HOLDINGS MERGER

Section 2.1. The Holdings Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Holdings Effective Time (as defined in Section 2.3 hereof), Laser Merger Sub shall be merged with and into Holdings. Following the Holdings Effective Time, Holdings shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Laser Merger Sub shall cease. The Holdings Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2. Closing. The closing of the Holdings Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which (subject to satisfaction or waiver of the conditions set forth in Article VIII) shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3. Effective Time of the Holdings Merger. The Holdings Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Holdings Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4. Certificate of Incorporation. From and after the Holdings Effective Time, the certificate of incorporation of Holdings as in effect at the Holdings Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by the DGCL and the Certificate of Incorporation.

Section 2.5. By-Laws. From and after the Holdings Effective Time, the by-laws of Laser Merger Sub as in effect at the Holdings Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation of the Surviving Corporation and the terms thereof.

NOT A CERTIFIED COPY

01-7623

Section 2.6. Directors. The directors of Laser Merger Sub at the Holdings Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by Law.

Section 2.7. Officers. The officers of Laser Merger Sub at the Holdings Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

Section 2.8. Holdings Merger Election. Notwithstanding the foregoing, at any time prior to the Holdings Effective Time, Holdings may elect, in its sole discretion, upon notice to Laser, to effectuate the Holdings Merger such that Holdings will be merged with and into Laser Merger Sub, with Laser Merger Sub as the "Surviving Corporation" for all purposes hereunder. In such event, the parties hereto shall execute an appropriate amendment to this Agreement to reflect the foregoing.

ARTICLE III

CONVERSION OF SHARES

Section 3.1. Effect on Capital Stock. At the Holdings Effective Time, by virtue of the Holdings Merger and without any action on the part of any holder thereof:

(a) Conversion of Holdings Common Stock.

(i) The Holdings Shares shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (the "Laser Shares") and (B) $159,956,756 in cash, without interest thereon (the "Cash Payment" and, together with the Laser Shares, the "Merger Consideration").

(ii) If, prior to the Holdings Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the number of Laser Shares to be issued pursuant to Section 3.1(a)(i) hereof shall be adjusted appropriately or (B) pay an extraordinary dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the Cash Payment shall be adjusted appropriately, such that the aggregate amount of cash, or if a dividend shall have been paid in other property, cash and other property, shall be equal to that which would have been received had the dividend been paid following the Holdings Effective Time at a time when the Laser Shares were already issued to and the Cash Payment made to Parent Holdings.

NOT A CERTIFIED COPY

0176214

MORGAN STANLEY CONFIDENTIAL 0007958

16div-023299

(iii) The shares of Holdings Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and Parent Holdings, as the holder thereof, shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(b) Conversion of Laser Merger Sub Common Stock. Each share of Laser Merger Sub Common Stock issued and outstanding immediately prior to the Holdings Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, par value $1.00 per share, of the Surviving Corporation.

(i) Exchange of Certificates. At the Closing, Parent Holdings shall surrender certificates representing the Holdings Shares, and Laser shall deliver or cause to be delivered to Parent Holdings a duly executed stock certificate or stock certificates representing the Laser Shares, and the Cash Payment, in immediately available funds by wire transfer to an account specified in writing by Parent Holdings at least one day prior to the Closing Date. In connection with the delivery by Laser of the Laser Shares, Laser shall utilize all shares of Laser Common Stock held by Laser as treasury shares before issuing any authorized but unissued shares of Laser Common Stock.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Holdings and Parent Holdings hereby represent and warrant to Laser as follows:

Section 4.1. Organization and Qualification.

(a) Each of Holdings and Worldwide is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted.

Section 4.2. Capitalization.

(a) The authorized capital stock of Holdings consists of 1,000 shares of Holdings Common Stock (the "Holdings Shares"), all of which are issued and outstanding and beneficially owned by Parent Holdings. All of the issued and outstanding shares of Holdings Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Holdings issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Holdings to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

(b) The authorized capital stock of Worldwide consists of 1,000 shares of Worldwide Common Stock (the "Worldwide Shares"), all of which are issued and outstanding and beneficially owned by Holdings, free and clear of all Liens, other than the pledge in connec-

NOT A CERTIFIED COPY

0017525

tion with the Notes. All of the issued and outstanding shares of Worldwide Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Worldwide issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Worldwide to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 4.3. Authority Relative to this Agreement and the Registration Rights Agreement. Each of Holdings and Parent Holdings has the requisite corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of Holdings and Parent Holdings, and no other corporate action on the part of Holdings or Parent Holdings (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof and thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each of Parent Holdings and Holdings and, assuming that it constitutes a valid and binding agreement of Laser and Laser Sub, constitutes the valid and binding obligation of Parent Holdings and Holdings enforceable against Parent Holdings and Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought. Prior to the Holdings Effective Time, the Registration Rights Agreement will have been duly executed and delivered by Parent Holdings and, assuming that it constitutes the valid and binding agreement of Laser, will constitute the valid and binding obligation of Parent Holdings enforceable against Parent Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 4.4. No Business Activities of Holdings and Worldwide.

(a) Since its formation, Holdings has engaged in no business activities or operations, other than in connection with holding the Worldwide Shares and the stock of its predecessor corporation and in connection with the Senior Secured Discount Notes due 1998 of Holdings and the Series B Senior Secured Discount Notes due 1998 of Holdings (collectively, the "1998 Notes") and the Notes. Holdings has no material assets other than Worldwide Common Stock, and has no liabilities other than under the Notes and other de minimis liabilities. Worldwide is the beneficial owner of 44,067,520 shares of Company Common Stock, free and clear of all Liens, other than the pledge pursuant to the LYONs and the Notes.

NOT A CERTIFIED COPY

017626

MORGAN STANLEY CONFIDENTIAL 0007960

16div-023301

(b) Since its formation, Worldwide has engaged in no business activities or operations, other than in connection with holding shares of Company Common Stock and in connection with the 1998 Notes, the Notes and the LYONs. Worldwide has no material assets other than the Company Common Stock (other than, as of the date hereof, the Mafco Demand Note and the LYONs Escrow Fund), and has no liabilities other than under the LYONs, the Notes and other de minimis liabilities.

Section 4.5. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any Governmental Entity is necessary for the consummation by Parent Holdings or Holdings of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate (i) have a Holdings Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Except as set forth on Section 4.5 of the Holdings Disclosure Schedule, neither the execution and delivery of this Agreement by Parent Holdings or Holdings, nor the consummation by Parent Holdings or Holdings of the transactions contemplated hereby, nor compliance by Parent Holdings or Holdings with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Parent Holdings, Holdings or Worldwide; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Parent Holdings, Holdings or Worldwide is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Holdings, Parent Holdings or Worldwide or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Holdings Material Adverse Effect.

Section 4.6. No Litigation. As of the date hereof, there is no suit, action, proceeding or investigation pending against or affecting Holdings or Worldwide.

Section 4.7. SEC Reports.

(a) Holdings has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Holdings SEC Reports"). As of their respective dates, the Holdings SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Holdings SEC Report has been revised, amended or superseded by a later Filed Holdings SEC Report, none of the Filed Holdings SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which

NOT A CERTIFIED COPY

017627

they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Holdings SEC Reports filed and publicly available prior to the date of this Agreement (as revised, amended or superseded by the Holdings SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Holdings SEC Reports."

(b) Worldwide has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Worldwide SEC Reports"). As of their respective dates, the Worldwide SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Worldwide SEC Report has been revised, amended or superseded by a later Filed Worldwide SEC Report, none of the Filed Worldwide SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Worldwide SEC Reports."

Section 4.8. Acquisition of Shares for Investment. Parent Holdings is not acquiring the Laser Shares with any present intention of distributing or selling any of such Laser Shares in violation of federal or state securities laws.

Section 4.9. Taxes.

(a) Except as would not have a Holdings Material Adverse Effect or as set forth on Section 4.9 of the Holdings Disclosure Schedule:

(i) Each of Holdings and Worldwide (A) has filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (B) has paid all Taxes due by it;

(ii) There are no outstanding waivers in writing or comparable consents regarding the application of any statute of limitations in respect of Taxes of Holdings or Worldwide;

(iii) There is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of Holdings or Worldwide and to the best of Holdings' knowledge, no basis exists therefor;

NOT A CERTIFIED COPY

017528

(iv) There are no Liens for Taxes upon the assets of Holdings or Worldwide except Liens relating to current Taxes not yet due;

(v) All Taxes which Holdings or Worldwide are required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered on the books of Holdings in accordance with GAAP; and

(vi) No power of attorney which is currently in force has been granted by or with respect to Holdings or Worldwide with respect to any matter relating to Taxes.

(b) Except as would not have a Holdings Material Adverse Effect, Holdings and its subsidiaries have previously delivered or made available to Laser (and its representatives) complete and accurate copies of:

(i) all audit reports, letter rulings, technical advice memoranda relating to United States federal, state, local and foreign Taxes due from or with respect to Holdings or its subsidiaries;

(ii) United States federal Tax Returns (to the extent that such Tax Returns relate to Holdings and its subsidiaries), and those state, local or foreign Tax Returns filed by (or on behalf of) Holdings or any of its subsidiaries (to the extent that such Tax Returns relate to Holdings and its subsidiaries) (including, in each case, workpapers related to such Tax Returns);

(iii) any closing agreements entered into by Holdings or any of its subsidiaries with any taxing authority, in each case existing on the date hereof; and

(iv) any Tax Sharing Arrangements and Tax indemnity arrangements to which Holdings or any of its subsidiaries was a party at any time prior to the Closing Date. Holdings and its subsidiaries will deliver or make available to Laser (and its representatives) all similar materials for all matters arising after the date hereof.

Section 4.10. Affiliate Agreements. Section 4.10 of the Holdings Disclosure Schedule sets forth a true and complete list of all agreements, Contracts, arrangements, payables, obligations and understandings between Holdings or any of its subsidiaries, on the one hand, and Parent Holdings or any of its Affiliates (other than Holdings or its subsidiaries), on the other hand (the "Affiliate Agreements").

Section 4.11. Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the Company's financial advisor, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by

NOT A CERTIFIED COPY

01752 9

this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates.

Section 4.12. LYONs Escrow Fund. The LYONs Escrow Fund is sufficient to fund the redemption, exchange or other retirement in full of the LYONs and related expenses.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER

Laser hereby makes the same representations and warranties to Parent Holdings and Holdings as the representations and warranties made by Laser to the Company in the Company Merger Agreement, and also represents and warrants to Parent Holdings and Holdings as follows:

Section 5.1. Laser Merger Sub. Laser Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Laser Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Laser Merger Sub consists of 1,000 shares of Laser Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and free of preemptive rights and are owned by Laser. Except as set forth above there are no shares of capital stock of Laser Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Laser Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.2. Authority Relative to this Agreement. Each of Laser and Laser Merger Sub has the corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby, thereby and by the Company Merger Agreement, have been duly authorized by all necessary corporate action on the part of Laser and Laser Merger Sub and no other corporate action on the part of Laser or Laser Merger Sub (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof or thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Laser and Laser Merger Sub and constitutes the valid and binding obligation of Laser and Laser Merger Sub, assuming it is the valid and binding obligation of Parent Holdings and Holdings, enforceable against Laser and Laser Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefore may be brought. Prior to the Holdings Effective Time, the Registra-

NOT A CERTIFIED COPY

017630

MORGAN STANLEY CONFIDENTIAL 0007964

16div-023305

tion Rights Agreement will have been duly executed and delivered by Laser and, assuming that it constitutes the valid and binding agreement of Parent Holdings, will constitute the valid and binding obligation of Laser enforceable against Laser in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 5.3. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser and Laser Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser and Laser Merger Sub nor the consummation by Laser and Laser Merger Sub of the transactions contemplated hereby, nor compliance by Laser and Laser Merger Sub with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Laser Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Laser or Laser Merger Sub is a party or by which either of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Laser Merger Sub or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.4. Acquisition of Shares for Investment. Laser is acquiring the Holdings Shares for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

ARTICLE VI

COVENANTS

Section 6.1. Conduct of Business. Except as expressly permitted by this Agreement or with the prior written consent of Laser, during the period from the date of this Agreement to the Holdings Effective Time, Holdings shall and shall cause Worldwide to conduct its business only in the ordinary course consistent with past practice, except that Holdings and Worldwide shall be permitted (but not required) to (i) effect the merger of Worldwide with

NOT A CERTIFIED COPY

0176531

16div-023306

Holdings, and (ii) take all action necessary in connection with the redemption or exchange of the LYONs and payment of any amounts thereunder and distribution to Parent Holdings from the LYONs Escrow Fund of any excess thereof. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement, during the period from the date of this Agreement through the Holdings Effective Time, Holdings shall not and shall cause Worldwide not to, without the prior written consent of Laser:

(a) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any class or series of its capital stock, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;

(b) settle or compromise any Tax liability or agree to any adjustment of any Tax attribute or make any election with respect to its Taxes other than in the ordinary course of business;

(c) amend its certificate of incorporation or by-laws;

(d) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets or securities of, or by any other manner, any corporation, partnership or other entity;

(e) create, incur, assume or guarantee any Indebtedness;

(f) except as otherwise required by Law or GAAP, change any of the accounting or Tax principles, practices or methods used by Holdings or Worldwide or fail to maintain the accounts, books and records of Holdings or Worldwide in the usual, regular and ordinary manner on a basis consistently applied;

(g) make any payments, loans, advances or other distributions to, or enter into any transaction, agreement or arrangement with, any of its Affiliates, officers, directors, or stockholders or it or its Affiliates or any associates or family members of any of the foregoing, or make any changes in or modify any of the Affiliate Agreements, other than in the ordinary course of business consistent with past practice or as required by the Affiliate Agreements, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;

(h) adjust, split, combine, subdivide or reclassify any shares of its capital stock;

(i) issue, sell, deliver, transfer, repurchase, redeem, acquire or pledge or authorize or propose the issuance, sale, delivery, transfer, repurchase, redemption, acquisition or pledge of shares of capital stock of any class or series, or any securities (other than the LYONs) convertible into capital stock of any class or series, or grant or enter into any rights, warrants, options, agreements or commitments with respect to the issuance of such capital stock or convertible securities;

NOT A CERTIFIED COPY

01763 2

(j) take any action that would make any representation or warranty of Parent Holdings or Holdings contained in this Agreement untrue or incorrect in any material respect and which could reasonably be expected to prevent the satisfaction of any condition to closing set forth in Article VIII hereof or otherwise prevent or materially delay the consummation of the transactions contemplated by this Agreement; or

(k) enter into any agreement or commitment to take any of the foregoing actions.

Section 6.2. Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto agrees to, and Holdings agrees to cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the Company Merger Agreement, as applicable, as promptly as practicable (including satisfaction, but not waiver, of the conditions set forth in Article VIII hereof and Article VIII of the Company Merger Agreement).

(b) Laser shall perform all of its obligations under the Company Merger Agreement in accordance with their terms.

Section 6.3. Consents.

(a) Without limiting the generality of Section 6.2(a) hereof, each of the parties hereto shall, and Holdings shall and shall cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to obtain all Consents of all Governmental Entities and, to the extent that the failure to obtain such Consents would have a Holdings Material Adverse Effect or a Laser Material Adverse Effect, as applicable, all third parties necessary in connection with the consummation of the transactions contemplated by this Agreement and the Company Merger Agreement prior to the Holdings Effective Time. Notwithstanding the foregoing, none of the parties hereto nor Worldwide nor the Company or any of its subsidiaries shall have any obligation to pay any fee to any third party (other than filing or similar fees payable to Governmental Entities) for the purpose of obtaining any Consent or any costs and expenses of any third party resulting from the process of obtaining such Consents. Each of the parties hereto shall make or cause to be made all filings and submissions under laws and regulations applicable to it as may be required for the consummation of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity which requires, or to consent to any order, decree or judgment which requires, such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

NOT A CERTIFIED COPY

0176333

MORGAN STANLEY CONFIDENTIAL 0007967

16div-023308

Section 6.4. HSR Notification. As soon as reasonably practicable, Laser and Parent Holdings shall make, or cause to be made, all filings and submissions under the HSR Act and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 6.7 hereof, Parent Holdings will furnish to Laser and Laser will furnish to Parent Holdings, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 6.7 hereof, Parent Holdings will provide Laser, and Laser will provide Parent Holdings, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Entity or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. Parent Holdings and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in any discussions with any Governmental Entity on a joint basis.

Section 6.5. LYONs Refund. Promptly following redemption, exchange or other retirement in full of the LYONs, Laser shall cause to be paid to Parent Holdings all amounts remaining in the LYONs Escrow Fund by wire transfer of immediately available funds to an account(s) designated in writing by Parent Holdings. Until the making of such payment, Laser shall cause Holdings and Worldwide to comply with all of their obligations under the Indenture relating to the LYONs, the Indenture and the related Escrow Agreement, shall not take any action to amend such indenture or agreement in any manner adverse to Parent Holdings and shall use reasonable best efforts to take action to cause the redemption or retirement in full of the LYONs as promptly as practicable. Promptly following the Holdings Effective Time, at the request of Parent Holdings, Laser shall cause Holdings and Worldwide to give the escrow agent under such Escrow Agreement irrevocable written notice of the assignment of all right, title and interest in and to any such amounts to and for the benefit of Parent Holdings, on which notice Parent Holdings may rely. Following the redemption or retirement in full of the LYONs, the Mafco Demand Note shall be canceled automatically without the further action of any Person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Note.

Section 6.6. Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Holdings Merger, and shall use its reasonable best efforts to obtain as promptly as practicable approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 6.7. Access to Information; Confidentiality. Holdings and Laser shall each afford, and Holdings shall cause Worldwide, the Company and each of its subsidiaries to afford, to the other and to the other's financial advisors, legal counsel, accountants consultants and other representatives full access at all reasonable times throughout the period prior to the Holdings Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each

NOT A CERTIFIED COPY

0176314

report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 6.7 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Holdings Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998 (the "Confidentiality Agreements").

Section 6.8. Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of Holdings, a Holdings Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.9. Affiliate Agreements; Intercompany Accounts. Parent Holdings and Holdings shall cause all intercompany accounts to be settled, and all Affiliate Agreements to be treated, as set forth in Section 4.10 of the Holdings Disclosure Schedule.

Section 6.10. Registration Rights Agreement. Immediately prior to the Holdings Effective Time, Parent Holdings and Laser shall execute and deliver the Registration Rights Agreement.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1. Sales of Laser Shares. Parent Holdings agrees not to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer (other than, in any such case, in connection with a pledge to secure *bona fide* indebtedness or other obligations) (collectively, "Transfer"), any Laser Shares received pursuant to the terms hereof as consideration for the Holdings Merger, other than to one of its Affiliates who agrees in writing to be bound by the terms of this Section 7.1, for a period of nine (9) months from and after the Holdings Effective Time, except that Parent Holdings may Transfer (A) from and after the date that is three (3) months following the Holdings Effective Time, twenty-five percent (25%) of the total number of the Laser Shares, and (B) from and after the date that is six (6) months following the

NOT A CERTIFIED COPY

017535

MORGAN STANLEY CONFIDENTIAL 0007969

16div-023310

Holdings Effective Time, an additional twenty-five percent (25%) of the total number of the Laser Shares (such that a total of fifty percent (50%) of the total number of the Laser Shares shall be Transferable from and after the date that is six (6) months following the Holdings Effective Time).

Section 7.2. Restrictive Legend. Pursuant to Section 7.1 hereof, each certificate representing the Laser Shares received by Parent Holdings shall be stamped or otherwise imprinted with the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER CONTAINED IN THE AGREEMENT AND PLAN OF MERGER DATED AS OF FEBRUARY 27, 1998 AMONG SUNBEAM CORPORATION, LASER ACQUISITION CORP., CLN HOLDINGS INC., AND COLEMAN (PARENT) HOLDINGS INC. AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED, OR OTHERWISE DISPOSED OF OR TRANSFERRED (OTHER THAN, IN ANY SUCH CASE, IN CONNECTION WITH A PLEDGE TO SECURE *BONA FIDE* INDEBTEDNESS OR OTHER OBLIGATIONS) ("TRANSFERRED") EXCEPT AS PERMITTED BY THE TERMS THEREOF. THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, AND THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES, EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (B) PURSUANT TO RULE 144 UNDER THE ACT, OR (C) UPON RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE ACT.

Upon request of Parent Holdings, Laser shall cause to be issued certificates representing such Laser Shares as to which the restrictions set forth herein are no longer applicable without such legend.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1. Conditions to Each Party's Obligation to Effect the Holdings Merger. The respective obligations of each party to effect the Holdings Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following conditions:

NOT A CERTIFIED COPY

0176536

MORGAN STANLEY CONFIDENTIAL 0007970

16div-023311

(a) Any waiting period applicable to the consummation of the Holdings Merger under the HSR Act shall have expired or been terminated.

(b) All of the Laser Shares shall have been previously approved for listing on the NYSE, subject only to official notice of issuance, if required.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of this Agreement or the Holdings Merger shall have been issued and remain in effect.

(d) All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity, which the failure to obtain, make or occur would have the effect of making this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby illegal.

Section 8.2. Conditions to Obligation of Holdings to Effect the Holdings Merger. The obligation of Holdings to effect the Holdings Merger shall be subject to the satisfaction by Laser or waiver by Holdings or Parent Holdings, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions:

(a) The representations and warranties of Laser in this Agreement and the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Laser in this Agreement and the Company Merger Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made on the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Laser Material Adverse Effect.

(b) Laser shall have performed in all material respects all obligations required to be performed by it under this Agreement or under the Company Merger Agreement at or prior to the Closing Date.

(c) Except as disclosed in the Filed Laser SEC Reports, since the date of the most recent audited financial statements included in the Filed Laser SEC Reports, there shall not have been any event, change or development which individually or in the aggregate has had or reasonably would be expected to have a Laser Material Adverse Effect or would impair the ability of Laser to consummate the transactions contemplated by this Agreement or to satisfy its obligations hereunder.

(d) The Registration Rights Agreement shall have been duly executed and delivered by each of the parties thereto.

NOT A CERTIFIED COPY

0017637

MORGAN STANLEY CONFIDENTIAL 0007971

16div-023312

Section 8.3. Conditions to Obligation of Laser to Effect the Holdings Merger. The obligation of Laser to effect the Holdings Merger shall be subject to the satisfaction by Holdings and Parent Holdings or waiver by Laser, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions, unless:

(a) The representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made at and as of the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Holdings Material Adverse Effect or Company Material Adverse Effect (as defined in the Company Merger Agreement), as the case may be.

(b) Parent Holdings and Holdings shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date.

(c) The Company shall have performed in all material respects those obligations required to be performed by it under the Company Merger Agreement on or prior to the Closing Date.

(d) Up to six (6) individuals designated by Laser (the "Laser Designees") shall have been duly elected members of the Board of Directors of the Company and all other members of such Board shall have resigned, all effective as of the later of (i) the Closing and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice (as defined in the Company Merger Agreement) shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance with the Company Merger Agreement.

ARTICLE IX

TAX MATTERS

Section 9.1. Taxes.

(a) Parent Holdings shall indemnify and hold Laser and Laser's subsidiaries and Affiliates harmless from and against the following:

(i) any liability for Taxes of any member of the "affiliated group" (within the meaning of Section 1504(a) of the Code) (except for the Company and its subsidiaries) of which Mafco Holdings Inc. (or any predecessor or successor) is the

NOT A CERTIFIED COPY

0176538

common parent that arises under the provisions of Treasury Regulation Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law; and

(ii) except to the extent provided in Section 9.1(b)(iii), any liability for Taxes (other than Taxes that arise under the provisions of Treasury Regulatory Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law) imposed on Holdings or Worldwide or for which Holdings or Worldwide may otherwise be liable for any Pre-Closing Period (including, without limitation, any Taxes resulting from Holdings or Worldwide ceasing to be a member of the "affiliated group" of which Mafco Holdings Inc. (or any successor) is the common parent, any income Taxes that arise in the Holdings Merger, and any Taxes imposed on Holdings or Worldwide as a result of any transaction effected between (and including) the date hereof and the Closing Date).

(b) Laser shall indemnify and hold Parent Holdings and its Affiliates harmless from and against the following:

(i) Taxes imposed on Holdings or Worldwide for any Post-Closing Period;

(ii) except to the extent provided in Section 9.1(a)(i), any liability for Taxes of the Company and any of its subsidiaries; and

(iii) any liability for Taxes resulting from transactions or actions taken by Holdings or Worldwide on the Closing Date but after the Holdings Effective Time, except for transactions or actions undertaken in the ordinary course of business.

(c) To the extent permitted by law or administrative practice, (i) the taxable year of Holdings or Worldwide which includes the Closing Date shall be treated as closing on (and including) the Closing Date and (ii) all transactions not in the ordinary course of business occurring after the Holdings Effective Time shall be reported on Laser's consolidated United States federal income Tax Return to the extent permitted by Treasury Regulation Section 1.1502-76(b)(1)(ii)(B) and shall be similarly reported on other Tax Returns of Laser or its Affiliates to the extent permitted by Law. For purposes of paragraphs (a) and (b)(i), where it is necessary to apportion between Parent Holdings and Laser the Tax liability of an entity for a Straddle Period (which is not treated under the immediately preceding sentence as closing on the Closing Date), such liability shall be apportioned between the period deemed to end at the close of the Closing Date and the period deemed to begin at the beginning of the day following the Closing Date on the basis of an interim closing of the books, except that Taxes (such as real property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(d) For purposes of Sections 9.1(a) and (b), whenever it is necessary to allocate an item of income, gain, deduction, loss or credit to either a taxable year or period that is not part of a Straddle Period and that ends on or before the Closing Date or a taxable year or period

NOT A CERTIFIED COPY

017639

that is not part of a Straddle Period and that begins after the Closing Date, such allocation shall be made consistent with the Law.

(e) Any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on Holdings or any of its subsidiaries arising out of or in connection with the transactions contemplated by this Agreement shall be borne by the party primarily obligated for such Tax under applicable Law, and each party shall indemnify the other party for any such Tax for which it is so liable.

(f) (i) Except as set forth in Section 9.1(f)(iii), Laser shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute (including, without limitation, any net operating loss, investment Tax credit, foreign Tax credit, or other credit or deduction) of (x) the Company or any of its subsidiaries and (y) for a Post-Closing Period, Holdings or Worldwide . If Parent Holdings or any of its Affiliates or subsidiaries receives any refund of Tax to which Laser is entitled pursuant to this Section 9.1(f)(i) or utilizes any Tax attribute to which Laser is entitled pursuant to this Section 9.1(f)(i), Parent Holdings shall promptly notify Laser and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(ii) Except as set forth in Section 9.1(f)(iii), Parent Holdings shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute of Holdings or Worldwide for a Pre-Closing Period. If Laser or any of its Affiliates or subsidiaries receives any refund of Tax to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii) or utilizes any Tax attribute to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii), Laser shall promptly notify Parent Holdings and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(iii) No payment shall be made in respect of a Tax deduction, Tax credit or other Tax benefit pursuant to this Section 9.1(f) in duplication of payments previously made in respect of the same Tax deduction, Tax credit or other Tax benefit.

(g) Any indemnity payment required under this Article IX as a result of an adjustment shall be paid seven (7) days after a "determination" within the meaning of Section 1313(a) of the Code. Any payment required to be made under this Article IX by one party to the other party that is not made on or before the date specified in this Article IX shall bear interest after such date at the rate specified in Code Section 6621(a)(2) for underpayments.

Section 9.2. Tax Returns. (a) Parent Holdings shall file or cause to be filed when due (i) all Tax Returns that are required to be filed on or before the Closing Date by or with respect to Holdings or any of its subsidiaries and (ii) all consolidated, combined or unitary Tax Returns that are required to be filed by or with respect to Parent Holdings or any entity that will be its Affiliate after the Holdings Merger, on the one hand, and Holdings or any of its subsidiaries, on the other hand, for taxable years or periods that include or precede the Closing Date. Parent Holdings shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. In the case of Tax Returns described in clause (ii) above, Laser shall pay Parent Holdings no later

NOT A CERTIFIED COPY

01750

than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX (or Parent Holdings shall pay Laser on such date the excess, if any, of any estimated Tax payments by the Company or any of its subsidiaries, relating to the period covered by such Tax Return, over the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX). Holdings and its subsidiaries shall cooperate in the preparation of any Tax Returns for which Parent Holdings has filing responsibility hereunder. Such cooperation shall include, but not be limited to, furnishing in a timely manner return preparation packages in the form and of the quality provided prior to the Holdings Merger. Such packages shall be prepared in good faith in a manner consistent with past practice.

(b) Laser shall file or cause to be filed when due all other Tax Returns that are required to be filed by or with respect to Holdings or any of its subsidiaries. Laser shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. Parent Holdings shall pay Laser no later than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Parent Holdings is liable pursuant to this Article IX.

(c) The party with filing responsibility under this Section 9.2 for a Tax Return shall, 20 days prior to the due date (including extensions) of such Tax Return, present to the other party (the "Indemnifying Party") for the approval (which approval shall not be unreasonably withheld) of the Indemnifying Party the portion, if any, of the Tax Return reflecting solely the items and positions for which the Indemnifying Party is liable pursuant to this Article IX.

(d) From and after the date hereof, Parent Holdings and each of its Affiliates shall not amend any Tax Return with respect to Taxes for which Laser or any of its Affiliates is liable pursuant to this Agreement, without the written consent of Laser, which consent shall not be unreasonably withheld.

(e) From and after the date hereof, any payment (including any estimated payment) in respect of Taxes pursuant to a Tax Sharing Arrangement that includes Holdings or any of its subsidiaries shall be reduced by any payment that would be owed by the other party pursuant to a Tax Sharing Arrangement.

Section 9.3. Tax Claims.

(a) In the case of any Tax audit, examination or judicial or administrative proceeding (a "Tax Proceeding") relating to a combined, consolidated or unitary Tax Return that includes Mafco Holdings Inc. (or any predecessor or successor thereto), Laser shall be entitled to control the portion of the Tax Proceeding, if any, relating solely to items for which Laser is liable pursuant to this Agreement, and Parent Holdings shall be entitled to control every other portion of the Tax Proceeding; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld. Parent Holdings shall be entitled to control the Pre-Closing Period portion of a Tax Proceeding relating to a Straddle Period Tax Return, or a Tax

NOT A CERTIFIED COPY

01764

MORGAN STANLEY CONFIDENTIAL 0007975

16div-023316

Return for a Pre-Closing Period ending before the Closing Date, of Holdings or Worldwide; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld.

(b) Parent Holdings or Laser, as the case may be, shall promptly notify the other party in writing of any tax claim that could result in liability of the other party under this Agreement (a "Tax Claim"). With respect to any Tax Claim, the party controlling the Tax Proceeding with respect thereto shall (i) not make any submission to any taxing authority without offering the other party the opportunity to review it, (ii) keep the other party informed as to the progress of such Tax Claim, (iii) provide the other party with any information that it receives in connection with the Tax Proceeding, (iv) permit the other party to participate (at its own expense) in all conferences, meetings or proceedings with any taxing authority in which the indemnified Tax Claim is or may be a subject, and (v) permit the other party to participate (at its own expense) in all court appearances in which the indemnified Tax Claim is or may be a subject. With respect to any Tax Claim, the party not controlling the Tax Proceeding with respect thereto shall not take any action or make any representations in connection with such Tax Claim with respect to issues affecting the other party's indemnity hereunder. With respect to any Tax Claim relating to a Pre-Closing Period for which Laser is or may be liable pursuant to this Agreement, Parent Holdings or any of its Affiliates shall either file (or cause to be filed) submissions at Laser's direction or appoint (or cause to be appointed) Laser or its authorized representatives as additional authorized representatives entitled to communicate fully with the Internal Revenue Service or the appropriate state, local or foreign taxing authority with respect to such Tax Claim.

(c) Nothing contained in this Section 9.3 shall be construed as limiting any party's right to indemnification under Section 9.1.

Section 9.4. Assistance and Cooperation. After the Closing Date, each of Parent Holdings and Laser shall (and shall cause their respective Affiliates to):

(a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 9.1(e) (relating to sales, transfer and similar Taxes);

(b) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 9.2;

(c) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of Holdings and each of its subsidiaries;

(d) make available to the other and to any taxing authority as reasonably requested in connection with any Tax Return described in Section 9.4(b) or any proceeding described in Section 9.4(c), all information relating to any Taxes or any Tax Returns of Holdings

NOT A CERTIFIED COPY

0176412

16div-023317

and each of its subsidiaries, including, without limitation, records, returns, schedules, documents, work papers or other relevant materials;

(e) provide timely notice to the other in writing of any Tax audits or assessments of Holdings and each of its subsidiaries that are pending or proposed in writing for taxable periods for which the other may have a liability under this Article IX; and

(f) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period.

Section 9.5. Adjustment to Merger Consideration. For all Tax purposes, any payment by Laser or Parent Holdings under this Agreement will be an adjustment to the Merger Consideration.

Section 9.6. Survival of Obligations. Notwithstanding anything to the contrary in this Agreement, and notwithstanding Article X of this Agreement, the obligations of the parties set forth in this Article IX shall be unconditional and absolute and shall remain in effect until 90 days after the expiration of the applicable statute of limitations.

Section 9.7. Reorganization. Laser shall not, and shall not permit any of its subsidiaries or Affiliates to, take any action that could prevent the Holdings Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Laser and Parent Holdings shall treat, and shall cause their respective Affiliates to treat, the Holdings Merger as a reorganization for all Tax and reporting purposes.

Section 9.8. Tax Sharing Agreements. All rights and obligations of Parent Holdings (and the entities that will be its Affiliates after the Holdings Effective Time) pursuant to any of the Tax Sharing Arrangements or any Tax indemnity arrangements involving Holdings or any of its subsidiaries will terminate on the Closing Date.

Section 9.9. Information. Notwithstanding any other provision of this Agreement or the Company Merger Agreement, neither Laser nor any of its Affiliates nor any other Person shall have any right to receive or obtain any information relating to Taxes of Parent Holdings or any of its Affiliates other than information relating solely to Holdings or any of its subsidiaries.

ARTICLE X

INDEMNIFICATION; SURVIVAL

Section 10.1. Parent Holdings' Agreement to Indemnify.

(a) Subject to the terms and conditions of this Article X, from and after the Closing Date, Parent Holdings shall indemnify, defend and hold harmless Laser and its subsidiaries (including after the Closing Date, the Company and its subsidiaries) and each of their re-

NOT A CERTIFIED COPY

0117613

MORGAN STANLEY CONFIDENTIAL 0007977

16div-023318

spective successors and permitted assigns, directors, officers, employees, representatives, agents, Affiliates and associates (collectively, the "Laser Group") from and against any and all losses, liabilities, expenses (including reasonable attorneys' fees), claims and damages (collectively, "Damages") asserted against, resulting to, imposed upon or suffered by the Laser Group, or any one of them, arising out of or related to any liability or obligation of Holdings or Worldwide existing on or prior to the Closing Date other than any such liability or obligation (i) arising in connection with the Notes, the LYONs and the 1998 Notes, (ii) which is also a liability or obligation of the Company or its subsidiaries (on a joint basis or otherwise), or (iii) which relates to the conduct, operations or activities of the Company or its subsidiaries.

(b) If there are any conflicts between the provisions of this Section 10.1 and Section 9.3 with respect to Tax Claims, the provisions of Section 9.3 shall control.

(c) Any payment by Parent Holdings under Article IX or this Section 10.1 will be an adjustment to the Merger Consideration.

(d) Anything in this Agreement to the contrary notwithstanding, the liability of Parent Holdings to indemnify the Laser Group pursuant to this Section 10.1 against any Damages sustained by reason of any Laser Claim shall be limited to Laser Claims as to which the Laser Group has given Parent Holdings written notice, setting forth in reasonable detail the basis for such Laser Claim, on or prior to the fourth (4th) anniversary of the Closing Date.

Section 10.2. Conditions of Indemnification With Respect to Third-Party Claims. The obligations and liabilities of Parent Holdings with respect to Laser Claims for Damages which arise or result from claims made by third parties ("Third-Party Claims") shall be subject to the following conditions:

(a) The Laser Group shall give Parent Holdings prompt notice of any such Third-Party Claim, and Parent Holdings shall have the right to undertake the defense thereof by representatives chosen by it; provided, however, that failure to provide prompt notice shall not affect Parent Holdings' obligations hereunder except to the extent that Parent Holdings is actually prejudiced by such failure;

(b) If Parent Holdings undertakes the defense of any such Third-Party Claim, the Laser Group shall, to the best of its ability, assist Parent Holdings, at the expense of Parent Holdings, in the defense of such Third-Party Claim, and shall promptly send to Parent Holdings, at the expense of Parent Holdings, copies of any documents received by the Laser Group which relate to such Third-Party Claim;

(c) If Parent Holdings, within a reasonable time after notice of any such Third-Party Claim, fails to defend the member(s) of the Laser Group against which such Third-Party Claim has been asserted, the Laser Group shall (upon further notice to Seller) have the right to undertake the defense, compromise or settlement of such Third-Party Claim on behalf of and for the account and risk of Parent Holdings, subject to the right of Parent Holdings to assume the defense of such Third-Party Claim at any time prior to settlement, compromise or final determination thereof; and

NOT A CERTIFIED COPY

01761L

MORGAN STANLEY CONFIDENTIAL 0007978

16div-023319

(d) Anything in this Article X to the contrary notwithstanding, (i) if there is a reasonable probability that a Third-Party Claim may materially and adversely affect the Laser Group other than as a result of money damages or other money payments, the Laser Group shall have the right, at its own cost and expense, to defend, compromise or settle such Third-Party Claim, and shall by doing so release Parent Holdings from any liability to provide indemnification with respect to such Third-Party Claim; and (ii) Parent Holdings shall not, without the written consent of the Laser Group, settle or compromise any Third-Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Laser Group a release from all liability with respect to such Third-Party Claim.

Section 10.3. Survival of Representations; Covenants. The representations and warranties in this Agreement shall terminate upon and not survive the Closing Date. This Section 10.3 shall not limit any covenant or agreement of the parties contained herein which by its terms contemplates performance after the Holdings Effective Time.

ARTICLE XI

TERMINATION

Section 11.1. Termination. This Agreement may be terminated at any time prior to the Holdings Effective Time:

(a) by mutual written agreement of Laser and Holdings;

(b) by either Laser or Holdings if the Holdings Merger shall not have been consummated on or before August 31, 1998 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date;

(c) by either Laser or Holdings if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable;

(d) by either Laser or Holdings in the event of a breach by the other party or any of its subsidiaries (including, in the case of Holdings, the Company and its subsidiaries) of any representation, warranty, covenant or other agreement contained in this Agreement or the Company Merger Agreement, as applicable, which would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.3(a) hereof or Section 8.1 thereof, as applicable, and is not capable of being cured (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement).

NOT A CERTIFIED COPY

01765

Section 11.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1 hereof, this Agreement shall forthwith become void, provided that the last sentence of Section 6.7 and Article XII shall continue, and there shall be no liability on the part of any of the parties, nothing herein shall relieve any party from liability for any willful breach hereof.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

If to Holdings:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Fax: (954) 772-3352
Attention: General Counsel

with copies to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Fax: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

If to Laser:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Fax: (561) 243-2191
Attention: David Fannin, Esq.

NOT A CERTIFIED COPY

01734

MORGAN STANLEY CONFIDENTIAL 0007980

16div-023321

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Fax: (302) 651-3001
Attention: Richard L. Easton, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 12.2. Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time before the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the Parties.

Section 12.3. Extension; Waiver. At any time before the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 12.4. Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

Section 12.5. Entire Agreement. This Agreement (including all Schedules and Exhibits hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which will remain in full force and effect for the term provided for therein.

Section 12.6. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Laser Holdings, Worldwide, their respective subsidiaries or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 12.7. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

NOT A CERTIFIED COPY

011547

MORGAN STANLEY CONFIDENTIAL 0007981

16div-023322

Section 12.8. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, its rules of conflict of laws notwithstanding.

Section 12.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Section 12.10. Headings. The heading references herein and in the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 12.11. Further Assurances. From time to time after the Closing Date, at the request of the other party hereto and at the expense of the party so requesting, Holdings and Laser shall execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate the transactions contemplated hereby.

Section 12.12. Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other party hereto irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, the other party hereto shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance.

Section 12.13. Certain Terms. As used herein: (i) the term "material adverse effect" (including as used in any definition) with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement and the Company Merger Agreement and (b) affecting in the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of Holdings" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

Section 12.14. Interpretation. When a reference is made to this Agreement to an Article or Section, such reference shall be to an Article or Section of, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007982

16div-023323

that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

0117549

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

SUNBEAM CORPORATION

By: _____
Name: Russell A. Kersch
Title: Executive Vice President

LASER ACQUISITION CORP.

By: _____
Name: Russell A. Kersch
Title:

CLN HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: Barry F. Schwartz
Title: Executive Vice President

NOT A CERTIFIED COPY

011550

NOT A CERTIFIED COPY

011551

CLN HOLDINGS INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, among Sunbeam Corporation ("Laser"), Laser Acquisition Corp. ("Merger Sub"), CLN Holdings Inc. ("Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted hereon for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

NOT A CERTIFIED COPY

017552

16div-023327

SCHEDULE 4.5

Consents and Approvals; No Violations

1. LYONs
2. The Notes
3. Consent to the transaction is required under an agreement between Parent Holdings and a third party which consent will be obtained prior to the Closing Date

NOT A CERTIFIED COPY

017553

SCHEDULE 4.9

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings Inc. ("Mafco Holdings") consolidated federal income tax return for the years 1989 and 1990

2. Waiver through December 31, 1998 of the Statute of Limitations for the Mafco Holdings federal income tax consolidated group for the years 1991, 1992 and 1993

NOT A CERTIFIED COPY

011631

SCHEDULE 4.10

List of Agreements with Affiliates	Post-Closing
1. Lease dated as of 7/1/97 between Revlon Consumer Products Corporation and The Coleman Company, Inc.	Survives by its terms
2. Reimbursement Agreement, dated as of February 26, 1992, between The Coleman Company, Inc. and MacAndrews & Forbes Holdings Inc.	Does not survive
3. Reimbursement Agreement dated as of May 27, 1993 between Worldwide and MacAndrews & Forbes Holdings Inc.	Does not survive
4. Reimbursement Agreement dated as of July 22, 1993 between CLN Holdings Inc. (as successor by merger to Coleman Holdings Inc.) and MacAndrews & Forbes Holdings Inc.	Does not survive
5. Tax Sharing Agreement V, dated as of May 27, 1993, among Mafco Holdings, Worldwide, The Coleman Company, Inc., and certain subsidiaries of The Coleman Company, Inc.	Terminates with respect to Mafco Holdings
6. Tax Sharing Agreement VI, dated as of May 27, 1993, between Mafco Holdings and Worldwide	Terminates with respect to Mafco Holdings
7. Cross-Indemnification Agreement, dated as of February 26, 1992, among New Coleman Holdings Inc., Coleman Finance Holdings Inc., The Coleman Company, Inc. and certain subsidiaries of New Coleman Holdings Inc. and The Coleman Company, Inc.	Survives by its terms
8. Executive Employees Deferred Compensation Plan (May 29, 1984)	Transferred to Coleman
9. The New Coleman Company, Inc. Retirement Plan for Salaried Employees (Amended and Restated as of July 1, 1989)	Transferred to Coleman
10. The New Coleman Company, Inc. Retirement Trust Agreement for Salaried Employees (December 28, 1989)	Transferred to Coleman

NOT A CERTIFIED COPY

017655

11.	The Coleman Company, Inc. Excess Benefit Plan	Transferred to Coleman
12.	The Coleman Company, Inc. Special Retirement Plan (effective October 1, 1993)	Transferred to Coleman
13.	The Coleman Retirement Incentive Savings Plan (Effective as of January 1, 1990)	Transferred to Coleman
14.	Coleman Monthly Salaried Retirement Incentive Savings Plan (Effective as of January 1, 1996)	Transferred to Coleman
15.	Licensing Agreement with Revlon Consumer Products Corporation	Survives by its terms
16.	Pension Plan for Hourly Employees sponsored by New Coleman Holdings Inc.	Transferred to Coleman
17.	The Special Medical Plan, The Basic Medical, The Regular Medical Plan	Transferred to Coleman
18.	Insurance policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements ("Self-Insured Arrangements")	To the extent any Insurance Policies benefit the Company, they shall be retained; to the extent the Company has obligations to pay amounts or post a letter-of-credit pursuant to the Self-Insured Arrangements, the Company shall perform such obligations
19.	Agreement with Tarlow Advertising	Terminates
20.	Stock Purchase Agreement, dated as of August 5, 1997, by and among Revlon K.K. ("Revlon") and the Company, and Transfer Agreement, dated as of March 31, 1997, by and among Revlon Consumer Products Corporation and the Company	Revlon or its affiliates remain entitled to certain tax benefits

NOT A CERTIFIED COPY

21.	Stock Purchase Agreement, dated as of December 12, 1997, between New Coleman Holdings, Inc. and the Company	New Coleman Holdings Inc. remains entitled to certain tax benefits
22.	Welfare plans, such as medical, sponsored by New Coleman Holdings or Mafco Holdings	Transferred to Coleman
23.	Mafco Demand Note held by Worldwide in connection with advances made for the payment of taxes by Worldwide	Canceled automatically and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998
24.	The Coleman Company, Inc. provides certain data processing services for Mafco Holdings and certain of its subsidiaries and is paid a fee for such services	Services terminated on or prior to the closing
25.	The Coleman Company, Inc. assists in the management of certain liabilities and obligations of New Coleman Holdings Inc. generally related to liabilities relating to divested operations of New Coleman Holdings Inc.	Services terminated on or prior to the closing

All amounts owed pursuant to agreements or arrangements with affiliates shall be paid in the ordinary course and in accordance with the applicable agreement or arrangement except in the case of the Mafco Demand Note, which shall be canceled automatically and of no further force or effect upon the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998.

NOT A CERTIFIED COPY

011657

16div-023332

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto

2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act

3. The Company may take all action necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure

4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement

5. Increase base salaries for Company employees effective as of March 1, 1998

6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997

7. Mafco Demand Note will be canceled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

NOT A CERTIFIED COPY

017538

NOT A CERTIFIED COPY

017659

Exhibit A

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of _____ __, 1998 (the "Agreement"), among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings").

WHEREAS, pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Laser, LASER ACQUISITION CORP., a Delaware corporation and wholly owned subsidiary of Laser ("Laser Merger Sub"), CLN HOLDINGS INC., a Delaware corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, Laser Merger Sub will be merged immediately after the execution of this Agreement with the surviving corporation becoming an indirect wholly owned subsidiary of Laser, upon the terms and subject to the conditions set forth in the Holdings Merger Agreement (the "Holdings Merger"); and

WHEREAS, upon consummation of the Holdings Merger, the shares of Holdings Common Stock (as defined herein) issued and outstanding immediately prior to the effective time of the Holdings Merger shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (as defined herein) and (B) $159,956,756 in cash, without interest hereon; and

WHEREAS, it is a condition to the obligations of Holdings to consummate the Holdings Merger that this Agreement be duly executed and delivered by each of the parties hereto; and

WHEREAS, in order to induce Holdings to enter into the Holdings Merger Agreement, Laser has agreed to provide registration rights with respect to the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

As used in this Agreement, the following terms shall have the following meanings:

The term "Affiliate" shall have the meaning ascribed to it in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

NOT A CERTIFIED COPY

017650

The term "Agreement" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Camper" shall mean The Coleman Company, Inc., a Delaware corporation.

The term "Effective Date" shall have the meaning ascribed to it in Section 2.2.

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Holdings" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Common Stock" shall mean common stock, par value $1.00 per share, of Holdings.

The term "Holdings Merger" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Holdings Merger Agreement" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Laser Common Stock" shall mean common stock, par value $.01 per share, of Laser.

The term "Laser Merger Sub" shall have the meaning ascribed to it in the second paragraph of the Preamble.

The term "Laser Offering" shall mean the sale of equity securities of Laser, or securities convertible into or exchangeable or exercisable for equity securities of Laser, pursuant to a registration statement filed by Laser under the Securities Act (other than a registration statement filed on Form S-8 or any successor form) respecting an underwritten offering, whether primary or secondary, that is declared effective by the SEC.

The term "Losses" shall have the meaning ascribed to it in Section 2.6(a).

The term "Parent Holdings" shall have the meaning ascribed to it in the first paragraph of the Preamble.

The term "Person" shall mean an individual, trustee, corporation, partnership, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, union, business association, firm or other entity.

NOT A CERTIFIED COPY

017651

The term "Registrable Securities" shall mean the shares of Laser Common Stock to be issued to Parent Holdings upon consummation of the Holdings Merger and any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The term "Registration Expenses" shall have the meaning ascribed to it in Section 2.5.

The term "Rule 144" shall mean Rule 144 promulgated under the Securities Act (or any successor rule).

The term "Rule 415 Offering" shall have the meaning ascribed to it in Section 2.1(a).

The term "SEC" shall mean the United States Securities and Exchange Commission.

The term "Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

The term "Shelf Registration Statement" shall have the meaning ascribed to it in Section 2.1(a).

The term "Transfer" shall mean any attempt to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer any of the Registrable Securities.

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 ***Required Registration.***

(a) *Form S-3.* Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on Form S-3 or another appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities by Parent Holdings pursuant to an offering on a delayed or continuous basis pursuant to Rule 415 (or any successor rule) under the Securities Act (a "Rule 415 Offering") and shall use reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the SEC on or before the date on which any of the Registrable Securities

NOT A CERTIFIED COPY

017662

16div-023337

may be transferred by Parent Holdings pursuant to Article VII of the Holdings Merger Agreement. Laser shall use reasonable best efforts to permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock issued to such Affiliates in the merger of a wholly owned subsidiary of Laser with Camper; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) *Effectiveness.* Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities covered by the Shelf Registration Statement have been sold and (ii) the second anniversary of the consummation of the Holdings Merger.

(c) *Amendments/Supplements.* Laser shall amend and supplement the Shelf Registration Statement and the prospectus contained therein if required by the rules, regulations or instructions applicable to the registration form used by Laser for such Shelf Registration Statement, if required by the Securities Act.

(d) *Offerings.* At any time from and after the date on which the Shelf Registration Statement is declared effective by the SEC (the "Effective Date"), Parent Holdings, subject to the restrictions and conditions contained herein and in the Merger Agreement, and subject further to compliance with all applicable state and federal securities laws, shall have the right to dispose of all or any portion of the Registrable Securities.

Section 2.2 *Holdback Agreement.*

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or exchangeable or exercisable for such securities (other than any such sale or distribution of such securities pursuant to registration of such securities on Form S-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.3 *Blackout Provisions.*

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a

NOT A CERTIFIED COPY

0176563

MORGAN STANLEY CONFIDENTIAL 0007997

16div-023338

bona fide business purpose for preserving as confidential, Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-fifteen (115) days during any twelve (12)-month period.

Section 2.4 *Registration Procedures.*

(a) *Procedures.* In connection with the registration of the Registrable Securities pursuant to this Agreement, Laser shall use reasonable best efforts to effect the registration and sale of the Registrable Securities in accordance with Parent Holdings' intended method of disposition thereof and, in connection therewith, Laser shall:

(1) prepare and file with the SEC the Shelf Registration Statement and use reasonable best efforts to cause the Shelf Registration Statement to become and remain effective in accordance with Sections 2.1(a) and (b) above;

(2) prepare and file with the SEC amendments and supplements to the Shelf Registration Statement and the prospectuses used in connection therewith in accordance with Section 2.1(c) above;

(3) before filing with the SEC the Shelf Registration Statement or prospectus or any amendments or supplements thereto, Laser shall furnish to one (1) counsel selected by Parent Holdings and one (1) counsel for the underwriter or sales or placement agent, if any, in connection therewith, drafts of all such documents proposed to be filed and provide such counsel with a reasonable opportunity for review thereof and comment thereon, such review to be conducted and such comments to be delivered with reasonable promptness;

(4) promptly (i) notify Parent Holdings of each of (w) the filing and effectiveness of the Shelf Registration Statement and each prospectus and any amendments or supplements thereto, (x) the receipt of any comments from the SEC or any state securities law authorities or any other governmental authorities with respect to any such Shelf Registration Statement or prospectus or any amendments or supplements thereto, (y) any oral or written stop order with respect to such registration, any suspension of the registration or qualification of the sale of the Registrable Securities in any jurisdiction or any initiation or threatening of any pro-

NOT A CERTIFIED COPY

0017694

MORGAN STANLEY CONFIDENTIAL 0007998

16div-023339

ceedings with respect to any of the foregoing, and (z) of the happening of any event that requires the making of any changes in such Shelf Registration Statement, prospectus or documents incorporated or deemed to be incorporated therein by reference so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) use reasonable best efforts to obtain the withdrawal of any order suspending the registration or qualification (or the effectiveness thereof) or suspending or preventing the use of any related prospectus in any jurisdiction with respect thereto;

(5) furnish to Parent Holdings, the underwriters or the sales or placement agent, if any, and one (1) counsel for each of the foregoing, a conformed copy of the Shelf Registration Statement and each amendment and supplement thereto (in each case, including all exhibits thereto) and such additional number of copies of such Shelf Registration Statement, each amendment and supplement thereto (in such case, without such exhibits), the prospectus (including each preliminary prospectus) included in such Shelf Registration Statement and prospectus supplements and all exhibits thereto and such other documents as Parent Holdings, its underwriters, agent or such counsel may reasonably request in order to facilitate the disposition of the Registrable Securities by Parent Holdings;

(6) in connection with a sale of Registrable Securities by or through an underwriter, if requested by Parent Holdings or the managing underwriter or underwriters of a Rule 415 Offering, subject to approval of counsel to Laser in its reasonable judgment, promptly incorporate in a prospectus, supplement or post-effective amendment to the Shelf Registration Statement such information concerning underwriters and the plan of distribution of the Registrable Securities as such managing underwriter or underwriters or Parent Holdings reasonably shall furnish to Laser in writing and such request to be included therein, including, without limitation, information with respect to the number of Registrable Securities being sold by Parent Holdings to such underwriter or underwriters, the purchase price being paid therefor by such underwriter or underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering; and make all required filings of such prospectus, supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such prospectus, supplement or post-effective amendment;

(7) use reasonable best efforts to register or qualify the Registrable Securities for offer and sale under such securities or "blue sky" laws of such jurisdictions as Parent Holdings reasonably requests and

NOT A CERTIFIED COPY

01765

do any and all other acts and things which may be reasonably necessary or advisable to enable Parent Holdings to consummate the disposition in such jurisdictions in which the Registrable Securities are to be sold and keep such registration or qualification in effect for as long as the Shelf Registration Statement remains effective under the Securities Act (provided that Laser shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph, (ii) subject itself to taxation in any such jurisdiction where it would not otherwise be subject to taxation but for this paragraph or (iii) consent to the general service of process in any jurisdiction where it would not otherwise be subject to general service of process but for this paragraph);

(8) notify Parent Holdings, at any time when a prospectus relating to the Shelf Registration Statement is required to be delivered under the Securities Act, upon the discovery that, or of the happening of any event as a result of which, the Shelf Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or any fact necessary to make the statements therein not misleading, and promptly prepare and furnish to Parent Holdings a supplement or amendment to the prospectus contained in the Shelf Registration Statement so that the Shelf Registration Statement shall not, and such prospectus as thereafter delivered to the purchasers of such Registrable Securities shall not, contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(9) cause all of the Registrable Securities to be listed on each national securities exchange and included in each established over-the-counter market on which or through which the Laser Common Stock is then listed or traded;

(10) in connection with a sale of Registrable Securities by or through an underwriter, make available for inspection by Parent Holdings, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney, accountant or other agent retained by Parent Holdings or its underwriter, all financial and other records, pertinent corporate documents and properties of Laser as shall be reasonably necessary to enable either of them to exercise their due diligence responsibility, and cause Laser's officers, directors, employees, attorneys and independent accountants to supply all information reasonably requested by Parent Holdings, its underwriters, attorneys, accountants or agents in connection with the Shelf Registration Statement; information

NOT A CERTIFIED COPY

017666

16div-023341

which Laser determines, in good faith, to be confidential shall not be disclosed by such persons unless (i) the disclosure of such information is required by applicable federal securities laws or is necessary to avoid or correct a misstatement or omission in such Shelf Registration Statement or (ii) the release of such information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction; Parent Holdings agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that the information obtained by any of them as a result of such inspections shall be deemed confidential unless and until such is made generally available to the public; Parent Holdings further agrees, on its own behalf and on behalf of all of its underwriters, accountants, attorneys and agents, that Parent Holdings will, upon learning that disclosure of such information is sought in a court of competent jurisdiction, give notice to Laser and allow Laser, at Parent Holdings' expense, to undertake appropriate action to prevent disclosure of the information deemed confidential; nothing contained herein shall require Laser to waive any attorney-client privilege or disclose attorney work product;

(11) use reasonable best efforts to comply with all applicable laws related to the Shelf Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act and the Exchange Act, and the rules and regulations promulgated by the SEC) and make generally available to its security holders as soon as practicable (but in any event not later than fifteen (15) months after the effectiveness of the Shelf Registration Statement) an earnings statement of Laser and its subsidiaries complying with Section 11(a) of the Securities Act;

(12) in connection with a sale of Registrable Securities by or through an underwriter, use reasonable best efforts to furnish to Parent Holdings a signed counterpart of (x) an opinion of counsel for Laser (including a "Rule 10b-5" opinion) and (y) a "comfort" letter signed by the independent public accountants who have certified Laser's financial statements included or incorporated by reference in such registration statement, covering such matters with respect to such registration statement and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to the underwriters in underwritten public offerings of securities for the account of, or on behalf of, an issuer of common stock, such opinion and comfort letters to be dated the date that such opinion and comfort letters are customarily dated in such transactions; and

NOT A CERTIFIED COPY

011567

(13) take other actions as Parent Holdings or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of the Registrable Securities.

(b) *Further Agreements.* Without limiting any of the foregoing, in the event that the sale of Registrable Securities is to be made by or through an underwriter, Laser shall enter into an underwriting agreement with a managing underwriter or underwriters selected by Parent Holdings containing representations, warranties, indemnities and agreements customarily included (but not inconsistent with the agreements contained herein) by an issuer of common stock in underwriting agreements with respect to offerings of common stock for the account of, or on behalf of, such issuers; provided, however, that Parent Holdings shall not utilize the Shelf Registration Statement for more than two (2) underwritten offerings during the term of this Agreement. In connection with the sale of Registrable Securities hereunder, Parent Holdings may, at its option, require that any and all representations and warranties by, and the other agreements of, Laser to or for the benefit of such underwriter or underwriters (or which would be made to or for the benefit of such an underwriter or underwriter if such sale of Registrable Securities were pursuant to a customary underwritten offering) be made to and for the benefit of Parent Holdings and that any or all of the conditions precedent to the obligations of such underwriter or underwriters (or which would be so for the benefit of such underwriter or underwriters under a customary underwriting agreement) be conditions precedent to the obligations of Parent Holdings in connection with the disposition of Parent Holdings' securities pursuant to the terms hereof. In connection with any offering of Registrable Securities registered pursuant to this Agreement, Laser shall, upon receipt of duly endorsed certificates representing the Registrable Securities, (i) furnish to the underwriter, if any (or, if no underwriter, Parent Holdings), unlegended certificates representing ownership of Registrable Securities being sold, in such denominations as requested, and (ii) instruct any transfer agent and registrar of the Registrable Securities to release any stop transfer order with respect thereto.

Parent Holdings agrees that upon receipt of any notice from Laser of the happening of any event of the kind described in paragraph (8) of Section 2.4(a), Parent Holdings shall forthwith discontinue its disposition of Registrable Securities pursuant to the Shelf Registration Statement and prospectus relating thereto until Parent Holdings' receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (8) of Section 2.4(a) and, if so directed by Laser, deliver to Laser all copies, other than permanent file copies, then in Parent Holdings' possession of the prospectus current at the time of receipt of such notice relating to the Registrable Securities.

Section 2.5 *Registration Expenses.*

All expenses incidental to Laser's performance of, or compliance with, its obligations under this Agreement including, without limitation, all registration and filing fees, all fees and expenses of compliance with securities and "blue sky" laws (including, without limitation, the fees and expenses of counsel for underwriters or placement or sales agents in

NOT A CERTIFIED COPY

017668

MORGAN STANLEY CONFIDENTIAL 0008002

16div-023343

connection therewith), all printing and copying expenses, all messenger and delivery expenses, all fees and expenses of underwriters and sales and placement agents in connection therewith (excluding underwriters' discounts and commissions and the fees and expenses of counsel therefor), all fees and expenses of Laser's independent certified public accountants and counsel (including, without limitation, with respect to "comfort" letters and opinions) and other Persons retained by Laser in connection therewith (collectively, the "Registration Expenses"), shall be borne by Laser. Laser shall not be responsible for and shall not pay underwriters' discounts and commissions and the fees and expenses of counsel therefor and fees and expenses of legal counsel, accountants, agents or experts retained by Parent Holdings in connection with the sale of the Registrable Securities. Laser will pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance) and the expenses and fees for listing the Registrable Securities on the New York Stock Exchange or, if the Laser Common Stock is then not so listed, included in an established over-the-counter market.

Section 2.6 *Indemnification.*

(a) *By Laser.* Laser agrees to indemnify Parent Holdings and Parent Holdings' directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person to the fullest extent lawful, against all losses, claims, damages, liabilities, judgments, and reasonable costs (including, without limitation, reasonable attorneys' fees and expenses) (collectively, the "Losses") as incurred, caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based upon any information furnished in writing to Laser by Parent Holdings or its underwriter or other agent expressly for use therein or by Parent Holdings' failure to deliver, or its underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Laser's other obligations under this Agreement, Laser shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Parent Holdings.

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents

NOT A CERTIFIED COPY

017569

MORGAN STANLEY CONFIDENTIAL 0008003

16div-023344

and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to delivery a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice.* Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions.* In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense

NOT A CERTIFIED COPY

017670

thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

NOT A CERTIFIED COPY

017671

16div-023346

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

(a) pursuant to Rule 144;

(b) pursuant to the Shelf Registration Statement; or

(c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt

NOT A CERTIFIED COPY

017672

MORGAN STANLEY CONFIDENTIAL 0008006

16div-023347

requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

NOT A CERTIFIED COPY

0179673

MORGAN STANLEY CONFIDENTIAL 0008007

16div-023348

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

NOT A CERTIFIED COPY

017676

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

017675

MORGAN STANLEY CONFIDENTIAL 0008009

16div-023350

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By:_____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By:_____
Name:
Title:

NOT A CERTIFIED COPY

017676

MORGAN STANLEY CONFIDENTIAL 0008010

16div-023351

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

CASE NO. CA 03-5165 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff(s),
vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

ORDER ON MORGAN STANLEY & CO. INCORPORATED AND MORGAN STANLEY SENIOR FUNDING, INC.'S MOTION FOR APPLICATION OF NEW YORK LAW

THIS CAUSE came before the Court June 28, 2004 on Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law, with all parties well represented by counsel.

I. Introduction

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998, in which Coleman (Parent) Holdings, Inc. ("CPH"), sold its 82% interest in the Coleman Company, Inc. ("Coleman"), to Sunbeam Corporation ("Sunbeam"). Morgan Stanley & Co., Inc. ("MS & Co."), served as financial advisor to Sunbeam for parts of the acquisition transaction and served as the lead underwriter for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition.

NOT A CERTIFIED COPY

01753178

In 1998, Morgan Stanley Senior Funding, Inc. ("MSSF"), and other lenders entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller companies.

CPH's Complaint alleges claims against MS & Co. arising from this transaction for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, and seeks damages of at least $485 million.

MSSF's Complaint alleges that, in the course of Sunbeam's acquisition of Coleman, Defendants MacAndrews & Forbes Holdings, Inc. ("MAFCO"), CPH's parent company, and CPH provided false information to MSSF about the "synergies" that Sunbeam would achieve from the combination of Sunbeam and Coleman. MSSF alleges that MAFCO and CPH's inflated synergy projections caused Sunbeam to pay a higher price to acquire Coleman and consequently caused Sunbeam's lenders, including MSSF, to make larger loans to finance the acquisition. MSSF's Complaint asserts claims for fraud and negligent misrepresentation and alleges that MSSF suffered hundreds of millions of dollars in damages when Sunbeam declared bankruptcy in February 2001 and defaulted on acquisition-related loans.

II. Analysis

A. An overview

MS & Co. and MSSF (together "Morgan Stanley"), filed their Motion for Application of New York Law ("Motion"). The Motion seeks a determination that New York substantive law controls all claims in these consolidated cases.

Florida's choice of law rules govern the conflict of laws analysis. Hoffman v. Ouellette, 798 So. 2d 42 (Fla. 4th DCA 2001). A conflict of laws analysis involves a three step process. First, the court must consider whether there are potentially outcome determinative differences between the substantive laws alleged to apply. See Tune v. Philip Morris, Inc., 766 So. 2d 350 (Fla. 2d DCA 2000), rev. den. 786 So. 2d 1188 (Fla. 2001). If there are, the Court must next determine the choice of law rule to be applied for the type of

NOT A CERTIFIED COPY

01737

claim alleged. Finally, the court must apply the appropriate choice of law rule. Hoffman.

The parties agree that Florida applies the "significant relationship" test in tort cases. The parties disagree on whether there are potentially outcome determinative differences in New York and Florida substantive law and, if there are, which state's law prevails on application of the conflicts principles. Choice of law is made on an issue by issue basis. Crowell v. Clay Hayden Trucking Lines, Inc., 700 So. 2d 120 (Fla. 2d DCA 1997), rev. den. 705 So. 2d 569 (Fla. 1998). To resolve the dispute, then, the Court must determine whether there are material differences between New York and Florida law on each issue and, if there are, apply the appropriate conflicts principles to determine the controlling substantive law on each contested issue.

B. Step One - New York v. Florida Law

(i) Negligent Misrepresentation

Morgan Stanley contends that New York law requires Coleman to prove that it had a "special relationship" with Coleman before it can bring a claim for negligent misrepresentation. Coleman contends that the "special relationship" requirement in the New York case law is merely a term of art that designates the same group of potential recipients of misrepresentations who have a cause of action as in Florida.

Florida has adopted §552 of the Restatement (Second) of Torts as a statement of the elements for a negligent misrepresentation claim:

> Information Negligently Supplied for the Guidance of Others.
>
> (1) One who, in the course of his business, profession or employment, or in any other transaction is which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

NOT A CERTIFIED COPY

017530

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

See Gilchrist Timber Co. v. ITT Rayonier, Inc., 696 So. 2d 334, 337 (Fla. 1997). Thus, in Florida, one who has a pecuniary interest in a transaction is liable if he negligently supplies incorrect information for the benefit or guidance of another who justifiably relies on it.

New York, however, circumscribes a tighter circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher. See American Protein Corp. v. AB Volvo, 844 F. 2d 56 (2d Cir. 1988), cert. den. 488 U.S. 852 (1988); DynCorp v. GTE Corporation, 215 F. Supp. 2d 308 (S.D.N.Y. 2002); Citibank, N.A. v. Itochu International, Inc., 2003 WL 1797847 (S.D.N.Y. 2003); Fleet Bank v. Pine Knoll Corp., 736 N.Y.S. 2d 737 (A.D. 3 Dept. 2002); St. Paul Fire and Marine Insurance Co. v. Health Fielding Insurance Brokerage, Ltd., 976 F. Supp. 198 (S.D.N.Y. 1996). The difference between Florida and New York law is material, and may be outcome determinative: the parties dispute whether MS & Co. held or acquired a position of trust or confidence over CPH, and whether MAFCO and CPH held or acquired a position of trust or confidence over MSSF.

(ii) Fraudulent Misrepresentation

Morgan Stanley contends that New York law prevents a recipient of a fraudulent misrepresentation from bringing a claim if it is a "sophisticated party" with access to information which, if checked, would have allowed it to determine the representation was inaccurate. CPH maintains that New York law is merely a specific application of the

NOT A CERTIFIED COPY

01753 1

general rule that a misrepresentation is not actionable unless reliance on it was reasonable, and that it is unreasonable for a sophisticated party in an arms' length commercial transaction to rely on information provided by its opponent that could have been verified.

Under New York law, reliance on a fraudulent misrepresentation is not reasonable if the recipient "has the means available to him of knowing, by the exercise of ordinary intelligence, the truth . . ." See Schumaker v. Mather, 133 N.Y. 590; 30 N.E. 755, 757 (1892). Thus, a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations. UST Private Equity Investors Fund v. Salomon Smith Barney, 733 N.Y.S. 2d 385, 288 A.D. 2d 87 (N.Y. App. Div. 2001).

In contrast, in Florida a recipient of a fraudulent misrepresentation may rely on it unless he knows it is false or its falsity is obvious, even if it had the means to verify the representation's accuracy. See Besett v. Basnett, 389 So. 2d 995 (Fla. 1980); M/I Schottenstein Homes, Inc. v. Azam, 813 So. 2d 91 (Fla. 2002); Sheer v. Jenkins, 629 So. 2d 1033 (Fla. 4th DCA 1993).

Clearly, there is a fundamental distinction on this point between New York and Florida which could be outcome determinative. MS & Co. claims CPH had access to information which would have allowed it to test the allegedly false representations but CPH failed to do its due diligence. MAFCO and CPH claim that MSSF had access to information that would have allowed MSSF to test the synergy representations, but MSSF failed to do its due diligence. If true, a jury could find reliance that is reasonable under Florida law to be unreasonable under New York law.

C. Step Two - Choice of Law Rule

(i) Applicable Rule

Florida has adopted the Restatement (Second) of Conflict of Laws' significant relationships test. See Bishop v. Florida Specialty Paint Company, 389 So. 2d 999 (Fla. 1980). Section 145 states the general principles with respect to tort. Section 148 states the choice of law principles for fraud and misrepresentation. Counsel agree section 148 applies.

NOT A CERTIFIED COPY

D 17582

See Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc., 92 F. 3d 1110 (11th Cir. 1996).

(ii) Procedure

The Court was unable to find any cases specifically delineating the procedure to be used for a judicial choice of law determination prior to trial. However, because application of the significant relationships test is fact-dependent, the Court concludes that a pre-trial determination is controlled by the summary judgment rule, Rule 1.510, Fla. R. Civ. P. First, the Court is unaware of any other procedural vehicle that would permit a pre-trial determination of facts. Second, it appears that when summary judgment has been used by the trial courts, the appellate courts have reviewed the orders without comment on the procedure employed. See, e.g., Rush v. Joyner, 540 So. 2d 266 (Fla. 4th DCA 1989); Bishop.

(iii) The Undisputed Facts

The following facts are undisputed:

1. CPH is a wholly owned subsidiary of MAFCO. Before the transaction with Sunbeam in March 1998, CPH was a holding company with an 82% interest in Coleman. CPH is a Delaware corporation with its principal place of business in New York City, New York.

2. MS & Co. is an investment banking firm providing financial and securities services. MS & Co. is a Delaware corporation with its principal place of business in New York City, New York.

3. CPH retained the investment bank of Credit Suisse First Boston ("CSFB") to serve as its financial advisor on the Sunbeam transaction. CSFB is a global investment bank with offices in New York. CPH worked with CSFB personnel in the New York office on the Sunbeam deal.

4. MS & Co. served as Sunbeam's financial advisor during the negotiations that led to the Coleman acquisition. MS & Co.'s contract with Sunbeam was governed by New York law.

5. New York counsel represented CPH, MS & Co., and MSSF during the course of the negotiations and closing of the Sunbeam transaction.

NOT A CERTIFIED COPY

01763

6. CPH retained the accounting firm of Ernst & Young, a national accounting firm with offices in New York. CPH worked with accountants in the New York office on the Coleman deal.

7. MSSF is a financial services company that provides credit services to its clients. MSSF is a Delaware corporation with its principal place of business in New York .

8. MAFCO relied on New York-based personnel at CSFB for financial services; on Wachtell, Lipton Rosen & Katz, a New York based law firm, for legal advice; and on Ernst & Young for accounting services.

9. There were numerous telephone calls between MS & Co. personnel and Sunbeam personnel in Florida concerning MS & Co.'s retention; its work for Sunbeam; and the Coleman transaction.

10. MS & Co. personnel met with Sunbeam personnel in Florida several times to discuss MS & Co.'s retention as Sunbeam's financial advisor, strategy, potential acquisition candidates, and merger issues.

11. On or about September 23 and 24, 1997; October 29, 1997; and March 4 and 5, 1998, MS & Co. personnel conducted due diligence at Sunbeam's Florida offices.

12. MS & Co. corresponded with Sunbeam at its Florida offices on a variety of issues dealing with its representation of Sunbeam and the merger.

13. On or about December 18, 1997, representatives of Sunbeam and MAFCO met in Florida to discuss a potential transaction involving Sunbeam and Coleman.

14. On or about February 3, 1998, Sunbeam personnel met with an Arthur Andersen representative at Sunbeam's Florida offices in connection with the Coleman transaction.

15. On March 5, 1998, MS & Co. personnel attended a drafting session in Florida in connection with the subordinated debenture offering.

16. On or about March 12, 1998, MS & Co. personnel conducted an accounting due diligence conference call with Arthur Andersen personnel in Florida regarding Sunbeam's financial circumstances.

17. The March 19, 1998 press release was publicly issued from Sunbeam's headquarters

NOT A CERTIFIED COPY

011584

in Delray Beach, Florida; was drafted by Sunbeam's lawyers at the New York offices of Skadden Arps; was reviewed by MS & Co. in New York; and was received by CPH in New York.

18. The statements by Lawrence Bornstein of Arthur Andersen concerning Sunbeam's earnings shortfalls took place at the offices of Global Financial Press in New York.

19. Any representations that MAFCO and CPH made to MSSF at the December 12, 1997 and January 29, 1998 meetings were made and received in New York.

20. On February 4, 1998, Coleman sent Sunbeam a proposed Confidentiality Agreement in connection with the proposed merger. Sunbeam executed the Confidentiality Agreement. The Confidentiality Agreement provided that New York law applies to it.

21. On February 27, 1998, Sunbeam and CPH's boards of directors met in New York and approved the merger agreement. MS & Co. made a presentation to Sunbeam's Board of Directors at the meeting in New York and provided a "fairness opinion" prior to the Board's approval of the transaction.

22. Sunbeam and CPH signed the merger agreement later that day in New York.

23. The merger agreement specified that the acquisition would close in New York and that all share certificates and other consideration would be exchanged by the parties at the closing in New York.

24. Written notice of changes in circumstances having a material adverse effect was to be delivered to CPH's wholly owned subsidiary in Fort Lauderdale, Florida. No notice was received.

25. On March 29, 1998, Sunbeam and CPH entered into a Registration Rights Agreement which provided for the registration by Sunbeam of 14,099,749 shares of Sunbeam common stock that were issued to a wholly owned subsidiary of CPH. The Registration Rights Agreement provided that it was governed by New York law without regard to New York conflicts of law principles.

26. The Sunbeam transaction closed on March 30, 1998 in New York.

27. CPH tendered its shares of Coleman to Sunbeam in New York. At the time of the transaction, Coleman was a public company traded on the New York Stock Exchange.

NOT A CERTIFIED COPY

017535

28. CPH accepted shares of Sunbeam stock in New York. At the time of the transaction, Sunbeam was a public company traded on the New York Stock Exchange.

29. The Sunbeam financing transactions were closed in New York on March 31, 1998.

30. MSSF loaned Sunbeam $680 million in New York in part to be used for the Coleman deal.

D. *Step Three - Application of the Law to the Facts*

(i) Negligent Misrepresentation - CPH v. MS & Co.

Restatement (Second) of Conflict of Laws §148 (1971) provides:

> §148. Fraud and Misrepresentation
>
> (1) When the plaintiff has suffered pecuniary harm on account of his reliance on the defendant's false representations and when the plaintiff's action in reliance took place in the state where the false representations were made and received, the local law of this state determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied.
>
> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, as may be present in the particular case in determining the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties:
>
> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
>
> (b) the place where the plaintiff received the representation,
>
> (c) the place where the defendant made the representations,
>
> (d) the domicil, residence, nationality, place of incorporation and place of business of the parties,

NOT A CERTIFIED COPY

0117636

(e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and

(f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

MS & Co. argues that subsection (1) applies; CPH argues that subsection (2) applies. The correct answer is unclear, since subsection (1) applies only if the false statements were both made and received in the same state, and subsection (2) applies if reliance occurs in whole or in part in a different state that where the representation was made. §148 does not state a rule where the place of reliance and representation are the same, but different from the place where the representation was received.

The representations were received in New York. The actionable part of CPH's reliance occurred in New York, where the contract was entered into and closed. Finally, it is undisputed that the representations relied on in Count I of CPH's Complaint were made in New York. Consequently, New York law controls unless Florida has a more significant relationship under the principles stated in section 6 of the Restatement. It does not. While Florida's public policy provides broader protection for the recipients of false information in commercial transactions, which creates greater incentives for parties to take reasonable care that their representations are correct, that interest is not paramount to New York's, under the principles outlined in section 6. Instead, certainty and predictability in commercial transactions require that New York law apply.

Even if the choice of laws was not dictated by subsection (1), application of subsection (2) would lead to the same result: CPH relied on the statements in New York; it received the representations in New York; the representations were made in New York; the parties are domiciled in New York; and CPH was required to perform in New York.

(ii) Negligent Misrepresentation: MSSF v. MAFCO and CPH

MSSF's claims against MAFCO and CPH are centered on two meetings where MSSF alleges MAFCO and CPH gave inflated synergy projections, on December 12, 1997, and

NOT A CERTIFIED COPY

01783

January 29, 1998. Both were face to face meetings in New York. Consequently, the allegedly false synergy projections were made, received, and relied on in New York. Florida does not have a more significant relationship to the particular issue--the group of people to which MSSF owed a duty--under the principles listed in section 6. Consequently, New York law governs whether MSSF owed a duty to MAFCO and CPH.

(iii) Fraudulent Misrepresentation: CPH v. MS & Co.

As outlined above, section 148 (1) of the Restatement dictates the application of New York law to determine whether reliance on a fraudulent misstatement is justified. Florida does not have a more significant relationship to this issue than New York, based on application of the principles outlined in section 6 of the Restatement. Though Florida has a strong public policy dictating that "(a) person guilty of fraudulent misrepresentation should not be permitted to hide behind the doctrine of caveat emptor," that interest does not override New York's. Besset at 997. Certainty and predictability require that the standards of due diligence governing sophisticated New York domiciled corporations entering into a commercial transaction in New York be governed by New York law.

(iv) Fraudulent Misrepresentation: MSSF v. MAFCO and CPH

Section 148 (1) of the Restatement dictates the application of New York law to determine the due diligence required to find reliance on a false statement reasonable. Application of section 6's principles does not dictate a different result.

(v) Conspiracy and Aiding and Abetting-CPH v. MS & Co.

The Court is unable to apply section 148's principles or conclude whether Florida or New York has the more significant relationship to CPH's aiding and abetting fraud and conspiracy claims, found at Counts II and III of its Complaint.

Both counts claim that MS & Co. actively worked with Sunbeam personnel to manipulate Sunbeam's finances to make it appear that Sunbeam had successfully rebounded from poor performance; to conceal and misrepresent Sunbeam's true financial condition to entice a potential purchaser or investor; and to provide CPH, both through MS & Co. and by materials it scripted for Sunbeam, false and inaccurate financial information to persuade

NOT A CERTIFIED COPY

01763

CPH to agree to, then consummate, a merger with Sunbeam.

It is unclear to the Court how, if at all, the two claims differ. However, if MS & Co. were found liable based on allegations of its participation with Sunbeam personnel in an elaborate fraud, then it would be liable for the entire fraud. See Hoch v. Rissman, Weisberg, Barrett, 742 So. 2d 451 (Fla. 5th DCA 1999), rev. den. 760 So. 2d 948 (Fla. 2000); Ford v. Rowland, 562 So. 2d 731 (Fla. 5th DCA 1990), rev. den. 574 So. 2d 141 (1990); Nicholson v. Kellin, 481 So. 2d 931 (Fla. 5th DCA 1985). Further, MS & Co. could be liable for Sunbeam's actions prior to its retention if it joined with Sunbeam to perpetuate a fraud with knowledge of its general purpose and scope. See James v. Nationsbank Trust Co. (Florida), N.A., 639 So. 2d 1031 (Fla. 5th DCA 1994). The fraud alleged is largely Florida based, and the location of its ultimate victim incidental. Florida has a strong public policy in favor of protecting the recipients of fraudulent misrepresentations. Besset. That policy is more clearly implicated if CPH is able to prove that MS & Co. was an actor in a Florida-based fraud. The allegations of conspiracy are disputed, precluding summary judgment at this juncture on the choice of law issue.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.'s Motion for Application of New York Law is Granted, in part. As to Counts I and IV of CPH's Complaint and MSSF's claims against MAFCO and CPH, the Court determines that New York substantive law applies (i) to engraft a requirement that the recipient of a negligent misrepresentation be in a special relationship to its publisher for the misrepresentation to be actionable, and (ii) to engraft a requirement that a party perform reasonable due diligence as to available information in order to prove that its reliance on a misrepresentation was reasonable.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 18 day of August, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

NOT A CERTIFIED COPY

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

NOT A CERTIFIED COPY

017690

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN(PARENT)HOLDINGS, INC.,
Plaintiff,) No. CA 03-5045 AI
vs.
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,) No. CA 03-5165 AI
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

VIDEOTAPED DEPOSITION OF
DONALD G. DRAPKIN
New York, New York
Thursday, June 24, 2004

Reported by:
Jane Watson
JOB NO. 161016

NOT A CERTIFIED COPY

017592

June 24, 2004
9:39 a.m.

Videotaped Deposition of DONALD G. DRAPKIN, held at the offices of Kirkland & Ellis, L.L.P., 153 East 53rd Street, New York, New York, pursuant to Notice, before Jane D. Watson, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, L.L.P.
Attorneys for: Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: RONALD MARMER, ESQ.

KIRKLAND & ELLIS, L.L.P.
Attorneys for: Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
LARISSA PAULE-CARRES, ESQ.

ALSO PRESENT:
Steven L. Fasman, Esq.
Victor Disla, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: Will counsel please introduce themselves for the video record.

MR. BEMIS: Good morning. On behalf of Morgan Stanley, Lawrence P. Bemis.

MS. PAULE-CARRES: Also on behalf of Morgan Stanley, Larissa Paule-Carres.

MR. MARMER: Representing CPH and the witness, Ronald Marmer from Jenner & Block. And with me is Steven Fasman from Mafco.

THE VIDEOGRAPHER: Will the Court Reporter please swear in the witness.

DONALD G. DRAPKIN, having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning, Mr. Drapkin. As I said, my name is Lawrence Bemis.
Would you state your full name for the jury, please.

A. Donald G. Drapkin.

Q. What does the G stand for, sir?

A. Guy.

NOT A CERTIFIED COPY

Drapkin

Q. G-U-Y?
A. (Indicating).
Q. You have to answer yes or no.
A. Yes.
Q. Thank you very much. How old are you, sir?
A. 56.
Q. What is your date of birth?
A. March 1, 1948.
Q. Are you represented by Mr. Marmer here this morning?
A. Yes, I am.
Q. Can you tell the jury where you live today?
A. 47 Rio Vista Drive, Alpine, New Jersey.
Q. Do you have a listed telephone number there?
A. Yes.
Q. What is it?
MR. MARMER: Excuse me. Can we supply that off record just in case.
We have --
MR. BEMIS: It's a listed phone

Drapkin

number. That's why I asked him.
MR. MARMER: Is it listed as in the sense of listed, publicly accessible?
THE WITNESS: It's publicly accessible.
MR. MARMER: Okay.
THE WITNESS: Yes.
A. 201-767-5650.
BY MR. BEMIS:
Q. Are you married today?
A. Yes, sir.
Q. Do you live at that address with your wife?
A. Yes, sir.
Q. How long have you been there?
A. I think it's going on 20 years.
Q. Any present intention to move?
A. No.
Q. Who do you work for today?
A. MacAndrews & Forbes -- I think it's Holdings. The ultimate parent company of MacAndrews & Forbes.
Q. And how long have you been employed by MacAndrews & Forbes Holdings? There's an S on the end I think.
A. Since January 1, 1987.
Q. What is your title at MacAndrews & Forbes Holdings, Inc. today?
A. Vice chairman.
Q. Do you hold any other titles?
A. Not that I'm aware, no.
Q. Are you a director of MacAndrews & Forbes Holdings?
A. I believe so, yes.
Q. And what is the office address for MacAndrews & Forbes Holdings?
A. 35 East 62nd Street, New York, New York 10021.
Q. And do you have an office telephone number there, sir?
A. Yes, I do.
Q. And what is it?
A. (212) 572-8440.
Q. You understand that you are being videotaped today?
A. Yes, sir.
Q. And do you understand that the videotape can be played to the jury in the trial of this action?
A. Yes, sir.
Q. And did you have an opportunity to consult with Mr. Marmer before your deposition today?
A. Yes, sir.
Q. Did you have an opportunity to review documents with him that he brought and showed to you?
A. Yes, sir.
Q. Do you understand, sir, that even though we are not in a courtroom, that the testimony you are giving is under oath, and has the same force and effect as if you were testifying in front of a jury?
A. Yes, sir.
Q. Is there any reason that you can tell us about today that you could not testify truthfully?
A. No.
Q. Have you ever been deposed before?
A. Yes.
Q. About many times?
A. Less than half a dozen.

NOT A CERTIFIED COPY

017594

Drapkin

Q. Is there -- withdrawn.
Have you ever been deposed in any litigation that is in any way connected with the Sunbeam Coleman transaction that we'll be talking about today?
A. No.
Q. Do you have any residences -- let me withdraw that question.
Do you have a residence in Florida?
A. No.
Q. Have you had since 1997?
A. No.
Q. You have a driver's license, right?
A. Yes, sir.
Q. And is it a New Jersey driver's license?
A. Yes.
Q. Are you registered to vote in New Jersey?
A. Yes, sir.
Q. I don't know if you pay state taxes there. I assume you do. Do you pay state income taxes in New Jersey?
A. Unfortunately.

Drapkin

Q. I note from looking at your background that you did graduate from Columbia Law School; is that right?
A. Yes, sir.
Q. About 1971?
A. Yes, sir.
Q. Are you admitted to practice as a lawyer today in any state?
A. Yes, sir.
Q. Which states?
A. The State of New York.
Q. Any other states, sir?
A. Not to my knowledge.
Q. When did you begin --
A. I might have been years ago. I don't recall whether I kept up.
Q. When did you begin -- strike that.
When were you first admitted to practice in New York?
A. I believe it was 1971.
Q. And have you been continuously licensed to practice in New York since 1971?
A. Yes, sir.
Q. I've done a little bit of background

Drapkin

checking on you just to speed things along. And I want to ask you a couple of questions about your background before we get to some more substantive matters.
When you graduated from law school and passed the bar exam, did you go to work for a law firm?
A. Yes, sir.
Q. Which one?
A. Cravath, Swaine & Moore.
Q. And how long were you with Cravath?
A. Until January 1, 1977.
Q. Then did you go to Skadden, Arps?
A. Yes, I did.
Q. How long -- what years were you there?
A. Until January 1, 1987.
Q. Did you have an area of practice that you specialized in as an associate at Cravath?
A. Cravath has a rotation system. So as an associate, I worked in, as I recall, three different areas.
Q. What were the areas that you worked in at Cravath?

Drapkin

A. My first rotation was what I would call general corporate work, representing public companies mostly and doing underwritings.
My second rotation was for another corporate partner who did mostly company work rather than -- and deals rather than public offerings.
And my third rotation was for a gentleman named Dick Simmons who was a Chemical Bank partner. And I did mostly Chemical Bank work.
(Discussion off the record.)
BY MR. BEMIS:
Q. Would you -- thank you for your patience. I'm sorry for the interruption.
Would you characterize the work that you did at Cravath generally being in the corporate field?
A. Yes.
Q. You then spent a number of years, it looks like 10 years if I count it correctly, at Skadden, Arps?
A. That's correct.
Q. When you left there, were you a

NOT A CERTIFIED COPY

01/6/95

Drapkin

partner?
A. Yes.
Q. Did you have an area of specialization when you worked at Skadden?
A. Yes.
Q. What was that, sir?
A. Corporate law.
Q. Any particular area of corporate law that you concentrated in?
A. I suppose one could say mergers and acquisitions.
Q. Did you do public offerings?
A. On occasion.
Q. Were you involved in mergers and acquisitions that involved underwritings?
A. On occasion.
Q. Have you ever worked on -- withdrawn. When you left Skadden -- Skadden, Arps in I believe you said January 1st of -- was it 1987?
A. Correct.
Q. Is that when you went to work for MacAndrews & Forbes Holdings, Inc.?
A. Correct.

Drapkin

Q. And have you -- you've been there continuously ever since; is that right?
A. Yes.
Q. Do you hold -- MacAndrews & Forbes Holdings, Inc. is owned a hundred percent by another company called Mafco, Inc.; is it not?
A. I actually am not exactly sure what the ultimate name -- as I said before, the ultimate name of the parent holding company. There may be. I would defer to my colleague, Mr. Fasman, who knows the corporate structure a little better than I do.
Q. Setting that issue aside, it is your understanding there is one holding company above MacAndrews & Forbes Holdings, Inc.; is that correct?
A. No.
Q. Then I want to see if we can get this sorted out and get it behind us. Let me see.
MR. BEMIS: Can you mark this as Exhibit 279, please.
(Discussion off the record.)
(MS Exhibit 279, Notice of Merger and Appraisal Rights, marked for identification,

Drapkin

as of this date.)
BY MR. BEMIS:
Q. I've handed you a document that the Court Reporter has marked as Morgan Stanley 279. Do you have that in front of you?
A. Yes.
Q. I direct -- I'd like you to -- withdrawn.
Please look at page 69. I don't know if it's double sided or not, but 279 is the page that I -- 69 excuse me. Are you there?
A. Yes, sir.
Q. My understanding is that you worked for the entity that is shown on this page as MacAndrews & Forbes Holdings, Inc.; is that correct?
A. Yes.
Q. Are you familiar with a company called Mafco Holdings, Inc.?
A. I know the name.
Q. That's all you know is the name?
A. I may be a director of it. We have lots -- as you can see from this, there are lots of holdings companies, and I have trouble keeping

Drapkin

the names straight.
Q. Well, for the record, this document is dated -- and it's on page ii if you want -- December 6, 1999. And you can set that aside for the moment and I may come back to it later.
Now, in addition to your position with MacAndrews and Forbes Holdings, Inc., do you hold any position in a company called MacAndrews & Forbes Group, Inc.?
A. I may be -- I may be a director of MacAndrews & Forbes Group, Inc. My employment is with MacAndrews & Forbes Holdings, Inc. I'm probably a director of all of the intermediates and subsidiaries.
Q. When you say you are an employee of that company, is that the company that issues you a paycheck?
A. I have no idea. We have direct deposit.
Q. Well, even if you have direct deposit, you usually get something from the company at the end of the year for federal tax purposes that tells you who paid you. Do you know what that is?

NOT A CERTIFIED COPY

Drapkin

A. It goes to my accountant. I'll add, we only have one shareholder so.
Q. And the one shareholder you have is Mr. Ronald O. Perelman?
A. That's correct.
Q. And he owns all of the companies, either 100 percent or whatever stock is owned of companies owned by these subsidiary companies, correct?
A. That is correct.
Q. Have you ever held any position in the company that is a Plaintiff in this case, Coleman (Parent) Holdings Inc.?
A. I believe I was a director.
Q. Do you remember when you were a director?
A. I don't remember the exact dates, no.
Q. Another company involved in this litigation is the Coleman Company, Inc. You were a director of that company, correct?
A. That is correct.
Q. And did you also serve on the executive committee of that company?
A. I believe so.

Drapkin

Q. How long were you a director?
A. I believe I was a director from when the date we bought the company until we were no longer involved.
Q. And when you say no "longer involved," would that be the date that you resigned pursuant to the merger agreement that CLN Holdings was a party to with Sunbeam?
A. That is correct.
Q. And did you submit -- you submitted a written resignation? Excuse me.
A. I don't recall.
Q. After you resigned from the Coleman Company, did you ever have any further position with the company?
A. Not that I recall.
Q. Did you ever hold a position with Coleman Worldwide Corporation?
A. I don't recall.
Q. Let me hand you a document we previously marked as Morgan Stanley Deposition Exhibit 130. Please look at page 3 and you'll see your name about four paragraphs down, directly below Mr. Perelman's name.

Drapkin

A. Yes, sir.
Q. Reading this paragraph, this is a document that's previously been identified as being filed by Coleman Company, Inc.. It identifies you as a director of Coleman Worldwide, which is short for Coleman Worldwide Corporation. Does that refresh your recollection if you were a director of that company?
A. Yes, sir.
Q. You can set that aside.
Were you -- withdrawn. Did you hold any positions in a company called CLN Holdings Inc.?
A. I don't recall.
Q. In addition to the companies we've been talking about, and kind of the chain of ownership of the Coleman Company, are you a director in other companies owned or controlled by Mr. Perelman?
A. Yes.
Q. Revlon?
A. Yes.
Q. You are a director of that company?
A. Yes.

Drapkin

Q. How long have you been a director of Revlon?
A. Since we've owned it.
Q. And when would that be?
A. I don't recall.
Q. Do you remember the decade since you've owned it?
A. I believe it was sometime in -- actually, let me amend my answer. I was still a lawyer when we acquired Revlon in 1985 and '6. I didn't join the company until '87. So I probably became director sometime in '87.
Q. And are Revlon -- is Revlon, Inc. a publicly-traded company?
A. Yes.
Q. Are you also a director of a number of its subsidiary companies? And I'll start with Revlon Group, Inc. Are you a subsidiary of that?
A. I believe those are not subsidiary companies.
Q. What are they?
A. I think they are holding companies.
Q. Holding companies. Are you a director of Revlon Group, Inc.?

NOT A CERTIFIED COPY

017697

Page 22

Drapkin

A. I believe so.
Q. There's a company called Revlon Consumer Products Corporation. Are you a director of that company?
A. I believe so.
Q. Is that a holding company as well?
A. I'm not sure.
Q. There's another company Revlon Worldwide Corporation. Are you a director of that company?
A. I believe so.
Q. Is that a holding company?
A. I'm not sure where in the chain what we call RGI Worldwide and Consumer Products are. But there's an organizational chart I'm sure you can get a hold of.
Q. Do you hold --
A. Excuse me one second.
(Discussion off the record.)
BY MR. BEMIS:
Q. Turning back to the companies that are most closely involved with, I think, this case, you've told us about MacAndrews & Forbes Holding, Inc. What is the business of that

Page 23

Drapkin

company?
A. We own a number of companies, and we buy and sell companies.
Q. It's a holding company, isn't it?
A. Yes, sir.
Q. And when you say you buy and sell companies, would this be in the nature of doing merger and acquisition transactions as you described in your legal practice?
A. In some sense.
Q. And has that been the business, as you've just described it for us, of MacAndrews & Forbes Holding since you went to work there in 1987?
A. Yes.
Q. Does it have any business that it operates today?
A. Lots. As I said, our business is owning and running companies, as well as buying and selling.
Q. What business does MacAndrews and Forbes Holding, Inc. actually operate itself as opposed through another entity?
A. None. But I'm not sure I understand

Page 24

Drapkin

the question.
Q. Well, do you understand that -- you understand the difference between an operating company and a holding company?
A. Yes, I think I do.
Q. Okay. The Coleman Company, which you heard me talking about, that's an operating company, correct? It was an operating company when you owned it?
A. Yes.
Q. It made things?
A. Right.
Q. It had factories?
A. Correct.
Q. Does MacAndrews & Forbes Holdings, Inc. as a corporation, does it have factories?
A. No.
Q. Does it make any products?
A. No.
Q. And I think you told me the address there was 35 East 62nd Street; is that right?
A. That's correct.
Q. And you -- does it have any other offices at all other than just that one office?

Page 25

Drapkin

A. Yes.
Q. Where is its other office -- offices if there's more than one?
A. We have spaces in various different locations in New York: 63rd Street -- I'm not exactly sure, but we do have some space at other places in New York. But the main offices are at 35 East 62nd.
Q. Coleman (Parent) Holdings Inc., which is one of the parties to this case, I think you said you were a director of that company?
A. I believe so.
Q. Where are its offices?
A. Where are they today?
Q. Yes. Where are they today?
A. I have no idea.
Q. Are you still a director of the company today?
A. I have no idea.
Q. What was the -- what did you -- was the -- withdrawn.
What was the business of Coleman (Parent) Holdings company the last time you knew?
A. To take action with respect to the

NOT A CERTIFIED COPY

Drapkin

interests of the Coleman Corporation, the operating company.

Q. Did it have any business in and of itself or was it just a holding company?

A. I believe it was just a holding company.

Q. And was Coleman (Parent) Holdings then owned 100 percent by MacAndrews & Forbes Holdings, the company that you worked for?

A. I don't know.

Q. Did it have any --

A. Are you asking about today or then or ever? The answer is going to be the same --

Q. Fair question. Let's say January 1st of 1988.

A. Directly or indirectly it would have been owned by MacAndrews & Forbes. Excuse me --

Q. I'm sorry, I didn't mean to interrupt you.

MR. MARMER: Could I have the year in that question.

Q. January 1, 19 -- I said '88 and I misspoke. Let me try again.

As of January 1, 1998, did Coleman

Drapkin

(Parent) Holdings have any operating businesses?

A. Not to my knowledge.

Q. And was its business essentially a holding company directly or indirectly of a common stock of the Coleman Company, Incorporated?

A. I believe so.

Q. Did it ever have an office in Florida to your knowledge? Again, lets focus on 1998.

A. I don't recall.

Q. Did it have any employees other than directors?

A. I don't know.

Q. Did it maintain -- did CPH, Coleman (Parent) Holdings, maintain an office in New York City at the 35 East 62nd Street address?

A. I don't know.

Q. There's another company, CLN Holdings Inc., that we've been talking about. Going back now to say January 1st of 1998, did it have any operating businesses that you know of?

A. I don't recall.

Q. Do you know what its business was at all?

Drapkin

A. I don't recall.

Q. Did it have any material assets?

A. I don't recall.

Q. Did it have any offices in Florida?

A. I don't recall.

Q. Did it have an office in New York?

A. I don't recall.

Q. Did it have any employees?

A. I don't recall.

Q. Any officers?

A. I don't recall.

Q. Did it have any directors?

A. I assume it had directors, and I assume that I was one of those directors.

Q. You told me you were a director of Coleman Worldwide Corporation, and I think we confirmed that in one of the filings, correct?

A. That's correct.

Q. And again focusing, we'll take the time period January 1, 1998. Was Coleman Worldwide Corporation owned by CLN Holdings Inc.?

A. I don't know where in the chain CLN Holdings was, whether it was a subsidiary, a holding company. I just don't recall.

Drapkin

Q. Is this something that you would need an organization chart to answer these questions?

A. Yes, sir.

Q. As of, say, January 1, 1998, did Coleman Worldwide Corporation, of which you were a director, have a business?

A. I assume it did.

Q. Do you know what it was, sir, as the director?

A. I assume its business was owning shares of Coleman Inc.

Q. Have you heard of an instrument which is abbreviated LYONs or liquid yield option notes?

A. Yes.

Q. Are those sometimes called LYONs, although spelled differently?

A. Yes, sir.

Q. What are those in the case of -- that you are familiar with?

A. It's a -- it was a popular device back in the '90s to issue a form of quasi debt security that could be converted into equity or the holder could demand back cash payment at

NOT A CERTIFIED COPY

01/0559

Drapkin

somewhat reduced interest rate because he had the option to get stock if he wanted.

Q. Were they also sold at a discount from face value like zero -- like the zero coupon debentures?

A. I think that would depend on the LYONs.

Q. On the LYONs, right?

MR. BEMIS: And again, Ms. Reporter, that's L-Y-O-N-S, not L-I-O-N.

BY MR. BEMIS:

Q. Did Coleman Worldwide Corporation ever issue LYONs?

A. I believe we did do a LYON issue. I don't recall the details.

Q. I'm going to show you what's already been marked as Morgan Stanley 241. And you are not going to need to read the whole thing. I just want you to look at the second paragraph of the first page of MS 241. Tell me when you're looking at that and I'll direct you to the sentence I want to you look at. Are you with me?

A. I'm looking at the first page.

Q. First page, second paragraph.

Drapkin

A. Okay.

Q. If you read halfway down that paragraph, it refers to notes due 2013, LYONs of Coleman Worldwide Corporation, a wholly-owned subsidiary of Coleman Holdings. Do you see that?

A. Uh-huh.

Q. You have to answer yes or no.

A. Yes, sir.

Q. Thank you. Does that refresh your recollection whether Coleman Worldwide Corporation issued LYONs which were due 2013?

A. Yes, sir.

Q. And the amount of the LYONs that were issued according to this Coleman escrow offering memorandum, if I read it correctly, is $561,553; is that correct?

A. I have no idea.

Q. You have no idea of?

A. That's your math. I see lots of different numbers here. I'd have to sit down and read it carefully to see what the exact number was.

Q. But you do recall that Coleman Worldwide did issue the LYONs securities, right?

Drapkin

A. Yes, sir.

Q. You can set that aside.

At any time that you were a director of the Coleman Worldwide Corporation, did it ever have any operating businesses at all?

A. Not to my knowledge.

Q. Was it to your knowledge an operating -- excuse me, a holding company at all times?

A. To my knowledge.

Q. Did it hold any material assets other than stocks or securities of some kind?

A. Not to my knowledge.

Q. Do you know what its principal address was at any time?

A. No, sir.

Q. Did it have an office at 35 East 62nd Street?

A. I don't recall.

Q. Do you know any of the directors other than yourself?

A. I would be guessing.

Q. I won't hold you to it, but what's your best, if you want to call it guess or assumption, as to who the other directors would

Drapkin

have been.

MR. MARMER: Objection to the form.

A. I don't want to guess. I just don't recall.

BY MR. BEMIS:

Q. Did it have any officers?

A. Same answer.

Q. That you don't know?

A. I don't recall.

Q. Did it have any employees of any kind?

A. I don't recall.

Q. You have to keep your voice up --

A. I'm sorry. I don't recall.

Q. You told me earlier when I asked you what the business was of MacAndrews & Forbes Holdings, Inc., you buy and sell businesses, right?

A. And operate them.

Q. And operate businesses you said. And you operate these businesses through other companies that you own?

A. Using your definition, yes, that's correct.

NOT A CERTIFIED COPY

Page 34

Drapkin

Q. Since 19 -- since 1987, how many businesses have -- has MacAndrews & Forbes Holdings, your employer, bought and sold?
A. I don't know.
Q. You have no idea at all?
A. I'd have to sit down and go through all my recollections to see what we owned, what we didn't own, what we sold. What we kept.
Q. I understand that --
A. You're asking me right here, do I know how many businesses that we owned or operated or sold. I don't know.
Q. Is it more than one?
A. Yes, sir.
Q. Is it more than 10?
A. Maybe.
Q. Seriously, are you telling me that you don't know whether it's more than 10 businesses that you've bought and sold since 1987?
A. I don't know the exact number.
Q. I'm not going to hold you to an exact number. It's your best approximation under oath in front of the jury what it is.

Page 35

Drapkin

A. Since I'm under oath and in front of the jury, I don't want to mislead anybody. I don't remember the exact number. If you want me to go back and check, I can go back and check. And we can figure out exactly the right number.
Q. Tell me what's your best --
A. I don't remember the dates we owned and sold Technicolor, is it before or after 1987. We had lots of smaller companies, bigger companies. I just don't remember.
Q. I appreciate you don't remember an exact number. And qualify the number in any way that you want. Give the jury your best estimate since 1987 of how many companies MacAndrews & Forbes Holdings, Inc. has bought and sold.
MR. MARMER: Objection; asked and answered.
Subject to my objection, the witness may answer again.
A. I don't have a good number. It's more than one and less than 50.
BY MR. BEMIS:
Q. Have some of these been public companies?

Page 36

Drapkin

A. Yes, sir.
Q. And some of them private companies?
A. Yes, sir.
Q. And is this true on both the buy and the sell side, that is you've bought public companies?
A. Yes, sir.
Q. And you've sold public companies?
A. Yes, sir.
Q. And MacAndrews & Forbes has bought private companies?
A. Yes, sir.
Q. And MacAndrews & Forbes, while you were there, has sold private companies?
A. Yes, sir.
Q. While you were at MacAndrews & Forbes, has that company or any of its subsidiaries issued debt securities, that is instruments that would qualify as securities under the 1933 Act?
A. Yes, sir.
Q. How many times?
A. I don't know.
Q. One of them you recalled was the

Page 37

Drapkin

LYONs, right?
A. Yes, sir.
Q. Do you recall any others?
A. Yes, sir.
Q. What others?
A. I mean, we do debt financing all the time. So almost every company we have either has a bank loan, which is a debt security as defined by the 1933 Act, or public debt or 144 debt. I mean, virtually every company in America has some form of debt, and our companies would be no -- excuse me. Would be no exception to those rules.
Q. When you say "144 debt," you're referring to Rule 144, correct?
A. Yes, I am.
Q. Since 1987, in an aggregate amount, how much debt financing has MacAndrews & Forbes Holdings, Inc. done?
A. I don't know.
Q. Is it in the hundreds of millions of dollars?
A. I don't know.
Q. Is it in the billions of dollars?
A. You're asking me to guess how much

NOT A CERTIFIED COPY

Drapkin

debt we've issued since 1987--
Q. I'm not asking you to guess.
A. But it would be a guess, so I can't answer the question.
Q. You have no idea at all as a director of the company? And you're the second ranking officer in the company, aren't you?
MR. MARMER: Objection.
Q. Let me rephrase the question.
MR. MARMER: Are you abandoning the question?
MR. BEMIS: I said I would rephrase it, so I guess that means I'm abandoning it.
BY MR. BEMIS:
Q. You are the second ranking officer in MacAndrews & Forbes, are you not?
A. We don't rank our officers.
Q. Who do you report to?
A. Mr. Perelman.
Q. Is he the top?
A. That's correct.
Q. Is it your testimony, as a man who reports to Mr. Perelman, that you do not know even an estimate of the amount of fine debt

Drapkin

financing that MacAndrews & Forbes Holdings, Inc. or its subsidiaries have done since 1987?
MR. MARMER: Object to the form.
A. It is my testimony that every single one of our companies has done some form of debt financing. And you're asking me to total that amount for a sixteen year period for up to 50 companies and to guess that number. I am not in the business of speculating on that number.
Q. When you do debt financings for all of these companies, as you have described them to us, do you -- have you used underwriters?
A. In some cases.
Q. Who are some of the underwriters that you've used?
A. Almost every major name on Wall Street.
Q. So, for example, you have used Credit Suisse First Boston?
A. Yes, sir.
Q. Have you used Morgan Stanley?
A. I do not know whether we have ever used Morgan Stanley for a debt financing. I actually think not.

Drapkin

Q. Salomon?
A. Salomon Brothers was an independent entity for many years, and then merged three or four times. Somewhere in that change, we've used an entity that either owned or was Salomon Brothers. But today it's part of Citigroup. And if you question is did we ever used Citigroup, the answer is yes.
Q. Well, I don't remember the date of the merger so.
A. I did the merger, so I actually remember it.
Q. When was it?
A. '82.
Q. Let me turn to the -- ask you a couple of questions about -- well, withdrawn.
MR. BEMIS: Could you mark this as 288 please, Miss Reporter.
(MS Exhibit 288, Cigar Afficionado article on Ron Perelman, marked for identification, as of this date.)
BY MR. BEMIS:
Q. Do you have Exhibit MS 288 in front of you?

Drapkin

A. Yes, sir.
Q. If you turn to Page 18 of 19, there's a second paragraph. And I'd like to direct your attention there, please. You'll see it begins "Perelman."
Are you there?
A. Yes, sir.
Q. You can read the whole paragraph if you like, but I'd like you to direct your attention to the remarks attributed to Mr. Perelman in this article. It states "and then Donald Drapkin, who's been our partner -- I mispronounced your name. I'm sorry. "Who had been our partner at Skadden, Arps, likewise reached a point where he was thinking about a change of career. And I made the same speech to him that I made to Gittis, and he joined us at that time. He's basically our in-house strategic thinker. He's our in-house investment banker.".
Do you see that?
A. Yes.
Q. Is than an accurate statement of your position at MacAndrews & Forbes Holdings, Inc.?
A. Yes.

NOT A CERTIFIED COPY

Drapkin

Q. You can set that aside.
Have you ever been referred to as Mr. Perelman's alter ego?
A. I don't know.
Q. Let me show you a document previously marked as MS 240 (handing).
MR. BEMIS: It's been previously marked, Miss Reporter.
BY MR. BEMIS:
Q. Do you have MS 240 in front of you?
A. Yes, sir.
Q. Have you seen this article before entitled "The Richest Guy in Town"?
A. I don't recall.
Q. Well, did you give a -- did you give an interview at some point to Mr. Craig, C-R-A-I-G, Horowitz?
A. The copy of this article you're giving me does not tell me the date, the publication it's in or where it might have come from.
Q. It does on the second page, sir, if you look at the footer on the second page. I'm sorry, I should have given you that page. That's

Drapkin

November -- September 6, 1993.
A. And this is supposed to be -- it says "New York." Does that mean New York Magazine?
Q. That I can't tell you off the top of my head, sir.
A. Well, I reiterate, do I remember whether I gave an interview to some magazine eleven years ago about Ronald? I don't recall.
Q. Well, turn to page -- to page 50 of the article.
A. Page 50. Okay.
Q. Page 50. And below the heading which reads "We will spend one billion dollars to put together a real Entertainment," and it continues over onto the next page.
A. Uh-huh.
Q. And the paragraph that begins "but Perelman," directly below there. Would you look at that, please --
A. Yes. Yes, sir.
Q. And tell me when you are done reading the paragraph.
Did you make those statements that are attributable to you, sir: "Just because he's

Drapkin

done ten deals or 20 deals or 30 deals that have been spectacular," says Donald Drapkin, Perelman's alter ego and MacAndrews & Forbes, "doesn't mean he should slow down or stop. If it was only about having enough money to live, he would have stopped a long time ago. But this is what we do. We do deals, big deals, little deals, deals."
Did you say that, sir?
A. I have no reason to doubt it, but I don't recall.
Q. Is it an accurate statement about what you do at MacAndrews & Forbes Holdings, Inc.?
MR. MARMER: Object to the form.
Q. As of this time in 1993 when this article was attributed to you?
MR. MARMER: Same objection.
A. It was certainly part of what we did.
Q. You can set that aside.
Now you attended the -- withdrawn. I would like to now move forward to 1998, and to the February board meetings of the Coleman Company Inc. at which time the merger transaction

Drapkin

that's the subject matter of this litigation was considered by the Coleman Company, Inc. board of directors. Are you with me timewise now?
A. Uh-huh.
Q. You have to answer yes or no?
A. Okay.
Q. Now, there were at least two meetings of the board of directors in February of '98 of Coleman Company Inc. Do you recall that?
A. Yes.
Q. Perhaps to put this in context and move it a little quicker, the dates that we've identified are February 25th and February 27, 1998. Does that square with your recollection?
A. Yes, sir.
Q. Now, you attended both of those meetings, did you not?
A. Yes, sir.
Q. Did you attend in your capacity as a director?
A. Yes, sir.
Q. And you were also at that time employed by MacAndrews & Forbes Holdings Inc., correct?

NOT A CERTIFIED COPY

01/03

Page 46

Drapkin
A. Yes, sir.
Q. And you reported at that time directly to Mr. Ronald O. Perelman, correct?
A. Yes, sir.
Q. At this same time of these board meetings of the Coleman Company Inc. you were also a director of Coleman Worldwide Corporation, right?
A. You've shown me documents that indicate that. I don't have a recollection.
Q. Now, the board of directors meeting, and I'm going to show you the minutes that we've previously marked Morgan Stanley Exhibit 88, and feel free to refer to those if they help you at any point in the questioning.
And I hand you now what's been marked as Morgan Stanley 88, which was previously marked.
MR. BEMIS: And here's an extra copy for you today, Ron.
BY MR. BEMIS:
Q. Do you have Morgan Stanley 88 in front of you, sir?
A. Yes, sir.

Page 47

Drapkin
Q. If you need it, if you'd like to stop and read the minutes, I'm more than happy to let you do that. But most of my questions are not going to be very detailed on the minutes at this point. So, if you need to stop, just tell me and I'll be more than happy to let you review the document. Is that all right?
A. Certainly.
Q. You have the minutes for the February 25th meeting, which is shown as beginning at 4 p.m. eastern time. Was this to your knowledge the first time that the Coleman company's board of directors was advised of a proposed transaction whereby the Coleman company would be merged with Sunbeam corporation?
A. I don't recall.
Q. You don't recall whether it was the first time?
A. (Indicating.)
Q. You have to answer yes or no.
A. I do not recall whether it was the first time.
Q. When do you recall the first time the board of directors of the Coleman Company was

Page 48

Drapkin
advised of a transaction with Sunbeam Corporation?
A. Do you mean the entire board sitting en masse?
Q. Yes, the board of directors.
A. Then I would have to say that was probably this meeting.
Q. Did you know about it before this meeting?
A. Yes.
Q. When did you first learn of a potential transaction whereby the Coleman company would be merged with Sunbeam?
A. It has been discussed on and off for a number of months. I can't give you the exact dates.
Q. Did you learn in your capacity as an officer and director of MacAndrews and Forbes Holdings, Inc.?
A. I learned because we discuss everything that goes on in our company. So if you want to characterize that as my capacity as an officer of MacAndrews, I suppose the answer is yes.

Page 49

Drapkin
Q. When you say "we discuss," who are the "we" that you're talking about?
A. Mr. Perelman, Mr. Gittis, at the time Mr. Slovin. Maybe Mr. Levin.
Q. Anyone else?
A. Mr. Maher might have been there. In that period of time, I'm quite sure Jimmy would have been around.
Q. Did this group that you've identified, Mr. Perelman, Mr. Geddes [sic], Bruce Slovin?
A. Gittis.
Q. Gittis. I'm sorry. Mr. Levin, Mr. Maher. Did this group usually meet in Mr. Perelman's townhouse for breakfast?
A. Every morning.
Q. And you would meet about 7:30 every morning for breakfast and go over what was going on in the companies wouldn't you?
A. No.
Q. How often did you meet?
A. Every morning.
Q. Did I have the time wrong?
A. Yes.

NOT A CERTIFIED COPY

011704

Page 50

Drapkin
Q. What was the time?
A. 8:30.
Q. Sorry.
How long would these meetings usually last for breakfast?
A. It varied from day to day.
Q. This was a set schedule though, was it not?
A. There was breakfast available every morning five days a week for the last 25 years or whatever number of years it is. I guess it's 17 years for me.
Q. Was it at one of these breakfast meetings at Mr. Perelman's townhouse -- in New York, correct?
A. Yes, sir.
Q. At his townhouse in New York that you first learned of the potential transaction involving Sunbeam Corporation and the Coleman Company, Inc.?
A. I have no idea.
Q. If I asked you this, I'm apologizing for asking you again, but do you remember how you first learned as opposed to when you first

Page 51

Drapkin
learned?
A. No.
Q. Do you know, did you learn about it in a conversation with someone or by reviewing a document for example?
A. I have no idea.
Q. Do you know of any other Coleman Company board of directors who were aware of the potential transaction between Sunbeam Corporation and the Coleman Company before February 25th?
MR. MARMER: Object to the form.
A. Well, certainly Mr. Levin and Mr. Slovin. Who else they might have talked to prior to that, I think that you have copies of chronologies done for other matters, and who knew when, where. And I would not want to challenge those. I don't have any contemporaneous knowledge.
Q. When you referred to "chronologies," did you review some chronologies in preparation for your deposition?
A. I saw one. I didn't review it.
Q. Was this prepared by Wachtell, Lipton?

Page 52

Drapkin
A. I believe so.
MR. BEMIS: Let me have MS 75, and we'll just make sure we have the right document.
A. Can I ask my counsel?
BY MR. BEMIS:
Q. Let me get a question pending. Let me show you what's been marked as MS 75. And I don't have any questions on it right now, but I just want to find out if that's what you're referring to.
A. Well, I don't recognize this.
Q. So you don't recall reviewing that in your deposition preparation?
A. No, sir.
Q. Or seeing it either?
A. No, sir.
Q. You can hand that back to me.
A. But I would ask -- I wanted to ask my counsel a question, because it might have been in a different form.
Q. Well, that's probably -- not to be rude, and I'm not trying to be rude to you, it's probably best if we just do question and answer.

Page 53

Drapkin
If he wants to ask you a question later, I'd rather do it that way.
A. I'm just trying to be accurate.
Q. I appreciate that. And, again, I'm not trying to be rude. As you might know, there's forms we have to go through.
At the February 25th meeting of the board of directors of the Coleman Company, Inc., were there any presentations at that meeting by investment bankers?
A. I recall that Credit Suisse First Boston had a book, a handout which would have been typical.
Q. Typical of what?
A. Any deal.
Q. That the investment bankers would prepare some type of handout for the board?
A. Yes, sir.
Q. Did -- was anything handed out at the board of directors meeting on February 25th that had been prepared by Morgan Stanley?
A. Not that I recall.
Q. Was there any representative of Morgan Stanley at the meeting?

UNCERTIFIED COPY

Drapkin

A. Not that I recall.
Q. Was the February 25th board meeting the first time that the independent members of the board of directors were told of a potential transaction between Sunbeam and the Coleman Company?
A. The same answer that I gave you before.
Q. You don't know?
A. That there was a chronology floating around that was -- prepared more contemporaneously, that would have more accurate information than my recollection.
Q. And, again, you did see this chronology during your deposition preparation?
A. Again, I saw a chronology. The one that you handed me did not look familiar to me.
MR. BEMIS: Miss Reporter, would you mark this as 173, please.
(MS Exhibit 173,"Project Laser" chronology, marked for identification, as of this date.)
BY MR. BEMIS:
Q. Do you have exhibit MS 173 in front

Drapkin

of you?
A. Yes, sir.
Q. Is this the chronology that you looked at?
A. No.
Q. Okay. You can hand that back to me.
Do you recall what this chronology looked like at all; how many pages for example? Did it have a heading on it or anything at all?
A. I don't recall a heading. It had smaller type. And it was in a different -- it didn't have a letter. Maybe it's the same one as you showed me, but without the letter.
Q. Without the letter.
Let me go forward now to the second board meeting at which we, I think, placed it February 27, 1998. Do you recall that meeting?
A. Yes, sir.
Q. And you did attend that as a director, correct?
A. Yes, sir.
Q. And you -- that was the meeting that the board of directors voted -- withdrawn. On February 27th, the Coleman board did vote in

Drapkin

favor of the merger, correct?
A. Yes, sir.
Q. Was there any -- was there a presentation by an investment banking firm at that meeting?
A. I believe Credit Suisse First Boston was at that meeting.
Q. And did Credit Suisse First Boston make a presentation to the board members?
A. I believe so.
Q. Did anyone from Morgan Stanley attend the meeting?
A. No, sir.
Q. Were there any documents handed out to the directors from Morgan Stanley?
A. No, sir.
Q. Did the board of directors vote unanimously for the transaction?
A. Yes, sir.
Q. Were any of the board members to your knowledge told how to vote?
A. I don't understand the question.
Q. Just that. Did they exercise -- let me try it this way. Did they exercise their own

Drapkin

independent business judgment or were they given instructions how to vote?
A. I am not aware of any director that was instructed to vote any particular way.
Q. Were you told how to vote?
A. Course not.
Q. Like Frank Gifford, did you tell him how to vote?
A. Course not.
Q. How about Ann Jordan, she was there, right?
A. Yes. Either there or by phone. I don't recall.
Q. Did you tell her how to vote?
A. Of course not.
Q. Did Mr. Perelman tell anybody how to vote?
A. Of course not.
Q. So all of the directors, relying on the information that they had, voted using their own independent business judgment whether this was in the best interests of the shareholders of the Coleman Company, correct?
A. Absolutely.

NOT A CERTIFIED COPY

Drapkin

Q. At least as to those directors who were first hearing about the merger at the meeting, the information that they were provided, was provided by -- withdrawn.

The information that was provided at both meetings, February 25th and February 27th, that consisted of information by Credit Suisse First Boston, correct?

A. There was a presentation by Credit Suisse.

Q. I think you said there was also a handout of some kind, correct?

A. Yes, I believe so.

Q. And did you -- strike that. Did the board of directors receive a presentation from its legal advisers?

A. I'm quite sure we did, but I don't recall it.

Q. Do you recall that the Coleman Company did have a legal advisor in the transaction?

A. Of course. I just don't remember. I don't remember if it was Wachtell. I assume it was Wachtell.

Drapkin

THE WITNESS: Is that correct?

MR. MARMER: He does not want me to provide the answer --

BY MR. BEMIS:

Q. When you say "Wachtell," you mean the law firm Wachtell, Lipton?

A. Yes.

Q. Were there presentations -- withdrawn.

At the February 25th meeting -- and you can look at the minutes if you like -- was there a presentation by an attorney representing the Coleman Company?

A. Yes.

Q. And who was that?

A. Well, assuming these minutes that you have accurately -- given me are the accurate minutes, then that would be Adam Emmerich of Wachtell, Lipton.

Q. Were there any presentations by any attorneys representing Sunbeam?

A. I would think not.

Q. Any presentations by attorneys representing Morgan Stanley?

Drapkin

A. I would hope not.

Q. Was -- other than the written materials that you recalled Credit Suisse First Boston preparing, do you recall any other written materials being handed out at the February 25th board meeting?

A. I don't recall.

Q. Now let's move forward to the 27th board meeting. Do you recall any legal presentations at that meeting?

A. I'm sure -- I don't have the minutes in front of me.

Q. Let me give you those. I should have given them to you, I apologize. I have them, too.

I hand you what has been marked as Morgan Stanley 118.

And do you have MS 118 in front of you?

A. Uh-huh.

Q. That's a yes, right?

A. Yes, sir.

Q. Okay. These previously have been identified as the minutes of the board of

Drapkin

directors of the Coleman Company, Inc. on February 27, 1998. Have you seen these minutes before?

A. I might have looked at them.

Q. In your deposition preparation?

A. I might have. I don't recall.

Q. How long by the way did you spend preparing for your deposition?

A. I don't know, two hours, two-and-a-half hours. Something like that.

Q. Did you do that yesterday?

A. Yes, sir.

Q. Now in -- at the meeting, now turning to February 27th, I think the question that was pending when I showed you the minutes, was there a presentation by attorneys, so --

A. The answer is yes.

Q. Was that the attorneys from Wachtell, Lipton again?

A. Yes.

Q. And they were the -- still the attorneys for the Coleman Company, correct?

A. They were the shareholder -- they were counsel to both MacAndrews and Coleman.

NOT A CERTIFIED COPY

Drapkin

Q. And there was -- was there a further presentation by Credit Suisse First Boston?
A. Yes, sir.
Q. Were there any written materials handed out at the meeting to the directors?
A. Yes, sir.
Q. And what materials were handed out to the directors?
A. The First Boston presentation, and I imagine that we all would have received copies of the proposed resolutions.
Q. When you say "the proposed resolutions," there are resolutions attached to the minutes, do you see those?
A. Correct.
Q. Is it your understanding -- withdrawn.
Is it your recollection that the resolutions in draft form were handed out to the directors at the meeting?
A. That would have been standard operating procedure.
Q. In advance of the board of directors meeting, was there a package of materials

Drapkin

prepared for the directors for them to review when they came to the meeting?
A. I don't recall.
Q. Is that standard procedure in your experience?
A. It is very often the case that we would receive a copy of an agenda and/or proposed resolutions. On the other hand, this was 48 hours after the last board meeting and there might not have been time for that.
Q. Was there a package of materials prepared for the directors for the February 25, 1998 Coleman company board of directors meeting?
A. I don't recall.
Q. Was the merger agreement that was eventually executed by the Coleman Company, Inc. as one of the parties, was that present at the meeting?
A. I would imagine that somebody had it.
Q. Well, did the directors have it so they could review it?
A. The actual full copy of the merger agreement?
Q. Yes, sir.

Drapkin

A. I don't recall.
Q. Did you read the merger agreement before you voted to approve it?
A. I'm sure I read a synopsis of the merger agreement or scanned the merger agreement myself since I spent many years writing them.
Q. Was there a synopsis of the merger agreement prepared for the directors at either meeting?
A. I don't recall. There's a summary of the proposed transaction.
Q. In writing?
A. It's attached to the minutes you handed me.
Q. What's attached to the minutes?
A. Yes.
Q. Anything beyond that?
A. Not that I recall.
Q. At the February 27th meeting, and still focusing on that, Credit Suisse First Boston made a presentation for the second time to the board, right?
A. Correct.
Q. Were there written materials handed

Drapkin

out by Credit Suisse First Boston at the meeting?
A. I assume there was another package, yes.
Q. Well, when you say you assume there was, do you have a specific recollection as you sit here today that there was a package?
A. I reviewed a document yesterday that looked like the deck of cards that First Boston did.
Q. When you say the "deck of cards," you mean by like an eight-and-a-half by eleven piece of paper, like a Power Point presentation?
A. Exactly.
Q. A/k/a a deck now in our business?
A. Yes.
Q. Let me show you what's previously been marked as MS 197, which has a cover page "Credit Suisse First Boston."
A. Uh-huh.
Q. Is this the deck you're referring to?
A. I don't understand the question.
Q. Maybe I misunderstood you. I thought you said there was at one of the meetings, and I think you were placing it at the 27th, a deck --

NOT A CERTIFIED COPY

Page 66

Drapkin

a deck of cards I think you referred to it, that Credit Suisse First Boston prepared. Is this it?

MR. MARMER: Object to the form.

A. I don't know which meeting -- this says February 25. I don't recall if this was given out at the 25th, the 27th. It is one of the presentations -- it looks like one of the presentations that First Boston would have handed out.

Q. Is this document, MS 197, one of the documents that you reviewed yesterday in preparing for your deposition?

A. Actually, it doesn't look like the one that I looked at. If you notice also, this says February 25th at 7:41 p.m.

That would have been way after the board meeting. So maybe this was the one for the 27th. I don't know.

Q. That is -- that is an inference one can draw from it, but I'm asking you. I'm not trying to tell you the answers --

A. I don't recall which one is which. I don't see the deal page that shows the ratios.

Q. Let me show you what's been marked in

Page 67

Drapkin

a previous deposition as MS 112. Please take a look at that.

A. Yeah, this looks more like what I looked at yesterday.

Q. Now you're referring to MS 112 as one of the documents you believe was discussed at one of the two board of directors meetings?

A. Yeah.

Q. Was this document, MS 112, used at the February 25th or the February 27th meeting or both?

A. I would think it would be the 27th.

Q. And why do you say that?

A. Because I think this has got the right exchange ratio.

Q. And when you're referring to the exchange ratio, are you referring to the figures which appear on page -- that's Page 2 of the document, but it's numbered page 1 in the upper-right-hand corner?

A. Correct. But I could be confused.

Q. Now as I understand the -- what the board was being told by Credit Suisse First Boston that in the -- in the transaction,

Page 68

Drapkin

MacAndrews & Forbes Holdings, Inc. or it's subsidiary companies, however the Coleman stock was held at any moment in time as of the date of these meetings, that they would exchange approximately 44.1 million dollars of -- excuse me, not dollars but shares of Coleman stock, for approximately 14.1 million shares of Sunbeam common stock as part of the transaction; is that correct?

MR. MARMER: Object to the form.

A. I'll take your word for it.

Q. Look at the summary of the transaction on page 1.

A. That's what it says.

Q. And in addition, MacAndrews and Forbes Holdings, Inc. or its subsidiary companies as the case may be, would receive approximately $160 million in cash, correct?

A. That's what the document says.

Q. Well, you were at the meeting. I'm asking you now as a member of the board of directors.

A. I don't remember the exact numbers, but it roughly sounds correct.

Page 69

Drapkin

Q. And another part of the consideration flowing to MacAndrews and Forbes Holdings, Inc. and its subsidiary companies, as the case may be, was an assumption of debt by Sunbeam Corporation, correct?

A. I believe so.

Q. And according to the, again, page 1 of Morgan Stanley 112, there were -- there were two sets of notes that were being assumed, a first and second priority notes; is that correct?

A. That's what it says.

Q. Well, you voted on the transaction, so now I'm asking you as a director of the company who voted on this for the shareholders. Is that correct?

MR. MARMER: Object to the form.

A. It is correct that they're assuming some notes. Whether the 496 and 525 are the exact numbers, taking the document at face value, I don't recall eight years later what the exact numbers were.

Q. Okay. Well, taking it at face value, assuming that these figures are correct from Credit Suisse First Boston, and there was an

NOT A CERTIFIED COPY

01/10/09

Drapkin

assumption of debt of -- if my math is correct, $1,021,000,000; is that correct?

MR. MARMER: Object to the form.

A. That's what it says.

BY MR. BEMIS:

Q. Well, did you as a director, did you vote for that?

MR. MARMER: Object to the form.

BY MR. BEMIS:

Q. On behalf of the Coleman Company --

A. Again, I voted in favor of the assumption of the first and second priority notes. I can't remember the exact numbers. If your math is right, it's right.

Q. So in total, the consideration -- the consideration that flowed to MacAndrews, and that is on page 1 of MS 112 --

A. I'm a little confused because if you look at page 2, the accreted value of the zero coupons are at 521 -- 525, rather, which is the same number as on page 1. But the 496 number does not appear in the total consideration. So I don't know where the 496 comes from.

Q. Well, I'll get back to that in a

Drapkin

second with you.

A. Maybe it's the 40, less the cash. I mean, I just it's eight years ago. I don't remember the exact numbers.

Q. Well, do you remember that there was an excess of one billion dollars of assumed debt that was part of the consideration flowing to MacAndrews as stated on Page 2 -- excuse me, page 1 of MS 112? And I'm looking at the chart --

A. I'm a little confused --

MR. MARMER: Just one moment. I object to the form of the question.

A. I'm a little confused because of page 2.

BY MR. BEMIS:

Q. What is your confusion?

A. What the total amount of assumed debt was and where it was. I know what the 525 was. I'm a little confused about the 496.

Q. What was the 525?

A. I assume those were the LYONs.

Q. And the first and second notes, weren't those first and second notes -- and I could be wrong on this, but weren't those second

Drapkin

notes of CLN Holdings Inc.?

A. I just don't remember.

Q. Let me show you what's been marked as --

MR. MARMER: Mr. Bemis, at some point be thinking about where is a good breaking point.

MR. BEMIS: Oh, that's fair. Let me just finish this.

BY MR. BEMIS:

Q. If you take out 279. It's probably the very thickest one at the bottom of the pile, please. That for the record is the Coleman Company, Inc. Notice of Merger and Appraisal Rights and Information Statement, which if you look on Page 2 is dated December 6, 1999. Is that what you have in front of you?

A. Yes.

Q. Now, if you'll turn to page 11 of the document, which is in the summary section. Look under the M&F transaction, and the second paragraph, if you will. And read that to yourself and tell me when you're done.

A. Right. Exactly.

Drapkin

Q. And those are indeed the figures rounded, if you will, that appear in the MS 112, which is the presentation by Credit Suisse First Boston?

A. I don't believe that's correct.

Q. Where am I incorrect?

A. The $525 million was MacAndrews & Forbes' consideration, the assumption of the parent debt.

Q. Right?

A. I believe the 496 was Coleman, Inc. debt, the operating company. And that was owed by the operating company, which is owned a hundred percent by MacAndrews & Forbes and the rest of the public shareholders, not MacAndrews and Forbes. That's why I was confused when you keep asking me the question. I don't believe the parent holding company had more than 525 million debt. You previously offered me a document -- and I don't mean to be conducting your deposition -- MS 241, which is the LYONs. And the total there was 600 face value, which I assume when this document is referring to the $525 million worth of accreted value, it is referring to this

NOT A CERTIFIED COPY

Page 74

Drapkin
Coleman escrow LYONs issue. I believe that the balance of the 496 is Coleman Inc. debt, but that's what I'm guessing from the documents that you've handed me.
Q. I think that you may be correct in that. So let's go back and see if we can get it fixed, and then we'll take a break. In terms of the consideration that is listed under the MacAndrews consideration and the Credit Suisse First Boston, there is the consideration in the form of the Sunbeam shares, correct?
A. Correct.
Q. And that's about 14.1 million shares rounded up, correct?
A. Plus the cash.
Q. And then there's the cash to MacAndrews of $160 million, correct?
A. That's what it says here.
Q. And then Sunbeam assumes debt of the $525 million, which you believe is the LYONs debt that we discussed earlier, correct?
A. Uh-huh.
Q. You have to answer yes or no.
A. Yes, sir.

Page 75

Drapkin
Q. And then there is debt of the Coleman Company, $497 million?
A. No, no. I think what this is saying, that the first and second priority notes on November 15, 1997 had an accreted value of 496, which was growing to 525 on May 15, 1998. That I believe is the correct reading of that --
Q. Now I understand.
A. And you do not add 496 and 525. It might have been nice for us to get an extra half a billion dollars, and we wouldn't have to have this lawsuit because we would have known all the facts, but in this case, I don't believe those are additive. Sorry. And that's why I was confused. I was just trying to be accurate.
Q. Well, then can you explain, I mean, I'm confused then. It does state in the Coleman's Company's statement it filed with the SEC that Sunbeam did assume one billion sixteen million in debt of Coleman and its parent corporations?
A. That's correct.
Q. Including 497 million debt of Coleman?

Page 76

Drapkin
A. Once again, turn to page 2.
Q. Okay?
A. "Total Consideration to be Paid to Coleman Shareholders." There are the shares to be issued, okay?
Q. Uh-huh.
A. There's the cash to be issued. There are the zero coupon debt, which we now -- now shown to be the accreted value on March 15th, which was I guess the estimated closing date at that time of 525 million; whatever they had to pay out the option holders. So for the common equity they were paying 1,583,000,000, which would included $525 million for the assumption of debt. Then there's net debt underneath that.
Q. Right.
A. Which is here Coleman's management estimate of the year-end debt of 1997, less 90 million they expected from the sale of one of the units. Well, if you add the 440 and the 525, you get very close to the number that you just gave me for the debt assumed by Sunbeam when they did the transaction. But far be it for me to do your homework.

Page 77

Drapkin
Q. Okay. When I say "okay," I hear your explanation. I don't necessarily accept that's what happened --
A. I'm trying to re-create it for you. I'm just trying to be accurate.
Q. I appreciate how accurate you're trying to be --
A. This is eight years ago, and I'm trying to put it back together in twenty seconds.
MR. BEMIS: Okay. Let's take a break here.
THE VIDEOGRAPHER: The time is 11:17 a.m. and this completes tape number 1.
(Recess taken.)
THE VIDEOGRAPHER: The time is 11:33 a.m. and this begins tape number 2.
BY MR. BEMIS:
Q. All right. Back on the record. Would you please look at 241 again. I think that should be right off to your right.
A. Yes, sir.
Q. Now, the instruments that are referred to in this document, the senior secured first priority discount notes due 2001, and the

NOT A CERTIFIED COPY

Drapkin

senior secured second priority discount notes due 2001, are those the same instruments that you see referred to on page numbered 1 of the Credit Suisse First Boston materials, MS 112, under the "Description" column?

A. I assume they are.

Q. Okay. Now Coleman Escrow Corporation eventually changed its name and it became CLN Holdings, right?

A. I take your word for it.

Q. If you don't know, you don't know.

Now, in addition to the -- I may just be confused as to this, and you can hopefully help me out. Are the senior secured first priority discount notes or the second security priority discount notes, both of which are referred to in MS 241, are those the same things as the liquid yield option notes due 2013?

A. That's what it says on the page.

Q. Which page now are you referring to, on 241?

A. 241, the first page.

Q. Where are you reading from?

A. In the second paragraph, starting

Drapkin

"the notes are being offered."

Q. Right.

A. "The retirement of the LYONs is expected to occur in a series of transactions, including an exchange-over by Coleman Worldwide, and subsequent redemption by Coleman Worldwide on May 27th of all LYONs and outstanding."

So I guess they're not. I guess these are the notes that replaced the LYONs.

Q. To the extent that they were replaced. The LYONs due 2013 are a different debt instrument from the senior secured first priority discount notes and the second senior secured -- excuse me, senior secured second priority discount notes due 2001, correct?

A. On the face of it, these look like zero or what we would call zero coupon holding company notes. And we use these to retire the LYONs. But -- and it's all here on the next page. I don't know why we're going through it. I just don't remember the chronology.

Q. All right. I think you can set that aside for right now.

A. It's all here on the second page.

Drapkin

Q. It may well be, but I'm far enough along that I've now got my question answered. If you want to take a look at it, go ahead.

A. No, it's just that you had me confused by talking about the LYONs.

Q. I wasn't trying to confuse you. Sorry.

A. I know you weren't trying, you just had that effect.

Q. Okay. But I am correct that the LYONs that we've been referring to are an instrument, even though they were or were not retired, that was an instrument due 2013, and these --

A. I have no idea when the LYONs were due.

Q. Well, it says that on the first page of the document.

A. Well, I missed that, but that's fine.

Q. So the LYONs are a debt instrument. And the two discount notes that are on the front page of MS 241, those are different debt instruments as well, correct?

A. That's correct.

Drapkin

Q. Okay. You can set that aside.

At the time of the closing, was -- excuse me. At the time the merger agreements were executed, and they're dated as of February 28, 1998, was the Coleman Company indebted to any companies affiliated with Mr. Perelman?

A. I don't recall. I would add to that, there are certified financials in the Coleman financial statements that were included. And some number of these documents would show that.

Q. Do you have 166 in front of you? We'll give you 166. I hand you what's been marked as Exhibit 166 -- excuse me, Morgan Stanley 166, which is the offering memorandum for the zero coupon senior subordinated debentures due 2018 that were issued in connection with the Coleman/Sunbeam transaction. Now attached -- strike that. Have you seen this document before?

A. No.

Q. And you were referring to some audited financial statements. And I think if you look at page F -- look at F 27, which are the CLN audited financial statements.

A. F 27?

NOT A CERTIFIED COPY

21 / 1 / 10

Drapkin

Q. F 27. Uh-huh.
A. Yeah.
Q. And CLN Holdings and subsidiaries included the Coleman Company, correct?
A. It should.
Q. And Worldwide, right?
A. I assume so.
Q. And I want you to look at the long term debt for December 31, 1997. Do you see that?
A. Long term debt?
Q. Uh-huh.
A. You mean the 980?
Q. $980,000,447.
A. Okay.
Q. What does that represent?
A. I don't know. I'd have to look at the footnotes.
Q. Okay.
A. Consolidated I guess it would probably include these notes plus whatever the operating company debt was.
Q. Well, it would include all of the debt of CLN consolidated up from Coleman Company

Drapkin

being if you will the bottom of the operating company up through the holding companies through CLN, right?
A. It should.
Q. And we know that some of the debt that had been issued is the senior secured first priority discount notes that we talked about, correct?
A. Yes.
Q. And the seconds that we talked about, right?
A. Yes.
Q. And we know there were the LYONs of 2013 that in some amount, whether they had been redeemed or not, those are still outstanding?
A. No.
Q. No what?
A. The purpose of doing the zero coupons or whatever these first and second priorities were, if I'm reading this correctly on page 2, was to retire the LYONs.
Q. Is it your understanding it had all been retired by the date of the merger documents, December 27, 1998?

Drapkin

A. No, I'm just making that assumption.
Q. Okay. Let's go back to my question then. What is the long term debt of $980,000,447 --
A. Would you like to know?
Q. Yeah.
A. Yeah. Sure. 7.260 senior notes due 2007 in the amount of $200 million --
Q. Where are you reading from? A little slower for the Court Reporter and for me. Where are you reading from?
A. The Court Reporter doesn't have to do this. Page F 39 will give you a list of what that $980,000,447. It's usually -- any audited financial statements will give you a break down of long term debt. Since it's in your client's document, I'll defer to you on this.
Q. Well, but it may be in my client's document, but this is a CLN Holdings audited financial statement that's attached pursuant to the auditors for CLN Holding.
MR. MARMER: Excuse me. There's no question pending.
MR. BEMIS: All right.

Drapkin

BY MR. BEMIS:
Q. Do you see the liquid yield option notes listed there?
A. Yes. There's a tag end amount. I'm reading the foot note on page F 41 which tells you why they're out.
Q. Well, will you at least agree with me, sir, that whatever may have been paid or -- withdrawn.
Would you agree with me that the outstanding debt, at least as presented in the audited financial statements of CLN Holdings as of December 31, 1997, was $980,000,447?
A. According to this document, correct.
Q. And isn't it a fact, sir, that in the consideration that was paid to the MacAndrews group as a consequence of the merger agreement dated February 28th of 1998 that the long term debt of CLN Holdings was assumed by the Sunbeam Corporation?
A. No.
Q. Which portion was not assumed?
A. That's not your question.
Q. Well, assume that is my question.

NOT A CERTIFIED COPY

01113

Drapkin

A. But MacAndrews & Forbes did not receive $ 980 million. You keep asking that question.

Q. Let me try again. Maybe we can't answer it and we have to ask somebody else.

Under the terms of the February 28, 1998 merger agreement, not necessarily the Coleman agreement but the CLN merger agreement with Sunbeam, the holdings agreement --

A. Got it.

Q. Am I correct that Sunbeam assumed the debt of CLN Holdings Inc. as of the date of the closing?

A. CLN Holdings and its subsidiaries.

Q. And its subsidiaries.

A. That's correct.

Q. As of at least December 31, 1997, the amount of that outstanding debt, according to the certified financial statements, is 980,000,447 -- excuse me, $980,000,447; is that right?

A. Yes.

Q. In addition to the assumed debt, whatever the final figure was as of the date of the closing on March 30th of 1998 -- you would

Drapkin

agree with me that was the date of the closing, March 30, 1998?

A. Yes, sir.

Q. Was there any, to your knowledge, material adjustment upward or downward in the amount of CLN Holdings Inc.'s consolidated debt as reflected on the financial statements?

A. I don't know what you mean by material. They were normal accruals.

Q. I mean, was there like a $500 million reduction in the debt between the end of the year 1997 and March 30th, anything like that?

A. Not to my knowledge.

Q. In addition to the assumption of debt then at the closing, which we know was 980,000,447,000, at least as of 12/31/97, CLN Holdings or it -- received 160 million in cash, right?

MR. MARMER: Excuse me, have you finished?

MR. BEMIS: Yeah.

MR. MARMER: Is that your question? I object to the question; misstates the record evidence.

Drapkin

A. Ask me the question again.

BY MR. BEMIS:

Q. As of the date of the closing --

A. March 30, 1998.

Q. -- CLN Holdings Inc. or one of its affiliates received consideration of 160 million in cash?

A. That is what the First Boston presentation says we were supposed to receive, and I assume that is what happened.

Q. And indeed if we were to look at MS 93, which is the actual merger agreement, this will get it sorted out and beyond this point -- if you will look at page 8 -- withdrawn.

First, let me just make the record clear that you do have in front of you Exhibit MS 93 previously marked, correct?

A. Yes, sir.

Q. And this is the agreement and plan of merger among Sunbeam Corporation, Laser Acquisition Corporation, CLN Holdings Inc. and Coleman (Parent) Holdings, correct? And if you want to check the signatures on the back, I think Mr. Schwartz signed this one.

Drapkin

A. Okay.

Q. Look at page 8.

A. Yes.

Q. Under heading section 3.1 (a) (i), do you see that?

A. Uh-huh.

Q. You have to say yes or no.

A. Yes, sir.

Q. The cash consideration paid is shown here as $159,956,765, correct?

A. That's what it says.

Q. And rounding that up, would you assume that's the $160 million referred to in MS 112 by Credit Suisse First Boston?

A. I would indeed.

Q. All right. Now, the third part of the consideration, it's in addition to the assumption of debt that we've talked about and the cash, was the issuance of Sunbeam shares, correct?

A. Correct.

Q. And according to Credit Suisse First Boston that was about 14.1 million shares, correct?

NOT A CERTIFIED COPY

Drapkin
A. Correct.
Q. And that is consistent is it not with the merger agreement, MS 93, at again section 3.1(a)(i)?
A. Yes, sir.
Q. All right you can set that aside.
Now, at the time of the closing, March 30, 1998, when the consideration we've been discussing was paid by Sunbeam Corporation, the Coleman stock that was outstanding -- do you recall that stock?
A. Uh-huh.
Q. It was about 44 million shares?
A. When you say "Coleman," I assume you mean the publicly-traded company, Coleman Inc.?
Q. That's a fair question. The stock that CLN Holdings Inc. or its subsidiaries, because I think it may have actually been held by Worldwide at this point, but I'm not sure. That stock represented about -- was it 44 million shares?
A. You're asking me about how many shares were outstanding --
Q. That's a terrible question. No, that

Drapkin
isn't what I'm asking you --
A. -- publicly owned -- I don't know what you're asking me.
Q. That's a fair question. Let me try again. At the time of the closing on March 30, 1998, CLN Holdings or its affiliates owned a number of shares of the Coleman Company Inc. common stock, correct?
A. Yes.
Q. And it was about 44 million shares?
A. And I'll ask the question again. CLN Holdings would include publicly-traded Coleman. I don't know what shares were in Coleman's treasury. You've asked the question Coleman and its affiliates. That would include publicly-owned Coleman. So I don't understand the question you're asking. If you're asking how many shares were outstanding in Coleman Inc. that were owned, if you will, by MacAndrews & Forbes entities, that's a number I could look up.
Q. How many shares of the Coleman Company Inc. common stock were owned by MacAndrews & Forbes entities?
A. I think that's your 44 million or

Drapkin
whatever the number is --
Q. Just confirm what it is.
A. Actually, this says -- I don't know, where was your Sunbeam -- if you go back to the Sunbeam financial statements, it will give me the total number of shares outstanding. And this says MacAndrews & Forbes has 44.1 million CLN shares. That's probably correct.
The reason you're getting screwed up is CLN was the ticker I believe for Coleman.
Q. Yes, I know --
A. So you keep talking about CLN Holdings, which is an up top company which MacAndrews owns, while CLN is the publicly-traded symbol for Coleman on the New York Stock Exchange.
Q. That I did figure out a couple of weeks ago. I appreciate that. But I am referring now to the Coleman stock that was held by CLN Holdings inc. or its direct subsidiaries.
A. Well, stop saying "direct subsidiaries." That includes publicly owned -- that includes Coleman. I don't know what Coleman had of its own shares in the treasury and the

Drapkin
rest. I mean, you're asking a question --
Q. Who owned the 44.1 million shares of Coleman stock at the time of the meeting before the closing --
A. My understanding is from this document it was owned by Coleman Worldwide, which is a MacAndrews & Forbes company.
Q. Let's then focus on that 44.1 million shares held by Coleman Worldwide immediately before the closing on March 30, 1998. Are you there?
A. Yeah, sure.
Q. Were any of those 44.1 million shares pledged as security for indebtedness?
A. I would imagine that they were pledged somehow to the zero -- I'm sorry, to the priority notes that you gave me the prospectus for since they are called 600 million face amount of senior secured first priority discount notes. I imagine if you give me time and I read this, I will find out there were shares pledged.
Q. Let me show you --
A. Twenty-six million shares of Coleman Company Inc. -- of Coleman common stock. So the

NOT A CERTIFIED COPY

Drapkin
answer to your question is yes, there were apparently shares pledged to those notes.
Q. Well, as of the date of the -- as of the date of the closing, March 30, 1998, were all or substantially all of these 44.1 million shares of Coleman stock pledged to secure debt?
A. I don't know the answer to that.
Q. Let me show you what's been marked as MS 239.
MR. BEMIS: Ms. Reporter.
(MS Exhibit 239, information statement dated 3/38/98, marked for identification, as of this date.)
BY MR. BEMIS:
Q. Turn to page -- withdrawn.
Do you have MS 239 in front of you?
A. Yes, sir.
Q. This is an information statement dated, if you look at the last page, March 18, 1998 --
A. Right.
Q. -- by the Coleman Company Inc., which was printed -- I believe it was printed from Edgar, but I'm not positive of that.

Drapkin
If you'll turn to page 17.
A. Yes, sir. This says those shares pledged.
Q. Well, if you look at -- withdrawn.
Please look at note 1.
A. I'm reading it.
Q. And does it not indeed provide that by -- "that substantially all of the shares owned are pledged to secure obligations of Coleman Worldwide and CLN Holdings, and shares of intermediate holding companies are or from time to time may be pledged to secure obligations of MacAndrews & Forbes Holdings Inc. or its affiliates"?
A. Okay.
Q. So am I correct then that these shares that we -- the 44.1 million shares that we were speaking of were indeed pledged at this time?
MR. MARMER: Objection to the form of the question.
A. I have no idea.
Q. Why is it that you have no idea.
A. Because the words of this footnote

Drapkin
say, substantially all of the shares are or from time to time may be. So you're asking me to tell you what they were on that date. I don't know.
Q. On that date being March 18, 1998?
A. That's the date you asked me, yeah.
Q. That's correct.
As a result of the transaction, the closing on March 30, 1998, the MacAndrews group did receive Sunbeam stock as we've discussed, right?
A. Yes.
Q. And that stock came -- without -- withdrawn.
At the time of the receipt of the stock, was that stock in any way pledged to cover any indebtedness?
A. I have no idea.
Q. Have you ever heard that it was pledged as of that -- as of the date of its receipt?
A. I don't recall. We have loan agreements. Could it have been somehow swept into them? I have no idea.
Q. I misunderstood your answer. When

Drapkin
you say it may have been, the stock once received by -- by the MacAndrews group --
A. Correct.
Q. -- it could have been as you put it swept into some other instrument or debt obligation of that group --
A. Possibly.
Q. But as you sit here today, you're not aware of that?
A. No.
Q. When Sunbeam delivered the stock to the MacAndrews group, as we've been using that term, it was not encumbered with any pledge by Sunbeam though, right?
A. I think all of those pledged were probably removed. Although the time period -- the discovery of the fraudulent financial statements occurred quickly thereafter. So the Sunbeam stock was rendered not much of an asset that you would use for security or anything.
Q. Setting that issue aside, I just want to know at the moment of closing as far as you know when the stock was received by the MacAndrews group, it wasn't subject to any pledge

NOT A CERTIFIED COPY

01771 10

Drapkin

on behalf by Sunbeam?
A. Certainly not that I'm aware of.
You're asking me if it was pledged by your client?
Q. Yes. Exactly.
A. They're a better person to ask than me.
Q. Well, I'm asking you what you know, and you're telling me you're not aware of any?
A. No, I'm not.
Q. So as far as you know, when MacAndrews group got the Sunbeam stock, it got that stock --
A. Free and clear.
Q. -- free and clear, and subject to whatever terms and conditions are in the merger agreement with regard to its future disposition?
A. That's not true.
Q. How is that not true?
A. I don't think that we could have sold the stock the next day.
Q. No, I said subject to whatever terms and conditions were in merger agreement concerning the stock's disposition.

Drapkin

A. And the security laws of the United States.
Q. Which are by the way incorporated into the merger agreement?
A. I don't know that sitting here, but if you say so, I agree. We don't violate the law.
Q. Now, at the time -- at the time of the -- withdrawn.
In 1996, did Coleman Company report a loss for the calendar year from its operations?
A. I would have to look at the 1996 audited financials to remember.
Q. Let me show them to you. I'm going to show you what we'll mark as MS 251.
(MS Exhibit 251, Coleman Company 10-K form for the year-ended December 31, 1997, marked for identification, as of this date.)
BY MR. BEMIS:
Q. Sir, I've handed you what's been identified as Morgan Stanley Exhibit 251.
Do you have that in front of you?
A. Yes, sir.
Q. And is this the form 10-K for the

Drapkin

Coleman Company for the year-end December 31, 1997?
A. That is what it purports to be.
Q. Look at the financial statements which appear on page F --
A. F 1 at sequence.
Q. Yes, sir. And I think the page I want you to turn to is 13, F 13.
A. Yes, sir.
Q. The financial statements here provide, if you will, a summary of the two years for the periods ending December 31, 1996 and 1995, correct?
A. This part of this footnote?
Q. Yes, sir.
A. This is a proforma footnote.
Q. I gave you the wrong page. I apologize. Let me get you the right page. I think it may be easier to work off of the selected financial data on page 13, although we can go back to the financial statements as well.
A. Back to page 13?
Q. Not F 13.
A. Oh, page 13?

Drapkin

Q. Right. Uh-huh.
A. That is the same as page F 4 in the financial statements.
Q. If you want to look at that.
A. I don't care. It's your pleasure. But since they're audited, they're identical.
Q. So let's just work off of 13, rather than F 13 if it's okay with you.
Did the Coleman Company have a net loss for 1996?
A. For 1996?
Q. Yes, sir.
A. Yes.
Q. And what was it?
A. The net loss for 1996 would be $41,000,893 -- thousand dollars.
Q. And on an earnings-per-share basis, what is the loss?
A. Seventy-nine cents.
Q. And then for the year-ending December 31, 1997, did the Coleman Company have a loss?
A. Yes.
Q. What was it?
A. $2,536,000,000.

NOT A CERTIFIED COPY

Page 102

Drapkin

Q. And on an earnings-per-share basis, what was the gain or loss?
A. A nickel.
Q. Five cents. Okay. You can set that aside.
Just to be clear, the nickel was a loss for the year not a gain, correct?
A. Yes, sir.
Q. Do you know what the Coleman Company -- strike that.
Did the Coleman Company have a gain or a loss for the first three months of 1998?
A. I don't recall. I also can't tell from these financials that you've handed me for both 1996 and 1997 where the restructuring charges were taken, which could have -- which would have impacted net earnings. So the company might have shown traditionally higher net earnings had those restructuring charges not been taken in those years. But I don't remember what they were.
Q. I'm going to go back now to the board of directors meeting on the 27th. We actually were there when we digressed. We were talking

Page 103

Drapkin

about the consideration that flowed from the transaction.
And going to the Coleman board meeting that you attended, we had been reviewing the Credit Suisse First Boston materials which I think we identified as MS 112. Its still in front of you.
Can you tell me whether there were any materials presented at the board meeting by any other investment bankers other than Credit Suisse First Boston?
A. Not that I recall.
Q. To your knowledge, did Credit Suisse First Boston in doing its analysis and presentation to the board rely on the audited financial statements of Sunbeam Corporation as prepared by Arthur Andersen?
A. You're asking me if Credit Suisse relied on --
Q. To your knowledge. To your knowledge.
A. I'm sure they did.
Q. Why do you say that "I'm sure they did"?

Page 104

Drapkin

A. Because I've done thousands of deals and it would be usual to rely on financial statements that Morgan Stanley and Arthur Andersen gave you.
Q. Are you saying that Morgan Stanley audited the financial statements of Sunbeam Corporation?
A. No. I assume not. You would know that better than I would. But I assume --
Q. Do you have any knowledge that Morgan Stanley audited the financial statements of Sunbeam Corporation?
MR. MARMER: We're now embarked upon a little bit of speaking over each other.
MR. BEMIS: I agree and I apologize.
MR. MARMER: Let's slow the pace down a bit --
BY MR. BEMIS:
Q. Do you have any knowledge that Morgan Stanley audited any of the financial statements of Sunbeam Corporation?
A. I'm not sure I understand the question. You mean audited in a FASB sense?
Q. We'll start there.

Page 105

Drapkin

A. No. I have no knowledge.
Q. Do you have any knowledge that Morgan Stanley hired anyone to do an audit of the financial statements of Sunbeam Corporation?
A. You mean to check Arthur Andersen's audit?
Q. Either that or do another audit?
A. I have no idea.
Q. And what audited -- what financial statements did Morgan Stanley provide to you personally?
A. To me personally?
Q. Yeah, you personally.
A. None -- well, indirectly. You asked me if they gave them to First Boston and did First Boston rely on them.
Q. Are you saying that Morgan Stanley gave audited financial statements to Credit Suisse First Boston?
A. I assume they gave them --
Q. Not assume. Do you know?
MR. MARMER: We're having the same problem again.
A. You're getting me a little confused.

NOT A CERTIFIED COPY

Page 106

Drapkin
You asked me whether or not Credit Suisse First Boston would have relied on information in the audited financials provided by Arthur Anderson.
Q. Let me start over. Let's not worry about what was asked in the past. Let me try again so we can move on and not confuse each other.
Is it your testimony that Morgan Stanley provided financial statements of Sunbeam Corporation to Credit Suisse First Boston?
A. I have no idea.
Q. The Coleman Company at the time of the execution of the merger agreements, dated as of February 28th, had an accounting firm, correct?
A. Coleman had an accounting firm.
Q. And the accounting firm was Ernst & Young?
A. E&Y is my recollection, yeah. But do you want me to check the certificate and make sure I'm right that it was E&Y?
Q. Sure, if you would like to.
A. Does someone know what page it's on?
MR. FASMAN: F 2.

Page 107

Drapkin
A. Yeah, it was E&Y,
BY MR. BEMIS:
Q. So in connection --
A. My only hesitation by the way is whether it was called E&Y in those days or some other name.
Q. Fair enough.
In connection with the merger transaction, the Coleman Company and CLN Holdings investment banking advice from Credit Suisse First Boston; is that right?
A. Yeah.
Q. And it had legal advice from the Wachtell, Lipton firm, correct?
A. Correct, yeah.
Q. And it had access from an accounting standpoint to its auditors Ernst & Young, correct?
A. Certainly.
Q. And Ernst & Young had been the auditors for the Coleman Company for a number of years preceding the closing of the merger agreement on March 30, 1998, correct?
A. I don't think we changed auditors. I

Page 108

Drapkin
think that's correct.
Q. After the merger -- after the merger agreements were signed, and up to the -- which is -- we'll use February 28, 1998 and up through the closing on March 30th, did you ever have any communications with anyone about -- let me withdraw the question and start over again.
Between the date of the signing of the merger agreements, which are in the record as MS 93 and MS 117, and the date of the closing, which the first agreement is March 30, 1998, did you have any face-to-face meetings with anyone at Morgan Stanley?
A. I don't think so.
Q. How about after the closing on March 30, 1998 and say up to July 31, 1998, did you have any meetings with anyone from Morgan Stanley?
A. With regards to the Coleman transaction?
Q. Yes, sir. Not just a casual meeting some place. I realize you may have run into them on the street in your business or --
A. Or they may have pitched us on

Page 109

Drapkin
something.
Q. Let's focus on the Coleman transaction.
A. I don't believe so.
Q. Before the vote of the Coleman board of directors on February 27, 1998 on the merger agreement, which has been identified as MS 117 in this case, did you speak to anyone at Morgan Stanley about the transaction?
A. Not that I can recall.
Q. Did you receive any documents from Morgan Stanley between the signing of the merger agreements dated as of February 28th and the closing on March 30, 1998?
A. Personally?
Q. Yes, sir.
A. Personally, directly to me?
Q. Yes, sir.
A. Not that I recall.
Q. And did you receive documents from Morgan Stanley through someone else?
A. Well, we saw the Sunbeam press release announcing that they might miss their estimates of sales for the quarter, but was going

NOT A CERTIFIED COPY

Drapkin

to make it for the year. That came from somebody, I assume. We didn't just read it off the tape. I assume that Morgan or Skadden would have sent it over to us in the normal course since we were in the middle of a deal. But that's an assumption. And I did see that prosecutes release.

Q. Can we refer to that as the March 19th press release going forward just for simplicity?

A. We can refer to it anything you like.

Q. I'd like to do it that way, so that's what we'll do.

Other than the March 19th press release, did you see anything -- strike that. Did you receive indirectly from any other source documents that you associated with Morgan Stanley?

A. Not that I can recall.

Q. Let me ask you the same questions about the correspondence from Morgan Stanley.

After the signing of the merger agreements dated as of February 28, 1998 and the closing on March 30th, did you receive any

Drapkin

correspondence from anyone from Morgan Stanley concerning the Sunbeam transaction?

A. Not that I recall.

Q. After the closing on March 30, 1998, and through, say, July 1st of 1998, did you receive any correspondence from anyone from Morgan Stanley concerning this transaction?

A. Not that I recall. I have to amend that. There may have been a research report that Morgan Stanley issued. I can't swear to that, but I have some vague recollection of Morgan Stanley research reports. I don't know whether O received that directly from Morgan Stanley or heard about it or someone forwarded it to us.

Q. Was it a research report on Sunbeam?

A. I think so, but I just can't recall.

Q. Well, if you remember later in your deposition, let me know.

A. I don't have a copy of it today so.

Q. I appreciate that.

A. But there was a research report during that period of time and it's my recollection that I looked at it.

Q. Focusing now just on one other area,

Drapkin

did you have any conference calls where Morgan Stanley to your knowledge was on the conference call between the execution of the merger agreements dated as of February 28, 1998 and the closing on March 30, 1998?

A. No.

Q. Any conference calls that you're aware of from the date of the closing through July 1st of 1998?

A. That I participated in?

Q. Yes, that you participated in.

A. Not that I recall.

Q. Before February 28, 1998, did you receive any -- did you receive any documents from Morgan Stanley concerning the Sunbeam/Coleman transaction?

A. Not that I recall.

Q. Before the execution of the merger documents dated as of February 28th, do you recall any correspondence from anyone at Morgan Stanley about the Coleman/Sunbeam transaction?

A. Not that I recall.

Q. Can you recall -- can you recall any communications with -- from -- withdrawn.

Drapkin

Can you recall any communications of any kind whether they be documents, face-to-face, telephone calls, electronic mail from Morgan Stanley to you in connection with the Sunbeam transaction?

A. To me personally?

Q. Yes, sir.

A. No, sir.

MR. BEMIS: Okay. This is a good place to break. I know you want to get out earlier, so 45 minutes for lunch? I know you want to work forever, but that's not going to work for the Court Reporter and me too. I'm going to have to take a short break. What time is your call this afternoon?

THE WITNESS: No, no I have be at a presentation. What time do you anticipate finishing?

MR. BEMIS: I suspect we're going to go most of the day, but it's possible we won't. It depends what you have to say. I suspect most of the day.

THE WITNESS: Okay.

NOT CERTIFIED COPY

01/20

Page 114

Drapkin

MR. BEMIS: I appreciate your courtesy. Forty-five minutes to an hour, we'll make sure we're back and still have time to eat.

Well, it's 12:25. Why don't we agree to be back here at ten after one.

MR. BEMIS: Ten after one. You have an agreement --

THE VIDEOGRAPHER: The time is 12:29 p.m. We're going off the video record.

(Lunch recess taken.)

AFTERNOON SESSION

(1:21 p.m.)

THE VIDEOGRAPHER: The time is 1:21 p.m.. We're back on the record.

(Discussion off the record.)

Page 115

Drapkin

DONALD G. DRAPKIN,

resumed, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Cont'd.)

BY MR. BEMIS:

Q. Right before we broke, I was asking you some questions about Morgan Stanley. And I want to talk now about Morgan Stanley Senior Funding, the other entity in these cases.

At any time between the approval of the merger agreements, which were dated as of February 28, 1998, and the closing on March 30th, did you have any face-to-face meetings or conference calls for example with anyone from Morgan Stanley Senior Funding about the Coleman acquisition?

A. I didn't have any contact with respect to the Coleman deal with anybody from Morgan Stanley or any related entity about this deal that I can recall any of this time.

Q. And "any of this time frame," that would be, say, February 27th through the date I asked you earlier, which would be July 8th?

Page 116

Drapkin

A. Correct.

Q. Before the signing of the document, as of February 20, 1998 do you remember having any conversations with anyone from Morgan Stanley Senior Funding? And in that I will include telephone conferences, electronic conferences, anything of that nature.

A. I'd answer that by saying I don't recall having any contact with anyone from Morgan Stanley. I have no idea what Morgan Stanley Senior Funding is. With respect to Coleman.

Q. Right. I understand we've been limiting ourselves with respect to Coleman.

Let me show you what's been marked as MS 93. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 93, which you should have in front of you.

Sir, would you look at section 6.7 of MS 93 and tell me when you are there.

A. Yes, sir.

Q. This session is titled "Access to Information," colon, or it maybe a semi colon, Confidentiality." Do you see that?

A. Sure.

Page 117

Drapkin

Q. I have a couple of questions about this section. If you'd like to read it, please do so and let me know when you're finished. Otherwise, let me know and I'll go ahead.

A. I've read it.

Q. At any time after the execution of this document, MS 93, as of February 27, 1998, were you ever informed that anyone representing the Coleman Company Inc. or CLN Holdings Inc. had sought to review the "books, reports, property, plans and personnel of Sunbeam"?

A. I'm not -- I wasn't working on the transaction, so I can't tell you what the scope of the due diligence that the law firms or First Boston or even us internally did.

Q. When you say you weren't working on the transaction, were you working on some other transactions during this period?

A. I imagine I was working on a number of them, but I seriously hope you don't ask me what they were.

Q. What were they?

A. I don't remember. I'm always working on something.

NOT A CERTIFIED COPY

Drapkin

Q. But if I understand you correctly, you did not work on the Sunbeam/Coleman transaction as an officer or an employee of the MacAndrews group, right?

A. Other than to hear chitchat, it was not an area of my primary responsibility.

Q. There was -- withdrawn.

Did you ever hear as chitchat as you put it whether anyone representing the MacAndrews group, and all of the companies within the chain that would be related to the acquisition, if they ever reviewed the room of document that had been set up at Skadden, Arps for due diligence?

A. I don't have any great recollection. I'm sure we did, but I don't know of my own.

Q. Would you -- at any of the board of directors meetings -- withdrawn.

Were there any board of director meetings of the Coleman Company after the February 27th meeting and before the closing on March 30, 1998 at which the Sunbeam/Coleman acquisition was discussed in any way?

A. Not that I recall.

Q. So the last --

Drapkin

A. There would be minutes. You'd have to refresh my recollection.

Q. I don't have any, that's why I'm asking the question.

Do you recall any telephone conference with directors about any issues after February 27, 1998 and before the closing --

A. Well, remember, some of my cohorts at work were directors. So the conversation would have turned to Coleman a number of times post February 27th.

Q. I'd like you to focus just on director meetings as opposed to a conversation you may have had with someone who also happens to be a director --

A. I'm just trying to be accurate.

Q. And I appreciate that. And that's a fair question, but now I want to just concentrate on a director meeting, an official director meeting --

A. Not that I recall.

Q. So the last, if you will, official meeting of the Coleman board of directors while it was still an affiliate of the MacAndrews group

Drapkin

in the sense -- let me withdraw the question.

The last meeting of the board of directors of the Coleman Company Inc. that you attended either in person or by telephone would have been the February 27th meeting?

A. The last formal all together board meeting that I recall was then. Could we have signed consents relating to some action or something? That's quite possible, but I don't recall.

Q. I hand you, sir, what has previously been marked as Morgan Stanley 39, which is a document. It is I believe what you were referring to as the March 19, 1998 press release.

First, would you take a look at that and tell me when you're done reviewing it.

A. Yes, I've looked at it.

Q. Is this the press release that you referred to earlier as the March 19, 1998 press release?

A. Yes.

Q. And did you upon receipt of -- strike that.

Drapkin

Do you remember how you received the press release?

A. No.

Q. Did you discuss it with any other board members? Now both formally or informally.

A. I don't recall specific conversations, but it would be impossible for me not to have discussed it.

Q. So I take it the press release was something that was important to you?

A. Anything with respect to Sunbeam would be important to me.

Q. Did you -- withdrawn.

Do you have any recollection of who it is that you spoke to the press release about after you received it, recognizing you didn't have a formal board meeting?

A. I'll repeat what I said before. I don't have any specific recollections of any particular conversation, but I remember the press release. I remember the interest that it caused, and it would have been impossible that we didn't discuss it.

Q. Was it discussed at these breakfast

NOT A CERTIFIED COPY

Page 122

Drapkin

meetings at Mr. Perelman's home in his townhouse?
A. Well, Mr. Maher, who was working on the transaction, his office is next door to mine. Mr. Schwartz, who is our general counsel, his office is twenty feet away. Mr. Perelman, Mr. Gittis and I, in addition to having breakfast everyday, have lunch together for the last 17 years maybe three or four times a week and very frequently dinner, in addition to being together throughout most of the day. So you want me to pinpoint when we might have discussed this? I can't do that.
Q. No, I really wasn't asking you the exact date. Did you discuss it --
A. At the breakfast. I have no idea.
Q. Okay. Did you discuss it at the lunch?
A. We discussed it sometimes. I have no recollection of the times, dates, substance of the discussion or vague -- of the discussion, but I know it was discussed.
Q. Let me shortcut this. You know it was discussed and the group it would have been discussed with are the people you've identified

Page 123

Drapkin

for us: Mr. Perelman, Mr. Maher, Mr. Schwartz, Mr. Gittis; is that right?
A. Yeah. Mr. Nesbitt, who was working on the case -- the transaction, not the case. I don't know, Richard Halperin might have been around in those days. We have a very small office, so it would be very unusual for us not to discuss whatever goes on.
Q. Were you out of -- were you in the United States --
A. Oh, actually, thank you very much. I have a ski house in Aspen. And on March 19th -- I don't know where I was March 19, 1998, but traditionally the last two weeks in March are my kid's--
Q. Spring break?
A. Spring break. So there's an excellent chance that I was skiing in Aspen those two weeks. I'd have to go back and check the records. It's also an excellent chance that Mr. Maher who has a house not far from me in Aspen was also skiing in Aspen those two weeks. But sitting here now, I just don't remember.
Q. And the opportunities that you would

Page 124

Drapkin

have had most likely, as you say, to discuss the press release, if you were skiing, it could have been skiing or it could have been at breakfast lunch or these dinner meetings --
A. Well, if I was in Aspen I didn't have breakfast, lunch and dinner. So I wouldn't have been discussing it.
Q. I'm putting it both in the alternative well as the conjunctive --
A. I talk to the office 19 times a day when I'm not there.
Q. So you weren't out of communication when you were skiing if you were skiing?
A. No.
Q. As a result of the discussions that you had or -- and I realize you said it was impossible that you did not have them, did you direct that any action be taken?
A. Did I personally direct any action?
Q. Yes?
A. No.
Q. Are you aware of anyone on behalf of Coleman, CPH or CLN Holdings taking any action?
A. I believe, and I know you're going to

Page 125

Drapkin

ask me all kinds of details, but I believe the Sunbeam side of the transaction -- and whether that was Morgan Stanley or Skadden or Al Dunlap himself, probably called someone at MacAndrews. It wouldn't have been me -- telling then they were going to issue this press release and it wasn't a big deal. But I don't remember who that was and who communicated that.
Q. Following receipt of the press release, do you recall anyone in the MacAndrews group of people, regardless which company they were affiliated with, being asked to take any action with regard to the information in the press release?
A. What I'm saying is I think the Sunbeam people preempted that by calling and warning us about this press release and saying, Don't worry about it. It's not a big deal.
Q. So as I understand it then, whatever happened, nothing happened after the issue of the press release on behalf of the MacAndrews -- --
A. I can't tell you what Mr. Schwartz or Mr. Gittis or anybody else did. I know I didn't do anything.

NOT A CERTIFIED COPY

Page 126

Drapkin

Q. Of the group that you've identified in the MacAndrews group, from Mr. Perelman on down to yourself, and I'm not hierarching (phonetic) anybody, who would be the person in your judgment would most likely know what, if any, steps were taken in follow up on the press release?

A. In this case?

Q. In this case.

A. Mr. Maher. Mr. Maher and Mr. Schwartz maybe.

Q. Mr. Barry Schwartz, right?

A. Correct. But more likely Mr. Maher.

Q. Recognizing that you didn't personally do anything, did you ever hear back from any source that somebody had done something to follow up on the press release?

A. My only recollection is that whether it was -- again, whether it was from Sunbeam or Morgan or Skadden, they said they had a -- they were slow in the first couple of months, but they were going to make it up in the third quarter and this was not a big deal.

Q. Following the -- following the

Page 127

Drapkin

issuance of the press release, did you -- I recognize you might have been out of town, however -- did you for example see an article we're going to mark as MS 36?

A. Actually, could have been Mr. Levin as well. Thinking back, Jerry Levin -- it's very likely Jerry Levin was in contact with whoever his counterpart was at Sunbeam.

Excuse me. Actually, Gordon Rich might have called Morgan Stanley as well.

Q. Gordon Rich was not with Morgan Stanley. Gordon Rich was with Credit Suisse First Boston.

A. I said Gordon Rich might have called someone at Morgan Stanley --

Q. I'm sorry. I misheard you. I'm sorry.

Why do you think that might have happened?

A. Just would seem like the normal thing to do.

Q. Let me show you what's been marked as MS 36m which is what I started to do when we got distracted.

Page 128

Drapkin

MR. BEMIS: Miss Reporter, that was previously marked. And I think that was Mr. Slovin's deposition.

BY MR. BEMIS:

Q. Do you have MS 36 in front of you?

A. Sure.

Q. Tell me when you're done looking at it, and I'll just have a couple of questions for you.

A. Yeah. I'm reading it.

Q. Okay.

Did you see a copy of this article from The New York Times dated March 20, 1998?

A. I don't know.

Q. Do you recall, even if you didn't see this article, that the price of the Sunbeam common stock did fall in trading 9.4 percent following the March 19th press release?

A. Yes, sir.

Q. And, now, going back to MS 93, which is the merger agreement, I think we previously established that part of the consideration that the MacAndrews group was going to receive was approximately 14.1 million shares of Sunbeam

Page 129

Drapkin

Corporation, correct?

A. Yes, sir.

Q. Was there any provision in MS 93, the merger agreement, for a renegotiation of the consideration if the price of Sunbeam stock fell or rose between the date of the agreement and the date of the closing, March 30, 1998?

A. Not to my knowledge.

Q. Are you familiar with the term "collar," C-O-L-L-A-R?

A. Yes, I am.

Q. Tell the jury what a collar is.

A. It's exactly what you just said. In a lot of cases if the price of the stock goes too far one way or the other up or down, the ultimate price is adjusted within that collar. It can work a hundred different ways, but that's the general idea.

Q. So in this case with regard to both the agreement -- let me rephrase the question.

With regard to MS 93, which is the holdings merger agreement, there was no collar in that agreement to protect the MacAndrews group's Sunbeam stock against a price drop or the benefit

NOT A CERTIFIED COPY

Drapkin

of a price increase?
A. There was no collar to protect against short term swings in the price of Sunbeam's stock, but there were lots of other protections against bad things happening.
Q. With regard to -- are you talking about -- withdrawn.
Are you speaking of a material adverse event or consequence, "MAC" as they're sometimes called?
A. Well, that's one. But the second, and the one you pointed me to just a minute ago following the access to information and confidentiality, if you read the next paragraph, it's called "Advice of Changes." That was supposed to mean that they would tell us if anything bad was happening.
Q. We'll come back to that in a second, but what you were speaking -- were you speaking of anything beyond a material adverse event or consequence?
A. Yeah, sure. They had to tell us if anything bad was going on.
Q. Well, that is a material adverse

Drapkin

consequence as defined in the document --
A. I didn't parse that through, but if that's so at the time, then okay.
Q. Let's go to the Coleman agreement, which is MS 117. I don't know if you have that in front of you, and if you don't, let me pull it out for you.
Do you have MS 117 in front of you?
A. Yes.
Q. You can set 93 aside if you like just for a minute. We'll probably come back to it, but just so you don't have so much paper.
A. Okay.
Q. Was there any provision in MS 117, which is the agreement and plan of merger involving the Coleman Company Inc., that protected the public shareholders from a decrease in the price of the Coleman or the Sunbeam common stock after February 28th -- excuse me, February 27, 1998 and prior to closing?
A. Sure.
Q. Where is it?
A. Section 6.3. "Upon obtaining knowledge of any occurrence, company and Laser

Drapkin

shall promptly advise the other party orally and in writing of any rep and warranty wouldn't be true in a material respect. Failure to comply, any change of event, having which insofar as can be reasonably foreseen would have, in the case of Laser an material adverse effect" -- and on and on and on or what you have called a MAC out.
Q. Where does that provide that if there had been -- in the documents does it provide if there is a change in the price of the Sunbeam common stock --
A. That wasn't the question that you asked me.
Q. Then I misspoke. I may have not asked the question the way I wanted, so I'll try again.
Is there anywhere in Morgan Stanley 117 that there is a provision that allows Coleman to either not go forward with the closing, delay the closing, or terminate the agreement if there is a decrease in the price of Sunbeam common stock between February 27, 1998 and the date of the closing of the merger agreement?
A. There is no collar, if that's

Drapkin

question that you're asking, that I'm aware of.
Q. So in effect in both the MS 93 and 117 there were no collars imposed as of February 27, 1998 on the marketplace of Sunbeam's stock?
A. No. Of course it wouldn't have mattered, but no.
Q. Let me show you another article which we'll mark as MS 215.
This was previously marked in Mr. Slovin's deposition. Please take a minute and look at MS 215.
Do you have MS 215 in front of you?
A. Yeah. I'm reading it.
Q. When you're done reading it, just let me know. I just have a couple of questions for you.
A. Okay.
Q. Do you read The Wall Street Journal?
A. Yes, sir.
Q. And I'm not trying to be facetious, but when you're on vacation skiing, do you read The Wall Street Journal, if you can get a copy?
A. Either I read it if I can get a copy or I read the headlines online.

NOT A CERTIFIED COPY

Drapkin

Q. Did you see this article that appeared in The Wall Street Journal on Friday March 20, 1998 regarding Sunbeam?
A. I have no recollection.
Q. The article states in the approximately the fifth paragraph beginning, "While Sunbeam's," do you see that?
A. Uh-huh.
Q. "While Sunbeam's announcement didn't discuss the company's earnings outlook, analysts said the sales disappointment is bound to affect profit. Sunbeam officials didn't return calls seeking comment." Do you see that?
A. Uh-huh.
Q. You have to answer yes or no.
A. Yes, I see it. But it also says on the side there "redacted privileged."
Q. This was produced by your people. I don't know what was redacted from it so.
In that paragraph, when it refers to "the sales disappointment is bound to affect profit," did you reach the same conclusion when you read the press release of March 19th?
A. I don't recall.

Drapkin

Q. Would that be a logical thing you would conclude based on your many years of doing deals?
A. I mean, certainly id your sales go down, it's possible that your profit would be affected. On the other hand, we're talking about Al Dunlap who patterned himself as being the world's greatest cost cutter. So it's quite conceivable that Al could have been saying -- and I don't know this but if you're asking me on my years of -- did he cut costs in the corner so that his profit would remain fine. Big companies do that all the time.
Q. Then the next paragraph --
A. It happened this morning I think to AT&T.
Q. The next paragraph reads, "The company has made promises that they haven't delivered on and that is certainly being favored into the stock today."
A. "Factored."
Q. "Factored." Excuse me. Thank you, sir. "Said R. Scott Graham, an analyst for CIBC Oppenheimer in New York." Do you see that

Drapkin

paragraph?
A. Yes, I do.
Q. Were you aware that earlier in 1998 that Sunbeam had announced that its quarterly earnings for 1997 fourth quarter had fallen short of analysts' expectations?
A. I don't recall.
Q. Look at the very last --
A. I read the paragraph, and I see it says they have done it before, but I -- and I don't remember sitting here whether or not they made their numbers for the year or not despite lowering sales forecast. I just don't remember. I'm sure I did at the time.
Q. In your judgment, given the years of your experience in being a strategist, and "the inside investment banker for Mr. Perelman's companies," would you consider Sunbeam, given that it had two drops, one of 9.5 percent according to this article and another of 9.4 percent roughly within a two-month period to be a volatile stock?
MR. MARMER: Object to form.
A. You know, the stock had risen

Drapkin

dramatically post our deal as I recall. I think the stock even after it fell 9.5 percent was still above the deal price on the day we approved the deal. And there were lots of analysts that seemed to be saying this was a short-term problem. So I guess anytime a stock is down 10 percent, there's some degree of volatility.
Q. My question though is not just a one time drop of 10 percent, but here you have a stock that drops twice 10 percent in less than a two month period based on adverse announcements by the company --
A. But the first time it had recovered erred.
Q. My question is: When you see a stock drop 10 percent twice in a two-month period, it may have recovered partially, do you consider that to be in your experience a volatile stock --
A. It more than recovered. It had gone way above.
Q. But do you consider it to be a volatile stock --
A. I'm not qualified to answer that question. There are volatility index. You can

NOT A CERTIFIED COPY

Drapkin

put pull them for the time and you could get an exact answer.

Q. I didn't ask you this question earlier, but do you read The New York Times regularly?

A. Yes, sir.

Q. And do you read the business section?

A. Yes, sir.

Q. Following the -- withdrawn. Let me show you now a document marked as MS 212.

A. After this line of questioning, can I take a short break?

Q. Do you want to take it now?

A. No let's get through this.

Q. For the record, do you have MS 212 in front of you?

A. Yes, sir.

Q. Let me know when you're finished. I have a few questions for you. Not very many.

A. Yes, sir.

Q. Sir, this document has a print date at the bottom of March 23, 1998. And this document was produced to Morgan Stanley by CPH, Coleman (Parent) Holdings.

Drapkin

Have you ever seen this document before?

A. No, not that I recall. I might have at the time.

Q. Do you know who Andrew Shore is?

A. Yes, I do.

Q. Were you reading his analyst reports concerning Sunbeam in 1998?

A. Only if someone gave them to me.

Q. Is this because you weren't the guy tracking this, that would be Mr. Maher again?

A. Yes, sir. I believe that in one of the CSFB books there were analysts estimates, but I can't swear to that. We could look at that if you wanted to. I'm just trying to be accurate. If he was in there, then I would have looked at it.

Q. You are correct. And let me show you the document that you're referring to.

Let me show you what's been marked -- these documents are really thick -- MS 76.

A. There it is. Researcher.

Q. So the record is clear, do you have MS 76 in front of you?

Drapkin

A. Yeah.

Q. If you look at the table of contents on Page 2, there is a heading "Four," which probably referred to a tab in the original version. And if you would turn to the section Four, and I believe, sir, if you go all the way to -- I'll give you a Bates numbered page what we calm it at the bottom. Bates numbered page CPH in the lower right hand corner, 147290. And it would be a blank page with a "four" on it.

A. Yup.

Q. Did you see this package of information before your preparation for your deposition?

A. No.

Q. Is it nonetheless your understanding based on looking at these documents that Credit Suisse First Boston was following analysts' reports on Sunbeam?

A. Not based on looking at that document. I just knew they were.

Q. Is it customary for an investment banker in a deal like the Coleman/Sunbeam transaction for the investment banks on each side

Drapkin

to at least collect and look at the analysts reports?

A. I would say so.

(Discussion off the record.)

THE VIDEOGRAPHER: The time is 2:02 p.m. and this complete tape number 2.

(Recess taken.)

THE VIDEOGRAPHER: The time is 2:13 p.m. and this begins tape number 3.

BY MR. BEMIS:

Q. Referring to the holdings merger, which is identified as MS 93, we talked about the consideration in article 3.1 (a) (i). Do you recall that discussion earlier about the stock and the cash that was being given?

A. Yes.

Q. This is a question I just forgot to ask you. When we were talking about the debt that was assumed, this was a stock merger between CLN Holdings Laser Acquisition Corporation, correct?

A. Uh-huh.

Q. You have to answer yes or no.

A. Yes.

NOT A CERTIFIED COPY

Page 142

Drapkin

Q. So whatever CLN Holdings' debt was on a consolidated basis, that debt gets assumed by virtue of the stock merger, correct?

MR. MARMER: Object to the form.

A. Essentially they're not assuming it personally, but they own the company that owns the debt so they become responsible for paying.

Q. Going back to the March 19th press release, following the press release, was there any discussion, even if it was chitchat in the hallway -- and again, I'm not trying to be pejorative about it. I understand what you're talking about -- concerning going back to Sunbeam and asking for an adjustment in the price based on the drop of the price of the stock?

A. I don't think I was at the firm during those two weeks.

Q. So you answer is you're not aware of any such conversation?

A. Correct.

Q. In the Coleman/Sunbeam merger, did you know that Sunbeam was raising some of the money that it needed to complete the acquisition through a zero coupon debenture offering that was

Page 143

Drapkin

being underwritten by Morgan Stanley?

A. Yes.

Q. And I showed you earlier the offering memorandum which is -- and I'll show it to you one more time, MS 166. Did you tell me that you had not seen the offering memorandum?

A. That's correct.

Q. In connection with an underwriting of this size, which is at least on its face $2,014,000,00, that's face value not issue price because these were issued discount, would it be in your experience as both an attorney and as the in-house investment banker for Mr. Perelman's companies, for the underwriter to obtain from the auditors of Sunbeam a comfort letter?

A. Yes.

Q. And would it be customary in your experience as both an attorney and as the in-house investment banker for Mr. Perelman's companies, for Sunbeam to direct its auditors to provide such a comfort letter?

A. Yes.

Q. Would it be in your experience as a lawyer and as the investment banker in-house for

Page 144

Drapkin

Mr. Perelman's companies for Morgan Stanley to request a comfort letter at the time not only of purchasing, in this case the debentures, but the actual effective date if you will of the offering memoranda, a bring down letter?

A. Yes.

Q. And in your experience both as a lawyer and as the in-house investment banker for Mr. Perelman's companies, would it be your judgment that the reason that one would obtain such a comfort letter would be for the auditors to establish at least in part their due diligence defense under Section 11 of the 1933 Securities Act?

MR. MARMER: Just a moment. May I have the question read back.

(Record read.)

MR. BEMIS: Thank you for having it reread because I misspoke. Let me do it again.

BY MR. BEMIS:

Q. Would it be your experience, sir, both as an attorney and as the in-house investment banker for Mr. Perelman's company that

Page 145

Drapkin

the reason the underwriter, here Morgan Stanley, would obtain a comfort letter from Sunbeam's auditors, here Arthur Andersen, would be for Morgan Stanley to establish a due diligence defense under Section 11 of the 1933 Federal Securities Act?

A. No.

Q. What would it be for?

A. They call it a cold comfort letter because it does not act as a defense in its entirety from liability for failure to find things you should have otherwise known.

Q. Without quarreling with you --

A. I mean, there are all kinds of public policy arguments I used to hear when I was a young lawyer, but you probably know this better than I do.

Q. Without quarreling with you whether it's an absolute or nonabsolute defense because I wasn't trying to suggest one way or the other, would it be your judgment that an underwriter in a case such as this Morgan Stanley, underwriting zero coupon debentures issued by Sunbeam, that the underwriter would seek to obtain a comfort

NOT A CERTIFIED COPY

Drapkin

letter from, in this case Sunbeam's auditors, Arthur Andersen, to attempt to establish to whatever degree is legally permissible a due diligence defense under Section 11 of the 1933 Securities Act?

A. You're tying it to Section 11. I think that underwriters ask for a due diligence letter, for a cold comfort letter from the accountants in a prudent exercise of their due diligence, without giving you a legal conclusion as to the legal reasons they ask for.

Q. Do you know why comfort letters refer to the underwriter's obligations and duties under the 1933 Act when they write such comfort letters?

A. Because the underwriters have such duties.

Q. Under the '33 Act?

A. Under the '33 Act and case law, yes.

Q. And Section 11 of the '33 Act?

A. Section 11, Section 10 (b) (5), Section 7, Section 5. Do you want me to continue? Section 3.

Q. Let me show you -- did you -- strike

Drapkin

that.

To your knowledge, did anyone at the MacAndrews group in connection with the Sunbeam/ Coleman transaction request a copy of the -- let me withdraw the question.

To your knowledge, did anyone in the MacAndrews group make inquiry of Sunbeam whether or not Arthur Anderson had provided Morgan Stanley with a comfort letter in connection with the underwriting of the zero coupon debentures?

A. I personally have no knowledge.

Q. Do you know whether anyone from the MacAndrews group in connection with the Sunbeam/ Coleman transaction asked Morgan Stanley as opposed to Sunbeam whether Morgan Stanley had received a comfort letter from Arthur Andersen in connection with the underwriting of the two billion 14 million face amount of zero coupon debentures that we've been discussing?

A. I was not personally working on it, so I have no idea.

Q. Even if you weren't personally working on it, did you ever hear of such a thing?

A. In connection with the Sunbeam deal,

Drapkin

no.

Q. Did you ever hear, and again in chitchat or when you were discussing things on the telephone, if you happened to be skiing or what have you during this period of March 19th, whether anyone in the MacAndrews group such as Mr. Maher, Mr. Perelman or Nesbitt or Gittis, whomever was involved in the transaction, asked Arthur Andersen whether they had provided a comfort letter to Morgan Stanley in connection with the underwriting of the two billion 14 million zero coupon subordinated debentures issued in connection with the Sunbeam/ Coleman merger?

A. No.

Q. Let me show you what's been marked as MS 9.

Do you have MS 9 in front of you, sir?

A. Yes, sir.

Q. Would you take a moment and review it and let me know when you're comfortable. I do have some specific questions, but not on every paragraph. Just let me know when you're ready.

Drapkin

A. Okay.

Q. If you need at any point to stop and read anything in particular, just tell me and we'll stop.

Have you ever seen MS 9 before?

A. Yes, sir.

Q. When did you see it?

A. Yesterday.

Q. In your deposition preparation?

A. Yes, sir.

Q. Did you recognize it as a comfort letter?

A. Yes, sir.

Q. Did you recognize it as a comfort letter that was issued by Arthur Andersen to Morgan Stanley in connection with the offering memorandum for the two billion 14 million Sunbeam Corporation zero coupon convertible senior subordinated debentures due 2018?

A. That's what it purports to be.

Q. Do you have any reason to believe it's not?

A. No.

Q. Is this letter in any way -- strike

NOT A CERTIFIED COPY

011729

Drapkin

that.

In your view as a person who's done many deals and been involved in underwriting and is the in-house investment banker, if you will, for Mr. Perelman, is this letter in the customary form of comfort letters?

A. Seems to be.

Q. And in your experience, sir, are you familiar at least if not as an expert, but just in your practice with the form of comfort letters as articulated by the accounting profession?

A. Yes, sir.

Q. And are they generally set forth in a statement of auditing standards?

A. Uh-huh. Yes, yes.

Q. And codified in sometimes what we refer to as the statement of auditing standards with an AU number followed there behind?

A. Correct.

Q. Have you read those standards at any time in your career?

A. Certainly.

Q. Would you agree with me, sir, that one of the matters that a comfort letter in the

Drapkin

circumstance of this case, where there is an underwriting that is approximately 90 days after the date of the last certified financial statements would cover a negative assurance on sales from the period of the last audited financial statement to the date of the request?

A. It would be quite common. But please let me add, I am not an accountant. I never went to business school. I took accounting for lawyers and that was the extent of it. I have practiced in the area for many years, but I do not hold myself out as an expert in the matters and intricacies of accounting.

Q. If you'll look at paragraph 5 (b), please. It's on page 3.

A. I see it.

Q. That paragraph, 5 (b), would that be in your view -- I recognize you're not claiming to be an expert, but a customary paragraph of negative assurance with regard to sales for the period following the last audited period?

A. It sure is negative.

Q. Setting aside whether it was negative --

Drapkin

A. You asked me whether it was negative assurance.

Q. No, I said was it a negative assurance. And you know the know the difference, what that is, right?

A. Sorry. It is not negative assurance, it is a bring down of sales for that period of time. And I didn't mean to be facetious. It is quite negative.

Q. If you look at-- withdrawn.

Looking at paragraph 5 (b) of MS 9, which is dated March 19, 1998, which by the way if it's helpful, that's the date of the offering memoranda --

A. I know.

Q. -- MS 166. It's also the date of that press release. Would you conclude that this is a material adverse event under either MS 93, which is the merger agreement with CLN, the holdings agreement, or the Coleman merger agreement, which is marked as MS 117?

A. I would certainly say that absent some rather elaborate explanation that this would give rise to one's worrying about it being an

Drapkin

adverse material change. And I assume further this was the cause for the March 19th press release.

Q. Let me show you now what's been marked as MS 10.

Do you have MS 10 in front of you, sir?

A. Yeah.

Q. Please take a look at it and when you're finished let know. I just have a couple of questions for you.

A. Yes.

Q. Did you see this -- have you seen this comfort -- strike that. Withdrawn.

Have you seen this exhibit before, MS 10?

A. I saw Page 2 of it yesterday. I don't recall page 1, but I certainly saw Page 2 -- or the numbers there on Page 2.

Q. Is MS 10, which is dated March 25, 1998, dated as of the date you understand the debentures were actually issued?

A. Yeah.

Q. And is it customary in your

NOT A CERTIFIED COPY

Page 154

Drapkin

experience, both as an attorney in the areas that you practice and as the in-house investment banker in Mr. Perelman's companies, for an underwriter such as Morgan Stanley in a transaction similar to what we've been addressing, the purchase and underwriting of $2,014,000,000 worth of zero coupon debentures to get a bring down letter from the auditors on the date of the actual purchase of the securities?

A. Yes, sir.

Q. And in your judgment looking at this, would you conclude this is indeed the bring down letter for the zero coupon debenture offering?

A. Yes, sir.

Q. Looking at paragraph E as in echo, sir, I'd like you to look at the table which appears on Page 2 which has the net sales figures?

A. Uh-huh.

Q. You have to say yes --

A. Yes, sir.

Q. -- or no.

Looking at that paragraph and the figures disclosed therein for net sales and net

Page 155

Drapkin

income loss, would this in your judgment be a material adverse event or consequence as set forth in MS 93 the CLN Holdings merger agreement? And I believe it's paragraph 6.6 thereof.

A. I believe that failure to alert the Coleman people under their responsibilities under that -- I think it was 6.7 of material adverse change, with or without an explanation of 5 E, would be a material breach of that obligation by both by anybody who is connected with this piece of paper.

Q. Having said that, if you'll look at the definition of laser material adverse effect which appears on page 4 of MS 93.

A. I have too many.

Q. I know you do. I've been trying to get some of them back so can with reduce the pile.

A. Page 4?

Q. Page 4. You'll see the definitions?

A. You want --

Q. I'd like you to look at the one, "laser material adverse effect," and tell me when you're there?

Page 156

Drapkin

A. I see that.

Q. It provides, "a Laser Material Adverse Effect," that's in initial caps and quotes, "shall mean a material adverse effect on the business results of operation or financial condition of laser and its subsidiaries taken as a whole," correct?

A. Correct.

Q. My question to you, again based on your experience and based on being the in-house investment banker for Mr. Perelman's companies, is the information in paragraph E of MS 10, in particularly the table 5A and B, is the information there a laser material adverse effect in your opinion?

MR. MARMER: Objection; asked and answered.

A. I'll answer that, but first I'd like to correct you. I'm not an investment banker.

Q. I didn't say you were. I said you're the in-house investment banker.

A. That's a magazine eponym that doesn't necessarily mean very much. But as a lawyer, which I am, on page 19 of the same agreement

Page 157

Drapkin

there is a -- there's a section called 6.8, "Advice of Changes." "Holdings or Laser shall promptly advise the other party orally or in writing of anything" -- if you read down. "Any change or event, having which insofar as can be reasonably foreseen would have, in the case of Laser, a laser material adverse effect." I believe that the failure to -- as a lawyer, had I been faced with this nightmare -- as a lawyer, the failure to live up to 6.8 is a clear violation of the agreement. This document should have been provided to us without having to go find Waldo by ourselves.

Q. Well, I appreciate that, but that wasn't my question.

A. I thought that was your question.

Q. Fair enough. We'll get there. My question is: I take it from you answer though that you think this information, as you said, go find Waldo, that MS 10 is in your view information that constitutes a laser material adverse effect as defined in MS 93?

A. What I'm saying, to use your words from before, a volatile enough fact that the

NOT A CERTIFIED COPY

Drapkin

failure -- and certainly in hindsight it was a material adverse change, but this document on its face, as a lawyer, I would have advised my client they had an affirmative obligation not only to the Laser people, but to the public to correct the March 19th press release, and indeed to tell the bond buyers there was something amiss. I don't know if that answers your question, but.

Remember, this is substantially worse than it was just a few days before.

Q. We'll get to the question of how substantially worse in a minute, but the focus in my next question is the notice provision, which you've been referring to under section 6.8.

My understanding is from your testimony that the MacAndrews side of the transaction, referenced by MS 93, did not receive from Laser a notice of a "laser material adverse effect"; is that correct?

A. Not to my knowledge.

Q. And it's my understanding that to your knowledge, that no one, not withstanding from -- excuse me. Withdrawn.

My understanding of your testimony is

Drapkin

at least to your knowledge, and I understand you didn't work on the deal yourself personally, that you're not aware of anyone on the MacAndrews side of the transaction, notwithstanding the March 19th press release, making any inquiry of either Sunbeam, Arthur Andersen or Morgan Stanley as to whether Morgan Stanley had received a comfort letter, and B, the contents of the comfort letter?

A. I am not aware.

Q. Are you aware of the MacAndrews group purchasing any of the zero coupon convertible senior subordinated debentures that were underwritten by Morgan Stanley pursuant to MS 166?

A. No, sir.

Q. In connection with the Coleman merger and that's MS 117 -- you might pull that out, that merger agreement, sir.

A. Sure.

Q. There is a -- withdrawn. You can set that aside for right now.

Let me show you what's been marked as MS 166, which is a letter from Ernst & Young,

Drapkin

L.L.P. to Morgan Stanley, 243.

Do you have in front of you MS 243?

A. Yes, sir.

Q. Have you seen this letter before which is addressed to CLN Holdings and Morgan Stanley and Co., Incorporated?

A. No.

Q. Did you see this letter in your preparation for your deposition?

A. No.

Q. Do you know what it is?

A. It looks like a comfort letter addressed to Morgan Stanley relating to the Coleman financial statements.

Q. It's also addressed to CLN Holdings, correct?

A. Correct.

Q. And this is the CLN Holdings Inc. that is the same CLN Holdings that is a party to MS 93, the holdings merger agreement we've been talking about, correct?

A. Uh-huh.

Q. You have to answer yes or no.

A. Yes.

Drapkin

Q. Now, it's customary is it not, sir, before a comfort letter is issued by the auditors in connection with an underwriting such as we've been speaking here, MS 166, for the company to request the audit letter from its accountants, right?

A. You've got to repeat the question.

Q. Fair enough. Before an auditor issues a comfort letter in connection with an underwriting transaction such as the zero coupons we've been speaking here about that Morgan Stanley underwrote --

A. Right.

Q. -- it's customary is it not for the company whose financial statements are the subject of the auditors' work to request from the auditor that they issue such a letter?

A. My problem with your question is the "company." In this case if the company you're asking about is Morgan Stanley requesting it from our auditors because the Coleman financials were inside of the registration statement relating to the zero coupons, the answer to your question is yes.

NOT A CERTIFIED COPY

011732

Page 162

Drapkin

Q. I think we're on the same wave length. Let me try it again because my question probably wasn't clear now that you've pointed it to me. In the instance in which the auditors are attaching the financial statement of for example Coleman to the underwriting offering memorandum which they were, it would be customary for Coleman to request that its auditors issue a comfort letter to Morgan Stanley?

A. Yes.

Q. And indeed that is -- even before that the auditors would request a representation letter from the company whose statements are being audited, right?

A. Normally yes.

Q. In this -- in the case of Coleman, did Coleman request that Ernst & Young issue a comfort letter to Morgan Stanley in connection with the zero coupon debenture offering represented by MS 166?

A. I have no idea.

Q. Assuming it was done, who would be the person who would have made the request to Ernst & Young from the Coleman Company?

Page 163

Drapkin

A. Probably the CFO.

Q. Do you remember who that was in 1998?

A. I don't remember. I knew, but I don't remember his name.

Q. It was a man?

A. I believe so, but I could be wrong.

Q. I'm sure we can figure it out --

A. It's in the materials -- one of the materials you gave me listed all of the executive officers of Coleman.

Q. We're not going to take your time to do that. We can go back and look for that, if that's the person who would have done it.

A. But Jerry could have asked for it, anybody could have asked for it. It's routine.

Q. Getting the comfort letters and making the request is routine?

A. Absolutely.

Q. In your history of doing deals, has there ever been a transaction that you were involved with that after the execution of the definitive merger document -- the transaction documents and the dates of the closing a material adverse event came to your attention which caused

Page 164

Drapkin

you, as either the buyer or the seller as the case may be, to declare a material adverse effect if that's the term or consequences that's sometimes used in documents?

A. Yes.

Q. How about the Panavision deal, did you do that?

A. Which Panavision deal are you talking about?

Q. The Panavision -- the Panavision deal in which you renegotiated the price for what you were going to pay for Panavision?

A. When we bought it or? I mean, there's been six Panavision deals.

Q. Fair enough. I'll have to pull them out for you because I didn't know there were six of them.

A. If you're talking about the original deal that we bought it from whatever.

Q. The transaction that I'm referring to was originally signed on December 18, 1997 and then there was an amended transaction that occurred on June 4, 1998. Does that help? I don't have the document. That's the bottom line

Page 165

Drapkin

--

A. Who was the deal with?

Q. On behalf of -- it was between -- I honestly can't remember which entity it was. I don't have the document, which irritates me. I have five boxes of documents. I don't have that one. Well, I can ask somebody else.

A. We bought Panavision. If we renegotiated the price in between, that wouldn't have been particularly startling. It was owned by -- Panavision was owned by Warburg Pincus. It was controlled by Warburg Pincus.

Q. Did you work on that deal?

A. No.

Q. Who handled that deal?

A. Mr. Maher.

Q. Well, he's the person we should ask that question.

A. And he was vice chairman of CSFB. He's a real investment banker.

Q. Did you have any involvement with the registration rights agreement for the Sunbeam stock that was issued to CLN Holdings -- let me withdraw that. That is not actually correct.

NOT A CERTIFIED COPY

Page 166

Drapkin

At the time of the merger between CLN Holdings inc. and Laser Acquisition Corporation, we've established there was 14.1 million shares of Sunbeam stock issued to the MacAndrews group in consideration of the extinguishment of their stock interests, correct?

A. (Indicating.)

Q. You have to answer yes.

A. Yes.

Q. There was a registration rights agreement, which is attached by the way to MS 93, although it's not executed, that was to be executed before the closing which covered the registration of those securities at some point in the future. Did you have any part in the negotiation of that agreement?

A. No.

Q. Mr. Maher again?

A. I have no personal knowledge who negotiated it.

Q. Have you heard from any source that Arthur Andersen in the period between March 19, 1998 and the closing, March 30, 1998, refused in any fashion to provide CLN Holdings Inc. or

Page 167

Drapkin

Coleman (Parent) Holdings Inc. a copy of either MS 9 or MS 10, which are the two comfort letters, that were provided to Morgan Stanley in connection with Morgan Stanley's underwriting of the 2,014,000,000 of zero coupon debentures?

A. I have no knowledge.

Q. Have you ever heard that Sunbeam in any way refused or impeded either CLN Holdings Inc. or Coleman (Parent) Holdings Inc. access to the Arthur Andersen comfort letters, marked as Morgan Stanley 9 and Morgan Stanley 10, that were issued in connection with the underwriting of the zero coupon debentures?

A. No, sir.

Q. Have you heard from any source that Morgan Stanley took any action that in any way interfered with any attempt, if there was one, by either CLN Holdings Inc. or Coleman (Parent) Holdings Inc. to obtain and read copies of the comfort letters, MS 9 and MS 10, that were issued by Arthur Andersen in connection with the underwriting of the zero coupon debentures?

A. I have no knowledge on this subject.

Q. Under the -- under section -- excuse

Page 168

Drapkin

me. Under MS 93, which is the merger agreement, we talked about the advice of changes clause and material adverse effect. If either CLN Holdings Inc. or Coleman (Parent) Holdings Inc. was aware of a material adverse change, even if it had not received notice, did it have the right to take any action under the agreement?

A. It seems to say so -- I mean, it's hypothetical.

Q. I realize that, but that's my question.

MR. MARMER: Object to the form.

A. It seems to say that we could.

BY MR. BEMIS:

Q. What action could you take?

A. We could walk away from the deal.

Q. Could you point me to the section where you can walk away from the deal?

A. This is 93?

Q. Yes, sir, MS 93.

A. Section 8.2 (c).

Q. Let me make sure that I am there.

A. I'm reading this quickly.

Q. That's why I want to make sure that

Page 169

Drapkin

we get it right. So take as much time as you need.

A. Section 8.2 says "conditions to obligations of holdings to affect the holdings merger."

Q. All right.

A. I assume that refers to, since that's the agreement that you gave me, that "holdings" I assume "holdings" is us.

Q. You have the holdings agreement by definition in front of you --

A. Holdings yes. That holdings shall be -- "The conditions to our obligations to effect the merger includes the reps and warranties being true, and it also includes that there hasn't been any event change which individually or in the aggregate had or has reasonably expected to have a material adverse effect." You made me read the definition of material adverse effect before.

Q. Can I interrupt for a second, because it will go faster. What I want you to do is just give me the section first, then we can talk about it. So we can follow through. I'll be very

NOT A CERTIFIED COPY

Drapkin

clear in my question.

If there had been an material adverse affect, if you either knew of it or had been advised of it, my question is what were your rights under the agreement as you understood it?

A. Not to go forward with the agreement.

Q. When you say not to go forward, do you mean not to close or to terminate? They mean different things.

A. Not to me.

Q. Oh, are you sure of that under the agreement?

A. I'm just saying not to me. I have no idea.

Q. Well, look at section eight 8.2.

A. Yeah.

Q. That is "conditions to obligations of holdings to affect the holdings merger."

A. Right.

Q. And it goes to on to say,"That the obligations to affect the merger shall be subject to satisfaction by Laser or waiver by Holdings or parent," and then it goes on to describe the additional conditions, correct? That's one

Drapkin

section. Are you with me?

A. Right.

Q. Now I want you to go over to section 11, which is "Termination." Do you see that?

A. Uh-huh.

Q. Is it your understanding that the obligation not to close is the equivalent of the right to terminate the agreement?

A. This says, "This agreement may be terminated at any time prior to the holdings effective time by either Laser or Holdings in the event of a breach" -- blah, blah, blah, "which would give rise to the failure of a condition set forth in 8.2 (a)," which is what we were just reading.

Q. No, you were reading 8.2 (b).

A. Well, I don't know since I haven't reread the entire agreement whether or not this comfort letter contains information that might actually have breached some other representation and warranty that the company had made to us. But assuming if not, I'm not really sure I understand what the difference is between if I don't close the merger, sooner or later the

Drapkin

August 31st date would have occurred and I could terminate. So I'm not sure that I understand the distinction between not going forward and terminating.

Q. Because you can satisfy or waive a condition of closing, can't you?

A. You can always do that. I can always rewrite the agreement. I mean, the two parties getting together can agree on anything.

Q. If the two parties don't agree however --

A. Then the deal will fail.

Q. No, then the deal will be determined by the terms of the deal, correct?

A. Yes.

Q. And the rights of the parties, assuming there's not an agreement to abandon the agreement, if you will, are set forth -- the terms we're speaking of 8.2, "Conditions of Closing" and "Termination." That's what I'm asking you to look at. Are we clear on that?

MR. MARMER: Are we clear on what?

BY MR. BEMIS:

Q. That's the sections we're talking

Drapkin

about.

A. I understand that I can terminate immediately if the reps and warranties aren't true is what this says, and I don't have a legal opinion as to whether the reps and warranties were or were not true at the time. I'd have to go back and parse them against the A, letter. Since I don't practice law any more, I don't intend to do that.

As to whether or not -- it's quite based on your question that if there was an event that allowed me not to consummate the merger, then I could sit there and wait until August 31, 1998 and the merger would not have been consummated, and I'd have the right to just walk away.

Q. Or you could also have the right to waive it and close and take $160 million, have a billion dollars in debt assumed, and take 14.1 million shares of Sunbeam stock, couldn't you?

MR. MARMER: Object to the form.

A. Sure.

BY MR. BEMIS:

Q. Okay. You can set that aside.

NOT A CERTIFIED COPY

Drapkin

I'm going to show you a series of documents now. We'll just go one at a time, and I just want to know if you've seen them before. And if you haven't, we'll move on and it should go pretty quickly.

I hand you what has previously been marked as Morgan Stanley deposition Exhibit 79. And do you have that in front of you?

A. No, I've never seen this.

Q. I'm sorry. You've never seen it before?

A. I don't recall.

Q. I hand you what's been marked as MS 80. Let me know if you have that in front of you.

A. I don't recall ever having seen this.

Q. Okay. You can hand that back to me.

I hand you now what's been marked as MS 81.

A. I've never --

MR. MARMER: Just a moment. Let me take a look at it.

MR. BEMIS: I'm sorry.

A. I don't recall ever having seen it.

Drapkin

BY MR. BEMIS:

Q. Thank you, sir.

I hand you what has been marked as MS 82.

A. I have never seen this.

Q. Do you know what "I/B/E/S" stands for, which is at the very top of the first page?

A. No.

Q. Okay.

A. No.

Q. If you don't know, you don't know.

A. I've seen that acronym, but I don't remember.

Q. I show you what's been marked as MS 83.

A. I don't remember ever seeing this.

Q. Do you know whose handwriting that is on the document; do you recognize any of it?

A. No. No.

Q. I'm now going to hand you MS 84, which is entitled "Sunbeam Long Range Strategic Plan." Have you ever seen that document before?

A. I don't recall ever having seen this, no.

Drapkin

Q. Before we move on, I'd like to just ask you if you can look at -- we're going to go page by page. I want to see if you can identify any of the handwriting. Go to the page with the CPH numbers at the bottom ending in '59.

Do you see that?

A. Uh-huh.

Q. Do you see the handwriting there? It says, "need head of licensing," I think.

Do you know whose handwriting that?

A. No.

Q. Continuing to the last page, the last two digits '60, do you recognize any of that handwriting?

A. No.

Q. Turning to the next page, '61, do you recognize any of that handwriting?

A. No.

Q. And turning to the page headed "Strategic Headlines," the last two digits '63, do you recognize that handwriting?

A. No.

Q. Why don't you just thumb through the rest of the documents so we don't unnecessarily

Drapkin

take up your time, but tell me if there's any handwriting that you recognize or even have an inkling whose it might be.

A. I'm sorry, I don't know.

Q. Without holding it to you, none of this, you recognize none of this handwriting even if you're not sure?

A. Not even a clue.

Q. Okay. Fair enough --

A. It looks like it was all the same person, but I don't know.

Q. That's what I assume, but I don't know whose it is. If you don't know, we'll ask somebody else.

I show you what's been marked previously as MS 85.

Do you have that in front of you?

A. Uh-huh.

Q. Yes or no?

A. Yes, I do.

Q. Thank you, sir. Have you seen this document before?

A. Not that I recall, no.

Q. You can hand it back to me then.

NOT A CERTIFIED COPY

Drapkin

Am I correct that you had no involvement whatsoever in whatever due diligence was done by the MacAndrews companies of Sunbeam, regardless of the time that it was done, in connection with the merger agreement?

A. That is correct.

Q. And the person that you think would have the most knowledge of that would be Mr. Maher?

A. Mr. Levin.

Q. Or Mr. Levin perhaps. Are those the two people that you would think would be the knowledgable -- I'm not holding it to you, just your best assumption based on your position in the company.

A. Yeah.

Q. You did have some meetings with CSFB in connection with this transaction, didn't you?

A. Me personally?

Q. Yes. Well, there may have been others present, but you personally did attend meetings where they were present?

A. I don't recall. You mean other than board meetings?

Drapkin

Q. I want to get the predicate for it and then I want to focus on it.

A. Other than the board meetings?

Q. Fair question. Yes, other than the board meetings.

A. I don't know. It's quite possible they came over when the transaction was originally being discussed, and I sat in on one or two of those meetings. That's possible.

Q. Can we see if you have MS 75 there? I have another copy.

MR. BEMIS: It should be in the pile over there of yours, Ron. It's the Wachtell chronology. We looked at it pretty early this morning.

A. Right.

BY MR. BEMIS:

Q. If you would look at Exhibit A --

A. Uh-huh.

Q. -- which is attached there to, sir. There's two entries where your name appears. The first is on December 16th.

A. I see that.

Q. Do you see that reference? Do you

Drapkin

have any recollection at all of this meeting?

A. No.

Q. And then there's another meeting on December 17th where you are identified as being present, and the individuals -- some of the individuals there are with CSFB. Do you remember this meeting?

A. No.

Q. Do you keep a calendar of any kind?

A. Yes.

Q. Currently?

A. Currently?

Q. Yes.

A. Yeah.

Q. Do you keep the old ones?

A. No.

Q. When do you throw them out, at the end of the year?

A. You have to ask my secretary, but I believe she throws them out when the year is over.

Q. Back in 1998 or 1999, did you keep a paper calendar or electronic calendar?

A. Always the same.

Drapkin

Q. Was it just a date planner?

A. Date planner.

Q. Do you keep that yourself or does your secretary keep it?

A. My secretary keeps it, but occasionally I'll pencil something in.

Q. And in connection with this litigation, were you asked by anyone to locate your old date planners to see whether you still had them going back to '97 or '98?

A. I don't know if it was, particularly in connection with this particular litigation, but I saw a piece of paper that purported to be a page from one of my calendars, which is where I think these two dates came from (indicating).

Q. A couple of background questions. You know Mr. Gordon Rich, correct?

A. Yes, sir.

Q. How long -- he's deceased now correct?

A. Unfortunately.

Q. Would you tell us who he was, please.

A. When? I mean, at what period of

NOT A CERTIFIED COPY

Drapkin

time? Or how do I know him? I'm not sure of the question.

Q. Well, he worked for CSFB, correct?

A. At the time of his demise, yes.

Q. Was he an uninvestment [sic] banker?

A. Was he an investment banker?

Q. Yes.

A. Yes, he was.

Q. Had you worked with Mr. Gordon Rich on other deals for the MacAndrews group of companies?

A. He went to the Harvard Law School and then started at Skadden, Arps. And he worked for me on numerous transactions before he left and went to First Boston.

Q. Do you know about how long he was at First Boston before he died?

A. I don't recall. A number of years.

Q. How many transactions, best you can recall, that he worked on with you at the MacAndrews group?

A. I really couldn't say.

Q. More than -- more than ten?

A. It depends on how you define

Drapkin

transactions. Gordon Rich was a very bright, very nice guy and he came with ideas all the time. Did we take all of his ideas? No. Did he do work from time to time for companies in other regards? There may have been lots of things that he did. I don't want to mislead you. We did work with him.

Q. Was he the lead person on behalf of CSFB in the Coleman/Sunbeam transaction?

A. I don't know.

Q. Do you know Steve Geller?

A. No. I mean, I think I've met him, but if he was here, I couldn't pick him out of a line up.

Q. By name, was he subordinate to Mr. Rich --

A. I don't know.

Q. Robert Duffy, do you know him?

A. I think I've met these guys, but I just don't remember them. This is eight years ago and I sometimes have trouble remembering what I did last month.

Q. Did your doctor ever tell you it's going to get worse?

Drapkin

A. The more Lipitor you take, the worse it gets. Although, they swear it has no effect.

Q. I want you to go back to -- I want to go back to the Coleman board meeting where the merger is approved. And I'd ask you to pull out of the pile, it's probably the thickest one in the pile, MS 279.

A. Yes.

Q. Okay. Pull it out.

A. Got it.

Q. And I'm going to give you a page number to turn to --

A. Yup.

Q. -- to make your lives a little bit easier.

Turn to page 40.

A. Yes, sir.

Q. And I'd like you first to focus on "Terms and Structure of the Transaction."

A. Yes, sir.

Q. Referring now to the Coleman board of directors, would you read that first paragraph to yourself. I want to ask you a couple of questions about it.

Drapkin

A. Okay.

Q. Now my first question is, is that paragraph accurate based on your being a director who voted in terms of the -- withdrawn.

My first question is, is that an accurate statement as to what the Coleman board of directors considered, given that you were present at the board of directors meetings in February of 1998.

MR. MARMER: Objection; lack of foundation. Objection; mischaracterizes the material.

BY MR. BEMIS:

Q. You can still answer.

A. It's accurate.

Q. So with regard to the Coleman merger agreement, which we've identified as MS 117, there was market risk associated with the transaction after the -- after February 27, 1998, right?

A. Yes, sir.

Q. And with regard to the CLN merger document, there was also market risk in the period between the date of the agreements and the

NOT A CERTIFIED COPY

011738

Drapkin

closing, correct?
A. Absolutely.
Q. Now the next paragraph of MS 279, which begins on page 40, begins " The Coleman board reviewed the economic terms." Would you read that paragraph to yourself, sir, and I just have a couple of quick questions on that.
A. Yes, sir.
Q. Based on being a director of the Coleman Company Inc. and being at the board meetings at the end of February, is this an accurate statement of what was reviewed at the board meeting?
A. To the best of my recollection, yes, sir.
Q. And am I correct in reading this that CSFB said there was an implied premium of 44.2 percent to the market value of the Coleman stock based on the consideration that Sunbeam was going to provide at the merger?
MR. MARMER: Objection; mischaracterizes the material.
A. That's what the document appears to say, yes.

Drapkin

BY MR. BEMIS:
Q. And did CSFB --
A. I'm sorry, B doesn't say that --
Q. My question is, somebody computed the premium of 44.2 percent, correct?
A. It's just a mathematical computation.
Q. Well, no, this is an implied market price they're referring to in this sentence.
A. I don't think so.
Q. Well, maybe I'm reading it wrong.
A. I think you take the $40 and -- $40 625 and 20, 686. You take the cash and whatever the exact percentage was of $40 and 625 each shareholder would get, and that is 44.2 percent higher than $20.68.
Q. I think you're correct. I think I did misspoke. It was based on the mathematical calculations of the cash per share, times the fractional share of Sunbeam stock you would get at market price?
A. Correct.
Q. And when you did that mathematical calculation, which most of us could do I think, the premium was at the time of closing 44.2

Drapkin

percent; is that right?
A. No. This is not the time of closing. This is February 26th. That's the time of signing.
Q. At the time of signing then. Just tell me what the 44.2 percent is as of what date.
A. This document speaks to February 26, 1998. If I am reading it correctly, the premium would be 44 percent based on what we just discussed.
Q. And that would be as of February -- close of business on February 26, 1998?
A. Yes, sir.
Q. And then we know -- we know there was another board meeting on the 27th. The calendar would show us that that's a Friday. And I think all the agreements were signed on Saturday, but dated back as of the 27th. Is that your recollection?
A. It appears to be, yes.
Q. Now, there's a long discussion -- well, I don't want to characterize. I'll let somebody else characterize it, but there is a discussion beginning on page 40 on the opinion of

Drapkin

Credit Suisse First Boston, and that discussion carries over to the next page. And I think there is a more detailed discussion inside of the document. Would you please read the section on the opinion of Credit Suisse First Boston.
A. I read it.
Q. And did Credit Suisse First Boston opine at the board of directors meeting on February 27, 1998 that the transaction was fair?
A. That is my recollection.
Q. In your understanding, what does that mean as a board of director of the Coleman Company?
A. That what I as a Coleman shareholder was receiving for my stock was fair.
Q. Did you have any Coleman stock?
A. Yes, I did.
Q. How many shares did you have at the time of the board meeting?
A. My recollection is I had about 20,000 shares, and my kids had about 10.
Q. Following the announcement of the merger transaction, which I think the record will show is March 2nd -- I think that's right, it's

NOT A CERTIFIED COPY

011739

Drapkin

March 2nd or 3rd -- did you sell your Coleman stock?

A. I sold it sometime in there, yes.

Q. You sold it sometime before the closing --

A. Yes, I did.

Q. -- on March 30th?

A. Yes.

Q. Did you also sell your children's shares?

A. I actually don't know that. I didn't go back to look to see -- when I was looking at the proxy that you gave me, it showed that my kids had 10,000 shares. I only remembered my 20. I would have filed a form 4, so the record would show whether or not I sold the kids shares. I just don't have any recollection whatsoever. But I would have if I knew they were there.

Q. You sold your shares before the March 19th press release?

A. Yes, sir.

Q. Are you aware of other directors of -- strike that.

Do you know what the term inside

Drapkin

director means, don't you?

A. Sure.

Q. You were an inside director?

A. Yes.

Q. Mr. Slovin has testified that he sold 53,300 shares of his stock immediately after the announcement of the Coleman merger. Are you aware of any other inside directors selling their Coleman stock immediately after the announcement?

A. I wasn't even aware that Bruce did. I think subsequent to these lawsuits I heard Jerry sold some shares, but I don't know that that's of my own personal knowledge.

Q. Turn to page 8, if you would, of Exhibit 279.

A. Yes, sir.

Q. If you look at the last paragraph, this does refer to the exercise of options, not necessarily shares that's separate and apart from options. It refers to Mr. Levin, his sales of stock after exercising options. And Mr. Jenkins, he's identified as the chief financial officer.

Is that who you were thinking of earlier who might have issued the request for the

Drapkin

comfort letter?

A. Yes. It's probably Jenkins. He's worked at a couple of companies that we've had so.

Q. Was Mr. Jenkins a director at this time? I can look, but I can't remember.

MR. MARMER: At which time?

Q. At the time --

A. Of the merger?

Q. Yes.

A. I don't think so.

Q. It would be in the minutes. I just don't have them in front of me.

The stock that you owned, was that as a result of exercising options or did you have the stock already?

A. No, I think I bought the stock. I think I bought the stock on the market when I was -- when we took the company public. I can't swear to that, but I'm pretty sure.

Q. Okay.

A. I never got options so.

Q. "I never" what?

A. I never received options, so I assume

Drapkin

that's how I got them.

Q. Why did you sell your 20,000 shares as opposed to keeping them and taking Sunbeam stock?

A. My position is in all the companies in which I'm a director, as long as I'm a director I think it's appropriate that I own shares. When I no longer serve as a director, I no longer feel the need to own shares.

Q. Not to quarrel with you, but you were still the director at the time of the sale --

A. I was not going to be a director of the combined companies. I had no continuing interest. I wasn't front-and-center, paying attention to it. I missed the whole runup in the Sunbeam stock.

Q. You missed the runup in the Sunbeam stock?

A. Between the date that I sold and the date before the March 19th now famous press release, I believe the Sunbeam stock went up substantially.

Q. Well, the Coleman stock went up substantially too, didn't it?

NOT A CERTIFIED COPY

01/710

Drapkin

A. The Coleman just traded in tandem with Sunbeam. Coleman was no longer Coleman; Coleman was a right to receive a share of Sunbeam.

Q. But the Coleman stock ran up almost $10 a share --

A. But I missed that.

Q. Oh, you missed that. You missed the runup of the Coleman stock after the announcement?

A. I sold two days after the announcement. Whatever that part of the runup, I got. But then the Sunbeam stock performed admirably prior to the March 19th bomb and it was up another -- I want to say -- I think it got over 50 bucks. Which would have been worth another 6 bucks a share to me.

Q. If you look at Page 17, you'll see the stock prices there. And for the first quarter of 1998, when you get there, just tell me and we'll look at that.

A. I'm there.

Q. It says the high for the Coleman stock was 35.563. Do you see that?

Drapkin

A. Yes.

Q. What did you sell your stock at, your 20,000 shares?

A. I want to say somewhere around $32 maybe, 31 or 32. Don't hold me -- I mean, I just --

Q. I won't hold you to it. I'm just asking. You got close to --

A. The Sunbeam stock got over 50 bucks a share. And the date that I sold it, I bet it was about 41. So maybe I got less than 32. I just don't remember.

Q. Okay, we can put that exhibit back together. We're done with it for the time being. Why don't we take five minutes here.

THE VIDEOGRAPHER: The time is 3:34 p.m. We're going off the video record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:44 p.m. We're back on the video record.

BY MR. BEMIS:

Q. In connection with the zero coupon debenture offering that Morgan Stanley underwrote in March of 1998, did you attend any of the road

Drapkin

shows?

A. No.

Q. You want to attend a road show today on a public offering I understand; is that correct?

A. That's correct.

Q. Tell the jury what a road show is.

A. When you're selling securities to the public, the management and the underwriters arrange for meetings with potential investors, institutional, retail sales forces and the like, and they so-call go on the road to tell their story to see whether they can get people interested in the deal.

Q. Did you have any involvement with the settlement between the MacAndrews group and Sunbeam that resulted in the issuance of warrants to the MacAndrews group?

A. None.

Q. Did you have any participation in the valuation of those warrants?

A. None.

Q. Let me show you what the Court Reporter will mark as MS 238.

Drapkin

(MS Exhibit 238, Sunbeam Preacquisition Business Plan, marked for identification, as of this date.)

Q. The Court Reporter has handed you MS 238. Do you have that in front of you?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sir.

Q. Have you ever seen that before?

A. No, sir.

Q. Okay, you can hand it back to me.

There were some meetings between or among the parties concerning a potential synergies that the combined Coleman/Sunbeam enterprise might achieve. Did you attend any of those meetings?

A. Not to my knowledge.

Q. Did you have any input in drafting any documentation that purported to analyze the dollar amount of those synergies?

A. No, sir.

Q. Were you involved in any way with the restatement investigation of Sunbeam's financial statements that was undertaken under the

NOT A CERTIFIED COPY

Drapkin

direction of the Sunbeam audit committee in 1998?
A. Not that I recall.
Q. Did you ever see the results of it?
A. I might have.
Q. Did you ever investigate what the actual sales short fall was of Sunbeam in the first quarter of 1998 versus the first quarter of 1997?
A. Did I personally?
Q. Yeah. Did you ever determine what it was?
A. I think I saw a piece of paper yesterday that actually showed what it was, but I didn't do any investigation on my own.
Q. Do you know what piece of paper that you saw?
A. No. It was some internal document that showed-- there was one piece of paper that I looked at that actually had the actual number.
Q. The actual number of the sales or the shortfall?
A. Whatever the first quarter was for Sunbeam.
Q. Do you remember what you saw in

Drapkin

terms -- withdrawn.
Do you remember what the difference was between what Sunbeam eventually recorded in 1998 for its first quarter sales versus its first quarter sales in 1997?
A. No, I do not.
Q. Did you ever -- strike that.
Did you ever see what the difference was in sales between the first quarter of 1997 and the first quarter of 1998 on a restated basis as opposed to as originally set forth in the financial statements of Sunbeam?
A. No, I did not.
MR. BEMIS: Okay. I don't have anything else for you. Thank you, sir.

(Continued on next page to include jurat.)

Drapkin

THE VIDEOGRAPHER: The time is 3:50 p.m. This completes tape 3, and also the videotaped deposition of Mr. Donald Drapkin.

_____
DONALD G. DRAPKIN

Subscribed and sworn to before me this ____ day of _____, 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF WESTCHESTER)

I, JANE WATSON, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:
That, the witness DONALD G. DRAPKIN whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 2004.

_____
JANE WATSON

01771.2

NOT A CERTIFIED COPY

---------- I N D E X ----------
---------- EXHIBITS ----------

MS EXHIBIT FOR ID.
MS Exhibit 279, Notice of Merger and Appraisal Rights..... 15
MS Exhibit 288, Cigar Afficionado article on Ron Perelman..... 40
MS Exhibit 173,"Project Laser" chronology..... 54
MS Exhibit 239, information statement dated 3/38/98..... 94
MS Exhibit 251, Coleman Company 10-K..... 99
MS Exhibit 238, Sunbeam Preacquisition Business Plan..... 197

*** ERRATA SHEET ***
ESQUIRE DEPOSITION SERVICES
155 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 782-8087

NAME OF CASE: Coleman V Morgan Stanley
DATE OF DEPOSITION: June 24, 2004
WITNESS: Donald Drapkin

PAGE	LINE	FROM	TO

_____
DONALD G. DRAPKIN

Subscribed and sworn to before me
this ____ day of _____, 2004.

_____ _____
(Notary Public) My Commission Expires:

NOT A CERTIFIED COPY

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

This draft is furnished solely for the purpose of indicating the form of letter that we would expect to be able to furnish Morgan Stanley & Co. ("Morgan") in response to their request, the matters expected to be covered in the letter, and the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with Morgan it is our understanding that the procedures outlined in this draft are those they wish us to follow. Unless Morgan informs us otherwise, we shall assume that there are not additional procedures they wish us to follow. The text of the letter itself will depend, of course, on the results of procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated therein.

March 19, 1998

Morgan Stanley & Co.
1585 Broadway
33rd Floor
New York, New York 10036-8293

Gentlemen:

We have audited the consolidated balance sheets of Sunbeam Corporation (the "Company") as of December 27, 1997 and December 29, 1996 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ending December 28, 1997 included in the offering memorandum for $1,300,000,000 Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018; our report with respect thereto is also included in the offering memorandum. The offering memorandum dated March 16, 1998 is herein referred to as the Offering Memorandum.

This letter is being furnished in reliance upon representation to us from Morgan Stanley & Co. that:

a. They are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process they have performed is substantially consistent with the due diligence review process that they would have performed if this placement of securities were being registered pursuant to the Act.

working?

SEC 110

AA105211 Confidential Treatment Requested by Arthur Andersen LLP

NOT A CERTIFIED COPY

EXHIBIT 1-12-04 CR # 110 Postrana

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

In connection with the Offering Memorandum—

1. We are independent public accountants with respect to the Company within the meaning of the Securities Act of 1933 (the "Act") and applicable published rules and regulation thereunder.

2. In our opinion, the financial statements audited by us and included in the Offering Memorandum comply in form in all material respects with Generally Accepted Accounting Principles ("GAAP").

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 28, 1997; although we have conducted an audit for the fiscal year ended December 28, 1997, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 28, 1997, and for the fiscal year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the financial position, results of operations, or cash flows as of any date or for any period subsequent to December 28, 1997.

4. For purposes of this letter, we have read the 1997 minutes of meetings of the Board of Directors of the Company and its subsidiaries as set forth in the minute books at January 26, 1998, officials of the Company having advised us that the minutes of all such meetings through that date were set forth therein. In addition, we read the agendas for meetings of the Board of Directors which took place on February 3, 1998 and February 28, 1998, officials of the Company having advised us that these constitute a complete listing of such meetings from January 26, 1998 through March 16, 1998 and that approved minutes for these meetings were not available as of March 16, 1998. We have carried out other procedures to March 16, 1998, as follows (our work did not extend to the period from March 16, 1998, to March 19, 1998, inclusive):

   a. With respect to the period from December 29, 1997 to February 1, 1998, we have -

      (i) Read the unaudited consolidated financial statements of the Company and subsidiaries for the period from December 29, 1997 to February 1, 1998 furnished us by the Company, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to February 1, 1998, were available. The financial information for the period from December 29, 1997 to February 1, 1998 is incomplete in that it omits the statements of cash flows and other disclosures.

NOT A CERTIFIED COPY

AA105212 Confidential
Treatment Requested by
Arthur Andersen LLP

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

(ii) Inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated financial statements referred to in a(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the Offering Memorandum.

The foregoing procedures do not constitute an audit conducted in accordance with generally accepted auditing standards. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that –

a. At February 1, 1998, there was any change in the common stock, increase in long-term debt or any decrease in consolidated net current assets or shareholders' equity of the consolidated companies as compared with amounts shown on the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum, except as follows (in thousands of dollars):

	December 28, 1997	February 1, 1998
Long-term debt	$ 194,580	$ 219,449
Shareholders' Equity	531,937	525,913

b. For the period from December 29, 1997, to February 1, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in net income, except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, except as follows (in thousands of dollars):

	The Period	
	December 30, 1996 through February 2, 1997	December 29, 1997 through February 1, 1998
Net sales	$ 72,945	$ 28,984
Net income (loss)	4,786	(9,510)

we had fire sale of inventory -

NOT A CERTIFIED COPY

AA105213 Confidential Treatment Requested by Arthur Andersen LLP

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

6. As mentioned in 4(a), Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to February 1, 1998, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after February 1, 1998, have, of necessity, been even more limited than those with respect to the period referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether (a) at March 16, 1998, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or shareholders' equity of the consolidated companies as compared with amounts shown on the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum or (b) for the period from December 29, 1997, to March 16, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amount of net income. On the basis of these inquiries and our reading of the minutes and meeting agendas as described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, except as follows:

   a. Between December 28, 1997 and March 16, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased as a result of drawings on the Company's credit facility and *(iii) consolidated shareholders' equity has decreased primarily because of a* first quarter compensation charge from restricted stock issued in connection with new employment contracts for key officers and net losses during the period, offset in part by contributions received for stock option exercises.

   b. For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997. Net income decreased primarily due to the aforementioned sales decrease and the compensation charge incurred in connection with new employment agreements for key officers.

7. At your request, we have -

   a. Read the unaudited pro forma condensed consolidated balance sheet as of December 28, 1997, and the unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 28, 1997.

NOT A CERTIFIED COPY

01778

AA105214 Confidential
Treatment Requested by
Arthur Andersen LLP

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

b. Inquired of certain officials of the Company who have responsibility for financial and accounting matters about –

(i) The basis for their determination of the pro forma adjustments, and

(ii) Whether the unaudited proforma condensed consolidated financial statements referred to in 7a comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

c. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. The foregoing procedures would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representation about the sufficiency of such procedures for your purposes.

8. Nothing came to our attention as a result of the procedures specified in paragraph 7, however, that caused us to believe that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements. Had we performed additional procedures or had we made an examination of the pro forma condensed consolidated financial statements, other matters might have come to our attention that would have been reported to you.

9. For purposes of this letter, we have also read the items identified by you on the attached copy of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

✓ Compared to corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

NOT A CERTIFIED COPY

AA105215 Confidential
Treatment Requested by
Arthur Andersen LLP

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

- Recomputed from corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.
- Compared to the Company's unaudited condensed consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.
- Recomputed from the Company's unaudited condensed consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.
- Compared to, or recomputed from, amounts included in an unaudited schedule or report prepared by the Company and found them to be in agreement. We make no representations regarding the completeness or accuracy of the Company's assumptions underlying the schedule or report.
- Compared to, or recomputed from, the books and records of the Company and noted agreement.
- Compared to, or recomputed from, corresponding amounts appearing in the Company's unaudited proforma condensed combined financial statements included in the Offering Memorandum and found them to be in agreement.

10. It should be understood that our work with respect to the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of the Offering Memorandum was limited to applying the procedures stated above and thus we make no representations regarding the adequacy of disclosure or, other than with respect to the noted results of the specific procedures applied, the accuracy of the discussion contained therein or whether any facts have been omitted.

11. Our audit of the consolidated financial statements for periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

NOT A CERTIFIED COPY

AA105216 Confidential Treatment Requested by Arthur Andersen LLP

PRELIMINARY AND TENTATIVE
FOR DISCUSSION PURPOSES ONLY

12. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph. Also, such procedures would not necessarily reveal any material misstatement of amounts listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

13. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to for any purpose, including but not limited to the purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

raa\lab\sunbeam\comfort ltr-NEW

NOT A CERTIFIED COPY

017751

AA105217 Confidential Treatment Requested by Arthur Andersen LLP

ITINERARY
JOHN TYREE

John will meet with Andy Savarie on Thursday morning.
The MS Team will meet John at the Company.
MS Team Members: Bram Smith, Seth Ishaan, Thomas. Burchill, Michael Hart

Wednesday, March 4, 1998

Delta Air Lines Flt. 447
LV: 8:50 a.m. LaGuardia Airport
AR: 11:43 a.m. Ft. Lauderdale

Hertz rent a car (confirmed)

Midsized car **Confirmation#:A2902133D27GOLD**

Accommodation:

Ritz Carlton Hotel
100 South Ocean Boulevard
Manalapan Fl 33462
561/533-6000
561/588-4202

From Airport- get on I95 headed north- follow through several cities (approximately 25 miles), look for signs t
Boca Raton, look for Linton Boulevard, head west (away from Ocean), the first light after the turn is Congress
turn left onto Congress, before the next light, look for a two story building with Sunbeam Marquis.

11:00am meeting at

SUNBEAM Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
561/243-2100

Contact: Deborah McDonald
Director of Corporation
Planning and Analysis
(561) 243-2092

RETURN: Thursday, March 5, 1998

Continental Airlines Flt 458
LV: 4:10p.m. Ft. Lauderdale
AR: 7:15 p.m. LaGuardia Airport.

Sunbeam/0726-001 (Convertible Debt)
Sunbeam/0726-002 (Leverage Finance)

NOT A CERTIFIED COPY

0177153

MORGAN STANLEY
CONFIDENTIAL
0045317

EXHIBIT
CPH 235
7 130104
LINDA J. GREENBERG, C.S.R.

F14\181336\PG1\07-17-039:02 十七/P

NOT A CERTIFIED COPY

017754

MORGAN STANLEY
CONFIDENTIAL
0045316

OFFERING MEMORANDUM — STRICTLY CONFIDENTIAL

$2,014,000,000

Sunbeam.

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED DEBENTURES DUE 2018

The Debentures are convertible at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock, $0.01 par value (the "Common Stock"), at a conversion rate of 6.575 shares per $1,000 principal amount at maturity. The conversion rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment in certain events. See "Description of Debentures—Conversion of Debentures." The Company's Common Stock is listed on the New York Stock Exchange under the symbol "SOC." The reported last sale price of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape on March 19, 1998 was $46⅛ per share.

The Debentures are being issued at an original price of $372.43 per $1,000 principal amount at maturity (the "Issue Price"), which represents an original issue discount of 62.757% from the principal amount thereof payable at maturity (the "Original Issue Discount"). The Issue Price represents a yield to maturity of 5.0% per annum (computed on a semi-annual bond equivalent basis).

Prior to March 25, 2003, the Debentures are not redeemable at the option of the Company. On or after such date, the Debentures are redeemable on at least 30 days' notice at the option of the Company, in whole or in part at any time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."

The Debentures may be purchased by the Company, at the option of the holder, as of March 25, 2003, March 25, 2008 and March 25, 2013 for purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. Subject to certain conditions, the Company may elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder." The Debentures may also be redeemed at the option of the holder if there is a Fundamental Change (as defined) at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances as described herein. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change." The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions (as defined), the Bank Financing (as defined), the offering of the Debentures and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the total indebtedness and other liabilities of the Company's subsidiaries would have been approximately $731 million.

The Debentures are eligible for trading in Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") Market.

SEE "RISK FACTORS" BEGINNING ON PAGE 12 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY PROSPECTIVE PURCHASERS.

THE DEBENTURES AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THE DEBENTURES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. ACCORDINGLY, THE DEBENTURES MAY BE OFFERED AND SOLD ONLY TO (i) "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A AND (ii) A LIMITED NUMBER OF OTHER INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT, PRIOR TO THEIR PURCHASE OF THE DEBENTURES, DELIVER TO THE INITIAL PURCHASER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. FOR A DESCRIPTION OF CERTAIN RESTRICTIONS ON RESALE OR TRANSFER, SEE "TRANSFER RESTRICTIONS."

PRICE 37.243% AND ACCRUED ORIGINAL ISSUE DISCOUNT, IF ANY

The Company has granted Morgan Stanley & Co. Incorporated (the "Initial Purchaser") an option to purchase up to an additional $302,100,000 aggregate principal amount at maturity of Debentures to cover over-allotments, if any. See "Plan of Distribution."

The Debentures are offered, subject to prior sale, when, as and if accepted by the Initial Purchaser and subject to approval of certain legal matters by Davis Polk & Wardwell, counsel for the Initial Purchaser. It is expected that delivery of the Debentures will be made on or about March 25, 1998 at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in immediately available funds.

MORGAN STANLEY DEAN WITTER

March 19, 1998

NOT CERTIFIED COPY

DEPOSITION EXHIBIT cpt 10

CP 033169
CONFIDENTIAL

01735

THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFERING OR SOLICITATION. NEITHER THE DELIVERY OF THIS OFFERING MEMORANDUM NOR ANY SALE MADE HEREUNDER OF THE SECURITIES DESCRIBED HEREIN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF.

This Offering Memorandum is highly confidential and has been prepared by the Company solely for use in connection with the proposed private placement of the Debentures described herein. The Company and the Initial Purchaser reserve the right to reject any offer to purchase Debentures, in whole or in part, for any reason and to sell less than the principal amount at maturity of the Debentures offered hereby. This Offering Memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Debentures or the Common Stock issuable upon conversion of the Debentures. Distribution of this Offering Memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the Company is prohibited. Offerees represent that they are basing their investment decision solely on this Offering Memorandum and their own examination of the Company and the terms of the offering. Each prospective purchaser, by accepting delivery of this Offering Memorandum, agrees to the foregoing and, if the offeree does not purchase Debentures or this offering is terminated, to return this Offering Memorandum and all documents delivered herewith to: Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York, 10036, Attention: Syndicate Department.

Each person receiving this Offering Memorandum acknowledges that (i) such person has been afforded an opportunity to request from the Company and to review all additional information considered by it to be necessary to verify the accuracy of or to supplement the information herein, (ii) it has not relied on the Initial Purchaser or any person affiliated with the Initial Purchaser in connection with its investigation of the accuracy of such information or its investment decision and (iii) no person has been authorized to give any information or to make any representation concerning the Company or the Debentures or the Common Stock issuable upon conversion of the Debentures offered hereby other than as contained or incorporated by reference herein and information given by duly authorized officers and employees of the Company in connection with investors' examination of the Company and the terms of the offering, and, if given or made, such other information or representation should not be relied upon as having been authorized by the Company or the Initial Purchaser.

No representation or warranty, express or implied, is made as to the accuracy or completeness of the information contained or incorporated by reference herein, and nothing contained in this Offering Memorandum, or incorporated by reference herein, is, or shall be relied upon as, a promise or representation. The Initial Purchaser assumes no responsibility for the accuracy or completeness of such information.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE DEBENTURES AND COMMON STOCK OF THE COMPANY. SPECIFICALLY, THE INITIAL PURCHASER MAY OVERALLOT IN CONNECTION WITH THE OFFERING AND MAY BID FOR AND PURCHASE DEBENTURES AND SHARES OF COMMON STOCK IN THE OPEN MARKET. FOR A DISCUSSION OF THESE ACTIVITIES, SEE "PLAN OF DISTRIBUTION."

NOT CERTIFIED COPY

0177

16div-023427

TABLE OF CONTENTS

	Page
Available Information	3
Incorporation of Certain Documents by Reference	4
Forward-looking Statements	4
Summary	5
Risk Factors	12
The Acquisitions	18
Financing Plan and Use of Proceeds	23
Price Range of Common Stock and Dividend Policy	24
Capitalization	25
Unaudited Pro Forma Condensed Financial Statements	26
Selected Historical Financial Data	31
Management's Discussion and Analysis of Financial Condition and Results of Operations	32
Business	37
Management	43
Security Ownership of Certain Beneficial Owners	45
Security Ownership of Management	46
Description of Other Indebtedness	47
Description of Debentures	48
Registration Rights	62
Description of Capital Stock	64
Certain United States Federal Income Tax Considerations	65
Plan of Distribution	67
Transfer Restrictions	68
Legal Matters	71
Independent Auditors	71
Index to Financial Statements	F-1
Appendix A—Accredited Investor Letter	A-1
Appendix B—Selling Securityholder Notice and Questionnaire	B-1

AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission") Such reports, proxy statements and other information filed with the Commission by the Company can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's regional offices located at 500 West Madison Street, Room 1400, Chicago, Illinois 60661 and at 7 World Trade Center, Suite 1300, New York, New York 10048. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 Fifth Street, Washington, D.C. 20549, at prescribed rates, or the Commission's site on the World Wide Web at http://www sec.gov. Copies of other materials concerning the Company can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

The Company has entered into separate definitive agreements to acquire CLN Holdings Inc. ("CLN Holdings"), the parent of The Coleman Company, Inc. ("Coleman"), Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc ("First Alert"), subject to various customary closing conditions, including the receipt of required regulatory approvals. Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the Commission The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from such filings with the Commission or from information supplied by them for inclusion herein Neither the Company nor the Initial Purchaser warrant that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein Investors are referred to each of CLN Holdings', Coleman's, Signature Brands' and First Alert's complete filings with the Commission which are available from the sources described in the immediately preceding paragraph.

NOT A CERTIFIED COPY

017758

CP 033171
CONFIDENTIAL

16div-023428

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following document has been filed by the Company with the Commission (File No. 1-52) pursuant to the Exchange Act and is incorporated herein by reference: the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 1997. All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Offering Memorandum but prior to the termination of the offering to which this Offering Memorandum relates shall be deemed to be incorporated by reference in this Offering Memorandum and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Offering Memorandum to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as modified or superseded, to constitute a part of this Offering Memorandum. The Company will provide without charge to each person, including any beneficial owner, to whom this Offering Memorandum is delivered, upon written or oral request of such person, a copy of any and all of the documents that have been or may be incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to Rich Goudis, at the principal executive offices of the Company in writing at Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 or by telephone at (561) 243-2100.

FORWARD-LOOKING STATEMENTS

This Offering Memorandum, including the documents incorporated by reference herein, contains forward-looking statements that involve risks and uncertainties. The statements contained in this Offering Memorandum or incorporated by reference herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including without limitation statements regarding the expectations, beliefs, intentions, plans or strategies of the Company, Coleman, Signature Brands and First Alert, or their directors or officers regarding the future. All forward-looking statements included in this document or incorporated by reference herein are based on information available to the Company on the date hereof or thereof, and the Company assumes no obligation to update any such forward-looking statements. Prospective investors are cautioned that any such forward looking statements are not guarantees of future performance and involve risks and uncertainties and that actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors. The information included in this Offering Memorandum, including without limitation the information set forth under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" identifies important factors that could cause such differences.

Except as otherwise indicated, (i) all references to the "Company" or "Sunbeam Corporation" refer to Sunbeam Corporation and its subsidiaries, unless the context otherwise requires, and (ii) all information in this Offering Memorandum assumes that the Initial Purchaser's over-allotment option will not be exercised.

NOT A CERTIFIED COPY

017759

SUMMARY

The following information does not purport to be complete and is qualified in its entirety by the more detailed financial and other information appearing elsewhere in this Offering Memorandum and in the documents incorporated by reference herein. The offering of the Debentures is referred to herein as the "Offering." For a discussion of certain important factors that should be considered by prospective purchasers of the Debentures, see "Risk Factors" beginning on page 12.

THE COMPANY

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately $1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation.

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The *Sunbeam®* and *Oster®* brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as *Mixmaster®*, *Osterizer®* and *Grillmaster®*, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over $56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand

NOT A CERTIFIED COPY

011750

CP 033173
CONFIDENTIAL

16div-023430

distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Restructuring and Growth Plan

In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed Chairman and Chief Executive Officer Albert Dunlap. The restructuring, which was recently completed, included the redefinition of Sunbeam's core products, divestiture of non-core businesses, assembling a new management team, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also consolidated all purchasing functions, reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000 and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force (approximately 6,000 jobs). In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997.

The Acquisitions

Following the successful restructuring of the Company, the management team has extended its strategic focus to identify underperforming companies with strong brand names. The Company intends to capitalize on its proven capability in cost containment and operational improvement by acquiring such companies and their premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations

On March 2, 1998, the Company announced that it had entered into separate agreements to acquire Coleman, Signature Brands and First Alert (collectively, the "Acquisitions"). The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions will give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman. With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.
- *Hardware:* This product category includes portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue and deliver approximately 21 3 million shares of Common Stock (with an aggregate value of approximately $1 billion based on current market prices) and to pay an aggregate of $221 million in cash in connection with the Coleman acquisition On such basis, the Coleman acquisition is valued at approximately $2.2 billion (including the assumption of approximately $976 million of indebtedness) If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19 4 million shares of Common Stock and pay aggregate cash consideration of $261 million in connection with the Coleman acquisition

Signature Brands. With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products Signature Brands attributes its leading market position to its strong brand name recognition, distribution

NOT A CERTIFIED COPY

017761

in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers.

- *Consumer Products:* Signature Brands markets its consumer products under the *Mr Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of *Mr. Coffee®* brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. In addition, *Mr. Coffee®* is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee®* brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. In addition, Signature Brands manufactures a comprehensive line of *Health o meter®* brand analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales. Capitalizing on the recently acquired rights to the *Borg®* and *Counselor®* brand names, Signature Brands intends to introduce in 1998 a new line of *Borg®* scales that are distinctly European in design for department and specialty stores. *Counselor®* scales, to be introduced in 1998, will represent opening price point scales for the mass market
- *Professional Products:* Professional products include the *Pelouze®* and *Health o meter®* brands of office, foodservice and medical scales and *Mr Coffee®* brand commercial coffeemakers. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales Signature Brands' office products, marketed under the *Pelouze®* brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily *Pelouze®* foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications

The Signature Brands transaction is valued at approximately $253 million, consisting of approximately $84 million in cash and the assumption of approximately $169 million of indebtedness

First Alert. With 1997 net sales of approximately $187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert®* brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert®* brand name and its leading smoke detector market share to develop and market a broad range of residential safety products

- *Smoke Detectors:* First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for these products. First Alert markets its smoke detectors under three principal brand names: the *First Alert®* premium brand name, which is featured in media and public relations promotional campaigns; the *Family Gard®* brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive, and the *BRK®* brand name, which is sold to the wholesale electrical market
- *Carbon Monoxide Detectors.* These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert®* and *Family Gard®* brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- *Fire Extinguishers.* First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert®* brand smoke detectors First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip®* brand name which is one of the leading brand names in the U.S retail fire extinguisher market.

The First Alert transaction is valued at approximately $178 million, consisting of approximately $133 million in cash and the assumption of approximately $45 million of indebtedness

---

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, including the receipt of required regulatory approvals, there can be no assurance that any or all of such transactions will be consummated

For further information with respect to the effects of the Acquisitions, see "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources"

NOT A CERTIFIED COPY

CP 033175
CONFIDENTIAL

017762

16div-023432

Financing Plan

In order to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert, the Company intends to negotiate a new bank credit facility (the "New Credit Facility") and to issue the Debentures offered hereby. See "Risk Factors—New Credit Facility Not Yet Committed." For a summary description of the expected terms of the New Credit Facility, see "Description of Other Indebtedness—New Credit Facility."

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering of the Debentures. See "Risk Factors—New Credit Facility Not Yet Committed," "Financing Plan and Use of Proceeds" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
	(In millions)		
New Credit Facility(a)	$1,294.3	Repayment of existing indebtedness(b)	$1,504.3
Debentures offered hereby	750.1	Cash Acquisition consideration(c)	477.6
		Fees and expenses(d)	62.5
Total	$2,044.4	Total	$2,044.4

(a) The New Credit Facility is expected to consist of a $1.5 billion term debt facility, and a $500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert of $202.2 million, $1,077.2 million, $179.9 million and $45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include $7.0 million, $100.3 million and $5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately $100 million and $60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of $261.1 million, $83.8 million and $132.8 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

Recent Announcement

On March 19, 1998 the Company issued a press release in which it stated that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but that net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Actual results could differ materially from the statements in the press release due to various factors including those set forth in "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business." See "Forward-Looking Information."

NOT A CERTIFIED COPY

CP 033178
CONFIDENTIAL

01763

16div-023433

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The summary historical financial data of the Company for each of the fiscal years listed below have been derived from the Company's audited financial statements. The pro forma financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed financial statements, including the notes thereto, appearing elsewhere in this Offering Memorandum. The summary unaudited pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred had the Acquisitions, the initial borrowings under the New Credit Facility used to fund a portion of the Acquisitions (the "Bank Financing") and the Offering been consummated as of the dates indicated, nor is the summary unaudited pro forma financial information necessarily indicative of future operating results or financial position. This summary should be read in conjunction with the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum and the information set forth under "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Unaudited Pro Forma Condensed Financial Statements"

	Fiscal Year Ended					
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997	December 28, 1997 Pro Forma(b)
						(unaudited)
	(In millions, except percentage, ratio and per share data)					
Statement of Operations Data:						
Net sales	$ 927 5	$ 1,044.3	$ 1,016 9	$ 984 2	$ 1,168 2	$ 2,595 4
Operating earnings (loss)	134 0	151.0	70.3	(285.2)	199 4	207 0
Earnings (loss) from continuing operations	76.9	85 3	37 6	(196.7)	123 1	30 3
Net earnings (loss)	88 8	107.0	50.5	(228.3)	109 4	N/A
Diluted earnings (loss) per share of common stock(c)	1.01	1 30	0.61	(2 75)	1 25	0 28
Average number of common and common equivalent shares outstanding (c)	87 9	82.6	82 8	82 9	87 5	107 0
Other Data:						
Gross margin	27 3%	26 8%	20 4%	8.5%	28 3%	27 6%
Operating margin	14 4	14 5	6.9	N/A	17 1	8 0
Ratio of earnings to fixed charges(d)	16 2x	14 9x	5 3x	—	14 5x	2 5x

	As of December 28, 1997	
	Actual	Pro Forma(e)
		(unaudited)
Balance Sheet Data:		
Cash and cash equivalents	$ 52 4	$ 78 9
Working capital	459 9	949 6
Total assets	1,120 3	4,054 3
Total long-term debt	194 6	2,044 4
Stockholders' equity	531 9	1,278 5

(a) Includes special charges of $337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Gives pro forma effect to (i) the Acquisitions, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if they had occurred on December 30, 1996.

(c) Reflects the adoption of SFAS No 128, *Earnings Per Share*. See Note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized), and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by $285 6 million

(e) Gives pro forma effect to the Pro Forma Transactions as if they had occurred as of December 28, 1997

NOT A CERTIFIED COPY

CP 033177
CONFIDENTIAL

017764

16div-023434

THE OFFERING

Securities Offered	$2,014,000,000 principal amount at maturity (plus up to an additional $302,100,000 principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"). There will be no periodic interest payments on the Debentures. See "Description of Debentures—General."
Yield to Maturity of Debentures	5.0% per annum (computed on a semi-annual bond equivalent basis) calculated from March 25, 1998.
Conversion	The Debentures are convertible, at the option of the holder, at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased by the Company, into Common Stock at the rate of 6.575 shares per $1,000 principal amount at maturity of the Debentures (the "Conversion Rate"). The Conversion Rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment upon the occurrence of certain events. Upon conversion, the holder will not receive any cash payment representing accrued Original Issue Discount; such accrued Original Issue Discount will be deemed paid by the Common Stock received upon conversion. See "Description of Debentures—Conversion of Debentures."
Subordination	The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. The Debentures will rank *pari passu* with liabilities owed to trade creditors of the Company. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. See "Description of Debentures—Subordination of Debentures."
Original Issue Discount	The Debentures are being issued at an Original Issue Discount for Federal income tax purposes equal to the excess of the stated redemption price at maturity of the Debentures (which is expected to be the principal amount at maturity) over the amount of their issue price (which is expected to be the Issue Price). Prospective purchasers of Debentures should be aware that, although there will be no periodic payments of interest on the Debentures, accrued Original Issue Discount will be included periodically in a holder's gross income for Federal income tax purposes prior to conversion, redemption, other disposition or maturity of such holder's Debentures, whether or not such Debentures are ultimately converted, redeemed, sold (to the Company or

NOT A CERTIFIED COPY

017765

CP 033178
CONFIDENTIAL

16div-023435

	otherwise) or paid at maturity. See "Certain United States Federal Income Tax Considerations."
Sinking Fund	None.
Redemption.....	The Debentures will not be redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures will be redeemable for cash on at least 30 days' notice, at the option of the Company, in whole at any time or in part from time to time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."
Fundamental Change	The Debentures may be redeemed for cash at the option of the holder if there is a Fundamental Change (as defined) at a price equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."
Purchase at the Option of the Holder...	The Company will purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder."
Financing Plan and Use of Proceeds . .	The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions. "See Financing Plan and Use of Proceeds "
Registration Rights	The Company will, for the benefit of the holders, file with the Commission as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures, a shelf registration statement (the "Shelf Registration Statement") covering resales of the Debentures and the Common Stock issuable upon conversion of the Debentures (the "Registrable Securities"). The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days after such first date of original issuance, and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by non-affiliates of the Company under Rule 144(k) of the Securities Act, or any successor provision, subject to certain permitted exceptions See "Registration Rights "
Transfer Restrictions .. .	The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and are subject to restrictions on transfer See "Transfer Restrictions "

NOT A CERTIFIED COPY

017766

CP 033179
CONFIDENTIAL

16div-023436

RISK FACTORS

An investment in the Debentures offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors, in addition to the other information set forth in this Offering Memorandum, in connection with an investment in the Debentures offered hereby.

Substantial Leverage; Ability to Service Indebtedness. Following the Acquisitions, the Bank Financing and the Offering, the Company will be highly leveraged, with indebtedness that is very substantial in relation to its shareholders' equity. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997, the Company's aggregate outstanding indebtedness would have been $2,044 million and the Company's shareholders' equity would have been $1,278 million. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not restrict the ability of the Company to incur additional Indebtedness. See "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "The Acquisitions," "Description of Other Indebtedness" and "Description of Debentures."

The Company's high degree of leverage could have important consequences to holders of the Debentures, including but not limited to the following: (i) the Company's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired in the future, (ii) a substantial portion of the Company's cash flow from operations must be dedicated to the payment of principal and interest on its indebtedness, thereby reducing the funds available to the Company for its operations and other purposes; (iii) the Company may be substantially more leveraged than certain of its competitors, which may place the Company at a competitive disadvantage; (iv) the Company may be hindered in its ability to adjust rapidly to changing market conditions; and (v) the Company's substantial degree of leverage could make it more vulnerable in the event of a downturn in general economic conditions or its business.

The Company's ability to repay or to refinance its obligations with respect to its indebtedness will depend on its future financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to financial, business and other factors, many of which are beyond the Company's control. These factors could include operating difficulties, increased operating costs, product pricing pressures, the response of competitors, and delays in implementing strategic projects. The Company's ability to meet its debt service and other obligations will depend in significant part on the extent to which the Company can implement its business strategy and successfully integrate the Acquisitions. There can be no assurance that the Company will be able to implement its strategy fully, that the anticipated results of its strategy will be realized or that the Acquisitions will be successfully integrated.

If the Company's cash flow and capital resources are insufficient to fund its debt service obligations, the Company may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital, or to refinance or restructure its debt. There can be no assurance that the Company's cash flow and capital resources will be sufficient for payment of principal of, and premium, if any, and interest on, its indebtedness in the future, or that any such alternative measures would be successful or would permit the Company to meet its scheduled debt service obligations. In addition, because the Company's obligations under the New Credit Facility will bear interest at floating rates, an increase in interest rates could adversely affect, among other things, the Company's ability to meet its debt service obligations.

Holding Company Structure; Subordination. The Debentures will be exclusively the obligations of Sunbeam Corporation and not of any of its subsidiaries. The Company is a holding company that conducts substantially all of its operations through its subsidiaries. As a holding company, the Company holds no significant assets other than its investments in and advances to its subsidiaries. The Company is, therefore, dependent upon its receipt of sufficient funds from its subsidiaries to meet its own obligations, including its obligation to pay the accreted value of the Debentures upon maturity or earlier redemption or repurchase. The ability of the Company's subsidiaries to pay dividends or to make other payments or advances to the Company will depend on the operating results of its subsidiaries and any restrictions on paying such dividends or making such payments as may be applicable to such subsidiaries, including those expected to be contained in the New Credit Facility.

NOT A CERTIFIED COPY

011757

CP 033180
CONFIDENTIAL

16div-023437

The Debentures will be unsecured and subordinated in right of payment to all existing and future Senior Indebtedness of the Sunbeam Corporation. As a result of such subordination, in the event of bankruptcy, liquidation or reorganization of the Company and in certain other events, the assets of the Company will be available to pay its obligations with respect to the Debentures only after all Senior Indebtedness has been paid in full, and there may not be sufficient assets remaining to pay amounts due on any or all of the Debentures then outstanding. The Debentures will be expressly subordinated to borrowings under the New Credit Facility and will be also effectively subordinated to all existing and future indebtedness and other liabilities and commitments of the Company's subsidiaries. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not prohibit or limit the incurrence of Senior Indebtedness by the Company or the incurrence of other indebtedness and other liabilities by the Company or its subsidiaries, and the incurrence of additional indebtedness and other liabilities by the Company or its subsidiaries could adversely affect the Company's ability to pay its obligations with respect to the Debentures. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997 the Company would have had $1,294 million of Senior Indebtedness outstanding, and as of the same date the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Company anticipates that from time to time it will incur indebtedness, including Senior Indebtedness, and that it and its subsidiaries will from time to time incur other additional indebtedness and liabilities. See "Description of Debentures—Subordination of Debentures."

The Company expects that borrowings under the New Credit Facility will be, and the Company's and its subsidiaries' future indebtedness may be, secured by liens and other security interests over the assets of the Company's subsidiaries and the Company's equity interests in the Company's subsidiaries. Moreover, the Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. The ability of the Company, and therefore the holders of the Debentures to benefit from distributions of assets of the Company's subsidiaries may be limited to the extent that the outstanding shares of any of its subsidiaries and such subsidiary's assets are pledged to secure other debt of the Company or its subsidiaries. Any right of the Company to receive assets of any subsidiary upon such subsidiary's liquidation or reorganization will be structurally subordinated to the claims of that subsidiary's creditors.

Risks Associated with Acquisitions. The Company faces significant risks associated with the recently announced acquisitions of Coleman, Signature Brands and First Alert. The Company must, among other things, return these companies to profitable operations; realize synergies from combining these companies with the Company's current operations; integrate the products manufactured by these companies into its existing product lines; consolidate duplicate facilities, systems and personnel; improve the operating efficiencies of such companies; develop new products; and shorten the product development cycle of the acquired companies. This process will require substantial attention from the Company's management team. The diversion of the attention of management from the day-to-day operations of the Company or difficulties encountered in the integration process could have an adverse effect on the Company's business, financial condition and results of operations, which effect could be material. In addition, consummation of the Acquisitions will result in a substantial increase in the size of the Company's operations placing challenges on the Company to effectively use its employees, management, operational and financial resources to manage the expanded operations of the Company. Failure to use such resources effectively could have a material adverse effect on the Company. Other potential risks of the Acquisitions include the presence of unknown liabilities and the possibility of the incurrence of significant charges associated with write-downs of the recorded values of assets acquired or restructurings of the acquired companies. Accordingly, there can be no assurance that the Company will realize the desired benefits of these acquisitions.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

New Credit Facility Not Yet Committed. The Company has been advised by an affiliate of the Initial Purchaser that, subject to customary qualifications, it is highly confident that under current market and economic conditions the New Credit Facility can be successfully syndicated to financial institutions, and the Company is

NOT A CERTIFIED COPY

0117768

CP 033181
CONFIDENTIAL

16div-023438

currently discussing the terms of the New Credit Facility with prospective lenders. While the Company is confident that it will be able to obtain the New Credit Facility on a timely basis to complete the Acquisitions, the Company has no commitments yet from lenders to provide the New Credit Facility. The offering of the Debentures is not conditioned upon the availability of the New Credit Facility and the Acquisitions are not conditioned on the availability of adequate financing. If the Company were unable to secure the New Credit Facility on a timely basis, the Company would be required to secure alternative financing sources to fund the Acquisitions or to delay the closing of the Acquisitions until funds became available.

Risks of International Operations and Expansion. The Company currently manufactures some products and has sales in countries such as Mexico and Venezuela whose economies have been unstable or hyperinflationary in recent years. The economies of other foreign countries important to the Company's expansion plans, including other countries in Latin America and Asia, could suffer similar instability in the future. Such factors as currency devaluation, new tariffs, changes in monetary policies, inflation, governmental instability and similar matters could negatively affect the Company's operations in foreign markets. Although the Company plans to take advantage of recent economic and currency fluctuations in certain Asian countries by increasing the Company's purchase of products from such countries at a lower price, there is no guarantee that such purchasing advantage will be fulfilled or will fully overcome any lost sales opportunities in those same countries. As a result, the economic conditions discussed above or any of these circumstances could have an adverse effect on future financial performance, which effect could be material.

The Company's goal is to substantially increase the amount of business conducted by it outside North America. If the Company fails to achieve anticipated market penetration in areas of the world into which the Company currently expects to expand its sales, such event is likely to have an adverse effect on the Company's future financial performance, which effect could be material. Expansion of the Company's sales in foreign markets depends upon many factors, including economic conditions in foreign countries, the strength of consumer demand in those countries for products which the Company sells (or expects to sell in those markets), the strength of competition from other global consumer product companies and other factors which may negatively affect the Company's anticipated performance in those markets. Although the recent financial instability in Asia has not currently had any material impact on the Company, if such conditions continue and/or worsen they could negatively impact the Company's ability to achieve anticipated sales growth in such countries, the effect of which could be material to the Company's future financial performance.

Risks Associated with New Product Development. The Company's plans to increase its revenues depend on its ability to develop new and innovative products. The Company anticipates that it will be able to rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its aggressive schedules for future product development. Failure to develop and manufacture new products that achieve market acceptance in the amounts and with the quality required by its customers would likely have an adverse effect on future financial performance, which effect could be material.

Dependence on Key Personnel. The Company depends heavily on the services of its senior management, including Albert J. Dunlap, the Company's Chairman and Chief Executive Officer, Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer, David C. Fannin, the Company's Executive Vice President, General Counsel and Secretary, and Donald R. Uzzi, the Company's Executive Vice President, Consumer Products Worldwide. The loss of any member of the Company's senior management, including Mr. Dunlap, Mr. Kersh, Mr. Fannin or Mr. Uzzi, could have an adverse effect on the Company, which effect could be material. On February 20, 1998, each of Mr. Dunlap, Mr. Kersh and Mr. Fannin signed new three year employment contracts with the Company which include substantial equity-based compensation.

Economic Conditions The Company's performance should be expected to be affected by the strength of the retail economy, primarily in the United States, but also in Canada, Latin America and Asia and, subsequent to the consummation of the acquisition of Coleman, Europe. Weakness in consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results. In addition, the extended credit terms provided by the Company in connection with its "early buy" program increase the Company's risk of collection of related accounts receivable

CP 033182
CONFIDENTIAL

NOT CERTIFIED COPY

01176 9

16div-023439

Competition. The Company operates in a highly competitive environment with numerous domestic and foreign competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated goals. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material. The Company's future success will depend to a significant extent upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution and order processing. There can be no assurance that the Company will be able to compete effectively in all such areas in the future.

The Company anticipates realizing price increases from time to time for certain of its products. The Company operates in a highly competitive industry, and its ability to realize price increases may be limited due to competitive pressures. If there is a material failure to realize anticipated price increases, margins likely will be lower than anticipated by the Company, and this will likely have an adverse effect on future financial performance, which effect could be material.

The Company's profitability may be negatively impacted by under-absorption of manufacturing costs resulting from underutilization of manufacturing capacity if the Company's sales growth is less than anticipated.

No Long Term Contracts with Customers. The Company markets its products through virtually every category of retailer including mass merchandisers, warehouse clubs, department stores, home centers and hardware stores. Due to the consolidation of the U.S. retail industry, the Company's customer base is relatively concentrated with its largest customer Wal-Mart Stores, Inc. accounting for 21%, and its five largest customers accounting for 36%, of 1997 net sales. The Company's customers, including all of its large retail customers, place orders for products on an as-needed basis and have no long term supply contracts with the Company. As a result, the Company relies on its ability to obtain a continuing flow of new orders from its large, high-volume retailing customers. While the Company has positioned itself to respond to the challenges of its markets by pursuing strategic relationships with large high-volume merchandisers, there can be no assurance that the Company will continue to be able to successfully meet the needs of its customers.

Raw Material Costs. A significant portion of the cost of goods manufactured by the Company in North America is the cost of raw materials and/or components. The Company has implemented changes in its purchasing function which have enabled the Company to purchase materials more efficiently and economically than it has in the past. The future success of the Company's purchasing initiatives may be affected by many factors beyond the Company's control, such as commodity pricing generally and higher prices for the specific materials required by the Company. Although there are numerous suppliers available for the materials and components sourced by the Company, any unanticipated change in suppliers could be disruptive and costly to the Company. In addition, the Company's future initiatives to reduce the cost of materials simply may not achieve savings in amounts comparable to those previously obtained by the Company. A significant failure by the Company to maintain material costs as anticipated would likely have an adverse effect on anticipated future financial performance, which effect could be material.

Dependence on Third-Party Suppliers and Service Providers. The Company currently manufactures approximately 70% of its products. One of the Company's goals for 1998 is to source approximately 50% of the Company's parts and/or products from third parties. The Company's ability to realize sales and operating profits at anticipated levels is dependent upon its ability to timely manufacture, source and deliver products which may be sold for a profit. Labor difficulties, delays in delivery or pricing of raw materials and/or sourced products, scheduling and transportation difficulties, management dislocation and delays in development and manufacture of new products can negatively affect operating profits. Although the Company will use its best efforts to select suppliers for sourced products which are reliable and dependable, the Company's planned increase in the percentage of sourced products will decrease the Company's immediate control of products and, if such suppliers fail to deliver products as anticipated, could have an adverse effect on future financial performance, which effect could be material.

The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary

NOT A CERTIFIED COPY

017770

CP 033183
CONFIDENTIAL

computer systems. Failure of any of these third-party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

Seasonality. Sales of certain of the Company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the year. For instance, the Company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by moderate temperatures in the northern states. The Company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an "early buy" program; such a program shifts certain of the weather related risks of negative sales impact for such seasonal products to later months of the season and, as result, could have a negative impact on future financial performance.

Litigation. As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits, product recall actions and/or by higher than anticipated rates of warranty returns or other returns of goods. Certain of the product lines to be acquired in the Acquisitions may increase the Company's potential exposure to litigation.

Limitations on Repurchases and Redemptions of Debentures. On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, outstanding Debentures, subject to certain conditions. In addition, upon a Fundamental Change, each holder of the Debentures will have the right, at the holder's option, to require the Company to redeem all or a portion of such holder's Debentures. There can be no assurance that the Company will have sufficient funds to pay the repurchase price on any Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the repurchase price at valuations based on then prevailing market prices) or, in the event of a Fundamental Change, the redemption price for all the Debentures tendered by the holders thereof. The New Credit Facility is expected to contain, and future agreements relating to other indebtedness (including Senior Indebtedness) to which the Company becomes a party may contain, restrictions or prohibitions on the repurchase or redemption of the Debentures. It is also expected that the New Credit Facility will prohibit the purchase of the Debentures by the Company in the event of a Fundamental Change, unless and until such time as the indebtedness under the New Credit Facility is paid in full. In addition, it is expected that the New Credit Facility will prohibit the Company's right to purchase Debentures on a Purchase Date for cash, but will not prohibit the purchase of Debentures with Common Stock. If a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures for cash or the Company is prohibited from redeeming the Debentures after the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to repurchase or redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures for cash or redeeming the Debentures. In such case, the Company's failure to repurchase or redeem Debentures required to be repurchased or redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the New Credit Facility and may also constitute a default under any other indebtedness of the Company outstanding at such time. In addition, it is expected that the occurrence of a Fundamental Change would constitute a default under the New Credit Facility and might constitute a default under other future indebtedness of the Company. In such circumstances, the subordination provisions in the Indenture would likely prohibit or restrict payments to the holders of Debentures. The inability to repay the indebtedness under the New Credit Facility, if accelerated, would have a material adverse effect on the Company and the holders of the Debentures. The term "Fundamental Change" is limited to certain specified transactions and does not include all events that could adversely affect the Company's financial condition or operating results. The requirement that the Company offer to redeem the Debentures upon a Fundamental Change will not necessarily protect holders of the Debentures in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."

Proposed Tax Legislation. On February 2, 1998, the Clinton Administration announced a legislative proposal (the "Administration Proposal") that would generally defer interest deductions for original issue discount on convertible debt, such as the Debentures, until such interest is paid in cash or other property. Payment would not include the conversion of such debt into equity of the issuer or the payment of an amount which is determined by reference to the value of the Common Stock. The Administration Proposal would be effective for convertible debt issued on or after the date of "first committee action." If enacted in its current form

CP 033184
CONFIDENTIAL

NOT A CERTIFIED COPY

01771

16div-023441

and if "first committee action" is taken with respect to the Administration Proposal on or before the date on which the Debentures are issued, such legislation would apply to the Debentures and the original issue discount accruing in respect of the Debentures would not be deductible by the Company for federal income tax purposes. Nevertheless, it is not possible to predict when or if the Administration Proposal will be enacted, or, if enacted, what form it may take. The federal income tax treatment of holders of Debentures would not be affected by the Administration Proposal if enacted in its current form.

Certain Tax Consequences to the Company. Section 279 of the Internal Revenue Code of 1986, as amended (the "Code") limits the deductibility of interest paid or incurred with respect to certain convertible debt incurred to finance the acquisition of stock of another corporation if such debt constitutes "corporate acquisition indebtedness." It is possible that the Internal Revenue Service could take the position that, as a result of the Acquisitions, the Debentures should be treated as "corporate acquisition indebtedness," which position, if sustained, could limit the Company's ability to deduct all or a portion of the original issue discount on the Debentures. Although the issue is not free from doubt, the Company believes that section 279 of the Code should not limit the Company's ability to deduct original issue discount.

Absence of a Public Market. Prior to the Offering, there has been no trading market for the Debentures. Although the Initial Purchaser has advised the Company that it currently intends to make a market in the Debentures, it is not obligated to do so and may discontinue such market making at any time without notice. In addition, such market making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, there can be no assurance that any market for the Debentures will develop or, if one does develop, that it will be maintained. If an active market for the Debentures fails to develop or be sustained, the trading price of the Debentures could be adversely affected.

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and, unless and until so registered, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act and applicable state securities laws. See "Registration Rights," "Plan of Distribution" and "Transfer Restrictions."

Initial Ratings Risks. The Company believes it is likely that one or more rating agencies may rate the Debentures. There can be no assurance that any such agency or agencies will rate the Debentures or, if they do, what rating or ratings they will assign to the Debentures. If one or more rating agencies assign the Debentures a rating lower than generally expected by investors, such event would likely have an adverse effect on the market price of the Debentures.

Restrictions on Ability to Pay Dividends. The New Credit Facility is expected to restrict the payment of dividends unless certain financial ratios are achieved. In addition, the Company may in the future issue additional indebtedness which contains similar restrictions.

In addition to the limitations imposed on the payment of dividends by the New Credit Facility and any future agreements governing indebtedness of the Company, under Delaware law the Company is permitted to pay dividends on its capital stock only out of its surplus or, in the event that it has no surplus, out of its net profits for the year in which a dividend is declared or for the immediately preceding fiscal year. Surplus is defined as the excess of a company's total assets over the sum of its total liabilities plus the par value of its outstanding capital stock. In order to pay dividends in cash, the Company must have surplus or net profits equal to the full amount of cash dividend at the time such dividend is declared. In determining the Company's ability to pay dividends, Delaware law permits the board of directors of the Company to revalue the Company's assets and liabilities from time to time to their fair market values in order to create surplus. The Company cannot predict what the value of its assets or the amount of its liabilities will be in the future and, accordingly, there can be no assurance that the Company will be able to pay cash dividends on the Common Stock.

NOT A CERTIFIED COPY

017772

THE ACQUISITIONS

On March 2, 1998, the Company announced the signing of separate definitive agreements to acquire Coleman, Signature Brands and First Alert. The three transactions are subject to customary conditions, including the receipt of required regulatory approvals, and are expected to close early this spring of 1998.

The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman

With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, and breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.
- *Hardware:* Following the divestiture of the safety and security products business anticipated in March 1998, this product category will include portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Outdoor Recreation	$ 859.7	74.5%	Domestic	$ 933.5	80.9%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.3)	(14.3)
Total	$1,154.3	100.0%	Total	$1,154.3	100.0%

Signature Brands

With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands, founded in 1919, is one of the oldest and largest domestic manufacturers of scales for home and medical use

- *Consumer Products.* Signature Brands markets its consumer products under the *Mr. Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of

NOT A CERTIFIED COPY

011773

CP 033188
CONFIDENTIAL

16div-023443

Mr. Coffee® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Sales of automatic drip coffeemakers accounted for approximately 43% of Signature Brands' net revenues in 1997. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Under the *Health o meter*® brand name, Signature Brands manufactures a comprehensive line of analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales, and offers a range of health and wellness therapeutic products. Capitalizing on the recently acquired rights to the *Borg*® and *Counselor*® brand names, Signature Brands intends to introduce in 1998 a new line of *Borg*® scales that are distinctly European in design for department and specialty stores. *Counselor*® scales, to be introduced in 1998, will represent opening price point scales for the mass market. Sales of consumer scales accounted for approximately 19% of Signature Brands' net sales in fiscal 1997. Signature Brands offers its consumer products through a combination of direct sales and independent manufacturers' representatives to distributors and major retail outlets, including mass merchants, national hardware chains, drugstore chains, catalogue showrooms, warehouse clubs, retail grocery chains, specialty stores, department stores and various mail-order companies.

- *Professional Products:* Professional products include the *Pelouze*® and *Health o meter*® brands of office, foodservice and medical scales and *Mr. Coffee*® brand commercial coffeemakers. Signature Brands' reputation for quality and its *Health o meter*® brand name recognition have been based on its participation in the medical scale market for over 75 years. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze*® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Professional scale products are marketed through a combination of direct sales and independent manufacturers' representatives to distributors, dealers, office megastores, mail order companies and major buying groups.

The following table summarizes Signature Brands' net sales for its fiscal year ended September 28, 1997 by product category (in millions):

Product Category	Amount	%
Consumer Products	$236.0	85.6%
Professional Products	39.7	14.4
Total	$275.7	100.0%

First Alert

With 1997 net sales of approximately $187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert*® brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. The markets for residential smoke and carbon monoxide detectors outside the United States are in a much earlier stage of development than the United States. First Alert's market penetration is greatest in the United Kingdom and Canada. First Alert sells its products to mass merchants, home center and hardware chains, catalog showrooms, warehouse clubs, and electrical wholesale distributors. First Alert also supplies its products to its wholly-owned, non-U.S. subsidiaries and to independent foreign distributors.

NOT A CERTIFIED COPY

01 7774

CP 033187
CONFIDENTIAL

16div-023444

- *Smoke Detectors:* First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for their products. First Alert markets its smoke detectors under three principal brand names: the *First Alert®* premium brand name which is featured in media and public relations promotional campaigns; the *Family Gard®* brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK®* brand name which is sold into the wholesale electrical market.

- *Carbon Monoxide Detectors:* These products include carbon monoxide detectors, first introduced by First Alert in 1993, with biomimetic sensors sold under the *First Alert®* and *Family Gard®* brand names. First Alert holds the leading market position in the carbon monoxide detector market.

- *Fire Extinguishers:* First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert®* brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip®* brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The following table summarizes First Alert's total sales for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Smoke Detectors.....	$101.6	54.4%	U.S.....	$169.0	90.4%
CO Detectors.....	40.4	21.6	Europe.....	20.2	10.8
Fire Extinguishers	17.1	9.1	Other	17.8	9.5
Other	27.8	14.9	Eliminations	(20.1)	(10.7)
Total	$186.9	100.0%	Total.....	$186.9	100.0%

Acquisition Structures and Agreements

The Acquisitions will be accounted for by the Company using the purchase method of accounting.

Coleman. Pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), among the Company, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("LAC"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ("CLN Holdings"), LAC will be merged with and into CLN Holdings (the "Holdings Merger"). CLN Holdings is an indirect wholly owned subsidiary of Mafco Holdings, Inc., a corporation wholly owned by Ronald O. Perelman ("Mafco"), and is the indirect beneficial owner of 44,067,520 shares of common stock of Coleman, representing approximately 82.4% of the total number of outstanding shares of common stock of Coleman.

In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid and nonassessable shares of Common Stock of the Company and (ii) $159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of the Company and the Company will become the indirect owner of 82.4% of the outstanding common stock of Coleman.

At the same time that it entered into the Holdings Merger Agreement, the Company also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), with Coleman and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("CAC"). Pursuant to the Coleman Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with and into Coleman (the "Coleman Merger"), with Coleman continuing as the surviving corporation. In the Coleman Merger, each outstanding share of Coleman common stock (other than shares held indirectly by the Company and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Common Stock of the Company and (ii) $6.44 in cash, without interest thereon. Upon consummation of the Coleman Merger, Coleman will become an indirect wholly owned subsidiary of the Company.

NOT A CERTIFIED COPY

01775

CP 033188
CONFIDENTIAL

16div-023445

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the satisfaction of certain other customary conditions. It is currently anticipated that the Holdings Merger will be completed in early this spring of 1998. Consummation of the Coleman Merger is subject to the completion of the Holdings Merger and the preparation and filing of definitive documents with the Commission. It is anticipated that the Coleman Merger will be consummated this spring of 1998. Parent Holdings (the direct holder of all outstanding stock of CLN Holdings) and Coleman Worldwide Corporation (the direct holder of 82.4% of the outstanding common stock of Coleman) have approved the Holdings Merger and the Coleman Merger, respectively, and no other stockholder approvals will be required in connection therewith.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue (and deliver from its treasury) approximately 21.3 million shares of Common Stock (with an aggregate value of approximately $1 billion based on current market prices) and to pay an aggregate of $221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately $2.2 billion (including the assumption of approximately $976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of $261 million in connection with the Coleman acquisition.

Signature Brands. Pursuant to the Agreement and Plan of Merger, dated as of February 28, 1998 (the "Signature Brands Merger Agreement"), among the Company, Java Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("Java Acquisition"), and Signature Brands, Java Acquisition commenced a tender offer (the "Signature Brands Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of Signature Brands (the "Signature Brands Common Stock") for $8.25 per share in cash. Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the Signature Brands Tender Offer that number of shares which when added to any shares owned by the Company or Java Acquisition represents at least 51% of the outstanding shares of Signature Brands Common Stock (assuming exercise of all outstanding options and warrants) on the date shares are accepted for payment. In addition, Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the Signature Brands Tender Offer and certain other customary conditions.

Pursuant to the Signature Brands Merger Agreement, following the expiration of the Signature Brands Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary Signature Brands stockholder approval and provided that Java Acquisition has purchased shares of Signature Brands Common Stock in the Signature Brands Tender Offer and certain other customary conditions are met, Java Acquisition will be merged with and into Signature Brands (the "Signature Brands Merger"), with Signature Brands as the surviving corporation. As a result of the Signature Brands Merger, Signature Brands will become a wholly owned subsidiary of the Company and each outstanding share of Signature Brands Common Stock, which is not owned by Signature Brands or any of its subsidiaries or the Company or any of its subsidiaries, other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive $8.25 in cash.

Timing of consummation of the Signature Brands Merger is dependent, among other things, upon whether the Signature Brands Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, Signature Brands stockholder approval of the Signature Brands Merger will be required. It is anticipated, however, that the Signature Brands Merger will be consummated early this spring of 1998.

First Alert. Pursuant to an Agreement and Plan of Merger, dated as of February 28, 1998 (the "First Alert Merger Agreement"), among the Company, Sentinel Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of the Company ("Sentinel Acquisition"), and First Alert, Sentinel Acquisition commenced a tender offer (the "First Alert Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of First Alert (the "First Alert Common Stock"), for $5.25 per share in cash.

NOT A CERTIFIED COPY

017776

CP 033189
CONFIDENTIAL

16div-023446

Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the First Alert Tender Offer that number of shares which when added to any shares owned by the Company or Sentinel Acquisition represents at least a majority of the outstanding shares of First Alert Common Stock (assuming exercise of all outstanding options) on the date shares are accepted for payment. In addition, Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the First Alert Tender Offer and certain other customary conditions.

Pursuant to the First Alert Merger Agreement, following the expiration of the First Alert Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary First Alert stockholder approval, and provided that Sentinel Acquisition has purchased shares of First Alert Common Stock in the First Alert Tender Offer and certain other customary conditions are met, Sentinel Acquisition will be merged with and into First Alert (the "First Alert Merger"), with First Alert as the surviving corporation. As a result of the First Alert Merger, First Alert will become a wholly owned subsidiary of the Company and each outstanding share of First Alert Common Stock, which is not owned by First Alert or any of its subsidiaries or the Company or any of its subsidiaries, or other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive $5.25 in cash.

Timing of consummation of the First Alert Merger is dependent, among other things, upon whether the First Alert Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, First Alert stockholder approval will be required, which would require the preparation and filing of definitive documents with the Commission. It is anticipated, however, that the First Alert Merger will be consummated early this spring of 1998.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, See "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from filings by Coleman, Signature Brands and First Alert with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrants that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert, which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. See "Available Information."

NOT A CERTIFIED COPY

017777

CP 033190
CONFIDENTIAL

16div-023447

FINANCING PLAN AND USE OF PROCEEDS

The net proceeds from the Offering are expected to be $726.6 million ($835.7 million if the Initial Purchaser's overallotment option is exercised in full), after deducting discounts and commissions and expenses related to the sale of the Debentures. The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions.

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
	(In millions)		
New Credit Facility(a)	$1,294.3	Repayment of existing indebtedness(b)	$1,504.3
Debentures offered hereby	750.1	Cash Acquisition consideration(c)	477.6
		Fees and expenses(d)	62.5
Total	$2,044.4	Total	$2,044.4

(a) The New Credit Facility is expected to consist of a $1.5 billion term debt facility and a $500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands, and First Alert in the amount of $202.2 million, $1,077.2 million, $179.9 million and $45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include $7.0 million, $100.3 million and $5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately $100 million and $60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of $261.1 million, $83.8 million and $132.7 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

For a description of the expected terms of the New Credit Facility and other indebtedness of the Company, see "Description of Other Indebtedness—New Credit Facility" and the Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum. See also "Risk Factors—New Credit Facility Not Yet Committed."

NOT A CERTIFIED COPY

017778

CP 033191
CONFIDENTIAL

16div-023448

PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

The Company's Common Stock is listed and traded on the New York Stock Exchange (the "NYSE") under the symbol "SOC."

The following table sets forth the reported high and low sale prices per share for the Common Stock on the NYSE Composite Tape and the cash dividends declared on the Common Stock for the calendar quarters indicated:

	Price Range		Dividends Per Common Share
	High	Low	
1996			
First Quarter	$19¾	$15⅛	$.01
Second Quarter	17⅛	13½	.01
Third Quarter	24¾	12¼	.01
Fourth Quarter	29½	22⅛	.01
1997			
First Quarter	$34½	$24⅞	$.01
Second Quarter	40¾	29¾	.01
Third Quarter	45¾	35⅜	.01
Fourth Quarter	50⅞	37	.01
1998			
First Quarter (through March 19, 1998)	$52	$36	—

On March 19, 1998, the last reported sale price of Common Stock on the NYSE was $45⅝ per share. On February 27, 1998, there were approximately 1,311 shareholders of record of Common Stock

The Company presently intends to continue to pay cash dividends at a quarterly rate of $.01 per share; however, future payments of cash dividends will be at the discretion of the Company's Board of Directors and dependent upon the Company's results of operations, financial condition and other relevant factors, including restrictions expected to be contained in the New Credit Facility.

NOT A CERTIFIED COPY

017779

CP 033192
CONFIDENTIAL

16div-023449

CAPITALIZATION

The following table sets forth the capitalization of the Company as of December 28, 1997 on a historical basis and on a pro forma basis after giving effect to (i) the Acquisitions, (ii) the initial borrowings under the New Credit Facility, (iii) the Offering and (iv) the use of the net proceeds from the Offering and from the initial borrowings under the New Credit Facility as described under "Financing Plan and Use of Proceeds." This table should be read in conjunction with "Financing Plan and Use of Proceeds," "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto of the Company, CLN Holdings, Signature Brands and First Alert included elsewhere in this Offering Memorandum.

	As of December 28, 1997	
	Actual	Pro Forma (unaudited)
	(In millions)	
Cash and cash equivalents	$ 52.4	$ 78.9
Short-term debt and current portion of long-term debt	$ 0.7	$ —
Long-term debt, net of current portion:		
New Credit Facility	$ —	$1,294.3
Existing Revolving Credit Facility(a)	109.3	—
Industrial Revenue Development Notes due 2009	75.0	—
Debentures offered hereby	—	750.1
Other	10.2	—
Total long-term debt	194.5	2,044.4
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (200,000,000 shares authorized; actual shares—89,984,425; issued, unaudited pro forma shares—109,420,895)	0.9	1.1
Paid-in capital	483.4	1,229.7
Retained earnings	141.1	141.1
Other	(30.4)	(30.4)
	595.0	1,341.5
Treasury stock, common stock at cost (4,454,394 shares)	(63.0)	(63.0)
Total shareholders' equity	532.0	1,278.5
Total capitalization	$727.2	$3,322.9

(a) Excludes approximately $59 million from the sale of trade accounts receivable through a revolving trade accounts receivable securitization program. The proceeds from the sale were used to reduce borrowings under the Existing Revolving Credit Facility. The maximum amount of receivables that can be sold under the program is $70 million.

NOT A CERTIFIED COPY

017730

CP 033183
CONFIDENTIAL

16div-023450

UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma condensed balance sheet as of December 28, 1997 was prepared to illustrate the estimated effects of (i) the Acquisitions, accounted for under the purchase method of accounting, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and from the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if the Pro Forma Transactions had occurred on December 28, 1997. The following unaudited pro forma statement of operations for the year ended December 28, 1997 was prepared to illustrate the estimated effects of the Pro Forma Transactions as if they had occurred as of December 30, 1996.

The fiscal year of the Company ended on December 28, 1997 and the fiscal years of CLN Holdings and First Alert ended on December 31, 1997. The fiscal year of Signature Brands ended on September 28, 1997. The unaudited pro forma condensed financial statements have been derived from the audited financial statements of the Company as of and for the year ended December 28, 1997, the audited financial statements of CLN Holdings and First Alert as of and for the year ended December 31, 1997 and the unaudited financial statements of Signature Brands as of and for the year ended December 31, 1997. The unaudited statement of operations of Signature Brands for the year ended December 31, 1997 has been derived from the audited statement of operations for the year ended September 28, 1997 and the unaudited statements of operations from the thirteen weeks ended December 31, 1997 and December 31, 1996 in order to present Signature Brands operating results on a basis consistent with the Company's fiscal year.

The pro forma condensed financial statements were prepared utilizing the accounting principles of the respective entities as outlined in each entity's historical financial statements. Certain reclassifications were made to sales, cost of sales and selling, general and administrative expenses as reported in the historical financial statements of CLN Holdings, First Alert and Signature Brands to conform to the classifications of the Company as follows:

	Decrease		
	Sales	Cost of Sales	Selling, General and Administrative
	(In thousands)		
CLN Holdings	$(71,488)	$(63,886)	$(7,602)
First Alert	(9,902)	(4,760)	(5,142)
Signature Brands	(23,171)	(3,725)	(19,446)

Included in the historical Statement of Operations of CLN Holdings are cash and non-cash restructuring and other charges totaling $36.4 million and related tax benefits of $13.9 million. These costs have been allocated to cost of goods sold and selling, general and administration expense in the amounts of $19.5 million and $16.9 million, respectively. These costs primarily relate to closing and relocating certain administrative and sales offices, closing several manufacturing facilities, write-down of inventory and fixed assets, as well as severance costs. Additionally, the expense of the early extinguishment of debt of $15.2 million shown on the CLN Holdings' historical statement of operations has been excluded from the unaudited pro forma condensed statement of operations.

The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable under the circumstances. For purposes of developing the unaudited pro forma condensed financial statements, the assets and liabilities of CLN Holdings, First Alert and Signature Brands have been recorded at historical cost. The allocation of purchase price for the Acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial increase in goodwill. The pro forma condensed financial statements do not include a one-time after-tax $30 million first quarter 1998 charge by the Company related to the execution of new employment contracts with the Company's Chairman and Chief Executive Officer and two other senior officers of the Company as further discussed in Note 14 of the Company's audited financial statements for the year ended December 28, 1997 or any adjustments for potential synergies or cost savings as a result of the Acquisitions.

The unaudited pro forma financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," the financial statements of each of the Company, CLN Holdings, First Alert and Signature Brands and the notes thereto, and the other financial information included elsewhere or incorporated by reference in this Offering Memorandum. This pro forma financial information is provided for informational purposes only and does not purport to be indicative of the results of operations or financial position which would have been obtained had the Pro Forma Transactions been completed on the dates indicated or the financial condition or results of operations for any future date or period

NOT A CERTIFIED COPY

0117781

CP 033194
CONFIDENTIAL

16div-023451

UNAUDITED PRO FORMA CONDENSED BALANCE SHEET

As of December 28, 1997
(In thousands)

	The Company	The Acquisitions: First Alert	The Acquisitions: Signature Brands (unaudited)	The Acquisitions: CLN Holdings	Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(a)	Pro Forma
Cash and cash equivalents	$ 52,378	$ 2,996	$ 4,118	$ 19,362	$ —	$ —	$ 78,854
Receivables, net	295,550	53,678	67,998	179,756	—	(16,335)	580,647
Inventories	256,180	40,285	37,851	236,327	—	(17,624)	553,019
Prepaid expenses and other current assets	53,897	10,680	7,707	47,815	67,779 (b)	(1,655)	186,223
Total current assets	658,005	107,639	117,674	483,260	67,779	(35,614)	1,398,743
Property, plant and equipment, net	240,897	28,181	16,820	175,494	—	(10,746)	450,646
Other intangibles	169,622	6,496	—	—	(973)(d)	—	175,145
Goodwill	24,750	22,045	134,921	338,989	1,864,215 (e) (458,081)(d)	(37,874)	1,888,965
Other assets	27,010	—	5,663	100,126	52,281 (f) (44,722)(d)(c)	469	140,827
Total assets	$1,120,284	$164,361	$275,078	$1,097,869	$ 1,480,499	$(83,765)	$4,054,326
Short-term debt and current portion of long-term debt	$ 668	$ 45,026	$ 5,000	$ 67,233	$ 117,847 (g)	$ 80	$ —
Other current liabilities	197,431	33,002	51,494	189,529	13,317 (c)	9,010	449,129
Total current liabilities	198,099	78,028	56,494	256,762	131,164	9,090	449,129
Long-term debt	194,580	—	164,060	980,447	1,250,050 (g) (2,044,438)(h)	89,037	2,044,438
Other long-term liabilities	195,668	4,933	6,539	117,309	42,150 (i)	—	282,299
Shareholders' equity	531,937	81,400	47,985	(256,649)	(112,902)(j) (746,523)(k)	(14,362)	1,278,460
Total liabilities and shareholders' equity	$1,120,284	$164,361	$275,078	$1,097,869	$(1,480,499)	$ 83,765	$4,054,326

NOT A CERTIFIED COPY

See Notes to Unaudited Pro Forma Condensed Financial Statements

017702

CP 033195
CONFIDENTIAL

16div-023452

UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS

As of December 28, 1997
(In thousands, except per share data)

	The Company	The Acquisitions: First Alert	The Acquisitions: Signature Brands (unaudited)	The Acquisitions: CLN Holdings	Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of SafetySecurity(t)	Pro Forma
Net sales	$1,168,182	$ 177,039	$255,766	$1,082,806	$ —	$ 88,413	$2,595,380
Cost of goods sold	837,683	135,731	188,669	776,445	—	(59,886)	1,878,642
Amortization of goodwill and intangibles	7,829	704	3,925	14,704	46,605 (m) (19,366)(n)	(992)	53,409
Selling, general and administrative expense	123,227	49,071	44,646	259,033	—	(19,608)	456,369
Operating earnings (loss)	199,443	(8,467)	18,526	32,624	27,239	7,927	206,960
Interest expense, net and other expense	10,163	4,593	18,115	93,693	132,039 (o)(p) (125,171)(q)(r)	(4,344)	129,088
Earnings (loss) from continuing operations before income taxes	189,280	(13,060)	411	(61,069)	34,107	3,583	77,872
Income taxes (benefit)	66,152	(5,224)	1,889	(24,162)	10,240(r)	(1,362)	47,533
Earnings (loss) from continuing operations before extraordinary items	$ 123,128	$ (7,836)	$ (1,478)	$ (36,907)	$ 44,347	$ 2,221	$ 30,339
Earnings (loss) per share of common stock from continuing operations:							
Basic	$ 1.45						$ 0.29
Diluted	$ 1.41						$ 0.28
Weighted average common shares outstanding:							
Basic	84,945						104,381 (s)
Diluted	87,542						106,978 (s)

NOT A CERTIFIED COPY

017733

See Notes to Unaudited Pro Forma Condensed Financial Statements

CP 033198
CONFIDENTIAL

16div-023453

(a) Represents the elimination of the assets and liabilities related to the announced sale of CLN Holdings' Safety/Security Division as of December 31, 1997 and reflects the net proceeds from the sale as a reduction of long-term debt. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.

(b) Represents the tax benefit at 37.6% of (1) the cash out of stock options as a result of the Acquisitions and (2) the prepayment penalty on refinanced indebtedness of the Company, Coleman and Signature Brands.

(c) Represents the elimination of an intercompany tax receivable ($35,395) and payable on the financial statements of CLN Holdings relating to a tax sharing agreement with Mafco that will be cancelled in connection with the Holdings Merger. The net tax receivable will be assigned to Mafco in connection with the Holdings Merger.

(d) Represents the elimination of the historical goodwill and organizational costs of First Alert, Signature Brands and CLN Holdings in amounts of $23,018, $139,005 and $306,358, respectively.

(e) Represents the excess of cost over book value of the net assets acquired of First Alert, Signature Brands and CLN Holdings in the amounts of $73,457, $181,954 and $1,604,436, respectively and an additional $4,368 relating to the Company's debt prepayment penalty. No estimate has been made in these pro forma statements of the one-time expenses that will be incurred in the rationalization of the businesses that will result from these Acquisitions. The amount of goodwill will change once the Company completes the final allocation of purchase price.

(f) Represents the estimated capitalizable debt issuance costs.

(g) Represents the repayment of the existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert in the amount of $195,248, $958,563, $169,060 and $45,026, respectively.

(h) Represents the issuance of new long-term debt to fund the Acquisitions and the refinancing of outstanding indebtedness in the amounts of $202,248, $1,338,263, $263,531 and $177,896 for the Company, CLN Holdings, Signature Brands, and First Alert, respectively, and to fund approximately $62.5 million in transaction costs. This new debt will be funded by borrowings of $1,294,000 under the New Credit Facility at an assumed interest rate of LIBOR plus 1.25% (6.9325% at March 13, 1998) and the Debentures offered hereby at a yield to maturity of 5.0% (or approximately $2,014,000 principal amount at maturity).

(i) Represents the elimination of the minority interest of Coleman's equity held by the public shareholders. Amount also includes the elimination of the minority interest loss for the period ended December 31, 1997.

(j) Represents the elimination of the historical equity balances of First Alert, Signature Brands and CLN Holdings.

(k) Includes the issuance of 14,099,749 and 5,366,721 shares of the Company's Common Stock to Mafco and public shareholders, respectively, with a total equity value of $756.7 million less estimated transaction costs of approximately $10.2 million. This equity value was derived by using the average ending stock price as reported by the NYSE Composite Tape for the day before and day of the public announcement of the acquisition. Additionally, the shares held by Mafco have been discounted 15% due to the restrictive nature of the securities.

(l) Represents the elimination of the 1997 results of operations relating to the sale of CLN Holdings' Safety/Security Division. The Unaudited Pro Forma Condensed Statement of Operations reflects the sale of CLN Holdings' Safety/Security Division as of January 1, 1997. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.

(m) Represents amortization, on a straight-line basis, for goodwill (see Note (e)) over a period of forty years.

NOT A CERTIFIED COPY

CP 033197
CONFIDENTIAL

16div-023454

(n) Represents the reduction in amortization expense resulting from the elimination of the historical goodwill and organizational costs as discussed in Note (d) above.

(o) Represents interest expense on $2,044,000 estimated borrowing under the New Credit Facility at the assumed rate set forth in Note (h) above and the Debentures in the aggregate amount of $132,039 ($89,797 with respect to the New Credit Facility and $37,504 with respect to the Debentures). Amount also includes estimated debt issuance costs aggregating $4,738 related to the New Credit Facility amortized on a straight-line basis over a period of seven-years and the Debentures amortized on a weighted average accreted basis over a twenty-year period.

(p) The interest rate on borrowings under the New Credit Facility may differ from the assumption set forth in Note (h) above. The effect on income of a ⅛ percent variance in interest rate is approximately $1.6 million with respect to the borrowings under the New Credit Facility.

(q) Represents the reduction in interest expense resulting from the debt refinancing as discussed in Note (g) above.

(r) Represents the incremental change in the consolidated entity's provision for income taxes at 37.6% as a result of the pre-tax earnings of First Alert, Signature Brands and Coleman, and all pro forma adjustments as described above.

(s) Represents basic and diluted weighted average shares outstanding of the Company as of December 28, 1997 plus the additional equity issued in connection with the acquisition of CLN Holdings as discussed in Note (k) above. The incremental shares relating to the Debentures have not been included, as they would be anti-dilutive.

NOT A CERTIFIED COPY

0177C3

CP 033188
CONFIDENTIAL

16div-023455

SELECTED HISTORICAL FINANCIAL DATA

The selected historical financial data set forth below has been derived from the Company's Consolidated Financial Statements. The selected financial data should be read in conjunction with the Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

	Fiscal Year Ended				
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997
	(In millions, except percentage, ratio and per share data)				
Statement of Operations Data:					
Net sales	$927.5	$1,044.3	$1,016.9	$ 984.2	$1,168.2
Cost of goods sold	674.2	764.4	809.1	900.6	837.7
Selling, general and administrative expense	119.3	128.9	137.5	214.0	131.1
Restructuring, impairment and other costs	—	—	—	154.8	—
Operating earnings (loss)	$134.0	$ 151.0	$ 70.3	$ (285.2)	$ 199.4
Earnings (loss) from continuing operations	$ 76.9	$ 85.3	$ 37.6	$ (196.7)	$ 123.1
Earnings from discontinued operations, net of taxes(b)	11.9	21.7	12.9	0.8	—
Loss on sale of discontinued operations, net of taxes(b)	—	—	—	(32.4)	(13.7)
Net earnings (loss)	$ 88.8	$ 107.0	$ 50.5	$ (228.3)	$ 109.4
Earnings Per Share Data(c):					
Average common and common equivalent shares outstanding	87.9	82.6	82.8	82.9	87.5
Diluted earnings (loss) per share from continuing operations	$ 0.87	$ 1.03	$ 0.45	$ (2.37)	$ 1.41
Diluted earnings (loss) per share	1.01	1.30	0.61	(2.75)	1.25
Cash dividends declared per share	0.04	0.04	0.04	0.04	0.04
Other Data:					
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%
Operating margin	14.4	14.5	6.9	N/A	17.1
Ratio of earnings to fixed charges(d)	16.2x	14.9x	5.3x	—	14.5x
Balance Sheet Data (at end of period):					
Working capital	$261.4	$ 294.8	$ 411.7	$ 352.6	$ 459.9
Total assets	928.8	1,008.9	1,158.7	1,072.7	1,120.3
Long-term debt	133.4	124.0	161.6	201.1	194.6
Shareholder's equity	370.0	454.7	601.0	395.3	531.9

(a) Includes special charges of $337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Represents earnings from the Company's furniture business, net of taxes and the estimated loss on disposal. See Note 9 to Notes to Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by $285.6 million.

NOT A CERTIFIED COPY

017756

CP 033189
CONFIDENTIAL

16div-023456

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Year Ended December 28, 1997 Compared to the Year Ended December 29, 1996

In November 1996, the Company initiated a major restructuring and growth plan designed to substantially reduce its cost structure and grow the business in order to restore higher levels of profitability for the Company. By July 1997, the Company completed the major phases of the restructuring plan. The $225.0 million of annualized cost savings anticipated from the restructuring results primarily from the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities (including a reduction in the number of production facilities from 26 to 8 and warehouses from 61 to 18), the elimination of over 6,000 positions (including 3,300 from the divestiture of non-core businesses described below and approximately 2,800 other positions), the centralization of the Company's procurement function and re-negotiation of supply contracts resulting in procurement savings for raw materials, components and sourced finished products and the reduction of the Company's product offerings and stock keeping units ("SKU's"). The restructuring and growth plan also included a redefinition of the Company's core product categories and the elimination of those businesses and product lines that did not fit the core categories. Sunbeam's core product categories are Appliances, Health at Home, Personal Care and Comfort, Outdoor Cooking and Away From Home. Product categories and businesses determined to be non-core were divested in 1997, including the Company's furniture business and its time and temperature, decorative bedding and Counselor® and Borg® scale product lines. In addition, the Company sold its textile mill in Biddeford, Maine in 1997.

Net sales from continuing operations for 1997 were $1,168.2 million, an increase of $183.9 million or 18.7% over 1996. Net sales on a normalized basis, after excluding divested product lines which are not classified as discontinued operations (time and temperature products, decorative bedding and Counselor® and Borg® branded scales), increased 22.4% during the year.

Global sales, on a normalized basis, increased during 1997 in all five of the Company's product categories primarily from new product introductions, improved distribution (particularly with the Company's top ten customers), international geographic expansion and improved price realization for certain products. Global sales growth on a normalized basis exceeded 25% in the Appliance, Outdoor Cooking and Away From Home categories with sales increases of 26.8%, 27.2% and 28.6%, respectively. Sales in the Health at Home category increased 10.7% on a normalized basis and sales in the Personal Care and Comfort category increased 3.4% during 1997.

The Company's Appliance category sales increases were driven by new products, such as re-designed blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers. Sales of Outdoor Cooking products increased in 1997 after three straight years of declines as a result of increased merchandising and advertising programs, new distribution and the introduction of an entirely new line of grills and accessories for the 1998 season that began to ship in the fourth quarter of 1997 under a new "early buy" marketing program that included, among other things, extended credit terms with due dates in the second quarter of 1998. The Company sold approximately $50.0 million of Outdoor Cooking Products under this program in the fourth quarter of 1997. The early buy program for Outdoor Cooking products is designed to improve customer service levels and production efficiencies with more level seasonal production and distribution activities that have historically peaked in the first half of each year and to drive additional retail sell-through of Outdoor Cooking products by reducing the likelihood of retail stock-outs during the important first and second quarter 1998 selling season.

Sales of Personal Care and Comfort products were up over 30% through September 1997, but suffered during the fourth quarter as a result of lower than expected retail sell-through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. The Company anticipates shifting to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Health at Home category sales increased as a result of new products and improved distribution in the drug channels. Away From Home sales increased in 1997 as a result of new products, including cordless clippers and titanium blades, coupled with increased distribution of commercially rated appliances. Also contributing to the Company's sales growth in 1997 were its new retail outlet stores, of which 22 were open by the end of 1997.

International sales, which represented 21% of total revenues in 1997, grew 31.2% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and the execution of 25 new international

NOT A CERTIFIED COPY

CP 033200
CONFIDENTIAL

0177157

16div-023457

distribution and license agreements. Revenue growth of approximately 34% was achieved both in Mexico and by the Company's Latin American export sales organization, and sales in Venezuela and Canada increased approximately 23% each. European sales fell slightly in 1997, however the Company expects that expanded electric blanket and clipper sales along with the help of additional new distribution agreements will benefit European sales in 1998.

The gross margin percentage for 1997 increased 19.8 percentage points to 28.3%. This increase reflects the results of many cost savings and margin enhancement initiatives undertaken as part of the Company's restructuring plan coupled with the incremental margin attributable to new products and higher revenues associated with the Company's growth plan. The Company initiated a manufacturing refinement program in the second quarter of 1997 targeted at aggressively improving factory productivity at all of its remaining operations, including the Neosho, Missouri Outdoor Cooking Products facility which suffered from poor productivity and operating inefficiencies during the 1997 grill season. The benefits of the refinement program began to favorably impact factory productivity in several factories during the third quarter of 1997. The refinement of the Neosho facility, which was completed prior to the initiation of production for the 1998 grill season in the fourth quarter, included a revised plant layout to improve material flow, increased usage of common parts in the manufacturing process and modifications to the paint system to increase capacity and throughput.

Operating earnings for 1997 were $199.4 million, an increase of $195.0 million over 1996, excluding the impact of the 1996 special charge. As a percentage of sales, the operating margin of 17.1% increased 16.6 percentage points above last year's operating margin, excluding 1996 special charges. The operating margin improvements for 1997 were the result of the improved gross margin discussed above and lower selling, general and administrative ("SG&A") costs in 1997 associated with the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, the outsourcing of certain administrative and distribution functions, a reduction in the number of warehouses, and Company wide cost control initiatives. In addition, SG&A during 1996 included incremental compensation costs associated with restricted stock awards and other costs related to the employment of a new senior management team, higher than normal expenditures for market research, packaging and other initiatives related to the launch of the Company's growth plan, and higher bad debt expenses associated with certain of the Company's customers. The cost reduction initiatives and one time items in 1996 coupled with increased sales in 1997 resulted in SG&A decreasing as a percentage of sales from 17.4% in 1996 (excluding the impact of special charges) to 11.2% for 1997.

Interest expense decreased from $13.6 million in 1996 to $11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997 due to improved cash flows.

The effective income tax rate of 35% for 1997 and 1996 for earnings (loss) from continuing operations was lower than the statutory federal and state rates as a result of lower foreign taxes from the utilization of foreign tax credits and loss carryforwards and lower state income taxes as a result of certain state income tax credits.

The Company's diluted earnings per share from continuing operations was $1.41 per share versus a loss per share from continuing operations in 1996 of $2.37. The Company's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock and common stock equivalents outstanding due to the exercise of stock options and a higher market value of the Company's common stock in 1997.

The Company's discontinued furniture operations, which were sold in March 1997, had revenues of $51.6 million in the first quarter of 1997 prior to the sale and break-even earnings. In 1996, the discontinued furniture operations had net income of $.8 million on revenues of $227.5 million and an estimated loss on disposal of the business of $32.4 million, net of applicable income tax benefits. The sale of the Company's furniture business assets (primarily inventory, property, plant and equipment) was completed in March 1997

The Company received $69 million in cash and retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of $13 7 million, net of income tax benefits. See discussion of Restructuring, Impairment and Other Costs in Note 8 and Discontinued Operations and Assets Held For Sale in Note 9 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum for further information regarding the individual components of the 1996 special charge and details of the 1997 activity in the Company's restructuring accrual.

NOT A CERTIFIED COPY

CP 033201
CONFIDENTIAL

017738

16div-023458

Year Ended December 29, 1996 Compared to the Year Ended December 31, 1995

The Company's operating results for 1996 include the effects of a pre-tax special charge of $337.6 million recorded in conjunction with the implementation of its restructuring and growth plan announced in November 1996. Approximately 20% of the charge was for cash items primarily for severance costs and lease and other facility exit costs. The special charge to earnings in 1996 is included in the following categories on the consolidated statement of operations:

	Pre-tax Dollar Amount	After-tax Per Share Amount
	(In millions)	
Restructuring, impairment and other costs	$154.9	$(1.21)
Cost of sales	92.3	(0.72)
Selling, general and administrative	42.5	(0.33)
Estimated loss from discontinued operations	47.9	(0.39)
Total	$337.6	$(2.65)

Net sales from continuing operations of $984.2 million for 1996 represents a decrease of $32.7 million, or 3.2%, from 1995. The Company experienced a loss from continuing operations of $196.7 million or $2.37 per share for 1996 versus earnings from continuing operations of $37.6 million or $.45 per share (diluted) in 1995 primarily as a result of the restructuring activities discussed above. The net loss for 1996 was $228.3 million, or $2.75 per share, compared to net earnings of $50.5 million, or $0.61 per share (diluted), for 1995. Excluding the impact of special charge items for 1996, earnings from continuing operations before income taxes decreased from $60.6 million in 1995 to a loss of $12.9 million in 1996.

Domestic sales represented approximately 80% of total sales of the Company in 1996 and decreased $28.5 million or 3.4% from 1995. This sales decline was driven by lower sales of outdoor cooking products, which declined 7.3% and lower sales of bedding products which declined 9.0% from 1995, primarily as a result of lower decorative bedding sales (divested in December 1996). Domestic sales of appliance products were flat with sales increases from new products such as vegetable steamers and toaster ovens being offset by reduced pricing on breadmakers. Sales of other product categories such as health and personal care products and time and temperature products (divested in March 1997) were either flat or declined slightly from 1995 levels.

International sales decreased $4.2 million or 2.2% from 1995 primarily as a result of lower sales in Latin America due to political and/or economic instability in several countries such as Ecuador, Peru, Columbia and Venezuela (which suffered a bolivar devaluation in April 1996), a sales decline of 11.2% in Canada as a result of the bankruptcy filing of the Company's then largest Canadian customer offset by a 55.0% increase in sales in Mexico as a result of a more stable economic environment in 1996.

The Company's gross margin percentage, excluding the impact of special charges, was 17.9% of sales in 1996, down from 20.4% in 1995, primarily from the underabsorption of higher manufacturing costs and excess manufacturing capacity that has been realigned for 1997 and beyond by the Company's restructuring and growth plan cost reduction initiatives.

SG&A expenses, excluding the impact of special charges described above, were 17.6% of sales in 1996 primarily as a result of an inflated cost structure that has been realigned for 1997 and beyond. In addition, a $12.0 million fourth quarter 1996 media advertising campaign and one-time expenditures for market research, new packaging, and other growth plan initiatives resulted in higher than normal SG&A spending in 1996. Also included in 1996 SG&A costs were $7.7 million of compensation expense resulting from restricted stock awards made in connection with the employment of a new senior management team.

Interest expense for 1996 increased from $9.4 million in 1995 to $13.6 million as a result of increased indebtedness of the Company for working capital requirements and non-recurring capitalized interest in 1995 related to the construction of the Hattiesburg, Mississippi manufacturing and distribution center

The effective income tax rate for 1996 decreased 3 percentage points from 1995 to 35.0% as a result of certain foreign and state operating losses for which no tax benefits were recorded and the non-deductibility of compensation expense related to restricted stock awards.

NOT A CERTIFIED COPY

CP 033202
CONFIDENTIAL

01 7789

16div-023459

The Company's discontinued furniture operations had revenues of $227.5 million in 1996, up 22.6% from $185.6 million in 1995. This revenue growth was the result of the acquisition of the Samsonite® furniture business in November 1995. Excluding the impact of this acquisition, furniture business sales declined 2.1%. Earnings from the discontinued furniture operations, net of taxes, declined from $12.9 million in 1995 to $.8 million in 1996 primarily as a result of lower gross margins from reduced pricing, underabsorption of higher manufacturing costs and higher raw material costs. In addition, SG&A costs increased due to the inclusion of the Samsonite® furniture business, higher distribution and warehousing costs, particularly with resin furniture products and higher bad debt expenses.

Foreign Operations

During 1997 approximately 90% of the Company's business was conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1995, 1996 and 1997 and Mexico reverted to hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Such translation adjustments were not material to 1995, 1996 and 1997 operating results.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1995, 1996 and 1997. See Note 4 to the Company's consolidated financial statements.

Liquidity and Capital Resources

As of December 28, 1997, the Company had cash and cash equivalents of $52.4 million and total debt of $195.2 million. Cash used in operating activities during 1997 was $8.2 million compared to $14.2 million provided by operating activities in 1996. This decrease is primarily attributable to an increase in earnings before non-cash charges in 1997 and the utilization of tax benefits generated from the implementation of the Company's restructuring plan, offset by higher accounts receivable due to increased sales in 1997 and certain seasonal dating terms, increased inventory levels in 1997 necessary to support continued anticipated sales growth and the Company's initiatives to improve customer service levels and 1997 cash expenditures required to implement the restructuring plan. In addition, cash used in operating activities reflects $59 million of proceeds from the sale of trade accounts receivable under the Company's revolving trade accounts receivable securitization program entered into in December 1997 as more fully described in Note 3 to the Company's consolidated financial statements.

Capital spending totaled $58.3 million in 1997 and was primarily for new products, cost reduction and capacity expansion initiatives. Capital spending in 1996 was $75.3 million (including $14.5 million related to the discontinued furniture operations) and was primarily attributable to new product development, cost reduction initiatives and a $5.0 million warehouse expansion financed with a capital lease. Capital spending in 1995 reflected approximately $59.4 million associated with the Hattiesburg facility, $27.4 million related to new product development and $10.8 million attributable to the discontinued furniture business. The remaining 1995 capital spending was related to cost reduction projects, productivity initiatives and environmental compliance including $14.4 million for a powder coat paint system for Outdoor Cooking products. The Company anticipates 1998 capital spending to be approximately 5% of sales and primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by investing activities also reflects $91.0 million in proceeds from sales of businesses, assets and product categories determined to be non-core to the Company's ongoing operations in conjunction with the 1996 restructuring plan. Cash used in investing activities for 1995 includes the purchase of a portion of the Company's furniture business, which was subsequently divested in full in March 1997.

Cash provided by financing activities totaled $16.4 million in 1997 and reflects net borrowings of $5.0 million under the Company's revolving credit facility, $12.2 million of debt repayments related to the divested furniture operations and other assets sold and $26.6 million in cash proceeds from the exercise of stock

NOT A CERTIFIED COPY

CP 033203
CONFIDENTIAL

01779O

16div-023460

options, substantially all by former employees of the Company. In 1996, cash provided by financing activities of $45.3 million was primarily from increased revolving credit facility borrowings to support working capital and capital spending requirements, $11.5 million in new issuances of long-term debt and $4.6 million in proceeds from the sale of treasury shares to certain executives of the Company. In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from $500 million to $250 million.

The Company is a party to various environmental proceedings, substantially all related to previously divested operations. In connection with the Company's restructuring plan a comprehensive review of environmental exposures was undertaken and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. This review and change in strategy resulted in additional environmental reserves being recorded in 1996 as more fully described in Note 12 to the consolidated financial statements. In management's opinion, the ultimate resolution of these environmental matters will not have a material adverse effect upon the Company's financial condition.

On March 2, 1998, the Company announced the signing of definitive agreements to acquire Coleman, Signature Brands and First Alert which are subject to various customary conditions including regulatory approvals. The Company's ability to complete the Acquisitions, which is expected in the early spring of 1998, is contingent on acquisition debt issuances. In connection with the Acquisitions, the Company plans to refinance existing indebtedness of the acquired companies as well as all or substantially all of its existing long-term debt. The Company expects to finance the cash portion of the Acquisitions and all debt refinancings through a combination of the Bank Financing and the Offering. For additional information regarding the Acquisitions, see Note 14 to the Company's Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

The Company believes its cash flow from operations, existing cash and cash equivalent balances, its receivable securitization program, together with expected available borrowings under the revolving credit portion of the New Credit Facility, will be sufficient to support working capital needs, capital spending, debt service and acquisition related cash requirements for the foreseeable future.

The Company is currently discussing the terms of the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

New Accounting Standards

See Note 1 to the Company's consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 130, *Reporting Comprehensive Income* and SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, both of which are required to be adopted for fiscal years beginning after December 15, 1997. The adoption of these standards will not impact the Company's consolidated results of operations, financial position, or cash flows.

Year 2000

The Company has assessed and continues to assess the impact of the Year 2000 issue on its operations, including the development and implementation of project plans and cost estimates required to make its information systems infrastructure Year 2000 compliant. Based on existing information, the Company believes that anticipated spending necessary to become Year 2000 compliant will not have a material effect on the financial position, cash flows or results of operations of the Company, nor will the Year 2000 issues cause any material adverse effect on the future business operations of the Company.

Subsequent Events

For a discussion of the Acquisitions and the new three year employment contracts between the Company and each of Mr. Dunlap, Mr. Kersh and Mr. Fannin, see Note 14 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

NOT A CERTIFIED COPY

017791

CP 033204
CONFIDENTIAL

16div-023461

BUSINESS

General

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's *net* sales were approximately $1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company was organized in 1989 (as Sunbeam-Oster Company, Inc.) and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. (the "Predecessor"). In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation. See "Management—New Employment Contracts."

Restructuring and Growth Plan

In the Fall of 1996, under newly elected Chairman, Albert J. Dunlap, the Company announced a major restructuring and growth plan. The restructuring portion of the plan was completed during 1997, resulting in a significant reduction in employees, facilities and costs, all of which is anticipated to generate approximately $225 million in annual savings for the Company. As a part of the restructuring plan, the Company divested its non-core business and assets, including furniture, time and temperature, decorative bedding, gas heaters and logs, Counselor® and Borg® scale business and the Company's Biddeford, Maine textile mill.

The Company's restructuring plan included the closure of 18 factories, 43 warehouses and 5 headquarters, resulting in the consolidation of all corporate offices into a single headquarters office *located in* Delray Beach, Florida and an operations facility at its Hattiesburg, Mississippi manufacturing and distribution facility. The number of manufacturing facilities has been reduced from twenty-six to eight (four in the US and four international). See "—Properties" below.

The Company has also consolidated all purchasing functions, substantially reduced the number of stock keeping units maintained by the Company and outsourced certain administrative, manufacturing and distribution activities.

The Company has developed a comprehensive three year growth plan for its core business. Sunbeam's goal is for revenues to double, reaching $2 billion by 1999, with operating margins improving to 20% of sales. This revenue growth is anticipated to be derived, in large part, by the development of new innovative products and the globalization of the Company. Domestically, the goal is to introduce at least 30 new products each year; during 1997, the Company introduced 35 new domestic products and 54 new international products. In its international business, the Company has a goal to triple international sales to $600 million by 1999. During 1997, the

NOT A CERTIFIED COPY

017792

CP 033205
CONFIDENTIAL

16div-023462

Company entered into 25 new international distribution/license agreements. The Company has also identified new channels of distribution as additional sales growth opportunities, including commercial organizations and "direct to the consumer" channels such as catalogs, the Internet and Sunbeam® factory outlet stores. The foregoing contains certain forward-looking statements that involve risks and uncertainties, see "Forward-Looking Statements" and "Risk Factors" for cautionary remarks concerning these statements.

Both international expansion and new product introductions will be supported by a significant investment in a major new advertising program that is geared to strengthen the Sunbeam®, Oster® and Grillmaster® brands in the marketplace.

Products

The Company's core product categories are as follows:

Appliances

Small kitchen appliances including Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, coffee makers, bread makers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, are sold primarily under the Sunbeam® and Oster® brand names. The Company holds the number one or two market positions in blenders, mixers and bread makers. The Appliance category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 32% of the Company's domestic net sales in 1997.

Health at Home

The Company markets its home health products under the Sunbeam®name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. This product category also includes the recently introduced AllergySmart™ air detector and air cleaner and the FreshSource™ power water filter. Sales of health care products accounted for approximately 10% of the Company's domestic net sales in 1997.

Personal Care and Comfort

The Company's Personal Care and Comfort products include a broad line of electric blankets, comforters and Cuddle-Up® heated throws, shower massagers, and hair clippers and trimmers for animals and humans which are sold through retail channels. The Company holds the number one market position in electric blankets, heated throws and retail hair clippers. Sales of Personal Care and Comfort products accounted for approximately 18% of the Company's domestic net sales in 1997.

Outdoor Cooking

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share position in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the Sunbeam® and Grillmaster® brand names. Sales of outdoor cooking products accounted for approximately 34% of the Company's domestic net sales in 1997.

Away from Home

The Company markets a line of professional barber, beauty and animal equipment, including the electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the market of its appliances, scales and Personal Care and Comfort products to institutional and commercial channels. Sales of Away from Home products described above accounted for approximately 6% of the Company's domestic net sales in 1997.

International

The Company markets a variety of products (primarily small kitchen appliances, Personal Care and Comfort products, grills, professional clippers and related products) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has manufacturing facilities in Mexico and Venezuela,

NOT A CERTIFIED COPY

017793

CP 033206
CONFIDENTIAL

16div-023463

and sales offices in Canada, the United Kingdom, Hong Kong and Australia. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 21% of the Company's total net sales in 1997.

To date, the Company's activities outside the United States have been primarily focused in Mexico, Latin America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The Oster® brand has the leading market share in small appliances in a number of Latin American countries.

The Company's pending acquisitions of Coleman, Signature Brands and First Alert are anticipated to provide new opportunities for international expansion of the Company's activities. See "The Acquisitions."

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over $56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Customers

The rapid growth of large mass merchandisers and warehouse clubs and changes in customer shopping patterns have contributed to a significant consolidation of the U.S. retail industry and formation of dominant multi-category retailers. Sunbeam has positioned itself to respond to the challenges of this changing retail environment by pursuing strategic relationships with large, high-volume merchandisers. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, hardware stores, catalogues, television shopping channels, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange

NOT A CERTIFIED COPY

017794

CP 033207
CONFIDENTIAL

16div-023464

services. The Company's largest customer, Wal-Mart Stores, Inc., accounted for approximately 21% of the sales in 1997.

Retailers are pursuing a number of strategies in their competition to deliver the highest-quality, lowest-cost brand name products. A growing trend among retailers is to purchase on a "just-in-time" basis in order to reduce inventory cost and increase returns on investment. This trend has required increased working capital investments for manufacturers and requires manufacturers to more closely monitor consumer buying patterns as retailers shorten their lead times for orders. Currently, most Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. However, one of the Company's goals for 1998 is to "source" approximately 50% of parts and/or products from others, including suppliers in Asia, in order to reduce capital investment in plants while growing sales volume and to improve operating margins. The Company intends to continue to support its retail partners' "just-in-time" inventory strategies through investments in, among other things, improved forecasting systems, more responsive manufacturing and distribution capabilities and electronic communications. Currently, Sunbeam has approximately 90% of its U.S. customer sales on electronic data interchange (EDI) systems.

The amount of backlog orders at any point in time is not a significant factor in the Company's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam® and Oster® trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, South and Central America and Europe, these registered trademarks, along with Osterizer®, Mixmaster®, Toast Logic®, Steammaster®, Oskar®, Grillmaster® and Blanket with a Brain® brands are important to the success of the Company's products. Other important trademarks within Sunbeam include Oster Designer® line, Cuddle-Up® and AS®.

Sunbeam holds numerous patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on the Company's business taken as a whole.

Employees

The Company currently has approximately 3,300 full-time domestic employees and 4,200 international employees. None of the Company's domestic full-time workforce has union representation. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

Seasonality

On a consolidated basis, Sunbeam sales do not exhibit substantial seasonality. However, sales of outdoor cooking products are strong in the first half of the year, while sales of appliances and Personal Care and Comfort products are strongest in the second half of the year. In addition, sales of an number of Company's products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. During 1997, the Company initiated early buy programs for highly seasonal products such as grill and warming blankets in order to more levelize promotion and distribution activities.

Raw Materials

The raw materials used in the manufacture of the Company's products are available from numerous suppliers in quantities sufficient to meet normal requirements. The Company's primary raw materials include aluminum, steel, resin, copper, and corrugated cardboard for cartons.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sale of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs, however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material

CP 033208
CONFIDENTIAL

NOT A CERTIFIED COPY

16div-023465

increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1997, the Company had been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at nine (9) sites, four (4) of which are among the Environmental Sites referred to above, and five (5) of which have not been designated as Superfund sites under federal or state law.

In addition, the Company is engaged in environmental remediation activities at a site located in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing and implementing a plan for remediation of this site; which remediation is anticipated to be substantially completed in 1998.

The Company's costs for environmental remediation activities have not had a material adverse effect on the Company's results of operations, financial conditions or competitive position. The Company has established reserves to cover the anticipated probable costs of remediation, based upon periodic review of all sites for which the Company has, or may have, remediation responsibility. As of December 28, 1997, the amount of such reserves was approximately four percent (4%) of the Company's total liabilities as set forth in the consolidated financial statements. Such environmental reserves do not anticipate any offsets for potential insurance recoveries from certain of the Company's liability insurance carriers which the Company continues to pursue.

Due to uncertainty over the remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws, and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved at fiscal year end 1997. In addition, the Company may be required to incur costs relating to remediation of other properties currently or previously owned or leased, including the properties to be acquired in the Acquisitions, as well as properties at which the Company and each of Coleman, Signature Brands and First Alert have disposed of waste. However, the Company believes, based on existing information, that the costs of completing the environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

In December 1996, the Company reached a negotiated settlement with the EPA with regard to a notice of violation concerning the construction and operation of two paint lines at the Company's Neosho, MO facility prior to obtaining the necessary permits for construction and operation. The negotiated settlement amount of $829,825 was agreed upon in connection with the Company's implementation of the "supplemental environmental project" which consisted of the Company's installation of nominal emission powder coating lines to replace solvent paint lines. In October 1997, the Company executed a Consent Decree documenting the settlement and is awaiting the EPA's execution of the Consent Decree; the Company anticipates formal resolution of this matter by the second quarter of 1998.

NOT A CERTIFIED COPY

017796

CP 033209
CONFIDENTIAL

16div-023466

The Company is not a party to any other administrative or judicial proceedings to which a governmental authority is a party and which involves potential monetary sanctions, exclusive of interest and costs, of $100,000 or more.

Properties

Active United States and International manufacturing, warehouse, and office locations are set forth below. In addition to the facilities set forth below, the Company leases warehouse space on a short-term basis when needed. Except as otherwise noted, each location is used for manufacturing, warehousing and related administrative office space.

United States	Square Feet	Title
Brownsville, Texas	48,000	Leased (a)
Delray Beach, Florida	51,073	Leased (b)
Del Rio, Texas	10,560	Leased (a)
Hattiesburg, Mississippi	725,000	Owned
Hattiesburg, Mississippi	300,000	Leased (a)
McMinnville, Tennessee	169,400	Leased
Neosho, Missouri	887,200	Owned/Leased
Waynesboro, Mississippi	853,714	Leased
Total	3,044,947	

International	Square Feet	Title
Acuna, Mexico	110,000	Owned
Barquisimeto, Venezuela	75,686	Owned
Caracas, Venezuela	9,867	Leased (c)
Hong Kong	20,550	Leased (d)
Matamoros, Mexico	91,542	Owned
Milton Keynes, England	2,000	Leased (c)
Mississauga, Canada	19,891	Leased (c)
Tlalnepantla, Mexico	297,927	Owned
Total	627,463	

(a) Warehouse only
(b) Corporate headquarters
(c) Administration
(d) Warehouse and administration

In addition, the Company has 17 United States and 5 Canadian retail outlet stores under lease totaling 103,000 square feet.

The Company believes that its existing facilities will adequately provide sufficient suitable capacity to implement its operating plans.

Legal Proceedings

The Company and its subsidiaries are involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

See "—Environmental Matters" for a description of certain legal proceedings related to environmental matters.

CP 033210
CONFIDENTIAL

NOT A CERTIFIED COPY

16div-023467

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information regarding the directors and executive officers of the Company as of February 1, 1998.

Name	Age	Position
Albert J. Dunlap	60	Chairman, Chief Executive Officer and Director
Russell A. Kersh	44	Vice Chairman and Chief Financial Officer
David C. Fannin	52	Executive Vice President, General Counsel and Secretary
Donald R. Uzzi	45	Executive Vice President, Consumer Products Worldwide
Charles M. Elson	38	Director
Howard G. Kristol	60	Director
Peter A. Langerman	42	Director
William T. Rutter	67	Director
Faith Whittlesey	59	Director

Albert J. Dunlap has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Russell A. Kersh has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

David C. Fannin has been Executive Vice President, General Counsel and Secretary since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

Donald R. Uzzi has been Executive Vice President, Consumer Products Worldwide since January 1997. From November 1996 to January 1997, he held the position of Senior Vice President, Global Marketing. Mr. Uzzi joined the Company in September 1996 as Vice President, Marketing and Product Development. From January 1993 to July 1996, Mr. Uzzi served as President of the Beverage Division of Quaker Oats. During 1990 to 1992, Mr. Uzzi was employed by Pepsi Cola as Senior Vice President for North America (1992) and Vice President and General Manager of the Mid-Atlantic Division (1990-1991).

Charles M. Elson has been a Director of the Company since his appointment to the Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and the Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October 1997.

Howard G. Kristol has been a Director of the Company since his appointment on August 6, 1996 Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976

Peter A. Langerman has been a Director of the Company since 1990 and served as the Chairman of the Board of Directors from May 22, 1996 until July 18, 1996. Since November 1996, Mr Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment

NOT A CERTIFIED COPY

017798

CP 033211
CONFIDENTIAL

16div-023468

advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997.

William T. Rutter has been a Director of the Company since his appointment on April 8, 1997. Mr. Rutter is a Senior Vice President/Managing Director, Private Banking of First Union National Bank of Florida, a position he has held since 1986.

Faith Whittlesey has been a Director of the Company since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc. (a publishing and printing company).

New Employment Contracts

On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three-year employment contracts with the Company, which include substantial equity-based compensation. These employment contracts replaced previous employment contracts entered into in July 1996 that were scheduled to expire in July 1999.

The new employment contract with Mr. Dunlap provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2 to the Company's Consolidated Financial Statements, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5 to the Company's Consolidated Financial Statements. In addition, the new employment contract with Mr. Dunlap provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment contracts with Mr. Kersh and Mr. Fannin provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under their July 1996 employment contracts, new grants of ten-year options to purchase a total of 1,875,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 employment contracts. In addition, the new employment contracts with Mr. Kersh and Mr. Fannin provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately $30 million.

NOT A CERTIFIED COPY

017799

CP 033212
CONFIDENTIAL

16div-023469

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table sets forth information as of February 27, 1998, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

Name	Amount and Nature of Beneficial Ownership	Percentage of Common Stock
Franklin Mutual Series Fund Inc.	17,541,398(a)	20.3%
including:		
Mutual Shares Fund	11,260,174(a)	13.3%
Mutual Qualified Fund	4,800,554(a)	5.5 %
Franklin Mutual Advisers, Inc.	17,541,398(a)	20.3%
Franklin Resources, Inc.		
Charles B. Johnson		
Rupert H. Johnson, Jr.	17,541,398(a)	20.3%
AXA Assurances I.A.R.D. Mutuelle	8,598,784(b)	9.9 %
including:		
AXA Assurances Vie Mutuelle		
Alpha Assurances Vie Mutuelle		
AXA Courtage Assurance Mutuelle		
AXA-UAP and The Equitable Companies Incorporated		
Fred Alger Management, Inc.		
including:		
Fred M. Alger III	4,424,098(c)	5.1 %

(a) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively, the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Adviser, Inc. is 51 John F. Kennedy Parkway, Short Hills, NJ 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole stockholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal stockholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock. Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson, and Rupert H. Johnson, Jr. each disclaim beneficial ownership of these shares.

(b) Information reflected in this table and the notes thereto with respect to AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the "Mutuelles AXA Group"), AXA-UAP ("AXA-UAP") and The Equitable Companies Incorporated ("Equitable") is derived from the Schedule 13G/A, dated February 17, 1998, filed jointly by the Mutuelles AXA Group, AXA-UAP and Equitable. In the aggregate, Mutuelles AXA Group, AXA-UAP and Equitable own 8,598,784 shares of Common Stock The members of the Mutuelles AXA Group, AXA-UAP and Equitable each have sole voting power over 5,670,794 of such shares, shared voting power over 1,373,600 such shares, sole dispositive power over 8,591,384 such shares and shared dispositive power over 7,400 such shares. The address of AXA Assurances I.A.R.D Mutuelle and AXA Assurances Vie Mutuelle is 21 rue de Chateaudun, 75009 Paris, France. The address of Alpha Assurances Vie Mutuelle is 100-101 Terrasse Boieldieu, 92042 Paris La Defense, France. The address of AXA Courtage Assurance Mutuelle is 26, rue Louis le Grand, 75002 Paris, France. The address of AXA-UAP is 23, avenue Matignon, 75008 Paris, France The address of The Equitable Companies, Incorporated is 1290 Avenue of the Americas, New York, NY 10104

(c) Information reflected in this table and the notes thereto with respect to Fred Alger Management, Inc and Fred M. Alger III is derived from the Schedule 13G, dated January 15, 1998, filed by and on behalf of Fred Alger Management, Inc and Fred M. Alger III Fred M. Alger III is the Chairman of Fred Alger Management, Inc The address of Fred Alger Management, Inc and Fred M. Alger III is 75 Maiden Lane, New York, NY 10038. Fred Alger Management, Inc and Fred M. Alger III have sole dispositive power over 4,409,498 of the shares listed above, sole voting power over 38,413 of such shares and shared voting power over 4,112,985 of such shares.

NOT REVIEWED COPY

017800

CP 033213
CONFIDENTIAL

16div-023470

SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of February 27, 1998, of the Company's Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director of the Company; (2) the four most highly compensated executive officers of the Company for the fiscal year ended December 28, 1997, other than the Chief Executive Officer (collectively, the "Named Executives"); and (3) the Directors and the current executive officers of the Company as a group.

Name	Amount and Nature of Beneficial Ownership(a)(b)	Percentage of Common Stock(b)
Directors		
Albert J. Dunlap	5,241,564	6.06%
Charles M. Elson	9,000(d)	*
Russell A. Kersh	1,045,400(c)	1.21%
Howard G. Kristol	9,000(d)(e)	*
Peter A. Langerman	0(f)	0
William T. Rutter	3,500(d)	*
Faith Whittlesey	5,390(d)	*
Named Executives(g)		
David C. Fannin	371,433(c)	*
Donald R. Uzzi	116,666	*
Lee Griffith	60,543	*
All Directors and current executive officers as a group (9 persons)	6,801,953(h)	7.9%

---

* Less than one percent.

(a) All Directors and Named Executives have the sole power to vote and to dispose of the shares of Common Stock listed above except as follows: (i) Mr. Dunlap holds 1,491,564 of the listed shares jointly with his wife; (ii) 151,600 shares listed as owned by Mr. Kersh are held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary (the power to vote and to dispose of such shares is held by Howard G. Kristol, Trustee of such Trust) and Mr. Kersh holds 5,000 of the listed shares jointly with his spouse and children; (iii) Mr. Fannin holds 20,433 shares jointly with his wife; and (iv) 5,000 of the shares listed as owned by Mr. Griffith are owned by Mr. Griffith's wife and minor children.

(b) Includes shares which Directors and Named Executives have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days). Includes 3,750,000, 781,250, 328,500, 116,666 and 50,000 shares which may be acquired by Messrs. Dunlap, Kersh, Fannin, Uzzi and Griffith, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table.

(c) Includes 112,500 and 22,500 restricted shares held by Messrs. Kersh and Fannin, respectively, that are subject to restrictions.

(d) Includes shares of restricted stock granted to each of Directors Elson, Kristol, Rutter and Whittlesey upon their respective elections, appointments and subsequent reelections to the Company's Board of Directors, all of which were immediately vested.

(e) Does not include shares owned by the Russell A. Kersh Irrevocable Trust (of which Mr. Kristol serves as Trustee) and as to which Mr. Kristol disclaims beneficial ownership.

(f) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "Security Ownership of Certain Beneficial Owners."

(g) Includes Russell A Kersh listed above under Directors

(h) Includes shares which all Directors and current executive officers of the Company have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

NOT A CERTIFIED COPY

011801

CP 033214
CONFIDENTIAL

CONT #974

16div-023471

DESCRIPTION OF OTHER INDEBTEDNESS

New Credit Facility

The Company is currently negotiating the terms of the New Credit Facility with a group of banks which the Company expects will provide for borrowings by the Company or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. The New Credit Facility is being arranged by an affiliate of the Initial Purchaser who has advised the Company that it is, subject to customary qualifications, highly confident that under current market and economic conditions a $2.0 billion credit facility can be successfully syndicated to financial institutions. It is expected that the facility will provide for one or more term loans in the aggregate principal amount of $1.5 billion which, together with the net proceeds of the Offering, will be used to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the indebtedness of the Company and the acquired companies (see "Financing Plan and Use of Proceeds") and a $500 million revolving credit facility which will be available for general corporate purposes. It is expected that the term borrowings under the New Credit Facility will mature based on an amortization schedule to be negotiated, subject to certain mandatory earlier repayments customary for facilities of a similar nature, and that the revolving credit borrowings will mature seven years from the closing date of the New Credit Facility. It is expected that interest will accrue, at the Company's option, at LIBOR plus a spread margin to be negotiated or at the Agent's (as defined below) Base Rate (generally the higher of the Agent's prime rate or the Federal Funds Rate plus 1/2 of 1%) plus a spread to be negotiated. The Company does not yet have commitments from lenders to provide the New Credit Facility and, in any event, the New Credit Facility is subject to the negotiation and execution of definitive documentation and other customary conditions.

Securities and Guarantees. Borrowings under the New Credit Facility may be secured by (i) a pledge of the stock of each of the Company's subsidiaries and (ii) security interests in substantially all of the assets of the Company and its subsidiaries. The Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. To the extent borrowings are made by any subsidiaries of the Company, the obligations of such subsidiaries will be guaranteed by the Company.

Covenants. The Company expects that the definitive New Credit Facility will contain various covenants customary for facilities of this type, including (among others) covenants restricting the incurrence of indebtedness, the payment of dividends and other restricted payments, the incurrence of liens, dispositions of assets, mergers and acquisitions, capital expenditures and loans and investments. In addition, it is expected that the New Credit Facility will require the Company to maintain various financial ratios, including a maximum leverage ratio, a minimum interest coverage ratio and a maximum fixed charge coverage ratio.

Defaults. The Company expects that the New Credit Facility will provide for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, ERISA, judgments and change of ownership and control (including for this purpose a Fundamental Change.)

Other Debt

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Until such indebtedness is repaid, the Company will continue to be subject to the covenants and restrictions and limitations contained in the terms of such indebtedness. For additional information concerning outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert see the consolidated financial statements set forth elsewhere herein.

NOT A CERTIFIED COPY

017602

CP 033215
CONFIDENTIAL

16div-023472

DESCRIPTION OF DEBENTURES

The Debentures are to be issued under an indenture to be dated as of March 25, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). A copy of the form of Indenture will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Debentures and the Indenture does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Debentures and the Indenture including the definitions therein of certain terms that are not otherwise defined in this Offering Memorandum. Wherever particular provisions or defined terms of the Indenture (or of the form of Debenture which is a part thereof) are referred to, such provisions or defined terms are incorporated herein by reference. As used in this "Description of Debentures," the "Company" refers to Sunbeam Corporation only and does not, unless the context otherwise indicates, include its subsidiaries.

Holders of the Debentures will also have the benefit of a Registration Rights Agreement between the Company and the Initial Purchaser. Under the Registration Rights Agreement, the Company will agree to file the Shelf Registration Statement with the Commission covering resales of the Debentures and the Common Stock issuable upon conversion thereof. See "Registration Rights."

General

The Debentures will be unsecured general obligations of the Company subordinate in right of payment to the New Credit Facility and certain other secured obligations of the Company as described under "Subordination of Debentures" and convertible into Common Stock as described under "Conversion of Debentures." The Debentures will be limited to $2,316,100,000 aggregate principal amount at maturity (including $302,100,000 aggregate principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) and will mature on March 25, 2018.

The Indenture does not contain any financial covenants or restrictions on the payment of dividends, the incurrence of indebtedness, including Senior Indebtedness (as defined below under "Subordination of Debentures"), or the issuance or repurchase of securities of the Company. The Indenture contains no covenants or other provisions to afford protection to holders of the Debentures in the event of a highly leveraged transaction or a change in control of the Company except to the extent described under "Redemption at Option of the Holder Upon a Fundamental Change."

The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). See "Certain United States Federal Income Tax Considerations." Maturity, conversion, purchase by the Company at the option of a holder or redemption of a Debenture will cause Original Issue Discount and interest, if any, to cease to accrue on such Debenture, under the terms and subject to the conditions of the Indenture. The Company may not reissue a Debenture that has matured or been converted, purchased by the Company at the option of a holder, redeemed or otherwise canceled (except for registration of transfer, exchange or replacement thereof).

The principal amount at maturity of each Debenture will be payable at the office or agency of the paying agent, initially the Trustee, in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose. Debentures may be presented for conversion into Common Stock at the office of the conversion agent and Debentures in definitive form may be presented for exchange for other Debentures or registration of transfer at the office of the registrar, each such agent initially being the Trustee. The Company will not charge a service charge for any registration of transfer or exchange of Debentures; however, the Company may require payment by a holder of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection therewith.

Form, Denomination and Registration

The Debentures will be issued in fully registered form, without coupons, in denominations of $1,000 principal amount at maturity and whole multiples thereof.

Global Debenture; Book-Entry Form. Debentures held by "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("QIBs"), will be evidenced by a global Debenture (the "Global Debenture"), which will be deposited with, or on behalf of, The Depository Trust Company, New York, New York ("DTC") and registered in the name of Cede & Co. ("Cede"), as DTC's nominee. Except as set forth

NOT A CERTIFIED COPY

0 1 7 0 3

CP 033218
CONFIDENTIAL

16div-023473

below, the Global Debenture may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

QIBs may hold their interests in the Global Debenture directly through DTC, or indirectly through organizations which are participants in DTC (the "Participants"). Transfers between Participants will be effected in the ordinary way in accordance with DTC rules. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests in the Global Debenture to such persons may be limited.

QIBs who are not Participants may beneficially own interests in the Global Debenture held by DTC only through Participants or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a Participant, either directly or indirectly ("Indirect Participants"). So long as Cede, as the nominee of DTC, is the registered owner of the Global Debenture, Cede for all purposes will be considered the sole holder of the Global Debenture. Except as provided below, owners of beneficial interests in the Global Debenture will not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form, and will not be considered the holders thereof.

Payment of the redemption price and the purchase price of the Global Debenture as well as any Liquidated Damages (as defined) due on the Global Debenture arising out of the Company's failure to meet its obligations under the Registration Rights Agreement will be made to Cede, the nominee for DTC, as the registered owner of the Global Debenture by wire transfer of immediately available funds. Neither the Company, the Trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Debenture or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company has been informed by DTC that, with respect to payment of Liquidated Damages (if any) on and the redemption price or the purchase price of the Global Debenture, DTC's practice is to credit Participants' accounts on the payment date therefor with payments in amounts proportionate to their respective beneficial interests in the Debentures represented by the Global Debenture as shown on the records of DTC (adjusted as necessary so that such payments are made with respect to whole Debentures only), unless DTC has reason to believe that it will not receive payment on such payment date. Payments by Participants to owners of beneficial interests in Debentures represented by the Global Debenture held through such Participants will be the responsibility of such Participants, as is now the case with securities held for the accounts of customers registered in "street name."

Holders who desire to convert their Debentures into Common Stock should contact their brokers or other Participants or Indirect Participants to obtain information on procedures, including proper forms and cut-off times, for submitting such request.

Because DTC can only act on behalf of Participants, who in turn act on behalf of Indirect Participants and certain banks, the ability of a person having a beneficial interest in the Debentures represented by the Global Debenture to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate evidencing such interest.

Neither the Company nor the Trustee (or any registrar, paying agent or conversion agent under the Indenture) will have any responsibility for the performance by DTC or its Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations. DTC has advised the Company that it will take any action permitted to be taken by a holder of Debentures (including, without limitation, the presentation of Debentures for conversion as described below) only at the direction of one or more Participants to whose account with DTC interests in the Global Debenture are credited and only in respect of the principal amount of the Debentures represented by the Global Debenture as to which such Participant or Participants has or have given such direction.

DTC has advised the Company as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its Participants and to facilitate the clearance and settlement of securities transactions between Participants through electronic book-entry changes to

NOT A CERTIFIED COPY

CP 033217
CONFIDENTIAL

017604

16div-023474

accounts of its Participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations such as the Initial Purchaser. Certain of such Participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with a Participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Debenture among participants of DTC, DTC is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by the Company within 90 days, the Company will cause Debentures to be issued in definitive form in exchange for the Global Debenture.

Conveyance of notices and other communications by DTC to Participants, by Participants to Indirect Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements that may be in effect from time to time. Redemption notices shall be sent to Cede. If less than all of the Debentures are being redeemed, DTC will reduce the amount of the interest of each Participant in such Debentures in accordance with its procedures.

Certificated Debentures. Debentures sold to investors that are not QIBs will be issued in definitive registered form and may not be represented by the Global Debenture. QIBs may request that any Debentures they hold in definitive registered form be exchanged for interests in the Global Debenture. Certificated Debentures may be issued in exchange for Debentures represented by the Global Debenture if a depositary is unwilling or unable to continue as a depositary for the Global Debenture as set forth above under "Global Debenture; Book-Entry Form."

Restrictions on Transfer; Legends. The Debentures will be subject to certain transfer restrictions as described below under "Transfer Restrictions" and certificates evidencing the Debentures will bear a legend to such effect.

Conversion of Debentures

A holder of a Debenture may convert it into Common Stock of the Company at any time after 90 days following the latest date of original issuance of the Debentures through the close of business on March 25, 2018; provided that if a Debenture is called for redemption, the holder may convert it only until the close of business on the last trading day prior to the Redemption Date unless the Company defaults in the payment of the redemption price. A Debenture in respect of which a holder has delivered a Purchase Notice exercising the option of such holder to require the Company to purchase such Debenture may be converted only if such notice is withdrawn in accordance with the terms of the Indenture. Similarly, a Debenture in respect of which a holder is exercising its option to require redemption upon a Fundamental Change may be converted only if such holder withdraws its election to exercise its option in accordance with the terms of the Indenture. A holder may convert such holder's Debentures in part so long as such part is $1,000 principal amount at maturity or a whole multiple thereof.

The initial Conversion Rate is 6.575 shares of Common Stock per $1,000 principal amount at maturity of Debentures, subject to adjustment upon the occurrence of certain events, as described below. A holder entitled to a fractional share of Common Stock shall receive cash equal to the then current market value of such fractional share.

On conversion of a Debenture, a holder will not receive any cash payment representing accrued Original Issue Discount. The Company's delivery to the holder of the fixed number of shares of Common Stock into which the Debenture is convertible (together with the cash payment, if any, in lieu of fractional Common Stock) will be deemed to satisfy the Company's obligation to pay the principal amount of the Debenture including the accrued Original Issue Discount attributable to the period from the Issue Date to the Conversion Date. Thus, the accrued Original Issue Discount is deemed to be paid in full rather than canceled, extinguished or forfeited. The Conversion Rate will not be adjusted at any time during the term of the Debentures for such accrued Original Issue Discount.

To convert a certificated Debenture into Common Stock, a holder must (i) complete and manually sign the conversion notice on the back of the Debenture (or complete and manually sign a facsimile thereof) and deliver such notice to the conversion agent, (ii) surrender the Debenture to the conversion agent, (iii) if required, furnish appropriate endorsements and transfer documents, and (iv) if required, pay all transfer or similar taxes. The

CP 033218
CONFIDENTIAL

NOT A CERTIFIED COPY

017835

16div-023475

procedure for converting a Global Debenture is described above under "Form, Denomination and Registration—Global Debenture; Book-Entry Form." Pursuant to the Indenture, the date on which all of the foregoing requirements have been satisfied is the Conversion Date.

The Common Stock issuable upon conversion of the Debentures has not been registered under the Securities Act and is subject to certain restrictions on transfer. See "Registration Rights" and "Transfer Restrictions."

The Conversion Rate is subject to adjustment under formulae as set forth in the Indenture in certain events, including: (i) the issuance of Common Stock of the Company as a dividend or distribution on the Common Stock; (ii) certain subdivisions and combinations of the Common Stock; (iii) the issuance to all holders of Common Stock of certain rights or warrants to purchase Common Stock; (iv) the distribution to all holders of Common Stock of capital stock (other than Common Stock), of evidences of indebtedness of the Company or of assets (including securities (other than Common Stock), but excluding those rights and warrants referred to in clause (iii) above or paid in cash); (v) distributions consisting of cash, excluding any quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock in any quarter does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require an adjustment of the Conversion Rate pursuant to this clause (v) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (y) 3.75 percent of the average of the last reported sales price of the Common Stock during the ten trading days immediately prior to the date of declaration of such dividend, and excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company; (vi) payment in respect of a tender offer or exchange offer by the Company or any Subsidiary of the Company for the Common Stock to the extent that the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price (as defined) per share of Common Stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; and (vii) payment in respect of a tender offer or exchange offer by a person other than the Company or any Subsidiary (as defined) of the Company in which, as of the closing date of the offer, the Board of Directors is not recommending rejection of the offer. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is a quarterly dividend, such adjustment would be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant to clause (v) above. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is not a quarterly dividend, such adjustment would be based upon the full amount of the distribution. The adjustment referred to in clause (vii) above will only be made if the tender offer or exchange offer is for an amount that increases the offeror's ownership of Common Stock to more than 25% of the total shares of Common Stock outstanding, and if the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price per share of Common Stock on the business day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer. The adjustment referred to in clause (vii) above will generally not be made, however, if as of the closing of such offer, the offering documents with respect to such offer disclose a plan or an intention to cause the Company to engage in a consolidation or merger of the Company or a sale of all or substantially all of the Company's assets.

No adjustment in the Conversion Rate will be required unless such adjustment would require a change of at least 1% in the rate then in effect; provided that any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated above, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

In the case of (i) any reclassification of the Common Stock, or (ii) a consolidation or merger involving the Company or a sale or conveyance to another corporation of the property and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall be entitled to receive stock, securities, other property or assets (including cash) with respect to or in exchange for such Common Stock, the holders of the Debentures then outstanding will be entitled thereafter to convert such Debentures into the kind and amount of shares of stock, securities or other property or assets (including cash) which they would have owned or been entitled to receive upon such reclassification, consolidation, merger, sale or conveyance had such Debentures been converted immediately prior to such reclassification, consolidation, merger, sale or conveyance assuming that a holder of Debentures would not have exercised any rights of election as to the stock, securities or other property or assets (including cash) receivable in connection therewith.

NOT A CERTIFIED COPY

017806

In the event of a taxable distribution to holders of Common Stock or in certain other circumstances requiring an adjustment to the Conversion Rate, the holders of Debentures may, in certain circumstances, be deemed to have received a distribution subject to United States income tax as a dividend; in certain other circumstances, the absence of such an adjustment may result in a taxable dividend to the holders of Common Stock. See "Certain United States Federal Income Tax Considerations."

The Company from time to time may, to the extent permitted by law, increase the Conversion Rate by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such increase, if the Company's Board of Directors has made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such increases in the Conversion Rate, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "Certain United States Federal Income Tax Considerations."

Redemption of Debentures at the Option of the Company

No sinking fund is provided for the Debentures. Prior to March 25, 2003, the Debentures will not be redeemable at the option of the Company. Beginning on March 25, 2003, the Company may (subject to applicable contractual restrictions including under agreements governing Senior Indebtedness) redeem the Debentures for cash as a whole at any time, or from time to time in part, upon not less than 30 days' nor more than 60 days' notice of redemption given by mail to holders of Debentures. The Debentures will be redeemable in whole multiples of $1,000 principal amount at maturity.

The table below shows Redemption Prices of a Debenture per $1,000 principal amount at maturity thereof, at March 25, 2003 and at each March 25, thereafter prior to maturity and at maturity on March 25, 2018, which prices reflect the accrued Original Issue Discount calculated to each such date. The Redemption Price of a Debenture redeemed between such dates would include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table to the actual Redemption Date.

Redemption Date	(1) Debenture Issue Price	(2) Accrued Original Issue Discount At 5.0%	(3) Redemption Price (1)+(2)
March 25, 2003	$ 372.43	$ 104.32	$ 476 75
March 25, 2004	372.43	128.45	500.88
March 25, 2005	372.43	153.81	526.24
March 25, 2006	372.43	180.45	552.88
March 25, 2007	372.43	208.44	580.87
March 25, 2008	372.43	237.84	610.27
March 25, 2009	372.43	268.74	641.17
March 25, 2010	372.43	301.20	673.63
March 25, 2011	372.43	335.30	707.73
March 25, 2012	372.43	371.13	743.56
March 25, 2013	372.43	408.77	781.20
March 25, 2014	372.43	448.32	820.75
March 25, 2015	372.43	489.87	862.30
March 25, 2016	372.43	533.52	905.95
March 25, 2017	372.43	579.39	951.82
March 25, 2018	372.43	627.57	1,000.00

NOT A CERTIFIED COPY

017807

CP 033220
CONFIDENTIAL

16div-023477

If less than all of the outstanding Debentures held in certificated form are to be redeemed, the Trustee shall select the Debentures held in such form to be redeemed in principal amounts at maturity of $1,000 or whole multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate (as long as such method is not prohibited by the rules of any stock exchange on which the Debentures are then listed, if any). If a portion of a holder's certificated Debentures is selected for partial redemption and such holder converts a portion of such certificated Debentures, such converted portion shall be deemed to be the portion selected for redemption. Debentures registered in the name of DTC or its nominee will be redeemed pro rata as described under "—Form, Denomination and Registration—Global Debenture; Book-Entry Form."

Redemption at Option of the Holder Upon a Fundamental Change

If a Fundamental Change (as defined) occurs at any time prior to March 25, 2018, each holder of Debentures shall have the right, at the holder's option, to require the Company to redeem any or all of such holder's Debentures on the date (the "Repurchase Date") that is 45 days after the date of the Company's notice of such Fundamental Change. The Debentures will be redeemable in whole multiples of $1,000 principal amount at maturity at their accreted value on the Repurchase Date.

The Company shall redeem such Debentures at a price equal to the Issue Price plus accrued Original Issue Discount to, but excluding, the Repurchase Date, provided that if the Applicable Price (as defined) in connection with the Fundamental Change is less than the Reference Market Price (as defined), the Company shall redeem such Debentures at a price equal to the foregoing Redemption Price multiplied by the fraction obtained by dividing the Applicable Price by the Reference Market Price.

The Company shall mail to all holders of record of the Debentures a notice of the occurrence of a Fundamental Change and of the redemption right arising as a result thereof on or before the tenth day after the occurrence of such Fundamental Change. The Company shall deliver to the Trustee a copy of such notice. To exercise the redemption right, holders of Debentures must deliver, on or before the 30th day after the date of the Company's notice of a Fundamental Change (the "Fundamental Change Expiration Time"), the Debentures to be so redeemed, duly endorsed for transfer, together with the form entitled "Option to Elect Redemption Upon a Fundamental Change" on the reverse thereof duly completed, to the Company (or an agent designated by the Company for such purpose). Payment for Notes surrendered for redemption (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly following the Repurchase Date.

The term "Fundamental Change" means the occurrence of any transaction or event in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock of a company listed (or, upon consummation of or immediately following such transaction or event, which will be listed) on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

The term "Applicable Price" means (i) in the event of a Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by the holder of one share of Common Stock and (ii) in the event of any other Fundamental Change, the average of the reported last sale price for the Common Stock during the ten trading days prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets in connection with the Fundamental Change.

The term "Reference Market Price" shall initially mean $30.2083 (which is equal to 66⅔% of the last sale price of the Common Stock as reflected on the cover page of this Offering Memorandum) and in the event of any adjustment to the Conversion Rate pursuant to the provisions of the Indenture, the Reference Market Price shall also be adjusted so that the Reference Market Price shall be equal to the initial Reference Market Price multiplied by a fraction the numerator of which is the Conversion Rate specified on the cover of this Offering Memorandum (without regard to any adjustment thereto) and the denominator of which is the Conversion Rate following such adjustment.

NOT A CERTIFIED COPY

017608

CP 033221
CONFIDENTIAL

16div-023478

The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable in connection with the redemption rights of Debenture holders in the event of a Fundamental Change.

The redemption rights of the holders of Debentures could discourage a potential acquiror of the Company. The Fundamental Change redemption feature, however, is not the result of management's knowledge of any specific effort to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions.

The term "Fundamental Change" is limited to certain specified transactions and may not include other events that might adversely affect the financial condition of the Company, nor would the requirement that the Company offer to repurchase the Debentures upon a Fundamental Change necessarily afford the holders of the Debentures protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company.

No Debentures may be redeemed at the option of holders upon a Fundamental Change if there has occurred and is continuing an Event of Default described under "—Events of Default; Notice and Waiver" below (other than a default in the payment of the Fundamental Change Redemption Price with respect to such Debentures). In the event of a Fundamental Change and exercise by holders of the Debentures of their associated rights to require the Company to redeem all or a portion of their Debentures, there can be no assurance that the Company would have sufficient funds to pay the redemption price for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will provide, and any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party also may provide, that a Fundamental Change would constitute an event of default thereunder permitting the lenders thereunder to accelerate the maturity thereof and thereby cause the subordination provisions in the Indenture to apply, preventing redemption of the Debentures until Senior Indebtedness thereunder is paid in full. Any such provisions could restrict or prohibit the redemption of the Debentures. If the Company is prohibited from redeeming the Debentures upon the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from redeeming the Debentures. In such case, the Company's failure to redeem Debentures required to be redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, or if a Fundamental Change would in and of itself constitute an event of default under agreements governing Senior Indebtedness then outstanding, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Purchase of Debentures at the Option of the Holder

On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, any outstanding Debenture for which a written Purchase Notice has been delivered by the holder to the office of the paying agent (initially the Trustee) at any time from the opening of business on the date that is 20 Business Days (as defined) prior to such Purchase Date until the close of business on such Purchase Date and for which such Purchase Notice has not been withdrawn, subject to certain additional conditions.

The Purchase Notice shall state (i) the certificate numbers of the Debentures to be delivered by the holder thereof for purchase by the Company; (ii) the portion of the principal amount at maturity of Debentures to be purchased, which portion must be $1,000 or a whole multiple thereof; (iii) that such Debentures are to be purchased by the Company pursuant to the applicable provisions of the Debentures; and (iv) in the event the Company elects, pursuant to the Company Notice (as defined), to pay the Purchase Price to be paid as of such Purchase Date in Common Stock, in whole or in part, but such Purchase Price is ultimately to be paid to such holder entirely in cash because any of the conditions to payment of the Purchase Price (or portion thereof) in Common Stock is not satisfied by the Purchase Date, as described below, whether such holder elects (x) to withdraw such Purchase Notice as to some or all of the Debentures to which it relates (stating the principal

NOT ACCEPTED COPY

017809

CP 033222
CONFIDENTIAL

16div-023479

amount at maturity and certificate numbers of the Debentures as to which such withdrawal shall relate), or (y) to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice. If the holder fails to indicate, in the Purchase Notice and in any written notice of withdrawal relating to such Purchase Notice, such holder's choice with respect to the election described in clause (iv) above, such holder shall be deemed to have elected to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice in such circumstances. For a discussion of the tax treatment of a holder receiving cash or Common Stock pursuant to its election to tender its Debentures to the Company on a Purchase Date, see "Certain United States Federal Income Tax Considerations."

Any Purchase Notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the Purchase Date. The notice of withdrawal shall state the principal amount at maturity and the certificate numbers of the Debentures as to which the withdrawal notice relates and the principal amount at maturity, if any, which remains subject to the Purchase Notice.

The Purchase Price payable in respect of a Debenture shall be equal to the Issue Price plus accrued Original Issue Discount to the Purchase Date. The table below shows the Purchase Prices of a Debenture as of the specified Purchase Dates. The Company may elect to pay the Purchase Price payable as of any Purchase Date in cash or Common Stock or any combination thereof.

Purchase Date	Purchase Price
March 25, 2003	$476.75
March 25, 2008	610.27
March 25, 2013	781.20

If the Company elects to pay the Purchase Price, in whole or in part, in Common Stock, the number of shares to be delivered in respect of the portion of the Purchase Price to be paid in Common Stock shall be equal to such portion of the Purchase Price divided by the Market Price (as defined) of the Common Stock. However, no fractional shares of Common Stock will be delivered upon any purchase by the Company of Debentures through the delivery of Common Stock in payment, in whole or in part, of the Purchase Price. Instead, the Company will pay cash based on the Market Price for all fractional shares of Common Stock.

The Company will give notice (the "Company Notice") not less than 20 Business Days prior to the Purchase Date (the "Company Notice Date") to all holders at their addresses shown in the register of the registrar (and to beneficial owners as required by applicable law) stating, among other things, whether the Company will pay the Purchase Price of the Debentures in cash or Common Stock, or any combination thereof (specifying the percentage of each) and, if the Company elects to pay in Common Stock, in whole or in part, the method of calculating the Market Price of the Common Stock.

The "Market Price" means the average of the Sale Prices (as defined) of the Common Stock for the five trading day period ending on the third Business Day prior to the applicable Purchase Date (if the third Business Day prior to the applicable Purchase Date is a trading day or, if it is not a trading day, then on the last trading day prior to such third Business Day), appropriately adjusted to take into account the occurrence during the period commencing on the first of such trading days during such five trading day period and ending on such Purchase Date of certain events that would result in an adjustment of the Conversion Rate under the Indenture with respect to the Common Stock. The "Sale Price" of the Common Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date as reported in the composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System. Because the Market Price of the Common Stock is determined prior to the applicable Purchase Date, holders of Debentures bear the market risk with respect to the value of the Common Stock to be received from the date of determination of such Market Price to such Purchase Date. The Company may elect to pay the Purchase Price in Common Stock only if the information necessary to calculate the Market Price is reported in a daily newspaper of national circulation.

CP 033223
CONFIDENTIAL

NOT CERTIFIED COPY

017810

16div-023480

Upon determination of the actual number of shares of Common Stock in accordance with the foregoing provisions, the Company will publish such determination in a daily newspaper of national circulation.

The Company's right to purchase Debentures with Common Stock is subject to the satisfaction of various conditions, including: (i) the registration of the Common Stock under the Securities Act, if required; and (ii) compliance with other applicable federal and state securities laws, if any. If such conditions are not satisfied by a Purchase Date, the Company will pay the Purchase Price of the Debentures to be purchased on such Purchase Date entirely in cash. See "Certain United States Federal Income Tax Considerations." The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable and will file a Schedule 13E-4 or any other schedule required thereunder in connection with any offer by the Company to purchase Debentures at the option of holders.

Payment of the Purchase Price for a Debenture for which a Purchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of such Debenture (together with necessary endorsements) to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose, at any time (whether prior to, on or after the Purchase Date) after delivery of such Purchase Notice. Payment of the Purchase Price for such Debenture will be made promptly following the later of the Purchase Date or the time of book-entry transfer or delivery of such Debenture. If the paying agent holds, in accordance with the terms of the Indenture, money or securities sufficient to pay the Purchase Price of such Debenture on the Business Day following the Purchase Date, then, on and after such date, such Debenture will cease to be outstanding and Original Issue Discount on such Debenture will cease to accrue whether or not book-entry transfer of such Debenture is made or such Debenture is delivered to the paying agent, and all other rights of the holder shall terminate (other than the right to receive the Purchase Price upon delivery of the Debenture).

No Debentures may be purchased at the option of the holder for cash if there has occurred (prior to, on or after the giving by the holders of such Debentures of the required Purchase Notice) and is continuing an Event of Default described under "Events of Default; Notice and Waiver" below (other than a default in the payment of the Purchase Price with respect to such Debentures).

If the Company becomes obligated to purchase any outstanding Debenture on a Purchase Date, there can be no assurance that the Company would have sufficient funds to pay the Purchase Price on that Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the Purchase Price at valuations based on then prevailing market prices) for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will prohibit the purchase of the Debentures for cash but will permit the purchase of Debentures with shares of Common Stock on a Purchase Date. There can be no assurance that any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party will not contain prohibitions on or defaults with respect to the repurchase of the Debentures or provide that prepayment or redemption would constitute an event of default. In the event a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures, the Company could seek the consent of its then existing lenders to repurchase the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures. The Company's failure to repurchase Debentures required to be repurchased under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Subordination of Debentures

The Indebtedness evidenced by the Debentures is subordinated to the extent provided in the Indenture to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all existing and future Senior Indebtedness. Such subordination will not prevent the occurrence of any Event of Default under the Indenture.

CP 033224
CONFIDENTIAL

NOT A CERTIFIED COPY

16div-023481

Upon any distribution of assets of the Company upon any dissolution, winding up, voluntary or involuntary bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, the holders of Senior Indebtedness will be entitled to receive payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all obligations due in respect of such Senior Indebtedness before the holders of Debentures will be entitled to receive any payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price, interest, if any, Liquidated Damages, if any, or any other payment in respect of the Debentures (a "Payment on the Debentures"), and until all obligations with respect to Senior Indebtedness are paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, any Payment on the Debentures to which the holders of Debentures would be entitled shall be made to the holders of Senior Indebtedness. By reason of the subordination, in the event of the Company's dissolution, winding up, bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, holders of Senior Indebtedness may receive more, ratably, and the holders of Debentures may receive less, ratably, than the other creditors of the Company.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

The Company also may not make any Payment on the Debentures if (i) a default in any payment obligations in respect of Senior Indebtedness occurs and is continuing, without regard to any applicable period of grace (whether at maturity or at a date fixed for payment or by declaration or otherwise) (each a "payment default") or (ii) any other default occurs and is continuing with respect to Designated Senior Indebtedness that permits holders of the Designated Senior Indebtedness as to which such default relates to accelerate its maturity and the Trustee receives a notice of such default (a "Payment Blockage Notice") from the Company or from a representative for any issue of Designated Senior Indebtedness. Payments on the Debentures may and shall be resumed (a) in case of a payment default, the earlier of the date on which such default is cured or waived in accordance with the terms of the governing instrument or ceases to exist and (b) in case of a nonpayment default, the earlier of the date on which such nonpayment default is cured or waived in accordance with the terms of the governing instrument or ceases to exist or 179 days after the date on which the applicable Payment Blockage Notice is received by the Trustee if the terms of the Indenture otherwise permit payment at that time. No new period of payment blockage may be commenced pursuant to a Payment Blockage Notice unless and until 365 days have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or shall be made, the basis for a subsequent Payment Blockage Notice unless such default shall have been cured or waived for a period of not less than 90 days (it being acknowledged that (x) any action of the Company or any of its subsidiaries occurring subsequent to delivery of a Payment Blockage Notice that would give rise to any event of default pursuant to any provision of Senior Indebtedness under which an event of default previously existed (or was continuing at the time of delivery of such Payment Blockage Notice) shall constitute a new event of default for this purpose and (y) any breach of a financial covenant giving rise to a nonpayment default for a period ending subsequent to the date of delivery of the respective Payment Blockage Notice shall constitute a new event of default for this purpose).

The term "Senior Indebtedness" means the principal of, premium, if any, interest (including all interest accruing subsequent to, or which would accrue but for, the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), original issue discount, rent and end of term payments payable on or in connection with, and, to the extent not included in the foregoing, all amounts payable as fees, costs, expenses, liquidated damages, indemnities, repurchase and other put obligations and other amounts to the extent accrued or due on or in connection with, Secured Indebtedness (as defined) of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals,

NOT A CERTIFIED COPY

017812

CP 033225
CONFIDENTIAL

16div-023482

extensions or refundings of, or amendments, modifications or supplements to, the foregoing). Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) Indebtedness of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (ii) accounts payable or other indebtedness to trade creditors created or assumed by the Company in the ordinary course of business and (iii) any particular Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to, or is pari passu with, or is subordinated or junior to, the Debentures.

The term "Indebtedness" means, with respect to any Person (as defined) and without duplication: (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof); (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers' acceptances or similar facilities; (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person (i) required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, or (ii) required, in conformity with generally accepted accounting principles, to be accounted for as an operating lease, provided either (A) such operating lease requires, at the end of the term thereof, that such Person make any payment other than accrued periodic rent in the event that such Person does not acquire the leased real property and related fixtures subject to such lease or (B) such Person has an option to acquire the leased real property and related fixtures, whether such option is exercisable at any time or under specified circumstances; (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge or exchange agreement or other similar instrument or agreement; (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d); (f) any indebtedness or other obligations described in clauses (a) through (d) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

The term "Designated Senior Indebtedness" means (i) Senior Indebtedness incurred under the New Credit Facility or (ii) any other particular Senior Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of the Indenture; provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

The term "Secured Indebtedness" means, with respect to any Person, Indebtedness of such Person secured by any mortgage, pledge, lien or other encumbance existing on the property or assets which is owned or held by such Person.

The Debentures are obligations exclusively of the Company. Since the operations of the Company are conducted through subsidiaries, the cash flow and the consequent ability to service debt, including the Debentures, are dependent upon the earnings of its subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, the Company. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amount pursuant to the Debentures or to make any funds available therefor, whether by dividends, loans or other payments. In addition, the payment of dividends and making of loans and advances to the Company by its subsidiaries are subject to statutory or contractual restrictions, including those expected under the New Credit Facility, are contingent upon the earnings of those subsidiaries and are subject to various business considerations.

NOT A CERTIFIED COPY

CP 033228
CONFIDENTIAL

0178 13

16div-023483

Any right of the Company to receive assets of any of its subsidiaries upon their liquidation or reorganization (and the consequent right of the holders of the Debentures to participate in those assets) will be effectively subordinated to the claims of that subsidiary's creditors (including trade creditors), except to the extent that the Company is itself recognized as a creditor of such subsidiary, in which case the claims of the Company would still be subordinate to any security interests in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by the Company.

At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Debentures rank *pari passu* with all outstanding indebtedness and other liabilities of the Company, including trade payables. Upon the consummation of the Offering, on a pro forma basis the Company will have no outstanding indebtedness or other liabilities other than trade payables. The Indenture will not limit the amount of additional indebtedness, including Senior Indebtedness, which the Company can create, incur, assume or guarantee, nor will the Indenture limit the amount of indebtedness which any subsidiary can create, incur, assume or guarantee.

In the event that, notwithstanding the foregoing, the Trustee or any holder of the Debentures receives any payment or distribution of assets of the Company of any kind in contravention of any of the subordination provisions of the Indenture, whether in cash, property or securities, including, without limitation, by way of set-off or otherwise, in respect of the Debentures before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, then such payment or distribution will be held by the recipient in trust for the benefit of holders of Senior Indebtedness or their representatives to the extent necessary to make payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of Senior Indebtedness.

The Company is obligated to pay reasonable compensation to the Trustee and to indemnify the Trustee against certain losses, liabilities or expenses incurred by it in connection with its duties relating to the Debentures. The Trustee's claims for such payments will generally be senior to those of holders of the Debentures in respect of all funds collected or held by the Trustee.

Events of Default; Notice and Waiver

The Indenture provides that, if an Event of Default specified therein shall have occurred and be continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding may declare the Issue Price of the Debentures plus the Original Issue Discount on the Debentures and any liquidated damages under the Registration Rights Agreement accrued to the date of such declaration to be immediately due and payable, but if the Company shall cure all defaults (except the nonpayment of Issue Price and accrued Original Issue Discount which shall have become due by acceleration) and certain other conditions are met, such declaration may be annulled and past defaults may be waived by the holders of a majority in principal amount at maturity of the Debentures then outstanding. In the case of certain events of bankruptcy or insolvency, the Issue Price of the Debentures plus the Original Issue Discount accrued thereon to the occurrence of such event shall automatically become and be immediately due and payable. Under certain circumstances, the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may rescind any such acceleration with respect to the Debentures and its consequences. Interest shall accrue at the rate of 5.0% per annum and be payable on demand upon a default in the payment of the Issue Price, accrued Original Issue Discount, accrued liquidated damages, if any, or any Redemption Price, Purchase Price or Fundamental Change Redemption Price to the extent that payment of such interest shall be legally enforceable

Under the Indenture, Events of Default are defined as: (1) default in payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, accrued Liquidated Damages, if any, Redemption Price, Purchase Price or Fundamental Change Redemption Price with respect to any Debenture when such becomes due and payable (whether or not payment is prohibited by the subordination provisions of the Indenture), provided

NOT A CERTIFIED COPY

017814

CP 033227
CONFIDENTIAL

16div-023484

that in the case of any failure to pay Liquidated Damages, such failure continues for a period of 30 days; (ii) failure by the Company to comply with any of its other agreements in the Debentures or the Indenture upon the receipt by the Company of notice of such default by the Trustee or by holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding and the Company's failure to cure such default within 60 days after receipt by the Company of such notice; or (iii) certain events of bankruptcy or insolvency.

The Trustee shall give notice to holders of the Debentures of any continuing default known to the Trustee within 90 days after the occurrence thereof, provided that the Trustee may withhold such notice if it determines in good faith that withholding the notice is in the interests of the holders.

The holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that such direction shall not be in conflict with any law or the Indenture and subject to certain other limitations. Before proceeding to exercise any right or power under the Indenture at the direction of such holders, the Trustee shall be entitled to receive from such holders reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in complying with any such direction. No holder of any Debenture will have any right to pursue any remedy with respect to the Indenture or the Debentures, unless (i) such holder shall have previously given the Trustee written notice of a continuing Event of Default; (ii) the holders of at least 25% in aggregate principal amount at maturity of the outstanding Debentures shall have made a written request to the Trustee to pursue such remedy; (iii) such holder or holders have offered to the Trustee reasonable indemnity satisfactory to the Trustee; (iv) the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures have not given the Trustee a direction inconsistent with such request within 60 days after receipt of such request; and (v) the Trustee shall have failed to comply with the request within such 60-day period.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

However, the right of any holder (x) to receive payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price and any interest in respect of a default in the payment of any such amounts on a Debenture, on or after the due date expressed in such Debenture, (y) to institute suit for the enforcement of any such payments or conversion or (z) to convert Debentures shall not be impaired or adversely affected without such holder's consent. The holders of at least a majority in aggregate principal amount at maturity of the outstanding Debentures may waive an existing default and its consequences, other than (i) any default in any payment on the Debentures, (ii) any default with respect to the conversion rights of the Debentures or (iii) any default in respect of certain covenants or provisions in the Indenture which may not be modified without the consent of the holder of each Debenture as described in "Modification" below. The Company will be required to furnish to the Trustee annually a statement as to any default by the Company in the performance and observance of its obligations under the Indenture.

Mergers and Sales of Assets by the Company

The Company may not consolidate with or merge into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless, among other items, (i) the resulting, surviving or transferee person (if other than the Company) is organized and existing under the laws of the United States, any state thereof or the District of Columbia, (ii) such successor person assumes all obligations of the Company under the Debentures and the Indenture and (iii) the Company or such successor person shall not immediately thereafter be in default under the Indenture. Upon the assumption of the Company's obligations by such person in such circumstances, subject to certain exceptions, the Company shall be discharged from all obligations under the Debentures and the Indenture. Certain such transactions which would constitute a Fundamental Change would permit each holder to require the Company to redeem the Debentures of such holder as described under "Redemption at Option of the Holder Upon a Fundamental Change."

NOT A CERTIFIED COPY

01781S

CP 033228
CONFIDENTIAL

16div-023485

Modification

Modification and amendment of the Indenture or the Debentures may be effected by the Company and the Trustee with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the Debentures then outstanding. Notwithstanding the foregoing, no such amendment may, without the consent of each holder affected thereby: (i) reduce the principal amount at maturity, Issue Price, Purchase Price, Fundamental Change Redemption Price or Redemption Price, or extend the stated maturity of any Debenture or alter the manner or rate of accrual of Original Issue Discount or interest, or make any Debenture payable in money or securities other than that stated in the Debenture; (ii) make any change to the principal amount at maturity of Debentures whose holders must consent to an amendment or any waiver under the Indenture or modify the Indenture provisions relating to such amendments or waivers; (iii) make any change that adversely affects the right to convert any Debenture or the right to require the Company to purchase a Debenture or the right to require the Company to redeem a Debenture upon a Fundamental Change; (iv) modify the provisions of the Indenture relating to the subordination of the Debentures in a manner adverse to the holders of the Debentures in any material respect; or (v) impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Debentures. The Indenture also provides for certain modifications of its terms without the consent of the holders. No amendment may be made to the subordination provisions of the Indenture that adversely affects the rights of any holder of Senior Indebtedness then outstanding, unless the holders of such Senior Indebtedness (as required pursuant to the terms of such Senior Indebtedness) consent to such change.

Limitations of Claims in Bankruptcy

If a bankruptcy proceeding is commenced in respect of the Company, the claim of the holder of a Debenture is, under Title 11 of the United States Code, limited to the Issue Price of the Debenture plus that portion of the Original Issue Discount that has accrued from the date of issue to the commencement of the proceeding. In addition, the Debentures will be subordinated in right of payment to Senior Indebtedness to the extent set forth in the Indenture and effectively subordinated to the indebtedness and other obligations of the Company's subsidiaries. See "Subordination of Debentures" above.

Taxation of Debentures

See "Certain United States Federal Income Tax Considerations" for a discussion of certain tax considerations relevant to a holder of Debentures.

Rule 144A Information Requirement

The Company has agreed to furnish to the holders or beneficial holders of the Debentures or Common Stock issued upon conversion thereof and prospective purchasers of the Debentures or such Common Stock designated by such holders, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act until such time as such securities are no longer "restricted securities" within the meaning of Rule 144 under the Securities Act (assuming such securities have not been owned by an affiliate of the Company).

Information Concerning the Trustee

The Bank of New York, as Trustee under the Indenture, has been appointed by the Company as paying agent, conversion agent, registrar and custodian with regard to the Debentures. The Indenture provides that, except during the continuance of an Event of Default, the Trustee thereunder will exercise such rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The Indenture and provisions of the Trust Indenture Act of 1939, as amended ("TIA"), incorporated by reference therein contain limitations on the rights of the Trustee thereunder, should it become a creditor of the Company, to obtain payment of certain claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee is permitted to engage in other transactions, provided, however, that if it acquires any conflicting interest (within the meaning of the TIA) it must eliminate such conflicting interest or resign.

NOT A CERTIFIED COPY

017516

CP 033229
CONFIDENTIAL

16div-023486

REGISTRATION RIGHTS

A copy of the Registration Rights Agreement will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Registration Rights Agreement, including the definitions of certain terms that are not otherwise defined in this Offering Memorandum. The Company will enter into a registration rights agreement with the Initial Purchaser (the "Registration Rights Agreement") pursuant to which the Company, at its expense, will, for the benefit of the holders, file with the Commission the Shelf Registration Statement covering resale of the Registrable Securities as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures. The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days of such first date of original issuance and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act, or any successor provision, subject to certain permitted exceptions. The Company will be permitted to suspend the use of the prospectus that is a part of the Shelf Registration Statement under certain circumstances relating to pending corporate developments, public filings with the Commission and similar events for a period not to exceed 30 days in any three-month period or not to exceed an aggregate of 90 days in any 12-month period; provided, however, that the Company will be permitted to suspend the use of the prospectus for a period not to exceed 60 days in any 3-month period or 90 days in any 12-month period under certain circumstances relating to probable acquisitions, acquisitions, financings or similar transactions. The Company will agree to pay predetermined liquidated damages as described herein ("Liquidated Damages") to holders of Debentures and holders of Common Stock issued upon conversion of the Debentures if the Shelf Registration Statement is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted above. Such Liquidated Damages shall accrue until such failure to file or become effective or unavailability is cured, (i) in respect of any Debenture, at a rate per annum equal to 0.25% for the first 90 day period after the occurrence of such event and 0.5% thereafter on an amount equal to the sum of the Issue Price of the Debenture plus accrued Original Issue Discount thereon and, (ii) in respect of each share of Common Stock, at a rate per annum equal to 0.25% for the first 90 day period and 0.5% thereafter on the then applicable conversion price for a share of Common Stock which equals the Issue Price of $1,000 principal amount at maturity of Debentures plus accrued Original Issue Discount thereon divided by the Conversion Rate in effect. A holder who sells Debentures and Common Stock issued upon conversion of the Debentures pursuant to the Shelf Registration Statement generally will be required to be named as a selling stockholder in the related prospectus, deliver a prospectus to purchasers of such Debentures and/or Common Stock issued upon conversion thereof and be bound by certain provisions of the Registration Rights Agreement that are applicable to such holder (including certain indemnification provisions). The Company will pay all expenses of the Shelf Registration Statement, provide to each registered holder copies of such prospectus, notify each registered holder when the Shelf Registration Statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the Debentures and the Common Stock issued upon conversion of the Debentures. The plan of distribution of the Shelf Registration Statement will permit resales of Registrable Securities by selling security holders through brokers and dealers.

Attached to this Offering Memorandum as Appendix B is a notice and questionnaire (the "Questionnaire") to be completed and delivered by a holder to the Company at least three business days prior to any intended distribution of Registrable Securities pursuant to the Shelf Registration Statement. Holders are required to complete and deliver the Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such holders may be named as selling stockholders in the related prospectus at the time of effectiveness. Upon receipt of such a completed Questionnaire, together with such other information as may be reasonably requested by the Company, from a holder following the effectiveness of the Shelf Registration Statement, the Company will, as

NOT A CERTIFIED COPY

017317

CP 033230
CONFIDENTIAL

16div-023487

promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities (subject to the Company's right to suspend the use of the prospectus as described above). The Company has agreed to pay Liquidated Damages in the amount set forth above to such holder if the Company fails to make such filing in the time required or, if such filing is a post-effective amendment to the Shelf Registration Statement required to be declared effective under the Securities Act, if such amendment is not declared effective within 45 days of the filing thereof. Any holder that does not complete and deliver a Questionnaire or provide such other information will not be named as a selling stockholder in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement.

NOT A CERTIFIED COPY

017318

CP 033231
CONFIDENTIAL

16div-023488

DESCRIPTION OF CAPITAL STOCK

The Company's authorized capital stock consists of 200,000,000 shares of Common Stock, par value $.01 per share and 2,000,000 shares of preferred stock, par value $.01 per share.

Common Stock

As of February 27, 1998, there were 86,457,201 shares of Common Stock outstanding. Each share of Common Stock has one vote on all matters upon which stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Common Stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of the Company, subject to prior distribution rights of any shares of preferred stock then outstanding. The Common Stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Common Stock. Holders of Common Stock are entitled to participate in dividends as and when declared by the Company's Board of Directors out of funds legally available therefor. The Company's ability to pay cash dividends is subject to certain restrictions. The Company expects that the New Credit Facility will contain limitations on the ability of the Company to pay dividends. The Company's Proxy Statement for its next annual meeting which is scheduled for May 13, 1998, includes an amendment to the Company's Restated Certificate of Incorporation increasing the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares.

The transfer agent and registrar for the Common Stock is The Bank of New York.

Preferred Stock

There are no shares of preferred stock currently outstanding. The Certificate of Incorporation provides that the Board of Directors of the Company may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Board may determine without any further action by the stockholders of the Company.

Delaware General Corporation Law Section 203

Section 203 of the Delaware General Corporation Law (the "DGCL") prohibits certain transactions between a Delaware corporation and an "interested stockholder," which is defined as a person who, together with any affiliate and/or associates of such person, beneficially owns, directly or indirectly, 15% or more of the outstanding voting shares of a Delaware corporation. This provision prohibits certain business combinations (defined broadly to include mergers, consolidations, sales or other dispositions of assets having an aggregate value in excess of 10% of the consolidated assets of the corporation or the aggregate value of all of the outstanding capital stock of the corporation, and certain transactions that would increase the interested stockholder's proportionate share ownership in the corporation) between an interested stockholder and a corporation for a period of three years after the date the interested stockholder acquired its stock, unless (i) the business combination is approved by the corporation's board of directors prior to the date the interested stockholder acquired shares, (ii) the interested stockholder acquired at least 85% of the voting stock of the corporation in the transaction in which it became an interested stockholder or (iii) the business combination is approved by a majority of the board of directors and by the affirmative vote of two-thirds of the votes entitled to be cast by disinterested stockholders at an annual or special meeting. Any future election to opt out of Section 203 can be effected only by an amendment to the Certificate of Incorporation or the Bylaws. Any such election would not be effective until 12 months after the adoption of such amendment and would not apply to a business combination with any interested stockholder who became such on or prior to the date of adoption.

NOT A CERTIFIED COPY

011619

CP 033232
CONFIDENTIAL

16div-023489

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the Debentures and Common Stock to a holder of a Debenture or Common Stock that is, for U.S. federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust, the administration of which is subject to the primary supervision of a court within the United States and which has one or more United States persons with authority to control all substantial decisions. This summary is based on laws regulations, rulings and decisions now in effect, all of which are subject to change, possibly with retroactive effect. There can be no assurance that the Internal Revenue Service (the "IRS") will not challenge one or more of the tax consequences described herein, and the Company has not obtained, nor does it intend to obtain, a ruling from the IRS or an opinion of counsel as to any U.S. federal income tax consequences relating to the Debentures.

This summary deals only with holders of Debentures who purchase the Debentures pursuant to the Offering and hold the Debentures and any Common Stock into which the Debentures are converted as capital assets. This summary does not address tax considerations applicable to investors that may be subject to special tax rules (including, without limitation, banks, insurance companies, tax-exempt entities, regulated investment companies, common trust funds, dealers in securities, or persons who hold Debentures or Common Stock as part of a hedge conversion or constructive sale transaction, straddle or other risk reduction transaction). This discussion also does not address the tax consequences arising under the laws of any foreign, state or local jurisdiction.

INVESTORS CONSIDERING THE PURCHASE OF A DEBENTURE SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING, CONVERTING OR OTHERWISE DISPOSING OF THE DEBENTURES AND COMMON STOCK, INCLUDING THE EFFECT AND THE APPLICABILITY OF STATE, LOCAL OR FOREIGN TAX LAWS.

Original Issue Discount on the Debentures. The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). The issue price of the Debentures will equal the initial price at which a substantial amount of the Debentures is sold for cash (other than to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers), and the stated redemption price at maturity of a Debenture will be the sum of all payments due under the Debenture (which is expected to be the principal amount at maturity).

For U.S. federal income tax purposes, each holder of a Debenture must include in gross income a portion of the OID in each taxable year during which the Debenture is held in an amount equal to the OID that accrues on the Debenture during such period, determined by using a constant yield to maturity method. The OID included in income for each year will be calculated under a compounding formula that will result in the allocation of less OID to the earlier years of the term of the Debenture and more OID to later years. For the approximate cumulative total amount of OID accrued annually, see the chart under "Description of Debentures—Redemption of Debentures at the Option of the Company." Any amount included in income as OID will increase a holder's tax basis in the Debenture.

Sale, Exchange or Retirement of the Debentures. A holder's tax basis for determining gain or loss on the sale or other disposition of a Debenture will generally equal the holder's cost of the Debenture increased by any accrued OID includible in such holder's gross income and reduced by payments, if any. Except as described in the next paragraph, upon the sale, exchange or retirement of a Debenture, a holder will recognize gain or loss equal to the difference between the amount realized on the sale or other disposition of the Debenture and the

NOT A CERTIFIED COPY

017320

CP 033233
CONFIDENTIAL

16div-023490

holder's tax basis in such Debenture. Gain or loss realized on the sale, exchange or retirement of a Debenture will generally be capital gain or loss and will be long-term capital gain or loss if the Debenture is held for more than one year.

If a holder elects to exercise its option to cause the Company to purchase its Debentures on a Purchase Date and the Company issues Common Stock in satisfaction of all of the Purchase Price, the exchange of the Debentures for Common Stock should generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received in such exchange of a Debenture should be the same as the holder's tax basis in the Debenture at the time of the conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received in such exchange should include the holding period of the Debenture exchanged. If the Purchase Price is paid with a combination of Common Stock and cash, gain (but not loss) realized by the holder should be recognized, but only to the extent of the cash received (including cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received should be the same as such holder's tax basis in the Debenture at the time of the conversion (except for any portion allocable to a fractional share of Common Stock), increased by the amount of gain recognized (other than with respect to a fractional share) and decreased by the amount of any cash received (except cash received in lieu of a fractional share). The holding period for Common Stock received in the exchange should include the holding period of the Debenture tendered to the Company in exchange therefor. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the amount of cash received for the fractional share and the holder's tax basis in the fractional share interest.

Conversion of Debentures. A holder's conversion of a Debenture into Common Stock will generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A tax basis in the Common Stock received on conversion of a Debenture will be the same as the holder's tax basis in the Debenture at the time of conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received on conversion will include the holding period of the Debenture converted, except that it is possible that the Internal Revenue Service may argue that the holding period of the Common Stock allocable to OID will commence on the date of the conversion and a holder would be required to hold such Common Stock for more than twelve months before long-term capital gain (or loss) treatment could be obtained upon a sale of such Common Stock. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the cash received for the fractional share interest and the holder's tax basis in the fractional share interest.

Dividends; Adjustment of Conversion Price. Dividends, if any, paid on the Common Stock generally will be includible in the income of a holder as ordinary income to the extent of the Company's current or accumulated earnings and profits.

If at any time the Company makes a distribution of property to shareholders that would be taxable to such shareholders as a dividend for federal income tax purposes (for example, distributions of evidences of indebtedness or assets of the Company, but generally not stock dividends or rights to subscribe for Common Stock) and, pursuant to the anti-dilution provisions of the Indenture, the Conversion Rate of the Debentures is increased, such increase may be deemed to be the payment of a taxable dividend to holders of Debentures. If the Conversion Rate is increased at the discretion of the Company or in certain other circumstances, such increase may also be deemed to be the payment of a taxable dividend to holders of Debentures. Moreover, in certain other circumstances, the absence of such an adjustment to the Conversion Rate of the Debentures may result in a taxable dividend to holders of the Common Stock.

Sale of Common Stock. Upon the sale or exchange of Common Stock, holders generally will recognize capital gain or capital loss equal to the difference between the amount realized on such sale or exchange and the holder's adjusted tax basis in such shares.

NOT A CERTIFIED COPY

017621

PLAN OF DISTRIBUTION

Under the terms and subject to the conditions set forth in the Purchase Agreement between the Company and Morgan Stanley & Co. Incorporated (the "Initial Purchaser") dated March 19, 1998 (the "Purchase Agreement"), the Initial Purchaser has agreed to purchase, and the Company has agreed to sell to the Initial Purchaser, $2,014,000,000, aggregate principal amount at maturity of Debentures at a purchase price of 37.243% of the principal amount at maturity thereof. After the initial offering of the Debentures, the offering price and other selling terms may from time to time be varied by the Initial Purchaser.

The Purchase Agreement provides that the obligation of the Initial Purchaser to pay for and accept delivery of the Debentures is subject to approval of certain legal matters by its counsel and to certain other conditions. The Initial Purchaser is obligated to take and pay for all of the Debentures offered hereby if any are taken (other than the Debentures covered by the overallotment option described below).

The Company has granted to the Initial Purchaser an option, exercisable within 30 days of the date of the Purchase Agreement, to purchase up to an additional $302,100,000 aggregate principal amount at maturity of the Debentures solely for the purpose of covering over-allotments, if any.

The Purchase Agreement provides that the Company will indemnify the Initial Purchaser against certain liabilities, including liabilities under the Securities Act.

The Company has been advised by the Initial Purchaser that the Initial Purchaser proposes to resell the Debentures initially at the price set forth on the cover page hereof to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) in reliance on Rule 144A under the Securities Act and to a limited number of other institutional "accredited investors" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act, that agree in writing to comply with the transfer restrictions and other conditions set forth in the Purchase Agreement. See "Transfer Restrictions."

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as described in the immediately preceding paragraph.

The Debentures are eligible for trading in The Portal Market. The Initial Purchaser has advised the Company that it presently intends to make a market in the Debentures as permitted by applicable laws and regulations. The Initial Purchaser is not obligated, however, to make a market in the Debentures and any such market making may be discontinued at any time at the sole discretion of the Initial Purchaser. Accordingly, no assurance can be given as to the liquidity of, or trading markets for, the Debentures.

The Company and the directors and current executive officers referred to under "Security Ownership of Management" will agree that they will not (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (b) enter into any swap or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, for a 90-day period after the date of this Offering Memorandum, without the prior written consent of Morgan Stanley & Co. Incorporated, other than (i) the Debentures offered hereby, (ii) the Common Stock issuable upon conversion of the Debentures, (iii) securities of the Company (and the agreement to provide such securities) as full or partial consideration in connection with any future acquisitions or strategic investments by the Company or securities of the Company issuable upon exercise or conversion of the foregoing securities; *provided* that the market value of such securities does not exceed $500 million in the aggregate, (iv) options granted or stock issued upon the exercise of outstanding stock options or otherwise pursuant to the Company's stock option or employee stock purchase plans or other executive compensation arrangements existing at the date of this Offering Memorandum and (v) in connection with the acquisition of CLN Holdings and Coleman.

In order to facilitate the offering of the Debentures and the Common Stock, the Initial Purchaser may engage in transactions that stabilize, maintain or otherwise affect the price of the Debentures or the Common Stock

NOT A CERTIFIED COPY

017022

CP 033235
CONFIDENTIAL

16div-023492

Specifically, the Initial Purchaser may over-allot in connection with the offering, creating a short position in the Debentures for its own account. In addition, to cover over-allotments or stabilize the price of the Debentures and the Common Stock, the Initial Purchaser may bid for, and purchase, the Debentures or shares of the Common Stock in the open market. Finally, the Initial Purchaser may reclaim selling concessions allowed to dealers for distributing the Debentures in the offering, if the Initial Purchaser repurchases previously distributed Debentures in transactions to cover short positions established by the Initial Purchaser, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Debentures or the Common Stock above independent market levels. The Initial Purchaser is not required to engage in these activities, and may discontinue any of these activities at any time.

The Initial Purchaser has performed various investment banking and other services for the Company in the past, and may do so from time to time in the future. In particular, the Initial Purchaser is acting as the Company's financial advisor in connection with the Aquisitions. In addition, an affiliate of the Initial Purchaser is arranging the New Credit Facility and expects to be a lender thereunder.

TRANSFER RESTRICTIONS

The Debentures and the Common Stock' issuable upon conversion of the Debentures have not been registered under the Securities Act. The Debentures and Common Stock issuable upon conversion of the Debentures may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except (i) in compliance with the registration requirements of the Securities Act and all other applicable securities laws, or (ii) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws. Accordingly, the Debentures are being offered and sold only (1) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) ("QIBs") in compliance with Rule 144A and (2) to a limited number of other institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) ("Institutional Accredited Investors") that, prior to their purchases of Debentures, deliver to the Initial Purchaser a letter attached hereto as Appendix A, which contains certain representations and agreements.

Each purchaser of Debentures will be deemed to (1) represent that it is purchasing the Debentures for its own account or an account with respect to which it exercises sole investment discretion and that it or such account is a QIB, or an institutional accredited investor, (2) acknowledge that the Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act, and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as set forth below, (3) agree that if it should resell or otherwise transfer the Debentures or the Common Stock issuable upon conversion of the Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), it will do so within the United States or to, or for the account or benefit of, U.S. persons only (a) to the Company or any subsidiary thereof, (b) to a QIB in compliance with Rule 144A, (c) to an institutional accredited investor that, prior to such transfer, furnishes to the Trustee, as registrar for the Debentures (or in the case of the Common Stock, the transfer agent for the Common Stock (the "Transfer Agent")), a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Debentures (or the Common Stock, as the case may be) (the form of which letter can be obtained from the Trustee for the Debentures or the Transfer Agent for the Common Stock), (d) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (e) pursuant to a registration statement which has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and (4) agree that it will give each person to whom it transfers such Debentures or Common Stock issuable on conversion of the Debentures notice of any restrictions on transfer of such Debentures and such Common Stock. Each institutional accredited investor (other than a QIB) that is an original purchaser of the Debentures will be required to sign an agreement to the foregoing effect in the form attached hereto as Appendix A. In the case of any certificated Debentures, prior to any proposed transfer of Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holders thereof must check the appropriate box set forth on the certificate representing the Debentures relating to the manner of such transfer and submit the certificate representing the Debentures to the Trustee. If (i) such transfer is to an institutional accredited investor or (ii) any holder proposes to transfer Common Stock issued upon conversion of Debentures

CP 033236
CONFIDENTIAL

NOT A CERTIFIED COPY

0 1 7 3 2 3

16div-023493

in either case prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holder (or beneficial holder, as the case may be) will be required to furnish to the Trustee (or, in the case of the Common Stock, the Transfer Agent) such certifications, legal opinions or other information as it may reasonably require to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Each certificate representing a Debenture will bear the following legend (unless such Debenture has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE DEBENTURE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT, PRIOR TO EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), RESELL OR OTHERWISE TRANSFER THE DEBENTURE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH DEBENTURES WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE DEBENTURE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRUSTEE OR A SUCCESSOR TRUSTEE, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (3) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (4) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE DEBENTURES EVIDENCED HEREBY ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE) IF THE PROPOSED TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR OR IS A PURCHASER WHO IS NOT A U.S. PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE DEBENTURE

NOT FILED

0117024

16div-023494

EVIDENCED HEREBY PURSUANT TO CLAUSE 2(B) ABOVE OR UPON ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

Each stock certificate representing Common Stock issued upon conversion of the Debenture will bear the following legend (unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRANSFER AGENT OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) ABOVE OR UPON ANY TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY AFTER THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT

NOT FOR PUBLIC DISCLOSURE

017825

LEGAL MATTERS

Certain legal matters will be passed upon for the Company by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York and for the Initial Purchaser by Davis Polk & Wardwell, New York, New York.

INDEPENDENT AUDITORS

The consolidated financial statements of Sunbeam Corporation and its subsidiaries, included in this Offering Memorandum, have been audited by Arthur Andersen LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Arthur Andersen LLP.

The consolidated financial statements of CLN Holdings and its subsidiaries, included in this Offering Memorandum, have been audited by Ernst & Young LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Ernst & Young LLP.

The consolidated financial statements of Signature Brands USA, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by KPMG Peat Marwick LLP, independent certified public accountants to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of KPMG Peat Marwick LLP, independent certified public accountants.

The consolidated financial statements of First Alert, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by Price Waterhouse LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Price Waterhouse LLP.

NOT A CERTIFIED COPY

017826

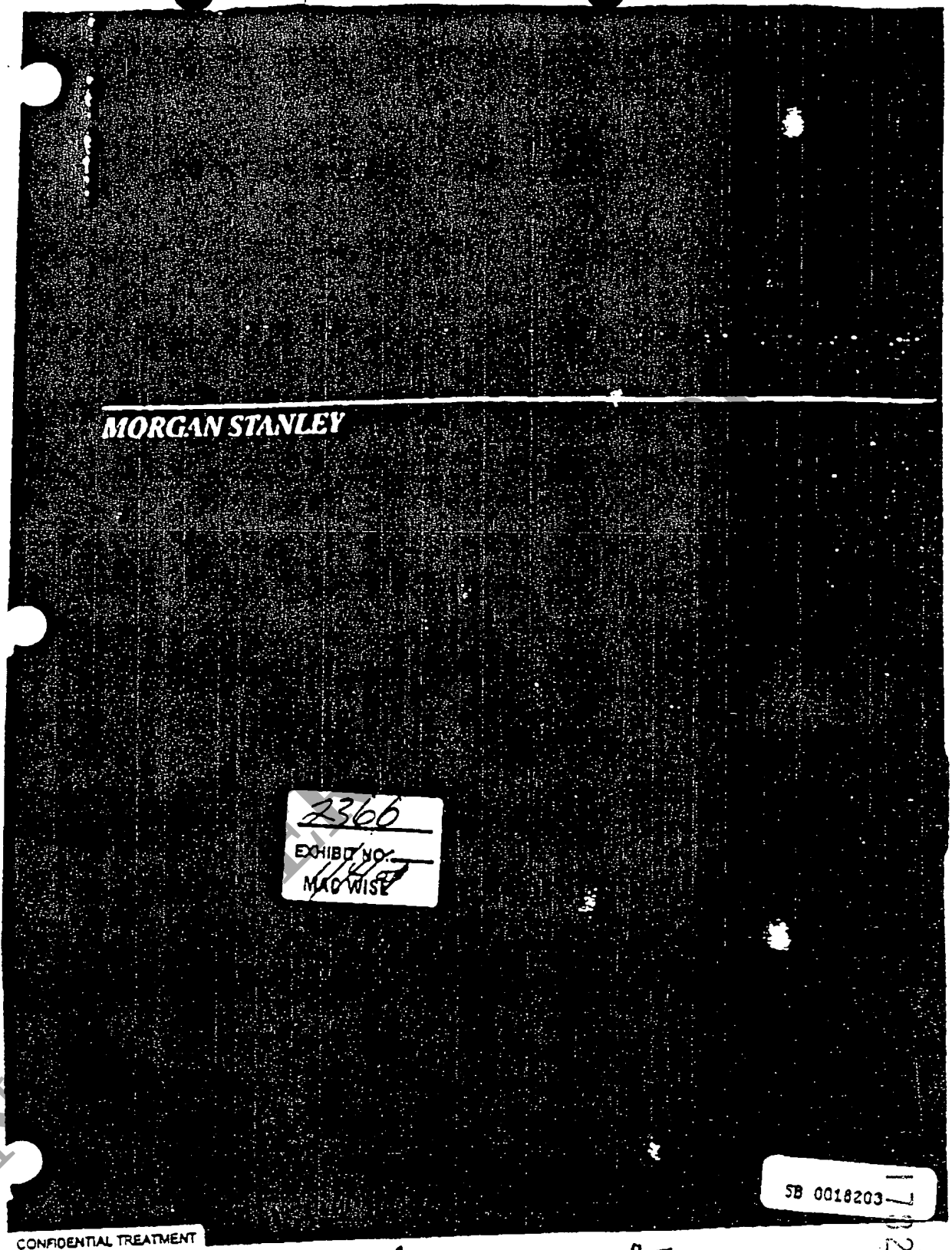
CP 033239
CONFIDENTIAL

16div-023496

(This page intentionally left blank)

NOT A CERTIFIED COPY

011327



CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CPH DEP. EX NO 75

FOR ID., AS OF CB 12/4/03

Sunbeam

Roadshow Presentation
Speaking Points
March 15, 1998

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018204

01730

Roadshow Presentation Speaking Points
3/15/18

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

0173311
KK 0001

SB 0018202

Sunbeam

Management Presentation

Al Dunlap

NOT A CERTIFIED COPY

104-784-3591 - Pro6

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

0017332
SB 0018205

Sunbeam

Summary Terms of the Offering

4 3/4 - 5 1/4
2.26 40

Issuer:	Sunbeam Corp.
Principal Amount	$500MM
Issue:	Zero Coupon Convertible Subordinated Debentures Due 2018
Maturity:	20 Years
Call Provision:	NC-5
Distribution Method:	Rule 144A with Registration Rights
Targeted Pricing:	March 19
Sole Manager:	Morgan Stanley Dean Witter

• Morgan Intro

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

0178333

SB 0013206

Sunbeam

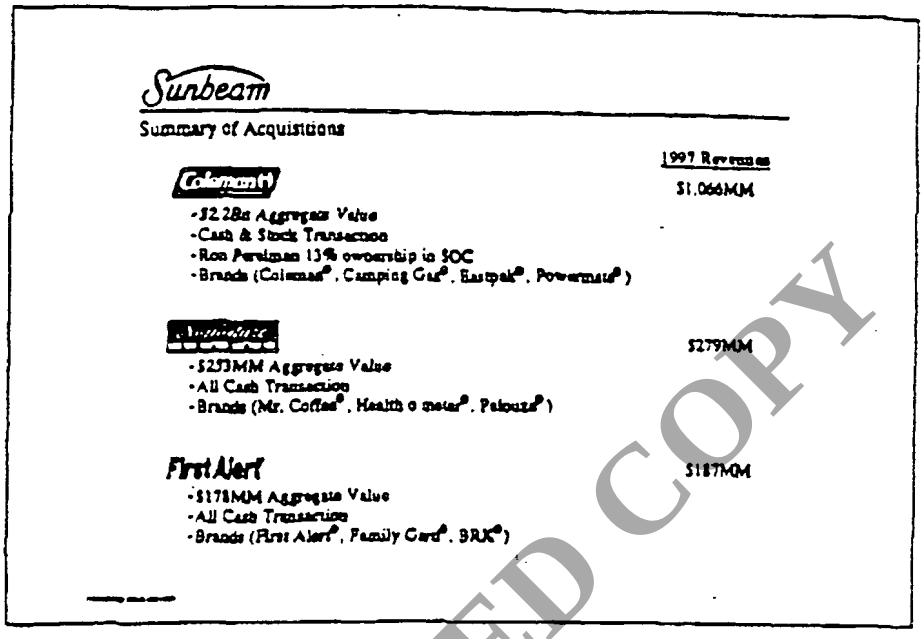
Management Team

Albert J. Dunlap	*Chairman & CEO*
Russell A. Kersh	*Vice Chairman & CFO*
David C. Fannin	*EVP & General Counsel*
Rich P. Goudis	*VP, Investor Relations & Corporate Planning*

- Morgan Intro

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



- As you know several weeks ago we embarked upon the acquisition of three publicly held companies.
  - -The Coleman transaction has an aggregate value of $2.2 billion of which approximately $815 million in stock and the remainder in cash and assumed debt. Coleman is the leader in outdoor camping & recreation, with great brand names such as Coleman, Powermate, Eastpak in the U.S. and Japan and Camping Gaz throughout Europe.
  - -With this transaction, Ron Perelman becomes our second largest shareholder behind Michael Price. Both men are brilliant investors and they see the potential to make a lot of money with Sunbeam.
  - -The Signature brands transaction is all cash and has an aggregate value of approximately $253 million. They have two great brands, Mr. Coffee and Health o meter and are dominant in North America
  - -The First Alert transaction is also all cash with an aggregate value of approximately $178 million. First Alert is the leader in home fire and carbon monoxide detectors in the U.S. and the U.K.
- With the acquisition of these three companies we essentially triple our annual revenues and take Sunbeam's market capitalization from about a billion, when I arrived, to almost $7 billion.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

Sunbeam

Sunbeam Vision Statement

"BECOME THE GLOBAL LEADER IN DURABLE CONSUMER PRODUCTS THROUGH THE CONSOLIDATION OF LEADING CONSUMER BRANDS"

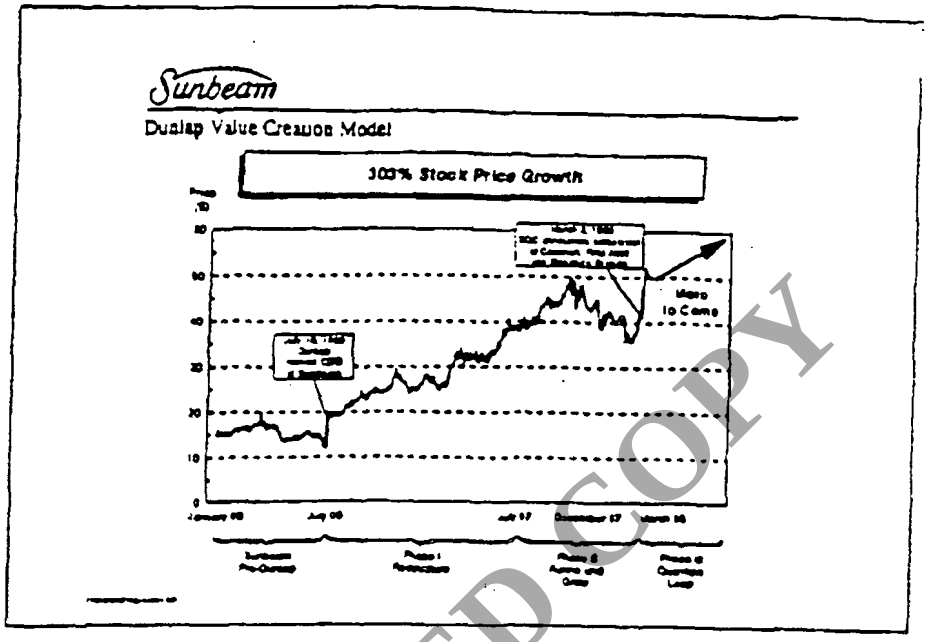
- Back in October of 1997 we engaged Morgan Stanley to advise us on how we could created the greatest amount of shareholder value for our investors. We concluded, jointly, that the best way to create additional value at Sunbeam was to take the leadership position in the consolidation of the industries in which we compete.
- Our strategy is to become the global leader in durable consumer products. In my view we will become the P&G of our industry.
- The announcement of these three acquisitions represents merely the initiation of our new strategy.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

017836

SB 0018209



- I have always had the philosophy that there are 3 fundamental phases to creating shareholder value.
- The first phase, the restructuring, is when you change the management team, cut the costs, divest non-core businesses and develop a strategy for growth. I believe that if a restructuring is to be successful it needs to be completed in 12 months. People will give you a chance to make things better and are willing to change if they can see and share in the results. At Sunbeam we made all of our employees shareholders and we completed the restructuring in July of 1997 - just 12 months from when I started with the company.
- The second phase, the refinement and growth phase, begins when the restructuring initiatives are completed. It is important to continually refine the organization to ensure that you have the most competitive cost structure and that you are properly leveraging the strengths of the organization. In Sunbeam's case for example, we went from 26 factories to 8 during the restructuring, but that didn't mean that our 8 remaining factories were in world class shape. So we went back in and made the necessary investments to relay out and fix our plants.
- The third phase is the quantum leap. When you merge, acquire or sell a company you unleash an enormous amount of hidden value. I believe we did that with these three acquisitions. We'll now start the process over as we structure and consolidate these companies into Sunbeam.

NFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

Sunbeam

Sunbeam When I Arrived

	When I Arrived
Sales	$984MM
EBITDA	$48MM
Operating Margin %	0.1%
Market Cap	$1,026MM
# Factories	26
# of Headquarters	6
# of Warehouses	61
# of Employees	12,000
# of SKUs	11,400

- When I arrived at Sunbeam the company was losing market share in just about every one of their major product lines (grills, blenders, mixers and scales). The top line, excluding acquisitions, was actually declining during the previous three years. And, more importantly to note was that this revenue decline came during a period where the company invested over $300 million in new capital.
- I firmly believe that this company had 9-12 months left before it went bust!
- There was tremendous excess capacity along with underutilized assets and factories. They had two many SKU's, had no budgetary control and had too many people.
- Additionally, margins were essentially non existent and worse of all there was no strategy to fix the company!
- That's why the Board hired me. They knew I would make the necessary difficult decisions to fix the company and restore its profitability.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

0017938

16div-023507

Sunbeam

Sunbeam Today

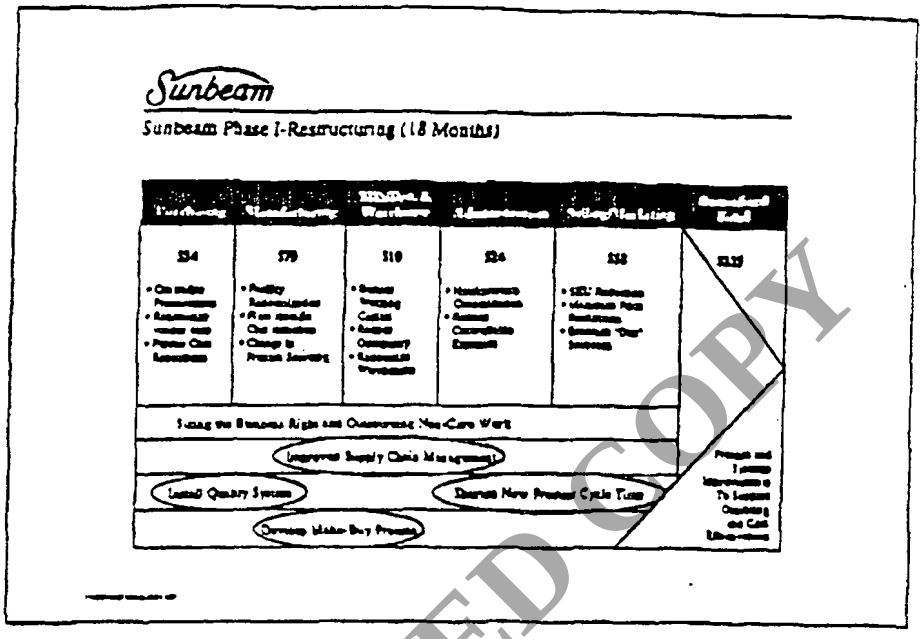
	When I Arrived	Sunbeam Today
Sales	$984MM	$1,168MM
EBITDA	$48MM	$238.0MM
Operating Margin %	0.1%	17.1%
Market Capitalization	$1,026MM	$4,348MM
# Factories	26	8
# of Headquarters	6	1
# of Warehouses	61	18
# of Employees	12,000	7,000
# of SKUs	11,400	2,000

- As you can see by the dramatic improvement in financial results we were very successful at turning the company around.
- Sales were up 22%, on a normalized basis. This growth represented the first time in company history that we were able to achieve double digit growth without an acquisition. The sales grew due to our strategic initiatives to introduce innovative new products (we introduce 89 last year) and expand our geographic reach (we signed 25 new distribution agreements around the world last year). Underlying this growth was the dramatic improvement in brand awareness - we experienced a 25% improvement due to an all new advertising campaign and new packaging for Sunbeam and Oster products.
- Our margins improved to record levels resulting from the dramatic cost and profit improvement initiatives that we implemented as part of the restructuring and repositioning of the Company. We reduced the number of factories from 26 to 8 and the number of warehouses from 61 to 18. We reduced the number of employees from 12,000 to 6,000, then added people back as the business grew, and we reduced the number of SKU's from over 11,000 to under 2,000.
- All of these initiatives translated into record levels of revenues and earnings for the company, but most importantly, we fixed the underlying business which has provided us with a strong base from which we can now grow.
- Let me take a few minutes to describe some of the specifics of our restructuring as well as the initiatives to refine and grow the company.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT REQUESTED UNDER FO

01 7339



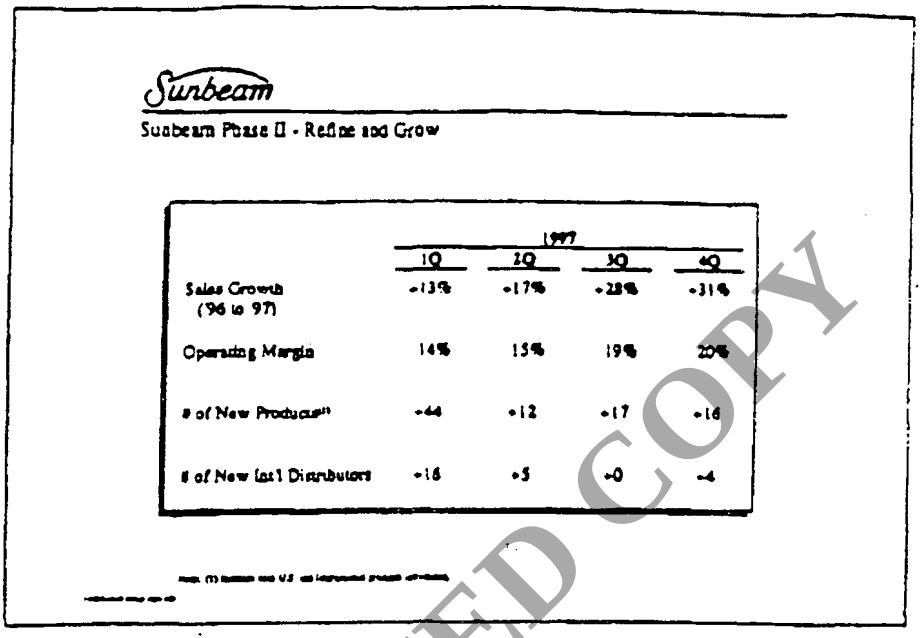
- As I mentioned earlier there are four key elements of the restructuring and repositioning of a company. While it is important that all four occur simultaneously, the ability to identify and implement a cost reduction and profit improvement program is critical.
- At Sunbeam we identified $225 million of profit enhancement opportunities. About 60% of the savings was realized in the first year and the balance will be achieved in 1998.
- As you can see the scope of the cost cutting and profit improvement is quite broad.
  - We consolidated the supplier base and used that leverage to obtain lower pricing and improve the overall supply chain
  - We consolidated and rationalized our factories, creating focus factories, which yielded the largest dollar savings
  - We consolidated 6 headquarters into one, reduced redundant functions and outsourced non-core responsibilities (payroll, collections, information systems, etc.)
  - And we enhanced margins by eliminating low margin SKU's and improved pricing by reducing unnecessary give-aways (volume rebates, co-op advertising, allowances, etc.) and in select cases we actually raised prices.
- As you can see it was quite a comprehensive plan to improve our cost structure. And it was all implemented within the first 12 months.

SB 0018213

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

017840



- The second phase, the refinement and growth, is the fun phase. Once all the massive moves and changes were completed, we were able to focus on refining the remaining operations.

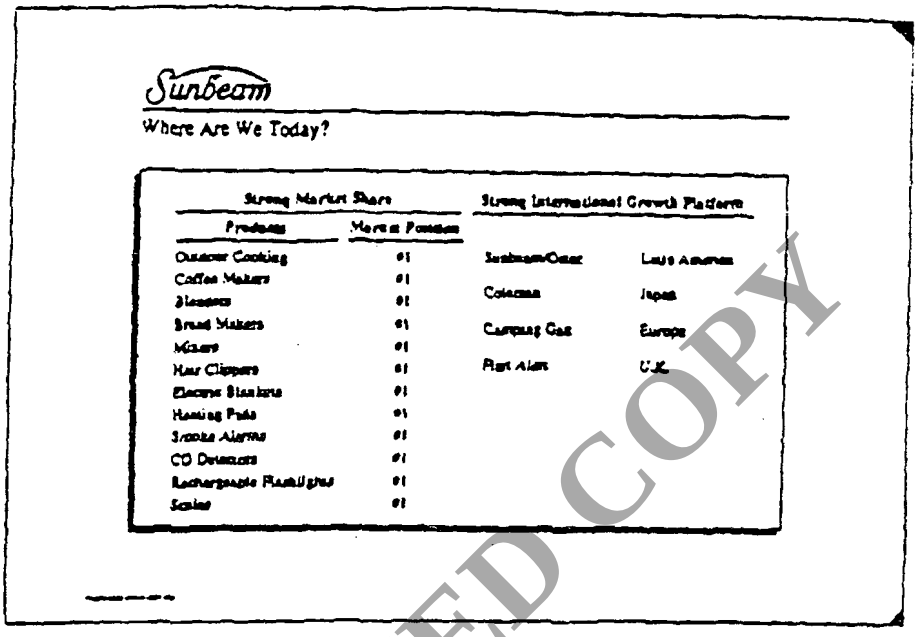
- As you can see by both the top and bottom line percentage improvements, we were successful at accelerating the growth and improvement throughout the year. Both on a year over year basis and on a sequential basis. (Our top line was up 13%, 17%, 28% and 31%, respectively during 1997). Most importantly, in the 4th quarter we proved to ourselves that we could achieve a 20% operating margin (this was our three year goal!)

- In addition to the cost savings associated with the restructuring, the addition of 89 new products and 25 new international distribution agreements helped drive double digit sales increases and they favorably enriched the margins as a percentage of sales.

- Once we felt comfortable that the underlying business was fixed and able to support further growth, we engaged Morgan Stanley and began our quest for the third phase - the quantum leap.

NOT ACCEPTED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



- *I learned working for Sir James Goldsmith that tremendous shareholder value is typically locked-up within companies because they fail to pursue strategic acquisitions or mergers. I have seen countless times that when companies merge or acquire they are able, through synergies, to unlock tremendous shareholder value.*

- We'll continue to unlock shareholder value when we restructure, reposition, refine and grow these companies.

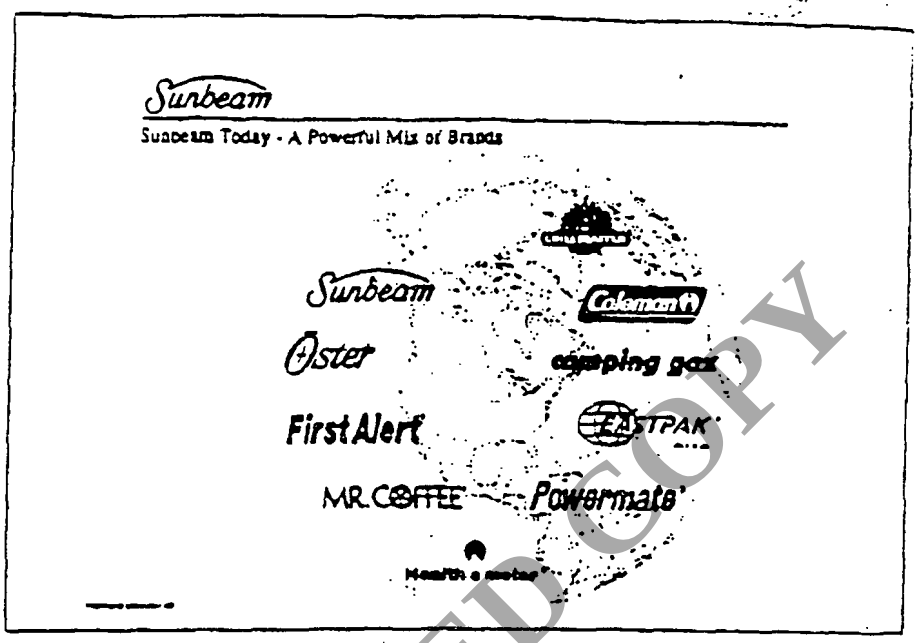
- Look at the chart, this is just a short list of the product lines which we are now number one in the industry. *The leadership positions in these categories, both in the U.S. and abroad will enable us to leverage numerous synergies that will accelerate our top an bottom line growth rates.*

- Not only do we plan to consolidate these three companies into Sunbeam, we will also take advantage of the geographic synergies. We will use Sunbeam's strength in Latin America to sell Coleman, First Alert, Mr. Coffee and Health o meter products. And we'll use Coleman's strength in Europe and Japan to sell Sunbeam, First Alert, Health o meter and Mr. Coffee products.

NOT A CERTIFIED COPY

017842

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



- I truly believe Sunbeam is quickly becoming the P&G of the durable consumer products industry. We have a tremendous brand name that is accepted across many different products throughout the house.

- The acquisition of Coleman enables us to add a second leg to the company. We believe the Coleman name is widely accepted outside the home and can be used to brand many different product lines.

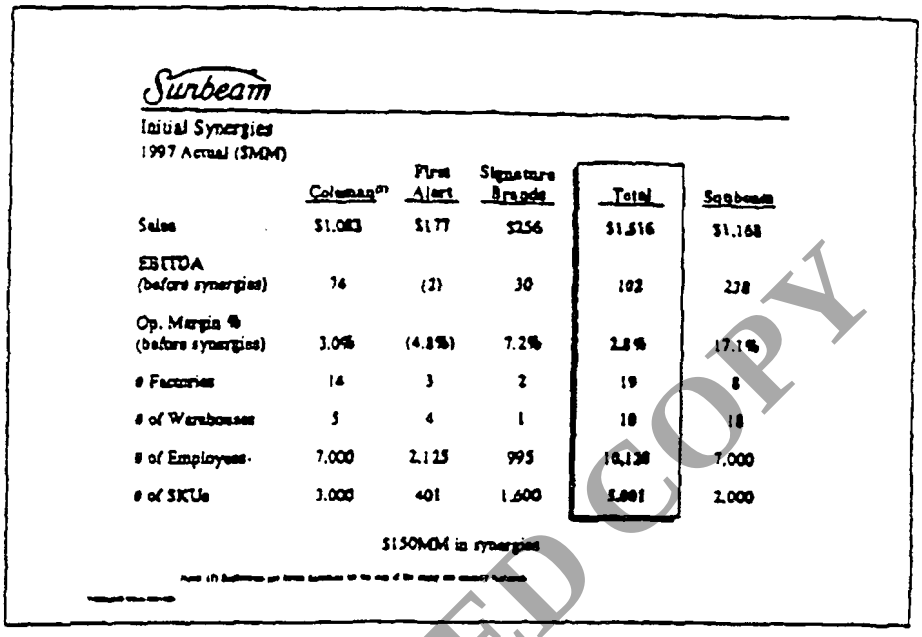
- First Alert, Mr. Coffee, Health o meter, Powermate, Eastpak, Oster, Grillmaster and Sunbeam are very strong brands on their own, but the opportunity to cross brand increases the amount of leverage we have within our existing distribution channels.

- For example: we will now be able to put the Sunbeam and Health o meter name on smoke alarms and carbon monoxide detectors, we'll be able to put Oster, Sunbeam or Mr. Coffee names on Coffee makers around the world and we'll be able to put Grillmaster, Camping Gaz and Coleman on gas grills. This will provide us with a tremendous opportunity to better manage the retail channels of distribution.

- As you can see, Sunbeam has become a powerful house of brands virtually overnight!

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



Sunbeam

Initial Synergies
1997 Actual ($MM)

	Coleman[2]	First Alert	Signature Brands	Total	Sunbeam
Sales	$1,083	$177	$256	$1,516	$1,168
EBITDA (before synergies)	76	(2)	30	102	238
Op. Margin % (before synergies)	3.0%	(4.8%)	7.2%	2.8%	17.1%
# Factories	14	3	2	19	8
# of Warehouses	5	4	1	10	10
# of Employees	7,000	2,125	995	10,120	7,000
# of SKUs	3,000	401	1,600	5,001	2,000

$150MM in synergies

- When we looked at these companies we quickly determined that there was enormous opportunity to reduce costs through the consolidation of the three companies into Sunbeam. The opportunity to eliminate duplicate SG&A functions is the easy upside to create meaningful EPS accretion in 1999.

- The previous management at Coleman said they completed a restructuring. What they did doesn't begin to approach what I consider a restructuring. In fact I believe that Coleman is very similar to the old Sunbeam. Too many factories, too many SKU's and underperforming product lines and very weak management. Rest assured we'll fix all of that very quickly!

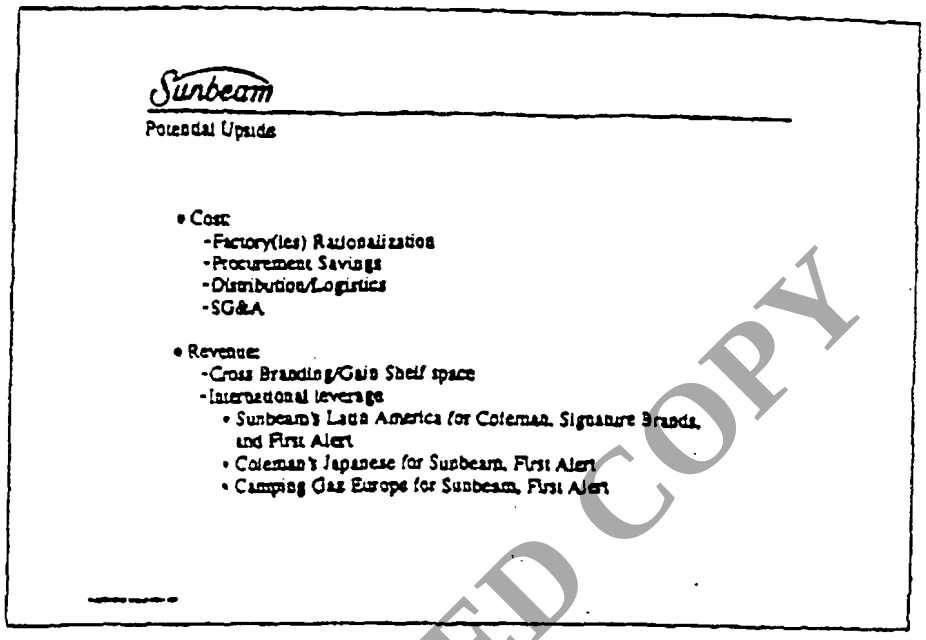
- First Alert and Signature Brands will be rapidly assimilated into Sunbeam as new product lines. We'll be able to quickly eliminate a large portion of their SG&A expenses.

- We have identified approximately $150 million of synergies. During our due diligence we visited many of the facilities, talked with existing management and we feel good about the $150 million in savings. There may be upside potential. Remember what we did at Sunbeam (we identified $225 million on a $1.2 billion business - and these three companies are about $1.5 billion).

NOT ACHIEVED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023513



- Since the announcement two weeks ago, we have already established teams which have been in the field to look at the factories and we are comfortable that we'll identify additional opportunities which will create upside to our initial estimates for synergies.

- We'll conduct an in depth study of all the potential synergies, including the consolidation of factories along with procurement and distribution savings.

- Additionally, we'll assess the potential revenue and margin benefits such as cross branding and expanded international sales using the strength of each individual company we acquired.

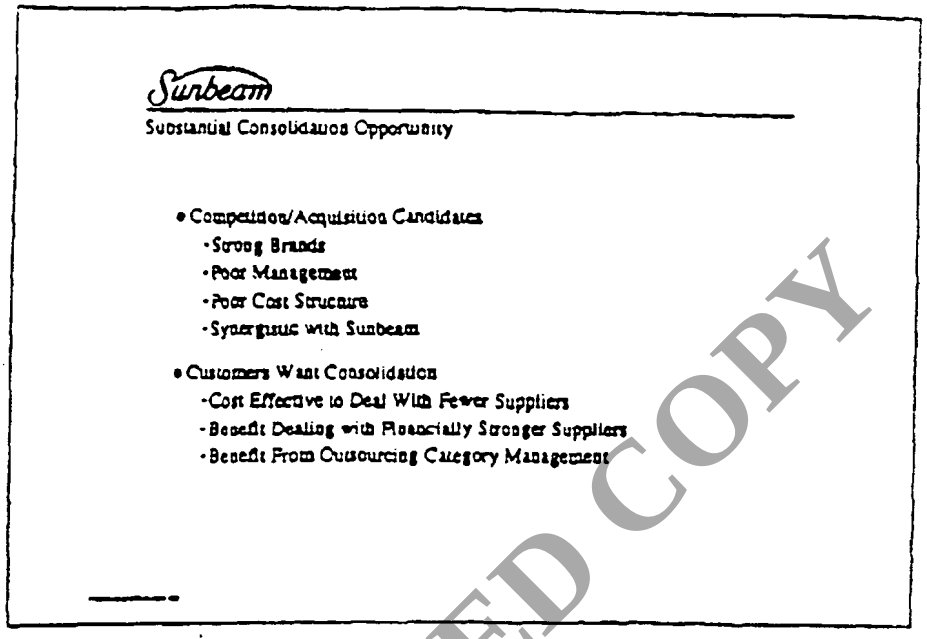
- I expect that we'll be in a better position to communicate these opportunities, and their impact on earnings, within a few months after we close these transactions.

NOT A CERTIFIED COPY

017845

SB 0018218

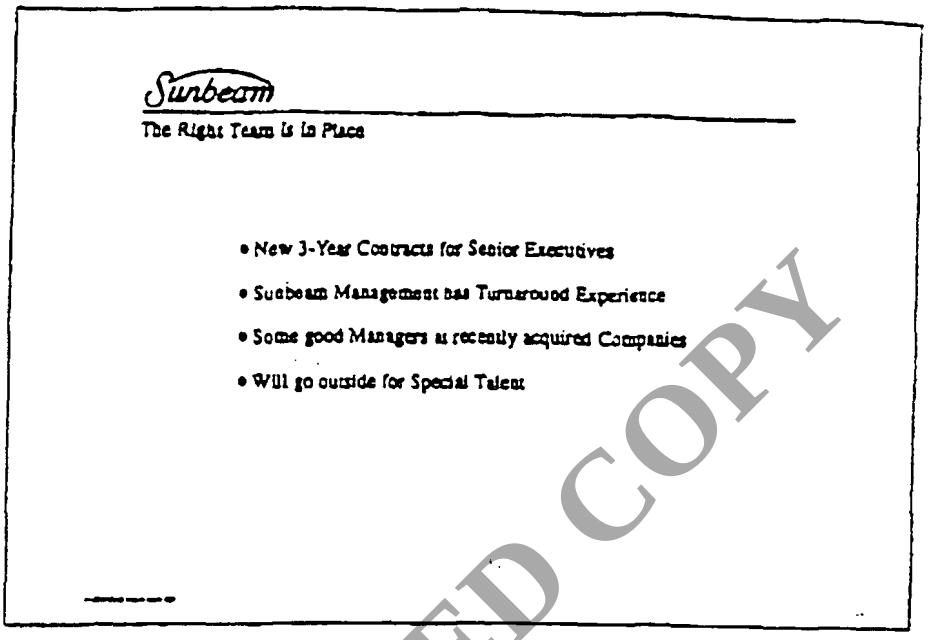
CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



- These three acquisitions mark the beginning of our strategy to grow through acquisitions and consolidate these fragmented industries along the way.
- Our criteria for evaluating acquisition targets is the following: companies with strong brand names, but weak management and poor cost structures, and companies which are synergistic with one or more of our core businesses.
- We can fix the cost structure of any company we acquire, thereby improving margins and generating re-investable returns. We'll then be able to invest in new products and strengthen the brand.
- As we continue to do this, we'll become stronger and stronger and our competition will become weaker. Many of our competitors are smaller and under capitalized and several of our competitors are divisions of larger companies. In either case they will be unable to attract the right resources, financial or human, to effectively compete with us. Interesting to note is that since we made the announcement of these three acquisitions, we have received numerous calls from smaller companies asking us to buy them.
- Our customers have applauded our decision to take the lead in consolidating the industry. When we talked with the President of WalMart he said, "I love what you guys did, I'm glad you guys finally listened to me".
- Our customers want to deal with fewer suppliers. They want suppliers to be financially capable of investing in the business; such as brand building and strengthening their infrastructure (EDI, information technology, just in time, etc.). And most importantly they want suppliers to help them manage their categories and improve their profitability.
- We are extremely well positioned to take the leadership role in this consolidation.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA!



- And finally, what makes this all work is having the right management team.
- I am fortunate at Sunbeam to have a very supportive Board. Michael Price plays a very active role in the Company through his representative on our Board. Michael was the catalyst in renegotiating new three year contract for myself, Russ and David. Michael and I both agreed that the only way we would launch on an acquisition strategy was if the Board and I were both commited to see it all the way through.
- Not only does the existing management team have experience in turning around Sunbeam, but there are about 20-25 people in the company that have worked for me in the past, at Scott or in other companies over the past 15 years.
- We will also find some good people in these newly acquired companies once we remove all the bureaucracy. And we'll go to the outside hire special talent such as marketing or product development people, where necessary.
- I view a management team like a sports team. Let me put the best athletes on the field and I'll win the game. I believe we have a wining team in place at Sunbeam.
- Let me now turn the presentation over to Russ Kersh. Russ has been with me the better part of 14 years and he is my most trusted business advisor.

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA

NOT A CERTIFIED COPY

Sunbeam

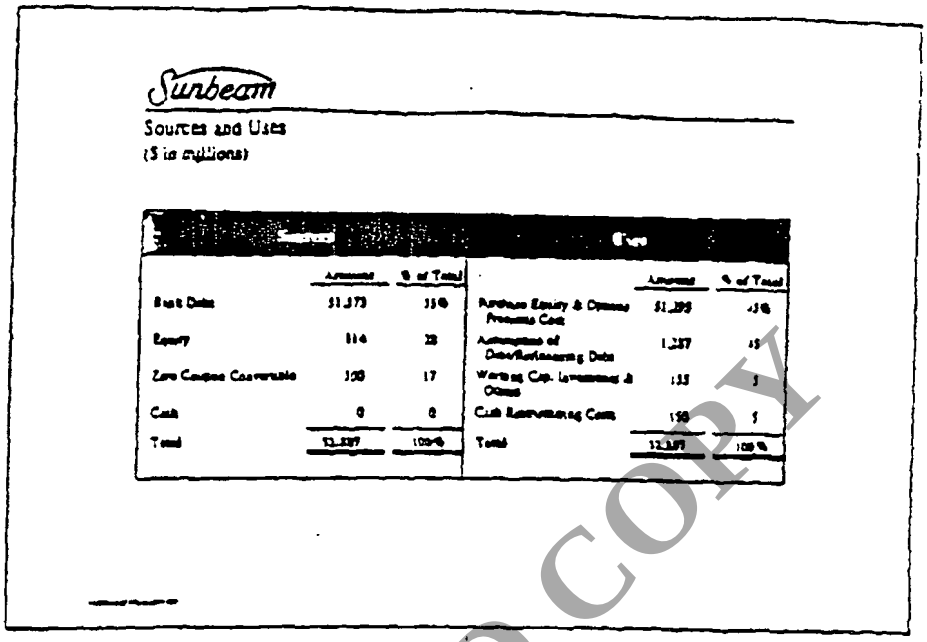
1997 Balance Sheet
($MM)

	Sunbeam Pre-Acquisitions	Adjustments for Acquisitions	New Sunbeam
Cash	$52.4	$26.5	$78.9
Assets	1,067.9	2,900.0	3,967.9
Total Assets	$1,120.3	$2,926.5	$4,046.8
Liabilities	$393.8	$337.6	$731.4
Debt	194.6	1,842.3	2,036.9
Equity	531.9	746.6	1,278.5
Total Liabilities plus Equity	$1,120.3	$2,926.5	$4,046.8
Key Ratios			
Debt/Book Capital	26%		61%
Debt/Market Capital	5%		38%***

- Let me take a few minutes to review with you the pro forma financials.
- As you can see in this slide, we are adding a good amount of debt to finance the transactions. We are very confident that we'll quickly grow EBITDA and have the capability to pay down the debt.
- As Al said earlier, we expect to raise the performance of these companies up to the Sunbeam standard. This will provide us with a lot of flexibility to pay down debt and still have enough cash to invest in the business.
- At closing of the companies, the debt to cap will be around 61% and we believe we can get that to approximately 50% within the first 12 months. And we are comfortable that we'll still have the necessary resources to continue our acquisition strategy.

NOT ACCERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED



Sunbeam

Sources and Uses
($ in millions)

	Amount	% of Total
Bank Debt	$1,375	33%
Equity	814	20
Zero Coupon Convertible	700	17
Cash	0	0
Total	$2,889	100%

	Amount	% of Total
Purchase Equity & Options Proceeds Cost	$1,399	43%
Assumption of Debt/Refinancing Debt	1,257	43
Working Cap. Investment & Others	133	5
Cash Restructuring Costs	100	3
Total	$2,889	100%

- As you can see in this chart, the financing that we are seeking will enable us to acquire these three companies and give us the resources to take a restructuring charge and invest in working capital.
- We will pay down and refinance the debt that we are assuming from these three companies. This will enable us to take advantage of lower interest rates that are at historically low levels.
- In addition we will have a $500 million revolver that can be used to make further acquisitions and invest in the company

- flexibility
- cost

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

Sunbeam

1997 Pro Forma Income Statement
($MM)

	Sunbeam	Coleman	First Alert	Signature Brands	Pro Forma
Sales	$1,168.2	$1,082.8	$177.0	$225.8	$2,598.4
Gross Margin	330.5	306.0	41.3	67.1	716.7
% Sales	28.3%	28.3%	23.3%	26.2%	27.6%
Op. Margin	199.6	32.6	(8.5)	18.5	207.1
% Sales	17.1%	3.0%	(4.8%)	7.2%	8.0%

- We believe that the operating margins for each of these three companies can be raised up to the Sunbeam level very quickly ~~and~~ readily Achievable
- ~~We believe the ability to increase operating margins to our levels is readily achievable.~~
  What does this mean - As Examples
- Based upon on 1997 sales, if we were to raise the operating margins to 10% for these three companies, that would generate an additional $80 million in EBITDA and if we were able to achieve 15% operating margins that would create and additional $155 million in EBITDA. And, we could generate an additional $185 million in EBITDA if we get their margins up to Sunbeam's 17%. The leverage is quite impressive.
- Now you can see why we feel very comfortable with our ability to service the debt, continue our acquisition strategy and invest in the business at the same time.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

Sunbeam

Target Financials

	1999 Combined	2000e Target
Sales	$2.68e	$4 - $5Be
Annual Sales Growth	–	4% - 8%
Gross Margin (%)	27.6%	30 - 35%
Operating Margin (%)	8.0%	15 - 20%

- Our strategy to acquire companies and consolidate the industry will enable us to accelerate our top and bottom line growth rates.

E.g. w/o other Acquisitions

- We believe that it is quite possible to have revenues of $4 to $5 billion by the year 2000 and to achieve operating margins approaching 20%.

- ~~We'll continue to use our "acquire, restructure and grow" strategy to fold in additional acquisitions and raise their margins to those of~~ Sunbeam.

- ~~As we continue to get bigger and bigger we'll get stronger and stronger.~~

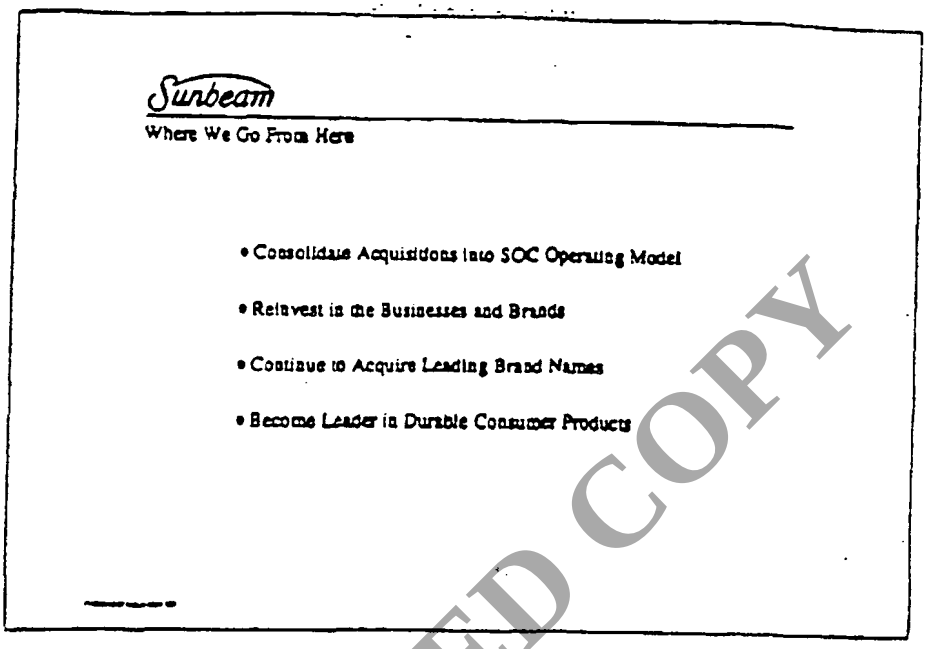
Our sales at Retail are strong and we are confident with our new products, powerful brand names, we are confident about our overall sales outlook for this year and beyond. As you may know we issued a press release this morning regarding sales for the current quarter. In the absence of this offering we would not have issued this release. Our retail customers give us a very short window on orders and we may not see some sales fall over into the 2nd qtr.

-20- last year's

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018225

NOT CERTIFIED COPY



- Where to we go from here? ~~Strictly onward and upward.~~
- We plan to continue our selective acquisition of leading branded durable consumer product companies.
- We'll consolidate those acquisitions into the Sunbeam operating model thereby accelerating our growth rates.
- The synergies that we identify will be used to pay down debt, reinvest in the business and increase shareholder value.
- We believe we are in a unique position to consolidate our industry. The industry remains very fragmented with smaller and financially weaker players fighting for survival.
- We have just started.....~~stay tuned the best is yet~~ to come!

NOT ACERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SUNBEAM CORPORATION

US Roadshow Information Package

March 16, 1998

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SUNBEAM CORPORATION

Key Roadshow Contacts

On the Road

SUNBEAM CORPORATION

Albert J. Dunlap	*Chairman & CEO*	
	Direct Line	(561)243-2150
	Fax	(561)243-2109
	Home	(561)368-8050
Russell A. Kersh	*Vice Chairman & CFO*	
	Direct Line	(561)243-2130
	Fax	(561)243-2107
	Home	(561)998-9920
David C. Fannin	*EVP & General Counsel*	
	Direct Line	(561)243-2125
	Fax	(561)243-2191
	Home	(954)563-4405
Rich P. Goudis	*Vice President, Investor Relations & Corporate Planning*	
	Direct Line	(561)243-2092
	Fax	(561)243-2107
	Home	(561)477-5798

MORGAN STANLEY & CO. INCORPORATED

William H. Strong	*Managing Director*	
	Direct Line	(312)706-4400
	Home	(847)735-9011
Andrew Savarie	*Vice President*	
	Direct Line	(312)706-4412
	Home	(773)665-7153
Alexandre J. Fuchs	*Vice President*	
	Direct Line	(212)761-6094
	Home	(212)598-0722
Shani Boone	*Analyst*	
	Direct Line	(212)761-4941
	Home	(212)581-5188

SB 00182281

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023524

SUNBEAM CORPORATION

Key Roadshow Contacts

Off the Road

US Roadshow Coordinators

Catherine Crandall- Meetings	Office:	(212) 761-5533
	Home:	(212) 751-2959
	Fax:	(212) 761-0316
Wendy Kligman - On-Site	Beeper:	(917) 876-7649
Christine Fasbach - Travel	Office:	(212)761-5125
	Home:	(212)496-2605

24 Hour Travel Emergency Number

	1-800-847-0242
Access Code:	K8R0

New York Equity Capital Markets

Ruth Porat	Direct Line:	(212) 761-5430
Brooks Harris	Direct Line:	(212) 761-5462
Jill Woodworth	Direct Line:	(212) 761-5464
Soumya Prasad	Direct Line:	(212)761-5468
	ECMS Desk:	(212) 761-5900
Syndicate Expenses	Roman Rywak:	(212) 703-2874
Morgan Stanley Prospectus Department	Domenic Ruscitti:	(212) 761-8570
	Fax:	(212) 761-0211
Morgan Stanley Creative Services	Tony & Lawrence:	(212) 761-7842
	Fax:	(212) 761-0526

NOT A CERTIFIED COPY

SB 00182291

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SUNBEAM CORPORATION

Road Show Schedule
$500,000,000 (USA)
0.0000% ZERO COUPON CONVERTIBLE DEBT

MORGAN STANLEY & CO. INCORPORATED

Date	City	Event/Time	Location	Contact
Monday March 16	LOS ANGELES	7:00 AM Host	FROLEY REVY INC CO I 9TH FLOOR 10900 WILSHIRE BLVD. LOS ANGELES, CA.	ANDREA O'CONNELL/SIMON LEE FROM PAC MUTUAL WILL ALSO ATTEND MEETING (310)208-4958 MS C: ALLIE SCHIEFFELIN BREAKFAST WILL BE SERVED
	LOS ANGELES	9:15 AM Host	TRUST COMPANY OF THE WEST SUITE 1800 865 SOUTH FIGUEROA STREET LOS ANGELES, CA	KEVIN HUNTER (213)244-0000 MS C: ALLIE SCHIEFFELIN
	LOS ANGELES	10:30 AM Host	OAKTREE CAPITAL MANAGEMENT 32ND FLOOR 550 SOUTH HOPE STREET LOS ANGELES, CA.	LARRY KEELE (213)694-1562 MS C: ALLIE SCHIEFFELIN
	LOS ANGELES	12:00 PM LUNCH R.S.	CHECKERS HOTEL SALON A 535 SOUTH GRAND AVENUE LOS ANGELES, CA 90071	SUSAN NESHANIAN (213) 891-0561 MS C:KATIE BARBATSULY
	SAN MATEO	3:30 PM Host	FRANKLIN RESOURCES 777 MARINERS ISLAND SAN MATEO, CA.	MITCH CONE (650)312-2131 MS C: ALLIE SCHIEFFELIN
Tuesday March 17	MINNEAPOLIS	7:30 AM BREAKFAST R.S.	THE MARQUETTE HOTEL MISSISSIPPI RIVER ROOM 710 MARQUETTE AVENUE MINNEAPOLIS, MN 55402	SALLY OLSEN (612) 376-7438
	MENOMONEE FALLS	11:00 AM Host	STRONG CAPITAL MANAGEMENT 100 HERITAGE RESERVE MENOMONEE FALLS, WI	JOYCE NOWAHOWSKI (414)359-3449 MS C: DAN ALBERT
	MILWAUKEE	1:00 PM Host	NORTHWESTERN MUTUAL LIFE INS 17TH FLOOR NORTH BUILDING 818 EAST MASON STREET MILWAUKEE WI 53202	GERRY BAIER/BOBBY RICHARDSON (414)299-7001 MS C: DAN ALBERT
	NORTHBROOK	3:45 PM Host	ALLSTATE INSURANCE COMPANY BUILDING G-4B 3075 SANDERS ROAD NORTHBROOK, IL	DAVE GOACHER (708) 402-5808 MS C: DAN ALBERT
Wednesday March 18	NEW YORK	8:00 AM Host	SALOMON BROS. ASSET MGT 38TH FLOOR 7 WORLD TRADE CENTER NEW YORK, NY 10048	ROSS MARGOLIES (212) 783-4314 MS C: GAY EBERS
	NEW YORK	9:30 AM Host	NEW YORK LIFE INSURANCE COMPAN ROOM 203 51 MADISON AVENUE NEW YORK, NY 10010	RAHIMAH LATEEF (212) 576-7705 MS C:ALLIE SCHIEFFELIN

Page: 8 of 10

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018231

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

[illegible] Road Show Schedule

$500,000,000(USA)
0.0000% ZERO COUPON CONVERTIBLE DEBT

Date	City	Event/Time	Location	Contact
Wednesday March 18	NEW YORK	11:00 AM	ALLIANCE CAPITAL MANAGEMENT 40TH FLOOR	TED KUCK (212)969-2443
		local	1345 AVENUE OF THE AMERICAS NEW YORK, NY	MS C: GAY EBERS
	NEW YORK	12:00 PM LUNCH R.S.	THE ST. REGIS HOTEL THE ROOF 2 EAST 55TH STREET (@ FIFTH AVENUE) NEW YORK, NY 10022	JEFFREY SELDEN (212) 753-4500
	NEW YORK	1:45 PM	MACKAY SHIELDS 37TH FLOOR	TOM WYNN (212)230-1810
		local	9 WEST 57TH STREET NEW YORK, NY	MS C: GAY EBERS
	NEW YORK	3:15 PM	GENERAL MOTORS CORPORATION 15TH FLOOR	PETER LUKE (212) 418-6307
		local	767 FIFTH AVENUE NEW YORK, NY 10153	MS C: GAY EBERS
	NEW YORK	4:30 PM	TRAVELERS 34TH FLOOR	ANGELA PELLEGRINI/MARK WEIL/JACK EISENSTADT/ROB SIMONS
		local	388 GREENWICH STREET NEW YORK, NY	(212)816-1235 MS C: DAN ALBERTS
Thursday March 19	BOSTON	8:00 AM	TO BE CONFIRMED	
		local		
	BOSTON	9:30 AM	TO BE CONFIRMED	
		local		
	BOSTON	11:00 AM	PUTNAM ADVISORS 12TH FLOOR	CHARLIE POHL (617)292-1671
		local	ONE POST OFFICE SQUARE BOSTON MA	MS C: KEVIN MCMAHON
	BOSTON	12:00 PM	BOSTON HARBOR SEE POSTING IN LOBBY	NATHANIEL STEWART (617) 856-7782
		R.S.	70 ROWES WHARF (ATLANTIC AVENUE) BOSTON, MA 02110	
	BOSTON	2:15 PM	TO BE CONFIRMED	
		local		
	BOSTON	3:00 PM	FIDELITY MANAGEMENT 33RD FLOOR	DAVID FELMAN (617)563-7611
		local	ONE FEDERAL STREET BOSTON, MA	MS C: KEVIN MCMAHON

Total: 12

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

16div-023528

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

017860
SECTION VI

SB 0018233

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

1987610

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List

Convertible Debt (0726-001)
Leverage Finance (0726-002)

SUNBEAM CORPORATION
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Telephone: (561) 243-2100
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Albert J. Dunlap *Chairman and CEO*	(561) 243-2150 Fax: (561) 243-2109	(561) 368-8050 Fax: (561) 362-9551	422 Addison Park Lane Boca Raton, FL 33432
Russell A. Kersh *Vice Chairman & CFO* *Asst: Shelly x2170*	(561) 243-2130 Fax: (561) 243-2107	(561) 998-9920 Fax: (561) 998-5645	Woodfield Country Club 3609 Carlton Place Boca Raton, FL 33496
David C. Fannin *EVP & General Counsel*	(561) 243-2125 Fax: (561) 243-2191	(954) 563-4405	3900 Galt Ocean Drive #1601 Fort Lauderdale, FL 33308
Rich Goudis *VP, Investor Relations & Corporate Planning*	(561) 243-2143 Fax: (561) 243-2107	(561) 989-8673	4777 N.W. 25th Way Boca Raton, FL 33434
Deborah S. MacDonald *Director of Corporate Planning and Analysis*	(561) 243-2092 Fax: (561) 243-2107	(561) 477-5798	9603 Lake Serena Dr. Boca Raton, FL 33496
Steven J. Groh *Finance Manager - Corporate Planning and Analysis*	(561) 243-2165 Fax: (561) 243-2107	(561) 616-0979	1062 The Pointe Drive W. Palm Beach, FL 33409

NOT A CERTIFIED COPY

0017062

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023531

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

SUNBEAM CORPORATION (cont'd)
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Telephone: (561) 243-2100
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Bob Gluck *VP, Controller*	(561) 243-2139 Fax: (561) 243-2027	(561) 487-5925	3150 Equestrian Drive Boca Raton, FL 33434
Janet Kelley *VP, Legal*	(561) 243-2127 Fax: (561) 243-2263	(561) 278-9490	326 Sandpiper Lane Delray Beach, FL 33483
Gary Mask *VP, Human Resources*	(561) 243-2124 Fax: (561) 243-2107	(561) 988-0037	3253 Westminster Drive Boca Raton, FL 33496
Bob Totte *VP, Taxes*	(561) 243-2131 Fax: (561) 243-2027	(954) 752-6715	10983 NW 3 Court Coral Springs, FL 33071
Steve Dalberth *Treasurer*	(561) 243-2138 Fax: (561) 243-2107	(561) 883-2449	21747 WestMont Court Boca Raton, FL 33428

NOT A CERTIFIED COPY

01733

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

MORGAN STANLEY

16div-023532

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED
1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Firm Management			
Bruce D. Fiedorek *Managing Director*	(212) 761-7739 Fax: (212) 761-0352	(212) 580-9774	50 West 71st Street New York, NY 10023
Chicago Branch			
William H. Strong *Managing Director*	(312) 706-4400 Fax: (312) 706-4728	(847) 735-9011 Fax: (847) 735-9109	904 North Green Bay Road Lake Forest, IL 60045-1709
Andrew Savarie *Vice President*	(312) 706-4412 Fax: (312) 706-4701 Pgr: (800) 324-3333 Pgr. ID: 92337	(773) 665-7153	2443 North Burling Avenue Apt. 2 Chicago, IL 60614
Mergers & Acquisitions			
James B. Stynes *Managing Director*	(212) 761-7772 Fax: (212) 761-0523 Pgr: (800) 864-8444	(212) 744-8750 Fax: (212) 744-4043	941 Park Avenue Apt. #9C New York, NY 10023
		(914) 242-9765	101 Springhurst Road Bedford Hills, NY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018237

16div-023533

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED (cont'd)

1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Mergers & Acquisitions			
Robert W. Kitts *Managing Director*	(212) 761-4822 Fax: (212) 761-0507 Pgr: (800) 864-4444	(201) 816-9722 Fax: (201) 816-0464	207 Chestnut Street Englewood, NJ 07631
Alexandre J. Fuchs *Vice President*	(212) 761-6094 Fax: (212) 761-0503 Pgr: (800) 864-8444	(212) 598-0722 Fax: (212) 673-6775 Cel: (917) 826-9521	2 Fifth Avenue Apt. #11K New York, NY 10011
Gene K. Yoo *Associate*	(212) 761-7937 Fax: (212) 761-0519 Pgr: (917) 901-4639	(212) 362-6793	135 West 70th Street Apt. #1-G New York, NY 10023
Tyrone Chang *Analyst*	(212) 761-8571 Fax: (212) 761-0507 Pgr: (917) 875-8388	(212) 996-8319	402 E. 90th Street Apt. #6G New York, NY 10128

CS&I 01735

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023534

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List

Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED (cont'd)

1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Client Services Group			
William Wright *Managing Director*	(212) 761-7922 Fax: (212) 761-0358 Pgr: (800) 795-7243 #8959684	(201) 288-6307	933 Park Avenue Apt. 9B New York, NY 10028
John D. Tyree *Associate*	(212) 761-7738 Fax: (212) 761-0358 Pgr: (917) 874-2159	(212) 721-5030	139 West 82nd Street Apt. 5C New York, NY 10024
Johannes Groeller *Associate*	(212) 761-7314 Fax: (212) 761-0360 Pgr: (917) 780-0327	(212) 315-9581 Fax: (212) 315-9581 Cell: (917) 913-6272	45 West 60th Street Apt. 19H New York, NY 10023
Shani Boone *Analyst*	(212) 761-4941 Fax: (212) 761-0358 Pgr: (917) 780-5645	(212) 581-5188	306 West 51st Street New York, NY 10019
Ben Derito *Analyst*	(212) 761-4303 Fax: (212) 761-0358 Pgr: (917) 901-0808	(212) 794-0056	402 East 69th Street, #5 New York, NY 10021

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023535

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED (cont'd)

1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier
Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Equity Capital Markets			
Ruth Porat *Principal*	(212) 761-5430 Fax: (212) 761-0538 Pgr: (800) 864-8444 Pgr. ID: 1816480	(212) 874-0024 Fax: (212) 874-2518	One West 72nd Street Apt. 26 New York, NY 10023
Brooks Harris *Principal*	(212) 761-5462 Fax: (212) 761-0538 Pgr: (917) 782-1577	(212) 473-3015	70 East 77th Street Apt. 4C New York, NY 10021
Jill Woodworth *Associate*	(212) 761-5464 Fax: (212) 761-0538 Pgr: (917) 780-5247	(212) 755-8905	136 East 56th Street Apt. 6D New York, NY 10022
Soumya Prasad *Analyst*	(212) 761-5468 Fax: (212) 761-0538 Pgr: (800) 864-8444 Pgr. ID: 1830568	(212) 691-5662	24 Charles Street Apt. 4 New York, NY 10014

01786

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023536

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

MORGAN STANLEY & CO. INCORPORATED (cont'd)
1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier
Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Credit			
Chris Whelan *Vice President*	(212) 761-4241 Fax: (212) 761-0687	(908) 232-4822	819 Shackamaxon Dr. Westfield, NJ 07090
Jason Kunreuther *Analyst*	(212) 761-4981 Fax: (212) 761-0687	(212) 724-6133	285 Central Park West Apt. 3N New York, NY 10024

NOT A CERTIFIED COPY

01736

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED (cont'd)

1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
Leverage Finance			
R. Bram Smith *Managing Director*	(212) 761-2660 Fax: (212) 761-0587 Bpr: (917) 876-0742 Car: (914) 953-5427 Fax: (914) 722-9124	(914) 472-3737	44 Drake Ave. Scarsdale, NY 10583
Michael Hart *Principal*	(212) 761-1052 Fax: (212) 761-0587 Bpr: (800) 864-8444 #1822265	(973) 635-2839 Fax: (973) 635-1781	7 Inwood Rd. Chatham, NJ 07928
Thomas F. Burchill *Vice President*	(212) 761-2924 Fax: (212) 761-0587 Bpr: (800) 864-8444 #1826180	*Until March 21, 1998* (203) 996-0169 *After March 21, 1998* 0171-394-9413	296 Old Norwalk Rd. New Canaan, CT 06840 23 Cheyne Row London SW3 5HW
Ishaan Seth *Analyst*	(212) 761-1286 Fax: (212) 761-0587 Bpr: (800) 864-8444 #1827619	(212) 889-1598	515 3rd Ave. Apt. 2 New York, NY 10016

01869

SB 0018242

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023538

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY & CO. INCORPORATED (cont'd)

1585 Broadway
New York, NY 10036
Telephone: (212) 761-4000
Telecopier: (212) 761-0260
(212) 761-0465
Telecopier
Operator: (212) 761-7849
Telex: 620131 MORSTAN

One Financial Place
440 South La Salle Street
Chicago, IL 60605
Telephone: (312) 706-4000

Name/Title	Office Number	Home Number	Home Address
High Yield Research			
Jake Foley *Principal*	(212) 761-1598 Fax: (212) 761-0590 Bpr: (917) 875-0396	(212) 595-7453	40 West 77th Street Apt. 17B New York, NY 10023
Equity Research			
Andrew Conway *Principal*	(212) 761-6394 Fax: (212) 761-0048 Bpr: (917) 874-7778	(212) 873-4887	
James Dormer *Associate*	(212) 761-6293 Fax: (212) 761-0048 Bpr: (917) 782-7935	(212) 838-5458	
Fixed Income Division			
Karen Eltrich	(212) 761-1575 Fax: (212) 761-0590 Bpr: (917) 876-4644		

011870

SB 0018243

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023539

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 450-4000
Telecopier: (212) 450-4800

Name/Title	Office Number	Home Number	Home Address
David Caplan *Partner* *(Mergers & Acquisitions)*	(212) 450-4156 Fax: (212) 450-5744	(212) 337-0204 Fax: (212) 352-0714	30 West 15th Street Apt. 12S New York, NY 10011
Alan Dean *Partner* *(Rule 144A Offerings)*	(212) 450-4126 Fax: (212) 450-4990	(914) 722-0310 Fax: (914) 722-0314	30 Hampton Road Scarsdale, NY 10583
Peter Douglas *Partner* *(Mergers & Acquisitions)*	(212) 450-4336 Fax: (212) 450-5518 Pgr: (917) 380-5650	(212) 753-8367 Fax: (212) 754-0970 Mobile: (917) 881-0901	328 East 51st Street New York, NY 10022
Gail Flesher *Partner* *(Environmental)*	(212) 450-4469 Fax: (212) 450-5570	(212) 787-5401	160 Riverside Drive Apt. 8B New York, NY 10024
Peter Levin *Partner* *(Bank Financings)*	(212) 450-4630 Fax: (212) 450-5571	(212) 247-7637	30 West 60th Street Apt. 2A New York, NY 10023
Po Sit *Partner* *(Tax)*	(212) 450-4571 Fax: (212) 450-5580	(718) 746-0631	154-29 19th Avenue Whitestone, NY 11357
Bradley Smith *Partner* *(Bank Financings)*	(212) 450-4310 Fax: (212) 450-5093	(914) 921-0746	42 Sterling Road Harrison, NY 10528

SB 0018244

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023540

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 450-4000
Telecopier: (212) 450-4800

Name/Title	Office Number	Home Number	Home Address
James Lurie *Senior Associate* *(Rule 144A Offerings)*	(212) 450-4206 Fax: (212) 450-5759	(516) 374-4074 Fax: (516) 374-4834	130 Cedar Avenue Hewlett Bay Park, NY 11557
Nicole Duncan *Associate* *(Rule 144A Offerings)*	(212) 450-4094 Fax: (212) 450-5518	(212) 867-4413	310 East 44th Street Apt. 1609 New York, NY 10017
Edith Fassberg *Associate* *(Environmental)*	(212) 450-4945 Fax: (212) 450-5570	(212) 980-2435	422 East 58th Street Apt. 5A New York, NY 10022
Charles Hsieh *Associate* *(Tax)*	(212) 450-4210 Fax: (212) 450-5580	(212) 490-7166 (619) 747-2151	235 East 40th Street Apt. 16J New York, NY 10016
William Megevick *Associate* *(Bank Financings)*	(212) 450-4751 Fax: (212) 450-5093	(212) 769-2894	305 West 72nd Street Apt. 6A New York, NY 10023
Heather Stack *Associate* *(Rule 144A Offerings)*	(212) 450-4452 Fax: (212) 450-5986	(212) 769-1734	585 West End Avenue Apt. 11D New York, NY 10024

SB 0018245

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 Third Avenue
New York, NY 10022-3897
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Name/Title	Office Number	Home Number	Home Address
Blaine (Finn) V. Fogg *Partner*	(212) 735-3900 Fax: (212) 735-3597	NY: (212) 860-3158 (914) 763-8483 Palm: (561) 835-9733	1185 Park Avenue Apt. #7A New York, NY 10128
Richard L. Easton *Partner*	(212) 735-3040 Fax: (212) 735-2000	(610) 388-8425 Fax: (610) 388-8427	The Mark Hotel 25 E. 77th Street New York, NY (212) 744-4300
Mark T. Shehan *Associate*	(212) 735-2042 Fax: (212) 735-3593	(212) 879-1630	525 East 82nd Street Apt. 11-D New York, NY 10028
			(Weekend Addresses)
		(516) 388-6195	24 Lilac Road Westhampton Beach, NY 1197
		(860) 364-5073	16 Upper Ridge Road Sharon, CT 06069
Peter J. Neckles *Banking Partner*	(212) 735-2466 Fax: (212) 735-3744	(914) 834-6956 Fax: (914) 834-6956 Cel: (917) 951-3048	16 North Chatsworth Ave. Larchmont, NY 10538
Michele D. Garland	(212) 735-2288 Fax: (212) 735-3608	(212) 580-5356 (212) 724-1894	41 West 72nd Street Apt. 10D New York, NY 10023

SB 0018246

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023542

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (cont'd)
919 Third Avenue
New York, NY 10022-3897
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Name/Title	Office Number	Home Number	Home Address
Gregory A. Fernicola *Corporate Finance Partner*	(212) 735-2918 Fax: (212) 735-3645	(212) 255-9719 Cel: (908) 305-0319	300 West 23rd Street Apt. 11B New York, NY 10011
		(908) 988-6569 Fax: (732) 988-2241	*(Weekend Address)* 357 Sea Spray Court Shark River Road Neptune, NJ 07753
Adrian J. S. Deitz *Corporate Finance Associate*	(212) 735-4143 Fax: (212) 735-3673	(212) 308-5751	220 East 65th Street Apt. 8E New York, NY 10021
Leander C. Gray *Banking Associate*	(212) 735-3999 Fax: (212) 735-3628	(718) 643-2914	279 Clinton Street Apt. 1 Brooklyn, NY 11201
Todd E. Freed *Corporate Finance Associate*	(212) 735-3714 Fax: (212) 735-3607	(212) 396-4086	403 East 69th Street Apt. 2E New York, NY 10021
Alison Amorison *Associate*	(302) 651-3145 Fax: (302) 651-3001	(609) 223-9391 Fax: (609) 223-1088	1005 April Court Mullica Hill, NJ 08062
Matthew M. Greenberg	(302) 651-3118 Fax: (302) 651-3001	(302) 658-2710	6 Dickinson Lane Wilmington, DE 19802
Steven J. Daniels	(302) 651-3107 Fax: (302) 651-3001	(302) 477-0439	1011 Crestover Road Wilmington, DE 19803

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

COOPERS & LYBRAND (Sunbeam)
1301 Avenue of the Americas
New York, NY 10019-6013
Telephone: (212) 259-1000
Facsimile: (212) 259-1301

Name/Title	Office Number	Home Number	Home Address
Don Burnett *Partner*	(212) 259-3003 Fax: (212) 259-4191	(203) 637-4926 Fax: (203) 637-4926	299 Riverside Avenue Riverside, CT 06878
Andrew Molenaar *Partner*	(212) 259-1704 Fax: (212) 259-4191	(203) 966-4687 Fax: (203) 966-8634	736 Salem Road New Canaan, CT 06840
Jack Bonini	(513) 768-4517 Fax: (513) 768-4599	(513) 561-1115	7270 Algonquin Drive Cincinnati, OH 45243

NOT A CERTIFIED COPY

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

ERNST & YOUNG LLP (Coleman)
787 Seventh Avenue
New York, NY 10019

Name/Title	Office Number	Home Number	Home Address
Gerald D. Cohen	(212) 773-1956 Fax: (212) 773-2821	(212) 327-1027	505 East 79th Street, 17-B New York, NY 10021
Michael J. Fitzpatrick	(212) 773-2457 Fax: (212) 773-2871	(212) 535-5204	315 East 69th Street, 6-L New York, NY 10021
			(Weekend Address)
		(248) 646-6851	5065 Tootmoor
		Fax: (248) 646-1596	Bloomfield Hills, MI 48302
Michael F. Mullen	(212) 773-2174 Fax: (212) 773-5648	(973) 360-0394	165 Central Avenue Madison, NJ 07940
Mitchell Rosendorf	(212) 773-3158 Fax: (212) 773-8534	(718) 805-2714	83-83 118th Street Apt. 1-L Kew Gardens, NY 11415

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

ERNST & YOUNG LLP (Coleman)
750 NationsBank Financial Center
100 North Broadway
Wichita, KS 67202

Name/Title	Office Number	Home Number	Home Address
James M. Havel	(316) 292-3838 Fax: (316) 292-3888	(316) 733-9791	13812 East Pinnacle Drive Wichita, KS 67230
Keith Chalfant	(316) 292-3844 Fax: (316) 292-3888	(316) 681-3411	1221 Bracken Court Wichita, KS 67206

NOT A CERTIFIED COPY

011877

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

KPMG PEAT MARWICK LLP (Signature Brands)
1500 National City Center
1900 East Ninth Street
Cleveland, OH 44114

Name/Title	Office Number	Home Number	Home Address
Scott L. Decker *Partner*	(216) 875-8390 Fax (216) 696-7792	(440) 349-9596 cell (440) 408-9129	33916 Blue Heron Drive Solon, OH 44139
James T. Guzowski *Partner*	(216) 875-8356 Fax (216) 696-7792	(440) 835-2864 cell (440) 789-5742	1128 Richmar Drive Westlake, OH 44145
Victoria M. Beach *Senior Manager*	(216) 875-8323 Fax (216) 696-7792	(440) 526-0089	9830 Barr Road Brecksville, OH 44141
Elizabeth L. Hacquard *Manager*	(216) 875-8352 Fax (216) 696-7792	(330) 833-5021	3122 Lynch Street, S.W. Massillon, OH 44646

NOT A CERTIFIED COPY

017878

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023547

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

PRICE WATERHOUSE, LLP (First Alert)
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 540-1500
Facsimile: (312) 565-1123

Name/Title	Office Number	Home Number	Home Address
Jim Eidam *Partner*	(312) 540-2020 Fax: (312) 565-1123	(219) 923-2735	8432 Castle Drive Munster, IL 46321
Gary Cleaver *Senior Manager*	(312) 540-2029 Fax: (312) 565-1123	(847) 441-9073	839 Cherry Street Winnetka, IL 60093

017879

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023548

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

PRICE WATERHOUSE, LLP (First Alert)
300 Atlantic Street
Stamford, CT 06901
Telephone:
Facsimile:

Name/Title	Office Number	Home Number	Home Address
Robert Eydt	(203) 316-5751 Fax: (203) 316-5780	(203) 838-9222	86 Highland Avenue Rowayton, CT 06853

NOT A CERTIFIED COPY

017880

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

ARTHUR ANDERSEN
100 N.E. 3rd Avenue, Suite 700
Fort Lauderdale, FL 33301
Telephone: (954) 523-4433
Facsimile: (954) 763-1677

ARTHUR ANDERSEN
777 South Flagler Drive
Phillips Point
Suite 1700 - West Tower
West Palm, FL 33401
Telephone: (561) 832-8100
Facsimile: (561) 655-1450

Name/Title	Office Number	Home Number	Home Address
Phil Harlow *Partner*	(954) 627-0001 (954) 523-4433 Fax: (954) 763-1677	(954) 764-5067	608 Second Key Drive Fort Lauderdale, FL 33304
Larry Bornstein *Senior Audit Manager*	(561) 832-8100 Fax: (561) 655- 1450	(561) 967-2331	7088 Charleston Point Rd. Lake Worth, FL 33467

01783

SB 0018254

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023550

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

ARTHUR ANDERSEN
One Biscayne Tower
Suite 2100
Miami, FL 33131-1801
Telephone: (305) 374-3700

Name/Title	Office Number	Home Number	Home Address
Gregory B. Wilder *Tax Partner*	(305) 789-2438 Fax: (305) 789-2477	(305) 254-9102	7770 S.W. 160 Street Miami, FL 33157
Miguel A. Fonseca *Tax Manager*	(305) 789-2435 Fax: (305) 789-2477	(305) 757-2545	9700 N.E. 12 Avenue Miami Shores, FL 33138

017882

SB 0018255

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

BANCAMERICA ROBERTSON STEPHENS
335 Madison Avenue
New York, NY 10017
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Robert Karen *Vice President - Loan Syndications*	(212) 503-7945 Fax: (212) 503-7355/ 7031	(516) 681-4611	14 Ulster Drive Jericho, NY 11753
Rosemary Halpin *Associate - Loan Syndications*	(212) 503-7715 Fax: (212) 503-7355/ 7031	(212) 877-4003	6 West 75th Street, #1C New York, NY 10023

NOT A CERTIFIED COPY

017883

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

BANK OF AMERICA NT&SA
335 Madison Avenue
New York, NY 10017
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Chuck Francavilla *Senior Vice President*	(212) 503-7078 Fax: (212) 503-7173	(212) 857-1937	1965 Broadway, #11-H New York, NY 10023
Igor Suica *Associate*	(212) 503-7584 Fax: (212) 503-7771		

017881

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

BANK OF AMERICA NT&SA
1230 Peachtree Street
Suite 3800
Atlanta, GA 30309
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Deirdre Doyle *Vice President*	(404) 249-6905 Fax: (404) 815-5912	(404) 352-0755	2453 Fernleaf Court Atlanta, GA 30318
Laurens F. Schaad, Jr. *Vice President*	(404) 249-6915 Fax: (404) 815-5912	(770) 587-4042	4684 Bishop Lake Marietta, GA 30062

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023554

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

FIRST UNION
NC0608
One First Union Center, TW-10
Charlotte, NC 28288-0608
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Andrew J. Gamble *Managing Director - Loan Syndications*	(704) 383-8186 Fax: (704) 383-6037	(704) 544-3391 Fax: (704) 544-3256	2800 Jem Court Charlotte, NC 28226
Kimberley A. Quinn *Vice President-Loan Syndications*	(704) 383-7190 Fax: (704) 383-6037	(704) 341-3599	4508 Rosecliff Dr. Charlotte, NC 28277

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023555

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

FIRST UNION
77 East Camino Real
2nd Floor
Boca Raton, FL 33432
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
M. Walker Duvall *SVP - Corporate Banking*	(561) 338-3901 Fax: (561) 338-6005	(561) 479-0449 Car: (561) 601-1321 Beep: 1-800-905-6016	6850 Grande Dr. N. Boca Raton, FL 33433

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)

(continued)

NOT A CERTIFIED COPY

FIRST UNION
301 S. College Street
Charlotte NC 28288
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Tom Molitor *Director - First Union Capital Markets*	(704) 383-0018 Fax: (704) 374-3300	(704) 841-9053	2210 Queensland Drive Charlotte, NC 28270
Barbara Adams	(704) 383-6668 Fax: (704) 374-3300	(704) 643-4818	4622 Colony Road Apt. S Charlotte, NC 28266

01733

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

16div-023557

As of March 13, 1998

SUNBEAM CORPORATION

Working Group List
Convertible Debt (0726-001)
Leverage Finance (0726-002)
(continued)

NOT A CERTIFIED COPY

GLOBAL FINANCIAL PRESS
75 9th Avenue
New York, NY 10011
Telephone:
Telecopier:

Name/Title	Office Number	Home Number	Home Address
Ken McLure	(212) 414-7460 Fax: (212) 337-3758		

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

017390

IFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

FROLEY, REVY INVESTMENT COMPANY

Style: Unclassified — Turnover:
Core Value — Active

10900 Wilshire Boulevard — The firm is owned by its employees.
Los Angeles, CA 90024-6394
Tel: (310) 208-4938
Fax: (310) 208-1695

Equity Assets ($ MM):
Annual Portfolio Turnover:
Number of Stocks Held:
Investor Type:

Key Contacts

Name	Title	Phone
Andrea O'Connell	Managing Director	(310) 208-4938
George Froley	Managing Director	(310) 208-4938
Patrick Kastner	Security Analyst	(619) 452-9752
Ravi Malik	Security Analyst	(310) 208-4938

Positions Held

Date	Position	Change	% Out
12/31/97	0	-	0
09/30/97	0	-	0
06/30/97	0	-	0
03/31/97	0	-	0
12/31/96	0	-	0
09/30/96	0	-	0
06/30/96	0	-	0
03/31/96	0	-	0

Investment Approach

Froley, Revy Investment Company is a convertible bond specialist with a top-down macro approach and bottom-up approach to security selection. The firm employs value, growth, and growth at a reasonable price investment styles. The firm's holdings are not limited by market-cap restrictions. When bonds are converted to common stock, the holding is sold off within six months.

•Investment Criteria:
1) Investment grade B or better.
2) 90-110% of par value.
•Sell Criteria:
1) *Deterioration in fundamentals:*
2) 130-140% of par value.
•Decision-Making Process:
The portfolio managers use their own discretion when making decisions.

Peer Ownership

Peer	12/97 ($ MM)	09/97 ($ MM)	06/97 ($ MM)	03/97 ($ MM)
SOC	-	-	-	-
RDR	-	-	-	-
FO	-	-	-	-
NWL	-	-	-	-
ZBB	-	-	-	-
KVC	-	-	-	-
Total	-	-	-	-
% Port	-	-	-	-

Industry Weightings

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	3.9	40.3948	9.3
Cellular/Wireless Tele-	21.9	6.102282	-1.8
Telephone-Long Dis-	2.5	6.009903	< .1
Media Staples	7.0	5.57836	7.2
Banks & Thrifts	0.6	4.91655	-2.0
Drugs/Pharmaceuticals	1.0	4.88006	1.8
Energy	0.3	3.74189	2.4
Food & Beverages	0.3	3.34024	-0.4
High Tech - Hardware	0.3	3.11383	0.8
Consumer Cyclicals	2.0	3.03851	-2.5

(1) = Relative to S&P 500 — *Value is millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	3.9	40.3948	9.3
Media Staples	7.0	5.57836	7.2
Construction	NM	1.11317	2.8
Leisure Staples	0.4	0.84186	2.7
Energy	0.3	3.74189	2.4

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Non-Electric Utilities	1.6	1.03696	-6.1
Metals	1.2	1.04109	-4.9
Manufacturing	< .1	0.25603	-4.9
Consumer Cyclicals	2.0	3.03851	-2.5
Banks & Thrifts	0.6	4.91655	-2.0

Portfolio Distribution

by Market Capitalization

Consumer Cyclicals Holdings

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Rouse Company	7.9	-0.9	1.6
2	Felcor Suite Hotels Inc	2.6	0.3	0.5
3	Lamar Advertising Company	0.7	>-.1	0.1
Consumer Cyclicals		11.2	-0.6	2.3

Portfolio Characteristics

	P/E	Yield	Fwd $ yr EPS Gr. Proj.	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	29.7	< .1	20.9	19.3	23.4	36.6	7.0	< 1
S & P 500	26.7	1.5	21.7	13.8	22.5	54.3	4.4	1.0
Industries	1.9	0.3	1.6	16.4	1.1	7.6	3.0	1.0
Consumer Cycli-	0.0	0.0	0.0	12.5	0.0	0.0	-	-

Consumer Cyclicals Adjustments

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Felcor Suite Hotels Inc	2.6	0.3	Beazer Homes USA Inc	0.0	-1.5
			Rouse Company	+9-	-0.9
			Lamar Advertising Com-	0.7	>-.1
Total	2.6	0.3	Total	8.6	-2.5

* Data as of 19971231

MORGAN STANLEY

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

SB 0018264

16div-023560

TCW Asset Management

Style	Orientation	Turnover
Core Growth	Active	Moderate

865 South Figueroa Street
Los Angeles, CA 90017
Tel:(213) 244-0000
Fax:(213) 244-0755

Founded: 1971. The firm is a subsidiary of The TCW Group, Inc. Affiliates include Trust Company of the West, TCW Funds Management, Inc. and Commercial Asset Management Corp. Small-cap investments are run out of the New York office.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

Key Contacts

Name	Title	Phone
Kevin Hunter	Managing Director	(213) 244-0000
Robert Hansen	Co-Director of Research	(213) 244-0013
Douglas Foreman	Group Managing Director	(213) 244-0007
Arthur Carlson	Managing Director	(213) 244-0053

Investment Approach

TCW manages small-, mid- and large-cap strategies, as well as growth and value. The firm focuses on companies whose stocks are undervalued due to either macro trends or company-specific developments which have significantly enhanced the outlook for profit growth. The investment process begins with a weekly review and projection of overall economic and financial market conditions by the Equity Policy Committee. This top-down review is intended to evaluate the environment in which businesses and the financial markets will be operating, as well as to identify those industries and specific companies which are being affected both positively and negatively. Statistical valuation benchmarks and ratios are employed to gauge whether current market prices are appropriate in view of the projected rewards and risk.

• Investment Criteria:

1) Balance sheet strength;
2) Proven management team;
3) Dominant market position;
4) New product and market innovation;
5) Consistent earnings and dividends;
6) High return on assets and equity.

• Sell Criteria:

1) Decline of 15% from purchase price or market cycle high.

• Decision-Making Process:

The internal research staff of 15 equity analysts, together with the five members of the large-cap equity team develop investment ideas through their own field research, Street inputs, and other sources.

Positional History

Date	Position	Change	% Out
12/31/97	0	-	0
09/30/97	0	-	0
06/30/97	0	-	0
03/31/97	0	-	0
12/31/96	0	-	0
09/30/96	0	-	0
06/30/96	0	-	0
03/31/96	0	-	0

Peer Group Comparison

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	-	-	-	-
BUK	<1	<1	<1	<1
PO	<1	<1	<1	<1
NWL	0	<1	<1	<1
XRD	<1	<1	<1	<1
ROYL	-	-	-	-
Total	1	<1	<1	<1
% Port	0.01	0.00	0.00	0.00

Industry Weightings

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
High Tech - Hardware	1.2	12.5841	6.1
High Tech - Software	2.7	11.0853	-34.3
Non-Bank Financial	0.9	7.95456	-78.6
Consumer Cyclicals	4.2	8.33196	-42.4
Health Care	0.9	6.07639	-98.4
Retail	1.4	5.92712	62.2
Machinery	1.0	5.25128	-150.0
Transportation	4.4	5.00081	-21.6
Consumer Staples	0.6	3.24664	-67.5
Energy	0.4	3.05821	49.0

(*) = Relative to S&P 500 *Values in millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Telephone (Local)	0.3	1.04808	111.9
Media Stocks	3.5	2.78746	80.5
Drugs/Pharmaceuti-	0.9	2.49361	77.0
Retail	1.4	5.92712	62.2
Banks & Thrifts	0.3	2.90806	49.9

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Manufacturing	1.2	2.72521	-240.4
Autos/Auto Parts	0.6	0.93002	-199.0
Machinery	1.0	5.25128	-150.0
Business Services	60.5	1.16579	-133.5
Health Care	0.9	6.07639	-98.4

Portfolio Distribution

by Market Capitalization

Consumer Cyclicals Holdings

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Outdoor Systems	60.2	-10.5	0.3
2	Grenitor International Group Ltd	42.3	-10.6	0.4
3	Crestline Corp	34.8	3.6	0.3
4	Acorn Products Inc	31.6	0.0	0.3
5	Interstate Hotels Co.	30.0	-2.0	0.3
6	Signature Resorts Incorporated	27.5	8.0	0.2
7	Maximus Inc	21.5	6.9	0.2
8	Snyder Communications Inc	17.2	-0.3	0.2
9	Wilmar Industries Inc	15.5	-0.6	0.1
10	Wackenhut Corp	15.1	-0.6	0.1
11	Trammell Crow Co	14.2	14.2	0.1
12	Applied Graphics Technologies	11.9	-1.6	0.1
13	Computer Learning Centers	11.3	0.8	<.1
14	CB Commercial Real Estate Ser-	10.9	10.9	<.1
15	Innovative Valve Technologies	10.6	10.6	<.1
16	AC Nielsen Corporation	10.3	-0.8	<.1
17	Applied Graphics Technologies	10.2	1.6	<.1
18	Macrovision Corporation	10.1	0.9	<.1
19	Cribbon Greetings Ltd	9.3	0.0	<.1
20	Viacom Group Inc	8.9	0.6	<.1
	Consumer Cyclicals	403.8	32.4	3.3

Portfolio Characteristics

	P/E	Yield	Price/ Est.EPS	$ yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sanders-Owen Co	29.7	<.1	30.9	19.3	23.4	36.6	7.0	<.1
S & P 500	26.7	1.3	23.7	13.8	22.3	54.3	4.4	1.0
Insurance	26.7	0.6	25.0	19.8	13.8	19.8	3.7	1.1
Consumer Cycli-	27.0	0.3	26.9	25.2	13.1	38.1	3.6	1.9

Consumer Cyclicals Adjustments

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Trammell Crow Co	14.2	14.2	Learning Tree Intern-	0.0	-10.3
CB Commercial Real	10.9	10.9	Outdoor Systems	60.2	-10.5
Innovative Valve Tech-	10.6	10.6	HFS Inc	0.0	-9.5
Cornerstone International	42.3	10.4	Caribbean International	8.0	-8.0
Signature Resorts Incor-	27.5	8.0	Interstate Hotels Co.	30.0	-7.0
JPS Textile Group Inc	7.2	7.2	Pacific Greystone Corp	0.0	-6.5
Maximus Inc	21.5	6.9	Cameron Ashley Build-	0.0	-5.5
Seagrams Inc	7.1	6.9	NCI Building Systems	5.0	-5.0
Hilton Hotels Corp	6.9	6.3	Doubletree Corp	0.0	-4.8
Lennar Corp	8.4	4.3	Stewart Enterprises Inc	6.9	-4.3
Total	174.8	112.7	Total	110.0	-86.0

* Data as of 12/31/97

MORGAN STANLEY

SB 0018265

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA R[illegible]

NOT CERTIFIED COPY

16div-023561

OAKTREE CAPITAL MANAGEMENT, LLC

Style	Investments	Turnover
Specialty	Active	High

550 South Hope Street
Los Angeles, CA 90071
Tel(213) 614-0900
Fax(213) 694-1595

Founded: May 1995. The firm is privately held. Firm invests primarily in high yield bonds and convertible securities. It invests approximately 4% of its total assets in equities.

- Equity Assets ($ MM)
- Annual Portfolio Turnover
- Number of Stocks Held
- Investor Type

KEY CONTACTS

Name	Title	Phone
Lawrence Keele	Principal	(213) 614-0900
Howard Marks	Chairman	(213) 614-0900
Timothy Andrews	Senior Vice President	(213) 614-0900
Andrew Watts	Managing Director	(213) 694-1539

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	0	0	0.00
09/30/97	0	0	0.00
06/30/97	0	0	0.00
03/31/97	0	0	0.00
12/31/96	0	0	0.00
09/30/96	0	0	0.00
06/30/96	0	0	0.00
03/31/96	0	0	0.00

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	-	-	-	-
BOK	-	-	-	-
FO	-	-	-	-
NWL	-	-	-	-
RBD	-	-	-	-
RJVL	-	-	-	-
Total	-	-	-	-
% Port	-	-	-	-

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*	% Chg.*
Paper & Forest Prods	3.3	44.3158	-5.3	-10.7
Metals	12.9	11.2215	-0.3	-2.6
Non-Bank Financial	1.3	10.5246	-18.0	-63.0
Food & Beverages	1.2	7.41936	-2.1	-22.1
Business Cyclicals	8.4	7.22410	< .1	-0.1
Metals Cyclicals	6.5	4.62305	-1.9	-29.2
High Tech - Hardware	0.4	1.93603	-1.1	-36.7
Consumer Cyclicals	2.3	1.30346	1.6	69.6
Drugs/Pharmaceuticals	0.7	1.23084	10.9	1557.1
Banks & Thrifts	0.3	2.71143	-11.0	-80.2

( ) = Industry in S&P 500 ** Value is million

Largest Industry Buys

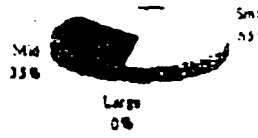
Industry	S&P	% Port	$ Chg.*	% Chg.*
Drugs/Pharmaceuticals	0.7	1.23084	10.9	1557.1
Consumer Cyclicals	2.3	1.30346	1.6	69.6
Energy	< .1	0.16312	0.3	1.8
Business Cyclicals	8.4	7.22410	< .1	-0.1

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*	% Chg.*
Non-Bank Financial	1.3	10.5246	-18.0	-63.0
High Tech - Software	< .1	0.03156	-12.4	-99.7
Transportation	0.0	0.00000	-11.8	-100.0
Banks & Thrifts	0.3	2.71143	-11.0	-80.2
Paper & Forest Prods	58.2	44.3158	-5.3	-10.7

PORTFOLIO DISTRIBUTION

By Market Capitalization



CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Acorn Prods Ltd	11.1	1.6	1.3
2	Warnes Industries Ltd	< .1	0.0	< .1
	Consumer Cyclicals	11.1	1.6	1.3

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Est.EPS	$ yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sushman-Oscar Co	29.7	< .1	20.9	19.3	23.4	30.6	7.0	< .1
S & P 500	16.7	1.5	13.7	13.8	22.5	56.3	4.4	1.0
Industrials	7.4	< .1	7.1	14.3	6.5	47.8	2.3	0.7
Consumer Cycli-	NA	0.0	9.9	17.0	-2.0	9.7	1.0	0.8

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Acorn Prods Ltd	11.1	1.6			
Total	11.1	1.6	Total	0.0	0.0

* Data as of 12/31/97

MORGAN STANLEY

3

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA

SB 0018266

01/30

NOT A CERTIFIED COPY

FRANKLIN ADVISERS, INC.

Style	Orientation	Turnover
Income	Active	Moderate

777 Mariners Island Boulevard
San Mateo, CA 94404
Tel/(650) 312-3000
Fax/(650) 312-3070

The parent company is Franklin Resources, which also owns Templeton Investment Counsel, Inc. Franklin Advisers manages the Franklin Funds and Templeton manages the Templeton Funds. Both Franklin and Templeton independently manage a portion of the precious funds.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Mitch Cose	Assistant Portfolio Manager	(415) 312-2131
Conrad Herrmann	Director of Research	(650) 312-3828
Rupert Johnson	Chief Investment Officer	(650) 312-2425
R. Martin Wiseman	Senior Vice President	(650) 312-2425

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	0	0	[illegible]
06/30/97	0	0	[illegible]
03/31/97	0	0	[illegible]
12/31/96	0	0	[illegible]
09/30/96	0	0	[illegible]
06/30/96	0	0	[illegible]
03/31/96	0	0	[illegible]

INVESTMENT APPROACH

Overall, the firm takes a countrian approach, seeking growth opportunities when prices are depressed. Franklin's investment process is guided by bottom-up, fundamental research. A liquidity screen is first applied to the firm's investment universe to insure that all potential candidates have sufficient trading volume. The resulting universe is then screened to identify stocks with lower P/Es. This list of potential investments is narrowed even further, screening for those companies which have had strong historical growth earnings. Portfolio managers have the flexibility to seek investments in value and growth situations, regardless of market-cap. Other funds also focus on precious metals and income producing stocks. The firm offers investment strategies for large, mid and small-cap stocks. International investments are managed through separate funds.

- Decision-Making Process:

Franklin does all of its own research. All new company recommendations for inclusion in the universe are agreed upon by the portfolio managers. This firm does not share research with Templeton Investment Counsel and makes decisions independently.

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOL	-	-	-	-
BOK	-	-	-	-
FID	16	13	14	[illegible]
NWL	23	[illegible]	18	[illegible]
RBD	-	-	-	-
RIVC	-	-	-	-
Total	39	36	35	[illegible]
% Port	0.21	0.21	0.24	0.30

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Electric Utilities	2.4	30.2818	19.0
Non-Bank Financial	1.4	11.3905	102.1
High Tech - Hardware	0.6	5.97173	178.8
Energy	0.8	5.89173	140.8
High Tech - Software	1.3	5.53934	111.6
Consumer Cyclicals	2.8	4.30652	38.5
Health Care	0.3	3.01245	0.5
Metals	3.4	2.94122	39.7
Banks & Thrifts	0.3	2.73934	22.8
Consumer Staples	0.3	2.50890	2.2

( ) = Decrease in S&P 500 *Values in millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
High Tech - Hard-	0.6	5.97173	178.8
Energy	0.8	5.89173	140.8
High Tech - Software	1.3	5.53934	111.6
Non-Bank Financial	1.4	11.3905	102.1
Metals	3.4	2.94122	39.7

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Telephone (Local)	0.4	1.82836	-70.5
Non-Electric Utilities	2.1	1.52360	-58.6
Telephone-Long Dis-	0.1	0.70763	-33.2
Media Staples	0.8	0.64353	-19.6
Chemicals	0.5	1.30342	-7.9

PORTFOLIO DISTRIBUTION

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Cendant Hotel Company	68.1	17.7	0.8
2	Four Seas Hotels Ltd	33.6	-0.4	0.3
3	Prime Hospitality Corp	43.0	3.8	0.3
4	D.R. Horton Corp	34.4	-0.3	0.2
5	Core Laboratories N.V.	31.2	24.1	0.2
6	Ryland Group Inc	26.1	-2.6	0.1
7	Castle & Cooke Inc	23.6	4.6	0.1
8	Leggett & Platt Inc	23.5	8.9	0.1
9	Advanced Health Corp	23.3	23.3	0.1
10	Oak & Bradstreet Corp	22.6	<.1	0.1
11	Applied Graphics Technologies	21.0	12.2	0.1
12	Hon Marmon Corp	20.3	<.1	0.1
13	Oakwood Homes Corp	19.3	0.1	0.1
14	Clayton Homes Inc	19.0	-4.0	0.1
15	Devry Inc	18.6	12.9	0.1
16	Sylvan Learning Systems Inc	16.2	3.0	<.1
17	MDC Holdings	16.1	3.6	<.1
18	Skyline Homes USA Inc	13.2	<.1	<.1
19	CORR Inc	14.2	3.8	<.1
20	NCH Corp	13.1	3.0	<.1
	Consumer Cyclicals	524.8	114.1	1.9

* Data as of 1997/12/31

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Est. EPS	Proj. 5 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	29.7	<.1	20.9	19.3	23.4	36.6	7.0	<.1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.3	4.4	1.0
Insurance	19.8	2.6	18.8	12.6	13.1	59.8	2.9	0.7
Consumer Cycli-	20.9	0.6	20.0	18.8	9.3	57.7	2.3	0.8

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Core Laboratories N.V.	31.2	24.2	Fleetwood Cnanos Inc	0.0	-26.8
Advanced Health Corp	23.3	23.3	Universal Outdoor Hold-	0.0	-12.5
Cendant Hotel Company	68.1	17.7	Cendant Corp	0.0	-7.8
Devry Inc	18.6	12.9	Hilton Hotels Corp	0.0	-5.9
Applied Graphics Tech-	21.0	12.2	Apollo Group Inc	0.0	[illegible]
Leggett & Platt Inc	23.5	8.9	Staaborne Inc	0.0	[illegible]
Cavalier Homes Inc	6.5	6.5	Omnicom Group Inc	0.0	[illegible]
Prime Hospitality Corp	43.0	3.8	Clayton Homes Inc	19.0	[illegible]
Trammell Crow Co	3.7	3.7	Kinder Concepts Inc	0.0	[illegible]
MDC Holdings	16.1	3.6	Belmont Homes Inc	0.0	[illegible]
Total	259.1	122.9	Total	26.6	[illegible]

MORGAN STANLEY

SB 0018267

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED
NOT CERTIFIED COPY

STRONG CAPITAL MANAGEMENT, INC.

Style	Orientation	Turnover
Core Growth	Active	High

100 Heritage Reserve
Menomonee Falls, WI 53051
Tel:(414) 359-3400
Fax:(414) 359-3460

Founded: 1974. Richard Strong is the controlling shareholder of Strong Capital Management. The firm manages the Strong Family of Funds.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Joyce Now	Portfolio Manager	(414) 359-3449
Richard Strong	Chief Investment Officer	(414) 359-3400
Ian Rogers	Portfolio Manager	(414) 359-3492
Richard Weiss	Portfolio Manager	(414) 359-3400

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	1,404,300	[illegible]	[illegible]
06/30/97	1,358,150	[illegible]	[illegible]
03/31/97	38,950	[illegible]	[illegible]
12/31/96	0	[illegible]	[illegible]
09/30/96	0	0	0.00
06/30/96	0	0	[illegible]
03/31/96	0	0	0.00

INVESTMENT APPROACH

The firm utilizes four different strategies for investing in domestic and international equities. Mutual fund categories include: Small/Mid-Cap Equities, Growth and Capital Appreciation Equities, Equity Asset Allocation, and International Equities. The firm's dominant investment style, Small/Mid Cap Equities, seeks to identify well-managed companies with sustainable earnings growth prospects selling at prices below their private market values. The investment process begins with a valuation process which screens its universe for growth rates and market-caps. The firm then conducts company visits in order to assess their operations and the quality of management. For those companies which pass the valuation process the fund will maintain a 1-2% initial position.

- Sell Criteria:

1) Reaches 80-100% private market value;
2) Becomes widely followed;
3) Deterioration in company fundamentals.

- Decision-Making Process:

The portfolio managers are responsible for investment decisions. Stocks are evaluated on a weekly basis in order to ensure that fundamentals and valuation criteria remain consistent. The investment professionals frequently meet with the management of companies they are targeting.

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	[illegible]	[illegible]	[illegible]	[illegible]
VDK	-	-	-	-
PO	-	-	[illegible]	[illegible]
NWL	<1	[illegible]	[illegible]	<1
KBD	-	-	-	-
NVL	-	-	-	-
Total	[illegible]	[illegible]	[illegible]	[illegible]
% Port	0.58	0.33	0.27	0.07

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Energy	7.3	9.83923	-308.3
High Tech - Hardware	0.8	8.88833	-391.0
Non-Bank Financial	1.0	8.66152	173.0
High Tech - Software	1.8	7.39718	86.7
Retail	1.7	7.16391	10.3
Consumer Cyclicals	4.3	6.87018	189.3
Banks & Thrifts	0.8	6.53166	-85.3
Health Care	0.9	5.81366	-100.5
Media Staples	7.0	5.57050	-212.8
Food & Beverages	0.7	4.36992	119.4

( ) = Relative to S&P 500. *Versus previous

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Consumer Cyclicals	4.3	6.87018	189.3
Non-Bank Financial	1.0	8.66152	173.0
Food & Beverages	0.7	4.36992	119.4
Drugs/Pharmaceuti-	0.4	1.96425	106.4
High Tech - Software	1.8	7.39718	86.7

Largest Industry Sells

High Tech - Hardware	0.8	8.88833	-391.0
Media Staples	7.0	5.57050	-212.8
Energy	7.3	9.83923	-308.3
Health Care	0.9	5.81366	-100.5
Banks & Thrifts	0.8	6.53166	-85.3

PORTFOLIO DISTRIBUTION

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Avis Rent A Car Inc	85.9	78.9	0.8
2	Comdisco Corp	81.6	45.1	0.7
3	Outdoor Systems	48.0	25.6	0.4
4	Sunbeam-Oster Co Inc	44.0	-13.3	0.4
5	Budget Group, Inc.	40.7	23.8	0.4
6	Universal Outdoor Holdings Inc	39.5	12.2	0.3
7	Central Garden & Pet Co	32.3	-3.4	0.3
8	Primos Co	30.9	-1.1	0.3
9	Wyndham Hotel Corp	30.5	2.6	0.3
10	U-Haul Inc.	22.0	-0.8	0.2
11	Hertz Corp.	19.2	2.6	0.2
12	Service Corporation International	15.4	-0.9	0.1
13	True North Communications Inc	13.3	>-.1	0.1
14	Cintas Hood Company	13.3	8.0	0.1
15	Coinmach Laundry Corp.	13.2	13.2	0.1
16	Lamar Advertising Company	12.1	12.1	0.1
17	Apollo Group Inc	11.9	11.9	0.1
18	Dyersburg Corp	11.7	0.6	0.1
19	Lasco Inc.	11.5	-1.3	0.1
20	H.& R.Block Inc.	10.0	10.0	<.1
	Consumer Cyclicals	586.9	251.3	3.2

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Est.EPS	$ yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	39.7	<.1	20.9	19.3	23.4	36.6	2.0	<.1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.1	4.4	1.0
Insurance	26.0	0.7	23.9	18.9	14.2	49.8	3.8	1.0
Consumer Cycli-	29.9	0.2	26.8	23.7	11.8	53.9	4.2	1.0

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Avis Rent A Car Inc	85.9	78.9	HFS Inc	0.0	-25.5
Comdisco Corp	81.6	45.1	Sunbeam-Oster Co Inc	44.0	-13.3
Outdoor Systems	48.0	25.6	Republic Industries Inc	<.1	-11.3
Budget Group, Inc.	40.7	23.8	TJ International Inc	0.0	-6.5
Coinmach Laundry	13.2	13.2	Cambridge Shopping	3.0	-4.5
Universal Outdoor Hold-	39.5	12.2	Promus Hotel Corp	0.0	-4.3
Lamar Advertising Com-	12.1	12.1	Carter Corp	0.0	-3.1
Apollo Group Inc	11.9	11.9	Staff Leasing Inc	0.0	-2.5
H.& R.Block Inc.	10.0	10.0	Unifirst Corp	2.1	-2.1
Rental Service Corp	8.6	8.6	Lasco Inc.	11.5	-1.3
Total	351.4	241.3	Total	37.7	-69.2

* Data as of 12/31/97

MORGAN STANLEY

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA RULE
NOT CERTIFIED COPY

SB 0018268

NORTHWESTERN MUTUAL LIFE INSURANCE

Style	Orientation	Turnover
Core Growth	Active	High

720 E. Wisconsin Avenue
Milwaukee, WI 53202
Tel/(414) 271-1444
Fax/(414) 299-7049

Founded: 1857. The firm is a publicly owned insurance company. It manages the Northwestern Series Funds, Inc. (formerly known as the NML Family of Funds), which consists of nine funds directed from the firm's Variable Life and Variable Annuities Products.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Gerry Baier	Vice President	(414) 299-7001
Bobby Richardson	Convertibles	(414) 299-7081
Patricia Van Kampen	Managing Director, Common Stock	(414) 299-7190
Edward Zore	Executive Vice President	(414) 299-7339

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	0	0	[illegible]
09/30/97	0	0	[illegible]
06/30/97	0	0	[illegible]
03/31/97	0	0	[illegible]
12/31/96	0	0	[illegible]
09/30/96	0	0	[illegible]
06/30/96	0	0	[illegible]
03/31/96	0	0	[illegible]

INVESTMENT APPROACH

Investments are typically concentrated in the securities of companies poised for above-average growth. Ultimately, portfolio managers look for attractive growth companies which are selling at a reasonable price. In order to identify investments for the large-cap portfolio, the firm utilizes top-down analysis to find attractive industries and sectors. Weightings are ultimately based upon the firm's industry outlook. Bottom-up analysis is used to evaluate potential investments for the small-cap portfolio. Northwestern screens these companies for growth potential, and subsequently determines fair value. The firm is more inclined to invest in ordinary issues of foreign securities.

- Investment Criteria:
1) Reasonably priced;
2) Consistent, sustainable growth;
3) Catalyst for growth;
4) Quality management.

- Sell Criteria:
1) Fundamentals deteriorate;
2) Price target reached;
3) Company looks poor on a technical basis.
- Decision-Making Process:
Each portfolio has a team, consisting of a portfolio manager and two analysts. Approximately 65% of research is generated internally, with the balance obtained from external sources.

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	[illegible]	[illegible]	[illegible]	[illegible]
EQIC	[illegible]	[illegible]	[illegible]	[illegible]
FID	[illegible]	[illegible]	[illegible]	[illegible]
SWL	[illegible]	[illegible]	[illegible]	[illegible]
XSLD	[illegible]	[illegible]	[illegible]	[illegible]
RIVL	[illegible]	[illegible]	[illegible]	[illegible]
Total	12	11	10	10
% Port	0.28	0.26	0.31	0.32

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*	
High Tech - Hardware	0.9	9.84039	-43.6	
Energy	1.2	9.18649	-66.0	
Non-Bank Financial	0.9	7.30781	-430.1	
Banks & Thrifts	0.8	7.21180	-202.1	
Health Care	1.0	6.63206	-54.6	
High Tech - Software	1.6	6.46071	-91.0	
Food & Beverages	0.9	5.79834	-74.2	
Consumer Staples	1.0	5.60518	-14.9	
Machinery	0.9	4.58864	-143.6	
Consumer Cyclicals	1.9	2.87539	-113.4	

( ) = Relative to S&P 500 *Value in millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Non-Electric Utilities	1.0	0.66371	3.3
Cellular/Wireless	0.7	0.18493	<.1

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	0.9	7.30781	-430.1
Banks & Thrifts	0.8	7.21180	-202.1
Machinery	0.9	4.58864	-143.6
Consumer Cyclicals	1.9	2.87539	-113.4
High Tech - Software	1.6	6.46071	-91.0

PORTFOLIO DISTRIBUTION

by Market Capitalization

Large 88%

Small 3% Mid 11%

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Comcast Corp	11.3	10.6	0.8
2	Clarks Corp	14.8	0.0	0.4
3	Mercer Group Inc	11.8	8.1	0.3
4	Trammell Crow Co	8.7	8.7	0.2
5	Getty Communications Plc	7.1	1.1	0.2
6	ITT Corporation	6.0	2.6	0.1
7	Advanced Health Corp	4.5	4.5	0.1
8	Service Corporation International	3.3	<.1	<.1
9	Marriott International Inc	3.1	<.1	<.1
10	Masco Corp	3.0	0.1	<.1
11	Hilton Hotels Corp	2.6	<.1	<.1
12	Cognizant Corporation	2.6	>-.1	<.1
13	Interpublic Group of Cos Inc	2.2	<.1	<.1
14	Dun & Bradstreet Corp	1.9	<.1	<.1
15	H & R Block Inc	1.6	<.1	<.1
16	Stanley Works	1.3	<.1	<.1
17	Whirlpool Corp	1.3	<.1	<.1
18	Black & Decker	1.3	<.1	<.1
19	Maytag Corp.	1.2	<.1	<.1
20	Armstrong World Industries Inc	1.1	0.0	<.1
	Consumer Cyclicals	110.5	36.0	2.8

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Est.EPS	$ yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	39.7	<.1	30.9	19.3	23.6	36.6	3.0	<.1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.3	4.4	1.0
Construction	26.7	1.3	25.0	15.7	20.1	50.1	4.2	1.0
Consumer Cycli-	33.9	0.4	32.2	25.3	17.7	33.1	6.3	0.9

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Comcast Corp	11.3	10.6	Education Management	0.0	-16.1
Trammell Crow Co	8.7	8.7	HFS Inc	0.0	-15.3
Mercer Group Inc	11.8	8.1	Legget & Platt Inc	0.0	-10.8
Advanced Health Corp	4.5	4.5	Casino Marketing Corp	0.0	-7.1
ITT Corporation	6.0	2.6	Lamrag Tire License-	0.0	-7.1
Getty Communications	7.1	1.1	BA Marketing Services	0.0	-7.0
Prosoft Development Inc	0.4	0.4	Parkway Properties Inc	0.0	-6.9
Proteus Hotel Corp New	0.3	0.3	West Teleservices Corpo-	0.0	-5.2
Masco Corp	3.0	0.1	Compagnie Generale des	0.0	-5.1
Interpublic Group of Cos	2.2	<.1	Granada Group PLC	0.0	-4.6
Total	73.0	36.3	Total	0.0	-105.8

* Data as of 12/31/97

MORGAN STANLEY

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED
NOT REFILED COPY

SB 0018269

ALLSTATE INSURANCE COMPANY

Style	Orientation	Turnover
Core Value	Active	Moderate

3075 Sanders Road
Northbrook, IL 60062-7127
Tel(847) 402-5000
Fax(847) 402-4726

Allstate Insurance Company, a subsidiary of the Allstate Corporation, manages its assets through the Allstate Insurance Investment Department. A major subsidiary of Allstate Insurance Co. is Allstate Life Insurance Co.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Dave Goetzber	Portfolio Manager	(708) 402-5000
Casey Sylla	Chief Investment Officer	(847) 402-5000
Roberta Asher	Assistant Vice President	(847) 402-6442
Sharn Martin	Director	(847) 402-5000

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	30,300	30,300	[illegible]
06/30/97	0	0	[illegible]
03/31/97	0	0	[illegible]
12/31/96	0	0	[illegible]
09/30/96	0	0	[illegible]
06/30/96	0	0	[illegible]
03/31/96	0	0	[illegible]

INVESTMENT APPROACH

Allstate seeks to find growth at a reasonable price. Earnings momentum and earnings revisions are other characteristics used in valuing a company. Quantitative analysis is used to identify those factors contributing to a company's growth. Once the technical analyst has identified the most important factors, "paper" portfolios are run which identify companies from which managers are free to choose from. However, portfolio managers are not constrained by this "paper" portfolio; it simply serves as a guide.

• Decision-Making Process:

All investment strategies are presided over by the finance committee of the firm and its principal subsidiaries. While the Investment Department manages all investment activities, Allstate's portfolio managers have a great deal of latitude in their investment decisions.

PEER OWNERSHIP

Peer	12/97 ($ MM)	09/97 ($ MM)	06/97 ($ MM)	03/97 ($ MM)
SOC	3	3	-	-
BOK	1	1	16	1
FO	-	-	-	-
SWL	10	9	9	10
RBD	-	-	-	-
RIVL	-	-	-	-
Total	31	28	35	10
% Port	[illegible]	[illegible]	[illegible]	[illegible]

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	3.3	27.5413	190.8
Banks & Thrifts	0.9	8.19132	165.3
Energy	0.9	6.77108	11.3
High Tech - Hardware	0.6	6.60508	62.3
Health Care	0.8	5.26612	-7.5
Food & Beverages	0.7	4.18297	-16.0
High Tech - Software	1.0	3.99387	53.1
Machinery	0.8	3.68218	6.8
Retail	0.9	3.83122	39.0
Consumer Cyclicals	1.3	2.00683	-1.9

( ) = Rank in S&P 500 *Values in millions

Largest Industry Buys

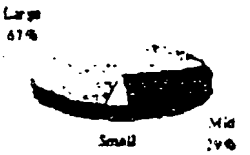
Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	3.3	27.5413	190.8
Banks & Thrifts	0.9	8.19132	165.3
High Tech - Hard-	0.6	6.60508	62.3
High Tech - Software	1.0	3.99387	53.1
Retail	0.9	3.83122	39.0

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Electric Utilities	1.0	2.38188	-99.3
Transportation	0.9	1.00226	-17.8
Food & Beverages	0.7	4.18297	-16.0
Apparel	0.8	0.25941	-15.3
Chemicals	0.5	1.32811	-14.1

PORTFOLIO DISTRIBUTION

by Market Capitalization



CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Insurance Auto Auctions Inc	19.2	0.0	0.2
2	Maytag Corp.	17.8	10.5	0.2
3	Ogden Corp	15.0	-1.3	0.2
4	Caesars Corp	12.1	3.0	0.2
5	Allied Waste Corp	8.1	-0.5	0.1
6	Homestead Village Properties	7.8	0.0	0.1
7	Black & Decker	6.7	-10.5	<.1
8	Ethan Allen Interiors Inc	6.5	3.7	<.1
9	Clayton Homes Inc	5.4	5.4	<.1
10	Cognizant Corporation	4.7	>-.1	<.1
11	Sotheby-Ozer Co Inc	4.6	1.3	<.1
12	Kause Company	4.2	0.0	<.1
13	Kause Co	3.4	<.1	<.1
14	Viad Corporation	3.4	0.3	<.1
15	American Greetings Corp	3.0	<.1	<.1
16	Interpublic Group of Cos Inc	1.8	-3.1	<.1
17	Budget Group, Inc.	1.7	1.7	<.1
18	Dun & Bradstreet Corp	1.5	>-.1	<.1
19	Starwood Hotels Corp	1.4	0.2	<.1
20	Mohawk Industries Inc	0.9	0.1	<.1
	Consumer Cyclicals	129.3	22.9	1.3

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Ea.E.P.S	$ yr E.P.S Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sotheby-Ozer Co	29.7	<.1	30.9	19.3	23.4	36.6	7.0	< 1
S & P 500	24.7	1.5	23.7	13.8	22.5	54.3	4.4	1.0
Industries	31.4	1.5	30.1	14.1	17.4	48.7	3.5	0.9
Consumer Cycli-	23.1	1.0	23.2	17.9	15.4	48.1	3.7	0.9

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Maytag Corp.	17.8	10.5	Black & Decker	6.7	-10.5
Ethan Allen Interiors Inc	6.5	3.7	ITT Corporation	0.0	-4.3
Clayton Homes Inc	5.4	5.4	Gibson Greetings Inc	0.0	-1.9
Caesars Corp	12.1	3.0	Service Corporation	0.0	-1.7
Budget Group, Inc.	1.7	1.7	Interpublic Group of Cos	1.8	-1.1
Sotheby-Ozer Co Inc	4.6	1.3	KPS Inc	0.0	-1.0
Viad Corporation	3.4	0.3	Interface Inc	0.8	-1.0
Dr Horton Inc	0.6	0.6	Ogden Corp	15.0	-1.0
Central Parking Corp	0.4	0.4	Burlington Industries Inc	0.0	-0.9
Mohawk Industries Inc	0.9	0.1	Outdoor Systems	0.0	-0.7
Total	53.0	29.1	Total	28.1	-23.7

* Data as of 12/31/97

MORGAN STANLEY

SB 0018270

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT
UNDER FOIA R[illegible]
[illegible]TED
NOT REDACTED COPY

SALOMON BROTHERS ASSET MANAGEMENT INC.

Style | Orientation | Turnover
Core Growth | Active | [illegible]

Seven World Trade Center
New York, NY 10048
Tel:(212) 783-7000
Fax:(212) 783-4014

In December 1997, Travelers Group acquired Salomon Inc., the parent firm of Salomon Brothers Asset Management. Although the combined firm is now Salomon Smith Barney, the asset management divisions will remain separate. The firm currently manages the Salomon Brothers Funds.

Equity Assets ($ MM) [illegible]
Annual Portfolio Turnover [illegible]
Number of Stocks Held [illegible]
Investor Type [illegible]

KEY CONTACTS

Name	Title	Phone
Ross Margolies	Director	(212) 783-6314
Gordon Gray	Director of European Equity Research	44-171-721-2000
Richard Dahlberg	Managing Director	(212) 783-6855
Michael Hyland	Managing Director	(212) 783-7416

POSITIONAL HISTORY

Date	Position	Change	% Out
[illegible]	[illegible]	[illegible]	[illegible]
09/30/97	0	-	[illegible]
06/30/97	0	-	[illegible]
03/31/97	0	-	[illegible]
12/31/96	0	-	[illegible]
09/30/96	0	-	[illegible]
06/30/96	0	-	[illegible]
03/31/96	0	-	[illegible]
12/31/95	0	-	0

INVESTMENT APPROACH

The firm utilizes both quantitative and fundamental analysis when evaluating potential investments. Emphasis is placed on growth stocks that are performing poorly due to a specific event or overall industry woes. Such companies are often underfollowed or out-of-favor with the Street. Fundamental analysis concentrates on companies which exhibit several of the following characteristics: 1) increasing earnings; 2) new products or services; 3) experiencing changes in market demand for products; 4) competitive industry position; 5) strong cash flow; and, 6) operating in favorable economic and regulatory environments. The firm prefers large-cap companies as all investments are set for long-term horizons.

• Investment Criteria:
1) Low P/E relative to both historical levels and current market levels;
2) Above-average, long-term growth prospects;
3) Catalyst to drive earnings;
4) Undervalued assets;
5) Qualified management team or new management policies or personnel.

• Decision-Making Process:
Portfolio managers, many of whom are analysts, generate a considerable amount of research and have the freedom to make investment decisions as long as they are within the guidelines set by the Investment Policy Committee.

PEER OWNERSHIP

Peer	09/97 ($ MM)	06/97 ($ MM)	03/97 ($ MM)	12/96 ($ MM)
VOC				
BDK	<1	<1	<1	<1
PO				
VWL				
RBD				
RVL				
Total	<1	<1	<1	<1
% Port	0.02	0.03	0.03	0.02

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port.	$ Chg.*
Non-Bank Financial	2.5	21.2567	44.1
Energy	1.3	9.853330	84.9
Basic & Thrifts	0.8	6.871806	38.1
Chemicals	2.1	5.894643	11.1
Health Care	0.9	5.817873	15.2
Manufacturing	2.4	5.622882	110.6
High Tech - Hardware	0.5	5.122979	44.5
Retail	1.2	5.000222	5.6
Food & Beverages	0.7	4.722148	-1.9
Consumer Cyclicals	1.3	4.621086	1.8

(*) = Relative to S&P 500 *Values in millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Manufacturing	2.4	5.622882	110.6
Energy	1.3	9.853330	84.9
Media Stocks	2.9	2.332179	50.1
High Tech - Hard-	0.5	5.122979	44.5
Non-Bank Financial	2.5	21.2567	44.1

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Biotechnology	<.1	0.001600	-37.0
High Tech - Software	0.5	2.111042	-16.7
Non-Electric Utilities	2.2	1.412358	-16.5
Aerospace/Defense	1.2	1.282316	-11.9
Metals	1.6	1.238453	-9.2

PORTFOLIO DISTRIBUTIONS

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ MM Val*	$ Chg.*	% Port
1	Host Marriott Corp	34.4	0.0	1.1
2	Cognizant Corporation	5.1	5.1	0.2
3	Forest City Enterprises Inc	4.1	0.0	0.1
4	Forest City Enterprises Inc	2.0	0.0	<.1
5	Amresco Inc.	1.3	0.0	<.1
6	Electric Fuel Corp	1.1	0.0	<.1
7	ITT Corporation	0.7	0.0	<.1
8	Black & Decker	0.7	0.0	<.1
9	Strayer Education Incorporated	0.7	0.0	<.1
10	Liberty Homes Inc.	0.3	>-.1	<.1
11	Liberty Homes Inc.	0.2	0.0	<.1
	Consumer Cyclicals	51.3	5.0	1.7

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Est. EPS	5 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunstream-Omni Co	29.7	<.1	20.9	19.3	23.4	36.6	7.0	<.1
S & P 500	26.7	1.3	23.7	13.8	22.5	54.3	4.4	1.0
Institution	21.8	1.2	18.8	14.3	15.7	51.0	3.7	1.0
Consumer Cycli-	19.8	0.4	17.8	19.8	3.4	43.1	3.7	0.9

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)
Cognizant Corporation	5.1	5.1
Total	5.1	5.1

Top Sells	Mkt Val ($ MM)	Change ($ MM)
Unifi Inc.	0.0	-2.2
Guilford Mills Inc	0.0	-3.9
Crown Crafts Inc.	0.0	-0.2
Liberty Homes Inc.	0.3	-1.1
Total	0.3	-7.3

SB 0016271

* Data as of 19970930

MORGAN STANLEY

8

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT UNDER FOIA REQ
NOT CERTIFIED COPY

NEW YORK LIFE INSURANCE COMPANY

Style	Orientation	Turnover
Core Growth	Active	High

51 Madison Avenue
New York, NY 10010
Tel:(212) 576-7000
Fax:(212) 576-4245

New York Life is a publicly traded insurance company. Subsidiaries include Monitor Capital and MacKay-Shields Financial Corporation.

Equity Assets ($ MM)	23,0
Annual Portfolio Turnover	1
Number of Stocks Held	9
Investor Type	I

KEY CONTACTS

Name	Title	Phone
Rashmi Laird	Investment Vice President	(212) 576-7705
Jai Bajaj	Director of Economic Research	(212) 576-6068
Richard Kernan	Executive Vice President	(212) 576-7333
Kenneth Quinn	Pension Vice President/Fixed Income	(201) 331-3015

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	0	-	0
09/30/97	0	-	0
06/30/97	0	-	0
03/31/97	0	-	0
12/31/96	0	-	0
09/30/96	0	-	0
06/30/96	0	-	0
03/31/96	0	-	0

INVESTMENT APPROACH

The firm utilizes bottom-up analysis to identify companies which are exhibiting above-average growth potential. The investment process is research-driven, focusing on earnings growth, balance sheets, and company fundamentals. The equity portfolio tends to consist of mid to large-cap stocks (minimum market-cap of $500 million).

- Investment Criteria:

1) Above-average earnings growth;
2) Attractive balance sheet;
3) Strong company management.

- Sell Criteria:

1) Earnings disappointment.

- Decision-Making Process:

While the majority of research is generated internally, analysts will also consider external research. The firm's research efforts are complemented by meetings with company management.

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	-	-	-	-
BOK	<1	<1	<1	-
FO	-	-	<1	-
NWL	17	-	<1	-
RBD	<1	<1	<1	-
RJYC	-	-	-	-
Total	20	3	<1	1
% Port	0.46	0.11	0.03	0.03

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	1.3	12.4784	63.1
Banks & Thrifts	1.3	10.1394	44.7
High Tech - Hardware	0.8	7.85130	-35.6
Energy	0.9	6.96570	-13.6
Food & Beverages	0.9	3.96848	24.2
Health Care	0.9	3.79113	-10.3
High Tech - Software	1.1	3.50006	20.9
Drugs/Pharmaceuticals	1.1	3.48858	17.3
Consumer Cyclicals	3.3	3.02352	-11.6
Consumer Staples	0.8	2.58104	16.6

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	1.3	12.4784	63.1
Banks & Thrifts	1.2	10.1394	44.7
Telephone (Local)	0.7	2.82854	40.1
Food & Beverages	0.9	3.96848	24.2
High Tech - Software	1.1	3.50006	20.9

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
High Tech - Hardware	0.8	7.85130	-35.6
Machinery	0.8	0.13655	-35.6
Manufacturing	1.0	2.32899	-19.6
Chemicals	0.8	2.07542	-14.3
Energy	0.9	6.96570	-13.6

( ) = Relative to S&P 500 *Change in millions

PORTFOLIO DISTRIBUTION

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Intermedia Communications Fla+	50.9	-6.1	1.3
2	Service Corporation International	22.6	10.5	0.5
3	Hilton Hotels Corp	19.6	9.0	0.5
4	Outdoor Systems	13.1	-10.9	0.4
5	Marriott International Ltd	13.1	<1	0.3
6	Rouse Company	12.9	0.0	0.3
7	Mascotech Corp	10.3	<1	0.2
8	Renaissance Industries Ltd	8.7	0.0	0.2
9	Felcor Suite Hotels Ltd	6.9	2.0	0.2
10	Cognizant Corporation	5.3	<1	0.1
11	Stewart Enterprises Ltd	5.1	0.0	0.1
12	Harte-Hanks Communications	4.9	0.0	0.1
13	Sylvan Learning Systems Ltd	4.9	4.9	0.1
14	Wyndham Hotel Corp	2.9	0.6	<1
15	Parkway Properties Ltd	2.7	0.8	<1
16	ITT Corporation	2.1	<1	<1
17	Whirlpool Corp	1.6	<1	<1
18	Omnicom Group Ltd	1.3	1.3	<1
19	Rouse Co	1.3	-0.8	<1
20	Interpublic Group of Cos Ltd	1.3	<1	<1
Total	Consumer Cyclicals	193.9	9.6	4.3

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Proj. Est. EPS	3 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	39.7	4.1	30.8	19.3	23.6	38.6	7.0	<1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.3	4.4	1.0
Industrials	24.0	1.3	22.3	16.1	16.8	53.1	3.9	1.3
Consumer Cycls	23.8	0.5	23.4	27.5	11.4	87.0	4.0	1.3

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Service Corporation	22.6	10.5	Caesars Corp	0.0	-19.4
Hilton Hotels Corp	19.6	9.0	Outdoor Systems	13.1	-10.9
Sylvan Learning Sys	4.9	4.9	Intermedia Communica	50.9	-6.1
Omnicom Group Ltd	1.3	1.3	HFS Inc	0.0	-3.5
Nordson Inc	1.2	1.2	Universal Outdoor Hold	0.0	-1.5
Capital Hotel Company	1.0	1.0	Rouse Co	1.3	-0.8
Ladbroke Inc	1.0	1.0	Viacom Group Inc	0.0	-0.8
Education Management	0.8	0.8	First Virtual Holdings Inc	0.2	>-0.1
Parkway Properties Ltd	2.7	0.6	Dun & Bradstreet Corp	1.1	>-0.1
Wyndham Hotel Corp	2.9	0.6	Mayflag Corp	0.8	>-0.1
Total	58.0	31.0	Total	69.8	-43.2

* Data as of 12/31/97

MORGAN STANLEY

SB 0018272

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT FOR PUBLICATION

16div-023568

ALLIANCE CAPITAL MANAGEMENT L.P.

Style	Orientation	Turnover
Core Growth	Active	Moderate

1345 Avenue of the Americas
New York, NY 10105
Tel:(212) 969-1000
Fax:(212) 382-4089

Founded: 1962. The Equitable Life Assurance Society of the United States, a subsidiary of AXA-UAP, is the general partner of Alliance. The Minneapolis office is responsible for large-cap growth investments. The firm manages the Alliance Funds.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Ted Kuck	Senior Vice President	(212) 969-1000
Michael Baldwin	Director of Research	(212) 969-1052
Bruce Calvert	Vice Chairman	(212) 969-1070
Kevin O'Brien	Senior Vice President	(212) 969-1288

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	9,457,883	↓ [illegible]	[illegible]
06/30/97	10,079,399	↓ [illegible]	[illegible]
03/31/97	10,501,307	↑ [illegible]	[illegible]
12/31/96	8,939,382	↑ [illegible]	[illegible]
09/30/96	[illegible]	↑ [illegible]	[illegible]
06/30/96	7,400	-	0
03/31/96	7,400	-	0

INVESTMENT APPROACH

Equity products include Large Cap., Large/Medium Cap., Research Value, Disciplined Growth, Hudson River Growth, Disciplined Core, Convertible Securities, Aggressive Growth, Style Title (Passive), Enhanced Index, Global Equity, International Equity and Emerging Markets. The Large Capitalization Growth Equity strategy begins with the "Alliance 100," from which companies with superior relative fundamental strength, earnings momentum, and attractive valuations are chosen to form the "Favored 25." Focus is on short-term relative valuation. Large and Medium Capitalization growth funds seek companies with prospective earnings momentum across the capitalization spectrum. Hudson River Growth Equity invests in companies with the potential for strong earnings growth, strong and stable corporate management, high ROE, and a solid balance sheet. The Aggressive Growth strategy looks for dynamics of change that will accelerate earnings growth above market expectations. It looks for emerging industry leaders with an emphasis on small and mid-size companies. Disciplined Growth uses the security scoring system to evaluate momentum and valuations. Research Value Equity seeks stocks with strong management, above-average industry positions, excellent balance sheets, and the ability to demonstrate superior earnings growth. Annualized expected total return must exceed the greater of 18% or 2x the expected S&P 500 return.

POSITION OWNERSHIP

Date	12/97 ($ MM)	09/97 ($ MM)	06/97 ($ MM)	03/97 ($ MM)
SOC	364	420	[illegible]	[illegible]
BOK	9	8	4	[illegible]
PO	18	13	13	[illegible]
WVL	13	14	[illegible]	[illegible]
RBD	9	9	11	[illegible]
RIVL	0	<1	<1	[illegible]
Total	311	464	421	376
% Port	0.17	0.22	0.23	0.18

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	2.3	19.6201	-655.9
High Tech - Hardware	1.3	18.0931	1,353.8
Energy	0.8	6.544652	939.7
Retail	1.3	5.216646	-661.0
Banks & Thrifts	0.6	5.111552	345.6
Drugs/Pharmaceuticals	1.0	4.861177	-667.3
Consumer Staples	0.8	4.679929	-149.2
Health Care	0.6	4.031144	313.0
Manufacturing	1.0	3.688837	412.3
Consumer Cyclicals	1.9	2.901451	-1,691.7

( ) = Relative to S&P 500 *Values in millions

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
High Tech - Hard-	1.3	18.0931	1,353.8
Energy	0.8	6.544652	939.7
Banks & Thrifts	0.6	5.111552	345.6
Health Care	0.6	4.031144	313.0
Telephone-Long Dis-	1.4	3.327777	431.3

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Consumer Cyclicals	1.9	2.901451	-1,691.7
Drugs/Pharmaceuti-	1.0	4.861177	-667.3
Non-Bank Financial	2.3	19.6201	-655.9
Retail	1.3	5.216646	-661.0
Food & Beverages	0.6	2.719861	-413.1

PORTFOLIO DISTRIBUTION

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Republic Industries Inc	839.6	73.6	0.8
2	ITT Corporation	699.3	23.6	0.7
3	Sunbeam-Oster Co Inc	364.2	-355.3	0.3
4	Mohawk Industries Inc	133.0	2.1	0.1
5	Host Marriott Corp	128.0	-131.6	0.1
6	Industrie Natuzzi SPA	107.3	3.0	<.1
7	Marriott International Inc	89.4	-31.1	<.1
8	Budget Group Inc	85.0	1.8	<.1
9	Extended Stay America Inc	71.7	-11.8	<.1
10	Cash Inc	56.8	-2.3	<.1
11	Reuters Holdings plc - ADR	56.7	18.9	<.1
12	Fortune Brands International Inc	34.4	2.5	<.1
13	Ro-Lo Industries Inc	34.1	3.2	<.1
14	Snyder Communications Inc	33.0	-1.3	<.1
15	Avis Rent A Car Inc	32.1	32.1	<.1
16	Garnett Group Inc	30.8	-2.0	<.1
17	Suburban Lodges Of America Inc	22.6	-1.2	<.1
18	Service Corporation International	21.6	2.0	<.1
19	Central Garden & Pet Co	21.3	9.6	<.1
20	CarMax Corp	20.6	3.1	<.1
Consumer Cyclicals		2,795.3	-300.3	2.5

* Out of 19971231

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Fwd Est.EPS	5 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	29.7	<.1	20.9	19.3	23.4	36.8	3.0	<.1
S & P 500	26.7	1.3	23.7	13.8	22.5	54.3	4.4	1.0
Industries	28.0	1.1	23.4	17.6	20.2	48.1	4.1	1.2
Consumer Cycli-	30.0	0.2	29.8	24.0	14.1	55.6	3.8	0.9

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Republic Industries Inc	839.6	73.6	Cendant Corp	0.0	-1,351.7
Avis Rent A Car Inc	32.1	32.1	HFS Inc	<.1	-182.2
ITT Corporation	699.3	23.6	La Quinta Motor Inns Inc	4.6	-133.9
Reuters Holdings plc -	56.1	18.9	Host Marriott Corp	128.0	-131.6
Signature Resorts Incor-	12.8	12.8	Doubletree Corp	0.0	-65.9
Mayfair Group Inc	11.6	11.6	Interstate Hotels Co.	10.6	-38.9
Visa Corporation	13.6	10.7	Polymer Group Inc	0.3	-35.5
Central Garden & Pet Co	21.3	9.6	Sunbeam-Oster Co Inc	364.2	-35.3
Budget Group, Inc.	85.0	7.8	Marriott International Inc	89.4	-31.1
Prime Hospitality Corp	12.9	5.3	Telefonica Holdings Inc	20.0	-14.1
Total	1,654.7	306.3	Total	617.2	-1,995.1

MORGAN STANLEY

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT UNDER FOIA REQUE

NOT DECLASSIFIED COPY

SB 0018273

0017000

16div-023569

MacKay-Shields Financial Corporation

Style	Orientation	Turnover
GARP	Active	Moderate

Nine West 57th Street
New York, NY 10019
Tel:(212) 758-3400
Fax:(212) 935-1083

Founded: 1938. The firm, a subsidiary of New York Life Insurance Company, subadvises the MainStay Family of Mutual Funds and associates with Monitor Capital, also a subsidiary of New York Life.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

Key Contacts

Name	Title	Phone
Thomas Wyss	Associate Director	(212) 758-3400
Denis Lapierre	President/Director of Research	(212) 230-1890
Shigemi Takagi	Director	(212) 758-3400
Ravi Akhoury	Chairman	(212) 230-1843

Positional History

Date	Position	Change	% Out
[illegible]	[illegible]	[illegible]	[illegible]
09/30/97	0	-	0 [illegible]
06/30/97	0	↓ -10,000	[illegible]
03/31/97	10,000	-	0 [illegible]
12/31/96	10,000	↑	10,000 [illegible]
09/30/96	0	-	0 0.00
06/30/96	0	-	0 [illegible]
03/31/96	0	-	0 0.00

Investment Approach

The firm manages investments using both value and growth strategies. For value, Mackay-Shields eliminates stocks with market-caps below $300 million. Emphasis is on the lowest quintile (20%) of the 2,500 stock universe based on P/E and/or P/CF on a trailing 12 month basis. Stocks are also screened for positive free cash flow. Analysts then evaluate value catalysts such as stock buybacks, management ownership, asset restructuring, discount to private market value, positive earnings trends and above-average yield. The Growth Equity product utilizes quantitative and qualitative research. Quantitative screens identify above-average earnings growth (>15%), earnings acceleration, and attractive P/Es relative to the growth rate. Qualitative measures look for value-added characteristics (growth catalysts) of a company. After securities have been identified, the firm attempts to maximize the entry point by looking at technical factors such as price momentum, relative strength, insider-ownership, and money flows.

- Decision-Making Process:

The Value & Growth teams exchange and share information, market research and judgments. Research is the responsibility of portfolio managers and analysts. A focus list is subjected to fundamental research, specifically company financial statements, Street research, periodicals, competitors and customers.

Peer Ownership

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	-	-	0	[illegible]
BDK	-	-	0	-
FG	-	-	0	[illegible]
VWC	-	-	-	-
XRO	-	-	-	-
KVC	-	-	-	-
Total	-	-	0	[illegible]
% Port.	-	-	0.00	0.00

Industry Weightings

Largest Industry Holdings

Industry	S&P	% Port.	$ Chg.*
Non-Bank Financial	1.7	14.1541	-201.3
High Tech - Hardware	0.8	8.64185	-100.7
Health Care	1.3	8.07844	-27.3
Electric Utilities	2.8	6.90094	263.7
Retail	1.5	6.17928	-132.2
Banks & Thrifts	0.7	5.80766	-137.5
Energy	0.7	5.51932	11.5
High Tech - Software	1.2	5.13807	-92.5
Food & Beverages	0.6	5.00945	-13.0
Consumer Cyclicals	1.0	1.47865	-315.9

( ) = Ranking in S&P 500 *Value in millions

Largest Industry Buys

Industry	S&P	% Port.	$ Chg.*
Electric Utilities	2.8	6.90094	263.7
Drugs/Pharmaceuticals	0.8	3.66426	139.2
Leisure Cyclicals	14.6	2.51979	83.2
Consumer Staples	0.6	3.47083	60.1
Transportation	3.1	2.30166	19.1

Largest Industry Sells

Industry	S&P	% Port.	$ Chg.*
Consumer Cyclicals	1.0	1.47865	-315.9
Non-Bank Financial	1.7	14.1541	-201.3
Banks & Thrifts	0.7	5.80766	-137.5
Retail	1.5	6.17928	-132.2
High Tech - Hardware	0.8	8.64185	-100.7

Portfolio Distribution

by Market Capitalization

Consumer Cyclicals Holdings

Rank	Company	$ Mkt Val*	$ Chg.*	% Port.
1	Service Corporation International	96.5	0.7	0.6
2	Oakwood Homes Corp	74.3	-0.9	0.4
3	Burlington Industries Inc	52.7	-4.5	0.3
4	Avis Rent A Car Inc	8.7	8.7	<.1
5	Loewen Group Inc	6.5	6.5	<.1
6	Interpool Financial Group Inc	2.8	2.8	<.1
7	Fieldcrest Cannon Inc	2.7	-0.9	<.1
8	Carolina Freshwing Corp	1.9	1.9	<.1
9	American Retirement Corp	1.3	0.0	<.1
10	Transtechnology Corp	1.3	1.3	<.1
11	Aztec Co	0.8	0.0	<.1
12	Agribiotech Inc	0.7	0.7	<.1
13	Extended Stay America Inc	0.7	0.0	<.1
Consumer Cyclicals		251.3	18.4	1.3

Portfolio Characteristics

	P/E	Yield	Price/ $ yr EPS Gr. Proj.	$ yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sundstrand-Oasis Co	29.7	<.1	20.9	19.3	23.4	36.8	7.0	<.1
S & P 500	28.7	1.3	23.7	13.8	22.5	54.3	4.4	1.0
Institutions	24.0	1.3	21.7	14.7	17.3	60.2	3.4	1.0
Consumer Cycli-	22.8	0.4	20.1	17.2	12.3	77.2	2.9	0.8

Consumer Cyclicals Adjustments

Top Buys	Mkt Val ($ MM)	Change ($ MM)
Avis Rent A Car Inc	8.7	8.7
Loewen Group Inc	6.5	6.5
Interpool Financial	2.8	2.8
Carolina Freshwing Corp	1.9	1.9
Transtechnology Corp	1.3	1.3
Agribiotech Inc	0.7	0.7
Service Corporation	96.5	0.7
Total	118.4	22.7

Top Sells	Mkt Val ($ MM)	Change ($ MM)
KPS Inc	0.0	-226.2
Caldera Corp	0.0	-102.0
Burlington Industries Inc	52.7	-4.5
Synergy Industries Inc	0.0	-1.2
Shaw Industries Inc	0.0	-1.0
Oakwood Homes Corp	74.3	-0.9
Fieldcrest Cannon Inc	2.7	-0.9
Whirlpool Corp	0.0	-0.2
Sundance Homes Inc	0.0	-0.1
Total	129.8	-338.9

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED
NOT CERTIFIED COPY

MORGAN STANLEY

SB 0018274

0179O

16div-023570

General Motors Investment Management

Style	Orientation	Turnover
Growth	Active	Mid

767 Fifth Avenue
New York, NY 10153-0013
Tel:(212) 418-6100
Fax:(212) 418-3665

General Motors Investment Management (GMIM) is a registered investment advisor and manages General Motor's pension fund as well as the funds of General Motors Acceptance Corp. and Motors Insurance Corp.

Equity Assets ($ MM)	$37,5
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	PF

Key Contacts

Name	Title	Phone
Peter Luke	Director of Convertible Investments	(212) 418-6100
W. Allen Reed	President	(212) 418-3585
Margaret (Peggy) Eisen	Director of North American Equities	(212) 418-6420
Bruce Marquand	Portfolio Manager	(212) 418-6305

Positional History

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	0	0	[illegible]
06/30/97	0	0	[illegible]
03/31/97	0	0	[illegible]
12/31/96	0	0	[illegible]
09/30/96	0	0	[illegible]
06/30/96	0	0	[illegible]
03/31/96	0	0	[illegible]

Investment Approach

General Motors Investment Management (GMIM) applies a growth-oriented, bottom-up approach towards its equity investments. The firm's stock selection process is based on traditional analysis. GMIM utilizes market timing and tactical asset allocation in an attempt to realize its investment objective. Approximately 10% of the firm's $40 billion domestic equity portfolio is internally managed, and according to market-cap, is benchmarked to the Russell 1000, Russell 2000, and S&P Mid-Cap.

Decision-Making Process:

The firm is organized around asset classes, with the staff divided into 6 investment units. The units include: 1) Investment Strategy and Asset Allocation, which is responsible for all funds under management; 2) Domestic Equities, responsible for both internally and externally managed U.S. equity assets; 3) Domestic Fixed-Income; 4) International Investments, responsible for non-U.S. equity and fixed-income investments; 5) Real Estate and Alternative Investments; and 6) Motors Insurance Corp. Investments, which invests the insurance company's portfolio. Each unit is headed by a managing director. In addition, there is a newly created research department. Frequently GMIM managers will meet with company management prior to purchase.

Peer Ownership

Peer	12/97 ($ MM)	09/97 ($ MM)	06/97 ($ MM)	03/97 ($ MM)
SOC	-	-	-	-
BDK	-	-	-	-
PCI	-	-	-	-
SWVL	-	-	-	-
RBO	-	-	-	-
RIVL	-	-	-	-
Total	-	-	-	0
% Port	-	-	-	0.00

Industry Weightings

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	1.3	29.0393	119.1
High Tech - Hardware	1.1	11.9676	20.0
Consumer Staples	2.0	11.1008	-134.1
High Tech - Software	2.2	9.16004	48.6
Consumer Cyclicals	1.6	5.20143	46.0
Bank & Thrift	0.4	3.21653	13.7
Health Care	0.4	2.83487	16.6
Energy	0.3	2.55376	6.0
Retail	0.6	2.34806	3.6
Mass Staples	1.2	2.30531	-0.6

(*) = Relative to S&P 500 *Values in $ Mils

Largest Industry Buys

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	1.3	29.0393	119.1
High Tech - Software	2.2	9.16004	48.6
Consumer Cyclicals	1.6	5.20143	46.0
Telephone-Long Dis-	0.6	1.47552	33.2
Biotechnology	0.0	1.90296	23.8

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
Consumer Staples	2.0	11.1008	-134.1
Business Staples	1.1	0.22727	-8.6
Aerospace/Defense	0.3	0.11750	-7.8
Food & Beverages	0.3	1.30480	-5.7
Chemicals	0.3	1.20037	-3.6

Portfolio Distribution

by Market Capitalization

Consumer Cyclicals Holdings

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Cendant Corp	26.8	-3.1	0.8
2	Outdoor Systems	20.9	4.7	0.6
3	House Co	20.0	0.0	0.6
4	Computer Learning Centers	10.5	4.6	0.3
5	Sylvan Learning Systems Inc	9.0	3.5	0.3
6	Education Management Corp	8.5	5.9	0.2
7	Sotheby Education Incorporated	7.5	3.8	0.2
8	Leggett & Platt Inc	4.6	4.6	0.1
9	Hasbro Industries Inc	4.2	0.1	0.1
10	Omnicom Group Inc	4.1	4.1	0.1
11	Pottery Companies	3.8	0.0	0.1
12	Homestead Village Properties	3.6	0.0	0.1
13	Applied Graphics Technologies	3.6	20.4	0.1
14	Consorta Family Solutions Inc	3.4	3.3	0.1
15	Ethan Allen Interiors Inc	3.2	3.2	0.1
16	Martin Facs Inc	3.2	3.2	0.1
17	Advanced Health Corp	3.2	3.2	0.1
18	Lamar Advertising Company	2.7	2.7	0.1
19	Circus Corp	2.3	2.3	0.1
20	Mom Matters Corp	2.3	2.3	0.1
Consumer Cyclicals		148.9	46.8	4.1

Portfolio Characteristics

	P/E	Yield	Prior Ea. EPS	5 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Jamestown-Outer Co	29.7	< .1	30.9	19.3	23.4	38.6	7.0	< .1
S & P 500	26.7	1.5	23.7	15.8	22.5	54.3	4.4	1.0
Innovation	25.6	1.5	24.5	20.6	13.7	49.4	3.7	1.0
Consumer Cycli-	37.6	0.9	34.1	27.3	12.6	26.2	3.5	0.8

Consumer Cyclicals Adjustments

Top Buys	Mkt Val ($ MM)	Change ($ MM)
Education Management	8.5	5.9
Sylvan Learning Sys-	9.0	3.5
Outdoor Systems	20.9	4.7
Leggett & Platt Inc	4.6	4.6
Computer Learning Cen-	10.5	4.6
Omnicom Group Inc	4.1	4.2
Sotheby Education Incor-	7.5	3.8
Ethan Allen Interiors Inc	3.2	3.2
Martin Facs Inc	3.2	3.2
Advanced Health Corp	3.2	3.2
Total	74.8	41.9

Top Sells	Mkt Val ($ MM)	Change ($ MM)
Universal Outdoor Hom-	0.0	-4.5
Harte Corp	0.0	-4.9
Furniture Brands Interna-	0.0	-3.5
Cendant Corp	26.8	-3.1
NCO Group Inc	0.0	-1.9
Catalina Development	0.0	-1.5
Owens Corning	1.7	-0.7
Applied Graphics Tech-	3.6	-0.4
Total	32.1	-21.6

MORGAN STANLEY & CO.
CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA
NOT CERTIFIED COPY

16div-023571

PUTNAM INVESTMENT MANAGEMENT, INC.

Style	Orientation	Turnover
Core Growth	Active	Moderate

One Post Office Square
Boston, MA 02109
Tel/(617) 760-1000
Fax/(617) 422-4072

Putnam is a subsidiary of Marsh & McLennan Companies, Inc. In June 1997, Putnam began subadvising Japanese pension funds on behalf of Nippon Life Insurance. The firm manages institutional portfolios, endowments, public pension funds and the Putnam mutual funds.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

KEY CONTACTS

Name	Title	Phone
Patrick O'Donnell	Director of Global Equity Research	(617) 348-4638
Tim Ferguson	Head of Investments	(617) 760-8001
Michael Maruso	Managing Director/Fixed Income	(617) 760-1376
Thomas Hoey	Vice President	(617) 760-8003

POSITIONAL HISTORY

Date	Position	Change	% Out
12/31/97	[illegible]	[illegible]	[illegible]
09/30/97	1,392,000 T	1,392,000	1.62
06/30/97	0 -	0	0.00
03/31/97	0 -	0	0.00
12/31/96	0 -	0	0.00
09/30/96	0 -	0	0.00
06/30/96	0 -	0	0.00
03/31/96	0 -	0	0.00

INVESTMENT APPROACH

Domestic equity management is divided into three different approaches: Core Growth, Specialty Growth, and Basic Value. Quantitative screens narrow an initial universe of 5000 stocks to 200, using appropriate measures for each of the three groups. These are rank-ordered into quintiles, based on earnings momentum, financial strength, valuation and dividend factors. The portfolio managers for the different equity groups perform fundamental research on the stocks that have passed the quantitative screen. The Basic Value approach examines P/B, P/Sales and yield, trying to find stocks that are undervalued but which are poised for a turnaround. The Specialty Growth approach is an aggressive approach which seeks stocks with exceptional earnings growth potential. The Core Growth approach looks for companies with strong ROE and ROIC, superior management, solid balance sheets and excellent products that assure market leadership. The firm also invests in international equities.

• Decision-Making Process:

The firm uses both internal and external research. Research is conducted from Putnam's offices in Boston, London and Tokyo. A list of about 200 approved stocks is generated at the company level for each type of fund, and individual portfolio managers may buy only stocks on this list. Each product has a lead manager, but almost all of the equity funds are team-managed.

PEER OWNERSHIP

Peer	12/97 ($MM)	09/97 ($MM)	06/97 ($MM)	03/97 ($MM)
SOC	80	82	-	-
BDK	<1	<1	<1	<1
PO	39	41	50	34
WWL	7	7	7	-
RBO	<1	<1	<1	<1
RWL	-	-	5	4
Total	106	114	95	102
% Port.	0.07	0.08	0.04	0.05

INDUSTRY WEIGHTINGS

Largest Industry Holdings

Industry	S&P	% Port.	$ Chg.*
Banks & Thrifts	1.1	9.31575	-433.8
High Tech - Hardware	0.9	9.007720	-750.9
Non-Bank Financial	1.1	8.529932	780.8
High Tech - Software	2.0	8.41042	54.3
Retail	2.0	8.18504	(1,130.1)
Energy	0.8	6.51930	244.6
Consumer Staples	1.0	5.34605	651.0
Machinery	1.0	5.22363	485.0
Food & Beverages	0.8	4.95378	1,255.9
Consumer Cyclicals	3.1	4.71350	-293.1

( ) = Reserve in S&P 500 *Values in millions

Largest Industry Buys

Industry	S&P	% Port.	$ Chg.*
Retail	2.0	8.18504	(1,130.1)
Food & Beverages	0.8	4.95378	1,255.9
Health Care	0.5	3.48592	798.2
Non-Bank Financial	1.1	8.529932	780.8
Consumer Staples	1.0	5.34605	651.0

Largest Industry Sells

Industry	S&P	% Port.	$ Chg.*
High Tech - Hardware	0.9	9.007720	-750.9
Telephone-Long Dis.	1.2	2.97961	-339.2
Banks & Thrifts	1.1	9.31575	-433.8
Consumer Cyclicals	3.1	4.71350	-293.1
Autos/Auto Parts	0.7	1.56006	-238.8

PORTFOLIO DISTRIBUTION

by Market Capitalization

CONSUMER CYCLICALS HOLDINGS

Rank	Company	$ Mkt Val*	$ Chg.*	% Port.
1	Cendant Corp	1,333.3	1,171.3	0.8
2	Outdoor Systems	536.4	20.4	0.4
3	Marriott International Inc	373.7	19.9	0.3
4	Mirage Corp	332.8	-23.1	0.2
5	Promus Hotel Corp New	287.1	287.1	0.2
6	Interbrand Group of Cos Inc	275.7	2.6	0.2
7	Omnicom Group Inc	259.8	82.3	0.2
8	ITT Corporation	233.3	232.9	0.2
9	Sylvan Learning Inc	221.4	7.3	0.2
10	Apollo Group Inc	192.1	-26.4	0.1
11	Lamar Advertising Company	144.4	10.2	0.1
12	Avis Rent A Car Inc	143.9	117.2	0.1
13	Extended Stay America Inc	139.6	10.0	<.1
14	Intermedia Communications Fla	138.2	8.2	<.1
15	Universal Outdoor Holdings Inc	136.2	-15.3	<.1
16	Caribiner International Inc	129.9	44.6	<.1
17	Service Corporation International	126.5	2.5	<.1
18	Republic Industries Inc	120.6	42.8	<.1
19	Digital Corp	114.6	43.1	<.1
20	Snyder Communications Inc	103.5	22.6	<.1
Consumer Cyclicals		5,307.1	1,913.9	3.7

* Data as of 12/31/97

PORTFOLIO CHARACTERISTICS

	P/E	Yield	Price/ Est. EPS	3 yr EPS Gr. Proj.	ROE	Debt/ Equity	P/B	Beta
Sunbeam-Oster Co	29.7	<.1	20.9	19.3	23.4	16.6	7.0	<.1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.3	4.6	1.0
Insurance	24.7	1.1	22.9	17.2	16.6	49.3	4.2	1.0
Consumer Cycli-	29.5	0.4	27.9	24.3	12.1	55.8	4.4	1.0

CONSUMER CYCLICALS ADJUSTMENTS

Top Buys	Mkt Val ($ MM)	Change ($ MM)	Top Sells	Mkt Val ($ MM)	Change ($ MM)
Cendant Corp	1,333.3	1,171.3	HFS Inc	1.0	-553.7
Promus Hotel Corp New	287.1	287.1	Doubletree Corp	0.0	-154.0
ITT Corporation	233.3	232.9	Promus Hotel Corp	0.0	-147.1
Avis Rent A Car Inc	143.9	117.2	Republic Industries Inc	120.6	-42.8
Omnicom Group Inc	259.8	82.3	Sylvan Learning Systems	33.2	-35.6
Sun Hung Kai Propert-	70.5	47.8	Legget & Platt Inc	0.4	-32.8
Caribiner International	129.9	44.6	Devry Inc	0.0	-32.6
Granada Group PLC	41.9	43.5	Armstrong World Indus-	0.0	-24.5
Budget Group, Inc.	102.6	43.1	Reuters Holdings plc -	0.0	-19.3
Marriott International	373.7	19.9	Apollo Group Inc	192.1	-16.4
Total	2,983.9	2,109.8	Total	347.7	(1,201.3)

MORGAN STANLEY

SB 0018276

MORGAN STANLEY & CO.

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA

NOT REFLECTED COPY

Fidelity Management & Research

Style	Orientation	Turnover
GARP	Active	Moderate

One Federal Street
Boston, MA 02109
Tel:(617) 563-7000
Fax:(617) 476-4125

Edward C. Johnson III owns controlling interest of Fidelity Management & Research Corp. The firm is responsible for managing the Fidelity Funds. Fidelity International Ltd. (U.K.) Fidelity Investment Management Ltd. (Hong Kong) and Fidelity Japan assist with foreign investments.

Equity Assets ($ MM)	[illegible]
Annual Portfolio Turnover	[illegible]
Number of Stocks Held	[illegible]
Investor Type	[illegible]

Key Contacts

Name	Title	Phone
David Feinman	Portfolio Manager	(617) 563-7611
Robert Haber	Vice President	(617) 563-6650
Robert Pozen	President	(617) 563-7703
Dwight Churchill	Vice President	(603) 791-3000

Positional History

Date	Position	Change	% Out
[illegible]	[illegible]	[illegible]	[illegible]
09/30/97	1,497,200	-349,500	1.73
06/30/97	1,846,700	-4,194,000	2.74
03/31/97	6,340,700	-1,875,000	7.65
12/31/96	8,415,700	-345,800	9.84
09/30/96	8,961,500	-	10.48
06/30/96	8,439,500	-1,791,000	9.35
03/31/96	7,230,500	773,100	8.44

Investment Approach

The investment process for Fidelity's equity disciplines is based on fundamental analysis. Analysts assess a stock's potential investment return based on dividend and earnings outlook. Quantitative screens supplement bottom-up equity research. Fidelity ultimately seeks superior projected long-term earnings growth and short-term momentum. The firm prefers companies that are not followed closely by other investors. Stocks that appear attractive under proprietary valuation disciplines are purchased. Due to its large asset size, the firm often holds large positions. Its active trading patterns often affect price, particularly for less liquid investments.

- Sell Criteria:

1) Perceived deterioration in the company or industry fundamentals;
2) Reduction in earnings or dividend growth forecasts;
3) Price appreciation causes excessive valuation.

- Decision-Making Process:

Fidelity's equity division consists of eight groups: Quantitative; Structured Investment; Income Growth; Asset Allocation Income; International; Capital Appreciation; Growth; and Specialized Growth. Portfolio managers conduct research specific to their product's investment strategy. The research staff supports the managers across disciplines. Because the firm places emphasis on visits with management, each manager receives a copy of what transpired between a Fidelity manager and a corporate manager.

Peer Ownership

Peer	12/97	09/97	06/97	03/97
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SOC	[illegible]	88	89	[illegible]
BDK	268	269	271	[illegible]
PG	<1	11	[illegible]	[illegible]
SWL	203	202	203	[illegible]
XRD	294	324	326	[illegible]
RTVL	-	-	-	-
Total	989	1,013	1,141	1,129
% Port	0.28	0.28	0.33	0.33

Industry Weightings

Largest Industry Holdings

Industry	S&P	% Port	$ Chg.*
Non-Bank Financial	1.5	12.3583	31.4.7
Energy	1.0	8.00660	-1,839.4
Banks & Thrifts	0.9	7.92145	1,577.0
High Tech - Hardware	0.8	7.91532	-9,761.4
Health Care	1.0	6.66902	488.2
Retail	1.8	6.33690	-1,098.3
Consumer Staples	1.1	3.96161	19.4
Machinery	1.0	4.93953	-1,579.5
High Tech - Software	1.0	4.30310	1,169.5
Consumer Cyclicals	2.4	3.70397	-3,768.0

Largest Industry Bets

Industry	S&P	% Port	$ Chg.*
Telephone-Long Dist.	1.2	1.81893	1,313.0
Banks & Thrifts	0.9	7.92145	1,577.0
High Tech - Software	1.0	4.30310	1,169.5
Drugs/Pharmaceut.	0.7	3.61790	1,058.3
Leisure Staples	0.9	1.89158	754.8

Largest Industry Sells

Industry	S&P	% Port	$ Chg.*
High Tech - Hardware	0.8	7.91532	-9,761.4
Consumer Cyclicals	2.4	3.70397	-3,768.0
Manufacturing	1.5	3.41854	-1,996.8
Aerospace/Defense	0.9	0.98167	-1,967.7
Energy	1.0	8.00660	-1,839.4

( ) = Relative to S&P 500 **Values in millions

Portfolio Distribution

by Market Capitalization

Consumer Cyclicals Holdings

Rank	Company	$ Mkt Val*	$ Chg.*	% Port
1	Omnicom Group Inc	1,003.0	-172.6	0.3
2	ITT Corporation	945.3	-487.9	0.3
3	Masco Corp	816.7	-131.4	0.2
4	Cognizant Corporation	810.5	-24.6	0.2
5	Lagardere S Plus Inc	462.8	-3.0	0.1
6	H & R Block Inc	442.1	82.8	0.1
7	Sensity Works	412.9	6.2	0.1
8	Maytag Corp.	402.2	-42.7	0.1
9	New Marriott Corp	371.6	-39.4	0.1
10	Black & Decker	363.7	-2.3	0.1
11	Ustil Inc.	340.6	-23.3	<.1
12	Outdoor Systems	307.6	-3.9	<.1
13	Service Corporation International	301.1	102.2	<.1
14	Hilton Hotels Corp	262.1	-46.1	<.1
15	Whirlpool Corp.	242.8	-69.0	<.1
16	Viad Corporation	242.0	>-.1	<.1
17	USG Corp	233.8	3.9	<.1
18	Fleetwood Enterprises Inc.	207.7	-12.6	<.1
19	Republic Industries Inc	202.5	-1.2	<.1
20	Circus Corp	192.6	-7.6	<.1
Consumer Cyclicals		8,154.8	-707.3	2.8

Portfolio Characteristics

	P/E	Yield	Price/E.s.E.P.S	$ yr EPS Gr. Proj.	ROE	Debt/Equity	P/B	Beta
Swanson-Omar Co	29.7	<.1	20.8	19.3	23.4	36.8	7.0	<.1
S & P 500	26.7	1.5	23.7	13.8	22.5	54.3	4.4	1.0
Institution	24.4	1.3	22.7	15.5	19.7	55.2	4.1	1.0
Consumer Cycli-	26.4	0.9	23.9	17.8	17.2	60.1	4.1	1.3

Consumer Cyclicals Adjustments

Top Buys	Mkt Val ($ MM)	Change ($ MM)
Service Corporation	301.1	102.2
H & R Block Inc.	442.1	82.8
LNR Prty Corp	51.3	51.3
Apollo Group Inc	100.8	42.9
Ogden Corp	137.4	39.5
Avis Rent A Car Inc	31.8	31.8
Oakwood Homes Corp	153.1	25.4
Ethan Allen Interiors Inc	25.5	17.6
Reuters Holdings plc -	31.3	17.3
Modevit Industries Inc	28.4	16.2
Total	1,375.0	436.8

Top Sells	Mkt Val ($ MM)	Change ($ MM)
MFS Inc	0.0	-1,397.3
Cendant Corp	0.0	-1,319.3
ITT Corporation	945.3	-487.9
Masco Corp	816.7	-131.4
Whirlpool Corp.	242.8	-69.0
Marriott International Inc	152.1	-52.4
Hilton Hotels Corp	262.1	-46.1
Maytag Corp.	402.2	-42.7
Swanson-Omar Co Inc	23.4	-39.9
New Marriott Corp	371.6	-39.4
Total	3,216.3	-3,625.6

NOT QUOTED OR CITED

MORGAN STANLEY & CO.

* Data as of 19971231

MORGAN STANLEY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018277

0017904

16div-023573

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

Sunbeam Corporation Equity Syndicate Voicemail Application

Management or Analyst Commentary Call-In #: 212-392-7424
Contributor's Mailbox & Password:

Mailbox #'s	Password #'s
33322	353196
33323	593174
33324	245721
33325	607555
33326	506034

The Syndicate Department will assign a contributor's mailbox and password number (noted above) to the individual making the presentation. Upon assigning the mailbox & password numbers, the caller may continue with the 9 steps listed below. Along with the contributor's mailbox and password numbers, the caller will be given a five digit *"Listen Only"* mailbox number, which will enable the Dean Witter retail sales force to listen to the caller's presentation. *The presentation cannot exceed ten (10) minutes*. While the presentation is in progress, if the caller is not satisfied with the presentation, press the (*) key to start over. To listen to the *completed* presentation dial 212-392-7424, enter *listen only* mailbox number (step #6 below) along with password #687749. The Law Department and Compliance Department request that no comments be made with regards to projections or earnings.

1. Dial the Morgan Stanley Dean Witter Voicemail System at 212-392-7424.
Prompt: "You have reached Morgan Stanley Dean Witter Voicemail processing system. If you have a mailbox number on this system, please press the # key now.

2. Press # key.
Prompt: "Mailbox number please." (33322)

3. Enter the five digit contributor mailbox number listed above.
Prompt: "Please enter your password." (353196)

4. Enter the six digit password associated with the contributor mailbox number listed above.
Prompt: "You have no new messages in your mailbox. Main menu. To send a message, press 2.

5. Press 2
Prompt: " At the tone, please record your message. When you have finished recording your message, press the # key.

6. Record your message! When you have finished recording your message, press the # key.
Prompt: " Please enter the destination mailbox number (33314) or spell the subscriber's name, press the # key.

7. Enter the appropriate *"Listen Only"* mailbox number, which has been assigned to the caller by the Equity Syndicate contact, listed in step #6.
Prompt: "To send your message now, press the # key. To specify future delivery press 4. To cancel destination press * key."

8. Press the # key.
Prompt: " Message sent, press * key if no more destinations or enter next destination now.

9. Press the * key.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

MORGAN STANLEY

017906

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SUNBEAM CORPORATION

Morgan Stanley Biographies

William H. Strong, *Managing Director*

William H. Strong is a Managing Director of Morgan Stanley & Co. Incorporated based in the Firm's Chicago office. Mr. Strong has responsibility for Morgan Stanley's corporate finance activities in the Chicago, Houston, Los Angeles, Montreal, San Francisco and Toronto offices.

Mr. Strong has been responsible for organizing numerous mergers, acquisitions and divestitures as well as capital raising transactions including initial public offerings, follow-on equity transactions, equity derivative transactions, high yield debt transactions and investment grade debt transactions. Recent noteworthy transactions completed by Mr. Strong include the initial public offerings of TeleTech Holdings, Omniquip International, LaSalle Partners and Midway Airlines; the $625 million secondary offering completed in early February 1998 for Fort James and representing Fort Howard Corporation in its $5.7 billion sale to James River Corporation of Virginia and successfully defending Chrysler Corporation from a $50 billion hostile takeover attempt by Kirk Kerkorian.

Prior to joining Morgan Stanley in January 1993, Mr. Strong was based in London and was Head of International Investment Banking and a member of the European Management Committee of Salomon Brothers International Limited. He was responsible for all investment banking functions and offices in Asia, Australia, Canada, Japan and Europe.

Mr. Strong graduated from Purdue University in 1973 with a Bachelor of Science degree and from Northwestern University in 1976 with a Master of Management degree. He also received a Certificate of Language from the University of Vienna in 1972.

Mr. Strong is a member of the National Association of Securities Dealers Inc., the American Institute of Certified Public Accountants, and the Illinois CPA Society. Mr. Strong is a member of the Board of Trustees of The Chicago Symphony Orchestra, where he chairs the Finance Committee, and The Bement School in Deerfield, Massachusetts. Mr. Strong is also a member of The Chicago Club and the Economic Club of Chicago.

Andrew B. Savarie, *Vice President*

Andrew Savarie joined the Firm in 1991 as a Summer Associate and, after completing graduate school, rejoined the Firm in 1992 as an Associate in the Mergers & Acquisitions Department in New York. Since joining the Firm, he has executed a wide variety of financing transactions as well as a number of M&A and advisory assignments across a number of different industries. In the summer of 1994, he joined the Corporate Finance Department in Chicago where he now works with clients across a broad range of industry areas. Prior to attending business school, Mr. Savarie served as an Officer in the United States Air Force for four years. Mr. Savarie received his B.S.E. in Electrical Engineering from Duke University in 1986, and a Masters of Management degree (with distinction) from Northwestern's J.L. Kellogg School of Management in 1992, where he graduated as an Austin Scholar.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SUNBEAM CORPORATION

Morgan Stanley Biographies
(continued)

Alexandre J. Fuchs, *Vice President*

Alexandre J. Fuchs is a Vice President in the Mergers, Acquisition & Restructuring Department at Morgan Stanley. He joined the Firm in April of 1994 from Wasserstein Perella & Co., Inc. Prior to that, he worked as an analyst at Salomon Brothers. He is currently a member of the Strategic Development Group, where he focuses on the coverage of financial buyers and food and consumer products companies. During his nine years of investment banking experience, Mr. Fuchs has advised such clients as Kohlberg, Kravis & Roberts, AEA Investors, Safeway, Inc., Daimler Benz, Tommy Hilfiger, and Georgia-Pacific.

Mr. Fuchs graduated cum laude from Boston University in 1988 with degrees in economics and finance. He received an M.B.A. from the Amos Tuck School at Dartmouth College in 1992 where he was a Tuck Scholar..

Shani R. Boone, *Analyst*

Shani Boone joined the Firm in July 1997 as an Analyst in Morgan Stanley's Investment Banking Department. Prior to that, she worked as a Summer Analyst in the Global Loan Syndications Group at Chase Securities, Inc.

Ms. Boone received a Bachelor of Arts degree in Economics with a Minor in Mathematics from Spelman College, Atlanta, Georgia, in 1997.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

FOR IMMEDIATE RELEASE

Sunbeam States that First Quarter Revenues
May Be Lower than Street Estimates

Delray Beach, Florida; March 19, 1998 - - Sunbeam Corporation (NYSE: SOC) said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Sunbeam Corporation is a leading consumer products company that designs, manufactures and markets, nationally and internationally, a diverse portfolio of brand name products. The Company's Sunbeam® and Oster® brands have been household names for generations, both domestically and abroad, and the Company is a market leader in many of its product categories.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018283

0179110

16div-023579

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Annual Report or From 10-K for its fiscal year ended December 31, 1997, filed with the Securities and Exchange Commission.

Contact:

Richard Goudis
(561) 243-2100

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 001828

1791

16div-023580

Gary - re Breakfast meeting - Time? - w Hardy?
- update on Frank; Time

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018285

017912

Kevin fax 212-761-0537
Alan 212 418-4990
David 212 735-3597

January Consolidated Net Sales Actual	29.0
February Consolidated Net Sales Actual	43.0
March International Net Sales thru 3/15/98(1)	6.9
March International Net Sales Forecast 3/16/98 thru 3/29/98 (1)	39.5
March Domestic Net Sales thru 3/17/98 (2)	22.7
March Domestic Open Orders @ 3/17/98 Net Sales (2)	27.8
	168.7

Potential Orders	
Home Depot	14.8
Menard's	11.7
WalMart	9.4
Sears	7.5
Costco	4.0
Service	3.3
Lowes	2.7
KMart	2.5
PHD	2.3
Hills	2.3
QVC	2.2
Caldor	2.1
M-Bloc	2.0
Target	1.7
Ward's	1.4
Scotty's	1.1
Rose's	0.8
Bradlees	0.8
AAFES	0.7
Ames	0.7
Pergament	0.6
Amer Drug	0.5
BJ's	0.5
Other	10.4
	86.0

	86.0		
subTotal	254.7	0.5%	% multiply
Low	267.0	5.3%	
High	293.0	15.6%	
plan Q1'98	253.5		

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

SB 0018287

PROJECT LASER

Revised Key Synergies Assumptions

	Item	Original	Rev. (12/97)	Rev. (1/98)	Comments
	Cost Related:				
1.	Transfer BBQ Licensee: $75MM sales @ 20%	$15.0MM	$10.0MM	$10.0MM	Disagreement on sales pick up; Licensee came to competitor; lost royalty,
	Lost Royalties	(2.0MM)	(2.5MM)	(2.0MM)	but pick up incremental sales (1/3 of $40MM) @ 25% margin
		$13.0MM	$12.5MM	$8.0MM	
2	Synergies Re CO BBQ (camping biz)		2.5MM ✓		
	$150MM sales @ 10%	$1.5MM	$1.5MM ?	$1.5MM	OK Maybe double counted ??
3.	Corporate Staff	$15.0MM	$15.0MM ✓	$15.0MM	Intercompany costs; payments from co. to parent; WH Maybe related staff
4.	International Group Staff	$2.0MM	$2.0MM ✓	$2.0MM	Intercompany costs; payments from co. to parent
5.	Latin America Staff	$2.0MM	$2.0MM ✓	$2.0MM	Elimination of Latin America staff
6.	Factory Outlet Staff	$1.0MM	$0.0MM	$0.0MM	Overhead of Boston HQ; No $1MM in factory staff
7.	Related to Consolidation of HQ and Subsidiaries:				
	Corp Selling - Variable	$3.7MM			Expense of $11MM, assumed 33% savings
	- Fixed	$7.0MM	7.0		Expense of $14MM, assumed 50% savings
	Corp MIS	$3.5MM	$3.0MM ✓	$3.0MM	Expense of $7MM, assumed 50% savings; Can cut Cooper MIS costs from $7-
					$8MM (excluding CapEx) by $3.0MM
	Corp Marketing	$4.3 $4.0MM			Expense of $8.5MM, assumed 50% savings 50%
	Corp Advertising	$0.0MM			Expense of $1.0MM, assumed 0% savings
	Corp Consumer Support (Co-op)	$0.0MM			Expense of $17.2MM, assumed 0% savings
	Corp Distribution	$4.0MM			Expense of $17.5MM, assumed 23% savings
	Corp Other G&A	$2.0MM	No. 5		Expense of $30MM, assumed 50% savings
		$49.0MM	$41.0MM	$12.0MM	Originally totaled $31MM - now Maybe down to $49MM
8	Eliminate $70MM Oracle Expense	$0.0MM	$0.0MM	($5.0MM)	Cooper's planned spending; reconcile they have no idea what our costs might
	(1-Year Impact)				be - agreed to $60MM; Lease is further down the curve; can be done but not for
					free; also Year 2000 Problem; synergies we bring to them - not they bring to us
9	Global Sourcing Raw Materials	$10.0MM	$5.0MM ?	$5.0MM	Est. rule, at 1% of Lasco sales; Cut in half should be higher $12.5m purchased
10	Consolidation (Logistics/Warehousing/Facilities)	$30.0MM	$5.0MM X	$5.0MM	Est. rule, at 1% of Lasco sales; Cut in half, nothing here for facilities in Asia
					consolidation for ops
	Total	$103.5MM	$81.5MM	$61.5MM	
	Revenue Related:				
1	C Europe Network Sells S Products				Use Cooper European infrastructure (estimate); Can't count revenue
	$100MM sales @ 20%	$10.0MM	$20.0MM	$15.0MM	synergies; Lasco does not have much to cut on cost side
2.	C Japan Network Sells S Products				Use Cooper Japan infrastructure (estimate); Do not yet have to tell recent
	$75MM Sales @ 20%	$5.0MM	$5.0MM	$0.0MM	joint venture in Japan
3	S Catalytic Appliance Line				New product line; High tech outdoor cooking
	$10MM Sales @ 20%	$2.0MM	$1.0MM	$2.0MM	
4.	Total	$17.0MM	$26.0MM	$15.0MM	
	Grand Total	$120.5MM	$107.5MM	$67.0MM	

5. S Latin America Sells C products
10-50% @ 15%

(4) 2.

$98.9

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

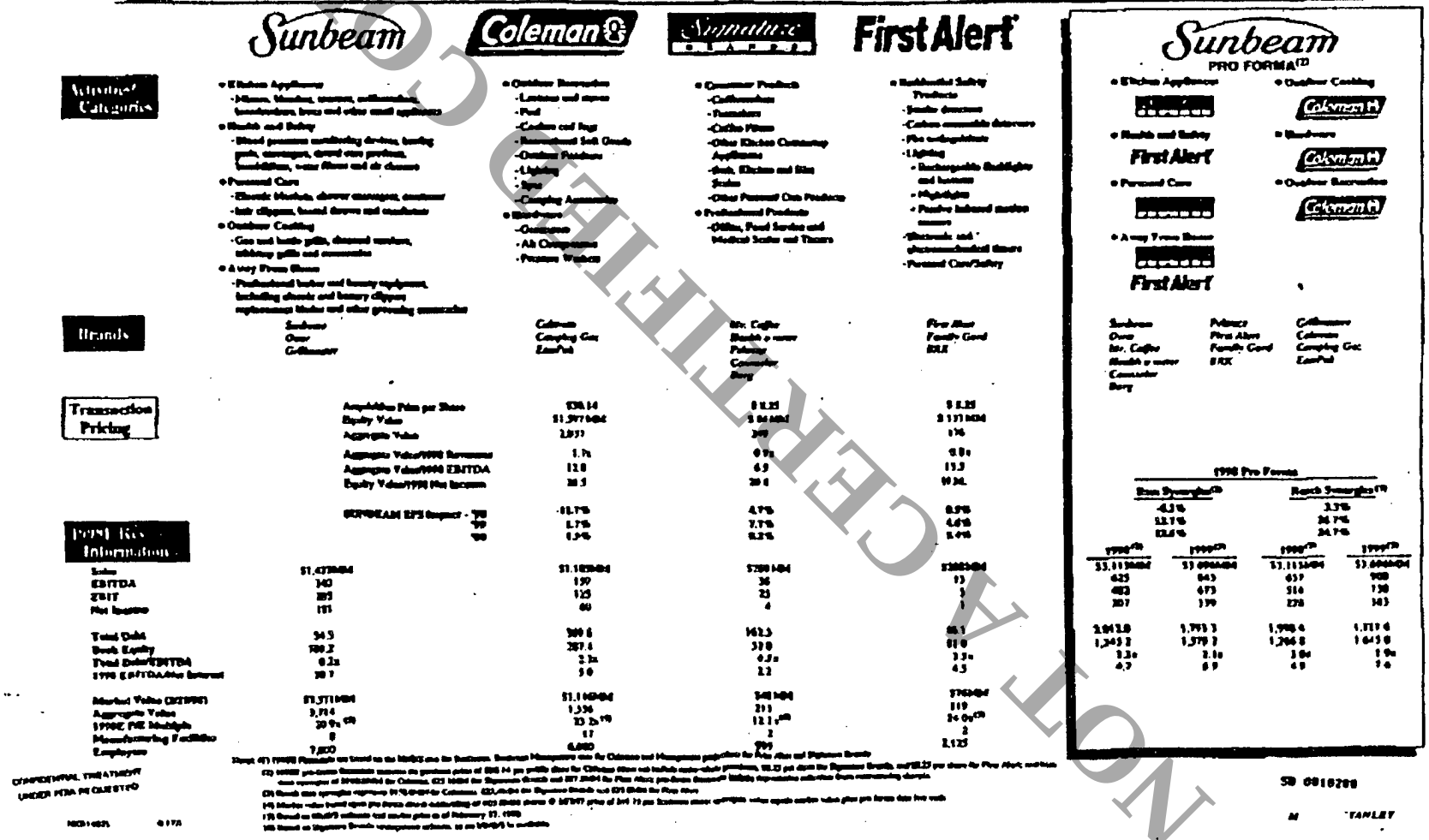
03/11/98 WED 12:38 FAX 301 243 2107 SBA, INC. 002

916710

16div-023583

16div-023584

SUNBEAM CORPORATION



NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT REQUESTED UNDER 17 CFR 240.24b-2

SB 0016289

M PAWLEY

017915

ARTHUR ANDERSEN

To: The Files, West Palm Beach

From: Lawrence A. Bornstein, West Palm Beach

Date: March 31, 1998

Subject: Discussion of Conversation with Representatives of Morgan Stanley During Sunbeams March 19, 1998 Drafting Session on their $2,014,000,000 Zero Coupon Bonds

---

The purpose of this memo is to document discussions held with Sunbeam, Sunbeam's counsel, Morgan Stanley and Morgan Stanley's Counsel during the drafting session held in New York for the final pricing of Sunbeams $2,014,000 zero coupon bonds. As part of our post audit review it became apparent that the Company's sales for the first two months of 1998 were significantly lower than the prior year. (Approximately $70 million vs. $140 million) We communicated to Bob Gluck, controller that this information would be supplied to the underwriter as part of our comfort letter. Upon review of the comfort letter and the offering document Phil Harlow, partner, Bill Pruitt, concurring partner and myself told Mr. Gluck on March 16, 1998 that that the decrease in sales from the prior year and that the potential for the Company to not meet analysts expectations of gross sales for the first quarter of 1998 was material and that this information would need to be disclosed in the updated offering document to be priced on March 19.

On March 19, the Company issued a press release without consultation with AA stating that the first quarter sales were not going to reach the expected $290-295 million but would still exceed prior year first quarter of $254 million.

On the evening of March 19, we attended a drafting session at Global Financial Press in New York. In attendance at the drafting session were as follows: Myself, Mark Brockleman, Arthur Andersen, John D. Tyree, Morgan Stanley, James Lurie, Davis Polk and Wardwell, Todd Freed, Skadden Arps and Adrian J.S. Deitz, Skadden Arps. I inquired with James Lurie what disclosure was going to be put in the offering document and he stated that the disclosure to be made in the recent development section would be the exact wording included in the Company's press release ~~would~~ be made. I told Mr. Lurie that the caveat that the Company would still exceed prior year first quarter sales was a forward looking statement and was not appropriate for an offering document and that I would need to discuss this matter with Phil Harlow.

I discussed the issue via telephone with Phil Harlow, who agreed that based on the known sales to date it would be very difficult to meet the sales estimates stated in the press release, and it was a risk to disclose it in the offering document. I discussed with Phil the sales estimate provided to Morgan Stanley (see attached) which showed booked sales through March 17 of approximately $100 million and a projected sales by customer to achieve the $254 million target. Mr. Harlow and I contacted Bob Gluck via the telephone and explained that the Company should only state in the offering document that sales would be less that $290-295 million. We explained that the Company only had ten days left in the quarter and that they would need to

NOT A CERTIFIED COPY

EXHIBIT
tabbies
CPH 114
1-13-04

Date: March 31, 1998

Subject: Discussion of conversation with representatives of Morgan Stanley dur... Sunbeams March 19 Drafting session on their $2,014,000,000 zero coupo... bonds

ship $15 million a day for the remainder of the quarter vs. $1 -1.5 million a day for the first 80 days of the quarter. Mr. Gluck agreed with our recommendation, however, he stated we should discuss it with David Fanin, inhouse counsel and Russ Kersh, CFO. I discussed the issue with Adrian J. S. Deitz, Skadden Arps, who discussed it with John Tyree and James Lurie.

Mr. Tyree and Mr. Lurie were very upset at the issue at hand and questioned me on whether I thought the Company would meet their sales target. I stated that I did not know, but I was trained to use healthy skepticism and that I thought it would be difficult. I again stated that is was AA recommendation to eliminate the statement about exceeding the prior year first quarter sales. I recommended that if they were to leave in the full press release that it should be cross-referenced to risk factors and forward-looking statements in the prospectus.

Mr. Harlow spoke with Mr. Fanin and Mr. Kersh as well as Janet Kelly, in-house counsel and was informed that the Company determined that they had to include the entire press release in the offering document.

Mr. Harlow strongly recommended that the reference to exceeding Q-1 from 1997 was not a wise disclosure to make because it represented a real "stretch" to achieve. Mr. Harlow was told that Don Izzi, V.P. Sales, was "very confident" of making the sales number.

LAB

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027049

AAR015039
Confidential Treatment Requested
by Arthur Andersen LLP

16div-023586

Ruth [illegible] 212 450-4990
Alan
David 212 735-3597

January Consolidated Net Sales Actual		29.0
February Consolidated Net Sales Actual		43.0
March International Net Sales thru 3/15/98(1)		6.9
March International Net Sales Forecast 3/18/98 thru 3/29/98 (1)		39.5
March Domestic Net Sales thru 3/17/98 (2)		22.7
March Domestic Open Orders @ 3/17/98 Net Sales (2)		27.6
		168.7

Potential Orders

Home Depot	14.8	
Menard's	11.7	
WalMart	9.4	
Sears	7.5	
Costco	4.0	
Service	3.3	
Lowes	2.7	
KMart	2.5	
PHD	2.3	
Hills	2.3	
QVC	2.2	
Caldor	2.1	
M-Bloc	2.0	
Target	1.7	
Ward's	1.4	
Scotty's	1.1	
Rose's	0.8	
Bradlees	0.8	
AAFES	0.7	
Ames	0.7	
Pergament	0.6	
Amer Drug	0.5	
BJ's	0.5	
Other	10.4	
	85.0	88.0

subtotal	254.7	0.5%	% multiply
Low	267.0	5.3%	
High	293.0	15.6%	
plan Q1'97	253.5		

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

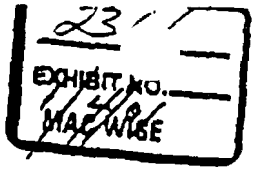
NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0027050

0017019

AAR015040
Confidential Treatment Requested
by Arthur Andersen LLP

16div-023587



MORGAN STANLEY

MORGAN STANLEY & CO.
INCORPORATED
ONE FINANCIAL PLACE
440 SOUTH LA SALLE STREET
CHICAGO, IL 60605
(312) 706-4000

September 5, 1997

NOT A CERTIFIED COPY

PERSONAL AND CONFIDENTIAL

CPH 70
DEP. EX. NO.
FOR ID., AS OF CB 12/4/03

Mr. Albert J. Dunlap
Chairman and Chief Executive Officer
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445

Dear Al:

Pursuant to our recent discussions, I am pleased to confirm the arrangements under which Morgan Stanley & Co. Incorporated ("Morgan Stanley") is engaged by Sunbeam Corporation ("Sunbeam") in connection with the proposed sale or merger of Sunbeam (the "Company") to or with another corporation (a "Sale Transaction"), and/or the possible acquisition of one or more entities (an "Acquisition Transaction").

During the term of our engagement we will provide you with financial advice and assistance in connection with these transactions, including advice and assistance with respect to defining objectives, performing valuation analysis, and structuring, planning and negotiating the transaction. We also will provide, as and when requested by you, an opinion to the Company's Board of Directors as to the fairness from a financial point of view of a Sale Transaction or an Acquisition Transaction to the Company's shareholders.

If a Sale Transaction is consummated, we will charge a "Sale Transaction Fee" of 0.425% of the Sale Transaction's Aggregate Value. The "Aggregate Value" of the Sale Transaction shall be the value of the consideration paid for the Company's common equity (or, in the case of a sale of assets, the consideration paid for such assets), plus the value of any debt, capital lease, and preferred stock obligations of the Company assumed, retired, or defeased in connection with the Sale Transaction. Any amounts to be paid by the buyer contingent upon future events shall be estimated for purposes of the Sale Transaction Fee calculation at an expected value mutually agreeable to you and to us at the time of closing, except that amounts held in escrow shall be deemed paid at closing.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 237825

The full Sale Transaction Fee in connection with a completed Sale Transaction will become payable and is to be paid by Sunbeam when control of 50% or more of the Company's common stock changes hands. Nevertheless, our advisory efforts pursuant to this letter will continue after control is obtained to assist you with a second step merger or similar transaction.

Any advice or opinions provided by Morgan Stanley may not be disclosed or referred to publicly or to any third party except in accordance with our prior written consent. Notwithstanding the foregoing, advice and opinions given by Morgan Stanley to the Company's Board of Directors may be disclosed in any disclosure document provided to the Company's shareholders that is required by the federal securities laws, provided that any such disclosure shall be reasonably satisfactory to Morgan Stanley and its counsel.

In the event the Company enters into a definitive agreement providing for a Sale Transaction, we will charge an "Exposure Fee" of $3,000,000. The Exposure Fee is intended to compensate us for publicly associating Morgan Stanley's name as a financial advisor with the Sale Transaction, for Morgan Stanley's contribution to the parties' reaching an agreement, or both. The Exposure Fee will be credited against the Sale Transaction Fee.

If an Acquisition Transaction is consummated, we will charge an Acquisition Transaction Fee calculated as a percentage of the Aggregate Value (as previously defined) of the Acquisition Transaction as follows:

Aggregate Value of Acquisition Transaction ($MM)	Acquisition Transaction Fee Percentage
$ 500	0.875%
1,000	0.540
1,500	0.510
2,000	0.480
3,000	0.450
Greater than 3,000	0.425

For an Acquisition Transaction in which the Aggregate Value is between two values shown in the above fee schedule, the Acquisition Transaction Fee Percentage applicable is determined by interpolation between the two nearest Acquisition Transaction Fee Percentages.

In the event the Company enters into a definitive agreement providing for an Acquisition Transaction, we will charge an Acquisition Exposure Fee equal to 25% of the estimated Acquisition Transaction Fee. The Acquisition Exposure Fee paid will be credited against the Acquisition Transaction Fee.

If the Company issues non-cash consideration in an Acquisition Transaction or receives non-cash consideration in a Sale Transaction, for purposes of computing the Acquisition Transaction Fee or the Sale Transaction Fee, non-cash consideration shall be valued as

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

16div-023589

follows: (x) publicly traded securities shall be valued at the average of their closing prices (as reported in The Wall Street Journal) for the ten trading days prior to the closing of a transaction and (y) any other non-cash consideration shall be valued at the fair market value thereof as determined in good faith by mutual agreement of the Company and Morgan Stanley

If, in connection with this assignment, Sunbeam effects a repurchase of or a public sale or private placement of equity, preferred or debt securities or Sunbeam effects real estate financings, asset or property sales, and Sunbeam requires investment banking services in connection therewith, Sunbeam agrees to offer to retain Morgan Stanley on mutually agreeable terms to assist it with such transaction. In addition, if in connection with this assignment, Sunbeam effects any interest rate, equity-related or currency hedges or currency conversions, including but not limited to currency transactions on a spot, forward or option basis, Sunbeam agrees to offer to retain Morgan Stanley on mutually agreeable terms to assist it with such transaction.

In addition to our fee for professional services, we will separately bill our documented out-of-pocket expenses as incurred, not to exceed $250,000 per transaction payable at the conclusion of each transaction. Generally these expenses include travel costs, document production and other expenses of this type. The reasonable fees of outside counsel and other professional advisors, should they be engaged with your consent, will be billed as incurred and are not subject to the $250,000 limit per transaction.

Morgan Stanley will act under this letter agreement as an independent contractor with duties solely to Sunbeam. Because we will be acting on your behalf in this capacity, it is our practice to receive indemnification. A copy of our standard indemnity form is attached to this letter.

Please note that Morgan Stanley is a full service securities firm engaged in securities trading and brokerage activities, as well as providing investment banking, financing, and financial advisory services. In the ordinary course of our trading, brokerage, and financing activities, Morgan Stanley or its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for our own account or the accounts of customers, in debt or equity securities or senior loans of Sunbeam or any other company that may be involved in this transaction.

The term of our engagement under this letter shall commence on the date hereof and continue for 12 months after the date hereof, unless extended by mutual consent. Our services hereunder may be terminated with or without cause by you or by us at any time and without liability or continuing obligation to you or to us (except for any compensation earned and expenses incurred by us to the date of termination or date of expiration and except, in the case of termination by you or expiration of our engagement, for our right to fees pursuant to this letter for any transactions effected within one year of such termination or expiration of our engagement) and provided that the indemnity provisions will remain operative regardless of any such termination.

Morgan Stanley and Sunbeam (on its own behalf and, to the extent permitted by law, on behalf of its shareholders) each waives any right to trial by jury in any action, claim, suit or

NOT AGREED TO

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

16div-023590

proceeding with respect to Morgan Stanley's engagement as financial advisor or its role in connection herewith.

If the terms of our engagement as set forth in this letter are satisfactory, kindly sign the enclosed copy of this letter and indemnification form and return them to us.

We look forward to working with Sunbeam on this very important assignment.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: _____
William H. Strong
Managing Director

Accepted:

SUNBEAM CORPORATION

By: _____

Title: _____

Date: 9-11-97

Enclosure

NOT A CERTIFIED COPY

011924

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Gentlemen:

This letter will confirm that we have engaged Morgan Stanley & Co. Incorporated to advise and assist us in connection with the matters referred to in our letter agreement dated September 5, 1997 (the "Engagement Letter"). In consideration of your agreement to act on our behalf in connection with such matters, we agree to indemnify and hold harmless you and your affiliates and your and their respective officers, directors, employees and agents and each other person, if any, controlling you or any of your affiliates (you and each such other person being an "Indemnified Person") from and against any losses, claims, damages or liabilities related to, arising out of or in connection with the engagement (the "Engagement") under the Engagement Letter, and will reimburse each Indemnified Person for all expenses (including fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing or defending any action, claim, suit, investigation or proceeding related to, arising out of or in connection with the Engagement, whether or not pending or threatened and whether or not any Indemnified Person is a party. We will not, however, be responsible for any losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the bad faith or gross negligence of any Indemnified Person. We also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to us for or in connection with the Engagement except for any such liability for losses, claims, damages or liabilities incurred by us that are finally judicially determined to have resulted from the bad faith or gross negligence of such Indemnified Person.

RIDER

We will not, without your prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claims, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes a release of each Indemnified Person from any liabilities arising out of such action, claim, suit or proceeding. No Indemnified Person seeking indemnification, reimbursement or contribution under this agreement will, without our prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding referred to in the preceding paragraph.

If the indemnification provided for in the first paragraph of this agreement is judicially determined to be unavailable (other than in accordance with the terms hereof) to an Indemnified Person in respect of any losses, claims, damages or liabilities referred to herein, then, in lieu of indemnifying such Indemnified Person hereunder, we shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (and expenses relating thereto) (i) in such proportion as is appropriate to reflect the relative benefits to you, on the one hand, and us, on the other hand, of the Engagement or (ii) if the allocation provided by clause (i) above is not available, in such proportion as is appropriate to reflect not only the relative benefits referred to in such clause (i) but also the relative fault of each of you and us, as well as any other relevant equitable considerations; provided, however, in no event shall your aggregate contribution to the amount paid or payable exceed the aggregate amount of fees actually received by you under the Engagement Letter. For the purposes of this agreement, the relative benefits to us and you of the Engagement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid or received or contemplated to be received by us or our stockholders, as the case may be, in the transaction or transactions that are the subject of the Engagement, whether or not any such transaction is consummated, bears to (b) the fees paid or to be paid to you under the Engagement Letter.

The provisions of this agreement shall apply to the Engagement and any modification thereof and shall remain in full force and effect regardless of any termination or the completion of your services under the Engagement Letter.

This agreement and the Engagement Letter shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed in and to be performed in that state.

Very truly yours,
SUNBEAM CORPORATION

By _____
David C. Fannin
Executive Vice President
General Counsel

Accepted:

MORGAN STANLEY & CO. INCORPORATED

By _____

Date: September 5, 1997

9/5/97

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 237829

NOT ACCEPTED

16div-023592

Rider to Indemnification Agreement with Sunbeam Corporation

We shall be entitled to participate at our own expense in the defense of any Action brought to enforce any claim or liability of any Indemnified Person resulting from any such Action and, if we so elect, we shall be entitled to assume the defense of such Action at our expense, including the employment of counsel (in which case we shall not thereafter be responsible for the fees, costs and expenses of any separate counsel retained by an Indemnified Person); provided, however, that such counsel shall be satisfactory to an Indemnified Person in the exercise of its reasonable judgment. Notwithstanding the foregoing, an Indemnified Person shall have the right to employ separate counsel in the defense of an Action, and we shall bear the reasonable fees, costs and expenses of such separate counsel if (a) the use of counsel chosen by us to represent the Indemnified Person would present such counsel with a conflict of interest; (b) the representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them; (c) we shall not have employed counsel satisfactory to the Indemnified Person in the exercise of the Indemnified Person's reasonable judgment to represent the Indemnified Person, within a reasonable time after notice of the institution of such Action; or (d) we authorize the Indemnified Person to employ separate counsel at our expense. In no event shall we be responsible hereunder for the fees and expenses of more than one counsel for any Indemnified Person in connection with an Action in the same jurisdiction.

NOT A CERTIFIED COPY

011926

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

MATERIAL REDACTED

Matter	Matter Name	Personnel Type	Name	Tran Date	Bill Hrs	Narrative
17	Rule 144A	Partner	Chilstrom RM	3/23/1998	0.90	CONF. W. FERNICOLA; CALLS W. DEITZ; REVIEW & REVISION OF OPINION.
17	Rule 144A	Partner	Deitz AS	3/3/1998	4.00	CONFERENCE CALL. DISCUSS [redacted] T. FREED, B. WEISS. DISCUSS [redacted], T. FREED. REVIEW DRAFT 97 10-K. REVIEW BACKGROUND DOCUMENTS.
17	Rule 144A	Partner	Deitz AS	3/4/1998	1.50	DISCUSSION OF [redacted] CONTENTS T. FREED, [redacted] REVIEW OUTLINE AND DRAFT 10-K LANGUAGE.
17	Rule 144A	Partner	Deitz AS	3/5/1998	2.50	DISCUSSION G. FERNICOLA, T. FREED. PREPARE CAPITALIZATION TABLE FOR OM. REVIEW DRAFT OM. DISCUS T. FREED.
17	Rule 144A	Partner	Deitz AS	3/6/1998	0.75	DISCUSS [redacted] T. FREED. MARK UP PRO FORMA SECTION.
17	Rule 144A	Partner	Deitz AS	3/8/1998	2.00	REVIEW AND COMMENT ON DRAFT OM.
17	Rule 144A	Partner	Deitz AS	3/9/1998	9.50	ATTEND DRAFTING SESSION AT SASM&F WITH MORGAN STANLEY AND DAVIS POLK. REVISE RISK FACTORS AND OTHER SECTIONS OF DRAFT OM. DISCUSS T. FREED.
17	Rule 144A	Partner	Deitz AS	3/10/1998	4.00	DRAFT PORTIONS OF OM. DISCUSS PRO FROMUS G. FERNICOLA, T. FREED. FIRST ALERT DILIGENCE CALL. T/C/W AAS RE PRO FROMAS. DISCUSS OM T. FREED.
17	Rule 144A	Partner	Deitz AS	3/11/1998	1.50	DISCUSS OM T. FREED. MEETING G. FERNICLA, T. FREED. T/C/W B. WEISS.
17	Rule 144A	Partner	Deitz AS	3/12/1998	1.00	REVIEW 10-K QS FOR COLEMAN, SIGNATURE BRANDS AND FIRST ALERT. DISCUSS [redacted] WITH G. FERNICOLA.
17	Rule 144A	Partner	Deitz AS	3/14/1998	17.00	ATTEND PRINTERS TO PRINT RED.
17	Rule 144A	Partner	Deitz AS	3/16/1998	7.00	DISCUSS DTC AND RESOLUTIONS WITH T. FREED. REVIEW AND COMMENT ON PURCHASE AGREEMENT. REVIEW COMMENTS AN OPINION OF G. FERNICOLA AND PREPARE FORM OF SKADDEN OPINION. DISTRIBUTE COMMENTS TO SUNBEAM. DISCUSS TAX OPINION B. WEISS.
17	Rule 144A	Partner	Deitz AS	3/17/1998	5.00	DISCUSS T. FREED RESOLUTIONS. DISCUSS OPINION G FERNICOLA. DISCUSS PURHASE AGREEMENT J. KELLEY REVISE COMMENTS AND DISTRIBUTE TO WORKING GROUP. REVIEW NYSE LISTING DOCUMENTS.
17	Rule 144A	Partner	Deitz AS	3/19/1998	22.00	REVIEW OFFERING MEMORANDUM FOR FINAL. T/C/W J. KELLEY RE PURCHASE AGREEMENT. REVIEW REVISED PURCHASE AGREEMENTS. T/C/W J. LURIE RE INDENTURE AND PURCHASE AGREEMENT. NEGOTIATE OPINIONS AND PURCHASE AGREEMENT WITH DAVIS POLK. DISCUSSION WITH B. CHILSTROM, G. FERNICOLA RE OPINION. DISCUSS T. FREED RESOLUTIONS AND PREPARE RESOLUTIONS. ATTEND PRINTERS TO PRINT FINAL OM. DISCUSS PRESS RELEASE. PRICING DUE DILIGENCE CALL.
17	Rule 144A	Partner	Deitz AS	3/20/1998	6.00	DISCUSS [redacted], GREGG FERNICOLA. DISCUSS OPINION GREG FERNICOLA. REVISE FROM OF OPINION OF J. KELLEY. DISCUSS [redacted], G. FERNICOLA, GARTLAND, J. LURIE AND A. DEAN.
17	Rule 144A	Partner	Deitz AS	3/21/1998	3.00	REVIEW AND COMMENT ON CLOSING MEMO. REVIEW AND COMMENT ON EMMET, MARVINS COMMENTS ON INDENTURE. T/C/W S. COHEN, WACHTELL RE COLEMN 10-K
17	Rule 144A	Partner	Deitz AS	3/22/1998	2.50	T/C/W S. COHEN, WACHTELL RE COLEMAN 10-K. REVIEW AND COMMENT ON DRAFT REGISTRATION RIGHTS AGREEMENT.

NOT A CERTIFIED COPY

CONFIDENTIAL

SASMF 19679

16div-023594

Ruth fax 212-761-0538

Alan 212 450-4990

David 212 735-3597

January Consolidated Net Sales Actual		29.0
February Consolidated Net Sales Actual		43.0
March International Net Sales thru 3/15/98(1)		6.9
March International Net Sales Forecast 3/16/98 thru 3/29/98 (1)		39.5
March Domestic Net Sales thru 3/17/98 (2)		22.7
March Domestic Open Orders @ 3/17/98 Net Sales (2)		27.6
		168.7
Potential Orders		
Home Depot	14.8	
Menard's	11.7	
WalMart	9.4	
Sears	7.5	
Costco	4.0	
Service	3.3	
Lowes	2.7	
KMart	2.5	
PHD	2.3	
Hills	2.3	
QVC	2.2	
Caldor	2.1	
M-Bloc	2.0	
Target	1.7	
Ward's	1.4	
Scotty's	1.1	
Rose's	0.8	
Bradlees	0.8	
AAFES	0.7	
Ames	0.7	
Pergament	0.6	
Amer Drug	0.5	
BJ's	0.5	
Other	10.4	
	86.0	86.0
	subtotal	254.7 0.5%
	Low	267.0 5.3%
	High	293.0 15.6%
	plan Q1'97	253.5

(1) Estimated waterfall of 7%
(2) Estimated waterfall of 10%

NOT A CERTIFIED COPY

EXHIBIT
CPH-121
RWB 1-15-04

LAB 000043
Confidential Treatment Requested

To: William Biese
cc:
From: Larry A. Bomstein
Date: 03/21/98 09:03 AM
Subject: Re: Sunbeam

Bill , how are things. It has been crazy at Sunbeam given there recent activity. I assume you have heard that they are buying Coleman, First Alert and Signature Brands valued at approximately $2.5 Billion. It looks like we are going to have alot more work in Mexico.

Please be advised that we anticipate having your team perform a limited quarterly review, with emphasis on cutoff procedures. The Company just released an early warning to the street that sales are not going to meet expectations of $285-295 million for the quarter. In fact they are at only $72 million at March 1. As you can see there will be a big push on sales, and we have been told they plan on having Bill -and - Hold transactions.

Finally , we have not seen your blue back report nor the report on the special work performed by your BSC group. Thanks

Categories:
©1998 Arthur Andersen. All Rights Reserved. For Internal Use Only.

Printed By: Rosemary A. Alberto

NOT A CERTIFIED COPY

0117332

EXHIBIT
CPH-118
RWG 1-15-04

AA120304 Confidential Treatment Requested by Arthur Andersen LLP

To: Larry A. Bornstein
cc:
From: Dennis Pastrana
Date: 03/24/98 01:21 PM
Subject: cut off testing

Take a look at this & call me asap. I have to go over this with Bob & Al Lefever who's leaving town today
Revised draft of bring down letter will follow, but look at this first.

cutoff test.do

Categories:
©1998 Andersen Worldwide SC All Rights Reserved For Internal Use Only.

Printed By: Rosemary A Alberto

NOT A CERTIFIED COPY

017934

EXHIBIT
CPH- 119
DWB 1-15-04

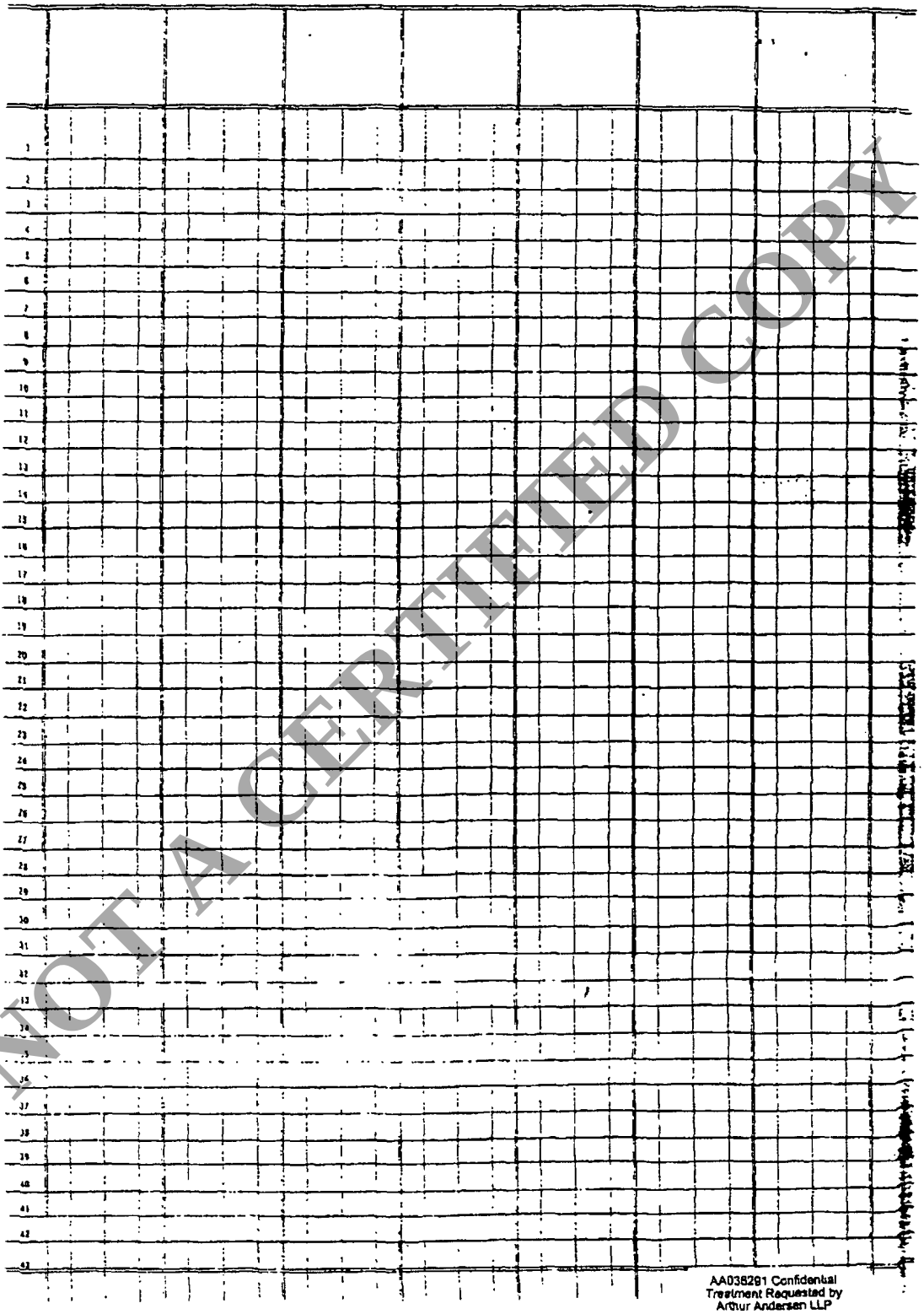
AA055758 Confidential Treatment Requested by Arthur Andersen LLP

SUNBEAM CORP

SHIPPING OUTLOOK OBSERVATION

R. 3/31/98

MET 4/98



AA036291 Confidential Treatment Requested by Arthur Andersen LLP

NOT A CERTIFIED COPY

017935

NOT A CERTIFIED COPY

017936

AA036292 Confidential Treatment Requested by Arthur Andersen LLP

Sunbeam – Shipping cut-off observation instructions
March 29, 1998

General Information:

Although the information that follows is public information, it is summarized here for your use only and is not to be shared with client personnel at the facilities you visit

Sunbeam's first quarter of fiscal 1998 will end on March 29, 1998 (the Sunday closest to the end of the month) As of March 1, 1998, the Company reported sales of approximately $72 million vs $143 million for the corresponding period of the preceding year Despite this decrease, management has announced to the public that it expects first quarter sales for 1998 to exceed first quarter 1997 sales of $253 5 million *That means that the Company expects to ship over $181 million (>70% of expected sales for the quarter)* in the month of March

Inventory locations:

Location	Address	Contact	Type of facility
Hattiesburg AMCD	95 Runnells Industrial Dr Hattiesburg, Miss	David Aslin 601-296-5067	Company-operated
Hattiesburg North	Near Hattiesburg AMCD	David Aslin 601-296-5067	Company-operated
Neosho, MO	4101 Howard Bush Dr Neosho, MO 64850	Mitch Long 1-800-641-4500 ex 1120	Company-operated
National Dist Center	1410 Goodrich Blvd Miami, OK	Kevin Jeffcoat 918-542-5766	Third-party
National Dist Center	805 Carnation Rd Aurora, MO	Brian Bennett 417-678-1500	Third-party

Revenue Recognition Policy:

Because of management pressures to meet earnings expectations, we are taking additional steps in connection with our quarterly review work to ensure that the client achieves a proper sales cut-off

Sunbeam's revenue recognition policy is as follows (from 1997 10-K)

> The Company recognizes revenues from product sales at the time of shipment to customers In limited circumstances, at the customer's request, the Company may sell seasonal product on a bill and hold basis provided that the goods are completed, packaged and ready for shipment, such goods are segregated and the risks of ownership and legal title have passed to the customer

Our job is to ensure compliance with this policy

What Constitutes "Shipment":

Shipment takes place when a customer's order is loaded on to a container, which is sealed and ready for delivery to the customer Shipments are generally not done on a "live" basis (i e the truck drivers are not

NOT A CERTIFIED COPY

017937

AA036293 Confidential Treatment Requested by Arthur Andersen LLP

sitting around waiting for their trucks to be filled) Rather, Sunbeam's customers work with various shipping companies (e g Consolidated Freightways, Yellow, etc), which drop-off empty containers at Sunbeam's locations to be filled and ready for shipment Filled trucks are parked on-site until truck drivers arrive to haul them away The majority of on-site containers are driven away within a couple of days

Sunbeam locations include both Company-owned facilities and third-party warehouses to which Sunbeam outsources *warehousing and distribution functions*

In accordance with the Company's policy, filled and sealed containers which are ready for shipment but are parked on-site awaiting pick up as of midnight on March 29th are considered shipped and, therefore are properly includable in sales for the period Additionally, at midnight there will be containers on the loading dock, in process of being filled These container loads may be completed, sealed and included in shipments for the periods Any containers, which have not begun to be filled, may not be included in shipments for the period

Bill and Hold Sales

As described in the Company's revenue recognition policy, Sunbeam sometimes sells goods to customers on a bill and hold basis This means that goods are moved/shipped to a non-Sunbeam and non-customer location, at the customer's request until some future date at which the goods will be delivered to the customer In order to qualify for revenue recognition, these transactions must meet the following criteria

- The risk of ownership must pass to and be acknowledged by the customer
- The customer must have a fixed commitment to purchase the goods in writing
- The customer, not Sunbeam, must request that the sales be on a bill and hold basis and the customer must have a substantial business purpose for ordering the product bill and hold
- The company must not have retained any specific performance obligations such that the earnings process on the sales is not complete
- **The ordered product must be segregated from Sunbeam's inventory and must not be subject to being used to fill other orders.**
- **The ordered product must be complete and prepared for shipment**
- The Company has not modified its normal billing and credit terms for the customer

Bill and hold inventory will be located primarily at the Miami Oklahoma and Aurora Missouri locations. These are third-party warehouses operated by National Distribution Center ("NDC") NDC performs warehousing and distribution services for Sunbeam and also holds bill and hold inventory for Sunbeam customers Our job will be to observe bill and hold inventories, noting that they are (1) segregated by customer and separated from Sunbeam's inventory and (2) that the related orders are complete and ready for shipment.

Procedures

Evening of March 29

1 Observe loading of containers at or near midnight, March 29, 1998 Any partially filled containers on the loading dock at midnight may be completed and shipped Bills of lading for these and any trucks previously filled should indicate a date of March 29, 1998 Bills of lading for any containers started after midnight should indicate a ship date of March 30, 1998 Obtain a sample of 5 bills of lading from containers being loaded on the dock at midnight

2 Determine through observation and inquiry that containers are traveling direct to customers. Determine if any containers are being shipped to non-customer locations If you identify containers being shipped to non-customer location, make inquiries as to the reasons Obtain a sample of 5 bills of lading for goods being shipped to non-customer locations

NOT A CERTIFIED COPY

017938

AA036294 Confidential Treatment Requested by Arthur Andersen LLP

3 Obtain a listing of the last 25 bills of lading issued from your location on March 29. 1998 Retain this information for submission to corporate (note at Neosho. Miami OK and Aurora. MO. request last 25 bills of lading for grills – exclude bills for parts)

4 Take a tour of the shipping facility with the plant manager or distribution manager Determine if any filled containers remain on site that have not been shipped to customers Judgmentally select 3 containers and have the shipping supervisor open the trailers to verify that they are full

Day of March 30

1 In connection with the work performed previously, obtain the first 5 sequentially issued bills of lading on March 30, 1998

2 Visit the selected bill and hold warehouse Note that in many cases these locations serve as a warehouse for both Sunbeam products and those held for customers on a bill and hold basis However. when a customer asks us to bill and hold an order. the goods should be segregated from Sunbeam's inventory

3 Obtain a report by customer of all bill and hold inventory at the location

4 Obtain "ship confirmations" for a sample of 5 orders shipped to customers on bill and hold basis Compare to the report obtained in step 3 noting inclusion Have the warehouse manager show you where the goods are located

5. Test count the goods to ensure they agree to the ship confirmation Compare the goods to the customer order noting that the order is complete and ready for shipment

6. Observe that the goods have been physically segregated from Sunbeam's inventory

7 Select orders from the report of bill and hold inventories and ask to see ship confirmations Have the warehouse manager show you where the goods are located on the floor

8 Ask the warehouse manager if there is any bill and hold inventory on hand for sales prior to 12/28/97 Obtain the order numbers for any such goods.

Wrap-up

Document in a brief memo the results of your observations of inventory cut-off and observations of bill and hold. Retain any bills of lading or shipping confirmations and the report of bill and hold inventories on site Overnight this information to the Miami office, Attention Dennis Pastrana, no later than Friday April 3, 1998

NOT A CERTIFIED COPY

017939

AA036295 Confidential Treatment Requested by Arthur Andersen LLP

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff(s),
vs.

MORGAN STANLEY & CO., INC.,
Defendant(s).
_____/

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO AMEND ITS COMPLAINT TO SEEK PUNITIVE DAMAGES

THIS CAUSE came before the Court November 5, 2004 on Coleman (Parent) Holdings, Inc.'s Motion to Amend its Complaint to Seek Punitive Damages, with all counsel present.

This case arises out of an acquisition transaction that was negotiated and consummated in late 1997 and early 1998 in which Coleman (Parent) Holdings, Inc. ("CPH"), sold its 82% interest in the Coleman Company, Inc., to Sunbeam Corporation. Morgan Stanley & Co., Inc., served as financial advisor to Sunbeam for parts of the acquisition transaction and lead underwriters for a $750,000,000 debenture offering that Sunbeam used to finance the acquisition. CPH alleges that by both affirmative statements and omissions Morgan Stanley, either directly or through materials scripted for Sunbeam, made material misrepresentations to CPH to induce it to enter into and ultimately close the transaction. It has sued Morgan Stanley for fraudulent misrepresentation, negligent misrepresentation, aiding and abetting fraud, and conspiracy, seeking damages of at least $485,000,000.

CPH has moved for leave of court to include a claim for punitive damages on all but its negligent misrepresentation claim. The parties agree that Florida law governs the procedure employed. See Rule 1.190 (f), Fla. R. Civ. P.; Fla. Stat. §768.72 (1). Morgan Stanley contends, though, that New York substantive law controls the availability of

NOT A CERTIFIED COPY

017941

punitive damages; that New York law requires that a defendant's acts show a pattern of wrongdoing aimed at the general public before punitive damages may be claimed; and that CPH's proffer fails to meet this element. Alternatively, it claims CPH's proffer is insufficient under Florida law. CPH claims that it need not show a pattern of misconduct aimed at the general public on a fraud claim under New York law and that, even if it does, such a pattern has been shown, and points out that no choice of law determination has been made on the aiding and abetting and conspiracy counts.

The Court concludes that under New York law the "public injury" element is required to be met only where the tort has its genesis in a breach of contract claim. See Merrill Lynch & Co., Inc. v. Allegheny Energy, Inc., No. 2 Civ. 7689 (HB), 2003 WL 22795650 (S.D.N.Y. Nov. 25, 2003) (public harm necessary to support punitive damages claim for fraudulent inducement to enter into a contract; not required for breach of fiduciary duty claim); Prohealth Care Associates, LLP v. April, 2004 WL 1872915 (N.Y. Supp.), 2004 N.Y. Sup. Op. 50919 (U) (N.Y. Sup. Aug. 18, 2004); cf. Rocanova v. Equitable Life Assurance Society of the United States, 612 N.Y.S. 2d 339, 634 N.E. 2d 940, 943-944 (N.Y. 1994) ("Punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights . . . However, where the breach of contract also involves a fraud evincing a 'high degree of moral turpitude' and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations,' punitive damages are recoverable if the conduct was 'aimed at the public generally . . .'" [citations omitted]); New York University v. Continental Insurance Company, 639 N.Y.S. 2d 283, 662 N.E. 2d 763 (N.Y. 1995) (no punitive damages permitted where duties allegedly violated arose from contract terms or by operation of law based on contract). Here, CPH does not claim it had a contract with Morgan Stanley or that the duties allegedly breached by Morgan Stanley arose because of a contractual relationship between them. Rocanova and New York University do not apply. Because Morgan Stanley argued no other potentially outcome determinative difference between New York and Florida

NOT A CERTIFIED COPY

017942

punitive damages law, Florida law controls. See Tune v. Philip Morris, Inc., 766 So. 2d 350 (Fla. 2d DCA 2000), rev. den. 786 So. 2d 1188 (Fla. 2001).

CPH has made a showing by record and proffered evidence which, if believed, would allow a reasonable juror to award punitive damages against Morgan Stanley on the fraud, aid and abetting, and conspiracy claims.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Plaintiff's Motion to Amend its Complaint to Seek Punitive Damages is Granted. The ad damnum clauses of Counts I, II, and III of Plaintiff's Complaint are hereby deemed amended to claim the damages sought in Exhibit A to the Motion.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 19 day of November, 2004.

ELIZABETH T. MAASS
Circuit Court Judge

copies furnished:
Joseph Ianno, Jr., Esq.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci
655 15th Street, NW, Suite 1200
Washington DC 20005

John Scarola, Esq.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy, Esq.
One IBM Plaza, Suite 4400
Chicago, Il 60611

Mark C. Hansen, Esq.
1615 M Street, NW, Suite 400
Washington, DC 20036

NOT A CERTIFIED COPY

017943

412

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 05
DEPUTY CLERK
BY

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 11
(EXHIBITS 113-122)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

018224

970

TABLE OF CONTENTS
VOLUME 11

	TAB
Christopher Whelan Deposition Transcript	113
Joseph Perella Deposition Transcript	114
Ruth Porat Deposition Transcript (12/10/04)	115
Morgan Stanley Financials re The Coleman Company Inc.	116
Blaine Fogg Deposition Transcript 12/16/04	117
Blaine Fogg Deposition Transcript 12/17/04	118
CPH Ex. 272	119
Karen Haycox-Eltrich Deposition Transcript	120
Philip Harlow Deposition Transcript	121
Bruce Slovin Deposition Transcript	122

NOT A CERTIFIED COPY

018225

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED DEPOSITION
OF CHRISTOPHER WHELAN
New York, New York
Wednesday, July 14, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162377

NOT A CERTIFIED COPY

018227

July 14, 2004
9:27 a.m.

Videotaped Deposition of CHRISTOPHER WHELAN, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: TIMOTHY J. CHORVAT ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: ZHONETTE M. BROWN, ESQ.

ALSO PRESENT:
Victor Disla, Videographer

THE VIDEOGRAPHER: Stand by.
This is tape number 1 of the videotaped deposition of Mr. Christopher Whelan in the matter of Coleman Parent Holdings Inc., Plaintiff, versus Morgan Stanley & Co., Inc., Defendant, in the 15th Judicial Circuit in and for Palm Beach County, Florida.
This deposition is being held at 216 East 45th Street, New York, New York on July 14, 2004 at approximately 9:27 a.m.
My name is Victor Disla from the firm of Esquire Video Services and I am the legal video specialist.
The court reporter is Mr. Bob Shaw in association with Esquire Deposition Services. Will counsel please introduce themselves for the video record.
MR. CHORVAt: This is Tim Chorvat and I represent the plaintiff.
MS. BROWN: This is Zhonette Brown of Kirkland Ellis on behalf of the Morgan Stanley entities and the witness.
THE VIDEOGRAPHER: Will the court

reporter please swear in the witness.
CHRISTOPHER WHELAN,
having been first duly sworn by the Notary Public, testified as follows:
THE WITNESS: I do.
EXAMINATION BY
MR. CHORVAT:
Q. Would you please state your name for the record, sir.
A. Christopher Whelan.
Q. Mr. Whelan, have you ever been deposed before?
A. No, I have not.
Q. Okay. Then let me just explain to you how this will work, though you may already understand it.
Over the course of today, I will be asking you a series of questions, and the court reporter will be taking down a transcript of my questions, your answers and any objections that your counsel makes.
There will also be a video record being made of this.
It is important, because the transcript is being made, that you answer

NOT A CERTIFIED COPY

018228

Page 6

audibly, instead of simply nodding or using some sort of a gesture.

If at any point I ask you a question that you don't hear, let me know that and I will try to repeat it.

If at any point I ask you a question that is unclear or you don't understand, let me know that and I will try to rephrase it.

Any questions about the process?

A. No.

Q. Are you currently employed?

A. Yes.

Q. With whom?

A. Morgan Stanley.

Q. Do you know which Morgan Stanley entity is your employer?

A. I am not exactly sure, but it is probably Morgan Stanley & Co.

Q. What position do you hold with Morgan Stanley?

A. I am the executive director in the credit department.

Q. Do you work in New York?

A. Yes, I do.

Q. Would you summarize, please, your education since high school.

A. Yes.

I received a Bachelor's at Colby College in economics in 1988.

Then I went to work at Bank of New York in the credit training program, after graduating from college.

I left Bank of New York in 1991, joined Morgan Stanley in July of 1991, and I have been there ever since.

Q. Briefly describe your employment track at Morgan Stanley, since 1991.

A. I came in at Morgan Stanley as associate in 1991. I was promoted to vice president at the end of 1995 -- sorry, the end of 1996.

I was then promoted to what used to be called principal at the end of 2000, but after the merger with Dean Witter they changed the principal title to executive director, and that is what I am today.

Q. Have you been in the credit department throughout your history with Morgan Stanley?

A. Yes.

Page 8

Q. During the time that you were vice president in the credit department, what were your responsibilities?

A. At that time the department was called the credit and rating advisory services group, and my responsibilities were primarily to cover existing accounts that Morgan Stanley had credit exposure to, whether it was lending exposure, derivative exposure, commodities exposure, um, and I covered certain industries.

I covered consumer products. I covered real estate. I covered lodging and gaming. And my job, primarily, was to provide unbiased credit analysis to determine whether the firm should take credit exposure with certain counterparties.

My other major function was to provide rating advisory services to prospective clients and existing clients, when these clients were in the process of dealing with the major rating agencies.

Q. When you say "rating advisory services," was that predicting what rating a particular offering would achieve?

Page 9

A. That is correct. That was part of the job, yes.

Q. What else?

A. Just a big part of it was advising clients on how to tell their story to the rating agencies, um, dealing with certain -- quite frankly, putting together presentations, effectively large road show presentations, if you will, to the rating agencies, so the clients could tell the story and then coach clients on how to handle certain strengths and credit issues that the rating agencies would want to get more information on.

Q. You mentioned that you also were responsible for providing unbiased credit analysis. How did you go about doing that?

A. How so?

Q. Describe that part of your job.

A. Well, I mean, simply, if it was a public company, we would use public filings to analyze the public financial statements.

And, many times, having conversations with senior management to understand what the strategy was, comparing a particular client to the competitive dynamics

NOT A CERTIFIED COPY

018229

out there.
Looking at equity research. Looking at fixed income research. Talking to the rating agencies.
It really just depended on which situation you were looking at.
Q. The credit analysis was designed for use by people within Morgan Stanley?
A. The credit analysis was strictly internal to determine whether Morgan Stanley should grant credit to a particular client.
Q. How have your responsibilities changed, if at all, since you have become a principal or an executive director?
A. Well, the groups changed a bit. Now it is just called the credit department.
The rating advisory aspect of it has been taken out of my group and put into investment banking.
Currently we, my group, reports to Steve Crawford, who used to be the CFO but now is head of, basically head of strategy.
And my particular job now is, I still cover certain industries, but mostly what I do now is I determine whether to extend

credit or not, to all companies in North America, depending on geography.
Q. Are there other executive directors in the credit department?
A. Yes.
Q. How many?
A. Worldwide? Worldwide, probably ten.
Q. In New York?
A. Um, probably six.
Q. When you were vice president, to whom did you report?
A. I reported directly to Les Bradford.
Q. Was that true the entire period from '96 to 2000?
A. Yes, it was.
Q. Were there other vice presidents at the same time who also reported to Ms. Bradford?
A. Yes, there were.
Q. How many in New York?
A. Probably about six, seven. Sorry, report directly to Leslie Bradford? Somewhere between four and six, give or take.
Q. Were there other vice presidents in the credit and rating agency department that

reported to someone other than Leslie Bradford?
A. Yes.
Q. Explain the structure of the department then, please.
A. Well, the way the department worked is, we had Rick Felix ran the department, who was then an MD. Leslie Bradford was an MD under Rick Felix. And anyone who was dealing with industrial corporate accounts reported to Leslie Bradford. Okay.
There was another MD in the department who is still there, named John LaMountain. He oversaw, effectively, a number of people who were in charge of our counterparty derivatives trading credit functions, so to speak.
So, for instance, John LaMountain would have a vice president who had a product, whether it is foreign exchange or commodities, or whatnot, and if that particular product person had a prospective account that fell in my industry bucket, they would come to me and ask for a credit overview or a preliminary rating.

I would give it to that person, and then that person would structure the derivative or commodity transaction, or foreign exchange transaction, depending on what I told them about the nature of the credit.
Q. During the 1997, '98 time frame, was your compensation structured as base pay plus at least the possibility of a bonus?
A. Yes, it was.
Q. During that period of time, was your compensation in any way related to the Sunbeam financing?
A. No, it was not.
Q. Describe your compensation package in 1997 and 1998, please.
A. Um, it is -- you know, off the top of my head, I am guessing. You know.
Can I -- can I give an estimate?
MS. BROWN: Yes.
MR. CHORVAT: We are looking for your best estimate.
A. Okay. My base was probably somewhere in the $125,000 range. My bonus was probably in the -- probably in the $100,000

NOT A CERTIFIED COPY

018230

range.
Q. Would it be correct for both years, 1997 and '98?
A. Probably the base stayed about the same. The base could have been a little less and the bonus was probably a little more.
Q. Sorry, which --
A. In 1998. The 125 is really a guess. I can't remember what it was.
But it was probably, total compensation was probably in the 225 range in 1997, and probably a little bit higher in 1998.
Q. Do you recall why it would have been a little higher in 1998?
A. I can't, quite frankly, now that I think of it, it could have been a little lower. I don't remember what kind of year we had that year, so.
Q. Who would have evaluated your performance in 1997 or 1998?
A. Well, I would have received a performance evaluation by Leslie Bradford.
Q. Anyone else?
A. No.

Q. What, if anything, have you done to prepare for today's deposition?
A. I met with an attorney yesterday.
Q. Aside from meeting with the attorney, have you done anything else to prepare for the deposition?
A. No, sir.
Q. Who did you meet with?
A. I met with Ms. Brown.
Q. How long did that meeting take?
A. Um, about four -- four and a half to five hours.
Q. Have you spoken to anyone else who has been deposed in connection with this case?
A. Yes, I have.
Q. Have you spoken to any of those individuals about the topic of their depositions?
A. No, I have not.
Q. Have you reviewed any documents that refreshed your recollection about any of the events surrounding the Sunbeam matter?
A. Other than some documents yesterday? No.
Q. What documents have you reviewed at

any time that refreshed your recollection with respect to Sunbeam?
A. Um, again, some documents yesterday. I can't remember exactly what those documents were, but some documents yesterday.
Q. Can you describe them in any way?
A. Um, they were various, you know, internal documents, by and large. Some perhaps, perhaps some public press releases. Some financial statements.
Q. Anything else that you can recall?
A. Um, no.
Q. What role did the credit and rating agency department play in connection with the Sunbeam financing?
A. Well, we were responsible for determining, first and foremost, whether the transaction that Morgan Stanley was looking to undertake, meaning providing a capital commitment for the bank financing to close the acquisitions, was a viable credit going forward.
It was a very large exposure to Morgan Stanley.
Our job as in the credit department

is to make sure that the capital base of Morgan Stanley is protected. That was our first and foremost job.
The second part was to help Sunbeam get through the rating process with a fair outcome on the ratings on the bank department, and by default the ratings on the notes.
Q. In connection with the first part of your answer, how did the work that the credit group or the credit and rating agencies group, how did that fit together with work that other departments or groups at Morgan Stanley were doing?
MS. BROWN: Objection to form.
Q. When your counsel objects like that, you can go ahead and answer the question. The objection is preserved for the record.
A. Okay, can you repeat the question?
Q. Sure. How did the work that the credit and rating agencies group at Morgan Stanley fit in with or work together with groups that, work that other groups at Morgan Stanley were doing in connection with the Sunbeam transaction?
MS. BROWN: Same objection.

NOT A CERTIFIED COPY

018231

Page 18

A. Well, let me say that we were an independent group, okay, that worked along with a deal team to put together a proposal for the firm's senior managers to determine whether this was a transaction that Morgan Stanley should undertake.

There are lots of things that go into that teamwork analysis, so to speak.

So, I am not so sure that, you know, if that, I am not so sure if that answered your question.

Q. Let me back up a bit.

You described the Sunbeam transaction as involving the financing of the acquisitions.

Did you have any involvement with Sunbeam at a time prior to its proposed acquisitions of Coleman and the other companies?

A. No, sir.

Q. Did you have any involvement in a potential transaction involving the acquisition of Black & Decker?

A. I don't recall.

Q. Do you recall how you first came to

Page 19

be involved with Sunbeam?

A. No, I do not.

Q. What percentage of your time did you devote to the Sunbeam transaction at the highest point?

MS. BROWN: Objection to form.

A. "Highest point" meaning?

Q. I assume that there were times during the period that you worked on the Sunbeam matter when sometimes you would work on it more on some days, and other days you would work on it less; would that be fair?

A. That is fair.

Q. Would there be days where the Sunbeam transaction would be the predominant thing that you would work on?

A. Perhaps, but I don't recall.

Q. At a given -- in the spring of 1998, other than the Sunbeam transaction, how many other matters would you have been working on at the same time?

A. It is hard to say.

Q. Would it be more or less than ten?

A. Probably.

Q. Probably more or probably less?

Page 20

A. Probably more.

Q. Probably more than 25?

A. Well, when you say 25, what exactly are you talking about? 25 what?

Q. 25 other transactions that require material amounts of your time.

MS. BROWN: Objection to form.

A. Um, I am not so sure about material.

Q. Anything more than a cursory amount of your time?

MS. BROWN: I continue the objection.

A. Yes. I am not so sure --

Q. I will step back and try it again.

Can you describe what your work load was like, the sorts of matters that you were working on in the spring of 1998.

A. Um, I can't describe specifically what I was working on.

There were probably a number of situations where I would get called and be asked to opine on a potential equity underwriting in the sense of we have a potential client, they are thinking about issuing some equity, what happens to their

Page 21

public rating. Okay.

Something like that takes a very little time. Okay.

I had other transactions probably, but again, I don't recall where I could have been having some back and forth advisory work with one or two, three clients, again, that took very -- the existing clients that were already rated.

Sunbeam was a little different, in the sense that it was not rated, and it was a big transaction.

Q. When you say that "it was a big transaction," how did Sunbeam fit in the spectrum of transactions that you worked on at that point in time?

MS. BROWN: Objection to form.

A. Can you --

Q. Sure. I will do it this way. You mentioned that Sunbeam was a big transaction. What do you mean by that?

A. What I meant was, it was a, the dollar amount that Morgan Stanley was committing in terms of the capital commitment was, at that time, the largest transaction

NOT A CERTIFIED COPY

018236

that I had looked at.
Q. The Sunbeam transaction involved a senior debt piece and also a convertible security.
Did your work focus on one or the other of those elements?
A. I was primarily, almost actually, almost entirely working on the senior debt piece.
Q. What role, if any, did Rick Felix have with respect to the Sunbeam transaction?
A. Well, Rick, as the head of the credit, department, and as a -- I believe he was co-chairman of the leveraged finance commitment committee, and he was responsible, he had the final credit authorization, so to speak, for the transaction. So, he ultimately approved the deal.
Q. You mentioned the leverage finance commitment committee.
What is that?
A. Well, it doesn't exist anymore in its present form, but it was a committee of very senior managers within the firm, business unit heads, who were responsible for,

ultimately, approving whether to undertake capital commitments or not.
Q. Would the leveraged finance commitment committee have been involved in both the senior debt piece and the convertible security?
A. No.
Q. Just the senior debt piece?
A. Correct.
Q. To your knowledge, did Mr. Felix have a role in connection with the Sunbeam transaction, other than an approval function?
MS. BROWN: Objection. Speculation. Foundation.
A. Yes. I can't recall.
Q. What role, if any, did Leslie Bradford play in connection with the Sunbeam transaction?
MS. BROWN: Objection. Foundation.
A. Can you rephrase the question?
Q. Sure. At the time you worked on Sunbeam, you reported to Ms. Bradford; correct?
A. Correct.
Q. Did Ms. Bradford have a role in

connection with the leveraged finance commitment committee?
A. Yes. She was also a member.
Q. And you were not; is that correct?
A. That is correct.
Q. Beyond being a member of the leveraged finance commitment committee, are you aware of whether Ms. Bradford did anything else in connection with the Sunbeam matter?
A. No, I am not aware.
Q. In connection with Sunbeam did you work with someone named Jason -- is it Kunreuther --
A. Kunreuther, yes.
Q. Who is he?
A. He was an analyst, a two-year analyst who worked in our department, worked for myself and other officers in the credit department.
Q. And he reported to you?
A. Um, he did not report directly to me. I don't remember who he reported to, but he reported to someone else in the department.
Q. What did Mr. -- could you say that again.

A. Kunreuther.
Q. What did Mr. Kunreuther do in connection with the Sunbeam matter, to your knowledge?
A. Specifically, I don't recall.
Q. Do you recall whether he did anything in connection with the Sunbeam matter?
A. He was involved -- I do remember him attending some diligence meetings with me. Um, and he -- he most likely spread some financial statements for me, into our database; so, it is easy to understand the financials.
Other than that, I don't recall.
Q. Other than Mr. Felix, Ms. Bradford and Mr. Kunreuther, is there anyone else from the credit group that you can recall having done work in connection with the Sunbeam matter?
A. No.
Q. Was there, at the time, something called the credit committee?
A. Credit committee? Um, I am not so sure what you mean by that.

NOT A CERTIFIED COPY

018233

Q. Well, in 1997 or 1998, was there an entity called the credit committee at Morgan Stanley?
A. We had a, and still have an internal credit committee in the credit department, but it was not called the credit committee.
Q. What was it called?
A. I believe it was called the industrial credit committee.
Q. Did the industrial credit committee play any role in connection with the Sunbeam transaction?
A. I don't recall.
Q. What work, if any, did you do in connection with ratings or potential ratings with respect to any Sunbeam offerings?
MS. BROWN: Objection to form.
A. Can you be a little bit more specific.
Q. Did you do any rating work in connection with Sunbeam?
A. Yes, I did.
Q. Please describe what you did.
A. Um, well, I was responsible for providing expected ratings to the deal team,

so that they could try to provide cost analysis to the client, because the big part of the cost on the bank debt is related to, is tied to ratings.
And at that time, again, Sunbeam was not rated.
Um, and then I also was responsible for working with the Sunbeam management, in preparing them for the meetings with the rating agencies and helping them along with some other team members, put together a rating agency presentation that they would walk through with the rating agencies at the meeting.
And then I was involved in some follow-up conversations with the rating agencies after those meetings.
Q. Did you do rating work in connection with both the senior debt piece and the convertible security?
MS. BROWN: Objection to form.
A. Not directly.
Q. What rating work, if any, did you do in connection with the convertible security?
A. At what time? I am not sure what

time you mean.
Q. Let me step back.
Over what period of time did you do rating work in connection with Sunbeam?
A. Um, I don't recall exactly. Um, probably somewhere between sometime in the -- with the company itself or with the team?
Well --
Q. Either one.
A. Probably sometimes towards the end of 1997, where I was providing some preliminary views on the ratings, and then more so in the, you know, the early part of 1998.
And then through, really, June.
Q. So, both before and after the acquisition of Coleman closed?
A. Yes.
Q. Would that time frame that you described from late 1997 through June of '98, would that apply to both the senior debt piece and the convertible security or just one or the other?
A. I don't recall.
Q. Are you familiar with a rating that

would be written B1/B plus?
A. Yes.
Q. How would you describe that rating?
A. Well, on a scale -- on -- I mean, it is hard to describe it, as you word it that way, but the highest possible rating at S&P is a triple A, all the way down to single D.
And the highest possible rating at Moody's is an A double -- also a triple A.
And so, you have all the way from triple A down to D, basically, both agencies.
You know. A B1 B plus rating, it depends on what security you are talking about. Because that will impact the rating. It could go higher or could go lower.
Q. What sort of rating would be required to be considered investment grade?
A. Triple B minus, B double A3.
Big B little A, little A3.
Q. So, would a B1 B plus rating be considered investment grade?
A. No, it would not.
Q. You mentioned, a couple times in your testimony, I think you used the phrase "deal team."

NOT A CERTIFIED COPY

018234

A. Correct.
Q. Who are you referring to by that?
A. Um, specifically, I don't recall everyone on the deal team, but members probably came from M&A, corporate finance, fixed income research. Um, debt capital markets, which probably, at that time, included the bank loan group.
That's it.
Q. Who were the consumers of the information that you generated in connection with Sunbeam?
MS. BROWN: Objection to form.
A. Can you be -- when you say consumers --
Q. Sure. When you performed an analysis in connection with the Sunbeam matter, to whom did you provide that analysis?
MS. BROWN: Same objection.
A. I guess it would depend on the situation.
Q. Well, is there a set of people that, in connection with the entire Sunbeam matter, that would constitute the people to whom you provided your analysis?

MS. BROWN: Objection to form.
A. Provide my analysis? Which analysis?
Q. You said that you performed credit analysis.
A. Correct.
Q. What was the purpose for which you performed that credit analysis?
MS. BROWN: Asked and answered.
A. Um, the purpose was, again, to make sure that Morgan Stanley, as a firm, was making a proper capital commitment, because again, our job primarily in the credit department is to protect the capital base of the firm itself.
Q. And it was not, ultimately, your decision, as a vice president in the credit department, as to whether or not that capital commitment would be made; was it?
A. That is correct.
Q. So, the analysis that you performed in connection with deciding whether or not Morgan Stanley should make the capital commitment, to whom did you provide that credit analysis?

A. I don't recall.
Q. Did you provide your analysis to Ms. Bradford or Mr. Felix?
A. I am sure I did, but I don't recall to who, if it was both, one or the other. But I am sure I did.
Q. Would you have also have provided your analysis to people on the deal team?
MS. BROWN: Objection to form.
A. Again, I don't recall if I did or not.
Q. What involvement, if any, did you have in formulating the amount of senior debt that would be extended to Sunbeam?
A. None.
Q. What involvement, if any, did you have in formulating the terms on which the senior debt would be extended to Sunbeam?
A. None.
Q. What involvement, if any, did you have in formulating the amount of the convertible security that Sunbeam would issue?
A. None.
Q. What involvement, if any, did you have in formulating the terms of the Sunbeam

convertible security?
A. None.
Q. Would it be fair to say that you really took the proposed terms and then analyzed whether those were a sound credit decision?
MS. BROWN: Objection to the form.
A. I am not so sure I understand.
Q. Well, your role, as you described it, was that you performed an analysis to protect Morgan Stanley's interest in extending capital to Sunbeam; is that right?
A. That is right.
Q. And in performing that function would it be fair to say that you took the proposed terms of the capital that would be extended as a given and then you evaluated whether those terms were worth pursuing from Morgan Stanley's perspective?
MS. BROWN: Objection to form.
A. I am not so sure, when you say pursue those terms, I am not so sure what you mean.
Q. You testified that you did not have a role in setting the terms of the financing

NOT A CERTIFIED COPY

018235

or capital to be extended to Morgan Stanley.
I am trying to ask you, as the flip side of that, is it correct that you took the terms of the capital that would be extended to Morgan Stanley as given, and then analyzed whether an extension of capital on those terms was in the interest of Morgan Stanley or not?
A. Well, in the interest of Morgan Stanley -- are you talking about from a credit standpoint whether it was an acceptable credit?
Q. Yes.
A. I think that is a fair statement.
Q. Are you familiar with the term "Sunbeam corporation working group" at Morgan Stanley?
MS. BROWN: Objection to form.
A. Not specifically. I am not so sure what --
Q. All right. In connection with Morgan Stanley's work on different matters, are there working groups established?
A. There was a team that was part of the, you know, what we would call the working group.

Q. Is "team" another word for working group, or is there a team within the working group?
MS. BROWN: Objection.
Q. What do you mean by your last answer?
A. Um, --
MS. BROWN: Objection. Compound.
A. I guess what I meant was a team, you know -- how I used it as -- yes, team could be a subsection of the working group, so to speak. They are not always interchangeable, is what I am trying to get at.
Q. Did the working group in connection with Sunbeam ever meet as an entire group?
MS. BROWN: Objection. Foundation.
A. Um, well, again, working group, I am not so sure, when you talk about working group, what we are talking about.
Q. So, is it your testimony that you are not familiar with any application of the term working group to the Sunbeam matter?
MS. BROWN: Objection to the extent it mischaracterizes.
A. I am familiar with a working group,

but there are, there could have been certain people on the working group that I never spoke with.
Q. What does working group mean in the context of a matter like the Sunbeam transaction?
A. Um, it most likely would include everyone at Morgan Stanley who was associated with the transaction in some form.
It would also include members of Sunbeam senior management team.
It would also include, potentially, and I don't recall, but it could potentially include members from other capital providers, law firms, accounting firms, consulting firms. It would include a lot of different entities.
Q. The deal team that you referred to would be a smaller, like a subset of that group?
A. That is fair to say.
Q. Who would be part of the deal team?
MS. BROWN: Objection, asked and answered.
A. Well, it could be -- people from my department, people from fixed income research,

people from M&A, people from corporate finance.
Um, that is pretty much it. Leveraged finance.
Q. Was there a particular leader of the deal team in connection with the Sunbeam transaction?
MS. BROWN: Objection to form.
A. Yes. I am not so sure what you mean by "leader."
Q. Was there a particular person who was, would have been in charge of or primarily responsible for the deal team?
MS. BROWN: Same objection.
A. Yes, again, I don't know -- I am not so sure what you mean by "in charge."
Q. Please describe how the deal team functioned in connection with the Sunbeam matter.
MS. BROWN: Objection to form.
A. It is kind of a broad question. I am trying to, I am not so sure what you mean.
Q. Well, I am trying to get a sense of how the team functioned and how you worked with others, and so -- I am looking for a

NOT A CERTIFIED COPY

018236

fairly, I am looking for your best description of how this organization, this deal team functioned.

A. I don't recall specifics, but again, there was usually a number of people involved from different areas of the group, or different areas of the deal team, again, from my department, from fixed income research, from leverage finance, from corporate finance, and from -- from M&A.

In terms of how the deal team worked, it just depended on where we were in the process.

Um, normally there was someone in corporate finance who was kind of um, um, in charge of or responsible for making sure that all of the constituencies -- meaning myself, and fixed income research and leverage finance, etc. -- were all kind of working together.

Q. Do you consider that you were part of the deal team with respect to Sunbeam?

MS. BROWN: Objection to form.

A. Um, again, it depends on what time you are talking about.

Q. When, if ever, were you part of the deal team in connection with Sunbeam?

A. Probably very preliminarily towards the end of 1997, and then more so, probably, in the February, March time frame of 1998.

Q. Were there any particular events that led you to become part of the deal team or led you to no longer be part of the deal team?

A. Well, I don't recall exactly, but there is no specific event that I can recall that got me involved in Sunbeam.

In relation to your second question, um, once Sunbeam had dismissed Mr. Dunlap and it was clear that Mr. Perelman's constituency was going to take over, at that point I was no longer involved.

Q. Why was that, if you know?

A. Well, at that time we had just hired someone from another institution to monitor and see through distressed situations and I did not have that experience, and he effectively took over, once things transpired as they did.

Q. To whom are you referring, in your last answer?

A. His name?

Q. Yes.

A. Morgan Edwards.

Q. Did you have occasion to deal directly with any individuals at Sunbeam?

A. I am sure I did, but I don't recall specifics.

Q. You can't recall any specific individuals that you talked with at Sunbeam?

A. Individually or --

Q. In any context, individuals that you would have spoken with.

A. I had spoken with Russ Kersh. I had spoken with Ron Richter. I had spoken with Al Dunlap.

I can't recall any other specific individuals.

Q. With respect to Mr. Kersh, did you speak to him in person, on the telephone, or both?

A. Both.

Q. Did you have one-on-one conversations with Mr. Kersh?

A. I believe I did.

Q. Did you speak to Mr. Kersh just once or twice, or was it something that, was Mr. Kersh someone with whom you spoke more frequently?

A. One on one?

Q. Yes.

A. No. It was one time.

Q. You said that you met Mr. Kersh in person, as well as over the telephone?

A. Yes. That's right.

Q. On how many occasions?

A. I don't recall.

Q. More than one or two?

A. Yes.

Q. With respect to Mr. Richter, did you speak with him in person, on the telephone, or both?

A. Both.

Q. Did you have one-on-one conversations with Mr. Richter?

A. Yes.

Q. Just once or twice, or more than that?

A. Um, I don't recall.

Q. With respect to Mr. Dunlap, did you

NOT A CERTIFIED COPY

018237

Page 42

speak with him on the telephone, in person, or both?
A. No. That was only in person.
Q. Was that a one-on-one conversation?
A. No, it was not.
Q. Part of a larger meeting?
A. That is correct.
Q. Is this just one occasion that you were to meet with Mr. Dunlap, or was it more than one?
A. It was more than one.
Q. Can you recall how many occasions you would have attended a meeting with Mr. Dunlap?
A. No, I can't recall.
Q. More or less than ten?
A. Definitely less than ten.
Q. Can you recall any specific meetings at which you and Mr. Dunlap were both present?
A. Um, I recall being at a meeting with Mr. Dunlap. I believe it was an equity analysts meeting, sometime in the spring of 1998.
I was at another meeting with Mr. Dunlap again, and I don't recall the primary

Page 43

reason for being at the meeting, although I know that he was signing copies of his book.
There may have been a couple of times, actually, thinking about it, on the phone, as part of diligence, but, quite frankly, I can't recall. But I remember those two specific times with Mr. Dunlap in person.
Q. At the in-person meetings with Mr. Dunlap that you mentioned, did those both take place after the Coleman acquisition closed?
A. When was the date of the Coleman acquisition?
Q. March 30th.
A. Um, I believe they were, yes.
Q. Can you recall having any conversations with Mr. Dunlap prior to March 30th, 1998?
A. Again, I believe, um, I can't recall specifics, but I believe there were a couple of phone calls with senior management of Sunbeam and some of the targets where, I believe, Mr. Dunlap was available by phone.
Q. Were these calls in which Mr. Dunlap was actually on the call or was he available

Page 44

to participate, if needed?
A. I don't recall.
Q. With respect to Mr. Kersh, did the conversations that you had with him take place before March 30th, after, or both?
A. Both.
Q. What did you talk to Mr. Kersh about?
A. I don't recall.
Q. With respect to Mr. Richter, do you recall whether your conversations with him were before or after March 30th, or both?
A. I believe they were after.
Q. Did they have to do with rating matters?
A. Perhaps, but I don't recall.
Q. Is there someone that you would describe as your primary contact at Sunbeam?
A. No.
Q. Other than Mr. Kersh, Mr. Richter and Mr. Dunlap, is there anyone else at Sunbeam that you can recall talking to?
A. Specifics? No.
Q. Would there be other people, but you just can't remember their names?

Page 45

A. I think that is fair.
Q. Had you heard of Mr. Dunlap prior to your work for Sunbeam?
A. Ah, I don't recall.
Q. In connection with your work did you say that the consumer products industry was one of the areas in which you focused?
A. It was one of them. However, at the time, and I cannot remember the specifics, a woman who I worked with, uhm, we had overlapping industry portfolios and there was some changing and she was on maternity leave; so, I believe, at the time of the Sunbeam transaction, consumer products was my, part of my portfolio.
Q. In connection with your work with the consumer products area, did you have occasion to learn about Mr. Dunlap's work with Scott Paper?
MS. BROWN: Objection to form.
A. No, I did not.
Q. At the time that you began work on the Sunbeam matter, did you have an understanding of Mr. Dunlap's reputation?
MS. BROWN: Objection to form.

018238

NOT A CERTIFIED COPY

A. I don't recall.
Q. You don't recall what Mr. Dunlap's reputation at the time may have been?
A. I don't.
Q. Have you, subsequently, come to have an understanding of Mr. Dunlap's reputation?
MS. BROWN: Objection to form.
A. I am not so sure what you mean by "reputation."
Q. Did you have any understanding of how Mr. Dunlap is thought of in business circles?
MS. BROWN: Objection.
A. I can't -- I can't speculate. I don't know how he is thought of.
Q. I am not asking you to speculate. I am asking you, based on your work with Sunbeam and your following of the consumer products industry, do you have any understanding of how Mr. Dunlap is viewed, as a matter of general reputation?
A. Um, well, um, nothing other than what I have, I guess, I have read in the papers.
Q. What can you recall having read in

the papers?
MS. BROWN: Objection. Time frame.
A. Um, I guess, yes, it depends on what time frame we are talking about.
Q. What can you recall having read at any time?
If it has changed over time, then please indicate that.
A. Um, I -- specifics, obviously, I can't give, but, you know, obviously, there was a lot of bad press regarding Mr. Dunlap, um, um, right -- again, I can't recall a specific time, but sometime probably in the, you know, springtime of 1998, probably in the, well, it was in the May time frame of 1998.
And then, subsequently, after his dismissal, of course, there was a lot of press about Mr. Dunlap, following his dismissal.
Q. In connection with your Sunbeam work did you have occasion to speak with any individuals at Arthur Andersen?
A. Um, I don't recall.
Q. In connection with your Sunbeam work did you have occasion to speak with any individuals at First Union?

A. I don't recall.
Q. In connection with your Sunbeam work did you have occasion to speak with any individuals at the Bank of America?
A. Again, I don't recall.
Q. In connection with your Sunbeam work did you have occasion to speak with any individuals at Coleman?
A. I believe there was a senior person from Coleman that we spoke to, as part of the transaction, but I don't remember that person's name.
Q. Do you remember their function, their title?
A. No, I do not.
Q. Is it someone that you spoke with just once, or twice, or more often?
A. It was -- it was a one-time meeting, um, as part of a larger group.
Q. Was the meeting in New York or somewhere else?
A. I don't remember. I don't recall.
Q. More generally, did you have occasion to travel away from New York in connection with the Sunbeam matter?

A. I don't recall if I did or not.
Q. Do you remember if you ever attended any meetings in Florida?
A. Um, no, I have never been to Florida in regards to Sunbeam.
Q. Do you remember if you traveled to Kansas or anywhere else in connection with Sunbeam?
A. I have never been to Kansas in connection with Sunbeam.
Q. So, it would be fair to say that the in-person meetings that you recall with respect to Sunbeam took place in New York?
A. From -- I don't recall. Most likely, was in New York.
Q. In connection with Sunbeam did you do any on-site due diligence in any place outside of Morgan Stanley's offices?
A. Off-site? Did you say "off-site due diligence"?
Q. I said "on-site." I basically mean -- is there something that you are able to -- is your work for Sunbeam something that you are able to do from your office or --
A. It could have been. It could have

NOT A CERTIFIED COPY

018239

Page 50

been.
Q. In connection with your Sunbeam work did you have occasion to speak with anyone at MacAndrews and Forbes?
A. No, I did not.
Q. In connection with your Sunbeam work did you ever, are you aware that an offering memorandum was issued?
A. Um, yes, I am aware.
Q. What role, if any, did you play in preparing the offering memorandum?
A. None.
Q. Did you review drafts of the offering memorandum?
A. No, I did not.
Q. Do you recall discussing the offering memorandum with anyone?
A. I don't recall.
Q. Please describe the work that you did in connection with Sunbeam prior to the end of 1997.
A. Um, the only work I would have done, at the end of 1997, would have been to provide preliminary rating estimates on the transaction.

Page 51

Q. When you say "the transaction," you are referring to the senior debt piece of the convertible, or the convertible piece, or were those even settled at that point in time?
A. It wasn't, I don't remember what was, you know, how the capital structure was -- I don't remember.
Q. Do you remember what preliminary rating opinions you provided in 1997?
A. No, I don't.
Q. Moving from 1997 to the first part of 1998, say January and February of 1998, please describe what work, if any, you did in connection with Sunbeam during that period of time.
A. Um, I don't remember specifically. Um, I don't remember specifically in January or February, um -- what work I did.
Q. Do you recall when press releases were issued concerning Sunbeam's potential acquisitions of Coleman and the two other companies?
MS. BROWN: Objection to form.
Q. Do you recall when it was that Sunbeam issued a press release with respect to its acquisition of Coleman?
A. No, I don't recall specifically, no.
Q. If that were the beginning of March of 1998, does that sound right to you?
A. That sounds correct.
Q. Do you recall what work, if any, you did in connection with Sunbeam, prior to the issuance of the Coleman press release?
A. No, I do not specifically recall.
Q. Do you recall reviewing the Sunbeam press release announcing the potential acquisition of Coleman?
A. That wouldn't have been, that would not have been my job function.
Q. In connection with Sunbeam's potential acquisition of Coleman, what is the first thing that you remember doing?
A. Um, providing, again, rating estimates on this transaction.
Q. Do you recall whether or not you would have participated in an organizational conference call, on or about March 3rd, 1998, in connection with the Sunbeam matter?
A. I don't recall participating, but as a matter of course, that is something that our

Page 52

Page 53

group normally would not be involved in.
Q. Why is it that that would be something that your group ordinarily wouldn't be involved in?
A. Again, because we were not really part of the client interaction. Our first priority was really -- my client was Morgan Stanley, the capital base of Morgan Stanley.
So, we normally did not get involved in organizational meetings, because it really had nothing to do with our department, other than potentially some ratings issues.
But normally, as a matter of course, we were not involved in those meetings.
MR. CHORVAT: I will mark this as an exhibit.
(CPH Exhibit 249, fax, marked for identification as of this date.)
Q. I will hand you what has been marked as CPH Deposition Exhibit 249.
This is a two-page document bearing Bates numbers Morgan Stanley 36633 and 36634.
Can you identify Exhibit 249?
A. Well, this is a fax from me to Karen Eltrich, who, I believe, at the time, was

NOT A CERTIFIED COPY

018240

working in fixed income research. And it looks like a, some type of due diligence agenda for Coleman.
Q. Why is it that you sent this fax, on or about March 5th, 1998?
A. I don't recall.
Q. Is the second page of this fax something that you prepared?
A. I don't recall.
Q. In the course of your work as a vice president in the credit group, did you have occasion to prepare due diligence review agendas?
A. As a matter of course, yes, I did.
Q. When you would prepare a due diligence review agenda, is that a sort of a standard form document that you would just apply to a particular transaction, or is it something that you would draw up from scratch?
MS. BROWN: Objection to form.
Go ahead.
A. From my standpoint, there is no standard. Every situation is different. Every credit is different.
So, from my standpoint, no, there is

no standard form.
Q. So, each time you prepared a due diligence review agenda, you would sit down and determine what to include for that particular matter?
A. That is correct, for things I wanted answers to. That is correct.
Q. But you don't recall whether or not you prepared this particular due diligence review agenda for Coleman?
A. I don't recall preparing this.
Q. Do you recall whether there was someone else in the credit group who might have prepared this due diligence review agenda for Coleman?
A. There would have been no one else.
Q. What function does a due diligence review agenda like this serve?
A. What do you mean by "due diligence"?
Q. Well, you mentioned that, in the course of your work as a vice president in the credit group, you would have cause to prepare due diligence review agendas?
A. Yes.
Q. Why did you do that?

A. Um, well, from a credit standpoint, I would describe it as credit due diligence. And, again, the purpose of our credit due diligence was to analyze the strengths and weaknesses of a particular company, to make sure that Morgan Stanley was going to get its money back on a capital commitment.
Q. You used the term "credit due diligence." Were you using that in contrast to some other kind of due diligence that someone else might be doing?
A. Um, yes.
Q. What other sorts of due diligence might someone else at Morgan Stanley have been doing, in connection with the Coleman --
A. I really can't say.
Q. Other than credit due diligence, what other sorts of due diligence are you aware of?
MS. BROWN: Objection to form.
A. I can't say. I was not -- I was not part of other forms of due diligence.
Q. When you used the phrase "credit due diligence," what were you distinguishing credit due diligence from?

A. I guess, I am talking about things that I am concerned about. It is kind of the way I look at the situation. That is all that I care about.
Okay. So, there could be, perhaps, someone in M&A that did some due diligence, you know, that had no bearing on my credit due diligence, so to speak.
Q. When you said that the due diligence work that someone else may or may not have done had no bearing on your credit due diligence, would your inquiry proceed on a separate track from any other due diligence inquiry that someone else might be doing?
A. It could. It could.
Q. When you say "it could," does that mean that there might also be interaction?
A. Um, yes. There could be interaction.
Q. In connection with Sunbeam do you recall whether your credit due diligence proceeded separately from any other due diligence work that anyone else at Morgan Stanley did, or whether there was interaction?
A. I am sorry, can you repeat the

NOT A CERTIFIED COPY

018241

Page 58

question.
Q. Yes. In connection with your work for Sunbeam in connection with the Coleman acquisition, do you recall whether your credit due diligence work proceeded separately from any other work that anyone else at Morgan Stanley might have done?
A. Um, I think, I believe there was overlap. There were different -- again, I was part of a team, so to speak, and just from a resource standpoint, it was part of the process where I could be part of a larger group of people conducting "due diligence." I was there to conduct credit due diligence.
But, at the same time, um, most likely, I was part of um, um, separate diligence that was not part of the team.
Q. Outside of the credit group, who else would have been in this larger group of people who were doing due diligence work in connection with Sunbeam and Coleman?
MS. BROWN: Objection. Foundation.
A. Um, again, specifically, I don't remember individuals, but some people from corporate finance, some people from debt

Page 59

capital markets, people from fixed income research, people from my department.
People from leverage finance.
Q. A moment ago you used the term "overlap" to describe what, I take it, were some interaction between yourself and individuals who were doing, in other groups, that were working on the Sunbeam Coleman matter.
Please describe the overlap that you referred to.
MS. BROWN: Objection to form.
A. Um, well, again, specifically, I can't remember specific times or persons who were there, but, generally speaking, when we undertake a commitment for a bank loan, there is a credit component, because Morgan Stanley is providing a capital commitment and there is, therefore, someone from that product group, being the bank loan group would also be involved in doing due diligence, as an example.
So, there may be overlap or a kind of a common diligence session with myself and someone from the loan product group to cover

Page 60

certain diligence topics.
Q. It is correct that you don't have any recollection of any specific overlap or meetings of the sort that you described in your last answer in connection with Sunbeam and Coleman?
A. Not specifically individuals, no, I do not.
Q. In connection with your credit due diligence with respect to Sunbeam, what sources of information did you utilize?
A. We relied on the public filings of Sunbeam and the financial statements of the companies that they were acquiring.
We relied on information provided to us by Sunbeam management and also management of the target companies.
And I don't recall specifics; however, in a situation like this, I probably used some fixed income research reports on some other consumer products companies that we researched -- reports, rating agency reports. That is probably it.
Q. You mentioned information from management of Sunbeam and the target

Page 61

companies.
What sorts of information did you request from management?
A. I don't recall.
Q. Are there types of information that you normally would request from management, beyond what would be in the filings or financial statements?
A. Perhaps. But every situation is different.
Q. In this instance you don't recall?
A. No.
Q. Other than public filings, financial statements, or information that you would specifically request, can you recall any other sources of information in connection with your credit due diligence reviews for Sunbeam?
MS. BROWN: Could I hear the question back, please.
(Record read.)
MR. CHORVAT: I will ask that again.
Q. In addition to public filings, financial statements from the target companies or information that the management of Sunbeam or the target companies provided to you, do

NOT A CERTIFIED COPY

018242

Page 62

you recall any other sources of information that you utilized in connection with your credit due diligence review?
MS. BROWN: Objection. It mischaracterizes the prior answer.
A. Specifically, no, I don't.
Q. Did you have occasion to contact any customers of Sunbeam?
A. I may have, but I don't recall.
Q. What sorts of reviews or analyses did you perform with the information that you obtained with respect to Sunbeam?
A. Specifically, I don't recall.
Most of the analysis that I did, again, was focused on the fundamentals of the business, the strengths and weaknesses, trying to determine whether a company with this type of capital structure was creditworthy -- using, you know, various assumptions which I don't recall.
Q. What, if anything, do you recall about the conclusions you reached with respect to whether or not Sunbeam was creditworthy?
A. Well, based on the information that we had, and based on the best of my ability,

Page 63

um, I thought that Sunbeam was a creditworthy entity. Um, um, and would receive a double B, BA2 rating by the rating agencies.
Q. Do you recall at what point in time you reached that opinion?
A. Not specifically, no.
Q. Is that prior to the closing of the acquisitions?
A. Um, I don't recall when those -- I don't recall -- I don't recall.
Q. With respect to the information that Sunbeam management provided to you, did you do anything to challenge or look into the dependability of that information?
MS. BROWN: Objection to form.
A. Um, I can't -- I can't say. I don't recall.
Q. Over what period of time did you perform your credit due diligence with respect to Sunbeam?
A. Um, again, I don't remember specific times, but it was probably sometime, based on this document that you have shown me here, sometime between the beginning of March and up until the time of the leveraged finance

Page 64

committee meeting.
Q. Did your due diligence work with respect to Sunbeam essentially end with the meeting of the leveraged finance commitment committee?
A. No.
Q. What work in connection with your credit due diligence review can you recall doing after the meeting of the leveraged finance commitment committee?
A. Well, I don't recall specifics, but again, there was a long time between the leveraged finance commitment committee meeting and the time that the company was presenting to the rating agencies. It was about, I think, three months.
So, there was ongoing, you know, work to be done to get the company ready to meet with the rating agencies.
Q. During that period of time after the meeting of the leveraged finance commitment committee would you consider your work, did it continue to be credit due diligence or did it sort of shift gears to something else?
A. I really -- I can't say. I don't

Page 65

recall.
Q. During the course of your credit due diligence review with respect to Sunbeam, did you take notes or record the work that you were doing in some fashion?
A. I am sure I did.
Q. What sorts of notes do you normally take in connection with the credit due diligence review?
A. It depends on what's being asked and what's being said.
Q. Do you recall what was being asked or being said in connection with the Sunbeam?
A. Not specifically, no.
Q. Do you, typically, take notes on a pad of paper, like a legal pad?
A. Um, you know, it is a piece of paper, but I don't remember what form it was in.
Q. Do you know what has happened to any notes that you would have prepared in connection with the Sunbeam --
A. No, I do not.
Q. Do you still have any notes in connection with Sunbeam?

NOT A CERTIFIED COPY

018249

A. No, I do not.
Q. Do you recall whether you utilized any e-mail in 1997 or 1998 with respect to Sunbeam?
A. I don't recall.
Q. Did you ever come to believe that any information that you had been provided in connection with Sunbeam was false or misleading?
A. Um, no, I do not.
Q. Did you ever come to believe that any information that you had been provided in connection with Coleman was false or misleading?
A. I am sorry -- can you repeat the last question?
Q. The first one was Sunbeam, the second one was Coleman.
A. Was the question, have you come to believe or -- or did you believe?
Q. Have you come to believe, at any point in time.
A. Oh. Well, yes. At a point in time I have come to believe that some of the information provided to us was misleading.

Q. With respect to Sunbeam, what information have you come to believe was misleading?
A. I don't recall specifics.
Q. Do you have a general recollection that --
A. Um, um, not really. I mean, you know, again, it has been quite a while, but I don't specifically remember what was, you know, what the fact pattern was after the fact.
But I do believe that yes, there was information that, you know -- it seemed like we did not have all of the information or did not have the whole story.
Q. When you say you did not have all of the information or have the whole story, are you referring to information about Sunbeam, or about Coleman, or something else?
A. Yes, I don't recall. I don't recall.
Q. A moment ago, you said that you had come to believe that some information that you had been provided was misleading. Were you thinking about Sunbeam information?

I will ask more specifically.
Were you referring to Sunbeam's performance in the first quarter of 1998 or something else?
A. No. I was talking about basically what happened after, you know, after the company basically collapsed.
Q. So, you are talking about information post dating Sunbeam's acquisition of Coleman?
MS. BROWN: Objection to form.
Q. Sorry. I want to clarify your last answer. When you say the company's collapse, what period of --
A. Sorry.
Q. Please just elaborate on your answer, if you would, please.
A. I guess what I am trying to say is that it became clear to myself, um, that after Mr. Dunlap was dismissed, and subsequently to that, in the following months, that even though we did what, I believe, was the best due diligence to our ability, that we did not have all of the facts, given that Sunbeam eventually, you know, um, declared bankruptcy.

Q. Is it your recollection that you did not come to believe that information that had been provided to you was false or misleading until sometime after Mr. Dunlap was fired?
A. Yes, I think that is -- yes.
MS. BROWN: Could we take a break?
MR. CHORVAT: That is fine.
THE VIDEOGRAPHER: The time is 10:56 a.m. and this completes tape number 1.
(Recess.)
THE VIDEOGRAPHER: Stand by. The time is 11:09 a.m. and this begins tape number 2.
BY MR. CHORVAT:
Q. Mr. Whelan, in connection with your credit due diligence review in the Sunbeam matter, did you ever place a phone call, just yourself, to the management of Sunbeam to request information?
A. I don't recall.
Q. In connection with the Sunbeam matter were you ever denied access to any information that you wanted to review?
A. I don't recall, but -- I don't believe that would happen as part of, you

NOT A CERTIFIED COPY

018214

know, my responsibility.
Q. Why is it that you don't believe that that would happen?
A. Um, well, again, the job of extending credit lay, ultimately, with the credit department, and not having that information would not be acceptable.
However, I will, it depends on what information we are talking about. Okay.
But there should be no reason why the credit department wants some information that the client should be willing to give them that information.
Q. At the time that you did your due diligence work in connection with Sunbeam, did you believe that you had information sufficient to do your job?
A. Um, to the best of my knowledge, yes, I thought I had all of the information that I needed.
Q. Did you have sufficient time to review that information?
A. Um, again, I don't remember the time frame -- specifically. I think it was perhaps about a month, maybe a little less. But,

looking back on it, I don't feel like I, I feel like, yes, I had enough time, based on the information that I had.
Q. Would you characterize your due diligence work in connection with Sunbeam as thorough?
A. Um, again, to the best of my ability, I thought it was.
Q. Are you familiar with the term "selling memorandum"?
A. Yes, I am.
Q. What's a selling memoranda?
A. It is, generally, a memorandum that is used to the sales force, depending, of course, on what type of instrument we are selling, to kind of give an overview of a particular company and/or transaction.
Q. Did you have any role in preparing any selling memorandum in connection with Sunbeam?
A. No, I did not.
Q. Would you have reviewed or commented on any selling memorandum in connection with Sunbeam?
A. No, I would not.

MR. CHORVAT: I will show you what previously has been marked as CPH Exhibit 129.
Q. Is Exhibit 129 a document that you are familiar with?
A. I am familiar with this document.
Q. What is Exhibit 129?
A. It looks like it is an equity commitment committee memo to the equity commitment committee.
Q. What is the equity commitment committee?
A. I honestly couldn't tell you exactly what it is, because I have never been to one. I have never been part of one.
Q. Do you have an understanding as to what role the equity commitment committee played in connection with Sunbeam?
A. No, I do not.
Q. Do you know whether the equity commitment committee would have been involved with the convertible security, as compared to the senior debt?
A. Again, I was not part of it, but my understanding is that they would, most likely,

review the convertible offering.
Q. Your name appears here on the first page of Exhibit 129, among the many others, after "from" and then a colon.
What role, if any, did you play in preparing Exhibit 129?
A. None.
Q. Do you know who would have prepared Exhibit 129?
A. No, I don't.
Q. Would you have reviewed Exhibit 129 before it went to the equity commitment committee?
A. No, I would not.
Q. In the course of your work on Sunbeam, did you review Exhibit 129?
A. I don't recall if I actually -- I don't recall.
Q. On the second page of this document there is a reference, in the first full paragraph, the longest paragraph on that page, to a rating on the zero coupon convertible security of not more than B1, B plus; do you see that?
A. Aha.

NOT A CERTIFIED COPY

018215

Q. Do you know who would have come up with that expected rating?
A. That would be me.
Q. Do you recall what factors led you to conclude that the convertible security would be rated not more than B1, B plus?
A. Not specifically, no.
Q. Do you have a general recollection?
A. No.
Q. Would a rating of B1, B plus, what effect, if any, would that have on the marketability of a zero coupon convertible security like the one that Sunbeam was to issue?
A. I couldn't answer that.
Q. For what purpose did you come up with the B1, B plus rating with respect to the zero coupon convertible offering?
A. Um, I was -- I was -- I guess I was asked that since we were going to be doing a convert along with a senior debt piece. The senior debt piece was also going to be rated. The rating agency eventually would rate the convert, even though the convert was getting done prior to. Sunbeam had no rating, prior

to the bank deal financing.
I was, again -- again, I can't recall specifically, but I was, most likely, asked by someone on the deal team to give a preliminary view on what we thought the rating on the convert would be, if it got rated.
Q. The rating of the convertible security would affect the interest rate that Sunbeam would have to pay on that security; is that correct?
A. I couldn't say.
Q. How, if at all, would the rating on the convertible security affect Morgan Stanley's position in connection with the Sunbeam financing?
MS. BROWN: Objection to form.
A. Can you repeat the question, please.
Q. Sure.
You testified earlier that your role with respect to the Sunbeam transaction was to protect Morgan Stanley's interest in making a capital contribution.
A. Aha.
Q. And my question is just how a rating determination on the convertible security

would affect Morgan Stanley's position, if at all.
A. By "position," what do you mean?
Q. The risk that Morgan Stanley was taking in the transaction.
A. That was not something that I really would opine upon. It was an underwriting. I was not involved.
I was never involved in the underwriting process. It was not deemed to be a capital commitment; so, therefore, that is not something that I would opine on.
Q. Is it fair to say that the B1, B plus rating that you predicted or opined on in connection with the convertible piece was done as an accommodation to others at Morgan Stanley or someone else in the transaction?
MS. BROWN: Objection to form.
A. I am not -- I am not so sure what you mean by "accommodating."
Q. Why is it that you came up with that rating?
A. Again, I don't recall. I think I said I was guessing someone had asked me to come up with a rating just because they knew

that eventually this convert would probably get rated once the senior piece got rated.
So, I don't remember exactly who or under what circumstances I was asked to provide that rating.
But this rating is a function of the senior rating; and so, since we were looking at a senior rating, the rating agencies always notch two notches below the senior implied rating, at that time; so, that is probably why I came up with the B1 B plus, but I can't remember exactly why.
Q. Providing the rating on the convertible piece was not part of your credit due diligence function in the Sunbeam transaction, or was it?
A. I would not say it was part of the credit function, per se. It was part of a function I performed as part of rating advisory, but it was not part of the credit function.
Q. Is it your recollection that the way that you got to the B1, B plus rating for the convertible security was that you provided a rating for the senior debt piece and then went

NOT A CERTIFIED COPY

018246

down two notches?
A. Again, that would have been the most likely situation. I don't remember specifically the timing and whatnot.
And, a lot of times, we would be providing -- you know, ratings are, they are not a science. They are not always easy to predict.
You are trying to predict what a committee of people, not the rating agencies, are trying to assess in terms of a credit risk.
So, but, yes, normally we would, when we come up with a senior implied rating, we would come up with a, if there was another piece of paper in the capital structure, it would just be kind of, it would just fall into place, as a matter of fact.
MR. CHORVAT: Let me show you what previously has been marked as CPH Exhibit 145.
Q. Are you familiar with Exhibit 145?
A. Um, it looks like the leverage finance commitment committee memo for the Sunbeam transaction.

Q. I will just ask, on the first page here, do you recognize the handwriting?
A. No, I don't.
Q. On the second page, which also looks sort of like a cover page, your name is listed, among many others --
A. Yes.
Q. -- as from.
What role, if any, did you play in preparing Exhibit 145?
A. I had no direct role. Again, I did not author this document.
I was, most likely, asked to read and make sure that I was okay with some of the statements in the document -- really, more so to the strengths and weaknesses of the credit. Obviously. The rating, this probably is a view of the rating, per se. That was my view. And then, again, I had some input into the financial model in the back.
Q. Can you recall any particular thoughts or comments that you would have had that would have contributed to this memorandum?
A. Um, verbally or -- or -- written?

Q. Either way.
A. I don't recall -- I don't recall specifics in terms of drafting the memo. I do recall, to a certain extent, talking about a downside scenario for this transaction, and getting comfortable even in the downside scenario that this was still a worthy, a viable entity.
Q. What do you recall the downside scenario for Sunbeam was like?
A. You know, I don't recall. But I do recall discussing it, um, at committee, but the specifics of it I don't recall.
Q. You said "discussing it at committee." Did you attend the meeting with the leveraged finance committee?
A. I don't believe I was -- I believe I was there telephonically.
Q. Did that meeting take place on or about March 20th, 1998?
A. Um, most likely. I mean, it is dated March. They usually are dated the day of the committee.
Q. Were you present telephonically for the entire meeting or just a part?

A. I don't recall. It was, I am sure, for a very good portion of it.
I don't recall, back then, whether -- for instance, today, we have a committee that has replaced this committee, and once the deal team has gone through the deal and everyone's questions are answered, it goes to a kind of core committee, and I don't remember whether they had that back then or not.
If they did, I was not there for the entire meeting. If they did, I was on for the entire deal team part of the meeting and then hung up when they went to core committee --
THE REPORTER: Excuse me.
A. -- after we were done.
MS. BROWN: He said, when they went to core committee.
Q. Would the leveraged finance committee meeting have been a meeting entirely devoted to Sunbeam or would there have been other matters, as well?
A. Um, I don't recall. There could have been an agenda. Um, if you are asking were other names discussed on this day -- at a

NOT A CERTIFIED COPY

018247

different time -- there could have been, but there were no other names discussed during the Sunbeam transaction.

Q. Do you recall how long the discussion of the Sunbeam transaction lasted at the leveraged finance committee meeting?

A. No, I do not.

Q. You mentioned that you recall there being discussion of the downside.

Are there other topics that you can recall being discussed?

A. Um, not specifically, no.

Q. Do you recall anything that you said, either in specific words or general topics?

A. No.

Again, my function, I think, was to discuss the rating generally and the rating, the senior rating. And, again, someone either had questions or had given a brief overview of the downside case.

Q. Do you recall whether you made a presentation, or answered questions, or something else?

A. Um, I don't recall, again, if

someone asked me some questions and I answered them or I just -- I was asked to walk through the downside case, and I did that, in a, you know, you know, perhaps two- or three-minute time frame.

Q. Anything else that you can recall about the leveraged finance -- is it leveraged finance committee or leveraged finance commitment committee?

A. You know, back then it seemed like -- on the first page it says "leveraged finance commitment committee." On the next page it says "leveraged finance committee." Everyone was calling it different things back then.

So, I think it was LFCC; so, I think it was leveraged finance commitment committee.

Q. Anything else that you can remember about the LFCC meeting with respect to Sunbeam?

A. No.

Q. On the page that is the next page, with the number 2 at the bottom, in the paragraph just under the top box, it says that: "The anticipated senior-most credit

rating for the pro forma Sunbeam is expected to be BB/BA 2," and that is in brackets.

Is that the rating that you were talking about?

A. Yes.

Q. That is the rating that you would have developed?

A. Yes.

Q. Do you know why it is in brackets?

A. No.

Q. Would the brackets signify that rating was still tentative or to be discussed?

A. Definitely not.

Q. By the time that the leveraged finance commitment committee had met, would you have pretty much settled in on your opinion as to what the rating would be?

A. Yes.

Q. Was it the role of the leveraged finance commitment committee to give final approval to Morgan Stanley's participation in the senior debt piece with respect to Sunbeam?

A. Yes, it was.

Q. After the leveraged finance committee -- well, I will ask this.

Did the leveraged finance committee approve participation in the Sunbeam senior debt piece at its meeting on or about March 20th, 1998?

A. Um, again, I don't remember specifics. I did not hear anyone say that they approved this transaction, but I assume that they did.

Q. Why is it that you assume that? What's the basis for that?

A. Well, we went forward with the financing.

Q. After the leveraged finance commitment committee would approve a transaction like Sunbeam, what else is left to do before closing?

MS. BROWN: Objection to form.

A. Can you clarify that?

Q. Sure. In your experience in the credit group, once the leveraged finance commitment committee approved a transaction, what was the process like between that time and when the transaction would actually close?

MS. BROWN: For the credit group?

MR. CHORVAT: His understanding of

NOT A CERTIFIED COPY

018248

Page 86

what the process would be.
MS. BROWN: Objection to form.
A. You know, again -- in this specific situation, I don't remember, and every situation is, every situation is different.
I mean, there are timing issues. There are -- you know, there are a lot of variables that can get you from commitment to closing.
And I don't recall, in this specific situation, how that would transpire.
And, again, there is no standard format, so to speak.
Q. Do you recall whether you continued to do credit due diligence between the time of the leveraged finance commitment committee meeting and the closing?
A. When was the closing?
Q. The Coleman acquisition closed on March 30th. I think some other pieces closed on March 27th.
A. No, I don't recall if I did or I did not.
Q. Did there come a time when you became aware of an issue as to whether or not

Page 87

Sunbeam would fail to meet projections or expectations for its performance in the first quarter of 1998?
A. Did there come a time when? I mean -- I am not so sure what you mean.
Q. Okay. During the course of your credit due diligence work, with respect to Sunbeam, did there come a time when you became aware of an issue as to whether or not Sunbeam's performance for the current quarter was falling below what had been anticipated?
MS. BROWN: Objection to form.
A. Um, can you clarify that a little more?
Q. Okay. What part of it is unclear?
A. You said, in the last part, "anticipated."
Q. Okay.
In the course of your credit due diligence work on Sunbeam, did you look at Sunbeam's projections for how they were going to do in the first quarter of 1998?
A. Um, I don't recall specifically. Um, however, um, it would be a little, um, unusual to look at, um, a quarterly number.

Page 88

Most of the part -- the information was done on annualized numbers.
So, um, I don't remember specifically about a particular quarter.
Q. In connection with your --
A. Sorry, in terms of a projection model like the ones that are in this memo.
Q. Yes, and I don't know exactly how this is going on the tape, but I guess, my guess is if your hands are here, (indicating) they may not be picking everything up.
A. Okay.
Q. In the course of your credit due diligence work with respect to Sunbeam, did you have cause to look at sort of Street expectations as to Sunbeam's performance during 1998?
A. No. That wouldn't concern me.
Q. Why not?
A. Because I don't -- I don't rely on what The Street was saying. Remember, we -- um, do our own analysis internally. And whether a company, um, is above or below analysts' expectations is nothing, you know -- depending on the situation, again, but it is

Page 89

something that I wouldn't necessarily pay a whole lot of attention to.
Q. When you did your credit due diligence work, was that based entirely on Sunbeam's historical performance, or did you also look at projections for future periods?
A. I am certain it was both.
Q. At any point in time, did you become aware that Sunbeam's performance in the first quarter of 1998 fell below its equivalent performance for 1997?
A. Um, at some point, I believe, I did find out about that. I don't recall exactly when that was.
Q. Do you recall whether or not it was before the closing of the Coleman acquisition?
A. Um, again, when was the closing acquisition?
Q. March 30th.
A. I don't recall specifically. Um, but I believe -- I recall that there was something that came out before the end of the quarter.
Q. What, if anything, do you recall about the information that came out before the

NOT A CERTIFIED COPY

018249

Page 90

end of the quarter?
A. Um, again, specifics, I don't recall specifics, but I know that their sales were going to be potentially below expectations, or something like that.
Q. Do you recall how you learned that?
A. I don't recall that, no.
Q. What, if anything, did you do when you found that out?
A. I don't recall.
Q. Did the fact that Sunbeam's performance was going to be below expectations in the first quarter of 1998 have any effect on your credit due diligence work?
MS. BROWN: Objection, to the extent that his question mischaracterizes the testimony.
A. Um, sorry. Can you repeat the question?
(Record read.)
MS. BROWN: My objection stands.
A. You know, I don't recall.
Q. Is it fair to say, in general, that if a company's performance falls short of the projections upon which you based your analysis

Page 91

to a given point in time, that would be a fact that you would want to know?
MS. BROWN: Objection to form.
A. Can you be a little bit more specific or clarify.
Q. Okay. It is correct, is it not, that the risk that Morgan Stanley would be exposed to in providing money to Sunbeam would be affected by Sunbeam's actual performance?
MS. BROWN: Objection to form.
A. Um, I think it depends on what you -- you know, how you define "performance."
Q. Is it fair to say that the risk that Morgan Stanley would be taking in extending financing to Sunbeam would be affected by the level of sales that Sunbeam would achieve?
MS. BROWN: Objection to form.
A. No. Not necessarily.
Q. Why not?
A. Well, there are a lot of things that impact on the creditworthiness. Sales is one of several dozen.
Uhm, for instance, a company with declining sales could generate more free cash flow because the company, in simple terms,

Page 92

with sales declining, is actually collecting receivables and inventory, um, all things being equal.
Um, so, that would bring in a level free of cash flow greater than a company that is growing very quickly.
So, that is just one possible variable.
So, if a company's -- you can't look at one metric and say, um, that is a, you know, a concern.
Q. Do you recall, in connection with Sunbeam's performance in the first quarter of 1998, whether the sales shortfall that it experienced was a positive or negative development?
MS. BROWN: Objection to form. Characterization.
A. Can you repeat the question.
(Record read.)
MS. BROWN: My objection stands.
A. Yes. Can you clarify positive from negative, from what standpoint.
Q. From your standpoint, in reviewing the risk that Morgan Stanley would be taking

Page 93

in extending credit.
A. I don't recall.
Q. What do you recall about Sunbeam's performance in the first quarter of 1998?
MS. BROWN: Objection to form.
A. When you say "performance," are you talking about earnings? Are you talking about sales? Are you talking about cash flow?
Q. Sales, earnings. If you want to talk about cash flow, whatever you recall. That's what I am trying to establish.
A. I mean, I do recall there was an, um -- um -- again, it is vague, but there was an issue in terms of sales performance, the first quarter of 1998 versus the first quarter of, I think, the first quarter of 1997.
But I don't remember the exact specifics, you know, at the time. I don't recall the exact specifics of what was happening at the time.
Q. Beyond the exact specifics, do you recall, generally, whether there had been a substantial shortfall in sales for the first quarter of 1998?
A. No, I do not.

NOT A CERTIFIED COPY

018250

Q. Is it fair to say, then, that you don't have any recollection of coming to the conclusion that Sunbeam's performance was at variance from what you had expected in putting together your ratings conclusion?
MS. BROWN: Objection to form.
A. At the time, I don't recall.
Q. Are you familiar with the term "comfort letter"?
A. Um, I believe I am familiar with it, but I am not exactly sure, you know, in what context.
Q. Well, what is your understanding of what a comfort letter is?
A. Um, it is a letter between two parties providing comfort in certain situations.
Q. In the course of your work on the Sunbeam matter did you ever have cause to review any letters from Arthur Andersen with respect to Sunbeam?
A. I don't recall.
Q. I will show you what was previously marked as CPH Exhibit 17.
Is that a document that you are

familiar with?
A. Um --
MS. BROWN: And, for the record, the witness will, whenever you ask him about documents, exclude any documents that he observed during his preparation for this, that he hasn't already testified about.
A. So -- no, this is not a document that I am aware of.
Q. This is not a document that you saw during your credit due diligence work with respect to the Sunbeam matter?
A. Not to my recollection, no, it is not.
Q. Okay. Do you recall whether Sunbeam issued a press release in 1998 concerning its performance in the first quarter?
A. Um, again, I don't recall the specifics, no.
Q. I will show you what was previously marked as CPH Deposition Exhibit 14.
Are you familiar with Exhibit 14?
A. Again, no, I am not.
Q. This is not something that you can recall seeing during your credit due diligence

review of Sunbeam?
A. I can't recall this specific document, no.
Q. Do you recall whether Sunbeam's performance for the first quarter of 1998 was a topic that was discussed at the leveraged finance commitment committee meeting on or about March 20th, 1998?
A. Um, I can't recall.
Q. Is it your view that a press release from Sunbeam indicating that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for that quarter, is not something that would be relevant to your credit due diligence work with respect to Sunbeam?
A. As stated here?
Q. Well, I did quote from there, yes. That is the basis for my question.
A. Oh. It wouldn't, I would not be overly concerned with it, no.
Q. This is not information that you would have wanted to know?
MS. BROWN: Objection, mischaracterizes.

A. Um, based on what the press release says, um, it is -- again, it is not something that would give me a lot of concern.
Q. Why is that?
A. Um, because the way it is, the way it is worded, it is very -- it is, again -- one, there is a lot more to sales growth or declines from a credit standpoint; and two, it talks about how it is unclear, it is unclear as to whether they are going to miss at all.
Q. So, is it fair to say that, in your view, there would be multiple possible explanations and multiple possible effects of the information that is contained in this press release?
MS. BROWN: Objection to form. Mischaracterization.
A. Um, can you be a little bit more specific?
Q. Sure. Is it fair to say that, in your view, the information that is contained in this press release is not necessarily a bad thing?
MS. BROWN: Objection to form.
A. I would say, based upon what I am

NOT A CERTIFIED COPY

018251

Page 98

reading, it is not necessarily a bad thing.
Q. If you were aware of the information contained in this press release, during your credit due diligence review, would it have been something that you would have done to contact management of Sunbeam and ask follow-up questions to determine whether or not this was a bad thing?
MS. BROWN: Objection to form.
A. Again, based on my experience and based on my judgment, if I thought it was something that I would need to follow up on, I would do that directly.
Q. Did you call anyone at Sunbeam to ask them about this press release or the information that is contained in it?
A. I don't recall.
Q. Do you recall whether you were aware of the information contained in this press release prior to the time that the leveraged finance commitment committee met?
A. I don't recall.
Q. Do you recall whether you were aware of the information in this press release prior to the time that the Coleman acquisition

Page 99

closed?
A. Um, again, I can't recall that.
Q. I will show you what has been previously marked as CPH Exhibit 112.
Are you familiar with Exhibit 112? In particular, the middle two pages.
A. No, I am not.
Q. Is Exhibit 112, is that something that you saw during your credit due diligence work for Sunbeam?
A. I don't recall.
Q. On the second page of the letter, which is the third page of this exhibit, there is a little chart towards the top of the page showing Sunbeam's net sales and net income for the roughly first two months of 1998, as compared to 1997; do you see that?
A. Yes, I do.
Q. And the net sales number is down from 143,499,000 to 72,018,000.
And the net income has gone from a positive 9,765,000 to a negative 41,190,000. Do you see that?
A. Yes, I do.
Q. Is that information that you were

Page 100

aware of during your credit due diligence work in connection with Sunbeam?
A. I don't recall.
Q. Is that information that would have been relevant to your credit due diligence review?
MS. BROWN: Objection to form.
A. Not necessarily.
Q. Why not?
A. Well, again, as I said before, there are a lot of factors that can impact the credit. Sales is just one of many.
And there could be a number of explanations as to why these numbers are different.
Q. If there are a number of possible explanations for these numbers, wouldn't it be relevant to your inquiry to know the numbers, so that you could seek those explanations?
A. Um, well, as these numbers are presented, it certainly would excite my curiosity as to what was happening and would, most likely, require some follow-up.
Q. On their face, these are numbers that reflected -- deteriorating performance;

Page 101

is that right?
MS. BROWN: Objection to form.
A. Again, not necessarily. The company -- well --
Q. Sorry.
Explain, please, what you mean by "not necessarily."
A. Well, again, a lot of things, a lot of things can happen.
And again, I don't recall the specifics, but, you know, the company could have sold a major part of its business in the first part of the prior, the last part of the prior year.
Q. Did that happen with Sunbeam?
A. I don't recall.
Q. Do you recall contacting anyone at Sunbeam for an explanation of the performance figures that are contained in Exhibit 112?
A. No, I don't recall that.
Q. Do you recall why you did not?
A. Recall why I did not contact them?
Q. Yes.
A. I just don't remember.
Q. Turn back to Exhibit 14 for just one

NOT A CERTIFIED COPY

018252

more moment.
A. Yes.
Q. Were you involved in any discussions as to whether or not to issue any press release from Sunbeam?
A. Absolutely not.
Q. Did you have occasion to visit the global financial press in connection with the Sunbeam transaction?
A. What's the global financial press?
Q. Financial printer.
A. No, I did not.
Q. In connection with Sunbeam did you ever have occasion to hear about any conversations about Sunbeam or its performance that took place at the global financial press?
A. No, I am not aware of that.
Q. Are you aware of whether or not the Sunbeam transaction closed as scheduled or whether there was any advance or delay in the closing?
A. That doesn't -- I don't recall that happening, no.
Q. Were you involved in any conversations as to when to close any aspect

of the Sunbeam transaction?
A. No.
Q. I will show you what has been previously marked as CPH Deposition Exhibit 36.
Is that a document that you are familiar with?
A. No, this is not a document that I am familiar with.
Q. To the best of your recollection, this is not something that you saw in connection with your work on the Sunbeam matter?
A. Well, you know, again, you know -- I may have seen this in the past six years, but I don't recall seeing it.
Q. You were not involved in any discussions as to whether or when to issue a press release containing the information in the Exhibit 36?
A. No, I was not.
Q. In connection with your work on Sunbeam, did you have occasion to consider potential synergies in Sunbeam's acquisitions?
MS. BROWN: Objection to form.

A. Sorry, can you repeat the question? I did not hear it.
(Record read.)
A. Can you be a little bit more specific?
Q. Sure.
Are you familiar with the word "synergies" in connection with corporate acquisitions?
A. Sure.
Q. Are synergies something that you look at from time to time in your work?
A. To evaluate credit? Yes.
Q. Why is that?
A. Well, depending -- again, every situation is different, but depending on the size of the synergies and the nature of the synergies, it could have an impact on the credit strength or weakness of the company.
Q. In connection with Sunbeam's acquisition of Coleman or First Alert or Signature, did you look at any synergies -- I guess that is the end of the question. Did you look at any synergies?
A. Again, specifically, I don't

remember the dollar amounts, but I am sure that we were, at least my analysis entailed some type of synergies for the transaction.
Q. Do you recall what source of information you used in considering potential synergies?
A. Again, not specifically, but -- I am almost positive that almost all of the sources of the synergies came from either Sunbeam directly or their consultants -- I think it was Coopers & Lybrand.
Q. Did you have cause to work with Coopers & Lybrand in connection with this matter?
A. I don't remember having any direct contact with them, no.
Q. Do you know what Coopers & Lybrand did in connection with this transaction?
MS. BROWN: Foundation, form. Objections.
A. Can you be a little bit more specific?
Q. What understanding, if any, do you have as to the work that Coopers & Lybrand did for Sunbeam?

NOT A CERTIFIED COPY

018253

Page 106

A. Specifically, again, I am not, I can't recall, but I believe they were hired to analyze potential synergies for the transactions.
Q. Let me ask you to turn back to Exhibit 129, which would be in your stack there.
A. Aha.
Q. If you would turn to the page numbered 17 at the bottom.
A. Yes.
Q. There is a question, number 5 in the middle of the page, that deals with synergies.
A. Aha.
Q. Is that something that you would have reviewed at the time?
A. For this document?
Q. Yes.
A. No.
Q. At the bottom of the response to number 5, there is a sentence that says: "They informed the Sunbeam board of directors that the synergies are likely to be in the 225 million to $275 million pre-tax range. Do you see that?

Page 107

A. Yes.
Q. Do you know who generated that estimate of synergies?
MS. BROWN: Objection. Foundation.
THE WITNESS: Sorry, can you read the question again.
(Record read.)
A. No, I do not.
Q. Did you do any work in estimating synergies from the acquisitions of Coleman, Signature and First Alert?
A. I may have. I don't recall. Again, as part of our credit process it is something, it is one of the main things that we would look into.
Q. Do you recall doing anything to assess the achieveability of any synergy forecasts?
A. Specifically, I don't recall.
Q. Do you recall whether the estimated synergies grew over time, or were reduced over time, or changed in some other way?
MS. BROWN: Objection to form.
A. When you say "grew over time," what time period are you talking about?

Page 108

Q. During the period that you were doing credit due diligence with respect to the Sunbeam matter.
A. No, I don't recall that.
Q. If we extend the time period to include after the closing of the acquisitions and moving towards the rating presentations, do you recall whether the synergy estimates grew or shrank over that period of time?
MS. BROWN: Asked and answered. And mischaracterizes.
A. Again, I don't recall over that time frame.
Q. Would you look at Exhibit 145, and look at page numbered 13 at the bottom, please.
A. Yes.
Q. The third bullet point there, under Roman 8, says that: "Synergies were also reduced on the MS base case."
Do you have an understanding of what "MS base case" is?
A. Yes. That is the Morgan Stanley base case.
Q. Who developed that?

Page 109

A. I don't recall.
Q. Someone at Morgan Stanley, other than yourself?
A. Again, I don't recall the specifics, but I am sure it was myself along with some other members of the team.
Q. So, when it says that synergies were also reduced on the MS base case, is that an adjustment that someone at Morgan Stanley would have made?
A. Um, yes. Yes.
Q. The reference, later in that sentence, to management case, those are projections that came from Sunbeam management?
MS. BROWN: Objection. Mischaracterizes the previous testimony.
A. Again, I can't be exact here, but it says from management case; so, you know.
Q. In ordinary usage, "management case" would refer to the case developed by management; is that right?
A. That is correct.
Q. Do you have any recollection of reducing synergies in projections from the management case?

NOT A CERTIFIED COPY

0108254

A. I don't have any specific recollection, but that is pretty much standard operating procedure from the credit standpoint.
Q. How do you go about deciding what synergies to put into a Morgan Stanley case?
A. Again, you know -- every situation is different. A lot of factors go into it.
I don't remember why we assumed the 40 percent reduction, but I am sure there was some, you know, statistical data behind it, in some fashion or another.
Q. What sorts of information do you look at in evaluating synergies?
A. Um, well, again, a lot of things.
One is, are they cost synergies or revenue synergies. Generally speaking, cost savings are easier to generate than revenue synergies.
It depends on the, um, the nature of the overlap between, perhaps, some of the businesses that are being folded into the company, um, the factor would be management's past history of achieving synergies.
Um, and, you know, there are other

things probably, too, that I can't think of off the top of my head.
Q. Do you recall if any of those factors came into play with respect to Sunbeam?
A. No, I can't.
Q. You mentioned, a couple answers ago, that it was, I think you said standard, or common, in any event, to reduce synergies from what management has suggested. Why is that?
A. Well, from a credit standpoint we always view synergies as something where -- well, for a lot of reasons, from a credit standpoint, we would view the glass as half empty.
And to just assume that a company is going to achieve everything that they say they are going to achieve I don't think is all that prudent, regardless of track record.
And, also, synergies can happen over a period of time.
And folding those in at different time periods is very hard to do.
So, again, from a credit standpoint, it is pretty standard to take some type of

haircut. And how you come up with the haircut depends on the situation that you are involved with.
But that is, you know, I think any credit analyst, you know, or any rating agency person or any person would take that kind of haircut.
Q. Is it fair to say that companies' managements tend to be optimistic in predicting synergies from a transaction?
MS. BROWN: Objection to form.
A. "Companies' managements." Can you be more specific?
Q. Sure.
You explained in your testimony why, in looking at a glass half empty, you often reduce synergies. I just wanted to take a little different perspective on that.
In your experience, is it fair to say that the management of a company looking at an acquisition or a transaction will often be optimistic about the synergies that can be generated from that transaction?
A. Not necessarily, no. There are plenty of times that I can't -- management has

exceeded synergies. It has happened.
Q. In your experience, is it equally likely that a company will exceed previous expectations as to synergies, as it will be to fall below those expectations?
MS. BROWN: Objection to form.
A. Again, purely from a credit matter, um, it is hard to say, just because, again, you know, things change over time. And the synergies get factored in at potentially different points in time.
So, you know, it is hard for me to sit here and categorically say that companies, you know, generally are better or worse than what they originally anticipate in terms of projections. It is just, it is really a case-by-case example. It depends on what industry you are talking about.
It depends on the experience of the management team.
It depends on what they are buying.
I just, I can't give that a, any kind of a kind of blanket answer from an experience standpoint.
Q. I will show you what was previously

NOT A CERTIFIED COPY

018255

marked as MS Deposition Exhibit 78.
Is this a document that you reviewed in connection with your Sunbeam work?
A. It doesn't look familiar, no.
Q. In connection with your Sunbeam work, did you become familiar with a gentleman named Andrew Conway?
A. I believe he was the equity analyst for Morgan Stanley for beverage companies, I think. I can't really remember.
Q. Do you recall any work that Andrew Conway did in connection with synergies in connection with Sunbeam?
A. No, I do not. I don't recall that.
Q. Do you recall any conversations with Mr. Conway with respect to Sunbeam?
A. No, I do not.
THE WITNESS: Could I take a recess?
MR. CHORVAT: Yes.
THE VIDEOGRAPHER: The time is 12:16 p.m. and we are going off the record.
(Recess.)
THE VIDEOGRAPHER: Stand by. The time is 12:24 p.m. and we are back on the video record.

BY MR. CHORVAT:
Q. Again, with reference to Deposition Exhibit 145, which, I think, you have in front of you, on page 13.
A. Yes.
Q. There are references there to the MS base case and MS downside case, and there is also a Morgan Stanley financing base case.
First of all, is the Morgan Stanley financing base case, is that the same as MS base case?
A. I don't know. Where did you see "MS financing"?
Q. The first sentence of the first bullet point.
A. Well, as it is worded here, they would seem to be the same, because there is only one clarifier. So, the second sentence is clarifying the first.
So, I am assuming, it seems like they are the same.
Q. And in the fourth bullet point there is a reference to an MS downside case.
A. Yes.
Q. What is a downside case, as compared

to a base case?
A. Again, I don't recall specifics, but usually a downside case would be, perhaps, a one in 10 or, you know, one out of four possibility of something that could go differently, negatively of course, compared to our base case.
Just to show how much flexibility there is from a credit standpoint to make it through a potential downside event, if you will.
Q. Who at Morgan Stanley would have generated the MS downside case in connection with Sunbeam?
MS. BROWN: Objection. Foundation.
A. Again, at the time -- it is done a little differently now, but at the time it was, most likely, myself, fixed income research and, perhaps, corporate financing, and/or the leverage product group.
Q. In a couple of these bullet points on page 13 is the acronym CAGR. Is that compound annual growth rate?
A. Yes.
Q. And in the second bullet point it

notes that the CAGR for sales was reduced from almost 14 percent in the management case to 9.4 percent in the MS base case.
Do you know why that was done?
A. Specifically, no, I do not.
Q. In general, was it typical in your work in preparing projections to alter sales growth rates from what management had projected, if you found that to be warranted?
MS. BROWN: Objection to form.
A. Well, that could be one factor that we could, I mean -- that we could change, or we would really call synthesize.
It could be sales. It could be EBITDA margin. It could be inventory turn. It could be, you know, the company generates a certain amount of free cash flow, how much of that cash flow goes towards back into the business, versus paying down debt service.
I mean, there are a lot of different assumptions that we can make here. I don't recall why we just looked at sales.
There could be other assumptions in the downside case that just aren't highlighted in this case, overview of the assumptions, but

NOT A CERTIFIED COPY

CA-18256

Page 118

I don't recall exactly why we chose sales.
Q. As set out in the fourth bullet point on page 13, the downside case still assumes that sales will grow on an annual rate of 4.4 percent, rather than 9.4 percent on the base case; is that correct?
A. Well, sorry, where does it say that? Yes. Yes.
Q. And then, the other difference that is laid out here between the downside case and the base case is that in the downside case Morgan Stanley has assumed no synergies from the transaction, as compared to the synergies that we talked about earlier that are in the third bullet point in the base case; is that right?
A. Aha.
Q. Did there come a time when Morgan Stanley worked to syndicate any portion of the Sunbeam financing?
A. Um, well, I am not in the syndication group and I never was. I can't, I am not really sure that I can answer that question.
Q. I will ask it a different way.

Page 119

What role, if any, did you play in any attempted syndication of any of the Sunbeam financing?
A. None.
Q. After March 30th, 1998, when is the next time that you can recall participating in a meeting with respect to Sunbeam?
A. I can't recall.
Q. Do you recall whether you participated in a meeting with analysts on or about May 11th, 1998?
A. I believe I was at that meeting, yes.
Q. Where did that meeting take place?
A. I believe it took place at the Equitable building on 7th Avenue, I believe.
Q. Do you recall who participated in that meeting from Morgan Stanley?
A. No, I do not.
Well, I was there, and I believe my analyst Jason Kunreuher was there.
Q. Can you recall who was there for Sunbeam?
A. Um, Al Dunlap was there. I can't recall if Russ Kersh was there, but I can't

Page 120

recall if he was there or not.
Q. Do you recall when that meeting occurred in relation to Sunbeam's issuing of its first quarter results for 1998?
A. No. I don't know when they issued the first quarter results.
Q. Other than the folks that you testified to as being there for Morgan Stanley for Sunbeam, how many other people were there? Roughly.
MS. BROWN: Objection to form.
A. I can't say, really.
Q. Was it held in a conference room or an auditorium?
A. I don't recall. I don't recall how big the room was.
Q. What was the purpose of the analysts' meeting on May 11th, 1998?
A. I don't recall at this time.
Q. You have been to analysts' meetings before?
A. Yes, I have.
Q. Is there, typically, a reason why management will meet with analysts in a meeting like that?

Page 121

A. There could be a number of reasons why they meet with the analysts. There is no one specific.
Q. What are the reasons that you can think of?
A. It could be to announce the transaction.
It could be to announce a -- it could be just kind of a luncheon to kind of give an update on performance.
It could be a follow-on to an earnings announcement.
It could be, you know, probably, a lot of other things that I am thinking about.
Q. You don't recall which, if any, of those it was in the case of Sunbeam in May of 1998?
A. No, I do not.
Q. Do you recall why you were there?
A. Um, no, I don't recall why I was there, other than that it was right down the street from my office and it was convenient to go, but I can't recall exactly why I was there.
Q. You were continuing to do some work

NOT A CERTIFIED COPY

018257

Page 122

for Sunbeam at that point?
A. Um, well, of course, we were still -- you know, we still had to meet with rating agencies at the beginning of June.
Q. Is it fair to say that your credit due diligence work had concluded by that point?
MS. BROWN: Objection, to the extent that it mischaracterizes the prior testimony.
A. Um, it is hard to say in what light.
Q. Well, as of May 11th, 1998, the acquisitions had already taken place and the closings had taken place on the financing; and so, were you continuing to do credit due diligence at that point?
MS. BROWN: Asked and answered.
A. Um, again, if it was -- most likely, any credit work was most likely related to the credit rating agencies, who are concerned about credits because that is why, how they rate bonds. So, it was, most likely, in that regard.
Q. In connection with your work in advance of the rating agency meetings, what

Page 123

was it that you were doing? What was your role?
A. Um, specifically, you know, I don't recall; but, generally, it would be helping the client put together, effectively, a presentation to the rating agencies to tell the story.
And, as was said before, the rating presentation is more of a larger road show presentation, so to speak. It is much more detailed. And so, that would be one aspect of it.
The other aspect would be scheduling the meetings with the constituencies at the S&P and Moody's, walking them through any potential issues they may have or things that they would like to hear about more specifically, so it is a more effective meeting.
And then, also, speaking with management and dealing with potentially some of the issues that the rating agencies may have.
Q. Do you recall who spoke at the May 11th analysts' meeting?

Page 124

A. Um, I believe Al Dunlap did. I know he was there, but I can't recall who actually spoke.
Um, um, I can't -- I believe -- I believe Michael Price may have been there, but I can't remember if that was that meeting or not.
Q. Who is Michael Price?
A. Well, at the time, I believe, Michael Price was a large shareholder in Sunbeam.
Q. Can you recall the tenor of the meeting, whether it was upbeat, or tense, or something else?
MS. BROWN: Objection to form.
A. You know, I really can't recall the length or the mood of the meeting.
Q. I will show you what has been previously marked as CPH Deposition Exhibit 195.
Are you familiar with Exhibit 195?
A. I don't recall it, no.
Q. In connection with the May 11th analysts' meeting, did you play a role in preparing any hand-outs or materials, written

Page 125

materials?
A. For this meeting?
Q. Yes.
A. No, I did not.
Q. Did you review any written materials before the meeting?
A. No, I did not.
Q. Would you have seen any written materials that were handed out when you were actually there at the meeting?
A. Are you asking me, if this was handed out at the meeting, would I have seen it?
Q. Yes.
A. If they handed it out, I would have seen it.
Q. Let me ask you to turn to the page that has the Bates number 40250, also 3546. There are two Bates numbers.
A. 402 --
Q. 250, cost savings and synergies.
A. Yes.
Q. It says "original estimate of 150 million and actual of 291."
Do you know where either of those

NOT A CERTIFIED COPY

018258

Page 126

numbers come from?
A. No, I do not.
Q. Do you know whether the $291,000,000 actual number is a number that was based on any input from you?
A. The 291, I had nothing to do with that number.
Q. Do you know if that is a Coopers & Lybrand number?
A. I have no idea where that number came from.
Q. Do you recall any discussions with anyone about the $291,000,000 synergy number?
A. Not to my recollection, no.
Q. Do you have any understanding of the model upon which that was based or the assumptions on which that was based?
A. No, I do not.
Q. Do you have any understanding as to why the original estimate of cost savings and synergies would have increased from 150 million to 291 million by May 11th, 1998?
A. No.
Q. In connection with your rating agency work for Sunbeam, did you have cause to

Page 127

discuss synergies with anyone at Sunbeam?
A. I can't recall specifics, but I probably did in due course.
Q. It would be a fairly normal topic to come up, but you don't recall any specific discussions?
A. Again, the rating agencies are credit people, and I am assuming that if this was a big part of the story, that they would want to have a lot of details as to how the synergies were going to be achieved.
I think that is a fair statement.
Q. Can you recall discussing synergies with anyone at Coopers & Lybrand in connection with Sunbeam?
MS. BROWN: Objection, asked and answered.
A. No, I can't recall that.
Q. At any point, did you review the basis for any synergies estimates that Coopers & Lybrand generated in connection with Sunbeam?
MS. BROWN: Sorry, could you read that back.
(Record read.)

Page 128

MS. BROWN: Objection to form and foundation.
A. Sorry, could you read that again.
(Record read.)
A. I can't recall.
MR. CHORVAT: I am handing you what has been marked as CPH Deposition Exhibit 250.
Can you identify Exhibit 250?
(CPH Exhibit 250, memorandum, marked for identification as of this date.)
A. Yes. This is a memorandum that I put together in preparation for the -- it is really just a brief itinerary of the meeting that Russ Kersh and Ron Richter were going to have with the rating agencies on, I guess, June 3rd.
Q. These are the meetings that you have mentioned from time to time in your prior testimony; is that right?
A. Yes. That's right.
Q. Were you involved in drafting the materials to be shared with the rating agencies at those meetings?

Page 129

A. Yes, I was involved.
(CPH Exhibit 251, documents Bates Nos. 5547 to 5599, marked for identification as of this date.)
MR. CHORVAT: I am handing you what has been marked as CPH Deposition Exhibit 251, which is a fairly lengthy document which bears Bates stamps MS, Morgan Stanley 5547 through 5599.
Q. Can you identify Exhibit 251?
A. Yes. This is the rating agency presentation that Sunbeam gave to the rating agencies.
Q. Do you know whether this is a final version or a draft?
A. I don't know.
Q. Exhibit 250 discusses rating agency meetings on June 3rd. Were there also meetings on or about May 25th; do you recall?
A. No. There wouldn't have been other meetings. There was only one set of meetings, one day of meetings.
Q. Were there drafts of the presentation materials prepared prior to the actual rating agency meetings?

NOT A CERTIFIED COPY

018256

Page 130

A. I am sure there were.
Q. What role did you play in preparing Exhibit 251?
A. Um, well, I did not physically put the document together. It was put together in, just as a matter of, that's how we did it in terms of efficiency, by the documentation, or whatever you wanted to call it, that was part of IBD.
But I -- based on what I knew, the strengths of the company weren't what the concerns of the rating agencies were going to be that crafted this document, to go over what we thought would be the salient points of what they would want to hear.
Q. The documentation group in IBD that you mentioned, that is a group within Morgan Stanley?
A. Yes. It is, like, word processing.
As a matter of fact, if you -- you know, there is a date on this document that says April 15th. I think that is the April 15th --
Q. If this document were prepared on or about April 15th, then it would be -- the May

Page 131

25th date on the cover would be sort of a projected date for the meeting, the analyst meeting?
A. It could have been.
We could have -- you know, a lot of times these things are fluid and there could have been a scheduling conflict that we had to move the meeting to June 3rd, or something like that, either from a company standpoint, or from my standpoint, or from the rating -- most likely, the rating agencies.
Q. With respect to the substance of Exhibit 251, what sources of information would you have drawn upon in connection with your contribution to this document?
A. Again, we would have relied on the information provided to us by the Sunbeam management team, along with the management team of some of the targets that they had purchased, the historical financials.
Obviously, let's say in the projection model, which is the management's projection model, so predominantly this information comes in some form through management.

Page 132

Q. Other than yourself, who else at Morgan Stanley would have contributed to the substance or presentation of Exhibit 251?
A. Specifically, I can't say, but it would have been probably certain key members from corporate finance and leveraged finance.
Q. Do you recall who any of those would have been in connection with Sunbeam?
A. Specifically, or -- just general people who were involved in the deal?
Q. As specifically as you can recall, with respect to Sunbeam.
A. Well, I can't recall anyone being involved in this book. I am sure someone was, but I can't tell you if someone on the deal team had a comment on a certain page.
Q. Would this have circulated to the entire deal team from the March transaction?
A. The recipients would have been myself, corporate finance -- leveraged finance, and perhaps fixed income, and that's it.
Q. I will ask you to turn to the page that bears the Bates number 5551.
A. Executive summary.

Page 133

Q. Executive summary.
In the second bullet point it says: "Synergies are projected to be at least $150 million annually."
A. Aha.
Q. Do you know where that number came from?
A. No, I do not.
Q. This is not something that you, personally, prepared?
A. No, it is not.
Q. The prior sentence in that bullet point talks about the acquisitions of Coleman Signature Brands and First Alert.
A. Yes.
Q. Do you know whether the $150,000,000 number is the combined synergies of all three acquisitions?
A. I can't say, for certain.
Q. If you turn to the page Bates numbered 5556.
A. Yes.
Q. It is a summary of acquisitions?
A. Yes. Yes.
Q. Under "Coleman" it says "$2.2

NOT A CERTIFIED COPY

018260

Page 134

billion aggregate value"; do you see that?
A. Aha.
Q. Do you know what the source of that information was?
A. No, I do not.
Q. That is not something that you did, personally?
A. No. I had nothing to do with that.
Q. So, in instances like this, you and others at Morgan Stanley would have taken information that came from a management source, and then Morgan Stanley put it into the form of this document?
MS. BROWN: Objection. Mischaracterizes.
THE WITNESS: Can you read the question back, please.
(Record read.)
MS. BROWN: Also, objection to form.
A. Um, I think most of the information, it is fair to say -- I haven't gone through the document -- is information that has been provided by management.
Q. With respect to the $2.2 billion valuation of Coleman, do you know if that

Page 135

number came from Sunbeam management or some other source?
A. Yes. I don't know where that came from.
Q. I will ask you to turn to page 5571.
A. Yes.
Q. "Coleman synergies rationale $122 million."
A. Yes.
Q. Do you know who came up with the $122 million number?
A. No, I do not.
Q. There is a whole list of considerations that seem to go into that. Do you know who generated those considerations?
A. No, I do not.
Q. Do you know whether it was management or Coopers & Lybrand?
A. I don't recall who came up with these figures.
Q. It was not you?
A. Absolutely not.
MR. CHORVAT: I am handing you what has been marked as CPH Deposition Exhibit 252.

Page 136

(CPH Exhibit 252, rating agency presentation, marked for identification as of this date.)
Q. Can you identify Exhibit 252?
A. Again, it looks like a Sunbeam rating agency presentation with a later date.
Q. It looks like a little footer is dated May 31st, 1998.
A. Yes. That looks to be right.
Q. What role, if any, did you play in preparing Exhibit 252?
A. Um, the same as I indicated before. It was more to help collect thoughts on the strengths and weaknesses of the company and issues that I knew the rating agencies would want to focus on.
Q. I will ask you to turn to the page that has the Bates number 19641.
There is some handwriting; do you recognize that?
A. No, I do not.
Q. That is not your handwriting?
A. I don't believe it is. It is hard to read, but I don't believe it is.
Q. This document bears Bates numbers

Page 137

19638 through 19725.
Let me ask you to turn to page 19651.
A. Yes.
Q. And here, under "Sunbeam acquisition rationale," the second bullet point says that "cost savings/synergies are approximately $290,000,000 annually." Do you see that?
A. Aha.
Q. Do you know why that number had increased from 150 million in the draft we were looking at a moment ago to about 290?
A. No, I can't. I can't give you an answer to that.
Q. Do you know who prepared the $290,000,000 estimate?
A. No, I do not.
Q. Do you recall any discussions of synergies in the range of $290 million with anyone at Sunbeam?
A. Not specifically, no.
Q. How about anyone at Coopers?
A. No.
Q. How about anyone during the analysts' meeting in May?

NOT A CERTIFIED COPY

018261

A. Again, I did not specifically have, I did not have any conversations with anyone at the analysts' meeting.
Q. Do you recall whether synergies was a topic that was discussed at that meeting?
A. I don't recall. I can't recall.
Q. Can you recall any discussion of synergies during the meetings with the rating agencies in June?
A. Um, I can't recall specifically, no. But, you know, like I said, I am sure it was a topic of conversation.
Q. There were two rating agencies meetings in early June; is that correct?
A. Yes. That is correct.
Q. What can you recall about the Standard & Poors meeting?
A. Um, nothing really. It was a non-event.
Q. When you say a non-event --
A. It was not any -- to me, I had gone to so many of these things in my career, it doesn't really -- there is nothing that comes to my mind.
Q. Do you recall who attended?

A. I believe the people on this page, and I can't recall specifically, but I believe on this page attended.
Q. When you say "the people on this page," the people on behalf of Sunbeam would have been Mr. Kersh and Mr. Richter?
A. Yes. That's right is there.
Q. And yourself, Morgan Stanley?
A. Yes.
Q. And then, the three individuals who are listed under Standard & Poors under 11A M?
A. Correct.
Q. Is there anyone else at that meeting that you can recall?
A. Jason Kunreuther, my analyst, but I can't recall him specifically being there.
Q. You can't recall any particular topics of conversation?
A. No, I cannot.
Q. How long did the meeting last?
A. I don't recall. A couple hours, probably.
Q. With respect to the Moody's meeting, who attended that meeting?
A. Kevin Kusniak (ph) was there, and a

gentleman named Rob McCreary.
Q. Who was Mr. McCreary with?
A. He was with Moody's.
Pam Stump was not there; so, he was there in her place, I believe.
Q. And Messrs. Kersh and Richter for Sunbeam?
A. Yes.
Q. And yourself, on behalf of Morgan Stanley?
A. Yes.
Q. How long did that meeting last?
A. Again, probably a couple hours.
Q. What, if anything, can you remember about that meeting?
A. I do remember that being a little contention between Mr. Kersh and Mr. McCreary. I can't remember specifically what about, but, quite frankly, that was pretty much the standard operating procedure with Mr. McCreary and pretty much anyone that was brought in to see Moody's.
Q. Do you recall whether synergies were discussed during that Moody's meeting?
A. I don't recall specifically, no.

Q. What about Sunbeam sales performance?
A. Not specifically.
Q. The acquisitions?
A. Sorry.
Q. The acquisitions?
A. Well, again, not specifically, but I am sure that is why they were there. Finance, I am sure, was part of the conversation.
Q. How long does it, typically, take after a rating agency meeting for the agencies to develop a rating?
A. Um, an official rating or preliminary rating?
Q. I take it the preliminary one comes first; right?
A. Yes.
Q. How long does that take?
A. It could take less than a day or so.
Q. Did you get preliminary ratings from Standard & Poors or Moody's?
A. Yes, I did.
Q. What did they have to say?
A. They both said double B, BA2 senior.

NOT A CERTIFIED COPY

018262

Q. Did they, also, rate the convertible piece?
A. They did not have to, but I knew, by default, that it would be rated, because, again, it is always two notches below that; rating; so, it would have been B1, B plus.
Q. And did those preliminary ratings become official at some point?
A. No, they did not.
Q. Why is that?
A. Well, after the rating meetings, June 3rd, I don't know, it was probably the following weekend when Mr. Dunlap got fired, along with Mr. Kersh.
Or, I think -- I don't know where he was, but -- and, obviously, put the whole syndication, or whatnot, in kind of disarray, or kind of suspended syndication process; so, S&P Moody's had different policies at the time.
S&P basically said they are not going to rate it, they are not going to rate anything, they don't normally rate converts unless there is another reason to rate.
At the convert meeting they had

something on a piece of paper, like the bank debt. Since the bank debt was not going to get rated -- because there was no syndication at the time, there was no reason to rate the converts. Okay.
Um, Moody's, on the other hand, the initial reaction, they were going to rate the bank debt, but when I told them that, look, there are three holders of the bank debt -- we do not need a rating on it because we are holding it -- us, being they and, I think, First Union.
We did not need the rating. And so, however, Moody's had this policy that there was a convert out there, and they were claiming that they were getting inquiries about a rating; and so, they gave it a rating.
Q. How long does it, typically, take to get an official rating after the rating agency meetings?
A. It depends, but in this situation, it is probably a couple weeks.
Q. Is that fairly typical?
A. I would say so.
Q. After the rating agency meetings on

June 3rd, did you have any further work in connection with Sunbeam?
A. Um, well, as I said, I had some follow-up conversations with the rating agencies.
And I may have, you know, relayed some of that information to some of the team members.
But, other than that, I can't remember -- I can't remember, you know, when it stopped.
Q. Other than relaying that sort of rating agency information, had you done anything else with respect to Sunbeam since June of 1998?
A. Since June of 1998?
Q. Yes.
A. Um, you know, I can't remember exactly the date, but it was probably the end of June where I was pretty much done with the, done with the company.
Q. Did you continue to monitor Sunbeam's performance after that?
A. No, I did not.
Q. Did you have any involvement in any

reserves established or write-downs or write-offs in connection with Sunbeam?
A. No, I did not.
Q. Have you had any cause to monitor American Household or Morgan Stanley's holdings in American Household, as a result of its Sunbeam position?
A. I recently, probably in the last year or so, received some financials on American Household, but I don't cover the industry anymore, and I believe I gave them to the person that covers the industry.
But it is not really a name that we follow from a portfolio management standpoint.
Q. Who is the person that you gave that information to?
A. I believe I gave it to a woman named Tina Trinkle, or I just let her know that we got these and filed them in our system, but -- I did not look at them.
Q. What group is Ms. Trinkle with?
A. She is in my group.
Q. Are you aware of anyone at Morgan Stanley who monitors American Household?
MS. BROWN: Objection to form.

NOT A CERTIFIED COPY

018263

Page 146

A. No, I am not aware.
Q. Are you aware of anyone at Morgan Stanley who would have valued Morgan Stanley's interest in American Household?
A. I am not aware of anybody.
Q. You have not?
A. I certainly have not.
Q. Just to step back for a second to March of 1998.
Were you involved at all in the road show in connection with the Sunbeam financing?
A. No, I was not.
Q. Did you attend any meetings or lunches that were part of the road show?
A. I may have, but I don't recall.
Q. Did you attend a lunch in Boston with respect to the road show?
A. No, I did not.
Q. Can you recall attending any meeting in New York with respect to the road show?
MS. BROWN: Objection to form.
A. Again, I recall being at a meeting with Mr. Dunlap, and he was, you know, signing books, but -- so, you know, that could have been the road show. I don't know.

Page 147

Q. Is there anything else that you can recall about that meeting?
A. Actually, no.
Q. Do you recall who else was there?
A. Um, I know, again, Jason Kunreuther with there with me, but other people, no.
Q. Do you know whether anyone else from Morgan Stanley was present at that meeting?
A. I can't recall.
Q. At any point, have you been asked whether you have any documents that relate to this litigation?
MS. BROWN: Objection to form.
A. Um, I don't recall.
Q. At any point, have you looked for any documents or electronic files that might relate to this litigation?
MS. BROWN: Same objection.
A. Um, again, you know, I was -- I was probably contacted several years ago for some documents, but I don't remember what those documents were, and whatnot, so.
Q. What is your understanding of what happened with respect to any working files that you had with respect to Sunbeam?

Page 148

THE WITNESS: Sorry, can you read back the question.
Q. I will try it again. It was a little sloppy.
I take it that during the time that you were working on Sunbeam you had some working files or papers that related to the matter that were in your possession?
A. That's right.
Q. At some point, did those documents come to be no longer in your possession?
A. Um, once I, uhm, once I was, once we brought Morgan Edwards on to cover our distress portfolio, I effectively gave them my entire file.
Q. You did not keep anything, at that point?
A. Not that I can recall, no, I did not.
Q. Would you also have transferred to Mr. Edwards any computer files that you had, related to Sunbeam?
THE WITNESS: What was the question, "could have"?
(Record read.)

Page 149

A. I don't recall.
Q. At the time that you were working on Sunbeam, the spreadsheets, word processing files, other kinds of computer files, those would have been on your computer; is that right?
MS. BROWN: Objection to form.
A. I suppose it is possible, but anything that I would have had he would have had access to through his, through the L-drive at Morgan Stanley.
Q. Is it fair to say that you use a different computer today than you used in 1998?
A. Yes, I think that is a fair statement.
Q. Do you know whether there are any files relating to Sunbeam on your current computer?
A. I don't know.
Q. Do you have cause to look?
A. No.
Q. Do you know whether anyone else has looked at your computer with respect to Sunbeam?

NOT A CERTIFIED COPY

018264

A. Not that I am aware of.
Q. Are you aware of any document retention policy at Morgan Stanley with respect to papers or computer files like what you would have had in your possession relating to Sunbeam?
A. No, I am not aware of what, if any, what the policy is.
Q. Sorry, as you sit here today, you don't know where any of the Sunbeam-related documents that you once would have had or had access to are today?
A. I have no idea.
THE VIDEOGRAPHER: Five minutes left on the tape.
MR. CHORVAT: If we can break for a couple minutes, I think I am just about done.
MS. BROWN: Okay.
THE VIDEOGRAPHER: The time is 1:12 p.m. and we are going off the video record.
(Recess.)
THE VIDEOGRAPHER: Stand by. The time is 1:18 p.m. and we are back on the

video record.
BY MR. CHORVAT:
Q. With respect to Exhibits 251 and 252, I will just ask you again about these footers that are on the lower left column.
Those are generated by a Morgan Stanley computer system; is that right?
A. I believe so.
Q. And so, these documents were generated by someone at Morgan Stanley; is that right?
MS. BROWN: Objection to form.
A. Can you be a little bit more specific.
Q. With respect to Exhibit 251, describe, to the best of your understanding, the process by which this document came to exist.
A. Well, it was put together through a collaborative effort between management of the company, certain members of the deal team who put the slides together, and then it was created in a word document, so to speak, by the word, I guess it is called the word processing group at Morgan Stanley.

Q. The same question with respect to Exhibit 252.
A. The same thing. You know. Management, along with certain team members, put together the slides and then, you know, in hand form. And then they were, obviously, put together by the word processing group at Morgan Stanley.
Q. These were prepared in connection with Morgan Stanley's work in preparation for the rating agency meetings?
MS. BROWN: Objection to form.
A. I think that is fair.
MR. CHORVAT: Thank you, Mr. Whelan, that is all that I have.
MS. BROWN: No questions.
THE VIDEOGRAPHER: The time is 1:20 p.m., and this completes tape number 2 and also the videotaped deposition of Mr. Christopher Whelan.
(Time noted: 1:20 p.m.)

CHRISTOPHER WHELAN

Subscribed and sworn to before me
this day of 2004.

018265

NOT A CERTIFIED COPY

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That CHRISTOPHER WHELAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18 day of July, 2004.

_____
ROBERT X. SHAW, CSR

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
MR. WHELAN	MR. CHORVAT	5

---------- INFORMATION REQUESTS ----------

DIRECTIONS:
TO BE FURNISHED:
REQUESTS:

---------- EXHIBITS ----------

CPH	FOR ID.
CPH Exhibit 249, fax	53
CPH Exhibit 250, memorandum	128
CPH Exhibit 251, documents Bates Nos. 5547 to 5599	129
CPH Exhibit 252, rating agency presentation	136

NOT A CERTIFIED COPY

992810

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs. Case No.
CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
---)

VIDEOTAPED DEPOSITION OF

JOSEPH R. PERELLA

New York, New York

Wednesday, December 8, 2004

Reported by:
SHAUNA STOLTZ-LAURIE
CSR NO. 810490
JOB NO. 168052

NOT A CERTIFIED COPY

018268

December 8, 2004
3:10 p.m.

Videotaped deposition of JOSEPH R. PERELLA, held at the offices of Morgan Stanley, 1585 Broadway, New York, New York, pursuant to notice, before Shauna Stoltz-Laurie, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Coleman (Parent) Holdings, Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for the Morgan Stanley entities
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS YANNUCCI, ESQ.
THOMAS A. CLARE, ESQ.

ALSO PRESENT:
JOSEPH BARRION, Videographer
JAMES BOYLE (Morgan Stanley)

(CPH Exhibit 371, Bill Strong 1993 performance evaluation package, marked for identification, as of this date.)
(CPH Exhibit 372, Bill Strong 1995 performance evaluation package, marked for identification, as of this date.)
(CPH Exhibit 373, Bill Strong 1996 performance evaluation package, marked for identification, as of this date.)
(CPH Exhibit 374, Bill Strong 1997 performance evaluation package, marked for identification, as of this date.)
(CPH Exhibit 375, Bill Strong 1998 performance evaluation package, marked for identification, as of this date.)
(CPH Exhibit 376, 1998 IBD Evaluation and Development Summary, marked for identification, as of this date.)
THE VIDEOGRAPHER: This is the video operator speaking, Joe Barrion, of Esquire Deposition Services, located at 216 East 45th Street, New York, New York.
Today's date is December 8th, 2004.

The time is 3:07. We are here at the offices of Morgan Stanley, located at 1585 Broadway, New York, New York, to take the videotaped deposition of Joseph Perella in the matter of Coleman (Parent) Holdings Incorporated versus Morgan Stanley & Company Incorporated in the 15th Judicial Circuit, In and For Palm Beach County, Florida, Case No. CA 03-5045 AI.
Will counsel please voice identify yourselves, and state who you represent.
MR. MARKOWSKI: Bob Markowski from Jenner & Block LLP on behalf of Coleman (Parent) Holdings.
MR. YANNUCCI: Tom Yannucci, Kirkland & Ellis LLP, on behalf of Morgan Stanley.
MR. CLARE: Thomas Claire, Kirkland & Ellis LLP, also on behalf of Morgan Stanley.
MR. DOYLE: Jim Doyle, Vice-President Counsel for Morgan Stanley, on behalf of Morgan Stanley.
THE VIDEOGRAPHER: Will the court

NOT A CERTIFIED COPY

018269

reporter please swear in the witness.
JOSEPH R. PERELLA, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:
EXAMINATION BY
MR. MARKOWSKI:
Q. Good afternoon, Mr. Perella.
A. Good afternoon.
Q. Mr. Perella, would you please state your full name for the record, please?
A. Joseph, middle initial R. Perella.
Q. Where do you reside, Mr. Perella?
A. New York City.
Q. And by whom are you currently employed?
A. Morgan Stanley.
Q. Do you have a title?
A. Chairman of Institutional Securities.
Q. And to whom do you report in that capacity?
A. Phil Purcell.
Q. Are there any other individuals at Morgan Stanley who report to you?

A. Two.
Q. And who are they?
A. Judy Foscale, F-o-s-c-a-l-e, and Ann Johnston, J-o-h-n-s-t-o-n.
Q. What is Mr. Purcell's position at Morgan Stanley?
A. Chief Executive Officer.
Q. He's the top person in the company?
A. Yes.
Q. And Judy Foscale, what is her title?
A. She's one of my two assistants.
Q. And Ann Johnston?
A. The other assistant.
Q. Do they have other administrative responsibilities, other than assisting you?
A. No.
Q. As the chairman of Institutional Securities what are your responsibilities?
A. As Chairman of Institutional Securities my role is really a client-oriented role. Some people refer to me as the senior client person in the firm. That's opposed to a line manager. So I have responsibility for leading the client effort,

for being the senior banker on certain important accounts of the firm, and for -- I would say just as a general statement it's more of a leadership role, not a managerial role.
Q. You joined Morgan Stanley in 1993?
A. Correct.
Q. Could you briefly review for me the course of your employment at Morgan Stanley, the various positions you've held?
A. I joined in November '93. I was a manager/director. I had no line responsibilities, as a senior client person. Approximately 18 months later I was asked to become the head of the corporate finance department, which is in an industrial sense the sales arm of the investment bank. 18 months after that --
Q. I'm sorry, 18 months after you joined in November of '93 would have been late 1995?
A. Early 1995.
Q. Thanks.
A. Well, spring of 1995.
Q. Spring of '95?

A. Approximately 18 months later I was asked to become the head of the investment banking division. I -- I held that -- I was in that function for -- until approximately October of 2000.
And in October of 2000 I became Chairman of Institutional Securities and Investment Banking, which we shorten really for ease of description, and simply say Chairman of Institutional Securities.
I also was on the management committee of the firm from the time I joined, and still am on the management committee of the firm.
So that that's basically the 11-year -- 11 years I've been at Morgan Stanley.
Q. What were your responsibilities as the head of Corporate Finance?
A. To run the corporate finance department.
Q. What does that consist of? What are the functions of the corporate finance department at Morgan Stanley?
A. As I said, it's the -- the

NOT A CERTIFIED COPY

018270

marketing arm and, in an industrial sense, the sales arm of the investment bank, to interface with the client world, and in a sense, the general practitioners who interface and are the first line of contact with companies, and so that group was under my direction for 18 months.

Q. And as the head of Corporate -- excuse me. As the head of the investment banking division --

A. Um-hm.

Q. -- what functions within Morgan Stanley are subsumed within that group?

A. The head of Investment Banking oversees the investment banking division that consists of corporate finance department, which consists of about half the resources of the division, Human Resources, the merger and acquisition department, the what was then Debt Capital Markets and Equity Capital Markets groups. They've since been combined to form a Global Capital Markets group, and the real estate department. So in effect, at the time I was the head of Investment Banking, that would be I believe six

departments reporting to the head of Investment Banking.

Q. In your capacity as the head of the investment banking division to whom did you report?

A. The -- I have to think about that for a second, because there were some changes in management. As the head of Investment Banking, my best recollection is that I reported to Peter Karches, who was the head of Institutional Securities, and while I think that's -- during the period I was the head of Investment Banking, I reported to him. He resigned in early September, and in the month between then and the time I became Chairman of Institutional Securities I reported to John Mack, because that would be September of the year 2000.

Q. You're represented by counsel here today; are you not, Mr. Perella?

A. Yes.

Q. Mr. Yannucci's representing you today, and Mr. Claire and Mr. Doyle.

A. Um-hm, yes.

Q. Did you have an opportunity to

prepare for the deposition today by meeting with them?

A. I met with them, yes.

Q. To prepare for your deposition today?

A. Yes.

Q. You've been deposed previously?

A. Yes.

Q. Approximately how many times?

A. Well, I started working on Wall Street in 1972, so I don't think I could recall the number, but significant in terms of number.

Q. You know Bill Strong?

A. Do I --

Q. -- know Bill Strong?

A. I certainly do.

Q. How long have you known Mr. Strong?

A. Since 1993.

Q. When you first joined the firm?

A. Correct.

Q. Did you review Mr. Strong's personal -- personnel evaluations to prepare for today?

A. I was shown them, but I -- I don't

-- it would depend on what you meant by review. I looked at some parts of them, but I didn't review them from front to back.

Q. Do you know what years you saw?

A. I'm -- I'm not confident I could be accurate in telling you what years that I looked at.

Q. You've seen Mr. Strong's personnel evaluations previously, correct?

A. Previous to?

Q. Previous to preparing for today's deposition.

A. Well, I was his evaluation director, so by -- by definition, I would have seen them during the evaluation process.

Q. Are you aware, sir, that Morgan Stanley opposed our request to take your deposition today?

A. I'm not familiar with the details of this lawsuit.

Q. You're not aware that we had to get a court order for today's deposition --

MR. YANNUCCI: Objection, relevance.

Q. -- to move forward?

NOT A CERTIFIED COPY

018271

MR. YANNUCCI: What's relevance is that to his facts you want to get from him?
A. As I said, I'm not really familiar with the details of this lawsuit.
Q. Mr. Perella, is it fair to say that Morgan Stanley today takes its personnel evaluation process very seriously?
A. Today?
Q. Yes.
A. Today and always, yes.
Q. That was my next question.
That was true in the 1990s as well, when you first joined Morgan Stanley, correct?
A. Yes.
Q. Can you estimate for me in any way, whether it's in terms of time or money, the amount of effort each year expended by Morgan Stanley in connection with the personnel evaluation process that the firm engages in?
A. Well, I -- I -- I couldn't do it in terms of money, because I have no basis for being able to build that model. I never asked the question.

In terms of time, I would say it's a significant amount of time in that it -- and, of course, it depends on whether you're talking about formal evaluation or informal evaluation. Informal evaluation, what I mean by that is people are encouraged to provide feedback on a regular basis. One of the things people like about the securities industry is that it's an instant feedback kind of business in that the market provides feedback to companies in terms of their performance. If they are performing well, their stocks go up. If they are not performing well, their stocks go down.
Our professionals are encouraged to provide advice to their teams as they're going along working on projects. If they see something that needs correction, they should do it on the spot, hopefully in private, and not in front of colleagues. That's what I mean by informal, the informal part of the process.
Because there -- there isn't a book that teaches you how to be an investment banker. It's a profession where you

basically learn on the job.
The formal part of the evaluation process begins -- and I'm not using months, because our fiscal month has changed several times in the 11 years I've been here, but just to set the example for you, in a fiscal year-ended November 30th the formal evaluation process probably begins sometime in September and concludes in early December, and that evaluation process is for every person in the firm, so in an institutional securities unit that has had in the neighborhood of 10,000 people in it in the period of time that I've been involved with Morgan Stanley, if you just extrapolate the amount of time and the number of people, that's a significant commitment to the evaluation and development process.
Q. It'd be tens of thousands of hours, I take it.
A. Yes.
Q. You took your own involvement in the evaluation process seriously; did you not, sir?
A. Yes.

Q. Could you review for me the formal evaluation process as it existed at Morgan Stanley in the period from 1993 to 1998, and if there were any significant changes in that time frame, if you could identify them for me, I'd appreciate it.
A. Well, I'll qualify what I say by the fact that I joined in November I believe in a fiscal year that ended either February 1st or February 28th of the following year, so as to the 1993 process, as a newcomer I wouldn't really be familiar with the '93 year, so as to -- and these are general comments that I make, because these things are fine-tuned from year to year. In the human resource area it seems like people are always trying to make it better every year. They don't think they ever get it right, so they always like to fine-tune the forms. And so I can't really give you an answer as to, for example, how the evaluation development summary might have changed from year to year, or how the evaluation form might have changed from year to year. I'm pretty sure they've changed, but I just can't tell you how and

NOT A CERTIFIED COPY

018272

when.

But let me try and at least give you a general description of the process. Each individual, from Dick Fisher and John Mack, who were running the firm when I came here, down to the most junior associate is evaluated. They are evaluated by peers, subordinates and superiors. The process begins by the individual requesting an evaluation of their performance, and that form, the evaluation request form, goes to the evaluation director for approval. The evaluation director reviews the form and ensures in their mind that it has a good cross-section of evaluators, and since it's someone who's responsible -- their responsibility is for the evaluation of that employee, they take some time and effort to make sure it's complete to make sure that someone is not -- we have an expression -- gaming the system. In other words, they just put their friends on it. I would say that's not been a problem, because people understand that, you know, they wouldn't look good if they did that.

So the evaluation director reviews it for completeness, approves it, and then the request for an evaluation of that employee goes out to those group of evaluators. They do the evaluation. The human -- that all goes in to the human resource department.

There was a time when this was done let's call it manually, meaning not on line, not direct into a computer, and -- and I think over the years it has migrated to be a totally electronic system.

So the -- all of these evaluations are then put together into what we call the package for that employee that goes to the evaluation director, and then the evaluation director reviews the package and prepares an evaluation development summary. And subsequent to that the evaluation development summary is reviewed by a committee of partners, and a presentation is made to that committee on the summary and on the package, and that person is -- is giving -- given an overall assessment.

And where people feel that the

evaluation development summary might not accurately reflect the package, it could be amended, and then the EDS, Evaluation Development Summary, is reviewed with the employee by their evaluation director, they're given a copy. During the review the package is reviewed in depth with them. Excerpts are read to them from the package, and then the individual signs the Evaluation Development Summary indicating they've received it. If they have any comments, they can indicate it on the form. And that pretty much ends the formal part of the process.

And that's given at the end of, as I said, the fiscal year. And we try to get people to focus on the developmental issues, and it's I think a process of awareness, self -- self-improvement and in a sense trying to harness the human potential that exists in the organization by -- I guess the concept is that every day we come to work, we try to do better than we did yesterday, and if you're able to do that with a 2,000-person division better than the competition, that's a competitive advantage. So we always viewed

our evaluation system as a competitive advantage.

Q. I've heard the term 360 review --

A. Um-hm.

Q. -- used to describe the Morgan Stanley formal evaluation process. Is that a term you're familiar with?

A. Yes.

Q. What does that refer to?

A. I think I mentioned that in the early part of my rather long answer to your question, and that is the peer, subordinate, superiors, so 360 means the full spectrum of people that you would interface with.

Q. What is the reason for having junior people review their bosses?

A. Well, in that model, if you want to call it the Renaissance model that I described, where you learn from someone who's more experienced in the art of investment banking, the ability to teach and lead by example is just as important as the ability to follow direction from a superior, and in the evaluation of a person as a complete professional we look at not only what people

NOT A CERTIFIED COPY

018273

you're reporting to think of your performance, not only what your colleagues think of your performance, but also people who are in a sense under you, junior to you in experience level in the firm think of your performance. So it's designed to be a complete feedback loop rather than a partial one.

Q. What use is made of the formal evaluations by the firm?

A. I think I answered that question.

Q. Well, you indicated that you provide feedback to the employee. Is it used for other purposes by the firm, setting compensation, promoting someone, demoting someone, terminating someone?

A. The -- well, let's just --

THE WITNESS: Could you repeat his question? Because he used several words.

A. (Continuing) Your question is pretty clear to me. I just need to answer them in the sequence that you asked them.

Q. Let me rephrase it for you --

A. You used a few things.

Q. -- and break it down.

In addition to providing feedback and direction to the person whose performance is being evaluated --

A. Um-hm.

Q. -- does Morgan Stanley use the formal evaluation process for other things?

A. Well, I like the fact that you were being specific about what you think these other things might be. The -- the -- the --

MR. YANNUCCI: You want to have that question read back?

THE WITNESS: That's really the most helpful, because I think I could answer that.

A. (Continuing) And I think I answered it in the sense that the goal is development, growth, and harnessing the human potential in a division and of the firm. Most of the evaluations end with goals for next year, for example. So they point the individual in the direction of things they need to work on.

And the beginning of the form tends to state -- usually says how did you do vis-a-vis your goals, for example, in the

self-evaluation. Excuse me. I forgot that part. Part of the evaluation package that I described earlier is a -- every individual fills out a self-evaluation, which is part of the package the evaluation director gets in doing the summary. Now, if the reporter could read back that original question, then I could address one by one the points that you ticked off.

Q. Let me try to address them one by one.

A. Okay.

Q. Does Morgan Stanley use the formal evaluation process in connection with setting compensation?

A. Well, the answer to that is yes and no, and I don't mean -- I mean that in -- very sincerely. It's intentionally separate from the comp process, because if -- what we don't want is people to focus on comp at the end of the year; we want them to focus on the developmental messages. So nowhere in the process do we talk about money and the comp. By money I mean the compensation. The focus is on the developmental message, the

strengths, and the things that employees need to work on.

Now, in the course of the people in charge evaluating people, they have usually read the packages of all the managing directors, for example, so they will have in their mind impressions from those packages, which have to filter into their determining comp, but it -- but -- but the reason I say -- that's the reason why I said yes and no.

But the no is when they're doing comp, they don't sit there with the evaluation package. That's not in the room. It's not -- it's really they're -- they're two separate processes in the firm's let's say broadly speaking HR function.

Q. What is the process for setting compensation for managing directors? Let me focus again on the time period that I'm most interested in, the mid to late 1990s.

A. Well, it's really -- this -- this is something I -- I would have to answer with general statements, and -- and it would be as follows. First of all, compensation depends on how well the firm does. It depends on,

NOT A CERTIFIED COPY

018274

Page 26

within the context of how well the firm does, how well the business unit, the division does, and then it depends on how well or what -- what an individual contribution to that overall effort was. So it's a combination of things that enter into sort of the determination of compensation levels.

The -- so within the -- the sort of you want to call it budget that gets created by performance of the enterprise, the managers make a determination of what the total reward should be to the employee -- and that is generally done by a very small group of partners in the business unit -- that is then reviewed by the individual or individuals that that unit reports to, and then would be signed off on by the person ultimately responsible or persons ultimately responsible for the firm, and then finally reviewed -- well, approved by the compensation committee of the board of directors.

Q. What role does revenue generation play in determining bonus compensation to the managing directors?

Page 27

MR. YANNUCCI: I'm going to object to the general nature of the question, ask you if you could focus on the -- I thought the evaluation we're concerned about, Mr. Strong.

Q. Okay, can you provide me a general answer, sir, or is that too difficult a question?

A. Let me -- if I recall your question, what role does revenue play in determining comp?

Q. Bonus compensation, yes.

A. Well, it's an important ingredient in determining compensation. And while I was in a position to determine compensation, what -- one of the things I stressed was that I -- first of all, my philosophy of investment banking is you don't pay investment bankers like traders, number one. Number two, that is the traders, you know, could have a very big year, and their compensation can spike. I believe investment bankers, being let's say a more -- more of a let's call it profession, should be paid --

(Interruption at the door.)

Page 28

(Mr. Schwartz joined the proceedings.)

MR. MARKOWSKI: Take a brief break.

THE VIDEOGRAPHER: We are going off the record. The time is 3:41.

(Discussion off the record.)

THE VIDEOGRAPHER: We are now back on the record. The time is 3:42.

A. (Continuing) So I was sharing with you my philosophy of compensation while I was in a managerial post.

I think revenue contribution was an important ingredient, but what I -- I stressed was the development of relationships and growth of the professional revenue over time. I didn't want, particularly since we were hiring new people into the firm that hadn't begun their careers at Morgan Stanley -- Morgan Stanley was a private firm up until 1986, and in that environment it tended to grow its own talent, and when it went public -- and this is not a pattern that's unusual for firms on Wall Street -- when it went public, it began to hire people from other firms. So when you come into a

Page 29

culture that's home grown, I didn't want the people to feel like they had to be instantly successful and productive, and I stressed that we would be looking at revenue over time.

So what we look at is what I would call overall athleticism, and that is -- and I don't think any different in banking than it would be in the law, for example -- you get a sense, when you're around a professional over a period of time, you know, that certain people have more potential than others. So I would say overall athleticism. A person could have a very bad revenue year but be a good athlete. They're not going to be penalized in our system.

A person could have a spectacular revenue year, but we're not going to pay them like a trader, because what we try to do is bring people along. I think if you pay a younger person a lot of money early on in their career because they pay -- they do something spectacular, it creates a -- a system that's to me out of kilter with what I call true banking culture.

NOT A CERTIFIED COPY

018275

So revenue played a part, but in my mind it's just one part of determining overall compensation, salary plus bonus, of our professionals, while I was running the division.

Q. Just to refer back for a moment to the formal evaluation process.

A. Hm.

Q. As I understand your answer, the process culminates in the development of the Evaluation Development Summary?

A. Correct.

Q. And that's shared with the employee -- correct? -- who actually receives a copy of that to keep.

A. But it's reviewed by that committee of partners before it's shared with the employee.

Q. It goes through a process of being vetted by people in addition to the evaluation director.

A. Correct.

Q. And those people have an opportunity to comment on it or revise it if they see problems with the evaluation

summary, correct?

A. If they don't think it reflects what's in the package.

Q. Is it fair to say that -- that at the end of that process the Evaluation Development Summary reflects a considered judgment of firm management with respect to the employee's performance in that time period?

MR. YANNUCCI: Object to the form of the question.

You may answer.

A. I -- I think to say it reflects firm management is -- is not accurate, because that implies that Dick Fisher and John Mack would somehow have their stamp of approval on that. I think it -- it reflects the -- it's the output of a process that goes on in a division with 2,000 people, and it tries to synthesize the input from usually somewhere between 15 and 30 evaluators so that it can be summarized in a -- in a way that feedback's provided to the employee while at the same time protecting the source of the information, because you can't share

the package with the employee, because that's got everyone's name there, and the whole point is that, you know, you want it to be let's call it a transparent process, one where the people -- people's views are expressed without fear of retribution, and, you know, in an open and constructive manner.

Q. Did I understand you to say, Mr. Perella, that when you served as evaluation director that you would read excerpts from the package to the person who was being reviewed?

A. Yes.

Q. How would you decide what material to read from a package?

MR. YANNUCCI: I'm going to object both to relevance and I don't know that he can generalize when he would or when he wouldn't.

But go ahead and answer if you can.

THE WITNESS: Restate the question.

(Record read.)

A. Well, one way you can do it is you can read the whole package to the person. That would eliminate the -- the need to pick

and choose. What I tried to do was basically read some portion of every evaluator's comments, so I -- I didn't sort of self-select. You know, if a person had 15 evaluators, they heard comments from all 15, because of -- you know, in my mind, if a person is asked to do an evaluation, and they've spent so much time on someone, they deserve to have their view shared.

Q. Was there a time, Mr. Perella, where you had managerial responsibility for Bill Strong?

A. Yes. When I was head of Corporate Finance Bill would have been under -- you know, in my department.

(Coughing) Excuse me.

Q. And that time period was approximately the spring of 1995 through early 1997?

A. Yes.

Q. When you became head of Investment Banking did you have any managerial responsibility for Mr. Strong?

A. Well, he was no longer a direct report, so he -- he -- he was not under my

NOT A CERTIFIED COPY

018276

direct reporting line; that when I became the head of Investment Banking my direct reports were the six division heads -- excuse me, department heads running those departments that I mentioned in I think the first early part of your questions.

Q. So when you were head of Corporate Finance Bill Strong reported directly to you; is that correct?

A. He was one of the individual -- one of the managing directors in Corporate Finance under my jurisdiction. It's -- when you say reported directly to you, it wasn't like he -- he was picking up the phone and telling me what he was doing every day. I mean there were maybe a hundred managing directors in Corporate Finance at the time. I'm saying a hundred -- I don't know the exact number -- as opposed to ten, just to sort of order -- give you the sense of magnitude. So, you know, to say that all hundred reported to me would -- you know, I didn't function like that. So -- but they were -- you know, they were under my supervision and in my department.

Q. And then after that Mr. Strong remained in Corporate Finance, which was one of the departments that you had overall responsibility for, correct?

A. Correct.

Q. Now, you've already indicated, sir, that you were involved in Mr. Strong's evaluations, his formal evaluations.

A. Yes.

Q. And what I'd like to show you and have you identify for us today are a set of exhibits that I've prepared. They've been marked by the court reporter as CPH Deposition Exhibit numbers 371 through 376.

A. Um-hm.

Q. I give you those as a stack and ask you if you can identify each one of them for us, for the record.

A. Well, why don't I do it as I go along.

Q. Yes. That would be good.

A. This appears to be 1993 performance evaluation package for Bill Strong.

Q. And you're referring to Exhibit 371, correct?

A. Yes.

372 is 1995 performance evaluation package for Bill Strong.

373 is 1996 performance evaluation for Bill Strong.

374, 1997 performance evaluation package for Bill Strong.

1998, Exhibit 375, performance evaluation for Bill Strong.

Q. I'm sorry, sir, you said 375 is the 1998 --

A. Correct.

Q. -- evaluation package?

A. And there's for some reason -- I was going through all these to make sure there was an EDS. (Perusing documents).

There's 376, which appears to be some other document, and I'm not so sure -- I mean it says "1998 IBD Evaluation and Development Summary," but it's not a package, it's just three pieces of paper, all -- and it's 376.

Q. Are you familiar with the form of Exhibit 376, sir?

A. I -- I --

Familiar with the form?

Q. Yes.

It's referred to in its title as an "IBD Evaluation and Development Summary." Are you familiar with that form of document?

A. Well, I -- you're going back now six years in time, so, you know, if this came out of our system, you know, it's what it is. I just -- you know, as I said, these things have changed from year to year, so I'd have to -- it appears to the EDS from -- for Bill Strong, but for some reason there's two of them in here, one in 375, called "Firm-Wide Performance Evaluation," and the other one says "1998 IBD," so I -- I don't know whether they're the same summary on two different forms or whether the forms changed in the middle of the process, so I'm -- I'm a little puzzled as to why there are two.

Q. Now, in 1996 or, excuse me, sir, 1995, Exhibit 372, you served as the evaluation director for Mr. Strong's evaluations; is that correct?

A. 1995? Yes.

Q. And you played that same role again

NOT A CERTIFIED COPY

018277

Page 38

in 1996, correct?
A. Yes.
Q. And in 1997 you again played that role, correct?
A. Yes.
Q. And in 1998 you were co-director of Mr. Strong's annual formal evaluation, correct?
A. Yes.
Q. And in that year Robert W. Jones was the primary director?
A. Yes.
Q. How did you come to have the responsibility as the evaluation director or co-director for Mr. Strong's annual evaluation?
MR. YANNUCCI: Objection, asked and answered.
A. Could -- I -- I -- I lost track of the question. I'm sorry.
Q. I can restate it.
How did you get the responsibility to serve as the evaluation director or co-director for Mr. Strong?
A. For each of these years you've

Page 39

given me?
Q. Yes.
A. Well, as we discussed earlier, in '95 and '96 I was the head of -- and for part of '97 the head of Corporate Finance, and I was the evaluation director for many managing directors during that period of time, and -- and so that would basically -- I would have the responsibility for being ED.
Q. Because of your response -- because of your managerial responsibilities of the firm?
A. Yes.
Q. Now, you've generally described the responsibility of Evaluation Director. Is that a fair characterization of the role you've played with respect to Mr. Strong's own evaluations?
A. That I was his evaluation director?
Q. And that you played the role that you've described previously as the role that Evaluation Director plays generally at Morgan Stanley in the annual formal evaluation process.
A. Sure.

Page 40

Q. Did you personally undertake to draft initially the summary of the evaluation comments?
MR. YANNUCCI: In any year?
MR. MARKOWSKI: In the years that we're looking at here for Mr. Strong.
A. As opposed to?
Q. Have someone else do it for you.
A. No, this is not something I delegated.
Q. So you would personally draft the summary statement?
A. Yes.
Q. Do you know, sir, who other than yourself in the years that we're talking about here, 1995 through 1998, had input into Mr. Strong's evaluation summaries?
A. The summary's the responsibility of the evaluation director. I indicated that there's a review process wherein the package is reviewed and the summary is included in the package and reflected on by that what's called a committee, so if you want to call that input, that's fine. I just wouldn't be able to remember whether as a result of

Page 41

Bill's review in any year a sentence was added, taken out. So when you use the word input, it sort of has0, you know, it could have a broad meaning in -- in developing an answer to your question.
Q. Do you know as you sit here today the names of any other people that reviewed your summaries before they were finalized and provided to Mr. Strong in the years we're speaking?
A. No. I couldn't remember that now.
Q. Is it fair to say, Mr. Perella, that the evaluation summaries that are contained in Exhibits 372 through 375, where you were involved in preparing or serving as the evaluation director, reflect your considered views of the comments that were made by those who evaluated Mr. Strong?
A. Yes.
Q. In some of the evaluations -- and we'll get to them in some detail shortly, sir, but in some of the evaluations, in some packages you personally evaluated Mr. Strong based on your own experiences with him. Do you recall doing that?

NOT A CERTIFIED COPY

018278

A. Doing?
Q. Providing your own personal comments about Mr. Strong in the course of the evaluation process.
A. In the 11 years I've been here I've -- I get -- I've probably done between 50 and a hundred of these. I get requests from people to do an evaluation of them, not as their director but as a -- one of the evaluators, so somewhere around 75 to a hundred, so I -- I -- Bill was one of the ones that I would have done during that period of time, but as to specifically remembering sitting down and doing it, no.
Q. I assume that --
A. The only reason I went on about that is because I'm not doing just -- if it were just one or two that I was doing, I'd probably remember it, but when you're doing a hundred, I think it's a little bit difficult to remember the specific circumstances around which you wrote it.
Q. If you lacked a sufficient basis to make a comment in a particular year, what would you do, sir?

A. If I -- I'd say --
If I lacked the specific --
Q. -- sufficient basis to make a comment, what would you do?
A. I'd say I'd be unable to evaluate the person.
Q. If the evaluation packages contain summaries or a statement of your personal evaluation of Mr. Strong, I assume it's the case that you made an effort to be fair and accurate in your comments. Is that correct?
A. Yes.
Q. Did you have any reason during the time period that we're addressing, sir, 1995 to 1998, to exaggerate criticisms of Mr. Strong?
A. Me exaggerate criticisms?
Q. Yes.
A. No.
Q. Do you have any reason to believe --
Do you know Robert Scott?
A. Yes.
Q. Do you have any reason to believe that Robert Scott would have had a reason to exaggerate criticisms of Mr. Strong?

A. No.
Q. Do you know Terry Meguid?
A. Meguid.
Q. Meguid? Excuse me.
A. Yes.
Q. Do you have any reason to believe that in the time period we're addressing today, 1995 through 1998, that Mr. Meguid would have had any reason to exaggerate criticisms of Mr. Strong?
A. No.
Q. What was Mr. Scott's position at Morgan Stanley in the -- in this time period; do you recall, sir?
A. The time period?
Q. 1995 through 1998.
A. Bob Scott was -- preceded me as head of Corporate Finance, became -- and became head of Investment Banking, so he preceded me also as the head of Investment Banking and then he became Chief Financial Officer of the firm.
Q. And ultimately ended up a member of the board of directors, correct?

A. When John -- yeah, I guess he did, when John Mack resigned from the firm in 2001.
Q. What was Mr. Meguid's position in this time period, nineteen ninety --
A. He was my deputy.
Q. Mr. Meguid was your number two person in --
A. Correct.
Q. -- Investment Banking?
A. And in Corporate Finance.
Q. In both positions.
A. Correct.
Q. He moved with you?
A. Most of the time, yeah.
Q. Is Mr. Meguid someone you worked with closely then for a number of years?
A. Yes.
Q. Do you respect his judgment?
A. Yes!
When you say number of years, I met him when I joined Morgan Stanley. He was not employed at any of my previous employers.
Q. Thank you.
A. I think he's been at Morgan Stanley

NOT A CERTIFIED COPY

018279

Page 46

his whole career.
Q. You respect Mr. Meguid's ability -- ability to evaluate personnel?
A. Yes.
Q. Bill Strong was hired -- let me ask you the question.
Do you know when Bill Strong joined Morgan Stanley?
A. No.
Q. It was before you; is that correct?
A. I don't know when he joined.
Q. You're not certain that he was here when you joined the firm?
A. I don't know when he joined. I think he preceded me.
Q. Do you know what Mr. Strong's responsibilities were when you first joined the firm in late '93?
A. No. I wouldn't --
Q. Are you --
A. -- be familiar with that.
Q. Mr. Strong did have administrative responsibilities when you were running -- when you were running the corporate finance department; is that correct?

Page 47

A. Well, I don't know the time sequence, but there -- there was a point in time when Bill had oversight for regional offices, but the exact start-end date of that, I'm not familiar with.
Q. The regional offices you're referring to are what, sir?
A. Offices outside of New York, in the United States, and that might have included Canada, although I'm not positive.
Q. There came a point where Mr. Strong ceased having that administrative responsibility for the regional offices; is that correct?
A. I'm -- I'm -- I'm sure that's true, but I'm not clear on the timing, because there was an interim attempt by the firm to -- when Bob Scott got elevated to head of Investment Banking I was not immediately made head of Corporate Finance. They actually had a three-person, if you believe it, head of Corporate Finance, one in Europe, one in New York and Bill in the region, and John Mack sort of lived with that for all of a few months maybe and decided that a three-headed

Page 48

corporate finance department really wasn't working well, and it might have been Bob Scott involved in that process, too, because they one day called me up and asked me to do it. But that was a very, very short period of time. I think it was -- you know, I might have even been an interim solution, because when Scott got taken out of the job at Corporate Finance to become the head of IBD having one (sic), they didn't immediately come up with a solution. They asked me to do it a few months later. So that there was a period of time there where they had tri-heads, so during that period of time, I can't be sure that Bill continued to, quote, run the regions, unquote.
And then there -- there -- there probably was a time when they transitioned that job to a younger person, which is kind of a typical pattern here of management.
(Discussion off the record.)
Q. What -- I want to make sure I understand the timing, sir.
Is it the case that there was a period of time where you had responsibility

Page 49

for the corporate finance department while Mr. Strong continued to serve as head of the regional offices?
A. Yes.
Q. How -- how long a period of time do you believe that was?
A. Well, the most it could have been was 18 months.
Q. One of Mr. Strong's responsibilities as head of the regional corporate finance department offices was generating revenue through those offices; is that correct?
A. I don't know if I would characterize his responsibility was generating revenue.
Q. He was given goals of increasing the revenue at the regional offices that he was responsible for, correct?
A. Well, everyone at the firm thinks that it's their responsibility to try and enhance our revenue base. I mean it's -- it's sort of everyone's responsibility. So when -- I -- I didn't quite understand the question, you know, that it was his

NOT A CERTIFIED COPY

018280

responsibility.
Q. Well, as the person who is at the head of the management of the regional offices, Mr. Strong was told to make efforts to increase the revenues generated by the offices under his supervision --
MR. YANNUCCI: Objection.
Q. -- correct?
MR. YANNUCCI: Lack of foundation.
A. I never told him that.
(Counsel confer off the record.)
Q. I want to ask you, sir, to -- do -- do you have Exhibit 374, sir, in that stack?
It's the 1997 evaluation package.
1997 was a year in which you served as Mr. Strong's evaluation director; is that correct?
MR. YANNUCCI: Asked and answered.
It's also on the front page of the document.
A. Yeah.
Q. Let me direct your attention to the page -- there are numbers in the right-hand corner of the pages, sir. The last three digits of the page I'd like to direct your

attention to are 470. It's the first page of the evaluation summary, I believe.
A. (Perusing document) Got it.
Q. Under "1997 Performance Summary" the first two sentences read "Bill has continued to enhance the MS franchise. Regional offices achieved a record with market-by-market share improvements." Do you see those two sentences, sir?
A. Yes.
Q. Was Mr. Strong's performance at least in part judged by the amount of revenues generated by the regional offices under his supervision?
A. Well, that -- that would be one factor in, you know, assessing his performance, yes.
MR. YANNUCCI: Just for the record, it says "Summarize the individual's performance relative to the objectives set for the year," end of quote.
Q. Let me -- let me direct your attention to page 455 in the same document, sir.
A. 455?

Q. That's correct.
A. Yeah.
Q. This is a portion of Mr. Strong's annual self-evaluation; is that correct?
A. It appears to be, yes.
Q. And Mr. Strong states at the top of that first page "I am very pleased with my performance in 1997. 1997 is the best year that I've had with the firm since joining in January of 1993. The regional offices for which I am responsible, Chicago, Houston, Los Angeles, San Francisco and Toronto achieved record revenue in 1997."
A. Um-hm.
Q. "The regional offices have achieved affirmed revenue of 130 million, 205 million, 276 million, and will incur revenue in the range of from 375 to 400 million in 1994 and '95, '96 and '97 respective" -- "respectively."
A. Um-hm.
Q. Do you see those statements, sir?
A. Yes.
Q. Mr. Strong in his annual self-evaluations would take credit for the

revenue accomplishments of the regional offices under his supervision, correct?
A. Take credit for the accomplishments? Is that what you said?
Q. In -- in discussing his own accomplishments for the year.
A. Well, he obviously has.
Q. Did you consider Mr. Strong, Mr. Perella, as someone who generated significant revenues for Morgan Stanley?
A. Are you referring to any particular year or just in general or --
Q. During the time period when you were serving as his evaluation director.
A. Well, we had a lot of, you know, significant producers here at the firm, and he was one of them.
(Telephone interruption.)
Q. And you referred to a significant producer. Significant producer of revenue?
A. Yes.
Q. Are you familiar with the term rainmaker, sir?
A. I've heard it, yeah.
Q. What does it mean to you?

NOT A CERTIFIED COPY

018281

A. We don't use it that much around here.
Q. What does the term mean to you?
A. On Wall Street?
Q. Whatever your source of understanding is.
A. Well, I read a lot about it. I guess you hear it in the press. It's I guess a term that people use when referring to someone who has the ability to generate revenue for his or her firm.
Q. Did you consider Mr. Strong to be a rainmaker, given that definition?
A. As I said, we don't use that firm -- that phrase around here that much.
Q. But given your definition of it, would you consider Mr. Strong to meet that definition?
A. Bill Strong was a significant revenue producer, and has been at Morgan Stanley for quite some time.
Q. Is that still true today, to your knowledge?
A. What is?
Q. Is it still true today that Mr.

Strong continues to generate substantial revenues for the firm?
A. I believe he does, yes.
Q. Does Morgan Stanley have a system for tracking fee credits or business origination?
A. Fee credits?
Q. Somehow --
A. You mean revenue?
Q. Yes.
A. What -- we track revenue according to Managing Director's area of responsibility, and it's -- because we try to emphasize teamwork, we generally attribute the revenues to more than one person. Therefore it's -- when you talk about rainmaker, there -- there's this sort of impression that one person's doing everything himself. This firm doesn't run like that. It's antithetical to the culture of Morgan Stanley. So the revenue -- tracking revenue is allocated and distributed to the team members that are a part of an effort to -- that were part of the team that -- that worked on the particular business or deal

over time.
Q. Is there a tally of some sort kept?
A. Well, as I said, there -- there -- somewhere in the administrative function they keep track of firm-wide revenues and attribute it to individuals that are working on the deals.
Q. Let me refer you again to Mr. Strong's self-evaluation --
A. Um-hm.
Q. -- for 1997. It's a few lines farther down from where I was just reading. There's a sentence that begins "My personal firm revenue has been 70 million, 73 million and will exceed 90 million in 1995, 1996 and 1997 with respect" --
A. I haven't found where you're reading here.
MR. YANNUCCI: It's right here (indicating).
A. (Continuing) Oh, further down.
Q. Yes.
Do you see it, sir?
"My personal firm revenue has been 70 million, 73 million and will exceed 90

million --
A. Yeah.
Q. -- for 1995, 1996 and 1997 respectively."
A. Yeah.
Q. Do you know what those figures consist of?
A. No.
Q. Do you know how Mr. Strong kept track of those numbers?
A. No.
Q. Would Mr. Strong be provided some form of a report by the firm, that identified for him the revenue that was attributed to him?
A. I don't really know the answer to that question.
Q. As his -- as the director of Mr. Strong's evaluation for 1997 would you have seen such a report?
A. At some point, but exactly when, I don't know. If I wanted to see it.
Q. You personally considered Mr. Strong, sir, as someone who is aggressive in pursuing business for Morgan Stanley; did you

NOT A CERTIFIED COPY

018282

Page 58

not?
A. Yes.
Q. There were some people within Morgan Stanley who thought Mr. Strong was too aggressive -- is that the case? -- in pursuing business.
A. There were some people at Morgan Stanley that thought Bill was too aggressive?
Q. In his pursuit of business.
A. Well, that's -- you know, that's a judgmental thing. That's a subjective statement.
Q. Did anyone express to you, sir, the point of view that they believed that Mr. Strong was overly aggressive in his pursuit the business or revenue for the firm?
A. Well, you're using adjectives like overly. I don't know that I could confirm that word.
But, you know, Bill Strong is a high achiever kind of person, and, you know, he doesn't sit still too long, but we have a lot of people around here like that.
Q. Did Mr. Meguid ever tell you that Bill Strong, in his personal view, was overly

Page 59

aggressive in his pursuit of revenue?
A. Overly aggressive? Did he tell me?
Q. In words -- in those words or in substance?
A. Well --
MR. YANNUCCI: Object to the form of the question.
A. -- I -- I -- he might have. I don't have specific recollection of it sitting here now.
Q. Let me direct your attention to page 458 of Mr. Strong's 1997 evaluation --
A. Yeah.
Q. -- Exhibit 374.
A. Page 458?
Q. Let me make sure.
A. Is that what you said?
MR. YANNUCCI: Yeah, that's what he said.
A. It says "Phil is a great team player and does as good a job of" (inaudible) as anyone in the firm."
Q. It's actually --
A. Is that what you're talking about?
Q. No. It's actually on the next

Page 60

page, sir.
A. Oh.
MR. YANNUCCI: 459?
THE WITNESS: (Reading).
Q. Are you on page 459, sir?
A. I was reading page 458.
Go ahead.
Q. Do you see Mr. -- there's a -- it's the -- I believe the -- one, two -- the third comment down under "Colleague"? It's the first comment --
A. Well, there's seven people commenting on this page. Which one are you referring to, which comment?
Q. The first comment under "Colleague Comments"?
A. Yeah, but which individual?
Q. The first one, Tarek?
A. Tarek Meguid?
Q. Meguid.
A. Yeah, I read that. That's under "Downward Comments." So all the comments on this page to from -- well, no. That's "Downward." These are "Colleagues." Okay. Yeah.

Page 61

Q. These are Mr. Meguid's, the first comment under "Colleague Comments"; is that correct, sir?
A. Yeah, but I'm trying to determine what -- all right. Go ahead.
Q. Could read Mr. Meguid's comment out loud for the record, please?
A. "Bill" --
You want me to read it?
Q. Yes, out loud.
A. "Bill is an extremely commercial banker and a tenacious competitor. He is highly focused on money-making opportunities sometimes to a fault. He is incredibly energetic, very diligent, very strong commercial results."
Q. Let me direct your attention to page 460, two pages farther into the document.
A. Yeah.
MR. YANNUCCI: 460?
MR. MARKOWSKI: 461.
A. (Continuing) Right.
Q. There's another comment by Mr. Meguid on that page --

NOT A CERTIFIED COPY

018283

A. Right.
Q. -- do you see that, sir --
A. Yes.
Q. -- in the center?
Would you read that out loud?
A. Yes. "Bill can be overly aggressive in terms of trying to capture transitional opportunities. Makes some judgments which are sometimes very close to if not over the line. A number of individuals have had experience which" -- "have had experiences which I have had to deal with on conflicts, et cetera, which reflect this."
Q. You personally considered Mr. Strong to be something of a self promotor; did you not, sir?
A. I don't recall saying that.
Q. Let me direct your attention to your own comment at the bottom of page 461.
A. Yeah.
Q. Would you read that out loud, please?
A. "Bill should engage less in self promotion and focus more on developing a team

approach, giving credit to others. The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard. There are very few people at Morgan Stanley that give me that impression."
Q. And those were your views of Mr. Strong in 1997 correct, sir?
A. That was a comment I wrote in 1997. That doesn't reflect my entire point of view on the gentleman.
Q. But that was --
A. I -- I wrote this in 1997, yes.
Q. And you were trying to be fair and accurate in that observation, correct?
A. Yes.
Q. Morgan Stanley set a high revenue objective for Mr. Strong in 1997, did it not, sir?
A. I don't know what you mean by that.
Q. Well, Mr. Strong was given a -- in his -- in a summary of his evaluation for 1997 given a revenue objective for 1998; do you recall that?
A. No.

Q. Let me direct your attention to the last page of --
A. Um-hm.
Q. -- Exhibit 374.
A. Right.
Q. Under "Business Goals"?
A. Yup.
Q. Would you read the first sentence?
A. "Maintain revenue contribution at or above currently level of 90 million. Provide support for continued improvement in the regional offices. All this will require continued commitment of the kind Bill has demonstrated to all. However, he should try and relax once in a while."
Q. That reference to $90 million there is the reference to the revenue that Mr. Strong should personally attempt to generate for the firm, correct?
A. Yes.
Q. Do you recall that the Sunbeam engagement was a significant part of Mr. Strong's business backlog at the end of 1997?
A. No.
Q. Let me refer you to the first page

of the summary.
A. Back to the first page?
Q. Of the summary.
MR. YANNUCCI: For '97.
Q. (Continuing) Just the page before it.
MR. YANNUCCI: Before '97?
MR. MARKOWSKI: 470.
A. Yeah.
Q. Do you see the -- it's the third sentence under "Performance Summary"?
A. Yes.
Q. Self-evaluation states "Personal revenue contribution at 90 million with excellent backlog, including the Sunbeam mandate."
A. Right.
Q. Do you recall that Mr. Strong considered to be -- considered the Sunbeam engagement to be one in which he had obtained a -- a fee arrangement for the firm that was higher than the firm's usual fee, fee structure?
A. Do I recall that? No.
Q. Let me direct your attention to

NOT A CERTIFIED COPY

018284

page 455 of the exhibit. This is --
A. Self-evaluation.
Q. Yes. It's immediately after the sentences that we'd been previously focusing on in this page.
Mr. Strong states "Highlights from that backlog include the sale of Sunbeam, market capitalization 3.7 billion, signed engagement letter with success fees" -- excuse me, "with success fees above fee scale."
A. Yeah. It goes on to state a whole bunch of other things that he said he was working on, too.
Q. Does this refresh your recollection that Mr. Strong characterizes the Sunbeam fee arrangement as being above scale?
A. It says here "the sale of Sunbeam." Is that what you're referring to?
Q. I'm referring to the statement that Mr. Strong makes concerning --
A. In his self-evaluation?
Q. Yes.
A. Well, what it says is that the engagement letter has a success fee above fee

scale. That's what it says.
Q. Do you have any recollection as you sit here today, sir, whether that was true or not?
A. No. It wouldn't be unusual for that to be the case, because some fees are above fee scale and some fees are at fee scale and some fees are below fee scale.
Q. Let me direct your attention to Mr. Strong's 1998 self-evaluation. It's Exhibit --
A. '98?
Q. Yes.
-- Exhibit 375.
A. '98. Yup.
Q. We -- we've seen, sir, in '97 that Mr. Strong's summary set a revenue objective of $90 million for Mr. Strong for 1998; do you recall that?
We just looked at it.
A. Could you repeat that question?
Q. Do you recall that Mr. Strong's revenue objective given to him in his 1997 evaluation was to generate 90 million or more in revenue in 1998?

A. Yeah. That was stated as a business -- one of his business goals.
Q. I'd like to refer you to page three -- excuse me, 475 of Exhibit 375.
A. 475. "Bill Strong 1998."
Q. This is Mr. Strong's self-evaluation -- -
A. Yeah.
Q. -- of his performance in 1998?
A. Right.
Q. And my questions at this point, sir, relate to the first paragraph. If you would take a moment to review that to yourself.
A. Well, it's a pretty long paragraph. (Reading) Yeah, I've read it.
It's pretty impressive.
Q. Mr. Strong recounts his success in generating revenue in 1998, correct?
MR. YANNUCCI: I'm going to object to that characterization.
THE WITNESS: Right.
A. It's -- it's an answer to the question "Describe your performance relative to your business goals and to the relative

performance criteria. Your comments should not exceed the space provided." So it's a -- it's a description of his commercial accomplishments during that period of time, yes. And it's quite extensive.
Q. And the among the things Mr. Strong reports is his successes in generating revenue for Morgan Stanley, correct?
A. Well, that's where he worked.
Q. That's what he's commenting on, his success in generating revenue.
A. I think it's a little more than that.
Q. But he is commenting on his success in generating revenue --
A. He's commenting on a lot of thing. It's -- it's a long paragraph. Must have three or four hundred words in it.
Q. Do you disagree with me, sir, that Mr. Strong in that paragraph is recounting his success in generating revenue in 1998 for Morgan Stanley?
A. He is in the course of commenting on his performance, talking about the aggregate revenue of the regional offices for

NOT A CERTIFIED COPY

018285

which he oversaw, with hundreds of people in it, and the revenue growth, his commitment to Toronto. I mean this is a very long sentence, and included in here are several references to "revenue." Yes, "revenue" is stated a number of times.

Q. Mr. Strong's success in generating revenue, correct?

A. It -- you're making it sound like it's one person did all of this. This -- the regional offices consist of hundreds of people, and they're referred to $600 million of revenue and six years in a row of record performance. That is the result of a lot of people doing a lot of work. Bill was overseeing all that. That would be like me saying that I had, you know, $5 billion of revenue because I had a -- I was the head of the investment banking division. So it's -- it's -- it's his area of responsibility, and these were the revenues generated in those areas.

Q. In addition to talking about the performance of the offices, Mr. Strong in this paragraph also recounts his own personal

success --

A. Yes.

Q. -- in generating revenue, correct?

A. His own personal success? Let me see here. I think he does.

(Reading) As I said, it's a long paragraph. I'm looking for reference -- "My personal revenue production has exceeded the previous year," right.

Q. Right.

A. This year. "My personal revenue production each year at Morgan Stanley has exceeded the previous year. At this point in the year my TSW revenue exceeds $100 million, which exceeds the comparable number from 1997 by over 30 percent."

Q. And then Mr. Strong goes further into details what makes up that hundred million dollars by identifying specific transactions.

A. Yeah. There's a long -- long -- there's a -- quite a long narrative here of the different companies that he was involved in.

Q. And he references Sunbeam on three

different occasions, correct, sir?

A. I don't know. I didn't count them.

Q. There's first --

A. "The result includes successful solicitation and execution of IPOs, capital trusts," Silestico (ph.), "LaSalle Hotel, Midway Airlines, Steelcase, True North, Sunbeam's acquisition of Coleman, First" --

Q. First Alert.

A. -- "Alert and Signature Brands 13 and a half million convertible secondary follow-on equity transactions, Fort James, Omniquip, Sunbeam," again Fort Meyer -- "Fred Meyer." I mean there -- and it continues to talk about a lot of other companies, "Allstate, Cargo, Price List," et cetera, et cetera.

Q. He identifies a 13 and a half million-dollar M&A fee for Sunbeam's acquisition of Coleman, First Alert and Signature Brands, correct, sir?

A. Sunbeam -- well, what it says is "Sunbeam's acquisition of Coleman, First Alert" --

(Discussion off the record.)

A. -- "and Signature Brands 13.5 million," close paren.

Q. And then it refers to a 18.2 million-dollar Sunbeam fee relating to convertible debt offering, correct?

A. I don't know what it relates to. I can't tell from that.

Q. It's behind the phrase "secondary and follow-on equity transactions," correct?

A. Well, but it refers to Fort James, and that's a different company, "10.6, Hollow Industries 1.1, Omniquip 2.2, Sunbeam 18.2," so --

Q. And then farther it refers to another 4.9 million-dollar revenue generated by Sunbeam, correct?

A. "High yield and senior bank transactions Omniquip 1.6, Scotsman 2.0, Sunbeam 2.9, Focal Communications 1.4." Yes.

Q. You have a hundred million dollars that Mr. Strong claimed credit for in this self-evaluation for his personal revenue contributions for the firm. There are three Sunbeam pieces, 13.5 million-dollar fee of revenue, a 18.2 million-dollar revenue and a

NOT A CERTIFIED COPY

018286

4.9 million-dollar revenue, correct, sir?
MR. YANNUCCI: I'm going to object.
A. Well, you used the word personal. He's talking about his involvement, yes, with -- with revenue relating to the Sunbeam account.
Oh, yeah, he does say "my personal revenue," right. So you -- you used his word, "my personal revenue production." He's referring to each year at Morgan Stanley. And then he includes the result with a listing of those names, so Sunbeam would be in that total, I presume.
Q. And the Sunbeam total is --
A. I don't know what the total is.
Q. -- something in excess of $35 million, correct, sir?
A. Well, if it's 13 plus 18 plus five, around $35 million, yeah.
Q. About a third of personal revenue that Mr. Strong was claiming credit for in this self-evaluation, correct?
A. It's -- it's a third of -- it's a third of a hundred million. Yes.
Q. What is TSW revenue; do you know?

Are you familiar with that phrase that Mr. Strong uses, sir?
A. I believe that's the internal document that tracks revenue.
Q. Do you know what the -- what the letters TSW stand for?
A. I think it stands for -- well, Mr. Meguid would know better -- transaction summary work sheet perhaps?
Q. Mr. Strong was a highly ambitious person, was he not, sir, at Morgan Stanley?
A. Was Mr. Strong highly ambitious? Well, I guess it depends on -- on how you see it. Some people might have thought he was highly ambitious, yes.
Q. Did you consider him to be ambitious?
A. It depends on what you mean by ambitious.
Q. I'm asking if you consider --
A. I thought of him as a high achiever. Some people might call that ambitious.
Q. Within two years of joining the firm he announced that he wanted to be some

day a member of the Morgan Stanley board of directors.
A. Uh-huh.
Q. Do you recall that?
A. (Laughing) Do I recall it?
Q. Yes.
A. I -- I -- I had no recollection of it up until very recently.
Q. What reminded you of it?
A. I went over in preparing for my deposition.
Q. You saw in these documents that Mr. Strong --
A. Yeah.
Q. -- declared his objectives of becoming a member of the Morgan Stanley board of directors?
A. Right.
Q. And he did that in 1995.
A. Yeah.
Q. Do you consider that to be highly ambitious, sir?
A. My guess is there probably were at the time several hundred people who would like to have been on the board of Morgan

Stanley, just about every MANAGING DIRECTOR that was reporting to me.
Q. Excuse me. Did they all put it in their self-evaluations?
A. No.
Q. Mr. Strong constantly in his annual self-evaluations complained about the fact that he was not being given more or greater management responsibility for the firm's business; do you recall that, sir?
MR. YANNUCCI: I'm going to object to the form of the question and the characterization.
A. Yeah, you -- you -- you -- you -- you like to characterize what he was doing. He was doing what he was doing. He was saying what he was saying. Bill is a very, you know, direct individual. It's not surprising if he wanted to be on the board, he would put it on his self eval. Other people may not be as direct and honest, quite frankly. They may harbor desires to be on the board but never express it, but they nevertheless would do what they could to get there. We've -- you know, that's just not in

NOT A CERTIFIED COPY

018287

Page 78

the cards for employees.
Q. How many insiders at Morgan Stanley are on the Morgan Stanley board of directors?
A. One. One.
Q. That's the chief executive officer.
A. Right. At the time -- remember what I said. Morgan Stanley was going through a transition when Bill arrived here. Now you've refreshed my memory by referring to his self eval as January of '93. Private ownership to public ownership. As a private firm, whatever you might refer to as a board were all insiders, and as it went into public ownership, they added outside directors. And in the early years the head of the investment banking division was on the board of directors, and then as we became more like a public company, fewer and fewer insiders were on the board, and it evolved. So as people dropped off, they weren't replaced. When Matchalot (ph.) went off the board, he was -- because he was replaced as the head of Investment Banking by Bob Scott, Bob Scott at the time did not go on the board. When I took over as the head of Investment Banking I

Page 79

did not go on the board.
So what he's reflecting in his aspiration is something that was in a sense going out of existence, because we were making a transition. And here we are today with only Phil Purcell on our outside board.
Q. Do you recall, sir, that Mr. Strong complained each year that his management capabilities were being underutilized by the firm?
MR. YANNUCCI: Object to the characterization.
A. I -- I -- I don't recall specifically complaining. There may be some reference to wanting to do more, in his evaluation, in his self-evaluation, in terms of goals and objectives.
Q. You recall that Mr. Strong wanted to be relocated from Chicago?
A. I -- I -- I have -- you know, if you put something in front of me that would indicate what it is that you're aiming at, then I could comment on it, but asking me, who has evaluated hundreds of people over the 11 years, to sort of talk about what

Page 80

individuals wanted to go where and when is kind of difficult.
Q. I appreciate that, sir.
Let me refer you to Mr. Strong's 1997 self-evaluation. It's Exhibit 374.
A. Seven, right?
Q. 374
A. Or '97 you said.
Q. Yes, 1997.
A. Page -- self eval?
Q. Yeah. It's page 457 of the document.
A. Yeah, I've got that page.
Q. And there's a section at the bottom of that page that starts with the phrase "What skills and abilities would you put to greater use"; do you see that?
A. Yes.
Q. And would you read Mr. Strong's -- this is Mr. Strong's statement.
A. Okay. So under the question -- under the section "Goals and Objectives" in the self-evaluation, which is at the front of the document, on the third page, it says "In addition to developing business and

Page 81

professional goals," it says "what skills and abilities would you put to greater use? Describe training or other support that would leverage your effectiveness," and "What are your long term career goals at Morgan Stanley?"
And Bill writes "As mentioned in prior years, I continue to aspire to positions of increased responsibility within the firm. I continue to believe that my managerial skills are underutilized. Further and as mentioned last year, at the right time and only if it serves the firm's interests I would like to return to London or New York."
Q. Does that refresh your memory that Mr. Strong made those requests?
A. Well --
MR. YANNUCCI: Object to the description of the request.
A. It's written here.
THE WITNESS: Right.
A. (Continuing) It's written here. He never rang me up and said, hey, I want to move to London, or, hey, I want to come to New York. He's still in Chicago.

NOT A CERTIFIED COPY

018288

Page 82

Q. That was my question. Why is he still in Chicago?
A. Well, first of all, people are generally working in our firm where they want to work.
I think he had a family he was raising there. I think they've since grown up. He's Chairman of the Chicago Symphony Board of Directors. He has become a name brand, if you will, in the community. And I think he has a comparative advantage, because continuity in our business is very valuable. So once you kind of weave yourself into the fabric of a community --
Goldman had a partner named Jim Gorda there, who for many years that we all, you know, were kind of like always trying to catch in my old firm, First Boston, and even at Wastein Perella (ph.), because he was so interwoven into the community.
Now, you know, having worked in London I think for a prior employer, and probably New York, you know, he developed a -- a love of those two cities. Having said that, I think as time went on, you know, Bill

Page 83

really became the senior-most person in that part of the world doing investment banking business. So I would -- this is a presumption on my part at this point -- think that his -- you know, his value added has never been higher, because of the continuity and the time and grade.
And, you know, some company -- now, for example, Boeing moves from Seattle to Chicago. We started doing business with Boeing for the first time when that happened thanks to Bill being there and having a senior person to pursue that business.
We had a problem with Eli Lilly as a company. They stopped doing business with Morgan Stanley. Having Bill -- we took it away from New York, gave it to Bill, and we started doing business with Eli Lilly again. So --
Let me say something else. You know, people express desires and interests. Bill is not the only one who would say, you know, hey, some day I'd welcome the opportunity to work in London ,and if it serves the firm's purpose, we would try and

Page 84

accommodate that, but, on the other hand, if we think they're a value added at hire somewhere else, we wouldn't do it.
And in looking at the whole situation, you know, if you take Bill out of Chicago, then you've got to answer the next question: Who's going to do it? Who's going to run Chicago? And, you know, there wasn't anyone of his stature there who could have filled his shoes that quickly, and so I think his highest and best use was to remain in Chicago, which was where he is, in despite of his from time to time mentioning that, you know, if the opportunity arose, he'd love to be back in London and New York again.
Q. Do you know if Mr. Strong has stopped asking to be moved out of Chicago?
A. I'm still his evaluation director, and I would have to say in all of years I've been Bill's ED he has never called up and complained about working in Chicago, verbally. I mean he might have written this in his package, but -- I think if I called him up and say, hey, how would you like to move to London, he'd say let me go home and

Page 85

talk to my wife and see what she thinks.
I mean we have these conversations with our people all the time. It's a little bit easier to get them to do that than say how about moving to Tokyo.
Q. We're running out of tape. Why don't we take a short break.
A. Okay.
THE VIDEOGRAPHER: This marks the end of tape number one in the videotaped deposition of Mr. Joseph Perella. We are going off the record. The time is 4:57.
(Recess taken.)
THE VIDEOGRAPHER: This marks the beginning of tape number two in the videotaped deposition of Joseph Perella. We are now back on the record. The time is 5:07.
Q. Mr. Perella, during the time period that we've been focusing on here this afternoon, 1995 to 1998, when you served as Mr. Strong's evaluation director there were a number of people that raised concerns during the course of the formal evaluation process

NOT A CERTIFIED COPY

018289

Page 86

about Mr. Strong's lack of candor in dealing with his colleagues; were there not?
A. I am sure if you asked the question, there must be a reference to it somewhere in his files, so I'll just follow your lead and take it wherever it goes in the -- in the package, if you want to go there.
Q. Well, as you sit here, before we go into the documents, do you recall that as being the case, that a number of people, when you were serving at Mr. Strong's evaluation director, raised during the course of the formal evaluation process concerns that they had about Mr. Strong's lack of candor in dealing with his colleagues at Morgan Stanley?
A. Well, what I recall is the fact that each and every year Bill Strong got evaluated by at least 20 people, and there were people from year to year who had developmental messages for him that included comments about being aggressive, that referred to what I referred to, the word you used, candor, you know, difficulty getting information, and a number of developmental

Page 87

messages which exist in each and every professional's package here. Otherwise it's not a credible package.
So the general answer to your question is yes, there -- there -- there were comments in there, and if you want to refer me to specific comments, I'm happy to focus on them.
Q. Well, let's do that. Let me refer you first to one of your own comments. It's in the 1997 evaluation package.
A. Yes?
Q. Do you have that in front of you?
A. Yes, 374.
Q. 374?
And at page 461, at the bottom there's a comment that you made relating to Mr. Strong.
A. (Reading).
Q. Do you see your own comment there, sir?
A. Yes.
Q. Would you read that out loud for us?
A. I read it before. "Bill should

Page 88

engage less in self promotion and focus more on developing a team approach, giving credit to others. The one problem I continue to have with Bill is that you never seem to get the whole story unless you probe very hard. There are very few people at Morgan Stanley that give me that impression."
Q. Mr. Meguid also had concerns about Mr. Strong's lack in condor in dealing with his colleagues; do you recall that, sir?
A. No, not specifically, but I'm sure there's a comment in there.
Q. Well, let me direct your attention to the first comment on the following page.
Do you see Mr. Meguid's comment at the top of 462, sir?
A. Oh, I'm on the wrong page. I was reading his comment on the other page.
Page 462?
Q. Yes.
A. Let's see where we are.
Q. Mr. Meguid's comment is the first one on that page.
A. I'm just trying to see where we are here. (Reading) Yeah.

Page 89

Q. Do you see that?
A. I see a comment on page 461.
Q. Would you read --
462, sir.
A. Oh, sorry.
Q. Top of 462?
A. Yeah.
Q. Would you read Mr. Meguid's comments?
A. "Bill continues to suffer the consequences of less than a straightforward approach. Gives people, including me, the impression that he is not completely up front. This needs to improve. There are numerous approaches to me from very credible people on the issue."
Q. Do you have any reason as you sit here today to doubt the accuracy of Mr. Meguid's characterization of the -- of his views of Mr. Strong or his comment concerning the approaches to him from other people on the same subject?
A. Well, I don't think they reflect his total view of Mr. Strong, but I have no reason to doubt that on this point it

NOT A CERTIFIED COPY

018290

reflected Terry's view at the time.
Q. And that it reflected his report on communications that he had had with others within the firm.
A. That other people had commented to him about this developmental issue, yes.
Q. Did you ever speak to Mr. Meguid about this comment?
A. About this specific comment?
Q. Yes.
When you were serving as the evaluation director for Mr. Strong did you go to Mr. Meguid and say, Terry, tell me what causes you to say this, and tell me what you're hearing from these other credible sources?
A. I -- I think it's important for you to understand the nature of the relationship I have with Mr. Meguid. First of all, in terms of proximity, he's in an adjacent office. Secondly, for all the time I was at Morgan Stanley in a managerial post for most of the time he served as my deputy. And so in the course of the period from April of 1995 to today, you know, I have had literally

thousands of conversations with Terry Meguid about people at the firm, and discussed the careers of all of our professionals, for that matter, who are let's say at the MD level, and so it's difficult for me to say, aha, on this very specific comment I walked across the hall to Terry Meguid's office and said X, Y or, okay? But, you know, I think it's fair to say that Terry and I have had conversations over the years about all of our senior managing directors, and the development of their careers at the firm.
Q. This is not the first time in the formal evaluation process that Mr. Meguid raised concerns about the manner in which Mr. Strong was dealing with his colleagues.
MR. YANNUCCI: Is that a question?
Q. (Continuing) Do you recall that, sir?
A. I -- not specifically, but I'm sure you probably have similar comment in another year.
Q. Let me turn you back to 1996.
A. Right.
Q. Exhibit 373.

A. 373.
Page?
Oh, oh, oh, Exhibit 373.
Q. Correct.
A. I'm looking for the page number.
Q. Page number 442.
A. 442, Bill Strong. One, two, three, four, five, six, seven, eight, nine, ten -- there's 25 evaluators.
Yeah?
Q. Are you on page 442, sir?
A. Not yet.
I am now.
Q. Do you see Mr. Meguid's comment that -- I think it's the third comment on the page?
A. Yes.
Q. Would you read that out loud, sir?
MR. YANNUCCI: Excuse me. I'm just going to object to using the witness as a human highlighter. If you want to ask him what he remembers about these issues, I certainly understand that, but I don't know why you're asking just read verbatim these statements.

Go ahead.
A. "His colleagues seem to be wary of his motives generally. I believe," comma, "because the manner in which he deals with certain external and client matters, i.e. with greater shrewdness" -- that's a parenthetical statement -- "is interpreted as the way in which he deals with his colleagues."
Q. In other words, that Mr. -- Mr. Meguid was raising the concern that Mr. Strong's colleagues were concerned that he was being shrewd in dealing internally with people at Morgan Stanley, correct?
MR. YANNUCCI: Object if you're asking him to interpret what Mr. Meguid thought other people thought about this individual.
Q. Is that how you read that comment, sir, as the person who served as Mr. Strong's evaluation director?
A. Look, you know, Bill Strong's getting evaluated by 25 people this year. I counted them before I turned to that page. And the thing you have to understand is what

NOT A CERTIFIED COPY

018291

I said earlier, and I probably felt it as much as Bill did. When you come into a firm like Morgan Stanley, Morgan Stanley had been a home grown culture, okay? Terry Meguid, for example, who's my deputy, had never worked anywhere else. Possible Scott retired 33 years at the firm. Just about everyone you come in contact with when you come into this firm as an outsider in the early 90s was a home grown Morgan Stanley person. Morgan Stanley had an inheritance, almost a sense of entitlement, in my opinion, which I considered to be a negative, that somehow the world owed them a living, and I think one of the good things that happened when John Mack took over is he believed in hybrid vigor, and believed in bringing in people from outside the firm to give it sort of new blood. And people like myself and like Bill Strong tended to stand out, because they had worked in places where they had to fight to get their market share, they were outside the bus, knocking on the bus to get in, and Morgan Stanley was inside the bus, okay? So when Bill Strong comes to Morgan Stanley

there are going to be people -- I mean he's going to stick out, and so is Joe Perella for that matter, and other lateral hires.

And also I think there is a strong feeling on the part of people that they're sort of, you know, not on display. What's the right word? They're being tested, and -- and so there's a lot of conflicting emotions here. I think the old guard is kind of not used to this new blood, so they're -- they're not used to the style. I mean these are people who -- you know, they referred to one another "He was in my training class." Well, whose training class was Bill Strong in? Whose training class was Joe Perella in? So they came into the firm, and I think one of the reasons John brought -- you know, these -- these -- these people in was to kind of give it a transfusion or a shot of adrenalin. And I think from time to time people are going to have problems with the style of these outsiders, okay?

So Bill's style is a lot different than Bob Scott's. I don't know if you took Bob Scott's deposition, but you would see

that instantaneously if the two guys were before you. And I think mine would be a little different than Bob Scott's.

Over time, you know, we I think grew to appreciate one another, but I think in the early -- in this period of transition there -- there were a lot of conflicting styles at work in the firm. But I would have to say, you know, that, you know, we took all the comments seriously, and we transmitted them to whoever the evaluatee was. Bill wasn't treated any differently than anyone else.

I think if this kind of thing rose to the level of concern where we thought someone shouldn't be at the firm, we would have done something about it, but I -- I -- in the total package and the sort of the evaluation of overall performance that was not the case with Bill. There were other managing directors I had greater concerns about than Bill Strong.

Q. Well, you yourself said that Bill Strong was one of the few people at Morgan Stanley that you had a problem with with

respect to --

A. No, I didn't say I had a problem with him.

Q. Excuse me.

-- with respect to trying to get the full story from him, that you had to probe very hard to get the full story from Bill Strong, and that in your experience, as an outsider coming into Morgan Stanley --

A. Um-hm.

Q. -- that he was one of the few people that you had that experience with; isn't that right?

Isn't that what you said in 1997 about Mr. Strong?

A. Oh, no wonder. This is 1996. I'm looking in the wrong place.

Q. It's Exhibit --

A. Well, I remember --

Q. -- 374 --

-- the comment you're referring to.

Q. -- page 461.

You said about Mr. Strong "The one problem I continue to have with Bill is that you never seem to get the whole story unless

NOT A CERTIFIED COPY

018292

you" --
A. Okay.
Q. -- "probe very hard."
A. Yes.
Q. "There are very few people at MS that give me that impression." That was you, Joe Perella, saying that.
A. Fine, I said it.
People in our business are -- have it beaten into them from the time they come in to the firm about being careful with information, okay? And so at the same time I had made it a goal, when I took over corporate finance and investment banking later, that I thought internal communication at Morgan Stanley was inadequate or insufficient or less than what it should be in what I would called a well-oiled investment banking machine. So I had gone on record with the division and with the department that my number one goal was to improve internal communication. And I said there's some people here who can't spell communication, there's some people here who could give a course in it, and there's some

people here that need improvement. So you have this internal tension, if you will, sharing information on the one hand and protecting information that's privileged, and on the other hand wanting to have the division operate better by having better communications. And everyone, you know, deals with that tension in different ways.
And what I was reflecting, I believe, in my comment was that, you know, Bill was --
What did you say the page was, 469?
Q. I think it's 461.
A. Oh, okay. No wonder I couldn't find it.
Q. "The one problem I continue to have with Bill is he never seems" --
MR. YANNUCCI: He was in the middle of finishing his answer.
Q. (Continuing) I'm sorry.
A. So with Bill, he was more protective of the information he had than some other people, so I had to work harder -- I've had to work hard to get him to be a better communicator.

Q. That's what you say you're referring to on that page?
A. Well, that's part of it, isn't it? Getting the whole story, you have to ask, you have to probe, so you have to ask questions, so that's -- that's to me part of communication.
Q. Well, let's take a look at the summary for 1997.
A. Sure.
Q. And see after going through the review process --
A. All right.
'97 EDS?
Q. This is an evaluation summary that you prepared.
A. Right. '97.
Q. And it was vetted by a group of others within the firm, correct, sir?
A. Correct.
MR. YANNUCCI: Asked and answered.
Go ahead.
Q. Let me -- let me direct your attention to the section entitled "Development Needs" --

A. Correct.
(Discussion off the record.)
Q. -- on page 470.
A. Yes.
Q. Do you have that in front of you?
A. Yes.
Q. Read the three comments made.
A. Which ones?
Q. "Balance." Beginning with "Balance."
A. "Developmental needs client skills business development"?
Q. Yes.
A. Because there's a column marked "Suggestions to Improve."
Q. I'm talking about the left-hand column.
A. Okay. "Client Skills. Business Development. Balance," colon, "overly aggressive at times in trying to capture transactions so as to miss possible negative impact on resource usage for the franchise. Two" --
Sorry. You want me to read the second one?

NOT A CERTIFIED COPY

018293

Q. Yes, please.
A. "Prone to exaggeration. Can cause skeptical reaction from client and loss of credibility with teammates. Also a tendency to overcommit clients on certain items which are not in Morgan Stanley's area of expertise. Three, straightforwardness. People have the impression he is not being completely up front. Also certain product areas think he should consult with them before racing to answer a client question. Some suggest he still manages by intimidation or setting artificial deadlines."
Q. And next to that the suggestion to improve was what, sir?
A. You want me to read those, too?
Q. Well, you can, sure.
MR. YANNUCCI: Yeah, I'm going to object to having this -- taking the witness' time just to read comments that there's no dispute over.
I also for purposes of completeness I'm going to state that this on the same page as or right above it, "Primary Strengths." You're just selecting

certain quotes out of this document and asking him to read them out load on the record, and I think that's highly inappropriate.
A. Well, I indicated that, you know, this is a summary, and it's a summary of the comments reflecting 22 people, that were shared by other partners in the firm.
MR. YANNUCCI: But it's only the negative comments that he wants you to read.
THE WITNESS: I know that, but I'm happy to answer -- to -- to do whatever he likes.
A. (Continuing) "Try to be more selective in pursuing business. If there are doubts, seek advice from colleagues. Also, try not to get into details. Your time is better spent. Resources are not endless to prioritize what is important before making requests for work."
Q. The next suggestion?
A. "Don't oversell. You don't have to. As your stature grows, your salesmanship must mature."

Q. And the suggestion to improve, next to the comment about straightforwardness?
A. "Need -- "Needs to work on being more open and transparent with colleagues."
Q. And those were the comments you delivered to Mr. Strong during his 1997 evaluation, correct, sir, you personally?
A. He got a written copy of this.
Q. And you personally delivered those comments to him, correct?
A. Well, I handed him the page, and I read comments from the package backing up the performance summary, including the many positive things that were said about him that year.
Q. And you told him about these specific things, these are things he should improve on, correct?
MR. YANNUCCI: Asked and answered.
A. Yes, I said that.
Q. Let's take a look at 1998, then.
A. Yup.
Q. Let's start with Mr. Meguid's comment on page 480. This is in Exhibit 375.
A. Four --

Q. I'm sorry, it's Exhibit 375, page 480.
Have you found page 480, sir?
A. Yup.
Q. Would you read Mr. Meguid's comment?
MR. YANNUCCI: 'M going to object again.
Go ahead.
A. "Bill can be overly aggressive in terms of trying to capture transactional opportunities. Makes some judgments which are sometimes very close to if not over the line. I continue to hear comments about his greater general concerns for his own people business unit relative to the firm's best interest."
Q. That's almost word for word the criticism that Mr. Meguid made of Mr. Strong in his 1977 (sic) evaluation correct, sir, on that subject?
A. '97?
MR. YANNUCCI: '77?
Q. 1997, excuse me.
A. I don't know. I haven't compared

NOT A CERTIFIED COPY

018294

it.
Q. Let's do that. Pull out --
MR. YANNUCCI: I'm going to object.
A. Why don't you ask Mr. Meguid the question?
MR. MARKOWSKI: If the witness would like to compare, I'm content to have him do that.
A. Sure.
Q. That's Exhibit 374, page 461.
A. Right. (Reading).
Q. Mr. Meguid reiterates the comment again in 1998, correct, sir?
MR. YANNUCCI: Your question was before, I think, it was almost word for word the same.
MR. MARKOWSKI: I'm content with that question.
A. Mr. Meguid has made a comment in each year, yes.
Q. Mr. Meguid repeats the substance of his 1997 criticism in 19 -- his 1998 comment in almost exactly the same words, correct, sir?
A. (Reading) Yes.

Q. Let me direct your attention to page 481.
A. Which year?
Q. This is in the 1998 evaluation summary.
A. Eight. Yes?
Q. Mr. Meguid makes another comment at the top of the page?
A. Yes.
Q. Would you read that, please?
A. "Bill continues to suffer the consequences of less than a straightforward approach. Gives people including me the impression that he is not completely up front. I have heard fewer negative comments this year than in the past."
Q. That again is almost exactly the same comment that Mr. Meguid made in 1997, correct?
A. Where is that?
Q. Page 462 of Exhibit 374.
A. Well, in 1997 it says at the end "this needs to improve," and at the end in 1998 it says "I have heard fewer negative comments this year than in the past."

Q. Mr. Meguid continued in 1998 to say that Mr. Strong continued to suffer the consequences of a less than straightforward approach, correct, sir?
MR. YANNUCCI: Objection, asked and answered.
A. Yeah, no, you're right, he uses the same words in both years.
Q. Let's take a look at the summary in 1998.
A. EDS 1998.
MR. YANNUCCI: It's the page on the back.
Q. Before we get there --
You were co-director of Mr. Strong's evaluation in 1998, sir; is that correct?
MR. YANNUCCI: Asked and answered.
A. We answered that about two hours ago.
Q. Right.
What role would you have played in preparing the summary for 1998, given the fact that you were serving as co-director?
A. The -- the -- the -- the correct

answer to that is I -- I wouldn't recall, but if -- as a generalization? The -- the primary director would probably do the write-up and share it with the co-director.
Q. Do you remember there being any disagreement between you and Mr. Jones in 1998 concerning Mr. Strong's evaluation summary?
A. Don't recall.
Q. Let me direct your attention to the development needs section, page 492 of the 1998 evaluation summary.
A. Um-hm.
Q. Would you read the first one into the record, please?
MR. YANNUCCI: I'm going to object again, because you're just again taking his commentS out of context, you're not reading the entire -- you're just picking certain sections.
But go ahead.
A. Well --
MR. MARKOWSKI: I'm going to pause for a second. Mr. Yannucci, I have been patient. Florida procedure provides the

NOT A CERTIFIED COPY

018295

Page 110

opportunity to object to the form of my questions without a speaking objection, and I'd appreciate it if you would limit your comments so that you're not influencing the witness' testimony.

MR. YANNUCCI: I don't think I am, counsel, and I would appreciate it if you would conduct the deposition as you should, and not waste the time of the witness to have him read statements that aren't -- aren't in dispute. You have him sit here and just read these documents.

Go ahead.

A. Well --

Q. Would you read --

A. -- I will read the ones you want me to read, you know, recognizing, as I'm well aware, that they reflect -- that these packages reflect the thoughts of 25 people, and this is a summary of the developmental needs, which are in everyone's package.

"Client skills business development. Overly commercial," colon, "can be overly aggressive in terms of trying to

Page 111

capture transactional opportunities. Makes some judgments which are sometimes very close to if not over the line. Needs to avoid overcommitting and maintaining" -- "needs to avoid overcommitting and maintain the efficacy of M&A fee scale. Intense style. Has a very intense style which can be off-putting to some clients. Professional and execution skills. Management teamwork. Communication. Although he has made progress and is acutely aware of the concerns he continues to suffer the consequences of less than a straightforward approach. Some colleagues feels" -- "feel he gives people the impression that he is not completely up front and uses information selectively. Oftentimes does not disclose information which others may view important or will disclose some information on a subject but not all. Also there is the perception that he does not properly balance the issues of the people -- of his people," slash, "his region with the best overall interest of the firm. Management. Should let his junior professionals manager" -- "manage the

Page 112

day-to-day relationships with his clients at the more junior levels. Connects very well with the officers, but needs to spend more time with the associates and analysts in the office."

Q. At the time that evaluation summary was prepared, sir, the effort was made to be fair and balanced in reporting to Mr. Strong the results of his evaluation, correct?

A. Absolutely.

Q. I asked you some questions generally, sir, about Morgan Stanley's compensation structure for managing directors. Do you know -- let me ask this question.

When Bill Strong was first hired to join Morgan Stanley from Salomon Brothers, do you know if he was given an employment contract?

A. No.

Q. You don't know?

A. I do not know.

Q. Do you know what percentage of Mr. Strong's compensation in the time period that we've been focusing on, 1995 through 1998,

Page 113

was bonus-based compensation as opposed to salary?

A. I don't know, but I know the pattern of our compensation, which is at least 90 percent, probably -- well, somewhere between 80 and 90 percent bonus.

Q. Do you know what Mr. Strong's total compensation was during the time period we've been focusing on?

A. No, I don't know.

Q. Do you know what influence Mr. Strong's -- let me take a step back.

Were you personally involved in the process of setting Mr. Strong's bonus in this time period?

A. From?

Q. '95 through '98?

A. Yes.

Q. Do you know what influence Mr. Strong's personal success in generating revenue had on the size of his bonus in those years?

MR. YANNUCCI: Objection, asked and answered.

A. I think over sometime in the last

NOT A CERTIFIED COPY

018296

Page 114

few hours I answered the question about -- that you asked about what role revenue plays in comp, and I think that was a pretty comprehensive answer --

Q. I asked --

A. -- if I'm not mistaken.

Q. I'm sorry to interrupt you.

I had asked a general question. Now I'm asking specifically about Mr. Strong.

A. Well, the -- the -- I said that person's compensation is based on a number of factors, revenue being one of them, and I said also revenue over time, not revenue in a specific year, or not wanting to have investment bankers' comp spike.

It -- it's -- there are some firms who have -- and I think it's worth mentioning, since you seem to be focused on comp. There are some companies who pay people purely on their revenue production in a given year. There are some people who like to be paid that way. We don't have that kind of system, and whenever a person has come to a point in their career here where they feel that's the kind of system they want to be on,

Page 115

they inevitably are told if they're not happy here, they can leave, which has happened in the fast. Some of our biggest producers wanted to be paid just on revenue less heat, light, and power, 50 percent for me, 50 percent for you. Firms that have done that have generally created firms within firms, created a lot of friction, they blow up. The most famous of those is Mike Milken, where people get paid based purely on their revenue sheet and nothing else. We've never had that system here.

And so that's why when I say revenue is just part of it, it's -- it's -- it's one of the factors that's taken into account in determining comp. And that was the case with Bill as well. And whenever people have -- and so when we sit down to determine comp, we look at all those things that I talked about that determine the revenue pool, the comp pool, and then take all those factors into account in coming up with that person's comp.

So no one here at the firm has a deal where they get paid in the investment

Page 116

banking division a percentage of the revenues, okay? When someone wanted that here once, I was in an office that same year that you're referring to, Bob Scott -- the guy wrote a written proposal, and Bob Scott took the proposal, said "Is there anything in this proposal, anything in your plan that you want to say that's not in the -- in the write-up," and the person said no, and he went like this right in front of him (indicating), in the garbage pail. Okay? The biggest producer, the highest paid person in my department in 1996, and the person left and went to another firm that gave him that package, and when his contract expired two years later another firm gave him the same package. And you know who that person is if I tell you, because he's now indicted. That's all I've got to say about revenue and compensation at Morgan Stanley.

Q. I have a few more questions about it, so let's see.

Mr. Strong --

A. Excuse me. Convicted, not indicted.

Page 117

Q. Mr. Strong had had success in generating substantial revenues for Morgan Stanley over a period of years; had he not, sir?

A. Yes.

Q. And he was valued by Morgan Stanley for his ability to generate substantial revenues for the firm, correct?

MR. YANNUCCI: Objection --

A. Among other things.

MR. YANNUCCI: -- to form of the question.

A. (Continuing) Among other things.

REQ MR. MARKWSKI: Mr. Yannucci, we have not received, I'm confident, copies of the TSW sheets that the witness has identified today as tracking the fee credits that Mr. Strong received in connection with the Sunbeam transaction or in connection with his evaluation process generally. I'd ask you to search Morgan Stanley's files and produce those documents to us.

Q. Sir, you did not personally have any involvement in the work that Morgan

NOT A CERTIFIED COPY

018297

Stanley did for Sunbeam, did you?
A. None whatsoever.
Q. Were you aware that in -- I'll set the time for you, sir. This is not a matter that's in dispute. But Sunbeam acquired my client's 82 percent interest in the Coleman company in March of 1998. Prior to that transaction closing Sunbeam issued a press release. I'll show you a copy of that. It's been previously marked as CPH Exhibit number 14.
A. So you were saying -- what is this?
Q. This is a press release that Sunbeam issued on March 19, 1998, about ten days or so before Sunbeam closed on the acquisition of my client's interest in the Coleman company. I'd like you to take a moment to read it.
A. You want me to read this?
Q. Yes, just to yourself.
A. (Reading).
Q. Have you had an opportunity to read it, sir?
A. I read it.
Q. Did anyone --

A. For the first time.
Q. Okay. Did anyone working on the Sunbeam transaction at Morgan Stanley, Mr. Strong or anyone else on the Morgan Stanley team, come to you to discuss issues relating to Sunbeam's first quarter 1998 performance or the press release that's Sunbeam issued on March 19th?
A. No.
Q. Ruth Porat is another person at Morgan Stanley who worked on the Sunbeam transaction.
Do you know Ruth Porat?
A. I do know Ruth Porat.
Q. She works in the equity capital markets part of the firm?
A. Not today, no.
Q. She did back in 1998.
A. She did work in Equity Capital Markets, if that was the period.
Q. Ruth Porat didn't come to talk to you about the circumstances leading to the issuance of the March 19th press release to ask for counsel from you concerning what Morgan Stanley should do, did she?

MR. YANNUCCI: Objection, asked and answered.
A. I think I can cut through a lot of this for you, if it makes a difference, and simply say that in my capacity at Morgan Stanley and whatever role I was playing during the period of time that this transaction developed and was done I had zero involvement, zero involvement in work, conference calls or anything you would refer to as work at Morgan Stanley. So it -- it is my belief that this was one of the many things going on at the firm that I read about when it transpired, and I had no involvement at all on any aspect of the deal, consulting, input, anything. So everything you would be asking me about the deal I'd be hearing for the first time, other than what I learned subsequent to the deal: It was announced. I bumped into Jimmy Maher. I see him. I see Howard Giddis. I see Don Drapkin, or whoever. Okay? You know, we worked on something together. I had -- I didn't even know it was going on when it was going on.
But that's not difficult to

understand, I think, if you have 2,000 people in the division working on hundreds of transactions at any given point in time. What I'm familiar with are the things that I was specifically working on or being consulted on, or where issues came to my desk.
But the way our system works, which is -- you know, there is a process set up at Morgan Stanley for things to get done, and they don't all flow through the head of the division or the head of the department's desk. If they did, it would be the definition of a bottleneck.
Q. If someone working on the Morgan -- on the Sunbeam deal for Morgan Stanley did have a concern and sought your counsel with respect to it, what would you have done?
A. Tried to help them out.
Q. Sir, do you recall being interviewed for an article that the New Yorker in 1999 about Mary Meeker?
A. Mary Meeker?
Q. Yes.
A. Our research analyst?

NOT A CERTIFIED COPY

018298

Q. Yes.
A. Not specifically, no.
Q. Mary Meeker is an employee of Morgan Stanley, a managing director of Morgan Stanley, correct?
A. Yeah, in good standing 500,000 e-mails later.
Q. I want to just show you a quote that's attributed to you in this article.
MR. YANNUCCI: This is in the New Yorker?
MR. MARKOWSKI: Yes.
We'll mark it as -- that will be CPH Exhibit 377.
(CPH Exhibit 377, 4/26/99 Mary Meeker article in The New Yorker, marked for identification, as of this date.)
(Discussion off the record.)
MR. MARKOWSKI: The date of the article is April 26th, 1999.
Q. And there doesn't appear to be a page number, but the quote I'm going to be asking you about is on the fifth page of the exhibit. There's a paragraph that begins in the left-hand column.

A. There's only one column on the page.
MR. YANNUCCI: Let me show him my page.
A. (Continuing) Oh, I'm on the wrong page.
Q. I think it's the fifth page.
A. Let me start all over. "The Woman in the Bubble," is that the title of the article?
Q. Correct. And it's the fifth page of the exhibit.
A. This is in which magazine?
Q. The New Yorker.
A. The New Yorker. Not New York Magazine.
Q. No, the New Yorker.
A. Okay.
Q. You can see in the upper right-hand column of the --
A. Three, four, five. Okay, I'm on the fifth page.
Q. -- there are two columns there?
And do you see the -- there's a new paragraph that begins in that left-hand

column?
A. "Morgan could have"?
Q. Yes.
It reads "Morgan could have made more money by being selective, but Meeker and her colleagues say that big money investors tend to rely on the firm's seal of approval." Quote, "If Morgan Stanley has its name on it," comma, "investors assume it's greater than Schlock Incorporated," comma, close quote, "Joe Perella, the head of Morgan: Morgan's corporate finance department mused." Do you see that?
A. Yes, I certainly do.
Q. Do you recall making that statement to the New Yorker?
A. No.
MR. YANNUCCI: Are you assuming that the quote comes from an interview to the New Yorker, or just was a quote elsewhere?
Q. Well, do you recall making that statement, that Morgan Stanley -- if Morgan Stanley has its name on it, investors assume it's better than Schlock Incorporated?

A. I don't recall making that specific statement, no.
Q. What does Schlock Incorporated mean to you, sir?
MR. YANNUCCI: Object to the relevance of this, but --
A. What does it mean to me?
Q. Yes.
A. Something that's not of high quality.
Q. Do you -- do you agree, sir, that if Morgan Stanley has its name on a deal, investors will assume it's something of quality?
MR. YANNUCCI: Object to the relevance.
A. I think that our firm has very high standards. We have a motto here, first class business in a first class way. We have a tremendous system of checks and balances, a process that people have to go through to vet things, to get things done.
For example, in the -- in the case of the -- let's say the bubble, the Internet, Mary was always of the opinion that 90

NOT A CERTIFIED COPY

018299

Page 126

percent of the companies were going to fail, that you'd only remember who was number one or two, and you'd forget all the rest of the companies. Because she was the leading analyst, everyone wanted her imprimatur. And so I think consistent with, you know, the standards of the firm, we tried to pick firms to work for that we thought were winners in that particular era.

Secondly, institutional investors I think believe that we have higher standards or let's say the highest standards on Wall Street, and I think they believe that if we -- they believe that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies.

I think -- and you heard me make the statement 500,000 e-mails later no one has been asked to leave our firm from the research department or the investment banking division. In all of the scandals that have rocked Wall Street, and Elliot Spitzer's investigation for the last I don't know how many years, 500,000 e-mails later our name is

Page 127

not on Adelphia, it's not on Enron, it's not on WorldCom, it's not on Global Crossing, okay? So they're -- all those, Tyco, Quest. And that I think has a lot to do with the fact that a lot of these companies that were at least 50 percent of business model, and the rest, Omnicom, have passed a very rigorous test to get through the Morgan Stanley system, and when people know you have that kind of rigorous test, a lot of times they don't even have ask you to even go through it; they go somewhere else. And it wasn't because we couldn't have done business with these companies. We wanted to.

So, you know, you ask me about what Schlock, Inc. means. It's -- it's -- it's something we don't like to be associated with. We like to be associated with first class companies and do business in a first class way, and try every day to -- to live to that standard.

Q. I take it, sir, although you can't recall making the statement to New Yorker reporter, that you'd agree that if Morgan Stanley has its name on it, investors assume

Page 128

it's better than Schlock Incorporated.

MR. YANNUCCI: Object to the relevance.

A. I -- I -- I -- I assume that if Morgan Stanley has its name -- I think investors believe that Morgan Stanley has its name on something, that we've done enough work on it, and that it's passed through our system to get to where it is, and we have a very rigorous capital commitment process here, a very rigorous equity commitment process here that is made up of a cross-section of people who are not interested in the particular deal of the moment.

Q. Just a moment.

A. Yeah.

(Counsel confer off the record.)

MR. MARKOWSKI: I have no further questions.

THE WITNESS: Okay. Thank you very much.

THE VIDEOGRAPHER: That's it? This marks the end of tape number two in the videotaped deposition of

Page 129

Joseph Perella. We are going off the record. The time is 5:56.

MR. MARKOWSKI: Actually, let's stay on the record. If you can go back on for a second.

THE VIDEOGRAPHER: We're back on the record at 5:56.

MR. MARKOWSKI: I just want to make sure that Morgan Stanley has no questions, and that the deposition is concluded.

MR. YANNUCCI: If we do, we'll let you know, but not at this time.

MR. MARKOWSKI: The deposition's closed then.

(Continued on the following page to include jurat.)

018300

NOT A CERTIFIED COPY

THE VIDEOGRAPHER: We are now off the record. The time is 5:57.

_____
JOSEPH R. PERELLA

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, SHAUNA STOLTZ-LAURIE, a Notary Public within and for the State of New York, do hereby certify:

That JOSEPH R. PERELLA, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December, 2004.

_____
SHAUNA STOLTZ-LAURIE

---------- I N D E X ----------
CPH Exhibit 371, Bill Strong 1993 performance evaluation package 4
CPH Exhibit 372, Bill Strong 1995 performance evaluation package 4
CPH Exhibit 373, Bill Strong 1996 performance evaluation package 4
CPH Exhibit 374, Bill Strong 1997 performance evaluation package 4
CPH Exhibit 375, Bill Strong 1998 performance evaluation package 4
CPH Exhibit 376, 1998 IBD Evaluation and Development Summary 4
EXAMINATION BY MR. MARKOWSKI: 6
REQ TSW sheets re Bill Strong fee credits for Sunbeam 117
CPH Exhibit 377, 4/26/99 Mary Meeker article in The New Yorker 122

*** ERRATA SHEET ***
ESQUIRE DEPOSITION SERVICES

NAME OF CASE: COLEMAN v. MORGAN STANLEY
DATE OF DEPOSITION: DECEMBER 8, 2004
NAME OF WITNESS: JOSEPH R. PERELLA

Reason codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

_____
JOSEPH R. PERELLA

018301

NOT A CERTIFIED COPY

Page 226

Will counsel please introduce themselves?
MR. MARKOWSKI: Bob Markowsi, Jenner & Block LLP, on behalf of Coleman Parent Holdings.
MR. O'CONNOR: Chris O'Connor of Jenner & Block LLP, on behalf of Coleman Parent Holdings.
MR. CLARE: Tom Clare, Kirkland & Ellis LLP, on behalf of Morgan Stanley and the witness, Ruth Porat, and here with me Jim Doyle, from Morgan Stanley's law department.
THE VIDEOGRAPHER: Will the court reporter please swear in the witness.
RUTH PORAT, resumed as a witness, having been previously sworn by the Notary Public, was examined and testified further as follows:
EXAMINATION BY
MR. MARKOWSKI:
Q. Ms. Porat, you understand you're still under oath, do you not?
A. Yes, I do.
Q. Ms. Porat, how do you feel today?

Page 227

A. Fine, thank you.
Q. Did you do anything to prepare for the resumption of your deposition today?
A. I briefly scanned the prior deposition.
Q. Did you do anything else?
A. No.
Q. Did you meet with counsel?
A. Just briefly to -- very briefly yesterday.
Q. How much time did you spend with counsel preparing for today?
A. Fifteen minutes maybe.
Q. In reviewing your transcript, did you notice anything that you wish to change or correct?
A. No. I scanned it pretty quickly. I saw one typo that may have a confusing reference which I will find for you, but other than that, no.
Q. Is there anything that in reviewing that transcript you believe you now recall that you could not recall at the time you gave your testimony on November 23?
A. No.

Page 228

Q. Let me show you what we marked as CPH Exhibit 378. It's a copy of the deposition transcript from your November 23 testimony. You said you found a typo. Can you locate it for me?
A. I don't remember where it is. I can spend the time to do it now or call you back; whatever you prefer.
MR. CLARE: I think we can do it through the errata portion of it.
MR. MARKOWSKI: That's fine.
Q. There are a couple of things I wanted to bring to your attention, to see if we can clear them up. If you can turn to page 167. You're at page 167 of the transcript, ma'am?
A. Yes.
Q. You see at the, bottom beginning at line 21, you begin to read from Exhibit CPH 17. It's a copy of the Arthur Andersen November 19, 1998 comfort letter?
A. Yes.
Q. Do you see on line, 25 and continuing to line 1 on page 168, the text reads: "From November 29, 1997 through

Page 229

March 1, 1998, which were $72,018,000 as compared to $43,499,000 for the corresponding period of the preceding year." Do you see those words?
A. Yes.
Q. And I don't know if you misspoke, or the court reporter took it down incorrectly, but that reference to $43,499,000 should be $143,499,000, shouldn't it?
MR. CLARE: Do you want to share a copy of that?
MR. MARKOWSKI: I can --
Q. But do you recall that?
MR. CLARE: Why don't you -- let me show her a copy of the document, so she can know what she was reading from.
Q. Let me show, you Ms. Porat, what we previously marked as CPH Exhibit No. 17. It's the Arthur Andersen March 19, 1998 letter to Morgan Stanley, and you were reading from paragraph C at the top of page, number five of the exhibit, I believe.
A. You're correct. It should have been $143,499,000.

NOT A CERTIFIED COPY

018304

16div-023682

Page 230

Q. So that's either a typographical error, or you misspoke, correct?
A. Correct.
Q. Let me direct your attention to one other item that I caught in scanning over the transcript, at page 142 and 143. This time it really says something I said.
You see at the bottom of page 142, I asked you a question relating to whether Mr. Tyree had told you that, during the due diligence call with Arthur Andersen on March 12, that Arthur Andersen had advised Morgan Stanley that in Arthur Andersen's view Sunbeam had used a number of aggressive techniques to enhance its 1990 sales revenue. Do you see that?
A. Yes.
Q. And your answer was "I don't recall hearing that," correct?
A. Correct.
Q. Did you understand, when I asked that question, that I was asking you about Sunbeam's 1997 sales revenue?
A. That would have been the proper comparison.

Page 231

Q. Right. And I don't know if I misspoke, or the court reporter took it down incorrectly, but you understood me to be asking about 1997, correct?
A. Yes.
Q. Were either of those the items that --
A. Unfortunately not, but I will find it.
Q. You can do that at a later time.
Do you recall that immediately -- let me take a step back. You attended the Sunbeam February 27 board meeting where the Sunbeam board voted to approve the acquisition of my client's interest in Coleman Company, correct?
A. I recall being at a board meeting, and I don't recall when that board meeting was, but it was a board meeting at which financing was discussed. And I don't recall whether the acquisition was approved at that board meeting.
Q. Let me show you the minutes of the Sunbeam February 27 board meeting, just so we have that point of reference clear.

Page 232

A. Okay.
Q. Let me show you, Ms. Porat, what we previously marked as CPH Exhibit 206. These are the minutes of the February 27, 1998 Sunbeam board meeting. I think we covered this in your -- the last session of your deposition, but I believe it's in the second paragraph here that identifies you as a participant or as an attendee at the board meeting. Do you see that?
A. Yes I do.
Q. You don't need to read the minutes, but I will represent to you that's the board meeting where Sunbeam voted to approve the acquisition of Coleman Company; the Sunbeam board did.
Do you recall that immediately after the February 27 board meeting you met with Sunbeam's outside public relations firm?
A. I don't recall that.
Q. Sunbeam had engaged Hill & Knowlton to act as its public relations firm in connection with the announcement of these acquisitions. Do you recall that?
A. I don't recall that.

Page 233

Q. Let me show you a document that we will be marking for the first time today. It will be CPH Deposition Exhibit 379 I guess.
(Plaintiff's Exhibit CPH 379, Copy of an April 28, 1998 letter from Skadden Arps to Michael MacPhail, marked for identification, as of this date.)
Q. CPH Exhibit No. 379 is a copy of an April 28, 1998 letter from Skadden Arps to Michael MacPhail at the Securities and Exchange Commission. Just take a look at it briefly, Ms. Porat, and tell me whether you've seen it before?
A. I don't believe I've seen it before.
Q. Let me direct your attention to page 17 of the attached chronology. Do you see an entry there that reads February 28 - March 1, 1998?
A. Yes.
Q. And that entry states Messrs. Dunlap, Kersh, Fannin, Goodis of Sunbeam and Messrs. Kits, Fuchs and Porat of Morgan Stanley met with Mauri Hope of Hill & Knowlton to discuss the public

NOT A CERTIFIED COPY

16div-023683

Page 234

relations aspects of the transactions. Do you see that?
A. Yes.
Q. Do you recall participating in discussions with that group of people relating to the public relations aspects of Sunbeam's first quarter 1998 acquisitions?
A. I don't. I don't remember that name Mauri Hope, either.
Q. Do you believe that this is erroneous?
A. I have no basis for judging. I just don't remember this meeting or that name.
Q. Hill & Knowlton is a public relations firm. You're familiar with that, correct, ma'am?
A. Yes.
Q. Do you recall any involvement on your part with Hill & Knowlton at any point relating to the public relations aspects of the acquisitions that Sunbeam made in the first quarter of 1998?
A. I don't recall. They may have been there and I didn't know it, but I don't

Page 235

recall Hill & Knowlton; meeting Hill & Knowlton.
Q. Do you recall participating in a series of discussions relating to the development of responses that Sunbeam management might consider making to inquiries relating to the transactions?
A. I remember meeting with Mr. Dunlap at one point in his apartment on a weekend with Bob Kitts to talk about some questions and answers, but I don't recall whether they were related to the acquisition specifically or the financing. I do remember a Q-and-A discussion, though.
Q. Let me show you a calendar for February and March of 1998 just so you can get the timing clear in your mind. I don't think we need to mark this as an exhibit, but let me show you a 1998 calendar. The minutes I showed you from the Sunbeam board meeting were from February 27. Do you see that February 27 was a Friday in 1998?
A. Yes.
Q. And March 1 -- excuse me. March -- February 28 and March 1 are Saturday and

Page 236

Sunday, correct?
A. Correct.
Q. So it would be consistent with your recollection of meeting with Mr. Dunlap on a meeting, about a weekend, for you to have met with Mr. Dunlap on March 28 and March 1, or on one or the other of those days, to discuss inquiries that may be made of Sunbeam management relating to the first quarter acquisitions?
MR. CLARE: Objection to form.
A. Or it could have been March 7th or 8th.
Q. Do you think the meeting would have occurred prior to the public announcement of the acquisitions so that Mr. Dunlap would be prepared for inquiries immediately upon the first announcement of the public that the acquisitions were taking place?
A. As I said, I don't recall whether it was about the financing or whether it was about more than the financing, so I don't know when it occurred. All I remember was it was a weekend.
Q. But you do have some recollection

Page 237

of participating in a meeting in Mr. Dunlap's apartment on a weekend to discuss questions that might be put to Mr. Dunlap relating to -- by people in the public relating to Sunbeam's first quarter 1998 acquisitions, or relating to the financing concerning those acquisitions, correct?
A. Just to make sure I'm answering it clearly enough, my involvement would have been as it related to a road show presentation, so what would have been covered are any questions or answers that we thought might have been raised in the context of a road show.
That's why I'm not sure whether it was the weekend you asked me about, or the following weekend immediately preceding the road show.
Q. Ms. Porat, I'm going to show you four different exhibits. They're numbered CPH Exhibit 140, 141, 142 and 143. I would like you to look at them for a moment and tell me whether or not you have seen one or more of those documents previously.
A. I don't remember these documents.

NOT A CERTIFIED COPY

018306

Page 238

Q. They relate to questions concerning the first quarter 1998 acquisitions, correct?
A. Correct.
Q. And these draft documents, or these documents contain potential answers to the questions concerning those transactions, correct?
A. Correct.
Q. You have no recollection of participating in the preparation of these documents?
A. I don't recall.
Q. You have no recollection of commenting on these documents?
A. I don't recall seeing a document like this. I may have, but I just don't recall it.
Q. There's handwriting on each of the exhibits, I believe. Do you recognize any of the handwriting on Exhibit 140?
A. I don't recognize it. I know it's not mine, but I don't recognize it.
Q. Do you recognize any of the handwriting on Exhibit 141?
A. No. Same answer.

Page 239

Q. Do you recognize any of the handwriting on Exhibit 142?
A. No. Same answer.
Q. I don't see any handwriting on 143. Does looking at these documents refresh your recollection concerning whether your meeting with Mr. Dunlap related to the road show, or to questions that Mr. Dunlap might receive upon the announcement of the acquisitions?
A. No.
Q. I think we touched on it briefly when we were together last, but do you recall that the debenture offering relating to the financing of the Sunbeam acquisitions required the approval of Morgan Stanley's Equity Commitment Committee?
A. Yes.
Q. And the committee received a written presentation, do you recall that?
A. Yes.
Q. Let me show you a copy of CPH Exhibit 129. This document is dated March 10, 1998?
A. Correct.

Page 240

Q. And it's a memorandum to the Morgan Stanley Equity Commitment Committee?
A. Correct.
Q. You're identified as one of the authors of the document?
A. I am identified as one of the authors.
Q. In fact, a number of individuals who are involved in Morgan Stanley's work for Sunbeam are identified as author of this document, correct?
A. Correct.
Q. Is this the formal presentation to the Equity Commitment Committee relating to the Sunbeam debenture offering?
A. I'm sorry?
Q. Is this the formal presentation, the written presentation, to the Equity Commitment Committee relating to the Sunbeam convertible debenture offering?
A. Yes, this looks like the document that would have been distributed to the Equity Commitment Committee.
Q. Were you involved in preparing this document?

Page 241

A. I don't recall if I was.
Q. Would you have at least reviewed it before it was presented to the Equity Commitment Committee?
A. Yes, I think I would have.
Q. You would have reviewed it to verify the accuracy of the things that you at least had knowledge of?
A. Yes.
Q. Do you know who was involved in preparing this written document?
A. I don't remember who wrote it.
Q. It was prepared by the Morgan Stanley team working on the Sunbeam transaction though, correct?
A. Correct.
Q. Mr. Strong, Mr. Kitts and Mr. Stynes are among the individuals who are identified as the authors of this document, correct?
A. Correct.
Q. All three of them had been working on the Sunbeam transaction for -- the Sunbeam engagement for some period of time by this point, correct?

NOT A CERTIFIED COPY

Page 242

MR. CLARE: Objection to form. It calls for speculation.
You can answer.
A. I don't know when each of them began to work on it, but I knew they were all involved in working on it.
Q. It was your understanding that they were involved from the outset of Sunbeam's engagement of Morgan Stanley?
MR. CLARE: Objection to form.
A. No. As I just said, I know they were all involved. I don't know when they each became involved.
Q. It was your understanding that Mr. Strong was involved from the outset, in any event, correct?
A. Yes.
Q. Did you attend the Equity Commitment Committee meeting?
A. I believe I did. I don't specifically remember it.
Q. Did the committee meet on the date of this memorandum, on March 10, or at some later date?
A. I have no idea.

Page 243

Q. Is there any practice with respect to the date of the preparation of the written report to the committee and the time of the committee's meeting?
A. The memo oftentimes would be written and distributed before the meeting, although not always. And I was just looking at the calendar because I think the committee met on Tuesdays, and this happens to be a Tuesday, so I don't know when this was prepared or circulated, and whether this date referred to a committee date. I have no recollection of all those dates; specific dates.
Q. Your recollection is that you attended the meeting whenever it occurred, correct?
A. I think that's right.
Q. Did anyone during the course of the -- let me ask a background question. Who else do you recall attending who was involved in performing work on the Sunbeam engagement?
A. I'm sorry?
Q. Who else do you recall from the Sunbeam team, the Morgan Stanley Sunbeam team

Page 244

other than yourself attending the Equity Commitment Committee meeting?
A. I don't actually remember the details of the Equity Commitment Committee meeting so I don't know.
Q. Do you know if Mr. Strong was there?
A. I don't know.
Q. Mr. Strong was the relationship officer, I believe is the term some have used to describe his responsibilities for Sunbeam; is that correct?
A. Correct.
Q. Would it have been typical for the Morgan Stanley relationship officer to attend the Equity Commitment Committee meeting relating to a transaction such as this?
A. He could either have attended, dialed in, or not attended, because there were enough other people who could present the issues.
Q. Would the Equity Commitment Committee expect to hear from Mr. Strong before approving the transaction?
MR. CLARE: Objection to the extent

Page 245

you're asking Ms. Porat to speak for the committee. Calls for speculation.
You can answer.
Q. Based on your experience?
A. I don't know. I think it varied by case.
Q. Do you recall anyone during the course of the Equity Commitment Committee where the Sunbeam convertible debenture offering was presented to the committee advising the committee members that Sunbeam was having problems with respect to its first quarter 1998 sales performance?
A. I don't remember, as I said, the meeting itself, but I do know that the first time I heard about any problem with first quarter was much later towards the New York road show, so your question doesn't actually hold for me, because I don't know what happened to the committee. I don't remember that, as I said a couple of times. But I do know when I first remember hearing about a sales problem that was much later.
Q. So you know that the committee wasn't advised at the meeting to approve the

NOT A CERTIFIED COPY

018308

Page 246

Sunbeam convertible debenture offering that there was a problem with respect to Sunbeam's first quarter performance, correct?
MR. CLARE: Objection, that misstates her testimony.
A. I didn't know that there was, and as I've said I don't remember this meeting. So you're interpreting -- I think that's an extension. I don't know, is the short way of putting it.
Q. Let me try to parce through this. You believe you attended the Equity Commitment Committee meeting where the Sunbeam convertible debenture offering was presented to the committee, correct?
A. I believe so, but I can't say it specifically.
Q. That's your belief, correct?
A. Right.
Q. You did not learn personally that there was a problem with respect to Sunbeam's first quarter 1998 sales until, I believe you just said, some time significantly after the Equity Commitment Committee had approved the convertible debenture offering, correct?

Page 247

A. Correct.
MR. CLARE: Objection to form. You can answer.
A. Correct.
Q. So if in fact you were an attendee at the March 10 1998 Equity Commitment Committee meeting, or whatever date that meeting took place concerning the Sunbeam convertible debenture offering, you didn't hear anyone advise the participants in that meeting that there was a problem with respect to Sunbeam's first quarter 1998 sales, correct?
A. If I was there, I didn't hear it.
Q. Take a brief look, Ms. Porat, at the written report that was provided to the committee. Let me ask this question. You've testified that you didn't learn that there was a problem with respect to Sunbeam's first quarter 1998 sales until sometime significantly after March 10, correct?
A. It was -- just to make sure I'm clear on what "significantly" means -- it was in that couple of days prior to pricing, so it was within a week that it was -- I don't

Page 248

remember hearing it until right prior to pricing.
Q. You first heard it, according to the testimony you gave at your last deposition session, at the end of the road show, correct?
A. Right.
Q. And the Equity Commitment Committee meeting occurred before the beginning of the road show, correct?
A. Correct.
Q. And you didn't have any knowledge before the road show began that there was a problem with respect to Sunbeam's first quarter 1998 sales, correct?
A. Correct.
Q. Based on that, are you comfortable saying that there is nothing in this March 10 report that alerts any reader of it to a problem with respect to Sunbeam's first quarter 1998 sales, or would you like to take a moment to look at it?
MR. CLARE: Objection to the form of the question.
A. I would assume there is not.

Page 249

Q. Well, just take a moment to look at it.
A. Can you just tell me?
MR. CLARE: Well, the document says what it says.
A. I'm assuming there's not, but you know the answer. I will assume there's not.
Q. If there had been a problem known to you with respect to Sunbeam's first quarter 1998 sales, is that something you would have brought to the attention of the participants in the Equity Commitment Committee meeting relating to the debenture offering?
MR. CLARE: Objection to form and hypothetical. You can answer.
A. I believe I would have brought it to their attention.
Q. And you didn't do that, correct?
A. Correct.
Q. We spent some time when we were together last talking about the series of conversations that you were involved in when you did first hear about a problem with Sunbeam's first quarter 1998 sales, correct?

NOT A CERTIFIED COPY

Page 250

A. Correct.
Q. And one of the -- you testified that you received a one-page summary of Sunbeam's sales situation in the first quarter, correct?
A. From the company.
Q. Correct.
A. Yes.
Q. Let me show you CPH Exhibit 16 again, just to have that in front of you. CPH Exhibit No. 16 is the one-page document that you received from the company on March 18, correct?
A. Yes.
Q. Did you receive any other written materials from the company on March, 18 or at any time prior to Sunbeam issuing its press release on March 19th, relating to Sunbeam's first quarter 1998 performance?
A. I don't recall seeing anything other than this and the draft press release.
Q. Do you see the list of companies under the heading "Potential Orders"?
A. Yes.
Q. What did you understand that to be

Page 251

a reference to?
A. As I recall, the names of companies and the potential orders in dollars that were expected to come from those companies by the end of the quarter.
Q. Those were not orders that Sunbeam had in hand at that point, correct?
MR. CLARE: Objection. Calls for speculation.
Q. Based on your understanding at the time?
A. Right. As I read it, it was -- the way it was described, as I recall, is there were verbal -- they had verbal indications that those orders would come in, and that they would come in prior to the end of the quarter.
Q. But Sunbeam wasn't describing those to you as orders that had in fact been made at that point, correct?
A. No, they were very adamant -- let me just step back. They were not booked yet. They hadn't occurred. They hadn't shipped, which is what the potential orders meant.
As I recall a lot of the debate the

Page 252

evening we were doing due diligence is the company was extremely adamant that those orders would come in, that they had been verified. They knew they would, and that they would not slip. And that was a lot -- by that I mean they would come in within the first quarter and not slip over even a day or two into the next quarter.
Q. Do you see that this document draws a distinction between open orders and potential orders?
A. Yes.
Q. What did you understand open orders to mean?
A. I don't recall sitting here today the difference between the two, but there was a lot of discussion about every line item on here, and the reason I'm making this point about this list of companies having orders that would close, or would be shipped, or closed, or properly accounted for by the end of the quarter, that was a big part of the debate that we had about -- and question we had about company's confidence that there was no question that those orders would occur in

Page 253

the first quarter.
So to simply answer your question, I can't remember the difference between that prior line and the next set of lines.
Q. But that's something that someone would have explained to you in the course of your conversations about this document?
A. I believe that's right.
Q. The total for potential orders is $86 million, correct?
A. Correct.
Q. The company told you that day that that $86 million was gross sales, not net sales?
A. I don't recall sitting here today.
Q. Did you ask that question, whether these were gross numbers or net sales numbers, under the heading Potential Orders?
A. I don't recall.
Q. You understand the difference between net sales and gross sales, do you not, ma'am?
A. I've heard that term used and seen that term in many contexts that something -- there's some kind of deduction between a

NOT A CERTIFIED COPY

018310

16div-023688

Page 254

gross and a net. It can vary by company.
Q. The size of the deduction can vary?
A. The size and the reason and a whole host of things.
Q. Do you see the references at the bottom of this page, there is a No. 1 in parenthesis, and a number 2, estimated waterfall of 7 percent, estimated waterfall of 10 percent?
A. Yes.
Q. Was that explained to you?
A. I don't recall if it was. I don't recall what it is sitting here today.
Q. What involvement Ms. -- before we move on, is there anything else that you can recall other than what you've previously testified to relating to the activities you were engaged in on March 18 concerning Sunbeam's first quarter 1998 sales performance?
A. I don't think so.
Q. What involvement did you have, Ms. Porat, after March 18 in monitoring Sunbeam's first quarter 1998 performance?
A. I don't recall having involvement.

Page 255

Q. Is it your belief you had no further involvement at that point in communications with the company about its first quarter performance?
A. I don't recall communications with the company.
Q. That you were involved in?
A. That I was involved in.
Q. Do you recall any -- do you recall whether you monitored Sunbeam's performance through conversations with others at Morgan Stanley?
A. The only thing I recall is very generally there was a bring-down due diligence session, but I don't remember the details of that.
Q. Did you participate in it?
A. No.
Q. What's a bring-down due diligence session?
A. It's just a -- between pricing and closing, it's a further due diligence discussion.
Q. Between pricing and closing what, ma'am?

Page 256

A. Of the securities that were sold.
Q. So before Morgan Stanley closed on the debenture offering, there was a final set of due diligence activities?
A. I wasn't involved in it. I just vaguely recall there was -- bring-down was done. I don't remember the details of it.
Q. Whose responsibility was it to do that?
A. That would have been John Tyree.
Q. Did you have any responsibility for it?
A. No.
Q. Did you have any responsibility for making sure it happened?
A. Not really. No.
Q. Did you have any responsibility for consulting with Mr. Tyree to hear what he had been told in connection with his bring-down due diligence activities?
A. I don't think so, no.
Q. Did Mr. Tyree make any report to you?
A. I don't recall.
Q. Were you involved in any

Page 257

conversations with Arthur Andersen at any point in 1998 relating to Sunbeam's first quarter 1998 performance?
A. I don't recall ever being on a call with them, but whether they were on a conference call and I didn't know it, I couldn't say.
Q. As far as you know Arthur Andersen was not involved in any of the conversations you had with respect to Sunbeam's first quarter 1998 performance?
A. Yes. If they were I don't recall that they were.
Q. Let me show you, Ms. Porat, what we previously marked as CPH Exhibit 33. It's a one-page document dated March 19th, 1998 on Morgan Stanley stationery from John Tyree and Johannes Groeller to Bob Gluck, Alan Dean and Greg Fernicola, subject bring-down due diligence?
A. Yes.
Q. Take a moment to look at that document, ma'am. Have you seen it before?
A. I believe I have, but it may have been in the prior deposition. I don't

NOT A CERTIFIED COPY

Page 258

recall.
Q. Do you see what the first bullet point is?
A. Yes.
Q. Could you read that?
A. "Top and bottom line outlook for first quarter, first half and the year."
Q. What does that relate to, top and bottom line outlook?
MR. CLARE: Objection to form and calls for speculation.
Q. Are you familiar with those terms, ma'am?
A. I would assume it refers to -- top refers to revenues, and bottom would probably refer to net income. But depending on the context could refer to operating income, or operating income before depreciation amortization. It could be a number of different types of references to earnings.
Q. In general, it's a reference to the company's sales performance and revenues and its earnings, correct?
A. Correct.
Q. And this indicates that there will

Page 259

be an inquiry about Sunbeam's outlook for the first quarter, the first half and for the full year, correct?
A. Correct.
Q. Were you involved in preparing the bring-down due diligence checklist?
A. I don't recall if I was.
Q. Do you recall having any involvement in the preparation of this particular document?
A. I don't recall being involved in the preparation of this document.
Q. Let me show you what we previously marked as CPH Exhibit No. 34. It's a document dated the next day from CPH Exhibit 33. CPH exhibit 34 is a Morgan Stanley memorandum, dated March 20, 1998. Do you see, that, ma'am?
A. Yes, I do.
Q. And the authors of this document are identified as Ruth Porat, Brooks Harris, John Tyree and Johannes Groeller, and the subject is bring-down due diligence?
A. Yes.
Q. Did you have involvement in the

Page 260

preparation of this document?
A. I don't recall being involved in the preparation of this document.
Q. You indicated to me a few moments ago that you had no involvement personally in the bring-down due diligence activity, correct?
A. I don't recall. I should have said -- I may have said I don't recall whether I was involved in the bring-down.
Q. Does this document change your testimony?
A. It does not.
Q. So even seeing CPH Exhibit, 34 the March 20, 1998 memorandum regarding bring-down due diligence, your testimony is that you personally had no involvement in that activity, correct?
MR. CLARE: Objection. That misstates the testimony.
A. No. My testimony was that I don't recall if I had any involvement.
Q. And this document doesn't change that recollection?
A. It does not change the

Page 261

recollection.
Q. Do you see that there is a -- you see that the first bullet point from the March 19th memorandum, "top and bottom line outlook for first quarter, first half and year," does not appear in CPH Exhibit No. 34, the March 20 version?
A. That sentence does not appear in the second.
Q. In fact, there is no reference in the March 20 version of the bring-down due diligence document to making any inquiry relating to Sunbeam's expectations for the first half of 1998; isn't that correct?
A. It looks like they had more detail in the first, quarter and they still look at the full year, versus the prior one which had one sentence on first quarter, first half and the year.
Q. So the specific inquiry concerning the first half of 1998 that was included in the March 19 due diligence checklist has been dropped from the March 20 version of the bring-down due diligence checklist, correct?
MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

0018312

16div-023690

Page 262

A. Those two words, "first half," are not on this second checklist.
Q. And there is no reference in the March 20 version of making any inquiry about the second quarter, correct?
A. Correct.
Q. Do you know why that was dropped?
MR. CLARE: Objection. Foundation. Calls for speculation.
A. I do not.
Q. Your name is on the March 20 version of the bring-down due diligence checklist, correct, Ms. Porat?
A. Correct.
Q. Were you involved in preparing this document, CPH Exhibit 34?
A. I think I previously said I don't recall one way or the other.
Q. Do you know why your name would be included on this document if you weren't involved in it?
A. Unfortunately it happens.
Q. What do you mean, "unfortunately it happens"?
A. At times people put team members on

Page 263

even when they're not involved in the preparation of the document.
Q. Did you give any instruction to Mr. Tyree in connection with his bring-down due diligence activities to drop the inquiry into the company's expectations for the second quarter of 1998?
A. I don't recall doing it, and I don't believe I would do it.
Q. Do you think that would have been an inappropriate thing to drop under the circumstances?
MR. CLARE: Objection to form and incomplete hypothetical.
A. Just to put this in context, this is an outline for a broader discussion, so I guess I objected to your question which implied trying not to review issues, when in fact this second list appears to be a more detailed outline that would guide a fuller discussion.
So I don't recall the preparation of it, but I just want to make sure the context in which it is typically used is a bit more clear.

Page 264

Q. I'm only inquiring about what I can read in the documents, ma'am, and I'm trying to understand the reasons for the differences.
CPH Exhibit 33, the March 19th version, indicates that there would be a specific inquiry relating to Sunbeam's expectations for the first half of 1998, correct?
A. Correct.
Q. And CPH Exhibit No. 34 doesn't contain that same specific reference, correct?
A. Correct.
Q. And you can't explain that today, correct?
A. Correct.
Q. Let me show you CPH Exhibit 35, Ms. Porat. CPH Exhibit No. 35 is a March 23 1998 Morgan Stanley memorandum from John Tyree, Johannes Groeller and Shanj Boone, subject Sunbeam bring-down due diligence. Do you see that?
A. Yes.
Q. Have you seen this document

Page 265

previously?
A. I don't recall if I have.
Q. Now, your name is not included in the list of authors on this version of the bring-down due diligence checklist, correct?
A. Correct.
Q. Can you explain that?
A. No, I can't explain it.
Q. The March 23 bring-down due diligence checklist does not include any reference to making an inquiry of Sunbeam relating to its expectations for the first half of 1998, does it?
A. It does not.
Q. And it doesn't contain any reference to making an inquiry concerning Sunbeam's expectations for the second quarter of 1998 either, does it?
A. I don't see the reference; a reference to the second quarter.
Q. You may have just answered this, and if you did I apologize. Have you seen CPH 35 previously?
A. I don't recall if I have.
Q. Do you recall any involvement in

NOT A CERTIFIED COPY

16div-023691

Page 266

its preparation?
A. I don't recall any involvement in its preparation.
Q. Does seeing CPH 33, 34, or 35 refresh your recollection, Ms. Porat, concerning your own personal involvement in due diligence activities after the March 19th press release was issued by Sunbeam?
A. No it doesn't change my recollection.
Q. Ms. Porat, let me show you what we previously marked as CPH Exhibit No. 112. CPH Exhibit 112 is a letter from Arthur Andersen to Morgan Stanley & Company Inc. dated March 25, 1998. Do you see that?
A. Yes.
Q. Do you recognize this document?
A. No.
Q. March 25, 1998 is the date on which the debenture offering closed, correct?
A. If you're telling me it did. I don't recall when it closed.
Q. Ms. Porat, let me show you what I will have the court reporter mark as CPH 380. It is a three-page document bearing Sunbeam

Page 267

Bates No. SB 251292 to 94 and it's entitled Sunbeam for immediate release, Sunbeam Corporation announces successful private placement of 750 million dollars of convertible debentures.
(Plaintiff's Exhibit CPH 380, Three-page document bearing Sunbeam Bates No. SB 251292-94 entitled Sunbeam For Immediate Release, marked for identification, as of this date.)
Q. I'm only showing you this at the moment, Ms. Porat, to establish the date of the closing of the debenture offering. This press release announces that the debenture offering closed on March 25, 1998, correct?
A. Correct.
Q. The date of the Arthur Andersen letter that I just provided you is March 25, 1998, correct, Ms. Porat?
A. Correct.
Q. Would it be consistent with Morgan Stanley's procedures to receive a bring-down comfort letter from Sunbeam's auditors dated as of the date of the closing of the debenture offering?

Page 268

A. I actually don't know.
Q. Do you recognize CPH No. 112 as a bring-down comfort letter?
A. It looks that way.
Q. What is a bring-down comfort letter, ma'am?
A. It is something the auditors would provide at the time of bring-down due diligence prior, you know, in conjunction with a pricing or a closing of a transaction.
Q. Among other things, the bring-down comfort letter brings information relating to the company's financial performance current to the date of the closing of the transaction, correct?
A. Correct.
Q. Let me direct your attention to the second page of CPH Exhibit 112. This letter reports Sunbeam's sales and earnings performance through the first two months of 1998, does it not, Ms. Porat?
A. I'm sorry. Where are you?
Q. The second page of the letter.
A. Right.
Q. There is a table at the top. Do

Page 269

you see that?
A. Yes.
Q. And that table reports Sunbeam's financial performance through the first two months of 1998, correct?
A. Correct.
Q. And it reports that Sunbeam's net sales through March 1, 1998 are $72,018,000, correct?
A. Correct.
Q. And it reports that Sunbeam's net income for the first two months of 1998 is a loss of $41,190,000, correct?
A. Correct.
Q. And those numbers compare to sales of $143,499,000 through the first two months of 1997, correct?
A. Correct.
Q. And earnings of $9,765,000 through the first two months of 1997, correct?
A. Correct.
Q. So Sunbeam's sales for the first two months of 1998, according to this letter, are about half of what they had been in the first two months of 1997, correct?

NOT A CERTIFIED COPY

018314

16div-023692

Page 270

A. Correct.
Q. And its earnings have declined by approximately 50 million dollars, correct?
A. Correct.
Q. From a profit of $9.7 million to a loss of a little over $41 million, correct?
A. Correct.
Q. Now, the comfort letter identifies one component of that $41 million loss in the following paragraph, correct?
A. Yes.
Q. It indicates that the company has incurred a $30.2 million compensation charge in February 1998 relating to new employment agreements with certain officers of the company?
A. Correct.
Q. Eliminating the effect of that one-time expense, Ms. Porat, according to this document Sunbeam had still lost approximately $10 million in the first quarter of -- first two months of 1998, correct?
A. Correct.
Q. Compared to a profit of about 9.7

Page 271

million in the first two months of 1997, correct?
A. Correct.
Q. A negative change of about $20 million in net earnings, correct?
A. Correct.
Q. Were you aware of those facts at the time the debenture offering closed on March 25?
A. I don't recall if I was.
Q. Did you talk to Mr. Tyree or anyone else to confirm that Morgan Stanley had received a bring-down comfort letter from Andersen?
A. I don't recall specifics around that.
Q. Did Mr. Tyree report to you the information contained in Arthur Andersen's bring-down comfort letter relating to Sunbeam's financial performance in the first two months of 1998?
A. As I said, I don't recall specifics.
Q. Was that a subject that you had interest in, given your participation in the

Page 272

telephone conferences on March 18 leading to the March 19th press release?
A. I'm sorry?
Q. Was that a subject in which you had interest given your participation in the events of March 18 that led to the issuance of Sunbeam's March 19th press release?
A. Yes.
Q. But as you sit here today you have no recollection of being advised that Arthur Andersen had informed Morgan Stanley on March 25 that Sunbeam had lost approximately $41 million in the first two months of the quarter?
A. I don't recall being advised that a problem -- there was a problem. And I don't recall the specifics behind the discussion.
Q. You told me when we were together last time, Ms. Porat, that you made it your business on March 18 to gather the facts relating to Sunbeam's sales situation in the first quarter, correct?
A. Correct.
MR. CLARE: Object to the form of the question.

Page 273

Q. You agree with me that's something that you took upon yourself, correct?
A. Correct.
Q. After March 18 did you consider yourself to have no further interest in that issue?
A. I don't remember thinking about it that way.
Q. Why didn't you make it your business to find out what Sunbeam's performance was after the -- after the issuance of the March 19th press release and prior to the closing of the debenture offering on March 25?
MR. CLARE: Objection to form.
A. Because we had a due diligence team that was proceeding to prosecute the business the way corporate finance and execution teams do.
Q. You left those matters in the hands of other people then?
A. Yes. As I said it was not my responsibility to be doing the due diligence.
Q. Do you have the March 25 Sunbeam press release in front of you, CPH No. 380?

NOT A CERTIFIED COPY

Page 274

A. Yes.
Q. Take a moment to read it to yourself, ma'am. Have you had an opportunity to do that?
A. Yes.
Q. This press release relates to the part of the Sunbeam engagement that you were personally involved in, correct?
A. It relates to the part that I was personally? Yes.
Q. Did you have any involvement in reviewing this press release before it was issued?
A. I don't recall reviewing it.
Q. Do you believe you did not see this press release before it was issued?
A. I don't recall if I did or I didn't.
Q. You don't recall one way or the other?
A. No I don't.
Q. There's nothing in this press release, is there, Ms. Porat, relating to Sunbeam having incurred a loss of something in excess of $40 million in the first two

Page 275

months of 1998?
A. No, there's not.
Q. Would you agree with me that the statements attributed to Mr. Dunlap continue to be bullish with respect to the company's performance and prospects?
MR. CLARE: Objection to form and foundation.
A. Can you repeat your question?
Q. Would you agree with me the comments attributed to Mr. Dunlap in the March 25, 1998 press release continued to be bullish with respect to the company's performance and prospects?
MR. CLARE: I renew my objections to form and foundation.
A. As I sit here and read it today, he seems bullish about his vision, but I was reading it to see if there was something more specific.
Q. You agree with me there is nothing negative in Mr. Dunlap's comments in this press release, correct?
MR. CLARE: Same objections.
A. I don't see negative comments by

Page 276

Mr. Dunlap in this.
Q. Mr. Dunlap -- the press release notes that the size of the debenture offering has been increased to $750 million from the originally planned 500 million offering, correct?
A. Correct.
Q. And Mr. Dunlap cites that as support for the public's view, investors' view, of Sunbeam's success, correct?
MR. CLARE: Objection. Calls for speculation as to -- other than what the statement is on the page.
Q. Do you agree with me?
A. I'm sorry. Can you repeat your question?
Q. Mr. Dunlap cites as evidence of the public's support for Sunbeam's success the fact that the debenture offering was increased from $500 million to $750 million?
MR. CLARE: Same objection.
A. As I just said the last time you asked me that, I think you're basically confusing the term vision and prospects. What he says here is a high level

Page 277

of confidence in Sunbeam's strategic direction. It's not a comment about financial performance.
Q. And its prospects for the future, correct?
A. Right.
Q. And Mr. Dunlap cites the fact that the debenture offering was oversubscribed, correct, as the reason why the size of the offering was increased from 500 million to $750 million?
A. Correct.
Q. And he refers to that as the overwhelming response of the investment community to the offering, correct?
A. Yes.
Q. And he states that that overwhelming response reflects a high level of confidence in Sunbeam's strategic direction and its prospects for the future, correct?
A. Correct.
Q. No reference to the fact that Sunbeam had lost $40 million in the first two months of 1998, correct?

NOT A CERTIFIED COPY

0183316

16div-023694

Page 278

A. Correct.
Q. No reference to the fact that Sunbeam's sales in the first two months of 1998 were half of what they had been in the first two months of 1997, correct?
A. Correct.
Q. Morgan Stanley knew those facts at the time this press release was issued, correct?
MR. CLARE: Objection. Foundation. There is none.
You can answer if you can.
A. Well, based on the bring-down comfort letter from Arthur Andersen, people within Morgan Stanley were aware of the sales trends, et cetera, and from the diligence discussion then that we had had prior to the pricing, we were aware of the sales trends even beyond what was in this letter.
Q. Morgan Stanley knew based on, if nothing else, the March 25 letter it received from Arthur Andersen that Sunbeam had lost approximately $41 million in the first two months of 1998, correct?
MR. CLARE: Same objection;

Page 279

foundation.
A. When you keep using the term Morgan Stanley as a blanket I'm uncomfortable. I'm not sure what implication that has. As you said, as I said, the team members involved in bring-down diligence were aware of this.
Q. They were aware that Sunbeam, if no other source than this March 25 letter from Arthur Andersen, had lost in excess of $40 million in the first two months of 1998, correct?
A. Correct.
Q. The members of Morgan Stanley's Sunbeam team knew that, correct?
A. Correct.
Q. You don't recall personally being aware of it, correct?
A. I don't recall.
Q. You may have been; it's just that you're not certain today?
A. That's correct.
Q. Between the closing of the debenture offering on March 25, Ms. Porat, and the closing of Sunbeam's acquisition of my client's interest in Coleman Company on

Page 280

March 30, did you have any involvement in any aspect of any work being done by Morgan Stanley for Sunbeam?
A. I don't recall having involvement.
Q. Ms. Porat, do you recall whether on March 18 or March 19th, or any date before the closing of the debenture offering on March 25, participating in any discussions at Morgan Stanley concerning whether it would be prudent to postpone the closing of the debenture offering?
A. I don't recall a discussion about postponing the closing.
Q. Did you raise that as a possibility with anyone at any point?
A. I don't recall raising it.
Q. Do you believe you did not?
A. I don't think I did. I don't recall doing it.
Q. Did anyone suggest that as an alternative that Morgan Stanley should consider in your presence?
A. I don't recall a discussion about a postponed closing.
Q. Did Mr. Strong ever raise that as a

Page 281

possibility?
A. I don't recall if he did.
Q. Is that something that occurred to you as something to consider?
MR. CLARE: Objection. Asked and answered.
Q. It's a different question. I want to make sure I'm clear if Mr. Clare didn't perceive the difference.
I asked you previously whether or not you made the suggestion to anyone, and I'm asking you now not whether you made the suggestion, but whether you considered it?
A. I don't recall considering it.
Q. So you gave no consideration to Morgan Stanley postponing the March 25 closing of the debenture offering despite the information that came to your attention during the course of the conversations you were involved in on March 18?
MR. CLARE: Objection. Misstates the testimony, and argumentative.
Q. Is that correct?
A. As I have said, I don't recall whether I considered postponing the closing.

NOT A CERTIFIED COPY

Page 282

Q. In any event, you don't believe you made that suggestion to anyone, correct?
A. I don't believe I did, but I don't honestly recall.
Q. Ms. Porat, let me show you what we previously marked as CPH Exhibit 36. The cover page is a fax to William Strong, James Stynes, Robert Kitts and John Tyree from David Fannin at Sunbeam, and it attaches a Sunbeam press release dated April 3, 1997. Actually -- I read it correctly. It is dated April 3, 1997, but I believe that the record will show it was issued on April 3, 1998.
A. When there is a convenient break point, if we could break.
Q. If you want to take a break before we spend a little time with this exhibit, that would be fine with me.
A. As you prefer.
Q. That's fine.
THE VIDEOGRAPHER: The time is 2:27, and we're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is now 2:38, and we are back on the record.

Page 283

Q. Ms. Porat, I do have Exhibit CPH 36 in front of you?
A. Yes.
Q. And you see the first page is a fax cover page from David Fannin dated April 3, 1998, and it's directed to four people at Morgan Stanley: William Strong, James Stynes, Robert Kitts and John Tyree. Correct?
A. Yes.
Q. And in the fax cover sheet Mr. Fannin advises Mr. Strong, Mr. Stynes, Mr. Kitts and Mr. Tyree that the company will be issuing a press release shortly, and he attaches a copy of that press release. Do you see that?
A. Yes.
Q. Did Mr. Strong or Mr. Stynes or Mr. Kitts or Mr. Tyree share this fax with you when they received it from Mr. Fannin on April 3?
A. I don't recall if they did. I don't recall one way or the other.
Q. Did you at some point see Sunbeam's April 3 announcement?

Page 284

A. I believe I did.
Q. Among other things, the April 3 announcement advises that Sunbeam now expects that its first quarter 1998 sales will be, quote, somewhat below 1997 levels, close quote. Do you see that?
A. Yes.
Q. And it also indicates that the company now expects to realize a loss in the first quarter of 1998. Do you see that?
A. Yes.
Q. Do you know what analysts' expectations were as of March 31, 1998 for Sunbeam's first quarter earnings?
A. I don't recall.
Q. That's something you would have been aware of at the time correct?
A. Probably.
Q. You testified previously that it was important to the debenture offering that Sunbeam continued to hit its numbers in the first quarter correct?
A. Correct.
Q. I'm sorry, did you tell me at some point you saw Sunbeam's announcement?

Page 285

A. I believe I did.
Q. How did you see it?
A. I remember an announcement. I can't remember if it was this one or some subsequent news that -- across the tape. I don't remember receiving a document like this, but I remember, when there was some bad news, being very surprised.
Q. What did you do?
A. I don't recall one way or the other. I just remember being surprised.
Q. At that point did you have any continuing work-related responsibilities concerning Sunbeam?
A. I don't believe I did.
Q. After you saw some Sunbeam announcement that surprised you with its bad news, do you recall doing anything?
A. I don't recall.
Q. Do you recall having any conversations with any members of the Sunbeam team at Morgan Stanley concerning the bad news that you saw?
A. I don't recall one way or the other.

NOT A CERTIFIED COPY

0183318

Page 286

Q. Did you have any conversations with anyone within Morgan Stanley management relating to the bad news announcement that you saw?
A. I don't recall discussions.
Q. Who was your boss at the time?
A. Richard Kauffman.
Q. Did you have any conversations with Mr. Kauffman?
A. I don't recall.
Q. You did have a conversation, you testified to previously I believe, that you had a conversation with Mr. Kauffman before the March 19th press release was issued, correct?
A. Correct.
Q. You don't recall any subsequent conversation with him when Sunbeam announced the bad news that you referred to?
A. I don't recall.
Q. Were you angry when you saw the Sunbeam announcement that you just referred to?
A. It's probably a fair description.
Q. What did you do about it?

Page 287

A. I don't recall.
Q. Did you complain to anyone at Sunbeam?
A. As I said, I don't recall.
Q. As you sit here today you can't remember having any conversations -- let me ask a broader question.
Do you recall that there was a series of bad news announcements that Sunbeam made after the closing of its acquisition of my client's interest in Coleman Company?
A. No. I was careful when I answered this. I don't remember what specifically I was referring to when I said I remember some bad news crossing the tape. So I don't recall if there were others -- if there was something other than this.
Q. Do you recall that by June 15 the Sunbeam board had terminated Al Dunlap?
A. I recall at some point they did.
Q. Do you recall that during that period of time from the closing of the acquisition of my client's interest in Coleman Company until the termination of Mr. Dunlap in the middle of June 1998, that

Page 288

Sunbeam's stock price took a precipitous drop?
MR. CLARE: Object to the form of the question.
A. I don't recall.
Q. Were you paying any attention to Sunbeam's stock price during that period of time?
MR. CLARE: Same objection.
A. I assume I was, but I don't recall what happened.
Q. You don't recall Sunbeam's stock price dropping substantially from March 30 or March 31, 1998 until the time that Mr. Dunlap was terminated?
MR. CLARE: Same objection.
A. I just answered it.
Q. I'm sorry, your answer is what?
A. I don't.
Q. Were you involved in any internal discussions at Morgan Stanley at any time between the closing of Sunbeam's acquisition of my client's interest in Coleman Company and Mr. Dunlap's termination by the board of directors of Sunbeam Corporation to --

Page 289

concerning what was going on at Sunbeam Corporation during that time period?
A. I don't recall if I was, but that's not to say that I wasn't. I don't recall.
Q. Do you remember being given any responsibility to try to gather facts relating to those circumstances?
A. I don't.
Q. Do you remember being briefed by anyone at Morgan Stanley relating to those circumstances?
A. I don't recall.
Q. During that time period, did you field any complaints from investors that had purchased the Sunbeam convertible debentures?
A. I don't recall getting complaints directly to me.
Q. Do you know if there were complaints?
A. I don't know.
Q. Do you know if Morgan Stanley took any actions during that time period or subsequently to appease investors who purchased the Sunbeam convertible debentures?
A. I don't know.

NOT A CERTIFIED COPY

Page 290

Q. You don't know one way or the other?
A. I don't know one way or the other.
Q. Did anyone make it known to you at some point, Ms. Porat, that investors in the convertible debenture offering were unhappy about their investment?
A. I don't recall any discussions. I'm not saying they didn't. I just don't recall.
Q. Did anyone advise you that the purchasers of the Sunbeam convertible debentures -- any of them were unhappy with Morgan Stanley?
A. I don't recall hearing that.
Q. Morgan Stanley was the underwriter of that offering, correct?
A. Correct.
Q. The sole underwriter, correct?
A. I believe that's right.
Q. Do you know if Morgan Stanley repurchased any of the debentures from anyone who complained after the problems at Sunbeam began to emerge?
MR. CLARE: Objection. Foundation.

Page 291

A. I don't know.
Q. Do you know if Morgan Stanley paid any money to any of the debenture investors?
A. I don't know if they did.
Q. Do you know if Morgan Stanley offered to give them anything else of value to appease their unhappiness?
MR. CLARE: Same objection.
A. I don't know.
Q. Ms. Porat, at any time before the closing on March 30, 1998 of Sunbeam's acquisition of my client's interest in Coleman Company, did you suggest to anyone that any of the factual information being shared with you or with others at Morgan Stanley relating to the problems that Sunbeam was experiencing in the first quarter of 1998 be shared with my client?
MR. CLARE: Objection to form.
A. I don't recall any discussions.
Q. You don't recall making that suggestion to anyone?
A. I don't recall.
Q. Did anyone make that suggestion in your presence?

Page 292

A. I don't recall hearing that.
Q. Mr. Strong never made that suggestion to you, I take it?
MR. CLARE: Objection. Asked and answered.
Q. Is that correct?
A. I said I didn't recall any conversations along those lines.
Q. Ms. Porat, after the convertible debenture offering closed on March 25, 1998, what did you do with materials that were in your possession at that point relating to that transaction?
A. I don't recall Sunbeam specifically, but what I have done my entire career is when a transaction is priced, I retain only maybe the selling memo and the prospectus. But if there was anything else, I never would keep it, because there was no need to.
Q. You would throw anything else you had away?
A. Consistently. So I don't recall on this one, but I would assume I did what I always do.

Page 293

Q. So it's your best recollection that as of March 19th, when the Sunbeam convertible debenture offering was priced, that you would have thrown away any materials you had relating to your involvement in that transaction except for the offering memorandum?
MR. CLARE: Objection. Misstates the testimony. You can answer.
A. I don't recall specifically on this one. All I was giving you is what I do at the completion of any transaction, is when it's priced, throw everything out other than the offering memorandum and maybe the selling memo.
Q. Was there a point in this case -- was there a point, Ms. Porat, when you were asked by someone at Morgan Stanley to gather any materials that you had relating to the work you were involved in concerning Sunbeam?
A. I hate to speculate, but I would assume so. But I don't remember it.
Q. Do you remember if you had anything other than the offering memorandum?
A. If I did, anything I would have had

NOT A CERTIFIED COPY

018320

16div-023698

Page 294

would have gone directly to legal.
Q. But, consistent with your practice, it's likely that the only thing you would have had at that point, if you followed your practice, is the offering memorandum?
A. Correct.
Q. Ms. Porat, in connection with the work that you were doing on the debenture offering, did you read any analyst reports concerning Sunbeam?
A. I don't recall if I did.
Q. Would you have, during the time period where the transaction was under way, and before the closing, made it your business to obtain any available current analyst reports concerning Sunbeam, or is that something you wouldn't typically do?
MR. CLARE: Objection to form.
A. Not necessarily.
Q. Well, that was a good objection, then, because now I don't know what your answer means. So let me rephrase it. I asked a poor question.
Would it have been your practice, in connection with the work you were doing

Page 295

relating to the Sunbeam convertible debenture offering and the marketing of those securities, to monitor any analyst reports that were then being issued relating to Sunbeam; issued during that time period?
A. Not necessarily, I think is the right response.
Q. After the March 19th press release was issued -- that's a press release that you were involved in reviewing before it was released, correct?
A. That's the date of the press release you showed me last time?
Q. Yes. I can show it to you again if you would like.
A. That's fine. If it's the one press release we discussed last time, if that was the date, then yes.
Q. After the press release was issued, did you review the analyst reports that were issued concerning that press release?
A. I don't recall if I did.
Q. Ms. Porat, I would like to take a short break and we may be done with this portion of your job here today.

Page 296

THE VIDEOGRAPHER: The time is 2:53, and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is now 3:03, and we are back on the record.
Q. Ms. Porat, I'm going to show you a document that we've previously marked as CPH Exhibit 377. It's an April 26, 1999 article from the New Yorker magazine entitled, "The Woman in the Bubble, How Mary Meeker Helps Internet Entrepreneurs Become Very, Very Rich," by John Cassidy.
You've seen that article before, have you not, Ms. Porat?
A. Yes I have.
Q. It talks about you, does it not?
A. It does.
Q. Let me direct your attention to the fifth page of the exhibit. Are you there? There is a paragraph that begins in the left-hand column with the words, "Morgan Stanley could have," do you see that?
A. Yes.
Q. I'll read a couple of sentences to you, ma'am. It reads, quote, "Morgan Stanley

Page 297

could have made more money by being less selective, but Meeker and her colleagues say that big-money investors tend to rely on the firm's seal of approval." Quote, "If Morgan Stanley has its name on it, investors assume it's better than Schlock Incorporated," close quote, "Joe Perella, the head of Morgan's Corporate Finance Department, mused."
Do you see that statement?
A. I do.
Q. Do you agree with Mr. -- the quote attributed to Mr. Perella?
MR. CLARE: I object to the form of the question.
A. I agree that if Morgan Stanley has its name on it, investors assume it's better than Schlock Incorporated.
Q. That's your personal feeling, correct?
A. Yes.
MR. MARKOWSKI: I have no further questions for Ms. Porat.
MR. CLARE: I don't have any questions for Ms. Porat.
MR. MARKOWSKI: The personal

NOT A CERTIFIED COPY

deposition of Ms. Porat is closed.
THE VIDEOGRAPHER: The time is now 3:05, and that concludes the deposition, and we are off the record.
(Time noted: 3:05 p.m.)

RUTH PORAT

Subscribed and sworn to before me this day of , 2004.

Notary Public

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, LINDA SALZMAN, a Notary Public within and for the State of New York, do hereby certify:
That RUTH PORAT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 13thday of December, 2004.

LINDA SALZMAN

INDEX

WITNESS	EXAMINATION BY	PAGE
RUTH PORAT	MR. MARKOWSKI	228

EXHIBITS

Plaintiff's No.	Description	FOR ID.
CPH 378	Copy of the deposition transcript of the November 23rd testimony of Ruth Porat	225
CPH 379	Copy of an April 28, 1998 letter from Skadden Arps to Michael MacPhail	233
CPH 380	Three-page document bearing Sunbeam Bates No. SB 251292-94 entitled Sunbeam For Immediate Release	267

NOT A CERTIFIED COPY

018322

A
accounted 252:21
accuracy 241:7
acquisition 231:15 231:21 232:15 235:12 279:24 287:10,23 288:22 291:12
acquisitions 232:24 234:7,22 236:10 236:16,19 237:5,7 238:2 239:10,15
act 232:22
action 299:15
actions 289:22
activities 254:17 256:4,20 263:5 266:7
activity 260:6,18
adamant 251:21 252:2
advise 247:10 290:11
advised 230:12 245:25 272:10,15
advises 283:12 284:3
advising 245:11
aggressive 230:14
ago 260:5
agree 273:1 275:3 275:10,21 276:14 297:11,15
agreements 270:15
AI 225:14
Al 287:19
Alan 257:18
alerts 248:19
alternative 280:21
Americas 224:18
amortization 258:19
analyst 294:9,15 295:3,20
analysts 284:12
Andersen 228:20 229:20 230:11,12 257:1,8 266:14 267:17 271:14 272:11 278:14,22 279:9
Andersen's 230:13 271:18
angry 286:21
announced 286:18
announcement 232:23 236:15,18 239:9 283:25 284:3,25 285:3,17 286:3,22
announcements 287:9
announces 267:3,14
answer 230:18 238:25 239:3 242:3 245:3 247:3 249:7,16 253:2 278:12 288:18 293:9 294:22
answered 265:21 281:6 287:12 288:17 292:5
answering 237:8
answers 235:11 237:12 238:5
apartment 235:9 237:2
apologize 265:22
appear 261:6,8
appears 263:19
appease 289:23 291:7
approval 239:16 297:4
approve 231:14 232:14 245:25
approved 231:21 246:24
approving 244:24
approximately 270:3,21 272:12 278:23
April 233:5,9 282:10,12,13 283:5,21,25 284:2 296:8 300:11
argumentative 281:22
Arps 233:6,9 300:12
Arthur 228:20 229:20 230:11,12 230:13 257:1,8 266:13 267:17 271:18 272:10 278:14,22 279:9
article 296:9,13
asked 230:9,21 237:16 276:23 281:5,10 292:4 293:18 294:23
asking 230:22 231:4 245:1 281:12
aspect 280:2
aspects 234:1,6,21
association 225:24
assume 248:25 249:7 258:14 288:10 292:24 293:22 297:5,16
assuming 249:6
attached 233:17
attaches 282:9 283:15
attend 242:18 244:15
attended 231:12 243:16 244:18,19 246:12
attendee 232:9 247:5
attending 243:21 244:1
attention 228:13 230:4 233:16 249:11,18 268:17 281:18 288:6 296:18
Attorneys 224:4,12
attributed 275:4,11 297:12
auditors 267:23 268:7
author 240:10
authors 240:5,7 241:19 259:20 265:4
available 294:15
Avenue 224:18
aware 271:7 278:15 278:18 279:6,7,17 284:17

B
B 300:7
back 228:8 231:12 251:22 282:25 296:5
background 243:20
bad 285:7,17,22 286:3,19 287:9,15
based 245:4 248:17 251:10 278:13,20
basically 276:23
basis 234:12
Bates 267:1,8 300:14
Beach 222:2 225:13
bearing 266:25 267:7 300:13
began 242:5 248:13 290:24
beginning 228:18 248:9
begins 296:20
behalf 226:4,7,10
belief 246:18 255:1
believe 227:22 229:23 232:7 233:14 234:10 238:19 242:20 244:10 246:12,16 246:22 249:17 253:8 257:24 263:9 274:15 280:17 282:1,3,12 284:1 285:1,15 286:12 290:20
best 293:1
better 297:6,16
beyond 278:19
big 252:22
big-money 297:3
bit 263:25
blanket 279:3
Block 224:3 226:4,7
blood 299:16
board 231:13,14,17 231:18,19,22,24 232:5,9,13,16,18 235:20 287:19 288:24
Bob 226:3 235:10 257:18
booked 251:22
Boone 264:21
boss 286:6
bottom 228:18 230:8 254:6 258:6 258:9,15 261:4
break 282:14,15,16 295:24
brief 247:15
briefed 289:9
briefly 227:4,9,9 233:12 239:12
bring 228:13
brings 268:12
bring-down 255:14 255:19 256:6,19 257:19 259:6,23 260:6,10,16 261:11,24 262:12 263:4 264:22 265:5,9 267:22 268:3,5,8,11 271:13,19 278:13 279:6
broader 263:16 287:7
Brooks 259:21
brought 249:11,17
Bubble 296:10
bullet 258:2 261:3
bullish 275:5,13,18
business 272:20 273:10,17 294:14

C
C 224:1 229:22 299:1,1
CA 225:14
calendar 235:15,19 243:8
call 228:7 230:11 257:4,6
calls 242:2 245:2 251:8 258:11 262:9 276:11
career 292:16
careful 287:12
case 245:6 293:16
Cassidy 296:12
caught 230:5
CA03-5045-AI 222:8
certain 270:15 279:20
certify 299:8,14
cetera 278:16
change 227:15 260:11,23,25 266:9 271:4
charge 270:13
checklist 259:6 261:22,24 262:2 262:13 265:5,10
Chicago 224:6
Chris 226:6
CHRISTOPHER 224:9
chronology 233:17
Circuit 222:1 225:12
circulated 243:11
circumstances 263:12 289:7,11
cites 276:8,17 277:7

NOT A CERTIFIED COPY

018323

Clare 224:15 226:9 226:9 228:9 229:11,15 236:11 242:1,10 244:25 246:4 247:2 248:23 249:4,15 251:8 258:10 260:19 261:25 262:8 263:13 272:24 273:15 275:7,15,24 276:11,21 278:10 278:25 281:5,8,21 288:3,9,16 290:25 291:8,19 292:4 293:8 294:18 297:13,23
clear 228:14 231:25 235:17 247:23 263:25 281:8
clearly 237:9
client 291:18
client's 231:15 279:25 287:11,23 288:23 291:12
close 252:20 284:5 297:6
closed 252:21 256:2 266:20,22 267:15 271:8 292:10 298:1
closing 255:22,24 267:13,24 268:10 268:14 273:13 279:22,24 280:7 280:10,13,24 281:17,25 287:10 287:22 288:22 291:11 294:14
Coleman 222:4 225:9 226:4,7 231:16 232:15 279:25 287:11,24 288:23 291:13
colleagues 297:2
column 296:21
come 251:4,15,16 252:3,6
comfort 228:21 267:23 268:3,5,12 270:8 271:13,19 278:14
comfortable 248:17
comment 277:2
commenting 238:14
comments 275:11 275:22,25
Commission 233:11
Commitment 239:17 240:2,14 240:19,23 241:4 242:19 244:2,4,16 244:22 245:8 246:13,24 247:6 248:8 249:12
committee 239:17 239:19 240:2,14 240:19,23 241:4 242:19,22 243:3,8 243:12 244:2,4,16 244:23 245:2,8,10 245:11,20,24 246:13,15,24 247:7,17 248:8 249:13
committee's 243:4
communications 255:3,5
community 277:15
companies 250:22 251:2,4 252:19
company 225:11 231:16 232:15 250:6,12,16 252:2 253:12 254:1 255:3,6 266:14 270:12,16 279:25 283:13 284:9 287:11,24 288:23 291:13
company's 252:24 258:22 263:6 268:13 275:5,13
compare 269:15
compared 229:2 270:25
comparison 230:25
compensation 270:13
complain 287:2
complained 290:23
complaints 289:14 289:16,19
completion 293:12
component 270:9
concerning 237:6 238:1,6 239:6 247:8 254:18 261:20 265:16 266:6 280:9 285:14,22 289:1 293:20 294:10,16 295:21
concludes 298:3
conference 257:6
conferences 272:1
confidence 252:24 277:1,19
confirm 271:12
confusing 227:18 276:24
conjunction 268:9
connection 232:23 256:19 263:4 294:7,25
consider 235:6 273:4 280:22 281:4
consideration 281:15
considered 281:13 281:25
considering 281:14
consistent 236:3 267:21 294:2
Consistently 292:23
consulting 256:18
contain 238:5 264:12 265:15
contained 271:18
context 237:13 258:17 263:15,24
contexts 253:24
continue 275:4
continued 223:5 275:12 284:21
continuing 228:24 285:13
convenient 282:14
conversation 286:11,13,18
conversations 249:23 253:7 255:11 257:1,9 281:19 285:21 286:1,8 287:6 292:8
convertible 240:20 245:9 246:1,14,25 247:9 267:5 289:15,24 290:6 290:12 292:9 293:3 295:1
copy 225:2 228:2 228:20 229:12,16 233:4,8 239:22 283:15 300:9,11
corporate 273:18 297:8
Corporation 267:3 288:25 289:2
correct 227:16 229:24 230:2,3,19 230:20 231:4,16 234:17 236:1,2 237:7 238:2,3,7,8 239:25 240:3,11 240:12 241:15,16 241:20,21,25 242:16 243:17 244:12,13 246:3 246:15,18,25 247:1,4,13,21 248:6,10,11,15,16 249:19,20,25 250:1,5,7,13 251:7,20 253:10 253:11 258:23,24 259:3,4 260:7,18 261:14,24 262:5,6 262:13,14 264:9 264:10,13,14,16 264:17 265:5,6 266:20 267:15,16 267:19,20 268:15 268:16 269:5,6,9 269:10,13,14,17 269:18,20,21,25 270:1,3,4,6,7,10 270:17,23,24 271:2,3,5,6 272:22,23 273:2,3 274:8 275:23 276:6,7,10 277:5 277:9,12,15,21,22 277:25 278:1,5,6 278:9,24 279:11 279:12,14,15,17 279:21 281:23 282:2 283:9 284:17,22,23 286:15,16 290:17 290:18,19 292:6 294:6 295:11 297:19
correctly 282:11
corresponding 229:2
counsel 224:21 226:1 227:8,12
County 222:2 225:13 299:4
couple 228:12 245:21 247:24 296:24
course 243:19 245:8 253:6 281:19
court 225:23 226:14 229:7 231:2 266:24
cover 282:7 283:5 283:11
covered 232:5 237:11
CPH 225:1,2 228:2 228:20 229:19 232:3 233:3,4,8 237:21 239:23 250:9,11 257:15 259:14,16,16 260:14 261:6 262:16 264:5,11 264:18,19 265:23 266:4,12,13,24 267:6 268:2,18 273:25 282:6 283:1 296:8 300:9 300:11,13
crossing 287:15
current 268:13 294:15

D

D 300:1
date 225:6 233:7 242:22,24 243:2 243:11,12 247:7 266:19 267:10,12 267:17,24 268:14 280:6 295:12,18
dated 239:23 257:16 259:15,17 266:15 267:23 282:10,11 283:5
dates 243:13,14
David 282:9 283:5
day 252:7 253:12 259:15 298:11
days 236:7 247:24
Dean 257:18
debate 251:25 252:23
debenture 239:14 240:15,20 245:9 246:1,14,25 247:9 249:13 256:3 266:20 267:13,14 267:25 271:8 273:13 276:3,19

NOT A CERTIFIED COPY

016324

16div-023702

277:8 279:23 280:7,11 281:17 284:20 290:6 291:3 292:10 293:3 294:8 295:1
debentures 267:5 289:15,24 290:13 290:22
December 222:15 223:2 225:18 299:19
declined 270:2
deduction 253:25 254:2
Defendant 222:10 224:12
department 226:13 297:8
depending 258:16
deposition 222:13 223:5,7 225:3,8 225:15,16,21,25 227:3,5 228:3 232:7 233:3 248:5 257:25 298:1,3 299:10,11 300:9
depreciation 258:18
describe 244:11
described 251:13
describing 251:18
description 286:24 300:8
despite 281:17
detail 261:15
detailed 263:20
details 244:4 255:16 256:7
development 235:5
dialed 244:19
difference 252:16 253:3,20 281:9
differences 264:4
different 237:20 258:20 281:7
diligence 230:11 252:1 255:15,19 255:22 256:4,20 257:20 259:6,23 260:6,16 261:12 261:22,24 262:12 263:5 264:22 265:5,10 266:7 268:9 273:16,23 278:16 279:6
direct 230:4 233:16 268:17 296:18
directed 283:6
direction 277:2,20
directly 289:17 294:1
directors 288:25
discuss 233:25 236:7 237:2
discussed 231:20 295:17
discussion 235:14 252:17 255:23 263:16,21 272:17 278:17 280:12,23
discussions 234:5 235:4 280:8 286:5 288:21 290:8 291:20
distinction 252:10
distributed 240:22 243:6
document 229:16 233:1 238:15 239:23 240:5,11 240:21,25 241:11 241:19 249:4 250:11 252:9 253:7 257:16,23 259:10,12,15,20 260:1,3,11,23 261:12 262:16,20 263:2 264:25 266:17,25 267:7 270:20 285:6 296:7 300:13
documents 237:24 237:25 238:4,5,11 238:14 239:5 264:2
doing 252:1 263:8 273:23 280:19 285:18 294:8,25
dollars 251:3 267:4 270:3
Doyle 224:20 226:12
draft 238:4 250:21
draws 252:9
drop 263:5,11 288:2
dropped 261:23 262:7
dropping 288:13
due 230:10 252:1 255:14,19,22 256:4,20 257:19 259:6,23 260:6,16 261:11,22,24 262:12 263:5 264:22 265:5,9 266:7 268:8 273:16,23
duly 299:11
Dunlap 233:22 235:8 236:4,6,16 237:3 239:7,8 275:4,11 276:1,2 276:8,17 277:7 287:19,25 288:14
Dunlap's 237:1 275:22 288:24
D.c 224:14

E

E 224:1,1 299:1,1 300:1,7
earnings 258:20,23 268:19 269:19 270:2 271:5 284:14
East 223:7 225:16
effect 270:18
either 230:1 231:6 234:9 244:18 265:18
Eliminating 270:18
Ellis 224:11 226:10
emerge 290:24
employment 270:14
engaged 232:21 254:18
engagement 241:24 242:9 243:22 274:7
enhance 230:15
entire 292:15
entitled 267:1,8 296:10 300:14
Entrepreneurs 296:11
entry 233:18,21
Equity 239:17 240:2,14,18,23 241:3 242:18 244:1,4,16,22 245:8 246:12,24 247:6 248:8 249:12
errata 228:10
erroneous 234:11
error 230:2
ESQ 224:7,9,15,20
Esquire 223:7 225:16,21,25
establish 267:12
estimated 254:7,8
et 278:16
evening 252:1
event 242:16 282:1
events 272:6
evidence 276:17
EXAMINATION 226:20 300:3
examined 226:18
excess 274:25 279:9
Exchange 233:11
excuse 235:24
execution 273:18
exhibit 225:2 228:2 228:19 229:19,23 232:3 233:3,4,8 235:18 237:21 238:20,24 239:2 239:23 250:9,11 257:15 259:14,16 259:16 260:14 261:6 262:16 264:5,11,18,19 266:12,13 267:6 268:18 282:6,17 283:1 296:8,19
exhibits 237:20 238:19
expect 244:23
expectations 261:13 263:6 264:8 265:12,17 284:13
expected 251:4
expects 284:3,9
expense 270:19
experience 245:4
experiencing 291:17
explain 264:15 265:7,8
explained 253:6 254:11
extension 246:9
extent 244:25
extremely 252:2

F

F 224:20 299:1
fact 240:8 247:5 251:19 261:10 263:19 276:19 277:7,23 278:2
facts 271:7 272:20 278:7 289:6
factual 291:14
fair 286:24
familiar 234:16 258:12
Fannin 233:22 282:9 283:5,12,20
far 257:8
fax 282:7 283:4,11 283:19
February 231:13 231:24 232:4,18 233:18 235:16,21 235:22,25 270:14
feel 226:25
feeling 297:18
Fernicola 257:19
field 289:14
Fifteen 227:13
Fifteenth 222:1 224:13 225:12
fifth 296:19
final 256:3
finance 273:18 297:8
financial 268:13 269:4 271:20 277:3
financing 231:20 235:13 236:21,22 237:6 239:15
find 227:19 231:8 273:10
fine 227:1 228:11 282:18,20 295:16
firm 232:19,22 234:16
firm's 297:4
first 233:2 234:7,23 236:9,18 237:5 238:2 245:12,15 245:16,22 246:3 246:22 247:12,19 248:3,14,20 249:9 249:24,25 250:4 250:19 252:7 253:1 254:19,24 255:4 257:2,10 258:2,7,7 259:2,2 261:3,5,5,14,16 261:18,18,21 262:1 264:8 265:12 268:20 269:4,12,16,20,22 269:25 270:21,22 271:1,20 272:13

NOT A CERTIFIED COPY

018325

272:22 274:25 277:24 278:3,5,23 279:10 283:4 284:4,10,14,22 291:17
five 229:23
Florida 222:2 225:13
followed 294:4
following 237:17 270:10
follows 226:19
form 236:11 242:1 242:10 247:2 248:23 249:15 258:10 261:25 263:13 272:24 273:15 275:7,16 288:3 291:19 294:18 297:13
formal 240:13,17
forth 299:10
found 228:4
foundation 262:8 275:8,16 278:10 279:1 290:25
four 237:20 283:6
Friday 222:15 225:18 235:22
front 250:10 273:25 283:2
Fuchs 233:23
full 259:3 261:17
fuller 263:20
further 226:19 255:2,22 273:5 297:21 299:14
future 277:4,20

G

gather 272:20 289:6 293:18
general 258:21
generally 255:14
getting 289:16
give 263:3 291:6
given 271:25 272:5 289:5 299:12
giving 293:11
Gluck 257:18
going 237:19 282:22 289:1 296:6
good 294:20
Goodis 233:22
Granderson 224:25 225:20
Greg 257:19
Groeller 257:18 259:22 264:21
gross 253:13,17,21 254:1
group 234:5
guess 233:3 263:17
guide 263:20

H

H 226:16 300:7
half 258:7 259:2 261:5,14,18,21 262:1 264:8 265:13 269:24 278:4
hand 251:7 299:19
hands 273:20
handwriting 238:18 238:20,24 239:2,4
happened 245:20 256:15 288:11
happens 243:9 262:22,24
Harris 259:21
hate 293:21
head 297:7
heading 250:23 253:18
hear 244:23 247:10 247:14 249:24 256:18
heard 245:16 248:3 253:23
hearing 230:19 245:22 248:1 290:15 292:1
held 223:6 225:15
Helps 296:11
hereinbefore 299:10
hereunto 299:18
high 276:25 277:18
Hill 232:21 233:25 234:15,20 235:1,1
hit 284:21
hold 245:19
Holdings 222:5 225:10 226:5,8
honestly 282:4
Hope 233:24 234:9
host 254:4
hypothetical 249:16 263:14

I

IBM 224:5
ID 300:8
idea 242:25
identification 225:5 233:7 267:10
identified 240:4,6 240:10 241:19 259:21
identifies 232:8 270:8
IL 224:6
immediate 267:2,9 300:14
immediately 231:11 232:17 236:17 237:17
implication 279:4
implied 263:18
important 284:20
inappropriate 263:11
include 265:10
included 261:21 262:20 265:3
income 258:16,17 258:18 269:12
incomplete 263:14
Incorporated 225:10,11 297:6 297:17
incorrectly 229:8 231:3
increased 276:4,20 277:10
incurred 270:13 274:24
Index 225:13
indicated 260:4
indicates 258:25 264:6 270:12 284:8
indications 251:14
individuals 240:8 241:18
information 268:12 271:18 281:18 291:14
informed 272:11
inquiries 235:6 236:8,17
inquiring 264:1
inquiry 259:1 261:12,20 262:4 263:5 264:7 265:11,16
instruction 263:3
interest 231:15 271:25 272:5 273:5 279:25 287:11,23 288:23 291:12
interested 299:17
internal 288:20
Internet 296:11
interpreting 246:8
introduce 226:1
investment 277:14 290:7
investors 276:9 289:14,23 290:5 291:3 297:3,5,16
involved 240:9,24 241:10 242:6,8,12 242:13,15 243:21 249:23 255:7,8 256:5,25 257:9 259:5,11 260:2,10 262:15,21 263:1 274:8 279:5 281:20 288:20 293:20 295:10
involvement 234:19 237:9 254:14,22 254:25 255:2 259:9,25 260:5,17 260:22 265:25 266:2,6 274:11 280:1,4 293:5
In-House 224:21
issuance 272:6 273:12
issue 273:6
issued 266:8 274:13 274:16 278:8 282:13 286:14 295:4,5,9,19,21
issues 244:21 263:18
issuing 250:17 283:14
item 230:5 252:17
items 231:6

J

James 224:20 282:7 283:7
Jenner 224:3 226:4 226:7
Jim 226:12
job 222:22 295:25
Joe 297:7
Johannes 257:18 259:22 264:21
John 256:10 257:17 259:22 264:20 282:8 283:8 296:12
judging 234:12
Judicial 222:1 225:12
June 287:18,25

K

Kauffman 286:7,9 286:13
keep 279:2 292:19
Kersh 233:22
kind 253:25
Kirkland 224:11 226:9
Kits 233:23
Kitts 235:10 241:17 282:8 283:8,13,19
knew 242:5 252:4 278:7,20 279:14
know 229:6,17 231:1 234:25 236:23 238:21 241:10 242:4,11 242:12 243:10 244:5,6,8 245:5 245:15,19,22,24 246:6,9 249:7 257:6,8 262:7,19 268:1,9 284:12 289:18,20,21,25 290:1,3,21 291:1 291:2,4,5,9 294:21
knowledge 241:8 248:12
Knowlton 232:21 233:25 234:15,20 235:1,2
known 249:8 290:4

L

law 226:13
leading 272:1
learn 246:20 247:18
led 272:6
left 273:20
left-hand 296:21
legal 225:22 294:1
letter 228:21 229:21 233:5,9

NOT A CERTIFIED COPY

266:13 267:18,23 268:3,6,12,18,23 269:23 270:8 271:13,19 278:14 278:19,21 279:8 300:12
level 276:25 277:18
levels 284:5
Linda 222:22 223:9 225:23 299:6,22
line 228:19,23,24 252:17 253:4 258:6,9 261:4
lines 253:4 292:8
list 250:22 252:19 263:19 265:4
little 270:6 282:17
LLP 224:11 226:4,7 226:10
locate 228:5
look 233:11 237:22 247:15 248:22 249:1 257:22 261:16
looking 239:5 243:7
looks 240:21 261:15 268:4
loss 269:13 270:6,9 274:24 284:9
lost 270:20 272:12 277:24 278:22 279:9
lot 251:25 252:5,17

M

M 224:9
MacPhail 233:6,10 300:12
magazine 296:9
making 235:6 252:18 256:15 261:12 262:4 265:11,16 291:21
management 235:6 236:9 286:2
March 229:1,20 230:12 233:19 235:16,24,24,25 236:6,6,12 239:24 242:23 247:6,21 248:18 250:13,16 250:18 254:18,23 257:16 259:17 260:15 261:4,7,11 261:22,23 262:4 262:11 264:5,19 265:9 266:7,15,19 267:15,18 269:8 271:9 272:1,2,6,7 272:12,20 273:4 273:12,14,24 275:12 278:21 279:8,23 280:1,6 280:6,8 281:16,20 284:13 286:14 288:13,14 291:11 292:10 293:2 295:8
mark 224:25 225:1 225:20 235:18 266:24
marked 225:5 228:1 229:19 232:3 233:6 257:15 259:14 266:12 267:9 282:6 296:7
marketing 295:2
marking 233:2
Markowsi 226:3
MARKOWSKI 224:7 225:1 226:3 226:21 228:11 229:13 297:21,25 300:4
marriage 299:16
Mary 296:10
materials 250:16 292:11 293:4,19
matter 225:9 299:17
matters 273:20
Mauri 233:24 234:9
ma'am 228:16 234:17 253:22 255:25 257:23 258:13 259:18 264:2 268:6 274:3 296:25
mean 252:6,14 262:23
means 247:23 294:22
meant 251:24
Meeker 296:11 297:2
meet 227:8 242:22
meeting 231:13,17 231:18,19,22,24 232:5,10,14,18 234:13 235:1,8,20 236:4,5,14 237:1 239:7 242:19 243:4,6,16 244:2 244:5,16 245:15 245:25 246:7,13 247:7,8,11 248:9 249:13
members 245:11 262:25 279:5,13 285:21
memo 243:5 292:17 293:15
memorandum 240:1 242:23 259:17 260:15 261:4 264:20 293:7,14,24 294:5
Messrs 233:22,23
met 232:18 233:24 236:5 243:9
Michael 233:6,10 300:12
middle 287:25
million 253:10,13 267:4 270:3,5,6,9 270:13,21 271:1,5 272:13 274:25 276:4,5,20,20 277:10,11,24 278:23 279:10
mind 235:17
mine 238:22
minutes 227:13 231:23 232:4,12 235:19
misspoke 229:6 230:2 231:2
misstates 246:5 260:20 281:21 293:8
moment 237:22 248:22 249:1 257:22 267:12 274:2
moments 260:4
money 291:3 297:1
monitor 295:3
monitored 255:10
monitoring 254:23
months 268:20 269:5,12,16,20,23 269:25 270:22 271:1,21 272:13 275:1 277:25 278:3,5,24 279:10
Morgan 222:8 224:17,21 225:10 226:10,12 229:21 230:13 233:24 239:16 240:1,9 241:13 242:9 243:25 244:15 255:11 256:2 257:17 259:16 264:20 266:14 267:21 271:12 272:11 278:7,15 278:20 279:2,13 280:2,9,21 281:16 283:7 285:22 286:2 288:21 289:10,21 290:14 290:16,21 291:2,5 291:15 293:18 296:21,25 297:4 297:15
Morgan's 297:7
move 254:15
mused 297:8

N

N 224:1 300:1
name 225:20 234:9 234:14 262:11,19 265:3 297:5,16
names 251:2
necessarily 294:19 295:6
need 232:12 235:18 292:20
negative 271:4 275:22,25
net 253:13,17,21 254:1 258:16 269:7,11 271:5
never 292:2,19
new 222:14,14 223:8,8,11 224:19 224:19 225:17,17 245:17 270:14 296:9 299:2,4,7
news 285:5,8,18,23 286:3,19 287:9,15
Notary 223:10 226:18 298:14 299:6
noted 298:5
notes 276:3
notice 223:9 227:15
November 225:4 227:24 228:3,21 228:25 300:10
number 229:23 230:14 240:8 254:7 258:19
numbered 237:20
numbers 253:17,18 269:15 284:21
N.W 224:13

O

O 226:16
oath 226:23
object 272:24 288:3 297:13
objected 263:17
objection 236:11 242:1,10 244:25 246:4 247:2 248:23 249:15 251:8 258:10 260:19 261:25 262:8 263:13 273:15 275:7 276:11,21 278:10 278:25 281:5,21 288:9,16 290:25 291:8,19 292:4 293:8 294:18,20
objections 275:15 275:24
obtain 294:15
occur 252:25
occurred 236:15,23 243:16 248:9 251:23 281:3
offered 291:6
offering 239:14 240:15,20 245:10 246:1,14,25 247:9 249:14 256:3 266:20 267:13,15 267:25 271:8 273:14 276:3,5,19 277:8,10,15 279:23 280:7,11 281:17 284:20 290:6,17 292:10 293:3,6,14,24 294:5,9 295:2
officer 244:10,15
officers 270:15
offices 223:6
oftentimes 243:5
Okay 232:1
one-page 250:3,11 257:16
one-time 270:19
open 252:10,13

NOT A CERTIFIED COPY

018327

16div-023705

operating 258:17 258:18
opportunity 274:3
orders 250:23 251:3,6,15,19,24 252:3,10,11,13,19 252:25 253:9,18
originally 276:5
outcome 299:17
outline 263:16,20
outlook 258:6,9 259:1 261:5
outset 242:8,15
outside 232:19
oversubscribed 277:8
overwhelming 277:14,18
O'Connor 224:9 226:6,6

P

P 224:1,1 226:16
page 228:15,15,24 229:22 230:6,8 233:17 254:6 268:18,23 276:13 282:7 283:4,5 296:19 300:3
paid 291:2
Palm 222:2 225:13
paragraph 229:22 232:8 270:10 296:20
parce 246:11
Parent 222:4 226:5 226:8
parenthesis 254:7
part 234:20 252:22 274:7,9
participant 232:9
participants 247:10 249:12
participate 255:17
participating 234:4 235:3 237:1 238:10 280:8
participation 271:25 272:5
particular 259:10
parties 299:15
paying 288:6
people 234:5 237:4 244:20 262:25 273:21 278:14 283:6
perceive 281:9
percent 254:8,9
Perella 297:7,12
performance 245:13 246:3 250:19 254:20,24 255:4,10 257:3,11 258:22 268:13,20 269:4 271:20 273:11 275:6,14 277:3
performing 243:22
period 229:3 241:24 287:22 288:7 289:2,13,22 294:13 295:5
personal 266:6 297:18,25
personally 246:20 260:5,17 274:8,10 279:16
place 236:19 247:8
placement 267:4
Plaintiff 224:4
Plaintiffs 222:6
Plaintiff's 225:2 233:4 267:6 300:8
planned 276:5
Plaza 224:5
please 226:1,15
point 231:25 234:20 235:9 241:25 251:7,20 252:18 255:2 257:2 258:3 261:3 280:15 282:15 283:24 284:25 285:12 287:20 290:5 292:12 293:16,17 294:4
poor 294:23
Porat 222:13 223:6 225:4,9 226:11,22 226:25 229:18 232:2 233:12,23 237:19 245:1 247:15 254:23 257:14 259:21 262:13 264:19 266:5,11,23 267:12,19 268:21 270:19 272:19 274:23 279:23 280:5 282:5 283:1 290:5 291:10 292:9 293:17 294:7 295:23 296:6,14 297:22 297:24 298:1,8 299:9 300:4,10
portion 228:10 295:25
possession 292:12
possibility 280:14 281:1
postpone 280:10
postponed 280:24
postponing 280:13 281:16,25
potential 238:5 250:23 251:3,24 252:11 253:9,18
practice 243:1 294:2,5,24
preceding 229:3 237:17
precipitous 288:1
prefer 228:8 282:19
preparation 238:10 243:2 259:9,12 260:1,3 263:2,22 266:1,3
prepare 227:2
prepared 236:17 241:13 243:11
preparing 227:12 240:24 241:11 259:5 262:15
presence 280:22 291:25
present 224:24 244:20
presentation 237:11 239:20 240:13,17,18
presented 241:3 245:10 246:15
press 250:17,21 266:8 267:14 272:2,7 273:12,25 274:6,12,16,22 275:12,23 276:2 278:8 282:10 283:14,15 286:14 295:8,9,12,16,19 295:21
pretty 227:17
previously 226:17 229:19 232:3 237:24 254:16 257:15 259:13 262:17 265:1,23 266:12 281:10 282:6 284:19 286:12 296:7
price 288:1,7,13
priced 292:16 293:3 293:13
pricing 247:24 248:2 255:21,24 268:10 278:18
prior 227:4 236:15 247:24 248:1 250:17 251:16 253:4 257:25 261:17 268:9 273:13 278:17
private 267:3
probably 258:15 284:18 286:24
problem 245:16,23 246:2,21 247:11 247:19 248:14,20 249:8,24 272:16 272:16
problems 245:12 290:23 291:16
procedures 267:22
proceeding 273:17
profit 270:5,25
proper 230:24
properly 252:21
prosecute 273:17
prospects 275:6,14 276:24 277:4,20
prospectus 292:18
provide 268:8
provided 247:16 267:18
prudent 280:10
public 223:10 226:18 232:19,22 233:25 234:6,15 234:21 236:15,18 237:4 298:14 299:6
public's 276:9,18
purchased 289:15 289:24
purchasers 290:12
pursuant 223:9
put 237:3 262:25 263:15
putting 246:10
p.m 223:3 225:19 298:5

Q

quarter 234:7,23 236:9 237:5 238:2 245:13,17 246:3 246:22 247:12,20 248:15,21 249:10 249:25 250:5,19 251:5,17 252:7,8 252:22 253:1 254:19,24 255:4 257:3,11 258:7 259:2 261:5,16,18 262:5 263:7 265:17,20 270:22 272:14,22 284:4 284:10,14,22 291:17
question 230:9,22 243:20 245:18 247:17 248:24 252:23,25 253:2 253:16 263:17 272:25 275:9 276:16 281:7 287:7 288:4 294:23 297:14
questions 235:10 237:2,12 238:1,6 239:8 297:22,24
quickly 227:17
quote 284:5,6 296:25 297:4,7,11
Q-and-A 235:13

R

R 224:1 226:16,16 299:1
raise 280:14,25
raised 237:13
raising 280:16
read 228:19 232:12 251:12 258:5 264:2 274:2 275:17 282:11 294:9 296:24
reader 248:19
reading 229:17,22 275:19
reads 228:25 233:18 296:25
realize 284:9
really 230:7 256:16
reason 252:18 254:3 277:9
reasons 264:3
recall 227:22,23 229:14 230:18

NOT A CERTIFIED COPY

0183328

16div-023706

231:11,17,18,20
232:17,20,24,25
234:4,19,24 235:1
235:3,11 236:20
238:12,15,17
239:13,20 241:1
243:21,24 245:7
250:20 251:2,13
251:25 252:15
253:15,19 254:12
254:13,16,25
255:5,9,9,13
256:6,24 257:4,12
258:1 259:7,8,11
260:2,8,9,22
262:18 263:8,22
265:2,24,25 266:2
266:22 271:10,15
271:22 272:15,17
274:14,17,19
279:16,18 280:4,5
280:12,16,19,23
281:2,14,24 282:4
283:22,23 284:15
285:10,18,19,20
285:24 286:5,10
286:17,20 287:1,4
287:8,16,18,20,21
288:5,10,12 289:3
289:4,12,16 290:8
290:10,15 291:20
291:21,23 292:1,7
292:14,23 293:10
294:11 295:22
receive 239:9
250:15 267:22
received 239:19
250:3,12 271:13
278:21 283:20
receiving 285:6
Recess 282:23
296:3
recognize 238:19
238:21,22,23
239:1 266:17
268:2
recollection 236:4
236:25 238:9,13
239:6 243:13,15
260:24 261:1
266:5,10 272:10
293:1
record 282:12,22
282:25 296:2,5
298:4 299:12
refer 258:16,17
reference 227:19
229:8 231:25
251:1 258:21
261:10 262:3
264:12 265:11,16
265:19,20 277:23
278:2
references 254:5
258:20
referred 243:12
286:19,22
referring 287:14
refers 258:14,15
277:13
reflects 277:18
refresh 239:6 266:5
regarding 260:15
relate 238:1 258:8
related 235:12
237:10 239:7
299:15
relates 274:6,9
relating 230:9
234:6,21 235:4,7
236:9 237:3,4,6
239:14 240:14,19
244:17 249:13
250:18 254:17
257:2 261:13
264:7 265:12
268:12 270:14
271:19 272:21
274:23 286:3
289:7,10 291:16
292:12 293:5,19
295:1,4
relations 232:19,22
234:1,6,16,21
relationship 244:9
244:15
release 250:18,21
266:8 267:2,9,14
272:2,7 273:12,25
274:6,12,16,23
275:12,23 276:2
278:8 282:10
283:14,15 286:14
295:8,9,13,17,19
295:21 300:15
released 295:11
rely 297:3
remember 228:6
234:8,13 235:8,13
236:23 237:25
241:12 242:21
244:3 245:14,20
245:22 246:7
248:1 253:3
255:15 256:7
273:7 285:3,4,6,7
285:11 287:6,13
287:14 289:5,9
293:22,23
renew 275:15
repeat 275:9 276:15
rephrase 294:22
report 243:3 247:16
248:19 256:22
271:17
Reported 222:21
reporter 225:23
226:15 229:7
231:2 266:24
reports 268:19
269:3,7,11 294:9
294:16 295:3,20
represent 232:13
repurchased
290:22
required 239:16
respect 243:1
245:12 246:2,21
247:11,19 248:14
248:20 249:9
257:10 275:5,13
response 277:14,18
295:7
responses 235:5
responsibilities
244:11 285:13
responsibility 256:8
256:11,14,17
273:23 289:6
resumed 226:16
resumption 227:3
retain 292:17
revenue 230:15,23
revenues 258:15,22
review 263:18
295:20
reviewed 241:2,6
reviewing 227:14
227:21 274:12,14
295:10
Rich 296:12
Richard 286:7
right 231:1 243:18
246:19 248:1,7
251:12 253:8
268:24 277:6
290:20 295:7
road 237:10,14,18
239:8 245:18
248:5,10,13
Robert 224:7 282:8
283:8
Ruth 222:13 223:6
225:4,9 226:11
259:21 298:8
299:9 300:4,10

S

S 224:1 300:7
sales 230:15,23
245:13,23 246:22
247:12,20 248:15
248:21 249:10,25
250:4 253:13,14
253:17,21,21
254:19 258:22
268:19 269:8,15
269:22 272:21
278:3,15,18 284:4
Salzman 222:22
223:10 225:24
299:6,22
Saturday 235:25
saw 227:18 284:25
285:16,23 286:4
286:21
saying 248:18 290:9
says 230:7 249:4,5
276:25
SB 267:1,8 300:14
scanned 227:4,17
scanning 230:5
Schlock 297:6,17
seal 297:4
second 232:7 261:9
262:2,5 263:7,19
265:17,20 268:18
268:23
securities 233:10
256:1 295:3
see 228:13,18,23
229:3 230:8,16
232:10 233:18
234:2 235:21
239:4 250:22
252:9 254:5 258:2
259:18 261:2,3
264:23 265:19
266:15 269:1
274:15 275:19,25
283:4,16,24 284:6
284:10 285:2
296:22 297:9
seeing 238:15
250:20 260:14
266:4
seen 233:13,14
237:23 253:23
257:23 264:25
265:22 296:13
selective 297:2
selling 292:17
293:14
sentence 261:8,18
sentences 296:24
series 235:4 249:22
287:9
Services 223:7
225:16,21,25
session 232:6 248:5
255:15,20
set 253:4 256:3
299:10,19
Shanj 264:21
share 229:11
283:19
shared 291:15,18
sheet 283:11
shipped 251:23
252:20
short 246:9 295:24
shortly 283:14
show 228:1 229:16
229:18 231:23
232:2 233:1
235:15,19 237:10
237:14,18,19
239:8,22 245:18
248:6,10,13 250:9
257:14 259:13
264:18 266:11,23
282:5,13 295:14
296:6
showed 235:20
295:13
showing 267:11
significantly 246:23
247:21,23
simply 253:2
sit 272:9 275:17
287:5
sitting 252:15
253:15 254:13
situation 250:4
272:21
size 254:2,3 276:3
277:9
Skadden 233:5,9
300:12
slip 252:5,7

NOT A CERTIFIED COPY

018329

16div-023707

sold 256:1
sole 290:19
somewhat 284:5
sorry 240:16
243:23 268:22
272:3 276:15
284:24 288:18
source 279:8
speak 245:1
specialist 225:22
specific 243:13
261:20 264:7,12
275:20
specifically 235:12
242:21 246:17
287:13 292:15
293:10
specifics 271:15,23
272:17
speculate 293:21
speculation 242:2
245:2 251:9
258:11 262:9
276:12
spend 227:11 228:7
282:17
spent 249:21
ss 299:3
Stanley 222:8
224:17,21 225:11
226:10 229:21
230:13 233:24
240:2 241:14
242:9 243:25
244:15 255:12
256:2 257:17
259:17 264:20
266:14 271:12
272:11 278:7,15
278:20 279:3
280:3,9,21 281:16
283:7 285:22
286:2 288:21
289:10,21 290:14
290:16,21 291:2,5
291:16 293:18
296:22,25 297:5
297:15
Stanley's 226:12
239:16 240:9
267:22 279:13
State 223:10 299:2
299:7
statement 276:13
297:9
statements 275:4
states 233:21
277:17
stationery 257:17
step 231:12 251:22
stock 288:1,7,12
strategic 277:1,19
Street 223:8 224:13
225:17
Strong 241:17
242:15 244:6,9,23
280:25 282:7
283:7,12,18 292:2
Stynes 241:18
282:8 283:8,12,18
subject 257:19
259:23 264:22
271:24 272:4
Subscribed 298:10
subsequent 285:5
286:17
subsequently
289:23
substantially
288:13
success 276:10,18
successful 267:3
suggest 280:20
291:13
suggestion 281:11
281:13 282:2
291:22,24 292:3
summary 250:3
Sunbeam 230:14
231:13,14,24
232:5,14,15,21
233:23 234:22
235:5,20 236:8
239:15 240:10,15
240:19 241:14,23
241:23 243:22,25
243:25 244:11
245:9,11 246:1,14
247:8 250:17
251:6,18 264:22
265:11 266:8,25
267:2,2,7,8
270:20 272:12
273:24 274:7,24
277:24 278:22
279:7,14 280:3
282:9,10 284:3,21
285:14,16,21
286:18,22 287:3,9
287:19 288:25
289:1,15,24
290:12,23 291:16
292:14 293:2,20
294:10,16 295:1,5
300:14,14
Sunbeam's 230:23
232:19 234:7
237:5 242:8 246:2
246:21 247:12,19
248:14,20 249:9
249:25 250:4,18
254:19,24 255:10
257:2,10 259:1
261:13 264:7
265:17 267:23
268:19 269:3,7,11
269:22 271:20
272:7,21 273:10
276:10,18 277:1
277:19 278:3
279:24 283:24
284:14,25 288:1,7
288:12,22 291:11
Sunday 236:1
support 276:9,18
sure 237:8,15
247:22 256:15
263:23 279:4
281:8
surprised 285:8,11
285:17
swear 226:15
sworn 226:17
298:10 299:11

T

T 224:7 226:16,16
299:1,1 300:7
table 268:25 269:3
take 231:12 233:11
247:15 248:21
249:1 257:22
274:2 282:16
292:3 295:23
taken 282:23 296:3
talk 235:10 271:11
talking 249:22
talks 296:16
tape 225:7 285:5
287:15
team 241:14 243:25
243:25 262:25
273:16 279:5,14
285:22
teams 273:18
techniques 230:15
telephone 272:1
tell 233:12 237:23
249:3 284:24
telling 266:21
tend 297:3
term 244:10 253:23
253:24 276:24
279:2
terminated 287:19
288:15
termination 287:24
288:24
terms 258:12
testified 226:18
247:18 250:2
254:17 284:19
286:12
testimony 225:4
227:24 228:4
246:5 248:4
260:12,16,20,21
281:22 293:9
299:12 300:10
text 228:24
thank 227:1
thing 255:13 263:11
294:3
things 228:12 241:7
254:4 268:11
284:2
think 228:9 232:5
235:18 236:14
239:12 241:5
243:8,18 245:5
246:8 254:21
256:21 262:17
263:10 276:23
280:18 295:6
thinking 273:7
THOMAS 224:15
thought 237:12
three 241:22
three-page 266:25
267:7 300:13
throw 292:21
293:13
thrown 293:4
time 225:18 227:11
227:23 228:7
230:6 231:10
233:2 241:24
243:3 245:16
246:23 249:21
250:17 251:11
268:8 271:8
272:19 276:22
278:8 282:17,21
282:24 284:17
286:6 287:22
288:8,14,21 289:2
289:13,22 291:10
294:12 295:5,13
295:17 296:1,4
298:2,5
times 245:21
262:25
timing 235:17
today 226:25 227:3
227:12 233:2
252:15 253:15
254:13 264:15
272:9 275:17
279:20 287:5
295:25
told 230:10 253:12
256:19 272:18
Tom 226:9
top 229:22 258:6,8
258:14 261:4
268:25
total 253:9
touched 239:12
transaction 241:15
241:23 244:17,24
268:10,15 292:13
292:16 293:6,12
294:13
transactions 234:1
235:7 238:6
transcript 225:3
227:14,22 228:3
228:16 230:6
300:10
trends 278:16,18
true 299:12
try 246:11 289:6
trying 263:18 264:2
Tuesday 243:10
Tuesdays 243:9
turn 228:14
two 252:8,16 262:1
268:20 269:4,12
269:16,20,23,25
270:22 271:1,21
272:13 274:25
277:24 278:3,5,23
279:10
types 258:20
typical 244:14
typically 263:24
294:17
typo 227:18 228:4
typographical
230:1

NOT A CERTIFIED COPY

018330

16div-023708

Tyree 230:10 256:10,18,22 257:17 259:22 263:4 264:21 271:11,17 282:8 283:8,13,19

U

U 226:16
uncomfortable 279:3
understand 226:22 230:21 250:25 252:13 253:20 264:3
understanding 242:7,14 251:10
understood 231:3
underwriter 290:16 290:19
unfortunately 231:8 262:22,23
unhappiness 291:7
unhappy 290:6,13

V

vaguely 256:6
value 291:6
varied 245:5
vary 254:1,2
verbal 251:14,14
verified 252:4
verify 241:7
version 261:7,11,23 262:4,12 264:6 265:4
versus 225:10 261:17
video 225:22
Videographer 224:25 225:7 226:14 282:21,24 296:1,4 298:2
Videotape 223:5
videotaped 222:13 225:8
view 230:13 276:9 276:10
vision 275:18 276:24
voted 231:14 232:14
vs 222:7

W

want 229:11 263:23 281:7 282:16
wanted 228:13
Washington 224:14
wasn't 245:25 251:18 256:5 289:4
waterfall 254:8,8
way 246:9 251:13 262:18 268:4 273:8,18 274:19 283:23 285:10,24 290:1,3 294:13 299:16
week 247:25
weekend 235:9 236:5,24 237:2,16 237:17
weren't 262:20
we're 282:22
we've 296:7
WHEREOF 299:18
William 282:7 283:7
wish 227:15
witness 226:11,15 226:16 299:9,13 299:18 300:3
Woman 296:10
words 229:4 262:1 296:21
work 240:9 242:5 243:22 280:2 293:20 294:8,25
working 241:14,22 242:6
work-related 285:13
wouldn't 294:17
written 239:20 240:18 241:11 243:2,6 247:16 250:15
wrote 241:12

X

x 222:3,11 300:1,7

Y

year 229:3 258:7 259:3 261:6,17,19
yesterday 227:10
York 222:14,14 223:8,8,11 224:19 224:19 225:17,17 245:17 299:2,4,7
Yorker 296:9

$

$10 270:21
$143,499,000 229:9 229:25 269:16
$20 271:4
$30.2 270:13
$40 274:25 277:24 279:10
$41 270:6,9 272:13 278:23
$41,190,000 269:13
$43,499,000 229:2 229:9
$500 276:20
$72,018,000 229:1 269:8
$750 276:4,20 277:11
$86 253:10,13
$9,765,000 269:19
$9.7 270:5

0

035045 225:14

1

1 225:8 228:24 229:1 233:19 235:24,25 236:6 254:6 269:8
1:20 223:3 225:19
10 222:15 223:2 225:18 239:24 242:23 247:6,21 248:18 254:9
10020 224:19
112 266:12,13 268:2,18
12 230:12
1221 224:18
129 239:23
13thday 299:19
140 237:21 238:20
141 237:21 238:24
142 230:6,8 237:21 239:2
143 230:6 237:21 239:4
15 287:18
16 250:9,11
167 228:15,15
168 228:24
168056A 222:22
17 228:20 229:19 233:17
18 250:13,16 254:18,23 272:1,6 272:20 273:4 280:6 281:20
19 228:21 229:20 261:22
19th 250:18 257:16 261:4 264:5 266:7 272:2,7 273:12 280:6 286:14 293:2 295:8
1990 230:15
1997 228:25 230:23 231:4 269:17,20 269:25 271:1 278:5 282:10,12 284:5
1998 228:21 229:1 229:20 232:4 233:5,9,19 234:7 234:23 235:16,19 235:22 237:5 238:2 239:24 245:13 246:22 247:6,12,20 248:15,21 249:10 249:25 250:19 254:19,24 257:2,3 257:11,16 259:17 260:15 261:14,21 263:7 264:8,20 265:13,18 266:15 266:19 267:15,19 268:21 269:5,8,12 269:23 270:14,22 271:21 275:1,12 277:25 278:4,24 279:10 282:13 283:6 284:4,10,13 287:25 288:14 291:11,17 292:10 300:11
1999 296:8

2

2 254:7
2:27 282:22
2:38 282:25
2:53 296:2
20 259:17 260:15 261:7,11,23 262:4 262:11
20005 224:14
2004 222:15 223:2 225:18 298:11 299:19
206 232:3
21 228:19
216 223:7 225:16
225 300:9
228 300:4
23 227:24 228:3 264:19 265:9
23rd 225:4 300:10
233 300:11
25 228:23 266:15 266:19 267:15,18 271:9 272:12 273:14,24 275:12 278:21 279:8,23 280:8 281:16 292:10
251292 267:1
251292-94 267:8 300:14
26 296:8
267 300:13
27 231:13,24 232:4 232:18 235:21,22
28 233:5,9,18 235:25 236:6 300:11
29 228:25

3

3 282:10,12,13 283:5,21,25 284:2
3:03 296:5
3:05 298:3,5
30 280:1 288:13 291:11
31 284:13 288:14
33 257:15 259:16 264:5 266:4
34 259:14,16 260:14 261:6 262:16 264:11 266:4
35 264:18,19 265:23 266:4
36 282:6 283:1
377 296:8
378 225:1,2 228:2 300:10
379 233:3,4,8 300:12
380 266:24 267:6 273:25 300:14

4

45th 223:8 225:17

NOT A CERTIFIED COPY

018331

5
50 270:3
500 276:5 277:10
6
60611-7603 224:6
655 224:13
7
7 254:8
7th 236:12
750 267:4
8
8th 236:13
9
9.7 270:25
94 267:1

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0092355

	4Q 12/31/1997	4Q 12/31/1996	% Change	Year 12/31/1997	Year 12/31/1996	% Change	LTM	Year 12/31/1996	% Change
	$475.3	$494.0							
Net revenues	$222.9	$224.4	-0.7%	$1,154.3	$1,220.2	-5.4%	$1,154.3	$1,220.2	-5.4%
Cost of sales	161.7	191.1		840.3	928.5		840.3	928.5	
Gross profit	61.1	33.3	83.5%	314.0	291.7	7.6%	314.0	291.7	7.6%
Gross Margin	*27.43%*	*14.85%*		*27.20%*	*23.91%*		*27.20%*	*23.91%*	
SG&A	61.2	76.7	-20.3%	266.3	291.7	-8.7%	269.4	291.7	-7.6%
SG&A as & of Sales	*27.4%*	*34.2%*		*23.1%*	*23.9%*		*23.3%*	*23.9%*	
Operating Income	(0.0)	(43.4)	45.3	47.7	0.0		44.6	0.0	
Depreciation & Amortization	*5.6*	*6.3*	10	*31.3*	*25.9*		31.3	*25.9*	
Extraordinary Expenses (Gain)	*0.4*	*16.9*		*36.0*	*74.2*		36.0	*74.2*	
EBITDA	**6.0**	**(20.0)**		**115.0**	**100.1**	14.8%	111.9	**100.1**	11.7%
EBITDA Margin	***2.7%***	***-8.9%***		***10.0%***	***8.2%***		***9.7%***	***8.2%***	
Interest	9.3	9.9	-6.8%	40.9	38.7	5.5%	40.9	38.7	5.5%
Capital Expenditures	11.0	13.7		30.0	41.3		30.0	41.3	
Capital Expenditures/Total Sales	4.9%	6.1%		2.6%	3.4%		2.6%	3.4%	
Total Debt	542.5	617.5	-12.1%	542.5	617.5	-12.2%	550.0	617.5	-10.9%
Total Cash	9.0	17.3		9.0	17.3		9.0	17.3	
Net Debt	533.5	600.2		533.5	600.2		541.0	600.2	
EBITDA/Interest	0.64	(2.02)		2.81	2.59		2.74	2.59	
EBITDA-Capex/Interest	(0.54)	(3.39)		2.08	1.52		2.00	1.52	
Debt/EBITDA				4.72	6.17		4.92	6.17	
Net Debt/EBITDA							4.84	5.99	
Accounts Receivable	221.8	182.4		221.8	182.4		221.8	182.4	
Inventories	245.8	287.5		245.8	287.5		245.8	287.5	
Accounts Payable	155.7	98.9		155.7	98.9		155.7	98.9	

[1] Debt for 3rd quarter and nine month periods represent Long Term Debt, Debt for LTM and annual periods represent total debt

NOT A CERTIFIED COPY

018334

raw ltm

Company	The Coleman Company, Inc	The Coleman Company, Inc.		The Coleman	The Coleman Company, Inc.		The Coleman Company, Inc.
period	4Q97	4Q96		year 1997	year 1996		year 1996
date	12/31/1997	12/31/1996		12/31/1997	12/31/1996		12/31/1996
sales	$222.9	$224.4		$1,154.3	$1,220.2		$1,220.2
cost of goods sold	161.7	191.1		840.3	928.5		928.5
gross profit	61.1	33.3		314.0	291.7		291.7
gross margin	27.43%	14.85%		27.20%	23.91%		23.91%
SG&A	61.2	76.7		266.3	291.7		291.7
D&A	10.3	6.5		34.4	25.9		25.9
Other	3.9	16.9		36.0	74.2		74.2
operating profit	(0.0)	(43.4)		47.7	0.0		0.0
operating margin	-0.01%	-19.34%		4.13%	0.00%		0.00%
EBITDA	14.2	(36.9)		118.1	100.1		100.1
EBITDA Margin	6.36%	-16.44%		10.23%	8.21%		8.21%
Interest	9.3	9.9		40.9	38.7		38.7
CAPEX	11.0	13.7		30.0	41.3		41.3
Capex/Sales	4.94%	6.09%		2.60%	3.39%		3.39%
total debt	542.5	617.5		542.5	617.5		617.5
cash	9.0	17.3		9.0	17.3		17.3
Net Debt	533.5	600.2		533.5	600.2		600.2
EBITDA/Interest	1.53	(3.71)		2.89	2.59		2.59
EBITDA-Capex/Interest	0.34	(5.09)		2.16	1.52		1.52
Debt/EBITDA	38.288	(16.744)		4.594	6.167		6.167
Net Debt/EBITDA	37.65	(16.28)		4.52	5.99		5.99
accounts receivable	221.8	182.4		221.8	182.4		182.4
inventories	245.8	287.5		245.8	287.5		287.5
accounts payable	155.7	98.9		155.7	98.9		98.9
days on receivables	363.2	296.7		70.1	54.6		54.6
days of inventories	402.6	467.6		77.7	86.0		86.0
days of payables	255.0	160.9		49.2	29.6		29.6
Current Maturities of Long Term Debt		0.7			0.7		0.7
current maturities of cap leases							
Revolving Credit		33.9			33.9		33.9
Long Term Debt	479.4	582.9		479.4	582.9		582.9
cap lease ob							
number of shares		52.2			52.2		52.2
line of credit		128.1			128.1		128.1
preferred stock							
shareholders equity	1,064.7	252.9		1,064.7	252.9		252.9
cash	9.9	17.3		9.9	17.3		17.3
Centers Open							
Same Center Revenue							
average occupancy							

MORGAN STANLEY
CONFIDENTIAL
0092356

NOT A CERTIFIED COPY

16div 023712

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff, -v- MORGAN STANLEY & CO., INC., Defendant.	CA 03-35045

DEPOSITION OF BLAINE V. FOGG

New York, New York

Thursday, December 16, 2004

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 167797

NOT A CERTIFIED COPY

018336

December 16, 2004
1:06 p.m.

Deposition of BLAINE V. FOGG, held at the offices of Skadden, Arps, Slate, Meagher & From, 4 Times Square, New York, New York, pursuant to Notice, before Tami H. Takahashi, a Registered Professional Reporter and a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff Coleman (Parent) Holdings Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
JEROLD S. SOLOVY, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Defendant Morgan Stanley & Co., Inc.
777 South Figueroa Street
Los Angeles, California 90017
BY: LAWRENCE P. BEMIS, ESQ.
- AND -
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: KATHRYN REED ROTHMAN, ESQ.

APPEARANCES (Cont'd):

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
Attorneys for the Witness
4 Times Square
New York, New York 10036
BY: CHRISTOPHER P. MALLOY, ESQ.

ALSO PRESENT:

MacANDREWS & FORBES HOLDINGS INC.
35 East 62nd Street
New York, New York 10021
BY: STEVEN L. FASMAN, Senior V.P.
BARRY F. SCHWARTZ, Executive V.P.

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

018337

NOT ACCERTIFIED COPY

Page 6

BLAINE V. FOGG, having been first duly sworn by the Notary Public, testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning, Mr. Fogg. My name is Larry Bemis. I'm with the law firm of Kirkland & Ellis, and I represent Morgan Stanley. Sitting on my right is Kathryn DeBord-Rothman, hyphenated, just recently married. And she will be assisting me in the deposition. She's also an attorney in my office.

Would you state your full name for the jury, please.

A. Blaine V. Fogg.

Q. And where do you live, Mr. Fogg?

A. Right now, I live in Paris.

Q. Where do you live in Paris?

A. I live at 6, Rue, R-U-E, D-E, L'Abbaye, L, apostrophe, A-B-B-A-Y-E, 75006 Paris, France.

Q. Which arrondissement is that in?

A. Sixth.

Q. Do you have a residence in New York as well?

A. Yes.

Q. And what is your address in New York?

A. 1185 Park Avenue.

Q. What is -- what is your ZIP code there?

A. 10128.

Q. Are you employed today by the law firm of Skadden Arps?

A. I am.

Q. And how long have you been employed by Skadden Arps?

A. I started at Skadden Arps in 1966. I was employed until I became a partner. Then I was a partner until October 1st of this year.

Q. Are you of counsel to the firm now?

A. I am.

Q. Do you maintain a business address in Paris?

A. Yes.

Q. And where is that?

A. That's 68, Rue Du, D-U, Faubourg, F-A-U-B-O-U-R-G, St.-Honore, H-O-N-O-R-E. And that is in the eighth arrondissement.

Q. Do you plan to have an office here in New York, being of counsel to Skadden Arps?

A. Yes.

Q. And what is your office address here in New York?

A. 4 Times Square, in this very building.

Q. As I understand, then, you have been of counsel since October of this year?

A. Correct.

Q. Would that be October of 2004?

I wanted to ask you to step back a few years from 2004 and turn to 1997 and 1998. Can your memory go back that far for me?

A. I'll try.

Q. In 1997, were you a partner resident in the New York office of Skadden Arps?

A. 1997? Yes, I was.

Q. When did you take up residency in Paris?

A. In Paris?

Q. Yes.

A. This year, October.

Q. Just this year in October?

A. Yes.

Q. In 1990 -- withdrawn.

You're familiar with the Coleman/Sunbeam merger transaction, aren't you, sir?

A. Yes.

Q. In that transaction, did Skadden Arps act as an attorney for Sunbeam Corporation?

A. Yes.

Q. And what was your position relative -- withdrawn.

Were you the lead attorney for Sunbeam in that transaction?

A. I was the lead mergers and acquisitions attorney, yes.

Q. And tell the jury what mergers and acquisitions is.

A. Companies buying other companies.

Q. And selling other companies?

A. And selling other companies and merging with other companies.

Q. You --

A. And doing joint ventures with other companies. It takes in a lot of territory.

NOT A CERTIFIED COPY

018338

Q. You, in your capacity as an attorney for Sunbeam Corporation, addressed the board of directors of Sunbeam Corporation at the time the merger agreements were approved by the board of directors, correct?
A. I don't think that's correct.
Q. Did you attend the board of directors meeting of Sunbeam Corporation when the merger was approved?
A. I did.
Q. And did you -- and is it your recollection you did not speak at the meeting?
A. I honestly don't recall. I probably did, but I don't recall.
Q. Would the minutes, in your view, if they reflected that you spoke, be an accurate reflection of what transpired?
MR. MARKOWSKI: Object to the form.
A. I don't recall, so I don't know how to answer that question.
Q. Okay. We'll get to it a little bit later.
Setting aside the meeting, you were involved, as well, in the issuance of a press release of Sunbeam Corporation dated on or

about March 19, 1998, were you not?
A. I was involved in the events leading up to the issuance of that press release, yes.
Q. And you -- at the time that you were involved in those events, you were representing Sunbeam Corporation, correct?
A. Yes.
Q. Following the issuance of the March 19th, 1998 press release, you were also involved with the -- an investigation of events at Sunbeam Corporation following Mr. Dunlap's termination, were you not?
A. Yes.
Q. And did you participate in the investigation and the eventual preparation of a report to the board of directors of Sunbeam Corporation about those events?
A. I'm not sure what you mean by participate. I certainly reviewed it and drafts of it. I was not one of the draftspersons of it.
Q. But you did see the report before it was finally issued; is that fair?
A. Yes.
Q. And you did attend board meetings of

Sunbeam Corporation in 1998 while this investigation was ongoing, did you not?
A. I did.
Q. Is there any part of -- withdrawn.
Did you have any participation in the debenture offering that was part of the financing of the Sunbeam transaction debenture? Let me withdraw the question. It was a little too broad.
Skadden Arps did represent Sunbeam as counsel in connection with Sunbeam's debenture offering in 1998; is that right?
A. Correct.
Q. And that -- did you participate as an attorney in any of the drafting of the documentation for the debenture offering?
A. I don't believe I did, no.
Q. Did you review any of it before it was finalized?
A. I don't believe I did, but I don't specifically recall.
Q. If you -- who at Skadden Arps was -- withdrawn.
Was there one attorney, one partner at Skadden Arps who had responsibility for

Skadden's work in connection with the Sunbeam debenture offer?
A. Yes.
Q. Who was that?
A. Greg Fernicola, F-E-R-N-I-C-O-L-A.
Q. My understanding is that you have been deposed on at least one occasion in your life; is that fair?
A. Yes.
Q. And you were deposed in this action, I think, during the arbitration proceeding involved Mr. Dunlap and Mr. Kersh?
MR. MALLOY: Object to the form.
A. Not this action.
Q. I may have misspoken.
You were involved in an arbitration proceeding relating to Mr. Dunlap and Mr. Kersh, were you not, as a witness?
A. I was deposed in that proceeding, yes.
Q. Right. In preparation for your deposition today, did you review your transcript in that proceeding?
A. I did read it, yes.
Q. When did you do that?

NOT A CERTIFIED COPY

018339

A. I read it in Paris about a week or 10 days ago.
Q. Let me show you a copy of the transcript that I have and ask if that's a transcript of the proceeding -- of your deposition.
A. The copy that I read in Paris had some missing pages.
Q. I think mine --
MR. MALLOY: Sounds like I might be in trouble.
THE WITNESS: No.
Q. Let me hand you what the reporter will mark for me as Morgan Stanley Exhibit 529.
(Defendant's Exhibit 529, Transcript of deposition of Blaine V. Fogg taken on 6/16/20, marked for identification, as of this date.)
Q. I've handed you, Mr. Fogg, a copy of what I understand to be your deposition taken on June 16, 2000 in what I referred to as the arbitration proceeding.
Do you have that in front of you?
A. I do.

Q. Now, is this a copy of the deposition transcript, albeit, I hope, with all of the pages that you reviewed in Paris before you came here for your deposition?
A. It appears to be the same document.
Q. At the time that you gave your deposition on June 16th of 2000, did you review it after -- after it was taken -- well, withdrawn.
After your deposition was taken on June 16, 2000 and before you did your review in Paris for your deposition here, did you read the deposition for corrections or errors or transcript changes?
A. I believe so, yes.
Q. Did you make any changes in the deposition, that you can recall?
A. I don't remember.
Q. In your review of the deposition in Paris before you came here for your deposition in New York, did you find any errors in the transcript?
A. I honestly read it rather quickly, but, no, I didn't find any -- nothing jumped out at me.

Q. At the time that you -- at the time you gave your deposition on June 16, 2000, the transcript reflects that you were under oath; is that correct?
A. I believe I was.
Q. The same oath, in effect, that you took here today, right?
A. I believe it was substantially similar, yes.
Q. In preparation for your deposition, other -- in preparation for your deposition, did you read any other documents -- well, withdrawn.
Did you read your deposition, Morgan Stanley Exhibit 529, to refresh your recollection about events in 1997 and 1998 and even thereafter?
A. Yes.
Q. And did it help you?
A. Yes.
Q. Did you look at any other documents in preparation for your deposition here today?
A. Yes.
Q. And did they help you refresh your recollection about events at that time period?

A. I'm trying to remember what documents I saw.
MR. MALLOY: He's entitled to ask you which documents actually refreshed your recollection. But, otherwise, he's not entitled to inquire into what you looked at. So, just limit your answer with that concept in mind.
A. Yes.
Q. Please tell me what documents you reviewed that refreshed your recollection.
A. Well, I do recall reviewing a draft of the Sunbeam March 19, 1998 press release which refreshed my recollection.
Q. Now, did the draft -- did the draft of the press release that you reviewed in preparation for your deposition have any indication on whether it had been prepared at Skadden Arps' offices, such as a footer at the bottom indicating a word processing source?
A. I didn't notice. I don't remember.
Q. Okay. We'll get to that later.
Did you -- what other documents did you review that refreshed your recollection?
A. That refreshed my recollection?

NOT A CERTIFIED COPY

018340

MR. MALLOY: Meaning that it caused you to recall something that you hadn't previously recalled.
A. I saw some documents that I hadn't seen before and, therefore, they didn't refresh my recollection.
MR. MALLOY: He's not entitled to know what those were.
THE WITNESS: I understand.
MR. BEMIS: Okay. Could I respectfully not have a -- I'm not -- I understand what you're doing, but not have dialog. If there's an objection, put it on --
MR. MALLOY: You're probing into privileged areas, and I'm making sure that the witness answers appropriately.
MR. BEMIS: I'm sure you had an opportunity to prep Mr. Fogg before he came today and I don't want to get contentious, I know we have a short amount of time to get this done, so we'll try to get it done.
A. I don't really recall whether any of the documents I looked at refreshed my

recollection or not. I really can't say, sitting here today.
Q. Did you see the -- did you see, for example, the merger agreements between Sunbeam, Coleman and the various MacAndrews & Forbes companies?
MR. MALLOY: Are you asking if he saw them and they refreshed his recollection, or are you asking if he saw them? Because I'm going to instruct him not to answer the question if it's the latter.
MR. BEMIS: Let me rephrase the question.
Q. Did you see -- did you see the merger agreements between Sunbeam, Coleman and the MacAndrews & Forbes entities and various other corporations in the course of your preparation, and did you -- did they refresh your recollection about events of the matter?
MR. MALLOY: Well --
A. The answer is no.
THE WITNESS: Sorry.
Q. Did you review -- withdrawn.
Did you see the complaint in this

action that's been brought against Morgan Stanley?
A. No, I didn't.
Q. Did you read -- see any deposition transcripts from other witnesses who have been deposed either in this proceeding or in earlier proceedings involving Sunbeam?
A. No, I didn't.
Q. In preparation for -- withdrawn.
Have you given any interviews, other than to your attorneys, about the matters in controversy between Morgan Stanley and the MacAndrews & Forbes companies that we are here about today?
A. No.
Q. You've not spoken to anybody at Mr. Solovy's office, for example?
A. No, no one.
Q. Have you spoken to anyone, other than your attorneys, about the lawsuit that you are here giving a deposition on?
A. I mentioned it to my wife.
Q. We'll exclude your wife.
A. I don't think so.
Q. Okay. I know you do maintain a

residence in Paris and you told us you have one in New York. You are still a U.S. citizen, right?
A. Yes.
Q. And where do you -- where -- are you registered to vote in the United States?
A. Yes.
Q. In what state?
A. New York.
Q. Do you -- do you have a driver's license in the United States?
A. Yes.
Q. Where is that issued?
A. New York.
Q. And how much time do you spend -- how much time do you spend -- well, withdrawn.
Recognizing that you only moved to Paris, I understand, in October, not a very long period of time, how -- how do you plan on allocating your time between the United States and New York?
A. Well, I have no plan. I mean, I will be where I need to be when I need to be there.
Q. How often have you come back to the

NOT A CERTIFIED COPY

018341

Page 22

United States since you went to -- went to Paris in October of 2004?
A. Twice.
Q. Twice.
Is this the second time?
A. Yes.
Q. Does your wife reside with you in Paris?
A. Yes.
Q. And does she reside with you in New York when you come to New York?
A. Yes.
Q. And do you -- one last question on this. Do you -- do you pay -- do you pay income taxes in the state of New York?
A. Yes.
Q. Do you pay city income taxes?
A. Yes.
Q. Do you receive -- do you receive mail at your address in New York City?
A. Yes.
Q. Where do you consider your -- to be your legal residence, or if you prefer, your domicile today, New York or Paris?
MR. MALLOY: Calls for a legal

Page 23

conclusion. You can ask him the facts about his -- what you seem -- about his --
MR. BEMIS: He can answer the question.
MR. MALLOY: -- domicile and you seem to have done that.
MR. BEMIS: Well, I'm trying to -- he can answer the question subject to your objection, of course.
DI MR. MALLOY: He's not here to answer legal questions, so I'll instruct him not to answer.
MR. BEMIS: Well --
Q. Just so we can get this clear, I'll only ask it one time. If counsel tells you not to answer a question, Mr. Fogg, are you going to follow those instructions?
A. Yes.
Q. Now, if I understood you correctly, you started work at Skadden Arps in 1966, I think you said; is that right?
A. That's correct.
Q. Did you go -- did you join the firm right out of law school?

Page 24

A. No.
Q. What did you -- where did you go to law school?
A. Harvard Law School.
Q. And when did you graduate?
A. 1965.
Q. And what did you do between 1965 and when you started at Skadden?
A. I worked for another law firm.
Q. And then -- have you continuously worked for Skadden, then, since 1966?
A. Yes, I have.
Q. And how long -- withdrawn.
When did you become -- I forgot to ask you, how old are you?
A. 64.
Q. When did you become a partner at Skadden?
A. I believe it was 1971.
Q. And --
A. Maybe '72. I'm just -- '71 or '72.
Q. It won't make a difference today whether it's '71 or '72. Either one is fine.
During -- during your practice as a partner, has your area of practice been

Page 25

mergers and acquisitions, as you described it earlier?
A. Yes.
Q. Has that been true -- was it true continuously from 1971 even up until today?
A. Yes, pretty much.
Q. Even though you are of counsel today, do you -- do you work a full -- a full-time schedule for the firm?
A. I work full-time.
Q. In 19 -- in 1997 and 1998, did you consider yourself a specialist in mergers and acquisitions?
A. In 1997 and 1998?
Q. '98.
A. '98.
Q. The time of the Sunbeam/Coleman transaction we'll be talking about today.
A. Yes. Specialist?
Q. Specialist.
A. Yes.
Q. Did you consider yourself highly respected in the field of mergers and acquisitions?
A. I hope so, yes.

NOT A CERTIFIED COPY

018342

Page 26

Q. When was the first time that you met Mr. Dunlap, Albert Dunlap, former chairman and chief executive officer of Sunbeam Corporation?
A. To the best of my recollection, it was in the 1980s, probably the first half of the 1980s.
Q. What were the circumstances under which you met him?
A. He went to work for a client named Sir James Goldsmith, for whom I did a lot of work.
Q. And could you just tell the jury very briefly who Sir James Goldsmith was?
A. He was -- he's now deceased. He was a European entrepreneur, who, during this time period, acquired several U.S. companies through a holding company of his.
Q. And what was -- what was -- what were the circumstances precisely under which you met Mr. Dunlap in connection with Mr. Goldsmith?
A. I don't have a precise recollection of a circumstance in which I met Mr. Dunlap, but it was -- he was hired by Mr. Goldsmith

Page 27

following Goldsmith's acquisition of Crown Zellebach, a Forest Products company, based on the West Coast.
Q. What, if anything, did you do -- well, strike that.
Did you do any legal work for Mr. Dunlap while he was working for Mr. Sir James Goldsmith?
A. For him personally?
Q. No, no. In his capacity as an employee of Mr. Goldsmith.
A. Yes, I did do work for Goldsmith or his holding companies in which Mr. Dunlap has worked.
Q. What kind of work?
A. Transactions in which -- I represented Goldsmith and his companies in transactions in which we sold off -- he sold off pieces of Crown Zellebach.
Other transactions including a transaction in which he swapped some assets for a big stake in the equity of a company called Hanson Industries, I believe.
Subsequent transactions which never took place but which Goldsmith and other

Page 28

parties tried to take over a British company called BAT. Mr. Dunlap was involved in that aborted effort.
MR. MALLOY: If I could just interrupt briefly. I'm sure Mr. Bemis doesn't want you to testify about any confidential matters you might have worked on for Sir James Goldsmith or Mr. Dunlap. Just keep that in mind when you're describing this for him.
A. Yes, all the above-mentioned transactions were publicly known at the time.
And there may have been others. I just don't have precise recollection.
Q. Did you work with Mr. Dunlap in connection with a company called General Oriental?
A. General Oriental was the Goldsmith holding company I alluded to earlier.
Q. And it was through General Oriental that Crown Zellebach was acquired, correct?
A. Correct.
Q. And then through a series of transactions various assets of Crown Zellebach were sold off or liquidated in some fashion,

Page 29

correct?
A. Correct.
Q. And you provided legal -- legal advice in connection with some of these transactions, I take it?
A. Yes.
Q. Did you ever represent Mr. Dunlap personally at any time in your career?
A. No.
Q. Did -- to your knowledge, did the law firm of Skadden Arps ever represent Mr. Dunlap personally?
A. No, although I do know that he claims we did, in a shareholder loss, put an appearance on his behalf.
Q. I take it, he was a -- he was sued along with other officers and directors --
A. Yes.
Q. -- of the company and Skadden represented all the parties in the case?
A. Yes, up to a point. I mean --
Q. All right. We'll set that aside.
In addition to -- well, withdrawn.
Did there come a time when you worked with Mr. Dunlap after he had left

NOT A CERTIFIED COPY

018343

Mr. Sir James Goldsmith's companies?
A. Yes.
Q. And when was that that you worked with Mr. Dunlap?
A. I can't put a precise time frame on it. It was after the Goldsmith attempt -- aborted attempt to take over BAT, which I believe was in the late 1980s. Not too long after that.
Q. Did you work at all with Mr. Dunlap while he was the chief executive officer of Scott Paper?
A. Yes.
Q. And in what -- what was just the general nature of the work that you did with Mr. Dunlap while he was the CEO of Scott Paper?
A. Well, the principal transaction that I recall was Scott Paper's merger with Kimberly-Clark. There was a previous transaction in which Scott Paper sold its interest in a paper company, the name of which is escaping me, to another company which was principally handled by one of my partners.
Q. And was -- was Scott Paper a Skadden

client -- drawn.
Was Scott Paper a Skadden Arps client at the time that you performed this work, or did Mr. Dunlap personally retain you to represent Scott Paper?
A. Scott Paper had been a Skadden Arps client for a number of years before Mr. Dunlap went to Scott Paper.
Q. The surviving entity in the merger that you described with Scott Paper and Kimberly-Clark was Kimberly-Clark, correct?
A. Correct.
Q. And is it your understanding that Mr. Dunlap's next job -- withdrawn.
When you worked with Mr. Dunlap on -- while he was employed by Scott Paper, he was the chief executive officer, correct?
A. He was, yes.
Q. And was he, at that time, to your knowledge, largely hailed as turning around Scott Paper?
A. Yes.
Q. Or is restructuring a word that was used in connection with Mr. Dunlap's work at Scott Paper?

A. I don't specifically recall, but he was regarded as the darling of Wall Street for having turned around Scott Paper and made the shareholders a lot of money.
Q. And was the next -- when did you next work with Mr. Dunlap after the merger of Scott Paper and Kimberly-Clark?
A. After he joined Sunbeam Corporation.
Q. Was -- at the time that Mr. Dunlap joined Sunbeam Corporation, I think the record will fairly reflect it was in 1996 -- did you, that is Skadden Arps, represent Sunbeam Corporation?
A. Sunbeam Corporation was a client for a period of time before Mr. Dunlap joined them.
Q. Were you -- were you one of Sunbeam Corporation's attorneys before Mr. Dunlap became the chief executive officer of Sunbeam?
A. No.
Q. Had you done any work for Sunbeam Corporation before Mr. Dunlap became Sunbeam's chief executive officer?
A. I had personally not done any work for Sunbeam.

Q. Now, after -- after Mr. Dunlap became the chief executive officer, did you begin to do work for Sunbeam Corporation?
A. Yes.
Q. And tell the jury how that came about.
A. Well, I'm not specifically -- I don't specifically recall, except somebody from Sunbeam called me. I don't know whether it was Mr. Dunlap or someone else.
Q. And about when was that after Mr. Dunlap joined Sunbeam?
A. I honestly don't recall.
Q. What was your first -- what was your first legal assignment for Sunbeam Corporation after -- after you got a call?
A. I have to stop here and think about privilege and discuss it with my lawyer.
Q. Let me ask the question a little simpler. Maybe I can avoid it for you. If I can't, Mr. Malloy --
A. I understand Sunbeam Corporation, which is now called American Household, has not waived the privilege.
Q. I'm not --

NOT A CERTIFIED COPY

0183414

Page 34

A. Therefore, I have to respect Sunbeam.
Q. I'm not trying to get into any of these privileged conversations, at least at this point.
And just, in general terms, what was the first legal matter that you recall addressing on behalf of Sunbeam Corporation, without getting into specific communications with the client?
MR. MALLOY: If you want to break and talk about that, we can. Maybe we should. Let's -- let's go off the record.
(Discussion off the record.)
MR. BEMIS: Do we need the question reread?
THE WITNESS: No.
MR. MALLOY: Sure.
MR. BEMIS: I need the question reread, even if you remember it.
(Record read.)
MR. BEMIS: Would you, please, read it back and show it repeated in the transcript.

Page 35

(The following record was read:
"Q. I'm not trying to get into any of these privileged conversations at least at this point.
And just, in general terms, what was the first legal matter that you recall addressing on behalf of Sunbeam Corporation, without getting into specific communications with the client?")
A. I was asked to look at a number of possible acquisition candidates, without naming names.
Q. And when did this occur?
A. I wouldn't put a time frame on it. It was after he arrived in 1996. It could have been late '96 or early '97 or sometime thereafter. I just don't recall.
Q. Let me show you a document that has been marked as Morgan Stanley Exhibit 109.
MR. BEMIS: We have a copy problem. We don't have one copy. Is it possible, Chris, we can take a short break and have a copy of this made?
MR. MALLOY: Sure.

Page 36

(Recess taken.)
MR. BEMIS: Please mark Exhibit 109, Ms. Reporter, and give it to the witness.
(Defendant's Exhibit 109, Skadden chronology, marked for identification, as of this date.)
Q. Mr. Fogg, do you have in front of you Exhibit MS 109?
A. I have it in front of me.
Q. Have you --
MR. MALLOY: I instruct him not to answer with his mouth full.
Q. Have you ever seen this document before?
A. I don't remember.
Q. Did you assist at all in the -- in the preparation of a chronology to the Securities And Exchange Commission in the spring of 1998 concerning certain matters related to Sunbeam Corporation?
A. Apart from this document, I have no independent recollection.
Q. Having reviewed the document, does it, in any way, refresh your recollection of whether you did have a part in the preparation

Page 37

of a chronology to the Securities And Exchange Commission?
A. Doesn't really refresh my recollection.
Q. Looking at the document, can you, if you want to -- if you turn to -- I'm using the page numbers which are Bates numbers on the lower right-hand side. Looking at page CPH 1042291, will you tell me when you are there?
A. I'm there.
Q. There are entries -- there is an entry in March or April of 1997. And do you see that?
A. Yes.
Q. Would you, please, just read it to yourself.
(Witness reading document.)
A. I did.
Q. Did you have -- did you participate in any matters for Sunbeam relating to a possible sale of Sunbeam as referred to in that paragraph to the SEC?
MR. MARKOWSKI: Could you read the question back for me, please.
(Record read.)

NOT A CERTIFIED COPY

018345

Page 38

MR. MARKOWSKI: Object to the form.
MR. MALLOY: Do you understand the question?
THE WITNESS: Yes
A. The answer is I believe I did.
Q. Just, in general terms, what did you do? What work -- withdrawn.
In general terms, what was your participation?
A. I don't specifically recall, but I do recall in this time frame Morgan Stanley was retained by Sunbeam to explore, among other things, the possibility of a sale of Sunbeam.
Q. Did you have any -- withdrawn.
When you started working for Sunbeam, as you've described for us, had you had any discussions with Morgan Stanley about Sunbeam's interest in a possible sale of the company?
THE WITNESS: Could you read the question back.
MR. BEMIS: It's all right. I don't know if it's the noise or -- is the noise bothering you?

Page 39

THE WITNESS: No.
MR. BEMIS: Okay. Sometimes it's hard -- it is hard to hear.
(Record read.)
MR. BEMIS: Let me ask the question again.
Q. Did you have any discussions with Morgan Stanley at the same -- about the time that you were working with Sunbeam in the manner you've described about a possible sale of Sunbeam?
MR. MARKOWSKI: Object to the form.
A. I participated in at least one meeting where Morgan Stanley people and Sunbeam people were present, and that possibility was discussed.
Q. Was this meeting that you just described your first face-to-face meeting with Sunbeam -- Sunbeam and Morgan Stanley at which a possible sale of Sunbeam was discussed?
A. Together?
Q. Yes.
A. I believe so.
Q. And where -- where was this meeting?
A. It was at -- it was at Sunbeam in

Page 40

Del Rey Beach, Florida.
Q. Who was present at the meeting?
A. Well, I remember Messrs. Dunlap, Kersh and Fannin all being there for Sunbeam. And the principal guy from Morgan Stanley was Bill Strong. I don't remember who else.
Q. Did you know Bill Strong at that time?
A. I knew Bill from before, yes.
Q. How long had you known Bill Strong?
A. I don't really remember. A number of years. We worked on things together.
Q. At the time -- at the time of this meeting in Del Rey Beach -- withdrawn.
Looking at the chronology that I put in front of you that was on the Skadden letterhead, MS 109, can you pinpoint the date of the meeting or the month of the meeting?
A. I can't really pinpoint it.
MR. MARKOWSKI: Object to the form.
A. No.
Q. Were you -- withdrawn.
How long did this meeting last in Del Rey Beach?
A. I recall being there the better part

Page 41

of the working day.
Q. Were there any other attorneys from Skadden Arps, other than yourself at the meeting?
A. Rich Easton was there.
Q. Was Mr. Easton, at the time of this meeting, a partner at Skadden?
A. Yes.
Q. Other than the people you've identified for us, Mr. Dunlap, Mr. Kersh and Mr. Fannin for Sunbeam, Mr. Strong from Morgan Stanley and yourself and Rich Easton, did anyone else attend this meeting?
A. I think there were other people from Morgan Stanley, but I don't remember who they were exactly. I don't remember if anyone else from Sunbeam was there. I kind of doubt it, but I'm not sure.
Q. And you believe that the meeting took the better part of a working day?
A. Yes. I remember starting in the morning and we had lunch and it went on into the afternoon.
Q. Were there documents used at the meeting?

NOT A CERTIFIED COPY

01834G

Page 42

A. I don't recall.
Q. Let me show you a document and ask if either this document -- if this document was used at the meeting.
MR. BEMIS: Ms. Reporter, could you mark this document as MS 541.
(Defendant's Exhibit 541, Project Laser Discussion Materials for September 11, 1997 conference call, marked for identification, as of this date.)
THE WITNESS: What's the question? Sorry.
Q. I think the question -- there was no question pending.
I've handed you a document we've marked as Morgan Stanley 541. Do you have that in front of you?
A. I do. 541, I have it, yes.
Q. Have you seen that document before?
A. I don't remember.
Q. And in looking at this document, does that, in any way, refresh your recollection of whether you reviewed a document at the time of your meeting in Del Rey Beach, as you described it?

Page 43

A. No, it doesn't.
Q. Is any of the handwriting on this document yours?
A. I haven't looked at every single page, but the handwriting on the first page is certainly not mine. I don't see my handwriting on any of it.
Q. Okay. You can hand it back to me.
Did you -- let me show you another document which we're going to mark as Morgan Stanley Exhibit 543.
A. I would note this is a document which purports to be for a conference call. Somebody wrote the names of the participants in the upper right and didn't include Skadden.
MR. BEMIS: Ms. Reporter, could you mark that, please, ma'am.
(Defendant's Exhibit 543, Memorandum dated 7/25/97, from Fannin to Strong, marked for identification, as of this date.)
Q. I've handed you what's been marked as Exhibit 543. Do you have that in front of you?
A. Um-hum.

Page 44

Q. Would you -- you have to answer yes or no, just for writing down purposes.
Do you have it in front of you?
A. I have it, yes.
Q. Okay, sir --
A. Sorry.
Q. -- this meeting -- this document refers to a possible meeting with you and Mr. Easton in, it looks like, either July or the early part of August of 1997.
Do you -- do you recall -- have you ever seen this document before?
A. I don't recall.
Q. Does this, in any way, refresh your recollection of when your first meeting was with Sunbeam?
A. Actually, I think it does. The reference to a July date brings back memories of how hot and muggy it was when we had the meeting. So, the summer would probably have been the time frame when we had the meeting.
Q. Okay. So, the meeting you're referring to is the meeting where Morgan Stanley was present as you've identified, correct?

Page 45

A. Yes.
Q. Now, with that time frame in mind, July, perhaps, of 1997, could you tell us what -- just the general subject matter of the meeting that took the better part of a working day?
A. The general subject matter was reviewing the strategic alternatives available to Sunbeam.
Q. How did the meeting progress, that is, you know, how did it start and what was the general manner in which the business was discussed throughout the day?
A. Let me just ask my counsel something about a privilege.
(Discussion off the record.)
MR. MALLOY: I think we would consider that to be a privileged conversation to the extent it involved communications related to legal advice. So --
MR. BEMIS: Morgan Stanley was at the meeting.
MR. MALLOY: Yes, they were acting as Sunbeam's financial advisors, which

NOT A CERTIFIED COPY

018347

Page 46

doesn't break the privilege. I'm sure Morgan Stanley takes that position as well.
But, subject to that, I think the witness can testify generally about what occurred at the meeting, but not as to the specific conversations that he was involved in, if he recalls any.
MR. BEMIS: So, you're going to take the position in this deposition that, if he had a conversation with Morgan Stanley where Morgan Stanley was present --
MR. MALLOY: Depends on the nature of the conversation.
MR. BEMIS: We're not going to go forward with the deposition if that's the position you're going to take.
MR. MALLOY: And the capacity in which Morgan Stanley was serving at the time.
MR. BEMIS: Well, let's just get a clear record. You're going to instruct the witness not to answer --
MR. MALLOY: It depends on what the question and what his -- and what is it

Page 47

that would be the subject of his testimony.
MR. BEMIS: What was the last question that was pending, ma'am, before we hit the point of an objection?
MR. MALLOY: My point is, to the extent Morgan Stanley was present when communications between Sunbeam and Mr. Fogg occurred, we don't believe that that would break the privilege. And I think that's fairly elementary.
MR. BEMIS: What was the question that was pending, ma'am?
(Record read.)
MR. BEMIS: Let me ask -- let me ask a fresh question so we can get an objection if we're going to get one.
Q. First of all, did Morgan Stanley -- did Morgan Stanley speak at the meeting?
A. Yes.
Q. Did you speak at the meeting?
A. Yes.
Q. Did Mr. Dunlap speak at the meeting?
A. Yes.
Q. How did the meeting begin?

Page 48

A. I don't recall specifically how it began.
Q. Now, by that I don't mean pleasantries. I mean, generally, how did the meeting by topic, if you will, begin?
A. As I said before, it was a meeting to discuss strategic alternatives. I don't know what particular alternative was discussed first, second or third. But the whole range of alternatives was discussed from the sale of the company to buying another company, et cetera. And it was a -- I'm probably volunteering, it was sort of a free-for-all discussion. It wasn't a formal Morgan Stanley presentation of a book and slide show and everything. It was -- we were sitting around a conference room table just brainstorming.
Q. And was there one strategic alternative as opposed to another that predominated the conversation during the working day?
A. I don't -- I don't recall. I believe it was Sunbeam management's preference to see if they could find a buyer for the company. That had been Mr. Dunlap's modus

Page 49

operandi before.
Q. What do you mean by that had been his modus operandi before?
A. Well, at Scott Paper he came in, sold off chunks, fired people, got the stock price up and then sold it to Kimberly-Clark. I don't think it was any secret that's what he was hoping to do with Sunbeam.
MR. BEMIS: Could you read his answer back. I'm sorry. You trailed off a little bit.
(Record read.)
Q. Did he say that at the meeting?
A. I don't remember.
Q. Did it -- was there any discussion of buying companies at the meeting?
A. There was a discussion of buying companies. I don't know if it was this meeting or a different meeting. I just don't recall.
Q. Did Mr. Dunlap say anything about buying other companies?
A. I'm sure he did. But I don't have a recollection, sitting here today, what he said.

NOT A CERTIFIED COPY

018348

Q. Did you --
A. If I did, I probably wouldn't be able to tell you because it's privileged.
Q. Did Mr. Strong say anything at the meeting?
A. Oh, I'm sure he did, yes, but I don't recall -- I don't recall who said what, really.
Q. So, with regard to anyone -- withdrawn.
With regard to other Morgan Stanley people who you believe were there, do you recall anything that they said?
A. No, not really.
Q. And do you recall anything that you or Mr. Easton said?
A. No, I don't really recall exactly what we said.
Q. Do you recall any of the general substance of what you said without -- recognizing that you might not remember your exact words.
A. I really don't. I really don't.
Q. How was the meeting -- how was -- strike that.

As I understand your testimony, there wasn't a booklet of materials, for example, that you recall being handed out?
A. There may have been, but I don't recall.
Q. And do you recall overhead slides being discussed?
A. I recall they were not used.
Q. So, this was -- was this more of a working session, as you put it, I think earlier?
A. Brainstorming.
Q. Brainstorming session?
A. Yes.
Q. There was no written forma agenda -- well, strike that.
Was there a written formal agenda, that you recall?
A. Not that I recall.
Q. How was the meeting left at the end of the working day?
A. I don't really remember.
Q. I take it that you and Mr. Easton did fly back to New York after the meeting was over?

A. I flew back to New York. I don't know where Rich went. He works in our Delaware office. I don't remember if he flew back with me or somewhere -- or with somebody else.
Q. What's the next thing that you recall happening after this first meeting which -- with Sunbeam and Morgan Stanley that you've placed in July of 1997 or thereabouts?
MR. MARKOWSKI: Object to the form.
A. I mean, the next specific recollection I have was a call I received from Mr. Fannin, general counsel of Sunbeam, sometime in late 1997, but I know there were a lot of stuff happened between July and December that I don't specifically recall.
Q. And just, in general -- withdrawn.
You said you got a phone call from Mr. Fannin?
A. Yes.
Q. And when did you say that was, late December?
A. I said it was late 1997, probably in December.
Q. And what was the subject matter of

the phone call, without telling me exactly what Mr. Fannin said or you said in the call, just the subject matter?
MR. MALLOY: Generally.
A. Generally? How general -- excuse me. I don't know what my counsel means by generally.
MR. MALLOY: Then let's --
THE WITNESS: I need to talk about privilege again.
MR. BEMIS: Okay.
(Discussion off the record.)
MR. BEMIS: Okay. Can you answer the question?
A. Mr. Fannin called me to say that Sunbeam was thinking of acquiring Coleman. And that was the subject of the call.
Q. Were you asked to do anything?
A. Yes.
Q. What were you asked to do?
A. Well, Mr. Fannin knew that we had represented MacAndrews & Forbes, which owned Coleman. And he wanted to make sure that we could represent Sunbeam in the transaction, so we talked about getting a waiver from

NOT A CERTIFIED COPY

018349

MacAndrews & Forbes.
Q. Now, at the time that you had this first meeting in Del Rey Beach that you described earlier where Morgan Stanley was present, I think the brainstorming meeting, did Skadden represent MacAndrews & Forbes?
A. We've represented them for some time, yes.
Q. To your --
A. To my knowledge, we represented them before that meeting and after that meeting.
Q. To your knowledge, does Skadden still represent MacAndrews & Forbes?
A. Yes.
Q. Are they presently a client of the firm?
A. Yes.
(Mr. Schwartz entered the deposition room.)
Q. All right. Did you proceed, then, to get -- to get a waiver?
A. Yes.
Q. Who did that?
A. I called my partner, Frank Gittis, who is the partner who interacts most directly

with MacAndrews & Forbes, and we talked about it. And he said he would speak to them and see if they had a problem.
Q. Did you eventually obtain a waiver?
A. Frank said he obtained their approval, but he didn't put anything in writing.
Q. All right. Using the December 1997 benchmark that you've just given us and then going back to the July brainstorming meeting, what, if any, involvement did you have with Sunbeam and potential strategic alternatives during that time period?
A. I don't have a specific recollection of much, except my partner Rich Easton and I looked at several potential acquisition candidates, without naming names, and rendered advice with respect to that.
Q. Was this Black & Decker and Maytag that you testified to earlier in your earlier deposition?
THE WITNESS: Can I answer that question?
MR. MALLOY: Yes, you can.
A. Yes.

Q. Did you have any communications with Morgan Stanley between the date of the brainstorming meeting which you placed in July of 1997 up to the date that Mr. Fannin called you in December of 1997?
A. I'm certain that I did, but I don't recall when or the substance of them.
Q. Do you recall during that same time period receiving any documents from Morgan Stanley?
A. Sitting here today, I don't recall.
Q. Do you recall anything at all unusual or out of the ordinary that, in your -- in that time period that involves Morgan Stanley?
A. Not really.
MR. MALLOY: I'm just wondering if there's a way to move this along. You seem to be rehashing a lot of what he's already testified to.
MR. BEMIS: Well, if I thought there was a way to just use his other deposition in the other proceeding, that might have been an option, but I'm not sure how we would do that.

Would you, please, mark this, Ms. Reporter -- excuse me -- this has been previously marked.
Q. Let me show you what's been marked as Morgan Stanley Exhibit 82. Excuse me. I misspoke. It's CPH Exhibit 82.
MR. MARKOWSKI: Do you have a copy of that for us, Mr. Bemis?
MR. BEMIS: After you see that, Mr. Markowski, can I have it back. I only have three of these big ones. It's one of your exhibits. You probably have it in your box.
MR. MARKOWSKI: I don't have it memorized.
MR. BEMIS: I don't have it memorized either. But I assume you have it in one of your boxes. If you don't, I'll give you another copy.
Q. Do you have a copy of CPH Exhibit 82 in front of you?
A. Yes.
Q. Have you ever seen that document before?
A. I don't remember.

NOT A CERTIFIED COPY

018350

Page 58

Q. There's a cover memorandum right behind page 1.
A. I see it.
Q. Page --
A. I'm cc'd on it.
Q. Yes, you are, sir.
Let me put the page number on the record so it's clear. CPH 0469478. And, yes, you are cc'd.
Does -- and after having reviewed the document, do you remember any portion of the document?
A. How long is the document?
MR. MALLOY: Do you want him to flip through every page, or is there specific issues you want to direct his attention to?
MR. BEMIS: I want to have him just take a general review of the document to see if it, in any way, is going to refresh his recollection about whether he participated in any of the information inside of the document.
Q. Just let me know when you're done.
A. You've asked a question that forces

Page 59

me to look at every page.
Q. Okay. Well, let me withdraw the pending question and let me see if we can move it along for you.
Having looked -- having looked at the document and whatever pages you flipped through, does it, in any way -- did you have, at any point, a role in preparing what is referred to as an information memorandum?
MR. MARKOWSKI: Object to the form.
A. I don't recall.
Q. In the period between -- in the period between this July 1997 meeting, the brainstorming meeting and the time Mr. Fannin called you in late 1997, did you receive anything from either Sunbeam or Morgan Stanley in the nature of an information memorandum such as you have in front of you, CPH 82?
A. I don't specifically recall. Probably, it's possible. I don't --
Q. Have you seen documents like this before in the course of --
A. Many.
Q. -- mergers --
A. Many.

Page 60

Q. What are they called?
A. Various things. Selling memorandum, whatever. That's what this appears to be. I do not recall right here today whether I participated in this preparation or whether -- if I saw it.
Q. Is it customary, based on your many years of experience, to have something in the nature of a selling memorandum when a company is considering a strategic alternative or option of selling the company?
A. Yes.
Q. Is it, likewise, similar to have an information memorandum in the nature of CPH 82 if the company is interested in making an acquisition?
A. Not really.
Q. You can hand that back to me. All the way up -- withdrawn.
I'd like you now to move toward to the end of 1997 around the time of Mr. Fannin's telephone call.
Did Skadden Arps put together an internal team to work on a possible acquisition by Sunbeam of Coleman?

Page 61

MR. MARKOWSKI: Could you read the question back, please.
(Record read.)
A. I don't recall whether we did so at that time, because I was informed pretty soon thereafter that the deal was dead.
Q. Who told you the deal was dead?
A. Mr. Fannin.
Q. Was this in a face-to-face conversation or a telephone call?
A. No, he called me.
Q. And do you recall this being before the -- before year-end 1997?
A. Yes.
Q. What did Mr. Fannin say to you about -- and what did you say about the deal being dead?
MR. MALLOY: Are you asking him to disclose this conversation with Sunbeam's general counsel?
MR. BEMIS: Well, he just said that Mr. Fannin said the deal was dead. I'm just asking what he said about the deal was dead. I'm not asking him for legal advice. At this point, it seems like a

NOT A CERTIFIED COPY

018351

fact statement that he's already disclosed.
(Discussion off the record.)
A. He told me that the principals had met and they could not reach a meeting of the minds on price, and they had parted company.
Q. Was -- strike that.
Did he identify who the principals were?
A. Yes.
Q. Who?
A. It was Mr. Dunlap, and I'm not sure if anyone else was there from Sunbeam. I think, probably, Kersh and Fannin were there, but I couldn't swear to it. And Mr. Perelman from MacAndrews, Mr. Goudis from MacAndrews. I'm not sure if anyone else was there from MacAndrews. But those were the principal people.
Q. Did you ever talk to anyone at MacAndrews & Forbes about this meeting?
A. Ever?
Q. Yes, ever.
A. Yes.
Q. Who?

A. I remember talking to Howard Goudis about it.
Q. When did you speak to Howard Goudis?
A. Much later, after -- much later, after Sunbeam had acquired Coleman, after Mr. Dunlap had been removed from his position, after the events that thereafter unwound.
Q. Did Mr. Fannin tell you anything else about the meeting that -- other than what you have told me?
A. I think he told me Michael Price was there. I'm not sure.
Q. Did he tell you -- did he tell you anything else about the meeting? And, again, now I'm referring to the meeting with Mr. Perelman and Mr. Goudis.
A. I think he told me the meeting was quite heated.
Q. What did he say about that?
A. I don't remember.
Q. What did you say to Mr. Fannin?
A. I said, okay, too bad, I think.
Q. Anything else that you recall?
A. No.
Q. Did you exchange any documents or

correspondence about the meeting that Mr. Fannin was describing for you?
A. Not that I recall.
Q. And you said some time later, Mr. Goudis, he gave you some information about this meeting between Mr. Dunlap and Mr. Perelman, correct?
A. Yes.
Q. What did he tell you?
THE WITNESS: This is not privileged, right?
A. He told me he was afraid Mr. Dunlap was going to have a heart attack. He got so angry and incensed at Mr. Perelman's suggested purchase price. Then he said that he had told Al to calm down. This is, you know, something you shouldn't get this excited about.
Q. Anything else?
A. No.
Q. What did you say?
A. I pretty much listened. I didn't say much of anything, that I recall.
Q. Now, in the -- this conversation that you had with Mr. Goudis, this was in reference to the Sunbeam offer to purchase

Coleman, correct?
A. Yes.
Q. And it was in connection with, indeed, the transaction that Mr. Fannin had called you about earlier, correct?
A. Yes, it was about the meeting that he told me had taken place where the parties couldn't come to a meeting of the minds.
Q. Did you -- withdrawn.
Up to the time of the meeting with Mr. Perelman -- if it helps you, it was December 18, 1997, based on prior testimony -- had you participated in the preparation of any term sheets for a transaction between Sunbeam and Coleman?
A. Not that I recall.
Q. Had you reviewed any, even if you didn't participate in their preparation?
A. I don't remember.
Q. At the time -- withdrawn.
At the end of the year, that is 1997 -- withdrawn.
Have you ever heard the term data room?
A. Have I what?

NOT A CERTIFIED COPY

018352

Q. Heard the term data room?
A. Certainly.
Q. What is -- tell the jury what a data room is.
MR. MARKOWSKI: Object to the form.
A. A data room is a -- used to be a physical location in a lawyer's office or an accountant's office for a company seeking to be acquired, they would deposit non-public information about itself to be inspected by potential buyers under -- usually under a confidentiality agreement.
Now there are such things as electronic data rooms, but that's not what we're talking about in those days.
Q. Had a data room been set up by Sunbeam, to your knowledge, by year-end 1997?
A. I have no idea.
Q. Was a data room set up at some point?
A. I don't remember. By Sunbeam, I don't remember.
Q. I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 418. Do you have that exhibit in

front of you, sir.
A. Um-hum, yes.
Q. Have you ever seen it before?
A. I don't remember it.
Q. Did you have any role in drafting any press releases -- withdrawn.
Did you have a role in drafting this draft of a press release?
A. I don't remember.
Q. Okay. Can you hand it back.
After the deal was announced dead by Mr. Fannin in late December, I think you said, 1997, did you discuss that fact with Mr. Dunlap at any point?
A. I don't believe I did.
Q. What's the next thing that -- well, withdrawn.
There comes a point in time when the deal is no longer dead, right?
A. Yes.
Q. When did you first have knowledge that discussions were, at least, resuming between the parties?
A. I believe it was sometime in early 1998, but I couldn't pinpoint it.

Q. Now, and what were the circumstances under which you learned the discussions were on again?
A. I don't remember who called to let me know. I just don't --
Q. What was your next involvement in the Sunbeam/Coleman transaction?
A. Well, I know that I got Rich Easton involved and he, in turn, got Allison Amorison involved, both from our Delaware office. I had not previously worked with Allison. I know we looked at a lot of public documents about Coleman, analyzed its indebtedness, did that kind of analysis. I don't recall all of the specifics of that.
MR. MALLOY: I don't think he's asking you for the specifics of the work that was performed.
A. Well, Skadden did that work and I was involved in it and so was Rich Easton and so was Allison. There was -- agreements were drafted pursuant to which the acquisition would be made, negotiated.
Q. Before the agreements were drafted, did you have any role in the drafting of the

confidentiality agreements between the parties?
MR. MARKOWSKI: Object to the form.
A. I don't remember.
Q. Let me show you -- strike that.
You did participate in the drafting of the merger agreements, correct?
A. In the negotiations, I did participate. I'm not sure if I put pen to paper or not.
Q. Did you read them before they were signed?
A. Yes.
Q. Did you read them carefully?
A. Yes.
Q. Let me show you -- let me show you first an exhibit which has previously --
(Discussion off the record.)
(Recess taken.)
Q. I'm going to hand you what's been marked as Morgan Stanley Exhibit 93 in previous depositions. I only have two clean copies of this, so I'm sorry but that's all I have. Mr. Markowski may have a copy in his box, I don't know.

NOT A CERTIFIED COPY

018353

MR. MARKOWSKI: We'll share.
MR. BEMIS: Or you can share, if you could. I don't have many questions on it.
Q. Do you have the Exhibit MS 93 in front of you?
A. I do.
Q. Did you look at -- strike that.
When was the last time you looked at this agreement?
A. I looked at it very briefly yesterday.
Q. Okay. And you did that in preparation for your deposition?
A. Yes.
Q. Morgan Stanley Exhibit 93 is one of the two mergers agreements that were part of the Coleman/Sunbeam transaction, correct?
A. Yes, there were two.
Q. And this is one of the documents that you reviewed carefully before they were executed by the parties, correct?
MR. MARKOWSKI: Object to the form.
A. Yes.
Q. Look at, if you would, page 18 and

19. And I'm going to address your attention briefly to section 6.7.
A. 18 and --
Q. Pages 18 and 19, section 6.7 --
A. Yes.
Q. -- is entitled, "access to information, confidentiality."
A. Yes.
Q. Do you see that?
A. Yes.
Q. At the end of that section, there's reference to two confidentiality agreements. Tell me when you are there.
A. Yes.
Q. Did you -- do you see the reference to the agreements dated February 4, 1998 and February 23, 1998?
A. I see the reference.
Q. Did you have any participation in the drafting of those agreements as referenced in section 6.7?
MR. MARKOWSKI: Object to the form.
A. The confidentiality agreements?
Q. Yes, sir.
A. I don't remember.

Q. At the time that you reviewed the merger agreement, MS 93, that you have in front of you, did you take any steps to verify that these two agreements as identified in section 6.7 had been executed by the parties?
A. I don't recall.
Q. What would be the normal practice?
MR. MARKOWSKI: Object to the form.
A. The normal practice?
Q. Yes, sir.
A. I'm not sure I know what you mean.
Q. Well, as counsel for one of the parties, you were reviewing, as an attorney, the documents here, the merger document, you're reading it carefully. What would be your normal practice to determine, for example, whether the agreements referred to had, indeed, been executed?
MR. MARKOWSKI: Object to the form.
A. My normal practice?
Q. Your normal practice, right, sir
MR. MARKOWSKI: Same objection.
A. Not the normal practice?
Q. We'll start with your normal practice.

MR. MARKOWSKI: Excuse me. Same objection.
A. My normal practice would be to assume that they had been executed and that someone had made sure of that.
Q. And when you say someone had made sure of that, that would be someone on the Skadden team representing Sunbeam?
MR. MARKOWSKI: Object to the form.
A. Someone on the Sunbeam team. Could be Skadden, could be Fannin, could be somebody working for the company. But somebody had made sure they were executed.
Q. Have you ever -- withdrawn.
Have you ever been told by anyone that either of the two agreements, that is, the February 4th or the February 23rd, 1998 confidentiality agreements referenced in 6.7, were not executed by the parties?
MR. MARKOWSKI: Object to the form.
A. Not in a non-privileged setting.
Q. Were you -- were you told something in a privileged setting?
MR. MALLOY: You're not asking him to --

NOT A CERTIFIED COPY

18354

Page 74

MR. BEMIS: Yes or no.
MR. MALLOY: You're not asking him to discuss what was --
MR. BEMIS: No.
MR. MALLOY: -- discussed in his prep sessions. So, excluding that.
MR. BEMIS: Well, you may have answered the question, then. That makes it --
Q. Can you answer my question? Were you told in a privileged setting, just yes or no?
A. Told what?
Q. Whether there was any evidence -- whether these agreements had or had not been signed.
MR. MARKOWSKI: Object to the form.
MR. MALLOY: Yes or no?
THE WITNESS: Could I have the question read back.
MR. BEMIS: Fair enough.
(Record read.)
Q. Have you been told, in what you referred to as a privileged setting, whether there was any information to the effect that

Page 75

the confidentiality agreements, either one of them, had been signed?
A. Yes.
Q. And when was this?
A. Recently.
Q. Recently during a session with your attorneys in preparing for the deposition?
A. Yes.
MR. MALLOY: Now, I assume going forward you're not going to -- you can -- the witness can understand that nothing that you're asking is asking questions about what he learned or discussed yesterday. So, we can --
MR. BEMIS: I'm not asking anything about what he --
MR. MALLOY: For your purposes, you can get a cleaner record and we don't have these sort of digressions.
MR. BEMIS: I'm not asking about any conversation with you.
THE WITNESS: Okay.
MR. BEMIS: And I have not tried to do that.
MR. MALLOY: You can exclude those

Page 76

altogether from your --
THE WITNESS: Expunge them from my memory, yes.
Q. Let me show you Exhibit 117. And, again, I apologize but I only have two clean copies of that one as well.
Do you have Exhibit MS 117 in front of you?
A. I do.
Q. Is this one of the two merger agreements that you reviewed as part of the Sunbeam/Coleman transaction?
A. It appears to be, yes.
Q. And did you review it in the same degree of detail that you reviewed Exhibit MS 93?
A. I would have reviewed them both the same -- the same degree of detail.
Q. If you would turn to page 29, section 7.2.
A. I'm there.
Q. All right. In that section, sir, there is, again, a reference to the two confidentiality agreements dated February 4, 1989 and February 23, 1998. Do you see that?

Page 77

A. I do.
Q. Do you understand that the confidentiality agreements that is referenced in section 7.2 of this exhibit, MS 117, are the same confidentiality agreements referred to in MS 93, what we discussed just a moment ago?
MR. MARKOWSKI: Object to the form.
A. I have no understanding of that issue, except that the documents speak for themselves and say they are the same.
Q. Well, did anyone come to your attention in your review of the merger agreements, and in particular here MS 117, to suggest that the documents are different, that is, it's a confidentiality -- that's a terrible question. Let me withdraw it and try again.
In your review of the merger agreements, MS 117, did anything come to your attention that the confidentiality agreements referenced in section 7.2 were different from those referenced in Exhibit MS 93?
MR. MARKOWSKI: Object to the form.
A. No.

NOT A CERTIFIED COPY

Page 78

Q. You can hand that back to me.
You said in your practice you assumed that someone would have checked to determine whether the confidentiality agreements had been executed; is that correct?
MR. MARKOWSKI: Object to the form.
A. I don't think that's exactly what I did say.
Q. Then tell me exactly what you did say, because I don't want to misstate what you said.
A. I said it was my practice to assume that -- assume that somebody else did.
Q. Was there a person on the Skadden team that -- in particular that you would identify as being the person, if it was a person at Skadden, who would have seen these documents were executed?
MR. MARKOWSKI: Object to the form.
A. I don't -- I don't know. I don't believe so. I just don't know. I don't recall.
MR. BEMIS: Please mark the following document as Morgan Stanley Exhibit 533.

Page 79

MR. MALLOY: I think Mr. Fogg has a clarification to his answer to the last question.
Q. Okay.
A. Well, the clarification --
Q. Please.
A. The clarification is simply that confidentiality agreements have become so standardized that it is not infrequently the practice to have the company or the company's in-house attorneys or even the investment bankers deal and write the confidentiality agreements without outside lawyers like Skadden Arps even being involved.
Q. Not even being notified?
A. Right.
Q. Okay. Please look at Morgan Stanley Exhibit 533, which the court reporter is marking now
(Defendant's Exhibit 533, Letter dated 2/3/98, from Fannin to Shapiro, marked for identification, as of this date.)
A. Um-hum. I have it in front of me.
Q. Thank you, sir.

Page 80

Did you receive a copy of this -- of this letter from Mr. Shapiro dated February 3, 1998 from Mr. Fannin?
MR. MARKOWSKI: Excuse me.
THE WITNESS: Sorry.
MR. MARKOWSKI: I think you misspoke, Mr. Bemis.
MR. BEMIS: What was the question?
(Record read.)
MR. BEMIS: I did misspeak. Thank you.
Q. Did you receive a copy of this letter from Mr. Fannin dated February 3, 1998 to Mr. Shapiro, the executive vice president general counsel of the Coleman company?
MR. MARKOWSKI: Object to the form.
A. It's indicated that a copy was sent to me. I'm listed as a cc.
Q. Other than that, do you --
A. Apart from a reference, I have no recollection.
Q. Okay. You may hand it back to me.
Having looked at Morgan Stanley Exhibit 533, does it, in any way, refresh your recollection whether you had any involvement

Page 81

at all with the drafting of the confidentiality agreements?
A. The substance of that document suggests that I did not.
Q. Does the substance of that document suggest that you, at least, saw one or more of the confidentiality agreements?
A. Yes.
Q. As you sit here today, do you have any independent recollection of seeing any of the confidentiality agreements referenced in the merger agreements, MS 117 and 93? Let me finish. Go ahead.
A. I have no independent recollection.
Q. You mentioned in your -- in a prior answer that it was customary to have confidentiality agreements. Did I hear you correctly?
A. It was -- it is and was customary.
Q. So, it was customary in 1998?
MR. MARKOWSKI: Object to the form.
A. In this kind of transaction?
Q. Yes.
A. Absolutely, yes.
Q. Why is it absolutely, yes, customary

NOT A CERTIFIED COPY

018356

Page 82

in transactions such as the Coleman/Sunbeam merger?
A. Because each party wants to find out everything they can about the other party. Sunbeam, because it's acquiring Coleman. Coleman, because it's taking part of the purchase price in Sunbeam's stock. The only way to find out information is to get the company to turn over all its information to you, and the only way the company will do that is if you agree to keep it confidential.
Q. In the -- at any time either -- strike that.
At any time either before the execution of the merger agreements or thereafter, other than a conversation with your attorney, did you ever come to -- come to hear from any source that either party, that is, either the Sunbeam side of the transaction or the MacAndrews & Forbes side of the transaction, had refused to execute confidentiality agreements?
A. No, I did not.
MR. MARKOWSKI: Could you read that back for me, please.

Page 83

(Record read.)
MR. MARKOWSKI: I object to the form.
A. No, I did not.
Q. Did you review drafts of the merger agreements as they were being prepared by the parties' attorneys? Let me rephrase the question.
We've looked at two of the merger agreements, MS 93 and MS 117. Did these documents go through drafts?
A. Certainly.
Q. And that's customary, correct?
A. Customary, yes.
Q. Did you review -- did you review drafts of the documents -- withdrawn.
Did you review drafts of the merger agreements as they were being negotiated, drafted and circulated?
A. I believe so.
Q. Do you ever remember a -- withdrawn.
At the closing of the merger transactions which took place on March 30, 1998, was there someone at your firm, at Skadden, that was responsible for a closing

Page 84

checklist, if you will, of the documents that needed to be executed as part of the transaction?
A. It would have been normal practice to do a closing checklist, but I don't recall anything about it in this case.
Q. Do you -- withdrawn.
Was there a person at Skadden on the Sunbeam -- representing the Sunbeam side of the transaction that was responsible for a closing checklist?
A. Same answer, I don't -- I don't really recall.
Q. Did you have anything to do with the actual closing of the transaction itself?
A. I don't remember if I was even there. I just don't remember.
Q. Let me show you what's been marked as Morgan Stanley Exhibit 344. Do you have that in front of you, sir?
A. I do.
Q. One of the attorneys that you mentioned earlier was Allison Amorison, correct?
A. Amorison.

Page 85

Q. Amorison. I apologize for mispronouncing her name.
She -- am I correct that she worked with Mr. Easton on the -- on the transaction?
A. Correct.
Q. She also worked with you?
A. Correct.
Q. And now, this document which has been identified in another deposition as a -- is a closing checklist -- as a checklist by title. Do you see that on page 2?
A. Yes.
Q. Is this -- is the type -- withdrawn.
Does this, in any way, refresh your recollection whether there was a closing checklist prepared by Skadden with regard to the closing of one or -- the first merger transaction, which is MS 93?
A. Independent of this document, even after reviewing it, I do not recall anything about a closing checklist. This document would seem to indicate on its face that Wachtell Lipton did the closing list and not Skadden.
Q. Or Wachtell had a closing checklist,

NOT A CERTIFIED COPY

018357

Page 86

not -- is there anything on the face of the document that -- strike that -- there -- that this is the only closing checklist?
MR. MARKOWSKI: Object to the form.
A. I don't -- I don't know. I just don't know.
Q. In your practice, sir, in a transaction such as this Coleman/Sunbeam transaction and a closing on one of the merger agreements, in this case MS 93, would it be customary for the two principal law firms to have just a single closing checklist?
A. Yes, it would be customary for there to be an agreed closing checklist. One of them, yes, one.
Q. Is it customary for one of the firms to be assigned the task of preparing the closing checklist?
A. One of the firms has to draft it and the other one comments on it and, hopefully, they reach an agreement.
MR. BEMIS: We need to take a short break so the reporter can change the cable on her computer.
(Recess taken.)

Page 87

Q. Am I correct, sir, that, as you sit here today, you do not recall attending the actual closing of the first merger agreement, MS 93; is that correct?
A. I don't recall.
Q. All right. Up to the time -- I want you to focus now on the period before February 28th, 1998, which is the date the merger agreements were signed, MS 93 and 117. Are you with me time period-wise?
A. Yes.
Q. All right. Can you tell me -- withdrawn.
In the time period up to February 28, 1998, are you aware of any due diligence of Sunbeam that was done by Coleman or MacAndrews & Forbes-related companies?
MR. MARKOWSKI: Object to the form. Lack of foundation.
A. Am I aware of any?
Q. Yes, sir.
A. I believe some was done, but I don't have any awareness, other than that.
Q. And what is it -- strike that.
What is it that causes you to

Page 88

believe that some was done?
MR. MARKOWSKI: Same objections.
A. Just that it would be highly unusual for none to have been done.
Q. Highly unusual in a transaction of this magnitude?
MR. MARKOWSKI: Object to the form.
A. Highly unusual in a transaction of this magnitude, yes.
Q. Would it be highly unusual in a transaction of this magnitude in which one of the parties was receiving stock as consideration in the transaction?
A. In a transaction in which one of the parties is buying a company, the other party is receiving stock as part of the consideration, it would be highly unusual if they didn't both do due diligence on the other.
Q. Are you aware of, as you sit here today, of any financial due diligence done of Sunbeam by MacAndrews & Forbes-related companies?
MR. MARKOWSKI: Object to the form and lack of foundation.

Page 89

A. Not other than what I just answered.
Q. Are you aware of any legal due diligence done of Sunbeam by MacAndrews & Forbes-related companies?
MR. MARKOWSKI: Same objections.
A. Same answer, I don't really recall.
Q. Was -- I'm sorry. I interrupted you.
A. I don't really recall.
Q. Okay. Was there anyone on the Skadden team representing Sunbeam that acted as the main point of contact, if you will, for due diligence requests, if any, by MacAndrews & Forbes?
A. I don't remember.
Q. Do you remember there being any disagreements, if you will, about due diligence matters before February 28th, 1998?
A. I don't recall any.
Q. Do you recall Sunbeam ever declining to provide MacAndrews & Forbes any information before February 28th, 1998 pursuant to a due diligence request by MacAndrews & Forbes?
MR. MARKOWSKI: Object to the form and lack of foundation.

NOT A CERTIFIED COPY

018358

A. I don't recall any such instance.
Q. Did you receive -- withdrawn.
Did you receive from York -- withdrawn.
Your counterpart legally was Wachtell Lipton, correct?
A. Um-hum, yes.
Q. And the attorney that you dealt there was Adam Emmerich?
A. Correct.
Q. Do you recall any correspondence or communications from Mr. Emmerich to the effect that Sunbeam was not cooperating with any due diligence requests from MacAndrews & Forbes in connection with the merger agreements?
A. I don't recall any such correspondence.
Q. Did you, in the course of your representation of Sunbeam, have any communications either directly or through people who worked with you on the transaction from the accounting firm of Ernst & Young?
A. I don't recall any.
Q. Again, in the time period up to and including February 28, did you have any

communications with the investment banking firm of Credit Suisse First Boston in connection with due diligence of Sunbeam?
A. I don't recall any.
Q. Do you remember the Wachtell Lipton firm making any requests of you directly, or one of the people working with you, for matters related to legal due diligence by MacAndrews & Forbes?
MR. MARKOWSKI: Object to the form.
A. I don't recall any.
Q. Up to February 28th of -- strike that.
Do you know -- withdrawn.
Was there any type of log or record kept, to your knowledge, of any due diligence that was performed by MacAndrews & Forbes up to the signing of the merger agreements on February --
A. I don't know.
Q. Do you have -- you never saw such a document?
A. No, I didn't.
MR. MALLOY: Mr. Bemis, you're sort of beating a dead horse here, aren't you?

Q. Let's move forward now from February 28th to March 30th.
During that time period, did you, personally or through your team, receive any requests for due diligence from MacAndrews & Forbes up to the point of closing on March 30, 1998?
MR. MARKOWSKI: Object to the form and lack of foundation.
A. I don't recall any. In fact, I don't recall anything about due diligence.
Q. You don't recall anyone doing due diligence, do you, after February 28th and up to March 30th?
MR. MARKOWSKI: Object to the form.
A. I don't remember whether they did or they didn't.
Q. I would ask you some questions about the period before February 28th, and I think I understand your testimony is you have no recollection of due diligence from any source, correct?
MR. MARKOWSKI: Object to the form.
A. Due diligence was not on my radar screen. I don't recall anything about due

diligence.
Q. Was it supposed to be on somebody's radar screen?
MR. MARKOWSKI: Object to the form. This obviously --
Q. Could you tell me who was on your side of the transaction?
A. No, I can't. I don't know. Sitting here today, I can't answer that.
Q. There comes a point in time in March where you said you were involved with the March 19, 1998 press release, correct?
A. Yes.
Q. When was the first time -- when was the first time that you had any information about a potential earnings shortfall at Sunbeam?
A. March 18th --
Q. What happened --
A. -- 1998.
Q. And what happened on March 18th, 1998?
MR. MALLOY: I think this may involve some privileged conversations, so I would ask the witness to limit his

NOT A CERTIFIED COPY

018359

Page 94

testimony to a very general description of what occurred.
A. That's what I'm thinking about. Group of people congregated in my office at Skadden to discuss the results for that -- of Sunbeam for that quarter, that first quarter of 1998, trying to find out what the facts were, to try to figure out whether some disclosures should be made publicly about those facts. And then to prepare such a disclosure.
Q. Well, if I understand you correctly, you edict and people congregating in your office at some point; is that right?
A. Correct.
Q. Is that on March 18th?
A. Yes.
Q. And how did this congregation come into existence?
A. I got a call from David Fannin saying he was coming over to see me. He was in New York.
Q. So, the first thing that happens on March 18th is a telephone call; is that fair to say?

Page 95

A. Yes.
Q. And it was Mr. Fannin calling you?
A. Yes.
Q. Was this phone call from Mr. Fannin -- withdrawn.
Did Mr. Fannin tell you that he was calling you about this earnings shortfall?
THE WITNESS: I have to discuss privilege issues with my counsel.
Q. Well, a lot of this you've already testified to. This --
MR. MALLOY: I don't think he testified about this conversation.
MR. BEMIS: Well, he -- according to his deposition testimony, he learned it directly from Mr. -- he learned it directly from Mr. Fannin on that phone call on that day, just what he said just now.
MR. MALLOY: But he didn't discuss what was said during the conversation.
MR. BEMIS: He said -- according to his testimony, he learned of an earnings problem from Mr. Fannin in his prior testimony.

Page 96

MR. MALLOY: Can you testify that far?
A. Yes.
Q. What did Mr. Fannin say to you in this phone call?
DI MR. MALLOY: I instruct you not to answer the question on the grounds of attorney/client privilege.
Q. When did Mr. Fannin -- strike that.
What time of day did Mr. Fannin call you on March 18? For example, was it the morning, afternoon?
A. It was in the morning.
Q. In the morning.
And what was the -- the substance of the phone call, without telling me what he said to you or you said to him, what was the subject matter of the phone call?
MR. MALLOY: He's already testified to that.
A. If there -- the substance was --
MR. MALLOY: Let's take a break for a minute --
A. -- the first quarter results for Sunbeam and whether there had to be some

Page 97

public announcement about that.
Q. What happened -- what happened next?
A. Mr. Fannin came to my office -- it was in a conference room, not my office at Skadden. We were there at 919 Third Avenue. I got Greg Fernicola to join us. And I got a fellow named Mark Shehan to join us. Mark is no longer with the firm.
Q. Could you spell his name?
A. Mark, M-A-R-K.
Q. That one I had.
A. S-H-E-H-A-N, one E.
Q. Thank you.
A. And the four of us met. That was the first meeting.
Q. How long did you meet?
A. That first little session? I can't remember. Not that long. Thereafter, we had several conference calls, some involving Morgan Stanley people and Davis Polk people and company people, other than Fannin. Some involving just Skadden and company people. And this all lasted several hours into the afternoon, perhaps took up the better -- it took up the better part of my working day.

NOT A CERTIFIED COPY

018360

Q. What is the next thing that happened in this sequence after the meeting in your office with Mr. Fannin, Mr. Fernicola, Mr. Shehan and yourself?
A. I believe that Mr. Fannin called people at the company, a guy in charge of sales, Don Uzzi, U-Z-Z-I, I believe. And he had somebody else with him. There was a brief discussion and we, also, spoke -- I, also, spoke to Morgan Stanley, Bill strong and Ruth Porat, P-R-O-R-A-T, I believe.
Q. P-O-R.
A. P-O-R, Porat. Sorry, Ruth. And Davis Polk. And then all of the above got on a big conference call to try to figure out where Sunbeam's first quarter was.
Q. Could we step back, again focusing on the very first thing you remember happening. I understand things run together and, please, tell me if they do. Stepping back to the meeting that you had with Mr. Fannin and Mr. Fernicola right after the phone call, what is the next thing that happened in the sequence of events?
A. I -- sitting here today, six and a

half years later, I'm not sure I can answer that question.
MR. BEMIS: Let's take a break.
(Recess taken.)
Q. Let me put a question to you so that we have a clear record. Is the next thing that happened after the meeting where Mr. Fannin was in your office following the phone call a series of conference calls with other people?
A. Yes.
Q. What's the first conference call that you can -- that you can remember today?
A. To the best of my recollection, it involved the people sitting in my office, Fannin, Fernicola, Shehan, myself, people from Morgan Stanley, I believe Strong and Porat and one or two or three people from Davis Polk representing Morgan Stanley. A fellow named Deitz, I believe, Alan Deitz.
Q. Alan Deitz, yes.
A. And a couple of other people. I don't recall who.
Q. So, there was a conference call?
A. I believe that's the next thing that

happened, best of my recollection.
Q. Was this call placed from your office?
A. Yes.
Q. And how long did that group of people speak on the conference call from your office?
A. It wasn't a long call, I don't believe.
Q. Who was on the phone representing Mr. Fannin -- well, strike that.
Was there anyone else on the call, other than Mr. Fannin, representing Sunbeam?
MR. MARKOWSKI: When you say "representing" --
MR. BEMIS: Sunbeam's management.
MR. MARKOWSKI: Employed by Sunbeam?
MR. BEMIS: Yes, Sunbeam management.
A. Not on that call, I don't think.
Q. How did the conference call get initiated? I don't mean dialing. Who called who?
A. We called Morgan Stanley or Davis Polk -- or I don't know. I don't know if we used a dial-in number or we just plugged

people in. I don't remember.
Q. What was -- strike that.
Have you ever seen any notes of the telephone call, this first conference call?
A. I don't remember.
Q. Did you see -- I take it, then, you didn't see any in your deposition preparation?
A. I thought we weren't asking about that.
MR. MALLOY: Yeah, we're not asking about that.
MR. BEMIS: Well, if he saw notes in his deposition preparation and he doesn't remember anything, then I want to know about it.
MR. MALLOY: I'm not sure I follow you. You already asked him whether there were any documents that refreshed his recollection. Having testified --
MR. BEMIS: Why don't you just instruct -- look, just instruct him not to answer, Chris.
MR. MALLOY: I just want to -- I'm trying to understand what you're asking him.

NOT A CERTIFIED COPY

018361

Page 102

MR. BEMIS: I'm asking whether he ever saw any notes of the meeting. If he did not, he did not. Now if he's segregating out something he saw yesterday, I want to know whether the notes exist, that's all. I suspect they do not and we're just going to move right on.

Q. So, the question is: Have you ever seen any notes of the conversation at this first conference call at any time?

A. I don't believe so.

Q. Okay. There we go. That was easy. Now, what do you recall being said by the people who were on the conference call? And as best you can tell me, who said what?

A. I can't give you a who said what. I can give you the gist of it.

Q. All right. If that's the way you recall it.

A. The gist of it --

Q. Please.

A. -- was there was information indicating that Sunbeam's sales for the quarter were going to be below the range of

Page 103

analyst estimates. How far below, no one seemed to know on that call. But we needed to find out what the true facts were and decide after we did that whether or not we had to issue a press release.

And that was pretty quickly decided on the call. And then we segued into the next call.

Q. Well, what was the source of the information that Sunbeam's first quarter sales might not meet analyst expectations?

MR. MARKOWSKI: Object to the form. It mischaracterizes the witness's statement.

A. I'm not sure I pinpointed that at the time. Fannin told me that's what the company was telling him. I don't know anything more than that.

Q. So, as you sit here today, as you recall it --

A. And Morgan Stanley knew it, too. Now, exactly how they found out, I don't know either.

Q. How is it -- withdrawn.

Can you tell me how you know that

Page 104

Morgan Stanley knew about it -- withdrawn.

Are you saying that Morgan Stanley knew about it at the time of the conference call?

A. Yes.

Q. And how did you come to the conclusion that they knew it?

A. Well, I mean, they were -- they were taking the position, we got to find out what the facts are. And we know there's this shortfall and let's find out what they are and what, if anything, we have to say about it.

Q. Who spoke on behalf of Morgan Stanley?

A. I can't put particular words in particular people's mouths. I think both Bill Strong and Ruth Porat spoke. I know that the people at Davis Polk spoke. I spoke. Greg Fernicola spoke. Fannin spoke. I don't recall who said what.

Q. Was -- before this first conference call, had you spoken to anyone at Sunbeam's management, other than Mr. Fannin, about the sales shortfall issue?

A. I don't believe so.

Page 105

Q. Did anyone from Morgan Stanley in this first coverage call object to finding out what the facts were?

A. No, not at all.

Q. What happened next in the sequence of events on March 18th?

A. Well, we had determined that the way to find out what the facts were was to call the guy at Sunbeam who was in charge of sales, see where the sales were for the quarter.

And that's -- so, I -- then I believe there was a call to people in my office and Mr. Uzzi at Sunbeam. And he had somebody with him, Deborah McDonald, I think, to sort of tell him that the next call was coming involving Morgan Stanley and Davis Polk and we needed to get to the bottom of this. I think that was a pretty short call.

Q. Who was on this next conference -- withdrawn.

Was there a call to Sunbeam? I believe, you're referring to Mr. Uzzi that there was going to be another call and --

A. Yeah.

Q. Let's set a time for it.

NOT A CERTIFIED COPY

018362

Page 106

A. With Morgan Stanley. And are you available, and let's do it promptly, and scheduling it, yes.
Q. So, the second call is in the nature of, let's schedule a time and here's what we're going to discuss?
A. It's a heads up of what is going to happen and scheduling.
Q. Now, was this call -- was anyone from Morgan Stanley on this call?
A. This particular -- no, I don't think so.
Q. So, the next call -- is the next call the first time that you spoke directly to -- well, withdrawn.
When did the next conference call or phone call take place on March 18th?
A. Promptly after that one.
Q. Who was on the line? And, if I can, I'll refer to this as the third call. Who was on the line?
A. Uzzi, McDonald, Fannin. I couldn't swear where -- Fernicola was in and out. I think Mark Shehan. He may have been in and out. I just don't recall. Fannin and I

Page 107

certainly. Bill Strong, Ruth Porat and the people from Davis Polk were all on the big call.
Q. Was this -- were the people from Morgan Stanley at their offices?
A. I don't know. I don't remember.
Q. Fair question. What I was -- let me try again.
You were in your office with -- was there anyone from Skadden besides yourself on this call, the third call?
A. As I just indicated, I don't recall whether Fernicola -- Fernicola was in and out. Shehan was in and out. I don't recall which particular things they were in for and which particular things they were out for.
Q. Was Mr. Fannin with you?
A. Yeah, Mr. Fannin was anchored in a chair in front of my desk. I don't think he left there for hours.
Q. So, we have now representatives of Sunbeam in Florida on the phone call, Mr. Uzzi and Ms. McDonald, as you recall it; is that fair?
A. Yes.

Page 108

Q. And then yourself and Mr. Fannin in your office and then Morgan Stanley and the people at a location or locations that you don't know for sure?
A. Correct.
Q. How long does this third conference call last?
A. Quite a while. I can't put a time frame on it, but it could have been an hour or more. I just don't recall.
Q. Did you have any documents at this third call that you used as a basis for questions or answers -- questions to anyone?
A. Yes.
Q. Describe the document that you had.
A. I think it was a one-page or two -- possibly a two-page document prepared by somebody at Sunbeam, presumably Uzzi, but I'm not sure or somebody working for him, which purported to show where Sunbeam stood in terms of sales for the first quarter of 1998, what was already booked and then sort of -- they went down a list of major accounts and indicated potential additional sales to those accounts, I think.

Page 109

Q. Did you --
A. I don't know when we got that document. It was --
Q. That my next question. When did you get the document?
A. I'm only -- I can't speculate, but I -- I don't remember. I don't think Fannin had it with him when he came over. I believe we got by fax during the day. I just don't remember.
Q. Did the people that were not in your office, did they have a copy of the document?
A. I believe they did. I think, maybe, we faxed it to them. I don't recall. I'm pretty sure they did. We were all working on the same page.
Q. And did Mr. Uzzi, based on your recollection of the phone call, have a copy of the document when he spoke?
A. I think so. I think it was prepared by him or somebody working for him, yes. I think he did, but I couldn't swear to it because I wasn't with him, so --
Q. But you and Mr. Fannin had a copy of the document?

NOT A CERTIFIED COPY

0183 63

Page 110

A. Yeah, yes.
Q. Let me show you what been marked as Morgan Stanley Exhibit 411.
(Defendant's Exhibit 411, Sales Buildup, marked for identification, as of this date.)
Q. Mr. Fogg, I have handed you what has been marked as -- by the reporter, as Morgan Stanley Exhibit 411.
Do you have that in front of you?
A. Yes, sir.
Q. Now, I'm not representing to you that the handwriting on the document is -- was on the document originally. So, for the time being, I'd just ask you to disregard the handwriting.
First of all, with -- excluding the handwriting, is this the document that you had in front of you when you spoke to Mr. Uzzi, Ms. McDonald in this third conference call?
A. I believe it was, yes.
Q. When was the last time that you saw this document?
A. Yesterday.
Q. And did it refresh your recollection

Page 111

about the events of March 18th?
A. Yes.
Q. Is this the same document that you testified to in your deposition in August -- excuse me -- June of 2000 that you had in front of you when you spoke to Mr. Uzzi on this conference call?
A. I don't remember that testimony, but --
Q. It's not a trick question. It wasn't identified in your transcript and that's why I ask you. Let me try it a different way.
Do you recall receiving only one document from Mr. Uzzi on the -- on March 18th?
A. I don't remember. I think so, but I'm not -- I couldn't be 100 percent sure.
Q. All right. Is any of the handwriting on Exhibit MS 411 yours?
A. Doesn't appear to be, no, none of it.
Q. All right. Could you, as best you can, take me through the conference -- the conference call with Mr. Uzzi which we've

Page 112

identified as the third conference call.
A. Well, again, I'm not sure I can give you a who said what in any great specifics. But the focus of the call was, okay, what sales are already in -- have been booked? What do those add up to? What sales are in the works that probably will be booked? And where does that leave Sunbeam for the quarter compared with the analyst estimates and with the first quarter of 1997?
And we discussed all of that at great length. A large part of the call related to going down this list of potential orders and hearing from Uzzi primarily -- McDonald didn't say much, as I recall -- from Uzzi why he thought these orders were going to be booked for each of these major accounts.
And he was very optimistic they would be booked. He said he talked to the people out in the field, the sales force. And he was just very confident that this was going to happen.
And he was pretty optimistic that this was going to come within the range of analyst expectations and ahead of last

Page 113

year's -- first quarter of 1997.
Q. Did I hear you say -- sorry.
A. And all us questioned him on each of these items. And what makes you so sure of this and that and the other thing, at great length. I don't know how long the call went on, but it was quite a while.
And the Morgan Stanley people asked questions, the Davis Polk people asked questions. I asked questions, Fannin asked questions. And that was it.
Q. Did anyone from Morgan Stanley ask questions?
A. I just said so, yes.
Q. Who on behalf of Morgan Stanley asked -- asked questions?
A. I believe both -- I recall both Bill Strong and Ruth Porat asking questions, saying things on the call. I can't, as I indicated earlier, give you a who said what, when. I just can't do that after six years or six and a half years.
Q. Was Mr. -- strike that.
Did Mr. Uzzi express confidence that he -- that he -- withdrawn.

NOT A CERTIFIED COPY

018364

Was -- withdrawn.
Did Mr. Uzzi express confidence in this third call that Sunbeam would meet analyst expectations for Sunbeam sales in the first quarter of 1998?
A. He did.
Q. Did he express even more confidence that Sunbeam would meet, at least, sales for Sunbeam's first quarter of 1997?
A. I'm -- I'm not sure about my earlier answer. I think he was quite confident they were going to beat the first quarter of 1997. I don't know -- and he was very confident on that basis, on that.
I'm not sure that he was -- how confident he was about the analyst expect -- estimates, meeting those or beating those. But I think he was -- felt there was a good shot at doing so.
Q. How would you describe Ms. Porat's questioning?
MR. MARKOWSKI: Object to the form.
A. As I sit here today, I can't -- I can't really characterize what she said, as opposed to what I said, as opposed to what --

I don't recall who said what.
But everyone on the call who was sitting in my office, as well as the Morgan Stanley people and the Davis Polk people, asked a lot of questions. They were, you know, challenging questions, probing questions. How can you possibly think that, this, so forth?
Q. You described in your earlier deposition Ms. Porat, in effect, quote, hammering at a point. Do you recall that testimony?
MR. MARKOWSKI: Object to the form.
A. I don't really recall that testimony, but it sounds like her.
Q. Why do you say that?
A. She's -- she's a strong person.
Q. Well, in your deposition on June 16th, 2000, you were asked the following questions and gave the following answers. And this is on page 73, sir, line 12 through 24:
"Q. When Uzzi was going through the numbers on your summary report, did anyone voice the opinion that they didn't believe those numbers?

"A. Well, I think that Morgan Stanley's people, especially Ruth Porat, was of the view that this is all very good, Mr. Uzzi, but there is a real chance you are not going to make these high end numbers the analysts are projecting, isn't there?
She was hammering at that point. He finally had to admit yes. He was trying to convince us that all he was -- all he was going to do to make the numbers."
Was that testimony accurate at the time you gave it, sir?
MR. MARKOWSKI: Object to the form.
A. When I testified under oath, what I say is what I believe, so the answer is yes.
Q. And your -- your description of -- strike that.
I think you described Ms. Porat as a strong person?
A. Very strong person, yes, capable person.
Q. Have you dealt with her -- had you dealt with her before this phone call with Mr. Uzzi?

A. No, no.
Q. Do you recall anything --
A. I'm sorry. I had.
Q. And what was that?
A. I think she was involved, at the time of the Sunbeam board meeting, when the merger -- the Coleman and the other two acquisitions were approved and the financing of them was discussed, I believe. I'm not sure, but I believe.
Q. Do you recall anything that Mr. Strong said?
A. Not specifically, no.
Q. Do you recall anything that Mr. Fannin said?
A. I'll say it again. I don't recall who said what specifically and when. I just recall the gist of the whole thing.
Q. Sometimes when you talk through these things, some things come back. And that's why I'm asking. I'm not trying to make it any longer, but occasionally you do remember something.
Is it -- how was the telephone -- the third telephone conference left on

NOT A CERTIFIED COPY

018365

March 18th after you went through the items on MS 411?
A. Well, the bottom line was that we weren't confident that there was 100 percent sure we were going to make the analyst estimates. Pretty -- we were pretty confident that we were going beat the first quarter of '97. But since the analysts' estimates were out there and since probably the analysts had reached their estimates based on company information, that we ought to correct it, better put out a press release that accurately gives the best picture of where we are.
So, a public disclosure of some kind was -- was decided upon. And --
Q. Was there any dissent -- I interrupted you. I apologize.
Was there any dissent at the conference call amongst those who were in your office or in the Morgan Stanley locations about the wisdom of issuing a press release?
A. No dissent.
Q. Was the issue of issuing a press release discussed directly with Mr. Uzzi in this phone call?

A. I don't recall -- I really don't recall.
Q. Given the consensus that a press release should be issued, was someone assigned the task of taking pen to paper and drafting a press release?
A. Yes.
Q. Who?
A. Well, it was not so much an assignment, but Fannin, I guess, grabbed a yellow pad in my office and started writing. He produced a draft. We had it typed. People in my office looked at it. I don't recall the specifics of what it said versus what the final thing said.
And I believe we circulated it to the other people who were on the previous call and discussed it with them. Except I don't think -- I don't think I ever called any -- I had any other discussion with Uzzi or McDonald on this subject.
I do recall discussing the press release with the Morgan Stanley people and the Davis Polk people. I'm not sure if we faxed it to them or read it to them or what, but we

did discuss it.
Q. Stepping back, Mr. Fannin then -- Mr. Fannin started the drafting process, as you remember it?
A. Yes.
Q. And then you -- your office had the press release typed up; is that fair?
A. Yes.
Q. I will now hand you what has previously been marked as Morgan Stanley Exhibit 504. Do you have that in front of you, sir?
A. I do.
Q. If you care to, please, take a moment and look at it. And, please, look at the footers on the document and in particular --
A. Yes.
Q. Is this document, Morgan Stanley Exhibit 504, a draft of the March 18th press -- or March 19th press release?
A. Yes, that's what it appears to be.
Q. And on the lower right-hand corner of both pages, it has draft March 18, 1998. And I believe it says 11:12 p.m.; is that

correct?
A. That's what it says.
Q. Now, does that -- does that date indicate that this is the date that it was prepared and printed at your office?
MR. MARKOWSKI: Object to the form.
Q. Let me ask it a different way. I'll withdraw the question.
What does that date mean?
MR. MARKOWSKI: Object to the lack of foundation.
A. I believe it means that document was emitted from our word processing equipment on March 18, 1998 at 11:12 p.m.
Q. And does the left-hand footer, which has the number 203024.01-New York server 3A, refer to a server here at Skadden -- at Skadden Arps?
A. Yes.
Q. Now, am I correct, then, based on the -- looking at -- well, withdrawn.
Is this, then, a draft of the press release that started with Mr. Fannin's pen to paper, as you described it, and then went through some process of review by others?

NOT A CERTIFIED COPY

018366

Page 122

A. I believe so.
Q. Let's -- let me move forward from the point that Mr. Fannin drafted something.
I understand that you did look at what he drafted after it was typed up, correct?
A. I, among other people, yeah.
Q. Did you make any changes that you can identify for the jury today?
A. I don't recall.
Q. And who were the -- who were the others at Skadden Arps that reviewed the press release?
A. I believe Fernicola and Shehan.
Q. Both of these gentlemen were in or in and out of the conversation with Mr. Uzzi we've identified as the third call, correct?
A. Correct.
Q. Did they make any changes?
A. I don't remember.
Q. You said that you believed that the draft was also sent or read to Morgan Stanley and Davis Polk. Do you recall that?
A. Yes.
Q. Starting with Davis -- let's start

Page 123

with Davis Polk. Do you have any recollection, as you sit here today, of speaking to anyone at Davis Polk?
A. I don't recall.
MR. MARKOWSKI: You're focused on commenting on the press release because he's testified about conversation with Davis Polk.
MR. BEMIS: He said he may have sent it to Davis Polk. I'm now asking whether he had discussions -- I'm now asking about any conversations he had with Davis Polk.
Q. Let me put a question to you so we're -- do you recall having any conversation with Davis Polk about a draft of the press release, assuming that you sent one over to them? Or you read it to them on the telephone, if that may be the case?
A. I don't recall the gist of any such conversations, or with Morgan Stanley. I just don't recall.
Q. So, as you sit here today, you don't recall any -- withdrawn.
Did you discuss the press release

Page 124

with anyone outside -- withdrawn.
Did you discuss the press release with Mr. Dunlap?
A. Yes.
Q. Did you do it -- did you do it before or after the press release was drafted?
A. I don't remember.
Q. Did you have more than one conversation with him before the press release was issued, about the press release?
A. I don't remember.
Q. What did you say -- withdrawn.
Did you speak to Mr. Dunlap in a face-to-face conversation or were you on the telephone?
A. Telephone.
Q. Where was Mr. Dunlap, as far as you know?
A. Somewhere in New York, but I'm not sure where.
Q. Was the subject matter of the phone call the issuance of the press release?
A. Yes.
Q. What did you say to Mr. Dunlap and what did he say to you?

Page 125

A. This may be privileged.
MR. MALLOY: Can we establish who else was on the call?
MR. BEMIS: Sure. Did you want to talk to him about it or --
MR. MALLOY: Can you establish who else was on the call?
MR. BEMIS: I didn't hear you.
Q. Was anyone else on the telephone?
A. I believe it was Fannin, myself, Kersh and Dunlap.
Q. So, this was a conference call?
A. Yeah.
Q. And did you place it from your office?
A. I believe so.
Q. When had you made contact with Mr. Kersh about the press release -- well, withdrawn. Let me try it a different way.
Had you spoken to Mr. Kersh about the press release before this conference call --
A. No.
Q. -- you had with Mr. Dunlap?
A. No, I don't think so.

NOT A CERTIFIED COPY

018367

Q. Did Mr. -- to your knowledge, based on your participation in these events, was Mr. Kersh aware there was an issue of whether a press release was going to have to be issued?
A. I'm not sure. I'm not sure.
Q. What happened in this phone call between Mr. Dunlap, Mr. Kersh, Mr. Fannin -- withdrawn.
What was said in this telephone call?
MR. MALLOY: Well, let me take a break with the witness to discuss a privilege issue.
(Recess taken.)
THE WITNESS: Can I have the question read back.
(Record read.)
A. Mr. Dunlap very strongly took the position no press release. Mr. Kersh seconded that motion. Fannin and I tried to explain to them they had no choice. We had to do it and, finally, sort of -- sort prevailed.
Q. Having gone through the conversation, at least in your own mind, was

Bill Strong on this call?
A. I don't remember.
Q. You don't remember one way or the other?
A. No.
Q. Okay. Given that Mr. Dunlap and Mr. Kersh's position is counter poised, if you will, by yourself and Mr. Fannin, did you receive instructions as to what you were to do?
A. Not really. I mean, the -- the instructions were that the press release was going to be issued. But Fannin, I thought, was going to talk further with them about it. But that we had -- we had to issue a press release, Sunbeam had to issue a press release.
Q. At the time you spoke with Mr. Dunlap, did you have a draft of the press release reduced to writing?
A. I don't really recall, but I think so.
Q. What was -- did -- can you recall anything in -- in particular that Mr. Dunlap said?
A. Well, he used very colorful

language. He said we were -- never mind. He -- he was very strong and said, the quarter is not over, you can't release a press release. We dont know what the quarter is going to do. How can you possibly do that? You guys are disloyal, et cetera, et cetera, et cetera.
Q. You started to tell us what language he used, and I -- it may be inappropriate in other circles, but in these proceedings I would ask you to tell us what he did say. What you remember he said, what language did he use?
A. I mean, his language was punctuated with expletives of all kinds.
Q. How about Mr. Kersh, did he say anything, other than echo his agreement with Mr. Dunlap on whether a press release should be issued?
A. Pretty much echoed.
Q. In the sequence of phone calls, this would be the fourth call that you've told me about.
Can you tell me what happened next after the telephone call with Mr. Dunlap and

Mr. Kersh?
A. Well, I think Mr. Fannin left and -- with a draft of the press release, and that was the last I heard of it until after it was issued, I think.
Q. Did you have any further conversations with anyone from Morgan Stanley, that you can remember, other than what you've told me about so far?
MR. MARKOWSKI: On that day?
MR. BEMIS: On that day, yes, March 18th.
Q. Let me re-ask the question again.
On March 18th, did you have any additional phone calls or face-to-face meetings with Morgan Stanley about the press release?
A. Not that I recall.
Q. Did you have any more telephone conferences or face-to-face meetings with anyone at Sunbeam, whether it be Mr. Dunlap, Mr. Fannin, Mr. Uzzi, Ms. McDonald, anyone?
A. I told you everything that I recall of that day.
Q. Were you satisfied -- strike that.

NOT A CERTIFIED COPY

018368

Page 130

In these conferences and face-to-face meetings as you've described them for us, you -- you were acting as legal counsel to Sunbeam, correct?
A. Yes.
Q. Did you believe at the time, as their legal counsel, that the press release was accurate?
A. Yes.
Q. Based on the information that you had at the time?
A. Yes.
Q. Was there anyone, other than Mr. Dunlap -- withdrawn.
Did you ever speak to Mr. Goudis before the press release was issued about the subject of the press release?
A. I don't recall.
Q. Do you recall sending Mr. Goudis a copy of the press release by facsimile?
A. I don't recall.
Q. Was there anyone on the Skadden Arps team that reviewed the press release, and you've identified Mr. Fernicola and Mr. Shehan as well as yourself, that echoed -- or I

Page 131

should say expressed any question about the content of the press release --
MR. MARKOWSKI: Objection.
Q. -- before it was issued?
MR. MARKOWSKI: Excuse me. Object to the form.
A. Anybody on the Skadden team?
Q. Yes. Let me put the question to you again since there was an objection. I don't know what it was, but let me ask it one more time.
Was there anyone on this Skadden team of lawyers, which I believe you've identified as Mr. Fernicola, Mr. Shehan and yourself, who participated in these calls who questioned the truthfulness of the press release as it was issued on March 19th?
A. I don't believe so.
Q. Other than Mr. -- strike that.
As to -- in the group that you've identified or whether it be Morgan Stanley, whether it be Mr. Fannin, whether it be people at Skadden, was there anyone in that group at any point that expressed any dissent as to the need to issue a press release?

Page 132

A. The group consisting of Fannin, Skadden, Morgan Stanley, and Davis Polk?
Q. Yes, sir.
A. No dissent, that I recall.
Q. Did anyone within that -- withdrawn.
Let me show you now what has previously been marked as Morgan Stanley Exhibit 39.
THE WITNESS: Do you need to mark this?
MR. BEMIS: That has been previously marked, sir.
Q. Sir, I've handed you what has previously been marked as a copy of the Sunbeam press release issued on March 19th, 1998. Have you seen that before, the press release?
A. I probably saw it, yes. I don't recall specifically.
Q. After the press release was issued, did you have any communications with anyone about the contents of the press release -- withdrawn.
Between March 19th and March 30th, 1998, did you have any communications with

Page 133

anyone from MacAndrews & Forbes about the press release?
A. MacAndrews & Forbes?
Q. MacAndrews & Forbes, yes. And I would include within that Coleman.
A. I don't recall.
Q. Did you have any -- any communications with anyone between March 19th and March 30th, 1998 with anyone at Wachtell Lipton, the attorneys for Coleman and MacAndrews & Forbes?
A. I don't recall.
Q. Between March 19th, 1998 and the closing on March 30th, did you have any communications with anyone from Credit Suisse First Boston about the press release?
A. I don't recall.
Q. Between March 19, 1998 and March 30, 1998, did you have any communications with anyone from Arthur Andersen about the press release?
A. I don't recall any such communications.
Q. Did you have any communications during that same time period with anyone

NOT A CERTIFIED COPY

018369

Page 134

representing Ernst & Young, Coleman's auditors?
A. I don't recall any such communications.
Q. Did anyone -- withdrawn.
Did you have any further communications with anyone at Sunbeam between the issuance of the press release on March 19, 1998 and the closing on March 30th?
A. Concerning the press release?
Q. The press release, yes, sir.
A. Yes.
Q. With who?
A. Mr. Dunlap.
Q. When did you speak to Mr. Dunlap next about the issuance of the press release which we've marked as MS 39?
A. It was either on March 19th or shortly thereafter.
Q. Was this a face-to-face call -- or withdrawn.
Was this a telephone call or a face-to-face meeting?
A. He called me.
Q. Were you in your office?

Page 135

A. I believe so, yes.
Q. Did he tell you where he was?
A. No, I don't recall.
Q. Was anyone else on the line?
A. No, not -- not on my end.
Q. How long did the two of you speak?
A. Very shortly, very, very brief.
Q. What was the subject matter of the call, the press release?
A. He chewed me out for having forced him to make a press release.
Q. Did he use colorful language in chewing you out?
A. Not as colorful as on other occasions, although he did tell me that I was disloyal, that he could never rely on me in the future. And that I had sold him out down the river.
Q. What did you say to him?
A. I said, you're wrong, you had no choice, put it behind you and move on, or words to that effect.
Q. Was that the end of the conversation?
A. Yes.

Page 136

Q. Did you ever have any other -- withdrawn.
Did you ever have again a conversation with Mr. Dunlap about the March 19th press release?
A. Yes.
Q. When was that?
A. I remember it was at a board meeting later on.
Q. A board meeting of Sunbeam?
A. A board meeting of Sunbeam, yes.
Q. Was --
A. After the first quarter had been completed and the results -- or the then-purported results thereof had been publicly announced --
Q. Was --
A. -- in which I inquired --
Q. Excuse me.
A. -- of Mr. Dunlap in front of the board what was the reason for the first quarter being so poor.
And he responded by blaming the press release of March 19th saying that the press release of March 19th caused all his

Page 137

customers to believe that Sunbeam was in a desperate position and they could take all kinds of advantage of it, of Sunbeam.
Q. Obviously, this was a board meeting before Mr. Dunlap was terminated?
A. Yes.
Q. Was this -- was this the May board meeting in advance of the annual shareholders meeting on -- I think it was May 12th?
A. I don't remember which -- what date it was or --
Q. Did you respond at all to Mr. Dunlap's reasoning?
A. I didn't say a word after that about that subject.
Q. Was this statement made in front of the other board members?
A. Yes.
Q. Did any of the other board members say anything?
A. I think Russell Kersh echoed Al's views, but nobody else said anything, I don't recall.
Q. Was the -- withdrawn.
Was this your last face-to-face

NOT A CERTIFIED COPY

018370

Page 138

conversation with -- as one-sided as it was, with Mr. Dunlap about the March 19th press release?
A. Face-to-face?
Q. Yes.
A. Yes, I think so. I can't recall any others.
Q. You were on the phone -- you were -- withdrawn.
You were at the board meeting when Mr. Dunlap was terminated, correct?
A. Yes.
Q. He -- but when the actual termination took place, he was on the telephone, correct?
A. Yes.
Q. Let's go to -- from the press release now to the -- to -- I have a couple of questions I'd like to ask you on the debentures.
Did you see the offering memorandum for the debentures?
A. Ever?
Q. Fair question. Did you see the offering -- withdrawn.

Page 139

Did you see the offering memorandum for the debentures before the actual purchase of the debentures by Morgan Stanley, which I believe the closing, if it helps you, is March 25, 1998.
A. I don't recall, but I believe a copy was sent to me before the closing.
Q. And a copy of the March 19th press release was -- withdrawn.
Let me show you a document marked in a previous deposition as CPH Exhibit 122.
A. Yes.
Q. Sir, have you -- you've seen this before, correct?
A. I don't recall.
Q. Did you review the disclosure of the information in the press release as -- before it was put in the offering memorandum under the caption, I believe it's "recent developments"?
A. I don't believe so.
Q. Now, according to -- withdrawn.
These footers that appear on the document on both the left and the right-hand side, do you see those?

Page 140

A. Um-hum, yes.
Q. And now, this -- although they're slightly different numbers, do these numbers indicate to you that this document was printed from the server and on a Skadden Arps printer at your office here in New York?
A. Yes, they do.
Q. And do you know whose handwriting this is that appears on the document?
A. No, I don't. It's not mine.
Q. Did you see the offering -- withdrawn.
You were aware that -- you were aware that the press -- the press release, in substance, was -- included the offering memorandum for the debentures, right?
A. I was aware of it when I saw the offering memorandum after the fact. I don't know if I was aware of it at the time or before the offering memorandum was finalized. I'm not sure I focused on it at that point.
Q. Okay. Why don't you hand me that back and I'll just stick it back in the file. Thank you very much.
Did you attend any of the road shows

Page 141

for the debentures?
A. No.
Q. Did anyone from Skadden, to your knowledge, attend any of the road shows?
A. Not to my knowledge.
Q. There was a -- a due diligence call, sometimes referred to as a bring-down due diligence call, on or about March 24, 1998. Did you participate in that call?
A. I don't recall.
Q. Did you discuss the call with anyone?
A. I have no recollection of doing so.
Q. Let me show you a document we'll mark as Morgan Stanley Exhibit 611.
(Defendant's Exhibit 611, Memorandum dated 3/23/98, from Tyree, Groeller and Boone to Kersh, Fannin, Kelly, Uzzi, Gluck, Dean and Fernicola, marked for identification, as of this date.)
Q. Mr. Fogg, the reporter has handed you what's been marked as MS 611. Do you have that in front of you?
A. I do.
Q. If you would take a moment and look

018371

NOT A CERTIFIED COPY

Page 142

at it. You're not shown as being copied on the document or being from you, but I'd just like you to, please, review it and then I have only a few questions.

(Witness reading document.)

A. Yeah, okay.

Q. Now, I know you're not on the document, but have you ever seen this document before?

A. I don't recall.

Q. Did you -- did you ever hear from anyone such as, for example, Mr. Fernicola about what occurred at the bring-down due diligence call?

A. I don't recall.

Q. If you don't remember, you don't remember. Hand it back to me.

Did you ever have any conversations with anyone, prior to March 30th, about whether Sunbeam was still comfortable with the statements in its March 19th press release?

A. I don't recall.

Q. If you had been told -- if you -- withdrawn.

We covered before that Skadden did

Page 143

represent Sunbeam in the -- in the debenture offering, correct?

A. Correct.

Q. And the offering memorandum for the debentures was something that was drafted by Skadden Arps, correct, for Sunbeam?

MR. MARKOWSKI: Object to the form.

A. Yes, Skadden Arps or Sunbeam or both.

Q. Or both.

Let me show you what the reporter will mark as MS 530, which is an -- it's a portion of about a 1,000-page document, which is the closing binder for the debentures. For example, we didn't put the entire debenture offering memorandum in here, but we did include the entire tabs.

(Defendant's Exhibit 530, Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures Due 2018, dated 3/25/98, marked for identification, as of this date.)

Q. All right. Do you have Exhibit MS 530 in front of you?

A. Yes.

Page 144

Q. And was this document prepared by Skadden Arps? I recognize that I did not give you the full 1,000 pages, but everything behind the tabs and the indexes is complete.

A. The footers on the pages would indicate no, it wasn't.

Q. And who -- who would it indicate prepared it based on the footer?

A. I have no idea.

Q. Okay. Did -- there is -- if you will -- if you will look at -- I'm going to have to give you a page number here. First of all, you were -- you are, by definition, issuer's counsel, correct?

A. Correct.

Q. And if you look at page -- if you look at page CPH and then -- the last -- the last three digits will be 379. Just look for 379 through 82.

A. 379.

Q. Through 82.

A. Through 82, yes.

Q. Now --

A. Wait a minute. Oh, yes, sorry. Yes.

Page 145

Q. This Schedule B is a list of documents that were to be -- which were to be delivered by the issuer, and the issuer in this case would be Sunbeam, correct?

A. Sunbeam is the issuer, yes.

Q. According to the -- the documents to be delivered, if you look at items -- item 9, it says "comfort letter from the accountants."

A. Yes.

Q. Do you see that?

A. Yes, I do.

Q. And does -- am I correct that that indicates that an original copy of the comfort letter was to be provided to the issuer, and that is Sunbeam, right?

A. Original --

Q. As opposed to a copy?

A. Was to be provided to the issuer?

Q. Yes. Is that right?

A. And the issuer's counsel.

Q. Which would be?

A. And Morgan Stanley.

Q. And Morgan Stanley?

A. And Davis Polk.

Q. Let me ask the question again if you

NOT A CERTIFIED COPY

0183721

Page 146

didn't get it.
Am I reading this correctly, sir, that a copy of the accountant's comfort letter, an original copy was to be provided to the issuer, which is Sunbeam; the issuer's counsel, which is Skadden Arps; the initial purchaser, which was Morgan Stanley; and the purchaser's counsel, which was Davis Polk?
A. That's what the document says.
Q. Now, did -- did -- at the time of the closing, which is shown as March 25, 1998, did Skadden Arps receive a copy of the accountant's comfort letter?
A. I don't know.
Q. Who would know? Would it be Mr. Fernicola?
A. Mr. Fernicola or Mr. Deitz.
Q. Attached to -- let me get the right page number for you. Just give me one second here. Turn to the page CPH 0628849.
A. It -- what's the last three?
Q. The last three digits are 849.
A. 849.
Q. It also has Skadden Arps Bates No. SASMF 03665.

Page 147

A. I have it.
Q. Now, this is the -- this is the comfort letter referred to in the index.
Did you -- did you ever see a copy of the comfort letter from the auditors that's in the closing binder for the debentures?
MR. MARKOWSKI: Object to the form.
A. Yes
Q. When did you first see it?
A. I saw it yesterday, but I don't recall whether I saw it before that or not.
Q. Now, Mr. -- do you recall any discussions with Mr. Fernicola between March 25th, 1998, the date of the closing of the debentures, and March 30, 1998, about the Arthur Andersen comfort letter that we've just identified in the closing binder, MS 530?
A. I don't recall.
Q. Do you recall any internal discussions at all at Skadden Arps about the contents of the comfort letter, which is attached to the March 25th, 1998 closing binder?
A. I don't recall.
Q. Am I correct, sir, that

Page 148

Mr. Fernicola would be the person at Skadden Arps who would be the most knowledgeable and the most -- about the debenture -- debenture closing and your -- Skadden's role as issuer's counsel for the debentures?
A. Mr. Fernicola and/or Mr. Alan Deitz.
Q. Who is the senior -- the most senior of those two gentlemen?
A. Mr. Fernicola.
Q. Mr. Deitz, at that time, reported to Mr. Fernicola, correct?
A. Correct.
MR. MARKOWSKI: Can I ask a question about how the document was put together? There's a page before this document. It has a No. 11 on it.
MR. BEMIS: Correct.
MR. MARKOWSKI: Is that the tab?
MR. BEMIS: It is. And the index is off by one.
MR. MARKOWSKI: Okay. This is -- your understanding is that's a copy of tab 11?
MR. BEMIS: It is correct. It was produced to us. I think they mis-indexed

Page 149

it, is what happened.
MR. MARKOWSKI: Because the index does not tie to the tab in the document.
MR. BEMIS: It's off by one for that document or, maybe, off two at one point. But it is in the manner in which it was produced to us.
Q. If I -- if I've asked you this, I apologize. Mr. Fernicola, is he still with the firm?
A. Yes.
Q. Is he in this office in New York?
A. Um-hum, yes.
Q. Would you look at the handwriting on the first page, which appears to be Nick S. Do you see that?
A. Yes.
Q. Do you know who that is?
A. Nick S.?
Q. Yes.
A. I know a Nick S., but I don't know if it's him.
Q. Okay. Who is it -- who is the Nick S. that you know?
MR. MALLOY: If you know a Nick S.

NOT A CERTIFIED COPY

0018373

Page 150

A. Nick Saggese.
Q. And who is that? Can you spell that for us?
A. S-A-G --
THE WITNESS: Two Gs?
MR. MALLOY: I don't know.
A. S-A-G-G-E-S-E, I believe. He's a partner in our Los Angeles office.
Q. Is he --
A. I don't know why his initials would be -- why his Nick S. would be on the cover page. I have no idea.
Q. Is he still in the Los Angeles office --
A. Yes.
Q. -- of Skadden Arps?
A. Yes.
Q. Do you have any reason to believe, based on your review of the closing binder which was produced by Skadden in this case, that your firm did not have possession of the comfort letter from Arthur Andersen which we've identified -- withdrawn.
Do you have any reason to believe your firm did not have a copy of the comfort

Page 151

letter which we identified in MS 530 as of the date of the closing, March 25, 1998?
A. No reason to believe one way or the other.
Q. Is it customary as -- is it customary to prepare closing binders for something as -- like a debenture offering of a $2 billion face amount of securities?
A. Yes.
Q. Is it customary for your law firm to prepare the closing binder in the manner -- with the indexes such as we have looked at in MS 530?
A. Yes.
Q. Is it customary in a closing binder for a debenture offering, in which auditors issue comfort letters, to include the comfort letters within the closing binder?
A. I don't know, since I don't work on those kinds of things, but I would think so.
Q. Would you, please, look at the pages identified with the Bates numbers ending -- well, I'll tell you what. I'll use the Skadden Bates numbers. They will be a little shorter. Please look at the page beginning

Page 152

with the Skadden Arps Bates number 03767.
A. 03767, yes.
Q. 03767. Are you there?
A. Yes.
Q. If you'll turn to the -- this -- this is a letter to Morgan Stanley addressed to Morgan Stanley in Skadden's capacity as special counsel to Sunbeam, right?
A. Yes, it's an opinion letter.
Q. It's an opinion letter, right?
A. Yes.
Q. And it's signed at the end, and the last page I see is 03775.
A. Yes.
Q. I have to confess the photocopy is pretty bad here, but is that signed Skadden Arps, just the firm's name? Is that how it's signed?
A. Yes.
Q. Is that the traditional manner in which your opinion letters are provided?
A. I believe so, yes.
Q. Now, according to -- who would have been responsible for preparing this opinion letter to Morgan Stanley?

Page 153

A. Greg Fernicola and his team.
Q. Okay. Would you ever view this letter before it was signed by Skadden Arps?
A. I might have, but I don't recall.
Q. Please turn to the page marked 03774, again, using the Skadden Arps Bates numbers.
A. Yes.
Q. If you'll look at the first -- the first paragraph, not the first full paragraph, but the --
A. Yes.
Q. Is -- there is language midway down that begins, "No facts." Would you please turn your attention to that.
A. Yes.
Q. Now, that language reads as follows: No facts have come to our attention that have led us to believe that the offering memorandum as of its date and as of the date hereof contained or contains an untrue statement of material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not

NOT A CERTIFIED COPY

Page 154

misleading, except that we express no opinion or belief with respect to the financial statements, schedules or other financial information -- excuse me -- financial and statistical data included therein or excluded therefrom.

Do you see that language?

A. I do.

Q. Is that language a customary language for an opinion letter of this type, assuming that nothing has come to your attention?

A. In my limited experience, yes. It's known as a 10(b)(5) opinion.

Q. That was my next question. Thank you.

All right. You may set this aside.

MR. BEMIS: It's 5 o'clock and we said we would break at 5:00. And I will easily finish tomorrow within the time frame that we have.

MR. SOLOVY: Whoa, whoa, whoa, say it a little louder.

MR. MALLOY: Yes.

MR. SOLOVY: You will easily finish?

Page 155

MR. BEMIS: I will finish within the time frame allotted for us tomorrow.

MR. SOLOVY: What does that mean?

MR. BEMIS: Well, without getting into an argument, you asked for one-half of the time.

MR. SOLOVY: Yes.

MR. BEMIS: We reserved a full day today. I've gone four hours.

MR. SOLOVY: Okay.

MR. BEMIS: So, therefore, I will finish within the allotted time that was given to me.

MR. SOLOVY: Well, let's do a little math, okay?

MR. BEMIS: I'm not going to do math with you.

MR. MALLOY: I want to hear the math.

MR. SOLOVY: Come on.

MR. MALLOY: You're going to finish in --

MR. SOLOVY: Give us a break here.

MR. MALLOY: We've given you a day and a half, and you agreed to take half

Page 156

of it, right?

MR. BEMIS: I didn't agree to that, but I'm not going to take more than that.

MR. MALLOY: It was represented to me that both parties could finish this deposition in a day and a half.

MR. BEMIS: We will -- we're going to finish it in a day and a half with me taking no more --

MR. MALLOY: Both paries.

MR. BEMIS: Well, I can't speak for them. I will take no more than one-half.

MR. SOLOVY: Well, let's figure out what the one-half is.

MR. BEMIS: Well, you figure it out and I may agree with you. But I will not take any more -- I'm not going to argue with you.

MR. MALLOY: Well, why don't you tell me when you expect to --

MR. BEMIS: What time are we going to start tomorrow, at 9 o'clock?

MR. SOLOVY: 9 o'clock, we're supposed to start.

MR. BEMIS: And I would expect -- I

Page 157

would expect to be done by 11 o'clock at the absolute latest tomorrow, which leaves you with six hours, Mr. Solovy, if my math is a correct.

MR. SOLOVY: Assuming everybody starves and doesn't eat lunch. Or we work past 5:00. That's what my math tells me.

Well, Mr. Malloy, you know, I address this issue to you. I mean, if we can go past 5:00 -- and that assumes, of course, that you'll have no redirect.

MR. BEMIS: We'll be done on time. Thank you very much, Mr. Fogg. It's nice to meet you finally.

MR. SOLOVY: Well, we're not satisfied with the way this is left, Mr. Malloy.

MR. BEMIS: You know, what would you like me to do?

MR. SOLOVY: I'm saying on the record, Mr. Bemis, to Mr. Malloy we're not satisfied with the way this is left in terms of treating us fairly.

MR. MALLOY: It's between you guys.

NOT A CERTIFIED COPY

018375

MR. SOLOVY: Correct. But it's on the record. But you understand the Court's order that, if it's not done, it's their responsibility to reproduce the witness.

MR. BEMIS: I don't necessarily agree with any of that, but we are finished for the day.

MR. SOLOVY: Well, there's a court order. And the court order says what it says.

(Time noted: 5:05 p.m.)

_____

BLAINE V. FOGG

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, TAMI H. TAKAHASHI, RPR and Notary Public within and for the State of New York, do hereby certify:

That BLAINE V. FOGG, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December 2004.

_____

TAMI H. TAKAHASHI

----------I N D E X----------

WITNESS EXAMINATION BY PAGE
BLAINE V. FOGG MR. BEMIS 6

---------INFORMATION REQUESTS---------
DIRECTIONS: 23, 96
RULINGS:
TO BE FURNISHED:
REQUESTS:
MOTIONS:

---------- EXHIBITS ----------
DEFENDANT'S FOR ID.
Defendant's Exhibit 529, Transcript of deposition of Blaine V. Fogg taken on 6/16/20..... 14
Defendant's Exhibit 109, Skadden chronology..... 36
Defendant's Exhibit 541, Project Laser Discussion Materials for September 11, 1997 conference call. 42
Defendant's Exhibit 543, Memorandum dated 7/25/97, from Fannin to Strong..... 43

DEFENDANT'S FOR ID.
Defendant's Exhibit 533, Letter dated 2/3/98, from Fannin to Shapiro..... 79
Defendant's Exhibit 411, Sales Buildup..... 110
Defendant's Exhibit 611, Memorandum dated 3/23/98, from Tyree, Groeller and Boone to Kersh, Fannin, Kelly, Uzzi, Gluck, Dean and Fernicola..... 141
Defendant's Exhibit 530, Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures Due 2018, dated 3/25/98..... 143

NOT A CERTIFIED COPY

018376

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

CONTINUED DEPOSITION OF BLAINE FOGG
New York, New York
Friday, December 17, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167799

NOT A CERTIFIED COPY

018378

December 17, 2004
9:00 a.m.

Continued Deposition of BLAINE FOGG, ESQ., held at the offices of Skadden Arps Slate Meagher & Flom, 4 Times Square, New York, New York, pursuant to Adjournment, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: JEROLD SOLOVY, ESQ.
ROBERT T. MARKOWSKI, ESQ.
CHRISTOPHER M. O'CONNOR, ESQ.

MacANDREWS & FORBES HOLDINGS, INC.
36 East 62nd Street
New York, New York 10021
BY: BARRY SCHWARTZ, ESQ.
STEVEN L. FASMAN, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
KATHRYN REED DeBORD, ESQ.

APPEARANCES (Cont'd):

SKADDEN ARPS SLATE MEAGHER & FLOM
Attorneys for Mr. B. Fogg
4 Times Square.
New York, New York 10036
BY: CHRIS MALLOY, ESQ.

BLAINE FOGG, having been first duly sworn by the Notary Public, testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning.
A. Good morning.
Q. Let me hand you MS 530 again, which is the closing binder abstract for the debentures that we looked at yesterday.
A. Yes, sir.
Q. I only have one question, and that is: Is that your handwriting, "Nick S," at the top?
A. No.
Q. Do you know whose it is?
A. No, I don't.
Q. Did Seggese -- is that correct?
A. Yes.
Q. Did Mr. Saggese work at all on the Sunbeam Coleman transaction?
A. Not to my knowledge. That is why I am surprised to see that on there.
Q. Let me show you a document that the court reporter, well, that we already have

NOT A CERTIFIED COPY

018379

Page 167

marked as Morgan Stanley Exhibit 616, but I ask the court reporter to initial this.
Would you take that, sir.
A. Yes.
Q. Do you have Exhibit 616 in front of you?
A. I do.
Q. Is that your handwriting? Below memo from Finn Fogg.
A. It honestly doesn't look like it. It says memo from Finn Fogg, but that does not look like my handwriting.
Q. Were you working with Mr. Saggese on any matter around March 29th of 1998?
A. I have no recollection.
Q. All right. Can you hand that back to me.
A. March 29th was my birthday.
Q. I would say happy birthday, but it's not the 29th.
At any time after March -- withdrawn. We looked at the audit comfort letters yesterday in the context of the closing binder for the debentures, MS 530. I am now going to hand you a separate copy which

Page 168

has previously been marked as MS 9. That is the comfort letter dated March 19th, 1998.
A. Yes. I have it in front of me.
Q. Have you seen, have you ever seen --
MR. MARKOWSKI: Do you have a copy for me, Mr. --
A. Yes.
MR. BEMIS: Yes, I am getting it for you.
Q. Have you ever seen that document before?
A. I saw it two days ago.
Q. You have never seen it at all in the course -- strike that. Did you ever see the document at any time before March 30th, 1998, the closing date?
A. I don't recall.
Q. Did you ask to see it?
A. I don't recall.
Q. All right. Let me show you what has previously been marked, and would you hand those back to me. We are done with it.
MR. MALLOY: All right.
BY MR. BEMIS:
MR. MALLOY: I want to keep copies.

Page 169

Q. I will show you what has been marked as Morgan Stanley Exhibit 10. Do you have that exhibit in front of you?
A. I do, sir.
Q. This is the March 25th, 1998 comfort letter, also included in MS 530, that we discussed yesterday. Have you seen this March 25th, 1998 comfort letter?
A. I don't recall.
Q. Did you see it in your preparation yesterday or the day before?
A. I don't recall.
MR. MALLOY: I think -- oh, we are not going to get into his prep session.
MR. BEMIS: He told me what he looked at just a moment ago. As to the other ones, I think it is an appropriate question, but he answered it.
Q. At any point before March 30th, 1998, did you see Morgan Stanley Exhibit 10, the March 25th, 1998 comfort letter?
A. I don't recall.
Q. At any time after March 30th, 1998, did anyone ask you or, to your knowledge, anyone at Skadden for a copy of either MS 9 or

Page 170

MS 10, the two comfort letters that we just looked at?
A. I don't recall.
Q. As you sit here today, your recollection is that the first time that you saw MS 9, which was the comfort letter of March 19th, was in your deposition preparation; is that correct?
A. That is the only time I recall seeing it.
Q. As you sit here today, you don't ever recall seeing MS 10, the comfort letter dated March 25th, 1998; correct?
A. My recollection is, I don't have any recollection of seeing it, before today.
Q. Okay. You can hand it back to me. Thank you.
Following the closing, did you review a press release that Sunbeam issued on April 3rd of 1998 announcing some of its first quarter results?
MR. MARKOWSKI: Objection to the form.
Q. You can answer.
A. I have seen a lot of Sunbeam press

NOT A CERTIFIED COPY

018380

Page 171

releases. I can't say that I did not review it. I can't say, sit here today and say that I did. If you show it to me, it may refresh my recollection.
Q. Let me show you what has been marked as MS 58. This is a press release dated April 3rd, 1998. The press release is attached behind the cover sheet.
A. Yes, I believe I have seen this before.
Q. Did you see it before it was issued?
A. I believe I did, yes.
Q. Please tell me what the circumstances were under which you saw the press release MS 58.
A. Well, I believe it was the night before this, and I was at home. It was, like, 9 or 10 o'clock at night, and David Fannin called me.
MR. MALLOY: Just, I caution you not to reveal the substance of that conversation, other than generally.
A. David Fannin called me to tell me more about events at Sunbeam.
Q. Did he discuss with you the press

Page 172

release attached to MS 58?
A. I believe he did. He may have even faxed a copy to my home. I don't recall. But, yes, I believe he did.
Q. Did you discuss the fax release, on the telephone -- withdrawn. Did you discuss the press release in your telephone call with Mr. Fannin, the night before April 3rd?
A. I believe we discussed what's in the press release, the substance of what's in the press release. Whether we discussed the actual press release, I don't know. I don't recall.
Q. Was anyone else on the telephone call, other than yourself and Mr. Fannin?
A. Just the two of us.
Q. What did you say to Mr. Fannin and what did he say to you on the subject of the press release?
MR. MALLOY: I will instruct the witness not to answer on the grounds of attorney/client privilege.
Q. Did you discuss the April 3rd press release with anyone else, either in its draft form, as you looked at it on April 2nd, or in

Page 173

the form that it was eventually issued on April 3rd?
MR. MALLOY: Ever?
MR. BEMIS: Yes. Ever.
A. I believe that night, after I spoke to Fannin, I called Rich Easton, my partner in Delaware, and told him about it.
I remember, after it was issued, Bill Strong called me and we discussed it.
Q. This is Bill Strong from Morgan Stanley?
A. Correct.
Q. Who else did you speak to about the April 3rd press release, other than Mr. Easton and Mr. Strong and Mr. Fannin?
A. Those are the three conversations that stand out in my mind. I may have spoken to other people, I just don't recall.
Q. When did you speak -- withdrawn. My understanding is that you did speak to Mr. Easton that evening -that is, the evening of April 2nd?
A. I believe so, yes.
Q. Who was on the call, besides yourself and Mr. Easton?

Page 174

A. Just the two of us.
Q. How long did you talk?
A. I think it was pretty short.
Q. Did you send Mr. Easton a copy of the press release that Mr. Fannin had sent to you, as you --
A. I did not. Not that evening, I don't think.
Q. Did you read it to him what you had?
A. I don't recall if I -- I don't recall whether or not I had the actual draft of the press release. I told him about the events.
Q. The events including the termination of Mr. Uzzi?
A. Yes.
Q. What did you say to Mr. Easton and what did he say to you?
DI MR. MALLOY: We would consider that to be a privileged conversation, as well.
Q. When did you speak to --
MR. BEMIS: You are instructing him not to answer?
MR. MALLOY: Yes.
Q. When did you speak to Mr. Strong?

NOT A CERTIFIED COPY

018381

A. I believe it was sometime in the afternoon of the day of the press release, which was April 3rd.
Q. Did you speak to him in person or on the telephone?
A. No. He called me.
Q. Did he call you at your office or your home?
A. Yes. At my office.
Q. How long did the two of you speak?
A. It may have been 15 minutes, maybe less. I can't really say.
Q. Was anyone else present on the telephone call, other than yourself and Mr. Strong?
A. Just the two of us, I believe.
Q. Would you believe this call took place on or about April 3rd, right after the issuance of the press release?
A. Sometime after the press release, and I believe on the same day of the press release.
Q. What did Mr. Strong say to you when he called you, on or about April 3rd?
A. In substance, and I can't quote him

because it is, I don't remember exactly what he said, but he was saying that the press release has caused the marketplace to go crazy, and everybody thinks Sunbeam is in disarray, having put out a prior press release about the quarter and now, just two weeks plus later, having to announce that that was an inaccurate estimate.
The fact that Uzzi has been fired.
And I also think that, and I don't know if it is in the press release or not, that Rich Goudis had left Sunbeam. He was urging me to urge Dunlap to have an analyst conference call to quiet the marketplace and explain Sunbeam is still a viable company, et cetera, et cetera.
I told him that I thought such a message to Dunlap would carry more weight if it came from Bill Strong rather than from me.
Q. Did you say anything else at all in the call?
A. I don't remember.
Q. Were you concerned about the April 3rd press release?
A. Concerned?

Q. Yes.
A. Um --
Q. I will withdraw the question.
Did Mr. Strong appear concerned about the April 3rd press release?
A. Absolutely, yes.
Q. I think you used the term, he said the market was "in disarray"?
A. Yes. We were both concerned. I was concerned -- not about the press release, but about the company, what was really going on.
Q. Before April 3rd, did you have any foreshadowing of the results that were going to be announced on April 3rd?
A. None whatsoever.
MR. MARKOWSKI: Objection to the form.
A. David Fannin call the night before, hit me out of the blue, and I was in shock to hear this.
Q. You referred to "this." Are you referring to Sunbeam's results for the first quarter?
A. That, the firing of Uzzi and, I believe, the leaving of Goudis.

Q. Based on your telephone call with Mr. Strong and the tone of voice that you heard from Mr. Strong, did you conclude that Mr. Strong was of the same state of mind?
MR. MARKOWSKI: Objection to the form.
A. Yes. I was concerned, as I previously testified, that this press release was causing havoc in the marketplace, ah, and he wanted to see if that situation could be addressed.
Q. What if -- withdrawn. Is there anything else that you can recall today, as you sit here, about the telephone call with Mr. Strong, on or about April 3rd?
A. No. Not really.
Q. Did you make any notes of the phone call?
A. I don't remember.
Q. Did you create any memoranda about the phone call at a later time?
A. I don't recall.
Q. Did you make any follow-up phone calls to anyone, or after the April 3rd call with Mr. Strong? For example, you called

NOT A CERTIFIED COPY

018382

Page 179

Mr. Easton, earlier -- when Mr. Fannin called you --
A. Nothing stands out in my mind today. I don't recall. I may have called Fannin. I may have called Easton. I may have called both of them, but I don't really remember.
Q. Did you call Mr. Dunlop?
A. No, I did not.
Q. Did he call you about the April 3rd press release -- that is, Mr. Dunlap?
A. I don't recall. I don't recall speaking to him about it, but I may have.
Q. Did you speak to anyone else at Morgan Stanley about the April 3rd press release, other than Mr. Strong, in this call on April 3rd?
A. I remember the morning of April 3rd noticing that the press release hadn't been issued, the stock was trading, as the day went on.
Um, I spoke to Rich Easton. We both got very nervous that this information should be out.
MR. MALLOY: Wait a minute.
THE WITNESS: I am sorry.

Page 180

A. I spoke to Easton and Fannin about the fact that the press release, that there seemed to be some delay in the issuance of the press release.
Q. Was it ever, did the presses release, at some point, get issued on April 3rd?
A. I believe it did.
Q. Did you ever hear from any source as to the reason there was any delay in issuing the presses release?
MR. MALLOY: In a non-privileged context.
MR. BEMIS: Just Yes or No at this point.
MR. MALLOY: You are asking him for the substance of a --
MR. BEMIS: I asked him if he learned the reason, not what the reason was, not who said it to him, not when, but whether he knows, Yes or No, and then I will follow up on that.
A. Yes.
Q. When did you learn the reason?
A. Sometime in April 3rd, in a

Page 181

conversation with David Fannin.
Q. Was anyone else on the call?
A. No. I don't think so.
Q. Did Mr. Fannin give you the reason for the delay?
A. Yes.
Q. What time of day was the press release issued?
A. I don't remember.
Q. How late in the day was it?
A. I believe it got out, I don't remember -- I am not even sure that it made it out in the morning. I don't recall.
Q. What did Mr. Fannin say about the reason for the delay in issuing the press release?
DI MR. MALLOY: I instruct you not to answer that question on the grounds of attorney/client privilege.
Q. Was Mr. Fannin seeking your legal advice in telling you the reason for the delay?
A. No.
Q. What did Mr. Fannin say to you about the delay in issuing the press release?

Page 182

MR. MALLOY: Let me talk to the witness.
MR. BEMIS: No. I don't want you to talk to him. I object to you talking to the witness in the middle of an examination when the witness has just said he wasn't giving legal advice.
MR. MALLOY: I need to be satisfied of that before he answers the question on the record.
MR. BEMIS: All right. I don't agree with it, but obviously you are his attorney and you can speak to him.
Off the record.
(Discussion off the record.)
MR. MALLOY: I will stand by my instruction.
A. I must clarify a prior answer. It was in the context of my giving legal advice.
Q. After the -- withdrawn.
Was the conversation that you had with Mr. Strong before or after the press release was issued on April 3rd?
A. Was my conversation with --
Q. With Bill Strong.

NOT A CERTIFIED COPY

018383

Page 183

A. It was after the press release was issued, I believe.
Q. Did you speak to anyone at Sunbeam, other than Mr. Fannin, after the press release was issued -- withdrawn.
Did you speak to anyone else, other than Mr. Fannin, about the reason for what you referred to as the delay in issuing the April 3rd press release?
A. I believe I spoke to Rich Easton about it.
Q. Other than Mr. Easton, anyone else?
A. I don't recall any such conversation.
Q. Did you speak to anyone at Wachtel Lipton about the April 3rd press release, either before or after it was issued?
A. I don't recall.
Q. Anyone at MacAndrews & Forbes?
A. I don't recall.
Q. Anyone at Credit Suisse First Boston?
A. I don't recall.
Q. Anyone at Arthur Andersen?
A. I don't recall.

Page 184

Q. Did you ever speak to Mr. Uzzi again after the phone call on March 18th?
A. I don't recall any such conversation.
Q. Did you ever speak to Deborah McDonald again, after the phone call on March 18th?
A. I may have, but I am not sure.
Q. After the April 3rd press release, did you ever receive from anyone at MacAndrews & Forbes a request for any information concerning Sunbeam's results of operations for the first quarter of 1998?
A. I am not sure how to answer the question.
There were many, many discussions involving people at MacAndrews & Forbes about Sunbeam's operations, including the first quarter of 1998, which took place at a later time than what we are talking about.
Q. Is this after the change in management at Sunbeam in June of 1998?
A. Correct.
Q. Let me focus the time period and may I, I would like to use June 15th, just as a

Page 185

marker point for us for the point, the change of management. Is that a fair date for you to use?
A. The record would show what date it was. Is that the date of the board meeting?
Q. The board meeting, I think, was on June 13th, and I think -- that is when Mr. Dunlap was terminated, and I think Mr. Levin was hired, I think, on June 14th and 15th. Within a day.
A. That is a Sunday? That is the right day.
Q. We will use that day, subject to correction. I will just ask you a question, posted between March 30th, and June 15th, 1998. Did you ever speak to anyone at MacAndrews & Forbes on the matter of any request for financial information about Sunbeam's operations in the first quarter of 1998?
A. I have no recollection of any such conversation.
Q. The same question with regard to Wachtel Lipton.
A. I don't recall.

Page 186

Q. And the same question with regard to Credit Suisse First Boston.
A. I don't recall.
Q. Ernst & Young?
A. I don't recall.
Q. During that same, period March 30th, 1998, up to and including, say, June 15th, 1998, did you ever receive any request for information about Sunbeam on any subject from MacAndrews & Forbes, whether it be financial information, who is who in management?
A. I don't recall.
Q. The same question with regard to Wachtel Lipton.
A. I don't recall.
Q. The same question with regard to Credit Suisse First Boston.
A. The same answer: I don't recall.
Q. The same question with regard to Ernst & Young.
A. I don't recall.
Q. After your conversation with Mr. Strong, on or about April 3rd, 1998, following the issuance of the press release, did you have any further communications with

NOT A CERTIFIED COPY

018384

him, say, up through June 15th, about Sunbeam?
A. I don't remember.
Q. Any communications with anyone at Morgan Stanley in that time period, between April 3rd and June 15th, 1998, about, again, Sunbeam?
A. I really don't remember. I am trying to remember. There was a, there was an analyst meeting at some point at which Sunbeam executives made presentations and I am, I don't know if Morgan Stanley -- I can't remember if Morgan Stanley was there or not, or if I talked to them or not. It is very possible. I don't remember.
Q. Are you referring to the analyst meeting on May 11th, 1998 that you attended?
A. I am referring to analyst meeting in the time frame previously indicated, um, which I attended, and I don't remember the date specifically.
Q. Did Mr. Dunlap speak at this analyst meeting?
A. Yes.
Q. Is this the only analyst meeting that you can recall taking place in the period

between April 30th, 1998 and June 15th, 1998?
A. It is the only one I attended.
Q. Okay.
Short of the analyst -- excuse me, withdrawn.
Excluding this analyst meeting, do you have any recollection of any communication of any kind with anyone from Morgan Stanley, whether it be written or oral or electronic, between April 3rd, 1998 and June 15th, 1998?
A. I don't have any recollection.
Q. Do you have any recollection of anyone at Skadden Arps having any such communication with Morgan Stanley, even though you did not, personally, have it?
A. I don't have any recollection.
Q. Do you have any recollection, as you sit here today, of MacAndrews & Forbes, at any period during the negotiations of the merger agreements and up to the closing on March 30th, 1998, requesting copies of Sunbeam's interim financial statements for any period in the first quarter of 1998?
A. I don't have any recollection.
Q. Do you have any recollection --

strike that.
To your knowledge, did anyone from Credit Suisse First Boston make any request for the interim financial statements of Sunbeam for any period in the first quarter of 1998 during the negotiation of the merger agreements and up to and including their closing on March 30th, 1998?
A. I don't know.
MR. MARKOWSKI: Objection. Lack of foundation.
MR. BEMIS: What was his answer?
(Record read.)
Q. To your knowledge, did any representative of Ernst & Young, the accounting firm, make any request that you are aware of for Sunbeam's interim financial statements for any period in 1998 during the negotiations of the merger agreements, up to and including their closing on March 30th, 1998?
A. I don't have any. I don't recall.
Q. Did anyone from the law firm of Wachtel Lipton make any request that you are aware of for copies of Sunbeam interim

financial statements for any period during the first quarter of 1998, either during the negotiations of the merger agreements or in the period up to and including their closing on March 30th, 1998?
MR. MARKOWSKI: Objection to the form.
A. I don't recall.
Q. What, if any, involvement did you have with Sunbeam -- strike that.
You did continue to represent Sunbeam after the April 3rd, 1998 press release; correct?
A. Yes.
Q. What was your involvement, if any, with Sunbeam between the April 3rd, 1998 press release and the analyst meeting, which, for the record, fairly shows was May 11th, 1998?
A. I don't remember what I did for Sunbeam during that period. I believe -- I mean -- at some point in that general time frame there was a big meeting with Sunbeam people and their consultants from one of the accounting firms.
Q. Coopers & Lybrand?

NOT A CERTIFIED COPY

018385

Page 191

A. I think it was Coopers. And I was invited to that all-day meeting, which was for the purpose of talking about restructuring Coleman, the other companies Sunbeam had acquired, et cetera. An all-day meeting, management presentations, consultants presentations.

I said and did very little at that meeting. There was also a board meeting somewhere in that time frame. I just can't pinpoint it, sitting here today.

Q. Let me show you what has been marked as Morgan Stanley 535, first.

A. Thank you. I have it, yes, I have read it.

Q. Did you receive a copy of this memorandum, as shown on the CC lines at the bottom-left-hand corner?

A. I probably did, yes.

Q. There are several meetings referred to in this memorandum.

A. Yes.

Q. Let me ask you: Do you recognize this as being a document received from David Fannin, based on the signatures that appear at

Page 192

the left top?

A. Yes.

Q. There are several meetings referred to, and one is a meeting concerning some presentations by Coopers & Lybrand; do you see that?

A. I do.

Q. You did refer to a meeting concerning Coopers & Lybrand, that Coopers & Lybrand appeared at and there were presentations. Is the meeting that you were testifying to the meeting that is identified in MS 535?

A. Um, the first meeting that is identified in MS 535 is a meeting of the board of directors of Sunbeam to be held on May 6th.

Q. Correct.

A. 1998. There was a prior meeting. Not a board meeting, but a prior meeting with Sunbeam management and Coopers & Lybrand, at Coopers & Lybrand, which I attended, previous to the board meeting.

Q. And then there was also a board meeting; correct?

A. Yes.

Page 193

Q. And after the board meeting -- withdrawn.

Was the board meeting on May 6th, 1998, as reflected in MS 535?

A. To the best of my recollection, it was -- yes, somewhere around there. I think the record speaks for itself.

Q. I have the minutes of the meeting, so I will not -- it is not a guessing contest. The Coopers & Lybrand meeting preceded the board meeting, as best you recall?

A. Yes.

Q. And then, following the board meeting, there was the analyst meeting?

A. Yes. Three meetings. I attended all three.

Q. Did you attend the annual meeting of the stockholders of Sunbeam on May 12th?

A. I don't remember.

Q. All right. Focusing now on the --

A. Excuse me. If as this document indicated it was in South Florida, I don't believe I did.

Q. Okay. Focusing on the Coopers & Lybrand meeting, first in the sequence, did

Page 194

anyone from Morgan Stanley attend that meeting?

A. I believe so, but I don't recall specifically who.

Q. Do you recall if anyone did attend, and what, if anything, the Morgan Stanley representative said?

A. No. I don't remember who said what at that meeting.

Q. Were the results of Sunbeam's operations for the first quarter, that is financial results discussed at this meeting?

A. I don't recall. The focus of the meeting was how can we restructure Sunbeam and these acquired companies, position the company for moving forward, et cetera. The focus of the meeting was on the future.

Q. Did Mr. Dunlap speak at the meeting?

A. Oh, yes.

Q. Where was this meeting?

A. At Coopers, I believe.

Q. It was at Coopers.

A. In New York.

Q. In New York. Who attended on behalf of Sunbeam, besides Mr. Dunlap?

NOT A CERTIFIED COPY

0183386

Page 195

A. There were a lot of people. Russ Kersh was there. David Fannin was there. I remember a fellow name Frank Ferako was there. He had just been hired.
There were a bunch of other people, and I don't remember exactly.
Q. Did anyone from Skadden Arps attend. Other than yourself?
A. I think I was a Lone Ranger at that meeting.
Q. Do you remember any of the individuals from Coopers & Lybrand who were at the meeting?
A. There was a whole troop. I don't remember the guy's name who was in charge, but he was Al Dunlap's go-to guy for restructuring.
Q. Does Bennett ring a bell?
A. Who? It doesn't ring a bell.
Q. How long did this meeting last?
A. It was, like, all day.
Q. Were there any -- were there documents that were handed out at the meeting?
A. I think there were all kinds of documents.

Page 196

Q. Slides, decks?
A. I don't remember slides or decks, but there were all kinds of documents.
Q. What was your role at the meeting?
A. I had no idea why I was invited to the meeting. I sat there and listened.
Q. How did the meeting come to a conclusion?
A. They decided to move forward and presented to the board some kind of a restructuring plan, the details of which I no longer recall.
Q. Did you attend the board meeting where those details were presented?
A. I did.
Q. Let me show you the minutes of the board of directors meeting, which we will mark as Morgan Stanley Exhibit 614. I handed you what the reporter has marked for us as Morgan Stanley Exhibit 614. Do you have that in front of you?
A. I do.
Q. Okay. Have you seen this document before?
A. Probably, but I don't have any specific recollection of having done so.

Page 197

Q. While you represented Sunbeam, was it customary for you to receive copies of the board of directors minutes?
A. Um, not all of them. I mean, sometimes I did and sometimes I did not.
Q. You are shown as being in attendance in the second paragraph of the minutes of May 6th, 1998. Do you see that?
A. I was there.
Q. You were there.
A. Yes.
Q. Did you attend the entire meeting?
A. I was there from the opening gavel until the board said let's adjourn. Yes.
Q. On page 5 --
A. Faith Wittlesey was late.
Q. Why is it that you remember that?
A. Because when she walked in maybe 20 minutes late, Mr. Dunlap dressed her down in front of the whole board and said that if she couldn't come on time, she should leave the board.
Q. Did she respond?
A. Not really.

Page 198

Q. Did any of the other directors respond?
A. I don't think anybody said anything at that point. Burnett, not Bennett, Burnett, that is the guy.
Q. I apologize. I thought that is what it was after I told you Burnett.
A. You told me Bennett.
Q. Excuse me. We were both close.
A. Right.
Q. Turn to page 5, please, under the heading "first quarter."
A. Yes.
Q. Did Mr. Kersh make a presentation to the board of directors about the results of Sunbeam's operations for the first quarter, including an analysis of the reason for any shortfall in the results?
A. Yes.
Q. Do you remember his presentation, other than what is written in the minutes?
A. No.
MR. MARKOWSKI: Objection to the form.
Q. Do you remember anything at all that

NOT A CERTIFIED COPY

018387

Mr. Kersh said about the first quarter operations of Sunbeam?
A. Yes.
Q. What do you remember that he said?
A. Let me just pause for a minute. Is this privileged?
MR. MALLOY: Can you read back the question.
(Record read.)
THE WITNESS: Actually, I testified about it yesterday.
Q. Not only that, the minutes reflect that, if it was privileged, it would have been redacted like the rest of the minutes were redacted. I am not your lawyer. I think you did --
MR. MALLOY: I think you are on safe ground.
A. Well, I remember asking the question as to why, wasn't it a fact that the first quarter was bad because the customers weren't buying the product. And both Dunlap and Kersh responding by saying that press release on March 19th put us in a terribly weak position and the customers took advantage of us.

Q. This is the conversation, I believe, you related to us yesterday?
A. Yes. Correct.
Q. Do you recall Mr. Dunlap saying anything else?
A. No.
Q. I believe yesterday you said that Mr. Kersh echoed Mr. Dunlap; is that correct?
A. Yes.
Q. Do you recall Mr. Kersh saying anything else?
A. No. Not really.
Q. Did the board of directors say anything in response to Mr. Dunlap's explanation?
A. I don't recall.
Q. Did you say anything else?
A. No, I don't think I did.
Q. Do you recall anyone else at the meeting making any other comments or asking any questions about the first quarter results, other than what you have described to us?
A. I don't recall.
Q. Did anyone from Morgan Stanley make any statements at the meeting that you

remember?
A. Not that I recall, no.
Q. Did you have any discussions, at or about the time of the meeting, with anyone from Morgan Stanley? Again, about the matters of the meeting.
A. I don't recall.
Q. Was the Coopers & Lybrand meeting and the discussion of the restructuring efforts discussed with the board of directors?
A. I believe so, yes.
Q. What was discussed on that subject?
A. I believe the general parameters of the restructuring plan proposal was presented to the board by Coopers & Lybrand.
Q. Did the board ask any questions?
A. I believe that they did, yes, but I don't recall what they were.
Q. All right.
A. Or who asked them specifically.
Q. Mr. Easton is shown in the minutes as attending the meeting.
A. He was there.
Q. Did you, at the meeting, provide any legal advice to the company?

A. I don't recall doing so.
Q. Did Mr. Easton provide any legal advice?
A. I don't recall him doing so.
MR. BEMIS: You may hand that back to me. Thank you.
MR. MALLOY: Off the record.
(Discussion off the record.)
THE REPORTER: Is this confidential?
MR. MALLOY: Yes. We are designating yesterday's transcript as confidential, as well.
MR. BEMIS: We are going to challenge that, since we are on the record.
Q. I am handing you what has been marked as Morgan Stanley Exhibit 115 at an earlier deposition. Do you have that in front of you, sir?
A. I do.
Q. Have you seen this document before?
A. Yes.
Q. What were the circumstances under which you first saw the document?
A. It was -- in which I first saw it.

NOT A CERTIFIED COPY

018388

I don't remember. But I did see it before it was issued. And I discussed it with Rich Easton and I discussed it with David Fannin and I discussed it with the people at the PR firm of Sard Verbinnen.

The first word is S-A-R-D, George Sard and Maureen Bailey.

Q. Did you draft the press release?

A. I don't believe so.

Q. Do you know who drafted it?

A. No. But I think it was somebody at the company and/or George Sard's firm.

Q. How did you first -- withdrawn.

Did I hear you correctly that you believe you saw a draft of it before it was issued?

A. Yes.

Q. How did you receive the draft?

A. I don't remember.

Q. Did you speak to Mr. Easton alone about the press release?

A. I believe Rich and I discussed it before we talked to Fannin and Sard and Bailey.

Q. Did you talk to --

MR. MALLOY: I would just note that we consider those conversations to be privileged.

Q. Did you --

MR. MALLOY: I will caution the witness not to go into the substance of those conversations.

THE WITNESS: I am sorry, I need a clarification. The substance of all of those conversations?

MR. MALLOY: We will let Mr. Bemis establish the nature of the conversations, and then we will take a -- we will take them one by one.

A. Okay.

Q. Are we all set?

You spoke as to Mr. Easton first about the draft of Morgan Stanley 115; right?

A. I did, yes.

Q. Just now I want to go through the sequence, so that I understand who was present. You then had a -- did you then have a conference with Mr. Fannin and Maureen Bailey?

A. I believe Easton and I then spoke

probably with Fannin alone first, and then with Fannin and George Sard and Maureen Bailey, and it may be that Dunlap and/or Kersh were at Sard Verbinnen and in the room for that call. I don't remember. All of these were phone calls.

Q. Was the conversation with Mr. Easton a phone call?

A. Correct. Yes.

Q. When you spoke to Mr. Easton, did you have a draft of the press release?

A. Yes. We both did.

Q. Okay.

When you spoke to Mr. Fannin, he had a draft of the press release, as well?

A. He was at Sard Verbinnen and they were creating a press release there, as I recall.

Q. But you did speak to him separately before you spoke to the larger group, Mr. Fannin, Ms. Maureen Bailey --

A. That is my recollection, yes.

Q. And possibly Mr. Dunlap and Mr. Kersh; correct?

A. Yes.

Q. What did you and Mr. Easton say to each other when you first spoke about the press release?

MR. MALLOY: I will instruct you not to answer that question on the grounds of attorney/client privilege.

Q. Were you asked -- had you been asked to review the press release?

A. Yes.

Q. Were you asked to give legal advice about the press release?

A. I was asked to comment on it.

Q. Were you asked to comment on legal matters, as opposed to business matters?

A. Yes. I think the text of the press release is both business and legal.

Q. This was now, at least the third press release that you identified that you either reviewed or helped create, correct, because you looked at the March 19th press release, you helped write the March 19th press release, and you also assisted in some fashion with the April 3rd press release; correct?

MR. MARKOWSKI: Objection to the form.

NOT A CERTIFIED COPY

018389

MR. MALLOY: I object to that question. It mischaracterizes his testimony.
A. I would correct that in that, yes, with respect to the March 19th press release, as I testified at great length yesterday, I was involved in the creation of that press release.
Q. Okay. You also --
A. With respect to the April --
Q. Excuse me.
A. With respect to the April 3rd press release, my involvement simply was to get a phone call to Mr. Fannin at home, the night before it was issued, telling me --
MR. MALLOY: Well --
A. Here is what happened and here is what is being issued.
Q. You were asked to comment on it?
A. I was.
Q. You asserted an attorney/client privilege to your conversation with Mr. Fannin; correct?
A. Correct.
Q. You refused to tell me what was

said?
MR. MALLOY: He was instructed not to answer.
A. I was asked not to comment on it.
Q. You met with your counsel out in the hall and came back in and said you would not tell me what was said; is that correct?
A. I do remember that.
Q. Let's move forward -- let's go forward to the April -- excuse me, the May 11th press release, 1998, and your testimony is that you are giving both business and legal advice to Sunbeam; correct?
A. No. I give legal advice.
Q. All right. I thought I heard you say that you were, your advice was both business and legal.
MR. MALLOY: He did not say that.
Q. If I misheard him, I misheard him. I don't wish to suggest otherwise.
A. I believe I said that the press release is both a business matter and a legal matter.
Q. You were giving legal advice to Sunbeam on the contents of their press release

of May 11th; correct?
A. Correct.
Q. All right. You did that first in a conversation with Mr. Easton; right?
A. Mr. Easton and I -- we got our comments together on the press release.
Q. These were your legal comments?
A. Yes.
Q. All right. And then, the next thing that happens is -- well, just so we can close the record on this -- what did you and Mr. Easton say to each other?
MR. MALLOY: I have instructed him not to answer that question already.
MR. BEMIS: Okay.
Q. Let's move on, then, to the next telephone call on -- and that is between you and Mr. Fannin.
A. And Mr. Easton, I believe.
Q. I did not realize that he was on that call. Sorry.
A. I think so.
Q. Again, was this on May 11th, the same day? Withdrawn.
Were all these conversations on May

11th, or were they before May 11th?
A. I don't remember. I think they were before May 11th.
Q. But close to May 11th?
A. Yes. Between the board meeting and the issuance of the press release sometime.
Q. What did you say to Mr. Fannin in this three-way call between yourself, Mr. Easton and Mr. Fannin?
MR. MALLOY: I will instruct you not to answer that question, on the grounds of privilege.
Q. What did Mr. Easton say?
MR. MALLOY: Same instructions.
Q. What did Mr. Fannin say?
MR. MALLOY: Same instruction.
Q. And then, after this conversation between Messrs. Fannin, Easton and yourself, there was another phone call which you have identified with the Maureen Bailey and -- Sard, is it Michael Sard?
A. George Sard.
Q. George Sard. Sorry. George Sard. And possibly Mr. Dunlap and Mr. Kersh; correct?

NOT A CERTIFIED COPY

018390

Page 211

A. Correct.
Q. How long did that conversation last?
A. It was not a long conversation.
Q. On the press release again; correct?
A. Yes, correct.
Q. What did you say in the telephone call?
DI MR. MALLOY: Same instruction. I instruct you not to answers on the grounds of privilege.
Q. Were you on this telephone call providing legal advice to George Sard and Maureen Bailey and Mr., Messrs. Fannin, Dunlap and Kersh?
A. Yes, we were.
Q. Was Mr. Easton, by the way, on this call?
A. Yes, I believe he was.
Q. How long did the six of you speak?
A. I am not sure that Dunlap and Kersh were involved in the phone call. I am not sure that they were at Sard Verbinnen.
I think I heard. I think one of them said something, but just with that amendment. The call was not a long call,

Page 212

maybe ten minutes.
Q. Was your legal advice followed?
A. No.
Q. Did you and/or you and Mr. Easton make specific legal recommendations as to the text of the press release which we have identified as MS 115?
DI MR. MALLOY: I will instruct him not to answer that question on the grounds of privilege.
Q. What was the general subject matter of the advice that you gave them at the meeting, without telling me what the specific advice was that was rejected?
A. Generally, it was about the text of the press release.
Q. Did Sunbeam accept any of your recommendations?
MR. MALLOY: You can answer that Yes or No.
A. Yes.
Q. And they rejected others?
A. Other.
Q. Other. Did you document in any way in your files the legal advice that was

Page 213

rejected by Sunbeam?
A. I don't recall doing so.
Q. Was anyone at Morgan Stanley on any of these calls leading up to the issuance of the May 11th press release?
A. Not to the best of my recollection.
Q. Did you consult with anyone at Morgan Stanley about the legal advice that you gave Sunbeam in these various phone calls concerning MS 115?
A. I don't recall doing so.
Q. Was there any delay in issuing the March, excuse me, May 11th press release, similar to what you recall of the April 3rd --
A. I don't recall any such delay.
Q. Did you then attend the May 11th analyst meeting that Mr. Dunlap spoke at?
A. Yes.
Q. Did you attend the entire meeting?
A. Yes.
Q. Did you say anything at the analyst meeting?
A. Nothing.
Q. How would you describe the meeting?
A. It was a typical analyst meeting.

Page 214

Management, Dunlap, Kersh and others made presentations and the analysts asked questions.
Q. Anything unusual about the questions or the answers?
A. Yes.
Q. What?
A. There was one analyst who asked some very pointed questions and Mr. Dunlap got very, very heated and dressed him down and called him irresponsible in front of the whole group.
I don't think I have ever seen that before or after in an analyst conference.
Q. Who was the analyst; do you know?
A. I don't recall, sitting here today. I think it was Andrew-something.
Q. Andrew Shore?
A. Andrew-something.
Dunlap kept pointing a finger at him, saying, Andrew you don't know what you are talking about, you are irresponsible, etc., etc.
Q. Did you have any discussions with Mr. Dunlap about the analyst meeting after it

NOT A CERTIFIED COPY

018391

took place?
A. I don't recall doing so.
Q. Did you witness any confrontation between Mr. Shore and Mr. Dunlap at the end of the meeting?
A. I saw it from a distance, that the two of them were engaged in what appeared to be an argument, but I did not really witness it.
Q. Did you hear about it?
A. I think so, but I don't remember who told me what or when.
Q. Attached to the press release of Morgan Stanley Exhibit 111 are the -- are the results as presented?
A. 115 or 111?
Q. I may have misspoke. Let me look here. 115. Let me ask the question again.
Do you have Exhibit 115 in front of you?
A. I do.
Q. If you would turn to the last three pages, as certain condensed consolidated financial information.
A. Yes.

Q. Do you see it?
A. Yes.
Q. Did you see that information in the draft press release that you reviewed before May 11th?
A. I don't remember.
Q. Referring to specifically the third to the last page, bearing the Bates number 0063809, would you look at that, please.
A. Yes, sir.
Q. The net sales figures that appear at the top under the headings March 31st, 1998, and March 30th, 1997, do you see that?
A. I do.
Q. When was the first time that you -- strike that.
Had you seen these figures before?
A. I don't remember. The April 3rd press release addressed, in general, this topic. But I don't think it had the figures in there.
Q. Okay. You may set this document aside. We are done with it. You can hand it back.
MR. MALLOY: Are you going to wrap

up now?
MR. BEMIS: Shortly.
Q. Did you see the article that appeared in the June 6th, 1998 Barron's magazine?
A. Yes.
Q. What were the circumstances under which you saw it?
A. I think Mr. Fannin called me.
Q. Had you seen the article at the time that Mr. Fannin called you?
A. No.
Q. Let me show you a copy of the document, just so that you have it, the letter -- the one that I will show you is a printout, because the large copy doesn't photocopy very well. I will hand you what has been previously marked as Morgan Stanley Exhibit 74.
A. Yes, sir, I have it in front of me.
Q. At the time you had spoken to Mr. Fannin, had you seen the article in Barron's, MS 74?
A. No. He called and told me about it.
Q. Did he send it to you or did you go

out and buy a copy?
A. I think I wandered over to my nearest newsstand and picked it up. It was a weekend, if I recall.
Q. What did Mr. Fannin say to you about the article when you spoke to him on the telephone?
A. He said it is a damaging article and I aught to see it.
Q. Not having seen it, what did you say?
A. I said that I will go get a copy.
Q. Did your read the article after you purchased the Barron's?
A. As soon as I bought it.
Q. Did you speak to Mr. Fannin or anyone else at Sunbeam after that?
A. Sure. Yes.
Q. Did you speak to Mr. Easton about it?
A. I believe so. I don't recall exactly whom I spoke to and when I spoke to them, but there were a lot of conversations about that article.
Q. Did you have a conversation,

NOT A CERTIFIED COPY

018392

conversations with people at Sunbeam?
A. Other than Mr. Fannin, I don't believe so.
Q. Did you attend the board meeting on June 9th, 1998, at which time the Barron's article was discussed?
A. I did.
Q. Were you asked to attend the board meeting by Mr. Fannin?
A. Yes.
Q. I will show you a copy of the minutes of that meeting, which have been previously marked as Morgan Stanley Exhibit 605.
Now, you -- I think you said that the article, that Mr. Fannin said that the article in Barron's MS 74 was quite damaging. Did I hear you correctly?
A. Yes.
Q. And what was your reaction to the article in Barron's when you read it?
A. It seemed quite damaging.
Q. Is it fair to say that you agreed with Mr. Fannin' assessment?
A. Yes.

Q. Was it is board meeting -- strike that.
You did attend the board meeting, and I have now handed you the minutes of that meeting, MS 605, for June 9th, 1998.
A. Yes.
Q. Have you seen the minutes of the meeting, MS 605, before that are signed by Mr. Fannin?
A. Probably, but I don't recall when.
Q. Did the minutes of the meeting, based on your attendance of the meeting, fairly and actually summarize the meeting?
A. Let me read them.
Q. Please do so.
A. Yes. But, with respect to the stuff on page 2, I was not there during that portion of the meeting; so, I can't comment on whether that is an accurate summary or not.
Q. All right. Let's limit --
A. I was told that that is what happened. The earlier part, in very broad outlines, appears to be an accurate summary.
Q. You were there with your partner Mr. Easton; right?

A. Yes.
Q. And at this meeting there is also shown in attendance Phil Harlow of Arthur Andersen; is that correct?
A. Yes.
Q. Did you understand or -- did you know who -- withdrawn.
Did you know who Mr. Harlow was?
A. Yes.
Q. Who was he?
A. I am not sure if I had met him before, but I knew he was the partner in charge of the Sunbeam audit at Arthur Andersen.
Q. When you saw the partner in charge, is that like you being the partner in charge of the Sunbeam account here at Skadden at the time for the Coleman transaction?
MR. MARKOWSKI: Objection to the form.
A. I don't know. I -- I don't know what exactly the partner in charge of an audit does; so, I can't really answer that.
Q. Did Mr. Harlow use the term "partner in charge," or how did you --

A. No. I just -- I used the term, that is what I thought of him as, um, and I don't know that he ever said it to me, he was the point man at Arthur Andersen with respect to Sunbeam.
Q. Did he speak at the meeting?
A. Yes.
Q. He is reported to have stated in the third paragraph, from the bottom of the minutes: "Mr. Harlow stated that after having reviewed the Barron's article and management's position, Arthur Andersen stood by its opinion with respect to the corporation's 1997 audited financial statements." Do you see that sentence?
A. I do.
Q. Do you recall Mr. Harlow saying that?
A. Yes, I do.
Q. Was there any hesitation in his voice when he said that?
A. None whatsoever.
Q. Did you sense any hesitation in his body language at the meeting?
MR. MARKOWSKI: Objection to the

NOT A CERTIFIED COPY

018393

Page 223

form.
A. No. He was unequivocal.
Q. Did you have any reason to believe that Arthur Andersen was going to later, within weeks, withdraw its opinion as to Sunbeam's 1997 financial statements?
A. Not at that time.
Q. What was your reaction when Arthur Andersen withdrew its opinion as to Sunbeam's 1997 financial statements?
A. I was quite surprised.
Q. Were you shocked?
A. I am not sure I would characterize it as shocked. I was surprised.
Q. Did the board ask any questions of Arthur Andersen and Mr. Harlow at the meeting of June 9th?
A. Yes, I think so.
Q. It refers to numerous questions being asked.
A. Yes.
Q. Did you recall any of the questions being asked of Mr. Harlow?
MR. MARKOWSKI: Objection to the form of the question.

Page 224

A. I believe I recall the areas of some of the questions.
Q. What were the areas?
A. The gist of some of the questions.
Q. What were the gist of the questions that you recall?
A. Um, well Mr. Harlow, what about bill and hold, was that appropriate. That was one area that they talked about.
Q. What did he say?
A. He was responded in the affirmative.
Q. Any other questions that you recall?
A. Not specifically, but there were numerous questions. I don't remember who asked them or exactly what they were, but --
Q. Were they questions that tracked some of the allegations in the Barron's article, MS 74?
A. I don't recall.
Q. Did you ask any questions of Mr. Harlow?
A. I don't recall.
Q. Did Mr. Easton?
A. I don't recall. There were a lot of questions by a lot of people, and I don't know

Page 225

if I chimed in or Rich chimed in. I just don't remember.
Q. Do you recall anyone from Morgan Stanley being present at the meeting?
A. No, I don't.
Q. Did you leave the meeting after the discussion of the Barron's article?
A. Um, there was a discussion of the Barron's article. There was a discussion with Harlow about the 1997 audited statements. There was a discussion about the second quarter brief discussion -- and that, after that, I believe the outsiders were asked to leave, nonboard members. The board members and Fannin stayed and the rest of the people were excused.
Q. What do you recall about the discussions of the second quarter?
A. I recall myself asking Dunlap and Kersh and whoever else were, management was there, how the second quarter is going.
Q. What did they say?
A. I believe Mr. Kersh said it is a little soft. And no one followed up on that.
Q. Was there any discussion of

Page 226

Sunbeam's -- withdrawn.
Was the next board meeting that you attended of Sunbeam, the board meetings that took place over the weekend, I believe the second week of June, where Mr. Dunlap and Mr. Kersh were terminated?
A. Mr. Kersh was not terminated over that week, only Mr. Dunlap.
Q. Then I misspoke. Is that -- is the meeting where Mr. Dunlap was terminated the next meeting that you attended?
A. Yes. The next meeting of the board, yes.
Q. Between the June 9th, 1998 board meeting and Mr. Dunlap's termination, what was your next involvement with Sunbeam?
A. I remember a telephone conversation, telephone conversations with Fannin and with Peter Langerman.
Q. When was this?
A. Between those dates that you just gave.
Q. What was the subject matter of those telephone conversations?

NOT A CERTIFIED COPY

018394

MR. MALLOY: Generally.
A. Generally, I think one of them told me or -- I don't remember who or maybe both of them told me.
MR. MALLOY: I caution you not to get into who said what, because we consider this to be a privileged conversation.
MR. BEMIS: Just right now, tell me generally what they were about.
A. Generally what had happened at the board meeting of June 9th, after the outsiders were excused.
Q. You subsequently learned that Mr. Dunlap offered to resign after you left the meeting?
A. Yes.
Q. Were you asked to do anything on behalf of Sunbeam in these phone calls with Mr. Langerman and Mr. Fannin?
A. I don't really recall, other than to come to the meeting on the 13th.
Q. The meeting, the board meeting of the 13th?
A. Yes. Ah, yes.

Q. Is this the board meeting in which Mr. Dunlap was terminated?
A. Yes.
Q. Following Mr. Dunlap's termination and the change in management at Sunbeam, did you participate in a --
A. I believe I was asked by one of them to look at the employment contracts of Messrs. Dunlap and Kersh.
Q. Did you do that?
A. I believe so, yes.
Q. Did you look at the provisions in the contracts involving termination?
DI MR. MALLOY: I instruct him not to answer questions regarding the nature of his review.
Q. All right. Following the board meeting when Mr. Dunlap was terminated, did you participate, either yourself or indirectly, -- withdrawn.
Following Mr. Dunlap's termination, did Skadden Arps assist Sunbeam in conducting an investigation of the events of Sunbeam, including its, including financial transaction matters that had occurred since Mr. Dunlap was

hired?
A. Yes.
Q. What was your role in that investigation?
A. Well, the investigation was primarily conducted by Bob Zimet, the very able Chris Malloy, and others from the litigation group here at Skadden, and I reviewed drafts of the report.
Q. Was a final report prepared?
A. I believe so.
Q. Was it presented to the board of directors?
A. I believe it was presented to the audit committee.
Q. The audit committee.
A. I believe.
Q. Of the board of directors of Sunbeam?
A. Yes. Correct. That is my recollection.
Q. You have to be a director to be on the audit committee; right?
A. Yes.
Q. In the report was Morgan Stanley

identified as having been responsible for any wrongdoing at Sunbeam?
DI MR. MALLOY: I will instruct the witness not to answer the questions regarding the substance of the investigation or the report.
Q. Was Morgan Stanley mentioned in the report?
DI MR. MALLOY: Same instruction.
Q. When was the last time that you saw this report?
A. I don't remember.
Q. Do you know who received copies of the report?
A. Do I, personally, know who received copies? No. I assume the audit committee received copies.
Q. Did you receive a copy yourself?
A. Yes.
Q. What did you do with your copy?
A. I don't remember.
Q. Did you ever discuss the audit committee -- strike that.
Did you ever discuss this report with anyone at MacAndrews & Forbes?

NOT A CERTIFIED COPY

018395

Page 231

A. I don't really remember. I mean, there were all kinds of discussions with MacAndrews & Forbes about what went wrong at Sunbeam, and whether the report was discussed with them, I just don't recall.
Q. Did you have discussions with MacAndrews & Forbes over what went wrong at Sunbeam?
A. Following Mr. Dunlap's termination, there were numerous meetings, telephone calls with people like Howard Gittes, Barry Schwartz, others at MacAndrews & Forbes about Sunbeam, about the whole situation.
Q. Did you participate in these conversations?
A. A lot of them, yes.
Q. Can you separate one conversation from another?
A. No. They all sort of meshed together in my mind.
Q. What did you tell them about what went wrong at Sunbeam?
MR. MARKOWSKI: Objection to the form.
MR. MALLOY: Well, you will have

Page 232

to -- many of these conversations were privileged and you will have to parse it out.
MR. BEMIS: He said he can't separate one conversation from another.
MR. MALLOY: I will instruct him not to answer.
MR. BEMIS: These people are not your clients, MacAndrews & Forbes.
MR. MALLOY: Mr. Gittes was a director.
MR. BEMIS: Mr. Schwartz wasn't a director.
MR. MALLOY: I think you have already gotten a report on that; so, I stand by the instructions.
Q. What did you tell, did you tell, what did you tell Mr. Schwartz -- about what went wrong at Sunbeam?
A. I don't think I told him anything.
Q. Was that discussed?
A. I previously testified that there were numerous meetings, telephone conversations which I participated in and people from MacAndrews & Forbes participated

Page 233

in about the whole Sunbeam situation, and not just the past, but the present and the future, and I can't separate out in my mind any of those with a couple of exceptions.
Q. What are the exceptions that you can separate out?
A. I remember Howard Gittes taking Peter Langerman and me aside and having a conversation about the situation.
Q. When was this?
A. Sometime after Mr. Dunlap was terminated, and I don't recall when.
Q. What did he say and what did they say?
A. Mr. Gittes said that MacAndrews & Forbes has big fraud claims against Sunbeam for having failed to make full disclosure when they issued the stock to them to pay for Coleman, and that it was an intolerable situation for him to be sitting on the board, for other MacAndrews & Forbes people to be involved, ah, while they had these claims.
And we had to resolve the situation, one way or the other. The two alternatives he presented to Mr. Langerman and to me were

Page 234

either we rescind the Coleman transaction or we reach some kind of settlement of the claims.
Q. What did you say?
A. I said, I don't know -- I don't recall, but I think Peter Langerman and/or I said, it is not really in Sunbeam's interest or practical to even think about rescinding the transaction.
In terms of the settlement, at some point I told Mr. Gittes and/or Mr. Langerman that Skadden couldn't represent either party in that, if there are to be settlement negotiations between MacAndrews & Forbes and Sunbeam.
Q. What did Mr. Gittes respond?
A. I don't recall exactly, but he, I think he wanted us to stay involved and to represent either Sunbeam or MacAndrews, but I took the position that we really couldn't.
Q. You said you did remember this conversation. I thought you said that you remembered another one or more than -- perhaps even more than one, or a specific conversation.

NOT A CERTIFIED COPY

018396

Page 235

A. That is the one that I -- I may have misspoke. That is the one that really stands out in my mind.
Q. I thought you said several conversations stood out in your mind. I asked you what was the first.
A. We can go back and have the transcript -- I believe I said one or two.
Q. If you only remember one, that is all you remember. I don't want to quarrel with you about your words. You may have misspoken.
A. That is really the one that I remember, now -- I remember sitting in the MacAndrews & Forbes board room with the beautiful Roy Lichtenstein mural, having all kinds of conversations, but I don't recall all of the substance of those conversations.
Q. Did Morgan Stanley ever come up in those conversations?
A. I don't recall.
MR. MALLOY: You said at the beginning that you would go an hour or an hour and a half. It has been an hour and a half.

Page 236

MR. BEMIS: I know. I am almost finished.
MR. MALLOY: I understand your reluctance to reveal your strategy here.
MR. BEMIS: I don't have an overall strategy, but --
MR. MALLOY: We really do need to know that you will end today and when your examination will end; so, why don't you tell us how much you will have.
MR. BEMIS: As soon as I am done, I will be done --
MR. MALLOY: Are you almost done?
MR. BEMIS: Yes.
MR. MALLOY: Tell us how much more you have, then tell us that you are almost done.
MR. BEMIS: I am reviewing my notes. Calm down. Calm down. This is just business.
MR. MALLOY: No, you need to wrap up, and you need to not --
MR. BEMIS: I need to finish my examination and I intend to do so and I intend to do so properly. Calm down.

Page 237

(Pause.)
MR. BEMIS: I think I am finished, but why don't we take five minutes and I will check with my associate.
THE WITNESS: All right. I have to make a phone call.
MR. MALLOY: Off the record.
(Recess.)
MR. BEMIS: Thank you. I have no further questions at this time.
MR. MARKOWSKI: I have some questions.
EXAMINATION BY
MR. MARKOWSKI:
Q. Good morning, Mr. Fogg.
My name is Bob Markowski, and I represent Coleman (Parent) Holdings in the litigation against Morgan Stanley.
Mr. Fogg, do you have a general understanding of the nature of the litigation that my client has brought against Morgan Stanley?
A. I have not seen the complaint, but I have a general sort of understanding, yes.
Q. In general terms, what's your

Page 238

understanding of the nature of the litigation?
A. That somehow Morgan Stanley participated in a deception of your client in connection with the Coleman transaction.
Q. And the Coleman transaction that you are referring to is the transaction by which my client sold its stock in the Coleman Company to Sunbeam in the first quarter of 1998; correct?
A. Correct.
Q. My client, at that time, had an 82 percent, approximately, interest in the Coleman Company; is that correct?
A. Something like that. I don't recall exactly the percentage.
Q. About 44 million shares, I think the record will show.
You were a partner at Skadden Arps in the first quarter of 1998; correct, sir?
A. Yes.
Q. You are now of counsel to the firm; correct?
A. Yes.
Q. You now work primarily in Paris?
A. Yes.

NOT A CERTIFIED COPY

018397

Q. In the first quarter of 1998 you worked in the New York office; correct?
A. Yes.
Q. You joined Skadden in 1996?
A. Yes.
MR. BEMIS: Objection. This is all asked and answered.
Q. Excuse me. You joined Skadden in 1966?
A. 1966.
Q. In 1998, sir, you acted as Sunbeam's lawyer in connection with the transaction by which my client sold its stock in Coleman Company to Sunbeam; correct?
A. Correct.
Q. Mr. Dunlap was the person responsible for bringing you into that transaction; is that correct? As Sunbeam's counsel.
A. Me, personally?
Q. Yes.
A. Yes, I would guess that he was the one that got me involved in the Sunbeam account, yes.
Q. At the time Skadden was also

representing MacAndrews & Forbes in other matters; correct?
A. I believe so, yes.
Q. Unrelated to the Sunbeam transaction; correct?
A. I believe so, yes.
Q. That was your understanding at the time?
A. Yes.
Q. In this transaction, though, Skadden Arps only represented -- by "this transaction" I mean the Coleman Sunbeam transaction -- Skadden Arps only represented Sunbeam's interests; correct?
A. Yes.
Q. Skadden did not represent MacAndrews & Forbes' interest in that transaction in any way; correct?
A. Correct.
Q. Skadden Arps did not represent my client Coleman (Parent) Holdings' interest in that transaction, in any way; is that correct?
A. That is correct.
Q. You were responsible for representing Sunbeam's interests as its

attorney; is that correct?
A. That is correct.
Q. The Coleman deal was not the only thing that Skadden Arps was doing for Sunbeam in the first quarter of 1998; is that correct?
A. That is correct.
Q. What other things were you doing?
A. There were two other acquisitions.
Q. Can you name those?
A. Um, Sunbeam was seeking to acquire Mr. Coffee and First Alert. I don't remember the corporate names of those.
Q. Does Signature Brands ring a bell?
A. Yes.
Q. Signature Brands was the owner of Mr. Coffee; correct?
A. Right. First Alert was the company, the other company that they were seeking to acquire.
Q. In the first quarter of 1998 Sunbeam was seeking to acquire Coleman Company, First Alert and Signature Brands; correct?
A. Yes.
Q. Skadden Arps was representing Sunbeam in each of those transactions?

A. Correct.
Q. And you were, personally, involved in each of those transactions as Sunbeam's counsel; correct?
A. Correct.
Q. Skadden Arps was also involved in doing certain other things for Sunbeam relating to those transactions in the first quarter of 1998; correct?
A. Correct.
Q. What were those things?
A. Financing transactions.
Q. There were two of those; correct?
A. Bank financing and a high yield financing.
Q. The high yield financing that you referred to is sometimes called the debenture transaction?
A. Correct.
Q. It was an issuance of zero coupon debentures by Sunbeam; correct?
A. Correct
Q. Convertible debentures?
A. Convertible, yes.
Q. And Skadden Arps was acting as

NOT A CERTIFIED COPY

018398

Page 243

Sunbeam's lawyer in connection with those two transactions; correct?
A. Yes.
Q. And you were involved in those two transaction, as well?
A. Not very much involved, no.
Q. But you were acting as Sunbeam's lawyer to the extent that you were involved in those transaction; correct, sir?
A. The firm was acting as Sunbeam's lawyer, yes. I was not really very much involved with the bank financing or the debenture offering. I am an M&A lawyer.
Q. To the extent that you had any involvement in it, it was as Sunbeam's counsel?
A. Yes.
Q. Skadden Arps was also hired in the first quarter of 1998 to draft new employment agreements for Mr. Dunlap, Mr. Fannin, and Mr. Kersh; correct?
A. I know that there were new employment agreements, but I don't recall exactly when those were to be drafted or whatever.

Page 244

Q. Do you recall that before the announcement of the transaction involving the sale of my client's interest in Coleman Company to Sunbeam there was an announcement that Mr. Dunlap had entered into a new three-year employment agreement with Sunbeam?
A. Yes. I think it was before the Coleman deal was announced, yes.
Q. And Skadden Arps drafted that employment agreement; is that correct?
A. I believe we did, yes.
Q. Do you recall getting a call from Mr. Fannin asking you to do that; don't you?
A. I do, yes.
Q. At the time, sir, in addition to the three transactions that Sunbeam had underway and the three acquisitions, excuse me, that Sunbeam had underway, in the first quarter of '98, the acquisition of my client's interest in Coleman, the acquisition of Signature Brands, and the acquisition of First Alert, Mr. Dunlap had also made public statements indicating an invitation to make yet still more acquisitions at some future point; is that correct?

Page 245

A. I don't recall that.
Q. You don't recall Mr. Dunlap indicating a plan to engage in further consolidation of the consumer products business, as part of the long-range strategic plan of Sunbeam?
A. I really don't recall.
Q. Mr. Dunlap was somebody known for making deals; correct, sir?
A. I guess so. He had done the Scott deal. I guess so.
Q. He had done the Scott deal after being there for a relatively short period of time; correct, sir?
MR. BEMIS: Objection to form.
A. I don't remember how long he was there.
Q. The Scott deal that you are referring to is the sale of Scott Paper to Kimberly Clark; correct?
A. Yes.
Q. Mr. Dunlap had been the chief executive officer of Scott Paper; correct?
A. He had, yes.
Q. He had retained you to assist him in

Page 246

the sale of Scott Paper to Kimberly Clark; correct, sir?
A. To assist Scott, yes.
Q. Yes. Sir, I would like to show you a document that has been produced to us by your firm in connection with your deposition. I understand these, sir, based on what we have been told about them, to be a printout of the time records that Skadden Arps maintained for the work being done by the firm on behalf of Sunbeam in the first quarter -- excuse me, March of 1998. I would like to ask you a couple questions about that.
MR. MARKOWSKI: Let's mark this as CPH Exhibit 384.
(CPH Exhibit 384, documents Bates Nos. 19645 to 687, marked for identification as of this date.)
Q. I will ask you some very specific questions about this. You don't need to look at entire document at this point.
Have you looked at this document as it has been produced to us before this -- just now?
A. Yes.

NOT A CERTIFIED COPY

018399

Page 247

Q. I will direct your attention to page 5 of the document. It is labeled page 543 at the bottom.
A. Yes.
Q. Are you there?
A. Yes. I am there.
Q. There are some time entries for you on that page. Do you see that, sir?
A. At the bottom?
Q. Yes.
A. Yes.
Q. Do you see those?
A. Yes.
Q. Under "personnel type," the column to the left of your name -- do you see that the words "of counsel" appear?
A. Yes.
Q. That was not your position at the firm in the first quarter of 1998; correct, sir?
A. No.
Q. You were --
A. A partner.
Q. Let me direct your attention to another reference here that caught my eye,

Page 248

actually on the first page. There is a reference to an Al Morrison, towards the bottom, or towards the top, as well, actually. Do you see that?
A. She was not a partner at that time.
Q. That is correct. She was associate?
A. She was associate and --
Q. She is a partner now?
A. She is a partner now.
Q. Does this indicate to you that the personnel type designations reflected on this document are those that people hold today at Skadden Arps, as opposed to those that these individuals held back in March of 1998?
A. Well, in those two cases, surely.
Q. Perhaps your counsel can clarify that for us at some point, and determine whether that is the case.
MR. MALLOY: That is the case. This was a, this was run recently at your request and it includes the -- is -- I couldn't hear you.
This was run recently at their request and it includes on the personnel type the current designations.

Page 249

Q. The only other thing I want to cover right now with you, sir, concerning this document, are the matter names.
There are a series of matter names, and I think they are in sequence here. And I would like you to go through with me each one of the matter names listed here and have you describe, to the best you can, the general nature of the matter that is the subject of these descriptions.
Do you see that the first matter name on the first page of the exhibit is "corporate advice"?
A. I do, yes.
Q. In general terms, what was that matter to be used for?
A. Basically, anything that did not fit into the other specific matters.
Q. It was a catchall for corporate work?
A. Yes.
Q. And then, beneath that, the first change in matter name is on the fourth line; do you see that?
A. Yes. Shareholders' meeting.

Page 250

Q. There was a special file created for a shareholders' meeting for Sunbeam?
A. That's what it would appear to be, yes.
Q. Are you familiar with the nature of the work that was to be billed to that matter?
A. I don't have any independent recollection, other than this document, since all of the work appears to have been done in March.
Q. This time record only relates to --
A. Only relates to March.
Q. I don't want to confuse you.
A. It had to do with work in connection with the shareholders' meeting.
Q. Do you know which shareholders' meeting?
A. It must have been the 1998 meeting. I don't see why work in March would have related to any other shareholders' meeting.
Q. Was there a point in time when there was some thought that a shareholder meeting of some sort might be required in connection with any of the three acquisitions?
A. Probably a shareholder meeting of

NOT A CERTIFIED COPY

018400

Page 251

Coleman.
Q. Not to speculate, but can you recall?
A. I don't recall that the three acquisitions were subject to the Sunbeam shareholder group.
Q. As you sit here, you are not sure what this relates to, what time it was billed to?
A. No. Not really.
Q. The next matter name that appears is on the fourth box from the bottom.
A. Averdesian.
Q. Do you know what that related to?
A. I have not a clue.
Q. And the next matter, after that, is "strategy"; do you see that?
A. I do.
Q. And there are several pages of entries here relating to strategy. I think those entries run through page 17 of the document. Do you see that, sir?
A. Well, yes. I have not looked at all 17 pages, but --
Q. But if you --

Page 252

A. Yes.
Q. Page to page 17, you will see that it continues to that page.
A. Yes.
Q. In general terms, what was the nature of the Skadden work activity that was to be billed to the strategy matter?
A. I think that was the Coleman transaction.
Q. The strategy is in reference to Coleman?
A. I believe so.
THE WITNESS: There is other stuff in there. I am sorry. I am looking at my own entries.
A. My own entries indicate Coleman. Also some other stuff, other than work on that transaction. But it is mostly Coleman, I think. I can't say that either.
Joe Nisa's time has some First Alert and Signature in it.
Q. Does it appear to relate generally, perhaps, to the three acquisitions?
A. I thought that there was a separate matter.

Page 253

Q. I will take you through each of them, sir, perhaps it will become more clear to you. On page 17.
A. Yes, sir.
Q. The matter names shift from strategy to --
A. Creditor.
Q. Creditor. Do you know what that matter related to?
A. Not really, but most of the time it is by Greg Galardi, who is a bankruptcy or restructuring lawyer in Delaware.
And I don't really know what this is. I can only speculate. I will do so if my counsel lets me.
Q. In addition to the work that Skadden was doing for Sunbeam in the first quarter of 1998 relating to the transactions of the financing and the employment agreements, was Skadden also doing other corporate work for Sunbeam?
A. Yes. There was the creditor matter, for example.
Q. This appears to be an example of that?

Page 254

A. It appears to be an example of that.
Q. Beneath creditor at the bottom of page 17 there is a matter name --
A. Boston.
Q. -- that appears there, it is Boston; correct, sir?
A. Correct.
Q. What did the Boston matter relate to?
A. I believe that was supposed to have captured the time dealing with the Signature Brands and First Alert acquisitions -- the so-called Boston, because those companies were owned by funds established by Tom, Thomas H. Lee & Company, based in Boston.
Q. There are quite a few entries for Boston; correct, sir?
A. Quite a few.
Q. They continue until it looks like the bottom of page 22; correct?
A. Correct.
Q. It is possible, sir, is it not, that in matters such as this, that people would sometimes bill time to the wrong matter?
A. Yes.

NOT A CERTIFIED COPY

CONT
#976

Page 255

MR. BEMIS: Objection to form.
Q. The next matter --
A. It is not only possible, it is inevitable, in my experience.
Q. It is your experiences here.
At the top of page 23 there is a new matter.
A. Bank financing.
Q. What did that matter pertain to?
A. The bank financing for the three acquisitions.
Q. The three acquisitions, again, are Coleman Company, Signature Brands and First Alert; correct?
A. Yes.
Q. Beneath that, I think beginning at page 34 -- there are quite a few entries for bank financing here, as well, sir?
A. Correct.
Q. The bottom of page 34, sir, you see towards the bottom there is a matter named, that is called rule 144A; do you see that?
A. Yes, I do.
Q. What does that matter pertain to?
A. The debenture offering.

Page 256

Q. The debenture offering also related to obtaining funds to be used by Sunbeam, at least in part, in connection with the three acquisitions; correct, sir?
A. Correct.
Q. And there are quite a few entries for the 144A matter; correct, sir?
A. There are, yes.
Q. Those continue to page 43 of the time printout?
A. That is the end. Well, yes.
Q. And then, there are a few, there are two other matters on page 43 that have a relatively small number of entries; do you see those?
A. Mercer and MD Corp.
Q. The Mercer matter related to what, sir?
A. I don't recall, except since it is Barbara Rubell's time, mostly, it must have had to do with the product liability matter.
Q. You see a reference to Hank Marshall; do you see his name?
A. Who?
Q. Hank Marshall, it is --

Page 257

A. Hank Marshall.
Q. Do you know Hank?
A. No.
Q. He is a partner at Sidley & Austin, Sidley Austin Brown?
A. I don't know Hank.
Q. All right. Do you see the matter, the last matter listed in this record, MD Corp., at the bottom?
A. Yes.
Q. At the bottom of page 43.
A. Yes.
Q. MD Corp. related to what, sir? I see you billed a little bit of time to them.
A. I don't recall. I don't recall.
Q. Sir, Skadden Arps was paid about $3,000,000 for its work on the three acquisitions and the related financings?
A. I don't remember.
Q. I would like to have the court reporter mark, as CPH Exhibit Number 384, a -- 385, excuse me, a two-page document. It bears Bates number SAS MF 19691 to 692. It says "Skadden Arps invoice" dated April 27th, 1998.
(CPH Exhibit 385, document Bates

Page 258

SAS MF 19691 to 692, marked for identification as of this date.)
Q. Do you have Exhibit 385 in front of you, sir?
A. Yes.
Q. You have seen this before; correct?
A. I don't recall, but I am sure I did.
Q. Would you have been the person responsible for billing Sunbeam for the work related to --
A. No.
Q. To the first quarter transactions?
A. No.
Q. There was another person at Skadden that did that?
A. Rich Easton.
Q. Rich Easton was one of the partners that you brought into in to assist you in connection with the work that needed to be done?
A. Not exactly. Rich Easton is a partner in our Delaware office, was then and still is. He had represented Sunbeam for some time before Mr. Dunlap got involved and before I got involved.

NOT A CERTIFIED COPY

018402

Page 259

So, he stayed on the account, and he knew Mr. Fannin from before. He had a good relationship with Mr. Fannin. And so, I came in and we worked together. But he remained the billing partner.
Q. This invoice reflects $3,000,000 in charges for professional services; is that correct, sir?
A. Yes, it does.
Q. And it indicates that $900,000 had previously been paid by Sunbeam; correct?
A. It does.
Q. And that $2.1 million remained due; correct, sir?
A. Yes.
Q. It also indicates that the firm was billing Sunbeam for slightly less than $120,000 in charges of disbursements; correct?
A. Yes.
Q. And these fees and expenses all relate to the three first quarter acquisitions and the related financings; correct?
A. Those are the five matters listed on page 1, yes.
Q. It doesn't relate to any other work

Page 260

that Skadden Arps was doing for Sunbeam?
A. It doesn't seem to be, no.
Q. These amounts, sir, are not, at least precisely based on the firm's hours; correct?
A. Um, not sure in this case. I don't know what our hours were.
Q. They are all rounded numbers; correct, sir?
A. Yes. But they could have been close to the hours and to the hourly time charges and just rounded. I don't recall.
Q. That was going to be my question. Was there some agreement with Sunbeam in advance that the firm would be paid a certain amount of money for the work or was the agreement that the firm would be paid based on the hours, or was it something else?
A. I don't recall.
Q. In any event, the invoice here is for $3,000,000 for the work; correct?
A. Yes.
Q. Do you know whether this represents the entire charge to Sunbeam for professional services relating to the three first quarter

Page 261

acquisitions and the related financings?
A. It purports to. I don't -- I don't -- I don't know any reason to think that there were other charges for these five matters.
Q. Your involvement with Sunbeam had started -- had started several months earlier than the first quarter of 1998; correct, sir?
A. Yes.
Q. You indicated yesterday it was, at least as early as the middle of 1997 that you received a call from Sunbeam requesting your involvement in assisting the company in connection with various strategic alternatives; correct?
A. Correct.
Q. And that work, at least partially, culminated in the transactions that occurred in the first quarter of 1998; correct, sir?
A. Correct.
Q. In 1997, sir, did Skadden Arps bill Sunbeam for any out-of-pocket costs or fees incurred in connection with the services that were being performed at that time?
A. What time is this?

Page 262

Q. 1997. The period before the transactions of the first quarter of 1998.
A. I don't remember.
Q. You don't remember whether the firm, whether you were charging your time to Sunbeam?
A. Before the first quarter of 1998?
Q. Yes. You testified that --
A. I charged some time to Sunbeam before that.
Q. Okay. Is it your understanding that that was being billed to Sunbeam?
A. I don't recall. I don't recall whether that is included in this bill or not.
Q. You are just uncertain about that?
A. I don't know.
Q. It could have been --
A. I don't know. Our records would certainly reflect that.
Q. During the work that was being done in the 1997 time period, you were involved in doing various things; correct, sir?
You were involved in 1997 in doing various things relating to assisting Sunbeam in connection with assessing strategic

NOT A CERTIFIED COPY

018403

Page 263

alternatives; correct?
A. Correct.
Q. Other than yourself, were others at Skadden Arps involved in that activity?
A. Rich Easton was involved.
Q. Anyone else?
A. I am not sure. I don't know.
Q. You were involved in at least -- let me take a step back.
You had various meetings and conversations with Sunbeam in connection with that activity in 1997; correct, sir?
A. Correct.
Q. And Morgan Stanley was involved in at least some of those meetings and conversations; correct?
A. Correct.
Q. And Bill Strong is a person that you recall being involved in that activity for Morgan Stanley; correct, sir?
A. Correct.
Q. In 1997, sir, when you first became involved, it was your understanding that Mr. Dunlap's preference was to have Morgan Stanley find a firm willing to acquire

Page 264

Sunbeam; correct?
A. Correct.
Q. That was his strong preference; is that correct, sir?
A. I believe so.
Q. Did Mr. Dunlap ever say that in your presence to any representatives of Morgan Stanley, such as Mr. Strong?
A. I don't remember.
Q. Do you recall Mr. Dunlap, at any point, ever being critical of Mr. Strong for Morgan Stanley's inability to find a company willing to acquire Sunbeam?
A. I don't really recall. I am sure he would be. He was critical of everyone else.
Q. Mr. Dunlap was a very demonstrative person; correct, sir?
A. Very.
Q. You had known him, by this point, for a better part of 15 years?
A. I am not sure that I ever knew him. I had worked for companies in which he was involved back into the mid-'80s.
Q. You were familiar by 1997 with the manner in which Mr. Dunlap communicated with

Page 265

people; correct, sir?
A. I had seen him communicate with quite a few people, yes.
Q. He was often quite blunt; correct, sir?
A. Often blunt. Yes.
Q. As you sit here today, you can't recall any circumstances where Mr. Dunlap was, to use that phrase, "quite blunt" in expressing his disappointment that Morgan Stanley had been unable to find a company willing to acquire Sunbeam?
MR. BEMIS: Objection. Asked and answered.
A. I really don't recall.
Q. You have just mentioned that you had first became involved in doing corporate work, where Mr. Dunlap was also involved in some way, back in the mid-1980s; correct, sir?
A. Yes.
Q. I think you testified yesterday, sir -- well, let me -- it would be faster if I let you do it.
Could you go through, chronologically, for me, sir, the transactions

Page 266

where you were involved as counsel to accompany where Mr. Dunlap was employed as an executive, beginning with the first transaction that you can recall and then taking us right through the time when you got the call in 1997 to become involved in Sunbeam.
A. First, a series of transactions in which Skadden and I represented Sir James Goldsmith and his holding company, General Oriental, and I don't specifically remember all of the transactions, but they took place after Goldsmith had acquired Crown Zellerbach, and it involved, generally, selling off parts of Crown Zellerbach.
I remember one very complicated transaction involving James River Corporation, and there were others.
Q. You had assisted Sir James Goldsmith in the acquisition of Crown Zellerbach; is that correct?
A. I have.
Q. Mr. Dunlap was not involved in that activity?
A. No. He was hired by Mr. -- to the

NOT A CERTIFIED COPY

Page 267

best of my recollection, he was hired by Mr. Goldsmith after that acquisition.
Q. And then -- what was Mr. Dunlap's role in connection with the transactions relating to the sale of various Crown Zellerbach assets?
A. Sir James Goldsmith had the whole staff of people involved in those transactions. Mr. Dunlap was not, at that point, a transaction person, he was a restructuring person. He would come in and fire people and, more that than actually handling the transactions themselves. But he was involved in that way.
Q. Do you recall his position or his title?
A. No, I don't.
Q. You had personal contact with him in connection with the legal work that you were doing?
A. Yes. Although I had much more contact with Sir James Goldsmith himself and other people working for him.
Q. This is just the circumstance in which you first became, in which you first met

Page 268

Mr. Dunlap; correct?
A. Correct.
Q. And can you recall, approximately, sir, how many of these sale transactions there were and over what period of time they occurred?
A. There was the James River transaction, which was the principal one, and I don't recall whether Dunlap was involved with that at all.
There was another transaction that we sold, a leveraged buyout, this was somebody represented by somebody in Chicago. I am very vague on this.
There was a transaction in which, I think this was the final transaction in which Sir James Goldsmith swapped his Crown Zellerbach, maybe, other Timberlands, for a big chunk of Hanson.
Dunlap was involved in that one. That's all I remember about the Crown Zellerbach exit transactions.
Q. Do you think there may have been more?
A. It is possible.

Page 269

Q. Do you recall over what period of time these transactions took place?
A. Not really. Probably a couple of years.
And the next time I encountered Mr. Dunlap was in London. Still he was working for Sir James Goldsmith and his holding company, and Sir James Goldsmith was teaming up with two other colorful entrepreneurs, Lloyd Jake Rothschild in London and Kerry Packer in Australia, to try to take over a U.K. public company called BAT, represented by Cravath. This was a hostile bid, and Dunlap was part of the Goldsmith team on site in London.
And the whole team, including merchant bankers and British lawyers and myself and one of my partners, Goldsmith, and Dunlap, would meet every day to strategize about how to proceed.
Q. Is it fair to say that you had more direct contact with Mr. Dunlap in connection with that transaction than you had previously?
A. Um, I saw more of him.
In these meetings in London he did

Page 270

not have a lot to contribute.
Q. Do you recall when this was?
A. The late '80s. That's about the best time frame that I can put on it.
Q. What happened in that transaction?
A. Um, the group Goldsmith, Rothschild, Packer, formed a company called Hoylake, which made a hostile tender offer for BAT, which was unsuccessful
Because BAT had a big U.S. insurance company, Fireman's, and the state insurances regulators in the United States refused to approve the takeover, which killed the deal, but that went on for months.
Q. Did you spend a great deal of time on that?
A. Yes.
Q. What do you recall next?
A. Next, I recall that, at some point, Dunlap left Goldsmith, and I am not sure if he left on his own accord or he was pushed, I just don't know.
And he went to work for Kerry Packer in Australia, one of the Goldsmith partners on the BAT take over.

NOT A CERTIFIED COPY

018405

Page 271

And I had one, I did one transaction, or the firm did one transaction for a Packer-controlled company in which Mr. Dunlap was involved. It was a U.S. company called Balassis Communications, and it wanted to, they wanted to take it public.

So, we did an initial public offering called Balassis Communications, principally handled by my corporate finance partner, Phyllis Korff.

And I was involved in the beginning of that transaction, with Mr. Dunlap and others, in negotiating with the management of Balassis over their employment, what piece of the equity that they would get, et cetera, et cetera.

Q. How did Skadden Arps come to be involved in representing Kerry Packer in that transaction?

A. Dunlap called.

Q. What do you recall next?

A. Scott Paper. Dunlap was named CEO of Scott Paper, which -- it was a pre-existing Skadden client, for whom we had been, had done quite a bit of work, and the Scott Paper team

Page 272

at Skadden at that time was headed by my partner Peter Atkins, and Peter and I went down to visit the new management team at Scott, outside of Philadelphia, um, and met with Dunlap, Kersh and the general counsel whose name escapes me.

And, thereafter, Dunlap or the general counsel called me, I can't remember who, to see if we would represent Scott in selling off, I think it was Hammermill Paper, some division of Scott, and my partner Bob Pincus in Delaware handled that transaction pretty much by himself. I did not get much involved.

Q. The call for that transaction came in to you either from Mr. Dunlap or the general counsel?

A. Yes.

And then the Kimberly Clark sale, which Bob Pincus and I, and others, represented Scott Paper in selling out to Kimberly Clark.

Q. The sale of Kimberly Clark to Scott Paper was a defining moment in Mr. Dunlap's career; was it, sir?

Page 273

MR. BEMIS: Objection to the form.

A. Defining moment? I don't know.

Q. He was given, I think you referred to him yesterday, sir, at least as of 1997, 1998, as a darling of Wall Street; correct?

A. Correct.

Q. And the Kimberly Clark transaction was certainly an important part of Mr. Dunlap becoming, in your opinion, one of the darlings of Wall Street; correct?

A. Yes.

Q. You indicated yesterday that that transaction made a lot of money for the Kimberly Clark shareholders; correct?

A. Not -- for Scott.

Q. For the Scott. Mr. Dunlap was working at Scott.

A. Yes.

Q. And Kimberly Clark acquired Scott; correct?

A. Yes.

Q. In connection with that sale you represented Scott?

A. Scott.

Q. And the Scott shareholders, in

Page 274

connection with that transaction, you said yesterday, made a great deal of money; correct?

A. Yes. Scott's stock during Mr. Dunlap's tenure there went way up.

Q. Mr. Dunlap was given a great deal of credit for turning Scott Paper around and capitalizing on the sale and the benefits of that turnaround by selling the business to Scott Paper; correct?

A. Yes. He became a --

Q. Selling the business to Kimberly Clark.

A. He became a legend in his own mind, yes.

Q. He also became something of a legend on Wall Street; is that correct, sir?

A. Yes.

Q. What was the nature of Skadden Arps' involvement in that transaction, sir?

A. Kimberly Clark?

Q. Yes.

A. We did everything. I mean, we -- we drafted and negotiated the merger agreement. Drafted and negotiated the SEC documents, the

NOT A CERTIFIED COPY

018406

Page 275

whole thing. We did the whole transaction.
Q. You worked extensively in that transaction personally; correct?
A. I certainly did, yes.
Q. Mr. Dunlap, personally, made a substantial amount of money as a result of the sale of Scott Paper to Kimberly Clark; correct, sir?
A. Yes.
Q. Mr. Dunlap held a substantial amount of Scott Paper stock in options; correct?
A. That is my recollection.
Q. Do you recall that Mr. Dunlap made something in the neighborhood of $100,000,000 as a result of the sale of Scott Paper to Kimberly Clark?
A. I couldn't fix a precise amount on it, but that doesn't seem unreasonable.
Q. I think you indicated, sir, that you did recall that Skadden Arps prepared a new employment agreement for Mr. Dunlap at Sunbeam, sometime before the three acquisitions were announced in the first quarter of 1998; is that correct, sir?
A. Yes.

Page 276

Q. Let me show you the employment agreement.
MR. MARKOWSKI: I will mark this as CPH Exhibit 386, sir. It is a document entitled "employment agreement by and between Sunbeam corporation and Albert J. Dunlap" effective as of February 1st, 1998.
(CPH Exhibit 386, employment agreement, marked for identification as of this date.)
Q. Do you have CPH Exhibit 386 in front of you, sir?
A. Yes, sir.
Q. This is a copy of the employment agreement that Skadden Arps prepared; is that correct?
A. It purports to be, but there is nothing on here to indicate that it came out of our word processor. Yes, there is, on the last page. Sorry.
Q. This is the document that Skadden Arps prepared, the employment agreement that Skadden Arps prepared for Sunbeam relating to Mr. Dunlap's employment as chief executive

Page 277

officer of the company; correct, sir?
A. That is what it purports to be, yes.
Q. It is effective as of February 1st, 1998; is that correct?
A. That is what it says.
Q. If you turn to the second page, sir, executed according to the document, on February 20th. Do you see that?
A. That is what it says.
Q. All right. Do you recall that the -- we will get to it later, I am sure, but actually I think you saw some documents already -- that the acquisition agreements relating to the sale of Coleman Company to Sunbeam were dated as of February 27th.
A. Right.
Q. Do you recall that, sir?
A. Yes.
Q. So, this agreement is dated about a week before the agreement was entered into between my client and Sunbeam relating to the acquisition of Coleman Company; correct, sir?
A. That's what it says, yes.
Q. And the term of this agreement, sir, is the employment period, is through January

Page 278

31st, 2001; correct?
You will see that at the bottom of page 2, in the paragraph entitled "Employment Period."
A. That's what it says.
MR. BEMIS: Objection to the form. He is highlighting the document.
He doesn't have any personal knowledge of this. Objection to the form.
Q. Sir, do you recall that Morgan Stanley advised Sunbeam that it was important, in connection with the announcement of the three acquisitions and the related financings, that Mr. Dunlap's employment period be extended?
A. I don't recall that.
Q. You don't recall that becoming a subject of conversation?
A. No.
MR. BEMIS: Objection. Asked and answered.
Q. Do you recall that Mr. Dunlap's employment contract was scheduled to expire in mid-1998, prior to the February 1st, 1998

NOT A CERTIFIED COPY

018407

Page 279

agreement?
MR. BEMIS: Objection. No foundation.
A. I don't recall.
Q. Do you recall that when the acquisitions were announced, that Mr. Dunlap made it a point to say that he had just signed a new employment agreement and intended to stay with the company to restructure the three companies that were being acquired?
A. I don't recall. I have some vague recollection of it, that that was known, but I don't recall specifically saying that.
Q. Sir, do you recall that Mr. Dunlap wrote a book?
A. Yes.
Q. Mean Business?
A. Yes.
Q. You bought quite a few copies of the book; do you recall that, sir?
A. Yes, I do.
Q. About a thousand?
A. Not me, personally. The firm did.
Q. I was going to ask that question. I had seen an indication that you bought 1,000

Page 280

copies of the book.
A. The firm.
Q. Skadden Arps bought the book, the 1,000 copies?
A. Yes.
Q. How did that come about?
A. Mr. Dunlap instructed me to do that.
Q. When did he do that?
A. I don't remember.
Q. Did you actually take delivery of 1,000 copies of his book?
A. I believe so.
Q. What did you do with them?
A. I think I stuck them in the library for anyone who wanted a free copy. There were a lot left over. I don't know what we did with those.
Q. Let me show you a document that we are going to mark as CPH Exhibit 387.
(CPH Exhibit 387, documents Bates Nos. 598 to 99, marked for identification as of this date.)
A. Thank you.
Q. Exhibit 387, sir, is a document, two-page document that bears Bates number

Page 281

HK SOC 598 to 599. I will represent to you, sir, that this was a document that was first produced by Hill & Knowlton.
A. All right.
Q. Do you see your name there, sir?
A. I do.
Q. And next to your name it indicates, actually written in hand beneath your hand is written the number 1,000; do you see that, sir?
A. Yes, I do.
Q. 1,000 is the number of copies of Mr. Dunlap's book, Mean Business, that you recall acquiring?
A. I don't specifically recall, but it sounds like it is right.
Q. Okay.
Do you see, on the bottom of this second page, sir, there is the date September 5th, 1997?
A. Yes.
Q. Does that refresh your recollection that you were approached about buying a large number of copies of Mean Business sometime in the latter part of 1997?

Page 282

A. Not really, but -- it sounds right.
Q. Do you recall that it was during the time period when you were working for Sunbeam?
A. Yes.
Q. So, sometime before Mr. Dunlap was terminated; correct, sir?
A. Yes.
Q. And do you recall it was before the acquisitions took place in the first quarter of 1998?
A. I believe so.
Q. Why did the firm buy 1,000 copies of the book?
A. To please a CEO of a good client.
Q. You did not, personally, pay for them, I take it?
A. No.
Q. Sir, Morgan Stanley was a client of Skadden Arps in 1998; correct?
A. I believe so. Yes.
Q. Are they a client of the firm today?
A. I believe so, although I don't know what we are doing for them.
Q. In connection with the work that Morgan Stanley -- do you have an

NOT A CERTIFIED COPY

018408

Page 283

understanding, sir, of, in general terms, of the various things that Morgan Stanley was doing for Sunbeam that related to the first quarter of 1998 acquisitions?
A. Yes.
Q. Could you tell me what your understanding is.
A. They were financial advisers with respect to the acquisitions, which included giving fairness opinions or fairness advice to the Sunbeam board with respect to the acquisition. On the one hand.
On the other hand, they were to provide or raise the money needed to finance the acquisitions.
Q. And in connection with the fundraising activity that Morgan Stanley itself was involved in, sir, what's your understanding of what Morgan Stanley did to accomplish that? In very general terms.
A. Well, there are two pieces of financing. There was a bank financing. Morgan Stanley provided a piece of that and brought other banks into, with respect to the rest of it. On the debenture offering they

Page 284

placed the debentures.
Q. They underwrote the debentures; correct, sir?
A. Yes.
Q. And then they marketed them; is that correct?
A. Yes. Correct.
Q. Morgan Stanley was being paid substantial amounts for its activity both as financial adviser to Sunbeam and as the senior lender and as the underwriter of the debenture offering; is that correct?
MR. BEMIS: Objection. Form, foundation.
Q. Was that your understanding, at the time?
A. I believe they did get significant fees in connection with those activities, yes.
Q. Is it your understanding, at the time, sir, that if the transactions did not go forward, if for some reason the three acquisitions did not occur, and if the financings were unnecessary, that Morgan Stanley would not be paid those fees?
MR. BEMIS: Objection. Form,

Page 285

foundation.
A. I don't recall the nature of their engagement letter.
Q. Is it your understanding, based on your involvement in transactions such as this, sir, that the fees that the investment banker typically will be paid are contingent on the transactions actually occurring?
MR. BEMIS: Objection. Form, foundation.
A. It is customary that all or part of the investment banking fees are success fees, contingent on the successful completion of the transaction.
Q. That was your understanding, as of the time these transactions were occurring in the first quarter of 1998; correct, sir?
A. Correct.
Q. Sir, you have never been involved in representing Coleman (Parent) Holdings, personally; have you?
A. No.
Q. You have never been involved in representing any MacAndrews & Forbes entities; is that correct?

Page 286

A. I don't believe I have.
Q. When you testified earlier, sir, about the first call that you got from Mr. Fannin, relating to the possibility of Sunbeam acquiring Coleman, the telephone call, I think you placed in late 1997 --
A. Yes.
Q. Do you recall that testimony, generally?
A. Yes.
Q. You told Mr. -- or maybe it was Mr. Fannin telling you that he was aware that Skadden Arps, at least sometimes, represented MacAndrews & Forbes entities; correct?
A. We both were aware, yes.
Q. Mr. Fannin was aware of that when he placed this call?
A. I believe so.
Q. You certainly were aware of it; correct?
A. I certainly was aware.
Q. And if Mr. Fannin was not aware of it, you told him during that first telephone call?
A. Yes.

NOT A CERTIFIED COPY

018409

Page 287

THE WITNESS: But I do think he knew of it before we even started talking about it.
Q. There was no doubt about the fact that Mr. Fannin was aware of that relationship; correct?
A. No doubt.
Q. And when Mr. Fannin raised with you the possibility of Skadden Arps becoming involved in the representing of Sunbeam, in connection with the possible acquisition of Coleman Company, you knew that there was a conflict presented by that engagement, potential engagement; correct?
A. Yes.
Q. And Mr. Fannin understood that, too; correct?
A. Yes.
MR. BEMIS: Objection to form.
Q. It was your understanding that Mr. Fannin, in your conversation with him, was aware of that; correct?
MR. BEMIS: Objection to form.
A. Yes.
Q. And did you tell Mr. Fannin at that

Page 288

time, sir, that for you to become involved in representing Sunbeam, in connection with the possible acquisition of Coleman Company, you would need to obtain a conflict waiver from MacAndrews & Forbes?
A. Yes.
Q. Could you explain, sir, everybody in this room, I think understands, but could you explain for the jury what this conflict situation involved, in your mind?
A. Well, the ethical rules that govern our profession, as you know, state that a lawyer shall not represent a client in a matter where the interests of another client are adverse.
And, therefore, we could not, without the consent of the clients involved, undertake the representation of either Sunbeam or MacAndrews in this transaction between the three of them.
Q. That is because the interests of Coleman (Parent) Holdings or MacAndrews & Forbes were adverse to the interests of Sunbeam in connection with this transaction; is that correct, sir?

Page 289

A. Yes.
Q. And Skadden Arps couldn't be both representing the interests of Sunbeam and MacAndrews & Forbes in that transaction; correct?
A. Yes.
Q. And Skadden Arps couldn't become involved in representing Sunbeam in that transaction, even though it was representing MacAndrews & Forbes in unrelated matters without getting the consent of my client; correct?
A. Correct.
Q. You followed up to speak to one of your partners with respect to obtaining such a waiver; correct, sir?
A. I did.
Q. And that person's name, again, is what?
A. Frank Gittes.
Q. What did you tell Mr. Gittes?
THE WITNESS: Is that okay?
MR. MALLOY: Well --
Q. I will rephrase the question.
What did you tell Mr. Gittes that

Page 290

you wanted him to do?
A. I called Frank. Frank and I are good friends -- and I said Frank, I have just learned that your client MacAndrews & Forbes was talking to my client Sunbeam about selling Coleman to Sunbeam, and I told him that Sunbeam wanted us to represent them, and did he think that that would be okay with MacAndrews & Forbes and that he could get their approval.
He thought that he could.
Q. Did you ask him to do that?
A. Yes.
Q. Do you know if he did?
A. He told me he did, later.
Q. When did he tell you that?
A. I couldn't put a time frame on it, but it was not a long period.
Q. The reason why you made that call to your partner was you wanted to become involved in representing Sunbeam in connection with this transaction; correct, sir?
A. Yes.
Q. Sunbeam had asked you to become involved; correct?

NOT A CERTIFIED COPY

0184-19

Page 291

A. Yes.
Q. You had been doing some work with Sunbeam on this general -- in this general area of strategic options for some months; correct?
A. Correct.
Q. And you had previously done a number of transactions for Mr. Dunlap or other companies that he had been involved in; correct, sir?
A. For companies, but not for him, personally.
Q. Correct. And I think you testified previously that one of the reasons you bought the firm bought 1,000 copies of Mean Business is that you considered him to be a CEO of an important client; correct?
A. Correct.
Q. And you wanted to be in a position to provide Mr. Dunlap and Sunbeam, an important client, with the services that they wanted in connection with the possible acquisition of Coleman Company; correct?
A. Correct.
Q. And that is why you called

Page 292

Mr. Gittes; correct?
A. Correct.
Q. I want to skip ahead a little bit and see if you have any knowledge of certain things.
There has been a lot of testimony in this case about a meeting that took place on February 23rd, 1998 at the offices of Morgan Stanley. That is about four days before the acquisition agreements relating to Coleman were executed. Do you have that time period in your mind?
A. Yes.
Q. Do you recall whether you were present at that meeting at Morgan Stanley on February 23rd, where there was a meeting of Morgan Stanley representatives, Coleman representatives, Sunbeam representatives, and representatives of my client?
MR. BEMIS: Objection to form.
A. I don't have any specific recollection of that meeting.
Q. Do you have any recollection of being at a meeting at the offices of Morgan Stanley about four days before the Coleman

Page 293

merger agreements were executed where Mr. Kersh, Mr. Goudis, perhaps others, made presentations to First Boston, my client, Coleman Company representatives, concerning Sunbeam's strategic plan?
A. I don't recall being -- I don't recall.
Q. You have no recollection of being at such a meeting; correct, sir?
A. I don't.
Q. Let me show you a copy of an exhibit that has been identified as a strategic plan presentation that Mr. Kersh and others made at that meeting. It has previously been marked as CPH Exhibit Number 238.
I will ask you to take a look at the document, sir, at least sufficiently to see whether it refreshes your recollection about whether you were present at a meeting about four days before the Coleman merger agreements were signed where Mr. Kersh, or perhaps someone else from Sunbeam presented this information to my client.
A. No, it doesn't.
Q. Looking at this document, sir, does

Page 294

it lead you to believe that you were not present at this meeting?
A. It doesn't provide any basis for me to recall whether I was or wasn't. I doubt that I was there.
Q. Have you ever seen this document before, sir?
A. I don't recall.
Q. If you can exclude the handwritten notes. There are a few handwritten notes.
A. I don't recall seeing it, no.
Q. Do you see, towards the end of this document, sir, it is a page that has Bates number 332, the last three digits of the Bates number at the bottom. The bottom right-hand corner. Three or four pages.
A. My Bates numbers are five --
Q. If you turn the page this way, the way that I have it, the bottom --
A. Sorry. 332. Yes.
Q. Do you see that page is entitled "long-range strategic objectives - earnings from continuing operations"; do you see that?
A. Yes.
Q. Have you ever seen this before?

NOT A CERTIFIED COPY

0184111

Page 295

A. I don't recall.
Q. I will show you a copy of what we previously marked as CPH Exhibit Number 9, sir.
It is a document entitled "Sunbeam Corporation discussion materials, February 1998," and it has, it is on Morgan Stanley stationery. You will see on the bottom right-hand corner of each page.
A. Yes.
Q. There has been testimony, sir, that this document was the, was delivered to my client and to the other participants in the February 23rd meeting at Morgan Stanley.
MR. BEMIS: Objection to the form. Foundation.
Q. Does this document refresh your recollection about whether you participated in the February 23rd meeting?
A. No, it doesn't.
Q. Have you seen this document previously?
A. I don't recall.
One of the documents -- I was shown yesterday -- has some pages that look like

Page 296

this, but I don't --
Q. I want you to exclude for this purpose, sir, seeing this in connection with your preparation.
A. I don't recall seeing this.
Q. Were you aware that Morgan Stanley presented this document to my client, sir?
MR. BEMIS: Objection. Form. Foundation.
A. I don't have any awareness, one way or other.
Q. Did anybody from Morgan Stanley describe to you, sir, the information that was being provided to my client in connection with its due diligence?
A. I don't recall.
MR. BEMIS: Objection. Form, foundation.
Q. Is that something that you would have had interest in?
MR. BEMIS: Objection. Form, foundation.
Q. Was that outside of what you were doing?
MR. BEMIS: Objection. Form.

Page 297

Foundation.
MR. MALLOY: When you say that, what are you referring to?
Q. You said that you don't recall being told what Morgan Stanley provided to my client in connection with my client's due diligence; correct, sir?
A. Correct.
Q. And I think inartfully, just trying to understand whether you viewed that as something that really did not relate to the activities that you were responsible for.
MR. BEMIS: Objection. Form, foundation.
A. I guess the answer to that is Yes.
Q. There has also been testimony, sir, that there was an accounting due diligence call that Morgan Stanley undertook in connection with the three acquisitions where representatives of Morgan Stanley spoke with the outside auditors for the Coleman Company, Signature Brands and First Alert.
Do you have any knowledge about the substance of the accounting due diligence conversations that Morgan Stanley had with the

Page 298

outside auditors for my client?
A. No, I don't.
Q. Do you have any understanding, sir, of knowledge concerning the information that Morgan Stanley received in connection with its accounting due diligence calls with Sunbeam's outside auditor, Arthur Andersen?
A. No.
Q. Let me show you a document to see if it refreshes your recollection on that, sir. It is a document that has been previously marked as CPH Exhibit Number 31. It is a document dated March 7th, 1998, on Morgan Stanley letterhead from John Tyree, to the Sunbeam financing team, subject accounting due diligence call.
Do you have Exhibit 31 in front of you, sir?
A. I do.
Q. Do you see that it refers to a planned series of conference calls with the outside auditing firms --
A. Yes.
Q. -- on March 12th, 1998?
A. Yes.

NOT A CERTIFIED COPY

Page 299

Q. That is after the agreement, the merger agreements were signed relating to the acquisition by Sunbeam of Coleman Company; correct?
A. Yes.
Q. And this indicates that one of the participants in the scheduled accounting due diligence conference calls was Arthur Andersen; do you see that, sir?
A. Yes.
Q. There is a reference to a Larry Bornstein next to the name Arthur Andersen; do you see that?
A. Yes.
Q. Did you participate in the accounting due diligence call on March --
A. I don't believe I did.
Q. -- on March 12th?
A. I don't believe I did.
Q. Did you, personally, ever have any conversation with Larry Bornstein?
A. I don't recall any.
Q. For this purpose, sir, I am focusing on the period before the closing of the transaction, with my client, on March 3rd. Do

Page 300

you recall that during that time --
A. I don't recall any conversations with Larry Bornstein ever.
Q. Did anyone report to you, sir, about the substance of the conversations that Arthur Andersen had with representatives of Morgan Stanley relating to Morgan Stanley's accounting due diligence inquiries?
A. I don't recall any such report.
Q. Did anyone from Morgan Stanley report to you, sir, that in connection with its conversations with Arthur Andersen, as part of its accounting due diligence, that Arthur Andersen advised Morgan Stanley that, in Arthur Andersen's view, Sunbeam had taken a number of aggressive actions in the fourth quarter of 1997 to enhance its net sales revenue?
MR. BEMIS: Objection. Form, foundation.
A. Could I hear the question back.
(Record read.)
A. I don't recall any such --
Q. Do you know John Tyree, sir, the author of this document?

Page 301

A. I know the name. I am sure I met him, but -- I -- I am not sure I can pick him out of a lineup.
Q. Do you recall Mr. Tyree ever advising you about the substance of his conversations with Arthur Andersen?
A. No, I don't.
MR. BEMIS: Objection to form. Foundation.
Q. You participated in the February 27th Sunbeam board meeting, correct, sir, that is the meeting where the board approved the acquisition of Coleman Company?
A. Yes.
Q. And there were representatives of Morgan Stanley present at that meeting; correct?
A. Yes. I believe the meeting was at Morgan Stanley.
Q. Do you recall that Mr. Strong was there?
A. I believe he was.
Q. Do you recall, at that meeting, that Morgan Stanley advised the Sunbeam board that it considered the Coleman acquisition terms

Page 302

fair to Sunbeam?
A. Yes. From a financial point of view, I believe they did advise them.
Q. That was important to the Sunbeam board; correct, sir?
MR. BEMIS: Objection to the form.
A. Yes.
Q. Why is that important to the Sunbeam board?
A. It supports their decision to do the deal.
Q. In what way, sir?
A. In what way?
Q. Yes.
MR. BEMIS: Objection to the form.
Q. In what way did the Morgan Stanley fairness opinion support the board's decision to go forward about the deal?
MR. BEMIS: Objection to the form.
A. It told the board that in the professional opinion of Morgan Stanley the deal was fair to Sunbeam.
Q. When you say from a financial point of view, what does that mean?
A. Financial point of view. The

NOT A CERTIFIED COPY

Page 303

financial terms are favorable.
Q. What does that mean, the financial terms?
A. The price.
Q. The price that is being paid for my client's stock; correct, sir?
A. Yes. It is a fair price to pay for the asset.
Q. That's what Morgan Stanley was saying to the Sunbeam board on February 27th; correct?
A. In effect. You would have to look at -- I don't know if there was a written fairness opinion. You have to refresh my recollection on that, but the terminology used by the banker is fair from a financial point of view.
Q. I just want to --
A. Those are the traditional, customary words used.
Q. What that relates to, for lay people, is to the price that is being paid; correct, sir?
A. Correct.
Q. Do you recall that, in connection

Page 304

with the Sunbeam board's meeting on the 27th, that Mr. Strong, or perhaps others from Morgan Stanley, addressed the subject of financing?
A. I believe they did, yes.
Q. Do you recall that Morgan Stanley, at the February 27th board meeting, assured the board that financing for the acquisitions could be obtained?
A. I would not sure that I would use the word "assured," but they certainly indicated that, in their judgment, the financing could be obtained.
Q. And that Morgan Stanley was willing to play a lead role in connection with arranging that financing; correct?
A. Correct.
Q. Do you recall, sir, that there was no financing contingency in the Coleman agreement?
A. I do.
Q. In other words, the agreement was binding and there was no out for Sunbeam if it couldn't arrange financing; correct?
A. Correct.
MR. MARKOWSKI: I am about to go

Page 305

into an area that is fairly lengthy. If you want to break now for lunch, we can do that. It is noon. Rather than break up this.
MR. MALLOY: It is a little early for lunch. Did you need to take a break for something?
THE WITNESS: I am not sure. I don't know when they are setting up there. I would just assume, keep going.
MR. MARKOWSKI: We can do that.
MR. BEMIS: Could we take a short break?
MR. MARKOWSKI: Yes.
(Recess.)
Q. Mr. Fogg, you indicated that you received a telephone call from David Fannin on March 18th, indicating that he wanted to come over to meet with you; correct?
A. Yes.
Q. That is the day before Sunbeam issued its press release on March 19th; correct?
A. Yes.
Q. Did Mr. Fannin indicate in his

Page 306

initial call to you that he was coming over to discuss issues relating to Sunbeam's first quarter performance?
MR. MALLOY: You can answer that Yes or No.
A. Yes.
Q. Was that the first indication that you had had, sir, of any sort, that there was any issue with respect to Sunbeam's first quarter 1998 performance?
A. Yes.
Q. You had not heard previously that Sunbeam's first quarter sales were in any way behind plan?
A. No.
Q. Or that its net income for the quarter was somehow behind plan?
A. No.
Q. By March 18th, Sunbeam's first quarter was almost over; correct?
A. January, February, 18 months of March -- 18 days of March were over, there were 13 days left.
Q. And, actually, I do not know if you recall this, sir, but Sunbeam was not on a

NOT A CERTIFIED COPY

01814

Page 307

calendar year fiscal year; do you recall that?
A. A calendar year?
Q. Right. Sunbeam's first quarter was going to close on March 29th or 30th.
A. Well, okay.
Q. Do you recall that?
A. Towards the end of March, correct.
Q. Do you recall that Sunbeam was not on a December 31st fiscal year?
A. Right.
Q. And that Sunbeam's first quarter was going to close slightly a few days before March 31st?
A. It sounds right.
Q. And, in any event, Sunbeam's first quarter was -- January was gone, February was gone and a substantial part of March was gone at that point; correct?
A. Correct.
Q. And this is the first indication that had been brought to your attention that there was any issue with respect to Sunbeam's first quarter performance?
A. Yes.
Q. Let me show you, I think we have the

Page 308

time record, sir, for your activity that day, CPH Exhibit 384. Do you have that in front of you? It should be in the stack of documents, probably the first one.
A. Here it is.
Q. Let's see if I can find it for you. Would you turn to page 38 of 43.
A. 38?
Q. Yes.
A. Yes.
Q. Do you see your time entry for March 18th, 1998?
A. Yes.
Q. And it is billed to the rule 144A matter; correct, sir, that day?
A. Yes.
Q. And the entry, could you read the description, the narrative that is --
A. The first quarter problem.
Q. That is how you described your work that day; correct?
A. Yes.
Q. And how much time did you bill that day to --
A. 8 and a half hours.

Page 309

Q. As you sit here today, is that consistent, in your mind, with the amount of time that you spent on March 18th?
A. Yes, it is.
Q. When Mr. Fannin arrived in your office, Mr. Fogg, he described in some more detail the first quarter issue than he had during the phone call?
A. Yes.
Q. And the two of you then began to call others; is that correct?
A. That is right.
Q. And one of the telephone calls you made, and one of the telephone calls you made after speaking to Morgan Stanley was to Sunbeam; correct?
A. Yes.
Q. You made a call and spoke to Don Uzzi; correct?
A. Yes. A lot of people were on the phone.
Q. I think you indicated that there were two telephone calls to Don Uzzi; correct?
A. Yes. There was an initial call, for just the people in my office calling Uzzi, to

Page 310

sort of set up a subsequent call.
Q. That is the first call that I want to spend a moment on.
A. Yes.
Q. The initial call that is made to Mr. Uzzi that day from your office.
A. Yes.
Q. How far into the discussions you were having that day on this issue do you believe that call took place?
A. I couldn't really put a time frame on it. I think it was probably the first third of the day, but I am not sure.
Q. It was one of the earlier events; correct, sir?
A. Yes. It was the -- first Fannin arrived, then Fernicola and Shehan joined us.
Then I think we spoke to Morgan Stanley and Davis Polk, and then the next thing I remember was the people in my room calling Uzzi.
Q. The purpose of the call to Uzzi was to essentially give him a heads-up; correct, sir?
A. To tell him that we were going to

NOT A CERTIFIED COPY

018415

Page 311

have a call later on with Morgan Stanley and Davis Polk and to schedule it and make sure that he was available, et cetera.
Q. And to give him a chance to prepare for that call; correct?
A. I don't know what. I don't know.
Q. Was he told, in general, what the subsequent call was going to deal with?
A. Yes.
Q. Do you recall what he was told about what the second call would deal with?
A. Where things stand for the first quarter.
Q. Now, you have testified, I think, just now, and then earlier, that the Skadden personnel in your office participating that day in these issues were Mr. Fernicola and Mr. Shehan, in addition to yourself; correct?
A. Mark Shehan. Not to be confused with Bob Shehan; yes.
Q. Is Greg Fernicola and Mark Shehan?
A. Yes.
Q. The Skadden personnel involved that day with this issue were the three of you; correct?

Page 312

A. Correct. And I am not sure -- I was the only one of the three who was there all the time. It was in my office, except to go to the men's room. The other two, I think left for periods and came back, but I don't remember. They were doing other things.
Q. Was there anyone else from Skadden Arps that day, that you can recall, involved in dealing with this issue?
A. No.
Q. Mr. Fernicola and Mr. Shehan had already been involved in doing work for Sunbeam in connection with the first quarter transactions; correct, sir?
A. Correct.
Q. That is why they were in the room?
A. Yes.
Q. Mr. Shehan, at the time, was associate, sir; is that correct?
A. Yes. Or maybe he was counsel -- he was not a partner.
Q. He was either associate or of counsel?
A. Not of counsel. We have another category called counsel.

Page 313

THE WITNESS: Is that right?
MR. MALLOY: Yes.
Q. But in any event, he was not a partner; correct?
A. He was not.
Q. He was not of counsel?
A. No, he was not. He was a senior corporate lawyer and I don't remember his title. I think it was, I think it was associate. Maybe it was counsel.
Q. When you say he was a senior corporate lawyer, he was still associate or counsel, correct, sir, he was not a partner?
A. He had been there many years, right, but he was not a partner. I worked with him on many, many occasions.
Q. What was Mr. Shehan doing before this on the Sunbeam matter; do you recall, generally?
A. Yes. I mean, Mark was one of the guys I had working on one of the lead transactions, I forget whether it was signature or First Alert, but one of them was his.
Q. Anything else that you can remember

Page 314

him doing?
A. No.
Q. Was he involved in the rule 144A matter?
A. No.
Q. That is the debenture offering; correct?
A. Correct.
Q. Mr. Shehan wasn't involved in the debenture offering?
A. No.
Q. Mr. Fernicola was?
A. Yes.
THE WITNESS: The reason I called Mr. Shehan was because I had worked with him in the past. He was very experienced, and I always find that on difficult issues it is better to have more smart people in the room rather than fewer.
Q. You testified earlier that Mr. Dunlap adamantly opposed the issuance of a press release when the question was put to him; correct, sir?
A. Yes, sir.

NOT A CERTIFIED COPY

Page 315

Q. Did that come as a surprise to you?
A. Um, certain aspects of it surprised me, yes.
Q. Did you expect Mr. Dunlap to immediately embrace the idea of issuing a press release?
A. No.
Q. Why do you believe that Mr. Dunlap was so adamant in his opposition to the issuance of a press release?
MR. BEMIS: Objection to form. Foundation.
Q. Let me make sure that I ask the question that I intended to ask.
I will withdraw the question.
At the time, back in the first quarter of 1998, why did you believe that Mr. Dunlap was being so adamant in his opposition to issuing a press release?
MR. BEMIS: Objection to form.
A. I did not ask him why so he did not tell me why. So, I would only be, have been speculating at the time, which I did. And my speculations were that he was very concerned about doing anything that would throw a monkey

Page 316

wrench into his deals, and he thought the press release might do that.
I must add that I would probably have expected any client in the circumstance, similar circumstances to at least push back on the lawyers to at least get them, you know, to challenge their thinking and make sure that they weren't taking the easy way out.
Q. Mr. Dunlap did a little bit more than push back; correct, sir?
A. Yes.
Q. And you already testified that Mr. Dunlap can be very demonstrative in expressing his point of view; correct, sir?
A. Yes.
Q. He was doing that on this occasion, too?
A. He was.
Q. Your belief, at the time, was that Mr. Dunlap was being driven here by concerns that a press release would throw a monkey wrench into his deals?
A. Yes.
Q. And the deals you are referring to, sir, are what?

Page 317

A. The financing and, without the financing, the acquisitions.
Q. And Mr. -- your belief was that Mr. Dunlap was concerned that public disclosure of a first quarter problem at Sunbeam could have an adverse effect on those transactions; correct?
A. Correct.
And, in addition, I speculated that it might, he was afraid that it might, ah, adversely affect his status as a darling of Wall Street who had never missed a quarter.
Q. The debenture offering was scheduled to be priced just the following day; correct?
A. I believe so, yes.
Q. On March 19th?
A. I believe so, yes.
Q. Sunbeam, along with Morgan Stanley, had been out on a road show marketing the debentures; correct?
A. Yes.
Q. And that road show was coming to --
A. I am not sure. I am not sure. I don't know when the timing of the road shows took place.

Page 318

Q. Do you recall, sir, that Mr. Fannin that day was at the New York road show, that is why he was in town?
A. I honestly don't recall. I knew they were all in town having something to do with the financing, and whether it was a -- a New York road show or a bank meeting or what the hell it was, I don't remember.
Q. Okay. But, in any event, your recollection is that, at the time, you understood that the financing was going to be the debenture offering was going to be priced on March 19th, the day after the discussions -- that were taking place that day; correct?
A. Yes.
Q. Now, the acquisition of my client's interest in Coleman Company hadn't closed at that point; is that correct?
A. The what?
Q. The acquisition of my client's interest in Coleman Company had not closed at that point; correct, sir?
A. Correct. We just went through the fact that this is taking place on March 18th,

01-0417

NOT A CERTIFIED COPY

and that deal did not close until March 30th.
Q. Correct. Do you recall previously saying, sir, that you thought that Mr. Dunlap opposed the issuance of a press release because he did not want to "screw up his financing"?
A. I think I testified to that in the arbitration. That's a different way of saying throw a monkey wrench into it; isn't it?
Q. Did you ever hear, sir, anyone from Morgan Stanley who was involved in the debenture offering say to Mr. Dunlap, or anyone else at Sunbeam, that it was important in connection with marketing the debentures that Sunbeam continue to hit its numbers?
A. I don't recall any discussion like that, no.
Q. In connection with the conversation that you had with Mr. Uzzi, you have testified that you got a one-page piece of paper that had some numbers on it; correct?
A. Yes.
Q. I will show you another copy of that, this time, with our Exhibit Number on it.

A. All right.
Q. Let me show you, sir, what we previously marked as CPH Exhibit Number 16.
A. All right.
Q. Do you recognize that as the document that you had, excluding the handwriting on it, the documented that you had in front of you during the conversation that you had that day with Mr. Uzzi and others about where Sunbeam was at as of March 19th, 1998?
A. Yes. And this is a copy including the handwriting of the same document I saw yesterday.
Q. You see the fax numbers in the upper corner, sir?
A. I do.
Q. Next to the -- there are three names up there, route, Allen and David. Do you see those?
A. Yes, I do.
Q. Next to David, is that your fax number?
A. Yes.
Q. I would like to spend a moment --

A. Not my current fax number, but my then fax number.
Q. That was what I was interested in, sir. Thank you.
A. No.
Q. I would like to spend a moment with you on the numbers in the document, sir.
Do you see, in the upper right-hand corner, the first line indicates "January consolidated net sales actual"; do you see that?
A. I do.
Q. And the number there is 29; do you see that?
A. Yes, I do.
Q. Do you understand that to be $29 million?
A. Yes.
Q. The second line is "February consolidated net sales actual"; do you see that?
A. Yes.
Q. And next to that, next to that typed number is the number 43; do you see that?
A. Yes.

Q. Did you understand that, at the time, to be a reference to $43 million in net sales in February?
A. Yes.
Q. Somebody has done the math, I think, next to those two numbers for us, but those two numbers total $72 million; correct, sir?
A. Yes.
Q. By the way, that is not your handwriting; correct?
A. No.
Q. And then do you see, beneath that: March international net sales through March 15th, 1998"?
A. I do.
Q. And the number 6.9 appears there; correct, sir?
A. Yes.
Q. $6.9 million in net sales, international sales through March 15th; correct?
A. Yes.
Q. That's what you understood that to be?
A. Yes.

NOT A CERTIFIED COPY

018418

Q. And then, skipping down two lines, do you see a reference to March domestic net sales through March 17th?
A. I do.
Q. And that number is $22.7 million; do you see that?
A. I do.
Q. The total of those four numbers, sir, for the actual net sales in January, February and international net sales for the first two weeks of March and March domestic net sales through March 17th is approximately $100,000,000; is that correct?
A. Do you want me to do the math?
Q. Sure. It is 72 plus 6.9.
MR. MALLOY: Here is a fresh page.
A. 72, 6.9. And 22.7. Is that right? Yes. Right?
Q. I believe so.
A. 101 million point 6.
Q. So, this document advised the people who received it that, as of mid-March, 1998, Sunbeam had total net sales of a little less than $102 million; correct?
A. That is what it purports to show,

yes.
Q. And the other numbers on this page all relate to sales that have not taken place yet; correct, sir?
A. Um, yes, the line March international net sales forecast was a forecast number.
The rest of March.
International. And March domestic open orders. I guess they are open orders, yes.
Q. And then -- the column for potential orders?
A. Yes.
Q. Those orders hadn't even occurred yet; correct?
A. I don't know. Potential orders. Yes. Correct.
Q. It was being represented that those were orders that the company was expecting or hoping to get, but had not actually?
A. Yes.
Q. Had actually not been made yet; correct?
A. Correct.

Q. The reason for this meeting that day was that Wall Street analysts had been led by the company to expect that Sunbeam would achieve sales in the first quarter of 1998 of something in the neighborhood of 285 to 295 million dollars; correct, sir?
MR. BEMIS: Objection to the form of the question. No foundation.
Q. That was your understanding.
MR. BEMIS: Objection to the form of the question. No foundation.
A. I only would quibble with a couple parts of the question.
And that is led to believe, I don't know who led what to whom.
I don't know if the analysts arrived at this based on their own analysis or to what extent it was the company information that they had put out. I don't know. But the analysts did have an estimated range, which, I think, was in the neighborhood that you mentioned, but I can't -- I think.
Q. Let's see if we can pin that down, sir, and we will move on. I will show you the March 19th press release.

A. All right.
Q. You have already seen this. But this is our version of it, March -- the CPH Exhibit 14. Do you see in the first sentence, sir, it states that --
A. It refers to the range of -- analyst estimates 285 million to 295 million, yes.
Q. That is something that you would have known at the time that these discussions had taken place, leading up to the issuance of the press release; correct, sir?
A. I would have known that at that time, yes.
Q. So, as of the time that the people are speaking about where Sunbeam stands in the first quarter of 1998, Sunbeam is about 185 to $195 million short of Wall Street's expectations for first quarter sales at that point; correct?
MR. BEMIS: Objection to form.
A. Yes. Correct.
Q. With about 12 days, or so, left in the quarter; correct, sir?
MR. BEMIS: Objection to form.
A. Yes.

NOT A CERTIFIED COPY

018419

Page 327

Q. A question, sir, for you about the column entitled potential orders.
A. Yes.
Q. Do you see that?
A. I do.
Q. It sums up at the bottom to 86; do you see that?
A. To 86 or 88? I can't -- if you say it is the 6, I will take your, it is a 6, I will take your word for it. I can't.
Q. It is either 86 or 88, that is the way you are reading it?
A. Yes.
Q. My question doesn't relate so much to the number, as to what the number reflects, sir.
You indicate that there were probing questions to Mr. Uzzi that day, relating to this document; correct?
A. Yes.
Q. Do you recall being told that the list of potential orders was a gross sales number, not a net sales number?
A. I don't recall.
Q. You know the difference between

Page 328

gross sales and net sales, sir?
A. Um, probably varies from company to company. I don't specifically recall.
Q. Gross sales would be the amount that customer pays; correct?
A. That would be, yes, right.
Q. And net sales would be some amount less than that that includes some expenses that the company deducts in calculating its net sales; correct?
MR. BEMIS: Objection to form. Foundation.
A. Yes. Some expenses, I don't know which ones.
Q. And in this case the Wall Street analysts' estimate was a net sales estimate of 285 to $295 million; correct?
MR. BEMIS: Objection to form. Foundation.
A. I don't recall, except that is what the March 19th press release says; so, that must have been what it was.
Q. The focus that day was on what net sales Sunbeam would achieve in the first quarter of 1998. That was the exercise;

Page 329

correct?
A. I believe so.
Q. You can't recall, as you sit here today, whether you were alerted to the fact that this $86 million number was a gross number?
A. I don't recall.
Q. But it is put in terms of orders, not net sales; correct, sir?
A. It says "orders," yes. Potential orders.
Q. The total, sir, of all of the numbers that are on this page came to -- well, let's -- there are two numbers that I can focus your attention on, sir. Do you see the grouping of numbers on the top of the page, Janet sales, February, March --
A. Yes.
Q. International. That total, group of sales totaled to $168.7 million; correct? Do you see that there?
A. Yes. That's what it says.
Q. Potential orders totals $86 million; correct?
A. Yes. Okay. It is a 6; right.

Page 330

Q. And the total of those two numbers is something in the neighborhood of $255 million; correct?
A. Correct.
Q. Something significantly short of 285 to $295 million; correct?
A. Correct.
Q. There is no other detail on this page that explains how the company might get from this group of numbers to 285 to $295 million; correct?
A. It doesn't seem to be.
Q. Did anyone in the course of the conversation that you had with Sunbeam that day, sir, claim that Sunbeam, at any point in the past, had ever accomplished sales of something in the neighborhood of 280 to $290 million in the last 12 days of the quarter?
MR. BEMIS: Objection to form. Foundation.
A. I don't recall. There is an indication on this document, at the bottom, of a low and a high, and I am trying to figure out what that means. But I don't recall.
Q. There are no entries in here

NOT A CERTIFIED COPY

018420

Page 331

supporting a number higher than $255 million or so; correct, sir?
MR. BEMIS: Objection to form. Foundation.
A. Well, the numbers next to low and high are higher, and I don't know what, I don't know how they got to them.
Q. There is nothing?
A. I don't recall.
Q. There is nothing in the document that explains that; correct, sir?
A. I don't know what these percentages are next to those numbers, 5.3 and 15.6. I just don't recall.
Q. And my question, sir, is simply: There was nothing in the document that explains how they got to those higher numbers; correct?
A. I don't see anything.
Q. Do you recall, sir, that, as of this time, mid-March, 1998, that Wall Street analysts were expecting Sunbeam to realize a significant first quarter profit, net profit?
MR. BEMIS: Objection to form, foundation.

Page 332

A. I don't recall.
Q. Was there any discussion on March 18th, sir, relating to where the company stood with respect to net earnings in the first quarter of 1998?
MR. MALLOY: Are you referring to the March call that included Morgan Stanley, or a different call?
Q. I am asking, generally: Was there any discussion on March 18th that you were privy to, sir, where the subject of where Sunbeam stood with respect to its first quarter net earnings --
A. On the large call involving Morgan Stanley, Uzzi, Davis Polk, Fannin, myself, etc., there was something discussed about that, but I don't know, I don't recall the substance.
Q. There is nothing on CPH Exhibit 16 that relates to net earnings; correct?
A. Right. There is nothing in the press release either.
Q. As you sit here, you can't recall --
A. I can't recall. I am sure it was discussed, I just can't recall what was

Page 333

discussed.
Q. There is no warning in the press release that Sunbeam may fall short of analysts' expectations for first quarter net earnings; correct?
A. There is no statement in the press release about net earnings.
Q. Do you agree, sir, that the more negative the press release that Sunbeam issued on March 19th, the greater the risk that the press release might throw a monkey wrench into the first quarter deals?
MR. BEMIS: Objection to form.
MR. MALLOY: Objection. Speculation.
A. Yes.
Q. That was your understanding at the time; correct, sir?
A. Yes.
Q. Do you have the March 19th press release in front of you, sir?
A. Yes.
Q. CPH Exhibit 14.
A. Yes.
Q. The press release issued on March

Page 334

19th, does not state that Sunbeam would fall below Wall Street's expectations of 285 to $295 million for the first quarter net sales; does it, sir?
A. No.
Q. The March 19th press release doesn't disclose that Sunbeam would fall short of Wall Street's first quarter net earnings estimates, either; does it?
A. Nothing in there about earnings.
MR. BEMIS: Objection. Asked and answered three times.
Q. The March 19th press release doesn't disclose that Sunbeam had net sales of just two $9,000,000 in January; does it?
A. No.
Q. It doesn't disclose that Sunbeam had net sales of just $43 million in February; does it?
A. No.
Q. It doesn't disclose that Sunbeam had net sales of about $102 million as of the date of the press release; correct?
A. No.
Q. The press release doesn't disclose

NOT A CERTIFIED COPY

0184121

that Sunbeam's net sales for the first two months of 1998 were about half of the net sales that Sunbeam had realized in the first two months of 1997; does it?

MR. MALLOY: I think the press release speaks for itself.

A. It doesn't say anything about that.

Q. Were you aware of that, sir, that Sunbeam's net sales through the first two months of 1998 were about half of Sunbeam's net sales in the first two months of 1997?

MR. BEMIS: Objection to form, foundation.

A. I know that on the large call, and on the discussion with Uzzi, we discussed prior quarters, and how "back end loaded" they were, as opposed to this one. We discussed that. And I don't recall any of the details about that.

Q. Do you remember anyone from Morgan Stanley, during the call, saying, um, the net sales numbers through January and February are only about half of what Sunbeam's net sales had been in the year ago quarter?

A. I don't specifically recall that,

no.

Q. The March 19th press release did not disclose that Sunbeam had lost about $40,000,000 in the first two months of 1998; does it, sir?

MR. BEMIS: Objection to form. Foundation.

A. It doesn't say anything about losses or earnings.

MR. MALLOY: You are wasting our time with this at this point.

Q. Sir, on March 20th --

A. March 20th.

Q. We will move to the day after the press release, the press release issued on March 19th; correct, sir.

A. To the best of my recollection, yes.

Q. And one of the things that you did on March 20th was monitor Wall Street's reaction to the press release. Do you recall that?

A. Monitored Wall Street's reaction to the press release?

Q. Do you recall doing that?

A. I am not a monitor. No, I don't

think I did that.

Q. Let me show you a time entry that I am basing the question on, sir.

Do you have Exhibit 384 in front of you, sir?

A. Yes.

Q. Let's see if I can find it. It is page 38 of 43 again --

A. Excuse me.

Q. Page 38 of 43. The page we looked at a minute ago.

A. Yes, March 20th.

Q. Do you see your March 20th time entry?

A. Yes, I do.

Q. This time entry is billed to the rule 144A matter; correct, sir?

A. Yes.

Q. And that is the debenture offering; correct?

A. Yes.

Q. And would you read the time entry that you wrote that day.

A. "TC," that means telephone calls, "with Fernicola, Goudis, Kelly," that is Janet

Kelly, who worked for David Fannin; Fannin. "Review Dow Jones and Bloomberg stories, advice on disclosures."

Q. Does that refresh your recollection, sir, that one of the things that you did on March 20th was review Wall Street's reaction to the March 19th press release?

MR. MALLOY: The question?

Q. Did it refresh your recollection?

A. The prior question was whether I monitored Wall Street's reaction. I don't think I monitored anything. Did I read media coverage of the press release? Obviously, I would have, yes.

Q. That's what that time entry relates to on March 20th; correct?

A. Part of it.

Q. Mr. Goudis was, do you remember Rich Goudis? You referred to him earlier this morning.

A. Yes, he was the PR guy.

Q. He was the investor relations person.

A. Yes.

Q. Do you remember your conversation

NOT A CERTIFIED COPY

018422

Page 339

with Mr. Goudis that day?
A. I do not, no.
Q. Do you recall if Mr. Goudis was reporting to you what he was hearing from Wall Street analysts?
A. I don't recall.
Q. Did you have any conversations with Mr. Goudis where he reported to you what he was hearing from Wall Street analysts relating to the --
MR. MALLOY: Well.
Q. -- relating to the March 19th press release?
DI MR. MALLOY: I will instruct him not to answer questions regarding the conversations that you had with Mr. Goudis.
Q. I am not asking about the substance, at this point, as opposed to whether there was such a conversation.
MR. MALLOY: You asked whether there was a conversation about particular substance. You are calling for him to reveal the substance of conversations.
MR. MARKOWSKI: Are you instructing

Page 340

him not to answer?
MR. MALLOY: Would you read back the question.
A. I have no recollection; so, it doesn't matter.
Q. Do you see the statement there, sir, at the end of your time entry that, relating to advice on disclosures?
A. Yes.
Q. Do you recall what that subject related to?
A. Not really, no.
Q. Do you recall that analysts, do you recall the analyst reaction to the press release, sir?
A. No.
Q. I will show you two or three analysts' reports to see if it refreshes your recollection.
A. I recall it was not positive. Do I recall precisely what they said? No.
Q. I will show you what I will ask the court reporter to mark as CPH Exhibit Number 388, and it is a two-page document bearing Bear, Stearns' production number 51 and 52.

Page 341

And it is a research equity, research report issued by Connie Maneaty at Bear, Stearns, relating to Sunbeam.
(CPH Exhibit 388, documents Bates Nos. 51 to 52 , marked for identification as of this date.)
Q. Do you have CPH Exhibit 388 in front of you?
A. I have it, yes.
Q. This is a report issued by Connie Maneaty at Bear, Stearns on March 19th, 1998, Orelating to Sunbeam; do you see that?
A. Yes, I do.
Q. And the headline of it states: "Sunbeam SOC - 45 - buy"; do you see that?
A. I do.
Q. And the headline below that reads: "4-and-one-half point drop unwarranted, buy reaffirmed, one year target remains 60 dollars"; do you see that?
A. I do.
Q. Do you recall seeing this document in connection with your review of Wall Street reaction to the March 19th press release?
A. I don't recall it, no.

Page 342

MR. BEMIS: I would like to show you what we will mark as CPH Exhibit Number 389. This is a two-page document that bears Bates number CPH 1393262 to 263. This is a Goldman, Sachs investment research report issued on March 20th, 1998, relating to Sunbeam.
(CPH Exhibit 389, documents Bates Nos. 3104 to 05 , marked for identification as of this date.)
A. I have it.
Q. Do you recall seeing this document, sir?
A. Not really.
Q. Do you see the first bullet point underneath the financial information?
A. Yes, I do.
Q. It states: "Continue to recommend purchase of SOC"; do you see that?
A. Yes, I do.
Q. Do you see that, further into that paragraph, excuse me, in the second bullet point, you see that Ms. Fontenelli is adjusting her expected net sales target for Sunbeam's first quarter?

NOT A CERTIFIED COPY

018423

Page 343

A. Yes.
Q. And that she indicates that her range previously had been 285 to $295 million; do you see that?
A. Aha.
Q. You have to answer Yes or No, sir.
A. Yes.
Q. And that she is adjusting her range down to 275 to $280 million, based on the press release; correct?
A. Yes.
MR. BEMIS: I move to strike that entire section of questioning. There is no foundation. You are asking the witness to read from a document that he has never seen or never saw before.
Q. Mr. Fogg, Morgan Stanley had an opportunity to comment on the press release that was issued on March 19th, before that press release was finalized; correct?
A. Yes.
Q. At the time that the press release was issued, was it your understanding that Morgan Stanley had signed off on it?
MR. BEMIS: Objection to form.

Page 344

Foundation.
A. It was my understanding that everyone on the large call had been, had come to an agreement on what we should say, yes.
Q. Morgan Stanley was part of that group; correct?
A. Yes.
Q. And was it your view, sir, that Morgan Stanley was in the driver's seat with respect to what Sunbeam would say in that first quarter 1998 -- excuse me, the March 19th, 1998 press release?
MR. BEMIS: Objection to form. Foundation.
A. "The driver's seat"? No, I would not use that term.
Q. If Morgan Stanley wasn't satisfied with the disclosures made in the March 19th press release that Morgan Stanley would have declined to proceed with the pricing of the debenture offering the next day, you understood that, sir; right?
MR. BEMIS: Objection to form, foundation.
A. Yes.

Page 345

Q. And Sunbeam wanted that debenture offering to proceed; correct?
A. Yes.
Q. It was important to Sunbeam's ability to complete the three acquisitions that the debenture offering proceed; correct?
A. Yes.
Q. If Morgan Stanley took the position that the disclosures in the March 19th press release were inadequate, Morgan Stanley was in the position not to proceed with the pricing of the debenture offering; correct?
A. Yes.
MR. BEMIS: Objection to form. Foundation, argumentative.
Q. That was your understanding at the time; correct, sir?
A. Yes.
Q. The debenture offering proceeded to pricing the next day; correct?
A. Yes.
Q. And do you recall, sir, that the plan had been to issue debentures sufficient to raise about $500 million?
A. I wish I had a perfect recollection

Page 346

of that. If you say that is what it was, I can't quibble with you. I don't recall.
MR. MALLOY: He is just asking you what you remember.
A. I don't recall exactly how much it was supposed to raise.
Q. Do you recall that, at the end, after the March 19th press release was issued, the size of the debenture offering was significantly increased?
A. I recall that it was oversubscribed.
Q. And the size of the offering was, therefore, increased; do you recall that?
A. Correct.
Q. Were you involved in the conversations on March 19th, where Morgan Stanley and Sunbeam representatives discussed pricing of the debentures?
A. No.
Q. Were you involved in any discussions relating to increasing the size of the debenture offering on that day?
A. I don't recall being involved in any, no.
Q. Did the company seek advice from you

NOT A CERTIFIED COPY

018424

Page 347

with respect to the advisability of increasing the size of the debenture offering?
A. I don't recall any such request to me.
Q. Sir, do you recall that after, and we have seen a time entry for you relating to this general subject on March 20th; correct?
A. March 20th? Yes.
Q. The review of reports relating to reaction to the press release; correct?
A. The entry talks about Dow Jones and Bloomberg reports, yes.
Q. Your understanding, your recollection today is that that entry related to reviewing matters concerning the March 19th press release; correct?
MR. MALLOY: I don't think he testified that he recollected work on that day at all.
Q. Do you recall?
A. I think I testified that I am sure that I would not have ignored the reaction to the press release.
Q. Your belief is that that March 19th, or, excuse me, the March 20th entry related to

Page 348

reviewing those kinds of reports; correct?
A. That's my belief.
Q. Do you recall that after that day, after March 20th, you stopped performing work on the Sunbeam transaction for several days?
A. No, I don't recall.
Q. Let me show you a couple things and see if they refresh your memory. I will show you what we will mark as CPH Exhibit Number 390. It is a two-page document, and it is a Skadden Arps fax cover sheet and a March 20th, 1998 memorandum from Blaine V. Fogg to Adam Emmerich, re Sunbeam/Coleman.
(CPH Exhibit 390, documents Bates Nos. 55 to 56, marked for identification as of this date.)
Q. I will also give you your calendars, so that you can have that next to this document.
MR. MALLOY: It is 1 o'clock, now. We would like to take --
MR. MARKOWSKI: Could I have three more minutes on this and we will be at a breaking point.
MR. MALLOY: Yes.

Page 349

MR. MARKOWSKI: Would you mark this as 391.
(CPH Exhibit 391, documents Bates Nos. 19637 to 644, marked for identification as of this date.)
Q. Mr. Fogg, can you identify for us what exhibits 390 and 391 are?
A. Um, 390 appears to be a one-page memo that I faxed to Adam Emmerich at Wachtel Lipton on March 20th, 1998.
391 appears to be a copy of some pages from my appointment calendar starting in late February of 1998 and continuing on into March. Yes.
Q. And in your March 20th memorandum to Mr. Emmerich, sir, in the last paragraph -- would you read that to us, please.
A. "In my absence next week Allison Amorison will be handling these matters, as well as other matters which may arise between now and the closing."
Indicating I was going someplace for a week.
Q. Ms. Amorison was an associate working on the transaction; correct, sir?

Page 350

A. Correct.
Q. Do you recall -- I do not know if this is at all helpful to you, sir, but your calendar doesn't contain any, I guess it has a, there is something reacted, I hadn't noticed that. There is a redaction from your calendar for the week of March 23rd; do you see that?
A. I do.
Q. Do these documents assist you in recalling where you were between March 20th and March 30th?
A. No.
Q. Does this refresh your recollection that there was a hiatus in your involvement in these transactions between shortly after the time the press release was issued, until approximately the day in which Sunbeam's acquisition of my client's Coleman stock occurred?
A. It would appear from these documents that there was a hiatus, perhaps even a vacation, but I don't recall.
Q. You don't recall what it was. Okay.

NOT A CERTIFIED COPY

018425

Page 351

MR. MARKOWSKI: We can take our break now.
(Luncheon recess: 1:08 p.m.)

Page 352

AFTERNOON SESSION
1:35 p.m.
BLAINE FOGG, having been previously sworn, resumed the stand and testified further as follows:
CONTINUED EXAMINATION
BY MR. MARKOWITZ:
Q. Good afternoon, Mr. Fogg.
A. Good afternoon.
Q. Mr. Fogg, between the time the press release was issued and these events that we have spent a little time on on March 20th --
A. The March 19th --
Q. The March 19th press release. Thank you.
-- and the review you did of news stories related to the press release on the 20th, the pricing took place with respect to the debentures; do you recall that?
A. My understanding, yes.
Q. And in connection with the pricing, the offering memorandum for the debentures was finalized.
A. It would have been, yes.
Q. It is standard practice, is it not, sir, that an offering memorandum on a transaction like this is finalized promptly after the pricing takes place?
A. I am not sure I have enough experience to answer that question. I know of another situation for a client where I was involved. I don't get involved much in the financing aspects. But, actually, Mr. Fernicola and I handled another transaction for a client, within the last year or so, where we did not have the offering memorandum finalized for days after the deal was priced.
Q. In this case the offering memorandum was finalized promptly after pricing; was it not?
A. I don't know.
Q. Do you recall that two Skadden Arps associates were at the printer of Global Financial Press on the night of March 19th, the day the press release was issued?
A. I don't recall who the printer was. I don't recall --
MR. MALLOY: He is just asking if you recall that fact.

Page 353

Page 354

A. I don't recall.
Q. Do you have Exhibit 384 in front of you, sir, the --
A. 384, yes.
Q. -- the printout of Skadden Arps' big records for March 1998, relating to the Sunbeam transaction?
A. Yes.
Q. Let me direct your attention to page 35 of 43. There is an entry towards the bottom of the page for A.S. Deitz.
A. Adrian Deitz.
Q. On March 19th.
A. On March 19th. Yes.
Q. Mr. Deitz spent 22 hours that day working on Sunbeam's rule 144A offering, correct, according to this record?
A. That's what it says.
Q. Do you see the statement at the end of his time record for that day, the last three sentences, begins with the words "attend printers"?
A. Yes.
Q. Attend?
A. "Attend printers to print final OM,

NOT A CERTIFIED COPY

018426

Page 355

discuss press release, pricing due diligence call."
Q. Who is, or who was Adrian Deitz in March of 1998?
A. Adrian Deitz, at that time, was associate here in the New York office. He is now a partner in the London office.
Q. In March of 1998 he was an associate?
A. Yes.
Q. I will direct your attention to page 40 of Exhibit 384. Do you see the reference to a T.E. Freed?
A. Todd Freed.
Q. On March 19th.
A. Yes. At the printer.
Q. Mr. Freed billed 15 hours that day on Sunbeam's 144A offering?
A. Yes. Associate then and associate now. I am not saying that it did not happen, I just don't recall it.
Q. So the record is complete, Mr. Freed's entry for that date states "drafting and revising offering memorandum at the printer for the Sunbeam corporation debt

Page 356

offering"; do you see that?
A. That's what it says.
Q. That doesn't refresh your recollection that that took place that night?
A. No. But obviously it did.
MR. MALLOY: He just wants to know your recollection.
Q. I will refer you to your time entry for March 19th, sir.
A. Where's that?
Q. Let's see if I can find it for you. It is on page 38.
A. Dinner, et cetera.
Q. Yes. Do you recall -- I will show you your calendar, also. Perhaps it will flesh it out.
A. I recall the dinner.
Q. You do.
A. Yes.
Q. There is a little more detail relating to this?
A. Mr. K's.
Q. That is what your calendar says?
A. A Chinese restaurant near the Waldorf.

Page 357

Q. This time that dinner was billed to the 144A offering; correct, sir?
A. Yes.
Q. Who was present for the dinner?
A. Um, Mr. Kersh, Mr. Fannin -- Ruth Porat, several other Morgan Stanley people. Maybe Bill Strong. I don't remember. It was sort of a dinner to celebrate the pricing of the offering.
Q. Was there discussion that night relating to the press release, the March 19th press release, during the dinner?
A. I don't recall much discussion about it. It was more a social occasion than anything.
Q. Can you recall any business discussion relating to the Sunbeam transactions that took place that night, at the dinner?
A. I remember they were very happy that the offering was going to be a success. They had oversubscribed. Other than that, I don't recall much of anything.
Q. Who is the "they," sir, both Morgan Stanley and Sunbeam?

Page 358

A. Yes.
Q. Other than celebrating the fact that the debenture offering was moving forward, can you recall anything else?
A. I don't really recall anything else.
Q. Do you recall, sir, that Mr. Freed was a first-year associate at this time?
A. I don't remember.
Q. Did you receive any calls the night of March 19th, Mr. Fogg, from the Skadden lawyers present at the printer that night working on finalizing the offering memorandum, Mr. Freed or Mr. Deitz?
A. I don't recall any. I may have, but I don't know.
Q. At any time, sir, did anyone report to you, either that night or subsequently, about the events that took place that night at the printer?
A. Other than talking to Mr. Malloy and preparing for the deposition, I don't recall any discussion.
Q. Did anyone report to you, excluding Mr. Malloy -- in connection with your preparation for today, did anyone report to

NOT A CERTIFIED COPY

018427

Page 359

you, sir, that in connection with the activity that night relating to finalizing the offering memorandum for the debentures, that the Arthur Andersen representatives present that night objected to including the press release language in the offering memorandum?
A. I don't recall hearing that.
Q. Let me direct your attention back to Exhibit 384, the time entry for Mr. Deitz that day, page 35.
A. Yes. The time for the 19th.
Q. March 19th. It states: "Attend printers to print final OM. Discuss press release." Do you see that? Do you see the entries?
A. Yes, I do.
Q. Do you know what the entry in Mr. Deitz's time entry on March 19th relating to discussion of the press release related to?
MR. BEMIS: Objection to form. Foundation.
A. No. No. Other than what the three words are, "discuss press release," I don't.
Q. The press release had been issued on March 19th; correct?

Page 360

A. It had.
Q. Mr. Deitz wasn't involved in preparing it; was he?
A. No.
Q. The entry here wouldn't related to work that Mr. Deitz engaged in in the preparation or issuance of the press release; right?
A. Correct.
MR. BEMIS: Objection, form. Foundation. Calls for knowledge of a person other than the witness.
Q. Your answer, sir?
A. That is correct.
Q. Did anyone report to you, sir, that there was any upset that night at the printer between the Arthur Andersen personnel present and the Morgan Stanley personnel present?
A. I do not recall getting any such report.
Q. As you sit here today, you don't recall any report relating to the events of that night; correct?
A. I don't recall any report about what happened at the printers, no.

Page 361

(Pause.)
Q. Mr. Fogg, let me show you what has been previously marked as CPH Exhibit 112.
It is a copy of the March 25th, 1998 letter from Arthur Andersen to Morgan Stanley.
A. All right.
Q. Is it your testimony, sir, that you don't recall seeing this prior to March 30th, 1998?
A. I don't recall, yes.
Q. Do you believe that you did not, or is it --
A. I have no recollection.
Q. One way or other?
A. One way or the other.
Q. Let me direct your attention to the second page of the document, sir.
A. All right.
Q. Do you see the financial information reported at the top of the page?
A. Yes.
Q. It reports that Sunbeam's net sales for the period December 29th, 1997 through March 1st, 1998, are $72,018,000; correct?
A. That's what it says.

Page 362

Q. And that its net sales for the comparable period in the first quarter of 1997 were $143,499,000; correct?
A. That is what it says.
Q. So, this document would have put the reader of it on notice that Sunbeam's sales in the first two months of 1998 were about half of what they had been in the first quarter of the prior year; correct?
A. That's what it says.
Q. And this also states that Sunbeam had suffered a loss of $41,190,000 through the first two months of 1998; do you see that, sir?
A. I do.
MR. BEMIS: Objection to form.
Q. And that compared to a profit of 9 point -- 9,765,000, in the first two months of 1997?
MR. BEMIS: Same objection. You are just reading documents that the witness hasn't seen.
A. That is what it says.
Q. Did anyone advise you, sir, prior to the closing of Sunbeam's acquisition of my

NOT A CERTIFIED COPY

018428

Page 363

client's interest in the Coleman Company, the Coleman Company, that Sunbeam had a $50 million swing, negative swing in its net earnings in the first two months of 1998?
MR. BEMIS: Objection. Form and foundation.
A. Prior to the closing --
MR. MALLOY: Can you read back the question.
A. I don't recall.
MR. BEMIS: Also misleading, the special charge of $30 million reflected there.
(Record read.)
MR. BEMIS: Same objections.
A. I don't recall receiving any such advice. I don't believe I did receive any such advice because, as I previously testified, Fannin called me a few days later and hit me like a ton of bricks and I was totally shocked that the first quarter had not been as good as the March 19th press release.
Q. Let me show you, sir, a document that has previously been marked as CPH Exhibit Number 380. This is a press release dated

Page 364

March 25th, 1998, issued by Sunbeam Corporation, that bears the headline "Sunbeam Corporation announces successful private placement of $750 million of convertible debentures."
I would like you to take a moment to look at that press release, sir, and tell me whether you can recall seeing it previously.
A. I seem to recall having seen it at some point.
Q. Do you know whether Skadden Arps was consulted with respect to this press release before it was issued, sir?
A. I don't recall.
Q. Do you recall whether you were?
A. I don't really recall. Probably, but that is only speculation.
Q. Well, let me remind you, sir, that we went through some documents right before we broke at lunch that indicated that you were away from your office between March 20th and March 30th. Do you recall that?
A. Well --
MR. BEMIS: He was away?
A. We went through some documents that

Page 365

said that, I told Adam Emmerich that I was going to be away. I guess I was away. I don't recall.
Q. Do you have any recollection of being consulted about the debenture offering press release while you were away from your office?
A. I don't recall.
Q. There is nothing in this press release, is there, sir, relating to Sunbeam's first quarter performance?
MR. BEMIS: Objection to form. Foundation. Argumentative.
A. It doesn't appear to be.
Q. There is nothing in here about Sunbeam suffering a loss of $41 million in the first two months of the quarter; is there?
A. There doesn't appear to be.
MR. BEMIS: Objection. Form. Foundation. Misleading.
Q. Sir, I want to go back to the conversation that you described this morning in your testimony, relating to a conversation that you had with Howard Gittes and, I believe, Peter Langerman; do you recall that

Page 366

testimony?
A. Yes.
Q. That is one of the conversations that you say that stood out in your mind; correct, sir? That took place after the closing of Sunbeam's acquisition in -- of my client's interest in the Coleman Company?
A. It is one of them, yes.
Q. Why does it stand out in your mind, sir?
A. I don't know.
Q. What do you recall Mr. Gittes -- Who initiated the conversation; do you recall?
A. It was Gittes.
Q. How did he do that?
A. He said, -- we were at MacAndrews & Forbes offices here in New York, and he asked Peter Langerman and me to step out and go into a smaller conference room.
Q. There was a larger group of people congregated that day?
A. Yes.
Q. What was the purpose for that larger meeting?

NOT A CERTIFIED COPY

A. I don't recall. It was Sunbeam.
Q. And Mr. Gittes asked that you and Mr. Langerman meet with him privately; is that correct?
A. That is correct.
Q. What do you recall happening next?
A. You can read back my prior testimony.
MR. BEMIS: Objection. Asked and answered.
Q. I want to make sure that the record is complete with respect to your recollection.
A. Mr. Gittes, who had been named to the Sunbeam board, said that it is an intolerable situation for me to be on the Sunbeam board, for other representatives of MacAndrews & Forbes to be involved on behalf of Sunbeam, while at the same time we have big claims against Sunbeam, MacAndrews & Forbes has big claims against Sunbeam, for duping us into taking Sunbeam's stock in connection with the Coleman acquisition.
We have to resolve this somehow. The only way we can do it is either to rescind the Coleman deal or reach some kind of a

settlement. Whereupon, Langerman and/or I, said, Jesus, we don't think it is possible, or in the best interest of Sunbeam to rescind the Coleman deal.
Um, so, that is off the table.
Settlement we can discuss.
Q. For a layperson --
A. Then we went on and I said, but I can't represent either of you guys in this transaction.
Q. For a layperson, sir, what does it mean to rescind this transaction?
A. It means to undo it and put it, put the situation back in the place it would have been if the transaction had never occurred.
Q. Mr. Gittes was saying that it would be acceptable to MacAndrews & Forbes if Sunbeam returned Coleman Company's stock to MacAndrews & Forbes; is that what Mr. Gittes was proposing?
A. He was proposing a rescission. He did not elaborate as to what that was, but what I thought it was, was Sunbeam gives Coleman back to MacAndrews & Forbes, and MacAndrews & Forbes gives back to Sunbeam that

which it received for Coleman. Stock and cash.
Q. And that conversation, either you or Mr. Langerman, or both of you, said, we are not prepared to discuss rescission, that is not on the table?
A. Right.
Q. What do you recall Mr. Gittes saying?
A. Well, we've got to settle somehow.
Q. Do you recall anything else about that private conversation that day?
A. No. Well, yes, as I testified earlier, that I told them that Skadden couldn't represent either Sunbeam or MacAndrews in that situation.
Q. Right. You have already described that to us. There is nothing else that you can recall?
A. I don't recall anything.
Q. Do you recall when that took place, how close in time to the closing of the acquisition by Sunbeam of my client's Coleman stock?
A. It was after Dunlap was terminated,

which took place in the middle of June. It was after a bunch of us, including Jerry Levin, trooped down to Sunbeam on the next day, and we spent sort of a week down there trying to get our hands around where the hell the company was, what was going on. And it took place, it would have to be, I don't know, after June of 1998, certainly.
Q. Just so the record is complete with respect to this, Mr. Langerman, at that time, was a member of the Sunbeam board of directors; correct?
A. At the time of that conversation he was a chairman of the Sunbeam board of directors.
Q. When Mr. Dunlap was terminated, Mr. Langerman replaced him as chairman of the Sunbeam board; correct?
A. Correct.
Q. I will show you what we previously marked as CPH Exhibit Number 211. CPH Exhibit 211, sir, is a fax, the first page is a fax transmittal to James Lurie, Heather Stack and Adrian Deitz, care of Global Financial Press, and it is dated March 19th, 1998; do you see

NOT A CERTIFIED COPY

018430

Page 371

that, sir?
A. Yes.
Q. And attached to it is a draft document; do you see that?
A. Yes, I guess it is a draft.
Q. And the document is entitled "zero coupon convertible senior subordinated debentures, due 2018, purchase agreement."
A. Yes. I see that.
Q. Do you have an understanding what the purchase agreement is, sir?
A. Generally, sure.
Q. Can you describe that for us?
A. It is the agreement pursuant to which Morgan Stanley agrees to buy the bonds that Sunbeam is issuing, subject to certain terms and conditions, representation and warranties. It is like an underwriting agreement.
Q. The way this transaction was structured, Morgan Stanley was the initial pusher of the Sunbeam debentures?
A. Yes.
Q. And Morgan Stanley then resold those debentures to other parties; correct?

Page 372

A. Correct.
Q. I will direct your attention to -- did you see this document, not necessarily this particular version of it, but did you see the purchase agreement, either in final or draft form?
A. I don't remember it specifically.
Q. I direct your attention to page 5.
A. Page 5, yes.
Q. You see paragraph L, on page 5?
A. Yes.
Q. There is some language that is underlined in paragraph L; do you see that?
A. Yes.
Q. Can you read that, sir? Out loud.
A. "It being understood that the information set forth in the company's March 19th, 1998 press release shall not, in and of itself, constitute any such material adverse change or prospective material adverse change."
Q. Do you have an understanding why, do you have any knowledge why that language was being added to the draft purchase agreement on March 19th?

Page 373

A. I know why a lawyer representing Sunbeam would have --
MR. MALLOY: He is asking you for your recollection.
A. No. He did not ask that.
MR. MALLOY: I assume you are asking for his understanding based on his knowledge at the time, you are not asking him to formulate an opinion here.
BY MR. MARKOWITZ:
Q. Do you recall, at the time, sir, any discussion about adding language like this to the purchase agreement?
A. No, I don't.
Q. Do you know what purpose it serves?
A. Yes.
Q. Can you explain that?
A. So that the facts set forth in the March 19th, 1998 press release cannot serve as a basis for Morgan Stanley deciding not to close.
Q. Morgan Stanley and Sunbeam together were agreeing that the information set forth in the press release could not be used by Morgan Stanley as a basis for declining to

Page 374

close the purchase of the debentures; correct?
A. Correct.
Q. Do you know, was there any discussion during this time period, sir, or at any time prior to the closing of Sunbeam's purchase of my client's interest in Coleman Company, of raising with my client the question whether my client would view the information known to Morgan Stanley as a material adverse change?
MR. BEMIS: Objection to the form of the question.
A. I don't have any recollection.
Q. In your presence, sir, did you ever see a, hear a Morgan Stanley representative suggest to Sunbeam that Sunbeam should disclose to my client the information contained in the sheet that was the subject of Mr. Uzzi's report to Sunbeam -- excuse me, to Morgan Stanley, about the status of Sunbeam's first quarter sales? CPH Exhibit 16.
A. I don't recall.
Q. Don't have any recollection of Morgan Stanley saying to Sunbeam, this information needs to be disclosed to

NOT A CERTIFIED COPY

0184341

Page 375

MacAndrews & Forbes, the information in Exhibit CPH 16?
A. I don't recall any such statement.
Q. Do you recall, sir, that one of the activities that -- let me ask a background question, sir. You previously testified that there were two merger agreements relating to the Coleman Company acquisition; correct?
A. Correct.
Q. One was an agreement with my client; correct?
A. Yes.
Q. And what was the second agreement?
A. I don't recall.
Q. Do you recall that it related to the acquisition of the publicly traded Sunbeam stock?
A. I don't recall. I would have to look at the agreements again.
Q. Let me show you. While we are getting the document, sir, do you recall that Sunbeam was acquiring 100 percent of Coleman Company in connection with the first quarter transactions?
A. In two steps.

Page 376

Q. The first step was the acquisition of my client's stock; correct?
A. Yes.
Q. And my client had approximately 82 percent of Coleman Company stock?
A. Correct.
Q. The rest of it was held --
MR. BEMIS: Objection to form.
Q. Excuse me. The rest of it was held by whom; do you recall?
A. It looks like public shareholders, I think.
Q. I will show you what we will mark as CPH Exhibit 392.
A. I believe the two documents were the first step document with your client and then the second step merger.
MR. MARKOWITZ: CPH Exhibit 392, sir, is a document that bears Bates number Morgan Stanley 8011 through 8066. It is entitled "Agreement and plan of merger, among Sunbeam Corporation Camper Acquisition Corp., and the Coleman Company," dated as of February 27th, 1998.

Page 377

(392 Exhibit 392, agreement, marked for identification as of this date.)
A. Yes.
Q. Can you identify for us, sir, what the CPH Exhibit 392 is?
A. The agreement and plan of merger, among Sunbeam Corporation and the Camper Acquisition Corp and the Coleman Company, dated as of February 27th, 1998. --
Q. What was the purpose of this agreement, sir; do you know?
A. I'd have to read it to tell you what the purpose was.
(Pause.)
A. I believe this was for the second step merger.
Q. The acquisition of the publicly traded Coleman stock?
A. Yes, I believe that is right.
Q. As part of the consideration that the public shareholders were to receive under this agreement, sir, Sunbeam was to issue registered shares of Sunbeam stock; is that correct?

Page 378

A. That is my recollection. Is that what it says?
Q. You can look, sir, but is that your recollection of --
A. My recollection.
Q. And Skadden Arps was involved in the activities relating to Sunbeam's registration of the shares necessary to complete the second stage of the Coleman Company acquisition; correct?
A. Yes, sir.
Q. That registration was not, did not become final for quite some period of time after this agreement; correct?
A. Absolutely right.
Q. Why is that?
A. Because in the -- first of all --
In the interim period, before we could get it filed and/or effective, a lot of things happened, like Arthur Andersen pulling its opinion for 1997 and the situation at Sunbeam unraveled.
Q. Do you recall that it was some period of time before Sunbeam was in a position to restate its 1997 financial

NOT A CERTIFIED COPY

0184132

Page 379

statements?
A. Yes, I recall it.
Q. And that was one of the impediments to registering the --
A. Yes.
Q. -- the stock to be issued to the Coleman shareholders; correct?
A. Yes.
Q. And do you recall that the Sunbeam restatement was completed in late 1998?
A. In that general time frame, yes. I don't recall when exactly.
Q. Do you recall that it was almost another year, perhaps even a little bit more, before the registration statement was finalized and became effective?
A. I know that it was a long time.
Q. Do you know what the impediment was to that, after Sunbeam filed its restated financial statements?
MR. MALLOY: I caution the witness that if any knowledge that you have on the subject comes from conversations with Sunbeam management, that you should break and talk about it to determine whether

Page 380

there was a privilege issue.
THE WITNESS: I don't think so.
Q. One impediment was that your client was taking the position that it had a claim against Sunbeam and there was a settlement of that claim, pursuant to which your client was getting some additional consideration and it was thought advisable, maybe even necessary, to include, to give that same additional consideration to the public shareholders.
So, we sort of had to wait for the settlement to get finalized.
Um, there was a hang-up with the SEC, I know.
Q. Are you familiar with that?
A. I was involved in some of that, yes.
Q. Let me show you a document and see if it helps focus this for us. This is a document that we will mark as CPH Exhibit 393. It bears the Bates number Morgan Stanley confidential 14766 to 14775. It is a memorandum from Steve Daniels to Steve Isko dated July 30th, 1999, re Sunbeam S4 comments.
A. I seem to recall that there was also litigation brought by the, I think Coleman

Page 381

shareholders, that wanted to settle or something. I don't remember specifically.
(CPH Exhibit 393, document Bates Morgan Stanley confidential 14766 to 14775, marked for identification as of this date.)
Q. You do remember that there were also some issues at the SEC after all of that was taken care of?
A. I remember one that --
Q. Sir, do you have Exhibit 393 in front of you?
A. Yes.
Q. Have you seen either this document, the July 30th, 1999 memorandum, or the attached August 3rd, 1999 letter from Skadden Arps to the SEC?
A. I am sorry?
Q. Have you seen either the July 30th, 1999 cover memo or the attached August 3rd, 1999 letter from Skadden Arps to the SEC?
A. Yes.
Q. The August 3rd letter is signed by you; correct?
A. Well, that is not my handwriting.

Page 382

Somebody signed it on my behalf.
Q. You did see the letter before it was signed?
A. Yes, I believe I did.
Q. Does this correspondence relate to the registration statement, sir?
A. Just let me -- there is also a letter here having to do with the S1, which was the registration statement relating to the debentures, but I guess you are not asking me to look at that one.
Q. I am focused on the public stock deal.
A. The Coleman, back-end merger deal?
Q. Yes.
A. What was the question?
Q. My question is whether these documents relate to the registration statement relating to that stock.
MR. BEMIS: Which documents in this package are you referring to?
MR. MARKOWITZ: The cover memo and the August 3rd document that I referred --
A. The first, the two-page cover memo

NOT A CERTIFIED COPY

0184433

Page 383

that I am cc'd from Mr. Daniels does relate to that.

And then the two-page letter to the SEC, dated August 3rd, 1999, from me, signed by someone on my behalf, does relate to this.

Q. Your August 3rd letter to the SEC, sir, seeks, asks that the SEC do whatever it can to expedite receipt of the staff comments relating to the S4; correct?

A. Correct.

Q. Do you remember there being frustration with getting the SEC's comments on the draft S4?

A. I just remember a need to get it done and the SEC was holding us up, and some frustration there.

Q. Was there a desire on Sunbeam's part to move as quickly as possible to get this registration statement on file and effective?

A. Yes.

Q. Why was that?

A. They wanted to complete the acquisition of Coleman and own 100 percent of it.

Q. And Skadden Arps was doing whatever

Page 384

it could to expedite that; correct?

A. We were trying to move it through the SEC, yes.

Q. Do you recall that Sunbeam was incurring penalties under the merger agreement as a result of the delay in registering the stock?

MR. BEMIS: Objection to form.

A. I don't think there was a merger agreement. I don't recall any penalties on the merger agreement.

Q. Do you recall that there were other penalties that Sunbeam was incurring because of the delay?

A. Not as a result of that registration statement, but there were penalties under the debentures as a recall for the failure to get the debenture registration statement -- registration statement, effectively --

Q. You said you could recall one significant SEC issue that delayed final approval of the S4 registration statement, for the stock to be issued to the Coleman public shareholders.

A. Right.

Page 385

Q. What was that issue?

A. It was an issue that is under SEC rule 13E3, which relates to going private transactions, which says that the board of the acquiring company, in this case Sunbeam, has to take a position as to whether or not the deal is fair to the shareholders of Coleman. The Sunbeam board was reluctant to do that.

MR. MALLOY: I caution you not to get into communications with counsel.

A. I told the SEC that the Sunbeam board was reluctant to do that under the circumstances. And they insisted, and we somehow -- and I don't recall exactly how we resolved the issue.

Q. You don't recall?

A. We did put in some recommendation.

Q. Ultimately, it was resolved and the registration became effective in late 1999?

A. Right.

Q. And the second stage of the transaction, then, closed in the first part of the year 2000; correct?

A. Right. Well, I don't remember where exactly, when it closed, but it closed. It

Page 386

closed.

Q. I take it, sir, that Skadden was doing whatever it could to expedite, as best it could, the activities that needed to take place for that transaction to close; correct?

A. Yes.

MR. MARKOWITZ: We will take a short break. I think I may be completed.

MR. MALLOY: Off the record.

(Recess.)

MR. MARKOWITZ: Thank you. I have no further questions.

MR. BEMIS: I have no redirect. Thank you. I have no further questions.

(Continued on next page)

0184314

NOT A CERTIFIED COPY

MR. MARKOWITZ: The deposition is closed.
(Time noted: 2:30 p.m.)

BLAINE FOGG

Subscribed and sworn to before me
this day of 20__.

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That BLAINE FOGG, the witness whose continued deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of December, 2004.

ROBERT X. SHAW, CSR

---------- I N D E X ----------
WITNESS EXAMINATION BY PAGE
MR. B. FOGG MR. BEMIS 166
MR. MARKOWSKI 237
---------- INFORMATION REQUESTS ----------
DIRECTIONS: 174, 181, 211, 212, 228, 230, 339
---------- EXHIBITS ----------
FOGG FOR ID.
CPH Exhibit 384, documents Bates Nos. 19645 to 687 246
CPH Exhibit 385, document Bates SAS MF 19691 to 692 257
CPH Exhibit 386, employment agreement 276
CPH Exhibit 387, documents Bates Nos. 598 to 99 280
CPH Exhibit 388, documents Bates Nos. 51 to 52 341
CPH Exhibit 389, documents Bates Nos. 3104 to 05 342
CPH Exhibit 390, documents Bates Nos. 55 to 56 348
CPH Exhibit 391, documents Bates Nos. 19637 to 644 349
392 Exhibit 392, agreement 377

CPH Exhibit 393, document Bates Morgan Stanley confidential 14766 to 14775 393

NOT A CERTIFIED COPY

018435

MORGAN STANLEY DEAN WITTER

Global High Yield Investment Research

October 9, 1997

Karen H. Eltrich (212) 761-1575
Jake Foley III (212) 761-1598

Coleman Co.
Making Investors Happy Campers

STRONG BUY

Amt. $MM	Cpn.	Mat.	Type	Rating	Offer Price	YTW	Treasury Spread	Int. Cov. LTM	Int. Cov. 97E	Leverage. LTM	Leverage 97E	Rating
Coleman Escrow 1												
$600 [1]	0.00%	'01	Sr Disc Nts	B3/B	$69.50	10.41%	451	1.03	1.52	11.98	8.38	SB
Coleman Escrow 2												
$133 [1]	0.00%	'01	Sr Disc Nts	Caa1/B	$63.00	13.31%	741	0.90	1.34	13.07	9.03	SB

[1] Full Principal Value, leverage ratios reflect accreted value and are pro forma for refinancing. Leverage ratios are through their respective classes.
Source: Company Financials & Morgan Stanley Estimates

Summary and Investment Conclusion

We have listed the Coleman Escrow 1st & 2nd Priority Discount Notes as Strong Buys as we believe the company is on the brink of an impressive turnaround. After an earnings stumble in 1996, a new management team, lead by Mr. Jerry Levin, is refocusing the company on profitability while attempting to revitalize the industry through increased advertising and new product innovations. The first tangible result from these initiatives appeared in the second quarter of 1997, when the company reported a 30 basis point improvement in their EBITDA margin. With the majority of Mr. Levin's restructuring plan now in place, we are expecting positive earnings comparisons for the last half of 1997 and a return to full earnings momentum in 1998.

Our investment case is not solely based on management's case for a turnaround. Our own research has shown there is an inherent value in Coleman's franchise which cannot be damaged by one year of poor performance. The components of this value are Coleman's dominant marketshare (see exhibit 13), its breadth of distribution, the overall health of the camping industry (see exhibits 10-12) and the equity existing in the Coleman brand name. It is a name that has been around since the 1900's and equates value, quality, reliability and camping to the consumer.

We believe Coleman's turnaround efforts will produce 1997 EBITDA of $123.7 million and 1998 EBITDA of $162.1 million. Applying a conservative multiple of 12.0x EBITDA which is below the median take-out multiple of 13.4x EBITDA for consumer products (see appendix 1), we derive a 1998 equity valuation of $25 per share for Coleman stock, providing equity coverage of 2.3x and 5.9x for the accreted value of the 1st and 2nd Priority issues respectively. Given the historical pricing correlation between the Coleman Escrow issues and Coleman stock, we have set a one year spread target of 350 basis points for the 1st Priority Issue and 450 basis points for the 2nd Priority Notes.

With our Strong Buy opinion, we are placing particular emphasis on the 2nd Priority issue, which we feel trades at a spread to the 1st Priority that is disproportionate to the associated risk. Although we recognize that if earnings continue to deteriorate the value of this issue will decline exponentially (see exhibit 5), we do not foresee any risk of a liquidity crisis at the company, and furthermore view the weighting of the tranches to be favorable to the 2nd Priority issue. Currently, the greatest upside potential exists in this tranche where we view a more appropriate spread between the two issues to be closer to 100 basis points.

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

NOT A CERTIFIED COPY

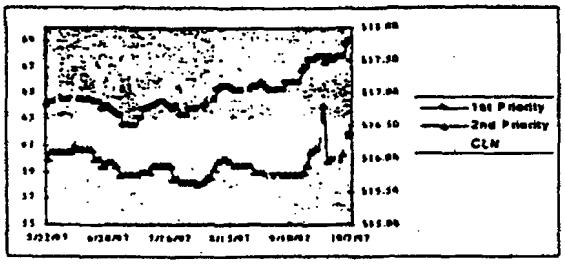
EXHIBIT
CPH 272
10/15/04 sw

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Exhibit 1

Coleman Holdings Pricing History



Source: Morgan Stanley

Company Description

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets. The company was founded in early 1900's, by W. C. Coleman, who began producing and selling the green gas lamps, which today are a Coleman icon and have become synonymous to the brand name. Today the company's products are sold domestically and in over 100 countries under the brand names, Coleman, Camping Gaz, Peak 1, Eastpak, Powermate, Firex, and Maplechase.

Exhibit 2

Recent Events & Historical Perspective

1989	MacAndrews & Forbes acquires Coleman
1992	Coleman completes initial public offering of common stock.
1993	Coleman issues $575 million of LYONs
	MacAndrew's and Forbes ownership interest is transferred to Coleman Worldwide
	Coleman Holdings issues approximately $281.3 (full principal amount) Coleman Holdings Notes
	All outstanding capital stock of Coleman World wide is transferred to Coleman Holdings
	Coleman acquires Taymar Group of UK
1994	Coleman acquires Metal Yanes of Brazil
	Coleman acquires Eastpak
	Coleman acquires Sanborn Manufacturing Co.
	Germany manufacturing operations restructured
1995	Coleman acquires Sierra Corporation
	Coleman acquires Active Technologies
1996	Coleman acquires Sealt Corporation
	Coleman acquires Camping Gaz
	Coleman closes Brazilian manufacturing operations acquired from Metal Yanes in 1994
Feb. 1997	Jerry W. Levin named Chairman & interim CEO Company announces wider than expected 4Q loss
March 1997	Coleman announces plans to leave Golden, Colorado headquarters
April 1997	Coleman announces cost-cutting plan centering on the closure and consolidation of four plants, reducing their workforce by 10% and eliminating 1/3 of their SKUs
May 1997	Mr. Levin decides to remain as CEO until his business plan has been completed
	David Ramon named President of the Outdoor Recreation Group
	Coleman decides corporate headquarters will return to Wichita, Kansas
	Coleman Escrow completes $732mm bond offering with proceeds to be used to refinance outstanding discount notes and Liquid Yield Option Notes
Sept. 1997	Coleman appoints Joseph Page as CFO

Source: Morgan Stanley

NOT A CERTIFIED COPY

0184438

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238450

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473149
16div-023813

Exhibit 3

Coleman Escrow Capital Structure (As of 6/30/97)

Short term borrowings	$86.5
Current Portion of long-term debt	0.6
First Priority Notes	394.8
Second Priority Notes	81.1
Coleman Holding Notes	0.0 [1]
LYONs	0.0 [1]
7.26% Senior Notes due 2007	200.0
7.10% Senior Notes due 2006	85.0
7.25% Senior Notes due 2008	75.0
Revolving Credit Agreement	96.0
Term Loan	66.1
Other	1.3
Total Debt	999.4
Less Current Portion	(0.6)
Total Long Term Debt	998.8

[1] *Assumes redemption of these issues*

Source: Company Financials

Exhibit 4

Coleman Co. Capital Structure (As of 6/30/97)

Short term borrowings	$86.5
Current Portion of long-term debt	0.6
7.26% Senior Notes due 2007	200.0
7.10% Senior Notes due 2006	85.0
7.25% Senior Notes due 2008	75.0
Revolving Credit Agreement	96.0
Term Loan	66.1
Other	1.3
Total Debt	610.5
Less Current Portion	(0.6)
Total Long Term Debt	609.9

Source: Company Financials & Morgan Stanley Estimates

Coleman Escrow Corp. Security Description

The notes are secured by a pledge of all of the shares of common stock of Coleman Holdings and guaranteed pursuant to the Coleman Worldwide Non-Recourse Guaranty. With the completion of the Coleman Holding Notes redemption and consummation of the LYONs retirement, the notes will be secured by a total pledge of 44,067,520 shares of the 53,368,726 million shares of outstanding Coleman Common Stock.

The funds will be held in escrow and will be released from time to time upon the satisfaction of certain conditions. The funds will be used to redeem the Coleman Holdings Notes (completed in July, 1997) and the retirement of the LYON's (estimated to be completed by May 27, 1998). As of June 30th, 1997, $16.5 million aggregate principal amount ($5.3 million accreted) of the LYONs remained outstanding.

The 1st Priority Notes rank senior in right of payment to the Second Priority Notes, with respect to any collateral securing the Notes and the Coleman Worldwide Non-Recourse guarantee.

Exhibit 5

Equity Coverage of Accreted 1st & 2nd Priority Issues @ final estimated pledged shares of 44.1 million

stock price	1st Priority Coverage	2nd Priority Coverage [1]
$5	0.56	-2.15
6	0.67	-1.61
7	0.78	-1.06
8	0.89	-0.52
9	1.00	0.02
10	1.12	0.57
11	1.23	1.11
12	1.34	1.65
13	1.45	2.20
14	1.56	2.74
15	1.67	3.28
16	1.79	3.83
17	1.90	4.37
18	2.01	4.91
19	2.12	5.46
20	2.23	6.00
21	2.34	6.54
22	2.46	7.09
23	2.57	7.63
24	2.68	8.17
25	2.79	8.72
26	2.90	9.26
27	3.01	9.80
28	3.13	10.35
29	3.24	10.89
30	3.35	11.43

[1] Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 1st Priority Accreted Value)/2nd Priority Accreted Value)

Source: Morgan Stanley

Exhibit 6

Coleman Company Structure

Mafco Holdings, Inc.
100%
|
MacAndrews & Forbes Holdings, Inc.
100%
|
New Coleman Holdings, Inc.
100%
|
Coleman Escrow, Corp
100%
|
Coleman Holdings, Inc.
100%
|
Coleman Worldwide Corporation
82.6%
|
The Coleman Company, Inc

Source: Company Financials

NOT A CERTIFIED COPY

018439

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. *Additional information on recommended securities is available on request.*

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238451

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473150
16div-023814

Exhibit 7

Mafco Holdings, Inc. Ownership of The Coleman Company, Inc. Stock

(thousands)	Total	% of Total Shares Outstanding
Total Shares Outstanding	53.369	100.0%
Total Mafco Ownership	44.068	82.6%

Source: Company Financials

In our valuation, we apply a 12.0x multiple of EBITDA, which is well below the industry median of 13.4x (see appendix 1). We believe our valuation is conservative given Coleman's strong market share and growth prospects. We have not done a downside valuation in the case of a liquidity crises as we do not perceive this to be a risk at any time in the near future. Even at its current depressed EBITDA levels, Coleman's operating company has interest coverage of 1.8x and revolver availability of $174 million, providing ample liquidity to the company should they not deliver a turnaround in the expected time frame.

Exhibit 8

The Coleman Company Valuation (1997 Forecasted EBITDA)

1997 Forecasted EBITDA	$123.7
x Valuation Multiple	12.0
= Coleman TEV	1,484.4
- Coleman Company Debt	609.9
= Equity Valuation	$874.5
Total Shares Outstanding	53.4
Value Per Share	$16.4
# of Shares Securing Coleman Escrow Issue	44.1
Coleman Holdings Secured Equity Valuation	$722.1
Coleman Escrow 1st Priority Accreted Debt	417.2
1st Priority Equity Coverage	1.7x
Coleman Escrow 2nd Priority Accreted Debt	86.4
2nd Priority Equity Coverage [1]	3.5x
Coleman Escrow 1st Priority Full Principal Debt	600.0
1st Priority Equity Coverage	1.2x
Coleman Escrow 2nd Priority Full Principal Debt	133.0
2nd Priority Equity Coverage [1]	0.9x

[1] Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 1st Priority Accreted Value)/2nd Priority Accreted Value)

Source: Morgan Stanley

Exhibit 9

The Coleman Company Valuation (1998 Forecasted EBITDA)

1998 Forecasted EBITDA	$162.1
x Valuation Multiple	12.0
= Coleman TEV	1,945.20
- Coleman Company Debt	609.9
= Equity Valuation	$1,335.3
Total Shares Outstanding	53.4
Value Per Share	$25.0
# of Shares Securing Coleman Escrow Issue	44.1
Coleman Holdings Secured Equity Valuation	$1,102.58
Coleman Escrow 1st Priority Accreted Debt	476.9
1st Priority Equity Coverage	2.3x
Coleman Escrow 2nd Priority Accreted Debt	106.0
2nd Priority Equity Coverage [1]	5.9x
Coleman Escrow 1st Priority Full Principal Debt	600.0
1st Priority Equity Coverage	1.8x
Coleman Escrow 2nd Priority Full Principal Debt	133.0
2nd Priority Equity Coverage [1]	3.8x

[1] Calculation for 2nd Priority Coverage is as follows: (Equity Valuation - 2nd Priority Accreted Value)/1st Priority Accreted Value)

Source: Morgan Stanley

NOT A CERTIFIED COPY

018440

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238452

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473151

16div-023815

Getting Back to Basics

The *key credit issue* for Coleman is whether or not the company will be able to successfully complete a turnaround. The company experienced a period of growth through acquisition, without creating the infrastructure necessary to channel this growth into profits. The inefficiencies associated with this management error manifested themselves into a 46% decline in EBITDA in 1996. Mr. Levin took the position of Chairman and CEO in February of this year, and although he has been very active in making changes at Coleman, investors are yet to see these efforts translated into positive earnings momentum.

We are believers in Mr. Levin's ability to turn Coleman around. Moderate earnings appreciation will occur in the second half of 1997 as the company begins to receive the benefits of their cost savings plan. Our spread to treasury targets for the end of 1997 are 400 and 600 basis points for the 1st Priority and 2nd Priority issues respectively. The company will have a full return to earnings momentum in 1998 as the full impact from cost savings initiatives are felt coupled with earnings growth from their acquisitions and new products.

Our expectations for 1998 EBITDA are $160 million, representing a 16% increase over the company's 1995 historic high EBITDA of $137 million. The company's performance in the first half of 1998 will demonstrate to investors the untapped strength of the Coleman brand and the newly formed existence of an operating base that is exceptionally well-positioned for the growth of the Coleman franchise. This prospect of stable earnings going forward will produce spread to treasuries of 350 basis points for the 1st Priority Notes and 450 basis points for the 2nd Priority Notes, which is in line with comparable consumer product companies.

Our investment hypothesis is based on the overall health of the camping industry, the opportunities associated with this health which are yet to be exploited, the enduring strength of the Coleman brand name and Mr. Levin's ability to bring operational discipline to a neglected infrastructure.

Investment Strengths

- Coleman is the leading brand name in the camping industry with nearly four times the market share of their nearest competitor.
- The Coleman brand name is widely recognized by consumers and is associated with quality and value.
- The camping industry has shown impressive growth over the past 10 years.
- The industry remains highly fragmented with several opportunities for further consolidation.
- Prior to new management, Coleman was run with growth for growth's sake versus a strategy of profitable growth. This has left new management with several opportunities for cost-cutting.
- Coleman exceeds the industry in terms of distribution, selling in mass merchandisers, sporting goods stores, wholesale clubs, sports specialty shops, food and drug chains, catalogue showrooms, home center stores and military exchanges. This is in contrast to their competitors whom generally focus on two or three channels. (Canvas & Camping Equipment, The U.S., Market, September 1996; Euromonitor International).
- Coleman has an advantageous relationship with retailers due to their breadth and scope of product offerings, strong brand recognition and high advertising expenditure. An example of the benefits of this relationship is when Coleman entered the camping accessory market, several retailers removed the market leader, Coughlan's, from their shelves to make room for Coleman.

Investment Weakness

- The camping industry is vulnerable to performance downturns in the event of poor weather
- The industry is highly seasonal, with the majority of sales occurring in the spring and summer seasons.
- The U.S. government has been gradually cutting the budget of the National Park Service, making the maintenance of these parks more difficult and limiting their accessibility. Backlogs in maintenance and reconstruction of trails for the USDA Forest Service are estimated at over $300 million, while the National Park Service puts its maintenance deficit in the billions of dollars. (1997 State of The Industry Report, The Outdoor Recreation Coalition of America and The Sporting Goods Manufacturers Association).
- The Japanese market, which represents an estimated 10% of Coleman's sales has had poor economic conditions with no expectation of a recovery.
- During 1996 and the first half of 1997, Coleman has reported deteriorating earnings results. New management is currently undertaking a turnaround strategy but it is yet to produce positive earnings comparisons.
- The equity sponsor of Coleman is perceived by some in the high yield market as lacking credibility after a stumble in a Marvel Comics investment. Although this situation was unique and bears no relevance on Coleman, it leaves Coleman securities vulnerable to "sympathetic trade-offs".

NOT A CERTIFIED COPY

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238453

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473152

16div-023816

Nature's First Green is Gold

According to Jim Lyons, assistant U.S. Secretary of Agriculture for Natural Resources and Environment, recreation has replaced mining, grazing and timber harvest as the most important use of U.S. Forest Service Land. The total contribution of Forest Service Land to the U.S. economy is $130.7 billion. Of this, recreation contributes $97.8 million, Fish & Wildlife $12.9 million, mineral production $10.1 million and timber, $3.5 million (*National Forest Service*).

Exhibit 10

Domestic Travel in the U.S. According to Purpose of Trip 1991-1995 (million person trips)

Purpose	1991	1992	1993	1994	1995
Visit Friends/Relatives	333	351	375	371	379
Outdoor Recreation	118	96	114	121	139
Entertainment	216	298	296	346	391
Business/Conventions	167	202	205	224	251
Other	146	116	147	154	157
Total	980	1,063	1,137	1,216	1,317

Source: US Travel Data Center/Trade estimates/US Industrial Outlook/Euromonitor Market Direction

A clear indication of this new popularity is attendance levels in the National Parks. With the most popular parks rivaling the attendance at Disneyworld (which offers year-round entertainment versus seasonal) it is little wonder these parks require reservations for guaranteed spaces during peak seasons.

Exhibit 11

Most Popular Sporting Activities in the USA - 1996

Activity	Participants	% Chg from 1993
Bowling	52.2 million	6.5%
Freshwater fishing - excluding fly fishing	45.9 million	(4.0)%
Basketball	45.6 million	8.3%
Billiards	44.5 million	10.4%
Free Weights	42.8 million	38.1%
Tent Camping	38.0 million	9.2%
Stationary cycling	35.0 million	(10.5)%
Treadmill	32.8 million	NA
Fitness Walking	32.5 million	4.8%
Running/Jogging	31.5 million	4.7%

(for U.S. population, over six years old, participated in activity at least once in 1993)
Source: American Sports/ Sporting Goods Manufacturers Association

Fueling this growth is a heightened awareness of America's natural beauties, a desire by families for vacations in child-friendly environments, and a "back to nature" movement attracting the baby boomer generation.

This new breed of campers, which extend beyond the usual backpackers, are not willing to sacrifice the comforts of home in order to experience nature. This has produced an opportunity for Coleman to capitalize on.

Exhibit 12

Top Five Categories for U.S. Sports Equipment Sales - 1996 (Estimated)

Sport	Sales (Wholesale Values)
Exercise Equipment	$2.632 billion
Golf	$2.245 billion
Firearms/Hunting	$1.700 billion
Fishing	$1.600 billion
Camping	$1.500 billion

Source: Sporting Goods Manufacturers Association Recreation Report 1993

Campers are no longer satisfied with a backpack, tent and sleeping bag. They require the amenities of home which include comfortable, warm sleeping bags, larger tents, high-tech cooking equipment and everything must be lightweight and compact. This class of consumer is willing to frequently upgrade their existing equipment if the new product is worthwhile and pay more for added convenience and luxury.

New products and innovations also have the ability to draw new users into the category, by increasing consumer awareness and broadening the appeals of camping.

To date, however, manufacturers have failed to fully take advantage of the favorable trends affecting the camping industry. There has been an overall lack of innovation and advertising by manufacturers. Coleman has been cited to us as an exception to this rule by industry observers and in the past year has introduced two exceptional products to appeal to the family camper, the Quick Bed™ air mattress, which inflates in less than three minutes and the 3-person Fastrack™ tent, which is designed to set up in only 60 seconds. Coleman, however, has not yet fully developed their own potential in this category and we expect it to be a source of further growth in the coming years.

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

NRTA CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238454

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473153

16div-023817

Exhibit 13

Manufacturers' Shares of Tents and Camping Equipment 1992-1996

	1992	1993	1994	1995	1996
Coleman	28.4	29.6	33.8	37.4	37.7
American Recreation [1]	7.7	7.9	9.5	9.9	10.1
American Camper (Nelson/Weather-Rite) [2]	6.3	6.3	6.7	7.2	8.3
Jansport	4.7	6.4	7.8	7.4	7.4
Johnson Camping	4.6	4.5	5.2	5.9	6.7
Avid Outdoors	1.6	1.6	1.7	1.6	1.7
Eastpak [3]	3.2	3.8	---	---	---
The North Face	1.8	2.6	3.0	3.4	3.7
Outdoor Products (Outdoor Recreation Group)	2.4	2.8	3.1	3.2	3.1
Henderson Camp (Henderson Products)	2.8	2.6	2.4	2.2	1.7
MZH [4]	1.5	1.5	1.5	---	---
Lowe Alpine	1.0	0.9	0.7	0.5	0.6
Sierra Designs [5]	0.7	0.8	---	---	---
Others	33.3	28.7	24.6	21.3	19.0
Total	100.0	100.0	100.0	100.0	100.0

[1] Division of Kellwood; comprised of Kelty/Ridgeway, Sierra Designs, Slumberjack, Wenzel, Travasak, Guarantee Fit-Trekk
[2] Division of Brunswick; changed name fro Nelson/Weather-Rite to American Camper
[3] Acquired by Coleman in 1994
[4] Acquired by Nelson/Weather-Rite in 1995
[5] Division of American Recreation; acquired by Kellwood in 1994
Source: Sportstyle/Euromonitor

Coleman dominates the camping equipment industry. The company has nearly four times the market share of their nearest competitor and is the only camping equipment and hardware manufacturer that offers retailers a broad spectrum of products. Historically they have aimed primarily at the middle income consumer, but their acquisition of Camping Gaz has successfully positioned the company in all segments in both Europe and America.

Given its fragmented nature, the industry has undergone a great deal of consolidation over the past 10 years, with Coleman being a very active participant in this trend. The second and third largest players, American Recreation Equipment manufactures with a 10.1% share and American Camper, holding an 8.4% share have also been active on the acquisition front. American Camper's parent Brunswick, was rumored to have been in talks to purchase Coleman in 1995.

Exhibit 14

Manufacturer's U.S. Sales of Camping Equipment

	Sales
1986	$580 million
1993	$1,225 million
1994	$1,375 million
1995	$1,508 million
1996 (estimated)	$1,500 million
1997 (projected)	$1,530 million

Source: Sporting Goods Manufacturers Association Recreation Report

A Period of Growth

When MacAndrews & Forbes first acquired Coleman in 1989, he hired Mr. Levin to serve as Chairman. Mr. Levin immediately lowered debt and improved profitability by selling several non-core divisions. Mr. Levin served as chairman from, 1989 to 1991. After his departure, several leaders served in the intervening period with the final being Mr. Michael Hammes as Chairman and CEO. During this period Coleman underwent a strategy of growth through acquisition. Given the high fragmentation of the industry, and the strong Coleman brand name, the reasoning behind these acquisitions was not unsound. These acquisitions included:

- **Eastpak** - a leading designer, manufacturer and distributor of branded daypacks, sports bags and related products
- **Sanborn Manufacturing Company** - a manufacturer of a broad line of portable and stationary air compressors
- **Seatt Corporation** - a leading designer, manufacturer and distributor of smoke alarms, thermostats and carbon monoxide detectors. The reasoning behind this product extension was the sector would leverage Coleman's reputation for providing safe and reliable products.

NOT A CERTIFIED COPY

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

SB 238455

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473154

16div-023818

- **Active Technologies, Inc.** - a manufacturer of technologically advanced lightweight generators and battery charging equipment

- **Sierra Corporation of Fort Smith, Inc.** - a manufacturer of portable outdoor and recreational folding furniture and accessories.

- **Camping Gaz** - a leader in the European camping equipment market.

Although each of these acquisitions were good strategic fits, where management made their mistake was in failing to create an infrastructure able to profitably manage the new divisions and maximize the synergies.

All of these mistakes became apparent in 1996, after the acquisition of Camping Gaz. Operating company debt ballooned to $740 million from $640 million in the year ago period. EBITDA dropped to $98.6 million from its 1995 high of $127.6 million and the company's stock dropped from a high of $26 in early 1996 to a low of $12.125 at the end of that year. It was at this time Mr. Levin was asked to return as Chairman and interim CEO.

Returning Home

In returning to Coleman, Mr. Levin is facing several of the challenges seen at Revlon in 1991. Fundamentally, the company lacks a management infrastructure conducive to organic growth and profitability. Strategically, Coleman has neglected the wants of consumers for a prolonged period of time. While it is the leader in a growing market, the company's products are often regarded as commodities. Many consumers still use the same Coleman products they purchased decades ago. Coleman has remained the category leader and continues to offer products that are top-of-the-market in quality, price-points, durability, convenience and safety. But this message has gotten lost - especially with retailers.

The first phase of Mr. Levin's turnaround plan has been to initiate operational improvements to drive profitability.

- In March, Coleman announced plans to leave the company's Golden, Colorado headquarters and sell the corporate jet - legacies of the previous management.

Mr. Levin made the decision to move back to Wichita, Kansas, where Coleman was founded in 1902. Wichita is currently home to Coleman's largest workforce and core operations. Wichita, Sedgewick County and Kansas are providing a combined $500,000 in economic development funding for the relocation. In addition to closing the Golden, Colorado headquarters, the company closed its regional headquarters in Geneva Switzerland. The international operations will now be run out of Coleman's New York offices. Eastpak's headquarters will remain in Boston.

We believe this move proved to benefit the company twofold. The first is the obvious cost savings associated with the closure of the pricey Colorado headquarters. More importantly, however, we view the company's decision to return to Wichita, Kansas as an important symbolic action to employees and retailers that Coleman is returning to its roots and remains a focused company committed to its legacy.

- The company closed and consolidated one international and three domestic factories and cut its workforce of 7,000 by approximately 10%. These factories included the Hastings Nebraska, New Ulm, Minnesota and Manchester, UK factories. This legacy of a bloated infrastructure appears to have been the result of previous management neglecting to rationalize product lines and factories as new acquisitions were made.

- The company is in the process of eliminating unprofitable products, representing 1/3 of their SKUs. This has removed approximately $100 million in low or no-profit revenue. Coleman has exceptional manufacturing capabilities which has always been a source of pride for the company. When a retailer would ask for a product to be manufactured in a new color, Coleman was able and willing to comply. This accommodation was done without undergoing a cost-benefit analysis, causing a proliferation in SKUs. At the end of 1996, Coleman had over 6,000 SKUs, with 1500 of those SKUs being added in one year.

- Liquidity will be improved by $100 million through reductions in working capital. During the first quarter, inventory was flat despite this quarter being the building period before the peak summer season. By the second quarter of 1997, Coleman had lowered year-over-year inventory and accounts receivables by $100 million, well ahead of our expectations for timing.

- Coleman plans to sell their pressure-washer business, which historically has been a drag on earnings. Through management's recent operational improvements, this division has since turned around, creating more value, but also creating the possibility that it will no longer be sold. If sold, the net proceeds are estimated to equal the cash restructuring charges, creating a neutral cash flow affect for the year.

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238456

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473155
16div-023819

- Mr. Levin is rebuilding the team around him that will redirect Coleman to profitable levels in both corporate and divisions. In general, he is hiring individuals he or Mr. Perelman have worked with before. Most recently, he hired Joseph Page as Chief Financial Officer. Since 1993, Mr. Page has served as EVP and CFO of Andrews Group, a wholly owned subsidiary of MacAndrews & Forbes. Mr. Page has also served as CFO of New World Communications Group, a company that was previously controlled by MacAndrew & Forbes Holdings.

  David Ramon was appointed President of the Outdoor Recreation Group, which represents the core brands and business for Coleman. Mr. Ramon was most recently President and Chief Operating Officer of New World Television Inc.. Prior to joining New World Communications, Mr. Ramon was EVP and CFO of Gillett Holdings, Inc., where he successfully managed and directed the restructuring of Gillett Holdings in three distinct and profitable businesses (Vail Associates, Packerland Packing Co. and New World Television Inc.).

To date, the company has put into place over $50 million of annualized cost savings against the 1997 plan from reductions in personnel, production facilities and administrative overhead combined with improved productivity and working capital management.

The second phase of Levin's strategy is to change the way in which Coleman does business. This includes establishing a corporate culture that encourages communication, increasing Coleman's profile with the consumer, bringing new excitement to the industry through product innovations, creating global unity through the Coleman brand names, seeking international growth and managing the company as one operation thereby maximizing synergies between divisions.

Employee Development. With the removal of the corporate headquarters to Colorado, Coleman lost touch with one of its most important resources - its employees. Mr. Levin has long recognized the importance of a corporate culture for the long-term success of a company. At Revlon he created an environment which fostered employee development, communication and teamwork while rewarding individual achievements.

We are expecting similar actions to be taken at Coleman. Already, Mr. Levin has accelerated efforts in training and development and has created a new incentive system for management that rewards performance against defined profit, cash flow and globalization goals.

Increased advertising. Coleman's greatest advantage is their brand name. With three times the market share of their nearest competitor, Coleman has the highest consumer brand awareness level of any camping manufacturer. Mr. Levin intends to exploit this advantage with increased advertising and exposure. With the exception of Jansport, the rest of the industry players lack the scope or scale to advertise on a large-scale basis and historically have not attempted to do so.

Traditional advertising for camping equipment has been magazines such as *Camping Magazine, Camping Today, Field and Stream, Outdoor Life, Outdoor Retailer and Backpacker* (Canvas & Camping Equipment, The U.S. Market, September 1996; *Euromonitor International*). We are expecting Mr. Levin, however, to broaden Coleman's reach into television advertising such as ESPN, ESPN2 and MTV in an effort to tap one of the lowest penetration age groups for camping, the 18-24 year old bracket. Mr. Levin is hoping to increase Coleman's sales through both existing users and new ones.

Product innovation. Camping is not a mature market, it is a growth area and there are new users entering every day. Levin hopes to attract these new users to the Coleman name while enticing old users to update existing products through the excitement of innovations, with these new products being supported by the afore mentioned increased advertising. Mr. Levin has stated his intention to increase Coleman's commitment to Research and Development in order to meet these goals.

The camping market is hungry for new products as the industry has neglected the changing demographics occurring in today's camping population (see appendix 4). Seeking an economical and child-friendly vacation in the splendor of the outdoors, today's campers are older and more likely to have a family. These segments of the population are more inclined to require comfort, convenience and consistency in their camping experience. They are willing to pay more for the added-luxury and to update existing products. This represents a currently untapped sales opportunity for Coleman to develop.

This does not mean Coleman plans to ignore the needs of campers and backpackers who do like to "rough it". These campers also present sales opportunities with product innovations as they are always seeking new products which are lighter, more reliable and mobile. This market also has the added benefit of dedicated press coverage through consumer interest magazines such as *Camping Today*, which provides a higher consumer profile for Coleman.

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

NOT A CERTIFIED COPY

SB 238457

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473156
16div-023820

Examples of product innovations with large growth potential that Mr. Levin has identified already in Coleman's repertoire include:

1. The Quick Bed™ air mattress which inflates in less than three minutes.

2. A 22 pound, gas-powered electrical generator that is about one-third the weight of competitive products, the Coleman® Powermate® 1000 Generator. This portable generator weighs 40 pounds less than its nearest competitor.

3. The Peak 1® X-Series™ collapsible backpacking stoves. These stoves won the 1997 Editors's Choice Award from *Backpacker Magazine.*

4. The Liquid Fuel (propane/butane mix) patent pending withdrawl mechanism and patent pending interconnection devise used in the Peak 1® X-Series™ collapsible backpacking stoves. This innovation will also be used in future Coleman Family products.

5. The 3-person Fastrack™ tent, with its attached preassembled frame, is designed to set up in only 60 seconds.

Brand Globalization. Levin will be applying his packaged goods to Coleman's strong repertoire of brands, focusing on the core brands of Coleman, Camping Gaz, Powermate and Eastpack. His strategy to maintain and grow Coleman's leadership position in the worldwide outdoor recreation business will be expanding and globalizing the brands with a distinct and uniform image throughout the world.

The obvious operational benefits to this strategy are the significant cost savings to be realized. By globalizing the products, packaging and advertising of these brand names Coleman will be able to further consolidate purchasing, production and marketing. Mr. Levin instituted these measures at Revlon, producing significant operating leverage the company is still benefiting from today.

Overall, we view the globalization of the brands as an important measure in the building of an infrastructure that is conducive to profitable growth. This new structure will enable management to have a greater level of focus with their time, a fundamental that appeared to be lacking previously.

International

International operations currently represent approximately 25% of sales, with the majority of these sales derived from Europe and Japan.

The company plans on growing their presence in emerging markets - believing that to be an investment in the future growth of the company. Currently in Asia, the company has a presence in Hong Kong, South Korea, Indonesia and the Philippines. The main goal in these markets is to increase distribution and establish Coleman as the pre-eminent camping brand. It is not expected to be a major contributor to earnings for the next few years.

One of Coleman's larger international markets, Japan, has suffered recently in the past years. A poor economy, which has shown no indicators for improving, has hampered sales. Management is working to alleviate some of the problems in this difficult operating environment, but a recovery is not expected soon.

The greatest problem the company has had to face is inventories - retailers had never adjusted the levels to reflect the lower sales levels being experienced. Mr. Levin and his team this year have gone in and lowered inventories with wholesalers. This has been a painful process which harmed second quarter earnings for the company, but management believes the majority of reductions have been taken, with little impact expected going forward.

Japan is a large camping market. About 14.6 million people (4 million households) engage in camping, with this number growing by 4-5% per year. There are 3,000 campgrounds in Japan today, with an average occupancy rate of 14%. This compares to the U.S. occupancy rate of 45%. (*Chamber World Network, International U.S. & Foreign Commercial Service).*

The lower usage rate can be attributed to the lack of amenities provided at these campgrounds, most of which don't offer hot showers, sufficient sanitation facilities or organized out-door leisure programs for campers. Only 900 campgrounds actually allow campers to drive to their sites, the remaining ones require campers to park in a central parking area from which the tent must be carried to the campsite. This lack of user-friendliness makes it difficult for campers to spend more than 2-3 days "roughing it" and is a very large obstacle for families camping. In recognition of the dearth of organization in the Japanese camping industry, the U.S. Recreational Vehicle Industry Association, the U.S. Recreational Park Trailer Industry Association and the Commercial Service of the U.S. Embassy in Tokyo filed a joint appeal to the Government of Japan to form a new regulatory framework for the industry (*Chamber World Network, International US&FCS).*

NOT A CERTIFIED COPY

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238458

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473157

16div-023821

The first step in formulating this new regulatory framework occurred in March of this year, when the Ministry of Construction issued a notice relaxing the BSL regulations for trailers used in campgrounds for destination camping purposes. Although the wording was highly ambiguous, the notice should suffice to give developers the ability to undertake 10-20 campground upgrades every year. *(Chamber World Network, International US&FCS).*

We believe this upgrading of camping facilities could be a potential boon to Coleman in the future. With the lack of improvement in the Japanese economy we believe more families would turn to camping as a frugal vacation alternative - were it more user-friendly and convenient.

In Europe, the new management team has made the important step of integrating the acquisition Camping Gaz into Coleman's distribution system. The increased presence this will give Camping Gaz coupled with the synergies will create earnings appreciation in 1998.

Camping Gaz is the leading camping manufacturer in Europe but has a similar problem to Coleman, the brand has been taken for granted. Consequently, Camping Gaz required a face-lift. The brand has been the same to consumers since its introduction and needed a new look to serve as a reminder of the higher technology products the company offers. In September, management introduced a new image for the brand to retailers during the Spoga trade show in Cologne, Germany. This is the first step in what management hopes is a rejuvenation of the brand in Europe.

The Coleman Company Financial Forecast

1997 is an unusual year in sales for Coleman, with the elimination of the $100 million in SKUs, the reduction of inventory in Japan and the exiting of the pressure washer business (approximately 8% of sales). The overall affect should be roughly flat sales, year over year. We are forecasting 1998 sales growth of 7.0%, which we view as conservative given Coleman's many marketing initiatives. Currently, the company is not focused on acquisitions and does not expect to make any unless an opportunistic acquisition were to present itself.

Gross margin will continue to appreciate as the company benefits from their SKU reduction program. In 1998, we expect further appreciation from the globalization of Coleman's brands. This will produce significant savings in procurement, packaging and manufacturing.

Selling General & Administrative Expenses as a % of sales are also expected to continue to improve as Coleman realizes the cost savings associated with their reduction in workforce and a new focus on cost savings by managers. These savings will be partially offset by increased advertising and research expenditures, which should in turn increase sales and operating leverage for the company.

We are being very conservative with regards to Coleman's capital structure. The company will be generating significant cash flow and we expect continued deleveraging to occur in 1998.

NOT CERTIFIED COPY

018447

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

SB 238459

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473158

16div-023822

Exhibit 15

The Coleman Company 1997 Summary Financial Forecast

	Year 12/31/95	1Q 3/31/96	2Q 6/30/96	3Q 9/30/96	4Q 12/31/96	Year 12/31/96	1Q 3/31/97	2Q 6/30/97	3QE 9/30/97	4QE 12/31/97	YearE 12/31/97
Net revenues	$933.6	$273.6	$452.7	$269.6	$224.4	$1,220.2	$295.5	$383.5	$281.5	$235.2	$1,195.6
Cost of sales	649.4	192.6	315.1	229.7	191.1	928.5	214.4	281.6	208.3	174.7	879.0
Gross profit	284.1	81.0	137.5	39.9	33.3	291.7	81.0	101.9	73.2	60.4	316.6
Gross Margin	*30.4%*	*29.6%*	*30.4%*	*14.8%*	*14.8%*	*23.9%*	*27.4%*	*26.6%*	*26.0%*	*25.7%*	*26.5%*
SG&A	174.7	46.7	78.9	89.3	76.7	291.7	65.9	70.1	55.2	49.1	240.3
SG&A as & of Sales	*18.7%*	*17.1%*	*17.4%*	*33.1%*	*34.2%*	*23.9%*	*22.3%*	*18.3%*	*19.6%*	*20.9%*	*20.1%*
Operating Income	109.5	34.2	58.6	(49.4)	(43.4)	0.0	15.2	31.8	18.0	11.3	76.3
Depreciation & Amortization	*18.8*	*5.3*	*6.6*	*7.4*	*6.5*	*25.9*	*6.7*	*7.0*	*8.0*	*7.1*	*28.9*
Extraordinary Expenses (Gain)	*(4.1)*	*0.0*	*0.0*	*57.3*	*16.9*	*74.2*	*0.0*	*18.6*	*0.0*	*0.0*	*18.6*
EBITDA	124.1	39.6	65.2	15.3	(20.0)	100.1	21.9	57.4	26.0	18.4	123.7
EBITDA Margin	*13.3%*	*14.5%*	*14.4%*	*5.7%*	*-8.9%*	*8.2%*	*7.4%*	*15.0%*	*9.2%*	*7.8%*	*10.3%*
Interest	24.5	8.1	10.7	10.0	9.9	38.7	10.7	11.0	10.5	9.7	41.9
Capital Expenditures	29.1	6.9	11.9	8.9	13.7	41.3	6.3	6.3	7.0	14.1	33.8
Capital Expenditures/Total Sales	3.1%	2.5%	2.6%	3.3%	6.1%	3.4%	2.1%	1.7%	2.5%	6.0%	2.8%
Long Term Debt	374.6	612.7	558.5	573.0	617.5	617.5	568.0	522.8	538.8	542.0	542.0
Total Cash	12.1	6.8	11.4	43.8	17.3	17.3	12.9	17.0	13.0	15.0	15.0
Net Debt	362.5	605.9	547.2	529.3	600.2	600.2	555.2	505.8	525.8	527.0	527.0
Available Credit	na	70.7	156.8	137.9	128.1	128.1	135.1	173.5	158.0	154.0	154.0
EBITDA/Interest	5.06	4.90	6.08	1.54	(2.02)	2.59	2.04	5.21	2.48	1.73	2.89
EBITDA-Capex/Interest	3.87	4.05	4.97	0.65	(3.39)	1.52	1.45	4.63	1.81	0.40	2.10
Debt/EBITDA	3.02					6.17					4.38
Net Debt/EBITDA	2.92					5.99					4.26
Coleman Escrow											
EBITDA/Interest	2.15	2.33	3.32	0.80	(1.03)	1.33	1.12	2.93	1.09	0.77	1.42
Debt/EBITDA	5.94					9.98					8.53

[1] *Extraordinary expenses detailed as following:*
1995 = Cost of Sales benefit of $6.3 mm related to adoption of EITF 95-2
3Q96 = $33.6 million charge in Cost of Sales and $23.8 million charge in SG&A relating to integration of Camping Gaz, exit of electric pressure washer business, increase in valuation reserve for certain foreign deferred income tax assets, litigation expenses associated with certain battery powered lights, asset write-offs and foreign tax matters.
4Q96 = $10.4 million charge Cost of Sales and $6.4 million charge in SG&A relating to same charges as 3Q96
2Q97 = $11.4 million charge in Cost of Sales and $7.2 million charge in SG&A relating to corporate restructuring program.
Source: Company Financials & Morgan Stanley Estimates

NOT A CERTIFIED COPY

018448

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

SB 238460

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473159
16div-023823

Exhibit 16

The Coleman Company 1998 Summary Financial Forecast

	Year 12/31/96	1Q 3/31/97	2Q 6/30/97	3QE 9/30/97	4QE 12/31/97	YearE 12/31/97	1QE 3/31/98	2QE 6/30/98	3QE 9/30/98	4QE 12/31/98	YearE 12/31/98
Net revenues	$1,220.2	$295.5	$383.5	$281.5	$235.2	$1,195.6	$313.2	$421.9	$301.2	$246.9	$1,283.2
Cost of sales	928.5	214.4	281.6	208.3	174.7	879.0	223.6	294.9	214.1	178.5	911.2
Gross profit	291.7	81.0	101.9	73.2	60.4	316.6	89.6	127.0	87.0	68.4	372.0
Gross Margin	*23.9%*	*27.4%*	*26.6%*	*26.0%*	*25.7%*	*26.5%*	*28.6%*	*30.1%*	*28.9%*	*27.7%*	*29.0%*
SG&A	291.7	65.9	70.1	55.2	49.1	240.3	58.6	71.7	57.5	51.6	239.4
SG&A as & of Sales	*23.9%*	*22.3%*	*18.3%*	*19.6%*	*20.9%*	*20.1%*	*18.7%*	*17.0%*	*19.1%*	*20.9%*	*18.7%*
Operating Income	0.0	15.2	31.8	18.0	11.3	76.3	31.0	55.3	29.5	16.8	132.6
Depreciation & Amortization	*25.9*	*6.7*	*7.0*	*8.0*	*7.1*	*28.9*	*6.9*	*7.3*	*8.2*	*7.3*	*29.7*
Extraordinary Expenses (Gain)	*74.2*	*0.0*	*18.6*	*0.0*	*0.0*	*18.6*	*0.0*	*0.0*	*0.0*	*0.0*	*0.0*
EBITDA	100.1	21.9	57.4	26.0	18.4	123.7	37.9	62.6	37.7	24.1	162.3
EBITDA Margin	*8.2%*	*7.4%*	*15.0%*	*9.2%*	*7.8%*	*10.3%*	*12.1%*	*14.8%*	*12.5%*	*9.8%*	*12.6%*
Interest	38.7	10.7	11.0	10.5	10.6	42.8	10.4	9.8	10.1	10.3	40.6
Capital Expenditures	41.3	6.3	6.3	7.0	14.1	33.8	6.8	6.2	7.4	14.7	35.1
Capital Expenditures/Total Sales	3.4%	2.1%	1.7%	2.5%	6.0%	2.8%	2.2%	1.5%	2.5%	6.0%	2.7%
Long Term Debt	617.5	568.0	522.8	538.8	542.0	542.0	564.0	509.0	515.0	519.0	519.0
Total Cash	17.3	12.9	17.0	13.0	15.0	15.0	11.0	14.0	13.0	14.7	14.7
Net Debt	600.2	555.2	505.8	525.8	527.0	527.0	553.0	495.0	502.0	504.3	504.3
Availible Credit	128.1	135.1	173.5	158.0	154.0	154.0	139.0	186.0	182.0	186.0	186.0
EBITDA/Interest	2.59	2.04	5.21	2.48	1.73	2.89	3.64	6.38	3.73	2.34	4.00
EBITDA-Capex/Interest	1.52	1.45	4.63	1.81	0.40	2.10	2.99	5.75	3.00	0.91	3.13
Debt/EBITDA	6.17					4.38					3.20
Net Debt/EBITDA	5.99					4.26					3.11
Coleman Escrow											
EBITDA/Interest	1.33	1.12	2.93	1.09	0.77	1.42	1.60	2.51	1.50	0.94	1.63
Debt/EBITDA	9.98					8.53					6.99

1996 = $54.0 million charge in Cost of Sales and $30.2 million charge in SG&A relating to integration of Camping Gaz, exit of electric pressure washer business, increase in valuation reserve for certain foreign deferred income tax assets, litigation expenses associated with certain battery powered lights, asset write-offs and foreign tax matters.
2Q97 = $11.4 million charge in Cost of Sales and $7.2 million charge in SG&A relating to corporate restructuring program.
Source: Company Financials & Morgan Stanley Estimates

NOT A CERTIFIED COPY

018449

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-023824

Appendix 1

Prices Paid For Recent Consumer Product Transactions

Announced	Acquiror/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value [2]	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	Premium Price [3]
04/09/97	Tambrands/Proctor & Gamble	Manufactures feminine hygiene products, home diagnostic, cosmetics and personal care products	$1,854	$2,004	3.0x	8.7x	14.4x	15.3%
11/26/96	Armor All (McKesson Corporation)/Clorox Company	Develops and markets a broad line of automotive appearance chemicals, including protectants, washes and other cleaning aids. The company also markets several brands of home care products	410	355	1.9	13.9	16.7	14.0
10/29/96	Carter-Wallace/Investor (MarvinDavis)	Manufacture pharmaceuticals, toiletries, diagnostic equipment and pet food	928	941	1.4	13.0	19.4	60.0
09/13/96	Duracell/Gillette	A worldwide manufacturer of high-performance alkaline batteries and other battery types	7,202	7,733	3.4	14.3	17.4	30.1
02/13/96	Helene Curtis/Unilever PLC	Develops, manufactures and markets personal care products, primarily hair and skin products and antiperspirants and deodorants	739	842	0.6	13.4	24.8	71.8
01/22/96	Maybelline/L'Oreal SA	Maker of Great Lash mascara and other cosmetics and perfumes	627	755	2.1	14.9	19.0	93.4
08/11/95	Schwarkopf (Hoechst AG) Henkel (KGAA)	Sells best-selling hair care products including top selling shampoo and best-selling hair spray	DM800	DM800	0.9	N.A.	17.3	N.A.
07/17/95	Scott Paper/Kimberly Clark	Consumer paper products	6,800	7,786	N.A.	10.0	16.0	1.9
01/09/95	American Home Products (Kolynos)/Colgate-Palmolive	Oral care division of AHP that operates primarily in Latin America	1,040	1,040	3.6	N.A.	19.2	--
08/22/94	Neutrogena Corp/Johnson & Johnson	U.S. manufacturer of quality skin and hair care products	$929	$933	3.2x	19.9x	22.9x	78.5%
09/12/94	Borden Inc./RJR Nabisco (KKR)	Operations include grocery products, snacks, dairy products and packaging products	2,015	3,698	0.6	12.3	32.0	9.9
09/26/94	L&F Products (Eastman Kodak Co.) Reckitt & Colman plc	Lysol disinfectant, Mop & Glo floor polish, Resolve rug cleaners	1,550	1,550	2.0	N.A.	N.A.	--
10/14/94	Eastman Kodak (L&F Do-It-Yourself Products)/Forstmann Little & Co.	Manufactures and markets a diverse line of Do-It-Yourself products, such as stains, paints, sealants and varnishes for home and commercial applications. Brand names include Thompson, Minwax, Roncraft and Red Devil	700	700	2.1	11.4	12.0	--
10/27/92	Bristol-Meyers Squibb (Drackett)/S.C. Johnson & Son	The company manufactures household products including Windex, glass cleaner, Drano drain opener, Vanish toilet bowl cleaner, Endust cleaning sprays, Behold furniture polish, Renuzit air freshners, O-Cedar broom	1,150	1,150	2.0	N.A.	N.A.	--

NOT A CERTIFIED COPY

018450

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238462

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473161

16div-023825

Announced	Acquiree/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value [2]	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	Premium Price [3]
06/20/90	American Cynamid Co. (Shulton Group)/Chlorox Co.	Purchased the worldwide household products portion of the Shulton Group, which includes the Pine-Sol cleaning product and the line of Combat brand insecticides	$465	$465	2.5x	N.A.	36.6x	--
03/09/90	American Home Products (Boyle-Midway Unit) Reckitt & Colman Plc	Products include Woolite soaps, Easy-Off Oven Cleaner, Black Flag and Holiday insecticides, Gulf-Lite charcoal lighter, Wizard air freshner, Sani-Flush toilet bowl cleaner, Old English furniture polish, HRS Floor Care and Zero Cold Wash	1,250	$1,250	1.9	12.9	13.7	--
09/22/89	Noxell Corp./Procter & Gamble Co.	Company develops, manufactures and markets cosmetic toiletry and household products. Products include: Noxzema, Clarion Complexion Lotion, Raintree, Cover Girl Cosmetics, Liquid Household Cleaner and Chili Ingredients	1,358	1,291	2.4	13.8	15.2	50.7
01/22/88	Sterling Drug Inc./Eastman Kodak Co.	Develops, manufactures and markets pharmaceuticals, household products; cosmetics and toiletries. Major products include: Phillips Milk of Magnesia, Midol, Bayer Aspirin, Panadol, Lysol, O-Con and Miniwax	5,267	5,770	2.6	15.6	17.7	97.8
12/01/86	Cheesebrough Ponds, Inc./ Unilever N.V.	Cheesebrough's products include: health and beauty (cosmetics, toiletry and medicinal products); packaged foods; Health Tex (apparel for infants); hospital supplies, Prince (sports equipment; Bass (casual footwear). Trademarks include: Cutex, Dermatology Formula, Groom & Clean, Intensive Care, Pertussin, Pond's, Q-Tips, Rave, Vaseline, Adolph's	3,095	4,413	1.4	N.A.	14.7	61.1
10/01/86	Richardson-Vicks Inc./ Proctor & Gamble Co.	Richardson-Vicks develops, manufactures and markets personal care products, including toiletries, hair care products, and health care products, including proprietary medicines. Major brand-name products include Vicks and Nyquil cough and cold products. Oil of Olay and Clearskin skin care products, and Vidal Sassoon and Pantene hair care products	1,708	1,873	1.6	N.A.	19.2	N.A.
		Mean			2.1x	13.4x	19.3x	48.7%
		Median			2.0	13.4	17.6	55.6%

Source: Morgan Stanley (MK)

NOT A CERTIFIED COPY

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

SB 238463

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473162

16div-023826

Appendix 2

The Coleman Company Product Offerings

Product Category	Brands	Competition	Comments
Lanterns & Stoves	Coleman Camping Gaz Peak 1	Century Primus American Camper Dayton Hudson Corporation	This is the product that Coleman began its empire with. The company believes themselves to be the leading manufacturer of lanterns and stoves in the world.
Fuel	Coleman Camping Gaz Peak 1	nm	
Coolers & Jugs	Coleman Camping Gaz	Rubbermaid, Inc. Igloo Products Corp. The Thermos Co.	
Recreational Soft Goods	Coleman Eastpak Timberland	American Recreation Slumberjack Academy Broadway Corp MZH Sears Wenzel Eureka Nike Outdoor Products Kelty	Backpacks, lead by the Eastpak brand have been the big performer in this category which includes tents and sleeping bags. Eastpak holds the number one share in Europe and Korea and the number two share in America. With their recent acquisition of the exclusive Timberland brand licensing rights for backpacks, the company believes Eastpak can further grow their share in America.
Outdoor Furniture	Coleman Sierra Trails	nm	
Electric Lights	Coleman	Eveready Rayovac Corp.	
Spas	Coleman	Watkins Manufacturing Corp. Clark Manufacturing	
Camping Accessories	Coleman	Coughlan's	Capitalizing on their strong brand name, Coleman recently introduced the Coleman accessory wall to retailers. The entry has been an immediate success as retailers appreciate the brand name recognition associated with the Coleman brand name. Several retailers dropped offerings by Coughlan's to make room for the Coleman products.
Generators	Coleman Powermate	Generac Corporation Honda Motor Company Kawasaki Yamaha	Coleman is the leading manufacturer and distributor of portable generators in the U.S. and worldwide. With the acquisition of ATI, the company now produces advanced-light-weight air generators.
Air Compressors	Coleman Powermate	DeVilbiss Campbell Hausfield	
Safety & Security Products	Firex Code 1 Coleman Sheltra	First Alert American Sensor Nighthawk	The majority of these products are distributed primarily through electrical wholesalers, though under the Coleman Sheltra brand, the line is gaining share with retailers. Coleman recently made a major innovation in this area with the introduction of an easy-access off button. The large round button can be pushed in order to stop an alarm from sounding if accidentally triggered. This innovation is not offered by any competitors.

Source: Company Financials & Morgan Stanley

© 1997 Morgan Stanley, Dean Witter, Discover & Co. All Rights Reserved.

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

NOT A CERTIFIED COPY

018452

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238464

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473163

16div-023827

Appendix 3

Coleman Sales by Division for 1996

	Sales	% of Total
Outdoor Recreation Group	$859.6	70.4%
Hardware	$360.6	29.6%

Source: Company Financials

Appendix 4

Profile of General Camping Equipment Users - 1993

Category	% of sample population	% users
All adults	9.2	100.0
Sex		
Male	10.4	54.1
Female	8.1	45.9
Age (years)		
18-24	11.1	15.6
25-34	12.1	30.3
35-44	14.6	34.0
45-54	6.9	11.0
55-64	4.8	5.9
65 or older	1.8	3.2
Occupation		
Professional/manager	11.1	20.6
Technical/clerical/sales	11.0	24.2
Precision/craft	12.4	10.1
Other employed	11.6	25.5
Not employed	5.2	19.6
Household income		
$75,000 or more	9.7	13.7
$60,000 or more	10.6	25.2
$50,000 or more	11.2	37.7
$40,000 or more	11.1	51.8
$30,000 or more	10.9	67.6
$20,000-29,999	9.5	16.9
$10,000-19,999	6.6	11.1
Less than $10,000	3.9	4.3
Marital Status		
Single	10.5	25.2
Married/cohabiting	10.0	63.5
Widowed/divorced/separated	5.5	11.3
Children in household		
No children	7.5	49.2
0-2	10.2	8.8
2-5	11.2	17.5
6-11	14.0	27.9
12-17	12.5	24.7
Household size		
1 person	4.6	6.5
2 people	7.3	26.0
3 or 4 people	11.7	50.4
5 or more people	11.1	17.1
Region		
North-east	7.2	16.1
Midwest	11.0	30.2
South	8.8	25.6
West	12.2	28.1

Source: SMRB

NOT A CERTIFIED COPY

018453

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238465

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473164

16div-023828

The information and opinions in this report were prepared by Morgan Stanley & Co. Incorporated ("Morgan Stanley Dean Witter"). Morgan Stanley Dean Witter does not undertake to advise you of changes in its opinion or information. Morgan Stanley Dean Witter and others associated with it may make markets or specialize in, have positions in and effect transactions in securities of companies mentioned and may also perform or seek to perform investment banking services for those companies.

Morgan Stanley & Co. Incorporated, Dean Witter Reynolds Inc. and/or their affiliates make a market in the securities of Coleman Escrow.

Morgan Stanley & Co. Incorporated, Dean Witter Reynolds Inc. and/or their affiliates or their employees have or may have a long or short position or holding in the securities, options on securities, or other related investments of issuers mentioned herein.

The investments discussed or recommended in this report may not be suitable for all investors. Investors must make their own investment decisions based on their specific investment objectives and financial position and using such independent advisors as they believe necessary. Where an investment is denominated in a currency other than the investor's currency, changes in rates of exchange may have an adverse effect on the value, price of, or income derived from the investment. Past performance is not necessarily indicative of future returns. Income from investments may fluctuate. The price or value of the investments to which this report relates, either directly or indirectly, may fall or rise against the interest of investors. Price and availability are subject to change without notice.

Morgan Stanley Asia Limited and others associated with it may have, and may continue to have, positions in and may effect transactions in securities of companies mentioned and derivatives of such securities which have been and may be issued by Morgan Stanley Asia Limited or others associated with it.

To our readers in the United Kingdom: [This publication has been issued by Morgan Stanley & Co. Incorporated and approved by Morgan Stanley & Co. International Limited, regulated by the Securities and Futures Authority. Morgan Stanley & Co. International Limited and/or its affiliates may be providing or may have provided significant advice or investment services, including investment banking services, for any company mentioned in this report. **NOT FOR DISTRIBUTION TO PRIVATE CUSTOMERS AS DEFINED BY THE U.K. SECURITIES AND FUTURES AUTHORITY.**

This publication is disseminated in [Japan by Morgan Stanley Japan Limited and in] Singapore by Morgan Stanley Asia (Singapore) Pte.

To our readers in the United States: While Morgan Stanley & Co. International Limited has prepared this report, Morgan Stanley & Co. Incorporated and Dean Witter Reynolds Inc. are distributing the report in the US and accept responsibility for its contents. Any person receiving this report and wishing to effect transactions in any security discussed herein should do so only with a representative of Morgan Stanley & Co. Incorporated or Dean Witter Reynolds Inc.

NOT A CERTIFIED COPY

0181454

This memorandum is based on information available to the public. No representation is made that it is accurate or complete. This memorandum is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities or instruments or to participate in any particular trading strategy mentioned. Please refer to the notes at the end of this report. Additional information on recommended securities is available on request.

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 238466

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0473165

16div-023829

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff(s), vs. MORGAN STANLEY & CO., INC., Defendant(s).	Case No. CA 03-5045 AI
MORGAN STANLEY SENIOR FUNDING, INC., Plaintiff(s), vs. MACANDREWS & FORBES HOLDINGS, INC., Defendants(s)	

VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH

New York, New York

Friday, October 15, 2004

Reported by:
JOAN WARNOCK
JOB NO. 166116

NOT A CERTIFIED COPY

018456

October 15, 2004
9:30 a.m.

Videotaped deposition of KAREN HAYCOX-ELTRICH held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before Joan Warnock, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, LLP
Attorneys for Coleman (Parent) Holdings, Inc., and MacAndrews & Forbes, Holdings, Inc.
One IBM Plaza, Suite 4400
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.
JOANNE HANNAWAY SWEENEY, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Morgan Stanley & Co. Incorporated and Morgan Stanley Senior Funding, Inc.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: ZHONETTE M. BROWN, ESQ.

ALSO PRESENT:
MARK GRANDERSON, VIDEOGRAPHER

VIDEOGRAPHER: This is tape number one of the videotaped deposition of Karen Haycox-Eltrich in the matter Coleman Holdings, Incorporated, versus Morgan Stanley & Company, Incorporated, defendants, Morgan Stanley Senior Funding, Incorporated, plaintiff, versus MacAndrews & Forbes Holdings, Incorporated, et al, the defendants. The case number, CA 03-5165 A1, and case number CA 03-5045 A1. This deposition is in the 15th Judicial Circuit in and for Palm Beach County, Florida. The deposition is being held at Esquire Deposition Services at 216 East 45th Street, New York, New York, on Friday, October 15th, 2004, and the time on my monitor is 9:39 a.m. My name is Mark Granderson with Esquire Deposition Services, and I am the legal video specialist. The court reporter is Joan Warnock also in association with Esquire Deposition Services. Will counsel please introduce themselves.
MR. BRODY: Michael Brody and Joanne

Sweeney for Coleman (Parent) Holdings and MacAndrews & Forbes Holdings, Inc.
MS. BROWN: Zhonette Brown, Kirkland & Ellis, LLP, on behalf of the Morgan Stanley entities and the witness.
VIDEOGRAPHER: Will the court reporter please swear in the witness.
KAREN HAYCOX-ELTRICH, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:
COURT REPORTER: Please state your full name and address for the record.
THE WITNESS: Karen Haycox-Eltrich, 450 North End Avenue, New York, New York 10282.
EXAMINATION BY
MR. BRODY:
Q. Good morning, Ms. Haycox-Eltrich. As introduced, my name is Mike Brody. I represent Coleman (Parent) Holdings. I'll be asking you questions today. The address you just gave, is that a home address or work address?
A. Home address.

NOT A CERTIFIED COPY

DB 18457

Page 6

Q. Do you go by names other than the one you used to introduce yourself?
A. Frankly, it's mainly Karen Eltrich.
Q. Have you ever been deposed before?
A. No, I have not.
Q. Let me tell you a little bit about the process. You've just taken an oath. It's the same oath you would take for this case were you testifying live in front of a judge or a jury. I will ask you questions, and it will be your job to answer them to the best of your ability. If you don't understand any of my questions, let me know, and I'll try to rephrase them. If you need to take a break, just say so. And even though it's being videotaped, when I ask you questions, it will be important to give an oral answer rather than a non-verbal method of communication so the court reporter can take it down. Are all those rules acceptable to you?
A. Yes.
Q. You indicated you've never been deposed. Have you ever testified under oath in any circumstance?
A. No, I have not.

Page 7

Q. Do you remember ever providing any affidavits or other sworn written testimony?
A. No, I do not.
Q. As you undoubtedly know from talking to your counsel, this case involves certain work you did while at Morgan Stanley. What were the approximate dates of your employment at Morgan Stanley?
A. I was at Morgan Stanley from October 1995 to May 2001.
Q. During that time period were you ever asked to collect documents relating to the work that you did at Morgan Stanley insofar as it related to Sunbeam or Coleman or the litigation that's before us?
A. Once I was, yes.
Q. When was that?
A. Couldn't tell you. I don't recall.
Q. Can you approximate with reference to your days of employment?
A. Obviously it was after the event, but no, I really couldn't tell you when it happened.
Q. Do you remember who asked you for documents?

Page 8

A. No, I do not.
Q. Do you remember what you provided? Did you provide documents?
A. Absolutely. It wasn't much. I mean I gave my Coleman model. I gave whatever notes I had had from my Sunbeam very limited due diligence, but nothing else. It was probably like, you know (indicating) -- sorry, you can't for the camera, for you -- about half an inch thick of documents. There was not a lot that I had been involved in.
Q. When you refer to your Coleman model, what do you mean?
A. I had covered Coleman in the secondary market as a high yield research analyst, so I had, obviously, forecasts, etc., and it was something even after the deal that it's not like I delete the model. So it wasn't an updated model, but it was the historical perspective.
Q. Was it maintained on a computer?
A. Yes.
Q. Do you know what program the model was generated in?
A. I'm assuming Excel.

Page 9

Q. That's what you used at the time?
A. Yes.
Q. We'll be talking further about the research you did. I'll ask you more questions about the model later on.
A. Okay.
Q. But aside from providing the model, you said you provided some documents relating to Sunbeam due diligence?
A. It would have been notes I may have taken or just -- I mean as a research analyst, you kind of keep whatever you have just in case it ever takes another life or form. And I couldn't tell you what I had. But it's just basically any documents that had been given to me regarding Sunbeam would have gone to them. And it, frankly, probably wasn't a lot because I wasn't that involved in the due diligence because I was high yield and there was actually no high yield bonds issued.
Q. Okay. Do you remember what attorney or other person asked you for these documents?
A. No.
Q. Do you remember who you gave them to?

NOT A CERTIFIED COPY

Page 10

A. No. It was someone internal from Morgan Stanley. That's all I know.
Q. Internal legal?
A. Don't know.
Q. Are you represented by counsel today?
A. Yes, I am.
Q. By Ms. Brown.
A. Yes, I am.
Q. And you know that her firm is Kirkland & Ellis?
A. Yes.
Q. When did you retain them to represent you?
A. It was about two months ago, I would say, six to eight weeks ago.
Q. Is that when you first learned that there might be a deposition?
A. Yes.
Q. Are you paying for their services?
A. No, I am not.
Q. Do you understand Morgan Stanley to be paying for their services?
A. Yes, I do.
Q. Did they initially contact you or

Page 11

did --
A. Yes.
Q. -- you initially contact them?
A. Well, given that you asked to depose me, they kind of contacted me.
Q. But it wasn't the sort of thing where someone from Morgan Stanley called and told you. The first call came from Kirkland & Ellis?
A. Yes, it did. Actually, I'm sorry, the first call came from Goldman Sachs, because they contacted Goldman Sachs, and then it was our Goldman Sachs legal representative who contacted me. But it was, yes, Kirkland.
Q. And is Goldman Sachs your current employer?
A. Yes, they are.
Q. So you learned of the possibility of a deposition in this case from someone at Goldman Sachs?
A. Yes.
Q. Do you remember the name of the person who talked to you?
A. No, I don't.
Q. Do you know if it's someone in the

Page 12

law department?
A. It was definitely in the legal department, yes.
Q. Since you left Morgan Stanley and prior to today, have you had any contact with people from Morgan Stanley about this deposition?
A. Absolutely not.
Q. So you haven't spoken with any in-house attorneys?
A. No, I have not.
Q. Do you have any continuing involvement in any deals with Morgan Stanley?
A. No.
Q. You don't have continuing compensation or --
A. I own stock in the company, but that's it.
Q. Do you maintain professional contacts with anyone from Morgan Stanley?
A. No professional, but a lot of personal.
Q. Just people you worked with?
A. People I worked with who are friends, but there is no professional contact

Page 13

whatsoever.
Q. Have you discussed the Sunbeam or Coleman matters with anyone at Morgan Stanley since you left?
A. No, I have not.
Q. So you haven't discussed this litigation with anyone?
A. No, I have not.
Q. What did you do to prepare for today's deposition?
A. Yesterday we met and she showed me some of the documents that had my name on it, but that would probably be about it.
Q. Do you remember what documents you saw?
MS. BROWN: Objection. I instruct the witness not to answer.
Q. Did any of those documents refresh your recollection about events in this case?
A. Vaguely, but not really.
Q. Well, which ones even had a vague effect on refreshing your recollection?
A. Honestly, just reading the press release that they were missing sales. You have to understand I was eight and a half

NOT A CERTIFIED COPY

0184159

Page 14

months pregnant when all of this happened, so it wasn't the core focus that I had. And so it was more of just kind of figuring out the time line. I mean obviously I remember the events, but I don't necessarily remember the time line in which they happened. And I would say that was probably all it gave me.

Q. Okay. You said you were eight and a half months pregnant. When was your child born?

A. March 25th, 1998. A girl. Thank you.

Q. Congratulations. That allows us to place this a little bit in time. I think the question I asked you that got us into that was whether any of the documents refreshed your recollection. Which were the documents, if any, that had your name on it that may have refreshed your recollection?

A. No.

MS. BROWN: Objection. I'm going to instruct the witness not to answer. She's already testified to what refreshed her recollection, and it wasn't anything that relates to the question that you

Page 15

just asked.

MR. BRODY: Well, I don't think that's exactly right.

Q. But which things that you saw yesterday had any effect in refreshing your recollection?

A. Exactly as I said. It was more of a time line incident. It was more of a time line issue versus an events issue, and it was the document which basically said that they were going to miss their sales, the sales forecast that the research analyst had.

Q. Ms. Eltrich, I'm handing you what has been previously marked as Exhibit 14. When you referred to a document that helped you place this in time, I think you said it was an indication that they were going to miss their sales, were you referring to the document that's been marked as CPH Exhibit 14?

A. Yes, I was.

Q. Did you see that back in March of 1998?

A. I saw it when it was released to the Street, yes, I did.

Q. Okay. You can put that aside for a

Page 16

moment. We'll come back to that. I believe you testified that in preparation for the deposition you met with Ms. Brown?

A. Yes.

Q. Approximately how long did you meet with her?

A. Two and a half hours.

Q. And that was yesterday?

A. Yes.

Q. Aside from reviewing documents, did you speak with anyone else --

A. No.

Q. -- besides Ms. Brown? Did you review any testimony that others had given?

A. No.

Q. Did you look at any videotapes of testimony?

A. No.

Q. Have you ever spoken with anyone connected with the New York Stock Exchange or the SEC about the events at Sunbeam or Coleman?

A. No, I have not.

Q. And I believe I may have asked you this, but have you discussed the substance of

Page 17

this testimony, the testimony you're giving today, with anyone other than Ms. Brown?

A. No, I have not.

Q. Before we focus on the events at Sunbeam, I would like to address your background a little. Could you describe for us your education after high school.

A. I went to NYU Stern School of Business and graduated in 1994 with a bachelor of science in economics and finance.

Q. Any other postgraduate education?

A. No.

Q. While at the Stern School, did you have any concentration within economics and finance? Was there an area that you studied more than any other?

A. No.

Q. And that was an undergraduate degree from the Stern School?

A. Yes, it was.

Q. After graduating from the Stern School, did you become employed?

A. I became employed in August of '94 with Advest as a research assistant.

Q. How long were you at Advest?

NOT A CERTIFIED COPY

0184690

Page 18

A. A little less than a year. It was -- actually, it was a little more than a year.
Q. What was your next job?
A. Then I was at Morgan Stanley.
Q. Now, focusing on your position at Advest, you said you were a research analyst?
A. Research assistant.
Q. I'm sorry. Research assistant. What were the responsibilities of a research assistant at Advest?
A. It was a hybrid between being a secretary and being a research analyst. There was one analyst who had me make haircut appointments for him, and there was another analyst who had me build his models for him. So it was a combination between the two.
Q. What types of businesses did you analyze?
A. It was financial institutions. It was large cap banks primarily with a few small caps.
Q. Did anyone report to you?
A. No.
Q. You left Advest in late 1995?
A. It was October, October of 1995,

Page 19

which is when I joined Morgan Stanley.
Q. What was your first position at Morgan Stanley?
A. I was an analyst. I believe I came on as a second-year analyst in the high yield research group.
Q. Describe for us what the high yield research group analyzed, what types of issuances?
A. Junk bonds, bonds related -- bonds that were below investment grade status.
Q. How long were you in the high yield research group?
A. Up until May of 2001.
Q. That's when you left?
A. Yes.
Q. What positions did you hold aside from analyst?
A. Analyst, associate, vice president.
Q. When did you become an associate?
A. When did I become an associate.
Q. Well, let me ask it a little differently if you don't remember the date. The events we're looking at in this case are in late '97 into early 1998. At that time

Page 20

were you an analyst or were you an associate?
A. I was an associate.
Q. And do you know when you became a vice president?
A. I believe it was either '99 or 2000, but I couldn't tell you exactly which date unless I honestly saw my records.
Q. I understand. And you remained a vice president until you left in May of 2001?
A. Yes.
Q. Returning to the position you held as an analyst at Morgan Stanley in the high yield research group, was there a particular area that you covered?
A. I covered several sectors. I was working with Jake Foley, who was my senior analyst, and under him we covered supermarkets, food and beverage, and restaurants, and occasionally special retail. On my own at that point I was covering consumer products as the lead analyst.
Q. You called that consumer products?
A. Um-hmm.
Q. And Coleman fit within consumer products?

Page 21

A. Yes, it did.
Q. Did Sunbeam fit within consumer products?
A. It did, but it was not under my universe of coverage.
Q. At the time you were covering Coleman did anyone report to you?
A. No.
Q. And you reported to Mr. Foley?
A. Yes.
Q. Do you remember what his title was at the time?
A. He was a principal.
Q. Principal, is that the next position up from vice president?
A. Yes, it is.
Q. At the time you were an associate did you continue coverage of the same areas?
A. Yes, I did.
Q. It was just a promotion, but you covered the same fields?
A. Yes.
Q. How about when you were vice president?
A. Same. Well, when I was vice

NOT A CERTIFIED COPY

01846

Page 22

president, Jake had left the firm, so I assumed coverage of all the sectors. Or I should say Jake had left the group. Sorry.
Q. But after Mr. Foley left the group, you were still covering supermarkets, food and beverage?
A. Restaurants, retail.
Q. Restaurants, specialty retail?
A. Sorry. Not retail. Specialty retail. Thank you.
Q. What does specialty retail mean?
A. It's small, very small little specialized companies. Really it was like one name, mother's work.
Q. I'm sorry?
A. Mother's work, which is maternity wear, versus covering the true retail spectrum.
Q. And you continued in that position until you left in May 2001?
A. Yes.
Q. Why did you leave Morgan Stanley?
A. Do I really have to put this on the record? I left Morgan Stanley because I was very happy under John Mack's leadership. I

Page 23

was less happy under Phil Purcell's leadership. And Goldman Sachs presented a great opportunity to me.
Q. And you left Morgan Stanley to go to Goldman Sachs?
A. Yes.
Q. What position were you hired into at Goldman Sachs?
A. Exactly the same position, vice president covering the same sectors adding on full retail. And, actually, now I did have consumer products.
Q. And when you say you added full retail, what types of companies did that include?
A. Petco, PCA, Pay Less Shoe Source. Just retail.
Q. What position do you now have at Goldman Sachs?
A. I am still vice president.
Q. Now, I'm going to focus on the 1997 to 1998 time frame and your employment at Morgan Stanley during that time frame. You were a research analyst, and then I guess in '97, '98, you were an associate?

Page 24

A. Yes.
Q. And that was in the high yield research group?
A. Yes.
Q. Was the high yield research group part of another group?
A. High yield.
Q. Who was in charge of the high yield group?
A. Dwight Sipprelle and Mike Rankowitz.
Q. The high yield research group that you were associated with, what was its business? What did it do?
A. It was several functions. Our primary goal was to cover bonds in the secondary market.
Q. Any other functions?
A. We also did do proprietary trading, so obviously we assisted the trading desk in their investment decisions.
Q. Trading in high yield bonds?
A. In high yield bonds.
Q. Anything else?
A. And we would as a very third front, we would assist the investment banking group

Page 25

in the underwriting of bonds. But, again, it wasn't really -- I shouldn't say assisting. It was working with the investment banking group to protect our group from what I would call bad deals, because we live with the bonds in the secondary, so we were involved in making the decision of whether or not something should be underwritten.
Q. And when you say you live with the bonds, what do you mean by that?
A. I mean bonds on average have a ten-year life, and I have to cover it in a secondary, and if I recommend it to my investor, I want to have that recommendation and know all the risks.
Q. And that was the business of the high yield research group. The high yield research group reported to Mr. Sipprelle and Mr. Rankowitz as high yield group?
A. Correct.
Q. And the high yield group, did they do the underwriting of high yield issuances?
A. No, we do not.
Q. What did the high yield group do?
A. We trade the bonds in the secondary.

NOT A CERTIFIED COPY

018462

Page 26

We obviously assist in the primary in terms of our sales force placed the bonds with clients. But our primary function was trading bonds in the secondary.
Q. Now, are you aware that in the Sunbeam deal that Morgan Stanley was involved in, there was a subordinated debenture offering?
A. The convertible?
Q. Yes.
A. Yes.
Q. Would that be considered a high yield issuance?
A. No, it was not a high yield issuance. Some high yield hybrid investors purchased it, but no. Our sales force was not as involved.
Q. I'm sorry. Not as involved? What do you mean?
A. I mean one or two salespeople sold it to their accounts, but, in general, it was sold off the convert desk, not the high yield desk. And it was recognized on their P&L, not ours.
Q. Meaning if Morgan Stanley had gains

Page 27

or losses on the sale of those bonds, it was not attributable to your division? Is that what you mean?
A. Meaning the underwriting fee we did not get an allocation of.
Q. You referred to proprietary trading. What do you mean by that?
A. Meaning we would take positions in bonds. It was like having your own investment fund where if we truly believed in a bond, and it was primarily bonds we underwrote, we would take a position.
Q. And when you refer to "we," who do you mean by "we"?
A. Meaning the trader, the group. The sales force is not involved in that decision. It's research and trading who makes the decision of whether or not they think a bond is undervalued and there is an investment opportunity.
Q. When a trader took a position in a bond, a high yield bond, whose money would that trader be investing? Morgan Stanley's?
A. Morgan Stanley's.
Q. Do you know if that money came from

Page 28

particular Morgan Stanley funds, or was it just undifferentiated Morgan Stanley money?
A. No. It was our book. We were allocated a certain amount of capital with which to invest.
Q. And by "us" you mean the high yield group?
A. The high yield group, which included emerging markets and bank loans.
Q. What do you mean by bank loans?
A. Leveraged bank loans.
Q. That was considered part of the high yield group?
A. It was, but they were private. We were public. So although it was part of our P&L, there was not as much interaction.
Q. Are you familiar with an entity known as Morgan Stanley Senior Funding?
A. Not really, no.
Q. Do you understand that to be a part of Morgan Stanley that made bank loans?
A. That would be my assumption, but I can't confirm.
Q. Do you know where the entities within Morgan Stanley that made bank loans got

Page 29

their money?
A. No, I don't. I would assume from Morgan Stanley.
Q. So just so I understand the structure, was the issuance of bank loans by Morgan Stanley considered to be part of its high yield group?
A. Yes. If it was a levered loan, yes.
Q. What do you mean by levered loan? Was there a leverage ratio that qualified it?
A. No. It's your investment rating. Again, if it's below investment grade.
Q. Do you know if there was a bank loan to Sunbeam in connection with this transaction?
A. There was, yes.
Q. Was that considered a levered loan?
A. It was off of -- honestly, I cannot remember what the ratings were, but it was off of our P&L, so it was from our leveraged finance group, yes.
Q. So just so I understand, the loan made to Sunbeam was considered a loan made by the high yield group?
A. Yes.

NOT A CERTIFIED COPY

018463

Page 30

Q. So any profits or losses on that loan were attributed to the high yield group?
A. Yes, it was.
Q. And that was the group that at the time was being headed up by Mr. Sipprelle and Mr. Rankowitz?
A. Correct.
Q. Do you know who made the investment decisions for those bank loans?
MS. BROWN: Object to form.
Q. If you know.
A. I only know a few names, but the way it worked at Morgan Stanley was it was always -- it was always a consensus, so there was several parties involved. There was investment banking, and there was bank loans, there was high yield. You had equity having to talk about it. So there was not any one party who made the decision. It was, as I say, it was a commitment committee with consensus.
Q. So let me see if I can rephrase your answer. Was the decision to make the loan or not make the loan made by a committee?
A. Yes.

Page 31

Q. I've seen reference to a leveraged finance commitment committee. Is that the committee?
A. Yes.
Q. And they would decide however they would decide, but they were the ones who made the decision?
MS. BROWN: Object to form.
Q. The decision would be made by that group; is that right?
A. The decision is made by the group with a strong veto voice by anyone who objects.
Q. Okay. I understand, I think. You referred to Mr. Foley. Did Mr. Foley report to Mr. Rankowitz or Mr. Sipprelle?
A. We had a head of research at the time. I can't remember who it was because we turned so often. But there was a head of research, and then there was Dwight and Rank, yes.
Q. Dwight and Rank? That's Mr. --
A. Yes. Sorry. That's Mr. Sipprelle and Mr. Rankowitz.
Q. And I've referred to them, as I think you have. Did they jointly hold the position?
A. Yes, they did. Mr. Rankowitz was primarily head of emerging markets, while Dwight was head of the high yield, but they ran the group together.
Q. I understand. You've referred to emerging markets. What does that mean?
A. It's countries who are yet to attain an investment grade rating, and we traded their bonds in the secondary.
Q. So international bonds?
A. Yes.
Q. Bonds of other countries?
A. Correct.
Q. Also traded by your group?
A. Yes.
Q. Do you know a gentleman by the name of Andrew Conway?
A. Yes, I do.
Q. Do you remember Mr. Conway's position in '97 and 1998?
A. He was the beverage analyst for Morgan Stanley.
Q. Was he within the high yield group?

Page 32

Page 33

A. No.
Q. What group was he within?
A. He was in equity research.
Q. How did equity research and high yield research relate to one another?
A. It would depend on if we covered a name together. In the case of Sunbeam, we would compare notes, but, again, I wasn't covering Sunbeam, so it was more of I could add value to them on Coleman, but it was a completely separate entity. They're analyzing a completely separate asset class than we are.
Q. At the time you were covering Coleman's bonds, was there someone covering Coleman's equity?
A. No, there was not.
Q. And you referred to Mr. Conway. Do you know if Mr. Conway ever initiated coverage of Sunbeam's stock?
A. I cannot recall.
Q. Do you know if there was anyone that issued coverage of Sunbeam's debt?
A. I don't think so, but I cannot recall.
Q. Do you know if that was ever under

NOT A CERTIFIED COPY

Page 34

consideration?
A. No, I do not.
Q. Now, in 1997 and 1998 were you compensated on a base pay and bonus basis?
A. Yes, I was.
Q. Who made the decisions about what you were to be paid?
A. Frankly, I'd like --
MS. BROWN: Objection. Foundation.
Q. Do you know?
A. No. I would like to know, but no, I don't know.
Q. Who told you what you were being paid?
A. My head of research.
Q. That would be Mr. Foley?
A. No. It would have been whoever was head of research at the time, which would have been either John Irish or Ann Short, but I can't recall who was the head of research at that time.
Q. And head of research includes both high yield and equity and other areas of research?
A. No, it does not. It is only high

Page 35

yield research.
Q. What were the names of those individuals you mentioned?
A. John Irish or Ann Short. It was most likely Ann Short.
Q. Did Mr. Foley report to either Ms. Short or Mr. Irish?
A. Yes. He reported to them as well.
Q. Okay. I understand. Do you know how your bonus was determined?
A. No.
Q. Do you know if your pay related in any way to returns on the instruments that you followed?
A. No.
Q. Roughly as a percentage of your compensation, do you know how much your bonus was in 1997 and '98?
A. No.
Q. Are we talking more than 50 percent, less than 50 percent?
A. It was probably more than 50 percent.
Q. And --
A. But just to give you a frame of

Page 36

reference, 1998 was the Russian crisis. It wasn't a good bonus year period.
Q. Particularly given that your department had emerging markets, among other things?
A. Among other things.
Q. Do you know if your -- and this may be related to the question I just asked, but do you know if your bonus had any relation to the returns on the proprietary trading that you assisted with?
A. No.
Q. Were you ever told that it did?
A. No.
Q. Do you know if any Morgan Stanley funds invested in Sunbeam?
A. No.
Q. Do you know if any Morgan Stanley funds invested in Coleman?
A. No. Sorry. My own trading desk had invested in Coleman, so yes, in that sense.
Q. And that was on the high yield side, not the equity side?
A. Correct.
Q. Do you know if anyone within Morgan

Page 37

Stanley invested in Coleman equity?
MS. BROWN: Object to form.
A. Individuals that I know, yes, but not as a firm, no.
Q. What do you know about individuals who invested in Coleman? What do you remember?
A. A couple of my friends, because I had been covering the bonds, thought the stock was cheap, so they bought the stock.
Q. And they told you that?
A. Oh, yes.
Q. Did they do well as a result of their purchase?
A. No.
MS. BROWN: Object to form. Foundation.
Q. Did they make money or did they lose money?
MS. BROWN: Objection. Foundation.
Q. Do you know?
A. They lost money because we were restricted in the period that the stock ran up because we had done the deal.
Q. Do you remember who or what group

NOT A CERTIFIED COPY

018469

Page 38

within Morgan Stanley made investment decisions for the Morgan Stanley and Morgan Stanley Dean Witter funds?
A. No.
Q. Do you ever remember receiving inquiries from any of those funds about Coleman?
A. I don't recall, no.
Q. Now, I think you testified in response to an earlier question that you assisted investment banking in some work. Can you describe the work that you assisted investment banking in?
A. If we were looking at a deal, if we were mandated to do a deal, we were always brought in not to do investment banking's due diligence, but to do due diligence for the trading desk and to do due diligence for our clients, because, again, if we're going to bring a deal to market, if we felt there was imminent danger to bankruptcy, we had the power to turn down a deal. If we felt there were certain risks that should be communicated to our clients, we had the power to communicate those risks to our clients. And

Page 39

our goal, our job, was to surface those risks so that the bond would be priced accordingly.
Q. You referred to being mandated to do a deal. What do you mean by that?
A. Meaning that a contract was signed whereby Morgan Stanley would underwrite a bond for a company.
Q. So you signed an underwriting agreement?
A. Exactly.
MS. BROWN: "You" being Morgan Stanley?
MR. BRODY: Yes. Exactly.
Q. You referred to you'd look at the deal to see if there was imminent risk of bankruptcy; is that correct?
A. Correct.
Q. What other risks would you be looking for?
A. As a research analyst, there's many risks you look for. You know, is there a liquidity crunch, what is the competitive pressures, can the company make their numbers, what is the quality of management. There is many different elements you look at, but you

Page 40

make an assessment of a company. And the thing of high yield versus equity is as long as you pay our coupon, we're happy. It's not like equity where the company needs to be a star performer. We just need them to pay their coupons. So it basically is just you assess varying degrees of what is their ability to pay their coupon.
Q. So the research that you did would look to the ability of the company to satisfy its high yield obligations?
A. Correct.
Q. Not its equity obligations?
A. Correct.
Q. In connection with the Sunbeam and Coleman transaction, did you look at Sunbeam?
MS. BROWN: Object to form.
Q. You personally.
MS. BROWN: Object to form.
MR. BRODY: Fine.
Q. You can answer.
A. I was eight and a half months pregnant, so my ability to do due diligence was highly limited, and it was not a high yield underwriting. So really my only -- my

Page 41

only involvement was my expertise in Coleman.
Q. Okay. We'll go into this in greater detail I think when we talk about Coleman, but what research, if any, do you remember doing into Sunbeam as opposed to Coleman?
A. I have very vague recollections of a couple of conference calls, but it really, again, was more to see how the company would relate to Coleman than me actually doing due diligence on Sunbeam.
Q. Do you remember who was on those calls?
A. No, I do not.
Q. We'll come back to that and see if you remember any details. Do you know an entity within Morgan Stanley known as the client service group?
A. Yes, I do.
Q. What was the business of the client service group?
MS. BROWN: Objection. Foundation.
A. If memory recollects, the client service group, it's either one or two things. Either they were related to private clients of the bank, or it was our actual investment

NOT A CERTIFIED COPY

018466

banking clients of the company. I can't remember if it was individuals or companies.
Q. Do you know what work, if any, you did with people in the client service group?
A. No, I do not recall.
Q. Do you know a gentleman by the name of John Tyree?
A. No, I do not recall.
Q. Andy Savarie?
A. Do not recall.
Q. Within the high yield area is it correct to say that your research group would support the traders?
A. That was our primary function, yes.
Q. And by supporting the traders, you would assist them in making trades that would be profitable for Morgan Stanley and its clients?
A. Ideally, yes.
Q. That was your goal?
A. Yes.
Q. Didn't always work that way?
A. Did not always work that way.
Q. Were there metrics by which the high yield group's performance was measured?

MS. BROWN: Objection. Foundation.
A. Only thing I ever heard was a year-end P&L.
Q. Were Mr. Rankowitz and Mr. Sipprelle responsible for maintaining the year-end P&L?
MS. BROWN: Objection to form. Foundation.
A. I don't know.
Q. In 1997 do you know if the year-end P&L for the high yield group was a profit or loss?
A. It was a profit.
Q. What about 1998?
A. I don't know, but I know it was less than '97.
Q. Were you circulated documents or emails showing how well the high yield group was doing?
A. No, we were not.
Q. Did you hear about it?
A. Can't recall.
Q. If I wanted to obtain the P&L for the high yield group, who would I talk to?
A. I don't know.
Q. Did you ever receive an evaluation

from the people you worked for for the work you did on Coleman or Sunbeam?
A. No, I did not.
Q. Were you personally evaluated based on how well your research turned out?
A. There is something called the Institutional Investor Report, which are Institutional Investor rankings which would measure what your clients thought of your research. But one of the hardest things of being a research analyst is most of what we do is subjective.
Q. Sure. Now, the Institutional Investor rankings, I think that's what you called it?
A. Um-hmm.
Q. Was that a Morgan Stanley document?
A. No. It's a magazine, Institutional Investor, and they poll your clients, and they rank you.
Q. Do you ever remember anyone after the fact looking back and, you know, critiquing your research, saying, well, this turned out to be right, this turned out to be wrong? Was that done?

A. No.
Q. Now, I believe that you talked earlier about the kinds of documents that you would hold on to. When you were at Morgan Stanley, what was your practice or policy for maintaining copies of the documents that you worked with?
A. It varied with the technology. As more and more things got filed on the web and SEC, you had to hold less. But at the time of this, obviously there was less technology, so you just held on to whatever you were given, because it could be value added at some point.
Q. Where did you keep it?
A. File cabinets.
Q. And was it in that file cabinet when you left Morgan Stanley in 2001?
A. Yes.
Q. Do you remember what sorts of things you kept about Sunbeam and Coleman?
A. No, I don't.
Q. Do you remember anything that you kept?
A. The most I could remember is a prospectus.

NOT A CERTIFIED COPY

0184967

Page 46

Q. Did you keep notes of things that you did?
A. I don't know.
Q. When you put together a research report, I assume you generated drafts?
A. Well, it's on a computer, so it's always the same draft. You just type over it.
Q. You wouldn't print out copies and keep them?
A. No, I would not.
Q. In connection with putting together a research report, you would gather a variety of pieces of paper and so on that they were based on, wouldn't you?
A. No. Most of my research is done on the web.
Q. Even in 1997 and '98?
A. Even in 1997.
Q. Now, in '97 and '98 did you use email?
A. Yes.
Q. Did you use email to communicate with people about Coleman and Sunbeam?
A. I don't recall.
Q. On the Sunbeam deal, there were a

Page 47

variety of people working on that deal from offices other than your high yield office; is that correct?
A. I don't recall, but probably.
Q. Do you remember communicating with any of them by email?
A. I don't recall.
Q. Did you communicate at all with people from Sunbeam, the company, in connection with the work that you did?
A. I don't recall, but highly unlikely.
Q. What about with people from Coleman?
A. While I was covering Coleman, I communicated frequently with the company to get updates on how the business was doing.
Q. In what form did you do that?
A. Primarily through the telephone.
Q. Did you keep notes of your calls? Did you make notes of your calls?
A. No, not really. Probably not.
Q. You wouldn't write stuff down?
A. During a conference call I would take notes, because I tend to give very great detail. But in a conversation where your life and death is resting on whether or not they

Page 48

meet your numbers, you don't need to write that down. You remember it.
Q. When did you first hear of the fact that there was litigation surrounding the Sunbeam deal? I don't mean this case. I mean any litigation.
A. I can't recall.
Q. You were at Morgan Stanley at the time?
A. I don't -- I don't remember.
Q. Well, let's focus on the coverage that you did of Coleman. You are aware of the Coleman Company?
A. It was six years ago, but yes, I'm aware of the Coleman Company.
Q. And what do you understand their business to be in 1997 and 1998?
A. They were primarily camping goods.
Q. You covered the high yield debt of Coleman's parent?
A. I covered the escrow bonds.
Q. You didn't have anything to do with covering the stock?
A. No, I did not.
Q. And I believe you said that Morgan

Page 49

Stanley did not cover the stock?
A. To my recollection, we did not have coverage of the stock.
Q. Fair enough. Now, in connection with the work you did for Coleman covering the escrow bonds, who did you have contact with?
MS. BROWN: Object to characterization, but go ahead.
A. At the company?
Q. Yes.
A. Mark Shiffman was my primary contact.
Q. Do you know where Mr. Shiffman was located?
A. He started out in New York, and he ended up in Florida.
Q. Do you understand whether Mr. Shiffman worked for MacAndrews & Forbes or for Coleman?
MS. BROWN: Objection. Foundation. Go ahead.
A. He worked for Coleman, but the rumor was he was dating Perelman's daughter, so it's kind of a blurry line.
Q. Did you ever talk to him about that?

NOT A CERTIFIED COPY

018468

Page 50

A. No. Just behind his back.
Q. What did it mean to cover the escrow bonds? That's the security you covered?
A. Yes. It means that those were the two bonds which I had a recommendation on. I did not have opinions on other parts of the capital structure.
Q. When you covered a company, when you covered Coleman, you made recommendations as to those bonds?
A. Yes, I did.
Q. And recommendations about whether to buy or sell or hold?
A. Correct.
Q. At the time did Morgan Stanley have certain categories of ratings for securities?
A. We did, but I couldn't tell you what they were. It changes all the time.
Q. If I were to tell you that I've seen research reports referring to a strong buy, do you ever remember there being a rating higher than a strong buy?
A. No. There was no rating higher than a strong buy.
Q. I assume there were ratings lower?

Page 51

A. Yes, there were.
Q. Hold, sell, sell right away?
A. Well, no. At Morgan it was more very strong buy. But no. I don't -- there was a hold and a sell, but I can't remember what the exact terminology was. But in general, there's only three or four ratings categories.
Q. And the top one was strong buy?
A. Yes, it was.
Q. Before you covered the bonds that you covered, was there anyone at Morgan Stanley covering anything for Coleman?
A. Not that I recall, no.
Q. How was it that Morgan Stanley decided to initiate coverage of the Coleman bonds?
A. Because of me. I looked at them and I thought that there was an investment opportunity.
Q. What do you mean by investment opportunity?
A. I can't recall the exact parameters at the time, but I felt the bonds were oversold. If memory serves correct, they had

Page 52

had very bad management, very disappointing year. We had Jerry Levin come in from Revlon, who was highly respected, and by our research we felt that it was a great brand and a potentially strong cash flow-generating company.
Q. When you say the bonds were oversold, what do you mean?
A. They were trading at a significant discount to par.
Q. So you expected them to go up?
A. Yes.
Q. To increase in value?
A. Yes. And plus you were getting -- again, this is off of memory, but you were getting like a ten, eleven percent yield. So your total return potential was very high.
Q. Now, when you say you made the decision to do this, you looked at the bonds, how was it that you happened to notice this?
A. I don't remember.
Q. At the time you noticed this investment opportunity, could you then just issue the research report, or did you need to get approval from others?

Page 53

A. I did not need to get approval from others. Obviously there are certain channels you go through. I would confer -- before I started doing work on the company, I would confer with my trader to make sure that there were bonds to be traded. And then obviously before you write a report, it has to go through legal to ensure that we're not violating any Morgan Stanley procedures.
Q. Do you know who the trader was on the Coleman bonds?
A. Michael Lily.
Q. Do you remember discussing the Coleman bonds with Mr. Lily?
A. I don't recall specifically.
Q. Yes.
A. But we obviously did discuss it, yes.
Q. Do you remember anything about that conversation?
A. No.
Q. And then you said you also had to get approval from legal?
A. Whenever you draft a report, it has to go through legal compliance before it can

NOT A CERTIFIED COPY

018469

Page 54

be published.
Q. Was there a person that you dealt with?
A. I don't recall.
Q. Do you remember if there was a person or a function responsible for reviewing those research reports?
A. It was all done by my secretary, so I really don't know.
Q. Do you remember if you showed your report to Mr. Foley before it issued?
A. I probably did, but I couldn't tell you exactly.
Q. Now, once coverage is initiated, did you continue to monitor the performance of those bonds?
A. Yes. We did quarterly updates. And if we had the opportunity to see the company on a one-off basis, we would publish on that.
Q. You're going to have to -- there is a lot of terminology that goes with this field, and I think I got most of it, but you're going to have to describe it. Now, you said you would do quarterly updates of your research?

Page 55

A. Basically when they report numbers, and we would report on how they did versus our estimates.
Q. And then I think you also referred to a one-off?
A. For example, Coleman presented at our high yield conference I believe it was in 1997, so we would do a written update on that.
Q. Did there come a time when you stopped covering the bonds?
A. I stopped covering the bonds when the Sunbeam deal was announced. I immediately became restricted.
Q. What do you mean by that?
A. Meaning Morgan Stanley was handling the deal, and so, consequently, we will not publish research when we're involved on the investment banking side.
Q. Got it. Would you then issue something saying, hey, we're not going to cover it anymore?
A. No. We just stop publishing. The client base -- our client base is private clients. Sorry. Are institutional clients. So they understand.

Page 56

Q. You're aware that the reports that you issued could have an effect on the market for the securities?
MS. BROWN: Object to form. Foundation.
A. I disagree with that. As I just said, our clients, our institutional clients, they're extremely sophisticated, and they use our work to help them make their decision, but we don't actually make their decisions for them. It's very rare that a high yield research report will move markets unless they have some truly new information.
Q. Did you ever personally buy or sell any securities in Coleman?
A. I did not.
Q. I don't know if you were allowed to. Were you allowed to under the Morgan Stanley rules?
A. No, I was not.
Q. But I believe you testified that Morgan Stanley and its traders took positions in the Coleman bonds?
A. Morgan Stanley trading did, yes.
Q. Did Morgan Stanley make a market --

Page 57

A. Yes, we did.
Q. -- in these bonds?
A. Yes, we did.
Q. In addition to making a market, did it take a long position in the bonds?
A. Yes, we did.
Q. And by taking a long position, that means that Morgan Stanley held them expecting them to go up in value so they could make money on the bonds?
A. Yes.
Q. Now, when you do a coverage report, what information do you typically consider?
MS. BROWN: Object to form.
A. It varies so much company by company and it varies by how much information was already out there. In the case of Coleman, we obviously did what we thought -- you know, we gave the company's investment strengths, weaknesses. The report also included a very comprehensive study of the camping industry and its potential growth and how we felt Coleman was a leader. But there is no template whatsoever to a research report.
Q. Okay. I guess I'm not asking the

NOT A CERTIFIED COPY

Page 58

question right. I'm trying to get at the types of information you would consider rather than what the report would look like. Were there types of information you typically considered?

MS. BROWN: Object to form.

A. As a high yield research analyst, your number one consideration is their ability, as I said, to pay the coupons. So every research report will include a capital structure, your amortization schedule, your model, financial forecast, your free cash flow. That's much more of the financial consideration which every report will contain, but then everything else is far more subjective in terms of, okay, we know this is what they have to pay down their bonds, what is the likelihood based on the fundamentals of the company that they can do that.

Q. I guess I'm not asking the question right.

A. Okay.

Q. I'm focusing less on what the report looks like and more on the information, the raw material that you would use to generate

Page 59

it. You would look at financial statements, for example; correct?

A. We look at publicly filed SEC filings, yes.

Q. Okay. What else?

A. We actually went to the -- I can't remember the name now, but we went to some park conservation, national wildlife park to see what their camping numbers were. We commissioned a study from one group to see what camping demand was and the quality of the Coleman name. But I obviously primarily look at financial statements, and, ideally, if you can, you talk to retailers and say, okay, what is the quality of this brand for you.

Q. Do you remember if you did talk to retailers about Coleman?

A. No, I did not. I did not have those contacts at that time. For us it was more going into the retail channels and seeing the shelf space that they had.

Q. And you did that?

A. Yes.

Q. How did you do that? Do you do that yourself, or do you have --

Page 60

A. You go to a Target. You go to a Wal-Mart.

Q. So you would go and look?

A. Yes.

Q. Did you ever buy any of their products?

A. I live in New York City, unfortunately not a big occasion for camping.

Q. Hey, people in New York camp, too. I know it happens. Would you participate in conference calls with management?

A. Yes.

Q. Would you talk to management aside from the regularly scheduled conference calls?

A. Only Mark Shiffman.

Q. And Mr. Shiffman was the director of investor relations?

A. He was. And he was extremely well-informed and very accessible, so he worked -- he was very, very good in that function.

Q. Did you speak to other analysts, other people that were covering Coleman?

A. Only on the buy side, not on the sell side.

Page 61

Q. Okay. You're going to have to explain what that means.

A. Meaning clients who were investing in the bonds, buying bonds from us, versus other shops that were potentially selling the bonds in the secondary.

Q. So you would talk to people who were interested in buying the bonds?

A. Correct.

Q. To see what they were looking for or looking -- what they saw to be value in Coleman?

A. No. It's the reverse. They were asking me why I saw value in Coleman.

Q. Did you read the reports of other analysts?

A. No, I did not.

Q. Of Goldman Sachs or someone else?

A. No, I did not.

Q. Do you know if other people covered the Coleman bonds?

A. I don't recall.

Q. Did you track related companies, that is, other companies in the same field?

A. Yes, I did.

NOT A CERTIFIED COPY

018471

Page 62

Q. What companies?
A. Well, within consumer products, but no other camping companies.
Q. Okay. And you obviously tracked consumer product companies for other purposes. Did you track them for purposes of comparing them to Coleman?
A. There is two answers to that is yes, on the bond spread basis, and, second, we would look at where equity comparables were trading on a total enterprise value, TEV, to EBITDA basis to get a downside multiple valuation for Coleman in the event they went bankrupt.
Q. Okay. We're going to do those one step at a time. You said you would look at the bond spread?
A. Meaning I would look at what total debt to EBITDA, EBITDA to interest and yield was for varying companies within the sector.
Q. Do you remember what companies you looked at?
A. No, I do not.
Q. Okay. And on the equity side you said you looked at the ratio between total

Page 63

enterprise value --
A. Total enterprise value to EBITDA.
Q. How would you determine total enterprise value?
A. That's total debt plus the market equity cap.
Q. And you would compare that to the company's EBITDA?
A. You would divide -- you would put that over EBITDA, yes.
Q. And you would compare Coleman's ratio to the ratio of other companies?
A. No. I would see what the ratio of other companies were, and I would see what Coleman's total debt to EBITDA was, and see what my recovery value was for the bonds.
Q. Okay. In the event of bankruptcy?
A. In the event of bankruptcy.
Q. Now, in connection with the work you did looking into Coleman, did you ever talk to Mr. Levin?
A. I don't recall. I mean obviously I heard him on the conference calls, but I don't recall if I ever had a one on one meeting with him.

Page 64

Q. Did you ever speak to Mr. Page?
A. I don't recall.
Q. Do you know Joe Page, or do you know who he is?
A. Don't recall.
Q. Did you ever speak to Mr. Shapiro?
A. I don't recall. The name is vaguely familiar, but I don't recall.
Q. I believe you identified Mr. Shiffman. Do you remember anyone else at Coleman that you spoke with?
A. No, I don't.
Q. And you're aware that 82 percent of the common stock of Coleman was owned by a MacAndrews & Forbes entity?
A. Yes, I was aware.
Q. Did you speak with anyone at MacAndrews & Forbes about Coleman?
A. No, I did not.
Q. In connection with the coverage you did of Coleman, did you ever visit a Coleman facility?
A. No, I did not.
Q. And I believe you said you went to the retail outlets and looked how their

Page 65

products were placed; is that correct?
A. Yes, it is.
Q. Did you talk to retailers?
A. No, I did not. I did not have those connections.
MS. BROWN: Let's take a break before we start using the exhibits.
MR. BRODY: Yes. That's fine. We can take a break now.
VIDEOGRAPHER: The time on the monitor is now 10:35, and we are off the record.
(Recess)
(Initiation of coverage for Coleman marked CPH Exhibit 272 for identification, as of this date.)
(Document Bates stamped Morgan Stanley Confidential 23225-23229 marked CPH Exhibit 273 for identification, as of this date.)
VIDEOGRAPHER: The time on the monitor is 10:44, and we're back on the record.
Q. While we were off the record, Ms. Eltrich, we marked two exhibits, and I'm

NOT A CERTIFIED COPY

018472

Page 66

going to show you the first of the two. It's been marked as Exhibit 272. Do you recognize that document?
A. Yes, I do.
Q. And what is it?
A. I believe it was my initiation of coverage for Coleman.
Q. And this is a document that you wrote?
A. Yes, it is.
Q. Did you prepare this document in the ordinary course of your business at Morgan Stanley?
A. Yes, I did.
Q. It's dated October 9th, 1997. Is that the date on or about the time you created it?
A. I couldn't recall.
Q. Did you issue this document on or about October 9th, 1997?
A. It was published on October 9th.
Q. Okay. "Published" is the word you prefer?
A. Yes.
Q. And then thereafter was a copy of

Page 67

this document kept in the files of Morgan Stanley?
MS. BROWN: Object to foundation.
A. I don't know.
Q. Did you keep a copy of it?
A. I believe I kept a copy with my own personal files.
Q. When you prepared this document, were you acting within the scope of your authority at Morgan Stanley?
MS. BROWN: Object to the extent he's calling for a legal conclusion.
MR. BRODY: I'm not.
A. To my knowledge, I was.
Q. And I would also like to show you what has been marked as Exhibit 273. Do you recognize that document?
A. I don't recall.
Q. Your name appears at the top. Do you see that?
A. Yes, I do.
Q. Do you recognize this as a document faxed to you or faxed from you?
A. Faxed to me. It basically looks like a second quarter earnings update, but I

Page 68

can't recall the details.
Q. And it's dated August 7, 1997; is that correct?
A. It appears to be, yes.
Q. And that would be about the time that a company like Coleman would issue its second quarter earnings?
A. It would appear so, yes.
Q. Is Exhibit 273, the earnings document, one of the documents you considered in connection with issuing the report that is shown as 272?
A. I don't recall specifically, but I would assume so.
Q. In any event, though, you would have read earnings announcements such as Exhibit 273 before doing the research report or as part of doing your work?
A. Yes, I would.
Q. Now, at the time you issued your first research report in October of 1997, did you understand that Coleman was in the process of a turnaround?
MS. BROWN: Object to form.
A. To the best of my knowledge, that

Page 69

was my assumption.
Q. What did you understand that to mean?
A. To the best of my recollection, it was that the numbers had been extremely disappointing, the company had become highly leveraged, but under new management I felt that the company could regain its bearings and service its debt.
Q. Did you understand that the company had adopted a strategy to improve its financial performance?
MS. BROWN: Object to form.
A. To the best of my recollection, yes, they had.
Q. If you look at Exhibit 273, the earnings announcement that shows that it was sent to you, the first paragraph refers to success in its turnaround strategy; correct?
A. Yes, it does.
Q. And that's the sort of thing that you would have read and analyzed in connection with doing a research report?
A. One part of it, yes.
Q. Of course. Other things as well. I

NOT A CERTIFIED COPY

018473

Page 70

understand. If you turn to the next page, the first full paragraph, the one that begins, "We were able to show dramatic progress." Do you see that?
A. Yes, I do.
Q. And the last sentence of that paragraph says, "Our turnaround strategy has provided us with a strong foundation on which to build Coleman's future." Do you see that?
A. Yes, I do.
Q. Do you understand that Coleman had started its turnaround but had not finished its turnaround?
MS. BROWN: Objection to form.
A. I don't recall where we were in the process.
Q. Well, do you remember reading this document?
A. No, I don't recall.
Q. But you don't doubt that you did?
A. To the best of my recollection, I read this document.
Q. If you look at the research report that you drafted and issued --
MS. BROWN: Published.

Page 71

Q. Published. Do I keep saying "issued"?
A. Published.
Q. I'll try to use "published." Let me withdraw that. Let's look at the research report that you published. Better?
A. Yes.
Q. It lists yourself and Mr. Foley; correct?
A. Yes, it does.
Q. Do you understand that it's listing the two of you as authors?
A. Yes, I do.
Q. But I believe your testimony is that this is something that you were the primary drafter of?
A. That is correct, with Mr. Foley supervising my work.
Q. Do you remember if Mr. Foley made any changes or suggestions?
A. I don't recall.
Q. The recommendation strong buy, was that your conclusion?
A. That was my conclusion.
Q. Do you know if anyone else had to

Page 72

sign off or make approvals of that?
MS. BROWN: Object to form.
A. To the best of my recollection, at the time it was the autonomy of the analyst to make that conclusion.
Q. Now, at the time you issued this report, were you aware that Sunbeam had retained Morgan Stanley to assist it as its investment banker?
A. I had no idea whatsoever.
Q. Were you aware of any interest of Sunbeam in Coleman?
A. None whatsoever.
Q. Now, the securities that you're analyzing are the Coleman Escrow I and Coleman Escrow II securities. You understand those to be the first and second priority discount notes?
A. To the best of my recollection, yes.
Q. Well, if you look at the first line of your summary and investment conclusions, that's how it refers to them.
A. I believe they were zeros, yes.
Q. And by zeros, you mean a zero coupon bond?

Page 73

A. Correct.
Q. And you understand that the bonds were not issued by the operating company Coleman, but by one of its parents?
A. Correct.
Q. And did you recall that those bonds were secured by stock in Coleman?
A. Vaguely to my recollection, yes, that was the case, if it was -- particularly if it was akin to the Revlon structure. That's how Perelman typically did it.
Q. You mentioned the Revlon structure. Did you look at the Revlon structure?
A. Yes, I did.
Q. Did you provide research coverage of Revlon?
A. Yes, I did.
Q. Who did you do that with?
MS. BROWN: Object to form.
A. Can't recall, but it was probably primarily myself.
Q. Now, you earlier identified the types of companies that you did work on. Would Revlon be a consumer products company?
A. Yes, it was.

NOT A CERTIFIED COPY

018474

Page 74

Q. What research do you remember issuing on Revlon?
MS. BROWN: Object to form. Go ahead.
A. I remember issuing research on the zeros that were subsequently refinanced prior to 1998, but -- and, actually, I'm sorry. I shouldn't say -- I remember recommending them to my trader, but I'm not sure if we ever published on them. I can't recall.
Q. Aside from that issuance, do you remember any other securities that you provided research on?
A. I can't recall. I can't recall what I published on. We watched the company, but I can't recall what I published on.
Q. Do you know if Morgan Stanley took positions in Revlon?
A. We did for the first zero coupon note. And, unfortunately, 1998 we took positions in the stock.
Q. Were you long on both?
A. Again, the zero coupon, I can't remember when it got refinanced, but it was well ahead of 1998. And then in 1998 I do

Page 75

very vividly remember having a position in the stock when they preannounced that they were stuffing the trade.
Q. When you refer to zeros, you mean zero coupon bonds?
A. Yes. They had a discount holding note very similar to Coleman.
Q. Now, returning to Exhibit 272, could you just read to yourself what you wrote on the first page of those four paragraphs in italics, then I'll ask you about them.
You've had a chance to read it?
A. Yes.
Q. Thank you. Turning to the first paragraph, you start by saying, "We have listed the Coleman escrow first and second priority discount notes as strong buy as we believe the company is on the brink of an impressive turnaround." You start by saying "We have listed." Does that indicate that this is the first coverage?
A. Yes, it is.
Q. And your statement that you believe the company is on the brink of a strong turnaround -- excuse me, an impressive

Page 76

turnaround, did you understand that to be true at the time you issued it?
A. I believe so.
Q. Published it. Thank you. I'm going to get this issue, publish before we're done. I apologize for that mistake in language. The next paragraph refers to the earnings stumble in 1996. That's the downturn in earnings you had talked about already?
A. I believe so, yes.
Q. And then it says, "A new management team led by Mr. Jerry Levin is refocusing the company on profitability while attempting to revitalize the industry through increased advertising and new product innovations."
You believed that to be correct when you published it?
A. I believe so, yes.
Q. And what do you recall, if anything, to be the basis for that statement?
A. I can't recall specifically.
Q. Do you remember anything?
A. I remember an SKU reduction. I remember investments in associating Coleman more with the outdoors, of being the premier

Page 77

brand of choice, and expanding distribution, for example, into Target, but I don't recall any other specifics.
Q. But those are things you recall the company had done?
A. Yes.
Q. The last sentence in that paragraph reads, "With the majority of Mr. Levin's restructuring plan now in place, we are expecting positive earnings comparisons for the last half of '97 and a return to full earnings momentum in 1998." You believed that to be correct at the time you published it?
A. I believe so, yes.
Q. And what do you mean by positive earnings comparisons for the last half of '97?
A. I believe what I meant was that EBITDA would be up year over year.
Q. So the second half of '97 would be better than the second half of '96?
A. Correct.
Q. And then the next phrase, "and a return to full earnings momentum in 1998." What do you mean by that?
A. I believe what I meant was that the

NOT A CERTIFIED COPY

018475

Page 78

full year 1998 would have positive comparisons to the full year 1997.
Q. Okay. The next paragraph says, "Our investment case is not solely based on management's case for a turnaround. Our own research has shown there is inherent value in Coleman's franchise which cannot be damaged by one year of poor performance." You believed those statements to be correct when you published them?
A. I believe so. I believe so, yes.
Q. And what research are you referring to there?
A. I believe this is what I had referred to earlier where we contacted -- we hired a consultant to get a brand equity evaluation, and we talked to people within the park industry, the camping, you know, wildlife, conservation park industry to see what kind of demand they were seeing.
Q. Do you remember the name of the consultant you used?
A. I should, but I don't.
Q. Did those consultants produce to you a written report of some kind?

Page 79

A. Yes, they did.
Q. Is that the sort of thing that you would keep in your files?
A. I would assume so, yes.
Q. The next paragraph states, "We believe Coleman's turnaround efforts will produce '97 EBITDA of 123.7 million and '98 EBITDA of 162.1 million." Did you believe that to be correct when you published it?
A. I believe so, yes.
Q. What do you understand to be the basis for that?
A. I can't recall.
Q. And it continues by saying, "Applying a conservative multiple of 12.0 times EBITDA, which is below the median takeout multiple of 13.4, times EBITDA for consumer products (see Appendix 1), we derive a 1998 equity valuation of $25 per share for Coleman stock, providing equity coverage of 2.3 times and 5.9 times for the accreted value of the first and second priority issues, respectively." That's something that you published in '97?
A. It's on here, so I assume so, yes.

Page 80

Q. And you believed that to be correct when it was published?
A. I believe so, yes.
Q. Now, where did the 123.7 million and 162.1 million estimates of '97 and '98 EBITDA come from?
MS. BROWN: Objection. Asked and answered.
A. I couldn't recall specifically.
Q. And the multiples of 12 times and 13.4 times, do you remember where you got those multiples?
A. I can't tell you where I came -- how I derived 12.0 because that was an assumption, but the 13.4 was the median of all the takeouts of consumer products which had happened over probably two to three years.
Q. What do you mean a takeout?
A. Meaning companies that had been transacted, their TEV to EBITDA at the time.
Q. Okay. So companies that had been bought or sold?
A. Yes.
Q. Their ratio of total enterprise value to EBITDA reflected that multiple?

Page 81

A. Correct.
Q. And so you're saying that using a 12.0 multiple as opposed to the 13.4, which was the comparable, was conservative?
A. I can't recall what my thought process was at the time.
Q. But it was you that chose the 12.0 multiple?
A. It was most likely me who chose the 12.0, yes.
Q. Now, the equity valuation of $25 per share, was that your prediction or estimate of what you thought Coleman stock would be worth in 1998?
A. I believe so, yes.
Q. And then the next ratios, that shows the coverage of Coleman's earnings to pay for the debt service on the bonds?
A. No. The next ratio of the 2.3 and 5.9 is because the escrow was secured by the stock. It was our determination -- and, again, the bonds had been accreted. It was not for face value. It was the zero accreted value. And it was our estimation at $25 per share what your collateral was worth and how

NOT A CERTIFIED COPY

0184796

Page 82

many times it covered you.
Q. So if the stock is worth $25 a share and Coleman Escrow or whoever had issued the bonds sold the stock, they would be able to cover 230 percent of the value of the first bonds?
A. It's one way of looking at it, but as a high yield analyst, the way you looked at it is if the company were to go bankrupt, and as the escrow you get first claim of the stock, what is the enterprise value that covers you.
Q. Okay. The last sentence on this page reads, "Currently, the greatest upside potential exists in this tranche," referring to the second priority notes, "where we view a more appropriate spread between the two issues to be closer to 100 basis points." What does that mean?
A. It means that right now as you see in this report, the first escrow is yielding 10.41, the second escrow is yielding 13.31, which is roughly a 300 basis point spread. We felt it should have been closer to 100 basis points.

Page 83

Q. So you're saying that the return on the seconds was really a good return?
A. If I recall correctly, that was, yes, our favorite in terms of total return.
Q. Turn to the third page of the document. The Exhibit 3 references the Coleman escrow capital structure, and it says you obtained that from the company financials?
A. I believe so, yes.
Q. By "company financials" you mean just the public published financials?
A. It would be the SEC filings, yes.
Q. And in that item there is a reference to the Lyons, L-y-o-n. Do you see that?
A. Yes.
Q. Do you have a recollection of what the Lyons were?
A. Not specifically, no. I remember they were in the capital structure, but, again, as you read the footnote, assumes redemption of these issues. If memory serves best, they did something to redeem these issues.
Q. Okay. So you understood those were

Page 84

not going to remain on the capital structure?
A. To my best recollection, yes.
Q. Exhibit 4 identifies as a source company financials and Morgan Stanley estimates. You see that?
A. Yes, I do.
Q. Do you know what Morgan Stanley estimates you were referring to?
A. I can't recall.
Q. In looking at these documents, excuse me, in looking at Exhibit 4, can you tell me which of those numbers came from the Morgan Stanley estimates as opposed to which came from the financials?
A. No, I cannot.
Q. Can you explain what Table 5 shows, what that means?
A. Table 5 is your collateral value of the stock based on the varying prices. So you have your first priority coverage, second priority coverage, and, again, I can't recall the exact numbers, but you had X number of stock, theoretically, covering your bonds in the event of a downside, so at what stock price what your collateral was. So it's a

Page 85

varying degree of that.
Q. So correct me if I'm wrong, but does this mean that if the stock price was nine, there was enough collateral in the stock to cover the first priority notes?
A. Correct.
Q. And if the stock price was between ten and eleven, there would be enough to pay the second priority notes?
A. If it was at eleven, yes.
Q. Somewhere between there?
A. Towards eleven, yes.
Q. Turn to the next page. After Exhibit 7 there is a paragraph that refers to the 12.0 multiple.
A. Yes.
Q. See that?
A. Yes.
Q. Is this something that you published at the time?
A. I believe so, yes.
Q. And at the time you understood it to be correct?
A. I believe so. Well, no, no, no. At the time I believed it to be a fair

NOT A CERTIFIED COPY

018477

Page 86

assumption.
Q. Okay. This was your best understanding of the multiple to use?
A. It was my best estimate.
Q. Okay. Your text reads, "We believe our valuation is conservative given Coleman's strong market share and growth prospects. We have not done a downside valuation in the case of a liquidity crisis as we do not perceive this to be a risk at any time in the near future." Is that something you wrote?
A. I believe so, yes.
Q. What do you mean by a liquidity crisis?
A. Meaning they run out of cash and they're unable to service their debt.
Q. Why did you not think that to be a risk at the time?
A. I can't specifically recall what the circumstances were.
Q. Exhibit 8, the valuation based on 1997 forecasted EBITDA, is that something that you did?
A. I believe so, yes.
Q. And, again, you believed that to be

Page 87

a correct calculation at the time?
MS. BROWN: Object to form.
A. I believe it was my best estimation at the time.
Q. And, likewise, Exhibit 9 is something that you did as well?
A. It was something I did, yes.
Q. And you believed that to be the best estimation at the time?
A. I believe it was my best estimation, yes.
Q. Okay. The next page of the document, I believe it's Page 5 of the report, contains some text about the performance of Coleman. Do you know what the basis, your basis was for this?
A. No. I can't recall.
Q. The third paragraph refers to the expectations for 1998 EBITDA. Could you just read that to yourself.
A. Yes.
Q. After having read that, does that refresh your recollection as to where that $160 million number came from?
A. No, it does not.

Page 88

Q. The next paragraph refers to the overall health of the camping industry. Is that something that you learned based on the consultant that you hired?
A. It was through the consultant, and it was through doing research on the web.
Q. Now, the next section of the report reads, "Nature's First Green is Gold," starting on the next page.
A. Um-hmm.
Q. And it's an analysis of the camping industry. Is that something that you prepared?
A. It is something that I researched, yes.
Q. And did you draft this section of the report?
A. Yes, I did.
Q. Beginning on Page 7 under the heading "A Period of Growth" and continuing for the next couple of pages, there is a description of Coleman's acquisitions and Coleman's plans. Do you remember what the basis was for these statements?
A. No, I do not.

Page 89

Q. But these are statements that you made and published in this report?
A. I believe so, yes.
Q. And you understood them to be correct when you issued them?
A. I believed them --
MS. BROWN: Object to the form.
A. I believed them to be my best estimate.
Q. Turn to Page 11 of the report and read to yourself the Coleman Company financial forecast. Just let me know when you've finished reading that.
A. Okay.
Q. And it concludes with the statement, "We are being very conservative with regard to Coleman's capital structure. The company will be generating significant cash flow, and we expect continued deleveraging to occur in 1998." By that you mean Coleman would be paying off even more of its debt?
A. I believe so, yes.
Q. That's what deleveraging means?
A. Yes, it does.
Q. Do you believe the statements

NOT A CERTIFIED COPY

018478

Page 90

contained in that Coleman company financial forecast to be your best understanding at the time you wrote them?
A. It was my best estimate, yes.
Q. The next page, the next two pages are financial forecasts for 1997 and 1998. And if you look at the bottom of those tables, they say, "Source: Company financial and Morgan Stanley estimates." Do you know what Morgan Stanley estimates went into this?
A. I couldn't tell you specifically. Well, just basically the third, fourth quarter in the year were our estimates.
Q. And when you say "our estimates," were they estimates that you did or estimates that you obtained from others?
A. Estimates that I did.
Q. The EBITDA number for the year end 1997 is 123.7 million. Do you know how you derived that number?
A. I can't recall, no.
Q. And, likewise, if you turn to the next page, you'll see the year end 1998 EBITDA is 162.3 million. Is that a number you derived?

Page 91

A. I believe so, yes.
Q. Do you remember how you derived it?
A. No, I couldn't tell you.
Q. But having looked at this document, do you recognize that to be your best estimate of 1998 EBITDA?
A. I don't recognize it, but to my best recollection, it would have been my best estimate.
Q. You wouldn't have put it in there if you had some other number?
A. Correct.
Q. Was there a protocol or methodology or model that you followed to derive numbers such as that?
MS. BROWN: Object to form.
Q. At the time?
A. No.
Q. Did you receive any guidance or instruction at Morgan Stanley as to what estimates to use or what predictions to make for companies of this type?
MS. BROWN: Object to form.
A. For a secondary company like this, absolutely not.

Page 92

Q. What do you mean by a secondary company?
A. Meaning a company that published financials, etc. There was no one else. It was our own. We had the autonomy to determine our estimates.
Q. Do you remember discussing your estimates of EBITDA for '97 or '98 with anyone else at Morgan Stanley?
A. I don't recall, no.
Q. Do you think you might have discussed them with Mr. Foley?
A. I don't recall.
Q. Turn to the next document.
MS. BROWN: Page?
MR. BRODY: I'm sorry. It's Page 14.
MS. BROWN: Turn to the next page.
Q. Page 14 and 15. It's Appendix 1, "Prices Paid for Recent Consumer Product Transactions." Is this a compilation that you prepared?
A. No, it is not.
Q. Where did you get it?
A. I got it from the investment banking

Page 93

division.
Q. Do you know who at investment banking?
A. I do not recall. And, actually, I should specify. It was either investment banking or equity research. I'm not sure which one.
Q. There are some indications for footnotes. For example, after aggregate value it has a little footnote two, and after-premium price it has a little footnote three, but I don't see the footnotes. Do you know what that's there for?
A. I can't recall.
Q. Do you have an understanding of what premium price means?
A. I believe -- no, I can't recall specifically.
Q. What is your belief?
A. I would believe it's the price over where the stock was trading at the time.
Q. And if you look at the bottom of this table, which is found in the next page, the mean premium price is just under 50 percent, and the median is just over

NOT A CERTIFIED COPY

018479

Page 94

50 percent?
A. That's what it would appear to say, yes.
Q. And this is the information that you included in the report that you published; correct?
A. I believe so, yes.
Q. Now, if you look at the bottom lines on Page 15, the mean and median numbers, the aggregate value column, there is a revenue column, an EBITDA column, an and EBIT column?
A. Yes.
Q. And there is that 13.4 number. Do you see that?
A. Yes, I do.
Q. Is this the source of the 13.4 multiple that is referenced earlier in the paper?
A. I would assume so.
Q. And that reflects that for these transactions in the consumer product field, the median multiple of revenue was 2.0, the median multiple of EBITDA was 13.4, and median multiple of EBIT was 17.6?
A. That's what it would seem to say,

Page 95

yes.
Q. For a financial analyst such as yourself, would you prefer to use the median or the mean?
A. In general, we use the median.
Q. Why is that?
A. Because it rules out the absolutes.
Q. Meaning the outliers?
A. Yes.
Q. Having looked at this document and now having really gone through the whole thing, do you remember any other sources of information that you used to prepare this other than the ones you've talked about already?
A. No, I do not.
Q. Is there anything in here that you believe to be incorrect?
A. I couldn't recall.
MS. BROWN: Object to form.
Q. Let me state that a little differently. I think I've asked you this in a number of places. Is there anything in here that you didn't believe to be correct or your best estimate at the time you published the

Page 96

report?
A. No, I do not think so.
Q. And looking back, do you look back on this and say, oh, gee, I don't think that was right?
MS. BROWN: Object to form.
A. I don't have the -- I don't have -- Coleman's done, so I don't have the perspective with which to answer that.
Q. Okay. Well, that answers the question. I appreciate that. Now, after you published this report, did you discuss it with anyone at Morgan Stanley, that you remember?
A. Not specifically, but you would obviously discuss it with your sales force, your traders, and your clients.
Q. Was there a particular trader that was responsible for Coleman?
A. Michael Lily.
Q. And he remained responsible for Coleman throughout the period?
A. Yes, he did.
MS. BROWN: Object to form.
Q. The '97, '98 time frame?
A. Yes, he was.

Page 97

Q. Do you remember any discussions with Mr. Lily?
A. Not specifically, no.
Q. Do you remember any general topics of conversation with him?
A. Yes. Whenever earnings came out, and Coleman, frankly, disappointed a lot, we would have to have conversations on that.
Q. Do you remember any discussions with the sales staff?
A. Not specifically, no.
Q. You referred to earnings coming out. I would like to show you what I'll mark as an additional exhibit.
MR. BRODY: Mark this as 274.
(Earnings announcement of Coleman marked CPH Exhibit 274 for identification, as of this date.)
Q. I've given you what has been marked as Exhibit 274. Do you recognize that as an earnings announcement of Coleman?
A. Yes, I do.
Q. And that was earnings for the third quarter announced in November of 1997?
A. Appears to be, yes.

NOT A CERTIFIED COPY

018480

Q. And it shows that it was sent to you?
A. Yes, it was.
Q. Is this an earnings report from Coleman?
A. It appears to be, yes.
Q. Were you on a regular circulation list that you would receive these documents?
MS. BROWN: Object. Foundation.
A. To my knowledge, I was.
Q. Do you know how that happened, how you got to be on that?
A. I requested to be on their distribution list.
Q. You requested that of Coleman?
A. Yes, I did.
Q. If you turn to the fourth page of this document, there are some financial numbers, and on the bottom there appears to be some handwriting?
A. Um- hmm.
Q. Do you recognize the handwriting?
A. It may be mine, but I'm not sure.
Q. Do you have any understanding as to what it refers to?

A. No, I don't.
Q. After you received this report, did you modify the research that you put out there?
A. I couldn't recall.
MR. BRODY: Mark this, please, as Exhibit 275.
(Research report dated January 26 issued by Ms. Eltrich marked CPH Exhibit 275 for identification, as of this date.)
Q. Ms. Eltrich, I'm showing you what has been marked as Exhibit 275. Do you recognize that as another research report that you issued?
A. Yes, I do.
Q. That you published?
A. Yes, I do.
Q. And it's dated January 26th?
A. Yes.
Q. Now, the prior one was dated October 9th, 1997. Are you aware of any research reports between those two dates?
A. I can't recollect.
Q. And can you recall any research

reports after this date?
A. I can't recollect.
Q. If I were to tell you that the acquisition of Coleman by Sunbeam, Sunbeam being a Morgan Stanley client, was publicly announced at the beginning of March 1998, would you believe that you would have done another research report after this one?
A. No, I would not have been allowed to.
Q. So if the facts I just told you are correct, and I believe them to be, you believe this to be your final research report?
A. I can't recollect.
MS. BROWN: Object to form.
Q. Looking at Exhibit 275, is that a document that you drafted?
A. I believe so, yes.
Q. And at the time you drafted it, you did so in the course of your responsibilities at Morgan Stanley?
A. I believe so, yes.
Q. And the document was published by Morgan Stanley to the recipients of its research reports, its high yield research

reports?
MS. BROWN: Object to form.
A. It was distributed on a distribution list to our clients.
Q. Okay. That's a better way of stating it. And it was sent to those clients in the ordinary course of Morgan Stanley's business?
A. To my knowledge, yes.
Q. Did you keep a copy of this document in your file?
A. I don't recall.
Q. Do you believe you did?
A. Probably not.
Q. It wasn't your practice to keep copies of research reports that you issued?
A. It was kept in my computer, not on file.
Q. So it was kept in electronic form?
A. Correct.
Q. And was it the ordinary course of your business to keep copies of the research reports you issued in electronic form on your computer?
A. It was the firm's practice, yes.

NOT A CERTIFIED COPY

018481

Page 102

Q. In this report dated January 26, 1998, you continued to recommend a strong buy for the Coleman Escrow I and Coleman Escrow II zero coupon notes; correct?
A. It appears to be, yes.
Q. At the time, January 26, 1998, were you aware that Sunbeam, counseled by Morgan Stanley, was in conversations with Coleman about acquiring Coleman?
A. I did not know.
Q. Do you know when you learned that fact?
A. When it was announced.
Q. Have you had a chance to review this document recently?
A. Not really, no.
Q. Okay. Well, we'll go through it a bit at a time. If you look at the summary and investment conclusions, I'll ask you to read that first paragraph to yourself.
A. Um-hmm.
Q. You've had a chance to read that paragraph?
A. Yes, I have.
Q. And those are statements that you

Page 103

published in January of 1998?
A. To my recollection, yes.
Q. And you believed them to be correct at the time?
A. I believe so, yes.
Q. Turn to a couple of paragraphs later that begins, "At the end of 1996." Do you see that paragraph?
A. Um-hmm.
Q. And about two-thirds of the way through the paragraph there is a sentence that reads, "Fundamentally, Coleman is in its best position in nearly five years."
A. Yes.
Q. You wrote that?
A. Yes, I did.
Q. And you believed that to be true when you wrote it?
A. I believe so, yes.
Q. Turn to the next page. There is a listing of investment strengths and weaknesses. See that?
A. Yes, I do.
Q. Again, those are statements that you made?

Page 104

A. I believe so, yes.
Q. And you believed them to be correct at the time you issued them?
A. I believe so.
MS. BROWN: Object to form.
Q. You published them?
A. I believe so, yes.
Q. If you turn to the document that bears the page number four of the document, "Coleman Company 1997 Summary Financial Forecast"?
A. Yes.
Q. Again, that's a financial forecast that you derived?
A. I believe so, yes.
Q. Some of the numbers are historical and some of them are estimates that you created?
A. It appears to be, yes.
Q. And, likewise, the following page is a similar set of estimates for 1998, some of which were historical and others reflect work that you did?
A. I believe --
MS. BROWN: Object to form. You

Page 105

said historical for 1998.
MR. BRODY: Well, the document is entitled 1998, but it contains 1997 numbers, among other things. Let me start over.
Q. Page No. 5, it's entitled "Coleman Company 1998 Summary and Financial Forecast." It contains some historical numbers from 1997?
A. Yes, it does.
Q. And it contains some estimated numbers for 1997 and 1998?
A. It appears to, yes.
Q. And those estimates are estimates that you created?
A. I believe so, yes.
Q. And at the time you published these numbers, you believed them to be the best estimates that you could come up with; is that correct?
A. To the best of my recollection, yes.
Q. Now, there is no reference in here, as best I can tell, to multiples of EBITDA, the 12.0 and the 13.4 numbers, for example, that we saw in Exhibit 272. Any reason to believe that you thought that those had

NOT A CERTIFIED COPY

018482

Page 106

changed between October of 1997 and January of 1998?
A. I cannot recall.
Q. You cannot recall any reason?
A. Cannot recall.
Q. At the time you published this report, you believed it to be true and the best estimate of what you expected to happen?
A. I believe so, yes.
Q. Did you continue to follow Coleman after this date?
A. I can't recall.
Q. Did you ever come to learn that any of the statements that you made in the report we've marked as Exhibit 275 were incorrect?
MS. BROWN: Object to form.
A. Not to my recollection.
Q. Now, when you wrote one of these documents and they were published, do you know to whom they were sent?
A. No, I do not.
Q. Do you know how many of them were sent out?
A. No, I do not.
Q. Can you estimate hundreds or

Page 107

thousands or any idea?
A. I can safely say less than a thousand, but that's about all I can give you.
Q. Do you know if it was more than a hundred?
A. No, I don't.
Q. Now, I believe you testified in response to an earlier question that you first learned of the possible transaction between Sunbeam and Coleman when the deal was publicly announced; is that correct?
A. That's correct.
Q. Do you know how it was that you came to learn of it?
A. No, I don't remember.
Q. Prior to that date, that announcement date, do you remember anyone from any other division within Morgan Stanley asking you for information about Coleman?
MS. BROWN: Object to form.
A. No one asked me directly about Coleman, no.
Q. Did people ask you indirectly?
A. There was one time when I was asked for potential acquisition targets, and I

Page 108

mentioned Coleman.
Q. What do you remember of that conversation? Who was it with?
A. Bob Kitts.
Q. What do you remember Mr. Kitts asking you?
A. Do you have any good consumer product companies in high yield that you feel could be takeover candidates?
Q. And what did you tell him?
A. I remember Coleman was on the list and probably Playtex.
Q. Did you cover Playtex?
A. Yes.
Q. Besides those two companies, any others that you remember?
A. I can't recall.
Q. Do you remember when this conversation was with Mr. Kitts?
A. No, I do not.
Q. Do you remember giving him copies of your reports?
A. No, I do not.
Q. Do you know if he had them?
A. He would have had access to them,

Page 109

yes.
Q. How?
A. We're the same firm, and it's all on a -- it's all on a portal.
Q. Okay. So someone in investment banking could call up your reports on a computer portal?
A. Correct.
Q. After that conversation with Mr. Kitts, did you have any follow-up conversations with him?
A. No, I did not.
Q. And then when the deal was announced, did you have further conversations with Mr. Kitts?
A. I don't recall who -- no, I don't believe I did directly.
Q. Do you know a Morgan Stanley employee by the name of Bill Strong, William Strong?
A. Yes, I do.
Q. Did you ever work with Mr. Strong on the Coleman or Sunbeam transaction?
A. Not directly, no.
Q. Did you work with him indirectly?

NOT A CERTIFIED COPY

018483

Page 110

A. Indirectly, yes.
Q. In what way?
A. They had me look at the transaction from -- basically giving what I knew about Coleman during that due diligence process.
Q. Can you explain what you mean by that?
A. In terms of as they were looking at Coleman as an acquisition target, what I thought of the company, could I verify statements by management.
Q. Who did you work with?
A. The only name I can remember directly is Chris Whelan.
Q. In connection with that work, did Mr. Whelan or others show you financial analyses that the investment bankers had prepared about Coleman?
A. I don't recall.
Q. Well, we'll go through that in a bit. And you understand Mr. Whelan to be working in Mr. Strong's organization?
A. No, he was not. Chris Whelan worked for credit, which is -- they worked with the rating agencies to determine what rating a

Page 111

bond will be issued with.
Q. What do you mean by saying this was indirectly from Mr. Strong?
A. Because we're the same firm and it was the same deal.
Q. Did you understand Mr. Strong to be in charge of the deal?
A. No.
MS. BROWN: Object to the form.
Q. Ms. Eltrich, were you aware that Morgan Stanley advised the board of directors of Sunbeam about the Coleman transaction?
A. I was aware, yes.
Q. Are you aware that Morgan Stanley made a presentation to the Sunbeam board of directors?
A. I was not directly aware, no.
Q. Did you ever, to your knowledge, see a presentation that they made?
A. Not to my knowledge, no.
Q. Were you aware that Morgan Stanley issued a fairness opinion?
A. Not directly, no.
Q. Do you know what a fairness opinion is?

Page 112

A. Yes, I do.
Q. Ms. Eltrich, I'm handing you what has previously been marked as Exhibit 89. And up at the top it says "Preliminary Draft," but I believe the testimony is this is as final as it got. And there is some handwriting there, Tyrone Chang, on the first page. Do you know a Mr. Tyrone Chang?
A. Not to my recollection.
Q. There are some things in here I may ask you about, but the first thing I'm going to ask you about this document is have you ever seen it before?
A. Not my recollection.
Q. Well, that's going to make the other questions go a little faster. I will represent to you that this is a presentation to the board of directors of Sunbeam about Coleman. The title is, "Presentation to the Board of Directors Camper," but it's not to the Coleman board. It's about Coleman. And I would ask you to turn to the page bearing number two. It's got the production number in the corner ending with 64. And it's entitled "Strategic Rationale Camper." Have you ever

Page 113

seen that before?
A. Not to my recollection.
Q. If you turn to Page 16 of the document, it ends with the production number 82. It's entitled "Summary of Camper Evaluation Analyses." Do you see that?
A. Yes, I do.
Q. And what is contained therein is a trading analysis, a precedent transaction analysis, a discounted cash flow, and an estimated value of synergies. Do you see those numbers?
A. Yes, I do.
Q. Prior to this deposition had you seen those numbers before?
A. Not to my recollection.
Q. If you look at the trading analysis at the beginning, there are various multiples of EBITDA and EBIT contained therein, among other things. Do you ever remember having any consultations with anyone at Morgan Stanley about what was the appropriate multiple to use?
A. No, I do not think I did.
Q. And in the precedent trading

NOT A CERTIFIED COPY

018484

Page 114

analysis, do you remember discussing those multiples or the appropriate transactions to use as precedents with anyone at Morgan Stanley?
A. Not to my recollection.
Q. The last item refers to estimated value of synergies. Do you remember ever performing any analysis of synergies that would or could result from this transaction?
A. Not to my recollection.
Q. If you turn to the appendix of this document, it's Page 54. It ends Page 22, 022. There is a description of various premiums paid in consumer and sporting goods transactions. Do you see that?
A. Yes, I do.
Q. And it goes on for a couple of pages. Have you ever seen this before?
A. Not that I recall, no.
Q. Now, when we were looking at Exhibit 272, your initiation of coverage for Coleman, at the end of the document you had various other transactions that you compared Coleman to.
A. Yes.

Page 115

Q. Do you believe that the source for your information was a document such as the one we're looking at here, Page 55, 56?
MS. BROWN: Objection to form
A. I can't -- like I said, I don't know if I got it from banking or equity. I don't know who kept track.
Q. Okay. And this doesn't look familiar to you?
A. It's the same format as the firm uses, but, again, I don't know who the source is.
Q. Okay. When you received that information from either banking or equity, did you keep a copy of it in your files?
A. I can't recall.
Q. Do you know if you received it in hard copy form or electronic form?
A. It would have been electronically.
Q. In addition to making the presentation we've seen that's been marked as Exhibit 89, Morgan Stanley prepared a fairness opinion or a fairness opinion letter relating to this transaction. Have you ever seen that before?

Page 116

A. No, I have not.
Q. Do you know if you were ever asked questions about the fairness of the transaction to the shareholders of Sunbeam?
A. To my recollection, no.
Q. Now, the record reflects that Morgan Stanley was retained by Sunbeam to assist it in the fall of 1997. I'll just state that for you. You don't have to believe me, but I believe that's what the record will reflect. And I believe your testimony is you first learned of the Coleman transaction in March of '98?
A. To my recollection, yes.
Q. Between the fall of '97 and March of 98, did you receive any other questions, other than the ones from Mr. Kitts about potential takeover candidates, relating to the work that Morgan Stanley did for Sunbeam?
A. No.
MS. BROWN: Object to form.
A. Not that I recall.
Q. Did you have any knowledge of what Morgan Stanley was doing for Sunbeam?
A. Not that I recall.

Page 117

Q. And I understand you've never worked in the investment banking division of Morgan Stanley?
A. No, I have not.
Q. Do you know what they were doing or what their duties were for Sunbeam?
A. Not that I recall.
Q. At some point Morgan Stanley was looking for a company to acquire Sunbeam. Did you have anything to do or were you asked any questions about efforts to find a company to acquire Sunbeam?
A. Not that I recall.
Q. And obviously at some point Morgan Stanley was looking for a company for Sunbeam to buy, and I believe you testified about your conversations with Mr. Kitts prior to the announcement. Do you have any other involvement or knowledge of the work that Morgan Stanley did on the buy side?
A. No, I did not.
Q. Are you aware that Morgan Stanley's chairman was a gentleman by the name of Al Dunlap?
MS. BROWN: Excuse me? Object.

NOT A CERTIFIED COPY

0185

Page 118

MR. BRODY: I misspoke. Let me withdraw that.
Q. Are you aware that Sunbeam's chairman was an individual by the name of Al Dunlap?
A. I am now, yes.
Q. Were you aware of that prior to the announcement of this deal?
A. No. I didn't know who he was.
Q. Between the announcement of the deal and its closing, did you have anything to do with Mr. Dunlap?
A. As memory recollects, I listened to one of his earnings conference calls, but I can't recall what direct due diligence I had with him.
Q. Do you believe that earnings conference call was between the announcement and the closing?
A. Actually, I shouldn't -- I don't know if -- I think it was actually the announcement conference call. I don't think it was in an earnings conference call. I'm sorry. It was the actual announcement call.
Q. The announcement of the deal?

Page 119

A. Yes.
Q. We'll get to that. Have you ever covered any other companies or investigated covering any other companies that Mr. Dunlap was involved in?
A. Not that I recall.
Q. Do you know a company by the name of Scott Paper?
A. I've heard of the company, yes.
Q. Do you know if Morgan Stanley covered Scott Paper?
A. I don't know.
Q. Did you?
A. No, I did not.
Q. So you didn't do any work on Scott Paper?
A. No, I've never done work.
Q. Have you ever heard it suggested by anyone that Mr. Dunlap's turnaround of Scott Paper was not real?
MS. BROWN: Object to form.
A. No, I have not, can't recollect.
Q. Do you remember any conversations with anyone at Morgan Stanley about whether Mr. Dunlap had accomplished anything at Scott

Page 120

Paper?
A. I don't recall.
Q. Is it correct that at the time of this deal, the announcement of this deal, Morgan Stanley did not cover Sunbeam?
A. I don't recall.
Q. Do you recall any coverage that it provided?
A. I don't recall any coverage, no.
Q. Were you ever asked to consider covering Sunbeam securities?
A. It was an investment grade company, so no.
Q. Do you know if others within the company were asked to cover --
A. Not to my recollection.
Q. I believe I asked you this before. You understand that Mr. Conway, Andrew Conway, was an equity analyst?
A. Yes.
Q. Did you ever have any conversations with Mr. Conway about Sunbeam or Coleman?
A. Not that I recall. Actually, his junior, Jim Dormer, was going to do most of the work if they were to initiate coverage.

Page 121

Q. Did you have any conversations with Mr. Dormer?
A. I'm sure I did, but I don't recall them specifically.
Q. Do you have any general recollection of items that you discussed with Mr. Dormer?
A. No, I do not.
MR. BRODY: Why don't we go off the record for a minute. We need to change the tape.
VIDEOGRAPHER: The time is now 11:39. We've reached the end of tape number one, and we are off the record.
The time is now 11:41, and this is tape number two, and we are back on the record.
(Document Bates stamped CPH 251099-251122 marked CPH Exhibit 276 for identification, as of this date.)
Q. In prior testimony you've talked about how you learned of the Sunbeam Coleman transaction through an announcement; is that correct?
A. Yes.
Q. I'm going to show you what the court

CPH 018486

NOT A CERTIFIED COPY

Page 122

reporter has marked as Exhibit 276, and if you turn to the page ending with the number 119, there is a list of participants and a number -- I'll wait until you're there.
A. Yes.
Q. And at number 257 is your name. And if you turn to Page 115, it describes that that's a list of participants, too. And it's about a conference call on March 2, 1998. See that?
A. Yes, I do.
Q. Have you ever seen this document before?
A. No, I have not.
Q. There is some handwriting on the first couple of pages of the document. Do you recognize that handwriting?
A. No.
Q. The very beginning.
A. Oh. No, I do not recognize the handwriting.
Q. There is evidence in the case that the deal was publicly announced on March 2nd. Do you recognize this as a list of people who participated in a conference call on March 2,

Page 123

1998?
MS. BROWN: Objection. Foundation.
A. I couldn't tell you.
Q. You believe you learned of the deal from participating in a conference call; is that correct?
A. No, it is not.
Q. How did you learn of the deal?
A. I believe it was when it was publicly announced on the press wire.
Q. Then did you thereafter participate in a conference call?
A. I can't specifically recall, but I believe so.
Q. After the deal was publicly announced on the press wire, did you do anything?
MS. BROWN: Object to form.
Q. In relation to the deal?
A. I can't recall.
Q. Do you remember discussing the announcement with anyone?
A. I discussed it with my trader.
Q. That's Mr. Lily?
A. Yes.

Page 124

Q. What do you remember discussing with him?
A. That we just made a lot of money.
Q. Why is that?
A. Because the Coleman bonds were going to be taken out.
Q. How did you know that?
A. I believe -- this is to my recollection, but I believe they announced that plan in the -- or it may have been our own speculation, but either way the bonds were getting taken out or the bonds would be investment grade because Sunbeam was investment grade, so they would appreciate in value.
Q. Your idea was that there would be a reduced risk of loss on the bonds with Sunbeam as the ultimate owner?
A. Correct.
Q. Do you know if the bonds were, in fact, taken out?
A. To my recollection, yes, the bonds were taken out.
Q. Do you know why they were taken out? And by "taken out" you mean they were

Page 125

redeemed?
A. Correct.
Q. They were sold or --
A. They were paid back.
Q. Paid back. Do you know why they were redeemed?
A. I can't recall specifically what the capital structure decision was on that.
Q. Do you know who was involved in that capital structure decision?
A. No, I do not.
Q. Did your trading operation, the high yield group, in fact, make money on these bonds?
A. Yes, we did.
Q. Do you remember how big a position you had?
A. No, I don't remember.
Q. But are we talking millions or?
A. I don't remember.
Q. Aside from the conversation with Mr. Lily about the fact that you would make money on the bonds, do you remember any other conversations you had after the announcement?
A. All I remember talking to

NOT A CERTIFIED COPY

018487

Page 126

specifically is Chris Whelan.
Q. And that was the conversation you referred to earlier?
A. There were multiple conversations, and I couldn't recall any of them specifically.
Q. Mr. Whelan worked in the credit group?
A. Correct.
Q. Was his office near yours?
A. It was in the same building.
Q. Where was that?
A. 1585 Broadway. He may have been in a different building, but he was within blocks.
Q. What do you remember being your first conversation with Mr. Whelan about this?
A. I don't remember.
Q. Do you know why Mr. Whelan and the credit group were involved in the transaction?
A. The credit group's function is to get a rating from the rating agency. So his function was to get a rating for the converts.
Q. Did Mr. Whelan, to your knowledge, prepare a rating agency presentation?

Page 127

A. I wouldn't have been involved in that.
Q. I believe you testified that Mr. Whelan asked you some questions and asked you to verify certain statements that they were making; is that correct?
A. To my recollection, yes.
Q. Do you remember what sorts of things Mr. Whelan asked you about?
A. No, I don't.
Q. Did you communicate with him face to face or on the telephone?
A. I don't recall.
Q. Do you know if you sent emails back and forth to Mr. Whelan?
A. I don't specifically recall.
Q. What do you think?
A. I would say most --
MS. BROWN: Objection. Speculation.
A. Pure speculation would be most likely, yes.
Q. Most likely yes emails?
A. Yes. Well, did we email, yes. Was that the primary form of the communication, I don't recall.

Page 128

Q. Sometimes face to face?
A. I don't recall.
Q. Sometimes on the phone?
A. Most likely, yes.
Q. And I believe you testified that Mr. Whelan asked you questions about Coleman; is that correct?
A. Most likely, yes.
Q. Do you remember any of the specifics he asked you about Coleman?
A. No, I do not.
Q. Do you remember any of the areas or topics he asked about?
A. No, I do not.
Q. Ms. Eltrich, I'm showing you what has been marked as Exhibit 9 in a prior deposition, and like the other big one I gave you, I'm just going to first ask you if this is something you've ever seen before.
A. Not to my recollection, no.
Q. In connection with any of the work that you did for Morgan Stanley beginning on the date of announcement and going forward, do you know if you were ever shown any of the discussion materials or presentation books

Page 129

that Morgan Stanley prepared for use in its efforts on behalf of Sunbeam?
A. Not that I recall.
Q. If you turn to the page ending in 290, it's very early in the document, it's about the fifth or sixth page of the document entitled "Investment Rationale."
A. Um-hmm.
Q. Got it?
A. Yes.
Q. Is that a document you've ever seen before?
A. I don't recall.
Q. The first bullet point refers to Sunbeam being an attractive growth story. Did you ever see that phraseology contained in Morgan Stanley presentations or materials?
A. I don't recall specifically.
Q. Do you recall generally that people discussed Sunbeam as an attractive growth story?
A. I don't recall.
Q. The next item refers to the profound transformation at Sunbeam. Do you recall any discussions within Morgan Stanley or with

NOT A CERTIFIED COPY

Page 130

Sunbeam about this profound transformation?
MS. BROWN: Object to form.
A. I can't specifically recall anything.
Q. Do you recall generally?
A. Commitment committee. That would be it.
Q. Were you at the commitment committee?
A. I was at meetings. Again, I was -- I can't remember the exact time frame because, again, I was eight and a half months pregnant, but I was definitely in meetings discussing the bridge loan, but I can't remember if it was -- most likely it was the commitment committee, but I can't recall.
Q. Okay. We'll get to that in a moment. The next item refers to tremendous intrinsic value in the company. Do you recall any discussions within Morgan Stanley about that?
MS. BROWN: Object to form.
A. None that I directly participated in.
Q. Do you remember any discussion about

Page 131

the intrinsic value of Sunbeam?
A. No.
MS. BROWN: Object to form.
A. I don't recall.
Q. Are you aware that Mr. Dunlap had published a book?
A. No, I was not aware.
Q. You have not seen his book Mean Business?
A. Not that I'm aware of, no.
Q. Nobody ever gave you a copy?
A. No. I have plenty of other bad CEOs who have given me books, so...
Q. Not that one?
A. Not that one.
Q. Were you involved in any efforts at Morgan Stanley in preparing materials to go to the public or to go to investors in Sunbeam about this transaction?
A. No, I was not.
Q. So you weren't involved in any announcements, any press statements or public statements about the announcement or the deal?
A. I believe I was not.
Q. Now, after the deal was announced in

Page 132

early March 1998 and until the first stage of the Coleman transaction closed, which I'll state was on March 30th, 1998, in that March time frame, and I know you were only there for part of it, what did you work on relating to the deal?
A. Very little.
Q. Well, if anything, what do you recall?
A. All I recall is a couple of conference calls for due diligence on different parts of the varying acquisitions and one for -- I believe one for Sunbeam. But I would clarify I was not really doing the due diligence role. It was more just to verify statements on Coleman.
Q. Now, when you referred to the different parts of the acquisition, by that do you mean First Alert --
A. Yes.
Q. -- Signature Brands, and Coleman?
A. Correct.
Q. So you were on conference calls about those companies?
A. Correct.

Page 133

Q. And you were also on, you believe, a conference call about Sunbeam?
A. If memory serves correct, yes.
Q. And then you had some role in the events leading up to the leveraged finance credit committee?
MS. BROWN: Object to form.
A. I did not have roles in that, no.
Q. But you participated in the meeting?
A. I was at the meeting, again, to provide my knowledge on Coleman.
Q. Anything else that you remember doing in that time frame?
A. No.
Q. Now, you had a daughter?
A. Yes.
Q. Your daughter was born when?
A. March 25th.
Q. Did you work up until she was born?
A. Pretty much, yes.
Q. So you were probably, I don't know what day of the week it was, but were you in the office on the 24th?
A. No.
Q. Were you there on the 23rd?

NOT A CERTIFIED COPY

018489

Page 134

A. I don't recall.
Q. Okay. Then I think it's safe to assume after she was born, you weren't around for a while?
A. That is correct. I took I believe twelve or fourteen weeks.
Q. So you didn't come back until sometime in the summer?
A. I came back the day Al Dunlap was fired.
Q. June 15th.
A. There you go.
Q. So between sometime around the 25th-ish of March until June 15th or thereabouts you weren't around?
A. Correct.
Q. And during that time frame did you get stuff at home? Did you do anything relating to Sunbeam?
A. I did not.
Q. So let's focus on the time period between the announcement and the 25th or so of March when you ceased working for the time being. Was there a team or group of people that was put together to work on this deal?

Page 135

MS. BROWN: Object to form.
A. I would assume so.
(Revised Working Group List for Sunbeam Corp. marked CPH Exhibit 277 for identification, as of this date.)
Q. Ms. Eltrich, I've given you what has been marked as Exhibit 277. And the subject of the memorandum is "Revised Working Group List for Sunbeam Corp." Do you see that?
A. Um-hmm.
Q. And you were listed as a recipient on this memorandum?
A. Yes, I am.
Q. And if you turn to Page 11 of the fax, it bears the Bates number Morgan Stanley Confidential 4683.
A. Um-hmm.
Q. There is a list of Morgan Stanley participants, including yourself; correct?
A. Yes.
Q. Do you recall if you received this working group list?
A. I don't recall, no.
Q. Mr. Conway and Mr. Dormer are listed there, who we've spoken about. Mr. Foley is

Page 136

listed. Do you know what Mr. Foley did on the transaction?
A. I don't think he was that involved, but I can't recall specifically.
Q. Fair enough. If you turn to the beginning of this document, Page 3 of the fax, it describes a number of individuals at Sunbeam. It goes on for two pages. I would like you to tell me if you recall speaking with any of those individuals.
A. No, I do not recall.
Q. If you turn to Page 4 of the document, the first name listed there is Bob Gluck. Do you recognize Mr. Gluck to be the controller or senior accounting officer at Sunbeam?
A. It's what's listed here. If this is correct, then yes.
Q. Do you know if Mr. Gluck was on the Sunbeam call that you participated on?
A. I can't recall.
Q. And any of these other names, do you remember them being involved in that call?
A. I really can't recall.
Q. The next several pages are

Page 137

individuals from Morgan Stanley. And I'm going to ask you just to go through them. We'll go through it a page at a time, but I'm just going to ask you if you remember having any communications, conversations, phone calls, face to face, email, or otherwise with these individuals about the Sunbeam deal or about Coleman.
The first page has Mr. Fiedorek, Mr. Strong, Mr. Savarie, Mr. Stynes. Do you remember them, working with them?
A. I remember Bruce Fiedorek, I remember Bill Strong, but I don't recall any specific conversations on Sunbeam or Coleman.
Q. Do you remember Mr. Fiedorek and Mr. Strong from the Sunbeam transaction or just from being at Morgan Stanley?
A. Just from being at Morgan Stanley.
Q. The next page identifies Mr. Kitts, and you've spoken about your conversation with Mr. Kitts.
A. Yes.
Q. Do you remember any other conversations with him?
A. I don't.

NOT A CERTIFIED COPY

001849

Page 138

Q. We've spoken about Mr. Chang. There is Alexander Fuchs. Do you remember any conversations with him?
A. No, I do not.
Q. Or Mr. Yoo?
A. No, I do not.
Q. The next page identifies the client services group. Do you remember any conversations with them or communications of any kind with them about Sunbeam?
A. No, I do not.
Q. The next page identifies equity capital markets. Likewise, do you remember any conversations with them?
A. No, I do not.
Q. Do you know Ruth Porat?
A. I know her through the firm, yes.
Q. You don't remember her from the Sunbeam deal?
A. No, I do not.
Q. Likewise, Mr. Harris, do you know him?
A. Actually, I don't recall him.
Q. The next page identifies Mr. Whelan, and you've testified about him. Do you

Page 139

remember any conversations with Mr. Kunreuther?
A. No, I do not.
Q. Turn to the next page, it identifies leveraged finance. And do you understand them to be the organization within Morgan Stanley that was making the loan?
A. Correct.
Q. Did you have any dealings with any of these individuals?
A. I dealt frequently with Rom Smith and Michael Hart.
Q. Did you have dealings with them on this deal?
A. I'm sure at some point we had conversations on it.
Q. You said you frequently dealt with Mr. Smith and Mr. Hart. What about?
A. Because a lot of companies that have high yield also have bank debt, so we would compare notes on the market, etc.
Q. Do you remember comparing notes with either of those individuals on Coleman or Sunbeam?
A. No, I do not.

Page 140

Q. Likewise, Mr. Burchill or Mr. Seth?
A. I don't recall them.
Q. Next page we've spoken about. The next page, Page 12, is for a law firm Davis Polk & Wardell. Did you ever deal with lawyers on this deal?
A. Not that I recall.
Q. Two pages later there is a listing of even more lawyers from Skadden Arps. Did you have any dealings with them?
A. Not that I recall.
Q. Page 16 of the document refers to Coopers & Lybrand. Did you have any dealings with Coopers?
A. Not that I recall.
Q. Do you know what Coopers did on this transaction?
A. No. I was not involved in that.
Q. The next two pages, Ernst & Young, do you know what they did?
A. I was not involved in that.
Q. Ernst & Young were auditors for Coleman. On the conference call you were on about Coleman, do you know if the auditors were on the call?

Page 141

A. I don't know.
Q. We're going to skip a couple of pages and ask you to turn to Page 22 of the document, and you see the listing for Arthur Andersen?
A. Yes.
Q. And it continues for a couple of pages. It lists Mr. Harlow, Mr. Bornstein, and then some other individuals?
A. Yes.
Q. Did you have any conversations with those gentlemen?
A. Not that I recall.
Q. Do you remember if there were accountants from Arthur Andersen on the due diligence calls or the conference calls that you participated in?
A. I can't recall.
Q. After the listing of Arthur Andersen, there is a listing for Bank America followed by First Union. Do you know what roles those entities played?
A. I believe they were also participating in the bridge loan.
Q. Did you have any conversations with

NOT A CERTIFIED COPY

018491

Page 142

them, with individuals from those companies?
A. Not until after the deal fell apart. It was after I came back from maternity leave.
Q. And when you refer to the deal falling apart, what do you mean?
A. Meaning Sunbeam preannouncing that they were missing numbers, and we were not able to syndicate the bridge loan.
Q. Were you involved in the efforts to syndicate?
A. No, I was not.
Q. You indicated that you were on a number of conference calls. Do you understand those calls to be part of the due diligence process?
MS. BROWN: Object to form.
A. To my recollection, I believe so.
Q. What does the term "due diligence" mean to you?
A. From a research perspective, due diligence for the available information that we get is to learn as much as you can and to identify the risk accordingly so that you can convey them to your investors.
Q. Do you remember the purpose for your

Page 143

involvement in these various due diligence calls?
MS. BROWN: Objection. Asked and answered.
A. It was more to relate on how they -- it was more to provide knowledge on Coleman than anything else.
Q. When you participated in the conference calls about Signature Brands and First Alert, did you say anything?
A. To my recollection, no, I did not.
Q. I take it nobody asked you anything?
A. To my recollection, no.
Q. Do you remember anything that was said in those conference calls?
A. I really don't recall.
Q. At Morgan Stanley or at Advest where you had worked before, had you received any training in how to do the investigation into the risks that you just described?
MS. BROWN: Object to form.
A. Describe what you mean by "training."
Q. Well, had there been any within the firm seminars or written materials or

Page 144

instructional meetings where people told you how to do this kind of investigation or research?
MS. BROWN: Object to form.
A. The primary source of learning was through, as a junior, sitting with the senior analysts and seeing what they did, and then within our research group, we tended to invoke best practices of here's a mistake I made, you don't make it. And one of my senior analysts that I worked with kept a due diligence checklist of questions for different industries that you should always ask. But it's not something that you learn in a day. It's primarily done through experience.
Q. You referred to best practices. How are those communicated to other people within your group or within Morgan Stanley?
A. Through research meetings.
Q. Were they communicated in writing or just --
A. I don't recall.
Q. Do you ever remember getting a memo or some other --
A. I don't recall. I don't recall.

Page 145

Q. -- some other writing describing best practices?
A. I don't recall.
Q. You indicated that a colleague of yours had a due diligence checklist?
A. He did, for example, for financial institutions, because I subbed for him when he was in Hong Kong for the summer, and he had kept a checklist.
Q. Who was that?
A. Emil Costa.
Q. Did you keep a copy of that after you stopped subbing for him?
A. I did at Morgan Stanley. I was not able to take my files, obviously, to Goldman Sachs.
Q. Of course. So while you were working at Morgan Stanley, you had this checklist of the sorts of things to look for?
A. For financial --
MS. BROWN: Object to form.
Q. For the sorts of things to look into?
MS. BROWN: Object to form.
A. For financial institutions.

NOT A CERTIFIED COPY

018492

Page 146

Q. Did you use that checklist when looking at companies that were not financial institutions?
A. Maybe a couple. I mean to the best of my recollection, maybe a couple of the bullet points. But every company is different, and the amounts of information you get for each company is different. So there is no cookie-cutter way of looking at due diligence.
Q. I understand. I understand your testimony. Aside from what you've just described, do you remember there being any documents or manuals on how to do due diligence?
A. Within research, not that I recall.
Q. Do you recall them being elsewhere in Morgan Stanley?
A. I would not be aware.
Q. Now, you participated in a number of conference calls. Aside from the conference calls, were you ever told what else Morgan Stanley had done to investigate Sunbeam, Coleman, First Alert, or Signature Brands?
A. Not that I recall.

Page 147

Q. So your knowledge of the investigation that was done is limited to those calls?
MS. BROWN: Object to form and characterization.
A. I couldn't recall specifically, but yes, I would say to the best of my recollection, my knowledge was confined to the calls.
Q. I would like to deal with each of the calls individually. There was a call about First Alert?
A. I believe so.
Q. Do you remember anything about it?
A. I really don't.
Q. Do you know who was on it?
A. No, I don't.
Q. Do you know how long it lasted?
A. No, I don't.
Q. Do you remember participating on your own phone, or were you in a room with others speaking on the speaker phone?
A. I believe I was on my own phone.
Q. Was it a type of thing where you would dial in to a call?

Page 148

A. To my recollection, yes.
Q. Do you remember anything that was said in that call about First Alert?
A. No, I really don't remember.
Q. Signature Brands, that was another company that Sunbeam was acquiring?
A. Yes.
Q. And you participated in the call about Signature Brands?
A. To my recollection, yes.
Q. What do you remember about the call?
A. I don't remember anything.
Q. Again, did you dial into that call, or were you in a room with others?
A. To my recollection, I dialed in.
Q. Do you know anyone else who was on the call?
A. I don't recall.
Q. Do you remember anything that was said?
A. No, I don't. I should clarify the only person I know who would have been on the call with me is Chris Whelan.
Q. Okay. Do you remember Mr. Whelan being on the calls or --

Page 149

A. I don't remember specifically, but I know he would have been on the calls.
Q. The call about Sunbeam, do you remember when that took place in relation to the announcement or the closing?
A. No, I do not.
Q. Do you remember who was on the call?
A. No, I do not.
Q. Were there people other than Morgan Stanley people on the call?
A. I don't recall.
Q. Do you remember what was said?
A. No, I don't.
Q. Do you recall if you said anything?
A. I don't recall.
Q. Now, for these three calls, the First Alert, Signature Brands, and Sunbeam calls, did you take notes?
A. I don't recall.
Q. Would it have been your custom or practice to take notes?
A. If it was a bond underwriting, yes. But as this wasn't a bond underwriting and I wouldn't have to convey the facts to investors, not necessarily.

NOT A CERTIFIED COPY

018493

Page 150

Q. Do you remember if there was an agenda for the calls?
A. I don't recall specifically.
MS. BROWN: Let's just take a ten or fifteen-minute break and I'll just grab a snack and we'll start up again.
MR. BRODY: That's fine with me if it's okay --
THE WITNESS: Yes.
MR. BRODY: Okay. We're off the record.
VIDEOGRAPHER: The time is 12:01, and we're off the record.
(Recess)
VIDEOGRAPHER: The time on the monitor is 12:23, and we are back on the record.
Q. Ms. Eltrich, when we broke we were talking about the due diligence calls and what you remembered from them.
A. Yes.
Q. And I think we talked about Signature Brands, First Alert, and Sunbeam. Now I would like to talk about the call about Coleman.

Page 151

A. Okay.
Q. You were on a call in which Coleman was discussed as well?
A. I believe so, yes.
Q. Do you remember who was on the call?
A. No, I do not.
Q. Do you remember what was discussed?
A. Not specifically, no.
Q. Were you asked any questions on the call?
A. Not that I recall.
Q. Do you remember anything that you said on the call?
A. No, I do not.
Q. Anything said by others?
A. Not that I recall, no.
Q. Let me show you what previously has been marked as I believe Exhibit 249 in a prior deposition. Do you recognize that as a fax sent by Mr. Whelan to yourself?
A. I believe so, yes.
Q. And it's sent on March 5th, 1998?
A. It appears to be, yes.
Q. Do you believe that you received this fax on or about March 5th, 1998?

Page 152

A. I couldn't specifically recall.
Q. If you would look at the fax tag line at the top, it indicates that it was sent from Morgan Stanley 212-761-0687 to 0590. Do you recognize 0590 to be the last digits of your fax number?
A. I can't remember.
Q. Pull out Exhibit 277. It's the working group list. It would be that document. And go to Page 11 of the document. It lists your fax number. That's your fax number, isn't it?
A. If this document is correct, yes.
Q. You don't have any reason to doubt it, do you?
A. No.
Q. If you turn to the second page of the document that's been marked as Exhibit 249, it's a due diligence review agenda for Coleman Company. Do you ever remember looking at that or seeing that?
A. I don't recall.
Q. Do you know if those topics were discussed in the conference call that you were in?

Page 153

A. I don't recall.
Q. Does this refresh your recollection at all about what was said?
A. No. It really doesn't.
Q. Do you remember individuals from outside of the Morgan Stanley companies that were involved in the Coleman due diligence call?
A. I don't recall.
Q. Do you know if there were accountants or Coleman people?
A. I don't recall.
Q. Do you remember taking notes of the call?
A. I don't recall.
Q. Had you taken notes, are those the sorts of things you would have kept?
A. On my computer. If I had taken notes, there would be notes on my computer.
Q. Was it your practice at the time when you took notes to take them on the computer?
A. Yes, it was.
Q. What happened to your computer when you left?

NOT A CERTIFIED COPY

0184694

Page 154

A. I don't know.
Q. The notes that you took on the computer, were they backed up to a network, or were they just kept on your computer?
A. I don't recall. You basically had both drives, a network drive and your own drive, and I don't know which one I used.
Q. Did you have a custom or a practice at the time?
A. No, I don't recall.
Q. Do you remember anything about what was said or not said on this Coleman due diligence call?
A. No, I don't recall.
Q. Did you participate in any efforts by Morgan Stanley to look at Sunbeam's reserves?
A. No, I did not.
Q. To contact any of Sunbeam's customers?
A. Not to my recollection.
Q. To investigate Sunbeam's current sales or budgets?
A. Not to my recollection.
Q. To look at how sales were made or

Page 155

revenue was recognized?
A. Not to my recollection.
Q. Did you participate in any conference calls or communications of any kind with people at Sunbeam other than senior management?
MS. BROWN: Object to form.
A. Not that I recall.
Q. Did you have any conversations or communications that you know of with Sunbeam's inside accountants or auditors?
A. Not that I recall.
Q. Did you personally -- I assume you weren't traveling much at the time. Did you ever visit Sunbeam's offices?
A. Not in the month of March, no.
Q. Did you visit thereafter?
A. I can't recall if I went to the offices. We did tour a couple of plants after.
Q. After June?
A. After June, yes.
Q. Do you know what purpose you were doing that for?
A. It was in terms of seeing what our

Page 156

term loan was worth, our bridge loan was worth. It was putting that in context.
Q. In connection with your investigation of Coleman, either to do your published research reports or to assist investment banking in doing due diligence, prior to the closing of the deal do you know if people from Morgan Stanley looked at Coleman's level of sales?
A. I wasn't involved in that.
Q. Or how Coleman made its sales to its customers?
A. I was not involved in that.
Q. Any conversations with Coleman's senior or junior management?
A. With regard to their sales?
Q. With regard to anything, aside from your conversations with Mr. Shiffman.
A. That's all I'm aware of.
Q. Do you remember any communications with Coleman's accountants?
MS. BROWN: Asked and answered. Objection.
A. I was not involved.
Q. And did you ever visit any of

Page 157

Coleman's offices or facilities?
A. I don't recall so, no.
Q. I'm going to show you a series of documents that have been marked in other depositions. And on each of them my first question is going to be have you ever seen this before.
A. Okay.
Q. And then we'll see where we go from there. The first document I'm showing you has previously been marked as Exhibit 28. Have you ever seen this before?
A. I don't recall.
Q. I take it this is not a document you prepared?
A. I don't think so, no.
Q. I'm next showing you what has been marked as Exhibit 27. Have you ever seen this before?
A. I don't think so, no.
Q. There is a reference to fast track due diligence. Do you remember anyone ever referring to fast track due diligence?
A. Not to my recollection.
Q. You don't know what that means?

NOT A CERTIFIED COPY

018495

Page 158

A. I don't think so.
Q. I show you what has previously been marked as Exhibit 31. Have you ever seen that before?
A. I don't think so, no.
Q. It gives information for calling in to various conference calls and indicates that there will be a conference call with the Coleman auditors at 11:30, the Sunbeam auditors at 12, the Signature Brand auditors at 12:30, and the First Alert auditors at one. Does that refresh your recollection about whether you participated in any conference calls with accountants?
A. No, it does not.
Q. That doesn't ring a bell?
A. No.
Q. I'm showing you what has previously been marked as Exhibit 128. And it says, "Attached are the agendas for the due diligence conference calls with First Alert and Signature Brands." And I believe you testified that you were on certain calls with or about First Alert and Signature Brands. I'm asking first if you've ever seen this

Page 159

before.
A. I don't recall.
Q. And second, do the agendas attached to this document refresh your recollection about what was discussed?
A. No, it does not.
Q. Okay. You can put that aside. I'm now showing you what has been marked previously as Exhibit 32. And it's entitled "Accounting Due Diligence." And it's topics one through 18. Have you ever seen that before?
A. Not to my recollection.
Q. If you look at item eight it says, "How aggressive is the company in its accounting policies?" Do you remember any conversations with Coleman or Sunbeam about that topic?
A. No, I do not.
Q. And item 16, "Company is conservative and leans to full disclosure?" Do you remember any conversations with either company about that?
A. I do not recall any, no.
Q. I'm showing you what has been marked

Page 160

as Exhibit 33. It refers to a bring-down due diligence call. Are you familiar with the concept of bring-down due diligence?
A. I am not, no.
Q. Are you familiar with the idea that sometimes shortly before a closing, the parties will have a follow-up due diligence call to see if anything has changed since the last time they talked?
A. I'm aware of the concept, but I'm not involved in that side of the business.
Q. Do you remember if one of these calls that you participated in was a bring-down call, served that purpose?
A. Not to my awareness.
Q. Document 33 that I've shown you, have you ever seen this before?
A. This, no, I have not.
Q. I've got one last one in this series, Ms. Eltrich. It's labeled Exhibit 34. Have you ever seen that document before?
A. I don't recall so, no.
Q. Do any of those documents refresh your recollection about what was said in the due diligence calls?

Page 161

A. No, it does not.
Q. In connection with the calls that you were on, did you learn at any time prior to the closing on March 30th, 1998, that Sunbeam had accelerated sales from 1998 into 1997?
MS. BROWN: Object to form.
A. I don't recall so.
Q. Had you heard any discussion about that?
A. I don't recall any discussions on that.
Q. When you came back to the company in June, are those things that you looked into or were made aware of?
MS. BROWN: Object to form.
A. I believe so, yes.
Q. Prior to the closing on March 30th, 1998, were you aware that Sunbeam had used bill and hold sales techniques to increase its revenue in 1997?
MS. BROWN: Object to form.
A. To my recollection, I was not aware.
Q. Was that a topic that you recall being discussed at all?

NOT A CERTIFIED COPY

0184996

Page 162

A. I do not recall that being discussed?
Q. In any of the work that you did in connection with the deal, do you remember anyone looking at or asking about Sunbeam's sales in the first quarter of 1998?
A. Yes.
Q. What do you recall being discussed about Sunbeam's sales in the first quarter of '98?
A. I can't tell you the event, or I should say when it happened, but my recollection, which is vague, is that it came to our attention that Sunbeam would fall short of analyst estimates. And so from our perspective in terms of underwriting the bridge loan, the banker, who I believe at the time the person called upon was Bill Strong, was asked to validate his client and stand up for his client and say should Morgan Stanley underwrite this loan on behalf of your client.
Q. And what happened?
A. Again, it's my recollection Bill Strong did verify his client and did believe that the credit still stood, that the company

Page 163

was still strong.
Q. I believe you said that it came to Morgan Stanley's attention that Sunbeam would fall short of analysts' projections. Is that what you said?
A. I don't remember exactly the context it was put in, but I know obviously after the fact that that was the concern.
Q. How did it come to your attention? How did it come to Morgan Stanley's attention?
A. I don't know.
Q. Do you remember this being discussed in a particular context?
A. That's -- I can't remember specifically what context. I remember a meeting on it, but I can't tell you if it was commitment committee or if it was a sidebar meeting.
Q. What do you mean by a sidebar meeting?
A. Meaning a non-formal meeting.
Q. Okay. Who do you remember speaking in the meeting?
A. I can't recall specifically.
Q. Were you there when Mr. Strong said,

Page 164

I validate this?
MS. BROWN: Object to form. It's a mischaracterization.
MR. BRODY: Let me withdraw the question.
Q. Were you there when Mr. Strong responded to the concern that you just expressed?
A. To my memory, I was, yes.
Q. Does that suggest to you that it was the commitment committee meeting?
A. If I had to -- if I had to make a guess, I would say yes, it was commitment committee for the bridge loan.
Q. Right. I'm not asking you to guess. You don't know one way or the other?
A. I don't know one way or another.
Q. Do you know when the meeting was held?
A. No, I do not.
Q. Obviously before March 25th?
A. It would be, yes.
Q. Because that's when --
A. Correct.
Q. You were gone by then?

Page 165

A. Correct.
Q. On maternity leave. You said the fact that Sunbeam would fall short of the analysts' sales projections came to Morgan Stanley's attention in some way. Do you remember who it was who said that at the meeting?
A. No, I do not.
Q. In response to that, was Mr. Strong asked questions?
A. To my memory, yes, he was.
Q. Who did the asking?
A. I don't recall.
Q. Do you remember in words or substance what they asked?
A. I don't recall specifically.
Q. Generally, do you remember what was discussed or what was asked of him?
A. The only specific thing I remember was, you know, can you vouch for your client's integrity. And after six years, that's what stood out most as the crux of what they cared about.
Q. What do you mean by "integrity"?
A. In terms of, you know, it happens.

NOT A CERTIFIED COPY

018497

Page 166

Companies miss numbers. And that's what they wanted to say, is this a one-time blip, or is this a trend we need to be aware of?
Q. And this question was put to Mr. Strong?
A. To my memory, yes.
Q. Do you remember what Mr. Strong said in response?
A. My memory is that he stood by his client.
Q. Do you remember in words or substance what he said to communicate that?
A. No, I do not.
Q. Do you remember any follow-up asked of Mr. Strong, why do you stand by your client, what is your basis, that sort of thing?
A. I would not have been involved in those conversations.
Q. In the meeting that you were at do you remember any follow-up?
A. I can't recall specifically.
Q. Do you remember anything else being said in that meeting about the fact brought to Morgan Stanley's attention that Sunbeam would

Page 167

fall short of its numbers?
MS. BROWN: I'm going to object to the extent it mischaracterizes. Go ahead.
A. I don't recall anything else.
Q. Okay. Do you remember anything discussed or communicated orally or in writing after that meeting about the same topic?
A. I don't recall.
Q. Did you take notes of this leveraged finance meeting?
A. No, I would not have taken notes.
Q. You testified earlier that sometimes you took notes on your computer. If you didn't have your computer with you, did you ever take notes on paper?
MS. BROWN: Object to form.
A. If I'm with a company, yes, I'll take notes.
Q. Meaning if you're with a company that you're covering?
A. Correct.
Q. But I mean at a Morgan Stanley meeting, was it your practice to take notes?
A. Not at a commitment committee.

Page 168

Q. Okay. Well, that's a better answer than what I asked. I was focusing on that meeting. Thank you.
Aside from that conversation, do you remember any other conversations about Sunbeam's first quarter performance prior to the closing?
A. None that I recall.
Q. Do you remember any conversations or communications about whether Sunbeam's announced turnaround was real?
A. None that I recall.
Q. Do you remember any conversations or communications, written or oral, about whether Sunbeam's announced turnaround was sustainable?
A. None that I recall.
Q. Do you remember any conversations within Morgan Stanley prior to the closing about Sunbeam's earnings per share from the first quarter of '98 or earnings more generally?
A. None that I recall.
Q. Now, we've spoken about your conversations with Mr. Shiffman at Coleman.

Page 169

Did you ever have any conversations with anyone else at Coleman other than perhaps participating in a conference call where you listened to Mr. Levin?
MS. BROWN: Objection. Asked and answered.
A. What time frame are you talking about?
Q. Prior to the closing.
A. Only conference calls.
Q. And broadening the question to other individuals within MacAndrews & Forbes, Mr. Perelman, Mr. Guinness, some of those individuals, did you ever have any conversations with any MacAndrews & Forbes people?
A. I don't recall so, no.
Q. Did you have conversations with Mr. Levin and others at MacAndrews & Forbes or Coleman after you came back in June?
A. Yes, I did.
Q. About what topics?
A. About Sunbeam and Coleman and -- because Mr. Levin had taken over the company.
Q. Okay. We'll get to that in a

NOT A CERTIFIED COPY

018498

Page 170

moment. Ms. Eltrich, I'm showing you a document that's been previously marked as Exhibit 238, and I'm going to ask you if you've seen it before. Now, first let me do the easy question. There is some handwriting on this document. Do you recognize it?
A. No, I do not.
Q. Okay. Then ignoring the handwriting, is this a document you recall seeing?
A. I do not recall.
Q. Return, please, to page ending with 32, CP 022332. There are two sets of numbers on here. Which number are you using?
A. I'm sorry. I was using this one.
Q. Okay. Well, using that one, it's CPH 1412567.
A. Okay.
Q. There is some handwriting on there. You don't recognize that; is that correct?
A. I do not recognize that.
Q. Well, then, ignoring the handwriting, do you recall ever seeing this page before?
A. I don't recall.

Page 171

Q. Do you recall any conversations about Sunbeam's long-range strategic plan?
A. I don't recall.
Q. Were you ever at meetings where Sunbeam's long-range strategic plan was presented or discussed?
A. I don't recall specifically.
Q. Let me show you one additional document.
(Document Bates stamped Morgan Stanley Confidential 36700-36720 marked CPH Exhibit 278 for identification, as of this date.)
Q. Ms. Eltrich, I'm showing you what has been marked as Exhibit 278. There is a cover page. Then there is a copy of the long-range strategic plan that is similar but somewhat different than the one I just showed you. And the cover page reflects it was faxed from Mr. Seth to you. Do you recognize the cover page as Mr. Seth's handwriting?
A. I couldn't tell you. I couldn't answer.
Q. Do you remember doing any work with Mr. Seth on this deal?

Page 172

A. I don't remember the name.
MS. BROWN: Sayt (phonetic).
MR. BRODY: It's pronounced Sayt? Thank you.
Q. The fax number that's shown there is the same fax number we previously saw as being your number. Do you have any reason to doubt that you received this document?
A. No, I have no reason.
Q. Having seen this document now having been sent to you, do you have any recollection of getting it or doing anything with it?
A. No, I don't.
Q. If you turn to the third page of the document, the Bates number is Morgan Stanley Confidential 100. There is some handwriting. Do you recognize that?
A. No, I do not recognize it.
Q. If you turn to page Morgan Stanley 108, there is some different handwriting. Do you recognize that?
A. It looks like my handwriting.
Q. Can you read into the record what those things say?
A. "Primarily private label. Three to

Page 173

400 million blankets. Five to 600 million carpets. Do not have leading market share in Europe or Asia."
Q. And having seen that, does that refresh your recollection that you had conversations about this?
A. It does not.
Q. Does this refresh your recollection that you were at a meeting where this was presented?
A. No, it does not. I may have been on a phone call for it, but I don't think I was in any meetings.
Q. If you turn to page Morgan Stanley Confidential 114, there is a description of Sunbeam's long-range strategic plan earnings per share numbers '98 through 2000. Do you recall having seen those numbers prior to the closing?
A. No, I do not recall.
Q. Do you recall doing anything with them?
A. No, I do not recall anything.
Q. Turn to the last page of this document. There is a description of Sunbeam's

NOT A CERTIFIED COPY

018499

Page 174

earnings, net sales, gross margin, operating profit, earnings, then earnings per share, actual and plan for 1998, and this is a first quarter statement. Do you remember any discussions about Morgan Stanley's view of Sunbeam's earnings for the first quarter?
A. No, I do not.
Q. There was a 32 cent per share number for 1998. Do you remember any discussions about that number?
A. I do not recall, no.
Q. You can put that document aside. In connection with the work that was done by Morgan Stanley, Morgan Stanley did a merger consequences analysis. Did you have anything to do with the merger consequences analysis?
MS. BROWN: Object to form.
A. I don't recall we did, I did, no.
Q. Do you remember ever seeing any documents that showed whether this merger would be accretive or dilutive of Sunbeam's financial performance?
A. I don't recall being part of any of that.
Q. Do you remember being shown copies

Page 175

of a merger model or an estimate of what the merger would do?
A. I don't recall.
Q. Ms. Eltrich, I've given you what has been marked as Exhibit 61. And given your prior testimony, this one may go quickly. Have you ever seen this before?
A. Not that I recall.
Q. If you turn to the first page containing numbers, the second page of the document, there is a form of financial analysis that has a pro forma income statement. Prior to the closing did you see any pro forma income statements for the combined company?
A. I can't recall specifically.
Q. Why don't we put this one aside, although we may come back to this. Did you participate in any discussions that you recall in which anyone discussed whether the deal, the combination of Sunbeam and Coleman, would produce synergies?
A. I cannot recall any specific conversations.
Q. Do you remember that topic being

Page 176

generally discussed?
A. Based on some of the sheets that you've shown me, I believe it was probably discussed.
Q. Well, aside from what you now see in the papers, do you remember participating or being involved in any discussions in which synergies numbers were raised?
A. I don't recall any.
Q. And just so we're talking about the same thing, can you just tell us what your understanding is of the term "synergy" as used in a merger consequence?
A. Cost savings.
Q. So it would be a savings to the combined company by combining the two companies?
A. Correct.
Q. And you didn't perform any analyses of whether there would be savings?
A. I don't recall doing any, no.
Q. And you don't remember discussions with others about whether there would be?
A. I don't remember any, no.
Q. Now, the transaction, aside from the

Page 177

merger, also involved a financing piece that Morgan Stanley was involved in?
A. Yes.
Q. And you've testified about what you referred to as the bridge loan?
A. Yes. Actually, it wasn't a bridge loan. It was a term loan.
Q. Okay. And do you remember the dollar value of that loan?
A. I remember it was over 600 million.
Q. Do you understand that to be Morgan Stanley's piece or the whole loan?
A. The whole loan.
Q. And then there were also the convertible debentures?
A. Yes.
Q. And I believe your testimony is that you were not involved in the convertible debentures?
A. That is correct.
Q. And so focusing now on the term loan, what was the nature of your involvement in that loan?
MS. BROWN: Object to form.
A. It was very limited. It really was

NOT A CERTIFIED COPY

018500

Page 178

only, again, with respect to Coleman.
Q. The loan was ultimately approved by a committee at Morgan Stanley?
A. To my recollection, yes.
Q. And as you understand the procedures at Morgan Stanley, a loan of this type would have to be approved by a committee?
A. To my recollection, yes.
Q. And also as you understand the way things worked at Morgan Stanley, would there be a collection of materials presented to the committee to assist it in deciding whether to approve the loan?
A. To my recollection, yes.
Q. Did you have anything to do, that you recall, in preparing those materials?
A. To my recollection, no, I did not.
Q. The committee that approved the transaction, was that the leveraged finance commitment committee?
A. I can't recall specifically.
Q. And I believe you testified that you attended a meeting at which the loan was discussed, and it may have been the commitment committee meeting?

Page 179

A. That is correct.
Q. Let me show you what has previously been marked --
MR. BRODY: Can we go off the record for a second.
VIDEOGRAPHER: The time is 12:54, and we are off the record.
(Discussion off the record)
VIDEOGRAPHER: The time is 12:55. We're back on the record.
(Commitment Committee memo marked CPH Exhibit 279 for identification, as of this date.)
Q. Ms. Eltrich, I'm giving you what has been marked today as Exhibit 279, and I will state for the record I thought I had brought the marked copy. This document has been marked in another deposition bearing a different number.
A. Okay.
Q. That's something for the lawyers to straighten out at some later point, but I'll just state that for the record. Do you recognize Exhibit 279?
A. I vaguely recognize it.

Page 180

Q. What do you recognize it as?
A. As a commitment committee memo.
Q. And what is a commitment committee memo?
A. It is what you referred to earlier as materials submitted to a commitment committee to aid them in their investment decision.
Q. And this one relates to the investment decision for Sunbeam?
A. It appears to, yes.
Q. The first page is from Mr. R.B. Smith. Is that Brom Smith?
A. I believe so, yes.
Q. And it identifies the fact that there is going to be a commitment meeting on March 20th at 7:30 in the morning?
A. Yes.
Q. Having seen that, does that refresh your recollection whether you, in fact, were at that meeting?
A. It doesn't.
Q. Do you have a calendar or some document where you would have written down whether you were there or not?

Page 181

A. Morgan Stanley would have kept record, obviously, but no, I don't necessarily mark it -- now I do, but back then, no, I did not have electronic measurements to know where I was.
Q. You said Morgan Stanley would have kept track. Was there some record of who attended these meetings?
A. No. They would have kept track if I was in the office or not. And if I was in the office, most likely, yes, I would have attended it.
Q. I understand. Towards the bottom there is a distribution of a variety of people. Do you recognize who all of those people are?
A. Not all of them.
Q. I'm going to go through these names and ask you first, if you know the individual, and then, second, if you recall if they were at the meeting that you remember participating in.
A. Um-hmm.
Q. Mr. Sipprelle?
A. I know him. I believe he was at the

NOT A CERTIFIED COPY

018501

Page 182

meeting.
Q. And that was the meeting at which the loan was discussed?
A. I can't confirm that.
Q. Mr. Rankowitz?
A. I know him. I can't confirm if he was at the meeting.
Q. Mr. Kourakos?
A. I know him. Can't confirm if he was at the meeting.
Q. Mr. Felix?
A. I know him. Can't confirm if he was at the meeting.
Q. Mr. Smith?
A. I know him, and I believe he was at the meeting.
Q. Mr. Newhouse?
A. I know him. I can't confirm he was at the meeting.
Q. I don't know if it's a Mr. or Ms.
A. It's Leslie. Leslie Bradford.
Q. Is that a man or woman?
A. Woman.
Q. Was she at the meeting?
A. I believe she was, yes.

Page 183

Q. I don't know again Mr. or Ms. Feldman?
A. Joel Feldman. I know him. I can't confirm if he was at the meeting.
Q. S. Brown?
A. I don't know.
Q. You don't know him?
A. Him or her, yes. I don't know them.
Q. I believe it's Mr. Pellecchio?
A. I don't know them.
Q. Bunger?
A. I know him. I can't confirm if he was at the meeting or not.
Q. Is the next individual Mr. Abdel Meguid?
A. Terry Meguid, I believe. I know him, but I don't know if he was at the meeting.
Q. Sanders?
A. Don't know them.
Q. Is that Ann Short?
A. Yes, it is. And I don't know if she was at the meeting.
Q. And then Mr. Strong?
A. Know him, and I believe, yes, he was

Page 184

at the meeting. But whether it was in person or via phone, but I believe he was in attendance.
Q. I understand. Now, if you look at the cover page here, there is some handwriting. Do you recognize that handwriting?
A. No, I do not.
Q. Turn to the next page of the document. This is the memorandum to the committee about the loan; correct?
A. Correct.
Q. And it shows that it's from a large number of people; is that correct?
A. Appears to, yes.
Q. And one of the people that it shows that it's from is K. Eltrich. Do you know if you drafted any portion of this document?
A. Not to my recollection.
Q. Do you know if you saw drafts of this document before it was sent out?
A. I don't recall.
Q. Do you recall seeing this document at any time prior to today?
A. I don't recall.

Page 185

Q. As you understand Morgan Stanley's procedures at the time, do you understand this to be the document that the leveraged finance committee would consider in deciding whether to approve the loan or not?
MS. BROWN: Object to form.
A. I don't know the full process. I wasn't involved in that side.
Q. Do you know if documents in addition to this one were circulated to the committee?
A. I don't know.
Q. Turn to the second page of the document. Below the box there is a paragraph that starts, "While Morgan Stanley seeks the committee's approval." Do you see that?
A. Yes.
Q. And about the second or third to last sentence in that paragraph is the phrase "due to the accelerated timing of the transaction, it is MSSF's intention to first close the transactions at the end of March and then syndicate its position." Did I read that correctly?
A. Except you said something instead of "acquisitions," but otherwise, yes.

NOT A CERTIFIED COPY

018502

Page 186

Q. Okay. Do you remember any discussions about the accelerated timing of the transaction?
MS. BROWN: Object to form.
A. I do not recall, no.
Q. The document indicates the transactions will be closed at the end of March and then the loan syndicated. Is that customary to close first and syndicate later?
A. I don't work in the bank debt world, so I really couldn't give you a good answer on that.
Q. The next box, the expected economics, do you have an understanding of what that means?
A. I have a vague understanding.
Q. And what is that understanding?
A. I believe it's reconciling -- for this it looks like what you would make in terms of fees specifically to the bank loan.
Q. So these are bank loan fees to Morgan Stanley?
MS. BROWN: Objection. Foundation. Mischaracterization.
A. I couldn't answer specifically.

Page 187

Q. Well, when you talked about the fees, whose fees were you talking about?
A. I would assume for the bank loan, but, again, I don't know if it's for the entire facility or if it's just for Morgan Stanley.
Q. I understand your distinction. Turn to Page 4 the document, the category under heading number four there is a reference to due diligence, and I'll ask you just to read that, and when you're done, I'll ask you some questions about it.
A. Okay.
Q. It describes certain due diligence done on this deal. Does that refresh your recollection about any involvement you may have had in due diligence?
A. I believe I was on the calls.
Q. That you've already testified about?
A. Yes.
Q. Aside from that?
A. No. I don't think I had any -- to my recollection, I didn't have other involvement.
Q. Okay. Turn, please, to Page 7 of

Page 188

the document. Under the category "Restructuring," the second sentence reads, "The restructuring portion of the plan has been substantially completed with only the final refinement stage remaining."
And the last sentence in this paragraph reads, "Cost reductions are expected to result in annual savings of $225 million, most of which were already realized in 1997."
Do you remember any discussion within Morgan Stanley about how much of Sunbeam's restructuring plan had been completed?
A. No, I don't recall.
Q. Or the amount of cost savings realized to date or expected to be realized in the future?
A. I don't recall.
Q. Turn to Page 10. Page 10 contains a description of Coleman. I would like you to look at that and tell me if there is anything that you recall drafting.
A. I don't recall being involved in this.
Q. In looking at this document today,

Page 189

is there anything in here that you think is in any way incorrect?
MS. BROWN: Object to form. Foundation.
A. I couldn't answer that based on the information I have.
Q. If you would turn, please, to Page 13, there is a description of projections and assumptions, and then four items under there. It talks about the Morgan Stanley financing base case and the downside case and the management case. Did you have anything to do with -- I'm sorry. Are you on the same Page 13?
A. No, I'm not. Sorry. Which? 15?
Q. 13.
A. 13. Okay. Oh, I see. Sorry. Okay. Yes.
Q. I would just like you to read those. My question is going to be, did you have anything to do with developing any of those cases or commenting on them?
A. I don't recall being involved, no.
Q. Do you know who did?
A. No, I don't know.

NOT A CERTIFIED COPY

018503

Page 190

Q. Turn to the next page. It's a "Pro Forma Capitalization for 1997" is what it's entitled, and then it continues thereafter; is that correct?
A. I believe so, yes.
Q. Do you see the line entitled "Pre-Tax Synergies"?
A. Yes, I do.
Q. And it shows synergies from 1996, '97, '98, and thereafter?
A. Yes.
Q. Did you have anything to do with selecting that number or --
A. I don't believe so, no.
Q. Do you know where it came from?
A. No, I do not.
Q. If you look down at the balance sheet data at the bottom and the reference to the debt, this set of projections would reflect that Sunbeam would be free of both the bank debt and the zero coupon debt by some point of 2002?
A. That's what it appears to indicate, yes.
Q. Do you remember any conversations at

Page 191

the leveraged finance commitment committee about how long it would take Sunbeam to clear itself of this debt?
A. No, I don't recall.
Q. Do you remember any discussions about whether the debt would be repaid from earnings or repaid from asset sales or other sources?
A. I don't recall.
Q. Do you remember Mr. Strong being asked about that?
A. I don't recall.
Q. Turn to the next page, Page 15, there are some credit statistics, and it's various debt coverage ratios.
A. Yes.
Q. Do those debt coverage ratios reflect the coverage you would expect for a high yield loan or an investment grade loan?
MS. BROWN: Object to form.
A. It's very much a qualitative decision, because you can't just look at the numbers. The rating agencies also look at the scope and the scale of the company, which I think was taken into consideration for

Page 192

Sunbeam. So I'm not a rating agency, so I could not -- I couldn't say one way or another. I disagree with them frequently.
Q. Okay. Fair enough. Do you know if the rating agencies ever rated this debt?
A. To my knowledge, I believe they did, yes.
Q. Did they rate it after Mr. Dunlap's termination?
A. I don't know.
Q. Do you know if they rated it before his termination?
A. I don't know.
Q. Turn to the next page, Page 16, there is an item that says, "Coleman synergies rationale, 118 million." Do you see that?
A. Yes, I do.
Q. Do you remember any discussions about the items contained under that heading?
A. No, I do not recall.
Q. You don't remember that being discussed at the meeting that you attended?
A. I don't recall.
Q. If you turn, please, to Page 18, there is a description of Sunbeam among

Page 193

investment considerations, and the last item is as follows: "Conservatively estimated synergies of $150 million from combination." Do you see that?
A. Yes, I do.
Q. Do you remember any discussion about those items?
A. No, I do not recall.
Q. It continues on to the following page, just in case that refreshes your recollection.
A. No, it does not.
Q. And then at the bottom of Page 19 carrying onto Page 20, there is a description of Coleman and the Coleman acquisition. I would ask you to read that, please.
A. Okay.
Q. Did you provide any of the material that's contained here?
A. I don't recall anything, no.
Q. Do you remember any discussion about this either at the committee or before?
A. No, I don't recall.
Q. There is no mention in here of the fact that Coleman is in the process of

NOT A CERTIFIED COPY

018504

Page 194

restructuring. Do you remember that being discussed at the commitment committee?
A. I don't recall.
Q. Would you please turn to Page 23. There is an item entitled "Ability to attain synergies." I would like you just to read that to yourself, and let me know when you've finished it.
A. Okay.
Q. Did you have anything to do with drafting this?
A. I don't recall so, no.
Q. Do you remember any discussions about it?
A. No, I don't recall.
Q. It starts by saying that Morgan Stanley and Coopers & Lybrand, special acquisition consultants to Sunbeam, have had extensive discussions, and so on. Did you participate in any discussions with Coopers & Lybrand about potential synergies?
A. I don't recall any.
Q. At the end of this paragraph it says that Mr. Conway has modeled 150 million in synergies in '98, and he feels that there

Page 195

could be upside to this figure. Do you remember that being discussed?
A. I don't remember that, no.
Q. You know Mr. Conway?
A. I know him, yes.
Q. Do you remember if he was at the meeting?
A. I don't remember.
Q. Do you remember any discussions Mr. Conway had or participated in about synergies?
A. I don't remember, no.
Q. If you turn to the next page and largely for the remainder of this document are financial numbers, and it's entitled "Based Financing Case." You didn't have anything to do with preparing that document; is that correct?
A. I don't think I did, no.
Q. And if you turn, please, to Page 40 of the document, it's entitled "Credit Downside." Did you have anything to do with preparing that downside case?
A. I don't think so, no.
Q. I'm not going to ask you to go

Page 196

through this model, but do you have a recollection of the difference between the base case and the downside case?
A. I know one's better than the other, but --
Q. I think I know that, too.
A. But other than that, specifically, no.
Q. Okay. Well, that's all I needed to know. You can put that document aside. Now having seen this document and going through the things that we've gone through, does that refresh your recollection further about the conversation that you previously testified about in which Mr. Strong was asked to stand behind Sunbeam?
A. No, it does not.
(Document Bates stamped Morgan Stanley Confidential 18885-18942 marked CPH Exhibit 280 for identification, as of this date.)
(Document Bates stamped Morgan Stanley Confidential 59244-59266 marked CPH Exhibit 281 for identification, as of this date.)

Page 197

Q. Ms. Eltrich, the court reporter has marked as Exhibits 280 and 281 some additional copies of this document, and I suspect you're not going to have to turn past the cover page on either one.
A. Okay.
Q. Do you recognize the handwriting on either one of them?
A. No, I do not.
Q. You testified that you recall a conversation in which Mr. Strong was asked about Sunbeam's first quarter performance. Do you recall any conversations after that date to ask how Sunbeam was doing, whether Mr. Strong's representation was correct?
MS. BROWN: Objection to the extent that mischaracterizes the testimony.
A. I was not -- to my recollection, I was not involved in any conversations.
Q. Have any been related to you?
A. Not that I recall.
Q. Subsequent to the closing, you've come to learn that Sunbeam, in fact, did not meet their numbers for the first quarter of 1998; is that correct?

NOT A CERTIFIED COPY

018505

Page 198

MS. BROWN: Object to form.
A. I know I learned it at some point. I couldn't tell you when.
Q. And have you come to learn that one of the reasons for that was that Sunbeam had accelerated sales from 1998 into 1997?
MS. BROWN: Objection to form.
A. I learned it at some point, but, honestly, it took us a while to figure out -- from my memory, it took us a while to figure out exactly what they had done.
Q. And I think we've established that you went on maternity leave between the 20th and the 25th of March?
A. Correct.
Q. And you returned on June 15th?
A. Correct.
Q. When you refer to the figuring out of what Sunbeam had done, was that after June 15th or before March 25th?
A. From my own figuring out, it was after June.
Q. Now, in connection with the financings, the convertible debenture offering, are you aware that Morgan Stanley

Page 199

received comfort letters from Sunbeam's accountants?
A. I was not involved in that process.
Q. Whether you were involved in the process or not, are you aware that Morgan Stanley, in fact, obtained comfort letters from Arthur Andersen?
A. I'm not in a position to verify that.
Q. Okay. So you don't know?
A. I don't know.
Q. To your knowledge, have you ever seen the comfort letters that Morgan Stanley received?
A. To my knowledge, no, I have not.
Q. Ms. Eltrich, I'm giving you what has been marked as Exhibit 17 in a prior deposition. It's a letter to Morgan Stanley dated March 19th, 1998, from Arthur Andersen. Have you ever seen this before?
A. I don't recall.
Q. Now, if you turn a couple of pages into it, Paragraph 5, it's on Page 3 of the letter, in item 5-B there at the bottom of the page it describes Sunbeam's net sales, and it

Page 200

compares roughly the same month in two different years. The first column is basically sales in January of '97, and the second column is basically sales in January of '98; is that correct?
A. It appears to be.
Q. And it shows that January '97 sales were about 73 million, and January '98 sales were about 29 million. Were you aware of that fact when you were at the leveraged finance credit committee?
A. I don't recall.
Q. Do you remember if that was discussed at the meeting?
A. I don't recall.
Q. If you turn to the next page, Paragraph 6-B, just read that to yourself.
A. Okay.
Q. Prior to the closing had you seen that language?
A. I don't recall.
Q. You can put that one to the side. Earlier in this deposition I showed you a press release that was issued by Sunbeam. And I believe it's in front of you. It's been

Page 201

marked CPH Exhibit 14.
A. Um-hmm.
Q. Were you aware of that press release on or about the date it was issued?
A. I vaguely remember it being issued.
Q. Did you have anything to do with its issuance, you personally?
A. I don't believe I did, no.
Q. Were you aware it was going to be issued before it was issued?
A. I can't recall.
Q. Do you remember whether the press release was discussed at the leveraged finance commitment committee?
A. I don't recall.
Q. Do you know if any disclosure other than Exhibit 14 was made to the public about Sunbeam's first quarter sales?
A. I don't recall.
Q. Do you remember if any disclosure was made to the public about Sunbeam's first quarter earnings prior to the closing on March 30th?
A. I don't recall.
Q. In connection with the work that you

NOT A CERTIFIED COPY

0-8506

Page 202

did for Morgan Stanley, did you do any investigation or digging into any of the facts that are addressed in the press release?
MS. BROWN: Object to form.
A. To my recollection, I was not involved in that part of the process.
Q. Are you aware of the efforts that Morgan Stanley went through to attempt to sell the convertible notes to investors?
MS. BROWN: Object to form.
A. To my recollection, I was not involved in that process.
Q. So there was a road show you didn't attend?
A. I do not recall attending the road show.
Q. Do you remember attending a lunch in New York, it was part of the road show, but it was not just a road show presentation, at which the deal was discussed?
A. I don't recall.
Q. Now, after the leveraged finance commitment committee meeting, do you recall doing anything else on this deal prior to closing?

Page 203

A. I don't recall.
Q. Do you know if anyone at Morgan Stanley did any further digging after the commitment committee meeting into Sunbeam's first quarter performance or Sunbeam's sales or Sunbeam's earnings?
MS. BROWN: Objection to form and foundation.
A. I wasn't involved, so I really can't --
Q. You don't know.
A. I can't comment.
Q. Now, the analysis you did of Coleman primarily addressed its debt structure, the debt issuance it had made; correct?
MS. BROWN: I'll object to form.
A. It was specifically on the escrow notes.
Q. Did you ever prepare an analysis of the stock value of Coleman, what you thought the stock should be trading at?
A. Within our research report we put a valuation on the company, which gave an implied stock value, but I never put an opinion or direct valuation on the stock.

Page 204

Q. Aside from what's contained in the research reports we've talked about, would there be anything else out there that would reflect the work you did that would have this implied price, implied value for the stock?
MS BROWN: I'm sorry. Can I hear that back.
MR. BRODY: Let me withdraw it and ask it again.
Q. Aside from the two research reports that we've addressed, are you aware of any documents that were published by Morgan Stanley reflecting your work that would contain an implied price for the equity in Coleman?
A. To my knowledge, there was nothing else.
Q. Now, are you aware that Morgan Stanley opined to Sunbeam that the acquisition price of Coleman was fair to the Sunbeam shareholders?
MS. BROWN: Objection. Asked and answered.
A. I was not involved in that process.
Q. Did you ever hear anyone express a

Page 205

view that the transaction was not fair to Sunbeam?
A. To my recollection, I never heard anything to that nature.
Q. Now, you left on maternity leave a few days before your daughter was born on the 25th of March; is that correct?
A. I believe so, yes.
Q. And then you returned, you said, you think the day that Mr. Dunlap was removed?
A. No. I remember the front page of the Wall Street Journal. It was the day that Mr. Dunlap was removed.
Q. Okay. After you returned, what work did you do in connection with Sunbeam?
A. What I remember is touring a couple of facilities, and I think they were primarily distribution and manufacturing for Sunbeam specifically, and I remember a couple of meetings with Mr. Levin where he was giving us updates as he kind of sorted through the mess.
Q. Do you remember when these facility tours were?
A. I do not recall.
Q. Do you remember when your meetings

NOT A CERTIFIED COPY

Page 206

with Mr. Levin were?
A. I do not recall.
Q. Can you place them in connection with your return to the company?
A. No, I really cannot.
Q. When you met with Mr. Levin, was it just Morgan Stanley people, or was it representatives of other banks as well?
A. There were representatives of other banks.
Q. Do you know who was there from Morgan Stanley?
A. I remember Brom Smith, but that's it. And I can't say he was at all the meetings. I just remember him being at one.
Q. Do you know why you participated in these meetings, why you were invited?
A. Because I was the consumer products analyst.
Q. Do you remember what Mr. Levin said?
A. No, not specifically.
Q. Do you remember generally what he addressed?
A. He addressed some of the inefficiencies throughout the company, but

Page 207

that's all I can generally state to you. He was on a steep learning curve as well, obviously, as he tried to figure out what was going on.
Q. Okay. So does this indicate to you that these meetings were probably early in Mr. Levin's tenure?
A. To my recollection, yes, they were.
Q. Do you remember anything else that was said at those meetings?
A. I remember Levin saying that Sunbeam should be able to work, that he should be able to fix it, that it was a great brand, and that the category, if you look at what Cuisinart had done, he felt there was something to be done there. But that was very preliminary, obviously.
Q. Do you remember anything else that was said at the meetings?
A. I don't specifically remember anything, no.
Q. Thereafter did you play any additional role in connection with Sunbeam?
A. I don't recall any.
Q. Do you remember providing any

Page 208

support to the bank group in trying to decide how the company should proceed?
A. I don't recall any, no.
Q. You're aware that at some point Sunbeam declared bankruptcy?
A. I was aware, yes.
Q. Were you at Morgan Stanley at the time?
A. I don't remember.
Q. Do you remember being consulted or advised about the bankruptcy?
A. I don't recall anything.
Q. Do you remember any further conversations with Mr. Smith or others from the bank group at Morgan Stanley about the loan?
A. I don't remember any.
Q. Do you remember if you or your group were ever asked to analyze the value of Sunbeam?
A. I don't remember.
Q. Now, you indicated that in connection with the work that you do for evaluating the risk of high yield notes, you look at the risk of bankruptcy?

Page 209

A. Yes.
Q. Did you ever perform a bankruptcy risk analysis for Sunbeam?
A. To my recollection, no, I did not.
Q. Do you know if anyone at Morgan Stanley did?
A. I don't know.
Q. In connection with the bank loan, Sunbeam made various communications to Morgan Stanley about its performance. Were you ever asked to analyze any of those estimates or projections?
MS. BROWN: Object to form.
A. To my recollection, no, I was not.
MR. BRODY: Let's go off the record. I may just have a few minutes.
VIDEOGRAPHER: The time is 1:27, and we are off the record.
(Recess)
VIDEOGRAPHER: The time is now 1:30, and we are back on the record.
MR. BRODY: I have no further questions. Thank you for your time and your cooperation.
MS. BROWN: I just have a couple of

NOT A CERTIFIED COPY

018508

Page 210

quick questions.
THE WITNESS: Okay.
EXAMINATION BY
MS. BROWN:
Q. First referring to CPH Exhibits 272 and 275, which were the analysis or analyses that you published.
A. Yes.
Q. Referring to the first one, which is dated October 9th, 1997, and marked CPH Exhibit 272, you answered a number of questions from Mr. Brody concerning the estimates or estimations that you had placed into this document. Do you know whether Coleman met your estimates?
A. To my recollection, they did not meet my initial estimates.
Q. And referring to CPH Exhibit 275, which is dated January 26, 1998, do you recall one way or the other whether Coleman met the estimates that you had published in that document?
A. I don't remember.
Q. When you spoke about the meeting that you were at where Mr. Strong stood by his

Page 211

client, and you mentioned that he was asked to vouch for the integrity of his client, can you explain what you meant by the word "integrity"?
A. Meant by do you believe in your client, is this a client that is what Morgan Stanley will represent. It's hard to exactly -- I mean it encompasses many different things. Is this a quality value client that we trust, that we are willing to represent for our investors. And that's what I mean by integrity.
Q. At the time of this meeting was there any concern raised that you recall with regard to Sunbeam's accounting practices?
A. To my recollection, there was nothing raised.
Q. Do you recall any questions concerning Sunbeam's accounting practices discussed within Morgan Stanley prior to the close of the deal in March of 1998?
A. I don't recall any.
Q. Do you remember having any concerns?
A. I don't remember having any concerns, no.

Page 212

Q. So when you spoke about the word "integrity," were you referring to a moral integrity or financial integrity?
MR. BRODY: Object to the form.
A. I was referring to a moral integrity.
Q. And the point of this meeting was to determine whether or not Morgan Stanley would make a loan to Sunbeam; is that correct?
A. To my recollection, yes, it was.
Q. What was the consequence to Morgan Stanley, as you understood it, if Sunbeam failed to honor its obligations under the loan?
A. We would lose over $600 million.
Q. Do you know whether Morgan Stanley actually lost money on that loan?
A. I believe we lost the entire loan, yes.
Q. And very early in your testimony you referred to the fact that Revlon had preannounced in 1998?
A. Yes.
Q. You were referring to the fact that they had preannounced that they didn't expect

Page 213

that they would meet earnings estimates?
A. That is correct.
MR. BRODY: Object to the form.
A. Actually, I'm sorry. That is not correct. They actually outright missed numbers in October of 1998. They did not preannounce. They simply completely missed their forecast.
Q. And you referred to something called "stuffing the trade"?
A. Yes.
Q. Could you explain what you were referring to?
MR. BRODY: Object to form.
A. The process that they had undergone was they had incentivized the channel to over-order for what they could sell, and thereby artificially increasing their sales in the previous quarters, and then when the third quarter came, the channel had too much product and did not reorder, and consequently they missed their numbers.
Q. And when you say "they," you're referring to Revlon?
A. I am referring to Revlon.

NOT A CERTIFIED COPY

CONFIDENTIAL

Q. And this occurred in 1998?
A. Yes. This was in October of 1998 that they missed.
Q. And at the time Revlon was owned in large part indirectly by Mr. Perelman; correct?
MR. BRODY: Object to form.
A. It was to my knowledge, yes.
MS. BROWN: I have no further questions.
MR. BRODY: I just have a couple.
BY MR. BRODY:
Q. I think you testified that Morgan Stanley lost their entire loan?
A. To my knowledge, they had, yes.
Q. Okay. You weren't at Morgan Stanley when the bankruptcy was resolved, were you?
A. I don't think I was.
Q. Are you aware that as a result of the bankruptcy, Morgan Stanley became the largest shareholder of Sunbeam?
A. I'm not aware.
Q. Have you followed Sunbeam after that to see what's happened to it since then?
A. I have not.

Q. So you don't know what Morgan Stanley's investment in Sunbeam has returned to them?
A. I only know anecdotally from people that I know that are still at the firm who have complained about it.
Q. But that's nothing from your personal knowledge?
A. Nothing from my personal knowledge.
(Continued on next page)

MR. BRODY: I have nothing further. Thank you.
THE WITNESS: Thank you.
VIDEOGRAPHER: The time is now 1:35, and this ends the deposition, and we are off the record.
(Time noted: 1:35 p.m.)

KAREN HAYCOX-ELTRICH

Subscribed and sworn to before me this day of , 2004.

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, JOAN WARNOCK, a Notary Public within and for the State of New York, do hereby certify:

That KAREN HAYCOX-ELTRICH, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2004.

JOAN WARNOCK

NOT A CERTIFIED COPY

0185 10

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
Karen Eltrich	Mr. Brody	5
	Ms. Brown	210
	Mr. Brody	214

---------- INFORMATION REQUESTS ----------

DIRECTIONS: 13, 14
RULINGS:
TO BE FURNISHED:
REQUESTS:
MOTIONS:

---------- EXHIBITS ----------

CPH		FOR ID.
272	Initiation of coverage for Coleman	65
273	Document Bates stamped Morgan Stanley Confidential 23225-23229	65
274	Earnings announcement of Coleman	97
275	Research report dated January 26 issued by Ms. Eltrich	99
276	Document Bates stamped CPH 251099-251122	121

277	Revised Working Group List for Sunbeam Corp.	135
278	Document Bates stamped Morgan Stanley Confidential 36700-36720	171
279	Commitment Committee memo	179
280	Document Bates stamped Morgan Stanley Confidential 18885-18942	196
281	Document Bates stamped Morgan Stanley Confidential 59244-59266	196

NOT A CERTIFIED COPY

018511

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 03 CA-005045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

DEPOSITION OF PHILLIP E. HARLOW
TAKEN AT THE INSTANCE OF THE DEFENDANT

Fort Lauderdale, Florida
Friday, November 19, 2004
9:04 a.m. - 1:50 p.m.

NOT A CERTIFIED COPY

018513

APPEARANCES:

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Summer Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036
Counsel for the Defendant
BY: JAMES M. WEBSTER, III, ESQUIRE
and REBECCA A. BEYNON, ESQUIRE

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Counsel for the Plaintiff
BY: CLARK C. JOHNSON, ESQUIRE

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
101 Park Avenue
New York, New York 10178-0061
Counsel for Phillip E. Harlow
BY: SCOTT D. FISCHER, ESQUIRE
and MICHAEL J. MOSCATO, ESQUIRE

INDEX

WITNESS:	PAGE
PHILLIP E. HARLOW	
Direct Examination by Mr. Webster	4
Cross-Examination by Mr. Johnson	147
Redirect Examination by Mr. Webster	155
Recross Examination by Mr. Johnson	158
Redirect Examination by Mr. Webster	161

EXHIBITS

Defendant's Exhibit #MS-600	21
Defendant's Exhibit #MS-39	38
Defendant's Exhibit #MS-117	57
Defendant's Exhibit #MS-31	66
Defendant's Exhibit #MS-48	72
Defendant's Exhibit #MS-9	72
Defendant's Exhibit #MS-44	80
Defendant's Exhibit #MS-43	89
Defendant's Exhibit #MS-32	120
Defendant's Exhibit #MS-47	122
Defendant's Exhibit #MS-10	126
Defendant's Exhibit #MS-602	132
Defendant's Exhibit #MS-603	133

The deposition of PHILLIP E. HARLOW was taken before me, BARBARA GALLO, RMR-CRR, Registered Merit Reporter-Certified Realtime Reporter, Notary Public, State of Florida at Large, at Ocean Executive Suites, 515 Seabreeze Boulevard, 2nd Floor, in the City of Fort Lauderdale, County of Broward, State of Florida, beginning at the hour of 9:04 a.m., on Friday, November 19, 2004, pursuant to Notice filed herein, at the instance of the Defendant in the above-entitled cause pending before the above-named Court.

- - -

THE VIDEOGRAPHER: We're on the record. This is the 19th day of November, 2004. The time is 9:04 a.m. This is the videotaped deposition of Phillip Harlow in the matter of Coleman Holdings Incorporated versus Morgan Stanley & Company, Incorporated. This deposition is being held at 515 Seabreeze Boulevard, 2nd Floor, Fort Lauderdale, Florida.

My name is Waltz Waun. I'm the videographer representing Visual Evidence.

Would the attorneys please announce their appearances for the record.

MR. JOHNSON: Clark Johnson, Jenner & Block, Chicago for plaintiff, Coleman Parent Holdings.

MR. WEBSTER: Jim Webster for defendant, Morgan Stanley.

MR. MOSCATO: Michael Moscato from the law firm of Curtis, Mallet for the witness, Phillip Harlow.

MS. BEYNON: Rebecca Beynon.

MR. MOSCATO: I'm sorry. And with me -- he's not present now, but he will be arriving shortly -- Scott Fischer from Curtis Mallet. Sorry.

MS. BEYNON: Rebecca Beynon on behalf of Morgan Stanley, defendant.

THEREUPON,

PHILLIP E. HARLOW,

being by me first duly sworn to tell the whole truth, as hereinafter certified, testified as follows:

DIRECT EXAMINATION

BY MR. WEBSTER:

Q. Good morning, Mr. Harlow.

A. Good morning.

Q. You've been deposed before; is that correct?

A. Many times.

NOT A CERTIFIED COPY

Q. You understand that you have to give verbal answers in response to all my questions?
A. Yes.
Q. And I'd ask if you don't understand a question of mine that you ask me to rephrase it, and I'll do my best to do that. You understand that?
A. Yes.
Q. And is it fair for me to assume that if you don't ask me to rephrase it, you understood my question?
A. If I -- if I hear you correctly, that's -- yes, that's my understanding.
Q. What did you do in preparation for today's deposition?
A. Just flipped through a couple past depositions and looked at a couple of memos, and that was it.
Q. What memos did you look at?
A. Looked at a memo from our work papers on discussions with your client, Morgan Stanley.
Q. Who wrote that memo?
A. That memo was written by Larry Bornstein.
Q. Do you know when it was written?
A. Sometime in 1998.
Q. Do you know when in 1998?

A. No, I don't.
Q. Was it after March of 1998?
A. Yes, after March.
Q. Was it in the summer of 1998?
A. Somewhere around there, I would guess.
Q. What other documents did you review?
A. I reviewed an Answer to a Complaint. I don't remember which one it was. And it was just cursory -- cursory review. Nothing -- didn't read it in detail.
Q. Do you know who, which party was making that answer?
A. I don't remember.
Q. You don't remember that it was Arthur Andersen or Morgan Stanley?
A. I think it was Arthur Andersen, but -- I've seen so many documents over the past six years that I just lose track.
Q. Where did you get that Answer?
A. From my attorneys.
Q. Did you review any other documents in addition to the memo from Mr. Bornstein and the Answer to the Complaint?
A. I just looked at a few other things, but I just don't recall where they were.
Q. And why did you review these documents?

A. Because it's -- you know, so much time has transpired since whatever you want to talk about today has taken place. I've got, you know, lots to do and lots on my mind, and I don't think about Sunbeam much anymore.
Q. Did anybody suggest that you review these documents?
A. My attorneys thought that I should try to refresh my memory.
Q. Did you review any documents that your attorneys did not recommend you to review?
A. No.
Q. Did you meet with anybody in preparation for today's deposition?
A. No one other than my attorneys.
Q. Have you met with anybody from Jenner & Block before today?
A. Not that I can recall.
Q. Have you ever --
A. Well, let me think about that. Years ago when I was in Chicago we used to do work with Jenner & Block. They were one of the top firms that my firm worked with, and I worked on transactions with Jenner & Block people. So to answer your question correctly, I would have to say yes.

Q. Have you met with anybody from Jenner & Block in connection with this litigation?
A. Other than this morning?
Q. Yes.
A. No.
Q. Have you spoken with anybody from Jenner & Block on the phone in connection with this litigation?
A. Not to my knowledge.
Q. Have you spoken with anybody other than your attorneys about this litigation that -- the case between Coleman and Morgan Stanley?
A. No.
Q. Have you met with anybody from Coleman regarding this litigation?
A. No.
Q. Where do you work, Mr. Harlow?
A. I'm an office furniture salesman now.
Q. And where were you working in March of 1998?
A. Arthur Andersen.
Q. How long had you been with Arthur Andersen at that point?
A. Well, I don't know. If I've got to do math without coffee, that may take a while. I started in 1971, so, you know, I guess 27 years maybe. '98 to '71.

NOT A CERTIFIED COPY

Q. And in March of 1998 were you part of the Sunbeam audit team?
A. Well, we completed the audit by then. I -- you know, we had auditors working on various things at Sunbeam, so I guess you would say yes.
Q. What was your position in the Arthur Andersen Sunbeam audit team?
A. I was an engagement partner.
Q. Was that the most senior position in the audit team?
A. I really don't know. I mean, we had all kinds of senior partners at Arthur Andersen that would technically be more senior than me.
Q. No, I didn't mean if anybody at Arthur Andersen was more senior than you. I'm asking if you were the most senior member of the Sunbeam audit team.
A. No, I would say that Bill Pruitt was more senior than I was, and he was a member of the audit team.
Q. What was his position?
A. He was the managing partner of our Florida practice, and he was the concurring partner that I would concur with on issues.
Q. Did there come a time in 1998 when you began to do work in connection with the Sunbeam acquisition

of Coleman?
MR. MOSCATO: Object to the form. You can answer.
THE WITNESS: Yes, very very limited work, yes.
BY MR. WEBSTER:
Q. What work did you do?
A. We spent a day in a Kansas City meeting with Ernst & Young. We were told we couldn't go to Wichita to the actual Coleman facility because they didn't want outsiders coming in to take a look at the company. And so we spent a grand total of a day looking at the Coleman acquisition, just meeting with their outside auditors, no one with the company. And that was, you know, apparently to help the company do some due diligence on the transaction.
Q. To help who do due diligence?
A. The company, Sunbeam. We were retained by Sunbeam for that work.
Q. Did Sunbeam have anybody else helping them do due diligence on Coleman?
A. My understanding Morgan Stanley did a tremendous amount of work on that acquisition.
Q. For Sunbeam?
A. For Sunbeam, that's correct.

Q. When was this meeting in Kansas City?
A. I don't remember the exact date, but it was prior to the transaction.
Q. Do you remember whether it was in March or February of 1998?
A. Well, I think, I think the transaction was announced sometime early March, so it probably was the latter half of February.
Q. Who else attended the meeting?
A. I had Mr. Gluck was with me who is the controller of Sunbeam. And I don't remember the engagement partner from Ernst & Young from Wichita. You know, I could look in records, but I just don't remember his name. That's who we met. And we spent basically time looking at their audit work papers.
Q. Did you other than the Kansas City meeting did you meet with Ernst & Young any other time in connection with the acquisition?
A. Which acquisition now?
Q. Sunbeam's acquisition of Coleman.
A. Of Coleman. We're not talking about other -- any other acquisition, just Coleman. Not to my knowledge.
Q. Okay. Did you meet with Ernst & Young in connection with other Sunbeam acquisitions?

A. I believe I did in earlier years.
Q. Okay.
A. Not Coleman related.
Q. Now you said that you could not go to Wichita?
A. Yes.
Q. Which is where the Coleman plant was?
A. Yes.
Q. Was that unusual?
MR. MOSCATO: Objection.
MR. JOHNSON: Object to form.
BY MR. WEBSTER:
Q. In your experience was that unusual?
MR. JOHNSON: Same objection.
THE WITNESS: You know, over my years I had done it both ways. I can understand why public companies want to keep a pending acquisition somewhat under wraps, you know, to avoid leakage of information about a potential merger acquisition. But, you know, in my professional opinion it's more helpful for us to be -- you know, if I'm going to be helping in due diligence to actually see the facility and be familiar with things from a hands-on

NOT A CERTIFIED COPY

standpoint rather than from a distance.
BY MR. WEBSTER:
Q. What do you mean by leakage of information?
A. Well, people leak information all the time. Pending transactions. You know, someone that works at Coleman could have said, well, Arthur Andersen was in here doing due diligence for Sunbeam asking a lot of questions on accounting. That information could get out to the public, and people could start selling or buying stock based on that information.
Q. So you're referring to information about the existence of the acquisition?
A. Yes.
Q. Not financial information about Coleman?
A. No, no, not at all. Leakage of information which should not be leaked to the public at that point in time.
Q. Was it your understanding that you had complete access to Coleman's financial information when you conducted the due diligence?
A. No, it was not my understanding at all.
Q. What was your understanding?
A. My understanding was I just had access to the work papers that were provided by Ernst & Young. And they pulled out a lot of work papers and kept a lot of

things from us in that review.
Q. Were there things that you requested that they kept from you?
A. Yes.
Q. What did they keep from you that you requested?
A. Specifically items related to internal control issues, conservatism or lack therein, preparation of financial statements. I think they -- the internal review memos and so forth that were prepared by review partners on the engagement. Those are the things that come to mind.
Q. How did that impact your ability to conduct the due diligence?
MR. MOSCATO: I object to the form. You can answer.
THE WITNESS: Well, I -- you know, I was asked to, you know, spend one day reviewing work papers and find what I could find. And, you know, I found a number of things, a number of issues just based on that. I probably could have found some more issues.
BY MR. WEBSTER:
Q. Did you report those all to Sunbeam?

A. Yes.
Q. What were the issues that you found that you reported to Sunbeam?
A. We had issues on reserves not being properly established. We had, I think, rebates issues that -- were not properly recorded. I think we had some timing on sales issues improperly reported. That was just based on a review, quick review of the work papers.
Q. Did you discuss your findings with Sunbeam?
A. Yes.
Q. Who did you discuss them with?
A. Mr. Gluck.
Q. And what did you say?
A. Oh, he was there right there with me and we went through them together, so he was nodding his head yes and taking notes.
Q. How were those issues resolved?
A. Well, you know, the company was aware of them. I don't know if there was any subsequent renegotiation of purchase price as a result, but as far as I know those issues remained at the time the acquisition was done.
Q. Did you encourage Mr. Gluck to ask for more access to Coleman financial information?

A. I think Mr. Gluck -- I think Mr. Gluck was a pretty astute, you know, CPA. He was an experienced controller, senior manager at a big eight accounting firm, Ernst & Young, I guess. And Mr. Gluck pretty much made up his mind what he wanted to do. And at that time he was conferring with Mr. Rus, Rus Kersh on what should be done.
But I -- I let it be known to Bob that I thought it was a pretty limited review for this size of acquisition, but I was assured that there were others that were taking a very close look at the company, including Morgan Stanley, and they were very involved in due diligence of Coleman.
Q. Who told you that?
A. Mr. Gluck, Mr. Kersh, Mr. Fannin.
Q. Do you know if Mr. Gluck or anybody at Sunbeam pushed for more access to Coleman's financial information?
MR. MOSCATO: I object to the form. You can answer.
THE WITNESS: Yes, Mr. Gluck did. I mean, I was involved in, you know, a number of conversations after the acquisition was done where Mr. Gluck was trying to get more financial information about the

NOT A CERTIFIED COPY

company, trying to get his arms around the, you know, the numbers.

BY MR. WEBSTER:

Q. This is after the acquisition?

A. Yes, yeah.

Q. But before the acquisition do you know if he pushed for more access to Coleman financial information?

A. I don't know what he did. He was extremely busy. There were three acquisitions going on at the same time. Again, we were -- like I say, our review was extremely extremely limited for this type of deal.

Q. Did you do any work in connection with the financing of the acquisition of Coleman?

MR. JOHNSON: Objection to form.

THE WITNESS: Well, we didn't basically design the -- or come up with the structure of the financing. I mean, we just basically were involved in the financial recording relating to documents that needed to be filed to complete financing. But we were not involved in the structure of the financing or giving opinions on any aspect of the financing. That was totally out of our area of

responsibility.

BY MR. WEBSTER:

Q. You did do some work in connection with the debenture offering; is that correct?

A. Debenture?

Q. Yes.

A. Well, we did whatever work was required to prepare the document as it related to financial statements and financial information within that document. But in terms of anything else in that document, no.

Q. Well, what did that work entail?

A. I don't remember all the details on that. It was a long time ago. But it was basically doing post audit review work. I think there was a -- I think there was a comfort letter in connection with that work that was requested by Morgan Stanley. You know, that was basically it. Review of the documents to be filed.

Q. I want to go back a second to the work that you did, the due diligence work you did on Coleman. Did you ever talk to anybody at Morgan Stanley about your due diligence work on Coleman?

MR. MOSCATO: I object to the form. You can answer.

THE WITNESS: We had discussions with Morgan Stanley from time to time. I can't remember if we talked specifically about the one-day experience related to Coleman. We had discussions about, you know, Morgan Stanley couldn't figure out how to calculate earnings per share. One of my staff people had to straighten them out on that. We had, you know, discussions on synergies that they prepared, synergies related to the acquisition.

But, you know, as far as, you know, that one day there I don't think I had any discussions. And I didn't think it was my responsibility to report to Morgan Stanley anyhow, but I did.

BY MR. WEBSTER:

Q. Why is that?

A. It's not my responsibility.

Q. You weren't working for Morgan Stanley?

A. Exactly. I was not working for Morgan Stanley. I was working for Sunbeam.

Q. Did you ever participate in a due diligence call with Morgan Stanley?

A. Yes.

Q. When was that?

A. I don't remember the date. Sometime in -- sometime in 1998, spring of '98.

MR. WEBSTER: Let's go off the record a second.

(A discussion was held off the record.)

THE VIDEOGRAPHER: Back on the video record 9:25 a.m.

(Defendant's Exhibit #MS-600 for i.d.)

BY MR. WEBSTER:

Q. Okay. In front of you, Mr. Harlow, is a document that's been marked Exhibit MS 600. Have you had a chance to review that?

A. I'm still looking at it here. Okay. I've looked at it.

Q. Does this document refresh your recollection as to when this due diligence phone call was?

A. I don't remember seeing this document, but this must have been around the time that it took place.

Q. Do you have any reason to doubt that the due diligence conference call took place on Thursday, March 12th?

A. No.

Q. Who else participated in the due diligence

NOT A CERTIFIED COPY

call?
MR. MOSCATO: You mean who else besides him or who else besides --
MR. WEBSTER: Who else besides Mr. Harlow.
THE WITNESS: I don't remember all the names of the people on the call. There were, you know, several people from Morgan Stanley, their attorneys, some other folks. But I did participate in this even though it doesn't have my name on it.
BY MR. WEBSTER:
Q. Who else participated from Arthur Andersen?
A. Larry Bornstein who's indicated in this memo.
Q. Anybody else?
A. I don't believe so.
Q. Did you ever speak to a man named John Tyree from Morgan Stanley?
A. I understand John was on the -- was on that call. I don't recall ever meeting him face to face.
Q. Was anybody from Sunbeam on the call?
A. I believe Mr. Gluck was on the call.
Q. Were any representatives of Coleman on the call when you participated?
A. I don't believe so.
Q. And when I say representatives, I mean their

auditors, Ernst & Young. Do you remember if anyone from Ernst & Young was on the call?
A. He might have been on the call, but I don't remember him being announced on the call or speaking on the call.
Q. Do you remember whether Coleman had any financial advisors in connection with the acquisition?
A. I don't remember. Don't recall.
Q. Do you remember whether Credit Suisse First Boston was involved in the transaction?
A. I don't remember.
Q. Do you remember what counsel Coleman had in connection with the transaction?
A. No.
Q. Do you know if there were any attorneys on the phone call?
A. Morgan Stanley's attorneys were. I think Davis Polk. I don't remember the gentleman's name.
Q. Any other attorneys?
A. Not that I can recall.
Q. What was the purpose of the call?
A. I just asked some questions. Morgan Stanley had provided kind of an outline as to areas they wanted to discuss. And, you know, it was just an opportunity for them to ask us questions.

Q. What questions did they ask? What type of questions did they ask?
A. I think they asked about things like passed adjustments that we might have made, you know, accounting in accordance with GAAP. You know, generally accounting type issues.
MR. MOSCATO: For the benefit of the court reporter, when he says "passed adjustments," it's p-a-s-s-e-d, not p-a-s-t.
Sorry.
BY MR. WEBSTER:
Q. Did Morgan Stanley ask any questions about the first quarter sales of Sunbeam for 1998?
A. I don't recall that on that call at all.
Q. Did you have any idea of what the status of Sunbeam's first quarter sales were for 1998 at the time of this call?
A. At the time of this call I don't think we had done our comfort letter work, and that's when I became aware of it. I think our comfort letter work was done after this date. So to answer your question, I don't believe I knew about it at that time.
Q. Did you have any discussions with Mr. Bornstein in advance of this call to prepare for

it?
A. Yes.
Q. What did you discuss?
A. Well, we discussed the outline that had been set by Morgan Stanley and appropriate responses to those questions.
Q. Did you discuss the possibility of questions about first quarter sales coming up?
A. I don't recall anything of that nature, no.
Q. Before this call had you asked Mr. Bornstein to look into Sunbeam's first quarter sales?
A. Specifically, no, not that I can recall.
Q. And did there come a point in time when you asked Mr. Bornstein to look into Sunbeam's first quarter sales?
A. Yes, there came a time when we became very focused on first quarter sales.
Q. When was that?
A. Sometime after this date. I don't remember the precise date.
Q. What prompted you to begin looking into first quarter sales for Sunbeam?
A. We were asked to prepare a comfort letter for Morgan Stanley.
Q. Who asked you to do that?

NOT A CERTIFIED COPY

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023892

A. I don't recall. We got, one of my team got a letter from Morgan Stanley or a call. I don't recall, but, you know, we got a request for a comfort letter.
Q. From Morgan Stanley?
A. From Morgan Stanley, yes.
Q. Had you talked to Sunbeam about the comfort letter before you got this request from Morgan Stanley?
A. I don't recall any direct discussion with Sunbeam.
Q. Do you know if anybody in your team had talked to Sunbeam about the comfort letter before you got this request from Morgan Stanley?
A. I don't. I don't know of that -- or those conversations, but I would assume that Mr. Gluck at some point in time mentioned to either Larry or, you know, one of our staff that a comfort letter would be required. But I don't know that for a fact.
Q. Did you talk to anybody on your staff about preparation of this comfort letter before you got the request from Morgan Stanley?
A. I don't recall any discussions before the request.
Q. Did you anticipate that this request would come from Morgan Stanley?

A. I thought there was a good possibility there would be one.
Q. Had Arthur Andersen started work on the comfort letter before this request came in from Morgan Stanley?
A. No.
Q. Do you remember when the request from Morgan Stanley came in for the comfort letter?
A. I don't remember that date, but it was sometime later in March. Sometime after this date.
Q. Okay.
A. But I can't recall the exact date.
Q. During the due diligence call, was there any discussion of Sunbeam's refusal to agree to certain accounting treatments on the '97 financial statements?
MR. MOSCATO: I object. I object to the form of the question.
MR. WEBSTER: Let me withdraw question. Let me withdraw the question.
BY MR. WEBSTER:
Q. Your team conducted the audit of Sunbeam's 1997 financial statements; is that correct?
A. That's correct.
Q. And at any point in that audit did you recommend certain -- that Sunbeam change any

accounting treatments on their financial statements?
A. Well, in connection with the 1997 audit we proposed some audit adjustments which we discussed with the company, and they had valid reasons for not wanting to record those. They had a different of -- opinion with, you know, our interpretation of GAAP, but they were, you know, in our mind immaterial, insignificant and we passed those adjustments.
Q. So they did not take the adjustments that you recommended; is that correct?
A. They did not pass -- they did notebook the immaterial adjustments that we proposed, that is correct.
Q. Was there any discussion of that in the due diligence call on March 12th of 1998?
A. There was a discussion that passed adjustments were immaterial, so that would fall within that category in my opinion.
Q. And who raised that subject?
A. I don't recall. I don't recall who asked the question, because I couldn't put the voices with the faces on the other end of the line.
Q. Did you discuss all of the proposed adjustments with Morgan Stanley in the due diligence call?

A. I don't recall if we discussed each and every one. We certainly made the point that we had passed adjustments which were, in our opinion, immaterial.
Q. Now besides this due diligence call with Morgan Stanley did you ever have any due diligence call with Coleman, with Coleman's auditors or financial advisors?
A. Not that I can recall.
Q. Did Coleman ever make any requests for your audit work papers from 1997?
A. I don't recall. They may have, but I just don't recall.
Q. Do you know if Coleman made any requests to discuss the '97 audits with you or anybody else at Andersen?
A. I don't recall. I don't recall any discussions with Coleman, the representatives, their auditors. I just don't recall any conversation on due diligence.
Q. All right. Now sometime after Morgan Stanley asked you to prepare a comfort letter did there come a time when you learned that Sunbeam's sales for the first quarter of 1998 were lower than expected?
MR. MOSCATO: I'm going to object to the characterization of the first quarter.

NOT A CERTIFIED COPY

0-2820

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023893

MR. WEBSTER: I'll withdraw the question.
MR. MOSCATO: I think you know what I mean. I don't want to make -- give a talking objection.
BY MR. WEBSTER:
Q. Did there come a time after Morgan Stanley requested the comfort letter that you learned that sales for Sunbeam in January and February of '98 were lower than expected?
A. Can you clarify that question for me as to whose expectations are we talking about?
Q. Sunbeam's.
A. I'm not -- I'm not sure I ever knew what Sunbeam's expectations were.
Q. Well, then the analysts' expectations?
A. I was told that the analysts expectations were probably not going to be met based on -- based on the sales at the point in time we were preparing the comfort letter.
Q. How did you learn this?
A. I learned this through my staff that was doing the work --
Q. Who finished it --
A. -- doing the work on the comfort letter.

Q. Who from your staff told you about this?
A. I believe I discussed it with Mr. Bornstein and -- certainly Mr. Bornstein and Dennis Pastrana.
Q. Do you remember when you discussed it with them?
A. It was during the time period in which they were working on the content of the comfort letter.
Q. Do you remember when that was?
A. It was probably within several days after receiving the Morgan Stanley request for the company, but I can't -- I don't recall the exact date.
Q. Did you have these discussions with Mr. Bornstein and Mr. Pastrana over the phone or in person?
A. Both.
Q. So there was more than one discussion?
A. Oh, yeah, more than one discussion, yes.
Q. And what was said about the sales figures?
A. I don't recall specific conversation, but it was one of, you know, somewhat disbelief that the sales levels were what they were compared to, you know, prior years you know, prior quarters. We were somewhat surprised that the sales were as low as they were. So that was the gist of that conversation or those conversations.

Q. Was there any discussion about what you needed to do about this information?
A. Well, at some point, you know, those conversations turned into need for disclosure. And any document that's going to go out, you know, where -- you know, any documents that were going to be used to sell debentures or, you know, we felt that if there was an analyst expectation of X and, you know, the company was not going to meet that expectation, that needed to be disclosed.
Q. Why?
A. Well, it needed to be disclosed because if you have potential investors, you know, thinking one thing and then reality is something else, that's exposure for the company and also exposure for, you know, anyone working with the company.
Q. So the need for disclosure was to protect those people who were going to invest in the debentures?
A. Well, potentially. That wasn't my responsibility. That was the company's responsibility. But, you know, we felt we should point it out.
Q. Did you discuss the need to disclose to anybody besides potential purchasers of the

debentures?
A. We didn't discuss with the -- well, we discussed with -- you're referring to Morgan Stanley as a purchaser of the debenture?
Q. No.
MR. MOSCATO: I was going to have a -- I was going to object to that. You answered too quick. I thought the question was vague. I personally couldn't understand it.
THE WITNESS: That's why I asked the question.
BY MR. WEBSTER:
Q. I'll rephrase the question. Did you have any discussions with your team about the need to disclose these figures?
A. Yes.
Q. Okay. And in your internal discussions with your team did you discuss the need to disclose this information to anyone other than potential investors in the debentures?
MR. JOHNSON: Objection to form.
THE WITNESS: Well, I mean, what do you mean others? The company -- Sunbeam? Stanley?

NOT A CERTIFIED COPY

BY MR. WEBSTER:
Q. Coleman. Did you discuss the need to disclose this to Coleman?
A. Well, what we discussed was the need for disclosure in the documents which all parties associated with that document would be able to see.
Q. The debenture offering?
A. Um-hum, yes.
Q. Did you discuss, though, the need specifically to disclose this to Coleman?
A. I don't recall.
Q. Do you recall whether with your Andersen team you discussed the need to send a letter to Coleman or place a phone call to Coleman to advise them of these sales figures?
MR. JOHNSON: Objection to form.
THE WITNESS: I'm pretty certain I didn't recommend that because that would have been way out of bound for us to do.
BY MR. WEBSTER:
Q. Why is that?
A. That's the company's responsibility, not our responsibility.
Q. Okay.
A. We were retained by Sunbeam, not Coleman.

Q. Did you discuss within Andersen whether or not you felt that Sunbeam had a responsibility to disclose this information to Coleman?
A. Yes.
Q. What was the discussion?
A. I don't recall the discussion, but we felt that Sunbeam should disclose this to the world.
Q. Well --
A. Make public disclosure. So that would be disclosure to everybody.
Q. I'm not asking about generally the world. Did you focus on the need for Sunbeam to disclose specifically to Coleman?
MR. JOHNSON: Objection to form.
THE WITNESS: I don't recall.
BY MR. WEBSTER:
Q. Now as a result of the discussions with your team did you come to a decision about what course of action you needed to take about this information?
A. Yes.
Q. What was that?
A. We felt it was necessary to discuss with management of the company that it was important that the company disclose, you know, in some fashion. We did not craft any wording or come up with, you know,

precise disclosure for the company but disclosed that the company would not meet the expectations that were on the street, you know, in some fashion, in some fashion let that be known.
Q. Were you confident at that time that the company would not meet the expectations of the analysts?
A. I was -- at the time I first saw it I was not confident. I was not confident at all. And then after I had discussions with some of the management team I was -- I still felt it was a real stretch that the company was going to be able to show significant increases in revenues by the end of the month because they only had at the time we found out 10, 11, 12 days to go by the end of the month, and they had to make, I think, in excess of $100 million in sales. And it had not been the company's experience in the past to be able to generate that level of sales in that short period of time. So I was, I was very skeptical that the company was going to be able to make their numbers.
Q. But did you ever conclude that they would not meet the numbers?
MR. JOHNSON: Objection to form.
MR. MOSCATO: I object. It's just

unclear what numbers.
MR. WEBSTER: The analysts' expectations for sales for the first quarter of 1998.
BY MR. WEBSTER:
Q. Did you ever conclude that it wasn't just a stretch but that they, in fact, would not meet those analysts' expectations?
MR. JOHNSON: Same objection.
THE WITNESS: Yeah, I concluded at some point on that.
BY MR. WEBSTER:
Q. When was that?
A. When the company -- when the company concluded.
Q. When was that?
A. Sometime towards the end of March. The company made a statement, made a public statement that they would not meet the analyst estimates. I concluded at that point.
Q. So after the press release came out?
MR. MOSCATO: Objection to form.
MR. JOHNSON: Objection to form.
BY MR. WEBSTER:
Q. Was it after the press release came out that

NOT A CERTIFIED COPY

018522

you concluded that they would not meet those expectations?

MR. JOHNSON: Same objection. Which press release? There's lots of press releases.

BY MR. WEBSTER:

Q. Did there come a time when Sunbeam made a press release about these first quarter sales figures?

MR. MOSCATO: I'm going to object to that.

MR. JOHNSON: I'd object to that.

THE WITNESS: There were a number of press releases that the company did put out in, you know, March, April time frame. And some of those press releases talked about sales; some talked about acquisitions. Which ones do we want to talk about?

MR. WEBSTER: Can I have MS 39, please?

(Defendant's Exhibit #MS-39 for i.d.)

BY MR. WEBSTER:

Q. Okay. Have you had a chance to review that?

A. I didn't read every word in this, but I think I've seen this unless some words have been changed in the original document.

Q. MS-39 is a press release from Sunbeam on

March 19th of 1998; is that correct?

A. That's correct.

Q. And if you could read the first sentence of that, please, in the record.

A. Delray Beach, Florida, March 19th, 1998. Sunbeam Corporation New York Stock Exchange SOC said today that it's possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for $285 million to 295 million. But net sales are expected to exceed 1997 first quarter net sales of 253.4 million.

Q. All right. That sentence -- nowhere in this press release does it say that Sunbeam will not meet analysts' expectations for the first quarter of 1998, does it?

A. Well, I think, in my opinion, when a public company puts out a statement like this, in my 30 years they're saying they're not going to make it. It's crystal clear in my opinion.

Q. The language in the press release does not say they will not meet their expectations, does it?

A. It's clear to me. It's clear to me. The company concluded -- anybody -- any investor that would read this would say they're not going to make it and their stock is going to get hit. I'm a hundred

percent confident.

Q. And is this is the press release that convinced you that they, in fact, would not meet the first quarter estimates?

A. Yeah, when I saw this press release, I -- concluded that management is saying they're not going to meet 285 million to 295 million sales in the first quarter.

Q. Did you participate in the drafting of this press release?

A. No.

Q. Did you discuss the creation of this press release with Sunbeam before it was issued?

A. I don't know how to answer that. I think that this press release -- and maybe I'm trying to take too much credit, but I think the reason why this press release even came out was because of the discussions I had with the management team about not being able to meet expectations.

Q. So you had discussions with management about the inability to meet expectations before this press release?

A. I did. I did, but we did not discuss drafting a press release or exactly what we were going to say in it. But this showed up shortly after my

conversation with management.

Q. Who did you talk to in management about the need for disclosure?

A. I talked to Mr. Gluck. I talked to legal department, Janet Kelley, David Fannin and Mr. Kersh, the company CFO.

Q. Gluck, Kelley, Fannin and Kersh?

A. Yes.

Q. On more than one occasion?

A. I don't recall. Well, let me go one by one. Mr. Gluck, yes, on more than one occasion. Miss Kelley, yes, on more than one occasion. Mr. Fannin, probably once before -- well, I talked to Mr. Fannin on a number of issues, but on this particular issue probably once before the press release was prepared. And, once again, Mr. Kersh, I talked to him from time to time on various issues. But in the time frame we're talking about just days prior to the release of this probably once.

Q. How many times did you talk to Mr. Gluck?

A. I don't recall. Five or six times.

Q. And what was said about the need for disclosure?

A. Mr. Gluck -- I don't remember precisely the words that he used, but the belief and the feeling

NOT A CERTIFIED COPY

that I got in talking to him about this issue is that he felt that it would be good if the company did have some disclosure on this issue, but he needed some help from me to get that done, the work on it.

Q. What do you mean by that?

A. To work on other members of management over him.

Q. Did he say why?

A. No.

Q. What do you mean he needed you to work on management?

A. Once again, I don't precisely remember the words, but I had the impression Mr. Gluck had some difficulty in dealing with Mr. Kersh as the CFO. And Mr. Kersh and Mr. Gluck had some difference of opinion as to disclosure specifically related to this issue. And Mr. Gluck had recommended or suggested that I talk to Mr. Kersh and Mr. Fannin about this issue and my concerns.

Q. And did you, in fact, talk to Mr. Kersh and Mr. Fannin about it?

A. Yes, I did.

Q. What was said?

A. I, in essence, told them that based on where the sales were year to date for the company that we

felt that in connection with this offering statement there should be some disclosures made in the document indicating the company was not going to perform as, you know, outside analysts expected.

Q. This is in -- disclosure in the offering memorandum for the debentures?

A. Yes.

Q. Was there a discussion about disclosure anywhere else other than the offering memorandum?

MR. JOHNSON: Objection to form.

THE WITNESS: I don't recall. I mean, I think we were talking in the -- we were talking in primarily the context of the offering memorandum to put disclosure in there because that's what we were working on at that point in time.

BY MR. WEBSTER:

Q. Did you discuss how it should be disclosed in the offering memorandum?

A. Not precisely. As far as geography within the document we thought it should be in a prominent section of the document. You know, I don't recall if there was a risk, risk section of that or not. It's been so long. But, you know, there should be a prominent display of the fact that the company sales

were not going to meet analysts' expectations.

Q. Did you discuss disclosing it anywhere other than the offering memorandum?

A. I don't recall.

Q. Did you ever discuss a press release with -- them before this press release came out?

MR. JOHNSON: Asked and answered.

THE WITNESS: As I say, this press release kind of appeared after that discussion. We didn't say press release or when it was going to come out or anything like that, so...

BY MR. WEBSTER:

Q. There were no discussions about a press release before this came out?

A. No, not that I recall. There may have been, but I don't recall.

Q. Did you discuss the degree of disclosure with Sunbeam?

A. No, just the essence of disclosure, that sales expectations were not going to be met. How that was said and, you know, the specific wording was not discussed.

Q. Did you discuss with Sunbeam prior to the release of this press release the ability to exceed

the first quarter results for 1997?

A. I don't recall any direct discussion on that.

Q. Did you discuss the ability to exceed '97 first quarter results within your Arthur Andersen team before this press release came out?

A. I don't remember specific discussions on that, but part of the -- as I recall, part of the comfort letter work was to make comparisons with the prior quarter. So in the context of putting the comfort letter together, that probably was looked at. May have been discussed. I mean, I think that was specifically reported on the comfort letter. I'd have to look at a copy to recall, but I think there was a comparison of prior, you know, prior periods.

Q. Well, you didn't have the full numbers for the first quarter yet, did you?

A. No. Did not have the full -- no. It was short of the first quarter, so there were another 10, 11, 12 days to go before the quarter ended.

Q. Just to be clear, you don't have any recollection of discussing the ability to exceed '97 first quarter results within the Andersen team?

MR. JOHNSON: This is at any time?

THE WITNESS: Oh, no, it was discussed.

MR. JOHNSON: I object.

NOT A CERTIFIED COPY

THE WITNESS: We certainly discussed it, yes.
BY MR. WEBSTER:
Q. What was said?
A. Well, it was discussed, clearly it was discussed when this press release came out.
Q. Before the press release came out?
MR. JOHNSON: That's my objection.
MR. MOSCATO: Do you understand the question, Phil?
THE WITNESS: I think I do.
BY MR. WEBSTER:
Q. Well, let me rephrase it just to be clear. Before this press release came out did you discuss with other members of your Andersen team the ability of Sunbeam to exceed their '97 first quarter results?
A. I believe there were some discussions on that. Like I say, we were doing work on the comfort letter. And, you know, there were schedules prepared. There was a subtotal of sales through March whatever the date was. We had a schedule of the first quarter from 1997. You know, and I'm sure at some point there might have been some discussion as to the difference in those sales compared to the prior quarter.
Q. Did you or anybody else in the Andersen team

express an opinion about whether Sunbeam would be able to exceed the first quarter of '97 results before this press release came out?
A. Before this press release. I don't recall. I don't recall.
Q. So did you discuss with Morgan -- not Morgan Stanley. Did you discuss with Sunbeam their ability to exceed '97 first quarter results before this press release came out?
A. I don't recall. I mean, what I do recall is saying compared to the prior year your sales are substantially less in 1998 than they were in 1997. Now can that be construed to be discussing first quarter shortfall? I don't know. But I would think a reasonable person could draw that conclusion.
Q. Just to be clear, you did -- before this press release came out you did discuss with Sunbeam the need to disclose that first quarter '98 expectations of the analysts would not be met; is that correct?
A. Yes, that's correct.
Q. But you did not discuss with Sunbeam before this press release came out whether or not Sunbeam would exceed the '97 first quarter results?
MR. JOHNSON: Object to the form.

THE WITNESS: I think we did. I think we did have an indirect discussion. I mean, I didn't come out and say, as I recall -- I mean, I may have. But I made it clear in the discussion that the year-to-date sales for 1998 were substantially less than year-to-date sales in 1997.
Now did I say you need to disclose you're not going to make, you know, your 1997 number? I don't recall. But we talked about the shortfall. And it could be -- you know, I think any accountant could make that assumption that, hey, you know, we've got to take a look at '97 as well as '98 where we were.
BY MR. WEBSTER:
Q. The 1998 analyst expectation, that was a higher number than the '97 first quarter number, correct?
A. That's correct, that's correct.
Q. What was the result of your discussion with Mr. Kersh about the need to made this disclosure about the analysts' expectations?
A. You know, once again, I don't remember exact

words that were said, but, you know, the impression in my mind from that conversation was the company is going to work hard to make the sales numbers. They felt pretty confident that there were going to be a lot of late sales reported at the end of the quarter. You know, made statements like, you know, the SEC attorneys were drafting the documents and that's their responsibility, not our responsibility. You know, things like that are in my mind, but exact words I don't recall.
Q. Now before this press release came out did you discuss with anybody at Morgan Stanley the need to make disclosures about the ability to meet the analysts' expectations for the first quarter of 1998?
A. At some point I had a discussion with some folks from Morgan Stanley, including their legal counsel. I don't remember precisely when that discussion was, but it was about the time this document came out.
Q. Do you remember whether it was before or after it came out?
A. Well, as I recall, it was -- I think it was right about the time this document came out.
Q. So it could have been before; could have been after?

NOT A CERTIFIED COPY

0185251

MR. MOSCATO: I object.
THE WITNESS: Well, I think -- well, the call was set up by Mr. Bornstein, and it was not a face-to-face meeting. And Mr. Bornstein was in New York working on the offering memorandum along with Morgan Stanley and counsel and, you know, the whole team up there. And there was, you know, some kind of heated discussions about disclosure of this in the document. And Mr. Bornstein would give me updates on those discussions.
And then at some point in time he asked me to participate in a conference call with Morgan Stanley and attorneys. And I think -- I think the company's attorneys were on that call as well, outside attorneys, not in-house attorneys. But things got pretty heated between Arthur Andersen and Morgan Stanley on disclosure on this particular issue.
BY MR. WEBSTER:
Q. Do you remember was Mr. Bornstein in the same room, same location with people from Morgan Stanley when this conference call was held?

A. I had the impression they were in a conference room. I mean, I was in Florida and they were in New York. And they were at Morgan Stanley's office or the printer's office. I don't recall. But from the -- from the sounds of the conversation it sounded as if they were on a speaker phone in a conference room.
Q. Did you talk to Mr. Bornstein at all when he was at the printers?
A. Yes.
Q. And you don't remember whether this conference call with Morgan Stanley was when they were at the printers or at Morgan Stanley's office?
MR. MOSCATO: I object. You can answer.
THE WITNESS: I don't recall. It was one or the other. But they were together wherever it was.
BY MR. WEBSTER:
Q. Do you remember whether the press release had come out when you had this conference call?
A. Well, as I say, I think, I think the disclosure of the press release in the document was, you know, one of the basis for our conversation. So I think the press release was just freshly out.

Q. Okay.
A. You know.
Q. You testified that, I believe -- correct me if I'm wrong -- that you didn't know about the press release until it came out; is that correct?
A. That's correct.
Q. And the press release was discussed in this conference call; is that right?
A. I believe it was.
Q. So --
A. Well, I believe the disclosure of this issue in the press release was discussed on that conference call.
Q. Do you remember whether the press release was discussed in the conference call?
A. I don't remember it precisely, but I do remember talking about this issue, which most likely would have been generated as a result of the press release coming out.
Q. Okay. Let's stop for just a second. Someone is at the door.
THE VIDEOGRAPHER: Off the video record, 10:07 a.m.
(Brief interruption.)
THE VIDEOGRAPHER: Back on the video

record, 10:07 a.m.
BY MR. WEBSTER:
Q. Okay, Mr. Harlow, I just want to clarify in this conference call with Morgan Stanley you did discuss the need to make the disclosure that's in the press release in the offering memorandum; is that correct?
MR. MOSCATO: I object to that characterization.
MR. JOHNSON: Object to the form.
MR. MOSCATO: Misstates his testimony.
THE WITNESS: That's not -- I don't think I said that. What I said was I think the contents of this press release were discussed in that call with Morgan Stanley. Now how that was -- well, I think that's what I said.
BY MR. WEBSTER:
Q. The press release was eventually included in the offering memorandum; is that correct?
A. As I recall, it was.
Q. During this conference call with Morgan Stanley, did you discuss the need to include this press release in the offering memorandum?
MR. MOSCATO: Objection.

NOT A CERTIFIED COPY

018526

MR. JOHNSON: Join.
MR. MOSCATO: You can answer.
THE WITNESS: Well, as I recall, what we discussed was even more disclosure than what was in the press release, the need for more disclosure in the offering memorandum than what was in here.
BY MR. WEBSTER:
Q. Does that mean that you knew about the press release at the time of this conference call?
A. Well, I think that's one of the things that generated the call was that press release.
Q. Okay. And what was your opinion about whether anything more than had been disclosed in the press release needed to be disclosed in the offering memorandum?
A. Well, specifically I had a concern about the last section of that first sentence where the company made the statement "...but net sales are expected to exceed 1997 first quarter net sales of $253.4 million."
Q. What was your concern?
A. My concern was that they should have put a period after 285 to 295 and eliminate that statement.
Q. Eliminate that statement from the press

release or from the offering memorandum?
A. Well, the press release was already out, so not much I could do about that, but specifically in the offering memorandum.
Q. Your opinion was that the information in the press release, except for that last clause of the first sentence should be disclosed in the offering memorandum?
MR. MOSCATO: I object. You can answer.
THE WITNESS: Well, at a minimum. Oh, I would have -- I would have loved to make some editorial changes to this press release.
BY MR. WEBSTER:
Q. Other than cutting out that information did you suggest that any more information needed to be disclosed in the offering memorandum?
A. Yeah, but we didn't wordsmith this particular press release.
Q. It was already out?
A. Yeah, the press release was -- that was a done deal.
Q. You were focusing on what should go in the offering memorandum?

A. Exactly.
Q. Did you discuss with Morgan Stanley and Sunbeam the need to include more information than was in this press release in the offering memorandum?
A. We discussed having stronger language, making it clear that -- well, what we wanted to do was to show where the sales were at the point in time the document was being prepared so the reader could see if they had a long way to go to make the number. And there was tremendous kickback from, resistance from, you know, the other parties up there to do that.
Q. What did they say?
A. I don't recall, but they just thought it was crazy, didn't make sense; we're stupid; we don't know what we're doing. They made us feel like idiots basically.
Q. You don't remember who said that?
A. I think it was the Davis Polk guy and the Morgan Stanley guy.
Q. Do you remember their names?
THE VIDEOGRAPHER: Let me go off the record.
(A discussion was held off the record.)
THE VIDEOGRAPHER: Back on the video record.

BY MR. WEBSTER:
Q. Do you remember specifically what you recommended should be added in the offering memorandum that wasn't in the press release?
A. The only thing that I specifically remember was the deletion of the sentence which we discussed earlier regarding 1997 first quarter net sales. Do I need to clarify that?
Q. No. You didn't want the whole sentence, just the last part of that first sentence excluded?
A. Just the last part of sentence which I previously read.
Q. Okay.
A. And I don't -- I don't recall other comments, you know, that were made relative to this disclosure.
MR. WEBSTER: MS-117, please.
(Defendant's Exhibit #MS-117 for i.d.)
BY MR. WEBSTER:
Q. Mr. Harlow, before you is a document marked MS-117, and the first page indicates it's agreement and plan of merger among Sunbeam Corporation, Camper Acquisition Corp. and the Coleman Company, Inc. dated as of February 27th, 1998. Have you ever seen this document before?
A. At some point I have. I don't recall when.

MS-117

NOT A CERTIFIED COPY

Q. What is this document?
A. It's an agreement and plan of merger between Sunbeam and Coleman.
Q. Okay.
A. Dated as of February 27th, 1998.
Q. Could you please turn to page 29 of that document, which is Bates stamped 0008043? And I'd ask you to read Section 7.2 to yourself and let me know when you finish.
MR. MOSCATO: Can you just do me a favor. Who's Laser?
MR. WEBSTER: Laser?
MR. MOSCATO: Yeah.
MR. WEBSTER: Defined --
MR. MOSCATO: You don't have to show me. Just tell me.
MR. WEBSTER: Laser is defined as Sunbeam, and the company is defined as Coleman.
MR. MOSCATO: The company is Coleman?
MR. WEBSTER: Yes.
THE WITNESS: Okay. I'm through.
BY MR. WEBSTER:
Q. Have you ever reviewed this section of this agreement before, Mr. Harlow?

A. No.
Q. What does this Section 7.2 provide for?
MR. JOHNSON: I object to this.
MR. MOSCATO: I object.
MR. JOHNSON: He said he's never even read it before, and he's not a party to it either.
MR. MOSCATO: I really do object. The documents speaks for itself.
BY MR. WEBSTER:
Q. The first sentence of Section 7.2 says that the company and Laser shall each afford to the other and to the other's financial advisors legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the company effective time to all of its books, records, properties, plants and personnel provided that all such access shall be on reasonable advanced notice and shall not disrupt normal business operations. And during such period, each shall furnish promptly to the other a copy of each report, schedule and other document filed or received by pursuant to the requirements of federal or states securities laws and all other information as such other party may reasonably request provided that no

investigation pursuant to this Section 7.2 shall affect any representation or warranties made herein or the conditions to the obligations of the respective parties to consummate the company merger."
Is that an accurate reading that have sentence, Mr. Harlow?
A. I don't know. I had my glasses off, but I assume you can read.
MR. MOSCATO: I will -- I will say that that was an accurate reading.
MR. WEBSTER: Thank you.
BY MR. WEBSTER:
Q. Mr. Harlow, did you have an understanding during March of 1998 that Coleman and Sunbeam had a right to review all of the other parties' books, records, properties, plants, et cetera?
A. I don't know what their rights were at that point.
Q. Okay. Did you during the period of March 1998 have any understanding that Coleman might request to review Sunbeam's books and records?
A. I assume that was a possibility.
Q. Did you discuss that possibility with Sunbeam?
A. I don't recall direct discussions, but I'm

sure at some point in time it came up.
Q. Did you discuss with -- after you learned that the sales figures for January and February of 1998 were low did you discuss with Sunbeam the possibility that Coleman might ask to see those sales figures?
A. I don't recall that discussion. I know they were Coleman people working with Mr. Gluck. I think he had their controller down a number of times in his office. And I assumed that they were discussing results of the company. But that was not my responsibility at all to follow up on that.
Q. During the time that you were discussing with Sunbeam the need to make disclosure about the sales figures for January and February of 1998, did you discuss with Sunbeam the possibility that Coleman might make a request for those figures?
A. I don't recall a discussion, but, you know, I absolutely assume that they, you know, they were a pretty sophisticated company, one of Mr. Perelman's companies, and I'm sure that they look at the numbers. I was not conducting their due diligence, and I can't tell them what they should and should not look at.
Q. Did anybody from Sunbeam ever express any concern to you about the possibility that Coleman

NOT A CERTIFIED COPY

73d5d6ca-ab2c-4e77-8ead-53fb3edfdffd

would ask to see the sales figures for January and February of 1998?
A. I don't recall. I don't recall that coming up.
Q. Did anybody from Morgan Stanley ever express to you a concern that Coleman might ask to see sales figures for January or February of 1998?
A. Absolutely not.
Q. Was it your understanding that Coleman could have received the sales figures for January and February of 1998 if they had asked for them?
A. Yes.
MR. MOSCATO: Phil, you got to pause just for a second.
THE WITNESS: That was my assumption.
MR. MOSCATO: I just want to object.
THE WITNESS: Okay. Object.
MR. MOSCATO: Retroactively I will object.
THE WITNESS: I object to this whole thing, but doesn't do me any good.
MR. MOSCATO: I can't do that. Well, I did do that actually.
THE WITNESS: Okay.
BY MR. WEBSTER:

Q. You provided, Andersen provided a comfort letter to Morgan Stanley; is that correct?
MR. MOSCATO: Go ahead.
THE WITNESS: I was going to give you a chance to object.
MR. MOSCATO: I'm not objecting.
THE WITNESS: That's correct.
BY MR. WEBSTER:
Q. And that was in connection with Morgan Stanley's underwriting of the debentures; is that correct?
A. Yes.
Q. Do you know if any comfort letters were prepared for Coleman or Sunbeam in connection with the acquisition?
MR. MOSCATO: I object to that. You can answer if you understand the question.
MR. JOHNSON: I'll join.
THE WITNESS: Do I understand --
BY MR. WEBSTER:
Q. Let me rephrase the question. Did Andersen ever prepare a comfort letter for Coleman in connection with the acquisition?
A. I don't recall.
Q. Did you ever anticipate that such a comfort

letter would be requested?
MR. MOSCATO: I object.
MR. JOHNSON: Join.
THE WITNESS: I just don't recall at all.
BY MR. WEBSTER:
Q. Did you ever discuss with Sunbeam the possibility that Coleman would ask for a comfort letter?
MR. MOSCATO: I object.
THE WITNESS: Don't recall.
BY MR. WEBSTER:
Q. Did you ever -- do you know if Ernst & Young ever prepared a comfort letter for Sunbeam?
MR. MOSCATO: I object.
THE WITNESS: I don't recall.
BY MR. WEBSTER:
Q. Do you know if Ernst & Young ever delivered a comfort letter to Sunbeam concerning Coleman?
A. I don't know that.
MR. MOSCATO: I object.
BY MR. WEBSTER:
Q. And do you know if anyone delivered a comfort letter to Coleman regarding Sunbeam?
MR. MOSCATO: Objection.
THE WITNESS: I don't know.

BY MR. WEBSTER:
Q. Do you know if the agreement and plan of merger required Sunbeam to prepare a comfort letter for Coleman?
MR. MOSCATO: I object.
MR. JOHNSON: James, I'm going to object to this line of questioning. If you're going to get into questions on Section 7.3, Morgan Stanley has responded to requests to admit that are absolutely judicially binding, and that, I think, foreclosed a lot of questioning you're about to engage in. Obviously if you want to engage in the questioning, you can, but I want to note my objection.
MR. MOSCATO: I'm sorry. I don't understand what you just said. Can you explain to me?
MR. JOHNSON: Sure.
MR. MOSCATO: Since I'm representing the witness, I think I have a right to know what's going on.
MR. JOHNSON: Why don't we go off the record.
MR. WEBSTER: Can we go off the record?

NOT A CERTIFIED COPY

MR. JOHNSON: Yeah.
THE VIDEOGRAPHER: Off the video record 10:34 a.m.)
(A recess was taken from 10:24 a.m. to 10:43 a.m.)
(Defendant's Exhibit # MS-31 for i.d.)
BY MR. WEBSTER:
Q. Okay. Mr. Harlow, before you is a document marked MS-31. Have you seen this document before?
A. Yes, I have.
Q. And the first page is a printout of an e-mail; is that correct?
A. It appears to be, yes.
Q. And an e-mail from Mr. Pastrana to you, Mr. Bornstein, and Mark Brockelman; is that correct?
A. That's correct.
Q. On March 18th, 1998?
A. Yes.
Q. And what is attached to this e-mail?
A. This is a draft of a comfort letter addressed to Morgan Stanley & Company.
Q. Do you know who created this document?
A. No.
Q. Did you participate in the drafting of this document?

A. I don't recall if I did up to this point. At some point in time I reviewed the final version of the document, but I don't recall if I participated in the drafting of this version.
Q. Do you know why this draft was created?
A. I assume it was to just provide Morgan Stanley and Sunbeam a copy of our -- of what we thought would be in the comfort letter at the time it was to be issued.
Q. Was it intended that this draft would be circulated to -- outside Arthur Andersen?
A. Yes.
Q. Who did you intend to circulate it to?
A. Well, typically a draft of this letter is sent to the requesting party prior to the issuance date and also our client.
Q. Who was the requesting party here?
A. Morgan Stanley.
Q. Do you know if this draft was, in fact, circulated to Morgan Stanley and to Sunbeam? Actually, strike that.
Do you know if this draft was actually circulated to Morgan Stanley?
A. I don't know if this draft was. I can't answer that. I can't tell from the -- I can't tell if this draft was.
Q. Do you know if a draft of the comfort letter was circulated to Morgan Stanley?
A. Yes, I know that a draft was. I don't know if this draft was.
Q. Do you know when a draft was circulated to Morgan Stanley?
A. I don't know the exact time or the exact date, but prior to the issuance date on the letter there was a draft sent.
Q. Do you know who at Morgan Stanley it was sent to?
A. I don't know that.
Q. Do you know how it was delivered to Morgan Stanley?
A. I don't know.
Q. Did you offer -- Do you know if Andersen offered a draft of the comfort letter to anyone besides Morgan Stanley and Sunbeam?
A. I don't know that.
Q. Do you know if Sunbeam offered a draft of the comfort letter to anybody besides Morgan Stanley?
A. No, I don't know that.
Q. Do you know if anybody requested a copy of the draft of the comfort letter?

MR. MOSCATO: Besides Morgan Stanley.
THE WITNESS: And Sunbeam.
BY MR. WEBSTER:
Q. Yes.
A. No, I don't know.
Q. Was this draft comfort letter available to Coleman upon request?
MR. JOHNSON: Object to the form.
BY MR. WEBSTER:
Q. Do you know if this draft comfort letter was available to Coleman upon request?
MR. JOHNSON: Same objection.
THE WITNESS: I don't know.
BY MR. WEBSTER:
Q. Did you have any expectation about whether Coleman would request a copy of the comfort letter?
MR. JOHNSON: Objection to form.
THE WITNESS: I had no knowledge of that, no.
BY MR. WEBSTER:
Q. It wasn't whether you had knowledge. Whether you had any expectation.
MR. JOHNSON: Same objection.
THE WITNESS: No, I wouldn't expect Coleman to get this letter.

NOT A CERTIFIED COPY

0085

BY MR. WEBSTER:
Q. Why not?
A. Because it's not -- this is a letter that we have drafted specifically for Morgan Stanley, you know, to do their thing. And I would not expect this to go out to any other parties.
Q. And the purpose of the draft is to get feedback on Morgan Stanley if this is satisfactory for their purposes; is that correct?
MR. MOSCATO: I object. You can answer.
MR. JOHNSON: Join.
THE WITNESS: Well, we found that underwriters have -- they like to pay attorneys lots of money, you know, to cross T's and dot I's, so, you know, we learned long ago you send these out ahead of time so there's plenty of time for the attorneys to do their thing and look at these letters and either get happy or unhappy with it.
So we sent them out well in advance so that they can look at them and pick them apart if they don't like them.

BY MR. WEBSTER:
Q. What's well in advance?
A. Well in advance of the issuance date.
Q. The issuance of the comfort letter?
A. The issuance of the comfort letter, you know, the comfort letter requirement for one that needs to be dated.
Q. Do you know how far in advance of the issuance of the comfort letter to Morgan Stanley the draft was sent to them?
A. Oh, this probably, you know, several days at least would be my guess.
Q. Did you review the draft before it was sent to Morgan Stanley?
A. I don't recall.
Q. Did you get any feedback from Morgan Stanley after they received the draft comfort letter?
A. I personally, I don't think I ever received feedback, but...
Q. Do you know if Andersen received feedback from Morgan Stanley?
A. Mr. Bornstein got some feedback from the letter, I think.
Q. Did you discuss --
A. It was my understanding he got some feedback.

Q. Did you talk to Mr. Bornstein about the feedback that he received?
A. I'm sure we did. I just don't remember the details.
MR. WEBSTER: Can I have Exhibit MS-48, please?
(Defendant's Exhibit #MS-48 for i.d.)
BY MR. WEBSTER:
Q. Mr. Harlow, before you is Exhibit MS-48. Is this another draft of the comfort letter?
A. It appears to be.
Q. I'd like you to compare the two drafts we have, MS-31 and MS-48. And specifically I'd like you to look at paragraph nine in MS-48, and I'd like to ask you whether that was included in MS-31, if that's new language.
A. I don't know if it's new language or old language. I don't know which draft was prepared first.
Q. Do you know if this --
A. I can't tell by these drafts.
MR. WEBSTER: Well, let's pull out MS Number 9, then.
(Defendant's Exhibit #MS-9 for i.d.)
BY MR. WEBSTER:

Q. And before you is Exhibit marked MS Number 9. Do you recognize this document, Mr. Harlow?
A. Yes, I've seen this before.
Q. Okay. Now the final comfort letter has 13 paragraphs; is that correct?
A. Yes, that's correct.
Q. And MS-48 only has 12, and MS-31 only has 11; is that correct?
A. That's correct.
Q. One of those new paragraphs, one of those additional paragraphs in the final comfort letter is paragraph 10, which was not in MS-31 if you compare those two documents.
A. Okay. That appears to be a difference between those two drafts.
Q. Do you know why that paragraph was added to the final comfort letter?
A. I have no idea.
Q. Do you know who requested that it be added to the final comfort letter?
A. I don't recall.
Q. All right. Focusing on MS-9, the final comfort letter, what was the purpose of the comfort letter?
A. The purpose of a comfort letter is basically

NOT A CERTIFIED COPY

0185311

to -- for Morgan Stanley to say that they've done a certain amount of due diligence on a transaction and, you know, get a letter from the accountants.

Q. And the transaction in this case was the debenture offering?

A. In this case that's what it was, yes.

Q. And do you know if a comfort letter was prepared by Ernst & Young on behalf of Coleman?

A. I don't know that.

Q. Did you have any discussions with Morgan Stanley about the preparation of a comfort letter by Ernst & Young?

A. I don't recall any discussion of that nature.

Q. Prior to this transaction, the acquisition of Sunbeam by -- the acquisition of Coleman by Sunbeam, had you worked on other acquisition transactions for other clients?

A. Yes.

Q. And had you worked on other transactions that involved debenture offerings?

A. Yes.

Q. And had you prepared comfort letters in connection with those other debenture offerings?

A. I had previously prepared a number of comfort letters, yes.

Q. And in those prior representations had you represented buyers in the transaction?

MR. MOSCATO: I object to the form. You can answer.

BY MR. WEBSTER:

Q. Well, in this case the debenture offering was to finance Sunbeam's acquisition of Coleman; is that correct?

A. That was the purpose of this debenture, right.

Q. And in this transaction you were representing the purchaser, which was Sunbeam, correct?

MR. MOSCATO: I object to that. You can answer.

THE WITNESS: Well, I was doing work for the purchasers, that's correct, yes.

BY MR. WEBSTER:

Q. And you prepared a comfort letter on behalf of the purchaser for Morgan Stanley, correct?

A. No, we prepared the comfort letter for Morgan Stanley. The request came directly from Morgan Stanley.

Q. And in your previous work on comfort letters had you also represented parties who were selling to another company?

A. No, I don't recall that. My clients usually were acquiring -- I worked on -- I don't ever recall working on a seller where I provided a comfort letter. Worked on a lot of buyers, but no sellers.

Q. You didn't represent any sellers?

A. Not that I can recall.

Q. Was it your experience that comfort letters were prepared for the sellers in those transactions?

MR. JOHNSON: Object to form.

MR. MOSCATO: I object to the whole line. I think it misconstrues what a comfort letter is, but go ahead and answer the question.

THE WITNESS: I've never really thought about it. I mean, it's, you know, it's typically an investment banker underwriting the transaction is calling the accountants for a letter that they can put in their file for information they already know. So, you know, it's kind of a cover your ass type of document. But I suppose that could be asked by an investment banker for -- representing a seller. I just don't know.

BY MR. WEBSTER:

Q. There are provisions in the AICPA rule and accounting standards for the preparation of comfort letters; is that correct?

A. There is literature related to comfort letter preparation, that's correct.

Q. And do you know what the standards are that govern the preparation of the comfort letters?

A. I used to, but I don't -- I haven't practiced accounting for sometime, so I would have to refresh my memory.

Q. Did you consult any of those accounting standards in connection with the preparation of this comfort letter?

A. Personally, probably not, but my staff did consult, you know, with those documents or those necessary references for comfort letters.

Q. And those -- was it your understanding that those standards govern the form in which those comfort letters would take and contents of the comfort letter?

MR. MOSCATO: I object. You can answer.

THE WITNESS: Form is discussed. I don't know if it governs it because I've had comfort letters take a number of different forms. I've had some pretty

NOT A CERTIFIED COPY

018532

screwy requests from underwriters in the past. They want us to opine on everything, you know, accounting related or not accounting related. But I assume there's some standards in there. I'd have to read it. I just -- I just don't recall.

BY MR. WEBSTER:

Q. Did those -- do you remember if those accounting standards governed who was entitled to a copy of the comfort letter?

A. I don't recall.

Q. Was it your understanding that Coleman could have requested a copy of this comfort letter?

MR. JOHNSON: Asked and answered.

MR. MOSCATO: That's been asked and answered actually.

THE WITNESS: It wasn't my understanding at all. I wasn't even thinking about that particular issue. So I suppose they could ask for anything. You know, I certainly couldn't provide it to Coleman without any authorization from my client.

BY MR. WEBSTER:

Q. And where did you get the information that was in this comfort letter?

MR. MOSCATO: I assume when you say you, you mean Andersen generally or Mr. Harlow's specifically?

MR. WEBSTER: Andersen.

THE WITNESS: Well, we started out with the annual financial statements of the company, which are as of December 28th, 1997, and then we reviewed minutes of the board of directors, and we reported on that in paragraph four. And then in paragraph 4A we looked at certain unaudited financial statements of the company from the beginning of the fiscal year to February 1, 1998. We talked to company officials regarding accounting matters.

BY MR. WEBSTER:

Q. Paragraph five of the comfort letter contains information about the sales, about Sunbeam sales in January of 1998 or between December 29th, 1997 and February 1, 1998; is that correct?

A. Paragraph 5B does, that's correct.

Q. Where did you get that information? Where did Andersen get that information?

A. We would have received that from the company's records. The company would have given that to us. This was not audited information. This was merely given to us by the company.

MR. WEBSTER: Can I have MS-44, please?

(Defendant's Exhibit #MS-44 for i.d.)

BY MR. WEBSTER:

Q. Have you had a chance to review MS-44, Mr. Harlow?

A. I've not reviewed everything in it, but I've reviewed it.

Q. What is this document, Mr. Harlow?

A. This is a representation letter to Arthur Andersen from Sunbeam officials related to the -- our preparation of the comfort letter.

Q. Why was this drafted, do you know?

A. This is received by the auditor preparing the comfort letter because most of the information in the comfort letter is not audited, so we require the company to represent certain things that are disclosed in the comfort letter.

Q. Is this where Andersen first learned about Coleman's sales in 1998?

MR. JOHNSON: I think.

MR. MOSCATO: I think, number one, you misspoke. And number two -- you said Coleman sales.

MR. WEBSTER: I'm sorry. Sunbeam sales with the first quarter of 1998.

MR. MOSCATO: And even with that correction I'll object.

MR. JOHNSON: I'll join.

THE WITNESS: Could you repeat the question?

BY MR. WEBSTER:

Q. Do you know if this is the first time that Andersen was informed about Sunbeam's sales for the first month of 1998?

A. For the first month of 1998? For the month of January?

Q. Yes.

A. I don't know.

Q. Did you --

A. I mean, I guess I'm not -- I'm not clear on the time frame because are we talking about the representation letter? Because there was --

Q. This is the representation letter, right?

A. This is the representation letter.

Q. It's dated March 16, 1998.

NOT A CERTIFIED COPY

018533

A. But this would have been signed and completed after March 16th, so --
Q. Why do you say that?
A. Well, because.
MR. MOSCATO: Why don't you let him finish before you interrupt. All right.
THE WITNESS: Because it's almost always impossible to get all signatures on a representation letter on the day that you want them. To have all four of these people in the office on the same day is probably next to impossible to get done unless they're having a board meeting.
BY MR. WEBSTER:
Q. This has all four signatures on it, correct?
A. Yes, it does.
Q. Do you have a recollection that this was received after March 16th of 1998?
A. I don't know. I'm assuming that, you know, this was received after that date.
Q. Why is that?
A. Just because I don't think we could have physically got all the signatures on this -- on that particular date.
Q. Other than that, do you have any reason to

doubt that you received this on March 16, 1998?
MR. MOSCATO: I object.
THE WITNESS: It was probably several days after because if you read paragraph nine, it actually covers the period up to March 16th. And it would have been pretty difficult to do that work, draft this letter and get it all signed on the same date. So there's probably some lag time between March 16th and when this got finalized.
BY MR. WEBSTER:
Q. Did you review this letter? Did you ever receive a copy of this letter?
A. At the time we did the work I don't believe so. I've seen this letter subsequent to that time.
Q. How long after that time?
A. I have no idea.
Q. Did you see it at any time in March of 1998?
A. I don't recall.
Q. Do you know if this representation letter is the source for the information in paragraph 5B of the comfort letter?
MR. MOSCATO: I object.
MR. JOHNSON: Join.

BY MR. WEBSTER:
Q. Again, the comfort letter is MS-9.
A. Okay. Sorry. The question again.
Q. Do you know if this March 16th letter, MS-44, is the source for the information in paragraph 5B of the comfort letter?
A. I would highly doubt it, because this letter is going to be prepared after the comfort letter, so I think it's the other way around.
Q. Do you know what was the source of the information in paragraph 5B of the comfort letter?
A. The source for that would have been the company.
Q. Do you know how it was conveyed from the company?
A. I don't know.
Q. Do you know whether it was orally or any written document?
A. I don't know. I don't know.
Q. In your experience, is the representation letter typically prepared after the comfort letter is prepared?
MR. MOSCATO: Objection.
THE WITNESS: They are done about the same time, but usually the finalization of

the representation letter, you know, lags the preparation of the comfort letter.
BY MR. WEBSTER:
Q. Do you remember in this case whether you received the representation letter after you prepared the comfort letter?
MR. MOSCATO: Objection. I think that was asked and answered.
THE WITNESS: My opinion is it was received after for the reasons I stated before.
BY MR. WEBSTER:
Q. Okay. Now you said that Morgan Stanley requested the comfort letter from Andersen; is that correct?
A. That's my understanding.
Q. Did you need approval from Sunbeam before you could go ahead and deliver the comfort letter to Morgan Stanley?
A. I don't know. I know we provided them a copy. I know that if the company didn't agree with the comments in there, then we wouldn't issue the letter, so, you know, kind of a back-ended answer to your question is probably we needed Sunbeam's concurrence on that letter to issue it since all the

NOT A CERTIFIED COPY

information in the letter was about the company, and it had been based on unaudited, much of it unaudited information.

Q. Did you review the contents in the comfort letter with anybody at Sunbeam before you issued it to Morgan Stanley?

A. My staff did.

Q. You did not personally, though?

A. I did not personally, no.

Q. Did your staff report to you about those conversations with Sunbeam?

A. I don't recall.

Q. Other than the comfort letter what other information, if any, was Morgan Stanley entitled to as the underwriter from you?

MR. MOSCATO: Well, I object to that.

MR. JOHNSON: Objection to form.

THE WITNESS: I'm sorry. I didn't hear the last part of your question. From who?

BY MR. WEBSTER:

Q. From Arthur Andersen.

A. From Andersen.

MR. MOSCATO: I object.

THE WITNESS: I don't know. We had no, you know, contractual relationship with

Morgan Stanley. You know, I don't know what -- other than the comfort letter, that's all I know, other than discussions with Morgan Stanley.

BY MR. WEBSTER:

Q. Did you have any expectations that anybody else would receive a copy of the comfort letter besides Sunbeam and Morgan Stanley?

MR. JOHNSON: It's asked and answered several times.

MR. MOSCATO: I object. You can answer it.

THE WITNESS: No.

BY MR. WEBSTER:

Q. Did you approve the comfort letter before it was sent out to Morgan Stanley?

A. As I recall, I did.

Q. Did you discuss the 1998 sales figures with Sunbeam before the comfort letter was sent out to Morgan Stanley?

MR. JOHNSON: Object to form.

THE WITNESS: Okay. Now are we talking about a draft of the comfort letter? Are we talking about the final comfort letter?

BY MR. WEBSTER:

Q. Before the final comfort letter went out?

A. Before the time the comfort letter went out.

Q. Did you discuss the sales for January and February of 1998 with Sunbeam?

MR. JOHNSON: Object to form.

MR. MOSCATO: I thought that was asked and answered, too, but go ahead.

THE WITNESS: Yeah, I mean, it would have been right around that time, within, we're talking about within a day or two.

BY MR. WEBSTER:

Q. What was said?

MR. MOSCATO: I object. That was asked and answered too.

MR. JOHNSON: He's testified in detail about somebody in personnel he spoke with.

THE WITNESS: Yes, well, as I testified before I don't remember exact words, but do we want to go through it again?

BY MR. WEBSTER:

Q. I just want to make sure I've got it.

MR. MOSCATO: I object to that, but go ahead. Is there anything that you remember in addition to what you've already testified to?

THE WITNESS: No, nothing additional.

MR. WEBSTER: All right. Can I have MS-43.

THE VIDEOGRAPHER: Would this be a good time to change the tape?

MR. WEBSTER: Yes.

THE VIDEOGRAPHER: Off the video record, 11:11 a.m.

(Defendant's Exhibit #MS-43 for i.d.)

(a recess was taken from 11:11 a.m. to 11:15 a.m.)

THE VIDEOGRAPHER: We're back on the video record. The time is 11:15 a.m.

BY MR. WEBSTER:

Q. Mr. Harlow, before you is a document marked MS Exhibit 43. Have you had a chance to review the document?

A. I have flipped through this document.

Q. This appears to be an Arthur Andersen internal form; is that correct?

A. That's correct.

Q. And what kind of form is this?

A. This is a form that was prepared after completion of post audit review work in connection with filings the company might be making. The periods

NOT A CERTIFIED COPY

018535

after -- look at subperiods after an audit was complete. That was kind of a checklist to make certain certain areas are covered in those reviews.
Q. And does this document deal with the post audit review of Sunbeam after their 1997 audit?
A. Yes.
Q. Is this form prepared for distribution outside Andersen?
A. No.
Q. Solely an internal form?
A. Well, you have a copy, so it does get outside every once in a while, so -- but the purpose was an internal document.
Q. Have you ever seen this document before?
A. Well, I signed it at one point in time, so I would have to say yes.
Q. Where is your signature?
A. It's on the front page.
Q. At the bottom of the front page?
A. Yes.
Q. There are two signatures there at the bottom of the front page. Which one is yours?
A. The bottom signature.
Q. Do you know whose signature that is above yours?

A. I believe that's Larry Bornstein's.
Q. And what is the date of your signature?
A. March '98.
Q. Now there's a date above there typed in on the fifth line down that says date to which post audit review completed, and it's dated March 16th, 1998. What does that mean?
A. That would have been the date up to which the post audit review was done.
Q. Okay. So this means this covers information about Sunbeam up to March 16th, 1998?
A. Yes.
Q. So this form was prepared sometime after March 16th of 1998?
A. Yes.
Q. Do you know when it was prepared?
A. No.
Q. Do you know who prepared it?
A. I don't know, but I'm assuming Dennis Pastrana prepared it since most of the work was completed by him.
Q. Do you know if this document was prepared before the comfort letter was issued?
A. I don't think it was prepared in its entirety before the comfort letter was issued.

Q. Why do you say that?
A. It was probably -- well, typically what we would do is prepare this simultaneous with the completion of the comfort letter. But, once again, this is a case where circulating the document and getting the signatures might take several days internally.
Q. Now this document, MS-43, says it covers information. I believe you indicated it covers information at Sunbeam through March 16th of 1998; is that correct?
MR. MOSCATO: I object to that.
THE WITNESS: Well, I think it covers the period of review up through March 16th. Whether all the information in here is precisely up to March 16th, I don't know. I'd have to review it in more detail.
BY MR. WEBSTER:
Q. Okay. There's also above those signatures --
A. Actually, I can say no because item four on page four we're talking about 1998 budget which is going to go beyond March 16th.
Q. Okay.
A. So there's probably a few other items in here

which are around that date.
Q. Okay. Are there any items which indicate that the information contained herein does not go through March 16th of 1998?
A. Well, the 1998 budget is going to cover the entire fiscal year.
Q. That would go beyond March 16th of 1998, correct?
A. Yes. That's for the entire year of 1998, a budget, which is beyond March 16th.
Q. So all the information covered in this document is through March 16th, 1998 or beyond?
MR. MOSCATO: I object to that.
MR. JOHNSON: Join.
THE WITNESS: No, I didn't say that either. I was trying to respond to your earlier question does everything go up through March 16th. My answer to that question was not necessarily. I pointed out one thing, and there's probably some more things in here.
On item 4B there's a discussion of a 1998 plan does not take into account the effects of recent acquisitions. I assume that plan deals with the entire fiscal

NOT A CERTIFIED COPY

018536

73d5d6ca-ab2c-4e77-8ead-53fb3edfdffd

year, not just through March 16th. Also, 4A, budget net sales, net income first quarter 1998, that goes beyond March 16th, 1998.

BY MR. WEBSTER:

Q. Okay. Going back to the first page, there's some handwriting above the signatures. Do you see that?

A. Below the signature -- below the typed names? Yes.

Q. Yes. Do you know whose handwriting that is?

A. I don't know.

Q. If you turn to the second page, the remaining pages of the documents are in a table form; is that correct, columns and rows?

A. Yes.

Q. The second column has a heading saying work done by, and I assume the initials under there are initials of the individuals that did the work; is that correct?

A. Yes.

Q. What is the third column?

A. That's work paper reference.

Q. So that column references various work papers which support the comments and disposition of items

that are included in the fourth column?

A. In some cases it would, but really the purpose is to document where in the work papers there's documentation to support the first column.

Q. Okay.

A. The work done in the first column. Not necessarily comments and dispositions. Those might be elsewhere within the work papers.

Q. If you look at paragraph 2A or box 2A there, the fourth column discusses a declining sales trend due to early buy program for outdoor grills which accelerated sales into the fourth quarter and sales in first quarter of 1997 of discontinued SKUs and ENO inventory in connection with the 1996 restructuring; is that correct?

A. Yes, that's the comment.

Q. What was your understanding of what that meant?

A. My understanding was the company instituted a program in which they were attempting to level out the sale of the grills so that they could get orders in earlier and not have the problems that they had in 1997 previous year whereby they were not able to deliver grills on a timely basis to some major customers, including Wal-Mart.

So the company instituted a program whereby they would attempt to get the orders in earlier. There were incentives given to the customers to order the grills on an earlier basis, and that was known as the early buy program.

Q. Did you discuss the early buy program with Morgan Stanley?

A. Yes.

Q. Did you discuss the early buy program with Morgan Stanley before the comfort letter was issued?

A. I don't recall exactly when that discussion took place, but there was some discussion, you know, when I referred to that conference call with Mr. Bornstein at the printers or Morgan Stanley's office.

Q. After the press release had been issued?

A. That was in connection with the press release discussion.

Q. What was said?

MR. MOSCATO: I'm sorry. I'm sorry. Can you read back his answer?

(The record was read as requested.)

MR. MOSCATO: Sorry.

BY MR. WEBSTER:

Q. You discussed the early buy program with

Morgan Stanley during the conference call after the press release was issued; is that correct?

A. That's -- yeah, that's my recollection.

Q. And what was -- what was the discussion about the early buy program?

A. I don't recall what the detail of the discussion was, but it was one of the reasons for the lower sales level for 1998. It was just one of the reasons given. But there wasn't an extensive discussion as to exactly what it was. But it was given as a result of lower sales level in the first part of 1998.

Q. Did you discuss whether that should be disclosed in the offering memorandum?

A. I don't recall. I believe it was -- it was disclosed in the financial statements.

Q. Turn to --

A. And I believe -- I believe it also was disclosed in the offering memorandum.

Q. Was there any -- did anybody object to disclosing that in the offering memorandum?

A. Not that I recall.

MR. JOHNSON: Object to form.

BY MR. WEBSTER:

Q. Can you turn to page four, specifically

NOT A CERTIFIED COPY

paragraph 4A of that document, please.
A. You -- I don't know if you want a full answer on your previous question or not, but you asked me about, you know, 2A, and I only talked about the first item in 2A. I don't know if you wanted me to talk about the second item or not. We kind of skipped over that.
MR. MOSCATO: Well let him ask the questions.
THE WITNESS: Okay. All right. 4A?
BY MR. WEBSTER:
Q. Actually, going back 2A for a second, was -- you said the information about the early buy program was in the 10-K already?
A. Yes.
Q. And did the offering memorandum contain anything different about the early buy program than had been disclosed in the 10-K?
A. I don't recall anything different. There should have been the same disclosure, at least at a minimum the same disclosure.
Q. Was there any discussion about making more disclosure in the offering memorandum that had been made in the 10-K?
A. I don't recall.

MR. JOHNSON: Objection to form.
BY MR. WEBSTER:
Q. All right. Going back to 4A on four, what does 4A concern?
MR. MOSCATO: I'll object to that. You can answer if you understand the question.
THE WITNESS: Well, 4A says, "To read the respective financial information and inquire as to whether it has been prepared on the same basis as the audited historical financial statements; compare such prospective financial information with historical results; investigate significant fluctuations."
BY MR. WEBSTER:
Q. And paragraph four, box four above that indicates this concerns the latest available forecast projection budget or other prospective financial data; is that correct?
A. Yeah, it indicates, "Obtain the latest available forecast projection budget, including capital and operating or other prospective financial data, particular data relating to cash flows. State the periods covered by such prospective information."

Q. And does the document indicate that the work described in four and 4A has been completed?
A. Yeah, there's an indication the work was done and there's a work paper reference.
Q. And do you know who made the comments in the comment box to 4A?
A. I assume Dennis Pastrana made those comments. I don't know for certain.
Q. And the last sentence in the comments says, "Through the second period of 1998 the company has net sales of approximately $72 million and a net loss of approximately $14.8 million; is that correct?
A. That's correct.
Q. What is the second period 1998?
A. The second period would be the second month. Essentially Sunbeam was on 52, 53-week fiscal year, and it's -- in essence, would be the month of February.
Q. Okay. So through February the comments indicate that the company had net sales of approximately 72 million and a net loss of approximately 14.8 million; is that correct?
A. Yeah. I don't remember the date of the end of the second period, but it's -- might be February 28th, might be March 1st. I don't recall.

Q. Now the comfort letter if you look back at MS-9 in paragraph 5B, that also contains a discussion of net sales and net income or net loss for 1990 -- for 1998; is that correct?
MR. JOHNSON: I'm sorry. Can I hear that again?
THE WITNESS: Yeah. Repeat the question.
BY MR. WEBSTER:
Q. The comfort letter also contains in paragraph 5B information about Sunbeam's net sales and net income or net loss in 1998; is that correct?
A. That's correct. But this is a different period than what's in this letter.
Q. That was my next question. Do you know why the comfort letter only goes through February 1st of 1998 on net sales and net loss?
MR. JOHNSON: I object to that.
MR. MOSCATO: I have to object to that. It really -- I can't imagine it's a deliberately misleading question. I'm sure it's an inadvertently misleading question if one looks at paragraph 6C.
THE WITNESS: Yeah, I do know why there's a difference.
BY MR. WEBSTER:

NOT A CERTIFIED COPY

018538

73d5d6ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023911

Q. Why is that?
A. Because the company did not have financial statements prepared for a period beyond that. And, you know, they cover that in --
Q. 6C?
A. 6C.
Q. Thank you.
A. And it clearly states --
MR. JOHNSON: It's actually 5C for everyone.
MR. WEBSTER: There is no 5C in the comfort letter.
MR. MOSCATO: You're looking at the wrong one.
MR. WEBSTER: MS-9.
MR. JOHNSON: I'm sorry.
BY MR. WEBSTER:
Q. Mr. Harlow, before the comfort letter was issued did you talk to Morgan Stanley about the sales figures for 1998?
A. I don't remember when the exact -- I don't know the exact sequence of the timing of the receipt of the comfort letter draft, the final comfort letter into Morgan Stanley's hands, but during that time frame there was clearly a discussion on sales.

shortfalls related to the first part of 1998 and disclosure of that information in the document. But I can't tell you exactly how that falls relative to comfort letter delivery.
Q. You did talk to Morgan Stanley about it, though, in that conference call that we've discussed already, correct?
A. That's correct.
Q. Is that the first time you talked to Morgan Stanley about the sales shortfalls for 1998?
A. That's the first time that I recall that I talked to them about it. Mr. Bornstein had called me several times in frustration because he had had verbal battles with Morgan Stanley and Morgan Stanley's attorney about disclosure, and Larry was very frustrated in their inability to listen to him about the need for disclosure and wanted me to have a discussion with them.
Q. But were those phone calls the same day as the conference call that you participated in?
A. They were in -- if not the same day -- some of them were the same day, and some of them could have been the previous day. I don't recall. But I can remember Larry called, and he was very upset and just felt like he was a lone wolf on this particular issue,

and everybody was basically beating him up and giving him a very hard time about the need for disclosure.
Q. Did Morgan Stanley ever request that the 1998 sales information be excluded from the comfort letter?
A. I don't -- I think prior to the press release -- I think that was the position that they were taking. The impression that we had was Morgan Stanley wanted to get this done, this deal done regardless of, you know, what did or did not get disclosed on this issue. And, you know, I don't remember if they specifically said -- you know, talked about specifics on disclosure. But my -- my strong feeling was there was significant kickback by them on disclosure on this issue.
Q. Disclosure in the comfort letter or disclosure to the public?
A. Disclosure in the document.
MR. MOSCATO: When you say the document, the offering memorandum?
THE WITNESS: The offering memorandum.
BY MR. WEBSTER:
Q. In the offering memorandum?
A. I don't think they had a big problem with the comfort letter, but there was certainly concern about documentation in the offering memorandum.

Q. Did they express concern about documenting it in the offering memorandum after the press release was issued?
A. As I recall, they were okay with the -- after the press release was issued with having the press release as the disclosure in the document. There was a -- there was a strong resistance to our elimination of the reference to the meeting of the 1990 -- 1997 first quarter sales with 1998.
Q. When you participated in the calls, would you describe them as -- how would you describe the level of discussion?
MR. JOHNSON: Object to form.
BY MR. WEBSTER:
Q. Contentious?
A. Yes, contentious.
Q. At any time did you threaten to withdraw as auditors for Sunbeam?
A. We discussed it internally. We discussed withholding our opinion, giving the company notice that they could no longer rely on our opinion if there was not some disclosure, but we did not threaten anyone externally, but we did have internal discussions on that issue.
Q. When did you have those internal discussions?

NOT A CERTIFIED COPY

Q1 85 36

A. About the time we determined sales levels and the lack of disclosure in the offering memorandum. So it would have been mid March.
Q. Before this conference call with Morgan Stanley?
A. It would have been about that time, within days of that.
Q. Days before or days after?
A. I don't recall. Most likely it would have been before that call.
Q. Do you remember whether you had internal discussions about withdrawing after the conference call with Morgan Stanley?
A. Yes, we did.
Q. How many discussions?
A. One or two.
Q. Who participated in those internal discussions?
A. Mr. Pruitt, Mr. Bornstein, myself. That's all I can remember.
Q. What was decided?
A. Well, it was ultimately decided that, you know, the disclosure was okay based on, you know, the company's adamant stance that they could meet those sales levels, and the company's telling us that there

their SEC attorney was 100 percent satisfied with disclosure, and that basically we're accountants and not attorneys, and you can't tell the company what to disclose.
But they told us they had done extensive work, you know, with their chief sales executive and, you know, actually prepared a schedule showing detailed sales by customer on how they were going to meet those first quarter numbers.
Q. Those were documents prepared by Sunbeam?
A. Yes.
Q. Did Morgan Stanley prepare any of those documents?
A. I don't know. I was told they were involved in discussions, but I was not a party to those internal discussions.
Q. And, in fact, you did not end up withdrawing from representing Sunbeam, did you?
A. At that point, no.
Q. Did you ever have any discussions with Sunbeam about withdrawing or was it all internal?
A. Oh, at that time it was just internal.
Q. Did you discuss whether you should threaten to withdraw?
A. No.

Q. Internally did you discuss whether you should threaten to withdraw?
A. Oh, internally we did, but not externally.
Q. And you decided that you shouldn't even threaten to withdraw?
A. Well, at that point in time we decided not to.
Q. Do you know if Morgan Stanley took any steps to review or verify the accuracy of these sales forecasts that Sunbeam was making?
A. I don't know that for a fact. I was told they did by the company, but I don't know that.
Q. Who told you that?
A. Mr. Gluck, Mr. Kersh.
Q. What did they say?
A. They said Morgan Stanley is all over the situation, and they've been very involved in due diligence. They've done extensive work. And I was given the impression that they'd done a heck of a lot more work than we'd done, so... But I don't know that for a fact.
Q. Now after the press release was issued do you know if Donald Drapkin from MAFCO ever called Arthur Andersen?
A. Never heard the name.

Q. Did Arthur Andersen receive any calls from Ronald Perelman from MAFCO about the press release?
A. Ronald Perelman calling us directly, not that I'm aware of.
Q. Do you know if Ronald Perelman called Sunbeam about the information in the press release?
A. I don't know.
Q. Do you know if Irwin Engelman of MAFCO called Andersen about the information in the press release?
A. Not to my knowledge.
Q. Do you know if Mr. Engelman called anybody at Sunbeam about the information in the press release?
A. No.
Q. Do you know if Mr. Engelman made contact in any way with Sunbeam about the information in the press release?
A. No.
Q. Did he make contact in any way with Andersen about the information in the press release?
A. I don't know.
Q. Do you know if Norman -- did Norman Einstling ever -- of MAFCO ever call you about the information in the press release?
A. I never heard the name before.
Q. Do you know if he ever called --

NOT A CERTIFIED COPY

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd

16div-023913

8540

A. I have no idea.
Q. -- Andersen?
A. I have no idea.
Q. Do you know if he made any contact with Sunbeam about the information in the press release?
A. I can't say.
Q. Did you ever have a conversation with Howard Gittis of MAFCO?
A. Yes.
Q. What about?
A. He was showing me some of his fine cigars one day and wanted to know if I wanted one.
Q. Is that it?
A. He's a cigar connoisseur. I met him several times. We just had conversations on other issues.
Q. Did you ever meet with him during March of 1998 when this acquisition was going on?
A. No.
Q. Did he ever call you or contact you in any way during that period of time?
A. In March? No.
Q. April?
A. I think I met Mr. Gittis for the first time probably in June of '98.
Q. Okay. Did Jerry Levin call you after the

issuance of the press release about information that was disclosed?
A. No.
Q. Do you know if he contacted --
A. Well, I talked to him after, after.
Q. After what?
A. But, once again, it's not in March.
Q. When did you first talk to him?
A. First talked to him in probably June of '98.
Q. Okay. Do you know if he contacted anybody at Andersen in March or April of 1998 about the information in the press release?
A. Not to my knowledge.
Q. Do you know if he contacted anybody at Sunbeam about the information in the press release?
A. It was my understanding that he was having meetings with management of Sunbeam at that time. What was discussed, I don't know.
Q. How about James Maher, did you ever receive a phone call from him after the issuance of the press release?
A. Not to my knowledge.
Q. Do you know if he made any contact with Andersen after the issuance of the press release?
A. Not to my knowledge.

Q. Do you know if he contacted Sunbeam at all about the information in the press release?
A. I don't know.
Q. How about William Nesbitt of MAFCO, did you ever receive a phone call, or did he contact you about the information in the press release?
A. No.
Q. Do you know if he contacted Andersen about any of the information in the press release?
A. I don't know.
Q. Do you know if he contacted Sunbeam about any of the information in the press release?
A. I have no knowledge.
Q. Joseph Paige of Coleman, did he ever contact you about information in the press release?
A. Can we just condense all of these?
Q. I just want to make sure --
A. Why don't you just name -- why don't you just give me all the names and the question you want, and I can take them all in one.
Q. Sure. The other names are Joseph Paige, Joram Salig, Paul Shapiro, Bruce Slovin, or Barry Schwartz, all of MAFCO or Coleman. Did you ever hear from any of them?
A. The only person I heard from is Paul Shapiro.

Q. Okay.
A. But, once again, I met Paul Shapiro in June of 1998, and it was not in the March time frame. The others I have not met or know of no knowledge of any questions of me, Arthur Andersen or Sunbeam.
Q. Did anyone from Ernst & Young ever contact you about the information in the press release?
A. I don't recall. I don't believe so.
Q. Do you know if anybody at Ernst & Young contacted Andersen about any information in the press release?
A. Not to my knowledge.
Q. Do you know if anybody at Ernst & Young contacted anybody at Sunbeam about the information in the press release?
A. Well, I know that -- I know that Mr. Gluck met with Ernst & Young in connection with the transaction, but I don't know what they discussed.
Q. Do you know if --
A. It was about the time the transaction was consummated.
Q. At the end of March?
A. During the March, late March time frame.
Q. Did anyone at Credit Suisse First Boston contact you about the information in the press

NOT A CERTIFIED COPY

release?
A. Not to my knowledge.
Q. Did anyone at Credit Suisse First Boston contact Andersen about the information in the press release?
A. Not to my knowledge.
Q. Did anyone at Credit Suisse First Boston -- do you know if anybody at Credit Suisse First Boston contacted anyone at Sunbeam about the information in the press release?
A. I have no knowledge of that.
Q. Did anyone at Wachtell Lipton contact you about the information in the press release?
A. That name's familiar. I'm just trying to remember the context of it. I just -- I don't remember. I don't remember who Wachtell represented, but the name is familiar. I may have seen it on a letter or something from them.
Q. Do you know if counsel for Coleman contacted you about the information in the press release?
A. I don't recall.
Q. Do you know if counsel for Coleman contacted Andersen about the information in the press release?
A. Not that I'm aware of.
Q. Do you know if counsel for Coleman contacted

Sunbeam about the information in the press release?
A. I don't know that. I can't count that one way or the other. Once again, I know they met with management, but what was discussed, I don't know.
Q. After the issuance of the press release did anyone from Coleman call you and ask to talk to you about the sales figures for 1998?
A. Other than the conversation?
Q. Other than what conversation?
A. At the printers? Did you say Coleman?
Q. Coleman. Was Coleman involved in the conversation at the printers?
A. No. I thought you said Morgan. No.
Q. Would you like me to repeat the question?
A. Well, I'm getting tired, so I need coffee.
Q. Let me ask you --
A. I'm starting to hear things.
Q. After the press release was issued did anybody from Coleman call you or contact you to ask you about the sales figures for 1998?
A. Yes.
Q. Who?
A. It was the -- pretty much the new management team that came into Sunbeam.
Q. When was this?

A. Mr. Levin, Mr. Shapiro, Karen Clark, the whole shooting match.
Q. So that was June of 1998?
A. Um-hum, yeah.
Q. And that was the first time they asked you about the sales figures for 1998?
A. Um-hum.
Q. After the issuance of the press release -- Strike that.
Was June of 1998 the first time that you talked to anybody at Coleman about Sunbeam's business?
A. That I can recall. You know, I think I met Karen Clark prior to June because she would -- she came to Delray to meet with Mr. Gluck to talk about the transition after the transaction was completed. So I did meet Karen Clark, but that's the only name I can recall.
Q. That was after the transaction was completed?
A. That was after, probably sometime in April of '98 when I met her.
Q. Did she ask you about the sales for --
A. No.
Q. -- the first few months?
Do you know if anyone from Coleman contacted Andersen about sales for '98 after the

issuance of the press release?
A. Not to my knowledge.
Q. Do you know if anybody from Coleman contacted Sunbeam about sales for '98 after the issuance of the press release?
A. Once again, I know there were meetings between Sunbeam and Coleman executives. What they discussed, I don't know.
Q. Did anybody from Sunbeam ever report to you that Coleman expressed concerns about the sales figures?
A. I heard something about that, but I don't remember the details.
Q. Who did you hear that from?
A. Mr. Gluck.
Q. What did he say?
A. Basically that there were some concerns about those numbers.
Q. On the part of Coleman?
A. On the part of Coleman.
Q. And this was after the press release came out?
A. Yes.
MR. JOHNSON: Objection to form.

NOT A CERTIFIED COPY

018542

73d5d8ca-ab2c-4e77-8eac-53fb3edfdffd

BY MR. WEBSTER:
Q. Did he say what Coleman was going to do about it?
A. No.
Q. Did he ask you to do anything about it?
A. No.
Q. Did he indicate whether any books and records of Sunbeam were going to be provided to Coleman?
A. Not that I recall.
Q. Do you remember any other details of the conversation?
A. No.
Q. Did you have any discussions with Morgan Stanley after the issuance of the press release about concern on Coleman's part about the sales figures for '98?
A. I don't recall any discussion with Morgan Stanley about Coleman's concern.
Q. Did anybody from Morgan Stanley indicate that they had inquiries from Coleman about the '98 sales figures?
A. Not that I'm aware of.
Q. After the issuance of the press release did anybody at Credit Suisse First Boston contact you or Andersen to talk about the '98 sales figures?

MR. JOHNSON: Isn't that asked and answered?
THE WITNESS: Not that I recall.
BY MR. WEBSTER:
Q. Do you know if anybody at Credit Suisse First Boston contacted Sunbeam about the '98 sales figures after the issuance of the press release?
A. I don't know.
Q. Did you have any discussions with Sunbeam about Coleman inquiring about the '98 sales figures?
A. Yeah, Mr. Gluck brought it up one day. I don't remember the context of the conversation, but he mentioned it to me. And I don't remember who the individual was. I don't know if it was Mr. Perelman he mentioned or, you know, somebody in the MAFCO. But it was in the context, you know, that Coleman was a little surprised when they heard the information. And that was about the gist of the conversation.
Q. Was there any concern that -- did Sunbeam -- did Mr. Gluck express any concern that Coleman would back out of the deal?
A. I don't recall. I don't recall that he did.
Q. During that conference call with Morgan Stanley, did anybody express a concern about how Coleman would react to the disclosure of the '98 sales

figures?
MR. JOHNSON: That's asked and answered.
THE WITNESS: Are we talking about the due diligence conference call, or are we talking about the printers' conference call?
BY MR. WEBSTER:
Q. Printers'.
A. Printers' conference call. I don't recall Coleman's name coming up in that conversation.
Q. Did Coleman -- was there any -- well, during the due diligence conference call, did you know about the '98 sales figures yet?
MR. MOSCATO: I think that's been asked and answered.
MR. JOHNSON: Yeah.
THE WITNESS: As I recall, I didn't.
MR. WEBSTER: Let's look at MS-32.
MR. MOSCATO: Do you want him to focus on both documents or just one document?
MR. WEBSTER: Both.
(Defendant's Exhibit #MS-32 for i.d.)
BY MR. WEBSTER:
Q. Have you had a chance to read the document yet, Mr. Harlow?

A. I've just flipped through it. I haven't read it.
Q. Are you familiar with these documents?
A. I don't know if I've seen these before or not.
Q. Do you know what they are?
A. Yeah, they're just drafts.
Q. Drafts of what?
A. The comfort letter and also the representation letter.
Q. Okay. And the first page of the document is a printout of an e-mail; is that correct?
A. It appears to be.
Q. Did you ever receive a copy of these documents that are attached to the e-mail?
A. I don't remember. I doubt it.
MR. MOSCATO: Your question meant these particular drafts of the document; is that right?
MR. WEBSTER: Yeah.
BY MR. WEBSTER:
Q. Now after the initial comfort letter did you receive a representation letter from Sunbeam?
A. I doubt it.
Q. Let's look at MS-47.

NOT A CERTIFIED COPY

185543

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023916

A. Are you talking about the draft? Are you talking about the final? The copy in here?
MR. MOSCATO: Well, let him just show you what he wants.
(Defendant's Exhibit #MS-47 for i.d.)
BY MR. WEBSTER:
Q. Did you get a chance to review that yet, Mr. Harlow?
A. (Nodding head).
Q. What is MS-47?
A. MS-47 is the signed representation letter from the company to Arthur Andersen.
Q. What's the date of the letter?
A. This one is dated March 23rd.
Q. Do you know why there's a representation letter dated March 16th and one dated March 23rd?
A. Well, one's probably relates to the bring-down letter when the deal was funded.
Q. And that would be the latter one?
A. That would be the latter date.
Q. Why was a second representation letter needed in connection with the bring-down letter?
MR. MOSCATO: I object to that. You can answer.
MR. JOHNSON: Join.

THE WITNESS: Because there is additional information in that letter typically that's different than the information in the first letter.
BY MR. WEBSTER:
Q. What is a bring-down letter?
A. Just updates the comfort letter to the later date.
Q. Okay.
A. Just really an updating of the original comfort letter.
Q. Okay. Did you have any discussions with -- did you personally have any discussions with Morgan Stanley about the preparation of the bring-down letter?
A. I don't recall. I don't recall any discussions with them.
Q. Do you remember -- did you have any discussions with your team at Arthur Andersen about the preparation of the come-down letter -- bring down letter?
A. Yeah, we had some discussions. I don't remember the details of those discussions.
Q. Did you participate in the drafting of the bring-down letter?

A. I reviewed it.
Q. But did not draft it?
A. I did not draft it, no.
Q. Do you know who drafted it?
A. It was probably Mr. Pastrana.
Q. Okay. And did Arthur Andersen prepare this representation letter?
A. The representation letter was most likely a copy of the earlier representation letter with some modifications. And the client could have made some modifications to this letter. But most likely it's what was -- it was pretty much a draft of the first representation letter with changes in dates.
Q. Did you discuss this representation letter with Sunbeam?
A. I did not.
Q. Do you know if -- do you know who in your team discussed this representation letter with Sunbeam?
A. I don't know who, but, you know, this letter would have been delivered probably by Mr. Pastrana to Mr. Gluck, and he would have handled the finalization of that letter.
Q. Did you have any expectation about whether Coleman would ask for a copy of this representation

letter?
MR. JOHNSON: Object to form.
THE WITNESS: Did I have any expectation?
BY MR. WEBSTER:
Q. Yeah.
A. I wouldn't think they'd want this letter.
Q. Why not?
A. I mean, it's not a letter that they would normally receive.
Q. Well, after -- this letter was -- is dated after the press release; is that right?
A. Which press release?
Q. The March 19th press release.
A. Yes. This date is after March 19th.
Q. Did you have any discussions with Sunbeam about Coleman requesting copies of the representation letter or bring-down letter after the press release was issued?
A. No.
Q. Did you have any discussions internally about the possibility of Coleman requesting copies of these documents after the March 19th press release was issued?
A. No, not that I can recall.
Q. Do you have an understanding as to whether

NOT A CERTIFIED COPY

018544

Coleman had a right to these documents if they requested them?
MR. MOSCATO: I object to that.
MR. JOHNSON: Join.
THE WITNESS: Well, I'm not an attorney, and I don't know what the agreements say, but I would say that Coleman did not have a right to these letters.
BY MR. WEBSTER:
Q. Why is that?
A. Because this is a letter to Arthur Andersen in a representation by Sunbeam. I just don't see why they would have a right to receive these letters. We certainly couldn't give these letters up.
Q. Okay.
MR. WEBSTER: Can I have MS-10, please.
(Defendant's Exhibit #MS-10 for i.d.)
BY MR. WEBSTER:
Q. Have you had a chance to review the document?
A. I've reviewed it. I've not read it in detail.
Q. Do you recognize what MS-10 is?
A. Yes.
Q. What is it?
A. This is the, what's known as the bring-down

comfort letter that Arthur Andersen issued to Morgan Stanley on March 25th.
Q. Do you know who requested that this document be drafted?
A. I assume it was a direct request from Morgan Stanley, but it could have been a request made through Sunbeam. I don't know.
Q. Would either a request from Morgan Stanley or through Sunbeam be sufficient for you to draft this letter?
A. Yes.
Q. Did they have to make the request in a certain way? Did it have to be written, or could an oral request generate the drafting of this letter?
A. Either way. I don't recall how they made the request.
Q. Who was entitled to receive a copy of this document?
A. Morgan Stanley and Sunbeam.
Q. Did you discuss the 1998 sales figures that are in this bring-down letter with Morgan Stanley before it was issued?
A. This particular letter I personally did not.
Q. Do you know if anybody at Andersen had discussions with Morgan Stanley about the '98 sales

figures before this letter was issued?
MR. MOSCATO: I'm sorry. Read back the question.
(The record was read as requested.)
MR. MOSCATO: I object. The question is vague.
MR. WEBSTER: Yeah, I'll rephrase the question.
BY MR. WEBSTER:
Q. This bring-down letter, Mr. Harlow, contains updated figures on the '98 sales of Sunbeam since the comfort letter; is that correct?
MR. MOSCATO: Well, I object to that.
MR. JOHNSON: Object to form.
MR. MOSCATO: I really do object to that.
BY MR. WEBSTER:
Q. I'll rephrase it.
This letter updates the '98 sales figures that were in the comfort letter; is that correct?
MR. MOSCATO: Why don't you take the comfort letter out, Phil, and compare before you answer that question.
MR. WEBSTER: The comfort letter is MS-9.

MR. MOSCATO: Look at 6C.
THE WITNESS: Okay. What's the question?
BY MR. WEBSTER:
Q. Does the bring-down letter update the figures on '98 sales for Sunbeam from the comfort letter?
A. No.
Q. Well, if you look at the second page of the bring-down letter at the bottom of paragraph -- well, the second page, it includes a figure there for net loss for Sunbeam for the first two months of 1998; is that correct?
MR. JOHNSON: Your question was sales.
THE WITNESS: Your question was on sales.
MR. MOSCATO: Yeah.
THE WITNESS: Not income or loss.
BY MR. WEBSTER:
Q. Well, does it update the net income loss figures from the comfort letter?
A. Yes, it does, it appears to.
Q. And the net income loss figures that were indicated in the comfort letter was a net loss of $9,510 for the first month of '98; is that correct?
MR. MOSCATO: Objection to form.
That's million. It's in euros.

NOT A CERTIFIED COPY

D-18545

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd

BY MR. WEBSTER:
Q. Nine million.
MR. MOSCATO: I'm sorry. There was confusion.
THE WITNESS: Repeat the question.
MR. MOSCATO: Can you try that again?
BY MR. WEBSTER:
Q. The comfort letter indicates that the net loss for the first month for '98 for Sunbeam was $9,510,000; is that correct?
A. Yes, through February 01, 1998.
Q. And the bring-down letter indicates that the net loss for Sunbeam in the first two months of 1998 was 41,190,000; is that correct?
A. Yes, that's for -- yeah, through March 1st, 1998. Another month, yes.
Q. Did you have any discussions with Sunbeam about including this figure in the bring-down letter?
A. Not that I recall. I mean, these were the -- these were the facts.
Q. Did Morgan Stanley ask any questions about the updated net loss figures in the bring-down letter?
A. I don't recall having any direct discussions with Morgan Stanley on the second letter.
Q. Do you know if they contacted anybody at

Andersen about the second letter?
A. I believe Larry had some discussions, but I was not part of those discussions.
Q. Okay. Did anyone from Morgan Stanley indicate to you that they were conducting due diligence on Coleman in connection with the debenture offering?
A. I don't think I -- I can't recall, you know, someone from Morgan Stanley saying we're doing due diligence. I mean, the documents I saw indicated that they were, and the company told me they were. But any direct discussion with Morgan Stanley about their work on due diligence, I don't -- I don't remember.
Q. Did anybody at Sunbeam ever discuss with you or anybody -- Well, strike that.
Did anybody at Sunbeam ever discuss with you how you should react if Coleman or anybody representing Coleman inquired about the '98 sales figures?
A. No.
Q. Did you receive any instructions from Sunbeam about how you should respond to inquiries for financial information from Coleman?
A. No, not that I recall.
Q. Did anybody from Sunbeam ever express concern

or worry that Coleman might inquire about '98 sales figures?
A. No, not to my knowledge.
Q. Did anybody from Sunbeam ever express any concern that Coleman might inquire about financial information on Sunbeam?
A. From Arthur Andersen? Not to my knowledge.
Q. Did they express any concern that Coleman would ask Sunbeam itself for such information?
A. No, I never heard anything like that.
MR. WEBSTER: This is a good time to break for lunch.
THE VIDEOGRAPHER: Off the video record, 12:19.
(A lunch recess was taken from 12:19 p.m. to 1:11 p.m.)
MR. WEBSTER: Let's make this MS-602.
(Defendant's Exhibit #MS-602 for i.d.)
THE VIDEOGRAPHER: Back on the video record. The time is 1:11 p.m.
BY MR. WEBSTER:
Q. Mr. Harlow, you have a document in front of you that has been marked MS-602. Have you had a chance to review the document?
A. Yes.

Q. Have you ever seen in before?
A. I don't think I've seen this particular document.
Q. Do you have any idea who created it?
A. I think this was created by Sunbeam. I've seen a different version of it.
Q. Okay. Do you know if this was part of Sunbeam's books and records?
A. I don't know.
Q. Okay. And I'm showing you -- Let's mark this as -- What was the last one? 602. -- Let's mark this as MS-603.
(Defendant's Exhibit MS-603 for i.d.)
BY MR. WEBSTER:
Q. Have you had a chance to review MS-603, Mr. Harlow?
A. Yes.
Q. This appears to be another version of MS-602; is that correct?
A. It appears to be the same schedule, just different notes, different handwriting than the previous one.
Q. Is this the version of this document that you saw?
A. I don't think so.

NOT A CERTIFIED COPY

0185496

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd

16div-023919

Q. There's handwriting in various parts of this document. Is any of the handwriting yours?
A. No.
Q. Do you have any idea who prepared this document?
A. No. Looks like -- well, any idea. I think the typed portion was prepared by Sunbeam, someone at Sunbeam.
Q. Why do you think that?
A. Because the version I saw at some point in time I was told is prepared by Sunbeam, which was similar to this. As far as the, you know, the handwritten notes, telephone numbers, I don't know whose those are.
Q. Do you remember when you saw a version of this document?
A. It would have been sometime in 1998, but I don't remember the exact date.
Q. Do you remember whether you saw this before the March 19th press release was issued?
A. I'm pretty sure I didn't see it before that date.
Q. Do you remember whether you saw it in March of 1998?
A. I think it was -- I think I saw it after

March 1998.
Q. After March of 1998?
A. Yep. I can remember discussing items -- discussing this document but not actually physically seeing.
Q. If you look at the top of the document, there's a fax lug line up there. Do you see that?
A. Which one?
Q. Both, I think. Well, it's crossed out a little bit on 602. If you look at 603, do you see the fax line up at the top?
A. Yes.
Q. Do you see where it indicates a date of March 19th, '98?
A. Yes, um-hum.
Q. Does this refresh your recollection as to when you might have seen this document?
MR. MOSCATO: Objection.
MR. JOHNSON: Join.
THE WITNESS: Not really.
BY MR. WEBSTER:
Q. Okay. All right. Mr. Harlow, I want to go back to a topic that we covered at the beginning of the deposition. You indicated that sometime in March of '98 you went to Kansas City to review Coleman work

papers; is that correct?
A. No. I actually reviewed -- there were Ernst & Young work papers.
Q. Ernst & Young work papers?
A. Of the audit of the Coleman Corporation.
Q. And was Ernst & Young present?
A. Yes.
Q. And did you discuss their work papers with Ernst & Young during that meeting?
A. Yes.
Q. Who else went with you to that meeting?
A. As I testified earlier, it was Mr. Gluck and Mr. Bornstein.
Q. Nobody else from Andersen?
A. I don't recall anyone other than myself and Larry from Andersen.
Q. Okay. Did you review any records regarding Coleman sales in the first part of 1998 during that meeting?
A. Those records were not made available to us, so the answer is no.
Q. Did you request them?
A. We only requested work papers, and there was no -- well, there was no audit done subsequent to that date, so we were just told we'd have access to their

audit work papers, which were actually incomplete at that point in time.
Q. Did you request that Ernst & Young or somebody from Ernst & Young be present to talk to you about the work papers?
A. They required their presence.
Q. Do you know why they did that?
A. That's just standard operating procedure for accounting firms.
Q. Okay.
A. When they allow access to their work papers.
Q. Do you know if Ernst & Young ever came to review Arthur Andersen's work papers on the Sunbeam audit?
A. I don't recall.
Q. Was there any discussion at that Kansas City meeting about conducting a similar meeting to review the Arthur Andersen work papers of the Sunbeam audit?
A. Not to my knowledge.
Q. Did you ever discuss with Mr. Gluck or anybody else at Sunbeam the possibility of Ernst & Young coming to do due diligence on your work, audit of Sunbeam?
A. We most likely did, but I just -- I don't recall precise dates and how it was discussed.

NOT A CERTIFIED COPY

Q. Do you recall any of the details of those discussions?
A. I don't. I had the assumption that it might occur in this type of transaction, but I -- and I think Mr. Gluck and I may have casually discussed it, but I don't -- I don't remember the details.
Q. Did Mr. Gluck express any concern about that occurring?
A. Not to my knowledge.
Q. What was the scope of the due diligence that you performed on Coleman in connection with the transaction?
MR. MOSCATO: I object to that. You can answer.
THE WITNESS: There was really no scope defined by the company. It was basically -- basically it was dictated by the amount of time we had at Ernst & Young's offices. It was a review of their work papers and to identify issues that Sunbeam should know about that might be documented in Ernst & Young's work papers, but there was no formal scope that, you know, that certain things were going to be reviewed, and this work was going to be

done.
It was merely, you know, Andersen fly out -- we actually flew out with Mr. Gluck and spent a day looking at the work papers and come up with what we can and catch a plane that night, and that's it.
BY MR. WEBSTER:
Q. Was a follow-up meeting discussed at that Kansas City meeting?
A. I don't recall.
Q. Do you know if you or anybody at Andersen ever requested an opportunity for a follow-up meeting or further review of the documents?
A. Well, I didn't request further review of the documents because we basically got everything reviewed that was made available to us that day. So I didn't -- I didn't feel another trip to flip through Ernst & Young work papers was going to do anybody any good.
Q. Okay. I want to go back to the conference call that you had with Morgan Stanley and others right after the issuance of the March 19th press release.
A. Okay. This is the --
MR. MOSCATO: I object to the --
THE WITNESS: The call at the printers or

Morgan Stanley's office or wherever?
MR. MOSCATO: Right.
BY MR. WEBSTER:
Q. Right. That's the conference call where you discussed what should be disclosed in the offering memorandum.
A. Okay.
Q. Did it -- during that conference call, did anyone from Morgan Stanley express surprise at the sales figures for the first part of 1998?
A. I don't recall surprise. I think it was -- it was more -- it seemed to be there was contentiousness about disclosure of those sales numbers in the document. I don't remember anybody saying, gee, whiz, I'm really surprised the numbers are what they are. I just don't recall that.
Q. Did anyone from Morgan Stanley complain that the sales figures hadn't been disclosed earlier?
A. They may have, but I wasn't -- I just don't -- I don't recall them saying Arthur Andersen should have disclosed those at an earlier point in time, but...
Q. Did they complain that Sunbeam should have disclosed?
MR. MOSCATO: Wait. Were you finished

with your answer?
THE WITNESS: No, I'm just trying to recollect. It's possible that there was some, you know, some disappointment in Sunbeam in not disclosing that at an earlier point in time, but I just don't recall, because most of our, most of our focus and energy was, okay, it is what it is; let's get it documented in the document as professionals should recommend to their clients. That's where we were coming from.
BY MR. WEBSTER:
Q. And that conference call was the first time that you talked to Morgan Stanley -- anybody at Morgan Stanley about the '98 sales figures?
A. Well, it was the second time I talked to Morgan Stanley, but the first time that I recall talking to them about the year-to-date '98 sales.
Q. The first time you talked to them was the due diligence call?
A. That was the -- yeah, the earlier discussion on accounting issues.
Q. And that was before you knew about the '98 sales figures?

NOT A CERTIFIED COPY

018548

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023921

A. That's right.
Q. Did -- during that March 19th or -- March 19th conference call with Morgan Stanley, did anybody discuss the possibility of a lawsuit or litigation in connection with disclosure?
A. Yeah, I think, I believe we brought it up that there's potential for litigation if you don't disclose this information.
Q. Litigation by whom?
A. Litigation by the parties harmed as a result of not knowing that information.
Q. Did you suggest who might sue?
A. No. I don't recall. I don't recall the detailed discussion, but --
Q. What else was said about the possibility of litigation?
A. I mean, I don't remember. We had -- we had attorneys on the call, and they were supposedly the experts on litigation, so they didn't want to hear us.
Q. Who was it that first alerted you to the '98 sales figures for Sunbeam?
MR. JOHNSON: I'm going to object to form.
THE WITNESS: I assume you're asking about the sales figures through first month of January.

BY MR. WEBSTER:
Q. Yes.
A. First month of 1998. It would have been either Mr. Bornstein or Mr. Pastrana. I don't remember which one. Most likely Mr. Bornstein.
Q. How did they get in touch with you? Were they a phone call?
A. Probably a phone call because we were in three separate offices. Mr. Bornstein was in our West Palm Beach office; Mr. Pastrana was based in our Miami office; and I ran the Fort Lauderdale office, so a lot of our conversation on work was over the phone as opposed to face to face.
Q. And that was sometime after the March 12th due diligence call?
A. Yeah, that would have been most likely after, yeah.
Q. Was it before the draft comfort letter was sent to Morgan Stanley?
A. It would have been about the time because I saw the draft about the same time it was sent to Morgan Stanley.
Q. Had you talked to Mr. Bornstein about the sales figures before you saw the draft comfort letter?
A. I don't recall. I mean, I think -- we had a

discussion about the same time I got them. He may have alerted that they were coming and, you know, don't be -- don't be surprised when you see it or something to that effect. But it was -- it was very close to, if he talked to me before I got it, it was very close to the time I received it. And it might have been a case where he was just notifying me.
Q. You've testified numerous times in the past about your work for Sunbeam; is that correct?
A. That's correct.
Q. And have you had a chance to review all of the transcripts that were created?
A. Absolutely not. I don't have that kind of time to waste.
Q. Have you reviewed any of the transcripts?
A. Very little. Very little.
Q. In each of those times that you were deposed did you make an effort to be truthful and accurate if all of your answers?
A. Yes, I did.
Q. Do you have any reason to doubt that any of the answers you gave in those previous depositions were inaccurate?
MR. JOHNSON: Object to the form.
MR. MOSCATO: I object. You can

answer.
THE WITNESS: In reviewing some of the transcripts, yeah, there are some inaccuracies in those transcripts.
BY MR. WEBSTER:
Q. I thought you said you haven't. You have reviewed some of the transcripts?
A. I said in reviewing some -- I haven't -- I haven't reviewed a lot of those transcripts, but I've got a pile of transcripts that are probably this high (indicating) on testimony on Sunbeam. And I have gone back in some cases prior to other depositions and found errors in those transcripts.
Q. Did you alert counsel to any of the errors that you found in the transcripts?
A. In some cases, I have.
Q. Do you know if Errata sheets were filled out for any of those transcripts?
A. I don't know what an Errata sheet is.
Q. Do you know if a sheet was filled out indicating what the errors were that you found in those transcripts?
A. I have no idea. A lot of that litigation is dead litigation and SEC stuff which has been settled, so I'm not going to worry about it now.

NOT A CERTIFIED COPY

Q. Other than those errors that you found, do you have any reason to believe that the transcripts of your previous testimony were inaccurate in any way?
MR. MOSCATO: I object. I don't understand the question.
MR. JOHNSON: Join.
THE WITNESS: I don't know how to answer that. I'd have to identify all the errors, but... Let me see, yeah, it's good testimony as long as I could go through and identify any errors, make those be known.
BY MR. WEBSTER:
Q. Your counsel has never asked you to go through the transcripts to find errors?
A. No.
MR. MOSCATO: You know, well, I object to that. That's attorney-client privilege. I'd ask that the answer be stricken.
BY MR. WEBSTER:
Q. Do you remember how far in advance of March 19th the draft comfort letter was created?
A. No.
Q. Just sometime between March 12th and

March 19th?
A. Um-hum. I mean, it was five years ago. No, I don't remember exactly what date it was prepared.
Q. Do you know if you saw the first draft of the draft comfort letter?
A. I don't know that. Probably didn't see it.
Q. Okay.
MR. WEBSTER: That's all the questions I have.
MR. JOHNSON: I've just got a couple of questions. Now, Mr. Harlow --
THE VIDEOGRAPHER: Did you want to get a microphone?
MR. JOHNSON: Yeah, I did. Thanks.
THE WITNESS: We need to turn the heat back up so he won't talk too long.
MR. JOHNSON: What's that?
THE WITNESS: We need to turn the heat back up so you won't have too many questions.
CROSS-EXAMINATION
BY MR. JOHNSON:
Q. I think I just have a few minutes of questions. Mr. Webster asked you about the printer conference call or the Morgan Stanley conference call

on several occasions, and I want to explore that testimony a little bit.
Is it your testimony that you preferred a disclosure of the net sales information through the first two months of 1998?
A. We preferred disclosure of a level of sales through the date in which was, you know, the effective date -- not effective date but the final printing date on the offering memorandum.
Q. So sales through some point in March of 1998?
A. Yes.
Q. And why did you or Andersen have that preference?
A. Well, it was our feeling that by doing so, it would give the reader of that document an idea as to the magnitude and the gap between the sales as of March 16th or whatever the date was as compared to a prior period.
Q. Did you have any concern that the sales situation was inconsistent with the picture of Sunbeam as a turned-around company?
MR. MOSCATO: I object to that.
MR. WEBSTER: Object.
THE WITNESS: I guess it depends on which way you're turning it around, but, I mean,

obviously the thought entered my mind, you know, that, you know, for the first two months we really didn't have a company that looked like it was really going and blowing, you know, as purported by the chairman of the company.
BY MR. WEBSTER:
Q. Did you -- didn't you testify to Mr. Webster that you discussed bill and hold transactions with Morgan Stanley?
A. I don't believe that question came up.
Q. Then I'll ask it.
A. I believe -- I believe he had asked me about the early buy program.
Q. Well, let me --
A. And I indicated that this been disclosed in the document.
Q. Okay. How about bill and hold in particular, did you ever discuss with Morgan Stanley that some people engaged in bill and hold sales?
A. I believe that was discussed in the due diligence conference call on the -- whatever date that was, March 10th or --
Q. 12th?
A. -- 11th or 12th or 13th or whatever.

NOT A CERTIFIED COPY

018550

Q. And your view was that bill and hold was a lousy business practice; is that correct?
MR. MOSCATO: I object.
MR. WEBSTER: Objection.
THE WITNESS: I've testified to that in the past. I'm not a proponent of bill and hold transactions, but doesn't mean they're illegal or anything like that.
BY MR. JOHNSON:
Q. Putting aside the accounting issues associated with it, your view at the time and today is that it's not a good business practice to engage in bill and hold sales?
MR. MOSCATO: I'll object to that.
THE WITNESS: Well, you know, there could be in some industries it is an accepted practice, a common practice. You know, I think you can go back and look at my previous testimony. It relates to, you know, this particular situation ultimately had a harmful effect on the company.
And, you know, I think my testimony, my previous testimony really is based on hindsight to see what happened as a result of bill and hold, not necessarily knowing

what I know today back in January of 1998 or February '98 or March '98. But today I would say bill and hold in this particular situation was not a good idea, not a good business practice.
BY MR. JOHNSON:
Q. Did anyone from Morgan Stanley ask your opinion about bill and hold as a business practice?
A. I don't recall.
Q. You don't recall that happening?
A. I don't recall that question being asked.
Q. Let me show you what's been previously marked as Exhibit 12, see if you can identify this for me. I'm more of an environmentalist than Mr. Webster, so I don't have copies for everybody, but I think all the parties should have one.
A. Do you need to mark this?
Q. It's been marked already.
I wonder if you could identify Exhibit 12, CPH Exhibit 12 for me, Mr. Harlow.
A. Okay. I'm sorry. Your question again?
Q. I just wonder if you can identify that for me.
A. This is a letter addressed to Arthur Andersen specifically to my attention dated March 11th from

Morgan Stanley requesting a comfort letter.
Q. Did you receive this document on or about March 11th?
A. I assume I did. I just -- it's dated March 11th. I'm sure I got it about that time.
Q. Okay. In the middle of the second paragraph of see page Exhibit 12, Morgan Stanley indicates that it will be engaged in a review process substantially consistent with the due diligence review process that Morgan Stanley would perform if the placement of securities were being registered under the 33 Act. Do you see that?
A. Yes.
Q. Did that portion of this letter have any significance to you?
A. Well, when I see that, I -- you know, my reaction is that Morgan Stanley is going to be doing a lot of work to make sure that this complies with SEC rules and regulations, and there would be a significant amount of due diligence in connection with it.
Q. Let me give out what's been marked previously as CPH Exhibit 36.
MR. MOSCATO: Where do you want this to go, right here?

MR. JOHNSON: Right there is fine. One for the witness there.
BY MR. JOHNSON:
Q. In particular, Mr. Harlow, I want you to have a look at the press release that is contained on the last four pages of Exhibit 36.
A. Do you want me to read the entire document?
Q. If you'd just be good enough to skim it. Feel free to study it more carefully if my questions call for that.
A. All right.
Q. This is the April 3 press release relating to Sunbeam's first quarter '98 sales; is that correct?
A. That's correct.
Q. Okay. Did you review this press release after it was issued?
A. I believe I saw this after, after it was released by the company.
Q. Did you have any reaction to this news?
A. I've got a lot of testimony on this one. I was -- you know, it was like no big surprise. But I think I called one of their in-house attorneys trying to rub their nose in it a little bit.
Q. When you say it was no big surprise, that's because you were of the view that the company would

NOT A CERTIFIED COPY

73d5d8ca-ab2c-4e77-8ead-53fb3edfdff
16div-023924

not meet first quarter sales numbers?
A. I was skeptical. As I testified earlier, I was skeptical at the company's ability to meet their 1997 first quarter sales levels based on what they had to do in the last ten days of the month of March.
Q. And you turned out to be right?
A. Yeah. I'm not real happy about that, but I did. I was right.
Q. And you say you called one of the Sunbeam in-house lawyers, rubbed their nose in it. Is that Janet Kelley?
A. Yes.
Q. Did she --
A. And later Mr. Fannin.
Q. When you say you rubbed their nose in it, can you tell me what you mean by that?
A. Oh, I just -- I'm not a very subtle person, but I tried to be subtle and just let them know that the wrong decision was made in their previous press release.
Q. And that was a decision that essentially ignored Andersen's concerns?
A. Yes.
MR. JOHNSON: No further questions.

REDIRECT EXAMINATION
BY MR. WEBSTER:
Q. Just a couple follow-ups. That press release, the March 19th press release was issued before you talked to Morgan Stanley about the '98 sales figures; is that correct?
MR. MOSCATO: You being Phil Harlow personally?
MR. WEBSTER: Phil Harlow.
THE WITNESS: I mean. What's the 16th (sic) date?
BY MR. WEBSTER:
Q. The 19th is the date of the press release I'm talking about.
A. The 19th was the date.
Q. My question is, the March 19th press release was issued before you ever talked to Morgan Stanley about the '98 sales figures; is that correct?
A. Before I personally did, as I recall. As I testified earlier, I think I talked to Morgan Stanley the day, it was later in the day, the day that press release was released.
Q. Right. Mr. -- you indicated a moment ago, I believe, that you preferred disclosure of the '98 net sales info through the date of the offering memorandum

in the offering memorandum; is that correct?
A. That's correct.
Q. Did you express that preference to Morgan Stanley?
A. As I testified earlier today, I did.
Q. Had you ever disclosed that kind of detail -- or strike that.
Are you aware of that level of detail ever being disclosed in a prior offering memorandum in a transaction you were associated with?
MR. MOSCATO: I object.
MR. JOHNSON: Join.
THE WITNESS: I've seen a lot of things disclosed over the years. You know, I didn't -- I had not seen precisely that kind of disclosure in an offering memorandum.
MR. WEBSTER: Thank you.
MR. MOSCATO: Are you finished with your answer?
THE WITNESS: Yeah, that's good enough.
MR. MOSCATO: Okay.
BY MR. WEBSTER:
Q. Did you ever talk to Morgan Stanley about disclosing the bill and hold practice in the offering

memorandum?
A. I don't recall. I think it was disclosed in the offering memorandum.
Q. The CPH Exhibit 36, the press release --
A. Which press release?
MR. MOSCATO: It would be the April 3 press release.
THE WITNESS: April 3.
BY MR. WEBSTER:
Q. April 3rd. April 3rd press release indicated that the company expected first quarter sales for '98 to be approximately five percent below '97's first quarter sales; is that correct?
A. That's what it says, that's correct.
Q. Was that degree of shortfall about what you had expected?
MR. MOSCATO: I object.
MR. JOHNSON: Join.
THE WITNESS: I had not calculated a shortfall percentage to be honest.
BY MR. WEBSTER:
Q. Did you have any expectation about the magnitude of the shortfall?
A. I -- no, I had not targeted a number.
Q. Did it surprise you that they had come within

NOT A CERTIFIED COPY

048552

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023925

five percent of '97's first quarter sales?
MR. MOSCATO: I object.
THE WITNESS: No, I wouldn't say that surprised me. I mean, I thought it was going to be below, whether it's five percent or seven percent, not surprising.
MR. WEBSTER: That's all the questions I have.

RECROSS EXAMINATION

BY MR. JOHNSON:

Q. One more follow-up. You indicated, Mr. Harlow, that the bill and hold sales were disclosed in the offering memorandum; is that correct?

A. Well, I can't remember. I mean, it's been years since I looked at the document. I think the financial statements if they're not a part of it are incorporated by reference. And in the financial statements, 1997 -- or, no -- yeah, 1997 financial statements they were disclosed.

Q. That's the 10-K for 1997?

A. Yes.

Q. And you've previously testified, haven't you, that the disclosure of the risks associated with bill and hold in the '97 10-K was not sufficient, haven't you?

MR. MOSCATO: I object to that.
THE WITNESS: Well, I think my -- you know, where I am on bill and hold and disclosure on that, you know, we had discussed with the company to have additional disclosures. And originally the company was not going to put anything relating to bill and hold transactions in the financial statements, and we insisted that that be done.
And they ultimately put in a discussion of bill and hold and also quantified the amount of bill and hold in the footnotes to the financial statements. There was also a discussion in the MDMA section. You know, is it adequate or isn't adequate? I don't know. I can't say.

BY MR. JOHNSON:

Q. On your June 8th, 1999 testimony, Mr. Lipman (phonetic) reviewed the various disclosures in the 10-K for 1997 at pages 157 through 160 relating to bill and hold.

A. What year was that testimony?

Q. The testimony was 1999.

A. 1999.

Q. June of 1999. You were then asked the question, "Now in your view is this sufficient disclosure of the risks of, well, I'll say the negative impact of future financial performance?"
Answer, "No, I think I would suggest better wording than this."
Do you recall giving that testimony?
THE WITNESS: I don't --
MR. MOSCATO: I object.
THE WITNESS: I don't recall.
MR. MOSCATO: Well, let me finish. I object. I believe that is out of context. Go ahead.
THE WITNESS: Well, it is out of -- clearly out of context, but, I mean --
MR. MOSCATO: The question is do you recall the testimony, yes or no.
THE WITNESS: Vaguely. I mean, you know, I testified 15 days up there. To remember everything I said would be next to impossible.
MR. MOSCATO: Are you finished?
MR. JOHNSON: I'm finished, yes.

REDIRECT EXAMINATION

BY MR. WEBSTER:

Q. To be clear, Mr. Harlow, did you ever recommend to Morgan Stanley that the offering memorandum should have more detailed disclosure regarding bill and hold than was in the 10-K?

A. I don't recall. I don't recall.

MR. MOSCATO: Thank you, everybody.
MR. WEBSTER: Thank you.
(The foregoing proceedings were concluded at 1:50 p.m.)

NOT A CERTIFIED COPY

018553

73d5d8ca-ab2c-4e77-8ead-53fb3edfdffd
16div-023926

THE STATE OF FLORIDA,)
COUNTY OF PALM BEACH.)

I, PHILLIP E. HARLOW, do hereby certify that I have read the foregoing transcript of my deposition given on Friday, November 19, 2004, and that together with any additions or corrections made herein, it is true and correct, to the best of my belief.

_____
PHILLIP E. HARLOW

SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY OF , 2004.

_____
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE MY COMMISSION EXPIRES:

RULE 1.310 FLORIDA RULES OF CIVIL PROCEDURE PROVIDES:

(E) ANY CHANGES IN FORM OR SUBSTANCE WHICH THE WITNESS DESIRES TO MAKE SHALL BE ENTERED UPON THE DEPOSITION BY THE OFFICER WITH A STATEMENT OF THE REASONS GIVEN BY THE WITNESS FOR MAKING THEM.

PAGE	LINE	CHANGE	REASON

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

_____ Date:_____
PHILLIP E. HARLOW

CERTIFICATE

THE STATE OF FLORIDA,)
)
COUNTY OF PALM BEACH.)

I, BARBARA GALLO, Registered Merit Reporter and Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true and correct transcription of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this____day of_____, 2004

_____
BARBARA GALLO, RMR-CRR
Notary Public State of Florida
My Commission Expires September 17, 2007

NOT A CERTIFIED COPY

018554

CONFIDENTIAL
IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

----------X
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
Case No.
vs. CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.
----------X
MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
Case No.
vs. CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
----------X

VIDEOTAPED DEPOSITION OF BRUCE SLOVIN
New York, New York
Wednesday, May 12, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 160109

May 12, 2004
9:10 a.m.

Videotaped Deposition of BRUCE SLOVIN, held at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York, pursuant to Notice, before Wendy D. Boskind, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for Coleman (Parent) Holdings Inc., MacAndrews & Forbes, and the witness
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Morgan Stanley
777 South Figueroa Street
Los Angeles, California 90017
BY: LAWRENCE P. BEMIS, ESQ.
-and-
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: ZHONETTE M. BROWN, ESQ.

ALSO PRESENT: Ruben Martinez, The Legal Video Specialist

THE LEGAL VIDEO SPECIALIST: This is tape number one of the videotaped deposition of Mr. Bruce Slovin, in the matter Coleman (Parent) Holdings, Inc., versus Morgan Stanley & Co., Inc., Case Number CA 03-5045 AI, also Morgan Stanley Senior Funding, Inc. versus MacAndrews & Forbes Holdings, Inc., Case Number CA 03-5165 AI.

This deposition is being held at 153 East 53rd Street, Manhattan, New York, on May 12, 2004, at approximately 9:10 a.m. My name is Ruben Martinez, from the firm of Esquire Video Services. The court reporter is Ms. Wendy Boskind, in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. BEMIS: Good morning. Lawrence P. Bemis, Kirkland & Ellis, on behalf of the Morgan Stanley

NOT A CERTIFIED COPY

018556

Page 5

entities.
MS. BROWN: Zhonette Brown, Kirkland & Ellis, also on behalf of Morgan Stanley.
MR. MARKOWSKI: Bob Markowski, from Jenner & Block, on behalf of Coleman (Parent) Holdings, MacAndrews & Forbes, and the witness.
THE LEGAL VIDEO SPECIALIST: Will the court reporter please swear in the witness.

BRUCE SLOVIN, business address at 1 Eleven Associates, LLC, 111 East 61st Street, New York, New York 10021, having been first duly sworn by the Notary Public, (Wendy D. Boskind), was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:
Q. Good morning, Mr. Slovin. Would

Page 6

Confidential - Slovin
you state your full name for the jury, please?
A. Bruce Elliot Slovin.
Q. How old are you, Mr. Slovin?
A. 40 -- 68.
Q. What's your date of birth?
A. 12-10-35.
Q. And you are represented by Mr. Markowski here this morning?
A. Yes.
Q. What is your current residence address?
A. 42 East 65th Street, New York City, New York.
Q. And how long have you lived there?
A. 18 years.
Q. Do you have a listed telephone number there?
A. Yes.
Q. What is it?
A. 212-570-6486.
Q. Are you a current resident of the State of New York?

Page 7

Confidential - Slovin
A. Yes.
Q. And you carry a New York driver's license?
A. Yes.
Q. Are you married?
A. Yes.
Q. Does your spouse live with you at that address that you just gave us?
A. Yes.
Q. Are you currently employed by any company affiliated with Mr. Ronald Perelman?
A. I am a director of M&F Worldwide.
Q. Is that the only company that you work for now or that is affiliated in any way with Mr. Perelman?
A. Yes.
Q. You understand you are being videotaped; correct?
A. Yes.
Q. And before you came to the deposition, did you have an opportunity to meet with Mr. Markowski?

Page 8

Confidential - Slovin
A. Yes.
Q. And did you review any documents with him before --
A. Yes.
Q. What documents did you review?
MR. MARKOWSKI: I am going to instruct the witness not to answer.
MR. BEMIS: Grounds?
MR. MARKOWSKI: Work product.
(DIRECTION NOT TO ANSWER.)
Q. You understand that the oath that you took, sir, has the same force and effect as if you were testifying live in front of a jury?
A. Yes.
Q. Is there any reason that you can think of today that you can't testify truthfully?
A. No.
Q. You have been deposed before; haven't you?
A. Yes.
Q. And you are an attorney; aren't you?

NOT A CERTIFIED COPY

018557

Confidential - Slovin

A. I am an attorney.
Q. Are you still licensed to practice in New York?
A. I may be.
I don't think I keep my dues up to date but, other than that, I think I probably can practice law, yes.
Q. You have been deposed -- you said you have been deposed before. You are then familiar with the process we go through in a deposition, the questions and answers?
A. Yes.
Q. If there is anything that you don't understand when I ask the question, you let me know. Otherwise, I am going to assume that you understand it. Fair enough?
A. Yes.
Q. Did you discuss your deposition testimony here today with anyone other than Mr. Markowski, your attorney?
A. Yes, Steven Fasman.
Q. And would you tell me who

Confidential - Slovin

Mr. Fasman is, please?
A. He is an attorney for --
Q. For MAFCO?
A. I believe so.
I am not entirely sure who his employment is directly with but, yes, one of the --
Q. He is an attorney for one of Mr. Perelman's entities; correct?
A. Yes.
Q. When did you talk to Mr. Fasman about your deposition?
A. Yesterday.
Q. Was he present when you were being prepared by Mr. Markowski?
A. Yes.
Q. How long were you prepared by Mr. Markowski and Mr. Fasman yesterday?
A. Approximately an hour-and-a-half to two hours.
Q. Was anyone other than Mr. Markowski and Mr. Fasman present during your preparation?
A. No.

Confidential - Slovin

Q. In the course of your preparation, did you review any deposition transcripts that have been taken in the action?
A. No.
Q. Any deposition transcripts from other actions at all related to the Sunbeam/Coleman merger transaction?
A. No.
Q. Did you review any partial transcripts?
A. No.
Q. Any documents where -- that were segregated out by where your name appeared in them?
A. I don't believe so.
Q. Have you given any written statements to anyone about the subject matter of the litigation you are here giving testimony on?
A. No.
Q. Have you given any affidavits on the same subject matter?
A. No.

Confidential - Slovin

Q. Other than being prepared by Mr. Markowski and Mr. Fasman yesterday for your deposition, have you been interviewed by anyone about the litigation you are here testifying on?
A. No.
Q. You were a member of the board of directors of The Coleman Company at the time that the agreement and plan of merger dated February 27, 1998 was approved by the board; correct?
A. Yes.
Q. Let me show you what's been marked as Morgan Stanley Exhibit 117.
(Deposition Exhibit Morgan Stanley 117, agreement and plan of merger among Sunbeam Corporation, Camper (phonetic) Acquisition Corporation, and The Coleman Company, dated as of February 27th, marked for identification.)
Q. Do you have in front of you Morgan Stanley Exhibit 117?
A. Yes.

NOT A CERTIFIED COPY

018558

Confidential - Slovin

Q. Please take a moment and look at it, if you choose, and tell me if that is, indeed, the agreement and plan of merger among Sunbeam Corporation, Camper (phonetic) Acquisition Corporation, and The Coleman Company, dated as of February 27th.

MR. MARKOWSKI: I object to the lack of foundation.

Q. You can answer.

A. It states that it is.

Q. Is this the document that you approved -- excuse me -- is this a copy of the document that you approved as a member of the board of directors at the meeting of February 27th, 1998?

MR. MARKOWSKI: Same objection.

A. It appears to be, (indicating).

Q. Now, at the meeting of February 27th, 1998 of the board of directors of The Coleman Company, you were present; correct?

A. Yes.

Q. And were you present for the

Confidential - Slovin

entire meeting?

A. My recollection is that I was.

Q. At any time during that board of directors meeting, on February 27th of 1998 of The Coleman Company, did Morgan & Stanley & Co., Incorporated, which I will refer to as "Morgan Stanley" here, appear before the board of The Coleman Company?

A. I don't recall.

Q. You don't recall, one way or the other?

A. That's right.

Q. You voted for the merger, did you not?

A. Yes.

Q. Did you see the merger agreement before you voted for the merger?

A. I don't recall.

Q. Did you ever read the merger agreement?

A. Uh -- in part.

Q. What part did you read?

Look at MS 117 and tell me what you read.

Confidential - Slovin

A. I don't recall.

Q. You don't even want to take a moment to look at it --

A. I have.

Q. -- and see --

A. I have.

Q. Okay.

A. I have flipped through every page, and I don't recall reading any specific page at the time, in February 1998.

Q. Well, did you read any portion of it after February 27th, 1998, after your board voted to approve the merger?

A. I don't recall.

Q. Well, you voted for the merger on behalf of the public shareholders of The Coleman Company, did you not?

A. Yes.

Q. And you also voted for the merger, as set forth in MS 117, on behalf of MAFCO Holdings Inc., which indirectly owned 82.4 percent of The Coleman Company, Inc. common stock; didn't you?

Confidential - Slovin

A. Yes.

Q. Did you rely on any information in approving the merger that was provided outside of the board meetings?

A. I don't recall that I did.

Q. Now, there were two board meetings at which the merger was discussed; correct?

A. To the best of my recollection, yes.

Q. The first meeting was February 25th of 1998; correct?

A. I believe so, yes.

Q. And that meeting lasted approximately an hour-and-a-half?

A. I have no recollection of the time that transpired.

Q. Well, let me show you the board minutes and see if that helps you.

(Deposition Exhibit Morgan Stanley 88, true and correct copy of the minutes of the board of directors of The Coleman Company, Inc. held on February 25th, 1998 at 4 p.m., marked

NOT A CERTIFIED COPY

Confidential - Slovin

for identification.)

Q. I show you what's been marked as Morgan Stanley Deposition Exhibit 88, sir.

MR. BEMIS: Do you need another copy, Mr. Markowski?

MR. MARKOWSKI: (Nodding.)

Q. I think I gave you two copies, sir. Let me just see if I did that. I did, I'm sorry.

Now, do you have Morgan Stanley Exhibit 88 in front of you, Mr. Slovin?

A. Yes, I do -- well -- yes, I did do.

Q. Okay. Now, sir, would you confirm for me, sir, that these are -- as a director of the company, that these are a true and correct copy of the minutes of the board of directors of The Coleman Company, Inc. held on February 25th, 1998 at 4 p.m.?

A. I believe they are.

Q. And if you will turn to the last page of the minutes, sir, will you confirm for me, sir, that the minutes reflect that

Confidential - Slovin

the meeting was adjourned at 5:30 p.m. that date?

A. Yes, I can confirm that based upon the comment on page 6 of these minutes.

Q. So the very first meeting in which the Coleman/Sunbeam merger was discussed at a board of directors meeting of the Coleman Corporation lasted one-and-a-half hours, according to the minutes; correct?

A. Yes.

Q. Do you have any reason to dispute that that is the length of that board meeting, sir, based on the minutes that have been presented to you here this morning?

A. No.

Q. And just to confirm -- withdrawn.

Now, let me show you what's been marked as Morgan Stanley Exhibit 119.

(Deposition Exhibit Morgan Stanley 119, copy of a court document

Confidential - Slovin

filed by Coleman (Parent) Holdings in the lawsuit that was brought against Arthur Andersen, LLP and Mr. Philip E. Harlow in the Circuit Court for Palm Beach County, Florida, marked for identification.)

Q. Do you have Plaintiff's -- excuse me, "Plaintiff's" -- do you have Morgan Stanley Exhibit 119 in front of you, sir?

A. Yes.

Q. This, sir, is a copy of a court document filed by Coleman (Parent) Holdings in the lawsuit that was brought against Arthur Andersen, LLP and Mr. Philip E. Harlow in the Circuit Court for Palm Beach County, Florida, as you will see on the caption.

Do you see that, sir?

A. Yes.

Q. And you at one time were the president of (Parent) -- of -- excuse me, of Coleman (Parent) Holdings Inc.; were you not?

Confidential - Slovin

A. Which company are you referring to?

Q. Coleman (Parent) Holdings Inc., you were the president of that company at one time.

A. I don't have a specific recollection of what title I carried at the time.

Q. Well, if -- even if you don't have a specific recollection at a point in time you were president at one time, were you not, sir?

A. You are suggesting I was president of a holding company, that held --

Q. No.

A. -- Coleman?

Q. I am suggesting -- I am asking you, really, is what I am asking you, at one time you were the president of Coleman (Parent) Holdings Inc., the Plaintiff in the lawsuit that's captioned in the documents in front of you.

A. I actually don't remember --

NOT A CERTIFIED COPY

018560

Confidential - Slovin

Q. Okay.
A. -- what title I held.
Q. But you did hold some title in the company.
A. I don't recall precisely what title.
Q. No, no, that's not my question. You recall holding a title. If you don't --
A. I don't recall holding a title specifically^.
Q. Well, let me ask you, sir, to turn to page 4 of the filing here by Coleman (Parent) Holdings Inc. and turn to paragraph 7, which is on page 4, and tell me when you are there; page 4, paragraph 7.
A. (Pause.)
I have read that paragraph.
Q. All right, sir.
Directing your attention to the third sentence, beginning: "This case involves a transaction". Do you see that?
A. Yes.

Confidential - Slovin

Q. The transaction referred to in this document is the Sunbeam/Coleman -- Coleman merger, and I will ask you, sir, do you agree that the lawyer's statement on behalf of Coleman (Parent) Holdings Inc. that the transaction was, quote, "negotiated at arm's-length by two large sophisticated and public-traded corporations"?
A. Yes.
Q. Would you agree with the next sentence, sir, that: "Each side was represented by prominent highly-paid advisors, Morgan Stanley, Skadden Arps, and Anderson for Sunbeam"? Do you agree with that?
A. Yes.
Q. And would you agree with the next portion of the sentence, "and CS Boston and Wachtell, Lipton for The Coleman Company"?
A. Yes.
Q. And did you -- would you agree with the following sentence: "Sunbeam

Confidential - Slovin

conducted due diligence of The Coleman Company just like any third-party buyer would do"?
A. Yes.
Q. Would you agree with me, sir, that The Coleman Company also conducted due diligence of Sunbeam like any buyer or buyer would do?
A. In the particular circumstances of this transaction, yes.
Q. Thank you. You can set that aside. You can hand it back to me. Thank you.
MR. BEMIS: Ms. Reporter, why don't we just take one second and let you mark these, initial these before I forget, and I will try to remember to let you do that as we move along.
(Discussion off the record.)
Q. Now, I would like now to ask you to direct your attention back to the board of directors meetings on February 27th and February 25th, 1998 of The Coleman Company, Inc.

Confidential - Slovin

Are you there, sir, are you thinking, are you with me at that time frame?
A. Yes.
Q. Okay. The Coleman Company at -- board of directors, was represented by Wachtell, Lipton, Rosen & Katz; correct?
A. Yes.
Q. And that's a New York City law firm?
A. Yes.
Q. A prominent New York City law firm?
A. Yes.
Q. And The Coleman Company was also represented by an investment banking firm; right?
A. Yes.
Q. And that investment banking firm was Credit Suisse First Boston; correct?
A. Yes.
Q. And, indeed, Credit Suisse First Boston was the exclusive financial advisor to The Coleman Company in the transaction;

NOT A CERTIFIED COPY

0185961

Confidential - Slovin

was it not, sir?

A. That's my belief, that they were.

Q. And, in addition, The Coleman Company, Inc. had auditors; did it not?

A. Yes.

Q. And your auditors were -- excuse me, The Coleman Company's auditors were Ernst & Young, LLP at that time?

A. Yes.

Q. And those auditors were, indeed, under the terms of the merger agreement, supposed to provide a comfort letter to Sunbeam with regard to the financial statements of The Coleman Company as part of the merger, were they not, sir?

MR. MARKOWSKI: Object to lack of foundation.

A. I have no specific recollection of that.

Q. I will ask you to look at Plaintiff's Exhibit 117. Turn to Section 7.3 A on page 29. And read that paragraph, please.

Confidential - Slovin

A. Which paragraph are you referring to?

Q. Paragraph 7.3, titled Comfort letter, sub-paragraph A.

A. Yes. (Pause.)

I have read the 7.3.

Q. My question was, sir, Arthur -- excuse me, Ernst & Young L.L.P., the accountants for The Coleman Company, Inc., were to provide a comfort letter to Laser, which is a subsidiary of the -- a subsidiary of Sunbeam in connection with the merger pursuant to this paragraph of the merger agreement; correct?

MR. MARKOWSKI: Object to the form of the question.

Are you asking him whether he recalls that --

MR. BEMIS: You can just object to the form of the question --

MR. MARKOWSKI: I want to know if you are asking him if he recalls it or whether you are asking him to read this and interpret this. I have

Confidential - Slovin

a different objection --

MR. BEMIS: I heard your objection.

He can answer the question.

MR. MARKOWSKI: I am going to object, then.

MR. BEMIS: You did, you said "object to form".

MR. MARKOWSKI: Excuse me. I am going to object on the grounds that it is a lack of foundation to the extent you are calling for him to interpret it, I object, the document speaks for itself.

MR. BEMIS: I have never heard of talking documents, but let's get an answer to the question.

A. That's how I interpret the reading of 7.3 sub A.

Q. And that's how you would have interpreted it, then, when you reviewed and approved the merger agreement at the board of directors meeting on February 27th, 1998 as a fiduciary to the

Confidential - Slovin

shareholders; correct?

A. I imagine that's so.

Q. All right.

At the board meeting, on February 27th of 1998, did Credit Suisse First Boston provide a fairness opinion to the board of directors of The Coleman Company?

A. My recollection is that they did, yes.

Q. Did you see it and was it given in writing or orally?

A. I think both.

Q. Let me show you what's been marked as Morgan Stanley 120.

A. Excuse me, you were talking about Credit Suisse or Morgan Stanley.

Q. Credit Suisse First Boston.

A. Yes, I have it.

Q. I am going to ask the court reporter to mark that, and I will just have a couple questions for you.

(Deposition Exhibit Morgan Stanley 120, written fairness opinion

NOT A CERTIFIED COPY

018562

Confidential - Slovin

that was provided to the board of directors of The Coleman Company, Inc. on February 27th, 1998, marked for identification.)

Q. I hand you now what I have had marked as Morgan Stanley 120.

Do you have that in front of you, sir?

A. I do.

Q. And can you please confirm for me, sir, that this is the written fairness opinion that was provided to the board of directors of The Coleman Company, Inc. on February 27th, 1998 --

A. It appears to be that.

Q. And this was provided by your exclusive financial advisor, Credit Suisse First Boston Corporation; correct?

A. I believe so.

Q. All right. You may set that aside for now.

At the board of directors meeting of February 27th, 1998, did you, that is, as a director of The Coleman

Confidential - Slovin

Company, receive a fairness opinion from Morgan Stanley & Company, Incorporated?

A. I actually don't recall.

Q. You don't recall one way or the other?

A. Yes.

Q. Well, in preparation for your deposition, did you see a Morgan Stanley & Company, Incorporated fairness opinion --

MR. MARKOWSKI: Objection.

Q. -- directed to the board of directors of The Coleman Company?

MR. MARKOWSKI: I am going to object, instruct the witness not to answer, calls for work product.

(DIRECTION NOT TO ANSWER.)

Do you want to ask him whether he has ever seen one --

MR. BEMIS: Well, that may be the next question. I don't need your assistance in telling me what questions --

MR. MARKOWSKI: I instruct him

Confidential - Slovin

not to answer that.

I made myself clear with respect to asking questions about what he reviewed with me, so why you ask that question I don't understand.

Q. Have you ever seen a fairness opinion prepared by Morgan Stanley & Company, Incorporated addressed to the board of directors of The Coleman Company, Inc.?

A. I have no specific recollection one way or another of seeing that.

Q. Now, am I correct, sir, that the only fairness opinion that was ever provided to The Coleman Company, Inc. is the document that you have in front of you as Morgan Stanley 120?

MR. MARKOWSKI: Would you read the question back, please.

MR. BEMIS: Let me rephrase the question.

Q. Am I correct that the only written fairness opinion that was provided to The Coleman Company by Credit Suisse

Confidential - Slovin

First Boston is Plaintiff's -- excuse me, Morgan Stanley Exhibit 120?

A. I do not know.

Q. You don't recall one way or the other?

A. I do not recall if there were other written documents within the fairness opinion. A legend that was submitted to the board of directors.

Q. Did you say "legend"?

A. It's an awkward word.

The -- I don't know if I saw any other fairness opinions written by First Boston.

Q. Other than MS 120 that is in front of you.

A. That is my recollection, yes.

Q. Now, am I correct, sir, that you, as a member of the board of directors of The Coleman Company, voted to approve the agreement and plan of merger as fair?

A. Yes.

Q. And did the other -- were there any dissenting directors, to your

NOT A CERTIFIED COPY

018563

Confidential - Slovin

knowledge?
A. Not to my knowledge.
Q. All right. When you voted as a director that the agreement and plan of merger was fair, what did you understand "fair" to mean?
A. Reasonable, economic relationships.
Q. So it was fair to the -- were you finished?
A. Yes.
Q. Good, I didn't mean to interrupt you. Sometimes that happens. I will try not to do that.
So, in your view, the merger agreement, which we marked as Morgan Stanley 117, it was fair to the public shareholders of The Coleman Company; correct?
MR. MARKOWSKI: You are asking him for his view at the time?
MR. BEMIS: Yes, as a director when he voted on it.
MR. MARKOWSKI: I just wanted to

Confidential - Slovin

know if you are asking him today or when he voted on it.
MR. BEMIS: I said -- I think I said when he voted, but if you are confused I will ask him again.
A. No, you don't have to ask again.
Q. Okay.
A. Yes, I thought it was fair to the public shareholders.
Q. And you thought that the merger agreement was fair to Coleman Worldwide Corporation?
A. Yes.
Q. By the way, who -- what entity held the shares of The Coleman Company that were owned by Mr. Perelman's affiliates?
A. I am not certain.
Q. Well, the Plaintiff in one of these cases is Coleman (Parent) Holdings Inc. Did you assume the transaction as a director on February 27th was fair to Coleman (Parent) Holdings?
A. Yes.

Confidential - Slovin

Q. And there is another entity that in the chain that we will get to, a company called CLN Holdings, Inc. Are you familiar with that?
A. No.
Q. You are not familiar with it?
A. No.
Q. Now, let me ask you a couple of specific questions about the company Morgan Stanley & Co., Incorporated, which is one of the parties to the case, that's its full name, and I will refer to them right now as "Morgan Stanley" just to keep the questions a little shorter. Is that okay with you?
A. Perfectly okay with me.
Q. Okay. Did you ever attend any face-to-face meetings with Morgan Stanley concerning the Sunbeam/Coleman action -- acquisition, excuse me, before it was approved on February 27th, 1998 by the board?
A. No.
Q. Between the approval of the

Confidential - Slovin

acquisition on February 27th, 1998, and the closing, which I think the record shows was March 30th of 1998, did you attend any face-to-face meetings with anyone with Morgan Stanley?
A. No.
Q. Now going forward, from the closing, which -- of March 30th of 1998, and say July 1st, 1998, did you have any face-to-face meetings with anyone at Morgan Stanley concerning the Coleman/Sunbeam merger?
A. No.
Q. Did you ever have any -- withdrawn. Did you ever participate in any conference calls with Morgan Stanley concerning the Sunbeam/Coleman acquisition before it was approved by the Coleman board of directors on February 27th, 1998?
A. No.
Q. Between the approval of the merger on February 27th, 1998 and the closing on March 30th, of 1998, did you participate in any conference calls with

NOT A CERTIFIED COPY

018561

Confidential - Slovin

Morgan Stanley?
A. No.
Q. After the closing on March 30th of 1998 and up to July 1st of 1998, did you participate in any conference calls with Morgan Stanley concerning the merger transaction?
A. No.
Q. Did you as a -- did you, individually, receive any documents from Morgan Stanley concerning the Sunbeam/Coleman merger before it was approved by the board of directors of The Coleman Company on February 27th, 1998?
A. I don't recall.
Q. Have you seen any such documents in the course of your preparation?
A. I don't believe so.
Q. After the approval by the board of directors of the Sunbeam/Coleman merger on February 27th, and up to the point of closing on March 30th of 1999 -- 1998, excuse me, did you receive any documents from Morgan Stanley concerning the merger?

Confidential - Slovin

A. I don't recall.
Q. Did you see any in your preparation for your deposition?
MR. MARKOWSKI: I have got to -- let me make it simple. I have a standing objection and instruction not to answer with respect to any questions you have got relating to materials he saw in meeting with me to prepare for this deposition.
MR. BEMIS: I prefer you make your objection rather than have a standing objection because I don't think it's proper.
MR. MARKOWSKI: If you want to keep asking the question, I will keep instructing him not to answer.
MR. BEMIS: You are entitled to do that, I am not quarrelling with you, we will just deal with it later.
MR. MARKOWSKI: That's harassment.
Q. I am not trying to harass you.
MR. BEMIS: If you think I am,

Confidential - Slovin

you can adjourn the deposition and go tell the judge.
Q. Did you ever receive any correspondence from anyone at Morgan Stanley concerning the Sunbeam/Coleman acquisition before you voted to approve it at the board of directors meeting on February 27th, 1998?
A. I have no recollection.
Q. Did you receive any after -- withdrawn. Did you receive any correspondence from Morgan Stanley concerning the acquisition after the February 27th, 1998 approval and up unto the point of the closing of March 30th, 1998?
A. I have no such recollection.
Q. After the closing, on March 30th, 1998, and up until July 1st, 1998, did you receive any correspondence from anyone at Morgan Stanley concerning the acquisition?
A. I have no such recollection.
Q. I ask you the same series of

Confidential - Slovin

questions, sir, regarding electronic mail. Did you, for example, receive any electronic mail from Morgan Stanley concerning the Sunbeam/Coleman acquisition up to the point it was approved on February 27th, 1998?
A. I don't believe so.
Q. After the approval and up to July 1st of 1998?
A. I don't believe so.
Q. Are you -- one of the -- withdrawn. One of the other parties in these cases is Morgan Stanley Senior Funding, Inc. Are you familiar with that entity?
A. I believe so.
Q. Did you -- did you ever attend any face-to-face meetings with Morgan Stanley Senior Funding concerning the Coleman/Sunbeam acquisition before you voted to approve it on February 27th, 1998?
A. No.
Q. Did you receive -- withdrawn.

NOT A CERTIFIED COPY

Page 41

Confidential - Slovin

Did you have any face-to-face meetings with anyone from Morgan Stanley Senior Funding between the approval on February 27th of the merger and its closing on March 30th, 1998?

A. No.

Q. Following the closing on March 30th, 1998 and up through July 1st of 1998, did you have any face-to-face meetings with Morgan Stanley --

A. No.

Q. Senior-- excuse me, Morgan Stanley Senior Funding.

A. No.

Q. Okay, thank you.

Did you ever participate in any conference calls with anyone associated with Morgan Stanley Senior Funding concerning the Sunbeam/Coleman acquisition before you voted as a director to approve the acquisition on February 27th, 1998?

A. Not to my recollection.

Q. Between the approval of the merger on the 27th of February and its

Page 42

Confidential - Slovin

closing on March 30th, 1998, did you participate in any conference calls with Morgan Stanley Senior Funding?

A. Not to my recollection.

Q. Did you receive any documents from Morgan Stanley Senior Funding concerning the Sunbeam/Coleman merger before you voted to approve it on February 27th, 1998?

A. I don't recall.

Q. You don't recall one way or the other?

A. Yes.

Q. In your preparation, did you see any documents that you believe that you had received from Morgan Stanley Senior Funding in connection with the merger prior to your voting to approve it on February 27th, 1998?

MR. MARKOWSKI: Instruct the witness not to answer.

(DIRECTION NOT TO ANSWER.)

A. I don't believe so.

MR. MARKOWSKI: I instructed you

Page 43

Confidential - Slovin

not to answer on that because he is not entitled to ask you questions about --

THE WITNESS: So I should not answer.

MR. MARKOWSKI: Right.

THE WITNESS: I thought I could answer, even if you object.

MR. MARKOWSKI: Not if I instruct you. Questions he has relating to the materials we reviewed yesterday or discussions we had yesterday, those are privileged communications and he's not entitled to know that.

THE WITNESS: Very good.

Q. Did you receive any electronic mail from anyone from Morgan Stanley Senior Funding concerning the Sunbeam/Coleman merger before you voted to approve it on February 27th, 1998 at the board meeting?

A. I have no such recollection.

Q. Did you receive any e-mails from

Page 44

Confidential - Slovin

Morgan Stanley Senior Funding between the time of the approval, February 27th, and its closing on March 30th, 1998?

A. I have no such recollection.

Q. Same question -- withdrawn. Did you receive any e-mails from anyone from Morgan Stanley Senior Funding following the closing on March 30 and up through July 1st of 1998, again concerning the Sunbeam/Coleman acquisition?

A. I have no such recollection.

Q. As a member of the board of directors, did the board of directors ever authorize the approval of Morgan Stanley to act in any capacity to advise Coleman in connection with the merger agreement dated February 27th, 1998 which we marked as MS 117?

A. I have no such recollection.

Q. Did The Coleman Company, to your knowledge, authorize or -- any payments to Morgan Stanley in connection with the Sunbeam acquisition of The Coleman Company?

NOT A CERTIFIED COPY

018566

Confidential - Slovin

A. I do not know.
Q. Are you aware of any payments being made?
A. No.
Q. Are you aware of Coleman (Parent) Holdings Inc., the company, one of the Plaintiffs on these consolidated actions, making any payments to Morgan Stanley in association with the acquisition of Coleman?
A. I have no such recollection.
Q. You are familiar with the company called MAFCO Holdings Inc.; correct?
A. Yes.
Q. You were the president of MAFCO Holdings Inc.; were you not?
A. Yes.
Q. To your knowledge, did MAFCO Holdings Inc. make any payments to Morgan Stanley in association with Sunbeam's acquisition of Coleman as approved by the board of directors on February 27th, 1998?
A. I do not recall.

Confidential - Slovin

Q. Now, as a -- as a member of the board of directors, and having reviewed and approved Morgan Stanley 117, which is the merger and acquisition agreement, you were aware as a director, were you not, sir, that The Coleman Company had access to Sunbeam's books and records before the merger agreement was approved; correct?
MR. MARKOWSKI: Object to the form of the question.
Q. You may answer.
A. I believe so.
Q. And what steps did -- withdrawn.
MR. BEMIS: Would you please mark this as Morgan Stanley 210, please.
(Deposition Exhibit Morgan Stanley 210, press release issued by Sunbeam, marked for identification.)
Q. Sir, do you have Morgan Stanley Exhibit 210 in front of you, sir?
A. Yes.
Q. For the record, this is a press release issued by Sunbeam. And I would

Confidential - Slovin

ask you to please take a moment to read it and let me know when you are finished.
A. (Pause.)
I have read it.
Q. Okay. Have you seen this press release before today, sir?
A. Yes, I believe so.
Q. And would you please tell me when you first saw it?
A. My recollection is that I saw it when it was issued and I saw it again with counsel.
Q. So when you say when it was first issued, you are referring to March 19th of 1998?
A. The date that appears on this document someplace.
Q. And that is March 19th, 1998; correct?
A. It is.
Q. Now, sir, when you saw the press release, you were still -- were you still a director of The Coleman Company?
A. I believe so.

Confidential - Slovin

Q. And following your receipt of the press release, did you contact anyone at Morgan Stanley & Company, Incorporated and ask them any questions about the press release?
A. No.
Q. Did you contact anyone at Sunbeam?
A. No.
Q. Did you contact -- did you contact any members of the board of directors of The Coleman Company that had participated in the February 27th, 1998 meeting approving the acquisition?
A. I may have.
Q. Do you recall one way or the other?
A. I believe I did.
Q. And who did you contact?
A. I don't recall specifically.
Q. Did you contact this person by -- in a face-to-face meeting or a telephone call?
A. I don't recall.

NOT A CERTIFIED COPY

018367

Confidential - Slovin

Q. Did you have a conversation when you contacted this person?

A. I believe I did, these persons or person or persons, I don't recall if I had one or many conversations with one or more than one person, but I do believe I had some conversation concerning this release.

Q. I would like to limit myself now to one time period, and that would be March 19th up until the closing of March 30th of 1998.

Are you with me on the time period now?

A. Yes.

Q. Okay. Now, just within that time period, did you discuss the press release with anyone on the board of directors of The Coleman Company?

A. I think I did.

Q. Now, what did you -- what did you say to the person that you talked to or persons that you talked to and what did they say to you?

Confidential - Slovin

A. I don't have specific recollection.

Q. Do you have general recollections?

A. Yeah -- yes.

Q. What are your general recollections?

A. Just that the (indicating) sales were reported to be off slightly and that the company attributed that result to a reorganization of some customer inventories, but that the company expected year results to equal what their predictions were on a sales basis.

Q. And as a consequence -- withdrawn. As a result of these conversations, as you have generally related to them, did the board of directors of The Coleman Company convene any meetings between March 19th and the closing to reconsider the merger agreement?

A. Not to my recollection.

Q. To your -- strike that. Between

Confidential - Slovin

March 19th and March 30th, 1998, were there any further meetings of the board of directors to discuss the merger agreement?

A. I do not have such a recollection.

Q. Did -- after receiving the press release of March 19th, 1998, did any member of the board of directors request a comfort letter from Arthur Andersen concerning the financial statements of Sunbeam Corporation?

A. I have no such knowledge.

Q. Please turn to Morgan Stanley Exhibit 117 again, if you would, sir. It's in front of you. And look at paragraph 7.2 -- excuse me, 7.3 entitled Comfort letters, and sub-paragraph B, and tell me when you are there.

A. Sub-paragraph B?

Q. Yes, sir, it's on page 30. And tell me when you are there.

A. (Pause.)

Yes, I have read it.

Q. Sir, following the press release

Confidential - Slovin

of March 19th, 1998, did anyone who was a director, now of The Coleman Company, make any request of officers or employees, if you will, of The Coleman Company, to have delivered to it a comfort letter from Arthur Andersen, LLP as set forth in sub-paragraph 7.2 B of the merger agreement?

A. I don't have any such recollection.

Q. When you had these informal conversations -- withdrawn. When you had your conversations with your other directors, between March 19th and when the press release was issued and the closing on March 30th, in the course of those discussions, did any of the directors say words to the effect: Gentlemen, under the terms of the merger agreement, we are entitled to receive from Sunbeam's auditors, Arthur Andersen, a comfort letter? Did anyone say that?

A. I don't remember.

Q. Do you think in light of the

NOT A CERTIFIED COPY

D18568

Confidential - Slovin

March 19th press release of 1998 it would have been a good idea for the directors to do that, given their fiduciary duties to the public shareholders?

MR. MARKOWSKI: Object to the form of the question.

A. I don't know that they did it or didn't do it.

There were people who were in our organization who were more intimately involved, and they may have done what you are suggesting, I do not know.

Q. Who were --

A. I don't remember.

Q. I interrupted, I apologize.

Who would be the person in the organization, that is, The Coleman Company, you are referring to, who would be intimately familiar with this topic and would have had the responsibility for requesting the comfort letter from Arthur Andersen that they were -- that Sunbeam was obligated to request pursuant to paragraph 7.2 B of the merger agreement,

Confidential - Slovin

Exhibit MS 117?

A. Jerry Levin was intimately involved, Jim Maher, our lawyers, and our accountants and our investment banking advisors, those are the people who were intimately involved with this transaction.

Q. Okay, you can set 117 aside for now, sir.

When you acted as a member of the board of directors of The Coleman Company, in 1998, approving the merger, you were acting as a business person and not as an attorney; correct?

A. Yes.

Q. You did not -- strike that.

At any point when you were a director of The Coleman Company, did you render legal advice to the company as a lawyer?

A. No.

MR. BEMIS: Ms. Reporter, would you please mark MS 121 for identification, please.

(Deposition Exhibit Morgan Stanley 121, copy of Mr. Slovin's

Confidential - Slovin

calendar, plus a printout of a monthly calendar that Mr. Slovin kept in 1997 and 1998 for the months indicated on the document, marked for identification.)

MR. BEMIS: Mr. Markowski?

Q. Mr. Slovin, do you have Morgan Stanley Exhibit 121 in front of you?

A. Yes.

Q. Is this a copy of your calendar, if you will, plus a printout of a monthly calendar that you kept in the -- 1997 and 1998 for the months indicated on the document?

A. It appears to be that.

Q. Are there any -- well, let me ask you another question.

In 1997 and 1998, did you personally keep this calendar which we have marked as Morgan Stanley 121?

A. My secretary would have.

Q. May I call it your "calendar", is that fair enough, or do you want to call it something else?

Confidential - Slovin

A. You can call it my "calendar", if you wish.

Q. Okay. So your secretary kept your appointments and meetings for you on this electronic calendar?

A. It appears she did.

Q. Well, you didn't keep it yourself, I take it?

A. No.

Q. Did you provide this calendar to your legal counsel in this case pursuant to a request for production of documents?

A. I imagine we did.

Q. Do you have any recollection of when you did it?

A. No.

Q. Do you have any recollection of why only the months of December of 1997 and February of 1998 were produced?

A. No.

Q. And you have --

MR. MARKOWSKI: I'm sorry, you said only December and February?

MR. BEMIS: It's December and

NOT A CERTIFIED COPY

018569

Page 57

Confidential - Slovin
February, that's the only two months I see. Maybe I made a mistake.
MR. MARKOWSKI: I have got January in my copy.
MR. BEMIS: You know what? I don't have a January front page for it, and that's what confused me. Let me rephrase the question.
Q. On the daily planner section, there is just -- there are two dates, December 9th and February 27th. Do you see that? Just take a look at that real quick for us.
A. Yes.
Q. Are those the only two dates that you had on your daily planner any references to The Coleman Company?
A. I do not recall.
Q. Do you have -- strike that. Are there any other meetings during the months of December 1997, January and February of 1998 that involve The Coleman Company that are not on your calendars?
A. I do not remember.

Page 58

Confidential - Slovin
Q. Was your calendar generally accurate, that was kept by your secretary?
A. I think so.
Q. Okay. Well, one thing that strikes me when looking at your calendar, is you did have a board meeting on February 27th -- excuse me, February 25th of 1998 at 4 p.m., and we marked that as -- the minutes of that, as MS 88, which you have in the pile. Do you recall that?
A. Do I recall what?
Q. Do you recall that you had a board meeting of The Coleman Company on February 25th of 1998.
A. Yes.
Q. And when I look at your cal-- first of all, you don't have a day planner for that date and you also don't have it on your monthly grid for February, that is, the meeting of the board of directors.
Do you see that?
A. Yes -- yes.
Q. Was the February 25th, 1998 board meeting called without any prior

Page 59

Confidential - Slovin
advance notice to you?
A. I have no recollection of that.
Q. Do you have any explanation of why it would not appear on your calendar under the date February 25th?
A. No.
Q. Other than the calendar that we have a portion of in Morgan Stanley Exhibit 121, did you keep any other type of calendar in 1997 and 1998?
A. I had a big red book, (indicating) --
Q. Like a day planner?
A. Yeah, but I think (indicating) this was supposed to reflect what was in the book. This was my secretary's product, and I would jot down from time to time things to do as well as appointments to be met.
Q. And what -- when you say "a big red book", it had a red cover on it; right?
A. Right.
Q. I have seen those, a "day

Page 60

Confidential - Slovin
planner" book lawyers call them. Do you still have those?
A. Do I have it back in '97 and '98? I don't recall, I might.
Q. When you were asked to produce documents in this case, did you look -- did you produce those red books to the attorneys?
A. I don't remember.
Q. Okay. Do you have any current plans to, if you do have the 1997/1998 day planners still in existence, do you have any current plans to dispose of them?
A. I haven't thought about that in a while.
Q. Okay.
MR. BEMIS: I would make a formal request of counsel, if such documents exist that they at least not be destroyed until we have an opportunity to see whether they are subject to production. I am not suggesting you would do that, I am just, for the record, making a

NOT A CERTIFIED COPY

018570

Confidential - Slovin

request.

(REQUEST.)

Q. In addition to your day -- your red book day planner -- I, by the way, gave those up a long time ago, but I do remember them, and what your secretary kept, did you keep any other type of record of your appointments, business or personal?

A. No.

Q. Nothing like on a home computer, calendar, or something like that?

A. No.

Q. Did you use electronic mail in 1997 and 1998 in your business?

A. I don't believe so.

Q. When did you first start using it?

A. A few years ago, I think.

Q. Was it after you -- withdrawn. Did you use it while you worked for any of Mr. Perelman's companies?

A. I don't think so.

MR. BEMIS: Why don't we take a

Confidential - Slovin

five-minute break here.

THE LEGAL VIDEO SPECIALIST: The time is 10:10, we are going off the record.

(Recess taken.)

THE LEGAL VIDEO SPECIALIST: The time is 10:17, we are back on the record.

MR. BEMIS: Ms. Reporter, will you mark as Morgan Stanley 127 a document entitled The Coleman Company, Inc. proxy statement, dated May 31, 1996.

(Deposition Exhibit Morgan Stanley 127, document entitled The Coleman Company, Inc. proxy statement, dated May 31, 1996, marked for identification.)

Q. Do you have Plaintiff's Exhibit 127 -- I did it again, do you have Morgan Stanley's Exhibit 127 in front of you, sir?

A. Yes.

Q. Is this the proxy statement for

Confidential - Slovin

The Coleman Company for the meeting to be held May 31, 1996?

A. Yes.

Q. I am showing you this, sir, because I want to ask you a couple of questions about some companies, and it may help you refresh your recollection, if you so need it, on pages 2 and 3, there are some descriptions, and feel free to look at this.

You were the president of a company called MAFCO Holdings Inc.

A. Yes.

Q. And that company -- was that company, at the time you were the president, owned 100 percent by Ronald O. Perelman?

A. I believe so.

Q. When were you the president of MAFCO Holdings Inc.?

A. I don't recall.

Q. Can you give me just a general time period?

A. I would say sometime during the

Confidential - Slovin

Nineties.

Q. Were you the president of MAFCO Holdings Inc. in 1998 at the time the Coleman merger was approved?

A. I don't recall.

Q. What did you do as the president of MAFCO Holdings Inc.?

A. Specifically to that entity, I don't recall.

Q. Were you also the -- withdrawn. Were you the president of an entity known as MacAndrews & Forbes Holding Company Inc.?

A. Yes.

Q. And when were you the president of that entity, sir?

A. In the Eighties and Nineties, I believe.

Q. Okay. Were you president in 1998 at the time of the Sunbeam/Coleman merger?

A. I believe so.

Q. Could you just generally give us what your job description was as president

NOT A CERTIFIED COPY

01851

Confidential - Slovin

of that company?
A. It was one of the intermediate holding companies and general discussions of the investments of the company, but no specific responsibilities that I can recall.
Q. The Plaintiff in one of the cases that you are here testifying to is Coleman (Parent) Holding Inc. You know that company; right?
A. Yes.
Q. You were the president of that company; correct?
A. Coleman Holdings, Coleman Worldwide, yes.
Q. Now, you were talking when you answered the question, and I want to make sure my question -- you were answering my question. You were the president of Coleman (Parent) Holdings Inc.; right?
MR. MARKOWSKI: I want to make sure the record is clear because he is reading a document.
A. I don't see the parentheses.

Confidential - Slovin

The title that is reflected on page 3 under my name is Coleman Holdings and Coleman Worldwide, that's my recollection as to those two companies.
MR. MARKOWSKI: If you are reading from the document, the reference is to your position as a director.
A. As a director, it was Coleman Worldwide and Coleman Holdings.
Q. Let's just focus on my question, rather than reading the document. You read the document, if you could, to yourself and it will help the record be a little clearer and just answer the best that you can. If you don't know, you don't know.
MR. MARKOWSKI: He is asking that you set the document aside for a moment.
Q. You can look at it if you need to refresh your recollection, but I don't need you to read it.
My question is, were you the

Confidential - Slovin

president at one point of a company called Coleman (Parent) Holdings Inc. as I have described it?
A. I believe so.
Q. And when was that, sir?
A. Mid-1990's.
Q. And were you the president of the company at the time of the Sunbeam/Coleman merger in 1998?
A. I believe I was.
Q. What was your general job description as the president of Coleman (Parent) Holdings Inc. in 1998 at the time of the merger?
A. I do not recall.
Q. Were you the president -- excuse me. Coleman (Parent) Holdings Inc. was indirectly owned by Mr. Ronald O. Perelman through his other holding companies; correct?
A. Yes.
Q. And the same would be true for MacAndrews & Forbes Holding Company; correct?

Confidential - Slovin

A. Yes.
Q. Now I would like to turn to another company, Coleman Worldwide Corporation. You were the president of that company, as well; were you not?
A. Yes.
Q. And what period of time were you the president?
A. Mid-'90 -- mid-Nineties.
Q. Were you president in 1998 at the time of the merger?
A. I believe I was.
Q. What was your general job description as president of Coleman Worldwide Corporation?
A. The responsibilities of an executive officer, these were intermediate holding companies, to the best of my recollection.
Q. Do you recall anything you did on behalf of the company?
A. Not specifically, I don't recall.
Q. At one time, were you president

NOT A CERTIFIED COPY

018572

Confidential - Slovin

of the Revlon Group, Inc.?
A. I believe I was.
Q. When was that, sir?
A. Sometime late Eighties, early Nineties.
Q. Were you president in 1998, at the time of the acquisition?
A. I don't recall.
Q. Were you president -- withdrawn. Was the Revlon Group, Inc., was it a company owned indirectly by Mr. Ronald O. Perelman through his holding companies?
A. I believe it was.
Q. And were you also president of a company called Cosmetic Center, Inc.?
A. I don't recall.
Q. Doesn't recall that one, okay.
You were the president of 1 Eleven Associates; were you not?
A. That's my present activity.
Q. I remembered that from your business cards.
And when did you become president?

Confidential - Slovin

A. Approximately three years ago.
Q. What does that company do?
A. 1 Eleven?
Q. Yes.
A. It handles my private investments.
Q. Does Mr. Perelman have any interest in this company?
A. No.
Q. You are the sole owner of the company?
A. Yes.
Q. Were you the president of a company called Hanson, H-A-N-S-O-N, Industries, Inc.?
A. No.
Q. Did you have any position with that company at any time?
A. I was executive vice president.
Q. Is that a company indirectly owned by Mr. Perelman?
A. No.
Q. Does he have any interest in it at all?

Confidential - Slovin

A. Not to my knowledge.
Q. What does Hanson Industries do?
A. I think it's out of business right now. It was part of an English holding company called Hanson Trust.
Q. Is it your understanding the company is out of business today?
A. I am uncertain.
Q. You said you were an executive vice president. Do you hold any position today in the company?
A. No.
Q. "No." When did you stop holding a position in the company?
A. 1980.
Q. 1980?
A. (Nodding.)
Q. Thank you.
Now, let me ask you a couple questions about some other companies in which I believe you were either a director or served on the executive committee.
Let me start with the Andrews Group and Corp. Incorporated. Are

Confidential - Slovin

familiar are you familiar with that company?
A. Vaguely.
Q. Were you a vice chairman of the company?
A. I don't recall.
Q. Were you a director?
A. I believe so.
Q. When?
A. I think in the late Eighties.
Q. What did it do?
A. I don't recall.
Q. Was it owned by Mr. Ronald O. Perelman directly or indirectly through one of his holding companies?
A. I think so.
Q. Now, one of the companies we talked about earlier was the Coleman Worldwide Corporation. In addition to being president, were you also a director?
A. I believe so.
Q. And when were you a director of the company?
A. Sometime in the Nineties.

NOT A CERTIFIED COPY

Confidential - Slovin

Q. And you were a director at the time of the 1998 merger --

A. I believe so.

Q. -- correct?

Now, am I correct that you were a director of The Coleman Company, Inc. since about 1993?

A. I believe so.

Q. And you served as a director until you resigned as a consequence of the merger; correct?

A. Yes, I think so.

Q. You were -- in addition to being the -- a director of The Coleman Company, Inc., you were also a member of the executive committee; is that right?

A. I believe so.

Q. And were the other members of the executive committee of The Coleman Company in 1998, at the time of the merger, Mr. Perelman, Mr. Drapkin, Mr. Levin, and yourself?

A. I don't have a specific recollection who the other directors were.

Confidential - Slovin

Q. No, not the other directors. Let me rephrase the question, maybe I misspoke.

I am referring now to the members of the executive committee of The Coleman Company.

A. My answer is the same, I don't recall.

(Deposition Exhibit Morgan Stanley 129, document, which on page 2 lists on the executive committee the names of Ronald O. Perelman, Mr. Drapkin, Mr. Levin, Mr. Hammas, and Mr. Slovin.)

Q. Well, do you recall that Mr. -- let me show you what's been marked as Morgan Stanley 129, and by the court reporter.

A. Yes.

Q. Okay. If you will look to page 2 of this document. And it lists on the executive committee the names of Ronald O. Perelman, Mr. Drapkin, Mr. Levin, Mr. Hammas -- did I pronounce that correctly? Is it Hammas or Hammas?

Confidential - Slovin

A. Hammas.

Q. Hammas, excuse me -- and yourself, Mr. Slovin. Are these the members of the executive committee of --

A. I believe so, yes .

Q. Okay. And then in addition to the executive committee of The Coleman Company, you were also on the management and stock option committee, according to this document?

A. Yes.

Q. And you served on those committees, did you not, until your resignation from The Coleman Company in 1998?

A. I believe so.

Q. You can set that aside, if you like.

Now, when you served as a director of The Coleman Company, Inc., were you compensated for your services as a businessman?

A. From Coleman, no.

Confidential - Slovin

Q. Who did compensate you -- were you compensated by someone?

A. Yes.

Q. By whom?

A. One of the MacAndrews & Forbes entities.

Q. Now when you say the MacAndrews & Forbes entities --

A. The holding companies.

Q. The holding companies, what was your compensation for attending the board meetings --

A. I --

Q. In 1998, we will use that.

MR. MARKOWSKI: You are focusing on director fees as opposed to his salary.

MR. BEMIS: Yes, that's what I am referring to.

A. No director's fees.

Q. Did you receive any type of compensation at all from The Coleman Company, Inc. in 1997?

A. I don't believe so.

NOT A CERTIFIED COPY

018954

Confidential - Slovin

Q. In 1998?

A. I don't believe so.

MR. BEMIS: Ms. Reporter, will you mark, as Morgan Stanley 130, a document entitled Information statement pursuant to Section 14 S (f) of the Securities Exchange Act of 1934.

(Deposition Exhibit Morgan Stanley 130, document entitled Information statement pursuant to Section 14 S (f) of the Securities Exchange Act of 1934, marked for identification.)

Q. All right. Do you have that document in front of you, sir?

A. Yes.

Q. All right. Can you, sir, confirm for me, sir, that this is, indeed, the information statement filed with the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 and Section 14 (f)as stated on the front page of the document?

Confidential - Slovin

MR. MARKOWSKI: Object, for lack of foundation.

A. It appears so.

Q. Now, if you would turn, sir, to page -- turn to page 17, please.

Tell me when you are there.

A. I am there.

Q. Now, according to this table, in Exhibit MS 130, as of March 30th, and the close of business that day, you owned either directly or in trust for family members for which you disclaim beneficial ownership 52,600 shares of Coleman stock; is that correct?

A. Yes.

MR. BEMIS: Ms. Reporter, would you mark as Plaintiff's -- excuse me, Morgan Stanley 237 a -- go ahead.

(Deposition Exhibit Morgan Stanley 237, press release, dated March 2nd, 1998, entitled Sunbeam acquires three publicly-traded consumer products companies - Coleman, Signature Brands, and First

Confidential - Slovin

Alert, marked for identification.)

MR. BEMIS: Before we turn to Exhibit 237, I think I misspoke a minute ago.

Q. And let me ask you again if you would look at page 17 of MS 130.

The stock ownership of 52,600 shares was as of March 3rd, 1998; correct?

A. Yes.

Q. Thank you, because I think I misspoke and said March 30th.

All right. I have handed you now, and the court reporter has marked as Morgan Stanley 237, a press release, dated March 2nd, 1998, entitled Sunbeam acquires three publicly-traded consumer products companies - Coleman, Signature Brands, and First Alert.

Do you have that in front of you?

A. Yes.

Q. If you will turn to the -- first of all, did you see this press release when it was issued?

Confidential - Slovin

A. Most likely, but I don't have a specific recollection.

Q. All right. Would you turn to the second page and the penultimate paragraph, beginning: "This is a fantastic situation", and tell me when you are there.

A. (Pause.)

Yes.

Q. The press release reads, quote: "This is a fantastic situation for all Sunbeam shareholders but" -- withdrawn. Do you understand this is a press release that is announcing the merger agreement that the board of directors voted on, on February 27th, 1998; correct?

A. Yes.

Q. And under the terms of the merger agreement, holders of Coleman stock were, in part, to receive Sunbeam stock as part of the merger; correct?

A. Yes.

Q. So the 56,000, if you will -- excuse me, 52600 shares that you owned, or

NOT A CERTIFIED COPY

018575

Confidential - Slovin

were held in trust for which you disclaimed a beneficial interest, those eventually would have been exchanged in some fashion for Sunbeam stock; correct?

A. Yes.

Q. Now, if you will again -- now I would ask you to turn to MS 237 and that penultimate paragraph, which reads as follows, quote: "This is a fantastic situation for all Sunbeam shareholders giving them the opportunity to participate in the wealth that Al Dunlap and his team are building, closed quote, said Ronald O. Perelman, who will become Sunbeam's second largest shareholder after the transaction. Quote Coleman will thrive as a part of Sunbeam's unbeatable family of brands" -- "brands," excuse me, "added Mr. Perelman."

Do you see that?

A. Yes.

Q. Did you agree with that statement at the time it was made?

A. I don't recall.

Confidential - Slovin

Q. Did you -- following the announcement on March 2nd, did you dispose of any of the 52,600 shares of Coleman stock that you owned?

A. Yes.

Q. How many did you dispose of?

A. I believe all.

Q. And you sold those on the open market?

A. Yes.

Q. In fact, you sold them on March 4th, 1998; didn't you?

A. I believe so.

Q. And, so, you made a decision that it was better to liquidate your Coleman stock than receive Sunbeam stock?

A. Yes.

Q. Why?

A. I thought that I had fair value for my Coleman stock. I held the stock when it was part of the Perelman enterprises and it seemed to me the right financial thing to do.

Q. So, as I take it, based on your

Confidential - Slovin

due diligence and your -- as a director of The Coleman Company, and your voting for the merger, you thought financially the best thing to do was to sell your Coleman stock rather than participate in what this fantastic opportunity that Mr. Perelman is quoted in the press release as telling the public; is that correct?

A. I made --

MR. MARKOWSKI: Object to the form of the question.

A. I made a judgment on behalf of my children that it was the -- in their best interest and mine, as well, to liquidate the stock, and I had very little or nothing to do with Mr. Perelman's statement.

Q. Well, what did you think of Sunbeam as a company under Mr. Dunlap's tutelage in March of 1998?

A. I thought it was a fine company.

Q. And he was a fine president?

A. Oh, well, I am not a hundred-percent sure of my impression of

Confidential - Slovin

Mr. Dunlap at that time, it has fused with later events I am afraid. I know he was an experienced manager, having taken over and improved -- and apparently improved and later sold companies. I know he was an experienced businessman from reading the newspapers.

That was my recollection of my thoughts about Mr. Dunlap.

Q. Did you ever meet Mr. Dunlap?

A. No.

Q. To this day, you have never met him?

A. No.

Q. Did you ever read any of his books?

A. No.

Q. Have you ever read any books about him?

A. I have read snippets about him, yes.

Q. Did you read his book "Chain Saw"?

A. No.

NOT A CERTIFIED COPY

018576

Confidential - Slovin

Q. Or the book "Chain Saw", not his book, the book "Chain Saw".

A. I have it, but I have not read it.

Q. Have you read "Testosterone, Inc." yet?

A. That -- authored by Mr. Dunlap?

Q. No.

A. I don't think I read that, either.

Q. Let's shift gears now from the Coleman -- one last question.

As a result of your -- the sale of the 52,600 shares of stock identified in Morgan Stanley 130, at page 17, you no longer, as of March 4th, had any equity interest in The Coleman Company; correct?

A. That's my belief, yes.

Q. So you had no financial or equity participation in the consequences of the merger; right?

A. Except as they affected Mr. Perelman's enterprises, with whom I was employed.

Confidential - Slovin

Q. Okay. Well, setting aside your employee relationship, your own personal -- from your personal financial standpoint, you liquidated all of yours and your family's and your trust's interests on March 4th, the day or so after the public announcement and you had no further interest in The Coleman Company.

A. No direct financial interest, yes.

Q. Are you aware of -- if you would look at MS -- if you look at MS 130 again, and again page 117.

A. Yes.

Q. Are you aware of -- strike that. Do you know whether any of the other individuals listed on page 17 sold their Coleman stock after the public announcement on March 2nd of 1998 of the Coleman/Sunbeam merger acquisition?

A. I have no such knowledge.

Q. Okay, you can set that aside for the time being, sir.

Confidential - Slovin

You were -- withdrawn. I am going to shift directions now to a different company, so if that helps.

Were you an off-- a member of the board of directors of The Coleman -- of Coleman Holdings Inc., no comma?

A. I think so.

Q. And when was that?

A. Mid-Nineties.

Q. At the time of the merger?

A. I believe so.

Q. And you were also a director, were you not, of MacAndrews & Forbes Group Inc.?

A. I believe so.

Q. And were you an officer of that company, as well?

A. I think so.

Q. Was that during the time of the merger?

A. I think so.

Q. What did you do as an officer and director of MacAndrews & Forbes Group

Confidential - Slovin

with a comma Inc?

A. It was one of the holding companies of the Perelman Group, and from time to time you would discuss investments.

Q. So you didn't have any specific responsibilities.

A. No.

Q. Now, one of the other companies we identified earlier is MAFCO, and that's all capital MAFCO Holdings no comma Inc., you told me you were the president of that company; right?

A. I believe so.

Q. And that was at the time of the merger; correct?

A. I believe so.

Q. And you were also a director of that company; were you not?

A. I believe so.

Q. And was your job as president and director essentially generalized discussions of the holding operations?

A. Yes.

NOT A CERTIFIED COPY

018577

Confidential - Slovin

Q. Are you familiar with a company called MacAndrews & Forbes Holdings with a comma Inc.?

A. I think so.

Q. That was one of the holding companies that -- of Mr. Perelman; correct?

A. One of the intermediate companies.

Q. And was -- you know, was the business of these holding companies to do deals?

MR. MARKOWSKI: You are talking about all of them?

MR. BEMIS: The holding companies he has identified as opposed to an operating company like Coleman.

A. There was some kind of a complex structure designed by Mr. Perelman's advisors for various reasons. You asked the question whether they were designed to do deals.

Q. Yes.

Confidential - Slovin

A. I don't think that was their sole purpose. It may have been one of the purposes, assuming many deals were engaged upon during the time frame you are talking about.

Q. Now, when I use the term "deals" and you used the term "deals", were you comfortable with referring to these as "mergers and acquisition deals" ?

A. Yes.

Q. Of all kinds, whether they are state law mergers, buyouts, almost any combination you can think of under that caption of mergers and acquisitions?

A. I would say yes.

Q. Okay. Let me show you a document that we will mark as MS 240.

MR. BEMIS: Ms. Reporter, if you would please mark that.

(Deposition Exhibit Morgan Stanley 240, article entitled "The richest guy in town, the high life and times of Ron Perelman, master of Revlon" by Craig Horowitz, marked for

Confidential - Slovin

identification.)

Q. I have handed you what has been marked as MS 420 -- excuse me, 240, I misspoke, which is an article entitled "The richest guy in town, the high life and times of Ron Perelman, master of Revlon" by Craig Horowitz, H-O-R-O-W-I-T-Z.

Do you have that in front of you?

A. Yes.

Q. If you will turn to page -- the fourth page of the article, right above the heading, quote: "We will spend 1 billion to put together a real entertainment company says Perelman top gun". Tell me when you are there.

A. Oh, I read the headline, yes.

Q. Okay. Below the headline, there is a paragraph that begins with "But". Do you see that?

A. "But Perelman is" --

Q. "Monomaniacal", which I wasn't going to read into the record, but that is

Confidential - Slovin

where I was referring to.

A. Yes.

Q. Below that, it's read, quote: "Just because he's" -- referring to Mr. Perelman -- "done 10 deals or 20 deals or 30 deals that have been spectacular," says Donald Drapkin, Perelman's alter ego at MacAndrews & Forbes quote doesn't mean he should slow down or stop. If it was only about having enough money to live, he would have stopped a long time ago, but this is what we do. We do deals. Big deals, little deals, deals", followed by an ellipsis, closed quote. Do you see that quotation?

A. Yes.

Q. Do you know Mr. Drapkin?

A. Yes.

Q. Are you a friend of his?

A. Yes.

Q. Do you serve on the board of directors of Mr. Perelman's companies with Mr. Drapkin?

A. I did.

NOT A CERTIFIED COPY

018578

Confidential - Slovin

Q. You did -- excuse me, before -- for four -- a few years ago.

Do you agree with Mr. Drapkin's statement that: "This is what we do, we do big deals, little deals, deals"?

A. Yes, we were very active in mergers and acquisitions of all types.

Q. And this was true in 1998, as well; correct?

A. Yes, we were very active.

Q. Okay, you can set that aside.

And when you did deals, you customarily retained advisors to assist you in the deals; correct?

A. The large deals, yes.

Q. And when you did -- the Coleman deal was a large deal; was it not?

A. Yes.

Q. $2 billion, roughly?

A. Yes.

Q. And, so, when you did large deals, you would, that is, Mr. Perelman's companies, would retain advisors such as sophisticated law firms; correct?

Confidential - Slovin

A. Yes.

Q. In fact, Wachtell, Lipton was a firm that Mr. Perelman's companies had used during the 1990's for his deals; correct?

A. One of the firms.

Q. What other ones did you use, in big deals?

A. I think we used Cravath and we used Skadden, we used Kramer Levin, I believe -- um -- I forgot the name of Judge Rifkind's firm, who passed on -- Arthur Liman's firm, I forget the name of it.

THE WITNESS: You don't know the name?

A. That was another firm, the name just slipped my mind.

Q. That's okay. In addition to -- would you describe these as all big powerful sophisticated New York law firms?

A. Yes.

Q. In addition to law firms you -- when you did deals, big deals, did you

Confidential - Slovin

customarily hire, "retain" may be a better word, a financial advisor?

A. When we felt it was necessary, yes.

Q. And other than Credit Suisse First Boston, that you identified for me in the Coleman transaction, can you identify any other investment banking firms that you used in these deals?

A. I think we employed Goldman Sachs and Lazard.

Q. Lazard Freres?

A. Yes. I am not certain whether we used Merrill Lynch, but those were -- and CS First Boston we used, Morgan Stanley we used, they represented the bulk of our employment of investment bankers.

Q. When you needed accounting assistance in these big deals, did you have a preferred accounting firm?

A. I don't think we had a preferred accounting firm in the singular. We used Peat Marwick, we used Ernst & Young, primarily.

Confidential - Slovin

Q. And was it -- in these large deals, was it customary for the person -- the entity on the other side of the transaction, sometimes there may have been more than one, for those entities to retain their own advisors?

A. Yes.

Q. So they would retain their own law firms?

A. The firms on the other side of a buy or sell deal, yes.

Q. And would the other -- the person on the other side of the buy or sell deal customarily, again, in these big deals, retain an investment banking firm to advise them?

A. Yes.

Q. And if accountants were needed, would they customarily retain their own accounting firms?

A. Surely.

Q. At any point in your big deals, did you ever use private investigators as part of your due diligence investigation?

NOT A CERTIFIED COPY

018579

Confidential - Slovin

A. I don't recall.
Q. Were any private investigators used in connection with the Coleman transaction?
A. Not to my knowledge, I don't have any such recollection.
Q. Okay.
A. Paul Weiss was the firm that I couldn't recall.
Q. Paul Weiss Rifkind?
A. Yes, forgive me.
Q. You did miss the judge's name. It went by me, too, I'm sorry.
I don't -- I apologize if I asked you this, but were you on the board of directors of a company called M & F Worldwide Corporation, as well?
A. I may have been, I don't have a specific recollection.
Q. Do you recognize the name as being one of Mr. Perelman's holding companies?
A. Yes.
Q. One of his deal -- companies

Confidential - Slovin

that did deals --
MR. MARKOWSKI: Object, lack of foundation.
A. I recall it being one of the companies in his structure. Whether that company was employed for deals specifically, I do not know. But it was a company that I recall being in his grouping of companies.
Q. Let me show you what's been marked as 128.
MR. BEMIS: Ms. Reporter, would you please mark, as MS 128, a document entitled Corporations listed on Schedule 1.
(Deposition Exhibit Morgan Stanley 128, document entitled Corporations listed on Schedule 1, marked for identification.)
Q. Do you have Morgan Stanley 128 in front of you?
A. Yes.
Q. Take a look at it, because you are going to see, towards the end of the

Confidential - Slovin

document, your signature does appear on one of the first ten pages.
A. Yes.
Q. You are going to see a Schedule 1 of companies where it says board of -- and tell me when you are at that page where it says "Schedule".
A. I have that.
Q. Okay. On Schedule 1, on the left-hand side, there is a name of a corporation and then there is a board or executive committee on the right-hand side.
Do you see that?
A. Yes.
Q. Now, this document which was provided in discovery in this case is dated as of November 1st of 1996, and the first page has Mr. Perelman's signature and your signature appears on the page immediately before Schedule 1 and it is Bates numbered DPW 0014390.
A. Yes.
Q. Is that your signature, sir?

Confidential - Slovin

A. Yes.
Q. Okay. Now, looking at Schedule 1, can you just confirm to me, for me, sir, that the companies and -- that list you as either a board or executive committee member, that these are true and accurate, at least as of the date of this document, November 1st, 1996, of positions that you held with the identified companies.
A. They appear to be accurate as presented by the MacAndrews & Forbes group of companies.
I do not have a specific recollection as to the accuracy of every company in which I am listed as either a board or an executive committee member.
Q. (Pause.) By my count, there are 79 different companies listed on Schedule 1 and, you know, if I am wrong somebody can re-count them later, but does that seem consistent with the number of companies that were -- that you were aware of in Mr. Perelman's groupings of

NOT A CERTIFIED COPY

018580

Confidential - Slovin

companies about this time?
A. I had no knowledge as to the precise number of companies in his grouping of companies. He had many, that's what I recall.
Q. (Pause.) Well, I count for you 24 companies alone that you were on the board of directors or the executive committee. You served on all those companies at one time, 24 companies?
A. Well, there are companies, for example, where you will see that I am involved with an Eric Hanson, those companies related to old companies that were owned at one point by Mr. Perelman's group of companies. They were created, as I said, by his advisors for various reasons. They were not all operating companies by any means. I recall that I was an officer or director or served on the executive committee of many of his companies as being one of a small group of people that worked closely with him. That's all I can recall.

Confidential - Slovin

Q. Other than -- withdrawn. When you worked -- when you -- withdrawn. When you were on the board of directors or on the executive committee of the companies that are shown on MS 128, Schedule 1, I mean, were you paid a salary for your work?
A. No.
Q. How were you paid by Mr. Perelman's companies?
A. I was employed --
Q. Not how much but how you were paid.
A. I was employed by one of the top companies in the holding company chain, biweekly and cash.
Q. Was your -- the company on your paycheck MAFCO Holdings no comma Inc.?
A. I think so, but I am not certain.
Q. And that company was the ultimate holding company, then directly above that was Mr. Perelman; correct?
A. I believe so, yes.

Confidential - Slovin

Q. What did you mean you were paid also in cash?
A. I didn't say "also in cash".
Q. Oh, I'm sorry, I misheard you.
A. I was paid by check on a biweekly basis. I used "cash" as being synonymous with a "check". You asked me how I was paid.
Q. I misunderstood you. Thank you.
And did you receive -- in addition to your biweekly pay, did you receive an annual bonus?
A. No.
Q. Did you receive any additional compensation, other than your biweekly pay?
A. At one point, I had options in Revlon. But, other than that, I don't think I received any other compensation.
Q. Were you given opportunities to participate in deals as an investor?
A. No.
Q. All right. Let's focus, if we could, on the document which I want to

Confidential - Slovin

have the court reporter mark as -- give me one second here, I am trying to move this a little forward. (Pause.)
THE LEGAL VIDEO SPECIALIST: Five more minutes remain on the tape.
MR. BEMIS: Okay, why don't we take a break here, so he can change the tape and I will locate the exhibit. Every couple hours we have to change the tapes.
(Discussion off the record.)
THE LEGAL VIDEO SPECIALIST: The time is 11:09, this completes tape number one.
(Recess taken.)
THE LEGAL VIDEO SPECIALIST: The time is 11:19. This begins tape number two of the videotaped deposition of Mr. Bruce Slovin, Esquire.
MR. MARKOWSKI: Before I neglect to do it, I would like to designate the deposition as confidential under the terms of the protective order.

NOT A CERTIFIED COPY

185810

Confidential - Slovin

So if you would label the first page appropriately, I would appreciate it.

Q. Okay, are you all set?

A. Yes, I am.

Q. All right, sir. I would like to move to a different topic here, and I am going to ask you some questions, so just organizationally what is the structure of one line of the companies that are involved in this lawsuit, so if you will try to follow along with me. I am going to start at the top and work down to The Coleman Company and, unless it would be easier for you to describe the organizational structure from the bottom to the top. What's easier for you?

In other words, Coleman Company is owned by somebody, and we can trace that ownership up all the way to the top or we can start at the top and work downwards.

A. I don't think it will make any difference to me.

Q. Okay. Well, then let me start

Confidential - Slovin

with The Coleman Company Inc. at the bottom.

My understanding, and you can correct me if I am wrong, is that the stock of The Coleman Company Inc. that was owned by Mr. Perelman's affiliated companies was owned by Coleman Worldwide Corporation; is that correct?

A. I have no specific recollection of that now. I imagine it's correct but my own knowledge, sitting here today, I don't recall the precise names of the intermediate holding companies.

MR. MARKOWSKI: Things like this, he is not asking you to guess at, he is asking you whether you know or don't know.

A. I don't know, sorry.

Q. I am going to show you a document that was in a public filing, or at least a draft public filing for the company, and we will have you look at that and see if that helps you understand the organizational structure or helps you

Confidential - Slovin

explain it to me, is probably a better way to put it.

Just give me one second. I think I can give you a copy of it, without have to get another copy, which I don't want to do. (Pause.)

MR. BEMIS: Could you please mark, as Exhibit 241, a document entitled Offering memorandum, dated May 17th, 1997, for $732,035,000, Coleman Escrow Corporation, Bates number -- initial Bates number is CPH 1107884.

(Deposition Exhibit Morgan Stanley 241, document entitled Offering memorandum, dated May 17th, 1997, for $732,035,000, Coleman Escrow Corporation, initial Bates number is CPH 1107884, marked for identification.)

Q. Honestly, sir, you are not expected to read all this, unless you wish to spend the weekend with us. So if you look at MS 241, and turn -- and I am going

Confidential - Slovin

to give you a specific page to look at, and the number I am going to give you is going to be the lower right-hand numbers or, actually, I think I can just give you a page number, is page 8 of the document, only eight pages in, please.

A. Yes.

Q. All right. Just so we are clear on the record, are you at page 8 of MS 241?

A. Yes.

Q. All right. And this document, which is a 1997 Coleman offering memorandum, has been produced to us in litigation, has an organizational chart which is headed on page 8 Ownership of the issuer and the Company.

Do you see that?

A. Yes.

Q. Okay. For the -- withdrawn. Company, which is capitalized, if you would look on the first page of the document, is defined as The Coleman Company Inc., which is the bottom company

NOT A CERTIFIED COPY

018582

Page 109

Confidential - Slovin
on the chart. Okay?
Now, looking at this chart and working our way up, again this is 1997, at the time you were a director of The Coleman Company; correct?
A. Yes.
Q. And you were also either an officer or director of -- or -- of all of the entities I believe in this chain with the possible exception of Coleman Escrow Corporation; is that true?
A. I believe so.
Q. Now, looking at this publicly-filed document, does it, based on your personal knowledge, represent the structure of The Coleman Company as of May 15th, 1997, when you were a director of the company?
MR. MARKOWSKI: Now he's asking you not what the document says, he is asking you whether you can remember that, those facts today.
A. I don't remember those facts.
Q. Well, do you have --

Page 110

Confidential - Slovin
A. Independent of this document, (indicating).
Q. Well, having reviewed the document and given that you were a director of the company, do you have any basis to believe that the representation that you have in front of you, by way of this organization chart, is incorrect --
A. No.
Q. -- as of the date?
A. No.
Q. Okay. Now, as of 1998, when you were approving the merger on February 27th, can you, as you sit here today based on your personal knowledge as a director, identify any changes in this (indicating) corporate structure as it relates to The Coleman Company and moving up through Mr. Perelman's enterprise?
A. No.
Q. Now, directly -- the top entry, which is MAFCO Holdings Inc., that company is owned directly by Mr. Perelman 100 percent; right?

Page 111

Confidential - Slovin
A. I believe so.
Q. All right. You can set aside -- put that exhibit back together, we will put a rubber band on it, and we are all -- we are done with that, for the time being.
A. That was good exercise, if nothing else.
Q. Look at it this way, it was much faster than going through it one at a time.
A. You would have had a corpse on your hand.
Q. I don't think so.
Now, starting at the top, with -- if you want to look at the chart, I don't think you will need it, MAFCO Holdings Inc., who were the -- do you know who the directors of that company were in 1998, when you were the president?
A. I don't have a recollection today.
Q. Okay. Do you know who the directors of MacAndrews & Forbes Holding

Page 112

Confidential - Slovin
Inc. were in 1998 at the time of the acquisition?
A. I thought you (indicating) showed me something along the way that showed officers and directors.
Q. It showed some directors and it showed -- or executive committee members, so it's not clear whether they were one or the other or both.
A. I have no independent recollection. I could guess at it, but that's not what you are asking me to do.
Q. Do you know who the directors were of New Coleman Holdings Inc.?
A. No.
Q. And all my questions now will be for 1998, okay, so we don't have to go back too far.
Do you know who the directors of Coleman Escrow --
A. No.
Q. -- Corporation were.
How about Coleman Holdings Inc.?
A. No.

NOT A CERTIFIED COPY

018583

Confidential - Slovin

Q. Coleman Worldwide Corporation?
A. No.
Q. And The Coleman Company Inc.
A. The Coleman Company is myself, a man by the name of Sporn, Perelman, Gittis, Drapkin, I believe --
Q. Would they be the ones listed in the board of directors minutes; correct?
A. Of course.
Q. So we won't test your memory on that because we have got a document that tells us.
A. Correct.
Q. Now, with regard to the -- with the exception of The Coleman Company Inc., on this organization chart we looked at in -- what's the name of it -- MS 241, were all of their offices from MAFCO Holding Inc. all the way down to Coleman Worldwide Corporation, were they in the same building in New York City?
A. All the officers and directors?
Q. No, "the offices", the physical offices.

Confidential - Slovin

A. The top companies, the MacAndrews companies were. All the Coleman companies may or may not have been. I don't recall where their offices were.
Q. Well, let's just start with MAFCO Holdings Inc. Were its offices in New York City in 1998?
A. Yes.
Q. And what was the address?
A. 1998, I believe it was 35 East 62nd Street.
Q. And would that be the same address in 1998 --
A. Yes.
Q. -- for MacAndrews & Forbes Holding Inc.?
A. Yes.
Q. And the same for New Coleman Holdings Inc.
A. I am uncertain as to what the office -- what offices existed for those intermediary -- intermediate companies, I am uncertain.

Confidential - Slovin

Q. When you were on the board of directors of The Coleman Company Inc., did you ever meet at any location other than in New York City?
A. I believe we met in Wichita, Kansas.
Q. Would that be for an annual meeting?
MR. MARKOWSKI: Excuse me. Could you read the question before back that started this.
(The record was read.)
MR. MARKOWSKI: You are asking about board meetings?
MR. BEMIS: Yes, and that was a poor question. Let me rephrase the question, so the record is clear.. Thank you for helping me with that.
Q. When you were a member of the board of directors of The Coleman Company Inc., did all of the director meetings, board of directors meetings, take place in New York City?
A. I don't think so. I think on

Confidential - Slovin

occasion a board of directors meeting would be held in Wichita. I recall annual meetings being held in Wichita and I believe, also, that there were board of directors meetings held in Wichita, as well.
Q. Would it be fair to say that the majority of the board of directors meetings during the period you were a director were held in New York City?
A. Yes.
Q. How would you describe your job for all of the companies that you held positions in -- and we counted 28 on that one -- on the exhibit Schedule 1 about a few minutes ago, how would you describe your job?
A. Well, I was in the inner circle for many years, from 1980, when I joined Ronald, until the year when I ended, three years ago. We would, you know, consider various subjects that would come up as pertained to that corporation.
Primarily, however, my job was

NOT A CERTIFIED COPY

018584

Confidential - Slovin

that of a mergers and acquisition executive. I travelled the world, I bought and sold companies for any number of his companies in the structure that you elaborated a moment ago.

I did spend more time on the Coleman side operationally, although I am not an operations person, but I spent more time with Coleman than I did with any of his other companies. Wherever they needed my help, I did what I was capable of doing, but my main function, as a business person, was that of one searching for acquisitions to be made or investments, I should say, broader -- more broadly to be made, helping to negotiate them. I was not terribly much involved on a financial side, that is, to structure the finance of any of these companies, the purchase of these companies, or the continued operations, I was not much involved in that. And when a company needed to be sold, I would most often participate in the negotiations to sell that company,

Confidential - Slovin

whether it was big or small.

Towards the middle and the end of -- towards the middle of the 1990's, Jimmy Maher came to work with us, and he took over some of the role that I had in the negotiating and searching for investment opportunities. Donny Drapkin did more and more of that, as did Howard Gittis, but that was my main function.

Q. So, if you put one sentence on your job application for your new job instead of your prior work is you were searching out mergers and acquisition candidates, both on the buy and sell side?

A. Yes.

Q. And would that be a fair description of your job, recognizing it's somewhat general, for the entire time you worked for Mr. Perelman's companies?

A. I would say yes.

Q. Why did you spend more time with The Coleman Company, as you have described it, particularly on operations?

A. Well, I don't want to exaggerate

Confidential - Slovin

my involvement with operations.

I spent more time with Coleman, they were changing executive management, Mike Hammas came in to be the chief operating officer. I -- Jerry Levin had originally managed Coleman when Ronald bought it, in 1988, and then he stepped away to work with Revlon, and I am embarrassed to say a man by the name of Larry something, the name slips my mind, once again, took over from that role and he was, you know, getting older and wanted to retire, and I was asked to help find his replacement, which I did, also, for Ronald, searching for personnel, senior personnel. And, so, I was asked to engage in that activity, which I did. And inasmuch as Mike Hammas was new to the enterprise, I was asked to involve myself, because there appeared to be a need to stay close to a new employee and observe his activities, which is what I did. During that period, and prior to Mike Hammas's coming, I tried and did expand

Confidential - Slovin

Coleman by purchasing companies in Europe and South America, the United States.

When I was needed to do something, and Ronald asked me to do it, I would do it. When we took over Technicolor, in 1982, I spent a year working in Los Angeles, selling the companies that we did not believe were to our best interests to hold. We kept certain core companies and sold others. When Ronald took over the banks, in 1988, he asked me to go down to Texas for a year and to observe the management and to try to report back on how I thought things were going. It was a new investment of his, and he thought I could help in the integration of the banks with the home office, which I did.

So, when a need occurred, he would ask me to get involved. And as I said, with Coleman, I was helping to buy companies and, also, to work with Mike Hammas and helping to manage what was then a worldwide company.

NOT A CERTIFIED COPY

018585

Confidential - Slovin

Q. Was there within these holding companies reporting to Mr. Perelman a group of close-knit advisors to him, like yourself, Mr. Drapkin?

A. No, I think the -- Howard Gittis, Donald Drapkin, myself --

Q. I mispronounced his name, I apologize.

A. Apologize to him, it's okay what you call him.

Q. Okay.

A. But he had legal advisors, he had insurance advisors, he had tax advisors, he had public relations advisors, he had real estate advisors. His enterprise was complex and required specialists of all kinds. And, yes, I mean, he had certain people who he went to more often than others in all aspects of the business world and community, the investment banking community was the same thing.

Q. Did you consider yourself in Mr. Perelman's inner circle during this

Confidential - Slovin

period --

A. Uh --

Q. -- of advisors?

A. I was a little bit slipping out of the inner circle when I joined Ronald in 1980. It was just he and I and then Howard came and Donald came and others of -- you know, of -- excellent businessmen. As he got more complicated, he needed other skills. And I think at this time I was not quite in the inner circle that I had been in prior years.

Q. By 1998, at the time of the sale of the -- or, the merger of the Coleman companies with Sunbeam, who would you identify as being on Mr. Perelman's inner circle, most trusted confidants?

A. I would say Howard Gittis, Donald Drapkin, he was using Jimmy Maher in the M&A side more and more and he became a close confidant. There was a man by the name of Bill Bevins, who no longer works with us, in the entertainment area that was a confident of his. Certainly

Confidential - Slovin

Jerry Ford in the banking business was very close to Ronald. You know, lawyers like Joe Flom and Arthur Liman, Judge Rifkind, accountants at Peat Marwick, a man by the name of Mike Regan was close to him. He had, as I say, special people in tax and public relations, but I would say the inner circle was Gittis and Drapkin, and on the M&A side it became Maher.

Q. Based on all the complex deals that I know you have participated in -- well, withdrawn. I will withdraw that. When you were the president of MAFCO Holdings Inc., did it have any employees per se?

A. MAFCO --

Q. Holdings Inc., the company directly below Mr. Perelman.

A. I do not know.

I did not participate much in the financial structuring of his businesses. He had lawyers and accountants and tax people who helped him much more intensely than I did, and I do

Confidential - Slovin

not recall who were the officers or directors of that company or employees.

Q. Let me try this a different way.

In 1998, at the time of the merger, if you handed someone your business card --

A. Mm-hmm.

Q. -- what company name was on your business card? Or maybe you had multiple business cards, I don't know, you tell me.

A. No, no, I think it was MacAndrews & Forbes Holdings, I think that was my business card.

Q. Okay, which was wholly-owned by MAFCO Holdings Inc.

A. Yes.

Q. Okay. Now, within these holding companies -- withdrawn. Have you ever heard the term "shared resources" used in operating a business when you -- multiple companies under a single umbrella?

MR. MARKOWSKI: Object to the form of the question.

Q. You can answer.

NOT A CERTIFIED COPY

018586

Confidential - Slovin

A. My understanding of a "shared resource" would be a person like myself, where I was working for MacAndrews & Forbes but I did work for MacAndrews & Forbes by assisting its various investments for whatever they needed at the time, but primarily in the area of buying and selling companies and hiring executives.

Q. And that's how I am using the term "shared resource", that a person employed by one entity will also provide resource and assistance to other companies within the same holding group of companies.

A. Right.

Q. And that's how I am using the terms.

Is it fair to say that MAFCO Holdings Inc., either directly or through MacAndrews & Forbes Holdings, Inc., essentially operated at the holding company level using shared resources among the various holding companies?

Confidential - Slovin

MR. MARKOWSKI: Object to the form of the question.

A. Well, there were a group of people that worked for MacAndrews & Forbes Holdings, and they had assignments, and often those assignments would be to be working with other corporations which represented Mr. Perelman's investments.

Q. Is that why, for example, you had worked -- you had titles at over 28 different companies at one point?

A. Well, when you structure a complex enterprise, as Mr. Perelman had at that time, you very often use your key lieutenants to be the officers and directors of companies which serve a rather narrow purpose but, yet, an important purpose, and I think that's why you find me as a director of many companies.

I told you a moment before you'll find, in the list of companies you gave me, where Eric Hanson, who was an employee at one time, and I were the sole

Confidential - Slovin

names because those were little boat companies we had under a boat company investment we had and there did not need to be other officers and directors because the purpose was rather narrow, holding certain assets, holding certain licenses, et cetera.

Q. Did you -- did the holding companies, either through MAFCO Holdings Inc. or MacAndrews & Forbes Holding Inc., did it have an analyst function somewhere, financial analyst function in the companies?

A. I don't think we had such a title.

The financial people would some do work on their side, the business people would do, you know, their aspect of the work, the lawyers the same, public relations people. We didn't have someone called a "financial analyst".

At one point, I had some young men working for me who helped me analyze companies and when I was looking at

Confidential - Slovin

acquisitions, but you could call them "analysts" if you wish but they were working specifically for me and helping analyze an acquisition candidate of which, of course, was -- took a good deal of my time.

Q. Do you know a man by the name of Elliot Nesbitt?

A. Will Nesbitt.

Q. Will, I apologize, I get it wrong.

A. Yes, he could be called an "analyst".

He was working for Jimmy Maher, very bright young guy, and he could be called an "analyst". He helped Jimmy the way other people helped me.

Q. And that would be --

A. Helping out --

Q. -- number-crunching and analyzing the financial consequences of a transaction.

A. Yes.

Q. And you used to do that

NOT A CERTIFIED COPY

018581

Confidential - Slovin

yourself, as well?

A. I did some of it myself, I had other people helping. Maher did it himself, too, Perelman did that, as well. We would read documents, we would try to see what opportunities lay in what fields, you know, whether we could make a good investment.

So we all did a little bit of the analysis.

Q. Let me ask you something, you know, given your years of experience in M&A, I mean, did you consider yourself a successful man in this field?

A. Yes.

Q. I don't mean to embarrass you, but do you consider yourself a smart man in this field?

A. Yeah, I think I am probably smart as most.

Q. How about Mr. Perelman, do you think --

A. Smart.

Q. -- he has been successful?

Confidential - Slovin

A. Has he been successful?

Q. Yes.

A. By what measure?

Q. How do we measure -- how would you measure success?

A. Well, are you talking about what -- business?

Q. Yes, business.

A. Or you want to talk about religious?

Q. Yes, business.

A. Yes, of course he has been successful.

Q. A smart man?

A. Very smart man.

Q. Good analyst?

A. Good analyst.

Q. And Mr. Maher, a smart man?

A. Yes.

Q. Good analyst?

A. Yes.

Q. Successful in his business?

A. Yes.

Q. And, in fact, this whole group,

Confidential - Slovin

let's take Mr. Drapkin, a smart man?

A. Yes.

Q. Successful in his business?

A. Yes.

Q. Sharp analyst?

A. I wouldn't say that Donny is the type of analyst that Will Nesbitt is, will get into the details, and nor is he as clever analyzing businesses as Ronald. Donny was a lawyer, but in the Wall Street world he's as smart as they come, structuring deals, but analyzing the right or left side of a balance sheet and product lines, that's not really his strength. He is certainly very smart and successful.

Q. Taken as a group, the inner circle in 1998, would you categorize them as a smart intelligent group of sophisticated businessmen?

A. Yes.

MR. BEMIS: Would you please mark a document entitled Notification in report form for certain mergers

Confidential - Slovin

and acquisitions as Morgan Stanley 132.

(Deposition Exhibit Morgan Stanley 132, document entitled Notification in report form for certain mergers and acquisitions, marked for identification.)

Q. Do you have Exhibit 132 in front of you?

A. Yes, I do.

Q. Have you ever seen this form before?

A. I don't think so.

Q. Not necessarily the particular contents of this form but this type of form, for mergers and acquisitions, a form filed under the Hart Scott Rodino Act.

A. Well, I know what the Hart Scott Rodino Act is. I may have reviewed such a document in the past. I don't recall this one at all.

Q. Do you know what "SIC codes" are, all caps?

A. SIC codes.

NOT A CERTIFIED COPY

01 8588

Confidential - Slovin

Q. SIC codes, right.
A. I sort of do, some type of a classification.
Q. Standard Industrial, does that make sense, Standard Industrial classification or codes?
A. Are you asking me or telling me?
Q. I am asking you.
A. It sounds right.
Q. If you would look at page -- and I am going to give you the CPH number because, unfortunately, this isn't numbered in any way I can see easy to work with, turn to CPH 1414678 and it's entitled item 5 A?
A. Yes.
Q. Are you there?
A. Yes.
Q. Now, you know, based on, you know, your positions in Mr. Perelman's holding companies, and in the working some of his operating companies, does the list of industries that is reflected here under the name Ronald O. Perelman, starting with

Confidential - Slovin

cigars, at SIC code 2121 and carrying all the way down to 9999, does that appear to be a fairly descriptive list of the various businesses that Mr. Perelman's companies were involved in about 1998?
MR. MARKOWSKI: Object --
A. Well --
MR. MARKOWSKI: -- to the form of the question.
A. I think the answer is yes. I can't say it's exhaustive or complete, but all the items that I looked at now do relate to one or more businesses that he owned or controlled.
Q. Okay, you can set that aside. Did you -- withdrawn. When is the first time that you heard from any source that there were discussions ongoing between Mr. Perelman's companies and Sunbeam concerning a possible deal involving The Coleman Company Inc.?
A. I think relatively shortly before the board meetings in February.
Q. Could you tell me how it is you

Confidential - Slovin

came to learn about these discussions between Mr. Perelman's companies and Sunbeam?
A. It could have been Ronald or Jerry Levin or Jim Maher --
MR. MARKOWSKI: He -- I don't mean to interrupt, he is not asking you to guess, he is asking whether you can tell him --
A. Well, it would have had to have been --
MR. MARKOWSKI: Don't guess, when you start out "it would have had to have been".
Q. Well, let me put it this way, Mayor Giuliani didn't tell you; right?
A. No.
Q. All right. So, given the source of people that you work with, what is your best recollection, as you sit here, as to who would have told you or who did tell you?
A. I have no specific recollection of any conversation I had, but it --

Confidential - Slovin

shortly before I did know that conversations were taking place, and I can't tell you the individual that mentioned it to me because I have no such recollection.
Q. Given the people that you work with, what would be the universe of people who you would have heard this information from?
MR. MARKOWSKI: Object to the form of the question, calls for speculation.
A. Well --
Q. Well, I don't want you to speculate because I don't want you to tell me --
A. I only could guess, but it would be one of a few people.
Q. Right, that's what I am asking you, who are the few people that you would identify --
A. Well, the best guess I would have is that I might have heard it that there were discussions from Maher or Levin

NOT A CERTIFIED COPY

018589

Confidential - Slovin
or Perelman or Gittis or Drapkin. I am really not sure, the people who were in the inner circle who would be participating in such an activity.
Q. I take it that, when you heard this, you were aware the discussions were confidential.
A. Absolutely.
Q. And you didn't tell anybody about the discussions.
A. I hope not.
Q. Okay. What did you learn -- withdrawn. What were you told by one or more of these individuals in the inner circle about a possible transaction?
MR. MARKOWSKI: If you can recall. Don't guess.
MR. BEMIS: Excuse me, he understands that, you don't need to interrupt --
MR. MARKOWSKI: I don't think so because you are asking him what would you have been, it calls for speculation, the way you phrased the

Confidential - Slovin
question.
MR. BEMIS: Okay, then object to the form of the question.
MR. MARKOWSKI: I am trying.
MR. BEMIS: Don't coach the witness.
MR. MARKOWSKI: Ask an appropriate question, you are calling for speculation.
MR. BEMIS: Then you can object to the form, that's the proper procedure, and you know it and I know it.
MR. MARKOWSKI: Ask a proper question, don't call for speculation, we'll get done a lot faster. I don't think it's a worthwhile discovery.
MR. BEMIS: Then you make an objection to form and, otherwise, you be quiet.
A. (Laughing.) Now we are going.
MR. MARKOWSKI: I will make my record the way I make my record.
MR. BEMIS: Well, we will see

Confidential - Slovin
how you make your record, whether you can dictate the terms of the deposition.
Let's try to get back so we can get the gentleman out of here today.
Q. The question I had was, from -- what were you told, as best you can recall, by one or more of these members of the inner circle about the discussions concerning The Coleman Company and Sunbeam.
A. My vague recollection is that there were negotiations under way to do some deal, a deal, with the Sunbeam Corporation.
MR. BEMIS: Can we go off the record for one second, please.
THE LEGAL VIDEO SPECIALIST: We are going off the record, the time is 11:58 a.m.)
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: The time is 12 p.m., we are back on the record.

Confidential - Slovin
MR. BEMIS: Ms. Reporter, could you please give me the courtesy of reading back the last answer.
(The record was read.)
Q. As a result of these discussions with the inner circle, did you receive any assignment from anyone to do anything in connection with the ongoing discussions?
A. No.
Q. Following these initial discussions with someone in the inner circle, did you have any further discussions with them or anyone else about the acquisition or discussions about the acquisition before the board meeting on February 25th of 1998?
A. I don't recall any such discussions.
Q. So, it was the next thing that happened after you had these initial discussions with someone in the inner circle the board meeting on February 25th?
A. Well, the "initial discussions" is really mislabeled. I don't think

NOT A CERTIFIED COPY

018590

Page 141

Confidential - Slovin
"discussions" actually describe accurately these conversations. They were brief, they were short, I was not involved. They could have been more than one. They could have taken place in different days but they led up, ultimately, to the board meetings when we were called to discuss in detail the prospective business arrangement with Sunbeam.
Q. Is it fair to say that the first substantive presentation, if you will, as opposed to a conversation that you had about the transaction that becomes the merger, was at the board meeting of February 25th?
A. For myself.
Q. Yes, sir.
A. Yes, for myself.
Q. I want to ask you about some individuals and if you know what role they played in the --
MR. BEMIS: We are going to go off the record.
A. No, no, leave them alone.

Page 142

Confidential - Slovin
Q. No.
THE LEGAL VIDEO SPECIALIST: We are going off the record, it's 12:03.
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: The time is 12:03, we are back on the tape, on the record.
Q. I'm sorry for the interruption.
A. I thought it was rather charming, made my day.
Q. We will have to snip that out of the deposition. So let's go back and serious matters here.
I would like to ask you some questions now about some individuals within Mr. Perelman's companies and specifically what role they had, if any, that you know about in connection with the merger, discussions that -- ultimately the transaction.
Let's start with Mr. Perelman. Do you know what role he had?
A. No, not specifically.
Q. He did attend the board meeting,

Page 143

Confidential - Slovin
as I understand, on February 25th?
A. Yeah.
Q. And he was at the board meeting on February 27th, as well?
A. My recollection is yes, but I -- honestly, I don't quite recall all those who were in attendance.
Q. Did Mr. Perelman have the final authority, the "yes" or "no", on the merger transaction?
MR. MARKOWSKI: Which merger are you referring to?
MR. BEMIS: The February 27th, 1998 Coleman, where The Coleman Company was a party to the transaction, not the second agreement.
MR. MARKOWSKI: You are referring to the public shareholder transaction.
MR. BEMIS: The one we marked as MS 117, I believe.
A. I think the board has the final decision, Mr. Perelman could advise of his

Page 144

Confidential - Slovin
opinion but it's a board vote.
Q. Did Mr. Perelman, by the way, advise the board of his opinion in either the February 25th or the February 27th, 1998 board meetings?
A. I don't know if he did it in a formal sense. I know that he was for the arrangement, the business arrangement, but I don't know that he held forth a discourse on whether it was the right thing to do, but I know the board made the final decision.
Q. Let me ask you now about Mr. Howard Gittis.
What was his role in the merger negotiations?
A. I can't say that I know, because I don't know.
Q. Okay, so you just said you don't know.
Mr. Drapkin?
A. I don't know, either.
Q. Mr. Maher?
A. I think Jimmy was involved most

NOT A CERTIFIED COPY

018591

Confidential - Slovin

directly in negotiating the terms of the arrangement with the representatives of Sunbeam.

Q. Barry Schwartz?

A. Barry Schwartz is an attorney, and a senior officer. He would have been involved in the crafting of the documents.

Q. Did Barry Schwartz work for The Coleman Company?

A. Was he an officer? He was certainly not employed by The Coleman Company. Was he an officer or director, I do not recall.

Q. Do you know if he worked -- withdrawn. Do you know the names of any of Mr. Perelman's companies that he held a position in?

A. Well, (indicating), you had --

MR. MARKOWSKI: The "he" is Mr. Schwartz?

MR. BEMIS: Mr. Schwartz, yes.

A. The top companies he was involved in, (indicating), but I have seen his name in a multitude of companies --

Confidential - Slovin

documents you presented to me.

Q. That's the 1, the Schedule 1 where we went through all those companies?

A. Right, I know that he was involved as an officer or director in many of the companies.

Q. But your understanding is that he provided legal services --

A. Yes, he is one of Perelman's lead counsels, if not the lead counsel.

Q. But he is employed by Mr. Perelman's companies.

A. Yes.

Q. And Mr. Nesbitt, you said he was a financial analyst of sorts?

A. No, a financial analyst of some intelligence, he is a bright kid, and he worked mostly with Jimmy Maher, and he worked -- employed by one of Perelman's top companies.

Q. But he did not work for The Coleman Company.

A. No.

Q. I am going to -- I am going to

Confidential - Slovin

mispronounce this gentleman's name, but Lenny Ajzenman, A-J-Z-E-N-M-A-N?

A. I don't recall that name.

Q. Okay.

A. Maybe it's your pronunciation.

Q. I thought my spelling was bad.

Mr. Levin, he was the president of The Coleman Company at the time of the acquisition; correct?

A. Yes.

Q. Do you know if he was involved in the negotiations --

A. Yes.

Q. -- at all.

Do you know a Paul Shapiro?

A. Paul is a lawyer, as well, but he had a different role for Ronald. I am not quite sure of what his responsibilities were, but I know he was a practicing lawyer for a long time.

MR. MARKOWSKI: His name is pronounced "Shapiro".

MR. BEMIS: "Shapiro"? I got that one wrong, too, but I apologize

Confidential - Slovin

again.

A. Shapiro is from Philadelphia.

Q. He is from Philadelphia?

A. Yes.

Q. Does he live in Philadelphia?

A. I don't know.

Q. Okay. What was Mr. Ginstling's role --

A. Tax.

Q. Tax? And did he work for The Coleman Company Inc.?

A. No, I don't believe so, another MacAndrews employee.

Q. Glenn Dickes, D-I-C-K-E-S?

A. Lawyer.

Q. He's a lawyer, for one of the MacAndrews companies?

A. Yes.

Q. And did he work on the documentation?

A. I do not know.

Q. Joram Salig, S-A-L-I-G?

A. Lawyer.

Q. Did he work --

NOT A CERTIFIED COPY

018592

Confidential - Slovin

A. I do not know.
Q. You have to let me finish the question. I know you are getting ahead of me. We are getting close to lunch break.
Steven Isko, I-S-K-O?
A. Steven I think is another attorney.
Q. For one of Mr. Perelman's companies?
A. Right.
Q. And Mr. Salig is a --
A. Lawyer.
Q. Salig?
A. Joram Salig.
Q. Is he a lawyer for one of Mr. Perelman's companies?
A. Yes.
Q. Anthony Ian, I-A-N?
A. Insurance, risk management, as they say.
Q. For one of Mr. Perelman's companies?
A. Yes.
Q. Do you know what role he had in

Confidential - Slovin

the negotiations?
A. No.
MR. BEMIS: Did he answer?
(The record was read.)
Q. Okay, I didn't hear you, I apologize.
Marvin Schaffer, S-C-H--
A. Tax.
Q. -- A-F-F-E-R. Tax? Did he work with Mr. Ginstling?
A. Yes.
Q. Did he work for one of Mr. Perelman's holding companies?
A. Yes.
Q. And did he work on the acquisition?
A. I do not know.
MR. BEMIS: All right. It's almost -- why don't we break here before I turn to another topic, and we will come back. Do you want to come back at 1 o'clock or as close to there as we can?
THE WITNESS: Do you have to go

Confidential - Slovin

through that whole book?
MR. BEMIS: No.
THE LEGAL VIDEO SPECIALIST: We are going off the record, the time is 12:11.
(Discussion off the record.)
THE LEGAL VIDEO SPECIALIST: We are back on the record, the time is 12:11.
Q. Now, when you have investigated companies as potential acquisitions in your mergers and acquisition work, is it customary during your investigation to sign confidentiality agreements with the companies you are looking at?
A. Often.
Q. Often. Let me show you what's been marked as MS 133.
MR. BEMIS: Would you please mark that as MS 133, please.
(Deposition Exhibit MS 133, document, marked for identification.)
Q. Do you have Plaintiff's -- withdrawn, do you have MS 133 in front of

Confidential - Slovin

you, sir?
A. Yes.
Q. Would you please take a look at that and will you tell me if that's Mr. Shapiro's signature that appears --
A. I would not know.
Q. You would not know.
Were you aware that The Coleman Company Inc., as part of the ongoing negotiations, had entered into a confidentiality agreement with the Sunbeam Corporation?
A. I do not have any recollection of knowing that fact before this moment.
Q. Well, let me ask you, sir, when you reviewed the merger --
MR. BEMIS: Let me see the merger agreement, 113.
I said 113, I meant 117. Thank you.
Q. Could you take Exhibit 117 out of the exhibits in front of you, please.
A. (Pause.)
Q. Okay. If you will turn to page

NOT A CERTIFIED COPY

018593

Page 153

Confidential - Slovin

29, sir, of MS 117, which, for the record, is the February 27th, 1998 agreement plan of merger.

Tell me when you are at page 29.

A. I have it.

Q. Please read Section 7--

A. I have.

Q. Okay. You knew right where to look.

A. Well, it does say "confidentiality" in it's heading, and I did notice it says February 4th, 1998 referring to the document named Morgan Stanley 133.

Q. So when you read -- when you -- even though you did not see in advance Morgan Stanley 133, you knew when you approved the merger agreement, as a member of the board of directors, that a confidentiality agreement had been signed dated as of February 4th, 1998; correct?

A. I imagine I did know that. I don't have a recollection of everything I knew back in February of 1998. I presume

Page 154

Confidential - Slovin

I did know that because it's imbedded in this document and it may have been discussed but I am guessing at my recollection, though, six years ago.

Q. But setting -- withdrawn. For a deal of this size, $2 billion, roughly, and given your experience in this -- in mergers and acquisitions, it would indeed be customary for such an agreement to be executed between the buyer and the seller, would it not, sir?

A. Yes.

Q. Okay. Let me show you now a document that is dated February 23 of 1998, and that I will have the court reporter mark, and I will show that to you.

(Deposition Exhibit Morgan Stanley 134, document dated February 23rd, 1998, addressed to The Coleman Company, marked for identification.)

Q. Do you have MS 134 in front of you?

A. Yes.

Page 155

Confidential - Slovin

Q. Now, this document is dated February 23rd, 1998 and is addressed to The Coleman Company, and the copy that you have in front of you is not signed, but if you would -- if you will look at the document, please, just very briefly, and tell me when you are done.

A. Do you want me to read the pages or just to look at it --

Q. No, you can just quickly look at it, as much as you are comfortable with. I don't have a specific question about the contents per se.

A. Right now, I don't know what this document is, I must read it --

Q. Please do so. And, if you like, you might even want to put MS 133 side by side, because you are going to find that, with the exception of I think one paragraph, they are identical, right down to the spacing.

A. "Right down to the" what?

Q. To the spacing on the documents.

A. And your question is?

Page 156

Confidential - Slovin

Q. Well, first of all, tell me when you have had a chance to look at it.

A. All right, I have looked at it now.

Q. Now, at the time that you approved the -- well, withdrawn. Have you ever seen MS 134 before today?

A. I have no recollection.

Q. Okay. When you approved the merger agreement, which we have marked as MS 117, there is a specific reference to approving, or, excuse me, as -- a specific -- withdrawn.

When you approved the merger agreement, indeed, told me you read the merger agreement, you saw in paragraph 7.2 a specific reference to a confidentiality agreement dated February 23rd, 1998.

A. Right.

Q. Do you see that?

A. Yeah.

Q. Is it your understanding as a director of the company that such a confidentiality agreement was indeed

NOT A CERTIFIED COPY

018594

Confidential - Slovin

executed by the parties since it's referenced in the merger agreement?

MR. MARKOWSKI: Objection to the lack of foundation.

A. I think that the language of 7.2 suggests that, yes.

Q. All right. You may set those documents aside.

Can you tell me what steps The Coleman Company Inc. took in terms of doing due diligence of Sunbeam before the merger agreement was approved on February 27th, 1998 by the Coleman board of directors?

A. I can only speak to my role as a director.

We reviewed (indicating) the agreements presented to us, and we listened to the opinions of CS First Boston, in so far as discussing the adequacy of the -- or fairness to the Coleman side. I listened to other people speaking to the deal who were actively involved in the negotiation and the

Confidential - Slovin

analysis of the deal, and I accumulated knowledge of, as presented to me, both orally and in writing, and then voted, as the records indicate.

Q. And when you say you accumulated the material presented to you orally and in writing, you are referring to the board meeting information.

A. Yes.

Q. Was -- withdrawn. As I understand your earlier testimony, the February 25th, 1998 board meeting, which started at 4 p.m. in the afternoon, was indeed the first time that you had received oral or written presentations on the merger that results in the merger agreement we marked as MS 117; is that correct?

A. In a detailed fashion, yes.

Q. And before this board meeting, your discussions had -- or "conversations", if it's a better term, were strictly, as you have described them, with these members of the inner circle of

Confidential - Slovin

Mr. Perelman; right?

A. Yes.

Q. Did you as a board member, before February 27th, do any independent research at all about Sunbeam or -- at all?

A. I knew of the company as a public company, but I didn't do any independent research.

Q. Did you read any analyst reports about Sunbeam, for example?

A. I might have.

Q. But you don't remember as you sit here today?

A. No.

Q. Okay. Well, let's go, then -- let me ask you to look at a couple of documents, and we will start with MS 138.

MR. BEMIS: Ms. Reporter, would you mark, as Morgan Stanley Exhibit 138, a document entitled Household products PaineWebber, Sunbeam, did Al show his hand too soon.

(Deposition Exhibit Morgan

Confidential - Slovin

Stanley 138, document entitled Household products PaineWebber, Sunbeam, did Al show his hand too soon, marked for identification.)

Q. Do you have MS 138 in front of you, sir?

A. Yes.

Q. This is a report by analyst Andrew Shore, dated February 6, 1998.

Have you ever seen it before?

A. I don't think so.

Q. Did you see -- withdrawn. Following the consummation of the merger, and closing on March 30th, did you ever go back and look at any of -- any analyst reports for Sunbeam that were written in early 1998?

A. No.

Q. Okay.

MR. BEMIS: Ms. Reporter, will you mark, as MS 137, a document with the heading MAFCO Consolidated Group Inc., January 30th, 1998, and attached to it is an identical

NOT A CERTIFIED COPY

065810

Confidential - Slovin
document but one -- it does not have handwriting on it as the first page does.
(Deposition Exhibit Morgan Stanley 137, document with the heading MAFCO Consolidated Group Inc., January 30th, 1998, marked for identification.)
Q. Do you have Morgan Stanley Exhibit 137 in front of you, sir?
A. Yes.
Q. This document, which was produced in litigation, has in the upper left-hand corner MAFCO Consolidated Group Inc.
Do you see that?
A. Yes.
Q. What is MAFCO Consolidated Group Inc.?
A. What is it? It looks like it's some business enterprise.
I don't know precisely what it is.
Q. Was there someone -- have you

Confidential - Slovin
ever seen this document --
A. No.
Q. -- before.
Were you aware that someone at MAFCO --
MR. MARKOWSKI: Before you go on, when you say "this document", look at the Bates numbering on this, and it doesn't appear to me that this has been produced in this form. Is this something that was assembled?
MR. BEMIS: Yeah, I said that there were two pages attached to it and one has handwriting and one does not, but they are otherwise identical.
MR. MARKOWSKI: They were produced in separate pieces of paper.
MR. BEMIS: Yes, they were, they were not stapled together.
MR. MARKOWSKI: So when you say "this document", you are referring to the first page?
MR. BEMIS: I am referring to

Confidential - Slovin
the entire document.
MR. MARKOWSKI: Thank you.
Q. Have you ever seen either of the two pages of MS 137?
A. I don't believe so.
Q. Were you aware that someone at MA-- strike that. As a director of The Coleman Company, Inc., and as an employee of Mr. Perelman's company, were you aware that someone at MAFCO Consolidated Group was apparently monitoring analysts' reports of estimates for fourth quarter earnings for Sunbeam?
A. I was not aware of that.
Q. Okay. You can set that -- you already have, you set that aside. Thank you.
Before the board meeting on February 25th, of 1998, had you been told by anyone, or were you aware of indirectly, that one of the MAFCO entities had been doing independent research on Sunbeam Corporation?
A. I have no such recollection.

Confidential - Slovin
Q. Do you know a man by the name of Michael Katzke, K-A-T-Z-K-E?
A. I don't think so.
MR. BEMIS: Ms. Reporter, would you mark, as MS 144, a document bearing Bates numbers CPH 1392480.
(Deposition Exhibit Morgan Stanley 144, document bearing Bates numbers CPH 1392480, marked for identification.)
Q. Do you have MS 144 in front of you, sir?
A. Yes.
Q. My only question is -- well, put it this way -- withdrawn. My first question is, looking at the handwriting that appears on the first page, which I will tell you is a reproduction of a Post-it note, do you recognize the handwriting?
A. No.
Q. Which is "Sunbeam Research". Have you ever seen the attached document before?

NOT A CERTIFIED COPY

018596

Confidential - Slovin
A. I have no such recollection.
Q. Okay, you may set it aside.
MR. BEMIS: Okay, let's break for lunch, it's 12:30, and we will come back about 45, 50 minutes. We are moving along.
THE LEGAL VIDEO SPECIALIST: The time is 12:31, we are going off the record.
(Luncheon recess: 12:31 p.m.)

Confidential - Slovin
AFTERNOON SESSION
(1:31 p.m.)

BRUCE SLOVIN,
resumed, having been previously duly sworn, was examined and testified as follows:

CONTINUED EXAMINATION
BY MR. BEMIS:
THE LEGAL VIDEO SPECIALIST: The time is 1:23, we are back on the record.
Q. Everybody ready?
A. Yes.
Q. Thank you very much for getting back on time.
Earlier in your testimony, I recall you saying that you had some analysts that worked with you at one time during your career at Mr. Perelman's companies; am I correct?
A. Yes.
Q. What were their names?

Confidential - Slovin
A. Ron Goldstein, Robert Knibb, K-N-I-B-B, Eric Hanson.
Q. Did either -- "either" -- did any of those three do any analyst work for you in connection with the Coleman merger?
A. No.
Q. Did you, while you were working for Mr. Perelman's companies, subscribe to any financial news services?
A. I got The Wall Street Journal, The London Financial Times, Bloomberg's programs -- um -- at one time I know we got the Standard & Poor tearsheets but -- I think that's what I got.
Q. How about UBS Warburg, anything from them?
A. UBS --
Q. Mm-hmm.
A. The investment banking --
Q. Mm-hmm.
A. -- firm -- well, I would read continuously reports on companies and the like, but whether I had subscribed to a service or not, I am not entirely sure.

Confidential - Slovin
Q. Setting aside what you may have subscribed to, did MAFCO or its affiliate company subscribe to any financial services?
A. I am not sure.
(Deposition Exhibit Morgan Stanley 166, offering memorandum for $2,014,000,000 for Sunbeam zero coupon convertible senior subordinated debentures due 2018 with the name Morgan Stanley Dean Witter at the bottom of the March 19, 1998 cover page, marked for identification.)
Q. Let me show you what's been marked as MS 166 by the court reporter.
MR. BEMIS: Thank you.
Q. Do you have MS 166 in front of you, sir?
A. Yes.
Q. For the record, this is an offering memorandum for $2,014,000,000 for Sunbeam zero coupon convertible senior subordinated debentures due 2018 with the

NOT A CERTIFIED COPY

018597

Confidential - Slovin

name Morgan Stanley Dean Witter at the bottom of the March 19, 1998 cover page.

Have you ever seen this document before?

A. Not to my recollection.

Q. So if you haven't seen it before you didn't rely on it in any way in voting for the merger.

MR. MARKOWSKI: Object to the form of the question.

A. Did I rely on -- no, I don't think I used this document, which I don't recall seeing, to express my opinion as director on the merger, no.

Q. You may set the document aside.

My understanding is that the information that you relied upon in voting as you did at the board of directors meetings of Coleman Company Inc. on February 27th was the information presented to you at the board meetings; correct?

A. Yes.

Q. I want to ask you some

Confidential - Slovin

questions, although you might not have actually done it, I want to know whether you know if anyone else did it. So, in that context, do you know if anyone from The Coleman Company, either its advisors or employees, in connection with the due diligence in this transaction interviewed any of Sunbeam's middle management?

A. I have no such knowledge of such interviews, I don't know anything about it.

Q. The same question with regard to the Sunbeam customers.

A. I don't know.

Q. Are you a-- do you know whether anyone from The Coleman Company or its professional advisors that it retained met with any analysts that were following Sunbeam?

A. I have no specific knowledge as to such meetings.

Q. Do you know if anyone at Coleman or anyone who was retained by or -- by Coleman or on behalf of Coleman, visited

Confidential - Slovin

any Sunbeam plants?

A. I have no such knowledge.

Q. Do you know whether, as part of the due diligence process, anyone at Coleman, or anyone retained by or on behalf of Coleman, interviewed anyone at Arthur Andersen, the accountants for Sunbeam?

A. I have no specific knowledge of any such meetings.

Q. Do you -- withdrawn. At or about the time of the closing, which is March 30th, 1998, are you aware of any inquiry by Coleman, its board of directors, or anyone retained by or on behalf of Coleman as to whether there were any quote material adverse changes closed quote in Sun-- in or at Sunbeam before the closing?

A. I have no such recollection.

Q. Are you aware of whether Coleman's board of directors or anyone retained by or on behalf of Coleman made any inquiry at or about the time of

Confidential - Slovin

closing regarding the state of Sunbeam's sales versus projections of its sales?

A. I have no such knowledge.

Q. I would ask you the same question with regard to revenue projections by Sunbeam.

A. No such knowledge.

Q. Were you at the closing, by the way?

A. No.

Q. Where did the closing take place?

A. I do not know.

Q. I am going to return for a few questions on Credit Suisse First Boston.

You had -- my understanding is that you, on behalf of Mr. Perelman's companies, had indeed worked with Credit Suisse First Boston in prior transactions; correct?

A. Yes.

Q. When was the first time that you recall working with them?

A. It was a number of years prior

NOT A CERTIFIED COPY

018598

Confidential - Slovin

to this transaction, but I don't have a date or a year in my mind.

Q. Do you -- withdrawn. About how many times have you worked with them overall in your career -- on your side of the table as being the person --

A. I would say about half a dozen times.

Q. What transactions?

A. Well --

Q. As best you can remember.

A. I remember once I was selling a cosmetic line. I think they were involved in some boat deals I did. I can't recall other specifics.

Q. Were they involved in the Panavision deal?

A. I do not know.

Q. How about the Marvel issuance of notes which result--

A. I don't recall.

Q. Okay. How about the Cal Fed/ Golden State merger?

A. I don't recall.

Confidential - Slovin

Q. In the Coleman/Sunbeam transaction now, we will go forward to 1997/1998, do you know the names of the -- any of the personnel who worked on the investment banking side of the advice given to Coleman?

A. Gordon Rich --

MR. MARKOWSKI: I'm sorry, the advice given to Coleman?

MR. BEMIS: To Coleman, yes.

A. Gordon Rich, from First Boston.

Q. How long have you known Mr. Gordon Rich?

A. He's dead now, but I knew him for say about ten years prior to the time of this deal.

Q. Did you know him professionally, socially, or --

A. I knew him professionally and to a lesser extent socially.

Q. Was Mr. Rich the senior person on the CSFB team advising Coleman?

A. My understanding is that he was, yes.

Confidential - Slovin

Q. Do you know Steve Geller?

A. Not that I can remember.

Q. Ron Duffy?

A. No --

Q. Or, I'm sorry, I say Ron, Robert Duffy.

A. No, I don't recall.

Q. Charles Ward?

A. No.

Q. Ramish (phonetic) Chakrapani, C-H-A-K-R-A-P-A-N-I?

A. No.

Q. When was the first time that you spoke to, or were spoken to, by anyone from CSFB about the Coleman transaction?

A. I think it was at the board meetings you are referring to.

Q. That would then be the February 25th board meeting?

A. I think so, yes.

Q. Okay. At the board meeting of the -- withdrawn. At the February 27th board meeting, did the board approve the retention of CSFB as the investment banker

Confidential - Slovin

for The Coleman Company Inc. in this Sunbeam/Coleman merger?

A. I thought they were already engaged.

Q. Well, let me show you the minutes of the meeting of February 27th.

MR. BEMIS: And I will ask the court reporter if you would please mark as MS 118 the board of directors minutes for February 27th, 1998.

(Deposition Exhibit Morgan Stanley MS 118, board of directors minutes for February 27th, 1998, marked for identification.)

MR. BEMIS: There is a copy for you, sir.

Q. Do you have Exhibit MS 118 in front of you?

A. Yep.

Q. Please turn to page 7 and look under the hiding Engagements. Tell me when you are there.

A. Yes.

Q. Now, would you read that

NOT A CERTIFIED COPY

018599

Page 177

Confidential - Slovin
paragraph to yourself, sir, if you would?
A. Yes.
Q. Now, before February 27th, 1998, had the board of directors in any way approved CSFB as being the exclusive financial advisor to The Coleman Company Inc.?
A. I don't think in a formal way that they had done that, no, before this meeting, that's why this resolution is here.
MR. BEMIS: I would like the court reporter to mark for us as MS 169 a letter dated December 10, 1997 to The Coleman Company, attention Mr. Jerry W. Levin and signed on the third page by Mr. Shapiro, I believe.
(Deposition Exhibit Morgan Stanley 169, letter dated December 10, 1997 to The Coleman Company, attention Mr. Jerry W. Levin, marked for identification.)
Q. Do you have that in front of

Page 178

Confidential - Slovin
you, sir?
A. Yeah.
Q. Now, when the board of directors approved the retention of The Coleman Company -- excuse me, when the board of directors of The Coleman Company Inc. approved the engagement of Credit Suisse First Boston as its exclusive financial advisor, as set forth in the first paragraph of MS 169, did the board have the engagement letter at the meeting?
A. I don't remember.
Q. Have you ever seen the engagement letter before today?
A. I don't remember.
Q. Have you ever seen a similar engagement letter addressed to The Coleman Company issued by Morgan Stanley & Co., Incorporated for this transaction?
A. I don't believe so.
Q. Is it your understanding of the transaction that Morgan Stanley & Co. was the financial advisor for Sunbeam?
A. It's my understanding.

Page 179

Confidential - Slovin
Q. And Credit Suisse First Boston was the financial advisor for The Coleman Company and its affiliated companies --
A. Yes.
Q. -- correct?
So you were on opposite sides of the table; right?
A. We represented different clients, my recollection, the best that I can tell you.
Q. Now, according to the terms of the letter, MS 169, the fee that was to be charged for CSFB services was a $4 million plus reasonable out-of-pocket expenses.
Do you see that?
A. Yes.
Q. As a director of the company, can you tell us whether that $4 million was paid as a result of the consummation of the merger?
A. I don't have any such knowledge, one way or the next.
Q. Would you have any reason to believe that it was not paid?

Page 180

Confidential - Slovin
A. No.
Q. There was also attached to MS 169, on the fourth page, a separate document, which is also dated December 10th of 1997 which, for lack of a better term, I am going to refer to as an "indemnity agreement". Do you see that page, sir?
A. Yes.
Q. Was this page of the engagement letter also approved by the board of directors on February 27th, 1998?
A. I have no independent recollection other than if I read the minutes I could tell you.
Q. Okay, go ahead and read the minutes if you need to, it would begin on page 7.
A. (Pause.)
MR. MARKOWSKI: I am not clear on what the question is right now.
MR. BEMIS: I thought he said he could answer the question if he reviewed the minutes.

NOT A CERTIFIED COPY

018600

16div-023972

Confidential - Slovin

A. The best answer -- repeat the question for me, please.

Q. Is it your understanding, based on reading the minutes of the board of directors meeting, that the board of directors on February 27th, 1997 approved as part of CSFB's engagement the last page of MS 169, what I call the "indemnity agreement".

A. Well, it states in this first resolution that they are -- we authorize the entering of the engagement letter as well as the indemnity arrangements and the -- my answer is yes.

Q. You can set that aside for right now.

Now, is it your understanding based on the presentations that were made at the board of directors meetings, on both February -- well, withdrawn. CSFB did make presentations to the board both on February 25th and February 27th, 1998; correct?

A. I think so, yeah.

Confidential - Slovin

Q. And it was based on those -- withdrawn. And is it your understanding, as a director, that CSFB evaluated the financial terms of the merger proposal between Sunbeam and Coleman?

A. Yes.

Q. And is it your understanding, as a director, that as a consequence of their evaluation that they then advised The Coleman Company exclusively on the fairness of the transaction?

A. Yes.

Q. Are you aware of any facts which suggest that CSFB advised Sunbeam on the fairness of the transaction?

A. No.

Q. You have to keep your voice up a little bit with the tape. Thank you.

(Deposition Exhibit Morgan Stanley 76, marked for identification.)

Q. Let me show you what's been marked as Morgan Stanley 76, please. It's already been marked.

Confidential - Slovin

Do you have MS 76 in front of you?

A. Yes.

Q. There is a table of contents on the second page, it tells you what's included. I know it's a relatively thick document.

A. Yep.

Q. My question is, have you ever seen MS 76 before in any form?

A. I don't remember.

Q. Okay, you can set that aside.

As you sit here today now, you have looked at the retention letter of December 10th, 1997 for CSFB, and you have taken me up to the board meetings starting February 25th, are you aware of any meetings, even if you might not have been present, between representatives of The Coleman Company or representatives of Sunbeam and CSFB in that period?

A. No, I am not.

Q. By the way, were you in the United States continuously between

Confidential - Slovin

December 10th, 1997 and February 25th of 1998?

A. December 10th, it was my birthday so where I was non compas mentis for weeks after --

Q. Okay.

A. Yes, I was in -- oh, no, I go to Europe, I have a home in Italy, my wife being Italian, so I go to Europe for Christmastime.

Q. So, roughly, when were you out of the United States during that time period?

A. The last ten days or so, beginning a few days of the new year, ten days to two weeks.

Q. And then you were -- were you in the United States after your return from Italy continuously up until, say, the closing of March 30th, 1998?

A. I believe I was.

Q. Before we turn to the first board meeting, on March 25th, I would like you to focus on, for a second on, some of

NOT A CERTIFIED COPY

010801

CONT #9716

Confidential - Slovin

the other issues with regard to any investigation that was done of the merger transactions which the board approved. And the first question is, are you aware of any type of accounting due diligence that was done by Coleman's accountants, Ernst & Young, LLP, in connection with the merger.

A. I have no specific knowledge of that type of work.

Q. Now, when you say you have "no specific knowledge", have you heard whether they did any work even though you didn't see it yourself?

A. I don't remember whether I heard that -- what work they did or did not do. I have no recollection of that subject.

Q. Did you personally have any communications with Ernst & Young, LLP that in any way were related to the merger transaction approved by the board on February 27th?

A. No.

Q. At the February 27th board of

Confidential - Slovin

directors meeting, which we have already marked as Exhibit 118, the board also approved the retention of Wachtell, Lipton as its attorneys; correct?

A. I believe so.

Q. Were you aware, as a director, that Wachtell, Lipton had been retained before February 27th, 1998 to advise The Coleman Company in connection with the Sunbeam/Coleman merger?

A. I don't have a specific recollection of when they were first retained.

Q. Other than Wachtell, Lipton, was there any other law firm that the Coleman Company retained in connection with the merger transaction?

A. I am uncertain.

Q. Had you worked with the Wachtell firm before in the merger and acquisition transactions you have been doing over the years?

A. I have done some work with them.

Q. Had you ever worked with, excuse

Confidential - Slovin

me, Adam Emmerich --

A. Yes.

Q. -- of the firm.

And what other transactions had you worked on with Adam Emmerich?

A. I can't remember the specifics, but I do remember working with that firm on some deals, but I don't remember which ones.

Q. Did they serve bagels in the morning when you came in?

A. Better than yours.

Q. Okay. I will take that --

A. That's a real New York law firm.

Q. I will take that to management, (smiling).

Are you aware of any due diligence of any kind that Wachtell, Lipton did in connection with the Coleman/Sunbeam merger that was approved on February 27th, 1998 by The Coleman Company board?

A. As I sit here today, I have no specific memory of what specific work they

Confidential - Slovin

did on this transaction other than to do the documents.

Q. So, when you say "do the documents", it would be, for example, do the merger agreements?

A. Yeah, the various paperwork would be done.

Q. The various confidentiality agreements that we reviewed?

A. I imagine that would fall in that category.

Q. Other than the two board meetings of February 25th and February 27th, 1998, when Mr. Emmerich appeared, did you speak with him about the Coleman/Sunbeam merger?

A. No.

Q. So, did you speak with him at all after the transaction was assigned on February 27th, about this transaction?

A. Not to my recollection.

Q. So your -- just to close this out, your sole interface, if you will, as a director with the Wachtell, Lipton firm

NOT A CERTIFIED COPY

018602

Confidential - Slovin

in this transaction consisted of the two board meetings.

A. To the best of my recollection, that is true.

Q. And if Wachtell, Lipton prepared any documents and you saw them, they would have been documents that were presented to you at the board meetings?

MR. MARKOWSKI: Object to the form of the question, calls for speculation.

A. I am speculating, I could have gotten some documents outside of the board meeting but I have no recollection of getting them.

Q. Okay. Well, that's fair, let me ask the question a different way. Wachtell, Lipton did make presentations at both board meetings; correct?

A. To my knowledge.

Q. And they presented some documents because they are attached to the minutes of the meeting we looked at; right?

Confidential - Slovin

A. I think so.

Q. Okay. Now, aside from the documents that are attached to the minutes of the meeting, that are identified as being prepared by Wachtell, Lipton, did you receive any documents in connection with the merger from Wachtell, Lipton?

A. Not to my recollection.

Q. Okay, we are done with that.

I would like to show you now what's been marked as MS 170 -- excuse me, MS 79.

(Deposition Exhibit Morgan Stanley 79, document, marked for identification.)

Q. Do you have MS 79 in front of you, sir?

A. Yes.

Q. Have you ever seen it before?

A. I do not remember seeing it before.

Q. Okay, you may set it aside.

(Deposition Exhibit Morgan Stanley 78, marked for

Confidential - Slovin

identification.)

Q. I show you now what's been marked as Morgan Stanley 78, in another deposition.

Do you have MS 78 in front of you, sir?

A. Yes.

Q. Have you ever seen the second page of this document before, either in this form or without the handwriting?

A. I have no recollection of seeing this document.

Q. Did you ever participate in any discussions or meetings concerning potential synergies that were -- could be achieved in a merger of The Coleman Company with Sunbeam?

A. No.

Q. You know what "synergies" is; right?

A. The Oxford Dictionary definition?

Q. No, in an M&A usage.

A. Yes.

Confidential - Slovin

Q. What is it?

A. One and one equals three, that's the M&A definition.

Q. So if you put one and one together, you do better than if you just leave them as one and one; right?

A. I would say yes.

Q. Okay.

A. We will publish that together.

Q. Slovin and Bemis on M&A synergies, we will sell ten copies.

A. Right, if that.

Q. If that?

MR. BEMIS: Would you please mark this, Ms. Reporter, as MS 178.

(Deposition Exhibit Morgan Stanley 175, document entitled Laser Corporation Key assumptions, marked for identification.)

Q. I have handed you Exhibit MS 175 --

MR. MARKOWSKI: I think you said "178".

MR. BEMIS: I misspoke earlier

NOT A CERTIFIED COPY

Confidential - Slovin

when I said "178", this exhibit has been marked as 175, paragraph.

Q. I am handing you now Exhibit MS 175, entitled Laser Corporation Key assumptions. Do you have that in front of you?

A. Yes.

Q. Have you ever seen --

A. Not to my recollection.

Q. Okay. You can set it aside.

(Deposition Exhibit Morgan Stanley 82, document, marked for identification.)

Q. I will hand you what has been previously marked as MS Deposition Exhibit 82.

Do you have that in front of you?

A. Yes.

Q. Have you ever seen it before?

A. No, not to my recollection.

Q. You may set it aside.

(Deposition Exhibit Morgan Stanley 81, document, marked for

Confidential - Slovin

identification.)

Q. I will hand you what's been marked as MS 81 at a previous deposition.

Do you have that exhibit in front of you, sir?

A. Yes.

Q. Have you ever seen it before?

A. I don't believe so.

Q. All right, you may hand it back and I will just put it back.

(Deposition Exhibit Morgan Stanley 83, document, previously marked for identification.)

Q. I will hand you now what's been previously marked as MS 83.

Do you have that in front of you?

A. Yes.

Q. Have you ever seen it before?

A. I don't believe so.

Q. You can set it back -- oops, thank you.

(Deposition Exhibit Morgan Stanley 84, document, previously

Confidential - Slovin

marked for identification.)

Q. I show you what's been marked previously as MS 84.

Do you have that in front of you?

A. Yes.

Q. Have you ever seen that document before?

A. I don't recall ever seeing this document.

Q. Okay. You may hand that back to me.

MR. BEMIS: Ms. Reporter, will you mark the following exhibit, entitled Sunbeam Corporation table of contents with attachments, as MS 186.

(Deposition Exhibit Morgan Stanley 186 document entitled Sunbeam Corporation table of contents with attachments, marked for identification.)

MR. BEMIS: Oh, you don't need that one, sorry, sir.

Q. Have you had an opportunity to

Confidential - Slovin

look at MS 186?

A. Yes.

Q. Have you ever seen it before?

A. I don't recall ever seeing this before.

MR. BEMIS: Ms. Reporter, will you mark as MS 188 a facsimile transmittal sheet and attachments for Project Laser Exhibit A: Transaction pricing calculations.

(Deposition Exhibit Morgan Stanley 188, facsimile transmittal sheet and attachments for Project Laser Exhibit A: Transaction pricing calculations, marked for identification.)

Q. Do you have MS 188 in front of you, sir?

A. Yes.

Q. This is a fax from Will Nesbitt to Adam Emmerich at Wachtell?

A. Yes.

Q. With an attachment.

Have you ever seen either the

NOT A CERTIFIED COPY

018604

Confidential - Slovin
facsimile cover sheet or the attachment?
A. Not to my recollection.
Q. Do you understand -- looking at the transaction pricing calculations and the date of this document, do you recognize this as pricing calculations that were used in deciding whether to approve the merger agreement?
A. I couldn't say, I do not know.
Q. Look at the last -- please look at the last page of Mr. Em-- or Mr. Nesbitt's transmittal, please.
A. Yes.
Q. And, so, for the record it's Bates numbered CPH 1316962. Are you there?
A. Yes.
Q. Third item under Basis of arrangement to convert to cash and stock, do you see that?
A. Yes.
Q. It is: "Deliver as much in laser stock as can be permitted, remainder in cash".

Confidential - Slovin
Do you see that?
A. Yes.
Q. At either of the board meetings, was there any discussion of whether the transaction should be structured as a cash transaction as opposed to a transaction that included the common stock of Sunbeam Corporation?
A. I just don't have a specific recollection of that -- it may have been a subject, but I just don't have a recollection of it, I'm sorry.
Q. You may set that aside, we are done.
THE LEGAL VIDEO SPECIALIST: Five more minutes.
MR. BEMIS: Why don't we go ahead and change the tape now.
THE LEGAL VIDEO SPECIALIST: The time is 2:05, this is the end of tape number two.
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: The time is 2:08, this begins tape number

Confidential - Slovin
three of the videotaped deposition of Mr. Bruce Slovin, Esquire.
THE WITNESS: "Esquire.".
Q. Could you locate in your pile there MS 88, which may be towards the -- it's the board of directors minutes meetings, Mr. Slovin. And you might want to pull out, as well, the February 27th minutes, which are 118, those two documents will help.
188 and 118, they are both board of directors meetings.
A. 188 --
(Discussion off the record.)
Q. I can give you another one --
A. No, it's there. Okay --
Q. You have got it. Thank you very much, thank you for your help.
All right. Let's -- now that you have the two minutes in front of you, MS 88 and MS 118, let's focus now on -- exclusively on the board of directors meetings.
What did you understand your

Confidential - Slovin
duties to be as a director representing the majority shareholder of Coleman at that meeting?
MR. MARKOWSKI: Object to the form of the question.
Q. And I will limit it in connection with the approval of the merger.
A. As the majority shareholder and the public shareholders?
Q. I am going to ask you about them later, but right now I want to start as majority shareholder.
MR. MARKOWSKI: Same objection.
A. I don't think my sense of duty would have been any different.
I was asked to vote on a proposed transaction. I listened to the experts tell me their conclusions based upon the work they had done. I considered what I had heard and comments made at the table by the directors, and concluded that this was a fair and a reasonable transaction for both, the majority

NOT A CERTIFIED COPY

509810

Confidential - Slovin

shareholder and the public shareholders and, therefore, I voted for the transaction.

Q. Now, with regard to the public shareholders, did you understand as minority shareholders in the Coleman organization that you, as a director, owed them a fiduciary duty under Delaware law?

A. Absolutely.

Q. Now, as part of the -- as part of the transaction, Sunbeam assumed a large amount of Coleman debt; did it not?

A. One of The Coleman Company, not Coleman Inc., I don't believe, I believe it was one of those two companies on top of Coleman, on the chart you showed me before, yes.

Q. And how much was that debt that was assumed?

MR. MARKOWSKI: I am just going to object to the form of the question, at this point, I think it was unclear what entity we are referring to.

Confidential - Slovin

A. My recollection it was in the hundreds of millions of dollars.

Q. So by the assumption of that debt under the merger documents, and related documents, that debt was removed from the companies affiliated with Mr. Perelman and became then the obligation of Sunbeam; correct?

MR. MARKOWSKI: Could you read the question back for me, please.

(The record was read.)

MR. MARKOWSKI: I am going to object to the form.

A. I believe so.

Q. Now, in terms of the public shareholders, that is, those shareholders not affiliated with Mr. Perelman, there was no similar assumption of debt part of the transaction; correct?

A. No.

Q. Now focusing specifically on the board of directors meeting on the 25th of February 1998, which is memorialized in the minutes of MS 88, if you would look at

Confidential - Slovin

that. There are documents -- excuse me, three pages of charts, if you will, attached to the back of the minutes.

Would you look at those, please?

A. Yes.

Q. Now, were you -- strike that. Were these documents -- withdrawn. Were these three pages shown to the directors at the meeting?

A. I'm sorry, I have no recollection of whether I saw these three pages at the meeting or not.

Q. Well, let's set aside whether the same three pages. Did you see as a part of the presentation by your law firm, Wachtell, Lipton -- when I say "your", I am talking about The Coleman Company -- your law firm a presentation on the proposed structure of the merger?

A. There was conversation concerning the structure. Whether I saw a chart I cannot tell you because I don't remember.

Q. Well, during the meeting which

Confidential - Slovin

we have identified lasting approximately 1.5 hours, could you tell the jury how the meeting progressed by presen-- in order of presentation?

A. I am afraid I cannot do that. I don't recall the precise presentation, the manner in which it was presented.

I believe that Jerry Levin was the chair of the meeting, and he introduced the subject matter and introduced Adam Emmerich, the attorney, and I believe then he introduced Gordon Rich, and we had a discussion, and they talked about the prospective deal and my recollection was that at the end of the meeting they said: We are not asking you to do any voting, they can consider it, reflect on it, and we still have some work to do and we will be back to you fairly shortly with what most likely would be a request to approve or disapprove the transaction.

Q. So, if I understand correctly, Mr. Levin spoke first; is that right?

NOT A CERTIFIED COPY

0186096

Confidential - Slovin

A. That's my recollection.
Q. Is that your recollection?
A. It's reflected by these minutes. This does refresh my recollection a bit. I don't know if I have any independent recollection.
Q. The minutes also reflect on page 2, in the third paragraph, that Mr. James Maher spoke. Do you recall that?
A. Do I recall that? I think I do, yes.
Q. Do you recall what Mr. Maher said at the meeting?
A. He was talking about the structure of the deal, as I recall, and some of the work he had done and why he thought that was a sensible deal for the Coleman entities.
Q. Can you be any more specific in adding what Mr. Maher said, sir?
A. No, I cannot. I do not recall his specific comments.
Q. Was there a -- withdrawn. Did Mr. Maher give you a history of the

Confidential - Slovin

negotiations with Sunbeam up to the time of the board of directors meeting on February 25th, kind of a blow-by-blow, if you will, of the negotiations?
A. I don't recall a blow-by-blow. I do recall some general overview, but not step-by-step.
Q. Is it, in your experience, as someone who has done many M&A transactions, is it customary for deals to go back and forth between the buyers and the sellers until they reach a final deal?
A. Yes.
Q. According to the minutes, on page 2, in the third paragraph, it says quote: "Following Mr. Maher's review, the directors asked numerous questions regarding the proposed transaction and a discussion ensued among the directors."
Do you see that?
A. Where -- I'm sorry.
Q. In the third paragraph on the second page, last sentence, sir.
A. Yes, I do.

Confidential - Slovin

Q. Could you tell the jury what any of the numerous questions were?
A. "The jury"?
Q. The jury who may watch your tape, yes, sir.
A. I don't have a specific recollection of questions, other than they went to the structure of the deal, the consideration of the deal, why it was the right thing to do, in the opinion of Mr. Maher, how he came to the terms that he was working on, those type of general questions, but a specific question I am afraid I can't help you.
Q. Do you remember any questions being asked of Mr. Maher concerning why the deal was being structured to take Sunbeam stock, as opposed to cash?
A. I do believe there was some conversation to that extent, but precisely what it was I don't remember.
Q. Do you remember generally what it was?
A. No, I do not.

Confidential - Slovin

Q. Did you ask any questions of why the transaction was being structured to take Sunbeam stock rather than an all-cash transaction?
A. I think I asked a question or two. I don't know if it was on that particular subject.
Q. What questions do you think you asked?
A. I don't remember.
Q. Okay. There is in the minutes, in that same sentence that we read, after the numerous questions were asked, a discussion ensued among the directors. Do you remember any of the discussion that ensued among the directors after Mr. Maher's presentation?
A. Well, it related to the subject of the questions and the answers.
Q. I would hope so.
A. (Laughing.)
Q. Can you be anymore specific than that?
A. This was six years ago, my

NOT A CERTIFIED COPY

018607

Confidential - Slovin

memory is really not so good, I don't remember details.

Q. All right. Well, after Mr. Levin's presentation and Mr. Maher's presentation, according to the minutes, Mr. Levin then introduced Mr. Emmerich. Is that consistent with your recollection?

A. My general recollection.

Q. What did Mr. Emmerich say at the meeting to the directors and the visitors?

A. He talked about the structure of the deal, why it was composed the way it was, from a legal point of view, what some of the ramifications were from a legal point of view, that sort of thing.

Q. What did he say about why the deal was structured the way it was and the legal ramifications?

A. Well, he said that this was a serious consideration, a thought, that this was the best interests of the Coleman shareholders and the public and majority shareholder.

Q. Did Mr. Maher express the same

Confidential - Slovin

conclusion, that it was in the best interests of the public and private shareholders of The Coleman Company?

A. I think he was an advocate of the deal. What his exact terms were and his expressions, I don't remember. But he did tell us about the deal, and my understanding was he, after his extensive work, was an advocate of it going forward.

Q. So in addition to Mr. Emmerich and Mr. Maher, let's go back up to Mr. Levin --

A. "Levin."

Q. I apologize, Mr. Levin --

A. Minnesota, Levin.

Q. -- did he, as well, express the view that the transaction was in the best interests of The Coleman Company shareholders?

A. My recollection was that he did.

Q. Now, when the -- withdrawn.

(Discussion off the record.)

Q. Did Mr. -- I'm sorry, I don't mean to interrupt. Did Mr. Emmerich go

Confidential - Slovin

through any of the additional agreements that are set forth in the merger agreement that -- and if it helps you, that is set forth in Section 7 -- excuse me, Article 7 of the merger agreement, MS 117, if you need to look at it.

A. I don't remember what other collateral agreements or documents he talked about.

Q. Well, one of them was the comfort letters from the -- cross-comfort letters from the two auditing firms.

A. Right.

Q. Was there any discussion of that?

A. My recollection is that -- I have no recollection of specific discussion on that subject. It was a subject that was raised at some point. What level of discussion ensued or who raised the question, what the responses were, I don't remember.

Q. But you do remember the subject being raised at one of the board meetings?

Confidential - Slovin

A. I do think so, I do think so, but my recollection is fuzzy, and sometimes the suggestion creates a memory, and I don't really want that to happen, so....

Q. So, as you sit here today, you can't remember the specific discussions on the cross-comfort letters but you believe it was discussed at some point.

A. I think so.

Q. Okay. And, just for the record, the cross-comfort letters I am referring to are those set forth in Section 7.2 of the merger agreement, MS 117.

Following Mr. Emmerich's presentation, the minutes reflect that the board asked questions and discussion ensued.

Do you recall any of the questions that were asked of Mr. Emmerich?

A. I recall that there were several questions, but I don't remember the specific ones.

Q. Do you remember any of the

NOT A CERTIFIED COPY

018608

Confidential - Slovin

discussion that ensued following -- the questions that were asked?

A. They related to the questions that were asked, but I don't remember the specifics, I'm sorry.

Q. Now, turning to the next presentation at the board meeting, it would appear that Mr. Gordon Rich spoke, as you previously identified. Is that now consistent with your recollection?

A. Yes.

Q. Did Mr. Rich present any documents at the meeting on February 25?

A. I remember reading something in the presentation, I think he passed out some documents.

Q. Let me show you two documents, and ask you if those were shown to anyone.

(Deposition Exhibit Morgan Stanley 112, document, dated February 25th, 1998, marked for identification.)

Q. The first document I would like you to look at is marked as Morgan Stanley

Confidential - Slovin

112.

Do you have Exhibit MS 112 in front of you, sir?

A. Yeah.

Q. Was this document or any portion of it presented to the board of directors at the May -- "May" -- February 25th, 1998 meeting?

A. I believe so.

Q. Now, is there something in particular that makes you believe that this document was presented, other than it's dated February 25th, 1998?

A. Well, it talks to the subject of valuations, and that's what we were all interested in. It talks about, you know, range of values which, again, is something that we were all interested in. These valuations of stock prices and part of consideration are very important, and some are complicated. I sort of remember seeing something like this.

Q. Did CSFB use a PowerPoint presentation to present these to you in

Confidential - Slovin

slide form or did you have hard copies handed out?

A. I think we had hard copies handed out.

I have seen Gordon present with slides, and maybe I am confusing them, because he has made many presentations to us. In this one, I don't recall a PowerPoint slide but I recall a hard copy.

Q. Okay. So this document, MS 112, would have been one of the documents that you would have considered in approving the merger?

A. Yes.

Q. On the February 27th; correct?

A. Yes.

Q. Okay. Let me show you one other document, which is MS 197, which is on a cover -- I have with a cover page of Credit Suisse First Boston, and if the court reporter would mark that, as well.

(Deposition Exhibit Morgan Stanley 197, document with a cover page of Credit Suisse First Boston,

Confidential - Slovin

marked for identification.)

Q. Do you have MS 197 in front of you?

A. Yes.

Q. Did you see this document at either the February 25th or the 27th board meeting?

A. It's hard to say. This is more detail, as it's entitled, it's backup material for the presentation. I am a little confused because what you are showing me in this prior document was draft materials.

Q. Right.

A. So I am confused whether this was a final version that was presented, the prior one or whether -- I don't recall this backup document, the detail. I don't re-- but you see, some of the material in the backup document is very similar to the material in what is entitled the draft material. So, I remember more receiving this item called Draft materials and I don't remember clearly receiving the

NOT A CERTIFIED COPY

018609

Page 217

Confidential - Slovin
document called Backup materials.
Q. All right. So your best recollection is that you think you saw MS 112, but you don't recall --
A. Right.
Q. -- whether you saw MS 197; right?
A. Right.
Q. Okay. All right. You can set those two documents aside in your pile.
A. Can I take these home with me?
Q. You know, we could probably arrange that.
MR. MARKOWSKI: Actually, under the form of our protective order, you can't.
Q. We can have you sign Exhibit A and then you can take it home, if you want.
MR. MARKOWSKI: Even then you can't, but I am sure you don't want them.
THE WITNESS: It's just some humor.

Page 218

Confidential - Slovin
Q. One of the -- withdrawn. If you will look at the board of directors minutes again. I hope you didn't put those aside. Look at 188, please, and turn to the second page of the minutes, and focus on the third paragraph. And the second sentence of the third paragraph reads: "Mr. Maher reviewed the history of the proposed transaction, including both the course of discussion between the company and Sunbeam and an inquiry made by the company to what the company believed was the most likely potential bidder, which bidder was not interested."
Do you see that sentence?
A. Yeah.
Q. Did Mr. Maher identify, either directly or in response to questions, who the other potential bidder was?
A. I don't recall that he did.
Q. When CSFB made its presentation, did Mr. -- what did Mr. Rich say about another buyer would likely discount the First Boston estimates as set forth on

Page 219

Confidential - Slovin
page 4 in the second-to-the-last paragraph? And, again, I am referring to MS 88.
A. Which page? Which paragraph?
Q. Page 4, next-to-the-last paragraph, and if you would focus on the last sentence, which reads as follows, quote: "Mr. Rich stated that although First Boston did not discount the 1998 EBITDA forecast, another buyer would likely discount such estimates resulting in a lower discounted cash flow range of values than those presented by First Boston." Closed quote.
What did Mr. Rich say about that topic, other than what's set forth here?
A. Well, I think he was suggesting that he thought that this deal perhaps was better valued than another deal might be and because another buyer might be more severe in his discounting the cash flow range, that was, he wasn't sure of that, but he said might be and likely and, therefore, the present deal was likely to

Page 220

Confidential - Slovin
be better for the Coleman people.
Q. So, as I understand it, the First Boston's presentation did not discount the current forecast given by Sunbeam for its 1998 earnings; correct?
MR. MARKOWSKI: You are asking whether he knows that?
MR. BEMIS: Yes, I am asking that.
A. I am not sure. You are asking me things about which I don't remember, I'm sorry. And I don't know how to answer that question. I don't remember.
Q. Well, let's turn to the next page of the minutes, on page 5. The first paragraph reads: "Mr. Rich then provided a brief overview of Sunbeam, including Wall Street estimates for Sunbeam's stock price and then reviewed a" -- excuse me -- "reviewed a summary of the discounted cash flow analysis." Do you see that sentence?
A. Yes.
Q. What did Mr. Rich --
MR. MARKOWSKI: I think that's a

0186 10

NOT A CERTIFIED COPY

Confidential - Slovin

comma.

MR. BEMIS: Is that a comma? Let me start over, you are correct, it is a comma.

Q. I would ask you, sir, to direct your attention to the first sentence on page 5 of MS 88, which reads as follows: "Mr. Rich then provided a brief overview of Sunbeam, including Wall Street estimates for Sunbeam's stock price and then reviewed a summary of the discounted cash flow analysis, comparable company analysis and comparable acquisition analysis for Sunbeam."

Do you see that sentence?

A. Yeah.

Q. What did Mr. Rich state, by way of overview, of Wall Street's estimates for Sunbeam's stock price?

A. Other than what it says in these minutes, I can't tell you more about what he said because I just don't remember.

Q. Was this information, Wall Street's estimates for Sunbeam's stock

Confidential - Slovin

price, information that you considered in deciding whether to vote for the merger on February 27th?

A. Yes, I considered everything that they spoke about. Clearly, I was swayed by their conclusions and judgments, not only First Boston but our entire staff of people who worked on the deal and, yes, their words carried weight with me to help me make my judgment.

Q. All right. It states at the end of the paragraph we were reading from: "Following Mr. Rich's presentation, the directors asked questions and a discussion ensued."

Can you tell us what, if any, questions the directors asked and what discussion ensued?

A. You know, other than that it was about the content of Mr. Rich's presentation, I can't help you.

Q. Did Mr. Levin, at the end of the meeting, tell you what the status of the negotiations were as of February 25th?

Confidential - Slovin

A. I think he implied that they had reached a very serious point and that they were ongoing and a serious pace, and that we could expect to hear from him shortly as to what final deal they might be presenting to the board, if a final deal was, in fact, reached.

Q. Going back up to the first paragraph again, the reference to "Wall Street estimates", do you see that up there, sir?

A. Yes.

Q. Do you understand "Wall Street estimates" to be estimates of analysts who follow the Sunbeam stock?

A. Yes.

Q. Such as Mr. Shore, who we looked at earlier from PaineWebber?

A. Yeah -- yes.

Q. Is that something that, as a man experienced in M&A transactions with the many years that you have described it, that when you are looking at a company you will research and look at analyst reports

Confidential - Slovin

on a company if it's being followed by a brokerage house?

A. Yes.

Q. Now, did any of the directors at the -- at that February 25th meeting, ask to see any of the Wall Street estimates such as what Mr. -- we showed you earlier regarding Mr. Andrew Shore, that he had done with regard to Sunbeam, did you ask to see the actual underlying estimates?

MR. MARKOWSKI: I am going to object to the form of the question.

A. I don't remember.

Q. All right. Let's set aside February 25th and move forward to -- one second before -- withdrawn.

Do you have the minutes of the February 27th meeting now in front of you?

A. Yes.

Q. That should be MS 118. Okay, good.

The minutes reflect, on the first page, that the meeting was called to order at 9:30 a.m.

NOT A CERTIFIED COPY

0011811

Confidential - Slovin

Do you see that?

A. Yes.

Q. And at the very end of the minutes, it reflects that the meeting had adjourned at 10:30 p.m.

Do you see that?

A. What page is that?

Q. It would be page 11, sir.

A. Yes.

Q. And did the meeting -- was the meeting continuous from 9:30 in the morning until 10:30 or -- setting aside people taking a quick break for coffee or the restrooms, were you in session for 11 -- I mean 13 hours?

A. Oh -- hmm -- I don't remember our meeting lasting that long, honestly. I don't remember. It might have. It says it does. There is no reason for me to argue against it. I can't believe that if it lasted that long, that people didn't step in and out of that meeting. Had a lot of old characters on the board, they would definitely be stepping out.

Confidential - Slovin

Q. Well, let's start with the people in attendance, starting with the directors again.

Based on your recollection, is that an accurate accounting of those directors that attended the meeting?

A. I swear I don't remember. I'm sorry.

Q. Okay. The others in attendance that are listed on the first page of MS 118, does that appear to be a correct listing of the "quote" "others" who were attending?

A. Looked like the cast of characters that would supplement the meeting, other than directors, yeah.

Q. Now, I asked you earlier about a Michael Katzke. Do you remember I --

A. No, I didn't remember who he was.

I see he is one of the attorneys from Wachtell, Lipton.

Q. Okay.

A. And Richard Duffy, who I didn't

Confidential - Slovin

know was one of the Credit Suisse people.

Q. Could you tell me how the meeting progressed, regardless of how long it took, on February 27th of 1998.

A. To do so, I would have to look over the minutes themselves. I mean, I would start that Mr. Levin called the minute -- the meeting to order at 10:30, and he then related to us some of the changes that had taken place and the consideration and exchange ratios from the time we met, just two days before, and then again --

MR. MARKOWSKI: I ask you to read the minutes.

A. But that's the way it would progress.

I don't have an independent recollection of -- other than the reading of the minutes, of the manner in which the meeting progressed, who spoke first, who spoke second.

Q. Well, according to the minutes, it appears that Mr. Levin spoke, then

Confidential - Slovin

Mr. Emmerich spoke, Mr. Rich spoke again, and Mr. Levin then reviewed the transactions, and then various motions were put to the board of directors. That's in the first two pages --

A. Yeah.

Q. -- of one paragraph.

A. Yes.

Q. Now -- and I am not trying to be facetious, or anything -- is there any reason to believe that it took 13 hours to cover these two pages of the minutes?

A. No, I couldn't -- I wouldn't under-- be able to tell you why it would take so long.

I -- perhaps there is an error in typing.

Q. Well, that's what I am asking -- I guess, ultimately, that might be the question, is there an error in the typing "adjourned at 10:30 p.m."?

MR. MARKOWSKI: To be fair to the witness, there is an explanation at the end of the minutes, if you

NOT A CERTIFIED COPY

018612

Confidential - Slovin

want to see if it refreshes his recollection.

Q. You can look at page 10 at the bottom there.

A. Thank you for your help.

Oh, thank you, there you go. It sounded like it was postponed for a bit until the Sunbeam people finished their work and then we concluded when they concluded.

Q. So, is it fair to say there was a meeting starting at 9:30, it concluded at some point, then there was a break and then you-all came back after a Sunbeam meeting, and then you adjourned again at 10:30?

A. I didn't recall that, honestly, but thanks to counsel's identifying this last penultimate paragraph -- half-paragraph on page 10, that's what would appeared to have happened.

Q. Now, did anyone other than the directors and the advisors, that is, First Boston through Mr. Gordon Rich and

Confidential - Slovin

Mr. Emmerich on behalf of Wachtell, Lipton and Mr. Levin on behalf of -- not advisor but was employed by Coleman, did anyone else make formal preparations to the board?

A. I don't have any recollection of others presenting in a formal manner.

Q. There are some documents attached to the minutes beginning right after page 11. If you will turn to those, please.

A. Yes.

Q. Were these documents presented to the board of directors on February 27th?

A. Well, this is, once again, those little charts you referred to earlier, and I would have to repeat my remarks, I don't recall.

Q. Was there any type of -- withdrawn. Was there a PowerPoint or slide presentation given at the meeting on February 27th?

A. I don't recall.

Confidential - Slovin

Q. Now, having gone through both the meetings on February -- well, strike that. When the board reconvened, after the adjournment and I guess following the Sunbeam meeting, if the minutes are to be believed, what transpired at the second part of the board of directors meeting?

A. I'm sorry, I don't remember.

Q. Okay. Was the merger agreement, which we have marked as MS 113 --

MS. BROWN: 17.

Q. Withdrawn. Was the merger agreement, which we marked as MS 117, was that document available to the directors at the board of directors meeting on February 27th, 1998, when they actually voted to approve the merger?

A. I don't remember.

Q. Would you have approved -- voted to approve the merger without reviewing the merger documents, the merger agreement, MS 117?

A. If it was gone over by counsel and those who were responsible for its

Confidential - Slovin

drafting and execution, and they explained it to me, I don't think I would feel obliged in the execution of my fiduciary duties to read each page. I had confidence in the lawyers and our staff. We talked extensively about the terms, and I don't think I had to read it in order to execute my authority.

Q. Do you know if any of the directors read the merger agreement, MS 117, before they voted to approve the merger on February 27th, 1998?

A. I don't know who did what, as far as reading the entire document, no, I do not remember.

Q. With regard to the further responsibilities under the merger agreement, MS 117, such as the cross-comfort letters from the auditors, who at the Coleman Company, whether it be the board or employees, were responsible for seeing that these other items were followed up on?

A. Well, the people in charge of

NOT A CERTIFIED COPY

019813

Confidential - Slovin

the transaction had the responsibility to see that all the requirements of the deal were honored by our side as well as by Sunbeam's side.

Q. So who is the person --

A. I don't --

Q. Is there one person?

A. I don't think there is one person that has such a responsibility.

I think the lawyers have their area of privilege, and the analysts have theirs, and I would think that Jerry Levin was the generalist on this deal, along with Jim Maher, to make sure that responsibilities were honored on both sides.

Q. Let me show you now what's been marked as -- withdrawn. One final question. I asked you earlier whether at either of the board meetings anyone from Morgan Stanley spoke. We have now been through all the meetings, and you have told me the course of proceeding. Do you recall anyone from Morgan Stanley ever

Confidential - Slovin

appearing at these board meetings on February 25th or February 27th?

A. I'm sorry, but I don't recall.

Q. You don't recall them appearing.

A. I don't recall either way.

Q. Do you see them on the list of attendees under the name Others on either of the board minutes?

A. No, no, I do not.

MR. BEMIS: So the record will reflect the witness was referring to MS 112 -- excuse me, it's 88 -- you are hiding those -- let the record reflect the witness is referring to the minutes of the board meeting February 25th and February 27th, which are MS 88 and 118.

Q. You can set those aside.

A. Did you say that was the final question?

Q. On that subject. We are doing fine.

Do you want to take a break before we get going?

Confidential - Slovin

A. No, I want to keep going.

MR. BEMIS: How are you doing, Ms. Reporter?

(Discussion off the record.)

MR. BEMIS: Would you please mark this MS 189, please. This is a two-page document.

(Deposition Exhibit Morgan Stanley 189, two-page document, which is addressed to Will Nesbitt from Alexandre J. Fuchs, Morgan Stanley & Co., Incorporated, and there is an attachment of one page to it, marked for identification.)

Q. The court reporter has marked for you MS 189, which is addressed to Will Nesbitt from --

A. Fuchs.

Q. -- from Alexandre J. Fuchs, Morgan Stanley & Co., Incorporated.

MR. MARKOWSKI: And could I have mine?

MR. BEMIS: Oh, I'm sorry.

Q. And there is an attachment of

Confidential - Slovin

one page to it.

Have you ever seen this document?

A. Not to my recollection.

Q. Okay. You may set that aside.

Do you know what a "road-show" is?

A. Yes, I do.

Q. Okay. Tell the jury what a "road-show" is.

A. My understanding of a "road-show" is this arena would be proponents of a deal of some sort, the sale of some financial instrument, representing a particular company, going out on the road to visit various financial institutions to try to sell the product that they were hawking at the time, and they would go from city to city, from financial institution to financial institution and explain why a bond, for example, they were selling, why some stock that they were selling was good value and that the audience ought to consider

NOT A CERTIFIED COPY

019814

Confidential - Slovin

purchasing same.

That's what I understand a "road-show" to mean.

Q. When you said "hawking", you weren't using that in a pejorative sense; were you?

A. Not at all.

Q. Could you explain to the jury how in the case of -- say the zero coupon debentures that we looked at earlier that were going to be used as part of the financing of this transaction, how those are underwritten and sold, based on your experience?

MR. MARKOWSKI: Could you read that back, please?

MR. BEMIS: I will rephrase the question.

Q. You remember we looked at the offering memorandum for the zero coupon debentures?

A. (Nodding.)

Q. I think they are subordinated debentures, that were being offered in

Confidential - Slovin

connection with the Sunbeam acquisition. Do you recall that?

A. Yes.

Q. What is an "underwriter"?

A. My understanding is someone who says that -- the financial institution that says that: I will underwrite the success of this deal, whoever doesn't take whatever remains unsold I will see to it that it's taken by our house, if necessary.

Q. In this case, when you -- withdrawn. Carrying that forward now to the road-show, is it customary for the underwriters to participate in the road-show?

A. I think so.

Q. Did you attend any of the road-show presentations for the zero coupon notes that were being offered in connection with the financing of the Sunbeam/Coleman transaction?

A. No, I did not.

Q. Let me just -- I want to show

Confidential - Slovin

you what the court reporter will mark as MS 193.

(Deposition Exhibit Morgan Stanley 193, on the second page, it's entitled Sunbeam road-show presentation speaking points March 15th, 1998, marked for identification.)

Q. Do you have MS 193 in front of you?

A. Yes, I do.

Q. All right, sir.

On the second page, it's entitled Sunbeam road-show presentation speaking points March 15th, 1998. I ask you to take a look at this quickly and -- or take as much time as you want, and tell me whether you have ever seen this document with or without handwriting. There are some handwritten notes --

A. I don't recall ever having seen this document.

Q. And have you ever done a road-show?

Confidential - Slovin

A. Yes.

Q. Have you ever been a presenter at a road-show?

A. Did present as the lead presenter? I don't think so, I think I participated.

Q. And were you participating along with an underwriter?

A. I think the financial institution hired to sell the instrument went along with us, and whether they were underwriters or using best efforts I don't remember, but everybody talked what a good deal was being offered to them and that they should reflect and participate.

Q. Well, best efforts is also underwriting, it's a firm underwriting best efforts --

A. Fair enough. I was using "underwriting" as a firm underwriting before when I spoke.

Q. And I understood that, that's why I wanted to clarify.

A. Right.

NOT A CERTIFIED COPY

018615

Confidential - Slovin

Q. But, in your experience -- strike that. You have actually participated with underwriters whether they be best efforts --

A. Right.

Q. -- or firm underwriting in a road-show representing the -- one of the beneficiaries, if you will, of the debt obligation and if it happens to be that that was trying to be sold; correct?

A. Right, right.

Q. So in terms of there being a road-show, if you will, for these zero coupon notes, you don't find anything unusual in that, do you, in this case?

A. Unusual? No. Road-shows, you know, if you are fortunate, you don't have to go on the road because the document sells itself mostly, but most often in a large offering you have to get out there, you know, and rub elbows with the prospective purchaser, and try to convince them of the quality of the product. I don't know if it's -- I don't think it's

Confidential - Slovin

unusual.

Q. And, in this case, the offering that was being made, underwritten by -- I think it's Morgan Stanley Senior Funding was --

MR. MARKOWSKI: That's --

MR. BEMIS: No, I misspoke.

Q. It was being offered by Morgan & Stanley & Co., Incorporated, being underwritten by them, was in excess of a billion dollars; wasn't it?

A. Is the document -- can I --

Q. Go ahead, you can look at it.

A. Was it in excess of a billion dollars?

Q. Yeah.

MR. MARKOWSKI: Are you referring to the face value of the note or --

MR. BEMIS: Yes, face value of the note.

A. $2,014,000,000.

Q. And on a discounted basis, I think it was approximately $1.2 billion;

Confidential - Slovin

correct?

A. I don't know --

MR. MARKOWSKI: That's not --

A. -- what the discount value --

MR. MARKOWSKI: That's not correct.

Q. What was the number?

MR. MARKOWSKI: It's actually in the speaking points, if you want to take a look.

MR. BEMIS: No --

A. What's the relevancy of that?

MR. MARKOWSKI: The fourth page.

Q. Just for the purposes of not forgetting it, the next time I get asked.

MR. MARKOWSKI: Do you see the --

THE WITNESS: Help him out, give him the page.

MR. MARKOWSKI: 398, CPH 255398.

A. Can we switch the camera to you now?

Q. No, can't do that.

MR. MARKOWSKI: Just trying to

Confidential - Slovin

help.

MR. BEMIS: (Pause.)

Yep. (Pause.)

Q. Now, with that help, which is probably not necessary at this point, but let me go on to another topic with you and show you one additional document and ask you whether you have seen that before.

And that is MS -- we will mark as MS 194.

(Deposition Exhibit Morgan Stanley 194, document entitled Sunbeam road-show presentation speaking points March 15th, 1998, marked for identification.)

Q. I have handed you what has been marked as MS 194, which is also entitled Sunbeam road-show presentation speaking points March 15th, 1998.

Do you see that?

A. Yes.

Q. Now, this -- have you seen this document or any version of it before --

A. I don't believe so.

NOT A CERTIFIED COPY

Confidential - Slovin
Q. Okay. You can set that aside.
(Pause.)
(Discussion off the record.)
THE WITNESS: You don't have to go to the Equinox Club after doing all this jumping up and down, you can go home early tonight.
MR. BEMIS: I wish. Would you, Ms. Reporter, please mark as MS 208 the Form 10-K for Sunbeam Corporation for -- the as-of date, I think I missed this, I want to say February 27th, 1998.
(Deposition Exhibit Morgan Stanley 208, Form 10-K for the period ending December 28, 1997 for the Sunbeam Corporation, marked for identification.)
MR. MARKOWSKI: Are you referring to the date when it was filed?
MR. BEMIS: No, I was referring to the bottom date, I think that was incorrect, I will correct it as soon

Confidential - Slovin
as I give it to him.
Q. I have handed you what has been marked as MS 208, which is the Form 10-K for the period ending December 28, 1997 for Sunbeam Corporation.
Do you have that in front of you sir?
A. Yes.
Q. Have you ever seen that document before?
A. I don't remember.
Q. Did you look at Sunbeam's Form 10-K before you voted to approve the merger on February 27th, 1998 at The Coleman Company board meeting?
A. I don't remember.
Q. The Form 10-K is a document that, when filed with the Securities and Exchange Commission, is generally considered public information; isn't it?
A. Yes.
Q. You can go -- you can actually go on line now and a program called Edgar and you can print it out without any

Confidential - Slovin
difficulty at all; correct?
A. Yes.
Q. Have you done that before?
A. No.
Q. "No"? You have had other people do it for you?
A. Yes.
Q. Okay, set that aside.
Did you look at any analyst reports on Sunbeam Corporation after the press release of March 19th, 1998, which I think we previously identified as MS 210.
A. You know, I just don't remember.
I do do reading, you know, it sounds like I don't read anything. I just don't remember, in answer to your questions, did I read an analyst's report subsequent to the meetings. I may, indeed, have. I just don't remember.
Q. Well, let me show -- let me just show you one of these reports. We will look at Mr. Shore's report on March 19th, 1998, which I will ask the court reporter to mark as MS 212.

Confidential - Slovin
(Deposition Exhibit Morgan Stanley 212, Mr. Shore's report on March 19th, 1998, marked for identification.)
Q. Now, I have handed you --
MR. MARKOWSKI: Do you have a copy of that?
MR. BEMIS: Yes, I'm sorry.
Q. The court reporter has handed you what's been marked as MS 212.
Do you have that in front of you?
A. Yes.
Q. Do you know who Andrew Shore is at PaineWebber?
A. Other than he's the author of this document, so I take it he's some form of analyst.
Q. Have you ever read any of his reports on Sunbeam?
A. I may have, I don't know for sure.
Q. Well, Mr. --
MR. MARKOWSKI: Before we go on,

NOT A CERTIFIED COPY

Page 249

Confidential - Slovin
the page -- the copy I have got isn't complete.
MR. BEMIS: Okay, let me look, 2 of 3.
A. Nor is mine.
Q. You are missing the middle?
MR. BEMIS: I have got three pages in mine, let me see.
Q. How many pages do you have?
A. Two.
Q. Okay. Well, we have got a problem, here is 2 --
MR. BEMIS: Let's go off the record for a second.
THE LEGAL VIDEO SPECIALIST: The time is 3:10, we are going off the record.
(Recess taken.)
THE LEGAL VIDEO SPECIALIST: The time is 3:16, we are back on the record.
Q. All right. Thank you for your patience, we have now corrected the missing page on Exhibit 212.

Page 250

Confidential - Slovin
Do you have in front of you Morgan Stanley 212?
A. Yes.
Q. And, for the record, this is a report entitled Sunbeam Corp. grilled three exclamation marks by PaineWebber Andrew Shore March 1998.
A. Right.
Q. Would you take a minute and read this, sir, if you haven't seen it before.
A. (Pause.)
Yes.
Q. Now, my question is, having read it, at any point after the signing of the merger agreement up until I showed you this document, have you ever seen it before?
A. I don't remember.
Q. Well, reading its contents, had you seen it, would you have taken any action, as a director of The Coleman Company, to consult with your other directors as to the consummation of the merger transaction on March 30th?

Page 251

Confidential - Slovin
A. Would I or did I?
Q. Would you have, since you said you didn't see it or don't remember having seen it.
MR. MARKOWSKI: I object to the form of the question.
A. Well, I mean, this relates to the Sunbeam release which you showed me earlier, saying that the sales were weaker than they expected, and they gave a reason for that, the Sunbeam folks did, that the customers were either restocking or doing something to alter the purchasing of product. Then they go on in the release, I remember, that they would overcome that weakness in the first quarter and they were sticking with their yearly projections. This fellow's going into it in a little more detail than the other -- than Sunbeam, but he concludes that, all things considered, he thinks they will get back on track, and he's still recommending the company.
Would I, and did I, and would I

Page 252

Confidential - Slovin
have spoken to -- you know, if I read this before, I might have spoken to one of the people involved, saying: Do you think this is serious? Or: Is it as the release suggests that it's going to be overcome, as Shore suggests, it will be overcome? I might have said something. But that is also hypothetical because I don't remember saying it -- I don't remember if I engaged in any conversations concerning the subject matter of the release or this report by Shore.
Q. Okay, you can set it aside.
Now, let me show you now what we will mark as MS 213.
(Deposition Exhibit Morgan Stanley 213, Sands Brothers & Company Limited Investment Bankers document, dated March 19th, 1998, marked for identification.)
Q. Do you have MS 213 in front --
A. Yes.
Q. -- of you.
For the record, this is a Sands

NOT A CERTIFIED COPY

Confidential - Slovin

Brothers & Company Limited Investment Bankers document, dated March 19th, 1998, following the press release of March 19th that we discussed earlier.

Have you ever seen this document before?

A. I don't believe so.

Q. Okay. Do you know Sands Brothers Limited?

A. I know of them, yes, a smaller brokerage house -- a brokerage house, investment banking house, I guess.

MR. BEMIS: Would you please mark, Ms. Reporter, as MS 214, a CIBC Oppenheimer report, dated March 19th 1998, on Sunbeam Corporation.

(Deposition Exhibit Morgan Stanley 214, CIBC Oppenheimer report, dated March 19th 1998, on Sunbeam Corporation, marked for identification.)

Q. Do you have MS 214 in front of you, sir?

A. Yes.

Confidential - Slovin

Q. Have you ever seen this analyst's report?

A. Not that I recall.

Q. You may set it aside.

Let me show you now a document marked as MS 36 by the court reporter.

(Deposition Exhibit Morgan Stanley 36, copy of The New York Times article appearing on March 20th, 1998, entitled Sunbeam stock falls 9.4 percent on lower projections for revenue, marked for identification.)

(Discussion off the record.)

Q. Do you have MS 36 in front of you, which is a reprint -- or a copy of The New York Times article appearing on March 20th, 1998, entitled Sunbeam stock falls 9.4 percent on lower projections for revenue.

A. Right.

Q. Have you seen -- did you see this story in The New York Times?

A. I may have.

Confidential - Slovin

Q. Well, as a director of The Coleman Company, Inc., who had voted to approve the merger on February 27th, 1998, was the fall in Sunbeam stock of 9.4 percent as a result of the March 19th press release a matter of concern to you?

A. Yes.

Q. After seeing that -- I mean, even if you didn't see the article, you were following the price of the stock; were you not?

A. No, I knew that Sunbeam came in with a lower first quarter than they anticipated. Whether I read (indicating) any one of these Shore or this fellow from Sands or this fellow from Oppenheimer, whether I read their report, I don't remember, but I do recall being told and -- that this was nothing to worry about, and that the company had adequately explained the fall in sales, that they thought that it was going to recover. The analysts picked that up and agreed. The stock fell, I think, you know, as often

Confidential - Slovin

occurs, there are overreactions, temporary overreactions to news, you see it every day in the paper today, and that doesn't belie value or what something is going to -- the stock is going to be the next day.

I did not see that, though, the slight weakness in sales.

Don't forget, they didn't talk about earnings weakness, which we would presume would be slightly affected, more affected by the shortfall in sales, but it was still up against the prior year, the momentum still looked like it was carrying forward with the company, and I didn't see, in my judgment, that it was so material. I wasn't happy with it, but not being pleased with an event doesn't require you to act unless it rises to the level of what you conclude or your associates conclude is a "material event".

Q. Did you consider the fall in Sunbeam's stock price of 9.4 percent after the March 19th press release, as reported

NOT A CERTIFIED COPY

Confidential - Slovin

by the New York Times on March 20th, 1998, as to be a "material event"?

A. I didn't view that as a "material event". I viewed it as an overreaction to an earnings report in a stock that was fairly fully valued.

Q. Did you rush in and buy any Sunbeam stock as a result of the price dropping 9.4 percent on March 19th?

A. I don't believe I did. I would have to review my stock trends.

Q. You can set that aside.

By the way, when you said that you were told that by someone, as I recall your testimony, that this was only a temporary event or temporary setback, who was it who told you that?

A. One of the participants in the deal on our side.

Q. So it would have either been -- it would have had to have been one of your inner circle people, if you will, or your investment bankers or your lawyers or your accountants; right?

Confidential - Slovin

A. Yeah, the people with whom I relied upon to take facts and analyze it for us, because they knew the company much better than I and upon whose judgment I relied a good deal upon.

Q. Okay. I show you what's been marked as MS 215, which is a reprint of a Wall Street Journal article, on March 20th, 1998.

(Deposition Exhibit Morgan Stanley 215, reprint of a Wall Street Journal article, on March 20th, 1998, marked for identification.)

Do you have that in front of you?

A. Yes.

Q. You told me earlier that one of the financial sources that you read is The Wall Street Journal along with the other one was The Financial Times; is that right?

A. And The New York Times.

Q. And The New York Times.

Did you read MS 215, which is a

Confidential - Slovin

reprint from an article of The Wall Street Journal, on Friday, March 20th, 1998?

A. I'm sorry, I don't remember if I read this article on March 20th, 1998.

Q. Well, if you look at the paragraph, which begins: "While Sunbeam's" -- which is one, two -- five paragraphs down: "While Sunbeam's announcements ".

Do you see that?

A. Yes.

Q. It says: "While Sunbeam's announcement didn't discuss the company's earnings outlook, analysts said the sales disappointment is bound to affect profits. Sunbeam officials didn't return calls for" -- "calls seeking comment."

Do you see that?

A. Yes.

Q. Now, that's actually consistent with what you said, right, that if sales fall it was bound to affect their profits; correct?

A. Yes.

Confidential - Slovin

Q. So if you had read The Wall Street Journal on March 20th, 1998, you knew at least by that date, ten days before the closing, that not only had there been a downturn announced in their sales but that was bound to affect the company's profits, as well; didn't you?

A. Yes.

Q. And the next paragraph, one of the analysts is quoted as saying: "The company has made promises they haven't delivered on and that is certainly being factored into the stock today."

Do you see that?

A. Yes.

Q. And if you had seen that, you would have known at least one of the analysts said the company wasn't delivering on promises they had made; right?

A. No, they said, if you read it carefully, hadn't in the past, has made promises that they haven't delivered on, and that is certainly being factored into

NOT A CERTIFIED COPY

018620

Confidential - Slovin

the stock today. In other words, they took the stock down, you know, what I viewed as excessive, having, you know, read or been told about the shortfall in sales, which seemed to me fairly slight, it was up against the prior period last year, I still felt that there was momentum in the company, and that they gave a reasonable explanation for the shortfall in sales which, you know, having been in business many years, you do have, every once in a while, your customers rearranging inventory, it has nothing to do with the product acceptance, and often the next quarter or the quarter following picks up on the shortfall.

It didn't appear to me -- I wasn't happy with it, but it didn't appear to me to be anything very serious, not the way it was set forth in the release and in the analyst's reviews, which were fairly consistent, saying that they felt that they were going to catch up and that this wasn't a break in the momentum that they

Confidential - Slovin

had built up in the last couple of years.

Q. When you said "they felt they were going to catch up", that they felt they were going to do better in the future, is that what you mean by that?

A. No, I think that in the Sunbeam release it said that: We had a shortfall in sales -- I mean, if I can find it, but that: For the year, we are still on target to meet the projections for the year.

Q. That's --

A. So you don't --

Q. I'm sorry.

A. -- you don't do deals based upon quarterly gyrations in sales, you can't do that.

Q. Any projections as to what Sunbeam -- well, withdrawn. What's a "forward-looking statement"?

A. A statement about the future.

Q. And do you rely on forward-looking statements in doing mergers and acquisition agreements?

Confidential - Slovin

A. Absolutely. How can you walk out of the office here without knowing what or thinking what's going to happen an hour from now? You know, the world doesn't stop at the minute the clock ticks.

Q. So, notwithstanding the March 19th press release, the analyst's report, to you the world didn't stop and the clock kept ticking and you just proceeded on to the closing?

A. Well, did you read the analysts' reports? They seemed fairly uniform, that this would be a problem overcome and that they were still recommending the company.

Q. So as long as the analysts were still recommending the company, it was your considered judgment, as a person who does this as a living, that you would proceed with the merger closing?

A. Certainly, analysts' views are not to be dismissed lightly. They are intelligent people from the Wall Street community, good houses, who spent a lot of

Confidential - Slovin

time with this particular company. It's their bread and butter.

In addition, I relied upon the release of the company -- "relied" is a little bit wrong, but I took into account the words of the release, which was comforting, I spoke to my people who knew much more than I did at the time, and they were not exorcized by it. When I put it all together, I myself was not unduly concerned with the 10 percent fall in sales due to inventory corrections, as I read it.

I have seen that happen many times in monitoring businesses, and it didn't seem to be an occasion for too much hand-wringing. No one liked it, but it was one of those events that occur in every business as it moves along from month to month, especially a retail business, where you are depending upon the customer coming every day and you don't know who is going to come in and buy your product. Whether it could be Farrell

NOT A CERTIFIED COPY

018621

Confidential - Slovin

(phonetic) or some other event takes place.

Q. And was this the view that you articulated the view of your investment advisor, Credit Suisse First Boston?

A. You know, again, I don't remember if I had a specific conversation with Gordon Rich or it was with Maher or Perelman or Gittis or Nesbitt, but the conclusion that I recall reaching, based upon what I had read and what conversations I had, that this was not a terribly negative event.

(Deposition Exhibit Morgan Stanley 216, report by Goldman Sachs, under the name of Elizabeth Fontanelli (phonetic), dated March 20th, 1998, marked for identification.)

Q. Let me show you now what's been marked as 216.

I have handed you what's been marked as MS 216, which is a report by Goldman Sachs, under the name of Elizabeth

Confidential - Slovin

Fontanelli (phonetic), dated March 20th, 1998. Have you seen this before?

A. I don't recall.

Q. You will notice the -- withdrawn. Please turn to the last page.

A. Yeah.

Q. The last sentence reads: "We expect near-term volatility around these fundamental issues until Sunbeam reports earnings in late April".

Do you see that?

A. Yes.

Q. Do you agree with that statement, that there would be near-term volatility in its stock?

A. I don't know.

Don't forget, the Sunbeam stock was fairly fully priced at the time, it wasn't a stock that was priced on a skimpy basis, it was a full price, and when you have that, you know, you are bound to get down-drafts from time to time based upon a piece of news that isn't positive. And I also read that they continued to recommend

Confidential - Slovin

the purchase, this is Goldman Sachs, of the various houses that were reporting on the company, it was the most prestigious, and they stayed with their estimate of 1999 earnings.

So they are saying to you here: Near-term, you can get bounces in the stock. We certainly just had one, if -- 9.4 percent, as you point out, and that to expect some volatility, but we are sticking with the company, we think momentum is in place, and we are recommending that you purchase it at these levels, and what was the level, $45.38, a pretty good price that Goldman Sachs is recommending to buy it at this price at this time, notwithstanding the weakness in the sales of the first quarter, written by a woman who obviously knew the company and had been following it and analyzing it for a period of time.

Q. You can set that aside.

MR. MARKOWSKI: I think, before we do that, we may have found the

Confidential - Slovin

page 3 that we were missing on the other exhibit.

MR. BEMIS: It's not on mine.

MR. MARKOWSKI: Does yours have --

MR. BEMIS: We fixed it.

THE WITNESS: Yeah, we fixed it.

MR. MARKOWSKI: No, you don't want the wrong -- if this is the official exhibit.

MR. BEMIS: My copy was okay, maybe that is what happened.

That is what happened.

A. So for want of page 3, a case was lost. (Laughing.)

(Discussion off the record.)

MR. BEMIS: Ms. Reporter, will you mark, as Exhibit 218, a Standard & Poor's stock report on Sunbeam Corporation, dated March 20th, 1998.

(Deposition Exhibit Morgan Stanley 218, Standard & Poor's stock report on Sunbeam Corporation, dated March 20th, 1998, marked for

NOT A CERTIFIED COPY

018622

Page 269

Confidential - Slovin
identification.)
Q. Do you have Morgan Stanley -- excuse me, do you have MS 218 in front of you, sir?
A. Yes.
Q. And did you or one of Mr. Perelman's affiliates subscribe to the Standard & Poor's stock reports?
A. Oh, I did not.
I don't know, maybe one of the folks in the office did.
Q. Did you see this Standard & Poor's stock report on Sunbeam Corporation on or about March 20th, 1998?
A. I do not remember.
Q. Do you see that Standard -- what Standard & Poor's had rated Sunbeam stock at this time?
A. You mean the three stars?
Q. Mm-hmm -- yes, sir.
A. Yeah, short-term, six to twelve months, hold.
Q. Not buy but hold; right?
A. Not sell but hold.

Page 270

Confidential - Slovin
Q. Okay. You can set this aside.
I show you now what's been marked as Standard & Poor's -- Standard -- withdrawn. Let me show you what the court reporter will mark as MS 219, which is a Standard & Poor's stock report on Sunbeam Corporation, dated March 21st, 1998.
(Deposition Exhibit Morgan Stanley 219, Standard & Poor's stock report on Sunbeam Corporation, dated March 21st, 1998, marked for identification.)
Q. Do you have Exhibit 219 in front of you, sir?
A. Yes.
Q. Now, this report is dated one day after the Exhibit 218 that we just looked at from Standard & Poor's. And I would ask you to focus your attention now under Valuation 20 - March 1998.
Do you see that?
A. Recently downgraded the shares to hold from accumulate; right?
Q. Right, that's the paragraph I am

Page 271

Confidential - Slovin
asking you to look at. Are you there?
A. I am there.
Q. Can you read that sentence -- first of all, did you see this report by Standard & Poor's on Sunbeam Corporation which was issued nine days before the closing of the merger?
A. I can't tell you that I did, I don't remember.
Q. Well, the report notes that, quote: "This would represent the second consecutive quarter that results did not meet projections and suggests more doubt about the company's ability to meet its aggressive financial objectives."
Do you see that?
A. Yes.
Q. Did you know on February 27th, 1998, when you voted to approve the merger, that Sunbeam had missed its 1997 fourth quarter earnings estimates?
A. I think I did.
Q. So you knew that at the time you voted on the merger and then --

Page 272

Confidential - Slovin
A. Yeah, because I thought that -- I still expected rapid growth, 2-99, and that there was a general positive trend should support the price of the stock, even though the near-term trading would be choppy.
I mean, this paragraph you are choosing to select portions of it that are negative, but the paragraph ends on a positive note.
Q. So, people -- so analysts following this stock, notwithstanding the information that was in the press release, still were acting on a positive note; is that your conclusion?
A. Yeah, I mean, I have read all of these reports.
As I said to you, the best house that I see analyzing it was Goldman Sachs, and they recommended purchase at forty-five dollars and change. You know, you can't disregard that.
I mean, these houses build up reputations, and Goldman Sachs has the

NOT A CERTIFIED COPY

Confidential - Slovin

best reputation of all the companies that we read, although the great majority of them were optimistic.

Q. As a result of these press releases that all came out following the March 19th -- excuse me, withdrawn. As a result of these analyst reports that we have been going through following the March 19th press release, did you make any inquiry of anyone at Morgan Stanley at all about Sunbeam's financial performance?

A. No.

Q. Did you ask -- did anyone from The Coleman Company ask Sunbeam Corporation for any financial update, if you will --

A. I don't --

Q. -- about its condition, excuse me, following the March 19th press release.

A. I do not know.

Q. Well, given that under the terms of the -- given that under the terms of the merger agreement, Sunbeam was

Confidential - Slovin

obligated to request and provide to The Coleman Company a comfort letter from Arthur Andersen, wouldn't it have been prudent for the directors of the company -- The Coleman Company, to request a comfort letter from Arthur Andersen as they were -- as agreed to in the merger agreement?

MR. MARKOWSKI: Hold on, let me object. I am going to object to the form of the question. I think it's misleading and improper.

Q. You can answer.

A. I relied on seasoned, experienced people to draw conclusions on what action should be taken given the events that we are referring to now. It was their judgment. I don't know things that they did do, what investigations that they did make to comfort them or discomfort them. I just don't know. And I can't answer your question because I don't know what they had done, you know, to comfort themselves based upon the

Confidential - Slovin

shortfall of sales.

Q. My question is, I think, a little bit different than perhaps you understood it, and let me try it one more time.

You were a director of The Coleman Company on March 27th with fiduciary duties to not only the public shareholders but the private shareholders of Mr. Perelman's companies; right?

A. Yes.

Q. And on March 19th, you get a press release, the second earnings or sales shortfall where Sunbeam had failed to meet street estimates; correct?

A. Yes.

Q. The stock --

(Discussion off the record.)

Q. By Sunbeam Corporation. And your answer was "yes"; right?

A. Yes.

Q. Okay. And the stock price falls -- the stock price falls 9.7

Confidential - Slovin

percent --

A. 4 percent.

Q. 9.4 percent, thank you for correcting me -- the stock price of Sunbeam falls 9.4 percent upon the issuance of the press release; correct?

A. Yes.

Q. And then you -- and you, "you", that is Coleman -- had a right to receive from Sunbeam a comfort letter from Sunbeam's auditors, Arthur Andersen, pursuant to Section 7.2 B of the merger agreement; right?

MR. MARKOWSKI: I object, the form of the question, it's misleading.

Q. You can answer.

A. What's the question?

Q. Do you want me to try it again? I will ask it again.

Under the terms of the merger agreement, Sunbeam, through the subsidiary Laser, as was described in the merger agreement, was required to use its

NOT A CERTIFIED COPY

018624

Confidential - Slovin

reasonable best efforts to cause to be delivered to the company -- company, that is, The Coleman Company, a quote comfort closed quote letters, letters of Arthur Andersen, LLP Lasers, i.e. Sunbeam's independent public accountants; correct? Right?

A. Yeah, you are reading from the document.

Q. That's right. And that was one of --

MR. MARKOWSKI: Could you read the entire sentence, Larry, or did you cut it off?

Q. I can continue reading. "Dated the date of the registration shall become effective and as of the date which the information statement is mailed to the company stockholders and addressed to the company and Laser in a form and substance reasonably satisfactory to the company and is reasonably customary in scope and substance for letters delivered by independent public accountants in

Confidential - Slovin

connection with transactions such as those contemplated by this agreement." That's the whole sentence.

Do you know the date the information statement was mailed to the stockholders of Coleman pursuant to Section 14 F?

A. It was sometime later.

Q. No, it wasn't sometime later, it was on March 18th.

I can show it to you, if you want.

A. So that's the day before.

Q. Right, the press release.

A. The press release, okay.

Q. Now, my question to you, wouldn't it have been prudent, given the information that you had as a director with fiduciary duties to the public stockholders, at a minimum, to have requested from Sunbeam that they deliver the comfort letter that they were obligated to seek using reasonable efforts from Arthur Andersen pursuant to Section

Confidential - Slovin

7.2 B?

A. And you are suggesting that we didn't do that?

Q. I asked you whether you did it and you said you didn't know.

A. I don't know.

Q. Now my question is, even if you don't know, wouldn't it have been prudent for you as a fiduciary to ask for the comfort letter.

A. And I said I can't answer that because I don't know the other things that the people did do.

In some instances, it would be more prudent and less prudent in other instances. What had they done to satisfy themselves that their actions or inactions were appropriate. And I don't know. So, I can't answer that in a vacuum, because it depends on what other things I have done.

It's a thing that -- right that you have, do you determine that it's necessary.

Confidential - Slovin

Q. Did you make a conscious decision that it wasn't necessary --

A. No --

Q. -- to get a comfort letter?

A. No, because I wasn't involved in those decisions.

As a director, I did not follow each portion of the contract to make sure that it was observed by either side. I just assumed that the people that were handling it abided on both sides by the terms of the contract, so all the warranties and representations by both sides were properly adhered to.

Q. Well, let me ask the question, then, a different way.

In your judgment, as a director and as a fiduciary to the shareholders, would it have been prudent for those responsible for following, if you will, compliance with the merger agreement, to have requested of Sunbeam that they provide The Coleman Company with the comfort letter from Arthur Andersen set

NOT A CERTIFIED COPY

018625

Confidential - Slovin

forth in paragraph 7.2 B of the merger agreement?

A. Well, obviously, our people made a decision on a course of action. I don't know what course of action they took and they made a decision based upon an assemblage of facts and circumstances that were satisfactory to themselves. There are a whole range of considerations that go into a final decision in this regard.

They made a decision, whatever it was.

Q. What --

A. And I presume that they were responsible people, because their records indicated that they were. And, you know, if they didn't do it, they probably had good reason because they did other things. I really don't know.

Q. Well --

A. You are saying why not take advantage of it and, you know, I don't know how to answer you. It's necessary or unnecessary.

Confidential - Slovin

I don't know if it would have been a delaying factor of significance, would it have set people's teeth ajar in some ways? I don't know what considerations went into a determination of their decision, which I don't know what it was, again.

So there are lots of -- you can't ask these questions in the abstract and say: Oh, they didn't do something they had a right to do, therefore they are not doing their job, it's impossible to answer it that way.

Q. Do you know what a "comfort letter" is?

A. I think it's a letter that --

MR. MARKOWSKI: Do you know what the comfort letter referred to in that paragraph is? Is that your question?

Q. Can you answer, sir, my question?

MR. MARKOWSKI: Hold on, let me --

Confidential - Slovin

A. Okay.

MR. MARKOWSKI: -- object to the form of the question, it's vague and misleading.

A. I think that a "comfort letter" tells you that they know of nothing material that has been other than from the representations and the warranties in the contract, and you ask is everything more or less okay, you know. And I think that's what a "comfort letter" is. And, normally, if something isn't okay with responsible people are going to tell it to you, so they are obliged to do that pursuant to the contract, whether you ask for it or not. If something material and negative has happened, I think they say: Hey, guys, something has happened. They didn't do that, to my knowledge, because they said it wasn't material because it was a blurred little answer, and everybody seemed to agree to that. All the analysts agreed to it that, that it wasn't anything serious. They all were saying that: It's

Confidential - Slovin

going to be choppy, but we are recommending the purchase or hold the stock. And you get an Arthur Andersen, you get a Morgan Stanley, very very responsible people. If something material and negative happened, you know, you expect them to raise their hand and say: Hey, wait a second. They didn't do it. But, once again, I don't know what our guys concluded.

You are asking me something in a way that is in the abstract for me, because I don't know the circumstances at the time that led to whatever decision they made.

Q. Okay. Are you all done? I don't want to interrupt you.

A. (Laughing.)

Q. Okay. Let me go back.

Do you know what a "comfort letter" is from an auditing firm in the context of this paragraph 7.2 B?

A. You know, I am really not that sure.

NOT A CERTIFIED COPY

018626

Confidential - Slovin

I thought I told you what I thought it was, and you are asking me the same question again, and you want me to repeat the -- what I said before?

Q. No, I don't need you to repeat what you said before. If that is your answer, that's your answer.

A. Yeah.

MR. BEMIS: Would you please mark, Ms. Reporter, as MS 220, an Andrew Shore analyst report, dated -- let's see -- April 3rd, 1998.

(Deposition Exhibit Morgan Stanley 220, Andrew Shore analyst report, dated April 3rd, 1998, marked for identification.)

Q. Please look at MS 220, and tell me when you are done.

A. (Pause.)

Yes.

Q. Have you seen MS 220 before?

A. I don't know if I have seen it, but I knew of the contents.

Confidential - Slovin

Q. "The contents" being the downgrade by Mr. Shore at PaineWebber?

A. Yes.

Q. How did you learn of the contents?

A. I might have read it, someone might have told it to me, but I did know that Coleman reported those bad numbers in April, early April.

MR. MARKOWSKI: You said "Coleman".

THE WITNESS: Uh --

A. Sunbeam.

Q. And do you see the initials on the right-hand side, it says "ROP" and then, below there, "DD FYI HG", I think?

A. Yes.

Q. Is that Mr. -- is that Mr. Gittis's writing?

A. Yes.

Q. Is "ROP" Mr. Perelman?

A. I believe, yes, it is, and "DD" is Donald Drapkin.

Q. Now, as a result of -- strike this. This was -- withdrawn. This report by Mr. Shore of April 3rd, 1998 was just -- what, four days after the closing; correct?

Confidential - Slovin

A. Yes.

Q. And did the board of directors -- did the board of directors of -- did the board of directors of any -- withdrawn. Did Mr. -- well, withdrawn.

What was your reaction to this downgrade by Mr. Shore on April 3rd and the mentioned press release on the earnings by Sunbeam?

A. I was shocked.

Q. You were shocked notwithstanding all the other information that you had received in March.

A. As I said to you, (indicating), I am going to have to repeat myself again, the great percentage of the analysts and the statement of the company were still upbeat, notwithstanding a small downward turn in the sales with a proper explanation. It was not negative.

Confidential - Slovin

This (indicating) report, and the Sunbeam report, is a hundred and eighty degrees opposite what was stated just a few weeks before. One doesn't follow the next. This came as a rude shock to our side, certainly, and you did not have a hint of the degree of trouble that's articulated here from the report and confirmation of the: Don't worry, we still recommend of the entire Wall Street community.

This is (indicating) just opposite. This is terrible. Before: This is nothing so bad, we still love the stock, buy it. Goldman Sachs $53 -- $45, sorry.

Q. So, as long as the analysts were --

A. No, no --

Q. Let me finish.

Your view, in March, as long as the analysts were saying you could still buy the stock, you were going to proceed

NOT A CERTIFIED COPY

018627

Confidential - Slovin

with the transaction, notwithstanding any other information you had or had an ability to acquire?

A. No, I didn't say that.

Q. No, the board of directors of The Coleman Company.

A. No, but you said notwithstanding other information out. What other information are you referring to? I don't know.

No one told me that this (indicating) was going to happen. I don't think anybody on our side had an inkling that this was going to happen. Why should they? Why would they? They had financial statements audited. They had one of the leading brokerage houses going around -- selling the bonds and standing behind the bonds. Why should the company have anticipated this? I don't see it at all. I didn't. There is nothing that have I read or had been told about that would have anticipated this dreadful set of results.

Confidential - Slovin

Q. Well, what is it you are telling me?

Are you telling me that Morgan Stanley knew something that they should have anticipated these dreadful results?

A. I didn't say that.

I said that what we had relied upon was audited statements, was a contract put together by serious representatives, by financial advisors of repute, by our own people and their analysis, and that led us to conclude that the transaction -- notwithstanding that the earnings might not hit the top level of the prognostication, we are still a valid and a good acquisition for the shareholders of Coleman, the small ones and the large one. That was our conclusion. And I think we had every right, based upon what I have read, to come to that conclusion, that this was a good arrangement for us, you know, notwithstanding the fact that Sunbeam was not the General Motors of its time, but it

Confidential - Slovin

was a company that was moving in the right direction and had momentum behind it, everybody that represented them seemed to think that they were very good, that -- the momentum was good and the pricing was good and that, all things together, it was a very reasonable and fair deal for the Coleman people.

This statement (indicating) comes out of the blue, you know, it's nothing that you could have -- that we could have -- I don't believe, divined from the work that -- the documents that were presented to us, that were represented, and that the work that we had done.

You know, this (indicating) came from someplace that was a rude shock.

Q. Do you think it was -- are you aware -- do you think it was a rude shock to Morgan Stanley?

A. I have not the slightest idea what was in Morgan Stanley's mind.

All I know --

Confidential - Slovin

Q. So you -- I'm sorry, go ahead.

A. -- Morgan Stanley is a firm of high repute and, you know, you tend to rely on things that they say.

I don't think they gave representations and warranties in the contract but, you know, you see them out on a road-show and the like, you know, they are smart guys. You have every reason to believe that things are okay.

Q. With regard to the road-show, you didn't attend any of the road-show meetings; right?

A. Wasn't Morgan Stanley the underwriter?

Q. And Mr. Perelman's companies, they didn't buy any of the zero coupon notes that were the subject of the road-show; did they?

A. No, I don't think so, but I was saying that Morgan Stanley was the underwriter here, so they were backing the sale of bonds of this company right at this -- what time was the road-show, right

NOT A CERTIFIED COPY

018628

Page 293

Confidential - Slovin
around now, or close to it? When was the road-show?
Q. March 15th, 1998, before the press release.
A. Yeah, two weeks before the press release -- my God, was this a rude shock to Morgan Stanley? I don't know what they knew, and I never talked to any of them.
Q. That's right, you never talked to any of them, you never relied on anything they said to you in deciding to approve the merger; did you?
A. No. That's not true. Their very presence has a -- as a representative of Sunbeam, gave me some comfort. This was not a small house from some small, you know, backwater town. This was Morgan Stanley.
Q. Just like Goldman Sachs was --
MR. MARKOWSKI: Don't interrupt him, hold on.
Q. I didn't mean to interrupt you. Go ahead.
A. I never spoke to Morgan Stanley,

Page 294

Confidential - Slovin
but their very presence, as a representative of Coleman -- excuse me, of Sunbeam, comforted me.
Q. So am I -- so are you telling me and the jury, sir, that the mere presence of Morgan Stanley as an investment advisor for Sunbeam caused you to vote for the merger?
A. Did I say "the mere presence"?
THE WITNESS: Can you read back my prior statements?
A. I am afraid you won't hear that I said that.
I said that was a fact that comforted me along with all the other things that we did, as prudent businessmen, to analyze and to make a judgment on the fairness of a deal for our shareholders.
Q. Are you aware of -- are you aware of any statement that -- whether orally or by -- in a document that Morgan Stanley made to anyone representing The Coleman Company or its affiliates in the

Page 295

Confidential - Slovin
transaction that you --
A. No.
Q. -- contend was false?
A. No, I can't tell you, I do not know because I don't have a recollection of all of their statements and representations as the facts bore them out or challenged them as they occurred. I do not remember.
Q. But, as you sit here today, your testimony is Morgan Stanley didn't make any statements to you personally --
A. Personally?
Q. -- as a director of The Coleman Company --
A. Right, I don't recall any statements made to me personally from Morgan Stanley. I might have forgotten something but, sitting here today, I don't remember.
Q. Following the closing, on March 30th, 1998, were you involved with any discussions with anyone about hedging Mr. Perelman's company's stock interests

Page 296

Confidential - Slovin
in Sunbeam Corporation?
A. No.
MR. BEMIS: Okay, why don't you give me about five minutes, I think we are about done. I want to go over my notes real quick and check with my colleague here and see if she has anything else. Can you give me about five minutes?
A. Should we leave the room?
(Discussion off the record.)
THE LEGAL VIDEO SPECIALIST: The time is 4:07, we are going off the record.
(Recess taken.)
THE LEGAL VIDEO SPECIALIST: The time is 4:26, this begins tape number four.
MR. BEMIS: Thank you.
Q. Would you please, Mr. Slovin, look at MS 220 again. It's the top exhibit. There is a an "X", for a lack of a better descriptor, on the left-hand side of the first page of the document.

NOT A CERTIFIED COPY

Confidential - Slovin

Do you see that?

A. Yes.

Q. Do you know who put that there?

A. No.

Q. Do you know what it means? Have you ever seen either Mr. Perelman, Mr. Drapkin, Mr. Gittis use that symbol to mean anything?

A. I don't know.

Q. Okay, you can set it aside.

Outside of board meetings at The Coleman Company, did you ever have any discussions with anyone about whether the merger transaction should be structured to receive cash rather than stock?

A. I do recall there was conversations about cash and stock. They were both elements of the transaction and ratios, do you take more or less of what was available from the buyer or your merger partner, but details I have no recollection. And I was not part of the decision-making apparatus. So, I listened to a conversation but didn't participate

Confidential - Slovin

with my advice.

Q. When you say you recall discussions about that outside of the board meetings, with whom were those discussions?

A. Well, I have to say, once again, which becomes a common theme, it would have been with one of the men that were actively engaged in the negotiations.

Q. That would be the people you previously identified, the inner circle, Mr. Maher, et cetera; correct?

A. Yeah, those who worked on this transaction.

Q. Do you recall anyone affiliated with Mr. Perelman's company suggesting that the deal should be structured as an all-cash offer, as opposed to taking stock?

A. I don't remember, I don't recall.

Q. Do you remember anyone, again, outside the board meetings, within this group of the inner circle, advocating the

Confidential - Slovin

desire to take stock over cash?

A. No. Again, I understood from the beginning, or someplace in the beginning, that this was a cash and a stock deal. What proportions were based upon negotiations, I did not, and I was not -- my opinion was not solicited, and I didn't give it because I did not know enough about the inner workings of the negotiations.

Q. When -- strike that. Did you have any discussions outside of board meetings about any potential synergies to be achieved, the one plus one equals three that we talked about earlier, by the combination of Coleman and Sunbeam? And again, I am talking about outside the board meetings.

A. Well, it was felt -- and when I say -- when you use the word "discussions", sometimes I use the word "conversations", because they weren't deep discussions, I had no deep discussions on any aspect of this transaction with

Confidential - Slovin

anybody except to an extent at the board meetings when people were raising questions and questions were being answered. But, yes, I think it was felt that we both had consumer products, we sold to similar customers. I don't recall if there were conversations about manufacturing synergies, but sales synergies I think yes. Purchasing the raw materials, yes.

Q. Were these discussions with the same group of individuals that --

A. You --

Q. -- inner circle you described earlier?

A. Yes, those that knew the deal.

Q. Did you -- strike that. When did you retire, again, in 2001; right?

A. Uh -- I retired when I became 65, I think was December --

Q. December 10th, 2001?

A. Good memory, 2001?

Q. Yes.

A. 2000 -- I was born in '35, 65

NOT A CERTIFIED COPY

018630

Confidential - Slovin

and '35 are 10 -- right -- 2000 I became --

Q. So in 2000 --

A. I became 65 in 2000, very end of 2000.

I think I stayed on for some time afterward, not doing very much, and then left his premises and went to work in my own shop, again, as I say, doing private investments for myself in 2001.

Q. Did you have -- withdrawn. So, you would have left the offices of Mr. Perelman's companies about the beginning of 2001 based on your --

A. Well, I -- my office and his office are one block apart. I can't get away from them. And, so, I shuttled back and forth. But I did very little.

You know, I am trying to remember back in an earlier question you asked me that I might have answered incorrectly.

I am on one of his boards, still, M&F -- it's a licorice extract

Confidential - Slovin

company, M&F Worldwide, it's a public company, MFW, I think the symbol is, and I do get compensated as a director, an outside director, in that public company. I don't know how I answered the question earlier.

Q. I think you answered it correctly earlier, but that's okay.

A. Okay.

Q. Whatever it is, it's not a big deal.

A. But my office is one street away from his, so when I stopped working for him I still stayed in his office. I had to move papers out, and the like, and I had conversations with the people, but very little.

Q. Okay. Well, let me just get more focused in regards to when you left the office, did you have any role at all in the decision to bring the lawsuit against Arthur Andersen?

A. None whatsoever.

Q. And did you have any role

Confidential - Slovin

whatsoever in the settlement of that lawsuit?

A. None whatsoever.

Q. During the entire time that -- withdrawn. During the period of time that you were still employed by Mr. Perelman's companies, did you have any discussions with anyone about bringing a lawsuit against Morgan Stanley?

A. I had no such discussions.

Q. Did you ever hear or even if you didn't participate in any discussions where Morgan Stanley was --

A. I don't have a specific recollection of what action they would take based upon events as they were unfolding.

Q. But let me finish the question, because I didn't get it out --

A. Forgive me.

Q. -- before you answered, and I'm sorry, we are almost done, it's getting late.

While you were employed by

Confidential - Slovin

Mr. Perelman's companies, did you ever hear of any discussions, even if you did not directly participate, in bringing a lawsuit against Morgan Stanley?

MR. MARKOWSKI: You should exclude from your answer any conversations involving counsel.

A. I have no specific recollection. I mean, I know there was a lot of upset about events as they were transpiring. What conclusions were drawn from the feelings of being upset and shocked, I don't really remember.

Q. Do you know what "bill and hold" means?

A. Yeah, I think I do.

Q. What does it mean, as you understand it?

A. As I understand it, it generally refers to an effort of a corporation to create sales when the customer really doesn't need it in order to get the sales that -- the profit margins into a particular financial reporting period. So

NOT A CERTIFIED COPY

018631

Confidential - Slovin

they will bill for merchandise bought but they will hold it, either in warehouses outside of their own manufacturing facility or trailers, so they can effect a sale, thereby enhancing the sales line and the earnings line, generally speaking, by the end of a quarter so that they can satisfy Wall Street.

Q. Is it your understanding that bill and hold transactions are per se improper under Generally Accepted Accounting Principles or --

A. Well, "bill and hold" is a generalized term. It's -- I don't think it's quite a term of art, though it may be, but I don't think it is.

I think it depends upon a degree of a bill and hold. If it's an immaterial amount, I think auditors tend to look away from it.

If the merchandise didn't leave the warehouse or your warehouse or it's standing, you know, on the factory line, I think they take a dim view of including

Confidential - Slovin

that in the sale. If it's out on the road someplace, sometimes they blink at it. It depends on the dimension of it. It's often engaged in -- it's really trying to bring up to date a sale that really hasn't matured yet.

Q. Well, my question, though is, it may have been poorly framed, let me try it one more time.

Is it your understanding that bill and hold -- bill and hold transactions, are just per se impermissible under --

A. No.

Q. -- accounting principles?

A. I do not know the answer to that per se, I can't answer that.

Q. We have previously marked this, this is Exhibit 208, so you don't have to go back into your pile, just please use that one. This is the Sunbeam 10-K, publicly filed with the Securities and Exchange Commission.

I recall that you did not know

Confidential - Slovin

whether you had seen this before; correct?

A. That's right.

Q. Were you a -- turn to page F -- let's see, what page number here -- (pause. If you will turn to page F 7, it's CHP -- "CHP" -- CPH, it's Bates 1428862. See the footnotes to the Arthur Andersen financial statements?

A. CPH 1428837 --

Q. 62, 1428862.

A. Okay.

Q. Under Revenue recognition?

A. Right.

Q. Do you see that, find that heading?

A. Yes, right.

Q. Do you see there that Sunbeam disclosed in its -- Sunbeam disclosed in its 10-K that it did, indeed, engage in bill and hold transactions?

A. Right, to a limited extent.

Q. So if you had read this, you would have been aware, as a member of the board of directors of Coleman, you would

Confidential - Slovin

have been aware of this; correct?

A. Well, I would have been aware that to a limited extent, is it one truckload of a product or is it warehouses full of a product?

Q. Well, sir, it says in the last sentence --

A. Limited extent.

Q. It says -- (inaudible.)

That's all right, the court reporter can't take both of us simultaneously, my apologies.

If you look at the last sentence here, it says: "The amount of such bill and hold sales is 3 percent of consolidated revenues".

A. Right.

Q. Let's look at consolidated revenues in the financial statement.

A. It's a million one, a million two.

Q. It's a billion, those are in --

A. Oh, a billion, right, of course.

Q. So we have operating --

NOT A CERTIFIED COPY

018632

Confidential - Slovin

A. Three -- 30 million.
Q. So about $30 million.
A. Right, a billion two.
Q. So it's not a truckload is what we are talking about; right?
Did you ever come -- withdrawn. In the mergers and acquisition agreements that you have -- withdrawn. In the mergers and acquisition transactions that you have negotiated and worked on over the years, you have reviewed, I take it, the underlying documents such as the merger agreement that we looked at in this case; correct?
A. Yes.
Q. And, you know, you told me earlier you are a lawyer, you read them at Harvard Law School; right?
A. Yes.
Q. And in the transactions that you have worked on, have they generally provided that New York law would be the controlling law in the transactions?
A. It was often the case but not

Confidential - Slovin

uniformly.
Q. You know, other than New York law, can you give me some examples of some where it wasn't, transactions where New York law was not selected as the controlling law?
A. Companies in Brazil --
Q. Well, let's exclude international transactions. Let's take a U.S.-based transaction, U.S.-based companies.
A. Well, I mean, I sold companies out of California to California buyers. I don't know that we used New York law on those. I don't remember.
I mean, it's most appropriate to use New York law if you are dealing with companies in New York or headquarters in New York but not all the time. I mean, I think in California cases I used New York law. I think that the deals that Ronald did in the banking world were also not under New York law, but I am guessing at that, I don't have a specific

Confidential - Slovin

recollection.
Q. Okay. (Pause.)
Did you have any role in the negotiation of the settlement with Sunbeam Corporation as a result of the threatened litigation by Mr. Perelman's companies against Sunbeam?
A. No.
MR. BEMIS: That's all I have.
MS. BROWN: Off the record.
THE LEGAL VIDEO SPECIALIST: The time is 4:45, this completes the videotaped deposition of Mr. Bruce Slovin.
(Time noted: 4:45 p.m.)

_____
BRUCE SLOVIN

Subscribed and sworn to before me this ____ day of _____, 2004.

_____
Notary Public

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, WENDY D. BOSKIND, an RPR and Notary Public within and for the State of New York, do hereby certify:
That BRUCE SLOVIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true and accurate record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2004.

_____
WENDY D. BOSKIND, RPR

NOT A CERTIFIED COPY

018633

May 12, 2004

INDEX

WITNESS PAGE
Bruce Slovin

EXAMINATION BY
MR. BEMIS:..... 5:23

----------EXHIBITS----------
Morgan Stanley 117, agreement and plan of merger among Sunbeam Corporation, Camper (phonetic) Acquisition Corporation, and The Coleman Company, dated as of February 27th..... 12:16
Morgan Stanley 88, true and correct copy of the minutes of the board of directors of The Coleman Company, Inc. held on February 25th, 1998 at 4 p.m..... 16:21
Morgan Stanley 119, copy of a court document filed by Coleman (Parent) Holdings in the lawsuit that was brought against Arthur Andersen, LLP and Mr. Philip E. Harlow in the Circuit Court for Palm Beach County, Florida..... 18:24

Morgan Stanley 120, written fairness opinion that was provided to the board of directors of The Coleman Company, Inc. on February 27th, 1998..... 28:24
Morgan Stanley 210, press release issued by Sunbeam..... 46:18
Morgan Stanley 121, copy of Mr. Slovin's calendar, plus a printout of a monthly calendar that Mr. Slovin kept in 1997 and 1998 for the months indicated on the document..... 54:24
Morgan Stanley 127, document entitled The Coleman Company, Inc. proxy statement, dated May 31, 1996..... 62:15
Morgan Stanley 129, document, which on page 2 lists on the executive committee the names of Ronald O. Perelman, Mr. Drapkin, Mr. Levin, Mr. Hammas, and Mr. Slovin..... 74:10
Morgan Stanley 130, document entitled Information statement pursuant to Section 14 S (f) of the Securities Exchange Act of 1934..... 77:10

Morgan Stanley 237, press release, dated March 2nd, 1998, entitled Sunbeam acquires three publicly-traded consumer products companies - Coleman, Signature Brands, and First Alert..... 78:20
Morgan Stanley 240, article entitled "The richest guy in town, the high life and times of Ron Perelman, master of Revlon" by Craig Horowitz..... 90:21
Morgan Stanley 128, document entitled Corporations listed on Schedule 1.. 98:17
Morgan Stanley 241, document entitled Offering memorandum, dated May 17th, 1997, for $732,035,000, Coleman Escrow Corporation, initial Bates number is CPH 1107884..... 107:15
Morgan Stanley 132, document entitled Notification in report form for certain mergers and acquisitions..... 132:4
MS 133, document..... 151:22
Morgan Stanley 134, document dated February 23rd, 1998, addressed to The Coleman Company..... 154:19

Morgan Stanley 138, document entitled Household products PaineWebber, Sunbeam, did Al show his hand too soon..... 159:25
Morgan Stanley 137, document with the heading MAFCO Consolidated Group Inc., January 30th, 1998..... 161:5
Morgan Stanley 144, document bearing Bates numbers CPH 1392480..... 164:8
Morgan Stanley 166, offering memorandum for $2,014,000,000 for Sunbeam zero coupon convertible senior subordinated debentures due 2018 with the name Morgan Stanley Dean Witter at the bottom of the March 19, 1998 cover page..... 168:7
Morgan Stanley MS 118, board of directors minutes for February 27th, 1998... 176:12
Morgan Stanley 169, letter dated December 10, 1997 to The Coleman Company, attention Mr. Jerry W. Levin..... 177:20
Morgan Stanley 76, marked for identification..... 182:20
Morgan Stanley 79, document..... 190:14
Morgan Stanley 78, marked for identification..... 190:24

NOT A CERTIFIED COPY

0186341

Page 317

Morgan Stanley 175, document entitled Laser Corporation Key assumptions..... ..... 192:17
Morgan Stanley 82, document..... 193:12
Morgan Stanley 81, document..... 193:24
Morgan Stanley 83, document, previously marked for identification..... 194:12
Morgan Stanley 84, document, previously marked for identification..... 194:24
Morgan Stanley 186 document entitled Sunbeam Corporation table of contents with attachments..... 195:18
Morgan Stanley 188,..... 196:12
Morgan Stanley 112, document, dated February 25th, 1998..... 213:20
Morgan Stanley 197, document with a cover page of Credit Suisse First Boston..... ..... 215:23
Morgan Stanley 189, two-page document, which is addressed to Will Nesbitt from Alexandre J. Fuchs, Morgan Stanley & Co., Incorporated, and there is an attachment of one page to it..... 235:9

Page 318

Morgan Stanley 193, on the second page, it's entitled Sunbeam road-show presentation speaking points March 15th, 1998..... 239:4
Morgan Stanley 194, document entitled Sunbeam road-show presentation speaking points March 15th, 1998..... 244:12
Morgan Stanley 208, Form 10-K for the period ending December 28, 1997 for the Sunbeam Corporation..... 245:15
Morgan Stanley 212, Mr. Shore's report on March 19th, 1998..... 248:2
Morgan Stanley 213, Sands Brothers & Company Limited Investment Bankers document, dated March 19th, 1998.. 252:17
Morgan Stanley 214,..... 253:18
Morgan Stanley 36, copy of The New York Times article appearing on March 20th, 1998, entitled Sunbeam stock falls 9.4 percent on lower projections for revenue 254:8
Morgan Stanley 215, reprint of a Wall Street Journal article, on March 20th, 1998..... 258:11

Page 319

Morgan Stanley 216, report by Goldman Sachs, under the name of Elizabeth Fontanelli (phonetic), dated March 20th, 1998..... 265:15
Morgan Stanley 218, Standard & Poor's stock report on Sunbeam Corporation, dated March 20th, 1998..... 268:22
Morgan Stanley 219, Standard & Poor's stock report on Sunbeam Corporation, dated March 21st, 1998..... 270:9
Morgan Stanley 220, Andrew Shore analyst report, dated April 3rd, 1998..... 285:15

(Exhibits retained by counsel.)

(REQUEST.)... ..... 61:3

(DIRECTION NOT TO ANSWER.)..... 8:11
(DIRECTION NOT TO ANSWER.)..... 30:18
(DIRECTION NOT TO ANSWER.)..... 42:23

Page 320

ERRATA SHEET

STATE OF NEW YORK) Pg__of__Pgs
ss:
COUNTY OF NEW YORK)

I wish to make the following changes, for the following reasons:
PAGE LINE
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____

NOT A CERTIFIED COPY

423

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 05
CLERK
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 12
(EXHIBITS 123-139)

NOT A CERTIFIED COPY

018636

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

077

TABLE OF CONTENTS
VOLUME 12

	TAB
CPH Ex. 169	123
CPH 0626464-0626490	124
MS Ex. 230	125
CPH Ex. 129	126
CPH Ex. 241	127
Simon Rankin Deposition Transcript	128
Brooks Harris Deposition Transcript	129
Expert Report of Douglas Emery	130
Expert Report of William Horton	131
CPH 0324558	132
CPH 0586586-0586587	133
CPH 0466948-0466949	134
CPH Ex. 222	135
CPH Ex. 90	136
CPH Ex. 13	137
CPH Ex. 379	138
CPH Ex. 89	139

NOT A CERTIFIED COPY

PROJECT LASER

Potential Acquirors

Company (Contact)	Comments	Action Steps
United States:		
American Standard Companies Inc. **Joseph S. Schubert** **Kelso & Companies, Inc.** **Chairman & CEO** **(212) 751-3939**	Feb. 9, 1998 - Meeting arranged for Feb. 18, 1998 Jan. 20, 1998 - AWalton has not contacted company - Will contact Kelso directly (BKitts)	BKitts to contact Kelso
Emmanuel A. Kampouris Chairman, CEO & Pres. Tel: (908) 980-6000		
The Black & Decker Corporation ***Thomas M. Schoewe*** **SVP & CFO**	Feb. 4, 1998 - Sent to Goldman marked up version of C/A; primary issues are the 3 year stand still agreement; inserted rider that said if someone else makes a bid for 100%, that we would not have our hands tied; and that we did not want to be in breach of the contract if any one of the BDK employees got hired by Laser	Holding of on signing C/A Awaiting response on sale of appliance business (week of 1/27/98 or 2/2/98)
Nolan D. Archibald Chairman, President & CEO Tel: (410) 716-3900		
Charles E. Fenton SVP & General Counsel	Jan. 30, 1998 - Received C/A Jan. 13Jan. 16, 1998 - Contacted again to inquire about appliance segment - Prepared to discuss further - Will contact us on sale of appliance segment in 1-2 weeks - No interest in acquisition Oct. 24, 1997 - Have been contacted; May be interested in selling their household appliance segment - No interest in acquiring Laser Oct. 2, 1997 - Initial contact	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044556

669810

EXHIBIT
4/2/64 AG

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Coleman Company, Inc. (Target) Jerry Levin (CEO) Ronald Perelman Will Nisbitt McAndrews & Forbes	Feb. 16, 1998 (conversation w/ Maher) - Maher has no meaningful feedback from Perelman, he is prepared to continue to own the company - They still do not believe that we are giving them enough credit for synergies in the valuation	Not prepared to improve proposal
	Feb. 14, 1998 (conversation w/ Maher) - Sent Maher Laser multiples	Analyzing structure assuming holding company
	Feb. 6, 1998 (meeting w/ Coleman) - Made it clear that they want debt at holding company to be assumed and could then possibly back off of $30 a share - Meeting was constructive - New analysis needs to be examined	Pursuing aggressively; Return to Coleman with initial structure and offer to begin negotiations in earnest and conduct due diligence
	Feb. 3, 1998 (call w/ Jerry Levin) - Camper believes business will be growing at 10% continuously; 12.5% EBIT margin target, also discussed value of synergies, proforma accretion/dilution and other analysis	
	Jan. 29, 1998 (meeting w/ Coleman) - Information gathering session - Both parties would like to keep R.P. and A.D. as far away from process as possible - CSFB bankers present - Coleman seemed eager to do a deal	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044557

019810

16div-024011

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Coleman Company, Inc. (Target) Jerry Levin (CEO) Ronald Perelman Will Nisbitt McAndrews & Forbes (cont)	Jan. 27, 1998 (BReed) - Coleman expressed view that synergies were understated, they think there is at least $150MM in synergies - They are nervous about AI, that is why deal is moving from all stock to another form, they don't think they will have a big enough position to have an effect on AI; they do not want to do all stock - They will most likely not do a deal at $25 a share (10x next year's EBITDA); they pointed out that at $30 there would still be accretion Jan. 23, 1998 (meeting w/ Will Nisbitt) - Meeting relatively uneventful; walked through presentation which showed that we would be flexible on structure, he was under impression that we were coming to talk about a $25 all cash deal; we had said low to mid 20s and not all cash; though we are flexible on structure the point was to use our stock as currency - Issue with synergies; they brought up that AI had suggested $200MM in synergies during dinner with Ronald we used $75 Dec. 19, 1997 - Could not reach an agreement on the price of transaction - Talks terminated	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044558

179810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Coleman Company, Inc. (Cont.)	Dec. 16, 1997 - Interest level is very high over possibility of a merger - Ronald said they will be looking at valuing the company on a contribution basis; impression that CLN gets the majority credit of the synergies - Pre-synergy breakdown of EBIT, EBITDA, Net income are about 75%, 25%; it is less favorable to Laser on the sale side because CLN's margins are lower - Could be much higher than 25-30% stake of whole company when synergies are factored in, CLN will clearly have an aggressive asking price - They definitely want Al to run combined business - Going after BDK is what has peaked interest here - Significant concern about Laser earnings Dec. 15, 1997 - Biggest problem is concern over systems - No issue as to who would run the combined entity - Ron is willing to take a minority position, would only take stock - "Deal is done" except for price Dec. 11, 1997 - Interested in negotiating a transaction; plan to meet with Al on	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044559

219810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Conair Corp. John Kilroy (CFO)	Feb. 9, 1998 (John Kilroy (CFO) call w/Bkitts) - Did not think there was any interest on Rizzuto's part after speaking with him, they comment that deal does make sense, but Rizzuto wants to maintain control and independence so they are not interested in pursuing further Feb. 2, 1998 - Call into Mcitrino (potential relationship with Conair)	
Emerson Electric Co. JD Switzer Sr. VP - Development Charles F. Knight Chairman & CEO Tel: (314) 553-2000	Jan. 20, 1998 - Awalton has not contacted - MS will contact Switzer directly (MRemec?, WBopp?)	MS will contact Switzer directly (MRemec?, WBopp?)

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044560

019843

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Gillette Company **Joel Davis** **SVP - Corporate Planning** Alfred M. Zeien Chairman & CEO Tel: (617) 421-7000 Thomas F. Skelley SVP & CFO Kenneth Kames VP - New Business Development	Jan. 28, 1998 - Not prepared to revisit transaction - They are satsified with their current level of exposure in consumer appliances Jan. 16, 1998 - Meeting arranged for 1/28 with Joel Davis - Requesting brief audience with Al Zeien to discuss in person Nov. 1997 - No further interest in pursuing transaction - Skepticism about growth - Spread too thin between EBIT and gross margin - Not interested in selling Braun - Earnings replacement - Zeien came through Braun Nov. 4, 1997 - Have not arrived at any directional conclusion yet, still reviewing material; Archie Livis, Chairman of the Braun division, has been traveling and has been unable to look at the material - Commented that the case was put forward in a very effective way (continued)	Meeting arranged for 1/28 with Joel Davis

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044561

019644

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Gillette Company (Cont.)	Oct. 24, 1997 - Have looked at it before (2 years ago); concern with sustainable profitability of 20% EBIT margins - With gross margins in the low 30s and EBIT margin at 20%, there doesn't appear to be much room to achieve SG&A/marketing type synergies. - Sales growth appears aggressive; also would have too many brands with Sunbeam, Oster, and Braun - Interest in outdoor cooking unlikely - Questions regarding extent of growth of new product strategy - Another concern is the restructuring charge and quality/sustainability of earnings issues Oct. 6, 1997 - Initial contact	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044562

019645

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Hicks, Muse, Tate & Furst Inc. **Mike Levin**	Feb. 4, 1998 (meeting with BKitts) - View that Laser looks fully valued, if there is a way to be helpful to Dunlap in acquiring a business, such as BDK, they will be willing to discuss it further Jan. 22, 1998 - Presented notion that Laser could be an interesting platform for Hicks Muse and their CEO, Dean Metropoulis to operate from; also talked about the notion of possibly an equity investment through some convertible preferred which would then enable Metropolis to take over the CEO role and position the company to make further acquisitions with the Laser currency; Metropoulis built International Foods very quickly out of American Home and has tripled the money for HM investors in about 14 months time - HM has indicated that they are anxious to find a new consumer products platform - Levin is meeting with Metropoulis on Jan. 24 to discuss possibility and to attempt to set up a meeting	
Maytag Corporation **Lester Crown** **Director** Leonard A. Hadley *Chairman & CEO* Tel: (516) 792-7000	Jan. 1998 - Re-initiated contact with Lester Crown - No interest in buying or selling - Want to exit home appliances	On hold

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044563

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Nacco (Hamilton Beach - Proctor-Silex)	Feb. 13, 1998 (conversion w/BStrong) - Giving serious consideration to the possible sale of the Company Feb. 4, 1998 (Conversation with J.C. Butler) - Positive call, impression that they would consider discussing the sale of HB-PS, had not discussed it with the CEO, but asked questions about due diligence and how rapidly Laser could move etc.; knowledgeable about the situation Feb. 2, 1998 - Bstrong called J.C. Butler, the acting CFO, has not returned call. Have been contacted last year and have not responded	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044564

019647

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Newell Co. Thomas A. Ferguson President & COO (815) 233-8557 William T. Alldredge VP - Finance (815) 233-8515 William P. Sovey Vice Chairman & CEO Tel: (815) 235-4171 John J. McDonough Vice Chairman & CEO (as of Jan. 1998)	Feb. 14, 1998 - Alldredge called BStrong to check on status of Laser Jan. 16, 1998 - Not prepared now - On list, but is not highest priority - Remain interested Dec. 15, 1997 - Transaction is extremely large - Do not want to pursue financial engineering path - Will continue to monitor situation Nov. 4, 1997 - Concerns regarding certain aspects of the business, in particular the grill business, which they view as too seasonal - Interest would be "materially" higher without grills - They will follow the situation closely Oct. 23, 1997 - Company stated that they had not finished with their analysis of Laser, which they are looking at fairly closely - Have implied that they may be taking the next step to perhaps talk to Laser management in a couple of weeks Oct. 14, 1997 - Synergies is a key issue - Have looked at target before, it is more attractive without furniture business - Size of deal is not a problem - Brand name of target is attractive - Don't like grill business, want to see financials without it - Would like to see profitability by segment - Acquiror can't add a lot to distribution, target has greater capabilities - Some concerns over quality of earnings; including restructuring charge and reserves issues	Awaiting response; No further action

(continued)

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044565

879810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Newell Co. (Cont.)	Oct. 3, 1998 - Initial contact	
Premark International, Inc.	Feb 6, 1998 (meeting w/ Chairman & CEO, and CFO) - Meeting was optimistic, their issues were the numbers, concerned with sustainability of Laser earnings and revenues, asked about charges Laser has taken in the past and perhaps reversed to meet earnings projections - Also concerned about Al's reputations, and how turnarounds are sustained after he leaves; expressed certain 'distrust' factor - Mentioned that this doesn't play to their largest business, consumer products division is minor - Also worried about retail consolidation - Found concept intriguing and platform strong; would enable them to clean up their businesses - Worried that Al will 'trash talk' them if negotiations don't go well Jan. 29, 1998 - Meeting scheduled for Feb. 6, 1998 - They are looking forward to meeting on Feb. 6; a little nervous of Al, they trust BStrong	Meeting on Feb. 6
Rubbermaid Incorporated **Richard D. Gates** **Senior VP, Business Development & Investor Relations** Wolfgang R. Schmitt Chairman & CEO Tel: (330) 264-6464	Jan. 20, 1998 - Awalton has not contacted - MS will contact directly (FEnglish?, DMcCreery?)	MS will contact directly (FEnglish?, DMcCreery?)

MORGAN STANLEY
CONFIDENTIAL
0044566

NOT A CERTIFIED COPY

679810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
The Stanley Works **Paul W. Russo** **VP, Strategy & Development** **Tel: (860) 225-5111** John M. Trani Chairman & CEO Tel: (860) 225-5111 Richard Huck VP & CFO David "Dusty" Philip VP, Goldman Sachs representative	Jan. 20, 1998 - Awalton has not contacted - MS will contact directly (DTopper?, BKitts?) Oct. 23, 1997 - Have looked at target before - The fit with respect to products and distribution channels is questionable. They have more professional vs. mass distribution - Seems to be highly valued - Will take some time to think about it, however, they are not "tire kickers," if they choose to proceed, it means that they are truly interested Oct. 6, 1997 - Initial contact	MS will contact directly (DTopper?, BKitts?)
T.H. Lee	Feb. 17, 1998 (conference call) - Discussed legal liability issues for First Alert case Feb. 16, 1998 - Meeting set up for Feb. 18 at 4 p.m. in NY to discuss Signature Brands Feb. 11, 1998 (meeting in Boston) - Meeting to discuss the First Alert and Signature Brands businesses Feb. 2, 1998 - Call into Tony Dinovi	Pursuing aggressively

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044567

059810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Whirlpool Corporation **Miles L. Marsh** **Director - Whirlpool** **Director - Morgan Stanley** David R. Whitwam Chairman & CEO Tel: (616) 923-5000 John P. Cunningham EVP & CFO	Jan. 20, 1998 - New angle - Marsh will contact Whitwam - Discuss possible combination with Whitwam as CEO of newco. - Suggest meeting with Whitwam directly Nov. 11, 1997 - Laser is not something they want to pursue - They did not wish to comment in detail, however, it concerns the "volatility" surrounding Laser Nov. 3, 1997 - Reasonably interested - Some concern about channels (white goods go through different channels), though there is some overlap - Transaction would help balance sheet, which is currently around a BBB+ rating - Struggling with growth in fundamental business of white goods - Laser growth of 20% would help - Laser initiatives fit well with WHR criteria of product innovation and customer service -they too are trying to develop a consumer pull strategy - Some concern regarding appliance overlap and multiple branding - Will take a look at it and get back to us quickly	Mmarsh to contact DWhitwam to discuss merger

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044568

159810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Europe: **Philips Electronics** Cor Boonstra Chairman, Board of Mgmt President Tel: (011) 31-40-78-60-22 Jan H.M. Hommen Executive Vice President CFO	Jan. 16, 1998 - Meeting arranged with Cor Boonstra in late February - In process of contacting to accelerate schedule - Attempting to arrange meeting during European housewares show at the end of January in Paris Jan. 5, 1998 - Informed that meeting was to be postponed due to scheduling conflicts and the absence of the US Consumer Products Division CFO Dec. 23, 1997 - Contacted by Patrick Finley from Philips USA to arrange a meeting for their people in the management of the appliance division and in Holland to meet with Laser management around January 13 (Houseware Show in Chicago) Dec. 16, 1997 - Interest in coming to Florida to talk with Laser management, do not know when Nov. 28, 1997 - Domestic Appliances Product Division has expressed interest in Laser; plan to discuss it with the international management team which meets the week beginning Dec. 6 - Concern that Laser has made significant cost savings at the expense of investments in new products and technologies Nov. 18, 1997 - Have expressed interest in meeting with Laser management	Letter and First Call research sent BVoute meeting with Cor Boonstra late February Urging earlier meeting Attempting for meeting at European Housewares Show in Paris week of 1/26/98

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044569

259810

PROJECT LASER

Potential Acquirors
(continued)

Company (Contact)	Comments	Action Steps
Philips Electronics (Cont.)	Nov. 11, 1997 - Have already been approached about Laser - Appear potentially interested; after initial meeting with the head of M&A, had another meeting with the CFO of the appliance division - Intrigued with prospect - International fit, Philips is stronger in Asia and Europe where Laser is weaker, while Laser has a strong presence in the US and Latin America, places where Philips is weak - Both brands are recognizable for the same attributes, ie innovation, which makes for a complementary business model - A concern is the fact that Philips' strategy is to adhere to the Philips brand name; perhaps a cobranding marketing strategy can act as a transitory mechanism to introduce Philips to the US market - Primary concern ("80% of issue") is valuation of Laser, feel uncomfortable with 4x sales - Next step is presentation by Appliance CFO to operational people Oct. 3, 1997 - Initial contact	

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044570

018653

16div-024024

PROJECT LASER

Potential Targets

Company (Contact)	Comments	Action Steps
United States:		
The Gillette Company (Braun)	(Please see previous list)	
Corning Incorporated (Housewares) Michael Rabin Goldman Sachs (212) 902-4267 Roger G. Ackerman Chairman & CEO Tel: (607) 974-9000	Jan. 15, 1998 - Have contact Goldman Sachs - Relatively late in process - Not admitting strategic buyers - Russ to contact Goldman representatives	RKersh to call MRabin

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044571

018594

F13\10282907-17-070.02 + C/PPG18

PROJECT LASER

Potential Targets
(continued)

Company (Contact)	Comments	Action Steps
Europe		
Electrolux AB (outdoor) Michael Treschow President & Chief Executive	Jan. 20, 1998 - MS will contact directly (JStynes?, JHepburn?)	JHepburn has call in to company; awaiting response
Wallenberg Family Peter Langerman	Dec. 1997 - Did not explicitly say that they are not interested - Referred to M&A specialist, who is negative on idea, to set up meeting - Inferred that they would like to attempt to turn around Electrolux first Nov. 26, 1997 - Called Treschow's office to set up meeting; will contact with possible dates Nov. 7, 1997 - First meeting date not possible until after Nov. 21 Oct. 22, 1997 - Wallenbergs will leave decision to company Oct. 6, 1997 - Clearance from Wallenbergs to set up meeting with CEO	
Philips Electronics	(Please see previous list)	
Siemens AG (Lighting) **Karl-Hermann Baumann** **CFO, Director** **Tel: (011) 49-89-636-00** Heinrich Von Pierer Chairman, Pres. & CEO	Jan. 1998 - Company definitely does not want to sell Lighting businesses, as it is a profitable business for them Oct. 26, 1997 - Contacting Baumann to arrange meeting; Baumann has been out of the office - Just sold fixture business; took great pains to separate from rest of Lighting business	

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0044572

F13\10282907-17-038:02 十七/PPG17

PROJECT LASER

Potential Targets
(continued)

Company (Contact)	Comments	Action Steps
Asia		
Funai	Jan. 20, 1998 - AWalton contacted - Would like to proceed - Need CA	AWalton will contact company regarding CA
LG Electronics Ku Ja-Hong President Tel: (011) 82-2-3777-1114 Fax: (011) 82-2-3777-5338	Jan. 16, 1998 - Have been contacted, awaiting reply - May not be as interested in selling consumer products business (not as weak as other Chaebols) - Not positioning strictly as sale of consumer products to Laser; Focusing company on strategic fit Nov. 4, 1997 -Company is not interested in this segment; Company focuses on high-tech large appliances with focus on Eastern Europe and Asia and is still concentrating on operations of their acquisition of Zenith - Size of transaction is too large	ESKim to contact company to discuss combination and confirm intentions with consumer business

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0044573

959810

Company: SUNBEAM CORP/FL/
Company: MAFCO HOLDINGS INC
Form Type: SC 13G SEC File #: 005-44799
Description: SCHEDULE 13G
Received Date: 04/08/98
Received Time: 16:02:31

NOT A CERTIFIED COPY

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC New York, NY Chicago, IL
Los Angeles, CA Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
http://www.gsionline.com

018658

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 13G
(RULE 13D-102)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO RULES 13D-1(B) AND (C) AND AMENDMENTS THERETO FILED PURSUANT TO 13D-2(B)

SUNBEAM CORPORATION

(Name of Issuer)

COMMON STOCK, PAR VALUE $0.01 PER SHARE

(Title of Class of Securities)

867071 10 2

(CUSIP Number)

NOT A CERTIFIED COPY

018659

SCHEDULE 13G

CUSIP NO. 867071 10 2 — Page 2 of 8

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON RONALD O. PERELMAN	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) [ ] (b) [ ]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE ORGANIZATION UNITED STATES	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER 283,850	
	6 SHARED VOTING POWER 14,099,749	
	7 SOLE DISPOSITIVE POWER 283,850	
	8 SHARED DISPOSITIVE POWER 14,099,749	
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 14,383,599	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9) 14.3%	
12	TYPE OF REPORTING PERSON IN	

NOT A CERTIFIED COPY

0998010

CONFIDENTIAL SASMF 01283
16div-024030
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0626466

SCHEDULE 13G

CUSIP NO. 867071 10 2 — Page 3 of 8

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON MAFCO HOLDINGS INC.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) [ ] (b) [ ]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE ORGANIZATION DELAWARE	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER -0-	
	6 SHARED VOTING POWER 14,099,749	
	7 SOLE DISPOSITIVE POWER -0-	
	8 SHARED DISPOSITIVE POWER 14,099,749	
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 14,099,749	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES	[X]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9) 14.0%	
12	TYPE OF REPORTING PERSON CO	

NOT A CERTIFIED COPY

019981

CONFIDENTIAL

SASMF 01284

16div-024031

CPH0626467

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1	NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON COLEMAN (PARENT) HOLDINGS INC.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) [ ] (b) [ ]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE ORGANIZATION DELAWARE	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER -0-	
	6 SHARED VOTING POWER 14,099,749	
	7 SOLE DISPOSITIVE POWER -0-	
	8 SHARED DISPOSITIVE POWER 14,099,749	
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 14,099,749	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES	[X]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9) 14.0%	
12	TYPE OF REPORTING PERSON CO	

NOT A CERTIFIED COPY

018662

CONFIDENTIAL SASMF 01285 16div-024032

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0626468

ITEM 1(a): NAME OF ISSUER.

Sunbeam Corporation (the "Sunbeam")

ITEM 1(b): ADDRESS OF ISSUER'S PRINCIPAL EXECUTIVE OFFICES.

1615 South Congress Avenue
Delray Beach, Florida 33445

ITEM 2(a): NAME OF PERSONS FILING.

Coleman (Parent) Holdings Inc. ("Parent Holdings") is an indirect wholly owned subsidiary of Mafco Holdings Inc. ("Mafco Holdings"). All of the capital stock of Mafco Holdings is owned by Ronald O. Perelman.*

ITEM 2(b): ADDRESS OF PRINCIPAL BUSINESS OFFICE.

The principal business offices of Parent Holdings is 5900 North Andrews Avenue, Suite 700, Fort Lauderdale, Florida 33309. The principal address of Mr. Perelman and the principal business offices of Mafco Holdings are each located at 35 East 62nd Street, New York, New York 10021.

ITEM 2(c): CITIZENSHIP.

Parent Holdings and Mafco Holdings are Delaware corporations. Mr. Perelman is a citizen of the United States.

ITEM 2(d): TITLE OF CLASS OF SECURITIES.

Common Stock, par value $0.01 per share (the "Shares").

ITEM 2(e): CUSIP NUMBER.

867071 10 2

ITEM 3: If this statement is filed pursuant to Rule 13d-1(c), check this box. [X]

ITEM 4: OWNERSHIP.

On February 27, 1998, Parent Holdings and CLN Holdings Inc. ("CLN Holdings"), a Delaware corporation and direct wholly owned subsidiary of Parent Holdings, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Sunbeam and Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("Merger Sub"), providing for, among other things, upon satisfaction or waiver of the conditions thereto, the merger (the "Merger") of Merger Sub with CLN Holdings. The Merger and related transactions are described in the Amended Current Report on Form 8-K/A filed by

---

* See attached Joint Filing Agreement

NOT A CERTIFIED COPY

018663

CONFIDENTIAL

SASMF 01286

16div-024033

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0626469

CLN Holdings on March 4, 1998. On March 30, 1998 the Merger was consummated. Upon consummation of the Merger, among other things, all shares of common stock of CLN Holdings were converted into 14,099,749 Shares and cash. This statement on Schedule 13G is being filed because Mafco Holdings and Parent Holdings may be deemed to beneficially own the aforementioned 14,099,749 Shares by virtue of the consummation of the Merger.

Pursuant to the Merger Agreement, upon consummation of the Merger, options (the "Options") to purchase 500,000 shares of common stock of The Coleman Company, Inc. ("Coleman"), which Options were granted during 1997 to Mr. Perelman under certain of Coleman's stock option plans, became immediately exercisable. Pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998, among Sunbeam, Camper Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Sunbeam ("Camper"), and Coleman, pursuant to which Coleman will merge (the "Coleman Merger") with Camper and become a wholly owned subsidiary of Sunbeam, each share of the common stock of Coleman acquired pursuant to the exercise of such Options and outstanding as of the consummation of the Coleman Merger will be converted into the right to receive $6.44 in cash and .5677 Shares of common stock of Sunbeam. Any Options unexercised as of the consummation of the Coleman Merger will be canceled, and, in settlement therefor, the holders of such Options will be paid cash in an amount equal to the product of (i) the total number of shares of common stock of Coleman subject to such Options and (ii) the excess of $27.50 over the exercise price per share of such common stock subject to such Options, less any applicable withholding taxes. Sunbeam has indicated that it expects the Coleman Merger to be consummated during the second quarter of 1998. This statement on Schedule 13G reflects Mr. Perelman's ownership of the Options to acquire 500,000 shares of common stock of Coleman that may be converted in the Coleman Merger into 283,850 Shares of common stock of Sunbeam. Pursuant to Rule 13d-4, Mafco Holdings and Parent Holdings expressly disclaim beneficial ownership of such 283,850 Shares and declare that the filing of this statement on Schedule 13G shall not be construed as an admission that either of them is, for purposes of Section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, the beneficial owner of any of such Shares.

(a) Amount Beneficially Owned: 14,099,749 Shares plus, in the case of Mr. Perelman only, Options to purchase shares of common stock of Coleman that may be converted in the Coleman Merger into 283,850 Shares.

(b) Percent of Class: Approximately 14.0% (14.3% in the case of Mr. Perelman only) based upon an aggregate of 100,811,445 Shares outstanding on March 30, 1998 which includes the 14,099,749 Shares issued in the Merger (based on information provided to the filing persons by Sunbeam).

(c) See items 5-8 on pages 2, 3 and 4 with respect to each respective filing person.

NOT A CERTIFIED COPY

019864

CONFIDENTIAL

SASMF 01287

16dv-024034

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0626470

ITEM 5: OWNER OF FIVE PERCENT OR LESS OF A CLASS.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following: [ ]

ITEM 6: OWNERSHIP OF MORE THAN FIVE PERCENT ON BEHALF OF ANOTHER PERSON.

The 14,099,749 Shares received by Parent Holdings in the Merger, as well as the capital stock of the intermediary holding companies affiliated with Mafco Holdings, may from time to time be pledged to secure certain obligations.

ITEM 7: IDENTIFICATION AND CLASSIFICATION OF THE SUBSIDIARY WHICH ACQUIRED THE SECURITY BEING REPORTED ON BY THE PARENT HOLDING COMPANY.

Not Applicable

ITEM 8: IDENTIFICATION AND CLASSIFICATION OF MEMBERS OF THE GROUP.

Not Applicable

ITEM 9: NOTICE OF DISSOLUTION OF GROUP.

Not Applicable

ITEM 10: CERTIFICATION.

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control or the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

NOT A CERTIFIED COPY

018665

CONFIDENTIAL SASMF 01288

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16div-024035 CPH0626471

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated as of: April 8, 1998

MAFCO HOLDINGS INC.

By: /s/ Glenn P. Dickes
Name: Glenn P. Dickes
Title:Senior Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: /s/ Glenn P. Dickes
Name: Glenn P. Dickes
Title:Vice President

/s/ Ronald O. Perelman
Ronald O. Perelman

NOT A CERTIFIED COPY

999810

CONFIDENTIAL

SASMF 01280

16civ-024036

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0626472

NOT A CERTIFIED COPY

0198167

16dIV-024037
CPH0626473

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Company: SUNBEAM CORP/FL/
Company: MAFCO HOLDINGS INC
Form Type: SC 13G SEC File #: 005-44799
Document Type: EX-99
Description: JOINT FILING AGREEMENT
Received Date: 04/08/98
Received Time: 16:02:31

NOT A CERTIFIED COPY

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC
Los Angeles, CA
New York, NY
Chicago, IL
Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
http://www.gsionline.com

018998

JOINT FILING AGREEMENT

In accordance with Rule 13d-1(k)(1) promulgated under the Securities Exchange Act of 1934, the undersigned agree to the joint filing of a Statement on Schedule 13G (including any and all amendments thereto) with respect to the shares of Common Stock, par value $0.01 per share, of Sunbeam Corporation and further agree that this Joint Filing Agreement (this "Agreement") be included as an Exhibit thereto. In addition, each party to this Agreement expressly authorizes each other party to this Agreement to file on its behalf any and all amendments to such Statement.

Dated as of: April 8, 1998

MAFCO HOLDINGS INC.

By: /s/ Glenn P. Dickes
Name: Glenn P. Dickes
Title: Senior Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: /s/ Glenn P. Dickes
Name: Glenn P. Dickes
Title: Vice President

/s/ Ronald O. Perelman
Ronald O. Perelman

NOT A CERTIFIED COPY

016669

Company: SUNBEAM CORP/FL/
Company: EQUITABLE COMPANIES INC
Form Type: SC 13G/A SEC File #: 005-44799
Description: AMENDMENT - SUNBEAM CORP
Received Date: 02/17/98
Received Time: 13:12:40

NOT A CERTIFIED COPY

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC New York, NY Chicago, IL
Los Angeles, CA Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
http://www.gsionline.com

018670

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 13G

Information Statement pursuant to Rule 13d-1 and 13d-2

(Amendment No. 1)*

SUNBEAM CORP

(NAME OF ISSUER)

COMMON STOCK

(TITLE OF CLASS OF SECURITIES)

867071102

(CUSIP NUMBER)

Check the following box if a fee is being paid with this statement : _:
(A fee is not required only if the filing person: (1) has a previous statement on file reporting beneficial ownership of more than five percent of the class of securities described in Item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of five percent or less of such class.) (See Rule 13d-7.)

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be 'filed' for the purpose of Section 18 of the Securities Exchange Act of 1934 ('Act') or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(CONTINUED ON FOLLOWING PAGE(S))

CUSIP NO. 867071102	13G	Page 2 of 13 Pages

1	NAME OF REPORTING PERSON AXA Assurances I.A.R.D. Mutuelle *S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON*	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [X]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION France	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 8,598,784 (Not to be construed as an admission of beneficial ownership)	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 10.0%	
12	TYPE OF REPORTING PERSON * IC	

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

018671

CONFIDENTIAL SASMF 01294
16div-024041
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0626477

CUSIP NO. 867071102	13G	Page 3 of 13 Pages

1	NAME OF REPORTING PERSON AXA Assurances Vie Mutuelle S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [X]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION France	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 8,598,784 (Not to be construed as an admission of beneficial ownership)	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 10.0%	
12	TYPE OF REPORTING PERSON * IC	

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

018672

CUSIP NO. 867071102	13G	Page 4 of 13 Pages

1	NAME OF REPORTING PERSON Alpha Assurances Vie Mutuelle S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [X]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION France	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 8,598,784 (Not to be construed as an admission of beneficial ownership)	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 10.0%	
12	TYPE OF REPORTING PERSON * IC	

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

018673

CUSIP NO. 867071102	13G	Page 5 of 13 Pages

1	NAME OF REPORTING PERSON AXA Courtage Assurance Mutuelle S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [X]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION France	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 8,598,784 (Not to be construed as an admission of beneficial ownership)	
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9 10.0%	
12	TYPE OF REPORTING PERSON * IC	

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

018674

CUSIP NO. 867071102	13G	Page 6 of 13 Pages

1	NAME OF REPORTING PERSON AXA-UAP S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [ ]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION France	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON (Not to be construed as an admission of beneficial ownership)	8,598,784
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9	10.0%
12	TYPE OF REPORTING PERSON *	HC

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

018675

CUSIP NO. 867071102	13G	Page 7 of 13 Pages

1	NAME OF REPORTING PERSON THE EQUITABLE COMPANIES INCORPORATED S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON 13-3623351	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP *	(A) [ ] (B) [ ]
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION State of Delaware	
NUMBER OF SHARES BENEFICIALLY OWNED AS OF December 31, 1997 BY EACH REPORTING PERSON WITH	5 SOLE VOTING POWER	5,670,794
	6 SHARED VOTING POWER	1,373,600
	7 SOLE DISPOSITIVE POWER	8,591,384
	8 SHARED DISPOSITIVE POWER	7,400
9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON	8,598,784
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES *	[ ]
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW 9	10.0%
12	TYPE OF REPORTING PERSON *	HC

* SEE INSTRUCTIONS BEFORE FILLING OUT!

NOT A CERTIFIED COPY

9798 10

Item 1(a) Name of Issuer:

SUNBEAM CORP

Item 1(b) Address of Issuer's Principal Executive Offices:

2100 New River Ctr.
Fort Lauderdale, FL 33301

Item 2(a) Name of Person Filing:

Alpha Assurances Vie Mutuelle,
AXA Assurances I.A.R.D Mutuelle,
AXA Assurances Vie Mutuelle,
and AXA Courtage Assurance Mutuelle,
as a group (collectively, the 'Mutuelles AXA').

AXA-UAP

The Equitable Companies Incorporated
(the 'Equitable Companies')

(Please contact Patrick Meehan at (212) 641-8234
with any questions.)

Item 2(b) Address of Principal Business Office:

Alpha Assurances Vie Mutuelle
100-101 Terrasse Boieldieu
92042 Paris La Defense France

AXA Assurances I.A.R.D Mutuelle and
AXA Assurances Vie Mutuelle
21, rue de Chateaudun
75009 Paris France

AXA Courtage Assurance Mutuelle
26, rue Louis le Grand
75002 Paris France

AXA-UAP
23, avenue Matignon
75008 Paris France

The Equitable Companies Incorporated
1290 Avenue of the Americas
New York, New York 10104

NOT A CERTIFIED COPY

018677

Item 2(c) Citizenship:

Mutuelles AXA and AXA-UAP France
Equitable Companies - Delaware

Item 2(d) Title of Class of Securities:

Common Stock

Item 2(e) CUSIP Number:

867071102

Item 3. Type of Reporting Person:

Equitable Companies as a parent holding company, in accordance with 240.13d-1 (b)(ii)(G).

The Mutuelles AXA, as a group, acting as a parent holding company.

AXA-UAP as a parent holding company.

NOT A CERTIFIED COPY

018678

Item 4. Ownership as of December 31, 1997:

(a) Amount Beneficially Owned:

8,598,784 shares of common stock beneficially owned including:

		No. of Shares
The Mutuelles AXA, as a group		0
AXA-UAP		0
AXA-UAP Entity or Entities:		
acquired solely for investment purposes:		0

(Each of the Mutuelles AXA, as a group, and AXA-UAP expressly declares that the filing of this Schedule 13G shall not be construed as an admission that it is, for purposes of Section 13(d) of the Exchange Act, the beneficial owner of any securities covered by this Schedule 13G).

The Equitable Companies Incorporated		0
Subsidiaries:		
The Equitable Life Assurance Society of the United States acquired solely for investment purposes:		
Common Stock	54,100	54,100
Alliance Capital Management L. P., acquired solely for investment purposes on behalf of client discretionary investment advisory accounts:		
Common Stock	8,567,034	
Shares which may be acquired/(disposed of) upon exercise of Options	-30,000	8,537,034
Donaldson, Lufkin & Jenrette Securities Corporation held for investment purposes:		
Common Stock	7,650	7,650
Wood, Struthers & Winthrop Management Corp. acquired solely for investment purposes on behalf of client discretionary investment advisory accounts:		0
Total		8,598,784

(Each of the above subsidiaries of The Equitable operates under independent management and makes independent decisions).

(B) Percent of Class: 10.0%

NOT A CERTIFIED COPY

018679

(c) Deemed Voting Power and Disposition Power:

	(i) Deemed to have Sole Power to Vote or to Direct the Vote	(ii) Deemed to have Shared Power to Vote or to Direct the Vote	(iii) Deemed to have Sole Power to Dispose or to Direct the Disposition	(iv) Deemed to have Shared Power to Dispose or to Direct the Disposition
The Mutuelles AXA, as a group	0	0	0	0
AXA-UAP	0	0	0	0
AXA-UAP Entity or Entities:				
NONE	0	0	0	0
The Equitable Companies Incorporated	0	0	0	0
Subsidiaries:				
The Equitable Life Assurance Society of the United States	54,100	0	54,100	0
Alliance Capital Management L. P.	5,616,444	1,373,600	8,537,034	0
Donaldson, Lufkin & Jenrette Securities Corporation	250	0	250	7,400
Wood, Struthers & Winthrop Management Corporation	0	0	0	0
TOTAL	5,670,794	1,373,600	8,591,384	7,400

(Each of the above subsidiaries of the Equitable Companies operates under independent management and makes independent voting and investment decisions).

NOT A CERTIFIED COPY

018680

Item 5.
Ownership of Five Percent or Less of a Class:

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following.
( )

Item 6.
Ownership of More than Five Percent on behalf of Another Person. N/A

Item 7.
Identification and Classification of the Subsidiary which Acquired the Security Being Reporting on by the Parent Holding Company:

This Schedule 13G is being filed by Equitable Companies; AXA-UAP, which beneficially owns a majority interest in Equitable Companies; and the Mutuelles AXA, as a group which beneficially own a majority interest in AXA-UAP:

( ) in the Mutuelles AXAs' capacity, as a group, acting as a parent holding company with respect to the holdings of the following AXA-UAP entity or entities;

( ) in AXA-UAP's capacity as a parent holding company with respect to the holdings of the following AXA-UAP entity or entities: NONE

(X) in EQUITABLE COMPANIES capacity as a parent holding company with respect to the holdings of its following subsidiaries:

(X) THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (13-5570651), an insurance company, a broker-dealer registered under Section 15 of the Securities and Exchange Act of 1934 and an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

(X) ALLIANCE CAPITAL MANAGEMENT L. P. (13-3434400), an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

(X) DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION (13-2741729), a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934 and an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

( ) WOOD, STRUTHERS & WINTHROP MANAGEMENT CORP. (13-2774791), an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

NOT A CERTIFIED COPY

189810

Item 8. Identification and Classification of Members of the Group. N/A

Item 9. Notice of Dissolution of Group: N/A

Item 10. Certification:

By signing below I certify that to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 10, 1998

THE EQUITABLE COMPANIES INCORPORATED*

/s/ Alvin H. Fenichel

Alvin H. Fenichel
Senior Vice President
and Controller

*Pursuant to the Joint Filing Agreement with respect to Schedule 13G attached hereto as Exhibit I, among The Equitable Companies Incorporated, Alpha Assurances Vie Mutuelle, AXA Assurances I.A.R.D Mutuelle, AXA Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle, and AXA-UAP, this statement Schedule 13G is filed on behalf of each of them.

NOT A CERTIFIED COPY

289810

Company: SUNBEAM CORP/FL/
Company: EQUITABLE COMPANIES INC
Form Type: SC 13G/A SEC File #: 005-44799
Document Type: EX-24
Description: JOINT FILING AGREEMENT
Received Date: 02/17/98
Received Time: 13:12:40

NOT A CERTIFIED COPY

LIVEDGAR Information Provided By:
GSI ONLINE
A division of Global Securities Information, Inc.

Washington, DC New York, NY Chicago, IL
Los Angeles, CA Dallas, TX

For Additional Information About LIVEDGAR, Call
1-800-669-1154
or Visit Us on the World Wide Web at
http://www.gsionline.com

018683

EXHIBIT I

JOINT FILING AGREEMENT

Each of the undersigned hereby agrees that the Schedule 13G filed herewith is filed jointly, pursuant to Rule 13d-1(f)(1) of the Securities Exchange Act of 1934, as amended on behalf of each of them.

Dated: February 10, 1998

The Equitable Companies Incorporated

BY: /s/ Alvin H. Fenichel
Alvin H. Fenichel
Senior Vice President
and Controller

AXA Assurances I.A.R.D. Mutuelle; AXA Assurances Vie Mutuelle; Alpha Assurances Vie Mutuelle; AXA Courtage Assurance Mutuelle, as a group, and AXA-UAP

Signed on behalf of each of the above entities

BY: /s/ Alvin H. Fenichel
Alvin H. Fenichel
Attorney-in-Fact
(Executed pursuant to Powers of Attorney)

NOT A CERTIFIED COPY

018684

CREDIT SUISSE FIRST BOSTON
Inter-Office Memorandum

To: Investment Banking Committee

From: Gordon A. Rich
Robert J. Duffy
Steven K. Geller (Document Retention)
Ramesh Chakrapani

Date: February 25, 1998

Subject: Proposed sale of The Coleman Company, Inc. to Sunbeam Corporation

The purpose of this memorandum is to apprise the Committee of our work in connection with the proposed two-step sale of The Coleman Company, Inc. ("Coleman") to Sunbeam Corporation ("Sunbeam"). Credit Suisse First Boston has been asked to provide a fairness opinion to Coleman's Board of Directors as early as February 25, 1998, in connection with the proposed sale to Sunbeam.

1. Description of the Transaction

Credit Suisse First Boston is acting as financial advisor to Coleman in connection with its proposed sale to Sunbeam (the "Transaction"). Coleman, listed on the New York Stock Exchange, is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets. Approximately 82% (44,067,520) of the outstanding Coleman common shares are held through an indirect wholly-owned subsidiary ("Holdco") of Mafco Holdings Inc. ("Mafco") which is controlled by Ronald O. Perelman.

Sunbeam and Coleman propose to enter into an agreement whereby, at closing, Sunbeam will (a) in exchange for Sunbeam stock and cash purchase Holdco which has as its primary asset its shares of Coleman and as its primary liability $525 million of zero-coupon debt against which its shares of Coleman are pledged, and (b) offer the public shareholders Sunbeam stock and cash in a second-step merger. The proposed transaction is expected to be taxable to the public shareholders of Coleman and tax-free to Holdco.

Summary of Transaction Consideration

SHAREHOLDER	SHARES EXCHANGED	CONSIDERATION
Mafco	44.1 million	• Assumption of $525 million of zero coupon debt for 19.2 million CLN shares
		• $6.44 in cash and 0.5677 SOC shares for each of 24.8 million CLN shares
Public	9.4 million	• $6.44 in cash and 0.5677 SOC shares for each of 9.4 million CLN shares

NOT A CERTIFIED COPY

0188686

CONFIDENTIAL
CSFBC 0001550

MS 230
7-8-04

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121260

16div-024055

2. *Question to the Committee*

Is the consideration of $6.44 in cash plus 0.5677 Sunbeam common shares fair to Coleman shareholders from a financial point of view?

3. *Summary Conclusions and Recommendations to the Committee*

Based on the analysis of the value of Coleman common shares and the value of the securities to be issued by Sunbeam pursuant to the transaction, the consideration is fair to Coleman shareholders (other than Holdco) from a financial point of view.

I. At a current Sunbeam trading price of $40.63 (2/24/98), the implied consideration of $29.50 (value of $6.44 cash and 0.5677 Sunbeam shares) is (i) above Coleman's valuation range of $21.31-$28.35 per share; (ii) at a 42.6% premium to Coleman's current trading price and 52-week high of $20.69 (2/24/98); and (iii) at a 136.0% premium to Coleman's 52-week low of $12.50 (1/27/98).

II. The transaction on a pro forma basis is 5.3% accretive to Sunbeam in 1998 and 6.2% in 1999 assuming pre-tax synergies of $100 million in 1998 and $100 million in 1999.

III. The Sunbeam offer is supported by the respective contributions of Sunbeam and Coleman as shown in section 9 of the memorandum.

4. *Transaction Summary*

The per share consideration being offered by Sunbeam represents the following premiums and multiples.

	SUNBEAM PRICE				
	$36.00	$38.00	$40.00	$42.00	$44.00
Value of 0.5677 SOC Shares	20.44	21.57	22.71	23.84	24.98
Value of Cash Component	6.44	6.44	6.44	6.44	6.44
Implied Offer Price per Coleman share	$26.88	$28.01	$29.15	$30.28	$31.42
Premium to Pre-Announcement average Coleman trading price:					
1 day ($20.69 on 2/24/98)	29.9%	35.4%	40.9%	46.4%	51.9%
3 months ($15.20)	76.9	84.3	91.8	99.3	106.8
1 year ($15.63)	72.0	79.3	86.5	93.8	101.1
2 years ($16.68)	61.2	68.0	74.8	81.6	88.4
IPO Price ($9.75 on 2/26/92)[1]	175.7%	187.3%	199.0%	210.6%	222.2%
12 month high ($20.69 on 2/24/98)	29.9	35.4	40.9	46.4	51.9
12 month low ($12.50 on 1/27/98)	115.0	124.1	133.2	142.3	151.4
Implied Equity Value[2]	$1,484	$1,527	$1,569	$1,612	$1,655
Implied Enterprise Value[3]	1,924	1,967	2,010	2,052	2,095
Multiple of:					
1997P/1998E EBITDA[4]	19.4x/11.7x	19.9x/12.0x	20.3x/12.3x	20.7x/12.5x	21.2x/12.8x
1997P/1998E P/E[5]	61.1x/22.8x	63.7x/23.8x	66.2x/24.8x	68.8x/25.7x	71.4x/26.7x

(1) $19.50 IPO price adjusted for a 2-for-1 stock split in 1996.
(2) Offer price multiplied by (34.2 million common shares plus 3.3 million options), plus $525 million of assumed zero-coupon, less $50.3 million of estimated options proceeds.
(3) Equals equity value plus net debt of $440.2 million (including $90 million of estimated after-tax proceeds from the sale of Safety & Security Products, Inc.).
(4) Coleman 1997P EBITDA and 1998E EBITDA based on Coleman management estimates, excluding Safety & Security Products Inc.
(5) 1998E P/E based on E.P.S. projection of $1.18 provided by Coleman management.

CONFIDENTIAL
CSFBC 0001551

NOT A CERTIFIED COPY

018687

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-024056

5. *Coleman Valuation Summary*

(Dollars in Millions)

VALUATION METHODOLOGY	ENTERPRISE VALUE REFERENCE RANGE	MULTIPLE OF 1997P/1998E SALES	EBITDA	EBIT
Comparable Companies	$1,150.0 – $1,600.0	1.1x – 1.5x 1.0 – 1.4	11.6x – 16.2x 7.0 – 9.8	18.3x – 25.5x 9.4 – 13.1
Comparable Acquisitions	$1,600.0 – $2,000.0	1.5x – 1.9x 1.4 – 1.7	16.2x – 20.2x 9.8 – 12.2	25.5x – 31.8x 13.1 – 16.4
Discounted Cash Flows	$1,797.3 – $2,071.7	1.7x – 1.9x 1.5 – 1.8	18.2x – 20.9x 11.0 – 12.6	28.6x – 33.0x 14.8 – 17.0
Credit Suisse First Boston Reference Range	**$1,600.0 – $2,000.0**	**1.5x – 1.9x** 1.4 – 1.7	**16.2x – 20.2x** 9.8 – 12.2	**25.5x – 31.8x** 13.1 – 16.4
Less Net Debt (1)	440.2 – 440.2			
Implied Equity Value	**$1,159.8 – $1,559.8**			
Plus Options Proceeds	$50.3 – $50.3			
Shares (MM) (2)	56.8 – 56.8			
Implied Price per Share	$21.31 – $28.35			
Premium to Pre-Announcement Price (3)	*3.0% – 37.1%*			

(1) 1997 estimated year-end net debt of $440.2 million based on Coleman management estimates including an estimated $90 million of after-tax proceeds from the sale of Safety & Security Products Inc.
(2) 53.5 million common shares plus 3.3 million options at an average exercise price of $15.1447 per share as of 12/31/97 per Coleman management estimates.
(3) Pre-announcement price of $20.69 as of 2/24/98.

Coleman

Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s.

The Company participates in two primary markets, outdoor recreation and hardware.

Outdoor Recreation: The Company's principal products include a comprehensive line of lanterns and stoves for recreational use, fuel-related products such as disposable fuel cartridges, a broad range of coolers and jugs, sleeping bags, backpacks, tents, outdoor folding furniture, portable electric lights, spas, camping accessories and other products for recreational use. These products are distributed predominantly through mass merchandisers, sporting goods chains and outdoor specialty stores.

Hardware: The Company's principal products include portable generators, portable and stationary air compressors and pressure washers. On February 18, 1998, the Company announced its intention to sell its Safety & Security Products Inc. division, a maker of smoke alarms, carbon monoxide detectors and thermostats, to Siebe Plc for $105 million.

1997 Restructuring. Coleman restructured its operations in 1997 to reduce costs, improve operating efficiency, and divest non-strategic businesses. The Company eliminated 1,000 positions, eliminated 25% of SKUs (with an expected target of 33%) and enhanced working capital management. The Company took a $36 million restructuring charge of which $16 million will be non-cash.

NOT A CERTIFIED COPY

018688

CONFIDENTIAL
CSFBC0001552

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

In arriving at the above values for Coleman, we have considered discounted cash flows, comparable companies and comparable acquisitions analyses.

a. Discounted Cash Flows Analysis

Our discounted cash flows analysis is based on management projections for 1998 to 2001 and estimates developed in conjunction with Coleman management for 2002 and beyond (the "Coleman Base Case"). We have used a discount rate range of 10.0% - 11.0% based on Coleman's WACC and terminal EBITDA multiples of 9.5x-10.5x applied to 2007E EBITDA.

Summary DCF Valuation
(Dollars in Millions)

SCENARIO	DISCOUNT RATE	PV OF UNLEV. FCF	TERMINAL MULTIPLE	PV OF TERMINAL VALUE	NET DEBT	TOTAL EQUITY VALUE	EQUITY VALUE PER SHARE[1]
Coleman Base Case	10.0%	$676	10.5x	$1,396	$440	$1,632	$29.62
	11.0%	$644	9.5x	$1,154	$440	$1,357	$24.78

(1) Equals (Total Equity Value plus $50.3 million estimated options proceeds) ÷ (53.5 million shares and 3.3 million options outstanding).

Coleman Financial Summary
(Dollars in Millions)

	1995[1]	1996[1]	1997P[2]	1998E	1999E	2000E
Coleman Base Case						
Sales	$934	$1,220	$1,066	$1,163	$1,280	$1,408
Growth	*NM*	*NM*	*NM*	*9.1%*	*10.0%*	*10.0%*
EBITDA	$128	$99	$99	164	184	206
% Margin	*13.7%*	*8.1%*	*9.3%*	*14.1%*	*14.4%*	*14.6%*
EBIT	$102	$63	$63	$122	$142	$165
% Margin	*10.9%*	*5.1%*	*5.9%*	*10.5%*	*11.1%*	*11.7%*

(1) Based on Coleman management estimates before restructuring and extraordinary charges, but including operational performance of Safety & Security Products Inc.
(2) Based on Coleman management estimates, excluding the operational performance of Safety & Security Products Inc.

b. Comparable Companies Analysis

We have considered the trading multiples of comparable companies in the consumer products industry. The appropriate universe of comparables for Coleman were determined based on a variety of comparability parameters including product mix, customer base, distribution channels and financial and equity market parameters. Coleman trades at a discount to many of its peers due to its sensitivity to weather conditions. Our reference range of $1,150 million - $1,600 million represents 7.0x - 9.8x 1998E Coleman Base Case EBITDA.

NOT A CERTIFIED COPY

018689

CONFIDENTIAL
CSFBC 0001553

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121263

16div-024058

Comparable Companies

(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	$3,682.7	$3,825.7	2.6x	11.6x	13.8x	20.4x
Coleman	1,124.5	1,564.7	1.3	9.6	12.8	17.5(1)
Huffy Corp.	189.4	274.2	0.4	6.4	14.5	15.6
Russell Corp.	993.3	1,503.7	1.2	7.3	11.4	15.8
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated based on Coleman management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.
Note: Sales, EBITDA, EBIT and E.P.S. estimates for the comparable companies are based on equity research reports.

c. Comparable Acquisitions Analysis

The comparable acquisitions analysis examined acquisition activity in the consumer products industry. Our comparable acquisition reference range of $1,600 million - $2,000 million represents 9.8x - 12.2x 1998E Coleman Base Case EBITDA. We have relied on 1998 EBITDA because it represents a more normalized level of profitability based on the restructuring that the Company undertook in 1997 to eliminate costs. This value range is within the multiple range for comparable acquisitions.

Comparable Acquisitions

(Currency in Millions)

DATE	ACQUIROR/ TARGET	DESCRIPTION	ENTERPRISE VALUE	ENTERPRISE VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBIT
9/96	Gillette Co./ Duracell International	Manufactures alkaline batteries.	$7,862.7	3.3x	14.2x	17.3x
9/96	Rubbermaid Inc./ Graco Children's Products, Inc.	Manufactures plastic toys.	320.0	1.2	NA	NA
8/96	Kohlberg Kravis Roberts & Co./ E&S Holding Corporation (Evenflo & Spalding Holding Corporation)	Manufactures sporting goods and juvenile products.	1,078.4	1.5	12.7	16.8
1/96	Brunswick Corporation/ Nelson/Weather-Rite	Manufactures camping gear.	120.0	1.2	NA	12.5
12/95	American Brands, Inc./ Cobra Golf Inc. II	Manufactures golf equipment.	673.8	3.7	11.9	12.3
2/95	Bell Sports Corporation/ American Recreation Company	Manufactures bicycles and batteries.	150.2	1.0	10.6	11.7
12/94	Sogedim of Belgium/ Adidas Int'l Hldg.	Manufactures athletic footware.	DM1,380.0	0.4	10.4	15.3

NOT A CERTIFIED COPY

018690

CONFIDENTIAL
CSFBC 0001554

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

6. *Sunbeam Valuation Summary*

(Dollars in Millions)

VALUATION METHODOLOGY	ENTERPRISE VALUE REFERENCE RANGE	MULTIPLE OF 1997P/1998E[4] SALES	EBITDA	EBIT
Comparable Companies	$3,400.0 - $4,200.0	2.9x - 3.6x 2.3 - 2.9	14.3x - 17.6x 10.4 - 12.8	17.1x - 21.1x 12.3 - 15.1
Comparable Acquisitions	$3,250.0 - $4,000.0	2.8x - 3.4x 2.2 - 2.7	13.7x - 16.8x 9.9 - 12.2	16.3x - 20.1x 11.7 - 14.4
Discounted Cash Flows				
Long-Term Strategic Plan	$4,312.0 - $4,885.7	3.7x - 4.2x 3.0 - 3.3	18.1x - 20.5x 13.1 - 14.9	21.6x - 24.5x 15.5 - 17.6
Base Case	$3,812.9 - $4,326.4	3.3x - 3.7x 2.6 - 3.0	16.0x - 18.2x 11.6 - 13.2	19.1x - 21.7x 13.7 - 15.6
Credit Suisse First Boston Reference Range	**$3,500.0 - $4,250.0**	3.0x - 3.6x 2.4 - 2.9	14.7x - 17.9x 10.7 - 12.9	17.6x - 21.3x 12.6 - 15.3
Less Net Debt [1]	143.0 - 143.0			
Implied Equity Value	**$3,357.0 - $4,107.0**			
Plus Options Proceeds	156.0 - 156.0			
Shares (MM) [2]	94.5 - 94.5			
Implied Price per Share	**$37.18 - $45.11**			
Premium to Pre-Announcement Price[3]	*(8.5)% - 11.1%*			

(1) 1997 estimated year-end net debt of $143 million based on Sunbeam management estimates.
(2) 85.5 million shares as of the Form 10Q dated 9/30/97, plus 9.0 million options at an average exercise price of $17.30 per share as of the Form 10K dated 12/31/96.
(3) Pre-announcement price of $40.63 as of 2/24/98.
(4) Multiples based on Sunbeam Base Case projections.

Sunbeam

Sunbeam is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer goods through mass market and other distributors in the United States and throughout the world. The Company also sells its products to commercial end users such as hotels and other institutions.

The Company's product categories are: (i) *Appliances* (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers) (ii) *Health Care* (vaporizers, humidifiers, air cleaners, massagers, hot and cold packs, blood pressure monitors and scales) (iii) *Personal Care and Comfort* (shower massagers, hair clippers and trimmers, electric warming blankets and throws) (iv) *Outdoor Cooking* (electric, gas and charcoal grills and grill accessories) and (v) *Away From Home* (clippers and related products for the professional and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care and comfort products, professional clippers and related products and grills) in all countries other than the United States.

In arriving at the above values for Sunbeam, we have considered discounted cash flows, comparable companies and comparable acquisitions analyses.

NOT A CERTIFIED COPY

018691

CONFIDENTIAL
CSFBC 0001555

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121265

16div-024060

a. Discounted Cash Flows Analysis

Our discounted cash flows analysis is based on two cases: (i) a set of projections based on management forecasts for 1998-2000 and 7.5% growth thereafter (the "Long-Term Strategic Plan Case"); and (ii) an alternative set of projections based on equity analyst projections for Sunbeam that assume lower revenue growth in the 1998-2000 period and 10.0% growth thereafter (the "Sunbeam Base Case"). The DCF uses a discount rate of 11.0% to 12.0% based on Sunbeam's WACC and terminal EBITDA multiples of 9.5x and 10.5x applied to 2002E EBITDA.

Summary DCF Valuation
(Dollars in Millions)

SCENARIO	DISCOUNT RATE	PV OF UNLEV. FCF	TERMINAL MULTIPLE	PV OF TERMINAL VALUE	NET DEBT	TOTAL EQUITY VALUE	EQUITY VALUE PER SHARE (1)
Long-Term Strategic Plan Case	11.0%	$796	10.5x	$4,090	$143	$4,743	$51.84
	12.0%	$774	9.5x	$3,538	$143	$4,169	$45.77
Sunbeam Base Case	11.0%	$659	10.5x	$3,668	$143	$4,183	$45.92
	12.0%	$640	9.5x	$3,173	$143	$3,670	$40.49

(1) Equals (Total Equity Value plus $156.0 million estimated options proceeds) ÷ (85.5 million shares plus 9.0 million options outstanding).

Financial Summary
(Dollars in Millions)

	1996	1997	1998E	1999E	2000E
Long-Term Strategic Plan Case					
Sales	$984	$1,168	$1,600	$2,000	$2,400
% Growth	*(3.2)%*	*18.7%*	*37.0%*	*25.0*	*20.0%*
EBITDA	48	238	372	471	568
% Margin	*4.9%*	*20.4%*	*23.3%*	*23.6%*	*23.7%*
EBIT	1	199	318	400	485
% Margin	*0.1%*	*17.1%*	*19.9%*	*20.0%*	*20.2%*
Sunbeam Base Case					
Sales	$984	$1,168	$1,460	$1,800	$2,070
% Growth	*(3.2)%*	*18.7%*	*25.0%*	*23.3%*	*15.0%*
EBITDA	48	238	329	423	487
% Margin	*4.9%*	*20.4%*	*22.5%*	*23.5%*	*23.5%*
EBIT	1	199	277	360	414
% Margin	*0.1%*	*17.1%*	*19.0%*	*20.0%*	*20.0%*

Note: Historicals as of Sunbeam management estimates, excluding non-recurring items.

b. Comparable Companies Analysis

We have considered the trading multiples of comparable companies in the consumer products industry. The appropriate universe of comparables for Sunbeam were determined based on a variety of comparability parameters including product mix, customer base, distribution channels and financial and equity market parameters. Our reference range of $3,400-$4,200 million represents 10.4x-12.8x 1998E Sunbeam Base Case EBITDA.

NOT A CERTIFIED COPY

Comparable Companies
(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	$3,682.7	$3,825.7	2.6x	11.6x	13.8x	20.4x
Coleman	1,124.5	1,564.7	1.3	9.6	12.8	17.5[1]
Tupperware Corporation	1,643.5	1,903.8	1.6	8.6	12.4	15.9
Whirlpool Corporation	4,906.5	6,887.5	0.8	7.5	12.4	16.1
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated based on Coleman management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.
Note: Sales, EBITDA, EBIT and E.P.S. estimates for the comparable companies are based on equity research reports.

c. Comparable Acquisitions Analysis

The comparable acquisitions analysis examined acquisition activity in the consumer products industry. Our comparable acquisition reference range of $3,250 million - $4,000 million represents 9.9x-12.2x 1998E Sunbeam Base Case EBITDA.

Comparable Acquisitions
(Currency in Millions)

DATE	ACQUIROR/ TARGET	DESCRIPTION	ENTERPRISE VALUE	ENTERPRISE VALUE AS A MULTIPLE OF LTM SALES	EBITDA	EBIT
9/97	Goodman Holding Company/ Raytheon Appliance Group	Manufactures home appliances, HVAC and commercial cooking equipment.	$750.0	0.5x	5.5x	10.1x
9/96	Gillette Co./ Duracell International	Manufactures alkaline batteries.	7,862.7	3.3	14.2	17.3
9/96	Rubbermaid Inc./ Graco Children's Products, Inc.	Manufactures plastic toys.	320.0	1.2	NA	NA
8/96	Kohlberg Kravis Roberts & Co./ E&S Holding Corporation (Evenflo & Spalding Holding Corporation)	Manufactures sporting goods and juvenile products.	1,078.4	1.5	12.7	16.8
2/96	Honeywell/ Duracraft Corp.	Manufactures household products.	266.9	1.6	13.9	16.5
9/95	Manitowoc Co./ Shannon Group	Manufactures commercial refrigerators, freezers and related products.	126.0	1.0	8.7	13.3
12/94	Berisford International plc/ Welbilt Corp.	Manufactures and wholesales food service equipment and heating and air conditioning products; wholesales household appliances.	481.2	1.0	8.3	10.0
1/94	Health O'Meter Products/ Mr. Coffee, Inc.	Manufactures electric drip coffee makers.	163.8	0.9	8.4	11.2

NOT A CERTIFIED COPY

018693

CONFIDENTIAL
CSFBC 0001557

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

8. Merger Consequences Analysis Summary

This analysis was prepared based on Sunbeam Base Case and Coleman Base Case forecasts. It assumes that:

- Fair market value of zero coupon assumed by Sunbeam for approximately 19.2 million Coleman shares; zero coupon written-up to approximately $582 million.
- Remaining Coleman shareholders receive 0.5677 Sunbeam shares and $6.44 in cash for each Coleman share.
- $100 million of annual pre-tax synergies, estimated by the managements of Coleman and Sunbeam, achieved in 1998 and 1999.

Pro-Forma Financial Consequences
(Dollars in Millions)

	1998E[1]	1999E[1]
Combined Operating Statistics		
Sales	$2,645	$3,080
EBITDA	596	707
Stand Alone EPS	$1.99	$2.58
Pro Forma EPS	2.09	2.74
% Accretion/(Dilution)	5.3%	6.2%
Credit Statistics		
EBITDA/Interest	6.0x	8.3x
Net Debt/EBITDA	2.1	1.4

(1) Based on Sunbeam Base Case and Coleman Base Case projections.

Synergies

Coleman management has estimated that the combination with Sunbeam could create up to $150 million of cost savings and revenue synergies. Revenue synergies (approximately 25% of the total) would be created primarily by using the Coleman distribution network to sell Sunbeam products and through savings on licensing. Cost synergies (approximately 75% of the total) would occur through the elimination of the corporate staff, consolidated sales forces, consolidated headquarters, and consolidated sourcing and logistics.

Sunbeam management expects to estimate $100 million of cost savings in their public announcement of the deal. The pro forma analysis assumes $100 million of annual cost savings including 1998 which is presented on a pro forma basis.

NOT A CERTIFIED COPY

016896

CONFIDENTIAL
CSFBC 0001559

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121269

16div-024063

9. *Relative Contribution Analysis*

The relative contribution analysis examines the percentage contribution, on a pro-forma basis, of the two companies to the combined entity and the resultant implied exchange ratios. Due to the higher leverage ratio at Coleman, net income percentages are the most relevant.

(Dollars in Millions)

	1997P		1998E	
	SUNBEAM	COLEMAN	SUNBEAM	COLEMAN
Sales	$1,168	$1,066	$1,460	$1,163
EBITDA	238	99	329	164
Net Income	124	22	180	63
Relative Contribution				
Sales	52.3%	47.7%	55.7%	44.3%
EBITDA	70.6	29.4	66.7	33.3
Net Income	84.1	15.9	74.2	25.8
Implied Exchange Ratio				
Sales	1.502x		1.311x	
EBITDA	0.685		0.821	
Net Income	0.311		0.575	
Implied Share Price [1]				
Sales	$61.01		$53.27	
EBITDA	27.81		33.34	
Net Income	12.66		23.34	

(1) Based on Sunbeam price of $40.63.
Note: Operating results as of Sunbeam and Coleman management estimates.

10. *Advisors*

Credit Suisse First Boston is acting as financial advisor and Wachtell, Lipton, Rosen & Katz is acting as counsel to Coleman in connection with this transaction. Shearman & Sterling is acting as counsel to Credit Suisse First Boston. Morgan Stanley Dean Witter Discover & Co. is acting as financial advisor and Skadden, Arps, Slate, Meagher & Flom is acting as counsel to Sunbeam.

11. *Credit Suisse First Boston's Relationship and Fees*

Credit Suisse First Boston has a long-standing relationship with Mafco, Coleman's controlling shareholder, and its shareholder, Ronald O. Perelman, having advised Mafco on a variety of financing and strategic advisory transactions. Notable transactions involving Mafco on which Credit Suisse First Boston has had a lead role include the initial public offering of the Revlon Group (wherein Credit Suisse First Boston acted as joint global coordinator); several lead-managed debt and equity financings for Coleman; a financial advisory assignment in the summer of 1997 in which Mafco, advised by Credit Suisse First Boston, made a final round bid on a property in a transaction that was eventually consummated by another party; and most recently, in January 1998, a lead-managed debt offering as part of Mafco's acquisition of a controlling stake and recapitalization of Panavision Inc. CSFB has a signed engagement letter with Coleman relating to the Transaction. Pursuant to the letter, CSFB will receive a fee of $4,000,000 payable upon completion of the Transaction.

NOT CERTIFIED COPY

018695

CONFIDENTIAL
CSFBC0001560

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121270

16div-024064

12. Due Diligence

Credit Suisse First Boston has had a long relationship with Coleman. It participated in the initial public offering of the Company in 1992 and several financings since then. In connection with this transaction, the Credit Suisse First Boston team has met several times with Coleman senior management (primarily Jerry Levin, the CEO, and Joe Page, the CFO) to discuss the Company's historical and financial results.

Credit Suisse First Boston also met with Sunbeam senior management on February 23, 1998 and February 24, 1998 to discuss Sunbeam's strategic plan and 1997 results. Credit Suisse First Boston attendees were Robert Duffy and Steven Geller.

NOT A CERTIFIED COPY

CONFIDENTIAL
CSFBC 0001561

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1121271

16div-024065

MORGAN STANLEY *INTEROFFICE MEMORANDUM*

TO: The Equity Commitment Committee **DATE:** March 10, 1998

FROM:

CFD - Chicago		MARD		CSG	
WHStrong	3-726-4400	RWKitts	x4822	WHWright	x7922
ABSavaric	3-726-4412	JBStynes	x7772	JDTyree	x7738
		AJFuchs	x6094	JGroeller	x7314
		GKYou	x7937	BDerito	x4303
		JDWebber	x4570	SBoone	x4941
		TChang	x8571		
		LRafii	x8179		

ECMS		Credit		Equity Research	
RMPorat	x5430	CMWhelan	x4241	AJConway	x6394
WBHarris	x5462	JCKunreuther	x4981	JDormer	x6293
JMWoodworth	x5464				
SSPrasad	x5468				

SUBJECT: SUNBEAM CORP. – RULE 144A ZERO COUPON CONVERTIBLE OFFERING ($500MM)

I. BACKGROUND

Sunbeam Corp. ("SOC", NYSE) is a leading worldwide manufacturer of a wide range of household and specialty brand name consumer products. As of March 6, 1998, the Company had an equity market value of $4.4Bn. Morgan Stanley became involved with Sunbeam through the relationship between Bill Strong and Al Dunlap. Bill Strong first met Al Dunlap in 1986 when Al Dunlap worked for Sir James Goldsmith. Bill Strong has been involved with three transactions for Al Dunlap and Sir James Goldsmith. The last transaction was a $275MM Regulation S sale of Newmont Mining common stock in 1993 successfully executed by Morgan Stanley. The Firm began soliciting a strategic relationship with Al Dunlap in April 1997 and was retained as sole strategic advisor to Sunbeam in early September 1997. Since that time, we have been exploring various strategic alternatives for the Company, with the active participation of Sunbeam's management team. Such advisory reviews have included potential acquisitions, a sellside process for the Company and the recently announced buyside transactions. As a consequence of these projects, the Firm has developed strong relationships with both the CEO and senior management at the Company. Furthermore, Andrew Conway expects to initiate equity research.

Morgan Stanley is advising the Company in its pending acquisitions of Coleman, Signature Brands and First Alert with a total $2.6Bn in aggregate value, including assumption of $1.2Bn in debt at the three entities. The Sunbeam common stock price has risen by $9.75 per share, from $41.75 to $51.50 (a 23% increase) since the transactions were announced. To finance these acquisitions, Sunbeam has asked Morgan Stanley to underwrite $2.0Bn in senior bank debt financing ($1.5Bn term debt and a $500MM Revolving Credit Facility), and to sole-manage a $500MM Zero Coupon Convertible Subordinated Debenture (plus a $75MM greenshoe) to be issued pursuant to Rule 144A. The price talk will be 35.5%-39.1%, with a yield to maturity of 4¼% to 5¼%, on a standard zero coupon structure. These financings, combined with the $814MM Sunbeam equity being provided to the seller of Coleman (MAFCO and minority

8 6 9 8 1 0

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000513

CPH EXHIBIT 129

FOR I.D. 1/22/04

16div-024066

shareholders), complete the financing of the acquisition. Morgan Stanley has signed a "Highly Confident" letter in reference to the financing of these acquisitions.

The convertible transaction will tentatively be launched on Monday, March 16, priced on Monday, March 23 and closed on Friday, March 27 to roughly coincide with the closing of the Signature and First Alert acquisitions. The transaction will be marketed through a four-day roadshow as well as investor conference calls from Wednesday, March 18 through Monday, March 23. MS believes Sunbeam's rating on this security would be not more than B1/B+, pro forma and as adjusted for the acquisition strategy and financing plan as described above, although we do not believe that the security will be rated until several weeks after pricing.

We are asking the Committee to approve underwriting the $500MM Zero Coupon Convertible security.

NOT A CERTIFIED COPY

669810

MORGAN STANLEY CONFIDENTIAL 0000614

16div-024067

II. COMPANY OVERVIEW

General

Sunbeam, with 1997 sales of $1,168MM, is one of the largest manufacturers and marketers of household and specialty consumer products. The Company's products are sold through mass retailers, including WalMart, KMart and Home Depot, and other distributors in the U.S. and internationally. The Company also sells its products to commercial end-users such as hotels.

The Company has five core product categories: Kitchen Devices, Health at Home Devices, Personal Care and Comfort Devices, Outdoor Cooking, and Professional Care Devices. An international group is responsible for selling to countries other than the U.S..

Sunbeam - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Kitchen Devices	$ 467.3	*40.0%*	Domestic	$ 950.9	*81.4%*
Health at Home	105.1	*9.0*	International	217.3	*18.6*
Personal Care & Comfort	186.9	*16.0*			
Outdoor Cooking	327.1	*28.0*			
Professional Care	70.1	*6.0*			
Outlet Sales	11.7	*1.0*			
Total	$1,168.2	*100.0%*	Total	$1,168.2	*100.0%*

Business Divisions

Kitchen Devices

- Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances
- Brands: *Mixmaster, Oster, Sunbeam, Osterizer*
- Market Position: #1, 2 or 3 depending on product category
- Major competitors include Black & Decker, Hamilton Beach/Proctor Silex (Nacco), and KitchenAid (Whirlpool)

Health at Home Devices

- Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners
- Brand: *Health at Home*
- Market Position: #1, 2 or 3 in most categories
- Major competitors include Duracraft, Braun (Gillette) and Health O'Meter

NOT A CERTIFIED COPY

018700

MORGAN STANLEY CONFIDENTIAL 0000615

16div-024068

Personal Care and Comfort Devices

- Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters
- Brands: *Cuddle-Up, Oster*
- Market Position: #1 in electric blankets, #1 in clippers
- Major competitors include Wahl, Andis and Teledyne

Outdoor Cooking Devices

- Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories
- Brands: *Sunbeam, Grillmaster*
- Market Position: *#1 in gas grills*
- Major competitors include Charbroil, Thermos and Weber

Professional Care Devices

- Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
- Brand: *Oster*
- Market Position: #1 in clippers
- Major competitors include Wahl and Andis

Restructuring

In the fall of 1996, after several years of disappointing results, Sunbeam announced a major restructuring and growth plan under newly appointed chairman Albert Dunlap. The restructuring portion of the plan has been substantially completed with only the final "refinement" stage remaining. It included the redefinition of Sunbeam's core products, divestiture of non-core businesses, hiring a new management team, closing of warehouses and consolidation of headquarters, elimination of production facilities, and a large reduction in unprofitable products. *The actions led to a reduction of approximately half the work force (about 6,000 jobs).* Cost reductions are expected to result in annual savings of $225MM, most of which were already realized in 1997.

The restructuring resulted in double-digit sequential sales growth throughout 1997 with annual sales growth of 18.7% and an operating margin improvement from 0.2% in 1996 to 17.1% in 1997, and with operating margins reaching 20% by the fourth quarter of 1997. Sunbeam's share price increased from the $15 range before the appointment of Al Dunlap to $41.75 before the announcement of the recent acquisitions.

NOT A CERTIFIED COPY

018701

MORGAN STANLEY CONFIDENTIAL 0000516

16div-024069

Pre-Acquisition Strategy/Goals

Prior to the acquisition announcements, Sunbeam management outlined the following goals for growth in 1998:

- 25% top line and 40% EPS growth based on new innovative products, successful roll out of air and water filtration products, higher advertising levels and increased penetration of international markets
- Expansion of global distribution by adding 30 new global products as well as international distribution/licensing agreements
- Project Full Time: Strategic initiative to improve customer service levels and therefore enhance growth (initiated 2Q 1997)
- Merger or acquisitions: Management will continue to examine strategic alternatives to strengthen the business and create shareholder value

Following the acquisition, the Company is going to pursue a strategy focused on the *consolidation of the consumer non-durables sector. With the significant number of* underperforming companies in this sector (Black & Decker, Rubbermaid, etc.), the Company believes it will have a significant opportunity to make additional future acquisitions.

NOT A CERTIFIED COPY

018702

MORGAN STANLEY CONFIDENTIAL 0000517

16div-024070

III. RECENT ACQUISITION ANNOUNCEMENTS

General

On Monday, March 2, the Company announced three acquisitions in the consumer non-durables sector: Coleman, Signature Brands and First Alert. The total aggregate value of these acquisitions is $2.6Bn. With these acquisitions, the Company is endeavoring to take the first step in the consolidation of the consumer non-durables sector.

Structure

The transaction will be financed with $2.0Bn of Bank Debt, $814MM in Sunbeam common equity (issued to MAFCO (Ron Perelman) as part of Coleman purchase) and $500MM in Zero Coupon Convertible debt. The Bank debt will consist of $1.5Bn in term debt and a $500MM revolver (only $50-$100MM drawn down initially). The transactions will be structured as follows:

- Coleman Acquisition: The transaction, valued at $2,126MM aggregate value, will be consummated in two steps (i) acquisition of Coleman Holdings (owner of 82.4% of Coleman Operating Co. stock) from MAFCO affiliates and (ii) minority repurchase of Operating Co. public shareholders
  - The shares issued to MAFCO (14.1MM shares, $589MM) will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months. The minority shareholders will also receive the same mix of 21% cash and 79% stock.
- Signature Brands Acquisition: Cash acquisition of all outstanding stock of Signature Brands by Sunbeam resulting in aggregate value of $249MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998
- First Alert Acquisition: Cash acquisition of all outstanding stock of First Alert by Sunbeam resulting in aggregate value of $178MM. The transaction is treated according to purchase accounting and expected to close in the first week of April 1998

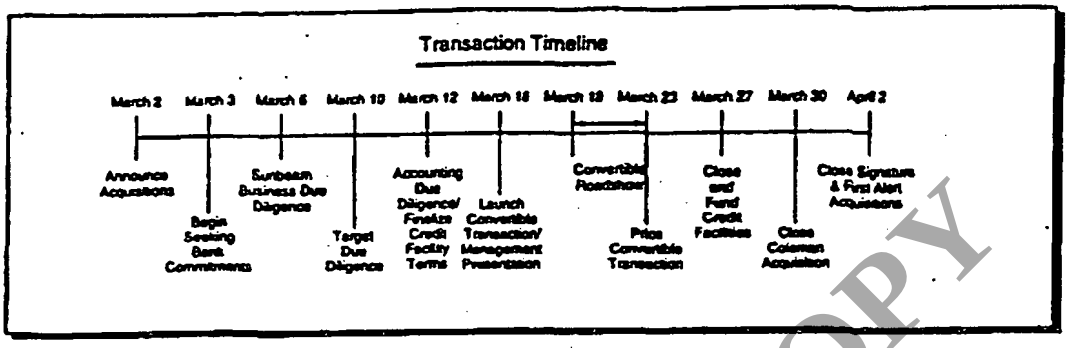
SOURCES ($MM)	Amount	% of Total	USES ($MM)	Amount	% of Total
Cash	$0.0	0.0%	Purchase Equity	$1,270.3	44.0%
Bank Debt	1,573.1	54.5	Option (Proceeds) Costs	24.8	0.9
Zero Coupon Convertible	500.0	17.3	Assumption of Debt	679.0	23.5
Equity	813.9	28.2	HoldCo Debt & Premium	607.7	21.1
			Cash Restructuring Costs	150.0	5.2
			Working Cap. Investment	105.1	3.6
			Transaction Fees	50.0	1.7
TOTAL	$2,887.0	100.0%	TOTAL	$2,887.0	100.0%

NOT A CERTIFIED COPY

018703

MORGAN STANLEY CONFIDENTIAL 0000518

16div-024071



Target Descriptions

Coleman ("CLN")

- Coleman is a leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. Its products have been sold domestically and internationally under the *Coleman* brand name since 1920s. Coleman attributes its market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise

- *Outdoor Recreation:* This business segment includes lanterns and stoves, fuel, coolers and jugs, recreational soft goods, outdoor furniture, electric lights, spas and camping accessories. Products sell under the *Coleman* and *Camping Gaz* brand names in a highly competitive market

- *Hardware:* After the recent divestiture of the safety and security products business on 2/18/98, this business segment includes portable generators, air compressors and pressure washers. Products sell under the *Coleman* brand name in a highly competitive market

Coleman - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Outdoor Recreation	$ 815.5	*76.5%*	Domestic	$ 867.7	*81.4%*
Hardware	250.5	*23.5*	Europe	159.9	*15.0*
			ROW	191.9	*18.0*
			Eliminations	(153.5)	*-14.4*
Total	$1,066.0	*100.0%*	Total	$1,066.0	*100.0%*

018704

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000519

16div-024072

Coleman - Selected Financial Information ($ in MM)			
	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	$933.6	$1,220.2	$1,066.0
% Change	*62.2%*	*30.7%*	*-12.6%*
EBITDA	127.9	99.0	99.0
% Margin	*13.7%*	*8.1%*	*9.3%*
EBIT	101.4	62.6	62.8
% Margin	*10.9%*	*5.1%*	*5.9%*
Net Income	50.0	11.3	14.3
% Margin	*5.4%*	*0.9%*	*1.3%*
Capital Expenditures	29.1	41.3	27.0

Signature Brands ("SIGB")

- Signature Brands designs, manufactures, markets and distributes a comprehensive line of consumer and professional products. It purchased certain operating assets of Pelouze Scale Co. in 1992 and acquired all of the outstanding shares of common stock of Mr. Coffee, Inc. in 1994

- *Consumer Products:* This division includes coffeemakers, hot and iced teamakers, coffee filters, replacement decanters and accessories and consumer scales under the *Mr. Coffee* and *Health O'Meter* trademarks

- *Professional Products:* This business segment includes professional scales (medical, office, food) and commercial coffee brewers. Products are sold under the *Pelouze* and *Health O'Meter* trademarks

Signature Brands - 1997 Sales Breakdown ($ in MM)					
Business Segment			Geographic		
Consumer Products	$ 236.0	*85.6%*	Worldwide	$ 275.7	*100.0%*
Professional Products	39.7	*14.4*			
Total	$ 275.7	*100.0%*	Total	$ 275.7	*100.0%*

NOT A CERTIFIED COPY

018705

MORGAN STANLEY CONFIDENTIAL 0000520

16div-024073

Signature Brands - Selected Financial Information ($ in MM)			
	Fiscal Years Ended September 29,.		
	1995	1996	1997
Revenues	$267.9	$283.0	$275.7
% Growth	*NA*	*5.6%*	*-2.6%*
EBITDA	32.5	37.4	31.0
% Margin	*12.1%*	*13.2%*	*11.2%*
EBIT	22.6	26.6	19.7
% Margin	*8.5%*	*9.4%*	*7.1%*
Net Income	1.0	2.7	0.1
% Margin	*0.4%*	*1.0%*	*0.1%*
Capital Expenditures	4.6	4.4	5.7

First Alert ("ALRT")

- First Alert manufactures and markets a broad range of residential safety products. It distributes its products through leading retailers mainly under the *Sentinel* premium brand name and the complementary *Family Gard* value brand name. Products are also distributed through electrical wholesalers under the *BRK* brand name for sale to professional contractors

- *Smoke Detectors:* This segment includes smoke detectors for residential application. Products are sold under the *First Alert*, *Family Gard* and *BRK* brand names and hold the #1 market share (75%) with American Sensor, Fymetics/Kidde and Coleman being the main competitors

- *Carbon Monoxide Detectors:* This segment includes carbon monoxide detectors with biometrics sensor sold under the *First Alert* and *Family Gard* brand names. The company holds #1 market position (49%) with Nighthawk (Kidde), American Sensor and Jameson as main competitors

- *Fire Extinguishers:* This segment includes fire extinguishers for use in kitchen, garage, workshop, auto and boat. Products are sold under the *Sure Grip* brand name and hold #2 market share (31%) behind Kidde (63%)

- Other manufacturing activities include miscellaneous product lines, including #4 market position in flashlights

NOT A CERTIFIED COPY

907810

MORGAN STANLEY CONFIDENTIAL 0000521

16div-024074

First Alert - 1997 Sales Breakdown
($ in MM)

Business Segment			Geographic		
Smoke Detectors	$ 75.7	*40.5%*	US	$ 148.8	*79.6%*
CO Detectors	36.2	*19.4*	International	38.1	*20.4*
Fire Extinguishers	15.1	*8.1*			
Other - US	21.8	*11.7*			
International	38.1	*20.4*			
Total	$ 186.9	*100.0%*	Total	$ 186.9	*100.0%*

First Alert - Selected Financial Information
($ in MM)

	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	$246.3	$205.6	$186.9
% Change	*-0.9%*	*-16.5%*	*-9.1%*
EBITDA	27.9	(18.3)	(2.7)
% Margin	*11.3%*	*-8.9%*	*-1.4%*
EBIT	20.5	(24.6)	(9.5)
% Margin	*8.3%*	*-12.0%*	*5.1%*
Net Income	11.4	(17.3)	(7.8)
% Margin	*4.6%*	*-8.4%*	*-4.2%*
Capital Expenditures	10.6	5.3	NA

NOT A CERTIFIED COPY

018707

MORGAN STANLEY CONFIDENTIAL 0000522

16div-024075

IV. EQUITY VALUATION

- As of February 27, 1998, Sunbeam shares were trading at $41.75 per share and were valued at the low end of its comparable range.
  - 20.9x 1998 median I/B/E/S estimate of $2.00 (versus 22.3x for comparables)
  - 15.2x 1999 median I/B/E/S estimate of $2.75 (versus 19.2x for comparables)
  - The low valuation was driven in part by the announcement of 4Q97 earnings $0.03 below street expectations
- After the transaction announcement, Sunbeam's share price has experienced an increase of $9.75, rising from $41.75 to $51.50, a 23% increase.
- The Company's current trading levels are warranted given the level of expected synergies ($150MM, pre-tax) and investors' confidence in Sunbeam's management team and proven ability to turn around companies and leverage undervalued brand names.
- Investors also view there to be other, significant acquisition opportunities for Sunbeam to capitalize on in its new role as an industry consolidator
- Investors are also pricing in the potential for future add-on acquisitions as Sunbeam can be viewed as the industry consolidator
- Investors focus on the 1999 P/E multiple (the first full year of ownership and of full cost savings) and currently price Sunbeam at a discount reflecting execution risk for the integration

Company	3/6 Close	Earnings 1998E	Earnings 1999E	Price/Earnings 1998E	Price/Earnings 1999E
Black & Decker	$48.625	$2.60	$3.10	18.7x	15.7x
Fortune Brands	40.475	1.70	1.90	23.8	21.3
Newell	49.250	2.10	2.38	23.5	20.7
Rubbermaid	27.750	1.20	1.45	23.1	19.1
			Mean	22.3x	19.2x
Sunbeam	$41.75[1]	$2.00	$2.75	20.9x	15.2x
Pro Forma Sunbeam[2]	51.50	2.34	3.12	22.0	16.5

Notes: (1) Closing share price before the announcement of the recent acquisitions.
(2) Adjusted for $150MM annual pre-tax synergies.

NOT A CERTIFIED COPY

018708

MORGAN STANLEY CONFIDENTIAL 0000523

16div-024076

V. PROPOSED TRANSACTION STRUCTURE AND TIMING

Issuer:	Sunbeam Corp.
Sole-lead Manager:	Morgan Stanley Dean Witter
NYSE Symbol:	SOC
Estimated Proceeds:	$500 million (plus 15% over-allotment option)
Maturity:	20 Yr.
Price Talk	
Coupon:	0%
Issue Price:	[35.5-39.1%]
Yield To Maturity:	[4 3/4-5 1/4%]
Initial Conversion Premium:	[22-26%]
Call Protection:	NC-5/Full
Use of Proceeds:	Acquisition financing
Green Shoe:	15%
Sinking Fund:	None
Subordination:	Subordinated to all Senior Secured Indebtedness, and *pari passu* with all Senior Unsecured Indebtedness (same as Network Association Structure)
Lock-Up:	[90 days]; The shares issued to MAFCO will be "locked-up" in the following manner: 25% can be sold after 3 months, a second 25% can be sold after 6 months, and the remaining 50% can be sold after 9 months
Existing Ratings:	Not rated
Expected Ratings:	B1/B+ (Pro forma for the acquisitions and as adjusted for the bank and convertible transactions); expected within 4-6 weeks of the offering
Gross Spread:	[2.50 - 3.00%]
Expected Timetable:	Monday, March 16 Launch transaction Presentation to MS salesforce Distribute Preliminary Offering Memoranda Wednesday - Monday, March 18 - 23 Roadshow Monday, March 23 Pricing Friday, March 27 Closing
Company Counsel:	Skadden, Arps, Slate, Meagher & Flom
Underwriter's Counsel:	Davis, Polk & Wardwell
Company Auditors:	Arthur Andersen

NOT A CERTIFIED COPY

018709

MORGAN STANLEY CONFIDENTIAL 0000524

16div-024077

VI. INVESTMENT CONSIDERATIONS

- Sunbeam

  - SUCCESSFUL RESTRUCTURING; CREATION OF A GROWTH COMPANY
    - During 1997, Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth, with operating margins reaching 20% in 4Q 97, up from 0.2% before the turnaround
    - The Company exited all of its non-core businesses, closed 18 factories, 43 warehouses and 5 headquarters, reduced employment by 50% and significantly reduced its number of SKU's offered (by about 80%)
    - The Company added 25 international distribution/licensing agreements which added $35MM in revenue, introduced 89 new products (35 U.S., 54 international) which added $150MM in revenue
    - Significant expansion of distribution with key retailers such as WalMart, KMart, Target, Costco and Home Depot
    - The Company improved capacity utilization to 75% in 1997 (50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing process
    - New product development time was decreased to 6 months from over 2 years (e.g. AllergySmart)
    - Sunbeam gained market share in every product category in 1997

  - EXPERIENCED AND COMMITTED MANAGEMENT TEAM
    - Al Dunlap has brought in an experienced management team with a history in similar turnaround situations
    - Management incentive systems, including the newly signed management employment agreements, are designed to ensure commitment to the turnaround process
    - Market has strongly endorsed the turnaround and acquisitions through strong stock price appreciation, which is expected to continue as the recent acquisitions are integrated

  - REALIZABLE SYNERGIES OF $150MM FROM COMBINATION
    - $100MM from combination with Coleman
    - $28MM from combination with First Alert
    - $25MM from combination with Signature Brands
    - Substantial Functional Redundancies/Cost Savings
      - Sales and Marketing
      - Finance and Administration Management
      - Information Systems
      - Consumer Research
      - Product Development
    - Operational Functional Redundancies
      - Distribution & Warehousing
      - Operations Management
      - Procurement Savings

NOT A CERTIFIED COPY

018710

MORGAN STANLEY CONFIDENTIAL 0000625

16div-024078

- *Quality/Inspection*
- The combined company sales will also benefit from dual branding of product lines as well as complementary strengths in specific European, Asian and emerging markets

- **The Coleman Acquisition**
  - STRONG, ESTABLISHED BRAND EQUITY VALUE
    - Near 40% market share in industry, nearest competitor has only 10%
    - Untapped strength in the *Coleman* brand name
    - Increased leverage over distribution channels
  - OPPORTUNITY TO STREAMLINE OPERATIONS AND UTILIZE EXPERTISE IN COST CUTTING
    - Current businesses are operating efficiently, however, operational redundancies will result in the potential to realize substantial synergies
    - Capacity available at current facilities to absorb significant production responsibilities of Coleman
    - Coleman has grown rapidly through acquisitions without associated operations rationalization, leaving significant opportunity for business re-engineering
  - CONSOLIDATION OF OUTDOOR RECREATIONAL PRESENCE
    - Combination results in less seasonal product mix in outdoor segment
    - Acquired brands expected to maintain sales levels during economic downturns
    - Increased critical mass for major innovation and advertising initiatives

- **The Signature Brands Acquisition**
  - ACCELERATED GROWTH IN REVENUES AND EARNINGS
    - This product line acquisition will be easily assimilated into the Sunbeam system, allowing for immediate recognition of significant synergies
    - Strong brand names will complement existing brands and remove major competitors in certain areas (*Health o Meter*)
    - Strong parent will be able to strengthen relationship with major retailers and help to gain additional shelf space
  - COMMITMENT TO NEW STRATEGIC PLAN
    - The transaction proves the willingness by Sunbeam to make fold-in acquisitions
    - Will lead to additional attractive acquisition opportunities

- **The First Alert Acquisition**
  - ENHANCES EXISTING PORTFOLIO OF HOME DEVICES PRODUCTS
    - Strengthens the home/kitchen device segment by capitalizing on complementary distribution channels

NOT A CERTIFIED COPY

018711

MORGAN STANLEY CONFIDENTIAL 0000526

16div-024079

- Strong brand recognition and #1 market share in smoke alarms and carbon monoxide alarms
- Long-term relationship with major retailers

– *SIGNIFICANT GROWTH POTENTIAL OF HOME SAFETY MARKET*

- Strong momentum in alarms replacement with $850MM untapped retail market for replacing existing 10-year old alarms

– OPPORTUNITY FOR BUSINESS RE-ENGINEERING AND COST CUTTING

- Unsatisfactory performance mainly due to manufacturing inefficiency, poor customer service and shipping delays
- Sunbeam's experience in streamlining operations opens up significant re-engineering and cost cutting opportunities
- Redundancies in business model create the opportunity to realize significant potential synergies
- Better purchasing power to improve margins
- Strong parent to build relationships with major retailers and gain additional shelf space

NOT A CERTIFIED COPY

018712

MORGAN STANLEY CONFIDENTIAL 0000527

16div-024080

VII. POTENTIAL INVESTOR CONCERNS

1) **Significant dependence on management team; particularly Al Dunlap.**

Concern: *Sunbeam's recent turnaround performance appears to be due more to the capability of its management team in cost-cutting than to the innate strength of the Company's core business or growing demand for Sunbeam's products. What if the CEO and his team do not stay to fully implement Phase III of the Company's strategic plan?*

Response: Al Dunlap and his senior management team recently signed new, three year employment contracts. These agreements are primarily stock and option based, and incorporate a vesting feature which encourages management tenure. In addition, Al Dunlap has publicly stated (on several occasions) that he is committed to Sunbeam and "this new employment agreement will put to rest any rumors that I [he] would leave the Company." Finally, the Company has already begun to search for other managers from within the industry who would add further depth and operational expertise to this team.

2) **The Company has recently experienced results below street expectations.**

Concern: *The Company recently reported fourth quarter earnings that were $0.03 below consensus expectations, resulting in a 9% share price decline on the day of the announcement. Is this indicative of a slowdown in the double digit growth that Al Dunlap has declared is his ongoing goal?*

Response: Lost in the turmoil of this earnings announcement was the fact that business has shown significant improvement from the recent restructuring very quickly. Fourth quarter sales jumped 31%, excluding divestitures, from last year's numbers. Sales growth had, in fact, accelerated all year. Fourth quarter results were broad-based with all businesses, except for blankets, showing healthy gains. Operating margins hit an unprecedented 20%. EPS were $0.47 vs. $(0.03) in 4Q97. In short, the Sunbeam management team sets extremely high goals and, even when they fall slightly short, it is still a significant achievement.

3) **Sunbeam's growth is highly dependent on its ability to expand internationally.**

Concern: *Pre-acquisition, Sunbeam is forecasting 25-35% growth in the international business. Given the recent departure of Dixon Thayer, VP of Sunbeam's international business, and potential currency/business deterioration in Asia, aren't these growth projections a bit high?*

Response: International sales grew 17% from 3Q98 to 4Q98, representing a 42% increase from 4Q97. The growth resulted from Sunbeam's superior technology (EMF technology in electric blankets in Japan, "smart" toasters, etc.), as well as a focused effort to strengthen the brand equity of the Oster brand name through direct response print advertising, in-store and trade demonstrations, etc. In addition, the recent currency turmoil in Asia is not expected to have a significant impact as Sunbeam has nearly all of its distribution agreements denominated in U.S. dollars with a relatively small portion of pro-forma sales from non-Japan Asia.

NOT A CERTIFIED COPY

018713

MORGAN STANLEY CONFIDENTIAL 0000628

16div-024081

4) **Integration of recent acquisitions and future acquisitions.**

Concern: *The Company is facing a significant challenge in integrating three separate companies concurrently. In addition, given the Company's new strategy of adopting the role of industry consolidator, it is likely that the Company will make additional acquisitions in the future. How can the Company be sure this integration effort will be successful?*

Response: Sunbeam management plans to integrate these acquisitions with immediate focus on cost synergies and brand development. Their acquisition strategy essentially involves acquiring undervalued, unmarketed brand names, and leveraging this established brand equity while combining administration, marketing, finance and other corporate functions more efficiently. This is a strategy that Al Dunlap and his team have successfully utilized at a number of companies before Sunbeam, including Scott Paper. In addition, revenue synergies derived from increasing geographical breadth, greater penetration of product offerings to major customers (i.e. WalMart) and the potential for dual branding will also generate substantial benefits through the combination.

5) **Are the supposed synergies to be gained as a result of the acquisitions attainable?**

Concern: *The synergies anticipated from these combinations are sizable (over $150MM in the first full year. How attainable are these synergies? What will be the cost of achieving these synergies?*

Response: Morgan Stanley and Coopers & Lybrand (special acquisition consultants to Sunbeam) have had extensive discussions with the management of Coleman, Signature Brands and First Alert, as well as the Sunbeam management regarding the potential synergies. Following these discussions and the subsequent due diligence performed prior to the announcement of these transactions, the Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately $150MM by the end of 1999. They, in fact, have stated that it is not unlikely that they could achieve even greater synergies in a shorter period of time. They informed the Sunbeam Board of Directors that the synergies are likely to be in the $225MM - $275MM pre-tax range.

6) **Dependence on one major customer, WalMart.**

Concern: *The Company presently attributes over 20% of its total revenues to WalMart. Following the acquisition, this concentration will increase to approximately 25%. Isn't this dependence on one major customer dangerous for the Company?*

Response: WalMart is widely recognized as the industry leader in mass retailing. In addition, WalMart offers all of the types of products manufactured by all five of Sunbeam's primary product lines, and WalMart (like Sunbeam) is aggressively expanding overseas. These characteristics make WalMart an excellent partner for the Company. However, Sunbeam is also aggressively expanding its distribution channels with other key retailers such as KMart, Target, Costco and Home Depot, and the Company now advertises on QVC. Sunbeam also has 22 factory outlet stores which are designed to sell

NOT A CERTIFIED COPY

01871L

MORGAN STANLEY CONFIDENTIAL 0000629

16div-024082

16div-024083

surplus or discontinued merchandise. Moreover, these acquisitions also seem to make Sunbeam an increasingly important supplier to all the major retailers.

NOT A CERTIFIED COPY

018715

MORGAN STANLEY CONFIDENTIAL 0000530

VII. Appendices

1. Summary Sunbeam PF and Historical Financials
2. Comparable Company Analysis
3. Summary Business Overview
4. Sunbeam Annotated Price Graph
5. SP-34's
6. Summary Business Overview Fold-out

NOT A CERTIFIED COPY

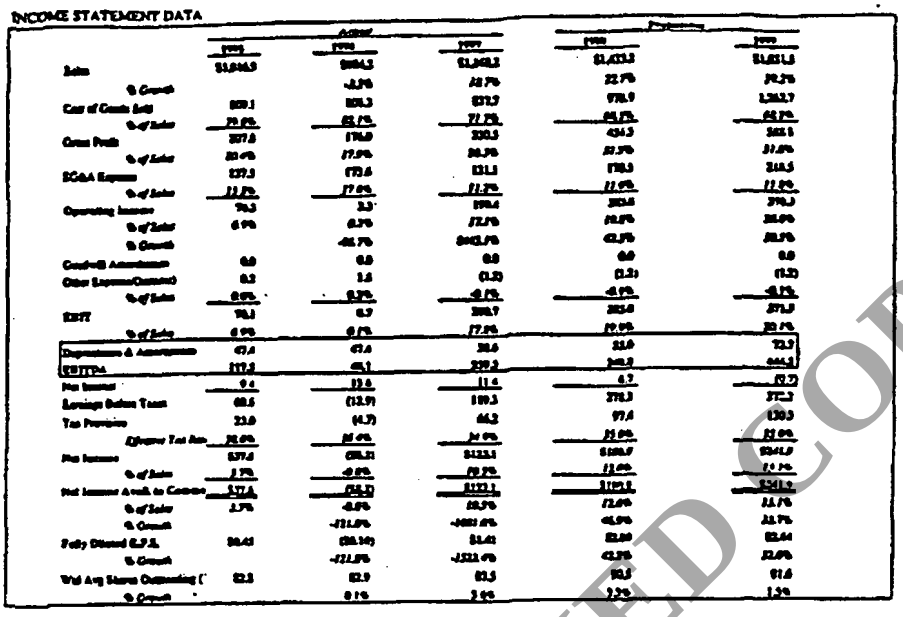
018716

MORGAN STANLEY CONFIDENTIAL 00000531

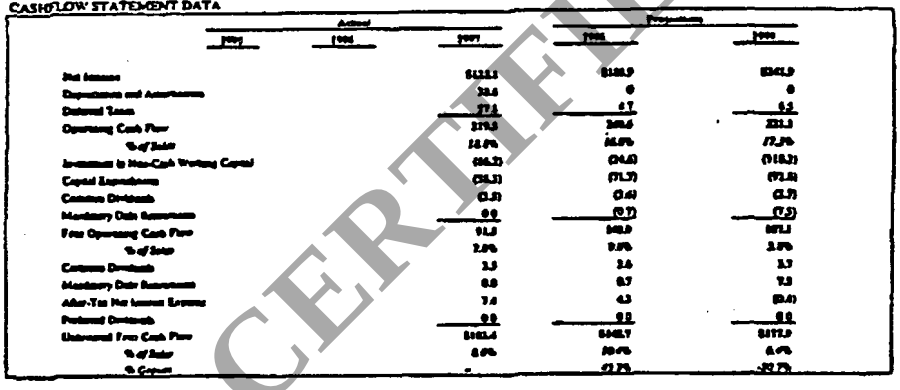
16div-024084

HISTORICAL SUNBEAM FINANCIALS

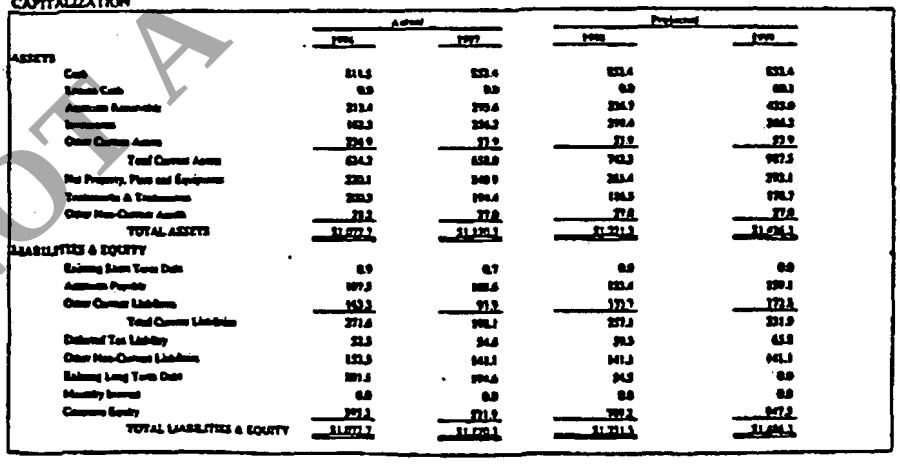
INCOME STATEMENT DATA



CASHFLOW STATEMENT DATA



CAPITALIZATION



NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000532

16div-024085

PRO FORMA SUNBEAM FINANCIALS

	1997 Actual					Pro Forma	
	Sunbeam	Coleman	First Alert	Signature Brands	Adjustments	1997	1998
Sales	$1,168.3	$1,044.8	$157.8	$278.9	(50.8)	$2,700.1	$3,134.7
% Growth	18.7%	-12.6%	-8.0%	2.3%		0.6%	15.4%
Cost of Goods Sold	837.3	743.8	148.0	192.4	(6.7)	1,923.4	2,117.3
% of Sales	71.7%	71.2%	94.9%	69.0%		71.2%	68.0%
Gross Profit	330.5	306.9	47.0	86.5	6.7	776.7	997.4
% of Sales	28.3%	28.7%	25.1%	31.0%		28.8%	32.0%
SG&A Expense	131.1	149.6	34.2	60.8	0.0	415.7	463.2
% of Sales	11.2%	13.9%	29.0%	21.8%		15.4%	14.9%
Advertising & Promotion	0.0	51.4	0	0	0.0	51.4	59.8
% of Sales	0.0%	4.8%	0.0%	0.0%		1.9%	1.9%
Research & Development	0.0	9.7	0	0	0.0	9.7	11.3
% of Sales	0.0%	0.9%	0.0%	0.0%		0.4%	0.4%
Operating Income	199.4	75.3	(7.2)	25.7	6.7	299.9	463.1
% of Sales	17.1%	7.1%	-3.8%	9.2%		11.1%	14.9%
% Growth	8443.1%	1.3%				245.2%	54.4%
Net New Goodwill Amortization					37.3	37.3	37.3
Old Goodwill Amortization	0.0	10.5	1.1	2.9	(0.0)	13.5	14.2
Financing Fee Income			0.0	0.9	2.3	3.2	3.2
Advisory Fees Amortization					1.1	1.1	1.1
Other Expense/(Income)	(1.2)	2	1.0	(0.3)	0.0	1.5	(0.7)
% of Sales	-0.1%	0.2%	0.6%	-0.1%		0.1%	-0.0%
Pre-Tax Synergies	0	0	0.0	0.0	(76.3)	(76.3)	(76.3)
% of Sales	0.0%	0.0%	0.0%	0.0%		2.8%	2.4%
EBIT	200.7	62.8	(9.4)	21.5	42.5	317.6	482.3
% of Sales	17.2%	5.9%	-5.0%	7.6%		11.8%	15.5%
Depreciation & Amortization	38.6	36.2	6.3	11.2	34.1	126.9	142.3
EBITDA	239.3	99.0	(2.8)	32.5	76.5	444.5	624.6
Net Income	11.4	40.9	3.6	18.5	66.4	140.7	125.3
Earnings Before Taxes	189.3	21.9	(12.9)	2.8	(24.3)	176.9	347.0
Tax Provision	66.2	7.7	(5.2)	2.7	9.5	80.8	140.6
Effective Tax Rate	34.9%	35.0%	*N.M.*	35.0%		45.7%	40.5%
Marginal Tax Rate			*N.M.*	96.7%		35.0%	35.0%
Net Income	$123.1	$14.3	(17.7)	50.1	(333.7)	196.1	$306.4
% of Sales	10.5%	1.3%	-4.1%	0.9%		3.6%	6.6%
Minority Interest	0	1.5	0	0	0.0	1.5	0.4
Preferred Dividends	0	0	0	0	0.0	0	0
Net Income Avail. to Common	$123.1	$12.8	(17.7)	50.1	849.4	194.6	$306.0
% of Sales	10.5%	1.2%	-4.1%	0.0%		3.5%	6.5%
% Growth	-1601.6%	15.0%	-32.6%	-92.6%		-308.1%	117.8%
Basic E.P.S.	$1.41	$0.34	($0.51)	$0.01	0.5	$0.91	$1.92
% Growth	-1365.9%	14.7%	-52.4%	-92.9%		-	-6.5%
Wtd Avg Shares Outstanding (1)	64.9	53.4	34.471	9.407		104.4	107.3
% Growth	2.4%	0.3%	-0.4%	3.7%		-	111.5%
Fully Diluted E.P.S.	$1.41	$0.33					$1.87
% Growth	-1322.4%	-36.1%					-4.5%
Wtd Avg Shares Outstanding (1)	87.3	53.4					109.9
% Growth	3.6%	0.3%					

NOT A CERTIFIED COPY

018718

MORGAN STANLEY CONFIDENTIAL 0000533

16div-024086

SUNBEAM BUSINESS OVERVIEW

Sunbeam

	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	• *Mixmaster* • *Sunbeam* • *Oster* • *Osterizer*	• *Health at Home*	• *Cuddle-Up* • *Oster*	• *Sunbeam* • *Grillmaster*	• *Oster*
Market Position	• #1, 2 or 3 depending on product category	• #1, 2 or 3 in most categories	• #1 in electric blankets • #1 in clippers	• #1 in gas grills	• #1 in clippers
Major Competitors	• Black & Decker • Hamilton Beach/Proctor Silex (Nacco) • KitchenAid (Whirlpool)	• Dunecraft • Braun (Gillette) • Health O'Meter	• Wahl • Andis • Teledyne	• Charbroil • Thermos • Weber	• Wahl • Andis
Distribution	• Mass merchandisers • Department stores • Specialty stores	• Mass merchants • Drug stores	• Mass merchants • Drug stores	• Mass merchants • Hardware/Home centers	• Mass merchants • Drug stores • Specialty stores • Professional distributors
1996 Net Sales:[1]	$383.9MM	$98.4MM	$187.0MM	$255.9MM	$59.1MM
% of Total	39%	10%	19%	26%	6%
1997 Net Sales:[1]	$455.6MM	$104.0MM	$190.4MM	$325.9MM	$72.4MM [2]
% of Total	40%	9%	16%	28%	6%

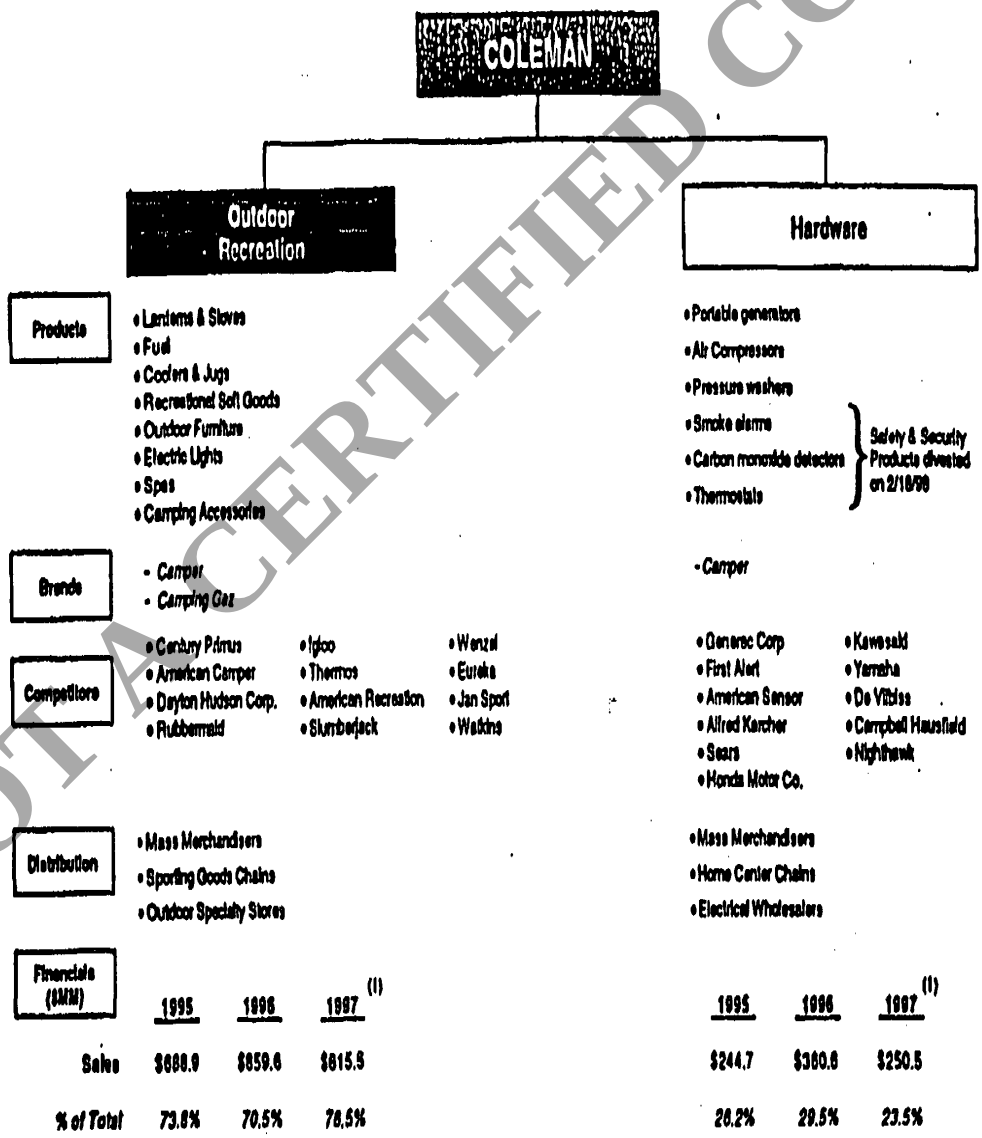
Notes: (1) 1997 sales breakdown from company and does not add to 100% due to outlet sales.
(2) 1997 sales includes the away-from-home category.

617810

MORGAN STANLEY CONFIDENTIAL 0000034

NOT A CERTIFIED COPY

COLEMAN BUSINESS OVERVIEW



Note: (1) Percentage breakdown of 1997 segment sales based on Prudential Securities research report dated 11/14/97.

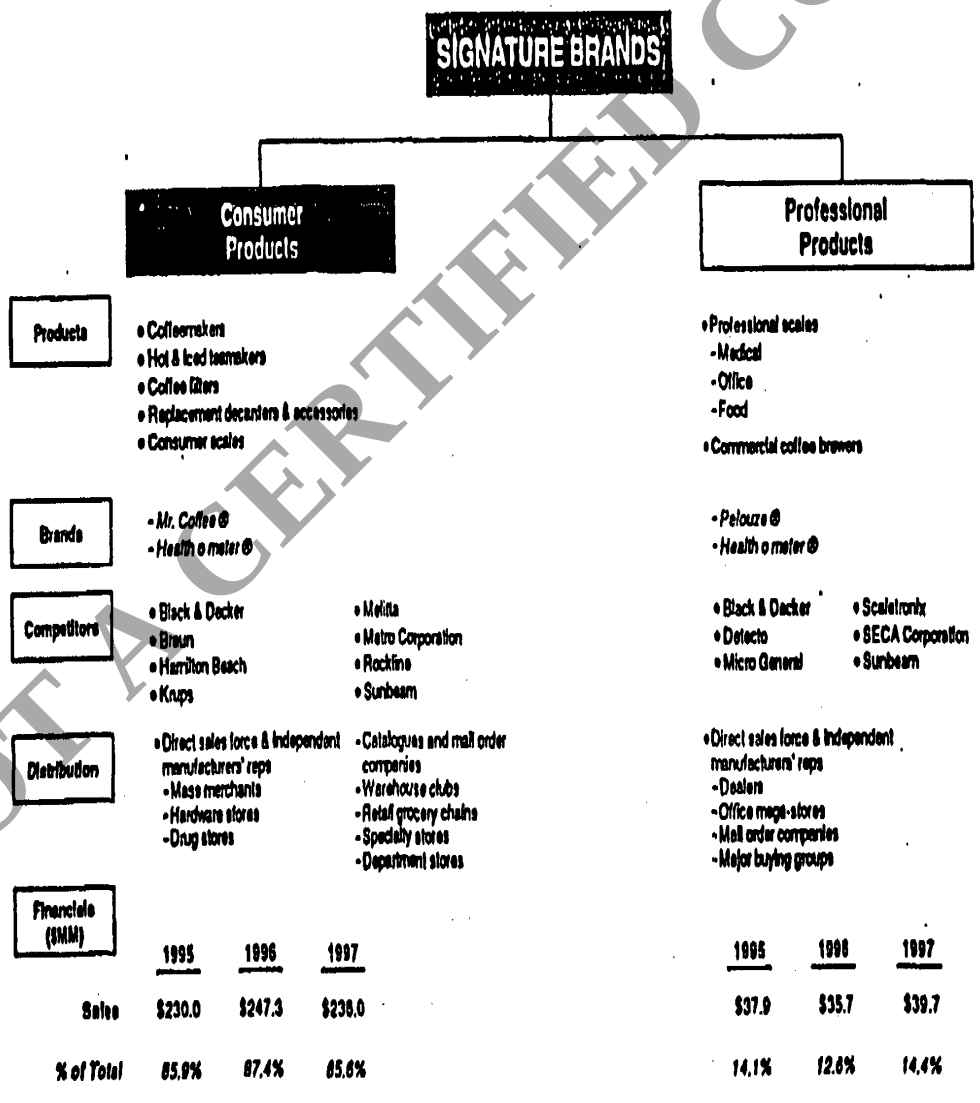
NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL DOCUMENTS

018720

16div-024088

SIGNATURE BRANDS BUSINESS OVERVIEW

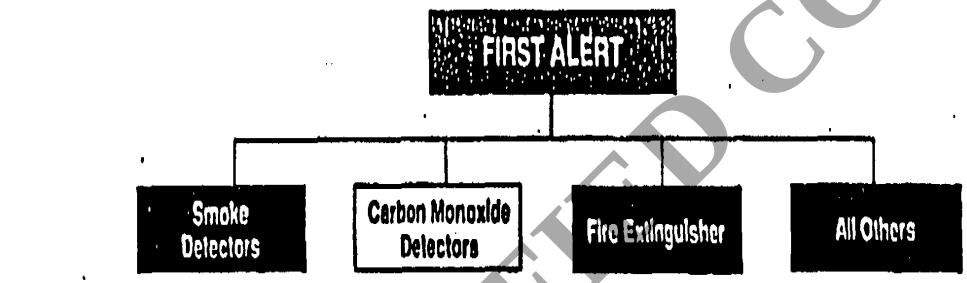


NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL

018721

FIRST ALERT BUSINESS OVERVIEW



	Smoke Detectors	Carbon Monoxide Detectors	Fire Extinguisher	All Others
Description	• Segment includes smoke detectors product line for residential application	• Segment includes carbon monoxide detectors with biometrics sensor	• Segment includes fire extinguishers product line for use in kitchen, garage, workshop, auto, & boat	• Segment includes all other miscellaneous product lines including rechargeable flashlights, electronic timers, nightlights, fire gates and child safety products
Brands	• *First Alert* • *Family Gard* • *BRK*	• *First Alert* • *Family Gard*	• *Sure Grip*	
Market Position	#1 with 75% market share	• #1 with 49% market share	• #2 with 31% market share	• *#4 in flashlight and varies for other products*
Major Competitors	• American Sensors • Fymetics/Kidde • Coleman	• Nighthawk (Kidde) • American Sensor • Jameson	• Kidde with 63% market share	• Black & Decker • Coleman • Eveready
Distribution	• Mass Merchants • Drug Stores • Home Centers	• Mass Merchants • Home Centers • Discount / Dept.	• Mass Merchants • Home Centers	• Mass Merchants • Home Centers
1998 Net Sales:(1)	$76.6MM	$61.1MM	$12.6MM	$19.9MM
% of U.S. Total	45.0%	35.8%	7.5%	11.7%
1997 Net Sales:(1)	$75.7MM	$36.2MM	$15.1MM	$21.8MM
% of U.S. Total	50.9%	24.3%	10.1%	14.7%

Note: (1) Excludes International sales.

MORGAN STANLEY CONFIDENTIAL

NOT A CERTIFIED COPY

018722

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Sunbeam Corporation

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Franklin Mutual Advisers, Inc.	Growth	n/a	0	17,541,398	20.5%	20.5%	2/09/98
Alliance Capital Management L.P.	Growth, Value	173.7	(836,549)	8,621,134	10.1%	30.6%	12/31/97
Columbia Management Company	Growth, Value	10.5	(267,850)	4,137,200	4.8%	35.5%	12/31/97
Fred Alger Management Inc.	Index	6.8	461,800	4,051,748	4.7%	40.2%	12/31/97
Stichharch Management Company, Inc.	n/a	n/a	0	3,589,199	4.2%	44.4%	9/20/96
Alex. Brown Investment Management	Growth	2.9	(36,500)	2,058,300	2.4%	46.8%	9/30/97
New York State Common Retirement Fd.	Index	n/a	2,900	1,544,300	1.8%	48.6%	9/30/97
Ardea Investment Management, Inc.	Growth, Value	11.9	466,800	1,490,800	1.7%	50.3%	12/31/97
Putnam Investment Management	Growth, Value	160.1	20,000	1,412,000	1.7%	52.0%	12/31/97
Strong Capital Management, Inc.	Growth, Value	21.8	146,850	1,404,800	1.6%	53.6%	9/30/97
Smith Barney Investment Advisors	Growth, Value	13.0	65,500	1,299,752	1.5%	55.1%	12/31/97
Columbus Circle Investors	Growth	14.1	(336,500)	1,266,000	1.5%	56.6%	12/31/97
Brown Brothers Harriman & Co.(Asset)	Growth	n/a	91,999	1,233,519	1.4%	58.1%	12/31/97
TIAA-CREF Investment Management Inc.	Growth, Index	69.1	(305,700)	1,115,300	1.3%	59.4%	12/31/97
Valenzuela Capital Partners, Inc.	Growth	0.5	115,500	1,081,600	1.3%	60.6%	12/31/97
Phoenix Investment Counsel, Inc.	Growth, Value	19.9	902,600	1,013,600	1.2%	61.8%	9/30/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	146,747	933,992	1.1%	62.9%	12/31/97
Horie Capital Management	Growth	4.1	(107,950)	918,850	1.1%	64.0%	12/31/97
Founders Asset Management, Inc.	Growth, Value	4.3	339,796	917,121	1.1%	65.1%	9/30/97
Wells Fargo Bank, N.A.	Index	n/a	(159,099)	907,376	1.1%	66.2%	12/31/97
Provident Investment Counsel Inc.	Growth	18.0	(40,000)	871,000	1.0%	67.2%	12/31/97
California State Teachers Retirement	Index	n/a	(40,000)	823,394	1.0%	68.1%	12/31/97
Prudential Mutual Fund Inv. Mgmt.	Value, Growth	66.7	779,500	791,000	0.9%	69.1%	12/31/97
American Express Financial Advisors	Growth, Value, Index	128.0	350,697	769,401	0.9%	70.0%	12/31/97
Nicholas-Applegate Capital Mgmt.	Growth	31.0	(136,383)	735,442	0.9%	70.8%	12/31/97
California Public Employees Retmt.	Growth	n/a	0	723,000	0.8%	71.7%	9/30/97
Eagle Asset Management, Inc.	Growth, Value	2.5	169,160	630,230	0.7%	72.4%	12/31/97
Bankers Trust Company (Inv. Mgmt.)	Index, Growth, Value	n/a	(33,900)	621,700	0.7%	73.1%	12/31/97
Shaw, Wehman, Munoz & Co., Inc.	Value	1.2	(91,625)	613,228	0.7%	73.8%	12/31/97
Cadence Capital Management	Growth	2.0	25,400	567,400	0.7%	74.5%	12/31/97
Onterd Electric Investment Corp.	Growth, Value	n/a	40,330	565,330	0.7%	75.2%	12/31/97
Fidelity Management & Research Co.	Growth, Value, Income	433.8	(943,200)	560,100	0.7%	75.8%	12/31/97
Duncan-Hurst Capital Management	Growth	2.9	(387,600)	530,140	0.6%	76.5%	12/31/97
First Union Nat. Bank/Capital Mgmt.	Index, Value, Growth	54.7	164,711	501,676	0.6%	77.0%	12/31/97
CoreStates Bank, N.A. (PA)	Income	n/a	(82,075)	473,575	0.6%	77.6%	6/30/97
Frank Russell Company	Growth	8.8	252,000	427,600	0.5%	78.1%	9/30/97
Neuberger & Berman, LLC	Value, Growth	42.9	22,273	394,992	0.5%	78.6%	12/31/97
Dean Witter InterCapital Inc.	Growth, Value	2.6	(121,800)	383,000	0.4%	79.0%	12/31/97
ARCO Investment Management Co.	Growth	n/a	113,300	353,300	0.4%	79.4%	12/31/97
Mitchell Hutchins Asset Mgmt., Inc.	Growth	43.8	101,847	340,485	0.4%	79.8%	12/31/97
Top 40 Institutions			741,878	68,223,068	79.8%		
Remaining 139 Institutions			(564,290)	7,001,550	8.2%		
Total Institutional Holdings			177,588	75,224,618	88.0%		
Other Holdings				10,246,382	12.0%		
Total Shares Outstanding				85,471,000	100.0%		

Summary of Latest 13F Reports
21 institutions increased holdings, of which 0 were new investors or first time filers
16 institutions decreased holdings, of which 0 eliminated their positions
3 institutions held their positions.

Index funds representing 16.6% of Total Institutional Shares Outstanding.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL DOCUMENT

018723

16div-024091

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Coleman Co.

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Coleman Holdings	n/a	n/a	0	44,067,520	82.5%	82.5%	3/10/97
Manning & Napier Advisors, Inc.	Value	5.5	101,550	1,551,147	2.9%	85.4%	12/31/97
General Motors Inv. Mgmt. Corp.	n/a	n/a	(30,000)	590,000	1.1%	86.5%	12/31/97
California Public Employees Rtmnt.	Growth	n/a	0	527,600	1.0%	87.5%	9/30/97
Long-Term Capital Portfolio, L.P.	Growth	n/a	292,800	501,800	0.9%	88.4%	12/31/97
Kingdon Capital Management Corp.	Growth	n/a	330,000	470,000	0.8%	89.3%	12/31/97
Keystone Investment Management Co.	Growth, Value	11.8	(5,000)	375,000	0.7%	90.0%	12/31/97
Cadence Capital Management	Growth	3.0	325,000	325,000	0.6%	90.6%	12/31/97
Standard Pacific Capital LLC	Diversified	0.5	78,130	294,920	0.6%	91.2%	12/31/97
STI Capital Management	Growth, Index, Value	11.0	0	279,940	0.5%	91.7%	12/31/97
Luther King Capital Management	Growth, Value	4.9	(50,000)	240,000	0.4%	92.1%	12/31/97
New Jersey Division of Investment	n/a	n/a	(20,000)	206,000	0.4%	92.5%	11/30/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	(35,073)	186,494	0.3%	92.9%	12/31/97
The Florida State Board of Admin.	n/a	n/a	0	180,000	0.3%	93.3%	12/31/97
Mellon Bank, N.A.	Index, Value	25.4	(12,900)	170,360	0.3%	93.6%	12/31/97
The Vanguard Group	Growth, Value, Index	223.7	(37,400)	97,300	0.2%	93.8%	12/31/97
Fondigest S.p.A.	n/a	n/a	93,600	93,600	0.2%	93.9%	6/30/97
AIM Capital Management Inc.	Growth, Value	57.1	46,300	90,000	0.2%	93.9%	12/31/97
Northern Trust Quantitative Advisors	Growth, Value	23.3	(840)	87,460	0.2%	94.1%	12/31/97
Goten and Glenberg, L.L.C.	Growth	3.1	(1,500)	75,000	0.1%	94.2%	12/31/97
Teachers' Retirement System of Texas	Value	n/a	(25,000)	75,000	0.1%	94.4%	9/30/97
LaSalle National Bank	n/a	n/a	5,700	67,900	0.1%	94.5%	12/31/97
World Asset Management	Index	9.9	0	58,100	0.1%	94.6%	9/30/97
Donaldson Lufkin & Jenrette, Inc.	n/a	n/a	58,000	58,000	0.1%	94.7%	9/30/97
SEA Associates	Value	31.3	(7,100)	49,300	0.1%	94.8%	12/31/97
TIAA-CREF Investment Management Inc.	Growth, Index	63.3	(7,300)	47,400	0.1%	94.9%	12/31/97
First Investors Management Co., Inc.	Growth	4.1	42,400	42,400	0.1%	95.0%	9/30/97
Neville, Rodie & Shaw, Inc.	Diversified	n/a	(5,800)	33,650	0.1%	95.1%	12/31/97
Grantham, Mayo, van Otterloo LLC	Growth, Value, Quant.	21.8	4,400	34,100	0.1%	95.1%	12/31/97
State Street Bank and Tr. Co. Boston	Growth, Value	232.4	1,098	32,886	0.1%	95.2%	12/31/97
Smith Barney Investment Advisors	Growth, Value	13.0	3,800	31,705	0.1%	95.2%	12/31/97
Charles Schwab Investment Management	n/a	n/a	2,400	27,900	0.1%	95.3%	9/30/97
Scottish Mutual Investment Managers	n/a	n/a	24,500	24,500	0.0%	95.3%	3/31/97
First Asset Management	Index, Value	34.0	0	19,022	0.0%	95.4%	12/31/97
Legg Mason Wood Walker, Inc.	Value	n/a	1,600	17,400	0.0%	95.4%	9/30/97
Comerica Bank - Detroit	Growth	n/a	0	15,000	0.0%	95.4%	9/30/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	14,800	14,800	0.0%	95.5%	12/31/97
Bankers Trust Company (Invt. Mgmt.)	Index, Growth, Value	n/a	0	13,900	0.0%	95.5%	12/31/97
Morgan Stanley Asset Management Inc.	Growth, Value	66.7	0	13,076	0.0%	95.5%	12/31/97
Montgomery Asset Management, LLC	Growth, Value	7.2	10,000	10,000	0.0%	95.5%	9/30/97
Top 40 Institutions			1,209,510	51,038,260	95.5%		
Remaining 18 Institutions			(1,190,339)	31,628	0.1%		
Total Institutional Holdings			19,211	51,069,888	95.6%		
Other Holdings				2,355,112	4.4%		
Total Shares Outstanding				53,425,000	100.0%		

Summary of Latest 13F Reports
18 Institutions increased holdings, of which 7 were new investors or first time filers
13 Institutions decreased holdings, of which 8 eliminated their positions
9 Institutions held their positions.

Index funds representing 1.7% of Total Institutional Shares Outstanding.

MORGAN STANLEY CONFIDENTIAL 0000538

NOT CERTIFIED COPY

018724

16div-024092

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for First Alert

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Thomas H. Lee	Value, Growth	2.9	0	12,664,490	52.4%	52.4%	12/31/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	2,500	1,083,200	4.5%	56.8%	12/31/97
Heartland Advisors Inc.	Growth, Value	2.7	0	750,000	3.1%	59.9%	12/31/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	850	463,582	1.9%	61.9%	12/31/97
TIAA-CREF Investment Management Inc.	Growth, Index	63.3	0	260,700	1.1%	62.9%	12/31/97
New Jersey Division of Investment	n/a	n/a	0	250,000	1.0%	64.0%	11/30/97
The Vanguard Group	Growth, Value, Index	223.7	7,500	91,600	0.4%	64.4%	12/31/97
UMB Investment Advisors	Growth	9.8	(4,700)	77,600	0.3%	64.7%	12/31/97
California Public Employees Rtmt.	Growth	n/a	(125,800)	55,200	0.2%	64.9%	9/30/97
Mellon Bank, N.A.	Index, Value	25.4	(7,000)	45,400	0.2%	65.1%	12/31/97
Smith Barney Investment Advisors	Growth, Value	13.0	28,820	34,292	0.1%	65.2%	12/31/97
Northern Trust Quantitative Advisors	Growth, Value	23.5	0	31,000	0.1%	65.4%	12/31/97
World Asset Management	Index	9.9	0	20,700	0.1%	65.4%	9/30/97
AFA Financial Inc.	Value, Income	0.2	(5,600)	15,900	0.1%	65.5%	9/30/97
Maverick Capital, Ltd.	n/a	n/a	0	15,700	0.1%	65.6%	12/31/97
Dawson-Samberg Capital Mgmt. Inc.	Growth	2.4	0	10,000	0.0%	65.6%	12/31/97
Investments Technology, Inc.	n/a	n/a	0	6,400	0.0%	65.6%	9/30/97
American National Bk & Tr (Chicago)	Index	n/a	0	1,000	0.0%	65.7%	9/30/97
Fleet Investment Advisors (Mass)	Growth, Income, Index	42.2	0	50	0.0%	65.7%	9/30/97
Wells Fargo Bank, N.A.	Index	n/a	(500)	0	0.0%	65.7%	12/31/97
Top 20 Institutions			(103,930)	15,876,814	65.7%		
Remaining 0 Institutions			0	0	0.0%		
Total Institutional Holdings			(103,930)	15,876,814	65.7%		
Other Holdings				8,306,186	34.3%		
Total Shares Outstanding				24,183,000	100.0%		

Summary of Latest 13F Reports
4 Institutions increased holdings, of which 0 were new investors or first time filers
5 Institutions decreased holdings, of which 1 eliminated their positions
11 Institutions held their positions.

Index funds representing 12.4% of Total Institutional Shares Outstanding.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000640

-30-

018725

SUNBEAM CORPORATION

Analysis of Institutional Shareholdings for Signature Brands

Institution	Equity Orientation	Total Assets Under Management	Change	Current Holdings	%TSO	Cumulative %TSO	Report Date
Thomas H. Lee	Value, Growth	2.9	0	3,381,256	37.2%	37.2%	12/31/97
Dimensional Fund Advisors, Inc.	Index, Value	13.2	0	490,900	5.4%	42.6%	12/31/97
Barclays Global Investors, N.A.	Growth, Value, Index, Quant.	n/a	(508)	154,381	1.7%	44.3%	12/31/97
Mellon Bank, N.A.	Index, Value	25.4	(4,300)	25,600	0.3%	44.6%	12/31/97
PNC Bank, N.A. (Invt. Mgmt.)	Growth, Income	n/a	0	10,000	0.1%	44.7%	12/31/97
Northern Trust Quantitative Advisors	Growth, Value	23.5	(3,400)	1,700	0.0%	44.7%	12/31/97
The Benchmark Company	n/a	n/a	(10,000)	0	0.0%	44.7%	12/31/97
Top 7 Institutions			(18,208)	4,063,837	44.7%		
Remaining 0 Institutions			0	0	0.0%		
Total Institutional Holdings			(18,208)	4,063,837	44.7%		
Other Holdings				5,018,163	55.3%		
Total Shares Outstanding				9,082,000	100.0%		

Summary of Latest 13F Reports
0 Institutions increased holdings, of which 0 were new investors or first time filers
4 Institutions decreased holdings, of which 1 eliminated their positions
3 Institutions held their positions.

Index funds representing 16.5% of Total Institutional Shares Outstanding.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000641

018726

16div-024094

DAILY STOCK PRICE RECORI

NEW YORK STOCK EXCHANGE

NYSE

1998

JANUARY-FEBRUARY-MARCH

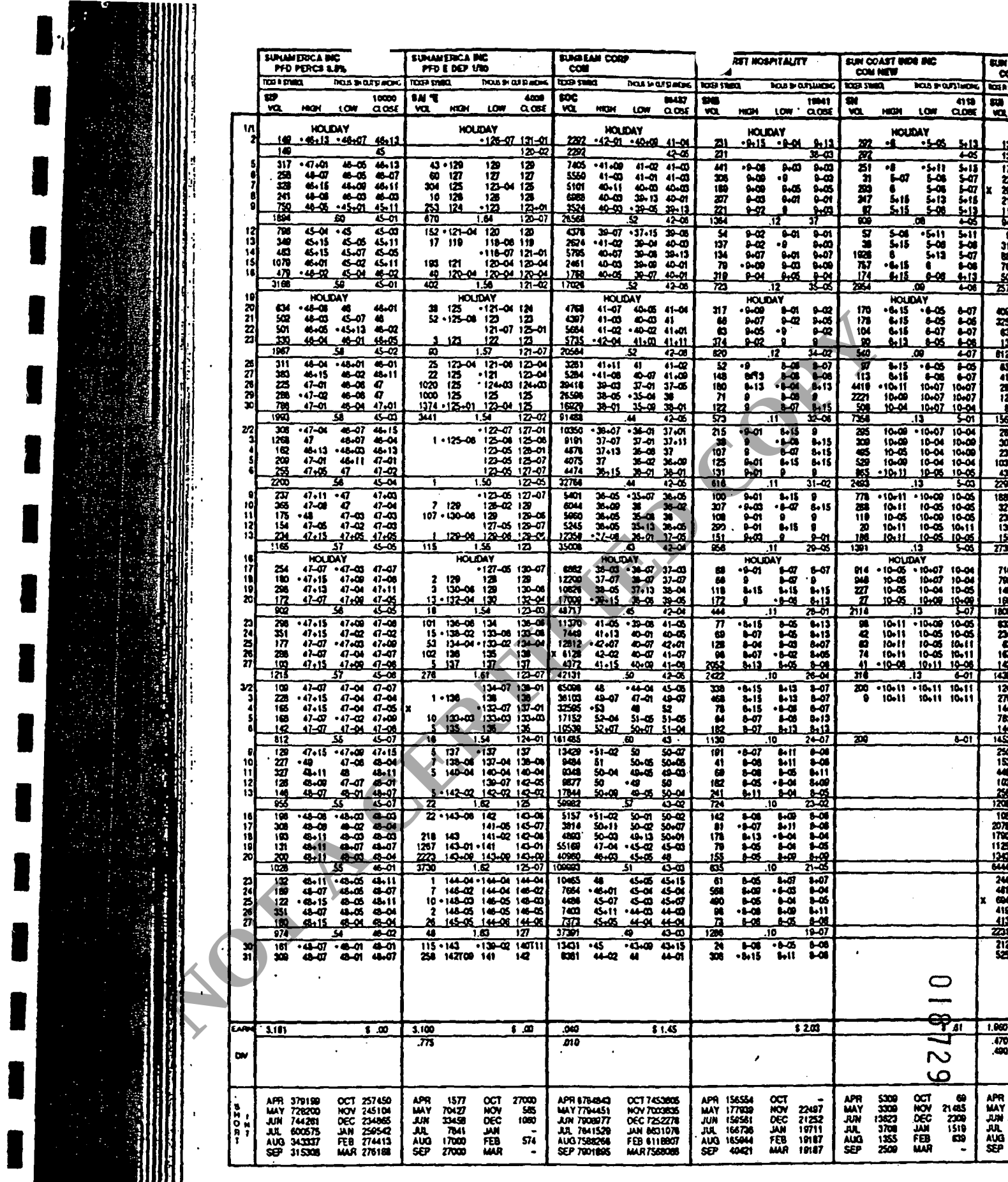
018728

NOT A CERTIFIED COPY

PLAINTIFF'S EXHIBIT
CPH 24
1-8-04

Standard & Poor's
A Division of The McGraw-Hill Companies
25 Broadway, New York, NY 10004

Copyright © 1998 The McGraw-Hill Companies. All rights reserved



SUNAMERICA INC PFD PERCS 8.5%
TICKER SYMBOL — TH'OUS SH OUTSTANDING
SIP — 10000
VOL | HIGH | LOW | CLOSE

	VOL	HIGH	LOW	CLOSE
1/1	HOLIDAY			
2	169	46+13	46+07	46+13
	169			45
5	317	47+01	46-05	46+13
6	258	46-07	46-05	46-07
7	328	46+15	46+09	46+11
8	241	46-08	46-03	46-03
9	750	46-05	45+01	45+11
	1894		.50	45-01
12	798	45-04	45	45-03
13	348	45+15	45-05	45+11
14	483	45+15	45-07	45-05
15	1070	46+01	45-02	45+11
16	479	46-02	45-04	46-02
	3188		.50	45-01
19	HOLIDAY			
20	634	46-08	46	46+01
21	502	46-03	45-07	46
22	501	46+05	45+13	46-02
23	330	46-04	46-01	46+05
	1967		.58	45-02
26	311	46-04	46+01	46-01
27	383	46+15	46-02	46+11
28	225	47-01	46-08	47
29	288	47-02	46-08	47
30	788	47-01	46-04	47+01
	1993		.58	45-03
2/2	308	47-04	46-07	46+15
3	1268	47	46+07	46-04
4	162	46+13	46+03	46+13
5	209	47-01	46+11	47-01
6	255	47+05	47	47-02
	2200		.56	45-04
9	237	47+11	47	47+03
10	365	47-08	47	47-04
11	175	48	47-03	47-03
12	154	47-05	47-02	47-03
13	224	47+15	47+05	47+05
	1165		.57	45-05
16	HOLIDAY			
17	254	47-07	47-03	47-07
18	180	47+15	47+09	47-08
19	286	47+13	47-04	47+11
20	172	47-07	47+08	47-05
	902		.56	45-05
23	298	47+15	47+09	47-08
24	351	47+15	47-02	47-02
25	177	47-07	47+03	47+09
26	288	47-07	47-04	47-07
27	100	47+15	47+09	47-08
	1215		.57	45-08
3/2	109	47-07	47-04	47-07
3	228	47+15	47-04	47-04
4	165	47+15	47-04	47-05
5	168	47-07	47-02	47+09
6	162	47-07	47-04	47-08
	812		.56	45-07
9	128	47+15	47+09	47+15
10	227	48	47-08	48-04
11	327	48+11	48	48+11
12	128	48+08	47-07	48-01
13	146	48-07	48-01	48-07
	956		.55	45-07
16	198	48-08	48+03	48-03
17	308	48-08	48-02	48-04
18	193	48+11	48-03	48-03
19	131	48+11	48-07	48-07
20	200	49+11	48-08	48-04
	1028		.55	46-01
23	192	48+11	48+05	48+11
24	189	48-07	48+05	48-07
25	122	48+15	48-05	48+11
26	351	48-07	48+05	48-04
27	180	48+15	48-04	48-04
	974		.54	46-02
30	161	48-07	48-01	48-01
31	309	48-07	48-01	48+07
EARN	3.181			$ .00
DIV				
SHORT	APR 378199	OCT 257450		
	MAY 728200	NOV 245104		
	JUN 744281	DEC 234865		
	JUL 600575	JAN 250542		
	AUG 343337	FEB 274413		
	SEP 315308	MAR 276188		

SUNAMERICA INC PFD E DEP 1/10
TICKER SYMBOL — TH'OUS SH OUTSTANDING
SAI PE — 4000
VOL | HIGH | LOW | CLOSE

	VOL	HIGH	LOW	CLOSE
1/1	HOLIDAY			
2			+126-07	121-01
				120-02
5	43	+129	129	129
6	60	127	127	127
7	304	125	123-04	126
8	10	126	126	126
9	253	124	+123	123+01
	670		1.64	120-07
12	152	+121-04	120	120
13	17	119	118-08	119
14			+118-07	121-01
15	183	121	120-04	120-04
16	46	120-04	120-04	120-04
	402		1.56	121-02
19	HOLIDAY			
20	38	125	+121-04	124
21	52	+125-08	123	123
22			121-07	125-01
23	3	123	122	123
	80		1.57	121-07
26	25	123-04	121-08	123-04
27	22	125	+121	123-04
28	1020	125	+124+03	124+03
29	1000	125	125	125
30	1374	+125-01	123-04	125
	3441		1.54	122-02
2/2			+122-07	127-01
3	1	+125-08	125-08	125-08
4			123-05	128-01
5			123-05	125-07
6			123-05	127-07
	1		1.50	122-05
9			+123-05	127-07
10	7	129	128-02	129
11	107	+130-08	129	129-08
12			127-05	129-07
13	1	129-08	129-08	129-07
	115		1.56	123
16	HOLIDAY			
17			+127-05	130-07
18	2	129	128	128
19	3	130-08	128	130-08
20	13	+132-04	130	132-04
	18		1.54	123-00
23	101	136-08	134	136-08
24	15	+138-02	133-08	133-08
25	53	134-04	+132-02	134-04
26	102	136	135	136
27	5	137	137	137
	278		1.61	122-07
3/2			134-07	138-01
3	1	+136	136	136
4			+132-07	137-01
5	10	133+03	133+03	133+03
6	5	135	135	135
	18		1.54	124-01
9	5	137	+137	137
10	7	138-08	137-04	138-08
11	5	140-04	140-04	140-04
12			139-07	142-05
13	5	+142-02	142-02	142-02
	22		1.62	125
16	22	+143-08	142	143-08
17			141-05	145-07
18	218	143	141-02	142-08
19	1267	143-01	+141	143-01
20	2223	143-09	143-09	143-09
	3730		1.62	125-07
23	1	144-04	+144-04	144-04
24	7	146-02	144-04	146-02
25	10	+148-03	146-05	148-03
26	2	148-05	146-05	146-05
27	26	145-05	144-06	144-06
	48		1.63	127
30	115	+143	+139-02	140T11
31	258	142T09	141	142
EARN	3.100			$ .00
DIV	.775			
SHORT	APR 1577	OCT 27000		
	MAY 70427	NOV 585		
	JUN 33458	DEC 1080		
	JUL 7841	JAN -		
	AUG 17000	FEB 574		
	SEP 27000	MAR -		

SUNBEAM CORP COM
TICKER SYMBOL — TH'OUS SH OUTSTANDING
SOC — 86437
VOL | HIGH | LOW | CLOSE

	VOL	HIGH	LOW	CLOSE
1/1	HOLIDAY			
2	2292	+42-01	+40+09	41-04
	2292			42-05
5	7405	+41+09	41-02	41-03
6	5550	41-03	41-01	41-03
7	5101	40+11	40+03	40+03
8	6988	40-03	39+13	40-01
9	3524	40-03	+39-05	39+13
	26568		.52	42-08
12	4378	39-07	+37+15	39-08
13	2624	+41-02	39-04	40-03
14	5795	40+07	39-08	39+13
15	2461	40-03	39-08	40-01
16	1788	40+05	39-07	40-01
	17026		.52	42-08
19	HOLIDAY			
20	4768	41-07	40+05	41-04
21	4397	41-03	40-03	41
22	5684	41-02	+40-02	41+01
23	5735	+42-04	41+03	41+11
	20584		.52	42-08
26	3281	41+11	41	41-02
27	5284	+41-08	40-07	41+09
28	39418	39-03	37-01	37-05
29	26596	38-05	+35-04	38
30	16929	39-01	35-08	38-01
	91488		.44	42-05
2/2	10350	+38+07	+36-01	37+01
3	9191	37-07	37-01	37+11
4	4578	37+13	36-08	37
5	4075	37	36-02	36+09
6	4474	36+15	36-01	36-01
	32764		.44	42-05
9	5401	36-05	+35+07	36+05
10	6044	36+09	36	36-02
11	5060	36+05	35-08	36
12	5245	36+05	35+13	36+05
13	12069	+37-08	36-01	37-05
	35008		.43	42-04
16	HOLIDAY			
17	6882	38-03	+38-07	37-03
18	12200	37-07	38-07	37-07
19	10824	38-05	37+13	38-04
20	17008	+39+15	39-05	39-05
	48717		.45	42-04
23	11370	41-05	+39-08	41-05
24	7449	41+13	40-01	40-05
25	12812	+42+07	40-07	42+01
26	x 6128	42-02	40-07	41-07
27	4372	41+15	40+09	41-08
	42131		.50	42-05
3/2	65098	48	+44-04	45-05
3	38103	49-07	47-01	49-07
4	32565	+53	48	52
5	17152	52-04	51-05	51-05
6	10539	52+07	50-07	51-04
	161485		.60	43 -
9	13429	+51-02	50	50-07
10	9484	51	50+05	50+05
11	8348	50-04	49-05	49-08
12	9877	50	+49	50
13	17844	50+09	49-05	50-04
	59982		.57	43-02
16	5157	+51-02	50-01	50-02
17	3914	50+11	50-02	50+07
18	4893	50-03	49+13	50+01
19	55188	47-04	+45-02	45-08
20	40960	46-03	45-05	46
	109883		.51	43-03
23	10465	48	45+05	45+15
24	7664	+46+01	45-04	45-04
25	4686	45-07	45-03	45+07
26	7403	45+11	+44-03	44-08
27	7373	45+05	44-04	44-04
	37391		.49	43-00
30	13431	+45	+43+09	43+15
31	8381	44-02	44	44-01
EARN	.040			$ 1.45
DIV	.010			
SHORT	APR 6784843	OCT 7453805		
	MAY 7794451	NOV 7003835		
	JUN 7908977	DEC 7252278		
	JUL 7841529	JAN 8031078		
	AUG 7588268	FEB 6118807		
	SEP 7901895	MAR 7568088		

[illegible] HOSPITALITY
TICKER SYMBOL — TH'OUS SH OUTSTANDING
SNB — 19941
VOL | HIGH | LOW | CLOSE

	VOL	HIGH	LOW	CLOSE
1/1	HOLIDAY			
2	231	+9+15	+9-04	9+13
	231			38-03
5	441	+9-08	9+03	9+03
6	306	9+09	+9	9-03
7	189	9+09	9+05	9+05
8	297	9-03	9+01	9-01
9	221	9-02	9	9-03
	1364		.12	37
12	54	9-02	9-01	9-01
13	137	9-02	+9	9-03
14	134	9+07	9+01	9-01
15	79	+9+09	9-03	9+09
16	219	9-04	9+05	9-02
	723		.12	35-05
19	HOLIDAY			
20	317	+9+09	9-01	9-02
21	68	9+07	9-02	9+05
22	83	9+05	+9	9-02
23	374	9-02	9	9
	820		.12	34-02
26	52	+9	9-08	9-07
27	148	8T13	9-08	9-08
28	180	9+13	+9-04	9+13
29	71	9	9-08	9
30	122	9	9-07	9+15
	573		.11	32-06
2/2	215	+9-01	9+15	9
3	38	9	+9-08	9+15
4	107	9	9-07	9+15
5	125	9-01	9+15	9+15
6	131	9-01	9	9
	616		.11	31-02
9	100	9-01	9+15	9
10	307	+9-03	+9-07	9+15
11	108	9-01	9	9
12	290	9-01	9+15	9
13	151	9-03	9	9-01
	956		.11	29-05
16	HOLIDAY			
17	88	+9-01	9-07	9-07
18	68	9	9-07	9
19	118	9+15	9+15	9+15
20	172	9	+9-08	9+13
	444		.11	29-01
23	77	+9+15	9-05	9+13
24	69	9-07	9-05	9+13
25	128	9-04	9-03	9-07
26	96	9-07	+9-02	9+05
27	2052	9+13	9-05	9-08
	2422		.10	26-04
3/2	338	+9+15	9+13	9-07
3	468	9+15	9+13	9-07
4	78	9+15	+9-08	9-07
5	84	9-07	9-08	9+13
6	182	9-07	9+13	9+13
	1130		.10	24-07
9	191	+9-07	9+11	9-08
10	41	9-08	9+11	9-08
11	68	9-08	9-05	9+11
12	182	9-05	+9-04	9+09
13	241	9+11	9-04	9-05
	724		.10	23-02
16	142	9-08	9+09	9-08
17	89	+9-07	9+11	9-08
18	178	9+13	+9-04	9-04
19	78	9-05	9-04	9-05
20	155	9-05	9-09	9+09
	635		.10	21-05
23	61	9-05	9-07	9+07
24	568	9+09	+9-03	9-04
25	490	9-05	9-04	9-05
26	98	+9-08	9-09	9+11
27	73	9-08	9-05	9-08
	1286		.10	19-07
30	26	9-08	+9-05	9-08
31	308	+9+15	9+11	9-08
EARN				$ 2.03
DIV				
SHORT	APR 156554	OCT -		
	MAY 177039	NOV 22497		
	JUN 156581	DEC 21252		
	JUL 166736	JAN 19711		
	AUG 165944	FEB 19187		
	SEP 40421	MAR 19187		

SUN COAST INDS INC COM NEW
TICKER SYMBOL — TH'OUS SH OUTSTANDING
SN — 4119
VOL | HIGH | LOW | CLOSE

	VOL	HIGH	LOW	CLOSE
1/1	HOLIDAY			
2	292	+8	+5-05	5+13
	292			4-05
5	251	+8	+5+11	5+13
6	31	5-07	5-08	5-07
7	283	8	5-08	5-07
8	247	5+15	5+13	5+15
9	97	5+15	5-08	5+13
	909		.08	4-08
12	57	5-08	+5+11	5+11
13	38	5+15	5-08	5-08
14	1928	8	5+13	5-07
15	767	+8+15	8	8-08
16	174	8+15	8-08	8+13
	2964		.08	4-08
19	HOLIDAY			
20	170	+8+15	+8-05	8-07
21	178	8+15	8-05	8-08
22	104	8+15	8-07	8-07
23	90	8+13	8-05	8-08
	540		.09	4-07
26	97	8+15	+8-05	8-05
27	113	8+15	8-08	8-07
28	4419	+10+11	10+07	10+07
29	2221	10+09	10+07	10+07
30	508	10-04	10+07	10-04
	7358		.13	5-01
2/2	295	10+09	+10+07	10-04
3	309	10+09	10-04	10+09
4	485	10-05	10-04	10+09
5	529	10+09	10-04	10-04
6	865	+10+11	10-05	10-05
	2483		.13	5-03
9	778	+10+11	+10+09	10-05
10	288	10+11	10-05	10-05
11	119	10-05	10+09	10-05
12	20	10+11	10-05	10+11
13	188	10+11	10-05	10-05
	1391		.13	5-05
16	HOLIDAY			
17	814	+10-05	+10+07	10-04
18	948	10-05	10+07	10-04
19	327	10-05	10-04	10-05
20	77	10-05	10+09	10-08
	2114		.13	5-07
23	98	10+11	+10+09	10-05
24	62	10+11	10-05	10+11
25	83	10+11	10-05	10+11
26	74	10+11	10-05	10+11
27	41	+10-08	10+11	10-08
	318		.13	8-01
3/2	200	+10+11	+10+11	10+11
3	9	10+11	10+11	10+11

DAILY STOCK PRICE RECORD

NEW YORK STOCK EXCHANGE

1998

APRIL-MAY-JUNE

NOT A CERTIFIED COPY

018730

Standard & Poor's

A Division of The McGraw-Hill Companies

25 Broadway, New York, NY 10004

Copyright © 1998 The McGraw-Hill Companies. All rights reserved.

SUNAMERICA CAP TR B TOPRS

TICKER SYMBOL: SAI 'V — THOUS $ OUTSTANDING: 7000

	VOL	HIGH	LOW	CLOSE
4/1	33	25-11	25-09	25-09
2	24	25-05	25-09	25-09
3	35	25-05	25-04	25-04
	92		25	25-07
6	94	25-05	25-04	25-05
7	36	25-05	25-09	25-09
8	30	25-11	25-09	25-05
9	47	25-11	25-09	25-09
10		HOLIDAY		
	207		28	25-07
13	190	25-11	25-09	25-09
14	67	25-05	25-09	25-05
15	16	25-11	25-05	25-11
16	47	25-11	25-05	25-05
17	78	25-08	25-05	25-06
	398		28	25-07
20	73	25-08	25-11	25-06
21	43	25-06	25-05	25-05
22	28	25-06	25-05	25-11
23	99	25-08	25-05	25-05
24	109	25-08	25-05	25-11
	350		28	25-07
27	174	25-11	25-09	25-05
28	88	25-05	25-09	25-05
29	49	25-05	25-09	25-09
30	42	25-11	25-05	25-05
5/1	12	25-05	25-05	25-05
	365		28	25-07
4	20	25-05	25-09	25-05
5	80	25-11	25-09	25-05
6	43	25-06	25-05	25-06
7	88	25-08	25-05	25-05
8	69	25-11	25-05	25-05
	298		29	25-07
11	25	25-06	25-05	25-11
12	62	25-08	25-05	25-05
13	83	25-08	25-05	25-11
14	22	25-06	25-11	25-11
15	28	25-08	25-11	25-11
	220		28	25-07
18	80	25-06	25-05	25-05
19	52	25-11	25-05	25-11
20	138	25-06	25-05	25-11
21	135	25-08	25-05	25-11
22	82	25-11	25-05	25-11
	467		28	25-07
25		HOLIDAY		
26	37	25-06	25-05	25-05
27	51	25-05	25-05	25-05
28	33	25-11	25-05	25-05
29	342	25-06	25-05	25-11
	463		29	25-07
6/1	12	25-11	25-11	25-11
2	48	25-07	25-06	25-13
3	33	25-07	25-13	25-07
4	18	25-07	25-13	25-07
5	54	25-15	25-13	25-13
	175		29	25-07
8	27	25-15	25-13	25-13
9	37	25-15	25-13	25-07
10	138	25-15	25-13	25-07
11	88	26	25-07	25-07
12	44	25-15	25-13	25-07
	334		29	25-07
15	139	26	25-07	25561
16	85	26-01	25-15	25-15
17	105	26-01	26	26-01
18	58	26-01	26	26
19	38	26-01	26	26-01
	426		30	25-07
22	60	26-01	26-01	26-01
23	77	26-01	26-01	26-01
24	59	26-03	26-01	26-03
25	74	25-11	25-09	25-09
26	51	25-11	25-09	25-05
	321		29	25-07
29	39	25-11	25-09	25-11
30	58	25-11	25-09	25-05

EARN: 2.088 — $ .00
DIV: .522

JAN	626			
FEB	398			
MAR	2691			
APR	417			
MAY	1015			
JUN	8102			
JUL	1961	JAN	400	
AUG	700	FEB	2804	
SEP	262	MAR	6571	
OCT	650	APR	3489	
NOV	4940	MAY	2373	
DEC	600	JUN	2695	

SUNAMERICA INC COM

TICKER SYMBOL: SAI — THOUS $ OUTSTANDING: 179118

	VOL	HIGH	LOW	CLOSE
4/1	2629	48	47-03	47-09
2	4069	49-11	48-03	49-07
3	4475	50-09	49-03	50-01
	11173		56	41-02
6	6984	52	50-03	51-03
7	12589	53-05	51-01	51-04
8	5661	51-13	49-05	50-04
9	7292	51-11	50-01	51-11
10		HOLIDAY		
	32626		57	41-07
13	5753	53-02	51-04	52-07
14	5871	54-02	53-03	53-06
15	8445	56	53-07	54-01
16	3738	53-08	52-01	52-03
17	4819	52-07	51	52-07
	26626		58	42-02
20	5017	52-05	51-07	52-07
21	6934	53-06	51-03	51-09
22	5472	52-11	51-04	51-06
23	2763	52-02	51-01	51-01
24	7772	51-03	49-04	50
	27908		56	42-06
27	9999	49-01	46-06	48-01
28	10015	48-09	46-09	46-11
29	5240	48	46-13	47-15
30	7152	50-01	48-04	49-15
5/1	4822	50-04	49	50-04
	37228		55	43-01
4	3644	51-03	49-13	49-13
5	3090	49-15	48-13	49
6	2802	49-02	48-01	48-03
7	6608	48-02	47-04	48-01
8	6935	49-01	48-01	49-01
	23079		54	43-03
11	4738	49-01	47-07	47-07
12	4655	49	47-07	49
13	3193	49-01	48-03	48-15
14	5078	49-01	48-03	48-07
15	3039	49-01	48-01	48-04
	20203		53	43-06
18	2742	48-03	47-02	47-11
19	3876	48-11	47-06	48-09
20	4909	50-05	48-07	50-05
21	3433	50-03	49-02	49-03
22	2415	49-05	49	49-01
	17375		54	44
25		HOLIDAY		
26	2586	49-09	48-01	48-03
27	5810	48-01	47	47-08
28	2447	48-05	47-13	48
29	3179	49-03	48-01	48-05
	14023		54	44-04
6/1	4273	49-13	48-03	49-05
2	10842	51-07	50	51-07
3	4311	52-03	50-02	50-09
4	3669	51-07	50-05	51-13
5	6339	53-03	51-09	53-01
	29434		58	44-07
8	8228	53-05	52-07	53-09
9	5220	55	53-03	54-07
10	8738	55-02	54-03	54-03
11	6557	54-05	52-08	53
12	6364	53-07	51-04	53-07
	35107		60	45-03
15	4824	53-05	52-05	52-05
16	6982	53-01	51-13	52-03
17	8256	54-04	52-03	54-04
18	4537	56-05	54-05	54-15
19	3687	56-02	56-02	56-04
	28385		62	45-07
22	6168	56-07	55-06	56-01
23	5695	57-05	56-03	56-06
24	7222	57-04	56-02	57-04
25	4248	57-11	55-13	56-03
26	3571	56-04	55-05	55-15
	27104		63	46-03
29	4329	57-07	56-09	57-09
30	2980	58	57-06	57-07

EARN: .400 — $ 2.21
DIV: .100

JUL	9299008	JAN	48862	
AUG	146661	FEB	9925509	
SEP	3298	MAR	543784	
OCT	9943884	APR	1243147	
NOV	9873985	MAY	678686	
DEC	917877	JUN	2016431	

SUNAMERICA INC PFD PERCS 8.5%

TICKER SYMBOL: SIP — THOUS $ OUTSTANDING: 10000

	VOL	HIGH	LOW	CLOSE
	150	48-11	48-03	48-05
	223	48-07	48-07	48-05
	244	49	48-11	48-06
	617		54	46-03
	170	49	48-06	48-06
	230	49	48-11	48-07
	199	48-15	48-05	48-05
	198	49-01	48-01	48-06
		HOLIDAY		
	797		54	46-04
	201	49-03	48-05	49-01
	285	49-02	49	49-01
	358	49-07	49-01	49-05
	302	49-05	48-15	49
	120	49-03	48-13	49
	1266		54	46-05
	233	49-03	48-13	49
	3467	49-02	48-15	49-01
	677	47-02	46-06	47-01
	305	49-07	49-01	48-05
	208	49-05	49-01	49-01
	198	49-03	49-01	49-01
	1067		54	46-06
X	4891	47-05	47-01	47-01
	1890	47-03	46-11	46-07
	677	47-02	46-06	47-01
	4512	47-05	46-13	47-05
	752	48	47-03	47-05
	12722		52	46-07
	254	47-04	47-03	47-04
	223	47-05	47-03	47-02
	241	47-04	47-03	47-03
	149	47-07	46-08	46-13
	178	47-07	47	47-02
	1043		52	46-07
	1272	47-05	46-08	47
	2139	47-01	46-08	47-01
	188	47-03	46-07	47-01
	1484	47-03	46-15	47-01
	228	47-04	47	47
	5309		51	46-07
	189	47-03	46-07	46-15
	166	47-02	46-07	47-01
	333	47-03	46-07	47-03
	192	47-01	46-15	47
	213	47-03	46-05	46-15
	1093		51	46-07
	468	46-15	46	46-11
	778	46-11	46-07	46-11
	698	47-01	46-02	46-07
	316	47	46-11	47
	2260		52	47
	234	47-03	46-13	47-03
	699	47-05	47-01	47-02
	255	47-04	47-01	47-03
	1603	47-07	47	47-07
	168	47-13	47-01	47-08
	2940		55	47-01
	245	47-05	47-05	47-03
	420	47-15	47-08	47-04
	144	47-13	47-04	47-08
	142	47-15	47-07	47-13
	373	47-15	47	47-13
	1324		54	47-02
	141	47-13	47-05	47-11
	365	47-15	47	47-03
	343	47-11	47-02	47-04
	531	47-04	47-03	47-04
	339	47-05	47-04	47-05
	1719		54	47-02
	328	47-07	47-05	47-06
	173	47-07	47-05	47-13
	190	47-11	47-04	47-05
	311	47-11	47-07	47-09
	306	47-11	47-03	47-05
	1308		53	47-03
	184	47-13	47-07	47-08
	256	48	47-05	48

EARN: 3.184 — $ .00
DIV: 1.592

JUL	600675	JAN	258542	
AUG	343337	FEB	274413	
SEP	315309	MAR	278188	
OCT	257450	APR	256088	
NOV	245104	MAY	159827	
DEC	234865	JUN	170559	

SUNAMERICA INC PFD E DEP 1/50

TICKER SYMBOL: SAI 'E — THOUS $ OUTSTANDING: 4000

	VOL	HIGH	LOW	CLOSE
	245	141-01	141	141
	19	145-02	142-06	143-09
	1037	147-06	144	147-06
	1301		1.60	128
	4	150-02	149-02	150-02
	26	152-07	149-03	152
	14	151	149-02	149-02
	11	150	146-04	150
		HOLIDAY		
	55		1.67	129-02
	7	153-04	151-06	153-04
	2	156-04	156-02	156-04
	7	156	157-02	156
	5	156-02	156	156
	17	154-02	151-04	152-04
	38		1.72	130-03
			150-03	154-06
	1112	153	152	152
			149-07	154-01
	1	151	151	151
	2	149-02	149	149
	1115		1.65	131-03
	238	147-02	141	144
	118	144	141-02	141-02
			139-01	143-03
	19	146	143	146
	3	149	147-04	149
	376		1.61	132
			146-07	151-01
	3	147-02	146-04	146-04
	12	145-06	145	145
			142-07	147-01
			142-07	147-01
	15		1.64	132-06
	2	143-02	143-02	143-02
			141-01	145-01
	13	144	141-06	144
			141-07	146-01
	1	145-02	145-02	145-02
	16		1.59	133-04
	5	143-04	143-02	143-02
			141-01	145-03
	11	145-06	141-06	145-06
	151	147-04	146-06	146-06
	501	146	145-15	146
	668		1.61	134-03
		HOLIDAY		
	2	144-02	144-02	144-02
			142-01	146-02
			142-01	146-03
			142-01	146-03
	2		1.63	135-03
	20	146-02	146	146-02
	4	150	148	150
X	4	151-03	150	150
	82	150	148	150
	8	152-02	149-02	152-02
	118		1.69	136-01
	25	155	154	155
	2	157	156-06	157
	500	156-07	156-03	156-07
	7	156-11	154-11	154-11
	6	154-11	152-11	154-11
	540		1.76	137-03
			152-04	156-07
	4	152-15	152-11	152-11
	8	156-06	154-07	156-06
	1	156	156	156
	68	159	157-06	158
	82		1.77	138-02
	1	160-06	160-06	160-06
	502	162-04	161-13	161-07
	57	161-01	161-01	161-01
	7	163-01	162-07	163-01
			161	165-02
	567		1.83	139-04
			161	165-02

EARN: 3.100 — $ .00
DIV: .775

JUL	7841	JAN	-	
AUG	17000	FEB	574	
SEP	27000	MAR	-	
OCT	27000	APR	48305	
NOV	585	MAY	47808	
DEC	1080	JUN	2474	

SUPERIOR INDS INTL COM

TICKER SYMBOL: SUP — THOUS $ OUTSTANDING: 20000

	VOL	HIGH	LOW	CLOSE
4/1	1	25-11	25-11	25-11
2	1	25-11	25-11	25-11
3	1	25-11	25-11	25-11
	3		25-11	25-11
6	1	25-11	25-11	25-11
7	1	25-11	25-11	25-11
8	1	25-11	25-11	25-11
9	1	25-11	25-11	25-11
10		HOLIDAY		
	4		25-11	25-11
13	1	25-11	25-11	25-11
14	1	25-11	25-11	25-11
15	1	25-11	25-11	25-11
16	1	25-11	25-11	25-11
17	1	25-11	25-11	25-11
	5		25-11	25-11
20	1	25-11	25-11	25-11
21	1	25-11	25-11	25-11
22	1	25-11	25-11	25-11
23	1	25-11	25-11	25-11
24	1	25-11	25-11	25-11
	5		25-11	25-11
27	1	25-11	25-11	25-11
28	1	25-11	25-11	25-11
29	1	25-11	25-11	25-11
30	1	25-11	25-11	25-11
5/1	1	25-11	25-11	25-11
	5		25-11	25-11
4	1	25-11	25-11	25-11
5	1	25-11	25-11	25-11
6	1	25-11	25-11	25-11
7	1	25-11	25-11	25-11
8	1	25-11	25-11	25-11
	5		25-11	25-11
11	1	25-11	25-11	25-11
12	1	25-11	25-11	25-11
13	1	25-11	25-11	25-11
14	1	25-11	25-11	25-11
15	1	25-11	25-11	25-11
	5		25-11	25-11
18	1	25-11	25-11	25-11
19	1	25-11	25-11	25-11
20	1	25-11	25-11	25-11
21	1	25-11	25-11	25-11
22	1	25-11	25-11	25-11
	5		25-11	25-11
25	1	25-11	25-11	25-11
26	1	25-11	25-11	25-11
27	1	25-11	25-11	25-11
28	1	25-11	25-11	25-11
29	1	25-11	25-11	25-11
	5		25-11	25-11
2	1	25-11	25-11	25-11
3	1	25-11	25-11	25-11
4	1	25-11	25-11	25-11
5	1	25-11	25-11	25-11
6	1	25-11	25-11	25-11
	5		25-11	25-11
9	1	25-11	25-11	25-11
10	1	25-11	25-11	25-11
11	1	25-11	25-11	25-11
12	1	25-11	25-11	25-11
13	1	25-11	25-11	25-11
	5		25-11	25-11
16	1	25-11	25-11	25-11
17	1	25-11	25-11	25-11
18	1	25-11	25-11	25-11
19	1	25-11	25-11	25-11
20	1	25-11	25-11	25-11
	5		25-11	25-11
23	1	25-11	25-11	25-11
24	1	25-11	25-11	25-11
25	1	25-11	25-11	25-11
26	1	25-11	25-11	25-11
27	1	25-11	25-11	25-11
	5		25-11	25-11
30	1	25-11	25-11	25-11

EARN: 1.000 — $ .00
DIV: .200

JUL	1000	JAN	-	
AUG	1000	FEB	-	
SEP	1000	MAR	-	
OCT	1000	APR	-	
NOV	1000	MAY	-	
DEC	1000	JUN	-	

SUPERVALU INC COM

TICKER SYMBOL: SVU — THOUS $ OUTSTANDING: 100825

	VOL	HIGH	LOW	CLOSE
	5875	44-01	43-07	44
	23094	45-09	43-03	43-09
	183613	43-07	39	34-03
	212562		51	43-03
	81178	34-04	31	32-02
	20272	33-05	31-03	31-07
	36781	32-01	29-06	30-03
	31831	30-15	29-02	30
		HOLIDAY		
	170062		33	42-07
	28369	30-11	27-07	28-03
	30456	30	28-02	30
	29478	30-08	29-03	29-07
	22087	29-09	28-01	28-01
	18981	29-13	28-03	29-08
	129352		31	42-03
	17873	30-08	29-03	30-09
	14910	31	29-06	30-01
	21334	29-15	29-13	29-15
	23214	29-04	25-09	25-09
	14749	26-02	25-01	25-01
	15194	25-04	24-06	24-15
	105416		28	41-01
	41756	25-05	24-06	25-01
	46100	27-06	24-15	27-06
	21788	27-08	26-08	27-01
	13107	27-07	26-08	27-05
	26734	28-07	27-09	27-13
	149485		31	40-03
	36563	28-07	25-05	25-06
	37152	25-03	24-13	25-02
	14568	25-15	25-01	25-06
	9093	25-13	25	25-05
	9678	25-04	24-11	25
	107054		28	39-05
	12670	25-03	24-02	24-05
	18210	24-05	23-06	24-01
	11486	24-01	23-09	23-11
	8044	24	23-03	23-05
	7845	23-11	23	23-04
	58259		26	38-07
		HOLIDAY		
	6656	23-07	23-05	23-04
	22497	23-02	22-05	22-04
X	26036	22-15	21-07	21-07
	16288	23-02	22	22-15
	71477		24	38-01
	8894	23-05	22-13	22-07
	18657	23-01	22-02	22-03
	4908	23-08	22-03	22-04
	5412	22-13	22-02	22-11
	12870	22-08	21-07	21-07
	50742		26	37-02
	21288	21-03	20-03	20-05
	27181	20-08	19-13	19-07
	20578	19-07	18-05	19
	14849	19-02	18-03	18-04
	16778	18-07	17-04	18-01
	100474		21	36-03
	40791	18	15-03	15-06
	83782	18-01	13-04	13-07
	41280	14-03	13-02	13-07
	46543	13-07	13-01	13-01
	81915	13-01	10-08	11-02
	303281		15	35-03
	152105	10	8-03	8-13
	125472	11-07	8	11-02
	93588	12-08	11-08	12
	63388	12-02	10-01	10-07
	35222	10-05	9-08	10-01
	469773		12	34-02
	22929	10-15	10-03	10-03
	20916	10-07	10	10-07

EARN: .040 — $ .76
DIV: .010

JUL	7641529	JAN	8531078	
AUG	7568268	FEB	6118807	
SEP	7901895	MAR	7562088	
OCT	7453605	APR	598739	
NOV	7003835	MAY	1730872	
DEC	7252278	JUN	1488040	

SUNBURST HOSPITALITY COM

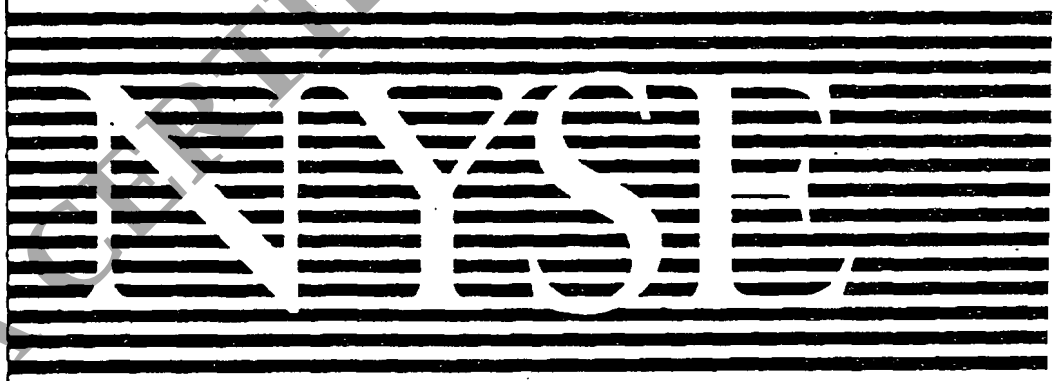
TICKER SYMBOL: SHB — THOUS $ OUTSTANDING:

	VOL	HIGH	LOW	CLOSE
	158	8		
	78	8		
	45	8		
	281			
	66	9		
	71	8		
	86	9		
	274	9		
		HOLIDAY		
	497			
	247	8		
	67	8		
	230	8		
	867	8		
	916	7		
	2327			
	202	7		
	113	7		
	124	8		
	103	8		
	147	8		
	669			
	85	8		
	60	8		
	135	8		
	52	8		
	111	8		
	443			
	57	8		
	125	8		
	247	8		
	78	7		
	71	8		
	578			
	125	8		
	129	8		
	46	8		
	114	7		
	33	7		
	447			
	198	7		
	518	7		
	417	7		
	461	7		
	478	7		
	2071			
		HO		
	434	7		
	364	7		
	642	7		
	335	7		
	1775			
	302	7		
	345	6		
	1170	7		
	178	6		
	128	6		
	2123			
	614	6		
	47	6		
	149	6		
	852	6		
	187	6		
	1859			
	642	6		
	831	6		
	1551	5		
	478	6		
	411	6		
	3911			
	139	6		
	187	6		
	768	6		
	306	6		
	275	6		
	377	6		
	838	6		

VOID AFTER 6-30-98

DAILY STOCK PRICE RECORD

NEW YORK STOCK EXCHANGE



1998

JULY-AUGUST-SEPTEMBER

018732

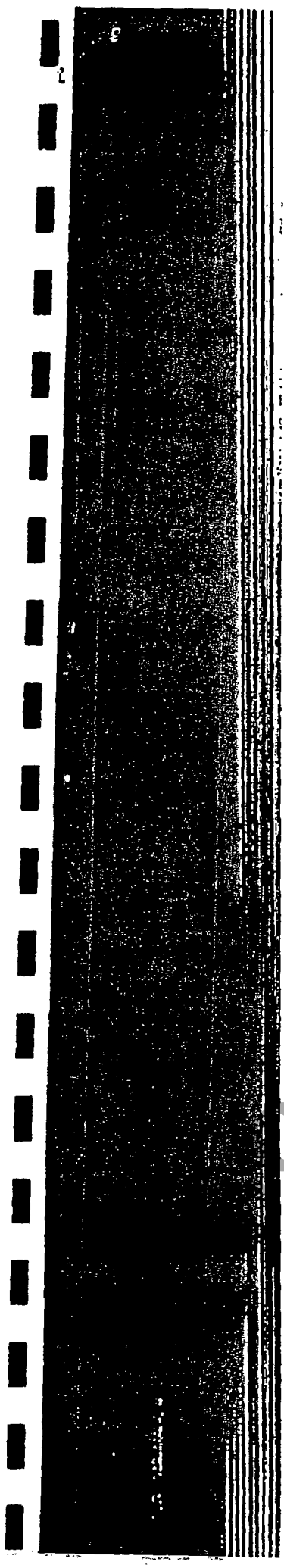
Standard & Poor's

A Division of The McGraw-Hill Companies

25 Broadway, New York, NY 10004

Copyright © 1998 The McGraw-Hill Companies. All rights reserved.

NOT A CERTIFIED COPY



	SUNAMERICA INC PFD PERCS 6.5%				SUNAMERICA INC PFD E DEP 1/80				SUNBEAM CORP COM				SUNBURST HOSPITALITY COM				SUN COMMUNITIES INC COM				SU
	TICKER SYMBOL			THOUS SH OUTSTANDING	TICKER SYMBOL			THOUS SH OUTSTANDING	TICKER SYMBOL			THOUS SH OUTSTANDING	TICKER SYMBOL			THOUS SH OUTSTANDING	TICKER SYMBOL			THOUS SH OUTSTANDING	TICK
	SIP			16000	SAI 'E			4000	SOC			100828	SNB			19871	SUI			17084	SU
	VOL	HIGH	LOW	CLOSE	VOL	HIGH	LOW	CLOSE	VOL	HIGH	LOW	CLOSE	VOL	HIGH	LOW	CLOSE	VOL	HIGH	LOW	CLOSE	W
7/1	149	•48	47-06	47+13	1	•164-01	164-01	164-01	19478	•10+05	9+15	10+01	325	8+13	•8+05	8+11	880	33-05	•33	33-04	
2	150	48	•47+11	47-07			•162	166-02	15372	10+01	•9+13	9-07	446	•8-07	8-05	8-07	334	•33-07	33-04	33+11	
3		HOLIDAY				HOLIDAY				HOLIDAY				HOLIDAY				HOLIDAY			
	299		.53	47-03	1		1.84	140-05	34848		.11	33-01	771		.08	8-02	1014		.37	34-05	
8	382	48+05	47-07	48-02	10	•171-06	•165-07	171-06	13524	10+01	•9+13	10	245	•8-07	8-06	8-06	712	33-05	•33-03	33-03	
7	262	48-02	•47+13	48			169-07	174-06	11816	10+01	9+15	9+15	248	8-06	8-04	8-05	283	33-07	33-04	33-07	
8	594	48-03	47+13	48+06	1	171-01	171-01	171-01	11894	10	9+13	10	197	8-04	8-03	8+07	289	33+15	33-04	33+11	
9	239	•48+15	48-01	48-03			170-02	175-01	24240	•10+03	9+13	9-07	222	8+08	8-03	8+08	358	•34-02	33-05	34	
10	109	48-04	48-01	48-04	5	171+03	171+03	171+03	13023	10+01	9+13	10+01	195	8-05	•8-02	8-02	149	34-02	33-05	33-05	
	1586		.53	47-04	16		1.93	142-02	74397		.11	32-01	1107		.07	8-02	1801		.37	34-04	
13	105	48+07	48-02	48-03	3	174	172-02	174	18297	•10-03	9+15	9+15	748	8-03	8+01	8-01	42	33+13	33-05	33+11	
14	153	48-04	48+03	48+05			•171-07	178-01	10872	10+03	•9+13	9-07	144	•8-04	8-01	8-02	198	33+11	•33-04	33-04	
15	1398	48+07	•48	48+01	2	176-07	175-07	176-07	11881	9+15	9+13	9+13	675	8-04	•8+15	9+15	56	33-08	33-04	33+11	
16	402	•48-05	48-01	48+05	33	•180	178	178-07	10568	9+15	9+13	9+13	176	8-01	8+15	8+01	281	•33+15	33+11	33+15	
17	151	48+07	48-02	48+05			177-06	183-01	9851	10-01	9+13	10+01	77	8-02	8+01	8-01	958	33-07	33-06	33-06	
	2207		.52	47-04	38		1.80	144	56987		.11	31-01	1820		.06	8-01	1518		.36	34-04	
20	185	48-03	48+05	48-03	25	•180	182	182	9652	10-01	9+15	10	139	8-02	8-01	8-01	800	33-07	33-06	33+13	
21	182	•48-07	48-02	48-05	7	180-04	178-04	178-04	11645	•10-02	9+13	9+15	78	•8-03	8-01	8-05	484	33-07	33-06	33-06	
22	123	48+13	48-03	48-05			178-03	180-01	13290	9-07	9-06	9-06	178	8+08	8+03	8-02	229	•33+15	33-06	33-07	
23	128	48-06	48-03	48-05	11	176-06	•173	173	12908	9-07	9-02	9-03	669	8-03	•5+13	5-07	209	33+15	33-03	33+07	
24	288	48-05	•48+01	48-05	10	178	178	178	7572	9-05	•9+03	9-03	193	8-01	5-07	8-01	108	33+09	•33-01	33-01	
	884		.54	47-05	53		1.94	145-04	55087		.10	30	1187		.07	8	1831		.37	34-04	
27	182	•49	•48-02	48-07			173-07	178-01	4427	•9-08	9+01	9-03	232	8-01	5-08	8-01	155	33-02	32-05	32-05	
28	129	48-08	48+05	48+05	28	•176-02	•170	170	6791	9-03	9	9-01	197	•8-03	8+01	8-03	264	33	•32-04	32-05	
29	141	48+15	48-03	48-04	4	173-06	171-06	172	5024	9-03	9-01	9-02	381	8+06	8	8	72	32-07	32-06	33-07	
30	141	48-08	48-04	48+09	10	174	173-08	174	10043	9-02	9	9+01	183	8	5-08	5+13	313	33-07	33-01	33-07	
31	106	48+13	48+09	48+09	4	174	174	174	8453	9+03	•9-07	9-07	888	5-08	•5+07	5-04	829	•34-01	33+09	33+09	
	699		.54	47-06	46		1.93	147	32718		.10	29	1853		.08	7-07	1633		.38	34-03	
8/3	150	48+13	48-04	48-08	3107	176-08	175-04	175-06	5318	•9	9-08	9+13	194	5+07	•5-02	5-03	208	•33+09	33-01	33-01	
4	856	•49	48+09	48-08	23	•180	173-02	173-02	10680	9+13	9-02	9-02	74	•5-08	5+05	5+09	169	33-02	32+09	32+09	
5	452	48-08	48-04	48-05	2	178	171-02	171-02	11908	9-04	8	8	212	5-08	5-03	5+07	283	32+15	•32-04	32+11	
6	583	48-08	48+07	48-06			•168-07	174-05	70241	8+01	•8-03	7	35	5-04	5-02	5-03	239	32+13	32-02	32-05	
7	77	48+13	•48-02	48-04	1	169-04	169-04	169-04	46909	7-08	8-05	8-06	55	5-04	5-02	5-03	578	32+15	32+09	32+15	
	2118		.57	47-06	3133		2.04	148-05	145054		.08	27-07	570		.06	7-06	1578		.38	34-02	
10	158	48+13	•48-01	48+11	5	165	165	165	78162	9+13	9+13	9-07	85	•5-03	5-01	5-02	188	33+01	32-06	33-06	
11	205	48+13	48-01	48-05			•168-07		43400	9-08	•9-01	9-06	633	5-01	5+01	5-01	233	32-07	•32+08	32+13	
12	520	48-08	48+05	48+09			169-07		29883	7-02	9-08	9-07	153	5-01	•5+08	5+01	204	33-05	32-07	33-04	
13	412	48-05	48-03	48+09	20	169	168-04	169	63786	9+15	8	9+09	471	5	5-07	5+15	118	33-06	33+05	33-04	
14	174	•49	48+09	48-07	51	•172	170-02	170+11	50451	•9-02	9-07	9	1528	5+01	5+08	5+15	187	•34+01	33-05	34	
	1467		.57	47-07	78		2.00	150-02	265982		.10	26-06	2873		.06	7-04	891		.40	34-02	
17	200	48+15	•48-05	48+13	33	171-04	•167-06	171-04	21560	•9-01	•8+01	8-07	272	6-07	6-06	6+13	258	34-01	33+15	33+15	
18	275	49-02	48-05	49	54	178-02	173	178-02	13715	9-07	9-03	9-07	128	6-07	•6+11	6+13	140	34-01	33+15	33+15	
19	172	49+05	48-07	49	2	179	179	179	16320	9-01	9-09	9-09	1824	•5	6+13	6+15	397	34+01	•33-07	33-07	
20	20179	51+13	49-06	51-06	4643	•203+01	185	196-03	11256	8+15	9-04	9+15	80	6+16	6-07	6+16	224	36	33-07	34	
21	10619	•52-01	51+13	51-07	1408	196T15	191	196T15	12518	9	9-03	9-09	98	5	6+13	6+15	412	•34-02	33-07	34	
	31445		.60	48	6138		2.28	152-05	75370		.10	25-06	2402		.08	7-03	1532		.39	34-02	
24	3299	51-07	51-05	51-06	73	201-04	197	200-07	17163	8-07	•8-04	8+13	32	•6	6+13	6-07	127	•34-01	33-06	33+15	
25	2723	•52	51-06	51+13	1002	•208	202-07	208-05	36372	•9-06	8+13	9-01	50	6-07	6+13	6+13	87	34	33-07	33-07	
26	1904	51-07	51-06	51+13	21	200	198	201	13388	9-04	9+01	9-07	554	6-07	6-05	6-06	734	33-08	33-05	33-05	
27	3330	51-08	•51-02	51-05	5099	197-01	195	195	17188	9-05	8-05	9-03	685	6-05	6-04	6+08	222	33-04	33-01	33-03	
28	2119	51+09	51-02	51+05	288		•185	185	13898	9+07	9-08	9+13	197	6-05	•6-02	6-05	280	33-03	•33+01	33+01	
	13375		.63	48-02	6483		2.39	154-07	100977		.11	24-07	1498		.08	7-02	1430		.41	34-01	
31	1998	51-03	•50-04	50-07	1624	•182-07	178-04	178-04	18708	•8-07	•7-04	7-04	221	•4+11	6-03	6-03	829	33+03	32-05	32+11	
9/1	1682	51-01	50-07	51	21	180	175-02	180	24377	8-02	7+09	7-07	571	6-03	•3-08	6-02	287	•33-03	32-05	33-02	
2	1244	•51-04	51	51-04	X		•169-07		11586	8-01	7-07	7+15	250	6-04	4	4	144	33-03	33	33	
3	872	51-04	51+03	51+05			169-07		5515	8	7+13	7+15	221	6-01	3-08	4	373	33	31-03	31-03	
4	874	51-04	51-02	51-04			169-07		4135	8	7+13	7-07	94	6-01	4	4-01	452	31-06	•30-08	31	
	6670		.87	48-03	1645			156-07	84321		.10	23-07	1367		.05	7-01	2077		.41	34	
7		HOLIDAY				HOLIDAY				HOLIDAY				HOLIDAY				HOLIDAY			
8	723	51-05	•51+05	51-05	2	184	184	184	7409	•8+05	7+15	8-01	280	•4+03	3-07	4	209	•31-05	31-01	31-03	
9	517	•51+11	51-03	51+11	5	•186-04	186-04	186-04	8045	8+03	7-07	7+15	659	3+15	3-05	3-05	152	31-05	31-02	31-04	
10	338	51-04	51-03	51-04			•159-07		7235	7+15	•7-04	7-05	507	3-08	3-02	3-02	183	31-05	31	31+03	
11	233	51-04	51-03	51-04			166-02	166-06	5448	7+11	7-04	7+09	1079	3+01	•3	3	722	31-01	•29-07	30-04	
	1809		.58	48-04	7			156-07	27035		.10	22-07	2518		.04	8-07	1266		.41	33-07	
14	382	51-07	•51-04	51-06	20	186-02	184+07	186-02	6548	•7+13	7-04	7-05	582	3-04	•3	3+07	351	31-01	30-04	30+11	
15	1130	52	51-06	52	35	•187	185	187	8080	7-05	7+03	7-02	1811	3-04	3	3-04	138	31-02	30-08	31-02	
16	427	•52-02	52	52	12	187	186	187	9534	7-02	7	7-01	1055	•3-08	3+07	3-05	118	31-03	30+15	30+15	
17	314	51-08	51-05	51+11	222	183+11	183+11	183+11	5019	7+01	•6-08	7+01	758	3-08	3-05	3-05	252	30-04	•30-02	30-04	
18	306	51+15	51+11	51-07	71	179+15	•179-07	179-07	6518	7+01	9+13	9-07	1918	3-04	3	3-04	540	•31+07	29-05	31+07	
	2559		.66	48-05	380		2.33	158-06	36808		.09	21-07	5228		.05	8-08	1400		.39	33-06	
21	319	51+13	51-08	51-08			•184-07		6893	•7+07	•6-06	7-02	89	3-04	•3-03	3-04	200	31-07	•31-01	31-04	
22	423	•51-07	51-08	51+13	11	184-06	184-04	184-06	4288	7+05	6+15	7	430	3-08	3-04	3+11	131	32-07	31-04	32-07	
23	523	51+13	51-08	51-08	9	186-05	186	186	6516	7-01	6+15	7-01	712	3+15	3+11	3+15	307	•34-08	33	34	
24	273	51-08	51-06	51+11	6098	•191+05	190	190	8218	7-03	7	7+05	348	3+15	3-06	3+13	125	34-01	33-01	33-01	
25	219	51-08	•51+09	51-05			175		3172	7+05	7+01	7-01	727	•4+05	3-07	4-02	111	33+15	33-01	33-05	
	1757		.65	48-06	6116		2.57	180-06	29185		.09	20-08	1918		.05	8-04	874		.41	33-08	
28	723	•51-05	51+07	51-04			175		2556	•7+03	7+01	7-01	223	•4-04	4-03	4-03	372	33-08	•33-01	33+08	X
29	228	51-05	51-04	51+09			175		3741	7+03	8-07	8+15	337	4-03	•4+01	4+01	624	34+01	33-04	34	
30	458	51-04	•51+05	51+05			•170		4082	7	•8+13	7	382	4-04	4-01	4-04	130	•34-02	33-05	33+09	
EARN	3.184			$ .00				$ .00				$ .76				$ 2.03	1.960			$ 1.50	
DIV					.775												.490				
SHORT INT	OCT 257450		APR 256088		OCT 27000		APR 48305		OCT 7453605		APR 598739		OCT –		APR 26061		OCT 6219		APR 11878		
	NOV 245104		MAY 159827		NOV 585		MAY 47608		NOV 7033835		MAY 1730872		NOV 22467		MAY 24521		NOV 7088		MAY 105163		
	DEC 234865		JUN 170559		DEC 1060		JUN 2474		DEC 7252278		JUN 1488040		DEC 21252		JUN 85221		DEC 45194		JUN 136203		
	JAN 256542		JUL 172865		JAN –		JUL 5311		JAN 8601078		JUL 475980		JAN 19711		JUL 40211		JAN 134852		JUL 134487		
	FEB 274413		AUG 133760		FEB 574		AUG –		FEB 6119807		AUG 684872		FEB 19187		AUG 28321		FEB 8509		AUG 108527		
	MAR 276188		SEP 9600		MAR –		SEP –		MAR 7568088		SEP 599872		MAR 19187		SEP 27956		MAR 12427		SEP 90703		

OTAL RETURN REPORT

THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

Videotaped deposition of:

SIMON RANKIN

taken at:
Barlow Lyde & Gilbert
Beaufort House
15 St Botolph Street
London EC3A 7NJ
UNITED KINGDOM

on
16th November 2004

NOT A CERTIFIED COPY

018735

APPEARANCES

For the Defendants:

JENNER & BLOCK LLP
1 IBM Plaza
Chicago, IL 60611-7603
t: (312) 923-2994
f: (312) 840-7394
e: tchorvat@jenner.com
by:
MR. TIMOTHY J. CHORVAT

For the Plaintiff:

KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005-5793
t: (202) 879-5108
f: (202) 879-5200
e: zbrown@kirkland.com

by:

MS. ZHONETTE M. BROWN

Court Reporter:

MS. EMMA WHITE, MIVR
Anglo American Court Reporters,
150 Minories
London, EC3N 1LS
t: +44 (0)20 7264 2088
email: info@a-acr.com

Also present: MR. Trevor McArthur, Videographer

INDEX

	Page
DEPOSITION OF SIMON RANKIN	
Cross-examination by MR. CHORVAT	5

EXHIBITS

Exhibit	Description	Page
292	Draft of Second Amendment to the Credit Agreement	69
293	Morgan Stanley 75968	76
294	Morgan Stanley 20379 through 20401, "Amendment number 10 to the Credit Agreement"	79
295	Morgan Stanley 59312 through 59314, inter-office memorandum to senior members of Morgan Stanley	82
296	Morgan Stanley 59295 through 59311, briefing memo for amendment number 12	86
297	Morgan Stanley 69860 through 69869	93
298	Morgan Stanley 24720 and 24721	95
299	Morgan Stanley 58883	96
300	Morgan Stanley 24863 through 24871, series of pages of handwritten notes	97

16th November 2004
(1.07 pm)

VIDEOGRAPHER: This is the beginning of videotape number 1 in the deposition of Simon Rankin in the matter of Coleman (Parent) Holdings Inc, plaintiff, versus Morgan Stanley & Co Inc, defendants, case number CA 03-5045 AI, and Morgan Stanley Senior Funding Inc, plaintiff, versus MacAndrews & Forbes Holding Inc et al, defendants, case number CA 03-5165 AI. We are at the law firm of Barlow Lyde & Gilbert at Beaufort House, 15, St. Botolph Street in the city of London, England. The time is 10.07, the date, November the 16th, 2004 as shown on the videotape. This case is in the 15th Judicial Circuit in and for Palm Beach County, Florida. My name is Trevor Macarthur, and I am the videographer. The Court Reporter today is Emma White. We are both working in association with Esquire Deposition Services, located at 155, North Wacker Drive, Chicago, Illinois, 60606.

Would counsel please introduce themselves and state whom they represent?

MR. CHORVAT: Timothy Chorvat from the

firm of Jenner & Block, and I represent CPH.

MS. BROWN: Zhonette Brown on behalf of the Morgan Stanley entities and the witness.

VIDEOGRAPHER: Are there any objections or stipulations? (Pause)

Would the Court Reporter please swear the witness?

MR. SIMON RANKIN,
having been duly sworn,
testified as follows:

Cross-examination by MR. CHORVAT:

MR. CHORVAT: Please state your name for the record.

A Simon Rankin.

Q Mr. Rankin, have you ever been deposed before?

A No, I haven't.

Q Let me just describe the procedure, although you may be familiar with this. I am going to ask you a series of questions. My questions, your answers, and any objections or comments that your counsel make are going to be taken down. They will be transcribed stenographically and also recorded on the video. Because a written record is being made of our discussions today, it is important that any

NOT A CERTIFIED COPY

Page 6

answer or response you make is made verbally, rather than with a nod or a shake of the head.
A Okay.
Q If at any point you don't hear a question that I ask, maybe if I have mumbled, let me know that and I will try and repeat it. If at any point I am unclear, and you don't understand a question that I ask, let me know that and I will try and rephrase it.
A Okay.
Q Please describe your educational background.
A I am a graduate from the Kellogg School of Management at Northwestern University, that is where I got my MBA. Before that I graduated from the University of Toronto, Trinity College, with a Bachelor of Arts in Commerce and Economics, and my high school education was in Upper Canada College in Toronto, Canada.
Q When did you receive your BA?
A 1987.
Q When did you get your MBA?
A 1995. Graduated in 1995.
Q Do you hold any other degrees?
A No.

Page 7

Q Please describe your employment history since whenever you took your first full-time job.?
A When I came out of college I worked for Corank Development Corporation(?) which is my father's real estate company. I worked there until I went to Kellogg in 1993. My summer internship, between my two years at Kellogg, was at Bankers Trust in New York. I took a full-time job at Bankers Trust upon graduation from Kellogg, worked there until end of 1997 when I joined Morgan Stanley, January 1998. I have worked full-time at Morgan Stanley in London and New York since then.
Q When you first went to work for Morgan Stanley, what position did you --
A Associate.
Q Was that in New York?
A When I left Bankers Trust -- sorry, take a step back. I am a Canadian citizen, and so I was working in the States on an H1B visa which was terminated when I left Bankers Trust, so Morgan Stanley had to apply for a new visa for me, so I came to London first for the first three months of 1998. I was working here in London, and then when my H1B visa came through I transferred back to New York, so it was pretty much at the end of March

Page 8

1998.
Q The end of March 1998?
A Yes.
Q Please describe the positions that you have held with Morgan Stanley since January of 1998.
A I was an associate for two years, Vice-President for three years, and have been an executive director now for two years.
Q During your time at Morgan Stanley has there been a particular division or group in which you have worked?
A Generally I have been working in debt products. I have worked for Morgan Stanley Senior Funding doing, you know, commercial syndicated loans. I currently work in a group called the Loan Products Group, where we focus on the allocation of the firm's balance sheet, and also relationship lending to our investment-great clients. That is what I have been doing over the last couple of years.
Q What corporate entity is your employer?
A I don't know.
Q In the first half of 1998 do you know what corporate entity was your employer?
A I don't know.

Page 9

Q During the first three months of 1998 when you were working in London, what division or group within Morgan Stanley did you work for?
A I don't know the technical answer to that.
Q Can you describe it as best you can?
A I just don't know. I mean, from my perspective, I work for Morgan Stanley. Could you be more specific? I don't know what you are looking for.
Q Is there an investment banking division at Morgan Stanley?
A Yes. Again, we have Joint Ventures. At least part of my responsibility would have been within IBD, Investment Banking Division, yes.
Q Is there another group that you also would have had some responsibility for?
A I don't know. We sat within the investment bank.
Q Was that true when you were in London in the first three months of 1998 and then after you went to New York as well?
A I had similar responsibilities. I mean, I think the closest I would probably come would probably be Morgan Stanley Senior Funding.
Q Do you know whether you were at any point

NOT A CERTIFIED COPY

Page 10

a Corporate Officer of Morgan Stanley Senior Funding?
A I am now a Vice-President of Morgan Stanley Senior Funding. I don't know exactly when I became that.
Q Do you know whether you would have held that position with Morgan Stanley Senior Funding at any time during 1998?
A No. I was an Associate. I think it is something that -- I don't know. I don't know exactly.
Q Do you recall how you came to learn that you were being appointed a Vice-President of Morgan Stanley Senior Funding?
A When I got signing authority.
Q What is your best recollection of when that was?
A I don't know.
Q Was there someone who informed you that you would, henceforth, have signing authority for MSSF?
A Yes.
Q Who was that?
A I don't recall.
Q Have you had occasion to sign documents on

Page 11

behalf of MSSF?
A Yes.
Q Do you recall when you first signed documents on behalf of MSSF?
A I don't remember.
Q Do you continue to execute documents on behalf of MSSF as part of your regular duties today?
A Yes, I do.
Q Is there someone within the corporate structure of MSSF that you report to?
A My immediate report is Kevin Addison. He's the Managing Director of the Loan Products Group.
Q Is Mr. Addison also an Officer of MSSF?
A I believe so.
Q Do you know what position he holds?
A I am not sure.
Q Within the larger umbrella of Morgan Stanley, is it also correct that you report to Mr. Addison today?
A Yes.
Q Moving back to the time that you first went to work for Morgan Stanley, when you were working in London at the beginning of 1998, to whom did you report?
A Kevin Addison.

Page 12

Q Then when you went to New York. Toward the end of March of 1998 to whom did you report in New York?
A Bram Smith, probably. That is the best I can do on that name.
Q For how long did you report to Mr Smith?
A Until I left to come to London.
Q How long was that?
A Early 2002. January 2002. Maybe February 2002.
Q During your work for Morgan Stanley, have you ever had occasion to work on bridge loans?
A Yes.
Q Just so that the record is clear, what is a bridge loan?
A Bridge loan is a situation where funding is arranged in advance of some kind of takeout, so it is a bridge to a permanent financing.
Q It is a situation where Morgan Stanley extends credit for some limited period of time, anticipating that it will be taken out?
MS. BROWN: Object to form.
A Could you repeat the question?
MR. CHORVAT: Sure. Is it correct to say that a bridge loan is a situation in which

Page 13

Morgan Stanley would extend funding for a limited period of time, anticipating that at the end of that period of time there is some other source of financing which would be arranged to take out the Morgan Stanley bridge loan?
A I think that is one type of a bridge loan, but I think there are many types of bridge loans. Sometimes a bridge loan is to a capital markets transaction, and sometimes it is to a bank loan transaction, and if we are underwriting a bridge to a bank loan transaction we would typically be part of the permanent financing as well as the bridge loan itself.
Q Within the Morgan Stanley structure, how are bridge loans approved?
A We have a Credit Committee.
Q Would that be the Leverage Finance Credit Committee, or is it another committee you are thinking of?
A It has changed its name over the years. It is currently called the Capital Commitments Committee, "CCC", but it has been called, "Leverage Finance Credit Committee", and it has been called other things over the years.

NOT A CERTIFIED COPY

Page 14

Q If we were thinking back to the first part of 1998, is this the entity that would have been called the, "Leverage Finance Credit Committee"?
A I don't know.
Q What, if anything, have you done to prepare for today's deposition?
A I met with Zhonette for a couple of hours yesterday.
Q Anything else?
A No.
Q Was anyone else present for that meeting?
A No.
Q During the course of that meeting did you have occasion to review any documents?
MS. BROWN: Objection. I would instruct the witness not to answer on the basis of privilege.
MR. CHORVAT: During the course of that meeting did you review any documents that refreshed your recollection?
A Yes.
Q What documents did you review that refreshed your recollection?
A I think we looked at the original syndication memorandum that was used. I don't

Page 15

remember the rest.
Q At any point have you ever seen any of the pleadings in the lawsuit that brings us here today?
A No.
Q At any point have you reviewed any deposition transcripts in connection with the lawsuit that brings us here today?
A No.
Q Other than your meeting with Ms. Brown yesterday, have you discussed your deposition with anyone else?
A No.
Q Have you discussed the pending litigation with anyone else?
A No.
Q During the time that you have worked for Morgan Stanley, have you ever had occasion to work on a matter or matters that involved Sunbeam?
A Yes.
Q When did you first have occasion to work on a matter involving Sunbeam?
A When I came back to New York from London, near the end of March 1998 I started working on a Sunbeam transaction.
Q You did no work on Sunbeam matters when

Page 16

you were in London, the first quarter of 1998?
A No. I was doing local transactions.
Q Do you recall when in March of 1998 you moved to New York?
A It was in the last week of March. I don't know the specific date.
Q Prior to the last week of March 1998, you did no work on the Sunbeam matters?
A That's right.
Q When was the last occasion you had to work on a Sunbeam matter?
A I don't recall.
Q Have you had occasion to work on a Sunbeam matter since you have been back in London?
A No.
Q Was there some period of time before you left New York when you had stopped working on Sunbeam matters?
A I don't remember the specific date that I stopped working on it. I just got -- no. I don't recall a specific date.
Q In connection with your work on Sunbeam matters, did you report to Mr Smith?
A Yes.
Q Who else at Morgan Stanley did you work

Page 17

with on Sunbeam matters?
A Michael Hart, Ishaan Seth, during early on, and then Mitch Petrick later on.
Q Did you ever have occasion to work with Tom Burchill on Sunbeam?
A No.
Q Do you know whether you effectively took over the role that Mr. Burchill had been playing with respect to Sunbeam?
MS. BROWN: Objection, foundation.
A I mean, Tom left and I came at the same time. That is the best I can give you on that. Tom moved to London.
MR. CHORVAT: What understanding do you have as to Mr Smith's role in connection with the Sunbeam work?
MS. BROWN: Objection, form.
A Could you be more specific?
Q Sure. Please describe the work that Mr Smith did in connection with Sunbeam to the extent you are aware of it.
MS. BROWN: Objection, foundation.
A I don't know his specific responsibilities. He was head of our sales force at Morgan Stanley.

NOT A CERTIFIED COPY

0187639

Page 18

Q Was there a particular aspect of the Sunbeam financing that Mr Smith worked on?
MS. BROWN: Objection, form.
A Not that I recall.
Q Do you recall whether there were more than one piece to the Sunbeam financing effort?
MS. BROWN: Objection, form.
A I don't really understand the question.
MR. CHORVAT: Sure. It is not terribly complicated. I mean, there was a senior lending piece, like a bank loan, and there was a convertible debenture; right?
A Oh, sure. There was a zero, there was the convert, and there was the syndicated loan.
Q Was there one part or the other of that that you worked on?
A I did not work on the zero coupon, so I would have worked on the syndicated loan.
Q When you say, "The syndicated loan", was that loan ever syndicated?
A No.
Q But it was intended to be syndicated?
A That's right.
Q Is that also true of Mr Smith, that he worked on the syndicated loan piece?

Page 19

A Yes.
Q As to Mr. Hart, was there a particular piece that he worked on?
A I don't know. I don't know if he only worked on one of them. I don't know.
Q What was Mr. Seth's role?
A He was an analyst. You know, drafting, modeling, you know, getting papers together.
Q Did he effectively report to you?
A I mean, I was senior to him, but whether he reported to me would be -- I mean, I gave him jobs to do, but I don't know if that is the specific term.
Q Please describe your role in connection with the Sunbeam syndicated loan.
A I was responsible for drafting the bank book, the memorandum that was to be used to syndicate the loan, to coordinate with the other banks, the process to syndicate the loan which involved inviting other banks, distributing materials.
Q Anything else?
A Broadly speaking, that is what I did.
Q At the time that you began work on the Sunbeam syndicated loan, did you have an

Page 20

understanding as to the timeframe on which the syndication would take place?
A It was within, you know, two or three months.
Q Do you recall when the Sunbeam acquisition of Coleman and first-alerted signature banks took place?
MS. BROWN: Object to form.
A I was aware that they were closing, but it wasn't really my responsibility.
MR. CHORVAT: As of the time you began work on Sunbeam, you understood that the loan to Sunbeam would not be syndicated before those acquisitions closed. Is that correct?
A My focus was on, you know, preparing, generally, to syndicate the loan, and I was aware that there were other things going on, but the direct correlation, not really.
Q Did you have an understanding as to why it was that the acquisitions were going to close, and the loan would be extended to Sunbeam before the loan was syndicated?
A Sometimes loans are syndicated before closing, sometimes after, so it really didn't strike me as anything one way or the other. They get done

Page 21

both ways.
Q I take it that there might be reasons in any individual situation why it would be done one way or done another way?
MS. BROWN: Object to form.
A Could you be more specific?
MR. CHORVAT: Sure. Do you have any understanding as to any reason why it was that in this particular instance the senior loan was extended to Sunbeam before the loan was syndicated?
A No. Not that I recall.
Q That is not a topic that you can recall discussing with anyone at Morgan Stanley?
A No. It just didn't strike me as relevant.
Q During the course of your work on Sunbeam for Morgan Stanley, did you have occasion to communicate in any way with any individuals within Sunbeam?
A Ron Richter was my main point of contact.
Q Do you recall what his title was?
A I think it was, "Treasurer". I am not sure.
Q You said he was your main point of contact. Were there others that you had occasion to

NOT A CERTIFIED COPY

01870

Page 22

speak with?
A He had an assistant whose name I can't recall, but it was just the two of them, to the best of my knowledge.
Q What were the nature of your communications with Mr. Richter?
MS. BROWN: I am going to object to form.
A Can you be more specific?
MR. CHORVAT: Sure. Is it a situation where you would seek information from Mr. Richter or he would seek information from you or something else?
A He assisted with the writing of the bank book, the distribution memorandum.
Q Did you physically write the text that went into the bank book?
MS. BROWN: Object to form.
A No, not that I recall, physically, no.
MR. CHORVAT: Who did?
A I don't remember.
Q I think you indicated earlier that you were responsible for drafting the bank book. What is it that you did in order to ensure that the bank book was drafted?
A You know, I think it was based on the

Page 23

memorandum for the zero coupon bonds, so largely the way it works is that the material is taken from that book and just changed in its form.
Q At the time that you began work on Sunbeam, the memorandum for the zero coupon bonds was already in existence?
A That's right.
Q Then your role was essentially to take that material and adapt it for your needs and then adjust as necessary?
A I think that is fair.
Q Other than Mr. Richter and his assistant, were there any other individuals at Sunbeam that you had occasion to contact?
A At this part of the process, no. Not that I recall.
Q Would your answer be different at some later part of the process?
A I mean, I was introduced to Jerry Levin later on and some of the other people who were working with him.
Q Do you recall when that was?
A Not specifically.
Q Sometime after Mr. Levin had assumed responsibilities with respect to Sunbeam?

Page 24

A Yes.
Q We will get to that period of time a little later.
At any point in time have you had occasion to speak with anyone at Coleman during your work for Morgan Stanley?
A Not that I recall.
Q At any point in time have you had occasion to speak with anyone at MacAndrews & Forbes or, "MaFCo", with respect to your work for Morgan Stanley?
A Are those -- sorry, could you be more specific, just so I understand the entity that you are talking about? I have met various people over time.
Q Sure.
A Howard Beavis, Irwin Engelman. Is that the right name?
Q Anyone else at MaFCo or any affiliate of MaFCo?
A I have met some other people whose names I don't recall.
Q When did you first have occasion to meet Mr. Beavis?
A I don't recall the exact date.

Page 25

Q Would it be during the summer of 1998 or later?
A Yes.
Q During, say, the first six months of 1998, did you have any occasion to speak with anyone at MacAndrews & Forbes, or MaFCo, or any related entities?
A Not that I recall.
Q During your work on Sunbeam for Morgan Stanley, have you had occasion to speak with anyone at Arthur Andersen?
A I don't think so.
Q I take it from your earlier answer that you have had occasion to speak with representatives of Bank of America with respect to Sunbeam?
A In terms of -- yes. Yes.
Q Who at Bank of America have you dealt with?
A I don't recall. It was just, you know, pretty much blocking and tackling to get the meetings together, lists of who was going to be invited to the bank meeting. It was very much related to the syndication.
Q What role did anyone from Bank of America play in the preparation or drafting of the bank

NOT A CERTIFIED COPY

018741

Page 26

book?
MS. BROWN: Object, foundation.
A I don't recall.
MR. CHORVAT: With whom at First Union did you have occasion to deal with with respect to Sunbeam?
A The same as with Bank of America. I don't recall exactly who I was dealing with.
Q Other than the individuals that you have mentioned thus far, can you recall any discussions with anyone else on behalf of a third party or any other party with respect to Sunbeam?
A Not that I recall.
Q Do you recall what the size was of the Senior loan to Sunbeam?
A About 1.4 billion. Something in that area.
Q 1.7 billion sound right?
A I don't recall exactly. I am sorry.
Q Prior to the time that you began work on Sunbeam, had you worked on any other Senior loans or bank loans during your time at Morgan Stanley?
A Yes.
Q Was the Sunbeam loan larger in size than the prior bank loans that you had worked on at Morgan Stanley?

Page 27

A I don't remember.
Q Do you recall whether the Senior loan to Sunbeam was proceeding on a more accelerated schedule than normal?
MS. BROWN: Object to form.
A Could you be more specific?
MR. CHORVAT: Sure. When you began work on the Sunbeam matter at Morgan Stanley, did you understand that there were time constraints, that the loan had to be closed by a particular day?
A No. Not that I recall.
Q Did you ever have occasion to interact in any way with any members of Sunbeam's board?
A No. Not that I recall.
Q Did you play any role in any negotiations with respect to any acquisitions that Sunbeam made?
A Not that I recall.
Q Did you ever have occasion to review any agreements that governed any acquisitions that Sunbeam made?
A Not that I recall.
Q What role, if any, did you play in connection with the documentation of the Senior debt placed to Sunbeam?

Page 28

MS. BROWN: Object to form.
A Could you be more specific?
MR. CHORVAT: Sure. You have mentioned that you worked on the bank book.
A Yes.
Q Let's, I guess, get this clear on the record. What is it that you are referring to as the, "Bank book"?
A I guess we would refer to that as a, "Confidential Information Memorandum". It is a thick Information Memorandum that is distributed to the potential lenders for the loan, the syndication of the loan.
Q So, the audience for the bank book would be lenders who are at least potentially interested in participating in the syndication?
A That is fair.
Q There also was documentation that governed the Senior loan as between Sunbeam as a borrower and Morgan Stanley and the other lenders. Isn't that right?
A Yes. Yes. The facility agreement, the loan agreement, whatever.
Q Did you ever have occasion to review that documentation?

Page 29

A Yes. I would have seen it.
Q Did you play any role in drafting or commenting on that documentation?
A Not that I recall.
Q That was a finished product during the time that you reviewed it?
A To the best of my knowledge, yes.
Q You mentioned that you reviewed the memorandum with respect to the convertible debentures. Did you play any role in drafting or editing or commenting on them?
A No.
Q What role, if any, did you play in connection with due diligence with respect to Sunbeam?
MS. BROWN: Object to form.
A Could you be more specific?
MR. CHORVAT: Sure. Is, "Due diligence", a term that you are familiar with?
A Yes.
Q What is your understanding of the meaning of the phrase, "Due diligence"?
A Well, it is a discovery process.
Q Who is it that is doing the discovering?
A Could you be more specific?

NOT A CERTIFIED COPY

0187

Page 30

Q Sure. You mentioned that due diligence is a discovery process, and all I would like you to do is to elaborate on that. Who is it that is discovering what?
A Well, it is usually, generally, a process that involves lawyers, accountants, bankers, you know. It is a very generic term. It is very specific in each case, but generally a group of experts.
Q In connection with a loan like the loan that was made to Sunbeam, what is the purpose of due diligence?
MS. BROWN: Object to form.
A What do you mean by, "Objective"?
MR. CHORVAT: "Objective", wasn't a word that I used, but that would work.
A Sorry.
Q Why is it that due diligence takes place in connection with a loan like the one that was made to Sunbeam?
A Well, you know, it is in order to fairly present your understanding of the loan, or of the situation, of the credit.
Q Were you involved at all in any due diligence that Morgan Stanley did with respect to Sunbeam?

Page 31

MS. BROWN: Object to form.
A No, not that I recall.
MR. CHORVAT: You never traveled to Florida, Wichita or anywhere else in connection with due diligence?
A No.
Q Did you do any travel from New York to anywhere else in connection with Sunbeam?
A Not that I recall.
Q Did you ever have occasion to review a highly confident letter in connection with Sunbeam?
A Not that I recall.
Q Let me show you what previously has been marked as CPH deposition Exhibit 10. Is this document the zero coupon memorandum that you referred to earlier?
A It appears to be a copy of the zero coupon offer memorandum, yes.
Q Tell me what use you made of this document, or another copy of it, in your work.
MS. BROWN: Object to form.
A I don't recall, exactly.
MR. CHORVAT: But this was a source of information and/or text for you in drafting the

Page 32

bank book?
A Yes. We would have used parts of this document, yes.
Q What other sources of information did you use for the bank book, beyond this document?
A Talk to the company about any additional materials that they felt was relevant, or any changes, I suppose, since this was printed.
Q Did you update the financial information beyond what was in this document?
A I don't recall.
Q This document is dated March 19th, 1998. Do I understand correctly that you had not gotten to New York yet on March 19th, 1998?
A Again, I believe I arrived in New York after March 19th. I don't have the exact date, but to the best of my knowledge it was later than March 19th.
Q Were you involved in any way in any roadshow with respect to sunbeam?
A No.
Q Roadshow.
A You mean related to this document, just to be clear, right?
Q That's right.

Page 33

A No.
Q Was there some other roadshow with respect to Sunbeam?
A One could argue that the syndication of the Senior loan is like a roadshow. It is a single date instead of going on the road, but it is a similar process, I suppose.
Q That is something that you were involved in?
A Yes.
Q Did you ever have occasion to review one or more comfort letters from Arthur Andersen with respect to Sunbeam?
A Not that I recall.
Q Did any materials from Arthur Andersen—let me start that over.
Did you make any use of any information supplied by Arthur Andersen in connection with your preparation of the bank book?
MS. BROWN: Object to form.
A Not that I recall.
MR. CHORVAT: Did you ever have any involvement in any press releases that Sunbeam issued with respect to its financial situation?
A Not that I recall.

NOT A CERTIFIED COPY

Page 34

Q Did you ever have occasion to discuss Sunbeam with Ruth Porat?
A Not that I recall.
Q Did you work with Ms. Porat at all?
A I don't know. Not that I recall.
Q Let me show you what has previously been marked as CPH deposition Exhibit 133. Is Exhibit 133 a document that you are familiar with?
A Yes.
Q What is Exhibit 133?
A It appears to be a copy of the briefing memo that would have gone to the Leverage Finance Committee.
Q Do you recognize the handwriting on the first page of Exhibit 133?
A It looks like my handwriting.
Q It says, "Simon", in a circle toward the upper right-hand corner. That is you?
A That is the way I mark my copy of documents, keep track of them.
Q Up at the top right of the first page of this document it appears to say, "Due diligence complete".
A I cannot read that third word. It looks like, "Due diligence ...", something.

Page 35

Q It doesn't look like, "Complete", to you?
MS. BROWN: Objection. Asked and answered.
A It doesn't.
MR. CHORVAT: Do you know why you would have written, "Due diligence complete", or, "Due diligence", something else on this document?
MS. BROWN: Objection to the extent it mischaracterizes.
A I don't recall why I wrote, "Due diligence", on there.
MR. CHORVAT: Do you recall whether due diligence had been completed as of the time you would have gotten this document?
MS. BROWN: Object to form.
A I think due diligence is an ongoing process.
MR. CHORVAT: When did you first get a copy of Exhibit 133?
A Probably when I arrived.
Q Do you recall whether that was on or after March 20th of 1998?
A I believe I arrived after March 20.
Q Did you attend a meeting of the Leverage Finance Credit Committee with respect to Sunbeam?

Page 36

A Not that I recall.
Q Just to broaden out the time period, during your work for Morgan Stanley have you ever had occasion to attend a meeting of the Leverage Finance Credit Committee, or the same committee by some later name, that dealt with Sunbeam?
A No. Not that I recall.
Q Under your name, it looks like there is writing that says, "Business, Environmental, Accounting, Legal". Do you know to what you were referring when you wrote that?
A I don't recall.
Q Were those different aspects of information that you would need to include in the bank book?
A Typically, yes.
Q Would that be a little checklist to yourself of things you needed to look into?
A Just sections. Not actually look into.
Q The upper left hand corner, is that just a doodle or is that an exclamation point, or is that -- what is that?
A That is a doodle. That is a paperclip like this, drawn around.
Q On the third page of this document the one

Page 37

that has the Bates number 40988, is that your handwriting as well? 40988.
A This one?
MS. BROWN: I don't think we have the same copy you have.
MR. CHORVAT: The one with the Bates number 59246.
A Okay.
Q Is that your handwriting?
A It looks like mine.
Q Why is March 30th circled, if you remember?
A Just that it was a date that was coming out.
Q You have mentioned that you got to New York and began work sometime after March 20th. Can you recall with any more specificity of when it would have been?
A I don't recall.
Q March 23rd of 1998 was a Monday. Would it have been on or about that Monday?
A If, "On or about", means give or take three or four days, yes.
Q Was it before March 30th that you began working --

NOT A CERTIFIED COPY

Page 38

A I believe so, yes.
Q What, if anything, did you do with respect to Sunbeam prior to March 30th of 1998?
A I would have just started learning about it, reading materials.
Q Just to help focus your recollection, the Sunbeam acquisition of Coleman closed on March 30th of 1998 which was also a Monday. Does that context refresh your recollection in any way of anything else you would have done prior to March 30th?
A No. Not that I recall.
Q Did you have any role in connection with the closing of the Coleman acquisition?
A No. Not that I recall.
Q On the page that bears the Bates number 59249, is that your handwriting on that page as well?
A It looks like my handwriting.
Q On the upper part of the page you wrote, "Audited?" Do you see that?
A Yes.
Q Do you know why you would have an arrow pointing to the 1997 column? Do you know why you would have written that?
A I don't recall, but the timing would --

Page 39

end of March, timing, April, August 1997, sorry, 1997 year end, it would just be whether or not it was complete, I suppose, but I don't recall, exactly.
Q Further down in that same column it looks like you have written, "Major restructuring". Do you recall what you were referring to there?
A I don't recall.
Q Let me just ask you to page through the rest of this document. There is additional handwriting. If there is any of the handwriting that is not yours, please point that out.
A (Pause) It is difficult to judge the lines and circles. Looks like my copy of the document.
Q During that first week or so that you worked on Sunbeam, I take it you would have had a copy of Exhibit 133, and a copy of Exhibit 10. Would there be any other materials that you would have made use of during your initial work on Sunbeam?
MS. BROWN: Objection. Mischaracterizes the evidence; assumes facts not in evidence.
A I don't know. I mean yes, if there were other documents. I don't know what they were. If you have any I would be happy to identify them.

Page 40

MR. CHORVAT: Let me show you what previously has been marked as CPH deposition Exhibit 112. Don't worry about that first page, but with respect to the next two pages of the exhibit, would this be something that you would have had occasion to look at in connection with your work on Sunbeam?
A I don't recognize this document. It appears to refer to the zero coupon, but I don't recall having this document.
Q Were there any other letters from Arthur Andersen that you can recall?
A I don't recall. As I said earlier, I don't recall correspondence or contact with Arthur Andersen.
Q Did you attend any closings of any acquisitions that Sunbeam made after you arrived in New York?
A No. I don't recall.
Q In connection with your work on Sunbeam, did you ever have occasion to review Sunbeam's financial performance for the first quarter of 1998?
MS. BROWN: Object to form.
A Not that I recall.
MR. CHORVAT: Did you ever hear that

Page 41

Sunbeam's financial performance for the first quarter of 1998 fell below analysts' expectations?
A No, not that I recall.
Q During the time that you worked on the bank book you never heard that Sunbeam's performance was less than what had been anticipated?
A You asked me if I had heard if it was below analysts's expectations, and I don't know what analysts' expectations were, so it is difficult for me to say, but I was aware that there was noise around the name, absolutely.
Q When you say there was, "Noise around the name", tell me what you recall.
A I don't recall, specifically. I just remember that there was discussion of missing numbers.
Q When you say, "Missing numbers", are you saying that Sunbeam's sales or earnings were lower than --
A Off target. I don't know what the exact word is, but I did not have a list of analysts -- I wasn't, you know, I wasn't keeping track of what analysts' expectations were. It is a different -- but I was aware that there were starting to be some

NOT A CERTIFIED COPY

Page 42

discussion about their performance generally, if that is an answer.
Q There is some sense in which Sunbeam's performance in the first quarter of 1998 was disappointing?
MS. BROWN: Object to form.
A "Disappointing"?
MR. CHORVAT: Well, let's try it again. Sunbeam's financial performance, Sunbeam's sales and earnings for the first quarter of 1998 were less than what Sunbeam had projected?
A I don't recall.
Q Do you recall hearing that Sunbeam's sales and earnings for the first quarter of 1998 were less than Sunbeam's sales and earnings in the first quarter of 1997?
A I recall something like that, yes.
Q Do you recall when you first heard about any issue with respect to Sunbeam's sales or earnings for the first quarter of 1998?
A I don't recall specifically, no.
Q What, generally, do you recall about that?
A I just recall becoming aware of, you know, that they were below expectations, I suppose, below our expectations, or somebody's expectations, there

Page 43

was just discussion that ... I don't recall, exactly. I don't recall the date. I don't recall the timing. I just, you know -- there was definitely some discussions but I don't know when.
Q Is that a topic that you discussed with anyone else at Morgan Stanley?
A Not that I recall.
Q How, if at all, did the noise with respect to Sunbeam's performance affect your work on the bank book?
MS. BROWN: Object to form.
A You know, I would ask Ron Richter to give me, to help me understand, you know, what was going on, what was relevant, you know, I suppose.
Q It is correct, is it not, that Sunbeam's financial performance would be something that potential participants in a syndication would be interested in looking at?
A Yes.
Q So, it is also correct that information about Sunbeam's financial performance is something that you would want to include in the bank book?
A To the extent that it was relevant I would put any information in the bank book.
Q What discussions with Ron Richter, in

Page 44

words or substance, can you recall with respect to Sunbeam's financial performance?
A I don't recall.
Q Did you ask him for updated information on Sunbeam's finances?
A I don't recall. I don't recall exactly what the information flow was.
Q Do you recall when it was in relation to your beginning work on Sunbeam and that you first had occasion to speak with Mr. Richter or his assistant?
A You know, I don't know when exactly I was introduced to him.
Q You see, he's an individual that you met at some point as well?
A Yes. We were on the 'phone first and then I met him in person later.
Q When was it that you met him in person?
A I don't remember.
Q Was it a meeting with analysts or lenders or banks or something?
A I am sorry, I don't remember.
Q Do you recall if it was in New York or somewhere else?
A I don't recall.

Page 45

Q On how many occasions have you met Mr. Richter in person?
A At least once.
Q Do you recall whether you had occasion to speak with Mr. Richter or anyone else at Sunbeam during the first week that you were working on Sunbeam?
MS. BROWN: Asked and answered.
A I don't recall. I don't think it was in the first week.
Q Please describe the timing process of your work on the bank book. What did you do, when, as best as you can recall.
A You know, essentially as soon as I arrived in New York I started, you know, I was staffed on this transaction, spent sometime getting up to speed, learning the background, reading, looking through these documents, looking through the Leverage Finance Committee memorandum, and thinking about structuring this material into the bank book.
Q Had you prepared other bank books prior to that time?
A Yes.
Q Was the process of preparing the Sunbeam bank book different in any way to the process that

NOT A CERTIFIED COPY

018716

Page 46

you had gone through previously?
MS. BROWN: Object to form.
A I think they are all different, but, you know, your goal is to get a representative book out to the prospective lenders so in that sense they are all the same.
MR. CHORVAT: In what respects was the preparation of the Sunbeam bank book unique?
A I mean, the material is all different.
Q Is there any other respect in which the preparation of the Sunbeam bank book was unusual?
MS. BROWN: Object to form.
A I would say no. I don't recall.
MR. CHORVAT: Let me show you what previously has been marked as CPH deposition Exhibit 261. Are you familiar with Exhibit 261?
A Yes.
Q Is 261 a draft of the bank book?
A No. This appears to be a slide presentation that would have been used at the meeting itself, whereas the bank books, the materials you would distribute in advance.
Q Is this your handwriting in Exhibit 261?
A It appears to be my handwriting, yes.
Q Looking through here, based on the

Page 47

handwriting, it appears that this is a draft of the document.
A It looks like a draft, yes.
Q What role did you play in drafting the slide presentation that is for the lender meeting?
MS. BROWN: Object to form.
A I don't recall. I mean, it looks like I was commenting on it.
MR. CHORVAT: Is this your handwriting that runs throughout the document?
A It looks like my handwriting.
Q Is this a document that Mr. Saith prepared?
A I don't know.
Q What recollection, if any, do you have of your role with respect to this document?
MS. BROWN: Objection, asked and answered.
A I mean, this looks like I was commenting on it.
MR. CHORVAT: Do you have an understanding of what source or sources of information went into this document?
A No. Sorry. I don't recall.
Q Is a slide presentation like this typical of a national syndication?

Page 48

A Yes.
Q Let me ask you to turn to the page that has the Bates number 24399. Can you explain what the meaning of your comments on that page is?
A I don't recall.
Q Do you recall whether these are numbers that you are adding for your own use or whether you are suggesting a different presentation?
A I don't know. I mean, it looks like I was just adding numbers. That seems to be a good way of putting it. 253, a sum of ...
Q I want to show you what previously has been marked as CPH deposition Exhibit 155.
A This is the bank book.
Q So this is the bank book that you referred to earlier in your testimony?
A Yes.
Q Were there some portions of this document that you yourself wrote?
MS. BROWN: Object to form.
A Not that I recall.
MR. CHORVAT: Other than yourself was there another individual or were there other individuals at Morgan Stanley who wrote portions of the bank book?

Page 49

MS. BROWN: Object to form.
A Other than the people that would have been involved in preparing it, I think, "Writing it" -- it would have been myself and Ishaan Seth.
Q Other than yourself and Mr. Seth, were there others at Morgan Stanley who reviewed or commented on drafts of the bank book?
MS. BROWN: Objection, foundation.
A I don't recall.
MR. CHORVAT: Is the bank book something that you had authority in 1998 to sign off on approval or was that something that was reviewed at some other level?
A I don't understand what you mean by, "Sign off and approve". It is the company's document, so ultimate responsibility, I guess it says up front, lies with the company.
Q Were there any individuals, senior to yourself at Morgan Stanley, who had any involvement in connection with the preparation of the bank book?
MS. BROWN: Objection, foundation.
A When you say, "Responsibility", I don't know what you mean.
MR. CHORVAT: Well, let me say, "Involvement".

NOT A CERTIFIED COPY

Page 50

A Sorry.
Q Other than yourself and Mr. Seth, who, if anyone, at Morgan Stanley had any involvement in preparing the bank book?
MS. BROWN: Same objection.
A I don't recall.
MR. CHORVAT: Well, is it something -- would Mr. Hart have had occasion to look at drafts of the bank book?
MS. BROWN: Objection, foundation.
A I don't know. I don't recall.
MR. CHORVAT: Would Mr Smith have had occasion to look at drafts of the bank book?
MS. BROWN: Objection, foundation.
A You know, probably would have looked at the list of the Sales people to make sure that these guys, make sure all the names are spelled correctly and the numbers are correct.
MR. CHORVAT: Is there anyone other than yourself and Mr. Seth to whom drafts of the bank book would have been circulated at Morgan Stanley?
MS. BROWN: Objection, foundation.
A Probably. I don't recall.
Q I mean, let me broaden it out. More

Page 51

generally in the process of preparing a bank book, does an associate report to or work with anyone more senior in getting to a finished product?
A I mean, yes. Mike Hart was on the deal. I was working with Mike.
Q Would individuals at Bank of America and First Union also have participated in the process of drafting, or was it a Morgan Stanley task?
MS. BROWN: Object to form and mischaracterizes evidence.
A The book would have been distributed to other institutions in a draft form, yes.
MR. CHORVAT: When you say it would have been distributed, who would have done that distributing?
A Myself, Reshan Paul(?).
Q Is the bank book something that was on a Morgan Stanley computer system?
A I think so.
Q It was like a Word document or something like that?
A I think so, yes.
Q It would have been somewhere physically on the Morgan Stanley word processing system at the time it was prepared?

Page 52

A Yes.
Q During your work on Sunbeam for Morgan Stanley, did you ever have occasion to attend any meeting or meetings of analysts?
A No. Not that I recall.
Q Did you ever have occasion to attend any meeting or meetings with rating agencies?
A Not that I recall.
Q The draft of the slide presentation that we looked at a moment ago, Exhibit 261, refers to a lender meeting on June 9th of 1998. Did you attend a lender meeting on or about June 9th of 1998?
A Yes, I did.
Q Who else from Morgan Stanley attended that meeting?
A I don't recall.
Q Do you recall whether Mr. Seth attended that meeting?
A I would be surprised if he didn't, but I don't recall.
Q Do you recall whether Mr Smith and Mr. Hart attended the meeting?
A I would say the same thing.
Q You would expect that they would have but you don't recall?

Page 53

A Yes.
Q What can you recall about that lender meeting?
A It was a relatively, you know -- nothing specific. I mean, the company gave a presentation, not a lot of Q and A at the end which is fairly typical for these bank meetings, banks like to ask their questions later, and Dunlap signing a lot of books.
Q Who gave the presentation on behalf of Sunbeam?
A I have no idea. I mean, a number of people. I think they took -- they would take sections.
Q Mr. Dunlap was one of them?
A Yes.
Q Mr. Kersh was one of them?
A I don't recall Kersh's presentation. I had a lot of responsibility so, you know, making sure that a lot of things were going on, so I didn't necessarily sit in there watching the whole thing.
Q Tell me what your responsibilities were.
A Make sure people signed in, there were enough seats. Some of the stuff we do is kind of boring.

NOT A CERTIFIED COPY

018748

Page 54

Q You had to handle the logistics, among other things?
A Yes.
Q Where did the meeting take place?
A In a hotel. I don't recall. A hotel in New York City.
Q Was it in a conference room, an auditorium?
A Yes, auditorium, yes.
Q Do you recall how many people or how many institutions attended?
A I don't recall exactly.
Q Do you have a --
A It was well-attended. There were a number of institutions and banks there.
Q More than 50 people? Several dozens of people?
A Probably.
Q What, if anything, about the specific discussions took place can you recall?
A It was a presentation rather than discussions.
Q Were there questions and answers?
A There was a Q and A session, yes.
Q Do you recall the topics that were covered

Page 55

in any of the questions?
A Not that I recall.
Q Do you recall whether there was any attention to or concern about somebody's financial performance?
MS. BROWN: Object to form.
A These, you know, I don't recall. It is unusual for banks to ask pointed questions at these meetings. They just don't do it, but I don't recall specifically.
Q In addition to the lender meeting, did you also have occasion during the course of the syndication efforts to speak with representatives of potentially interested institutions?
A Those -- the answer -- not that I recall. Typically, we have a sales force and they deal with their counterparts at institutions, so, you know, sometimes the sales force cannot answer questions unless we know that it generally comes through to us, but I don't recall specifically having questions from the counterparts of the other institutions.
Q With respect to Sunbeam, was there someone else at Morgan Stanley who would have been involved in those discussions?
A Yes. The sales force.

Page 56

Q Under Mr Smith?
A Yes.
Q After the lender meeting in June 1998, what else, if anything, did you do with respect to the attempt to syndicate the Sunbeam loan?
A I don't recall. The process takes two or three weeks, and, you know, potentially the lenders declined to participate in the loan.
Q The bank book would have been available to lenders as of the time of the lender meeting. Is that right?
A Typically, it distributed in advance.
Q Do you recall in this occasion?
A I don't recall.
Q You mentioned a moment ago that the process takes two or three weeks. Describe that process, please.
A Typically, you have the bank meeting, and then, I think actually if you look at the front of this book there is a timetable. Typically, the banks were given three weeks to come back with commitments after the bank meeting, and it is an iterative process from the bank meeting to that date, where you just answer bank's questions, and, you know, try to assist them to get an approval on the loan.

Page 57

Q When you say it is an iterative process, what is it that iterates?
A They come to you with questions, you answer their questions, they can come back with more questions.
Q You mentioned that the syndication effort with respect to Sunbeam was not successful?
A We didn't syndicate the loan.
Q Did you have an understanding at the time as to why it was that you didn't syndicate the loan?
A I think there were questions starting to come up as to, you know, what was going on in the company. I don't remember specifically, but ...
Q Do you recall anything about the nature of those questions?
A No. I don't recall.
Q Do you recall whether it had anything to do with efforts to accelerate a sales or earnings from one reporting period into another?
A At some point over -- I don't recall when exactly I became aware of that as an issue at some point, but I don't recall whether it was during the process here, or whether there were just other issues that the banks were concerned about. The share price was falling. There were a number of

NOT A CERTIFIED COPY

Page 58

things going on.
Q At some point during the syndication process Mr. Dunlap was terminated?
A I don't recall exactly. Do you recall when? I don't recall exactly when it was terminated.
Q I guess the question I am wondering, I want to get at, is whether you recall whether the syndication process was proceeding successfully up to the point that he was terminated, or whether it was already having problems?
A I don't recall.
MS. BROWN: Let's take a break.
(11.29 am)
OFF THE RECORD
(11.37 am)
MR. CHORVAT: Mr. Rankin, there came a time when the efforts to syndicate the Sunbeam loan in June of 1998, when those efforts ended?
A Yes.
Q How did that come about?
A I think the bank, you know, we had declines from all the banks who had been invited to the syndication.

Page 59

Q So, it wasn't so much a decision that Morgan Stanley or Sunbeam made, as it was you had just gotten answers back and there were no takers?
A Yes. I don't know if the last decline had come in, but it became obvious that we weren't going to syndicate the loan.
Q I take it you didn't work any further on the bank book after that?
A That is fair.
Q Other than things that you have testified to so far in connection with the bank book or the lender agreement, what else did you do with respect to Sunbeam at Morgan Stanley?
A Well, after -- you know, I think the focus shifted, and I don't know the exact sequence of events, but the Macandrews and Forbes and MaFCo became involved and I started attending meetings with different parties, I suppose.
Q When you say, "Different parties", what parties were those?
A I mean, I remember having meetings, I think, with Macandrews and Forbes and their attorneys, I suppose, or their advisers. I don't know exactly who.
Q Together with, or separately from, those

Page 60

meetings, did you also have meetings with representatives of Bank of America and First Union?
A I didn't, no. I don't recall.
Q Do you know whether someone else at Morgan Stanley was continuing to coordinate with Bank of America and First Union?
A I don't know.
Q With respect to the meetings with MaFCo, are these meetings in person or conference calls or both?
A Both, I think.
Q How did that process start, to your recollection?
A I don't recall.
Q Do you recall how your involvement in that process came to be?
A Attending meetings with Mike Hart.
Q Something where Mr. Hart asked you to attend a particular meeting?
A Yes.
Q Did you have any responsibility with respect to the dealings with Macandrews and Forbes or MaFCo, other than to show up at meetings?
A No.
Q Did you have any logistical

Page 61

responsibilities in connection with any of those meetings?
MS. BROWN: Object to form.
A No. The meetings were at their offices.
MR. CHORVAT: Were these meetings that you took notes at or wrote memos about?
A I don't recall how we were recording it.
Q Do you recall when in relation to the lender meeting the first meeting with MacAndrews and Forbes or MaFCo took place?
A I don't recall.
Q What can you recall about your meetings with MaFCo?
A You know, I don't have a great recollection of the meetings.
Q How many meetings are we talking about?
A Three, five. More.
Q Over what general period of time did they take place?
A A number of weeks, months.
Q All in 1998?
A I believe so.
Q Were they all in the same place?
A No. They moved around.
Q What locations can you remember?

NOT A CERTIFIED COPY

0187750

Page 62

A Some were at what is called The Townhouse, I guess, that is MacAndrews and Forbes' office, and some were at an attorney's office, but I don't recall which attorney. Manhattan attorney.
Q Who attended the meetings?
A Morgan Stanley, Macandrews and Forbes, Macandrews and Forbes' advisers. I can't remember if we had our attorneys there. We might have had advisers from Morgan Stanley as well.
Q Who served as Morgan Stanley's advisers?
A I don't recall.
Q When you say, "Advisers", do you mean someone other than counsel?
A I mean counsel, yes.
Q What do you recall about the purpose of the meetings?
A Just to determine what, you know, to determine what was going on, the situation, and really just to, you know, get a handle on what was going on, and how we were going to deal with it.
Q When you say, "What was going on", do you mean events at Sunbeam?
A At Sunbeam, yes. Their accounting issues, who was going to run it, who owned it.
Q Without asking you to recall specific

Page 63

words that specific individuals used, what can you recall about the substance of the discussion?
A You know, it was pretty much about who was going to run the company, how to get the company back on its feet, how to move forward, how to constructively attack the situation, and, you know, try to presumably -- I will not say "presumably", but, I mean, to maintain value.
Q Would you characterize it as a collaborative effort to maintain that?
MS. BROWN: Object to form.
A Yes.
MR. CHORVAT: Now, I had carved out from my prior question any specific statements that any particular individuals made. Do you recall any specific statements that any particular individuals made?
A No. I do not.
Q Do you recall why it was that those meetings stopped happening after some period of time?
A Actually, I stopped attending them, so I am not sure when they stopped happening.
Q Other individuals at Morgan Stanley continued to attend them after you stopped?

Page 64

A Yes. Mitch Petrick became involved in the transaction.
Q When is it that Mr. Petrick first became involved with Sunbeam?
A I don't recall exactly, but after the syndication was not completed, after the information about the accounting became well-known, but specifically, I cannot tell you.
Q What is your understanding of the role that Mr. Petrick played with respect to Sunbeam?
A How to, you know, maintain as much value in the company as possible, you know, make sure that it was managed properly, make sure that -- that is it. Just maintain values, really, I think is the order of the day.
Q In addition to your work on the bank book, the meeting, and your attendance at some meetings with representatives of Macandrews and Forbes, what other work did you do with respect to Sunbeam?
A There were certain amendments that were required, so I was -- you know, I facilitated that, if you will, internally, from the Morgan Stanley perspective.
Q What is it that you did to facilitate amendments to the agreements with Sunbeam?

Page 65

A The loan agreement would have certain requirements and obligations of the company in it. If the company couldn't meet those they would technically be in default, so they would need an amendment to cure that default. That is my recollection as to what we were doing.
Q Why is it that there would be an amendment to cure the default as compared to enforcing the rights that the lenders had upon a default?
MS. BROWN: Objection. Foundation; speculation.
A You know, I don't know.
MR. CHORVAT: Is there someone at Morgan Stanley who made a decision in one or more instances to wave a default by Sunbeam?
A Well, I think generally speaking the banks aren't interested in running a company, you know, the management of the company. That is not their job, so I think that, you know, there is a co-operative value maintaining, hopefully, an enhancing exercise, where you work together.
Q Who at Morgan Stanley would have had authority to agree to the substance of an amendment to waive a default?
A Mike Hart, Mitch Petrick.

NOT A CERTIFIED COPY

Page 66

Q Were those the individuals with whom you worked in connection with amendments to the Sunbeam credit agreement?
A Generally Mike Hart.
Q What was your role in contrast to Mr. Hart's role with respect to amendments to the credit agreement?
MS. BROWN: Object to form.
A I suppose mine was more making sure that it was drafted correctly, and that Mike would be more responsible for making sure that it reflected the firm view, I suppose.
Q Were you involved in negotiating the terms of any of the amendments to the credit agreement?
A No, I wasn't.
Q Was that Mr. Hart's responsibility?
A I don't know whose responsibility it was directly.
Q But at some point it was communicated to you that there would be a particular change made in the substance of the credit agreement, and it would be your responsibility to see that that was documented correctly?
A Well, a lot of attorneys were involved, so it was a group effort.

Page 67

Q In connection with the amendments to the Sunbeam credit agreement, other than Mr. Hart, with whom did you work? And I don't mean just internally at Morgan Stanley. I mean anyone else you work with.
A I forget. I mean, we had attorneys. I just don't recall which firm it was, but I am sure there is materials around that can demonstrate who it was. I just don't recall exactly which law firm it was.
Q Did the firm of Davis Polk work on that?
A I just don't recall.
Q Were there individuals at other lending institutions who also worked on the amendments?
A Yes. The Bank of America and First Union had representatives at the meetings as well, yes.
Q Were there meetings with respect to amendments to the credit agreement?
A I am sure there were. There will be ongoing discussions whether, you know -- but it was a fairly continuous process. I wasn't necessarily part of all the conversations, but, I mean, it took all three of us, all three of the banks, Bank of America, First Union and Morgan Stanley were generally in agreement on what we were doing, so there must have been conversations going on.
Q Over the course of time there were quite a few amendments to the Sunbeam credit agreement. In your experience, is that typical, or were there an unusual number of amendments here?
MS. BROWN: Object to form.
A I haven't been in a situation like that before, so ... we just did what was necessary.
Q Are you familiar with something called the, "Parent security agreement", with respect to Sunbeam?
A That doesn't -- I don't recall it.
Q You don't recall why it was that a parent security agreement was developed?
A I don't recall.
Q In connection with the loan to Sunbeam, is it correct that there were a couple of pieces to the Senior debt? There was a term piece and a revolver piece?
A I think that's right, yes.
Q Do you recall over what period of time advances were made to Sunbeam under either part of their facility?
A A revolving credit facility can be drawn and repaid, drawn and repaid, so that is over the life of it. The term facilities, I don't recall here, but typically they are drawn relatively close to the closing of the transaction. They are the funded part of the loan to fund the acquisition. I don't remember the specific dates that they were actioned.
(Exhibit CPH 292 marked for identification)
Q I will ask you to look at what has been marked as Exhibit 292. Is this, or any part of this, a document that you have seen before?
A I don't recall this document specifically, but, you know, generally I am familiar with the issues that were being addressed in it.
Q After the cover page, this is a draft of a second amendment to the credit agreement.
A That is what it appears to be, yes.
Q Your role with respect to the second amendment would be, as you have described it, as a facilitation role for the Morgan Stanley perspective. Is that right?
A That's right.
Q In the first page of the amendment itself, the second page of this document, there is a, "Whereas", clause that appears to list the purposes for the amendment. In the (iii) it says that:
"One of those purposes is to modify the conditions to borrowing and issuance amendment

Page 68

Page 69

NOT A CERTIFIED COPY

018752

Page 70

renewal and extends of Letters of Credit", and (iv):
"Extending the time period by which the parent is required to enter into hedging agreements".
Do you recall whether those portions of this amendment would be things that Sunbeam would have requested?
A I don't know if they would have requested it, or if it was just passage of time. It may, you know -- I don't know. I don't recall.
Q You started to say, "Passage of time". What was the thought you were getting at there?
A It says, "Extend the time period by which the parent is required under the hedging agreements", and if they hadn't entered into the hedging agreements by the time they were required to, the passage of time would necessitate an amendment, but I am just reading into it. That is all.
Q In (v) it says:
"Answer information or requirements".
Was it the case that as the amendment process went on, the lenders, including Morgan Stanley, added information or requirements to enhance their ability to monitor the situation at

Page 71

Sunbeam?
MS. BROWN: Object to form and foundation.
A I don't know whether it was clarification or additional. I don't know.
Q Do you recall whether, during the process of amending the credit agreement, the lenders, including Morgan Stanley, sought additional information beyond what Sunbeam had previously been required to supply?
MS. BROWN: Same objections.
A I don't recall the specifics.
MR. CHORVAT: In (ii) it says:
"Increase pricing".
Is it the case that in connection with amendments to the credit agreement that the lenders, including Morgan Stanley, increased the fees and interest that they charged to Sunbeam?
A I think that's correct, yes.
Q Why is that?
MS. BROWN: Objection, foundation.
A I would be -- I don't know. Presumably the risk had gone up.
MR. CHORVAT: I was going to ask you if it was a function of the risk or of the

Page 72

administrative time and effort that you are putting in, or something else.
A It could be both.
Q Do you recall whether, as of June of 1998, Sunbeam had drawn down the full availability that it had under the revolver?
A I don't think so. It is very rare that a company -- the revolver -- it is very rare that a company does that, so the answer is I don't know, but I would be very surprised.
Q On the first page of this document, this appears to be a fax transmittal to Tom Mollitt(?) or of First Union. Is that an individual that you dealt with in connection with Sunbeam?
A I met Tom, yes.
Q Was he the person at First Union that was your primary contact with respect to Sunbeam?
A I don't recall.
Q Was there a particular role that First Union played in contrast to the role that Morgan Stanley played with respect to Sunbeam?
MS. BROWN: Object to form.
A People had, you know, people did have different roles, but I don't recall specifically. I mean, we were in charge of getting this thing into

Page 73

its form, for instance.
Q That thing being Exhibit 155, the bank book. Is that what you were pointing to there?
A Yes.
Q What role did First Union play? Was there a particular aspect that they were in charge of?
A No, I don't recall what the split of responsibilities was.
Q Would your answer be the same with respect to Bank of America?
A Yes.
Q Was there a particular individual at Bank of America with whom you dealt?
A I don't recall who it was. I don't recall.
Q Over the course of the amendment process with respect to the Sunbeam credit agreement there are instances where interest rates that are charged under the documents to Sunbeam are increased. Do you recall the reason for those increases?
A I don't recall the specific reasons.
Q Do you recall whether interest rates charged to Sunbeam were increased because of market factors, or because of factors specific to Sunbeam, or some of both?
MS. BROWN: Objection, foundation.

NOT A CERTIFIED COPY

018753

Page 74

A I believe they were variable rates, variable interest rates, and so there would be a market section. If the underlying rates went up and down, the rates would go up and down, and then there is a margin on top of that that reflects the risk of the transaction.

MR. CHORVAT: And that margin on top of whatever the variable portion of the rate would be, that is an element of the rate that is set specifically with respect to Sunbeam. Is that correct?

A Yes.

Q It is designed to reflect the particular circumstances and risks that are associated with Sunbeam?

MS. BROWN: Objection, form.

A The margin of a loan, the margin of loans reflects the company's specific situation.

MR. CHORVAT: Let's pause just a moment. We need to change the tape.

(12.03 pm)

OFF THE RECORD

(12.06 pm)

VIDEOGRAPHER: This is the beginning of videotape number 2 in Simon Rankin's deposition.

MR. CHORVAT: Mr. Rankin, what role, if any, did you play in connection with any decisions to mark-down or write down Sunbeam dead on the books of Morgan Stanley?

A None.

Q Do you have an understanding as to who at Morgan Stanley would have been involved in that process?

A I don't know.

Q Do you have any understanding of when any mark-downs were taken with respect to any debt of Sunbeam on --

A I don't know.

Q Are you aware that the lenders, including Morgan Stanley, worked to obtain a direct pledge of collateral from Coleman in connection with the Sunbeam financing?

A I don't recall it.

Q I will ask you to take a look at Exhibit 293 which is a one-page document bearing the Bates number Morgan Stanley 75968. Note that your name is listed about halfway down the list of addressees there. Is this a document that you are familiar with?

Page 76

(Exhibit 293 marked for identification)

A I don't recognize the document specifically, but I recognize my name on the, "To", list.

Q Is this the sort of document that you received from time to time in connection with your work on Sunbeam for Morgan Stanley?

A Yes.

Q In the list of individuals, "To", there you see Mr. Petrick's name. He was at Morgan Stanley?

A Yes.

Q Mr. Hart was at Morgan Stanley?

A Yes.

Q Anyone else who was at Morgan Stanley?

A I think Morgan Edwards. It is a tough call. I think we hired him. At some point Morgan Edwards was working at Morgan Stanley.

Q Can you identify any of the other individuals there on the, "To", list?

A No. I believe they are employees of First Union and Bank of America.

Q In the second paragraph there it says: "We are currently working with Skadden to prepare the documentation for the direct pledge of Coleman to the lenders".

What, if anything, can you recall about a direct pledge of collateral by Coleman?

A I don't recall those negotiations.

Q Do you recall whether the lenders, including Morgan Stanley, sought a direct pledge of collateral by Coleman in order to improve their secured position with respect to Sunbeam?

A That would sound like the right fact pattern, but I don't recall the actual motivation behind it, but that would presumably be their intent.

Q On the cc list, can you identify those individuals?

A I don't remember who they are.

MS. BROWN: By the way, a lot of these documents refer to communications to or from attorneys, so I just caution you to the extent that you are answering questions not to reveal any communication you had with any of your counsel.

A Okay. Thank you.

MR. CHORVAT: This document is dated April 22nd of 1999. As of April of 1999, or the spring of 1999, or generally, do you have

Page 77

NOT A CERTIFIED COPY

018754

Page 78

a recollection of whether Morgan Stanley believed that its position with respect to Sunbeam was fully secured?
MS. BROWN: Objection, foundation.
A I don't know.
MR. CHORVAT: Let me try and improve the question a little bit. I don't know if it will change the answer. Do you have an understanding as to any time in the first half of 1999 whether Morgan Stanley understood that its Senior loan position with respect to Sunbeam was fully secured?
MS. BROWN: Same objection.
A I wasn't involved in any -- to the best of my recollection I was not involved in discussions of that nature, so I don't know.
MR. CHORVAT: At any time.
A I was not involved in these negotiations and I was not involved as you were discussing earlier, so I don't know, and I was not involved in trying to line up the security value and the loans outstanding to see if they were fully secured on the technical basis, no.
Q Was there any point in time, if we move away from the first half of 1999, just to broaden it

Page 79

out, is there any point in time in which you had an understanding as to whether or not Morgan Stanley's Senior loan position vis-a-vis Sunbeam was fully secured or something other than fully secured?
A No. I don't.
Q Let me ask the reporter please to mark this as CPH deposition Exhibit 294.
(Exhibit 294 marked for identification)
Mr. Rankin, let me ask you to look at Exhibit 294 which is a document that bears the Bates number Morgan Stanley 20379 through 20401. Can you identify Exhibit 294?
A It is entitled, "Amendment number 10 to the credit agreement".
Q If you look at the page that bears the Bates number 20395, is that your signature?
A That is my signature.
Q In what capacity did you sign this document?
A As Vice-President of Morgan Stanley Senior Funding Inc.
Q On the first page of this document there is, in the second, "Whereas", clause it says that the parent, and that is Sunbeam Corporation, has requested that the administrative agent and the

Page 80

lenders agree to continue to waive for approximately another year from the date of this document, certain provisions of the credit agreement. Do you have an understanding as to why Morgan Stanley agreed to that?
MS. BROWN: Objection, foundation.
A I don't recall.
MR. CHORVAT: Would this be an instance of the general tendency that you testified to earlier concerning the waiver of defaults by Sunbeam?
MS. BROWN: Objection. Mischaracterizes the witnesses testimony; calls for speculation.
A I don't recall the specific reasons for this amendment.
MR. CHORVAT: What do you recall more generally about the process as of -- this would be the first half of 2000 in which the credit agreement was amended and waiver dates were extended?
A I don't have specific recollection about the specific events that were going on at that point.
Q Do you have a general recollection of how things evolved with respect to the credit agreement?

Page 81

MS. BROWN: Object to form.
A We, as a firm, were continuing to work with the company to try to stabilize it, maintain value. I think, you know, that is to the best of my knowledge.
MR. CHORVAT: On the page that is labeled Morgan Stanley 20383, there is a Section 5 that carries over to the following page that relates to fees, and then there is the credit agreement with respect to fees. Do you recall why there were provisions relating to fees and the increases of fees included in either amendment 10 specifically or amendments like it more generally?
A I don't know.
Q Do you have a recollection of who at Morgan Stanley would have been involved in determining the appropriate fees to charge Sunbeam?
A I don't recall.
Q Is that something that Mr. Hart would have done, or Mr. Petrick or someone else?
A I don't recall, but they were the underwriters leading the negotiations. So, it is a fair speculation.
Q Mr. Rankin, let me ask you to look at

NOT A CERTIFIED COPY

018755

Page 82

Exhibit 295, which is a three-page document that bears the Bates number Morgan Stanley 59312 through 59314. Can you identify this document?
(Exhibit 295 marked for identification)
A It appears to be an inter-office memorandum to senior members of Morgan Stanley from Bram Smith, Mike Hart, myself, Petrick, Doster, and credit officers.
Q Is this your handwriting on this document?
A It looks like my handwriting.
Q The four individuals who are to whom this memo is addressed, would it be fair to describe them as senior management of Morgan Stanley?
A Yes.
Q Do you know why a memorandum with respect to Sunbeam would have been addressed to senior management in April of 2000?
A It would just be a communication to Senior management as to what was going on in this transaction.
Q Do you know what role, if any, senior management was playing with respect to the Sunbeam transaction?
A I don't know.
Q In the, "From", portion of this

Page 83

memorandum, there are eight individuals who are grouped into three categories. Were there particular responsibilities with respect to Sunbeam that each of those three groups had?
A I think it was a collaborative effort that was going on between the teams. This is just really a functional, you know, distinction of what groups the people are in, but this would have been everybody working together on it.
Q You mentioned a functional distinction. Were there different functions that the different groups performed with respect to Sunbeam?
A The loan group is origination, credit is, you know, the internal credit group that reviews it from a credit perspective, and SSG, I don't know what that stands for, but that would have been who Petrick was -- the individual within the group within he was working in.
Q Who is T Doster?
A Ted Doster worked for Mitch. I don't know what his role is now, but I think at the time he was working for Mitch Petrick.
Q Do you have any understanding of his role with respect to Sunbeam?
A No.

Page 84

Q Is this a memorandum that you wrote?
A I don't recall who wrote this.
Q In the first paragraph of the memorandum it -- most of the way toward the bottom of that paragraph on the left side, it says that the extension will allow Sunbeam management time to continue the turnaround of the company's operations and to prepare the credit for ultimate syndication. As of April of 2000, was it still Morgan Stanley's intention to syndicate the Sunbeam loan?
MS. BROWN: Objection. Foundation.
A Well, it appears from what is written here that syndicating the loan was a goal.
Q The next sentence says:
"The lenders ..."
And by, "Lenders", I take it that refers to Morgan Stanley, First Union and Bank of America. It says:
"The lenders believe that the strategies being pursued by Jerry Levin and his Management Team have stabilized the company's operations, providing a platform for growth, and that an achievable business plan has been established".
Do you recall whether you or others

Page 85

at Morgan Stanley held that view with respect to Mr. Levin's efforts at Sunbeam?
MS. BROWN: Objection. Foundation and compound.
A I believe it is fair to say that.
Q Looking at the handwriting on this page, toward the bottom of this page is written, "Hoolihan Lokley(?)". Do you see that?
A Yes.
Q Did you have occasion to deal with anyone from Hoolihan Lokley in connection with Sunbeam?
A I believe they made -- I don't recall exactly what Hoolihan Lokley was doing.
Q Do you recall who retained Hoolihan Lokley?
A I don't recall.
Q With your handwriting on this document, is it fair to conclude that this was a document that you at least received in connection with your work at Morgan Stanley?
A Yes.
Q Do you recall who Lizzie is or was in the very bottom handwritten portion?
A I think that is my aunt.
Q That probably has nothing to do with

NOT A CERTIFIED COPY

Exhibit 6

Page 86

Sunbeam?
A I think it was a note to myself to call her back.
Q With respect to Sunbeam documents that you marked up, we have seen a number today, what sort of files did you keep with respect to Sunbeam?
A I kept -- I just kept the materials that were -- I kept a file of the related documents.
Q It was something that you maintained in your office?
A I had a file somewhere on my desk, in the desk.
Q How did you decide what documents to keep in your file with respect to Sunbeam?
A Probably kept most documents.
Q It was just your practice to keep documents that related to Sunbeam in a file?
A Yes, or a stack, or a file, or -- you know.
Q Mr. Rankin, let me ask you to look at Exhibit 296 which is a document that bears Bates numbers Morgan Stanley 59295 through 59311. Can you identify Exhibit 296?
(Exhibit 296 marked for identification)
A It appears to be a briefing memo for

Page 87

amendment number 12, and a copy of the amendment.
Q The handwriting on this document, is that yours?
A Yes.
Q Some of the names here are crossed out. Do you know, for example, why Mr. Hart's name would have been crossed out?
A Probably because he wasn't a contributor, or wasn't a contributor for the memo, I think. I don't recall exactly.
Q Did there come a time when Mr. Hart stopped working object Sunbeam matters?
A I believe so.
Q When was that in relation to August of 2000, if you recall?
A I don't recall.
Q Can you get a sense, comparing the 296 with 295, of whether you start of started with the shell of the April memo and used that to draft the August memo and then went back and corrected the names as appropriate?
A I don't know. I don't recall. They are certainly related.
Q Toward the bottom of this page, the handwriting talks about, "Can Adrian be guarantee".

Page 88

Can you read what that says after that?
A It looks like, "... secured [something] stock, maybe with stock, shorthand."
Q And then there is a, "Coleman guarantee/pledge of any outstanding Sunbeam ownstock", or Sunbeam owned stock".
A Yes.
Q Do you know why you would have written that?
A It looks like a detail of the actual sentence, so lenders have enhanced their security position by securing assets. That is the specifics.
Q Was that a note to yourself to beef up that part of the memo?
A I don't know.
Q There is a reference in the third paragraph on the first page to Policano & Manzo which is then abbreviated to, "P and M". Do you see that?
A Yes.
Q Did you have occasion to deal with individuals from Policano & Manzo in connection with Sunbeam?
A Yes.
Q Who at Policano & Manzo did you have

Page 89

occasion to deal with?
A I mean, "Deal", is probably unfair. I think I -- I think they made some presentations and did some analysis which I would have received, but to deal with them, I don't think that is a correct characterization.
Q Are there particular individuals at Policano & Manzo with whom you communicated?
A I don't recall. I mean, there were, but I don't recall their names.
Q Does the name Ed Ordway ring a bell?
A I recall that name, yes.
Q Is that somebody who worked on Sunbeam for Policano & Manzo?
A I recognize his name. I recognize Paul Canny(?) Manzo. If you tell me that he worked there at the time I would say yes.
Q Do you know whether he made any presentations to which you referred?
A I just don't recall.
Q To whom did Policano & Manzo make presentations in connection with Sunbeam?
MS. BROWN: Objection, foundation.
A I don't recall.
MR. CHORVAT: Did you, yourself, attend

NOT A CERTIFIED COPY

Page 90

any presentations that Policano & Manzo made with respect to Sunbeam?
A I don't recall whether -- I don't recall.
Q Do you have a recollection of what the nature of the work that Policano & Manzo did with respect to the work that Sunbeam did was?
A The purpose of their work was to evaluate the controls and operations at Sunbeams. I don't recall exactly what they did.
Q Do you recall over what period of time Morgan Stanley and the other lenders worked with Policano & Manzo with respect to Sunbeam?
A I don't recall when we hired them precisely.
Q Do you have a general understanding?
A I don't recall.
Q Was there someone other than yourself at Morgan Stanley who would have been more involved in communicating with Policano & Manzo?
MS. BROWN: Objection, foundation.
A I don't recall, although I think Mitch Petrick and Ted Doster were becoming more involved with the transaction as the transaction went on.
Q Do you recall what use, if any, Morgan Stanley made of information supplied by Policano &

Page 91

Manzo?
A I don't recall.
Q During the course of your work for Morgan Stanley with respect to Sunbeam, did you have occasion to deal with anyone from FTI?
A I don't know who that is.
Q Does the name Fred Nuttall ring a bell?
A No.
Q We discussed Hoolihan Lokley a little earlier. Does the name Michael Claimer ring a bell with respect to Sunbeam?
A No.
Q What role, if any, did you play in connection with Sunbeam's bankruptcy?
MS. BROWN: Object to form.
A None that I recall.
MR. CHORVAT: Were you aware that Sunbeam filed a Chapter 11 petition at some point?
A Yes.
Q Were you still working with respect to Sunbeam as at the time that Sunbeam filed its Chapter 11 petition?
A Not that I recall.
Q When did you move to London?
A I think it was February 2001.

Page 92

Q Have you done any work with respect to Sunbeam since you moved to London?
A No. Not that I recall.
Q Did you do any work with respect to any preparation for debtor and possession financing for Sunbeam?
A Not that I recall.
Q Was there someone else at Morgan Stanley who would have worked on preparations for debtor and possessions financing for Sunbeam?
A Somebody. I just don't know who it was.
Q During the year 2000, when we have seen a couple of memos that were drafted with respect to Sunbeam, what was your role in connection with Sunbeam?
A I would put it down more as monitoring than being directly involved in the negotiations.
Q From, say, the beginning of 2000, through the time that you left for London, did your role with respect to Sunbeam change?
A It diminished over time. Petrick and Doster took an increasing role.
Q When you left for London, did someone take over your responsibilities with respect to Sunbeam?
MS. BROWN: Objection, foundation.

Page 93

A Not that I recall. I don't know. Presumably somebody did.
Q Have you played any role whatsoever with respect to American Household, the successor to Sunbeam?
A No.
Q Was there ever time that you are aware of when Sunbeam had fully drawn down on its revolver?
A I am not aware of that.
Q Is it the case that over the time that you worked with respect to Sunbeam, that Sunbeam would, from time to time, take advances on its revolver?
A I don't recall.
Q Do you recall when Sunbeam last took an advance on its revolver?
MS. BROWN: Objection, foundation.
A No.
MR. CHORVAT: Mr. Rankin, I will ask you to look at Exhibit 297 which bears the Bates numbers Morgan Stanley 69860 through 69869. Are you familiar with Exhibit 297?
(Exhibit 297 marked for identification)
A I am not familiar with this document.
Q Your name is listed on the first page as an addressee with a 2123 fax number. The date is

NOT A CERTIFIED COPY

018758

September of 2001. Were you working on Sunbeam matters as of September 6th of 2001?
A I think my role had been dramatically reduced.
Q And the substance of this document relates to Sunbeam's debtor in possession credit facility. Did you have any function with respect to Sunbeam's debtor in possession Credit Facility?
A Not that I recall.
Q If you had gotten a fax like this in September of 2001 what would you have done with it?
MS. BROWN: Objection. Speculation; hypothetical.
A I would have made sure that one of the other people on this list had seen it.
MR. CHORVAT: Would you have sent it out to Mr. Petrick, or was there someone else?
A It seems that Mr. Petrick appears to have got a copy and Ted Doster, Rick Felix, Dan Ryan, so I would have, you know, just made sure that one of them was taking responsibility for it.
Q Mr. Rankin, let me ask you to look at Exhibit 298 which is a two-page document that bears the Bates numbers Morgan Stanley 24720 and 24721. Can you identify this exhibit?

(Exhibit 298 marked for identification)
A It looks like -- it is a comparison of two loan structures written on my letterhead, and the second page appears to be the source of the current loan amount.
Q The handwriting on the first page, is that yours?
A It looks like my handwriting.
Q The handwriting on the second page, is that your handwriting as well?
A That looks like my handwriting.
Q Can you tell why you wrote this?
A The loan had changed and I was lining up the differences.
Q This is something that you wrote in connection with your work at Morgan Stanley with respect to Sunbeam?
A Yes.
Q The loans that are added up here, that is the Sunbeam facility, is that right? This refers to Sunbeam?
A I think so.
Q That is a better question. On the first page there is a question that appears to be answered, "Yes". Can you read what the question is?

A "Is the B loan second secured"?
Q Do you know what you meant by that?
A I think -- I don't know what I meant by that but, "Second secured", would generally mean that it is a second priority behind the rights of the first loan.
Q There is a tranche A and a tranche B to the Sunbeam facility?
A Yes.
Q The B loan, would that refer to tranche B?
A I presume so, yes.
Q Can you tell when you wrote this?
A I would guess at the same time that this document came out. If you find this document we can figure out what time it was done.
Q Can you tell from the little computer code in the bottom left of that page when that was written?
A No. That is not our code.
Q 299 is a one-page document that bears the Bates number Morgan Stanley 58883. Mr. Rankin, can you identify Exhibit 299?
(Exhibit 299 marked for identification)
A It looks like my handwriting on a piece of my letterhead. I see the name Jerry Levin on it, so

it appears to be Sunbeam-related, but I don't remember actually writing this note.
Q This is something that you wrote in connection with your work at Morgan Stanley?
A Yes.
Q At the bottom line there, does it say, "Could work with Jerry Levin"?
A It looks like it.
Q Do you know why you wrote that?
A I don't.
Q Exhibit 300 is a document that bears the Bates numbers Morgan Stanley 24863 through 24871, which is a series of pages of handwritten notes. Mr. Rankin, is this your handwriting?
(Exhibit 300 marked for identification)
A That does not look like my handwriting.
Q Can you tell whose handwriting it is?
MS. BROWN: Objection, speculation.
A No. I have no idea. I don't know.
MS. BROWN: Somebody that likes to trace their writing.
A No. There is nothing on here that helps me.
MR. CHORVAT: Let me just ask you to take a look at the Bates numbered paged 24867. That

NOT A CERTIFIED COPY

018759

Page 98

is not your handwriting either, anywhere there?
A No.
Q This page refers to a June 25th 1998 all hands meeting at Davies Polk. Is that a meeting that you were at?
A I don't recall.
Q At any point were you asked to assemble or preserve documents that related to the pending litigation?
A Yes.
Q When was that?
A I don't recall exactly.
Q A long time ago?
A Yes.
Q What is it that you did in response to that request?
MS. BROWN: Well, objection to the extent -- I will just instruct you not to reveal any communications with counsel.
A Okay. I mean, I just put all my files in a safe place.
MR. CHORVAT: Is that a request that you received when you had been in London, or that you received before that?
A I think it was before that.

Page 99

Q Do you have any materials relating to Sunbeam or the pending litigation that you have not provided to counsel?
A No. Not that I -- no.
Q In 1998 did you keep an electronic calendar or some similar system?
A I don't recall. I think we had it, but I don't think I -- I am not sure I was using it.
MR. CHORVAT: Let's take a break for a few minutes.
(12.51 pm)
OFF THE RECORD
(12.57 pm)
MR. CHORVAT: Mr. Rankin, did you say you moved back to London in 2001 or 2002?
A 2001.
Q In February?
A I think so, yes.
Q So, a fax that would have come to New York to your attention in September of 2001 you wouldn't even have been there to get it. Is that right?
A I wouldn't have been in New York.
Q If it had been forwarded on to you in London, you haven't worked on Sunbeam since you have been in London?

Page 100

A That's right.
Q Getting back to the meetings in the summer of 1998 that you participated in with respect to Sunbeam, you mentioned, I believe, that Mr. Hart also participated in at least some of those meetings?
A Yes.
Q Is there anyone else at Morgan Stanley who would have participated in those meetings?
A I don't recall. I mean, as I say, as time progressed, Mitch Petrick and Ted Doster started becoming more involved, but precisely when that overlap started to occur I don't recall.
Q Did Mr. Doster become involved before Mr. Petrick?
MS. BROWN: Objection, foundation.
A I don't know.
MR. CHORVAT: In connection with your work on the bank book, you have mentioned thus far that you used CPH deposition Exhibit 10 as a source of information. That is the zero coupon memoranda.
A Yes.
Q You have mentioned CPH deposition Exhibit 133, which is your copy of the Leverage Finance

Page 101

Credit Committee memo. You are hesitating.
A I am sorry, as a --
Q As a source of information. Is that not right? We could clean up the record and ask this as a better question if you are confused. Let's do this in pieces.
A All right.
Q In connection with your work on the bank book, you used CPH deposition Exhibit 10 as a source of information?
A Yes.
Q Did you also use CPH deposition Exhibit 133 as a source of information?
A This was background information, just getting familiar with the transaction, but I don't recall specifically taking information out of here and putting it into here, if that is clear enough.
Q I believe you also testified that you dealt with Mr. Richter and his assistant at Sunbeam for information in connection with the bank book.
A Yes.
Q Other than those sources of information, did you use any other sources of information in connection with the bank book?
A The audited financials that are in here

NOT A CERTIFIED COPY

would have come from the appropriate auditing firms.
Q Any other sources of information with respect to the bank book?
A Not that I recall.
MR. CHORVAT: Thank you, Mr. Rankin. That is all I have.
(1.01 pm)
(Deposition concluded)
----------ooOOoo----------

CERTIFICATE OF DEPONENT

I, Simon Rankin, hereby certify that I have read the foregoing pages, numbered 1 through 104 of my deposition of testimony taken in these proceedings on 17th November 2004, and with the exception of the changes listed below and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed.....

Date.....

ERRATA

Page Description

I, Emma White, Member of the Institute of Verbatim Reporters, Accredited Court Reporter of the Supreme Court of England and Wales, of Anglo American Reporters, London, England, hereby certify that the foregoing testimony was recorded by me stenographically and thereafter transcribed by me, and that the foregoing transcript is a true and accurate verbatim record of the said testimony.
I further certify that I am not a relative, employee or counsel of any of the parties of the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: Emma White (BIVR Member, NCRA Member)

NOT A CERTIFIED COPY

019761

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING INC.,
Plaintiff,
vs. CA No. 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs. CA No. 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF W. BROOKS HARRIS
New York, New York
Tuesday, October 26, 2004

Reported by:
JOYCE G. ABELES
JOB NO. 166125

NOT A CERTIFIED COPY

018763

October 26, 2004
9:30 a.m.

Confidential videotaped deposition of W. BROOKS HARRIS, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to subpoena, before Joyce G. Abeles, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff Coleman (Parent) Holdings Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant Morgan Stanley
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
MARK GRANDERSON, Videographer

THE VIDEOGRAPHER: This is tape number 1 of the videotaped deposition of W. Brooks Harris in the matter Coleman Holdings, Incorporated, plaintiff, versus Morgan Stanley & Company, Incorporated, defendants; Morgan Stanley Senior Funding, Incorporated, plaintiff, versus MacAndrews & Forbes Holdings, Incorporated, et al, defendant; case number CA 03 5045 AI and case number CA 03 5165 AI.

This matter is being handled in the 15th Judicial Circuit in and for Palm Beach County, Florida, on Tuesday, October 26, 2004. And the time is 9:34 a.m.

My name is Mark Granderson with Esquire Deposition Services and I am the legal video specialist. The court reporter is Joyce Abeles, also in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. O'CONNOR: Christopher

O'Connor of Jenner & Block on behalf of Coleman Parent Holdings.

MR. CLARE: Thomas Clare, Kirkland & Ellis LLP, on behalf of Morgan Stanley and the witness, Mr. Harris.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

W. BROOKS HARRIS, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. O'CONNOR:

Q. Good morning, Mr. Harris. Could you please state your full name for the record?

A. William Brooks Harris.

Q. And your address?

A. 360 East 88th Street, Apartment 43A, New York, New York, 10128.

Q. Mr. Harris, have you ever been deposed before?

A. Yes.

Q. How many times?

A. I can only remember one other

NOT A CERTIFIED COPY

018764

time.
Q. Was your deposition in connection with employment at Morgan Stanley?
A. No.
Q. Just run through some of the basics for you again so we're on the same page. I just ask that you answer your questions verbally without head nods so the court reporter can take down your answer. And I'll assume that you understand my questions unless you indicate otherwise. And I'll just ask that you not take a break while a question is pending.
Is that acceptable?
A. Sure.
Q. Where are you currently employed, sir?
A. Deutsche Bank.
Q. Is that in New York?
A. Yes.
Q. What's your position at Deutsche Bank?
A. I run U.S. convertible origination.
Q. And when you say -- could you

explain for us what convertible origination is?
A. I work with companies to structure convertible bonds that they sell in the market, raise proceeds.
Q. You said that you run that.
Is it a department?
A. Yes.
Q. What's your title?
A. I'm the managing director.
Q. When did you begin your employment at Deutsche Bank?
A. September 2001.
Q. In September of 2001, were you, was your title managing director?
A. Yes.
Q. Prior to September of 2001, where were you employed?
A. Morgan Stanley.
Q. Sir, where did you attend college?
A. University of Pennsylvania.
Q. And did you receive a degree from Penn?
A. Yes, I did.

Q. And what was that?
A. I received a BS degree and I received a BSE.
Q. What was your degree in?
A. My BS was in economics and my BSE was in computer science.
Q. Any postgraduate studies?
A. Yes.
Q. Where?
A. Stanford University.
Q. What did you study at Stanford?
A. I got my MBA there.
Q. What year did you get your MBA?
A. 1990.
Q. Did you work between your undergraduate degree and your education at Stanford?
A. Yes.
Q. Where did you work?
A. Dillon Read.
Q. What was your position at Dillon Read?
A. I was an analyst.
Q. Anywhere else before your MBA that you worked?

A. I worked at Morgan Stanley.
Q. What year did you work at Morgan Stanley?
A. 1989 for the summer.
Q. What type of work did you do at Morgan Stanley that summer?
A. I was a summer associate.
Q. Did you concentrate in any particular area?
A. No.
Q. Upon receiving your MBA at Stanford, where did you work?
A. Morgan Stanley.
Q. And what year was that, 1990?
A. 1990, yes.
Q. What title did you have at Morgan Stanley in 1990?
A. Associate.
Q. Were you assigned to a particular group or department?
A. No.
Q. Did you receive a promotion from associate at Morgan Stanley?
A. Yes.
Q. And what was that position?

NOT A CERTIFIED COPY

018765

Page 10

A. Vice president.
Q. And when was that?
A. I don't recall.
Q. Was it five years?
A. Four or five years.
Q. Okay. When you were promoted to vice president, were you in a particular group or department?
A. Yes.
Q. What was that?
A. Equity capital markets.
Q. Any other promotions?
A. Yes.
Q. What's the next position?
A. Principal.
Q. What year were you promoted to principal?
A. I don't recall.
Q. What was your position at Morgan Stanley in 1998?
A. I don't recall. I believe I was principal.
Q. Did you receive any other promotions?
A. Yes.

Page 11

Q. What was the next title that you assumed?
A. Managing director.
Q. Do you recall what year you were promoted to managing director?
A. No.
Q. Any other positions?
A. No.
Q. Can you explain for us the responsibilities of a managing director?
A. That's a very broad question.
Q. Okay. Let me back up.
Were you a managing director in equity capital markets?
A. Yes.
Q. Okay. What were your responsibilities as managing director in that department?
A. I was responsible for convertible origination.
Q. Going back to 1998, do you recall your involvement on the Sunbeam engagement at Morgan Stanley?
A. Yes.
Q. At that time, who were your

Page 12

direct superiors?
A. I don't recall.
Q. Was Ruth Porat a superior?
A. She was senior to me. I don't know -- she was senior to me, yes.
Q. Who else was senior to you in 1998?
MR. CLARE: Objection to form.
Q. Within equity capital markets.
A. I don't recall.
Q. Who was your direct report in 1998?
A. I don't recall.
Q. Do you recall anyone you reported to in 1998?
A. I can't match the time to the people.
Q. I'll show you some documents a little bit later that may help you with that.
A. Sure.
Q. Sir, do you know what it means to be on a convertible desk? Have you heard that phrase before?
A. That could mean a number of

Page 13

things.
Q. Okay. What does it mean to you?
A. There are two possible meanings to me. One would be somebody who does convertible origination. The other meaning could be somebody who works on the sales and trading desk.
Q. While you were employed at Morgan Stanley -- well, let me back up.
You testified that you were involved in convertible origination at Morgan Stanley?
A. Yes.
Q. Did you also work on the sales and trading convertible desk?
A. No, I did not.
Q. Okay. So all of your responsibilities at Morgan Stanley in equity capital markets around 1998 was convertible origination?
A. That's correct.
Q. What were your day-to-day responsibilities in that role?
A. I was responsible for helping companies structure and sell convertible

NOT A CERTIFIED COPY

018766

bonds to raise capital, convertible bonds and other convertible products.
Q. Can you explain briefly what a convertible bond is?
A. A convertible bond is a bond or a debenture that can be converted at the option of the investor into typically the common stock of the issuer.
Q. Sir, did you have any role in loan origination at Morgan Stanley?
A. No.
Q. Why did you leave Morgan Stanley in September of 2001?
A. To accept a job at Deutsche Bank.
Q. Is there any specific reason why you accepted that job at Deutsche?
A. Paid me a lot of money.
Q. Any other reasons?
A. I'd say that's probably the primary reason.
Q. Okay. Were you fired from Morgan Stanley?
A. No, I was not.
Q. So your leaving Morgan Stanley was entirely voluntary?

A. That's correct.
Q. Did you know Bram Smith?
A. Yes, I did.
Q. How did you know Bram?
A. Bram worked at Morgan Stanley.
Q. Do you know why Bram Smith left Morgan Stanley when he did?
A. No, I don't.
Q. Do you recall when Mr. Smith left Morgan Stanley?
A. I do not.
Q. Sir, do you recall -- strike that.
Did you supervise anyone within equity capital markets in 1998?
A. Yes, I did.
Q. Who did you supervise?
A. I can't recall all the people I supervised.
Q. Do you recall any?
A. Jill Woodworth.
Q. Anyone else you can recall?
A. At that time, I can't recall.
Q. And sir, your testimony then is that you can't recall who your direct report

was at that time?
A. That's correct.
Q. And Ruth Porat would not be the person that you reported to?
A. That's correct.
Q. Mr. Harris, are you aware that my client, Coleman Parent Holdings, has filed a lawsuit against Morgan Stanley in connection with Sunbeam's March 1998 acquisition of my client's interest in the Coleman Company?
A. Yes.
Q. How did you become aware of that lawsuit?
A. I received an email informing me that I was going to be deposed in that lawsuit, and part of the email made me aware of that lawsuit.
Q. When did you receive that email?
A. I don't recall.
Q. Was it in the last six months?
A. I believe it was.
Q. What did you do to prepare for today's deposition?
A. I met with counsel to discuss what the deposition would be like.

Q. Okay. Who did you meet with, Mr. Clare?
A. That's correct.
Q. Did you meet with anyone else?
A. No.
Q. How long did you meet with Mr. Clare?
A. A few hours.
Q. Was it in person?
A. Yes.
Q. When you met with Mr. Clare, did you review any documents?
A. Yes.
Q. Did those documents refresh your recollection on the events of 1997 and 1998 in connection with the Sunbeam engagement?
A. Yes.
Q. What documents refreshed your recollection?
A. There were performance evaluations.
Q. What performance evaluations did you review?
A. There was one of Ruth Porat.
Q. Did you review your own

NOT A CERTIFIED COPY

018767

performance evaluation?
A. I don't recall. I don't believe so.
Q. Any other documents that refreshed your recollection of the events?
A. Yes.
Q. What were those documents?
A. I believe there was an equity commitment committee memo.
Q. Did you read that memo?
A. No, I did not.
Q. Did you skim through it?
A. Yes.
Q. Okay. Any other documents?
A. There was a memo that talked about sales figures of some kind.
Q. Do you recall who drafted the memo?
A. I do not.
Q. You don't recall whether it was a Morgan Stanley document or Arthur Andersen document?
A. I'd never seen it before and I didn't really look at it closely.
Q. Was it a multipage document?

A. No.
Q. Just one piece of paper?
A. That's correct.
Q. Any other documents?
A. Not that I recall.
Q. Did you read any testimony that's been given?
A. No.
Q. Did you have any testimony read to you?
A. No.
Q. Or described to you?
A. No.
Q. Other than meeting with Mr. Clare, did you discuss with anyone your potential deposition testimony in this case?
A. Yes.
Q. Who did you speak with?
A. My wife.
Q. Other than your wife, anyone else?
A. No.
Q. Do you --
A. I told my secretary I'd be here today.

Q. Sure.
Do you continue to have contact with Morgan Stanley employees?
A. Yes.
Q. Who are the people that you maintain contacts with?
A. Current employees, not really.
Q. Former employees?
A. Yes.
Q. What current Morgan Stanley employees have you seen in the last year?
A. I actually saw Ruth.
Q. When did you see Ms. Porat?
A. She and I bumped into each other a couple months ago.
Q. Where did you bump into her?
A. Bagel shop across the street from my apartment.
Q. Did you have a conversation with Ms. Porat?
A. Yes.
Q. What did you discuss?
A. How she was doing, how I was doing.
Q. There was no discussion about the

Sunbeam engagement or this lawsuit?
A. No.
Q. Other than Ms. Porat, have you had any communications with current Morgan Stanley employees?
MR. CLARE: Within what time period?
MR. O'CONNOR: In the last year.
A. Yes.
Q. Who else?
A. Oh, current employees, no. No.
Q. Okay. How about former employees of Morgan Stanley within the last year?
A. Yes.
Q. Who have you spoken with?
A. I've spoken with Frank Pratt who is a friend of mine. I've spoken with most of the people from Morgan Stanley who now work at Deutsche Bank.
Q. Since you've left Morgan Stanley in 2001, have you had conversations with either current or former Morgan Stanley employees about the Sunbeam engagement?
A. No.
Q. Have you spoken to any current or

NOT A CERTIFIED COPY

018768

Page 22

former Morgan Stanley employee about this lawsuit?
A. No.
Q. Or their testimony in this lawsuit?
A. Asked and answered.
Q. Were you ever asked to look for Sunbeam documents?
A. Not to my knowledge.
Q. Do you have any documents in your possession that relate to the Sunbeam engagement?
A. No.
Q. When you left Morgan Stanley, what did you do with your documents?
A. I left them.
Q. Did you use email in 1997 and 1998?
A. I don't recall.
Q. Do you recall doing anything with your email at Morgan Stanley when you left in 2001?
A. No.
Q. In 1997 and 1998, were you aware of any document retention or destruction

Page 23

policies at Morgan Stanley?
A. Yes.
Q. What do you recall of those policies?
A. I recall that there were procedures for retaining documents that we were required to follow.
Q. Did you follow those policies?
A. Yes, I did.
Q. Were you ever instructed to keep your files lean, do you recall that instruction?
MR. CLARE: Objection to form.
A. I don't recall that specifically.
Q. In connection with a convertible debenture offering, what documents did you retain typically?
MR. CLARE: I object to the form of the question.
A. I personally rarely retained any documents.
Q. I'm sorry, were you done?
A. Yes.
Q. Was that in accordance with the document retention or destruction policy at

Page 24

Morgan Stanley?
A. If there were documents I believe needed to be retained, I would typically send them to our legal department and ask them to retain what needed to be retained, get rid of what needed to be gotten rid of in -- consistent with our document reasons policy.
Q. Do you recall whether you retained any documents in connection with your work on the Sunbeam engagement?
A. I personally did not retain any documents.
Q. Did you send those documents to the legal department?
A. I or my team retained or sent documents to the legal department for their evaluation on whether they should be retained.
Q. Do you recall when you did that?
A. I do not.
Q. How about emails, did you send your emails to the legal department for determination of what needed to be deleted and what needed to be retained?

Page 25

A. No.
Q. What did you do with your emails?
A. I didn't do anything with them. I just assumed they would be saved.
Q. Did you ever print out email messages?
A. Yes, I did.
Q. What did you do with those documents?
A. Threw them away eventually.
Q. Was that in accordance with the document retention policy at Morgan Stanley?
A. Yes.
Q. What did the policy say in 1998 with respect to preserving emails?
MR. CLARE: Objection, no foundation. You can answer if you can.
A. I don't recall.
Q. Do you recall what Morgan Stanley's document retention policy was with respect to transaction documents such as convertible debenture offerings?
A. Not specifically.
Q. Were you given any retention policies in hard copy form?

NOT A CERTIFIED COPY

018769

A. Not that I recall.
Q. Do you recall receiving any instructions regarding the preservation of documents in connection with debenture offerings?
A. Yes.
Q. You just can't recall what those policies were?
A. That's correct.
Q. When you left Morgan Stanley in 2001, who was the head of equity capital markets?
A. John Anda.
Q. Can you spell his last name, please?
A. A N D A.
Q. Prior to Mr. Anda, was there anyone that was in charge of equity capital markets?
A. I believe Richard Kaufman was co-head with John Anda.
Q. Do you recall how long those two served as co-heads of equity capital markets?
A. No.

Q. Were they co-heads of equity capital markets during the Sunbeam engagement?
A. I don't recall.
Q. Prior to Mr. Anda and Mr. Kaufman, do you recall anyone serving as head of equity capital markets?
A. Yes.
Q. Who was that?
A. Well, I mean, I know Scott Sipprelle served, but that was quite a while ago.
Q. You believe that was before the Sunbeam engagement?
A. I think so. And then there was one other person in between who served briefly, and I apologize, I can't remember his name.
Q. Anyone else you recall serving in that position?
A. Yes.
Q. Who is that?
A. Vikram Pandit.
Q. Do you recall when Mr. Pandit was head of equity capital markets?

A. In the early '90's.
Q. Sir, did you ever have conversations with Mr. Anda or Mr. Kaufman concerning the Sunbeam convertible debenture offering?
A. I don't recall.
Q. Mr. Harris, when was your first involvement on the Sunbeam engagement?
A. I don't recall.
Q. Do you have any general recollection when you first began working on the Sunbeam engagement?
A. Late '80's.
Q. When, what does it mean to you when I say the Sunbeam engagement?
A. That's a good question. I assume you're talking about the convertible bond offering.
Q. Okay. You don't recall that the convertible bond offering was made in March of 1998?
A. No.
Q. You believe it started in the late '80's?
A. Oh, I'm sorry. I misspoke. The

late '90's. My apologies.
Q. No problem. So your best recollection is your first involvement on the Sunbeam engagement was in the late '90's?
A. That's correct.
Q. What do you recall being the first thing that you did on the Sunbeam engagement?
A. I prepared a term sheet for the terms I believed were appropriate for Sunbeam to raise capital in the convertible market.
Q. Who first approached you to prepare this term sheet?
A. I believe it was Bill Strong.
Q. What did Mr. Strong advise you or tell you in connection with this engagement?
A. He told me that they were making acquisition and they needed to fund it and he asked if they had access to the convertible market.
Q. And who is they, Sunbeam?
A. Yes, that's correct.
Q. What does it mean to have access

NOT A CERTIFIED COPY

018770

Page 30

to the convertible market?
A. To be able to offer, to be able to raise money in the convertible market.
Q. What are the requirements to raise money in the convertible market?
MR. CLARE: Objection to form.
A. To have a set of facts and circumstances and terms on the security the investors want to buy.
Q. Do you recall your response to Mr. Strong's inquiry?
A. Yes.
Q. And what was your response?
A. Yes.
Q. When did you provide Mr. Strong that response to his question whether Sunbeam had access to the convertible market?
A. Shortly after he requested it.
Q. That same day?
A. That's correct.
Q. What did you do to determine that Sunbeam had access to the convertible market?
A. I looked at -- I received an

Page 31

overview from Bill of why they wanted money. I looked at some of their technical characteristics such as trading volume, borrow available. I probably did some other stuff, but I can't recall.
Q. Do you recall what you reviewed, Mr. Strong gave you concerning why they needed financing?
A. No. I believe he said they were making an acquisition.
Q. Did he show you any documents in connection with that?
A. No.
Q. You say you looked at Sunbeam borrow available.
What does that mean?
A. It means, it means investors willing to lend their stock to convertible investors.
Q. Did you look at any nonpublic information in considering whether Sunbeam had access to the convertible market?
A. No.
Q. You didn't have any conversations with Sunbeam management?

Page 32

A. Not at that time I didn't.
Q. Do you recall anything else Mr. Strong told you when he first approached you seeking financing for the Sunbeam acquisitions?
A. No, very simple.
Q. After you provided Mr. Strong with your answer that Sunbeam did have access to the convertible market, what did you do?
A. I had one of my colleagues prepare a term sheet and I went up to a conference room where Morgan Stanley team and Sunbeam team were sitting and I described how the product worked.
Q. Did you play any role in preparing this term sheet --
A. Yes.
Q. -- or did you have other people work on it?
A. Yes.
Q. Who did you meet with after you prepared the term sheet?
A. I don't recall.
Q. Was Mr. Strong in the room?

Page 33

A. Yes, and Mr. Kitts was in the room as well.
Q. Anyone else from Morgan Stanley?
A. I believe so.
Q. You don't recall their names?
A. I don't recall.
Q. You don't recall whether Ms. Porat was in the room?
A. I don't recall if she was or not.
Q. Who from Sunbeam attended this meeting?
A. I don't recall.
Q. Was Mr. Dunlap there?
A. I don't believe he was.
Q. Did you ever meet Mr. Dunlap?
A. Yes, I did.
Q. How about Russ Kersh, did you meet Russ Kersh?
A. I don't recall.
Q. You can't recall whether Mr. Kersh was at this initial meeting?
A. No, I can't.
Q. Was one of your roles, sir, to convince Sunbeam management to use Morgan Stanley as the sole underwriter of a

NOT A CERTIFIED COPY

018771

Page 34

convertible debenture?
MR. CLARE: Objection to form.
A. Yes.
Q. Did Mr. Strong tell you that he really wanted Morgan Stanley to act as the sole underwriter for this debenture offering?
A. No.
Q. That was understood, though, when you went to this meeting, right?
MR. CLARE: Object to form. And lack of foundation as to what others understood.
THE WITNESS: Sorry.
MR. CLARE: You can answer.
A. Could you repeat the question, please?
Q. Sure. When you went into this meeting with the term sheet that you prepared, you knew that one of your roles was to convince Sunbeam to use Morgan Stanley as the underwriter for a debenture offering, right?
A. That's correct.
Q. And Sunbeam, in fact, could have

Page 35

relied on another investment banking firm to underwrite this convertible debenture, correct?
MR. CLARE: Objection, calls for speculation. You can answer if you can.
A. I think -- yes, it's possible.
Q. There wasn't anything that required Sunbeam to use Morgan Stanley for this debenture offering, right?
A. We were quite good at this type of offering. I would not have advised them to use somebody else.
Q. But they did have that option?
A. Yes, they did.
Q. Okay. Can you estimate what percentage of your total time was spent working on the Sunbeam engagement?
MR. CLARE: During what time period?
MR. O'CONNOR: His first recollection of working on Sunbeam through the completion of your work on the engagement.
A. I'd say half my time.
Q. After you attended this meeting

Page 36

with Sunbeam and Morgan Stanley representatives where you prepared the term sheet -- let me back up.
What do you recall from that meeting?
A. I presented the term sheet, explained how it worked, and I believe people thanked me, and I left.
Q. Did you ask any questions of the Sunbeam personnel who attended the meeting?
A. I don't recall.
Q. Were there any discussions about Sunbeam's then existing business or financial condition?
A. No.
Q. Was the discussion limited to the information that was contained on the term sheet?
A. I don't recall.
Q. Mr. Harris, were you involved in any of the M&A work that was performed by Morgan Stanley on the Sunbeam engagement?
A. No.
Q. Other than the underwriting of the convertible debenture, did you have any

Page 37

other role on the Sunbeam engagement?
A. No.
Q. After you attended the meeting and made your presentation with the proposed term sheet, what did you do on the Sunbeam engagement?
A. Waited for a response from the company and the team.
Q. When did that response come?
A. I believe it came later that same day.
Q. And what was the response?
A. That they were interested and they wanted to understand it in more detail.
Q. What did you do in response to their response to your presentation?
A. More evaluation of the circumstances; produced a few more pages in the term sheet; prepared to present it to a larger group if needed.
Q. What specifically did you do to conduct this additional evaluation?
A. I don't recall.
Q. You don't recall what documents you created?

NOT A CERTIFIED COPY

018772

A. No.
Q. Sir, I'm showing you what's previously been marked as CPH Exhibit 9. It's a large document.
I'm going to actually ask you, my first question is whether you've seen this before?
A. I don't recall seeing this, no.
Q. This was not one of the documents that refreshed your recollection during the preparation with Mr. Clare?
A. I don't recall having seen this document.
Q. If you could, sir, flip to the page, it's the fifth page in. It bears a number CP 026290.
A. Maybe you could just point me to the right page?
Q. Sure.
A. All right.
Q. Mr. Harris, do you recall seeing that particular page at any point in time during the Sunbeam engagement?
A. I don't recall seeing this page.
Q. Okay. Were you aware, sir, that

my client was advised that Sunbeam represents an attractive growth story and investment opportunity?
MR. CLARE: Objection, no foundation.
A. No.
Q. Were you aware, sir, that there were representations made that Sunbeam had undergone a profound transformation since the arrival of new management in July of 1996 --
MR. CLARE: Same objection.
A. No.
Q. Why does that make you smile, sir?
A. How would I possibly know that? I was just answering your question. I can't even imagine how I would possibly know that, but --
Q. None of that information was conveyed to you in connection with the debenture offering?
MR. CLARE: Wait a minute. You're asking him whether or not it was communicated to Mr. Harris that Morgan

Stanley made those representations to your client?
MR. O'CONNOR: That's correct.
MR. CLARE: Okay. You can answer that question.
A. I don't believe there's any -- there's any linkage that would get me that information. I just can't even imagine how that would possibly be relevant to anything I was working on, or why that would be communicated to me.
Q. And that's what I'm trying to find out, sir, what information you were working with when you prepared the debenture offering?
A. Fair enough.
Q. Okay. None of this information then was conveyed to you in connection with the underwriting?
A. I don't recognize this information.
Q. You did nothing, sir, to evaluate Mr. Dunlap's purported turnaround of the Sunbeam company in connection with the underwriting of the debentures?

MR. CLARE: Objection to form.
A. I did not personally do that.
Q. Did you have any conversations with anyone that conducted that inquiry?
A. Yes.
Q. Who did you then discuss that issue with?
A. I don't recall.
Q. Were you involved in preparing what's called a highly confident letter in connection with Sunbeam's financing of the acquisitions?
A. I don't recall.
Q. Did you ever prepare a highly confident letter?
A. I did not.
Q. Were you aware, sir, that a highly confident letter had been provided to Sunbeam?
A. I don't recall that.
Q. Sir, I'm handing you what's previously been marked as CPH Exhibit 74. Have you ever seen this document before, sir?
A. I don't recall seeing this

NOT A CERTIFIED COPY

018773

document.
Q. And you weren't aware that Morgan Stanley advised Sunbeam that it was highly confident that proposed credit facilities could be syndicated to the market --
MR. CLARE: Objection -- sorry, go ahead.
Q. -- when you were preparing the debenture offering?
MR. CLARE: Objection, lack of foundation.
A. I'm sorry, could you repeat the question?
Q. Sure. At the time that you were working on the convertible debenture offering, were you aware that Morgan Stanley had issued Sunbeam this letter indicating it was highly confident that the proposed credit facilities could be syndicated to the market?
A. I don't recall.
Q. Mr. Strong didn't advise you of this highly confident letter when he spoke to you about the debenture offering?
A. Again, I don't recall that.

Q. After you went back, sir, and conducted more analysis of a proposed debenture offering, what did you do with that information?
A. Just confirmed my original assessment that these guys could raise money in the convertible market.
Q. Did you tell anyone about your confirmation of that fact?
A. No. I had already told the team that the financing was doable, and if I had found out I didn't think it was doable, I would have told them that. But they already knew I thought the financing was doable.
Q. But when you left this initial meeting where you presented the proposed term sheet, they had some additional questions for you, is that correct?
A. They wanted me to present to a broader group and possibly to answer additional questions, yes, that's correct.
Q. Did you ever make a presentation to a broader group?
A. Yes.
Q. When was that?

A. I don't recall.
Q. Do you recall who you met with?
A. No.
Q. Were Morgan Stanley employees present?
A. I believe the further presentation was probably telephonic, so I don't recall who was actually on it.
Q. Was this a presentation to members of Sunbeam's board?
A. I don't believe so.
Q. Do you recall anyone who was participating on this call, conference call, if it was a conference call?
A. I don't.
Q. You don't remember anything about this second presentation that you made?
A. No.
Q. What was the result of that second presentation?
A. Ultimately, the company decided to do the financing.
Q. How was that information conveyed to you?
A. I don't recall.

Q. Do you recall when the company decided to go forward with a convertible debenture offering?
A. Shortly thereafter.
Q. Shortly after that second presentation?
A. That's correct.
Q. Do you recall any questions that were posed to you during that second presentation?
A. I do not.
Q. Do you recall anything that you did as a result of that second presentation?
A. I don't understand your question.
Q. Okay. After you had this second presentation on a potential debenture offering, was there anything that you did subsequent to that presentation as a result of the discussion that was had at that time?
A. No.
Q. What do you recall doing next after that meeting?
A. I think working on other business for different companies.
Q. Were you involved in preparing an

NOT A CERTIFIED COPY

018774

Page 46

offering memorandum for the debenture?
A. Yes.
Q. So that's something that you did after that meeting, is that correct?
A. I -- sometime after the meeting, I reviewed the offering memorandum, absolutely.
Q. Okay. Were you involved in drafting any sections of the offering memorandum?
A. No.
Q. Who was involved in drafting that offering memorandum?
A. John Tyree, Jill Woodworth.
Q. Is it fair to say, sir, that you were acting in sort of a supervisory role in connection with the drafting of that offering memorandum?
MR. CLARE: Objection to form.
A. I'd say an advisory role. If they had questions about the structure of the security, I would answer those questions.
Q. Well, you supervised Ms. Woodworth in 1998, correct?
A. I'm sorry?

Page 47

Q. You supervised Ms. Woodworth?
A. Yes, I did.
Q. Okay. Let me show you what's previously been marked as CPH Exhibit 10.
(Brief interruption.)
MR. CLARE: Let's go off the record.
THE VIDEOGRAPHER: The time is now 22 minutes after 10 and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: Time is 10:27 and we are back on the record.
BY MR. O'CONNOR:
Q. Sir, before we took a break, I handed you what was previously marked as CPH Exhibit 10.
Do you have that in front of you?
A. Yes.
Q. And is this the Sunbeam offering memorandum for the subordinated debentures?
A. It appears to be.
Q. Is this the document that you reviewed that was drafted by Mr. Tyree and Ms. Woodworth?

Page 48

A. It appears to be.
Q. As you flip through this document, sir, you don't recall yourself drafting any particular sections or provisions?
A. No.
Q. Typically, you do not draft the offering memorandum in a convertible debenture offering?
A. That's correct.
Q. You can set that aside for now.
Did you prepare any other documents or did you prepare any documents, other than this proposed term sheet you testified about, in connection with the debenture offering?
A. I don't recall.
Q. How about the selling memorandum?
A. I don't prepare that.
Q. Sir, I'm handing you what's previously been marked as CPH Exhibit No. 26.
A. Yes?
Q. Do you recall this document, sir?
A. No, I do not.

Page 49

Q. You did not prepare this document?
A. I did not.
Q. This was not a document you prepared in conjunction with any of the meetings that you've testified about today?
A. No.
Q. Who prepared this document?
MR. CLARE: Objection, no foundation.
A. I don't know.
Q. This isn't something that you would have used in connection with the debenture offering?
A. Not that I would have used.
Q. Have you ever seen a document like this before?
A. Yes.
Q. What is -- how is this document used?
MR. CLARE: You're asking this particular document which he said he's never seen before, or this type of document?
MR. O'CONNOR: This type of

NOT A CERTIFIED COPY

018775

document.
A. Typically, someone on an execution team will run through a document like this with a company to get organized for a transaction.
Q. Sir, if you could flip to page CP 22729?
A. 22729?
Q. The fourth page of the document. It's also CPH 1412964.
A. Yes.
Q. Sir, there's a column entitled, "Financing Market Overview"?
A. Yes.
Q. And there's a third bullet point which reads, "Convertible debt and equity"?
A. Yes.
Q. And under that bullet point, the very last entry is "Recent market volatility has increased convertible debt appeal"?
A. Yes.
Q. Did you provide that information to the execution team to put into this document?
A. This is a generic bullet point

that would be part of our marketing materials that would be generically available -- which would be available to anybody who was having a discussion on a convertible.
Q. Did you prepare these generic marketing materials?
A. I don't believe I did.
Q. So this information was not provided to the execution team directly from you?
A. It was not provided directly from me, that's correct.
Q. And if you could flip to the next page, which is CPH 1412965?
A. Yes.
Q. And that middle column reads, "500 million zero coupon convertible debt"?
A. Yes.
Q. And the last bullet point, "Quick execution via Rule 144A"?
A. Yes.
Q. Did you provide that information to the execution team?
A. I told them that that was the

case, yes.
Q. Okay. Why is there a quick execution of a convertible debt, convertible debenture offering?
MR. CLARE: Objection to form.
Q. Why is that relevant information for an execution team?
A. When you're using the 144A market, you need not register the sale of those securities with the SEC. Therefore, you're not subject to SEC review. Therefore, you can execute more quickly.
Q. Do you recall having any conversations on that issue in connection with the Sunbeam debenture offering?
A. Can you be more specific?
Q. Sure. Do you recall any conversations with anyone in conjunction with the convertible debenture offering on how quickly you can conduct the offering?
A. Absolutely.
Q. Okay. Who did you discuss that issue with?
A. I don't recall.
Q. Mr. Strong?

A. Yes.
Q. Members of the Sunbeam management?
A. Yes.
Q. Just above that, the third bullet point says, "Positive signaling to the market."
What does that mean?
A. Convertibles have a conversion price which represents a premium to the stock price at issue. And investors typically like when companies sell stock at a premium as opposed to selling it at market.
Q. That has nothing to do with the ability to quickly execute a debenture offering?
A. No, there's no connection between those two.
Q. Okay. When you had these conversations about the quick execution of a debenture offering, do you recall what was discussed in that context, other than your ability to quickly execute the debenture offering?

NOT A CERTIFIED COPY

018776

A. I don't recall the specifics now.
Q. You don't recall anyone telling you that it was important to complete the debenture offering within a matter of a couple of weeks --
A. No.
Q. -- for example? Okay.
Did anyone ever express the desire to complete the debenture offering as quickly as possible?
A. No.
Q. Was there anything unique or unusual about the Sunbeam convertible debenture offering?
A. It was a fairly standard structure.
Q. So your answer is no?
A. No. I mean, yes, there was something unique. It was a different issuer than all the other issuers we had done before. I'm sure there were things that were unique about it, but there was nothing materially unique about it.
Q. If you could flip, sir, to page CPH 1412996, which is a document that

appears to be a proposed agenda dated March 3rd, 1998.
Do you recall seeing a proposed agenda?
A. Nope.
Q. Under "Zero coupon convertible," there' is -- it contains a sub headline, "Accounting Matters."
Do you see that?
A. Yes.
Q. And part B of Accounting Matters reads, "Comfort letter."
Do you see that?
A. Yes, I do.
Q. Is it standard practice, sir, to obtain a comfort letter in connection with a debenture offering?
A. Yes.
Q. And is it standard practice, sir, to obtain that comfort letter from the issuer's outside accountants prior to the pricing and closing of the debentures?
A. I believe it is.
Q. Did you have any role, sir, in preparing the timeline for completing all

the necessary agenda items for the debenture offering?
A. I'm sorry, is that in an exhibit in here?
Q. I'm just asking in general.
Were you involved in preparing the timeline for a completion of the debenture offering?
A. Yes. Yes.
Q. If you could turn to page CPH 1413002.
A. 141?
Q. 3002.
A. I don't know if I have that page. Oh, they're not in order. Okay.
MR. CLARE: What's not in order?
THE WITNESS: Okay. 1412982 back here, they don't appear to be in order.
A. Okay. I'm on your page.
Q. Sir, did you provide this timeline, this summary financing table to the execution team?
A. I don't believe I personally provided it, no.
Q. And in fact, this shows, sir,

that on March 23rd, the plan was to receive a comfort letter, and then below that, pricing of the convertible transaction.
That's the -- do you see that, sir?
A. Yes.
Q. And again, that's the standard practice for issuing debentures?
MR. CLARE: Objection to form.
What are you referring to when you say, that?
MR. O'CONNOR: The timing of the receipt to the comfort letter.
A. I can't say as to whether it's before pricing or closing.
Q. Well, I'm confused, sir. A moment ago you testified that it's standard practice to obtain a comfort letter from outside accountants in connection with pricing and closure of the debentures.
A. Let me clarify that then. I take my direction from -- I don't handle that aspect of it. And I know that there's a comfort letter in connection with transactions. And when exactly it comes, I

NOT A CERTIFIED COPY

018777

Page 58

don't know exactly.
Q. Okay. But for the Sunbeam debenture offering, the initial plan was to receive the comfort letter and price on March 23rd, is that correct?
A. I don't know.
Q. Other than --
A. I did not prepare this exhibit.
Q. Okay. If you could turn to CPH 1412974.
Do you see that page, sir?
A. Yes, I do.
Q. This the 144A zero coupon convertible checklist? There's a bullet point there that says, "Before Launch." The first bullet point below that is "Board Approval," and then the second is "Due diligence (Laser and targets may be able to piggyback on prior due diligence)."
Do you create this page, sir?
A. No, I did not.
Q. Okay. Do you recall any discussions about piggybacking due diligence for the Sunbeam debenture offering?
A. I've never seen this page before.

Page 59

Q. That wasn't my question.
Did you have any discussions, sir, about the issue of being able to piggyback on prior due diligence in connection with the debenture offering?
A. No.
Q. Have you ever heard that word before, piggybacking for due diligence?
A. It doesn't mean anything to me.
Q. Have you ever heard of that term before? Have you heard that term used in connection with due diligence?
A. Not that I recall. It's not a common -- it's not a standard term.
Q. Below that, sir, it says, "Draft Offering Memorandum." And then "Recent Developments" section, and "Required Financials." And the third line under Required Financials is "Comfort letter on financials and pro formas."
Do you see that?
A. Yes, I do.
Q. Do you know, sir, whether the receipt of the comfort letter in the Sunbeam debenture offering was an important item to

Page 60

complete on the convertible checklist?
MR. CLARE: Objection to form.
A. This convertible checklist is not something I prepared and it's not -- so you're asking -- I'm not sure I understand the question.
Q. Okay.
A. I didn't prepare this checklist.
Q. I understand.
A. I had no involvement in that.
Q. My question, sir, was do you recall any discussions about the importance of receiving the comfort letter -- before launch?
A. In the context of this checklist, I do not.
Q. Okay. Outside of the context of this checklist.
A. Yes.
Q. Do you recall any conversations --
A. Yes.
Q. -- about the importance of receiving the comfort letter before pricing and before closing the debenture offering?

Page 61

A. Before pricing, I'm not sure. Again, I don't know exactly what time in the process the comfort letter comes.
Q. Okay. Well, let's make it a little more simple.
Do you recall any discussions about the importance of receiving the comfort letter from Sunbeam's auditors, period, in connection with the debenture offering?
A. Yes.
Q. What discussions did you have on that topic?
A. Just that it had to happen.
Q. Who did you have those conversations with?
A. I don't recall.
Q. Do you recall when you had discussions about the importance of receiving a comfort letter in connection with the debenture offering?
A. No, I don't.
Q. Do you recall any other conversations in connection with the comfort letter that was to be provided by Arthur

NOT A CERTIFIED COPY

018778

Andersen in connection with the debenture offering?
A. I don't recall who was supposed to provide the comfort letter, and no.
Q. You did not know at that point, sir, that Sunbeam's outside auditors was Arthur Andersen?
A. At that point I probably knew who their outside auditors were. I do not recall that today.
Q. Okay. You can set that aside.
Sir, did you attend the Sunbeam board meeting at which the board considered and voted on the acquisition of Coleman First Alert and Signature Brands?
A. No.
(Brief interruption.)
MR. CLARE: Do you want to go off the record?
THE WITNESS: Can I go off the record?
THE VIDEOGRAPHER: Time is 10:43. We're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: Time is 10:47

and we are back on the record.
BY MR. O'CONNOR:
Q. Sir -- before the break, I believe I asked you whether you attended the Sunbeam board meeting at which the board considered and voted on the acquisition of Coleman First Alert and Signature Brands.
And your answer was no, you did not attend that meeting?
A. That's correct.
Q. You didn't participate by telephone or any other --
A. I don't believe I did.
Q. Do you know whether there was any discussion at that meeting about the convertible debenture offering that you were working on?
MR. CLARE: Objection, foundation.
A. I had no direct knowledge of that.
Q. No one came back to you and said that there was an issue or a discussion about the debenture offering?
A. I don't recall.
Q. Sir, I'm showing you what's

previously been marked as CPH Exhibit 100. This is the "Sunbeam $500 Million Rule 144A Zero Coupon Convertible Subordinated Debt Offering," the selling memorandum.
Have you ever seen this document before, sir?
A. Yes, I have.
Q. And you testified earlier that you did not draft this document, is that correct?
A. I did not draft this document, that's correct.
Q. Who drafted this document?
A. I don't recall.
Q. Who typically is responsible for drafting a selling memorandum for a subordinated debt offering?
A. CSG.
Q. And that's client services group?
A. I believe.
Q. Okay. Do you know whether it was Mr. Tyree who was responsible for preparing this selling memorandum?
A. I don't know ultimately. Mr. Wright would be responsible for everything.

Whether he did it himself or not, I'm not sure.
Q. You testified earlier that Mr. Tyree and Ms. Woodworth were responsible for preparing the debenture offering memorandum, right?
A. Among other people, yes.
Q. Okay. Do you recall any other people involved in the drafting of the offering memorandum?
A. Mr. Wright would have been involved.
Q. Anyone else?
A. I'm not sure.
Q. Do you recall what other involvement Mr. Tyree had in connection with the debenture offering?
A. I mean, he's an execution person, I mean, a lot of involvement.
Q. What types of things did Mr. Tyree work on in connection with the debenture?
MR. CLARE: Objection, calls for speculation.
THE WITNESS: Okay.

NOT A CERTIFIED COPY

018779

MR. CLARE: You can answer to your knowledge.
A. Oh, to my knowledge, I don't have direct knowledge of -- well, actually, I believe that he would have been the one to prepare the checklist.
Q. That's the checklist that we were looking at just a moment ago?
A. Yes.
Q. In --
A. He or Mr. Wright --
Q. Is that the checklist from CPH Exhibit 26 that we just looked at?
A. It was the exhibit we just looked at. I don't remember which exhibit it was.
Yes, that's the kind of thing he would have done.
Q. Do you recall anything else that Mr. Tyree worked on in connection with the debenture offering?
A. The offering memorandum.
Q. And besides the offering memorandum?
A. The selling memo.
Q. Anything else?

A. I don't recall.
Q. Do you recall reviewing this memorandum after it was prepared?
A. Yes.
Q. What was the purpose in reviewing the selling memo?
A. To make sure that structural aspects of the convertible are properly described.
Q. Any other reasons why you reviewed this document?
A. That's the primary one.
Q. Well, any other reasons?
A. If I saw something obviously wrong, I would have said something.
Q. Do you recall reviewing this selling memorandum and finding something wrong that had to be corrected?
A. The final memo, no. The final memo was, upon my review, consistent with what -- I did not find any mistakes in it.
Q. Okay. This particular memo is dated March 12th, 1998.
Does this appear to be the final selling memorandum?

A. I don't know.
Q. If you could, sir, please turn to page 4 of CPH Exhibit 100. This is a page entitled "Sunbeam Corp. Offering Structure and Timing."
Did you prepare this page, sir?
A. I did not personally prepare this page.
Q. Did you provide information for the preparation of this page?
A. Yes, I did.
Q. If you look down, sir, to near the bottom of the page, there's an expected timetable?
A. Yes.
Q. It's listed there. And on this document, the pricing and closing are listed for March 19th and March 24th.
Do you see that, sir?
A. Yes.
Q. That's a much earlier in time than the original timetable that we looked at a moment ago in --
A. I don't recall that.
MR. CLARE: I object to the form

of the question.
THE WITNESS: Is that a question?
MR. CLARE: I was objecting to his prior question.
THE WITNESS: Okay.
Q. Why don't you also pull in front of you, sir, CPH Exhibit 26 and we'll take a look at that?
A. Which page?
Q. It would be page CPH 1413002.
A. Yes.
Q. The "Summary Financing Timetable."
My question for you, sir, is in the March 12th selling memorandum, the timing for the pricing and closing has been accelerated from the original timetable that appears on CPH 1413002, correct?
A. That appears to be the case, yes.
Q. Do you recall why it was that the pricing and closing of the debenture offering was accelerated after the creation of the original summary financing timetable that appears in CPH Exhibit 26?
A. No, I do not.

NOT A CERTIFIED COPY

018780

Q. You don't recall any discussions about speeding up the process for the debenture offering in connection with the Sunbeam acquisition?
A. No.
Q. And just above, sir, if you look again on page -- Exhibit CPH 100, there's an entry on the offering structuring, structure and timing page. It says, "Gross spread." And then next to that is "3 percent."
What does that represent, sir?
A. 3 percent represents the gross spread.
Q. What is a gross spread?
A. Gross spread is the fee the underwriter gets for placing the securities.
Q. And who came up with the 3 percent figure for the gross spread on the Sunbeam debenture offering?
A. I did.
Q. How did you determine to set the gross spread at 3 percent?
A. By looking at other transactions, and based on my experience in the convertible market.

Q. Based on the other transactions that you reviewed, is 3 percent higher or lower?
A. It's consistent.
Q. Is it at the high end, the low end?
A. It's in the middle.
Q. In the middle.
Did you have any conversations with anyone concerning what gross spread to set for the Sunbeam debenture offering?
A. Yes.
Q. Who did you speak with on that issue?
A. I don't recall.
Q. Was Mr. Strong one of those individuals?
A. I don't recall.
Q. Sunbeam management, was it discussed with?
A. Certainly we discussed it with them. They had to accept it.
Q. If you could, sir, please turn to page 16 of the selling memorandum, CPH Exhibit 100, that's Morgan Stanley

confidential 62876.
Sir, on this page entitled, "Sunbeam Corp. Key Selling Points," do you recall reviewing this page, sir?
A. I don't believe I reviewed this in detail, no.
Q. Why is that?
A. Because it wasn't my area of expertise.
Q. This document, sir, what's the purpose of this document?
A. This document is to provide information to the sales force so they understand holistically what's going on in connection with the transaction.
Q. And the reason for that, sir, is because the sales force is trying to sell the Sunbeam convertible debentures, correct?
A. That's part of it.
Q. Well, is it not part of your job, sir, to ensure the successful sale of the convertible debentures?
MR. CLARE: Objection to form.
A. Yes.
Q. Okay. So how is it then, sir,

that this page is not important for you to review in connection with the sale of these convertible debentures?
A. Because of the nature of the convertible market. I mean, these are -- these are selling points with respect to the strength of the story. People buy convertibles because of fundamentals -- i.e., the story, and because of technicals.
And I was comfortable that these securities could be placed based on the technicals. And from what I had heard, not from reviewing this, but I understood that the fundamentals were consistent with our ability to sell. These were not, in my mind, the primary reasons why somebody would buy the security.
Q. Who told you that the fundamentals were consistent with the technical aspects of the debenture offering?
MR. CLARE: Objection, that misstates the prior testimony, I believe. You can answer.
A. Sure. Just based on discussions I had had during the development of this

NOT A CERTIFIED COPY

018781

business, various people.
Q. Do you recall any particular names?
A. It's just my impression based on all the discussions I had had around the transaction.
Q. Did Mr. Strong tell you that the key selling points that appear on 62876 were consistent with what you knew about the convertible market and the technical aspects of the debenture offering?
A. I never discussed this page with Mr. Strong.
Q. Did you ever discuss the information about Sunbeam's existing business and financial condition as being consistent with the technical aspects of the debenture offering?
A. I don't recall having that conversation with Mr. Strong.
Q. So then your testimony, sir, is that you were not responsible for ensuring that the information that appeared in the key selling points was accurate?
A. Not directly responsible.

Q. So you did have some responsibility for, in reviewing the selling memorandum, that the information that was being conveyed to the market by the people at Morgan Stanley selling the convertible debentures was accurate?
A. I'm sorry, could you repeat that question?
MR. O'CONNOR: Sure. Read it back, please?
(Whereupon, the requested portion of the record was read back by the reporter.)
A. Yes. The people who prepared this document, I was primarily trusting that they had conveyed the correct information. And I had no reason to suspect that they did not.
Q. What did you do, sir, to ensure that the information that's contained in Morgan Stanley 62876 was accurate?
A. I don't believe it was my primary responsibility to independently verify this information. And I did not.
Q. So if it wasn't your primary responsibility, you did not do anything to

ensure that the information that was being conveyed to the market was accurate?
MR. CLARE: Objection, that misstates the testimony.
A. That misstates the testimony. No, if I saw something that I believed was inaccurate or if I had a reason to believe that something was inaccurate, then I would have taken action.
Q. You did nothing yourself to confirm that the statements contained under the key selling points were, in fact, accurate, is that correct?
A. I did not specifically review this page and confirm its accuracy.
Q. Who was responsible for confirming the accuracy of the information on this page?
A. I would say the CSG team.
Q. And that's Mr. Wright?
A. That's correct.
Q. And Mr. Tyree?
A. That's correct.
Q. Anyone else?
A. I would say that anybody on the

team, if they reviewed it and saw something they thought was incorrect or had reason to suspect it was incorrect, would have been responsible for inquiring further, including myself.
Q. Did you have any discussions, sir, with anyone regarding what was being done to confirm the accuracy of the information contain in the key selling points?
A. Yes.
Q. What did you discuss?
A. I don't recall specifically.
Q. Do you recall when you had those discussions?
A. I don't recall specifically.
Q. Do you recall generally what was discussed or when it was discussed?
A. When it was discussed? Prior to pricing the transaction.
Q. So that would be prior to March 19th, 1998?
A. If that's the date the transaction was priced.
Q. Well, sir, if you could flip back

NOT A CERTIFIED COPY

018782

Page 78

to CPH Exhibit 10 which is the debenture offering memorandum?
MR. CLARE: It's this one.
THE WITNESS: This one.
Q. Sir, on the front page of this offering memorandum, it contains a price and a date.
Do you see that the date is March 19th, 1998, directly below Morgan Stanley Dean Witter?
A. Yes, the date is March 19th, 1998.
Q. Okay. And there's a pricing for the convertible debentures in this document?
A. I'm sure there is somewhere. I'm sorry, what is your question?
Q. Third paragraph from the bottom, reflects a price, "37.243 percent and accrued original issue discount."
Is that the pricing for these debentures?
A. That's correct.
Q. Okay. So the pricing as of March 19th, 1998 is reflected in this document, correct?

Page 79

A. In this document, Exhibit 10.
Q. Yes, sir.
A. I believe so.
Q. Okay. This document doesn't refresh your recollection that the debenture offering memorandum was completed on March 19th, 1998?
A. On or about, yes, absolutely it does.
Q. And does it refresh your recollection that the pricing of the debentures occurred on March 19th, 1998?
A. On or about March 19th, it does, absolutely.
Q. Why would it be "about," why not March 19th?
A. I don't know what date is put on the cover of the offering memorandum. Is it the pricing date? Is it the trade date? I'm pretty sure it's not the closing date. That's a little bit higher. But I mean, it could have been March 19th or March 18th.
Q. Well, as you flip through CPH Exhibit 10, does this appear to you to be the final offering memorandum for the

Page 80

debentures?
A. This definitely does. I'm sorry, I don't know. If you tell me the date was March 19th, that sounds right to me.
Q. I'm just trying to help you, sir, put in perspective in the timeline of when you knew and when you had discussions.
A. I appreciate that.
Q. So your discussions about ensuring that the information contained in CPH Exhibit 100 in the key selling points occurred prior to March 19th, 1998, correct?
A. Prior to March 19th, 1998, okay.
Q. And who did you have those discussions with?
A. I'm sorry, could you repeat the question?
Q. With whom did you discuss the issue of confirming the accuracy of the information contained in the key selling points?
A. Various people.
Q. And who were those people?
A. Ruth Porat was certainly one of them. Bill Strong. Bill Wright. And

Page 81

perhaps others.
Q. You don't recall anyone else specifically?
A. I don't recall specifically who was involved in those discussions.
Q. And generally, what was discussed on this issue?
A. On which issue?
Q. The issue of confirming the accuracy of the information contained in the key selling points?
A. I can't recall specifically.
Q. Was anyone given the task of confirming the accuracy of the information that was provided to the Morgan Stanley salespeople who were selling the convertible debentures?
A. That would have been the responsibility of the CSG team.
Q. Okay. And again, that was Mr. Wright?
A. Yes.
Q. And Mr. Tyree?
A. That's correct.
Q. Was Ms. Porat also responsible

NOT A CERTIFIED COPY

018783

Page 82

for that?
A. I think everybody on the team was responsible for making sure that if there was something they were aware of that was a problem, that they addressed it.
Q. Why was that important? Why was it important to ensure that the information that was being conveyed to the market was accurate?
A. I believe when we sell securities into the market, we make every effort to make sure that the information that the investors have is full and complete and contains no material misstatements or omissions. I think it's important that that be the case.
Q. And part of your role in preparing the debenture offering is to ensure that that is, in fact, the case, correct?
MR. CLARE: Objection, asked and answered now several times. You can answer again.
A. Yes. I would very much want that to be the case in any offering in which I

Page 83

was involved in.
Q. Did you conduct any due diligence, Mr. Wright, in connection with the debenture offering?
MR. CLARE: This is Mr. Harris.
Q. I'm sorry, Mr. Harris.
A. I may have participated in one or more conference calls with respect to due diligence. I would not consider myself have been conducting due diligence, but rather participating or listening in on the call.
Q. Okay. Let's go through those calls.
What's the first conference call that you remember participating on in connection with due diligence?
A. I don't recall.
Q. Do you recall any of the conferences that you participated in in connection with the due diligence?
A. I don't recall.
Q. Do you recall anything that was discussed on those conference calls?
A. I can't recall.
Q. Do you recall when those

Page 84

conference calls occurred?
A. Before pricing.
Q. So before March 19th, 1998?
A. Yes, if that was the pricing date.
Q. Okay. Did you take any notes --
A. No.
Q. -- during these due diligence calls?
A. I did not.
Q. Why is that?
A. I'm not responsible for due diligence. I don't consider myself able to conduct aggressive due diligence. I do not specialize in this industry. Until I was asked to come up and present, I didn't know anything about this company. I wasn't involved in the acquisition.
And so as a result, the only function I could provide on that call or in any other context was if something to a layperson appeared to be incorrect, I might be able to spot it.
But the people who were charged with conducting due diligence understood the

Page 85

company in much greater detail than I did. It was their responsibility. And I assumed that they were doing that and I could only, I could only, as a layperson, determine if there was something that just completely didn't add up.
Q. Do you recall ever speaking on any of these conference calls?
A. No.
Q. Do you recall anyone asking you any questions --
A. No.
Q. -- about any issue on these conference calls?
A. Not about due diligence, no.
Q. About the debenture offering?
A. A lot of questions were asked about the debenture offering. I don't recall on what calls. If people had technical questions, I answered them.
Q. None of those questions related to Sunbeam's existing business or financial condition?
A. Not that were asked of me, no.
Q. And you don't recall any

NOT A CERTIFIED COPY

018784

Page 86

conversations that occurred on these calls generally?
A. All I recall generally was statements that what we were presenting was accurate, insistence that everything was fine.
Specifically? I don't recall.
Q. Was there some question that the information that Morgan Stanley was conveying to the public was not accurate --
A. I believe --
Q. -- or complete?
A. -- due diligence is the process of confirming -- I believe part of due diligence is to confirm that everything you understand about the company is correct.
Q. Who was responsible, sir, for ensuring that the statements contained in the debenture offering memorandum, marked as CPH Exhibit No. 10, were accurate?
A. I believe, as I've stated before, anybody involved in the team was responsible, if they found something in the document they believed was incorrect, for highlighting that, questioning that,

Page 87

bringing that to everybody's attention.
Q. Did you ever have any conversations with anyone concerning what they did to ensure that the information contained in the offering memorandum was accurate?
A. Yes.
Q. Who did you speak with?
A. I don't recall.
Q. Do you recall raising any issues with respect to the contents of the offering memorandum marked as CPH Exhibit 10?
A. I don't believe I did.
Q. Did you have any conversations with Mr. Tyree on the issue of the due diligence he was performing?
A. I don't recall.
Q. You don't recall any conversations with Mr. Tyree about the information he was learning about the company in connection with the debenture offering?
A. Not specific conversations, no.
Q. You never asked Mr. Tyree if he had conducted an accounting due diligence

Page 88

call?
A. I'm quite certain -- as part of his process, I don't remember the specifics, but as part of his process, someone on his team confirmed to me and a larger group of people that due diligence had been conducted. And I'm sure they walked through what was done in due diligence. And I'm sure that there was nothing that had been presented to me that seemed untoward.
Q. And you don't recall who this person was that confirmed that due diligence --
A. I believe it was a number of people. I believe a number of people were doing different parts of due diligence.
Q. Who ultimately was responsible for ensuring that all of the due diligence was completed?
A. I believe that all aspects of the transaction need to be ultimately passed on by equity commitment committee which involves a group of people. So that would be the answer, equity commitment committee.
Q. So the equity, members of the

Page 89

equity commitment committee were responsible for ensuring that all necessary due diligence was conducted in the Sunbeam --
A. They did not conduct it directly, but a transaction wouldn't proceed unless there was assurance to a senior group of people that it had been completed and it was complete and it was accurate and there were no misstatements or omissions.
Q. So there was no one individual at Morgan Stanley who was responsible for ensuring that everyone had done the necessary due diligence in the Sunbeam transaction?
A. Again, as I said before, CSG was charged with conducting due diligence. They would have to share with a broader group of people what they had done and the broader group of people would have to be comfortable with that for a transaction to proceed. And it wouldn't be just one person, no.
Q. So Mr. Wright, as head of CSG at that time, was not the person who was responsible for ensuring all due diligence had been completed?

NOT A CERTIFIED COPY

Page 90

A. That was a responsibility of his, but -- yes, absolutely that's his responsibilities.
Q. Was it also his responsibility to ensure that statements contained in CPH Exhibit 10, the debenture offering memorandum, were accurate?
A. Yes.
Q. Did you ever go to Mr. Wright to confirm that they had conducted all the necessary due diligence to confirm the accuracy of the statements contained in CPH 10?
A. Mr. Wright came to me and others and made that assertion.
Q. Did you ever learn, sir, that Sunbeam was engaging in aggressive revenue recognition practices?
A. I'm sorry, please repeat the question.
Q. Did you ever learn that Sunbeam was engaging in aggressive revenue recognition practices?
MR. CLARE: I object to the form of the question.

Page 91

A. Yes, I'm not sure -- I'm not sure what you mean by aggressive. But no, I mean, if that's a bad thing. I don't understand what you mean by aggressive revenue recognition practices.
Q. Well, were you ever informed, sir, that Sunbeam was engaging in what's called bill and hold transactions?
A. That term is not familiar to me.
Q. Did you have any communications with Sunbeam's outside accountants, Arthur Andersen, in connection with the debenture offering?
A. No.
Q. Do you know if anyone did?
A. I believe they did.
Q. Who do you believe had conversations or communications with Arthur Andersen in connection with the debenture offering?
A. I don't know specifically.
Q. Did you have any communications with Davis Polk in connection with the debenture offering?
MR. CLARE: That's a yes or no question.

Page 92

A. Yes.
Q. Who did you speak with at Davis Polk?
A. I don't recall.
Q. When did you speak with attorneys at Davis Polk concerning the debenture offering?
A. From shortly after the time the company decided to proceed with the transaction through the closing.
Q. In any of those conversations with Davis Polk, who -- I'm sorry, strike that. I'm having a hard time getting the question out.
Who was present during those conversations that you had with Davis Polk attorneys?
A. There were a lot of conversations, so various people.
Q. Was Arthur Andersen present during any of those conversations?
A. I don't believe so.
Q. Anyone outside of Sunbeam or Morgan Stanley present during any of those conversations?
A. Not conversations I had.
Q. Did you have any communications with anyone from my client, Coleman Parent Holdings or MacAndrews & Forbes holdings?
A. Over what time period?
Q. The entire Sunbeam engagement?
A. During the time I was working on the project?
Q. Yes.
A. No.
Q. At any other time?
A. I mean, subsequent, you know, years later, I think I made presentations to various members of MacAndrews & Forbes.
Q. Was that while you were employed at Morgan Stanley?
A. That's correct.
Q. Do you recall when those conversations occurred?
A. I do not.
Q. Do you recall generally the subjects of those conversations?
A. I made a presentation to Avon about doing a convertible financing.

Page 93

NOT A CERTIFIED COPY

018786

MR. CLARE: Avon or Revlon?
THE WITNESS: Revlon, excuse me. Same thing. They did not do the deal.
Q. Sir, I'm handing you what was previously marked as CPH Exhibit 129.
A. I'm sorry, did you have questions about that?
Q. Did you have a chance to look at that?
A. I've glanced at it, yes.
Q. Do you recall this document, have you seen this before?
A. Yes. Yes, I have.
Q. When did you see this document?
A. I don't recall, but I would surmise by reading the date on it sometime on or before March 10th.
Q. Mr. Harris, you're listed as an author, one of the authors of this document. Did you prepare --
A. Am I listed as an author? Oh, okay. When you say from --
Q. Right. The memorandum says it's from several individuals, including yourself.

Do you see that?
A. Yes, I do.
Q. Okay. Did you prepare any portion of this document?
A. I did not directly prepare any portion of this document.
Q. When you say, "not directly," did you pass information along to people for inclusion in this document?
A. Yes, I did.
Q. What portion of this document did you assist in preparing?
A. Page 12.
Q. Is that it, just page 12?
A. Yes, I mean, probably, you know, some input on to background where it relates to the terms of the security.
Q. What's the purpose of this memorandum, sir?
A. Purpose of this memorandum is to provide information for a discussion by equity commitment committee of the proposed transaction.
Q. Beyond having a discussion, was this memorandum prepared in order to obtain

approval from that committee to underwrite the zero coupon convertible debentures?
A. Yes.
Q. Do you know who the members of this committee were in March of 1998?
A. No, I don't.
Q. You don't remember any of the members of the committee?
A. On that specific date -- yes, I do. John Havens certainly would have been on it.
Q. I'm sorry, Havens, H A V E N S?
A. Yes.
Q. Anyone else?
A. Membership on the committee changed from time to time and I don't remember on that specific date.
Q. Okay. Well, the committee that's -- did the committee ultimately approve the underwriting of the zero coupon convertible debentures?
A. Yes, it did.
Q. Do you recall who participated in that decision to approve the underwriting?
A. Again, I don't recall who

specifically was on the committee at that time.
Q. Other than Mr. Havens?
A. Other than Mr. Havens.
Q. Did you attend this meeting?
A. Yes, I did.
Q. What was your role at the meeting?
A. My role at this meeting was to explain the terms of the security and to comment on whether I believed it was salable or not.
Q. Do you recall what questions were asked of you during this meeting?
A. No, I do not.
Q. Do you recall what you advised the committee in connection with the -- your comments on whether the debentures were salable?
A. Yes. I told the committee I believed the debentures were salable.
Q. What were the reasons you gave the committee for your position?
A. Based on my experience in the market, as well as valuation models,

NOT A CERTIFIED COPY

018787

Page 98

valuation -- the result of valuation models. I'm not sure if any of that was included or not. Doesn't appear that it was, which is fine.
Q. Did you prepare any valuation models in connection with this --
A. My team prepared valuation models.
Q. Who was on your team?
A. Jill Woodworth, Soumya Prasad.
Q. Did any of those valuation models include information concerning Sunbeam's apparent turnaround under Mr. Dunlap?
A. No.
Q. What did those models contain?
A. Those models contained the terms of the security, the volatility of the company, and an assumed credit spread.
Q. What did you look at in terms of volatility in preparing these models?
A. I don't recall.
Q. What typically do you look at when you model volatility of a company?
A. Historical volatility, volatility of comparable companies, call-implied

Page 99

volatility.
Q. In reviewing that, in reviewing the data in compiling these models, you took no consideration of Sunbeam's statements concerning its existing business condition?
A. No.
Q. Did you take into consideration any of Sunbeam's forward-looking statements about potential growth opportunities, earnings opportunities?
A. Absolutely not.
Q. Did anyone ask you about those issues during this meeting?
A. No.
Q. What's required, sir, in order to go forward with the underwriting of convertible debentures?
MR. CLARE: Object to the form of the question.
A. It's a very broad question.
Q. Well, let me try and ask you a better question.
You said that the purpose of this memo was to seek approval from the equity commitment committee to underwrite the zero

Page 100

coupon convertible debentures for the Sunbeam engagement, correct?
A. Yes.
Q. Okay. Beyond that approval, is there anything necessary -- would any other committee or person at Morgan Stanley have to approve the underwriting of the debentures?
A. No.
Q. Do you recall the structure -- strike that, the process by which Morgan Stanley offered the debentures to the public?
A. Yes. Hold on a second.
MR. CLARE: Yes.
A. They didn't offer them to the public.
Q. To the people, the investors who purchased the debentures.
A. That's correct. They were all -- it was offered 144A, so it was not offered to the public.
Q. Who were they offered to?
A. They were certainly offered to qualified institutional buyers. I can't

Page 101

remember whether or not they were offered to accredited investors as well.
Q. My question, sir, is how that process took place.
Can you describe for me, once the approval was received by committee, how those debentures were sold?
A. Sure. They were offered pursuant to 144A to qualified buyers. Qualified buyers received offering memoranda, were offered the opportunity to participate in a conference call with management. And the people in certain cities were also offered the opportunity to see a management presentation.
I can't recall whether or not there were one-on-ones, I believe there probably were, which is individual meetings between investors and the company.
There was a standard book-building process where people would indicate their interest in the security, how much size, price limitations, et cetera.
After completing that book-building process, the transaction was

UNCERTIFIED COPY

018788

NOT A CERTIFIED COPY

Page 102

priced and distributed.
Q. Did Morgan Stanley initially purchase the debentures and then resell them to the institutional investors and the others?
A. Technically, I believe they did, although it was a best efforts offering, so, you know, we only did that after we had committed demand.
Q. The debenture offering originally was in the amount of $500 million net to Sunbeam, is that correct?
A. That sounds, that sounds right.
Q. And then at some point, the debenture offering was increased to 750 million.
Do you recall that happening, sir?
A. Yes.
Q. When did that happen?
A. That happened on or about the date of pricing, probably in the afternoon of the date of pricing.
Q. Who decided to increase the debenture offering to 750 million?

Page 103

A. That was a joint decision. At Morgan Stanley, it would have been myself, as well as members of the sales and trading force, in consultation with all the senior officers involved in the transaction.
Once we decided that the transaction could be upsized, we offered that to the company and it was their choice whether to accept it or not and they accepted it.
Q. Was Ms. Porat involved in that decision?
A. Yes.
Q. Mr. Strong?
A. Yes.
Q. Anyone else specifically that you recall involved in the decision to increase --
A. Frank Pratt.
Q. Anyone else?
A. I don't recall.
Q. Do you recall the reasons why Morgan Stanley recommended to Sunbeam that they increase the debentures from 500 to 750 million?

Page 104

MR. CLARE: Objection, that misstates the testimony.
A. I'm sorry, could you repeat the question?
Q. Do you recall the reasons why Morgan Stanley recommended to Sunbeam -- well, let me ask the predicate.
Did Morgan Stanley recommend to Sunbeam that they increase the debenture offering from 500 to 750 million?
A. Yes.
Q. Why?
A. Because there was a lot of demand out there and, there was a lot of demand and we wanted to fill that demand.
Q. Any other reasons?
A. We thought the company would be interested.
Q. Why would the company be interested in increasing the debenture offering?
A. Originally, 500 was our estimate of a comfortable market size, but we informed them that the actual size might be larger. They liked the transaction quite a

Page 105

lot because it paid no cash interest. And the effective conversion price was significantly above their current stock price --
(Discussion off the record.)
A. I'm sorry, I don't --
MR. CLARE: Were you done? Want to have it read back to you to make sure it's accurate?
THE WITNESS: Sure. Read it back, please.
(Whereupon, the requested portion of the record was read back by the reporter.)
A. Was significantly higher than the current market price. They liked the deal. They had a lot of financing to do. And subject to getting attractive terms, wanted to do more of it. It's not uncommon in the convertible market.
Q. Were there any discussions within Morgan Stanley about decreasing the size of the loan, the senior loan Morgan Stanley was providing to Sunbeam in connection with raising the debenture offering to 750

018789

million?
A. Yes.
Q. And what was discussed on that issue?
A. All I was aware of was that there was a certain dollar need, and if the convertible was increased, the loan would be decreased.
Q. Do you recall anything else about those discussions other than the size of the -- the amount of financing Sunbeam needed?
A. No. I knew about those discussions because I was told that particular aspect, but that's all I was involved in.
Q. You don't recall any discussions about reducing Morgan Stanley's risk on the senior loan by lowering that, in turn, by increasing the amount of the debenture offering?
A. That's -- no.
Q. Is that just implied in the conversation?
A. It goes without saying. I mean,

you know, it goes without saying.
Q. Who was involved in the conversations that you had about decreasing the amount of the senior loan?
A. It was conveyed to me by one of the team members and I just don't know who that was.
MR. O'CONNOR: We need to change the videotape, so we'll go off the record.
THE VIDEOGRAPHER: Okay. The time is now 11:40. We have reached the end of tape number 1 and we are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is now 11:45 and this is tape number 2 and we are back on the record.
BY MR. O'CONNOR:
Q. Mr. Harris, you referred earlier to the process by which Morgan Stanley sold the debentures and you referred to a book-building process.
Do you recall what price target Morgan Stanley had placed on the debentures

prior to marketing the actual debentures?
A. I believe it's in this memo here. I don't recall specifically, but...
Q. If you look on the first page of CPH Exhibit 129, it's the one right in front of you?
A. Yes.
Q. The last paragraph, the first full sentence or the last full sentence of that paragraph where it reads, "The price talk will be 35.5 percent to 39.1 percent --"
A. Yes.
Q. "-- with a yield to maturity of 4-3/4 percent to 5-1/4 percent on a standard zero coupon structure"?
A. Yes.
Q. Would that be your effort to target a price for these debentures?
A. Yes.
Q. Is that what a "price talk" refers to?
A. Price talk refers to the yield range and the premium range.
Q. Who was responsible for taking

down the feedback that Morgan Stanley was receiving from potential purchasers?
A. The convertible sales force.
Q. And is that what you referred to as the book-building process?
A. Yes.
Q. How was that information compiled?
A. I believe investors would talk to their salesperson and they would give an indication of size and price limit. And then those were aggregated.
Q. Was that information used in setting the final price of the debenture, the debentures?
A. Yes, it was.
Q. Any other factors taken into consideration in setting the price of the debentures?
A. Yes.
Q. And what were those factors?
A. There were a lot of factors. I can't recall all of them. They would include our judgment.
Q. Sunbeam's stock price?

NOT A CERTIFIED COPY

018790

Page 110

A. No.
Q. That wasn't a factor in setting the price for the debentures?
A. No.
Q. Why not?
A. Well, because the price talk is coupon and a premium, and the premium is applied to the stock price, irrespective of where it is. Investors are more focused on the premium than they are on the stock price.
Q. So the last closing price for Sunbeam on the date of pricing, on March 19th, 1998, was not directly considered in setting the price of the debentures?
A. That's correct.
Q. Beyond the size and the price limit information you received from potential purchasers, was there any other information that you would consider significant in determining the pricing of the debentures?
A. Just qualitative feedback.
Q. And what do you mean by qualitative feedback?

Page 111

A. What they said about the deal. If they liked it; they didn't like it; they really liked it; they didn't like it a lot.
Q. What were the potential investors saying to Morgan Stanley in --
A. There was a spectrum of feedback, I mean, a range of things. Some people liked it; some people didn't like it.
Q. During the course of the equity commitment committee meeting, where they approved, discussed and approved the underwriting of the debentures, was there a discussion about the fee Morgan Stanley would receive in connection with this offering?
A. Yes.
Q. What was discussed in that respect?
A. What the fee was going to be.
Q. And what did you advise, did you advise the committee what the fee would be?
A. Yes.
Q. What did you advise them?
A. 3 percent, I believe, according to what's in these pages here.

Page 112

Q. Okay. If you flip quickly, sir, to Morgan Stanley, it's page 12 of the CPH Exhibit 129, the memo to the committee. There the gross spread is indicated in brackets as 2.5 to 3.0 percent.
Do you recall why in this document it has changed from the earlier document that we saw to now including a range of 2.5 to 3 percent?
A. No, I don't. And also let me say that when I said 3 percent before, I had seen that in one of these documents so I assumed that was the case. I don't remember specifically what the fee was here.
MR. CLARE: I also want to point out, when you referred to an earlier document, if you were referring to the selling memorandum, the selling memorandum is dated in time after the equity commitment committee memo that you're asking him about now, so --
A. Perhaps we had not come to a decision with the company on what the fee was going to be.
Q. I appreciate that clarification.

Page 113

A. I don't remember what the fee was.
Q. You don't remember the final fee --
A. I don't. You could probably find it in this document.
Q. I'll show you some documents that might help you with that.
A. Do you know what the final fee was?
Q. I know what I think it was.
A. What do you think it was?
Q. Let's see if we can refresh your recollection on that issue.
A. I'm prepared to take your word for it.
Q. Well, I would like your word for it, your testimony.
THE WITNESS: Here.
MR. CLARE: You're looking at the offering memorandum now.
THE WITNESS: Here we go, we have the offering memorandum right here.
Q. The fee appear in the offering memorandum?

NOT A CERTIFIED COPY

018791

Page 114

A. Yes, it does, it appears to. No, I take that back -- I mean, it's probably in here somewhere, I'm pretty sure.
Q. Let me show you a document that's previously been marked as CPH Exhibit 146. I'll point you to what I believe to be Morgan Stanley's fee. It appears on page Morgan Stanley 80328, which is a page entitled, "Project Laser Fee Calculation."
And I apologize, I'm not sure --
A. I've never seen this before.
Q. Okay. I'm not sure if this was produced to us cut off, or if it was cut off in the photocopying, but in the first section of this fee calculation, there appears to be an entry for the zero coupon convertible financing fee.
Do you see that, sir, in the upper left-hand corner?
A. Yes. It says 3 percent of gross proceeds.
Q. And that number then, 3 percent of the gross proceeds of 750.04 million and change was $22-1/2 million?
A. Yes.

Page 115

Q. And then there's an entry here that says a .5 percent credit in the amount of 3.75 million?
A. Yes.
Q. Does that refresh your recollection with respect to how Morgan Stanley's fee was calculated for the debenture offering?
A. I don't recall that aspect of it.
Q. You don't recall why Sunbeam received 1/2 percent credit?
A. I don't recall specifically. I believe it's not uncommon for us to credit a portion of the fees against other fees that the company has paid essentially resulting in a lower gross spread.
Q. So when a company is receiving multiple services from Morgan Stanley, sometimes a credit would be given to them on a particular portion of, say, the financing?
A. Yes.
Q. So the total number that's reflected in this document, CPH Exhibit 146, for fees paid by Laser for the convertible debenture offering of $18,751,851, that does

Page 116

not refresh your recollection as to the fees Morgan Stanley received for the debenture offering?
A. That appears to be the fees.
Q. Okay. You can set that aside.
MR. O'CONNOR: I'll ask the court reporter to mark as Exhibit CPH 286, a document bearing Bates labeled Morgan Stanley Confidential 95550 through 95551.
(CPH Exhibit 286, document bearing Bates Nos. Morgan Stanley Confidential 95550 and 95551, marked for identification, as of this date.)
Q. Take just a moment to look at that document, sir.
Sir, have you seen this document before?
A. I don't recall having seen this, although it is addressed to me, among other people.
Q. This is an email from Peter Albero to several recipients, including yourself, dated March 27, 1998?
A. Yes.

Page 117

Q. Do you recall what this issue was that was being discussed in this email?
A. I have no recollection of this, but -- I have no recollection of this.
Q. Does this appear to affect the amount of fees that Sunbeam paid to Morgan Stanley or the allocation of those fees within Morgan Stanley?
A. This addresses the allocation of those fees.
Q. You don't recall this being an issue at any point?
A. I don't recall this being an issue. I mean it's --
Q. Was there an issue of who would receive credit for the fees generated by Morgan Stanley in this engagement?
A. No.
Q. You don't recall anyone -- I'm sorry, were you finished?
A. I'm not sure I understand your question. This memo?
Q. No, I'm asking more generally.
Do you recall any issues at Morgan Stanley about who would be receiving

NOT A CERTIFIED COPY

0018792

Page 118

fee credit, fee generation credit in connection with the Sunbeam engagement?
A. No.
Q. Mr. Harris, did you attend the leveraged finance committee meeting that was held in connection with the Sunbeam engagement?
A. No.
Q. You had no participation whatsoever in the senior loan or the syndication of that loan?
A. No.
Q. Did you have any discussions with anyone concerning what was discussed at that meeting?
A. I don't recall.
Q. You don't recall anyone telling you the results of that meeting or any issues that came up in that meeting?
A. No.
Q. At any point, sir, did you receive any information on the status of Sunbeam's first quarter 1998 sales, net sales situation?
A. I don't recall.

Page 119

Q. Do you recall ever asking about information concerning the status of Sunbeam's earnings or sales in the first quarter of 1998?
A. Yes.
Q. When did you first ask about Sunbeam's earnings or sales in the first quarter of 1998?
A. I don't recall.
Q. Was it before the debenture offering was priced?
A. Yes.
Q. What specifically did you ask?
A. I don't recall.
Q. To whom was this inquiry addressed?
A. I don't recall specifically.
Q. Do you recall generally?
A. To whom it was requested?
Q. Correct.
A. I mean, it would have -- it may have been to John Tyree or to others. I didn't really -- I'm sure I asked somebody to get me the information, not to directly do it. I might have asked John, John, can

Page 120

you make sure somebody does this and that the information gets back to me.
Q. Why did you want information about Sunbeam's first quarter earnings and sales, first quarter 1998 earnings and sales?
A. Because of the proximity of those earnings announcements and the execution of our transaction.
Q. Why were you concerned about the proximity of Sunbeam's sales and earnings to the debenture transaction?
MR. CLARE: Objection to form.
A. I mean, I wanted to make sure that when we offered these securities, all publicly available information was correct, not misleading and complete.
Q. Were you undertaking an effort to confirm that the nonpublic information in the hands of Morgan Stanley was consistent with the public information that was being provided by Morgan Stanley in connection with the Sunbeam engagement?
MR. CLARE: Objection to form.
A. It's a difficult question to

Page 121

answer because if we had some information that was material, it would have been disclosed and I would have insisted that it be disclosed.
If it was not material, I would want to make sure that it didn't raise questions relative to material information that was outstanding, even if it weren't disclosed.
Q. Who would decide whether the information that you had acquired upon making your inquiry was material information?
A. I think that would be decided by a group of people, and people charged with conducting due diligence. And then it would be reported back to a more senior group to sanity test whether they had done everything appropriately, whether everything hung together.
Q. Okay. In that first level, who were the people who would have been involved in making that determination of materiality?
A. It would have included people including the CSG team.

NOT A CERTIFIED COPY

018793

Q. So Mr. Wright and Mr. Tyree?
A. That's correct.
Q. Anyone else?
A. Anyone else who took an interest and wanted to delve deeper. Everybody on the team is required to get themselves comfortable that, you know, they are unaware of anything that should be investigated further, anybody can do it.
Q. After making your inquiry about Sunbeam's first quarter '98 sales and earnings, what did you learn?
A. That the results of the inquiry had confirmed that to the best of our ability to determine, what we were aware of was consistent with what was in the public market and what investors expected.
Q. What specifically did you learn after making that inquiry?
A. I don't recall.
Q. You don't recall whether you learned Sunbeam's actual sales in the first quarter of 1998 at the point at which you received the information?
A. I don't believe I was in a

position to make judgments of interpreting that data. I believe the information that got back to me was the people who understood the business and were in a position to understand the data had completed their analysis and that the data confirmed what we believed.
Q. So you didn't ever receive any specific sales data for the first quarter of 1998?
A. I don't recall. I may have. I wouldn't have been in a good position to interpret it.
Q. But you don't recall receiving any actual numbers?
A. I don't recall whether I did or not.
Q. How about earnings estimates, do you recall receiving any specific information on Sunbeam's earnings for the first quarter of 1998?
A. I'm sure that that was reported to me at some point.
Q. At some point prior to the pricing of the debentures?

A. Yes.
Q. You don't recall -- specifically what earnings information you received?
A. Not specifically, no.
Q. Besides Sunbeam's first quarter 1998 sales and earnings, did you ask for any other information?
A. I don't believe I asked for any other information, other than confirmation that there were no material misstatements or omissions.
Q. Is it fair to say then that you took the word of the people that were reporting this information to you that there were no material omissions or misrepresentations?
A. To some degree, although I will say, at the time, they probably walked me through their logic and although I was not the best person to interpret it, I saw nothing wrong with their -- I saw nothing that I knew to be wrong with their logic.
Q. Do you recall seeing anything that concerned you, anything that concerned you about the information that you received

after making your request?
A. I saw nothing that I believe contradicted what they were telling me.
Q. What were they telling you?
A. They were telling me -- I don't remember the specifics.
Q. Do you recall generally what they were telling you?
A. Generally, they were telling me that the company was going to perform at a level that was expected by the market, and therefore all required public disclosure had been made. And they walked through their explanation of how that worked.
I'm not an expert on the business, but there was nothing that, on the surface, I could clearly countervene. And if there had been, then we would have done more work or we would have done something else.
Q. And the information that you recall generally being conveyed to you concerning the market's expectations, that referred to first quarter 1998 sales and earnings?

NOT A CERTIFIED COPY

018794

A. I believe so.
Q. Other than speaking with these individuals at Morgan Stanley, and again, you don't recall who you spoke with on this issue?
A. Don't recall specifically.
Q. Did you make any effort to speak to anyone at Morgan -- I'm sorry, strike that, at Sunbeam, anyone at Sunbeam, whether management or otherwise, concerning --
A. It was not my responsibility.
Q. Did you ask the people that were providing you this information whether they had spoken to Sunbeam, management or --
A. I believe they had.
Q. You believe they had, but you don't recall specifically --
A. I did not ask them that.
Q. Did you assume that they had done that work?
A. I believe they told me they had.
Q. You have no independent recollection though?
A. Of what?
Q. Of them telling you that they had

spoken to people at Sunbeam?
A. I believe they told me that they had spoken to people at Sunbeam.
Q. Do you know today what Wall Street was expecting as far as Sunbeam's first quarter 1998 sales?
A. No, I do not.
Q. Did you have any conversations with Mr. Tyree or Mr. Strong or Ms. Porat concerning Sunbeam's first quarter 1998 sales?
A. I'm sorry, could you repeat the question?
Q. Did you have any conversations with Mr. Tyree, Mr. Strong, or Ms. Porat concerning Sunbeam's first quarter 1998 sales?
A. Yes.
Q. What did you discuss with them?
A. I believe that one or more of those people were involved in evaluating whether the report that was coming back that the performance was going to be in line with expectations. I believe one or more of those people were involved in -- listening

to that report and making sure that there was nothing on the surface that they could disagree with, and you know, to see if there was anything else that they thought was appropriate to do to get more comfort around those numbers.
Q. Do you recall which of the individuals I mentioned, Tyree, Strong or Porat, that you had those conversations with?
A. Tyree, Porat.
Q. Mr. Strong?
A. Not that I recall.
Q. When did you have those conversations with Mr. Tyree or Ms. Porat?
A. Prior to pricing.
Q. Did Mr. -- other than Mr. Tyree and Ms. Porat, did you speak with anyone else at Morgan Stanley concerning their efforts to evaluate the information they were receiving from Sunbeam concerning first quarter 1998 sales?
A. Yes.
Q. Who else did you speak with?
A. I don't recall.

Q. When you had these conversations, where did they occur?
A. Morgan Stanley's offices.
Q. And other than conversations occurring prior to pricing, you can't pin down with any more specificity when those conversations occurred?
A. Within a couple days of pricing.
Q. Were all of these meetings in person?
A. No.
Q. How many meetings did you have in person with Mr. Tyree, Ms. Porat and the others concerning Sunbeam's first quarter 1998 sales?
A. I don't recall.
Q. Did you participate in telephone conferences on the same issue?
A. Yes.
Q. How many telephone conferences?
A. I don't recall.
Q. Do you recall receiving any documents reflecting Sunbeam's then-existing sales in the first quarter of 1998?
A. No, I did not.

NOT A CERTIFIED COPY

018795

Page 130

Q. Let me show you a document that's been marked as CPH Exhibit 16.
Have you ever seen this document before?
A. Yes.
Q. When have you seen it?
A. This morning.
Q. Was this shown to you in preparation for your deposition testimony?
A. Yes, it was.
Q. Other than seeing this document this morning, have you seen this document before?
A. No.
Q. So the first time you've seen this document was this morning?
A. As I indicated, yes.
Q. Okay. Now, when I say, this document, I mean the document including the handwriting? Let me ask a better question.
Have you ever seen any form of this document?
A. No, I have not.
Q. At the top of the document, you'll see a fax line that says March 18th,

Page 131

1998.
Do you see that?
A. Yes, I do.
Q. And directly below that, it says, "Ruth fax."
Do you recall whether that was Ruth Porat's fax number at the time?
A. I've got to say, I don't.
Q. Okay. So in your meetings with Ms. Porat, Mr. Tyree and the others, they never provided you with this document?
A. No.
Q. Did they provide you with any of the information contained on this document?
A. I don't recall.
Q. You don't recall knowing that Wall Street estimated that Sunbeam's first quarter 1998 sales would be 285 to 295 million?
A. No.
Q. And you don't recall knowing that in January and February of 1998, as reflected in this document, Sunbeam's first quarter sales were only $101.6 million?
A. No.

Page 132

Q. You don't recall any discussions about the shortfall of Sunbeam's sales to Wall Street's estimates of 285 to $295 million?
A. Yes.
Q. You do recall those conversations?
A. Yes.
Q. What do you recall about the conversations regarding that shortfall?
A. That the conversation took place.
Q. You don't recall who said what?
A. No. I can't remember these numbers at all.
Q. Okay. Well, I'm not asking just about the specific numbers.
But on the issue of the shortfall, what do you recall remember --
MR. CLARE: Object.
Q. I'm sorry, what do you recall about those conversations?
A. I believe that there were discussions as to whether they would make the sales the market expected or not.
You're just talking about the

Page 133

conversation I had with Ruth or John or somebody else?
Q. I'm talking about any conversations that you've had with anyone within Morgan Stanley concerning the issue of Sunbeam's first quarter 1998 sales?
A. Yes, okay.
Q. And earlier, I believe you testified that you didn't have recollection of what was discussed, other than generally 1998 first quarter sales.
A. That's correct.
Q. Okay. Well, now, you've indicated to me that you recall a discussion taking place about the shortfall between Sunbeam's existing 1998 first quarter sales and Wall Street's estimates?
A. Perhaps I --
MR. CLARE: Objection to form.
A. Perhaps I misstated that. I mean, obviously the question that we were discussing is what the sales would be relative to Wall Street expectations. Whether there was a shortfall or not, that's your words, not mine.

NOT A CERTIFIED COPY

018796

Q. Well, that's what I was asking you, sir. And let me reask it again.
Do you recall discussions about Sunbeam's shortfall from Wall Street's estimates, expectations for first quarter 1998 sales?
MR. CLARE: I object to the form of the question.
A. Now you're asking if after the earnings were reported, there was whether there was a discussion of that.
Q. That wasn't my question, sir. Let me try again.
I want to know everything that you know, that you can recall from the discussions you had with Mr. Tyree, Ms. Porat or anyone else within Morgan Stanley on the issue of Sunbeam's first quarter 1998 sales.
A. Just to be clear, there was no shortfall at the time we were talking because there was not report of their first quarter numbers.
Q. That you were aware of?
A. That's correct. I mean, I --

their numbers almost certainly weren't reported at that time, at least I was not aware of that.
Q. You're changing my question. I'm not talking about reported numbers. I'm talking about the information that Morgan Stanley had in its possession on first quarter 1998 sales when you had the discussions about Wall Street's expectations and those sales numbers.
A. And I'm telling you I'm not aware that Morgan Stanley, or anybody I know, had the first quarter sales numbers to be able to compare with Wall Street estimates.
Q. Perhaps the confusion is that I'm not asking you about Sunbeam's final first quarter 1998 sales. I'm asking you about the conversations you had prior to pricing, which would be before the close of first quarter 1998, that you had with people within Morgan Stanley on the issue of Sunbeam's current sales status in the first quarter of 1998.
MR. CLARE: Object to the form. And asked and answered. You can answer.

THE WITNESS: Okay.
A. I will say that these discussions were to determine whether we believed that the first quarter numbers would come out consistent with what people were expecting, and whether or not there would be a shortfall. There's the shortfall word. And the results of the discussion, as I've said a couple of different ways, is I was told by the people who were looking closely at this that they did not believe there would be a shortfall.
Q. So you were having conversations with people at Morgan Stanley about Sunbeam's shortfall in the first quarter of 1998, shortfall in sells, as compared to Wall Street expectations.
A. As to whether or not there would be a shortfall, yes. Yes, absolutely. I mean, what else would we be discussing about the numbers? We wanted to make sure that what was in the market was full, complete, no material omissions or misstatements. And yes, I mean, we were looking at the sales numbers. And we wanted to make sure that

they were consistent with what the street expected.
Q. Did anyone advise you that Sunbeam had provided Morgan Stanley actual sales figures for the first quarter of 1998 through March 15th or 17th of 1998?
A. I know that we had received sales information through some date, and I'm not sure what date it was through.
Q. What do you recall learning from that information that you received?
A. I was told that when considering that information and the sales that were expected for the rest of the quarter, the numbers would be consistent with expectations.
Q. Who told you that?
A. I don't recall.
Q. Mr. Tyree, Ms. Porat or anyone else at Morgan Stanley didn't provide you with any specific numbers to allow you to come to an independent conclusion on whether Sunbeam was on track to meet Wall Street analysts' expectations for sales in the first quarter of 1998?

FOR A CERTIFIED COPY

018797

Page 138

A. Not that I recall.
Q. Did you ever ask for that specific information so you could come to your own determination whether Sunbeam was on track to meet Wall Street expectations in the first quarter of 1998?
A. As I stated before, they explained to me how they were getting to the conclusion they did, and I did not see fault with their logic. I, of all the people listed here, I'm not the one to be able to understand their business or project their business. I didn't see anything obviously wrong and didn't know enough about the business to ask any more questions.
Q. Did anyone express any level of concern to you about whether Sunbeam was on track to meet Wall Street expectations for the first quarter of 1998?
A. People had assured me that they would.
Q. That wasn't my question.
Did anyone express any level of concern about whether Sunbeam would actually meet Wall Street expectations on sales in

Page 139

the first quarter of 1998?
A. That was the reason that we were doing the extra due diligence.
Q. So everyone had a concern?
MR. CLARE: Objection, it misstates the testimony.
A. No. I would say that -- I would characterize it differently by saying that -- the whole purpose of due diligence is to make sure the information you believe you know is indeed accurate.
And I would say that several people on the team wanted to make sure that we had done this thoroughly and properly. I'd say that's consistent with a lot of transactions I've worked on. And they didn't have an axe to grind one way or the other as to whether they'd make it or they missed it. But they wanted to know and I wanted to know.
Q. Let me ask my question a little differently.
Did anyone come to you and say, I don't think Sunbeam is going to make it?
A. No, nobody came to me and said

Page 140

that.
Q. No one conveyed to you a concern that Sunbeam would not meet the first quarter 1998 sales as expected by Wall Street?
A. No one came to me and said I don't think these guys are going to make their numbers.
Q. So why was this extra due diligence being performed at this time?
A. Because we're very diligent.
Q. You don't know why this process started?
A. As I told you before, we were close, temporally, to the announcement of the earnings and on every deal -- let me say it differently.
It's prudent, given the proximity, to make sure you really know. And so they kicked the tires pretty hard on this.
I don't understand the business. I was not charged with understanding the business. I wanted to make sure that, you know, somebody who did understand the

Page 141

business had looked at this closely and it panned out.
Q. Did anyone tell you that Sunbeam was guaranteeing that they would meet Wall Street estimates for the first quarter the 1998?
A. I don't think anybody used those words.
Q. Did anyone discuss how Sunbeam would fill orders in time to meet Wall Street's expectations in the first quarter of 1998?
A. I believe they did, but I can't recall the specifics.
Q. Do you recall generally what was discussed on that point?
A. No.
Q. How do you know that specific issue was discussed?
A. Because that's the level of detail to which I understand this, which is it's not my function to understand what the business is and so I don't know what their sales model is, et cetera.
But what I can do is I can

NOT A CERTIFIED COPY

018798

NOT A CERTIFIED COPY

Page 142

understand if you need to make your sales for the quarter, you know, how much have you sold so far and how much do you have to go and how are you going to do it.

And that's the level of understanding I could assimilate on this discussion. Beyond that, who we're selling to, I have absolutely no capacity to judge that or not.

Q. Did anyone express, during any of these meetings, their doubt whether Sunbeam could complete these projected sales --

A. No.

Q. -- in order to meet Wall Street's expectations in the first quarter of 1998?

A. No. My impression of the meetings was that people were convinced following their due diligence that the company would make their sales.

Q. Were you aware, sir, that as of March 18th, 1998, that Sunbeam would have needed to complete $195 million in sales in order to meet Wall Street's expectations in the first quarter of 1998?

A. Am I aware of that?

Page 143

Q. Were you aware of that during these discussions?

A. I don't recall.

Q. Do you recall any discussion about why Sunbeam was experiencing a sales shortfall in the first quarter of 1998?

MR. CLARE: Objection to form.

A. No.

Q. No, you don't recall that being discussed?

A. That's correct.

Q. You didn't ask that question?

A. No. I mean, again, I didn't ask. It wasn't my responsibility to ask these kind of questions.

Q. Mr. Harris, during any of these meetings in which you participated where there was discussion about Sunbeam's first quarter 1998 sales, was there also a discussion about the need to issue a press release?

A. I don't recall.

Q. You don't recall any discussions about whether Sunbeam needed to issue a press release in connection with the

Page 144

debenture offering that was about to occur?

A. I don't recall.

Q. Do you recall that Sunbeam, in fact, issued a press release on March 19th, 1998, concerning its first quarter 1998 sales?

A. I believe that's the case.

Q. You did not participate in any discussions about the necessity to issue that press release?

A. I don't remember the specifics, but that sounds quite possible.

Q. So you do recall attending a meeting in which you discussed the necessity to issue a press release in the first quarter of 1998 relating to Sunbeam's sales situation?

A. Yes, I don't remember the specifics, but I mean that sounds vaguely familiar.

Q. Okay. Well, what do you recall about those conversations?

A. About those conversations specifically? I don't recall.

Q. You don't recall anything that

Page 145

was discussed in the context of --

A. No, actually, I don't.

Q. -- a press release?

A. I don't.

Q. You didn't participate in drafting the March 19th, 1998 press release?

A. I don't believe I did.

Q. I'm handing you what's been marked as CPH Exhibit 14.

A. Okay.

Q. Have you had a chance to review that document?

A. I've skimmed it, yes.

Q. Do you recognize that document?

A. No.

Q. You don't recognize that to be the press release that Sunbeam issued on March 19th, 1998, concerning its first quarter 1998 sales?

A. It appears to be. I don't remember this.

Q. You weren't involved in drafting the particular language that appears in this document?

A. No.

018799

Q. You don't know how it came about that this document was created or issued?
A. I don't recall, no.
Q. Do you recall discussions, sir, that Sunbeam believed it was possible that net sales for the first quarter of 1998 may be lower than Wall Street analysts' expectations?
A. I don't recall.
Q. Do you recall any discussions at any time with anyone concerning whether net sales were expected to exceed 1997 first quarter net sales?
A. I can't recall that specifically now.
Q. Do you recall it generally?
A. Based on looking at this press release, it appears that at some point that discussion was had, yes, sure; generally, based on this press release. I mean, specific memories? No.
Q. All right. Well, my question is, do you recall those discussions occurring?
A. I recall --
Q. On your own independent

recollection?
A. I recall that there were discussions as to whether or not they would meet the estimates for sales, maybe for earnings. The specifics? I don't recall at all. And as I read this press release, I realize I really don't recall.
I mean, I was very tangentially involved in this. This is not my area of responsibility.
Q. Okay. You can set that aside.
Do you recall reviewing a comfort letter that was prepared by Arthur Andersen and provided to Morgan Stanley in the first quarter of 1998?
A. I did not review such a comfort letter.
Q. Were you aware that one was issued?
A. I assumed one was issued.
Q. Why would you -- did you ever ask to see the comfort letter that was issued by Arthur --
A. Absolutely not.
Q. Why not?

A. Because that's not my area of responsibility.
Q. The information contained in the comfort letter was not relevant to the work you were performing in connection with the debenture offering.
A. I don't believe that's what I said.
Q. Well, I'm asking.
A. Okay. Well, why -- can you phrase that as a question?
Q. Sure. Is the information contained in the comfort letter that Andersen provided to Morgan Stanley relevant to the work you were performing on the debenture offering?
A. Yes.
Q. Then if it was relevant, why did you not review or ask for the comfort letter?
A. There are thousands of pages of documents that are produced in the context of a transaction. We assemble a fairly materially sized team so that we can break the responsibilities down so that we can

actually perform them all.
That was not my responsibility, although there would have been somebody who would have done that and, as part of the equity commitment committee process, they would have had to assure the committee that a comfort letter would be provided.
Q. Sir, I'm handing you what's been marked as CPH Exhibit 17. This is the March 19th, 1998 comfort letter issued by Arthur Andersen to Morgan Stanley.
How many pages is contained in this document, sir?
MR. CLARE: Object to the form of the question. It's a waste of time as well.
A. I believe there are fewer than 10 pages in this document.
Q. There are seven pages in the March 19th, 1998 comfort letter, right?
A. Sorry, is that a question?
Q. Yes.
A. Seven pages? Let me reconfirm that. There are seven pages in this comfort letter.

NOT A CERTIFIED COPY

018800

Page 150

Q. This is a very important document, is it not?
MR. CLARE: Objection to form. And argumentative.
A. Are you suggesting it's more important than these other documents you shared with me?
Q. I'm asking you if this is an important document --
MR. CLARE: And I object --
Q. -- as part of Morgan Stanley's underwriting of the debenture offering?
MR. CLARE: I object to the form of the question.
A. Yes, I believe it's an important document.
Q. So out of the thousands of documents you referred to earlier, this seven-page document is -- would it be fair to say, probably more important than many of those other thousands of pages of documents?
MR. CLARE: Objection to form.
A. There are some documents that are less important than this, yes. And there are some documents that are more important.

Page 151

Q. What documents are more important than this document?
A. From my perspective?
Q. Yes, sir.
A. The documents that I'm more involved with are -- I'm not a lawyer. I can't make that judgment. I'll take back that answer --
Q. Sir, I'm not asking you to render any legal opinion. You testified that there are documents that are more important than this March 19th, 1998 comfort letter. And I want to know the documents that are more important than this letter, in your --
MO MR. CLARE: I object, and I move to strike the preamble to the question. You misstated his testimony.
He stated that there are documents that are more important for his involvement. That's what he testified to. If you want to ask him about that, that's fine, go right ahead. I object to the question.
Q. That is my question.
A. Okay. I don't have direct

Page 152

responsibility for reviewing the comfort letter and so I have not reviewed a comfort letter in my current role in over a decade, although on almost every transaction I work with, it is assured to me that there is a valid comfort letter that has been reviewed by the appropriate people on the team.
Q. Let me try again.
What documents are more important in connection with your work on the debenture offering than the March 19th, 1998 comfort letter?
A. The documents that are more important to me are the ones that I'm more directly responsible for, which include things like the offering memorandum. Specifically, within the offering memorandum, the description of securities. I'm very concerned about that because that's one of my primary responsibilities, to structure the transaction correctly. That's why it's important to me.
Q. Any other documents you can think of?
A. Yes.

Page 153

Q. Go ahead.
A. I -- I don't understand the question. I'm sorry.
Q. It's a pretty simple question.
What other documents, other than the ones you've just identified, are more important in terms of your work on the debenture offering, than this document, CPH Exhibit 17?
A. I'm -- I'm troubled by the question because I don't understand what you mean by more important.
Q. Sir, it was your testimony.
A. Okay.
Q. What does it mean to you?
A. Okay.
Q. What's more important --
A. It means something -- perhaps what I should have said is, perhaps what I should have said is something that I'm more responsible for. So perhaps I misspoke.
Q. You were concerned, sir, in connection with the debenture offering about the status of Sunbeam's first quarter 1998 sales, correct?

NOT A CERTIFIED COPY

018801

CONT #977

Page 154

MR. CLARE: Objection to form.
A. I wouldn't express it exactly like that.
Q. How would you express it?
A. I wanted to make sure the people on the team who are responsible for conducting due diligence had completed their due diligence completely, and that it was thorough. And that would include sales and other things, but I will not make a judgment on which are more important or less important.
Q. Okay. But my question was, you participated -- well, let me ask a new question.
You participated in meetings at which Morgan Stanley personnel discussed Wall Street expectations for Sunbeam's sales in the first quarter of 1998 and Sunbeam's sales in the first quarter of 1998, right? We went through that about 15 minutes ago.
A. Yes, I mean, I kept saying, not the full first quarter sales and you kept running over me, but I'm sorry, we did.
Q. I didn't intend or mean to run

Page 155

over you --
A. Apology accepted.
Q. But you, in fact, were involved in conversations about the status, not the final first quarter 1998 sales, but the then-existing sales information in connection with the debenture offering, right?
A. Yes.
Q. Okay. This document, CPH Exhibit 17, contains specific sales data for Sunbeam in the first quarter of 1998 through March 1st of 1998, does it not?
A. I don't know. I haven't seen this document before.
Q. If you turn to MS 379 -- just above paragraph 7 is paragraph C.
Can you read that to yourself?
A. Okay.
Q. That paragraph, sir, tells you that Sunbeam's net sales from December 29th, 1997 through March 1st, 1998, were 72 million as compared to 143.4 million for the corresponding period in the preceding year.
Would you agree with that?

Page 156

A. That's what it says, yes, absolutely.
Q. That information wasn't relevant to you in connection with the debenture offering?
A. I'm sorry, what's your question?
Q. Was that sales shortfall information that Sunbeam's first quarter 1998 sales through March 1st of 1998 were half of its net sales in the first quarter of 1997, was that information relevant to your work on the debenture offering?
A. Yes.
Q. Then why didn't you ask for and receive and review a copy of this seven-page document?
MR. CLARE: Objection, asked and answered. You can answer again.
THE WITNESS: Okay. Are you okay? Okay.
A. I'm not saying I never saw that information. I'm saying I didn't read this particular document.
Q. Well, let's back up. I asked you earlier whether you saw specific sales

Page 157

information on Sunbeam's first quarter 1998 sales.
Are you saying now that you did have that information?
A. No, I'm not saying I did or I didn't. What I'm saying is that the team who was responsible for this laid out their logic behind why the information we were presenting was full and complete.
And at the time, I saw nothing, based on my limited understanding of the business, that I could say clearly countervened the argument they were making. I can't remember what specific data they provided, I can't remember what their logic was, but I do remember what the conclusion was.
Q. Did you review any documents in connection with your work on the debenture offering that you were not responsible for?
A. I reviewed documents in connection with the debenture offering that I was not primarily responsible for, yes.
Q. But you didn't look at this document?

NOT A CERTIFIED COPY

018802

Page 158

A. I think that's been asked and answered.
Q. Okay.
A. Several times. Shall I answer again, just in case? No, I did not review this document.
Q. If you could flip back, sir, to CPH Exhibit 14. You can keep that open by the way. CPH Exhibit 17.
A. To that page --
Q. That's correct, MS 379?
A. And which one do you want me to look at?
Q. The press release, CPH 14.
A. Okay.
Q. Was there any discussion, sir, that you recall about including specific sales information into the March 19th, 1998 press release?
A. I don't recall.
Q. If you look at CPH Exhibit 14, in the middle of the first paragraph where it says, "The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns."

Page 159

Do you see that language?
A. Yes. Yes, I do.
Q. If you flip back a page to MS 378 in CPH 17, that document, back one page, at paragraph 6(b), and I'd ask you to take a moment to read that.
My question for you sir is --
A. I haven't quite finished.
Q. Okay. Take your time. Let me know when you're done.
A. Okay. I can't claim to understand that completely, but go ahead.
Q. Do you recall any discussions about the reason for Sunbeam's shortfall in the first quarter of 1998?
A. No.
Q. Do you recall any discussion about whether to include the reason that the company's early buy program accelerating sales into the fourth quarter of fiscal 1997, into the March 19th, 1998 press release?
A. I don't recall any of that.
Q. Do you recall knowing this information that appears in paragraph 6(b)?

Page 160

A. I don't recall any of this.
Q. And you don't recall reviewing any drafts of the March 19th, 1998 comfort letter, correct?
A. I'm quite confident that I did not.
Q. Sir, if you could turn back to CPH Exhibit 10 which is the debenture offering memo.
A. This one?
MR. CLARE: I'll put these in order for you.
THE WITNESS: Okay.
Q. And specifically, sir, if you could please flip to page 8.
Now, sir, you were primarily responsible for the debenture offering memo, isn't that correct?
MR. CLARE: Objection to form. Misstates the prior testimony.
A. That's correct, that does misstate the prior testimony. I was not.
Q. Well --
A. I was responsible for portions of it, and for putting, providing input for it.

Page 161

Q. Okay. And you reviewed this document --
MR. CLARE: Sorry, were you Don with your prior answer?
THE WITNESS: Yes, I am.
MR. CLARE: Okay, I'm sorry.
Q. And you reviewed this document in its final form, correct?
A. I reviewed portions of this document.
Q. In fact, this is one of the documents that you testified was more important than the March 19th, 1998 press release, correct?
A. Yes. Well, hold on a second. No, not versus the press release, versus the comfort letter.
Q. I'm sorry, the comfort letter.
A. You're trying to trick me.
Q. I'm not trying to trick you --
A. That was a good one. You almost caught me.
Q. I misspoke, sir --
A. When I -- misspeak, I get rebuked.

NOT A CERTIFIED COPY

018803

NOT A CERTIFIED COPY

Page 162

Q. All right, sir, I'll ask the question again.
This offering memorandum, CPH Exhibit 10, is one of the documents that you listed as being more important than the March 19th, 1998 comfort letter?
MR. CLARE: That misstates the prior testimony. Objection.
Q. In connection with your work on the debenture offering.
MR. CLARE: Thank you.
A. I really am uncomfortable with that characterization of my prior testimony. I really wish there was a way to get around it, but each time you say it, you'll help me out and I'll try and remember that I have more involvement with this document than I do with the comfort letter. Perhaps that's the better way to express it.
Q. Sir, my question for you was that this document, CPH Exhibit 10, was one of the documents that you listed as being more important than the March 19th, 1998 comfort letter in connection with your work on the debenture offering, was that not your

Page 163

testimony?
MR. CLARE: I object. Objection to form. Asked and answered. He's explained several times what his prior testimony was and what he meant by it.
If you want him to do it again, he can, but I really think it's getting repetitive and abusive. You can answer the question again.
THE WITNESS: I think it's getting repetitive and abusive. Do I have to answer it?
MR. CLARE: I'm not instructing you not to answer, but go ahead and answer again.
THE WITNESS: I'll answer it. If you don't instruct me not to answer it, I'll answer it again.
A. I'm sorry, what was the question? Although I've heard it several times.
Q. This document, CPH Exhibit 10, was one of the documents that you listed.
When I asked you specifically, tell me what documents are more important to you than the March 19th, 1998 comfort

Page 164

letter, you listed this document, the offering memorandum, correct? It's a simple --
A. In connection with my work.
Q. Yes, it's a simple yes or no question.
A. Yes.
Q. Okay.
MR. CLARE: Actually -- well, you don't have to limit your answer to the way he wants it.
THE WITNESS: Whatever. Okay. I'm sorry.
Q. Sir, on page 8 -- let me take you back actually, to page 5 through 11.
This is the summary section of the offering memo, would you agree with that?
A. It appears to be.
Q. Okay. Did you review the summary section of this offering document?
A. I reviewed in detail pages 10 and 11, I believe. Yes, 10 and 11.
Q. Why was it important for you to review the contents on pages 10 and 11 of

Page 165

this document?
A. Because my primary responsibility in the transaction is to make sure the deal is properly structured, legally, mechanically, and that there's a market for them. And so page 10 and 11, all the pages in here of this very important document to me in the context of my work, if there's a mistake in 10 and 11, it's going to take the most work for me to rectify that.
Q. And it's important that the information contained in this offering document is accurate, right?
A. Yes.
Q. Because this is the information that Morgan Stanley is providing to the public -- or not to the public, strike that, to the potential purchasers of the debentures, right?
A. It's one of the reasons.
Q. And it's very important that that information that you're conveying to potential investors is accurate?
A. I think I said yes.
Q. Because potential investors in

018804

the subordinated debentures rely on the information and the statements contained within the offering memo, correct?
MR. CLARE: Object, calls for speculation. You can answer.
A. Okay. Yes. If you say so.
Q. If you turn to page 8, sir, there's a section entitled, "Recent Announcement."
Would you take a second to read that, please?
A. Okay.
Q. This is the language that appears in the March 19th, 1998 press release, correct?
A. I believe so.
Q. Well, we can look at it.
A. Sure, I mean --
Q. If you would care to.
A. Why would you ask me that because, you know, you can look yourself.
Q. Well, we're getting there. I want to make sure that you have all the information you need to answer my question.
A. Okay, I mean -- yes, I mean, it

appears to be.
Q. Okay. My question then for you, sir, is did you review this recent announcement section in connection with your review of this memorandum?
A. I probably did not read that directly, no.
Q. Why not?
A. Because I'm primarily responsible for making sure the deal is properly structured. And this doesn't deal with structure.
If I had read it and I had found something objectionable to it, I would have pointed it out, because every team member ought to do that, but my primary responsibility is to make sure the deal is it properly structured and that it can be sold in the market.
Q. Who at Morgan Stanley is responsible for ensuring the accuracy of the entire offering memorandum?
A. I believe the CSG team has primary responsibility for making sure that the accuracy of the entire document is

correct.
Q. And that's Mr. Wright and Mr. Tyree?
A. That's correct.
Q. This recent announcement section does not contain the information Morgan Stanley had on Sunbeam's first quarter 1998 sales -- the information Morgan Stanley had in its possession through the March 19th, 1998 comfort letter on Sunbeam's first quarter 1998 sales as of that date, does it?
MR. CLARE: Objection, no foundation.
A. I don't know. I don't know. You've given me a document you claim is the comfort letter which I've never seen before. And you ask me if there's information in the comfort letter that's not here, and --
Q. Okay. Do you have any reason to believe that the March 19th, 1998 comfort letter I gave you is not, in fact, the comfort letter that Morgan Stanley received from Arthur Andersen?
A. No. No, I don't have reason to believe it's not.

Q. Let me ask the question a little differently for you.
Does the recent announcement section advise that Sunbeam's net sales from December 29th, 1997 to March 1st, 1998, were 72 million versus 143.4 million in the same time period in 1997?
A. You're asking me if it states that?
Q. In the recent announcements section.
A. I don't believe it does.
Q. Had you read the comfort letter that you have in your hand now, would you have advised that this offering memorandum contain that information on Sunbeam's first quarter 1998 sales?
MR. CLARE: Objection, incomplete hypothetical. You can answer.
A. Not necessarily.
Q. Why not?
A. I don't understand the business well enough to understand whether those couple of numbers you showed me in some document I saw for the first time today are

NOT A CERTIFIED COPY

018805

Page 170

material for inclusion in this section of a document. It's not my area of expertise. I don't know enough about the facts and circumstances. It's a very complicated judgment. That's why. Do you think it should be?

MR. CLARE: Just let him ask the questions.

THE WITNESS: Okay.

Q. Sir, had you read the March 19th, 1998 comfort letter and then reviewed this offering memorandum, would you have advised -- strike that.

Would you have raised a concern that that information in the comfort letter concerning first quarter 1998 sales should be in this offering memorandum?

A. Not necessarily.

Q. Why not?

A. If the person who understood the business and was charged with making that evaluation presented a persuasive argument for why that was not material, and other people who are more familiar with the business than me agreed with that, then I

Page 171

would defer to them on that point.

Q. So you wouldn't have even raised the issue --

MR. CLARE: Objection.

Q. -- that that sales information contained in the comfort letter might be included in the offering memorandum?

A. Not necessarily.

Q. Well, as you sit here today, if you had read the March 19th, 1998 comfort letter and you had that net sales information, would you have pulled anyone aside at Morgan Stanley and said, should this be included in the offering memorandum?

MR. CLARE: Same objections as before.

A. It's not -- it's not the right question because, you know, I come here today not remembering anything about this transaction. How can I make a judgment on what's material and what's not just by reading one page of a document you gave me?

I would suggest that nobody could do that. So I can't necessarily do that.

Q. That wasn't my question. I

Page 172

didn't ask you if you would have felt that it was material.

My question to you, sir, was if you had receipt the March 19th, 1998 press release -- strike that, comfort letter, and knew that Sunbeam's sales were half of 1997's sales for the same period, would you have pulled anyone aside at Morgan Stanley and said, do you think that information should be included in the offering memorandum?

MR. CLARE: Objection, incomplete hypothetical.

A. I don't have the expertise to make that judgment. And if that happened, you know, the people with the expertise would have raised it. And if they didn't raise it, then I probably would have been -- I mean, if the experts don't raise it, the people who understand the business -- not necessarily.

Q. You testified earlier, sir, that had you come across any information in materials that were going to investors contained false or inaccurate information,

Page 173

your role as well as everyone's role at Morgan Stanley, would be to flag that issue to determine whether or not that information should be corrected, correct?

A. Yes.

Q. Then my question for you, sir, is, had you looked at that comfort letter and knew the actual sales shortfall in the first quarter of 1998, would you have done that in connection with the drafting and review of the offering memorandum marked as CPH Exhibit 10?

A. I think your question -- if you're asking me if, if you're asking me if this were material information and it were brought to my attention, would I ask about it? I mean, it's -- quite, it's quite the hypothetical.

I mean, I think -- maybe this would answer your question. If I were aware of any information that was material and nonpublic that needed to be disclosed, I would encourage the team, more than encourage, I would expect the team would disclose it.

NOT A CERTIFIED COPY

908810

Page 174

By your question, it's -- it sounds like you're assuming that this is -- I don't know. I don't know the connection between your two questions. So I could just answer this question.

Yes, any material information that's nonpublic ought to be disclosed, yes. If that's your second question. I don't see a connection between your first question and your second question.

Q. In connection with the work that you performed on the debenture offering, do you consider a 50 percent sales shortfall over the prior period important information to you?

MR. CLARE: Objection to form.

MR. O'CONNOR: I'll withdraw it. I'll ask a better question.

Q. Was Sunbeam's sales shortfall, as reflected in the March 19th, 1998 comfort letter, information that you would have liked to have known prior to pricing of the debenture offering?

A. I mean, it wouldn't necessarily have affected the outcome.

Page 175

Q. You would have had no impact upon reading that information in the comfort letter, that wouldn't have affected anything you had done on the deal?

A. It wouldn't have had a necessary effect, no -- it wouldn't necessarily have affected the outcome, no.

Q. Had you obtained that information, would you have done anything differently?

MR. CLARE: Objection, incomplete hypothetical.

A. Yes, I mean, also I testified earlier I'm not sure whether I had that or not.

Q. Well, you testified that you, for sure, never read the comfort letter which contained that information.

A. For sure, I never read the comfort letter. That I remember. I remember that very clearly.

Q. Do you recall any discussions about whether to include the statements contained in the March 19th, 1998 press release into the offering memorandum at the recent announcement section?

A. I don't recall that specifically, no.

Q. Do you recall any discussion about whether the debenture offering should be delayed or cancelled because of information Morgan Stanley had obtained concerning Sunbeam's first quarter 1998 sales?

A. No.

Q. Did the March 19th, 1998 press release that's been marked as CPH Exhibit 14 have any impact on the pricing of the debentures?

A. No.

Q. I'm sorry, your answer?

A. No.

(Discussion off the record.)

THE VIDEOGRAPHER: Time is now 1:05 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 12 minutes after 1:00 and we are back on the record.

BY MR. O'CONNOR:

Page 177

Q. Circumstance I'm sorry if I've asked you this already, but whose responsibility was it to review the contents of the March 19th, 1998 comfort letter?

A. CSG.

Q. And again, that's Mr. Wright and Mr. Tyree?

A. That's correct.

Q. Who would be responsible for advising other members of the Morgan Stanley team about the content of that comfort letter?

A. CSG.

Q. The offering memo, previously marked as CPH Exhibit 10, who is responsible for signing off, if you will, on the offering memorandum on the final copy?

A. Various people; CSG would collect the final signoff. Different people would sign off on different parts of it. I would sign off on the structure.

Q. And by structure, are you referring to the two pages that you --

A. That and the description of debentures and anything on the front cover

NOT A CERTIFIED COPY

018807

that related to the securities themselves.
Q. Specifically, who are the people that would have signed off on the document, besides yourself, or portions thereof?
MR. CLARE: Objection, lack of foundation.
A. I don't, I don't know specifically. I mean, it's CSG's responsibility to make sure that any member of the team has signed off on anything that's relevant to them.
Q. Is there a particular process by which they do that, like signoff sheets, documents that are created?
A. Drafts are circulated and comments are collected.
Q. Does the equity commitment committee review the offering memorandum?
A. No, they do not.
Q. Sir, were you involved in the pricing of the offering memorandum?
A. The pricing of the offering memorandum?
Q. I'm sorry, the pricing of the debentures. Thank you.

A. Yes, I was.
Q. Who else was involved in that?
A. That would be members of the sales and trading group.
Q. Was Ms. Porat involved in pricing?
A. She was -- she was there, but most of the pricing was done by me and sales and trading folks.
Q. In proximity to the completion and printing of the offering memorandum, when did that pricing occur?
A. Before.
Q. How long before?
A. One to two days.
Q. Do you have any recollection that the pricing was completed on the same day as the completion of the offering memorandum and the printing at Global Financial Press?
A. It's unusual for it to be that fast, but it could be.
Q. You don't have any specific recollection whether that was indeed the case with these debentures, that they were priced and printed and the offering

memorandum was printed on the same day?
A. I don't recall the exact chronology.
Q. That general chronology doesn't refresh your recollection?
A. No, I don't know whether it was the same day, the next day or the day after.
Q. Okay. Did anyone call you or contact you in any way, sir, during the final drafting and printing of the offering memorandum to raise any issues?
A. Not that I remember.
Q. You don't recall hearing that there was a dispute of differences between Morgan Stanley personnel, or a dispute concerning the contents of the offering memorandum between Morgan Stanley personnel and Arthur Andersen personnel?
A. I don't recall that, no.
Q. You don't recall hearing that Arthur Andersen specifically objected to including the language of the press release and the recent announcement section of the offering memorandum?
A. I don't recall that, no.

Q. Do you recall hearing that Sunbeam was extending the close of its quarter in the first quarter of 1998?
A. I don't recall that.
Q. Were you involved, sir, in the preparation of the road show for the debentures?
A. No.
Q. I'm handing you what was previously marked as CPH Exhibit 75. Take a moment to flip through that, sir.
A. This is what you're calling the road show presentation?
MR. CLARE: I don't think he's characterized it. I think he's just handed it to you and identified it as a Deposition Exhibit No. 75.
Q. My question to you, sir, will be, do you recognize any of these materials?
A. Yes.
Q. Did you prepare or assist in preparing any of these materials?
A. No.
Q. Did you travel for any of the road show presentations?

NOT A CERTIFIED COPY

018808

A. No.
Q. Did you attend the road show presentation in New York on March 18th?
A. Yes.
Q. Do you recall anyone contacting you during or after that road show in New York to discuss first quarter 1998 sales?
A. Yes.
Q. What do you recall?
A. I recall that there were discussions on that and I believe it was sometime after the road show presentation.
Q. When did you first learn that the issue of first quarter 1998 sales had come up at the New York road show?
A. Well, I'm not saying it came up at the road show. I'm saying is there were discussions that took place after. I don't recall when it first came up.
Q. I'm sorry. Okay.
So you don't recall any discussions among Morgan Stanley personnel or Sunbeam personnel during or immediately following the road show concerning Sunbeam's first quarter 1998 sales?

A. I don't recall exactly when those took place now.
Q. You don't recall that Ms. Porat was contacted by someone to advise her of concerns about the status of first quarter 1998 sales?
A. I don't recall that now.
Q. She never conveyed that to you?
A. I don't recall.
Q. Who presented that day at the road show?
A. Al Dunlap did and I don't recall if there were others.
Q. You don't recall Mr. Kersh speaking at the road show in New York?
A. I don't remember that specifically now.
Q. Do you recall, at any point during the road show, where the subject of the March 19th, 1998 press release was raised?
MR. CLARE: Sorry, could you read back that question?
(Whereupon, the requested portion of the record was read back by the

reporter.)
MR. O'CONNOR: I think I misspoke.
Q. Sir, at any point during the road show, was there any discussion or comment on the March 19th, 1998 press release that went out that day?
MR. CLARE: Okay. I'm going to renew my objection. The road show that he testified he attended was March 18th, and you're asking him about a press release that went out that day, so I'm confused about the timing. And that's the basis for my objection.
MR. O'CONNOR: I'm sorry. Thank you. I have my question confused.
Q. The New York road show was March 18th.
Was there any discussion about the need to issue a press release during the March 18th road show?
A. I don't recall.
Q. Do you recall any discussions about changes to the road show presentation on March 19th as a result of the issuance of the March 19th press release?

A. No.
Q. Did you ever hear that someone at Morgan -- strike that, someone at Sunbeam had addressed the issuance of the March 19th, 1998 press release at the Boston road show on March 19th?
A. No.
Q. That subject was never discussed?
A. I don't recall that.
Q. You don't recall any discussions concerning whether Sunbeam should downplay the information that was contained in the March 19th, 1998 press release?
A. No.
Q. Sir, what did Morgan Stanley do to track Sunbeam's first quarter 1998 sales between the issuance of the press release and the closing of the debentures?
MR. CLARE: Objection, no foundation.
A. I don't know.
Q. Were you participating in any due diligence or review or monitoring of Sunbeam's first quarter 1998 progress between the March 19th, 1998 press release

NOT A CERTIFIED COPY

018809

Page 186

and the closing of the debentures?
A. Not that I remember.
Q. I'm showing you what's been marked as CPH Exhibit 33.
Do you recall this document, sir?
A. No.
Q. You've never seen this before?
A. I don't recall this document.
Q. You were not involved in any "bring-down due diligence"?
A. Not that I recall.
Q. I'm going to show you what's been marked as CPH Exhibit 34.
Do you recognize this document?
A. No.
Q. Your name appears as one of the authors of this document.
A. Yes, it does. Yes, it appears to.
Q. Do you know why that is?
A. I find that people take liberties with my name -- sometimes when they shouldn't. Maybe that's not a direct answer. I think somebody put my name on it because they decided they wanted to put my

Page 187

name on it, but I don't recall being involved in this.
Q. You can't think of any reason why they would put your name and Ruth Porat's name on Exhibit 34?
MR. CLARE: Objection, calls for speculation.
A. I don't -- perhaps they discussed it with me. You know, as I say, I have no recollection of any of this.
Q. Okay.
A. I'm pretty confident I didn't write this memo.
Q. If you look at the first bullet point on CPH Exhibit 33, which I handed to you previously. First bullet point on this bring-down list is "Top and bottom line outlook for first quarter, first half and the year."
Do you see that, sir?
A. Yes.
Q. And then on the list that contains your name as one of the authors, dated March 20th, which is the day after CPH Exhibit 33, that first bullet point has been

Page 188

changed.
Do you see that?
A. Yes, that first bullet point does not, is not contained in the memo of March 20th.
Q. In fact, the inquiry in that first bullet point in the March 20th memo no longer lists the first half of Sunbeam's revenues and earnings, is that correct?
A. I don't see that list in the first bullet point in the March 20th memo, yes.
Q. Do you have any knowledge of why that particular inquiry was dropped between the March 19th, 1998 memo and the March 20th memo?
A. No.
Q. Do you recall any conversations whatsoever concerning whether to drop the inquiry into Sunbeam's second quarter of 1998 during the bring-down due diligence?
A. No.
Q. Sir, I'm handing you what's previously been marked as CPH Exhibit 112.
Have you ever seen that document

Page 189

before, sir?
A. I've seen something similar to this.
Q. Sir, this is the March 25th, 1998 version of Arthur Andersen's comfort letter.
Did you review this document on or about March 25th, 1998?
A. Absolutely not.
Q. When you say you've seen something similar to this, to what are you referring?
A. I think there's something in this pile here that looks pretty similar to this.
Q. And that would be the March 19th, 1998 comfort letter that we went through in detail, correct?
A. That's correct. I have not looked through either of them in great detail, and today is the first time I've ever seen either of them.
Q. I'm showing you what's previously been marked as CPH Exhibit 36.
Sir, just to back up one step, were you aware that Arthur Andersen provided Morgan Stanley with an updated comfort

NOT A CERTIFIED COPY

018810

Page 190

letter on March 25, 1998?
A. No.
Q. Okay. Sir, have you had a chance to review CPH Exhibit 36?
A. Not in detail.
Q. Do you recognize this document or any of the information contained in the document?
A. I don't. I don't remember this press release, no.
Q. This is, in fact, an April 3rd, 1997 Sunbeam press release.
(Discussion off the record.)
Q. 1998.
A. It says 1997.
Q. Yes, it's wrong on the document. Do you recall, sir, that this press release was issued shortly after the closing of the debentures and the closing of Sunbeam's acquisition of my client's interests in the Coleman Company?
A. No.
Q. You don't recall any discussions within Morgan Stanley concerning the April 3rd press release, or the information

Page 191

contained in it?
A. Not specifically.
Q. Generally?
A. Yes.
Q. What do you recall?
A. I don't think there was, you know, back and forth on what this meant and what investors would think and, you know, we need to be aware of it, because we sold some debentures -- we sold some convertibles and so we needed to make sure we were in communication with investors to monitor their concerns.
Q. So you were aware that a press release had been issued by Sunbeam shortly after the debenture --
A. At some point, I was aware that there had been a press release, yes.
Q. What was your reaction to the press release?
A. My reaction to it was, I was surprised and I was disappointed.
Q. Did you ever go back to anyone at Morgan Stanley, whether it was Ms. Porat or Mr. Tyree, and ask them what happened?

Page 192

A. Yes, I did.
Q. What did they say?
A. They said, at the time we sold the debentures, we believed that they were going to perform consistently with -- consistently with what was in the market. And if they didn't do that after the fact, that was inconsistent with all the due diligence they had done.
Q. Did you speak with anyone else about the information contained in the press release, or the press release itself?
A. Yes.
Q. Who did you speak with?
A. I don't recall.
Q. Did any of the debenture holders contact you after this press release was issued?
A. Contact me personally?
Q. Yes.
A. No.
Q. Contact Morgan Stanley?
A. Yes.
Q. Did anyone try to rescind their purchase of the debentures?

Page 193

A. No, not that I'm aware of.
Q. What was the nature of their contact with Morgan Stanley?
A. It was consistent with the feedback we get on every deal -- which is something negative comes out, they're unhappy. If something positive comes out, they're happy. So, they were unhappy.
Q. Did anyone, to your knowledge, investigate the reasons why Sunbeam did not meet its sales for first quarter of 1998, the expectations of Wall Street or -- let me withdraw that and ask a better question.
Was there any investigation done by Morgan Stanley to determine why Sunbeam fell short of, not only Wall Street's expectations for first quarter of 1998, but for Sunbeam's first quarter 1997?
A. I don't know.
Q. Did you ever ask anyone to conduct that investigation?
A. I personally did not.
Q. Are you aware of anyone that did?
A. As I said, I don't know.
Q. Do you know who at Morgan Stanley

01881

NOT A CERTIFIED COPY

reviewed a draft of the March 19, 1998 press release?
A. No.
Q. Do you know who at Morgan Stanley was involved in discussions in drafting -- I'm sorry, discussions about whether or not to issue a press release?
A. I don't have specific memory of who that might have been.
Q. Do you have any memory?
A. I believe that Ruth was probably made aware of it. I believe I was probably made aware of it. I believe John Tyree was probably involved.
Q. When you say, Tyree was involved, is that as opposed to being aware of the press release?
A. I don't know. I don't know. I mean, I'm sure before the press release came out, people on the team were informed that it was going to come out.
Q. And why do you believe that?
A. Because whenever there's -- whenever there's a press release by the company -- well actually, let me say it

differently.
The company issues a press release and their marketing securities or offering securities team needs to be aware of that, whether it's important or not.
Q. In connection with your role on the debenture offering, wouldn't it have been important for you to know whether Sunbeam was going to issue a press release before it went out?
A. Yes.
Q. And would it be important to you to know the contents of that press release before it went out?
A. Yes.
Q. But you don't recall reviewing that press release before it went out?
A. I do not. It could quite possibly be the case that they discussed it with me and I said, okay, that's fine.
Q. Do you have any recollection of that conversation occurring?
A. No specific recollections, no.
Q. Any general recollection?
A. Yes, that it occurred.

Q. So people did come to you and tell you that Sunbeam was going to issue a press release on March 19, 1998?
A. Yes, before the press release came out, I'm sure people discussed it with me.
Q. Did you review a draft of the press release before it went out?
A. I don't recall.
Q. Did someone read you the contents of the draft press release?
A. I don't recall.
Q. Isn't that something that you would want to know before the press release went out?
A. I would want to know what was in the press release, yes. Whether they had to read it to me specifically, or I had to review it specifically, not necessarily.
Q. So is it fair to say that despite having no recollection of having the contents read to you, you were, in fact, read the contents of that press release before it went out?
MR. CLARE: Objection to form.

Q. I mean, you --
A. Somebody probably -- if they didn't read me the contents of it, they went through all the major points that were going to be in there, yes. I would suspect, would infer that from the situation, although I don't have any specific recollection of it.
Q. Sir, you were promoted to managing director in December of 1999, is that correct?
A. That sounds about right.
Q. In 1998, was there a big push at Morgan Stanley to increase the number of convertible debenture offerings?
A. No more so than any other year.
Q. Was 1998 a much better year for issuing -- I'm sorry, strike that, for Morgan Stanley's underwriting of convertible securities than 1997?
A. I don't recall. Actually, if I had to guess, I'd say it probably was lower. Actually, strike that. I just don't recall.
MR. CLARE: Just one second.
(Pause in the proceedings.)
MR. O'CONNOR: No further

NOT A CERTIFIED COPY

018812

questions.
MR. CLARE: Okay. I don't have any questions for this witness. So we're done.
THE VIDEOGRAPHER: The time is 1:37 and we have concluded the deposition. And we are off the record.
(Time noted: 1:37 p.m.)

ACKNOWLEDGEMENT

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, W. BROOKS HARRIS, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of October 26, 2004, that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
W. BROOKS HARRIS

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, JOYCE G. ABELES, a Notary Public within and for the State of New York, do hereby certify:
That W. BROOKS HARRIS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of October, 2004.

_____
JOYCE G. ABELES

----------INDEX----------

WITNESS	EXAMINATION BY	PAGE
W. BROOKS HARRIS	MR. O'CONNOR	05

----------INFORMATION REQUESTS----------
MOTIONS: Page 151, Line 15

----------EXHIBITS----------

CPH EXHIBITS	FOR ID.
CPH Exhibit 286, document bearing Bates Nos. Morgan Stanley Confidential 95550 and 95551, marked for identification....	116:11

EXHIBIT RETAINED BY COUNSEL

018813

NOT A CERTIFIED COPY

*** ERRATA SHEET ***

NAME OF CASE: Coleman vs. Morgan Stanley
DATE OF DEPOSITION: October 26, 2004
NAME OF WITNESS: W. BROOKS HARRIS

PAGE	LINE	FROM	TO

_____
W. BROOKS HARRIS

Subscribed and sworn to before me
this ____ day of _____, 2004.

_____
(Notary Public)
My Commission Expires: _____

NOT A CERTIFIED COPY

018814

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO. INC,

Defendant.

CASE NO.: 2003 CA 005045A1

NOT A CERTIFIED COPY

EXPERT REPORT OF DOUGLAS R. EMERY

December 7, 2004

018816

I. OVERVIEW

A. Assignment

1. I have been retained by Counsel for Coleman (Parent) Holdings Inc. ("CPH") in connection with the above-referenced matter. I was asked to discuss the financial performance of Sunbeam Corporation ("Sunbeam") from a corporate finance perspective. In particular I was asked to focus on its financial performance from Q4 1996 through Q1 1998.

B. Qualifications

2. I am currently Bank of America Scholar, Professor of Finance, and Department Chair in the Department of Finance at the University of Miami. I was also recently elected to serve as Vice-President for the 2006 Financial Management Association International (FMA) annual program, and currently serve as the Chair of the Board of Trustees of the Eastern Finance Association. Previously, I have held positions at Binghamton University, The University of Missouri, Nanjing University, Washington University, Purdue University, The University of Kansas, and The University of Calgary.

3. I teach classes in corporate financial management. I have taught such classes at all levels, from introductory undergraduate classes through doctoral seminars, including a variety of advanced and case classes at both the graduate and undergraduate levels. Sunbeam and its performance during this period have been widely studied by academics, with numerous case studies and lectures covering Sunbeam's claimed turn-around and collapse. In fact, I have discussed Sunbeam and its performance during this period in particular and corporate ethics in general in class lectures at the University of Miami.

4. I earned a B.S. in physics from Baker University, and an M.B.A. and a Ph.D. in Business from The University of Kansas. I have co-authored five books including

NOT A CERTIFIED COPY

018817

Corporate Financial Management and *Debt Management: A Practitioner's Guide.* I have also published numerous articles regarding corporate finance and other finance topics. I have served, or currently serve, in various editorial capacities for numerous journals, including having served for more than six years as editor of *Financial Management*, the signature journal of the FMA.

5. A copy of my curriculum vitae is attached as Appendix A. In addition to my education and employment, it lists my publications, papers, and conferences in which I have participated. I have not testified in the past five years.

C. Scope of Analysis

6. I was asked to provide a discussion of Sunbeam's financial performance. In particular, I was asked to discuss Sunbeam's supposed "turn-around" under the leadership of Albert Dunlap, and its subsequent collapse and later bankruptcy after fraud was discovered in 1998. I have also been asked to explain how this fraud affected the value of the company and potential rationale for such fraud.

7. I understand that CPH alleges Morgan Stanley has engaged in various wrongful acts through its involvement in the sale of CPH's interest in The Coleman Company Inc. ("Coleman Company") to Sunbeam, including fraudulent misrepresentation, aiding and abetting, conspiracy and negligent misrepresentation.

8. In completing this assignment, I reviewed documents produced by the parties and conducted independent research. In addition, I have drawn upon my years of experience in corporate finance to assist me in reaching my conclusions. I have been assisted in this matter by Analysis Group, Inc. ("AG"). Staff at AG have gathered and analyzed information working under my direction. A complete list of documents relied upon is contained in Appendix B. In general, I reviewed the following types of materials:

NOT A CERTIFIED COPY

018818

- Legal filings;
- Analyst reports;
- SEC filings;
- Financial statements;
- Other financial documents such as offering memoranda; and,
- Press releases and news articles.

9. I am compensated at the rate of $515 per hour for time I incur on this assignment. Payment is not contingent on my findings nor on the outcome of this case. I reserve the right to update my report if new information becomes available.

D. Summary of Conclusions

10. Based on representations made to the public by Sunbeam, financial analysts and the general public viewed Sunbeam as a successful and improving company in 1997 and Q1 1998. This perception represented a substantial turn-around from 1996 when Sunbeam had shown a decline in sales and a large loss in profits. The claimed turn-around, however, was a fraud.

11. In April 1998, Sunbeam stated that it expected its Q1 1998 results to be below market expectations.[1] Notably, these results were even lower than those predicted by the company in a press release made two weeks before, dated March 19, 1998, which indicated that "…it is possible that its net sales for the first quarter of 1998 may be lower than [estimates]… but net sales are expected to exceed 1997 first quarter net sales…"[2] Surprisingly, despite the fact that the announcement date was only twelve days before the end of the quarter, the Q1 1998 sales fell below those of Q1 1997, contrary to Sunbeam's statement in the announcement, and earnings (which were not even mentioned in the warning) were negative. Upon the April 3 announcement of Q1 1998 results, the market price of Sunbeam shares

[1] *See* "Sunbeam Says 1st Qtr Sales Fell, Fires Executive," *Bloomberg*, April 3, 1998.
[2] 0016944-45, at 944.

NOT A CERTIFIED COPY

0188119

lost almost 25 percent of its value, dropping from a share price of $45.56 to $34.38.[3]

12. In fact, the poor performance in Q1 1998 was only the first indication of (and not fully reflective of) numerous problems at Sunbeam. Sunbeam management subsequently issued a warning revealing that Sunbeam's financial statements from Q4 1996 though Q1 1998 were inaccurate.[4] As was later reported, Sunbeam's financials for this period contained numerous irregularities and fraud, resulting in an overstatement of revenues and profits for the period Q1 1997 through Q1 1998.[5]

13. Not only had Sunbeam's fraud inflated its earnings in 1997, but it also caused the expectation that its earnings would be higher in the future. As such, the value of Sunbeam was dramatically higher than it would have been without the fraud. This created the opportunity for Sunbeam management to either: 1) sell the company at an excess over its actual value, or 2) purchase valuable assets of other companies using the overvalued stock as currency.

II. BACKGROUND: SUNBEAM PRIOR TO Q3 1996

14. Founded in 1910 with the introduction of its first appliance—the electric iron[6]—Sunbeam became a leading manufacturer and marketer of durable consumer goods, including kitchen and health-related appliances, outdoor grills and furniture, and electric blankets.[7] Despite its diversified offerings, Sunbeam maintained strong brand recognition amongst consumers.[8] As of May 1995,

NOT A CERTIFIED COPY

018820

[3] *See* Bloomberg data.
[4] "Sunbeam Admits Improper Accounting Firm to Restate Results," *The Miami Herald*, August 7, 1998; "Sunbeam to Restate Financial Results," *PR Newswire*, October 20, 1998.
[5] *See* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98.
[6] Sunbeam Corporate website, available at http://www.sunbeam.com/history.asp (visited November 17, 2004).
[7] CPH1257094 - CPH1257113. *See also*, Sunbeam Corporation Annual Report 1999.
[8] CPH1257094 - CPH1257113, CPH2008290 – CPH2008291.

Sunbeam was the market leader in 70% of its product categories.[9]

15. According to its original audited financial statements, Sunbeam's annual revenue declined from $1,044.2 million in 1994 to $984.2 million to 1996, with profits that began as high as $107.0 million in 1994 dropping steadily as well.[10] By the spring of 1996, Sunbeam needed to change its strategy. The stock price had declined from a high of approximately $25 per share in January 1995 to around $15 per share in May 1996.[11] Sales were relatively flat, and the company had failed to meet earnings expectations in nearly every quarter for the past two years.[12] Analysts believed that Sunbeam needed to refocus its product offerings and reduce its cost structure in order to improve growth and earnings.[13] In May 1996, Sunbeam CEO Mike Schipke was fired, opening the position for a new leader.

16. In July 1996, Albert Dunlap was hired as CEO, bringing with him the reputation of a company turn-around specialist.[14] Over the following months, Dunlap would devise and implement a strategy to supposedly improve Sunbeam's profitability by rationalizing its plants, warehouses, and headquarters, divesting certain unprofitable business units, including its furniture, time & temperature operations, and dramatically simplifying its product line by eliminating 87% of its stock-keeping units (SKUs).[15]

III. SUNBEAM Q3 1996 – Q1 1998: THE "TURN-AROUND"

17. Initial reaction to Mr. Dunlap's hiring and turn-around plan was positive. News

NOT A CERTIFIED COPY

018821

[9] CPH1257094 - CPH1257113.
[10] *See* Exhibit 1.
[11] *See* Exhibit 2. From a price of $24.88 on 1/3/95 to a price of $13.50 on 5/6/96. *See* Bloomberg data.
[12] *See* "Sunbeam in for a Pruning: New Chief Replaces Second in Command," *HFN*, July 29, 1996, "Sunbeam Chief to Osterize Plants, Workers," *Tampa Tribune*, November 9, 1996.
[13] *See for example*, CPH1125139-1125142.
[14] *See for example* "Are You Tough Enough to Handle Straight Talk from 'Rambo in Pinstripes'?; Cutting through the Bull with Al Dunlap," *Palm Beach Post*, October, 20, 1997. Prior experience includes Lily-Tulip, Consolidated Press, and most notably the turn-around of Scott Paper.
[15] CPH1125115 – CPH1125117.

articles and analyst reports both supported the belief that Sunbeam performance would improve over the following year, based on Dunlap's hiring and the new direction of the company. In fact, Sunbeam's stock price increased steadily from Dunlap's hiring through his announcement of the turn-around plan in November 1996 and continued to increase through late 1997. As Exhibit 3 shows, Sunbeam shares increased from $12.50 a share on July 18, 1996 to more than $45 by October 1997, approximately a 260 percent increase.

18. Notably, the stock price gained almost 50 percent alone on the announcement that Mr. Dunlap was named the CEO.[16] This large increase in price, preceding any actual turn-around or restructuring plan caused some to question the validity of the company valuation. Some analysts such as Constance Maneaty of Bear, Stearns & Co. reserved judgment awaiting the strategy to be unveiled.[17] Nevertheless, others such as Susan Gallagher, an analyst at NatWest Securities Corporation, recommended using any price weakness as an opportunity to aggressively purchase Sunbeam stock.[18]

19. When Sunbeam finally made its restructuring announcement, the reaction of the financial community was optimistic. Goldman Sachs analyst Elisabeth Fontenelli reported, "Yesterday's much anticipated restructuring announcement from new Sunbeam CEO Al Dunlap posed better-than-expected $225 million of annualized cost savings and a growth plan to double sales to $2 billion in the next three years. Restructuring cost savings are highly visible."[19] Based in part on this restructuring strategy, both Goldman Sachs and Merrill Lynch provided "buy" and "recommended" ratings for Sunbeam stock.[20] In Q4 1996, in conjunction with the implementation of the restructuring plan, Sunbeam recorded a pre-tax

NOT A CERTIFIED COPY

018822

[16] *See* Bloomberg data. *See also* "For a Struggling Sunbeam, Shock Therapy," *The New York Times*, August 11, 1996.
[17] *See* "For a Struggling Sunbeam, Shock Therapy," *The New York Times*, August 11, 1996. *See also* "New Chairman Mixing In," *The Miami Herald*, August 20, 1996, which says that developing a new strategic vision for Sunbeam won't be easy.
[18] *See* "For a Struggling Sunbeam, Shock Therapy," *The New York Times*, August 11, 1996.
[19] CPH1125115-117, at 115.
[20] CPH1125115-117. CPH1125110-111.

charge of approximately $337.6 million.[21]

20. By April 1997, after Q1 1997 results were released, Sunbeam and others were already touting the success of the turn-around. CEO Dunlap stated that "[t]he impressive growth in both revenue and earnings is proof that the revitalization of Sunbeam is working....The results for our ongoing operations are the beginning of the new Sunbeam. The turn-around is going strong. We are focused on building the business and I believe the best is yet to come."[22]

21. Achievements in the restructuring of Sunbeam as described by Dunlap included:

- Implementation of major advertising program for brand relevance
- Launch of new GrillMaster barbeque grill campaign and packaging
- 15 new license and distribution agreements
- 42 new international products
- New distribution channels including 10 factory outlet stores
- Reduction in new product development cycle (to six months) allowing 30 new products a year
- Reduction in employment headcount by 50%
- Reduction in number of factories from 26 to 8
- Reduction in number of warehouses from 61 to 18
- Sale of the furniture business and time & temperature product line; and
- Signing a deal to sell the Biddeford textile facility.[23]

22. Based on Sunbeam's public claims and reported results, analysts also believed the restructuring was succeeding. Scott Graham of CIBC Oppenheimer & Co. stated, "In sum, the revenue acceleration portion of this story is moving ahead quickly. The new products we witnessed, the company's upcoming new ad program and more focused branding strategies are all evidence to this end. And with most of the cost reduction actions behind the company, we expect Sunbeam's topline

NOT A CERTIFIED COPY

018823

[21] *See* Sunbeam 10-K for year ended December 29, 1996. The charge included $154.9 million in restructuring costs, $92.3 million in COGS for inventory write-downs, $42.5 million in SG&A for litigation reserves, and $47.9 million related to expected losses from the divestiture of the furniture business.

[22] "Sunbeam's First Quarter Sales Up 13%, Earnings per Share up 200% from Ongoing Operations," *PR Newswire*, April 23, 1997.

[23] "Sunbeam's First Quarter Sales Up 13%, Earnings per Share up 200% from Ongoing Operations," *PR Newswire*, April 23, 1997.

activities to continue at this fast pace..."[24] Bear, Stearns & Co. analyst Constance Maneaty also confirmed that "Sunbeam has largely completed an aggressive restructuring to rid the company of superfluous product lines and a heavy cost structure."[25] Accordingly, both provided "buy" recommendations for Sunbeam's stock.[26]

23. This positive outlook based on Sunbeam's represented performance continued throughout Q2 and Q3 1997, as the consensus of financial analysts were "buy" and "recommended" ratings for Sunbeam stock.[27] Goldman Sachs analyst Elisabeth Fontenelli opined that "[b]y year end Sunbeam will not only be a profitable and thriving entity, but its balance sheet should be net debt free..."[28] Constance Maneaty of Bear, Stearns & Co. also was optimistic as she was "comfortable with the second quarter results, pleased with the solid sales growth and optimistic that the operating changes at the plant level...will contribute to the earnings momentum we anticipate in 1998."[29]

24. In October, Sunbeam announced that sales increased 25 percent in the third quarter relative to the same quarter in the year prior, with sales to the top ten domestic customers up more than 30 percent.[30] Sunbeam was described as "[r]eaping the benefits of a massive restructuring engineered by Chairman Al Dunlap."[31] Sunbeam's announcement caused analysts to confirm the positive outlook, opining that "the performance of Sunbeam should continue to be impressive."[32]

25. Throughout Q4 1997 and Q1 1998, analysts generally remained upbeat about

[24] CPH1125112-114, at 112.
[25] CPH1125139-142, at 140.
[26] CPH1125112-114, CPH1125139-142, CPH1287455-469.
[27] *See* Exhibit 4.
[28] CPH1125122-123, at 123.
[29] CPH0472533-535, at 534-5.
[30] "Sunbeam's Shine: Sales Jump 25%," *Palm Beach Post*, October 23, 1997.
[31] "Sunbeam's Shine: Sales Jump 25%," *Palm Beach Post*, October 23, 1997.
[32] Analyst Constance Maneaty of Bear, Stearns & Co. "Sunbeam's Shine: Sales Jump 25%," *Palm Beach Post*, October 23, 1997.

NOT A CERTIFIED COPY

018824

Sunbeam. Goldman Sachs, Prudential Securities, Merrill Lynch, and PaineWebber, among others, offered "buy," "strong buy," "accumulate" and "recommended" ratings.[33] Even analysts that had "hold" ratings for the stock, such as Justin Maurer of McDonald & Co., believed that there was "...actual substance behind the hype..."[34]

26. Despite the good outlook, Sunbeam's stock price decreased over the period of October 8, 1997 through December 15, 1997 from $48.25 to $38.56.[35] Andrew Shore of PaineWebber explained, "[n]umerous explanations for the [stock] gyrations have been given, including but not limited to (1) Al Dunlap is leaving; (2) Sunbeam is going to miss the fourth quarter [estimates] and (3) Sunbeam is going to make a bad acquisition. We believe all three of these scenarios are highly unlikely and the latest dip into the $39-$40 area presents a good buying opportunity."[36]

27. On the other hand, some analysts believed prices may have reached their high point. Some of the more negative recommendations at the time included Merrill Lynch's John Gibbons, who commented, "Currently, Sunbeam is trading at...the upper end of valuations in the consumer products universe. However, we continue to recommend the stock, believing Mr. Dunlap will do everything in his power to create additional shareholder value..."[37] Another analyst, William Steele of The Buckingham Research Group expressed concern over the stock price. His January 1998 "neutral" rating was accompanied by the language: "We contend a lower valuation is warranted due to a near-term uncertainty regarding the company's earnings outlook."[38] Nevertheless, Buckingham's target price of

NOT A CERTIFIED COPY

018825

[33] *See* Exhibit 4.
[34] CPH0306588-589, at 589.
[35] *See* Bloomberg data.
[36] CPH0466399-401, at 399.
[37] CPH1407315-318, at 316. Note, however, that over the following months from January to March 1998, Gibbons made three long-term "buy" recommendations. *See* Exhibit 4.
[38] CPH1279118-122, at 118.

$43 was in excess of the market price of $37.63.[39]

28. On March 2, 1998, Sunbeam announced its plan to acquire the Coleman Company and two other entities, Signature Brands and First Alert.[40] Analysts believed that these acquisitions would provide additional opportunities for Sunbeam to grow and enhance shareholder value. John Gibbons of Merrill Lynch stated on March 3, 1998, "We believe the three acquisitions make good strategic and economic sense. There appear to be solid distribution synergies and the product lines should fit in well with the existing Sunbeam and Oster platforms."[41] Likewise, Andrew Shore of PaineWebber believed that "[w]ith the acquisitions again giving Al Dunlap the opportunity to do what he does best, turn-around troubled companies, the stock may be poised to set new highs in the coming months."[42]

29. This positive outlook of the investment community continued through the end of Q1 1998, even withstanding the press release issued by Sunbeam on March 19.[43] That press release, dated March 19, 1998, indicated that "...it is possible that its net sales for the first quarter of 1998 may be lower than [estimates]... but net sales are expected to exceed 1997 first quarter net sales..."[44] After the release, the stock price experienced a 9 percent decrease from $50.06 to $45.38, but remained in the $45 range and did not decrease significantly until more earnings announcements were made in April.[45]

30. Nevertheless, analysts remained positive in regards to the March 19th press release. David Buck of Sands Brothers & Co, reiterated a "Strong Buy" rating highlighting long-term value creation opportunities.[46] Likewise, Scott Graham of CIBC Oppenheimer, "surmise[d] that a sales shortfall will would [sic] equate to a

[39] *See* Exhibit 4. (CPH1279118-122) In fact, over this entire period Q4 1996 through Q1 1998, analyst targets exceed the actual stock price, as illustrated in Exhibit 5.
[40] 0000006-7.
[41] CPH1279605-606, at 605.
[42] CPH1028971-973, at 972.
[43] 0016944-45.
[44] 0016944-45.
[45] *See* Bloomberg data.
[46] CPH1393269.

NOT A CERTIFIED COPY

018826

slight earnings shortfall... But management did emphasize that it is not saying that it would miss the quarter," and continued to reiterate a "Strong Buy" rating focusing on the long-term view of Sunbeam.[47]

31. Consistent with the public claims of Sunbeam, Sunbeam discussion materials prepared by Morgan Stanley[48] and Sunbeam's 1998 Long Range Strategic Plan[49] (which I understand were both given to CPH during the discussions regarding the sale of Coleman Company) emphasized the good outlook for Sunbeam with continued sales and profit growth over the upcoming years. Both documents highlight the objective of $2 billion in sales by 1999 with a 20% operating margin, and outline Sunbeam's strategy for achieving this growth, based in part on the successes of 1997.[50] These materials were consistent with the turn-around story proclaimed by Sunbeam (as discussed above).

32. In conclusion, from Dunlap's hiring in Q3 1996 through the acquisitions at the end of Q1 1998, Sunbeam claimed to be a well-positioned company. The restructuring appeared to have worked, with reported revenues improved and costs reduced. According to its financial statements, Sunbeam achieved annual revenue of $1,168.2 million in 1997 with profits in excess of $109 million, figures well in excess of those in 1996.[51] The stock price had increased from a low of approximately $13 per share in mid-1996 to almost $45 per share at the end of Q1 1998.[52] Sunbeam appeared to be a well-managed company with great prospects moving forward.

IV. SUNBEAM POST Q1 1998

33. The announced results for Q1 1998 clearly disappointed the market. Shares of Sunbeam fell 25 percent on April 3, the day Sunbeam announced that first quarter

[47] CPH1393472-78, at 472.
[48] CP026286-026370.
[49] CPH0254621-254640.
[50] *See for example*, CP026301 and CPH0254636.
[51] *See* Exhibit 6.
[52] *See* Exhibit 3. Price of $12.25 on 7/15/96, Price of $44.13 on 3/31/98.

NOT A CERTIFIED COPY

018827

sales were about 5 percent below those in Q1 1997.[53] Sunbeam later revealed that profit had fallen from approximately $6.8 million to negative $44.6 million.[54]

34. Surprisingly, the revenue expectations that Sunbeam had announced only twelve days prior to the end of the quarter were substantially inaccurate. Not only did the Q1 1998 sales fall below those of Q1 1997 contrary to the expectations proclaimed in the March 19th announcement—but in addition, earnings showed a loss, and earnings were $50 million below Q1 1997—a possibility not even mentioned in the March 19th announcement.[55] Clearly, the March 19th release had been substantially inaccurate and insufficient.

35. Shortly thereafter, analysts downgraded their recommendations for Sunbeam stock. Andrew Shore at PaineWebber and Constance Maneaty of Bear, Stearns & Co. both downgraded Sunbeam from "buy" to "neutral,"[56] and Goldman Sachs' Elizabeth Fontenelli removed Sunbeam from the "recommend list" and reclassified it as "market perform."[57]

36. Although performance was not as expected, some analysts still expressed guarded hope for the future. Tom Burnett, an analyst for Merger Insight newsletter, indicated concern that Dunlap could build a company as well as he could downsize, implying a wait-and-see approach.[58] Andrew Shore of PaineWebber reduced Q1 1998 expectations, but still maintained hope that 1998 earnings would

NOT A CERTIFIED COPY

018828

[53] *See* Exhibit 6; "Sunbeam Says 1st Qtr Sales Fell, Fires Executive," *Bloomberg*, April 3, 1998.
[54] *See* Exhibit 6; Sunbeam 10-Q for Q1 1998, filed May 11, 1998. As the 10-Q revealed, the announced sales decline of 5 percent did not disclose the entire picture, as the sales figure was based on a quarter with additional days, included Coleman sales, and also included a large volume of "bill and hold" sales.
[55] With more than 85 percent of the quarter behind it, it is difficult to fathom how Sunbeam could have truly believed it would sell enough in the remainder of the quarter to achieve what it stated in its March 19 press release. *See* Exhibit 6 and 0016944-45.
[56] "Sunbeam Corp. Cut to 'Neutral' at PaineWebber," *Bloomberg*, April 3, 1998; "Sunbeam Cut to 'Neutral' at Bear Stearns," *Bloomberg*, April 6, 1998
[57] "Sunbeam Cut to 'Market Perform' at Goldman Sachs," *Bloomberg*, April 6, 1998.
[58] "Reality Pays a Tough Call on Sunbeam; Purchases Hurt Profits, Stock Price," *Sun-Sentinel*, April 12, 1998.

surpass those of 1997.[59] Others were less optimistic. Jeffery Middleswart of David W. Tice & Associates believed that the promised growth would be difficult in an industry that "is largely driven by replacement purchases and has been growing by less than 5 percent a year,"[60] concluding that "a lot of the [Sunbeam] goals laid out for 1998 are pretty unrealistic."[61]

37. The poor first quarter results, however, were soon followed by more bad news for Sunbeam. In late April, a lawsuit was filed against Sunbeam alleging securities law violations through an improper sales promotion in Q4 1997 that artificially boosted profits.[62] Other lawsuits soon surfaced accusing Sunbeam of issuing misleading statements and omitting key facts from disclosures.[63]

38. On May 11, Sunbeam released its Q1 1998 results revealing that profits for the quarter were negative $44.6 million. In addition, the Q1 1998 10-Q indicated methods by which Sunbeam increased its reported first quarter sales (including items not disclosed in the April announcement). For example, Sunbeam extended its quarter from March 29 to March 31, including $5 million in added sales from the two additional days in Q1 results.[64] Sunbeam also included $29 million in "bill and hold" sales in Q1 1998, despite the fact that these sales were expected to result in lost volume later in 1998.[65] Additionally, $14.8 million of reported sales were obtained by including Coleman sales.[66] Sunbeam also announced that it expected its second quarter barbeque grill sales to decline further relative to its low first quarter sales.[67]

NOT A CERTIFIED COPY

018829

[59] CPH1417337-42. FY 12/31/98 expected per share earnings reduced to $1.55-$1.60, compared with actual per share earnings of $1.41 for FY 1997.
[60] "A Warning by Sunbeam Stuns Wall St." *The New York Times*, April 4, 1998.
[61] "Reality Pays a Tough Call on Sunbeam; Purchases Hurt Profits, Stock Price," Sun-Sentinel, April 12, 1998.
[62] "Sunbeam Accused of Masking Sales with 4th-Qtr Grill Promotion," *Bloomberg*, April 23, 1998.
[63] *See for example*, "Notice of Filing of Class Action Against Sunbeam," *Bloomberg*, May 22, 1998; See also "Class Action Suit Filed Aginst Sunbeam Corp. and its Officers," *Bloomberg*, May 15, 1998.
[64] Sunbeam 10-Q for Q1 1998, filed May 15, 1998, at 5.
[65] Sunbeam 10-Q for Q1 1998, filed May 15, 1998, at 10.
[66] Sunbeam 10-Q for Q1 1998, filed May 15, 1998, at 10.
[67] "Sunbeam Expects Barbecue Grill Sales to Decline in 2nd Qtr," *Bloomberg*, May 15, 1998.

39. The market reaction was not positive. The stock price declined further, continuing its descent from $29-30 (in mid-April) to $22.94 by the end of May.[68] A June 6, 1998 article by Barron's described in detail Sunbeam's sales and earnings for 1997, describing them as "appear[ing] to be largely manufactured," and discussing many of the techniques Sunbeam used to artificially inflate its turn-around.[69] On June 13 Al Dunlap—the man responsible for "turning-around" Sunbeam— was fired.[70]

40. After Dunlap's termination, more bad news for Sunbeam surfaced. On June 25, Sunbeam announced that its auditor, Arthur Andersen LLP, would not consent to the inclusion of its opinion in an SEC registration statement.[71] This prompted Sunbeam to conduct an internal investigation, and by June 30, Sunbeam had revealed that it had hired Deloitte & Touche LLP to review the accuracy of its 1997 financial statements.[72]

41. The internal investigation found that the financial statements were inaccurate. In August, Sunbeam indicated that it would restate its audited financial statements for 1997, Q1 1998, and perhaps 1996.[73] A few months later, Sunbeam issued its restated financials showing lower sales and profits for 1997.[74] Delayed by the restatement of previous financials, it was not until December when Sunbeam was able to release its performance for Q2 1998 and Q3 1998, which showed a combined loss of more than $530 million.[75] By this point, Sunbeam stock was trading for about $6 a share.[76]

NOT A CERTIFIED COPY

018830

[68] *See* Bloomberg data.
[69] CPH 1351678-680, at 679.
[70] "Sunbeam's Shares Keep Falling, Below Price When Dunlap Arrived," *Bloomberg*, June 19, 1998; "Sunbeam to Review 1997 Statements and May Restate Results," *Bloomberg*, June 30, 1998.
[71] *See* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98, at 3.
[72] "Sunbeam to Review 1997 Statements and May Restate Results," *Bloomberg*, June 30, 1998.
[73] "Sunbeam Admits Improper Accounting Firm to Restate Results," *The Miami Herald*, August 7, 1998; "Sunbeam to Restate Financial Results," *Bloomberg*, October 20, 1998.
[74] *See* "Sunbeam to Restate Financial Results," *Bloomberg*, October 20, 1998. *See also* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98.
[75] "Sunbeam Loses $533 Million in 2nd, 3rd Quarters," *Palm Beach Post*, December 17, 1998.
[76] *See* Bloomberg data.

42. Thus, over the period from Sunbeam's announcement of Q1 1998 results to the end of the year, the stock dropped from a high of $45.56 in April to approximately $6 in December.[77] Mired by debt and the poor decisions from the Dunlap era, Sunbeam was unable to revitalize itself over the following years, and subsequently filed for Chapter 11 bankruptcy in February 2001.[78]

V. THE FRAUD

43. As discussed, the poor performance in Q1 1998 was the first of many problems for Sunbeam in 1998. But it was a symptom of the larger problem at Sunbeam—that Sunbeam had fabricated its success story by inflating revenues and earnings through numerous fraudulent methods, including some that borrowed against later periods. Eventually, it became impossible for Sunbeam to borrow enough from future sales to continue the facade.

44. It is not unusual for managers to use certain kinds of techniques to do what they call "smooth" period-by-period net income and give an impression of uniform (or at least much less variable per-period) net income than is actually the case. In such cases, managers argue that the variability they are eliminating is not meaningful, and that the "smoothed" net income pattern better represents reality.

45. In Exhibit 8, I illustrate an example of the manipulation of earnings from a variable amount each quarter to a "smooth" pattern. In this example, the firm has earnings which vary from $50 in one quarter to $150 in the next, repeating this pattern. Using delayed and borrowed sales over the quarters, however, a manager can "smooth" the earnings to a steady $100 per quarter.

46. Unfortunately, there is a moral hazard with "smoothing" net income in that managers may be tempted to use such techniques to instead deliberately

NOT A CERTIFIED COPY

018831

[77] *See* Exhibit 7.
[78] *See* "Sunbeam Seeks Bankruptcy Protection; Hopes to Emerge Within Nine Months," *Dow Jones Business News,* February 6, 2001.

misrepresent their firm's performance over some period of time. Despite this possibility, it is not feasible to misrepresent a firm's performance indefinitely. This inability to sustain misrepresentation (through manipulation of accounting decisions and/or outright fraud) over a prolonged period of time is why I teach students to consider a firm's net income over an extended time period, such as four or five years. Over time, it grows increasingly difficult to continue to misrepresent the firm's performance.

47. Exhibit 9 illustrates an example of the manipulation of the same firm's earnings, but instead of smoothing to a uniform amount each quarter, it shows a dramatic increase during the second year. In this situation, the firm actually earns an average of $100 per quarter in each of the six quarters shown. However, using misstated reserves, delayed sales, and borrowed sales, the firm is able to misrepresent its earnings and instead report earnings in the four quarters of year 2 as $100, $200, $400, and $600.

48. The actual and reported earnings then can offer very different impressions about the value of this firm. If sales are reported early, and one does not understand that these sales are simply ones that are otherwise expected to occur in the future anyway, one might easily conclude incorrectly that the firm's sales *rate* had grown. On this basis, one might then also conclude that the value of the firm and its stock is much greater than it actually is. I discuss the impact of earnings on valuation in the next section.

49. Returning to Sunbeam's situation, as discussed in Sunbeam's restated 10-K/A for fiscal year 1997, Sunbeam's financials for the period Q4 1996 through Q1 1998 contained numerous irregularities and fraud, resulting in an overstatement of revenues and profits.[79]

50. As the restatement indicates, the fraud included creating improper reserves

[79] *See* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98. See also "Sunbeam to Restate Financial Results," *Bloomberg*, October 20, 1998.

NOT A CERTIFIED COPY

018832

whereby additional costs were added to the 1996 performance (making profits lower) that could be later used to enhance 1997 performance (making profits higher). Not only does this improve 1997, but it also creates the perception of a greater improvement from 1996, as the gap between 1996 and 1997 is larger due to the combination of the decrease in 1996 and increase in 1997.

51. Another fraud mentioned is improper revenue recognition, which increased sales in a given quarter by borrowing against the following quarter through various mechanisms. Also known as "channel stuffing," these mechanisms include price discounts, extended payment terms and other concessions, which facilitate the submission of early purchase orders by customers.[80] Through use of these methods, Sunbeam shifted sales to the current quarter by borrowing against future revenues without informing the market of the potential future impact.

52. The danger of using such techniques (besides the fact that they are illegal) is two-fold. First, as previously discussed, as the process continues, it becomes more and more difficult for the company to find additional revenue that it can anticipate or "borrow" from the future. The difficulty intensifies over time because not only must the company replace the "borrowed" revenue in the subsequent period, but the company must also find additional sources to continue the pattern of growth in revenues if the company is going to meet the expectations on which the investment community has based its value of the company's stock.

53. During this same time period, the other schemes such as the use of improper reserves eventually run out, and the company no longer can use these tools to boost earnings. Not surprisingly, it became increasingly difficult—and ultimately impossible—for Sunbeam to find such revenue sources.

54. The second important danger is that there are real and significant costs associated

[80] One such method revealed in the 10-K/A is called "bill and hold sales" where products are sold to customers before they normally would have been purchased, enabling the company to bill the customer at the time of sale, and then hold the products for the customer (generally at no cost) until delivery is requested. *See* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98.

NOT A CERTIFIED COPY

018833

with the earnings manipulation techniques used by Sunbeam. Price discounts, used to induce cooperation from customers, do not create added sales on which additional profit is made. Instead, they are wasted costs, whose purpose is to simply rearrange the period in which the sales are recorded. Thus, certain costs connected with the earnings manipulation techniques used by Sunbeam reduced the profit on sales that would have occurred in the near future anyway.

55. Collectively, the fraud served to inflate the revenues and profits of Sunbeam from Q1 1997 through Q1 1998. In Exhibit 10, I show the reported and restated profit and loss statements over this period. As the exhibit shows, Sunbeam inflated its 1997 revenues by almost $100 million (approximately 8%), and overstated its profits by more than $70 million (approximately 65%).

56. In conclusion, Sunbeam's scheme to defraud investors by manipulating revenues and earnings gave the appearance of a dramatically successful turn-around for a once-struggling company. An added irony is that the costs of undertaking these schemes reduced whatever profit Sunbeam would have otherwise earned during these quarters. The result was that the repeated use of these fraudulent methods served to inflate analyst expectations for the company, enhancing the stock price of Sunbeam, until the fraud unraveled after Q1 1998.

VI. ASCRIBING MOTIVE TO THE FRAUD

57. Given that the fraud Sunbeam engaged in cannot be continued indefinitely (as techniques like "channel stuffing" will eventually catch up with the perpetrator), what rationale could Sunbeam have had for engaging in such fraud? In concept, there are at least two reasons why one might want to engage in this type of fraud. The first is where one hopes to fool a buyer and sell the company for an inflated price before outsiders figure out what the apparent results are based on, in which

NOT A CERTIFIED COPY

018834

case the buyer is saddled with the problem.[81]

58. Another possible motive is where the perpetrators expect to obscure the manipulation in some way prior to being found out. One way in which one might hope to accomplish that is with the acquisition of another company. An acquisition may generate restructuring and other charges that would be large enough to hide the past earnings manipulation. But how would this benefit Sunbeam?

59. In order to better understand the motive, recall the impact of the fraudulent activities. As discussed above, Sunbeam's fraud served to inflate analyst expectations for the company, enhancing Sunbeam's current stock price, but also creating a situation where future sales would be impaired. Two questions follow: 1) how do inflated sales and profits in one year enhance the stock price, and 2) how would a sale or acquisition potentially hide the fraud?

60. The valuation of a firm's stock is a reflection of the market's estimate of the present value of the future value of the cash flows that the firm will generate. A simple example would be a firm that would only generate $100 in cash flow in the next year, and nothing after that. If the appropriate discount rate is 10 percent,[82] the present value of the firm's future cash flows is $90.91.[83] If there are 100 shares of stock for this firm, the per share price would be $0.91.[84]

61. This calculation becomes more complicated when multiple cash flows over the following years are assumed, but the same principle holds. If the same firm described above had the $100 cash flow annually, the present value would be

NOT A CERTIFIED COPY

018835

[81] This might be thought of as being analogous to someone who sells a used car knowing that it has mechanical problems. It is often impossible for the buyer to prove that the seller knew about the problems before the sale and sue for fraud.

[82] The method by which practitioners determine an appropriate risk-adjusted discount rate is outside the scope of this report. Generally, the degree of certainty of the future cash flow affects the discount rate. For simplicity I assume 10 percent is appropriate for all of the examples herein.

[83] Present Value = Cash Flow$_{(t)}$ / (1 + Discount Rate)$^{(t)}$. In this case, = $100 / (1.10) = $90.91.

[84] = $90.91 / 100.

$1,000 and the price per share would be $10.[85] Thus, the expectation of a *stream* of future cash flows can dramatically increase the value of the stock—in this example from less than $1 to $10 per share.

62. Continuing on, if we assume these cash flows were to grow each year by 5 percent (e.g., in year 1 the cash flow is $100, in year 2 it is $105, and in year 3 it is $110.25) the present value would double from $1,000 to $2,000 and the price per share would also double to $20.[86] Likewise, an even higher growth rate would increase the value even more. For example, an expected future growth rate of 8.33 percent per year would also make a six-fold increase in the price per share to $60.[87]

63. And, of course, a one-time increase in the cash flow stream would also increase both the value and the price per share. For example, an increase from $100 to $600 per year (with no expected future growth) would also make a six-fold increase in the price per share to $60.

64. As this example demonstrates, an increase in the expectation about the future cash flows from the firm can greatly change the underlying value of the stock. In this case, the value increased from less than $1 to $10 to $20 to $60. Thus, changing the perception of the value of the company, by increasing the expectation of the future cash flows and/or rate of growth of those cash flows, can have a tremendous impact on the valuation of the company and its stock. The market bases its expectations on many factors, among them, the current sales levels, recent rates of growth in sales and earnings, and the company's representations of future growth opportunities. Essentially, the value depends on the information the market has about the expected future cash flows.

NOT A CERTIFIED COPY

018836

[85] For this type of cash flow (known as a perpetuity), the Present Value = Annual Cash Flow / Discount Rate. In this case = $100 / 0.10 = $1000.
[86] Present Value = Annual Cash Flow / (Discount Rate – Growth Rate). In this case = $100 / (0.10 – 0.05) = $2000.
[87] In this case = $100 / (0.10 – 0.083) = $6000.

65. In the case of Sunbeam, not only had Sunbeam's fraud inflated its earning in 1997, but it also caused the expectation that its earnings would be higher in the future. Effectively, Sunbeam manipulated the information the market relies upon to value the company. As such, the value of Sunbeam was higher than it would have been without the fraud. Using our example from above, if Sunbeam convinced the market that the growth would be 5 percent and not zero, the stock's value would double. If it convinced the market that the growth would be 8.33 percent, the stock's value would sextuple.

66. Given that Sunbeam possessed better information than the market as a whole (i.e., it was aware of its fraud and the market was not), Sunbeam was in a position to exploit its knowledge. This *asymmetric information*[88] created the possibility that Sunbeam management might be able to either: 1) sell the company at an excess over its actual value to an unsuspecting buyer, or 2) purchase valuable assets of other companies using the inflated stock as currency. Not only would this benefit Sunbeam by giving it more for its stock than the stock was actually worth, but it also would provide the opportunity for Sunbeam to potentially conceal its fraud through a sale or through restructuring charges related to an acquisition.

67. Interestingly, Sunbeam retained Morgan Stanley in mid-1997 to serve as its financial advisor in exploring strategic alternatives including a possible sale of the company.[89] As sale efforts were unsuccessful, Morgan Stanley also advised Sunbeam to consider acquiring other companies.[90] Sunbeam's management also advertised these intentions to the market. A December 1997 New York Times article indicated that Mr. Dunlap "recently put Sunbeam in play, saying the appliance maker was looking either to be acquired or to make a major acquisition

NOT A CERTIFIED COPY

0188837

[88] Asymmetric information is a situation where one party has information others do not have. *See for example*, Corporate Financial Management, 2nd edition, 2004, Emery, Finnerty, and Stowe, p. 436.
[89] Answer of Morgan Stanley & Co. Incorporated, p. 1. See also "Sunbeam on the Block?" *HFN*, October 27, 1997.
[90] Answer of Morgan Stanley & Co. Incorporated, p. 1.

of its own."[91] Thus, it appears that Sunbeam, aware of the limited time it had to exploit its asymmetric information, sought both types of opportunities to exploit it and potentially conceal its fraud. But how could the acquisitions hide the fraud?

68. Often after an acquisition, a company incurs costs to restructure the organization to better integrate the new entity. These costs can include various items such as writing off obsolete inventory or discontinuing unnecessary or unprofitable operations. Analysts often remove restructuring charges from their analysis to estimate sustainable earnings and assess ongoing profitability—two factors that can greatly impact the valuation of the company as discussed earlier. In fact, companies often report earnings with and without the restructuring charges.[92] By *taking* excess restructuring costs in an acquisition, Sunbeam could once again build up a reserve that it could later draw down to inflate future profitability.

69. Additionally, after an acquisition, companies often report financial results of the combined entity. Doing so can make it difficult—or even impossible—for analysts to disentangle the results and attribute them to the pre-acquisition companies. Therefore, such manipulation can potentially hide weakness in revenues and profits for either the purchaser or the acquired entity. In this case, Sunbeam could benefit if its borrowed sales could be concealed within the sales of the acquired companies.

70. In the end, Sunbeam used its stock to purchase the Coleman Company.[93] In doing so, Sunbeam was able to extract valuable assets in exchange for shares that at the time were worth more than six times the price for which they traded later in

NOT A CERTIFIED COPY

018838

[91] "Sunbeam Dances with Mr. D; Is Albert Dunlap Saving the Company or Setting a Sale?" The New York Times, December 23, 1997.

[92] For example, Sunbeam reported Q1 1998 results with and without one-time charges and restructuring charges. See "Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00," *Bloomberg*, May 11, 1998. *See also* Sunbeam Q4 1997 earnings announcement detailing restructuring costs. See "Sunbeam Has 4th-Quarter Profit on Higher Sales, New Products," *Bloomberg*, January 28, 1998.

[93] *See for example*, "Sunbeam Acquires Three Publicly Traded Consumer Products: Coleman, Signature Brands and First Alert," *Bloomberg*, March 2, 1998.

the year.[94] Unfortunately for Sunbeam, the scheme was discovered before the restructuring charges and combined income statements from the acquisitions could conceal its fraud.

VII. CONCLUSIONS

71. Based on representations made to the public by Sunbeam, financial analysts and the general public viewed Sunbeam as a successful and improving company in 1997 and Q1 1998. This perception represented a substantial turn-around from 1996 when Sunbeam had shown a decline in sales and a large loss in profits. The claimed turn-around, however, was a fraud.

72. In April 1998, Sunbeam stated that it expected its Q1 1998 results to be below market expectations.[95] Notably, these results were even lower than those predicted by the company in a press release made two weeks before, dated March 19, 1998, which indicated that "...it is possible that its net sales for the first quarter of 1998 may be lower than [estimates]... but net sales are expected to exceed 1997 first quarter net sales..."[96] Surprisingly, despite the fact that the announcement date was only twelve days before the end of the quarter, the Q1 1998 sales fell below those of Q1 1997, contrary to Sunbeam's statement in the announcement, and earnings (which were not even mentioned in the warning) were negative. Upon the April 3 announcement of Q1 1998 results, the market price of Sunbeam shares lost almost 25 percent of its value, dropping from a share price of $45.56 to $34.38.[97]

73. In fact, the poor performance in Q1 1998 was only the first indication of (and not fully reflective of) numerous problems at Sunbeam. Sunbeam management subsequently issued a warning revealing that Sunbeam's financial statements

NOT A CERTIFIED COPY

018839

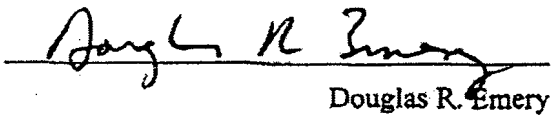
[94] *See* Bloomberg. Price of $45.63 on 3/2/98, Price of $6.63 on 10/1/98.
[95] *See* "Sunbeam Says 1st Qtr Sales Fell, Fires Executive," *Bloomberg*, April 3, 1998.
[96] 0016944-45, at 944.
[97] *See* Bloomberg data.

from Q4 1996 though Q1 1998 were inaccurate.[98] As was later reported, Sunbeam's financials for this period contained numerous irregularities and fraud, resulting in an overstatement of revenues and profits for the period Q1 1997 through Q1 1998.[99]

74. Not only had Sunbeam's fraud inflated its earnings in 1997, but it also caused the expectation that its earnings would be higher in the future. As such, the value of Sunbeam was dramatically higher than it would have been without the fraud. This created the opportunity for Sunbeam management to either: 1) sell the company at an excess over its actual value, or 2) purchase valuable assets of other companies using the overvalued stock as currency.

75. I reserve the right to amend or supplement my report as additional information becomes available. I may prepare charts, videos and other demonstrative exhibits in support of testimony I may be asked to give.

Submitted by:



Douglas R. Emery

Date: December 7, 2004

NOT A CERTIFIED COPY

04881O

[98] "Sunbeam Admits Improper Accounting Firm to Restate Results," *The Miami Herald*, August 7, 1998; "Sunbeam to Restate Financial Results," *PR Newswire*, October 20, 1998.
[99] *See* Sunbeam 10-K/A for fiscal year ended 12/28/97, filed 11/12/98.

APPENDIX A

DOUGLAS R. EMERY

Department of Finance
University of Miami
Miami, Florida 33124-6552
Phone: (305) 284-4430; -4362
Fax: (305) 284-4800
demery@miami.edu

NOT A CERTIFIED COPY

EDUCATION

1973 to 1976	THE UNIVERSITY OF KANSAS	Lawrence, Kansas
	Ph.D., Business, granted in May 1977.	
1971 to 1973	THE UNIVERSITY OF KANSAS	Lawrence, Kansas
	M.B.A., granted in August 1973.	
1967 to 1971	BAKER UNIVERSITY	Baldwin City, Kansas
	B.S., Physics, granted in May 1971.	

EMPLOYMENT

1998 to Date	UNIVERSITY OF MIAMI	Miami, Florida
	Department Chair, Bank of America Scholar, and Professor of Finance, Department of Finance, School of Business Administration, hired with tenure.	
1989 to 1998	BINGHAMTON UNIVERSITY	Binghamton, New York
	The Koffman Fellow and Leading Professor of Finance, School of Management, hired with tenure.	
1980 to 1989	THE UNIVERSITY OF MISSOURI	Columbia, Missouri
	Professor (and Associate Professor) of Finance, Department of Finance, tenured August 1, 1984, promoted August 1988.	
1988 to 1989	NANJING UNIVERSITY	Nanjing, People's Republic of China
	Visiting Professor of Finance, October 1988 to January 1989, International Business School.	

November 1, 2004

1986 to 1987	WASHINGTON UNIVERSITY	St. Louis, Missouri

Visiting Associate Professor of Finance, August 1986 to January 1987, Graduate School of Business Administration.

1979 to 1980	PURDUE UNIVERSITY	West Lafayette, Indiana

Visiting Assistant Professor of Management, Krannert Graduate School of Management.

1976 to 1980	THE UNIVERSITY OF CALGARY	Calgary, Alberta, Canada

Associate Professor (and Assistant Professor), Faculty of Management, promoted August 1978, tenured July 1, 1979, on leave without pay 1979-80.

1978	THE UNIVERSITY OF KANSAS	Lawrence, Kansas

Visiting Assistant Professor, June-July, School of Business.

PROFESSIONAL INTERESTS

Financial management, theory and application of financial decision models, capital structure, capital investment, liabilities management.

BOOKS

Emery, Douglas R., John D. Finnerty, and John D. Stowe, CORPORATE FINANCIAL MANAGEMENT, Second Edition. Upper Saddle River, NJ: Prentice Hall, 2004, 899 pages.

Finnerty, John D. and Douglas R. Emery, DEBT MANAGEMENT: A PRACTITIONER'S GUIDE. Cambridge, MA: Harvard Business School Press, 2001, 430 pages.

Emery, Douglas R., John D. Finnerty, and John D. Stowe, PRINCIPLES OF FINANCIAL MANAGEMENT. Upper Saddle River, NJ: Prentice Hall, 1998, 783 pages.

Emery, Douglas R. and John D. Finnerty, CORPORATE FINANCIAL MANAGEMENT. Upper Saddle River, NJ: Prentice Hall, 1997, 999 pages.

Emery, Douglas R. and John D. Finnerty, PRINCIPLES OF FINANCE WITH CORPORATE APPLICATIONS. St. Paul: West Publishing Company, 1991, 898 pages.

NOT A CERTIFIED COPY

2481810

JOURNAL PUBLICATIONS

Finnety, John D. and Douglas R. Emery, "The Value of Corporate Control and the Comparable Company Method of Valuation," *Financial Management*, Vol. 33, No. 1 (Spring), 2004, 91-99.

Burch, Timothy R., Douglas R. Emery, and Michael E. Fuerst, "What Can Nine-Eleven Tell Us about Closed-end Fund Discounts and Investor Sentiment?" *The Financial Review*, Vol. 38, November 2003, 515-529.

Finnety, John D. and Douglas R. Emery, "Corporate Securities Innovation: An Update," *Journal of Applied Finance*, Vol. 12, No. 1, Spring 2002, 21-47.

Emery, Douglas R. and John D. Finnerty, "Using a PERCS-for-Common Exchange Offer to Reduce the Costs of a Dividend Cut," *Journal of Applied Corporate Finance*, Vol. 7, No. 4, Winter 1995, 77-89.

Iskandar-Datta, Mai E. and Douglas R. Emery, "The Role of Indenture Provisions in Determining Bond Ratings," *Journal of Banking and Finance*, Vol. 18, 1994, 93-111.

Emery, Douglas R., Mai E. Iskandar-Datta, and Jong-Chul Rhim, "Capital Structure Management as a Motivation for Calling Convertible Debt," *Journal of Financial Research*, Vol. XVII, No. 1, 1994, 91-104.

Patel, Ajay, Douglas R. Emery, and Yul W. Lee, "Firm Performance and Security Type in Seasoned Offerings: An Empirical Examination of Alternative Information-Signaling Models," *Journal of Financial Research*, Vol. XVI, No. 3, 1993, 181-192.

Emery, Douglas R. and John D. Finnerty, "A Review of Recent Research Concerning Corporate Debt Provisions," *Financial Markets, Institutions & Instruments*, Volume 1, Number 5, 1992, 23-39.

Reiter, Sara Ann and Douglas R. Emery, "Estimation Issues in Bond Rating Models," *Advances in Quantitative Analysis in Finance and Accounting*, Volume 1 - Part A -- Methodologies, JAI Press, edited by C. F. Lee, Spring 1991.

Emery, Douglas R. and Wilbur G. Lewellen, "Shareholder Gains From Callable Bond Refundings," *Managerial and Decision Economics*, Volume 11, 1990, 57-63.

Emery, Douglas R. and Adam K. Gehr, Jr. "Tax Options, Capital Structure, and Miller Equilibrium: A Numerical Illustration," *Financial Management*, Vol. 17, No. 2, Summer 1988, 30-40.

Emery, Douglas R., Wilbur G. Lewellen and David Mauer, "Tax Timing Options, Leverage, and the Choice of Corporate Form," *Journal of Financial Research*, Vol. XI, No. 2, Summer 1988, 99-110.

NOT A CERTIFIED COPY

DI 8813

Emery, Douglas R., J. Ronald Hoffmeister and Ronald W. Spahr, "The Case for Indexing a Bond's Call Price," *Financial Management*, Vol. 16, No. 3, Autumn 1987, 57-64.

Lewellen, Wilbur G. and Douglas R. Emery, "Corporate Debt Management and the Value of the Firm," *Journal of Financial and Quantitative Analysis*, Vol. 21, No. 4, December 1986, 415-426.

Lewellen, Wilbur G. and Douglas R. Emery, "Securityholder Cash Flows and the Valuation of Corporate Investment Projects," *Managerial and Decision Economics*, Vol. 6, No. 2, June 1985, 80-87.

Emery, Douglas R. and Wilbur G. Lewellen, "Refunding Non-Callable Debt," *Journal of Financial and Quantitative Analysis*, Vol. 19, No. 1, March 1984, 73-82.

Emery, Douglas R., F. Hutton Barron, and William F. Messier, Jr., "Conjoint Measurement and the Analysis of Noisey Data: A Comment," *Journal of Accounting Research*, Vol. 20, No. 2, Autumn 1982, Pt. 1, 450-458.

Lewellen, Wilbur G. and Douglas R. Emery, "On the Matter of Parity Among Financial Obligations," *Journal of Finance*, Vol. 36, No. 1, March 1981, 97-111.

Messier, William F., Jr. and Douglas R. Emery, "Some Cautionary Notes on the Use of Conjoint Measurement for Human Judgment Modeling," *Decision Sciences*, Vol. 11, No. 4, October 1980, 678-690.

Gaumnitz, Jack E. and Douglas R. Emery, "Asset Growth, Abandonment and the Replacement Decision of Like-for-Like Capital Assets," *Journal of Financial and Quantitative Analysis*, Vol. XV, No. 2, June 1980, 407-419.

Emery, Douglas R. and F. Hutton Barron, "Axiomatic and Numerical Conjoint Measurement: An Evaluation of Diagnostic Efficacy," *Psychometrika*, Vol. 44, No. 2, June 1979, 196-210.

Emery, Douglas R. "Comparing Methods: What is Unfair?" *Organizational Behavior and Human Performance*, Vol. 23, February 1979, 117-119.

Emery, Douglas R., Philip C. Parr, Per B. Mokkelbost, David Gandhi, and Anthony Saunders, "An Investigation of Real Investment Decision Making with the Options Pricing Model," *Journal of Business Finance and Accounting*, Vol. 5, No. 4, Winter 1978, 363-369.

Peters, Richard M. and Douglas R. Emery, "The Role of Negative Numbers in the Development of Double Entry Bookkeeping," *Journal of Accounting Research*, Vol. 16, No. 2, Autumn 1978, 424-426.

Emery, Douglas R. "A Monte Carlo Investigation of Scaling as an Alternative to Regression in the Bootstrapping Model," *Organizational Behavior and Human Performance*, Vol. 22, August 1978, 1-16.

NOT A CERTIFIED COPY

Emery, Douglas R. "Overlapping Interest in Bond Refunding: A Reconsideration," *Financial Management*, Vol. 7, Summer 1978, 19-20.

Emery, Douglas R. "DULDST: A Numerical Conjoint Measurement Program Designed to Scale Data to a Dual-Distributive Model in Three Dimensions," *Journal of Marketing Research*, Vol. XIV, November 1977, 558-559.

Emery, Douglas R. "DIST: A Numerical Conjoint Measurement Program Designed to Scale Data to a Distributive Model in Three Dimensions," *Journal of Marketing Research*, Vol. XIV, August 1977, 413-414.

Emery, Douglas R. and Francis D. Tuggle, "On the Evaluation of Decisions," *MSU Business Topics*, Vol. 24, No. 2, Spring 1976, 42-48.

PAPERS IN REFEREED CONFERENCE PROCEEDINGS

Emery, Douglas R., Rashmi Thakkar, and Shane Moriarity, "A Comparative Study of the Materiality Judgments of Financial Statement Users and Auditors," *Proceedings*, 1982 Decision Sciences Institute National Meeting, Vol. 1, 5-7.

Emery, Douglas R., Francis D. Tuggle, and Andrew D. Luzi, "Subject Response Error in a Lexicographic Model," *Proceedings*, 1980 Decision Sciences Institute National Meeting, Vol. 2, 205-207.

Person, Henry B., F. Hutton Barron, and Douglas R. Emery, "Conjoint Measurement of Pooled Noisy Judgements of Multiattribute Alternatives," *Proceedings*, 1978 Decision Sciences Institute National Meeting, Vol. I, 300-302.

Bayer, M. B., Douglas R. Emery, and Y. Wand, "The Benefits and Costs of Habilitating the Developmentally Handicapped," *Proceedings*, 1978 Administrative Sciences Association of Canada National Meeting, 6-15.

Emery, Douglas R. "Conjoint Measurement of Sequential Elimination Models," *Proceedings*, 1977 Decision Sciences Institute National Meeting, 171-174.

NOT A CERTIFIED COPY

018845

PROGRAM PARTICIPATION

Association Conferences

Decision Sciences Institute: 1996, 1994, 1992, 1989

Eastern Finance Association: 2003, 2002, 2001, 2000, 1997

Financial Management Association: 2004, 2003, 2002, 2001, 2000, 1997, 1995, 1994, 1993, 1992, 1990, 1989, 1988, 1987, 1986, 1985, 1984, 1983, 1981, 1980, 1979, 1978

KPMG Peat Marwick PhD Project: 1999, 1998, 1997

Midwest Finance Association: 1993, 1988, 1987, 1986, 1983

Southern Finance Association: 2003, 2002, 2001, 2000, 1999, 1989

Western Finance Association: 1983

TIMS-ORSA: 1978

Invited Conferences

KPMG Ph.D. Project, 1997, 1998, 1999
Optimal Security Design and Innovations in Financing, Rutgers University, April, 1993
Innovative Securities, Hofstra University, March 1991
Fixed Income Securities, Rutgers University Graduate School of Business, April 1991
Capital Budgeting, Rutgers University Graduate School of Business, May 1990
Bayesian Research Conference, University of Southern California, February 1977
Bayesian Research Conference, University of Southern California, February 1976

Invited Workshop Papers

Binghamton University
Claremont Graduate School
DePaul University
Kansas University
Kansas State University
Kent State University
Miami University
Michigan State University
New York University
Purdue University
Rutgers University
University of Calgary
University of Connecticut
University of Michigan
University of Mississippi
University of Missouri--Columbia
University of New Orleans
University of North Carolina--Charlotte
Virginia Commonwealth University
Washington University
Wayne State University

NOT A CERTIFIED COPY

018846

PROFESSIONAL SERVICE

Editor (with John D. Finnerty) of *Financial Management*, 1993-1999

Vice President for Annual Program, Financial Management Association International, 2006

Board of Trustees Chair, Eastern Finance Association, 2004-2005

President, Eastern Finance Association, 2003-2004

President, Southern Finance Association, 2000-2001

Vice President–Annual Program, Southern Finance Association, 1999-2000

Advisory Editor of *The Financial Review*, 2004-date

Associate Editor of *Decision Sciences*, 1990-1999

Associate Editor of *Financial Practice and Education*, 1999-2000

Associate Editor of *The Financial Review*, 1998-2004

Associate Editor of *FMA Online*, 2001-date

Associate Editor of *Journal of Applied Finance*, 2001-date

Associate Editor of *Journal of Financial Research*, 2003-date

Director, Eastern Finance Association, 2000-2002

Northeast Regional Director, Financial Management Association, 1992-1994

Track Chair (Finance), Decision Sciences Institute, 1996

Annual Program Committee Member For:

Financial Management Association: 2004, 2003, 2002, 2001, 1993, 1992, 1990, 1988, 1987

Midwest Finance Association: 1989, 1988

Ad Hoc Referee For:

Accounting Review
Engineering Economist
Financial Practice and Education
Journal of Applied Finance
Journal of Economics and Business
Journal of Finance
Journal of Financial and Quantitative Analysis
Journal of Financial Research
Journal of Mathematical Psychology
Journal of Money, Credit and Banking
Journal of the Midwest Finance Assoc.
Management Science
Review of Financial Studies
The Financial Review

NOT A CERTIFIED COPY

018847

DISSERTATION COMMITTEES CHAIRED

Andrew J. Felo, "An Investigation of the Relationship Between Board Oversight of an Ethics Program and Firm Value," final defense: March, 1999.

Chang-Hwan Lee, "Do Nice Guys Finish Last? An Empirical Investigation of Reputation as a Determinant of Stockholder Returns," final defense: December, 1991.

Jong-Chul Rhim, "An Empirical Investigation of Managerial Incentive Problems Associated with Executive Bonus Plans," final defense: December, 1990.

Mai E. Iskandar, "The Role of Debt Issue Characteristics in Predicting Bond Ratings," final defense: July, 1986.

UNIVERSITY SERVICE

Administrative:

Chair, Dean Search Committee: 1992, 1993
Chair, Faculty Development Committee: 1993, 1994, 1995
Chair, Faculty Development Reacreditation Taskforce Committee: 1997, 1998
Chair, Finance Faculty: 1991, 1992, 1993, 1994, 1997, 1998
Chair, Research and Development Committee: 1985, 1986, 1987, 1988, 1990, 1991, 1992, 1993
Chair, Research Enhancement Committee (College): 1990, 1991
Chair, Senior Personnel Committee (College): 1990, 1991, 1992, 1993, 1994
Chair, Undergraduate Curriculum Committee (College): 1977
Dean's Advisory Committee: 1993, 1994, 1995, 1996, 1997, 1998
Faculty Senate Executive Committee, College-elected representative (University): 1987, 1988, 1991, 1992, 1993
Graduate Management Association Faculty Advisor: 1991, 1992, 1993, 1994

External Affairs:

Corporate Associates Program: Initiated with John Gardner to establish a mutually supportive partnership among corporations and the Binghamton University School of Management.

Major Committee Membership:

Administrative Review Procedures Committee, College-elected member (College): 1994, 1995
Building Committee: 1989, 1990, 1991, 1992
Business/Mathematics Liaison Committee (College): 1978, 1979, 1983
Calendar Committee, Presidential appointment (University): 1992
Curriculum Committee (College): 1997
Dean Search Committee, College-elected member: 1991, 1992, 1993
Doctoral Program Steering Committee (College): 1986, 1987, 1988, 1991, 1992, 1993, 1995, 1996, 1997
External Stakeholders Reacreditation Taskforce Committee: 1997, 1998
Facilities Committee (College): 1983, 1984, 1985
Faculty Awards Committee, College-elected member (College): 1990, 1991, 1992, 1993
Fiscal Affairs Committee (Faculty Senate Executive Committee): 1987, 1988
Graduate Faculty Senate, Department-elected representative (University): 1987, 1988, 1990, 1991, 1992, 1993
International Committee (College): 1989, 1990, 1991

NOT A CERTIFIED COPY

01884

MBA Curriculum Coordinating Committee (College): 1994, 1995, 1996, 1997
MBA Curriculum Revision Committee (College): 1993, 1994
Membership Committee (Graduate Faculty Senate): 1987, 1988
Provost's General Education Planning Committee: 1992, 1993
Recruiting Committee (Department): 1980, 1981, 1982, 1986, 1987, 1996, 1997
Representative to the Faculty of Science, College-elected representative (College): 1976, 1977, 1978
Research and Developement Advisory Committee, Department-elected representative (College): 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993
Research Center Committee (College): 1985, 1986, 1987
Research Seminar Committee (Department): 1980, 1984, 1985
Undergraduate Curriculum Committee (College): 1976, 1977, 1978, 1979, 1982, 1983, 1995, 1996
University-Wide Promotion and Tenure Committee, College-elected member: 1990, 1991, 1992
Vice-Chancellor for Administrative Services Search Committee (University): 1987, 1988

PROFESSIONAL ASSOCIATION MEMBERSHIPS

American Finance Association
Decision Sciences Institute
Eastern Finance Association
Financial Management Association
Society for Research in Finance
Southern Finance Association
Southwestern Finance Association
Western Finance Association

NOT A CERTIFIED COPY

018849

APPENDIX B

DOCUMENTS RELIED UPON

Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., Complaint, May 8, 2003.
Coleman (Parent) Holdings Inc. v. Morgan Stanley & Co., Inc., Answer of Morgan Stanley & Co. Incorporated, June 23, 2003.
Morgan Stanley & Co., Inc. v. Arthur Andersen LLP, First Amended Complaint, August 6, 2004.

Sunbeam Corp Form 10-Q for the quarter ended June 30, 1996.
Sunbeam Corp Form 10-Q for the quarter ended September 29, 1996.
Sunbeam Corp Form 10-K for the year ended December 29, 1996.
Sunbeam Corp Form 10-Q for the quarter ended March 30, 1997.
Sunbeam Corp Form 10-Q/A for the quarter ended March 30, 1997.
Sunbeam Corp Form 10-Q for the quarter ended June 29, 1997.
Sunbeam Corp Form 10-Q for the quarter ended September 28, 1997.
Sunbeam Corp Form 10-K/405 for the year ended December 28, 1997.
Sunbeam Corp Form 10-K/A for the year ended December 28, 1997.
Sunbeam Corp Form 10-Q for the quarter ended March 31, 1998.
Sunbeam Corp Form 10-Q/A for the quarter ended March 31, 1998.
Sunbeam Corp Form S-4/A filed on December 6, 1999.
Sunbeam Corp Annual Report 1999.

"Sunbeam in for a Pruning: New Chief Replaces Second in Command," *HFN,* July 29, 1996.
"For a Struggling Sunbeam, Shock Therapy," *The New York Times,* August 11, 1996.
"New Chairman Mixing In," *The Miami Herald,* August 20, 1996.
"Chain Saw Al to the Rescue?" *Forbes,* August 26, 1996.
"Sunbeam Chief to Osterize Plants, Workers," *Tampa Tribune,* November 9, 1996.
"Sunbeam's First Quarter Sales Up 13%, Earnings per Share Up 200% from Ongoing Operations" *PR Newswire,* April 23, 1997.
"Are You Tough Enough to Handle Straight Talk from 'Rambo in Pinstripes'?" *Palm Beach Post,* October 20, 1997.
"Sunbeam's Shine: Sales Jump 25%," *Palm Beach Post,* October 23, 1997.
"Sunbeam: On the Block?" *HFN,* October 27, 1997.
"Sunbeam Dances With Mr. D," *The New York Times,* December 23, 1997.
"Sunbeam Has 4th-Quarter Profit on Higher Sales, New Products," *Bloomberg,* January 28, 1998.
"Sunbeam Acquires Three Publicly Traded Consumer Products; Coleman, Signature Brands and First Alert," *Bloomberg,* March 2, 1998.
"Sunbeam Says 1st-Qtr Sales Fell, Fires Executive," *Bloomberg,* April 3, 1998.
"Sunbeam Corp. Cut to 'Neutral' at PaineWebber," *Bloomberg,* April 3, 1998.
"A Warning By Sunbeam Stuns Wall St.," *The New York Times,* April 4, 1998.
"Sunbeam Corp. Cut to 'Market Perform' at Goldman Sachs," *Bloomberg,* April 6, 1998.
"Sunbeam Corp. Cut to 'Neutral' at Bear Stearns," *Bloomberg,* April 6, 1998.
"Reality Pays a Tough Call on Sunbeam; Purchases Hurt Profits, Stock Price" *Sun-Sentinel,* April 12, 1998.
"Sunbeam Accused of Masking Sales With 4th-Qtr Grill Promotion," *Bloomberg,* April 23, 1998.
"Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in $1.00," *Bloomberg,* May 11, 1998.
"Sunbeam Expects Barbecue Grill Sales to Decline in 2nd Qtr," *Bloomberg,* May 15, 1998.
"Class Action Suit Filed Against Sunbeam Corp. and Its Officers," *Bloomberg,* May 15, 1998.
"Notice of Filing of Class Action Against Sunbeam Corporation," *Bloomberg,* May 22, 1998.
"Sunbeam's Shares Keep Falling, Below Price When Dunlap Arrived," *Bloomberg,* June 19, 1998.
"Sunbeam to Review 1997 Statements and May Restate Results," *Bloomberg,* June 30, 1998.
"Dunlap and Kersh Resign from Sunbeam Board of Directors," *PR Newswire,* August 6, 1998.
"Sunbeam Admits Improper Accounting Firm to Restate Results," *The Miami Herald,* August 7, 1998.
"Sunbeam to Restate Financial Results," *Bloomberg,* October 20, 1998.
"Sunbeam Loses $533 Million in 2nd, 3rd Quarters," *Palm Beach Post,* December 17, 1998.
"Sunbeam Seeks Bankruptcy Protection; Hopes to Emerge Within Nine Months," *Dow Jones Business News,* February 6, 2001.

Sunbeam Corporate website, available at http://www.sunbeam.com/history.asp (visited November 17, 2004).

Corporate Financial Management, 2nd Edition, 2004, Emery, Finnerty, and Stowe.

Bloomberg Stock Price Data.

NOT A CERTIFIED COPY

018850

APPENDIX B

DOCUMENTS RELIED UPON

BEGIN BATES	END BATES
0000001	0000175
0007947	0008010
0008011	0008066
0016944	0016945
0022175	0022295
CP026286	CP026370
CPH0038719	CPH0038720
CPH0039454	CPH0039462
CPH0039469	CPH0039470
CPH0145513	CPH0145515
CPH0254621	CPH0254640
CPH0306588	CPH0306589
CPH0306590	CPH0306592
CPH0321942	CPH0321944
CPH0466399	CPH0466401
CPH0468314	CPH0468316
CPH0468332	CPH0468335
CPH0468336	CPH0468341
CPH0468384	CPH0468388
CPH0468421	CPH0468423
CPH0468623	CPH0468625
CPH0468652	CPH0468653
CPH0468703	CPH0468709
CPH0468711	CPH0468715
CPH0468716	CPH0468718
CPH0468719	CPH0468722
CPH0468723	CPH0468727
CPH0472533	CPH0472535
CPH0472536	CPH0472539
CPH0472540	CPH0472543
CPH0472544	CPH0472548
CPH0473148	CPH0473165
CPH0480418	CPH0480422
CPH0482038	
CPH0482042	
CPH0482046	
CPH0484968	CPH0484969
CPH0588637	CPH0588638
CPH1022749	CPH1022750
CPH1028971	CPH1028973
CPH1029174	CPH1029175
CPH1039208	
CPH1051135	CPH1051136
CPH1059632	CPH1059635
CPH1059641	
CPH1125110	CPH1125112
CPH1125112	CPH1125114
CPH1125115	CPH1125117
CPH1125122	CPH1125123
CPH1125126	
CPH1125139	CPH1125142
CPH1241513	CPH1241514
CPH1257094	CPH1257113
CPH1274390	CPH1274393
CPH1274414	CPH1274416
CPH1274417	
CPH1278468	CPH1278471
CPH1278472	CPH1278475
CPH1278483	CPH1278484

NOT A CERTIFIED COPY

018851

APPENDIX B

DOCUMENTS RELIED UPON

BEGIN BATES	END BATES
CPH1278485	CPH1278486
CPH1278487	CPH1278490
CPH1278491	CPH1278494
CPH1278495	CPH1278496
CPH1279118	CPH1279122
CPH1279123	CPH1279126
CPH1279288	CPH1279289
CPH1279600	CPH1279604
CPH1279605	CPH1279606
CPH1287455	CPH1287469
CPH1287711	CPH1287718
CPH1325260	CPH1325270
CPH1327166	CPH1327167
CPH1327714	CPH1327721
CPH1327729	CPH1327738
CPH1327914	CPH1327921
CPH1328079	CPH1328084
CPH1328080	CPH1328083
CPH1328092	CPH1328102
CPH1328111	CPH1328116
CPH1328117	CPH1328122
CPH1351621	CPH1351624
CPH1351658	CPH1351661
CPH1351678	CPH1351680
CPH1351703	CPH1351712
CPH1351727	CPH1351731
CPH1352713	CPH1352717
CPH1392178	CPH1392181
CPH1393262	CPH1393263
CPH1393266	CPH1393268
CPH1393269	
CPH1393465	CPH1393467
CPH1393468	CPH1393471
CPH1393472	CPH1393478
CPH1393479	CPH1393484
CPH1393485	CPH1393489
CPH1397650	CPH1397651
CPH1397652	CPH1397654
CPH1407297	CPH1407305
CPH1407315	CPH1407318
CPH1411173	CPH1411177
CPH1414949	CPH1414950
CPH1414951	CPH1414954
CPH1414957	CPH1414958
CPH1415376	CPH1415378
CPH1415380	CPH1415399
CPH1415426	CPH1415429
CPH1415510	CPH1415512
CPH1415513	CPH1415516
CPH1415517	CPH1415519
CPH1415520	CPH1415521
CPH1415540	CPH1415541
CPH1415724	CPH1415726
CPH1415775	CPH1415776
CPH1417337	CPH1417342
CPH1417343	CPH1417347
CPH1417348	CPH1417350
CPH1417358	CPH1417359
CPH1417360	

NOT A CERTIFIED COPY

018852

APPENDIX B

DOCUMENTS RELIED UPON

BEGIN BATES	END BATES
CPH1417361	CPH1417363
CPH1417367	CPH1417369
CPH1417370	
CPH1417371	CPH1417373
CPH1417941	CPH1417943
CPH1417972	CPH1417978
CPH1422130	
CPH1424565	CPH1424567
CPH1424568	CPH1424570
CPH1424571	CPH1424574
CPH1424575	CPH1424577
CPH1424578	CPH1424580
CPH1424581	CPH1424583
CPH1424584	CPH1424587
CPH1424588	CPH1424591
CPH1424592	CPH1424594
CPH1424595	CPH1424598
CPH2008282	CPH2008289
CPH2008290	CPH2008291
CPH2008292	CPH2008303
CPH2008304	CPH2008310
CPH2008311	CPH2008315
CPH2008316	CPH2008318
MS02379	MS02381

NOT A CERTIFIED COPY

018853

EXHIBIT 1

SUNBEAM CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
1994 - 1996

	FY 1994		FY 1995		FY 1996	
	($)	(%)	($)	(%)	($)	(%)
Net Sales	1,044,247	100.0%	1,016,883	100.0%	984,236	100.0%
COGS	764,355	73.2%	809,130	79.6%	900,573	91.5%
Gross Profit	279,892	26.8%	207,753	20.4%	83,663	8.5%
Selling, General and Administrative	128,836	12.3%	137,508	13.5%	214,029	21.7%
Restructuring, Impairment and Other Costs					154,869	15.7%
Operating Income	151,056	14.5%	70,245	6.9%	(285,235)	-29.0%
Interest Expense	6,974	0.7%	9,437	0.9%	13,588	1.4%
Other (Income) Expense, Net	(712)	-0.1%	173	0.0%	3,738	0.4%
Current Income Taxes	33,227	3.2%	(2,105)	-0.2%	(28,062)	-2.9%
Deferred Income Taxes	26,283	2.5%	25,146	2.5%	(77,828)	-7.9%
Earnings (Loss) from Discontinued Operations, Net	21,727	2.1%	12,917	1.3%	(31,591)	-3.2%
Net Profit (Loss)	107,011	10.2%	50,511	5.0%	(228,262)	-23.2%

Notes & Sources:
Dollars in thousands.
1994 and 1995 data from Sunbeam Corp. 10-K for the year ended December 29, 1996.
1996 data from Sunbeam Corp. 10-K for the year ended December 28, 1997.
Excludes Sunbeam's furniture business, which was divested in 1997.
FY 1994 ended on January 1, 1995. FY 1995 ended on December 31, 1995. FY 1996 ended on December 29, 1996.

NOT A CERTIFIED COPY

EXHIBIT 2

SUNBEAM EQUITY PRICE
JANUARY 1, 1993 - JUNE 30, 1996

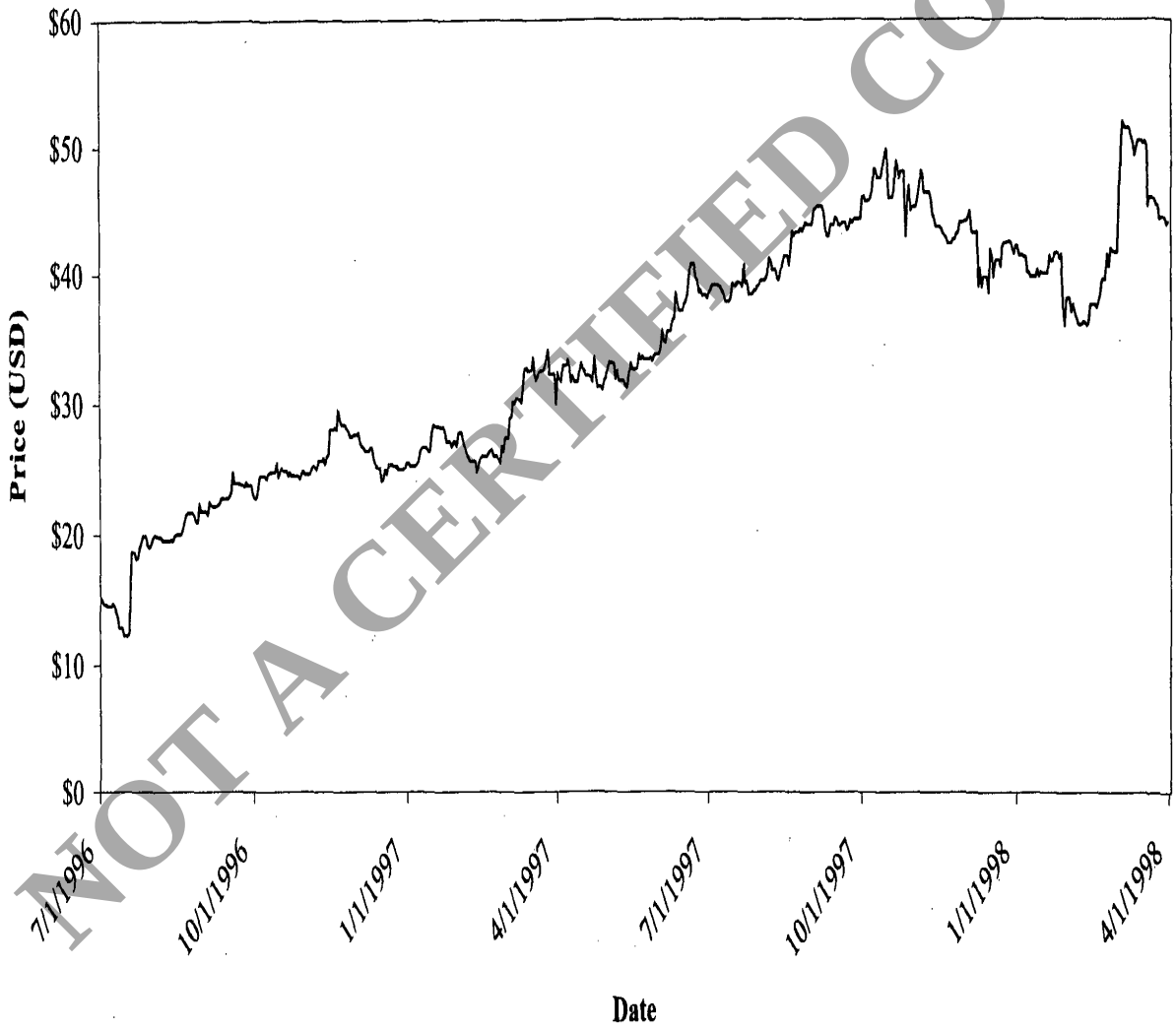
NOT A CERTIFIED COPY

Notes & Sources:

Daily closing prices from Bloomberg.

EXHIBIT 3

SUNBEAM EQUITY PRICE
JULY 1, 1996 - MARCH 31, 1998



NOT A CERTIFIED COPY

Notes & Sources:
Daily closing prices from Bloomberg

EXHIBIT 4

SUMMARY OF ANALYST REPORTS
Q4 1996 - Q1 1998

Date	Firm	Lead Analyst	Rating	Actual Price	Target Price			Bates Range
					Low	High	Midpoint	
11/13/1996	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 25.38	$ 33.00	$ 35.00	$ 34.00	CPH1125115-117
11/14/1996	Merrill Lynch	Deepak Raj	Buy	$ 26.00	$ 30.00	$ 35.00	$ 32.50	CPH1125110-111
1/14/1997	CIBC Oppenheimer	Scott Graham	Buy	$ 26.50	$ 33.00	$ 34.00	$ 33.50	CPH1125112-114
3/12/1997	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 30.88			$ 43.00	CPH1125139-142
3/24/1997	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 32.50			$ 43.00	CPH1287455-469
4/23/1997	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 31.63			$ 40.00	CPH1051135-136
4/24/1997	Merrill Lynch	Deepak Raj	Buy	$ 33.50				CPH1125126
6/12/1997	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 38.50	$ 40.00	$ 41.00	$ 40.50	CPH1125122-123
7/24/1997	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 39.38				CPH0472533-535
7/24/1997	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 39.31	$ 40.00	$ 41.00	$ 40.50	CPH0472536-539; CPH0472540-543; CPH0472544-548
7/28/1997	Donaldson, Lufkin & Jenrette	Mark Hassenberg	Buy	$ 38.44	Low to Mid $40's		$ 42.50	CPH2008316-318
10/7/1997	McDonald & Co.	Justin Maurer	Hold	$ 46.00				CPH0306588-589
10/8/1997	Prudential Securities	Susan Gallagher	Buy	$ 46.56			$ 55.00	CPH0306590-592
10/9/1997	CIBC Oppenheimer	Scott Graham	Buy	$ 48.25			$ 52.00	CPH1287711-718
10/22/1997	CIBC Oppenheimer	Scott Graham	Buy	$ 47.31	$ 58.00	$ 60.00	$ 59.00	CPH1407297-305
10/22/1997	The Buckingham Research Group	William Steele	Neutral	$ 48.38			$ 49.00	CPH2008311-315
10/24/1997	Merrill Lynch	John Gibbons; Deepak Raj	Buy	$ 47.81				CPH1407315-318; CPH2008304-310
10/29/1997	PaineWebber	Andrew Shore	Buy	$ 45.69			$ 56.00	CPH2008292-303
10/30/1997	Prudential Securities	Susan Gallagher	Buy	$ 46.94			$ 55.00	CPH0480418-422
11/3/1997	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 45.31				CPH2008282-289
12/4/1997	The Buckingham Research Group	William Steele	Neutral	$ 44.50			$ 49.00	CPH2008290-291; CPH0484968-969
12/4/1997	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 44.94				CPH0321942-944
12/5/1997	CIBC Oppenheimer	Scott Graham	Strong Buy	$ 44.94			$ 60.00	CPH0482038, 042, 046
12/8/1997	The Buckingham Research Group	William Steele	Neutral	$ 43.19			$ 49.00	CPH1278472-475

NOT A CERTIFIED COPY

LEGAL 010857

EXHIBIT 4

SUMMARY OF ANALYST REPORTS
Q4 1996 - Q1 1998

Date	Firm	Lead Analyst	Rating	Actual Price	Target Price Low	Target Price High	Target Price Midpoint	Bates Range
12/10/1997	Prudential Securities	Susan Gallagher	Buy	$ 39.00			$ 55.00	CPH1278495-496
12/15/1997	PaineWebber	Andrew Shore	Buy	$ 39.63	Mid $50's		$ 55.00	CPH0466399-401
1/28/1998	CIBC Oppenheimer	Scott Graham	Strong Buy	$ 37.75			$ 53.00	CPH1327729-738
1/29/1998	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 37.63	Mid $50's		$ 55.00	CPH0468623-625
1/29/1998	Prudential Securities	Nicholas Heymann	Buy	$ 37.63			$ 55.00	CPH1328117-122; CPH1415724-726
1/29/1998	Merrill Lynch	John Gibbons	Buy	$ 37.63				CPH1279123-126; CPH1278468-471; CPH1278491-494
1/29/1998	The Buckingham Research Group	William Steele	Neutral	$ 37.63			$ 43.00	CPH1279118-122; CPH1278485-486
1/29/1998	PaineWebber	Andrew Shore	Buy	$ 37.63			$ 50.00	CPH1415426-429; CPH1278487-490
1/29/1998	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 37.63				CPH1059632-635
1/30/1998	The Buckingham Research Group	William Steele	Neutral	$ 36.00			$ 43.00	CPH0468421-423
1/30/1998	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 36.00			$ 49.00	CPH1278483-484; CPH1415775-776
1/30/1998	McDonald & Co.	Justin Maurer	Hold	$ 36.00				CPH0468652-653
2/2/1998	Prudential Securities	Nicholas Heymann	Buy	$ 38.13			$ 55.00	CPH1328111-116
2/6/1998	PaineWebber	Andrew Shore	Buy	$ 37.00	Mid $50's		$ 55.00	CPH1327714-721
2/7/1998	Standard & Poor's	NA	Accumulate	$ 36.13				CPH1411173-177
2/19/1998	CIBC Oppenheimer	Scott Graham	Strong Buy	$ 38.38			$ 53.00	CPH1328092-102
3/2/1998	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 45.00	$ 60.00	$ 65.00	$ 62.50	CPH1415376-378
3/3/1998	Merrill Lynch	John Gibbons	Buy	$ 45.63			$ 54.00	CPH1279605-606
3/3/1998	PaineWebber	Andrew Shore	Buy	$ 45.63	$ 58.00	$ 60.00	$ 59.00	CPH1274390-393; CPH1028971-973
3/5/1998	CIBC Oppenheimer	Scott Graham	Strong Buy	$ 45.63			$ 57.00	CPH1393485-489; CPH1279600-604
3/5/1998	Merrill Lynch	John Gibbons	Buy	$ 52.00				CPH0038719-720

NOT A CERTIFIED COPY

EXHIBIT 4

SUMMARY OF ANALYST REPORTS
Q4 1996 - Q1 1998

Date	Firm	Lead Analyst	Rating	Actual Price	Target Price			Bates Range
					Low	High	Midpoint	
3/12/1998	Prudential Securities	Nicholas Heymann	Buy	$ 49.38			$ 70.00	CPH1393479-484; CPH1328079-084
3/12/1998	PaineWebber	Andrew Shore	Buy	$ 49.38			$ 60.00	CPH1415380-399
3/19/1998	PaineWebber	Andrew Shore	Buy	$ 50.06				CPH1029174-175; CPH1274414-416; CPH1393266-268
3/19/1998	Sands Brothers & Co., Ltd.	David Buck	Strong Buy	$ 50.06			$ 70.00	CPH1393269
3/19/1998	CIBC Oppenheimer	Scott Graham	Strong Buy	$ 46.31			$ 57.00	CPH1393472-478
3/19/1998	Bear, Stearns & Co.	Constance Maneaty	Buy	$ 45.00			$ 60.00	CPH1241513-514; CPH1022749-750
3/20/1998	Goldman Sachs	Elisabeth Fontenelli	Recommended	$ 45.38	$ 60.00	$ 65.00	$ 62.50	CPH1059641; CPH1393262-263; CPH1415540-541
3/21/1998	Standard & Poor's	NA	Hold	$ 46.00				CPH1397650-651
3/24/1998	The Buckingham Research Group	William Steele	Buy	$ 45.94			$ 64.00	CPH1039208

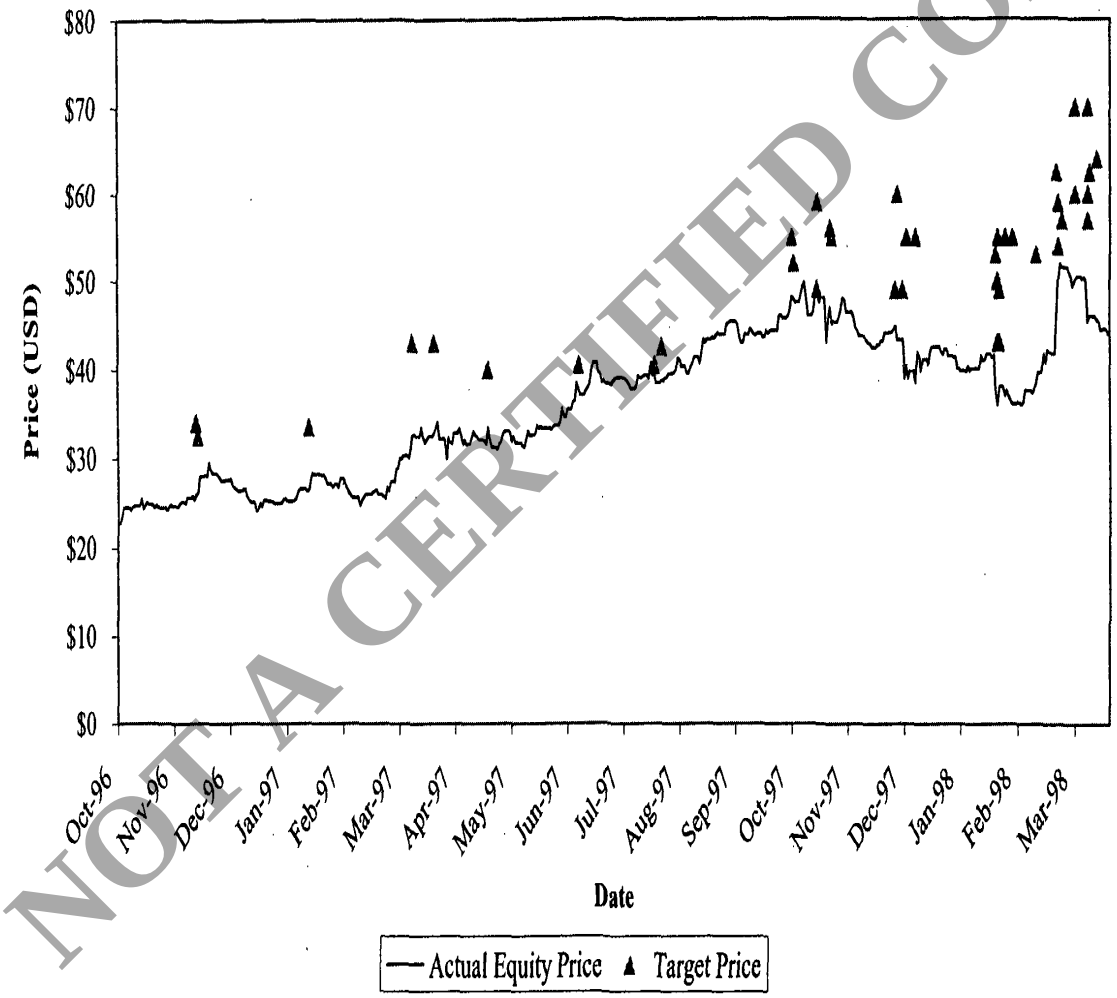
Notes & Sources:
Merrill Lynch ratings represent long-term recommendations. All corresponding near-term recommendations were "Accumulate."

NOT A CERTIFIED COPY

658810

EXHIBIT 5

SUNBEAM ACTUAL EQUITY PRICE V. ANALYST TARGET PRICE FORECASTS
Q4 1996 - Q1 1998



NOT A CERTIFIED COPY

Notes & Sources:

Daily closing prices from Bloomberg.

Mid-point target prices from Exhibit 4.

EXHIBIT 6

SUNBEAM CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
AS ORIGINALLY REPORTED
Q1 1996 - Q1 1998

	Q1 1996		Q2 1996		Q3 1996		Q4 1996		FY 1996	
	($)	(%)	($)	(%)	($)	(%)	($)	(%)	($)	(%)
Net Sales	229,707	100.0%	253,896	100.0%	231,770	100.0%	268,863	100.0%	984,236	100.0%
COGS	181,608	79.1%	206,685	81.4%	202,998	87.6%	309,282	115.0%	900,573	91.5%
Gross Profit	48,099	20.9%	47,211	18.6%	28,772	12.4%	(40,419)	-15.0%	83,663	8.5%
Selling, General and Administrative	32,585	14.2%	38,054	15.0%	49,441	21.3%	93,949	34.9%	214,029	21.7%
Restructuring, Impairment and Other Costs							154,869	57.6%	154,869	15.7%
Operating Income	15,514	6.8%	9,157	3.6%	(20,669)	-8.9%	(289,237)	-107.6%	(285,235)	-29.0%
Interest Expense	3,035	1.3%	3,410	1.3%	4,424	1.9%	2,719	1.0%	13,588	1.4%
Other (Income) Expense, Net	1,337	0.6%	917	0.4%			1,484	0.6%	3,738	0.4%
Current Income Taxes	2,396	1.0%	548	0.2%	(7,898)	-3.4%	(23,108)	-8.6%	(28,062)	-2.9%
Deferred Income Taxes	2,128	0.9%	1,520	0.6%	(1,425)	-0.6%	(80,051)	-29.8%	(77,828)	-7.9%
Extraordinary Charge from Early Retirement of Debt, Net										
Earnings (Loss) from Discontinued Operations, Net	10,741	4.7%	4,443	1.7%	(2,318)	-1.0%	(44,457)	-16.5%	(31,591)	-3.2%
Net Profit (Loss)	17,359	7.6%	7,205	2.8%	(18,088)	-7.8%	(234,738)	-87.3%	(228,262)	-23.2%

	Q1 1997		Q2 1997		Q3 1997		Q4 1997		FY 1997	
	($)	(%)	($)	(%)	($)	(%)	($)	(%)	($)	(%)
Net Sales	253,450	100.0%	287,609	100.0%	289,033	100.0%	338,090	100.0%	1,168,182	100.0%
COGS	185,669	73.3%	213,080	74.1%	200,242	69.3%	238,692	70.6%	837,683	71.7%
Gross Profit	67,781	26.7%	74,529	25.9%	88,791	30.7%	99,398	29.4%	330,499	28.3%
Selling, General and Administrative	33,008	13.0%	31,559	11.0%	33,863	11.7%	32,626	9.7%	131,056	11.2%
Restructuring, Impairment and Other Costs										
Operating Income	34,743	13.7%	42,970	14.9%	54,928	19.0%	66,772	19.7%	199,443	17.1%
Interest Expense	1,993	0.8%	2,973	1.0%	1,503	0.5%	4,912	1.5%	11,381	1.0%
Other (Income) Expense, Net	113	0.0%	(483)	-0.2%			(848)	-0.3%	(1,218)	-0.1%
Current Income Taxes	(1,052)	-0.4%	(4,655)	-1.6%	17,136	5.9%	(3,060)	-0.9%	8,369	0.7%
Deferred Income Taxes	13,128	5.2%	18,901	6.6%	1,717	0.6%	24,037	7.1%	57,783	4.9%
Extraordinary Charge from Early Retirement of Debt, Net										
Earnings (Loss) from Discontinued Operations, Net	(13,713)	-5.4%							(13,713)	-1.2%
Net Profit (Loss)	6,848	2.7%	26,234	9.1%	34,572	12.0%	41,761	12.4%	109,415	9.4%

	Q1 1998	
	($)	(%)
Net Sales	244,296	100.0%
COGS	211,459	86.6%
Gross Profit	32,837	13.4%
Selling, General and Administrative	68,841	28.2%
Restructuring, Impairment and Other Costs		
Operating Income	(36,004)	-14.7%
Interest Expense	5,072	2.1%
Other (Income) Expense, Net	2,367	1.0%
Current Income Taxes	327	0.1%
Deferred Income Taxes	(4,785)	-2.0%
Extraordinary Charge from Early Retirement of Debt, Net	(5,608)	-2.3%
Earnings (Loss) from Discontinued Operations, Net		
Net Profit (Loss)	(44,593)	-18.3%

Notes & Sources:
Dollars in thousands.
Excludes Sunbeam's furniture business, which was divested in 1997.
1996 and 1997 data from Sunbeam Corp. 10-K/405 for the year ended December 28, 1997 and 10-Qs for the quarters ended March 30, 1997, June 29, 1997, and September 28, 1997.
Q4 1996 calculated as FY 1996 - sum of Q1 1996 through Q3 1996.
Q4 1997 calculated as FY 1997 - sum of Q1 1997 through Q3 1997.
1998 data from Sunbeam Corp. 10-Q for the quarter ended March 31, 1998.
Quarters in 1996 and 1997 based on 13 weeks. Quarters in 1998 based on calendar date.

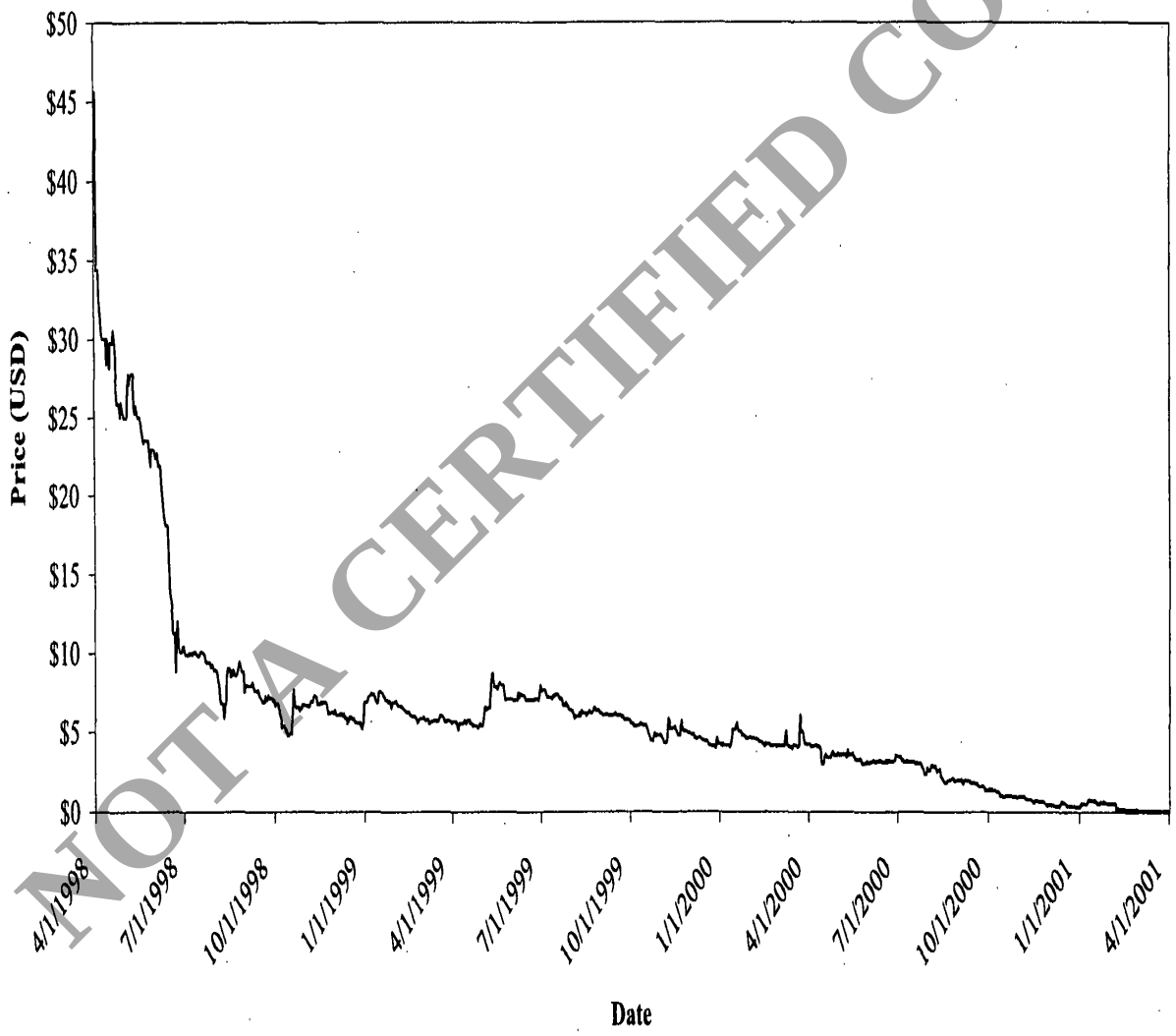
NOT A CERTIFIED COPY

019881

Confidential
Subject to Protective Order

EXHIBIT 7

SUNBEAM EQUITY PRICE
APRIL 1, 1998 - MARCH 31, 2001



NOT A CERTIFIED COPY

Notes & Sources:
Daily closing prices from Bloomberg.

EXHIBIT 8

ILLUSTRATION OF EARNINGS MANIPULATION: SMOOTHING

	Year 1 Q4	Year 2 Q1	Year 2 Q2	Year 2 Q3	Year 2 Q4	Year 3 Q1
[1] Actual Earnings	$50	$150	$50	$150	$50	$150
[2] Delayed Sales		(50)				
[3] Application of Sales			50			
[4] Borrowed Sales	50				50	
[5] Reversal of Borrowing				(50)		(50)
[6] Cumulative Owed Sales	50	50	50	0	50	0
[7] Earnings Overstatement (Reduction)	50	(50)	50	(50)	50	(50)
[8] Reported Earnings	$100	$100	$100	$100	$100	$100

Notes & Sources:

[6] = sum of [4] and [5] for all periods up to and including current.
[7] = sum of [2] through [5].
[8] = [1] + [7].

NOT A CERTIFIED COPY

EXHIBIT 9

ILLUSTRATION OF EARNINGS MANIPULATION: MISREPRESENTATION

	Year 1 Q4	Year 2 Q1	Year 2 Q2	Year 2 Q3	Year 2 Q4	Year 3 Q1
[1] Actual Earnings	$50	$150	$50	$150	$50	$150
[2] Misstated Reserves	(600)					
[3] Reversal of Unused Reserves			50	200	350	
[4] Delayed Sales		(50)				
[5] Application of Sales			50			
[6] Borrowed Sales			50	50	200	
[7] Reversal of Borrowing						(300)
[8] Cumulative Owed Sales			50	100	300	0
[9] Earnings Overstatement (Reduction)	(600)	(50)	150	250	550	(300)
[10] Reported Earnings	($550)	$100	$200	$400	$600	($150)

Notes & Sources:

[8] = sum of [6] and [7] for all periods up to and including current.

[9] = sum of [2] through [7].

[10] = [1] + [9].

NOT A CERTIFIED COPY

EXHIBIT 10

SUNBEAM CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
REPORTED V. RESTATED
1996 - Q1 1998

	REPORTED			RESTATED			DIFFERENCE		
	FY 1996	FY 1997	Q1 1998	FY 1996	FY 1997	Q1 1998	FY 1996	FY 1997	Q1 1998
	($)	($)	($)	($)	($)	($)	($)	($)	($)
Net Sales	984,236	1,168,182	244,296	984,236	1,073,090	247,601	0	(95,092)	3,305
COGS	900,573	837,683	211,459	896,938	830,956	213,828	(3,635)	(6,727)	2,369
Gross Profit	83,663	330,499	32,837	87,298	242,134	33,773	3,635	(88,365)	936
Selling, General and Administrative	214,029	131,056	68,841	221,655	152,653	71,139	7,626	21,597	2,298
Restructuring, Impairment and Other Costs	154,869			110,122	(14,582)		(44,747)	(14,582)	
Operating Income	(285,235)	199,443	(36,004)	(244,479)	104,063	(37,366)	40,756	(95,380)	(1,362)
Interest Expense	13,588	11,381	5,072	13,588	11,381	5,073	0	0	1
Other (Income) Expense, Net	3,738	(1,218)	2,367	3,738	12	3,165	0	1,230	798
Current Income Taxes	(28,062)	8,369	327	(22,419)	1,528	327	5,643	(6,841)	0
Deferred Income Taxes	(77,828)	57,783	(4,785)	(69,206)	38,824	(449)	8,622	(18,959)	4,336
Extraordinary Charge from Early Retirement of Debt, Net			(5,608)			(8,624)			(3,016)
Earnings (Loss) from Discontinued Operations, Net	(31,591)	(13,713)		(38,301)	(14,017)		(6,710)	(304)	
Net Profit (Loss)	(228,262)	109,415	(44,593)	(208,481)	38,301	(54,106)	19,781	(71,114)	(9,513)

Notes & Sources:
Dollars in thousands.
Reported data from Exhibit 6.
1996 and 1997 restated data from Sunbeam Corp. 10-K/A filing for the year ended December 28, 1997.
Q1 1998 restated data from Sunbeam Corp. 10-Q/A for the quarter ended March 31, 1998.
Difference = Restated - Reported.

NOT A CERTIFIED COPY

598810

CONFIDENTIAL

Coleman (Parent) Holdings, Inc.

v.

Morgan Stanley & Company, Inc.

Expert Report of William N. Horton

LECG, LLC

December 7, 2004

NOT A CERTIFIED COPY

0188167

I. Qualifications

My name is William N. Horton. I am a Director of LECG, LLC. LECG is a global consulting firm that provides economic and financial analysis, expert testimony, litigation support, public policy analysis and strategic advisory services.

I hold a Bachelor of Arts degree in Economics from Davidson College and graduated from the Harvard Graduate School of Business Administration with a Masters Degree of Business Administration.

I have over 22 years of experience as an investment banker with Goldman, Sachs & Company, Hambrecht & Quist, LLC, KPMG Baymark Capital, LLC, and Nesbitt Burns Securities, Inc.

During my 15 years with Goldman, Sachs & Company, I initiated, worked on and/or closed a significant number of public and private equity transactions, mergers and acquisitions, and strategic business relationships between U.S. and international firms. During my 5 years with Hambrecht & Quist, LLC, as a Principal and Managing Director, I worked extensively with venture-backed private and public companies in developing and implementing joint ventures, strategic financing and business relationships, in the placement of public and private equity securities, and mergers and acquisitions of such firms. During my 2 years with KPMG Baymark Capital, LLC and then Nesbitt Burns Securities, Inc., I was Managing Director at each firm, responsible for technology investment banking, including solicitation and execution of initial public offerings, follow-on equity offerings, private placements of debt and equity, and mergers and acquisitions.

Over the last 6 years, I have acted as consultant and financial advisor to technology companies in developing business plans and projections, raising both seed and venture equity financing, negotiating investment and securities purchase agreements, negotiating bridge loans, negotiating technology and licensing agreements, advising on mergers and acquisitions, and preparing companies for initial public offerings.

While continuing to take an active part in consulting with private high-technology firms, in the last three years I have also served as an expert witness on matters of business

NOT A CERTIFIED COPY

018868

valuation, damages, due diligence, disclosure, business strategy, and business procedures, with a focus on equity financing, and mergers and acquisitions.

During the course of my career, I have had extensive experience in conducting due diligence related to mergers and acquisitions, and equity and equity-related offerings, and in preparing disclosure documents related to such transactions.

During the course of my career, I have not published any articles or papers.

My resume is attached as Appendix 1.

My testifying experience at deposition and trial is attached as Appendix 2.

I am being compensated at the rate of $400/hour for my work as an expert. My fees are not contingent.

A list of Documents Reviewed and Relied Upon is attached as Appendix 3.

NOT A CERTIFIED COPY

018869

II. Summary of Opinions

After examining the evidence in this case, I have arrived at the following principal opinions, the grounds and bases for which are set forth in this report, the exhibits and the materials that I relied upon:

1. Morgan Stanley & Co., Incorporated ("Morgan Stanley"), in its multiple roles as the investment banker and financial advisor to Sunbeam and as sole manager and underwriter of Sunbeam's convertible debenture offering, had to insure that the information and disclosure materials it used in making the solicitations that were part of these assignments presented a fair and accurate description of Sunbeam and its business.

2. The Coleman Company, Inc.'s and Coleman (Parent) Holdings Inc.'s (together "Coleman") reliance upon the disclosure materials provided by Morgan Stanley and Sunbeam, and on publicly available disclosures and filings by Sunbeam (the "Sunbeam Investment Story"), in making its decision to accept the offer by Sunbeam and proceed with the transaction, was reasonable and customary for a sophisticated investor because of Sunbeam's status as a public company, the structure of the transaction and Sunbeam's acceptance of an obligation to notify Coleman of any material adverse change in Sunbeam's business prior to the closing of the acquisition.

3. Upon receipt of Arthur Andersen LLP's ("Arthur Andersen") draft March 19 Comfort Letter on or about March 18, 1998, Morgan Stanley should have informed Coleman that the March 19 Comfort Letter disclosed a material adverse change in the business of Sunbeam and that the materials that it had provided to Coleman in their discussions concerning Sunbeam contained untrue statements of material facts concerning the Sunbeam Investment Story.

4. Upon receipt of Arthur Andersen's draft March 19 Comfort Letter, on or about March 18, 1998, Morgan Stanley should have withdrawn the proposed offering of $2,014,000,000 Sunbeam Zero Coupon Senior Subordinated Convertible Debentures because public announcements and filings by Sunbeam, the

NOT A CERTIFIED COPY

018870

Preliminary Offering Memorandum, and the Internal Sales Memorandum contain untrue statements of material facts concerning the Sunbeam Investment Story.

5. Sunbeam's March 19 Press Release, prepared at the insistence of Morgan Stanley and incorporated into the final Offering Memorandum for the sale of $2,014,000,000 Sunbeam Zero Coupon Senior Subordinated Convertible Debentures, for which Morgan Stanley was the sole manager and underwriter, failed to disclose a material change in Sunbeam's business and contained material misstatements of fact relating to the Sunbeam Investment Story.

In arriving at my opinions, I have reviewed and examined documents produced in discovery, deposition transcripts, published articles, publicly available financial data, research reports issued by Wall Street analysts, and certain spreadsheets and comparisons prepared at my direction. Set forth in Appendix 3 is a list of documents that I have reviewed and relied upon in the preparation of this report. I reserve the right to update my opinions as additional information becomes available and as I have the opportunity to review and consider it. In the remaining sections of the Report, I will document the information and analyses that have led me to these opinions.

NOT A CERTIFIED COPY

018871

CONFIDENTIAL

III. Opinions

A. Morgan Stanley's Responsibilities as Sunbeam's Investment Banker

Based on my review of the case record, including the Morgan Stanley engagement letters, Morgan Stanley had multiple roles as investment banker and financial adviser to Sunbeam in 1997 and 1998.

- Morgan Stanley acted as Sunbeam's financial advisor and agent in connection with the potential sale of Sunbeam.
- Morgan Stanley acted as Sunbeam's financial advisor and agent in connection with any acquisitions, including the acquisitions of Coleman, Signature Brands USA, Inc. and First Alert, Inc.
- Morgan Stanley acted as financial advisor to Sunbeam in providing a fairness letter in connection with the acquisition of Coleman.
- Morgan Stanley acted as the sole manager and the underwriter of Sunbeam's offering of $2,014,000,000 Zero Coupon Senior Subordinated Convertible Debentures.
- Morgan Stanley acted as Sunbeam's financial advisor in the arrangement of additional bank financing for Sunbeam.
- Morgan Stanley had the right to advise Sunbeam on a variety of other transactions that Sunbeam might consider during the course of Morgan Stanley's engagement.

As is customary in the investment banking business, Morgan Stanley expected to earn both retainer fees and contingent fees upon successful completion of any of the above transactions.[1]

When retained as a company's merger and acquisition financial advisor, the usual and customary practice for an investment banking firm is to initially work with its client to develop offering materials that the investment banking firm then uses in its contacts with

[1] CPH Deposition Exhibit 70; and CPH Exhibit 246.

NOT A CERTIFIED COPY

018872

and solicitation of potential buyers or sellers. In the development of the offering materials, the investment banking firm has access to all publicly available documents and filings by the client as well as confidential internal long-term plans and projections, and conducts due diligence on its client. The due diligence is conducted by the investment banking firm in order to insure that the offering documents present a fair and accurate picture of its client's business, plans, and projections, among other things. The investment banking firm then contacts potential acquirers and/or sellers on behalf of the client. In connection with each of these contacts, it is usual and customary for the corporation or institution contacted by the investment banking firm to use the offering materials being provided by the investment banking firm in making its own decision to proceed with negotiations toward the proposed transaction. This is particularly true where a merger is being pursued in a short period of time and where the parties are currently competitors, or may, if the acquisition does not proceed, become competitors in the future. In addition, when the stock of the acquiring company is being used as currency in the transaction, it is usual and customary for the company being acquired to negotiate a provision in the merger agreements that allows them to not proceed with the transaction in the event of the occurrence of a material adverse change and/or an event or events that might have a material adverse effect on the business of the acquirer.

Investment bankers understand that, in their dealings and communications with other parties related to securities transactions, including potential investors in offerings with which the investment banking firm is connected, the investment banker is obligated to act and communicate in an honest manner. Investment bankers are familiar with the fact that their conduct in the preparation of documents related to securities offerings is governed by the securities laws, including the Securities Act of 1933 and Securities Exchange Act of 1934 and related regulations, as well as laws governing fraud. In my experience, training programs at investment banking firms deal with these issues, and they are also dealt with in an investment banker's studies leading up to taking the Series 7 exam, an exam that all investment banking professionals dealing with the sale of securities have to pass. Investment bankers also understand that the public, including sophisticated investors and corporations, will be relying on the honesty and accuracy of their communications and disclosures. In addition, investment bankers who specialize in

NOT A CERTIFIED COPY

0188873

mergers and acquisitions understand that these obligations also extend into communications and disclosures made in connection with merger and acquisition transactions.

When an investment banking firm acts as sole manager and initial purchaser of a public offering of securities, for example, it is usual and customary for potential investors in such an offering, including sophisticated investors of Rule 144A offerings, to rely upon the accuracy and completeness of the information and disclosures in the offering documents and upon the obligation of the investment banking firm to have conducted due diligence in connection with the preparation of the offering documents.

B. Coleman Acted in a Reasonable and Customary Manner in Relying Upon Sunbeam's and Morgan Stanley's Public and Private Disclosures and Obligations to Notify Them of Any Material Adverse Change in Sunbeam's Business

Development of the Sunbeam Investment Story

Mr. Albert J. Dunlap was hired by Sunbeam in July 1996 as Chairman and Chief Executive Officer to, as he is quoted as saying, "...significantly restructure the Company...reducing the Company's cost structure, divesting non-core, low margin products and developing a solid strategy for future growth."[2] This strategy supposedly was implemented during the second half of 1996, and Sunbeam reported that it was substantially completed in the first quarter of 1997 as disclosed in Sunbeam's press release dated April 23, 1997 that states:

> "The impressive growth in both revenue and earnings is proof that the revitalization of Sunbeam is working...The substantially higher earnings in the quarter from ongoing operations were due to increased sales coupled with successful implementation of our restructuring efforts...The margins attained in the first quarter are the highest achieved by Sunbeam in two years. I believe we are well on our way to achieving our goal of 20% operating margins."

[2] Sunbeam Press Release, July 24, 1996.

NOT A CERTIFIED COPY

018874

The stock market reaction to the development of the Sunbeam Investment Story was to bid up the price of Sunbeam from $12.24 on July 16, 1996, the day before the announcement of Mr. Dunlap being hired, to $25.50 on December 31, 1996, to $33.50, where it closed on April 23, 1997.[3]

The implementation of this strategy and the importance of growth in sales were critical elements of the Sunbeam Investment Story. For example, Prudential Securities, in initiating coverage of Sunbeam on June 23, 1997, stated:

> "At a minimum over the next 6-9 months, we believe further upside potential in the stock will be driven by significant and rapid improvement in operating performance and sales growth as a result of restructuring benefits and aggressive implementation of growth strategies..."[4]

The Sunbeam Investment Story was further enhanced with the announcement of second quarter results for 1997 on July 23, 1997.[5] For example, PaineWebber, in commenting on Sunbeam's announced results in its research report dated July 28, 1997, stated:

> "The biggest surprise of the quarter was a positive one, with sales up 13.3% on a reported basis (16.6% on a normalized basis, excluding divested time and temperature, decorative bedding and scale businesses)...the company averted any earnings disappointments by delivering better than expected sales growth."[6]

Market reaction to the further development and enhancement of the Sunbeam Investment Story and its dependence on sales growth continued to be positive with the stock price increasing from $33.50 on April 23, 1997 to $39.75 on July 23, 1997.[7]

Development of the Sunbeam Investment Story continued with the announcement of third quarter results for 1997 on October 22, 1997, where it was announced that sales had increased 28.3% on a comparable basis and earnings per share had increased by $0.58

NOT A CERTIFIED COPY

018875

[3] Sunbeam Stock Price History.
[4] Prudential Research Report dated June 23, 1997.
[5] Sunbeam Press Release dated July 23, 1997.
[6] PaineWebber Research Report dated July 28, 1997.
[7] Sunbeam Stock Price History.

from a loss of $0.19 per share to $0.39 per share.[8] Mr. Dunlap commented on the results in the press release:

> "I am very pleased that the rate of revenue growth has continued to accelerate, concurrent with a dramatic expansion of operating margins...In the past 15 months we have been able to turn around a great old company that had lost its way, reposition it for tremendous profitable growth and build a great management team that is focused on increasing shareholder value."[9]

Wall Street reacted positively to the reported results, as illustrated by an Oppenheimer & Co., Inc. research report dated October 22, 1997 that states:

> "Sunbeam reported 3Q97 EPS of $0.39 vs. a ($0.19) loss a year ago; this was $0.02 better than we expected. The company's 25% sales increase and margin growth were both slightly better than we had forecast."[10]

The stock market's reaction was again positive as Sunbeam's stock price increased further from July 23, 1997, when it closed at $39.75, to $48.375, where it closed on October 22, 1997.[11]

The development of the Sunbeam Investment Story, as described above, and its acceptance by the market and Wall Street analysts, was critically dependent upon Sunbeam driving increases in sales and operating margins. The reason for this is that increased sales and operating margins directly translate into increases in net income and earnings per share, which in turn drive Wall Street analysts and the market valuation of a stock.

Morgan Stanley Becomes Part of the Sunbeam Investment Story

Morgan Stanley became an integral part of the Sunbeam Investment Story when the firm was engaged by Sunbeam in September 1997 to pursue a sale of Sunbeam or pursue acquisitions by Sunbeam. Mr. Dunlap publicly announced this plan and touted the "turn around" on October 23, 1997:

NOT A CERTIFIED COPY

018876

[8] Sunbeam Press Release dated October 22, 1997.
[9] Ibid.
[10] CPH 1407297-1407305.
[11] Sunbeam Stock Price History.

> "Having successfully completed the turnaround of Sunbeam and being well on our way to dramatically growing the business, we feel that the timing now is right to look towards achieving the next level of value for our shareholders. As I have said on numerous occasions, we will pursue whatever course serves best to enhance shareholder value, including acquisitions, mergers or possibly a sale of the Company."[12]

Wall Street's reaction to Sunbeam's reported third quarter 1997 results, and the announcement of Morgan Stanley's retention, was positive. For example, in a research report published on October 29, 1997, PaineWebber highlighted the importance of the retention of Morgan Stanley to the future of Sunbeam as follows:

> "The real potential for another round of meteoric stock price appreciation comes if Sunbeam can make a strategic acquisition, using Sunbeam stock as the currency...Sunbeam shareholders may be getting two Dunlap turnarounds for the price of one. Now that would be a bright idea."[13]

Beginning in early October 1997 and continuing into 1998, Morgan Stanley made a number of contacts with potential acquirers of Sunbeam but failed to find a buyer. Morgan Stanley's failure was anticipated by Wall Street analysts. For example, Merrill Lynch, in a research report issued on October 24, 1997, commented:

> "Part of Al Dunlap's blueprint for fixing companies entails taking companies through quantum leaps. What this means is that after turning a business around, he typically sells it for a significant premium above current market value...We continue to think that this process is more likely to entail buying and restructuring another company using Sunbeam as his currency rather than selling Sunbeam outright."[14]

NOT A CERTIFIED COPY

018877

Morgan Stanley as Sunbeam's Investment Banker

Overview: Upon being retained by Sunbeam in September 1997, it would be normal and customary for Morgan Stanley to thoroughly get to know Sunbeam, its business and its

[12] Sunbeam Press Release dated October 23, 1997.
[13] CPH 2008292-2008303.
[14] CPH 1407315-1407318.

prospects in the preparation of the offering materials for the Company. As described previously in this report, this would involve Morgan Stanley reviewing all publicly available materials as well as confidential internal long-term plans and projections and then conducting in-depth due diligence with Sunbeam in the preparation of the discussion materials that Morgan Stanley was going to use with potential acquirers and/or companies to be acquired. As part of the process of preparing the discussion or offering materials, it would also be usual and customary for Morgan Stanley to discuss with Sunbeam the risks and opportunities to its business and related to potential transactions, and then to review them independently from a broader industry and competitive perspective. Morgan Stanley needed to thoroughly understand Sunbeam, its business, prospects, risks and opportunities because, in making contacts on mergers and acquisitions, it potentially would be dealing with acquirers or companies to be acquired who might be competitors with Sunbeam and/or sophisticated companies with a thorough knowledge of Sunbeam's business. Morgan Stanley's access to both public and private confidential information put the firm in a unique position to be sensitive to the truth and accuracy of the Sunbeam Investment Story as it was being told by Sunbeam (and by Morgan Stanley in the discussion or offering materials that it had developed) and to take into consideration any information that they became aware of that called into question the Sunbeam Investment Story. When Morgan Stanley was named as sole manager and underwriter of the convertible debenture issue in March 1998, its due diligence on Sunbeam in preparation of the offering memorandum would normally and customarily include anything that it learned or became aware of during the course of all of its financial advisory work with Sunbeam since it was retained in September 1997.

Concerns About the Sunbeam Story: In the context of Morgan Stanley's financial advisory work as investment banker to Sunbeam, Morgan Stanley became aware of concerns about Sunbeam's performance and the Sunbeam Investment Story.

Fourth Quarter Results for 1997 Do Not Meet Expectations: For example, on January 28, 1998 Sunbeam publicly announced that its results for the full year 1997 did not meet expectations:

NOT A CERTIFIED COPY

018878

> "Sunbeam Corporation today announced record sales and earnings for its fourth quarter and full year 1997. Sales for the quarter were $338 million, reflecting a 30.6% increase over the prior year period on a comparable basis...Before the 1996 special charges taken by the Company to restructure and reposition Sunbeam, earnings per share (diluted) from continuing operations of $.47 were $.50 ahead of the loss of $0.03 reported the fourth quarter last year...On a year to date basis, revenue of $1.168 billion was 22.4% above 1996 on a comparable basis and earning per share (diluted) from continuing operations of $1.41 was $1.51 above the loss of $0.10 reported in 1996, excluding special charges."[15]

The stock market's reaction to this disclosure was reflected by changes in Sunbeam's stock price, as it dropped by more than 10% over the two days following the announcement, from $41.5625 where it closed on January 27, 1998, the day before the announcement, to $36.00 on January 29, 1998, the day after the announcement.[16]

The decline in the stock price only reflects part of the market reaction as Wall Street analysts commented further on the fourth quarter as not meeting expectations. For example, CIBC Oppenheimer published a research report on January 28, 1998 that stated:

> "Sunbeam reported 4Q97 EPS of $0.47 vs. a per-share loss of $0.03 a year ago. This was $0.05 short of our estimate and $0.03 lower than Street consensus. Sales increased 26% year-over-year; we had estimated a 34% increase...Clearly, management's optimism that it could pull out the quarter late in December were excessive."[17]

Despite Sunbeam having missed its guidance, CIBC Oppenheimer goes on in their report to emphasize the decline in price as creating a buying opportunity and recommending a "Strong Buy" on the stock. CIBC Oppenheimer's evaluation of Sunbeam was paralleled by PaineWebber in a research report issued on January 29, 1998 ("...we continue to believe Sunbeam is a good buy in the high-$30s...our 12-18 month price target is $50.") as well as by Merrill Lynch ("We continue to recommend

NOT A CERTIFIED COPY

018879

[15] CPH 0291847-0291849.
[16] Sunbeam Stock Price History.
[17] CPH 1327729-1327738.

Sunbeam") and Prudential Securities ("We are reiterating our Buy rating on Sunbeam Shares with a 12-month price target of $55...") in reports issued on the same day .

Fourth Quarter of 1997 Results: The failure of Sunbeam to achieve its guidance on financial results for the fourth quarter of 1997 also caused some analysts to examine the potential impact on first quarter of 1998. A research report published by PaineWebber on February 6, 1998 included the following comments:

> "With shares down over 12% in 1998, the market is skeptical about whether an encore performance is possible."[18]

The research report then goes on to focus on the key risks to Sunbeam as follows:

> "As expected, the grill sales led the way in the quarter, but this growth was substantially ahead of our expectations. We are not bothered by the 'grill blip' in the fourth quarter as long as the company hasn't stolen some first quarter 1998 upside to stretch to meet fourth quarter 1997 expectations. The stakes are high as Sunbeam enters the peak grill season, as the company has already begun to seed the channel in the fourth quarter, grill inventory is high (according to strategy)..."[19]

Despite these statements, PaineWebber reiterated its "Buy" rating on Sunbeam.

The positive Wall Street review of Sunbeam's prospects was also supported by Mr. Dunlap in his interview with Neil Cavuto of The Cavuto Business Report on January 28, 1998 where he comments to a question about Sunbeam missing Wall Street guidance: "We haven't missed anything." Then with respect to a question about the prospects for Sunbeam, Mr. Dunlap further states: "...I said today we were not uncomfortable with Street estimates next year of $2...which would be a 40 percent increase and sales growth of 25 percent. Now who else is doing that?"[20]

Wall Street analysts emphasized the upside in Sunbeam's stock price. For instance, Goldman Sachs states in a research report dated January 29, 1998 that:

NOT A CERTIFIED COPY

018880

[18] CPH 1415366-1415373.
[19] Ibid.
[20] CPH 1278476-1278479.

> "We continue to recommend purchase of SOC shares. On the record, we firmly believe that Sunbeam's targeted 25% growth and 20% operating margin are real and attainable and support outsized earnings growth through 1999."[21]

Bear Stearns also focused on the upside in Sunbeam's stock price in a research report published on January 29, 1998 where they continued to rate Sunbeam a "buy" and "attractive on a valuation basis" with a "12-month mid-$50s price target."

Wall Street's anticipation of potential acquisitions became reality with the announcement of the acquisitions on Sunbeam, Signature Brands and First Alert on March 2, 1998. Market reaction to the acquisition announcements was positive with Sunbeam's stock price trading up from $41.75 on February 27, the day before the announcement, to $49.875 on March 3, 1998.

Wall Street's reaction to the announcement was positive. For example, Merrill Lynch in a research report dated March 3, 1998 commented: "We applaud Sunbeam's proposed acquisitions...We reiterate our Accumulate/Buy ratings...Our new 12-month price objective is $54." In addition, CIBC Oppenheimer in a research report dated March 5, 1998 commented: "Once these acquisitions close, Sunbeam's earnings, position at retail, and long-term prospects will be enhanced, in our view. We are reiterating our Strong Buy rating." These positive comments continued after the filing of Sunbeam's 10-K on March 6, 1998. In a research report published by Prudential on March 6, 1998, the firm stated: "We are aggressively reiterating our Buy rating on Sunbeam shares with a 12-month price target of $70 or more..." Similarly, in a research report published by PaineWebber on March 12, 1998, the firm set a price target of $60 for Sunbeam's stock and commented: "With the acquisitions again giving Al Dunlap the opportunity to do what he does best, turnaround troubled companies, the stock may be poised to set new highs in the coming months."

NOT A CERTIFIED COPY

018881

The Sunbeam Investment Story Presented to Coleman by Morgan Stanley Failed to Disclose Any of the Points of Concern

It was the positive Sunbeam Investment Story, however, that was carried over by Morgan Stanley in its communications with Coleman. In February 1998, Sunbeam and Morgan

[21] Defendant's Exhibit 852. CPH 1059632-1059633

Stanley made a presentation to Coleman concerning Sunbeam's long-term strategic plan and Morgan Stanley's discussion materials presentation (the "Morgan Stanley Discussion Materials") for use in the negotiation of the proposed acquisition of Coleman by Sunbeam.[22]

In the Morgan Stanley Discussion Materials, the Investment Rationale section includes major points of the Sunbeam Investment Story:

> "Sunbeam represents an attractive growth story and investment opportunity.
>
> Sunbeam has undergone a profound transformation since the arrival of new management in July 1996.
>
> Tremendous intrinsic value in the Company."[23]

The Morgan Stanley Discussions Materials also highlight positive Wall Street analyst comments about Sunbeam and the Sunbeam Investment Story.

The Discussion Materials do not, however, reference, either directly or indirectly, Sunbeam's failure to meet the guidance it had given Wall Street for the fourth quarter of 1997. From the case record, there also does not appear to have been any disclosure of the audited financial statements of Sunbeam for fiscal 1997 of the early buy program that represented $50 million in sales in 1997, nor of the bill and hold sales booked in the fourth quarter of 1997 that are described in a footnote to the audited financial statements.[24] As described previously in this report, the Morgan Stanley Discussion materials emphasize the positive aspects of the Sunbeam Investment Story, including positive analyst comments, the strength of the turnaround in Sunbeam's business and the excellent prospects for Sunbeam in the future.

Since the disclosure of and/or discussion of these types of issues would be usual and customary in the negotiation of an acquisition for equity, the apparent failure of Sunbeam and/or Morgan Stanley to raise and discuss these issues with Coleman is both not customary and surprising for firms with the level of sophistication that they each had.

NOT A CERTIFIED COPY

018882

[22] Depostion Exhibit CPH 9.
[23] Ibid.
[24] CPH 0012762-0012934.

The Sunbeam Investment Story Told to Potential Investors by Morgan Stanley

Despite the public and private concerns, the Sunbeam Investment Story told to the public also remained positive. Morgan Stanley, for example, provided its marketing and sales professionals with the Internal Selling Memorandum on March 12, 1998 for use in discussions and conversations with potential investors for the sale of the convertible debentures. In the Internal Selling Memorandum, Morgan Stanley puts a positive spin on Sunbeam's fourth quarter results in the section of the Selling Memorandum titled "Potential Investor Concerns," and explains the shortfall in the fourth quarter discussed above, as follows:

> *"The Company recently reported fourth quarter earnings that were $0.03 below consensus expectations, resulting in a 9% share price decline on the day of the announcement. Is this indicative of a slowdown in double digit growth that Al Dunlap has declared is his ongoing goal?*
>
> Responses: Business has shown significant improvement from the recent restructuring very quickly. Fourth quarter sales jumped 31%, excluding divestitures, from last year's numbers. Sales growth had, in fact, accelerated all year. Fourth quarter results were broad-based with all businesses, except for blankets, showing healthy gains. Operating margins hit an unprecedented 20%. EPS were $0.47 vs. $(0.03) in 4Q97. In short, the Sunbeam management team sets extremely high goals and, even when they fall slightly short, it is still a significant achievement."[25]

This talking point that Morgan Stanley distributed internally to its sales force in connection with the sale of Sunbeam's zero coupon convertible debentures clearly indicates that Morgan Stanley had red flagged this as a point of concern that had to be dealt with in talking with potential investors. In addition, Morgan Stanley's inclusion of this talking point highlights the sensitivity that Morgan Stanley would be reasonably expected to have to any information that might indicate that Sunbeam's sales were weaker than expected, information that became clear on March 18 with the delivery of the draft March 19 Comfort Letter.

[25] CPH Exhibit 100. As was described previously in this report, this explanation paralleled Wall Street's perspective.

NOT A CERTIFIED COPY

018883

CONFIDENTIAL

C. It was Usual and Customary for Coleman, as a Sophisticated Investor, to Rely Upon Sunbeam and Morgan Stanley's Obligation to Disclose any Material Adverse Change in Sunbeam's Business Prior to Closing on the Merger

Although preliminary discussions between Coleman and Sunbeam took place in December 1997 and January 1998, negotiation of the acquisition of Coleman by Sunbeam took place during a very limited time period in February 1998.[26] This constraint on the time period necessarily forces the firms involved to place primary dependence on due diligence, on the publicly available information on each company, and on any disclosure materials provided by each side to the other, such as the Morgan Stanley Discussion Materials that were provided to Coleman. In addition, the case record also indicates that there were three days of formal due diligence, on February 22, 23, and 24, 1998, during which representatives of each company met. In my experience, this type of due diligence is typical in what is often referred to as fast track mergers and acquisitions, particularly where both parties are currently competitors or might become competitors in the future if the transaction does not go through. As a result of the time and competitive constraints on due diligence, it is usual and customary for each party and their representatives to rely upon the truth and accuracy of materials that they have received and any statements that may have been made by the other party or representatives of the other party. In addition, once definitive agreements are signed relating to an acquisition or merger transaction, it is usual and customary practice for deal-related due diligence to end and for both parties to move forward to a closing that is only dependent on normal regulatory clearances like Hart-Scott-Rodino or a material change in either party's business.

The acquisition of Coleman by Sunbeam was structured in mergers and acquisitions' terminology as a two-step transaction, with Sunbeam first acquiring Coleman (Parent) Holdings' equity interest in Coleman and then acquiring the publicly traded minority interest in Coleman. In addition, Sunbeam's acquisition of Coleman also involved Morgan Stanley arranging Sunbeam's approximately $1.7 billion of bank debt and

[26]CPH Exhibit 169.

NOT A CERTIFIED COPY

018884

Morgan Stanley directly raising approximately $2.0 billion of zero coupon convertible debt to fund the acquisition of Coleman, Signature Brands USA, Inc. and First Alert, Inc.[27] From any perspective and as a matter of practice, this structure made the acquisition of Coleman by Sunbeam dependent upon Morgan Stanley's acting as sole manager and the initial purchaser of the zero coupon convertible debt and Morgan Stanley's ability to sell those securities to sophisticated investors. In a Rule 144A offering, sophisticated investors rely upon the public disclosure by Sunbeam that is incorporated in the Offering Memorandum and upon Morgan Stanley's due diligence obligations as both financial advisor since September 1997 and sole manager of the offering.

As a matter of industry practice and custom, Coleman, as a sophisticated investor, would expect to benefit from these due diligence and disclosure obligations on the part of Morgan Stanley and Sunbeam in the sale of the Rule 144A zero coupon convertible debentures. These disclosure obligations, as is usual and customary, would necessarily and fundamentally include disclosure of any material adverse change in Sunbeam's business. Consequently, it was entirely reasonable and customary for Coleman to believe that disclosure of any material adverse change in Sunbeam's business prior to the actual acquisition would be made by Morgan Stanley and/or Sunbeam directly to Coleman. From an investment banking perspective, Coleman had the right to believe this for three reasons. First, Coleman was receiving equity in Sunbeam immediately after the closing on the Rule 144A offering and it would be usual and customary for them to receive a copy of the final Offering Memorandum as part of that transaction. Second, the definitive merger agreement requires Sunbeam to disclose to Coleman, as a condition to closing, any material adverse change in Sunbeam's business.[28] Third, since Morgan Stanley had solicited Coleman concerning a possible acquisition in December 1997, and had provided the Morgan Stanley Discussion Materials to Coleman in February 1998 for consideration in accepting Sunbeam's acquisition offer, it would be usual and customary for Morgan Stanley to contact Coleman directly if it were to become aware that the materials that it had provided to Coleman where materially incorrect or false and misleading. The

NOT A CERTIFIED COPY

018857

[27] CPH Exhibit 100. The issue of zero coupon convertible debt was increased in size on March 19, 1998 from $1.7 billion in principal amount to $2.014 billion.
[28] MS 93 and MS 117.

occurrence of a material adverse change in Sunbeam's business would be reasonably expected to trigger this obligation.

D. Morgan Stanley and Sunbeam Had the Usual and Customary Obligation Upon Receipt of the March 19 Comfort Letter to Disclose to Coleman a Material Adverse Change in Sunbeam's Business

On March 18, 1998, Arthur Andersen delivered a draft letter to Morgan Stanley concerning the financial results of Sunbeam through March 16, 1998 and delivered the signed March 19 comfort letter the following day (the "March 19 Comfort Letter").[29]

In the March 19 Comfort Letter, Arthur Andersen qualifies the letter based on Morgan Stanley's representations as follows:

> "a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).
>
> b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act."[30]

In the March 19 Comfort Letter, Arthur Andersen disclosed that net sales for January 1998 were approximately $44 million lower than for the same period in 1997 ($28,984,000 versus $72,945,000) and that the net sales for the period for January and February 1998 were approximately $71.5 million lower than net sales for the same period in 1997 ($72,018,000 versus $143,499,000). The March 19 Comfort Letter then goes on to define the principal cause of the decline in net sales as follows:

NOT A CERTIFIED COPY

0188896

[29] CPH Deposition Exhibit 17. This letter is generally referred to in the investment banking industry as a "comfort letter." It is generally required by securities firms to be provided by a corporation's accountants immediately prior to pricing a security offering in order to insure that there has not been a material change in the financial statements or results of the company since the last financial statements were released publicly.

[30] Ibid.

"For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997."

The March 19 Comfort Letter also disclosed that long term debt increased by $105 million from $194.6 million on December 29, 1997 to $299.6 million on March 16, 1998, and that net income had declined by approximately $14.3 million (a loss of $9.5 million versus a net income of $4.8 million) for January and February 1998 as compared to January and February 1997.[31] [32] The increase in long term debt was troubling to near term prospects for Sunbeam's sales because it would indicate that inventories at Sunbeam's customers relating to the early buy and buy and hold programs were not being sold. Therefore, Sunbeam's customers were not paying Sunbeam for products bought under these programs, which in turn reduces Sunbeam's cash and requires additional debt financing.

Given the statement by Arthur Andersen that the March 19 Comfort Letter was being provided to Morgan Stanley as part of their due diligence process relating to the issuance of the Zero Coupon Convertible Senior Subordinated Debentures, these disclosures clearly represent a material adverse change in the business of Sunbeam from any business perspective, and certainly from an investment banking perspective. In addition to the magnitude of the deterioration from the previous year in Sunbeam's financial performance and financial position, the information disclosed contradicts the foundation of the Sunbeam Investment Story that Sunbeam was telling along with the Sunbeam

NOT A CERTIFIED COPY

[31] CPH Exhibit 112. The bring down comfort letter provided by Arthur Andersen to Morgan Stanley on March 25, 1998 disclosed no improvement in the deterioration in Sunbeam's business since the March 19 Comfort Letter.

[32] CPH Exhibit 63, CPH 0287279. Although Morgan Stanley had some discussions with Sunbeam on March 18 concerning this disclosure and specifically the shortfall in sales, the information provided to Morgan Stanley further highlighted the sales shortfalls disclosed in the March 19 Comfort Letter. In the additional information provided to Morgan Stanley, actual sales through January and February totaled $72.0 million, international sales in March through March 15, 1998 totaled $6.9 million, and domestic net sales through March 17, 1998 totaled $22.7 million resulting in total sales of only $100.6 million before any consideration of open orders or forecasts.

Investment Story that Morgan Stanley was telling potential acquirers, companies being acquired (like Coleman), and potential investors.

Consequently, upon receipt of this due diligence information, Morgan Stanley had a usual and customary responsibility as an investment banker, financial advisor and agent of Sunbeam in the negotiation of the acquisition of Coleman, to insist upon and/or alternatively disclose to Coleman the material adverse change in Sunbeam's business because the firm needed to correct false and misleading statements that the firm had made to Coleman.

E. Morgan Stanley Had the Power and the Obligation to Cancel the Proposed Offering of the $2,014,000,000 Sunbeam Zero Coupon Senior Subordinated Convertible Debentures Upon Receipt of the March 19 Comfort Letter

On March 19, 1998, Morgan Stanley, as sole lead manager and underwriter of the $2,014,000,000 Sunbeam Zero Coupon Senior Subordinated Convertible Debentures, had the power to cancel or withdraw the Rule 144A offering before it was priced at the end of that day.[33] From an investment banking perspective, the effect of any such withdrawal or cancellation by the sole manager and underwriter of the offering would have been the postponement or termination of the acquisition of Coleman, particularly since the proceeds of the offering were being used to acquire Coleman.

The disclosure of the material adverse change in Sunbeam's business in Arthur Andersen's March 19 Comfort Letter would have led, in the ordinary course of the investment banking business, to the realization that the Sunbeam Investment Story, as it had been told, was false and misleading. Since Morgan Stanley had based its solicitation efforts on behalf of Sunbeam, its presentations to Coleman, and its sales and marketing efforts for the Zero Coupon Convertible Senior Subordinated Debentures on the Sunbeam Investment Story, the realization of the false and misleading aspects of it would normally and customarily have led to the withdrawal of the offering prior to pricing.

NOT A CERTIFIED COPY

018888

[33] CPH Deposition Exhibit 10.

F. Sunbeam's Press Release of March 19, 1998, Included in the Offering Memorandum for the Sale of $2,014,000,000 Sunbeam Zero Coupon Senior Subordinated Convertible Debentures Was Materially Misleading and Contained Untrue Statements of Material Facts

On March 19, 1998, Sunbeam issued a press release regarding its expected financial results for the first quarter of 1998. The press release stated in part:

> "Sunbeam Corporation (NYSE: SOC) said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers..."[34]

The disclosure made in the press release was also included in the final Offering Memorandum for the sale by Sunbeam pursuant to Rule 144A, of $2,014,000,000 Zero Coupon Convertible Subordinated Debentures by Morgan Stanley as sole manager.[35]

The disclosure made in the March 19 press release failed to disclose accurately and clearly the information in the March 19 Comfort Letter as follows:

First, the March 19 Comfort Letter discloses that long term debt increased by $105 million from $194.6 million on December 29, 1997 to $299.6 million on March 16, 1998, and that net sales for January and February 1998 were approximately $71.5 million lower than net sales for the same period in 1997 ($72,018,000 versus $143,499,000) and net income had declined by approximately $14.3 million (a loss of $9.5 million versus a gain of $4.8 million) for the same periods. The March 19 Comfort Letter then goes on to define the principal cause of the decline in net sales as follows:

NOT A CERTIFIED COPY

018889

[34] Deposition Exhibit CPH 14, MS 0016944-16945.
[35] Deposition Exhibit CPH 10, CP 033169-033240.

"For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997."

Given this disclosure, and the amount of the increase in debt and the decreases in net sales and net income, it would be normal and customary for the sole manager and initial purchaser of an offering of securities of a company to insist that full disclosure of this information be made. The March 19 Press Release, however, made no mention of the decline in sales, the significant increase in debt, the losses that Sunbeam had incurred or the primary reasons behind them, as disclosed by Arthur Andersen. The failure of Sunbeam and Morgan Stanley to disclose this information made the press release and the Offering Memorandum materially misleading.

Second, the initial reference to the early buy program and the bill and hold transactions was made in Sunbeam's 10-K filing on March 6, 1998, and included in the Offering Memorandum. The information about these two programs apparently had not been formally disclosed to Wall Street prior to that date. With the further definitive information disclosed by Arthur Andersen in the March 19 Comfort Letter, the disclosure made by Sunbeam on March 19, 1998 in the press release and included in the Offering Circular for the Zero Coupon Convertible Senior Subordinated Debentures failed to disclose the significant deterioration in Sunbeam's business.

Third, the March 19 Press Release was materially misleading in its statement that sales of Sunbeam's products were strong at the retail level because, if they were strong, it would be reasonable to expect customers to reorder products as they were sold and inventories depleted. However, since the March 19 Comfort Letter clearly states that sales through the end of February 1998 by Sunbeam were $71.5 million below the comparable period of 1997 because of the early buy program, this statement is materially misleading. This information was further corroborated in the discussion that Morgan Stanley had with Sunbeam on March 18 that indicated that sales continued to be extremely weak and that

NOT A CERTIFIED COPY

018890

Sunbeam had no firm orders that would reasonably be expected to allow Sunbeam to achieve the guidance that it had given Wall Street.[36]

Fourth, the March 19 Press Release was also materially misleading in assigning blame for the prospective shortfall in sales relative to guidance that Sunbeam had given to Wall Street to "changes in inventory management and order patterns at certain of the Company's major retail customers." I reviewed the public disclosure of Sunbeam's competitors and its principal customers, to the extent possible, and could find no mention of any such changes that impacted competitors or were initiated by customers.[37] The disclosure of the impact of the early buy program on Sunbeam's sales in the March 19 Comfort Letter, along with the similar impact of the buy and hold transactions, are the only events that it is reasonable to believe had a substantive impact on Sunbeam's sales in January and February 1998 and on the increase in debt. Consequently, the disclosure of the reasons for the prospective shortfall was materially misleading.

Although Sunbeam's stock price declined by approximately 10% from $50.0625 on March 18 to $45.375 on March 19 when the March 19 Press Release was issued, Wall Street analyst reaction to the press release reflected any that the market was unaware of the significant deterioration in Sunbeam's business of which Morgan Stanley was aware. For instance, PaineWebber stated in a research report dated March 19, 1998:

> "We do not think this warning means that the 'new Sunbeam' story is over; in fact we would use any weakness as a buying opportunity."[38]

In addition, although PaineWebber noted the $50 million in the early buy program disclosed in Sunbeam's 10-K, they commented further that the program only robbed "a little of the first quarter's thunder."[39]

Similarly, Bear Stearns in a research report on March 19, 1998 commented:

NOT A CERTIFIED COPY

018891

[36] CPH 63.
[37] 10K's for fiscal 1997 and 10Q's for the first quarter of 1998 filed with the Securities and Exchange Commission for the following companies: Whirlpool, NACCO, Black and Decker, Wal-Mart, K-Mart, Price CostCo, Target, Home Depot, Sears, Service Merchandise, Lowe's, and J.C. Penney.
[38] Exhibit 533, CPH 1029174-1029175.
[39] Ibid.

"We think that yesterday's price drop of over 4 points was an over reaction and we reiterate our buy rating on the shares."[40]

The full breadth of the deterioration in Sunbeam's business in the first quarter of 1998 that Morgan Stanley was aware of on March 18 and the market's reaction to it did not begin to be reflected in the market until the April 3 Press Release was issued. The further market correction to the additional information about Sunbeam's business resulted in an approximately 25% drop in its stock price on April 2, 1998 from $45.5625 to $34.375, where it closed on April 3, 1998. The stock further declined approximately 10% during the next several days as the market further digested the announcement and the related Wall Street research analyst reports. For example, the collapse of the Sunbeam Investment Story from a Wall Street analyst perspective is described in some detail in a research report published by PaineWebber on April 3:

"Core Business in Trouble: The weakness in Q1 confirms our worst fears about the slowdown in Sunbeam's core business...The first quarter sales weakness is even more disturbing because it compares against a first quarter of 1997 that Sunbeam management a year-ago described as full of glitches...We are cutting our sales growth estimates for the core Sunbeam business (excluding the acquisitions) to 10% per year from around 20% due to the announced sales shortfall."[41]

Although some information about Sunbeam's sales shortfalls was disseminated to the public and Wall Street on April 3, the full breadth of the problems at Sunbeam and their impact on Sunbeam's stock price further unfolded after April 3.

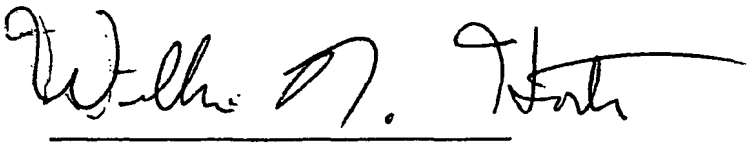
NOT A CERTIFIED COPY

018892

[40] CPH 1241513-1241514.
[41] MS 220.

CONFIDENTIAL

Signed on December 7, 2004 at Emeryville, California.



William N. Horton,
Director
LECG LLC
2000 Powell Street, Suite 600
Emeryville, CA 94608

NOT A CERTIFIED COPY

018893

CONFIDENTIAL

Appendix 1

WILLIAM N. HORTON

LECG LLC
2000 Powell Street, Suite 600
Emeryville, CA 94608
Office Telephone: (510) 985-6740
Office Telefax: (510) 653-9898
E-Mail: whorton@lecg.com

3721 Waterford Lane
Walnut Creek, CA 94598
Residence Telephone: (925) 937-5160
Mobile: (510) 913-5640
E-Mail: wnhorton@pacbell.net

GENERAL BACKGROUND

Experienced executive and testifying expert who has focused on high technology for the last 15 years and has a unique combination of technology understanding and hands-on operating and investment banking experience. Background includes 23 years of investment banking experience, principally with Goldman, Sachs & Co. and Hambrecht & Quist, and 6 years of operating experience with a number of high-technology companies as a consultant, financial advisor, chief financial officer, secretary to the board and board director.

As an investment banker, developed broad experience across a wide range of industries and with a wide variety of transactions and advisory assignments in both the U.S. and international markets with a special expertise in the Far East. Over the last 15 years, extensively involved with high technology companies in advising them in developing business plans; valuing companies and their securities; raising funds in the venture capital, private placement and initial public offering markets; identifying and structuring a variety of business agreements with strategic partners (joint ventures; OEM supply, contract manufacturing; technology licensing; and joint development, among others); developing and implementing intellectual property strategies; and advising on mergers and acquisitions.

Specific expertise with high technology companies: Internet, software, semiconductors, semiconductor capital equipment, computers and peripherals, electronic components, consumer electronics and wireless services and devices. Experience with these companies includes high-level investment banking in finance, valuation, mergers & acquisitions and in structuring strategic business relationships as well as operational roles as chief financial officer with responsibilities for accounting, strategic business development and human resources. In addition, experience as executive officer responsible for the choice and implementation of full accounting, CRM and MRP software systems.

BUSINESS EXPERIENCE

2002-	**LECG, LLC.**	**Emeryville, CA**
	Testifying Expert	
2001-	**Elesys, Inc.**	**Sunnyvale, CA**
	Member of and Secretary to the Board of Directors; and Consultant	
1999-01	**Tellus Technology, Inc.**	**Fremont, CA**
	Consultant, VP Finance and Chief Financial Officer, and Secretary to the Board of Directors	
1998-99	**Planned Financial Solutions**	**Pleasanton, CA**
	Managing Director	
1997-98	**Nesbitt Burns Securities, Inc.**	**San Francisco, CA**
	Managing Director, North American Technology Investment Banking	
1995-97	**KPMG BayMark Capital LLC**	**San Francisco, CA**
	Managing Director, Information, Communications & Entertainment	
1990-95	**Hambrecht & Quist Incorporated**	**San Francisco, CA**
	Principal and Managing Director, Investment Banking-Japan & Korea (1991-1995)	
1975-89	**Goldman, Sachs & Co.**	**New York, NY**
	Vice President, International Group, Global Finance Department (1983-1989)	
	Vice President, Tokyo Representative Office (1979-1983)	
	Associate, Corporate Finance Department (1975-1979)	

NOT A CERTIFIED COPY

CONFIDENTIAL

WILLIAM N. HORTON

EDUCATION

1975 **MBA, Harvard Graduate School of Business Administration** — **Boston, MA**
Graduated with Distinction. Course concentration in accounting, finance and international business.

1973 **Southern Methodist University** — **Dallas, TX**
Courses in COBOL/Fortran programming and investment management.

1970 **BA, Economics, Davidson College** — **Davidson, NC**
Course concentration in international politics and economics of less developed nations.

DEAL EXPERIENCE

Venture and Start-up Related:

Elesys, Inc.: business plan, accounting systems, marketing plans and strategic business financing.
Tellus Technology Inc.: business plan; $2.5 million bridge financing; $14 million venture capital financing; $20 million product supply agreement; and implementation of accounting and ERP system
FunTix, Inc.: business plan and $1 million start-up financing.
e-employee.com, Inc.: executive summary; $540,000 angel financing and $5 million venture financing.
VIVAGY, Inc.: financial advisory.
NetsWork, Inc.: $12 million of venture financing.
ECO Manufacturing Co., Inc.: financing documents and $15 million venture financing.
ITI Medical Technologies, Inc.: $5 million venture financing.
MC Power Corporation: $30 million venture financing.
US Digital: $10 million venture financing.
Communications Intelligence Corporation: strategic advisory and $10 million financing.
The Trylon Corporation: $10 million strategic business financing and initial public offering.
AutoImmune, Inc.:financial advisory re licensing and joint development of proprietary bio-technology.
Creative BioMolecules, Inc.: licensing and joint development of proprietary bio-technology.
Mercury Interactive Corporation: $5 million distribution agreement.
Ramtron International Corporation: $15 million intellectual property and technology licensing agreement.
Biocircuits, Inc.: financial advisory re strategic business alliances.
Alameda Instruments, Inc.: distribution agreement and sale of the company.
Union Carbide, Inc.: joint venture for commercialization of power plant flue gas scrubber technology.
Integral Peripherals, Inc.: manufacturing agreement, $5 million of equity investment and subsequent $20 million licensing, research & development and equity investment.
Read-Rite Corporation: $50 million manufacturing joint venture and $30 million of equity investment.
Paradigm Technology, Inc.: $25 million technology and intellectual property licensing agreement, research and development agreement, and equity investment; and subsequent $3.5 million equity investment.
U.S. Memory, Inc.: DRAM memory manufacturing venture in the U.S.

Mergers & Acquisitions

Commonwealth Oil & Refining Company
Diversey Corporation
Kearney & Trecker Corp.
Abbott Laboratories, Inc.
Orient Leasing Co., Ltd.
Unisys Corporation
Spectragraphics Corporation
Alaris, Inc.
Vivagy, Inc.
Spar Aerospace, Ltd.
Reveal Computer Products, Inc.
Tellus Technology, Inc.
Alameda Instruments, Inc.
Carver Corporation
ARA Services, Inc.
Chips and Technologies, Inc.

NOT A CERTIFIED COPY

018895

16div-024258

CONFIDENTIAL

General Atomics Corporation
VLSI Technology, Inc.
PureSolutions, Inc.
EXL Consulting, Inc.
Mitsubishi Electric Co., Ltd.
Seattle Silicon Corp.

Structured and Project-Related Financing

U.S. Steel Corporation and Mitsubishi Corporation: $165 million project financing.
LTV Corporation, Sumitomo Metal Industries Co., Ltd and Mitsui & Co. (U.S.A.), Inc.: $185 million project financing.
Inland Steel Company and Nippon Steel K.K.: $481 million project financing of joint venture.
ANA Enterprises: structured, tax-advantaged special purpose entity auction preferred stock financing.
Fujitec America Inc.: structured, tax advantaged special purpose entity auction preferred stock financing.
NMB (USA) Inc.: structured, tax advantaged special purpose entity auction preferred stock financing.
Borg-Warner Corporation: $5 million, 5 year Yen/$ forward contract.
Southland Corporation: Yen-based sale and leaseback of U.S. 7-11 stores.
Orient Leasing Co., Ltd.: lease line of credit for financing subsidiary.
NEC Corporation: lease line of credit for financing subsidiary.
Evalca, Inc.: joint venture and project financing.
National Semiconductor: joint venture and project financing.

Initial Public Offerings

Flowers Industries, Inc.
Harte-Hanks Newspapers, Inc.
Orient Leasing Co., Ltd.
Exar Corporation
Shaklee (Japan) K.K.: subsidiary of Shaklee Corporation
Nippon Avionics K.K.: joint venture of Hughes Aircraft Company and NEC Corporation.
N.E. Chemcat, Inc.: joint venture of Engelhard Corporation and Sumitomo Metal Mining Co., Ltd.
Tellus Technology, Inc.
The Trylon Corporation

Private Placements

Communications Intelligence Corporation: $10 million equity financing.
Ideal Basic Industries: $80 million debt.
Mobil Corporation: $50 million debt.
Yamanouchi Pharmaceutical Co., Ltd.: $50 million convertible preferred stock.
Sony Corporation: $50 million convertible preferred stock.
Bristol Myers K.K.: Yen debt.
Sony Corporation of America: industrial development bonds.
Honda Motor Manufacturing Company: pollution control financing.
Suntory Limited: $10 million debt.
Mitsui & Co. (U.S.A.), Inc.: $40 million investment in Airborne Freight Company.

Public Offerings of Debt, including Commercial Paper

Indianapolis Water Company: $18 million.
Ford Motor Credit Company: over $1 billion in a series of offerings, including continuous offering of Medium Term Notes and Eurobonds.
Sears, Roebuck & Company: Samurai bond offering in Japan.
US JVC Corporation: commercial paper.
Sharp Corporation: commercial paper
Sumitomo Corporation of America: commercial paper.

NOT A CERTIFIED COPY

018896

CONFIDENTIAL

Bridgestone Tire Co. of America: commercial paper.
Mitsui Co. (America), Inc.: commercial paper.
Kanematsu-Gosho (U.S.A.) Inc.: commercial paper.
Lucky-Goldstar (U.S.A.): commercial paper.
Samsung Electronics: commercial paper.

Financial Advisory

H.L. Hunt Estate: valuation.
KMart: stock exchange listing.
Motorola: stock exchange listing and general advisory.
Knight-Ridder Corporation: stock exchange listing.
Ameritech: stock exchange listing.
Hambrecht & Quist: acquisition valuation of investment in Japanese venture fund.
Ford Motor Company: valuation of securities.
Mitsui & Co., (U.S.A.), Inc.: valuation of transfers of equity in Alumax, Inc.
Marcam Corporation: creation of a multi-part strategic alliance.
NEC Corporation: consulting study of financing alternatives.
Orient Leasing Co., Ltd.: financing subsidiary.
Elesys, Inc.: strategic business.
Rohm Co., Ltd.: general advisory.

OTHER ACTIVITIES

1992 - 2000	**The Seven Hills School** *VP, Board of Trustees*	**Walnut Creek, CA**
1998- 2000	**The Thacher School** *Co-head of Parents' Fund*	**Ojai, CA**

MILITARY SERVICE

1970 - 1972	**U.S. Army**	
	1st Lieutenant, Company Commander, 1st Air Cavalry Division	**Vietnam**
	2nd Lieutenant, Officer in Charge, Human Relations Basic Training Course	**Fort Campbell, KY**

NOT A CERTIFIED COPY

018897

CONFIDENTIAL

Appendix 2

William N. Horton

Expert Witness Experience

CASE	COURT	YEAR
Trial Testimony:		
Hyundai Motor Company v. Bering Truck Corporation and BTC Resolution, LLC *Bering Truck Corporation and BTC Resolution LLC v. Hyundai Motor Company*	International Arbitration	2003
Equative, Inc. f/k/a Attilaweb.com v. Alta Communications, et. al *Alta Communications, et al., v. Jeffrey A. Dracup*	American Arbitration	2004
Deposition:		
O'Keefe, et. al., v. Heaps, et. al. *Haupt et. al., v. Heaps, et. al.*	Fourth Judicial District Court, Utah County, State of Utah	2002
Monolithic System Technology, Inc. v. Synopsys, Inc., and Mountain Acquisition Sub, Inc.	Court of Chancery of the State of Delaware in and for New Castle	2004
Comdisco, Inc. v. Socialnet, Inc., et al.	Superior Court for the State of California, County of Santa Clara	2004

NOT A CERTIFIED COPY

018898

Appendix 3			
Documents Reviewed and Relied Upon			
Title	**Page Number**	**Date**	**Bates#**
CS First Boston: Sunbeam-Oster		5/8/95	CPH1257094-1257113
Goldman Sachs & Co.: Sunbeam Corporation		11/13/96	CPH1125115-1125117
Merrill Lynch: Sunbeam-Oster - Management Announces Major Restructuring		11/14/96	CPH1125110-1125114
Bear, Stearns & Co. Inc.: Sunbeam Corp. - Estimates Raised to $1.55 in 1997, and $2.25 in 1998, Rating Changed from Neutral to Buy		3/12/97	CPH1125139-1125142
Bear Stearns: Sunbeam Corp.		3/24/97	CPH1287455-1287469
Goldman Sachs & Co.: Sunbeam Corporation		4/23/97	CPH1051135-1051136
Goldman Sachs & Co.: Sunbeam Corporation		4/23/97	CPH0251579-0251580
Dean Witter Reynolds: Sunbeam Corporation		4/23/97	CPH0251575-0251578
Merrill Lynch: Sunbeam-Oster - Good Momentum as Q1 EPS Beat Expectations		4/24/97	CPH1125126-1125126
NatWest Securities: Sunbeam Corporation - Success of Growth Strategies Emerge: 1Q97 EPS Just Ahead of Expectations		4/24/97	CPH0251582-0251584
Merrill Lynch: Sunbeam Corp. Good Momentum as Q1 EPS Beat Expectations		4/24/97	CPH0251571-0251574
PaineWebber: Sunbeam - Dunlap might pull it off		4/28/97	CPH0251569-0251570
Donaldson, Lufkin & Jenrette - Sunbeam Corp. Next Step, The Orders		4/29/97	CPH0251581-0251581
Intentionally Left Blank			-
Goldman Sachs: Sunbeam Corporation		6/12/97	CPH1125122-1125123
Bear, Stearns & Co. Inc: Sunbeam - Q2 EPS of $0.30 Met Expectations on Surprisingly Strong Ongoing Sales Growth of 16% H2 EPS Fine Tuned - Year Remains at $1.57		7/24/97	CPH0472533-0472535
Goldman Sachs: Gulfstream Aerospace Corp.		7/24/97	CPH0472540-0472543
Goldman Sachs: AlliedSignal Inc.		7/24/97	CPH0472536-0472539
Goldman Sachs: Gulfstream Aerospace Corp.		7/24/97	CPH0472544-0472548
Donaldson, Lufkin & Jenrette: Sunbeam Corp. Strong Response to New Products		7/28/97	CPH2008316-2008318
McDonald & Co.: Sunbeam Corporation - Hattiesburg Plant Tour Provides Substance Behind the Headlines		10/7/97	CPH0306588-0306589
Bear Stearns: SOC: New Product Introductions on October 8		10/8/97	CPH0306574-0306575
Prudential Securities: Sunbeam Corporation		10/8/97	CPH0306590-0306592
Oppenheimer & Company, Inc.: SOC: Momentum Accelerates: 2 Key New Product Launches		10/8/97	CPH0306564-0306566
Oppenheimer & Co. Inc.: SOC: Revised: Momentum Accels. w/2 Key New Product Launches		10/9/97	CPH1287711-1287718
Oppenheimer & Co. Inc.: SOC: Revised: Momentum Accels. w/2 Key New Product Launches		10/9/97	CPH0306584-0306587
Goldman Sachs: Sunbeam Corporation		10/9/97	CPH0306583-0306583
Goldman Sachs: Sunbeam Corporation - New Products Lend Credibility to Growth Plan: Maintain RL		10/9/97	CPH0306567-0306568
PaineWebber: Sunbeam-Oster: Two New Products Unveiled - Part 1		10/9/97	CPH0306572-0306576
PaineWebber: Sunbeam-Oster: Two New Products Unveiled - Part 2		10/9/97	CPH0306569-0306571
Bear, Stearns & Co. Inc.: Sunbeam - Update From Analyst Meeting Raising 1998 EPS Estimate by $0.05 to $2.30		10/9/97	CPH0306576-0306578
Goldman Sachs		10/9/97	CPH0306579-0306582
The Buckingham Research Group: Sunbeam Corp.: Neutral - Income Statement Appears Strong; Balance Sheet a Question		10/22/97	CPH2008311-2008315

NOT A CERTIFIED COPY

Title	Page Number	Date	Bates#
Oppenheimer & Co., Inc.: Sunbeam Corporation - Household Durables		10/22/97	CPH1407297-1407305
Merrill Lynch: Sunbeam Corp - Strong Sales and Margin Gains Drive Q3 EPS		10/24/97	CPH1407315-1407318
Merrill Lynch: Analysis of Q3 EPS		10/24/97	CPH2008304-2008310
PaineWebber: Sunbeam - Beaming in on Phase III; upgrade to buy		10/29/97	CPH2008292-2008303
Prudential Securities: Sunbeam Corp.		10/30/97	CPH0480418-0480422
Goldman Sachs: Sunbeam Corporation - Sunbeam and the Seven Dwarfs: Why We Would Still Buy the Shares		11/3/97	CPH2008282-2008289
The Buckingham Research Group: Sunbeam Corp. - Sunbeam's Analyst Meeting At Neosho A Positive Surprise		12/4/97	CPH2008290-2008291
The Buckingham Research Group: Sunbeam Corp. - Sunbeam's Analyst Meeting At Neosho A Positive Surprise		12/4/97	CPH0484968-0484969
Bear, Stearns & Co., Inc.: Sunbeam - Update from Neosho Plant Tour		12/4/97	CPH0321942-0321944
CIBC Oppenheimer - SOC: Positive Analysts Mtg; Good News on Intl'l; Reit. Strong Buy, $60 Ta - Part 1 of 3		12/5/97	CPH0482038-0482038
CIBC Oppenheimer - SOC: Positive Analysts Mtg; Good News on Intl'l; Reit. Strong Buy, $60 Ta - Part 2 of 3		12/5/97	CPH0482042-0482042
CIBC Oppenheimer - SOC: Positive Analysts Mtg; Good News on Intl'l; Reit. Strong Buy, $60 Ta - Part 3 of 3		12/5/97	CPH0482046-0482046
Prudential Securities: SOC Shares Under Pressure; Reiterate Buy Rating		12/10/97	CPH1278495-1278496
PaineWebber: Sunbeam: Shares Weak; Story Still Strong		12/15/97	CPH0466399-0466401
CIBC Oppenheimer: Sunbeam Corporation - 4Q Comes Up Short; Reducing Estimates, but Maintain Strong Buy		1/28/98	CPH1327729-1327738
Goldman Sachs		1/29/98	CPH1059632-1059635
Merrill Lynch: SOC - Company Update		1/29/98	CPH1278468-1278494
PaineWebber: Sunbeam: Solid Close to 1997; Encore in 1998?		1/29/98	CPH1415426-1415429
The Buckingham Research Group: Sunbeam Corp.: Neutral - Fourth Quarter EPS In Line with Estimates; Neutral		1/29/98	CPH1279118-1279122
The Buckingham Research Group: Sunbeam Corp.: Neutral - Fourth Quarter EPS In Line with Estimates; Neutral		1/29/98	CPH1278485-1278486
Merrill Lynch: Sunbeam Corp. - Don Miss Consensus		1/29/98	CPH1279123-1279126
Prudential Securities: Sunbeam Corporation		1/29/98	CPH1415724-1415726
Prudential Securities: Sunbeam Corporation Company Update		1/29/98	CPH1328117-1328122
Goldman, Sachs & Co.: Sunbeam Corporation - Reiterate Buy; Selloff Overdone; Failure is Not an Option		1/30/98	CPH1415775-1415776
Prudential Securities: Sunbeam Corporation Company Update		2/2/98	CPH1328111-1328116
PaineWebber: Sunbeam - Did Al show his hand too soon?		2/6/98	CPH1415366-1415373
Standard & Poor's: Sunbeam Corp.		2/7/98	CPH1411173-1411177
CIBC Oppenheimer: Sunbeam Corporation		2/19/98	CPH1328092-1328102
Dun & Bradstreet Inc		2/20/98	CPH1394389-1394403
Bear, Stearns & Co., Inc. - Sunbeam - New Direction; Acquisitions; 1999 Estimates Raised to $3.00; Price Target Raised to $60-65		3/2/98	CPH1415376-1415378

NOT A CERTIFIED COPY

Title	Page Number	Date	Bates#
Merrill Lynch: Sunbeam Corp - Chairman Al Goes On A Buying Spree		3/3/98	CPH1279605-1279606
PaineWebber: Sunbeam: It Pays to be in Al's Camp		3/3/98	CPH1274390-1274393
PaineWebber: Sunbeam: It Pays to be in Al's Camp		3/3/98	CPH1028971-1028973
CIBC Oppenheimer: Sunbeam Corporation Post-Conference Call Conclusion: Very Positive		3/5/98	CPH1393485-1393489
CIBC Oppenheimer: Sunbeam Corporation Post-Conference Call Conclusion: Very Positive		3/5/98	CPH1279600-1279604
Merrill Lynch: Sunbeam Corp. - Chairman Al Goes On A Buying Spree		3/5/98	CPH0038719-0038720
Prudential Securities: Sunbeam Corp. Company Update - Sunbeam Begins Aggressive Plan To Consolidate Housewares Industry By Acquiring Coleman, Signature Brands, And First Alert		3/12/98	CPH1393479-1393484
Prudential Securities: Sunbeam Corp. Company Update - Sunbeam Begins Aggressive Plan To Consolidate Housewares Industry By Acquiring Coleman, Signature Brands, And First Alert		3/12/98	CPH1328079-1328084
PaineWebber: Sunbeam - Al's magical mystery tour		3/12/98	CPH1415380-1415399
CIBC Oppenheimer: Sunbeam Corporation - 1Q Sales May Fall Short, But for Reason We Can Live With; L-t View Unchanged		3/19/98	CPH1393472-1393478
Sand Brothers & Co., Ltd: Sunbeam Corporation - SOC Pre-Announces 1Q Sales Shortfall Due to Timing of Customer Buying; Focus on Bigger Picture, Namely Pending Acquisitions, Price Weakness Represents Buying Opportunity		3/19/98	CPH1393269-1393269
PaineWebber: Sunbeam: Grilled!!!		3/19/98	CPH1393266-1393268
PaineWebber: Sunbeam: Grilled!!!		3/19/98	CPH1274414-1274416
PaineWebber: Sunbeam: Grilled!!!		3/19/98	CPH1029174-1029175
Bear, Stearns, & Co. Inc. - Sunbeam		3/19/98	CPH1241513-1241514
PaineWebber: May & Speh and Sunbeam price new convertibles		3/20/98	CPH1393465-1393467
Goldman Sachs: Sunbeam Corporation		3/20/98	CPH1415540-1415541
Goldman Sachs: Sunbeam Corporation: Trimmed Q1:98E/1998E on Potential Q1 Sales Shortfall; RL		3/20/98	CPH1393262-1393263
Goldman Sachs: Sunbeam Corporation: Trimmed Q1:98E/1998E on Potential Q1 Sales Shortfall; RL		3/20/98	CPH1059641-1059641
Standard & Poor's: Sunbeam Corp.		3/20/98	CPH1397652-1397654
Standard & Poor's: Sunbeam Corp.		3/21/98	CPH1397650-1397651
The Buckingham Research Group: SOC		3/24/98	CPH1039208-1039208
CIBC Oppenheimer: SOC: Exec Departures, Poor Qtr: Our Thesis is in Question; Lowrg Rating to Hold		4/3/98	CPH1417371-1417373
Merrill Lynch: Convertible Week in Review		3/24/98	CPH1393468-1393471
PaineWebber: Sunbeam: Downgrade to Neutral from Buy		4/3/98	CPH1417370-1417370
PaineWebber: Sunbeam: Downgrade to Neutral from Buy		4/3/98	CPH1274417-1274417
PWR: Sunbeam: Downgrade to Neutral from Buy		4/3/98	CPH1417337-1417342
Buckingham Research Group: Sunbeam		4/6/98	CPH1424571-1424574
PaineWebber: Sunbeam: Downgrade to Neutral from Buy - Part 1		4/6/98	CPH1424581-1424583
PaineWebber: Sunbeam: Downgrade to Neutral from Buy - Part 2		4/6/98	CPH1424584-1424586
McDonald & Co.: SOC Reducing Rating to Buy Based Upon Short-Term Issues, Franchise Value Remains Intact		4/6/98	CPH1424578-1424580
Prudential Securities: SOC to Report Lower than Expected 1Q98 Sales and Earnings: Despite Extensive Near-Term Uncertainty, Significant Upside Potential Exists Over 12-18 Months		4/6/98	CPH1424568-1424570

NOT A CERTIFIED COPY

CONFIDENTIAL

Title	Page Number	Date	Bates#
Buckingham Research Group: SOC: Downgrade to Neutral: Reducing Estimates: Earnings Visibility Low		4/6/98	CPH1424575-1424577
Intentionally Left Blank			-
Buckingham Research Group: Sunbeam Corporation: Downgrade to Neutral; Earnings Visibility Low		4/6/98	CPH1417343-1417347
McDonald & Co.: SOC: reducing Rating to Buy (2) Based Upon Short-Term Issues; Franchise Value Remains Intact		4/6/98	CPH1417348-1417350
McDonald & Co.: SOC Reducing Rating to Buy Based Upon Short-Term Issues, Franchise Value Remains Intact		4/6/98	CPH1417348-1417350
CIBC Oppenheimer: SOC: [redacted] Chg in Our Initial Concls.; Story to Tread Water - Part 1		4/6/98	CPH1424588-1424591
CIBC Oppenheimer: SOC: [redacted] Chg in Our Initial Concls.; Story to Tread Water - Part 2		4/6/98	CPH1424592-1424594
Bear Stearns: SOC: EPS Shortfall & Management Changes Cloud the Outlook		4/6/98	CPH1417367-1417369
Goldman Sachs: SOC: Removing Shares Fm Recommended List; Rate MP: Lowering Ests - Part 1 of 2		4/6/98	CPH1417361-1417363
Goldman Sachs: SOC: Removing Shares Fm Recommended List; Rate MP: Lowering Ests - Part 2 of 2		4/6/98	CPH1417358-1417360
Merrill Lynch: Sunbeam: Downgraded on Earnings Uncertainty & Mgmt Changes		4/6/98	CPH1424595-1424598
CIBC Oppenheimer: Sunbeam Corporation: Top Management Trying to Make the Sun Rise Again		4/22/98	CPH1351727-1351731
CIBC Oppenheimer: Sunbeam Corporation: Top Management Trying to Make the Sun Rise Again - Part 1 of 2		4/27/98	CPH0468703-0468709
PaineWebber: Sunbeam: Is This a Stable Organization? - Part 1 of 3		5/11/98	CPH1415510-1415512
PaineWebber: Sunbeam: Is This a Stable Organization? - Part 2 of 3		5/11/98	CPH1415513-1415516
PaineWebber: Sunbeam: Is This a Stable Organization? - Part 3 of 3		5/11/98	CPH1415517-1415519
Goldman Sachs: Sunbeam Corporation: Q1 Shows Operating Loss; EPS Guidance Below Ests; MP		5/11/98	CPH1415520-1415521
Sunbeam Corporation: Recovery Plan Execution Will Determine Pace of Shareholder Reacceptance; Look For Shares To Rebound To At Least Mid-$30s Over Next 6-12 Months		5/12/98	CPH1417972-1417978
PaineWebber: Sunbeam: Out with the New, In with the New, New - Part 1		5/12/98	CPH0468723-0468727
Merrill Lynch: Sunbeam-Oster: Lower Expectations At The "New, New" Sunbeam		5/12/98	CPH0468719-0468722
Bear Stearns: SOC: Cheap Stock but Dead Money Until New Management Can Execute New Strategy		5/12/98	CPH0468716-0468718
First Call: Earnings Estimates Summary for SOC Sunbeam Corporation		5/12/98	CPH0468711-0468715
Research Notes: Sunbeam Corporation		5/12/98	CPH1415031-1415033
Consumer Cyclical: Sunbeam Corporation Company Update		5/13/98	CPH1351703-1351712
CIBC Oppenheimer: Sunbeam Corporation - Dunlap Ouster Long-term Positive: Near-term Fundamentals Negative		7/15/98	CPH0039454-0039462
Merrill Lynch: Research Summaries		6/15/98	CPH0468314-0468316
Merrill Lynch: Sunbeam Corp - Dunlap Fired; Estimates Still Look High		6/16/98	CPH0039469-0039470
Merrill Lynch: Sunbeam: Estimates Still Too High		6/16/98	CPH0468332-0468335

NOT A CERTIFIED COPY

Title	Page Number	Date	Bates#
CIBC Oppenheimer: Dunlap Ousted by Bd.; L-T Positive: This Was the Only Way: N-T Fund - Part 2 of 2		6/16/98	CPH0468336-0468341
The Buckingham Research Group: Sunbeam Corporation - Al Dunlap Removed as Chairman and CEO		6/16/98	CPH0468384-0468388
Prudential Securities: Jerry Levin Appointed CEO of Sunbeam; While EPS Forecasts Will Drop Due to 2098 Inventory Adjustment, Adequate Liquidity Not an Issue; Buy Retained		6/17/98	CPH1417941-1417943
Prudential Securities: Sunbeam Corporation - Discussion With New CEO Friday Confirms SOC Possesses Ample Liquidity and 1997 Financials Accurate		6/19/98	CPH1351658-1351661
Bear Stearns & Co., Inc.: SOC: Fire Sale on Estimates (Part 1 of 2)		6/28/98	CPH1414951-1414954
Bear Stearns & Co., Inc.: SOC: Fire Sale on Estimates (Part 2 of 2)		6/28/98	CPH1414949-1414950
Bear Stearns & Co. Inc.: SOC: Changing of the Guard in the Midst of Earnings Uncertainty		6/29/98	CPH1414957-1414958
Merrill Lynch: Preview of Q2 Earnings		7/1/98	CPH1327914-1327921
Merrill Lynch: Sunbeam Corp. - Increasing Uncertainty: Changing Risk Rating		7/1/98	CPH1279288-1279289
CIBC Oppenheimer: Sunbeam Corporation - Internal Meetings Positive; Near-term Liquidity Looks OK, But Reducing Ests		7/7/98	CPH1325260-1325270
Sunbeam Corporation: SOC ITS 1997 & 1Q98 Financials; SOC's Tangible Negative Net Worth Continues to Rapidly Deteriorate; Is Chapter 11 Next? Rating Reduced to Sell		8/7/98	CPH1392178-1392181
Consumer Cyclical: Sunbeam Corp. Company Update - Announcement Leads Us To Conclude No Reasonable Prospect Remains For Upside In Near-Term; Risks Could Escalate Quickly; Rating On SOC Reduced to Sell		8/10/98	CPH1351621-1351624
Banc of America Securities: Sunbeam Corporation		6/28/99	CPH1352713-1352717
PaineWebber: Sunbeam: Blame it on the reign	pp. 4-15	5/28/98	-
Prudential: Sunbeam, Company Update	pp. 17-25	5/13/98	-
CIBC Oppenheimer: Sunbeam: New Plan Looks Good on Paper, But Begins to Even Lower Earnings Base	pp. 27-38	5/13/98	-
CIBC Oppenheimer: Sunbeam: Top Management Trying to Make the Sun Rise Again	pp. 40-44	4/22/98	-
Prudential: Sunbeam: Company Update	pp. 46-51	4/9/98	-
CIBC Oppenheimer: Sunbeam: Post-Conf Call: No Chg in Our Intial Conclusions: Story to Tread Water	pp. 53-58	4/6/98	-
CIBC Oppenheimer: Sunbeam: Executive Departure, Poor Qtr & Other Issues: Downgrade to Hold	pp. 60-65	4/3/98	-
CIBC Oppenheimer: Sunbeam: Executive Departure, Poor Qtr: Our Thesis Is in Question: Downgrade to Hold	pp. 67-68	4/3/98	-
PaineWebber: Sunbeam: Al's magical mystery tour.	pp. 70-89	3/12/98	-
Prudential: Sunbeam: Company Update	pp. 91-96	3/12/98	-
CIBC Oppenheimer: Sunbeam: Post Conference Call Conclusion: Very Positive	pp. 4-8	3/5/98	-
CIBC Oppenheimer: Sunbeam: Announces 3 Acquisitions; Dunlap Contract Extended; Very Positive	pp. 10-16	3/2/98	-
CIBC Oppenheimer: Sunbeam: Review and Preview: 4Q Relief, 1998 Very Positive; Transaction On Way	pp. 18-28	2/19/98	-
PaineWebber: Sunbeam: Did Al show his hand too soon?	pp. 30-37	2/6/98	-
Prudential: Sunbeam: Company Update	pp. 39-44	2/2/98	-
Prudential: Sunbeam: Company Update	pp. 46-51	1/29/98	-

NOT A CERTIFIED COPY

018903

CONFIDENTIAL

Title	Page Number	Date	Bates#
CIBC Oppenheimer: Sunbeam: 4Q Comes up Short; Reducing Estimates, but Maintain Strong Buy	pp. 53-62	1/28/98	-
Prudential: Sunbeam: Company Update	pp. 64-69	12/11/97	-
CBIC Oppenheimer: Sunbeam: Very Positive Conversation w/Dunlap; Believe Weakness is Opportunity	pp. 71-78	12/9/97	-
CBIC Oppenheimer: Sunbeam: Positive Meeting;; Good News on International; Reiterate Strong Buy	pp.80-90	12/5/97	-
Prudential: Sunbeam: Company Update	pp.92-96	10/30/97	-
PaineWebber: Sunbeam: Beaming in on Phase III; upgrade to buy	pp.98-109	10/29/97	-
Oppenheimer & Co.: Sunbeam: 3Q97 EPS Better than Expected; Raising Estimates; Target Now $58-60	pp.111-119	10/22/97	-
Oppenheimer & Co.: Sunbeam:. Momentum Accelerates with Two Key New Product Launches	pp.121-128	10/10/97	-
Oppenheimer & Co.: Sunbeam: Revised: Momentum Accelerates with Two Key New Product Launches	pp. 130-137	10/8/97	-
PainWebber: Sunbeam: Still Shining	pp. 3-20	7/28/97	-
PainWebber: Sunbeam: Upbeat meeting with management	pp. 22-29	7/8/97	-
Oppenheimer & Co.: Sunbeam: Meeting with Top Management Very Positive; Raising Estimates, Target	pp. 31-41	6/30/97	-
Oppenheimer & Co.: Sunbeam: Meeting with Top Management Very Positive; Raising Estimates, Target	pp. 43-47	6/24/97	-
Prudential: Sunbeam: Report Review	pp. 50-55	6/23/97	-
Bill Strong Evaluations		various	-
Corporate documents		various	-
Sunbeam Press Release: "Sunbeam Corporation Adds Internation Distributors and Launches New Line of International Products" (Exhibit 300)		1/7/96	CPH1039054-
Sunbeam Press Release: "Sunbeam's First Quarter Sales uU 13%, Earnings Per Share Up 200% From Ongoing Operations"		4/23/97	CPH0247489-0247494
Morgan Stanley Dean Witter: Global High Yield Investment Research "Coleman Co. Making Investors Happy Campers" (strong buy) (Exhibit CPH 272)		10/9/97	CPH0473148-0473164
Sunbeam Press Release: Sunbeam Announces Sales Up Nearly 30%, EPS of $0.39 Exceeds Consensus Expectations		10/22/97	CPH0306560-0306561
Sunbeam Press Release: Sunbeam Corporation Retains Morgan Stanley to Explore Alternatives		10/23/97	CPH0588637-0588638
Deposition Exhibits: re: Laser Corporation - Produced by Morgan Stanley		no date	CPH1426289-1426296
Sunbeam Press Release: Sunbeam Completes Record Year for Sales, Earnings & Global Expansion		1/28/98	CPH0461624-0461626
Sunbeam Corporation Discussion Matials - Prepared by Morgan Stanley (DX 9)		February 1998	CP026288-026370
Sunbeam Long Range Strategic Plan (MS182)		no date	CPH1412533-1412551
Net Sales table with Potential Orders (DX 16)		no date	SB0028858-
Letter from Arthur Andersen to Morgan Stanley re: Sunbeam Audited Consolidated Balance Sheets (DX 17)		3/19/98	MS00375-00381
Sunbeam Press Release: "Sunbeam States that First Quarter Revenues May Be Lower Than Street Estimates (DX 14)		3/19/98	0016944-0016945
Letter from Arthur Andersen to Morgan Stanley re: Offering Memorandum (Exhibit 112)		3/25/98	CPH0129613-0129616
Testimony of Albert Dunlap - Sunbeam - SEC		April 3 - 7, 2000	-
Testimony of Albert Dunlap - Alfred Dunlap, Russell Kersh & Sunbeam		July 12 - 13, 2000	-

NOT A CERTIFIED COPY

Title	Page Number	Date	Bates#
Testimony of Albert Dunlap - Alfred Dunlap & Sunbeam; Russell Kersh & Sunbeam		September 18 20, 2000	-
Testimony of Albert Dunlap - Camden Asset Management v. Sunbeam		May 14 - June 5, 2001	-
Deposition of Lawrence A. Bornstein - Sunbeam-SEC		10/14/99	-
Deposition of Paul Shapiro - Sunbeam-SEC		5/11/00	-
Deposition of Paul Shapiro - Camden Asset v. Sunbeam		7/10/01	-
Deposition of Scott M. Yales - Coleman v. Morgan Stanley		11/24/03	-
Deposition of Ruth Porat		2/6/01	-
Deposition of John Tyree - Coleman v. Morgan Stanley		9/15/03	-
Deposition (continued) of John Tyree - November 14, 2003		11/14/03	-
Deposition of William Strong - December 4, 2003		12/4/03	-
Deposition of Lawrence Alan Bornstein - January 15, 2004		1/15/04	-
Deposition of Robert Duffy - July 4, 2004		7/4/04	-
Deposition of Joseph P. Page - April 27, 2004		4/27/04	-
Deposition of Paul E. Shapiro - June 8, 2004		6/8/04	-
Order Instituting Public Administrative Proceedings		3/15/01	-
Materials to Stockholders from Coleman re: merger, Coleman, Sunbeam, litigation settlement etc.		various	-
Morgan Stanley Contact Log Documents		various	-
Morgan Stanley: Due Diligence Materials		various	-
Presentations		various	-
Sunbeam Board Terminates Al Dunlap as Chariman and CEO	pp. 1-3	6/15/98	-
Sunbeam Corporation Denounces False Accusations in Barron's Article	p.4	6/8/98	-
Michael Price Responds to Fortune Sunbeam Article	p. 6	5/26/98	-
Shareholder Represented by Berger & Montague P.C. Files Class Action Lawsuit Against Sunbeam - NYSE: SOC -; Albert Dunlap and Other Insiders for Securities Fraud	pp. 8-9	5/11/98	-
Sunbeam Reports 1st Quarter Results; Expects 1998 EPS in	pp. 12-19	5/11/98	-
Bear Stearns & Co. Inc, Equity Research		1/29/98	CPH0468623-8625
McDonald & Co., Research Report		1/30/98	CPH0468652-53
Stull, Stull & Brody Announce Class Periods for Class Action Complaints	p. 20	5/8/98	-
Shareholder Represented by Berger & Montague, P.C. Files Class Action Lawsuit Against Sunbeam -- NYSE:SOC; Albert Dunlap and Other Insiders for Securities Fraud	pp. 22-26	5/4/98	-
Stull, Stull & Brody Announce Class Periods for Class Action Complaints	p. 27	4/24/98	-
Abbey, Gardy & Squitieri Announces Suit Against Sunbeam	pp. 29-30	4/23/98	-
Sunbeam Corporation Responds to Notices of Law Suits	p. 31	4/23/98	-
Notice of Pendency of Class Action Filed Against Sunbeam Corporation	pp. 32-33	4/23/98	-
Sunbeam Corporation Announces New $2 Billion Credit Facility and Redemption of Coleman Worldwide Notes	pp. 34-38	4/3/98	-
Sunbeam Corporation Acquires Controlling Interest in the Coleman Company, Inc.	pp. 39-40	3/30/98	-

NOT A CERTIFIED COPY

018905

Title	Page Number	Date	Bates#
Sunbeam Corporation Announces Successful Private Placement of $750 Million of Convertible Debentures	pp. 41-42	3/25/98	-
Sunbeam States First Quarter Revenues May be Lower Than Street Estimates	pp. 43-44	3/19/98	-
CLN Hldgs Still Watch Neg: Signature Brands Watch Pos	p. 47	3/3/98	-
Sunbeam Acquires Three Publicly Traded Consumer Products Companies; Coleman, Signature Brands and First Alert; Al Dunlap Signs New Three Year Contract	pp. 49-53	3/2/98	-
Sunbeam Completes Record Year for Sales, Earnings & Global Expansion	pp. 54-57	1/28/98	-
Sunbeam Completes Record Year for Sales, Earnings & Global Expansion	pp. 58-60	1/28/98	-
Re-Opening of Outdoor Cooking Facility in Neosho, Missouri	pp. 61-62	11/11/97	-
Sunbeam's Al Dunlap Breaks News of Retaining Morgan Stanley to Explore Merger, Sale or Acquisition of Company on CNBC	pp. 63-64	10/23/97	-
Sunbeam Corporation Retains Morgan Stanley to Explore Alternatives	pp. 65-66	10/23/97	-
Sunbeam Announes Sales Up Nearly 30%, EPS of $0.39 Exceeds Consensus Expectations	pp. 67-70	10/22/97	-
Sunbeam Will Exceed New Products Goal for 1997	pp. 71-72	10/13/97	-
Sunbeam Announces 16.6% Ongoing Sales Growth EPS of $0.30 Climbs 900% Over Prior Year Period	pp. 73-78	7/23/97	-
Sunbeam is Back, New & Improved	pp. 79-80	7/11/97	-
Sunbeam Announces Quarterly Dividend	p. 81	4/16/97	-
Sunbeam Launches Integrated Marketing Campaign for Outdoor Grill Line	pp. 82-84	4/10/97	-
The Chainsaw Legacy		11/25/96	-
What Paper Firms' Merger Means		11/18/96	-
Management & Business Features - Al Dunlap - Another Conquest Over, Plenty More To Go		12/18/95	-
A Return Visit to Earlier Stories -- Keeping the Faith: Kimberly-Clark Knew What it Was Doing		12/16/95	-
What Paper Firms' Merger Means		8/6/95	-
Letter from Sunbeam to Arthur Andersen		3/16/98	CPH0129687-689
Great Scott Went Down the Toilet		7/21/95	-
Scott M. Yales Exhibits 46-55, 58-59, 63-66		various	-
Sunbeam Corporation Form 10-K for fiscal year ended Decemer 27, 1997		various	-
Sunbeam Monthly Financials (Daily Sales for 1997 & 1998 by month)		various	-
Wal-Mart Form 10K for fiscal 1997			
Wal-Mart Form 10Q for first quarter of fiscal 1998			
CostCo Wholesale Form 10K for fiscal 1997			
CostCo Wholesale Form 10Q for the first quarter of fiscal 1998			
Kmart Form 10K for fiscal 1997			
Kmart Form 10Q for the first quarter of fiscal 1998			
Target Form 10K for fiscal 1997			
Target Form 10Q for the first quarter of fiscal 1998			
Home Depot 10K for fiscal 1997			
Home Depot Form 10Q for the first quarter of fiscal 1998			
Sears Roebuck Form 10K for fiscal 1997			
Sears Roebuck Form 10Q for the first quarter of fiscal 1998			

NOT A CERTIFIED COPY

01890

Title	Page Number	Date	Bates#
Service Merchandise Form 10K for fiscal 1997			
Service Merchandise Form 10Q for the first quarter of fiscal 1998			
Lowe's Form 10K for fiscal 1997			
Lowe's Form 10Q for the first quarter of fiscal 1998			
J.C. Penney Form 10K for fiscal 1997			
J.C. Penney Form 10Q for the first quarter of fiscal 1998			
Whirlpool Form 10K for fiscal 1997			
Whirlpool Form 10Q for the first quarter of fiscal 1998			
NACCO Industries Form 10K for fiscal 1997			
NACCO Industries Form 10Q for the first quarter of fiscal 1998			
Black and Decker Form 10K for fiscal 1997			
Black and Decker Form 10Q for the first quarter of fiscal 1998			

NOT A CERTIFIED COPY

018907

AGGRESSIVE TIME LINE FOR TRANSACTION

DECEMBER 15/16	Kersh, Fannin and Langerman meet with other side in New York to work on key issues and major terms
	Inform Morgan Stanley and get them working on fairness opinion
	They inform their bankers (presumably Mark) and do the same
	Inform Skadden, Arps of deal and meet with them to discuss letter of intent/term sheet (Note that one of us may have to use a different firm. Suggest possibly Sues firm or McDermott firm)
DECEMBER 18	Dunlap, Perelman and Price meet to handshake the deal.
DECEMBER 19 (Friday)	Skadden, Arps finalizes letter of intent/term sheet/sign by fax
DECEMBER 22 (Monday)	Issue joint press release or coordinate separate press releases, announcing agreement in principle to merge the two companies
DECEMBER 29 (Monday)	Sunbeam Board meeting in Delray Beach/Morgan here for fairness File Hart Scott materials
JANUARY 12 (Monday)	Mail proxy materials to shareholders They mail their proxy materials
JANUARY 29 (Thursday)	Our Shareholders meet in New York to approve transaction. Hart Scott clearance due
	Their shareholders meet to approve transaction
FEBRUARY 2 (Monday)	Begin work as new company
	Al buys lavish estate in Wichita, announces he is selling Boca place and moving there
	OR Company moves headquarters to Wichita, leaves Chairman and Secretary in Delray

NOT A CERTIFIED COPY

018909

SB 087859
Confidential Treatment
Under FOIA Requested

Sunbeam.

Legal Department

MEMORANDUM
GENERAL COUNSEL

PRIVILEGED AND CONFIDENTIAL/ATTORNEY-CLIENT COMMUNICATION

TO: **Al Dunlap**
Russ Kersh

FROM: David Fannin

DATE: **December 8, 1997**

RE: Perelman - Key Points

The merger/combination of these two companies is virtually ideal.

Complementary product lines -- Their outdoor consumer products and our outdoor cooking could be the powerhouse outdoor company in the world.

Customer base very compatible -- And Wal-Mart and others want to consolidate supplier base. More clout with retailers.

Many synergies are evident -- two public companies need separate finance, legal, accounting, MIS, insurance and other functions. Probably could save tens of millions with very little effort.

International emphasis of Sunbeam fits countries where Coleman is already big, such as Japan and Europe. Sunbeam is very successful in Latin America and could add distribution to Coleman products in that area of the world.

Marketplace is looking for both companies to DO something, and this will be very well received.

We, as well as the Michael Price organization, see tremendous boost in stock price of the combined entity. One plus one equals at least three and maybe four. Easily looking at a $60 to $65 stock in a hurry.

No better time than right now to get going. Start 1998 off with the new entity in place by early to mid first quarter. Evaluate existing management talent and attract new players to a much

NOT A CERTIFIED COPY

018911

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

higher profile entity.

We are going to do something at Sunbeam. Have looked at possible sale of the Company, and that remains viable. However, this looks even better to us -- and to the Price organization -- as we see a potentially much more valuable company to use either as a platform for acquisitions or to sell within 12 to 18 months. Could build a consumer powerhouse.

Potential exit strategy (partial or complete) by means of secondary offering(s) in late 1998 or early 1999.

We are not wed to having to run the combined company. More than willing to do so, but also willing to step aside if that is what is in the best interests of all concerned.

NOT A CERTIFIED COPY

018912

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SB 351946
16div 024273
CPH0586587

KEY POINTS TO COME OUT OF MEETING

1. Basic understanding of deal structure (merge CLN into SOC) and the exchange ratio on the stock. Exchange to be agreed to as 2 CLN shares for each share of SOC received by CLN shareholders. CLN holders will undoubtedly benefit from this, as SOC stock will likely increase in value with the announcement that AL is staying for 3 years more and will build a powerhouse consumer products company through acquisitions.

2. Confirm that SOC will use Skadden, Arps. We have been using them for months in this transaction. CLN can use whoever else it wants.

3. Basic understanding of <u>timing</u> of key events. We want:

a) Skadden will prepare a definitive agreement on Friday, December 19 and get it to CLN's lawyers over the weekend. Each Board should meet on Monday, December 22 to approve the agreement. It will include a $50 million (or greater) breakup fee in each direction and a strong no-shop agreement in both directions.

b) WE MUST HAVE ACCESS TO THEIR BUSINESS PEOPLE OVER THE WEEKEND IN NEW YORK SO THAT MORGAN STANLEY CAN DISCUSS THE BUSINESS WITH THEM IN ORDER TO GIVE THE FAIRNESS OPINION. WE WILL MAKE OURSELVES AVAILABLE TO THEIR BANKERS OVER THE WEEKEND AS WELL.

c) The two Boards MUST meet and vote on Monday, the 22nd. Period. They may want to put it off until January. We must resist this. Morgan MUST meet with Coleman management this weekend in order to be able to give a fairness opinion to our Board on Monday, the 22nd.

d) Announce the deal after the market closes on the 22nd. [Dana Kennedy will get an exclusive interview early evening on the 22nd.]

e) Begin transition planning the week of January 5. Al, Russ and David will travel to Wichita to meet management below Levin, Page, etc. and find out weaknesses and strengths. We should also begin recruiting for a COO.

f) Subject to SEC clearance, we would like to have shareholder meetings by the end of January and implement the combination by February 1.

4. Understanding as to management structure. Ron needs to buy off on an 8-person Board with Price and Perelman each having one representative on the Board (with each of those Directors on the Executive Committee). By the way, when Price and Steinhardt had 70% of the Company, they had <u>one</u> representative each, with both of them on the Executive Committee. Also, Ron should be briefed on Al's new contract and to his

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-024074 CP1046948

basic decision-making autonomy as Chairman and CEO.

5. Agreement that this is only the first of several strategic acquisitions and that the mechanism for building shareholder value will be to do acquisitions, rather than buy back shares, leverage up the company, etc. Those things could come later.

6. Basic agreement as to the nature of press statements to be made by each company, Al, Ron and Michael.

7. No changes in employment arrangements at Coleman (i.e. no new employment contracts, management incentive plans, etc.) and no renewals of existing contracts without Sunbeam's approval.

NOT A CERTIFIED COPY

018915

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div0024275 OPP10466949

SUNBEAM CORPORATION

Table of Contents

SECTION I OVERVIEW OF THE COLEMAN COMPANY, INC.

SECTION II PRELIMINARY MERGER ANALYSIS

SECTION III SECOND STEPS

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 00024431

DEPOSITION EXHIBIT 222
Lee
6-16-99

L16810

MORGAN STANLEY CONFIDENTIAL 0000432

NOT A CERTIFIED COPY

OVERVIEW OF THE COLEMAN COMPANY, INC.

816810

SUNBEAM CORPORATION

The Coleman Company, Inc. Transaction Rationale

Merits/Value

- Dominant positions in its categories; camping and outdoor equipment
  - Nearly 40% market share; next largest competitor has 10%
- Strong brand names: *Coleman, Camping Gaz, Eastpak, Sierra Trail, Powermate* (to be sold?)
  - Associated with quality, value and safety
  - Reinforced by high advertising effort
- Fragmented camping and outdoor industries
  - Opportunities for continued consolidation
- Favorable industry trends
  - Nature family-friendly activities in demand by baby-boomers
  - Consumers willing to pay more for convenience and comfort
  - Strong growth over the last 10 years; still not a mature market
- Distribution strength
  - Economies of scope; only camping equipment manufacturer that offers a broad spectrum of products
  - Broad set of distribution: Mass Marketers to Specialty
- Several opportunities to create value remain
  - Untapped strength of the *Coleman* brand
  - Industry has lacked innovation and advertising

Issues

- Restructuring program underway
  - Results just beginning to show
  - Poor current profitability
  - Remaining improvements uncertain
- Research earnings estimates already include $50MM of cost savings.
- Continuing problems in integrating past acquisitions
- Camping industry vulnerable to seasonality and poor weather
  - Unpredictability of earnings
  - Japan has been weakening
- High current leverage
- Inventory problems in Asia, particularly in Japan
- Still unclear whether the Company has the infrastructure to manage growth and profitability

616810

MORGAN STANLEY CONFIDENTIAL 0000243

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

The Coleman Company, Inc. Product Lines

Outdoor Recreation								Hardware			
Lanterns & Stoves	Fuel	Coolers & Jugs	Recreational Soft Goods	Outdoor Furniture	Electric Lights	Spas	Camping Accessories	Generators	Air Compressors	Pressure Washers	Safety & Security Products
Brand Names											
Coleman Camping Gaz Peak 1	Coleman Camping Gaz Peak 1	Coleman Camping Gaz	Coleman Peak 1 Eastpak Timberland	Coleman Sierra Trails	Coleman Powermate Job-Pro Camping Gaz	.....	Coleman	Coleman Powermate	Coleman Powermate	Coleman Powermate	Firex Code 1 Coleman Shelltra
Products											
Single fuel-powered lanterns & stoves Dual fuel-powered lanterns & stoves Propane fueled lanterns & stoves Butane fueled lanterns & stoves	Propane cartridges Butane cartridges Propane camping fuel Butane camping fuel	Personal coolers Large coolers Beverage coolers Soft-sided coolers	Tents Sleeping bags Backpacks Daysacks Sports bags Duffel bags Rucksacks	Aluminum-frame folding furniture Steel-framed folding furniture	Hand held spotlights Flashlights Fluorescent lanterns Rechargeable lanterns Rechargeable flashlights	Spas	Cookware Utensils	Portable generators	Air-compressors	Pressure washers	Smoke alarms Carbon monoxide detectors Thermostats

026810

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 00034434

MORGAN STANLEY

SUNBEAM CORPORATION

The Coleman Company, Inc. Summary Descriptive Sheet

($MM, except per share amounts)

DESCRIPTION OF BUSINESS:

Leading manufacturer and marketer of consumer products for the outdoor recreation and household markets on a global basis. The Company's products have been sold domestically and internationally under the Coleman brand name since the 1920s.

The Company attributes its market position to the strength of the Coleman brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

RECENT EVENTS:

November 13, 1997 - The Company announced a small 3rd quarter profit, benefiting from recent restructuring efforts.

September 2, 1997 - The Company announced the appointment of Joseph P. Page to the position of CEO, succeeding Steven L. Kaplan who is leaving the Company.

August 7, 1997 - The Company reported 2Q earnings of $0.47 (excluding restructuring charges and extraordinary items) compared to $0.51 for the same period last year.

May 27, 1997 - The Company said it is moving its headquarters to Wichita Kansas, from Golden, Colorado in order to be closer its main manufacturing operation.

April 15 1997 - The Company announced that it will close three US and one international factory and its 7,000 person workforce by 10% and eliminate about 6-7 of its product line.

SELECTED INFORMATION:

Year of Incorp	Delaware
Headquarters	Boulder, CO
Stock Symbol	CLN
Listing	NYSE
Fiscal Year End	December 31

SEGMENT SALES BREAKDOWN:

Industry			Geographic		
Outdoor Recreation	$899.5	69.6%	Domestic	$707.4	82.8%
Hardware	370.7	30.4%	Europe	148.78	11.8%
			RETW	219.1	18.0%
			Eliminations	(175.1)	-14.4%
Total	$1,270.2	100.0%	Total	$1,270.2	100.0%

SELECTED FINANCIAL INFORMATION:

	Fiscal Years Ended December 31,			9 Yr	LTM	Estimates (2)	
	1994	1995	1996	CAGR	(9/30/97)	1997E	1998E
Revenues (1)	$795.6	$911.6	$1,270.2	23.4%	$1,455.8	$1,352.9	$1,267.8
% Change		14.6%	39.3%				-6.3%
EBITDA (1)	102.8	123.9	99.0	-1.9%	91.8	119.4	122.4
% Margin	12.9%	13.6%	7.8%		6.3%	11.3%	11.9%
EBIT (1)	80.1	101.8	62.6	-11.6%	52.1	99.4	101.4
% Margin	10.1%	11.2%	4.9%		3.6%	9.4%	9.9%
Net Income (1)	42.2	56.0	11.1	-48.3%	6.0	54.6	57.9
% Margin	5.3%	6.1%	0.9%		0.4%	5.2%	5.7%
Capital Expenditures	41.9	29.1	41.1	0.0%	52.7	60.0	60.0

SELECTED SHARE INFORMATION:

Stock Price (12/9/97)	$15 1/16
52 Week High	31 7/8 (11/3/97)
10 year High (1992)	36 1/2
Shares Outstanding (MM)	51.425
Dividend	$0.00
Dividend Payout	0.0%
Dividend Yield	0.0%

SELECTED VALUATION PARAMETERS:

	LTM	1997E		P/S	P/E
Adj Mkt Cap/Sales (3)	111.9%	101.9%	FY 1996	$0.21	32.1 x
Adj Mkt Cap/EBITDA (3)	21.7 x	19.5 x	LTM	0.18	16.4
Adj Mkt Cap/EBITDA (3)	18.2	9.5	1997E (5)	0.18	11.9
			1998E (5)	0.99	11.5
Market/Book (4)	1.1				
			Proj 5 Yr Growth (5)	10%	
Discount to LTM High	(19.9)%		1998E PE to Growth		
Discount to 10-year High	(41.1)			0.9 x	

OWNERSHIP:

Significant Shareholders (6):		DLJ Holdings (6):	
Total Insider Holdings	41.3%	Ronald O. Perelman (14) Director	0.2%
		Ann W. Stewart (15) Director	0.0%
		Other	0.1%
Institutional Ownership	42.7%		
Retail	0.1%		
Total	100.0%	Total Insider Holdings	41.3%

CAPITALIZATION:

	Book Capitalization at 9/30/97		Market Capitalization at 12/9/97	
	Amount	%	Amount	%
Short-Term Debt	$0.0	0.0%	$0.0	0.0%
Long-Term Debt	$121.6	44.9%	$121.6	10.4%
Preferred Stock	0.0	0.0%	0.0	0.0%
Shareholders Equity	149.0	55.1%	818.1	69.6%
Total Capitalization (7)	$270.6	100.0%	$1,299.1	100.0%
Cash and Cash Equivalents			$19.9	
Adjusted Market Capitalization (3)			$1,279.2	

SELECTED CREDIT STATISTICS:

EBIT/Net Interest	0.5 x
EBITDA/Net Interest	2.2
Total Debt/EBITDA	1.1
Senior Debt Ratings	
- Moody's	NA
- S&P	NA

Notes:
(1) Sales, EBIT, EBITDA and Net Income are for continuing operations before any extraordinary or non-recurring items, and cumulative effect of accounting changes
(2) Estimates from CSFB research report dated December 10, 1997; Net income estimates from FY1 FS
(3) Adj Market Cap consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents
(4) Based on a closing market price of $15 1/16 per share on 12/9/97 and 51.4 MM shares outstanding on 9/30/97
(5) IBES/FS earnings growth rate 1998/97
(6) Based on information from proxy dated 9/8/97, institutional ownership from Bloomberg
(7) Total Capitalization excludes short-term debt

[illegible]

1 Only amounts in excess of

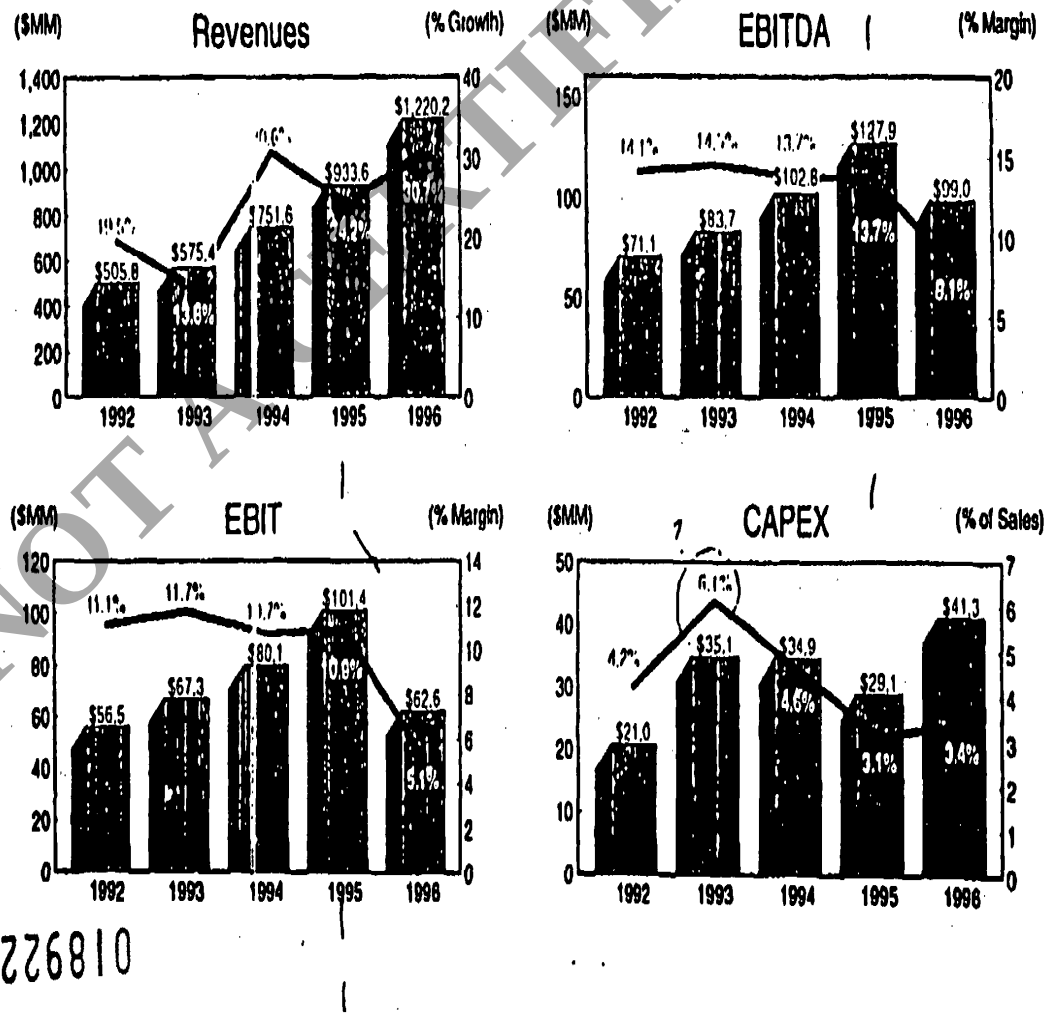
NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 00024280

SUNBEAM CORPORATION

The Coleman Company

Historical Financial Overview[1]



226810

Note: (1) Financials exclude all non-recurring items.

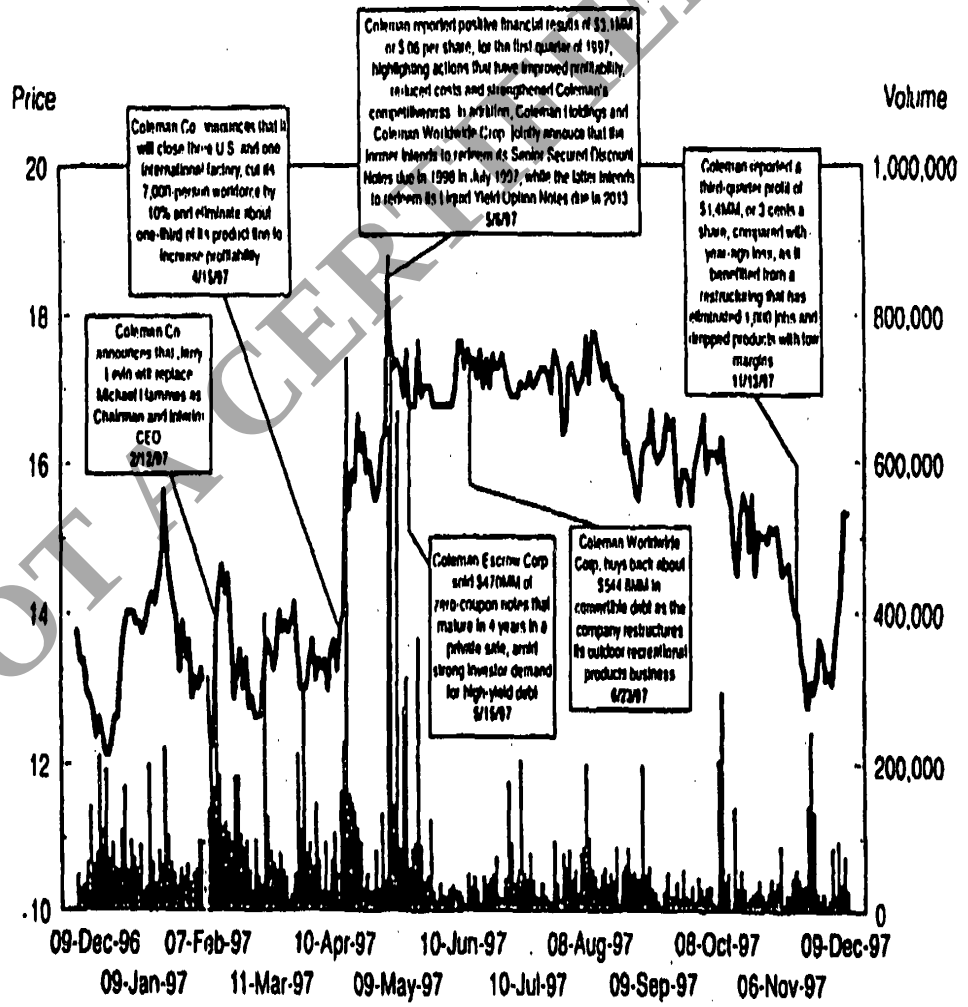
MORGAN STANLEY CONFIDENTIAL COCG436

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Coleman Co. - Annotated Share Price/Volume Analysis

December 9, 1996 - December 9, 1997



018923

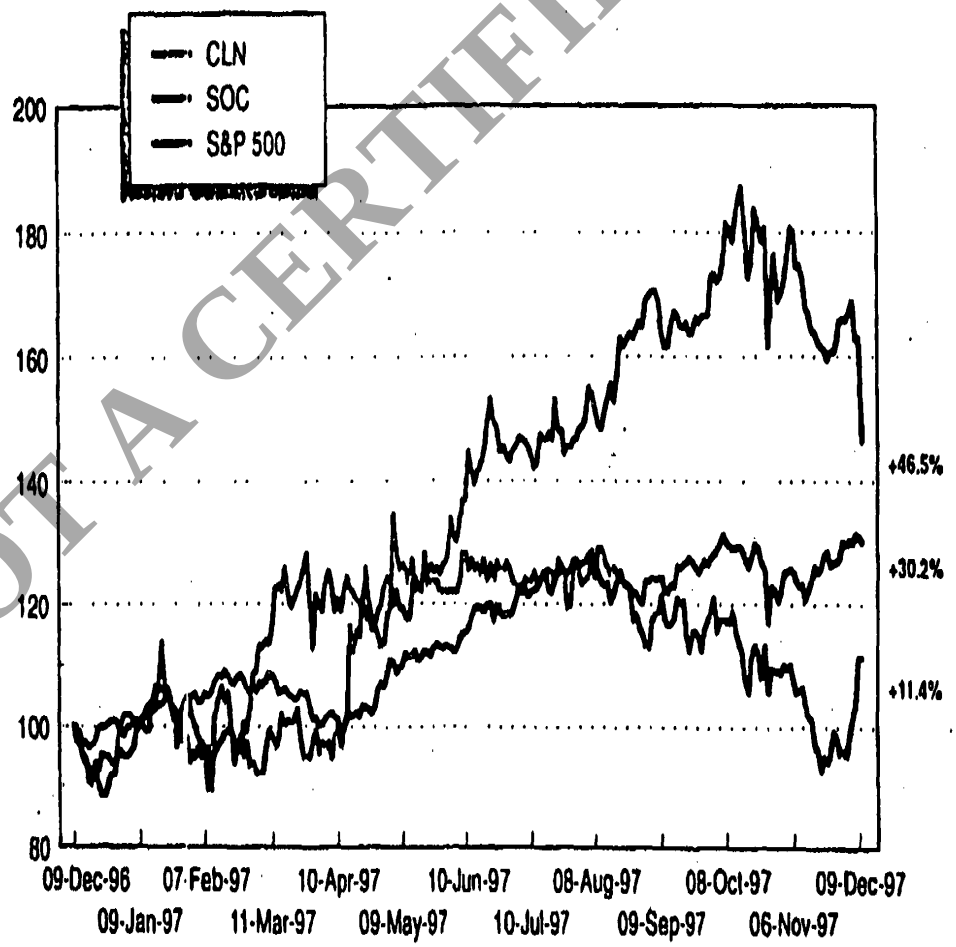
MORGAN STANLEY CONFIDENTIAL CC002437

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Coleman Co. - Indexed Share Price Analysis

December 9, 1996 - December 9, 1997



NOT A CERTIFIED COPY

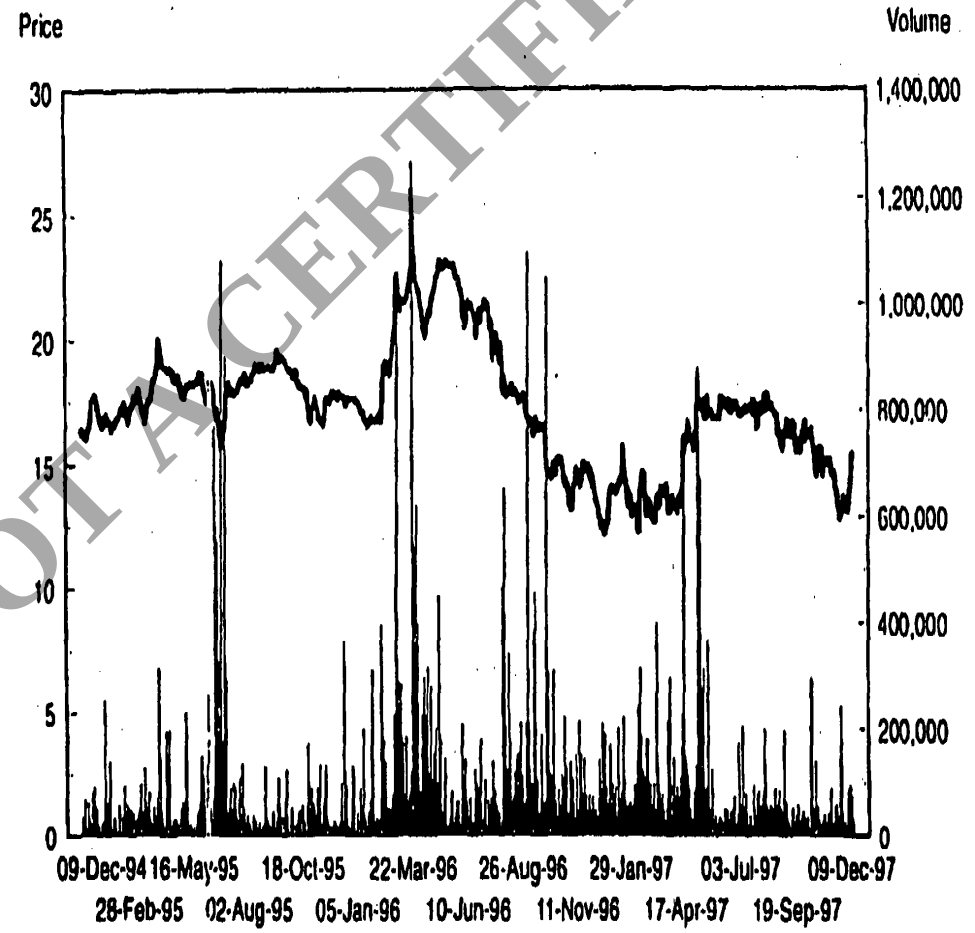
MORGAN STANLEY CONFIDENTIAL 00024388

126810

SUNBEAM CORPORATION

Coleman Co. - Share Price/Volume Analysis

December 9, 1994 to December 9, 1997



018925

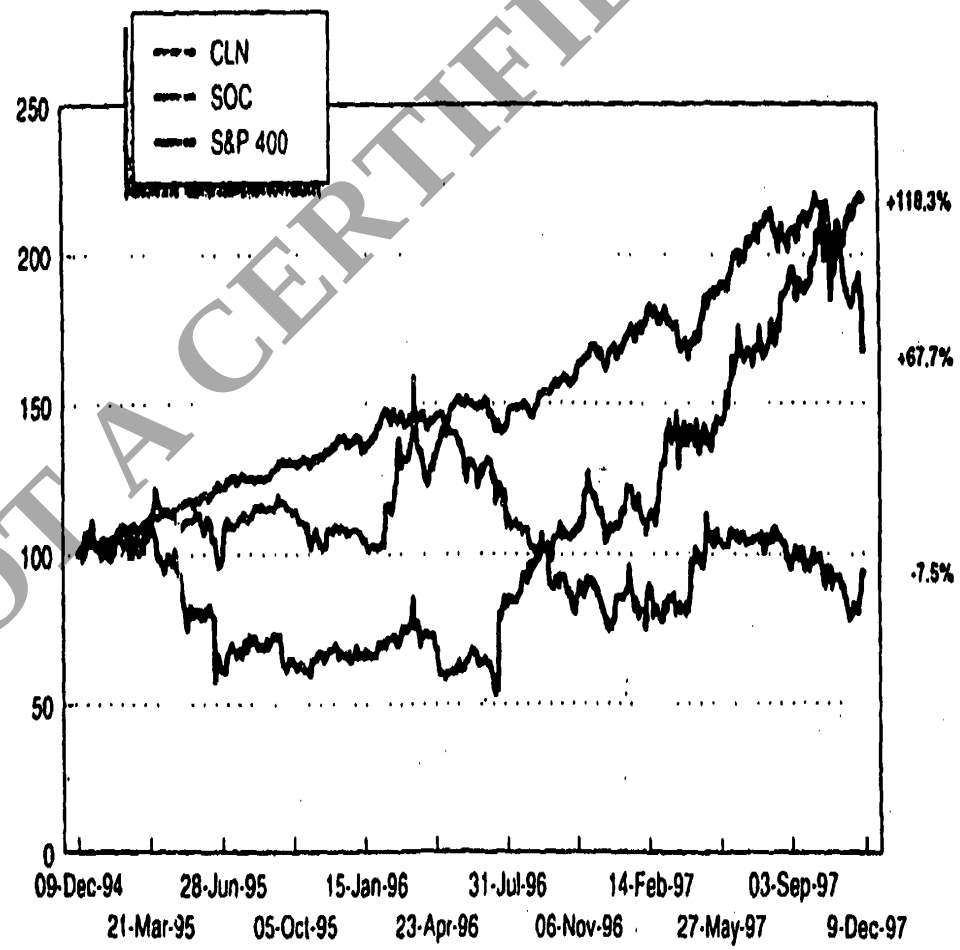
MORGAN STANLEY CONFIDENTIAL 0002439

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Coleman Co. - Indexed Share Price Analysis

December 9, 1994 - December 9, 1997



926810

MORGAN STANLEY CONFIDENTIAL 0003440

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

The Coleman Company: Summary of Recent Analyst Estimates

Date	Price	Firm/(Analyst)	Recomm.	Target Price	EPS 1997E	EPS 1998E	PE 1997E	PE 1998E	Long Term EPS Growth	1998 PE/Growth
11/18/97	$14.25	CS First Boston/ (L. Hyman / H. Jenssen)	Buy	$23 12 months	$0.90	$1.10	28.5 x	13.0 x	15.0%	.87
11/14/97	$14.00	Prudential Securities/ (S. Gallagher)	Buy	$21 - $23 12 months	0.48	1.15	29.2	12.2	26 - 28%	.86 - .92
11/13/97	$14.00	Oppenheimer/ (S. Eisenberg / L. Dupman)	Hold	NA	0.45	0.87	31.1	16.1	NA	NA
12/09/97	$15.31	I/B/E/S			$0.48	$0.99	31.9x	15.5	17.5%	.89
12/09/97	$15.31	First Call (Ten Brokers)			$0.48	1.01	31.9	15.2	16.7%	.91

- "The company's performance in the first half of 1998 will demonstrate to investors the untapped strength of the Coleman brand and the newly formed existence of an operating base that is exceptionally well-positioned for the growth of the Coleman franchise...Our investment hypothesis is based on the overall health of the camping industry, the opportunities associated with this health which are yet to be exploited, the enduring strength of the Coleman brand name and Mr. Levin's ability to bring operational discipline to a neglected infrastructure." *(Morgan Stanley - 10/9/97)*
- "After an earnings stumble in 1996, a new management team, lead by Mr. Jerry Levin, is refocusing the company on profitability while attempting to revitalize the industry through increased advertising and new product innovations." *(Morgan Stanley - 10/9/97)*
- "With the majority of the restructuring initiatives now behind the company, we have witnessed improved profitability. Yet, sales volumes of higher margin product and an extremely powerful new product pipeline will be necessary to sustain growth in 1998." *(Oppenheimer - 11/13/97)*
- "Signs of success from the company's restructuring and growth strategies emerged as Coleman experienced share gains in core domestic outdoor recreation sales and improved gross margins." *(Prudential Securities - 11/14/97)*
- "The restructuring is on or ahead of the plan: 1,000 jobs have been eliminated compared with a goal of 700; 25% of SKUs have been cut compared to an initial target of 33%, which management now believes it can exceed; and liquidity has increased by $100 million, already reaching the year-end objective. Moreover, anecdotal indications of retailers' response to the new lineup for 1998 have been quite favorable." *(CS First Boston - 11/18/97)*

MORGAN STANLEY CONFIDENTIAL 0006441

NOT A CERTIFIED COPY

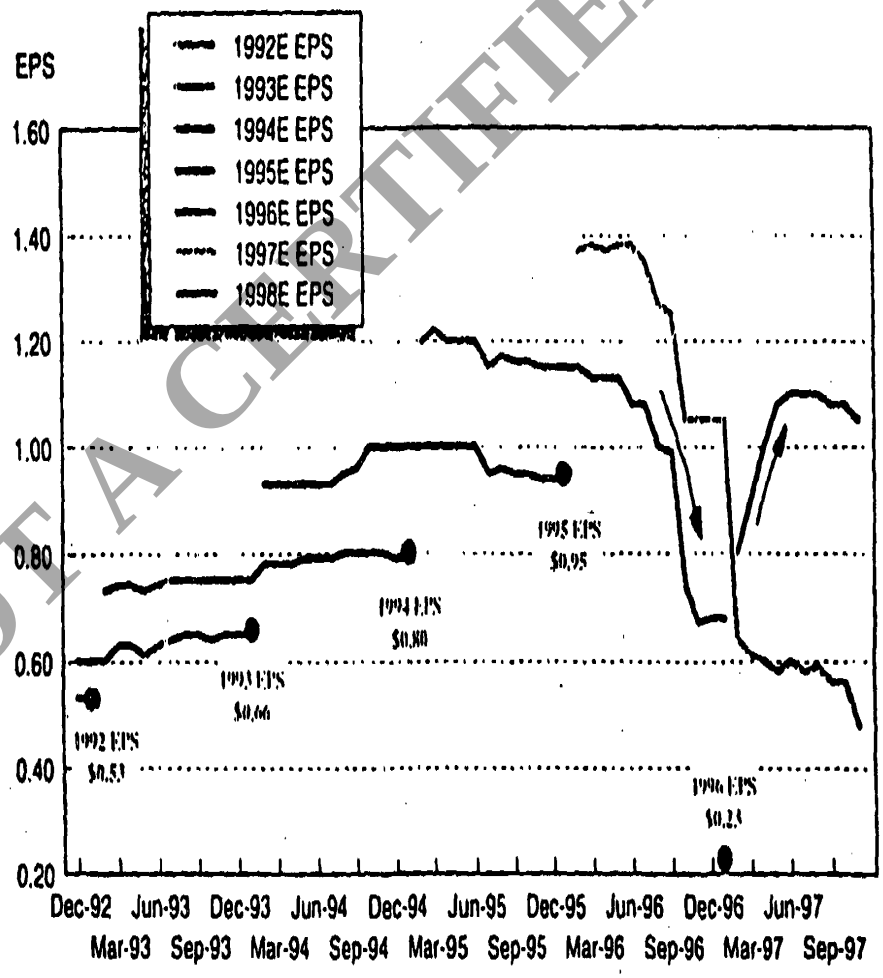
L26810

MORGAN STANLEY CONFIDENTIAL C0003442

SUNBEAM CORPORATION

The Coleman Company, Inc.

Earnings Estimate Progression



826810

Source: *I/B/E/S* monthly estimates

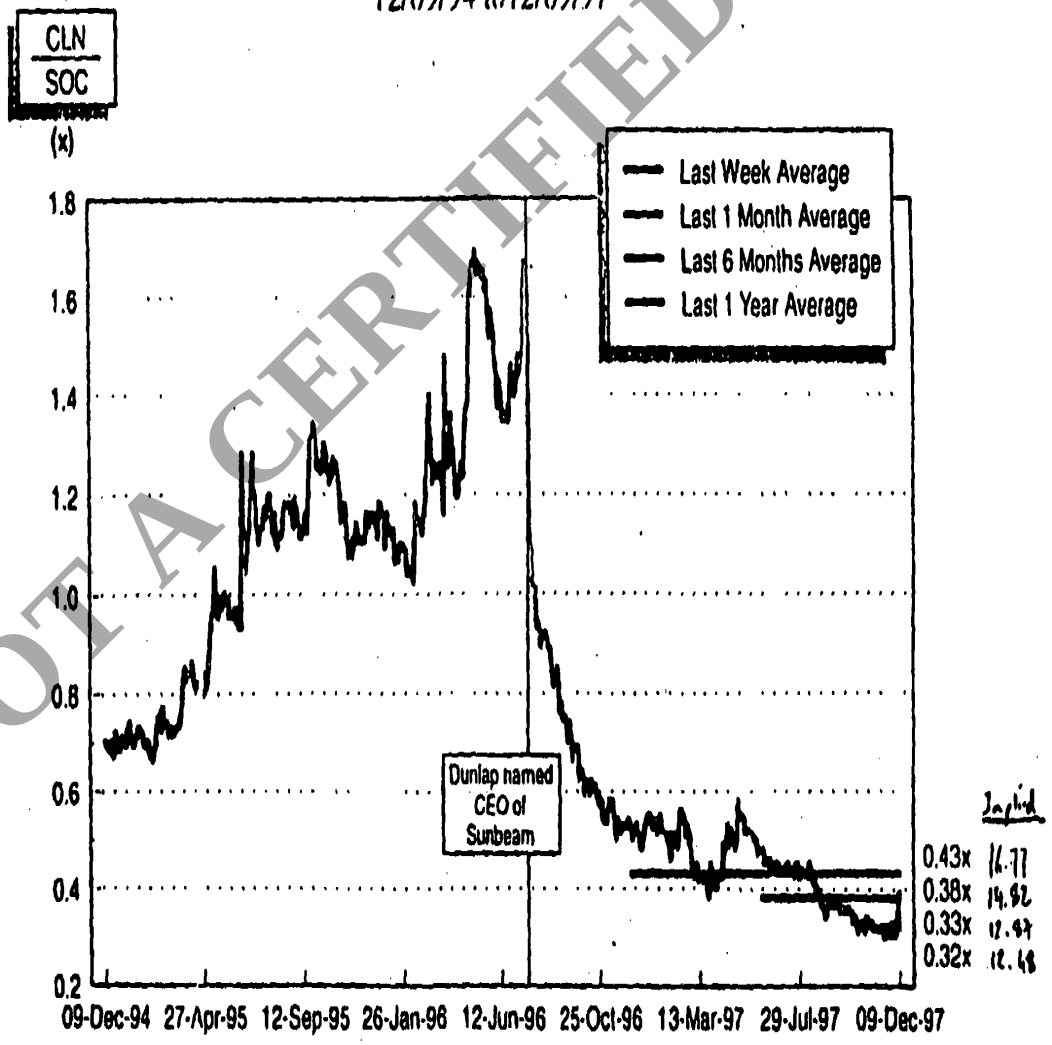
NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000243

SUNBEAM CORPORATION

Coleman Co. - Historical Exchange Ratio Analysis

12/09/94 to 12/09/97



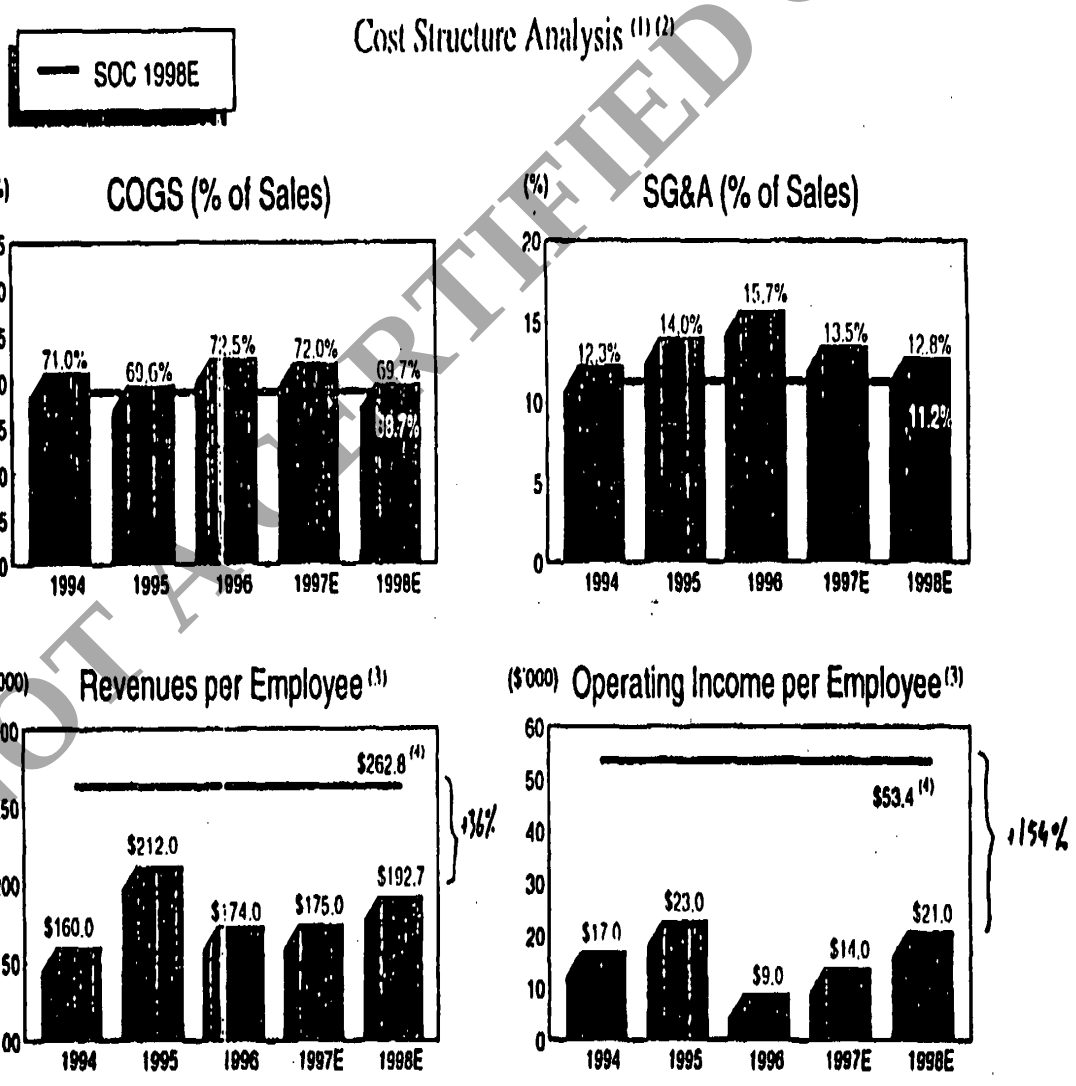
626810

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

The Coleman Company

Cost Structure Analysis [1] [2]



Notes: (1) Financials exclude all non-recurring items.

(2) CLN estimates based on CS First Boston research report dated 11/18/97. SOC estimates based on Oppenheimer research report dated 10/22/97.

(3) Number of Employees assumed to remain constant from 1996 onwards.

(4) SOC 1998E divided by 1996 number of employees.

MORGAN STANLEY

MORGAN STANLEY CONFIDENTIAL 00003444

NOT A CERTIFIED COPY

16div-024289

THE COLEMAN COMPANY

Analysis of Institutional Shareholdings

Institutions [1]	Amount	%
Manning & Napier Advisors, Inc.	1,449,597	2.7%
General Motors Invt. Mgmt. Corp.	620,000	1.2%
California Public Employees Rtmnt.	527,600	1.0%
ARCO Investment Management Co.	500,000	0.9%
Fred Alger Management Inc.	462,000	0.9%
Keystone Investment Management Co.	380,000	0.7%
Luther King Capital Management	290,000	0.5%
STI Capital Management	279,940	0.5%
New Jersey Division of Investment	226,000	0.4%
Standard Pacific Capital LLC	216,794	0.4%
Barclays Global Investors, N.A.	211,566	0.4%
Long-Term Capital Portfolio, L.P.	209,000	0.4%
The Florida State Board of Admin.	180,000	0.3%
Kingdon Capital Management Corp.	140,000	0.3%
Total Institutional Holdings	**5,692,497**	**10.7%**

Insiders [2]	Amount	%
Ronald O. Perelman	44,067,520	82.8%
Other Insiders	322,594	0.4%
Total Insider Holdings	**44,390,114**	**83.2%**
Other Holdings	3,282,879	6.1%
Total Shares Outstanding [3]	**53,424,856**	**100.0%**

Notes:
(1) Based on Technimetrics ownership run dated 12/10/97
(2) Based on Proxy dated 3/31/97
(3) Based on common shares outstanding per 9/30/97 10Q

186810

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL COC0345

THE COLEMAN CORPORATION

Directors and Officers

Name (Age)	Appointed	Committee(s)	Positions with Company and Other	Shares (including options)[1]
Ronald O. Perelman (54)	1989	Executive	Chairman of the Board of Directors and Chief Executive Officer of Mafco Holdings Inc., MacAndrews & Forbes Holdings Inc. and various affiliates since 1980.	44,067,520
Donald G. Drapkin (48)	1989	Executive and Compensation	Director and Vice Chairman of Mafco Holdings Inc., MacAndrews & Forbes Holdings Inc. and various affiliates since 1987.	30,000
Lawrence M. Jones (65)	1989	Audit	Former Chairman and CEO from 1990 to 1993 and has been associated with the company for over 35 years.	40,512
Robert J. Lanigan (68)	1995	Compensation	Director since his appointment in 1995. He is also a director at The Dun & Bradstreet Corp., Sonat, Inc. Transocean Offshore, Inc., Chrysler Corp., Cognizant Corp., and Owens-Illinois, Inc.	12,000
Jerry W. Levin (52)	1989	Executive	Chairman of the Board of Directors and Chief Executive Officer of the Company since February 1997. He has been Chairman of the Board of Revlon since 1992.	15,000
Robert S. Miller (55)	1994	Compensation	Director since his appointment in 1994. He has been Vice-President, Treasurer and a director of Moore Mill & Lumber Co. since 1993.	2,000
John A. Moran (64)	1996	Audit	Member of the Board of Directors since 1996. He is currently the Chairman of Rutherford-Moran Oil Corp.	10,000
Bruce Slovin (61)	1993	Executive and Compensation	Director since his appointment in 1993. Has been President of Mafco Holdings Inc., MacAndrews & Forbes Holdings Inc. and various affiliates since 1980.	52,600
William H. Spoor (74)	1992	Audit	Member of the Board of Directors since 1992. He retired in 1985 as Chairman and CEO of Pillsbury.	2,000

Notes: (1) Based on the 3/31/97 proxy statement.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 00034446

018932

SUNBEAM CORPORATION

Market Statistics for Selected Comparable Companies

(Sums, except per share data)		LTM Price		Market Value		EPS[3]			P/E					Proj. 5 yr.
							Calendar			Calendar		CY98 PEG	CY99 PEG	EPS
Company	Price[1]	High	Low	Equity	Aggregate[2]	LTM	1998E	1999E	LTM	1998E	1999E	Growth	Growth	Growth[4]
Bell Sports Corp.	$8.38	$11.25	$4.88	$115.9	$157.4	$0.45	$0.52	$0.60	18.6 x	16.0 x	13.9 x	1.1 x	0.9 x	15.0 %
The North Face Inc.	22.75	28.13	13.50	256.1	293.1	0.89	1.17	1.52	25.6	19.4	15.0	0.6	0.5	30.0
Brunswick Corp.	30.06	37.00	23.13	2,992.7	4,672.5	2.11	2.45	2.79	14.2	12.3	10.8	0.9	0.8	14.0
K2 Inc.	29.31	32.94	23.44	484.7	680.5	1.52	1.95	2.28	19.3	15.0	12.8	0.9	0.8	17.0
					Median:				18.9 x	15.5 x	13.4 x	0.9 x	0.8 x	16.0 %
					Mean:				19.4	15.7	13.1	0.9	0.7	19.0
The Coleman Co., Inc.	$15.31	$19.13	$11.50	$817.7	$1,021.9	$0.04	$0.99	$1.16	N.M. x	15.5 x	13.2 x	0.9 x	0.8 x	17.5 %

IN LINE

Notes:

(1) Closing prices as of 12/9/97. Highs and lows represent the latest 52 week figures.

(2) Aggregate value equals market value of equity plus short term debt, long term debt, minority interests and any capital leases and underfunded pensions, as appropriate.

(3) IBES median EPS estimates as of 12/9/97 and calendarized to December 31st for 1998 and 1999.

(4) IBES median long term growth estimates as of 12/9/97.

018933

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000247

MORGAN STANLEY CONFIDENTIAL C0024B

PRELIMINARY MERGER ANALYSIS

NOT A CERTIFIED COPY

016934

SUNBEAM CORPORATION

Articulating the Strategic Rationale

Combining the Comforts of Home and Health and Bringing them Outdoors

Similar Assets	Similar Challenges
• Global Brands	• Diluted Brand Image
• Strong Market Shares	• Neglected Infrastructure
• Similar Distribution Channels and Customers	• Lack of Packaged Goods Mentality
	• Significant Financial Underperformance
	• Historical Lack of Brand Advertising
	• Lack of Innovation in the Category

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0003449

016935

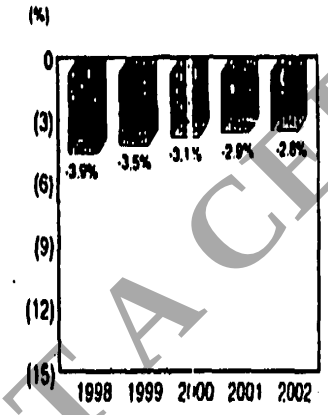
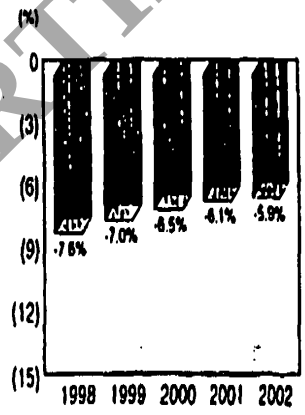
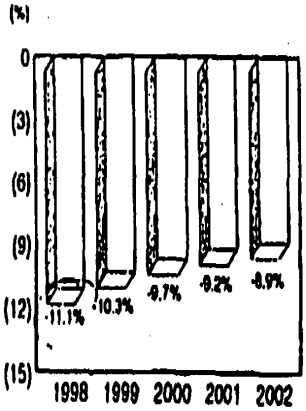
16div-024294

MORGAN STANLEY CONFIDENTIAL CCC03450

SUNBEAM CORPORATION

Coleman. - Summary Transaction Structure

100% Stock Purchase / No Synergies Assumed

	$16 Offer Price (4.5% Premium)	$18 Offer Price (17.6% Premium)	$20 Offer Price (30.6% Premium)
Accretion/ Dilution			

Breakeven Analysis: 1998

Inc. Pre-Tax Synergies	$15MM	$30MM	$45MM
% of Target 1998E Sales	1.2%	2.4%	3.5%

Pro Forma LTM Credit Analysis:

Total Debt/Adj. Book Cap.	33.4%	31.7%	30.1%
EBIT/Gross Interest Exp.	3.5x	3.4x	3.4x
Op. Cash Flow/Total Debt	16.4%	16.4%	16.4%
Ron Perelman % Interest	16.9%	18.6%	20.2%

Note: (1) SOC stock issue price of $39.00 as of 12/8/97; CLN EPS estimates from I/B/E/S; SOC EPS estimates from Oppenheimer research dated 10/22/97.

NOT A CERTIFIED COPY

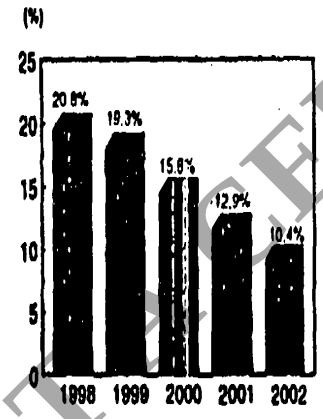
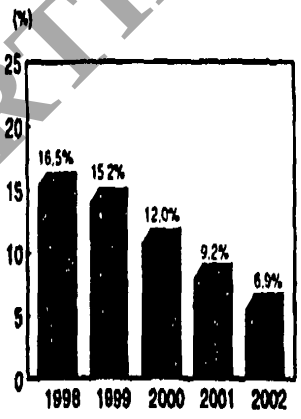
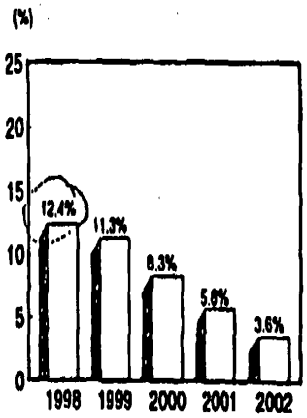
0189936

MORGAN STANLEY CONFIDENTIAL 000345

SUNBEAM CORPORATION

Coleman. - Summary Transaction Structure

100% Stock Purchase / 7.5% Synergies Fully Realized

	$16 Offer Price (4.5% Premium)	$18 Offer Price (17.6% Premium)	$20 Offer Price (30.6% Premium)
Accretion/ Dilution			
Breakeven Analysis: 1998			
Inc. Pre-Tax Synergies	$0MM	$0MM	$0MM
% of Target 1998E Sales	0.0%	0.0%	0.0%
Pro Forma LTM Credit Analysis:			
Total Debt/Adj. Book Cap.	33.4%	31.7%	30.1%
EBIT/Gross Interest Exp.	5.5x	5.4x	5.3x
Op. Cash Flow/Total Debt	25.1%	25.1%	25.1%
Ron Perelman % Interest:	16.9%	18.6%	20.2%

Note: (1) SOC stock issue price of $39.00 as of 12/9/97; CLN EPS estimates from I/B/E/S; SOC EPS estimates from Oppenheimer research dated 10/22/97; Assumes synergies of 7.5% of estimated sales ($95.1 MM in 1998 and $105.0 MM thereafter).

NOT A CERTIFIED COPY

PRELIMINARY DRAFT

SUNBEAM CORPORATION

Synergy and Price Analysis

($MM, except per share data)

SOC acquires CLN
With Synergies

100% Stock Purchase Analysis - Accretion / (Dilution)

	Impl. Exch. Rat.	Year	Synergies Assumed $0	$20	$40	$60	$80	$100	$95	$127
Synergies (% of 1998E Target Sales)			0.0%	1.6%	3.2%	4.7%	6.3%	7.9%	7.5%	10.0%
$16.00	0.41	1998	-3.9%	-1.3%	6.5%	11.7%	16.9%	22.1%	20.8%	29.0%
4.5%		1999	-3.5%	0.9%	5.2%	9.6%	13.9%	18.2%	19.3%	26.9%
17.00	0.44	1998	-5.8%	-0.7%	4.5%	9.6%	14.7%	19.9%	18.6%	26.7%
11.0%		1999	-5.2%	-0.9%	3.3%	7.6%	11.9%	16.2%	17.2%	24.7%
$18.00	0.46	1998	-7.6%	-2.5%	2.5%	7.6%	12.7%	17.7%	16.5%	24.5%
17.6%		1999	-7.0%	-2.7%	1.5%	5.7%	9.9%	14.2%	15.2%	22.6%
$19.00	0.49	1998	-9.4%	-4.4%	0.6%	5.6%	10.6%	15.6%	14.4%	22.3%
24.1%		1999	-8.6%	-4.5%	-0.3%	3.9%	8.0%	12.2%	13.2%	20.5%
$20.00	0.51	1998	-11.1%	-6.2%	-1.2%	3.7%	8.7%	13.6%	12.4%	20.2%
30.6%		1999	-10.3%	-6.2%	-2.0%	2.1%	6.2%	10.3%	11.3%	18.5%

Price
(Premium)

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0006452

016938

MORGAN STANLEY CONFIDENTIAL 0000345

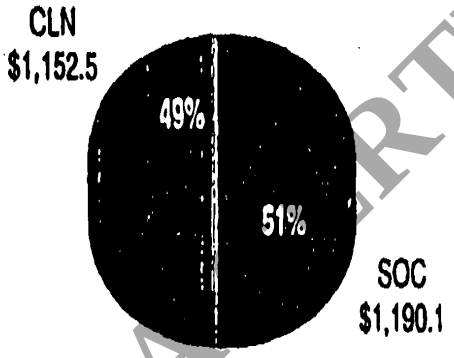
NOT A CERTIFIED COPY

SUNBEAM CORPORATION

CLN Market Cap:[2]	$818.0
SOC Market Cap:[2]	$3,333.0

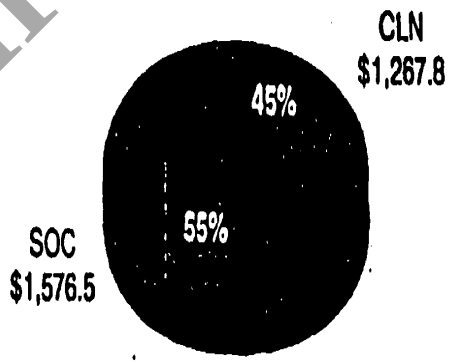
Pro Forma Performance
($MM, except per share data)

1997E Revenues [1]



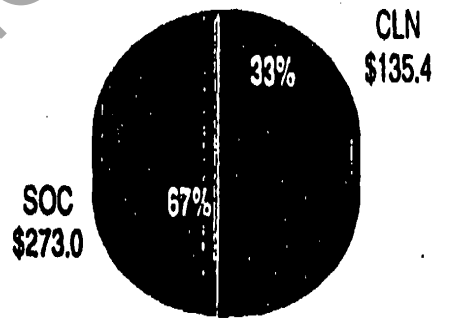
Total: $2,342.6MM

1998E Revenues [1]



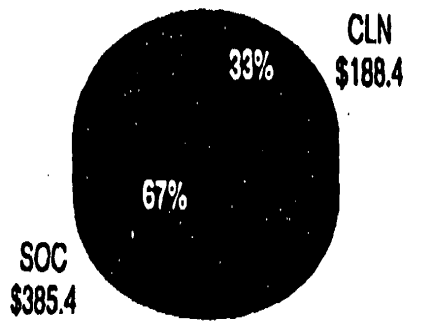
Total: $2,844.3

1997E EBITDA[1]



Total: $408.4MM

1998E EBITDA[1]



Total: $573.8MM

Notes: (1) CLN estimated revenue and EBITDA data are from CS First Boston research report dated 11/18/97. SOC estimated revenue and EBITDA data from Oppenheimer research dated 10/22/97.

(2) Market values as of 12/9/97.

SUNBEAM CORPORATION

Transaction Structure Analysis

($MM, except per share data)

SOC acquires CLN
Without Synergies

100% Stock

Offer Price Per Share:		$16.000	$16.500	$17.000	$17.500	$18.000	$18.500	$19.000	$19.500	$20.000
Premium to Market ($15.313)		4.5 %	7.8 %	11.0 %	14.3 %	17.6 %	20.8 %	24.1 %	27.3 %	30.6 %
Exchange Ratio		0.4103 x	0.4231 x	0.4359 x	0.4487 x	0.4615 x	0.4744 x	0.4872 x	0.5000 x	0.5128 x
1998E P/E Paid		16.2 x	16.7 x	17.2 x	17.7 x	18.2 x	18.7 x	19.2 x	19.7 x	20.2 x
Equity Value		$853.3	$883.5	$911.7	$939.9	$968.2	$996.4	$1,024.6	$1,052.8	$1,081.1
Aggregate Value		1,324.8	1,353.1	1,381.3	1,409.5	1,437.7	1,465.9	1,494.2	1,522.4	1,550.6
Earnings Accretion (Dilution)	SOC Statistic									
CY1998E:	$2.22	(3.9)%	(4.9)%	(5.8)%	(6.7)%	(7.6)%	(8.5)%	(9.4)%	(10.2)%	(11.1)%
CY1999E:	2.66	(3.5)%	(4.3)%	(5.2)%	(6.1)%	(7.0)%	(7.8)%	(8.6)%	(9.5)%	(10.3)%
CY2000E:	3.20	(3.1)%	(4.0)%	(4.8)%	(5.7)%	(6.5)%	(7.3)%	(8.1)%	(8.9)%	(9.7)%
CY2001E:	3.81	(2.9)%	(3.7)%	(4.5)%	(5.3)%	(6.1)%	(6.9)%	(7.7)%	(8.4)%	(9.2)%
CY2002E:	4.60	(2.8)%	(3.6)%	(4.4)%	(5.2)%	(5.9)%	(6.7)%	(7.4)%	(8.1)%	(8.9)%
1998 - 2002 CAGR	20.0%	20.3 %	20.4 %	20.4 %	20.5 %	20.5 %	20.6 %	20.6 %	20.7 %	20.7 %
Pro Forma Indicated DPS										
% Change to CLN Dividend		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
SOC Payout Ratio	1.8 %	1.9 %	1.9 %	1.9 %	1.9 %	1.9 %	2.0 %	2.0 %	2.0 %	2.0 %
Breakeven Analysis: 1998E										
Incr. Pre-Tax Synergies		$15	$19	$23	$26	$30	$34	$37	$41	$45
% of Combined Sales		0.7 %	0.8 %	1.0 %	1.2 %	1.3 %	1.5 %	1.7 %	1.8 %	2.0 %
Breakeven P/E Multiple		18.3 x	18.5 x	18.6 x	18.8 x	19.0 x	19.2 x	19.4 x	19.6 x	19.8 x
Pro Forma Credit Analysis:										
Total Debt / Adj. Bank Cap.	28.9 %	33.4 %	33.0 %	32.5 %	32.1 %	31.7 %	31.3 %	30.9 %	30.5 %	30.1 %
EBIT / Gross Interest Exp.	19.6 x	3.5 x	3.5 x	3.5 x	3.4 x	3.4 x	3.4 x	3.4 x	3.4 x	3.4 x
Op. Cash Flow / Total Debt	32.8 %	16.4 %	16.4 %	16.4 %	16.4 %	16.4 %	16.4 %	16.4 %	16.4 %	16.4 %
Primary Shares Issued (MM):	85.5	21.9	22.7	23.4	24.1	24.8	25.5	26.3	27.0	27.7
% Pre-existing		25.7 %	26.5 %	27.4 %	28.2 %	29.0 %	29.9 %	30.7 %	31.6 %	32.4 %
% Acquiree Interest		20.4 %	21.0 %	21.5 %	22.0 %	22.5 %	23.0 %	23.5 %	24.0 %	24.5 %
Pro Forma Cap. (MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,381	1,410	1,438	1,466	1,494	1,522	1,551	1,579
Adj. Bank Cap.	$698	$2,033	$2,061	$2,090	$2,118	$2,146	$2,174	$2,203	$2,231	$2,259
Accounting:										
Goodwill Created		930.5	958.7	986.9	1,015.1	1,043.3	1,071.6	1,099.8	1,128.0	1,156.2
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions: No Synergies; Issue Price Per Share: $19.00; 1998E P/E Issue Price: 17.6 x; Incr. Syn. % of Target Sales: N.M.%; LTM Target EBIT Margin: 4.5%; Holding Co. Debt Assumed: $0.0; Cost of Debt: 8.5%; Goodwill Amortized Over 40 Years; Goodwill Not Tax Deductible; CLN Primary Shares (000): 53425; CLN Options (000)*: 3018; * Ex. Price: $15.84

016810

MORGAN STANLEY CONFIDENTIAL 000424

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

SOC acquires CLN
With Synergies

Transaction Structure Analysis
($MM, except per share data)

100% Stock

Offer Price Per Share:		$16.000	$16.500	$17.000	$17.500	$18.000	$18.500	$19.000	$19.500	$20.000
Premium to Market ($15.313)		4.5 %	7.8 %	11.0 %	14.3 %	17.6 %	20.8 %	24.1 %	27.3 %	30.6 %
Exchange Ratio		0.4103 x	0.4231 x	0.4359 x	0.4487 x	0.4615 x	0.4744 x	0.4872 x	0.5000 x	0.5128 x
1998E P/E Paid		16.2 x	16.7 x	17.2 x	17.7 x	18.2 x	18.7 x	19.2 x	19.7 x	20.2 x
Equity Value		$855.3	$883.5	$911.7	$939.9	$968.2	$996.4	$1,024.6	$1,052.8	$1,081.1
Aggregate Value		1,324.8	1,353.1	1,381.3	1,409.5	1,437.7	1,465.9	1,494.2	1,522.4	1,550.6
Earnings Accretion (Dilution)	SOC Statistic									
CY1998E	$2.22	20.8 %	19.7 %	18.6 %	17.5 %	16.5 %	15.4 %	14.4 %	13.4 %	12.4 %
CY1999E	2.66	19.3 %	18.3 %	17.2 %	16.2 %	15.2 %	14.2 %	13.2 %	12.3 %	11.3 %
CY2000E	3.20	15.8 %	14.9 %	13.9 %	12.9 %	12.0 %	11.1 %	10.1 %	9.2 %	8.3 %
CY2001E	3.81	12.9 %	12.0 %	11.0 %	10.1 %	9.2 %	8.4 %	7.5 %	6.6 %	5.8 %
CY2002E	4.60	10.4 %	9.5 %	8.6 %	7.7 %	6.9 %	6.1 %	5.2 %	4.4 %	3.6 %
1998 - 2002 CAGR	20.0%	17.2 %	17.2 %	17.3 %	17.3 %	17.3 %	17.4 %	17.4 %	17.4 %	17.5 %
Pro Forma Indicated DPS										
% Change to CLN Dividend		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
SOC Payout Ratio	1.8 %	1.5 %	1.5 %	1.5 %	1.5 %	1.5 %	1.6 %	1.6 %	1.6 %	1.6 %
Breakeven Analysis: 1998E										
Incr. Pre-Tax Synergies		$0	$0	$0	$0	$0	$0	$0	$0	$0
% of Combined Sales		0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %
Breakeven P/E Multiple		14.5 x	14.7 x	14.8 x	14.9 x	15.1 x	15.2 x	15.4 x	15.5 x	15.6 x
Pro Forma Credit Analysis:										
Total Debt / Adj. Bank Cap	28.7 %	33.4 %	33.0 %	32.5 %	32.1 %	31.7 %	31.3 %	30.9 %	30.5 %	30.1 %
EBIT / Gross Interest Exp.	19.6 x	5.5 x	5.4 x	5.4 x	5.4 x	5.4 x	5.4 x	5.4 x	5.4 x	5.3 x
Op. Cash Flow / Total Debt	32.8 %	25.1 %	25.1 %	25.1 %	25.1 %	25.1 %	25.1 %	25.1 %	25.1 %	25.1 %
Primary Shares Issued (MM):	85.5	21.9	22.7	23.4	24.1	24.8	25.5	26.3	27.0	27.7
% Pre-existing		25.7 %	26.5 %	27.4 %	28.2 %	29.0 %	29.9 %	30.7 %	31.6 %	32.4 %
% Acquiree Interest		20.4 %	21.0 %	21.5 %	22.0 %	22.5 %	23.0 %	23.5 %	24.0 %	24.5 %
Pro Forma Cap. (MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,381	1,410	1,438	1,466	1,494	1,522	1,551	1,579
Adj. Bank Cap.	$698	$2,033	$2,061	$2,090	$2,118	$2,146	$2,174	$2,203	$2,231	$2,259
Accounting:										
Goodwill Created		930.5	958.7	986.9	1,015.1	1,043.3	1,071.6	1,099.8	1,128.0	1,156.2
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions: Includes Synergies of $95.1MM; Incl. Syn. % of Target Sales: 7.5%; Cost of Debt: 8.5%; CLN Primary Shares (000): 53425
Issue Price Per Share: $39.00; CLN Target EBIT Margin: 4.5%; Goodwill Amortized Over 40 Years; CLN Options (000)*: 3018
1998E P/E Issue Price: 17.6 x; Holding Co. Debt Assumed: $0.0; Goodwill Not Tax Deductible; * Ex. Price: $15.84

176810

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0003435

SUNBEAM CORPORATION

SOC acquires CLN With Synergies

Transaction Structure Analysis
($MM, except per share data)

100% Stock

Offer Price Per Share:		$16.000	$16.500	$17.000	$17.500	$18.000	$18.500	$19.000	$19.500	$20.000
Premium to Market ($15.313)		4.5 %	7.8 %	11.0 %	14.3 %	17.6 %	20.8 %	24.1 %	27.3 %	30.6 %
Exchange Ratio		0.4103 x	0.4231 x	0.4359 x	0.4487 x	0.4615 x	0.4744 x	0.4872 x	0.5000 x	0.5128 x
1998E P/E Paid		16.2 x	16.7 x	17.2 x	17.7 x	18.2 x	18.7 x	19.2 x	19.7 x	20.2 x
Equity Value		$855.3	$883.5	$911.7	$939.9	$968.2	$996.4	$1,024.6	$1,052.8	$1,081.1
Aggregate Value		1,324.8	1,353.1	1,381.3	1,409.5	1,437.7	1,465.9	1,494.2	1,522.4	1,550.6
Earnings Accretion (Dilution)	SOC Statistic									
CY1998E	$2.22	29.0 %	27.9 %	26.7 %	25.6 %	24.5 %	23.4 %	22.3 %	21.3 %	20.2 %
CY1999E	2.66	26.9 %	25.8 %	24.7 %	23.6 %	22.6 %	21.6 %	20.5 %	19.5 %	18.5 %
CY2000E	3.20	22.2 %	21.1 %	20.1 %	19.1 %	18.1 %	17.2 %	16.2 %	15.3 %	14.3 %
CY2001E	3.81	18.2 %	17.2 %	16.2 %	15.3 %	14.4 %	13.5 %	12.6 %	11.7 %	10.8 %
CY2002E	4.60	14.7 %	13.8 %	12.9 %	12.1 %	11.2 %	10.3 %	9.5 %	8.6 %	7.8 %
1998 - 2002 CAGR	*20.0%*	*16.4 %*	*16.4 %*	*16.4 %*	*16.5 %*	*16.5 %*	*16.5 %*	*16.6 %*	*16.6 %*	*16.6 %*
Pro Forma Indicated DPS										
% Change to CLN Dividend		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
SOC Payout Ratio	18 %	1.4 %	1.4 %	1.4 %	1.4 %	1.4 %	1.5 %	1.5 %	1.5 %	1.5 %
Breakeven Analysis: 1998E										
Incr. Pre-Tax Synergies		$0	$0	$0	$0	$0	$0	$0	$0	$0
% of Combined Sales		0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %
Breakeven P/E Multiple		13.6 x	13.7 x	13.9 x	14.0 x	14.1 x	14.2 x	14.4 x	14.5 x	14.6 x
Pro Forma Credit Analysis:										
Total Debt / Adj. Book Cap.	28.7 %	33.4 %	33.0 %	32.5 %	32.1 %	31.7 %	31.3 %	30.9 %	30.5 %	30.1 %
EBIT / Gross Interest Exp.	19.6 x	6.1 x	6.1 x	6.1 x	6.1 x	6.1 x	6.0 x	6.0 x	6.0 x	6.0 x
Op. Cash Flow / Total Debt	32.8 %	28.0 %	28.0 %	28.0 %	28.0 %	28.0 %	28.0 %	28.0 %	28.0 %	28.0 %
Primary Shares Issued (MM):	85.5	21.9	22.7	23.4	24.1	24.8	25.5	26.3	27.0	27.7
% Pre-existing		25.7 %	26.5 %	27.4 %	28.2 %	29.0 %	29.9 %	30.7 %	31.6 %	32.4 %
% Acquiree Interest		20.4 %	21.0 %	21.5 %	22.0 %	22.5 %	23.0 %	23.5 %	24.0 %	24.5 %
Pro Forma Cap. ($MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,381	1,410	1,438	1,466	1,494	1,522	1,551	1,579
Adj. Book Cap.	$698	$2,033	$2,061	$2,090	$2,118	$2,146	$2,174	$2,203	$2,231	$2,259
Accounting:										
Goodwill Created		930.5	958.7	986.9	1,015.1	1,043.3	1,071.6	1,099.8	1,128.0	1,156.2
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions: Includes Synergies of $126 $MM; Incl. Syn. % of Target Sales: 10.0%; Cost of Debt: 8.5%; CLN Primary Shares (MM): 53425
Issue Price Per Share: $19.00; CLN Target EBIT Margin: 4.5%; Goodwill Amortized Over 40 Years; CLN Options (MM)*: 3018
1998E P/E Issue Price: 17.6 x; Building Co. Debt Assumed: $0.0; Goodwill Not Tax Deductible; * Ex Price: $15.84

MORGAN STANLEY CONFIDENTIAL 0000346

346810

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

SECOND STEPS

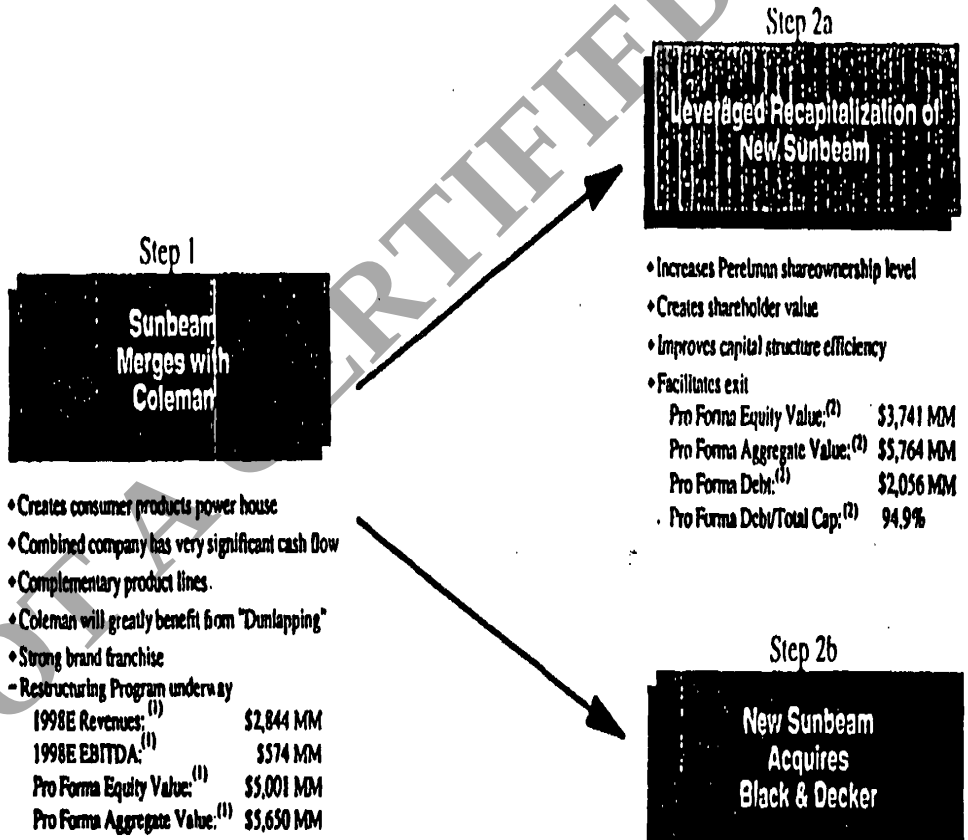
MORGAN STANLEY CONFIDENTIAL 00032457

016943

16div-024302

SUNBEAM CORPORATION

Pathways



- Creates consumer products power house
- Combined company has very significant cash flow
- Complementary product lines
- Coleman will greatly benefit from "Dunlapping"
- Strong brand franchise
- Restructuring Program underway

1998E Revenues:[1]	$2,844 MM
1998E EBITDA:[1]	$574 MM
Pro Forma Equity Value:[1]	$5,001 MM
Pro Forma Aggregate Value:[1]	$5,650 MM

- Increases Perelman shareownership level
- Creates shareholder value
- Improves capital structure efficiency
- Facilitates exit

Pro Forma Equity Value:[2]	$3,741 MM
Pro Forma Aggregate Value:[2]	$5,764 MM
Pro Forma Debt:[2]	$2,056 MM
Pro Forma Debt/Total Cap:[2]	94.9%

- Company will greatly benefit from "Dunlapping"
- Will create greatest shareholder value
- Unwilling seller may require hostile solution
- Coleman merger adds significant firepower

1998E Revenues:[3]	$7,987 MM
1998E EBITDA:[3]	$1,314 MM
Pro Forma Equity Value:[3]	$7,388 MM
Pro Forma Aggregate Value:[3]	$15,249 MM

Notes: (1) Assumes a 100% stock purchase at a 20% premium; synergies of 7.5% of target 1998 and 1999 sales and constant thereafter; Assumes that pro-forma entity traded at current SOC 1998E P/E of 17.6x.
(2) Assumes 25% of stock post CLN acquisition acquired at a 10% premium to market; Assumes that pro-forma entity traded at current SOC 1998E P/E of 17.6x.
(3) Assumes a 100% debt purchase at a 40% premium; synergies of 7.5% of target 1998 and 1999 sales and constant thereafter; Assumes that pro-forma entity traded at current SOC 1998E P/E of 17.6x.

MORGAN STANLEY CONFIDENTIAL 000024376810
NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

018945

SHAREHOLDER VALUE CREATION PROGRAM [1]

Sunbeam

($MM, except per share amounts)

Phase 1: Acquisition of Coleman - No Synergies

1998 Income Statement

	Sunbeam	Coleman	Pro Forma
Sales	$1,577	$1,268	$2,844
SG&A	177	259	436
% of Sales	11.2%	20.4%	15.3%
EBT	306	91	380
GW Amort.	0	10.0	27
Taxes	116	38	155
Earnings	$190	$53	$226
E.P.S.	? $2.22 (2.06)	$0.99	$2.04
Shares Outstanding	85.5MM	53.4MM	110.8MM
1998E P/E	17.6x	15.5x	-

Pro Forma Balance Sheet

Cash	$33
Goodwill	1,064
Other	1,853
Total Assets	$2,950
Short Term Debt	$1
Long Term Debt	681
Other	781
Shareholders Equity	1,487
Total Liab + Common Eq.	$2,950

- Purchase accounting
- 100% stock financed
- 20% premium

Current Situation

	Sunbeam	Coleman	Offer Price
Stock Price	$39.00	$15.31	$18.38
Market Value	$3,333	$818	$989
Agg. Value	$3,511	$1,289	$1,459

Phase 2: "Dunlapping" of Coleman

1998 Income Statement

Sunbeam/Coleman

	No Improvements	With Improvements [2]
Sales	$2,844	$2,844
SG&A	436	341
% of Sales	15.3%	12.0%
EBT	380	476
GW Amort.	27	27
Taxes	155	191
Earnings	$226	$285
E.P.S.	$2.04 →	$2.57
Shares Outstanding	110.8MM	110.8MM

P/E Assumption

	SOC Stand Alone	Blended	Worst Case
E.P.S.	$2.57	$2.57	$2.57
1998E P/E	17.6x	17.1x	15.0x
Stock Price	$45.12	$43.94	$38.53
Market Value	$5,001	$4,871	$4,270
Agg. Value	$5,650	$5,520	$4,919
Stock Price Change (%)	+16%	+13%	-1%
Market Value Created	$679	$549	-$52

Note: (2) Assumes CLN SG&A is cut by 7.3% of sales.

Phase 3: Acquisition of Black & Decker - No Synergies

1998 Income Statement

	New Sunbeam	Black & Decker	Pro Forma
Sales	$2,844	$5,142	$7,987
SG&A	341	1,340	1,680
% of Sales	12.0%	26.1%	21.0%
EBT	476	444	378
GW Amort.	27	64	139
Taxes	191	193	196
Earnings	$285	$251	$182
E.P.S.	$2.57	$2.65	$1.64
Shares Outstanding	110.8MM	94.8MM	110.8MM
1998E P/E	17.6x	14.7x	-

Pro Forma Balance Sheet

Cash	$220
Goodwill	7,674
Other	4,094
Total Assets	$11,988
Short Term Debt	$164
Long Term Debt	7,918
Other	2,417
Shareholders Equity	1,482
Total Liab + Common Eq.	$11,988

- Purchase accounting
- 100% debt financed
- 40% premium

Current Situation

	New Sunbeam [2]	Black & Decker	Offer Price
Stock Price	$45.12	$39.06	$54.69
Market Value	$5,001	$3,704	$5,358
Agg. Value	$5,650	$5,558	$7,212

Phase 4: "Dunlapping" of Black & Decker

1998 Income Statement

New Sunbeam/Black & Decker

	No Improvements	With Improvements [2]
Sales	$7,987	$7,987
SG&A	1,680	1,295
% of Sales	21.0%	16.2%
EBT	378	763
GW Amort.	139	139
Taxes	196	343
Earnings	$182	$420
E.P.S.	$1.64 →	$3.79
Shares Outstanding	110.8MM	110.8MM

P/E Assumption

	New SOC Stand Alone	Blended	Worst Case
E.P.S.	$3.79	$3.79	$3.79
1998E P/E	17.6x	16.0x	14.0x
Stock Price	$66.65	$60.70	$53.12
Market Value	$7,388	$6,728	$5,888
Agg. Value	$15,249	$14,590	$13,749
Stock Price Change (%)	+71%	+56%	+36%
Market Value Created	$3,066	$2,406	$1,366

Note: (2) Assumes B&DK SG&A is cut by 7.5% of sales.

Note: (1) SOC estimates from Oppenheimer research dated 10/22/97; CLN estimates from CSFB research dated 11/18/97 and Prudential research dated 11/14/97.

F18GI141285.0112-11-973:29A

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0003458

976810

SUNBEAM CORPORATION

Pro Forma Share Repurchase Analysis (Phase 3)

Post Acquisition of CLN at a 20.0% Premium (1)

Post Acquisition Statistics

Post Acquisition Shares Outstanding (MM	110.839
Implied Post Acquisition Share Price:	$45.12
1998E P/E Multiple:	17.6 x
1999E P/E Multiple:	14.8 x

Share Repurchase Assumptions

Repurchase Price:	$49.63
Premium to Market:	10.0%
Date of Repurchase:	06/30/98

	Percentage of Pro Forma Shares Repurchased			
	0.0%	15.0%	25.0%	35.0%
Shares Repurchased (MM)	0.000	16.626	27.710	38.794
Income Statement Impact				
1998E EPS	$2.57	$2.56	$2.56	$2.56
Accretion / (Dilution)	--	-0.2%	-0.3%	-0.4%
Impl. Stock Price	$45.12	$45.05	$45.00	$44.94
1999E EPS	$3.05	$3.13	$3.19	$3.28
Accretion / (Dilution)	--	2.5%	4.7%	7.7%
Impl. Stock Price	$45.12	$46.25	$47.26	$48.58
Balance Sheet Impact				
Total Debt	$680.1	$1,506.0	$2,056.0	$2,606.0
Shareholder's Equity	1,487.1	660.0	110.0	(440.0)
Debt/Book Capitalization	31.4%	69.5%	94.9%	120.3%
Shareholder Impact				
Financial Buyer Ownership	18.9%	22.2%	25.2%	29.1%

Note: (1) Assumes a 100% stock purchase at a 20% premium and synergies of 7.5% CLN projected 1998 and 1999 sales held constant thereafter.

MORGAN STANLEY CONFIDENTIAL 0000345

L76810 0189L7

NOT A CERTIFIED COPY

MORGAN STANLEY

SUNB-024306

SUNBEAM CORPORATION

Pro Forma Pathway Feasibility

ACQUISITION #1

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$6,706.6
SG&A	1,131.9
Profit Before Taxes	609.2
Goodwill Amort.	138.6
Net Income	325.0

Valuation	SOC Stand-alone	Downside
Equity Value	$5,710.2	$4,940.7
Agg. Value	13,100.4	12,330.9
Assumed P/E	17.6x	15.2x

SOC Standalone	
Income Statement	
Revenues	$1,576.6
SG&A	176.6
Profit Before Taxes	306.0
Goodwill Amort.	--
Net Income	189.7
Valuation	
Equity Value	$3,333.4
Agg. Value	3,511.2
Assumed P/E	17.6x

ACQUISITION #2

Acquisition of CLN & Restructuring	
Income Statement	
Revenues	$2,844.4
SG&A	340.7
Profit Before Taxes	475.5
Goodwill Amort.	26.6
Net Income	284.7

Valuation	SOC Stand-alone	Downside
Equity Value	$5,001.0	$4,327.0
Agg. Value	5,650.0	4,976.0
Assumed P/E	17.6x	15.2x

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$7,986.6
SG&A	1,294.8
Profit Before Taxes	763.2
Goodwill Amort.	138.6
Net Income	420.5

Valuation	SOC Stand-alone	Downside
Equity Value	$7,387.8	$4,331.6
Agg. Value	15,249.2	12,192.9
Assumed P/E	17.6x	10.3x

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL

816810

SUNBEAM CORPORATION

Pro Forma Pathway Feasibility

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL C0003461

676810

ACQUISITION #1

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$6,706.6
SG&A	1,131.9
Profit Before Taxes	609.2
Goodwill Amort.	138.6
Net Income	325.0

Valuation	SOC Stand-alone	Downside
Equity Value	$5,710.2	$4,940.7
Agg. Value	13,100.4	12,330.9
Assumed P/E	17.6x	15.2x

SOC Standalone	
Income Statement	
Revenues	$1,576.6
SG&A	176.6
Profit Before Taxes	306.0
Goodwill Amort.	-
Net Income	189.7
Valuation	
Equity Value	$3,333.4
Agg. Value	3,511.2
Assumed P/E	17.6x

Acquisition of CLN & Restructuring	
Income Statement	
Revenues	$2,844.4
SG&A	340.7
Profit Before Taxes	475.5
Goodwill Amort.	26.6
Net Income	284.7

Valuation	SOC Stand-alone	Downside
Equity Value	$5,001.0	$4,327.0
Agg. Value	5,650.0	4,976.0
Assumed P/E	17.6x	15.2x

ACQUISITION #2

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$7,986.6
SG&A	1,294.8
Profit Before Taxes	763.2
Goodwill Amort.	138.6
Net Income	420.5

Valuation	SOC Stand-alone	Downside
Equity Value	$7,387.8	$4,331.6
Agg. Value	15,249.2	12,192.9
Assumed P/E	17.6x	10.3x

SUNBEAM CORPORATION

Pro Forma Pathway Feasibility

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0000462

ACQUISITION #1

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$6,706.6
SG&A	1,131.9
Profit Before Taxes	609.2
Goodwill Amort.	138.6
Net Income	325.0

Valuation	SOC Stand-alone	Downside
Equity Value	$5,710.2	$4,940.7
Agg. Value	13,100.4	12,330.9
Assumed P/E	17.6x	15.2x

SOC Standalone	
Income Statement	
Revenues	$1,576.6
SG&A	176.6
Profit Before Taxes	306.0
Goodwill Amort.	--
Net Income	189.7
Valuation	
Equity Value	$3,333.4
Agg. Value	3,511.2
Assumed P/E	17.6x

Acquisition of CLN & Restructuring	
Income Statement	
Revenues	$2,844.4
SG&A	340.7
Profit Before Taxes	475.5
Goodwill Amort.	26.6
Net Income	284.7

Valuation	SOC Stand-alone	Downside
Equity Value	$5,001.0	$4,327.0
Agg. Value	9,650.0	4,976.0
Assumed P/E	17.6x	15.2x

ACQUISITION #2

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$7,986.6
SG&A	1,294.8
Profit Before Taxes	763.2
Goodwill Amort.	138.6
Net Income	420.5

Valuation	SOC Stand-alone	Downside
Equity Value	$7,387.8	$4,331.6
Agg. Value	15,249.2	12,192.9
Assumed P/E	17.6x	10.3x

096810

SUNBEAM CORPORATION

Pro Forma Pathway Feasibility

ACQUISITION #1

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$6,706.6
SG&A	1,131.9
Profit Before Taxes	609.2
Goodwill Amort.	138.6
Net Income	325.0

Valuation	SOC Stand-alone	Downside
Equity Value	$5,710.2	$4,940.7
Agg. Value	13,100.4	12,330.9
Assumed P/E	17.6x	15.2x

SOC Standalone	
Income Statement	
Revenues	$1,576.6
SG&A	176.6
Profit Before Taxes	306.0
Goodwill Amort.	-
Net Income	189.7
Valuation	
Equity Value	$3,333.4
Agg. Value	3,511.2
Assumed P/E	17.6x

Acquisition of CLN & Restructuring	
Income Statement	
Revenues	$2,844.4
SG&A	340.7
Profit Before Taxes	475.5
Goodwill Amort.	26.6
Net Income	284.7

Valuation	SOC Stand-alone	Downside
Equity Value	$5,001.0	$4,327.0
Agg. Value	5,650.0	4,976.0
Assumed P/E	17.6x	15.2x

ACQUISITION #2

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$7,986.6
SG&A	1,294.8
Profit Before Taxes	763.2
Goodwill Amort.	138.6
Net Income	420.5

Valuation	SOC Stand-alone	Downside
Equity Value	$7,387.8	$4,331.6
Agg. Value	15,249.2	12,192.9
Assumed P/E	17.6x	10.3x

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0002463

196810

SUNBEAM CORPORATION

Pro Forma Pathway Feasibility

ACQUISITION #1

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$6,706.6
SG&A	1,131.9
Profit Before Taxes	609.2
Goodwill Amort.	138.6
Net Income	325.0

Valuation	SOC Stand-alone	Downside
Equity Value	$5,710.2	$4,940.7
Agg. Value	13,100.4	12,330.9
Assumed P/E	17.6x	15.2x

SOC Standalone	
Income Statement	
Revenues	$1,576.6
SG&A	176.6
Profit Before Taxes	306.0
Goodwill Amort.	--
Net Income	189.7
Valuation	
Equity Value	$3,333.4
Agg. Value	3,511.2
Assumed P/E	17.6x

ACQUISITION #2

Acquisition of CLN & Restructuring	
Income Statement	
Revenues	$2,844.4
SG&A	340.7
Profit Before Taxes	475.5
Goodwill Amort.	26.6
Net Income	284.7

Valuation	SOC Stand-alone	Downside
Equity Value	$5,001.0	$4,327.0
Agg. Value	5,650.0	4,976.0
Assumed P/E	17.6x	15.2x

Acquisition of BDK & Restructuring	
Income Statement	
Revenues	$7,986.6
SG&A	1,294.8
Profit Before Taxes	763.2
Goodwill Amort.	138.6
Net Income	420.5

Valuation	SOC Stand-alone	Downside
Equity Value	$7,387.8	$4,331.6
Agg. Value	15,249.2	12,192.9
Assumed P/E	17.6x	10.3x

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL C0023454

016952

February 27, 1998

Board of Directors
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

Members of the Board:

We understand that CLN Holdings Inc. ("Holdings"), Sunbeam Corporation ("Buyer"), Laser Acquisition Corporation, a wholly owned subsidiary of Buyer ("LAC"), and Coleman (Parent) Holdings Inc. have entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"). Pursuant to the Holdings Merger Agreement, LAC will merge with and into Holdings (the "Holdings Merger") and all of the issued and outstanding shares of common stock, par value $1.00 per share, of Holdings (the "Holdings Common Stock") will be converted into the right to receive $159,956,756 in cash and 14,099,749 shares of common stock, par value $.01 per share (the "Buyer Common Stock"), of Buyer (collectively, the "Holdings Consideration").

We also understand that Buyer, Camper Acquisition Corporation, a wholly owned subsidiary of Buyer ("CAC"), and The Coleman Company, Inc. ("the Company") have entered into an Agreement and Plan of Merger, dated as of February 27, 1998 ("the Company Merger Agreement"). Pursuant to the Company Merger Agreement, CAC will be merged with and into the Company (the "Company Merger" and, together with the Holdings Merger, the "Mergers") and each outstanding share of common stock, par value $.01 per share of The Coleman Company, Inc. (the "Company Common Stock"), will be converted into the right to receive (i) 0.5677 shares of Buyer Common Stock and (ii) $6.44 in cash. Upon consumption of the Holdings Merger and Company Merger, Buyer will indirectly beneficially own 100% of the outstanding shares of Company Common Stock.

You have asked for our opinion as to whether the Consideration to be paid by the Buyer pursuant to the Merger Agreement is fair from a financial point of view to the Buyer.

NOT A CERTIFIED COPY

018954

CPH EXHIBIT 90
FOR IDENTIFICATION
PAMELA A. STITT
1-8 2004
WITNESS Chang, T.

For purposes of the opinion set forth herein, we have:

(i) reviewed certain publicly available financial statements and other information of the Company and the Buyer, respectively;

(ii) reviewed certain internal financial statements and other financial and operating data concerning the Company and the Buyer prepared by the managements of the Company and the Buyer, respectively;

(iii) reviewed certain internal financial statements and other financial data concerning Holdings prepared by management of Holdings;

(iv) reviewed certain financial projections prepared by the managements of the Company and the Buyer, respectively;

(v) discussed the past and current operations and financial condition and the prospects of the Company with senior executives of the Company;

(vi) reviewed with the management of the Buyer their estimates of the synergies and cost savings expected to be achieved from the Merger;

(vii) discussed the past and current operations and financial condition and the prospects of the Buyer with senior executives of the Buyer;

(viii) reviewed the pro forma impact of the Merger on the Buyer's earnings per share, cash flow, consolidated capitalization and financial ratios,

(ix) reviewed the reported prices and trading activity for the Company Common Stock and the Buyer Common Stock;

(x) compared the financial performance of the Company and the Buyer and the prices and trading activity of the Company Common Stock and the Buyer Common Stock with that of certain other comparable publicly-traded companies and their securities;

(xi) reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

(xii) participated in discussions and negotiations among representatives of the Company and the Buyer and their financial and legal advisors;

(xiii) reviewed the Company Merger Agreement and Holdings Merger Agreement;

(xiv) reviewed evaluations prepared by Coopers & Lybrand of the potential synergy opportunities present in the Mergers; and

(xv) performed such other analyses as we have deemed appropriate.

NOT A CERTIFIED COPY

018955

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

We have assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion. With respect to the financial projections including the estimates of synergies and cost savings expected to be achieved in the Mergers, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of the Company. With respect to the potential operational improvements associated with the Mergers we have relied upon the evaluation of both Coopers & Lybrand and the Company. We have not made any independent valuation or appraisal of the assets or liabilities of the Company; however, we have reviewed the valuation of Coopers & Lybrand with respect to operational benefits expected to be achieved in the Mergers, and have relied without independent verification upon such valuations for purposes of this opinion Our opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to us as of the date hereof.

We have acted as financial advisor to the Board of Directors of the Buyer in connection with this transaction and will receive a fee for our services.

It is understood that this letter is for the information of the Board of Directors of the Buyer and may not be used for any other purpose without our prior written consent.

Based on the foregoing, we are of the opinion on the date hereof that the Consideration to be paid by the Buyer pursuant to the Merger Agreements is fair from a financial point of view to the Buyer.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: _____
James B. Stynes
Managing Director

NOT A CERTIFIED COPY

018956

F21*113542\04-22 99:10 14 AVPG3

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 THIRD AVENUE
NEW YORK 10022-3897

TELEPHONE NO.: (212) 735-3000
FACSIMILE NO.: (212) 735-2000
DIRECT FACSIMILE NO.: (212) 735-3607

FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: John D. Tyree (CONFIDENTIAL)

FIRM: Morgan Stanley & Co. Incorporated

CITY: New York, NY DATE: Mar. 18, 1998

TELEPHONE NO.: (212) 761-7738

FACSIMILE NO.: (212) 761-0358

FROM: Todd E. Freed FLR/RM.: 46-68

REFERENCE NO.: 545100 DIRECT DIAL: (212) 735-3714

TOTAL NUMBER OF PAGES INCLUDING COVER(S): 3

THIS FACSIMILE IS INTENDED ONLY FOR USE OF THE ADDRESSEE(S) NAMED HEREIN AND MAY CONTAIN LEGALLY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ADDRESS ABOVE VIA THE LOCAL POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US.

MESSAGE: Please see the attached press release. UNDER NO CIRCUMSTANCES SHOULD THIS PRESS RELEASE BE DISSEMINATED PRIOR TO ITS SIGN OFF BY ALBERT J. DUNLAP AND/OR DAVID C. FANNIN.

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT CPH 13

018958

MESSAGE CONFIRMATION

SESSION NO. = 163

03/18/98 23:42
ID=SKADDEN ARPS

DATE	TIME	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	
03/18	23:41	00'55"	212 761 0358	ECM-S	03	OK	0000

NOT A CERTIFIED COPY

018959

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
919 THIRD AVENUE
NEW YORK 10022-3897
TEL (212) 735-3000
FAX (212) 735-2000

April 28, 1998

VIA FACSIMILE TRANSMITTAL

Michael MacPhail, Esq.
Division of Enforcement
Securities and Exchange Commission
Central Regional Office
1801 California Street, Suite 4800
Denver, Colorado 80202

Re: Trading in the Securities of The Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc., File No. MD-1200

Dear Mr. MacPhail:

In response to your letter dated March 2, 1998 to Janet Kelley, Vice President, General Counsel and Assistant Secretary of Sunbeam Corporation ("Sunbeam"), and pursuant to our subsequent telephone conversations, I am enclosing a written chronology (the "Chronology") describing events leading up to the March 2, 1998 announcement of Sunbeam's acquisitions of The Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (the "Acquisitions"). Attached to the Chronology are schedules containing the names of the personnel of firms engaged by Sunbeam who worked on the Acquisitions, as well as the names of Sunbeam personnel not referred to in the Chronology who were aware of the Acquisitions. The Chronology is correct to the best of our knowledge. However, to the extent that it is based on information supplied by other firms, Sunbeam cannot vouch for the accuracy of the information supplied.

If you have any questions regarding the enclosed materials, please do not hesitate to telephone me.

PLAINTIFF'S EXHIBIT
CPH 379
12-10-04 LS

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 17227

019861

2161
EXHIBIT
12-5-06 mp

Request for Confidential Treatment

Pursuant to Rule 83 of the Commission's Rules on Information and Requests, 17 C.F.R. § 200.83, Sunbeam requests that the documents submitted herewith be treated as confidential, that they not be disclosed to any person pursuant to the Freedom of Information Act ("FOIA") or otherwise, and that, with respect to any request for disclosure under the FOIA or otherwise, Sunbeam be provided with notice that disclosure has been requested and an opportunity to submit written objections to such disclosure before any disclosure is made.

Each page of the documents covered by this request has been stamped with the legend "CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED."

Notice of any request for disclosure should be sent to David C. Fannin, Esq., Executive Vice President, Chief Legal Officer and Secretary, Sunbeam Corp., 1615 South Congress Avenue, Delray Beach, Florida 33445 (tel. (561) 243-2100), and to the undersigned at the above address.

Please acknowledge receipt of this request for confidential treatment by signing the duplicate of this letter enclosed herewith in the space provided below, and returning the same to me in the enclosed stamped, self-addressed envelope.

Very truly yours,

Douglas M. Kraus

Enclosures

Request for confidentiality
acknowledged

_____

cc: Freedom of Information Act Officer
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

CONFIDENTIAL SASMF 17228

018962

NOT A CERTIFIED COPY

STATEMENT OF CONFIDENTIALITY PURSUANT TO THE FREEDOM OF INFORMATION ACT

Pursuant to Rule 83 of the Commission's Rules on Information and Requests, 17 C.F.R. § 200.83, Sunbeam Corporation requests that the document submitted herewith be treated as confidential, that such document not be disclosed to any person pursuant to the Freedom of Information Act ("FOIA") or otherwise, and that, with respect to any request for disclosure under the FOIA or otherwise, no disclosure should be made without prior notice to Douglas M. Kraus, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022 and David C. Fannin, Esq., Executive Vice President, Chief Legal Officer and Secretary, Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 (561) 243-2100.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 17229

018963

CHRONOLOGY

March-April, 1997	In or about late March or early April, 1997, senior management of Sunbeam Corporation ("Sunbeam") initially began to consider a possible sale of Sunbeam or the initiation of one or more major acquisitions.
April 22, 1997	Albert J. Dunlap, Chairman of the Board and Chief Executive Officer of Sunbeam, and Russell A. Kersh, Sunbeam's Chief Financial Officer, met at Sunbeam's headquarters in Delray Beach, Florida with Bruce Fiedorek, William H. Strong, James B. Stynes and Robert W. Kitts, Managing Directors of Morgan Stanley & Co., Incorporated ("Morgan Stanley"), to discuss the retention of Morgan Stanley as financial advisor to Sunbeam in connection with a possible sale of Sunbeam or a possible acquisition by Sunbeam of one or more other companies. The Coleman Company, Inc. ("Coleman") was identified as one of many companies that might be a potential buyer of Sunbeam or a potential acquisition candidate for Sunbeam.
April-September, 1997	During this period, Sunbeam, with the assistance of Morgan Stanley, reviewed and considered a variety of strategies. Various companies were identified as potential buyers of Sunbeam or potential acquisition candidates.
September 11, 1997	Morgan Stanley was formally retained by Sunbeam as financial advisor in connection with "the proposed sale or merger of Sunbeam to or with another corporation and/or the possible acquisition of one or more entities." (See

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

019894

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

	Schedule A for a list of Morgan Stanley personnel who worked on this matter).
November 6, 1997	Morgan Stanley representatives Kitts, Managing Director William Reid and Vice President Alexandre J. Fuchs met with James Maher of MacAndrews & Forbes ("Mafco"), the majority owner of Coleman, at Mafco headquarters in New York City to discuss possible opportunities for Mafco. Sunbeam understands that, from time to time, Morgan Stanley advises Mafco on a variety of business and financial matters and among the potential transactions identified by Messrs. Reid and Fuchs was the possible acquisition of Sunbeam by Mafco.
December 11, 1997	Sunbeam representatives Kersh and David C. Fannin, Executive Vice President, Chief Legal Officer and Secretary, met with Messrs. Stynes, Kitts and Fuchs of Morgan Stanley at the Palace Hotel in New York City to discuss a possible business combination of Coleman and Sunbeam. The meeting included a background presentation on Coleman and a preliminary financial analysis by Morgan Stanley.
December 12, 1997	Messrs. Kersh and Fannin of Sunbeam and Peter Langerman, a director of Sunbeam and Senior Vice President and Chief Operating Officer of Franklin Mutual Advisors Incorporated ("Franklin"), Sunbeam's largest shareholder, met with Coleman's Chairman and Chief Executive Officer, Jerry W. Levin, Coleman's Executive Vice President and Chief Financial Officer, Joseph P. Page, and Coleman's Executive Vice President and General Counsel, Paul E. Shapiro, to discuss Coleman's business

NOT A CERTIFIED COPY

	and potential synergies that could result from a business combination of Sunbeam and Coleman.
December 15, 1997	Sunbeam contacted Blaine V. Fogg, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") regarding legal advice concerning a possible transaction with Coleman. (See Schedule B for a list of Skadden personnel who worked on this matter).
December 16, 1997	Messrs. Kersh and Fannin of Sunbeam conferred by telephone with Mr. Fogg, Richard L. Easton, Esq. and Allison L. Amorison, Esq. of Skadden for advice concerning a possible acquisition of Coleman.
December 18, 1997	Mr. Dunlap and Michael Price, President and Chief Executive Officer of Franklin, met with Coleman director and Mafco's Chairman, Chief Executive Officer and controlling stockholder, Ronald O. Perelman, in Florida, as well as with Mr. Howard Gittis, another Mafco executive. Mr. Dunlap indicated Sunbeam's interest in a possible transaction in which Sunbeam would purchase Coleman in a transaction valued in a range of $18 to $22 per share of Coleman stock. Mr. Perelman indicated that such a price range was too low and stated that he would not be prepared to support a potential transaction at such a price.
January 21 or 22, 1998	After consultation with Messrs. Kersh and Fannin, in an effort to revive a possible transaction, a Morgan Stanley representative contacted Mr. Perelman and indicated that Sunbeam would consider a possible transaction involving both cash and shares of Sunbeam stock

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

018966

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH1042293
16div-024322

	at a price higher than the prices discussed at the December 18 meeting with Mr. Dunlap. Mr. Perelman indicated his willingness to discuss such a potential transaction.
January 23, 1998	William Nesbitt of Mafco met with Morgan Stanley representatives Stynes, Gene K. Yoo, Associate, and Tyrone Chang, Analyst, at Mafco headquarters in New York City, to renew talks concerning a possible transaction with Coleman.
January 29, 1998	Messrs. Kersh and Fannin of Sunbeam and Messrs. Stynes, Fuchs and Chang of Morgan Stanley met with Coleman representatives Levin and Page, Mafco representatives Maher and Nesbitt and Gordon Rich of Credit Suisse First Boston ("CSFB"), Coleman's financial advisor, to discuss the potential synergies that might be associated with a business combination of Sunbeam and Coleman and to discuss a preliminary schedule for mutual due diligence.
Week of February 2, 1998	During this week, Morgan Stanley submitted to Mafco an outline of a proposed transaction structure which focused on Sunbeam's acquisition of Coleman.
February 3, 1998	Messrs. Kersh and Fannin of Sunbeam met with Phil Harlow of Arthur Andersen LLP, Sunbeam's auditors, at Sunbeam's headquarters in Delray Beach, Florida to discuss the financial impact on Sunbeam of a potential acquisition of Coleman.
February 4, 1998	Sunbeam and Coleman entered into a Confidentiality Agreement.

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

February 6, 1998	Messrs. Stynes, Kitts, Fuchs and Chang of Morgan Stanley met with Messrs. Maher and Nesbitt of Mafco and Mr. Rich and Robert Duffy of CSFB at Mafco headquarters in New York City to discuss a possible acquisition of Coleman by Sunbeam, including a possible acquisition by Sunbeam of CLN Holdings Inc., the Mafco affiliate that indirectly owned Coleman stock. Substantial differences in price and valuation remained.
February 9, 1998	Mr. Kitts of Morgan Stanley contacted Anthony DiNovi, Managing Director of the Thomas H. Lee Co. of Boston, Mass. (the "THL Co."), who was also a Board member of First Alert, Inc. ("First Alert"), to express Sunbeam's interest in the acquisition of First Alert and Signature Brands USA, Inc. ("Signature"), both of which were controlled by THL Co. Sunbeam viewed such transactions as either alternatives to a Coleman transaction or possible "add ons" to a Coleman transaction.
February 10, 1998	Messrs. Kersh and Fannin of Sunbeam, Messrs. Fogg and William J. Weiss, Esq. of Skadden and Messrs. Stynes, Kitts, Fuchs and Webber of Morgan Stanley met at Morgan Stanley headquarters in New York City to discuss legal, structural and tax issues in connection with a potential Coleman transaction, as well as the possible acquisition by Sunbeam of First Alert and Signature.
February 11, 1998	Messrs. Kersh and Fannin of Sunbeam, Messrs. Stynes, Kitts and Josh Webber, Associate, of Morgan Stanley, met with Mr. DiNovi and Scott Schoen, Managing Director of THL Co., at THL Co. headquarters in Boston to discuss Sun-

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

018968

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

	beam's interest in a possible acquisition of First Alert and Signature.
February 12, 1998	After the announcement by First Alert of an adverse jury verdict awarding $16.9 million in a product liability case, Mr. DiNovi of THL Co. contacted Mr. Kitts of Morgan Stanley to explain the jury verdict and confirm Sunbeam's interest in light of the verdict.
February 13, 1998	Messrs. Stynes, Kitts and Fuchs of Morgan Stanley participated in a conference call to discuss the terms of a transaction with Coleman, including the structure and price with Mafco representative Maher.
February 16, 1998	Sunbeam and First Alert, Inc. entered into a Confidentiality Agreement.
February 17, 1998	Sunbeam contacted its insurance brokers, Sedgewick of Florida, Inc. ("Sedgewick of Florida"), regarding the performance of insurance due diligence in connection with First Alert's adverse jury verdict. (See Schedule C for a list of Sedgewick of Florida personnel who worked on this matter). Mr. Fannin of Sunbeam, Barbara Wrubel, Esq. of Skadden, Messrs. Stynes and Kitts of Morgan Stanley and Peter Cook of Sedgewick of Florida participaced in a conference call with Mr. DiNovi and B. Joseph Messner, President and Chief Executive Officer of First Alert, concerning First Alert's adverse jury verdict. Mr. Kitts of Morgan Stanley contacted the directors of Signature affiliated with THL Co. concerning due diligence.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

018969

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042296
16div-024325

	Sunbeam and Signature entered into a Confidentiality Agreement.
February 18, 1998	Mr. Fannin of Sunbeam conferred by telephone with Skadden attorneys Easton and Amorison concerning product liability issues and related transaction structuring issues in connection with the possible acquisition of First Alert. Sunbeam representatives met with First Alert's insurance advisors to discuss First Alert's cost and ability to obtain insurance with respect to the subject matter of the jury verdict.
February 19, 1998	Messrs. Kersh and Fannin of Sunbeam and Messrs. Kitts, Fuchs, Webber and Chang of Morgan Stanley participated in a conference call with Mafco representative Maher to discuss price and structural details of the Coleman transaction. Messrs. Kersh and Fannin of Sunbeam and Mr. Kitts of Morgan Stanley met with Mr. Messner of First Alert at Morgan Stanley headquarters in New York for information gathering and negotiation of a possible transaction with First Alert.
February 20, 1998	Representatives of Skadden began drafting definitive acquisition agreements for the Coleman transaction reflecting terms of the potential transaction discussed by representatives of Mafco and Sunbeam. Mr. Kitts of Morgan Stanley contacted Mr. DiNovi of First Alert to discuss in greater detail Sunbeam's interest in acquiring First Alert.

NOT A CERTIFIED COPY

	Robert J. Gluck, Vice President and Controller of Sunbeam, telephoned Mr. Harlow and Larry Bornstein of Arthur Andersen LLP ("Arthur Andersen") regarding the performance of financial due diligence in connection with the proposed acquisitions of Coleman, First Alert and Signature and to discuss a financial due diligence schedule. (See Schedule D for a list of Arthur Andersen personnel who worked on this matter).
	Sunbeam contacted Joseph R. Brendel, Esq. and Michael J. Kline, Esq. of Thorp Reed & Armstrong, Sunbeam's counsel for intellectual property and environmental issues, regarding intellectual property and environmental due diligence in connection with the Coleman transaction. (See Schedule E for a list of Thorp Reed & Armstrong personnel who worked on this matter).
	Mr. Kersh of Sunbeam and Messrs. Stynes and Kitts of Morgan Stanley met with Meeta Vyas, Chief Executive Officer and Vice Chairman of the Board of Directors of Signature, Louis P. Friedman, Managing Director, and Robert Mann, Vice President, of Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), Signature's financial advisor, at DLJ headquarters in New York City to perform due diligence, gather information and engage in negotiations in connection with Sunbeam's acquisition of Signature.
February 21, 1998	Mr. Kersh telephoned Andrew Molenaar, a partner at Coopers & Lybrand LLP ("Coopers & Lybrand"), Sunbeams's management consulting firm, regarding the performance of operational due dili-

NOT A CERTIFIED COPY

	gence at plant facilities of Coleman, First Alert and Signacure. Mr. Molenaar, Jong Lee, Manager, and Keith Polak, Senior Associate, of Coopers & Lybrand participated in a conference call with Messrs. Levin and Page of Coleman to discuss Coleman's business. (See Schedule F for a list of Coopers & Lybrand personnel who worked on this matter).
February 22, 1998	Conrad Bringsjord, Managing Director of Salomon Smith Barney, one of First Alert's financial advisors, met with Morgan Stanley representatives Kitts and Stynes to discuss Sunbeam's proposal to acquire all equity securities of First Alert at a price of $4.50 per share, payable one-half in cash and one-half in equity securities of Sunbeam.
February 23-24, 1998	Mr. Fannin, Richard Goudis, Sunbeam's Vice President of Investor Relations and Corporate Planning, Messrs. Stynes, Fuchs, Webber and Chang of Morgan Stanley and representatives of Arthur Andersen and Coopers & Lybrand met with Messrs. Levin and Page of Coleman, Mr. Nesbitt of Mafco and Messrs. Rich, Duffy and Steven Geller of CSFB at Mafco Headquarters in New York City to conduct due diligence and to arrange facility visits. Janet Kelley, Sunbeam's Vice President, General Counsel and Assistant Secretary, met with Mr. Shapiro and Steven R. Isko, Vice President-Legal, both of the Coleman legal group, to conduct due diligence. Due diligence meetings were also held at Morgan Stanley's offices in New York and Mafco's headquarters during

NOT A CERTIFIED COPY

which Messrs. Kersh, Fannin and Goudis met with Messrs. Levin, Page, Shapiro, Maher and Nesbitt, along with representatives of CSFB, to discuss Sunbeam's long term strategic plan and financial projections for fiscal years 1998 through 2000.

Mr. Brendel of Thorp Reed & Armstrong, met with Lorelie Borland, Esq. of Mafco at Mafco's offices at 625 Madison Avenue in New York City to review environmental issues in connection with the Coleman transaction. In the course of the Coleman due diligence, Mr. Brendel learned of the First Alert and Signature acquisitions and agreed to conduct environmental due diligence with regard to First Alert and Signature. Mr. Kline of Thorp Reed & Armstrong met with Steve Fasman, Esq. of Mafco to review intellectual property issues in connection with the Coleman transaction.

Mr. Gluck of Sunbeam and Messrs. Harlow and Bornstein of Arthur Andersen reviewed the 1996-97 audit work papers for Coleman at the offices of Coleman's auditors, Ernst & Young LLP, in Kansas City.

February 24, 1998

Messrs. Kersh and Fannin, along with representatives from Morgan Stanley, held conference calls with Mr. Maher to finalize the structure and negotiate the remaining terms of the transaction with Coleman.

Mr. Molenaar, Dick Oishi and Dave Winston, Managers of Coopers & Lybrand, performed operational due diligence at Coleman's facility in Wichita.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

018973

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042300
16div-024329

	Mr. Messner and First Alert's financial and legal advisors visited Sunbeam to conduct due diligence regarding the fairness of a potential transaction between Sunbeam and First Alert and to continue discussions concerning Sunbeam's proposal for the acquisition of First Alert. Sunbeam modified its offer for First Alert to $5.00 per share, one-half payable in cash and one-half payable in equity securities of Sunbeam. First Alert's financial advisors indicated that First Alert would consider an all-cash offer at a higher price.
	Sunbeam contacted its public relations firm, Hill & Knowlton, Inc. ("Hill & Knowlton"), regarding a special engagement in connection with the acquisitions. (See Schedule G for a list of Hill & Knowlton personnel who worked on this matter).
February 25, 1998	Sunbeam representatives Fannin, Fogg, Easton, Weiss and Amorison met with Messrs. Shapiro and Isko of Coleman, Adam O. Emmerich, Esq. and Steven A. Cohen, Esq., Coleman's legal advisors from Wachtell, Lipton, Rosen & Katz ("Wachtell"), at the New York offices of Skadden to review the status of the transactions, address organizational, legal, logistical and other issues and negotiate the final structure of the Coleman transaction.
	First Alert's Board of Directors met to discuss the Sunbeam proposal. Mr. Goudis met in the morning with Mr. Messner of First Alert in Aurora, Illinois to conduct due diligence.
	Mr. Oishi and Eric Mauch, Senior Associate of Coopers & Lybrand, performed

NOT A CERTIFIED COPY

	operational due diligence at First Alert's facility in Chicago.
	Janet Kelley of Sunbeam and Messrs. Brendel and Kline of Thorp Reed & Armstrong met in the morning in Cleveland with Steven Billick, Chief Financial Officer of Signature, and Rem Bellzinskas, Signature's Controller, and outside counsel for Signature to review environmental and intellectual property documents.
	Mr. Goudis and Ms. Kelley of Sunbeam met in the afternoon in Cleveland, Ohio with Steven Billick, Chief Financial Officer of Signature, as well as Signature's internal and outside counsel, to conduct business, legal and tax due diligence.
	Mr. Gluck of Sunbeam and Mr. Bornstein of Arthur Andersen conducted due diligence review on financial information, books and records and audit work papers at the offices of Signature's auditors, KPMG Peat Marwick L.L.P. ("KPMG Peat Marwick") in Cleveland.
February 25-27, 1998	Representatives from Morgan Stanley visited First Alert's facilities and engaged in discussions concerning possible synergies between Sunbeam and First Alert and the terms of the transaction. Legal, accounting and business due diligence was performed by Sunbeam representatives.
February 26, 1998	Messrs. Kersh and Fannin of Sunbeam and Messrs. Stynes, Kitts and Webber of Morgan Stanley participated in a conference call with Mr. Maher of Mafco and representatives from Wachtell at Morgan Stanley headquarters in New York to review the status

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

NOT A CERTIFIED COPY

018975

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

of the Coleman transaction and address organizational, legal, logistical and other issues. A final structure for the transaction was agreed upon.

Mr. Easton and Ms. Amorison of Skadden met with Messrs. Shapiro and Isko of Coleman, Mr. Nesbitt of Mafco and Messrs. Emmerich and Cohen of Wachtell at the offices of Wachtell to review the merger agreements and discuss outstanding issues in connection with the Coleman transaction.

Janet Kelley of Sunbeam and Messrs. Brendel and Kline of Thorp Reed & Armstrong met in Aurora, Illinois with Mr. Messner of First Alert and First Alert's general counsel, Haldon Grant, to conduct general legal, environmental and intellectual property due diligence.

Mr. Gluck of Sunbeam and Messrs. Harlow and Bornstein of Arthur Andersen reviewed First Alert's audit work papers at the offices of First Alert's auditors, Price Waterhouse LLP ("Price Waterhouse"), in Chicago.

Sunbeam's financial advisors continued discussions with First Alert's financial advisors regarding the terms of the transaction, including the price payable to shareholders. Sunbeam modified its proposal to an all cash tender offer at a price of $5.00 per share.

Messrs. Mclenaar and Tom Nicholas, Senior Associate of Coopers & Lybrand, met with Ms. Vyas to conduct due diligence and tour Signature's production facilities in Glenwillow, Ohio.

NOT A CERTIFIED COPY

February 27, 1998	Late at night on February 26th and early in the morning on February 27th, Mr. Fogg and Mark T. Shehan, Esq. of Skadden and Messrs. Stynes, Kitts and Fuchs of Morgan Stanley negotiated by telephone with Signature's lawyers and Mr. Friedman of DLJ and presented an offer for Sunbeam's acquisition of Signature with a price of $8.00 per share in cash. In the afternoon of February 27th, the Board of Directors of Sunbeam, Morgan Stanley representatives Stynes, Fuchs, Kitts, Strong, Webber, Chang, Yoo, Bram Smith, Managing Director, Ruth Porat, Managing Director, Michael Hart, Principal, John Tyree, Associate, and Lily Rafi, Analyst, Messrs. Fogg and Easton of Skadden and Mr. Fannin and Ms. Kelley of Sunbeam met at Morgan Stanley headquarters in New York to consider the Coleman transaction, pursuant to which each outstanding share of Coleman common stock would be converted into the right to receive 0.5677 of a share of Sunbeam common stock and $6.44 in cash. The Board unanimously approved the Coleman transaction. The Board of Directors of Sunbeam also unanimously approved a negotiating range and authorized certain officers of Sunbeam to proceed with negotiations related to the proposed acquisitions of First Alert and Signature and to enter into a definitive agreement if satisfactory terms could be reached. Late in the evening, Sunbeam proposed to purchase, in a tender offer, all outstanding shares of First Alert at a price of $5.25 per share, net to the seller in cash.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

018977

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042304
16div-024333

	Skadden attorneys Easton, Amorison, Weiss and Steven Daniels, Esq. met with Wachtell attorneys Emmerich, Cohen, Frank L. Miller, Esq., Michael S. Katzke, Esq. and Deborah L. Paul, Esq. and Messrs. Isko and Shapiro of Coleman at the offices of Wachtell to finalize the definitive merger agreements.
	Messrs. Fannin, Kersh, Gluck and Ms. Kelley met with Messrs. Harlow and Bornstein of Arthur Andersen at the Palace Hotel in New York to discuss the recent due diligence performed on Coleman, First Alert and Signature.
	Messrs. Molenaar and Nicholas of Coopers & Lybrand toured Signature's production facilities in Bridgeview, Illinois.
February 28, 1998	Late at night on February 27th and early in the morning on February 28th, Messrs. Fogg and Shehan of Skadden and Messrs. Stynes, Kitts and Fuchs negotiated by telephone with Signature's lawyers and Mr. Friedman of DLJ and presented an offer for Sunbeam's acquisition of Signature to the representatives of DLJ with a price of $8.25 per share in cash.
	Messrs. Dunlap, Kersh and Fannin of Sunbeam and Messrs. Kitts and Stynes of Morgan Stanley participated in conference calls with First Alert and Signature to finalize the terms of the transactions.
	The Board of Directors of First Alert and Signature approved the transactions with Sunbeam. Definitive agreement between Sunbeam and First Alert

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

CONFIDENTIAL SASMF 17244

018978

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042305
16div-024334

	and Sunbeam and Signature were executed.
February 28 - March 1, 1998	Messrs. Dunlap, Kersh, Fannin and Goudis of Sunbeam, Messrs. Kitts, Fuchs and Porat of Morgan Stanley met with Mauri Hope of Hill & Knowlton to discuss the public relations aspects of the transactions.
March 1, 1998	Representatives of Sunbeam, Messrs. Kitts, Fuchs and Stynes of Morgan Stanley and Ms. Hope of Hill & Knowlton participated in a conference call with Steve Lipin of the Wall Street Journal to advise him of the impending announcement of the transactions.
March 2, 1998	Announcement of the transactions prior to the opening of trading on the New York Stock Exchange.

NOT A CERTIFIED COPY

The information on this schedule has been supplied by Morgan Stanley & Co., Incorporated. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE A

Personnel from Morgan Stanley & Co., Incorporated, 1585 Broadway, New York, New York 10036, (212) 761-4000, who worked on the Sunbeam project were:

Bruce D. Fiedorek, Managing Director, Firm Management (New York)
William H. Strong, Managing Director (Chicago Branch)
Robert W. Kitts, Managing Director, Mergers & Acquisitions (New York)
Ruth Porat, Managing Director, Mergers & Acquisitions (New York)
William Reid, Managing Director, Mergers & Acquisitions (New York)
Bram Smith, Managing Director, Mergers & Acquisitions (New York)
James B. Stynes, Managing Director, Mergers & Acquisitions (New York)
Alexandre J. Fuchs, Vice President, Mergers & Acquisitions (New York)
Michael Hart, Principal
John Tyree, Associate, Mergers & Acquisitions (New York)
Josh Webber, Associate, Mergers & Acquisitions (New York)
Gene K. Yoo, Associate, Mergers & Acquisitions (New York)
Tyrone Chang, Analyst, Mergers & Acquisitions (New York)
Lily Rafi, Analyst, Mergers & Acquisitions (New York)

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

018980

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042307
16div-024336

The information on this schedule has been supplied by Skadden, Arps, Slate, Meagher & Flom LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE B

Personnel from Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, (212) 735-3000, who worked on the Sunbeam project were:

Partners	Of Counsel	Counsel	Associates
Clifford H. Aronson	James A. Levitan	Wendy Fleishman	Allison L. Amorison
Richard L. Easton		Joseph P. Nisa	Angela I Daniel
Blaine V. Fogg			Steven J. Daniels
Mitchell J. Solomon			Matthew M. Greenberg
Barbara Wrubel			Alexander B. Johnson
			Nancy H. Johnson
			Deborah J. Komins
			Patrick J. Morgan
			Timothy F. Nelson
			Regina Olshan
			Mark E. Rakoczy
			Mark T. Shehan
			James A. Stotizfus
			Clem G. Turner
			Romina Weiss
			William J. Weiss

Legal Assistants		Support Staff	
Cat Bistransin	Carol A. Albano	Marlene Flom	Sandra J. Roach
Buzz Bovshow	Rudolph E. Arita	Todd William Genger	Jennifer Roberts
Robert A. Davies	Philip A. Ashby	Josephine Giambalvo	Florence Samuelson
Jennifer Hessmer	Kim Baker	Kathryn Graybill	Quetcy Santiago
Nicholas F. Matranga	Katherine J. Balazs	Elizabeth C. Guthrie	Linda Schager
Matthew J. Plante	Camilla K. Beattie	Helen Harris	Gregory J.Simon
Todd Ross	Paul Bogdanovic	Laura L. Hauck	Lorna Smith-Grant
Martha I. Rosas	Brenda Boykin	Beryl Heaton	Maureen Todman
Laura M. Sheridan	Lynn T. Buckley	Patricia Jones	
Janet W. Slater	Carole Casey	Helen B. Kaplan	
	Jill G. Cornell	Mary E. Keough	
	Joanne D'Angelo	Leslie C. Leach	
	Linda Davis	Ann Link	
	Serafina Distefano	Robert C. Loehr	
	Carol Donnelly	G. Bradford Newman	
	Rosalie Engelman	Karl J. Peterson	
	Margaret Flocco	Cristina Poggioli	

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

The information on this schedule has been supplied by Sedgewick of Florida, Inc. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE C

Personnel from Sedgewick of Florida, Inc., 1 Financial Plaza, Suite 2400, Ft. Lauderdale, Florida 33394, (954)764-7700, who worked on the Sunbeam project were:

Peter Cook - Account Manager
Thomas Patrick - Account Director

NOT A CERTIFIED COPY

018982

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The information on this schedule has been supplied to us by Arthur Andersen LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE D

Personnel from Arthur Andersen LLP, 100 N.E. 3rd Avenue, Suite 700, Fort Lauderdale, Florida 33301, (954) 523-4433) and 777 South Flagler Drive, Phillips Point, Suite 1700, West Tower, West Palm Beach, Florida 33401 (561) 832-8100, and One Biscayne Towers, Suite 2100, Miami, Florida 33131, (305) 374-3700, who worked on the Sunbeam project were:

Phil Harlow, Partner (Fort Lauderdale)
Sandra Prisco, Executive Assistant to Phil Harlow
Larry Bornstein, Senior Audit Manager (West Palm Beach)
Rosemary Alberto, Executive Assistant to Larry Bornstein
Dennis Pastrana, Senior Accountant (Miami)

NOT A CERTIFIED COPY

018983

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The information on this schedule has been supplied to us by Thorp Reed & Armstrong. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE E

Personnel from Thorp Reed & Armstrong, One Riverfront Center, Pittsburgh, Pennsylvania 15222-4895, (412) 394-7711, who worked on the Sunbeam project were:

Partners	Of Counsel	Associates
Joseph R. Brendel	Peter G. Veeder	Ronald C. Gahagan, Jr.
Edward B. Harmon		James M. Ginocchi
Michael J. Kline		

Support Staff	Librarian
Roberta S. McLaughlin	Donna Kieler

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED

018984

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042311
16div-024340

SASMF17251

The information on this schedule has been supplied by Coopers & Lybrand LLP. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE F

Personnel from Coopers & Lybrand LLP, 1301 Avenue of the Americas, New York, New York 10019-6013, (212) 259-1000, who worked on the Sunbeam project were:

Donald Burnett, Partner (New York)
Andrew Molenaar, Partner (New York)
Jong Lee, Manager (New York)
Dick Oishi, Manager (Chicago)
Dave Winston, Manager (Chicago)
Keith Polak, Senior Associate (New York)
Eric Mauch, Senior Associate (Chicago)
Tom Nicholas, Senior Associate (Chicago)

NOT A CERTIFIED COPY

The information on this schedule has been supplied by Hill & Knowlton, Inc. Sunbeam makes no representation as to its accuracy or completeness.

SCHEDULE G

Personnel from Hill & Knowlton, Inc., 466 Lexington Avenue, New York, New York 10017, (212) 885-0300, who worked on the Sunbeam project were:

Ed Belak
Kim Brooks
Pat Carle
A.J. Desjardins
Madeline Hardardt
Mari Hope
Christopher Markham
Pamela Ritchie
Michael Sheinfield
Carla Sylvester
Harlan Teller
Jane-Linn Vincent

NOT A CERTIFIED COPY

The information on this schedule has
been supplied by Sunbeam Corporation.

SCHEDULE H

Personnel from Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445, (561) 243-2100, who were not referred to in the above Chronology to which this schedule is attached, but who worked on the Sunbeam project, were:

Steve Dalberth - Director, Treasury Operations
Marta Deak - Human Resources Generalist
Steve Groh - Manager-Financial Planning and Analysis
Silvia Inman - Administrative Assistant
James Llewellyn - Director of Compensation and Benefits
Dee Valek - Administrative Assistant
Sean Thornton - Director-Corporate Security
Deborah MacDonald - Director, Worldwide Planning & Strategy
Gary Mask -Vice President-Human Resources
Shelley Meronchuk- Administrative Assistant
Dale Tabinowski - Director, Field Human Resources
George Timchal - Vice President, Procurement
Bob Totte - Vice President, Taxes
Don Uzzi - Left firm-was Executive Vice President, Consumer Products, Worldwide

NOT A CERTIFIED COPY

018987

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1042314
16div-024343

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
919 THIRD AVENUE
NEW YORK 10022-3897
TEL (212) 735-3000
FAX (212) 735-2000

May 5, 1998

VIA FACSIMILE TRANSMITTAL

John Kroog, Esq.
Director, Market Surveillance
New York Stock Exchange, Inc.
11 Wall Street
New York, New York 10005

Re: Acquisition of The Coleman Co., Inc. (CLN) by Sunbeam Co. (SOC)
NYSE Investigation #98611

Dear Mr. Kroog:

In response to your letter dated March 6, 1998 to David C. Fannin, Esq., Executive Vice President, Chief Legal Officer and Secretary of Sunbeam Corporation ("Sunbeam"), I am enclosing a copy of a written chronology (the "Chronology") describing events leading up to the March 2, 1998 announcement of Sunbeam's acquisitions of The Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (the "Acquisitions"). The Chronology was prepared for and submitted to the Securities and Exchange Commission in response to an inquiry similar to that in your March 6 letter.

We believe that the Chronology and the Schedules attached thereto respond to most, if not all, of the requests for information contained in your March 6 letter. The Chronology describes the events culminating in the public announcement of the Acquisitions and identifies the principal outside firms engaged by Sunbeam to assist it with the Acquisitions. The Schedules attached to the Chronology contain the names of the individuals at those firms who worked on the Acquisitions, as well as the names of Sunbeam personnel not referred to in the Chronology who are believed to have been aware of the Acquisitions before they were publicly announced. The Chronology is correct to the best of our knowledge.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 17254

0188810

However, to the extent that it is based on information supplied by other firms, Sunbeam cannot vouch for the accuracy of the information supplied.

If you have any questions regarding the enclosed materials, please do not hesitate to telephone me.

Request for Confidential Treatment

Sunbeam requests that the documents submitted herewith be treated as confidential and that, with respect to any request for disclosure to any person or entity other than the New York Stock Exchange of any of the information contained in the materials submitted herewith, Sunbeam be provided with notice that disclosure has been requested and an opportunity to submit written objections to such disclosure before any disclosure is made.

Notice of any request for disclosure should be sent to David C. Fannin, Esq., Executive Vice President, Chief Legal Officer and Secretary, Sunbeam Corp., 1615 South Congress Avenue, Delray Beach, Florida 33445 (tel. (561) 243-2100), and to the undersigned at the above address

Please acknowledge receipt of this request for confidential treatment by signing the duplicate of this letter enclosed herewith in the space provided below, and returning the same to me in the enclosed stamped, self-addressed envelope.

Very truly yours,

Douglas M. Kraus

Enclosures

Request for confidentiality
acknowledged

_____

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SASMF17256

MESSAGE CONFIRMATION

04/30/99 15:58
ID=SKADDEN ARPS

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	
04/30	18'27"	212 3271331	CALLING	31	OK	0000

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 17256

018990

PRELIMINARY DRAFT

PROJECT LASER

Presentation to the Board of Directors

CAMPER

February 27, 1998

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083960

266810

CPH EXHIBIT 89
FOR IDENTIFICATION
PAMELA A. STITT
1-8 2004
WITNESS Chang, T.

MORGAN STANLEY
16civ-024347

PROJECT LASER

Table of Contents

SECTION I TRANSACTION OVERVIEW

Tab A Strategic Rationale
Tab B Transaction Summary

SECTION II OVERVIEW OF CAMPER COMPANY

SECTION III PRELIMINARY VALUATION OF CAMPER COMPANY

SECTION IV OVERVIEW OF LASER COMPANY

SECTION V PRELIMINARY VALUATION OF LASER COMPANY

SECTION VI REVIEW OF ANTICIPATED COMBINATION SYNERGIES

SECTION VII PRO FORMA COMBINATION ANALYSIS

APPENDIX

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083961

C66810

F13103603\02-26-98\8:59 PM 2

NOT A CERTIFIED COPY

TRANSACTION OVERVIEW

MORGAN STANLEY
CONFIDENTIAL
0083962

16div-024349

166810

F13\100126\02-22-98\8:31 AM

STRATEGIC RATIONALE

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083963

966810

F13\1038837\02-26-0619:59 P\PG4

MORGAN STANLEY
IGGIV-024030

PROJECT LASER

Strategic Rationale
CAMPER

- Capitalize on **strong brand value**
  - Near 40% market share in industry, nearest competitor has only 10%
  - Untapped strength of the *Camper* brand
- **Maintain recent growth** rate in revenues and earnings
  - Respond to market concern about the need to make an acquisition ("Quantum Leap")
  - Remain a top performer in peer group
  - Increase leverage over channels
- Give management **opportunity to streamline operations and utilize its expertise in cost cutting**
  - Current businesses operating efficiently
  - Similarity of businesses will result in the **potential to realize tremendous synergies**
  - Capacity available at current facilities to absorb significant production responsibilities of *Coleman*
- CAMPER has grown rapidly through acquisition without associated operations rationalization
  - Significant **opportunity for business re-engineering**
- Consolidate outdoor recreational presence
  - Diversify existing product base
  - Combination **results in less seasonal product mix** in outdoor segment
  - Acquired brands expected to maintain sales during economic downturn
- Several opportunities to **create value** remain
  - Industry has lacked innovation and advertising
  - Push new product through existing distribution system (mass market channels)

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083964

966810

TRANSACTION SUMMARY

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083965

L66810

F13\103883\02-26-98\9:59 PM35

1040 MORGAN STANLEY 2

PROJECT LASER

Transaction Summary

Two Step Transaction:
- Acquisition of CAMPER Holding (owner of 82.4% of CAMPER Operating Co. stock) from MAFCO affiliates
- Minority repurchase of Operating Co. public shareholders

The CAMPER Holding Acquisition

Description:	• Acquisition of all the outstanding stock of CAMPER Holding by LASER
Consideration:	A) - 14,099,749 LASER Common Shares (fixed) - $590,426,989 approximate value as of February 26, 1998 B) - $159,956,756 Cash to MAFCO affiliates
"Assumption" of Holding Company Debt:	• "Assumption" of CAMPER Holding Company Debt $524.4MM of Discount Notes accreted value • All early redemption costs to be paid by LASER
Collars:	• None
Walkaway:	• None
Closing Conditions:	• Customary conditions
Shareholder Lockup:	• MAFCO affiliates agreed to hold at least 75% of their LASER shares for 3 months; and at least 50% of their LASER shares for 6 months
Expected Closing:	• 2Q98

Note: (1) Assumes LASER stock price of $41.875

The Minority Repurchase

Description:	• Reverse subsidiary merger of newly formed subsidiary into CAMPER
Consideration:	A) - 5,336,721 LASER Common Shares (fixed) - $223,475,192 approximate value as of February 26, 1998 B) - $60,543,244 Cash to public shareholders
Collars:	• None
Walkaway:	• None
Closing Conditions:	• LYONS redemption • Customary conditions
Expected Closing:	• 2Q98

Cash-Out of Options

Number of Options:	• 3,282,930
Average Exercise:	• $15.1447
Cash-out Price:	• $27.5000
Total Cash-out Cost:	• $40,561,585

NOT ACERTIFIED COPY

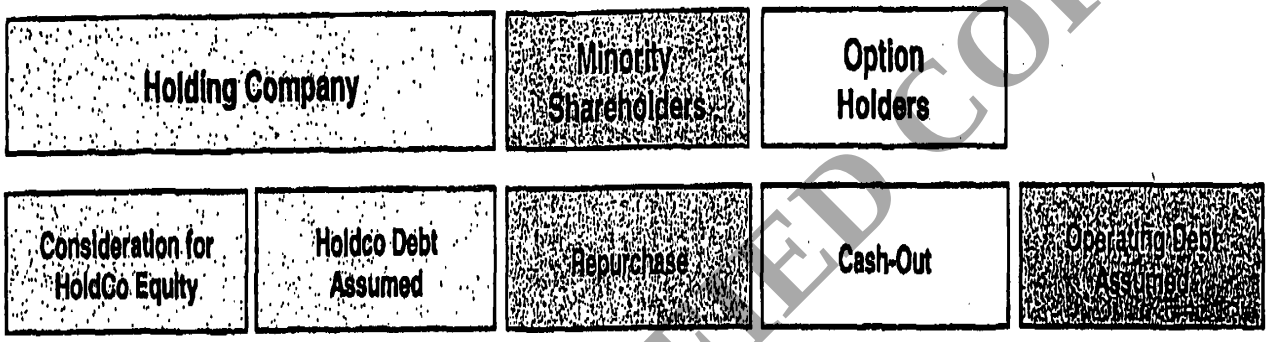
MORGAN STANLEY CONFIDENTIAL 0083966

866810

PROJECT LASER

Transaction Pricing

CAMPER



- 19,436,470 LASER Common Shares Issued
- $220,500,000 Cash
- $40,561,581 worth of options cashed out
- $1,064,400,000 Total debt assumed or refinanced

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083967

666810

Notes: (1) Assumes paydown of $90.0MM associated with the sale of CAMPER Safety & Security.

PROJECT LASER

Financial & Market Overview of Laser and Camper

Market Statistics:	Laser	Camper
Market Price @ February 25, 1998	$41.875	$19.875
10-Year High	$50.438	$26.000
10-Year High Date	10/15/97	03/22/96
Primary Shares Outstanding (MM)	85.5	53.5
Fully Diluted Shares Outstanding (MM)	88.1 (1)	54.2 (2)
Indicated Dividend	$0.04	$0.00
Indicated Dividend Yield/LTM Payout Ratio	0.1% / 2.8%	0.0% / 0.0%

Current Estimates				
EPS Estimates	I/B/E/S	Laser	I/B/E/S	Camper
1997A	$1.42 (3)	$1.42 (3)	$0.51 (3)	$0.51 (3)
1998E	$2.00	$2.20	$0.97	$1.13
5-Year Est. EPS Growth (4)	20.0%	N.A.	17.5%	20.9%
Implied P/E Ratio				
1997A	29.5 x	29.5 x	39.0 x	39.0 x
1998E	20.9	19.0	20.5	17.6
1998E P/E to Growth Rate	1.0	N.A.	1.2	0.8

Capitalization ($MM):	Book as of 12/31/97	Market as of 02/25/98	Book as of 12/31/97 (6)	Market as of 02/25/98 (6)
Short-Term Debt	$0.7	$0.7	$64.7	$64.7
Long-Term Debt (5)	194.6	194.6	387.3	387.3
Stockholder's Equity	531.9	3,581.6 (6)	227.1	1,062.7 (6)
Total Capitalization	$727.2	$3,776.8	$679.1	$1,514.7
Cash	$52.4		$13.0	
Total Debt/Total Capitalization	26.8%	5.2%	66.6%	29.8%
Net Debt/Total Net Capitalization	21.2%	3.8%	65.9%	29.2%
Market/Book Ratio	5.2 x		2.2 x	

1998E Financial Results (7)		Margin		Margin
Revenues	$1,433.2		$1,184.9	
EBIT	285.0	19.9%	124.9	8.7%
Gross Interest Expense	8.2		32.0	
Net Income	180.9	12.6%	60.3	4.2%
EBIT/Gross Interest Expense	34.6		3.9	
1998E Effective Tax Rate	35.0%		35.0%	

Operating Statistics:		
Employees	6,000	7,000
LTM Sales/Employees	$238,863	$169,271
LTM EBIT/Employees	$47,498	$17,843
LTM Capex to LTM Sales	5.0%	2.5%
Credit Rating (Moody's/S&P)	N.A.	B (S&P)

Notes: (1) Based on 85.5 MM common shares and 6.7 MM options outstanding with an average exercise price of $25.61, as of preliminary 12/31/97 Annual Report; treasury method assumed.
(2) Based on 53.5 MM common shares on 2/20/98 and 3.1 MM options outstanding with an average exercise price of $15.14, on 2/23/98 from Camper Mgmt.; treasury method assumed.
(3) Earnings from continuing operations excluding one time charges.
(4) Estimates for Camper management case earnings per share projections from 1998-2002.
(5) Long-term debt includes minority interest.
(6) Market value based on primary shares outstanding; book value for Camper estimated for sale of Safety & Security.
(7) Based on I/B/E/S case for Laser and Camper Management case for Camper.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083968

Cont #97

OVERVIEW OF CAMPER COMPANY

NOT A CERTIFIED COPY

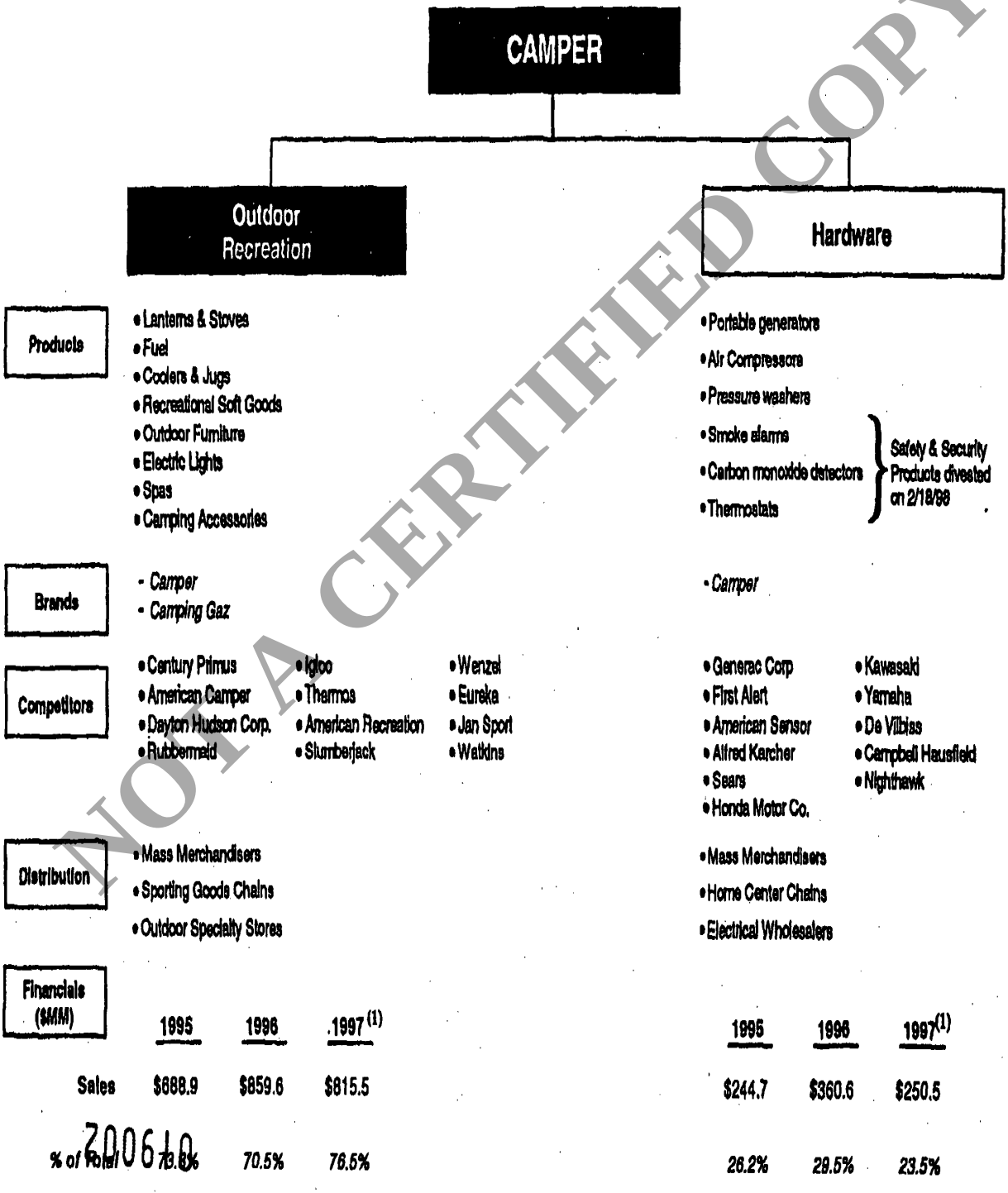
MORGAN STANLEY
CONFIDENTIAL
0083969

100610

PRELIMINARY DRAFT

PROJECT LASER

Camper Business Overview



NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083970

200610

F1803\1448093-26-98&12P

Note: (1) Percentage breakdown of 1997 segment sales based on Prudential Securities research report dated 11/14/97.

PRELIMINARY

PROJECT LASER

Summary Descriptive Sheet: CAMPER

($MM, except per share amounts)

DESCRIPTION OF BUSINESS:

Leading manufacturer and marketer of consumer products for the outdoor recreation and hardware markets on a global basis. The Company's products have been sold domestically and internationally under the Camper brand name since the 1920s.

The Company attributes its market position to the strength of the Camper brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

RECENT EVENTS:

February 18, 1998 - Stebe plc signed an agreement to acquire Camper's Safety and Security division for $105MM. Stebe will also license the "Camper" name for certain products sold through retail distribution.

September 2, 1997 - The Company announced the appointment of Joseph P. Page to the position of CFO, succeeding Steven F. Kaplan who is leaving the Company.

August 7, 1997 - The Company reported 2Q earnings of $0.47 (excluding restructuring charges and extraordinary items) compared to $0.53 for the same period last year.

May 27, 1997 - The Company said it is moving its headquarters to Wichita, Kansas, from Golden, Colorado in order to be closer its main manufacturing operation.

April 15, 1997 - The Company announced that it will close three US and one international factory, cut its 7,000-person workforce by 10% and eliminate about 1/3 of its product line.

SELECTED INFORMATION:

State of Incorp:	Delaware
Headquarters:	Wichita, KS
Stock Symbol:	CLN
Listing:	NYSE
Fiscal Year End:	December 31

SEGMENT SALES BREAKDOWN:

Industry ($)			Geographic ($)		
Outdoor Recreation	$815.5	76.5%	Domestic	$867.7	81.4%
Hardware	250.5	23.5%	Europe	159.9	15.0%
			ROW	191.88	18.0%
			Eliminations	-153.5	-14.4%
Total	$1,066.0	100.0%	Total	$1,066.0	100.0%

SELECTED FINANCIAL INFORMATION:

	Fiscal Years Ended December 31,			3 Yr.	LTM	Estimates (2)	
	1995	1996	1997	C.G.R.	(12/30/97)	1998E	1999E
Revenues (1)	$933.6	$1,220.2	$1,066.0	6.9%	$1,066.0	$1,184.9	$1,303.4
% Change	62.2%	30.7%	-12.6%		--	11.2%	10.0%
EBITDA (1)	127.9	99.0	99.0	-12.0%	99.0	159.1	189.9
% Margin	13.7%	8.1%	9.3%		9.3%	13.4%	14.6%
EBIT (1)	101.4	62.6	62.8	-21.3%	62.8	124.9	146.0
% Margin	10.9%	5.1%	5.9%		5.9%	10.5%	11.2%
Net Income	50.0	11.3	14.3	-46.5%	14.3	60.7	77.8
% Margin	5.4%	0.9%	1.3%		1.3%	5.1%	6.0%
Capital Expenditures	29.1	41.3	27.0	-3.6%	27.0	38.0	41.0

3-year Price History

SELECTED MARKET INFORMATION:

Stock Price (2/25/98):	$19.875
LTM Low / High:	11.500/20.880
10-year High (3/22/96):	26.000
Shares Outstanding (MM):	53.425
Dividend:	$0.00
Dividend Payout:	0.0%
Dividend Yield:	0.0%

SELECTED VALUATION PARAMETERS:

	LTM	1998E
Adj. Mkt. Cap./Sales (3):	143.8%	129.4%
Adj. Mkt Cap / EBIT (3):	24.4 x	12.3 x
Adj. Mkt Cap / EBITDA (3):	15.5	9.6
Market/Book (4):	4.3	
Discount to LTM High:	(4.8)%	
Discount to 10-year High:	(23.6)	

	E.P.S.	P/E
FY 1997:	$0.27	74.2 x
LTM:	0.27	74.3
1998E (2):	0.97	20.5
1999E (2):	1.14	17.4
Proj. 5 Yr. Growth (5):	17.5%	
1998E P/E to Growth	1.0 x	

OWNERSHIP:

Significant Shareholdings (6):		D&O Holdings (6):		
Total Insider Holdings	83.2%	Ronald O. Perelman (54)	Director	82.8%
		Jerry W. Levin (52)	Chairman, CEO	0.0%
		Other		0.4%
Institutional Ownership	12.7%			
Retail	4.1%			
Total	100.0%	Total Insider Holdings		83.2%

CAPITALIZATION:

	Book Capitalization at 12/30/97		Market Capitalization at 2/25/98	
	Amount	%	Amount	%
Short-Term Debt:	$0.0	100.0%	$0.0	100.0%
Long-Term Debt:	$481.0	65.9%	$481.0	31.2%
Preferred Stock:	0.0	0.0%	0.0	0.0%
Shareholders Equity:	248.8	34.1%	1,061.8	68.8%
Total Capitalization (7):	$729.8	100.0%	$1,542.9	100.0%
Cash and Cash Equivalents:			$9.9	
Adjusted Market Capitalization (3):			$1,533.0	

SELECTED CREDIT STATISTICS:

LTM EBIT / Net Interest:	1.5 x
LTM EBITDA / Net Interest:	2.4
Total Debt / LTM EBITDA:	4.9
Senior Debt Ratings	
- Moody's	NA
- S&P	B

Notes:
(1) Sales, EBIT, EBITDA and Net Income are for continuing operations before any extraordinary or non-recurring items, and cumulative effect of accounting changes.
(2) Estimates from Laser Management projections for Camper.
(3) Adj. Market Cap. consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents.
(4) Based on a closing market price of $19.875 per share on 2/25/98 and 53.4 MM shares outstanding on 12/30/97.
(5) I/B/E/S growth rate estimate as of 2/25/98.
(6) Based on information from proxy dated 3/31/97; Institutional ownership from Bloomberg.
(7) Total Capitalization excludes short-term debt.
(8) Percentage breakdown of 1997 industry sales based on Prudential Securities research report dated 11/14/97; geographic breakdown based on 1996 percentages.

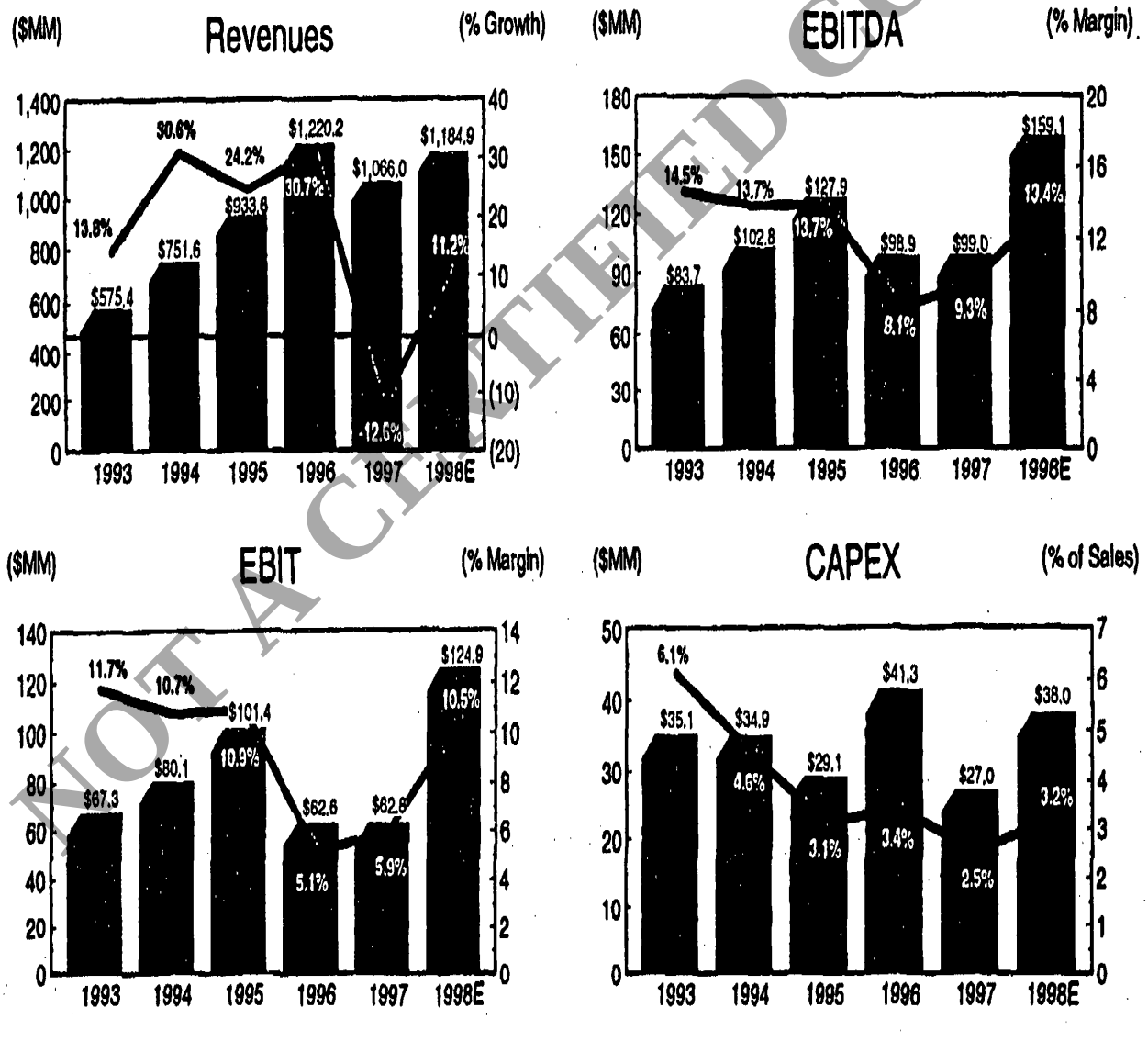
E0061603

NOT A CERTIFIED COPY

PROJECT LASER

The Camper Company

Financial Performance (1)



NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083972

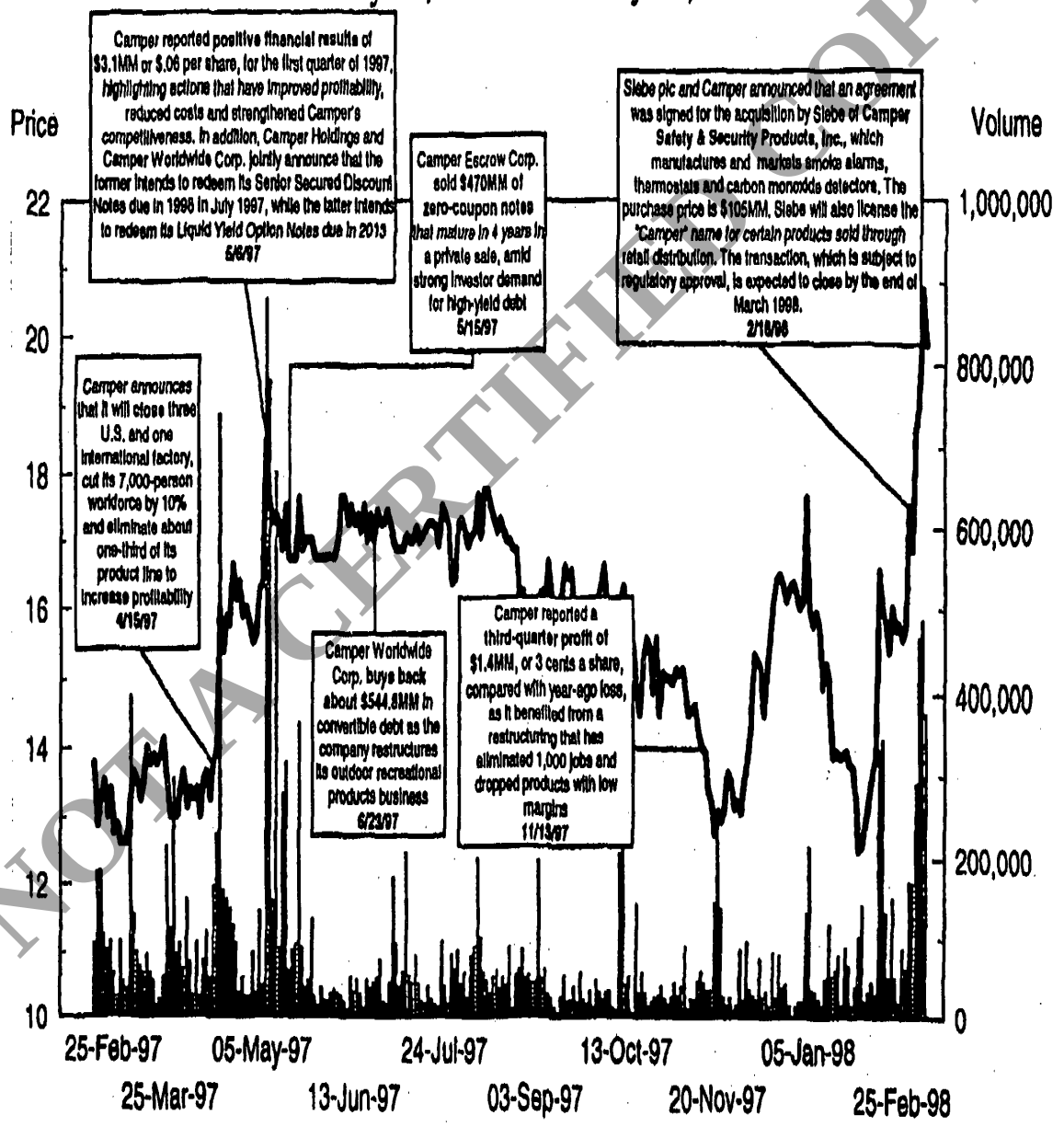
100610

Notes: (1) Financials exclude all non-recurring items. 1998E are based on the Laser management case for Camper.

PROJECT LASER

The Camper Company - Annotated Share Price/Volume Analysis

February 25, 1997 - February 25, 1998



NOT A CERTIFIED COPY

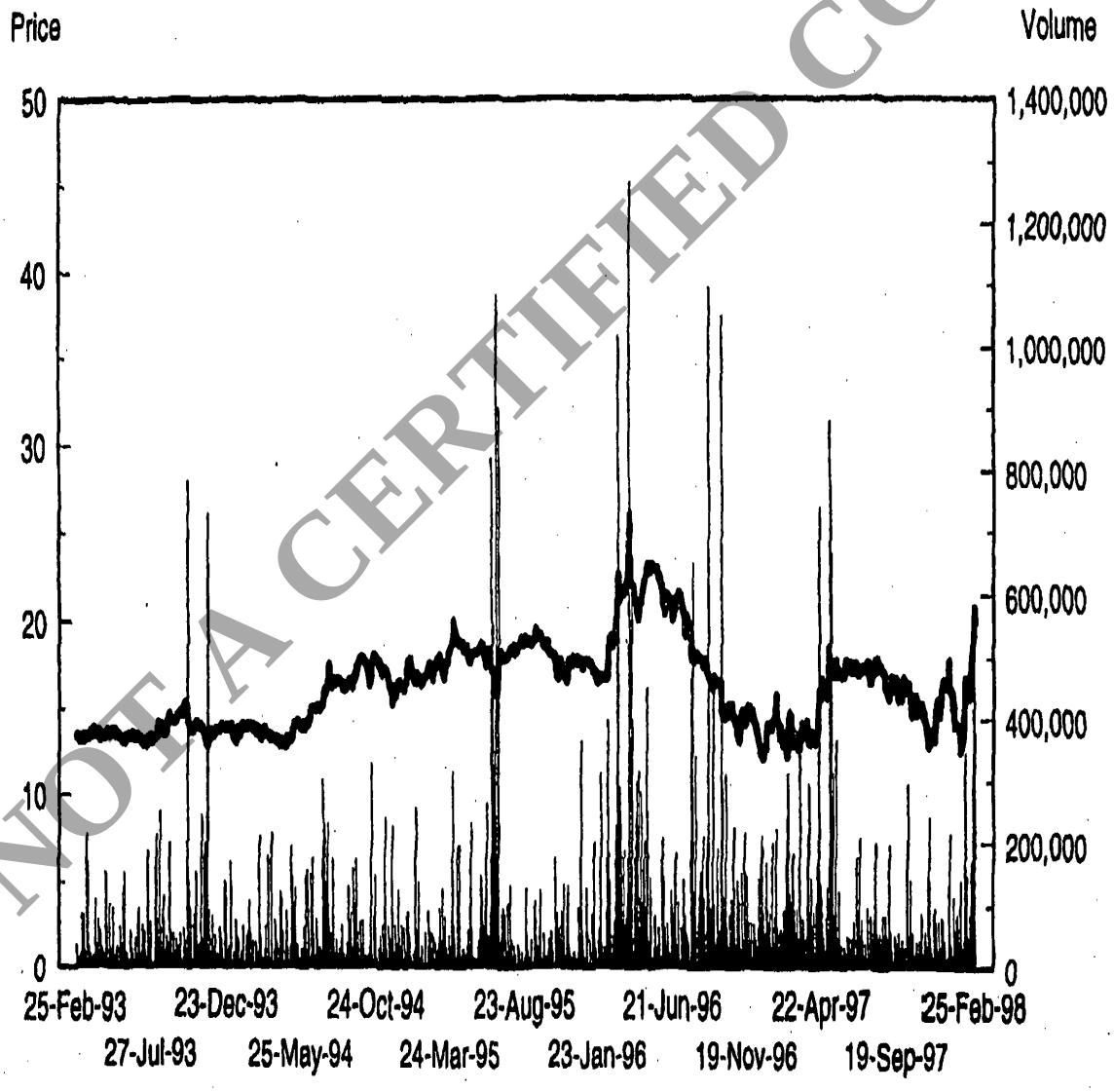
MORGAN STANLEY
CONFIDENTIAL
0083973

S00610

PROJECT LASER

Camper Price/Volume Graph

February 25, 1993 to February 25, 1998



NOT A CERTIFIED COPY

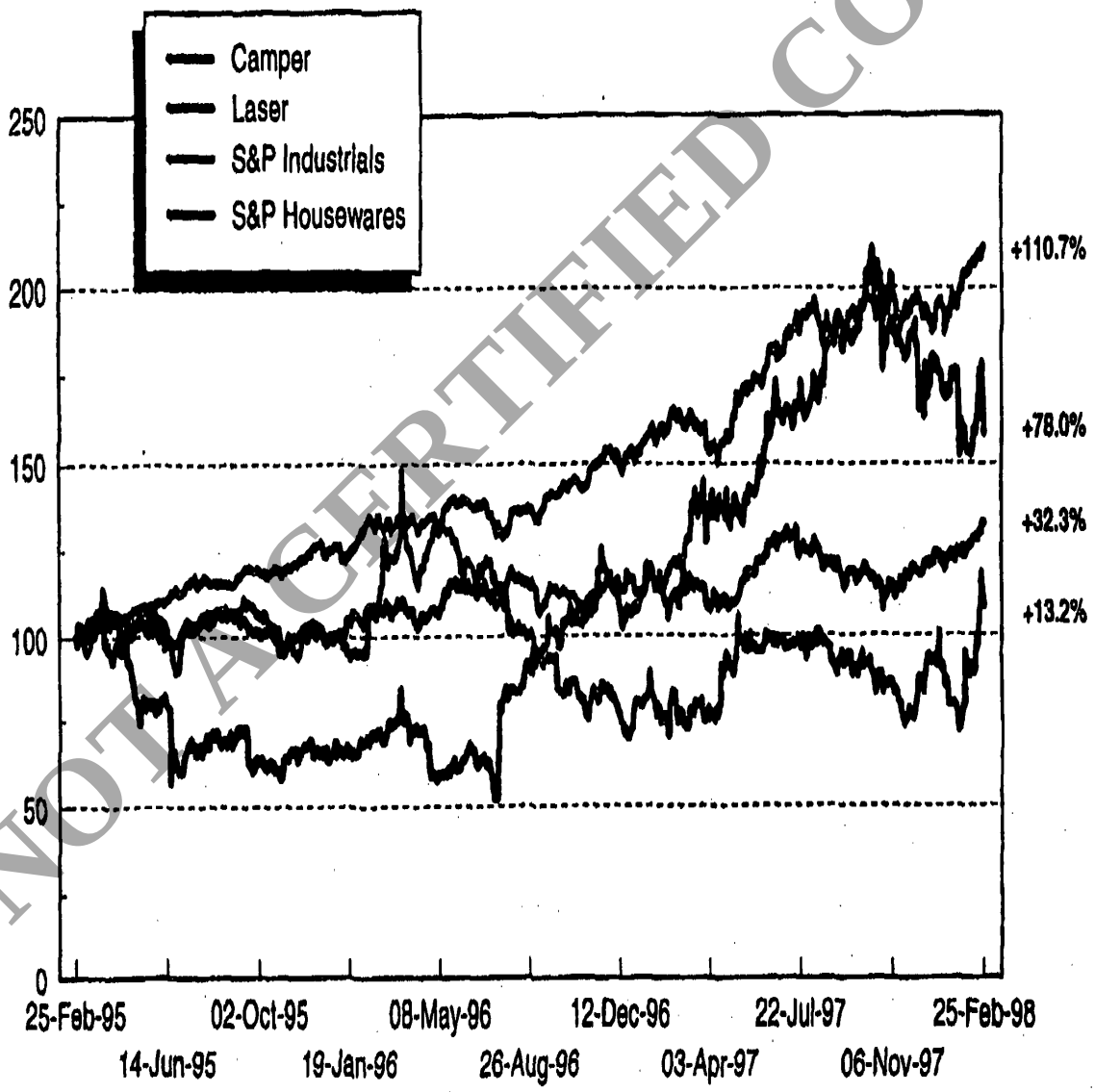
MORGAN STANLEY
CONFIDENTIAL
0083974

900610

PROJECT LASER

CAMPER - Indexed Share Price Analysis

February 25, 1995 - February 25, 1998



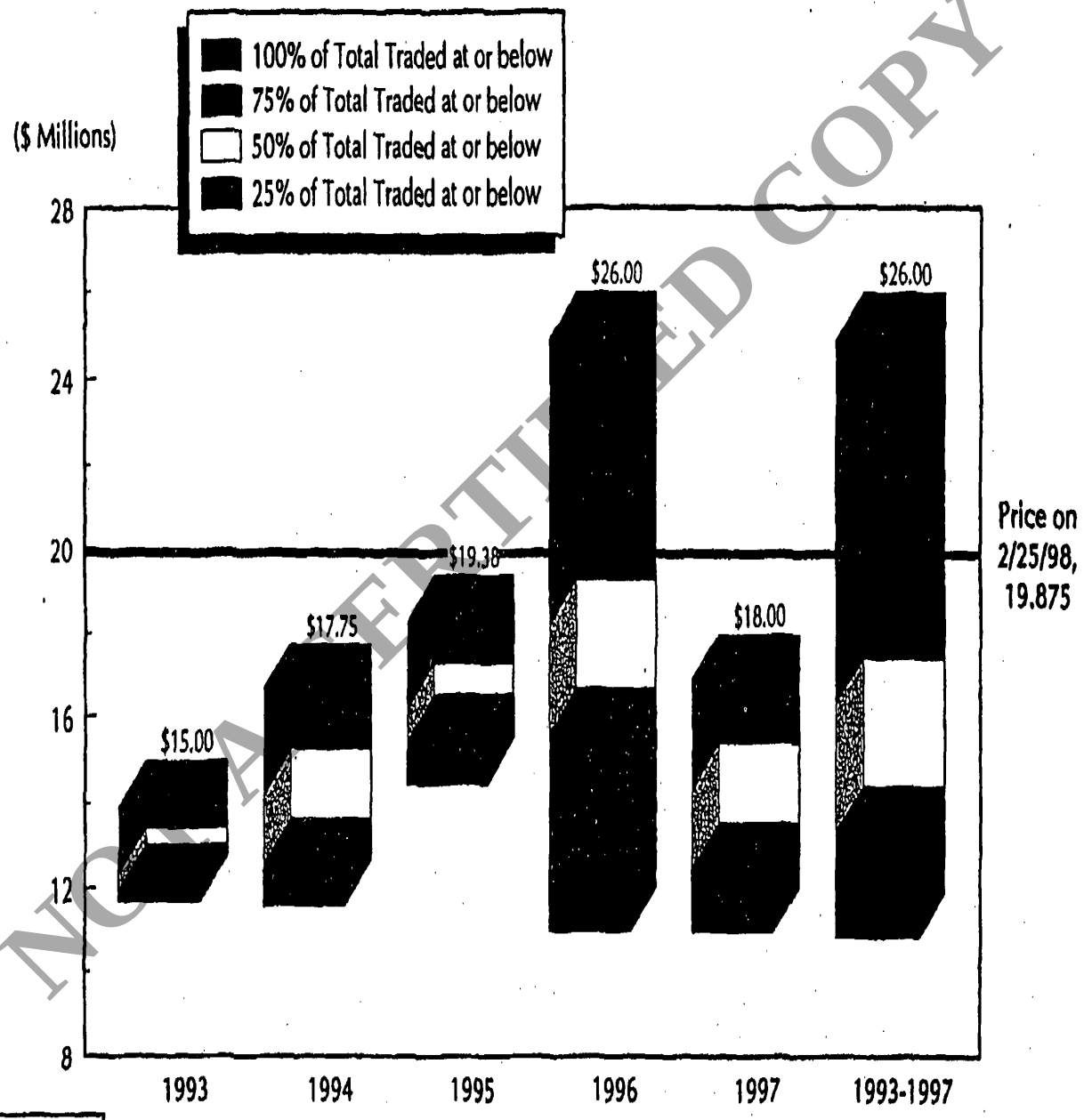
NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083975

L00610

PROJECT LASER

Camper Company: Stock Basis Analysis



Shares traded as a % of 53,424,856 total shares outstanding[1]	25.7%	24.4%	32.0%	59.9%	39.1%	186.3%

Note: (1) From 10Q dated 9/30/97

MORGAN STANLEY CONFIDENTIAL 0083976

NOT A CERTIFIED COPY

MORGAN STANLEY
16div 024383

PROJECT LASER

The Camper Company: Summary of Recent Analyst Estimates

Date	Price	Firm/(Analyst)	Recomm.	Target Price	EPS 1998E	EPS 1999E	PE 1998E	PE 1999E	Long Term EPS Growth	1998 PE/Growth
02/23/98	$18.625	ABN AMRO/ (B. Burnson/B. Martin)	Hold	N.A.	$0.90	$1.15	20.7x	16.2x	20%	1.04
02/23/98	$18.625	McDonald & Co./ (J. Maurer)	Hold	N.A.	0.90	1.25	20.7	14.9	N.A.	N.A.
02/20/98	$16.875	Prudential Securities/ (N. Heymann)	Hold	$18-$19 6-12 mo.	0.90	1.15	18.8	14.7	N.A.	N.A.
02/20/98	$16.875	CS First Boston (L. Hyman)	Buy	$23 12 mo.	0.95	1.25	17.8	13.5	15%	1.19
02/25/98	$19.88	I/B/E/S			$0.97	$1.14	20.5x	17.4x	17.5%	1.17
02/25/98	$19.88	First Call (Ten Brokers)			$0.96	$1.20	20.7	15.5	17.5%	1.18

- "Camper's management has streamlined the infrastructure and renewed its focus on generating profitable sales. Although much already has been accomplished, we expect continued efforts to drive higher profitability through better information management systems, globalization of the operations and product line, and improving product mix." *(CS First Boston - 2/20/98)*
- "Now that the company has cleaned up many of the issues which have had a negative impact on margins over the last two years . . . It appears that FY98 may be the first year since FY95 that we have an opportunity to witness the earnings power of Camper." *(MacDonald & Co. - 2/23/98)*
- "*The company's performance in the first half of 1998 will demonstrate to investors the untapped strength of the Camper brand and the newly formed existence of an operating base that is exceptionally well-positioned for the growth of the Camper franchise...Our investment hypothesis is based on the overall health of the camping industry, the opportunities associated with this health which are yet to be exploited, the enduring strength of the Camper brand name and Mr. Levin's ability to bring operational discipline to a neglected infrastructure.*" *(Morgan Stanley - 10/9/97)*
- "After an earnings stumble in 1996, a new management team, lead by Mr. Jerry Levin, is refocusing the company on profitability while attempting to revitalize the industry through increased advertising and new product innovations." *(Morgan Stanley - 10/9/97)*
- "The restructuring is on or ahead of the plan: 1,000 jobs have been eliminated compared with a goal of 700; 25% of SKUs have been cut compared to an initial target of 33%, which management now believes it can exceed; and liquidity has increased by $100 million, already reaching the year-end objective. Moreover, anecdotal indications of retailers' response to the new lineup for 1998 have been quite favorable." *(CS First Boston - 11/18/97)*

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083977

600610

PROJECT LASER

Analysis of Camper Shareholdings

	Amount	%
Institutions [1]		
Manning & Napier Advisors, Inc.	1,551,147	2.9%
General Motors Invt. Mgmt. Corp.	590,000	1.1%
California Public Employees Rtmnt.	527,600	1.0%
ARCO Investment Management Co.	500,000	0.9%
Keystone Investment Management Co.	380,000	0.7%
Standard Pacific Capital LLC	294,920	0.6%
STI Capital Management	279,940	0.5%
Luther King Capital Management	240,000	0.4%
New Jersey Division of Investment	226,000	0.4%
Barclays Global Investors, N.A.	211,566	0.4%
Long-Term Capital Portfolio, L.P.	209,000	0.4%
The Florida State Board of Admin.	180,000	0.3%
Kingdon Capital Management Corp.	140,000	0.3%
Mellon Bank, N.A.	110,360	0.2%
Total Institutional Holdings	**6,561,394**	**12.3%**

	Amount	%
Insiders [2]		
Ronald O. Perelman	44,067,520	82.8%
Other Directors & Officers	322,594	0.4%
Total Insider Holdings	**44,390,114**	**83.2%**
Other Holdings	**2,413,982**	**4.5%**
Total Shares Outstanding [3]	**53,424,856**	**100.0%**

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083978

Notes:
(1) Based on Technimetrics ownership run dated 2/20/97
(2) Based on Proxy dated 3/31/97
(3) Based on common shares outstanding per 9/30/97 10Q

010610

PRELIMINARY VALUATION OF CAMPER COMPANY

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083979

110610

F13\100128\02-22-98\8:31 AM

MORGAN STANLEY
16CIV-024356

PROJECT LASER

Valuation Methodology

Morgan Stanley's preliminary valuation relies on four valuation methodologies:

	Methods	Relevance for the Company
Comparable Trading Company Analysis	-Value in public equity markets -Analysis of comparable companies' trading and operating statistics -Add "control premium" to determine M&A value	-Depends upon the number of pure comparable companies in size and business line
Precedent Transactions	-Value in market for "Corporate Control" -Price required to be paid to control cash flows -Analysis of precedent transactions is helpful to the extent the acquiree is similar and the external environment is constant	-Depends upon number of recent precedent transactions and degree of comparability
Discounted Cash Flow Analysis	-Discounted present value of projected cash flows with a terminal value applied -Discounted at the appropriate discount rate, the "Weighted Average Cost of Capital" -Resulting DCF value is adjusted to reflect other assets (e.g., cash) and liabilities (e.g., debt)	-Best gauge of standalone economic value -Best method of capturing unique value of company for a strategic buyer -Focuses on cash flow and growth characteristics of company -If done properly, is a very useful valuation tool in negotiations -Must have realistic underlying business plan/budget

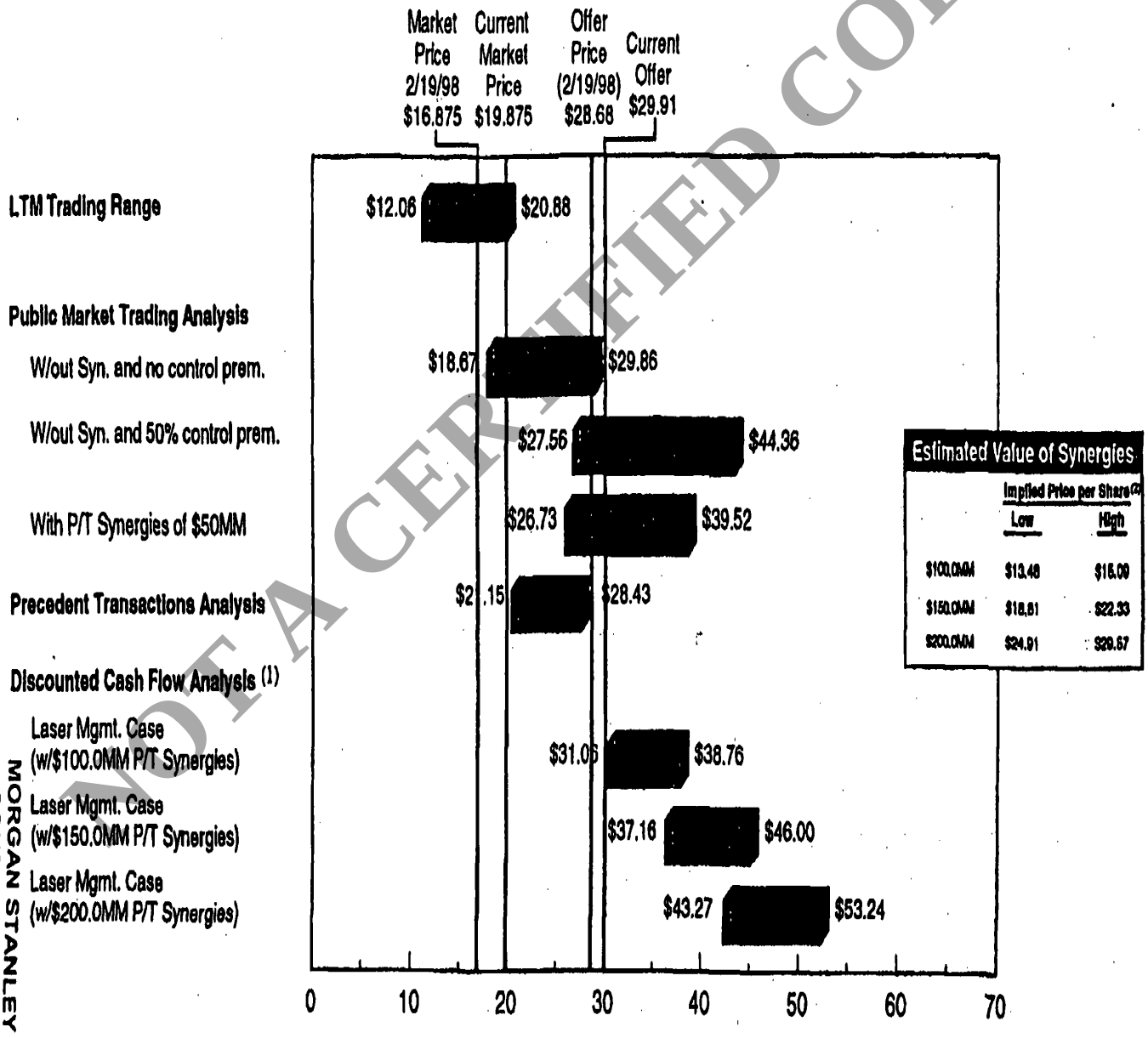
MORGAN STANLEY
CONFIDENTIAL
0083980

OF A CERTIFIED COPY

210610

PROJECT LASER

Summary of Valuation Analysis
CAMPER Company



Estimated Value of Synergies

	Implied Price per Share(2) Low	High
$100.0MM	$13.48	$15.09
$150.0MM	$18.51	$22.33
$200.0MM	$24.91	$29.57

Notes: (1) Discounted to January 1, 1998 assuming a 10.5-11.5% discount rate and a 9.0-11.0 forward EBIT Multiple for terminal value.
(2) Based on 53.4MM common shares outstanding on 2/25/98 from the 9/30/97 10-Q and 3.3MM options outstanding with an average exercise price $15.14 on 12/31/97 from Camper Management; options proceeds assumes tax benefits on options exercise.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083981

C 10610

16div-024368

PROJECT LASER

Summary of Camper Valuation Analyses

($MM, except per share data)

Benchmark	Amount	Multiple Range Low		Multiple Range High	Implied Aggregate Value Low		Implied Aggregate Value High	Implied Equity Value Low		Implied Equity Value High	Implied Price per Share (4) Low		Implied Price per Share (4) High
I. Trading Analysis													
Without Synergies													
1998E Revenues	$1,184.9	1.5 x	-	2.2 x	$1,777	-	$2,607	$1,337	-	$2,167	$24.44	-	$39.05
1998E EBITDA	159.1	8.0	-	12.0	1,273	-	1,909	832	-	1,469	15.54	-	26.75
1998E EBIT	124.9	11.0	-	16.0	1,374	-	1,998	934	-	1,558	17.33	-	28.33
1998E Net Income	60.3	18.0	-	23.0	1,526	-	1,827	1,085	-	1,387	20.00	-	25.31
Without Control Premium					Mean:	$1,487	- $2,085	$1,047	-	$1,645	$19.33	-	$29.86
					Median:	$1,450	- $1,954	$1,010	-	$1,513	$18.67	-	$27.54
Control Premium 50.0%					Mean (1):	$2,017	- $2,908	$1,571	-	$2,468	$28.55	-	$44.36
					Median (1):	$1,955	- $2,710	$1,514	-	$2,270	$27.56	-	$40.88
With Synergies (2)													
1998E EBITDA (w/ Synergies)	$209.1	8.0 x	-	12.0 x	$1,673	-	$2,509	$1,232	-	$2,069	$22.59	-	$37.33
1998E EBIT (w/ Synergies)	174.9	11.0	-	16.0	1,924	-	2,798	1,484	-	2,358	27.02	-	42.43
1998E Net Income (w/ Synergies)	93.6	18.0	-	23.0	2,125	-	2,593	1,685	-	2,153	30.57	-	38.81
					Mean:	$1,907	- $2,633	$1,467	-	$2,193	$26.73	-	$39.52
					Median:	$1,924	- $2,593	$1,484	-	$2,153	$27.02	-	$38.81
II. Precedent Transaction Analysis													
1997 Revenues	$1,066.0	1.9 x	-	2.4 x	$2,025	-	$2,558	$1,585	-	$2,118	$28.81	-	$38.20
1997 EBITDA (w/o Synergies)	99.0	12.0	-	15.6	1,188	-	1,544	748	-	1,104	13.99	-	20.33
1998 EBITDA (w/o Synergies)	159.1	10.0	-	12.0	1,591	-	1,909	1,150	-	1,469	21.15	-	26.75
					Mean:	$1,601	- $2,004	$1,161	-	$1,564	$21.31	-	$28.43
					Median:	$1,591	- $1,909	$1,150	-	$1,469	$21.15	-	$26.75
III. Discounted Cash Flow (3)													
Laser Mgmt. Case (w/o Synergies)					$1,432	-	$1,734	$992	-	$1,294	$18.36	-	$23.67
Laser Mgmt. Case (w/ $100.0MM Base Pre-Tax Synergies)					2,153		2,590	$1,713	-	$2,150	31.06	-	38.76
Laser Mgmt. Case (w/ $150.0MM Base Pre-Tax Synergies)					2,500		3,001	$2,059	-	$2,561	37.16	-	46.00
Laser Mgmt. Case (w/ $200.0MM Base Pre-Tax Synergies)					2,846		3,412	$2,406	-	$2,972	43.27	-	53.24
IV. Estimated Value of Synergies													
$100.0MM Pre-Tax								$721	-	$856	$13.48	-	$15.09
$150.0MM Pre-Tax								1,067	-	1,267	18.81	-	22.33
$200.0MM Pre-Tax								1,414	-	1,678	24.91	-	29.57

Notes:
(1) Assumes a 50.0% equity control premium.
(2) Assumes 1998 pre-tax synergies of $150.0MM.
(3) Discounted to January 1, 1998 assuming a 10.5-11.5% discount rate and a 9.0-11.0 forward EBIT Multiple for terminal value.
(4) Based on 53.5 MM common shares outstanding and 3.3 MM options outstanding with an average exercise price of $15.14 from Camper Management; assumes treasury method shares.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083982

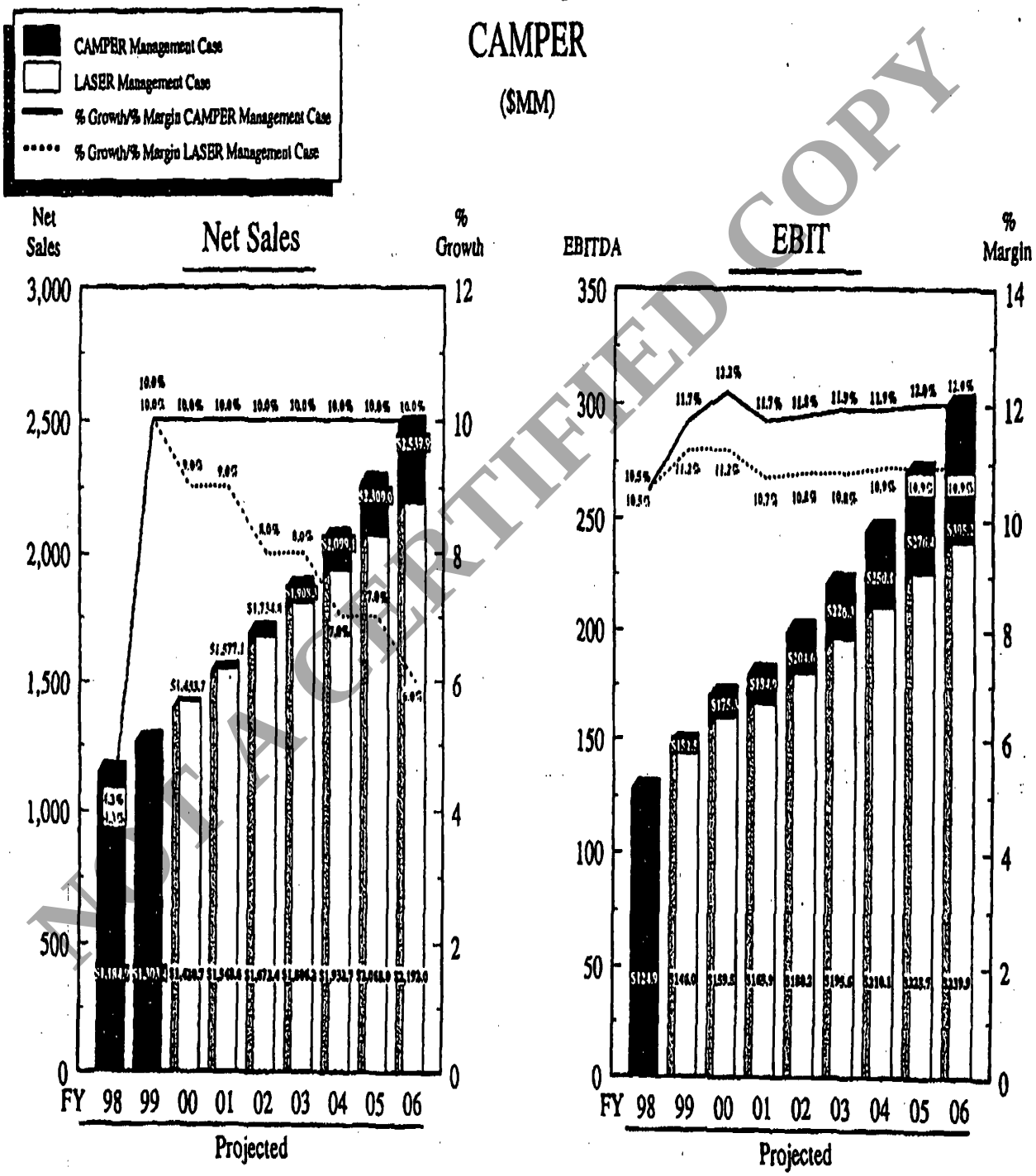
16div 024369 MORGAN STANLEY

PROJECT LASER

Financial Projections

CAMPER

($MM)



MORGAN STANLEY
CONFIDENTIAL
0083983

NOT A CERTIFIED COPY

S10610

F18D0145034.01\2-28-98\1:04A

MSCAN0000870

PROJECT LASER

Camper Valuation Matrix - Without Synergies

Laser Mgmt. Case Without Synergies

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Cur. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1997E (4)	1998E (4)	1999E (4)	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT	Aggregate Value/ 1999E (4) Sales	1999E (4) EBITDA	1999E (4) EBIT
Camper Stat.:				$19.88	$20.88	$12.06	$12.8	$60.3	$77.4	$1,066.0	$99.0	$62.8	$1,184.9	$159.1	$124.9	$1,303.4	$190.0	$146.0
0.7000 x	$29.31	$1,613.8	$2,054.0	47.5 %	40.4 %	143.0 %	N.M. x	26.8 x	20.9 x	1.9 x	20.7 x	32.7 x	1.7 x	12.9 x	16.4 x	1.6 x	10.8 x	14.1 x
0.7050	29.52	1,625.7	2,065.9	48.5	41.4	144.7	N.M.	27.0	21.0	1.9	20.9	32.9	1.7	13.0	16.5	1.6	10.9	14.1
0.7100	29.73	1,637.6	2,077.8	49.6	42.4	146.5	N.M.	27.2	21.2	1.9	21.0	33.1	1.8	13.1	16.6	1.6	10.9	14.2
0.7150	29.94	1,649.4	2,089.7	50.6	43.4	148.2	N.M.	27.4	21.3	2.0	21.1	33.3	1.8	13.1	16.7	1.6	11.0	14.3
0.7200	30.15	1,661.3	2,101.5	51.7	44.4	149.9	N.M.	27.6	21.5	2.0	21.2	33.5	1.8	13.2	16.8	1.6	11.1	14.4
0.7250	30.36	1,673.2	2,113.4	52.8	45.4	151.7	N.M.	27.8	21.6	2.0	21.3	33.7	1.8	13.3	16.9	1.6	11.1	14.5
0.7300	30.57	1,685.1	2,125.3	53.8	46.4	153.4	N.M.	28.0	21.8	2.0	21.5	33.8	1.8	13.4	17.0	1.6	11.2	14.6
0.7350	30.78	1,697.0	2,137.2	54.9	47.4	155.2	N.M.	28.2	21.9	2.0	21.6	34.0	1.8	13.4	17.1	1.6	11.3	14.6
0.7400	30.99	1,708.9	2,149.1	55.9	48.4	156.9	N.M.	28.4	22.1	2.0	21.7	34.2	1.8	13.5	17.2	1.6	11.3	14.7
0.7450	31.20	1,720.7	2,160.9	57.0	49.4	158.6	N.M.	28.6	22.2	2.0	21.8	34.4	1.8	13.6	17.3	1.7	11.4	14.8
0.7500	31.41	1,732.6	2,172.8	58.0	50.4	160.4	N.M.	28.8	22.4	2.0	21.9	34.6	1.8	13.7	17.4	1.7	11.4	14.9
0.7550	31.62	1,744.5	2,184.7	59.1	51.5	162.1	N.M.	29.0	22.5	2.0	22.1	34.8	1.8	13.7	17.5	1.7	11.5	15.0
0.7600	31.83	1,756.4	2,196.6	60.1	52.5	163.8	N.M.	29.1	22.7	2.1	22.2	35.0	1.9	13.8	17.6	1.7	11.6	15.0
0.7650	32.03	1,768.3	2,208.5	61.2	53.5	165.6	N.M.	29.3	22.8	2.1	22.3	35.2	1.9	13.9	17.7	1.7	11.6	15.1
0.7700	32.24	1,780.1	2,220.4	62.2	54.5	167.3	N.M.	29.5	23.0	2.1	22.4	35.4	1.9	14.0	17.8	1.7	11.7	15.2
0.7750	32.45	1,792.0	2,232.2	63.3	55.5	169.0	N.M.	29.7	23.2	2.1	22.5	35.5	1.9	14.0	17.9	1.7	11.8	15.3
0.7800	32.66	1,803.9	2,244.1	64.3	56.5	170.8	N.M.	29.9	23.3	2.1	22.7	35.7	1.9	14.1	18.0	1.7	11.8	15.4
0.7850	32.87	1,815.8	2,256.0	65.4	57.5	172.5	N.M.	30.1	23.5	2.1	22.8	35.9	1.9	14.2	18.1	1.7	11.9	15.4
0.7900	33.08	1,827.7	2,267.9	66.4	58.5	174.2	N.M.	30.3	23.6	2.1	22.9	36.1	1.9	14.3	18.2	1.7	11.9	15.5
0.7950	33.29	1,839.6	2,279.8	67.5	59.5	176.0	N.M.	30.5	23.8	2.1	23.0	36.3	1.9	14.3	18.3	1.7	12.0	15.6

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083984

Notes: (1) Based on 53.5 MM common shares outstanding on 2/20/98 and 3.3 MM options outstanding with an average exercise price of $15.14 on 2/23/98 from information provided by Camper Management.
(2) Includes Preferred Stock of $0 MM and Total Debt of $345 MM less Cash of $13 MM.
(3) Based on the closing share prices on 2/26/98.
(4) Estimates based on Laser Mgmt. Case

B 10610

MORGAN STANLEY 024371

PROJECT LASER

Camper Valuation Matrix - With Base Synergies of $100.0MM (8.4% of 1998 Sales)

Laser Mgmt. Case - Base Synergies of $100.0MM

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premiums/(Discount) to: Cur. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1997E (4)	1998E (4)	1999E (4)	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT	Aggregate Value/ 1999E (4) Sales	1999E (4) EBITDA	1999E (4) EBIT
Camper Sim.:				$19.88	$20.88	$12.06	$45.3	$93.6	$145.8	$1,066.0	$149.0	$112.8	$1,184.9	$209.1	$174.9	$1,303.4	$290.0	$246.0
0.7000 x	$29.31	$1,613.8	$2,054.0	47.5 %	40.4 %	143.0 %	35.7 x	17.2 x	11.1 x	1.9 x	13.8 x	18.2 x	1.7 x	9.8 x	11.7 x	1.6 x	7.1 x	8.3 x
0.7050	29.52	1,625.7	2,065.9	48.5	41.4	144.7	35.9	17.4	11.1	1.9	13.9	18.3	1.7	9.9	11.8	1.6	7.1	8.4
0.7100	29.73	1,637.6	2,077.8	49.6	42.4	146.5	36.2	17.5	11.2	1.9	13.9	18.4	1.8	9.9	11.9	1.6	7.2	8.4
0.7150	29.94	1,649.4	2,089.7	50.6	43.4	148.2	36.4	17.6	11.3	2.0	14.0	18.5	1.8	10.0	11.9	1.6	7.2	8.5
0.7200	30.15	1,661.3	2,101.5	51.7	44.4	149.9	36.7	17.7	11.4	2.0	14.1	18.6	1.8	10.1	12.0	1.6	7.2	8.5
0.7250	30.36	1,673.2	2,113.4	52.8	45.4	151.7	37.0	17.9	11.5	2.0	14.2	18.7	1.8	10.1	12.1	1.6	7.3	8.6
0.7300	30.57	1,685.1	2,125.3	53.8	46.4	153.4	37.2	18.0	11.6	2.0	14.3	18.8	1.8	10.2	12.2	1.6	7.3	8.6
0.7350	30.78	1,697.0	2,137.2	54.9	47.4	155.2	37.5	18.1	11.6	2.0	14.3	18.9	1.8	10.2	12.2	1.6	7.4	8.7
0.7400	30.99	1,708.9	2,149.1	55.9	48.4	156.9	37.8	18.3	11.7	2.0	14.4	19.1	1.8	10.3	12.3	1.6	7.4	8.7
0.7450	31.20	1,720.7	2,160.9	57.0	49.4	158.6	38.0	18.4	11.8	2.0	14.5	19.2	1.8	10.3	12.4	1.7	7.5	8.8
0.7500	31.41	1,732.6	2,172.8	58.0	50.4	160.4	38.3	18.5	11.9	2.0	14.6	19.3	1.8	10.4	12.4	1.7	7.5	8.8
0.7550	31.62	1,744.5	2,184.7	59.1	51.5	162.1	38.5	18.6	12.0	2.0	14.7	19.4	1.8	10.4	12.5	1.7	7.5	8.9
0.7600	31.83	1,756.4	2,196.6	60.1	52.5	163.8	38.8	18.8	12.0	2.1	14.7	19.5	1.9	10.5	12.6	1.7	7.6	8.9
0.7650	32.03	1,768.3	2,208.5	61.2	53.5	165.6	39.1	18.9	12.1	2.1	14.8	19.6	1.9	10.6	12.6	1.7	7.6	9.0
0.7700	32.24	1,780.1	2,220.4	62.2	54.5	167.3	39.3	19.0	12.2	2.1	14.9	19.7	1.9	10.6	12.7	1.7	7.7	9.0
0.7750	32.45	1,792.0	2,232.2	63.3	55.5	169.0	39.6	19.1	12.3	2.1	15.0	19.8	1.9	10.7	12.8	1.7	7.7	9.1
0.7800	32.66	1,803.9	2,244.1	64.3	56.5	170.8	39.9	19.3	12.4	2.1	15.1	19.9	1.9	10.7	12.8	1.7	7.7	9.1
0.7850	32.87	1,815.8	2,256.0	65.4	57.5	172.5	40.1	19.4	12.5	2.1	15.1	20.0	1.9	10.8	12.9	1.7	7.8	9.2
0.7900	33.08	1,827.7	2,267.9	66.4	58.5	174.2	40.4	19.5	12.5	2.1	15.2	20.1	1.9	10.8	13.0	1.7	7.8	9.2
0.7950	33.29	1,839.6	2,279.8	67.5	59.5	176.0	40.6	19.7	12.6	2.1	15.3	20.2	1.9	10.9	13.0	1.7	7.9	9.3

Notes: (1) Based on 55.5 MM common shares outstanding on 2/20/98 and 3.3 MM options outstanding with an average exercise price of $13.14 on 2/23/98 from information provided by Camper Management.

(2) Includes Preferred Stock of $50MM and Total Debt of $453 MM less Cash of $13 MM.

(3) Based on the closing share prices on 2/25/98.

(4) Estimates based on Laser Mgmt. Case

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083985

MSDPM 0243872

PROJECT LASER

Camper Valuation Matrix - With Base Synergies of $150.0MM (12.7% of 1998 Sales)

Laser Mgmt. Case - Base Synergies of $150.0MM

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Cur. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1997E (4)	1998E (4)	1999E (4)	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT	Aggregate Value/ 1999E (4) Sales	1999E (4) EBITDA	1999E (4) EBIT
Camper Stat.:				$19.88	$20.88	$12.06	$61.5	$110.3	$180.1	$1,066.0	$174.0	$137.8	$1,184.9	$234.1	$199.9	$1,303.4	$340.0	$296.0
0.7000 x	$29.31	$1,613.8	$2,054.0	47.5 %	40.4 %	143.0 %	26.2 x	14.6 x	9.0 x	1.9 x	11.8 x	14.9 x	1.7 x	8.8 x	10.3 x	1.6 x	6.0 x	6.9 x
0.7050	29.52	1,625.7	2,065.9	48.5	41.4	144.7	26.4	14.7	9.0	1.9	11.9	15.0	1.7	8.8	10.3	1.6	6.1	7.0
0.7100	29.73	1,637.6	2,077.8	49.6	42.4	146.5	26.6	14.8	9.1	1.9	11.9	15.1	1.8	8.9	10.4	1.6	6.1	7.0
0.7150	29.94	1,649.4	2,089.7	50.6	43.4	148.2	26.8	15.0	9.2	2.0	12.0	15.2	1.8	8.9	10.5	1.6	6.1	7.1
0.7200	30.15	1,661.3	2,101.5	51.7	44.4	149.9	27.0	15.1	9.2	2.0	12.1	15.3	1.8	9.0	10.5	1.6	6.2	7.1
0.7250	30.36	1,673.2	2,113.4	52.8	45.4	151.7	27.2	15.2	9.3	2.0	12.1	15.3	1.8	9.0	10.6	1.6	6.2	7.1
0.7300	30.57	1,685.1	2,125.3	53.8	46.4	153.4	27.4	15.3	9.4	2.0	12.2	15.4	1.8	9.1	10.6	1.6	6.3	7.2
0.7350	30.78	1,697.0	2,137.2	54.9	47.4	155.2	27.6	15.4	9.4	2.0	12.3	15.5	1.8	9.1	10.7	1.6	6.3	7.2
0.7400	30.99	1,708.9	2,149.1	55.9	48.4	156.9	27.8	15.5	9.5	2.0	12.4	15.6	1.8	9.2	10.8	1.6	6.3	7.3
0.7450	31.20	1,720.7	2,160.9	57.0	49.4	158.6	28.0	15.6	9.6	2.0	12.4	15.7	1.8	9.2	10.8	1.7	6.4	7.3
0.7500	31.41	1,732.6	2,172.8	58.0	50.4	160.4	28.2	15.7	9.6	2.0	12.5	15.8	1.8	9.3	10.9	1.7	6.4	7.3
0.7550	31.62	1,744.5	2,184.7	59.1	51.5	162.1	28.4	15.8	9.7	2.0	12.6	15.9	1.8	9.3	10.9	1.7	6.4	7.4
0.7600	31.83	1,756.4	2,196.6	60.1	52.5	163.8	28.6	15.9	9.8	2.1	12.6	15.9	1.9	9.4	11.0	1.7	6.5	7.4
0.7650	32.03	1,768.3	2,208.5	61.2	53.5	165.6	28.7	16.0	9.8	2.1	12.7	16.0	1.9	9.4	11.0	1.7	6.5	7.5
0.7700	32.24	1,780.1	2,220.4	62.2	54.5	167.3	28.9	16.1	9.9	2.1	12.8	16.1	1.9	9.5	11.1	1.7	6.5	7.5
0.7750	32.45	1,792.0	2,232.2	63.3	55.5	169.0	29.1	16.2	10.0	2.1	12.8	16.2	1.9	9.5	11.2	1.7	6.6	7.5
0.7800	32.66	1,803.9	2,244.1	64.3	56.5	170.8	29.3	16.4	10.0	2.1	12.9	16.3	1.9	9.6	11.2	1.7	6.6	7.6
0.7850	32.87	1,815.8	2,256.0	65.4	57.5	172.5	29.5	16.5	10.1	2.1	13.0	16.4	1.9	9.6	11.3	1.7	6.6	7.6
0.7900	33.08	1,827.7	2,267.9	66.4	58.5	174.2	29.7	16.6	10.2	2.1	13.0	16.5	1.9	9.7	11.3	1.7	6.7	7.7
0.7950	33.29	1,839.6	2,279.8	67.5	59.5	176.0	29.9	16.7	10.2	2.1	13.1	16.5	1.9	9.7	11.4	1.7	6.7	7.7

Notes: (1) Based on 92.5 MM common shares outstanding on 2/20/98 and 3.3 MM options outstanding with an average exercise price of $15.14 on 2/23/98 from information provided by Camper Management.

(2) Includes Preferred Stock of $0 MM and Total Debt of 945.3 MM less Cash of $13 MM.

(3) Based on the closing share prices on 2/25/98.

(4) Estimates based on Laser Mgmt. Case

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083986

16div 004873 MORGAN STANLEY

PROJECT LASER

Camper Valuation Matrix - With Base Synergies of $200.0MM (16.9% of 1998 Sales)

Laser Mgmt. Case - Base Synergies of $200.0MM

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Curr. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1997E (4)	1998E (4)	1999E (4)	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT	Aggregate Value/ 1999E (4) Sales	1999E (4) EBITDA	1999E (4) EBIT
Camper Stat.:				$19.88	$20.88	$12.06	$77.8	$127.0	$214.3	$1,066.0	$199.0	$162.8	$1,184.9	$259.1	$224.9	$1,303.4	$390.0	$346.0
0.7000 x	$29.31	$1,613.8	$2,054.0	47.5 %	40.4 %	143.0 %	20.8 x	12.7 x	7.5 x	1.9 x	10.3 x	12.6 x	1.7 x	7.9 x	9.1 x	1.6 x	5.3 x	5.9 x
0.7050	29.52	1,625.7	2,065.9	48.5	41.4	144.7	20.9	12.8	7.6	1.9	10.4	12.7	1.7	8.0	9.2	1.6	5.3	6.0
0.7100	29.73	1,637.6	2,077.8	49.6	42.4	146.5	21.1	12.9	7.6	1.9	10.4	12.8	1.8	8.0	9.2	1.6	5.3	6.0
0.7150	29.94	1,649.4	2,089.7	50.6	43.4	148.2	21.2	13.0	7.7	2.0	10.5	12.8	1.8	8.1	9.3	1.6	5.4	6.0
0.7200	30.15	1,661.3	2,101.5	51.7	44.4	149.9	21.4	13.1	7.8	2.0	10.6	12.9	1.8	8.1	9.3	1.6	5.4	6.1
0.7250	30.36	1,673.2	2,113.4	52.8	45.4	151.7	21.5	13.2	7.8	2.0	10.6	13.0	1.8	8.2	9.4	1.6	5.4	6.1
0.7300	30.57	1,685.1	2,125.3	53.8	46.4	153.4	21.7	13.3	7.9	2.0	10.7	13.1	1.8	8.2	9.4	1.6	5.5	6.1
0.7350	30.78	1,697.0	2,137.2	54.9	47.4	155.2	21.8	13.4	7.9	2.0	10.7	13.1	1.8	8.2	9.5	1.6	5.5	6.2
0.7400	30.99	1,708.9	2,149.1	55.9	48.4	156.9	22.0	13.5	8.0	2.0	10.8	13.2	1.8	8.3	9.6	1.6	5.5	6.2
0.7450	31.20	1,720.7	2,160.9	57.0	49.4	158.6	22.1	13.6	8.0	2.0	10.9	13.3	1.8	8.3	9.6	1.7	5.5	6.2
0.7500	31.41	1,732.6	2,172.8	58.0	50.4	160.4	22.3	13.6	8.1	2.0	10.9	13.3	1.8	8.4	9.7	1.7	5.6	6.3
0.7550	31.62	1,744.5	2,184.7	59.1	51.5	162.1	22.4	13.7	8.1	2.0	11.0	13.4	1.8	8.4	9.7	1.7	5.6	6.3
0.7600	31.83	1,756.4	2,196.6	60.1	52.5	163.8	22.6	13.8	8.2	2.1	11.0	13.5	1.9	8.5	9.8	1.7	5.6	6.3
0.7650	32.03	1,768.3	2,208.5	61.2	53.5	165.6	22.7	13.9	8.3	2.1	11.1	13.6	1.9	8.5	9.8	1.7	5.7	6.4
0.7700	32.24	1,780.1	2,220.4	62.2	54.5	167.3	22.9	14.0	8.3	2.1	11.2	13.6	1.9	8.6	9.9	1.7	5.7	6.4
0.7750	32.45	1,792.0	2,232.2	63.3	55.5	169.0	23.0	14.1	8.4	2.1	11.2	13.7	1.9	8.6	9.9	1.7	5.7	6.5
0.7800	32.66	1,803.9	2,244.1	64.3	56.5	170.8	23.2	14.2	8.4	2.1	11.3	13.8	1.9	8.7	10.0	1.7	5.8	6.5
0.7850	32.87	1,815.8	2,256.0	65.4	57.5	172.5	23.3	14.3	8.5	2.1	11.3	13.9	1.9	8.7	10.0	1.7	5.8	6.5
0.7900	33.08	1,827.7	2,267.9	66.4	58.5	174.2	23.5	14.4	8.5	2.1	11.4	13.9	1.9	8.8	10.1	1.7	5.8	6.6
0.7950	33.29	1,839.6	2,279.8	67.5	59.5	176.0	23.7	14.5	8.6	2.1	11.5	14.0	1.9	8.8	10.1	1.7	5.8	6.6

Notes: (1) Based on 55.5 MM common shares outstanding on 2/20/98 and 3.3 MM options outstanding with an average exercise price of $15.14 on 2/23/98 from information provided by Camper Management.
(2) Includes Preferred Stock of $0 MM and Total Debt of $433 MM less Cash of $13 MM.
(3) Based on the closing share prices on 2/25/98.
(4) Estimates based on Laser Mgmt. Case

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 0083987
16div 024374 MORGAN STANLEY

PROJECT LASER

Camper Discounted Cash Flow Analysis - Without Synergies

Laser Mgmt. Case

($MM, except per share data)

EBIT Multiple (x) (Forward)	9.0			10.0			11.0		
Discount Rate	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%
Present Value of									
Cash Flows - Year 1	$98	$98	$98	$98	$98	$98	$98	$98	$98
Cash Flows - Years 2-8	448	439	431	448	439	431	448	439	431
Terminus	971	937	904	1,079	1,041	1,004	1,187	1,145	1,105
Other Assets (Liabs)(a/t)	0	0	0	0	0	0	0	0	0
Aggregate Value	$1,518	$1,474	$1,432	$1,626	$1,578	$1,533	$1,734	$1,682	$1,633
Cash	$13	$13	$13	$13	$13	$13	$13	$13	$13
Preferred Stock	0	0	0	0	0	0	0	0	0
Total Debt	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)
Equity Value	$1,078	$1,034	$992	$1,186	$1,138	$1,092	$1,294	$1,242	$1,193
Price Per Share (1)	$19.87	$19.10	$18.36	$21.77	$20.93	$20.13	$23.67	$22.77	$21.90
Premium (Discount) to Market (2)	*-1.6%*	*-5.4%*	*-9.1%*	*7.8%*	*3.7%*	*-0.3%*	*17.3%*	*12.8%*	*8.5%*
1998E P/E Implied	17.9 x	17.2 x	16.5 x	19.7 x	18.9 x	18.1 x	21.5 x	20.6 x	19.8 x
Valuation Multiple (Entry)									
Aggregate Value/1998E Revenue	1.3 x	1.2 x	1.2 x	1.4 x	1.3 x	1.3 x	1.5 x	1.4 x	1.4 x
Aggregate Value/1998E EBITDA	9.5	9.3	9.0	10.2	9.9	9.6	10.9	10.6	10.3
Aggregate Value/1998E EBIT	12.2	11.8	11.5	13.0	12.6	12.3	13.9	13.5	13.1
Equity Value/1998E Net Income	17.9	17.2	16.5	19.7	18.9	18.1	21.5	20.6	19.8
Terminal Value Analysis									
% Value in Terminus	*64.0%*	*63.6%*	*63.1%*	*66.4%*	*66.0%*	*65.5%*	*68.5%*	*68.1%*	*67.7%*
% Value in Cash Flows	*36.0%*	*36.4%*	*36.9%*	*33.6%*	*34.0%*	*34.5%*	*31.5%*	*31.9%*	*32.3%*
Implied Forward Terminal Multiples									
Sales	1.0 x	1.0 x	1.0 x	1.1 x	1.1 x	1.1 x	1.2 x	1.2 x	1.2 x
EBITDA	7.0	7.0	7.0	7.8	7.8	7.8	8.6	8.6	8.6
EBIT	9.0	9.0	9.0	10.0	10.0	10.0	11.0	11.0	11.0
P/E	*15.2*	*15.2*	*15.2*	*16.6*	*16.6*	*16.6*	*18.1*	*18.1*	*18.1*
Perpetual Growth Rate	3.9%	4.4%	4.8%	4.5%	5.0%	5.5%	5.0%	5.5%	6.0%

Notes: (1) Based on 53.5MM common shares outstanding on February 26, 1998 from Camper mgmt. and 3.3MM options outstanding at an average exercise price of $15.14 on February 26, 1998 from Camper mgmt.; treasury method shares assumed.

(2) Based on the closing share price of $20.19 on February 26, 1998.

Assumed no synergies.

Valuation As of January 1, 1998

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083988

MSDW 02403515

PROJECT LASER

Camper Discounted Cash Flow Analysis - With Synergies of $100.0MM (8.4% of 1998 Sales) (3)

Laser Mgmt. Case

($MM, except per share data)

EBIT Multiple (x) (Forward)	9.0			10.0			11.0		
Discount Rate	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%
Present Value of									
Cash Flows - Year 1	$129	$129	$128	$129	$129	$128	$129	$129	$128
Cash Flows - Years 2-8	754	739	725	754	739	725	754	739	725
Terminus	1,397	1,347	1,300	1,552	1,497	1,444	1,707	1,646	1,588
Other Assets (Liabs)(a/l)	0	0	0	0	0	0	0	0	0
Aggregate Value	$2,280	$2,215	$2,153	$2,435	$2,365	$2,297	$2,590	$2,514	$2,442
Cash	$13	$13	$13	$13	$13	$13	$13	$13	$13
Preferred Stock	0	0	0	0	0	0	0	0	0
Total Debt	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)
Equity Value	$1,839	$1,775	$1,713	$1,995	$1,925	$1,857	$2,150	$2,074	$2,002
Price Per Share (1)	$33.29	$32.15	$31.06	$36.02	$34.79	$33.60	$38.76	$37.43	$36.15
Premium (Discount) to Market (2)	*64.9%*	*59.3%*	*53.8%*	*78.4%*	*72.3%*	*66.5%*	*92.0%*	*85.4%*	*79.1%*
1998E P/E Implied	19.6 x	19.0 x	18.3 x	21.3 x	20.6 x	19.8 x	23.0 x	22.2 x	21.4 x
Valuation Multiple (Entry)									
Aggregate Value/1998E Revenue	1.9 x	1.9 x	1.8 x	2.1 x	2.0 x	1.9 x	2.2 x	2.1 x	2.1 x
Aggregate Value/1998E EBITDA	10.9	10.6	10.3	11.6	11.3	11.0	12.4	12.0	11.7
Aggregate Value/1998E EBIT	13.0	12.7	12.3	13.9	13.5	13.1	14.8	14.4	14.0
Equity Value/1998E Net Income	19.6	19.0	18.3	21.3	20.6	19.8	23.0	22.2	21.4
Terminal Value Analysis									
% Value in Terminus	*61.3%*	*60.8%*	*60.4%*	*63.7%*	*63.3%*	*62.8%*	*65.9%*	*65.5%*	*65.0%*
% Value in Cash Flows	*38.7%*	*39.2%*	*39.6%*	*36.3%*	*36.7%*	*37.2%*	*34.1%*	*34.5%*	*35.0%*
Implied Forward Terminal Multiples									
Sales	1.4 x	1.4 x	1.4 x	1.6 x	1.6 x	1.6 x	1.7 x	1.7 x	1.7 x
EBITDA	7.5	7.5	7.5	8.4	8.4	8.4	9.2	9.2	9.2
EBIT	9.0	9.0	9.0	10.0	10.0	10.0	11.0	11.0	11.0
P/E	16.4	16.4	16.4	17.8	17.8	17.8	19.2	19.2	19.2
Perpetual Growth Rate	3.5%	4.0%	4.4%	4.2%	4.7%	5.1%	4.7%	5.2%	5.7%

Notes: (1) Based on 53.5MM common shares outstanding on February 26, 1998 from Camper mgmt. and 3.3MM options outstanding at an average exercise price of $15.14 on February 26, 1998 from Camper mgmt.; treasury method shares assumed.

(2) Based on the closing share price of $20.19 on February 26, 1998.

(3) Assumes $50.0MM in pretax synergies in 1998, $100.0MM in 1999 and 2000 and $105.0MM thereafter.

Valuation As of January 1, 1998

MORGAN STANLEY CONFIDENTIAL 0083989

120640

NOT A CERTIFIED COPY

PROJECT LASER

Camper Discounted Cash Flow Analysis - With Synergies of $150.0MM (12.7% of 1998 Sales) (3)

Laser Mgmt. Case

($MM, except per share data)

EBIT Multiple (x) (Forward)	9.0			10.0			11.0		
Discount Rate	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%
Present Value of									
Cash Flows - Year 1	$144	$144	$144	$144	$144	$144	$144	$144	$144
Cash Flows - Years 2-8	902	885	868	902	885	868	902	885	868
Terminus	1,599	1,542	1,488	1,777	1,714	1,653	1,954	1,885	1,819
Other Assets (Liabs)(a/t)	0	0	0	0	0	0	0	0	0
Aggregate Value	$2,646	$2,571	$2,500	$2,823	$2,743	$2,665	$3,001	$2,914	$2,830
Cash	$13	$13	$13	$13	$13	$13	$13	$13	$13
Preferred Stock	0	0	0	0	0	0	0	0	0
Total Debt	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)
Equity Value	$2,205	$2,131	$2,059	$2,383	$2,302	$2,225	$2,561	$2,474	$2,390
Price Per Share (1)	$39.74	$38.43	$37.16	$42.87	$41.45	$40.08	$46.00	$44.47	$42.99
Premium (Discount) to Market (2)	*96.8%*	*90.3%*	*84.1%*	*112.3%*	*105.3%*	*98.5%*	*127.9%*	*120.3%*	*113.0%*
1998E P/E Implied	20.0 x	19.3 x	18.7 x	21.6 x	20.9 x	20.2 x	23.2 x	22.4 x	21.7 x
Valuation Multiple (Entry)									
Aggregate Value/1998E Revenue	2.2 x	2.2 x	2.1 x	2.4 x	2.3 x	2.2 x	2.5 x	2.5 x	2.4 x
Aggregate Value/1998E EBITDA	11.3	11.0	10.7	12.1	11.7	11.4	12.8	12.4	12.1
Aggregate Value/1998E EBIT	13.2	12.9	12.5	14.1	13.7	13.3	15.0	14.6	14.2
Equity Value/1998E Net Income	20.0	19.3	18.7	21.6	20.9	20.2	23.2	22.4	21.7
Terminal Value Analysis									
% Value in Terminus	*60.4%*	*60.0%*	*59.5%*	*62.9%*	*62.5%*	*62.0%*	*65.1%*	*64.7%*	*64.3%*
% Value in Cash Flows	*39.6%*	*40.0%*	*40.5%*	*37.1%*	*37.5%*	*38.0%*	*34.9%*	*35.3%*	*35.7%*
Implied Forward Terminal Multiples									
Sales	1.6 x	1.6 x	1.6 x	1.8 x	1.8 x	1.8 x	2.0 x	2.0 x	2.0 x
EBITDA	7.7	7.7	7.7	8.6	8.6	8.6	9.4	9.4	9.4
EBIT	9.0	9.0	9.0	10.0	10.0	10.0	11.0	11.0	11.0
P/E	16.7	16.7	16.7	18.1	18.1	18.1	19.5	19.5	19.5
Perpetual Growth Rate	3.4%	3.9%	4.3%	4.1%	4.6%	5.0%	4.6%	5.1%	5.6%

Notes: (1) Based on 53.5MM common shares outstanding on February 26, 1998 from Camper mgmt. and 3.3MM options outstanding at an average exercise price of $15.14 on February 26, 1998 from Camper mgmt.; treasury method shares assumed.
(2) Based on the closing share price of $20.19 on February 26, 1998.
(3) Assumes $75.0MM in pretax synergies in 1998, $150.0MM in 1999 and 2000 and $155.0MM thereafter.

Valuation As of January 1, 1998

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083990

PROJECT LASER

Camper Discounted Cash Flow Analysis - With Synergies of $200.0MM (16.9% of 1998 Sales) (3)

Laser Mgmt. Case

($MM, except per share data)

EBIT Multiple (x) (Forward)	9.0			10.0			11.0		
Discount Rate	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%
Present Value of									
Cash Flows - Year 1	$160	$159	$159	$160	$159	$159	$160	$159	$159
Cash Flows - Years 2-8	1,050	1,030	1,011	1,050	1,030	1,011	1,050	1,030	1,011
Terminus	1,802	1,738	1,676	2,002	1,931	1,863	2,202	2,124	2,049
Other Assets (Liabs)(a/l)	0	0	0	0	0	0	0	0	0
Aggregate Value	$3,012	$2,927	$2,846	$3,212	$3,120	$3,032	$3,412	$3,313	$3,219
Cash	$13	$13	$13	$13	$13	$13	$13	$13	$13
Preferred Stock	0	0	0	0	0	0	0	0	0
Total Debt	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)	(453)
Equity Value	$2,571	$2,487	$2,406	$2,771	$2,680	$2,592	$2,972	$2,873	$2,778
Price Per Share (1)	$46.18	$44.70	$43.27	$49.71	$48.10	$46.55	$53.24	$51.50	$49.83
Premium (Discount) to Market (2)	*128.8%*	*121.4%*	*114.3%*	*146.3%*	*138.3%*	*130.6%*	*163.7%*	*155.1%*	*146.8%*
1998E P/E Implied	20.3 x	19.6 x	18.9 x	21.8 x	21.1 x	20.4 x	23.4 x	22.6 x	21.9 x
Valuation Multiple (Entry)									
Aggregate Value/1998E Revenue	2.5 x	2.5 x	2.4 x	2.7 x	2.6 x	2.6 x	2.9 x	2.8 x	2.7 x
Aggregate Value/1998E EBITDA	11.6	11.3	11.0	12.4	12.0	11.7	13.2	12.8	12.4
Aggregate Value/1998E EBIT	13.4	13.0	12.7	14.3	13.9	13.5	15.2	14.7	14.3
Equity Value/1998E Net Income	20.3	19.6	18.9	21.8	21.1	20.4	23.4	22.6	21.9
Terminal Value Analysis									
% Value in Terminus	*59.8%*	*59.4%*	*58.9%*	*62.3%*	*61.9%*	*61.4%*	*64.5%*	*64.1%*	*63.7%*
% Value in Cash Flows	*40.2%*	*40.6%*	*41.1%*	*37.7%*	*38.1%*	*38.6%*	*35.5%*	*35.9%*	*36.3%*
Implied Forward Terminal Multiples									
Sales	1.8 x	1.8 x	1.8 x	2.0 x	2.0 x	2.0 x	2.2 x	2.2 x	2.2 x
EBITDA	7.8	7.8	7.8	8.7	8.7	8.7	9.6	9.6	9.6
EBIT	9.0	9.0	9.0	10.0	10.0	10.0	11.0	11.0	11.0
P/E	16.9	16.9	16.9	18.3	18.3	18.3	19.7	19.7	19.7
Perpetual Growth Rate	3.3%	3.8%	4.3%	4.0%	4.5%	4.9%	4.6%	5.0%	5.5%

Notes: (1) Based on 53.5MM common shares outstanding on February 26, 1998 from Camper mgmt. and 3.3MM options outstanding at an average exercise price of $15.14 on February 26, 1998 from Camper mgmt.; treasury method shares assumed.

(2) Based on the closing share price of $20.19 on February 26, 1998.

(3) Assumes $100.0MM in pretax synergies in 1998, $200.0MM in 1999 and 2000 and $205.0MM thereafter.

Valuation As of January 1, 1998

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083991

£02618023

OVERVIEW OF LASER COMPANY

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083992

190240

F13100126002-22-98110:02 A\PO5

1/6 [illegible] 9

PROJECT LASER

Business Overview

Sunbeam

	Kitchen Devices	Health at Home Devices	Personal Care and Comfort Devices	Outdoor Cooking Devices	Professional Care Devices
Description	• Segment includes hand and stand mixers, blenders, toasters, coffee makers, breadmakers, irons and other small appliances	• Segment includes blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers, water filters and air cleaners	• Segment includes electric blankets, shower massagers, consumer hair clippers, heated throws and comforters	• Segment includes gas and kettle grills, charcoal smokers, tabletop grills and accessories	• Segment includes a line of professional barber and beauty equipment, including electric and battery clippers, replacement blades and other grooming accessories
Brands	- *Mixmaster* - *Sunbeam* - *Oster* - *Osterizer*	- *Health at Home*	- *Cuddle-Up* - *Oster*	- *Sunbeam* - *Grillmaster*	- *Oster*
Market Position	-#1, 2 or 3 depending on product category	-#1, 2 or 3 in most categories	-#1 in electric blankets -#1 in clippers	-#1 in gas grills	-#1 in clippers
Major Competitors	-Black & Decker -Hamilton Beach/Proctor Silex (Nacco) -KitchenAid (Whirlpool)	-Duracraft -Braun (Gillette) -Health O'Meter	-Wahl -Andis -Teledyne	-Charbroil -Thermos -Weber	-Wahl -Andis
Distribution	-Mass merchandisers -Department stores -Specialty stores	-Mass merchants -Drug stores	-Mass merchants -Drug stores	-Mass merchants -Hardware/Home centers	-Mass merchants -Drug stores -Specialty stores -Professional distributors
1996 Net Sales:(1)	$383.9MM	$98.4MM	$187.0MM	$255.9MM	$59.1MM
% of Total	39%	10%	19%	26%	6%
1997 Net Sales:(1)	$455.6MM	$104.0MM	$190.4MM	$325.9MM	$72.4MM(2)
% of Total	40%	9%	16%	28%	6%

Note: (1) 1997 sales breakdown from company and does not add to 100% due to outlet sales.
(2) 1997 sales includes the away-from-home category.

MORGAN STANLEY CONFIDENTIAL 0083993

NOT A CERTIFIED COPY

PROJECT LASER

Summary Descriptive Sheet: LASER

($MM, except per share amounts)

DESCRIPTION OF BUSINESS:

Company develops, makes, and sells small appliances; barbecue grills; electric blankets and heated throws; health and personal care products; barber and beauty equipment, hair clippers, and animal care products. Small appliances include mixers, blenders, coffee makers, toasters, irons, etc. Outdoor products include propane, natural gas, charcoal and electric barbecue grills, including kettle models. Health care products include blood pressure monitoring devices, heating pads, massagers, dental care products, humidifiers and air cleaners.

RECENT EVENTS:

October 24, 1997 - The Company announced it has hired Morgan Stanley to explore strategic alternatives.

October 23, 1997 - The Company reported positive 3Q earnings of $0.39, exceeding Street estimates by a penny.

October 8, 1997 - The Company announced the introduction of its new FreshSource water filtration system and AllergySmart air filtration system. The two products are expected to contribute $100 MM in 1998 sales.

June 23, 1997 - The Company announced the completion of five additional international distribution/ marketing agreements signed during the second quarter of 1997. This brings the total to 21 since Dunlap joined.

June 17, 1997 - The Company entered into a partnership arrangement with United Family Communications for exclusive pan-regional advertising on Casa Club TV, the only network entirely dedicated to the home in Latin America.

May 13, 1997 - The Company said it completed the sale of its Biddeford, Maine textile factory to an investment group.

SELECTED INFORMATION:

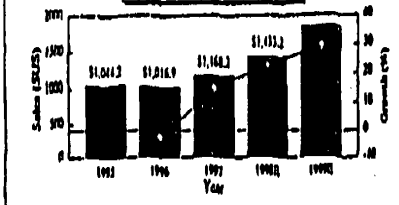
State of Incorp:	Delaware
Headquarters:	Delray Beach, FL
Stock Symbol:	SOC
Listing:	NYSE
Fiscal Year End:	December 28

SEGMENT SALES BREAKDOWN:

Industry (Estimated)			Geographic		
Kitchen Devices	$467.3	40.0%	Domestic	$950.9	81.4%
Health at Home	105.1	9.0%	International	217.3	18.6%
Pers. Care & Comfort	186.9	16.0%			
Outdoor Cooking	327.1	28.0%			
Professional Care	70.1	6.0%			
Outlet Sales	11.7	1.0%			
Total	$1,168.2	100.0%	Total	$1,168.2	100.0%

SELECTED FINANCIAL INFORMATION:

	Fiscal Years Ended December 28,			3 Yr.	Estimates (2)	
	1995	1996	1997	C.G.R.	1998E	1999E
Revenues (1)	$1,016.9	$984.2	$1,168.2	5.0%	$1,433.2	$1,851.5
% Change		-3.2%	18.7%		22.7%	29.2%
EBITDA (1)	114.2	48.2	239.3	44.7%	340.0	444.2
% Margin	11.2%	4.9%	20.5%		23.7%	24.0%
EBIT (1)	70.1	0.7	200.7	15.0%	285.0	371.5
% Margin	6.9%	0.1%	17.2%		19.9%	20.1%
Net Income (1)	37.6	(8.2)	123.1	N.A.	180.9	241.9
% Margin	3.7%	-0.8%	10.5%		12.6%	13.1%
Capital Expenditures	94.3	75.3	58.3	N.A.	71.7	92.6



SELECTED MARKET INFORMATION:

Stock Price (2/25/98):	$41.875
LTM Low / High:	23.875/50.438
10-year High (10/24/97):	50.438
Shares Outstanding (MM):	85.471
Dividend:	$0.04
Dividend Payout:	2.8%
Dividend Yield:	0.1%

SELECTED VALUATION PARAMETERS:

	1998E
Adj. Mkt. Cap/Sales (3):	201.0%
Adj. Mkt Cap / EBIT (3):	10.0 x
Adj. Mkt Cap / EBITDA (3):	8.4
Market/Book (4):	6.7
Discount to LTM High:	(17.0)%
Discount to 10-year High:	(17.0)

	E.P.S.	P/E
1998E ($):	$2.00	20.9 x
1999E ($):	2.64	15.9
Proj. 3 Yr. Growth ($):	20%	
1998E P/E to Growth	0.8 x	

FULLY DILUTED OWNERSHIP:

Significant Shareholdings (6):	
Total Insider Holdings	3.8%
Franklin Mutual	19.2%
Alliance Capital Management	11.0%
Columbia Management	5.5%
Other Institutional Ownership	41.9%
Other	18.6%
	100.0%

D&O Holdings (6):	
Chrm, CEO Albert J. Dunlap (60)	2.4%
Other	1.4%
Total D&O Holdings	3.8%
ESOP	0.0%
Total Insider Holdings	3.8%

CAPITALIZATION:

	Book Capitalization at 12/28/97		Market Capitalization at 2/25/98	
	Amount	%	Amount	%
Short-Term Debt:	$0.7	100.0%	$0.7	100.0%
Long-Term Debt:	$194.6	26.8%	$194.6	5.2%
Preferred Stock:	0.0	0.0%	0.0	0.0%
Shareholders Equity:	531.9	73.2%	3,579.1	94.8%
Total Capitalization (7):	$726.5	100.0%	$3,773.7	100.0%
Cash and Cash Equivalents:			$52.4	
Adjusted Market Capitalization (3):			$3,722.0	

SELECTED CREDIT STATISTICS:

LTM EBIT / Net Interest:	17.6 x
LTM EBITDA / Net Interest:	21.0
Total Debt / LTM EBITDA:	0.8
Senior Debt Ratings	
- Moody's	NA
- S&P	NA

Notes:
(1) Sales, EBIT, EBITDA and Net Income are for continuing operations before any extraordinary or non-recurring items, and cumulative effect of accounting changes.
(2) Estimates from Laser is based on I/B/E/S data from Laser.
(3) Adj. Market Cap. consists of market value of equity (including preferred stock) plus total debt less cash and cash equivalents.
(4) Based on a closing market price of $41.875 per share on 2/25/98 and 85.5 MM shares outstanding on 12/28/97.
(5) Long term growth from I/B/E/S dated 2/25/98.
(6) Based on information from proxy dated 4/16/97; institutional ownership from Technimetrics run dated 9/11/97.
(7) Total Capitalization excludes short-term debt.

NOT A CERTIFIED COPY

MORGAN STANLEY 520610
CONFIDENTIAL
0083994

PRELIMINARY DRAFT

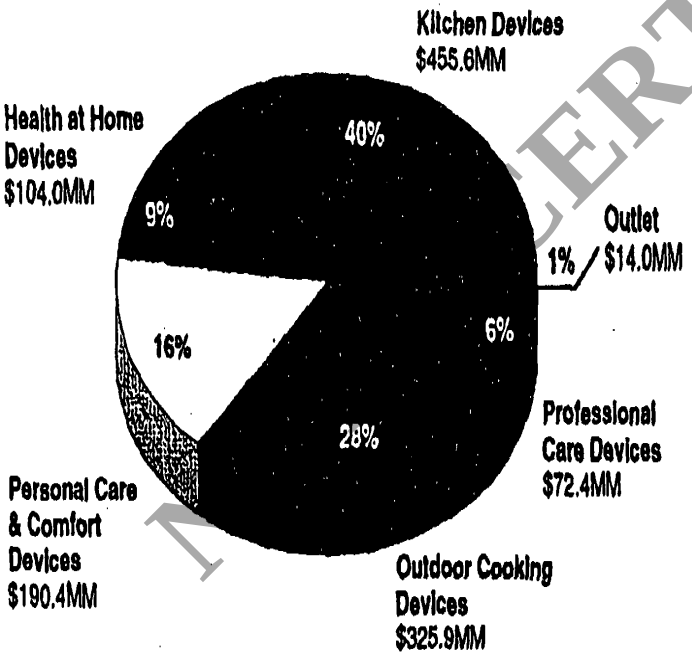
PROJECT LASER

1997 Dollar Share by Segment

Sunbeam: Preeminent Branded Consumer Devices Company

Broad presence in a number of categories

No single true competitor for Sunbeam across all product lines



Total 1997 Sales: $1,168.2MM

Kitchen Devices

- SEB
- Braun
- Moulinex
- KitchenAid
- Matsushita
- Black & Decker
- Philips
- Hamilton-Beach

Health at Home Devices

- Holmes
- Duracraft
- Health-o-Meter
- Brita
- Pur
- Homedics

Personal Care & Comfort Devices

- Conair
- Teledyne
- Helen of Troy
- Norelco
- Wahl

Outdoor Cooking Devices

- Charbroil/Thermos
- Weber
- Fiesta

Professional Care Devices

- Wahl
- Heineger
- Hamilton-Beach
- Andis
- Lister
- Black & Decker

MORGAN STANLEY
CONFIDENTIAL Z0610
0083995

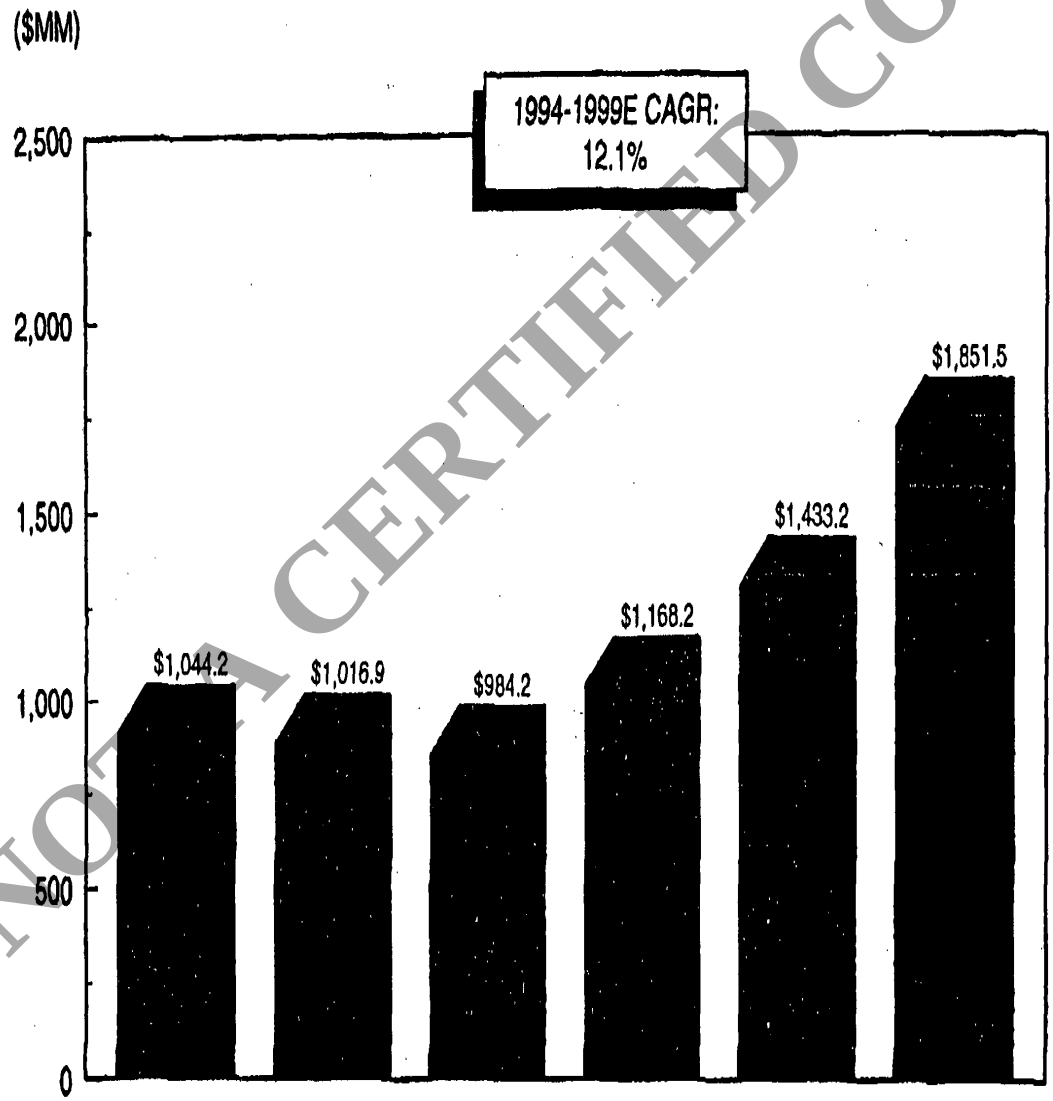
NOT CERTIFIED COPY

F1831145036d-23-98a11:38A

MORGAN STANLEY 2

PROJECT LASER

Consolidated Net Sales, 1994-1998E [(1)]



% growth	12.6%	(2.6)%	(3.2)%	18.7%	22.7%	29.2%

Source: Sunbeam Annual Report

Note: (1) Projections based on Laser I/B/E/S case.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0083996

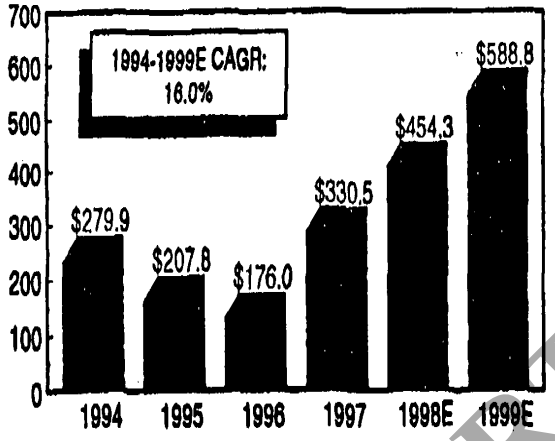
9028
8206

PRELIMINARY DRAFT

PROJECT LASER

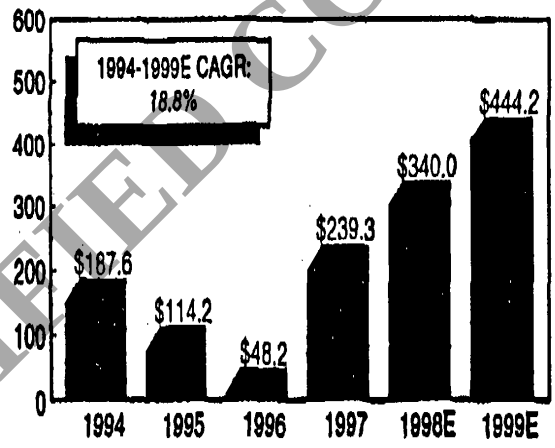
Consolidated Profitability Statistics (1)(2)

($ MM) **Gross Profit**



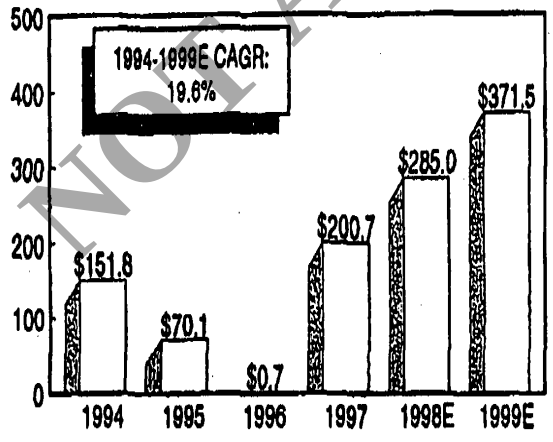
	1994	1995	1996	1997	1998E	1999E
% Margin	26.8%	20.4%	17.9%	28.3%	31.7%	31.8%

($ MM) **EBITDA**



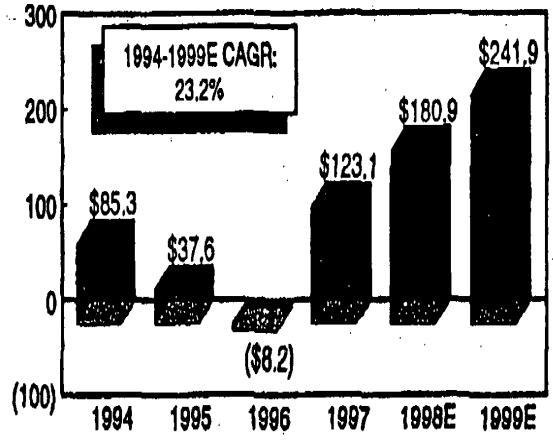
	1994	1995	1996	1997	1998E	1999E
% Margin	18.0%	11.2%	4.9%	20.5%	23.7%	24.0%

($ MM) **EBIT**



	1994	1995	1996	1997	1998E	1999E
% Margin	14.5%	6.9%	0.1%	17.2%	19.9%	20.1%

($ MM) **Net Income**



	1994	1995	1996	1997	1998E	1999E
% Margin	8.2%	3.7%	(1.7)%	10.5%	12.6%	13.1%

MORGAN STANLEY CONFIDENTIAL 0083997

NOT A CERTIFIED COPY

620610

Notes: (1) Projections based on Laser I/B/E/S case.

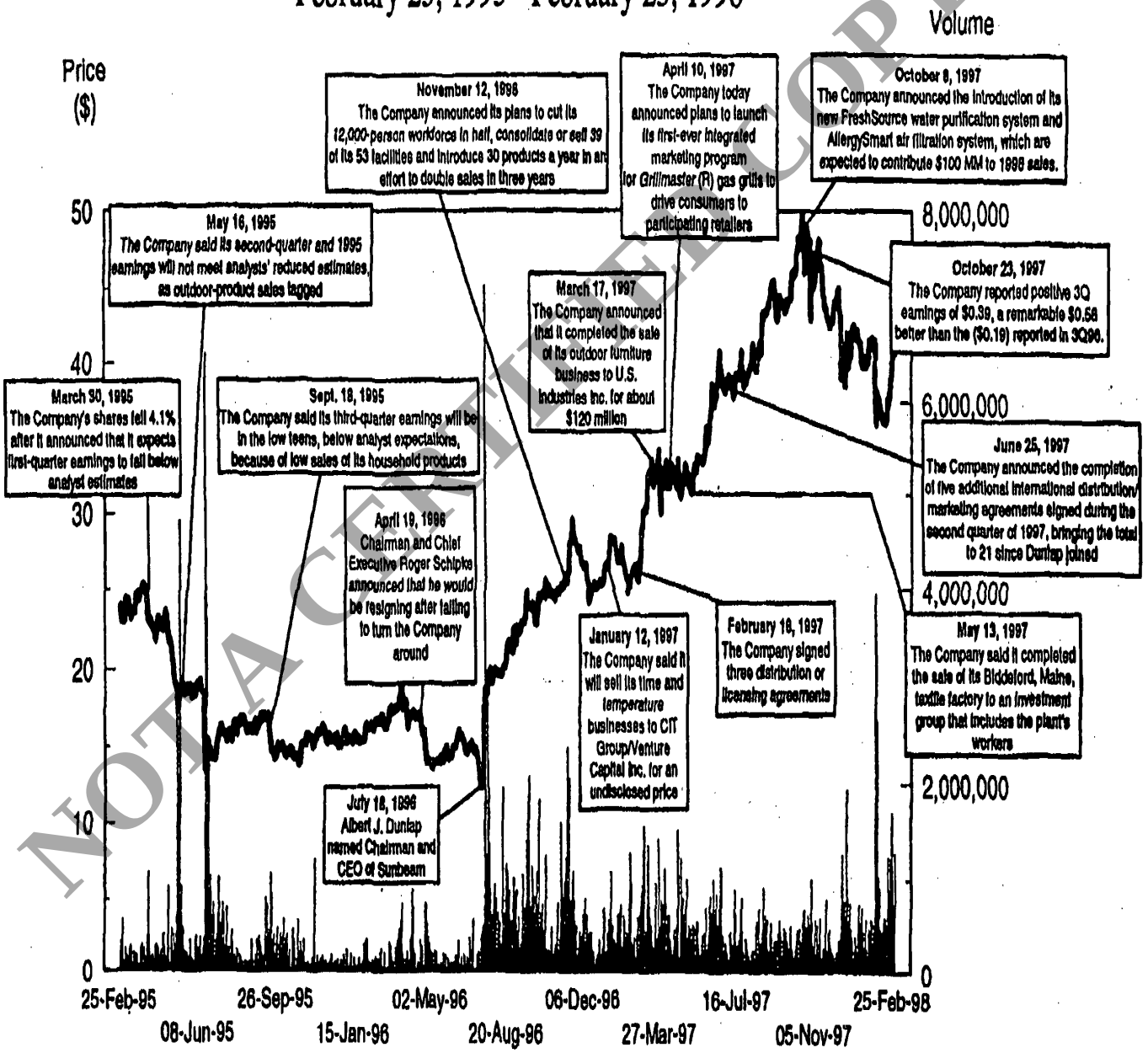
(2) Data excludes any one-time or extraordinary charges.

PRELIMINARY DRAFT

PROJECT LASER

The Laser Company - Annotated Closing Share Price and Volume Analysis

February 25, 1995 - February 25, 1998



NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083998

019030

PROJECT LASER

The Laser Company: Summary of Recent Analyst Estimates

Date	Price	Firm/(Analyst)	Recomm.	Target Price	EPS 1998E	EPS 1999E	PE 1998E	PE 1999E	Long Term EPS Growth	1998 PE/Growth
01/29/98	$37.63	Prudential Securities/ (Nicholas Heymann)	Buy	$55 12 months	$2.10	$2.60	17.9x	14.5x	20 - 25%	.72 - .90
01/29/98	$37.63	Buckingham Research/ (William H. Steele)	Neutral	$43	2.00	2.40	18.8	15.7	21.0%	.90
01/29/98	$37.63	PaineWebber/ (Andrew Shore)	NA	$50 12 - 18 mo.	2.00	2.60	18.8	14.5	20.0%	.94
01/29/98	$37.63	Merrill Lynch/ (John Gibbons)	Buy	NA	1.80	NA	20.9	NA	15.0%	1.4
01/28/98	$37.75	CIBC Oppenheimer/ (Scott Graham)	Strong Buy	$53 12 months	2.10	2.65	18.0	14.2	NA	NA
2/25/98	$41.88	I/B/E/S			$2.00	$2.63	20.9x	15.9x	20.0%	1.05
2/25/98	$41.88	First Call (Eight Estimates)			1.99	2.58	21.0	16.2	20.3%	1.04

- "[Laser is] the most profitable player in the industry by a wide margin...(with 17% operating margins in 1997, almost three times the Housewares indusstry average of about 6%)." *(Prudential Securities - 1/29/98)*
- "[Laser] is focusing on taking the best care of its major customers (to ensure further access to dominant shelf space), rapidly establishing the best global distribution for its current (and likely future additional) products in the industry and continuing to toll out the industry's most innovative products...its doing everything to serve every customer like royalty." *(Prudential Securities - 1/29/98)*
- "As Laser displays more of a new product and service track record with retailers, we believe...gains will be realized in 1998." *(CIBC Oppenheimer - 1/28/98)*
- "Al Dunlap is not only restructuring Laser, but enhancing its future growth opportunities. A recent tour through SOC's Neosho, MO grill plant confirms that investments have been made to strengthen operations." *(Merrill Lynch - 12/10/97)*
- "We believe that what has been accomplished to date is remarkable and that there is room for further improvement over the next couple of quarters." *(PaineWebber - 10/23/97)*
- "We continue to believe there is upside in Laser shares as the company enters its fourth phase of shareholder value creation. Now focused on executing its growth plan, it is our view that Mr. Dunlap's desire to execute his tenth turnaround could find...enhanced flexibility in [Laser's] yearend 1997E net debt free balance sheet and significant free cash flow." *(Goldman Sachs - 10/9/97)*

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0083999

180610

F1\39594\02-27-98\5:55 AM\G1

180610AA02/03/98

I:\bdg\laser\sellside\soc_hold.wk4

PROJECT LASER

Analysis of Laser Shareholdings

(000s)

	Holdings	%		Holdings	%
Institutions (1)			**Insiders (2)**		
Franklin Mutual Advisers, Inc.	17,541	19.2%	Albert J. Dunlap (Chairman & CEO)	2,158	2.4%
Alliance Capital Management L.P.	10,080	11.0%	Russell A. Kersh (EVP - Finance & Admin.)	307	0.3%
Columbia Management Company	5,050	5.5%	David C. Fannin (EVP - General Counsel)	69	0.1%
Fred Alger Management Inc.	2,643	2.9%			
Fidelity Management & Research Co.	2,353	2.6%	Other Directors & Executive Officers	978	1.1%
TIAA-CREF Investment Management In	2,170	2.4%			
Alex. Brown Investment Management	2,095	2.3%	**Total Insider Holdings**	**3,513**	**3.8%**
Wells Fargo Bank, N.A.	1,552	1.7%			
Columbus Circle Investors	1,540	1.7%			
New York State Common Retirement Fd	1,489	1.6%			
Strong Capital Management, Inc.	1,258	1.4%	Other Holdings	10,741	11.7%
Husic Capital Management	1,215	1.3%			
Top 12 Institutions	48,987	53.6%	**Total Common Shares Outstanding (3)**	85,166	93.1%
Other Institutions (148 in total)	21,925	24.0%	Options Outstanding (12/31/96)	6,272	
Total Institutions (160 in total)	70,912	77.6%	**Fully Diluted Shares Outstanding**	91,437	100.0%

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084000

Notes: (1) Based on Technimetrics ownership run dated 9/11/97.

(2) Based on Proxy dated 4/17/97; includes options exercisable within 60 days and restricted shares.

(3) From 10-Q dated 6/29/97.

019022

16div 024387
MORGAN STANLEY

PRELIMINARY VALUATION OF LASER COMPANY

NOT A CERTIFIED COPY

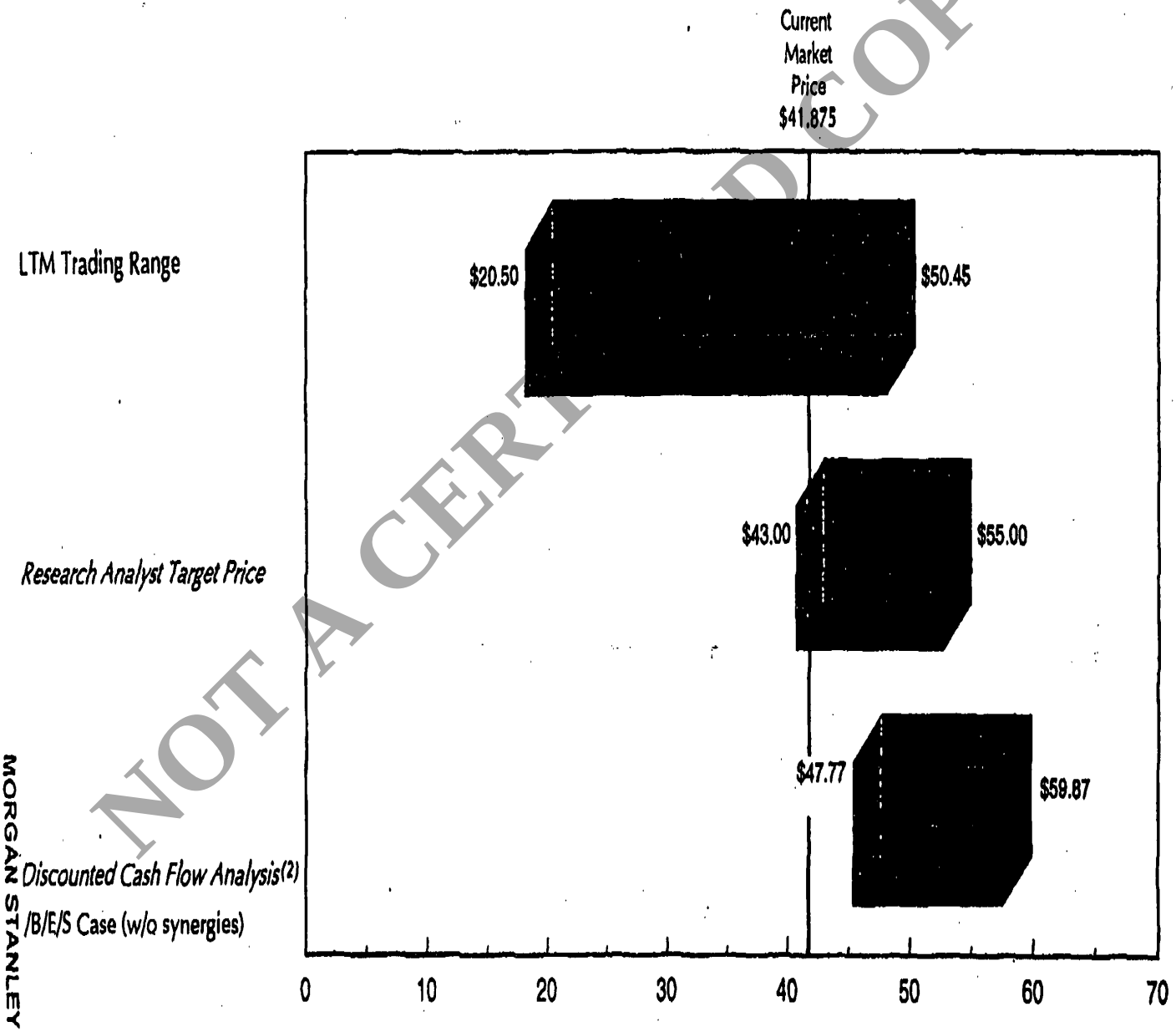
MORGAN STANLEY
CONFIDENTIAL
0084001

019033

PROJECT LASER

Summary of Valuation Analysis

LASER Company (1)



NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084002

Notes: (1) Implied price per share based on 85.5MM common shares outstanding on February 26, 1998 from the 12/31/97 10-K and 6.7MM options outstanding with an average exercise price of $25.61, on 12/31/97 from Laser 10-K; options proceeds assumes tax benefits on options exercise

(2) Discounted to January 1, 1998 assuming a 10.5-11.5% discount rate and a 8.0-10.0 forward EBITDA Multiple for terminal value.

PROJECT LASER

Laser Valuation Matrix

I/B/E/S Case

($MM, except per share data)

Impl. Price Per Share	Equity Value (1)	Aggregate Value (1)	Premium/(Discount) to: Curr. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1997A (4)	1998E (4)	1999E (4)	Aggregate Value/ 1997A (4) Sales	1997A (4) EBITDA	1997A (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT	Aggregate Value/ 1999E (4) Sales	1999E (4) EBITDA	1999E (4) EBIT
Laser Stat.:			$41.88	$50.44	$25.50	$123.1	$180.9	$241.9	$1,168.2	$239.3	$200.7	$1,433.2	$340.0	$285.0	$1,851.5	$444.2	$371.5
$37.50	$3,286.5	$3,429.4	(10.4)%	(25.7)%	47.1 %	26.7 x	18.2 x	13.6 x	2.9 x	14.3 x	17.1 x	2.4 x	10.1 x	12.0 x	1.9 x	7.7 x	9.2 x
38.50	3,378.7	3,521.5	(8.1)	(23.7)	51.0	27.4	18.7	14.0	3.0	14.7	17.5	2.5	10.4	12.4	1.9	7.9	9.5
39.50	3,470.9	3,613.7	(5.7)	(21.7)	54.9	28.2	19.2	14.3	3.1	15.1	18.0	2.5	10.6	12.7	2.0	8.1	9.7
40.50	3,563.0	3,705.9	(3.3)	(19.7)	58.8	28.9	19.7	14.7	3.2	15.5	18.5	2.6	10.9	13.0	2.0	8.3	10.0
41.50	3,655.2	3,798.1	(0.9)	(17.7)	62.7	29.7	20.2	15.1	3.3	15.9	18.9	2.7	11.2	13.3	2.1	8.5	10.2
42.50	3,747.4	3,890.3	1.5	(15.7)	66.7	30.4	20.7	15.5	3.3	16.3	19.4	2.7	11.4	13.7	2.1	8.8	10.5
43.50	3,839.6	3,982.5	3.9	(13.8)	70.6	31.2	21.2	15.9	3.4	16.6	19.8	2.8	11.7	14.0	2.2	9.0	10.7
44.50	3,931.8	4,074.7	6.3	(11.8)	74.5	31.9	21.7	16.3	3.5	17.0	20.3	2.8	12.0	14.3	2.2	9.2	11.0
45.50	4,024.0	4,166.8	8.7	(9.8)	78.4	32.7	22.2	16.6	3.6	17.4	20.8	2.9	12.3	14.6	2.3	9.4	11.2
46.50	4,116.1	4,259.0	11.0	(7.8)	82.4	33.4	22.8	17.0	3.6	17.8	21.2	3.0	12.5	14.9	2.3	9.6	11.5
47.50	4,208.3	4,351.2	13.4	(5.8)	86.3	34.2	23.3	17.4	3.7	18.2	21.7	3.0	12.8	15.3	2.4	9.8	11.7
48.50	4,300.5	4,443.4	15.8	(3.8)	90.2	34.9	23.8	17.8	3.8	18.6	22.1	3.1	13.1	15.6	2.4	10.0	12.0
49.50	4,392.7	4,535.6	18.2	(1.9)	94.1	35.7	24.3	18.2	3.9	19.0	22.6	3.2	13.3	15.9	2.4	10.2	12.2
50.50	4,484.9	4,627.8	20.6	0.1	98.0	36.4	24.8	18.5	4.0	19.3	23.1	3.2	13.6	16.2	2.5	10.4	12.5
51.50	4,577.1	4,719.9	23.0	2.1	102.0	37.2	25.3	18.9	4.0	19.7	23.5	3.3	13.9	16.6	2.5	10.6	12.7
52.50	4,669.3	4,812.1	25.4	4.1	105.9	37.9	25.8	19.3	4.1	20.1	24.0	3.4	14.2	16.9	2.6	10.8	13.0
53.50	4,761.4	4,904.3	27.8	6.1	109.8	38.7	26.3	19.7	4.2	20.5	24.4	3.4	14.4	17.2	2.6	11.0	13.2
54.50	4,853.6	4,996.5	30.1	8.1	113.7	39.4	26.8	20.1	4.3	20.9	24.9	3.5	14.7	17.5	2.7	11.2	13.4
55.50	4,945.8	5,088.7	32.5	10.0	117.6	40.2	27.3	20.4	4.4	21.3	25.4	3.6	15.0	17.9	2.7	11.5	13.7
56.50	5,038.0	5,180.9	34.9	12.0	121.6	40.9	27.8	20.8	4.4	21.7	25.8	3.6	15.2	18.2	2.8	11.7	13.9

Notes:

(1) Based on 85.5 MM common shares outstanding as of 9/30/97 from the 9/30/97 10-Q and 6.7 MM options outstanding with an average exercise price of $25.61, as 12/31/97 from Camper Management.

(2) Includes Preferred Stock of $0 MM and Total Debt of $195 MM less Cash of $52 MM.

(3) Based on the closing share prices on 2/25/98.

(4) Estimates based on I/B/E/S Case

NOT A CERTIFIED COPY
MORGAN STANLEY CONFIDENTIAL 0084003
C0031U
MSDW-02463390

PROJECT LASER

Laser Discounted Cash Flow Analysis

I/B/E/S Case

($MM, except per share data)

EBITDA Multiple (x) (Forward)	8.0			9.0			10.0		
Discount Rate	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%	10.5%	11.0%	11.5%
Present Value of									
Cash Flows - Year 1	$141	$141	$141	$141	$141	$141	$141	$141	$141
Cash Flows - Years 2-8	1,230	1,203	1,176	1,230	1,203	1,176	1,230	1,203	1,176
Terminus	3,232	3,118	3,008	3,636	3,507	3,384	4,040	3,897	3,760
Other Assets (Liabs)(a/l)	0	0	0	0	0	0	0	0	0
Aggregate Value	$4,604	$4,462	$4,325	$5,008	$4,851	$4,701	$5,412	$5,241	$5,077
Cash	$52	$52	$52	$52	$52	$52	$52	$52	$52
Preferred Stock	0	0	0	0	0	0	0	0	0
Total Debt	(195)	(195)	(195)	(195)	(195)	(195)	(195)	(195)	(195)
Equity Value	$4,461	$4,319	$4,182	$4,865	$4,708	$4,558	$5,269	$5,098	$4,934
Price Per Share (1)	$50.24	$48.70	$47.21	$54.62	$52.92	$51.29	$59.01	$57.15	$55.37
Premium (Discount) to Market (2)	*20.0%*	*16.3%*	*12.7%*	*30.4%*	*26.4%*	*22.5%*	*40.9%*	*36.5%*	*32.2%*
2001E P/E Implied	24.7 x	23.9 x	23.1 x	26.9 x	26.0 x	25.2 x	29.1 x	28.2 x	27.3 x
Valuation Multiple (Entry)									
Aggregate Value/1998E Revenue	3.2 x	3.1 x	3.0 x	3.5 x	3.4 x	3.3 x	3.8 x	3.7 x	3.5 x
Aggregate Value/1998E EBITDA	13.5	13.1	12.7	14.7	14.3	13.8	15.9	15.4	14.9
Aggregate Value/1998E EBIT	16.2	15.7	15.2	17.6	17.0	16.5	19.0	18.4	17.8
Equity Value/1998E Net Income	24.7	23.9	23.1	26.9	26.0	25.2	29.1	28.2	27.3
Terminal Value Analysis									
% Value in Terminus	*70.2%*	*69.9%*	*69.5%*	*72.6%*	*72.3%*	*72.0%*	*74.7%*	*74.4%*	*74.1%*
% Value in Cash Flows	*29.8%*	*30.1%*	*30.5%*	*27.4%*	*27.7%*	*28.0%*	*25.3%*	*25.6%*	*25.9%*
Implied Forward Terminal Multiples									
Sales	2.0 x	2.0 x	2.0 x	2.3 x	2.3 x	2.3 x	2.5 x	2.5 x	2.5 x
EBITDA	8.0	8.0	8.0	9.0	9.0	9.0	10.0	10.0	10.0
EBIT	10.1	10.1	10.1	11.3	11.3	11.3	12.6	12.6	12.6
P/E	18.3	18.3	18.3	20.0	20.0	20.0	21.8	21.8	21.8
Perpetual Growth Rate	3.8%	4.3%	4.7%	4.5%	5.0%	5.4%	5.1%	5.6%	6.0%

Notes: (1) Based on 85.5MM common shares outstanding on February 25, 1998 from the 9/30/67 10-Q and 6.7MM options outstanding at an average exercise price of $25.61 on February 25, 1998 from the 12/31/96 10-K.

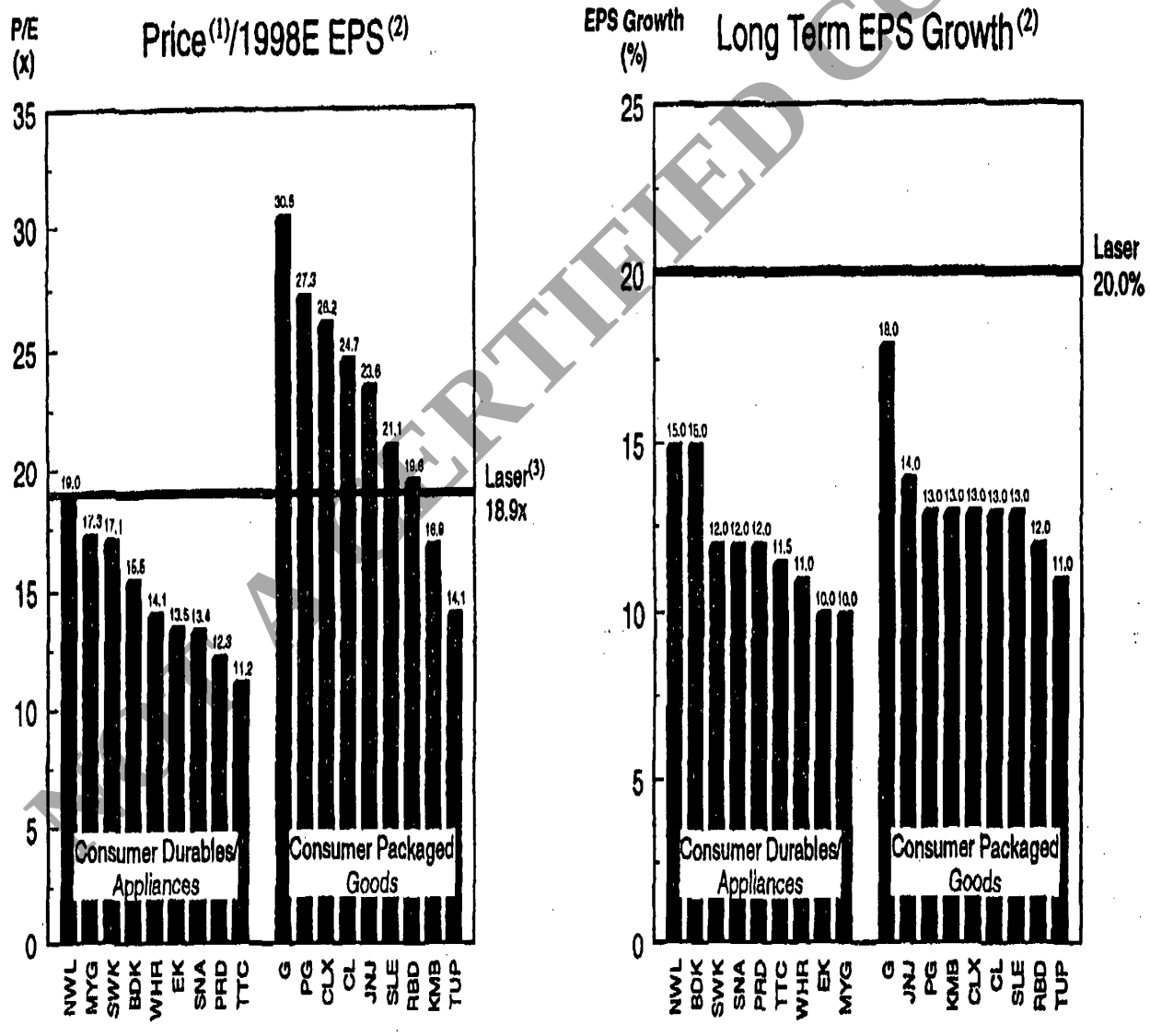
(2) Based on the closing share price of $41.88 on February 25, 1998.

MORGAN STANLEY CONFIDENTIAL 0084004

NOT A CERTIFIED COPY

PROJECT LASER

Trading Statistics of Selected Consumer Products Companies



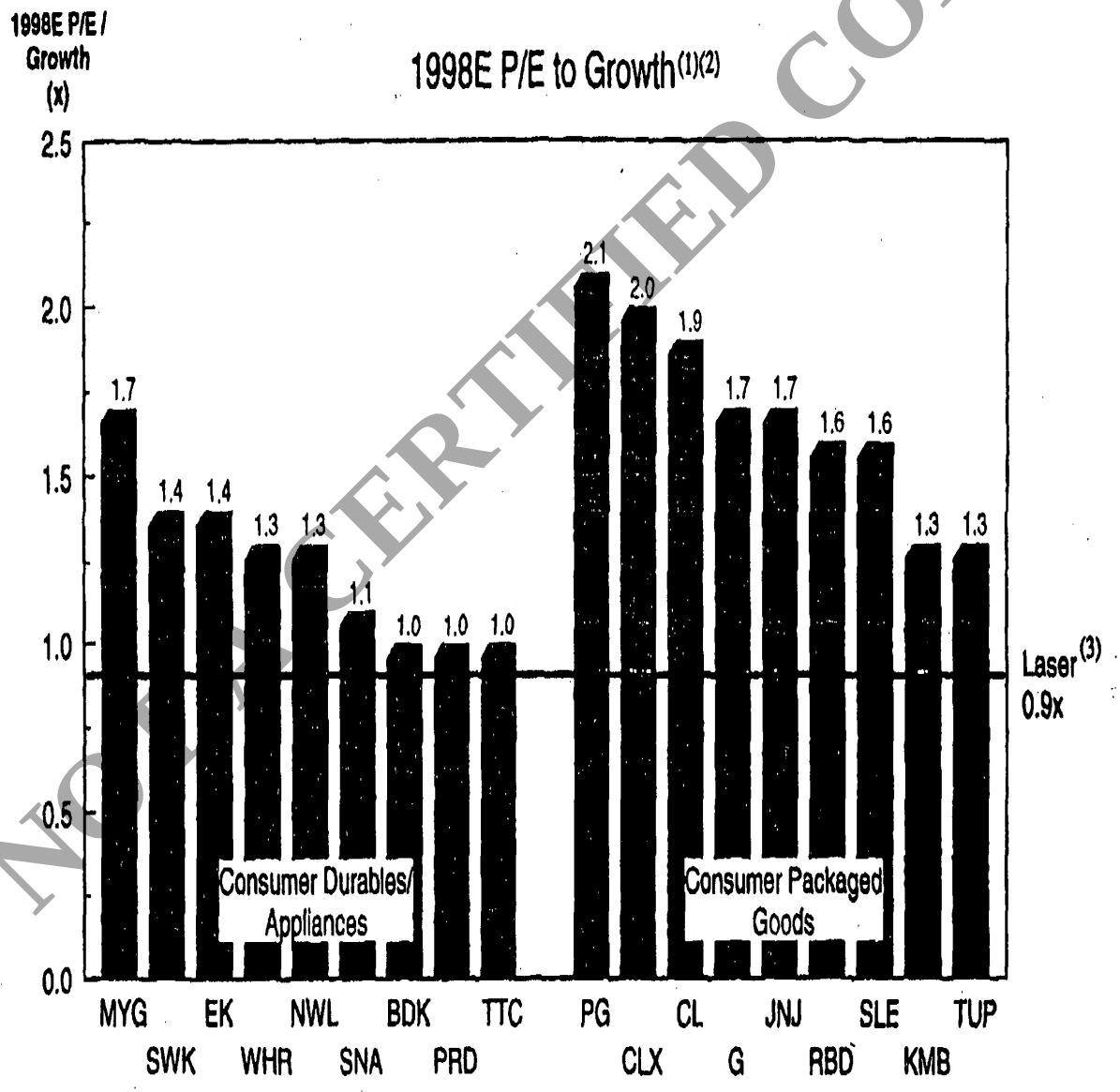
Notes: (1) Based on closing prices as of 2/25/98.
(2) Estimates based on median I/B/E/S estimates as of 2/25/98; 1998E estimates calendarized to a December 31 year end.
(3) Long-Term EPS Growth from I/B/E/S dated 2/25/98.

MORGAN STANLEY CONFIDENTIAL 0084005

NOT A CERTIFIED COPY

PROJECT LASER

Trading Statistics of Selected Consumer Products Companies



Notes: (1) Based on closing prices as of 2/25/98.
(2) Estimates based on median I/B/E/S estimates as of 2/25/98 calendarized to a December 31 year end.
(3) Long-Term EPS Growth from I/B/E/S dated 2/25/98.

NOT CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084006

190610

REVIEW OF ANTICIPATED COMBINATION SYNERGIES

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084007

610610

PROJECT LASER

Summary of Potential Operating Efficiencies

Operational Synergies	Revenue Synergies
• General & Administration Functional Redundancies/ Cost Savings – Sales – Marketing – Administration Management – Finance – Information Systems – Consumer Research – Product Development • Operational Functional Redundancies/Cost Savings – Distribution & Warehousing – Operations Management – Procurement Savings – Materials Management – Quality/Inspection – Facility Rationalization* • Assumes full synergies in 1999	• CAMPER sales will benefit from LASER strength in Latin America • LASER sales will benefit from CAMPER strength in Japan & Europe • LASER sales will benefit from CAMPER name on Grills in U.S. & Canada • CAMPER sales will benefit from dual branding of product lines from the Combined Company of CAMPER, LASER, SENTINEL, and JAVA • CAMPER sales will benefit from SENTINEL strength in commercial sales

* Not in initial synergies

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084008

040610

PROJECT LASER

Overview of Synergy Analysis
CAMPER

	$100.0 MM	$150.0 MM	$200.0 MM
Estimated Annual Synergies			
% of 1998E Camper Revenues	8.4%	12.7%	16.9%
% of 1998E Camper SG&A	7.7%	11.5%	15.3%
% of 1998E Newco Revenues	3.8%	5.7%	7.6%
% of 1998E Newco SG&A	4.4%	6.6%	8.8%

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084009

170610

16div 024096 MORGAN STANLEY

PROJECT LASER

Repositioning Highlights
Combination of Cost Reduction and Growth Drive Shareholder's Value

Cost Related

- Majority of the **restructuring plan completed** in the first quarter of 1997
  - Expected to result in cost savings of $225MM, of which 75% are expected to be realized in 1997 and the balance in 1998
- **Facility consolidation** finished
  - Of 26 factories, eight remain (four in the US, three in Mexico and one in Venezuela)
  - Reduced the number of warehouses from 61 to 18
  - Consolidated the number of headquarter locations from six to one
- **Workforce** reduction to 6,000 from 12,000 employees
  - 3,000 positions related to businesses sold
- Eliminate **88% of its Stock Keeping Units** (SKUs)
  - From 12,500 items (of which 4,500 were furniture products) to about 2,000
  - Elimination of product variations, not product lines; simplified ongoing business
- **Divested** non-core businesses
  - Furniture, decorative bedding, time and temperature lines, gas logs & heaters and Biddeford, Maine textile mill sold; *Counselor* and *Borg* scales brands exclusively licensed to Signature Brands

Growth Related

- Implemented and integrated **new systems and processes** for all core business functions (e.g., new J.D. Edwards systems, product development, *Demand Solutions* forecasting, controllers, accounting, etc.)
- Redesigned concurrent **product development cycle** from 2.5 years to 6 months
  - Plans to introduce 30 new products a year over the next several years
- Initiated "Project Full Time" to improve **customer service**
  - Opportunity to further increase sales by eliminating supplier hedging, filling voids and being invited into new categories
  - Channel management expected to contribute $200 MM in revenue by 1999
- Selectively targeting **international markets** for growth opportunities
- Initiated extensive consumer and market research
  - Identify opportunities by addressing consumer issues and needs
- Revamped **advertising campaign**
  - Award winning advertising and marketing campaign

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084010

210610

PROJECT LASER

Scott Paper - Restructuring and Growth Plans

NOT A CERTIFIED COPY

Restructuring Plan

- Cut number of facilities
  - Reduce number of warehouses from 60 to 19; Close older, higher-cost plants; Close printing and writing paper unit in Mexico
- Create three operating companies in geographic units with distinct headquarters
  - United States (Philadelphia, then Boca Raton), Asia (Hong Kong) and Europe (Paris)
- Divest non-core (non-tissue) assets
  - Sell S.D. Warren printing and writing division to realize $1.3Bn; Sell Alabama energy facility for $350MM
  - Sell Philadelphia headquarters for $1Bn
- Reduce workforce by over 35% with approximately 11,000 layoffs
  - 71% of HQ staff, 50% of managers, 20% of hourly workers and 60% R&D staff
- Reduce R&D by eliminating $35MM (50%) and 60% of staff to create market-driven R&D department
- Reduce non-operating costs by eliminating memberships in outside organizations and corporate gifts to charities

Growth Targets

- Reduce company's $2.3Bn debt and expand stock buyback with $2.5 Bn from divestiture of assets
- Invest $25MM in Shanghai joint venture and $148MM in Mexico expansion
  - Pursue similar ventures in India and Indonesia
- Introduce 107 new products and hire marketing employees while focusing on core tissue business
- Improve annual productivity 5% on a cost base of $4.0Bn to create $200MM of cost reduction
- Result: Share price appreciation of 225% during Dunlap's tenure until sale to Kimberly-Clark Corp.

MORGAN STANLEY CONFIDENTIAL 0084011

610470

PRO FORMA COMBINATION ANALYSIS

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084012

770610

F13\100126\02-22-96\8:31 AM

PROJECT LASER

Summary of Pro Forma Combination Methodology

NOT A CERTIFIED COPY

- Transaction assumed to occur on January 1, 1998 with all financial data presented for fiscal years ended December 31, 1997
  - Exception of accreted value of Holding Company notes and related redemption premium, calculated as of May 15, 1998
  - Shareholders equity of holding company adjusted by difference
- Camper Holding Company balance sheet estimated from December 31, 1997 Operating Company balance sheet and adjusted for sale of Safety & Security business
- Transaction to be accounted for as a **purchase**, structured as an acquisition of Mafco's interest in Camper Holding Company and the assumption of debt followed by a purchase of the minority publicly held shares
- Preliminary assumption is that the Camper acquisition would be for **stock** and **cash** plus the assumption of operating company and holding company debt
  - Camper shares held by Mafco downward adjusted by 19.2 MM shares ($500 MM assumed value of holding debt at $26 per share)
  - Additional $220.5MM in cash exchanged for 8.1MM Camper shares
  - Assumed debt refinanced with new bank loans at a cost of 7% and $500MM in zero coupon convertible at 5.5% convertible into 8.9MM Laser shares
  - Remaining equity purchased for Laser common stock at a fixed exchange ratio of 0.7450 Laser shares issued per Camper share
- Synergies primarily driven by operational cost efficiencies
- Goodwill assumed to be amortized over 40 years with no tax deductibility

MORGAN STANLEY
CONFIDENTIAL
0084013

S10610

F13\10356\02-27-98\8:16 AM\2

PROJECT LASER

Camper Company Financial Projections

Significant Assumptions

	Camper Management Case	Laser Management Case
Methodology	• Based on summary information provided by Camper Company and CSFB research report modified by Camper management – Modified with an assumed PP&E write-off not included in plan • Assumes the Sale of Camper Safety & Security business	• Adjusted from Camper management case to reflect more conservative projections
Sales Projections	• 1998 from Camper management plan • Sales growth held at 10% thereafter	• Decreased sales growth rate from management case of 10% in 1998 to 6% by 2006
Operating Margins	• 1998 management estimate of $136.3MM adjusted for: – Increase of $8.3MM from write-off of $25MM in PP&E resulting in saved depreciation expense over 3 years – Decrease of $7.5MM in lost grill related royalties • Operating margin grown to 12.0% in 1999 and 12.5% thereafter – 1999 and 2000 further adjusted from stated margins by $8.3MM depreciation adjustments	• 1998 margins unadjusted from Camper management case; base operating margins held constant at 1998 unaffected level of 11.5% – 1999 and 2000 further adjusted by depreciation related to PP&E write-off
EBIT	• EBIT projections based off operating income adjusted by amortization and other expense – Other expense held constant at $1MM from 1998 management estimate	• Amortization and other income assumptions identical to Camper management case
Capital Expenditures	• 1998 as indicated by management (includes $8MM in Oracle related Capex) – Capex held constant at 2.5% of sales thereafter – Increased by $8MM of Oracle Capex in 1999 and 2000	• Same percentage as Camper management case
Depreciation	• 1998 from management plan less depreciation adjustment from PP&E write-off – Grown to 100% of Capex by 2001	• Same percentage as Camper management case
Amortization	• 1998 estimate of $11.25MM from management held constant thereafter	• Identical to Camper management case
Non-cash Working Capital	• 1998 accounts receivable and inventory adjustments from CSFB report – Days outstanding and turnover held constant thereafter • Other ratios/percentages held constant at 1997 levels pro forma for Safety & Security sale	• Same ratios/percentages as Camper management case
Tax Rate	35%	• 35%

NOT A CERTIFIED COPY

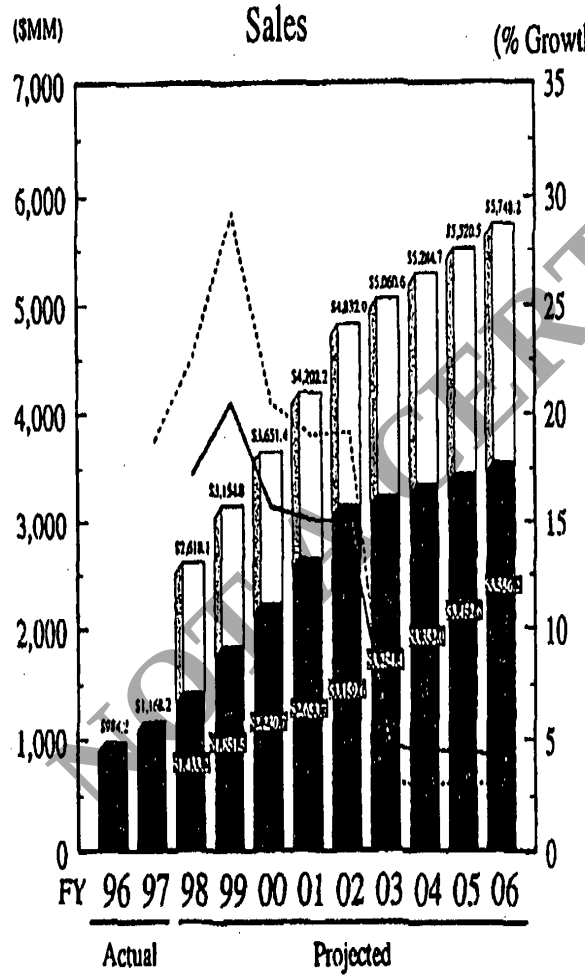
MORGAN STANLEY
CONFIDENTIAL
0084014

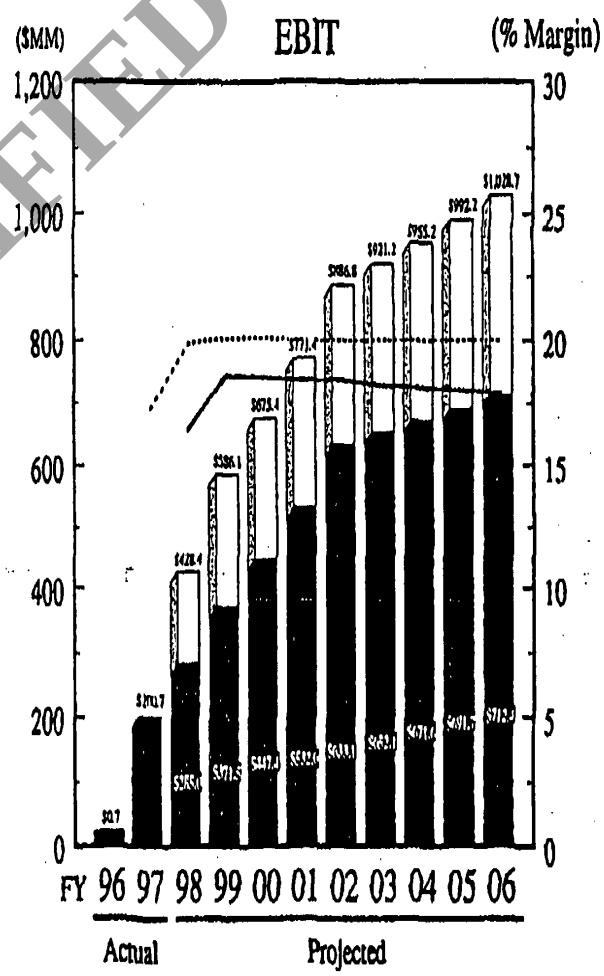
970610

PROJECT LASER

Pro Forma Combination Analysis

CAMPER with LASER[1]





Synergies	$50	$100	$100	$105	$105	$105	$105	$105	$105

MORGAN STANLEY CONFIDENTIAL 0084015

NOT CERTIFIED COPY

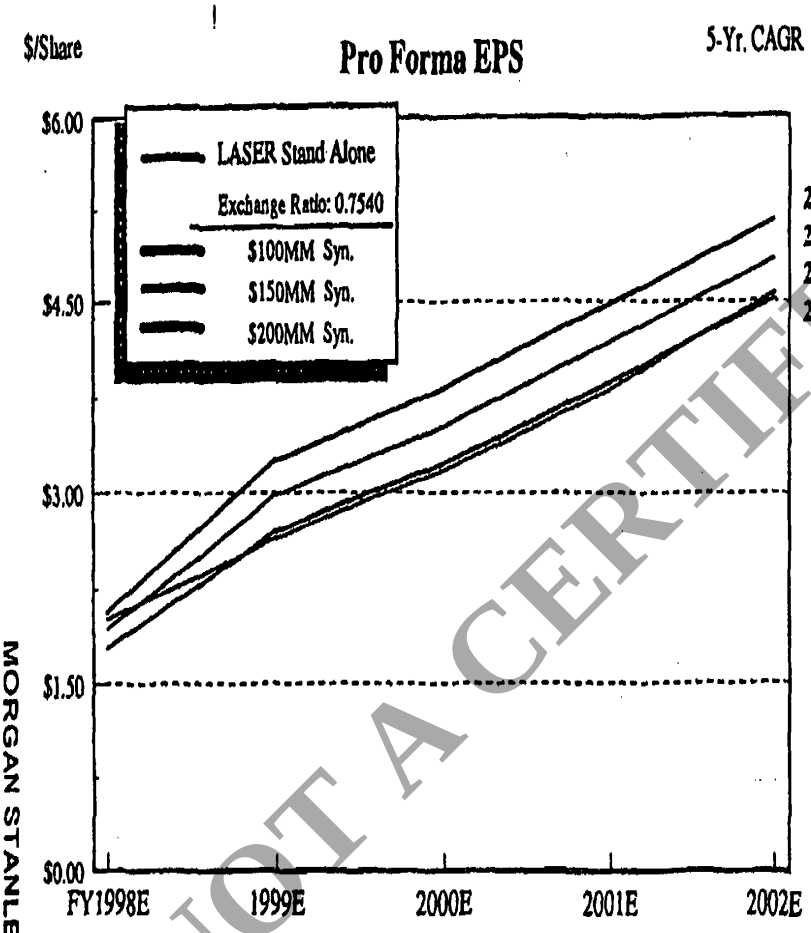
L70610

Note: (1) Assumes purchase price per share of $29.91 and $100MM in pre-tax synergies; based on I/B/E/S case for Laser and Laser Management case for Camper.

PRELIMINARY DRAFT

PROJECT LASER

Acquisition of CAMPER



Capitalization

	LASER Stand Alone	Pro Forma[1] Exchange Ratio 0.7450
	($MM)	
Total Debt	$195.3	$1,699.8
% of Total Capital	*26.9%*	*61.9%*
Equity	$531.9	$1,045.8
% of Total Capital	*73.1%*	*38.1%*
Cash	$52.4	$74.6
Shares Issued (MM)	--	19.4
% of Existing Shares	--	*22.7%*
% Ownership		
- CAMPER Shareholders	--	*17.4%*
- Existing LASER Shareholders	--	*82.6%*

Synergies[2]

Accretion/(Dilution)

$100MM	(11.7)%	1.7%	1.8%	1.6%	(1.2)%
$150MM	(4.1)%	12.4%	11.1%	9.7%	5.9%
$200MM	3.2%	23.2%	20.4%	17.5%	12.6%

810610

Notes: (1) Includes $100MM P/T synergies and assumes merger date of 1/1/98.
(2) $100MM, $150MM, and $200MM represent 8.4%, 12.7%, and 16.9% of Camper 1998E sales respectively.

MORGAN STANLEY CONFIDENTIAL 0084016

NOT A CERTIFIED COPY

PROJECT LASER

Accretion/Dilution and Credit Statistic Analysis

Laser: I/B/E/S Case; Camper: Laser Mgmt. Case - Without Warrants;

Camper Base Case Synergies of $100.0MM;

($ MM)

Pro Forma EPS Analysis	PF 1997	1998	1999	2000	2001	2002	2003	2004	'98-'02 CAGR
Diluted E.P.S. Accretion/(Dilution)									
Laser Stand Alone Diluted EPS (1)	$1.41	$2.00	$2.64	$3.17	$3.80	$4.56	$4.77	$4.99	22.9%
% change	--	42.2%	32.0%	20.0%	20.0%	20.0%	4.5%	4.8%	
Pro Forma Diluted EPS (1)	--	$1.77	$2.69	$3.23	$3.86	$4.51	$4.74	$5.06	26.4%
% Accr./(Dil.) to Laser Shareholders	--	-11.7%	1.7%	1.8%	1.6%	-1.2%	-0.6%	1.3%	
% change	--	--	52.0%	20.2%	19.7%	16.7%	5.1%	6.7%	
Synergies									
Synergies Realized (p/t)	--	$50.0	$100.0	$100.0	$105.0	$105.0	$105.0	$105.0	
% of Pro Forma Revenue	--	1.9%	3.2%	2.7%	2.5%	2.2%	2.1%	2.0%	
Incr. Synergies Req. to Break Even (p/t)	--	$38.6	N.M.	N.M.	N.M.	$5.8	$3.0	N.M.	
% of Pro Forma Revenue	--	1.5%	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	
Credit Statistics (2)									
Cash Interest Expense									
EBITDA/Interest	4.67 x	7.01 x	11.07 x	17.28 x	37.22 x	53.72 x	82.70 x	N.M. x	
(EBITDA-CapEx)/Interest	3.64	5.73	9.25	14.43	31.03	44.80	68.92	N.M.	
Total Interest Expense									
EBITDA/Interest	3.51 x	5.19 x	7.70 x	10.62 x	16.58 x	20.29 x	82.70 x	N.M. x	
(EBITDA-CapEx)/Interest	2.74	4.24	6.44	8.87	13.82	16.92	68.92	N.M.	
Total Fixed Charges									
EBITDA/(Interest+Pref. Divs. [Pre-Tax])	3.51 x	5.19 x	7.70 x	10.62 x	16.58 x	20.29 x	82.70 x	N.M. x	
(EBITDA-CapEx)/(Interest+Pref. Divs. [Pre-Tax])	2.74	4.24	6.44	8.87	13.82	16.92	68.92	N.M.	
Senior Debt / EBITDA	3.09 x	1.92 x	1.15 x	0.65 x	0.20 x	0.38 x	0.00 x	0.00 x	
Total Debt (Excl. Pref.) / EBITDA	4.38	2.88	1.91	1.35	0.84	0.38	0.00	0.00	
Total Debt (Incl. All Pref.) / Book Cap.	61.9%	56.1%	47.7%	37.4%	25.7%	12.7%	0.0%	0.0%	
Total Debt (Excl. Pref.) / Book Cap.	61.9%	56.1%	47.7%	37.4%	25.7%	12.7%	0.0%	0.0%	
Funds Flow from Operations / Total Debt (Excl. Pref.)	16.9%	22.1%	35.0%	51.2%	85.0%	192.0%	N.M.	N.M.	
Cumulative Free Cash Flow	--	$146.1	$348.2	$633.7	$986.9	$752.6	$1,320.2	$1,935.5	
% of PF Bank Debt Outstanding:	100.0%	100.0%	84.0%	54.8%	18.9%	18.9%	0.0%	0.0%	
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Rev/Net PP&E	8.21 x	8.48 x	9.32 x	9.96 x	10.77 x	11.84 x	12.04 x	12.39 x	

Note: (1) Laser stand alone EPS from I/B/E/S. Pro forma EPS excludes costs associated with restructurings.
(2) Pro forma 1997 includes $50MM in pre-tax synergies.

MORGAN STANLEY CONFIDENTIAL 0084017

JUST A CERTIFIED COPY

670610

16div 024404 MORGAN STANLEY

PRELIMINA DRAFT

PROJECT LASER

Accretion/Dilution and Credit Statistic Analysis

Laser: I/B/E/S Case; Camper: Laser Mgmt. Case - Without Warrants;

Camper Base Case Synergies of $150.0MM;

($ MM)

	Pro Forma EPS Analysis								'98-'02
	PF 1997	1998	1999	2000	2001	2002	2003	2004	CAGR
Diluted E.P.S. Accretion/(Dilution)									
Laser Stand Alone Diluted EPS (1)	$1.41	$2.00	$2.64	$3.17	$3.80	$4.56	$4.77	$4.99	22.9%
% change	--	42.2%	32.0%	20.0%	20.0%	20.0%	4.5%	4.8%	
Pro Forma Diluted EPS (1)	--	$1.92	$2.97	$3.52	$4.17	$4.83	$5.05	$5.36	26.0%
% Accr./(Dil.) to Laser Shareholders	--	-4.1%	12.4%	11.1%	9.7%	5.9%	6.0%	7.4%	
% change	--	--	54.8%	18.6%	18.5%	15.8%	4.7%	6.1%	
Synergies									
Synergies Realized (pf)	--	$75.0	$150.0	$150.0	$155.0	$155.0	$155.0	$155.0	
% of Pro Forma Revenue	--	2.9%	4.8%	4.1%	3.7%	3.2%	3.1%	2.9%	
Incr. Synergies Req. to Break Even (pf)	--	$13.7	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
% of Pro Forma Revenue	--	0.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Credit Statistics (2)									
Cash Interest Expense									
EBITDA/Interest	4.97 x	7.38 x	12.25 x	20.30 x	54.60 x	107.82 x	143.45 x	N.M. x	
(EBITDA-CapEx)/Interest	3.94	6.09	10.37	17.13	45.97	90.68	120.53	N.M.	
Total Interest Expense									
EBITDA/Interest	3.73 x	5.45 x	8.43 x	11.98 x	19.95 x	25.89 x	143.45 x	N.M. x	
(EBITDA-CapEx)/Interest	2.96	4.50	7.14	10.11	16.80	21.77	120.53	N.M.	
Total Fixed Charges									
EBITDA/(Interest+Pref. Divs. (Pre-Tax))	3.73 x	5.45 x	8.43 x	11.98 x	19.95 x	25.89 x	143.45 x	N.M. x	
(EBITDA-CapEx)/(Interest+Pref. Divs. (Pre-Tax))	2.96	4.50	7.14	10.11	16.80	21.77	120.53	N.M.	
Senior Debt / EBITDA	2.90 x	1.81 x	1.01 x	0.52 x	0.07 x	0.22 x	0.00 x	0.00 x	
Total Debt (Excl. Pref.) / EBITDA	4.11	2.73	1.72	1.18	0.68	0.22	0.00	0.00	
Total Debt (Incl. All Pref.) / Book Cap.	61.9%	55.5%	46.0%	34.6%	21.7%	7.7%	0.0%	0.0%	
Total Debt (Excl. Pref.) / Book Cap.	61.9%	55.5%	46.0%	34.6%	21.7%	7.7%	0.0%	0.0%	
Funds Flow from Operations / Total Debt (Excl. Pref.)	17.9%	23.4%	38.8%	58.8%	105.8%	329.9%	N.M.	N.M.	
Cumulative Free Cash Flow	--	$162.7	$398.8	$720.0	$1,110.4	$915.0	$1,520.7	$2,172.7	
% of PF Bank Debt Outstanding:	100.0%	100.0%	79.0%	46.3%	6.6%	6.6%	0.0%	0.0%	
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Rev/Net PP&E	8.21 x	8.48 x	9.32 x	9.96 x	10.77 x	11.84 x	12.04 x	12.39 x	

Note: (1) Laser stand alone EPS from I/B/E/S. Pro forma EPS excludes costs associated with restructurings.
(2) Pro forma 1997 includes $75MM in pre-tax synergies.

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084018

050610

MORGAN STANLEY

PRELIMIN DRAFT

PROJECT LASER

Accretion/Dilution and Credit Statistic Analysis

Laser: I/B/E/S Case; Camper: Laser Mgmt. Case - Without Warrants;

Camper Base Case Synergies of $200.0MM;

($ MM)

	Pro Forma EPS Analysis								'98-'02
	PF 1997	1998	1999	2000	2001	2002	2003	2004	CAGR
Diluted E.P.S. Accretion/(Dilution)									
Laser Stand Alone Diluted EPS (1)	$1.41	$2.00	$2.64	$3.17	$3.80	$4.56	$4.77	$4.99	22.9%
% change	--	42.2%	32.0%	20.0%	20.0%	20.0%	4.5%	4.8%	
Pro Forma Diluted EPS (1)	--	$2.06	$3.25	$3.81	$4.47	$5.14	$5.37	$5.67	25.6%
% Accr./(Dil.) to Laser Shareholders	--	3.2%	23.2%	20.4%	17.5%	12.6%	12.6%	13.4%	
% change	--	--	57.6%	17.3%	17.1%	15.1%	4.4%	5.6%	
Synergies									
Synergies Realized (pf)	--	*$100.0*	*$200.0*	*$200.0*	*$205.0*	*$205.0*	*$205.0*	*$205.0*	
% of Pro Forma Revenue	--	3.8%	6.3%	5.5%	4.9%	4.2%	4.1%	3.9%	
Incr. Synergies Req. to Break Even (pf)	--	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
% of Pro Forma Revenue	--	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Credit Statistics (2)									
Cash Interest Expense									
EBITDA/Interest	5.27 x	7.75 x	13.52 x	24.05 x	80.43 x	402.56 x	418.73 x	N.M. x	
(EBITDA-CapEx)/Interest	4.24	6.46	11.57	20.50	68.32	341.22	354.48	N.M.	
Total Interest Expense									
EBITDA/Interest	3.96 x	5.72 x	9.20 x	13.51 x	23.40 x	35.59 x	418.73 x	N.M. x	
(EBITDA-CapEx)/Interest	3.19	4.76	7.87	11.52	19.87	30.16	354.48	N.M.	
Total Fixed Charges									
EBITDA/(Interest+Pref. Divs. [Pre-Tax])	3.96 x	5.72 x	9.20 x	13.51 x	23.40 x	35.59 x	418.73 x	N.M. x	
(EBITDA-CapEx)/(Interest+Pref. Divs. [Pre-Tax])	3.19	4.76	7.87	11.52	19.87	30.16	354.48	N.M.	
Senior Debt / EBITDA	2.74 x	1.70 x	0.89 x	0.40 x	0.00 x	0.08 x	0.00 x	0.00 x	
Total Debt (Excl. Pref.) / EBITDA	3.88	2.58	1.56	1.02	0.53	0.08	0.00	0.00	
Total Debt (Incl. All Pref.) / Book Cap.	61.9%	55.0%	44.3%	31.8%	17.9%	2.8%	0.0%	0.0%	
Total Debt (Excl. Pref.) / Book Cap.	61.9%	55.0%	44.3%	31.8%	17.9%	2.8%	0.0%	0.0%	
Funds Flow from Operations / Total Debt (Excl. Pref.)	18.9%	24.7%	42.9%	67.7%	135.1%	945.2%	N.M.	N.M.	
Cumulative Free Cash Flow	--	$179.3	$449.4	$806.2	$1,232.6	$1,132.2	$1,775.9	$2,464.7	
% of PF Bank Debt Outstanding:	100.0%	100.0%	74.0%	37.7%	0.0%	0.0%	0.0%	0.0%	
% of PF High Yield Debt Outstanding:	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	N.M.	
Rev/Net PP&E	8.21 x	8.48 x	9.32 x	9.96 x	10.77 x	11.84 x	12.04 x	12.39 x	

Note: (1) Laser stand alone EPS from I/B/E/S. Pro forma EPS excludes costs associated with restructurings.
(2) Pro forma 1997 includes $100MM in pre-tax synergies.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084019

190610

16div 024406 MORGAN STANLEY

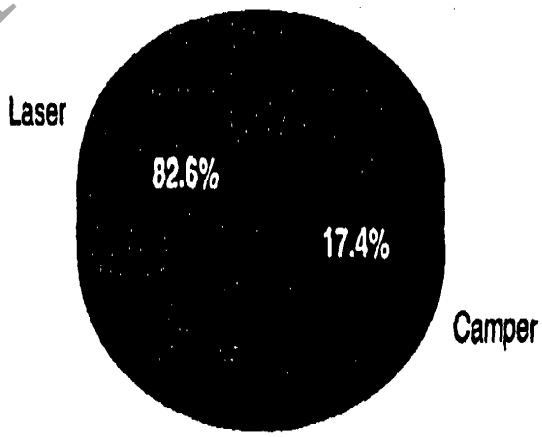
PROJECT LASER

Pro Forma Merger Analysis [1]

Summary of Fully Diluted Ownership

LASER Shares	Existing (000s)	Pro Forma (000s)	%
Common Stock	85,530	85,530	76.6%
Options	6,654	6,654	6.0%
Total	92,184	92,184	82.6%

CAMPER Shares	Existing (000s)	Pro Forma (000s)	%
Filly Diluted Shares [2]	54,546	19,436	17.4%
Total	54,546	19,436	17.4%
Total Shares		111,620	100.0%



NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084020

Notes: (1) Assumes a purchase price of $30.197 per share and a $41.875 share price for Laser.

(2) Assumes 53.468MM shares outstanding and 3.319MM options with an average exercise price of $15.145; treasury method assumed.

25061 0

F1BG1145034\2-27-98\5:15A

MSBCAN-02A4607

NOT A CERTIFIED COPY

APPENDIX

MORGAN STANLEY
CONFIDENTIAL
0084021

019053

F13\80319\02-22-95\7:10 PM\PG0

PROJECT LASER

Premiums Paid in Selected Precedent Consumer & Sporting Goods Transactions(1)

Date Announced	Acquiree/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value (2)	Equity Value/ Cash Flow	Equity Value/ Earnings	Equity Value/ Book Value	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	EBITDA Margin	Premium to Unaffected Stock Price (3)
09/16/97	Salomon S.A./Adidas AG	Manufactures sporting and athletic goods including ski and golf material	$1,350	$1,270	51.5x	38.6x	4.1x	1.7x	14.8x	21.3x	11.5%	19.0%
04/11/97	ERO Inc./Hedstrom Corp. (division of Hicks Muse Tate & Furst)	Manufactures toys and childrens backpacks	122.6	200.7	18.5	15.7	3.0	1.3	7.3	9.3	17.8	12.0
04/09/97	Tambrands/Procter & Gamble	Manufactures feminine hygiene products, home diagnostic, cosmetics and personal care products	1,854	2,004	18.2	28.5	19.1	3.0	8.7	14.4	34.5	15.3
11/26/96	Armor All (McKesson Corporation)/Clorox Company	Develops and markets a broad line of automotive appearance chemicals, including protectants, washes and other cleaning aids. The Company also markets several brands of home care products	410	355	25.9	31.3	3.3	1.9	13.9	16.7	13.7	14.0
10/29/96	Carter-Wallace/Investor (MarvinDavis) (Pending)	Manufacture pharmaceuticals, toiletries, diagnostic equipment and pet food	928	941	17.4	31.2	2.7	1.4	13.0	19.4	10.8	60.0
09/13/96	Duracell/Gillette	A worldwide manufacturer of high-performance alkaline batteries and other battery types	7,202	7,733	21.6	29.4	5.1	3.4	14.3	17.4	23.8	30.1
08/15/96	Spalding & Evenflo Cos/KKR	Leading global manufacturer and marketer of branded consumer products serving both the sporting goods and juvenile products markets.	533.0	912.0	N.A.	N.A.	N.A.	1.0	11.4x	14.7x	8.8	N.A.
02/13/96	Helene Curtis/Unilever PLC	Develops, manufactures and markets personal care products, primarily hair and skin products and antiperspirants and deodorants	739	842	N.A.	N.M.	3.4	0.6	13.4	24.8	4.5	71.8
½/96	Maybelline/ L'Oreal SA	Maker of Great Lash mascara and other cosmetics and perfumes	627	755	N.A.	36.6	33.5	2.1	14.9	19.0	14.1	93.4
12/18/95	Cobra Golf Inc./American Brands Inc.	Produces premium priced golf clubs including King Cobra oversized metalwoods and irons.	700.9	673.8	N.A.	21.1	7.0	3.7	12.0	12.3	30.8	30.9
08/11/95	Schwarzkopf (Hoechst AG) Henkel (KGAA)	Sells best-selling hair care products; including top-selling shampoo and best-selling hair spray	DM800	DM800	N.A.	N.A.	N.A.	0.9	N.A.	17.3	N.A.	N.A.
01/11/95	ScottPaper/Kimberly-Clark	Consumer paper products	6,800	7,786	N.A.	25.6	4.3	N.A.	10.0	16.0	N.A.	1.9
02/03/95	Club Car Inc./ Clark Equipment Co.	Designer, manufacturer and marketer of electric and gasoline golf cars for recreational use and off-road vehicles for golf, commercial and industrial use.	237.0	262.9	N.A.	25.8	4.3	1.4	11.0	13.0	12.7	50.3

Notes: (1) Based on financial data from latest twelve-month period prior to the announcement date.
(2) Equity Value plus total debt assumed less cash.
(3) 4 weeks prior to announcement of transaction.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084022

PROJECT LASER

Premium Paid in Selected Precedent Consumer & Sporting Goods Transactions[1]

(continued)

Date Announced	Acquiree/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value (2)	Equity Value/ Cash Flow	Equity Value/ Earnings	Equity Value/ Book Value	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	EBITDA Margin	Premium to Unaffected Stock Price (3)
01/09/95	American Home Products (Kolynos)/ Colgate-Palmolive	Oral care division of AHP that operates primarily in Latin America	1,040	1,040	N.A.	34.4	35.7	3.6	N.A.	19.2	N.A.	--
12/20/94	Canstar Sports Inc./ Nike Incorporated	Canadian maker of hockey equipment; also ice skates, in-line roller skates and protective equipment. It also makes bindings, buckles and other components for snowboard, ski, and ski boots.	395.0	455.4	N.A.	29.9	7.6	2.9	17.5	21.1	16.6	56.0
08/22/94	Neutrogena Corp./ Johnson & Johnson	U.S. manufacturer of quality skin and hair care products	929	933	N.A.	35.4	6.7	3.2	19.9	22.9	16.1	78.5
09/12/94	Borden, Inc/RJR Nabisco (KKR)	Operations include grocery products, snacks, dairy products and packaging products	2,015	3,698	N.A.	N.A.	N.A.	0.6	12.3	32.0	4.9	9.9
09/26/94	L&F Products (Eastman Kodak Co.)/Reckitt & Colman, plc	Lysol disinfectant, Mop & Glo floor polish, Resolve rug cleaners	1,550	1,550	13.0	N.A.	N.A.	2.0	N.A.	N.A.	N.A.	--
10/14/94	Eastman Kodak (L&F Do-It-Yourself Products)/ Forstmann Little & Co.	Manufactures and markets a diverse line of Do-It-Yourself products such as stains, paints, sealants and varnishes for home and commercial applications. Brand names include Thompson, Minwax, Rowcraft and Red Devil	700	700	18.1	19.8	5.8	2.1	11.4	12.0	18.4	--

NOT A CERTIFIED COPY

MORGAN STANLEY
CONFIDENTIAL
0084023

Notes: (1) Based on financial data from latest twelve-month period prior to the announcement date.
(2) Equity Value plus total debt assumed less Cash.
(3) 4 weeks prior to announcement of transaction. 550610

MORGAN STANLEY 0

PROJECT LASER

Premium Paid in Selected Precedent Consumer & Sporting Goods Transactions[1]

(continued)

Date Announced	Acquiree/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value (2)	Equity Value/ Cash Flow	Equity Value/ Earnings	Equity Value/ Book Value	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	EBITDA Margin	Premium to Unaffected Stock Price (3)
10/27/92	Bristol-Myers Squibb (Drackett)/ S.C. Johnson & Son	The Company manufactures household products including Windex glass cleaner, Drano drain opener, Vanish toilet bowl cleaner, Endust cleaning sprays, Behold furniture polish, Renuzit air fresheners, O-Cedar broom and mop handles and Mr. Muscle hard-surface cleaners	1,150	1,150	N.A.	N.A.	N.A.	2.0	N.A.	N.A.	N.A.	--
06/20/90	American Cyanamid Co. (Shulton Group)/Clorox Co.	Purchased the worldwide household products portion of the Shulton Group, which includes the Pine-Sol cleaning product and the line of Combat brand insecticides	465	465	N.A.	N.A.	N.M.	2.5	N.A.	36.6	N.A.	--
03/09/90	American Home Products (Boyle-Midway Unit)/Reckitt & Colman Plc	Products include Woolite soaps, Easy-Off Oven Cleaner, Black Flag and Holiday insecticides, Gulf-Lite charcoal lighter, Wizard air freshener, Sani-Flush toilet bowl cleaner, Old English furniture polish, HRS Floor Care, and Zero Cold Wash	1,250	1,250	N.A.	N.A.	N.A.	1.9	12.9	13.7	14.7	--
09/22/89	Noxell Corp./ Procter & Gamble Co.	Company develops, manufactures and markets cosmetic, toiletry and household products. Products include: Noxzema, Clarion Complexion Lotion, Raintree, Cover Girl Cosmetics, Liquid Household Cleaner and Chill Ingredients	1,358	1,291	21.3	25.7	5.1	2.4	13.8	15.2	17.4	50.7%
03/20/89	Coleman Co/MacAndrew & Forbes	The company's products fall in two business segments: outdoor recreation, which includes lanterns, campstoves, catalytic heaters, coolers, jugs, tents, sleeping bags, fuel, camping accessories, air inflators, lights, patio grills, canoes, fishing boats, backpacking equipment, camping utility trailers, life vests, Hobie Cat and Hodler sailboats, water skis, sailboards, air guns, archery bows, bass fishing boats, water ski boats, California Cooperage spa products, Western Cutlery knives, and ranging optical rangefinders; heating and air conditioning, which includes furnaces, air conditioners and heat pumps for homes and air conditioners for recreational vehicles.	539.8	662.0	N.A.	22.1	2.7	1.0	9.4	12.3	10.6	73.0

Notes: (1) Based on financial data from latest twelve-month period prior to the announcement date.
(2) Equity Value plus total debt assumed less Cash.
(3) 4 weeks prior to announcement of transaction.

990610

F13\10380902-26-98\1:56 AM 03

MORGAN STANLEY CONFIDENTIAL 0084024

NOT A CERTIFIED COPY

PROJECT LASER

Premium Paid in Selected Precedent Consumer & Sporting Goods Transactions(1)

(continued)

Date Announced	Acquiree/Acquiror	Business Description of Acquiree	Equity Value	Aggregate Value (2)	Equity Value/ Cash Flow	Equity Value/ Earnings	Equity Value/ Book Value	Aggregate Value/ Revenues	Aggregate Value/ EBITDA	Aggregate Value/ EBIT	EBITDA Margin	Premium to Unaffected Stock Price (3)
01/22/88	Sterling Drug Inc./ Eastman Kodak Co.	Develops, manufactures and markets pharmaceuticals; household products; cosmetics and toiletries. Major products include: Phillips Milk of Magnesia, Midol, Bayer Aspirin, Panadol, Lysol, D-Con and Miniwax	5,267	5,770	21.6	27.7	5.2	2.6	13.6	17.7	16.7	97.8
12/01/86	Chesebrough Ponds Inc./ Unilever N.V.	Chesebrough's products include: health and beauty (cosmetics, toiletry and medicinal products); packaged foods: Health Tex (apparel for infants); Prince Matchabelli (fragrances and cosmetics); hospital supplies; Prince (sports equipment; Bass (casual footwear). Trademarks include: Cutex, Dermatology Formula, Groom & Clean, Intensive Care, Pertussin, Pond's, Q-Tips, Rave, Vaseline, Adolph's	3,095	4,413	N.A.	22.7x	2.9x	1.4x	N.A.	14.7x	N.A.	61.1%
10/01/86	Richardson-Vicks Inc./ Procter & Gamble Co.	Richardson-Vicks develops, manufactures and markets personal care products, including toiletries, hair care products, and health care products, including proprietary medicines. Major brand-name products include Vicks and Nyquil cough and cold products. Oil of Olay and Clearasil skin care products, and Vidal Sassoon and Pantene hair care products	1,708	1,873	N.A.	22.2	3.6	1.6	N.A.	19.2	N.A.	N.A.
		Mean:			22.7x	28.3x	9.0x	2.0x	13.1x	18.9x	15.6%	44.0%
		Median:			19.9	28.5	4.7	2.0	13.4	17.6	15.4	40.4

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084025

Notes: (1) Based on financial data from latest twelve month period prior to the announcement date.
(2) Equity Value plus total debt assumed less cash.
(3) 4 weeks prior to announcement of transaction.

90610

PROJECT LASER

Market Statistics for Selected Comparable Companies: Camper

($mm, except per share data)

Company	Price[1]	LTM Price High	LTM Price Low	Market Value Equity	Market Value Aggregate[2]	EPS[3] LTM	EPS Calendar 1998E	EPS Calendar 1999E	P/E LTM	P/E Calendar 1998E	P/E Calendar 1999E	CY98 PE/ Growth	CY99 PE/ Growth	Proj. 5 yr. EPS Growth[4]	Aggregate Value/ 1998E[5] Sales	Aggregate Value/ 1998E[5] EBITDA	Aggregate Value/ 1998E[5] EBIT	Aggregate Value/ 1999E[5] Sales	Aggregate Value/ 1999E[5] EBITDA	Aggregate Value/ 1999E[5] EBIT
Consumer Durables/Appliances																				
Black & Decker	$50.44	$51.25	$29.63	$4,781.9	$6,397.6	$2.34	$2.60	$3.25	21.6	19.4	15.5	1.3	1.0	15.0 %	1.3 x	8.7 x	12.3 x	1.2 x	N.A.	11.2 x
Snap-On	42.06	46.31	35.25	2,560.6	2,709.8	2.5	2.7	3.0	17.1	15.6	13.9	1.3	1.2	12.0	1.5	N.A.	9.5	1.4	N.A.	8.4
Stanley Works	47.06	47.50	35.50	4,201.2	4,463.5	2.1	2.4	2.8	22.3	19.6	17.1	1.6	1.4	12.0	1.6	10.3	12.4	1.5	9.1	10.8
Toro	39.94	46.31	33.00	486.8	705.8	2.9	3.2	3.5	13.6	12.5	11.4	1.1	1.0	11.5	0.6	N.A.	7.5	N.A.	N.A.	N.A.
Newell Companies	44.94	45.19	32.13	7,149.6	8,583.7	1.8	2.1	2.4	24.7	21.4	19.0	1.4	1.3	15.0	2.4	11.2	13.4	2.3	10.6	12.6
Maytag	45.00	46.00	20.13	4,273.9	5,090.2	1.9	2.3	2.6	23.9	19.2	17.3	1.9	1.7	10.0	1.4	8.9	12.3	1.3	8.3	11.3
Polaroid	46.19	60.31	36.25	2,057.0	2,716.2	2.2	2.8	3.8	20.9	16.8	12.3	1.4	1.0	12.0	1.2	7.2	10.7	1.1	6.8	9.2
Eastman Kodak	63.63	93.00	53.31	21,328.1	22,306.1	3.5	4.1	4.9	18.8	16.1	13.5	1.6	1.4	10.0	1.5	7.6	10.4	1.4	6.7	8.8
Whirlpool	65.88	69.50	45.25	4,941.3	7,564.3	3.2	4.0	4.7	20.8	16.5	14.1	1.5	1.3	11.0	0.9	8.0	13.9	0.9	7.4	12.4
					Median:				20.9 x	16.8 x	14.1 x	1.4 x	1.3 x	12.0 %	1.4 x	8.7 x	12.3 x	1.4 x	7.9 x	11.0 x
					Mean:				20.4	17.4	14.9	1.5	1.3	12.1	1.4	8.8	11.4	1.4	8.2	10.6
Consumer Packaged Goods																				
Rubbermaid Inc.	$29.00	$30.50	$23.00	$4,344.1	$4,607.2	$0.89	$1.20	$1.48	32.6 x	24.2 x	19.6 x	2.0 x	1.6 x	12.0 %	1.8 x	10.0 x	13.5 x	1.7	9.2	12.1
Gillette	107.88	108.81	72.00	60,418.3	62,637.3	2.5	3.0	3.5	42.6	36.0	30.5	2.0	1.7	18.0	5.6	19.1	21.2	5.1	18.2	20.4
Tupperware	26.81	45.63	22.50	1,636.4	1,896.7	1.8	1.7	1.9	14.7	15.9	14.1	1.4	1.3	11.0	1.5	7.8	11.2	N.A.	N.A.	N.A.
Procter & Gamble	83.44	84.75	56.63	111,936.4	117,178.4	2.6	2.7	3.1	32.5	30.8	27.3	2.4	2.1	13.0	3.0	14.6	18.1	N.A.	N.A.	N.A.
Clorox	86.56	87.19	55.00	8,950.8	10,012.7	2.5	2.9	3.3	34.0	29.6	26.2	2.3	2.0	13.0	3.4	N.A.	17.8	N.A.	N.A.	N.A.
Kimberly-Clark	55.06	56.88	43.25	30,317.4	32,820.6	2.4	2.9	3.3	22.8	19.3	16.9	1.5	1.3	13.0	2.4	11.9	14.5	2.3	10.8	13.2
Johnson & Johnson	74.25	74.69	51.13	99,308.3	98,288.3	2.5	2.8	3.1	30.2	26.8	23.6	1.9	1.7	14.0	3.9	14.3	17.9	3.5	12.7	15.9
Colgate-Palmolive	78.88	81.69	49.25	23,331.7	26,191.0	2.4	2.8	3.2	32.3	28.4	24.7	2.2	1.9	13.0	2.7	17.2	20.8	2.5	15.4	18.5
Sara Lee	57.25	59.94	38.50	27,089.0	30,581.0	2.1	2.4	2.7	27.5	24.0	21.1	1.8	1.6	13.0	1.5	12.3	16.5	N.A.	N.A.	N.A.
					Median:				32.3 x	26.8 x	23.6 x	2.0 x	1.7 x	13.0 %	2.7 x	13.3 x	17.8 x	2.5 x	12.7 x	15.9 x
					Mean:				29.9	26.1	22.7	1.9	1.7	13.3	2.9	13.4	16.8	3.0	13.3	16.0
					Total Median				23.3 x	19.5 x	17.2 x	1.6 x	1.4 x	12.5 %	1.6 x	10.3 x	13.4 x	1.5 x	9.2 x	12.1 x
					Total Mean:				25.2	21.8	18.8	1.7	1.5	12.7	2.1	11.3	14.1	2.0	10.5	12.7
Laser	$42.06	$50.44	$25.50	$3,594.9	$3,737.7	$1.40	$2.00	$2.64	30.0 x	21.0 x	15.9 x	1.1 x	0.8 x	20.0 %	2.4 x	9.7 x	11.7 x	1.9 x	7.7 x	9.2 x
Camper	19.88	20.88	12.06	1,061.3	1,567.1	0.51	0.97	1.14	N.M.	20.5	17.4	1.2	1.0	17.5	1.2	9.0	11.5	1.1	7.6	9.6

Notes:

(1) Closing prices as of 2/25/98. High and low represent the latest 52 week figures

(2) Aggregate value equals market value of equity plus short-term debt, long-term debt, minority interests and any capital leases and underfunded pensions, as appropriate

(3) IBES median EPS estimates as of 2/25/98 and calendarized to December 31st for 1998 and 1999

(4) IBES median long-term growth estimates as of 2/25/98

(5) Based on estimates from various research reports; Camper estimates based on Prudential research report dated 11/13/97

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0084026

437

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 6
(EXHIBITS 47-59)

NOT A CERTIFIED COPY

016270

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

971

TABLE OF CONTENTS
VOLUME 6

	TAB
Paul Shapiro Deposition Transcript (6/8/04)	47
James Maher Deposition Transcript (11/3/04)	48
Steven Geller Deposition Transcript	49
Paul Shapiro Deposition Transcript (7/28/04)	50
Joseph Page Deposition Transcript	51
MS Ex. 84	52
CPH Ex. 239	53
MS Ex. 112	54
MS Ex. 88	55
MS Ex. 113	56
MS Ex. 120	57
MS Ex. 117	58
CPH Ex. 140	59

NOT A CERTIFIED COPY

016271

NOT A CERTIFIED COPY

0162772

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Case No: CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Case No: CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

DEPOSITION OF PAUL E. SHAPIRO

Tuesday, June 8, 2004

New York, New York

Reported By:

LINDA J. GREENBERG

JOB NO. 161095

NOT A CERTIFIED COPY

016273

June 8, 2004
9:19 A.M.

Deposition of PAUL E. SHAPIRO, taken by Defendant, pursuant to Notice, at the offices of Kirkland & Ellis, L.L.P., Citicorp Center, 153 East 53rd Street, New York, New York, before Linda J. Greenberg, a Certified Shorthand Reporter and Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, L.L.P.
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603

BY: MICHAEL T. BRODY, ESQ.

KIRKLAND & ELLIS, L.L.P.
Attorneys for Defendant
777 South Figueroa Street
Los Angeles, California 90017
BY: LAWRENCE P. BEMIS, Esq.

Also Present:
Kathryn Reed DeBord, Esq.
Kirkland & Ellis, L.L.P.

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Paul Shapiro in the Matter of Coleman (Parent) Holding, Inc., plaintiff, versus Morgan Stanley & Company, Incorporated, defendant, Case Number CA 03-5045 AI.

Morgan Stanley Senior Funding, Inc., plaintiff, versus MacAndrews & Forbes Holding, Incorporated, et al, defendant. Case number CA 03-5165 AI in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

This deposition is being held at Kirkland & Ellis at 153 East 53rd Street, New York, New York on Tuesday, June 8, 2004, and the time is 9:59 a.m.

My name is Mark Granderson with Esquire Deposition Services, and I am the legal video specialist. The court reporter is Linda Greenberg, also in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. BEMIS: Lawrence Bemis for the Morgan Stanley entities.

MS. DeBORD: Katie DeBord for Morgan Stanley.

MR. BRODY: Michael Brody for Coleman Parent Holdings, MacAndrews & Forbes and the witness.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

PAUL E. SHAPIRO,
having been first duly sworn, was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:

Q. Good morning Mr. Shapiro. Again, my name is Larry Bemis.

Would you state your full name for the jury, please?

A. Yes. Paul E. Shapiro, S-H-A-P-I-R-O.

Q. What does the "E" stand for?

A. Edwin.

Q. Mr. Shapiro, how old are you?

NOT A CERTIFIED COPY

016274

A. 63.
Q. What is your date of birth?
A. April 25, 1941.
Q. Are you currently a senior vice president of MacAndrews & Forbes Holdings, Inc.?
A. Yes, I am.
Q. Where do you live?
A. I live in Florida, in Boca Raton, Florida; 2199 Northwest 30th Road; and in New York City in Manhattan.
Q. Are you registered to vote?
A. I'm registered to vote in Florida. I hold a Florida driver's license. I consider myself a Florida resident.
Q. What is your residence address in Manhattan?
A. 132 East 72nd Street.
Q. Are you married?
A. Yes.
Q. Does your spouse live in New York or Florida?
A. She goes back and forth with

me.
Q. Where is she registered to vote?
A. Florida. She also holds a Florida driver's license.
Q. Do you have an office address in New York City?
A. Yes, I do. At the present time it's 35 East 62nd Street.
Q. Do you have an office telephone number at that address?
A. Yes. 212-572-8610.
Q. Do you have an office address in Florida?
A. No, I do not at this time.
Q. Now, is your office address that you gave is, is that the address of MacAndrews & Forbes Holdings, Inc.?
A. Yes, it is.
Q. And how long has that been your current office address?
A. Just since January 1st of this year.
MR. BRODY: I'm sorry, the

answer was what?
(Requested portion of record read.)
Q. Sir, I'm going to ask you some questions today concerning a number of events going back to 1997 and going forward.
Do you understand, sir, that you are being videotaped today?
A. Yes, I do.
Q. And you have been deposed before, have you not, sir?
A. Yes, I have.
Q. You understand that you are under oath and that the oath you took has the same force and effect as if you were testifying in front of a jury?
A. Yes.
Q. Is there any reason that you can think of that you would not be able to testify fully and truthfully today?
A. No, there is not.
I would like to add that I am experiencing a problem with my eye today,

something usual, so I may blink several times because of that condition, but it's nothing more than that.
Q. If at any point you need to take a break, let us know; or you're having trouble reading documents, because there are going to be a lot of documents, let us know and we'll see what we can do.
Mr. Brody was introduced as your counsel here today. Did you have an opportunity to meet with him before your deposition?
A. Yes, I did.
Q. And how long did you meet with him to prepare for your deposition?
A. We met twice, and I would guess that the total of the two meetings might have been five hours, six hours. Something in that range.
Q. When did you meet with him?
A. I met with him yesterday, and I met with him two or three weeks ago. I don't remember the exact date previous to yesterday.

NOT A CERTIFIED COPY

016275

Q. When you met with Mr. Brody, did you review documents?
A. Yes, we did.
Q. What documents did you review?
MR. BRODY: I'm going to object to the form of the question. I ask you to rephrase, what we've done on other depositions.
MR. BEMIS: I have to confess, I can't tell you what you've done in all the other depositions.
MR. BRODY: Typically witnesses have been permitted to testify if any of the documents refreshed their recollection.
Your partners have taken the position that the question you just asked invades work product.
MR. BEMIS: I'm not going to get into what other people have done or not done. I'm going to ask my question. If you object, we'll go from there.
MR. BRODY: Fine.
Q. What documents did you review

in preparation for your deposition?
MR. BRODY: I object and instruct him not to answer. It invades work product. You can ask the question --
MR. BEMIS: I heard you the first time. You made your objection.
Q. Are you going to follow the instruction and not tell me what documents you reviewed?
A. I'm going to follow the instructions of my attorney.
Q. Were these documents you reviewed related to events in 1997, 1998, during the period of the Sunbeam/Coleman merger and acquisition?
MR. BRODY: You can answer that question yes or no.
A. Yes.
Q. Did any of those documents refresh your recollection about events going back to 1997 and 1998?
A. Some did, yes.
Q. What documents did you review that refreshed your recollection?

MR. BRODY: You can answer.
A. I reviewed some papers that appeared to have been connected to a meeting held between some Coleman people and Sunbeam people in December of 1997.
Q. Could I just stop you right there.
Is that a document solving so-called synergies between the two companies?
A. Yes. It was a list of ideas for synergies, yes.
I reviewed what I would call a merger agreement. I don't know what the exact title of it was, but the merger documents connected to the transaction that ultimately occurred between Sunbeam and Coleman.
Q. May I ask you, is that the document that you signed on behalf of The Coleman Company, Inc.?
A. Yes.
Q. Go ahead.
A. I also reviewed documents

relating to a presentation made by senior Sunbeam management to me and others at Coleman in the week proceeding the signing of that merger agreement concerning Sunbeam's expected performance for 1998 and beyond, if I recall.
I reviewed --
Q. Do you remember the title of that document?
A. No, I don't.
Q. Just give me --
A. It was what I would call a deck. It was a presentation.
Q. A PowerPoint presentation?
A. Yes.
Q. If you just give me one second.
Was this document entitled, "Sunbeam's Strategic Long Range Presentation"?
A. I don't remember, but I'm sure -- what I'm talking about is likely to be a document you'll show me, and when you show it to me I'll tell you if it appears to be the one that I reviewed.

NOT A CERTIFIED COPY

016276

Q. Was this a meeting that took place before the merger agreement was signed which, I think, the record later will show was February 28th of 1998?
A. Yes. The deck related to a meeting that was held before the agreement was signed.
Q. Did Mr. Kersh make a presentation at this meeting?
A. Yes.
MR. BEMIS: We'll cover that -- I think for the record that's MS-86, but when the documents arrive, we'll confirm that.
Q. What other documents did you review that refreshed your recollection?
A. Minutes of board meetings of the Coleman board relating to their approval, their consideration of the transaction, their approval of the transaction. A presentation made by Credit Suisse First Boston to the board, including a fairness evaluation opinion.
Q. Can I ask you, on the board

minutes, did you review minutes other than the minutes of February 25, 1998 and February 27, 1998 which have previously been identified --
A. I don't remember the exact dates, but there were minutes of two meetings that were held a few days prior to the signing of the merger document and then a meeting held on the same day as the signing.
Q. And then the Credit Suisse First Boston documents you reviewed, you recall to be a fairness opinion?
A. My recollection is, it was a presentation to the board to help them in concluding whether the price was fair to Coleman shareholders, and I don't recall if --
Again, if I saw the deck it would probably refresh my recollection, but they were giving the board their judgment as to the proper -- as to the fairness to shareholders of the proposed price.

MR. BEMIS: Can we have the courtesy of going off the record? The documents have arrived. We'll bring them into the room and things should go a little smoothly. I think things have been going smoothly, but they will continue to go smoothly.
THE VIDEOGRAPHER: The time is now 10 minutes after 10 and we are now off the record.
(Discussion held off the record.)
THE VIDEOGRAPHER: The time is now 10:15 and we are back on the record.
(Requested portion of record read.)
Q. When you refer to a deck, are you referring to a PowerPoint presentation?
A. Yes. I don't remember whether in this instance it was presented -- whether it was presented with a camera, but it was a group of papers that looked like a PowerPoint presentation.

Q. Let me show you what's been previously marked as MS-84. We're not going to go through this in detail right now, but I just want to ask you if the document that you recall in the form of a deck that, I believe, was presented by Mr. Kersh before the merger agreement was signed, is this the document you were referring to?
MR. BRODY: You can answer the question, but I'd ask you to clarify. Are you asking about the documents or the handwriting or both?
MR. BEMIS: I'm just asking right now about the document.
A. We're now shifting from the First Boston document which I've been --
Q. Yes, sir.
A. This looks like -- again, I can't be specific, but it looks like the document that was presented at the meeting at Morgan Stanley, yes.
Q. Let me rephrase the question and start over.

NOT A CERTIFIED COPY

016277

Page 18

When you use the term "deck," is that the type of document that you are referring to, what you have in your hands, MS-84?

A. Yes.

Q. Can you just hold it up to the camera, just hold the front page up so the jury can see what we're talking about. You can hand that back to me and we'll come back to it later.

Let's go forward now from the Credit Suisse First Boston deck that you looked at. What other documents did you look at in preparation for your deposition that refreshed your recollection?

A. My recollection is that I looked at a copy of a press release issued by Sunbeam in the period between the signing of the merger agreement and the actual closing of the transaction, mid March, the 18th, 19th, somewhere in there, in which they discussed the question of whether they would reach the revenue target that they had forecast publicly

Page 19

prior to that.

Q. Revenue or sales?

A. I don't remember. I'd have to look at the releases.

Q. But you only looked at one press release?

A. Yes.

Q. What other documents did you look at that refreshed your recollection?

A. I'm sure there were a few others, but I don't recall sitting here. Again, as you show me documents, I'll be glad to tell you whether or not I looked at them in preparation.

Q. When did you retain Mr. Brody as your counsel?

A. My understanding is Mr. Brody was retained by my employer some time ago and I first met with him, as I said, in preparation for this case and agreed that he would represent me, also.

Q. Are the fees for Mr. Brody's services then being paid by your employer?

A. Yes.

Page 20

Q. So that's MacAndrews & Forbes, correct?

A. Yes.

Q. Does Mr. Brody represent you in any other matters other than this litigation?

A. No, he does not.

Q. You have given other depositions related to the Coleman/Sunbeam merger transaction, correct?

A. I believe I recall having given a deposition in Florida -- at least one deposition in Florida. I think it was in the shareholder litigation, but I'm not sure, some time ago.

Q. Now, other than the one deposition that you believe you gave in Florida, have you given any other testimony under oath in any proceeding such as for the Securities and Exchange Commission, the New York Stock Exchange, anything like that?

MR. BRODY: Related to Sunbeam?

MR. BEMIS: Related to this,

Page 21

yes.

A. I don't believe so. I met with the Securities and Exchange Commission and I met with the New York Stock Exchange, but I don't believe I gave testimony.

Q. When you met with the Securities and Exchange Commission, were you under oath during the interview?

A. Not to my recollection.

Q. Were you represented by counsel?

A. The company was represented by counsel. I personally did not require counsel. I was not a witness to anything, nor was I a subject to the investigation.

Q. Again, I'm just going to refer -- all my questions today are going to be on the Coleman/Sunbeam merger. Unless I tell you otherwise, that is what we'll be talking about. That will keep you focused.

When you met with the New York Stock Exchange, were you interviewed?

A. No. I was meeting with them in

NOT A CERTIFIED COPY

016278

connection with issues relating to whether Sunbeam was meeting the listing standards of the Stock Exchange and whether they would continue to list the stock or de-list the stock.

Q. Other than the two meetings that you've identified with the -- excuse me, you haven't identified there were two meetings. Other than the meetings you've been telling me about with the SEC or the New York Stock Exchange as the case may be, have you met with any other regulatory agency about Coleman/Sunbeam issues?

MR. BRODY: Object to the form. You can answer.

A. I'm trying to think of the three years that I was at Sunbeam -- I don't recall meeting with any other agency.

Q. Just to close this out then, do you recall one instance where you were under oath and you gave a deposition, you believe, in the shareholder litigation, and that is the only time you believe

you've given testimony under oath regarding the Sunbeam/Coleman transaction?

MR. BRODY: Object to the form.

A. Yes, I mean, without somehow refreshing my recollection, I recall one deposition taken in Florida relating to the shareholder litigation. I don't believe there were any others -- I can't recall, sitting here today, that there were any others.

I was definitely not under oath in any discussions I had with either the SEC or the New York Stock Exchange.

Q. Did you ever appear as a witness on behalf of Sunbeam to testify for the corporation as opposed to give testimony as Paul E. Shapiro?

A. As I look back, I recall one instance in Delaware where I gave testimony in a case involving the -- on behalf of the corporation in a case involving -- I believe it was indemnification and payment of fees on behalf of Al Dunlap, the former CEO of

Sunbeam, and I know I testified in Delaware Chancery Court on that issue.

I don't recall if I had been deposed on that issue or not. I don't recall giving testimony in any other case. It's possible. I just don't recall.

Q. Other than discussing your deposition here today with your attorney, Mr. Brody, have you discussed the deposition with anyone else beyond saying I'm going to be here, for example?

A. Steven Fasman, who is counsel at MacAndrews & Forbes, discussed with me before I met Mr. Brody -- told me about the case, discussed with me the willingness to provide Mr. Brody as my counsel and sort of facilitated my meeting with Mr. Brody.

Q. And Mr. Fasman is an attorney for MacAndrews & Forbes?

A. Yes.

Q. Did you review during your preparation the complaints in the two actions that you are here giving testimony

on today?

A. No, but I have read them previously some time ago.

Q. What were the circumstances under which you first read the complaints?

A. My recollection is that somebody at MacAndrews -- Steven Fasman, possibly -- sent me a copy of the complaint that they had filed in the -- originally the Morgan Stanley case; and when Morgan Stanley filed their counterclaim, if I recall, a separate case, I don't remember which it was, I was sent a copy of that complaint, I believe also by Steven Fasman, but I'm not sure.

Q. Did you have any involvement in the drafting of the complaint by Coleman Parent Holdings against Morgan Stanley & Co., Incorporated?

A. Not to my recollection.

Q. Am I correct that the first time that you saw that complaint was after it had been filed in court?

A. That's my recollection.

NOT A CERTIFIED COPY

016279

Page 26

Q. I'm going to ask you just a few questions about your background and then we're going to go on to some more substantive matters.

Did you first go to work for The Coleman Company on July 1st of 1997?

A. Yes.

Q. When did you leave the company as an employee?

A. I left on the date that the closing took place in the sale to Sunbeam which, if I recall, was -- it was either the last day of March or the first day of April. It was the very end of March or early April of 1998.

Q. Let me show you what's we'll mark as MS-257.

(Exhibit MS-257 for identification, Mr. Shapiro's resignation from The Coleman Company, Inc.)

Q. Do you have Morgan Stanley Exhibit 257 in front of you, sir?

A. Yes.

Q. Is that your signature?

Page 27

A. Yes.

Q. Is this your resignation from The Coleman Company, Inc.?

A. I don't recall, but it certainly looks like it. I assume it is.

Q. Now, during the time you were employed by The Coleman Company, which I think you've told me now would be July 1, 1997 through March 31st of 1998, what positions did you hold with the company?

A. My recollection is that I was executive vice president and general counsel.

Q. Where was your office?

A. My office was at 625 Madison Avenue in New York.

Q. Did The Coleman Company maintain offices at that address?

A. Yes. We had a small executive office for what I would call corporate personnel, as opposed to operating personnel, and there were about six or eight of us that were in that space as opposed to Coleman's major headquarters in

Page 28

Wichita, Kansas.

Q. Did you ever work out of the Wichita, Kansas office?

A. Yes.

I never had an office there, but I traveled there fairly frequently for business reviews and so forth.

Q. That was a very poorly phrased question.

Did you ever maintain an office in Wichita?

A. No.

Q. For all practical purposes then, your office was at 625 Madison Avenue while you were employed by The Coleman Company?

A. That's correct.

Q. During the period you were employed by The Coleman Company, did you hold any other employment with entities owned by Ronald Perelman, either in total or through some other stock ownership?

A. Well, I didn't have stock ownership --

Page 29

Q. No, Mr. Perelman's stock ownership.

A. No. But to my recollection, in addition to my contract with Coleman, I also had a contract with one of the MacAndrews holding companies.

Q. Was this Marvel Entertainment?

A. No. I had left Marvel-- I left Marvel immediately preceding -- immediately before going to Coleman.

Q. Let me focus just on the Coleman period right now.

Can you tell us what company that you were also employed by that was affiliated with Mr. Perelman?

A. I don't recall. At various times I was affiliated with a company called the Andrews Group, which was a holding company, an intermediate holding company that, among other things, owned all or some of the stock in, I believe in -- had a relationship, let's put it that way, to Marvel, which had been my previous employer.

NOT A CERTIFIED COPY

016280

Page 30

And one of the MacAndrews & Forbes Holdings -- at various times I have also had contracts with others of the holding companies above the operating companies, I just don't recall at that time which one it was.

Q. Just so we're clear, as far as you can recall as you sit here today, during the period July 1, 1997 through March 31, 1998, while you were employed by Coleman, you only had employment with one other company associated with Mr. Perelman, is that right?

A. At any given time I did. I don't remember whether it changed during that period.

Q. During the period you were employed by The Coleman Company, was that your primary employment?

A. Yes.

Q. And what percentage of your time did you spend on The Coleman Company as opposed to this other company owned by Mr. Perelman?

Page 31

A. To my recollection, over 90 percent. I just don't recall.

Q. During the period you were employed by The Coleman Company, were you also of counsel to the law firm of Greenberg Traurig? And I think the full name at that time was Greenberg Traurig Hoffman Rosen Lipoff & Quentel.

A. When I first came to work for MacAndrews & Forbes, I remained of counsel to Greenberg Traurig for a period of time. I don't remember when that ended.

I was paid for a period of time by the firm. Then that stopped, and then I remained listed on the letterhead as counsel for a period of time, but I don't frankly recall whether it included the period during which I was at Coleman.

Q. Before you went to work for The Coleman Company, you had been employed in various capacities as an attorney, had you not?

A. Within the MacAndrews entity or by myself?

Page 32

Q. By yourself, sir.

A. Yes.

Q. When did you start your legal practice?

A. 1967.

Q. Was that after your graduation from law school?

A. Yes.

Q. Did you graduate from the University of Pennsylvania, is that right?

A. Yes.

Q. If I recall, you did your undergraduate work there as well?

A. Yes, I did.

Q. What did you in 1967, and we'll just work our way forward real quickly.

A. In 1967, I joined as an associate in the law firm of Wolf Block Schorr & Solis-Cohen in Philadelphia.

Q. Were you officed in Philadelphia at that time?

A. Yes, I was.

Q. Did you eventually open an office in West Palm Beach?

Page 33

A. Yes. Jumping a bunch of years and careers, but, I did.

Q. Why don't you bring me forward from when you joined Wolf Schorr.

A. I was with Wolf Block Schorr again from somewhere around September of 1967 until the beginning of April of 1970.

The beginning of April 1970, I left with another young lawyer and gave up the practice of law and we formed a school called the Institute for Paralegal Training.

We were the first school in the country to train people to work as legal assistants. I would say one of our first placements was at your law firm in Chicago --

Q. You eventually sold that company, as I recall?

A. Yes. We sold that company to Bell & Howell Company.

Q. In 1973?

A. In 1973.

Q. Take us forward.

NOT A CERTIFIED COPY

016281

Page 34

What did you do in 1973?
A. I continued to work for the school for Bell & Howell Company until the summer of 1976, at which time I resigned from the school.
I then took a year off, although I did some consulting work during that year, and returned to Wolf Block Schorr & Solis-Cohen in 1977.
Q. Which office?
A. Philadelphia.
Q. How long did you stay in the Philadelphia office?
A. I stayed in the Philadelphia office until the summer of 1982, at which point I moved to Palm Beach County, Florida for the purpose of starting a Wolf Block office in that area.
Q. When you moved to West Palm Beach, Florida in 1982, did you establish legal residence then in Florida?
A. Yes. That's where I lived, in Boca Raton, Florida, my office was in West Palm Beach. I took the Florida Bar exam.

Page 35

Became a member of the Florida Bar, if I recall, in the fall of '82.
Q. You beat me by two years.
A. I then practiced law in that office until 1988, at which point I and others in the office left and formed a firm which was named Shapiro & Bregman, B-R-E-G-M-A-N.
Q. Can I interrupt you there?
So that office, Shapiro & Bregman -- that's an ampersand, right, Bregman?
A. Yes.
Q. You opened that office in 1988; and you continued in that practice, I think, until about 1991, is that correct?
A. Yes.
Q. And what happened in 1991?
A. In 1991 we merged that firm into the firm of Greenberg Traurig, which, I think, then had the name Greenberg Traurig Hoffman Lipoff Rosen & Quentel.
Q. That's correct.
And then you worked with the

Page 36

Greenberg Traurig firm, which we'll use for shorthand, until about January of 1994, is that right?
A. No.
Until December of 1993, at which point, at the end of December, I joined MacAndrews & Forbes, and was assigned to work for one of the companies that they controlled, which was Marvel Entertainment Group, Inc.
Q. When you joined MacAndrews & Forbes, are you referring now to the holding company or a larger affiliated group of companies?
A. I'm just referring to the affiliated companies, yes.
Q. The company that you went to work for with MacAndrews & Forbes, was that a Marvel Entertainment Group?
A. I think, again, to my recollection, my employment agreement was with a company called Andrews Group, of which I was an executive vice president; and my day-to-day work was, again, 95

Page 37

percent for Marvel Entertainment Group, of which I was an executive vice president and general counsel.
Ultimately, I believe, also chief administrative officer.
Q. Let me show you what we'll mark as MS-252.
(Exhibit MS-252 for identification, Mr. Shapiro's resume.)
Q. Do you have MS-252 in front of you, sir?
A. Yes, I do.
Q. Mr. Shapiro, there's a brief resume for you here. Could you just take a quick read of it and let me know when you're finished, and my question is just going to be whether it's accurate, at least in its presentation of your background and employment as described therein?
A. Yes. I really don't know what this is from, but it is accurate.
Q. All right, you can set it aside.

NOT A CERTIFIED COPY

016282

When you first started your employment with Marvel Entertainment Group, did you move to New York from West Palm Beach?

A. Again, I was living in -- I was working in West Palm Beach. I was living in Boca Raton. My wife and I, our arrangement was that we rented an apartment in New York and we commuted. We kept our house. We were in Florida on weekends, we were in New York during the week when my business had me in New York, I traveled a great deal on business to Italy and to California and to other places.

Q. When you went to work for Marvel Entertainment Group, I think you said your titles eventually were executive vice president, general counsel and chief administrative officer, did you have an office in New York?

A. Yes.

Q. And where was that office, sir?

A. I believe Marvel was

headquartered -- I was at the Marvel headquarters and I believe it was headquartered at 387 Park Avenue South.

Q. And at the time that you were employed by Marvel Entertainment Group, was that company owned by Mr. Perelman or one of his affiliated companies?

A. Mr. Perelman's companies owned approximately 81 or 82 percent of the stock, and the rest was owned by the public.

Q. That's then approximately the ownership percentage that Mr. Perelman had through his affiliate companies of The Coleman Company at the time of the merger, correct?

A. That's correct.

Q. Your next job then after Marvel Entertainment Group was with The Coleman Company, correct?

A. That's correct.

Q. And we've covered that.

Let's leap forward now to March 31, 1998. You resign. Where do you go to

work next?

A. I was under contract, again, with one of the MacAndrews holding companies, and I had an office -- they established an office for me at 35 East 62nd Street, which is their headquarters; and I was there. I spent -- I really didn't have a lot to do, so I spent a lot of time at my home in Florida.

But I was -- I had that office until June -- mid June of 1998, at which time I went to Sunbeam.

Q. I think if you look at Morgan Stanley Exhibit 252, it states that about June 15, 1998, you became the executive vice president and chief administrative officer of Sunbeam Corporation, is that accurate?

A. Yes.

Q. I remember that, because that happens to be my birthday, so I won't forget that.

Did you then enter into a three year employment agreement with Sunbeam

Corporation?

A. My recollection is that during the time I was at Sunbeam, I think there were two different agreements, but I did enter into an agreement. I don't remember how long the first one was.

It was soon after I went there, within a month, we entered into an agreement.

Q. How is it that you came to be an employee of Sunbeam Corporation on or about June 15th of 1998?

A. Well, whatever day June 15th is, it might be a Monday, the prior Saturday I was in Florida, and I received a call informing me that the board of Sunbeam had fired their CEO and CFO -- had fired their CEO, Al Dunlap, the prior -- on that day, and I don't remember whether they fired or suspended the CFO, Russell Kersh.

But they had then reached out to MacAndrews & Forbes and requested a meeting the next day, on Sunday, to

NOT A CERTIFIED COPY

016283

Page 42

discuss, among other things, the possibility of MacAndrews & Forbes providing management, at least on a temporary basis, to take over the company. Since after the merger Coleman represented probably 40 percent or 40 plus percent of the revenues of the combined company, and I went to New York.

I was asked to come to New York. I went to New York. I met with Jerry Levin, who had been the CEO of Coleman, some MacAndrews people and the board of Sunbeam, I don't remember offhand whether all of the board members were present. They weren't all present in person, I don't remember how many were in person by telephone, and it was agreed that day that Jerry and I would go to Florida and take over the management of Sunbeam.

And we would sort out over the next few weeks or a month what the permanent arrangement or the long-term arrangement would be, and that's how I

Page 43

came to be involved with Sunbeam.

Q. Who called you, the name of the person who called you and first discussed with you going to work for Sunbeam?

A. Howard Gittis, who is executive vice president of MacAndrews & Forbes Holdings.

Q. Is it fair to say, then, Mr. Gittis asked you to come to New York then and meet with the other MacAndrews & Forbes people?

A. Yes.

Q. And then when you came to New York, you met with Mr. Levin and others and then proceeded to take on the assignment as you have described it?

A. Yes.

Q. Let me show you what has been marked as MS-258.

(Exhibit MS-258 for identification, Document.)

Q. I've handed you, sir, what's been marked as MS-258 for identification.

Would you please take a minute

Page 44

and look at it and tell me when you're done. I don't have a lot of detailed questions about it. Primarily it's related to the fourth paragraph of the document.

A. I'm sorry, what was your question?

Q. I didn't ask you one yet. Are you done?

A. Yes, I've reviewed it.

Q. Is it accurate, sir, that you, as stated in the fourth paragraph, that you, along with Mr. Levin, signed three-year employment agreements with Sunbeam?

A. I believe so, yes.

Q. When did the employment agreements then terminate?

A. Well, in my case, assuming this is the last agreement I signed with Sunbeam, because I just can't remember, my agreement terminated in the summer of 2001, sometime after the Sunbeam bankruptcy filing.

Page 45

Q. When you were employed by Sunbeam during the time period we've gone over, June 15th of 1998 through, we'll say, June of 2001, did you have an office in Florida?

A. Yes. I had an office in Florida.

Q. Where at?

A. Initially, the office was at Sunbeam headquarters which was in Del Ray. I don't remember the exact address, but it was on Congress and Linton.

Q. Did you also maintain an office in New York?

A. For a period of time, yes.

Q. Where was that office in New York?

A. It was, I believe, still at 625 Madison.

Q. Again, that's --

A. Wait a second. I meant 35 East 62nd.

Q. Again, that's a MacAndrews & Forbes office, correct?

NOT A CERTIFIED COPY

016284

Page 46

A. Yes.
Q. And while you worked for Sunbeam, how much time did you spend in New York versus time in Florida; or if it varied --
A. My duties were essentially all in Florida.
I did spend time in New York because the lenders that we were dealing with for the most part were headquartered in New York. All the lawyers -- the matter involved a lot of lawyers, lenders, consultants, et cetera and they were all based in New York, so I did have to go to New York frequently for the purpose of meeting with those people.
But I would say that I considered myself to be working in Florida.
Q. Did you commute back and forth during weekends, as you described earlier --
A. No, essentially -- we still had our home and we essentially were based in

Page 47

Florida. As I said, we came up here when I needed to come up for base. I have children up here we visited periodically, but my business location was Florida.
Q. Were you paid by Sunbeam during this period of time that you worked for Sunbeam?
A. Yes.
Q. Did you work for any other company affiliated with Mr. Perelman during the time you worked for Sunbeam?
A. Yes. I was also employed by one of Mr. Perelman's holding companies. Although, again, I would say most of my time, well over 90 percent, was spent on Sunbeam.
Q. What holding company did you work for during this period?
A. I don't recall.
Q. Were you paid by that company as well as paid by Sunbeam?
A. Yes.
Q. While you were employed by Sunbeam, were you on the board of

Page 48

directors at any time?
A. Of --
Q. Sunbeam?
A. Of the public corporation? No.
Q. Were you a member of an audit committee of Sunbeam, even if you weren't a director of the company?
A. No. I was not a member. I attended most of the audit committee meetings as a senior executive, but I was not a member.
Q. You attended the audit committee meetings of the board of directors, but you weren't a member because you weren't a director, is that right?
A. That's correct. I don't know if I attended all of them, but I attended many of them.
Q. But your attendance at the audit committee meetings of Sunbeam during your employment were strictly as a senior executive officer of the company, correct?
A. That's correct.

Page 49

Q. Let me show you what's been marked as MS-253.
(Exhibit MS-253 for identification, Detail organization chart.)
Q. If you would take a moment and look at MS-253, I don't have a lot of questions. It's a detail organization chart for Sunbeam. Just concentrate, I think, on the first page of the organization chart, which has a number in handwriting. It looks like a "7" at the bottom.
And then if you'll turn also to the one marked "12" in handwriting, I have just a couple of quick questions for you.
After you've looked at those, let me know.
A. Okay.
Q. My first question is, is this a Sunbeam created document?
A. It appears to be. I don't recall it, but it appears to be.
Q. It has a date in the upper

NOT A CERTIFIED COPY

016285

Page 50

right-hand corner of the first page dated September 14, 1998. Do you see that?
A. Yes.
Q. Turn to page 7, which is entitled "Chief Executive Officer," and then it has Mr. Levin's name at the top and you ultimately appear on the left-hand side, third line.
A. Yes.
Q. To your knowledge, is this a fair and accurate organizational chart for Sunbeam on or about September 14th of 1998?
A. I have no reason to believe otherwise. Things shifted fairly rapidly in the early days at Sunbeam, but this appears to be a chart showing Jerry Levin's direct reports.
Q. And you were one of his direct reports as executive vice president and chief administrative officer, correct?
A. That's correct.
Q. And then if we turn to page 12, the page is entitled, "Administration."

Page 51

Tell me when you are there.
A. Yes.
Q. Is this an organizational chart for your direct reports when you were in the position of executive vice president, chief administrative officer of Sunbeam, at least as of the date of the document?
A. Yes. It's not complete, but it's close, yes.
Q. So the general counsel, Janet G. Kelley, reported to you?
A. Yes, she did.
Q. Following your employment at Sunbeam, which I believe you thought terminated in June of 2001, did you join another MacAndrews & Forbes company?
A. I believe what I said was that my employment terminated in the summer of 2001. I'm not sure if -- my recollection was that it terminated at the end of July, but I could be wrong.
Q. I may have misheard.
A. I started spending time in both places, in effect, but, yes, I did join

Page 52

another company as of August 1st.
Q. And what company was that?
A. Revlon.
Q. Which Revlon company?
A. Revlon the public company.
Q. Is that Revlon, Inc.?
A. I think it's Revlon Holdings, Inc., but I'm not certain.
Q. What was your position?
A. I was executive vice president and chief administrative officer.
Q. That is the same title that you held at Sunbeam, correct?
A. That's correct.
Q. Did you have essentially the same duties at Revlon Holdings, Inc. that you did at Sunbeam?
A. They were similar. There were some lines of business that were different, some of the reports were different, but they were similar.
Q. When you were at Sunbeam, did your responsibilities include restructuring, if you will, of Sunbeam

Page 53

following the termination of Mr. Dunlap and Mr. Kersh and others?
A. I would say that I was one of the people intimately involved in that. I was not -- I think Jerry Levin really took the lead on that, but I was intimately involved in that, yes.
Q. When you became employed by Revlon Holdings, Inc., were you involved in restructuring with that company?
A. That company didn't restructure, so the answer to that is no.
They recently -- they recently engaged in a transaction in which they swapped a good deal of debt for equity and restructured their balance sheet in that way, but I was not involved in that transaction.
Q. How long did you work for Revlon Holdings, Inc. as executive vice president and chief administrative officer?
A. Again, from the summer of 2001 until December 31st of 2004.

NOT A CERTIFIED COPY

016286

Q. 2004 --
A. '3, excuse me.
And then I had one project that I continued to work on until recently.
Q. Where was your office when you worked for Revlon Holdings, Inc.?
A. It was at Revlon's headquarters, which was originally at 625 Madison; and then in October of 2003, we moved the headquarters to 237 Park Avenue.
Q. After you left Revlon Holdings, Inc., what did you do then?
A. I rejoined the parent company, MacAndrews & Forbes Holdings, as a senior vice president.
Q. Was that as of January 1st of 2004?
A. Yes.
Q. And that is your current position today, correct?
A. That is my current position today, although that position will end at the end of June of 2004.
Q. Why is that?

A. Because I, at that point, will join a new business with my son.
Q. So as of June 1st of 2004 --
A. As of July 1st.
Q. I misspoke, I'm sorry.
As of July 1st, 2004, will you be severing all employment relationships with any of Mr. Perelman's companies?
A. I will not after that be working for Mr. Perelman's companies. I have severance obligations that they have toward me that will continue to be fulfilled.
Q. Do you have a position with a company called Toll Brothers, Inc.?
A. Yes.
Q. Is that your son's company?
A. No.
Q. It's a different company?
A. That's a New York Stock Exchange publicly listed company of which I've been a director for over ten years.
Q. When you go into business, I take it with your son, I think you said

this summer, where is that business located?
A. That business will be located both in New York and Florida.
Q. What does it do?
A. The business, it's involved in a new field, which is called the life insurance settlement business and involves the purchase of life insurance policies from people who no longer want or need their life insurance. Very complicated business which, luckily, my son understands.
Q. I would gather it's actuarially based, and I think I do understand what it probably involves.
So as you sit here today, do you still maintain your apartment residence in New York as you've described it?
A. Yes.
Q. And you still maintain your same home in Boca Raton, correct?
A. That's correct.

Q. Just curious, why we're deposing you in New York while you're living in Florida. Is there a reason why we couldn't have taken your deposition in Florida?
A. I was not asked to have my deposition taken in Florida. I was there the weekend and would have been happy to stay for this deposition.
But I think the question you actually asked me was not where I was living. You asked me where I was a resident -- consider myself to be a resident of Florida.
Q. I understand, and I'm not quarreling --
A. And over the last ten years, my work has caused me to be in New York a great deal of the time, and in Florida for some of the other time, then other places.
Q. Did you actually travel from Florida to New York for your deposition here?
A. I actually came here on Sunday

NOT A CERTIFIED COPY

0116287

Page 58

evening.
Q. Have you ever held any positions in Coleman Parent Holdings, Inc., one of the plaintiffs in this case, the consolidated cases?
A. The answer is, I do not recall holding a position in any of them, but it's possible.
Q. Have you ever held a position in a company called, all caps, CLN Holdings Inc., no comma?
A. I don't recall holding a position in that company, but again, it's possible.
Q. CLN Holdings Inc. also was at one time known as Coleman Escrow Corp.
Did you ever hold a position in Coleman Escrow?
A. I don't recall if I held a position.
Q. Same question for Coleman Worldwide Corporation?
A. I don't recall.
Q. MAFCO Holdings Inc., no comma?

Page 59

A. I think MAFCO Holdings Inc. is the company which I am now the senior vice president -- actually, excuse me, MacAndrews & Forbes Holdings, Inc., is the company of which I'm now --
Q. MAFCO Holdings Inc. is a different company?
A. Yes. The answer is, I don't recall. I believe so, but I don't recall.
Q. In any of the companies affiliated with Mr. Perelman that you have worked for in your career, have you ever sat on the boards of directors?
A. Not of the public companies. Only of subsidiaries.
THE VIDEOGRAPHER: The time is now 11:08 and we are off the record.
(A recess was taken.)
THE VIDEOGRAPHER: The time is now 11:19 and we are back on the record.
Q. Mr. Shapiro, do you know Barry F. Schwartz?
A. Yes, I do.
Q. Was he employed by Wolf Block

Page 60

at the same time that you were an attorney there?
A. Yes. We overlapped for part -- Barry's younger than I am. We overlapped for part of the time.
Q. Did you both work in the Philadelphia office at the same time?
A. I'm not sure. I believe Barry came when I was still -- yes, he came when I was still in Philadelphia. I think he came when I was gone and when I got back there, he was there.
Q. Did Mr. Schwartz have any connection with your decision to join The Coleman Company, Inc. in 1997?
A. I don't recall.
Q. How was it that you came to work for The Coleman Company?
A. Remember, I was working for MacAndrews & Forbes prior to that.
Q. Right.
A. I had been at Marvel Entertainment Group. Marvel Entertainment Group filed a Chapter 11 bankruptcy

Page 61

petition in December of 1996; and there was a very contentious fight in Delaware Bankruptcy Court all through the spring -- the winter and spring of 1997 involving MacAndrews' interest on one side and bondholders who were led by, among others, Carl Icahn, on the other side.
And at the end of June -- sometime in late June of 1997, the Bankruptcy Court gave the bondholders the right to vote stock that was pledged to them which was an amount of stock that controlled the company.
And Mr. Icahn and other bondholders elected a new board that replaced the existing board at Marvel, and I left at that time.
I don't recall whether I resigned or was fired, but I left.
Q. Did Mr. Schwartz have any involvement in your initial employment by Mr. Pearlman's companies in 19 -- I think it was 1994 when you first joined?
A. I was originally approached, I

NOT A CERTIFIED COPY

016288

believe, by Mr. Gittis -- Mr. Schwartz reported to Mr. Gittis -- and I consider Mr. Schwartz a very good friend; and Mr. Schwartz encouraged me, along with Mr. Gittis, to join the company.

He thought it was something -- he thought it was a good thing for me and for the company and so forth, so he did influence me, yes.

Q. Did you know Mr. Gittis before he approached you to join Mr. Pearlman's companies in 1994?

A. Yes. He had also been a long time Wolf Block Schorr partner and we were colleagues beginning -- we first met him when I was a summer associate at Wolf Block in 1966.

Q. In 1997, when you joined The Coleman Company, were you an active member of the Florida Bar?

A. I believe so. I ultimately transferred to inactive status, but I don't remember when.

Q. In 1997, when you joined The

Coleman Company, were you a member of the Bar of any state other than Florida?

A. Yes. I was a member of the Pennsylvania Bar. I am now also inactive, but I don't recall which year I moved to inactive status in the Pennsylvania Bar.

Q. Any other state bars?

A. No, no.

Q. Have you ever been a member of the New York Bar?

A. No, I have not.

Q. You may be able to do the math faster than me.

How many years did you actively practice law, either with Wolf Schorr, your own firm, or with the Greenberg Traurig firm, as you described it?

MR. BRODY: Excluding practice of law at MacAndrews & Forbes or its entities?

MR. BEMIS: Yes, the private practice of law.

Q. Let me rephrase the question before you try to answer, because the

court reporter is having a difficult time taking both of us simultaneously.

How many years were you in private practice with the firms of Wolf Schorr, your firm and Greenberg Traurig?

A. I believe 19 or 20 years.

Q. What type of practice did you have during those 19 to 20 years?

A. I was originally a real estate lawyer. Then I switched to being a, I would say, corporate and business lawyer, also, I continued to do real estate work.

And by the time I left the practice to join Marvel, I would have considered myself a corporate securities lawyer.

Q. As a corporate securities lawyer, did you counsel clients in mergers and acquisitions?

A. At times, yes, but generally not huge public company transactions.

Q. When you were practicing as a lawyer, and a corporate securities lawyer, did you become familiar with the Federal

Securities Laws; in particular, the 1933 Act and the 1934 Act?

A. Yes.

Q. And as a corporate securities lawyer in connection with your practice, did you also become generally familiar with the accounting profession and their responsibilities in connection with, for example, underwritings of securities?

MR. BRODY: Object to the form.

You can answer.

Q. You can answer.

A. Generally, yes.

Q. In your practice as a corporate securities lawyer, could you read an audited financial statement?

MR. BRODY: Object to the form. Go ahead.

A. I'm not trained as an accountant, but I believe I can make some sense of an audited financial statement, yes.

Q. As a corporate securities lawyer, did you understand what a balance

NOT A CERTIFIED COPY

016289

Page 66

sheet was?
A. Yes.
MR. BRODY: Objection.
Q. Did you understand what an income statement was?
MR. BRODY: Same objection.
A. As a general matter, yes.
Q. Were you familiar, as a corporate securities lawyer, with generally accepted accounting principles, even though I understand you're not an expert?
MR. BRODY: Object to the form.
A. I'm certainly familiar with the concept of generally accepted accounting principles, and I used some of the principles and didn't know a lot of the other principles.
Q. Would the same be true for generally accepted auditing standards?
MR. BRODY: Same objection.
A. You've asked me in my role as a practicing attorney --
Q. Correct?

Page 67

A. Yes. I knew what they were.
I would have had much less familiarity with generally accepted auditing standards in those days.
Q. As a corporate securities lawyer as you've described it, by the time you joined Coleman in 1997, were you familiar with the duties of directors to public companies?
A. As a general matter, yes.
Q. Let's turn to 1997, if we could, sir, when you joined the company.
You were the general counsel of the company, The Coleman Company, correct?
A. Yes.
Q. And as the general counsel of The Coleman Company, starting in 1997, did you have the sole responsibility for legal matters of that company?
A. I had the responsibility for managing the legal department of that company. I was the senior legal officer, yes.
Q. During the period July 1, 1997

Page 68

until your resignation, March 31, 1998, how many lawyers were there in The Coleman Company legal department that reported to you as general counsel and chief legal officer?
A. My recollection is that I had a younger lawyer, Steven Isko, who was the corporate securities M&A lawyer.
Q. That's I-S-K-O, correct?
A. I-S-K-O.
We had a product liability group in Wichita that consisted of Ken Bell as the senior attorney and several paralegals.
We had one or two intellectual property lawyers, Steve Gurth (ph.) being the most senior.
We had counsel in our French subsidiary, Robert Rosenzweig. I think it's R-O-S-E-N-Z-W-E-I-G; and we had another generalist named Vic Michaels.
Q. Vic Michaels?
A. Yes, Vic Michaels.
I think that's it. I don't

Page 69

remember if we had anybody else.
Q. In terms of the Sunbeam/Coleman transaction, were you the chief legal officer for that transaction for The Coleman Company, Inc.?
A. I was general counsel at the time. I mean, I worked on the transaction. Steven Crew worked on the transaction as did others and we had outside counsel.
Q. When you say others, others inside the legal department at the Coleman Company?
A. Yes. I mean, I'm not certain, but I would think that as -- to the extent that there were issues or questions concerning, for example, product liability issues, Ken Bell would have gotten involved and so forth.
Q. Well, setting aside a product liability issue or perhaps an environmental issue where you had to list something on the disclosure schedule, in terms of the actual merger agreement, the

NOT A CERTIFIED COPY

016290

Page 70

drafting and execution of that agreement, was that your responsibility or was it shared with Mr. Isko or how was --

MR. BRODY: Objection to form.

A. Mr. Isko and I took responsibility for the company, but I don't want to overstate the work product that we had Wachtel Lipton as outside counsel, and they certainly did the vast majority of drafting; they and counsel for Sunbeam, Skadden Arps.

I was the senior most legal officer within the company involved in the transaction.

Q. You've heard the expression, "The buck stops here"?

A. Yes. It's a fairly old expression and honored more in breach.

Q. Well, setting aside where it's honored, in the case of the merger agreement here that you signed on behalf of The Coleman Company, Inc., did the buck stop at your desk, sir, for that agreement for The Coleman Company --

Page 71

MR. BRODY: Object to form.

Q. -- as chief legal officer?

A. With regard to any legal matter, I would say yes, for the company.

Q. Now, you told me earlier in your questioning this morning that you did review some of the board of director minutes for The Coleman Company, Inc. that were related to the merger, correct?

A. Yes.

Q. I want to show you first a document, MS-88, and ask you to take a look at that. That's already been previously marked.

I've handed you what's been marked as Morgan Stanley or MS-88.

Do you have that in front of you?

A. Yes, I do.

Q. Is this, Mr. Shapiro, one of the documents that you reviewed with your counsel in preparation for your deposition?

A. I believe the answer is yes.

Page 72

Q. Are these the minutes of The Coleman Company, Inc. board of directors meeting on February 25, 1998 at 4 p.m. eastern time?

A. They appear to be, yes.

Q. And this meeting was held at 35 East 62nd Street, New York, New York, correct?

A. That's correct.

Q. And that is the MacAndrews & Forbes address or office address you gave me earlier, correct?

A. Yes.

Q. Did you attend the entire meeting?

A. I believe so.

Q. Were you there as executive vice president and general counsel of The Coleman Company, Inc.?

A. Yes.

Q. If you can set that aside. You're going to need to refer to it again. Just keep it close there.

Sir, would you do me the

Page 73

pleasure of handing that to the court reporter. This was previously marked at Mr. Slovin's deposition, but for reasons I can't explain, this doesn't have an initial, so we'll ask the reporter to initial it and date it, please.

(Exhibit MS-118 for identification, Agenda and minutes of board of directors meeting on 2/27/98.)

Q. Mr. Shapiro, do you have MS-118 in front of you?

A. Yes.

Q. Is this the agenda and minutes of the board of directors meeting of The Coleman Company, Inc. on February 27, 1998?

A. It appears to be the minutes.

Q. Is this one of the documents that you reviewed with Mr. Brody, your counsel, before coming to your deposition today?

A. Yes.

Q. And was this meeting of The Coleman Company board of directors held on

NOT A CERTIFIED COPY

016291

Page 74

February 27, 1998 at the MacAndrews & Forbes offices at 35 East 62nd Street, New York, New York?
A. Yes.
Q. Did you attend the February 27, 1998 board meeting?
A. Yes, I did.
Q. And did you attend as the general counsel and vice president of The Coleman Company?
A. Yes.
Q. And did you attend the entire meeting on February 27th?
A. To my recollection, yes.
Q. Would you please look at a document we previously marked as MS-117.
MR. BRODY: Are you going to need to initial this again?
MS. DeBord: Yes.
MR. BRODY: Why don't I get him started looking --
MR. BEMIS: Miss Reporter, would you please initial this and date it. For the record, this was also marked at

Page 75

Mr. Slovin's deposition.
(Exhibit MS-117 for identification, Agreement and plan of merger.)
Q. Sir, do you have Exhibit MS-117 in front of you?
A. Yes, I do.
Q. And is this, sir, the agreement and plan of merger among Sunbeam Corporation, Camper Acquisition Corp. and The Coleman Company, Inc.?
A. It appears to be, yes.
Q. Is your signature on this document on the page that is marked Morgan Stanley Confidential 0008054?
A. Yes.
Q. And you signed this as the executive vice president of The Coleman Company, Inc., correct?
A. Yes.
Q. And at the time you signed it, that is, the agreement had been approved by the board of directors?
A. Yes.

Page 76

Q. And you had, as the chief legal officer and general counsel, reviewed the document before you signed it, correct?
A. Yes.
Q. And you understood the document, correct?
A. I think so.
Q. If you would look at MS-88 again, which is the February 25th meeting, please, and tell me when you have that document.
A. Yes, I have it.
Q. Is February 25, 1998 the first board of directors meeting at which the board of directors of The Coleman Company had been advised that there were discussions between Coleman and Sunbeam concerning a merger?
A. To my recollection, yes.
Q. During the February 25th meeting, was there any representative of Morgan Stanley Co., Inc., at the meeting?
A. It appears from the minutes that Gordon Rich and Rob Duffy were both

Page 77

there.
Q. They're not employed by Morgan Stanley, are they?
A. I'm sorry, Morgan Stanley. I thought you said Credit Suisse -- no, the answer is no. Nobody from Morgan Stanley was there.
Q. I'm going to ask you the same question with regard to Morgan Stanley Senior Funding, Inc.
Was anyone from that company present at the February 25th meeting?
A. No.
Q. Before February 25, 1998, had anyone from either Morgan Stanley & Co., Incorporated or Morgan Stanley Senior Funding made any type of presentation to the board of directors of The Coleman Company relating to the Sunbeam/Coleman merger?
A. There had been a meeting with certain members of Morgan Stanley at which at least one or maybe two of the directors attended, but other than that, to my

NOT A CERTIFIED COPY

016292

knowledge, no.
Q. At the February 25, 1998 board of directors meeting, were any documents of any kind presented to the board of directors that were attributed to Morgan Stanley; that is, prepared by Morgan Stanley, or Morgan Stanley Senior Funding?
A. I don't recall.
MR. BRODY: Object to the form.
Q. At the February 25, 1998 board of directors meeting, was there any reference to Morgan Stanley or Morgan Stanley Senior Funding at the meeting?
A. I don't recall.
Q. According to the minutes of the meeting, it convened at 4 p.m. and adjourned at 5:30 p.m. Is that your recollection of how long the meeting lasted?
A. I don't recall. I mean, it's -- if you would have asked me offhand, I would have said a couple of hours, so it's --
Q. Please now look at Morgan

Stanley 118, which is the minutes of the February 27th board of directors meeting.
Do you have that in front of you?
A. Yes.
Q. Now, was it at this meeting on February 27th that a board of directors actually voted to approve the merger agreement that we marked as MS-117?
A. Yes.
Q. Were there any presentations to the board of directors between the conclusion of the February 25th meeting of the board and the beginning of the February 27, 1998 meeting of the board concerning the proposed merger between Coleman and Sunbeam?
A. You're asking the meeting of the board as opposed to individual discussions? There was no meeting of the board, to my recollection.
Q. Were there any documents presented to the board of directors between the February 25th meeting's

conclusion and the commencement of the February 27, 1998 board of directors meeting?
A. I don't recall.
Q. At the February 27th meeting, at which time the merger was approved, was there any presentation at the meeting by any representative of Morgan Stanley & Co., Incorporated?
A. I do not believe so.
Q. Was there any presentation by a representative of Morgan Stanley Senior Funding, Inc.?
A. I do not believe so.
Q. There were, however, presentations at both board of directors meetings by Credit Suisse First Boston, correct?
A. There certainly was at the second meeting. I don't remember their presentation, sitting here today, at the first meeting. They were present. I don't remember their presentation.
Q. And Credit Suisse First Boston

was The Coleman Company's exclusive financial advisor in the Sunbeam/Coleman merger transaction, was it not?
A. Yes.
Q. Now, at the board meeting on February 27th, the board members were voting on behalf of some public shareholders, were they not?
A. Yes.
Q. And they were also voting on behalf of MAFCO Holdings Inc., which at that time, I think, owned approximately 82 percent indirectly of The Coleman Company, Inc., is that correct?
A. Yes.
Q. Was the vote of the board of directors on February 27, 1998, was it unanimous?
A. My recollection is yes, it was.
Q. To your knowledge, were any members of the board of directors of The Coleman Company told how they should vote on February 27, 1998?
A. No.

NOT A CERTIFIED COPY

016293

Q. To your knowledge then, did the board of directors of The Coleman Company, Inc. exercise their own independent business judgment on February 27, 1998 in deciding whether to vote for the merger?
A. Based on the information presented to them, I believe the answer is yes.
Q. After the February 27, 1998 board of directors meeting of The Coleman Company, were any members of the board of directors provided with any documents prepared by Morgan Stanley & Co., Incorporated?
A. Not directly.
Q. Were they presented with any documents prepared by Morgan Stanley Senior Funding, Inc.?
A. I don't recall any.
Q. At the time that the merger transaction was presented to the board, Coleman had advisors in the transaction, did it not?
A. I think you asked me that

previously and I said that Credit Suisse was their advisor.
Q. Well, in addition to Credit Suisse they had legal advisors, and that would be the Wachtel Lipton firm, correct?
A. Correct.
Q. Would you consider the Wachtel Lipton Rosen & Katz firm to be a sophisticated legal firm?
A. Yes.
Q. Do you consider that firm to be a sophisticated securities firm?
A. Yes.
Q. A sophisticated corporate firm?
A. Yes.
Q. A sophisticated firm in the negotiation, drafting and execution of merger and acquisition agreements?
A. Yes.
Q. Do you consider that firm to be sophisticated in the legal requirements of the Securities Act of 1933 and the Exchange Act of 1934?
A. Yes.

Q. You told me earlier that your -- that is, The Coleman Company's banking firm, investment banking firm, Credit Suisse First Boston, was their exclusive financial advisor.
Do you believe that at that time, in 1998, Credit Suisse First Boston was an a sophisticated investment banking firm?
MR. BRODY: Object to the form. Go ahead.
A. Yes.
Q. And had Credit Suisse First Boston indeed provided financial services to Mr. Perelman's holding companies in past merger and acquisition transactions?
A. I don't know if they had to the holding companies. I know they had to the operating companies.
Q. On February 27, 1998, when the board voted to approve the Sunbeam/Coleman merger, The Coleman Company had a public accounting firm, did it not?
A. Yes, it did.

Q. Was that Ernst & Young, L.L.P.?
A. Yes.
Q. And in your view, was Ernst & Young, L.L.P. a sophisticated accounting firm?
A. Yes.
Q. Now, at the board of directors meeting on February 27, 1998, did Credit Suisse First Boston present a fairness opinion on the terms of the merger transaction?
A. I believe the answer is yes.
Q. And would you tell the jury what a fairness opinion is?
A. Well, in my mind, it's an analysis by an investment banker in which they go through a series of methodologies for valuing the equity, in this instance, the equity of Coleman, in order to aid the board of directors in determining whether the price being offered for the company by, in this case, Sunbeam, is an appropriate price, is an adequate price and is fair to the shareholders.

NOT A CERTIFIED COPY

016294

Page 86

Q. Let me show you what has been marked as Morgan Stanley 120; and again, we'll have the court reporter mark this, although it was marked, I think, at Mr. Slovin's deposition as well?

(Exhibit MS-120 for identification, Document dated 2/27/98.)

Q. Do you have, sir, MS-120 in front of you, sir?

A. Yes.

Q. This document is dated February 27, 1998 and is addressed to the board of directors of The Coleman Company, is it not?

A. Yes, it is.

Q. And is that Mr. Gordon A. Rich's signature on the third page?

A. I'm not familiar with Gordon's signature, but it appears to be.

Q. Is it your recollection, sir, based on attending the February 27, 1998 board of directors meeting that Mr. Rich did, indeed, present Credit Suisse First Boston's opinion on the fairness of the

Page 87

Coleman/Sunbeam merger?

A. Yes.

Q. Is there any reference in MS-120, the written fairness opinion, to Credit Suisse First Boston rendering its fairness opinion based on any representations by Morgan Stanley & Co., Incorporated?

MR. BRODY: Object to the form.

A. The only thing I can say is that if you look at page 2 of the fairness opinion they talk about what they have relied on, and they talk about publicly available business and financial information relating to the company and the acquiror, which would have been Sunbeam, and they talk about reviewing certain other information, including financial forecasts provided by, among others, the acquiror.

And I don't -- I don't, sitting here today, know to what extent any of those things would have either been prepared by or reviewed by Morgan Stanley

Page 88

or presented, for example, at a meeting where forecasts were presented in the week prior to the merger, but the words "Morgan Stanley" do not appear to me on this page.

Q. Well, in Mr. Rich's presentation on February 27, 1998, did Mr. Rich make any reference to Credit Suisse First Boston's fairness opinion being based in any way upon any representation, statement or document that they received from Morgan Stanley and Co., Incorporated?

A. I don't recall.

Q. You don't recall one way or the other?

A. No. I don't recall one way or the other.

Q. At the board of directors meeting, when the board decided in their independent business judgment to vote on the merger, was any type of fairness opinion presented to the board by Morgan Stanley and Co., Incorporated?

A. No.

Page 89

Q. Is it your understanding, sir, that Credit Suisse First Boston, the exclusive financial advisor to The Coleman Company, Inc. in this transaction, provided an opinion that the merger transaction as set forth in MS-117 was fair to the public shareholders of The Coleman Company?

A. You're asking -- excuse me. Could you restate the question, please?

MR. BEMIS: Let her re-read it to you.

(Requested portion of record read.)

A. Yes.

Q. After the February 27th board of directors meeting, did you ever have any face-to-face meetings with anyone representing Morgan Stanley and Co. concerning the Sunbeam/Coleman merger transaction?

A. At any time after?

Q. After the February 27 -- let me -- good point. Let me bracket the

NOT A CERTIFIED COPY

016295

Page 90

questions I'm going to ask you now between February 27th and the closing, which, I believe, is March 30th of 1998. That's the time frame I'm going to be asking you about, and I'll try to put it in all the questions.

With that background, did you attend any meetings, face-to-face meetings, with Morgan Stanley concerning the Sunbeam/Coleman acquisition between February 27th and the closing on March 30, 1998?

A. Not to my recollection.

Q. Did you attend any meetings with Morgan Stanley after the closing and through July 1st of 1998?

A. I think the answer to that is yes.

Q. And what meeting do you think that you attended during that period?

A. Well, after I went to work at Sunbeam in mid June, soon thereafter we had a meeting with the senior lenders, and I believe that meeting took place in June,

Page 91

so it was before July the 1st, which is the time period you had framed.

That meeting was attended by members of, I would say, Morgan Stanley. I don't know which division of Morgan Stanley.

Q. Was that meeting in connection with the zero coupon notes that were issued by Sunbeam and purchased by Morgan Stanley Senior Funding in connection with the merger?

MR. BRODY: Object to the form of the question. It assumes facts not in evidence.

A. I can't answer the question a simple way.

Morgan Stanley -- without getting specific as to its divisions -- was selling senior notes -- had sold senior notes. We never knew if they had sold them all or whether some of them were in inventory. They were also in the senior secured credit.

They had, I believe, 40 percent

Page 92

of the senior secured credit that was in or around $1,700,000,000, so they were both a lender to the company in senior credit and they were involved in the notes that you've described.

We met with them with representatives of Morgan Stanley in late June because, for one, we wanted to introduce ourselves to the senior lenders. We knew the company had problems and we wanted to meet with them.

Secondly, I think we were -- we believed we were about to default on a covenant relating to the senior secured loan, which they were a 40 percent participant in.

And third, to my recollection, Sunbeam, when I came there, was in the process of filing a registration statement for the so-called zero coupon bonds which became a problem because Arthur Andersen was unwilling to attach its prior audit opinion -- to consent to the attachment over to the filing.

Page 93

So I know I met with representatives of Morgan Stanley, but I can't separate the strands.

Q. And I also misspoke earlier as to identifying who was underwriting what, so I'll give -- you met with one of the Morgan Stanley entities --

A. I think it was several people.

Q. Between February 27th and the closing on March 30th, did you have any conference calls with anyone with Morgan Stanley, whether it be Senior Funding or it be Morgan Stanley & Co., Incorporated?

A. I don't recall.

Q. In the same time frame, February 27th through the closing on March 30th, did you receive any documents from anyone at Morgan Stanley or Morgan Stanley Senior Funding concerning the Coleman/Sunbeam acquisition?

A. I don't recall.

Q. Did you receive any electronic mail from Morgan Stanley between February 27, 1998 and March 30, 1998 in any way

NOT A CERTIFIED COPY

016296

Page 94

connected with the Sunbeam/Coleman merger transaction?
A. I don't recall.
Q. Is it fair to say, sir, that between February 27, 1998 and March 30, 1998 that you don't recall receiving any form of communication, written, oral or electronic, between yourself and either Morgan Stanley Senior Funding or Morgan Stanley and Co., Incorporated?
A. The only two things that I might have received, and I don't know who they came from, were a press release issued by Sunbeam in that time period and a copy of the private placement memorandum for the zero coupon bonds, which might have come from Morgan Stanley. I don't recall as we sit here now.
MR. BEMIS: Let's just identify those two documents.
Q. I show you what's been marked as MS-39 at another deposition and ask you if that's the press release you just referred to?

Page 95

A. It appears to be, yes.
Q. You can hand that back to me and we'll come back to that.
I will hand you what's been marked as MS-166 and I'll ask that -- this was already marked but we'll mark it again as MS-166, which I believe is the zero coupon offering memo that you were referring to.
(Exhibit MS-166 for identification, Offering memorandum.)
Q. Is MS-166 the offering memorandum you were referring to, sir?
A. It appears to be.
MR. BEMIS: Let's go off the record for a change of tape.
THE VIDEOGRAPHER: The time is now 12:13 and we have reached the end of tape number one and we are off the record.
(Discussion held off the record.)
(A recess was taken.)
THE VIDEOGRAPHER: The time is now 12:21 and this is tape number two and

Page 96

we are back on the record.
Q. When you received MS-166, which is the offering memorandum, did you read the document?
A. I don't remember. I don't remember when I received it. If you recall, what I testified to is that I might have received it in that period. I don't remember when I first saw it and I don't --
Q. Well, if you might have received it, did you read it when you received it?
A. I don't recall.
MR. BRODY: Object to the form.
Q. If you'll look at MS-117, which is the merger agreement and please turn to section 4.19, which is captioned "Brokers." Tell me when you are there.
A. I'm there.
Q. Did The Coleman Company provide a copy of the agreement between Credit Suisse First Boston and The Coleman Company to Sunbeam which is identified in

Page 97

this document as Laser?
A. There's a parenthetical that indicates such an agreement was provided, so I assume it was.
Q. This agreement would be the retention letter, correct, that you signed?
A. It would seem to be, but I don't recall.
Q. Let me show you the retention letter, which I'll have to locate.
MR. BEMIS: Miss Reporter, would you please mark as MS-169 a December 10, 1997 letter to The Coleman Company from Credit Suisse First Boston.
(Exhibit MS-169 for identification, Letter dated 12/10/97 from CSFB to The Coleman Company.)
A. Yes, I have it.
Q. Is that your signature that appears on page 3 and page 4 of the document under the heading "The Coleman Company, Inc."?
A. Yes, it is.

NOT A CERTIFIED COPY

016297

Page 98

Q. And is this exhibit, MS-169, the engagement letter between Credit Suisse First Boston and The Coleman Company, Inc. an indemnification agreement between the same parties?
A. I believe it is.
Q. And is this the agreement that is referred to in paragraph 4.19 of MS-177?
A. I assume it is.
Q. You may set 169 aside for right now.
Did The Coleman Company, Inc. pay Credit Suisse First Boston a fee for the services Credit Suisse First Boston provided to The Coleman Company as its exclusive financial advisor in the Coleman/Sunbeam merger transaction?
A. The agreement provides for a fee, and I assume we paid it.
Q. Was the fee approximately 4 million dollars?
MR. BRODY: I object to the form. Are you asking what the agreement

Page 99

provides or what was actually paid, if he knows?
MR. BEMIS: I'll take either one.
A. There are two fees which add up to 4 million dollars. I assume that's what was paid, but I don't recall.
Q. Do you recall any dispute with Credit Suisse First Boston about the payment of the fee?
A. No.
Q. As chief legal officer of the company and the person who signed MS-166, would you be the person at the Coleman Company who would have approved the payment of an Credit Suisse First Boston invoice?
A. I don't recall. I might have. Mr. Isko might have. There are others that could have.
Q. Did The Coleman Company, Inc. enter into any engagement letters similar to MS-166 with Morgan Stanley & Co., Incorporated in connection with the

Page 100

Coleman/Sunbeam merger?
A. No.
Q. Did The Coleman Company make any payments to Morgan Stanley in connection with the Coleman/Sunbeam merger?
A. I'm not aware of any.
Q. Are you aware of any payments by any company affiliated with The Coleman Company, Inc. that made any payments to Morgan Stanley in connection with the Coleman/Sunbeam merger?
A. I'm not aware of any.
Q. Please look at the merger agreement, MS-117, and I direct your attention to section 7.2, sir, which is on page 29.
A. Uh-huh.
Q. That section is entitled "Access and Information: Confidentiality."
Do you see that?
A. Yes.
Q. And you read this section, of course, before you signed the merger

Page 101

agreement, right?
A. I don't recall, but I assume so.
Q. Do you find this section to be a customary provision in a merger and acquisition agreement in your experience as both an attorney and as general counsel to The Coleman Company?
MR. BRODY: Object to form.
A. The provision seems to be appropriate, yes.
Q. Now, sir, there is a provision here for the exchange of information pursuant to initial cap "C," Confidentiality, capital "A," Agreements between Laser, which is Sunbeam, and the company, which is Coleman, dated February 4, 1998 and February 23, 1998, correct?
A. That's what the agreement says, yes.
Q. And those agreements were executed, were they not, sir?
A. I have no idea.
Q. Well, did you as chief legal

NOT A CERTIFIED COPY

016298

Page 102

officer take any steps to confirm whether these confidentiality agreements had been executed before you signed this document, MS-117?
A. It's my recollection that there was a confidentiality agreement in place between the parties, but I don't recall the date, I don't recall whether there was one or two.
Q. Why do you say one or two?
A. Because there are two dates listed here.
Q. Why did you say one?
A. What I said was -- I'll go back over my answer and be very specific -- what I said was, is that sitting here today, I recall that there was a confidentiality agreement in place during the transaction so that we could exchange non public information.
I do not recall, sitting here today, that there was more than one; nor do I recall what the dates of the agreement or agreements would have been.

Page 103

Q. But it is your understanding that there was a confidentiality agreement between the parties and it was reciprocal, regardless of when dated, is that fair?
MR. BRODY: Object to the form.
A. Yes.
Q. Let me show you then what we'll mark as MS-133; and this has been previously marked so that one we don't have to do again.
MR. BRODY: The copy that you gave him appears to have something highlighted on the back page.
MR. BEMIS: That may be my copy. Let me see. That may just be his signature. I'm not sure -- we'll give you this one. There's no big secret on the highlighting. I just gave you the wrong one. Now that we have that clarified --
Q. Do you have MS-133 in front of you?
A. Yes.
Q. Did you sign MS-133?
A. Yes.

Page 104

Q. Is MS-133 the confidentiality agreement that you referred to in paragraph 7.2 of the merger agreement, MS-117?
A. I assume so. It's one of them, yes.
Q. Did you send MS-133, the February 4, 1998 letter, then to Sunbeam Corporation for its signature?
A. I don't know. I don't know if it was hand-delivered to their counsel. I have no idea about this. There is a signature from Sunbeam on it.
Q. Do you recognize that as Mr. Fannin's signature?
A. I see the stamp on it and I see that it's signed, yes. I wouldn't recognize Mr. Fannin's signature.
Q. Would you tell the jury who Mr. Fannin is?
A. Yes. Mr. Fannin was the executive vice president, I think at that point in time, general counsel. His title changed right around this time. General

Page 105

counsel of Sunbeam prior to the merger.
Q. Would you agree with me that Mr. Fannin in this transaction was your counterpart at Sunbeam?
A. Yes.
Q. Indeed, if the titles are accurate, you were both executive vice presidents and general counsels of your respective employers, correct?
A. That's correct.
Q. Can we refer to MS-133 as one of the confidentiality agreements as it's capitalized in the merger agreement, 117?
MR. BRODY: Object to the form. It's assuming the fact --
MR. BEMIS: I heard your objection. I'm just asking him right now.
Q. Can we, sir, or not?
A. We can refer to it as a confidentiality agreement, at least one of which we've identified, yes.
Q. Who drafted MS-133?
A. I don't recall.
Q. Did you draft it? That is,

NOT A CERTIFIED COPY

016299

Page 106

you, as general counsel of The Coleman Company or --
A. Did I personally draft this?
Q. Yes, sir.
A. No, I did not personally draft it.
Q. Was it provided to you by Wachtel Lipton?
A. I don't recall.
Q. Was it provided to you by Mr. Schwartz?
A. I don't believe it was provided by Mr. Schwartz. I don't recall whether it was provided by Wachtel, by Mr. Isko or by Skadden and then reviewed by Wachtel. I just don't know.
Q. Let me show you what's been marked as MS-75, which is a chronology that was prepared by the Wachtel firm to the New York Stock Exchange, and telling me when you have that and --
A. I have that.
Q. Okay. If you would look at the paragraph under the date January 29, 1998

Page 107

and tell me when you are there.
A. Uh-huh.
Q. By the way, you've seen this document before, have you not, sir?
A. Yes. I believe this is a document that I reviewed with counsel.
Q. And you reviewed it with counsel in preparation for your testimony today, correct?
A. Yes.
Q. Now, let's look at the January 29th entry, and it states that "On January 29th, Barry F. Schwartz of MacAndrews telephoned Wachtel Lipton to indicate that a form of confidentiality agreement to be proposed to Sunbeam in connection with the provision of confidential information to Sunbeam will be faxed to Wachtel Lipton for review."
Do you see that paragraph?
A. Yes.
Q. Wachtel Lipton was your counsel in the transaction as you've told us, right?

Page 108

A. That's correct.
Q. And MS-75, which you have in front of you and which you reviewed with your lawyers, was a document that Wachtel Lipton submitted to the United States Securities and Exchange Commission pursuant to a request by the Commission, correct?
MR. BRODY: Objection. Foundation.
MR. BEMIS: Read the first paragraph of the letter, sir.
MR. BRODY: Same objection.
A. I apologize, but looking at the letter I see a chronology.
I do not see anything that says that this document was attached. I don't mean to be contentious. I just don't -- I can't answer the question.
It mentions that there are certain items attached and there's a chronology.
Q. Well, sir, as the legal officer of the company, The Coleman Company at the

Page 109

time this letter was written -- because you still were the legal officer on March 30, 1998, because you hadn't resigned, right?
A. You asked me a question which, I believe, was whether this document was submitted, the confidentiality agreement was submitted to the SEC.
Q. No, no, I didn't say that at all and that may be where we've got some confusion.
My question, the chronology that you have in MS-75 was prepared by Wachtel, the Coleman's counsel, in response to a request by the United States Securities and Exchange Commission?
A. Yes.
Q. And now, the paragraph that we looked at or that I read to you provides that, in effect, Mr. Schwartz provide a copy of a confidentiality or confidential information form that was going to be faxed to Wachtel Lipton for review.
Are you there?

NOT A CERTIFIED COPY

016300

A. Yes.
Q. Now, having read that, does this refresh your recollection over who prepared any confidentiality agreement for signing by Sunbeam?
A. No.
Q. The next paragraph reads, "Joram Salig of MacAndrews faxed the confidentiality agreement to Wachtel Lipton and Paul Shapiro, general counsel of Coleman, for their respective review."
Do you see that?
A. Yes.
Q. Is that an accurate statement?
A. I don't recall. It's seven years later. I just don't recall. I assume it is, but I don't recall.
Q. Do you have any reason to doubt that it is true?
A. No. You asked me if it's accurate and I assume it means, can I remember that today, and the answer is, I can't. I assume it's accurate.
Q. Would you tell the jury who

Joram Salig is?
A. Joram Salig is an attorney who at the time in question worked for Barry Schwartz.
Q. At MacAndrews & Forbes?
A. Yes, the holding company.
Q. Did you make any changes to MS-133 after you received it from whomever you received it from, and prior, of course, to the signature by Mr. Fannin of Sunbeam?
A. My practice with this type of document would have been to review it and to also have Steven Isko, who was my associate, review it, and I don't recall whether either of us made any changes.
Q. Now, you've had an opportunity to review MS-133, correct, both today and, I think, in your deposition preparation you saw this, is that correct -- I misspoke, I'll withdraw the question.
In your deposition today you have had an opportunity to review MS-133, right?

A. I have had an opportunity to look at it and say that it appears to be a confidentiality agreement relating to this transaction. I have not read it in detail.
Q. And you read it before you signed it and sent it to Mr. Fannin in 1998?
A. I don't recall, but it was normally my practice to read things that I signed.
Q. As a lawyer, now, not just as a citizen on the street, when you sign documents as executive vice president and general counsel of a public company, don't you read them before you sign them?
MR. BRODY: Objection. Asked. And answered.
Q. As a matter of course, don't you read things, sir, before you sign them when you were acting as general counsel and executive vice president of a public company?
A. Yes.

Q. Now, look at, if you would, the term "Evaluation Materials" that appear on page 1 of MS-133.
A. Yes.
Q. Do you, as you sit here today, recall making any type of change or comment to the meaning of that defined term, "evaluation material"?
MR. BRODY: Object to form. Foundation.
A. I don't recall.
Q. Turn then please to page 4, the last paragraph, beginning, "You understand." Are you there?
A. Yes.
Q. Tell me when you've read the paragraph.
A. I've read the paragraph.
Q. Am I correct, sir, that this paragraph provides that Coleman was not making any representations or warranty to Sunbeam about the completeness or accuracy of the capital "E," Evaluation, capital "M," Material, as defined on page one of

NOT A CERTIFIED COPY

016301

this document?
MR. BRODY: Object to form.
A. That's what this says.
Q. Did you, to your knowledge, as you sit here today, make any changes to this paragraph before this letter was sent to Mr. Fannin of Sunbeam for his signature?
A. I do not recall having made any changes.
Q. If you'll turn back to page 1, sir, "Evaluation Material" includes, within the definition drafted by The Coleman Company, either directly or through its affiliates, information, whether in oral, written, electronic or other form prepared by, among others, its bankers and financial advisors, am I correct?
A. Yes.
Q. And "bankers and financial advisors," as it's used in your letter, includes bankers and financial advisors such as Credit Suisse First Boston,

correct?
A. That's correct.
Q. And it would include on a reciprocal basis an investment banker such as Morgan Stanley & Co., Incorporated, right?
MR. BRODY: Object to the form and foundation.
A. I don't know how to answer the question because there is no reciprocal -- you haven't directed me to any reciprocal provision in this document.
Q. Sir, you told me under section 7.2 that there were reciprocal confidentiality agreements.
A. I absolutely did not say that. You're putting words in my mouth.
Q. We'll let the record --
A. Excuse me.
Q. Sir, I'm not here to argue with you --
A. Excuse me --
Q. This is question and answer. I'm not going to listen to --

A. You don't have to listen to me, but the jury does. Excuse me.
Q. I move to strike your comments.
A. You can strike my comments; but if you want to continue the deposition, I will not let you misstate what I said and let it sit.
You asked me very specifically under 7.2 whether there were two confidentiality agreements.
I very specifically said that I remembered that there was at least a confidentiality agreement in place in regard to this transaction, that I did not know the date of it, that I did not remember whether there were two.
You have identified one here. I have never discussed a confidentiality agreement that ran in the other direction. I don't recall if there was one. I did not discuss it, so please do not put words into my mouth, or I will not continue to sit through this deposition.
Q. Are you done?

A. Yes, I'm finished.
MR. BEMIS: Okay, I move to strike your comments.
MR. BRODY: I oppose the motion. I think it's an appropriate response to the question; and if you want him to answer questions, you have to give him an opportunity to answer them.
MR. BEMIS: I move to strike your side-bar comments.
Q. Did The Coleman Company or its affiliates prepare a confidentiality agreement for Sunbeam to send to The Coleman Company for execution pursuant to paragraph 7.2 of the merger agreement?
A. The answer is, I don't recall, but your question makes no sense, because "pursuant to" means in relation to -- this agreement is dated later than either of the dates that appears for those confidentiality agreements.
Q. Well, let me rephrase the question then for you since my question makes no sense to you, and I'll see if I

NOT A CERTIFIED COPY

016302

can do a better job.
You refer in the document you signed to a February 23, 1998 confidentiality agreement in section 7.2 of MS-117, right?
A. I don't refer to anything.
There is a document here that refers to two confidentiality agreements. I have testified that I do not recall those confidentiality agreements. That's all I can testify to.
Q. Well, you can testify that you signed the document, MS-117, and you read it before you signed it, right?
A. I can testify to the fact that I signed it.
MR. BRODY: And he already has.
I think we're now getting into arguing with the witness. I ask you to move on.
MR. BEMIS: And I ask you to keep your comments limited to objections, and I move to strike your side-bar comments.

MR. BRODY: Objection.
Argumentative.
Q. Let me show you what's been marked as MS-134.
(Exhibit MS-134 for identification, Draft document).
Q. Please look at MS-134 and tell me when you are done.
MR. BRODY: Do you want him to read it or just look at it?
MR. BEMIS: We don't need to be contentious. I'm doing the same thing I do with everyone. I'm giving him the courtesy of looking at the exhibit and letting me know when he's prepared to answer a question.
If he needs more time after I ask a question, I will, of course, extend to him the courtesy of as much time as he needs to look at it.
A. Yes. I have MS-134 in my hand.
Q. Is MS-134 a draft of the confidentiality agreement referenced in paragraph 7.2 of Exhibit 117 that we

discussed earlier?
A. I have no idea.
Q. Well, you read it. Does it appears to be, sir, a draft of it?
A. I don't know, because it's not signed.
Q. I understand it's not signed and you can't answer it -- let me ask you, can you compare, if you like, MS-134 and the previously identified MS-133, and tell me if there is any apparent difference between the two documents other than, for example -- I'm not suggesting what your answer should be -- the name was left blank on page 4, whereas I believe in MS-133, I believe Mr. Jerry Levin's name is filled in.
A. I mean, it appears to be a draft that somebody prepared of an agreement that is similar to the -- to MS-133.
Q. Did The Coleman Company or one of its affiliates in the MacAndrews & Forbes group of companies send this

document to Sunbeam for its execution?
A. I don't know. I have no idea.
Q. Let me show you what's been marked as MS-101.
(Exhibit MS-101 for identification, Document dated 2/23/98.)
A. For some reason I have two copies.
Q. It's just they were stuck together. Thank you, sir.
A. Yes, this appears to be the same as 134.
Q. I appreciate that.
If you look at the fax banner line at the top, it says "212-527-5888 MacAndrews & Forbes." Do you see that?
A. Uh-huh.
Q. Could you answer yes or no rather than --
A. I'm sorry, yes.
Q. That's okay. It happens all the time.
And it's also dated February 23, 1998, the same date of the document,

NOT A CERTIFIED COPY

0163303

Page 122

correct?
MR. BRODY: "It" being the fax banner as being the same?
MR. BEMIS: Yes.
A. Yes.
Q. Is this a fax banner for MacAndrews & Forbes?
A. I don't know.
Q. Have you ever seen a fax banner for MacAndrews & Forbes?
A. I probably have. I mean, it appears to be, but I don't know.
Q. Do you know whose fax number that is, 212-257-5888?
A. No.
Q. I'm going to hand you what's been marked as MS-69.
Did you receive a copy of this document in connection with the Sunbeam/Coleman merger transaction, sir?
A. I may have, but I don't specifically recall.
Q. Turn to page 4, and would you please look at Mr. Joram Salig's name

Page 123

there and the numbers below.
A. Uh-huh.
Q. You have to say yes or no.
A. I'm sorry. Yes.
Q. Now, at the time that this document appears to be dated, this is on the first page, March 6, 1998, was Joram Salig, was he, to your knowledge, an attorney working for Mr. Schwartz at MacAndrews & Forbes Holdings, Inc.?
A. I'm sorry, what date did you say?
Q. On the first page there's a footer prepared and it says, "March 6, '98 printed at 12:56 p.m."
A. I believe so.
Q. Is there more than one Joram C. Salig that you're aware of that worked for Mr. Barry Schwartz about this time at MacAndrews & Forbes?
A. No.
Q. And what role did Mr. Joram C. Salig play in the Coleman/Sunbeam merger transaction that is documented in MS-117?

Page 124

A. I don't recall. He's an experienced corporate lawyer, but I don't recall the role he played.
Q. Did you make any inquiry before you signed MS-117 and the particular reference to paragraph 7.2 whether the --
A. I'm sorry, what is MS-117 again?
Q. The merger agreement. I'll rephrase the question for you. You have it right at the bottom --
A. I got it.
Q. Before you signed MS-117 -- and I'm making particular reference in my question to section 7.2 -- did you make any inquiry of anyone either at Sunbeam or at Coleman or at MacAndrews & Forbes whether the Confidentiality Agreements -- capitalize "Confidentiality" and capitalize "Agreements" -- dated February 4, 1998 and February 23, 1998 had been signed by the parties?
A. I don't recall.
Q. Would it have been customary in

Page 125

execution of your duties as chief legal officer of The Coleman Company to have made such an inquiry before you signed the merger agreement?
A. I can't answer that question. Maybe, maybe not. I don't know.
Q. What circumstances would you not have made inquiry whether documents were executed that are referred to as being executed in the merger agreement?
A. I just, I can't recall. I can't recall. This was a transaction which occurred over eight or nine days in which we were essentially going -- we had large teams of people. We were essentially going around the clock. It's a 39 page single-spaced document.
Is it possible that I made a mistake in reading this and did not see the confidentiality agreement? It's possible. I just don't recall. This was over seven years ago, sir.
Q. That really wasn't my question how many years ago it was. The question

NOT A CERTIFIED COPY

016304

Page 126

was, would it be customary for you, even though you don't recall it as you sit here today, to have made inquiry as part of your responsibilities as chief legal officer of The Coleman Company before you executed this contract, MS-117?

MR. BRODY: Objection to form. Asked and answered. That's the same question. Go ahead.

A. I had assistant counsel. I had people from Wachtel Lipton sitting there. If somebody -- did I necessarily -- can I remember that I read this?

I don't remember. I don't remember. I can't answer your question. I appreciate your attempt to pin it on me, but I don't remember.

Q. Please don't assume I'm trying to pin anything on you, whatever you meant by that.

Let me go at it a slightly different way with you.

Was it your understanding at the time that you signed MS-117 and with

Page 127

particular reference to paragraph 7.2 that the parties had, indeed, executed, capital C, Confidentiality Agreements, capital A, that are referenced in that paragraph and dated as of February 4th and February 23, 1998?

A. I testified previously -- I could say this a hundred times. We can sit here until tomorrow, that my recollection is that there was a confidentiality agreement in place between the parties.

I cannot testify to anything more than that no matter how many times or how many ways you ask it, sir.

MR. BEMIS: We said we would break at 1 o'clock. This is a good time to break.

THE VIDEOGRAPHER: The time is now 1:05 and we are off the record.

(A luncheon recess was taken from 1 o'clock p.m. to 2:10 p.m.)

THE VIDEOGRAPHER: The time is now 2:10 and we are back on the record.

Page 128

Q. Mr. Shapiro, would you please look at section 7.2 of the merger agreement, MS-117, please.

A. I left my glasses in my jacket. Hold on a second. I'll get my glasses.

Q. I know the feeling.

A. Sorry, what section?

Q. 7.2.

A. Okay.

Q. That provision provides for access to the books, records, properties, plants and personnel of each of the parties to the merger agreement, correct?

A. Uh-huh.

Q. You have to answer yes or no.

A. Yes.

Q. At any time during the period covered by this section 7.2, was there any difficulty that you are aware of accessing the books and records of Sunbeam Corporation by The Coleman Company, Inc.?

A. Can you just give me a minute?

Q. Sure.

A. I'm trying to refresh my

Page 129

recollection.

This refers to the company effective time -- 2.3 --

Q. I think you have to look at 2.3 for that.

A. What I'm trying to come to grips with here is, as I read this, this paragraph gives each party access essentially from the date of the agreement, which was the Friday, the 27th or 28th, when it was signed and a press release went out, public release went out, and the closing date a month later.

Actually, my recollection is -- this sort of surprises me, because my recollection when I look at this was that this was for the benefit of Sunbeam because they were going to take over this company. And we essentially had a deal that had only -- the only real condition that we thought we had here was Hart-Cott, so Sunbeam would have wanted to get into Coleman facilities, because they were going to work on the reorganization plan

NOT A CERTIFIED COPY

016305

Page 130

with Coopers Lybrand.
Actually, other than the fact that, I guess, maybe it's standard, I'm surprised that there was a provision that allowed us into their world, because I don't know what we would have done in their world at that point.
We were bound, subject only, I guess, to Hart-Cott, and the standard -- what I guess lawyers refer to as a MAC out, subject only to a material adverse change out.
So the answer is, I don't believe we were denied any access. I don't believe that we requested any -- would have had a reason to request any access.
Q. Before the date of MS-117, which is as of February 27, 1998, are you aware of The Coleman Company inquiring of Sunbeam to examine Sunbeam's books and records pursuant to any preliminary due diligence and the access being denied by Sunbeam?

Page 131

A. No, I'm not aware -- I don't recall any access being denied.
Q. Are you aware of any restrictions being placed on The Coleman Company's access to books and records of Sunbeam at any time during the negotiations and leading all the way up until the closing on March 30, 1998?
A. I don't recall that it was ever contemplated that, for example, given the timing of the transaction -- when you say access to books and records, there were public records on file; and essentially, this is what lawyers refer to as a public company deal.
We were operating as Coleman essentially based on the public records of Sunbeam, and then some additional information that was furnished about their future plans, because our shareholders were going to be large shareholders of Sunbeam; and the stub period, the stub period beyond what had been announced.
The point of this deal, they

Page 132

had announced their '97 earnings. They had not filed their 10-K. But they had announced the earnings and there were three quarters of Qs available as public records that carried you through the third quarter of '97.
It was never contemplated that we would, for example, go in and do an audit or any -- it would have been simply impossible. This was not like buying a small company that wasn't public. We didn't treat it as such.
So we were not denied access, but we would never have asked for that kind of access, nor do I believe that the other side asked for it of us.
Q. The "other side" being Sunbeam?
A. Yes.
I mean they had some very specific requests, but when you talk about books and records, I think about, like, reviewing the financial performance, literally going in and reviewing the financial performance as opposed to what's

Page 133

publicly reported. They didn't do that either.
They had a bunch of very specific requests about specific information, but it wasn't a general overhaul due diligence.
Q. So in your view, the due diligence was somewhat limited in this transaction based on the nature of the transaction?
A. What I'm saying is that the diligence was focused more on what was public as opposed to an attempt to go behind what was public other than those things that were specifically divulged and requested.
Q. Can you identify for me any of the -- I don't mean to be pejorative -- but the things that were specifically requested by The Coleman Company from Sunbeam?
MR. BRODY: Object to the form. Go ahead.
A. I recall more the other

NOT A CERTIFIED COPY

016306

Page 134

direction, frankly.
Q. Let's do both sides.
A. Yes. What was requested by Coleman of Sunbeam was, if I recall, was basically some kind of presentation of, you know, how -- as I said, they had made a public press release of their earnings for the year.
We requested some kind of information about, as I recall, how were they doing since the end of the year and what was their -- what did the future look like for Sunbeam, what was their growth plan.
And that was largely responded to by a meeting that was held in a deck that I mentioned at the very beginning of the deposition that was presented to us.
With regard to individual items that were not public records, I really can't recall today what they might have been. I have a better recollection of the work that I had to do, which was more producing things for Sunbeam to look at.

Page 135

Q. Focusing now on the request for a presentation of this information that I think we identified -- Morgan Stanley 88 was a deck that we identified this morning -- 84, I misspoke, 84, excuse me -- who made this --
A. I don't think I have a copy, so I can't respond to whether 84 is the right number.
Q. I'll give it to you.
This, I believe, in your last answer or the answer before last is what you're referring to as MS-84 that we identified this morning.
A. It looks right. This looks correct.
Q. Let me then step back and ask you to tell the jury who at The Coleman Company or one of its affiliates made the request for the information that you identified and apparently results in the deck MS-84?
A. Again, this was a long time ago. My recollection is that someone from

Page 136

our side requested such a meeting.
I don't recall sitting here today whether it was the sort of M&A team that was working on the deal for MacAndrews which was Jim Maher and Will Nesbit, or whether it was Jerry Levin, but I believe it would have been one of them.
Q. Was this request in writing or was it oral?
A. I don't recall. I think it was probably oral. It also may have been that Credit Suisse was involved in the request.
Q. Do you recall any documents from Credit Suisse First Boston to Sunbeam or anyone who was advising them for this information?
A. No.
Q. So, again, what you do recall is what was asked for, it was asked for orally?
A. To the best of my recollection, that's correct.
Q. And that the result of the request, as you sit here today, resulted

Page 137

in the meeting where MS-84 that we just identified was presented by Mr. Kersh?
A. Within my world.
Just to explain what I mean by that, there were kind of two parallel worlds working here.
One was sort of the M&A world at a deal level, and that was really Maher/Nesbit, possibly some other people higher up at MacAndrews, and possibly Credit Suisse after they were engaged. They were on the business side. I was never involved with them, for example, in meeting the other side and negotiating the purchase price.
So they may have made due diligence requests, which I may or may not have known about at the time, but I don't recall them today.
Within my world, working on the deal, once the handshake had been reached, the request I recall was some kind of an oral request from somebody, I think, on our business side to somebody at either

NOT A CERTIFIED COPY

016307

Page 138

Morgan Stanley or at Sunbeam for a presentation, a meeting, information.

Q. But as you sit here today, you cannot identity who made the request or to whom it was made specifically, is that fair?

A. No. I believe it was to somebody at either Sunbeam or Morgan Stanley.

Q. But other than identifying a company, you can't identify the person to whom the request was made or indeed who indeed made the request on behalf of your side?

A. I cannot.

Q. Okay. Let me show you what we'll mark as MS-39, which is the press release we identified earlier this morning.

Do you have MS-39 in front of you, sir?

A. Yes, I do.

Q. This is the press release we identified this morning of March 19, 1998

Page 139

as one of documents that you reviewed in preparation for your deposition, correct?

A. Yes.

Q. Now, when you received MS-39, did you read it?

A. I assume when you say when I received it, you mean when I originally received it.

Q. Yes, back in 1998.

A. The answer is, I don't recall whether I received the press release or simply became aware of its contents.

Q. I take it then if you did receive it, you do not know how you received it. Is that accurate?

A. Yes, I don't recall.

Q. And if someone told you about it, is it fair to say you don't remember now who told you about it?

A. Yes.

Q. Having read MS-39, did you consider any of the information in the press release to be material in the context of the merger agreement, MS-117?

Page 140

MR. BRODY: Object to form.

A. I'd have to go back through the agreement. I considered it concerning, because it was inconsistent with what we thought was going on at Sunbeam.

Q. You used the term that -- and I'm familiar with the material -- adverse event or condition, to use differently, but did you consider the information in the press release, MS-39, to be a material adverse event?

A. In and of itself, as I said, it was concerning. I don't think that this itself, in my opinion, and I am not an expert on -- I've never looked at, you know, 20 cases on what have courts agreed is a material adverse change in a situation like this -- I did not see this by itself as a material adverse change, but if it were accompanied by a bunch of other things, I suppose it could have been.

Q. As a result of either receiving the press release or being advised of its

Page 141

contents, did you, as the executive vice president, chief legal officer and the signatory to MS-117, take any steps to investigate further the information that is in the press release?

A. I was general counsel. Not chief legal officer.

Q. I apologize. I'll accept that amendment.

A. My recollection is that we -- I can't remember which one of us -- were surprised and concerned about this and made some inquiry of the other side as to what was going on at Sunbeam.

And this -- as you pointed out earlier to me, this did not talk about revenues. My recollection is not revenues. This talks about net sales. It doesn't talk about earnings. It doesn't talk about revenues.

My recollection is that Sunbeam had put out publicly, forecasts or projections, as to how they would perform in future periods, and this was

NOT A CERTIFIED COPY

016308

Page 142

inconsistent with what had been public.
And my take-away reading it was that given the type of advisors they had, sitting here today, my recollection is that they had forecasts or projections out that both covered revenues and possibly components of revenues, like net sales and earnings that they and their advisors must have been concerned -- I knew that they were in some kind of a road show on the bonds -- that their forecasts they now believed were not accurate, at least as to what was in this press release, net sales.
But I took a certain amount of comfort that that must mean they also discussed the other components that were out, forecasts like net earnings or earnings; and were comfortable, or at least convinced their advisors that they were comfortable, that they were okay on those elements, and, therefore, did not have to publicly change those forecasts.
And my recollection today -- and I cannot remember the individual back

Page 143

and forth -- is that we expressed concern to somebody on the other side; and what came back to us was:
"Look, it's still early in the month. We do a lot of late month shipments, particularly at the end of the quarter. We're not sure we're going to miss. As an excess of caution, because we're out at a road show, we feel a need to put this out, but we think we're okay with regard to our earnings."
Based on that -- I don't mean this was 30 seconds, there were a variety of discussions internally among our group -- I think the conclusion we reached was that it was inappropriate to try to exercise the MAC out, and that this was the extent of the problem.
The clear take-away on our part, this was a blip. Sunbeam's view was, this was a blip. They would recover from it in the second quarter, et cetera.
Q. Can you tell the jury who it was that you spoke to when you made this

Page 144

inquiry because of your concern over the contents of the press release?
A. Well, first of all, I didn't say that I made an inquiry. What I said was we sat -- there was a group of us that sat down and talked, and I don't remember who in the group -- I am quite certain it was not I -- who in the group spoke to somebody on the Sunbeam team; and let's include in the team the lawyers, the investment bankers, et cetera --
Q. I didn't mean to interrupt you. Are you finished?
A. Yes.
Q. I asked you earlier whether you had any discussions with anyone at Morgan Stanley & Co., Incorporated and Morgan Stanley Senior Funding, Inc. between the signing of this MS-117, and you said you didn't recall any.
A. I know that I personally cannot -- I did not talk to anybody at Morgan Stanley about this press release.
Q. You've referred to the MAC

Page 145

event and there is a specific provision in the contract that deals with that, and let's make sure we're talking about the same provision.
If you look at MS-117 and look at section 5.7, tell me if that is the material adverse event provision that you were referring to.
A. I think so.
Q. Now, as I understand section 5.7 from reading it, whatever constitutes a material adverse event, if it exists, that there is a so-called out for The Coleman Company, and that out being that they did not have to go forward with the merger transaction.
Am I reading this correctly?
A. Let's take a minute and read the agreement, okay. I mean, that's the way I recall it in my mind, but Article 5 says that "they represent and warrant as follows," so the MAC change is a representation.
In other words, this does not

NOT A CERTIFIED COPY

016309

Page 146

by itself say that anybody can -- that we, as Coleman, would have the right to not consummate.

So I have to find out what the impact of a misrepresentation might have been -- I'm sorry, what the existence of this situation would mean.

Q. Sir, I may be able to assist you in this and save some time and you can tell me if I'm wrong, and I'm not trying to put words in your mouth.

If you would look at what I'll show you is Exhibit 93, which is the so-called agreement and plan of merger among Sunbeam Corporation, Laser Acquisition Corporation and CLN Holdings Inc. and Coleman Parent Holdings, Inc., I direct your attention to section 8.2, and if you'll look at section 8.2(a).

A. Okay.

Q. And then if you'll also look back, now we'll go back to 117 and look at "Termination of the Agreement," which I believe is section 10 --

Page 147

A. 9.

Q. Let me look here. 9. 9.1, which provides, "This agreement shall terminate automatically upon the termination of the holdings merger agreement in accordance with" --

A. So that's the way -- so there is --

Q. Is it your understanding that how the two documents worked is that if there was a material adverse event under MS-117, that that was a condition of closing for the holdings merger agreement; and that upon that condition occurring and being declared the underlying Coleman agreement, MS-117 would terminate automatically?

A. That appears to be the way it worked.

Q. I appreciate your pointing that out because mechanically it is a little *complicated, but that's how I understood* it. You can set aside the CLN merger agreement 93 for the time being if you'd like.

Page 148

Would you please go back and look at the press release again. I want to ask you a couple more questions about that.

A. Okay.

Q. The press release, MS-39, contains a paragraph which is the penultimate paragraph of the documents and it begins with "cautionary statements."

Do you see that paragraph, sir?

A. Yes.

Q. As an attorney and as a person who did practice in the securities area, did you understand what cautionary statements are?

A. Yes.

Q. And is the statement that appears in the press release, MS-39, correct, to your understanding, as of 1998, what cautionary statements were, or as the term is used here, "forward looking statements," as defined in the Private Securities Litigation Reform Act of 1995?

Page 149

MR. BRODY: Object to the form.

You can answer.

Q. Yes?

A. I understand what a forward-looking statement is, and I understand that there is an attempt here to talk about forward -- to caution people against forward-looking statements.

Q. And what do you understand to be a forward-looking statement as of 1998, the date of the press release?

A. I haven't thought about it for a while; but my recollection is that there is a safe harbor in the securities laws for forward-looking statements where you essentially are specific about what the reasons are that something you're saying about the future may not occur and where you have no reason to believe at the time that the statement you are making is inaccurate.

So, for example, if I were in the airline business, and I said that I think we're going to have a great year

NOT A CERTIFIED COPY

016310

Page 150

next year and then put a forward-looking statement in that said one of the things that I caution against is the possible change in oil prices, which would affect our costs, and oil prices, in fact, did change, then I would be protected under the forward-looking statement safe harbor from the prediction I had made, that we would make a great year, if the reason that we weren't making a great year was the change in oil prices and/or other things that I had warned people about.

Q. Is there any provision --

A. You have to recognize, I've seen this press release now quite often, including in the securities litigation and so forth, so I can't separate -- I'm having trouble separating out in my mind what it meant in 1998, the minute I got it, from all the stuff I've learned over the last six years.

Q. Is there any provision in the merger agreement, MS-117, by way of a representation or a warranty concerning

Page 151

forward looking statements by either party to the merger agreement?

MR. BRODY: Object to form.

A. I don't recall.

Q. Well, you have the document in front of you. If you can take a look and if you find one, point it out to me. Otherwise, we'll just move forward.

A. It appears that the representations made with regard to financial statements here do not have anything relating to forward looking statements.

Q. All right, sir. You can set that aside for the time being.

Now, let me ask you to look at a document which we have previously marked as MS-243.

(Exhibit MS-243 for identification, Document dated 3/20/98 from Ernst & Young to CLN Holdings Inc. and Morgan Stanley & Co., Incorporated.)

Q. I have handed you what's been marked as MS-243, which is dated March 20,

Page 152

1998 and it's from CLN Holdings -- excuse me -- it is to CLN Holdings Inc. and Morgan Stanley & Co., Incorporated from Ernst & Young.

Have you seen this document before?

A. I don't recall.

Q. Do you know what it is?

A. I think it's what, again, the professional normally refers to as a comfort letter.

Q. It's a comfort letter in connection with establishing the due diligence defense of section 11 of the 1933 Act, correct?

MR. BRODY: Object to form.

A. I really don't remember. I just -- I mean, it's -- my understanding is that Morgan Stanley and Sunbeam were out selling the zero coupon bonds. The offering memorandum under which they were being sold, which you had shown me earlier, I presume contains Coleman financials that are audited, and the

Page 153

auditor is normally asked to render an opinion as to -- essentially, is there any -- it boils down to, are they aware of anything at the moment this was going out that would change the opinion that they had previously rendered. To boil it down, that's what this does.

Q. Can we refer to this going forward as a, capital C, Comfort, capital L, Letter?

A. I believe, yes.

Q. You can set that aside for the time being.

I want to show you now what's been marked as MS-9, previously marked, sir. Please look at MS-9 and tell me when you're satisfied that you've looked at it.

I do have some questions, but we can focus on a particular paragraph as it becomes necessary.

A. Okay.

Q. Is this, in your judgment, sir, a comfort letter as well as --

A. It appears to be, yes.

NOT A CERTIFIED COPY

016311

Q. And in your expertise in the securities field, would it be a cross comfort letter in connection with the debenture offering?

MR. BRODY: Objection to form. Foundation.

A. I'm not sure. I don't know what a cross confirmation -- comfort letter.

It appears to be a comfort letter relating to Sunbeam financials, whereas the other one was Ernst & Young giving comfort on the Coleman financials.

I really don't understand the various checkmarks in paragraph 11, but that probably doesn't matter.

Q. Maybe I can address the question differently.

You have Exhibit 243 in front of you, correct? I think it's 243, which is the Ernst & Young letter addressed to CLN.

A. And Morgan Stanley.

Q. And Morgan Stanley, correct?

A. Yes.

Q. And both of these letters are being submitted in connection with an offering memorandum dated March 19, correct?

A. That's correct.

Q. We could go back and pull it out again, but is it your understanding that's the offering memorandum for the zero coupons?

A. Yes.

MR. BEMIS: For the record, I think we identified that as MS-166.

Q. And the exhibit that you have now in front of you, Number 9, that is from the auditors of Sunbeam, correct?

A. That's correct.

Q. And Morgan Stanley 243 was from the auditors in 1998 as of The Coleman Company, Inc., right?

A. I think officially it's 1997, but yes.

Q. But as of the time they wrote the comfort --

A. They were not engaged, I believe, for 1998. I just want to be literal. They were auditors.

MR. BRODY: Also I would point out a clarification.

You keep talking about Coleman, but the document recites it's the balance sheets of CLN Holdings Inc., which contain The Coleman Company financial statements on a consolidated basis.

MR. BRODY: So the questions and answers are clear.

Q. Just to put this in context so we can move on to another issue, is it your understanding that MS-9, which is the Arthur Andersen comfort letter, and MS-243, which is the Ernst & Young, L.L.P. comfort letter, were both given by the auditors in connection with the offering memorandum for the Sunbeam Corporation zero coupon convertible senior subordinated debentures in 28 --

A. I believe they were each done for that purpose.

Q. And each of the letters recites, I think it's sub-paragraph(a), that, "These recipients of these letters are assumed to be knowledgeable about the due diligence review process that would be performed if the placement of securities were being registered pursuant to the Securities Act of 1933," correct?

A. That's correct.

Q. Is there anything in MS-9 that, in your judgment, is a material adverse event under section 5.7 of MS-117, the merger agreement?

MR. BRODY: Objection. Form. Foundation. Go ahead.

A. I'm not getting paid here today, okay. I've never seen this letter before and it was not addressed to anybody that I was connected to.

Do I really -- am I really required to read this letter and give a professional opinion? I no longer have an active license in any state.

Is that really what I'm

NOT A CERTIFIED COPY

016312

Page 158

supposed to do here today?
MR. BRODY: That was my objection.
MR. BEMIS: I'm glad that you agree with his statement.
Q. Yes, it is what I'm asking you to do and that's what I want you to do.
I want to look --
A. I'd like to ask my lawyer whether I am required to do that today.
I am a witness; and I was not a witness to any event connected to this letter.
Q. I'm not going to quarrel with you.
So we're clear, there are numbered paragraphs that are in the Arthur Andersen letter beginning on page 2, and I'm asking you to look at the items there and tell me whether, based on your position as the signatory of the merger agreement, MS-117, and being the general counsel and executive vice president of The Coleman Company Inc. in 1998, are any

Page 159

of the items that are disclosed by Andersen here material adverse events as set forth in section 5.7 of MS-117?
A. This is not something that was ever disclosed to me.
Q. Sir, I'm not asking you that.
I'm asking you now, you have the document. Tell me whether any of these items are material adverse events?
MR. BRODY: I'm going to object to the line of questioning on the grounds of form, and if I can explain --
MR. BEMIS: No, you can't. You can object on form. You cannot explain; and if you do explain, I'm going to adjourn the deposition.
MR. BRODY: Let me just finish what I'm saying.
MR. BEMIS: Okay.
MR. BRODY: I think you are asking him a really unfair question for the reasons he stated, among others, and --
MR. BEMIS: Now you're going

Page 160

way beyond form. You object to form, otherwise we're going to adjourn the deposition. I'm serious.
You either limit your objections, or I'm going to adjourn it.
MR. BRODY: Well, I think I've done a pretty good job of limiting my objections. To say the question is unfair, and not explain why I think it is unfair is not suggesting the answer to this witness.
The witness has explained to you his reasons. There are a host of others. I see under Rule 413 this is just going nowhere, and so I guess I'd ask you to withdraw --
MR. BEMIS: No, I'm not withdrawing the question.
You've got your objection.
THE WITNESS: My question is -- and I think I have a right to ask my counsel this question -- to my knowledge -- and I'm not an expert in litigation, I was not brought here as an expert witness

Page 161

or paid to be an expert witness.
As a witness, I can testify to things that are -- events, pieces of paper that I've looked at or whatever, that I have seen before and that relate to something that I thought about before or witnessed. Look up the verb "witness."
You are asking me here to look at a document I have never seen, that was not sent to me, that was not sent to my company, and to give an opinion as to that document that I assume is based on my knowledge as a lawyer, and I don't understand how to do that or why I would do that.
You're not asking me to be a witness now. You're asking me to become an expert looking at facts that I have never seen before.
MR. BEMIS: You want to answer the question, sir? I'm not going to quarrel with you. You're either going to answer it or you're not going to answer it, and we're going to adjourn the

NOT A CERTIFIED COPY

016313

Page 162

deposition and ask for a court order to bring you back. It's one of the two. I'm not going to quarrel with you.

THE WITNESS: Look, I don't have any interest in being threatened with a court order. If what you want to do is ask a judge whether -- I am perfectly happy to have a judge tell me whether it is my responsibility to answer that question, and I will come back for the purpose of answering that question if a judge says that I have to do that;and I have testified here now for five hours and I am prepared to continue to testify.

I do not believe it is my obligation or interest to read a document I have never seen and exercise some kind of independent judgment about this where I am not a witness to the facts.

So I think what would make sense, sir, is if you go on to something else; and if you feel that this is something which I am required to testify to, if you get a court order, I will be

Page 163

happy to reappear and to respond to that question if a judge tells me that that is my obligation.

MR. BRODY: And I would add by way of suggestion that if you --

MR. BEMIS: I don't need suggestions. I only need objections. Please, I don't need any suggestions from you. If you make an objection, that's all you need to do so the judge can rule on the objection.

MR. BRODY: I'm suggesting something that would allow us to get past this and move on. That is, I'm asking you to ask questions on other topics and if you want to revisit this at the --

MR. BEMIS: I want to ask --

THE WITNESS: This is a lot of work, and I'm very tired. It's the end of five hours, and I don't understand why I have to learn at a deposition.

I have never understood that to be something that is the obligation of a witness.

Page 164

MR. BEMIS: Sir, again, I do not wish to --

THE WITNESS: It's technical, it's complicated, and I am not a witness to these facts.

MR. BEMIS: Oh, I think you are a witness to these facts, sir.

THE WITNESS: I have never seen this document before, sir.

MR. BEMIS: That is not the issue, whether you've seen the document, although it may become an issue later.

The issue is whether you're going to answer the question; and if you tell me that you're not going to answer the question, you won't read the document, then we'll proceed accordingly.

I'm not trying to threaten you in any way and I don't want you to think that I am.

I am here as asking the questions pursuant to my responsibility as an attorney, and that is all I'm here for.

Do you want to read back the

Page 165

question --

THE WITNESS: My attorney has advised me, and I believe that I am not required to answer this question; and I am saying that I'm happy to continue the deposition, and if a judge says that I am wrong about this and that I am required to answer the question, I will take the time to read it when I am fresh and to try to answer the question.

MR. BRODY: And I'd also suggest, as I've said, that we consult further about this and do it after --

MR. BEMIS: I don't think that would be appropriate, to adjourn the deposition so you can consult with your witness on how to answer a critical question in the lawsuit.

It wouldn't be permitted in court; and it would not, in my view, be something that I would be willing to acquiesce in today.

MR. BRODY: I'm not suggesting we do that. I would give you my

NOT A CERTIFIED COPY

Page 166

representation that I would not consult with the witness about your question.
MR. BEMIS: I do not think we are advancing the progress here by engaging in any further colloquy.
I would ask you to answer the question or instruct him not to answer it or adjourn the deposition to obtain a protective order if you think that my conduct is somehow inappropriate.
MR. BRODY: Well, let me just tell you what I'll do:
I suggest that you withdraw the question long enough for me to call Florida counsel, make sure that he thinks what I'm doing is correct.
If he agrees that what I'm doing is correct and suggests we ought to take it to the judge. If he says, "Brody, you're being unreasonable, have him answer the question," I'll so advise the witness.
In the meantime, if you're concerned that I'm going to consult with the witness about answering the question,

Page 167

which I said I wouldn't do, I'll have him sit in here and you guys can talk about baseball. I don't care. But that's what I would suggest as a way to get past this.
But if you would insist upon pushing forward on a question that he doesn't feel is anything that he can provide testimony on as a witness, and I think is an improper question given the Rules of Evidence, that's your choice.
I think there are lots of ways out of this problem.
MR. BEMIS: Would you find my question and repeat it to the witness?
Would you please show that question repeated in the transcript?
(The following question is the pending question.)
Q. "Is there anything in MS-9 that in your judgment is a material adverse event under section 5.7 of MS-117, the merger agreement?"
MR. BEMIS: Will you answer the question, please?

Page 168

A. I think I've made clear that I don't --
Q. Tell me yes or no so we have a record of what you're doing so we can take it in front of the judge.
A. I will only answer the question if the judge tells me that it's a question that I should answer.
MR. BEMIS: Are you instructing him not to answer or are you just allowing him to decide --
MR. BRODY: I'm willing to instruct him so that this is something that I'll resolve, but I'm also asking you, if you would engage in the procedure that I just suggested so we can avoid --
MR. BEMIS: You want to make a call to Mr. Scarola?
MR. BRODY: Yes.
MR. BEMIS: If you wish to make a call to Mr. Scarola, I will acquiesce in in that as long as you honor your commitment that you're not going to discuss the answers to the questions or

Page 169

the subject matter with the witness.
MR. BRODY: I will honor that commitment. I've made it twice to you.
MR. BEMIS: I'm just asking you to confirm it.
MR. BRODY: Three times.
MR. BEMIS: Feel free to use the telephone. We're off the record while you make your phone call.
THE VIDEOGRAPHER: The time is now 3:06 and we are off the record.
(A recess was taken.)
THE VIDEOGRAPHER: The time is now 3:17 and we are back on the record.
MR. BRODY: As I said I would, I've not consulted with the witness despite his request that I advise him about something not relating to the substance of the testimony, but to honor my statement to you, Mr. Bemis, I have resisted that request.
I continue my objection to the form of the question for the reasons stated by myself and by the witness, among

NOT A CERTIFIED COPY

016315

Page 170

others, it requires a legal conclusion.
I am willing to withdraw my instruction; and state that while I'm willing to withdraw the instruction, I remain convinced that this is an objectionable question.
If the witness can answer it based on knowledge that can be called for in a deposition, he may do so.
If he cannot answer the question -- and maybe that's what he -- if he cannot answer the question, then so be it. But I will withdraw the instruction. He can answer it based on his knowledge.
Do you want the question back?
THE WITNESS: Let me have the question.
Q. When you're ready to answer -- whatever you're going to say -- would you let me know, because I want to have the reporter insert into the transcript the exact question that was pending so it's easier to find later.
(Requested portion of record

Page 171

read.)
(The following question is the pending question.)
Q. "Is there anything in MS-9 that in your judgment is a material adverse event under section 5.7 of MS-117, the merger agreement?"
A. I continue to believe that the question is an unfair question, but I will answer the question to the best of my ability sitting here today.
And the answer I would give is that it certainly would have been helpful to know that net sales were less than half for the month of January, less than half of what they had been the prior year. The net income was 9 and a half million dollars negative as opposed to 5 million positive the prior year.
Q. Can I --
A. Hold on a second. You asked me a question, and I do not want to be interrupted.
Q. Would you please identify the

Page 172

paragraphs, is all I'm asking you, of the letter that you're referring to when you're reading things into the record?
A. Paragraph 5(a) and (b) indicate that net sales were less than 50 percent of the comparable period, which is essentially the month of January the prior year. That income was minus 9.5 million as opposed to plus 4.7 million.
And that long-term debt, as reflected in paragraph 6-A, had jumped -- when you put it together with paragraph 5(a) -- had jumped in a month and a half from 219 million to 299 million. They jumped $80 million.
Q. Did you mean to say 5(a)? You said 6-A --
A. No, 5(a) and 6-A. You have to compare the two. You have to compare the two because they both speak about December 29th, but you have to go to February 1st in 5(a) and compare it to March 16th.
Those things might have resulted in some -- might have raised some

Page 173

questions in my mind; and 6(c), which then indicated that sales -- when you deduct it from 5(b) for the month of February --
This is very strange, but it appears that there were no sales in the month of February -- unless I'm reading this wrong -- 1998, because in 5(b) they show net sales of 72 million 945 through February 2nd; and in 6(c) they refer to sales through March 1st as 72 million, which is less than what they were at February 2nd, so they appear to just have returns or something that adjusted net sales downward.
I don't know offhand whether those things are a material adverse change, but if I had seen this letter at the time it might have raised some questions in my mind.
Q. I don't know if you mentioned this, because I was trying to follow your answer, but I didn't hear you say paragraph 6(c). Would you look at that, please.

NOT A CERTIFIED COPY

Page 174

A. Paragraph --
Q. 6(c) of MS- --
A. 6(c) says --
Q. I know what it says. Are you there?
My question to you, if you're looking at it, is that a material adverse event, in your judgement as the signer of the merger agreement, MS-117 --
A. And I told you --
MR. BRODY: Let him finish his question and I'll object.
Q. Focusing on paragraph 6(c) of MS-9, is that a material adverse effect under section 5.7 of MS-117?
MR. BRODY: Object to form. Foundation. Calls for a legal conclusion. All the objections I stated before, and he's asked and answered. Go ahead.
A. I said that it shows a very disturbing fact, pattern which I was unaware of until having seen this letter; and I don't know that in and of itself it would constitute a material adverse

Page 175

effect, but it would have raised questions in my mind as to whether they were headed in that direction, is the best I can say.
Q. Are there any other paragraphs other than the ones you've identified now which I noted as 5(a), 5(b), 6(a) and 6(c). I didn't hear you say 6(b), but if you did, I apologize.
A. I do not believe I referred to 6(b). 6(b) is a little bit concerning, but I don't know that at the time I would have considered it by itself as a material adverse effect.
Q. So just so we have it in one place, the paragraphs that you've identified as being potential adverse material effect paragraphs are paragraphs 5(a), B; 6(a), and 6(c), correct, sir?
A. That's correct. Maybe 6(b).
Q. I appreciate that.
Let's look now at MS-10.
Please tell me when you're done reviewing MS-10 and I'll have a few questions for you.

Page 176

A. Okay.
Q. This letter, which is dated March 25, 1998 addressed to Morgan Stanley by Arthur Andersen refers back to MS-9 that we looked at earlier, and if you need to, you might want to have that in front of you, it's up to you.
Sir, is there anything in this letter from Arthur Andersen to Morgan Stanley & Co., Incorporated that you consider to be material adverse effect under section 5.17 of the merger agreement, MS-117?
MR. BRODY: Object to the form of the question. Form, foundation, legal conclusion and the aforestated reasons.
A. If you look at (e), the table in (e) on page 2 that repeats the sales issue that is contained in 6(c), which I referred to earlier, they have now added something which was not there.
5(b) showed an income deflection through the period through February 1st. It didn't talk about

Page 177

income, if I recall in this other one, through March 1st.
Now they're through March 1st, so in the month of February it appears that the prior year they made 5 million dollars and change, and this year, in a month, they were down about 2 million.
Because according to the prior letter, they're down 9 million 5 as of February 1. They charged 30 million for the new contracts. Let's assume that that's not an issue, so that would take them down to 39.5; and they report them down 41.9, so that's almost another 2 million.
They've obviously had a bad February income-wise, which it didn't show before, and that it confirms that they had a bad February sales-wise.
And they have, if I recall, a press release out, if I can find it --
Q. The March 19th press release?
A. Yes.
Q. It's MS-39.

NOT A CERTIFIED COPY

016317

Page 178

A. A press release out which says that the sales are going to be 285 to 295 was their original estimate.

This is now showing that their sales were 72 million at March 1st.

So they're now going have to do -- to reach their own numbers that they put out, 180 million in the month of March.

Now, I don't know what their prior March had been, but as I said, it would have been concerning; and their long-term debt further increased from March 1st -- that was talked about in paragraph 5(a) as 219 at February 1st -- let's see if they've updated that -- they've updated it to 299 at March 16th, so it's another 10 million.

I don't recall frankly whether -- you'd have to know the business better than I to know whether that's typical of that time of year or not that they draw large amounts of money or whether it was due to the poor

Page 179

performance.

So I don't know that any of these things by themselves would have constituted a material adverse change.

The question is whether that would have led to a discussion which would have revealed other things that would have revealed that there was a material adverse change. I don't know.

Q. The paragraphs that you've identified in MS-10 are sub-paragraphs (e) and (f) that potentially would fall within the section 5.7. Those are the only two that I made notes on. Am I correct?

A. Yes. Those and the ones in the prior letter are painting a picture of a company not performing as it publicly said it was going to perform during that period.

MR. BEMIS: We're going to change the tape right here.

THE VIDEOGRAPHER: The time is now 3:34 and this is the end of tape number two and we are off the record.

Page 180

(Videotape changed.)

THE VIDEOGRAPHER: The time is now 3:36 and this is tape number three and we are back on the record.

Q. Sir, would you please take MS-117, the merger agreement, out of your exhibit pile there and put it in front of you and turn to section 7.3.

Are you there, sir?

A. Yes.

Q. The title of section 7.3 is "Comfort Letters," correct?

A. Yes.

Q. And the first paragraph refers to a company, and that's The Coleman Company under this agreement, correct, sir?

A. Yes.

Q. And using its reasonable best efforts to cause to be delivered to Laser -- and that is Sunbeam, correct?

A. Yes.

Q. -- a comfort letter of Ernst & Young, L.L.P. as of the date of the

Page 181

registration statement shall become effective, correct?

A. Yes.

Q. And then there's to be another letter as of the date of the information statement mailed to the company's stockholders, correct?

A. Yes.

Q. The information statement was, indeed, sent to the company's shareholders, was it not, sir?

A. Unless I've got this wrong, my recollection is it was sent about a year and a half later than it was supposed to be sent, yes.

In other words, the one that's contemplated here was to be sent in the time frame, if I recall, of April/May '98.

We ultimately, I believe, did not send that information statement until the end of -- I want to say 2000. '99 or early -- the end of '99 or early 2000, if I recall.

Q. Let me show you what's been

NOT A CERTIFIED COPY

016318

marked as MS-130.
(Exhibit MS-130 for identification, Document dated 3/18/98.)
Q. Sir, do you have MS-130 in front of you?
A. Yes.
Q. And you'll see that it's dated March 18, 1998 on the last page.
A. Yes.
Q. And is it your testimony, sir, that this was not sent to the shareholders? And I have the EDGAR filing list if you need to see it --
A. I mean, my recollection is that the -- maybe it's the proxy statement that never went to the shareholders, but that the shareholder piece was put on hold for a year and a half.
The information -- if you say it went out, then it went out. I didn't recall.
Q. Would you like to see --
A. Well, the meeting that it was referring to -- the point is that this was

an information statement that was leading to a meeting at which the shareholders would vote.
Q. No. It's just the opposite.
The shareholders don't vote on this one. That's the point of an information statement.
A. That's correct, but they also -- there was a registration statement, excuse me.
They got this and then there was a registration statement to issue stock which would have completed the merger. That never got done. I forgot that this had been filed, and until I see it now, you tell me that it was filed.
Q. I kept interrupting you and for that I apologize.
Just so the record is clear, you've got MS-130 in front of you, and what it is, is the Section 14(f) information statement, which I will represent to you, if you check the SEC filings, it was indeed filed with the

Securities and Exchange Commission. I believe the filing date is --
A. It says "March 18, 1998" on the bottom of it Section 14(f).
Q. You're familiar with EDGAR, right?
A. Yes.
Q. Let me show you what's being marked as Exhibit 248.
(Exhibit MS-248 for identification, Document filed with Securities and Exchange Commission.)
A. Okay.
Q. Would you, sir, please turn to page 2 of the document under the date of -- there's one filed by Coleman and one filed by Sunbeam at the entries for 3/18/98, SC14(f)1. Do you see that?
A. Yes.
Q. Now, does that, sir, mean that The Coleman Company filed the document we have marked as MS-130 with the Securities and Exchange Commission of the United States of America on March 18, 1998?

A. I assume so. I don't know.
Q. Would you assume that to be true, sir, based as general counsel of The Coleman Company on this date?
A. I assume from looking at the EDGAR report and this document that it was done; but as you know, I testified that I did not recall it being done at that time.
MR. BRODY: Objection as asked and answered.
Q. Now, sir, one of the comfort letters that the company -- that is, that Coleman was to provide to Sunbeam, was a comfort letter from Ernst & Young as of the date on which the information statement was mailed to the company's stockholders, which was March 18, 1998.
Did that happen?
A. I don't know.
Q. Well, who --
MR. BRODY: I'm sorry, object to form, by the way.
Q. Who at the company, either within, as an employee or an advisor, was

NOT A CERTIFIED COPY

016319

Page 186

responsible for using the company's best efforts to cause to be delivered to Sunbeam the comfort letter identified in section 7.3-A as of the date the information statement was mailed to the company's stockholders March 18, 1998?

A. I don't recall. It could have been me. It could been have been Steve Isko. It could have been Joe Page, the CFO. I don't recall.

I know that you've shown me one today that's dated March 20th. I don't recall if another one was issued for March 18th or not.

Q. Now, turn to paragraph 7.3(b) of MS-117 and tell me when you are there.

A. I'm there.

Q. That paragraph is, if you would compare -- let me back up before we do sub-paragraph (b).

The second comfort letter that is referred to in section 7.2(a) of MS-117 is to be dated as of the effective date of the registration statements.

Page 187

Do you see that, sir?

A. Let's go back a step.

Q. Sure.

A. (a) --

Q. We're on (a).

A. (a) is when the information statement is mailed to the company's stockholders -- and I do not know.

With the EDGAR report it shows when it was filed with the SEC. It doesn't show when it was mailed to shareholders.

We know that there was a comfort letter issued on the 20th, so it talks about a date when the registration statement is effective, and I think the registration statement that's being talked about here is not the registration statement for the debt, it's for the stock to be issued, and it talks about as of the date of which the statement is to be mailed to the shareholders.

Q. All I'm referring to now, I was going to ask you a question about the

Page 188

registration statement.

Here's the question:

The registration statement that is referred to in paragraph 7.3(a) is the registration statement for the securities that were going to be issued by Sunbeam --

A. Correct.

Q. -- as part of the merger consideration, correct?

A. Yes.

Q. Because there are two registration statements, and I want to separate that from the bond registration statement. Now, let's look at 7.3(b).

If you'll tell me when you are there, I'll proceed.

A. Yes, I'm there.

Q. Would you agree with me, sir, if we can shortcut this, that paragraph 7.3(b) is a reciprocal paragraph to 7.3(a)?

A. It would appear to be.

MR. BRODY: I will object to the form of the question. Were you done

Page 189

with the question?

MR. BEMIS: Yes.

MR. BRODY: I'll object to the form of the question.

Q. I think your question was they appear to be, sir?

A. It's interesting. One of them is 7 lines long, one is 6 lines long -- one of these, 7.3 is 6 lines long, 7.3(b) is 7 lines long, so I didn't -- if I read them next to each other I could see what was different.

I believe that they're similar, yes.

Q. Now, did The Coleman Company, Inc. receive from Arthur Andersen, L.L.P., Sunbeam's independent public accountants, a comfort letter dated on or about the date that the information statement, MS-130, was mailed to stockholders?

MR. BRODY: Object to the form of the question.

A. I don't recall.

Q. Did The Coleman Company receive

NOT A CERTIFIED COPY

016320

Page 190

from Sunbeam the comfort letter dated on or about the date of the information statement, which is March 18th --

MR. BRODY: Asked and answered and same objection.

MR. BEMIS: I haven't finished the question.

MR. BRODY: Sorry.

I thought you were.

MR. BEMIS: No, I hadn't finished. Now I'm going to repeat it.

Q. At any time did The Coleman Company receive from Arthur Andersen, L.L.P. a comfort letter addressed, as indicated in paragraph 7.3(b), in connection with the transactions contemplated by the merger agreement, MS-117?

MR. BRODY: Asked and answered and same objections.

A. I took your first question to relate to the information statement.

Q. And you had answered that. Now it's related to at any time --

Page 191

A. Well, my recollection is because I was involved deeply in the second piece, my recollection is that when we finally filed the registration statement, which was somewhere around a year and a half later, we then got a letter from Arthur Andersen -- a comfort letter -- that gave comfort with regard to the '97 financial statements as restated, by that time.

So there was a comfort letter at that time. I don't recall whether it was a comfort letter in the March time period. It was given to Coleman.

Q. I'm going to ask the question, and I think you've answered it because we didn't have some dates. I want to make sure the record is clear.

At any time up until the closing, March 30, 1998, did The Coleman Company receive from Arthur Andersen, L.L.P. either one of the comfort letters that are referred to in section 7.3(b) of MS-117?

Page 192

A. I don't recall receiving it.

MR. BRODY: Now, since the question and answer came too soon, I would object to the form and foundation of the last question.

Q. Did The Coleman Company request from Sunbeam the comfort letter or letters specified in section 7.3(b) before the closing on March 30, 1998 of the merger transaction?

A. I don't recall.

Q. Did any company affiliated with The Coleman Company, Inc. -- and I'm going now upstream -- CLN and Coleman Parent Holdings, any of the MAFCO entities -- request from Sunbeam that Arthur Andersen provide the comfort letter or letters specified in section 7.3(b) of MS-117 before the closing of the merger agreement on March 30, 1998?

MR. BRODY: Same objection.

A. I don't recall.

Q. Did Sunbeam or any representative of Sunbeam tell The Coleman

Page 193

Company that Arthur Andersen would not provide the comfort letters provided in section 7.3(b) as of the dates specified before the closing on March 30, 1998?

A. 7.3(a) and (b) talk about a comfort letter to be provided at the time of mailing of this document.

I don't know when or if this document was mailed. We have not discussed that today, and if it was not mailed prior to the date that you have mentioned, March 30 or 31st, then the comfort letter would not have been provided or requested.

So unless we establish -- if you tell me that this was mailed prior to March 31st, then the comfort letter should have been issued under the agreement and we can start to track down why it was not -- why I don't recall it.

But if it was not mailed in that time frame, the comfort letter was not supposed to have been issued and would not have been issued.

NOT A CERTIFIED COPY

016321

Page 194

Q. Would you please answer my question, and I can show it repeated to you, and I'm not quarreling with you. I just want you to answer my question.
A. The reason I can't answer your question is that the agreement provides that we would request and get a comfort letter at a point in time that relates to a mailing.
I can't answer a question as to whether we requested it, because I don't know whether we mailed it. It would have been inappropriate to ask for it if we weren't mailing.
Q. Is it your testimony, sir, that your recollection is that you didn't send MS-130 to the stockholders after the information statement was filed with the SEC?
A. I don't recall.
Q. I didn't ask you whether you recalled.
Is that your understanding of what happened?

Page 195

A. I don't know. I mean, I would assume that the lawyers in the room who have been working on this for whatever number of years have pulled all the documents and you guys do know.
I don't remember.
Q. Okay, let's go back to my question.
Did anyone from Sunbeam, whether it be Sunbeam employees or their advisors, tell The Coleman Company or its representatives before the closing on March 30, 1998 that Arthur Andersen, L.L.P. would not provide either of the comfort letters specified in section 7.3(b) of MS-117?
A. If this was not mailed at that time, nobody would have asked the question, so --
Q. I'm not worried about whether the question was asked.
A. That's like asking me -- look, here's the point.
The comfort letter had to be

Page 196

dated contemporaneously, approximately with the mailing, so you would not ask for it except around the time of the mailing itself.
Q. Wasn't the mailing a condition of the closing, sir?
A. I don't recall.
Q. Do you want to look at the document, sir? Or do you want me to do it for you?
A. It would be helpful if you would direct me to the place in the document where it shows that -- again, sir, I'm testifying as to something that you probably have studied and that I did seven years ago.
So if you would tell me where that was a condition, or whether this was mailed, it would help me answer the question.
I don't recall if this was mailed. I've made that clear.
Q. Sir, I'm not here to testify for you, and if you just answer my

Page 197

questions, you can qualify them with saying that you don't know whether it was mailed, if you wish.
My question is --
A. I've said to you that I don't recall that we made a request for the comfort letter; and therefore, if we had not made a request, then I certainly wouldn't recall that it was denied, that the request was denied.
Q. So as I understand your testimony, you have no recollection --
A. I testified, sir.
I would appreciate if you not summarize my testimony. I gave a statement. The statement stands on the record.
Q. Now I'm going to ask you a question and you can either answer it or you can decline to answer as your counsel or you decide.
Is it your testimony that you do not recall Sunbeam ever telling you, either directly or through one of its

NOT A CERTIFIED COPY

016322

representatives before the closing on March 30, 1998 of the merger transaction that Arthur Andersen, L.L.P. would not provide the comfort letter or letters provided in section 7.3(b) of the merger agreement, MS-117?

MR. BRODY: Objection to form.

A. I don't recall discussing the subject.

MR. BRODY: Objection to form. Asked and answered.

Q. Do you consider, sir, as the general counsel of the company that the comfort letters specified to be exchanged in section 7.3 of MS-117 were important to whether the deal closed?

A. The information statement and the issues that floated around it were largely handled for us by Wachtel Lipton, and I simply don't recall seven years later what the mechanics were.

Q. My question is not about mechanics now.

My question is simply whether

the comfort letters were important -- or if you prefer the word "material" -- to the closing of the transaction on March 30, 1998?

MR. BRODY: Object to the form.

A. I have said I don't recall, and the reason that -- and you're making this extremely difficult as a witness, because you have taken great pains to show me other comfort letters that were issued around this time.

For some reason, neither the Arthur Andersen comfort letter nor the Ernst & Young comfort letter have been shown to me.

That indicates either that you've chosen not to show them to me or that neither of them was requested, meaning that for some reason the information statement was not mailed in that time, and I don't remember from seven years ago which of those things was relevant or happened.

Q. Did you ask whether the comfort

letters from Arthur Andersen, L.L.P. had been provided to The Coleman Company before the transaction contemplated by MS-117 closed on March 30th?

Did you ever ask anyone?

MR. BRODY: Object to the form.

A. I don't recall. I don't recall.

Q. Was it important to you?

A. I don't recall.

MR. BRODY: We've been over this several times --

Q. You don't recall whether it was important to you?

A. What was important to me was to get the transaction closed, and we did close it. So we must have met at that point whatever conditions we and the other side deemed were important. That's all I can say today.

Q. When was the first time that you had any discussions with -- do you need a break?

MR. BRODY: I'd like to take a

break, because I haven't had one. I think the court reporter needs one, too.

MR. BEMIS: Okay. That's why I asked.

MR. BRODY: Before you go off the record, it's 4 o'clock.

Are we going until 5?

MR. BEMIS: Yes. We said we'd quit at 5. I didn't say I would be done -- I'm going to try to finish.

MR. BRODY: We'll take 5 minutes and then we'll come back and finish.

THE VIDEOGRAPHER: The time is 4:04 and we are off the record.

(A recess was taken.)

THE VIDEOGRAPHER: The time is now 4:10 and we are back on the record.

Q. Sir, would you look at MS-130 and just read the first couple of lines into the record for us.

A. Could I just take a minute?

I'd like to look back at another document.

NOT A CERTIFIED COPY

016323

Page 202

Q. If you're looking for the conditions of closing, I'm going to cover that with you, so we'll get there.

Let's focus right now on MS-130. Look at the first paragraph, where it says, "This information statement is being mailed on or about March 18, 1998 to holders of record as of March 18, 1998 of shares of common stock" -- et cetera -- "of The Coleman Company, Inc.," correct?

A. Yes.

Q. Now, would you have filed this statement with the SEC, that is, The Coleman Company as indicated by the EDGAR filing that we reviewed, if the company had not, indeed, mailed the information statement required by Section 14(f) of the Exchange Act of 1934?

A. When you said "you file," I do not think we as a company would have filed this unless it was our intention to mail on or about March 18th, when we file.

Q. Now, you had asked me where we had gotten off onto the conditions of the

Page 203

closing.

Please look at MS-117 at 35, page 35. Tell me when you are there.

A. Uh-huh.

Q. You have to say yes or no.

A. Yes.

Q. Thank you.

I direct your attention now to Article 8, "Conditions to Consummation of the Merger," and sub-paragraph(a) in particular. Do you see that paragraph?

A. Yes.

Q. And does that not indeed provide that one of the conditions of the closing is that there be the mailing of the information statement to the company's stockholders and that the period required by law -- which I believe is 20 days -- had lapsed?

A. Again, this was a long time ago, but I don't think this is a condition to the closing.

The closing is what we talked about taking place on March 30th.

Page 204

This is a condition to the merger of the two companies. The merger did not take place at the closing.

At the closing, Sunbeam acquired 80 some percent of the stock of Coleman.

To effect the back end merger, it had to go then through the merger, including granting appraisal rights to the minority shareholders, exchanging stock, et cetera. That did not take place in the March 31st timetable, and it was expected to not take place for another six to eight weeks, so it was expected to be consummated sometime, let's say, in May.

And, in fact, that's why I was saying it did not take place until about a year and a half later. There was no question that the registration statement was not going to become effective. It was never thought that that would become effective by March 31st, so it couldn't have been a condition of the closing you were talking about in March 1998.

Page 205

Q. I'm only referring now to the registration statement.

MR. BRODY: That's the answer. Ask another question.

A. What I'm saying to you is --

Q. Say whatever you'd like --

A. You've asked me a question and what I'm saying to you is section 8.1 does not, in my view, relate to the closing that you have referred to.

It relates to the consummation of the merger of the two corporations which was intended to take place at a later date.

Q. Well, let me ask you this --

A. And under no circumstances does it say that by the closing date this document, 130, had to have been mailed to the shareholders.

As I said, it may have been, but this is saying that before the merger takes place, this document has to have been mailed to the shareholders.

I don't recall, for example,

NOT A CERTIFIED COPY

0163244

Page 206

sitting here today, whether the information statement had to be -- this replaces, because there was an 80 percent shareholder, a normal proxy statement.

I don't recall whether this has to be filed with the SEC and have a review period or not. I just don't remember anymore.

Q. Let's talk about the discussions leading up to your signing the merger agreement, MS-117.

When is the --

A. The merger agreement? MS-117. I did not sign the merger agreement.

Q. Maybe I misspoke --

A. I'm sorry, yes. I was looking at the other document. Yes.

Q. Because the record is a little garbled, just so we're clear, you did sign the merger agreement, MS-117?

A. Well, there are two agreements.

Q. I know, sir, but I said 117.

A. Yes, 117 I signed.

Q. That's the only one I'm talking

Page 207

about with you.

A. Okay, yes.

Q. When is the first time that you had any discussions with anyone about a possible transaction involving The Coleman Company and Sunbeam Corporation?

A. Sometime, if I recall, in December of 1997.

Q. Did you look at any documents in your preparation that refreshed your recollection of when this first discussion took place?

A. Yes, but I remembered without -- I remembered it within a few days without having looked at those documents.

Q. Is it the chronology that we talked about earlier, which is MS-75, prepared by Wachtel and given to the SEC?

A. No. My recollection, sitting here years later, was the first time that I became aware was in connection with a meeting that was held, which I attended -- I had recalled it in mid December. I believe now it was December 12th.

Page 208

In preparation for the deposition I saw that I had signed -- and you showed me today -- an engagement with First Boston a couple of dates before that. I frankly did not remember it having been before the meeting.

Q. Were your first discussions involving any type of transaction with Sunbeam in connection with hiring CSFB as your investment advisor?

A. My recollection of the events started with the meeting that took place, I believe on December 12th. Now, I must have known about the meeting a few days ahead of time or it wouldn't have been on my schedule.

But I did not recall and do not recall today being aware of this transaction more than a few days, a week, ten days, something like that, before the meeting of December 12th.

Q. December 12th you recall having a meeting.

Can you tell me who was present

Page 209

at the meeting?

A. My recollection is that from Coleman it was Jerry Levin, the CEO, Joe Page, the chief financial officer, and myself.

And from Sunbeam it was Russell Kersh, the chief financial officer, David Fannin, the general counsel, and a member of the board, Peter Langerman, who also represented the largest then Sunbeam shareholder.

Q. Where was this meeting?

A. The meeting was at 625 Madison and it was in a conference room next to Jerry Levin's office.

Q. Is this the meeting that is identified in the first paragraph of Exhibit A to MS-75 to the right of the date, December 12, 1997?

A. Yes.

MR. BRODY: Object to form.

A. Yes -- did you say MS-97 or MS-75?

Q. I said MS-75, according to the

NOT A CERTIFIED COPY

016325

Page 210

transcript.
A. Yes. I believe it is.
Q. And did you have advance notice of the meeting?
A. As I said to you, I don't remember having advance notice but I must have, because I don't remember being shocked walking in the conference room, but I don't think it was a great deal in advance.
Q. What was the subject matter of the meeting?
A. My recollection is, it was to be sort of a meet and greet and a very informal starting discussion of -- they wanted to ask us some questions about Coleman and what kinds of ideas could we float around about possible synergies that might exist if the two companies were merged.
Q. Who requested that meeting?
A. I don't know.
Q. Who invited you to the meeting?
A. I think Jerry Levin.

Page 211

Q. Do you recall what, if anything, Mr. Levin said to you about the subject matter of the meeting?
MR. BRODY: Before the meeting?
MR. BEMIS: Yes, before the meeting when he got invited.
A. Only what I just testified to, that it was kind of a meet and greet and we would discuss some possible synergies and I think Jerry sensed -- that he conveyed to me was that he did not think this was likely to really get to a deal.
Q. Did you prepare any documents for the meeting?
A. I don't recall.
Q. In your preparation, did you see any documents that were discussed at the meeting?
A. There was a one- or two-page list of synergy ideas that I saw, but I don't remember if I saw it before the meeting or at the meeting. I know I saw it at the meeting. I don't recall if I saw it before.

Page 212

Q. Let me show you what we'll mark as MS-231. I'm going to hand to you what the court reporter will mark as MS-231.
(Exhibit MS-231 for identification, Document with handwriting.)
Q. Do you have MS-231 in front of you, sir?
A. Yes, I do.
Q. Is this the document that you were referring to that you either saw at the meeting or before the meeting?
A. I saw a document like this. I can't remember today if this was the only -- the exact iteration and whether the numbers added up right, but it was a document like this.
Q. Who prepared the document that you saw at the meeting like MS-231?
A. I did not prepare it, and I believe it was prepared by Jerry Levin and Joe Page, and I don't know who else might have helped them.
Q. What is it that makes you

Page 213

believe that the document like MS-231 was prepared by either Mr. Levin or Mr. Page?
A. Well, I remember Mr. Levin's involvement, I mean, I remember him working on this; and Mr. Page, as CFO, was, I'm sure, involved in helping him.
Q. Can you identify the handwriting on MS-231?
A. It's not mine, and I don't believe it's Jerry Levin's. I'm not really familiar with Joe Page's handwriting.
Q. Given the attendees at the meeting -- recognizing that you may not be able to testify with certainty as to his handwriting -- what is your belief, if any, as to whose handwriting it is?
A. It was one of the other four people other than Jerry Levin or me, is all I can say.
Q. Fair enough.
Let me show you another copy of this document, which is MS-78, previously marked.

NOT A CERTIFIED COPY

016326

Please take a look at MS-78, which I've just put in front of you.
Do you have that, sir?
A. Yes.
Q. Just turn to the second page, and my question is, do you know whose handwriting is on this document?
A. No.
Q. Do you have any idea?
A. Again, not Levin's, not mine; and given the front page, probably not Page's.
Q. You can set MS-78 aside for the time being. I'm going to show you a document marked as MS-177.
(Exhibit MS-177 for identification, Document with handwriting.)
Q. Take a look at that.
My only question is, whose handwriting is it, if you know?
A. Not mine. Not Jerry Levin's.
As I read some things in here, I would assume it was one of the Sunbeam

people's handwriting, because as an example, the very last item on the first page is something that -- Coleman for Kids exclusive to Target is something we knew about, so we probably wouldn't have written that in notes.
Somebody from Sunbeam probably didn't know it, therefore they would have taken the notes.
Q. You can set that aside. We'll come back to that.
I'd like you to take MS-231 from your exhibit pile and put that in front of you and I have a couple of more questions about that.
Other than Mr. Page and Mr. Levin, are you aware of any other person who may have assisted in the preparation of this?
MR. BRODY: Object to form.
A. No.
Q. And do you know what analysis, if any, was done to arrive at the numbers that appear in the column to the left of

the document totaling $150.5 million?
A. Well, I'd have to go item by item to answer that, but if you look at the first item, we had given a third-party license to Charbroil with regard to outdoor gas barbecue grills as opposed to cooking stoves.
And whoever wrote this, Jerry or Joe, assumed that given Sunbeam was in that business directly, and that I guess it had seen that Sunbeam claimed a margin of 20 percent on those products, or Charbroil -- I don't know where he got the 20 percent -- that you could take the sales that Charbroil was making that year, which I guess he thought was 75 million, put a margin in of 20 percent. You'd get to 15 million. Deduct the royalties that we would no longer get.
I should add, the license was about to expire. We were in the process of negotiating a renewal when this transaction occurred, so I think he assumed, well, they wouldn't renew it.

They would pick up the business, add it to their business, and this is $13 million of margin that you could obtain.
Then he went to the next one, synergies --
Q. Can I ask a question about the last one?
Why, if the license was about to expire, would you subtract the 2 million?
A. When I said it was about to expire, Charbroil wanted to renew and we wanted to renew.
So if you were looking at -- what you were saying is today we get 2 million in margin off of that business in royalties. If you take it over and get 15, then you're going to get a new 15 minus the 2 we were already getting. It's additive to the amount of 13, okay?
Q. I got you.
A. Then the next thing was Camping Gas barbecues. Camping Gas was a French company that made -- the premiere camping

NOT A CERTIFIED COPY

016327

Page 218

equipment company in Europe -- and they also made barbecue grills that were sold in Europe.

So whoever wrote this was saying, "Maybe between the Sunbeam brand, you guys make barbecue grills, we don't make them except in Europe. There are some synergies there that would allow us to save money on the -- pick up another 10 percent of margin on the Camping Gas barbecue grills."

Q. If you go back up to the first item, there's some handwriting to the right that it says, "SOC believes," it says "10M," which I read as 10 million.

Do you see that writing?

A. Yes.

Q. Did someone at the meeting on behalf of Sunbeam make a statement like that?

A. I don't recall. I don't recall because, again, I don't know -- the only person on our side whose handwriting this might be, I've testified to, is Page.

Page 219

It appears it was written by somebody on the Coleman side, because with the comments. So I suppose Page was taking notes, and for whatever reason somebody on the Sunbeam side said, "We think this will only be 10 million, not 15 million."

Q. If you would continue and look at the third item, which is "Corporate Staff" of $15 million, can you tell me what analysis, if any, was done to arrive at that number?

MR. BRODY: Objection to form and foundation.

A. Again, the best people to ask would be Jerry Levin and Joe Page, but they were aware that Dunlap ran the business very differently than the way we ran a business.

And so it was their understanding that if Dunlap took this business over, as opposed to having corporate staff in a lot of different locations, he would centralize it in one

Page 220

place. And they just estimated based on what Coleman's corporate overhead was that you could cut out approximately -- it was a guesstimate, I think, $15 million of Coleman overhead by putting it on the Sunbeam backbone.

You weren't going to have two public companies, for example, you wouldn't need to duplicate two financial staffs, et cetera.

Q. Turning to item 4, can you tell me what "International Group Staff" refers to?

A. Yes.

We at Coleman had international businesses in Europe, in Latin America, in Japan, and there were specific staffs devoted to those in Europe, in Japan and in Miami, if I recall, for the Latin American group.

There may have also been staff in Argentina and somewhere else. I can't recall anymore.

Then we also had a staff in New

Page 221

York that we called ROW, rest of world, and that staff covered the rest of the world where we didn't have our own subsidiary, we were operating generally through distributors, and did some overseeing of the local staffs that were in those other three places.

They also had an international group, and I think somebody was estimating that you didn't need both staffs and that you could -- their staff could oversee what our staff was overseeing for Coleman at the same time they were overseeing Sunbeam.

Q. The fifth item, "Latin America Staff," can you briefly describe what that is referring to?

A. Yes. We each had a staff for Latin American markets.

Sunbeam had a brand called Oster. The Oster brand was very popular in parts of Latin American, Venezuela and other parts.

The business was generally

NOT A CERTIFIED COPY

016328

Page 222

staffed out of Miami as well as some local people. We, as I said, had a Miami staff that ran our Latin American business, so somebody was proposing that maybe we can get rid of one of our Latin American staff in Miami and just run off of their backbone.

Q. Item 6, I think, is "C Europe Networks Sells S Products," is that right?

A. Yes. The idea there would have been that Sunbeam didn't really have presence in Europe.

We had presence in Europe through our Camping Gas subsidiary, and I don't recall if we had anything else in Europe.

And the idea was, could we -- because we already had a distribution network in Europe, could we begin to introduce Sunbeam products in Europe using the Coleman backbone, in effect.

And the number -- whoever did this just made a guesstimate. Might be a $100 million of sales at a 20 percent

Page 223

margin, so that would be $20 million that you can bring in.

Q. Does the "C Europe" refer to Coleman Europe?

A. Yes, I think so.

Q. And the "S" refers to Sunbeam?

A. I would assume so.

Q. So the idea here is that the Coleman Europe sales network would sell Sunbeam products which --

A. Might, might.

Q. Understood. It might.

And that might result in $100 million in sales at a margin of 20 percent?

A. Correct.

Q. The next item is item 7.

A. Same thing for Japan. They had no presence in Japan. We had a full subsidiary in Japan. It was our second biggest camping market in the world of Coleman product.

And the idea was, could we introduce Sunbeam products in Japan

Page 224

running it off of our backbone.

Q. So, again, the "C" refers to Coleman and the "S" is for Sunbeam, right?

A. Yes.

Q. The next item, which is item 8, "Factory Outlet Staff," what does that refer to?

A. Each of the companies had factory outlet stores, the purpose of which, as a general matter, to get rid of excess and obsolete inventory.

And we had stores in various parts of the country. They had stores in various parts of the country, and we each had a small headquarters staff to run those units; and the theory was, couldn't one of those staffs run both units.

Q. Item number 9 is "S Catalytic Appliance Line." What does that refer to?

A. Coleman had a line of heaters called catalytic heaters.

They were very efficient heaters that did not, if I recall -- produced no or very little carbon monoxide

Page 225

which was important, because they could be used in enclosed spaces for a limited amount of time.

It was a very advanced burning technique; and the question was, since Sunbeam made products -- some products that heated, could you take the Coleman know-how in catalytic appliances and create some Sunbeam appliances. If you'll notice that was a small number, but it was an idea.

Q. The tenth item is, "Consolidate Division HQ to DBF."

Did I read that correctly?

A. Yes.

Q. What does that refer to?

MR. BRODY: Objection to form and foundation.

A. I guess that means -- we had three divisions in the United States that had headquarters in remote locations.

East Pack, which was a backpack company, was headquartered outside of Boston; PowerMate, which made portable

NOT A CERTIFIED COPY

016329

Page 226

generators, electrical generators, was headquartered in Nebraska; and Coleman Outdoor Recreation, which was the biggest piece of this, makes the camping equipment, was headquartered in Wichita.

And the idea there was, could you consolidate all of their divisional headquarter staff to -- I guess "DBF" is Del Ray Beach, Florida.

Q. The eleventh item is, "Consolidate Domestic Sales Forces."

Can you briefly explain for me what that means?

MR. BRODY: Objection to form and foundation.

A. Again, Dunlap, in his public appearances and his books and so forth, professed the idea that as you acquire brands and so forth you could -- you would pick up huge efficiencies in sales staff so that you had a person calling on Wal-Mart, for example -- since you have a consolidation at retail, you have a person calling on Wal-Mart.

Page 227

We had a lot of common distribution between the companies. Wal-Mart, K-Mart. Target, in particular, and to some degree, Home Depot. Grills for Sunbeam and flashlights, and certain other things, and grills for Coleman.

The question was, could you take the sales backbone and put more products on it without having to duplicate the sales staff. Consistent with the Dunlap philosophy, you theoretically could.

Our own philosophy I don't think thought you could, but if they bought our company, they would have used their philosophy, and this was a proposed saving that might occur if that happened.

Q. What is item 12?

A. Coleman had what was referred to as a Legacy computer system, which, as I understand it, means it's old and a lot of it is custom-made for Coleman.

As we had acquired other companies, on the one hand; and on the other hand, given that we and all other companies were facing the Y2K issue, we had pretty much concluded that what we were going to do was to put in what's called an Enterprise ARP system -- an Enterprise computer system, which is an integrated computer system that does everything from the factory to the accounting.

Page 228

And we had decided that it would be an Oracle system, and we had gotten far enough to estimate that the expense of that system would be $20 million. We had spent some money with Ernst & Young's consulting group to work on that system.

Sunbeam had already put in an Enterprise system in early 1996 or '7, JD Edwards' system.

And so the person writing this was assuming that we could eliminate the Oracle system and just spend some money converting Coleman over to the JD Edward's system.

Page 229

Q. What is item 13?

MR. BRODY: Objection.

Form, foundation.

A. I don't know.

Q. What is item 14?

A. Well, everybody always believes that if you're in a lot of different businesses, you can create a global sourcing system.

So that, for example, you're buying plastic for blenders, irons, toasters and other products at Sunbeam, and at the same time you're buying a lot of plastic for products such as coolers at Coleman. You're buying metal, raw steel for Coleman camping equipment. You're buying raw steel for appliances that Sunbeam is making, and you're making these things in various places all over the world.

And so managers always believe that if you can put more of that stuff together, you can buy it better, and that was the idea here.

NOT A CERTIFIED COPY

016930

Page 230

Q. What is item 15?
MR. BRODY: Objection to form and foundation.
A. Again, the Dunlap theory of business involves consolidating warehouses and logistics, meaning transportation and material movement and so forth.
And the theory is that, again, if you're shipping -- if you can consolidate what's going to K-Mart between more -- put more business at K-Mart, you have more full truckloads, you can operate out of fewer warehouses.
So that, for example, if I need 100,000 foot warehouse for something and they need a 100,000 foot warehouse, even if you need 200,000 feet, the cost of operating -- the people cost of operating 200,000 feet is much less than twice 100,000 feet, so consolidating facilities was estimated might save as much as $10 million.
Q. How long did the meeting on December 12th last?

Page 231

A. I don't know. I would guess maybe a couple of hours.
Q. Other than MS-231 that you're looking at and people's notes on the same document, were there any other documents that were discussed or handed out at the meeting?
A. There were other things discussed. There was nothing else handed out that I can remember.
Q. As an example, was there any supporting material ever prepared for any of the 15 items on MS-231?
A. Not that I recall.
Q. Did someone lead the discussion on behalf of The Coleman Company at the meeting? For example, Mr. Levin or Mr. Page?
A. Yes -- I think Jerry led it. I don't know, on some of these items Joe may have taken the lead. I don't recall. I did not. That's for sure.
Q. Was there someone who took the lead on behalf of Sunbeam at the meeting?

Page 232

A. Russ Kersh did.
Q. He was the most senior Sunbeam person attending the meeting, right?
A. Well, I mean, Peter Langerman was a director, so he kind of -- he kind of at a social level took the lead.
Fannin was a lawyer, like myself, and less involved in day-to-day operations. I think in terms of seniority he's older than Russ, but Russ was the senior of the two as an officer. He was for all intents and purposes the number two guy at Sunbeam -- yes, at Sunbeam.
Q. Did CSFB, who, at least according to the retention letter had been retained a couple of days earlier, have any input into the preparation of the document MS-231?
A. I don't recall. Jerry Levin would be more likely to know than I.
Q. Do you recall whether there were any earlier versions of MS-231?
A. I don't recall.
Q. I'm going to show you what the

Page 233

reporter will mark as MS-228.
(Exhibit MS-228 for identification, Document with handwriting.)
Q. Do you have MS-228 in front of you?
A. Yes, I do.
Q. Do you know whose handwriting is on this document?
A. No. It's not mine. I don't think it's Jerry's.
Q. Reading any of the comments that you can read, can you tell me if this document appears to have been prepared by either someone from the Sunbeam side or the Coleman side?
MR. BRODY: Which, the handwriting or the typed document?
MR. BEMIS: The handwriting. Just the handwriting.
A. I would think the Sunbeam side because, for example, on number 2, it says -- actually, I don't know. I don't know. It says something about "assembling third

NOT A CERTIFIED COPY

016331

Page 234

party in Europe." I don't know. I can't read enough of the writing to know.
Q. Okay. You can set that one aside.
Did you have any follow-up discussions with Sunbeam about the issue of synergies between the two companies?
A. Did I?
Q. Yes, sir.
A. Not that I recall.
Q. So am I correct that the only meeting that you attended where Sunbeam was present and the subject of synergies to be achieved or possible to be achieved between the combination of the two companies was the December 12, 1997 meeting?
A. With Sunbeam present, the only other meeting that I recall would have been the meeting at Morgan Stanley the week that we signed the agreement, and I don't recall if synergies were discussed at that meeting or not.
Q. I'm going to hand you what was

Page 235

previously marked as MS-77 which is entitled, "Sunbeam Corp./The Coleman Company, Inc. Proforma Combination Analysis, December 10, 1997," and it appears to be on the stationery of Chase Securities Inc., no comma.
Do you have that in front of you?
A. Yes.
Q. First of all, have you ever seen that document before?
A. I never saw it until preparation -- I don't recall ever seeing it until preparation for my deposition.
Q. What, if any, involvement did Chase or Chase Securities Inc. have with the Coleman/Sunbeam transaction?
A. I don't recall any involvement, so this may have been a presentation that was made to the Maher/Nesbit team or to Jerry Levin before CSFB was retained, but I don't know what else it would be.
Q. I'm just going to show you this real briefly.

Page 236

I've handed you what's been marked as MS-76 at a previous deposition.
Have you ever seen this document before? And if you turn to page 2, you'll just see there's a brief table of contents of some public documents --
A. I don't recall.
Q. -- and some research reports.
A. I don't recall.
Q. You don't recall seeing it?
A. No.
Q. You can set it aside. You can hand it back to me. We'll put it back in the file.
According to the chronology, you had a couple of meetings on December 16th and 17th of 1997 on the transaction, and I'm referring now to Exhibit A to MS-75, if you'd like to look at that to help you.
A. Yes.
Q. Turning first to the December 16th meeting, where was that meeting held?
MR. BRODY: Objection.

Page 237

Foundation.
Q. Let me back up then.
Were you present at the meeting as shown on that chronology?
A. I assume I was. I have no reason to believe otherwise.
Q. Do you have any recollection of the meeting whatsoever?
A. I mean, I remember having a couple of meetings. I don't remember the dates.
Q. Setting aside the date and looking at the attendees on the chronology prepared by Wachtel Lipton, do you recall the meeting itself even though you do not recall the date?
A. Yes. I mean, I recall some meetings.
Q. Now, referring specifically to this meeting which is under the date of December 16th, where did the meeting take place?
A. I'm surmising that it would have been at MacAndrews headquarters

NOT A CERTIFIED COPY

0163332

Page 238

because of who the attendees were.
Q. That being Mr. Perelman, among --
A. Yes.
Q. How long did this meeting last?
A. I don't recall.
Q. What was discussed about a potential transaction?
A. I mean, the most I recall -- and the two meetings don't stand out in my mind separately -- is that there was a meeting in which we probably replayed to them what had happened in the December 12th meeting, and there was just a general discussion about what a deal might look like.
Q. Well, at the meetings where you discussed, in general, what a deal might look like, what was discussed about what the deal might look like?
MR. BRODY: Before you go further on that, keeping in mind that he's counsel, are you attempting to seek his legal communications or legal advice?

Page 239

MR. BEMIS: I'm just asking what took place. If you object, you'll have to object.
MR. BRODY: Well, I'm going to object. Given the soft foundation as to when it was and who was there and what was discussed, I don't think I can instruct you not to answer the question.
But to the extent your communications include your communication of legal advice or communications of information to you seeking legal advice, you've got to say so and disclose that rather than the legal advice.
A. I don't remember a lot about those meetings. Just kind of a general discussion.
I don't recall anything that was terribly specific, much more like, how would you combine the businesses, where are they additive, what happens when you put the two of them together.
I don't recall anything terribly specific.

Page 240

Q. Do you recall whether the timing of these meetings, given that you don't remember the exact date and we're working off of the chronological, whether the deal was being discussed as a possible stock transaction, cash transaction, or combination of both?
A. I don't remember being aware of that kind of discussion at that point in time.
Q. Do you recall any documents being discussed at either of the two meetings?
A. No.
Q. Now, the next meeting that you are identified as participating in in the Wachtel chronology, MS-75, is a meeting on January 29, 1998, if you'd like to look at that.
My question is, did you attend a meeting on the 29th of January as set forth in the Wachtel chronology?
A. I can't remember that meeting, but I have no reason to believe otherwise

Page 241

having looked at the chronology.
Q. Now, looking -- we also looked at the notes which is, if you'll pull it out, is MS-177, multiple pages of notes.
A. Yes.
Q. Let me know when you have it.
Looking at the chronology and looking at the notes, and I think you told me earlier that you had thought it was someone from Sunbeam's handwriting based on some remarks at the bottom of the first page relating to -- I think, Coleman Kids, I think, was the reference.
Do you believe those notes were made in the meeting that is identified on the last paragraph of page -- it's page 2 of Exhibit A of MS-75?
A. Sir, what did you just say, page --
Q. Page 2 of Exhibit A --
MR. BRODY: We have too many things. You're asking if these notes were made at a meeting on January 29th?
Q. That's referred to on page 2 of

NOT A CERTIFIED COPY

016333

Exhibit A of MS-75.
A. I don't know. It's hard to tell.
These could also be notes from somebody like --
Q. Well, if you don't know, you don't know. That's fine. You've answered the question.
Let's focus then on what, if anything, you can remember about the meeting on the 29th.
What was the meeting about?
A. As I said before, I don't remember that meeting. If I had not seen the Wachtel Lipton letter, I would not have recalled that I attended this meeting.
Q. In the Wachtel Lipton chronology on the January 29th, it is stated, "They further discussed how the companies might proceed with due diligence and related matters if Sunbeam made unacceptable proposal."
Do you see that sentence?

A. Uh-huh.
Q. Yes or no.
A. Yes. I'm sorry.
Q. That's all right.
As of January 29, 1998, were you aware of any due diligence that had been performed by either Coleman or Sunbeam in connection with any proposed or contemplated or being discussed transaction between the parties?
A. I don't recall any. There had been some requests to me from David Fannin as a result of the December 12th meeting, which I punted one. I was told, "We don't know if anything is going to happen here. Just let it sit. Don't do anything at the present time."
So I did not respond to those requests. I don't remember making any due diligence requests of them. It is possible that the Maher/Nesbit team made some or that CSFB to Morgan Stanley made some.
I recall thinking at the end of

December that no deal was going to happen. Then I recall thinking in late January that something might happen. And then I recall thinking in early February that nothing was going to happen, and then all of a sudden it happened.
And that's sort of my recollection of that period in time, between the end of December and somewhere around February 23rd.
Q. So if we were to bring us current, then the next meeting that you can't recall whether Sunbeam was present or Sunbeam was not present, and just people from Mr. Perelman's companies were present would be February 23rd or so, 1998?
A. Whatever the Thursday is of that week. It would have been February 19th, I guess. The 27th was a Friday. That's the day we signed. So the 20th would have been a Friday. So the 19th, I would say.
Q. What happened on February 19th

of 1998?
A. Assuming it's a Thursday, my recollection is that I received a call early in the morning from Barry Schwartz of MacAndrews telling me that they believed that a deal was possible and that it was something that was going require a great deal of effort quickly and that I should come to a meeting, I should get dressed and get to a meeting that morning early for us to organize and catch up with each other and organize the effort to go do a deal.
MR. BEMIS: It's 5 o'clock. I told you I'd break at 5 o'clock and so why don't we break here, and we'll have to discuss what we're going to do to finish you, because I cannot finish even if we go another hour.
It's likely going to take, I'm guessing, my best estimate, and truly, it's an estimate, but I reasonably think we can finish you in a morning, and we can do it in Florida if you'd like.

NOT A CERTIFIED COPY

016334

Page 246

That's the best I can do for us right now since we said we'd quit at 5.
MR. BRODY: We'll take your request under advisement, and advise you whether we're willing to bring the witness back. We started late for reasons that you guys didn't have what you needed and weren't ready and --
MR. BEMIS: That's nonsense that we weren't ready.
We started all of about 15 minutes delayed as a consequence of some boxes not being here.
15 minutes wouldn't have made any difference of whether we completed the deposition, and I do apologize if Federal Express did not get here in time.
But I didn't schedule this deposition for New York. You insisted it be taken in New York. We could have taken it in Florida while we were there.
MR. BRODY: Can I finish?
MR. BEMIS: You may.
MR. BRODY: Thank you.

Page 247

We didn't start on time for whatever reason. You weren't in a position to start, and I understand you saying Federal Express didn't have your documents here, but we could have started with other stuff at 9:30.
In any event, I think a lot of time today has been wasted asking this witness things about documents and meetings that he has no knowledge of or did not attend, and we'll take your request under advisement.
I want to state one other thing on the record which is information I received today.
We offered to you Mr. Jones' deposition for Friday, I believe it was, of this week, and you did not want to go forward with that deposition on that day as scheduled.
I've been advised that Mr. Jones is having surgery and is going to be very difficult to schedule in the future.

Page 248

MR. BEMIS: When is he having the surgery?
MR. BRODY: I think within the next week or ten days. I don't have the information in front of me, but we'll do what we can on getting you a date.
MR. BEMIS: I will state for the record, if you want to make such a big deal of this, is that you scheduled Mr. Jones on a date when we had a case management conference in the case and we advised you.
When you do that, you make it extraordinarily difficult to go to West Palm Beach and Wichita simultaneously.
We're off the record.
MR. BRODY: No, we're not off the record, because I feel like I need to respond to that.
MR. BEMIS: I'm sure you do.
MR. BRODY: Yes, I do.
MR. BEMIS: Then go ahead and respond and let's get finished so the witness can leave.

Page 249

MR. BRODY: There is a case management conference on Friday, I acknowledge, but I also suspect there are more lawyers on your side of the case able to take Mr. Jones' deposition than will be in court on Friday.
MR. BEMIS: Well, when you start making decisions as to who takes depositions you let me know, and we'll put you on the payroll. But that's not your decision. That's my decision. Not yours.
THE VIDEOGRAPHER: The time is now 5:10 and we are off the record.
(Time Noted: 5:10 p.m.)

_____
PAUL E. SHAPIRO

Subscribed and sworn to before me this ____ day of ____ , 2004.

_____

0163335

NOT A CERTIFIED COPY

PAUL E. SHAPIRO
STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)
I wish to make the following changes,
for the following reasons:
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____
Page Line ___ ___
Change From: _____
Change To: _____
Reason:
_____

_____
PAUL E. SHAPIRO

Subscribed and sworn to before me
this___day of_____, 2004.
_____

CERTIFICATE

I, Linda J. Greenberg, Professional Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that, PAUL E. SHAPIRO, the witness whose deposition is hereinbefore set forth, was duly sworn and that such deposition is a true record of the testimony given by the witness to the best of my skill and ability.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 2004.

_____
Linda J. Greenberg

My commission expires: May 17, 2007

INDEX

WITNESS	EXAMINED BY	PAGE
PAUL E. SHAPIRO	Mr. Bemis	5

EXHIBITS

NO.	PAGE
(Exhibit MS-257 for identification, Mr. Shapiro's resignation from The Coleman Company, Inc.)	26
(Exhibit MS-252 for identification, Mr. Shapiro's resume.)	37
(Exhibit MS-258 for identification, Document.)	43
(Exhibit MS-253 for identification, Detail organization chart.)	49
(Exhibit MS-118 for identification, Agenda and minutes of board of directors meeting on 2/27/98.)	73
(Exhibit MS-117 for identification, Agreement and plan of merger.)	75
(Exhibit MS-120 for identification, Document dated 2/27/98.)	86
(Exhibit MS-166 for identification, Offering memorandum.)	95
(Exhibit MS-169 for identification, Letter dated 12/10/97 from CSFB to The Coleman Company.)	97
(Exhibit MS-134 for identification, Draft document)	119
(Exhibit MS-101 for identification, Document dated 2/23/98.)	121
(Exhibit MS-243 for identification, Document dated 3/20/98 from Ernst & Young to CLN Holdings Inc. and Morgan Stanley & Co., Incorporated.)	151
(Exhibit MS-130 for identification, Document dated 3/18/98.)	182
(Exhibit MS-248 for identification, Document filed with Securities and Exchange Commission.)	184
(Exhibit MS-231 for identification, Document with handwriting.)	212
(Exhibit MS-177 for identification, Document with handwriting.)	214
(Exhibit MS-228 for identification, Document with handwriting.)	233

NOT A CERTIFIED COPY

0163336

NOT A CERTIFIED COPY

016337

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA
----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendants.

----------x

JAMES ROBERT MAHER

New York, New York

Wednesday, November 3, 2004

Reported by: Steven Neil Cohen, RPR

Job No. 166520

NOT A CERTIFIED COPY

016338

November 3, 2004
9:00 a.m.

Continued Videotaped Deposition of JAMES ROBERT MAHER, taken by Defendants, pursuant to notice at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Attorneys for Coleman (Parent) Holding, Inc.
BY: ROBERT T. MARKOWSKI, ESQ.

KIRKLAND & ELLIS, LLP
777 South Figueroa Street
Los Angeles, California 90017
Attorneys for Morgan Stanley & Co., Inc.
BY: LAWRENCE P. BEMIS, ESQ.

KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.
BY: RYAN P. PHAIR, ESQ.

ALSO PRESENT: Steven Fasman
Ruben Martinez, Videographer

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

THE VIDEOGRAPHER: The time is 9:00 a.m. This is tape number one, volume 2 of the continuation videotaped deposition of Mr. James Robert Maher.

JAMES ROBERT MAHER,
called as a witness by the Defendants, having been previously duly sworn, testified further as follows:

BY MR. BEMIS:

Q. Good morning, Mr. Maher.

A. Good morning.

Q. Yesterday when we adjourned we had worked our way up date-wise to about I believe January 23 and I believe that if you look at the chronology, MS 75, which we looked at yesterday you will see a meeting on that date.

Did you -- you are not shown as attending that meeting with Mr. Stynes, Mr. Fuchs and Mr. Chang.

Did you recall Mr. Nesbitt giving you a report of that meeting?

A. The reason I am pausing, I don't -- I thought there was a meeting around that period of time which I at least

NOT A CERTIFIED COPY

016339

Page 220

spent some time in the meeting so I am not sure I wasn't -- there was a meeting with Stynes -- I guess there was a separate meeting but I think there was a meeting where Stynes came by. Maybe it is later.
Q. Just focusing on the meeting on January 23, was that the first meeting, even if you did not attend, that you recall occurring following Mr. Reid's telephone call earlier in the month of January?
A. I frankly don't recall. It is listed as the first meeting so I assume the chronology is correct.
Q. Did Mr. Nesbitt who has testified that he did attend this meeting tell you the results of the meeting on January 23?
A. I don't specifically recall him telling me. I also can't imagine that if this meeting occurred which it says it did that he wouldn't have told me.
Q. Let me show you what we have already marked as Morgan Stanley Exhibit 175.
A. I am just going to get some coffee.

Page 221

Q. Do you have MS 175 in front of you?
A. I do.
Q. Have you seen this document before?
A. I don't remember -- I don't specifically recall it but it looks like the type of document that Morgan Stanley would have put together at that time.
Q. On the first page, the first page where it refers to Laser specific, do you see the first bullet point which reads, Laser earnings projections based on I/B/E/S dated 1/21/98?
A. Yes.
Q. Would you tell the jury what I/B/E/S is?
A. I think it is a compilation of analysts' estimates.
Q. Is it short for Institutional Brokers Estimate System?
A. It may well be.
Q. Have you used this source before?
A. Yes. It is sort of universally used.

Page 222

Q. Universally used in the investment banking profession?
A. Yes.
Q. Is it -- in 1998 was it a compilation, if you will, of estimates by various institutions?
A. Excuse me one second.
MR. MARKOWSKI: Stop that.
THE VIDEOGRAPHER: Going off the record. The time is 9:06.
(Discussion off the record)
THE VIDEOGRAPHER: We are back on the record. The time is 9:06.
BY MR. BEMIS:
Q. The question that was pending was were the I/B/E/S estimates in 1998, the date of the document you are looking at, a compilation of estimates by various institutional brokers about earnings of corporations?
A. Yes.
Q. If you look to the right side of the first page of MS 175 you see under the Camper specific heading a bullet which reads as follows: "Camper earning

Page 223

projections based on modified CS First Boston report November 18, 1997."
Do you see that?
A. Yes.
Q. Was CS First Boston following as an analyst the Coleman Company on or about that time, November 18, 1997?
A. I don't know.
Q. Have you ever seen the CS First Boston report that is identified in that bullet?
A. I may have.
Q. Is there anything in this document that, as you look at it now, that to you is a misrepresentation by Morgan Stanley to MacAndrews & Forbes?
MR. MARKOWSKI: Object to the form.
THE WITNESS: I would have to look at every line in here. I am not going to do that.
BY MR. BEMIS:
Q. Okay. Then you can set the document aside.
Do you want to hand that back to

NOT A CERTIFIED COPY

016340

Page 224

me?
Mr. Nesbitt testified that he attended the meeting that we were discussing, that is, with Mr. Stynes, Mr. Yoo, Mr. Chang and Mr. Fuchs because you would not attend.
Having looked at MS 75 does that in any way refresh your recollection that Mr. Nesbitt told you what happened at the meeting?
MR. MARKOWSKI: I don't believe that accurately characterizes Mr. Nesbitt's testimony. Object to the form. Lack of foundation.
MR. BEMIS: I think it does.
BY MR. BEMIS:
Q. You can answer.
A. What is the question?
Q. Let me shortcut this.
Did Mr. Nesbitt tell you that he had a meeting about this time, January 23, with Mr. Stynes, Mr. Yoo, Mr. Chang and Mr. Fuchs?
A. I don't specifically recall him telling me this but I remember there was a

Page 225

meeting and it says so in the chronology so I have no reason to dispute that.
Q. What do you recall about the meeting regardless at this point of the source from whom you heard it?
A. I don't recall saying anything about the meeting but I do recall the first meeting after the Bill Reid called where Morgan Stanley came and I didn't look closely enough at the sheet to tell you what it says but it was my understanding they came with an all-stock offer at a price that was less than Reid had indicated. It didn't involve any cash. And that is my recollection.
I don't know if that is what that says.
Q. What is the next thing that you remember happening following this offer as you have just described it?
A. I don't know if it is the next thing that happened but the next thing that relates to this transaction was I think Morgan Stanley was told -- I told them, somebody told them that whatever they

Page 226

proposed was unacceptable.
Q. Whatever proposal followed Mr. Reid's phone call was unacceptable; is that fair?
A. Yes.
Q. Did you at that point -- did at that point MacAndrews & Forbes make a counterproposal?
A. There was a counterproposal eventually made. I think it was -- I think it was as to the form of the transaction.
There needed to be cash in the transaction and it needed to be a higher price. I don't think -- I don't think there was a price indicated at that time.
Q. I am going to hand you back real quickly Morgan Stanley 175 and if you look under Transaction Specific on the first page, do you see that heading?
A. Yes.
Q. It does state in the first bullet, assumes 100 percent stock finance transaction with purchase accounting.
A. Yes.
Q. Do you see that?

Page 227

A. Yes.
Q. Does that then suggest to you as you sit here today that this was indeed the transaction you were thinking of, a 100 percent stock transaction?
A. It does.
Q. You can hand that back to me.
We know as you told us that the transaction proposed in Exhibit 175 was rejected by MacAndrews & Forbes, correct?
A. Yes.
Q. The best you can recall, if there was a counterproposal it had to be some combination of cash and stock but no specific price was set at that point for the Coleman stock?
A. That is my recollection.
Q. Did you report the results of the proposal in Exhibit 175 to Mr. Perelman?
A. I don't specifically remember. I can't imagine not.
Q. Would it be your normal course when these meetings took place to advise Mr. Perelman of the ongoing discussions?
A. Yes.

NOT A CERTIFIED COPY

Page 228

Q. Would Mr. Perelman in the ordinary course provide you with direction as to what he wanted to do next?
A. Yes.
Q. In this case what instructions did he give you?
A. I don't recall any specific instructions but the end result was that we rejected the proposal so --
Q. What is the next time -- next meeting that you recall meeting -- withdrawn.
What is the next meeting you recall with any representatives of Sunbeam or Sunbeam itself in connection with what becomes the Coleman transaction?
A. Well, according to this chronology there was a meeting on the 29th.
Q. Let me ask you to look at your calendar which is MS 86 and I believe that does show a meeting on January 27 which is not on the chronology.
MR. BEMIS: If you would hand one to the witness, Mr. Markowski?
THE WITNESS: Thanks.

Page 229

BY MR. BEMIS:
Q. I would ask you now that you have MS 86 in front of you to turn to the entry for Tuesday, January 27, 1998.
Are you there?
A. Getting there.
Q. At 11:30 a.m. you have a reference to a meeting that appears to include Mr. Gittis, Mr. Perelman, Mr. Gordon Rich from Credit Suisse First Boston and it appears to be in Mr. Gittis' office and it is Re: Gucci and Coleman.
Did I read that correctly?
A. Yes.
Q. Did you have a meeting on that date with those gentlemen on those topics, Gucci and Coleman?
A. That is what it says. I may well have.
Q. What happened at that meeting?
A. I don't recall.
Q. If Mr. Gordon Rich was at the meeting with regard to Coleman would he have been there as your investment adviser?
A. I assume so, yes.

Page 230

Q. You, as you sit here today, have no specific recollection of what happened at this meeting?
A. No.
Q. You may set -- hold on to your calendar. Keep that in front of you but you may set it aside for the time being.
If you look at the chronology, Morgan Stanley Exhibit 75, you will see there is a reference to a -- the retention of Wachtell, Lipton; do you see that?
A. I do, on the 28th.
Q. Yes, sir. Were you at all involved in that decision?
A. I think -- I mean, I am sure I was aware of the decision. There may have been some discussion about it. I was certainly aware of it.
Q. By January 28 MacAndrews & Forbes either directly or through Coleman had retained both an investment banker and a law firm as part of the negotiations over a possible Coleman transaction; is that fair to say?
A. That is fair to say.

Page 231

Q. Did you -- if you look at -- strike that.
Did you have a meeting on January 28 with Mr. Gittis and Mr. Nesbitt as shown on your calendar that date?
If you will look at the entry at 9:00 a.m. it is HG which I assume is Mr. Gittis and WN, Mr. Nesbitt. Do you see that?
A. Yes.
Q. Can you tell the jury what happened at that meeting?
A. I can't.
Q. There is also a meeting on January 29 that is referred to in the chronology, MS 75, that takes place between Sunbeam, various representatives, Morgan Stanley, various representatives, Coleman, various representatives, and MacAndrews & Forbes, various representatives including yourself and the CSFB team at MacAndrews & Forbes' offices in New York.
Do you see that entry?
A. Where is this?
Q. On January 29, 1998. It is the

NOT A CERTIFIED COPY

016342

Page 232

third entry.
A. Where does it say MacAndrews & Forbes offices?
Q. I think that comes out of another exhibit which is Morgan Stanley 279.
I tell you what. Without setting where the meeting was did you attend the meeting that is shown for January 29?
A. I remember a meeting of this sort of magnitude, this cast of characters, taking place around that period of time to discuss synergies, yes.
Q. Where did that meeting take place as you recall it?
A. I think it may have been at Revlon's office.
Q. At Revlon's offices?
A. I think so.
Q. Where are Revlon's offices?
A. 625 Madison, but I think there is a reference in my calendar, 11th page, Nesbitt, 625 Madison, on the 29th.
Q. Did you attend the entire meeting?
A. I think so.

Page 233

Q. As of the January -- what was the basic subject matter of the January 29 meeting?
A. Well, it says in the chronology, to discuss potential synergies which would be a combination of Coleman and Sunbeam.
Q. At that meeting, as of the -- sorry.
A. As well as setting a time frame for due diligence.
Q. I take it as of January 29 at least there had been no due diligence done by either side, on your side of the transaction?
MR. MARKOWSKI: Object to the form of the question. I think it mischaracterizes the witness' prior testimony.
THE WITNESS: I wouldn't characterize it that way. There had been work being done all along. When we went back and Nesbitt had done work, I am sure First Boston had done work in preparation for the December meeting. I think there was a period of time when

Page 234

probably nothing was done. Prior to the 29th meeting I would imagine that work was being done again by a combination of First Boston, Nesbitt, Levin, Page.
BY MR. BEMIS:
Q. You have told me the -- you have told me some of the work that was done before the meeting with Mr. Dunlap in Palm Beach on December 18. We covered that yesterday, right?
A. We covered that I believe yesterday.
Q. Then I believe you told me that following the meeting on December 18 at Mr. Perelman's home matters broke down; is that right?
A. That is correct.
Q. There was no further discussions, no further investigation or due diligence, if you will, up until the time the parties next met following Mr. Reid's call in the week of January 18; is that fair?
A. I don't know when Reid's call was. Again -- I don't know we established

Page 235

when Reid's call was.
Q. The public filings say it was on January 22. That was Exhibit MS 79 that we looked at yesterday.
I don't want to quarrel --
A. Okay. I will say the 22nd.
Q. Following the 22nd, following the 22nd we know, you told me, there was a meeting apparently between at least Mr. Nesbitt and certain representatives of Morgan Stanley, correct?
A. Yes.
Q. Between the 23rd and this meeting on the 29th what due diligence had been done by MacAndrews & Forbes concerning a transaction with Sunbeam and Coleman?
A. As I just stated, you asked me a question whether -- you said, I think you said, no due diligence had been done prior to the 29th.
Q. Forget what my other question was. Let's focus on the question I asked you right now.
Between the 23rd of January and the meeting on January 29th what due

NOT A CERTIFIED COPY

016343

Page 236

diligence had been done by MacAndrews & Forbes concerning a transaction between Coleman and Sunbeam?
A. I don't know.
Q. At the meeting was there a discussion -- withdrawn.
At the January 29 meeting, and you did attend the meeting, correct?
A. I did, yes.
Q. Are the parties that are identified in MS 75 as having attended the meeting, that is, Mr. -- Messrs. Stynes, Fuchs, Chang, Fannin, Kersh, Levin, Page, Shapiro, yourself, Mr. Maher, Nesbitt and Mr. Rich from Credit Suisse First Boston the people you remember attending the meeting?
A. I don't remember them specifically. I remember Kersh was there, Fannin was there, certainly Page was there, Levin was there, Nesbitt, Rich, myself, Chang, Fuchs, Stynes was there.
In general I remember these people being there. There may have been other people there.

Page 237

Q. Were there discussions at the January 29 meeting among those who attended it about how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal?
A. That is what it says in the chronology. I have no reason to dispute it.
Q. So the due diligence was to proceed once Sunbeam made an acceptable proposal; is that correct?
A. Not necessarily.
Q. What was the agreement reached at the January 29 meeting?
A. The due diligence of -- the specific due diligence relating to interaction between representatives of Sunbeam and Coleman would take place after an acceptable proposal was on the table.
It doesn't mean that Levin wasn't doing work, due diligence work. It doesn't mean that Nesbitt wasn't doing it, it doesn't mean that First Boston wasn't doing it in the interim.
Q. Do you know that they were?

Page 238

A. I don't know that they weren't.
Q. Do you know that they were is my question.
Do you have personal knowledge of them, the people you have identified, doing this work?
A. Well, Levin was certainly doing work on the -- on synergies which is certainly part of the due diligence effort.
Q. Anything else?
A. Not that I can think of at the moment.
Q. Let's move forward and there is a reference to Sunbeam entering into a confidentiality agreement with Coleman on or about February 4, 1998.
Do you see that entry?
A. Yes.
Q. Have you seen the confidentiality agreement?
A. I don't recall.
Q. Let me show you a copy of what has been identified as the confidentiality agreement and ask you to please take a moment and look at it.

Page 239

I have handed the witness what has been marked as MS 133.
Have you had an opportunity to look at MS 133?
A. I have, yes.
Q. Have you ever seen it before?
A. I don't recall seeing it, no.
Q. In your experience as an investment banker is it customary for parties in a transaction being negotiated such as the Coleman-Sunbeam transaction to exchange confidentiality agreements?
A. Generally.
Q. You can hand that back to me.
By the time of the exchange of the confidentiality agreements had you learned of Sunbeam's results for the fourth quarter of 1997?
MR. MARKOWSKI: Object, lack of foundation, mischaracterizes the record. There has been no testimony that there was in fact an exchange of confidentiality agreements.
BY MR. BEMIS:
Q. Let me rephrase the question.

NOT A CERTIFIED COPY

016344

Page 240

By the time of January 4, the date of the confidentiality agreement that we just reviewed, February 4 -- did I say January?
A. You did.
Q. I apologize.
By the time of the February 4 confidentiality agreement that we just reviewed were you aware of Sunbeam's results as reported for -- excuse me -- fourth quarter of 1997?
A. I don't recall.
Q. Let me show you a document previously marked as Morgan Stanley 206 which is a copy of a Wall Street Journal article on January 29, 1998.
Do you have that in front of you?
A. I do.
Q. Having looked at that document, at least as of January 4, 1998, were you aware of the reported earnings of Sunbeam for its fourth quarter 1997?
MR. FASMAN: You said January again.
BY MR. BEMIS:

Page 241

Q. I did.
Let me ask the question again.
Having looked at the document at least as of February 4 were you aware of the reported earnings for Sunbeam for its fourth quarter of 1997 as set forth in MS 206?
A. I imagine I would have been. I don't have a recollection of being specifically informed but I would imagine I would have seen this.
Q. Would you have seen it as part of the clipping service that you received?
A. I would have seen it by reason of the Wall Street Journal article.
Q. You read the Wall Street Journal regularly?
A. Pretty much.
Q. You can hand that back to me.
At the January 29 meeting that we discussed before we turned to the confidentiality agreement was the earnings shortfall reported in MS 206 discussed among the parties at that meeting?
A. I don't recall it being

Page 242

discussed.
Q. What is the next thing that you recall in the negotiations following the January 29, 1998 -- excuse me. Let me withdraw that.
What is the next event you recall occurring in the negotiations between Sunbeam and Coleman and their representatives after the January 29, 1998 meeting which you believe took place at Revlon's offices?
A. Well, I have in front of me the chronology from Wachtell, Lipton.
Q. Does that assist you in your testimony looking at that chronology?
A. Yes. MS 75?
Q. Yes.
A. It says there was a meeting attended by Morgan Stanley, Mr. Nesbitt, myself and Mr. Rich, Mr. Duffy of First Boston, and it says that they made a presentation reflecting a transaction which Coleman would be acquired by Sunbeam for .6017 Sunbeam shares per Coleman shares which was approximately $22 a share plus

Page 243

warrants that Morgan Stanley valued at $4 per share.
Apparently I indicated that MacAndrews would not be prepared to support such a proposal and advised Morgan Stanley that only an all-stock transaction that valued Coleman stock at $30 a share or an amount slightly lower than $30 a share if the transaction involved cash and stock would be of interest.
It sounds right to me.
Q. As of February 6 the parties hadn't reached an agreement. You were still at a proposal counterproposal stage, correct?
A. Yes.
Q. Is it fair to say that this meeting on February 6 as described in MS 75 was the first time that MacAndrews & Forbes had made a counteroffer as opposed to simply rejecting an offer made by Sunbeam?
A. I think that's correct but I also, as I pointed out earlier, it depends how you characterize counteroffer.
I think our counter -- with a

NOT A CERTIFIED COPY

016345

Page 244

dollar pricing, I think that is correct, but if you go back to the proposal that they made earlier, the all-stock proposal on --

Q. January 23.

A. On January 23, there was a form of a counterproposal which this doesn't work as an all-stock transaction at this price. I guess I consider that to be a counterproposal.

Q. Is it fair to say, however, as of February 6, the figure of $30 per share was the first time that MacAndrews & Forbes had put that on the table in the negotiations?

A. I think that's right.

Q. Where did the figure $30 per share come from?

A. It must have come from discussions with Mr. Perelman, Mr. Gittis, I am sure Mr. Levin.

Q. It wasn't your figure?

MR. MARKOWSKI: Mr. Maher's personally?

BY MR. BEMIS:

Q. Yes, as a negotiator.

Page 245

A. It was not my personal counterproposal.

Q. Was there a discussion amongst the principals at MacAndrews & Forbes who were heading the negotiations as you identified them yesterday where the $30 figure was arrived at?

A. I am sure there were a number of discussions. I don't recall the specifics of those discussions but typically there are discussions, ongoing discussions.

I don't remember a meeting where there was a number specifically arrived at.

Q. Was there a meeting where --

A. There may have been. It could have ranged from Ronald Perelman saying here is what I think we ought to do to somebody saying, well, Ronald, would you find this acceptable and him saying, yes. That might have been me, somebody else.

That would be typical of the types of discussions that would have occurred.

Q. What was the basis for the figure of $30 per share as a valuation for Coleman

Page 246

at this time?

A. I don't recall.

Q. What was Coleman trading at on the New York Stock Exchange on February 6, 1998?

A. I don't know. I am sure you know.

Q. I do. The closing price was $15.65.

A. So you have answered your own question. Thank you.

Q. I was trying to be polite in answering your question.

My question is, if the closing price was $15.65 can you help the jury understand how as negotiators you came up with -- you being MacAndrews & Forbes -- came up with $30 per share?

A. Well, typically in a negotiation you take into consideration any number of different items including the underlying value of the company that you are interested in -- in the underlying value of Coleman, the synergies created between the two companies and typically in a

Page 247

transaction like this the negotiations are -- they vary but they -- there are negotiations over who gets what share of the synergies attributed to them so you have an underlying value of the company and then some sort of sharing of the synergies.

Typically in a transaction like this you could probably have 50 percent of the synergies going to each party. That would be typical.

You look at, as I mentioned yesterday, how much the acquirer can afford to pay because that has something to do with the negotiation.

You look at what the potential transaction will mean to the acquirer because that has something to do with what they will be willing to pay.

All of those items get factored into it and there is no science. It is sort of an art as to what number you come up with.

And in the end it ultimately, in a company like this which is controlled 80 plus percent by one individual, it depends

NOT A CERTIFIED COPY

016346

Page 248

on what he is willing to sell the stock for.
Q. Are you finished? I didn't want to interrupt you.
A. No.
Q. In this case I think you referred to something as an art. Art usually gets reduced to some form whether it be a canvass, a sculpture, something we can look, touch and see.
Is there a document that you have ever seen where a calculation arriving at a valuation of $30 per share for Coleman was determined or calculated?
A. There were -- the First Boston analysis had ranges of values. Those documents exist, yes.
Q. If there is a document it is a First Boston document as you would recall it?
A. Yes.
Q. You didn't see any documents from Morgan Stanley valuing Coleman at $30 per share, did you?
MR. MARKOWSKI: You are talking

Page 249

about back at that time?
MR. BEMIS: Yes.
THE WITNESS: I don't recall that. I would be very surprised if, at that point in time, if they would have had a document valuing the company at $30 a share when they were trying to buy it at 23.
BY MR. BEMIS:
Q. They weren't trying to buy it. Sunbeam was trying to buy Coleman.
A. They weren't hired to make the case that the company was worth more than what they were offering.
Q. Sunbeam was buying Coleman, correct?
A. Yes.
Q. When you came up with the alternative structures at the February 6 meeting of $30 per share or a lower value for a cash stock combination was -- did CSFB, your investment banker, provide input into that decision?
MR. MARKOWSKI: Could you read the question back for me please?

Page 250

(Record read)
MR. MARKOWSKI: Object to the form. I am not sure what the reference to "the decision" is.
BY MR. BEMIS:
Q. You can answer.
A. What decision?
Q. The counterproposal.
A. I don't specifically remember CSFB being involved in that decision.
They were -- they were available for -- to answer questions, to give us advice and they may well have had some input into it.
Q. There was the proposal we identified on January 23, the one that was the all-stock transaction, and I believe the exhibit number that you looked at was -- give me one second -- was Morgan Stanley Exhibit 175.
Do you recall that? That was the all-stock transaction?
A. I do.
Q. Did you have CSFB review that proposal?

Page 251

A. I am sure they did.
Q. If they did review it -- withdrawn.
If they did review it as you are sure that they did would it be customary for CSFB to provide you with a result of their review?
A. No.
Q. Would they just keep it to themselves?
A. No.
Q. What -- how would the information that comprises CSFB's review get back to MAFCO?
A. Well, in that case I don't think there was much to review.
We had rejected the transaction so what were they going to review it and get back to us with?
Q. Focusing -- withdrawn.
Were you, that is, MacAndrews & Forbes, as of February 6 when you made the proposal of $30 per share in an all-stock deal, was MacAndrews & Forbes actively looking for a buyer for Coleman?

NOT A CERTIFIED COPY

016347

Page 252

A. No, not that I recall.
Q. Was Sunbeam the only party that was in the negotiations or even preliminary discussions, if you will, with MacAndrews & Forbes concerning a purchase or some form of business combination with Coleman?
A. Yes, I think that is right.
I am just going to grab some coffee.
Q. At the February 26 meeting, excuse me -- withdrawn.
At the February 6, 1998 meeting we have been discussing was there a discussion at that meeting of Sunbeam assuming as part of a transaction Coleman Worldwide and CLN Holdings' indebtedness?
A. I think that may have occurred at that meeting, yes. I think there was a discussion. I am not sure if it was in that meeting or a later meeting but it was --
Q. Who raised that as a potential point of the structure of a transaction?
A. I think I did.
Q. Did you do that on your own or

Page 253

was that an instruction you received from Mr. Perelman?
A. I wouldn't have done it on my own, no.
Q. What was the amount of the indebtedness of Coleman Worldwide and CLN Holdings that you were discussing being assumed by Sunbeam as part of the Coleman-Sunbeam transaction should it go forward?
A. I don't remember.
Q. Was it in the hundreds of millions of dollars?
A. Yes, it was.
Q. Was it indeed over a billion dollars?
MR. MARKOWSKI: Object.
THE WITNESS: I don't know what the number was. I am sure you know what the number is. Tell me what it is.
BY MR. BEMIS:
Q. I am not trying to be contentious with you, sir. You don't assume that I know anything right now. If you can answer

Page 254

my question we will try to get you out of here quicker.
A. I don't know.
Q. CLN Holdings --
MR. MARKOWSKI: I didn't get a chance to finish my objection. My objection is the question was misleading.
BY MR. BEMIS:
Q. Setting aside the exact number of the indebtedness of Coleman Worldwide and CLN Holdings, the suggestion for the assumption was a suggestion put forward by Mr. MacAndrews & Forbes in the negotiations; is that fair?
A. That is fair.
Q. Just so the jury understands who these parties are, Coleman Worldwide was a holding company, was it not?
A. I don't remember the exact names of the companies. I am trying to be helpful but I don't remember the names.
Q. Was Coleman Worldwide a holding company as opposed to an operating company?
A. I think so.

Page 255

Q. Was CLN Holdings a holding company as opposed to an operating company?
A. I am telling you I don't remember the exact structure so --
Q. I didn't ask you the exact structure.
A. These are the companies that -- are you asking me the companies that owned -- are those the companies that owned the stock of Coleman on behalf of MacAndrews & Forbes in the short form?
Q. In short form that is where we are going, yes.
My first question is: Was CLN Holdings a holding company and not an operating company?
MR. MARKOWSKI: I think what Mr. Maher says is he doesn't remember the exact names of the companies.
THE WITNESS: CLN could be a public entity. I don't know which it is. That is my issue.
BY MR. BEMIS:
Q. Did MacAndrews & Forbes, I am going to pick your words, ultimately own

NOT A CERTIFIED COPY

016348

Page 256

the Coleman common stock, the 82 percent that is attributed to Mr. Perelman?
A. Yes.
Q. It did. Mr. Perelman owned this stock indirectly if you will through a series of holding companies, correct?
A. I believe that is correct.
Q. The debt that you were speaking of assuming was debt of the holding companies within the chain running from Coleman up to ultimately Mr. Perelman's ownership, correct?
A. Yes.
Q. Let me show you -- I only have one extra copy of this exhibit. I am sorry.
I am going to hand you what has been previously marked as Morgan Stanley 108. Do you have that exhibit in front of you?
A. I do.
Q. Mr. Nesbitt testified in his deposition that he prepared this document.
Did -- have you seen the document before?

Page 257

A. I don't recall specifically but it looks familiar. I think this is very similar to the one we saw yesterday.
Q. There are a number of attachments to the document. If you turn to page, turn to page, they are not necessarily numbered at the bottom but you will have to look at the Bates numbering on them.
It would be the fourth page of the document. It is titled Project Laser Proposed Summary Transaction Terms.
A. Yes. It is 0924 on the bottom.
Q. Yes, sir.
Have you seen that document before?
A. It looks familiar.
Q. This proposal, is this proposal an -- an all-stock proposal, stock and warrants?
MR. MARKOWSKI: Mr. Bemis, let me pause here for a second. I don't have the document in front of me. You indicated at the beginning Mr. Nesbitt testified that he prepared this document. Were you referring simply to

Page 258

the first page of this compilation materials or the entire package?
MR. BEMIS: Mr. Nesbitt -- Mr. Nesbitt prepared the document and assembled the document. I think it is fair to say, although I don't have instant recall of it, I don't think he said he prepared all of the attachments to the document.
THE WITNESS: This attachment was prepared by Morgan Stanley.
BY MR. BEMIS:
Q. That is why I said that.
I think the question that was pending as we were looking at page 3, the form of the consideration of the proposed summary transaction appears to be Laser common stock and Laser common stock warrants. Am I correct?
A. Yes.
Q. This is -- it also continues, an implied price of $22 per share; is that correct?
A. For the common stock portion of the transaction, yes.

Page 259

Q. Was this -- was the proposal that you are looking at under Project Laser Proposed Summary Transaction, Bates numbered CPH1120634, was that the proposal that was rejected at the February 6 meeting and to which you countered with the $30 per share as an all-stock transaction or something less if there was a combination of cash and stock?
A. It looks like it, yes.
Q. According to the miscellaneous provisions on the same page of MS 108 there is -- there are two bullets, one of which is no assumption of any holding company level debt. Do you see that?
A. Miscellaneous, yes.
Q. Was your proposal, that is, MacAndrews & Forbes proposal, that there be an assumption or an assumption of CLN Holding debt and Worldwide debt again a counterproposal to this summary proposal?
A. As I said earlier, I don't recall when that proposal to assume the debt of the MacAndrews & Forbes holding companies was stated.

NOT A CERTIFIED COPY

0163149

Page 260

It was clearly after this but I don't remember whether it was in response to this or not.
Q. According to the prospectus filed by the Coleman Company, and I am referring to Morgan Stanley Exhibit 279, and, in particular, page 37, the prospectus states that, "At this meeting," referring to the February 6, 1998 meeting, "the possibility of Sunbeam's acquisition of MacAndrews & Forbes' interests in Coleman including Sunbeam's assumption of indebtedness of Coleman Worldwide and CLN Holdings as the first step in the acquisition of Coleman was discussed."
Does that then square with your recollection?
A. Yes.
Q. One other question. That is, look at the expected closing date, if you will. It says 2Q98. Do you see that?
A. Yes.
Q. Does that mean, 2Q98, second quarter of 1998?
A. I believe so, yes.

Page 261

Q. Did you -- was there any discussion at the February 6 meeting at which the Sunbeam proposal that we have been discussing was made and the counterproposal, if you will, was made as you provided, was there a specific discussion of a closing date?
A. I don't recall. There may have been but I don't recall it.
Q. Do you recall how the closing date eventually got moved to the first quarter of 1998 from the initial proposal that we are looking at here of the second quarter of 1998?
A. I don't recall how that happened, no.
Q. Turn to the -- to the page which is Bates marked CPH1120640 in Exhibit 108.
Tell me when you are there.
A. Is this CSFB 930?
Q. Yes. I think it is.
A. Sunbeam Corporation, I/B/E/S EPS estimate overview.
Q. Right. That is where I am at. I think we are both on the same page.

Page 262

Again, I/B/E/S estimate overview, that, which is dated February 6, 1998 on the right-hand side, did you understand that I/B/E/S to be the I/B/E/S we spoke about earlier, the investors -- institutional investor summaries?
A. Yes, it seems to be.
Q. The next page of the document, I will use the CPH Bates numbers but it is CPH1120641, First Call Estimate Overview, do you see that?
A. Yes.
Q. What is First Call?
A. It is another -- I think it is a compilation of analysts' estimates also.
Q. Is it something one subscribes to?
A. I think one can subscribe to it, yes.
Q. Did MacAndrews & Forbes subscribe to it?
A. I don't know.
Q. Did MacAndrews & Forbes -- is I/B/E/S a service one subscribes to?
A. I don't think so.

Page 263

Q. How do you obtain those figures?
A. I frankly don't know.
Q. You leave that to the analysts?
A. I call Mr. Nesbitt.
Q. Fair enough.
A. I think you can get them on the internet.
Q. You think the I/B/E/S figures are on the internet?
A. I think so.
Q. Let's set this document aside, MS 108, for now. You can hand it back to me.
Let's try to move forward now from February 6 and let me ask you, was there a response to your counterproposal at the February 6 meeting when you rejected the offer that Sunbeam made that we just reviewed of all cash -- excuse me, all stock and warrants and an implied value of $22 per share?
A. I have the chronology again in front of me.
It says on February 13 Stynes and Kitts called me saying they were making their best and final proposal of .65116

NOT A CERTIFIED COPY

016350

Page 264

shares of Sunbeam stock which was approximately 24.50.

I apparently indicated it was of no interest.

Q. Going back to the meeting on February 6, did you at that meeting receive a document from Morgan Stanley?

A. Which meeting? Sorry.

Q. The meeting of February 6, the one we were talking about.

A. I don't recall a specific document but I would be surprised if there wasn't one.

Q. Let me show you what has been marked as Exhibit 81 in an earlier deposition.

This, sir, is the exact same document that was attached to Exhibit 108, Mr. Nesbitt's collection of documents.

I would ask you first to take a look at it. I just have a couple of quick questions.

A. Okay.

Q. Do you have the document in front of you?

Page 265

A. I do.

Q. The first page of this four-page document which is entitled Proposed Summary Transaction Terms, I will represent to you that I compared it to the document we looked at in Exhibit 108 which has Mr. Nesbitt's calculations on top.

My first question is: Did this document, Exhibit 81, get handed out at the meeting on February 6 and discussed?

A. It certainly seems like it.

Q. For the record, we are looking at Bates number CP033711 through CP033714.

Looking at the --

A. What is a CPH number?

Q. There is two sets of numbers on the documents. I will put the CPH numbers in if I can see where the CPH number is on the first page which I didn't see.

I see it now. It is also for the record CPH1421814. That continues to CPH142817.

You can hand it back to me. I think we have covered it in our other questioning. I don't want to take your time unnecessarily with it. Thank you.

Page 266

Just to put us back on track here, after the meeting on February 6 in which -- or at which, excuse me -- the exhibit we just looked at, MS 81, that proposal was rejected as well as the proposal which is -- a copy of which is in MS 108, the next thing you recall happening is a counterproposal on February 13; is that correct?

A. The next thing according to the -- my chronology is February 13 of that which I have no reason to dispute.

Q. I am going to hand you what we previously marked in another deposition as Morgan Stanley 356.

Do you have that in front of you?

A. I do.

Q. This document is dated February 12, 1998 and it is addressed to Mr. Will Nesbitt, not to you, from Rob Duffy.

Rob Duffy is Mr. Duffy at Credit Suisse First Boston, your investment adviser, correct?

A. That's correct.

Page 267

Q. Have you seen this document before, MS 356?

A. Again, I don't recall specifically but it looks like something that I would have seen.

Q. This was a document prepared by -- is this document prepared by Credit Suisse First Boston?

A. Appears to be.

Q. The document contains a scenario which they refer to as base case. Do you see that?

It is up on the upper left-hand corner in all of the pages.

A. Second page?

Q. Yes, sir.

A. Yes.

Q. By the way, Project Violet is what becomes the Coleman transaction, correct?

A. I don't know.

Q. Looking at this document, does this appear to be a -- an analysis from a financial perspective of the Coleman-Sunbeam transaction?

NOT A CERTIFIED COPY

016351

Page 268

A. I wish I could read it. I am having trouble seeing it.
Q. Let me ask you, or is it, alternatively, a proposal for some form of leveraged buyout?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: It looks like an analysis of what an investment bank would typically do which is to analyze whether a private equity firm or buyout firm, as you said, could -- what it could afford or what level, what price could be paid for the company. I don't think -- I don't believe there was any discussion about an actual leveraged buyout or management buyout. It was more a theoretical exercise.
BY MR. BEMIS:
Q. A theoretical exercise?
A. I believe, yes.
Q. When you read through the theoretical exercise, if you will, is there a price per share that a private equity fund, for example, might be willing to pay

Page 269

for this company based on the analysis done by CSFB?
A. I can't frankly tell you at the moment. It will take a while to figure that out.
I don't think there is a conclusion here the best I can tell. There is a bunch of numbers but I don't see a conclusion. It looks like -- I can't even tell -- it looks like $31 per share.
Q. Where are you reading that from?
A. Equity, first page. Page 1.
Q. Yes, sir.
A. Up in the left-hand corner under CS First Boston Corporation.
Q. That is $21 per share, not 31.
A. Is it?
Q. Yes. My eyes are bad but not that bad.
MR. MARKOWSKI: I guess I can't read it either.
BY MR. BEMIS:
Q. Indeed, I think if you read through to the next page it continues over at $21 per share. Go to the third page.

Page 270

Very clearly $21 per share. Continuing --
A. Then it goes out and starts over again at it looks like if that is 21 or 32, 22 or 32 depending --
Q. It rises from 21 to 23.
A. 22.
Q. 23?
MR. MARKOWSKI: Your copy must be better than ours because I can't make those numbers out.
MR. BEMIS: It is not our position or point. You or I could quarrel with what it says. If he can't read it he says he can't read it. I can clearly read it and the numbers are 21 through 23. I don't want to quarrel with you. If you can't read it we will set. aside.
THE WITNESS: Okay.
BY MR. BEMIS:
Q. The ultimate objective of a document like MS 356 that your investment bankers prepared would be to look at a possible scenario of what a private equity fund might be willing to pay for Coleman;

Page 271

is that correct?
A. Yes. Typically when investment bankers look at companies, particularly when they are looking at the fairness transaction, one of the things they look at is what a leveraged management buyout could afford to do to pay for the transaction.
Typically that is -- typically that is the low end of the spectrum in terms of value because buyout firms don't -- are not able to create synergies in any transaction.
Q. Let's turn to the February 13 conference call.
MR. MARKOWSKI: Before you go on to something new can we take a short break?
MR. BEMIS: Sure.
THE VIDEOGRAPHER: Going off the record. The time is 10:21. This completes tape number one.
(Recess)
THE VIDEOGRAPHER: We are back on the record. The time is 10:37. This begins tape number two, volume two.

NOT A CERTIFIED COPY

016352

Page 272

BY MR. BEMIS:
Q. Mr. Maher, when we broke we were going to turn to the February 13 conference call.
First of all, my understanding is on February 13 you were in Aspen, is that correct, based on your calendar, MS 86?
A. Well, according to my calendar on February 13 I left for Aspen in the afternoon.
Q. Did you take the conference call before or after you left?
A. I am not sure. I don't think it would have been -- it must have been before I left because once I was in the air I wouldn't have taken it.
Q. The reference on February 13, breakfast at 36 East 63rd Street, is a reference to breakfast at Mr. Perelman's townhouse; is that correct?
A. That's correct.
Q. Did the conference call come in at the townhouse or did you take the call at the office?
A. Was it a conference call or a

Page 273

meeting? I just don't recall.
Q. I don't see a meeting on your calendar on the 13th. Do you?
A. I don't.
Q. All right.
Setting aside --
A. I don't see a conference call either.
Q. That's correct. I don't either.
So setting aside whether it was a conference call or a meeting, this was a communication between the parties which was a response to what had been essentially rejected and the counterproposal of February 6, right?
A. Yes.
Q. Were there any documents that were used in the conference call or the meeting if that is what happened?
A. I don't recall.
Q. Let me show you MS 82.
Let me see if I can see one that is easier for you to read.
I will show you what has been marked as MS 82 at an earlier deposition

Page 274

which is entitled Project Laser and then below that line, Laser Stand Alone Income Statements.
This has CPH Bates numbers 1406962 through 64.
Do you have that document in front of you?
A. I do.
Q. Did you have this document at the time -- first of all, have you ever seen this document before?
A. I may have. I don't specifically recall it.
Q. Is there anything, as you read the document, that shows a -- a combination of the two companies, that is, Sunbeam and Coleman?
A. There is a Laser which I believe is Sunbeam's stand alone case.
Q. That is the first page, right?
A. Yes. There is a Camper stand alone case without sale of Safety and Security. It says management case.
Then there is a Camper stand alone income statement - sale of Safety and

Page 275

Security management case.
Q. Just so the jury understands one of the headings there, Sale of Safety and Security, does that refer to the sale of a Coleman company or division which was called Safety and Security?
A. Yes. It must.
Q. You can hand that back to me then.
Did you, in the course of the, either the meeting or the call on February 13, did you confer with any one else to -- withdrawn.
Did you confer with anyone else in the February 13 conference call on behalf of MacAndrews & Forbes such that you could state to Morgan Stanley that MacAndrews & Forbes' proposal was not of interest?
A. I don't recall. I may or may not have.
Q. Was this proposal on February 13, was it an all-stock transaction?
A. I believe so. It looks like it.
Q. Was there any discussion in the

NOT A CERTIFIED COPY

016353

Page 276

changing of the closing date from the second quarter of 1998 as we saw in the earlier documentation?
A. Not that I recall.
Q. What is the next thing that you recall happening after the February 13 call or meeting at which time you rejected the proposal put forth at that time?
A. Once again, referring to the Wachtell, Lipton chronology, MS 75, it appears that Kitts and I had a conversation on the 18th of February which I have no reason to dispute in which he invited a counterproposal.
Q. At this time on February 18 you were back in your office having returned from Aspen, right?
A. According to my calendar I was back in New York, yes.
Q. Were there any documents exchanged in relationship to this telephone call on February 18 -- withdrawn.
In connection with the February 18 telephone call between yourself and Mr. Kitts was there -- were there documents

Page 277

exchanged by the parties?
A. Not that I recall.
Q. This again was just a verbal back and forth between the two on various terms?
A. I don't think it is a verbal back and forth on various terms. That is not what the chronology suggests.
Q. Perhaps then I misspoke. Let me try again.
On the telephone call on the 18th was all that was discussed a -- an invitation to MacAndrews & Forbes to make a counterproposal to the offer made on February 13, 1998?
A. I don't know that that is all that was discussed.
Q. Can you -- having read the chronology can you now recall anything else that was discussed?
A. No.
Q. Did Mr. Kitts, to your knowledge -- strike that.
As you sit here today can you recall Mr. Kitts putting any specifics on an invited -- an uninvited counterproposal?

Page 278

A. An uninvited?
Q. No. An invited.
A. Invited.
No.
Q. On the 19th you meet with -- do you meet with Mr. Perelman as shown on MS 75?
A. That is what MS 75 suggests, that I had a meeting on the 19th with Perelman. I have no reason to believe that didn't occur.
Q. You met with Mr. Perelman following the call with Mr. Kitts on February 18 to discuss with Mr. Perelman a possible counterproposal; is that correct?
A. Yes.
Q. Again, the counterproposal that you are discussing with Mr. Perelman is a counterproposal to the proposal made on February 13 that we discussed earlier, correct?
A. I guess. It is a counterproposal.
Q. The last -- I am trying to make sure I understand it.

Page 279

The last proposal that was on the table by either party was the one put forth on February 13?
A. I assume that is correct. You can assume that is correct.
Q. You met with Mr. Perelman, and was it Mr. Perelman who then provided the proposal of .789 Sunbeam shares per Coleman share which was according to MS 75 approximately $30 per share?
A. Ask that question again please.
Q. Sure.
When you met with Mr. Perelman did -- on the -- February -- on February 19 --
MR. MARKOWSKI: Let me stop for a moment. We have been assuming that the chronology specifies the date of the Perelman meeting. I am not sure that this is necessarily what this is telling us. I don't know that it matters but I think the reference on the 19th tell us that the call to Mr. Kitts was on the 19th.
MR. BEMIS: All right. Fair

NOT A CERTIFIED COPY

016354

Page 280

enough. I will not quarrel about something like that. I don't think it is significant either. Let me go back and ask the question in a slightly different way.

BY MR. BEMIS:

Q. After Mr. Kitts spoke to you on February 18 you did have a discussion with Mr. Perelman about Mr. Kitts' call, correct?

A. Yes.

Q. There is a counterproposal that is relayed to Mr. Kitts on February 19, 1998, right?

A. Yes.

Q. That counterproposal was a proposal that was given to you by Mr. Perelman, right?

A. Not necessarily.

Q. What do you mean by that?

A. I don't know whether it was a proposal that Mr. Perelman suggested or a proposal that I suggested that he agreed to or a proposal that somebody else in the room may have suggested that he agreed to

Page 281

that I delivered, or I am sure there are other permutations.

Q. In any event, Mr. Perelman approved the proposal?

A. I believe that to be the case.

Q. The next thing that happened after Mr. Perelman approves the proposal is that you transmit the proposal to Mr. Kitts; is that right?

A. That sounds correct.

Q. Your proposal which is 7.89 Sunbeam shares per Coleman share which is stated in MS 75 to be $30 per share, does that seem correct, the figures that are in there?

A. It seems correct, yes.

Q. This was an all-stock offer, correct?

A. I think so.

Q. Did the offer include assumption of holding company debt such as we discussed earlier for the debt of Coleman Worldwide and CLN Holdings Inc.?

A. I am not sure.

Q. What was the closing date on this

Page 282

proposal? For example, did it still remain second quarter of 1998 or had it changed?

A. I don't think -- I don't recall that there was -- there were counterproposals to all of the items in the original proposal.

Q. You were basically focused at this time on pricing issues?

A. I believe so.

Q. When you spoke to -- after you spoke to Mr. Perelman and perhaps others and obtained Mr. Perelman's consent to the terms of the proposal of .789 Sunbeam shares did you convey that to Mr. Kitts?

A. I believe so.

Q. Did you do that orally?

A. I believe so.

Q. Were there any -- in connection with your oral communication, were there any documents exchanged between the two of you such as by a facsimile or electronic means of some kind?

A. Not that I remember.

Q. Mr. Kitts, what was his response when you gave him Mr. Perelman's

Page 283

counterproposal?

A. I don't know what his response was when I gave him the counterproposal.

Q. He didn't immediately accept it, did he?

A. No.

Q. Indeed, is what happened that Mr. Kitts called you later on the same day, that is February 19, and made another proposal?

A. According to the chronology that sounds correct.

Q. The counterproposal was a proposal of 7.11 Sunbeam shares per Coleman share which according to the chronology had a valuation of about $26.90 per Coleman share.

A. Did you say 7.11?

Q. I said .711 I thought. Maybe I did. I did say -- let me ask you the question. Thank you for catching that.

The counterproposal that Mr. Kitts provided was an exchange of .711 Sunbeam shares per Coleman share which according to the chronology had a valuation

NOT A CERTIFIED COPY

016355

Page 284

of $26.90 per Coleman share; is that correct?
A. Yes.
Q. To the best of your recollection as you sit here today are the figures, those figures, accurate in terms at least of the counterproposal that was given to you?
A. It sounds more or less correct.
Q. Did you -- when Mr. Kitts called you to make this further counterproposal on February 19 were there any documents exchanged in connection with this counterproposal?
A. Not that I recall.
Q. Did you tell Mr. Kitts at the time you received this counterproposal that Coleman would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock which was approximately $28.20 per share?
A. I don't recall whether that was in that same conversation or in a subsequent conversation but it seems to me correct, somewhere either in that

Page 285

conversation or a subsequent conversation I responded.
Q. Having, at this point, on February 19, you having made this proposal to Mr. Kitts as to what Coleman would be prepared to consider as an exchange ratio of .745 shares, how did Mr. Kitts respond?
A. I don't recall.
Q. Was there any discussion at this point where you make this last proposal on February 19 of assumption of holding company debt of the MacAndrews & Forbes companies?
A. I think at this point in time that was part of the transaction, I think. I am not 100 percent sure but I think.
Q. Was the closing date still the second quarter of 1998 as we looked at earlier?
A. I don't recall.
Q. Let's move forward.
Did Mr. Perelman, by the way, give you the authority to tell Mr. Kitts that Coleman would be prepared to consider the exchange ratio of .745 shares?

Page 286

A. I don't recall having specific authority but I don't also believe that I would have offered it without either understanding that he was prepared to accept it or having been told specifically that he would accept it.
Q. Let me hand to you now what has been marked previously as Morgan Stanley Exhibit 83.
I have handed you a copy of Morgan Stanley Exhibit 83 and you have that in front of you, correct?
A. Yes.
Q. I will tell you that some of the handwriting on this document is Mr. Nesbitt's by his testimony. I don't represent that all of it is but some of it is.
Did you receive a copy of MS 83?
MR. MARKOWSKI: Are you including the handwriting in your question at this point or just the document?
MR. BEMIS: No, just the document. I am not quarreling over when the handwriting was put on. Did

Page 287

he get a copy of the document with or without the handwriting.
THE WITNESS: This looks somewhat familiar to me.
BY MR. BEMIS:
Q. This document bears a date, it is on the very bottom of the document, in the left-hand side, it is on the so-called footer line. You will see it is 022098.
Do you see that?
A. I do.
Q. Does this document in terms of the consideration package, if you will, represent the terms that you counterproposed to Mr. Kitts on February 19?
A. I don't think so but I am not 100 percent sure of that because there are two packages here.
Q. Can we focus on package 1 first? I realize there are two. I note that the exchange ratio on package 1 is .7450, correct?
A. Yes.
Q. That is what you proposed on

NOT A CERTIFIED COPY

016356

Page 288

February 19, 1998 to Mr. Kitts, correct?
A. According to this chronology, yes.
Q. Again, that was an all-stock offer, no cash, correct?
A. Yes.
Q. So at least with regard to the consideration package 1, does that accurately reflect your counterproposal to Mr. Kitts on February 19?
A. I am not sure because I don't know whether my proposal on the 19th included the assumption of Camper holding company debt as is referred to.
Q. My reading of -- is the assumption of holding company debt in this document as it is laid out in MS 83, is the assumption of holding company debt included within both consideration package 1 and consideration package 2?
A. Well, I can't tell you. That is my question. I don't know the answer to that.
Q. In any event, it looks like -- withdrawn.

Page 289

Is it fair to say looking at MS 83 that you received back from Mr. Kitts at least two consideration packages?
A. Yes.
Q. You had a choice to elect either package 1 or package 2, is that right? That is the proposal at least?
A. That is what it appears to be, yes.
Q. When you received -- withdrawn.
If you will turn to page 2, it also refers to a proposal by Mr. Kitts for an expected closing of the second quarter of 1998, correct?
A. Yes.
Q. With regard to due diligence there is to be an execution of agreements upon completion of satisfactory due diligence, right?
A. Yes, that is what it says.
Q. The due diligence -- excuse me. The agreements which is capitalized in that sentence on page 2, that is the definitive merger agreements, right?
A. I assume so.

Page 290

Q. The due diligence would be the due diligence that would be done before the execution of the merger agreements, right?
A. Presumably.
Q. There would be due diligence on both sides of the transaction, correct?
A. Presumably.
Q. The next box on page 2 which is -- has the writing inside of the box, Acquisition of Publicly Held Camper Shares, do you see that?
A. Yes.
Q. Does that refer, to your understanding, based on being in the negotiations, the acquisition of the shares of the Coleman Company, Inc. that were not held indirectly by Mr. Perelman?
A. I would interpret it that way.
Q. Again, the expected closing there is the second quarter of 1998, correct?
A. That is correct.
Q. After you received MS 83 did you discuss it with anyone?
A. I don't recall specific discussions but I can't imagine that I

Page 291

wouldn't have discussed it with Perelman, Gittis, Levin, Wachtell, Lipton, First Boston.
Q. When you had -- were there any issues that arose in your discussions with Wachtell, Lipton, First Boston or Mr. Perelman or Mr. Gittis?
A. I don't recall. I don't recall exactly what issues arose out of this.
Q. Okay.
Does this document though, MS 83, form the basis for your further negotiations with Sunbeam or its representatives that leads to the execution of the merger agreements?
A. It formed the basis for further negotiations and those negotiations ultimately led to an execution of the merger agreement.
Q. You can hand that back to me. Thank you very much.
Let me hand you what has previously been marked as Morgan Stanley Exhibit 340.
I will take one second and see if

NOT A CERTIFIED COPY

016357

Page 292

we marked this exhibit. We might not have.
I misspoke, this exhibit has not been marked and I would ask the court reporter to mark this copy as Morgan Stanley Exhibit 340.
(Morgan Stanley Exhibit 340 marked for identification)
BY MR. BEMIS:
Q. Do you have Exhibit MS 340 in front of you?
A. I do.
Q. The first two pages following the fax cover sheet do have some handwriting on it.
Is any of that handwriting yours?
A. I don't believe so.
Q. Do you know whose it is?
A. I don't.
Q. Did you have any -- did you have any discussions with anyone where the items which are marked "no" in the margin were discussed?
A. I may have. I have specifically "no" next to a preferred share 48-1/8 conversion price, 25 percent premium over

Page 293

current Laser price.
It says "no" next to it in the column. I don't recall why that says no.
Q. If you turn to page 2 to the right of the heading Shareholder Lockup there is "no" and I think that means registration rights, is that what that means?
A. Probably a reasonable interpretation. It says REGRTS.
Q. That would refer to --
A. I would believe registration rights.
Q. Rather than a lockup of the shares they would be subject to some form of registration rights agreement, correct?
A. It would be the norm.
Q. That would be the norm?
A. Yes.
Q. Going down the page under the heading Acquisition of Publicly Held Camper Shares, there is a termination fee and there is -- to the right it is written, no.
Do you remember discussing that issue with anyone?

Page 294

A. I am sure I was involved in discussions about every one of these items but I don't recall it specifically.
Q. Again, the -- I don't see any no or any writing next -- withdrawn.
The expected closing is still shown here as being second quarter of 1998, correct?
A. Yes. Well, it is in two places. It looks like it contemplates two closings.
Q. That ultimately is the form of the transaction that takes place that is a two-step transaction and there are to be indeed two closings, correct?
A. That is my recollection, yes.
Q. On the third page which is entitled Project Laser Pricing Mechanism Overview --
MR. MARKOWSKI: I think that may be the fourth page.
MR. BEMIS: Is it the fourth page on that one? You are correct. It is the fourth page. Thank you.
BY MR. BEMIS:
Q. Item number 1 refers to assumed

Page 295

Camper holding company debt of 500 million dollars and then it being offset by a portion of the existing holding company stock position in Camper and then at an assumed 26 per camper share valuation.
Do you see that?
A. I do, yes.
Q. Can you tell the jury what that refers to?
A. It is -- it looks to me to be a calculation where the holding company debt is valued at $26 per Camper share held by MacAndrews & Forbes.
Q. There is writing at the bottom that reads -- I think I am reading this correctly -- "Will - other holding company obligations."
Do you see that writing?
A. I do.
Q. Is that your writing?
A. I don't believe so.
Q. Do you know whose it is?
A. No.
Q. On the final page of the document which is transaction pricing calculations,

NOT A CERTIFIED COPY

016358

Page 296

we have first deal assumptions at the top and it, below the price per Laser share the exchange ratio of .745. That again is what you proposed in your call on February 19, 1998, right?
A. That is correct.
Q. Then there are some basic debt assumptions there, correct? One of them is $500 million?
A. There is the line, debt assumption, assumed face amount -- face value, $500 million."
Q. That is debt of the Coleman Company, Inc., correct?
A. It doesn't say that here but I assume that is correct.
Q. You can set that -- you can set this document aside for right now. You can hand it back to me. Thank you.
Would you agree with me that from February 19 through the execution of the documents on February 28 things moved pretty quickly?
A. I would -- I guess I would characterize it differently. I think

Page 297

things moved as they would in a normal transaction of this size.
Q. It would be normal in a transaction of this size -- let me step back.
On February 20 did you have a deal -- withdrawn.
On February 19 after you spoke to Mr. Kitts, did you have a deal?
A. Sometime after I spoke to Mr. Kitts we had a rough deal. I don't know when he came back to me and acknowledged what we had.
Q. After you received the February 20, 1998 document that we just went through that was MS 340 did you have a deal?
A. No, because -- I don't think we had a deal. I think we were clearly in the ballpark because the economic value of that transaction was starting to be close to what we were talking about but I don't think we had a final deal at that point in time because I know it changed after that.
Q. You went to -- am I correct that you were in Aspen between February 19 and

Page 298

February 22 skiing, is that correct, looking at your calendar?
A. February 19?
Q. Through the 22nd.
A. I left on the night of Thursday, the 19th, and spent the weekend in Aspen.
Q. Did you do any negotiations over the weekend in Aspen about this transaction with Sunbeam?
A. I may well have.
Q. Do you have any specific recollection of doing so such that you could tell that to the jury under oath?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: Yes. I think I recall having discussions with Kitts before and after taking off from -- taking off on Thursday evening and I think they continued into Friday and they may have continued all weekend. I don't specifically recall them continuing all weekend but I certainly recall having a discussion or discussions with Kitts on Thursday

Page 299

afternoon, evening, and I believe it was continuing on into Friday.
BY MR. BEMIS:
Q. You believe you did have continuing discussions with Mr. Kitts over the weekend?
A. Certainly. I specifically remember discussions on Thursday and I think they continued.
Q. Was there any further exchange of documents in this period while you were in Aspen?
A. Not that I recall.
Q. You returned from Aspen I think on February 22 according to your calendar?
A. It looks like Sunday night, the 22nd, yes.
Q. Then on the 23rd it appears that there were a series of meetings. Is that consistent with your recollection of events?
A. My calendar suggests there was a meeting with Morgan Stanley on the 23rd at 5:45. That also is mentioned in the chronology prepared by Wachtell, Lipton.

NOT A CERTIFIED COPY

016359

Page 300

Apparently on the 23rd there was a meeting at some point in time during the day between Nesbitt, Page, Levin, Shapiro, Duffy and Geller with representatives of, it looks like, Morgan Stanley to conduct due diligence.

Later that day there were meetings with -- I met with, it looks like, the First Boston people and then that evening there was a meeting at Morgan Stanley which included Nesbitt, Shapiro, Levin, Page, Maher, Duffy, Steven Isko and Fannin and Kersh, Kitts, Stynes, Fuchs, Chang and Goudis at Morgan Stanley where Sunbeam made a presentation regarding its business and its outlook.

Q. Could I ask you to focus on the first meeting on February 23? You are not shown as attending the first meeting which is identified in MS 75 which you read a moment ago.

Do you see that meeting?

A. On the 23rd?

Q. Yes, sir.

A. I do.

Page 301

Q. There is a specific reference to conduct due diligence. Do you see that?

A. Yes.

Q. Do you know what due diligence was done at this meeting on February 23, 1998?

A. I think this meeting was Morgan Stanley's due diligence regarding Sunbeam.

Q. Regarding Sunbeam or regarding Coleman?

A. Regarding Coleman, excuse me.

Q. So then you don't attend this meeting, right? You are not shown as being there.

A. I didn't attend it, nor does my calendar suggest that I did.

Q. Later in the day you have -- you have a meeting with, it looks like, CSFB personnel; is that correct?

A. Yes.

Q. What was the subject matter of that meeting on February 23, 1998 among CSFB personnel and yourself?

A. I can only -- I don't recall specifically. I would think it was to discuss the status of the transaction.

Page 302

Q. When you are discussing -- withdrawn.

Can you recall anything specific about the status of the transaction that you discussed?

A. No.

Q. Then you attend this meeting on February 23 in the evening; is that correct?

A. Yes.

Q. Your calendar refers to a 5:45 p.m. meeting at Morgan Stanley and that is, for the record, on MS 86.

Is that the meeting you attended?

A. Yes. I don't know if it is at 5:30. That is what my calendar says. 5:45.

Q. You said there -- earlier you told me there was a presentation at that meeting by Mr. Fannin and Mr. Kersh. Do you recall that?

A. Yes.

Q. They presented a -- strike that. What did -- what did Mr. Fannin present?

Page 303

A. I don't recall. Fannin was there. I don't think he was actually making the presentation. I think Kersh as I recall did a great bulk of the presentation.

Q. Did Mr. -- in Mr. Kersh's presentation did he use some form of projection device so that people could follow along with the discussion or was it just an oral presentation?

A. There was a projector and there was -- I think everybody had copies of the slides.

Q. A deck of the materials?

A. I believe so, yes.

Q. Let me show you what has been marked as Morgan Stanley Exhibit 84. Let me see that one back. I gave you multiple copies on top of it. I want to make sure I gave you the right one.

I have given you now Morgan Stanley 84. Did you have a copy of the -- of MS 84 during Mr. Kersh's presentation?

A. I think so.

NOT A CERTIFIED COPY

0016360

Page 304

Q. Did you stay for the entire presentation?
A. I believe so.
Q. Looking at MS 84, if you will turn to the -- turn to page -- I want to give you this -- let me see the easiest way to read these numbers for you.
There are CPH numbers on it beginning with CPH1324756. Do you see that number on the first page? I will refer to the last two digits to help us along.
A. Okay.
Q. Turn to the page marked 59.
A. Okay.
Q. You will see some writing there, explore licensing opportunities. Do you see that?
A. Yes.
Q. Do you recognize the handwriting?
A. I do not.
Q. Did you make any notes on the copy of the deck that you had?
A. Not that I recall.
Q. There is, if you will turn to page -- turn to page 71. Are you there?

Page 305

A. No.
I am.
Q. There is next to the figure, net sales, do you see the handwriting, Jan, J-A-N, slow and then February below the January?
A. It says Feb, Jan.
Q. Did Mr. Kersh comment on net sales in January during his presentation?
A. Not that I recall.
Q. Did he comment on February sales?
A. Not that I recall.
Q. Did anyone ask any questions about January or February sales?
A. Not that I recall. I think there was discussion about the first quarter and the year.
Q. The first quarter. What was the discussion -- was this a discussion between Mr. Kersh and representatives of MacAndrews & Forbes?
A. Well, Mr. Kersh was at the -- sitting at the head table making the presentation so it was with Mr. Kersh and everybody else in the room effectively.

Page 306

Those discussions were about the ability of the company to make its forecast which is in the long range strategic plan here, sales and EPS in 1998, specifically, and going on beyond that, and my recollection is that Mr. Kersh in no uncertain terms said that not only was he going to make "what the Street's forecast was," but they were going to make their budget in the first quarter and for the year.
Q. Did Mr. -- this was a statement that Mr. Kersh made for the entire year in February of 1998, correct?
A. Yes.
Q. He was projecting forward at that point approximately ten months and a week or so, right?
A. He was projecting they were going to do better than their budget.
Q. He was projecting forward as I said for ten months and about a week as of this time; is that right?
A. Well, he was projecting forward for about a month and he was projecting

Page 307

forward for ten months and a few days.
Q. Then the projections for the year 1999, those were projections not only for the balance of 1998 but for another 12 months in 1999, right?
A. Yes.
Q. Then the projections for 2000, those were projections for two years and at least ten months, correct?
A. Well, 2000 were projections that were for the period starting in the beginning of 2000 so it wasn't -- it was not projections for two years and two months.
Q. Perhaps I misspoke in the way I asked the question. I think we both agree it was a projection for the year 2000, correct?
A. Yes.
Q. The year 2000 was still a year and ten months away, correct?
A. Yes.
Q. There is writing at the bottom under earnings per share where one wrote below 220 for 1998, $1.99.

NOT A CERTIFIED COPY

0163110

Page 308

Do you see that?
A. Yes.
Q. Do you recall that discussion?
A. You will note there is a little ST next to it which I believe indicates that that is the Street estimate or the I/B/E/S or whatever for the company.
Q. Did Morgan Stanley speak at the meeting on February 23 that -- in the evening other than courtesies and pleasantries?
A. Well, I think Morgan Stanley introduced Kersh who introduced the subject, was involved in the process. There were discussions about where we were going. There were discussions about questions we had and they were certainly involved in the process, yes.
Q. I didn't ask you whether they were involved in the process. That is a different question. I want you to focus on perhaps a more limited --
A. Did they address questions? The answer is, yes.
Q. What questions was Morgan Stanley

Page 309

asked, and please tell me who was asked and who responded if you can.
A. I think Morgan Stanley was asked questions primarily about completing the due diligence.
Q. The due diligence of Coleman?
A. The due diligence of Sunbeam and Coleman as to the process.
Q. As to what?
A. As to the process.
Q. The process of how they were going to complete due diligence?
A. Yes.
Q. What due diligence did -- were you -- excuse me.
Who spoke on behalf of Morgan Stanley?
A. My recollection is that I think it was Stynes primarily.
Q. What did he say?
A. He was sort of the team leader.
Q. What did Mr. Stynes say?
A. I don't recall specifically.
Q. Who asked the question of Mr. Stynes?

Page 310

A. I don't recall. I don't recall who asked any questions.
Q. Other than this question to Mr. Stynes do you recall any other questions asked of anyone on behalf of -- withdrawn.
Other than this question addressed to Mr. Stynes do you recall any other questions addressed to Morgan Stanley?
A. Not specifically, no.
Q. Do you recall any specific question ever asked of Morgan Stanley at the February 23 meeting whether Sunbeam would meet its net sales objectives for the first quarter of 1998?
A. No.
Q. Do you recall any question asked of Morgan Stanley at the February 23rd meeting whether Sunbeam would meet its earnings per share estimates for the first quarter of 1998?
A. What was -- go back one question.
Q. What -- do you recall any question asked of Morgan Stanley at the

Page 311

February 23 meeting whether Sunbeam would meets its earnings per share estimates for the first quarter of 1998?
MR. MARKOWSKI: I think he asked for the prior question.
BY MR. BEMIS:
Q. Do you recall any specific question ever asked of Morgan Stanley at the February 23 meeting whether Sunbeam would meet its net sales objectives for the first quarter of 1998?
A. No. I said, no. No to the second question also.
Q. Okay.
Did anyone ask Morgan Stanley at the meeting whether Sunbeam would meet its long term strategic plan net sales goals for 1998?
A. No.
Q. Did -- I would ask you.
A. I don't recall anybody asking.
Q. I am sorry. I didn't mean to interrupt you.
Did anyone at the February 23 meeting ask anyone at Morgan Stanley

NOT A CERTIFIED COPY

0163362

Page 312

whether Sunbeam would meet its long range strategic plan net sales goals for 1999?
A. Not that I recall.
Q. The same question for the year 2000.
A. Not that I recall.
Q. With regard to earnings per share, did anyone ask Morgan Stanley at the meeting whether Sunbeam would meet its earnings per share projection for 1998 of $2.20 as set forth in this document?
A. Not that I recall.
Q. I would ask you the same question for the periods 1999 and 2000 which have the respective earning per share figures of $2.75 and $3.30.
A. Not that I recall.
Q. Did anyone ask -- did anyone ask at the February 23rd meeting whether Sunbeam had interim financial statements for the month of January 1998?
A. Not that I recall.
Q. Did anyone at the February 23 meeting ask Sunbeam to provide MacAndrews & Forbes copies of their interim financial

Page 313

statements for January 1998?
A. Not that I recall.
Q. As part of the -- there is a discussion on page CPH, and then the last two digits, 60. If you would turn there please?
A. Okay.
Q. In the left-hand margin -- by the way, this handwriting has been previously identified to be, at least in the belief of one person, Mr. Jerry Levin's handwriting.
Are you familiar with Mr. Levin's handwriting?
A. No, I am not.
Q. Anyway, we will set that issue aside.
Turn to the left-hand column on that page where it is written, dumped 10 million blankets, Japan and China fourth Q.
Do you see that?
A. Yes.
Q. Do you recall Mr. Kersh or anyone else discussing Sunbeam dumping 10 million blankets in Japan and China in the fourth quarter?

Page 314

A. I don't.
Q. Do you recall any discussion at all about blankets in China and Japan?
A. I remember there was a discussion about blankets and some sales but I don't remember what the substance of it was.
Q. Did anyone at the meeting after the presentation or even during the presentation ask Mr. Kersh when Sunbeam planned to file its annual report on form 10-K with the Securities and Exchange Commission for the year ending 1997?
A. I don't remember somebody specifically asking that but I am sure at some point in time somebody asked that question or maybe I -- or we knew the answer to it.
Q. You did know they were going to file one, that is, Sunbeam?
A. Well, of course.
Q. On page CPH ending with the two digits, 65, would you please turn to that page?
A. Okay.
Q. Under bullet -- above bullet

Page 315

number 1 is the heading Implemented No Return Policy. Do you see that?
A. I am not sure that is what it says. It looks like something about no return policy.
Q. Was there a discussion of no return policy at this meeting on February 23?
A. I don't recall.
Q. At any point during the February 23 meeting did any representative of MacAndrews & Forbes ask for a list, whether it be oral or in writing, of Sunbeam's current customers?
A. Yes. I think there was a request for current customers. I don't remember who made it and I don't know whether it was made at this meeting or some later date but I think there was a request for customers.
There were requests for lots of information at this meeting, typical types of information, and that would be the typical type of information that people would request.
I don't specifically remember

NOT A CERTIFIED COPY

0163363

Page 316

anybody asking the question but --
Q. As you sit here today you don't have a specific recollection of ever receiving a customer list, do you?
A. I think we did receive a customer list. I don't specifically remember it but I think we did.
Q. Did you ask -- at the -- strike that.
At the February 23 meeting did anyone from MacAndrews & Forbes ask Mr. Kersh where Sunbeam stood on sales for the first quarter of 1998 versus where they were a year earlier, first quarter 1997?
A. There was a substantial amount of discussion about the first quarter, and, as I recall, Kersh basically said that he was going to make the goal.
You asked me whether somebody from MacAndrews & Forbes. I loosely include in that people from Coleman also.
Q. I am including Coleman in that. I think we are both on the same page.
A. Okay, and First Boston also.
Q. I was including First Boston, any

Page 317

representative on behalf of MacAndrews & Forbes.
A. Okay.
Q. Was there any discussion at the February 23 meeting of Sunbeam's pattern of sales orders during quarters?
A. Not that I recall.
Q. I am going to show you now a series of exhibits and I just want to see if any of the documents have your handwriting on them. There is no specific questions other than that.
Unfortunately this is a ritual we have to go through because we can't figure out whose these are.
Do you want to hand me back 84, Mr. Maher, and we will get that out of your way? Thank you very much.
First I am going to hand to you MS 181. These are copies of the deck that you looked at.
My only question is whether you can identify any of the handwriting on the document.
A. Is it the same all the way

Page 318

through the document?
Q. The handwriting is consistent.
A. I will just look at one. No.
Q. Thank you very much.
I am handing you now MS 182 and ask you to look at the handwriting on that, please, and tell me if you can identify it, any of it?
A. No.
Q. You can hand that back to me. Thank you.
I am now going to hand to you MS 183. There may be two sets of handwriting on that, one on the cover page and one on the inside.
I would like you to take a look at it.
A. No.
Q. I hand you now what has been marked as Morgan Stanley 184. On the cover page you will see Black & Decker written on it and then there is some writing, restructuring charge, at the top and additional writing on the interior of the document.

Page 319

A. No.
Q. Lastly, I show you what has been marked as MS 185 which has handwriting, sales 96, and then, eliminated 40 to 50, and then there is some other writing on the inside of the document at various places.
A. No.
Q. Did you keep your copy of MS 84 which is the copy that you looked at first or did you leave it behind at the meeting?
A. I don't know. You said it is a copy that I looked at first.
Q. In the deposition?
A. Not the specific copy that I -- that is not mine.
Q. I am not suggesting that it was. What I meant is you said you did have a copy of the deck at the presentation, not that that was yours?
A. It would be pretty typical of me just to leave it.
Q. Let me show you now what -- strike that.
Were there any other documents handed out at the meeting or available at

NOT A CERTIFIED COPY

016364

Page 320

the meeting of February 23?
A. For some reason I think there was a Morgan Stanley presentation on -- either on Sunbeam or the combined entity. I just remember something. I don't know whether it was at that meeting or a later meeting or an earlier meeting.
Q. Did you see it in your deposition preparation?
A. I don't recall seeing it, no.
Q. Did you keep a copy of the document from Morgan Stanley?
A. I doubt it.
Q. According to the chronology, we will go back to MS 75, between February 24 and the 27th, 1998, Coleman and Sunbeam and their respective advisers negotiated the structure of the transaction, conducted due diligence and drafted the necessary documentation. Do you see that?
A. I do.
Q. Is that an accurate statement of what happened during that period?
A. I think that is an accurate statement.

Page 321

Q. Did you -- I want to focus on the negotiation of the structure first.
Was that your responsibility to negotiate structure?
A. Probably, yes.
Q. And working with CSFB?
A. I don't know that they were overly involved in it.
Q. In terms of structure who was your counterpart on the other side of the negotiations?
A. Kitts and Stynes at various times were involved so the two of them.
Q. Were the lawyers on each side of the transaction involved in negotiating the structure?
A. I don't think directly, no.
Q. Were they simply drafting the documentation according to the structure that you negotiated?
A. Yes, although I am sure -- I am sure from my standpoint that I was getting input as to things that might or might not work.
Q. As an example -- I am not

Page 322

suggesting this happened right this way.
If you came up with a structure you would be able, you would pose that structure to your attorneys and they might tell you, yes, you can do it that way or, no, we can't, here is an alternative, that type of dialogue?
A. Yes, exactly.
Q. Wachtell, Lipton was the attorneys that you used, correct?
A. That's correct.
Q. Then on the Sunbeam side they -- their attorneys were Skadden, Arps?
A. Yes.
Q. You have worked with Skadden, Arps before, correct?
A. Yes.
Q. Let's talk about the drafting the documentation. I think you probably answered this.
The documents, that is the merger agreements and the exhibits and the schedules that go with it, right?
A. I assume so, yes.
Q. That was drafted by the

Page 323

attorneys, correct?
A. Yes.
Q. Did you review the documentation before, when it was finalized?
A. I don't recall specifically but "review" for me would be a two-page summary of what the important issues are of the document. I wouldn't read it specifically.
Q. As you sit here today your testimony to the jury is that you didn't read the final documentation before it was executed by the officers of the companies?
A. That's correct.
Q. You left that to others to do?
A. Yes.
Q. Let's focus on the other category of events that took place between February 24 and 27. That is conducting due diligence.
Let me ask you first to focus on due diligence by MacAndrews & Forbes.
A. Collectively?
Q. Collectively, yes; obviously on your side of the table, if you will.
A. Which would include Wachtell,

NOT A CERTIFIED COPY

016395

Page 324

Lipton.
Q. It is going to include Wachtell, Lipton and also Credit Suisse First Boston on your side and your accountants.
Let's start with the due diligence kind of in general terms and let me ask you whether there was a person on behalf of MacAndrews & Forbes that had overall responsibility for this due diligence that was conducted between February 24 and February 27, 1998.
A. I would say the laboring oar was, from a business standpoint, was Jerry Levin and Joe Page and their accountants.
Obviously from a legal standpoint it was Wachtell, Lipton and First Boston was involved with both the legal and financial, business due diligence.
Q. Did you have overall responsibility for monitoring the due diligence?
A. No.
Q. Did you have overall responsibility -- I will use a different term -- coordinating the due diligence?

Page 325

A. No.
Q. Mr. Gittis testified in an earlier deposition that due diligence did "fall within the ambit of Maher."
Is that an accurate statement in your view?
MR. MARKOWSKI: I object to the form of the question.
THE WITNESS: Did it fall in the what?
BY MR. BEMIS:
Q. I didn't hear you.
A. Could you ask the question again?
Q. Sure.
Mr. Gittis who was deposed on April 21, 1999 in the Coleman Company shareholder litigation was deposed and was asked the following questions. I am referring to page 9, line 25:
"Q. In connection with the agreement by MacAndrews to sell its interests did MacAndrews conduct a due diligence investigation of Sunbeam's operations?
"A. Oh, sure, they did.

Page 326

"Q. Do you know who the people at MacAndrews were who were responsible for performing that investigation?
"A. It fell within the ambit of Jim Maher who was the president of MacAndrews."
That is what Mr. Gittis said.
Is that an accurate statement?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I think -- do you want to ask the question again?
BY MR. BEMIS:
Q. Is that an accurate description of -- by Mr. Gittis?
A. It is a description. I wouldn't -- it is not the way I would describe it.
It is also a question -- he is answering a question about MacAndrews. I don't know whether he is answering for MacAndrews in the sense that we have been talking about or just MacAndrews.
Excuse me a second.
MR. MARKOWSKI: Off the film for

Page 327

a phone call.
THE VIDEOGRAPHER: Going off the record.
The time is 12:00 p.m.
(Recess)
THE VIDEOGRAPHER: We are back on the record. The time is 12:12.
BY MR. BEMIS:
Q. Mr. Maher, did you give any instructions to Credit Suisse First Boston as to what due diligence they should do in this period between February 24 and February 27, 1998?
A. Other than to do -- none that I recall specifically other than to do their normal due diligence that they would conduct in a transaction like this.
Q. Did you give any instructions to your law firm, Wachtell, Lipton as to what due diligence they should do in this period between February 24 through February 27, 1998?
A. Nothing that I recall specifically; the normal drill.
Q. Did you give your, Coleman's,

NOT A CERTIFIED COPY

016366

Page 328

accounting firm -- did you give Coleman's accounting firm, Ernst & Young, any instructions as to the accounting due diligence they should?
A. No. I am sure Page did. I wouldn't have.
Q. With regard to -- with regard to MacAndrews & Forbes internally now excluding your outside advisers was there any person inside MacAndrews & Forbes who was tasked with doing any form of due diligence?
A. I think Will was doing due diligence working with all of the parties, I believe. Will Nesbitt.
Q. Right. I knew who you were talking about.
To your knowledge did any of the group that you have described as conducting the due diligence, CSFB, Wachtell, Lipton, Mr. Nesbitt and the accounting firm of Ernst & Young, did they during this period of due diligence, February 24 through February 27, did they conduct any interviews of any Sunbeam employees about

Page 329

Sunbeam's financial performance in the first quarter of 1998?
A. I don't know.
Q. Again, this same group of people?
A. Other than the interviews that occurred at the meeting that took place at Morgan Stanley on the 23rd, there was a pretty thorough vetting of Sunbeam's performance at that meeting with the management of Sunbeam.
Q. Anything other than the February 23 meeting that you are aware of?
A. No.
Q. Are you aware of any of the -- your due diligence team interviewing Sunbeam middle management during the due diligence period?
A. I believe that Levin and Page, Shapiro made a number of visitis to different locations.
I can't tell you where they went or what they did but I would imagine in the course of that they talked to a number of middle managers.
Q. Recognizing --

Page 330

A. At Sunbeam.
Q. You weren't on these trips, correct?
A. No.
Q. As you sit here today while you believe they interviewed certain Sunbeam facilities you don't know such that you could tell the jury that they actually did interview middle management people, is that fair?
A. That's fair.
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Sunbeam customers, for example, like a Wal-Mart or a Sears or whatever their largest customers were?
A. If that were done that would have been Jerry.
Q. You are not aware of it being done as you sit here?
A. I have a vague recollection that somebody talked to some of their customers.
The big customers of Sunbeam were big customers of Coleman and in some cases Revlon so my recollection is there were

Page 331

some discussions. I just don't know.
Q. You didn't conduct any discussions?
A. I didn't, no.
Q. Did anyone on behalf of the MacAndrews & Forbes' due diligence team interview analysts about Sunbeam?
A. I would be surprised. No.
MR. MARKOWSKI: You are focusing on this February 24 to 27 time period?
MR. BEMIS: Yes, sir. I am focusing on the period February 24 through February 27 as set forth in MS 75.
THE WITNESS: The only one I would think that would have been involved, it would be highly unusual to involve an analyst since this was a public company.
BY MR. BEMIS:
Q. Did anyone on the MacAndrews & Forbes' due diligence team interview Arthur Andersen during this period of due diligence, February 24 through the 27th?
A. You are talking about the broad

NOT A CERTIFIED COPY

016367

Page 332

team?
Q. The whole broad team.
A. I don't know. I do think there were discussions between our accountants and their accountants.
Q. As you sit here today you don't know the results of those discussions, correct?
A. I don't recall them, no.
Q. During the due diligence period we have been discussing, February 24 through the 27th, did anyone to your knowledge on the MacAndrews due diligence team go back and research analyst reports about Sunbeam that pre-dated this time period, February 24 through the 27th?
A. I think Will read through a lot of the research reports. We had a package of research reports early on that predates this period which is when -- as we said, work started in December. It continued after the discussions started in January so to suggest that it is just this narrow -- this three-day period I think is -- I don't know whether he looked at research reports

Page 333

during this three-day period but he certainly looked at research reports.
Q. If Mr. Nesbitt -- Mr. Nesbitt would be the one who knows what he looked at?
A. Yes, he would.
Q. Did you personally undertake to review any research reports about Sunbeam before September -- excuse me -- February 27, 1998, you, personally?
A. I think I read a few of the research reports about Sunbeam.
Q. Do you recall whose that you read?
A. I think -- I think it was First Boston. I don't recall.
Q. There was a First Boston report identified in one of the First Boston documents. I think it is dated, I want to say, November 1 of 1997 but I could be mistaken.
Is that the one you are referring to?
A. I am not sure.
Q. Did First Boston -- strike that.

Page 334

Did Credit Suisse First Boston have an analyst that was covering Sunbeam?
A. Well, I assume so because I think there was a research report.
Q. I could be wrong about this but I understood that -- how is it announced that they are going to institute coverage on a company, for example, and in addition to that there can be research reports that are done that are not part of announced coverage. Am I correct in that or do I have it wrong?
A. If there is a research report written, I don't know who would have written it except somebody who was covering the company.
Q. Was Credit Suisse First Boston researching Sunbeam during this period leading up to February 27, 1998 when the due diligence was going on?
A. I frankly don't recall whether they had analysts out. I think I said that a number of times.
Q. During the due diligence period of February 24 through the 27th as

Page 335

referenced in MS 75 did Morgan Stanley provide to anyone on the MacAndrews due diligence team any documents that you know of?
A. I think Morgan Stanley presented, as I said before, it may have occurred and may have been at their office or before or after that there was a presentation on Sunbeam. I don't have it in front of me but I am pretty sure there was a document that they presented that was a, for lack of a better term, a selling document on Sunbeam.
Q. Let me show you -- let me show you what I think the document is you are referring to and you can tell me if it is or is not.
I will hand you what has been marked as Morgan Stanley Exhibit 186. Do you have that document in front of you?
A. 186, yes.
Q. Is this the document you are referring to?
A. Let me take a look.
MR. MARKOWSKI: This particular

NOT A CERTIFIED COPY

016368

Page 336

version has some handwriting in it.
MR. BEMIS: I am sure.
MR. MARKOWSKI: You are excluding that?
MR. BEMIS: I am excluding any handwriting on it. I can't guarantee you -- there is handwriting on the front too. I think I know whose it is. Another day, another issue.
THE WITNESS: Yes, this is the one I was talking about.
BY MR. BEMIS:
Q. Is any of the handwriting in this document yours?
A. No. Well, I haven't gone through it completely. Is it all the same?
Q. I don't want to try to testify about what it is. That would not be proper for me to do so.
Let me --
A. On the earlier documents you showed me, you said it was on the front page, it was --
Q. This one I couldn't tell you that with certainty.

Page 337

Look at page CPH1324814.
A. Stated growth objectives?
Q. Yes, yes.
A. I was right on that page.
Q. There is some handwriting on the right-hand side that reads, as I read it, how much driven by restructuring charges, savings through income.
Do you see that?
A. How much is driven by restructuring charges, restructuring charges, savings through income.
Q. Is that your writing?
A. No.
Q. Do you know whose it is?
A. I do not.
Q. Do you have any thought on whose it is?
A. No.
Q. You had this -- is this the document that you believe was available at the February 23 meeting?
A. Yes; either at that meeting -- they may have presented it at that meeting, "they" being Morgan Stanley.

Page 338

Q. I think you told me earlier you had no recollection of Morgan Stanley making any presentation, correct?
A. No. I don't.
Q. Did you ask anyone on the MacAndrews & Forbes' due diligence team to conduct any review of MS 186 during the due diligence period of February 24 through the 27th, 1998 as reflected in MS 75?
A. Did I ask somebody specifically to?
Q. Yes.
A. Not that I recall.
Q. Did anyone do it even if they did it on their own and without instruction?
A. I believe that everybody who was at that meeting read through this and in some shape or form was impacted by it.
Q. Did someone tell you that -- did the people on the due diligence team tell you that they read through it and were impacted by it or are you just making that as an assumption?
A. I don't remember somebody specifically saying they were -- that they

Page 339

read through this but --
Q. Okay.
Did you -- you worked on -- you worked on an outline of the -- withdrawn.
You did have, after the results of the -- your due diligence team's investigation of Sunbeam, you had sufficient information that you elected to proceed with the execution of merger documents, correct?
MR. MARKOWSKI: Can I have the question back please?
MR. BEMIS: I will re -- I will withdraw and ask another question.
BY MR. BEMIS:
Q. Did you have after you completed the results of your due diligence investigation by this team we have identified during the period February 24 through the 27th of 1998 enough information that you elected to proceed with the execution of the merger documents.
MR. MARKOWSKI: I am going to object the form. You are referring to Mr. Maher proceeding with the execution

NOT A CERTIFIED COPY

016369

Page 340

of the documents.
MR. BEMIS: I am referring to MacAndrews & Forbes.
MR. MARKOWSKI: Okay.
THE WITNESS: I am not sure MacAndrews & Forbes executed the merger agreement either.
BY MR. BEMIS:
Q. MacAndrews & Forbes through its holding companies did execute the merger documents or through --
A. Coleman did execute.
Q. So did CLN?
A. As part of -- not the merger agreement but --
Q. Yes, they did do one of the merger agreements. There is two merger agreements.
MR. MARKOWSKI: What is the question?
MR. BEMIS: We have lost track. Do you want me to restate the question for you?
MR. MARKOWSKI: Rephrase or restate it.

Page 341

BY MR. BEMIS:
Q. After you had completed the results of your due diligence investigation that was conducted by this team between February 24 and 27 did you have enough information to enter into the merger agreements that were signed as of February 28, 1998?
MR. MARKOWSKI: I am going to object to the form of the question. It is misleading. Mr. Maher made it clear that the due diligence period wasn't limited to the 24th through the 27th.
BY MR. BEMIS:
Q. You can answer.
A. I don't know how quite to answer it because it is sort of -- you are asking about me. I didn't enter into the merger agreements.
Q. I am referring you to in the context of MacAndrews & Forbes. I know you didn't sign the documents.
A. The company Coleman entered into an agreement that provided them with certain protections, certain further

Page 342

disclosures, certain further information that was forthcoming, that would be forthcoming with the agreement that they felt at that point in time was appropriate to enter into.
Q. CLN Holdings signed such an agreement as well as the Coleman Company, right?
A. You told me that a few minutes ago. They signed an agreement. I am sure. I don't remember what the agreement was.
Q. Both CLN Holdings?
A. They would have been similar.
Q. Similar in the sense that the parties entered into agreements that provided them with certain protections, as you put it, certain further disclosures and certain further information that was to be forthcoming after the agreements were signed, correct?
A. Yes.
Q. Indeed those are called like representations and warranties, aren't they?
A. Yes.

Page 343

Q. You negotiate those between the parties?
A. Yes.
Q. And then you reduce them to writing in the contracts?
A. That's right.
Q. The contracts -- they did, in your case there were no other warranties and representations other than what the parties specifically sat down and agreed to?
MR. MARKOWSKI: I object to the form of the question. Mr. Maher said he never read the final versions of the agreement.
THE WITNESS: I didn't read the final version of the agreement.
BY MR. BEMIS:
Q. You read the summaries of the agreements, right, sir?
A. What is your question?
Q. Sir, you -- my question was the contracts that were executed in this case contained representations and warranties by the parties, correct?

NOT A CERTIFIED COPY

016370

Page 344

A. Yes.
Q. They were representations by Sunbeam on the one hand, right?
A. I believe so.
Q. And there were representations by Coleman in one of the documents, correct?
A. I believe so.
Q. And representations by CLN Holdings, one the parties to the contract, in the first step of the merger, right?
A. Different, but, yes.
Q. In your, those representations and warranties were all placed in writing after the parties completed their negotiations, correct?
A. Yes.
Q. And in customary fashion the parties in those agreements agreed there were no other representations and warranties other than set forth in the definitive documents that they signed?
MR. MARKOWSKI: Object to the lack of foundation.
THE WITNESS: I don't know that for a fact. If it says it, if you want

Page 345

to tell me that it says it, then it says it.
BY MR. BEMIS:
Q. You would agree with me if it says that, right?
A. Yes.
Q. If the merger agreements say there are no other warranties and representations other than set forth in those documents you would agree that is an accurate statement?
MR. MARKOWSKI: Objection.
THE WITNESS: Yes.
MR. BEMIS: You will be laughing a different tune later.
BY MR. BEMIS:
Q. Hand that document back to me. Let's go forward from February 27, 1998.
You told us that you did appear at the board meeting of the Coleman Company, correct?
A. That's correct.
Q. You made a presentation at that time?

Page 346

A. I think I told the board about the history of the negotiations.
Q. In addition to you speaking Mr. Levin spoke, correct?
A. Yes.
Q. And then you had your representatives from CSFB speak at the meeting, correct?
A. I didn't. It wasn't my meeting. They spoke.
Q. MacAndrews & Forbes?
A. Coleman meeting.
Q. Withdrawn.
Let's leave it that CSFB spoke at the meeting on behalf of the transaction, correct?
A. Yes.
Q. They expressed an opinion, I think, as you put it with appropriate qualifying language that the transaction was fair to Coleman's public shareholders?
A. From a financial point of view, yes.
Q. Yes. Thank you.
Following the meeting of the

Page 347

Coleman board, at the conclusion of the Coleman board meeting on February 27 the transaction with Sunbeam was approved by the Coleman board, correct?
A. Well, there were two meetings. There was one on the 25th and one on the 27th.
Q. Just the 27th now.
A. Yes.
Q. The 27th -- the February 27th meeting is the one where the transaction was actually voted upon?
A. Yes.
Q. I forgot one person who spoke at the meeting. There was also lawyers for Coleman from Wachtell, Lipton, Anna Emmerich, in particular, who spoke to the board as well?
A. At one or both of those meetings, yes.
Q. Each one -- as I understand it each of the board members voted in favor of the transaction; is that correct?
A. I don't recall but I assume that is correct.

NOT A CERTIFIED COPY

016371

Q. To your knowledge were any of the board members told how to vote on the transaction?
A. By whom?
Q. By anybody.
A. They may have been told what they could take into consideration in voting which I guess is sort of how to vote by the lawyers.
Q. My question was probably a little bit different. Maybe it wasn't clear enough.
Did anyone on the MacAndrews & Forbes side of the transaction tell the Coleman board members how they had to vote on the transaction?
MR. MARKOWSKI: You mean vote yes or no?
BY MR. BEMIS:
Q. Yes; yes or no.
A. Not to my knowledge.
Q. The Coleman board members who -- when -- you told us earlier that Morgan Stanley didn't make any presentation to the board members, correct?

A. Not that I am aware of other than the presentations that were given to the representatives of the company, First Boston, the Coleman management team, the MacAndrews & Forbes people.
I am sure that a copy of that -- so you have a director Page, not Page but Levin, who certainly had a copy of that, had been presented that information.
Q. Other than Mr. Levin is there any other Coleman board member that you are aware of that even had any knowledge of a potential transaction between Coleman and Sunbeam before the board meeting on February 25, 1998?
A. Sure.
Q. Who?
A. Perelman, Slovin, was Gittis a director? I don't know if he is a director or not. Drapkin, yes. Those three at a minimum.
Q. Let me ask you to go forward from the approval of the merger agreements. They were, as the record will show, eventually signed as of -- they were signed

on February 28, as of February 27.
I want to go forward from that date with you.
After February 28 did you have, up until the time of closing which I believe is March 30, 1998, did you, Mr. Maher, have any communications with anyone at Morgan Stanley about Sunbeam-Coleman?
A. Not that I recall.
Q. Are you aware of Mr. -- are you aware of Mr. Levin having any communications with anyone at Morgan Stanley between February 28, 1998 and the closing on March 30, 1998?
A. No.
Q. Mr. Perelman?
A. Not that I am aware of.
Q. Mr. Page?
A. Not that I am aware of.
Q. Mr. Nesbitt?
A. Not that I am aware of.
Q. Are you aware of anyone at Credit Suisse First Boston having any communications with anyone at Morgan Stanley about the Sunbeam transaction

between February 28 and March 30, 1998?
A. Not that I am aware of.
Q. After March -- strike that.
After February 28 and continuing up to the closing which is again March 30, 1998 did MacAndrews & Forbes' due diligence team do any further due diligence on Sunbeam?
MR. MARKOWSKI: Would you read the question back for me please?
(Record read)
THE WITNESS: Other than -- it is my understanding that during that period of time I think there was a number of meetings that involved, I believe, Page and Levin in terms of what the future operations of the company are, would be and how the company was going to be operated. I don't know whether that qualifies for further due diligence under your definition or not but I think those discussions, ongoing discussions, were taking place as to synergies and putting the businesses together and

NOT A CERTIFIED COPY

016372

Page 352

what the impact may be. I think that qualifies.
BY MR. BEMIS:
Q. Anything other than that?
A. Not that I am aware of.
MR. BEMIS: Why don't we change the tape?
THE WITNESS: I am sorry. After Sunbeam -- do you -- what was the question again, between what?
BY MR. BEMIS:
Q. February 28, 1998 and March 30, 1998, the closing.
A. I think after Sunbeam put out its press release I believe that Levin spoke with Kersh about the business and what the press release meant.
That is my understanding.
MR. BEMIS: Why don't we change the tape here and we will pick up with that?
THE VIDEOGRAPHER: The time is 12:44 and this completes tape number two.
(Recess)

Page 353

THE VIDEOGRAPHER: We are back on the record. This begins tape number three, volume two. The time is 12:45.
BY MR. BEMIS:
Q. Let me first ask you to identify the press release you are referring to and then I will ask you a couple of followup questions.
I will show you what has been marked as MS 39 which is a copy of a March 19 press release.
I am handing you what has been previously marked as MS 39 on Sunbeam stationery.
I will hand a copy to your counsel.
Do you have MS 39 in front of you?
A. I do.
Q. You referred a moment ago in your testimony to a press release.
Is MS 39 the press release you were referring to?
A. It is.
Q. As I understand your testimony,

Page 354

Mr. Levin, in your understanding, spoke to Mr. Kersh following the issuance by Sunbeam of the March 19, 1998 press release; is that correct?
A. That is my understanding, yes.
Q. How did you reach that understanding?
A. I think -- my recollection is that at the time after this announcement was made there was some questions posed by the press release as to whether they were going to make the quarter or not and it seemed, I believe, the determination was made to have Jerry Levin talk to Kersh about what exactly this meant.
Q. First of all, you didn't speak to Mr. Kersh, right?
A. I did not.
Q. Did Mr. Levin to your personal knowledge speak to Mr. Kersh?
A. Personal knowledge? What does that mean?
Q. You were present when Mr. Kersh and Mr. Levin spoke, if they did speak?
A. No.

Page 355

Q. Did someone tell you that Mr. Levin spoke to Mr. Kersh?
A. I don't remember.
Q. Did you see a document where Mr. Levin said I spoke to Mr. Kersh?
A. No.
Q. Did someone tell you that Mr. Levin spoke?
A. That is my recollection. There was a conversation but I don't recall where that recollection comes from.
Q. I take it then you don't recall what Mr. -- because you weren't -- strike that.
So the jury is clear, you weren't present -- you were not present at the conversation with Mr. Kersh assuming it occurred, right?
A. That's correct.
Q. You don't know how you even learned that such a conversation, if it took place, took place, correct?
A. That's correct.
Q. You don't have any notes that you have ever seen about this conversation if

NOT A CERTIFIED COPY

0163373

Page 356

it occurred, do you?
A. No.
Q. Did you hear from some source what Mr. Kersh said to Mr. Levin?
A. It is my understanding that he was reassuring as to the prospects of the company.
Q. Did someone -- did you hear from some source what Mr. Kersh said to Mr. Levin?
A. No.
Q. Did you ever speak -- strike that.
To this day have you ever spoken to Mr. Levin and asked him whether he spoke to Mr. Kersh?
A. No.
Q. Following the issuance of the March 19 press release -- strike that.
Did you see the March 19 press release on or about that time, March 19?
A. Somewhere around there, yes; somewhere on that day or thereafter.
Q. You were in Aspen between March 14 and March 28, 1998, weren't you?

Page 357

A. That's correct.
Q. So how did you find out about the press release in Aspen while you were skiing in Aspen?
A. I don't recall.
Q. While you were skiing in Aspen did you give any instructions to your due diligence team as to any followup they should do with respect to the press release?
A. I didn't have a due diligence team.
Q. MacAndrews & Forbes had a due diligence team, didn't they?
A. Yes.
Q. That is what I am referring to. I think I have been trying to be consistent with that. I will rephrase the question.
Did the MacAndrews & Forbes' due diligence team do anything about the March 19 press release by way of further investigation after it was issued and while you were skiing in Aspen?
A. Well, as I told you I believe that Levin talked to Kersh.

Page 358

Q. Other than what you believe, anything else?
A. I also recall that I was told that analysts who followed the stock were being told by Dunlap at the time that he put this press release out only, I don't have the exact language, but sort of paraphrasing, only at the behest of his lawyers and that things were really okay.
Q. You heard something from an analyst. Can you tell me what analyst it was?
A. I can't tell.
Q. You didn't talk to the analyst?
A. I did not.
Q. Who did you hear this from?
A. This was internally within MacAndrews & Forbes.
Q. Something that was being discussed in the hallways?
A. Well, the hallways of MacAndrews & Forbes is where everything gets discussed. I wasn't there as you know.
Q. I know you were skiing.
Did anyone call, as a result of

Page 359

hearing this in the hallways or wherever at MacAndrews & Forbes -- Mr. Dunlap was making these statements.
Did anyone on the MacAndrews & Forbes' due diligence team call Mr. Dunlap and ask him about the statements that were being attributed to him in connection with the March 19 press release?
A. I don't know.
Q. Did anyone on the MacAndrews & Forbes' due diligence team after the issuance of the March 19 press release ask Sunbeam for copies of their interim financial statements for the first quarter of 1998 to the extent they existed on that date?
A. I don't know.
Q. Did you ever up to the time of closing as a representative of MacAndrews & Forbes ever see an interim financial statement of Sunbeam for the first quarter or any portion of it 1998?
A. No, I didn't see that until after the closing.
Q. At any time up to the closing on

NOT A CERTIFIED COPY

016374

Page 360

March 30, 1998 did anyone on the MacAndrews & Forbes' due diligence team even request of Sunbeam either directly or through its accountants, Arthur Andersen, a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998?

A. Not that I am aware of.

MR. BEMIS: Why don't we break for lunch?

THE VIDEOGRAPHER: Going off the record. The time is 12:33.

(Luncheon recess: 12:33)

Page 361

AFTERNOON SESSION

1:46 p.m.

THE VIDEOGRAPHER: We are back on the record. The time is 1:46.

BY MR. BEMIS:

Q. Good afternoon, Mr. Maher.

A. Good afternoon.

Q. Let me turn to a different topic now.

During the March period of 1998 you knew, did you not, that there was going to be an underwriting of Sunbeam debentures as part of the financing of the acquisition of Coleman?

A. Yes, I did.

Q. You knew that Morgan Stanley was doing the underwriting, correct?

A. I did.

Q. Did you -- you have told us already that you were in Aspen from March 14 to March 24.

Did you attend any road shows at all in March concerning the debentures?

A. I did not.

Q. Did you ever see any -- strike that.

Page 362

Did you ask anyone on behalf of the MacAndrews & Forbes team to attend any of the road shows?

A. No.

Q. Did you ever see any of the documents that were used in the road shows?

A. Used in the road shows? I probably saw the -- I may have seen the red herring.

Q. There is a document that I can show you. It is a document called -- withdrawn.

There is a document referred to as Speaking Points which was marked as MS 193 and I would like to show it to you and ask you whether you have ever seen it.

I am going to hand you what has been marked previously as MS 193.

MR. BEMIS: Here is a copy for you, Mr. Markowski.

BY MR. BEMIS:

Q. For the record, this has Bates numbers SB0018203-288 as well as CPH0255395-480.

Page 363

Mr. Maher, do you have Exhibit MS 183 in front of you?

A. I do. 183?

Q. 193. Thank you very much. 193.

A. Yes.

Q. Have you seen it before?

A. I don't believe so.

Q. Will you hand it back to me?

Thank you, sir.

MR. MARKOWSKI: Could you read me back the Bates numbers that Mr. Bemis read?

MR. BEMIS: Would you like me to read them to you again?

MR. MARKOWSKI: Maybe I misheard it.

MR. BEMIS: CPH numbers -- let me look at the document in case there is some issue. They are just coming off my notes. CPH0255395.

MR. MARKOWSKI: If that is what you read. I heard a different number. Maybe it was me.

MR. BEMIS: It is possible I misspoke. It wouldn't be the first

NOT A CERTIFIED COPY

016375

Page 364

time.
BY MR. BEMIS:
Q. Now let me show you what has previously been marked as MS 194, and for the record I will read the Bates numbers into the record.
The CPH Bates numbers are 1185762-84 and the MS Bates numbers are 00977-99.
Do you have MS 194 in front of you, Mr. Maher?
A. I do.
Q. Please take a look at it and my only question at the outset will be if -- have you ever seen it before.
A. Is this the same as the other?
Q. Portions of it I believe are the same but if you would like to see the other one I can give it to you?
A. No. It is just -- I do recall seeing something. I don't know if it was this or something about the combined entities after they made the announcement. This doesn't look exactly like it but it may be.

Page 365

Q. You don't know?
A. I don't know.
Q. You can hand it back to me.
I asked you earlier whether you had ever seen the offering memorandum and -- withdrawn.
I asked you yesterday whether you had ever seen the offering memorandum for the debentures. You testified yesterday you had not and yet I thought I heard you say a few moments ago you may have seen a red herring?
A. I may have.
Q. You don't know one way or another?
A. No.
Q. The red herring is not the final offering memorandum, correct?
A. No, it is not.
Q. Did you -- strike that.
Did anyone -- withdrawn.
Did MacAndrews & Forbes through any entity that you are aware of purchase any of the debentures issued by Sunbeam in March of 1998 and underwritten by Morgan

Page 366

Stanley in connection with the Sunbeam-Coleman transaction?
A. I don't know.
Q. You don't know of any?
A. I don't know of any.
Q. You didn't buy any, did you, personally?
A. Personally, no.
Q. You didn't buy any on behalf of Mr. Perelman's companies, did you?
A. No. I already answered that.
Q. Let me show you what has been marked as -- before I show you this document, stepping back to the underwriting, did you see any of the documents executed between Morgan Stanley and Sunbeam in connection with the underwriting such as a notes purchase agreement, underwriting agreement?
A. I doubt it.
Q. When you have done, you have done -- strike that.
Your firm, at least when you worked with them, First Boston, did underwritings; you told me that, right?

Page 367

A. Yes.
Q. You are familiar and have seen underwriting agreements, correct?
A. Yes.
Q. For securities that are subject to the 1933 Securities Act you are familiar with the due diligence defense of underwriters, are you not?
A. It has been a long time so refresh my memory.
Q. As an underwriter you understand that under section 33 of the 1933 Act, that underwriters are absolutely liable for statements in an underwriting memorandum absent the availability of due diligence.
Do you recall that from your many years in investment banking?
A. I told you, most of my time was on the M&A side of the business, merger and acquisition, but that sounds correct.
Q. In connection with underwritings that you are familiar with it is customary, is it not, to include the financial statements of the offering company in the offering memorandum as certified by the

NOT A CERTIFIED COPY

0163376

Page 368

auditors, correct?
A. Yes.
Q. Are you familiar -- are you familiar with the term "comfort letters?"
A. Yes.
Q. You have seen them before?
A. Yes.
Q. Is it not indeed customary in the case of an underwriting for securities such as was done in the Sunbeam transaction by virtue of the debentures to obtain comfort letters from the auditors in connection with the offering memorandum?
A. Yes.
Q. I am going to ask you to take a look at Morgan Stanley 166 which is the offering memorandum that has previously been identified by other witnesses.
MR. MARKOWSKI: Do you have a copy I can use?
MR. BEMIS: Sure.
BY MR. BEMIS:
Q. Let me withdraw that question and start over again.
I have handed you what has

Page 369

previously been marked as MS 166 which is the offering memorandum for the Sunbeam zero coupon convertible senior subordinated debentures 2018.
Do you have that in front of you?
A. I do.
Q. My understanding is that you did not see -- you have not seen this offering memorandum before, right?
A. I told you I wasn't sure. I don't think I have.
Q. In connection with the offering memorandum, Coleman's financial statements are attached to this, to this document as are Sunbeam's financial statements?
A. Okay.
Q. Did you have -- did you have any role in having Ernst & Young provide its consent to have its financial statements included in the offering memorandum?
A. No.
Q. In connection with -- in connection with the offering memorandum for the debentures were you aware that Morgan Stanley would in the ordinary course have

Page 370

received comfort letters from the auditors whose financial statements as certified by them are included in the offering memorandum?
A. The question --
Q. Let me rephrase the question.
A. I think I know what you are asking.
Q. In connection with the inclusion of the financial statements in the offering memorandum for Coleman which, for example, are in here, is it customary for the --
A. And for Sunbeam.
Q. And for Sunbeam.
A. And the other companies.
Q. First Alert and Signature Brands to have their auditors provide comfort letters with respect to the financial statements included in the offering memorandum?
A. Yes.
Q. Am I correct, sir, that -- let me try again.
Am I correct, sir, that a comfort letter in this case which -- we are dealing

Page 371

with a period mid first quarter, would provide certain comfort to the underwriter with regard to the period since the last audited financial statement included in the offering memorandum?
A. Comfort or discomfort, yes.
Q. Comfort or discomfort?
A. Yes.
Q. For example, nothing has come to you attention except that?
A. Something along those lines.
Q. You are familiar with that?
A. Yes.
Q. In connection with the offering memorandum for the zero coupons bonds, the Coleman Company's auditors, Ernst & Young, did provide a comfort letter to Morgan Stanley.
Have you seen that letter?
A. The Coleman?
Q. Yes.
A. No.
Q. Did you --
MR. MARKOWSKI: Sorry. Could you read the question back please?

NOT A CERTIFIED COPY

016377

Page 372

MR. BEMIS: In connection with the offering memorandum for the zero coupon bonds the -- I misspoke. I will rephrase the question. I called them bonds rather than debentures.

BY MR. BEMIS:

Q. In connection with the offering memorandum for the zero coupon debentures Ernst & Young did provide a comfort letter to Morgan Stanley. Have you seen that letter?

A. I did not.

Q. Have you ever asked to see that letter at any time?

A. No.

Q. In connection with the offering memorandum for the zero coupon debentures the auditors for Sunbeam, Arthur Andersen, provided a comfort letter to Morgan Stanley. Have you ever seen that letter?

A. Yes.

Q. When did you first see it?

A. I can't tell you when I first saw it. It was sometime after -- after -- after -- year -- years later. It may have

Page 373

been in connection with the, or during the period of time after the, let's call it, the collapse of Sunbeam.

Q. Is it fair to say, sir, that MacAndrews & Forbes did not, until sometime after March 30, 1998, the date of the closing, request from either Sunbeam or Arthur Andersen, for that matter, a copy of the comfort letter provided by Arthur Andersen in connection with the debenture offering?

A. I don't know that for a fact.

Q. Did you request a copy of the Arthur Andersen comfort letter?

A. I did not.

Q. Did you request anyone at MacAndrews & Forbes on the due diligence team to request a copy of the audit comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the debenture offering?

A. I did not but I must tell you I took a fair amount of comfort that Morgan Stanley, having released this release and knowing they had a comfort letter from the

Page 374

auditors of Sunbeam, went forward with the offering.

Q. My question is -- just so I am clear.

You did not; that is, the MacAndrews --

A. I think I answered the question.

Q. You answered it you, and I am not sure whether you meant you or MacAndrews & Forbes.

Let me try to get a straight answer.

A. You got a straight answer.

Q. I am not suggesting you were trying to equivocate with me. I didn't mean anything by that. Please accept my apologies.

A. Okay.

Q. My question was: Did anyone on the -- on the MacAndrews & Forbes' due diligence team request a copy of the Andersen comfort letter to Morgan Stanley issued in connection with the debenture offer before the closing of the Coleman-Sunbeam transaction on March 30?

Page 375

A. I think I answered that before as I don't know.

Q. Are you aware of any prohibition in the merger of -- strike that.

Under the merger agreements are you aware of any provision in the agreements that would have barred, or prohibited, if you prefer, whether it be CLN Holdings or Coleman, requesting a copy of the Andersen comfort letter before the closing?

A. No.

Q. Are you aware of the --

A. I am also not aware of anything that would require them to provide it either.

Q. Require who?

A. Sunbeam.

Q. Are you aware of the provisions in the merger agreements that require Sunbeam to make its books and records including accounting records available to Coleman and CLN Holdings after the signing of the agreements on February 28 and up to the time of closing?

NOT A CERTIFIED COPY

Page 376

A. I don't remember that specifically but that sounds like a normal provision.

We also have, I will point out we have a press release that says they are going to come very close to making their numbers and a cold comfort letter that at the time one could presume was -- basically expressed something that was similar to what is said in this press release. That would be a reasonable assumption to make.

Q. Wouldn't it also be a reasonable assumption that you on behalf of the MacAndrews & Forbes' due diligence team would request financial information from Sunbeam after it issued the press release?

MR. MARKOWSKI: Object to the form of the question.

THE WITNESS: No. I don't think that is a reasonable assumption at all. I think what is reasonable here is the assumption that if somebody is doing an underwriting and they put out a press release that the press release is not a lie, not a bold face lie.

Page 377

MR. MARKOWSKI: Hold on. Let him finish.

BY MR. BEMIS:

Q. Are you done?

A. Yes.

Q. Who issued the press release?

A. Sunbeam.

Q. Thank you.

A. And who underwrote the bonds?

MR. MARKOWSKI: One at time.

BY MR. BEMIS:

Q. You saw the press release?

A. And who underwrote the bonds?

Q. I am not here to answer questions.

A. Let me ask you a question.

MR. MARKOWSKI: Jim, hold on. Larry, let him speak. Okay.

MR. BEMIS: I will wait -- let him say whatever he would like and then we will go on.

BY MR. BEMIS:

Q. Anything else?

A. Do you want to read me back what I just said?

Page 378

(Record read)

BY MR. BEMIS:

Q. Did you want to say anything else?

A. No.

Q. Did you ask the auditors on your due diligence team which was Ernst & Young to make any inquiries of Arthur Andersen about Arthur Andersen's comfort letter issued to Morgan Stanley by Arthur Andersen in connection with the debenture offer?

A. Did not.

Q. Are you aware of anyone on the MacAndrews & Forbes' due diligence team making such a request through Ernst & Young?

A. I am not.

Q. Did you get -- did you get, and if I asked you this I apologize, but did you, that is, MacAndrews & Forbes, get a copy of the Ernst & Young comfort letter that was sent to Morgan Stanley?

A. I don't know. Obviously you are including Coleman in that?

Q. Yes, I am.

Page 379

A. I can't believe that their auditors would have provided something to somebody without providing it to them. That would be highly unusual.

Q. In fact, it is customary in your experience that the comfort letters --

A. I think it is actually required.

Q. -- goes to both the company and to, in this case, the underwriters, correct?

A. Yes.

Q. In addition to the comfort letters that were issued in connection with the underwriting of the debentures, are you familiar with the requirement for the issuance of comfort letters in connection with the merger documents?

A. Say that again.

Q. Sure.

In addition to the comfort letters we have been discussing in connection with the debenture offering are you aware there are requirements for comfort letters from the auditors that were incorporated into the merger agreements?

NOT A CERTIFIED COPY

Page 380

MR. MARKOWSKI: I object to the form of the question. It misstates the record with respect to the requirements of the merger agreements.
MR. BEMIS: I don't think it does but I will stand on my question.
THE WITNESS: I don't know. Do you want to ask me the question again?
BY MR. BEMIS:
Q. Are you aware that there was a requirement in the CLN, I will call it, merger agreement which is marked as MS 93 in Exhibit A for the provision of a comfort letter?
A. When? When was there a provision?
Q. It was a provision for a comfort letter in connection with the registration of the securities to be issued following the first -- closing of the first step of the merger.
A. Comfort letter at a point in time when the securities were to be registered?
Q. That is correct.
A. Which could be -- we never got

Page 381

there.
Q. I am not disputing that. I am just --
A. If there was a comfort letter, if the transaction, which it did close, and MacAndrews & Forbes chose to sell those securities and get a registration statement filed, I guess, shorthand, there would have been a requirement for a cold comfort letter from the auditors. It makes sense to me.
Q. It does make sense to you?
A. Yes.
Q. Let me just --
MR. MARKOWSKI: I want to stop for a second. Is that what you were representing to the witness is contained in the merger agreement?
MR. BEMIS: I said in an exhibit to the merger agreement, and it is.
MR. MARKOWSKI: Okay.
MR. BEMIS: It is Exhibit A.
MR. MARKOWSKI: I just want to make sure I understand what your representation to the witness was.

Page 382

MR. BEMIS: I am going to show it to him. I am not testifying.
MR. MARKOWSKI: You already made a representation. I just wanted to understand what it was.
MR. BEMIS: Don't try to box me in on what I said. The record shows what I said. I am not answering your questions here today. There will come a time, perhaps, but not today.
Mr. Reporter, would you mark as Exhibit 278 the registration rights agreement dated March 29, 1998 among Sunbeam Corporation and Coleman (Parent) Holdings, Inc.?
(Morgan Stanley Exhibit 278 marked for identification)
MR. MARKOWSKI: This is a newly marked exhibit?
MR. BEMIS: I think so.
BY MR. BEMIS:
Q. First of all, sir, I want to show you what has been previously marked as Morgan Stanley Exhibit 93.
I am going to ask you to turn to

Page 383

page 7994.
A. Is this the same thing?
Q. No. What I am handing you now is MS 93, the agreement and plan of merger among Sunbeam, Laser and CLN Holdings and Coleman (Parent) Holdings.
MR. MARKOWSKI: May I have a copy please?
MR. BEMIS: Yes. I am going to run out of copies of these things.
BY MR. BEMIS:
Q. Do you have that document in front of you, sir?
A. I do.
Q. If you would look to page -- I will give you the Morgan Stanley number because it is shorter -- 7994?
A. Yes.
Q. That document is Exhibit A and it refers to it as the registration rights agreement, right?
A. Yes.
Q. Have you ever seen Exhibit 93 including the attachment, Exhibit A, before today?

NOT A CERTIFIED COPY

016380

Page 384

A. I don't know.
Q. Turn -- now I would like you to look at MS 278 which is Exhibit A but executed by the parties.
Do you have that document?
A. I do.
Q. Do you know Mr. Dickes?
A. I do.
Q. Would you turn to the last page of MS 278 and you will see the signature above the name Glenn P. Dickes and above that, Coleman (Parent) Holdings, Inc.
Do you see that?
A. Yes.
Q. Is that Mr. Dickes' signature?
A. I don't know.
Q. You wouldn't know.
Is it your understanding the registration rights agreement was executed?
A. I don't know.
Q. Turn to page 8 of the agreement, MS 278. Tell me when you are there.
A. Page 8. I am there.
Q. Directing your attention to paragraph 12 under Section 2.4 entitled

Page 385

Registration Procedures. Are you there?
A. Yes.
Q. Were you aware at the time that the merger agreements were executed that the registration rights agreement attached to the CLN merger agreement, MS 93, contained a requirement that a comfort letter be signed by Sunbeam's independent public accountants?
A. Ask me -- say that again.
Q. Sure.
Were you aware at the time the merger agreements were executed that the registration rights agreement attached to the CLN merger agreement, MS 93, contained a requirement that a comfort letter be signed by Sunbeam's independent public accountants?
MR. MARKOWSKI: Object to the form of the question, mischaracterizes the document.
THE WITNESS: I don't know.
BY MR. BEMIS:
Q. Hand it back to me.
A. Both of them?

Page 386

Q. Sure. You can hand them both back.
A. It wouldn't have been the kind of detail I would have focused on.
Q. Who would have been in charge of focusing on that kind of detail?
A. Wachtell, Lipton.
Q. Just so the jury puts that in context, Wachtell, Lipton was your attorneys, right?
A. Collectively.
Q. For the MacAndrews group in this transaction?
A. Or Coleman.
Q. They also represented CLN Holdings Inc., right?
A. I guess so.
Q. And Coleman (Parent) Holdings, Inc. which was a signatory to the contract we just looked at, right?
A. Okay.
Q. Would you give me 93 back?
MR. MARKOWSKI: The merger agreement?
MR. BEMIS: Right.

Page 387

MR. MARKOWSKI: I gave it to you.
BY MR. BEMIS:
Q. At any time following the issuance of the March 19 press release are you aware of anyone at MacAndrews & Forbes on the due diligence team asking Sunbeam for the contents of the Arthur Andersen comfort letter that was issued in connection with the debentures?
A. I think you asked me that question already.
Q. I may have and I apologize if I did. I just want to make sure I close this out and we will go on.
A. No.
Q. Are you aware after March 19 of anyone on the MacAndrews & Forbes' due diligence team asking Morgan Stanley for the contents of the comfort letter provided to Morgan Stanley in connection with the debenture offer?
A. I am not.
Q. Are you aware of anyone on behalf of the MacAndrews & Forbes' due diligence team after March 19 asking anyone at Arthur

NOT A CERTIFIED COPY

Andersen about the contents of the comfort letter issued in connection with the offering of the debentures?
A. I am not.
Q. You knew on behalf of MacAndrews & Forbes that at least as of the closing, March 30, that Sunbeam would have interim financial statements for a period of approximately three months as of the date of closing, is that right?
A. I am not sure I understand the question you are asking.
Q. Let me try again. If you don't understand it it wouldn't do any good to have you answer it.
At the time of the closing, you, Mr. Maher --
A. Yes.
Q. -- your history of investment banking and being sophisticated financially as you are knew that Sunbeam had interim financial statements as of March 30, 1998, interim financial statements?
A. Quarterly statements?
Q. Actually they would be monthly

statements which would get eventually wrapped into quarterly statements.
You knew they had interim financial statements, that is, Sunbeam?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I knew they would have quarterly statements. I didn't know for a fact they had monthly statements.
BY MR. BEMIS:
Q. Did you ever ask them?
A. I don't recall asking them, no.
Q. Did anyone on the --
A. I think you asked that question before.
Q. I probably did.
Did anyone on behalf of the MacAndrews & Forbes' due diligence team ask anyone on the Sunbeam side of the transaction whether Sunbeam had monthly interim financial statements?
A. I don't know.
Q. Have you ever heard that Sunbeam engaged in what the accountants call bill

and hold transactions?
A. Yes.
Q. Did you hear at some point that they had done that in 1997?
MR. MARKOWSKI: You are asking if any time prior to today he heard of that?
MR. BEMIS: That is just a starting --
MR. MARKOWSKI: Yes.
THE WITNESS: Yes.
BY MR. BEMIS:
Q. Did you know that they engaged in bill and hold transactions before the closing of the merger agreements on March 30, 1998?
MR. MARKOWSKI: Would you read that back for me please?
BY MR. BEMIS:
Q. I will read it back.
Did you know that they engaged in bill and hold transactions before the closing of the merger agreements on March 30, 1998?
MR. MARKOWSKI: The first word

was did you know?
MR. BEMIS: Did you know.
MR. MARKOWSKI: When?
MR. BEMIS: I said before the closing on March 30, 1998.
MR. MARKOWSKI: You are asking if Mr. Maher knew that before then.
I am trying to understand the time period of the question. You are asking him whether he knew prior to the closing?
MR. BEMIS: I will tell you what. I will shorten this to get him out of here. I will ask the question again.
MR. MARKOWSKI: Go ahead.
BY MR. BEMIS:
Q. Before March 30, 1998, the close of the merger transactions, did you know that Sunbeam in the year 1997 engaged in bill and hold transactions as that term is used by accountants?
A. I don't remember whether I knew then or not. I may have, I may not have.
Q. Were you aware at the closing on March 30, 1998 that Sunbeam had in 1997

NOT A CERTIFIED COPY

016382

Page 392

announced an early buy program for its grills?
A. I do believe that was discussed to some extent in the February meeting.
Q. February of 1998 meeting?
A. Meeting at Morgan Stanley on February --
Q. I think the meeting you are referring to is February 23, 1998 at 5:45 p.m.
A. That is the one.
Q. Were you aware on March 30, 1998 at the time of the closing that Sunbeam's grill sales accounted for in excess of 30 percent of its net domestic sales?
A. I don't know. I don't remember the exact numbers.
Q. Do you remember there were numbers discussed at the February 23, 1998 meeting about the percentage of Sunbeam's domestic sales that --
A. There were numbers discussed at the February meeting. I don't recall how specific they were in terms of percentages and so forth but I do remember, they did go

Page 393

through business by business and talk about the sales of each business. You have that presentation.
Q. Let me try --
A. It is in the presentation.
Q. I didn't get the whole question out.
A. Sure.
Q. Let me try one more time.
Did you know at the time of the closing on March 30, 1998 that Sunbeam's grill sales accounted for in excess of 30 percent of its domestic sales?
A. During what period of time?
Q. 1997.
A. I think we had a break out in that presentation as to what their sales were in 1997.
Q. Did you understand that those grill sales that accounted for in excess of 30 percent of their domestic sales, Sunbeam's domestic sales in 1997, were subject to the early buy program?
MR. MARKOWSKI: Object to the form of the question.

Page 394

BY MR. BEMIS:
Q. You can answer.
A. I don't recall what percentage. I know we discussed it but I don't recall what the percentage was so the answer is I think we were told at that meeting but I don't remember the exact details.
Q. Were you told at any point before the closing on March 30, 1998 that the early buy program could have a negative impact on Sunbeam's future financial performance?
A. I don't believe so.
Q. Let me show you MS 166. Turn to MS 166, the offering memorandum which you have in front of you.
A. Yes.
Q. There is a section on page 12 that begins, risk factors. Tell me when you are there.
A. I am there.
Q. Would you just read the first paragraph into the record for the jury please?
A. "Investment in the debentures

Page 395

offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors in addition to other information set forth in this offering memorandum in connection with an investment in the debentures offered hereby."
Standard language.
Q. Just boilerplate in your view?
A. Yes.
Q. Turn to page 16 and tell me when you are there.
A. I am there.
Q. There is a caption for seasonality, do you see that?
A. Yes.
Q. Would you read that section into the record for the jury please?
A. "Sales of certain of the company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the years. For instance, company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by

NOT A CERTIFIED COPY

016383

Page 396

moderate temperatures in the northern states. The company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an early buy program. Such a program shifts certain of the weather-related risks of negative sales impact for such seasonal products to later months of the season and as a result could have a negative impact on future financial performance."

Q. Had you read the offering memorandum you would have been aware of this information at the time of the closing on March 30, 1998, correct?

A. I would have been aware of what?

Q. The language you just read to the jury.

A. If I had read the memorandum I would have been aware of what?

Q. The language you just read to the jury.

A. Yes.

Q. Was there any discussion at the February 23 meeting of the extent of

Page 397

Sunbeam's 1997 bill and hold transactions?

A. I think there was a discussion. I just -- I don't recall the details of that discussion.

Q. If you would turn to page F3? Excuse me.

Let me ask you to first turn to page 16.

A. Yes.

Q. I know you are waiting on me. Just give me one second. I misspoke.

I need you to turn to page 14 if you could under risk factors in MS 166.

Are you there?

A. Yes.

Q. Under the risk factor "economic conditions" in the offering memorandum would you just read the last sentence into the record for the jury please beginning with "in addition?"

A. "In addition, the extended credit terms provided by the company in connection with its early buy program increased the company's risk of collection of related accounts receivable."

Page 398

Q. With regard -- now I ask you a question about bill and hold and I would like you to turn to page F -- that stands for the financial statements -- and it is page F8. It appears on the Bates numbered page, this may help you, CPH1326566.

A. Yes.

Q. At the February 23 meeting was it discussed either by Mr. Kersh directly or as a result of questioning that Sunbeam did engage in bill and hold sales?

A. I think so.

Q. At the February 23 meeting was it discussed that in 1997 the amount of the bill and hold sales was approximately 3 percent of Sunbeam's consolidated revenues?

A. I don't recall.

Q. As of March 30, 1998 had you read the offering memorandum, MS 166, and, in particular, page F8 under the heading Revenue Recognition in the financial statements you would have seen the following language, "The amount of such bill and hold sales at December 29, 1977 was approximately 3 percent of consolidated

Page 399

revenues," wouldn't you, sir?

A. Explain to me what that has to do with the last question.

Q. Could you just answer my question?

A. No. I am not going to answer the last question.

Q. You are not going to answer?

A. No. Because you asked me a question before, what happened in a meeting, you asked me a question as to what happened in a meeting in February.

Then you read something out of a document that is produced in March and try to draw the inference that the two had something to do with each other.

Q. These statements weren't produced in March. They are actually part of the 10-K which is March 6 but, sir, had you read the offering memorandum?

A. March 6 is not February.

Q. Do you need to say something else and then I will ask you a question.

A. March 6 is not the February meeting.

NOT A CERTIFIED COPY

016384

Page 400

Q. Are you all done?
A. Yes.
Q. As of March 30, 1998 had you read the offering memorandum you would have known that at least according to Arthur Andersen approximately 3 percent of Sunbeam's consolidated revenues were the product of sales on a bill and hold basis, wouldn't you?
MR. MARKOWSKI: Object to the reference of this being Arthur Andersen's statement.
BY MR. BEMIS:
Q. I will rephrase the question.
If you had read the offering memorandum as of March 30, 1998 you would have known that in footnote 1 of Sunbeam's financial statements it was disclosed that for the year 1997 approximately 3 percent of Sunbeam's consolidated revenues were the product of sales on a bill and hold basis, wouldn't you?
A. Anybody who read that statement would know that.
Q. Thank you very much. You can

Page 401

hand that back to me. We are all done with that.
MR. MARKOWSKI: We will take a short break.
MR. BEMIS: Sure.
THE VIDEOGRAPHER: Going off the record at 2:40.
(Recess)
THE VIDEOGRAPHER: We are back on the record. The time is 2:45.
BY MR. BEMIS:
Q. I will hand you what has been marked as Morgan Stanley Exhibit 208 which is the form 10-K for Sunbeam for the period ending December 28, 1997.
I was wondering -- can you tell me whether you have that document in front of you, sir?
A. I do.
Q. I have a couple of questions about some specific sections that are underlined in this document and I would ask you first to turn to page 6.
A. Page what?
Q. Page 6.

Page 402

Are you there?
A. Yes.
Q. Just to put this in context for the jury, the form 10-K is what is also referred to as an annual statement, correct?
A. By who? I don't refer to it -- sort of an annual report.
Q. Annual statement, annual report; you refer to it as the annual report?
A. I refer it to as the 10-K.
Q. We will use that terminology then for you.
Am I correct that companies who have securities that are registered securities under the '33 Act file annual reports on form 10-K once a year?
A. That is my understanding also.
Q. At any time before December 30, 1998 had you ever looked at a form 10-K for Sunbeam?
A. What was the question again?
Q. At any time before -- at any time before March 30, 1998 had you ever looked at a form 10-K for Sunbeam?

Page 403

A. I presume so, yes.
Q. Do you know what year you looked at?
A. Probably 1997. Before what date?
Q. Before the closing on December 30, 1998.
A. December 30, 1998?
Q. I misspoke. March 30, 1998. Let me ask the question again.
Before March 30, 1998 did you look at Sunbeam's form 10-K for the year 1997? Earlier you testified did you not.
A. I don't recall looking at it.
Q. Look at page 6 under the heading Seasonality and tell me when you are there.
A. I am there.
Q. Do you see the underlining that appears on page 6 which bears the Bates number CPH1428836? Do you see it?
A. Yes.
Q. Would you read it into the record for the jury please?
A. "During 1997 the company initiated early buy programs for highly seasonal products such as grills and

NOT A CERTIFIED COPY

016385

Page 404

warming blankets in order to more levelize production and distribution activities."
Q. Do you know who placed that underlining on this document?
A. I do not.
Q. Turn to the next page, page 7, CPH1428837. Are you there?
A. Yes.
Q. Do you see the underlining in the first full paragraph?
A. Yes.
Q. Would you read that into the record for the jury?
A. There is no underlining in the first full paragraph.
Q. Excuse me. It is the second full paragraph. I didn't have my page turned far enough.
A. Okay.
Q. Okay?
A. Starting -- "as of December 28, 1997 the amount of such reserves was approximately 4 percent," 4 percent number in parentheses, "of the company's total liabilities as set forth in the company's

Page 405

consolidated financial statements. Such environmental reserves do not anticipate any offsets for potential insurance recoveries from certain of the company's liability insurance carriers which the company continues to pursue."
Q. Sir, the next major heading is Cautionary Statements. Do you see that?
A. The next what?
Q. The next heading on that page is entitled Cautionary Statements?
A. Yes.
Q. If you would continue over to page 9 where you will see some underwriting and a paragraph that begins, "Sales of certain of the company's products." Do you see that?
A. Yes.
Q. Would you read the first two sentences into the record for the jury which are not underlined?
A. "Sales of certain of the company's products can be negatively impacted by unseasonable weather conditions during different seasons of the year, for

Page 406

instance, the company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by moderate temperatures in the northern states."
Q. Would you then read the underlined text which follows that, those two sentences?
A. "The company has attempted to levelize production, marketing and other activities related to seasonable products by implementing an early buy product program."
Q. That is in quotation marks?
A. Yes, it is. Early buy is in quotations. "Such a program shifts certain risks of negative sales impact for such seasonal products to later months in the season and as a result could have a negative impact on future financial performance."
Q. The language that you just read out of the form 10-K, this entire -- is available as a public document, correct?
A. Yes, it is.
Q. It is filed with the Securities

Page 407

and Exchange Commission, correct?
A. These particular references here that you had me read were specifically pointed out as being inadequate by the SEC.
Q. That may well be the case but I didn't ask you that. I asked you whether the document was publicly available.
A. I just wanted to make sure you knew that.
Q. Thank you.
Are you aware that this document was publicly available as of March 30, 1998 from the Securities and Exchange Commission?
A. Was I aware?
Q. Yes.
A. I assume so, yes.
Q. Finally, if you will turn to the financial statements and, in particular, turn to page -- let me ask you a question that I forgot to ask you.
In that language that you just read under the cautionary statements concerning the early buy program there is underlining. Do you know who put that

NOT A CERTIFIED COPY

016386

Page 408

underlining on there?
A. Which one? Page 9?
Q. Yes, sir, page 9.
A. I don't.
Q. If you turn now to the section that is entitled item 7, it is on page 14, management's --
A. F14?
Q. Actually not F14, just plain 14, headed Management's Discussion and Analysis of Financial Condition and Results of Operation.
A. Yes.
Q. There is some underlining on page 14 in the penultimate paragraph.
Do you see that underlining?
A. Yes.
Q. Do you know who placed that underlining on this document at CPH?
A. I do not.
Q. This paragraph as well discloses the early buy marketing program, correct?
MR. MARKOWSKI: Object to the form of the question.
BY MR. BEMIS:

Page 409

Q. You can answer, sir.
Let me withdraw the question.
This paragraph discloses that Sunbeam had something called an early buy marketing program that included among other things extended credit terms with due dates in the second quarter of 1998, right, sir?
A. That is what it says.
Q. It is also stated in this paragraph by Sunbeam that, "The company sold approximately $50 million of outdoor cooking products under this program in the fourth quarter of 1997." Do you see that?
A. I do.
Q. Were those two facts discussed at the February 23, 1998 meeting that Mr. Kersh spoke at?
A. I think there was some discussion about the early buy programs as I said before and the amount of grill sales in the fourth quarter may have been -- I think, was mentioned. I am not sure. I am not sure. But I will also point out that Kersh said they were going to make the numbers in the first quarter regardless of any of

Page 410

these items.
Q. Turn to -- by the way, you referred to Mr. Kersh.
So the jury is clear, Mr. Kersh was an employee of Sunbeam, correct?
A. Yes, chief financial officer.
Q. If you will continue, go over now to the financial statement section which should have the designation F on the bottom.
If you will turn to page F, it is F7 but F7 is going to continue over to a second page without a page number because this is printed off of EDGAR.
Tell me when you are there.
A. I am there.
Q. Under revenue recognition --
A. That is on the second page?
Q. Yes, sir. The carryover. Do you see that paragraph?
A. I do.
Q. Disclosure that in paragraph, by Sunbeam, in the footnotes to its financial statements is the same disclosure that we looked at in the debenture offering

Page 411

memorandum a few minutes ago, MS 166, correct?
A. I don't know if it is exactly the same.
Q. Would you like to look at the other one again so we can close this out?
MR. MARKOWSKI: The documents say what they say. I don't understand why you are spending time with the witness doing it.
MR. BEMIS: Because the witness isn't going to appear at trial unless you are going to represent you will present him at trial.
MR. MARKOWSKI: The documents will be there if you want to show them to the jury.
MR. BEMIS: Are you representing you will bring him to the jury?
MR. MARKOWSKI: The documents will be there. My objection is you are wasting the witness' time because the documents will say what they say now and later and having Mr. Maher physically compare them for you isn't

NOT A CERTIFIED COPY

016387

Page 412

really advancing this.
MR. BEMIS: Are you going to produce him at trial?
MR. MARKOWSKI: If you have any questions -- are we done?
MR. BEMIS: I --
MR. MARKOWSKI: You are wasting our time. You are wasting our time.
MR. BEMIS: You asked me a question. Now you are being rude.
MR. MARKOWSKI: I didn't ask you a question at all. I said that you are wasting our time. There is no doubt about that. I don't have to ask you that.
THE WITNESS: Isn't the 10-K taken and lifted into that document word for word? Maybe I am mistaken.
BY MR. BEMIS:
Q. Were you referring to the Sunbeam's 10-K being taken word for word and being placed in the offering memorandum, MS166?
A. Yes.
Q. Is that your understanding?

Page 413

A. I don't know. I am asking you that question. Just give me the piece of paper.
Q. Sure. That is what I thought would be the fastest to get this over.
I am going to hand you MS 166 and I have turned the page to where I think you should be looking and that is CPH page 1326566.
I will hand that to you, Mr. Maher. Let me reach. There we go. Thank you, sir.
A. Like I said it is the financial of the 10-K. I wouldn't --
Q. So I get the question out and we will move on to another topic, the disclosure that appears in MS 166 is the same disclosure that appears in Sunbeam's annual statement on form 10-K, MS 208, under revenue recognition on page F7 of the financial statements, correct?
A. F8.
Q. F8 in MS 166 and F7 in MS 208.
A. It seems to be the same.
Q. You can hand that back to me and

Page 414

I appreciate your patience. We are all done with that.
MR. MARKOWSKI: We are done with the 10-K.
BY MR. BEMIS:
Q. Sir, I have handed you what we previously marked as Morgan Stanley Exhibit 93 which is the -- the agreement and plan of merger among Sunbeam, Laser, CLN Holdings Inc. and Coleman (Parent) Holdings, Inc. which you looked at earlier today.
Do you have that in front of you?
A. Yes.
Q. Please look at section 6.7 which is on page 18.
A. Yes.
Q. That section is entitled Access to Information and Confidentiality. Do you see that?
A. Yes.
Q. Are you aware of any request by MacAndrews & Forbes' due diligence team directed to either Sunbeam or its accountants to examine Sunbeam's books and

Page 415

records, properties and personnel, copies of its documents filed with either the federal or state securities authorities pursuant to paragraph 6.7 of MS 93?
A. Well, first of all, you wouldn't, for any public documents which you include in that list of items, you wouldn't need this.
Q. You may not need it, sir, but --
A. But it doesn't say it here.
Q. It does say it if you read all the way down.
A. What does it say?
Q. If you look at the last sentence on page 18 beginning with the word "operations" with a closed parentheses, and during such period shall each furnish or each shall furnish promptly to the others (A) a copy of each report, schedule or other document filed or received by it pursuant to the requirements of the federal or state securities laws.
A. That says that they are supposed to deliver. You were asking me whether -- whether anybody requested those public

NOT A CERTIFIED COPY

016388

Page 416

filings. That is all.
Q. Okay. I hear your point.
Would you answer my question?
A. Which is?
Q. Are you aware of any request by the MacAndrews & Forbes' due diligence team directed to either Sunbeam or its accountants to examine Sunbeam's books and records, properties, personnel, copies of any documents filed with the federal or state securities authorities pursuant to Section 6.7 of MS 93?
A. No.
Q. Can you hand that back to me?
I have handed you what has previously been marked as MS 117, the agreement and plan of merger among Sunbeam Corporation, Camper Acquisition Corporation and the Coleman Company, Inc. dated as of February 27, 1998.
Do you have that in front of you?
A. I do.
Q. Please turn to Section 7.26, the document on page 29, entitled Access and Information; Confidentiality.

Page 417

Tell me when you are there.
A. I am there.
Q. Are you aware of any request by Coleman pursuant to this Section 7.2 made to either Sunbeam or its accountants or its legal counsel or its financial advisers for access to books and records relating to Sunbeam and, in particular, books and records relating to properties, plants, personnel, business operations, et cetera?
A. I am not but as we talked about earlier today after signing the merger agreement there was a -- it is my understanding that management of Sunbeam and management of Coleman started to spend a lot of time together so information of this nature quite naturally I think was passed back and forth during that period of time. I don't have any firsthand knowledge of it.
Q. You can hand it back to me.
My understanding of the meetings you were talking about were meetings in connection with the proposed combination of the companies and how they would be

Page 418

integrated post closing; am I correct?
A. Yes. There was a lot of information that is outlined in that paragraph that would be changing hands, I presume.
Q. As you sit here today you are not aware of any such information changing hands?
A. I am not.
Q. Were you involved in any discussions concerning hedging of the Sunbeam stock that was received at the time of the closing of the Sunbeam CLN merger?
A. Yes.
Q. What discussions were you involved with?
A. I was involved with a number of different discussions, with a number of different financial institutions about the possibility of entering into an agreement, hedging agreement, I guess for lack of a better term, that would allow MacAndrews & Forbes to effectively sell some of its securities in a hedging transaction.
Q. Tell the jury what a hedging

Page 419

transaction is.
A. I think the simplest way to think about it is you own a share of stock, you agree to sell it at a price today to a financial institution, you get some percentage -- let's say it was $10, and these numbers will be wrong by some factor because I haven't done this in a long time.
Say the price of the stock was $10 today. You agree to sell it to this institution for $10. They agree to buy it from you in say a year or two years. They will pay you for it today.
They will -- the transaction will stay in place for a period of time which could be a year or two years.
You will share in some percentage of the upside above $10 if the stock trades above $10 over that period, whatever the period of time is, and you will be protected on the downside so that if the stock goes down, in some cases you even have absolute protection. It depends how much upside you want versus how much downside protection you get.

NOT A CERTIFIED COPY

016389

Page 420

Q. Over what period of time -- withdrawn.
Over what period of time did you have discussions with people about hedging the Sunbeam stock received in the merger?
A. It may have been before the actual closing. It may have started before the closing, I don't remember exactly when, and went on for several months after the closing of the transaction.
Q. Can you identify for the jury please who you were having -- withdrawn.
Can you identify for the jury with whom you were having these discussions and by -- with whom, company names as opposed to individuals?
A. I think -- this may not be all inclusive -- but off the top of my head, Bear Stearns, I think Chase, maybe Citibank and maybe First Boston but certainly Bear Stearns and maybe Goldman Sachs. Certainly Bear Stearns and Citibank. The other names I am less certain about.
Q. Did you go to these financial institutions, if I can call them that, or

Page 421

did they come to you?
A. I don't recall.
Q. Did you ever -- strike that.
Did you ever enter in -- withdrawn.
MacAndrews & Forbes, whatever entity at that point was -- would enter into such a transaction -- withdrawn.
Did MacAndrews & Forbes or any of its entities ever enter into a hedging transaction with respect to the Sunbeam securities issued at the time of the closing of the merger?
A. Not to my knowledge.
Q. Why not?
A. I think any number of reasons. Probably the primary reason was during that period of time in 1998 there was a fair amount of concern and with no clear answer as to whether -- what the SEC's view was as to these transactions.
These transactions effectively -- because when a securities firm enters into this type of transaction it protects itself by selling some of the shares that it has

Page 422

bought from you in the future.
There was a concern that the SEC will take the position, or the SEC was thinking about the position that effectively what was happening if you look through this transaction was that the seller of the -- the owner of the securities that were being hedged was effectively selling unregistered securities ultimately through the transaction and wasn't really -- it was never resolved during the period of time that made any sense for us to do this.
As it turns out we probably could have done it if we did it before we actually owned the securities.
So if we had done it during the month of March it would have been okay.
Q. Did you ever get to the point of receiving specific proposals from any of the five companies that you identified?
A. I think so. I think specific -- specific proposals were like wherever the stock price is today, we will buy X number of shares at a premium Y above the stock

Page 423

price and protect you Z below that stock price. Something like that.
There is also a limited number -- I think there is a certain practical limitation on the number of shares you can do on these type of transactions.
Q. About what period of time did these -- withdrawn.
When did these discussions end in 1998 as best you can recall?
A. I think the middle of the year, June.
Q. June of 1998?
A. I guess. They trailed off after a while because it became clear, clearer and clearer that neither we nor the securities firms were prepared to enter into these transactions.
I think Bear Stearns was probably the most aggressive. They seemed prepared to do it.
Q. My understanding, and please correct me if I am wrong, is the SEC did not come down after consideration with the conclusion that these were sales of

NOT A CERTIFIED COPY

016390

Page 424

unregistered securities, the hedging transactions; am I correct in that?
A. I don't know.
Q. You don't know. Okay.
A. It sounds like a good decision though.
Q. I don't profess to tell you whether I am right or wrong on that one. I am aware of the dispute.
MR. MARKOWSKI: In other words, you are not giving him legal advice so he can go do it today.
MR. BEMIS: You got that right. You got that right.
BY MR. BEMIS:
Q. Let me show you what has been marked as MS 74 which is an article from Barron's Magazine dated June 6, 1998.
I will tell you that although this is a Barron's article it was reprinted from another source because the Barron's article on that large format that they used makes terrible photocopies.
I actually have a terrible photocopy if you would like to look at it.

Page 425

This one is much easier to read.
My first question to you is: Have you seen this article that appeared in Barron's on June 6, 1998 which we marked as MS 74?
A. Yes, I think I did.
Q. Did you receive it as part of the clipping services?
A. I don't recall how I got it but I am sure I got it.
Q. Did you read the article?
A. I believe so.
Q. What was your reaction to the article when you read it?
A. I don't recall.
Q. Did you have any meetings with anyone about the article?
A. Not that I recall.
Q. Did you prepare any memorandum or memoranda as the case may be about the document?
A. I don't believe so.
Q. Will you tell me -- will you hand that to me?
Did you participate in any

Page 426

decisions -- withdrawn.
Did you participate in any discussions at MacAndrews & Forbes about requesting a rescission of the Sunbeam-Coleman transaction with Sunbeam?
A. My recollection is there were certainly discussions. I think we ultimately asked for a rescission transaction.
Q. What happened to that request?
A. I frankly don't recall. It was either rendered impractical or --
Q. Did you participate in any of the discussions with Sunbeam concerning settling MacAndrews & Forbes claims against Sunbeam?
A. Yes.
Q. What was your role in those discussions?
A. I think I was just a participant with Mr. Gittis, I would say, taking the lead.
Q. Mr. Gittis had the lead in these discussions?
A. Yes, I would say so.

Page 427

Q. Whose idea was it to settle the dispute between MacAndrews & Forbes and Sunbeam through the issuance of warrants?
A. I don't know whose idea it was. As I recall the parties to that -- I think Sunbeam was being advised I think at that point in time by Blackstone and their attorneys were involved, Skadden, Arps; our attorneys, Wachtell, Lipton; us; I think Peter Langerman, I think, as a board member.
Q. Board member for Sunbeam, right?
A. Yes, and also a significant shareholder of the company as I recall, representing, I think, Mutual Shares was a big shareholder of the company. Langerman represented that position.
Q. Did Michael Price have any role in this?
A. Michael Price was Langerman's partner, boss, owner of Mutual Shares. I don't think he had sold Mutual Shares at that point in time. I think he still owned them. I think Peter spoke for Michael.
Q. At some point there was a

NOT A CERTIFIED COPY

016391

Page 428

settlement reached with Sunbeam which was reduced to writing?
A. Yes.
Q. And that settlement provided for the issuance of warrants to MacAndrews & Forbes to settle the dispute with Sunbeam, correct?
A. That is correct.
Q. Did MacAndrews & Forbes place a value to the warrants that were issued as part of the settlement?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I think -- my recollection is that there is two issues; one, there was a point of view as to whether they had any value at all which my point of view is these warrants were valueless but it was an opportunity to settle and get on with trying to make this company work as opposed -- was the only real solution, so the only money we had at that point in time.
Rescission didn't seem possible

Page 429

and put a management team in place that would move the company forward would be the logical thing at that point in time.
In terms of value I personally felt the warrants were valueless. I think MacAndrews put a value on the warrants. I don't know what it was.
Q. Did MacAndrews & Forbes put a value on its claims against Sunbeam that were settled by the issuance of the warrants?
A. I don't know.
Q. For example, did they say we were damaged in the amount of $500 million as a result of Sunbeam's conduct, something like that? I am not suggesting 500 million is the number. I am using that as an example.
MR. MARKOWSKI: Let me make sure we are not getting into privileged communications here. You are asking him in the context of communications with Sunbeam was there a value expressed?
MR. BEMIS: Yes.
MR. MARKOWSKI: If there were any

Page 430

internal discussions with lawyers you should exclude them from your answer.
BY MR. BEMIS:
Q. Let me put it this way.
A. I think the Blackstone advisers put some value on the warrants.
Q. Blackstone put a value of $70 million on the warrants?
A. I don't know what the value was.
Q. Sunbeam in its financial statements took a $70 million charge for the settlement based on the warrants, correct?
A. I don't know. They may well have. I am telling you what my point of view was at the time.
Q. Let me go back to the question I originally asked. We are getting close to being finished.
In the negotiations with Sunbeam did MacAndrews & Forbes ever express a position to Sunbeam as to the amount of damage that MacAndrews & Forbes claims it had been injured as a result of the Sunbeam-Coleman transaction?

Page 431

A. Not that I recall.
Q. Did you ever see the Blackstone report?
A. I think I saw a Blackstone report. I don't know if it was the Blackstone report.
Q. It is my understanding that other than -- withdrawn.
Were the warrants that were issued by Sunbeam to MacAndrews & Forbes, whatever entity it was, were those warrants thereafter pledged to secure indebtedness of one or more of the MacAndrews & Forbes companies?
A. I don't know.
Q. Were you involved at all in the claims that were made against Arthur Andersen by MacAndrews & Forbes?
A. No.
Q. I am including Coleman (Parent) Holdings or CLN Holdings. You weren't involved in any of that?
A. No.
Q. You were gone by that period of time over to your next job?

NOT A CERTIFIED COPY

016392

A. I don't know. I don't know. When was it?
Q. It was in the year 2000 when the claims were filed. I think it was 2000. I know they were settled October 10, 2002.
A. Yes. Pretty much.
MR. BEMIS: I don't have anything else.
MR. MARKOWSKI: We are done.
THE VIDEOGRAPHER: The time is 3:32.
This completes the videotaped deposition.
(Time noted: 3:32 p.m.)

_____
JAMES ROBERT MAHER

Subscribed and sworn to before me this day of 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That JAMES ROBERT MAHER, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 4th day of November, 2004.

STEVEN NEIL COHEN, RPR

INDEX OF EXAMINATION

Witness
JAMES ROBERT MAHER
By Mr. Bemis.....219

MORGAN STANLEY EXHIBITS

Exhibit Number Marked
340 Document.....292
278 Registration Rights Agreement.....382

NOT A CERTIFIED COPY

0163393

NOT A CERTIFIED COPY

0163914

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
VS.
MORGAN STANLEY & CO., INC.,
Defendant.

VIDEOTAPED DEPOSITION STEVEN GELLER
New York, New York
Friday, July 30, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 163186

July 30, 2004
9:48 a.m.

Videotaped Deposition of STEVEN GELLER, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York, pursuant to Notice, before Robert X. Shaw, CSR, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611
BY: CLARK C. JOHNSON, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for Defendant
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

VINSON & ELKINS LLP
Attorneys for Mr. Geller
666 Fifth Avenue
New York, New York 10103
BY: STEVEN R. PARADISE, ESQ.

ALSO PRESENT:
Victor Disla, Videographer
Brandie Weaver
Beth Stewart

THE VIDEOGRAPHER: Stand by.
This is tape number 1 of the videotaped deposition of Mr. Steven Geller in the matter of Coleman Parent Holdings Inc., Plaintiff, versus Morgan Stanley and Co. Inc., Defendant, in the 15th Judicial District in and for Palm Beach County Florida.
This deposition is being held at 153 East 53rd Street, New York, New York on July 30th, 2004 at approximately 9:48 a.m.
My name is Victor Disla from the firm of Esquire Video Services, and I am the legal video specialist.
The court reporter is Mr. Bob Shaw, in association with Esquire Deposition Services.
Will counsel please introduce themselves for the record.
MR. CLARE: Yes, good morning. Thomas Clare of Kirkland & Ellis LLP, here on behalf of Morgan Stanley & Co., and Morgan Stanley Senior Funding, and I have with me Beth Stewart, also a summer

NOT A CERTIFIED COPY

016395

Page 5

associate at Kirkland Ellis LLP.
MR. JOHNSON: Clark Johnson of Jenner & Block, Chicago, for Coleman Parent Holdings and MacAndrews & Forbes Holdings.
MR. PARADISE: Steven Paradise with Vinson & Elkins, and with me is Brandi Weaver, a summer associate with our firm, and we are here on behalf of the witness, Mr. Geller.
THE VIDEOGRAPHER: Will the court reporter please swear in the witness.
STEVEN GELLER, having been first duly sworn by the Notary Public, testified as follows:
THE WITNESS: I do.
EXAMINATION BY
MR. CLARE:
Q. Good morning, Mr. Geller. We met this morning when you came in. My name is Tom Clare, and I am here on behalf of Morgan Stanley in this lawsuit.
Could I get you to state your full name for the record, please?
A. Sure. Steven Keith Geller.

Page 6

Q. What is your home address?
A. 300 East 75th Street, New York, New York 10021.
Q. Is that your primary residence?
A. Yes.
Q. Do you have any other residences?
A. No.
Q. Do you maintain a residence in Florida?
A. No.
Q. What is your date of birth?
A. July 28th, 1972.
Q. How are you currently employed?
A. I am employed by Credit Suisse First Boston.
Q. What is your address at Credit Suisse First Boston?
A. It is 11 Madison Avenue, New York, New York 10010.
Q. What position do you hold at CSFB?
A. I am currently a director.
Q. You are represented by counsel here today?
A. Yes, I am.
Q. That is Mr. Paradise?

Page 7

A. That is correct.
Q. Before this morning, have you spoken with Mr. Johnson or any attorney from Jenner & Block about the deposition here today?
A. No, I have not.
Q. Before we get into the substance of what we are going to talk about, and go through some of the mechanics of how we are going to proceed today, you understand that the deposition today is being videotaped and that the video of this deposition might be played to the jury in the trial of this case?
A. I dO.
Q. Have you ever been deposed before?
A. I have not been deposed, but I think I testified before, I don't know if there is a difference.
Q. The testimony that you provided was in court or in some sort of legal proceeding?
A. Yes.
Q. Okay. Did it have anything to do with Sunbeam?
A. No.
Q. Did it have anything to do with Coleman?

Page 8

A. No.
Q. Was it a business matter related to your work at CSFB, or was it a personal matter?
A. A business matter.
Q. Did the matter in which you provided testimony involve any MacAndrews & Forbes company or transaction that you were working on?
A. No.
Q. Counsel has probably gone through this with you, but let's talk a little bit about some of the ground rules that we will use here today.
You just took an oath. It is the same oath that you would take if you were testifying live in court; do you understand that?
A. Yes.
Q. And is there any reason that you can't provide truthful testimony today in answering my questions?
A. No.
Q. My job is to ask questions that you can understand and that are clear. If for

NOT A CERTIFIED COPY

some reason you don't understand my question, or you don't hear me and you would like me to rephrase it or repeat it, I would be happy to do that.

Just let me know and I will attempt to rephrase it in a way that is easy to understand. Your job is to answer the questions to the best of your ability. If you answer my question, I will assume that you heard my question and that you understand it; is that okay?

A. Yes.

Q. If at any point today you want to correct something that you said earlier in your testimony, or if you remember something that is either different or you want to add to your prior testimony, just let me know and I will give you an opportunity to do that; okay?

A. Yes.

Q. The court reporter is taking down your testimony based on what you say, and we are obviously videotaping, but because the court transcript is the official record of the proceeding today, you have to answer verbally. The court reporter can't take down if you just

nod your head or shake or shrug your shoulders; so, I may remind you from time to time that you have to answer my questions verbally.

And we also need to try to not interrupt each other. I will ask my question before you start your answer and I will try to let you finish your answer before I start my next question. We may need to remind each other of that throughout the day.

If you need to take a break for any reason, get some coffee or water, use the restroom, walk around, let me know and we will try to accommodate you as quickly as we can.

Do you have any questions about the ground rules that we covered this morning?

A. No.

Q. What was the subject matter of the testimony that you gave in your prior proceeding?

A. It was related to the CSFB technology group.

Q. Was it an arbitration? Was it a lawsuit? What role did you play in that?

A. I was just a, I was called in for

some questions, but I did not have a major role; so, I don't know the overall reason that I was there.

Q. Okay. The full name of your employer is Credit Suisse First Boston, and I will refer to it today as CSFB. And I will also talk today about the Coleman Company, which is one of the subject matters of the lawsuit.

When I refer to Coleman, I will be talking about the camping goods company that was headquartered in Kansas, and there are some other companies that have similar names; for example, there is a company called Coleman Parent Holdings Company.

That was a MacAndrews & Forbes affiliate that owned some percentage of Coleman, and I will refer to that as either CPH, Coleman Parent Holdings or I may refer to it as MacAndrews & Forbes, just to differentiate it from the camping goods company.

If for some reason my question is not clear or a difference between those entities makes a difference to your answer,

let me know, and we will make sure that we get it clear.

Is that okay, if we use those terms today to talk about the questions that I am going to ask?

A. Yes.

Q. How did you prepare for the deposition today?

A. I did not do very much preparation. I did meet with Steven, my attorney. That's pretty much it.

Q. When did you meet with him?

A. Yesterday.

Q. For how long?

A. Oh, probably about an hour and a half to two hours.

Q. Was anyone other than Mr. Paradise present?

A. There was a woman from the legal department at CSFB.

Q. Nobody from the law firm of Jenner & Block?

A. No.

Q. Did you review any documents that refreshed your recollection about these events

NOT A CERTIFIED COPY

016397

Page 13

related to the engagement that CSFB had worked on for Coleman?
A. None that refreshed my recollection, but I did review documents.
Q. What documents do you recall having reviewed?
A. Yesterday?
Q. Yes.
MR. PARADISE: I will object for a moment. I will not object, but I think to ask that question you do need to establish that a document refreshed his recollection.
As long as we have an understanding that there is no waiver of any kind by my allowing him to answer the question, I will let him answer.
MR. CLARE: Yes. We have that understanding.
A. I reviewed an investment banking committee memo.
I reviewed a fairness opinion and I reviewed an engagement letter.
That was it.
Q. Did you review or have described to

Page 14

you any prior testimony that was given by any witness related to these matters?
A. Did I review --
Q. Like deposition testimony or transcripts of testimony that were given by any of the witnesses in this case.
A. No.
Q. Did you speak to anyone other than Mr. Paradise and the attorney from CSFB's legal department about the deposition?
A. Sorry?
Q. Did you speak with anyone, other than your counsel -- either the CSFB, in-house counsel or Mr. Paradise about the deposition today?
A. No, I did not. I did inform my boss that I was going to a deposition, but I did not disclose the matter, but I was going to be out all day today.
MR. PARADISE: Excuse me.
MR. CLARE: Sure.
(Witness and counsel confer.)
A. Also, yesterday Hillary Preston was also present. She works with Steve. I apologize.

Page 15

Q. When you refer to Mr. Paradise, that was intending to include his colleagues at Vinson & Elkins.
A. All right.
Q. Did you speak with anyone other than MacAndrews & Forbes about the deposition today?
A. No.
Q. Anyone formerly at the Coleman Company?
A. No.
Q. Any of your colleagues at CSFB, other than the in-house attorney that was present?
A. No.
Q. Do you have any ongoing business relationships with MacAndrews & Forbes?
A. No.
Q. When was the last time that you performed work for MacAndrews & Forbes or any MacAndrews & Forbes-related company?
A. I think, on that transaction.
Q. When you say "that transaction," you are referring to Sunbeam's acquisition of Coleman?

Page 16

A. Correct.
Q. Prior to Sunbeam's acquisition of Coleman, had you done work for any MacAndrews & Forbes company while at CSFB?
A. MacAndrews & Forbes company? No.
Q. When was the last time that you had spoken with anyone at MacAndrews & Forbes about a Coleman or Sunbeam, this transaction?
A. Um, I am not sure I ever had spoken to anyone at MacAndrews & Forbes, but I may have spoken to them during the Sunbeam transaction. I probably did speak to some people at MacAndrews & Forbes.
Q. We will obviously discuss the chronology of that transaction in some detail throughout the course of the day today.
Just to put it in a time reference, the acquisition transaction closed at the end of March, 1998, is when the deal actually closed.
If I understand your testimony, since March of 1998, since the transaction closed, you have not spoken with anyone at MacAndrews & Forbes about the transaction?
A. As best as I can remember, I think

NOT A CERTIFIED COPY

Page 17

that is correct.
Q. Have you spoken with anyone at Sunbeam about the transaction since March of 1998?
A. When you say "the transaction"?
Q. Sunbeam's acquisition of Coleman.
A. No.
Q. When was the first time that you heard about a lawsuit that had been filed against Morgan Stanley related to the acquisition transaction that we have been discussing?
A. You know, I received a notice to send documents to my legal department and I don't remember the exact time. I feel like it may have been six months, a year ago, I don't know the exact date, but I handed over documents to my legal department.
Q. Did anyone from MacAndrews & Forbes or their attorneys, Jenner & Block, contact or consult or interview you prior to the filing of that lawsuit, which took place in May of 2003?
A. No.
Q. Do you understand from any source

Page 18

the nature of the allegations that are being made against Morgan Stanley in the lawsuit?
A. Not really. No.
Q. In general, MacAndrews & Forbes has alleged that Morgan Stanley engaged in a conspiracy with Sunbeam to defraud it in connection with Sunbeam's acquisition of Coleman.
Are you aware of any facts, as you sit here today, that would support those allegations?
A. No.
Q. MacAndrews & Forbes further alleges that Morgan Stanley knowingly provided false information to it during the negotiations for that acquisition transaction.
Are you aware of any facts, as you sit here today, that would support those allegations?
A. Morgan Stanley -- um, no. Received a financial plan from Sunbeam and Morgan Stanley. I don't know who gave it to us, three-year forecasts from Sunbeam, some plan.
Q. Just to -- I will make sure I understand your answer.

Page 19

A. Sure.
Q. If I understand your testimony, you were provided by Sunbeam with a financial plan for Sunbeam?
A. Yes.
Q. Did Morgan Stanley provide that plan to you?
A. I don't remember. We went to a diligence session. I believe the representatives of Morgan Stanley and Sunbeam were there; so, I don't know who actually handed it -- but it was a Sunbeam document.
Q. A document that you had understood had been prepared by Sunbeam?
A. Yes.
Q. And was that document presented verbally during that meeting that you recall attending?
A. Yes.
Q. Was it presented verbally by anyone from Morgan Stanley, to the best of your knowledge?
A. No.
Q. Was it presented by someone from Sunbeam?

Page 20

A. To the best of my knowledge, yes.
Q. Would that be Mr. Rus Kersh from Sunbeam?
A. I don't remember.
Q. But it was one of the Sunbeam officers or executives that were present at that meeting?
A. I believe so.
Q. So, I want to go back to my original question that led us down this road.
MacAndrews & Forbes has alleged that Morgan Stanley knowingly provided false information to it in connection with the acquisition transaction.
Do you have any reason to believe that Morgan Stanley, apart from Sunbeam, did that in connection with the acquisition transaction?
A. No. No.
Q. Do you understand that Morgan Stanley also was underwriter for certain bond offerings that was done by Sunbeam in connection with the acquisition transaction?
A. Yes.
Q. Did you have that understanding back

NOT A CERTIFIED COPY

016399

Page 21

in 1998 when you were working on the transaction, or have you learned that since?
A. I don't remember when I learned.
Q. As part of the lawsuit, MacAndrews & Forbes has alleged that Morgan Stanley was negligent in its performance of due diligence in connection with the underwriting of that convertible bond offering and negligent in connection with its due diligence in working with Sunbeam on the acquisition transaction.
Do you have any knowledge or facts or information that those allegations are true?
A. No.
Q. Other than the due diligence session that you described to me, did you participate or have an opportunity to observe any of the due diligence that was performed by Morgan Stanley with regard to Sunbeam?
A. No.
Q. Did you participate or observe Morgan Stanley conducting due diligence on the Coleman Company?
A. Did I observe? Um, I don't remember. I don't remember.

Page 22

Q. You understand the difference that I am attempting to draw here?
A. Yes. I don't remember a diligence session on the Coleman Company; so, I don't remember if they ever performed it.
Q. As I said, we will get into the meetings or conversations in some detail this morning and in the early part of the afternoon.
Before we do that, I would like to get a little bit more background information about you.
Would you describe your education for me.
A. Sure, I went to Duke University, and I studied economics and Japanese. And I joined Credit Suisse First Boston in 1994 as an analyst, and I have been there for the past ten years
Q. What degree did you receive from Duke?
A. BA.
Q. Did you graduate with honors?
A. Yes.
Q. There are different gradations of

Page 23

honors at Duke?
A. Yes. I graduated cum laude.
MR. PARADISE: Try to keep your voice up for the benefit of the reporter.
Q. Do you have any postgraduate degrees?
A. No.
Q. Have you ever attended business school?
A. No.
Q. Are you a CPA?
A. No.
Q. Do you have any other professional certification?
A. No.
Q. Are you admitted to practice law anywhere?
A. No.
MR. PARADISE: Don't forget -- father.
THE WITNESS: That is a profession.
Q. It is an important profession.
A. Very important, yes.
Q. Any military service?
A. No.

Page 24

Q. You testified that you joined CSFB in 1994, as an analyst. And that you now hold the title of director. Can you walk me through your titles that you have held at CSFB, as best you can.
A. Sure.
Q. With the years that you received those titles.
A. Sure. I was an analyst from 1994 to 1997.
I became associate in the fall of 1997, and I was associate for the next three and a half years, I believe, until June of 2000, and I became a vice president.
And in December of 2003 I became director.
I think that is the progression.
Q. During the period of time that a Sunbeam acquisition of Coleman was being negotiated and worked on and closed, you held the title of associate? That would have been in --
A. This was disclosed in 1998?
Q. Correct. The events that we are going to be focusing on took place in the

NOT A CERTIFIED COPY

fourth quarter of 1997 and then the first quarter of 1998.
A. Okay. So, I would have been associate, yes.
Q. And what were your responsibilities generally with regard to this transaction, as associate, at CSFB during that time period?
A. To help the financial modeling, I was in the M&A group and the financial modeling, the preparation of analyses.
Q. Who did you report to during that time period?
A. Well, lots of people. But I think ultimately the heads of the M&A group were Gordon Rich, Brian Finn, Scott Lindsay and Steve Koch.
Q. Am I correct that who you would report to on a particular transaction would depend upon which banker was working on the engagement?
A. Yes. And, ultimately, their senior banker, which would be one of those four gentlemen, as associate, probably would report to a couple layers in between; so, maybe the entire M&A group above associate, I would say

ultimately according to those four, but to answer: Yes, you reported to someone above you on each transaction.
Q. With regard to the engagement that CSFB performed for Coleman in the Sunbeam acquisition, who were the intermediate bankers that you worked with?
A. I remember working with Rob Duffy, as the intermediate. He was the intermediate banker. And Gordon Rich.
Q. Have you remained in the mergers and acquisitions area since 1998?
A. Yes. I joined the technology practice in 2000, and I have been in the technology practice since, but still focusing on mergers and acquisitions.
Q. Can you approximate how many M&A deals that you have worked on prior to the Sunbeam Coleman acquisition in the first quarter of 1998?
A. When you say "worked on," can you be more specific?
Q. Played a substantive role on either supporting with financial analysis, modeling, playing any role whatsoever.

A. Okay. Several transactions don't actually get consummated; so, when you say "worked on," do you mean only transactions that happened or projects?
Q. I would define it to include projects.
A. I don't know the answer.
Probably 40 or 50.
Q. If we were to change the definition, then, to include transactions that actually closed, probably --
A. Probably would be 10 or less.
Q. Can you approximate those same figures, since the Sunbeam Coleman transaction?
A. Probably another 20 transactions that closed, maybe more. Probably, I don't know, 200 projects. I don't know. It is very difficult to answer that question.
Q. In response to one of my prior questions you described having attended a due diligence meeting with some Sunbeam people where Morgan Stanley was present.
Were you involved in other deals prior to the Coleman Sunbeam transaction where

you had had participated in due diligence sessions?
A. Yes.
Q. Had you been involved, prior to the Sunbeam acquisition of Coleman, where, as part of the transaction, the client that CSFB was representing would be receiving stock, either a buyer or seller of the transaction?
A. I believe so.
Q. And in connection with those transactions, had you been involved in performing due diligence?
A. Yes.
Q. As you sit here today, can you think of other transactions that you have worked on besides the Sunbeam Coleman transaction where your client or CSFB's client was receiving stock and you were asked to perform due diligence into the company whose stock your client was receiving?
MR. JOHNSON: This is buy or sell side?
MR. CLARE: Correct.
A. This is before the transaction or during the transaction?

NOT CERTIFIED COPY

CONT #971

Page 29

Q. Why don't we not limit it in time. Why don't we have it be during any time period.
A. Sure -- yes, there are transactions.
Q. Can you think of some, as you sit here today, examples of similar transactions?
A. Similar transactions defined as where my client --
Q. Received stock.
A. Received or issued stock?
Q. I am trying to focus on -- and let's see if we can narrow it down further, as Mr. Johnson has suggested. We can maybe do this in an efficient way.
As you sit here today, can you think of other transactions in which the client that you and CSFB were advising were receiving stock in exchange for selling its interest in a company or assets where you had performed a role in due diligence?
A. I am sure that I can think of several. We advised --
MR. PARADISE: Just answer Yes or No for now.
THE WITNESS: Yes.

Page 30

Q. So that, those are transactions that you have some experience and familiarity with?
A. Yes.
Q. In the course of performing the due diligence for those transactions, can you describe to me, generally, what steps you took or were involved in, in the area of due diligence?
A. Very different on each transaction. It is various transactions, very transaction-specific. It is very title-specific for me. It is very team-specific.
So, it would be very difficult to answer that question, that general question with an answer that kind of encompasses everything. It is very specific to a particular transaction.
Q. Okay. Let's come at it this way. You described in your prior testimony a meeting that you attended, you described as a due diligence session, with Sunbeam, and where Morgan Stanley was present.
What other due diligence did you participate in of Sunbeam in connection with

Page 31

the Coleman Sunbeam transaction?
MR. PARADISE: Objection to the form, foundation grounds.
MR. JOHNSON: I will join.
MR. PARADISE: You can answer.
A. I don't remember.
Q. As you sit her today, other than the one meeting that you described, can you recall any other due diligence activity that was undertaken by you in connection with the transaction?
MR. PARADISE: Same objection.
MR. JOHNSON: I join.
A. I don't recall. I don't remember any, I don't remember any other -- other sessions.
Q. Putting aside meetings, were there other steps that you took -- for example, reviewing documents or publicly available information, or the like, that you would categorize as due diligence that you performed on this transaction?
MR. PARADISE: Same objection.
A. Sure, we -- I remember viewing publicly available documents, research reports

Page 32

regarding Sunbeam. I don't remember what else we did. I am sure we did other analyses as well.
Q. As you sit here today, the due diligence that you recall performing was this meeting and reviewing public documents related to Sunbeam?
A. Yes.
Q. Is there anything else that you recall that would fit into the category of due diligence on Sunbeam that you were involved in?
A. I don't recall.
Q. I want to go back to the questions that I was asking you earlier about other transactions that you had worked on where you were advising a seller that was receiving stock as part of a deal.
In any of those other transactions, were you involved in due diligence activities that were different than attending a due diligence session like the one on the Coleman transaction or reviewing public available documents?
A. That is fairly standard. Again, it

NOT A CERTIFIED COPY

016402

varies from deal to deal, but no, that is really standard.

Q. Were there other transactions that you worked on where your client would be receiving stock where you took any step in addition to reviewing publicly available documents and meeting with the company's management as part of your due diligence?

MR. JOHNSON: Hold on.

MR. PARADISE: I don't think I understood the last question. I don't think the last answer he gave you was consistent with the understanding of the question that I had. You may want to go back.

If you don't mind, he was asking you whether you had any, I think, if you had done anything in addition to reviewing publicly available information and attending due diligence sessions on other M&A transactions, and you said that is pretty standard. I don't think that answered the question.

THE WITNESS: Yes. We did more than one session. We could do, a few other

documents, yes. We sometimes do things differently than that one particular transaction. As I said, it is very specific to the particular deal.

Q. And on these other transactions, as you described, what are the other types of documents that you might review, other than the ones, the publicly available documents that you described?

MR. JOHNSON: Are we talking generally M&A, or are we talking sell sides where the seller gets stock?

MR. CLARE: For all of my questions, for the next brief time period we are talking about situations where the client that you are advising is receiving stock as part of a sale transaction, or they are selling either -- an interest in the company or assets.

MR. PARADISE: We are talking about any type of M&A engagement, whether it be limited or not limited to where Credit Suisse First Boston is engaged for a fairness opinion.

MR. CLARE: Correct.

MR. PARADISE: Any time of.

MR. JOHNSON: Any time of an M&A transaction or a sell side transaction where the seller is getting stock.

MR. PARADISE: I am sorry. With that caveat, but not limited to where they are only rendering a fairness opinion.

MR. CLARE: That's correct.

MR. PARADISE: Is that correct?

Q. Let me get this straight.

We are talking about the universe of transactions where CSFB is advising the client on a sell side transaction, but without regard to the type of engagement, not being limited to --

MR. JOHNSON: Objection to form. But --

MR. PARADISE: Do you understand the question?

THE WITNESS: I wanted to answer the question. I don't think there is an agreement among all of you guys.

MR. PARADISE: There is an agreement, but we are having trouble

articulating it, and it is probably my fault. It is early.

Let me give it a shot.

On this transaction the Sunbeam Coleman transaction that Credit Suisse was engaged in, what Mr. Clare is asking you is, on other transactions in which you are representing the sell side company, but not necessarily limited to where you are only engaged to render a fairness opinion, have you done additional due diligence, beyond what you already described as a due diligence you performed on this transaction, on the Coleman Sunbeam transaction?

THE WITNESS: Okay.

MR. PARADISE: Does that help?

THE WITNESS: Yes.

MR. JOHNSON: Objection to the form of your question, too.

MR. CLARE: I will try it this way.

Q. What other kinds of due diligence have you done on other engagements on the sell side?

A. On the sell side?

NOT A CERTIFIED COPY

016403

Page 37

Q. Yes.
A. From selling a company, I may, you know, talk to the company -- understand the company, as well, spend time with all of their management team.
I did that probably here -- ah, you know, we reviewed, depending upon the type of transaction, you know, there are different industries that you deal with. Certain things are more sensitive than others.
You will, several different documents. It is a very difficult thing to answer. We review important documents, depending upon the particular situation.
So, it is hard for me to answer that question in a general sense, because it is very transaction-specific.
Q. On other transactions where your client is receiving stock in exchange for selling --
A. Sure.
Q. -- an interest in a company or selling assets, have you performed other types of due diligence on the company that is issuing the stock to your client?

Page 38

A. Yes. And I think my answer to the question is: It depends on the company that is issuing the stock. Right. Because every company is unique in its own fashion, has different areas that you need to focus on.
When you say different types of due diligence, I think the answer would be Yes, and the answer would be very specific to the type of transaction you are doing and the type of stock you are receiving and the business of the acquirer.
Q. Can you give me some examples of additional due diligence that you might be able, that you have done in other circumstances like that, beyond attending a, one, due diligence session and reviewing public documents that might be appropriate for a particular transaction?
A. Sure.
MR. JOHNSON: Hold on a second. Could I hear the question back.
(Record read.)
A. Sure. I will give you one example.
Working with technology companies we often sit in on IP calls or intellectual

Page 39

property sessions, because that is always a very important part of the company that is issuing us the stock.
Again, that is an example of something we may participate in, if it is extremely important.
Q. And the purpose of doing that would be to learn about a particular aspect of the issuer's business?
A. Yes. That has value, significant value. And again, as I said, every company is different; so, in technology IPs, that is important, and lower growth companies may not be as important to the overall value. That is an example.
Q. As you sit here today, are there other examples that come to mind of due diligence that you performed on those type of transactions?
A. Um, nothing that comes to mind.
Q. For example, in a transaction which your client is receiving stock from an issuing company, as part of a sell side transaction, have you ever met with the issuer's auditors to ask them questions about the financial

Page 40

condition of the company?
A. Have I ever met with the issuer's auditors?
MR. PARADISE: By "issuer," you mean the company?
Q. Issuing the stock.
A. The auditors usually speak to each other and then give a report. Have I participated in a session, maybe.
But if it is a publicly available company, usually the auditor, the financials are audited or reviewed by an auditor. So -- accurate, in all material respects.
Q. You described a situation where the auditors for the two companies would talk to each other, as part of the due diligence process. Did I understand that correctly?
A. Yes.
Q. Do you recall, in connection with the Sunbeam Coleman transaction, any interaction between Coleman's auditors and Sunbeam's auditors?
A. I don't remember.
Q. You certainly did not have any involvement in it, to the best of your

NOT A CERTIFIED COPY

Page 41

recollection?
A. No.
Q. I asked you, earlier, whether, prior to the Sunbeam Coleman transaction, you had worked on any deals for MacAndrews & Forbes, and I believe you answered that you had not; is that correct?
A. Yes.
Q. This was your first introduction to MacAndrews & Forbes was this engagement?
A. Yes.
Q. By "this engagement" I am referring to CSFB's engagement in December of 1997 in connection with the Coleman Sunbeam transaction. That was your first introduction to MacAndrews & Forbes or individuals at MacAndrews & Forbes?
A. That was my first introduction to individuals at MacAndrews & Forbes, yes.
Q. Did you have an understanding that CSFB had a prior relationship with MacAndrews & Forbes and had done other work for MacAndrews & Forbes historically?
A. I did not know at the time. I was associate; so, I don't know. I don't think

Page 42

so. I just got staffed on a transaction, and I helped with the transaction. So.
Q. Let's get some documents to see if we can --
A. Sure.
Q. I will hand you what we previously marked as Morgan Stanley Deposition Exhibit 230. I ask that you take a look at it.
We will come back to this document a couple times today. I will only focus you on a particular part this morning.
For the record, while you are perusing it, Exhibit 230 is a February 25th, 1998 memo from various individuals at CSFB to the investment banking committee dated February 25th, 1998. Is this the investment banking memo that you reviewed --
A. Yes.
Q. -- in preparation for the deposition today?
A. Yes.
Q. I will focus for this part of the examination on what is section 11 of the memo. It is actually also on page 11 of the memo.
It is the section entitled Credit

Page 43

Suisse First Boston's relationship and fees. Take a moment to read that paragraph to yourself and I will ask you a few questions about it.
Let me know when you are ready.
A. I am ready.
Q. The paragraph describes other transactions involving MacAndrews & Forbes and Credit Suisse First Boston.
The first one described in the paragraph is the initial public offering of the Revlon Group, wherein Credit Suisse First Boston acted as joint global coordinator?
Did you work on that transaction?
A. No.
Q. Did you have any involvement?
A. No.
Q. The second transaction described is several lead managed debt and equity financings for Coleman.
Did you work on those financing transactions, in any way?
A. No.
Q. The third one is a financial advisory assignment in the summer of 1997, in

Page 44

which Mafco, advised by Credit Suisse First Boston, made a final round bid on a property in a transaction that was eventually consummated by another party.
Did you have any involvement in that transaction that is described?
A. No.
Q. And the final transaction described is in January of 1998, a lead manufacturing debt offering as part of MacAndrews & Forbes' acquisition of a controlling stake and recapitalization of Panavision. Did you have any involvement in that transaction?
A. No.
Q. That final transaction that is described there, as having taken place in January of 1998, was during the same time period that you were working on and that CSFB was working on the Sunbeam Coleman acquisition.
Putting aside whether you played a role on the transaction, on the Panavision transaction or not, did you have any understanding that CSFB was simultaneously working on that transaction for MacAndrews &

NOT A CERTIFIED COPY

Page 45

Forbes in connection with Panavision recapitalization?
A. No. I mean, other than it is in this memo, so if I looked at this memo, I may have seen it at the time that the memo was written. I don't know. I don't remember who wrote this paragraph, but --
Q. But you don't recall having, as part of the work that you were doing on the Coleman engagement, discussing work with other analysts, associates or professionals at CSFB about MacAndrews & Forbes and Panavision, what work was simultaneously going on?
A. No.
Q. Who at Coleman or MacAndrews & Forbes did you have interaction with, as part of the work you did on the Coleman Sunbeam transaction?
A. I don't remember the gentleman's name. I did not have very much interaction. I was associate. I did not have much client information at the time on this particular transaction.
There were some people, and I don't remember who I interacted with, but I just

Page 46

don't remember their names.
Q. I will mention a few names to you, and if you let me know if you recall having met or spoken with them as part of this engagement.
A. Yes.
Q. Ron Perelman?
A. Yes.
Q. Did you meet or speak with Mr. Perelman on this transaction?
A. Yes.
Q. And what do you recall about your interactions with Mr. Perelman?
A. I just -- I attended a meeting. I did not really have any interaction; so, I did meet him, but that is -- that is all I remember.
Q. Do you recall the subject matter of the meeting that you attended where Mr. Perelman was present?
A. I don't recall.
Q. Or what was discussed.
A. I believe this transaction.
Q. Anything more specific than the subject matter of the transaction that you

Page 47

recall?
A. Um, maybe discussed the status of the discussions. I don't remember. I don't remember.
Q. Was that your first introduction to Mr. Perelman?
A. Yes.
Q. Did you have a view as to whether Mr. Perelman was, at that time frame, highly sophisticated in mergers and acquisitions transactions?
A. Did I have a view, yes. He was a very smart -- he seemed to be a very smart man with a very good reputation. Yes.
Q. Did you have any discussions or interactions with Jim Maher?
A. Yes, he was, I believe, at that same meeting.
Q. Other than that meeting that you described, did you have any interaction with Mr. Maher or discussions with Mr. Maher?
A. Other than that meeting, no. I don't remember.
Q. The meeting that you remember where Mr. Maher was present, was the same meeting

Page 48

where Mr. Perelman was present?
A. Yes.
Q. Do you recall Mr. Maher having been present at the due diligence meeting with Sunbeam that you described earlier?
A. I don't remember who was there.
Q. Do you recall that there were individuals from MacAndrews & Forbes at the due diligence meeting, even if you can't remember who they were?
A. Actually, I don't remember. I don't remember.
MR. PARADISE: Keep your voice up for the reporter's benefit.
THE WITNESS: Sure.
Q. During that time period, did you regard Mr. Maher as highly sophisticated in mergers and acquisitions transactions?
A. Yes.
Q. He appeared that way to you?
A. Yes.
Q. Did you have any meetings or discussions with Howard Gittis?
A. I believe he was at that same meeting.

NOT A CERTIFIED COPY

016905

Q. Other than the meeting that you described, this was the same meeting with Mr. Maher and Mr. Perelman?
A. Yes.
Q. Other than that meeting, did you have any interactions or dealings with Mr. Gittis?
A. No.
Q. Will Nesbitt?
A. Yes. I believe he was at that same meeting.
Q. Did you have other interaction with Mr. Nesbitt, besides the meeting that you described?
A. We may have had some conversations over the course of the transaction. I vaguely remember that we probably spoke once or twice.
Q. Mr. Nesbitt was your counterpart at MacAndrews & Forbes, in terms of relative seniority?
A. No. I don't think so. I think he was more senior than I was at the time.
Q. Would it be fair to say that Mr. Nesbitt was your primary point of contact at MacAndrews & Forbes for this transaction,

in terms of frequency of interaction?
MR. JOHNSON: Objection to form.
A. Yes, yes. I don't know. I did not have very much interaction, but I don't know.
Q. What conversations do you recall having with Mr. Nesbitt about the Coleman --
A. I don't really remember any conversations that I may have participated in -- if he called Rob Duffy or something, but I don't remember having any substantive conversations.
Q. Did you receive information from Mr. Nesbitt or anyone at MacAndrews & Forbes about Coleman, for purposes of your model?
A. Maybe. I don't remember. I don't remember. It has been so long ago. Potentially. Potentially.
Q. Did you have interactions with people at the Coleman Company, management of the, the camping goods, Mr. Jerry Levin or Jerald Page, those individuals in connection with the transaction?
A. I believe I met Mr. Levin, but I don't remember -- I think it was maybe at that same meeting.

Q. Was there someone at the Coleman Company that provided you with input or information about Coleman for your modeling purposes?
A. I don't remember.
Q. Did you have an awareness or understanding from any source that in the fourth quarter of 1997, in the first quarter of 1998, that CSFB was also a lender to the Coleman Company?
A. No.
Q. Did you have any discussions with bankers at CSFB regarding what Coleman's credit position was with regards to its outstanding loans?
A. I don't remember having any discussions.
Q. There were two CSFB professionals, Julia Kingsberry and Joel Gloudowski, whose names have appeared on some documents that we have looked at.
Do you recall any discussion with either Ms. Kingsberry or Mr. Glodowski about Coleman or the transaction?
A. Those names are not familiar to me.

Q. I will hand you what we previously marked as Morgan Stanley Exhibit Number 315.
I will ask you that you take a look at it. Given your prior testimony, I think we will probably move through this document fairly quickly, but I wanted to ask you a few questions about it.
A. All right.
Q. Let me know after you have had an opportunity to peruse it and I will point you to specific parts of it and I will ask you about them.
A. Okay.
Q. This is a document that Mr. Gloudowski's and Ms. Kingsberry's names appear on behalf of Credit Suisse First Boston.
Having seen this document, does it refresh your recollection in any way that they were professionals involved in a lending relationship with the Coleman Company?
A. It doesn't refresh my recollection at all.
Q. Have you ever seen this document before?

NOT A CERTIFIED COPY

Page 53

A. I don't recall seeing this document.
Q. The document is dated the same day as the closing of the acquisition transactions, March 30th, 1998, and it describes, in the first few paragraphs here, the repayment of obligations that Coleman Company had.
Did you have any involvement, quite apart from this document, in the mechanics or the modeling of Coleman's payback of debt in connection with the closing of the transaction?
A. No.
Q. In the subject line of this letter, Morgan Stanley Exhibit 315, it describes Credit Suisse First Boston as an agent for certain lenders, and also as having issued certain letters of credit.
In 1997, or 1998, did you have any knowledge that Credit Suisse First Boston had that role?
A. No.
Q. The document on page 1 over to 2, describes the various payoff figures for aspects of the loan, adding up to $82.7

Page 54

million.
Do you have an understanding from any source as to how much of that money was owed to Credit Suisse First Boston versus the other lenders?
A. No.
Q. Put that document aside. Before we get into the specific chronology, I would like to ask you to explain in your own words what role you played on the transaction or this engagement. What were your responsibilities?
A. Did we cover that or was that -- you asked about what the role of the associate was?
Q. I think I asked, specifically, what role an associate may have on that transaction.
What I would like to get now is your recollection, as best you can remember, of what you were asked to do and what you did do in connection with the acquisition transaction.
A. I assisted with preparing the financial models for the transaction.
Q. You also testified that you attended

Page 55

one due diligence session.
A. Aha.
Q. One due diligence session?
A. Aha. Yes.
Q. Were you tasked with performing due diligence on behalf of Coleman or MacAndrews & Forbes; is that the reason why you had attended that session? Is that a separate responsibility or was your attendance at that session part of your understanding of the company for purposes of your model?
MR. JOHNSON: Objection to form.
A. Um, I guess my understanding of the diligence was to understand the company for purposes of the model. That was my role.
Q. Did you participate in any of the price negotiations with Sunbeam?
A. No.
Q. Did you participate in any meetings or telephone conferences with Sunbeam management, other than that one due diligence session that you described?
A. I don't recall any. There may have been a conversation, but I don't know.
Q. Do you recall whether Al Dunlap was

Page 56

present at the meeting that you attended?
A. I don't recall that.
Q. Do you recall ever having been on the telephone conference or in a meeting with Mr. Dunlap as part of your work on this engagement?
A. I don't recall any conversations.
Q. Were you involved in the preparation of materials that were presented by CSFB to the Coleman board of directors?
A. Yes.
Q. Did you attend the board meetings of the Coleman board of directors in connection with the acquisition transaction?
A. No.
Q. Did you have an understanding as to why MacAndrews & Forbes was interested in selling its interest in Coleman?
A. No.
Q. Did you have an understanding that MacAndrews & Forbes had engaged in prior efforts to sell its interest in Coleman before its discussions with Sunbeam?
A. No. I don't think so.
Q. Earlier, you described

NOT A CERTIFIED COPY

Page 57

transactions -- or "projects," I think you called them -- that don't mature into actual closed acquisition transactions.

Were you involved in any projects unconsummated that related to the Coleman Company, prior to these discussions with Sunbeam?

A. No.

Q. In connection with the engagement, were you aware of any efforts by MacAndrews & Forbes to talk with other potential purchasers, in parallel with Sunbeam, to engage interest in purchasing?

A. I was not aware of any.

Q. Were you ever asked to prepare sell side materials for MacAndrews & Forbes or for Coleman to describe Coleman to potential purchasers?

A. Not that I remember, no.

Q. Did you ever hear anyone say, in words or substance, that MacAndrews & Forbes was interested in selling its interest in Coleman because Coleman was underperforming?

A. No.

Q. Or that Coleman's financial

Page 58

condition was deteriorating?

A. No

Q. Did you ever hear anyone say, in words or substance, that MacAndrews & Forbes was interested in selling its interest in Coleman because it needed to raise cash or other assets for other MacAndrews & Forbes companies?

A. No.

Q. Did you ever hear any discussion, either internally at CSFB or at MacAndrews & Forbes, about what MacAndrews & Forbes planned to do with the proceeds that it received from the transaction?

A. No.

Q. Under the merger agreement that was ultimately signed, MacAndrews & Forbes retained the right to pledge its shares of Sunbeam that it received as part of the consideration to secure debt obligations. I am making that representation to you.

Did you have any discussions with MacAndrews & Forbes about their plans in that regard, or their interest in retaining that right?

Page 59

A. No, I did not have any discussions.

Q. Were you involved in any discussions, either internally at MacAndrews & Forbes or externally with Sunbeam or Morgan Stanley, about the form of consideration that would be used in that acquisition transaction?

A. No.

Q. Do you have an understanding that, at some point in the transaction, an all cash deal was discussed between the parties?

A. No.

Q. As you sit here today, are you aware that the transaction, as ultimately consummated, involved a cash component paid to MacAndrews & Forbes, a stock component, Sunbeam stock component paid to MacAndrews & Forbes, and also that certain debt was assumed?

A. Yes.

Q. You have that recollection?

A. Yes.

Q. Were you involved in any discussions with MacAndrews & Forbes about the financial benefits that it would achieve by structuring the transaction that way?

Page 60

A. No.

Q. Were you aware of any restrictions or limits in place on MacAndrews & Forbes or any of its holding companies that would make it beneficial, either from a tax or accounting standpoint, to structure the transaction as a mixture of cash, stock and debt assumption?

A. No.

Q. During the meeting that you described with Mr. Perelman and Mr. Maher and Mr. Gittis, where they were present -- and maybe Mr. Nesbitt, I think you said, also may have been present at the meeting, but during that meeting -- whoever the participants were, was there a discussion about accepting Sunbeam stock as part of the consideration for the merger?

A. I don't remember.

Q. Do you recall anyone suggesting, in words or in substance, that it was a bad idea to take Sunbeam stock?

A. No.

Q. Did you have any discussions with Mr. Levin about his views on the growth potential for Sunbeam stock?

NOT A CERTIFIED COPY

Page 61

A. No.
Q. Have you ever met Mr. Don Drapkin?
He is a MacAndrews & Forbes person. Was he someone that you had any interaction with?
A. He may have been at that meeting, I don't know.
Q. Do you recall Mr. Drapkin expressing any views with regard to whether accepting Sunbeam stock was a good idea or a bad idea?
A. No.
Q. During any of your discussions with MacAndrews & Forbes, was there any discussion about Al Dunlap accepting stock in a company that was being run by Mr. Dunlap?
A. No.
MR. JOHNSON: Objection to form.
Q. Did you or others, to your knowledge, do any research on Mr. Dunlap's history and performance at other companies that he had been at as part of your research on Sunbeam?
A. I don't remember doing any specific research, although he was a well-known CEO at the time; so, we may have had an understanding

Page 62

about the companies that he had run for Sunbeam. But I don't remember if we did any specific research on it.
Q. Were you aware that Mr. Dunlap had a reputation of being a turnaround specialist for companies?
A. What do you mean by a turnaround specialist?
Q. Taking underperforming companies, cost cutting, and turning around underperformers into growth-oriented companies.
A. Yes. Yes.
Q. Did you understand that he had previously been at a series of companies where he had turned them around in the way that I just described?
A. I think so.
Q. Did you know, in the fourth quarter of 1997 and the first quarter of 1998, that Mr. Dunlap had been an executive at Scott Paper Company before coming to Sunbeam?
A. Um, maybe. If you ask me to name the companies that he was the COO, I could not do it today, but maybe back then I had an

Page 63

understanding that he was.
Q. Did you conduct any research or did anyone conduct any research, to your knowledge, about Mr. Dunlap's tenure at Scott Paper and the achievements that he had claimed to have created at Scott Paper?
A. I don't remember. Maybe.
Q. In the fourth quarter of 1997, the first quarter of 1998, did you have any reason to question Mr. Dunlap's honesty and integrity as a chief executive officer?
A. No.
Q. Did you ever hear anyone say, in words or substance, that there was a reason to question Mr. Dunlap's honesty or integrity?
A. No.
Q. Or any other member of the Sunbeam management team?
A. No.
Q. One of the components of the acquisition transaction was the assumption of debt by Sunbeam of debt held by Coleman and other holding companies affiliated with the transaction.
Were you part of any conversations

Page 64

with MacAndrews & Forbes about the benefits to be achieved from including a debt assumption as part of the compensation package?
A. I don't remember any. There may have been.
Q. We looked, earlier, at a document that suggested that, at the same time, there was a recapitalization project going on.
Do you recall any discussions about the need for MacAndrews & Forbes or any of its holding companies to remove debt from its books in order to achieve these other financing transaction that it was simultaneously working on?
A. No.
MR. PARADISE: Tom, whenever it is convenient, could we take a short rest room break?
MR. CLARE: Sure.
Okay, why don't we take it now.
MR. PARADISE: And keep it short.
THE VIDEOGRAPHER: The time is 10:50 a.m., and we are going off the video record.
(Recess.)

NOT A CERTIFIED COPY

Page 65

THE VIDEOGRAPHER: Stand by. The time is 11:04 a.m., and we are back on the video record.
BY MR. CLARE:
Q. Mr. Geller, before the break I was asking you some questions about what role you played on the transaction.
Maybe you can just give me a flavor of what it was like on the transaction on a day-to-day basis. I mean, how did you interact with other people on the team, and how did you get information for your models? What role did you perform on a day-to-day basis?
MR. JOHNSON: Objection to form and to the several questions loaded in there, as well.
A. Can we start question by question?
Q. Sure.
Describe for me your day-to-day role on the transaction.
A. I did, read research reports. I put together the financial models to help evaluate the transaction.
Q. Did you perform all of this work in

Page 66

New York?
A. Yes.
Q. Did you ever travel to Florida in connection with the work on this engagement?
A. No.
Q. Did you ever travel outside of the State of New York?
A. No.
Q. How did you receive the financial information for your models?
A. I don't remember. Myself or Rob Duffy probably received the information for the models.
Q. What do you recall as the source of information about Sunbeam for your models? Where did you get the financial information about Sunbeam?
A. Well, probably, I don't remember exactly, but probably publicly available information on Sunbeam -- SEC filings, as an example; research reports, as an example. And probably from Morgan Stanley and from Sunbeam.
Q. What information do you recall getting from Morgan Stanley about Sunbeam?
A. I don't recall any specific

Page 67

information from either Morgan Stanley or Sunbeam. I probably received documents and I couldn't tell you exactly who gave them to me or to Rob.
Q. As you sit here today, do you recall having received any document from Morgan Stanley about Sunbeam?
A. No.
Q. As you sit here today, do you recall receiving any document from Sunbeam about Sunbeam's financial condition?
A. No. So, one of the two most likely sent us the documents about, most likely sent us the information about Sunbeam, but I don't remember who did specifically send it to us.
Q. How did you get staffed on this transaction?
A. I received a call from our staffer probably, and they said you are going to, you are going to work on this transaction.
Q. What instructions were you given about the transaction?
A. I don't remember.
Q. What stage of discussions with Sunbeam was the transaction at when you first

Page 68

got involved?
A. I don't remember.
Q. Was it your sense that you were involved from an early point in the discussion, or did you come in later, closer to the signing of the merger agreement, if you recall?
A. I don't know all of the discussions; so, I don't know what stage we came in.
Q. Can you estimate the number of weeks or months or days that you were working on this engagement?
A. I would estimate a couple of months, maybe.
Q. I hand you a document that we have previously marked as Morgan Stanley Exhibit 169, a December 10th, 1997 letter from CSFB addressed to the Coleman Company.
Have you seen this document before?
A. Yes.
Q. Is this the engagement letter that you reviewed in preparing for your deposition today?
A. Yes.
Q. Were you involved in any way in

NOT A CERTIFIED COPY

017611

Page 69

preparing the engagement letter for this transaction?
A. I don't remember doing this particular engagement letter or being involved.
Q. Do you recall any discussions about the scope of CSFB's engagement, or for what services CSFB was being retained for?
A. No.
Q. The first paragraph of the letter describes CSFB as the exclusive financial adviser with respect to the evaluation of a proposed transaction with the company, code named Laser; do you see that language?
A. Yes.
Q. Do you understand that the Laser was a code name for the Sunbeam company?
A. Yes.
Q. And Morgan Stanley Exhibit 169, the engagement letter, describes CSFB as the exclusive financial adviser with respect to evaluating the proposed transaction with Sunbeam.
Are you aware of any other financial advisers that were engaged by Coleman to

Page 70

evaluate a proposed transaction with Sunbeam?
A. No.
Q. Are you aware of any other financial adviser, other than CSFB, that was engaged by MacAndrews & Forbes in connection with evaluating the proposed transaction with Sunbeam?
A. No.
Q. The engagement letter in the second paragraph contains a number of sub-parts that describe the tasks that CSFB may be asked to perform.
The first one discusses that CSFB would, if appropriate and requested, assist Coleman in analyzing and evaluating the business operation and financial position of the company, which is defined as the Coleman Company.
Did you play a role in analyzing or evaluating the business operation and financial position of the Coleman Company as part of the engagement?
A. Yes. I believe so.
Q. What understanding did you have as to the financial position of Coleman at the

Page 71

time?
A. I don't remember.
Q. Do you recall, generally, that Coleman was underperforming versus other companies in the market?
A. I don't remember.
Q. Are you aware of any other financial adviser that assisted Coleman in analyzing its and evaluating its business for purposes of a proposed transaction?
A. No.
Q. In connection with the work that you did, you were not asked to coordinate or assist with any other financial adviser in that regard?
A. No.
Q. The paragraph (b) states that: "If appropriate and requested, CSFB would assist Coleman in evaluating proposals, any proposal which is received from Laser. Sunbeam."
Were you involved in evaluating proposals received from Sunbeam?
A. I don't remember. We may have summarized proposals from Sunbeam. So, I don't remember. I was associate; so, I may

Page 72

have received a proposal and analyzed it.
Q. As you sit here today, do you recall receiving term sheets or other proposals related to consideration amounts in analyzing the economics of them to MacAndrews & Forbes or Coleman?
A. I believe so. I believe so.
Q. In connection with that, was part of the work that you did evaluating the potential value of Sunbeam's stock that would be received by Coleman and MacAndrews & Forbes as part of the transaction?
MR. JOHNSON: Objection to form.
A. I believe. I believe we analyzed that relative to the publicly available information and made assessment, yes.
Q. Do you recall any analysis or evaluation of the value of Sunbeam's stock apart from the publicly available information?
A. I think, yes, we received the strategic plan, I believe, as we discussed earlier.
Q. And you are referring to the Sunbeam document that you recall receiving at the due diligence meeting?

NOT A CERTIFIED COPY

Page 73

A. Yes.
Q. Other than the Sunbeam strategic plan, which you received at the meeting, do you recall any other data or information that you considered in evaluating the value of Sunbeam stock?
A. I don't remember.
Q. The next paragraph describes that, if appropriate and requested, CSFB would assist Coleman in structuring and negotiating the proposed transaction with Sunbeam.
Did you play any role in the structuring or negotiating the transaction with Sunbeam?
A. No.
Q. The next paragraph states that: "If appropriate and requested, CSFB would meet with the board of directors to discuss the proposed transaction and its financial implications."
I think we established earlier that you did not attend any of the board meetings; is that correct?
A. No, I don't remember --
Q. You were involved in preparing

Page 74

information that was presented to the board?
A. Yes.
Q. And the final paragraph describes rendering a fairness opinion.
Were you involved in the preparation of a fairness opinion?
A. Of the actual document?
Q. Or the analysis that led to it.
A. Yes.
Q. What role did you play in the analysis of the fairness opinion?
A. I helped prepare the financial models.
Q. And other than the sources of information that you have already described, publicly available information and the Sunbeam long-range strategic plan, were there other sources of information about Sunbeam that fed into that analysis work that you did for the fairness opinion?
A. I don't remember. I may have received information about the benefits of the transaction, as well. The cost savings, as an example.
Q. Do you recall, as you sit here

Page 75

today, receiving information about the benefits of the transaction and the cost savings from anyone at Morgan Stanley?
A. No.
Q. The paragraph on the bottom of page 1 of the engagement letter describes that the company, Coleman, "will furnish CSFB with all information concerning the company or CSFB reasonably deems appropriate, will provide CSFB with access to the company's officers, directors, employees, accountants, counsel and other representatives."
Do you recall meeting with representatives of the company, specifically its accountants or attorneys, with regard to the engagement transaction work that you did?
A. Sorry. Can you just repeat that --
Q. Sure.
A. I --
Q. Do you recall having met with officers, directors, employees and accountants, counsel or other representatives of Coleman in connection with the engagement?
A. Yes.
Q. Do you recall meeting with any of

Page 76

Coleman's accountants, Ernst & Young?
A. I don't remember.
Q. Do you recall any interaction with Ernst & Young on the engagement at all?
A. I don't recall any.
Q. Do you recall any interaction with Coleman's attorneys for the transaction, attorneys at the Wachtel Lipton firm?
A. I don't believe I had any interaction. I may have sent a fax or two to them, but I don't believe I had any interaction.
Q. Who at Coleman was the source of your information about Coleman and its financial condition?
A. I don't remember. I don't remember who sent it to us.
Q. I would like you to turn to page 2, please. Towards the bottom middle of the page, there is a paragraph that states: "If we are requested to render an opinion, the nature and scope of our analysis, as well as the form and substance of our opinion, shall be as we deem appropriate."
Is that consistent with your

NOT A CERTIFIED COPY

Page 77

understanding of how the work on this engagement was performed?
In other words, CSFB determined the nature and scope of the analysis that went into the fairness opinion?
MR. JOHNSON: Objection to form.
A. I don't remember.
Q. Is that standard or typical for the engagements that you have worked on, that CSFB makes the determination about the nature and scope of analysis that will be performed prior to rendering a fairness opinion?
A. Yes.
Q. Do you recall that being any different in this transaction?
A. No.
Q. Did anyone from Coleman or MacAndrews & Forbes place any limits on the nature or scope of CSFB's analysis?
A. Not that I recall.
Q. Did anyone from Coleman or MacAndrews & Forbes ever prevent CSFB or you from conducting any investigation or performing any analysis that you wanted to perform?

Page 78

A. Not that I recall.
Q. Do you recall anyone from Sunbeam placing any limits on the information that you had requested from Sunbeam?
A. Not that I recall.
Q. Do you recall anyone from Morgan Stanley placing any limits or the nature or the scope of your analysis of Sunbeam?
A. No.
Q. Turn to the third page, please. The next to last paragraph, it describes the agreement being construed "governed in accordance with the laws of the State of New York," and I asked you whether you recall having traveled outside of the State of New York for this engagement. I think you said that you had not.
Do you know if Mr. Rich or any other member of the CSFB team traveled outside of New York in connection with this engagement?
A. I don't know.
Q. Was the team that worked on this transaction from CSFB based or headquartered in New York?
A. Yes.

Page 79

Q. Did you participate in any telephone conferences or conversations with participants who you recall being present in Florida -- on the call --
A. Maybe. I don't remember.
Q. You did recall being present at a due diligence meeting, an in-person meeting; correct?
A. Yes.
Q. Did that meeting take place in New York?
A. Yes.
Q. Other than that one meeting, do you recall having participated in any telephone conferences with representatives of Sunbeam?
A. I don't remember. I don't recall.
Q. As you sit here today, you are unable to recall any other direct communication that you had with Sunbeam employees?
A. Correct.
Q. Would you put that document aside. What was your understanding of Morgan Stanley's role in the transaction?
A. Financial adviser to Sunbeam.

Page 80

Q. Did anyone ever state to you, in words or in substance, that Morgan Stanley was serving as an adviser to MacAndrews & Forbes?
A. No.
Q. Did anyone state to you, in words or substance, that Morgan Stanley was serving as an adviser to the Coleman Company?
A. No.
Q. Did you ever observe Morgan Stanley to provide financial advice to the Coleman Company?
A. No.
Q. Did you ever observe Morgan Stanley to provide financial advice to MacAndrews & Forbes?
A. No.
Q. Did anyone ever tell you, in words or in substance, that Morgan Stanley would have some responsibility for performing due diligence on behalf of MacAndrews & Forbes?
A. No.
Q. Did anyone ever tell you, in words or substance, that Morgan Stanley would have some responsibility for performing due diligence on behalf of the Coleman Company?

NOT A CERTIFIED COPY

Page 81

A. No.
Q. Did you ask anyone from Morgan Stanley to review your model?
A. No.
Q. Did you ask anyone from Morgan Stanley to review the materials that you were preparing for the Coleman board?
A. No.
Q. Mr. Geller, I will hand a document that has been previously marked as Morgan Stanley Exhibit 75.
This is a lengthy document, the first three pages of which are a letter from an attorney at the firm of Wachtel Lipton Rosen & Katz, and it is addressed to the SEC. I don't have any reason to believe Mr. Geller that you have ever seen this document before.
I will represent to you that this document was produced to us in the litigation and it attaches, as Exhibit A, a chronology that was prepared by the Wachtel Lipton firm and presented to the SEC in this transaction, and it describes meetings and conversations that took place.
And I am going to ask you some

Page 82

questions not about the document, but about the transactions that, the meetings that are referred to here, perhaps in a way of structuring the rest of our discussion.
So that is the reason that I am providing you with this document.
A. Okay.
Q. If you want to flip ahead to the page, the first page of Exhibit A --
A. Okay.
Q. It describes a telephone call in early December of 1997 between Mr. Dunlap and Mr. Perelman.
And it describes these conversations beginning in early December of 1997. Is that roughly consistent with the time frame that you think you and others at CSFB got involved?
MR. JOHNSON: Objection to form.
A. Yes.
Q. The second entry on the chronology, is a December 12th, 1997 meeting. It describes the meeting between Mr. Levin, Mr. Shapiro and Mr. Page, on behalf of Coleman. A meeting with Mr. Fannin and Mr. Kersh and Mr. Langerman, on behalf of

Page 83

Sunbeam. You are not shown as having participated in that meeting.
Did you have any knowledge or understanding that that meeting was going to take place?
A. I don't remember.
Q. There was a reference here to potential synergies that could result from a combination of Sunbeam and Coleman.
In preparation for the discussions with Sunbeam, were you asked to prepare or consider a model for synergies that might be achieved during the negotiations?
A. I don't remember if we prepared anything, synergies in particular.
Q. There are some names in this entry that we have not talked about before. It makes reference to a Mr. Fannin, and he is described as the executive vice president and counsel and secretary of Sunbeam.
Did you have any dealings with Mr. Fannin, at any point during your work on the engagement?
A. I don't remember.
Q. Do you remember, do you recall

Page 84

whether Mr. Fannin was present at the due diligence meeting that you remember attending?
A. I don't remember.
Q. The next entry is for Russell Kersh in this document. He is described as the vice-chairman and chief financial officer of Sunbeam.
Do you recall meetings or conversations with Mr. Kersh of Sunbeam?
A. I remember the name, but I don't remember what interaction I had with him.
Q. Do you remember if Mr. Kersh was at the due diligence meeting that you recall attending?
A. I don't remember.
Q. I will hand you, and just keep this document in front of you for a minute, we will come right back to it.
A. All right.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 78. I will ask you to take a look at it.
The first page of Morgan Stanley Exhibit 78 is a fax cover page dated December 15th, 1997. And attached to the cover page is

NOT A CERTIFIED COPY

016415

Page 85

a one-page itemization of 15 items, totaling $150.5 million.
A. Okay.
Q. The first thing I want to do is establish the chronology for this document. If you look at the message on the first page of the fax message, the first sentence refers to a meeting having taken place on a Friday. December 15th, 1997 was a Monday; so, the Friday before was December 12th. I will make those representations to you.
A. Yes.
Q. The first paragraph of the fax transmittal letter describes this as a one-page list of issues which, "C," provided to the Sunbeam representatives during the December 12th meeting, and the fax cover sheet describes the attachment as identified synergies and cost savings in putting the two companies together.
Now I will ask you to flip over to the second page with that background. I will ask you if you have ever seen the second page of Morgan Stanley Exhibit 78 before.
MR. JOHNSON: Objection to the form

Page 86

of the question.
A. I don't remember if I saw this particular exhibit.
Q. Do you recall having seen a document like this before that identifies synergies, potential synergies in an itemization of these 15 items or similar items?
A. Yes.
MR. JOHNSON: Objection to form.
Q. Do you recall having seen them in the fourth quarter of 1997, first quarter of 1998, or since then?
A. I think, back then, I remember.
Q. That was part of the information that you used in your financial model?
A. Yes.
Q. Do you know who prepared this document, this specific exhibit, the second page of Morgan Stanley Exhibit 78?
A. No.
Q. Do you know if CSFB had any involvement in preparing it?
A. I don't believe so.
Q. Were you ever asked to do any work to determine if the figures identified on this

Page 87

page totaling $150,000,000 were reasonable?
A. I don't recall doing any work.
Q. Do you recall ever being asked to perform that function?
A. No.
Q. Do you recall any discussions with Morgan Stanley about potential synergies?
A. No.
Q. Do you recall being part of any discussions with Sunbeam about synergies that might be, could be achieved from the transaction?
A. I don't recall any.
Q. Was the subject of synergies discussed at the due diligence meeting that you recall attending?
A. Maybe. I don't remember.
Q. As you sit here today, you can't recall any reference to synergies during that meeting?
A. I can't recall, no.
Q. You described having seen documents that contained an itemization of synergies from the transaction.
A. Yes.

Page 88

Q. Were those figures in the documents that you were describing revised through the course of your work?
A. I don't remember.
Q. Do you recall meetings or discussions with the Coleman Company or MacAndrews & Forbes where those figures were adjusted up or down?
A. I don't recall.
Q. You can put that document aside.
Going back to the December 12th entry on the chronology. The first meeting described thereunder, December 12th.
Do you have an understanding from any source about what transpired during that meeting between Coleman and Sunbeam?
A. I don't remember.
Q. The second paragraph on that same date describes a meeting between Mr. Perelman and Mr. Gittis and Mr. Maher and Mr. Rich and Mr. Levin, discussing a potential transaction with Coleman and Sunbeam.
This is the first time in the chronology that CSFB shows up as having been involved.

NOT A CERTIFIED COPY

Do you recall having attending that meeting?
A. No, I don't recall.
Q. The meeting that you attended with, some of those same participants were Mr. Perelman and Mr. Maher and other individuals from MacAndrews & Forbes.
Was it your sense that that was the initial discussion between CSFB and MacAndrews & Forbes about it, or did you have a sense that there had been prior discussions?
A. I don't remember.
Q. Did Mr. Rich ever describe to you conversations of his meetings with MacAndrews & Forbes that you had not attended?
MR. JOHNSON: Any meeting or this one?
A. Did he ever?
Q. Any meeting.
A. When you say described, just --
Q. Did he ever relay the substance of what took place at the meeting?
A. No.
Q. The next two entries on the chronology, December 16th and December 17th,

you are listed as a participant in those meetings.
I would like you to read the entries for both of those meetings, please, and let me know when you are ready.
A. Okay.
Q. Do you recall attending these meetings?
A. I recall attending one, but -- I recall attending one.
Q. What do you recall about the meeting that you attended? What was discussed?
A. I don't remember. I think we probably prepared some materials, um, discussed them. I don't remember. I don't remember the specifics and substance.
Q. Do you recall providing the individuals from MacAndrews & Forbes with a compilation of publicly available information about Sunbeam?
A. I don't recall. Maybe.
Q. The next entry on the page describes a December -- December 18th, on the next page, describes a meeting between Mr. Perelman, Mr. Dunlap and Mr. Price. And it takes place

the day or two after the meetings that you were participating in.
Do you recall, as part of the meeting that you attended, preparation being made for a meeting between Mr. Perelman and Mr. Dunlap?
MR. JOHNSON: Objection to form.
A. Maybe. Maybe. I don't remember.
Q. Did you understand that Mr. Perelman and Mr. Dunlap were going to have direct communications or negotiations about a potential transaction?
A. Yes.
Q. And how did you have that understanding?
A. I don't remember if I heard it at the meeting or if I heard it secondhand.
Q. Were you or others at CSFB asked to perform any particular work to help get Mr. Perelman ready for that meeting?
A. I was not asked -- no, by anybody, but we may have prepared some materials, as we talked about the meeting prior to that day for that meeting.
Q. At the meeting that you attended,

did anyone present express any views about Sunbeam as a potential acquisition partner?
A. I don't remember.
Q. Positive or negative.
A. I don't remember.
Q. Do you recall anyone during the meeting that you attended expressing concern about entering into a transaction with Mr. Dunlap?
A. No.
Q. Would you turn to the next page of the document. It is the document that, the page, rather, that begins with December, the December 18th entry, which I already asked you about.
I would like you to look at the third entry on the page. There is a reference made to William Reid, that is described as a managing director of Morgan Stanley.
Did you have any interaction with Mr. Reid?
A. Sorry, I don't see it on the page.
MR. JOHNSON: I think you confused him about what page you were on.
MR. PARADISE: The third paragraph

NOT A CERTIFIED COPY

Page 93

on the next page.
THE WITNESS: Sorry, page 3.
Q. Sorry, it is the second page of the chronology.
A. Sure.
Q. Just so we are all on the same page, literally.
MR. PARADISE: There it is.
Q. We are looking at the Bates number CPH 1401529.
A. Yes. I see it.
Q. I am looking at the third entry of the page bearing the date early January, 1998. There is a reference there to Mr. Reid, described as a managing director of Morgan Stanley.
Having had a conversation with Mr. Perelman, did you have any interactions with Mr. Reid? Is that a name that is familiar to you in connection with this engagement?
A. It is not a name that is familiar. I don't remember having any interactions with him.
Q. Do you recall anyone from MacAndrews

Page 94

& Forbes advising you that Mr. Reid had called Mr. Perelman, as described here?
A. No.
Q. The same page, the entry for January 29th, 1998, the final paragraph on the page, it describes a meeting between Mr. Stynes, Mr. Fuchs, Mr. Chang, Mr. Fannin and Mr. Kersh, and were also present Mr. Levin, Mr. Page, Mr. Shapiro, Mr. Maher, Mr. Nesbitt and Mr. Rich. Obviously, Mr. Rich is from CSFB.
Do you recall having attended this meeting, the January 29th meeting with Mr. Rich, as described here in this entry?
A. No.
Q. There are some names here that we have not seen before.
Mr. Stynes, do you have any interaction or recollection of dealings with Mr. Stynes?
A. I don't have any recollection.
Q. Mr. Fuchs? Alex Fuchs.
A. I don't have any recollection, but I may have.
Q. Mr. Stynes and Mr. Fuchs were both

Page 95

Morgan Stanley representatives. Does that refresh your recollection about any dealings that you might have had with them?
A. I just don't remember the names, but we probably did.
Q. Mr. Chang, Tyrone Chang, also with Morgan Stanley?
A. I don't remember.
Q. The January 29th meeting describes some additional discussion about potential synergies that could be created from the combination.
Do you have any understanding about what was discussed about synergies during this time period, January, late January of 1998?
A. No.
Q. The document makes reference to a discussion about how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal.
Did you have any understanding about how due diligence would be conducted if Sunbeam made an acceptable proposal?
A. No.
Q. Other than attending the one due

Page 96

diligence meeting, did you have an understanding of any other due diligence performed by MacAndrews & Forbes on Sunbeam?
A. No.
Q. Do you recall any discussion of a confidentiality agreement or agreements between the parties to facilitate due diligence?
A. No.
Q. I will hand you what we marked previously as Morgan Stanley Exhibit 206.
A. Thank you.
Q. The Wall Street Journal article dated January 29th, 1998, the same day as the meeting that we were just looking at. Read as much of it as you would like and let me know and I will ask you some specific questions about it.
A. Okay.
Q. Do you recall seeing this article in January of 1998, or do you recall the events that are described in the article?
A. Vaguely. Not really.
Q. The first paragraph of the article reports that Sunbeam reported fourth quarter

NOT A CERTIFIED COPY

16div-024562

Page 97

earnings for the four quarter of 1997, that fell slightly short of analysts' expectations.

Do you recall, in connection with the work that you were doing, being aware that Sunbeam had reported fourth quarter 1997 earnings that were short of analysts' expectations?

A. I don't recall.

Q. During this time period, were you and others at CSFB monitoring public announcements of public filings by Sunbeam?

A. I don't remember, but probably.

Q. That would have been a standard part of your practice for engagements that were active?

A. Yes.

Q. The same paragraph describes a 9.5 percent drop in the price of Sunbeam shares on that announcement of fourth quarter earnings below analysts' expectations. Do you recall, during January of 1998, almost a 10 percent drop in the Sunbeam share price entering into any of the work that you did?

A. I don't remember.

Q. Do you recall any discussions

Page 98

internally at CSFB about the impact that this announcement or decline in price might have on the economics of the transaction?

A. I don't remember.

(Witness and counsel confer.)

MR. PARADISE: When we get to a breaking point, the witness would like to go to the bathroom.

THE WITNESS: Do I need permission?

MR. CLARE: We will be happy to accommodate that. Let's just get through this document, if that is all right.

MR. PARADISE: In the future you can direct that request to Mr. Clare.

Q. The subheading on the first column, "reaction of analysts," the paragraph states that "analysts had lowered their 1998 and 1999 earning estimates."

(Phone ringing.)

THE WITNESS: I apologize.

Q. That's okay.

Do you recall being aware, during the first quarter of 1998, that several analysts had lowered their earnings estimates for Sunbeam for the reasons stated here,

Page 99

specifically that the company's earnings wouldn't accelerate as fast as had been expected?

A. I don't remember.

Q. During this time period, to the extent that analysts had come out with reports on Sunbeam, those things that you would have collected and reviewed as part of your work --

A. Yes.

Q. You would have been aware of any revisions to analysts' thinkings that were issued during this time period?

A. Most likely, yes

Q. Do you recall any discussion with MacAndrews & Forbes or Coleman about the view on The Street that Sunbeam's earnings would not accelerate as fast as had been previously expected?

A. I don't recall.

Q. Do you recall any discussions about what impact that might have on the economics of the transaction for MacAndrews & Forbes?

A. I don't recall.

Q. Did it play a role in the modeling work that you did?

Page 100

A. I don't recall.

MR. PARADISE: "It," being the lowering of the analyst --

MR. CLARE: Correct.

Q. The modeling work that you did, did it include projections of earnings for Sunbeam into future financial periods?

A. Yes.

Q. If Wall Street analysts had reduced their projections for those future time periods, would that have played a role in your thinking about those projections?

A. It most likely would have.

Q. As you sit here today, you don't recall whether it did or did not?

A. I don't recall.

Q. Do you recall any discussions with your colleagues at CSFB about whether less optimistic or aggressive projections were warranted for Sunbeam?

A. I don't recall.

Q. Do you recall anyone from CSFB or MacAndrews & Forbes suggesting that the projections for Sunbeam for future time periods needed to be scaled back or discounted

NOT A CERTIFIED COPY

01644 19

Page 101

in some way?
A. I don't recall.
Q. We will look at some documents a little later on that were presented to the board. There are different financial cases that were presented.
There is one which appears in the document that is described as the Sunbeam long-range strategic plan case and there is another case that is described as the base case.
A. Okay.
Q. Do you recall that, generally? I am not trying to trick you here. We will look at the documents. Do you recall, generally, that different financial cases were presented to the board of directors?
A. No. I don't recall.
MR. PARADISE: Before you start this new line, can we take a short break?
MR. CLARE: Sure. I am still working on the document.
MR. PARADISE: Are you? Okay.
THE WITNESS: Yes.
MR. CLARE: Two minutes.

Page 102

THE WITNESS: Okay. Two minutes.
Q. Do you recall any impact that Sunbeam's fourth quarter earnings announcement had, if any, on the decision to present multiple cases to the board of directors?
A. I don't remember.
Q. Do you recall what the impetus of that decision was?
A. No.
MR. CLARE: Why don't we take our break.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: The time is 11:47 a.m. and this completes tape number 1.
(Recess.)
THE VIDEOGRAPHER: Stand by. The time is 11:54 a.m. and this begins tape number 2.
Q. Mr. Geller, I am handing you two exhibits that were previously marked as Morgan Stanley Exhibit 133 and Morgan Stanley Exhibit 101. I will ask you to take a look at them.
A. Okay.
Q. Morgan Stanley Exhibit 133 a February 4th letter from the Coleman Company

Page 103

addressed to Sunbeam Corporation.
It is a confidentiality agreement governing material provided by Coleman to Sunbeam during the due diligence.
Have you ever seen this document in any form before today?
A. I don't remember seeing it.
Q. Were you aware during, the time of the engagement, that due diligence was being conducted on Coleman by Sunbeam pursuant to a confidentiality agreement?
A. I don't remember.
Q. Do you have an understanding, one way or the other, about whether there was a confidentiality agreement in place that governed information being provided by Sunbeam to Coleman?
A. I don't remember.
Q. During the due diligence meeting that you attended, were you advised -- or, before the meeting, were you advised that there was a confidentiality agreement in place regarding what you and CSFB could do with the information and materials that it received?
A. I don't remember. I don't remember

Page 104

expressly being advised of that.
Q. In other transactions that you worked on, have there been confidentiality agreements governing the exchange of information during due diligence?
A. Yes.
Q. As you sit here today, you just can't remember, one way or the other, whether there were confidentiality agreements governing the due diligence agreement during this engagement?
A. That is correct.
Q. You can put those documents aside.
Let me ask you one final question, on the issue of the confidentiality agreements. Do you recall, during any of the meetings or conversations that you were a part of, anyone from MacAndrews & Forbes or Coleman objecting to entering into a confidentiality agreement?
A. No.
Q. I will go back to the chronology that we were looking at earlier, Morgan Stanley Exhibit --
A. Thank you.

NOT A CERTIFIED COPY

Page 105

Q. -- 75. And I have shown you the page that begins with the February 4th entry.

A. Yes.

Q. And the next time that you appear in the chronology is the reference to the February 23rd, 1998 meeting that appears at the bottom of the page and on to the next page. I would like to ask you to read that entry and let me know when you are ready to proceed.

A. Okay.

Q. Have you looked at the description on the top of the next page, as well? It is a carryover.

A. All right. Okay.

Q. These entries suggest that there were a series of meetings that took place on this day and that you were present for some of the meetings, but not for all of them.

My first question is whether you remember there being a series of meetings, and you were involved in some and not others, on these due diligence meetings.

A. I don't remember.

Page 106

Q. In the second carryover paragraph on the chronology it describes Sunbeam having made a presentation regarding its operating projections, which you recall having for part of the meeting that you attended; is that correct?

A. Yes.

Q. This chronology doesn't identify you as having been present for that meeting.

I am not saying that the chronology is correct. I am just trying to understand whether you remember being present at a meeting where Sunbeam made a presentation about its operating projections, or if you were told that that had occurred.

A. I remember being present at a meeting where they discussed that.

Q. Okay.

A. I think so. I think. I don't know --

Q. As you sit here today, the best of your recollection is that you were present at a meeting where Sunbeam made a presentation about its operating projections?

A. At a meeting. I don't know if -- if

Page 107

they did it more than once.

Q. Okay.

Prior to the due diligence meeting that you attended, other than reviewing publicly available information about Sunbeam, had you done any other due diligence regarding Sunbeam?

A. No.

Q. Had you spoken with or asked to speak with Sunbeam's management team prior to this date to conduct due diligence?

A. I don't believe so, but I don't remember.

Q. Had you spoken with, prior to the due diligence meeting, Sunbeam's accountants, the auditors -- the auditors were Arthur Andersen on the transaction.

A. I don't believe so.

Q. At any point during your work on the engagement, did you speak with Arthur Andersen?

A. I don't recall speaking to Arthur Andersen.

Q. Prior to your due diligence meeting, had you spoken with or asked to speak with

Page 108

Sunbeam's in-house accounting professionals?

A. I don't remember. I also don't know who we considered among that group; so -- I don't know.

Q. I will give you some names of people at Sunbeam.

A. Sure.

Q. For this list of names I want to focus on the time period before the due diligence meeting. We will kind of break this up into two different time periods.

Before the meeting that you recall attending, had you spoken with or asked to speak with Al Dunlap to conduct due diligence?

A. No.

Q. Rus Kersh?

A. I don't remember. Maybe.

Q. Rich Goudis?

A. Maybe.

Q. David Fannin?

A. I don't remember.

Q. Don Uzzi?

A. I don't know.

Q. Scott Yales?

A. I don't remember.

NOT A CERTIFIED COPY

Page 109

Q. Kyle Kaiser?
A. I don't remember.
Q. Kyle Sinclair?
A. I don't remember.
Q. Deirdre DenDanto?
A. I don't remember.
Q. Lee Griffith?
A. I don't remember.
Q. Tom Hartshorn?
A. I don't remember.
Q. Chuck Meyers
A. I don't remember.
Q. Bill Blumfeld?
A. I don't remember.
Q. In response to several of my questions you indicated that you don't remember. My question is, as you sit here today, before the due diligence meeting that you remember attending, can you recall making any request to speak with anyone internally at Sunbeam to conduct due diligence?
MR. JOHNSON: Objection to form.
A. Can you repeat the question.
(Record read.)
MR. PARADISE: This is in person,

Page 110

here.
MR. CLARE: Correct.
A. No.
Q. Prior to the due diligence meeting, did you speak with any of Sunbeam's customers?
A. No.
Q. Did you visit Sunbeam's headquarters?
A. No.
Q. Did you visit any of Sunbeam's manufacturing facilities?
A. No.
Q. Tell me everything that you can remember about the meeting that you described as a due diligence meeting.
A. It was very long ago. I just remember being in a room in a big office in New York, and I believe they handed out a plan and we discussed the plan, but I don't really remember the specifics.
Q. Who do you recall having spoken at the meeting?
A. I don't remember.
Q. As you sit here today, do you recall anyone from Morgan Stanley having a speaking

Page 111

role at the meeting that you attended?
MR. JOHNSON: Objection to form.
A. I don't remember.
Q. Do you recall who handed out the plan?
A. I don't remember.
Q. In the meeting that you remember, was the presentation of the plan done by Power Point slides or by virtue of a handout that everybody had, flipping around the table?
A. I don't remember.
Q. Was the meeting interactive in the sense of people asking questions and there was give and take during the meeting?
A. I don't remember.
Q. Do you remember anything at all about the presentation that was given, other than that it was given?
A. No.
Q. During the meeting, was there any discussion about Sunbeam's performance in the first quarter of 1998?
A. I really don't remember specifics about what was discussed.
Q. Do you recall anyone asking, anyone

Page 112

from CSFB, or MacAndrews & Forbes, or Coleman asking Sunbeam or Morgan Stanley about Sunbeam's first quarter 1998 performance?
A. I don't remember.
Q. Do you recall any discussion that Sunbeam's first quarter 1998 sales, up to that point, were slower than had been expected?
A. I don't remember.
Q. Do you recall anyone asking about the January, 1998 earnings announcement that we looked at?
A. I don't remember.
Q. Did you take notes during the meeting?
A. I don't remember.
Q. Is it your standard practice or typical practice to make notes during a meeting like that?
A. Yes.
Q. Do you recall what was said? Do you recall the substance of anything that was said with regard to Sunbeam's financial performance or growth prospects?
A. No.
Q. All right. We will look at, I will

NOT A CERTIFIED COPY

Page 113

hand you the next document, which is Morgan Stanley Exhibit 84.
A. Thank you.
Q. This is a document bearing the title "Sunbeam long-range strategic plan."
A. Okay.
Q. Is this, Morgan Stanley Exhibit 84, putting aside the handwriting on the document, which I am going to ask you about in a second, is this the form of presentation that you recall receiving during the due diligence meeting?
A. Yes.
Q. Do you recognize the handwriting on this document, Morgan Stanley Exhibit 84?
A. No.
Q. It is not your handwriting?
A. No.
Q. Do you recall, as part of the discussion, anyone from Sunbeam or Morgan Stanley identifying potential risks or risk factors associated with Sunbeam achieving these objectives?
A. I don't remember.
Q. Was the presentation made, was it

Page 114

presented page by page or was an overview given; do you recall?
A. I don't recall.
Q. The level of detail that was presented verbally?
A. I don't recall.
Q. Were the participants in the meeting given copies to take with them, if you recall?
A. I believe so. I don't know if everyone was given a copy -- or just some people were given copies. I don't remember --
Q. You will see throughout the transaction, throughout the presentation, Morgan Stanley Exhibit 84, there are a series of what are described as strategic headlines for different Sunbeam business units, and different sales figures at the bottom of the page.
Do you see those figures, the projections, generally -- for example, on the page CPH 1324763 there are strategic headlines for the clients' business and box at the bottom that contains sales figures, historical and projected?
A. Yes.

Page 115

Q. Do you recall anyone from Sunbeam discussing the achieveability of its sales projections for 1998, 1999 or 2000?
A. I don't recall.
Q. Do you recall anyone from Morgan Stanley making any statement during the meeting --
A. I don't recall.
Q. -- about Sunbeam's sales projections?
A. I don't recall.
Q. Do you recall any discussion after the meeting with your colleagues at CSFB or with MacAndrews & Forbes about Sunbeam's sales projections?
A. I don't recall.
Q. Do you recall anyone saying, in words or in substance, that the projections were optimistic or aggressive?
A. I don't recall.
Q. I would like you to turn to page 16 of the document, which has the Bates number CPH 1324771.
A. Yes.
Q. The title is Sunbeam long-range

Page 116

strategic objectives earnings from continuing operations.
And you will see on this page that there are net sales gross margin, SG and A, operating profit and other financial metrics down on the left-hand side.
And then, across the top, there are actual figures given for 1997 and long-range strategic plan numbers given for 1998, 1999 and 2000.
Do you recall any discussion of Sunbeam's long-range strategic plan as it relates to these financial metrics for 1998, '99 and 2000, during this meeting?
A. I don't recall.
Q. Did you understand, during the meeting that, Sunbeam to be making any promise or guarantee that it would achieve the figures listed as projections in its long-range strategic plan?
A. No.
Q. Did you understand Morgan Stanley to be making any promise or guarantee that Sunbeam would achieve the projections listed in Sunbeam's long-range strategic plan?

NOT A CERTIFIED COPY

Page 117

A. No.
Q. The handwriting to the right of the entry for net sales appears to say, "Jan Feb slow." Did anyone say, at the meeting that you attended, in words or substance, that Sunbeam's sales for January or February were slow?
A. I don't remember.
Q. Do you recall anyone from Coleman or MacAndrews & Forbes or CSFB asking during the meeting about Sunbeam's sales in the first two months of 1998?
A. I don't remember.
Q. Would that be, in your experience in conducting due diligence, a standard question that would be asked during due diligence?
A. Yes.
Q. About specifically a company's performance during the current financial time -- reporting period?
A. Yes.
Q. As you sit here today, you can't recall whether that question was asked?
A. No.
Q. When you attended this meeting, did

Page 118

you have with you any checklist of questions or issues that you wanted to cover during due diligence with Sunbeam?
MR. PARADISE: This is the witness, personally?
MR. CLARE: Correct.
A. I don't remember.
Q. Do you recall being asked to prepare one for other participants in the meeting?
A. I don't remember.
Q. Do you recall whether others at the meeting had a checklist or issue list of questions to ask or topics to cover with Sunbeam?
A. I don't remember.
Q. You can put this document side. I will hand you what I will ask the court reporter to initial a document that we had not previously marked, Morgan Stanley Exhibit 329.
(MS Exhibit 329, Sunbeam long range strategic plan, marked for identification as of this date.)
(Witness and counsel confer).
Q. Okay. Mr. Geller, I have handed you what has been marked as Morgan Stanley Exhibit

Page 119

329. It is another copy of the Sunbeam long-range strategic plan with some different handwriting on it. I would like you to flip through it and ask you if you recognize that handwriting as your own.
A. Yes.
Q. This is your happened writing?
A. Yes.
Q. The page that is Bates numbered CSFB C1629, I would like to invite your attention to this.
The page is a description, bears the title "Sunbeam long-range strategic objective number 5, achieve lead industry leadership and customer service."
And the bottom of the page, in handwriting, there is a notation "21 percent of sales to Walmart." Is that your handwriting?
A. Yes.
Q. Do you believe that that was a recording of something that was said during the meeting contemporaneous?
A. Probably.
Q. Do you recall being told, during the

Page 120

meeting, that 21 percent of Sunbeam's sales were to Walmart?
A. I don't remember.
Q. Is the figure 21 percent of sales to a single customer significant in conducting diligence with regard to a company's long-term performance?
MR. JOHNSON: Objection to form.
A. Can you repeat the question.
Q. Sure, I will rephrase the question because that was a bad question.
Did you find in the first quarter of 1998, during this meeting, this fact that 21 percent of Sunbeam's sales to Walmart to be significant for your purposes?
A. I don't remember.
Q. Did you or others at CSFB, to your knowledge, ever contact Walmart regarding Sunbeam?
A. No.
Q. Did you or others at CSFB, to your knowledge, ever contact Sunbeam's other customers?
A. No.
Q. What did you do, if anything, with

NOT A CERTIFIED COPY

Page 121

Sunbeam's long-range strategic plan presentation after the meeting?
A. Could you be more specific?
Q. Sure. Did you put it in the file and never look at it again? Did you use it as a source of information for your models? Did you discuss it with MacAndrews & Forbes and discuss its achieveability?
A. Sure.
MR. JOHNSON: Objection as, one, asked and answered. And, he already testified to that question.
Subject to that, you can answer it again.
Q. And by giving you those I will say that I am not meaning to limit in any way --
A. Sure.
Q. -- the options that are available to you in answering. My open-ended question and the one, the only one that is really pending is: What, if anything, did you do with Sunbeam's long-range strategic plan after the meeting?
A. I probably -- I don't remember. I don't remember. I probably used it for the

Page 122

basis of the financial model.
Q. As you sit here today, do you recall doing that?
A. Yes.
Q. Okay.
A. Yes.
Q. Specifically, what parts of the Sunbeam strategic plan do you recall using in the financial model?
A. The forecast.
Q. Prior to putting the forecast information into your model, did you discuss those numbers with anyone at CSFB?
A. I don't remember.
Q. Do you recall any discussion about whether it was appropriate to use Sunbeam's strategic plan forecast numbers at face value in your model?
MR. JOHNSON: Objection to form.
A. I don't remember.
Q. Do you recall developing, as part of your financial models, an alternate base case that was different than the Sunbeam strategic plan case?
A. Yes.

Page 123

Q. What led to the preparation of the base case?
A. I don't remember.
Q. Do you recall any discussion with MacAndrews & Forbes or your colleagues at CSFB that Sunbeam's projections were optimistic or aggressive?
MR. JOHNSON: Asked and answered.
A. No.
Q. During the meeting at which the strategic plan was presented, did anyone from Sunbeam make any promise or guarantee or prediction of Sunbeam's future stock performance?
A. Can you be more specific? Do you want me to answer each one, the guarantee --
Q. Sure. Why don't you answer it in your own words.
A. No.
Q. No to all three?
A. No to all three.
Q. Did Morgan Stanley make any such, promise, prediction or guarantee?
A. No. No to all three.
Q. Did Morgan Stanley vouch for the

Page 124

accuracy of Sunbeam's projections, as presented during the meeting?
A. No.
Q. Did Morgan Stanley vouch for the accuracy of Sunbeam's audited financial statements?
A. No.
Q. You can put this document aside. I will hand you what we previously marked as Morgan Stanley Exhibit 317, and I will ask you to look at it.
A. All right.
Q. Mr. Geller, this is not your handwriting; correct?
A. No. I don't believe so.
Q. Is any portion of the handwriting on Morgan Stanley Exhibit 317 yours? It all appears to be the same to me.
A. Me, too. I don't believe so.
Q. The handwritten notes on the top of the page have the header "Major Risks" and there are a number of different items listed on the next two pages.
Do you recall, during the meeting that you attended, the due diligence meeting,

NOT A CERTIFIED COPY

Page 125

there being a discussion of risks associated with Sunbeam's future performance?
MR. JOHNSON: Asked and answered.
A. I don't recall.
Q. Risk number 1, at least as identified on this exhibit, describes a risk of an ability to outsource quickly. It talks about different pacing of outsourcing. Do you recall any discussion about that at the meeting?
A. I don't recall.
Q. All the way down, at the very bottom of the page, there is a reference to Al Dunlap having created a negative sales impact, because, I believe, looking to sell.
Do you recall any discussion at the meeting that you attended of a negative sales impact created by Sunbeam being participant in the mergers and acquisitions market?
A. No.
Q. On the second page of the document there is a reference to revenue, the entries for 96 versus 97 and 97 versus 98. Do you recall any questions being asked or information being provided about Sunbeam's

Page 126

revenue, year over year, during those periods?
A. No.
Q. You can put that document aside.
I am handing you Morgan Stanley Exhibit 85, and I will ask you to take a look at it.
A. All right. Okay.
Q. I handed you Morgan Stanley Exhibit 85, which is a presentation, a book of material presentations entitled Sunbeam corporation discussion materials, February, 1998.
Have you ever seen this document in this form before?
A. I don't think so. I don't remember seeing it.
Q. Do you recall anyone from Morgan Stanley or Sunbeam presenting this document, Morgan Stanley Exhibit 85, during the due diligence meeting that you attended?
A. I don't remember. I don't remember.
Q. Do you recall there being multiple presentations during the meeting or only one?
MR. JOHNSON: Objection to form.
A. I don't remember.

Page 127

Q. But, as you sit here today, you don't recall receiving a copy of this document, Morgan Stanley Exhibit 85, at that meeting?
A. No, I don't recall this.
Q. Okay. Do you recall Morgan Stanley, separate from Sunbeam, presenting information during the meeting?
A. No, I don't remember.
Q. Okay. You can put this document aside.
I am handing you what we have marked as Morgan Stanley Exhibit 88. These are minutes of a board meeting of the Coleman Company on February 25th, 1998.
You have already told me that you did not attend the board meeting of the Coleman Company, to the best of your recollection; so, my first question is: Take as much time as you would like to review the minutes of the meeting. I want to just see if it refreshes your recollection that you did attend or confirms that you did not attend, in your own mind.
A. I did not attend the meeting, so.

Page 128

Q. Seeing this doesn't refresh your recollection that you may have attended parts of it or any of it?
A. No.
Q. It lists as participants in the meeting from Credit Suisse First Boston, Gordon Rich and Robert Duffy. Do you recall Mr. Rich and Mr. Duffy attending one or more Sunbeam or Coleman board meetings?
A. Yes.
Q. Your source of that is you prepared materials for them to take to the meeting?
A. Yes.
Q. Do you recall getting any reports from Mr. Rich or Mr. Duffy or any other source about what transpired at the Coleman board meetings that related to the acquisition?
A. I don't recall.
Q. We will see in a minute that there were two board meetings held relating to the acquisition, one on February 25th, which is what we are looking at here, and another one, two days later, on February 27th.
Do you recall doing work between the board meetings to -- as an outgrowth of what

NOT A CERTIFIED COPY

16div-024570

Page 129

may have transpired at the first meeting?
A. I don't remember.
Q. With that testimony, I am not going to ask you much about the board meeting for obvious reasons. I do have a question about page 2 of the minutes.
A. Okay.
Q. There is a reference here in the third paragraph to an inquiry made by Coleman to another company. It is identified as the month's likely potential bidder for Coleman, which bidder was not interested.
Do you have any understanding as to what that is referring to, Coleman having made an inquiry to another potential bidder?
A. No, I don't remember, no.
Q. You can put that document aside. I will hand you Morgan Stanley Exhibit 112. This is a document entitled February 25th, 1998, draft materials prepared for the board of directors, the Coleman Company.
Is this a document that you assisted in the preparation of?
A. Yes.
Q. I would like to invite your

Page 130

attention, first, to page 3 of the presentation, which is Coleman transaction multiples. Do you see that?
A. Yes.
Q. There is a valuation sensitivity of Sunbeam's proposal model at different Sunbeam share prices.
A. Yes.
Q. As part of your modeling, was there any Sunbeam share price number below which it was concluded or discussed, the transaction would no longer be fair?
MR. JOHNSON: Objection to form.
A. I don't remember.
Q. You don't recall performing any analysis below the Sunbeam share price of $34, as indicated here?
A. No.
Q. Did you understand, in connection with the modeling work that you were doing, there to be any guarantee of Sunbeam's share price performance on a going forward basis?
A. No.
Q. Was it your understanding that Sunbeam would continue to trade publicly after

Page 131

the acquisition transaction?
A. What do you mean by "after the acquisition transaction"?
Q. After Sunbeam acquired Coleman, that Sunbeam would continue, Sunbeam shares would continue to trade publicly?
A. Yes.
Q. Was it your understanding that the deal included the acquisition transaction, included any provision in which Sunbeam would have to compensate Coleman with additional cash or some other value if Sunbeam's share price dropped below a certain level?
A. I don't remember.
Q. Do you recall that concept ever being discussed as a possibility or something that might be advisable for the transaction?
A. I don't recall.
THE WITNESS: Could I take a break?
MR. CLARE: Sure. Why don't we do that now, because we will get into a more detailed line of questioning.
THE VIDEOGRAPHER: The time is 12:32 p.m. and we are going off the video record.

Page 132

AFTERNOON SESSION
1:11 p.m.
STEVEN GELLER, having been previously sworn, resumed the stand and testified further as follows:
THE VIDEOGRAPHER: The time is 1:11 p.m. and we are back on the video record.
EXAMINATION BY
MR. CLARE:
Q. Mr. Geller, before the break I had handed you Morgan Stanley Exhibit 112, the presentation prepared for the Coleman board.
How did you go about preparing the presentation?
A. Can you be more specific?
Q. Sure. What process did you use to pull this information together?
A. Well, I think it really depends on the particular page, but some of it was just typed into it, the document and others were numbers that were created for the model, were pieced into the presentation, specifically in terms of how we actually developed -- is that what you are asking?
Q. The information is sourced

NOT A CERTIFIED COPY

016427

Page 133

throughout on different pages to different sources.
Was that your practice in putting together a presentation like this, to attribute information to its source through a footnote or other reference?
A. Yes.
Q. Did Morgan Stanley assist you in any way in preparing the presentation to be given to the board of directors?
A. No.
Q. At any point, did you or others at CSFB, to your knowledge, provide a copy of this to Morgan Stanley to review for accuracy before it was presented?
A. No.
Q. Throughout the presentation there are historical financial numbers for Sunbeam -- not projections, but historical. Those are not sourced.
Where would that information have come from? Or where did it come from?
A. Are you talking about anything in particular?
Q. Yes. For example, let's look at

Page 134

page 12 of the presentation.
A. Sure.
Q. The title of the slide, rather, is "overview of Sunbeam."
The bottom right-hand box, entitled "financial summary," there is financial information for Sunbeam for 1996 and 1997, which are historicals, and then estimates for '98 and '99. Do you see that?
A. Yes.
Q. And the '98 and '99 estimates are sourced as having been based on Wall Street estimates, but there is no source for the '96 and '97 documents. Where would the historical Sunbeam information come from?
A. I don't know this particular information. It could come from Sunbeam itself, or it could come from their public filings.
Q. Did you rely on the historical financial information provided by Morgan Stanley in putting together the presentation that went to the board?
A. I don't remember.
Q. Do you recall?

Page 135

A. I don't recall where this came from in particular.
Q. In terms of your practice in putting together information like this, is it generally your practice to obtain historical financial information from audited financial statements?
A. Yes.
Q. I would like you to turn to page 2 of the presentation, please.
A. All right.
Q. In the right-hand box, entitled "relevant statistics," there are various metrics and premium percentages that are calculated here.
Did you have any discussions with your colleagues at CSFB about the premium that Sunbeam was paying for Coleman?
A. I don't remember.
Q. Do you recall any discussion about what these premiums, as reflected here, were attributed to?
A. When you say attributed to --
Q. For example, whether there were expected synergies to be achieved through the

Page 136

combination of Sunbeam or Coleman that would warrant payment of a premium to Coleman.
MR. JOHNSON: Objection to the form. I think we are getting a little bit off the record here. But, subject to that, if you understand the question --
Q. What do you mean by "off the record"?
MR. JOHNSON: I don't mean it in the traditional sense of off the record. You asked a question that really wasn't in the form of a question. And so, I objected to form.
MR. CLARE: Okay.
Q. Did you participate in any discussions with your colleagues at CSFB about the premium that was paid by Sunbeam for Coleman as having been attributed to potential synergies?
A. I don't remember.
Q. Or a control premium?
A. I don't remember.
Q. I would like you to turn to page 13 of the presentation, please. The slide summarizes different valuation analyses that

NOT A CERTIFIED COPY

Page 137

were performed with regard to Sunbeam. Is that correct?
A. Yes.
Q. It summarizes a discounted cash flow analysis, a comparable company analysis and a comparable acquisition analyses.
A. Correct.
Q. Did you perform those analyses in connection with the modeling that you did?
A. Parts of it, sure.
Q. In the model work that you did, were any one of those three approaches given more weight than the other?
A. I don't remember.
Q. You don't recall any discussions where anyone said, in words or substance, that, for example, the discounted cash flow analysis would be more important than a comparable acquisition analysis to Coleman's decision-making?
A. I don't remember.
Q. Now, the discounted cash flow analysis that is shown here on page 13 is shown under two different cases. We have alluded to this in my earlier questioning.

Page 138

There is the long-term strategic plan and then there is the base case.
Do you recall doing the discounted cash flow analysis under two different sets of assumptions?
A. I don't recall, but I -- this, I believe we did.
Q. Do you recall that both sets of assumptions were included or intended to be included in the materials presented to the Coleman board?
A. Yes.
Q. It was your understanding that both sets would be presented to the Coleman board?
A. Yes.
Q. Did you have any discussions as to why both the base case and the long-term strategic plan should be presented to the Coleman board?
A. No.
Q. Do you recall whether that was a decision that CSFB made on its own or a decision that was made in consultation with MacAndrews & Forbes or Coleman?
A. I don't know.

Page 139

Q. Would you turn to the next page. We will provide some additional detail on the discounted cash flow analysis.
I want to focus on the top half of the page that has historical information for 1996, 1997 and then estimates for 1998 through 2002.
A. Okay.
Q. Again, those same figures are provided for the base case and also the long-term strategic plan case.
The strategic plan case is referenced to footnote 2. Do you see that?
A. Yes.
Q. Footnote 2 describes the strategic plan as Sunbeam management projections for 1998 to 2000 and estimates for 2001 and 2002.
Do you see that?
A. Yes.
Q. Do you recall where those estimates for 2002 came from?
A. No.
Q. Did Sunbeam or Morgan Stanley provide guidance to CSFB on the estimates that CSFB would use for the strategic plan case for

Page 140

2001 and 2002?
A. I don't remember.
Q. Do you recall, as you sit here today, any dialogue with Sunbeam or Morgan Stanley about estimates for 2001 or 2002?
A. No.
Q. I want to refer you back to the investment banking memo that we looked at, the first document this morning in this pile, which is Morgan Stanley Exhibit 230, and I will ask that you keep Exhibit 112 out in front of you, as well.
Turning to the section, the investment banking memo that deals with the discounted cash flow analysis. It is page 7 of the presentation, the very top of the page, and it describes the discounted cash flow analysis has been performed on two cases.
As we have seen, the long-term strategic plan case and the Sunbeam base case; do you see that?
A. I think I am on the right page now, okay, yes.
Q. And the strategic plan case describes management forecasts for 1998 to

NOT A CERTIFIED COPY

Page 141

2000, and 7.5 percent growth thereafter.
Does that refresh your recollection in any way as to the source of the estimates that were included in the strategic plan case?
A. No.
Q. Did you discuss that 7.5 percent growth figure with others at CSFB or MacAndrews & Forbes?
A. I don't remember.
Q. Did you discuss that 7.5 percent growth assumption with anyone from Morgan Stanley?
A. I don't remember.
Q. Did you ask Morgan Stanley or Sunbeam to assess the reasonableness of 7.5 percent growth assumption for 2001 and 2002?
A. I don't remember.
Q. Or, generally, do you recall discussing any aspects of your discounted cash flow analysis with Morgan Stanley?
A. I don't recall.
Q. As you sit here today, you don't recall any discussions with Morgan Stanley about that?
A. No.

Page 142

Q. You can put the investment banking memo aside for a moment.
In your experience, is it typical to provide a discounted cash flow analysis under different sets of assumptions --
MR. JOHNSON: Objection to form.
Q. -- when presenting a valuation in connection with a mergers and acquisitions transaction?
MR. JOHNSON: Same objection.
MR. PARADISE: Objection, as well.
A. Okay.
MR. PARADISE: You can answer.
A. Um, when you say "typical," would you be more specific? What does that mean?
Q. Sure. Is it commonly done, in your experience?
MR. JOHNSON: Same objection.
MR. PARADISE: Objection.
A. It is a case by case -- yes, it is done.
Q. In instances where multiple scenarios are presented to the board for a discounted cash flow analysis, what is the purpose of doing it under multiple different

Page 143

assumptions?
MR. JOHNSON: Objection to form.
A. To just show the implications of different assumptions.
Q. Why in this transaction for the Sunbeam Coleman acquisition did CSFB elect to present the valuation of Sunbeam under two different scenarios?
A. I don't remember.
Q. Did anyone say, in words or substance, that this, the strategic plan case was too aggressive or too optimistic and needed to be discounted?
MR. JOHNSON: Asked and answered for the third time.
A. I don't remember.
Q. You don't remember anyone saying that?
A. No.
Q. Do you remember any sense of the, that the Sunbeam projections were too aggressive leading to the development of a base case?
MR. JOHNSON: Objection to form.
A. I don't remember.

Page 144

Q. Footnote 1 describes the base case as having been projections developed in conjunction with Coleman management, based on the equity analysts' research. Did you develop those projections for the base case?
A. I don't remember.
MR. PARADISE: Was he the person at CSFB who developed them in conjunction with the Coleman management?
MR. CLARE: Yes, that is a much better question.
Q. Were you person at CSFB that worked in conjunction with Coleman management in developing the base case?
A. I don't remember.
Q. Do you recall any involvement in the development of the base case?
A. I don't recall.
Q. Do you know who the Coleman management that is referred to in footnote 1 is?
A. No.
Q. The base case is a more conservative case than the strategic plan case, based on these figures; correct?

NOT A CERTIFIED COPY

Page 145

MR. JOHNSON: Objection to form.
A. Correct.
(MS Exhibit 330, documents Bates Nos. 1121275 to 332, marked for identification as of this date.)
MR. CLARE: I will ask the reporter to initial this document. It is a new one. Exhibit 330.
Q. Mr. Geller, I handed you what has been marked as Morgan Stanley Exhibit 330, and it is a presentation entitled "backup materials prepared for the investment banking committee."
Did you have any involvement in preparing these backup slides for the investment banking memo?
A. Probably yes.
Q. You don't recall having been involved in doing that?
A. Yes, I think I did.
Q. That would have been part of the work that would have led to the board presentation that we were looking at?
MR. JOHNSON: Objection to form. Is that a question?

Page 146

MR. CLARE: Yes.
A. Led to --
Part of the work is part of what we typically do, that led to the board presentation.
Q. The process I am trying to understand is, you did some modeling work and you put together some presentation materials for the investment banking committee; correct?
A. Correct.
Q. And based on the approval of the investment banking committee, a presentation was made to Coleman's board?
A. Yes. That is correct.
Q. And the same information that was provided to the investment banking committee was then provided to the Coleman board?
A. Um --
MR. JOHNSON: Objection to form.
A. Not necessarily.
Q. I think I understand the difference. It is the same work, the same type of modeling and assumptions that go into preparing for the investment banking committee, the same work that goes into preparing materials for the

Page 147

presentation to the board?
MR. JOHNSON: Objection to form.
A. Generally speaking, that is correct.
Q. This slide presentation describes itself as backup materials prepared for the investment banking committee. This document, Morgan Stanley Exhibit 330, is this a document that would have accompanied the analysis performed in Morgan Stanley Exhibit 230, the investment banking memo?
A. Apparently, yes.
Q. I will only ask you about one aspect of this document, Morgan Stanley Exhibit 330. Again, it relates to the discounted cash flow part of the analysis.
If you look at the page that begins on CPH 1121310?
A. Yes.
Q. This is one slide in a series of slides done under the Sunbeam base case.
A. Okay.
Q. And if you see, in the header of the page I have referred you to, it describes the case as -- Sunbeam base case; do you see that?
A. Yes.

Page 148

Q. Okay. I want you to keep your finger on that page and flip ahead several pages to the page ending in Bates number 1313.
A. Yes.
Q. And it is the same information presented under the Sunbeam long-term plan case.
A. Okay.
Q. Do you see that?
A. Yes.
Q. Have I correctly interpreted what we are looking at here?
A. Yes.
Q. If you flip between the two different cases and if you look at the sales growth figures for 2001 and 2002, the estimates, you see that under the base case the estimates call for sales growth in 2001 and 2002 of 10 percent growth in each of those years; do you see that?
A. Yes.
MR. PARADISE: 10 percent from the previous year.
A. I see that.
Q. Under the long-term plan case, it

NOT A CERTIFIED COPY

016431

Page 149

calls for 7.5 percent sales growth in 2001 and 2002 in each of -- of those two years.
A. Yes.
Q. Was there any discussion internally at CSFB or with MacAndrews & Forbes about the pace at which Sunbeam's sales growth would be achieved?
A. I don't remember.
Q. Was there any discussion that the Sunbeam base case called for faster year over year growth in 2001 and 2002 than the Sunbeam long-term strategic plan case?
A. I don't remember.
Q. Do you recall any discussion at all about the differences between the Sunbeam strategic plan case and the base case?
A. No.
Q. You can put that document aside. I would like you to keep the investment banking memo in front of you.
A. Sure.
Q. You are listed as an author of the document, and did you have a role in creating Morgan Stanley Exhibit 230, the investment memo?

Page 150

A. Yes.
Q. What was your role in creating that?
A. I may have put together certain sections of the memo.
Q. Can you identify the sections of the memo that you put together, as you sit here today?
A. I can't.
Q. Did you attend a meeting of the investment banking committee with regard to the proposed sale of the Coleman to Sunbeam?
A. I think I did.
Q. Did that meeting take place in New York?
A. Yes.
Q. Was it an in-person meeting?
A. I believe so.
Q. Is this form of document, a memo to the investment banking committee, part of the process at CSFB for requesting approval prior to the issuance of a fairness opinion?
A. At the time, this was, yes.
Q. And when you say "at the time," in 1998 -- this was a part of the formal process that was required prior to the issuance of a

Page 151

fairness opinion?
A. Correct.
Q. Did you understand that the investment banking committee would be relying upon the information provided in the memo and in the backup materials in making its determination regarding whether or not to issue a fairness opinion?
A. Yes.
Q. And did you understand that it was important to try to be accurate in providing information to the investment banking committee for that purpose?
A. Yes.
Q. Did you try to be accurate in providing information to the committee?
A. Ah, absolutely.
Q. Did you make any sort of presentation during the meeting of the investment banking committee on this transaction?
A. I don't recall. I don't believe so.
Q. Do you recall any questions that were asked that you were asked to address during the meeting?

Page 152

A. No, I don't recall.
Q. Do you recall anything about what was said during the investment banking meeting on the Coleman acquisition?
A. No.
Q. Did you provide a copy of a draft of Morgan Stanley Exhibit 230 to Morgan Stanley or Sunbeam prior to the investment banking committee meeting for approval or review?
A. No.
Q. I would like you to look at page 10, please.
The pages are not very legibly numbered, but in the lower-left-hand corner there is a footer of each one that gives the page number. You can skip around. That might be helpful.
Under the section entitled "synergies," the first sentence of that section states: "Coleman management has estimated that the combination with Sunbeam could create up to 150 million of cost savings and revenue synergies." Do you see that?
A. Yes.
Q. What was the source of that

NOT A CERTIFIED COPY

Page 153

statement, as of February 25th, 1998?
A. I don't remember.
Q. Do you recall that, earlier today, we looked at a document that listed $150 million of synergies from the combination with Sunbeam?
Do you recall any discussions where that synergy page was carried forward into this time period, February, 1998 and analyzed?
A. I don't remember any discussions. I don't remember any discussions specifically related to that page.
Q. Do you recall being asked to perform any work on synergies from the transaction as part of the negotiation of the acquisition in order to justify a higher price for Coleman?
A. I can't remember.
Q. More generally, were you asked at any point to perform work to provide arguments to Coleman and MacAndrews & Forbes to use in negotiating the higher price for Coleman?
A. Maybe, but I don't remember.
Q. Do you recall synergies being the subject of discussions of meetings that you were, that you attended as it related to the

Page 154

price of Coleman?
A. Um, no.
Q. Or specifically the price that Sunbeam was being asked to pay for Coleman?
A. No. I was not involved in that at all.
Q. During the investment banking committee meeting, to the extent that you remember, do you recall anyone expressing doubts or concerns about Coleman or MacAndrews & Forbes receiving Sunbeam stock as a part of the consideration?
MR. JOHNSON: Could I hear that back.
A. No.
Q. I will hand you a document that we previously marked as Morgan Stanley Exhibit 277.
A. Thank you.
Q. I will ask you to generally familiarize yourself with it and let me know when you are ready to proceed.
A. Okay.
Q. The upper right-hand corner of the page has a date stamp and time stamp and a

Page 155

reference to project Violet; do you see that?
A. Yes.
Q. Do you recall Project Violet being a code word associated with this project that we have been discussing?
A. Yes.
Q. And, actually, the words Project Violet appear on some of the other materials that we have looked at related to this transaction.
A. Yes.
Q. The date of the document is February 27th, 1998, and the time stamp says 5:39 a.m.
I will represent to you that February 27th was the date of the board meeting, the second board meeting of Coleman where the transaction was approved, and the date the final merger agreement was signed.
Do you recall, early in the morning of that day, performing an analysis like this one for some purpose?
A. Not specifically.
Q. Do you recognize this document, Morgan Stanley Exhibit 277, as something that you prepared or as part of your model?

Page 156

A. Possibly. Possibly. I recognize this format.
Q. You do?
A. This format, sure --
Q. Sorry to interrupt you. Were you done?
A. I do recognize this format of the model. I don't remember specifically what this was used for, this particular model.
Q. What information was being analyzed here in this form of the model?
MR. JOHNSON: Objection to the form.
Q. Or let me strike that and ask a different question.
A. Sure.
Q. What is the purpose of this document? This form of document, putting aside this particular one.
A. Sure.
MR. JOHNSON: Objection to the form.
Q. Do you understand my question? I am asking generally with regard to the form of this type of calculation.
MR. JOHNSON: Objection. My objection is standing.

NOT A CERTIFIED COPY

0196133

Page 157

A. Okay. This provides some information about both companies' financial information, but, generally speaking, this is to show the accretive and dilution, it is called, of the transaction to the acquirer.
Q. This is information that would be done from the prospective of the acquiring company to see whether it is accretive or dilutive?
A. Correct.
Q. Do you recall who, if anyone, provided you the assumptions to use in this analysis for this transaction?
A. I don't remember.
Q. The second page of the exhibit sets forth the projected income statement for the companies. It does a projected Sunbeam stand-alone and then a pro forma Sunbeam Coleman combination. Do you see that?
A. Yes.
Q. The projected Sunbeam stand-alone case uses figures for sales and discounted cash flow and operating income that are identical to the base case scenario that we looked at, not the strategic plan case.

Page 158

Did you have any discussions or recollection of doing the accretion/dilution analysis using the base case versus the strategic planning case?
A. I don't remember.
Q. Do you recall, as you sit here today, ever preparing an accretion or dilution analysis that was based on the strategic plan case?
A. I don't recall.
Q. You can put that document aside.
A. All right.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 118. These are minutes from the February 27th, 1998 board meeting, and you are not shown as having participated, but I wanted to give you an opportunity to review it to see if it refreshes your recollection whether you did attend.
A. I don't think I attended. I don't believe I did.
Q. Did you ever receive a report from any source about what, if anything, transpired at the February 27th board meeting?

Page 159

A. Potentially, I don't remember.
Q. As you sit here today, do you recall Mr. Rich or Mr. Duffy reporting to you on the events of the February 27th board meeting?
A. No.
Q. Did you learn from Mr. Rich or Mr. Duffy that the board had approved the transaction?
A. I don't remember.
Q. You do recall that the transaction was approved and ultimately consummated?
A. Sure. That I remember.
Q. But don't recall learning that the Coleman board had approved the transaction?
A. I don't remember.
Q. Getting any feedback on the presentation that was made by CSFB to the Coleman board.
A. No, I don't remember that specifically.
Q. Do you recall that CSFB provided a fairness opinion to the Coleman board?
A. Do I -- I recall -- not specifically, because I was not at that meeting, but I recall that that was part of

Page 160

the board materials.
Q. You do recall being asked, that CSFB was asked to provide a fairness opinion
MR. PARADISE: I believe the witness is --
MR. CLARE: The question is more general.
Q. As a part of the engagement, CSFB was requested to render a fairness opinion for the transaction?
A. Yes. I guess my answer would be, that would be my understanding, yes. I was never, personally, it was never requested of me, to me.
Q. Were you aware that the investment banking committee had approved the issuance of a fairness opinion for this transaction?
A. Yes.
Q. You just don't have any knowledge as to whether that fairness opinion was actually delivered to the Coleman board?
A. Well --
Q. Because you weren't there?
A. Because I was not there, correct.
Q. Thank you.

NOT A CERTIFIED COPY

Page 161

Other than the work that you have already described in your testimony today, did you perform any other work relative to the preparation of a fairness opinion by CSFB?
A. Maybe, but not that I can recall. This is pretty standard material.
Q. As you sit here today, you don't recall that there were other categories or projects or works that, types of projects that you have performed specifically for the fairness opinion that did not factor into the other modeling work that you were doing?
A. Not that I can recall.
Q. Did you have any role in drafting the fairness opinion provided by CSFB?
A. No. Other than I may have -- no, not that I remember. I may have typed some text or someone gave it to me, but --
Q. I will show you Morgan Stanley Exhibit 120, which is a copy of the fairness opinion provided by CSFB to the board, and signed by Mr. Rich on the final page of the document. Do you recognize that as Mr. Rich's signature? Not today.
A. Yeah, I don't know what his

Page 162

signature looks like, but it appears to be.
Q. Okay. I am not going to ask you much about this document, but on page 2, the final paragraph on page 2, there is a statement that discusses a financial forecast.
A. Yes.
Q. And the sentence that I am going to ask you about says: "With respect to the financial forecasts, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of the company and the acquirer as to the future financial performance of their prospective companies and the synergies and operating cost savings expected to be achieved through the combination of the operation of the company and the acquirer." Do you see that?
A. Yes.
Q. Based on your interactions with Sunbeam and Morgan Stanley, did you have any reason to believe, based on any other information that you had or reviewed, that Sunbeam's financial forecasts had not been reasonably prepared as described here?

Page 163

A. No.
Q. Was there any information that you had obtained from other sources -- publicly available documents, analysts' reports, that would call into question the forecasts received from Sunbeam?
MR. PARADISE: At which point in time?
MR. CLARE: At any point during the first quarter of 1998.
A. Not that I remember.
Q. If you had information suggesting that Sunbeam's financial forecasts were, that called into question Sunbeam's financial forecasts, would that have been a topic that you would have followed up on in conducting due diligence?
A. Yes.
Q. You would have wanted more information about that?
A. Yes.
Q. You can put that document aside.
Earlier, I asked you a series of questions about the due diligence that you and others at CSFB had performed up to the date of

Page 164

that due diligence meeting. Do you recall --
A. Right.
Q. Do you recall that line of questioning?
A. Yes.
Q. I want to ask now about the time period between the due diligence meeting and the time that the merger agreements were signed, and I will represent to you that it was a four-day period between the meeting that you were shown as having attended for due diligence and February 27th, when that --
A. Okay.
Q. Did you conduct any due diligence on Sunbeam after that due diligence meeting before the merger agreement was signed?
A. Not that I remember. I don't remember.
Q. Did you have any dealings or interaction with Sunbeam or Morgan Stanley after that due diligence meeting that you attended?
A. I don't remember. Maybe.
Q. As you sit here today, can you recall any meetings or telephone conversations

NOT A CERTIFIED COPY

Page 165

where Morgan Stanley was present after the due diligence meeting?
A. I can't recall.
Q. The merger agreement was signed between Coleman and Sunbeam on February 27th, but did not close until the end of March. Did you perform any work on the engagement during that time period between the signing of the definitive agreement and the closing?
A. Maybe. I don't remember specifically, but possibly.
Q. Do you recall, as you sit here today, being asked to do anything or doing anything during that time period between the signing of the merger agreement and its closing?
A. I can't recall anything specifically, but it is possible that we did. It is possible.
Q. Okay.
I guess, recognizing that it is possible, as you sit here today, do you recognize having done, do you remember having done any specific work during that time period, after the fairness opinion was issued

Page 166

to the Coleman board?
A. I can't -- no, I don't remember. I don't remember anything specific.
Q. Did you or others at CSFB, to your knowledge, conduct additional due diligence of Sunbeam after the signing of the merger agreement?
A. Not that I recall. It is possible.
Q. After the merger agreement was signed, did you make any requests of Sunbeam or Morgan Stanley for financial information about Sunbeam?
A. I don't recall. Possibly.
Q. As you sit here today, do you recall ever having made that request?
A. No.
Q. After the merger agreement was signed, do you recall making any request of Sunbeam for information about its first quarter 1998 performance?
A. I don't remember.
Q. As you sit here today, do you recall having made any such request?
A. No.
Q. After the merger agreement was

Page 167

signed, but before it closed, did you make any request of information from Arthur Andersen, Sunbeam's accountants?
A. I don't remember. As I sit here today, no.
Q. As you sit here today, you don't recall having made such a request?
A. That is correct.
Q. Are you familiar with the term "comfort letter," in the context of securities underwriting?
A. No. I have heard of it, but I don't have a -- I really don't know what it is.
Q. Have you ever reviewed comfort letters prepared by accountants in connection with the work that you have done?
A. No. I am not sure what is a comfort letter is specifically.
Q. Have you ever reviewed a letter prepared by an accounting firm that contains interim financial information since the date of the last audit, the update information, financial information?
A. Potentially.
MR. JOHNSON: Objection to form. I

Page 168

did not hear you. Did you answer?
THE WITNESS: I said "potentially."
Yes.
Q. You have reviewed those types of documents in connection with work that you have done on other transaction?
MR. JOHNSON: Objection to form.
A. Yes.
Q. Do you recall, at any point during the engagement for Coleman, requesting such a letter from Arthur Andersen, Sunbeam's accountant?
A. I don't recall.
Q. As you sit here today, do you recall such a request being made?
A. No.
Q. Do you recall any discussions with MacAndrews & Forbes, Coleman or at CSFB about negative information coming out about Sunbeam prior to the close of the transaction?
A. I don't remember.
MR. CLARE: 11.
Q. I will hand you what has been marked as Morgan Stanley Exhibit 11.
Morgan Stanley Exhibit 11 is a press

NOT A CERTIFIED COPY

Page 169

release issued by Sunbeam dated March 19th, 1998. And again, just to place the date of this press release in time for you, this -- the merger agreements were signed on February 27th, and the acquisition was closed at the end of March.

So, this press release was issued during that time period, between the signing of the definitive agreement and the closing.

A. Okay.

Q. Do you recall seeing or being made aware of this press release?

A. I don't recall.

Q. Do you recall any discussion about an announcement by Sunbeam that its sales for the first quarter may be lower than analysts' estimates for the first quarter?

A. I don't remember.

Q. Do you recall whether you were asked at any point to look at your model or to determine whether adjustments might be appropriate or necessary based on this information that is disclosed here in the presses release?

A. It is possible, but I don't recall.

Page 170

Q. As you sit here today, do you recall being asked to perform any additional work based on the information presented here in the March 19th press release?

A. No.

Q. After March 19th, 1998, do you recall being asked by CSFB or MacAndrews & Forbes to request additional information from Sunbeam?

A. I don't recall.

Q. As you sit here today, do you recall any such request?

A. I don't recall.

Q. As a result of the information disclosed here in the press release, do you recall being asked by anyone to request additional information of Morgan Stanley, from Morgan Stanley?

A. I don't recall.

Q. Do you recall any discussions about Sunbeam's first quarter sales being short of expectations?

A. I don't remember.

Q. Do you recall any discussions with Mr. Duffy or Mr. Rich about what impact, if

Page 171

any, this announcement would have on CSFB's fairness opinion?

A. I don't remember, but it is possible.

Q. Do you recall, in the wake of the issuance of this press release, a decline in Sunbeam's stock price?

A. I don't remember.

Q. Do you recall being asked to model the value received by MacAndrews & Forbes in the acquisition under a new set of assumptions about the value of Sunbeam's stock?

A. I don't remember.

Q. Do you recall any discussions with MacAndrews & Forbes or Coleman about delaying the closing of the transaction?

A. I don't recall.

Q. Do you recall any discussions with MacAndrews & Forbes or Coleman about declaring a material adverse change as a result of information disclosed by Sunbeam?

A. I don't recall.

Q. Do you recall any discussions as to whether additional information might be necessary to make a determination about

Page 172

whether a material adverse change had occurred?

A. I don't recall.

Q. Did you attend the closing of the transaction?

A. I don't recall. I don't think so.

Q. Do you know if anyone from CSFB did, Mr. Rich or Mr. Duffy?

A. I don't know.

Q. Were you aware in the first quarter of 1998 that Morgan Stanley was, in addition to serving as an underwriter, also one of several banks that was loaning money to Sunbeam to finance the acquisition?

A. I don't remember.

Q. Did you perform any work on valuing the Sunbeam shares that MacAndrews & Forbes received in the transaction?

A. That MacAndrews & Forbes received?

Q. Yes.

A. I don't believe so.

Q. Did you perform any work on valuing the shares that MacAndrews & Forbes received from Sunbeam in light of the restrictions that the merger agreement placed on the sale of

NOT A CERTIFIED COPY

Page 173

those shares?
A. I don't believe so.
MR. CLARE: Why don't we take a short break, and I think we may be either done or close to being done.
If you can maybe give me ten minutes and let me collect my documents and make sure that I have not missed something that I need to cover.
MR. JOHNSON: All right.
MR. CLARE: Give me ten minutes.
THE VIDEOGRAPHER: The time is 2:03 p.m. and we are going off the video record.
(Recess.)
MR. CLARE: Exhibit 11.
THE VIDEOGRAPHER: Stand by. The time is 2:16 p.m. and we are back on the video record.
BY MR. CLARE:
Q. Mr. Geller, I have handed back to you Morgan Stanley Exhibit 11, which is the March 19th, 1998 press release issued by Sunbeam, relating to the first quarter of 1998 sales.

Page 174

And after the issuance of the press release, as you sit here today, do you recall making any inquiry of Sunbeam for additional information about first quarter sales?
A. I don't recall.
Q. As you sit here today, do you recall making any inquiry of Arthur Andersen about Sunbeam's first quarter sales following the issuance of the March 19th press release?
A. I don't recall.
Q. Do you recall making any inquiry of Morgan Stanley about Sunbeam's first quarter sales after the issuance of the March 19th press release?
A. I don't recall.
Q. Do you recall receiving any information from any source about Sunbeam's first quarter sales after the issuance of the March 19th press release?
A. Any source --
I don't remember any. It is possible.
Q. Are you familiar, generally, with the concept of hedging an equity investment?
A. I think so.

Page 175

Q. Were you part of any discussions with MacAndrews & Forbes about hedging its Sunbeam shares that it received as part of the acquisition transaction?
A. I don't believe so.
Q. Did you attend any meeting or have any conversations where the concept of hedging those Sunbeam shares was discussed or considered?
A. Not that I remember.
MR. CLARE: I will hand you what was previously marked as Morgan Stanley Exhibit 298.
THE WITNESS: Are you done with this one?
MR. CLARE: Yes.
THE WITNESS: Thank you.
Q. Morgan Stanley Exhibit 298 is an April 23rd, 1998 letter to or memorandum to the Mafco finance lenders, copy to, among others, Joel Glodowski and Credit Suisse First Boston.
A. All right.
Q. In the first paragraph of the memorandum it indicates that it is attaching

Page 176

modifications to the Mafco finance credit agreements and Mafco guarantee. Do you have any familiarity with those credit and guarantee documents that are referenced there?
A. No.
Q. And the proposed modifications that are reflected here in Morgan Stanley Exhibit 298 are described as permitting Mafco and its subsidiaries to enter into an equity hedge arrangement in respect of the Sunbeam capital stock.
Do you recall any discussions with Mr. Glodowski or others about such an equity hedge arrangement?
A. I don't remember.
Q. Did anyone ever state to you, in words or substance, that MacAndrews & Forbes was interested in hedging its investment in Sunbeam stock that it received as a result of the acquisition?
A. I don't know. Possibly. I don't remember.
Q. As you sit here today, do you recall any discussion about MacAndrews & Forbes interest in hedging its investment in Sunbeam

NOT A CERTIFIED COPY

stock?
A. No.
Q. And, as you sit here today, do you know, one way or the other, whether MacAndrews & Forbes ever pursued any hedge arrangement for its Sunbeam stock?
A. No.
MR. CLARE: Put that one aside. Exhibit 316.
(MS Exhibit 316, 10QA filing, marked for identification as of this date.)
Q. Mr. Geller, I have handed you what has been marked as Morgan Stanley Exhibit 316, which is a 10-QA filed by Sunbeam. I will only ask you about the text that appears on the page.
If you look at the pagination in the upper right-hand corner, I am looking at the page 9 of 37, and it appears to be page 6 of the original 10-QA. There is a reference here to the acquisition. I would like you to read that paragraph to yourself. The final sentence of that paragraph describes the value of the Sunbeam's stock having been discounted

by 15 percent due to the restrictive nature of the securities. Do you see that?
A. Yes.
Q. Do you recall that, as part of the merger agreement, that the stock received by MacAndrews & Forbes was restricted?
MR. JOHNSON: Objection to form.
A. I don't recall.
Q. Do you have an understanding from any source what discount rate MacAndrews & Forbes used in valuing the Sunbeam stock that it received due to the restrictions in the merger agreements?
A. No.
Q. Do you have any understanding from any source what the basis for the 15 percent number stated here in Exhibit 316 is?
A. No.
MR. CLARE: Those are all of the questions that I have.
THE WITNESS: Thank you.
MR. CLARE: Mr. Johnson may have a few questions for you.
MR. JOHNSON: Just a few questions. Could I have the microphone, please.

EXAMINATION BY
MR. JOHNSON:
Q. Good afternoon.
A. Yes. Good afternoon.
Q. Mr. Geller, at any time prior to the signing of the merger agreement and the closing, did Morgan Stanley advise you that Sunbeam's sales through the first two months of 1998 were running at half the sales for the first two months of 1997?
MR. CLARE: Objection to form.
A. I don't recall that.
Q. At any time between the signing of the merger agreement and the closing, did Morgan Stanley ever tell you that, through the first two months of 1998, Sunbeam was showing a 40 million dollar loss in earnings?
MR. CLARE: Objection to form.
A. I don't recall.
Q. At any time between the signing of the merger agreement and the closing, did anyone from Morgan Stanley ever tell you that Sunbeam had accelerated sales into the fourth quarter of 1997?

MR. CLARE: Objection to form.
A. I don't recall. I don't recall that information.
MR. JOHNSON: No further questions.
MR. CLARE: I don't have anything further.
MR. PARADISE: Thank you.
MR. CLARE: Thank you, Mr. Geller.
THE VIDEOGRAPHER: The time is 2:25 p.m., and this completes tape 2, and also the videotaped deposition of Mr. Steven Geller.
(Time noted: 2:25 p.m.)

STEVEN GELLER

Subscribed and sworn to before me
this day of 2004.

NOT A CERTIFIED COPY

016439

CERTIFICATE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ROBERT X. SHAW, CSR, a Notary Public within and for the State of New York, do hereby certify:

That STEVEN GELLER, the witness whose deposition is hereinbefore set forth,was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3 day of August, 2004.

ROBERT X. SHAW, CSR

INDEX

WITNESS	EXAMINATION BY	PAGE
MR. GELLER	MR. CLARE	5

INFORMATION REQUESTS

DIRECTIONS:
TO BE FURNISHED:
REQUESTS:

EXHIBITS

MS		FOR ID.
MS Exhibit 329, Sunbeam long range strategic plan		118
MS Exhibit 330, documents Bates Nos. 1121275 to 332		145
MS Exhibit 316, 10QA filing		177

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

016441

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

Case No.
v. CA 3-5165 AI

MACANDREWS & FORBES HOLINGS, INC.,

Defendant.

July 28, 2004
12:08 p.m.

Continued Deposition of PAUL E. SHAPIRO, taken by Defendant, pursuant to Agreement, at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York, before ANITA SHEMIN, a Shorthand Reporter and Notary Public within and for the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for COLEMAN and MacANDREWS & FORBES
One IBM Plaza
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for MORGAN STANLEY
153 East 53rd Street
New York, New York
BY: LAWRENCE P. BEMIS, ESQ.
- and -
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: KATHRYN REED DeBORD, ESQ.

ALSO PRESENT:
VICTOR DILA, Videographer

INDEX

WITNESS	EXAMINATION BY	PAGE
PAUL E. SHAPIRO		
	MR. BEMIS	257
		392
	MR. BRODY	376

EXHIBITS

MORGAN STANLEY	DESCRIPTION	PAGE
180	Memorandum dated 2/21/98	273
181	Memorandum	287
261	Communications package	365
262	June 29, 1998, Board minutes	373

CPH	DESCRIPTION	PAGE
253	Document, Bates Nos. 1409707 through 1409980	383
254	SEC Form S-4	386

THE VIDEOGRAPHER: This is Tape No. 1 of the videotaped deposition of Mr. Paul Shapiro in the matter of Coleman (Parent) Holdings, Inc., Plaintiff v. Morgan Stanley & Co., Inc., Defendant, in the 15th Judicial Circuit in and for Palm Beach County, Florida.

This deposition is being held at 153 East 53rd Street, New York, New York, on July 28, 2004, at approximately 12:08 p.m. My name is Victor Dila, I am from the firm of Esquire Video Services. I am a legal video specialist. The court reporter is Anita Shemin in association with Esquire Deposition Services.

Will counsel please introduce themselves.

MR. BEMIS: Good afternoon. Larry Bemis, on behalf of Morgan Stanley.

MS. DeBORD: Kathy Debord, for Morgan Stanley.

MR. BRODY: My name is Michael T. Brody, on behalf of Coleman (Parent) Holdings and MacAndrews & Forbes

NOT A CERTIFIED COPY

Page 257

Holdings and the witness.
THE VIDEOGRAPHER: Will the court reporter please swear in the witness.
PAUL E. SHAPIRO,
having been duly sworn, testified as follows:
EXAMINATION BY MR. BEMIS:
Q Good afternoon, Mr. Shapiro. Thank you for coming back.
When we adjourned your deposition -- this is a while back -- we were talking about a home call that you had received from Barry Schwartz on the morning of February 19th. I think you said -- the transcript will -- is more precise, but I am going to summarize, you had received a phone call early on that morning, I think it was a Thursday, you said Mr. Schwartz asked you to get dressed and come to a meeting.
Do you recall the phone call?
A Yes.
Q Could you tell me as precisely as you can what Mr. Schwartz said to you on that phone call?
A No, I can't recall precisely, but it was to the effect that an agreement in principal had been reached between the business -- the

Page 258

business people for a transaction which Sunbeam would acquire Coleman, I should come to a meeting that was being held early that morning, I don't remember the exact time, in order to be brought up to date and to begin to organize and complete the transaction.
Q When you refer to the business people, who are you referring to?
A Whoever were the business people on Sunbeam's side. To my knowledge, Russ Kirsch and others were the people. I met with David Fannon and their representatives at Morgan Stanley, and on our side, senior MacAndrews' people as well as Jim Maher. I think Will Nesbitt at the time was working for him.
Q Anyone else on the MacAndrews' --
MR. BRODY: That he would consider one of the senior business people?
MR. BEMIS: He used the term senior business people.
A Howard Guiness.
I don't remember who precisely was at that meeting. The senior people at MacAndrews included Daniel McCann as well as Barry Schwartz, who was acting in his capacity as

Page 259

general counsel.
Q You were the senior person that worked for Coleman on the transaction at this time?
A Among the others that worked on it were Jerry Levin, who was the Chief Executive Officer; Joe Page, who was the Chief Financial Officer; I was General Counsel, Joe and I were both Executive Vice Presidents, and then below me, Stephen Isko, who was -- who worked for me as either Assistant General Counsel or deputy. I don't remember his title, but he was an in-house lawyer.
Q Would you include Mr. Levin and Mr. Page as business people working on the transaction?
A Yes.
Q Did they work on the business side of the transaction before February 19th, 1998?
A I would have to divide the negotiating of the arrangements versus discussions that might have occurred concerning the deal itself. To my knowledge, I don't remember either of them working on what the actual consideration might be and the detailed terms of the deal. They were -- they were among the senior group running Coleman, so they were involved to the extent

Page 260

that information might be passed or questions answered about the business itself, the operating business.
Q Is it fair, then, to say that Mr. Levin and Mr. Page were -- were more involved in operational issues for Coleman as opposed to the purchase or sale of the company?
A Yes.
Q As I understand it, there was a meeting following the phone call from Mr. Schwartz; correct?
A Yes.
Q Where did that take place?
A I believe at 35 East 62nd Street at the headquarters of MacAndrews & Forbes.
Q Who was present at this meeting?
A I don't recall specifically. I know I was there, I believe Barry Schwartz was there, I believe Howard Gittis, Jerry Levin, either Jim Maher, or Will Nesbitt or both of them. I don't recall if Steve Isko was there. I believe he probably was. I am not sure, I don't remember the others.
Q Was there anyone from Sunbeam there?
A No.

NOT A CERTIFIED COPY

Page 261

Q This was strictly a MacAndrews' meeting?
A MacAndrews and Coleman, yes.
Q How long did this meeting last on February 19th?
A I don't recall.
Q Do you recall if it lasted, for example, for a morning, was it an afternoon meeting, an all day meeting?
A It was not an all day meeting, but I don't recall how long it lasted.
Q What was the subject matter of the meeting?
A The subject matter of the meeting was the possible impending acquisition of Coleman by Sunbeam.
Q What was said on that subject? I realize there were multiple people that may have spoken.
A The gist of the meeting was that -- was that a -- I don't know how to characterize it, a tentative deal had been reached in which the basic consideration that would be paid, the value that would be paid had been agreed upon between the parties.
The method of the acquisition -- to my

Page 262

recollection the method of the acquisition, the -- the details of the split of how much would be cash and how much would be stock, how the transaction would actually be effectuated were still not completely pinned down.
Q Were there open issues identified at the meeting that had to be resolved with Sunbeam?
A I don't recall. It is just my general recollection that -- that exactly how the transaction would be effectuated and exactly what the final split would be, for example, between stock and cash weren't getting pinned down, that Jim Maher was still talking with Morgan Stanley people on behalf of Sunbeam to iron out those details.
Q Is it fair to say in the larger -- withdrawn.
Is it fair to say that the large issues that remained open were the form of the transaction and the, as you put it, I believe, the split between the cash component of the consideration and the stock component of the consideration?
A Yes.
MR. BRODY: Objection to form.

Page 263

I am sorry, you may answer.
A I believe that essentially the value of the consideration was either agreed to by then, or it was very close. They were within 10 percent one way or the other, 5 percent one way or the other, and I believe the -- the other open item was how would the transaction would be accomplished, exactly what would be the mechanics of it.
Q When you say 5 or 10 percent, is that 5 or 10 percent of a dollar figure attributable to the transaction?
A No. Let me put it a different way because 5 or 10 percent would have been -- sitting here, years later, I would say they were within a dollar -- they either were there or a dollar one way or the other of what the consideration was. It was close enough to gear everybody up. There was a sense that they would come to agreement on that, but the -- but the way it would be paid and the split was not yet pinned down completely.
Q When you say the way it would be paid and the split, now we are talking about the distribution between a cash payment and a stock

Page 264

payment which would total up to a value?
A There was cash, there was stock, and with regard to the MacAndrews piece, there was also an assumption of holding company debt.
Q Now, at the meeting on February 19th that you have been describing for us, what discussion was there, if any, on the assumption of debt of the holding company?
A I don't recall.
Q Do you know the amount of debt within $100 million that was being discussed at the meeting?
A Well, I said I don't recall whether the debt itself was being discussed. The holding company debt, which was above the operating company, was a number, and -- and the -- any discussion of that would have revolved around does it get assumed and does the money get paid off. It was a mechanic, but it was my understanding that the holding company debt, one way or the other, would be extinguished as a result of the transaction.
Q And the holding company debt would be reflected on the financial statements at a point in time whatever the date of the financial

NOT A CERTIFIED COPY

statements; correct?
MR. BRODY: Objection to the form.
A I believe so, yes.
Q If I were, for example, to look at the audited financial statements for the holding company CLN Holdings, Inc. -- if I were to look at the audited financial statements for CLN Holdings, Inc., for the period December 31, 1997, for example, I would find on that audited financials -- in the audited financial statements an entry, for example, long term debt; correct?
MR. BRODY: I object to form.
A I don't recall, because I wasn't involved with the holding company, but I assume the answer is, yes.
Q Okay.
Was there any discussion at the February 19th meeting about assuming debt of the Coleman Company, Inc.?
A I think the assumption -- I don't recall if there was at that meeting, but the assumption was that the Coleman debt would be assumed one way or another. The acquisition was of the whole company. It was intended to be an

acquisition of the company as an entity, and, therefore, the debt would go along with it.
Q As of February 19th, 1998, can you tell us what the debt was of the Coleman Company, Inc., recognizing you might not be able to do it to the dollar?
A I cannot even do it to 100 million. I can't recall. It would have been reflected on the Coleman financial statements.
Q As we discussed with CLN Holdings, Inc., the amount of debt would be reflected in the audited financial statements of the Coleman Company, Inc., for whatever period so designated; correct?
A Yes.
Q What was the -- withdrawn.
Were there any documents handed out at the meeting on February 19th?
A I don't recall.
Q Let me show you what has been marked as Morgan Stanley 83.
Mr. Shapiro, I have handed you what has been marked as MS 83. Do you have that in front of you?
A Yes.

Q I am not -- I will tell you there are a couple of dates on the document. There is one in handwriting at the top. I am not suggesting to you that that is the date of the document, but there is also a footer at the very, very bottom that is hard to read. I have to take my glasses off to read it, but I believe it is February 20th, 1998, is the dating on it.
With that background, I don't ask you to accept the dates necessarily. Have you seen this document, MS 83, before or one like it?
A Not to my recollection.
Q Was any document similar to this available to the participants of the February 19th meeting you had been telling us about?
MR. BRODY: I object to form.
A The answer is, I have no way of knowing -- I don't recall seeing it.
Q Were there any documents available for the parties to review at the February 15th meeting that summarized in any way the transaction terms?
A I don't recall.
Q You can hand that back to me.

One last question. Do you recognize any of the handwriting on the document? There is handwriting at the top, and there is some on the front page.
A No.
Q All right.
Was the meeting that you have been describing a continuous meeting with the participants, or did you break and come back later in the day?
A I don't recall.
Q How was the meeting left?
A My general recollection today is that it was a meeting to catch everybody up on where things stood and to divide up the work to be done going forward. It was agreed that we would hire counsel, that was a follow-up to the meeting, and I believe that Steve Isko and I were assigned the responsibility to interface with counsel for Sunbeam in order to provide any diligence material they wanted and in order to meet with them and their lawyers to get the legal documents themselves that would be necessary to close the transaction.
Q Did Mr. Schwartz have specific

NOT A CERTIFIED COPY

Page 269

responsibilities assigned to him at the February 19th meeting?
A I don't recall.
Q Did Mr. Maher have further responsibilities?
A I think his responsibility would be to pin down with the Sunbeam investment bankers the finalization of whatever open issues there were in connection with the business deal itself, meaning things like how the debt would be assumed, the split of stock would be, what the final consideration would be, the split of stock and cash would be.
Q Did Mr. Maher have the lead on the business side to finalizing the business terms?
A He was responsible for the interface with the Morgan Stanley people, and he reported up to people like Mr. Gittis, Mr. Pearlman, Mr. Drapkin ultimately for the decision as to what would be acceptable.
Q Was anyone at the meeting from Credit Suisse First Boston?
A I don't recall.
Q So the record is clear, I was referring to the February 15th meeting.

Page 270

A I assumed you meant the February 19th meeting. I don't recall.
Q Was anyone at the meeting charged with the responsibility of interfacing with Credit Suisse First Boston?
A I don't recall.
Q Was anyone at the meeting on February 19th that you have been describing for us surprised that the parties on the business side had apparently come very close to reaching the business terms of a deal?
A I don't recall.
Q Were you surprised?
A Yes.
Q And why were you surprised?
A Well, because the last contact I can recall today that I was aware of was in January, and my take away from that contact, as reported to me by Jerry Levin, that this deal was just unlikely to happen, the parties were too far apart.
I think I testified earlier I had dinner with Mr. Schwartz the night before, which was a social dinner. He said nothing about it, so whether he knew and didn't say anything or

Page 271

whether he didn't know, I don't recall, but it just all took me by surprise that the first thing the next morning, I became aware that something had occurred.
Q I do not recall asking you: Did you say that you had dinner with Mr. Schwartz on the evening before the February 19th meeting?
A Yes.
Q There was no discussion over dinner about this pending deal?
A No.
Q You said one of the assignments given at the February 19th meeting was to retain outside counsel; correct?
A Correct.
Q Did you do that, or did someone else do it?
A Well, I think the initial contact to Wachtel was made through MacAndrews. Probably through Mr. Schwartz, I am not certain.
Q It was not you?
A No. I met with the Wachtel people, I said, formally on behalf of the operating company. I was the -- I was the interface.
Q Who was your contact at Wachtel on the

Page 272

operating side?
A Adam Emerick.
Q Had you worked with Mr. Emerick before?
A Yes, but not a great deal. I worked with him on some minor problems with some other companies.
Q Is Mr. Emerick a transactional lawyer?
A I think he is probably one of the most knowledgeable M and A lawyers I have ever met, so his -- his specialty, I suppose, is M and A transactions, but his certain -- he certainly -- certainly, his overall knowledge of corporate law is enormous, so I suppose he advises in an advisory role as well as a transactional role.
Q Going forward, did Mr. Emerick have the primary outside legal responsibility for the MacAndrews & Forbes/Coleman side of the transaction?
A Yes. The interface, you know, at the top may have been with Marty Lipton, but on a day-to-day basis, Adam Emerick was the team leader for Wachtel in terms of doing the transaction.
Q Eventually merger documents were drafted which we reviewed at your earlier deposition

NOT A CERTIFIED COPY

Page 273

session. Do you recall those documents?
A Yes.
Q Who took the lead in drafting those? Was it Wachtel?
A I believe it was Skadden, but I am not certain whether it was Wachtel or Skadden. Skadden Arps represented Sunbeam in the transaction. I believe they took the lead in the drafting.
Q When did you first meet with Mr. Emerick, or if it was Mr. Lipton, concerning the Sunbeam/Coleman transaction?
A I think it was with Mr. Emerick, and I would say within a day or two of February 19th. I Don't recall precisely, but soon thereafter.
Q Let me show you a document which we will mark as Morgan Stanley 180.
MR. BEMIS: All you need to do is initial the documents, Miss Reporter. If you will initial and date them for me, please.
(Morgan Stanley Exhibit 180, memorandum dated February 21, 2998, marked for identification, as of this date.)

Page 274

Q I hand you what has been marked by the reporter as MS 180. Do you have that in front of you, sir?
A (No Response)
Q You have to answer yes or no.
A Yes, I do. I am sorry, I forgot.
MR. BEMIS: This is a two-page memorandum dated February 21st, 1998, I believe from Mr. Adam O. Emerick addressed to Richard L. Easton and Alex Fuchs, F U C H S, Miss Reporter.
Q Have you seen this document before?
A I don't recall.
Q Was Mr. Easton Mr. Emerick's counterpart at Skadden?
A Yes. Finn Fogg and Easton were the team at Skadden.
Q And Marty Lipton and Adam Emerick were the team at Wachtel?
A Yes, though in terms of my involvement, both Finn and Rich were -- were in negotiating sessions with me and drafting sessions, Mr. Lipton was not. So, his involvement would be sort of the top level client contact between MacAndrews and Wachtel.

Page 275

Q Did you say that Mr. Emerick was in drafting sessions with you?
A I said Mr. -- Mr. Fogg and Mr. Easton, although the memo is not addressed to Mr. Fogg, and on the one side, both he and Mr. Easton were in many of the negotiating drafting sessions I attended, and on the other side, it was generally Adam for us.
Q You may hand that back to me.
I understand now that you met at either a day or two after February 19th with your counsel. What is the next major event after that that you recall happening concerning the transaction?
A Well, everything happened in such a tight time frame, and it wasn't relevant to remember it at the time. It was over six years ago. That -- that is hard to separate the threads of what happened day by day, but there were discussions at which we came to understand what the issues were and discussed them among ourselves; i.e., the Coleman/MacAndrews group with counsel.
There were then discussions that I was not involved with with the other side that moved

Page 276

those issues toward agreement. I recall that Steve Isko and I met with Janet Kelly, who was the No. 2 counsel at Sunbeam at the time, and David Fannon. Janet Kelly was more involved in what I would call diligence type matters, and we were busy getting her materials that satisfied her diligence requests and then getting together with counsel for the other side and negotiating the documents themselves. I just -- I can't separate it out day by day, it is just -- it is just too difficult.
Q Let me show you what we marked in your -- or showed you in your last deposition as Morgan Stanley 75, which is sometimes referred to as the Wachtel chronology.
If you turn to Page 3, and that will be -- I think it is Page 3 of the chronology, not necessarily of the document, the top date is February 4th, 1998. Do you see that?
A (No Response)
Q And if you look down now, there is a reference to a -- to meetings on February 23rd, 1998, and I would like you first to look at that, and I have some questions about that date. Are you there?

NOT A CERTIFIED COPY

Page 277

A Yes.
Q The first entry on MS 75 under that date of February 23rd, there is -- there is a meeting to conduct due diligence, and you are identified as attending that meeting. Do you see that reference?
A Yes.
Q Do you recall that meeting?
A (No Response)
Q If it helps you, there is a continuation of the February 23rd entries.
A I remember an evening meeting. I do not recall the meeting in the morning or at some other time of the day.
Q Am I correct, then, that you do not recall a due diligence meeting, if you will, in the morning on February 23rd?
A No, I don't because my recollection of the due diligence meetings that I was involved in as counsel were essentially meetings which were attended by Janet Kelly. She is not listed here. I may have well been at the meeting, I don't recall it today.
Q Let's turn to the evening reference on February 23rd.

Page 278

A Yes.
Q And it is stated in the chronology that there was a meeting that you attended as well as others at which Sunbeam made a presentation, quote, "Regarding its 1998 operating projections." Do you see that?
A Yes.
Q Did you -- strike that.
Did you attend the evening meeting?
A Yes.
Q Where was that held?
A At the offices of Morgan Stanley.
Q How is it that you came to attend the meeting?
A Somebody informed me that this meeting was going to be held, and it could have been Jerry Levin, I am not sure, and I was invited to attend and, therefore, attended.
Q Did you speak at the meeting?
A I don't recall.
Q By speaking, I don't mean just social pleasantries.
A I don't recall speaking at the meeting.
Q How long did the meeting last on that evening of February 23rd?

Page 279

A I don't recall. It was -- it was -- it was certainly no more than three hours, but I don't recall how long it was.
Q Well, would you -- who -- who spoke at the meeting?
A My recollection is that Rich Goudis, who was the head of investor relations. They had what investment bankers call a DEC, which was a series of slides, and Goudis ran the overhead projector, he probably prepared the DEC, and Russ Kirsch -- and most of the meeting was held by Russ Kirsch. I don't recall if any of the investment bankers spoke, I don't remember today, but the major thrust of the conversation was a presentation by Kirsch and Goudis with Rich doing the talking.
Q Investment Bankers were both present from Morgan and Credit Suisse First Boston; is that correct?
A Looking at the list, Duffy was the only person from Credit Suisse. Nesbitt and Maher were in-house investment, that was their job, were there, and I noted that Kits, Steins, Fuchs, Chang were all Morgan Stanley people. They were there, yes.

Page 280

Q Mr. Duffy was the -- was the -- strike that.
Was Mr. Duffy at this time the senior person on the Credit Suisse First Boston investment banking team working on the transaction?
A No. No, the senior person was Gordon Rich.
Q He is not shown as attending the meeting. Do you recall if he was there?
A I don't recall.
Q Let me show you a document which has been previously marked as Morgan Stanley 84, and which I -- do you recall in your previous session of your deposition, you said you saw this in your preparation? And I will hand that to you.
And let me take this back for a second. I will hands another one to you. You can use that one.
MR. BRODY: Thank you.
Q Let me see if I gave you a marked up one. I did -- I did not.
I have given you Morgan Stanley 84. Did you see this document, albeit probably in slide

NOT A CERTIFIED COPY

0016448

Page 281

form, on February 23rd, 1998?
A I saw a document that looked like this. I cannot be specific. I cannot specifically say it was this one.
Q Was -- was MS 84 in hard copy available for people at the meeting so they could take notes or write on it?
A I believe so, but I am not certain.
Q Did you take any notes during the February 23rd evening meeting?
A I don't recall.
Q If you would look at MS 84, there is handwriting, and I will direct you, for example, to the fourth page, and there are -- there are page numbers on the bottom, and the easiest ones, I think, to refer to are the single digit numbers.
Do you see where it says MS and then 00004?
A Yes.
Q Do you recognize that handwriting next to the writing?
A Some of it looks like it could be Jerry Levin's, but I am not sure.
Q Turn to Page 5 of MS 84.

Page 282

Does this also look like Jerry Levin's handwriting?
MR. BRODY: I object to form.
A Could be, could be. I am not 100 percent sure. Certainly, it is not mine, it is not Steve Isko.
Q If you would turn now to Page 6.
There is also handwriting. Is your testimony the same concerning the possibility --
A Yes.
Q -- that it is Mr. Levin's handwriting?
A (No Response)
Q Turn to Page 16, sir. It is entitled "Sunbeam Long Range Strategic Objectives Earnings from Continuing Operations."
Do you see the entry "Net Sales," and then next to it off to the right, handwriting, which is, I believe, "Jan slow," and then February below that? Do you see that?
A Yes.
Q There are numbers below it as well. Does that to you also look like Mr. Levin's handwriting?
MR. BRODY: I object to the form of the question.

Page 283

A It could be.
Q When you say it could be, you have seen Mr. Levin's handwriting before; right?
A Yes. And as I have testified, I think it kind of looks like his handwriting, but it's not -- it's not clear to me that it is.
Q During the presentation by either Mr. Kirsch or Mr. Goudis -- let me stop and ask, did they both speak, or did just one of them speak and the other operate the projector?
A My take away sitting here years later, that Kirsch did most of the speaking. I don't remember if Gittis spoke a little, not at all, but Kirsch dominated the discussion.
Q Did Mr. Kirsch say anything to the effect that net sales for Sunbeam in January were slow for 1998?
A I don't recall.
Q Did Mr. Goudis make any statement to that effect that you recall?
A I don't remember.
Q Did Mr. Kirsch make any statements about earnings per share for 1998? And I direct your attention to Page 16 at the bottom of the page, there is in handwriting below the figure $2.20,

Page 284

$1.99, it looks like.
A I don't recall him -- I do not recall Mr. Kirsch saying that the numbers presented would not be achieved. Quite the contrary.
Q Did Morgan Stanley -- strike that.
Did anyone present on behalf of -- withdrawn.
Let me do it this way: Did Mr. Kits say anything at the evening meeting?
A I don't recall.
Q Did Mr. Steins say anything at the February 23rd evening meeting?
A I don't recall.
Q Did Mr. Fuchs say anything at the meeting?
A I don't recall.
Q Mr. Chang?
A I don't recall.
Q Would you consider this meeting of February 23rd, 1998, a due diligence meeting?
A Yes.
Q Were questions -- strike that.
Were there any questions asked by either Coleman representatives or MacAndrews & Forbes representatives?

NOT A CERTIFIED COPY

Page 285

A Yes.
Q Do you recall any of the questions that were asked?
A I remember Jerry Levin, possibly Joe Page, asking questions about the margins that they were achieving because the margins were much higher than margins that we were able to achieve in similar businesses, questioning how they could achieve such margins.
I remember Mr. Levin asking questions about their new products, such as what they referred to as air and water, water purification, air being air purifying matters. I remember Mr. Levin asking about international markets, I remember him asking about their grill business, and I recall him asking about they had taken a very large reserve in their restructuring in 1998, where they stood with regard to that reserve.
Q What was said on that subject by --
A I think they --
Q -- by Sunbeam?
A I think they gave him a number, a sense of a number as to how much of the reserve had been used, what was left. There were a variety

Page 286

of questions about the operation generally. Jerry, and to a lesser extent, Joe asked -- Joe Page asked.
Q Turn to Page 17. Look at the writing in the right-hand side after the text next to the graph where it says "225 M." Do you see that?
A Yes.
Q Is that -- you mentioned that Mr. Levin had -- excuse me, Mr. Levin had asked a question, I think, on the restructuring charge and how much was left. Does looking at this writing in any way refresh your recollection of what the question was or what the answer was at the meeting?
A No. My recollection, sitting here years later, is that that -- that the amount that they had used was a very high percentage of what they had reserved by the end of '97. That is what we learned at the meeting.
Q Can you read the handwriting below the "225 M" on Page 17?
A It looks like it says "Write-off in 1996, 10 million left." That is what it looks like.
Q Having read that, assuming that is what

Page 287

the words are, is there anything inconsistent with those words and those figures from what you can remember being said at the meeting?
MR. BRODY: I object to form.
A No. I mean, my recollection was that there was a large number, and that -- and that a very high percentage of it had already been used. And I don't remember the precise numbers, but 225 is a large number, and 10 is a small number compared to 225. That is consistent with my take away.
Q I have a couple of other versions of this document, and I want to see if you can identify any of the handwriting that is on them. They will be the same document, just different handwriting.
MR. BEMIS: Miss Reporter, would you mark MS 181 for the witness, please.
(Morgan Stanley Exhibit 181, memorandum, marked for identification, as of this date.)
Q The reporter has handed you what we have marked as Morgan Stanley 181. I would ask you, please, to look through the document from the first page, which has some handwriting, and

Page 288

several other pages and tell me if you can identify any of -- any of the handwriting?
A No. The people at the meeting whose handwriting I was familiar with, it would only be Levin, Isko and my own. I wasn't used to seeing Joe Page's or any of the MacAndrews' people's handwriting. So, the answer is, no, it is not mine, it is not Isko's, it is not Jerry's.
Q Let me show you a couple of more of these and --
A Sure.
Q -- and there is really no shortcut to doing it, unfortunately?
A I understand.
Q I will hand you what was marked as Morgan Stanley 182 at a previous deposition, and please take a look at that and see if you can identify that handwriting. There is some handwriting on the front page beginning with 223, and there is, I believe, a couple of additional notes in the document. I will find the page number for you. It is on the very last page of the document, it appears to be a 100 followed by an M and air, "100 M air and water."

NOT A CERTIFIED COPY

Page 289

A I don't recognize it.
Q Okay. You will hand that back to me. Thank you.
I hand you what was now marked as MS 183 at a previous deposition, sir. This one has a cover page on it.
MR. BRODY: Do you have a copy?
MR. BEMIS: Oh, I am sorry. Yes.
MR. BRODY: Thank you.
Q There is quite a bit of handwriting in the document itself. Please look at it, and if you can identify the handwriting, please tell us whose it is.
A No, I am not familiar with this handwriting.
Q Okay.
Do you know who Karen is on the front page of the document? Did I take yours back? I may have, I am sorry.
A No.
Q Do you know who Ishann Seth, I think, is?
A No.
Q Let me hand you what has been marked as MS 184 in a previous deposition, and I would

Page 290

like you to do the same thing you have been doing. Look at the document and see if you can identify any of the handwriting which begins on Page 1.
A No, I do not.
Q I will hand you now what has been previously marked as MS 185 and ask if you can look at that and tell me if you can identify any of the handwriting?
A No. No, I do not.
Q Do you recall any discussion of a no return policy being implemented by Sunbeam at this meeting? Let me withdraw the question and ask it a little bit better.
Do you recall whether there was any discussion at the February 23rd evening meeting about Sunbeam having implemented a no return policy?
A I don't recall. I am aware of their attempt to institute the policy and a lot about it, but I don't recall when I learned about it. I don't recall if it was that meeting or subsequent.
Q In general, what do you recall about the policy and their attempt to implement,

Page 291

recognizing you might not remember when you first learned about it?
A My recollection is that Russ Kirsch and Al Dunlop decided there would be a no return policy with retailers, and that he so informed the sales staff and the accounting staff in the latter part of 1997, and that the policy was an unenforceable, ridiculous policy, and it failed. And -- and it was kind of almost humorous because in the latter part of the year of 1997 and in early 1998, there were literally trucks of returns coming to the Hattiesburg warehouse that were turned back on orders of Kirsch. They went back to wherever they came from, made a round trip back to Hattiesburg, and they kept going. Essentially, the way it was described to me, there were trucks all over Mississippi going back and forth from places like Wal-Mart with returns.
Q When you said it was described to you, who described it to you?
A It was described to me in connection with the work that we did on the restructuring, when we learned about it, because it went to the issue of were there -- there were returns that

Page 292

should be accounted for or not. Actually, the stuff did come back, and there was a massive amount of product piled up in Hattiesburg that we had to sort through, and we had to --
Q You said restructuring. Did you mean the restatement?
A Yes, the restatement.
Q That is the restatement in October of 1998?
A When we started to learn about this, I -- I know that I began to learn about it in detail in June of 1998 because, you know, I think I have previously described Arthur Andersen sitting down with us right after I went to Sunbeam and telling us that they could not -- they would not give permission to use their financials in connection with a public offering of the debt that had been sold under 144.
And I recall very distinctly in that meeting a discussion of that -- of that exact issue, there was product out there that Andersen now claimed they were unaware of that was making round trips between retailers and not being accepted at Hattiesburg. I don't recall whether it was discussed in February -- in the

NOT A CERTIFIED COPY

Page 293

February 23rd meeting.
Q But you put the date of this meeting in, you assumed, your position at Sunbeam on June 15th of 1998?
A Mid June, 14th, 15th, somewhere around there.
Q And your position was Chief Administrative Officer reporting directly to Mr. Levin; correct?
A Correct.
Q So, the meeting with Andersen that you have described to us was sometime after your start in mid June?
A It was within the first ten days after my start, yes.
Q Okay. I will show you a large DEC, which has been marked as MS 186, and ask you to take a look at that.
Do you have MS 186 in front of you, sir?
A Yes, I do.
Q If you can look through it and tell me if you recall this DEC? I am using the word DEC as you used it being presented at the February 23rd meeting.
A No, I don't. I don't recall one way or

Page 294

the other.
Q You can hand that to me.
Do you recognize any of the handwriting on it? There is an RSE in the upper right-hand corner.
A (No Response)
Q No?
A (No Response)
Q I want to hand this back to you because there is one entry that I would like you to take a look at. If you turn to Page --
MR. BRODY: Can I have the copy back?
MR. BEMIS: Yes.
Q -- 59.
MR. BRODY: Thank you.
Q Mr. Shapiro, with the heading "The Sunbeam Corporation Projected Stated Growth Objectives."
MR. BRODY: Which page?
MR. BEMIS: Page 59.
Q Are you there?
A Yes.
Q You will see under the third bullet some handwriting, and I believe it reads, "How much

Page 295

driven by restruc.," with a period, "charges savings through income?"
Does that look -- does it look like I read it correctly to you?
A Yes.
Q Do you recognize that handwriting?
A No.
Q No.
You had mentioned to Mr. Levin asking a question about operating margins?
A Yes.
Q Does this entry achieve an operating margin of at least 20 percent? And then it has parenthetically, "From 16 percent over last nine months." Does that in any way refresh your recollection about the questions or the answers to Mr. Levin's questions?
A No, the answers -- there was no discussion from Sunbeam indicating that the margins were being achieved through use of restructuring charges, relief of restructuring reserves. In fact, it was quite clear the way Kirsch presented it, that they were pure operating margins, that their excellence of operations were such that they were achieving

Page 296

very, very high in consumer product goods of that type.
20 percent is extremely high in those categories, so there was no discussion that -- from his perspective, from Sunbeam Company's perspective that indicate that the margins were being achieved through use of restructuring reserves.
Q I didn't mean to interrupt you. Did anyone on your side of the table, the Coleman side, such as Mr. Levin ask the question, are you achieving any of these operating margins through restructuring charges?
A I don't recall.
Q Was there a -- was the discussion on operating margins as presented in this bullet point, that it had been 16 percent over the last nine months, but the objective was to obtain 20 percent in the 1998 --
MR. BRODY: You mean at the meeting on the 23rd?
MR. BEMIS: Yes. At the meeting on the 23rd, yes.
A I don't recall them talking about 16 percent operating margin. I recall them

NOT A CERTIFIED COPY

Page 297

talking as a general matter about achieving operating margins in their business of 20 percent.
Q Okay. You can hand that back to me. According to MS 75 -- I will hand that back to you.
MR. BEMIS: Do you still have yours? Okay.
MR. BRODY: The answer is, I don't think the witness has one.
MR. BEMIS: I was asking if you had yours.
MR. BRODY: Oh, I thought you were asking him.
MR. BEMIS: Fair enough.
Q I am going to hand back MS 75 again, and I turn to Page 4. Look at the reference to February 24-27, 1998, and directing your attention to the reference to "Conducted due diligence." Do you see that?
A Yes.
Q Can you tell me from your personal knowledge what due diligence was done during this period of time, February 24th through the 27th?

Page 298

A I recall Sunbeam, through Janet Kelly, making various requests to Steve Isko and me that were directed largely toward what litigation did we have outstanding, did we have environmental claims outstanding, trying to get their arms around an understanding of what those litigation and environmental matters might encompass.
I think they had some questions about our licensing and about other major contracts that we might have that would impact operations going forward. And I remember discussion about what we were doing with our computer system because we were in the process of changing our computer system going to an Enterprise system.
Q Did the Coleman Company, Inc., do any due diligence of Sunbeam during this period of time that we have identified, February 24th through February 27th?
MR. BRODY: I object to the form of the question.
A My recollection is that -- that over time, the public records of Sunbeam had been looked at.
I think that, again, we asked some

Page 299

general questions about their litigation, environmental matters, how they ran certain parts of their businesses, but to a great extent, we relied on the public filings of Sunbeam.
Q When you speak of public filings, you are speaking of filings with the Securities and Exchange Commission?
A Yes. And the meeting in the -- and the evening meeting that you previously referred to was, I would say, from Coleman's perspective a major part of the due diligence.
Q Was there any one person at the Coleman Company who had responsibility for overall due diligence, whether it is called operational or legal, however you might want to term it?
A I would say I had responsibility on the legal side for responding to their due diligence requests and for any requests that we might make along with Mr. Isko on the business side. I would say that it was a combination of Jim Maher with the assistance of Will Nesbitt, and Jerry Levin and Joe Page.
Q Was all of the due diligence completed that -- by the time that the merger agreements

Page 300

were signed, as of February 27th, 1998?
A Yes.
Q Strike that.
In the course of doing the due diligence, whether it be responding to a request of Sunbeam or a request made by Sunbeam, were any records kept, that you are aware of, of the due diligence requests and the responses by any party to the transactions?
A I don't recall.
Q Did Credit Suisse First Boston do any due diligence of Sunbeam that you are aware of?
A They attended the evening meeting that we have discussed.
Q The February 23rd meeting?
A Yes. And I know they went into the public records of Sunbeam in order to do their fairness opinion. And I don't recall whether they asked other questions that would have been answered by either Sunbeam or their investment bankers. I don't recall sitting here today.
Q Are you aware of any due diligence that was done by your -- withdrawn.
Are you aware of any due diligence that was done by the Wachtel law firm on behalf of

NOT A CERTIFIED COPY

0161553

Page 301

the Coleman Company or CLN Holdings, Inc., for that matter?
A I don't know, I don't remember.
Q Did Ernst & Young, which was the -- which was the outside accounting firm for Coleman Company, Inc., at this time, do any due diligence of Sunbeam's financial statements?
A I don't recall. I do recall them responding to questions and, I think, arranging to meet with -- meet with the Sunbeam auditors or the Sunbeam finance people, I don't remember which, and I think it had to do with understanding the tax situation at Coleman.
Q If I understand what you just said, Ernst & Young was responding to a request for information by Sunbeam's accountants?
A That is my recollection. Or Sunbeam's finance people, I don't remember which, trying to understand certain aspects of the tax, where we stood tax wise at Coleman.
Q At any point up to the signing of the merger documents, which we have previously identified, and they are dated February 27th, 1998, did the Coleman Company, Inc., make any request of Sunbeam for financial statements for

Page 302

any period in 1998? For example, January, February?
MR. BRODY: I object to the form of the question.
Go ahead.
A My recollection is that -- again, this is over six years ago, but it seems to me at some point in late January or early February, Sunbeam announced their 1997 results and indicated how they were doing up to that point, I would say through January of '98. I believe there were questions asked as to how they were doing for January and February at the point that we signed, and I believe that -- my recollection is that we were assured that they were on target to meet the stated projections that were out publicly and that were consistent with the DEC they had shown us in the evening presentation at Morgan Stanley in the last week in February.
But I don't think -- I don't know if we requested actual financial statements for January or February. We asked questions about their performance, and they were responded to.
Q Who asked the questions, and who responded?

Page 303

A I can't recall who on our side asked and on their side responded. I thought on their side, it would be Russell Kirsch, but I don't remember specifically.
Q Now, when you referred to an announcement of some financial results, I think you were referring to the fourth quarter of 1997 for Sunbeam; weren't you?
A Yes.
Q I will show you a document previously identified as MS 206, which is an article from the Wall Street Journal, January 29th, 1998. Please take a look at it, and I just have a couple of quick questions on this.
(Witness peruses document)
A Okay.
Q Referring now to MS 206, the Wall Street Journal article dated January 29th, 1998, you are shown as being on a distribution list, which is on Page 2. Do you see that?
A Yes.
Q Did you -- did you receive a copy of this, as indicated?
A I don't recall. I remember being aware of the general information that is discussed in

Page 304

this article.
Q Who is Marc Shifman? Who was that?
A Marc was, I think, at the time head of investor relations for Coleman reporting to Jerry Levin.
Q When you received this article, this -- this was -- strike that.
Did you receive this article -- withdrawn.
Whether you received the article or not, you were at least aware contemporaneously with the announcement that there had been a shortfall and a market reaction to the Sunbeam's stock price; is that right?
A Yes, yes.
Q Now, I asked you whether the Coleman Company had requested any financial statements for any period in 1998, and you have given me an answer to that. Do you recall whether the Coleman Company asked Arthur Andersen to provide the Coleman Company, Inc., with any financial statements, whether audited or unaudited, for any period in 1998 --
A (No Response)
Q -- before the closing of the merger

NOT A CERTIFIED COPY

Page 305

document -- excuse me, the signing of the merger documents?
A I am sorry, 1998 financial statements?
Q That was a terrible question. Let me try it again.
A You are asking me about 1998 financial statements?
Q Let me ask a question. I will withdraw it, it was poorly phrased.
Did the Coleman Company, Inc., ask Arthur Andersen for any financial statements, whether audited or unaudited, for Sunbeam for any period in 1998 before the execution of the merger documents on February 27th, 1998?
A In my mind, the question doesn't make sense for a couple of reasons. One is we would not have gone directly to Arthur Andersen. They were engaged by Sunbeam. Normal protocol would be to go through Sunbeam. We would not contact them directly.
Secondly, Arthur Andersen would have not been the keeper of those statements, they would have been interim financial statements, and normally Andersen would not have any involvement with those financial statements except with the

Page 306

issuance of a 10-Q at the end of the first quarter where they would do a review, but not certify statements. So, it wouldn't have made any sense to go to Andersen at that point, and I don't recall going to Andersen.
Q I appreciate it might not make any sense to you, but at the end of your answer, I think you said you do not recall any such request being made?
A No, no.
Q Setting aside the Coleman Company now, I want to focus on CLN and ask you the same questions.
Are you aware of anyone from CLN Holdings, Inc., making a request of Sunbeam for financial statements, whether audited or unaudited, for any period in 1998 before the signing of the merger documents as of February 27th, 1998?
A I don't recall us -- us being the large group, being Coleman or CLN, requesting actual financial statements. I do recall asking whether everything was okay and consistent with what had been portrayed to the public.
Q When you say you, you asked that

Page 307

question?
A No, no. I said I recall it being asked.
Q But as you sit here today, you don't remember who asked it; correct?
A No, but I remember being aware that we were going to ask and being aware of what we were told.
Q Whatever you were told, as you sit here today, you do not remember who told you -- told your side of the table whatever was said?
A No, no.
Q I will take this back from you.
MR. BEMIS: Why don't we take a break. We have been going an hour and a half.
MR. BRODY: Fine.
(Recess Taken)
THE VIDEOGRAPHER: The time is 1:42 p.m., and this begins Tape No. 2.
Q Did anyone, to your knowledge, from CSFB ask Sunbeam for any audited or unaudited financial statements for any period in 1998 before the signing of the merger documents?
A I don't know.
Q Did the Coleman Company have interim

Page 308

financial statements that it prepared?
A We normally prepared a monthly financial statement for internal purposes. They certainly weren't filed publicly.
Q I wasn't suggesting they were.
A And I don't remember how far after the end of each month they would have been available.
Yes, we prepared monthly.
Q In the monthly interim financial statements, did it include both an income statement and a balance sheet?
A I believe so.
Q Were those interim financial statements at the Coleman Company, were those prepared by the -- under the direction of the Chief Financial Officer of the company?
A Yes.
Q And that would be Mr. Page; correct?
A Yes.
Q On a quarterly basis, the Coleman Company, in 1998, filed with the Securities and Exchange Commission its quarterly financial results on a Form 10-Q; right?
A The answer is, I don't recall, because

NOT A CERTIFIED COPY

Page 309

at or before end of the quarter, the company was sold to Sunbeam, and I was gone. So, we would not -- the prior management would not have been in a position to prepare those financials.

Q I understand. Fair point.

Let's -- let me go back, then, to 1997. During 1997, did the Coleman Company, Inc., file quarterly financial statements with the Securities and Exchange Commission on Form 10-Q?

A (No Response)

Q Are you aware of any request by anyone on the Coleman or the holding company's side of the negotiations asking Sunbeam for either January or February interim financial statements before the signing of the merger documents as of February 27th, 1998?

A Not to my recollection.

Q Going forward up to the closing now of March -- withdrawn.

Up to the time of the closing of the CLN Holdings merger agreement, which is March 30, 1998, are you aware of anyone on either the Coleman or the CLN holding side of the transaction, whether it be a law firm, an accounting firm, internally requesting of

Page 310

Sunbeam copies of the interim financial statements for the month of January 1998?

A I don't recall.

Q Are you aware of such a request for the period of February 1998?

A I don't recall.

Q And the same question for the period ending March of 1998?

A I don't recall.

Q Did you ever have a communication, whether it be written or oral, with anyone at Morgan Stanley about whether Sunbeam's performance in the first quarter of 1998 was compared to what analysts might be estimating for the same time period?

A Did I?

Q Yes.

A No, I did not. I don't recall any.

Q Did you ever have any written or oral communications with Morgan Stanley about Sunbeam's first quarter sales?

A I did not.

Q Did you ever have any communications, again written or oral, with Morgan Stanley about Sunbeam's first quarter earnings for 1998?

Page 311

A No.

Q Did you ever have any written or oral communications with anyone at Morgan Stanley discussing whether Sunbeam's turn around was, quote, "real," closed quote?

A I think the answer is -- I think I have testified earlier that my communication with Morgan Stanley was essentially limited to the meeting the last week of February, the due diligence meeting, and I do believe that at that meeting, we received assurances that Sunbeam was on track for the first quarter, the turn around was real, the results were repeatable, et cetera. Those assurances came in the presence of Morgan Stanley, but I believe were made by the Sunbeam people.

Q Did anyone from -- withdrawn.

Did you ever have any discussion with anyone from Morgan Stanley, directly with Morgan Stanley, in which you discussed with Morgan Stanley Sunbeam's business plan for 1998?

A Did I?

Q Yes.

A No.

Q The same question for 1999?

Page 312

A Other than I have stated earlier concerning that evening meeting, no.

Q Let me show you what has been previously marked as Morgan Stanley 87. Do you have that in front of you, sir?

A Yes.

Q Can I see -- I want to make sure you have all of the pages on your copy, sir. I will hand that back to you.

Did you receive MS 87 from Mr. Emerick and Mr. Frank L. Miller?

A I am on the distribution list. I don't recall specifically, but I assume so.

Q Does the transaction structure as set forth in these documents accurately reflect the final structure of the transaction that is memorialized in the merger documents we have previously identified?

A I believe so.

Q You can set it aside, then.

Is it fair to say that by February 25th of 1998, that the consideration and the structure of the transaction which is memorialized in the merger documents had been agreed upon by the parties?

NOT A CERTIFIED COPY

Page 313

A Yes. I don't remember if there was any last minute tinkering, but essentially it had been agreed upon as of February 25th from your perspective as a legal officer of the Coleman Company.

Q Were there any open issues that you were still considering?

A I don't recall. I mean, there may have been some things that had to be resolved, but I believe they were most of the way there. I don't remember today what was open.

Q Sir, I hand you what has been previously marked as MS 188. Please take a look at it. I have just a couple of questions for you. The first one is going to be whether you received it, so --

A I don't recall.

Q Do you recall in the negotiations when you became actively involved, February 19th up until the -- say up until February 26th, when the deal became a combination of cash and stock as opposed to a stock deal?

A It was sometime during that period from when I first got started to the closing. And I think I testified last time that the key issue

Page 314

was that we insisted that there be no shareholder vote as a condition to the closing. So, the closing would only be conditioned on Hart Scott Rodino, which was impossible to avoid, and conditioned on the material adverse change provision in the agreement.

And that insistence drove the result to some combination of cash and stock because under New York Stock Exchange rules, a company cannot issue 20 percent or more of the voting stock without a shareholder vote. So, the investment bankers and the lawyers had to figure out a way to do the deal with no more than 19.9 percent of the stock being issued.

And I know there were discussions between Sunbeam's counsel and the New York Stock Exchange that went into the details of what could actually be issued because there were treasury shares, for example, that could be added to newly issued shares, and -- and -- and all of that led to a number, which was the maximum number. When you multiply that number by the agreed upon consideration, you couldn't get to the consideration, so there had to be a cash element.

Page 315

Q If you look at, please, Exhibit 188, which I understand you said you did not receive?

A I said I don't recall if I received it.

Q I am sorry, I thought you said you did not receive it. I misunderstood.

Turn to Page 3 under the heading "Basis of Agreement to Convert to Cash and Stock."The third item is "Deliver as much in Laser stock as can be permitted, remainder in cash." Do you see that?

A Yes.

Q Now, is this -- is this provision; that is, as much stock as can be permitted and remainder in cash, were you referring to that there had to be only so much stock that would be part of a deal to avoid a vote, and the balance would have to be in cash?

MR. BRODY: I object to the form. Go ahead.

A Essentially, there is a calculation here that shows between the two pages how much Sunbeam stock could be issued without a shareholders vote. It appears on Page 2 and Page 3.

Q So, as I understand it, the -- your side

Page 316

of the table; that is, the Coleman/CLN Holdings side of the table, wanted to take as much Sunbeam stock as possible, subject to what you have told us about wanting to avoid a shareholder vote; is that fair?

MR. BRODY: I object to the form, foundation.

A No, I don't recall who -- who wanted to drive this as -- as -- as much in the stock direction as possible. What I recall was -- what I recall, without regard to whether the Coleman side wanted all stock or some combination in the transaction, there was a limitation of how much stock could be issued based upon the shareholders vote that drove that. Whether, in fact, the Coleman side wanted more stock, less cash, more cash, less stock, I don't recall today.

Q Would the gentlemen who were on the business side of the transaction be the people that you would think, sitting here today, would be most knowledgeable on that subject?

A Yes, I would think so.

Q You can hand that back to me. You told us -- withdrawn.

NOT A CERTIFIED COPY

You told us in the first day of your deposition that you attended the February 25th, 1998 Board of Directors meeting of the Coleman Company, Inc.; correct?

A Yes.

Q And at the meeting, there was a presentation by Mr. Levin; correct?

A (No Response)

Q Would you like to see the minutes?

A Yes, I recall that there were at least two meetings. At one of the meetings, Mr. Levin presented the current status of the business.

Q I have handed you the minutes of the Board of Directors meeting of the Coleman Company, Inc., dated February 25th, 1998, at 4:00 p.m.

A Yes.

Q Do you have that in front of you?

A Yes.

Q If you need to refer to them, let me know. I don't have too many questions on it at this point.

There was a presentation by Mr. Levin; correct?

A That is correct.

Q And, in addition, there was a presentation by Credit Suisse First Boston; was there not?

A The minutes indicate that there was.

Q Having reviewed the minutes of the meeting and outline of the presentation by Mr. Levin and Mr. Gordon Rich of First Boston, do these minutes accurately reflect what was said at the meeting, recognizing they are not verbatim minutes?

A Yes. I have some trouble sitting here again over six years later distinguishing between this meeting and the meeting two days later, but I know that Mr. Rich, First Boston, did make a very complete presentation to the Board of their valuation, and methodology and so forth. I just don't remember which of the two meetings it occurred at. The minutes indicate at the first meeting, and I presume they are accurate.

Q Let me also show you what has been marked as MS 279, the Coleman Company, Inc., Notice of Merger and Appraisal Rights and Information Statement.

I am going to hand you what has been

previously marked, I think, at Mr. Rivkin's (phonetic) deposition earlier. I don't have many questions about it, it is a long document.

Did you assist in the preparation of this document?

A Can you tell me when this document is dated?

Q Yes, I can, sir. I will have to get --

A If it is December '99, the answer is, yes. I assisted mainly at a review level.

Q It is on the second page. It should be right on the second page. The document is dated December 6th, 1999.

A The answer is, yes.

Q What was your level of participation, please?

A Well, the -- the -- the document was filed in order to close what we referred to as the back end of the merger, which was the transfer of consideration to the Coleman share -- the minority Coleman shareholders, the approximately 18 percent other than the maximum shareholders, and that was supposed to occur soon after the closing with the MAFCO piece, which was at the end of March of '98.

It got delayed, and -- and this was -- this was subsequently undertaken as a major project that went on for quite a time. It was done -- it was headed by Mr. Isko, who reported to me. He was general counsel at that point of Sunbeam reporting to me as Chief Administrative Officer, and the finance headed by Bobby Jenkins, who conferred with him often on issues as a colleague, and -- and with the help of Skadden and the help of Deloitte and Arthur Andersen and Ernst & Young --

Q Perhaps -- withdrawn.

A So, I was involved in --

Q What was specifically your involvement?

A It was a project, and the answer was I was -- I was a member of the team that talked about the project, dealt with the SEC comments as they came back and forth and tried to figure out how to get this very difficult task accomplished, but I was by no means the leader of the project.

Q There is a narrative provision in the filing which describes the negotiations and the presentations to the Board of Directors of the company. Did you -- did you participate in

NOT A CERTIFIED COPY

Page 321

drafting that narrative?
A I don't recall. I do not believe that I was a draftsman of any of this. I reviewed major parts of it and commented on them, but I was not a draftsman.
Q Could you tell me who was the major draftsman of the text of MS 279?
A Well, to the extent that it was the financial portions of it, it would have been the various accounting firms that were involved with the particular parts, Ernst & Young with regard to Coleman, Deloitte with regard to any Sunbeam financials that were presented after 1998 and Arthur Andersen with regard to financials through the end of 1998.
With regard to the legal and textural parts, it would have been Stephen Isko working with a team from Skadden, headed by Rich Easton and Finn Fogg.
Q Who would have been responsible for drafting those sections that dealt with the negotiations that led up to the signing of the merger agreements and the presentations, for example, made to the Board?
A I don't recall. I don't recall whether

Page 322

it was Mr. Isko, whether Wachtel got involved again to help with that since they had been involved with it before. Skadden wouldn't have been involved with it originally, so it would probably not have been them. I am just not certain.
Q Before this document that is MS 279 was -- strike that.
The document was eventually filed with the SEC; correct?
A That is correct.
Q And it was sent to Coleman shareholders?
A After being approved by the SEC, yes.
Q Did you review the final text of the document before it was submitted to the SEC for its approval?
A I reviewed the documents at various points in its process. I don't recall whether I reviewed final text or not.
Q To the extent that the document was reviewed by you, did you make any material changes to it? I realize you might have made a small textural change. Do you remember any material changes you might have made?
A Along the way, I don't recall.

Page 323

Q Did you -- at least to the final draft that you did see, did the document fairly and accurately summarize the negotiations leading up to the execution of the merger documents to the extent you had knowledge of those negotiations?
MR. BRODY: I object to the form.
A The answer is, I don't recall. I would assume that if I felt the document was inaccurate, that I would have expressed that view.
Q Let's -- let me show you Morgan Stanley 118, the minutes of the second Board of Directors meeting, in case you need to look at those.
Do you have Morgan Stanley 118 in front of you?
MR. BRODY: He doesn't, actually.
A No, I don't.
Q I thought I gave you 118; did I not?
MR. BRODY: You gave me 118.
Q I apologize, too many documents here. Here you go, sir.
A Okay.
Q All right.
Did Mr. Rich of Credit Suisse First

Page 324

Boston make a presentation to the Board as reflected in the minutes of February 27th?
A It appears that he did, yes.
Q What was your role -- your role was to -- withdrawn.
How would you describe your role at the Board meeting?
A Essentially ministerial. I was not a member of the Board, I was general counsel to the company, and in this instance, I was the one who introduced the resolutions as general counsel.
Q Did you make any type of presentation other than the introduction of the various resolutions?
A Not to my recollection.
Q Did you draft the resolutions, or were those done by a legal counsel for you in connection with --
A I believe the resolutions were -- drafts of the resolutions were prepared by Wachtel Lipton. I am sure I reviewed them, as did Mr. Isko.
Q Were there any questions by the members of the Coleman Company Board of Directors from

NOT A CERTIFIED COPY

either the February 25th or the February 27th meeting that stand out in your mind today?

A No. I recall the members asking questions trying to understand the transaction, understanding what the alternatives were to doing a transaction, whether the value was adequate and so forth, what you would expect from an intelligent board of directors, but nothing that I recall seven, six and a half years later, no.

Q Did any of the directors raise at the meeting the value of the Sunbeam stock that was a part of the consideration that was being paid for the Coleman stock?

A I mean, the value of the stock, stock was traded publicly, and it had a market value day by day. It was discussed by Mr. Rich, I am sure there were questions asked about whether we were comfortable, those who were involved with the transaction, that Sunbeam was solid, and was a good company and so forth.

The -- the public shareholders, of course, who were the major part of the Board's concern were in a position all through this thing to vote with their feet, and, so, they --

they were each in a position to make their own decision about the value of Sunbeam's stock. Since the minute this was announced, it became a proxy for Coleman stock, but the focus was, as described in the minutes, was the price fair.

Q And Credit Suisse First Boston opined that it was?

A Correct.

Q What does it mean that you opine that it is fair in this context?

A It means that the investment banker does an analysis of what they believe the fair price for Coleman is, the company that they represent, and that analysis essentially is based on the operations and prospects of the company as opposed to what its actual stock price is.

They then look at the consideration being paid and opine as to whether the consideration being paid is appropriate, fair, in light of the valuation they have determined is appropriate for the target company, the acquired company, and they use various methods of computation of what the value of Coleman is, discounted cash flow and others.

Q And all of the valuations that were done

by CSFB were presented in summary form, if you will, to the Board; were they not?

A Yes.

Q And did any of the CSFB valuation methodologies that were presented to the Board suggest in any way that the consideration paid as of the point in time of their presentation was not fair?

A They all -- if I recall, every valuation showed that 27.50 a share, which was the consideration that appeared -- that was the target consideration was a fair price.

Q And given the market price of Coleman stock, before the announcement of the merger, was a premium being paid based on a valuation of $27.50 per share?

A As that term is generally understood, the answer is, yes. 27.50 represented more than what Coleman was trading before the announcement. Before the announcement, whether it was a premium to what Coleman was really worth is in the eye of the beholder.

Q Based simply on valuation by the market as you have described it, there was substantial agreement?

A Yes, the Coleman stock -- the Coleman stock was trading at considerably less than 27.50 a share up until right before the announcement.

Q Am I correct that the premium, again based on market value as you have described them, was in excess of 40 percent?

A I don't recall exactly. Coleman was somewhere in the prior months in the 14 half to 18 range. If I recall, it went up and down, and it jumped right before the merger was announced. So you can do the calculation.

Q Did any of the directors at either the February 25th or February 27th Board meeting raise in their questioning the recent announcement that we looked at in the Wall Street Journal article, which I think is MS 206, that Sunbeam had not met certain street expectations for the fourth quarter of 1997, and there had been a drop in its price as a result thereof?

A I don't recall.

Q Did any of the people in attendance who were not directors, such as yourself, did they raise this issue with the -- with the Board for

NOT A CERTIFIED COPY

Page 329

their consideration?
A I don't recall.
Q Was there any discussion at the Board of Directors meetings on either February 25th or February 27th, 1998, any discussion about analysts' expectations for Sunbeam's performance, financial performance, for the first quarter of 1998?
A I don't recall.
Q Do you recall there being any presentation by any adviser to the Coleman Company at either of the -- at either Board meeting, February 25 or February 27, concerning analysts' expectations for Sunbeam's first quarter performance?
A I just don't recall.
Q If there had been such a presentation by an adviser to the Coleman Company or as a result of an employee of the Coleman making such a presentation -- withdraw the question. I will try it again.
If there had been a presentation to Coleman's Board at either February 27th or February 25th, and that presentation had concerned analysts' expectations for Sunbeam's

Page 330

financial performance in the first quarter of 1998, would that have been reflected in the minutes?
MR. BRODY: I object to form.
A I don't know.
Q Who kept the minutes at the meeting; was it Mr. Isko?
A Mr. Isko.
Q Were there audiotapes of the directors minutes?
A No.
Q Shorthand notes?
A No.
Q Did Mr. Isko draft the minutes in the first instance, or was it done by your law firm?
A For this meeting, I don't recall.
Q The February 27th, 1998 Board meeting was the last Board meeting of the Coleman Company, Inc.; was it not?
A It was the -- to my recollection, it was the last meeting of the Board in which the membership was -- the membership at February 27th, Coleman continued to exist and still does. It has meetings.
Q After the -- withdrawn.

Page 331

Did you attend any of the presentations sometimes called roadshow presentations for the zero coupon notes that were issued in connection with the merger?
A No.
Q Did you see -- before the closing of the CLN merger agreement in March 1998, did you see the offering memorandum for the notes?
A I don't believe so.
Q You did see the March 19th press release; did you not?
A I saw it in the newspaper, yes.
Q A moment ago, I misspoke, I think I referred to the zero coupon notes. They were actually debentures. You understand what I meant?
A I assumed you meant the zero coupons issued to fund the merger of Coleman, First Alert and Signature Brands.
Q Those were the debentures I was referring to.
A Okay.
Q So we are both on the same page.
Let me show you the press release from March 19th. I think you testified in your

Page 332

earlier session with us that you did see this in your deposition preparation. I will hand that to you and your counsel.
You saw this press release, you said, in the newspapers; is that how you saw it?
A Yes, yes.
Q Do you remember what newspaper -- strike that.
Did you see it on or about March 19th in the newspapers?
A A copy was presented to me. I don't recall whether it was a copy directly out of the newspapers, whether it was something that came from a website, Dow Jones News. I don't recall. I saw this press release on approximately a contemporaneous basis to it being issued.
Q Did I understand you to say that someone gave it to you, the press release or newspaper article?
A I got it somehow. It didn't appear magically.
Q Were you on a distribution list?
A I was not on a distribution list.
Q However it got to you, you got it and you read it when you received it; correct?

NOT A CERTIFIED COPY

Page 333

A Yes.
Q Did you, as a result of the press release, did you take any actions to investigate the matters set forth in the press release?
A I am quite certain I attended a meeting in which the contents of the press release were discussed by Coleman and MacAndrews people.
Q Where was this meeting?
A I don't recall.
Q Was it in New York?
A Yes.
Q Who was present?
A I don't recall.
Q Do you recall anyone who was present besides yourself?
A I am sure Jerry Levin was there, could have been Mr. Isko on the MAFKO end, it could have involved Mr. Maher, Mr. Schwartz, Mr. Gittis. Some members of that group, I would presume.
Q How soon after the press release was issued on March 19th, 1998, did this meeting take place?
A Soon.
Q That day?

Page 334

A On the next day. Within a very short time.
Q So the -- withdrawn.
How long did this meeting last?
A I don't recall.
Q Do you have any notes of the meeting?
A No.
Q Any documents handed out or discussed at the meeting other than --
A No, I just remember that we discussed what this was all about and what it meant.
Q What was said about what this was all about and what it meant?
A My recollection is that it came as a surprise to us, that it was our belief up until the time of this press release that Sunbeam was on track to meet its net sales and earnings projections that had been shown to us at the meeting in the last week of February and had been presented at various analysts' meetings to the public. And, so, to my recollection, it was the first we became aware that they believed that they might have a problem.
Q There is no -- withdrawn.
There is no mention of earnings in this

Page 335

press release; right?
A That is correct. So, my reading of the press release would be that they are talking about a sales shortfall, and that by not mentioning earnings and by having earnings estimates out in the public, I would have read it to presume that they still believed that they were going to make their earnings.
Q Let's start with you. Did you make any inquiry of anyone at Sunbeam following your receipt of the press release?
A Not to my recollection.
Q Did anyone who attended this meeting where, as you put it, this was a surprise to us, did anyone at that meeting make any inquiry of Sunbeam about either its sales for the first quarter of 1998 or its earnings for the same period?
A I believe someone from our team got in touch with someone from the Sunbeam side, probably the investment banking side of Sunbeam; i.e., Morgan Stanley, to get a sense of what was going on.
Q What makes you believe today, as you sit here six years later, that someone on your team

Page 336

got in touch with someone --
A I just have a vague recollection that there was an inquiry made, and there was an answer given.
Q But as you sit here today, you do not know who made the inquiry, if one was made; is that fair?
A That is correct.
Q And if an inquiry was made by someone, you don't know to whom it was made by, as you sit here today?
A Yes. As I say, I believe that the line of communication would have been to Morgan Stanley probably from Mr. Maher or Mr. Nesbitt.
Q Did Mr. Maher or Mr. Nesbitt ever tell you that they had spoken to someone at Morgan Stanley after March 19th?
A Again, my recollection is that I believe that I learned that someone had spoken to the Sunbeam side and -- and had been responded to by -- with an assurance that, A, they might still make the number because they tended to get a lot of sales at the end of the quarter, they were being very conservative, and, B, it was kind of a blip, and it was notin the a big deal.

NOT A CERTIFIED COPY

Page 337

They didn't believe it affected the long term, it just simply affected the quarter.
Q Can you identify any better for me who on the Sunbeam side you think said something to this effect, other than who it would have been --
A No. The way I have gotten -- the way that it is in my mind is that if -- the only person on the Sunbeam side that somebody might have talked with would have been Mr. Dunlop or Mr. Kirsch. None of us were in contact at that point, to my knowledge, with Mr. Dunlop. The only person that might have talked to Russ Kirsch would have been Jerry Levin. I don't recall him having that discussion, and it is likely if it was Jerry, I would remember or would have been part of it.
And the way the transaction tended to work, a lot of communications funneled through Maher and Nesbitt on our side, this type of communication, and they generally did not talk directly to the Sunbeam people, they talked to the Morgan Stanley people.
Q Have you seen any documents that in any way would evidence a communication of the type

Page 338

that you think could have happened?
A Any documents?
Q Yes, sir.
A No.
Q For example, a memorandum that someone wrote that I spoke to Mr. Kirsch, and he said the following, anything like that?
A No.
Q Did you have any -- strike that.
Did you participate in any discussions on the March 19th press release with Mr. Pearlman?
A Not that I recall.
Q Did any of the directors of the Coleman Company, Inc., have contact with any of the officers of the Coleman Company after the March 19th press release and make inquiry about that press release?
MR. BRODY: I object to form.
A I don't recall.
Q Did anyone on the Coleman side make contact with Rich Goudis, whose phone number is listed on the press release, to ask for further information about the matters set forth in the press release?

Page 339

A I don't think so.
Q Did anyone on the Coleman side of the transaction, including CLN Holdings, Inc., request from Sunbeam their interim financial statements for the months of January and February 1998 following the issuance of the press release, MS 339?
MR. BRODY: I object to form.
A I don't recall.
Q Did anyone on the Coleman or CLN Holdings Inc.'s side of the transaction make any inquiry to Sunbeam's auditors after March 19th and before the closing on March 30, 1998, about the matters set forth in the March 19th, 1998 press release?
MR. BRODY: Same objection.
A I don't believe so. I don't recall.
Q Now, following the March 19th, 1998 press release, did the team at MacAndrews & Forbes continue to monitor the financial press with regard to Sunbeam? That is a poor question. Let me withdraw it and try it again.
Between March 19, 1998, and the closing on March 30, 1998, did the MacAndrews & Forbes team that was working on this transaction

Page 340

monitor the financial press for commentary from analysts on Sunbeam?
A It would have been normal procedure in MacAndrews & Forbes to receive clippings from the financial press relating to each of their companies, and certainly Sunbeam would have been on the list by now.
Q When you say it would be normal procedure, is there a person who had that task?
A But that, I don't know the answer. I assume there was, but at that point in time, senior executives tended to receive a daily packet that included any comments in the press about any of the MacAndrews companies. I am sure somebody would have been added to the list by then.
Q Did this daily package have a name?
A No.
Q Were you on the distribution list for the daily package?
A There were points of time during my time at MacAndrews, and there was a point in time when it became dramatically unwieldy, so I was no longer --
Q Were you on the list between March 19

NOT A CERTIFIED COPY

Page 341

and March 30?
A The answer is, I don't recall. But, typically, if it related to one of the companies I was working at, it would get to me.
In other words, Jerry Levin was certainly on the list. If something came through of interest, he would have sent it up to me even if I didn't get it directly.
Q Would Mr. Maher have been on the list with regard to this transaction?
A I presume so.
Q Mr. Nesbitt?
A I don't know whether he would have been on the list or Mr. Maher would have forwarded him materials.
Q If you have answered this, I apologize for asking it again, but do you know who at this period of time, say March 19th up to March 30th, would have been the person who would have prepared the daily package? And if it is more than one person, just tell me who.
A I have no idea because it was essentially a clerical function. I mean, they undoubtedly subscribed to some clipping service. A clipping service I would presume forwarded a

Page 342

package in electronic or hard copy, and somebody -- this job that you are portraying would have involved making a series of Xerox copies and attaching a distribution list and sending them out.
Q So, it was actually a service that provided the collection of the information?
A The answer was, I never knew. I presume so. That is how you normally do that kind of thing. I can't imagine they had people sitting and reading newspapers all day. They used to. Now, it is a business. In old days, people actually did do that. I don't know, was a time when that is how it was done.
Q On June 15th, you told me you accepted your position at Sunbeam, you -- as the Chief Administrative Officer, did you participate in the investigation that was done on the restatement of Sunbeam's financial statements?
A Yes.
Q What was your role?
A Participating senior executive, sat in on meetings with the accountants, attended discussions with the SEC staff, sat in on Audit Committee -- presentations to the Audit

Page 343

Committee and Audit Committee meetings.
Q Did you attend all of the Audit Committee meetings that involved the restatement?
A I generally attended all of the Audit Committee meetings unless I was unavailable for some reason.

Q And you also were the principal executive officer of the Coleman Company who was negotiating with the lending banks to Sunbeam, were you not?
A You mean after the 15th?
Q My questions are all to the 15th.
A I wouldn't say I was the principal, I mean I was -- Jerry Levin was the chief fiancial officer and I would say it was more like a team and certainly Jerry Levin --it tended to be Jerry, me, Bobby and Steve Isko who would meet with the banks.
Q And the banks had loaned Sunbeam money in connection with the merger transaction; correct?
A That's correct
Q And what were the banks that you

Page 344

were negotiating with?
A The bank group at that time was, consisted of Morgan Stanely who owned 40 percent of the, of that level of debt, First Union, now Wachovia, I think were at Wachovia, First Union, 40 percent Morgan Stanley, and then there were two banks that each owned 30 percent, one was then First Union, now Wachovia, and Bank of America.
Q And what was the total amount of the debt that these percentage costs related to as of September 15th of 1998?
MR. BRODY: Thank you.
A The facility was somewhere in the billion 8 range, and the -- what was drawn in June 1998, I don't recall. It was considerably less, maybe a billion 2 or a billion 3 at that point. I don't recall specifically.
Q And the bank facility, which consists of these three banks, as of June 15th, loaned Sunbeam somewhere in the neighborhood of 1.2 to $1.3 billion; that is what you recall?
A They were committed to something like a billion 8, and they had loaned -- I am really vague on this -- a billion 2 or a billion 3. The whole facility had not been drawn.

NOT A CERTIFIED COPY

Page 345

Q As of June 15th of 1998, when you joined Sunbeam, was Sunbeam in default under any of the lending agreements?
A No, but -- but we determined within a week or so of being there that they would be in default as of June 30th.
Q What was the nature of the default that was anticipated by June 30th?
A I don't recall, but it was a covenant default. It had to do with performance for the quarter ending June 30th, and I don't recall if it was sales or net -- or net earnings, but -- but -- but it was a -- but it was more than a technical covenant that we were going to be in default of.
Q And did you then participate in negotiations with the bank facility to either waive the covenant or amend the credit agreement such that there would be no default?
A Yes.
Q And did you -- did you -- did you eventually reach an agreement with the banks?
A Yes, we did.
Q When was that?
A I would say late June, early July.

Page 346

Q Of 1998?
A Yes.
Q Following that agreement, did Sunbeam default again?
A I believe that we -- that there was a constant stream of waivers that we sought. And I believe that when you say did we default, the reason I hesitate in answering that is I can't remember if we obtained waivers before defaults actually occurred or whether we cured defaults with waivers. So, technically, I don't remember the answer, but what I do recall is we knew we had a problem, we wanted the banks to give us kind of blanket relief, and they sort of wanted to deal with it quarter by quarter.
Q Did there come a time when the banks refused to grant Sunbeam any further waivers?
A No, I don't think that that time ever came.
Q Did Sunbeam draw down on the balance of the credit facility?
A Yes.
Q Did it eventually draw down on the entire $1.8 billion?
A I believe so.

Page 347

Q Did Sunbeam file for bankruptcy?
A Yes.
Q When was that?
A It was January or early February of 2001.
Q At the time of the filing of the bankruptcy, did -- did the banks have -- withdrawn.
At the time of the filing of the bankruptcy by Sunbeam, Did it owe the banks the $1.8 billion that it had drawn down?
A I believe it did.
Q And did the banks then file claims in the bankruptcy proceeding?
A I believe so.
Q I want to go back to the restatement of the financial statements. When did that process start? Withdrawn.
What was your first involvement with the restatement of Sunbeam's financial statements that occurred? I think you told me earlier in October of 1998?
A I think I testified earlier that within two or three days after Jerry Levin and I arrived at Sunbeam in June of '98, we met with

Page 348

Phil Harlowe from Arthur Andersen, who is -- who was the Arthur Andersen partner in charge of the Sunbeam account because there had been a lot written about whether Sunbeam's numbers were accurate or not, including a Baron's article in early June.
We received assurance from Mr. Harlowe that Arthur Andersen stood behind its audits and was comfortable with the results. Within the next few days, no more than ten days, I learned that in connection with the zero coupon bonds that had been issued in March of '98, there was a registration that had to be filed sometime by the last ten days in June, June 19 scenario, to make the bonds publicly tradeable. They were issued as 144 bonds, exempt from registration.
And in connection with that filing, Arthur Andersen had to agree to the inclusion of the audit opinion from 12/31/97 in the filing. And somebody came to inform me that Arthur Andersen was starting to raise concerns as to whether they could stand by their earlier audit letter.
And I was asked to come into a meeting with Phil Harlowe and -- and at least one of his

NOT A CERTIFIED COPY

Page 349

associates, Larry Bornestein, and some of the Sunbeam people, and in that meeting, Phil expressed concern -- I think Bobby Jenkins was also in that meeting with me -- concern that -- that in doing their follow-up work in connection with agreeing to include their '97 audit opinion, there were some things that were now disturbing them, that they thought there might be some problems, and they weren't sure they could include -- they could agree to have their audit opinion attached to the filing.

Those -- the -- the consequences of that would have been very dire for Sunbeam because you can't file without the inclusion of the audit opinion. So, Sunbeam would have been unable to file. It would, therefore, have defaulted in a provision of the bond -- of the bond debenture, which would have resulted in Sunbeam having to make certain penalty payments of interest to the zero coupon holders and to make a public announcement that there was an issue concerning its -- its accounting.

I was, of course, not in a position to dispute the facts because I didn't know the facts. I was newly arrived on the scene. All I

Page 350

knew was that it was a very serious situation and told Mr. Harlowe that it was a very serious situation, and did he understand the consequences of the action he was proposing or considering. And that is because of the repercussions from that decision by Arthur Andersen, I thought it was important that he go to his national office and involve the highest level partners in that decision so that it wasn't the kind of thing where a local decision was made.

And then two weeks later, they said, oops, we really can do this, the damage would have already been severe. I wanted to make certain that Andersen was giving it their top level consideration, whatever the decision ultimately was. I wasn't in a position to push them or argue with them one way or the other, and -- and over the next few days, they brought in a national partner, who was a former SEC accounting division senior accountant -- my recollection, his name was John Riley, a very smart guy -- and they wavered back and forth over the next few days, and as they got up to the date when this filing had to occur under the

Page 351

bond debenture, they concluded that they could not include their audit and opinion in filing, and, therefore, the filing had to be delayed.

That caused a major emergency for Sunbeam, and we then had to announce publicly this fact, and that our Audit Committee was looking into the circumstances surrounding our financials. I don't remember whether -- whether it was one press release or two, but -- but between then and the next few days, a press release was issued stating that the Audit Committee had determined that it was uncertain whether our previous financials could be relied upon and that the Audit Committee was undertaking an investigation into whether a restatement would be necessary.

So, that -- so, that brings you up to somewhere around the last week in June, I believe.

Q In this two week period, roughly between when you started and the end -- and the end of the month, and the issuance of these press releases, was -- did anyone claim that Morgan Stanley -- that Morgan Stanley had anything to do with the issues that were causing Arthur

Page 352

Andersen to hesitate to allow the use of their opinions in the Registration Statement for the zero coupon debentures?

A Not to my recollection.

Q Did Mr. Riley or Mr. Harlowe, for that matter, during this two week period identify for you specific accounting issues that were -- that were the -- that were the cause, if you will, of their unwillingness to allow their opinion to be used in a Registration Statement for the debentures?

A Yes.

Q What were the specific issues as of -- as of the end of June that were brought to your attention by either Mr. Harlowe, or by Mr. Riley or someone else from Andersen?

A Again, this was a process, so it is hard to isolate, what you learned at one point versus what you learned at another point. But my recollection was that the major issues they raised were a very large bill and hold sale of grills, outdoor barbecue grills. At the end of 1997, they raised an issue concerning the booking of returns for 1997, and then there was an issue concerning whether there were certain

NOT A CERTIFIED COPY

Page 353

sales that had been registered were real or not.
In connection with the bill and hold sale, the issue was that there are very specific steps that must be accomplished in order to book something as a bill and hold sale, it is very specific accounting, and among those things were letters that were required from retailers saying that, in effect, that I requested this extra inventory, I wanted it for my purpose, and that, in fact, we are -- we are the owners even though we don't necessarily physically possess it, and even though we are not going to pay for it for some time. There was a question of whether the letters that were received by Andersen were the right kind of letter and whether, in fact, they had been in some respects influenced by Sunbeam when they weren't supposed to be influenced by Sunbeam.
With regard to the returns, the story came out as to whether there were -- the issue that I mentioned earlier where trucks were appearing at the loading dock with returns, and Sunbeam was sending them away, and whether, in fact, there were -- there were unaccounted for returns at the end of '97 and the first quarter

Page 354

of '98 also were impacted by that. And the bill and hold issue, there was at least one sale, a very large sale, if I recall, consisted of parts that the -- in a sense the consumer service end of Sunbeam had this large inventory of parts, so if you called up and said my toaster is broken, and I need a new handle, somewhere there was a fulfillment department that either sold you that handle or gave it to you if it was under warranty, and there was an alleged sale that involved millions and millions of dollars to that whole inventory to a third party at the end of '97, and it was booked in '97. It was somewhere between 5 and $10 million, if I recall, and facts had now came out as to whether that sale had really occurred or not.
There were some other matters, but those were the kinds of things that were raised.
Q So, as a consequence of these matters being raised, the result was that Andersen did notify Sunbeam that it would not consent to the use of the opinion with regard to certain financial statements for inclusion in the Registration Statement for the debentures; am I right?

Page 355

A That is correct.
Q So the jury is clear on this, which financial statements were at issue for inclusion in the debenture offering in this period of June of 1998?
A I believe it was the year end 1996 financial statements, the year end 1997 financial statements and the first quarter of 1998.
Q Now, following the Andersen decision and the press releases that were issued, was there an investigation undertaken by Sunbeam in connection with its auditors concerning some of these very matters you have described for us which caused Andersen to decline to give their consent to the use of their opinion?
A Yes. Essentially under the aegis of the Audit Committee, the Audit Committee retained Deloitte & Touche as their special consultant and as an expert to work with Arthur Andersen and the Sunbeam accounting and finance staff to determine whether a restatement was needed, whether the financials did not fairly and accurately present the financial condition of the company at the periods that I mentioned.

Page 356

Q At the same time, did Deloitte and withdrawn.
Did Arthur Andersen assist in this investigation as well?
A Yes, Arthur Andersen, in theory, was the lead. They were investigating the situation kind of like the lead. Deloitte was looking over their shoulder on behalf of the Audit Committee, and the -- and the finance staff and the senior executives at Sunbeam were also involved.
Q And there was also a group called Chicago Partners who was involved as well; correct?
A That is correct. They were -- the Chicago Partners, if I recall, was involved for a different purpose, because at the same time, the -- the -- the Board -- I don't recall if it was the Board or the Audit Committee, undertook an investigation of what had happened in order to determine who was at fault, whether there were people at Sunbeam that had to be removed and so forth.
And that investigation was undertaken by, I believe, a committee of the Board. They

NOT A CERTIFIED COPY

Page 357

retained Skadden Arps, and I believe Chicago Partners was retained as a forensic accounting firm to work on that report with the Board committee. As I said, I don't remember if it was the Audit Committee, a separate committee of the Board or the whole board. I don't remember today.

Q And the law firm that was involved was Skadden Arps; correct?

A Yes.

Q The same counsel had by Sunbeam in the merger transaction that closed on March 30, 1998?

A That is correct.

Q The reports -- the reports were eventually issued by Sunbeam -- withdrawn.

A report was eventually issued by Arthur Andersen with regard to its investigation; correct?

A Not exactly. The first step was that enough work was done to convince everybody involved that a restatement was necessary. So, Andersen came to the conclusion that a restatement was necessary, Deloitte agreed with that, and the Audit Committee agreed with it.

Page 358

Q I didn't mean to interrupt. Go ahead.

A The process is that you investigate whether, in fact, a restatement is necessary. The first question is, a bell goes off, you say you can't rely on the financials, now we have to determine is it a real problem or not.

Something around a month or six weeks went by during which enough investigative work was done that the accountants and the Audit Committee all became convinced that the financials involved did not accurately and fairly state the financial condition and operations of the company, the results of operations of the company, so then we announced that fact.

That gets you to sometime in early to mid August, and then additional work was done to now, in effect, redo the financial statements for the periods involved, and a new opinion was issued by Arthur Andersen at the end of that process for the restated financials.

Q When I use the word report, that -- that was not -- that was not a good word for what I was looking for. Arthur Andersen did issue to Sunbeam, in connection with the restatement and

Page 359

the investigation, a management letter, did it not, where it outlined the problems that -- that are -- that are at the root, if you will, of what caused the restatements to be issued; is that fair?

A I believe under accounting law or practice, I am not sure where it comes from, when you do a restatement, the auditing firm is required to issue a management letter which contains all of the deficiencies that they believe led to the restatement. It is a -- it is an interesting process because they were supposed to issue such a letter in connection with the annual audit anyway.

And -- and this letter tells you a lot of things after the fact, which you kind of wish had been told to the company before the fact; i.e., that the internal control mechanisms are inadequate, things like that.

Q Did the -- did the -- have you reviewed the management -- strike that.

Did you review the management letter when it was issued?

A Yes.

Q Did the management letter in any way

Page 360

suggest that Morgan Stanley had had any paragraphs in any of the accounting matters that caused the restatement?

A Not, not to my recollection.

Q Was there any indication in the management letter that was issued by Arthur Andersen in connection with the restatement that Morgan Stanley knew of the accounting matters that caused the restatement before the restatement was --

A They wouldn't have looked into it, but, no.

Q Let me show you what has been marked as Exhibit 61 and ask you if this is the management letter that you have been describing for us that Arthur Andersen issued following the investigation that you have described in conjunction with Deloitte & Touche, the Audit Committee, and Sunbeam's accounting staff?

A *It appears to be.*

Q In addition to the --

A Yes, okay.

Q It is okay to proceed?

A Yes.

Q In addition to the audit work that was

61 — 8-96

NOT A CERTIFIED COPY

Page 361

done and which we have been -- we have summarized in MS 61, you told us also there was an investigation undertaken by the Board with the assistance of legal counsel and Chicago Partners. Do you recall that testimony?
A Yes.
Q Did this committee of the Board have a name, like the Audit Committee, like special committee to investigate?
A As I said, I should remember this, but I just don't. I don't remember if it was the whole Board, or a committee of the Board or the Audit Committee itself.
Q Did this -- I am going to call it a special committee, so we can separate it from the Audit Committee, if that is proper. Did this special committee issue a report of any kind?
A There was a report prepared. I don't know if it was issued by that committee or accepted by the committee. In other words, I don't know whether the report which was largely compiled and prepared by Skadden and Chicago Partners then became the committee's report or whether they simply accepted the report.

Page 362

Q Did the report of the special committee, whatever form it eventually took, did it assess blame or assign blame to any one person or persons for the issues that were also the subject of the management letter, which we marked as MS 61?
A I don't recall. What I recall focusing on was, did it pin any blame on anybody that was still with the company. In other words, my focus sitting where I was as an operational person, I had my own views of who was at fault. My concern was is anybody that might have been at fault in any material way gone, or do we have people that we are depending on now still at the company whose activities are revealed by this investigation to be such that we shouldn't continue in employment with the company. So, that was sort of my focus.
Q Did people on the Board receive a written version of whatever Skadden prepared?
A They received a presentation of it. I don't remember whether they kept it or not.
Q When you say a presentation, like that, like a DEC presentation we talked about?
A No. I think they received the report

Page 363

itself and a verbal presentation by Bob Zimmit at Skadden, along with Chris Malloy, who worked with him. I don't know whether they kept the report because there were all kinds of issues regarding confidentiality and privilege that were going back and forth with the SEC. I don't recall if they were given to them in a room, made a presentation and gave it back to them or kept it.
Q Did the report go to the SEC as far as ongoing proceedings with the SEC?
A We initially resisted giving it to the SEC, and I don't recall if it ultimately went to the SEC or not.
Q Did the report identify any wrongdoing by Morgan Stanley in connection with the matters that were investigated?
A I don't recall.
Q You don't recall one way or the other?
A No, I don't recall one way or the other.
Q Did the report identify any current employees of Sunbeam at the time that the report was prepared were at fault for the matters set forth in the report?
A My recollection is that there was one

Page 364

employee who I believe -- one who -- who we had -- who we had some serious concerns about, and -- and that person left the company after the restatement was completed.
Q Who was that?
A Robert Gluck, who was the chief -- I believe the Chief Accounting Officer was his title.
Q Did Chicago Partners prepare a report separate from whatever Skadden Arps prepared?
A I don't recall. I know they worked on the Skadden report, and -- I mean I believe they were retained by Skadden to work on that report. I don't believe they produced a separate report, but it is possible.
Q Was there an individual at Chicago Partners that was primarily responsible for whatever forensic investigation it did, if that is what it is?
A There was, and I can't remember what his name was.
MR. BEMIS: Let's take about five minutes, and I will try to finish him up in the next 30 minutes and get him out of here.

NOT A CERTIFIED COPY

MR. BRODY: That is good.
THE VIDEOGRAPHER: The time is 3:22 p.m., and this ends Tape No. 2.
(Recess Taken)
MR. BEMIS: Would you mark this.
(Morgan Stanley Exhibit 261, communications package," marked for identification, as of this date.)
Q Let me show you what the court reporter has previously marked as --
THE VIDEOGRAPHER: Excuse me. I have to get on the video.
The time is 3:34 p.m., and this begins Tape No. 3.
Q Sir, let me hand you what the court reporter has previously marked as MS 261. Do you have that, sir?
A Yes, I do.
Q Did you receive a copy of this as is indicated on the distribution -- I am sorry, attachment, which is Page 2 of the document?
A I believe so.
Q This document is marked as a confidential draft. Was there a further draft of this document, to your knowledge?

A I don't know.
Q When you received this document, did you make any further comments to the text of the various enclosures with the press release and ending with a conference call alert?
A I don't know. I mean, I know what this was, and it would have been my practice at the time to review it and make comments, but I don't know when the draft got to the point where I had no comments.
Q Would you please tell the jury what MS 261 is.
A Yes. We were about to issue the revised -- I should say the restated financials of Sunbeam for 1996, 1997 and the first quarter of '98. I think that the second quarter of '98 came a little later than this, and this was a communications package that was put together that was a combination of a press release that would be issued, a script for a conference call that would involve analysts and others that might be interested, and an employee communication, a communication to vendors, to retailers and so forth. So, it was a complete communication package in connection with

announcing the restated financial results.
Q Was the press -- withdrawn.
Are any of the handwritten changes on this document yours?
A I don't believe so.
Q Do you know whose they are?
A No.
Q Do you have any idea whose they are --
MR. BRODY: I object to form.
A -- no, I really don't. I -- it could be -- it -- it talks about a conference call here, so it could be Marc Shifman or somebody at Sard Verbinnen who is our outside communications firm for this, who was sitting on the phone call making notes of comments to get to the final draft. I just don't know.
Q Well, let's start with each of the items real quickly. This shouldn't take long.
The press release that was issued, was it not, that is Attachment A to --
A A press release was issued. I presume it was -- it was this one.
Q If you look at Attachment B, which is entitled "Restatement Conference Call," did that conference call take place?

A Yes.
Q Were you on the conference call?
A I was in the room when Jerry presided, yes.
Q Did Mr. Levin read the text as set forth in Exhibit 261?
A He read part of it, and Bobby Jenkins read part of it, and I will see who else.
Q I only saw Bobby Jenkins and Mr. Levin, but I could have missed somebody.
A It appears that it was Bobby and Jerry.
Q Now, following the reading of the prepared text, were there questions and answers?
A I believe so.
MR. BRODY: When the conference call was taking place?
MR. BEMIS: When the conference --
MR. BRODY: When it took place, rather?
MR. BEMIS: Yes.
A I believe so. Our normal practice would be to open the phone lines to those on the line for questions.
Q Is there a transcript of the conference call that you are aware of?

NOT A CERTIFIED COPY

Page 369

A I don't believe we did transcripts of recordings of Sunbeam conference calls. I am not certain.
Q I used the word transcript, I should have said, was there a recording of any kind?
A I don't recall if we recorded the conference calls.
Q The questions and answers, which is Attachment C, if you continue through the document, were these, if you will, prepared answers to anticipated questions that those on the conference call might ask?
A Possible questions, yes.
Q If you will turn to Exhibit D, which is a letter dated October 20th, 1998, or perhaps better described as a memorandum from Mr. Levin to the earnings restatement and an attached video, did that go to Sunbeam's management, the letter and the video?
A I believe it did, yes.
Q And then, finally, there is an Exhibit E, an e-mail to Mr. Levin, to all Sunbeam employees. Did that e-mail get sent to the -- get sent to the employees as indicated?
A I believe it did.

Page 370

Q And like Exhibit F appears to be a form of letter to vendors dated October 20th, 1998, did that letter get sent to selected vendors?
A I believe it did.
Q If you look now at Exhibit G, this is -- it is -- it appears to be another form letter to -- and it has a trade name. Did this letter get sent to certain customers of Sunbeam?
A I believe so, yes.
Q Would this like go to Wal-Mart, for example?
A Yes.
Q And then, if we look at Item H, which is entitled "Conference Call Alert," is this a memorandum or a press release of some kind that went out so that people could call into the conference call?
A Yes, I believe so.
Q All right.
Now, the document we have been looking at, which is a package of materials, is this, if you will, a culmination of the work done by Andersen, Deloitte Touche, Skadden, Chicago Partners, et cetera, over the period from June 15th when you came to the company up until

Page 371

October of 1998?
A It is a culmination of probably 90 percent of the work, because as I said, my recollection is we wanted to get out as quickly as possible the restated financials for -- we were now derelict in 10-Q filings, we had failed to file the second quarter 10-Q's within the required time, and -- and my recollection is that we wanted to move as quickly as we could consistent with doing the job properly, so we got this much out.
And I believe this covered through the period of the first -- without looking at it again, the first quarter of '98, and then we had to come back about a month later and do the second quarter of '98. The work just wasn't all done by this time, so there was another call that dealt with the second quarter of '98, which wasn't a restatement, it was the first time we released those financials.
And I don't recall when the -- when the third quarter of '98 was done, whether it was done at the time we announced the second quarter or it was done later. We tried to catch up and be a back on time filer. I don't recall whether

Page 372

we caught up at the end or --
Q When you were not getting your 10-Q filings filed in a timely manner with the SEC, were you filing, or had you filed 8-K's to notify the SEC where you were at with respect to your investigation?
A Well, you file the 8-K to notify the public you file it with the SEC. I am sure we filed a press release and an 8-K at the time in late June when we were informed by Andersen that we could not rely on the financials and to announce that we were investigating and to announce that we were going to restate.
In the meantime, the SEC was in touch with us. We met with them once or twice. They were in regular touch with the Skadden people, they knew where we were. I don't think we had to subsequently file to say we wouldn't be filing our quarterly. I think they were generally aware of that.
Q I apologize for interrupting you. Let me show you what we will mark as MS 262.
MR. BRODY: 261 is a new exhibit today?
MR. BEMIS: Yes.

NOT A CERTIFIED COPY

Page 373

Miss Reporter, would you mark this as 262, please.

(Morgan Stanley Exhibit 262, June 29, 1998 Board of Directors meeting minutes, marked for identification, as of this date.)

Q I have handed you what the reporter has marked as MS 262, which is entitled "Minutes of Special Meeting of the Executive Committee and of the Audit Committee of the Board of Directors of Sunbeam Corporation, June 29th, 1998."

Do you have that in front of you?

A Yes.

Q Now, as I -- as I understand your prior testimony, June 29th, 1998, would be about the time that the -- that the issue with Andersen would have come to a head; that is, that they would not consent to the use of their opinion in connection with the Registration Statement for the debentures. Am I in the right time frame?

A I think so, yes.

Q Okay.

Now, the Audit Committee kept minutes of all of the formal meetings; did it not?

A Yes, I believe so.

Page 374

Q And I think you said earlier that you participated in the Audit Committee meetings to the extent that you were available. If there was a meeting when you weren't there, I think you told us you wouldn't have, but if you were, you did participate; correct?

A Yes.

Q Do you recall any meetings of the Audit Committee at which any comments were made about Morgan Stanley in connection with the merger?

A I don't recall.

Q Do you recall any comments about Morgan Stanley on any subject matter at these Audit Committee meetings from June, let's say, of 1998 up until the October conference call?

A Well, yes, there were. I mean --

Q Other than banking issues? Let me set that one aside.

A Okay. I do recall discussions that related to zero's and their role in the zero's because at some point over the summer, Jerry Levin, and I and I think Bobby Jenkins went to meet with one of the largest holders of the zero coupon bonds, a group in Texas, and they were regular customers of Morgan Stanley, they were a large hedge fund, and I recall discussions with them in which they expressed their view of Morgan Stanley's role in and the work Morgan Stanley had done, and the fact that they were considering bringing a lawsuit against Morgan Stanley and had done something, I think maybe lobbied a lawyer's letter to Morgan Stanley simply reserving rights to later bring a complaint.

Page 375

We were aware of issues relating to the failed attempt of Morgan Stanley to lead a syndication of the loan when the three banks went into the loan 40 percent, 30 percent and 30 percent in round numbers. Morgan Stanley were responsible themselves for if it were fully drawn between 6 and $700 million, and the other two banks, in excess of $500 million. That was an extremely unusual position for banks to be in, and it was their intention that they were just -- that -- that they were going to bridge the situation until there was a syndication led by Morgan Stanley, at which point Morgan Stanley would have paid themselves and the other two banks way down.

And -- and the first meeting for a

Page 376

presentation to proposed syndicate members had been scheduled, if I recall, sometime from early to mid June had been called off because of the accounting problems that they began to see and the performance problems at Sunbeam. I was aware of those issues. I don't recall any other discussions except discussions relating to the Morgan Stanley as the banker.

MR. BEMIS: That is all I have. Thank you very much.

MR. BRODY: Could we go off the record for just a second.

THE VIDEOGRAPHER: The time is 3:50 p.m. We are going off the record.

(Recess Taken)

THE VIDEOGRAPHER: The time is 3:54 p.m. We are back on the video record.

EXAMINATION BY MR. BRODY:

Q I would like to ask you a few questions to follow-up on some of the things that Mr. Bemis has asked you today and in the last session. This is the second session of your this; correct?

A Yes.

NOT A CERTIFIED COPY

016472

Page 377

Q And the first session ended with Mr. Bemis still questioning?
A Yes.
Q So, this is my first opportunity to question you on the record?
A Yes.
Q In the last session, sir, Mr. Bemis asked you some questions concerning the Information Statement and the comfort letter provisions in the merger agreement. Do you generally recall that topic?
A Yes.
MR. BRODY: Counsel, I am going to apologize that I don't have extra copies, but I trust that you do of these documents.
Q Let's start with Exhibit 117, the Public Company Merger Agreement. It is previously marked.
Mr. Shapiro, I have given you what has been marked by Mr. Bemis as Exhibit 117. Do you recognize that as the public Company Merger Agreement?
A (No Response)
Q The merger agreement with the --

Page 378

A Yes.
Q Can you turn to Paragraph 7.3, and in Paragraph 7.3A and 7.3B, the agreement discusses certain circumstances in which comfort letters may be obtained?
A Yes.
Q I am going to focus on Paragraph 7.3B, and it refers to a comfort letter. Can you describe the circumstances in which Coleman would have the ability to obtain a comfort letter pursuant to Paragraph 7.3B?
A Well, my recollection is that the transaction essentially had two steps to it. Step 1 was the acquisition by a Sunbeam entity of the parent company, the MacAndrews -- ultimately went up to MacAndrews & Forbes, the parent company stock. That transaction took place, I believe, on March 30th of 1998, and that stock was acquired. Approximately, 18 percent of the stock was held by the public.
Because entities controlled by Mr. Pearlman had 80 percent of the stock, no shareholder meeting of the Coleman shareholders was required, but, nevertheless, to complete the merger and the acquisition by Sunbeam entities

Page 379

of the Coleman public stock, a second step had to take place, and that second step involved a mailing to the Coleman shareholders of an Information Statement, which in that case essentially replaces a proxy statement. A proxy statement would have been used when a vote was required, and the Information Statement would provide information similar to that that would be provided in a proxy statement. The shareholders would have had no right to vote on the outcome, but they would have had a right under Delaware law to dissent from the transaction and -- and exercise their appraisal rights under Delaware law.
So, instead of taking the consideration that was called for under the agreement, they could go to the Delaware court in effect and say, we want you to force the company to pay me what you determine, judge, is the fair value of my stock.
So, the Information Statement essentially is a way for the -- for the shareholder to receive all of the information that presumably the shareholder would need to make a decision as to whether to accept a

Page 380

consideration or to dissent. In addition to that, in connection with the back end merger, people were to be paid in cash and stock, and it was agreed that the stock would be publicly traded stock, and the stock, therefore, had to be registered on a Registration Statement with the SEC.
In connection with the Registration Statement and the Information Statement, both of which had to go through the SEC and be sent to shareholders, information in those Registration Statements -- in the Registration Statement and I believe in the Information Statement included the financials of Coleman for periods audited by Ernst & Young, which would have included everything at least through the end of '97, and depending on when the mailing occurred, the first quarter of '98. It was anticipated at the time that this was done, that that second step and the ultimate mailing would take place between, let's say, 30 to 60 days after the March 30th closing, whenever the closing was going to take place of the first stage.
And I believe 7/3 was Sunbeam obtaining from Coleman an agreement that it would do

NOT A CERTIFIED COPY

Page 381

whatever was necessary to cause or to request Ernst & Young to provide the financial statements that were needed for inclusion in the Registration Statement and the Information Statement.

Q Okay.

Now, focusing on the text of Paragraph 7.3B itself, in light of the explanation that you have just given, what was the date, according to Paragraph 7.3B, on which those comfort letters from the auditors would be provided? Or I should say dates.

A Well, the -- the -- the Ernst & Young -- consistent with SEC practice, the Ernst & Young comfort letter had to be ultimately dated the date that the Registration Statement became effective. That would have been the date, as I said, projected to be somewhere in the 30 to 60 day range after all things went well, after the closing of the first stage. So, end of April to the end of May.

Q I guess I don't want to focus so much on the date. Just reading the text of 7.3B, does it provide when those comfort letters -- does the text of the agreement provide when those

Page 382

comfort letters should be provided?

A Yes. It says they should be provided at the time the Registration Statement becomes effective and when the Information Statement is mailed to the company's stockholders.

Q Focusing on the terms Registration Statement and Information Statement, are those terms defined terms within the text of that agreement?

A I have to look. They are capitalized, so they probably are.

Q Can you explain to us where you are looking?

A I am looking under the definition section of the agreement, which is Section 1.1, and on Page 4 of 1.1, there is a definition for Information Statement, which refers you to 4.9, and -- and the Registration Statement is defined on Page 6 and also refers you to 4.9.

Q So, to get the definition, you have to go to 4.9 that is on Page 17, and focusing on -- we will do them one at a time. What is the Registration Statement, as defined in that document, defined as?

A It is defined as the Registration

Page 383

Statement on Form S-4 under the Securities Act, which is also a defined term for the purpose of registering the shares of Laser common stock, that would have been Sunbeam common stock, to be issued in the company merger.

Q What is the term Information Statement defined as?

A It is defined as the Information Statement to be distributed in connection with the company merger with a related filing on Schedule 13E3, where the notice to be provided to the company's stockholders pursuant to Section 14F of the Exchange Act, leaving out some expertise.

Q When that is referring to the company merger, that is what you described as the second stage of the merger?

A Yes.

MR. BRODY: I am going to ask the court reporter to mark this as Exhibit 253.

(CPH Exhibit 253, document bearing Bates Nos. CPH 1409707 through 1409980, marked for identification, as of this date.)

Page 384

MR. BRODY: I will state for the record that it bears Production Nos. CPH 1409707 through 1409980.

Q Mr. Shapiro, is the document that I have given you marked as Exhibit 253, the Information Statement that you have just referred to?

A It appears to be.

Q Based upon your review of it, can you determine when it was mailed, approximately?

A It appears to be mailed, approximately, December 6th, 1999.

Q So, if a comfort letter was provided pursuant to Paragraph 7.3 that we spent some time talking about in connection with that Information Statement, it would have been provided in December of 1999 or thereabouts?

MR. BEMIS: Objection, leading.

THE WITNESS: Could I answer?

MR. BEMIS: You can answer, sure.

Q Yes?

A Yes. That is not when it was anticipated. It would be presented, but as facts turned out, because of the restatement, as I said, it was anticipated that it would be provided when this was mailed, which we would

NOT A CERTIFIED COPY

016474

Page 385

have expected to be, let's say, in May of '98, but it didn't happen until now, yes.
Q If you just put Exhibit 253, the Information Statement, aside, I will show you what Mr. Bemis has previously showed you as Exhibit 130, and you were asked some questions about that document before.
Is that the Information Statement sent in connection with the company merger that was referenced in Paragraph 7.3B?
A I don't believe so.
Q I am going to give you back what had been previously marked as Morgan Stanley 117, and I have opened it to 1.9 where you were looking before. Can you review Paragraph 1.9 and tell me if any of the defined terms there appear to refer to the document that I have shown you as Exhibit 130?
MR. BEMIS: Objection to the form.
A This appears to be something that is referred to in 4.9, which is a 14-F notice, which is a Notice to Shareholders, relating to the change of directors. Again, a notice as opposed to a proxy because they don't get the voting control. At this point, the vote is

Page 386

controlled by its Sunbeam entities.
MR. BRODY: I will ask the court reporter to mark one additional exhibit as Exhibit 254.
(CPH Exhibit 254, SEC Form S-4, marked for identification, as of this date.)
Q I will give you what has been marked as Exhibit 254. This is a lengthy 364 page document that I will represent we printed off of the SEC's website. It does not have a production number in this case, although I am quite confident that there are copies in this document in the production file.
I am going to ask you if you can tell me what Exhibit 254 is?
A It says on the front that it is an S-4.
Q Do you recognize that as an SEC form for Registration Statement?
A Yes.
Q Do you have an understanding as to what stock or other securities that form is registered on?
A I believe it is registering the Sunbeam stock that is to be paid to the public

Page 387

shareholders of Coleman in connection with the completion of the merger.
Q Can you explain to us when that document was submitted to the SEC?
A Submitted to the SEC?
Q Or filed?
A The answer is, I don't know when it was submitted. It became effective -- it appears to be on -- mailed on December 6th.
Q Of?
A I am sorry. December 6th, 1999.
Q I have placed again in front of you Exhibit 117, the Public Company Merger Agreement. In that agreement, when Paragraph 7.3B refers to an effective date of a Registration Statement, you understand it to refer to this December 1999 date?
MR. BEMIS: Objection to the form, leading.
A Yes.
Q You can put that document aside.
Today, Mr. Bemis asked you some questions about the meeting you attended, I believe, in the evening of February 23rd at Morgan Stanley?

Page 388

A Yes.
Q And I believe you said some individuals of Sunbeam, in the presence of Morgan Stanley, described the prospects and plans of the company, among other things?
A Yes.
Q I believe Mr. Bemis asked you if anyone had stated at the meeting -- the Sunbeam people at the meeting had stated that the numbers that it was projecting had not or would not be achieved, and you said, among other things, quite the contrary. Could you explain what you meant by that?
A Yes. I believe the answer is that Russ Kirsch expressed confidence that notwithstanding the slow performance, sales performance, that had been previously announced in January, for example -- yes, in January, that -- that they stuck by what -- what was out on the street with regard to the first quarter and the balance of '98.
Q Now, in your last session, sir, you were asked some questions about CPH Exhibit 17 and Morgan Stanley Exhibit 10. I will place those in front of you now and identify those as

NOT A CERTIFIED COPY

Page 389

various comfort letters provided by Arthur Andersen to Morgan Stanley on March 19th, and perhaps earlier dates, 1998, and March 25th, 1998.

MR. BEMIS: Objection, form.

Q I believe your testimony was that you had not seen those documents contemporaneously; that is, in 1998?

A That is correct.

Q That is not something that you reviewed in connection with the work that you did for Coleman or later for Sunbeam -- withdrawn.

Was that not something that you did for the work for Coleman prior to the March closing?

A That is correct. I might have seen them later when I went to Sunbeam. After June 14th, I might have.

Q I believe you said that those documents raised concerns or questions in your mind. What did you mean by that?

A The March 19th letter -- the March 19th letter shows that net sales for the period -- Sunbeam had at that time this odd fiscal year, which started -- I guess ended December 30th or December 29th, so they state sales for

Page 390

December 29th, '97, through February 1st, '98. The net sales here were less than 50 percent of the prior period -- the comparable prior year, excuse me, and that -- and that net income had gone from 4.8 million, approximately, to, approximately, 9 and a half million negative. So, that would have -- should have shown a problem with the first -- essentially the first month.

Further, on Page 5, they go on to say though the company has not provided us with any financial statements as of any date or for any period subsequent to February 1st, '98, they have provided net sales. Now, for the two month period, essentially, as opposed to the one month period in 5-B, were 72 million as compared to 143,500,000, and, so, net sales were, approximately, half of what they had been for the two months in the prior year, meaning that to hit the number that they had projected, they would have to do -- I think the projection out on the street was 275 to 285 for the first quarter -- they would have to do 200 million and change in the balance of March, which would have raised some concerns since they had never done

Page 391

that kind of number, I don't believe, in one month. That is the first of them.

And then in the March 25th letter, in E, they showed long term debt which I believe was only covered for the period Feb. 1 through Feb. 1 in the first letter, and for that period, it had gone up a little bit, from 194 to 219. It now showed it going from 194 to 279, so they were negative 60 in the month of February, which is a substantial jump in debt with regard to sales.

It shows what I had previously described in the March 19th letter, sales through March 1, approximately half of the comparable period in the prior year, and it shows net income or loss going from 9,765,000 positive in the prior period, comparable prior period, the first two months of the year, essentially to negative 41 million, although of that negative 41 million, 30 million was really a pure accounting charge relating to restricted stock issued in connection with new employment agreements to certain key officers. Let's say on an operating basis, it was really negative 11 million, so a $20 million swing negative in the first two

Page 392

months of the year.

Q How did the information --

A Then --

Q I am sorry.

A Then it goes on to say that as of March 23rd, the debt had gone from -- it is 279 at the beginning of the month to 309 as of March 23rd, so it had increased another $30 million in that three week period, approximately three weeks and a day.

Q How did that information, which is contained in those two comfort letters, compare to what you and others were told at the meeting at Morgan Stanley on the 23rd?

A In my recollection today, it was inconsistent with the picture that was presented to us.

MR. BRODY: I have nothing further.

MR. BEMIS: One question.

CONTINUED EXAMINATION BY MR. BEMIS:

Q After the restatement was done, what did the accountants conclude the difference was between sales in the first quarter of 1998 and the first quarter of 1997?

MR. BRODY: I object to form. I am

NOT A CERTIFIED COPY

Page 393

sorry, objection to form.
A I am sorry, what the difference was --
Q I think, actually, in the first quarter of 1998 versus 1997, and I think if you look at MS 262 -- I direct your attention to the page. I am looking for the page number in this document.
A I think it's the last three numbers at the bottom, CPH, I think it is 719. Is that the page you are directing me to, where it says first quarter '98?
Q Well, there is also -- there is another place it appears. Let me put a clean question to you because I think we are both at the same information, but on a different page. It appears twice.
If you would look at -- you were looking at the press release; correct?
A Yes, the draft press release.
Q Just looking at the press release, what was the difference between first quarter 1998 revenue versus what was originally reported?
MR. BRODY: I object to form.
THE WITNESS: I can answer it now?
MR. BRODY: Yes.

Page 394

A The press release indicates that first quarter was 247.6 versus the originally reported 244.3. Now, I am just trying to spin up and remember how that all worked. The K had never been filed, there was no original. I guess the K was filed -- they issued a press release, I remember that, in early April that had, I believe, sales on it, and then I guess the K was filed. So, this is saying that the originally reported was 244.3, and after the restatement, it was -- it went to 247.6, and that the loss, which compares to, I believe -- I am trying to dig my way through it. It compares to the March 19th press release which projected revenues of less than what was on the street, which was 275 to 285. I don't remember what the number was in that press release, if there was a number.
MR. BRODY: Do you want him to see the document?
MR. BEMIS: He can look at the document, if he wants to.
Q I think you are being handed the press release.
A Yes.

Page 395

I said 275 to 285, it is 285 to 295, but are expected to exceed first quarter net sales of 253.4. So, this 247 would be compared to 253.4, but there are two things I can't -- that come to my mind, and I can't really dig (sic) my way through them.
This refers to the net sales, the press release, which is the number in the press release, and I believe in the two Andersen comfort letters, Sunbeam had something called waterfall, which was the difference between gross sales and net sales, which was considerable. It was anywhere from 12 to 20 percent of items that went -- that were deducted from gross to net. I don't know what the press release -- the press release refers to revenues. This refers to net sales, and this refers to net sales. I don't know what revenues were, I don't remember offhand.
The second thing is you are now talking apples to oranges. One of the things, the first quarter, as stated in the press release, got to the number it got to were because there were a bunch of items disallowed in the fourth quarter of 1997 in the restatement as being improperly

Page 396

booked that ultimately were recognized, but in the first quarter of '98. So, they were only '98 revenues because -- because they were moved out of '97, and, therefore, the number may have been a similar number, but -- but it only -- it only got to a similar number because of the shifting of a lot of money out of the end of '97, which devastated '97, right into the quarter of '98. For example, the bill and hold sales which were disallowed.
You really want apples to apples. If you did, I believe that actual -- and, again, I don't know if we are talking gross sales here or net sales were substantially different on an apples to apples basis from what was stated to us and what was stated in this press release.
Q If you look at --
A And I believe, also, the loss of $55 million was very different from what the analysts, for example, if I recall, were projecting for the first quarter of '98.
Q Are you finished? I don't want to interrupt you.
A Yes.
Q Okay.

NOT A CERTIFIED COPY

Page 397

The press release which you have in front of you, which is marked as MS 39, concludes, does it not, that they expect to exceed -- net sales are expected to exceed 1997 first quarter net sales of 253.4 million? That is what it says; right, it would exceed first quarter 1997?

A Yes.

Q It doesn't say -- the press release doesn't say they are going to meet the analysts' expectations of 285 to $295 million; does it?

MR. BRODY: I object to form.

Q That isn't what the press release says?

A But you have to get back to what I said. What I said was, again, to just separate the threads, this press release, I would be of the opinion that this press release corrected from Sunbeam's standpoint any analysts' estimates that were out there with regard to net sales and brought them to a number of called 53 plus $1.253.4, plus a dollar. I think that is a fair reading of this. But it did not correct in any way the analysts' estimates that were out on the street for earnings for the first quarter.

Therefore, I think it is logical to

Page 398

conclude, given the obligation of the company, that they were, in effect, supporting the earnings estimates that were out there, which I believe were way, way north of a $55 million loss, nor does this say the way that we are going to get to 253.4 plus a dollar is by shifting earnings that were already recorded in, I believe, its 10-K, which had now been filed for '97, creating a bigger loss -- I am sorry, a bigger deterioration in '97 into '98. So, I am saying I don't think this is an apples to apples if the accounting was the same for the two periods.

Q What you are pointing to is the press release and the October --

A If the accountings were the same for the two periods, this would not have been the result. The period -- the period for the first quarter of '98, the result would have been much worse than the 257.6 million.

Q Rather than trying to guess at these numbers in the fashion that we are going about it, the fact is that the apples to apples and oranges to oranges comparison between the first quarter of 1997 and the first quarter of 1998

Page 399

were actually filed with the SEC pursuant to the restatement; correct?

MR. BRODY: I object to the form.

A I wouldn't expect that because you are taking one sentence -- you are taking one sentence out of a press release that has prior pages to it and subsequent pages, and what it says wasere were numbers moved out of various periods permanently or into other periods. So, you can't take a snapshot that says -- that says I am comparing on the one hand a number for the first quarter of '98 based on everything that built up to it through prior periods, and it is comparable to a number in the restatement when numbers came out of the prior periods and were moved up to that number.

Q I am not quarreling with you about how the numbers got arrived at, that is not my job. My question is a little different. Perhaps it wasn't articulated well.

If, actually, Sunbeam filed a restatement where it said based on the accounting prior to the restatement, here is what our net sales were for 1997 first quarter, and here is what they were for first quarter

Page 400

1998, absent restatement that was filed with the SEC; was it not?

A As I have said, no, I don't believe -- I said previously there are two issues here that are moving. One is -- is the documents that were done in March, both the press release, March of '98, and the Arthur Andersen comfort letters used the language, net sales. If the document that you are pointing me to in the press release issued in October of 1998 in connection with the restatement uses the term revenues, I don't know, sitting here today, what the comparison is between the revenues and net sales, but the top line at Sunbeam was typically anywhere from 12 to 20 percent higher than the net sales line. So, if revenues is referring to the top line, then you have got -- you have got to bring it down by as much as 40 some million dollars.

Secondly, I don't think comparing the two things or making that there is a press release which has the words in it, I will not accept personally that that is a fair representation of the financial condition of Sunbeam's financial performance in the first

NOT A CERTIFIED COPY

quarter without looking at where the money came from.

MR. BEMIS: Okay. Let's leave that for another day. That is beyond what we are going to accomplish in the next few minutes that somebody else will have to tell us about that I understand you can't answer the question in the way that the documents are phrased.

All right. Thank you very much. I hope to meet you again under different circumstances, perhaps in Florida.

MR. BRODY: The deposition is concluded. We will reserve signature.

THE VIDEOGRAPHER: The time is 4:30. This completes Deposition Tape No. 3 and also completes the deposition of Mr. Paul Shapiro.

(Time noted: 4:30 p.m.)

CERTIFICATION

I, ANITA SHEMIN, a Notary Public in and for the State of New York, do hereby certify:

THAT the witness whose testimony is hereinbefore set forth was duly sworn by me; and

THAT the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related, either by blood or marriage, to any of the parties to the action; and

THAT I am in no way interested in the outcome of the matter.

IN WITNESS WHEREOF, I have hereunto set my hand the 29th day of July, 2004.

_____

ANITA SHEMIN

NOT A CERTIFIED COPY

016179

NOT A CERTIFIED COPY

0164580

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. No. CA 03 5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. No. CA 03 5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF JOSEPH P. PAGE

Tuesday, April 27, 2004

Los Angeles, California

Reported by:
PAMELA J. FELTEN
CSR No. 5189
Job No. 137520

NOT A CERTIFIED COPY

016481

NOT A CERTIFIED COPY

0164910

UNITED STATES

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.) No. CA 03 5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.) No. CA 03 5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF JOSEPH P. PAGE
Tuesday, April 27, 2004
Los Angeles, California

Reported by:
PAMELA J. FELTEN
CSR No. 5189
Job No. 137520

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.) No. CA 03 5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.) No. CA 03 5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

CONFIDENTIAL
Videotaped Deposition of JOSEPH P. PAGE, taken on behalf of Morgan Stanley, at 1901 Avenue of the Stars, Suite 575, Los Angeles, California, beginning at 12:50 p.m. and ending at 6:54 p.m. on Tuesday, April 27, 2004, before PAMELA J. FELTEN, Certified Shorthand Reporter No. 5189.

APPEARANCES:

For Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding, Inc.:

KIRKLAND & ELLIS LLP
BY: THOMAS A. CLARE
Attorney at Law
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5993
tclare@kirkland.com

For Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.:

JENNER & BLOCK
BY: MICHAEL T. BRODY
Attorney at Law
ONE IBM PLAZA
Suite 4400
Chicago, Illinois 60611-7603
(312) 222-9350
mbrody@jenner.com

The Videographer:

MITCH LERMAN
ESQUIRE DEPOSITION SERVICES

INDEX

WITNESS:	EXAMINATION
JOSEPH P. PAGE	
BY MR. CLARE	11
BY MR. BRODY	268

EXHIBITS
(NOT ATTACHED - RETAINED BY MR. CLARE)

DEPOSITION	PAGE
MS 100 CLN Holdings Inc. Consolidated Statement of Operations (Bates Nos. CPH0282212 to CPH0282227)	79
MS 101 February 23, 1998 letter agreement to The Coleman Company, Inc. from Sunbeam Corporation (Bates Nos. CP 033110 to CP 033116 and CPH 1421213 to CPH 1421219)	134
MS 102 The Coleman Company organization charts (Bates Nos. CPH0171292 to CPH0171296)	136
MS 103 December 10, 1997 letter agreement to The Coleman Company from Credit Suiss First Boston (Bates Nos. CP 012044 to CP 012046 and CPH 1402232 to CPH 1402234)	141
MS 104 Document headed MAFCO Consolidated Group, Inc., Sunbeam/Coleman Comparison dated 12/8/97 2:13 p.m. (Bates Nos. CPH 2000144 to CPH 2000149)	176
MS 105 Document headed MAFCO Consolidated Group, Inc. Will Nesbitt, dated 12/10/97 4:56 p.m. (Bates Nos. CP 038209 to CP 038213 and CPH 1426299 to CPH 1426303)	176

NOT A CERTIFIED COPY

INDEX (Continued)

EXHIBITS
(NOT ATTACHED - RETAINED BY MR. CLARE)

DEPOSITION PAGE
MS 106 Document headed MAFCO Consolidated Group, Inc., Sunbeam/Coleman dated 1/26/98 11:49 a.m. (Bates Nos. CP 037827 to CP 037836 and CPH 1425922 to CPH 1425931) 182
MS 107 Document headed MAFCO Consolidated Group, Inc., Sunbeam/Coleman dated 1/26/98 11:47 a.m. (Bates Nos. CPH 2000086 to CPH 2000095) 182
MS 108 Document headed MAFCO Consolidated Group, Inc., Will Nesbitt, dated 2/6/98 5:12 p.m. (Bates Nos. CPH 1120631 to CPH 1120659 and CSFBC 0000921 to CSFBC 0000949) 183
MS 109 April 28, 1998 letter from Skadden, Arps to the Securities and Exchange Commission with Chronology attached (Bates Nos. CPH 1042288 to CPH 1042317 and SASMF 17227 to SASMF 17256) 200
MSA 110 Photocopies of various business cards (No Bates numbers) 204
MS 111 Sunbeam Long Range Strategic Plan (No Bates numbers) 219
MS 112 February 25, 1998 Draft Materials Prepared for the Board of Directors The Coleman Company, Inc. (Bates Nos. CP 011053 to CP 011072 and CPH 1401219 TO CPH 1401238) 237

INDEX (Continued)

EXHIBITS
(NOT ATTACHED - RETAINED BY MR. CLARE)

DEPOSITION PAGE
MS 113 Minutes of a Meeting of the Board of Directors of The Coleman Company, Inc. Held on Wednesday, February 27, 1998 (Bates Nos. SASMF 08881 to SASMF 08881 and CPH 0634065 to CPH 0634075) 241
MS 114 Document titled The Coleman Company, Inc. (Bates Nos. CPH 1344526 to CPH 1344542) 246
MS 115 Sunbeam earnings press release dated May 11th, 1998 (Bates Nos. 0063805 to 0063811) 257
MS 116 The Coleman Company, Inc. Analysis of Effects of Stock Option Exercises (Bates No. CPH 0014850) 266

PREVIOUSLY MARKED EXHIBITS
(REFERENCED BUT NOT ATTACHED - RETAINED BY MR. CLARE)

MS 93 Agreement and Plan of Merger among Sunbeam Corporation, et al. and Coleman (Parent) Holdings Inc. dated as of February 27, 1998 (Bates Nos. 0007947 to 0008010) 129
MS 79 MacAndrews & Forbes document titled "Sunbeam Transaction Rationale" (Bates No. CPH0467007 and SB 232346) 158
MS 76 December 1997 document entitled "Materials Prepared for Discussion Sunbeam" (Bates Nos. CPH1407048 to CPH1407318 and CP 016852 to CP 017122) 159

INDEX (Continued)

PREVIOUSLY MARKED EXHIBITS
(REFERENCED BUT NOT ATTACHED - RETAINED BY MR. CLARE)

MS 77 Sunbeam Corp./The Coleman Co., Inc. Pro Forma Combination Analysis December 10, 1997 (Bates Nos. CP 037515 to CP 037534 and CPH 1425610 to CPH 1425629) 163
MS 75 March 30, 1998 letter to the SEC from Wachtell, Lipton with attachments (Bates no. CP 011337 to CP 011346 and CPH 1401525 to CPH 1401534) 164
MS 78 December 15, 1997 fax from Sunbeam with attachment (Bates Nos. 0026587 to 0026588) 169
MS 80 Document titled Laser Corporation Key Assumptions (Bates Nos. CP 038199 to CP 038206 and CPH 1426289 to CPH 1426296) 185
MS 81 Project Laser Proposed Summary Transaction Terms (Bates Nos. CP 033771 to CP 033774 and CPH 1421814 to CPH 1421817) 194
MS 82 Project Laser, Laser Stand Alone Income Statement (Bates Nos. CP 016766 to CP 016768 and CPH 1406962 to CPH 1406964) 197
MS 83 Project Laser Proposed Summary Transaction Terms (Bates Nos. CP 039154 to CP 039157 and CPH 1427250 to CPH 1427253) 198
MS 84 Sunbeam Long Range Strategic Plan (Bates Nos. MF 00001 to MF 00019 and CPH 1324756 to CPH 1324774) 212

INDEX (Continued)

PREVIOUSLY MARKED EXHIBITS
(REFERENCED BUT NOT ATTACHED - RETAINED BY MR. CLARE)

MS 85 Sunbeam Corporation Discussion Materials, February 1998 (Bates Nos. CP 020984 to CP 021068 and CPH 1411216 to CPH 1411300) 225
MS 88 Minutes of a Meeting of the Board of Directors of The Coleman Company, Inc. Held on Wednesday, February 25, 1998 (Bates Nos. SASMF 08872 to SASMF 08880 and CPH 0634056 to CPH 0634064) 230
MS 11 Sunbeam press release (Bates No. 0016944 to 0016945) 255
MS 58 April 3, 1998 fax with Sunbeam press release attached (Bates No. SASMF 14139 to SASMF 14143 and CPH 0639323 TO CPH 0639327) 257

NOT A CERTIFIED COPY

Los Angeles, California, Tuesday, April 27, 2004
12:50 p.m. - 6:54 p.m.

THE VIDEOGRAPHER: This is the videotape deposition of Joseph Page in the matter of Coleman (Parent) Holdings Incorporated versus Morgan Stanley Senior Funding, Incorporated, also Morgan Stanley Senior Funding, Incorporated versus MacAndrews & Forbes Holding, Incorporated.

Today's date is April 27th, 2004. The time is 12:50 p.m. My name is Mitch Lerman. I represent Esquire Deposition Services of Chicago.

Would counsel please identify themselves for the record.

MR. CLARE: Tom Clare from the law firm of Kirkland & Ellis LLP on behalf of Morgan Stanley & Co. and Morgan Stanley Senior Funding.

MR. BRODY: Michael Brody from Jenner & Block, Chicago, Illinois, on behalf of the witness, Coleman (Parent) Holdings, Inc., and MacAndrews & Forbes.

THE VIDEOGRAPHER: The case number to today's matter is CA 03 5045 AI in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

Would counsel -- excuse me.

We're on the record. Would the court reporter

please swear in the witness.

JOSEPH P. PAGE,
having been administered an oath, was examined and testified as follows:

MR. BRODY: Before we begin, Tom, as I mentioned off the record at the beginning, your notice of deposition requested Mr. Page to bring with him any documents relevant to the case. We have in the past objected to that broad and undefined request for production of documents and, moreover, we don't think a notice of deposition is the proper way to obtain the production of documents.

Having said that, however, as an accommodation to you and to the witness, Mr. Page has produced today and I have handed to you the only documents that he is able to identify that could possibly be responsive. So I've given them to you, they're originals only, and we'll use them today as is necessary. When the deposition is over, I'll take them back, have them copied and produced to you. And I point out that there is one privileged document within the file which we have withheld on that ground.

MR. CLARE: Okay, Mike. Thank you for that.

One other housekeeping matter before we begin. The deposition in this case is being taken in both of the consolidated cases. At the beginning of the videotape record only one of the case numbers was read into the record. The other case number is CA 03 5165 AI and that's the Morgan Stanley Senior Funding versus MacAndrews & Forbes action.

EXAMINATION

BY MR. CLARE:

Q With those preliminaries out of the way, good afternoon, Mr. Page. We met just a few moments ago. My name is Tom Clare and I represent Morgan Stanley in this litigation. Could I ask you to state your full name, please, for the record.

A Joseph P. Page.

Q And your address, please.

A Home address?

Q Yes.

A 314 Loring Avenue, Los Angeles.

Q That's in California?

A California.

Q Do you have any other residences?

A No.

Q And could I get your business address, please.

A 10880 Wilshire Boulevard, Los Angeles, California.

Q And who is your current --

A Suite 1850.

Q Thank you. And who is your current employer?

A Shelter Capital Partners.

Q And what kind of business is Shelter Capital --

A Private equity venture capital.

Q In a moment we'll go through some of the ground rules for the deposition today, but one of the things that we're going to need to try to do is to avoid talking over each other. The court reporter is taking down my questions and your answers. And so if you'll give me an opportunity to finish my question before answering, that will help the court reporter to take down the testimony as accurately as we can.

What is your title at Shelter Capital?

A I'm a member. I'm also the chief operating officer of the firm.

Q Is that your only employer at this time?

A Yes.

Q And how long have you been with Shelter?

A Four years.

Q Is Shelter Capital owned or in any way affiliated with MacAndrews & Forbes or any of its

NOT A CERTIFIED COPY

companies?
A No.
Q Has it ever been?
A No.
Q Do you have any ownership interest in any entity or company that is affiliated with MacAndrews & Forbes today?
A No.
Q Do you receive any compensation in any form from MacAndrews & Forbes or any of its affiliated companies --
A I --
Q -- today?
A I do not.
Q Have you ever been deposed before?
A Yes.
Q How many times?
A Once.
Q And in what matter?
A It was a civil case at New World Communication Group.
Q Is that the only time?
A Yes.
Q I take it that that deposition did not have anything to do with your role at Coleman; is that

correct?
A That's correct.
Q It did not have anything to do with Sunbeam?
A That's correct.
Q And what, just generally, was the nature of that matter?
A It was a dispute over a license agreement for some characters in a cartoon.
Q And what was the sub- -- the general subject matter of your testimony in that matter?
A It's so long ago. It was probably fact gathering. The -- it was settled out after -- shortly after the depositions were taken.
Q Were you involved in negotiating the license agreements that were at issue in that dispute?
A No.
Q Have you ever provided sworn testimony in court or any other live proceeding?
A Not that I can remember.
Q Okay. As -- as promised, you've had an opportunity to talk with your counsel, and before we get into more of the substantive questions, I want to go through a few of the ground rules which may be familiar to you from your prior deposition.
At the beginning of the session today, you just

took an oath, and that's the same oath that you would take as if you were testifying in court. My job this afternoon is to ask you questions that you can understand, and if I don't do my job, make sure you tell me. If you don't understand or you can't hear my question, just ask me and I'll be happy to try to rephrase it for you.
Your job, consistent with your oath, is to answer my questions truthfully and to the best of your ability. If you give an answer to my question, I'm going to assume that you heard my question and understood it. Is that okay?
A That's fine.
Q And if you need to correct something that you've said, if later in the deposition or if something occurs to you that you want to amend or correct a prior answer, just let me know and I'll give you an opportunity to do that. Is this okay?
A That's fine.
Q Now, the court reporter, as I mentioned, is taking down the testimony and while it is recorded on video, the paper record is the primary record that we have, and so we both need to make sure we do verbal answers to the questions instead of nods and shrugs and things. Answering out loud, we'll need to try to do

that. We talked about not trying to interrupt or talk over each other.
And as I mentioned to you off the record, if you need to take a break for any reason, just let me know and we can take a short break.
Do you have any questions about the ground rules for the deposition today?
A Nope.
Q What did you do to prepare for your deposition today?
A I met with representatives of the law firm representing The Coleman Company.
Q Is that Mr. Brody and his firm?
A And one of his associates, that's correct.
Q And do you remember the other person's name?
A Maybe Mr. Brody can help me with the gentleman that came out.
MR. BRODY: Just remember -- testify what you can remember to and --
THE WITNESS: Another lawyer came out probably two or three months ago.
BY MR. CLARE:
Q Okay. Was it just Mr. Brody and this one other lawyer?
A That's correct.

NOT A CERTIFIED COPY

016186

Page 17

Q And it was a male?
A Yes.
Q Was anyone else present for some or all of that session?
A No.
Q Just the three of you.
And you said that was about a month or so ago?
A It was just the two of us per time. Not three at once.
Q Were these two separate --
A Yes.
Q -- sessions?
A That's correct.
Q Okay. And did you -- when did you meet with Mr. Brody?
A Yesterday.
Q And for how long?
A Approximately two and a half hours.
Q Just you and Mr. Brody?
A That's correct.
Q And did you look at any documents?
A Yes, we did.
Q Any of the documents that were shown refresh your recollection about the events related to Sunbeam's acquisition of Coleman?

Page 18

A Somewhat.
Q Can you think of any right now that refreshed your recollection?
A No.
Q Did you review any prior deposition testimony that's been given in this or any other Sunbeam related matter?
A No.
Q Was any deposition testimony described to you?
A No.
Q Did you look at documents with the other attorney from Mr. Brody's firm?
A Yes.
Q Did the documents that were shown to you by that attorney refresh your recollection about the events?
A Not that I recall.
Q Did you review any deposition testimony with that attorney?
A No.
Q Or have any prior testimony described to you?
A No.
Q Other than the two sessions that we have just talked about, were there any other efforts that you made to prepare yourself for the deposition today?
A No.

Page 19

Q How long did you meet with the attorney the first time?
A About the same amount of time, two and a half hours.
Q And that was here in Los Angeles?
A That's correct.
Q Other than the attorneys, Mr. Brody and the attorney whose name you can't remember, have you spoken with anyone else about the lawsuit that is currently pending in Florida against Morgan Stanley?
A No.
Q Have you spoken to anyone at MacAndrews & Forbes about this litigation?
A Steve Fasman called me originally to say that I was going to be deposed in the matter.
Q And how long ago was that?
A It's been a long time, so I can't recall.
Q When did you first hear that Coleman (Parent) Holdings had filed a lawsuit against Morgan Stanley?
A When Steven Fasman called me.
Q Prior to Mr. Fasman calling you, you were not aware that this lawsuit had been commenced?
A That's correct.
Q I take it, then, that you were not consulted by anyone prior to it being filed?

Page 20

A Not that I can remember.
Q Or interviewed about the underlying facts?
A I was not interviewed.
Q Have you seen a copy of the complaint that Coleman (Parent) Holdings filed against Morgan Stanley?
A Yes.
Q And have you read it?
A Yes.
Q Was the first time you saw a copy of the complaint in this action during one of the two deposition sessions -- preparation sessions that you've described?
A I think it was in advance of the first one.
Q So material was sent to you in advance to read?
A That's correct. I requested it.
Q In addition to the complaint, was there any other material that you requested to look at?
A They also sent the complaint of Morgan Stanley against Coleman Holding.
Q So both complaints?
A That's correct.
Q Is there anything else?
A Nope.
Q Have you had business dealings with Morgan Stanley other than in connection with Sunbeam's acquisition of Coleman?

NOT A CERTIFIED COPY

MR. BRODY: In any capacity?
MR. CLARE: In any capacity.
THE WITNESS: Not that I can recall.
BY MR. CLARE:
Q Do you know anyone at Morgan Stanley who works there now or in the past?
A I'm sure I do, if I went and looked in my Rolodex.
Q But as you sit here today, you can't recall?
A Nobody is close. Or nobody that I would have seen in the recent past.
Q Have you or any of the companies that you've worked for ever retained Morgan Stanley for any purpose?
A Not that I can remember.
Q In 1997 and the first quarter of 1998, which are the events that we're primarily going to talk about today, did you have an opinion about Morgan Stanley's reputation as being an ethical company?
MR. BRODY: Object to form.
I'm sorry. I'm objecting for the court reporter and perhaps for the judge later. You can answer the question.
THE WITNESS: Can you repeat the question?
MR. CLARE: Sure.
Q In 1997 and the first quarter of 1998, did you

have an opinion as to whether or not Morgan Stanley was an ethical company?
A No.
Q In 1997 and the first quarter of 1998, did you have an opinion as to whether or not Morgan Stanley was a competent investment bank?
A No.
MR. BRODY: Same objection.
BY MR. CLARE:
Q I take it that you've had an opportunity to read the complaint that was filed against Morgan Stanley?
A Yes.
Q And you understand that Coleman (Parent) Holdings have alleged in that litigation that Morgan Stanley conspired with Sunbeam to defraud Coleman (Parent) in connection with the acquisition of Coleman? Do you understand that that allegation is being made?
A Yes.
Q Do you believe as you sit here today that Morgan Stanley did conspire with Sunbeam to defraud Coleman (Parent) Holdings?
A I don't have an opinion.
Q Do you have any facts that would support such a contention? Are you personally aware of it?
MR. BRODY: Object to the form.

THE WITNESS: I don't have an opinion.
BY MR. CLARE:
Q My -- my question was a little bit different. My question was: Putting aside whether you have an opinion or not, whether you participated in any meetings or are aware of any facts that you believe would support such a contention?
MR. BRODY: Same objection.
THE WITNESS: I don't know how to an- -- respond to that question.
BY MR. CLARE:
Q So as you -- I'm trying to get: As you sit here today and you think about that allegation, are there anything that you were involved in that you think support that allegation that's made that Morgan Stanley conspired with Sunbeam to defraud Coleman (Parent) Holdings?
MR. BRODY: Object to form and also legal conclusion.
Go ahead
THE WITNESS: I really never thought about it.
BY MR. CLARE:
Q Can you describe your educational background for me, please.
A You want degrees and years?
Q Please.

A I have a Bachelor of Science in accounting from Loyola Marymount University, 1975. I hold a Master's Degree from Loyola Marymount University, 1979. And I'm a certified public accountant in the State of California and inactive status.
Q Inactive?
A Inactive.
Q When did you obtain your CPA degree? Certification rather.
A 1977.
Q And when did it go inactive status?
A Somewhere around 1996, I believe, which is a couple of years after I had left public accounting.
Q So prior to the events in 1997 and the first quarter of 1998 relating to the sale of Coleman to Sunbeam, your status as a CPA had switched to inactive?
A I believe that's correct.
Q Going back to your college degree in accounting, did you have any other majors besides accounting?
A No.
Q Any concentration within accounting?
A No.
Q Did you graduate with any honors?
A Not that I re- -- can recall.

NOT A CERTIFIED COPY

16div-024632

Q And your Master's Degree, was that an MBA Degree?
A Yes. Master's of Business Administration.
Q And that was from the same institution?
A That's correct.
Q And what year was that?
A 1979. It was an Executive MBA program.
Q And were you working at the time you obtained that degree?
A That's correct.
Q And who were you working for at the time?
A Price Waterhouse.
Q What city was that?
A Los Angeles.
Q Did you have any concentration associated with your Executive MBA?
A International business.
Q And what was required in order to achieve that concentration?
A Additional course work in international business courses.
Q Was that the only concentration?
A Yes.
Q And you successfully completed it?
A That's correct.

Q Did you graduate with -- from your Master's program with any honors?
A Not that I can recall.
Q Have you ever been admitted to or studied the practice of law?
A No.
Q Have you ever been certified as a certified public accountant in any state other than California?
A No.
Q You indicated that you were working for Price Waterhouse at the time of your MBA studies. When did you start working for Price Waterhouse?
A 1975.
Q Immediately upon graduating from college?
A That's correct.
Q And what was your position at Price Waterhouse?
A Initially I was on the audit staff of Price Waterhouse.
Q Auditing public companies?
A That's correct.
Q Based out of Los Angeles?
A Yes.
Q And how, if at all, did you progress in terms of titles or responsibility changes after that?
A You want to know where I ended or what I did along the way?

Q I'd like to know the sequence along the way.
A Okay.
Q As best you can.
A I can do it. I was an auditor for three years at Price Waterhouse. I then switched to the tax department, approximately 1978. Completed my Master'S Degree in 1979. I took a tour of duty with Price Waterhouse in Paris, France from 1979 to 1981. While I was in Paris, I was promoted to manager. I returned to Los Angeles in 1981, continued to work in the tax department of Price Waterhouse, and I was admitted as a partner in 199- -- excuse me -- 1986. And I left the firm in January or December/Jan -- December of 1993.
Q What were your duties and responsibilities when you were working in the tax function at Price Waterhouse?
A Which time frame?
Q The time frame immediately after your audit function in the 1978 time period before you went to Paris.
A Just a generic staff accountant, senior accountant in the tax department.
Q Was it related to the audit function, as well?
A During that time, it would be both compliance and planning for companies and individuals. And on the

audit test function, it would be working with companies and their accounting for income tax provision sections.
Q And you were in that job for approximately a year before your MBA and your tour of duty in France?
A That's correct.
Q And while in France, what were your job functions?
A I was responsible for an ex-patriot tax practice in preparing U.S. tax returns for U.S. citizens living abroad. And our area of concentration was Southern Europe and Northern Africa.
Q And was the focus exclusively on individuals or did it also include companies?
A It was probably 90, 95 percent individuals. Some -- some consulting on the corporate side.
Q You were promoted to manager at the conclusion of your tour of duty or during?
A Midway.
Q Did your job functions in terms of what you have just described change in any way when you were promoted to manager?
A I was one of the two managers in charge of running the practice in Paris for my last year.
Q And when you say the practice, you mean the practice that you just described?

NOT A CERTIFIED COPY

Page 29

A That's correct. There were about approximately 10 professionals which were U.S. based -- U.S. CPAs working in Europe at the time.
Q Did the individuals that you supervised as a manager all perform the same function? In other words, ex-pat tax?
A Yes.
Q So when you were promoted to manager, there wasn't another group that was brought underneath your ambit other than the one you had been working in?
A No. Generally the staff that were in Europe were on rotations of two years.
Q When you returned to the United States, you returned as a manager to Los Angeles?
A That's correct.
Q And what were your job functions?
A Similar to what I was doing before I left. And actually I'll clarify. I was in Century City. It's the greater Los Angeles area. If we're going to get into that granule of detail, I'll give you the exact locations. It was Century City. There was also a -- distinguish that between the Los Angeles office, and there were other practices in and around the Los Angeles area. I continued to do work with corporations, individuals, high net worth families, and pretty much

Page 30

doing the same type of work I was doing before I left.
Q Still in the tax area?
A Yes.
Q In 198- -- and did those responsibilities continue until 1986 when you were --
A Yes.
Q -- made a partner?
A That's correct.
Q When you were made a partner, did your responsibilities change in any way?
A We -- yes. At that time we formalized our entertainment media practice and I was one of the two founding partners of the specialized practice in the entertainment media area for Price Waterhouse.
Q And what did those responsibilities entail?
A I mostly -- my new client assignments were all in the entertainment media area and I lightened my load in areas outside of entertainment media to be a pure concentration on the entertainment media space.
Q Was it tax based work or accounting based work or both or neither?
A It was accounting based work in the sense of helping companies form. I also at the same time or around the same time was one of the mergers and acquisition specialists for the firm. And because in Los

Page 31

Angeles most of the mergers and acquisition activities were in the entertainment media area, it all blended together as one large activity. And I also continued to advise in the high net worth families in the Los Angeles area. And I found the business manager practice of Price Waterhouse probably in the late '80s and continued to do the same sorts of work that I was doing before, but I was supervising a staff of individuals at that time.
Q It was during this time that you were designated by Price Waterhouse as an M & A specialist?
A That's correct.
Q What was required in order to achieve that designation?
A A lot of mergers and acquisition work.
Q So practical, real world experience?
A Yes.
Q Anything else? Any other course work?
A There were training courses that were held periodically that I would have attended. I would have taught on some of them. Tax structure kind of courses. And there were dedicated teams of partners around the country and around the world that would have been designated mergers and acquisitions specialists.
Q And did you maintain that merger and acquisition specialist designation up until the time you

Page 32

left?
A That's correct.
Q What classes or training did you teach in connection with your designation as M & A specialist?
A I used to teach an accounting for income tax course.
Q I'm sorry?
A Accounting for income tax course, which had to do with the audit side of the tax provision and related balance sheet accounts for financial audit.
Q Any other course work that you taught?
A I taught a lot of courses, but nothing I could remember at this point.
Q Were all of the courses that you taught either related to accounting or tax?
A Yes, I believe so.
I was also the world firm specialist for tax in entertainment media. So I would consult around the world with other offices regarding the entertainment media industry.
Q And that practice was headquartered here in Century City?
A That's correct.
Q During that time period that you were designated an M & A specialist, can you approximate how

NOT A CERTIFIED COPY

16div-024634

Page 33

many others at Price Waterhouse had achieved that designation?
A There would have been hundreds of us.
Q How many in the Century City area?
A Century City/Los Angeles area there were probably 25 or 30. Maybe more.
Q Was there a -- an annual education requirement for currency that needed to be maintained in order to maintain that designation, or once you had it you had it for --
A No. We met on a regular basis.
Q While -- while you were at Price Waterhouse in any of the time periods that we talked about, did you have as any of your clients MacAndrews & Forbes or any of its affiliated companies?
A Yes.
Q And can you describe that for me, please.
A I did some work for New World Entertainment, I believe it was in the late '80s. And it had to do with some structuring of a acquisition that they were doing and a divest- -- divestiture of a company in Australia. That was all on the tax structure side.
Q And what was New World Entertainment acquiring?
A I was -- it was being acquired by one of the MacAndrews & Forbes entities and I was helping them with

Page 34

some structuring of that acquisition.
Q Was -- what was the nature of the consideration that was being given for the acquisition? Was it cash? Stock? Debt?
A I believe it was -- it was cash, but I don't have a -- have a vague recollection of that transaction. It was not one that was a very extensive assignment. It was a fairly small assignment.
Q But as you sit here today, you can't recall specifically what the consideration was?
A No.
Q And if I understood your prior answer correctly, your client was New World Entertainment and it was being acquired by MacAndrews & Forbes?
A No. My client was -- was MacAndrews.
Q Okay. Thank you for that clarification. And it was acquiring New World Entertainment?
A That's correct.
Q What was the nature of the divestiture that was being done in Australia?
A They -- we were shutting down an Australian subsidiary.
Q Of New World?
A Yes.
Q After the acquisition?

Page 35

A It was either contemporaneously with the acquisition or shortly thereafter.
Q And to whom was that company being divested?
A I think it was just being shut down.
Q Oh. Thank you.
Any other dealings with MacAndrews & Forbes or its affiliates while at Price Waterhouse other than -- than the engagement that we've talked about?
A Later, yes. But at that time, no. Later in my career, yes.
Q Not while at Price Waterhouse?
A That's correct.
Q Okay. And you left Price Waterhouse in 1993?
A December of '93, that's correct.
Q And where did you go?
A I went to work for New World Communication Group.
Q And why did you move from Price Waterhouse to New World?
A I was offered a job and I accepted it.
Q And who was it that offered you that job?
A The job was offered to me -- the individual was Mr. Bill Bevins, who was the chief executive officer of New World. And I actually was an employee of MacAndrews & Forbes beginning in 1994. And it had --

Page 36

was -- it had already acquired New World. And so I was loaned down to New World as a -- an executive from MacAndrews & Forbes.
Q Okay. But you were employed by MacAndrews & Forbes?
A That's correct.
Q What was your title during that time period?
MR. BRODY: Which time period?
BY MR. CLARE:
Q The time period that you worked for New World. Well, let me clarify.
A The company --
Q It's more complicated than that. The time period that you worked for MacAndrews & Forbes but were on loan to New World Communications.
A My title at MacAndrews & Forbes was chief financial officer of Andrews Group. My loaned title to New World was I was chief financial officer of New World Communications Group, which was a holding company which held as one of its assets New World Entertainment.
Q During that time period that we're talking about, while you were on loan to New World Communications Group, did you have any responsibilities at Andrews Group or were they exclusively New World related?
A I had some responsibilities of Andrews Group.

NOT A CERTIFIED COPY

Page 37

Q Okay.
A Andrews Group was the holding company inside of MacAndrews & Forbes that held all entertainment media assets.
Q So that included New World, but also other holdings?
A That's correct.
Q What other holdings were included in that group?
A Marvel Entertainment was held there, also. And I believe a company called Four Star Entertainment, which was an inactive company.
Q Would you describe, please, what your primary responsibilities were as the CFO of Andrews Group, putting aside the New World responsibilities for a moment?
A I -- most of my time was spent at the New World level. There was a -- very little time acting as -- doing some coordination amongst the Marvel and New World assets pre New World becoming a public entity.
Q Were you involved in any merger and acquisition work during that time period?
A For which?
Q For Andrews Group.
A Well --

Page 38

Q Or any of its holdings.
A With respect to New World, yes. Other Andrews -- MacAndrews & Forbes entities at that time, no.
Q So during the time that you were the CFO of New World, you continued to engage in or you did do some merger and acquisition work?
A At New World.
Q At New World. Could you describe that for me, please.
A We acquired a distribution company called Genesis Entertainment which I was involved in. That acquisition was already underway just as I was arriving to New World. We also acquired a company called -- it was Stephen Cannell's company, it was an entertainment company, and a library that I worked on and negotiated a deal with. We acquired a company called Moving Target which was an entertainment company that I also was involved in -- with. And then we also at the same time of having these entertainment assets, we owned broadcast stations and there were three broadcast operations, different broadcast groups that were acquired, and I had some involvement in the acquisition of those broadcast groups.
Q Did you work with outside financial advisors on any of those deals that you described?

Page 39

A Not that I can recall.
Q No investment banks that you can recall?
A Not that I can recall.
Q What about outside accounting firms?
A Not that I can recall.
Q You talked about the Genesis acquisition. Was that a stock deal or cash?
A That was a stock deal privately held. Not a public company.
Q And did you have some or any responsibility for conducting due diligence on the Genesis stock that was being acquired?
A That one -- that one transaction was just about complete when I was arrived -- when I was arriving so I did very little work on that particular transaction.
Q In the time that you were involved, did you have any involvement in doing due diligence on the Genesis stock that was being acquired?
A No.
Q Who -- do you know who at New World had performed that?
A I don't.
Q I'll ask you the same question about the other deals that you referenced. There was a Moving Target?
A Yes.

Page 40

Q Did you have any responsibility or duty for conducting due diligence on that deal?
A Yes, I did.
Q And how did you perform the due diligence on that acquisition?
A I performed the due diligence with my internal staff and myself.
Q Was that also a stock deal?
A My recollection is it is -- or it was. Again, another private held -- privately held company.
Q And what steps did you take to do -- conduct due diligence on that transaction?
A What does steps mean?
Q What -- what due diligence did you conduct?
A I reviewed financial statements, tax returns, reviewed projections, interviewed personnel, looked at the current liabilities, contingent liabilities.
Q All those --
A All those things.
Q -- tasks that you described, they were all done with regard to the company that was being acquired?
A It was a very small entity.
Q Okay. For what purpose did you review projections?
A For financial per- -- potential financial

NOT A CERTIFIED COPY

016492

Page 41

performance, but there were no as- -- there were no library assets so they were very limited in projections other than expenses.
Q But for what purpose were you reviewing them?
A For --
Q These are -- I'm sorry. Go ahead.
A For future performance potential in combination with our company.
Q Were you reviewing projections that had been provided by the prior owners?
A That would be correct.
Q And were you reviewing those projections for feasibility?
A Again, they were just expenses. So they were just expense items because this was really an individual's personal company with very limited assets in it. So, yes, I would have been looking at it for both a liability and an assets viewpoint.
Q To determine the veracity of those projections?
A Yes.
Q For any of the other acquisition transactions that you described, did you perform due diligence in a like manner?
A Yes.
Q For which deal?

Page 42

A Cannell.
Q And can you describe, please, the due diligence that you performed for that transaction?
A Stephen Cannell is a -- a famous television writer/producer, had an extensive library, and when we acquired Stephen's company, we were acquiring his production assets, his library. We were going to license his library. We were going to distribute it. And we pro- -- performed, myself plus all of our staff, entertainment staff, performed due diligence on every aspect of his company, including contracts, projections of his library, what we thought the performance of his library would be, and looking at expenses, contingent liabilities, known liabilities.
Q Did you interview folks at that company?
A Yes.
Q Did you review projections in the same way that you described earlier?
A Yes.
Q Did you review financial reports?
A Yes.
Q Did you visit the facilities?
A Yes.
Q What other steps other than the ones I've just taken (sic) did you take on that transaction to conduct

Page 43

due diligence?
A What was necessary to have a complete understanding of the company.
Q Can you think of anything else as you sit here today?
A No.
Q Did you conduct this due diligence again with your internal staff at New World?
A Yes.
Q Did you involve any outside consultants or advisors?
A Not that I can recall.
Q Both for the Moving Target and the -- is it Cannell?
A Yes. Stephen Cannell.
Q Both for the Moving Target and the Stephen Cannell deals, did you feel that you were qualified to conduct the due diligence from the accounting aspects of those companies from your prior experience?
MR. BRODY: Object to the form.
Go ahead.
THE WITNESS: Yes.
BY MR. CLARE:
Q Have you told me all of the merger and acquisition work that you can remember as you sit here

Page 44

today?
A In my career?
Q During that time period that you were at New World.
A Well, I also would have done due diligence on some of the acquisitions of the television stations, but those I would not have been the primary responsible executive. We had a broadcast group that was based in Atlanta, Georgia. I would have helped with that group on selected items that they would request of me, but I would have been the primary due diligence leader on any entertainment product or entertain -- entertainment asset that we would acquire.
Q With regard to the acquisition of the television stations, did you employ any outside consultants or advisors to assist with due diligence?
A I believe we did, but I can't recall.
Q What about those acquisitions did you believe necessitated hiring outside advisors?
A I just -- I was not as active on those acquisitions that I would have been on the others. I don't know if they used outsiders or not. It's possible.
Q And with regard to the due diligence that was performed on the acquisitions of those television stations, did you or individuals acting at your direction

NOT A CERTIFIED COPY

Page 45

interview personnel?
A Again, I was not that active in those acquisitions, so I would have only a peripheral responsibility and it would mostly be with respect to how those companies would have folded into the overall financials of New World Entertainment Group because we were a public company at the time.
Q Would that have included the evaluation of projections provided to you by management of those companies?
A I -- I would not have personally done that. That would have been done by broadcast experts who were based in Atlanta, Georgia.
Q And those broadcast experts were members of New World Communications that were within that organization?
A That's correct.
Q You stayed at Andrews Group and New World until -- for how long?
A I -- well, I was at Andrews Group through -- give me a moment to remember back -- I believe 1998.
Q I've seen a report that indicated that you were the executive vice president and CFO of Andrews Group from December 1993 to January 1997.
A That's correct, but I was at Andrews Group until about '98, and then I moved over to a company

Page 46

called PX Holding, which was inside of the MacAndrews & Forbes organization. You asked me about Andrews Group.
Q Okay.
A I moved over to a holding company that sat on top of the acquisition of Panavision within the MacAndrews & Forbes organization.
Q I see. So a separate entity was created to acquire Panavision?
A That is correct.
Q And you took over that organization?
A I was in -- I was an officer inside of that company.
Q At the time -- and was that company a subsidiary of Andrews Group?
A No.
Q It was a --
A I --
Q -- peer --
A I'm not exactly sure how it fit into the corporate structure. I can't give you a response one way or another where it was in the corporate organization of MacAndrews & Forbes.
Q And what month and year was that?
MR. BRODY: What's that?

Page 47

BY MR. CLARE:
Q When you undertook those responsibilities for Panavision.
A PX Holding.
Q PX Holdings. Thank you.
A It would have been sometime mid '98. And I can't recall exactly which month.
Q This was after your tenure at Coleman Company?
A That's correct.
Q You became -- when did you go to Coleman Company?
A It's August/September of '98. Excuse me. August/September of '97 is the best of my recollection.
Q And you became the executive vice president and CFO of Coleman?
A That's correct.
Q Were you simultaneously holding a position at New World?
A No. New World had been sold in January of 1997 to News Corp.
Q And between January of 1997 and August of 1997, what were you doing?
A I was looking for new acquisitions for MacAndrews & Forbes.
Q Based here in Los Angeles or in Century City?

Page 48

A Yes. That's correct.
Q So you remained an employee of MacAndrews & Forbes during that time period?
A Yes.
Q You left New World upon its sale?
A Yes.
Q Tell me, please, the circumstances that led to you becoming the CFO of Coleman Company.
A I was in New York, summer of '97, and I was asked if I would take over as chief financial officer of The Coleman Company for a period of time until they could locate a permanent chief financial officer for The Coleman Company.
Q Up until that point in time, had you had any professional dealings with The Coleman Company?
A No.
Q Were you replacing a CFO that had left?
A Yes, but I had never met him.
Q And who was that?
A Steve. And I can't remember Steve's last name.
Q Do you know why Steve left?
A Steve was asked to leave.
Q Do you know why?
A Um, I don't know the -- the full story of why he was being asked to leave.

NOT A CERTIFIED COPY

16div-024638

Page 49

Q What were you told?
A I was told that he was -- they had moved Coleman from Wichita to Denver, and they were moving Coleman from Denver back to Wichita. They didn't believe long term that he would go to Wichita, and they were going to need to replace him at some point. And they wanted to have an opportunity to have someone go into Coleman, stabilize the financial organization until it could determine who should be the permanent chief financial officer of the company.
Q Coleman was in the midst of a restructuring during that time period, correct?
A That is correct.
Q Were there any other reasons that you were told as to why Steve was asked to leave?
A No.
Q Did you relocate to Wichita for that position?
A No.
Q You were living still in California?
A Yes.
Q And you were performing your duties as the CFO of Coleman from California?
A That's correct.
Q How does that square with the explanation that they wanted somebody to be in Wichita to be the CFO?

Page 50

A Permanent CFO to be in Wichita. I was not necessarily going to be the permanent CFO. This was more of an interim or temporary assignment.
Q Did you have any other titles while you were at The Coleman Company except for executive vice president and CFO?
A At The Coleman Company?
Q Yes.
A No. Not that I recall.
Q During the time that you were at The Coleman Company, did you remain an employee of MacAndrews & Forbes?
A Yes, I did.
Q Did you receive compensation from MacAndrews & Forbes?
A Yes, I did.
Q Did you also receive compensation from The Coleman Company?
A No, I didn't.
Q So you were never actually employed by The Coleman Company?
A I was employed by The Coleman Company.
Q You just didn't receive any compensation?
A My compensation was paid to MacAndrews & Forbes.

Page 51

Q Paid by MacAndrews & Forbes?
A No. My comp- -- the compensation for my services was paid to MacAndrews & Forbes.
Q Coleman Company paid MacAndrews & Forbes and MacAndrews & Forbes then paid you?
A That's correct.
Q And was that arrangement in place the entire time that you were CFO of The Coleman Company?
A That's correct. I did receive severance from The Coleman Company directly to me at the -- at the time that Russ Kersh let me go.
Q That was after the acquisition?
A That's correct.
Q Who did you report to while you were at The Coleman Company?
A Jerry Levin.
Q And who were your direct reports?
A Joe Tesoriero, the head of taxes. Gwen Whistler, who was head of international. Karen Clark, who was my vice president of finance. And there were a couple of others, but I can't recall their names at this point.
Q You joined Coleman as an employee effective August 1997?
A That's correct.

Page 52

Q Were you compensated on a salary basis during '97 and 1998?
A From who?
Q MacAndrews & Forbes.
A Yes.
Q Did you receive any other form of compensation other than salary?
A From MacAndrews & Forbes?
Q Yes.
A I would have received base salary and bonus.
Q Any other forms of communi- -- of compensation?
A I had a car provided to me. I had health benefits provided to me. That's about it.
Q All by MacAndrews & Forbes?
A That's correct.
Q What compensation, if any, did you receive from Coleman during that time period?
A I was awarded stock options when I started with The Coleman Company.
Q And it was a single award?
A Yes.
Q Did you ever exercise those options?
A I did.
Q During your time as CFO?
A That's correct.

NOT A CERTIFIED COPY

Q When? Can you place in time your exercise?
A It was --
Q Prior to -- I'm sorry. Go ahead.
A It was a couple days after my 16(b) restriction elapsed, which was six months. And in reviewing documents over the last several days, it was after we released our annual report and before the close of the first quarter. Was sometime in March of '98.
Q How many options were you awarded and exercised?
A My recollection is 50,000 options.
Q And what proceeds did you receive from the exercise?
A I can't remember the amount.
Q What was your salary in that time period from MacAndrews & Forbes on an annual basis?
A I can't remember.
Q Can you give me an estimate? Order of magnitude?
A $500,000 a year.
Q And bonus?
A 250,000 a year.
Q You believe that that estimate that you've just given me, recognizing it's an estimate, was for the time period 1997, 1998?

A That would be around that time. That would be about what I was earning, I believe.
Q During the time that you were the chief financial office of Coleman, did you receive compensation from any other entities other than MacAndrews & Forbes and The Coleman Company?
A I would have exercised stock options from my New World tenure, which those would have been translated to News Corp. options, and that would have been compensation from News Corp. under the -- when they acquired New World.
Q Those had -- were options that were awarded during the time that you were at New World?
A That's correct.
Q No new awards during that time period --
A No.
Q -- from News Corp.?
A That's correct.
Q And would you describe briefly for me, please, the employment that you've held since leaving Coleman.
A After I left Coleman, I took up residence at Panavision, which was a new MacAndrews & Forbes acquired or controlled company. Sometime after my arrival there -- so it's probably mid 1998 -- I became vice chairman and chief administrative officer of Panavision,

which I stayed through end of April 2000.
Q And since then?
A I joined Shelter Capital as a partner in May of 2000, which I'm -- I'm still there currently.
Q We talked about your merger and acquisition activities before joining Coleman. Have you continued a merger and acquisition practice after leaving Coleman?
A A practice in a professional service practice or the practice of mergers and acquisition?
Q Have you played any role in merger and acquisition transactions after leaving Coleman?
A Yes.
Q And would you describe that for me, please.
A We looked at a number of companies at Panavision to acquire. I don't think we concluded any of those potential acquisitions. And then in my roles and responsibilities as a partner of Shelter Capital, our primary focus is investing in companies from a private equity standpoint where we would take control positions and take board seats, and in that activities, we would acquire companies, and I have participated in a number of acquisitions in and around our portfolio companies at Shelter Capital.
Q While at Panavision, did you conduct, either directly or through your staff, due diligence on

acquisition candidates?
A Yes.
Q And could you describe that for me, please.
A A -- one of a potential acquisitions, we were looking at a lighting company that was based in London. I attended with the CEO of the company meetings with management of that company, reviewed their operations, facilities, their market share activities, how they were as a competitor against our activities in London, reviewed financial documents, audited financial statements, forecasts of their business.
Q For the same purposes that we talked about earlier?
A Yes.
Q During any of that work that was performed, did you engage outside advisors to assist in due diligence?
A No.
Q All conducted in-house?
A Yes. The -- none of the acquisitions were ever completed.
Q Do you or have you ever owned any property in Florida?
A No.
Q Are you registered to vote?
A In Florida?

NOT A CERTIFIED COPY

96-1910

NOT A CERTIFIED COPY

Page 57

Q Here in California.
A Yes, I am.
Q Have you ever registered to vote in Florida?
A No.
Q Do you have a California driver's license?
A Yes, I do.
Q Have you ever held a driver's license in Florida?
A No.
Q Ever paid income taxes to the State of Florida?
A Yes.
Q Uh --
A Through Price Waterhouse as a partner. We were a general partnership.
Q Since leaving Price Waterhouse in 1993, have you paid any income tax to the State of Florida?
A No.
Q Other than the stock options that were exercised in Coleman, did you own stock in Coleman independently?
A No.
Q Did you ever own stock in Scott Paper?
A No.
Q Did you ever own stock in Sunbeam?
A Not that I can recall.

Page 58

Q Did -- so you did not receive any Sunbeam stock personally in connection with the acquisition transaction?
A That's correct.
Q Ever own stock in Morgan Stanley?
A Not that I can recall.
Q I'd now like to focus on the time period when you were the chief financial officer of The Coleman Company. So all the questions that I'm going to be asking are focused on -- on that time period.
When you assumed the role of interim CFO, did Coleman have its own business planning organization?
A It wasn't interim CFO. I was the chief financial officer of The Coleman Company.
Q Thank you for that clarification.
But it was not intended to be a permanent position?
A It was permanent until we found a replacement, like everything in life.
Q All right. Let me start again.
A I'm sorry.
Q Well, I appreciate the clarification. That's -- that is very helpful and I want to be as accurate as I can in my questioning so I appreciate that.
When you assumed the responsibilities of chief financial officer of Coleman, did it have its own business planning organization?
A Could you -- what do you mean by business planning? Maybe that will help me understand your question.
Q Forecasting, budgeting, strategic planning.
A It was -- inside of The Coleman Company, there were individuals that provided forecasting and planning. We generally decentralized it so it was at the business units. And so if we had a PowerMate, which was our power generating company, they would have a -- an individual who would forecast that particular business unit. And then my staff would have assembled those forecasts together to create a long-term forecast for the company or forecast for the company.
Q And did those individuals report to you, even indirectly, at the individual business units?
A They really reported to the business unit leaders. They would have some indirect or dotted line responsibility to me, but mostly we required them to report to the business leaders.
Q What role, if any, did you play with regard to the restructuring that was underway at Coleman when you joined?
A I was very active in the restructuring of The Coleman Company when I arrived. They were in the middle of accounting adjustments for the restructuring, monitoring, inventory reserves that were taken. We also had IT issues with respect to Y2K that I was responsible for, and the overall health and development of the financial organization was my responsibility.
Q What was the time horizon over which the restructuring was intended to be completed?
A It had begun well before that -- well before I ever arrived, and I would say by the time I arrived, we were still in the middle of the restructuring. I don't know if I ever had a time in my mind when it would be completed.
Q Were there any target dates that had been discussed or contemplated internally?
A Not that I recall.
Q What aspects of the restructuring had been accomplished prior to your arrival?
A I think the majority of the restructuring items that had been accomplished is they had decided what inventory items or what products they were going to continue with for the majority of the items which they were going to go forward with, which ones they were not going to go forward with. And they were trying to dispose of excess inventories. They were deciding the

Page 59

Page 60

Page 61

capacity of plants. But all of it was in the process. I wouldn't say any of it was completed, but I would believe that 70 to 80 percent of the decisions that had been made had been made and we were in the execution phase of those, and monitoring.

Q Tell me about the remaining percentage. In other words, what restructuring decisions were made during your tenure?

A Restructuring is a very broad topic. I mean it's hard to say that there is three items on the restructuring checklist and you've got two of the three to go. Restructuring is a continuing effort that is -- requires monitoring and adjustments and course correction. We were continuing to look at excess inventory and --

THE REPORTER: I'm sorry. Could you slow down just a little.

THE WITNESS: Oh, I'm sorry.

THE REPORTER: "We were continuing to look at" --

MR. BRODY: Excess inventory.

THE WITNESS: -- excess inventory and in the area of disposing of that excess inventory trying to get some type of modernization from the inventory. We had one division, Safety and Security, that was for sale that

Page 62

we were trying to dispose of that was not a part of the core business on an ongoing basis, and we were trying to pull together our forward forecast of what was going to happen in some of the foreign locations. Korea, Japan. So I would say that by the time I arrived, we knew where the -- the issue areas were and we were still working through clarifying what we were going to do with those particular business units. So I would say that there was a lot of activity around restructuring. It was talked about quite a bit at investor conferences and there were always discussions about it on investor calls.

BY MR. CLARE:

Q What tasks associated with the restructuring remained unfinished at the time that the merger was completed?

MR. BRODY: Wait. Which merger?

MR. CLARE: With -- with Sunbeam.

THE WITNESS: It was the continuation of when I arrived. There was still some activities that were ongoing with respect to inventory and plants and which ones were going to stay open and which ones were going to close. A lot of those were also being discussed with the Sunbeam management and their advisors of what they wanted to do. For instance, we had a very large Y2K project underway that we were told to suspend awaiting the

Page 63

acquisition by Sunbeam because they wanted to go into a different course of action versus what we were thinking we wanted to do with the Sun- -- with The Coleman Company.

BY MR. CLARE:

Q These conversations that you're describing with Sunbeam management, did they take place during the pendency of while they were waiting for the transaction to close?

A Some of them did, yes.

Q Did any of those conversations about the future course of the restructuring at Coleman take place prior to the signing of the definitive merger agreement?

A Not that I recall.

Q But you do recall having conversations with Sunbeam management about the future direction of the restructuring between the signing of the definitive agreement and the closing?

A If it wasn't me directly, it would have been through Jerry giving me instructions.

Q So those conversations were taking place, some of them you were involved in, others Mr. Levin was involved in?

A That's correct. Mostly it would have been Jerry, not me.

Page 64

Q Did you ever meet with Sunbeam management between the time of the signing of the definitive merger agreement and the closing?

A I don't recall when the signing of the definitive merger agreement occurred. If someone could tell me what that date was, I could -- I could give you a better view if I met with anybody between that and closing.

Q Sure. The definitive merger agreement was signed February 27th, 1998, and the closing was approximately one month later at the end of March.

A I don't recall meeting with anybody between that -- those two dates.

Q Do you have a meeting in mind that you're thinking about that fell outside of that date?

A No. We had meetings that I recall in New York that would have occurred in December and January of -- December of '97 and January of '98 with some members of the Sunbeam team.

Q And the nature of those meetings were in the vein of discussing a potential merger transaction?

A I would say they would be -- they would be in the vein of exploratory and a merger transaction, yes.

Q And then ultimately negotiations for definitive agreement?

NOT A CERTIFIED COPY

016498

Page 65

A I didn't participate in negotiations.
Q The meetings that you attended were exploratory in nature?
A Yes.
Q And during those meetings, was there a discussion with Sunbeam management about the future direction of the restructuring at The Coleman Company?
A Not that I recall specifically about restructuring of The Coleman Company.
Q After the closing, did you have discussions and conversations with Sunbeam's management about the topic of the future direction of Coleman's restructuring?
A In the one area of IT, yes. The others that I can't recall. I was in charge of the IT -- the project that was ongoing at Coleman. So I would have been the one that they would have talked to about my activities and my staff's activities on the -- the IT area.
Q And you're certain that those conversations took place after the closing?
A After the definitive agreement or after the closing?
Q Well, that's what I'm trying to get at.
A It would have been between the definitive agreement and closing, yes.
Q Okay. And who -- who was that discussion with?

Page 66

A I don't recall.
Q Did it take place in New York?
A No. I was -- I asked if I should continue -- we had a 30 million dollar IT project that was underway. I had completed a one million dollar planning project just before the definitive agreement was signed is my recollection, and I was about ready to move to phase two which was to expend a lot of money and hire experts on the outside, and I was told to not do that. And I can't remember if it was -- who it was at Sunbeam who gave me those instructions.
Q Was that -- were those instructions given verbally to you or in writing?
A Verbally.
Q Over the telephone or in person?
A Most likely over the telephone.
Q And I apologize if you answered this already. You don't recall the person who gave you that direction?
A No.
Q Um.
A I believe it was the head of IT for Sunbeam, but I don't remember his name.
Q Was that -- was that a single telephone conversation that you had or a series of conversations about this topic?

Page 67

A There were a series of conversations about the topic.
Q All involving this one individual or were other members of Sunbeam's management team involved in that decision?
A I can't recall how many and what individuals were involved.
Q But you only recall dealing with one individual on that topic?
A That's correct.
Q Was Morgan Stanley a part of any of those conversations about that topic?
A Not that I recall.
Q And on the one verbal communication that you recall, was Morgan Stanley on the telephone line?
A Not that I recall.
Q Was it your understanding that Mr. Levin was meeting with Sunbeam management during this -- the time period between the definitive agreement and the closing?
A I don't have any knowledge if he was or wasn't. Jerry was in New York. I was in Wichita. So what Jerry was doing in New York was not something that I was keeping tabs on, his movement, so I wouldn't have any knowledge if he was meeting with them or not meeting with them.

Page 68

Q As you sit here today, did you ever have a conversation with Mr. Levin where that was discussed; in other words, what his -- his activities were during that time period between the definitive agreement and the closing?
A Not that I recall.
Q Earlier in your testimony -- and this is the reason why I'm asking you these questions -- you said that those -- some of the discussions that were had with Sunbeam management were held indirectly through Mr. Levin, and that's what I'm trying to understand, what you were referring to when you answered my question that way. Can you explain?
A Well --
MR. BRODY: Object -- I'm sorry. Object to the form. Go ahead.
THE WITNESS: Most of the restructuring of the company was complete. There were some areas in the grills and other areas of interest that overlapped between activities that Sunbeam would have had in its portfolio products and what Coleman would have had in its portfolio products. I was not involved with the day-to-day operations of our -- our companies from a business standpoint, sales, marketing, product development. That was Jerry's primary responsibility of

NOT A CERTIFIED COPY

Page 69

dealing with those business heads. And so if there were decisions with respect to those particular products in those companies and they affected what Sunbeam may have in those companies, I would only hear about it peripherally from others. I wouldn't necessarily engage in that conversation. So I assume that Jerry was probably having some discussions, but I don't know who they were with or when they were being held. They could have happened before the definitive agreement saying if we go to a definitive agreement, then don't do these things or do these things, but I don't have a recollection of when Jerry would have had those conversations

Q As you sit here today, are you aware of any contact by Coleman or its senior management team with Sunbeam's management team during that time period between the definitive agreement and the closing other than the one conversation or series of conversations on technology issues that you've already testified to?

A I believe that there were at least one visit by Sunbeam individuals to Coleman for a review of our operations at Coleman that probably occurred after the definitive agreement and before closing.

Q And was Morgan Stanley a part of that visit?

A I don't recall.

Page 70

Q Were you present for that visit?

A Yes.

Q And who from Sunbeam do you recall visiting?

A Russ would have been there certainly, and then I don't remember who else was with him.

Q But as you sit here today, you don't recall Morgan Stanley being part of the Sunbeam contingent that visited?

A No. But I don't recall who else was there other than Russ.

Q Did you have any responsibility for administering any tax sharing agreements between Coleman and any other MacAndrews & Forbes entity?

A I know that there was a tax sharing agreement, but I also believe that since Coleman had losses, that the tax sharing agreement at that time probably wouldn't have been active. So, yes, it would have been one of my responsibilities, and if there was something that needed to be done with respect to the tax sharing agreement, it would have been something I would have been responsible for.

Q Do you recall in fact during the time period that you were there Coleman contributing losses to the MacAndrews Consolidated Tax Group for purposes of the tax sharing agreement?

Page 71

A I've never seen MacAndrews & Forbes tax returns so I wouldn't know if the losses were utilized at MacAndrews & Forbes' level.

Q Okay. Putting aside the tax sharing agreement, was Coleman experiencing losses during that time period?

A I believe --

Q Net --

A I believe so.

Q Net operating losses?

A Yes.

Q So recognizing that you don't understand or have personal dealings with the -- how that would be treated under the tax sharing agreements, during the time period that you were there, Coleman was experiencing net operating losses?

A That's correct.

Q Okay. Do you have an understanding as to how the tax sharing agreements worked at MacAndrews & Forbes during that time period, '97 and '98?

A Not as I sit here today. Not that I can recall.

Q In 1997 and 1998 while you were at Coleman, were there any other or any -- strike that.

While you were at Coleman, were there any ways in which proceeds from Coleman's operations would flow to

Page 72

other entities that were owned by MacAndrews & Forbes?

A Outside of MacAndrews & Forbes or MacAndrews & Forbes?

Q MacAndrews & Forbes or any of its affiliated companies.

A I don't recall any other affiliated companies, but we certainly would have made payments to MacAndrews & Forbes for expenses.

Q For example, your salary?

A My salary would be a primary -- I think a good example, and there were others, I think, that would have been similarly situated.

Q Can you think of other examples of payments that were made by Coleman for expenses to MacAndrews & Forbes?

A Paul Shapiro's contract may have been up at MacAndrews, and he -- we would have reimbursed him for his. There may have been some insurance that was at MacAndrews that would have been reimbursed for. And there could have been just out-of-pocket expenses.

Q But as you sit here today, you can't think of any of those?

A Nothing specifically.

Q Even cat- -- category-wise, generically, can you describe the types of expenses that might fall into

NOT A CERTIFIED COPY

016500

that rubric?
A Could be rent, because I know that our offices for Coleman in New York were at 625 Madison, which was a -- an office building that was controlled by MacAndrews & Forbes or one of its companies.
Q Anything else that you can think of?
A Nothing in -- in detail.
Q When you -- when you answer the question that way, it leads me to want to ask the next question. Do you have something else in your mind that isn't a detailed --
A If we would -- normally what happened at Coleman, if there was an expenditure that was paid for in New York having to do with an out-of-pocket expense, it would come through the inter-company account as a disbursement. I can't remember if it was as detailed as pencils or if it was grand as, you know, airfare or somebody's salary. But that was a regular occurrence.
Q Did Coleman Company issue any debt while you were there?
A Not that I can recall.
Q Were you aware at the time whether any of the Coleman debt that existed was secured by assets of MacAndrews & Forbes or any MacAndrews & Forbes company?
A Not that I remember.

Q Did you have an understanding whether Coleman Company stock had been pledged to secure debt of MacAndrews & Forbes or any of its entities?
A Yes.
Q Can you describe that for me, please.
A It's not a company that I remember having a lot of involvement with, but it was typical for MacAndrews & Forbes Company to pledge stock of a -- one of its companies for debt at a holding company level between MacAndrews & Forbes, the ultimate parent, and the public company.
Q Are you aware of instances in which that was done while you were at Coleman?
A New debt or debt -- or is that -- that vehicle was in place when I was there, I believe, but I don't know if any new debt was put -- was sold during that time.
Q Were there any pledged transactions that were -- were made during your tenure that you can recall?
A Not that I can recall.
Q But your recollection is that that vehicle was in place at the time you arrived?
A Yes.
Q And was in place at the time of the acquisition?

A Yes.
Q Did you negotiate or play any role in connection with any of the Coleman debt that existed, even if renegotiating or restructuring existing debt?
A I seem to recall we may have had some discussions in and around covenants on our bank lines, but I can't recall. As a -- as a chief financial for a number of companies, I've had many discussion -- discussions with bankers and renegotiating covenants. So it -- it would have been something I think we would have been looking at at Coleman if we -- even -- maybe if we didn't have a restructuring of a covenant, we may have been in dialogue with our bankers about our covenants.
Q Did you negotiate or play in role in connection with the Coleman credit agreement? The revolver agreement?
A Not that I can recall specifically or generally.
Q Do you recall, specifically or generally, discussions with Coleman's lenders about covenant compliance?
A I know we monitored them as a part of our treasury activities. I can't recall if it would have gone to having discussions directly with the lenders.
Q Were there discussions that you had with

people at MacAndrews & Forbes about Coleman's compliance with its debt covenants?
A Yes.
Q And who would you discuss that with?
A Irwin Engelman, I believe, was chief financial officer at the time. It would have been a normal discussion point at times when I would be in New York. We -- we always would talk about compliance with debt covenants. We also, you know, talked about where we stood with respect to all of our covenants. It was a normal occurrence.
Q Did Coleman ever violate any of the covenants under its loan agreements?
A I can't recall if we did or we didn't.
THE REPORTER: Can I have a second to change paper?
MR. CLARE: Certainly.
MR. BRODY: You okay?
THE WITNESS: Sure.
BY MR. CLARE:
Q Was Coleman close to violating any of its covenants under the loan agreements while you were there?
A I don't recall.
Q Did Coleman prepare operating plans for 1998 while you were there?

NOT A CERTIFIED COPY

A Yes.
Q And what process did Coleman follow to generate that plan?
A Generally what we do is go out to each of the business units, we would make site visits. So, for example, if we were -- not all sites were visited. A majority of the sites -- for instance, we would go to Japan to have a site view, a visit with our Japanese subsidiary. They would prepare -- each of the divisions or subsidiaries would prepare a plan for the year, and that plan would be presented to the senior management of Coleman. That would include myself, Jerry Levin, and a couple of others in and around the senior manager -- management positions. That would include potentially Paul Shapiro, who is general counsel, and some others. And then we would have an exchange about their future plans, what they thought the company -- their particular subsidiary division was going to do in the future. And there would be a dialogue between senior management and those division heads.
Q And then what was the next step?
A Next step usually was a -- there would be notes either from Jerry or others on the senior management team back to the division about making some adjustments to the plan, and then ultimately those plans would come to my

staff, they would be added together, and a consolidated plan would be -- start to develop.
Q Was that infrastructure in place at the time you arrived?
A Yes.
Q And Coleman had been following that practice for the time prior to your arrival?
A I believe so.
Q Did Coleman have a plan for 1997?
A I believe it did.
Q Do you know how Coleman's performance compared to its plan for 1997?
A I don't recall.
Q Were you -- you personally were not involved in the making of the '97 plan?
A No, I was not involved in making that plan.
Q Were you involved at the end of 1997 in -- in reviewing performance against the '97 plan.
A I don't remember.
Q Were there documents at Coleman that tracked performance versus plan on an ongoing basis during the year?
A I'm sure there were, but not that I can recall.
Q You were personally involved in the making of the plan for 1998?

A That's correct.
Q How did Coleman's first quarter 1998 performance compare to its plan?
A I don't remember. I wasn't there at the end of the first quarter of '98.
Q When did you leave Coleman?
A The day after the acquisition. So it would have been the end of March of '98 and the quarter would not have been concluded.
Q Did you have reports that were provided to you on a intra-quarter basis showing performance against plan?
A Not -- yes, I'm sure I did, but not that I can recall.
Q So as you sit here today, you cannot recall at any point during the first quarter how Coleman's financial performance stacked up against its plan?
A Not that I can remember.
MR. CLARE: Okay. Let's mark the first exhibit.
MR. BRODY: What do you need?
THE WITNESS: I'm reaching for my glasses.
MR. CLARE: We'll start with MS 100.
(Deposition Exhibit MS 100 was marked for identification by the court reporter.)

MR. BRODY: Thanks. I'll find one later.
MR. CLARE: What are you looking for?
MR. BRODY: A stapler.
MR. CLARE: Oh.
Q Mr. Page, I'm handing you --
MR. BRODY: I'm sorry. It's stapled in the bottom corner.
BY MR. CLARE:
Q -- what's been marked as Morgan Stanley 100. Do you recognize this document?
A I do not.
Q Do you recognize this form of document -- of report or form that you've seen before in connection with your work at Coleman?
A Not that I recall.
Q Who at the Coleman organization would have been responsible for generating or maintaining this type of a report?
A During my tenure would probably be Karen Clark or one of our other assistant controllers.
Q And -- so I take it you don't have any understanding or basis to say how often this type of report was generated or updated?
A Not that I recall.
Q And maybe it's obvious, the reason why I'm

NOT A CERTIFIED COPY

016502

Page 81

asking you about this is that is a fax line at the top of this particular compilation that has your name and The Coleman Company on it. Do you see that at the top of Morgan Stanley Exhibit 100?
A I do.
Q And do you see that fax number there to the left of (316) 832-2501?
A I see that number.
Q Do you recognize that as a fax number that was associated with you in some way when you were at Coleman?
A I will speculate for you that 316 -- I know that's Wichita's Area Code, and this is probably coming off of my fax machine in Wichita. But I wasn't there.
Q How much time did you spend in Wichita during your tenure at Coleman?
A I believe when this was faxed, I wasn't at Coleman anymore.
Q Okay. But putting -- quite apart from this, how much time did you physically spend in Wichita while you were at Coleman?
A During the seven or eight months that I was the chief financial of -- chief financial officer of The Coleman Company, I was outside of Los Angeles somewhere on Coleman business every week except for the week of Christmas and the week of Thanksgiving. And my normal

Page 82

pattern would be I would probably be in Wichita between 50 and 75 percent of that time that I was traveling. Other times it would be New York or out at a plant or one of our subsidiaries.
Q Did Coleman have any operations in Florida?
A Not that I recall.
Q Do you recall ever visiting Florida for any purpose during your tenure at Coleman?
A Never.
I'll back that up and say not that I remember. I -- we may have done a conference down there once.
Q But as you sit here today, you don't recall ever traveling to Florida on Coleman business?
A Yeah, I don't recall going to Florida on Coleman business. The only thing, I have a recollection of giving a speech at an investor relations conference somewhere in the south, and it could have been Florida.
Q But that didn't specifically relate to Coleman business; that was --
A It would have been a Coleman presentation at a investors relation conference. It would be in the Morgan Stanley consumer products seminar and we were presenting The Coleman Company potentially.
Q Now, you said --
A That was an example.

Page 83

Q You used Morgan Stanley --
A As an example.
Q You don't recall who was --
A No.
Q -- sponsoring the conference?
A No.
Q And as you sit here today, you don't recall whether it was in Florida or outside of Florida?
A No. It could have been.
Q Looking at Morgan Stanley Exhibit 100, the title of it is "CLN Holdings Inc. Consolidated Statement of Operations." Do you recognize CLN Holdings Inc. as one of the indirect parents of Coleman Company?
A Yes.
Q The first line of the report here on the first page indicates net revenues, and it compares the three months -- first three months in 1997 and the first three months of 1998. Do you see that?
A Yes, I do.
Q And this document shows that the first three months of 1998 revenues are lower than the first three months of 1997.
A Yes, it shows that.
Q Is that consistent with your recollection that while you were at Coleman in the first quarter of 1998

Page 84

that net revenues were below what they had been in the prior year?
A I wouldn't have known because I never closed the first quarter of '98.
Q But even within the quarter, was it your understanding that that was the case?
A I wouldn't have known.
Q So at any point during the first quarter of 1998, you would not have seen documents or reports showing how Coleman's performance to date in the quarter compared to the same quarter in the prior year?
A But the quarter wouldn't have been complete.
Q I understand that. It wouldn't have been for the -- a complete quarter, but for a period within the first quarter. Did you ever --
A Yeah. The period could have been January. Based on a timing of the close of this transaction, we may or may not have had a February view. So we would have at -- we probably would have had January closed, but we also would have been still working on February or could have just com- -- completed February.
Q Was it -- in the January/February time period, did you ever have information that Coleman's operations to date in the quarter were lower than the same time period in 1997 quarter to date?

NOT A CERTIFIED COPY

A I don't recall.
Q You don't recall how its performance compared?
A No.
Q During any of the conversations that you had with Sunbeam, which you've characterized as exploratory conversations, did you have any discussions with Sunbeam about Coleman's performance in the first quarter of 1998 as compared to the first quarter of 1997?
A Not that I remember.
Q I'd like you to turn back into the third page of this document, it's the Bates number at the bottom CPH 0282214. And, again, we're looking at Morgan Stanley deposition Exhibit 100.
A 2214?
Q Correct. And the title on this page is The Coleman Company, Inc. Income Statement March 1998. Is this a form of document that you're familiar with?
A This looks like one of our income statements.
Q Is this a report that would have been provided to you on some basis while you were at Coleman?
A This particular one? No.
Q Or this form of document?
A Yes, it could be.
Q Okay. I want to focus on the right half of the page and just have you explain to me what information is

being conveyed in the columns that are under year -- the year-to-date heading.
A You want me to read across to you?
Q Well, I want to understand what -- what's being conveyed. The first column says "Actual - 1997." And that I'm interpreting as the actual 1997 performance?
A That would be my interpretation, also.
Q Do you know that to be the case?
A Not that -- I don't know -- because I've never seen this document before -- if that is in fact 1997.
Q Putting aside the specific numbers that are on the page, that's -- that's the information that would be --
A That would lead me to believe that that was actual results from 1997, the first quarter.
Q And the second column is "Plan - 1998"?
A It reads "Plan - 1998."
Q And would the information that is conveyed in that column be the results of the planning process that you described?
A I don't know if -- I don't know if that's true or not.
Q So you don't know whether the results of the planning process that you described earlier were ever incorporated into a -- an income statement form like

this?
A I don't know whose plan this one is.
Q Again, putting aside the specific numbers on the page --
A And I don't know if we ever completed the planning -- I can't recall if we completed the planning process for 1998 when I was there.
Q So it's your testimony that as you sit here today, you're not sure whether the plan for 1998 was ever completed?
A I can't remember if we completed it or not. I know it was in process. I just don't know if it was ever finalized.
Q And then the third column under that same header would be the actual 1998 performance to date?
A Yes. That would be -- I would interpret as being the actual performance of the company through that period.
Q Were you ever sent or copied a report of this form that purported to show the actual 1998 performance to date compared to a plan amount during your tenure?
A For the first quarter of '98?
Q Yes.
A Never.
Q In the fourth quarter of 1997, did you receive

such a document?
A Yes, I'm sure.
Q And you -- would it have been in this form that we're looking at here on the third page of Morgan Stanley Exhibit 100?
A I believe so.
Q As you sit here today, do you have an understanding as to how Coleman's performance in 1997 compared with the 1997 plan?
A Not that I can recollect.
Q During the first quarter of 1998, did you have a sense of whether Coleman's performance was above or below plan?
A Not that I can remember.
Q Would that have been a topic that was discussed with investors at -- or analysts?
A Performance through -- through the first quarter? Is that what you're asking me? At an investor conference?
Q As it relates to -- as it compares to plan.
A We wouldn't have talked to -- that would be selective disclosure issues. We wouldn't have done that.
Q Was Coleman's plan for either 1997 or 1998 ever discussed or disclosed outside of Coleman Company or MacAndrews & Forbes?

NOT A CERTIFIED COPY

Page 89

A Not that I can recall.
Q At the time you left -- strike that.
At the time that the definitive agreement was signed, was Coleman's sales to date in the first quarter of 1998 above or below the sales for that same time period in the first quarter of 1997?
A I don't recall.
Q You can't even recall directionally whether it was above or below?
A No.
Q Were you part of any discussion in which Coleman or anybody speaking on behalf of Coleman informed Sunbeam during the first quarter of 1998 that its financial performance was below its plan for 1998?
A Not that I can recall.
Q Did Coleman ever issue any press releases or public statements in the first quarter of 1998 regarding its performance as compared to its plan?
A Not that I can recall. We wouldn't have sent out a press release on our internal plan to an outside -- that would not be something we would ever do.
Q Why not?
A Because no one would have an idea what our internal plans were.
Q As you sit here today, do you recall ever

Page 90

discussing in any context Coleman's 1998 plan with Sunbeam?
A Not specifically.
Q What about generally?
A I don't recall any conversations directly about the plan that I can recall.
Q Were you ever asked questions about Coleman's performance objectives for 1998?
A Not that I can remember.
Q Do you recall that topic being discussed with you? Putting aside the specific questions that may or may not have been asked.
A Not that I can remember.
Q Do you recall any discussions with Morgan Stanley about Coleman's 1998 plan?
A Not that I can remember -- recall.
Q Do you recall that topic being discussed?
A No.
Q I'd like you to turn to the last page of Morgan Stanley Exhibit 100. It's Bates number ending in 2227. This document at the top is titled "Management Judgment Income Statement." Do you recognize this form of document?
A No.
Q Do you see the handwriting at the top that

Page 91

says, "1-Time Charges"?
A I do.
Q Is that your handwriting?
A That is not.
Q Do you have any understanding as to what information is being communicated on this page?
A Nope.
Q Did you provide written reports to MacAndrews & Forbes regarding Coleman's performance while you were at Coleman?
A The only time I remember providing written reports regarding Coleman to MacAndrews & Forbes would have been at board meetings.
Q At Coleman board meetings?
A Yes.
Q No ongoing reporting?
A Not that I can recall.
Q And to whom would those reports be given at the board meetings?
A Board members.
Q Including members of MacAndrews & Forbes?
A That's correct. Whoever of us would be in attendance.
Q Do you recall which board members were affiliated with MacAndrews & Forbes during your tenure?

Page 92

A No.
Q Putting aside the written reports that were provided to Coleman's board members, did you verbally report financial information about Coleman to MacAndrews & Forbes employees during your tenure?
A Not that I can recall.
Q You testified earlier that the topic of covenant compliance was something that you would discuss with MacAndrews & Forbes; is that correct?
A That's correct.
Q Do you recall other Coleman financial topics that were discussed with MacAndrews & Forbes?
A Not that I can recall.
Q So as you sit here today, covenant compliance is the only topic that you can recall discussing with MacAndrews & Forbes during the time that you were there?
A Yes.
Q Who at MacAndrews & Forbes did you provide that information to?
A As I think I mentioned before, it was Irwin Engelman, who is the chief financial officer, and there was someone who would have been in his treasury area who had banking relations that I may have spoken to.
Q Do you know that individual's name?
A Not that I can remember.

NOT A CERTIFIED COPY

Page 93

Q Were these conversations with Mr. Engelman part of an ongoing reporting that you had with him or to him or were these more ad hoc conversations that dealt with specific issues?
A I'd characterize them more as ad hoc.
Q Do you recall what events prompted these discussions?
A Um, generally Irwin would call if he was going to meet with one of the bankers and ask how we were doing in compliance with our covenants, and was there anything that the bankers should know in advance.
Q And was there anything that you reported to Mr. Engelman to report to the banks during your tenure?
A Not that I recall.
Q Were you involved in any way in the sale of Coleman's Safety and Security?
A Not directly. I think I had dispatched maybe one or two -- one or two of my staff to help out on that disposition, but I was not an active participant in the disposition of that company.
Q Do you know why that division was sold?
A I believe that it didn't fit the long-term strategy that Jerry had for the company.
Q Which was what?
A More of a consumer recreation company than a

Page 94

product company.
Q What were the proceeds that Coleman received from that sale?
A I don't remember.
Q Do you recall it being in the range of approximately $100,000,000?
A That sounds like around in the range it was being discussed being sold.
Q Was that a cash sale?
A I believe so.
Q Was -- during your tenure at Coleman, was Coleman approached by any company other than Sunbeam with regard to a potential merger or acquisition?
A Not that I can remember.
Q Did Coleman approach any other company during your tenure about a potential merger or acquisition?
A We looked at acquiring a couple of companies during my tenure. I can't recall if it was before or after or during the discussions with Sunbeam.
Q Well, it certainly wasn't after. Right?
A Well, we could have, because it could have been a conversation after Coleman was sold, someone else said, "Would you like to get back in the consumer products business?" And they could be -- it could be a discussion I had with a MacAndrews & Forbes individual that would

Page 95

have been a MacAndrews & Forbes entity, not under the Coleman umbrella.
Q I see. When Coleman was approached by Sunbeam and those conversations were underway, did Coleman seek out other potential bidders?
A Not that I know. Not that I'm aware of.
Q Okay. Now I'd like to talk specifically about Sunbeam's acquisition of Coleman. So my questions are all going to be geared toward your role and trying to understand what role you played in -- in that process. So I will ask you to describe what role you played in that process, and we'll start there.
A Um, my earliest recollection was that I was invited into a meeting to meet some representatives from Sunbeam. I mostly was a participant in Q and A discussions with the Sunbeam individuals asking about the operations of Coleman. My role really during the period of the -- of the Sunbeam/Coleman discussions was mostly centered on continuing to run the financial operations of The Coleman Company. I wasn't that directly involved in the discussions that Sunbeam was having with Coleman direct.
Q We'll go through the meetings that, at least there are records, that you attended in more detail. But you testified about your earliest recollection of having

Page 96

this meeting with Sunbeam and participating in a Q and A session. Were those questions that were being directed by Sunbeam to Coleman about Coleman's business?
A Yes.
Q Were any questions going the other direction about Sunbeam's business by Coleman during that meeting that you recall?
A Not that I recall.
Q Do you recall the time period of that meeting?
A I recall one -- at least one meeting before the Christmas holidays where we had a -- a discussion with individuals from Sunbeam.
Q Is that the meeting that you were just referring to?
A Yes.
Q I asked you earlier or you testified in response to one of my questions whether you attended any of the negotiation sessions with Sunbeam, and I believe you said that you wouldn't characterize any of the meetings that you attended as negotiations; is that correct?
A That's correct.
Q So it would be fair to say that all of the meetings that you attended with Sunbeam would be characterized as exploratory sessions; is that the way

NOT A CERTIFIED COPY

16div-024650

Page 97

you described it?
A Yes.
Q Were you part of any meetings where price or structure of the transaction were discussed?
A I don't think so.
Q At the meetings that you remember attending, were Morgan Stanley present?
A There was one meeting that I remember that Morgan Stanley was present.
Q And who from Morgan Stanley?
A I don't recall.
Q What role did Morgan Stanley play at that meeting?
A It was a discussion where Russ was presenting the Sunbeam plan or its internal views of its forecast, and I think some Morgan Stanley individuals were present at that discussion.
Q That was Mr. Kersh who was doing the presentation?
A Yes.
Q Did Morgan Stanley speak during that meeting?
A Not that I recall.
Q Did you attend any meetings or telephone conferences with Sunbeam where Morgan Stanley was present other than the one that you've described?

Page 98

A Not that I can recall.
Q Did you attend any meetings or telephone conferences with Sunbeam where Morgan Stanley was not present, in other words, outside of Morgan Stanley's presence?
A Yes.
Q The first Q and A session that you described, is that one such --
A Yes.
Q -- session?
Are there others that you can recall as you sit here?
A Well, after the definitive agreement was signed, certainly I had discussions regarding IT and other things with Sunbeam personnel that there wouldn't have been anybody other than myself and that particular individual on the phone.
Q And that was in the time period between the definitive agreement and the closing?
A That's correct.
Q And it was shortly after the closing that you no longer worked for Coleman?
A That's correct.
Q Were you involved in any way in the due diligence that Sunbeam did with regard to Coleman's

Page 99

operations?
A Yes.
Q And how were you involved?
A I would answer any questions that they would ask of me or provide my staff to respond to any other inquiries they may have.
Q And you described the one meeting where questions were asked directly to you. Were there other such meetings where questions were asked to you about Coleman's operations or financial performance?
A Yes.
Q And where did those meetings take place?
A There was another meeting in New York -- I think it was probably after the beginning of '98 -- where we had another meeting with -- with Sunbeam personnel.
Q And, again, the purpose of that meeting or the -- was for Sunbeam to ask questions about Coleman?
A That's correct.
Q During that meeting, were -- did people from Coleman ask questions about Sunbeam or its business operations?
A The only time I remember having a discussion regarding the operations of Sunbeam was at a meeting where Mr. Kersh made a presentation on the Sunbeam company.

Page 100

Q And that was the same meeting that you described earlier?
A Yes.
Q And Morgan Stanley was present for that?
A That's correct.
Q But you don't recall them saying anything?
A That's correct.
Q Were you involved with or responsible for conducting any due diligence on Sunbeam prior to the acquisition?
A No.
Q Did you work with any of Coleman's outside advisors who were tasked with doing due diligence on Sunbeam?
A No.
Q Did you perform an evaluation of the deal for Coleman?
A No.
Q Do you know who, if anyone, did perform such evaluation?
A I don't have a direct recollection of anybody performing that that I would have known. If it would have been done, it would have been done by MacAndrews & Forbes staff.
Q Are you aware one way or the other whether such

NOT A CERTIFIED COPY

Page 101

evaluation was done? Have you ever seen it before?
A Not that I remember.
Q Were you ever asked for information to prepare such evaluation?
A Evaluation of what?
Q Of what the acquisition transaction would be worth to Coleman or its shareholders.
A Not that I recall.
Q Did you receive any inquiries from MacAndrews & Forbes related to evaluation that would -- that they were conducting for the deal?
A Not that I recall.
Q Are you aware of any documents that would reflect Coleman's or MacAndrews & Forbes' estimate of the economic benefits it expected to receive from the transaction?
A Not that I can remember.
Q If we wanted to ask somebody within the MacAndrews & Forbes organization for that type of information, who would be the likely individuals that we would go to?
A Irwin Engelman, Jim Maher. Ronald, I'm sure. Howard Gittis.
Q When -- in the other acquisition, the merger transactions that you've been involved in with

Page 102

MacAndrews & Forbes companies, are there documents that are put together reflecting the economic benefits that MacAndrews & Forbes expects to receive?
A No, not -- well, I'm sure there were, but none -- none that I would have been prepared -- I would prepare.
Q Were you aware -- aware that such documents existed?
A Not that I'm aware of.
Q At the time of the transaction, did you think that Sunbeam was overpaying for Coleman?
A I don't have an opinion.
Q Did you ever have a discussion with anyone at Coleman or MacAndrews & Forbes about the consideration that was being paid by Sunbeam to Coleman shareholders?
A What kind of consideration is being paid? Yes.
Q Okay. We'll talk about that in a moment. But in terms of the overall compensation and whether it was over -- whether Sunbeam was overpaying, did you ever have any discussions with anyone about that topic?
A Not that I can recall.
Q Did you ever discuss that with Karen Clark?
A Not that I recall.
Q Did you ever discuss the amount of compensation that Coleman's shareholders would be receiving with

Page 103

Mr. Maher?
A Not that I can recall.
Q Or Mr. Engelman?
A Not that I can recall.
Q Mr. Gittis?
A Not that I can recall.
Q Mr. Perelman?
A Not that I can recall.
Q Anyone within the MacAndrews & Forbes organization?
A They negotiated the deal. So I wouldn't have had a discussion about price with them.
Q Did you have a view in the first quarter of 1998 how much you thought The Coleman Company was worth?
A No.
Q Was that something that was outside of your job function?
A I wouldn't have been qualified to value The Coleman Company.
Q Now, you're aware -- or let me ask it this way. Are you aware that during the discussions between Sunbeam and Coleman that various forms of consideration were discussed for the acquisition?
MR. BRODY: During the negotiations? Is that the question?

Page 104

MR. CLARE: Yes.
THE WITNESS: Yes. I'm aware that there were various forms of compensation or consideration that were being considered.
MR. CLARE: Okay. We need to stop to change the videotape.
THE WITNESS: Great.
THE VIDEOGRAPHER: Going off the record. The time is 2:43 p.m. This is the end of Tape 1.
(Recess.)
THE VIDEOGRAPHER: Back on the record. The time is 2:52 p.m. This is the beginning of Tape 2.
BY MR. CLARE:
Q Okay. Mr. Page, before the break, we were talking about the consideration that Coleman shareholders would receive in connection with the acquisition transaction. And just so I'm clear, I believe you've testified already that you do not recall any conversations that you had about the amount of the compensation that some -- Coleman shareholders would receive under the transaction; is that correct?
A That's correct.
Q But I was then going to ask you about the different forms of consideration that were under discussion, and you did have conversations about the

NOT A CERTIFIED COPY

016508

Page 105

different forms of consideration; is that correct?
A Not that I was advised, but I heard that in the -- in the negotiations there was a combination of cash and stock.
Q That was the way the deal was ultimately struck?
A That's correct.
Q And an additional aspect of the acquisition was that Sunbeam agreed to assume certain debt at Coleman and the operating company level; is that correct?
A That's correct, ultimately.
Q Do you recall there being discussions about the acquisition being a cash only transaction?
A I never heard it was a hundred percent cash transaction. I always understood there being some equity element.
Q What is -- what was the source of information that you had about the forms of consideration that were under discussion?
A That would -- Jerry Levin would have been the one that -- who would have informed me.
Q He was reporting back to you on the negotiations?
A That's correct.
Q Was it your understanding that from the outset

Page 106

Sunbeam stock was intended to be a portion of the consideration?
A I'm not -- I wasn't a part of the negotiations. I don't know what the form of the original thoughts for the transaction were.
Q From the time that you first were apprised of -- of what was being discussed, Sunbeam stock was part of the consideration package?
A That's what I recall.
Q So there was never a time when it wasn't, to your understanding?
A That's correct.
Q Did you have any discussions with Mr. Levin about what Coleman's preferred compensation package would be?
A No.
Q With anyone at MacAndrews & Forbes?
A Not that I recall.
Q Were you asked for your input as to whether Coleman should proceed with the acquisition transaction?
A Not that I recall.
Q Did you have a view?
A Not that I recall.
Q Did anyone ask you or were you part of any discussions about whether Coleman shareholders should

Page 107

accept Sunbeam stock as a part of the consideration?
A I don't --
MR. BRODY: Objection to form. Asked and answered.
Go ahead.
THE WITNESS: Not that I remember.
BY MR. CLARE:
Q That topic was never discussed with you to the best of your recollection?
A To the best of my recollection, no.
Q Did you have a view as to whether Coleman shareholders should accept Sunbeam stock as part of the consideration?
A I didn't have a view.
Q Were you part of any discussions where anyone suggested in words or in substance that Coleman shareholders should not accept Sunbeam stock as part of the consideration?
A No, I don't have a recollection of having that conv- -- that thought or discussion.
Q Did you ever hear Mr. Levin express the view that the Coleman shareholders, and in particular MacAndrews & Forbes, should get all cash for its interest in Coleman?
A Not that I recall.

Page 108

Q Mr. Levin never discussed that with you?
A Not that I recall.
Q When you were in New York, did you ever attend breakfast meetings with Mr. Perelman?
A Never.
Q Was there anyone within Coleman or the MacAndrews & Forbes organization that was in favor of accepting Sunbeam stock, to your knowledge? Or expressed that view in your presence?
A Not that I remember.
Q Was there any discussion -- did you have any discussion or part of any conversations about the pros and cons of accepting stock in a company that was being operated by Al Dunlap?
A Not that I remember.
Q Did anyone in your presence ever express doubts about Mr. Dunlap's track record?
A No.
Q Or about Sunbeam's projected growth?
A Not that I remember.
Q Did you ever discuss Sunbeam with any financial analysts?
A Not that I can recall.
Q Are you aware that Mr. Levin met with a Paine Webber analyst named Andrew Shore at or around the time

NOT A CERTIFIED COPY

016509

Page 109

of the acquisition transaction?
A Not that I remember or recall.
Q Did he ever discuss with you conversations that he, Mr. Levin, had had with financial analysts about Sunbeam?
A No.
Q Now, broadening beyond Mr. Levin. Did you ever have discussions with MacAndrews & Forbes personnel who had reported conversations they had had with financial analysts regarding Sunbeam?
A No.
Q Any discussions with Mr. Levin or anyone within the MacAndrews & Forbes organization about structuring the deal in a way that would include Sunbeam assuming holding company level debt?
A Not that I recall.
Q Did you have an understanding as to the need of MacAndrews & Forbes or any of its subsidiaries to remove those -- that debt from its books in order to accomplish other financial objectives?
A Not that I remember.
Q Did you have any discussions about financing transactions that MacAndrews & Forbes was in the midst of in the fourth quarter of 1997 and the first quarter of 1998?

Page 110

A I don't have -- that was not something that I would have been aware of.
Q And, in fact, you were not aware of?
A I was not aware of.
Q Did you ever hear anyone say that part of the reason why holding company level debt was made part of the consideration package was to allow MacAndrews & Forbes to refinance its debt for other companies?
A Not that I remember.
Q Were you aware or are you aware of credit agreements at MacAndrews & Forbes that impose limits on its ability to retain proceeds from asset sales?
A I'm not aware of that.
Q Were you aware of such agreements or such limits in 1997 or 1998?
A No.
Q Did you ever hear it say (sic) that the consideration package for the Sunbeam/Coleman transaction was structured in a way to maximize MacAndrews & Forbes' retention of cash proceeds?
A No.
Q Did you ever discuss with anyone the implications of the Sunbeam acquisition under credit agreements at MacAndrews & Forbes?

Page 111

A No.
Q Did you have an understanding from any source that MacAndrews & Forbes was limited in the amount of cash consideration that it could retain as a result of the acquisition transaction as opposed to using it to pay down existing debt?
A No.
Q Did you have any work -- did you do any work with CSFB on the merger acquisition?
A Not that I recall.
Q Were you aware that they were retained as Coleman's financial advisor for the acquisition?
A Yes.
Q And who at Coleman was primarily responsible for dealing with CSFB?
A I don't remember.
Q Wasn't you?
A Not that I remember.
Q Did you have any dealings with CSFB in connection with the transaction?
A Not that I remember.
Q Did you have any dealings with other consultants or outside advisors in connection with the acquisition transaction?
A I think I met some individuals from Coopers who

Page 112

were on the Sunbeam team.
Q And who did you understand Coopers to be working for?
A Sunbeam.
Q And what was the purpose of -- of your conversations with Coopers?
A Well, I was just introduced to them at some point when they started their work in Wichita.
Q No substantive discussions?
A Not with me.
Q Just introductions?
A Introductions with me, but they had conversations with my staff.
Q Who else at The Coleman Company was on the team that was working on the acquisition transaction?
A Sunbeam acquisition of Coleman?
Q Yes.
A It would have been Jerry Levin, Paul Shapiro in New York. And then could have been some of my staff working directly with individuals at Sunbeam. Karen Clark, others.
Q Are you aware of conversations that Ms. Clark or others had directly with members of Sunbeam?
A I would be informed if they were going to have a conversation. I wouldn't know the details of the

NOT A CERTIFIED COPY

Page 113

conversation.
Q Were you informed that those conversations did take place?
A Yes.
Q Before the definitive agreement was signed?
A Very little before the definitive agreement was signed. Most of it was after the definitive agreement was signed.
Q During the time period between the definitive agreement and the closing?
A Yes.
Q And it was your understanding that Ms. Clark had conversations directly with Sunbeam during this time period?
A Yes.
Q Other members of your staff?
A I believe Joe Tesoriero, who was my director of taxes, would have had discussions with tax individuals at Sunbeam or their advisors.
Q During that same time period?
A Yes.
Q Anyone else on your staff who would have had direct conversations with Sunbeam during that time period?
A Nobody that I can remember.

Page 114

Q In any of the reports that you received that those conversations were going to take place or had taken place, was it ever reported to you that Morgan Stanley was a part of those discussions?
A Not that I can recall.
Q Was it your understanding that Ms. Clark's conversations were directly with her counterparts at Sunbeam?
A Yes.
Q And the same thing with Mr. Testatori (sic)?
A Tesoriero?
Q Thank you.
A Yes.
Q I really butchered that.
A It would only have been with Sunbeam representatives. I wouldn't have known if there had been others around.
Q You were not a part of any of those conversations?
A Sometimes I would be.
Q In any of the conversations that you were a part of, was Morgan Stanley on part of the conversation?
A Not that I recall.
Q And all of those conversations took place before the closing?

Page 115

A Yes. Well, I'm sure there were ones that took place after closing, but I wasn't there.
Q The ones that you were a part of were?
A Yes. Before the closing.
Q And what was the purpose of those conversations that took place between Coleman and Sunbeam during that interim period?
MR. BRODY: Object to the form.
Go ahead.
THE WITNESS: They would have been due diligence related, trying to understand the financial operations of Coleman. For Joe Tesoriero, tax positions that Coleman had taken historically. And it was just a requirements for information, I think, to -- to -- for the Sunbeam individuals to perform due diligence.
BY MR. CLARE:
Q Which direction was due diligence occurring during these conversations? Was Coleman doing due diligence on Sunbeam or was Sunbeam doing due diligence on Coleman or both?
A Sunbeam doing due diligence on Coleman.
Q During these -- any of those conversations that you were part of or reported to you, did Coleman request any information or documents from Sunbeam about Sunbeam?
A The only time I recall was when Russ presented

Page 116

the strategic plan for Sunbeam to a group of MacAndrews & Forbes and Coleman executives.
Q And that was the meeting that we talked about a few moments ago?
A That's correct.
Q But during this time period between the definitive agreement and the closing, during any of those conversations, did Coleman make any requests of Sunbeam, to your knowledge?
A Not that I recall.
Q Were requests made by Sunbeam of Coleman for information?
A Yes.
Q And that was in the nature of due diligence that Sunbeam was doing on Coleman?
A Between the definitive period and closing, yes. And also they were trying to have a better understanding of how our work flows came about and more detailed information of how they would consolidate Coleman into the Sunbeam organization.
Q Are you aware of any due diligence that was conducted by Coleman or Coleman (Parent) Holdings on Sunbeam Company?
A Not that I recall.
Q Are you aware whether others in the

NOT A CERTIFIED COPY

Page 117

organization, either at Coleman or within MacAndrews & Forbes, were responsible for conducting due diligence to Sunbeam?
A Not that I remember.
Q You understood at the time that the acquisition that was being discussed would have called for Coleman (Parent) Holdings to receive a substantial number of Sunbeam shares, correct?
A Yes.
Q And it would result in MacAndrews & Forbes and its affiliate companies owning 10 to 15 percent of Sunbeam after the transaction closed?
A I'm not aware of -- I don't recall the exact percentage.
Q But it was a substantial interest that they were taking in Sunbeam?
A Yes.
MR. BRODY: I'm sorry. Belatedly object to the form.
Go ahead.
BY MR. CLARE:
Q Are you aware as you sit here today of any due diligence that was conducted by Coleman or MacAndrews & Forbes or any of its affiliated companies regarding Sunbeam?

Page 118

A Not that I can remember.
Q Did you have a view at the time that due diligence should be conducted with regard to Sunbeam or its operations?
A I can't recall.
Q Would it be typical in merger and acquisition practice for a company that's acquiring a substantial amount of equity in another company to conduct due diligence on its operations?
MR. BRODY: Object to form.
THE WITNESS: If it's not a controlled transaction, it would be a little unusual.
BY MR. CLARE:
Q It would be unusual?
A We had a similar transaction when News Corp. acquired New World, and we did not do due diligence on News Corp.
Q Who at Sunbeam do you remember discussing prior to the signing of the definitive agreement?
A I don't understand. Could you repeat that?
MR. BRODY: Yeah.
MR. CLARE: I'm sorry. It was probably a bad question. I think I left out a word.
Q Who at Sunbeam do you recall talking to prior to the signing of the definitive agreement?

Page 119

A I remember having a couple of conversations with Russ Kersh and his head of taxes, who I -- I can't recall his name, and his IT individual, who I can't recall his name either.
Q Did you have conversations with Mr. Kersh that were apart from the meeting that you described where Mr. Kersh made a presentation about Sunbeam's plan?
A No.
Q That was the only conversation that you remember with Mr. Kersh?
A Regarding Sunbeam's forecast, that's correct.
Q Well, on any subject related to Sunbeam?
MR. BRODY: Is this prior to the definitive agreement stage or anytime?
BY MR. CLARE:
Q This is prior to the definitive agreement stage?
A Not that I recall.
Q Did you ever -- did you have any direct dealings with Al Dunlap?
A Never met him. Never talked to him on the phone.
Q Rich Goudis?
A Yes.
Q And what -- again, prior to the definitive

Page 120

agreement, what were your dealings with Mr. Goudis?
A I remember the name. I think he may have been one of the -- at one of the meetings or I was on a phone call with him in advance of the definitive agreement.
Q Did you have discussions with Mr. Goudis where -- directly; in other words, without Morgan Stanley present?
A Not that I recall.
Q And as you sit here today, do you recall which of those -- any of the meetings Mr. Goudis was at?
A I don't recall.
Q How about David Fannin?
A I believe David -- I met him maybe in the first or second meeting. I don't remember if he was at any of the later ones.
Q Don Uzzi?
A Never met him.
Q Scott Yales?
A I don't recall that name.
Q Kyle Kaiser?
A I don't recall that name.
Q Kyle Sinclair?
A That name does not ring a bell.
Q Diedra DenDanto?
A I don't recall that name.

NOT A CERTIFIED COPY

016512

16div-024656

Q Lee Griffith?
A No. Don't remember him.
Q Tom Hartshorne?
A Don't recall.
Q Chuck Myers?
A Don't recall.
Q Bill Bloomfield?
A Don't recall.
Q Other than the individuals that we've talked about, do you recall having conversations or dealings with anyone at Sunbeam?
A Regarding?
Q Regarding the acquisition transaction. Again, prior to the definitive agreement?
A Other than those handful of individuals we just went through, those would have been the only ones I would have talked to.
Q During any of those meetings or conversations, did any of these individuals ever refuse to answer any questions that were asked of them about Sunbeam?
A Not that I recall.
Q Did you have any conversations with Sunbeam's in-house accounting professionals?
A Well, Russ was a chief financial officer so he would have been an accounting professional. So I

remember him. And I probably talked to his controller. Escapes me who his name was.
Q Mr. Goudis?
A Yeah, I think it was Goudis.
MR. BRODY: No. Object to form. Goudis is Director of Investor Relations.
MR. CLARE: Yes, you're right.
Q Any members of the Sunbeam in-house audit team?
A External audit team or internal audit team?
Q Internal.
A Not that I recall.
Q Did you ever have any discussions with Sunbeam's outside auditors at Arthur Andersen?
A I remember talking to a tax partner at some point, but I don't recall talking to the audit partner.
Q What was the subject of the discussion with the tax partner?
A I think it was introduction to my -- Joe Tesoriero, who is my head of taxes.
Q Was this with regard to information requests that were being made by Sunbeam to Coleman?
A Yes.
Q So the purpose was not to obtain information from Arthur Andersen?
A No.

Q Are you aware of any requests made by anyone from Coleman or anyone within the MacAndrews & Forbes organization to Arthur Andersen about Sunbeam?
A No.
Q Are you aware of any discussions with any of Sunbeam's customers about Sunbeam?
MR. BRODY: By whom?
MR. CLARE: By anyone at Coleman or anyone within the MacAndrews & Forbes organization or any of its outside advisors.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q Did you visit Sunbeam's headquarters prior to the signing of the definitive agreement?
A No.
Q Did you visit any of Sunbeam's manufacturing facilities?
A No.
Q Are you aware whether anyone from Coleman or MacAndrews & Forbes visited Sunbeam's headquarters prior to the signing of the definitive agreement?
A Not that I recall.
Q Or any of Sunbeam's manufacturing facilities?
A Not that I recall.
Q Did you ask -- strike that.

Who was Coleman's auditor during this time period?
A Ernst & Young.
Q Did you ever have discussions with Ernst & Young about Sunbeam?
A Yes.
Q Did you ask or direct Ernst & Young to make any inquiries of Sunbeam or its advisors?
A No.
Q What were the nature of your discussions with Ernst & Young?
A I would have alerted Ernst & Young that we were going to be acquired; that they may be requested to make their working papers available to Sunbeam's auditors, Arthur Andersen. So that would be a courtesy call to the audit partner.
Q Other than that conversation -- conversations that you just described, any other discussions with Ernst & Young about Sunbeam?
A Not that I recall.
Q Did you review any of Sunbeam's public filings prior to the acquisition being signed?
A I remember reading through or skimming the 10-K and some analyst reports.
Q For what purpose?

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

Page 125

A Understanding their business.
Q Is this prior to the signing of the definitive agreement?
A I don't recall the timing of it.
Q And I noted as I flipped through the stack of documents that your counsel produced to us immediately prior to the deposition that there are indeed some Sunbeam public filings in here. Do you recall which, if any -- which of the public filings that you reviewed and when you reviewed them?
A I don't.
Q Were you -- was the purpose for reviewing those filings to conduct due diligence on Sunbeam?
A No.
Q Was the purpose to prepare for any of the meetings that you were attending?
A It was -- the purpose was to understand what businesses that they were in that could be similar to the ones that we were in and to have a better general understanding of what businesses that Sunbeam was in.
Q Did you direct -- or are you aware whether anyone at Coleman or MacAndrews & Forbes directed CSFB to conduct any due diligence regarding Sunbeam?
A I don't -- not that I recall.
Q Did you know the CSFB team -- any members of

Page 126

the CSFB team that was working on that engagement?
A Gordo, who was the -- the partner on it.
Q Gordon Rich?
A Gordon Rich.
Q And had you had prior dealings with Mr. Rich?
A Yes.
Q For Coleman?
A No. It was for -- I think he was our banker at New World, and I had a personal relationship with him.
Q And had you ever worked with Mr. Rich or any of his team on any merger and acquisition transactions?
A Yes.
Q Which ones?
A When New World sold to News Corp.
Q Mr. Rich and his team served as the -- as New World's financial advisor?
A I believe so.
Q Was there any concern that if Coleman or MacAndrews & Forbes had asked CSFB to conduct due diligence that they wouldn't have done a good job?
A I don't recall.
Q Did you view, at the time, CSFB as competent to conduct a due diligence investigation of Sunbeam if asked?
A Yes.

Page 127

Q Did you have any dealings with the Wachtell, Lipton law firm regarding the Sunbeam acquisition transaction?
A Yes, I knew Adam Emmerich, who was the partner.
Q And is it your understanding that Coleman had retained Wachtell, Lipton as an advisor in connection with the transaction?
A Yes.
Q Did you have any -- did -- to your knowledge, did Wachtell, Lipton conduct any due diligence investigation of Sunbeam?
A Not that I --
MR. BRODY: Objection to form. Foundation.
THE WITNESS: Not that I know of.
BY MR. CLARE:
Q Did you have any concern that, if asked, Wachtell, Lipton would not do a good job of conducting due diligence regarding Sunbeam?
MR. BRODY: Same objection.
THE WITNESS: Not that I'm aware of.
BY MR. CLARE:
Q Did you view them as competent to conduct such an investigation in 1997 and 1998?
A To -- competent to do complete due diligence on Sunbeam?

Page 128

Q Yes.
A They couldn't do a complete job. They were lawyers, not working for a financial institution.
Q In conjunction with other financial advisors?
A As a part of the team.
Q Yes.
A Yes, they could.
Q It wasn't anything about Wachtell, Lipton's competence?
A No.
Q Did you direct Ernst & Young to conduct any due diligence regarding Sunbeam?
A No.
Q Did you have any concern about Ernst & Young's competence to conduct a due diligence investigation of Sunbeam, if asked, or to participate in such an investigation?
A No.
Q Do you have an understanding as to why none of these outside advisors were directed or asked to conduct a due diligence investigation of Sunbeam?
A I don't.
MR. BRODY: Objection. Foundation.
THE WITNESS: I don't.
BY MR. CLARE:

0195 14

16div-024658

Page 129

Q Was the topic of conducting due diligence on Sunbeam ever discussed with you?
A Not that I recall.
Q Are you aware that MacAndrews & Forbes, through its subsidiaries, were given access to Sunbeam's books and records by the merger agreement?
MR. BRODY: Object to form. Foundation
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q I'm going to hand you what's been marked as Morgan Stanley Exhibit 93.
(Previously marked Exhibit MS 93 referenced herein.)
BY MR. CLARE:
Q Have you ever seen this document before?
A Not that I can remember, but I'm sure I have.
Q Were you involved in the negotiation or drafting or -- of the merger agreements between Sunbeam and Coleman?
A Not primarily.
Q Were drafts circulated to you for comment?
A Yes.
Q Did you in fact comment on them?
A Not that I can remember.
Q Who were they circulated to you by?

Page 130

A Probably Wachtell.
Q I'd like you to turn to the page that is Bates numbered 7968 at the bottom. It's page 18 of the agreement.
Invite your attention to Section 6.7. It's at the bottom of that page and carries over to the next page. I'm going to ask you some questions about it. So if you'd like to read that to yourself and let me know when you're ready.
A Okay.
Q Were you aware at the time that the merger agreement allowed Coleman to have access to Sunbeam's books and records as described here in Section 6.7?
A Not that I recall.
Q Does reviewing this refresh your recollection in that regard?
A No.
Q Is it typical in a merger and acquisition agreement to have such a provision like Section 6.7, in your experience?
MR. BRODY: Object -- object to form. Foundation.
THE WITNESS: It seems reasonable.
BY MR. CLARE:
Q In your experience?

Page 131

A Yes.
MR. BRODY: Same objection.
BY MR. CLARE:
Q Are you aware of any requests that were made to Sunbeam pursuant to this Section 6.7?
A Not that I can recall.
Q Did anyone ever report to you that such requests were made?
A Not that I recall.
Q Or did anyone report to you that a request for information from Sunbeam was ever rejected or denied?
A Not that I recall.
Q The Section 6.7, last sentence, refers to a confidentiality agreement, several agreements. One dated February 4th, 1998 and one dated February 23rd, 1998. Are you aware of those agreements?
A Not that I remember.
Q Were you involved in any way in discussing confidentiality agreements between Sunbeam and Coleman leading to the definitive agreement?
A Not that I remember.
Q Have you ever seen those agreements?
A I can't recollect ever seeing those agreements.
Q I'm sorry?
A I don't recollect ever seeing those agreements.

Page 132

Q In your experience, is it typical to have such agreements in merger and acquisition transactions?
MR. BRODY: Object to form.
THE WITNESS: Yes.
MR. BRODY: Go ahead.
THE WITNESS: Yes.
BY MR. CLARE:
Q Do you have any reason to believe that either of those confidentiality agreements were not executed?
MR. BRODY: Object to form.
THE WITNESS: I wouldn't have knowledge.
BY MR. CLARE:
Q You have no personal knowledge one way or the other?
A No.
Q Or no discussion about that?
A No. That's correct.
Q During the time period that -- between the definitive agreement and the closing, you had discussions with Sunbeam personnel?
A That's correct.
Q Did you understand or operate as if a confidentiality agreement were in place between the two companies in terms of disclosing confidential Coleman information to Sunbeam?

NOT A CERTIFIED COPY

Page 133

A Yes.
MR. BRODY: Object to the form.
THE WITNESS: Yes.
MR. BRODY: I'm sorry. Could I have the end of that question back, please. Or read the whole thing.
(Record read as follows:
"Question: Did you understand or operate as if a confidentiality agreement were in place between the two companies in terms of disclosing confidential Coleman information to Sunbeam?")
MR. BRODY: Thanks.
BY MR. CLARE:
Q On the same page, under Article VII, there is a Section 7.1. I'm going to ask you a question about the very first part of that.. I'd like you to read that to yourself.
A Okay.
Q Do you understand Section 7.1 to be a form of a lockup?
A Yes.
Q And that's a restriction that Coleman (Parent) Holdings had on its ability to sell Sunbeam stock?
A That's correct.

Page 134

Q There is a parenthetical in the first sentence of Section 7.1 that would permit (Parent) Holdings to pledge Sunbeam shares to secure bona fide indebtedness or other obligations. Do you see that reference?
A I do.
Q Are you aware of any pledges that meet that description that MacAndrews & Forbes or any of its affiliates made with regard to Sunbeam shares after they received it?
A Not that I'm aware of.
Q Okay. You can set that document aside.
I'd like to mark that as the next exhibit, please.
THE REPORTER: 101, MS 101.
(Deposition Exhibit MS 101 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Mr. Page, I've handed you what's been marked as Morgan Stanley Deposition Exhibit 101, and ask that you take a look through it and let me know when you're ready.
A Okay.
Q Morgan Stanley Exhibit 101 is a form agreement between the Sunbeam Corporation and The Coleman Company, the date February 23rd, 1998. Do you see that?
A I do.

Page 135

Q And the subject matter of this form agreement is confidentiality of information provided during discussions leading to the definitive agreement. Do you see that?
A Yes, I do.
Q Have you ever seen this document in any form before today?
A Not that I recall.
Q Do you recall receiving this in draft from Sunbeam or its counsels or advisors?
A Not that I remember.
Q Do you recall any discussion relating to February -- relating to this agreement?
A No.
Q Do you see at the top there is a fax number and a fax header indicating MacAndrews & Forbes? Do you recognize that fax number as one associated with MacAndrews & Forbes?
A My memory is not that good.
Q Are you aware whether this agreement was ever signed?
A Um, I'm not. I'm not aware one way or another.
Q Were you part of any discussions about this agreement?
A Not that I recall.

Page 136

MR. BRODY: Asked and answered.
MR. CLARE: I'm sorry?
MR. BRODY: Asked and answered was the objection. Go ahead.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q Earlier when I asked if it would be typical in your experience to have a confidentiality agreement leading to -- or governing discussions leading to a merger agreement, in your experience, is this document, Morgan Stanley 101, an example of the type of form that would be typical?
MR. BRODY: Object to form. Foundation.
THE WITNESS: I haven't read it word for word, but something like this would be typical.
MR. CLARE: Okay. Set that aside.
MR. BRODY: 102?
MR. CLARE: Yes.
(Deposition Exhibit MS 102 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Mr. Page, I've just handed you what's been marked as Morgan Stanley Exhibit 102. Ask that you just flip through it quickly. Or take as much time actually as you'd like to look at it. I only have a few questions

NOT A CERTIFIED COPY

016516

Page 137

about it.
A Okay.
Q Do you recognize Morgan Stanley Exhibit 102 as a series of organization charts for The Coleman Company and certain of its departments?
A Yes, I do.
Q And page 1 of Morgan Stanley Exhibit 102 is the Corporate Legal Department?
A Yes. That's what's written at the top.
Q Does that reflect the organizational structure of the Legal Department during your tenure?
A As I remember.
Q To the best of your knowledge?
A To the best of my knowledge.
Q To your knowledge, was anyone identified here in the Corporate Legal Department asked to conduct due diligence on Sunbeam in connection with the transaction?
MR. BRODY: Object to foundation.
THE WITNESS: I don't recall.
BY MR. CLARE:
Q Is there anyone -- strike that.
Go to the second -- the second page of Morgan Stanley Exhibit 102. It refers to the Corporate Finance Group and shows you at the top of the organization chart. Does this page, bearing Bates No. 1293, reflect the

Page 138

organization structure of the Corporate Finance Group of Coleman Company while you were there as you remember it?
A As I remember it.
Q And all of these individuals reflected on this page reported to you directly or indirectly?
A That's correct.
Q Does seeing this page refresh your recollection in any way about individuals that might have had conversations with Sunbeam either before or after the definitive agreement was signed?
A Yeah. Al Scheels, the V.P. of MIS, would have been the individual that would have been the -- my direct report who would have been interacting with the Sunbeam head of I -- IT.
Q Is it your understanding that Mr. Scheels had direct communications without you present with the Sunbeam IT folks?
A Yes.
Q And you had conversations where you and Mr. Scheels had conversations with them?
A That's correct.
Q Anybody else on this page?
MR. BRODY: Anybody else on this page what?
BY MR. CLARE:
Q That refreshes your recollection --

Page 139

A No.
Q -- that had direct conversations with Sunbeam --
A No.
Q -- at any point in time?
How about Ms. Clark?
A Yes. I said -- I think I mentioned her before.
Q Correct.
A And Joe Tesoriero, which I mentioned before.
Q You can set that document aside.
I want to go back to the work that you did with CSFB. You indicated that CSFB was retained as a financial advisor on the New World/News Corp. transaction?
A News Corp. transaction, that's correct.
Q And had -- was CSFB asked to perform any due diligence in connection with that transaction?
A No. They -- they -- not that I recall. They were giving the fairness opinion for the transaction for the shareholders of -- of New World.
Q They were giving the fairness opinion?
A That's correct.
Q Was there any other aspect of their engagement besides rendering a fairness opinion?
A Not that I recall.

Page 140

Q Were there any other in- -- transactions for which you had engaged CSFB in your career?
MR. BRODY: Object to form.
Go ahead.
THE WITNESS: I may have, but nothing that I can remember specifically or indirectly or generally.
BY MR. CLARE:
Q That's pretty broad.
Are you aware of any instance in which CSFB had been asked by a company owned or affiliated with MacAndrews & Forbes to conduct due diligence in connection with the merger and acquisition transaction?
A Not that I can recall.
Q You indicated that you had a personal friendship with Mr. Rich?
A Yeah. Gordon Rich.
Q Did that predate his work on the News Corp. --
A Yes.
Q -- transaction?
A Yes.
Q So you knew Mr. Rich well?
A Yes.
Q How did you meet Mr. Rich?
A He's a friend of my brother's who is a financial officer of a public company on the East Coast,

NOT A CERTIFIED COPY

Page 141

and we met through that relationship while I was still at Price Waterhouse.
Q Did you remain in touch with Mr. Rich after the acquisition transaction? The Coleman/Sunbeam acquisition transaction?
A Not that I remember.
Q So that was the last dealings that you had with him?
A He died not too long after that, I think.
MR. CLARE: Mark the next exhibit.
(Deposition Exhibit MS 103 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Mr. Page, I've handed you what's been marked as Morgan Stanley Deposition Exhibit 103. It's a December 10th, 1997 letter. And ask that you take a look at it. It's on CSFB letterhead.
A Right.
Q Have you ever seen this document before?
A I saw it yesterday.
Q Prior to preparing for your deposition -- and I assume that's the context in which you reviewed it?
A Yes, it was.
Q -- have you ever seen this document before?
A Not that I recall.

Page 142

Q I'd like you to turn to the last page of the document. Do you recognize the signature there as Mr. Shapiro's signature --
A Um --
Q -- on behalf of The Coleman Company?
A I don't know if I could tell you if that was Paul's signature or not, but he has signed it.
Q And do you recognize that as Mr. Rich's signature?
A I wouldn't rec- -- know if that was his signature or not either.
Q Okay. You were aware that Coleman had engaged CSFB as an advisor in connection with the acquisition transaction?
A Yes.
Q And you were aware of that at the time?
A Yes.
Q Were other candidates considered?
A I was not in the selection process.
Q Were you aware there was a selection process or are you -- or was there no selection process?
Was there a selection process that you were not a part of or there was no selection process?
A I'm not --
MR. BRODY: Object to the form.

Page 143

Go ahead.
THE WITNESS: I didn't make that decision. I don't know if there was a selection process or not.
BY MR. CLARE:
Q Okay. You were not involved in negotiating that document, the engagement between Coleman and CSFB?
A I did not negotiate this document.
Q Do you believe you reviewed it before it was signed?
A Not necessarily.
Q In the first paragraph of the letter reads as follows: "This letter agreement confirms our understanding that The Coleman Company, Inc." -- referred to as the company or you -- "has engaged Credit Suiss First Boston Corporation and its affiliates, successors and assigns as appropriate ('CSFB' or 'we'), to act as its exclusive financial advisor with respect to the evaluation of the proposed Transaction (as defined below) with a company we have code-named Laser."
Do you understand Laser to be referring to Sunbeam?
A Yes.
Q And that was the code name that was associated with Sunbeam for this transaction?
A That's correct.

Page 144

Q Was it your understanding that CSFB was in fact retained by Coleman as the exclusive financial advisor for the transaction?
A As it's read in that letter, yes.
Q And is that consistent with your understanding?
A Yes.
Q Are you aware of any other being ret- -- any other companies or individuals being retained by Coleman as a financial advisor with respect to the evaluation of a proposed transaction with Sunbeam?
A Not that I recall.
Q The paragraph that follows lays out a number of different tasks that CSFB will -- would perform if appropriate and requested. And I'm going to go through them and ask you if you're aware if they in fact performed those tasks or if they were asked to perform those tasks.
First, did CSFB assist Coleman in analyzing and evaluating the business operations and financial position of Coleman?
A Not that I can recall.
Q Were any -- were any other company retained to perform that task?
A Not that I recollect.
Q Did CSFB assist Coleman in evaluating any

NOT A CERTIFIED COPY

016518

16div-024662

Page 145

proposal that was received from Sunbeam?
A I'm -- not that I have a recollection of.
Q Was any other company retained to perform that function?
A I -- you're -- your questions are what I was -- things that I was in attendance at. There were other discussions that I was not in attendance at that things could have been discussed with respect to evaluating and considering other acquisitions, but for evaluations with me present, no.
Q Okay. So to your knowledge, you don't have any knowledge, I guess, whether CSFB assisted Coleman in evaluating proposals that were received from Sunbeam?
A That's correct.
Q You were not part of any of those discussions?
A I was not part of the discussions.
Q But you're also not aware of anyone -- any other financial advisor --
A That's correct.
Q -- so advising Coleman?
A That's correct.
Q Did CSFB assist Coleman in structuring and negotiating the proposed transaction with Sunbeam?
MR. BRODY: Objection. Foundation.
Go ahead.

Page 146

THE WITNESS: It's the same issue as before. They could have, but not in my presence.
BY MR. CLARE:
Q Did CSFB attend any meetings that you were at that you've described?
A Yes. I believe so.
Q And, again, you don't classify those as negotiation sessions?
A No.
Q Did CSFB meet with the board of directors as described in paragraph (d) to discuss the proposed transaction and its financial implications?
A Yes.
Q And you were present for that?
A Yes.
Q Did anyone else perform that function for the board of directors?
A Not that I recall.
Q Did CSFB render an opinion as to the fairness from a financial point of view to the company stockholders of the consideration to be received in the Sunbeam transaction?
A Yes, they did.
Q And did anyone else render such an opinion?
A Not that -- not that I recall.

Page 147

Q Get you to turn to page 2 of Morgan Stanley Exhibit 103. The first full paragraph describes the compensation that CSFB would receive for this engagement. Describes a financial advisory fee of $250,000 payable upon execution of the agreement.
Do you know if that payment was made to CSFB?
A I don't recall.
Q It describes a transaction fee of $3,750,000 payable upon the consummation of the transaction.
Was that payment made?
A I don't recall.
Q And the third deals with the reimbursement of out-of-pocket expenses including fees and expenses of counsel retained by CSFB.
Do you recall whether any such reimbursements were made?
A I don't recall.
Q Do you remember CSFB retained counsel to advise it in connection with its engagement for Coleman?
A Not that I recollect.
Q Were any other financial adv- -- were any -- are you -- strike that. Withdrawn.
Were any financial advisory fees paid to any -- anyone in connection with the acquisition transaction, to your knowledge? In other words, are you aware of any

Page 148

payments like the ones described here to other financial advisors?
A Not that I recall.
Q Did CSFB ever request, to your knowledge, to perform work related to the acquisition transaction that MacAndrews & Forbes or Coleman did not permit it to do?
A Could you ask that again?
Q Sure. Did CSFB ever ask to expand the scope of its engagement in a way that Coleman or MacAndrews & Forbes rejected?
MR. BRODY: Objection. Foundation.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q Are you aware of any due diligence conducted by CSFB on Sunbeam?
MR. BRODY: Objection. Foundation.
THE WITNESS: Not that I remember.
BY MR. CLARE:
Q What did you understand Morgan Stanley's role to be in the acquisition transaction?
A Advisor to Sunbeam.
Q Was there ever a time that you believed them to be an advisor to The Coleman Company?
A No.
Q Was there ever a time that you believed Morgan

NOT A CERTIFIED COPY

016519

Page 149

Stanley to be an advisor to MacAndrews & Forbes?
A Not in this transaction.
Q Not in connection with the acquisition transaction?
A Yes. They could have been at other times.
Q Are you aware of any instance in which they were?
A No.
Q So at any point during the -- your tenure at Coleman, did you think that Morgan Stanley was an advisor to MacAndrews & Forbes for the Sunbeam/Coleman transaction?
A No.
Q Are you aware of any engagement letter between Coleman or MacAndrews & Forbes and Morgan Stanley?
A No.
Q Are you aware of anyone ever asking Morgan Stanley in words or in substance to conduct research or due diligence on Sunbeam on behalf of Coleman?
A Not that I remember.
Q Or on behalf of MacAndrews & Forbes?
A No.
Q Are you aware of anyone ever telling Morgan Stanley in words or in substance that Coleman was relying upon it to conduct research or due diligence on Sunbeam?

Page 150

A Not that I recall.
Q Are you aware of anyone ever telling Morgan Stanley in words or in substance that MacAndrews & Forbes was relying upon Morgan Stanley to conduct research or due diligence on Sunbeam?
A Not that I recall.
Q Did anyone ever discuss with you in words or in substance that they -- let -- let me withdraw that.
Did anyone at Coleman or MacAndrews & Forbes ever discuss with you information that was provided by Morgan Stanley?
A No.
Q Did anyone ever tell you in words or in substance that they were relying upon information presented by Morgan Stanley in going ahead with the acquisition transaction?
A Not that I remember.
Q Did anyone from Coleman or MacAndrews & Forbes ask Morgan Stanley to review the work that CSFB had done?
A Not that I remember.
Q Or to review the materials that CSFB presented to the Coleman board to make sure that they were accurate?
A Not that I remember.
Q Or to review the materials that the Wachtell,

Page 151

Lipton firm had presented to the Coleman board?
A Not that I remember.
Q Did you attend the closing?
A What does "attend the closing" mean?
Q Well, the deal closed at the end of March.
A It closed on a day.
Q Yes, it did close on a day.
A And what does it mean "attend the closing"?
Q Were you present when it closed?
A I was in Wichita, Kansas, the day it closed -- actually, in Wichita, Kansas, the day it was announced, and I believe I was in Wichita when it closed.
Q So the day the definitive agreement was signed, you were in Wichita?
A The day it was announced, I was in Wichita.
Q Okay. Were -- were you present when the definitive agreement was signed?
A I don't think so.
Q Do you have an understanding where the agreement was signed?
A No.
Q Do you have --
A Or I don't recall. Excuse me.
Q Do you have an understanding as to where it was closed?

Page 152

A No.
Q Were you aware before the closing of the deal that Morgan Stanley was assisting Sunbeam in the financing of the acquisition?
A Yes.
Q Were you aware that Morgan Stanley was intending to serve as the underwriter for convertible notes that Sunbeam was going to issue?
A I believe that's what I recollect, yes.
Q Were you aware that Morgan Stanley was also part of a group of banks that was going to enter into a credit agreement with Sunbeam --
A Not that --
Q -- to provide a bank loan?
A Not that I recall.
Q Before the closing of the deal, are you aware of any request made of Morgan Stanley by Coleman or MacAndrews & Forbes to provide the information that it had obtained during its role of -- as an underwriter?
A Not that I recall.
MR. BRODY: I'm sorry. Could you read that question back?
(Record read as follows:
"Question: Before the closing of the deal, are you aware of any request

NOT A CERTIFIED COPY

016520

made of Morgan Stanley by Coleman or MacAndrews & Forbes to provide the information that it had obtained during its role as an underwriter?")

MR. BRODY: Object to the form.

Go ahead.

BY MR. CLARE:

Q Before the deal closed, did you ever -- are you aware of anyone asking what information Morgan Stanley had obtained in the performance of its underwriter due diligence?

A No.

Q Before the deal closed, did -- are you aware of any request of Morgan Stanley to provide a report on the results of its due diligence of Sunbeam?

A No.

Q Are you aware at any time period of a request being made of Morgan Stanley to provide the results of its due diligence on Sunbeam?

A No.

Q How did you first become aware of a potential transaction between Sunbeam and Coleman? Who told you?

A I believe it was Jerry Levin.

Q And where were you when he told you?

A I don't remember.

Q Was it an in-person conversation?

A Probably on the phone.

Q And what did he say?

A He said, in essence, that Sunbeam has expressed some interest in The Coleman Company and there were some discussions that were taking place.

Q Was it your understanding that there had already been discussions?

A I don't think that we would have gotten into that detail.

Q Was there any discussion of price during that conversation?

A Not that I recall.

Q Or structure of the transaction?

A Not that I recall.

Q Was there any discussion about whether Coleman would be interested in entering into a transaction with Sunbeam?

A Not that I remember.

Q Or why an acquisition transaction might make sense for Coleman?

A Not that I remember.

Q Were there any discussions -- withdrawn. Strike that.

Was this before the turn of the new year in

1998?

A Yes. It would -- it would have been in the late part of '97. Excuse me. Yeah. Late part of '97, that's correct.

Q In December, do you believe?

A It was around the holiday time. So it could have been between Thanksgiving and Christmas.

Q Were you aware that -- well, strike that.

There was a meeting between Mr. Dunlap and Mr. Perelman that took place, an in-person meeting. Was it before or -- were you aware that such a meeting had taken place?

A I have a vague recollection of a meeting like that -- of being told about a meeting like -- with the two of them meeting at some point. I don't remember when it was.

Q Was it --

A I --

Q Was that before or after you first learned of this potential transaction?

A I can't place the time.

Q Were you asked to do anything in connection with this information that Mr. Levin was --

A No. I think Jerry was alerting me as chief financial officer that we had a potential transaction and

we may at some point have to enter into some discussions with Sunbeam regarding the acquisition. I think he was just giving me a heads-up.

Q Is there anything else about that conversation with Mr. Levin that you can remember?

A No.

Q In any of your discussions, did you ever hear anyone say in words or in substance that MacAndrews & Forbes was interested in selling its interest in Coleman because it believed Coleman was underperforming?

A No.

Q Or to raise cash for other MacAndrews & Forbes companies?

A No.

Q Or to eliminate debt for other financing?

A No.

Q Did you have any discussions with Mr. Levin about potential synergies that could be achieved between a combination of Sunbeam and Coleman?

A I remember conversations that Jerry and I have had about synergies.

Q Okay. Would you please tell me about those conversations.

A Oh, I think when the discussions came up

NOT A CERTIFIED COPY

016521

Page 157

originally and they had moved to we were going to get together with Sunbeam executives, either before that or after the first meeting, a group of individuals -- and I believe it really started with Jerry -- put together a list of items that could be a road map for the Sunbeam due diligence team of items that they should consider in the combination of the two companies, potential savings of the two companies put together.

Q Did you have any role in putting that together?

A I read it. I probably gave some input on the corporate cost structure. But that would be -- it would be limited to that area.

Q Those are the only conversations that you remember regarding the subject of synergies as it relates to this acquisition transaction?

A Well, it was a -- probably a series of conversations that Jerry and I would have had.

Q Were all of the conversations that you had related to synergies prior to that meeting -- meeting that you described?

A Well, at the meeting we would have talked about them. So certainly the -- I'm -- most of the conversations regarding synergies were either before or during that meeting.

Q Okay. I'm going to hand you what's previously

Page 158

been marked as Morgan Stanley Exhibit 79.

THE WITNESS: You want to mark it?

MR. CLARE: It's previously been marked.

THE REPORTER: It's previously marked.

MR. BRODY: Thanks.

THE WITNESS: Okay.

(Previously marked Exhibit MS 79 referenced herein.)

BY MR. CLARE:

Q Have you ever seen this document, Morgan Stanley Exhibit 79, before?

A No, not that I remember.

Q Did you rely in any way upon the information that's communicated here in the work that you did on the acquisition transaction?

MR. BRODY: Object to the form.

THE WITNESS: I don't understand that question.

MR. CLARE: Sure. Let me rephrase it.

Q You've never -- to the best of your knowledge, you've never seen this document before?

A I've never seen that document.

Q The information that's communicated here on Morgan Stanley Exhibit 79, did it play any role in the work that you did leading to the acquisition?

MR. BRODY: Same objection.

Page 159

THE WITNESS: I don't know what the work I was doing and leading to the acquisition that this would be relevant to. So I can't answer your question.

BY MR. CLARE:

Q Neither do I and that's my -- it sounds to me like the answer is -- is no.

A No.

Q Okay. That's all I'm trying to understand.

A Okay.

Q Hand you what's previously been marked as Deposition Exhibit 76, Morgan Stanley Deposition Exhibit 76.

(Previously marked Exhibit MS 76 referenced herein.)

THE WITNESS: You want me to take the rubber-band off?

MR. CLARE: You can. I'm only going to ask you about a couple of pages of it.

For the record, Morgan Stanley Exhibit 76 is a document on CSFB letterhead, at least the first page, dated December 1997, entitled "Materials Prepared for Discussion Sunbeam."

THE WITNESS: Okay.

BY MR. CLARE:

Q Have you ever seen this document before?

Page 160

A Not that I remember.

Q Do you know when it was provided to Coleman by CSFB?

A Um, I don't know if it was provided to Coleman by CSFB.

Q Okay. Do you know if the information communicated here by CSFB was ever updated or provided to Coleman before the transaction closed?

A I don't know.

MR. BRODY: Object to form.

THE WITNESS: I -- this wasn't -- I don't recognize this document and it wasn't something that Coleman -- that I can remember -- I mean Coleman -- define Coleman for me. Is it executives of Coleman? Shareholders of Coleman?

BY MR. CLARE:

Q Coleman's management team or individuals at MacAndrews & Forbes associated with Coleman.

MR. BRODY: Object. Foundation.

THE WITNESS: I've never seen this document. So that's all I can probably speak to.

BY MR. CLARE:

Q You indicated earlier that you read some Sunbeam's public filings?

A Yes.

NOT A CERTIFIED COPY

016522

Page 161

Q The -- I take it that it was not public filings necessarily in this form?
A I would have pulled public filings off EDGAR or through any other sources that we would have used.
Q So that was my -- that was going to be my next question. CSFB didn't provide you with the materials, did they?
A They could -- they could have, but I'm very capable of pulling documents -- public documents on my own.
Q Part of the information that's included here in Morgan Stanley Exhibit 76 are analyst research reports.
A Uh-huh.
Q Did you review analyst research reports on Sunbeam prior to the signing of the agreement?
A Yes, I read some.
Q And for what purpose?
A Un- -- again, understanding Sunbeam's businesses and how its acquisition of Coleman would fit into its business strategies.
Q Do you think analyst research reports are an appropriate source of information about a company?
A It's one -- one of many sources.
Q When you read the analyst reports on Sunbeam, did they contain projections about Sunbeam's future

Page 162

performance?
A Yes.
Q Did you interpret those statements in the analyst reports as guarantees or promises of that level of future performance by Sunbeam?
A Guarantees, promises, no.
Q What did you interpret them to be?
A Forecasts of the performance of the -- of the financial -- financial performance of the company on a go-forward basis that the analysts would have received in dialogues with management of the company.
Q And is it a typical practice in connection with merger and acquisition transactions to use analyst reports and projections as basis of information?
MR. BRODY: Object. Foundation, form
THE WITNESS: As a starting point, yes.
MR. CLARE: We can set this document aside.
Q Did you have any dealings with Chase Securities as it relates to the Sunbeam/Coleman acquisition?
A Chase may have been one of our lenders, but I can't recall that -- I have had business dealings with Chase in prior companies. They could have been one of the lenders in our facilities.
Q As you sit here today, do you recall Chase playing any role in the acquisition transaction?

Page 163

A Not that I recall.
Q Let me hand you what's previously been marked as Morgan Stanley Exhibit 77 and ask you to take a look at it.
(Previously marked Exhibit MS 77 referenced herein.)
BY MR. CLARE:
Q Ask if you've ever seen that document before.
A Okay. Not that I recall ever seeing this before.
Q Do you know whether anyone at Coleman or MacAndrews & Forbes asked Chase to prepare this?
A I don't -- I don't have a view. Not that I know of.
Q Was Chase ever retained to do any work in the acquisition transaction?
A Not that I remember.
Q On the third page of Morgan Stanley Exhibit 77, Chase lays out the assumptions that it made in presenting this pro forma combination analysis. Do you see that?
A Yes.
Q And the financial projections in this pro forma are based on the Sunbeam equity report from Prudential dated October 30th, 1997.
A Yes.

Page 164

Q Do you see that?
A I do.
Q Is that a typical way for a company to present such an analysis? In other words, relying upon third party equity reports?
MR. BRODY: Objection. Foundation, form.
THE WITNESS: Preliminarily, yes.
BY MR. CLARE:
Q In reading this, Morgan Stanley Exhibit 77, would you understand Chase to be guaranteeing the projections that were made in that Prudential research report?
A No.
Q Or would you be -- understand Prudential to be guaranteeing those projections?
A No.
Q Okay. Set that document aside. I'm going to hand you what's been marked as Morgan Stanley Exhibit 75.
(Previously marked Exhibit MS 75 referenced herein.)
BY MR. CLARE:
Q Ask that you take a look at it. This is a March 30, 1998 letter from the Wachtell, Lipton firm to the Securities and Exchange Commission. And attached to the letter is a chronology that was prepared by counsel

NOT A CERTIFIED COPY

Page 165

and submitted to the SEC of the events leading to the acquisition transaction.

Have you ever seen the document or the chronology before?

A No, I've never seen this letter before.

Q We're going to use this document for this segment of the deposition to see if we can put some structure on some of the meetings that you attended, or at least are reported here that you attended, to see if they refresh your recollection in any way about the events.

A Okay.

Q So I'd like you to turn to the exhibit to the letter which begins on page CPH 1401528. Exhibit A. Do you see that?

A Got it.

Q The first entry bearing your name is December 12th, 1997. Ask you to read that to yourself.

A Okay.

Q Do you recall the December 12th, 1997 meeting?

A Vaguely.

Q Is this the meeting that you described earlier at which the synergies were presented?

A I can't recall if it's this one or it would have been the next one.

Page 166

Q Where did the meeting that you remember take place?

A These would have been in Jerry's conference room at 625 Madison Avenue.

Q In New York?

A Yes.

Q Was Morgan Stanley present at the meeting that you remember?

A Not that I recall.

MR. BRODY: This first one?

THE WITNESS: Yes.

BY MR. CLARE:

Q Did you know at the time of the first meeting that Morgan Stanley was advising Sunbeam?

A Not that I remember.

Q This entry for the December 12th indicates that Mr. Levin, Mr. Shapiro and yourself gave a presentation. Do you recall giving a presentation to Sunbeam?

A I recall being at the meeting. I don't remember what my role was in the meeting.

Q You don't recall whether you had a speaking role or not?

A I don't recall.

Q Tell me everything that you do remember about the meeting that you remember.

Page 167

A I remember having a meeting at some point with Russ Kersh and -- and I guess this is being refreshed by reading this -- that David Fannin and Peter Langerman were there, and we had a general discussion of the operations of Coleman, what we were doing in some of the business units. But it was a fairly unstructured discussion. We may have had with us our investor relation pack where we could have flipped some PowerPoint slides just to give them a better understanding of The Coleman Company.

Q Anything else that you remember about the meeting?

A No. That's about it.

Q Do you remember any of the questions -- whether there were any questions that were asked of Coleman by Sunbeam?

A Not that I can remember.

Q Do you remember any discussion about -- let me strike that.

What did you understand the purpose of this meeting to be?

A Potential acquisition of Sunbeam taking over The Coleman Company.

Q Was there any discussion of price or structure of that acquisition?

Page 168

A Not that I remember.

Q How did you prepare for the meeting?

A I really don't recall.

Q What -- was there any action items or tasks that were identified at the meeting as the next steps in this discussion?

A Not that I remember.

Q Were there discussions that you had internally either with others at Coleman or at MacAndrews & Forbes after the meeting?

A Not that I remember.

Q Other than what you've already testified to, is there anything that you -- else that you remember about that meeting?

A About the one on December 12th?

Q Yes.

A No.

Q I'm going to hand you the next exhibit. You may want to keep that one out. We're going to go back to that in a moment.

A Okay.

Q This one is marked as Morgan Stanley Exhibit 78. First page is a Sunbeam fax sheet dated December 15th, the second page is a series of entries adding up to 150.5 million dollars.

NOT A CERTIFIED COPY

016524

Page 169

(Previously marked Exhibit MS 78 referenced herein.)
THE WITNESS: Should I read the message on the front or is it not necessary?
BY MR. CLARE:
Q I'm only going to use it to point out that in the first line of the fax message it describes the attachment as a one-page list of issues which C, referring to Coleman, provided to us at our meeting on Friday. And if you work the dates, it's referring to the December 12th --
A 12th.
Q -- meeting.
So the attachment to this document, Morgan Stanley Exhibit 78, are 15 items adding up to 150.5 million. Who prepared this document?
MR. BRODY: Meaning the attachment?
MR. CLARE: The attachment, yes.
THE WITNESS: What do you mean by prepare?
BY MR. CLARE:
Q Who had input into its creation?
A I believe it would have been Jerry and the senior staff members of Coleman. That would have included me.
Q And it was prepared before the December 12th

Page 170

meeting?
A Based on these dates, yes.
Q And at whose request was this document prepared?
A I don't remember.
Q Did Mr. Levin give the direction that it would be prepared?
A Yes.
MR. BRODY: Objection. Asked and answered.
THE WITNESS: Yes. To me.
BY MR. CLARE:
Q And what were his instructions?
A Um, this would -- this is very typical of two companies that are in the same line of business of looking at cost -- potential cost savings when we combine companies that would be in the same -- as a strategic inv- -- strategic acquirer of a company as opposed to a financial acquirer. So this would be a very common document that would be prepared.
Q Did you circulate drafts of this document before the meeting for comment?
A Not that I recollect.
Q Do you recall changes that were made to it before it was finalized?
MR. BRODY: Object to form.

Page 171

THE WITNESS: Not specifically.
BY MR. CLARE:
Q Generally?
A No.
Q How did you go about preparing this document which is the attachment to Morgan Stanley Exhibit 78?
MR. BRODY: Object to form.
THE WITNESS: I didn't prepare. I may have -- prepare anywhere from -- I could have given input on any of these line items. I could have typed this off of my computer. There wasn't a lot that would have gone into this other than in areas of -- that I would have done would have been looking at our corporate overhead staff, which I believe is one of the items on here, because I would have looked at our budgets on the corporate side. I had some knowledge of our Oracle expense, the 20 million dollar, item 12, elimination, is the one IT project that I was in charge of. So there were a couple of these that I would have some personal input on. Some of the other ones I would have no input on.
BY MR. CLARE:
Q Who was the person at Coleman who was preparing this document and receiving input from you and other members of the senior team?
A I don't think it was anybody at Coleman. It

Page 172

was probably at the -- at our offices in New York. It would have been Jerry Levin's direction that this was then put together.
Q Do you know who -- who at Mr. Levin's direction was actually preparing the document? In other words, who did you give your input to?
A I don't remember.
Q Are there any work papers in existence that would support the line items that are listed here?
A Not that I can recall.
Q What was done to -- to determine whether the figures presented here were reasonable?
A Um, I think of some these are just coming from our budget packages and looking at the financial statements of Sunbeam.
Q Can you identify which of these items would have come from the budget packages?
A As I said before, the corporate staff numbers would have come in from our -- international group would have come out of our corporate budgets. The corporate staff would have been out of our corporate budget of how many people we have on that staff, what we spend on an annual basis in having a corporate staff.
Q Was any integration plan created prior to the generation of this document?

NOT A CERTIFIED COPY

Page 173

A This would be the document we would hand over to Sunbeam for their integration people and due diligence people to -- to look at the Sunbeam organization and then look into the Coleman organization. This is really a road map for where they should be looking for synergies and cost savings.
Q Did Coleman ever prepare such an integration plan in connection with its own consideration of potential synergies?
A Of -- no. We wouldn't have been in a position to be able to do that since we really -- Sunbeam was a larger company and had much more extensive operations than ours.
Q But no plan was created?
A Not to my --
MR. BRODY: By Coleman?
MR. CLARE: By Coleman.
THE WITNESS: By Coleman? Not to my knowledge.
BY MR. CLARE:
Q Was any effort made to identify or assess the costs of achieving the synergies identified here on this document?
A Not to my knowledge.
Q Were any of Coleman's or MacAndrews & Forbes' outside advisors involved in the creation or preparation

Page 174

of this document?
A Not that I remember.
Q Was CSFB involved in any way in the preparation or this document or presentation of it?
A Not that I recall.
Q Who presented this document at the December 12th meeting?
A Would have been Jerry.
Q Anyone else?
A Um, and I'm sure we'd have gone line by line with the Sunbeam executives in attendance and had a dialogue about each -- each of the items and our thoughts that were surrounding those items.
Q Did you speak on any of the line items?
A I probably would have talked about the Oracle IT project because I was -- that was one that I was in charge of.
Q Any others?
A I could have talked about just giving them what our total corporate staff budget was and international group budget was. Basically just reading from our financial statements.
Q Were there any questions that were asked by Sunbeam about any of these items on this document --
A Uh --

Page 175

Q -- that you recall?
A Not that I can recall.
Q Are you aware of any other written document related to potential cost savings that were provided to Sunbeam or its representatives?
A Not that I can remember.
Q Was this document ever retracted at any point during the negotiations or discussions with Sunbeam?
A Not that I remember.
Q During what time period was this document prepared? Over how many days or weeks?
A I could speculate, but I don't remember.
Q Was it days or weeks?
A It was probably in -- it could have been done in -- in days or a week or so. It wouldn't have been a very extensive effort because it would have been done out of public documents of Sunbeam and were done from our -- our internal budgets, and this would have been an evolutionary process as we would have put it together.
Q Was this document ever updated after your meeting with Sunbeam where it was presented to Sunbeam?
A No. I think the idea was Sunbeam was going to take this back and they were going to do their own due diligence, come back and ask from us more material that they want to know so they could clarify each of these

Page 176

areas and come up with new areas or eliminate some of these areas.
Q And did that, in fact, occur?
A Not that I remember.
Q Who from -- you described a role that Mr. Levin played in putting this document together. You described your role. Were there any other individuals that had input into this document that you're aware of?
A Not that I can remember.
Q Was Mr. Nesbitt involved in preparing or providing input onto this document?
A Not that I recall.
Q Anyone else from MacAndrews & Forbes?
A Not that I remember.
MR. CLARE: Okay. You can set that document aside.
Mark that as the next one, please.
We'll mark two at a time. That's the first one.
MR. BRODY: Exhibit 104?
MR. CLARE: That's the second one.
MR. BRODY: Exhibit 104 and 105?
THE REPORTER: Yes.
MR. BRODY: Thank you.
(Deposition Exhibits MS 104 and MS 105

NOT A CERTIFIED COPY

016526

Page 177

were marked for identification by the court reporter.)

MR. CLARE: For the record, while you're reviewing Morgan Stanley Exhibit 104 and 105, Morgan Stanley 104 is a document bearing the header for MAFCO Consolidated Group, Inc. Sunbeam/Coleman Comparison, and a date and time in the upper right-hand corner of December 8th, 1997 at 12:13 p.m.

Morgan Stanley Exhibit 105 bears the header MAFCO Consolidated Group Inc., Will Nesbitt. And in the upper right-hand corner the date and time of December 10th, 1997 at 4:56 p.m.

Q My first question, Mr. Page, is: Have you seen any -- either of these two documents before?

A Not that I remember.

Q Were you involved in any way in the preparation of these documents?

MR. BRODY: Object to form.

THE WITNESS: Preparation as in typing, no.

BY MR. CLARE:

Q As in providing input for?

A Not that I remember.

Q Morgan Stanley Exhibit 105 identifies Will Nesbitt in the upper left-hand corner. Did you have any interactions with Mr. Nesbitt in preparing for the

Page 178

December 12th meeting that we've been talking about?

A Not that I remember.

Q Did you have any interactions with Mr. Nesbitt in any aspect of the Sunbeam/Coleman acquisition transaction?

A Yes. Will worked on it from the MacAndrews & Forbes side so I would have had discussions with him. He was at that one meeting that we were at the Morgan Stanley offices, I believe, or when Morgan Stanley was present when there was a presentation by Russ of the future of Sunbeam.

Q Apart from that meeting, what were the nature of your discussions with Mr. Nesbitt about the acquisition?

A He would call me for info- -- requests for information, debt levels, sales figures. He'd ask for analyst report information that we may have. I, you know, interacted with Will quite a bit when I would be in New York.

Q Both of these documents bear the header MAFCO Consolidated Group Inc. Do you see that?

A Uh-huh.

Q Are you familiar with that as a MacAndrews & Forbes company?

A Yes.

Page 179

Q And that company is not have any indirect ownership interest in Coleman at the time, did they?

A I don't know. I don't know what the corporate structure of MAFCO or MacAndrews & Forbes was.

Q Were either of these documents prepared at your request?

A No.

Q I'd like you to look at the fourth page -- I'm sorry -- what is identified as, yes, page 4 of Morgan Stanley Exhibit 104, which is the document dated December 8th, 1997. It appears that Ms. -- this document is modeling a pro forma analysis with three different levels of cost savings. Do you see that?

A I do.

Q With no cost savings, with 40,000,000 in cost savings, and with 60,000,000 in cost savings. Do you know the circumstances under which those estimates were arrived at?

A I don't.

Q If you look at the third page of Morgan Stanley Exhibit 105, which is dated two days later, December 10th, Mr. Nesbitt's spreadsheet, or the spreadsheet bearing his name, is again modeling the merger consequences at those same three synergy levels. Do you see that?

Page 180

A I do.

Q Did you have any discussion with anyone about potential synergies from the acquisition in the zero to $60,000,000 range during this time period in preparing for the December 12th meeting?

A Not that I recol- -- recollect.

Q Do you know how those estimates were arrived at?

A I do not.

Q Do you know what analysis, if any, was performed between December 10th, 1997, the date of Morgan Stanley Exhibit 105, and the December 12th meeting at which 150 million dollars in synergies was presented to Sunbeam?

MR. BRODY: Object to form.

THE WITNESS: No, I don't.

BY MR. CLARE:

Q I'd like you to go back to Morgan Stanley 104, please, and look at the last page. It's some handwritten notes. It's unclear whether it actually goes with this document or not, but this is the way it was produced to us in the litigation. Do you recognize that handwriting?

A I do not.

Q It's not yours, I take it?

A It's not.

NOT A CERTIFIED COPY

016527

Page 181

Q The first line appears to say Sunbeam. The second line appears to say McKelly. Is that a name that's familiar to you?
A It's not.
Q The third -- sorry -- the fourth line appears to say, "Agenda - MS - get as much as possible."
Do you have an understanding as to what that means or refers to in the context of the Sunbeam transaction?
A I do not.
Q The next line says, "FU plus B of A," with an arrow, "bully MS." Do you see that?
A I see it.
Q Do you understand "FU" to be reference to First Union?
A No. I have no knowledge.
Q Do you have any understanding as to what that reference means?
A No.
Q The next reference is, "covenant relief okay."
Do you have an understanding as to what that's referring to?
A I do not.
MR. CLARE: Okay. You can set that document aside.

Page 182

Mark that one as Morgan Stanley 106.
(Deposition Exhibit MS 106 was marked for identification by the court reporter.)
MR. CLARE: And let's mark this as 107.
MR. BRODY: Thank you.
(Deposition Exhibit MS 107 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Have you ever seen either of these two documents before, Morgan Stanley 106, which is dated January 26th 1998, or Morgan Stanley 107, which is dated January 26th, 1998?
A Not that I remember.
Q Morgan Stanley Exhibit 106 appears to be a merger consequence analysis assuming cost savings of $100,000,000, and 107 appears to be a merger consequence analysis assuming cost savings of $150,000,000.
Were you involved at any point after the December 12th meeting in modeling or considering synergies for the acquisition?
A Not that I remember.
Q So your testimony is that, to the best of your recollection, your involvement with modeling or considering synergies ended with the presentation of that document on the 12th?

Page 183

MR. BRODY: Objection. Form.
Go ahead.
THE WITNESS: That's what I remember at this point, yes.
BY MR. CLARE:
Q During any of the meetings that you attended with Sunbeam, did the subject of synergies come up again? In other words, at any of the later meetings?
A Not that I recall.
Q Do you know how the $100,000,000 synergy number reflected on Morgan Stanley Exhibit 106 was arrived at?
A No.
Q Or the $150,000,000 figure reflected on Morgan Stanley Exhibit 107?
A No.
Q No discussions with Mr. Nesbitt about that topic?
A Not that I recall.
Q Okay. Set those aside.
MR. BRODY: 108?
THE REPORTER: Yes.
MR. CLARE: Yes.
(Deposition Exhibit MS 108 was marked for identification by the court reporter.)
BY MR. CLARE:

Page 184

Q Mr. Page, I'm handing you what's been marked as Morgan Stanley Exhibit 108. It's a document in the upper right-hand corner bearing a date of February 6th, 1998, the same legend in the upper left-hand corner MAFCO Consolidated Group, Inc., Mr. Nesbitt's name. And the title refers to merger consequences assuming cost savings of $75,000,000.
Do you have an understanding as to why Mr. Nesbitt was modeling an acquisition with $75,000,000 of synergies in early February?
A I do not.
MR. BRODY: Okay. And you're just -- the question is focusing on the first page of the exhibit? Because what follows appears to be very different.
MR. CLARE: Yes.
MR. BRODY: Collection of different stuff.
MR. CLARE: Yes. And I will say that I -- I -- this is the way that the document was produced to us. I don't have any understanding or knowledge whether it was actually compiled in this way.
MR. BRODY: Got it.
MR. CLARE: But my question to Mr. Page about the $75,000,000 figure is limited to the first page of Morgan Stanley Exhibit 108.
Q So have you ever seen that first page before?

NOT A CERTIFIED COPY

016528

Page 185

A Not that I remember.
Q And are you aware of Mr. Nesbitt or others modeling synergies in the $75,000,000 range in January or February of 1998?
A Not that I remember.
Q During any of the meetings that you attended, did Coleman or anyone from MacAndrews & Forbes tell Sunbeam that it was modeling synergies at $75,000,000?
A Not that I'm aware of.
Q Okay. You can set that document aside.
I'm handing you what's been previously marked as Morgan Stanley Exhibit 80. It's a document entitled "Laser Corporation Key Assumptions."
(Previously marked Exhibit MS 80 referenced herein.)
BY MR. CLARE:
Q Have you ever seen this document before?
A Not that I recall.
Q Do you recognize any of the handwriting on Morgan Stanley Exhibit 70?
A Give me a moment to make my way --
Q Sure. Take --
MR. BRODY: I'm sorry.
THE WITNESS: -- through the document.
MR. BRODY: I'm sorry. Morgan Stanley

Page 186

Exhibit --
MR. CLARE: Exhibit 80.
MR. BRODY: 80.
MR. CLARE: Thank you, Mike. I appreciate that.
THE WITNESS: I don't recognize any of the handwriting.
BY MR. CLARE:
Q The -- on the first page of Morgan Stanley Exhibit 80 it makes some assumptions that are Laser Specific, Camper Specific, and Transaction Specific. And you'll see there's an arrow coming off of the Camper Specific column and some handwritten notes there. Says, "From discussions with Levin and Page." Do you see that?
A I do.
Q Do you recall any discussions with Sunbeam or Morgan Stanley in which the camper specific assumptions that are listed there were discussed?
A Not that I recall.
Q Do you recall providing Sunbeam or Morgan Stanley with earning projections for Coleman?
A Not that I recall.
Q There is a reference here in the first bullet -- bullet point to a modification of a CSFB report dated November 18th, 1997. Do you recall any discussions

Page 187

about modifying the projections that -- in a CSFB report to provide to Sunbeam or Morgan Stanley?
A Not that I recall.
Q The first dash under that bullet point gives an estimated 1998 sales figures of roughly 1.2 million dollars. Do you see that?
A It's 1.2 billion dollars.
Q 1.2 billion dollars. Thank you.
Do you recall providing Sunbeam or Morgan Stanley with an estimate of 1998 sales?
A I do not.
Q Did you or anyone from Coleman ever tell Morgan Stanley or Sunbeam that Coleman was not on pace to achieve the estimates reported by Wall Street analysts?
MR. BRODY: Object to form.
THE WITNESS: Not that I remember.
BY MR. CLARE:
Q Did anyone from MacAndrews & Forbes in your presence ever tell Sunbeam or Morgan Stanley that?
A Not that I remember.
Q The camper specific assumptions include estimates for sales, operating income, income from continuing operations and EPS. Do you see that?
A I do.
Q And at least according to this document, that

Page 188

those projections were based upon modification of a CSFB report. Is that a typical way to present information as a starting point for discussions in a merger and acquisition transaction?
MR. BRODY: Object to the form. Foundation.
THE WITNESS: Starting with the analyst report and modifying out is a -- is a fair way to -- to look at a company.
BY MR. CLARE:
Q And when information like that is presented, derived from an analyst report, is it reasonable for the company receiving that information to interpret the estimates as guarantees of future performance?
A No.
Q Why not?
A Because they're estimates based on what -- there are a number of factors that would go into analyst estimates. It would be -- some would be economic stability of the U.S. and world economies since Coleman in specific was in a worldwide market. If there was, for instance, a continuous recession in Japan, it would have an adverse reaction or have adverse consequences to our Japanese subsidiary. So you'd have to take it in a snapshot at that one place in time and how the company is performing and how its product line is rolling out,

NOT A CERTIFIED COPY

016529

Page 189

consumer interests, interest rates. Be all sorts of factors that would go into consideration.
Q Would that be true of any estimate of future performance?
A For any company.
Q The second bullet point there references camper long-term earnings growth of 17.5 percent based on I/B/E/S dated January 21st. Are you familiar with I/B/E/S? Or I/B/E/S?
A I think that's a group that consolidates earning estimates from analyst community.
Q And is that a typical way to present earnings growth information in this type of a context?
A I don't know.
Q Like you to turn back to the page CPH 1426294. It's three pages from the back.
A Got it.
Q And this is a slide entitled "Laser Corporation Synergy and Price Analysis - Pooling" and the word "irrelevant" is written there. Were you part of any discussions where synergy or price analysis pooling was described as irrelevant to the analysis?
A No.
Q Do you know what that's referring to?
A I believe that they're saying that pooling is

Page 190

not available in this transaction. Pooling transactions are very complicated and they're hard to fit inside the rules. So it's not outside the realm of reason why somebody would put irrelevant there.
Q Okay. Put that document aside.
I'd like to return to the chronology that we were looking at earlier, Morgan Stanley Exhibit 75.
A Okay.
Q The next reference that bears your name is a meeting on January 29th, 1998. It's at the bottom of the next page. Ask you to read through that entry.
A Okay.
Q The bottom entry there references a meeting with Mr. Stynes, Mr. Fuchs, Mr. Chang, Mr. Fannin, Mr. Kersh, Mr. Levin, Mr. Page, Mr. Shapiro, Mr. Maher, Mr. Nesbitt and Mr. Rich. Do you recall that meeting?
A This one I don't recall.
Q The -- at least according to this description is to discuss potential synergies that could be created by a combination of Coleman and Sunbeam. Do you recall synergies being discussed at a meeting in late January?
A I don't recall that.
Q The entry indicates that another topic of discussion was how the companies might proceed with due diligence and related matters if Sunbeam made an

Page 191

acceptable proposal. Do you recall that topic being discussed?
A I don't.
Q Do you believe that you attended this meeting?
A I just don't recall this one.
Q Did all of the meetings that you attended related to the acquisition transaction take place in New York?
A Yes. Then there were some meetings with some Sunbeam personnel, as I mentioned before, that were post agreement, pre-closing, that they would have come out as individuals to -- to Wichita. But the -- the only ones I ever attended were in New York.
Q The December 12th meeting, Mr. Levin provided a piece of paper with 150.5 million dollars in synergies. Was that figure discussed at subsequent meetings --
MR. BRODY: Objection.
BY MR. CLARE:
Q -- that you were at?
MR. BRODY: I'm sorry. Objection to form, mischaracterizes, and I think asked and answered.
Go ahead.
THE WITNESS: Not that I remember.
BY MR. CLARE:
Q Do you recall any discussion with Sunbeam or

Page 192

Morgan Stanley about the topic of due diligence?
A Not that I can recall.
Q Do you recognize the names of any of the individuals here on the Sunbeam side of the table at least that are identified for the January 29th meeting. Do you know who Mr. Stynes is?
A I don't recall him.
Q Or Mr. Fuchs?
A Don't recall him.
Q Mr. Chang?
A Don't recall him. Fannin, yes. And Kersh, yes.
Q And obviously everybody else on the other -- on that -- on the Coleman side of the table you knew?
A Yes. I recognize all of them.
Q Does reviewing this entry for the January 29th, 1998 refresh your recollection in any way about a meeting that you might have attended in New York?
A No. I -- my -- as I mentioned earlier, I had a recollection of two meetings; one early, around the holiday period, and then the one where Mr. Kersh made a presentation of Sunbeam. I remember those two. This one I don't remember.
Q Do you recall hearing in the January 1998 time period that Sunbeam had fallen short of analysts'

NOT A CERTIFIED COPY

016530

Page 193

expectations for fourth quarter 1997?
A Not that I remember.
Q Any discussion internally at Coleman or with others at MacAndrews & Forbes about Sunbeam's performance in the fourth quarter of 1997?
A Not that I remember.
Q Who is Marc Shiffman?
A He was our investor relations individual. He handled our dealings with analysts. He worked for Jerry. He was --
Q He was a Coleman person?
A Yes. He was housed in New York.
Q I'm sorry. You said he was based in New York?
A Yes.
Q Who is Jim Conroy?
A Jim Conroy works for MacAndrews & Forbes. He's a -- he's a PR individual.
Q Bob Knibb?
A Knibb was an executive at the MacAndrews & Forbes organization.
Q Greg Woodland?
A In the Finance Department of the MacAndrews & Forbes organization.
Q During the time period that discussions with Sunbeam were underway, were you copied on or routed these

Page 194

reports and other materials related to Sunbeam?
A Not that I remember.
Q Were you aware that in the January 1998 time period, analysts had lowered their 1998 and 1999 earnings estimates for Sunbeam?
A Not that I recall.
Q Do you remember any discussion about analysts revising downward their estimates for Sunbeam?
A Not that I recall.
MR. CLARE: We need to stop the tape -- to change the tape.
MR. BRODY: Okay. Why don't we take a break?
THE VIDEOGRAPHER: Going off the record. The time is 4:47 p.m. This is the end of Tape 2.
(Recess.)
THE VIDEOGRAPHER: Back on the record. The time is 4:59 p.m. This is the beginning of Tape 3.
BY MR. CLARE:
Q Did you personally have any conversations with analysts regarding Sunbeam?
A Not that I recall.
Q I'm going to hand you what's been marked as Morgan Stanley Exhibit 81. Ask you to take a look at it.
A Okay.
(Previously marked Exhibit MS 81

Page 195

referenced herein.)
BY MR. CLARE:
Q Have you ever seen this document before?
A Not that I recall.
Q Have you ever seen it -- a document in this form before, a term sheet for proposed transaction between Coleman and Sunbeam?
A Not that I remember.
Q Morgan Stanley Exhibit 81 bears a print date at the bottom left-hand corner of February 6th, 1998. Were you present at any meeting where a term sheet like this was handed out or discussed?
A Not that I recall.
Q The document that we're looking at, Morgan Stanley 81, is reflecting a proposed transaction that's an all stock deal. Do you see that?
A I do.
Q Do you have any understanding or discussion how the terms were negotiated relating to an all stock deal?
A I do not.
Q Or how the deal evolved during discussions from an all stock deal to a mix of stock and cash?
A I do not.
MR. BRODY: Object to the form.
BY MR. CLARE:

Page 196

Q There is a termination fee referenced here in this term sheet. Do you -- were you part of any discussions relating to a termination fee?
A No.
Q The expected closing is identified on Morgan Stanley Exhibit 81 as the second quarter of 1998. Did you have any understanding as to when this transaction would propose to be closed?
A I don't recall.
Q Do you know why it was moved up to close at the end of the first quarter?
A I do not. Or don't recall.
Q Or do you know that it was ever contemplated to close in the second quarter?
A Well, it was two steps. One was taking out of the MacAndrews & Forbes fee. And the second step was taking out the public.
Q Do you have any understanding as to how the timing of that first step of that transaction was arrived at?
A I don't recall.
Q Or any of the discussions between the parties about the timing?
A No. I wasn't a party to those.
Q There is a reference here on Morgan Stanley

NOT A CERTIFIED COPY

Page 197

Exhibit 81 to a one-year lockup for RP, which I'm assuming refers to Ron Perelman. Do you recall any discussions relating to the lockup term for the shares that Mr. Perelman or MacAndrews & Forbes would receive?
A No.
Q Okay. You can set that document aside.
I'm going to hand you what's been marked as Morgan Stanley Exhibit 82 --
MR. BRODY: Thank you.
MR. CLARE: -- titled "Project Laser, Laser Stand Alone Income Statements, I/B/E/S Case."
(Previously marked Exhibit MS 82 referenced herein.)
BY MR. CLARE:
Q Have you ever seen this document before?
A Not that I recall.
Q In any of the work that you performed related to the acquisition transaction, did you rely on information provided by Morgan Stanley?
MR. BRODY: Object to form and foundation.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q In any of the work that you performed on the acquisition transaction, was the source of any information that was provided to you attributed to Morgan

Page 198

Stanley?
MR. BRODY: Same objection.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q You can set that document aside. Handing you Morgan Stanley Exhibit 83. Previously marked. Similar in form to the document that we were just looking at. Bears the title "Project Laser, Proposed Summary Transaction Terms" and the print date in the lower left-hand corner is February 20th, 1998.
(Previously marked Exhibit MS 83 referenced herein.)
BY MR. CLARE:
Q Have you seen this document before?
A Not that I recall.
Q Under the form of consideration, the consideration package entries on the first page, it is reflecting what is still an all stock deal, but that MacAndrews & Forbes would have the right 30 days prior to closing to choose between two different consideration packages.
Do you recall at any point a discussion about a transaction where MacAndrews & Forbes would have an option on how it would elect to receive its consideration?

Page 199

A Not that I remember.
Q There is also an entry on the February 20th term sheet that we're looking at related to the assumption of holding company debt. Do you know how that topic was introduced as a discussion point between the parties?
A I don't.
Q Were you part of any meeting where the topic of assumption of debt was discussed between Coleman and Sunbeam?
A No.
Q During the meeting that you recall where Mr. Kersh made the presentation, was there any discussion of deal structure?
A Not that I recall.
Q Or price?
A No.
Q On the second page of Morgan Stanley Exhibit 83, there is a reference to a one-year lockup period. Were you -- was that topic discussed in any of the meetings that you attended?
A Not that I remember.
Q Did you ever discuss the topic of a lockup internally at Coleman or with MacAndrews & Forbes?
A Not that I remember.

Page 200

Q Were you part of any discussion either before or after the acquisition agreement was signed on how MacAndrews & Forbes might hedge its position that it was going to take in Sunbeam?
A No.
Q Were you aware that proposals were made to MacAndrews & Forbes on how it might hedge its position in Sunbeam?
A No.
Q Put that document aside.
Mark that as the next one, please.
THE REPORTER: 109.
MR. CLARE: Is that 109?
THE REPORTER: Yes.
(Deposition Exhibit MS 109 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Mr. Page, I'm handing you what's been marked as Morgan Stanley Exhibit 109. The beginning of this document is a letter from the law firm of Skadden, Arps to the SEC transmitting yet another chronology. There is an entry that I'd like to ask you about that is dated February 21st, 1998, and that entry begins on page CPH 1042298.
A Okay. You say the February 21st date?

NOT A CERTIFIED COPY

Q Correct.
A Do you want me to read that?
Q Yes. Just to yourself, please.
A Okay.
Q Do you recall this telephone conference with Coopers & Lybrand?
A I recall a -- a call around this period of time. I can't remember the exact date with Coopers as an introductory call.
Q This was the call that you referred to earlier in your testimony?
A Yes.
Q Were you in Wichita for this call?
A I don't recall.
Q Was Morgan Stanley a part of this call?
A Not that I remember.
Q This entry identifies the purpose is to discuss Coleman's business. Do you recall any discussion of Coleman's business during this telephone conference call?
A No.
Q You recall it as being introductory only?
A Yes.
Q You knew at the time you were talking to Coopers & Lybrand that they had been retained by Sunbeam?
A That's correct.

Q And did you understand that Coopers & Lybrand had been tasked to evaluate the synergies that might be achieved through a merger?
A I understood that to be one of their tasks, yes.
Q Were there other tasks?
A I would assume that they were doing due diligence, yes.
Q Due diligence on Coleman?
A Yes.
Q Was there any discussion with Coopers & Lybrand on this call about Sunbeam's business?
A Not that I recall.
Q Were there any synergy figures that were discussed with Coopers & Lybrand?
A Not that I recall.
Q Did you identify members of your staff for Coopers & Lybrand to work with in response to their request for information?
A Not that I remember, but I'm sure that would have been one of the topics we would have talked about.
Q Is there anything else you remember about your discussion with Coopers & Lybrand?
A I think this was probably the call we had before they came out to do due diligence at our -- some

of our facilities and so this was probably establishing timetables.
Q Was any substant -- substance of Coleman's business operations discussed on this call?
A I don't think so.
Q Did you accompany Coopers & Lybrand on any of their site visits?
A No.
Q Were you present for any of the interviews that they conducted?
A Nope.
Q Did you provide any documents to Coopers & Lybrand?
A I was never interviewed by Coopers & Lybrand.
Q Did you provide any documents to members of your staff who was working with Coopers for transmittal to Coopers?
A Coopers interacted with my direct staff members. They took up residence in my conference room next my office in Wichita, Kansas, for a week or so, as I seem to recall, and they interacted directly with a lot of my direct reports, but not with me.
MR. CLARE: I'll put this back into here. Let's mark that as at next one, please.
MR. BRODY: 110?

MR. CLARE: Yes.
(Deposition Exhibit MS 110 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Mr. Page, I'm handing you what's been marked as Morgan Stanley Exhibit 110. There is no Bates number on this document, but it is among the documents that were produced to us today at the beginning of this deposition by your counsel. We've had a copy made and we'll be marking it as Morgan Stanley Exhibit 110. It's a one-page document. It appears to be a photocopy of business cards from your file.
A That's correct. This is only half of the information that -- there was -- there was copies of cards on the back of the sheet that I handed over to you.
Q Indeed there were. All right. Well, let's deal with this page for now.
We've talked about your dealings with Mr. Kersh who is on the upper left-hand corner. Other than the one meeting that we've been discussing where Mr. Kersh made a presentation, did you have any other in-person meetings with Mr. Kersh?
A I believe he came to two. He -- one, the first meeting where we -- that I recall, and the second was the one he made the presentation, and I believe he came to

NOT A CERTIFIED COPY

Page 205

Wichita at least one time where he took a plant tour and had other interactions with staff members.
Q And that was after the agreement was signed?
A That's correct.
Q Mr. Gluck is the -- identified here as the third entry is the controller. Does that refresh your recollection about the controller at Sunbeam --
A Yes.
Q -- that you may have spoken with?
A Yes.
Q Did you have any telephone conversations or meetings with Mr. Gluck?
A I think I had various conversations with him along -- along the way. Sometimes it was he was seeking information. I would be directing him to staff members that could provide it to him.
Q Did you ever ask Mr. Gluck any questions about Sunbeam's business practices?
A I did not.
Q You have Mr. Gluck's home number written here. Did you ever have occasion to call Mr. Gluck at home for any reason?
A Not that I remember.
Q Mr. Totte, is that the individual --
A That's the --

Page 206

Q -- the tax person?
A -- head of taxes for Sunbeam. Yes, that's correct.
Q Did you have meetings with Mr. Totte?
A I believe I met him in Wichita one time.
Q Again, between the definitive agreement and closing?
A That's correct.
Q Mr. Wilder is identified here as the tax partner from Arthur Andersen. Is that the individual you were referring to earlier?
A Yes.
Q The Harlow name is handwritten here as the Arthur Andersen audit partner. Did you have any dealings with Mr. Harlow?
A I don't recall having direct contact with Mr. Harlow.
Q Was any contact with Mr. Harlow ever reported to you?
A Not that I remember.
Q Then there is a number of cards here from Coopers & Lybrand. Are these the individuals that visited Wichita in the manner that you just described?
A I believe so. These were the, I think -- yes, I think that's correct.

Page 207

Q Mr. Duffy from CSFB, did you have dealings with Bob Duffy?
A I remember a meeting with him, yes.
Q In what context?
A I think he was at some of the early meetings we had.
Q On what subject matter?
A It would have been on the -- Jerry Levin's office regarding the merger.
Q And what did it relate to? Preparing for the --
A I don't recall the nature of the conversation. I just remember meeting him.
Q Do you recall Alex Fuchs from Morgan Stanley, having any dealings with Mr. Fuchs?
A I remember the name. I don't remember interacting with him.
Q Do you recall whether he was present at any of the meetings that you were at?
A Not that I can recall.
Q Or having any discussions with him?
A Not that I recall.
Q Mr. Joshua Webber?
A Not that I recall.
Q You can set Exhibit 109 and 110 aside.

Page 208

I'd like to look back at Morgan Stanley Exhibit 75, the chronology prepared by Wachtell, Lipton. The next entry that I'd like to look at is dated February 23rd, 1998. Ask you to read that entry to yourself.
A Okay.
Q There is two sessions that are identified here on February 23rd, 1998 that reference you and I'd like to take them one at a time. The first reference is a meeting with Mr. Nesbitt, Mr. Page, Mr. Levin, Mr. Shapiro, Mr. Duffy and Mr. Geller with Mr. Stynes, Mr. Fuchs, Mr. Goudis in New York to conduct due diligence. Do you recall that meeting?
A I recall having a meeting in -- at 625 Madison Avenue before we went over to the Morgan Stanley offices. It was similar in tone and content to the first discussion we had back in November -- excuse me -- in December of '97 talking about the operations of Coleman.
Q Was that the exclusive focus of the meeting, the Coleman operations?
A That's my recollection.
Q Did -- was there any presentation made at that meeting by Coleman or those at the meeting on behalf of Coleman about its business operations?
A I don't recall.
Q Do you recall it as a question-and-answer

NOT A CERTIFIED COPY

0165134
16div-024678

Page 209

session?
A I really don't recall the substance of the meeting other than there was a discussion of Coleman.
Q And did -- would you classify this meeting as exploratory in nature?
A Yes.
Q Did you have a sense or understanding as to whether negotiations for an acquisition had -- had been underway at this point?
A I assume, yes.
Q Do you recall any discussion during that session about Sunbeam or its business operations?
A Um, I believe that was the beginning of the discussion that -- was the setup for the discussion that we were going to have that Russ was going to present -- Mr. Kersh was going to present the operations of Sunbeam to MacAndrews & Forbes employees and Coleman employees.
Q And that occurred later that day?
A That's correct.
Q At the offices of Morgan Stanley?
A Yes.
Q Do you recall any of the questions that were asked of Coleman during that morning session?
A I don't.
Q Were there any discussion of synergies?

Page 210

A I don't recall.
Q Do you recall anything that was said by any of the Morgan Stanley representatives during that meeting?
A I do not.
Q Did Morgan Stanley ask questions?
A I don't recall.
Q Is there anything else about the morning session that you remember?
A No.
MR. BRODY: When you say morning, I think his testimony was it was before the other one. I'm not sure his testimony was in the morning. You may want to --
THE WITNESS: My recollection was in the afternoon.
MR. CLARE: Okay. Fair enough. In the first session.
THE WITNESS: First session.
MR. BRODY: Thank you.
BY MR. CLARE:
Q The first session relating to Coleman's business operations?
A Right.
Q As you sit here today, you cannot recall anything that was said by anyone on the Sunbeam side?
A I don't recall.

Page 211

Q The second meeting referenced for February 23rd indicates attendees Nesbitt, Shapiro, Levin, Page, Maher, Duffy, and Isko for Coleman. And Fannin, Kersh, Kitts, Stynes, Fuchs, Chang and Goudis. Do you recall that meeting?
A Yes, I do.
Q Is that the meeting that you've been referring to at which Mr. Kersh made a presentation?
A Yes.
Q And tell me in as much detail as you can what you recall about that presentation.
A I recall Mr. Kersh presenting each of the business lines of Sunbeam in some detail, what was included in those lines, discussions of margins, growth potential, activities from '97 through '98. It was -- it would be characterized as an investor relations presentation with forward looking information financially.
Q Did you or anyone from Coleman or MacAndrews & Forbes ask questions of Mr. Kersh?
A Yes.
Q Do you recall any of the questions that were asked?
A No.
Q Did Mr. Kersh address -- strike that.

Page 212

Did Morgan Stanley present any portion of the presentation?
A Not that I remember.
Q Did Mr. Kersh hand out written slides to accompany his presentation?
A I believe so.
Q Did Morgan Stanley hand out any written materials?
A Not that I remember.
Q What, if anything, did Mr. Kersh say about Sunbeam's performance in the first quarter of 1998?
A I don't recall.
Q I'm going to hand you what's previously been marked as Morgan Stanley Exhibit 84.
MR. BRODY: Thank you.
(Previously marked Exhibit MS 84 referenced herein.)
BY MR. CLARE:
Q Ask you to take a look at it.
A Okay.
Q Is Morgan Stanley Exhibit 84 a copy of the presentation that Mr. Kersh delivered?
A I believe it is.
Q Did Mr. Kersh present this page by page in terms of going through the items or was it more a summary

NOT A CERTIFIED COPY

Page 213

presentation?
A Page by page.
Q Do you recognize any of the handwriting on this copy, Morgan Stanley Exhibit 84?
A I do not.
Q Did Morgan Stanley comment in any way at that meeting on Mr. Kersh's presentation of Sunbeam's strategic plan?
A Not that I recall.
Q Did Morgan Stanley state at any point during your discussions that they had independently examined the audited financials of Sunbeam?
A I don't recall.
Q Was the -- what, if anything, did Mr. Kersh say about how Sunbeam expected 1998 earnings per share to come out?
A I don't recall.
Q Was that a topic that he addressed?
A Uh, I believe he did. It was in the presentation in the back.
Q Did you understand Mr. Kersh's projection of earnings per share for 1998 to be a guarantee?
A No. I remember Mr. Kersh making a statement that the street had a lower number that was on these forecasts.

Page 214

Q That the street was predicting a lower number?
A That's correct.
Q Mr. Kersh's presentation was a higher number?
A That's correct.
Q Was there any discussion about that?
A He just made it as a -- as a comment.
Q Was there any discussion -- any questions asked by Coleman or MacAndrews & Forbes about 1998 performance?
A I don't recall.
Q Did Mr. Kersh address in any way the turnaround that was underway at Sunbeam initiated by Mr. Dunlap?
A Not that I recall.
Q Did Mr. Kersh address grill revenue?
A Not that I remember.
MR. BRODY: Are you asking what he remembers or do you want him to look through the document for what was addressed or wasn't addressed?
MR. CLARE: I'm only asking for his recollection at this point.
MR. BRODY: Okay. Thanks.
BY MR. CLARE:
Q I'd like you to turn, please, to what is page Bates No. 4763, "Strategic Headlines" page. There is some sales figures referenced there at the bottom. What, if anything, do you recall Mr. Kersh saying about those

Page 215

sales figures?
A I don't recall.
Q Did you understand that the 1998, 1999 and 2000 figures were estimates? Or projections?
A Yes.
Q And did those projections fall under the category of estimates that cannot reasonably be relied upon as a guarantee?
MR. BRODY: Object to the form. Legal conclusion. Argumentative.
Go ahead.
THE WITNESS: I would put more weight on these because they're coming from the company than I would from an analyst's presentation.
BY MR. CLARE:
Q Did you interpret them to be a guarantee by Mr. Kersh or by Sunbeam that these figures would be achieved?
A Not a guarantee.
Q Did you interpret them to be a promise that the figures would not be lower than this?
A No.
Q Did Mr. Kersh ever state in words or in substance that Sunbeam stock would not decrease in value over time?

Page 216

A No.
Q Was it contemplated that Sunbeam stock would continue to trade publicly after the acquisition?
A Would Sunbeam continue to be a public corporation? Yes.
Q Was there any discussion of an early buy sales program?
A Not that I recollect -- recollect.
Q The next page of the presentation there is a reference to air and water documents -- air and water products, rather, in point No. 4.
A Yes.
Q You see some handwriting there?
A I do.
Q Hundred million in 1998. Do you know what that's referring to?
A I think -- I seem to remember Russ making -- when he was presenting this area, he was bullish on their household air purification, air water products.
Q And the impact that it would have on Sunbeam's performance?
A Yes.
Q Did you understand Mr. Kersh to be guaranteeing the positive impact of the air and water products?
A Guaranteeing, no.

NOT A CERTIFIED COPY

016536

Page 217

Q I'd like you to turn, please, to the page bearing Bates No. 4771, describing long range strategic objectives, earnings from continuing operations. And there is a reference or a table here showing actual and strategic plan numbers for a variety of financial metrics. In the left-hand column, the top item is net sales. To the right of that is a handwritten note. It says, "January, February slow." Do you see that?
A I do.
Q Do you recall any discussion about sales in January or February of 1998 being slow?
A No.
Q Do you have any understanding as to what that's referring to?
A I do not.
Q Was there any discussion at that meeting that you attended about Sunbeam's performance to date in the first quarter of 1998?
A Not that I recall.
Q Was there any discussion about how Sunbeam's performance in the first quarter would compare to analyst estimates?
A Not that I remember.
Q Or to the prior year?
A Not that I remember.

Page 218

Q Did Morgan Stanley present any portion of this presentation, Morgan Stanley Exhibit 84?
A Not that I remember.
Q At the conclusion of the presentation, didn't Morgan Stanley make any remarks?
A Not that I recall.
Q What, if anything, did you do with Mr. Kersh's presentation after leaving the meeting?
A I don't recall what I did with it.
Q Did you use the presentation for any of the work that you did on the acquisition?
A Not that I recall.
Q Did you take any of the figures that were provided by Mr. Kersh in his presentation into your modeling or analysis of the presentation --
MR. BRODY: Object.
BY MR. CLARE:
Q -- of the acquisition?
MR. BRODY: Object to form. Mischaracterizes his testimony about what he did.
Go ahead.
THE WITNESS: I didn't model a combined transaction.
BY MR. CLARE:
Q Did you take any of the figures presented by Mr. Kersh in his presentation for any purpose in connection with your work on the acquisition transaction?
MR. BRODY: Same objection.
THE WITNESS: Not that I recall.
MR. CLARE: Let's mark this as the next exhibit, please.
THE REPORTER: It's 111.
MR. BRODY: 111?
THE WITNESS: 111.
MR. BRODY: Thank you.
(Deposition Exhibit MS 111 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Morgan Stanley 111 is another copy of the same presentation that we've just been looking at. This one was found in the file that was produced by your counsel to me at the beginning of the deposition today. There is some handwriting on this version, Morgan Stanley 111. Is that your handwriting?
A This is my handwriting.
Q Okay. I'd like to go through it and, to the best of your ability, please explain to me the handwritten entries. The first one, I believe, appears on the page titled "Sunbeam Appliances, Strategic Headlines."

Page 219

Page 220

A That's the one I have.
Q Okay. And do you see a reference there to the right of the title?
A 30 percent margin.
Q Do you know what that's referring to?
A Probably referring to the margin on that particular line of appliances.
Q Is that an in- -- information that was presented by Mr. Kersh?
A That would be my recollection.
Q And did Morgan Stanley present any information at that meeting or any other meeting about margins?
A Not that I recall.
Q Did you understand Mr. Kersh to be guaranteeing any level of margin on Sunbeam's products on a going forward basis?
A On a go-forward basis? No. I think that reference of 30 percent is on historical basis.
Q There is a reference to the left of the "blending and Mixing" entry. Do you see that?
A It says 50 cents per share. I don't know what that means. I don't recall.
Q On the next page there is another entry to 30 percent margin?
A Yes.

NOT A CERTIFIED COPY

Page 221

Q Is that for the Health At Home line?
A That's correct.
Q Same questions, was that information presented by Mr. Kersh?
A Yes.
Q Did Morgan Stanley make any statement about margins for the Health at Home products?
A Not that I recall.
Q And, again, that was a description of historical --
A That would have been the question.
Q The next page relates to Personal Care and Comfort Bedding. 40 percent margin?
A 40 percent margin.
Q Is it the same?
A Same answers as before.
Q Okay.
A Historical, no from Morgan Stanley, and it was Russ.
Q No guarantees?
A No guarantees.
Q There is some circles with the sales figures at the bottom and some notes. I'm wondering if you can explain and interpret the handwriting for me?
A I think that my writing to the right is saying

Page 222

that they had a fourth quarter problem because they only had single and double bedding and not king and queens. So it caused them a little bit of a -- some type of issue in the fourth quarter. And that's all my interpretation would be.
Q Okay. The next page. This is the --
A There is a note down by 169, and 120 of that 169 was bedding in the U.S. I'm -- don't know what that would have meant. The Clippers on the far right, that is differentiating Clippers, I believe, at retail versus -- I guess they had a professional haircutting line. This differentiates one from what's going to be coming up next.
Q Next page is "Outdoor Cooking"?
A Showing 10 percent margin '97, and it's also noting a 20 to 25 percent margin for '98.
Q And that was a projection made by Mr. Kersh about the margins?
A That's correct.
Q And did you understand Mr. Kersh to be guaranteeing that level of margin for the outdoor cooking products?
A No.
Q The next page "Strategic Headlines" for "Other Channels"?

Page 223

A Excuse me. I think my comment to the right is this has to do with lodging. They were going to sell irons, coffee makers, and hair dryers through a direct channel to hotel chains as a growth strategy and channel. And outlet stores, they had the professional clipper business. They were going to go through outlet stores. 21 -- 16 U.S., 5 Canada adds up to 21.
I'm now at the long range strategic objectives, earnings from continuing operation, and I think I was doing math from -- we asked him what his '96 base was of 984 million, and I think I was just doing the growth of revenue year to year. 180 million from '96 to '97. 450 million from '97 to '98. 400 million from '98 to '99. And 400 million from '99 to 2000. And I note on the very bottom under 2000 -- excuse me -- 1998, earnings per share of $2.20. I have marked street estimate where it says "street" $1.97.
Q Did Mr. Kersh present the street estimate?
A That's correct.
Q So he provided both figures during the presentation?
A Well, the ones that were written, we would have -- we would have asked -- someone asked the question, "What is the street estimate for '98?" Or he made a statement that the street estimate for '98 was

Page 224

less than what their internal forecasts were.
Q Did he provide any explanation as to why the internal forecasts were higher than the street estimates?
A Not that I recall.
Q Did he provide any guarantee or promise that EPS would be higher than the street estimates?
A He was alluding that he believed that they were going to beat the street.
Q Did he make that promise or guarantee that Sunbeam would beat the street?
A He made a statement that he believed they were going to beat the street.
Q Did you interpret that as a promise or guarantee?
A No. I interpreted that as his estimate of what the performance of the company was going to be.
Q Did you in any of the work that you did on the acquisition transaction rely on Mr. Kersh's estimate of beating the street in thinking about the acquisition?
MR. BRODY: Object to the form. Mischaracterizes prior testimony.
Go ahead.
THE WITNESS: Not that I recall.
BY MR. CLARE:
Q Did you discuss it with anyone at Coleman?

NOT A CERTIFIED COPY

016538

Page 225

A Not that I recall.
Q Or MacAndrews & Forbes?
A Not that I recall.
Q Okay. Put that document aside.
Hand you what's been marked as Morgan Stanley Exhibit 85.
(Previously marked Exhibit MS 85 referenced herein.)
THE WITNESS: Okay.
BY MR. CLARE:
Q Have you ever seen this document before?
A I think I saw one yesterday.
Q Okay.
A When it was presented to me by my lawyer.
Q Prior to preparing for your deposition, had you ever seen a copy of Morgan Stanley Exhibit 85 before?
A Not that I recall.
Q Was this document entitled "Sunbeam Corporation Discussion Materials February 1998," provided or presented during a meeting that you attended?
A Not that I remember.
Q If you had been provided with a copy of it, would you have kept it in the same place as you did the strategic plan presented by Mr. Kersh?
A Not necessarily.

Page 226

Q This is -- this document 85 is in the nature of a presentation. Do you recall any other presentations being made at the meeting other than the one Mr. Kersh gave?
A No.
Q I'd like you to turn, please, to the Bates No. ending 11220, "Sunbeam Corporation Investment Rationale."
A Okay.
Q Whether or not as part of a presentation or not, have you ever seen this slide before?
A Not that I remember.
Q During any of the meetings that you attended, did anyone from Morgan Stanley or Sunbeam describe Sunbeam as an attractive growth story?
A Not that I remember.
Q During any of the meetings that you attended, did anyone state in words or in substance that Sunbeam has undergone a profound transformation since the arrival of new management in July 1996?
A Not that I remember.
Q Or that Sunbeam has tremendous intrinsic value?
A Not that I remember.
Q Next line under that reference to intrinsic value talks about growth and profitability outpacing nearest competitors. Was there ever any discussion about

Page 227

Sunbeam outpacing its competitors in growth and profitability?
A Not that I remember.
Q Were any promises or guarantees made by Mr. Kersh at that meeting that you attended about growth and profitability?
A Well, he certainly talked about growth and profitability.
Q Those topics were discussed?
A Yes.
Q Were any promises or guarantees made about growth or profitability of Sunbeam on a going forward basis?
A No.
MR. BRODY: Object to the form.
BY MR. CLARE:
Q I'm sorry. The answer was?
A No.
Q Do you recall this slide being discussed or presented in any of the meetings that you attended?
A Not that I remember.
Q I'd like you to turn, please, to the slide ending 1226. Was this slide discussed or presented at the meeting you attended?
A Not that I recall.

Page 228

Q Do you recall Sunbeam -- either Mr. Kersh or anyone else -- preside -- providing estimates or projections of performance for 1998 and 1999 based on an Oppenheimer research report as reflected here?
A Not that I recall.
Q I'd like you to turn to the next page, please. Same questions. Have you seen that slide before? Was it presented at the meeting?
A Not that I remember.
Q I'd like you to turn to the slide page 1231, please. Do you recall this slide being presented or discussed at the meeting?
A Not that I recall.
Q Did Mr. Kersh address growth objectives for Sunbeam during the meeting?
A He talked about growth. He presented growth targets for Sunbeam. Yes.
Q Did you understand those targets to be promises or guarantees?
A No.
Q There is a reference here in the first bullet point of doubling 1996 sales to almost two billion by 1999 without acquisitions. Was that topic discussed at the meeting that you attended?
A Not that I recall.

NOT A CERTIFIED COPY

016539

Page 229

Q Or the tripling of international sales?
A International sales generically was discussed, but not tripling that I can recall.
Q The next bullet point refers to an operating margin objective of at least 20 percent. Do you recall that topic being discussed?
A I don't.
Q Or a 25 percent return on equity?
A I don't recall.
Q Or a free cash flow of 600 million?
A I don't recall.
Q Do you understand -- withdrawn. Strike that. Set that document aside.
Is there anything else about the meeting that you attended where Mr. Kersh gave his presentation that you remember that we haven't discussed?
A No. I think we've covered most of it.
Q Have we covered all of it or most of it?
A We've covered everything I can remember.
Q Okay. Thank you.
What is the next event that you remember related to the acquisition?
A Well, there was a board meeting and I remember a presentation, and Coopers & Lybrand individuals in Wichita, Kansas. Those would be the other events that I

Page 230

recall surrounding the acquisition.
Q I'm going to hand you what's been marked as Morgan Stanley Exhibit 88, minutes from a board meeting of The Coleman Company dated February 25th, 1998. You're shown as an attendee.
(Previously marked Exhibit MS 88 referenced herein.)
BY MR. CLARE:
Q Have you ever seen these board minutes before?
A Only in preparation for this deposition.
Q The Exhibit Morgan Stanley 88 purports to be minutes of a meeting of the board of directors of Coleman in February -- on February 25th, 1998 in New York. Do you recall attending a board meeting of Coleman in New York?
A Yes, I do.
Q Where did Coleman hold its board meetings on -- normally?
A They normally were held at the townhouse, which is on 62nd Street.
Q And you're referring to the MacAndrews & Forbes townhouse?
A That's correct.
Q And that was the ordinary place of board meetings for Coleman even before this acquisition?

Page 231

A All the ones that I've attended were at the board room at MacAndrews & Forbes.
Q In New York?
A In New York.
Q What do you recall about the board meeting that you attended?
A A general discussion of the potential acquisition of Sunbeam acquiring Coleman.
Q Do you recall attending more than one board meeting on the -- on the acquisition?
A I only really remember one.
Q Did you speak at the board meeting that you attended?
A I don't believe so.
Q Did anyone from Morgan Stanley attend the meeting that you remember?
A Not that I recall.
Q Did anyone from Morgan Stanley participate in the meeting even if they didn't participate in person?
A Not that I recall.
Q No one from Morgan Stanley plugged in by telephone call?
A Not that I recall.
Q Or videoconference?
A No.

Page 232

Q Was any written material made available to the board of directors or the participants that was attributed to Morgan Stanley?
A Not that I remember.
Q I'd like you to turn -- well, please, just -- the first page indicates that Mr. Levin called the meeting to order and asked Mr. Isko to serve as the secretary of the meeting. Mr. Isko is a name we've seen before. He was in the law department at Coleman?
A At that time, yes.
Q And he was the assistant secretary of the corporation?
A I knew him as a lawyer in the law department.
Q Did -- was it Mr. Isko's practice to circulate drafts of the board minute meetings for comment among the participants?
MR. BRODY: Object to form.
Go ahead.
THE WITNESS: Not usually.
BY MR. CLARE:
Q Turning to the second page of Morgan Stanley Exhibit 88, the middle or third paragraph on the page, I'd like you to read that to yourself, please.
A Okay.
Q It describes a presentation made by Mr. Maher

NOT A CERTIFIED COPY

0165540

about the history of the proposed transaction with Sunbeam. What do you recall about Mr. Maher's presentation?

A I don't recall his presentation.

Q Do you recall Mr. Levin making remarks about the -- the acquisition?

A I do not recall.

Q There is a reference here to an inquiry made by the company to another potential bidder who was not interested. Do you recall that being discussed at the board meeting?

A I recall another company, but I can't remember who it was.

Q Were you part of the inquiry that was made to that other company?

A No.

Q Who handled those communications?

A It wasn't me, so I wouldn't know.

Q That paragraph refers to numerous questions being asked about the transaction and a discussion. Do you recall any of the questions that were asked by the board members about the transaction?

A I don't.

Q Or any of the directors?

A I don't.

Q Did you recall Morgan Stanley being mentioned or referenced at all during the board meeting?

A Not that I recall.

Q Turn to the next page, please. Well, I guess it's the next paragraph on -- on the same page we were looking at, on page 2 of the exhibit. It describes a presentation by Mr. Emmerich. Do you recall Mr. Emmerich's presentation?

A No, I don't recall it.

Q He described the overall structure of the acquisition. Do you recall any questions that were asked of Mr. Emmerich?

A I don't.

Q Do you recall any discussion about the tax treatment of the acquisition?

A I don't recall.

Q The next page, page 3 of the exhibit, again refers to questions -- numerous questions being asked by the directors regarding the consideration being paid, the structure of the transaction and the other terms of the transaction. Do you recall any of the questions that were asked or discussions that followed Mr. Emmerich's presentation?

A I do not.

Q Turn to the next page. The second full paragraph. Mr. Levin introduced Mr. Gordon Rich of First Boston. Do you recall Mr. Rich making a presentation?

A I recall him making a presentation, yes.

Q What do you recall about his presentation?

A Just that he was giving --

THE REPORTER: I'm sorry? He was giving --

THE WITNESS: Giving a fairness opinion.

THE REPORTER: Thank you.

BY MR. CLARE:

Q You may be confusing different meetings and different presentations. I think we'll see in a few minutes that a fairness opinion was given by Mr. Rich at a meeting that took place two days later.

A Okay.

Q So do you recall Mr. Rich on the 25th giving any sort of presentation about the transaction?

A I don't recall.

Q Do you recall Mr. Rich discussing or mentioning Morgan Stanley during this presentation?

A I don't recall.

Q Turn to the top of the next page, please. And read that first paragraph to yourself, which is at the top of page 5 of Morgan Stanley Exhibit 88.

A Okay.

Q Did Mr. Rich present a conclusion to the board

of directors of Coleman that Sunbeam stock was fairly valued at the then existing market price?

A I think that's what the paragraph says.

Q Do you recall him doing that?

A No, I don't.

Q It describes an analysis performed by CSFB to reach that conclusion. Do you recall anything that was said about how that analysis was performed?

A I don't recall.

Q Three paragraphs down from that, there is a reference to the Management Incentive Plan and a discussion about an earnings per share condition not having been satisfied. Do you recall that topic being discussed at the board meeting?

This is in the paragraph that begins, "Mr. Levin thanked Mr. Rich . . ."

A Okay. I read it.

Q Do you recall that issue?

A I don't.

Q Do you recall, as indicated in the bottom section of that page, the board approving the payment of bonuses notwithstanding the satisfying -- the sat- -- the conclusion being satis- -- condition being satisfied?

A I don't.

Q Did you receive a bonus pursuant to the

NOT A CERTIFIED COPY

Page 237

Management Incentive Plan for 1997?
A Yes.
Q And pursuant to this resolution reflected here?
A I can't recall.
Q Do you recall how much that bonus payment was?
A It wasn't a large amount. But it was paid after I had left Coleman.
Q Can you give me an order of magnitude?
A 20- to 25,000.
Q Okay. You can put that document aside. Mark this as the next one, please.
THE REPORTER: 112.
(Deposition Exhibit MS 112 was marked for identification by the court reporter.)
THE WITNESS: Okay.
BY MR. CLARE:
Q Have you ever seen this exhibit, Morgan Stanley 112 before? It's a February 25th, 1998 "Materials Prepared For Board of Directors of Coleman Company."
A I remember some of it.
Q Do you recall this presentation being given by Mr. Rich to the board of directors?
A Vaguely.
Q At the meeting that you attended?
A Yes.

Page 238

Q Did anyone other than Mr. Rich from CSFB speak, to your recollection?
A I don't remember.
Q At any point during the board of directors meeting, did anyone provide the board with the estimates -- the higher estimates that Mr. Kersh had presented during the meeting?
A Not that I remember.
Q I'd like you to turn, please, to slide 12 of Morgan Stanley Exhibit 112, Bates numbered 1231. It's titled "Overview of Sunbeam." Do you see at the bottom right-hand corner there is a financial summary provided for the 1996, '97 and 1998 -- 1999 -- estimates for '88 (sic) and '89 (sic). Do you see that?
A I do.
Q Do you see the footnote indicates that the estimates are based on Wall Street estimates?
A Yes.
Q And it was your recollection that the Wall Street estimates were lower than the figures that Mr. Kersh had presented?
A That's correct. That's what Mr. Kersh said.
Q Do you remember -- and that's consistent with your recollection of what --
A That's true. I did not go back and

Page 239

independently verify his comments.
Q Was there any discussion at the board meeting of Sunbeam's having projected higher numbers than what Wall Street was estimating?
A Not that I remember.
Q Look at the next page of the document. the "Valuation Summary," slide 13. There's a discounted cash flow analysis presented under the long term strategic plan and also a base case. Do you recall CSFB presenting alternate analyses to the board?
A I don't recall.
Q Do you recall any discussion from the board about the differences between the base case -- what is described here as the base case and what is described here as the long term strategic plan case?
A No.
Q Turn to the next page, please, which is a detail on the discounted cash flow analysis. You see the base case line has a footnote, note 1, which states, "Projections developed in conjunction with CLN management based on equity analyst research."
Do you recall any discussion about how the base case presented to the Coleman board was arrived at?
A I do not.
Q Were you consulted or provide any input on a

Page 240

base case for presentation to the Coleman board?
A Not that I remember.
Q Do you have an understanding as to what the equity analyst research referred to in that footnote relates to?
A I do not.
Q Were you ever asked by CSFB to comment on equity analyst research reports providing estimates for Sunbeam on a going forward basis?
A Not that I remember.
Q Would you turn to slide 18, please, "Pro Forma Analysis." Do you recall Mr. Rich or anyone from CSFB presenting to the board a $100,000,000 pretax synergy scenario?
A Not that I remember.
Q Do you recall any discussions of synergies with the Coleman board?
A Not that I remember.
Q Was there any discussion at the Coleman board that you remember about the value of Sunbeam stock?
A Not that I recall.
Q Any projections on a going forward basis about what CSFB or others believed that the stock might be worth?
A Not that I remember.

NOT A CERTIFIED COPY

016542

MR. CLARE: Mark this as 113.
(Deposition Exhibit MS 113 was marked for identification by the court reporter.)
BY MR. CLARE:
Q I've handed you what's been marked as Morgan Stanley Exhibit 113. These are minutes of the meeting of the board meeting The Coleman Company held on Friday, February 27th, 1998, again at 35 East 62nd Street in New York. Do you recall attending this meeting?
A I think they both have blurred together in my mind.
Q Having reviewed now these two different board minutes, do you recall there being two separate meetings? Does that refresh your recollection?
A No.
Q At -- do you recall anyone from Morgan Stanley attending the meeting or meetings that you remember?
A I do not.
Q You're shown as a participant or at least as an attendee of the meeting here. Do you have any reason to believe that you did not attend both meetings?
A I believe I was in attendance at both meetings.
Q The paragraph at the bottom of the first page reflects Mr. Levin updating the board on the status of negotiations and describing a modification to the

exchange ratio that had been presented a day or two earlier. Do you recall any discussion about that topic?
A I do not.
Q Do you recall the reasons for the cash component of the consideration being increased?
A I do not.
Q Do you recall any discussion at any -- either of the board meetings expressing a desire on the part of the board or any board member to receive less Sunbeam stock as part of the consideration?
A I do not.
Q Did anyone from Morgan Stanley attend the February 27th board meeting?
A Not that I remember.
Q Did anyone from Morgan Stanley participate in the February 27th board meeting by telephone or videoconference?
A Not that I remember.
Q Look at page 2 of Exhibit -- Morgan Stanley Exhibit 113, the third paragraph from the bottom, reflects Mr. Rich delivering a fairness opinion on behalf of CSFB. Do you see that?
A I do.
Q Do you recall Mr. Rich giving that opinion?
A Yes, I do.

Q What, if anything, do you recall about Mr. Rich's presentation of the fairness opinion?
A Other than he said it was a fair transaction, it was a fair --
Q Was there any questions put to Mr. Rich or discussion about that?
A Not that I recall.
Q Was there any discussion about the work that had been performed by CSFB to reach that conclusion?
A Not that I remember.
Q Did Morgan Stanley's name come up at all in connection with the discussion of fairness of the consideration?
A Not that I remember.
Q Did Morgan Stanley render or provide any fairness opinion to the Coleman board?
A Not that I remember.
Q Or any opinion on any topic?
A Not that I remember.
THE REPORTER: I need another paper change.
MR. CLARE: Oh. Go ahead.
THE REPORTER: Okay. Thank you.
BY MR. CLARE:
Q At the board meeting that you recall attending, did the board of directors approve the proposed

acquisition?
A Yes.
Q Was there any discussion that the board had relied upon Morgan Stanley in approving the transaction?
A Not that I recall.
Q At the conclusion of the board meeting, did somebody go sign the merger agreement on behalf of The Coleman Company?
A I don't remember.
Q Certainly wasn't you?
A Wasn't me.
Q Was there any discussion or conversations that you had with any of the participants after the board meeting about the transaction?
A Not that I remember.
Q Did you, after the definitive agreement was signed, play any part in the issuance of Sunbeam convertible debentures?
A Could you --
Q Sure.
A -- ask that question again?
Q Did you play any role or review any materials relating to Sunbeam's issuance of convertible debentures after the agreement was signed?
A No.

NOT A CERTIFIED COPY

Page 245

Q Did you read any of the offering materials related to that offering?
A Not that I remember.
Q Did you attend any of the road shows related to that offering?
A No.
Q Do you recall Morgan Stanley and other banks making inquiries of Coleman during the time period between the definitive agreement and the closing?
A Not that I remember.
Q Do you recall making a presentation to Morgan Stanley and First Union Bank about Coleman and its business?
A What time frame?
Q Well, any time frame.
A Not that I remember.
Q Do you recall presenting Coleman's 1998 plan to Sunbeam's lenders?
A Not that I remember.
On your prior question about Morgan Stanley presentations, they could have been in attendance at an investor relations meeting so I could have talked to an investor -- a analyst for Morgan Stanley at some point. I just don't recall.
Q But not in the context of a specific session?

Page 246

A Not in -- not in context of a specific session and not in the context of this transaction.
MR. CLARE: Let's mark this as the next exhibit, please. 114.
THE REPORTER: 114.
(Deposition Exhibit MS 114 was marked for identification by the court reporter.)
THE WITNESS: Okay.
BY MR. CLARE:
Q All right. Do you recognize this document, Morgan Stanley Exhibit 114?
A I don't.
Q Do you see on the first page and other pages of the document there are multiple fax lines dated March 13th, 1998?
A I do.
Q And that was a time period when you were still with Coleman, correct?
A That's correct.
Q And one of the fax entries here is a fax from your machine, at least it bears your name --
A That's correct.
Q -- and your fax number?
A That's correct.
Q And then the other fax line is to a New York

Page 247

telephone fax with the entry MS NY IBD. Do you see that?
A I do.
Q Do you recall sending or any presentation to Morgan Stanley or transmitting it to somebody else for transmittal to Morgan Stanley in the March 1998 time period?
A I don't.
Q Do you recall presenting by telephone the information contained in this slide?
A I don't recall.
Q Do you recall being asked by Mr. Levin or making a -- having a conversation with Mr. Levin to Morgan Stanley and First Union?
A Not that I recall.
Q I'd like you to turn, please, to page 4529. Talks about The Coleman Brand. And the bottom two bullet points. First one reads, "History of innovation and technological improvement." Do you see that?
A I do.
Q Do you understand that statement to be making a promise or guarantee about future innovation or technological improvement?
A I actually think it says, "History of innovation" so that's not -- no, I would not.
Q And "significant market positions," do you

Page 248

understand that to be making any guarantees about future market position?
A No.
Q Do you recall -- whether or not you recall this particular compilation, do you recall presenting any of these slides in any context?
A These are familiar slides that we would make in a normal presentation to potential investors or analysts that would be interested in Coleman background material on companies that we're restructuring. Those appears to be ones that we would have used time and time again.
Q Okay. You don't recall providing the standard presentation to Morgan Stanley at any point?
A I just don't recall.
Q Look at the slide 4536 near the back entitled "Revenue/EBITDA/Capital." Do you see that?
A Right. Yes.
Q And is this slide part of the presentation that would be made to potential investors?
A Potentially. But I don't know if it would include future.
Q You're referencing the "Plan 1998" column?
A That's correct.
Q Would that be unusual to present that?
A To an investor it would be.

NOT A CERTIFIED COPY

016544

Page 249

Q It would be?
A It would be.
Q Why -- why would that information be omitted in presenting to an -- investors?
A Forward looking information. Selective disclosure issues.
Q Have you ever presented -- do you recall ever presenting Coleman's 1998 plan to any potential investor or third party?
A I don't recall.
Q When -- do you understand Coleman to be making a guarantee or promise that it will meet these 1998 plan numbers for revenue, EBITDA and capital as reflected here on the slide?
A No.
Q That's because they are forward looking statements?
A That's correct.
Q And for the reasons that you described earlier, it would not be reasonable for a third party to rely on them as a guarantee of future performance?
A Not a guarantee.
MR. BRODY: Object to the form.
BY MR. CLARE:
Q I'm sorry?

Page 250

A Not a guarantee.
Q Did you know as of the middle of March 1998 that Coleman's -- strike that.
Turn to the next to -- third to the last page, slide 4540. Slide entitled 1998 Growth Strategy. Is this a slide that would have been part of the typical investor -- investment package?
A Yes.
Q Is the growth strategy here -- presented here a statement of Coleman's growth objectives?
A Um, I believe it would be strategies.
Q Okay. Are these guarantees or promises that Coleman will accomplish these strategies?
A Guarantees, no.
Q This is management's estimation of what they're attempting to accomplish?
A It's management's --
MR. BRODY: Object to form.
THE WITNESS: Management's plan for the upcoming year.
BY MR. CLARE:
Q Would it be reasonable for a third party to rely on these objectives as a promise or guarantee that they would be achieved?
A No.

Page 251

MR. BRODY: Object to form.
BY MR. CLARE:
Q No?
A No.
Q Put that aside.
Do you recall in the period of time between the definitive agreement and the closing that Sunbeam issued a press release about its first quarter 1998 sales?
A Yes.
Q And what do you recall about that release?
A Thought it was a downward adjustment to the guidance it had given previously.
Q Were you part of any discussions internally at Coleman or MacAndrews & Forbes about that press release?
A Before it went out?
Q No. After it was received.
A I may have had some discussions with my internal staff.
Q What -- tell me everything you remember about those conversations.
A Just that they had issued a press release as they were guiding down their -- their quarter, and that would be about the extent of it.
Q No discussions with Mr. Levin?
A Not that I remember.

Page 252

Q Or anyone at MacAndrews & Forbes?
A Not that I remember.
Q Did you ask anyone at Sunbeam about the downward adjustment?
A No.
Q Did you ask anyone at Morgan Stanley about the press release?
A Not that I remember.
Q Did you ask -- all right. Let me -- withdrawn.
Are you aware of anyone at Coleman or MacAndrews & Forbes making an inquiry to Sunbeam about that press release?
A Not that I remember.
Q Are you aware of anyone at Coleman or MacAndrews & Forbes asking Morgan Stanley about that press release?
MR. BRODY: Objection. Foundation.
THE WITNESS: Not that I remember.
BY MR. CLARE:
Q Did Coleman or MacAndrews & Forbes ask CSFB to look into the implications of it?
MR. BRODY: Objection. Foundation.
THE WITNESS: Not that I know of.
BY MR. CLARE:
Q Or Wachtell, Lipton?

NOT A CERTIFIED COPY

Page 253

MR. BRODY: Same.
THE WITNESS: Not that I know of.
BY MR. CLARE:
Q Was there any discussion internally that you were a part of about exercising the material adverse change clause in the agreement?
A Not in my presence.
Q Are you aware of any of those discussions?
A No.
Q Or any discussions about approaching Sunbeam with a request to delay the closing of the transaction until after the end of the first quarter?
A Not that I remember.
Q Any discussions at all internally at Coleman or MacAndrews & Forbes about the implications of Sunbeam's announcement for the transaction?
A Not that I remember.
Q Or with any third party?
A Not that I remember.
Q And the conversations that you had with your staff, did they relate to the -- well, what was the purpose of those discussions?
A Just to give them information that there had been a press release, that we knew that Sunbeam was on the road, that obviously it had impact on their lives

Page 254

because if the acquisition would have gone through, they would have been impacted since they were corporate staff members and probably would be redundant. So they probably had a personal interest and a professional interest. So I would have taken it upon myself to make sure that they had seen that.
Q Are you aware of any other discussions or inquiries that were made in the days after the March 1998 press release issued by Sunbeam?
A Not that I can recall.
Q Did you ever have any discussions with Mr. Perelman about the acquisition?
A Not that I can remember. We obviously would have had interchanges potentially at board meetings, but nothing I can recall correctly.
Q Any discussions other than at board meetings?
A Not that I remember.
Q Do you know who attended the closing for Coleman?
A No.
Q Do you know where the shares of Coleman were exchanged for the consideration?
A No.
MR. CLARE: Mark this as the next. Actually, I think we've already got this one marked.

Page 255

MR. BRODY: I can't see it, but it looks like it has a sticker on it.
MR. CLARE: It does. I was just looking at the date. Yes, it does. I want to make sure it's the right litigation. Thanks.
Mr. Page, I've handed you what's been marked as Morgan Stanley Exhibit 11, a copy of a press release issued by Sunbeam on March 19th, 1998.
(Previously marked Exhibit MS 11 referenced herein.)
BY MR. CLARE:
Q Is this the press release that you remember?
A Yes.
Q Is this the one we've been discussing for the last few minutes?
A Yes.
Q There is a statement in the press release stating Sunbeam's expectation that first quarter 1998 net sales would exceed the first quarter of 1997 sales. Do you see that?
A Yes, I do.
Q Do you recall any discussion with anyone about that statement in the press release?
A No.
Q Would you classify that as a forward looking

Page 256

statement?
A Yes.
MR. BRODY: I'm sorry. Object to the form.
BY MR. CLARE:
Q Do you understand that to be a promise or a guarantee that first quarter 1998 sales would exceed first quarter 1997 sales?
MR. BRODY: Object to the form.
THE WITNESS: I think it's getting closer to a promise. Not a guarantee.
BY MR. CLARE:
Q How is it getting closer to a promise?
A Because you're in the mid part of the month of March and you should have at that point, with two and a half of three months completed, a pretty good idea what the quarter should be.
Q Did you in any of the work that you did rely upon that forward looking statement?
MR. BRODY: Object to form.
THE WITNESS: No.
BY MR. CLARE:
Q Were you -- do you recall any discussion about that with anyone at Coleman or MacAndrews & Forbes?
A Not that I recall.
Q Handing you what's been marked as Morgan

NOT A CERTIFIED COPY

0165476

Page 257

Stanley Exhibit 58. Again, the first page is a fax cover sheet. The attachment that I'm going to ask you about is a press release by Sunbeam dated April 3rd, 1997.

A Okay.

(Previously marked Exhibit MS 58. referenced herein.)

BY MR. CLARE:

Q Did you see or hear about this press release issued by Sunbeam?

A In advance or after?

Q Either.

A Not in advance. I certainly read it.

Q After it was issued?

A Yes.

Q Any discussion at Coleman or MacAndrews & Forbes about it?

A I don't believe I was at Coleman any longer. So no to Coleman. And MacAndrews & Forbes I can't recall.

Q What -- so you don't recall any discussions about this with anybody?

A That's correct.

MR. BRODY: 115?

THE REPORTER: 115.

(Deposition Exhibit MS 115 was marked for

Page 258

identification by the court reporter.)

BY MR. CLARE:

Q I've handed you Morgan Stanley Exhibit 115, the Sunbeam release dated May 11th, 1998.

A Okay.

Q Do you recall seeing or hearing about this earnings release?

A No.

Q You don't recall it?

A No.

Q What is the next thing or event that you recall hearing about the Sunbeam/Coleman acquisition?

A The next event would have been when the Barron's article came out. I was contacted by somebody at MacAndrews & Forbes to give my reaction to the Barron's article.

Q Who contacted you?

A Probably was Will Nesbitt.

Q And tell me about that conversation.

A Just that it had come out and they were looking at it and wanted to run by me some of their thoughts on that -- that article.

Q What were their thoughts?

A It was just a -- it was in my file, I believe.

MR. BRODY: Okay. We may be getting into an

Page 259

area that touches on a privileged communication. Why don't you lay some foundation for the communication.

BY MR. CLARE:

Q The first conversation you had was with Mr. Nesbitt?

A Yes.

Q Was anybody else on the line?

A No.

Q Okay. What did Mr. Nesbitt say to you?

A He said the Barron's article came out and that it was -- he had sent me the article, and said just to look at it and I did.

Q Had you seen it before Mr. Nesbitt sent it to you?

A No.

Q And you read it?

A Yes.

Q And then what was next -- what happened next?

A I can't recall.

Q Did you have any other conversations about the Barron's article?

A I'm sure I did.

Q With whom?

A Will.

Q Was he the only person?

Page 260

A That's all I can remember.

Q Okay. And what further conversations did you have with Mr. Nesbitt?

A Just the nature of some of the items that were contained in the article about Sunbeam's operations.

Q And what specifically?

A Nothing I can remember specifically.

Q For what purpose did you understand Mr. Nesbitt to be making this inquiry?

A He was trying to understand what parts of the Barron's article that had any impact on the operations of Sunbeam.

Q And did Mr. -- did you discuss with Mr. Nesbitt -- what views did you present to Mr. Nesbitt?

A That I wasn't aware of -- wasn't aware of the article and couldn't add much guidance on the article that was in Barron's.

Q Any other discussions about the Barron's article with anyone else?

A No.

Q Did Mr. Nesbitt say in words or in substance that MacAndrews & Forbes had been misled by Sunbeam?

A Not that I recall.

Q Do you recall anyone from MacAndrews & Forbes ever stating that to you in words or in substance?

NOT A CERTIFIED COPY

A Not that I recall.
Q Did Mr. Nesbitt or anyone from MacAndrews & Forbes ever tell you in words or in substance they believed that Morgan Stanley had misled them?
A Not that I recall.
Q What's the next event that you remember?
A That's it.
Q Do you recall Mr. Dunlap being -- an announcement that Mr. Dunlap had been fired?
A Yes.
Q And do you recall what were -- any discussions about that?
A No. No discussions.
Q Were -- did anyone contact you in the aftermath of Mr. Dunlap's firing about next steps?
A No.
Q Were you ever approached to take a position at Sunbeam?
A No. No position was ever offered to me at Sunbeam.
Q Was it ever discussed with you?
A Jokingly, since I lived in California and Sunbeam was in Florida.
Q Other than in a joking sense --

A No.
Q -- were there any discussions --
A No.
Q -- about that?
A I had moved on to Panavision at that point so I was actively involved in the operations of Panavision.
Q And at what point again did you join Panavision?
A Just after the -- Panavision transaction closed just after the Coleman acquisition closed. And so there was a period where -- I think there was a couple of weeks between the two of them, and then I would have -- I went in residence at Panavision and then sometime thereafter became an officer of Panavision.
Q Was there ever a discussion -- were you ever part of any discussion where there was a link established between the sale of Coleman and the Panavision acquisition?
A No.
Q After you joined Panavision, did you have any further involvement or discussion relating to Sunbeam or Coleman?
A Not that I can recall.
Q Were you part of discussions between MacAndrews & Forbes and Sunbeam in which

MacAndrews & Forbes sought to rescind the transaction?
A No.
Q Were you aware that those discussions were underway?
A No.
Q Were you aware that MacAndrews & Forbes settled -- reached a settlement with Sunbeam?
A No.
Q You didn't play any role in the negotiation of the settlement?
A No.
Q Any role in valuing the settlement?
A No.
Q Have you done any work with or for Sunbeam since Mr. Levin has taken control?
A No.
Q When was the last time you spoke with Mr. Levin?
A Well over a year ago.
Q Have you ever spoken with Mr. Levin about litigation arising out of the acquisition?
A No.
Q Anyone at MacAndrews & Forbes about that?
A Steve Fasman with respect to this deposition.
Q Other than that one conversation?

A Barry Schwartz regarding this deposition.
Q Anything else?
A No.
Q After the closing of the acquisition transaction, did you attend any meeting or participate in any conversation with Bear Stearns regarding a proposal to hedge?
MR. BRODY: Objection. Asked and answered.
THE WITNESS: No.
BY MR. CLARE:
Q CSFB?
A No.
Q Citibank?
A No.
Q Anyone else?
A No.
Q Did you ever hear that topic discussed?
A Not that I rec- -- not that I recall.
Q Do you know why MacAndrews & Forbes did not pursue any proposal that was presented to hedge its investment in Sunbeam?
A No.
Q In 1997 and 1998, did you regard the -- Mr. Perelman as highly sophisticated in merger and acquisition transactions?

NOT A CERTIFIED COPY

016548

Page 265

MR. BRODY: Object to the form.
THE WITNESS: Yes.
BY MR. CLARE:
Q And buying and selling companies?
A Yes.
Q In analyzing potential equity investments?
A Yes.
Q Did you in 1997 and 1998 regard Mr. Maher as highly sophisticated in merger and acquisition transactions?
MR. BRODY: Same objections.
THE WITNESS: Yes.
BY MR. CLARE:
Q In buying and selling companies?
A Yes.
Q And in analyzing potential equity investments?
A Yes.
Q In 1997 and 1998, did you regard Mr. Gittis as highly sophisticated in merger and acquisition transactions?
MR. BRODY: Object to form.
THE WITNESS: Yes.
BY MR. CLARE:
Q In buying and selling companies?
A Yes.

Page 266

Q And in analyzing potential equity investments?
A Yes.
MR. BRODY: It's a new one?
MR. CLARE: Yes.
THE REPORTER: 116.
(Deposition Exhibit MS 116 was marked for identification by the court reporter.)
BY MR. CLARE:
Q Handed you what's been marked as Morgan Stanley Exhibit 116. It's a document entitled "The Coleman Company, Inc. Analysis of Effects of Stock Option Exercises." Have you ever seen this document before?
A No.
Q Do you know what this document is presenting?
A No.
Q The time -- that fax line at the top of the page, May 6th, 1998, that was a time after you had left Coleman?
A That's correct.
Q You were no longer in residence at Wichita?
A That's correct.
Q Do you serve on the boards of any MacAndrews & Forbes companies?
A Currently?
Q Currently.

Page 267

A No.
Q Have you ever?
A Yes.
Q Which ones?
A Panavision.
Q Other -- other than Panavision?
A No.
Q What years were on the board of Panavision?
A '98 through 2000, I believe.
Q Did you join the board after the Coleman/Sunbeam acquisition had closed?
A Yes.
Q That was coincident with your joining Panavision?
A That's correct.
Q Did you ever speak with Mr. Nesbitt while he was in Italy regarding the Sunbeam/Coleman acquisition?
A Not that I recall.
Q Did you ever have occasion to speak with Mr. Maher while he was in Aspen related to the Sunbeam Coleman acquisition?
A Not that I recall.
Q Do you know if Mr. Maher has a home in Aspen?
A At some point he did. I don't know if he currently has one.

Page 268

Q Do you recall him having a home in Aspen at the time the acquisition transaction was under consideration?
A I can't recall.
MR. CLARE: Why don't we just take five minutes and see if we're done or close to being done?
MR. BRODY: Okay.
THE VIDEOGRAPHER: Going off the record. The time is 6:44 p.m.
(Recess.)
THE VIDEOGRAPHER: Back on the record. The time is 6:50 p.m.
BY MR. CLARE:
Q Mr. Page, other than the meetings and telephone conversations that we've discussed today, do you recall any other meeting or telephone conversation relating to the Sunbeam acquisition of Coleman?
A No.
MR. CLARE: Those are all the questions that I have. Thank you for your time.
EXAMINATION
BY MR. BRODY:
Q Okay. Mr. Page, I just have a few questions to follow up.
Throughout today's deposition you were asked a number of questions about the work that you had done on

NOT A CERTIFIED COPY

Page 269

the Coleman/Sunbeam transaction and, for example, whether you'd relied on certain information in that transaction and so on. What role did you play in the Sunbeam/Coleman transaction?
A Purely as providing diligence material to the Sunbeam teams and answering questions regarding Coleman.
Q When you said "provided diligence materials to the Sunbeam team," that is information about Coleman?
A Yes.
Q Did you have anything to do with the decision of Coleman or MacAndrews & Forbes to do the deal?
A No.
Q Or the price for the deal?
A No.
Q Its terms?
A No.
Q Negotiation of any part of the deal?
A No.
Q In the work that you did, were you involved in looking at Sunbeam and its possible value?
A No.
Q You were asked a number of questions about the deal and meetings and events that happened to which you responded, "Not that I recall." What -- what do you mean by that expression?

Page 270

MR. CLARE: Object to the form of the question.
THE WITNESS: Meaning that I either cannot recall or wasn't -- that I could remember if any of that -- if I was a part of any of those discussions.
BY MR. BRODY:
Q Okay. So, for example, I know Mr. Clare asked you about various Sunbeam board meetings and whether certain things had been said there and you said, "Not that I recall." By that did you mean that it didn't happen?
MR. CLARE: Object to the form of the question. Leading.
THE WITNESS: Meaning that it could have happened, but I don't remember.
BY MR. BRODY:
Q Okay. I'm going to ask you about one exhibit and I'll use Exhibit 112 and just so you don't have to dig it out of the pile, I'll show you the copy that Mr. Clare gave to me. Exhibit 112 is the Draft Materials Prepared for the board of directors by CSFB --
A Yes.
Q -- bears a date February 25th, 1998. And I'm going to refer you to slide 14. Mr. Clare asked you about -- some questions about one case in that slide, but do you also see the description in there of the long

Page 271

range strategic plan?
A Yes.
Q And the footnote for that slide -- excuse me -- for that line item, what does that refer to?
A It was the Sunbeam management projections from '98 and 2000, and the estimates for 2001 and 2002.
Q Were those -- focusing on the '98 through 2000 information, is that the information that Mr. Kersh presented to you and others on that meeting in February, perhaps the 23rd of February?
MR. CLARE: Objection.
THE WITNESS: It appears to be that.
MR. CLARE: No foundation.
MR. BRODY: Well, we can pull out the document.
MR. CLARE: No. My -- that wasn't my objection. My only objection was he didn't prepare this document.
MR. BRODY: Okay
Q But do you recognize those to be the same numbers?
A Yes.
Q Now, returning finally to that presentation of Mr. Kersh. Did -- do you recall Mr. Kersh presenting any negative information about the company sales at that meeting?

Page 272

A No.
Q Or any negative information about the company's earnings?
A No.
Q What impression did Mr. Kersh leave with you about the current year 1998?
A He was very upbeat about sales prospects and net income prospects of the company.
MR. BRODY: I have no further questions. Thank you.
MR. CLARE: I don't have anything further.
MR. BRODY: We will reserve signature.
MR. CLARE: Okay.
THE VIDEOGRAPHER: Going off the record. The time is 6:54 p.m. This is the end of Tape 3. We have used a total of three tapes.

NOT A CERTIFIED COPY

016550

I, JOSEPH P. PAGE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____, 2004, at _____, _____.
(City) (State)

_____
JOSEPH P. PAGE

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

_____
PAMELA J. FELTEN
CSR No. 5189

NOT A CERTIFIED COPY

016551

NOT A CERTIFIED COPY

016552

CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
MF 00001
CPH 1324756
16div-024697

NOT A CERTIFIED COPY

DEPOSITION
EXHIBIT # 84
FOR ID TRN
4-8-04

Sunbeam®

Long Range Strategic Plan

016553

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

MF 00002

CPH 1324757

16div-024698

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES

1. Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.).

2. Strengthen Sunbeam and Oster brands globally.

3. Continually introduce innovative and highly differentiated products globally.

4. Optimize worldwide supply chain.

5. Achieve industry leadership in customer service.

016554

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00003
CPH 1324758
16div-024699

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES

1) *Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.)*

- Leverage our brand halo to further strengthen our image and reputation with the consumer, customer and investor, worldwide.
- Develop comprehensive Go-To-Market plans to drive worldwide activity.
- Sharpen international market focus to Latin America, Mexico, Venezuela, Japan, UK and Canada and tailor product bundles to the individual markets.
- Continue to be the consumer's first choice for innovative and differentiated solutions in both the value and premium segments of our core businesses.
- Deliver product to market better and faster than the competition.

555910 016555

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00004
CPH 1324759
16div-024700

NOT A CERTIFIED COPY

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

2) Strengthen Sunbeam and Oster brands globally..

- Position and differentiate the Sunbeam and Oster brands globally with targeted marketing and advertising.
- Improve competitive positioning through core business focus on the consumer and technology:

  Sunbeam - Value and Innovation segments
  Oster - Quality and Performance segments

- Leverage Oster brand recognition in Latin America.
- Explore licensing opportunities. – need head of licensing

959910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

NOT A CERTIFIED COPY

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

3) *Continually introduce innovative and highly differentiated products globally.*

- Continue to develop highly differentiated products.
- Focus development resources on "Home Runs" (e.g., air and water). +5-10 million revenue cutoff
- Respond to and meet consumer needs better than the competition.
- Explore alternative uses for proprietary technology (i.e., utilize PTC wire technology to enter the heated carpet market). Lunch $10 Million Blankets Japan a China + Asia
- Continue to enhance the product development process and turn around.

LSS910

MF 00005

CPH 1324760

16div-024701

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

4) Optimize worldwide supply chain.

- Shift make versus buy mix from 70/30 to 50/50.
- Balance proximity of supplier, plant and customer locations to minimize logistical requirements and associated costs and accelerate delivery.
- Exploit cost savings opportunities associated with Asia Pacific economies via joint ventures and acquisitions.
- Simplify and standardize processes and practices.

CONFIDENTIAL MF 00006 CPH 1324761

16div-024702

859910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00007
CPH 1324762
16div-024703

NOT A CERTIFIED COPY

Sunbeam. **LONG RANGE STRATEGIC OBJECTIVES**

5) Achieve industry leadership in customer service.

- Define and monitor customer satisfaction from forecasting to invoicing through Project Full Time.
- Fill distribution voids and achieve new product sell-in leveraging Full Time performance.
- Achieve preferred supplier status with joint partnering and 98% on time and in full shipments to key customers.
- Implement systems to track and resolve total quality issues incorporating ISO 9000 requirements.

016559

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00008
CPH 1324763
16div-024704

NOT A CERTIFIED COPY

Sunbeam APPLIANCES

Strategic Headlines

1. Strengthen Sunbeam and Oster trademarks globally.

2. Continually introduce a constant stream of consumer-driven new products concentrated in three focus areas:
   - Blending and Mixing
   - Smart Cooking
   - Everyday Best

#1 or #2 in each category BUD

3. Broaden distribution with existing customers. 30% GM

M.S.

$MM	1997	1998	1999	2000
U.S. Sales	288	356	430	480
% Increase	16%	24%	21%	12%

095910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00009
CPH 1324764
16div-024705

NOT A CERTIFIED COPY

Sunbeam HEALTH AT HOME

Strategic Headlines

1. Leverage Sunbeam brand equity to become the category expert.
2. Expand the business to healthy environment (i.e., air and water) and home safety (e.g., emergency carbon monoxide or smoke notification, security alarms, first aid monitoring.)
3. Fill distribution voids and extend product seasons.
4. Use Air & Water to launch our core Health at Home product lines globally.

$MM	1997	1998	1999	2000
U.S. Sales	93	189	240	300
% Increase	7%	103%	27%	25%

100% of 1998

30% CM

199910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam. **PERSONAL CARE & COMFORT - Bedding**

Strategic Headlines

1. Advance technology advantage with continuous development of new wire technology (lower EMF) and electronic controls (solid state controls).

2. Launch new products that address consumer's safety concerns and provide heating comfort in places other than the bedroom.

3. Globalize the business focusing on high potential countries.

4. Increase household penetration by introducing new packaging and promoting the "Blanket with a Brain" concept.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

CONFIDENTIAL
MF 00010
CPH 1324765
16div-024706

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00011
CPH 1324766
16div-024707

NOT A CERTIFIED COPY

Sunbeam **PERSONAL CARE & COMFORT - Clippers and Other Personal Care**

Strategic Headlines

1. Grow household penetration by focusing on high potential targets:
   - large and low income families
   - teens
   - African Americans
2. Introduce new products with better performance than the competition.
3. Grow business globally.
4. Enter new personal care categories leveraging our Sunbeam and Oster brand names.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

570 GM
120
49 retail

595910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00012
CPH 1324767
16div-024708

NOT A CERTIFIED COPY

Sunbeam OUTDOOR COOKING

Strategic Headlines

1. Continue to entrench GrillMaster as the dominant worldwide brand of grills and accessories/replacement parts.
2. Achieve category growth by promoting grilling in high-growth, high-profit segments. Address category negatives/barriers.
3. Dramatically increase the profit importance of GrillMaster and Outdoor Cooking to Sunbeam and the trade.
4. Develop outdoor cooking business globally, focusing on countries with high disposable income and high meat consumption.

$MM	1997	1998	1999	2000
U.S. Sales	297	341	390	420
% Increase	25%	15%	14%	8%

199910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam OTHER CHANNELS

Strategic Headlines

1. Away From Home
   - Bundle existing products to effectively grow lodging.
   - Expand beyond lodging into commercial food service.

2. Outlet Stores
   - Continue to expand in "A" locations.
   - Continue to serve as more profitable alternative channel for excess inventory.

$MM	1997	1998	1999	2000
U.S. Sales	65	111	135	150
% Increase	55%	71%	20%	15%

S95910

CONFIDENTIAL MF 00013 CPH 1324768

16div-024709

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam INTERNATIONAL

Strategic Headlines

1. Focus on high growth areas where we can leverage Sunbeam and Oster brand names, such as Latin America, Canada, Southeast Asia.

2. Tailor product bundles to the individual markets (i.e., pick and choose product lines in the rest of the world).

3. Continue to develop license and distributor arrangements.

25 new ones last year 50M sales (loaded)

4. Minimize capital investment.

5. Globalize core business successes (i.e., blenders, clippers and blankets).

$MM	1997	1998	1999	2000
Int'l. Sales	240	360	529	734
% Increase	25%	50%	47%	39%

999910

CONFIDENTIAL MF 00014 CPH 1324769

16div-024710

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00015
CPH 1324770
16div-024711

NOT A CERTIFIED COPY

Sunbeam CHANGING COMPETITIVE DYNAMICS

- Reinvestable Returns Differentiates the Winners from the Losers.
  - Market Leaders are those who will invest in the business (i.e., New Products, Advertising, Working Capital).
    - Philips
    - KitchenAid
    - Sunbeam
    - Braun
    - Krups
    - Hamilton Beach / Proctor Silex
  - Other Companies will not remain competitive
    - Rival
    - National Presto
    - Mr. Coffee
    - Health O'Meter
    - Black & Decker
    - West Bend
- Sunbeam Maintains a Unique Global Position
  - No global competitor
  - No competitor in more than one category in the U.S./Abroad
  - Two strong global brands

L95910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 331 28%	$ 511 32%	$ 640 32%	$ 773 32%
Selling, General and Administrative Expenses	$ 131 11%	$ 193 12%	$ 240 12%	$ 288 12%
Operating Profit	$ 200 17%	$ 318 20%	$ 400 20%	$ 485 20%
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 190	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

899910

CONFIDENTIAL MF 00016 CPH 1324771

16div-024712

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00017
CPH 1324772
16div-024713

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED BALANCE SHEET

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Cash and Cash Equivalents	$ 52	$ 229	$ 396	$ 633
Receivables,Net	$ 296	$ 328	$ 400	$ 460
Inventories, Net	$ 256	$ 264	$ 309	$ 351
Other Current Assets	$ 54	$ 34	$ 39	$ 51
Total Current Assets	$ 658	$ 855	$ 1,144	$ 1,495
Property, Plant and Equipment, Net	$ 241	$ 274	$ 310	$ 355
Goodwill and Trademarks & Other	$ 221	$ 215	$ 208	$ 200
Total assets	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Current Liabilities	$ 198	$ 213	$ 252	$ 295
Long Term Debt	$ 195	$ 195	$ 195	$ 195
Other Long Term Liabilities	$ 195	$ 199	$ 221	$ 249
Shareholders Equity	$ 532	$ 737	$ 994	$ 1,311
Total Liabilities and Shareholders Equity	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Net Debt	$ 143	$ (34)	$ (201)	$ (438)

going from 25% to 20% depts increased w/ sales

225 M written in 1998 10M left

699910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00018
CPH 1324773
16div-024714

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - NET SALES GROWTH ANALYSIS

	Long Range Strategic Plan		
	1998	1999	2000
Base Net Sales	$ 1,168	$ 1,600	$ 2,000
Domestic			
New Products	227	165	145
New and Existing Channels	65	51	30
Price	20	15	20
Total Domestic	312	231	195
International			
New Products	50	70	80
New Geography and Franchise Growth	70	99	125
Total International	120	169	205
Net Sales Plan	$ 1,600	2,000	$2,400

016570

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL
MF 00019
CPH 1324774
16div-024715

NOT A CERTIFIED COPY

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED STATEMENT OF CASH FLOW

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Income, Continuing	$124	$199	$252	$308
Depreciation and amortization	$39	$54	$71	$83
Deferred Income Taxes	$58	$0	$5	$15
Change in Working Capital	($237)	($7)	($73)	($61)
Cash Flow from Operations	($16)	$246	$255	$345
Proceeds from Asset Sales	$91	$0	$0	$0
Capital Expenditures	($58)	($81)	($100)	($120)
Dividends	($3)	($3)	($3)	($3)
Proceeds from Exercised Options	$27	$15	$15	$15
Cash Flow before Debt Repayment	$41	$177	$167	$237
Net Debt	$143	($34)	($201)	($438)

165910

NOT A CERTIFIED COPY

016572

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

February 25, 1998

CONFIDENTIAL

Draft Materials Prepared for the Board of Directors

The Coleman Company, Inc.

CP 025958
CONFIDENTIAL

016573

CPH 1416194

16div-024717

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Preliminary Financial Terms of Transaction

NOT A CERTIFIED COPY

Terms	Description
Form of Transaction	"Two Step" Merger
Approximate Consideration Per CLN Share	
Public	• 0.6258 SOC shares and $4.40 in cash for each CLN share (Taxable)
MacAndrews Consideration	Sell control of Coleman Worldwide (44.1mm CLN shares) in exchange for: • Assumption of First and Second Priority Notes ($496 million of accreted value 11/15/97; $525 million of accreted value 5/15/98) • 15.6 million SOC shares and $106 million in cash (Tax Free)

CP 025959
CONFIDENTIAL

CPH 1416195

16div-024718

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Key Transaction Multiples

NOT CERTIFIED COPY

Total Consideration to be Paid to CLN Shareholders	
SOC Common Share Price	$40.625[1]
Shares To Be Issued	21.5mm
	$875mm
+ $27.50 x (16% x 34.2mm shares)	$146mm
+ Assumed Zero-Coupon Debt	$525mm
+ Net Consideration to Option Holders	$ 50mm[2]
"Common" Equity Value	$1,597mm
+ Net Debt	$440mm[3]
Adjusted Market Value	$2,037mm

(1) Based on SOC closing price as of 2/24/98.
(2) Difference between $29.82 (0.6258 SOC shares at $40.63 per SOC share plus $4.40 in cash) and average strike price of $15.14 on 3.3 million options.
(3) CLN Management estimates of 1997 Year-end Net Debt less $90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
(4) Based on CLN closing prices through 2/24/98.
(5) $19.50 IPO Price adjusted for a 2-for-1 stock split.
(6) Management estimates including income from its safety and security products unit for three months.
(7) Premium to $29.82 (0.6258 SOC shares at $40.63 per share plus $4.40 in cash).

Relevant Statistics	Price	Premium[7]
▪ CLN Last Twelve Months High[4] (2/24/98)	$20 11/16	44.2%
▪ CLN Last Twelve Months Low[4] (1/27/98)	$12 1/2	138.6%
▪ % Premium to Current Stock Price (2/24/98)	$20 11/16	44.2%
▪ % Premium to IPO Price (2/26/92)	$9 3/4[5]	205.9%
▪ Adjusted Market Value		
1997P EBITDA	$99	20.6x
1998E EBITDA	$164	12.4x
▪ Price as Multiple		
1997 E.P.S.	$0.44	67.8x
1998E E.P.S.[6]	$1.18	25.3x

CP 025960
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

016575

CPH 1416196

16div-024719

The Coleman Company, Inc.

CLN Transaction Multiples

Valuation Sensitivity of SOC Proposal
(Dollars in Millions)

		SUNBEAM SHARE PRICE					
		$34.00	$36.00	$38.00	$40.00	$42.00	$44.00
Implied Consideration for Public (0.6258 SOC Shares and $4.40 in Cash)		$25.68	$26.93	$28.18	$29.43	$30.68	$31.94
Common Equity Value		$1,439	$1,486	$1,533	$1,580	$1,628	$1,675
Net Debt[1]		440	440	440	440	440	440
Adjusted Value		$1,879	$1,926	$1,973	$2,021	$2,068	$2,115
Adjusted Value as a Multiple of:							
1997P EBITDA[2]	$99	19.0x	19.5x	19.9x	20.4x	20.9x	21.4x
1998E EBITDA[2]	$164	11.5x	11.8x	12.1x	12.3x	12.6x	12.9x
Implied Consideration as a Multiple of:							
1997 E.P.S.[3]	$0.44	58.4x	61.2x	64.0x	66.9x	69.7x	72.6x
1998E E.P.S.[3]	$1.18	21.8x	22.9x	23.9x	25.0x	26.1x	27.1x

(1) CLN Management estimate of 1997 Year-end Net Debt less $90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
(2) Based on CLN Management estimates assuming the sale of the safety and security products unit.
(3) 1997 actual EPS. 1998E EPS based CLN Management estimates and includes income from the safety and security products unit for the first quarter.

NOT A CERTIFIED COPY

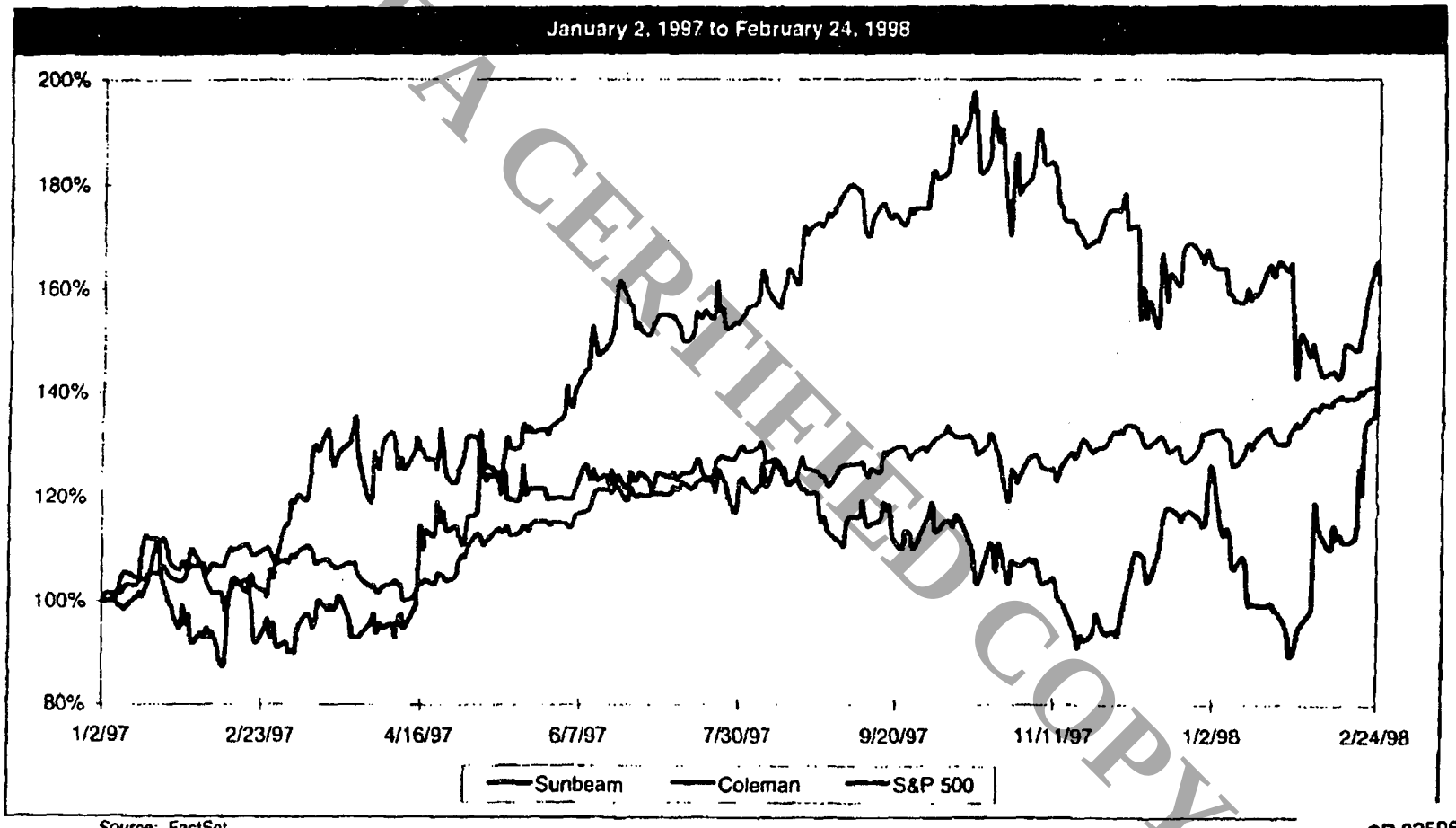
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CREDIT SUISSE | FIRST BOSTON

CPH 1416197
16div-024720
9/59/0

The Coleman Company, Inc.

Indexed Share Price Performance



Source: FactSet.

CREDIT SUISSE | FIRST BOSTON

CP 025862
CONFIDENTIAL

W:\library\80520086.nyw/4

LL5910

NOT A CERTIFIED COPY

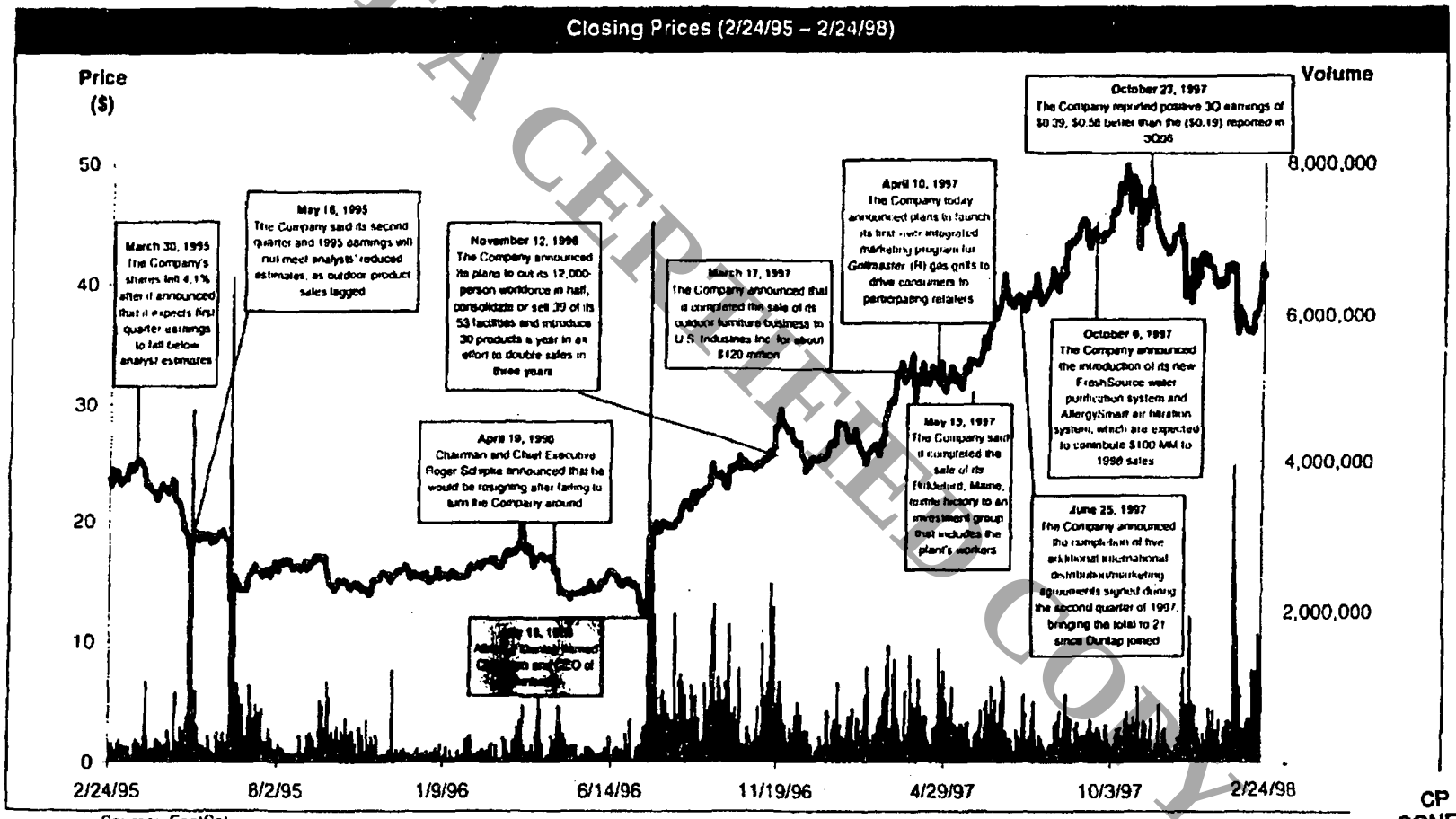
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1416198

16div-024721

The Coleman Company, Inc.

Sunbeam: Recent Stock Price Performance



Source: FactSet.

CREDIT SUISSE | FIRST BOSTON

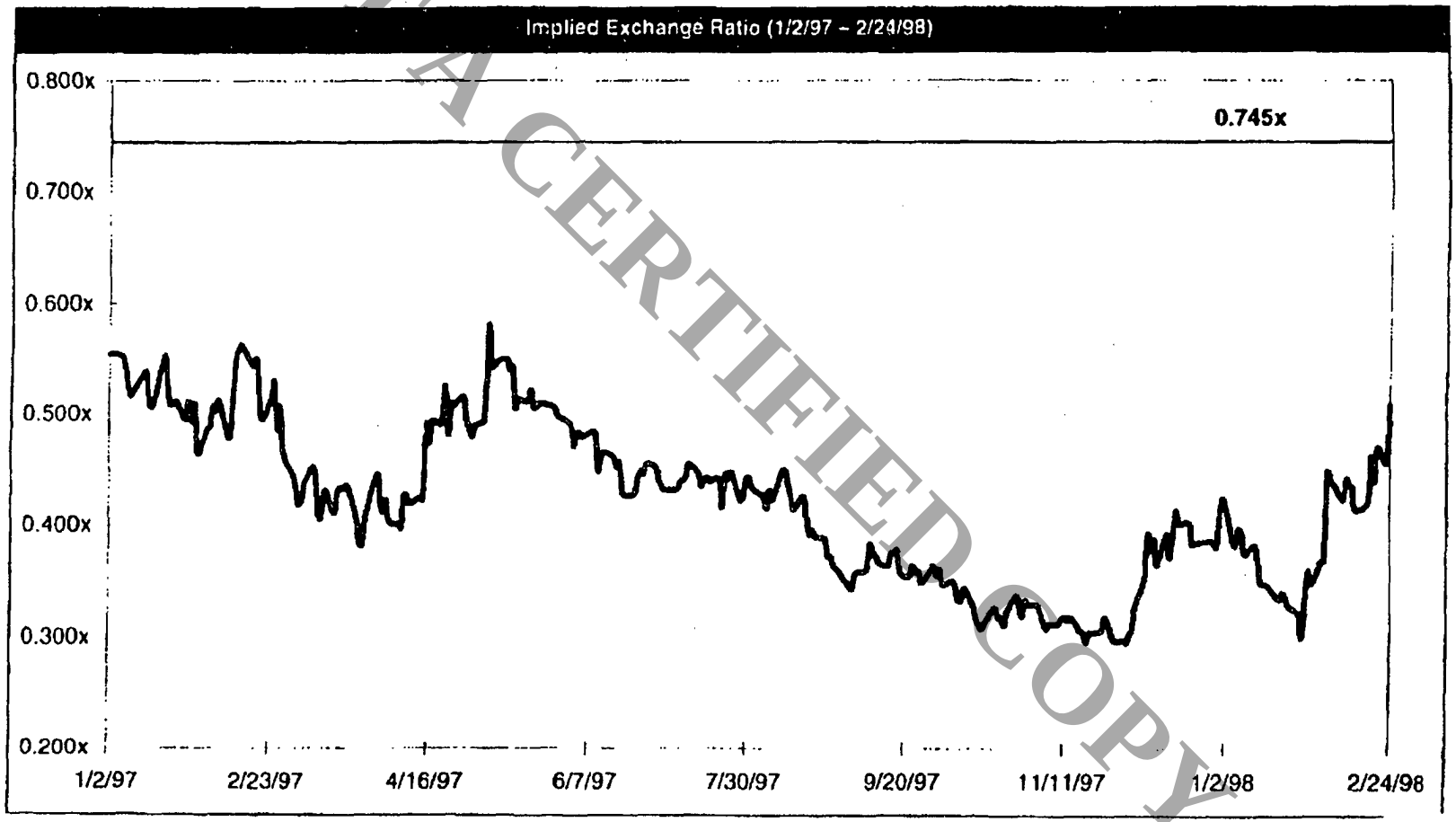
W:\library\80520086.nyw/5

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1416199
16div-024722
NOT A CERTIFIED COPY
CP 025963
CONFIDENTIAL
016578

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Implied Exchange Ratios



Source: FactSet.

NOT A CERTIFIED COPY

CP 025964
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

016579

W:\library\80520086.nyw/6

CPH 1416200

16div-024723

The Coleman Company, Inc.

Valuation Methodologies

1. Discounted Cash Flow - Assumes that the value of the Company equals the present value of future unlevered free cash flows generated from the existing assets.

2. Comparable Companies - Assesses the value of the Company in terms of the public market trading values of comparable publicly-traded companies.

3. Comparable Acquisitions - Generates a private market valuation for the Company on the basis of prices that have been paid in acquisitions of comparable companies.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

089910

CPH 1416201

16div-024724

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Valuation Summary - CLN

NOT A CERTIFIED COPY

Credit Suisse First Boston Reference Ranges

(Dollars in Millions)

VALUATION METHOD	ENTERPRISE VALUE RANGE	IMPLIED 1998E EBITDA MULTIPLE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
Discounted Cash Flow Analysis	$1,797 – $2,072	11.0x – 12.6x	$1,357 – $1,632	$24.78 – $29.62
Comparable Company Analysis	$1,150 – $1,600	7.0x – 9.8x	$710 – $1,160	$13.27[3] – $21.31
Comparable Acquisitions Analysis	$1,600 – $2,000	9.8x – 12.2x	$1,160 – $1,560	$21.31 – $28.35

(1) *Equals Enterprise Value less $440 million of Net Debt.*
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) Assumes no conversion of options since average option strike price of $15.14 exceeds the implied per share price.

CP 025966
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON 189910

W:\library\80520086.nyw/8

CPH 1416202

16div-024725

The Coleman Company, Inc.

Discounted Cash Flow Analysis

NOT A CERTIFIED COPY

Operating Assumptions[1]

(Dollars in Millions)

	1996	1997P[2]	1998E	1999E	2000E	2001E	2002E	2003E
Revenue	$1,220.2	$1,066.0	$1,163.3	$1,279.6	$1,407.5	$1,548.3	$1,703.1	$1,830.9
EBITDA	99.0	99.0	163.8	184.3	205.5	221.4	240.1	258.2
EBIT	62.6	62.8	121.8	142.3	164.5	182.4	201.1	217.0
Unlevered Free Cash Flow	NA	NA	80.3	76.2	90.9	102.6	109.7	123.7

(1) Based on CLN Management estimates for 1998 to 2001 and estimates developed in conjunction with CLN management for 2002 and beyond. Estimates exclude the safety and security products unit.

(2) 1997 pro forma for the sale of the safety and security products unit.

Present Value Matrix

(Dollars in Millions, Except Per Share)

DISCOUNT RATE		2007E EBITDA MULTIPLE 9.5X	10.5X
10.0%	Per Share[1]	$27.27	$29.62
11.0%	Per Share[1]	$24.78	$26.92

(1) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CP 025987
CONFIDENTIAL

CPH 1416203

16div-024726

016582

The Coleman Company, Inc.

Comparable Companies Analysis - CLN

NOT A CERTIFIED COPY

Public Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,163MM[3]	1.0x – 1.5x	$1,163 –$1,745	$723 – $1,305	$13.52[4]– $23.86
1998E EBITDA	$164MM[3]	7.0x – 10.0x	$1,147 –$1,638	$706 – $1,198	$13.21[4]– $22.40
1998 EPS	$1.18	13.0x – 18.0x	$1,259 –$1,594	$819 – $1,154	$15.31 – $21.20
CSFB Reference Range			**$1,150 –$1,600**	**$710 – $1,160**	**$13.27[4]– $21.31**

(1) Equals Enterprise Value less $440 million of Net Debt.
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) As of CLN Management estimates.
(4) Assumes no conversion of options since the average option strike price of $15.14 exceeds the implied per share price.

Comparison of Market Data of Selected Comparable Companies
(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	**$3,682.7**	**$3,825.7**	**2.6x**	**11.6x**	**13.8x**	**20.4x**
Coleman	**1,124.5**	**1,564.7**	**1.3**	**9.6**	**12.8**	**17.5[1]**
Huffy Corp.	189.4	274.2	0.4	6.4	14.5	15.6
Russell Corp.	993.3	1,503.7	1.2	7.3	11.4	15.8
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated on management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.

CP 025968
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1416204

16div-024727

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Acquisitions Analysis - CLN

NOT A CERTIFIED COPY

Private Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,163MM[3]	1.2x - 1.5x	$1,396 - $1,745	$956 - $1,305	$17.71 - $23.86
1998E EBITDA	$164MM[3]	10.0x - 12.0x	$1,638 - $1,966	$1,198 - $1,525	$21.98 - $27.75
CSFB Reference Range			**$1,600 - $2,000**	**$1,160 - $1,560**	**$21.31 - $28.35**

(1) Equals Enterprise Value less $440 million of Net Debt.
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) Based on CLN Management estimates.

Comparison of Market Data of Selected Comparable Acquisitions
(Currency in Millions)

DATE	ACQUIROR	TARGET	ENTERPRISE VALUE	MULTIPLE OF LTM REVENUES	MULTIPLE OF LTM EBITDA
9/96	Gillette Co.	Duracell International	$7,862.7	3.3x	14.2x
9/96	Rubbermaid Inc.	Graco Children's Products, Inc.	320.0	1.2	NA
8/96	Kohlberg Kravis Roberts & Co.	E&S Holding Corporation (Evenflo & Spalding Holding Corporation)[1]	1,078.4	1.5	12.7
1/96	Brunswick Corporation	Nelson/Weather-Rite	120.0	1.2	NA
12/95	American Brands, Inc.	Cobra Golf Inc. II	673.8	3.7	11.9
2/95	Bell Sports Corporation	American Recreation Company	150.2	1.0	10.6
12/94	Sogedim of Belgium	Adidas Int'l Hldg.	DM1,380.0	0.4	10.4

(1) Strata, an entity organized by Kohlberg Kravis Roberts & Co., L.P., owned 88.4% of the common stock after the recapitalization. The Enterprise Value is presented on a grossed-up basis.

CPH 1416205

16div-024728

The Coleman Company, Inc.

Overview of Sunbeam

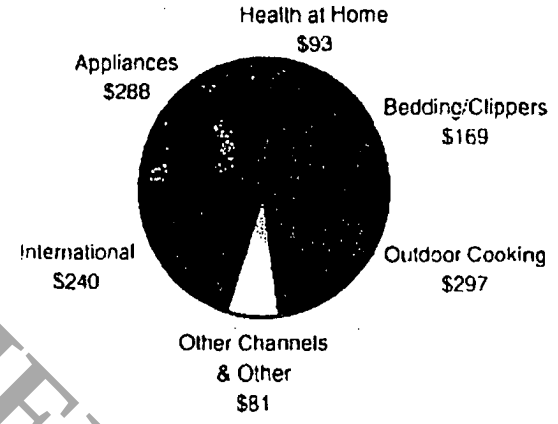
NOT A CERTIFIED COPY

Business Overview

- Sunbeam is one of the leading consumer products companies in the U.S.
- Major brands include Sunbeam, Oster and Grillmaster
- The Company holds the number 1 or 2 position in a variety of products including blenders, electric blankets, gas grills, clippers and other kitchen and health devices.
- The Company is in the midst of a rapid restructuring and growth initiative led by Al Dunlap who was appointed CEO on July 18, 1996.

1997 Revenue Breakdown
Total = $1,168

(Dollars in Millions)



Financial Summary

(Dollars in Millions)

	1996	1997	1998E[1]	1999E[1]
Revenue	$984	$1,168	$1,460	$2,070
EBITDA	48	239	329	423
Net Income	(8)	124	180	236

(1) Based on Wall Street estimates.

CP 025970
CONFIDENTIAL

CREDIT SUISSE FIRST BOSTON

589910

W:\library\80520086.nyw\12

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1416206

16div-024729

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Valuation Summary - SOC

NOT A CERTIFIED COPY

Credit Suisse First Boston Reference Ranges

(Dollars in Millions)

VALUATION METHOD	ENTERPRISE VALUE RANGE	IMPLIED 1998E EBITDA MULTIPLE[1]	EQUITY VALUE RANGE[2]	IMPLIED PER SHARE PRICE[3]
Discounted Cash Flow Analysis				
Long-Term Strategic Plan	$4,312 – $4,886	13.1x – 14.9x	$4,169 – $4,743	$45.77 – $51.84
Base Case	$3,813 – $4,326	11.6x – 13.2x	$3,670 – $4,183	$40.49 – $45.92
Comparable Companies Analysis	$3,400 – $4,200	10.4x – 12.8x	$3,257 – $4,057	$36.12 – $44.59
Comparable Acquisitions Analysis	$3,250 – $4,000	9.9x – 12.2x	$3,107 – $3,857	$34.53 – $42.47

(1) Multiples based on Wall Street estimates ($328.5 million of EBITDA).
(2) Equals Enterprise Value less $143 million of Net Debt.
(3) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).

CP 025971
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

989910

W:\library\80520086.nyw/13

CPH 1416207

16div-024730

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Discounted Cash Flow Analysis – SOC

NOT A CERTIFIED COPY

Operating Assumptions
(Dollars in Millions)

	1996	1997	1998E	1999E	2000E	2001E	2002E
Base Case[1]							
Revenue	$984.2	$1,168.2	$1,460.0	$1,800.0	$2,070.0	$2,277.0	$2,504.7
EBITDA	48.1	238.0	328.5	423.0	486.5	535.1	588.6
EBIT	0.7	199.4	277.4	360.0	414.0	455.4	500.9
Unlevered Free Cash Flow	NA	NA	107.3	147.5	190.8	230.8	253.9
Long-Term Strategic Plan[2]							
Revenue	$984.2	$1,168.2	$1,600.0	$2,000.0	$2,400.0	$2,580.0	$2,773.5
EBITDA	48.1	238.0	372.0	471.0	568.0	610.6	656.4
EBIT	0.7	199.4	318.0	400.0	485.0	521.4	560.6
Unlevered Free Cash Flow	NA	NA	172.7	158.0	217.3	272.1	292.5

Present Value Matrix
(Dollars in Millions, Except Per Share)

DISCOUNT RATE		2002E EBITDA MULTIPLE 9.5X	10.5X
Base Case[1]			
11.0%	Per Share[2]	$42.23	$45.92
12.0%	Per Share[2]	$40.49	$44.02
Long-Term Strategic Plan[2]			
11.0%	Per Share[3]	$47.72	$51.84
12.0%	Per Share[3]	$45.77	$49.71

(1) Projections developed in conjunction with CLN management based on equity analyst research.
(2) SOC Management Projections for 1998 to 2000 and estimates for 2001 and 2002.
(3) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).

CP 025972
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

L85910

W:\library\80520086.nyw/14

CPH 1416208

16div-024731

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Companies Analysis - SOC

NOT A CERTIFIED COPY

Public Market Valuation

(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E EBITDA	$329MM[3]	10.0x - 12.0x	$3,285 - $3,942	$3,142 - $3,799	$34.90 - $41.86
1998E E.P.S.	$1.99	19.0x - 22.0x	$3,560 - $4,124	$3,417 - $3,981	$37.81 - $43.78
CSFB Reference Range			**$3,400 - $4,200**	**$3,257 - $4,057**	**$36.12 - $44.59**

(1) Equals Enterprise Value less $143 million of Net Debt.
(2) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).
(3) Based on Wall Street estimates.

Comparison of Market Data of Selected Comparable Companies

(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	**$3,682.7**	**$3,625.7**	**2.6x**	**11.6x**	**13.8x**	**20.4x**
Coleman	**1,124.5**	**1,564.7**	**1.3**	**9.6**	**12.8**	**17.5**
Tupperware Corporation	1,643.5	1,903.8	1.6	8.6	12.4	15.9
Whirlpool Corporation	4,906.5	6,887.5	0.8	7.5	12.4	16.1
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

CP 025973
CONFIDENTIAL

CPH 1416209

16div-024732

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Acquisitions Analysis - SOC

NOT A CERTIFIED COPY

Private Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,460MM[3]	2.0x - 2.5x	$2,920 - $3,650	$2,777 - $3,507	$31.04 - $38.77
1998E EBITDA	$329MM[3]	10.0x - 12.0x	$3,285 - $3,942	$3,142 - $3,779	$34.90 - $41.86
CSFB Reference Range			$3,250 - $4,000	$3,107 - $3,857	$34.53 - $42.47

(1) Equals Enterprise Value less $143 million of Net Debt.
(2) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).
(3) Based on Wall Street estimates.

Comparison of Market Data of Selected Comparable Acquisitions
(Dollars in Millions)

DATE	ACQUIROR	TARGET	ENTERPRISE VALUE	MULTIPLE OF LTM REVENUES	MULTIPLE OF LTM EBITDA
9/97	Goodman Holding Company	Raytheon Appliance Group	$750.0[1]	0.5x	5.5x
2/97	Honeywell	Duracraft Corp.	266.9	1.6	13.9
9/96	Gillette Co.	Duracell International	7,862.7	3.3	14.2
9/96	Rubbermaid Inc.	Graco Children's Products, Inc.	320.0	1.2	NA
8/96	Kohlberg Kravis Roberts & Co.	E&S Holding Corporation (Evenflo & Spalding Holding Corporation)[2]	1,078.4	1.5	12.7
9/95	Manitowoc Co.	Shannon Group	126.0	1.2	8.7
12/94	Berisford International plc	Welbilt Corp.	481.2	1.0	8.3
1/94	Health O'Meter Products	Mr. Coffee, Inc.	163.8	0.9	8.4

(1) $200.0 million worth of receivables were purchased by a financial institution. For valuation purposes, we assume receivables would have to be financed.
(2) Strata, an entity organized by Kohlberg Kravis Roberts & Co., L.P., owned 88.4% of the common stock after the recapitalization. The Enterprise Value is presented on a grossed-up basis.

The Coleman Company, Inc.

Contribution Analysis

NOT A CERTIFIED COPY

Pro Forma Contribution Analysis

(Dollars in Millions Except per Share Data)

	CLN	SOC	IMPLIED PERCENTAGE FOR CLN	ACTUAL PERCENTAGE FOR CLN	IMPLIED EXCHANGE RATIO
1997P Results					
Earnings	$24	$124	15.9%	30.2%	0.311x
1998E Results					
Earnings	$63	$180[1]	25.8%	30.2%	0.575x

(1) Based on $1.99 EPS and 90.7 million shares outstanding under the treasury method.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CP 025975
CONFIDENTIAL

The Coleman Company, Inc.

Pro Forma Analysis

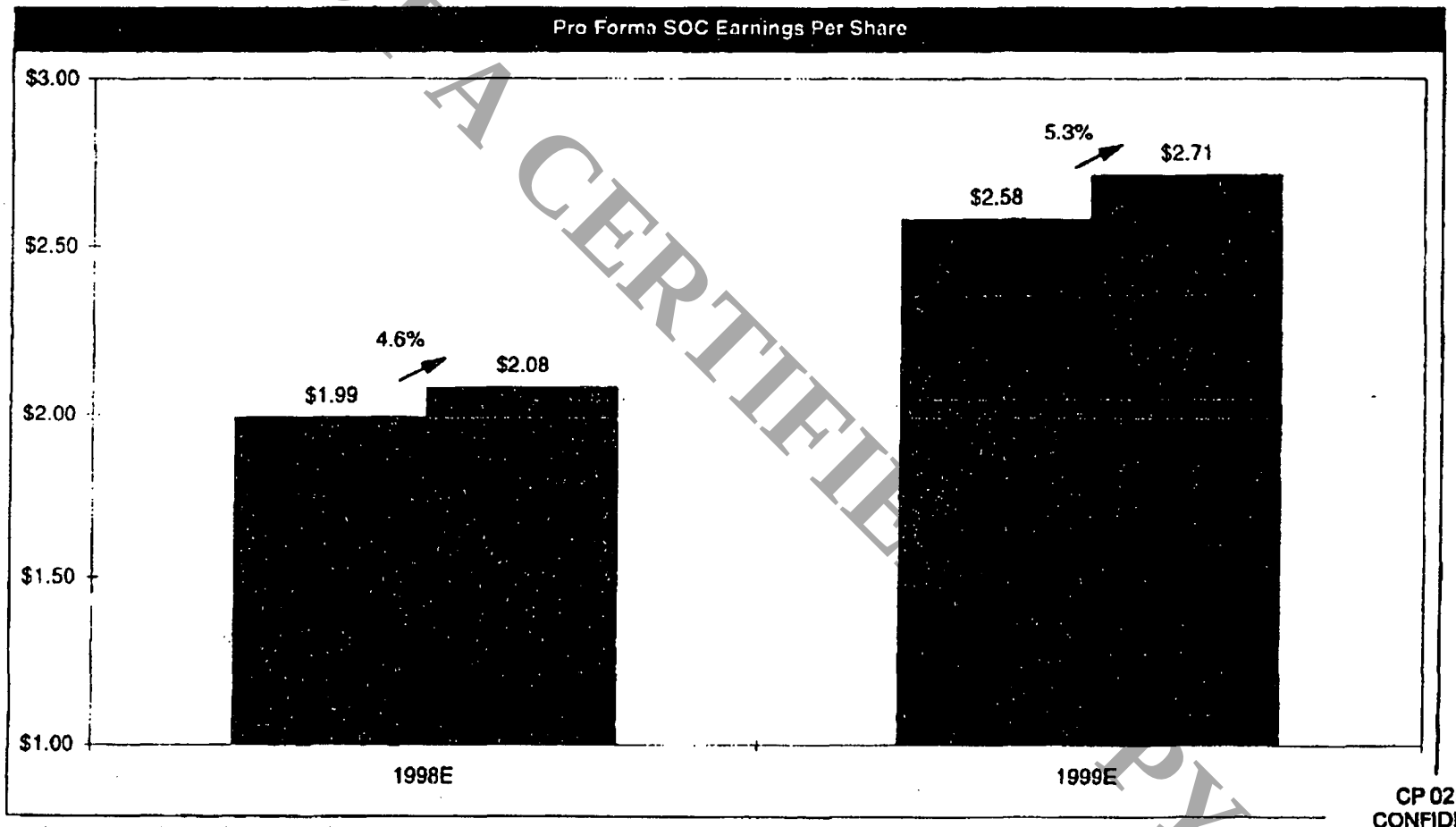
Assumptions
• $100 million of pre-tax synergies and cost savings
• Sunbeam assumes holding company zeros
• Coleman's debt and cash payment for shareholders financed at 6.5%
• Purchase accounting with goodwill amortized over 40 years

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Pro Forma Analysis



Note: Excludes one-time restructuring charges.

CREDIT SUISSE | FIRST BOSTON

NOT A CERTIFIED COPY
CP 025977
CONFIDENTIAL
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1416213
16div-024736
269910

NOT A CERTIFIED COPY

016593

EXHIBIT 7

CONFIDENTIAL

CP 011053
CONFIDENTIAL

NOT A CERTIFIED COPY

February 25, 1998

Draft Materials Prepared for the Board of Directors

The Coleman Company, Inc.

016594

EXHIBIT
MS 112

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Preliminary Financial Terms of Transaction

Terms	Description
Form of Transaction	"Two Step" Merger
Approximate Consideration Per CLN Share	
Public	• 0.5677 SOC shares and $6.44 in cash for each CLN share (Taxable)
MacAndrews Consideration	Sell control of Coleman Worldwide (44.1mm CLN shares) in exchange for: • Assumption of First and Second Priority Notes ($496 million of accreted value 11/15/97; $525 million of accreted value 5/15/98) • 14.1 million SOC shares and $160 million in cash (Tax Free)

NOT CERTIFIED COPY

CREDIT SUISSE | FIRST BOSTON

W:\library\80580021.nyw/1

669910

CPH 1401220

16div-024739

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Key Transaction Multiples

Total Consideration to be Paid to CLN Shareholders	
SOC Common Share Price	$40.625[1]
Shares To Be Issued	19.4mm
	$790mm
+ $6.44 x 34.2mm shares	$221mm
+ Assumed Zero-Coupon Debt	$525mm
+ Net Consideration to Option Holders	$ 48mm[2]
"Common" Equity Value	$1,583mm
+ Net Debt	$440mm[3]
Adjusted Market Value	$2,023mm

(1) Based on SOC closing price as of 2/24/98.
(2) Difference between $29.50 (0.5677 SOC shares at $40.63 per SOC share plus $6.44 in cash) and average strike price of $15.14 on 3.3 million options.
(3) CLN Management estimates of 1997 Year-end Net Debt less $90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
(4) Based on CLN closing prices through 2/24/98.
(5) $19.50 IPO Price adjusted for a 2-for-1 stock split.
(6) CLN Management estimates including income from its safety and security products unit for three months.
(7) Premium to $29.50 (0.5677 SOC shares at $40.63 per share plus $6.44 in cash).

Relevant Statistics	Price	Premium[7]
▪ CLN Last Twelve Months High[4] (2/24/98)	$20 11/16	42.6%
▪ CLN Last Twelve Months Low[4] (1/27/98)	$12 1/2	136.0%
▪ % Premium to Current Stock Price (2/24/98)	$20 11/16	42.6%
▪ % Premium to IPO Price (2/26/92)	$9 3/4[5]	202.6%
▪ Adjusted Market Value		
1997P EBITDA	$99	20.4x
1998E EBITDA	$164	12.4x
▪ Price as a Multiple of		
1997 E.P.S.	$0.44	67.1x
1998E E.P.S.[6]	$1.18	25.1x

NOT A CERTIFIED COPY

969910

CPH 1401221

16div-024740

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

CLN Transaction Multiples

NOT CERTIFIED COPY

Valuation Sensitivity of SOC Proposal

(Dollars in Millions)

	SUNBEAM SHARE PRICE					
	$34.00	$36.00	$38.00	$40.00	$42.00	$44.00
Implied Consideration for Public (0.5677 SOC Shares and $6.44 in Cash)	$25.74	$26.88	$28.01	$29.15	$30.28	$31.42
Common Equity Value	$1,442	$1,484	$1,527	$1,569	$1,612	$1,655
Net Debt [1]	440	440	440	440	440	440
Adjusted Value	$1,882	$1,924	$1,967	$2,010	$2,052	$2,095
Adjusted Value as a Multiple of:						
1997P EBITDA [2] $99	19.0x	19.4x	19.9x	20.3x	20.7x	21.2x
1998E EBITDA [2] $164	11.5x	11.7x	12.0x	12.3x	12.5x	12.8x
Implied Consideration as a Multiple of:						
1997 E.P.S. [3] $0.44	58.5x	61.1x	63.7x	66.2x	68.8x	71.4x
1998E E.P.S. [3] $1.18	21.9x	22.8x	23.8x	24.8x	25.7x	26.7x

(1) CLN Management estimate of 1997 Year-end Net Debt less $90 million of estimated after-tax proceeds from the sale of the safety and security products unit.
(2) Based on CLN Management estimates assuming the sale of the safety and security products unit.
(3) 1997 actual EPS. 1998E EPS based CLN Management estimates and includes income from the safety and security products unit for the first quarter.

CPH 1401222

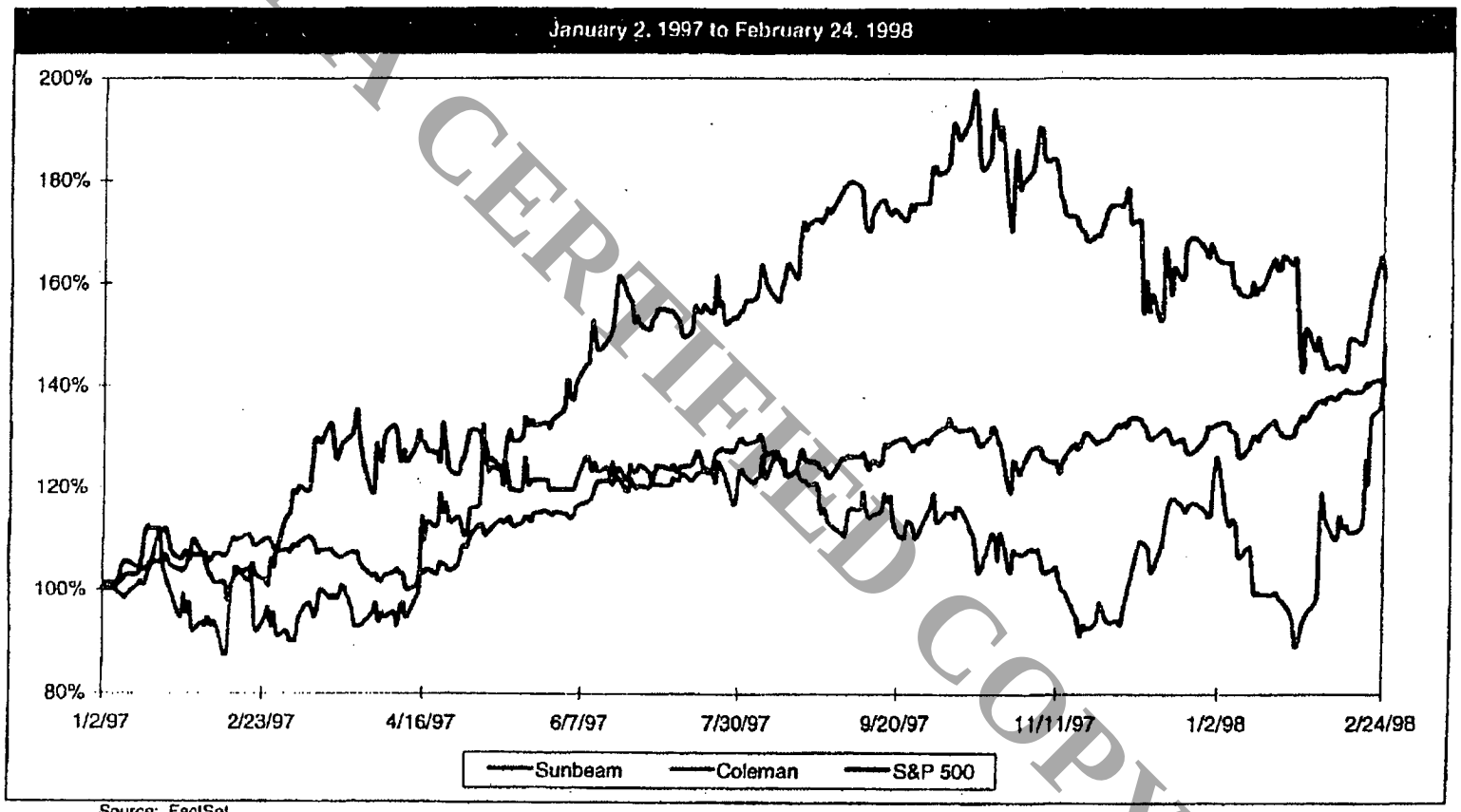
16div-024741

L69910

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Indexed Share Price Performance



Source: FactSet.

CREDIT SUISSE | FIRST BOSTON

CP 011057
CONFIDENTIAL

W:\library\80520086.nyw/4

869910

NOT A CERTIFIED COPY

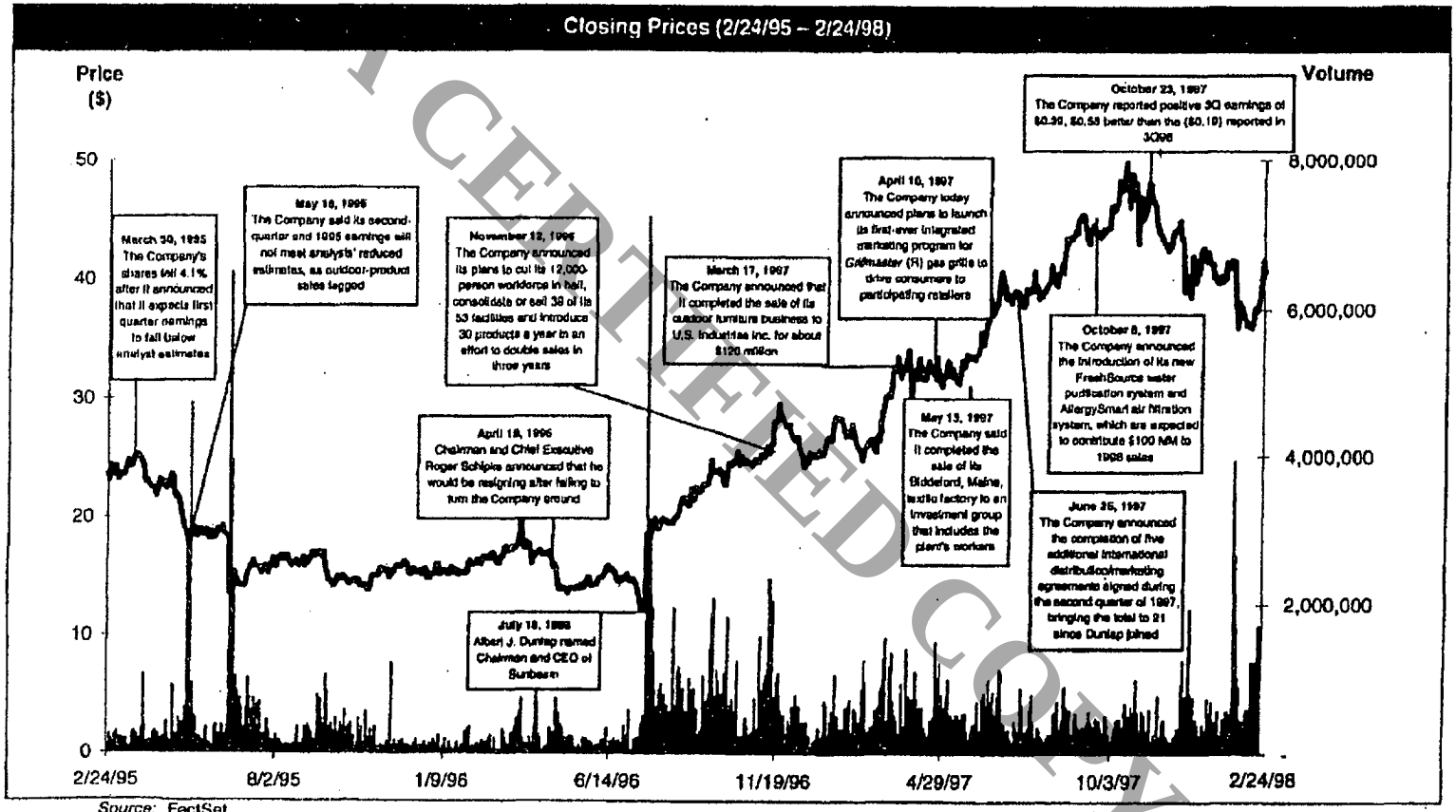
CPH 1401223

16div-024742

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Sunbeam: Recent Stock Price Performance



Source: FactSet.

CREDIT SUISSE | FIRST BOSTON

CP 011058
CONFIDENTIAL

W:\library\80520086.nyw/5

669910

NOT CERTIFIED COPY

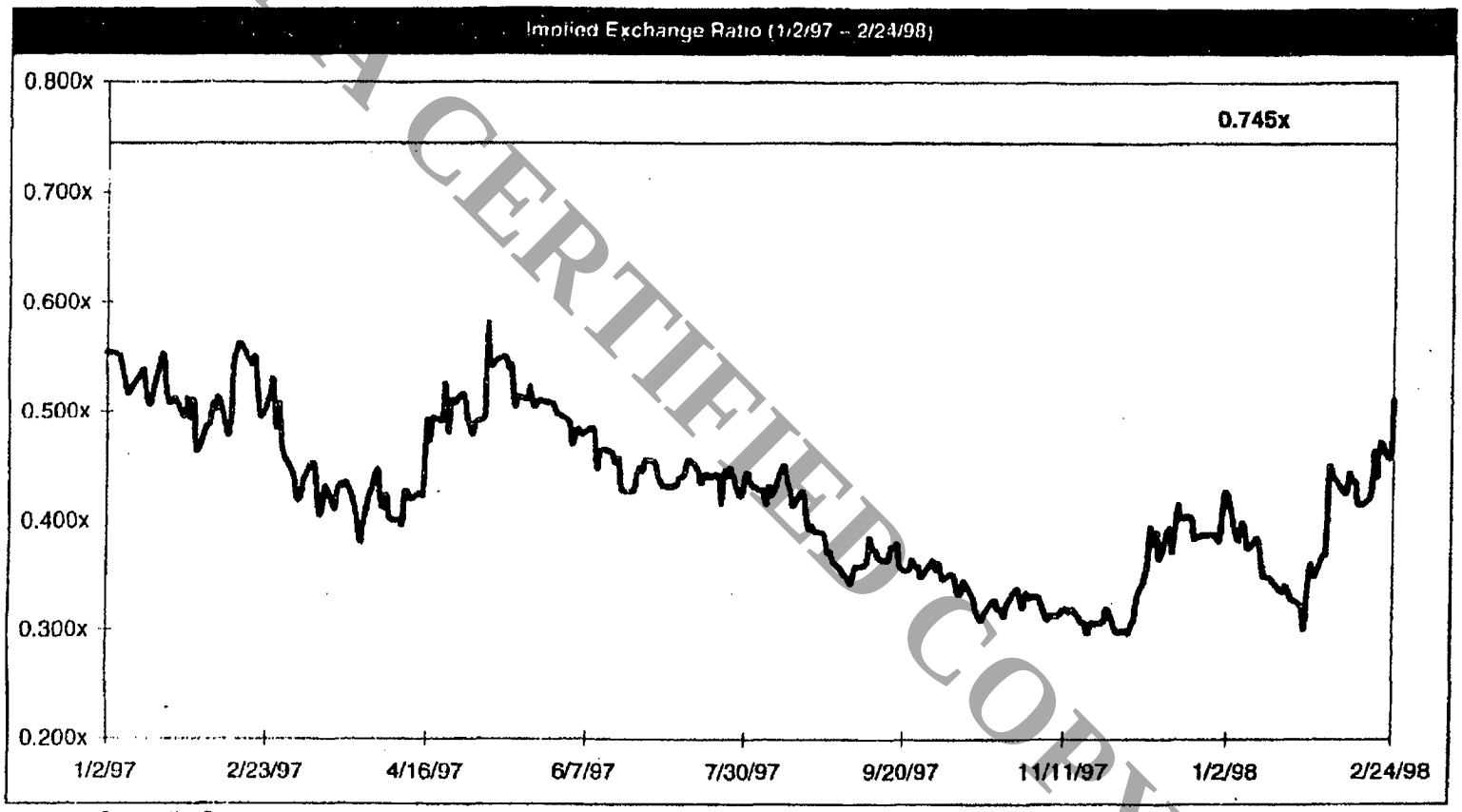
CPH 1401224

16div-024743

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Implied Exchange Ratios



Source: FactSet.

CP 011059
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

W:\library\80520086.nyw/6

009910

NOT A CERTIFIED COPY

CPH 1401225

16div-024744

Cont #971

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Valuation Methodologies

1. Discounted Cash Flow - Assumes that the value of the Company equals the present value of future unlevered free cash flows generated from the existing assets.

2. Comparable Companies - Assesses the value of the Company in terms of the public market trading values of comparable publicly-traded companies.

3. Comparable Acquisitions - Generates a private market valuation for the Company on the basis of prices that have been paid in acquisitions of comparable companies.

NOT A CERTIFIED COPY

CPH 1401226

109910

16div-024745

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Valuation Summary - CLN

NOT A CERTIFIED COPY

Credit Suisse First Boston Reference Ranges

(Dollars in Millions)

VALUATION METHOD	ENTERPRISE VALUE RANGE	IMPLIED 1998E EBITDA MULTIPLE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
Discounted Cash Flow Analysis	$1,797 – $2,072	11.0x – 12.6x	$1,357 – $1,632	$24.78 – $29.62
Comparable Company Analysis	$1,150 – $1,600	7.0x – 9.8x	$710 – $1,160	$13.27[3] – $21.31
Comparable Acquisitions Analysis	$1,600 – $2,000	9.8x – 12.2x	$1,160 – $1,560	$21.31 – $28.35

(1) Equals Enterprise Value less $440 million of Net Debt.
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) Assumes no conversion of options since average option strike price of $15.14 exceeds the implied per share price.

CREDIT SUISSE | FIRST BOSTON

209910

CPH 1401227

16div-024746

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Discounted Cash Flow Analysis

NOT A CERTIFIED COPY

Operating Assumptions[1]
(Dollars in Millions)

	1996	1997P[2]	1998E	1999E	2000E	2001E	2002E	2003E
Revenue	$1,220.2	$1,066.0	$1,163.3	$1,279.6	$1,407.5	$1,548.3	$1,703.1	$1,830.9
EBITDA	99.0	99.0	163.8	184.3	205.5	221.4	240.1	258.2
EBIT	62.6	62.8	121.8	142.3	164.5	182.4	201.1	217.0
Unlevered Free Cash Flow	NA	NA	80.3	76.2	90.9	102.6	109.7	123.7

(1) Based on CLN Management estimates for 1998 to 2001 and estimates developed in conjunction with CLN management for 2002 and beyond. Estimates exclude the safety and security products unit.
(2) 1997 pro forma for the sale of the safety and security products unit.

Present Value Matrix
(Dollars in Millions, Except Per Share)

DISCOUNT RATE		2007E EBITDA MULTIPLE 9.5X	10.5X
10.0%	Per Share[1]	$27.27	$29.62
11.0%	Per Share[1]	$24.78	$26.92

(1) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).

CP 011062
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

W:\library\80520086.nyw/9

CPH 1401228

16div-024747

E09910

The Coleman Company, Inc.

Comparable Companies Analysis - CLN

Public Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,163MM[3]	1.0x – 1.5x	$1,163 –$1,745	$723 – $1,305	$13.52[4]– $23.86
1998E EBITDA	$164MM[3]	7.0x – 10.0x	$1,147 –$1,638	$706 – $1,198	$13.21[4]– $22.40
1998 EPS	$1.18	13.0x – 18.0x	$1,259 –$1,594	$819 – $1,154	$15.31 – $21.20
CSFB Reference Range			**$1,150 –$1,600**	**$710 – $1,160**	**$13.27[4]– $21.31**

(1) Equals Enterprise Value less $440 million of Net Debt.
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) As of CLN Management estimates.
(4) Assumes no conversion of options since the average option strike price of $15.14 exceeds the implied per share price.

Comparison of Market Data of Selected Comparable Companies
(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	**$3,662.7**	**$3,825.7**	**2.6x**	**11.6x**	**13.8x**	**20.4x**
Coleman	**1,124.5**	**1,564.7**	**1.3**	**9.6**	**12.8**	**17.5[1]**
Hully Corp.	189.4	274.2	0.4	6.4	14.5	15.6
Russell Corp.	993.3	1,503.7	1.2	7.3	11.4	15.8
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

(1) P/E calculated on management's forecast of $1.18. P/E based on First Call estimate of $0.91 would be 22.7x.

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1401229
16div-024748

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Acquisitions Analysis - CLN

NOT A CERTIFIED COPY

Private Market Valuation

(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,163MM[3]	1.2x - 1.5x	$1,396 - $1,745	$956 - $1,305	$17.71 - $23.86
1998E EBITDA	$164MM[3]	10.0x - 12.0x	$1,638 - $1,966	$1,198 - $1,525	$21.98 - $27.75
CSFB Reference Range			**$1,600 - $2,000**	**$1,160 - $1,560**	**$21.31 - $28.35**

(1) Equals Enterprise Value less $440 million of Net Debt.
(2) Equals (Equity Value plus $50.3 million of estimated options proceeds) ÷ (53.5 million common shares outstanding plus 3.3 million options outstanding).
(3) Based on CLN Management estimates.

Comparison of Market Data of Selected Comparable Acquisitions

(Currency in Millions)

DATE	ACQUIROR	TARGET	ENTERPRISE VALUE	MULTIPLE OF LTM REVENUES	MULTIPLE OF LTM EBITDA
9/96	Gillette Co.	Duracell International	$7,862.7	3.3x	14.2x
9/96	Rubbermaid Inc.	Graco Children's Products, Inc.	320.0	1.2	NA
8/96	Kohlberg Kravis Roberts & Co.	E&S Holding Corporation (Evenflo & Spalding Holding Corporation)[1]	1,078.4	1.5	12.7
1/96	Brunswick Corporation	Nelson/Weather-Rite	120.0	1.2	NA
12/95	American Brands, Inc.	Cobra Golf Inc. II	673.8	3.7	11.9
2/95	Bell Sports Corporation	American Recreation Company	150.2	1.0	10.6
12/94	Sogedim of Belgium	Adidas Int'l Hldg.	DM1,380.0	0.4	10.4

(1) Strata, an entity organized by Kohlberg Kravis Roberts & Co., L.P., owned 88.4% of the common stock after the recapitalization. The Enterprise Value is presented on a grossed-up basis.

509910

CPH 1401230

16div-024749

The Coleman Company, Inc.

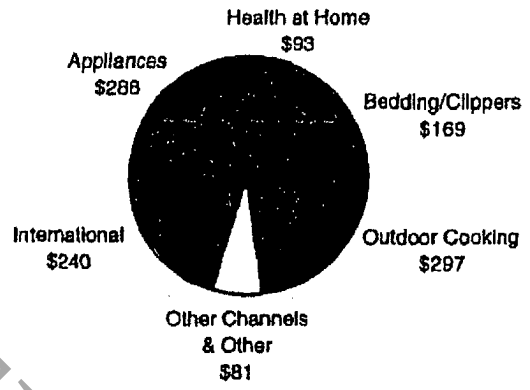
Overview of Sunbeam

Business Overview

- Sunbeam is one of the leading consumer products companies in the U.S.
- *Major brands include Sunbeam, Oster and Grillmaster*
- The Company holds the number 1 or 2 position in a variety of products including blenders, electric blankets, gas grills, clippers and other kitchen and health devices.
- The Company is in the midst of a rapid restructuring and growth initiative led by Al Dunlap who was appointed CEO on July 18, 1996.

1997 Revenue Breakdown
Total = $1,168

(Dollars in Millions)



Financial Summary

(Dollars in Millions)	1996	1997	1998E[1]	1999E[1]
Revenue	$984	$1,168	$1,460	$2,070
EBITDA	48	239	329	423
Net Income	(8)	124	160	236

(1) Based on Wall Street estimates.

NOT CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Valuation Summary - SOC

NOT A CERTIFIED COPY

Credit Suisse First Boston Reference Ranges

(Dollars in Millions)

VALUATION METHOD	ENTERPRISE VALUE RANGE	IMPLIED 1998E EBITDA MULTIPLE[1]	EQUITY VALUE RANGE[2]	IMPLIED PER SHARE PRICE[3]
Discounted Cash Flow Analysis				
Long-Term Strategic Plan	$4,312 – $4,886	13.1x – 14.9x	$4,169 – $4,743	$45.77 – $51.84
Base Case	$3,813 – $4,326	11.6x – 13.2x	$3,670 – $4,183	$40.49 – $45.92
Comparable Companies Analysis	$3,400 – $4,200	10.4x – 12.8x	$3,257 – $4,057	$36.12 – $44.59
Comparable Acquisitions Analysis	$3,250 – $4,000	9.9x – 12.2x	$3,107 – $3,857	$34.53 – $42.47

(1) Multiples based on Wall Street estimates ($328.5 million of EBITDA).
(2) Equals Enterprise Value less $143 million of Net Debt.
(3) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).

CREDIT SUISSE | FIRST BOSTON

L09910

CPH 1401232

16div-024751

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Discounted Cash Flow Analysis – SOC

Operating Assumptions
(Dollars in Millions)

	1996	1997	1998E	1999E	2000E	2001E	2002E
Base Case[1]							
Revenue	$984.2	$1,168.2	$1,460.0	$1,800.0	$2,070.0	$2,277.0	$2,504.7
EBITDA	48.1	238.0	328.5	423.0	486.5	535.1	588.6
EBIT	0.7	199.4	277.4	360.0	414.0	455.4	500.9
Unlevered Free Cash Flow	NA	NA	107.3	147.5	190.8	230.8	253.9
Long-Term Strategic Plan[2]							
Revenue	$984.2	$1,168.2	$1,600.0	$2,000.0	$2,400.0	$2,580.0	$2,773.5
EBITDA	48.1	238.0	372.0	471.0	568.0	610.6	656.4
EBIT	0.7	199.4	318.0	400.0	485.0	521.4	560.6
Unlevered Free Cash Flow	NA	NA	172.7	158.0	217.3	272.1	292.5

Present Value Matrix
(Dollars in Millions, Except Per Share)

DISCOUNT RATE		2002E EBITDA MULTIPLE 9.5X	10.5X
Base Case[1]			
11.0%	Per Share[2]	$42.23	$45.92
12.0%	Per Share[2]	$40.49	$44.02
Long-Term Strategic Plan[2]			
11.0%	Per Share[3]	$47.72	$51.84
12.0%	Per Share[3]	$45.77	$49.71

(1) Projections developed in conjunction with CLN management based on equity analyst research.
(2) SOC Management Projections for 1998 to 2000 and estimates for 2001 and 2002.
(3) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).

NOT A CERTIFIED COPY

CP 011067
CONFIDENTIAL

CREDIT SUISSE | FIRST BOSTON

809910

CPH 1401233

16div-024752

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Companies Analysis - SOC

NOT CERTIFIED COPY

Public Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E EBITDA	$329MM[3]	10.0x - 12.0x	$3,285 - $3,942	$3,142 - $3,799	$34.90 - $41.86
1998E E.P.S.	$1.99	19.0x - 22.0x	$3,560 - $4,124	$3,417 - $3,981	$37.81 - $43.78
CSFB Reference Range			**$3,400 - $4,200**	**$3,257 - $4,057**	**$36.12 - $44.59**

(1) Equals Enterprise Value less $143 million of Net Debt.
(2) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).
(3) Based on Wall Street estimates.

Comparison of Market Data of Selected Comparable Companies
(Dollars in Millions)

COMPANY	MARKET VALUE	ADJUSTED MARKET VALUE	ADJUSTED MARKET VALUE 1998E SALES	1998E EBITDA	1998E EBIT	1998 P/E
Sunbeam	**$3,682.7**	**$3,825.7**	**2.6x**	**11.6x**	**13.8x**	**20.4x**
Coleman	**1,124.5**	**1,564.7**	**1.3**	**9.6**	**12.8**	**17.5**
Tupperware Corporation	1,843.5	1,903.8	1.6	8.6	12.4	15.9
Whirlpool Corporation	4,906.5	6,887.5	0.8	7.5	12.4	16.1
The Black & Decker Corp.	4,769.7	6,385.4	1.4	8.7	11.9	19.0
The Stanley Works	4,169.3	4,431.6	1.5	9.3	11.9	19.1
Newell Co.	7,008.7	8,150.0	2.3	10.8	13.2	21.0
Rubbermaid Inc.	4,344.1	4,607.2	1.7	10.1	13.7	24.5
Brunswick Corp.	3,125.0	3,804.8	0.9	6.3	8.8	12.8

CPH 1401234
16div-024753

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Comparable Acquisitions Analysis - SOC

Private Market Valuation
(Dollars in Millions)

		RELEVANT MULTIPLE RANGE	ENTERPRISE VALUE RANGE	EQUITY VALUE RANGE[1]	IMPLIED PER SHARE PRICE[2]
1998E Revenues	$1,460MM[3]	2.0x - 2.5x	$2,920 - $3,650	$2,777 - $3,507	$31.04 - $38.77
1998E EBITDA	$329MM[3]	10.0x - 12.0x	$3,285 - $3,942	$3,142 - $3,779	$34.90 - $41.86
CSFB Reference Range			**$3,250 - $4,000**	**$3,107 - $3,857**	**$34.53 - $42.47**

(1) Equals Enterprise Value less $143 million of Net Debt.
(2) Equals (Equity Value plus $156.0 million of estimated options proceeds) ÷ (85.5 million common shares outstanding plus 9.0 million options outstanding).
(3) Based on Wall Street estimates.

Comparison of Market Data of Selected Comparable Acquisitions
(Dollars in Millions)

DATE	ACQUIROR	TARGET	ENTERPRISE VALUE	MULTIPLE OF LTM REVENUES	MULTIPLE OF LTM EBITDA
9/97	Goodman Holding Company	Raytheon Appliance Group	$750.0[1]	0.5x	5.5x
2/97	Honeywell	Duracraft Corp.	266.9	1.6	13.9
9/96	Gillette Co.	Duracell International	7,862.7	3.3	14.2
9/96	Rubbermaid Inc.	Graco Children's Products, Inc.	320.0	1.2	NA
8/96	Kohlberg Kravis Roberts & Co.	E&S Holding Corporation (Evenflo & Spalding Holding Corporation)[2]	1,078.4	1.5	12.7
9/95	Manitowoc Co.	Shannon Group	126.0	1.2	6.7
12/94	Berisford International plc	Welbilt Corp.	481.2	1.0	8.3
1/94	Health O'Meter Products	Mr. Coffee, Inc.	183.8	0.9	8.4

(1) $200.0 million worth of receivables were purchased by a financial institution. For valuation purposes, we assume receivables would have to be financed.
(2) Strata, an entity organized by Kohlberg Kravis Roberts & Co., L.P., owned 88.4% of the common stock after the recapitalization. The Enterprise Value is presented on a grossed-up basis.

NOT CERTIFIED COPY

CPH 1401235
16div-024754

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Contribution Analysis

NOT A CERTIFIED COPY

Pro Forma Contribution Analysis

(Dollars in Millions Except per Share Data)

	CLN	SOC	IMPLIED PERCENTAGE FOR CLN	ACTUAL PERCENTAGE FOR CLN	IMPLIED EXCHANGE RATIO
1997P Results					
Earnings	$24	$124	15.9%	30.2%	0.311x
1998E Results					
Earnings	$63	$180[1]	25.8%	30.2%	0.575x

(1) Based on $1.99 EPS and 90.7 million shares outstanding under the treasury method.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Pro Forma Analysis

Assumptions
• $100 million of pre-tax synergies and cost savings
• Sunbeam assumes holding company zeros
• Coleman's debt and cash payment for shareholders financed at 6.5%
• Purchase accounting with goodwill amortized over 40 years

NOT A CERTIFIED COPY

CPH 1401237

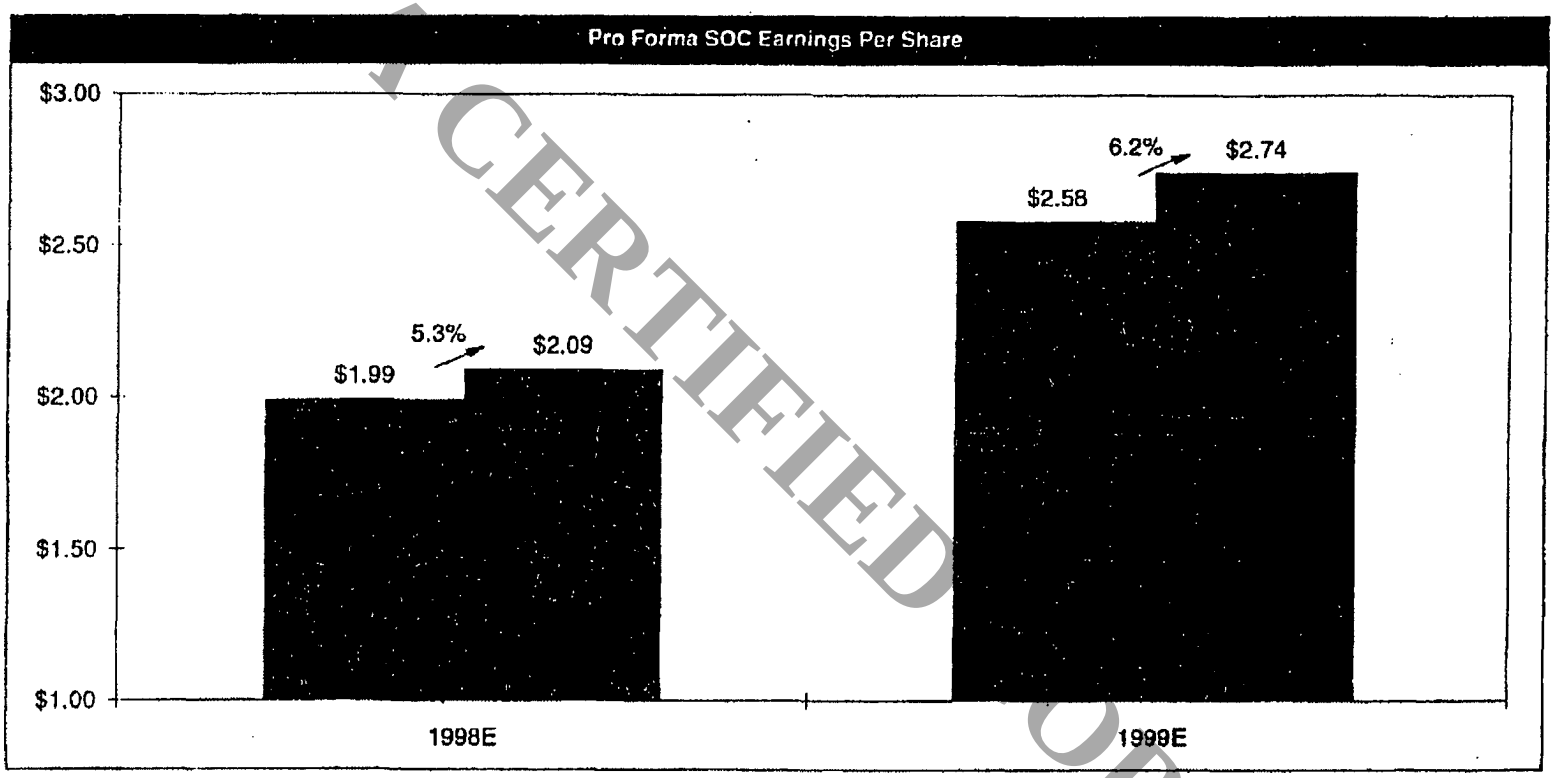
219910

16div-024756

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The Coleman Company, Inc.

Pro Forma Analysis



Note: Excludes one-time restructuring charges.

NOT A CERTIFIED COPY

CREDIT SUISSE | FIRST BOSTON

W:\library\80580021.nyw/3

CPH 1401238

16div-024757

£19910

NOT A CERTIFIED COPY

016914

DEPOSITION
EXHIBIT # 88
FOR ID TRN
4/8/04

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
THE COLEMAN COMPANY, INC.
Held on Wednesday, February 25, 1998 at 4:00 p.m. (EST)
35 East 62nd Street, New York, New York

Directors in Attendance:

Jerry W. Levin, Chairman
Donald G. Drapkin
Frank Gifford
Ann D. Jordan
John A. Moran (by telephone)
Ronald O. Perelman
Bruce Slovin
William H. Spoor (by telephone)

Absent:
Lawrence M. Jones
James D. Robinson III

Others in Attendance:

From The Coleman Company, Inc.
Joseph P. Page, Executive Vice President and Chief Financial Officer
Paul E. Shapiro, Executive Vice President and General Counsel
Steven R. Isko, Vice President - Legal and Assistant Secretary
From MacAndrews & Forbes
Howard Gittis
James Maher
William Nesbitt
Barry F. Schwartz
From Wachtell, Lipton, Rosen & Katz
Adam O. Emmerich
Paul K. Rowe
Michael S. Katzke
From Credit Suisse First Boston
Gordon Rich
Robert Duffy

Chairman Levin called the meeting to order at 4:00 p.m. and asked Mr. Isko to act as Secretary of the meeting. Mr. Levin thanked everyone for attending and introduced the participants from Wachtell, Lipton, Rosen & Katz, ("Wachtell") the Company's special counsel, and Credit Suisse First Boston ("First Boston"), the Company's financial advisors.

NOT A CERTIFIED COPY

016615

The first order of business was a brief overview by Mr. Levin of the Company's results for the fourth quarter and full year 1997, and an outlook for near term prospects.

The next item of business was an overview by Mr. Levin of a proposed transaction whereby the Company would be merged with Sunbeam Corporation ("Sunbeam"). Mr. Levin stated that the Company had been in discussions with Sunbeam with respect to a potential transaction whereby the Company would be merged with Sunbeam and holders of the Company's common stock would receive Sunbeam common stock and cash with a total value of $27.50 per Company share. Mr. Levin stated that the proposed transaction is structured to put Sunbeam in control as quickly as possible in order to reduce disruption to the Company's business. Mr. Levin then provided an overview of the information provided by Sunbeam as to their current intentions with regard to divestiture of certain business units of the Company and potential restructurings of remaining facilities. Mr. Levin also reviewed certain employee-protection provisions which the Company is requesting as part of the proposed transaction, including the severance policies, acceleration of options and formalizing pre-existing agreements with certain officers.

Mr. Levin then asked Mr. James Maher to review with the Board the history of the proposed transaction with Sunbeam. Mr. Maher reviewed the history of the proposed transaction, including both the course of discussion between the Company and Sunbeam and an inquiry made by the Company to what the Company believed was the most likely potential bidder, which bidder was not interested. Following Mr. Maher's review, the directors asked numerous questions regarding the proposed transaction and a discussion ensued among the directors.

Following the directors' questions and discussion, Mr. Levin then introduced Mr. Adam Emmerich of Wachtell. Mr. Emmerich described the overall structure of the proposed transaction, the timing for the consummation of the proposed acquisition of the Company by Sunbeam, and the principal filings with the Securities and Exchange Commission (the "SEC") that would be required in connection with the proposed transaction and the timing of those filings. Utilizing a chart he handed out at the meeting (a copy of which is attached to these minutes), Mr. Emmerich then described in detail the structure of the proposed transaction, including the merger of CLN Holdings Inc., a subsidiary of MacAndrews & Forbes Holdings Inc. ("M&F") which owns approximately 82.4% of the Company's common stock in the first step of the transaction, and the merger of the Company and the exchange of its common stock held by the public in the second step of the transaction. Mr. Emmerich described the consideration payable in each step of the transaction, noting that, after a reduction to account for the debt at CLN Holdings, the aggregate consideration payable to M&F for shares of CLN Holdings in the first step of the transaction was based on the same proportions of consideration

NOT A CERTIFIED COPY

016616

in cash and Sunbeam common stock payable to the public in the second step of the transaction. Mr. Emmerich also described the tax treatment of the two steps of the transaction, indicating that the receipt of consideration by the Company's public stockholders would generally be taxable while the receipt of consideration by M&F for shares of CLN Holdings in the first step would not be taxable.

Mr. Emmerich then reviewed the contemplated conditions to closing, including that there would be very few conditions, which is typical of acquisitions of public companies. Mr. Emmerich stated that once the acquisition of CLN Holdings was consummated, there would be virtually no conditions to the obligations of Sunbeam to close the second step of the transaction.

The directors then asked numerous questions regarding the consideration being paid, the structure of the transaction, and the other terms of the transaction, and a discussion ensued.

Following the discussion, Mr. Emmerich stated that the Board needed to consider two distinct matters in connection with the acquisition of the Company: (i) approving the merger agreement between Sunbeam and the Company and (ii) approving the first step of the transaction (the acquisition of CLN Holdings) under Section 203 of the Delaware General Corporation law. Mr. Emmerich stated that both decisions by the Board should be governed by the "business judgment rule" under Delaware law.

Mr. Emmerich reviewed with the Board the requirements of the "duty of care" and "duty of loyalty," identifying certain facts the Board should consider, including that both M&F and the Company's public stockholders will receive consideration for the Company's common stock in the same mix of cash and stock and based upon the same valuation, management's activities to maximize the consideration to all of the Company's shareholders and that there is a tremendous risk of damage to the Company's business in conducting a more extended or extensive sale process without any indication that another bidder would emerge. Mr. Emmerich noted for the Board as part of its consideration that both Wachtell and First Boston have in the past been engaged by affiliates of the Company, including M&F and its subsidiaries.

Mr. Emmerich stated that in light of the fact that the preponderance of the economic investment of the Company's stockholders in Coleman will become an equity stake in Sunbeam following the consummation of the transaction, and that, at such time, there will exist no controlling stockholder of Sunbeam, the proposed transaction is not a "sale" within the meaning of Revlon v MacAndrews & Forbes, which doctrine Mr. Emmerich described for the Board. Mr. Emmerich stated that the Company's stockholders, as stockholders of Sunbeam, may be able to obtain another control premium with respect to their Sunbeam common stock, and that this is an unusually favorable transaction in that the public stockholders of the Company would not only

NOT A CERTIFIED COPY

016617

CONFIDENTIAL SASMF 08874
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634058

16div-024761

receive a premium for their Coleman shares but would also obtain the benefits of becoming stockholders in Sunbeam, a public company which has no controlling stockholder, thereby offering the possibility of sharing in another control premium in the future.

Following Mr. Emmerich's presentation the Board asked questions and a discussion ensued.

Mr. Levin thanked Mr. Emmerich for his presentation and then introduced Mr. Gordon Rich of First Boston. Mr. Rich reviewed with the Board each page of the presentation prepared by First Boston, a copy of which was distributed to the directors and is attached to these minutes. Mr. Rich began with an overview of the financial terms of the proposed transactions, including the proposed exchange ratio in the second step of .6258 Sunbeam shares for each share of the Company's common stock, cash consideration in the second step of $4.40 per share (together representing a premium of 44.2% to the Company's stock price on the previous day), and aggregate consideration in the first step of the transaction of approximately 15.6 million shares of Sunbeam common stock and approximately $106 million in cash. Mr. Rich then reviewed the value of the proposed transaction as it relates to various financial indicia, including historical stock trading prices and earnings, the value to the Company's stockholders as the price of Sunbeam stock increased or decreased, and the two-year trading history of Sunbeam stock. Mr. Rich stated that since Mr. Dunlap became Chief Executive Officer of Sunbeam, Sunbeam's stock price has approximately doubled.

Mr. Rich then reviewed the implied exchange ratio of the proposed transaction and stated that it was higher than the exchange ratio implied by the two companies' historical stock market price.

Mr. Rich then reviewed with the Board the section of the First Boston presentation on Valuation Methodologies, and reviewed with the Board the three methods prepared by First Boston: Discounted Cash Flow Analysis, Comparable Company Analysis and Comparable Acquisition Analysis. In reviewing the Discounted Cash Flow Analysis, Mr. Rich noted that First Boston used the Company's 1998 estimates on earnings before interest, taxes, depreciation and amortization ("EBITDA"), which shows a significant increase over 1997 results, and is higher than the Company's best results in any year. Mr. Rich stated that although First Boston did not discount the 1998 EBITDA forecasts, another buyer would likely discount such estimates, resulting in a lower discounted cash flow range of values than those presented by First Boston.

Mr. Rich stated that the price being paid for the Company's common stock would be within or exceed the range of values for the Company's common stock implied by the three valuation methodologies.

NOT A CERTIFIED COPY

016918

Mr. Rich then provided a brief overview of Sunbeam, including Wall Street estimates for Sunbeam's stock price and then reviewed a summary of the Discounted Cash Flow Analysis, Comparable Company Analysis and Comparable Acquisition Analysis for Sunbeam. Based on such analysis, Mr. Rich stated that it was First Boston's conclusion that Sunbeam's stock was fairly valued at today's market price (approximately $41 per share). Mr. Rich then reviewed a Contribution Analysis demonstrating that, based on contribution to earnings, the Company's stockholders should receive 16% of the outstanding Sunbeam shares after the acquisition of Coleman, whereas the terms of the transaction provide that they will receive approximately 30%.

Following Mr. Rich's presentation, the directors asked questions and a discussion ensued.

Mr. Levin explained that a decision from the directors with respect to the transaction was not required at today's meeting, and that significant issues remained to be negotiated. Mr. Levin indicated that the Board would meet again to consider the final terms of the transaction.

Mr. Levin thanked Mr. Rich for his presentation and stated that the next item was the approval of the 1997 bonus payments. Mr. Levin stated that the bonuses under the Management Incentive Plan were conditioned on the Company achieving a certain minimum earnings per share. The earnings per share condition was the only condition that had not been satisfied and if the condition were absent, bonuses would have been earned under the Management Incentive Plan. Therefore, in light of the progress made by the Company during 1997 to restructure its operations and in consideration of the Company's financial performance during 1997, management recommends that a bonus be paid based on the amounts that would have been earned absent the condition of a minimum earnings per share.

Upon a motion made and duly seconded, the Board adopted management's recommendation with respect to the 1997 bonuses and adopted the following resolutions:

1997 Bonus Payments

WHEREAS, one condition to the payment of amounts under the Company's Management Incentive Plan has not been satisfied for 1997; and

WHEREAS, but for such condition, certain payments would have been earned under the Company's Management Incentive Plan;

NOW THEREFORE, BE IT RESOLVED, that in light of the progress made by the Company during 1997 to restructure its operations, and in consideration of the financial performance of the Company during 1997, the payments to employees of the Company of

NOT A CERTIFIED COPY

0116619

discretionary bonus as described to this Board are hereby approved and adopted in all respects.

General

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized and empowered in the name and on behalf of the Company, to (i) take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered, and where necessary or appropriate, file or cause to be filed with the appropriate governmental authorities, all such other instruments and documents, including but not limited to all certificates, contracts, bonds, agreements, documents, instruments, receipts or other papers, (ii) incur and pay or cause to paid all fees and expenses and (iii) engage such persons as such officer shall in his judgment determine to be necessary or appropriate to carry out fully the intent and purposes of the foregoing resolutions and each of the transactions contemplated thereby; and further

RESOLVED, that all actions previously taken by any director, officer, employee or agent of the Company in connection with or related to the matters set forth in or reasonably contemplated or implied by the foregoing resolutions be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company.

Mr. Levin then stated that the next Board meeting would be held on Friday, February 27, 1998 at 9:30 a.m. (EST). Mr. Levin stated that Messrs. Rich and Emmerich and members of management would be available to answer any questions any of the directors may have and provide any additional materials a director may want.

At 5:30 p.m., the meeting was adjourned.

Secretary

NOT A CERTIFIED COPY

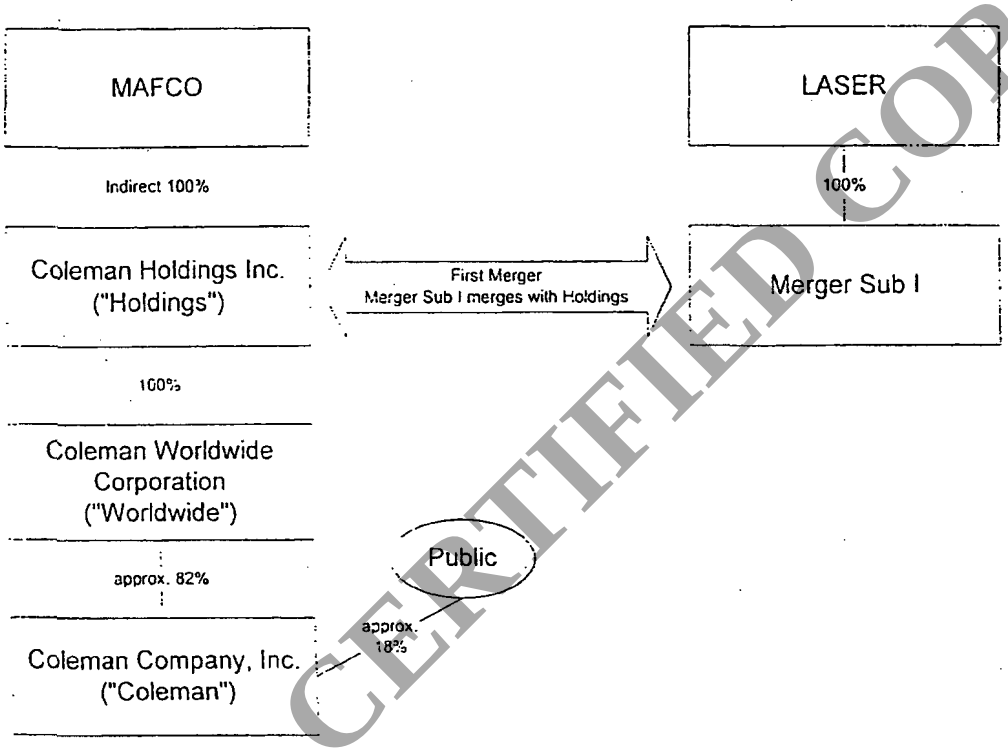
016620

CONFIDENTIAL SASMF 08877

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634061

16div-024764

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



PRE-TRANSACTION STRUCTURE:

MAFCO owns Coleman Holding Companies, and idirectly 82% of Coleman

Public owns 18% of Coleman

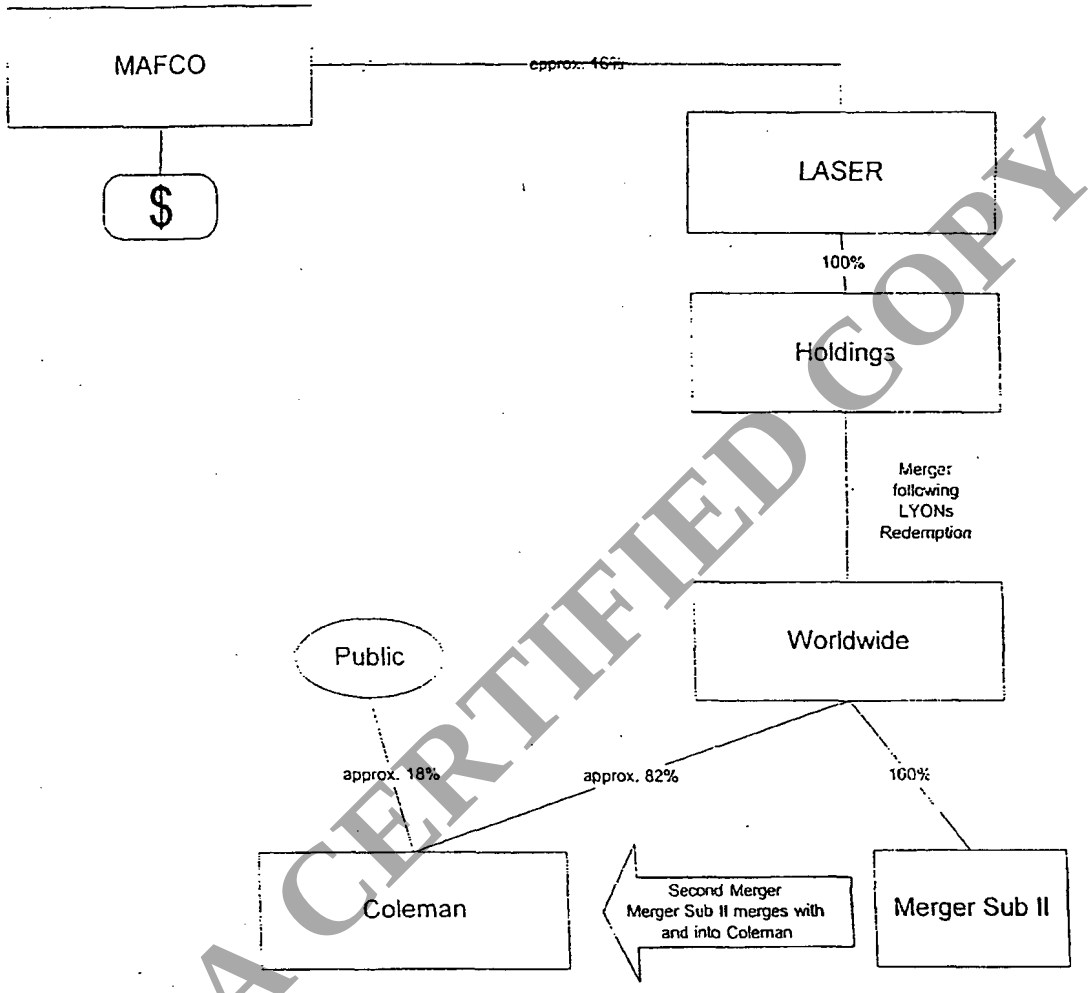
Laser forms Merger Sub I to acquire Coleman Holdings

NOT A CERTIFIED COPY

012921

STRICTLY CONFIDENTIAL
FEBRUARY 25, 1998

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER FIRST MERGER:

MAFCO receives Laser stock and cash for Holdings shares

Laser owns Coleman Holdings chain

Public continues to own 18% OF Coleman

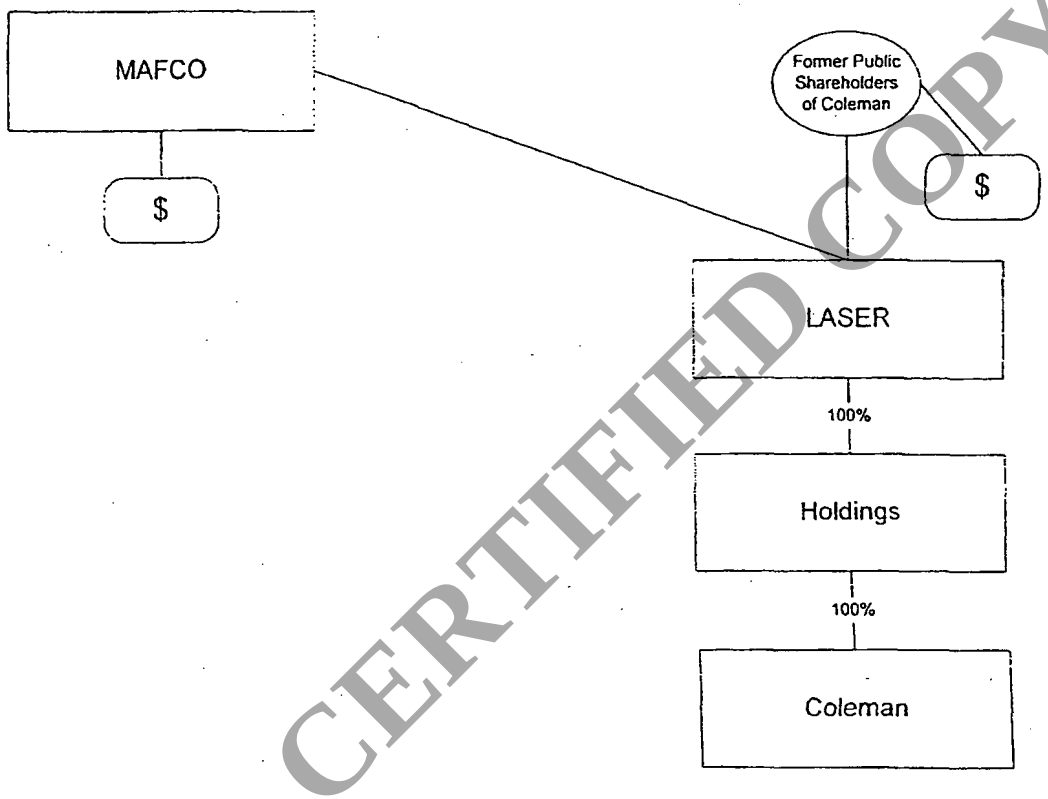
LYONs redeemed; Worldwide mergers with Holdings

Merger Sub II formed for second merger

NOT A CERTIFIED COPY

016622

PROJECT LASER
PROPOSED TRANSACTION STRUCTURE



AFTER SECOND MERGER:

Public receives Laser stock and cash for Coleman shares in the second merger

Coleman 100% owned by Laser

NOT A CERTIFIED COPY

019623

NOT A CERTIFIED COPY

0166924

MINUTES OF A MEETING OF
THE BOARD OF DIRECTORS OF
THE COLEMAN COMPANY, INC.
Held on Friday, February 27, 1998 at 9:30 a.m. (EST)
35 East 62nd Street, New York, New York

Directors in Attendance:

Jerry W. Levin, Chairman
Donald G. Drapkin
Frank Gifford
Lawrence M. Jones
Ann D. Jordan
John A. Moran (by telephone)
Ronald O. Perelman
James D. Robinson III
Bruce Slovin
William H. Spoor (by telephone)

Others in Attendance:

From The Coleman Company, Inc.
Joseph P. Page, Executive Vice President and Chief Financial Officer
Paul E. Shapiro, Executive Vice President and General Counsel
Steven R. Isko, Vice President - Legal and Assistant Secretary
From MacAndrews & Forbes
Howard Gittis
James Maher
William Nesbitt
From Wachtell, Lipton, Rosen & Katz
Adam O. Emmerich
Paul K. Rowe
Michael S. Katzke
From Credit Suisse First Boston
Gordon Rich
Robert Duffy

Chairman Levin called the meeting to order at 9:30 a.m. and asked Mr. Isko to act as Secretary of the meeting. Mr. Levin thanked everyone for attending and reviewed with the Board the status of the negotiations, noting that in the course of the negotiations the cash component of the consideration has been increased to $6.44 per Company share, and that the exchange ratio for the Sunbeam stock to be received has been decreased to .5677, the effect of which was subsequently described by Mr. Rich. Mr. Levin then asked Adam Emmerich of Wachtell, Lipton, Rosen and Katz ("Wachtell") to review the proposed transaction structure and the consideration to be received.

NOT A CERTIFIED COPY

EXHIBIT
MS 123

Mr. Emmerich reviewed with the Board the transaction structure, utilizing a chart which was distributed to the Board (a copy of which is attached to these minutes), and the consideration to be received by the public stockholders of the Company and by MacAndrews & Forbes Holdings Inc. ("M&F") for the sale of CLN Holdings Inc. ("CLN Holdings"), a parent company of the Company and by the Company's public stockholders.

Mr. Emmerich then reviewed the terms of the principal documents for the transaction, utilizing a summary of such documents delivered to the Board (a copy of which is attached to these minutes). Mr. Emmerich reviewed with the Board the conditions to the first step, the merger of CLN Holdings, and the conditions to the second step, the merger of the Company and the exchange of its common stock held by the public. Mr. Emmerich reviewed again with the Board their duties under Delaware law. Mr. Emmerich then responded to questions from the directors.

Mr. Levin then introduced Mr. Gordon Rich of Credit Suisse First Boston ("First Boston"). Mr. Rich reviewed the financial terms of the proposed transaction, noting the differences from the terms that existed on Wednesday, in particular the increase in the cash component of the consideration to $6.44 per Company share and the decrease in the exchange ratio of Sunbeam shares per Company share to .5677. Mr. Rich reviewed with the Board revised pages to the First Boston presentation delivered on Wednesday (a copy of such pages are attached to these minutes). Mr. Rich stated that the revised financial terms, based on Wednesday's closing price per Sunbeam share, has $0.31 less value per Company share than the previous financial terms, but that based on yesterday's closing price for Sunbeam's common stock the value to the stockholders of the cash and stock to be received in the merger was approximately the same as on Wednesday. Mr. Rich then responded to question from the directors.

Mr. Rich then stated that it was First Boston's opinion that the consideration to be received by the public stockholders of the Company is fair from a financial point of view.

A discussion then ensued about Sunbeam's pending acquisitions, and Mr. Maher reviewed for the Board Sunbeam's contemplated acquisitions of Signature Brands (which owns the Mr. Coffee brand of coffee makers) and First Alert.

Mr. Levin reviewed with the Board the terms of the proposed transaction that relate to employee severance and benefits. Mr. Levin described for the Board the principal terms of the Executive Severance Policy to be adopted by the Board, the severance policy to be offered to employees that are not participants in the Executive Severance Policy, and the acceleration of stock options upon the closing of the acquisition of CLN Holdings.

NOT A CERTIFIED COPY

0166626

CONFIDENTIAL SASMF 08882

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634066

16div-024770

Mr. Levin then introduced Paul Shapiro, General Counsel of the Company, who reviewed with the Board the proposed resolutions to be adopted.

A motion was duly made and seconded to approve the following resolutions.

WHEREAS, it is proposed that CLN Holdings enter into an Agreement and Plan of Merger (the "Holdings Merger Agreement") with Sunbeam, a newly formed subsidiary of Sunbeam ("Laser Merger Sub") and Coleman (Parent) Holdings Inc., pursuant to which CLN Holdings would be merged with Laser Merger Sub, with CLN Holdings as the surviving entity (the "Holdings Merger");

WHEREAS, in the Holdings Merger, the shares of Holdings Common Stock, par value $1.00 per share ("Holdings Common Stock"), issued and outstanding immediately prior to the effective time of the Holdings Merger will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam common stock, par value $.01 per share ("Sunbeam Common Stock"), and $159,956,756 in cash, without interest thereon; and each share of Laser Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $1.00 per share, of the surviving corporation in the Holdings Merger; and

WHEREAS, it is proposed that, concurrently with the execution and delivery of the Holdings Merger Agreement, the Company enter into an Agreement and Plan of Merger (the "Coleman Merger Agreement") with Sunbeam and a newly formed subsidiary of Laser ("Coleman Merger Sub") , pursuant to which the Company would be merged with Coleman Merger Sub, with the Company as the surviving entity (the "Coleman Merger"); and

WHEREAS, in the Coleman Merger, each share of the Company's Common Stock, par value $0.01 per share ("Coleman Common Stock"), issued and outstanding immediately prior to the effective time of the Coleman Merger (other than (i) shares of Coleman Common Stock owned by the Company, Sunbeam or any subsidiary of the Company and (ii) Dissenting Shares (as defined in the Coleman Merger Agreement)) will be converted into the right to receive (A) 0.5677 shares of Sunbeam Common Stock, with cash paid in lieu of fractional shares, and (B) $6.44 in cash, without interest thereon; and each share of Coleman Merger Sub common stock issued and outstanding immediately prior to such time will be converted into one share of Common Stock, par value $.01 per share, of the surviving Company in the Coleman Merger; and

WHEREAS, First Boston, financial adviser to the Board of Directors, has made a presentation to the Board of Directors regarding the Holdings Merger and the Coleman Merger and has advised the Board of Directors that, as of the date of hereof, the consideration to be received by the public stockholders of the Company in the Coleman Merger is fair to such stockholders from a financial point of view; and

NOT A CERTIFIED COPY

0166927

CONFIDENTIAL SASMF 08883

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634067

16div-024771

WHEREAS, upon careful consideration of the information presented by management of the Company, First Boston and the Company's other advisers, and after full discussion of those matters which the Board of Directors believes are necessary or appropriate to enable it to evaluate and reach an informed decision regarding the fairness and advisability of the Coleman Merger and the respective transactions contemplated thereby, including the Holdings Merger, the Board of Directors has determined that it is advisable and in the best interests of the Company and its stockholders to approve the Coleman Agreement and the consummation of each of the transactions contemplated by such agreement, including the Holdings Merger; and

WHEREAS, it is proposed that the Company adopt and implement an Executive Severance Policy in substantially the form provided to the Board of Directors and that the Company enter into certain employment arrangements with Jerry W. Levin, Chairman of the Board and Acting Chief Executive Officer of the Company, and Paul E. Shapiro, General Counsel, substantially in the form of the agreements presented to the Board of Directors; and

WHEREAS, Coleman Worldwide Company ("Worldwide") intends to redeem all of its outstanding Liquid Yield Option Notes due 2013 on May 27, 1998 or as soon as practicable thereafter and following such redemption intends to merge with and into Holdings with Holdings as the surviving Company (the "Worldwide-Holdings Merger");

NOW, THEREFORE, BE IT:

Approval of Coleman Merger and Coleman Merger Agreement

RESOLVED, that the Coleman Merger is advisable and fair to and in the best interests of the Company and its stockholders; and

RESOLVED, that the form, terms and provisions of the Coleman Merger Agreement, in substantially the form attached hereto, and the consummation of the transactions contemplated thereby, including the Coleman Merger and the Holdings Merger, be, and they hereby are, authorized, approved and adopted in all respects, and that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to execute, acknowledge, certify and deliver the Coleman Merger Agreement with such amendments and/or supplemental or additional related agreements as are contemplated by the Coleman Merger Agreement, and as the officer or officers executing the same shall approve, such approval to be evidenced by execution and delivery thereof; and

RESOLVED, that the Board of Directors does hereby recommend that the stockholders of the Company approve the Coleman Merger Agreement, as the same may be executed and acknowledged on its behalf by its officers; and that the Company perform its obligations in

NOT A CERTIFIED COPY

016628

CONFIDENTIAL SASMF 08884

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634068

16div-024772

accordance with the Coleman Merger Agreement and the other instruments and agreements contemplated thereby; and

Delaware Business Combination Statute

RESOLVED, that the Holdings Merger and the transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, are hereby approved for purposes of Section 203 of the Delaware General Company Law (the "DGCL") which transactions may result in any of Sunbeam, Laser Merger Sub or Coleman Merger Sub becoming an "interested stockholder" within the meaning of paragraph (a)(2) of Section 203 of the DGCL and by any other similar laws that may be deemed applicable to the Company; and

RESOLVED, that the Board of Directors hereby approves the Worldwide-Holdings Merger solely for purposes of Section 203 of the DGCL which transaction may result in any of Sunbeam, Laser Merger Sub or Coleman Merger Sub becoming an "interested stockholder" within the meaning of (a)(2) of Section 203 of the DGCL and by any other similar laws that may be deemed applicable to the Company; and

Adoption of Executive Severance Policy

RESOLVED, that the form, terms and provisions of the Executive Severance Policy, in substantially the form presented to the Board of Directors, and the consummation of the transactions contemplated thereby, be, and hereby are, approved and adopted in all respects; and that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take, or cause to be taken any and all such actions as in such officer's judgment shall be necessary, desirable, appropriate or advisable to implement, carry out and effectuate the Executive Severance Policy; and

Increases In Target Bonus

RESOLVED, that the target bonuses for the following persons under the Company's Management Incentive Plan are hereby approved and adopted in all respects:

Hiro Suzuki	50%
Anthony Lenders	60%
James Rasmus	50%
Gwen Wisler	50%
Kyle Wendt	25%
Bobby Jenkins	50%
Karen Clark	50%
Gary Patten	40%

NOT A CERTIFIED COPY

016629

CONFIDENTIAL

SASMF 08885

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0634069

16div-024773

Approval of Certain Employment Arrangements

RESOLVED, that upon information provided to the Board of Directors and upon such other matters as are deemed relevant to the Board of Directors, the Board of Directors finds that the form, terms and provisions of the agreements with Messrs. Levin and Shapiro are fair to and in the best interests of the Company and its stockholders and hereby approves and adopts each of such agreements, substantially in the forms provided to the Board of Directors as of the date hereof; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to execute and deliver such employment agreements substantially in the form provided to the Board of Directors as of the date hereof, with such changes therein as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization, approval, and adoption thereof by the Board of Directors; and

Securities and Exchange Commission Filings

RESOLVED, that in order for the Company to comply with all applicable requirements of the Securities Act of 1933, as amended, and all rules and regulations thereunder (the "Securities Act"), the Securities Exchange Act of 1934, as amended, and all rules and regulations thereunder (the "Exchange Act"), and the rules and regulations of the New York Stock Exchange (the "NYSE"), any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver and file with the Securities and Exchange Commission (the "SEC"), the NYSE or other relevant body any and all reports, statements, documents and information required to be filed (the "SEC Filings") by the Company pursuant to the Securities Act, the Exchange Act and the rules of the NYSE, including, without limitation, to the extent deemed necessary or appropriate by any officer, after consultation with counsel, preliminary and definitive proxy materials (including an information statement meeting the requirements of Schedule 14C under the Exchange Act) and any amendments or supplements thereto or other documents required in connection therewith as such officer deem necessary or appropriate in connection with the approval of the Coleman Merger Agreement and the consummation of the transactions contemplated thereby, including the Holdings Merger; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to (i) appear before and respond to inquiries of officials of the SEC and the NYSE in connection with the SEC Filings, (ii) pay any fees and expenses incurred in connection with the preparation and filing of the SEC Filings, and

NOT A CERTIFIED COPY

0166630

CONFIDENTIAL SASMF 08886

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634070

16div-024774

(iii) take such other actions in connection with the SEC Filings as the officer or officers taking the same shall deem necessary, appropriate or advisable; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take all action necessary or appropriate to mail or cause to be mailed to the Company's stockholders definitive proxy materials together with such other documents (including without limitation a cover letter to stockholders) as such officers, upon the advice of counsel, deem necessary or appropriate in connection therewith; and

Engagements

RESOLVED, that the Board of Directors hereby approves the engagement of First Boston as financial advisor in connection with the transactions contemplated by the Coleman Merger Agreement on the terms reflected in the form of engagement letter provided to the Board of Directors, and any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to enter into an engagement letter and indemnity arrangements with First Boston in connection therewith, all in such form as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization thereof by the Board of Directors, and to take such actions as may be necessary or advisable to comply with the terms of said agreement and to consummate the transactions contemplated thereby; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to engage such other advisors and other agents as may be necessary or advisable in connection with the Coleman Merger and the other transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, and enter into engagement agreements with such firms on such terms as the officers executing the same may approve, the execution thereof by any such officer conclusively to evidence the due authorization thereof by the Board of Directors, and to take such actions as may be necessary or advisable to comply with the terms of said agreement and to consummate the transactions contemplated thereby; and

Actions by Subsidiaries

RESOLVED, that any officer of the Company and its various subsidiaries be, and each of them individually hereby is, authorized, in the name and on behalf of the Company and such subsidiaries, to cause any of such subsidiaries to enter into any agreement and any transaction relating thereto, and to consummate such transactions, as may be necessary or advisable in

NOT A CERTIFIED COPY

016631

CONFIDENTIAL SASMF 08887

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634071

16div-024775

connection with and in furtherance of the Coleman Merger Agreement and the transactions contemplated thereby, including the Holdings Merger; and

Regulatory Filings

RESOLVED, that, in order for the Company to comply with all applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the rules and regulations thereunder, including, but not limited to, the filing requirements thereunder, any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver and file or cause to be prepared, executed, delivered and filed all reports, statements, documents, and information required to be filed by the Company pursuant to the HSR Act and to respond to all requests for additional information and to meet or confer with, or to cause counsel to meet or confer with, officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice relating to any transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized to cooperate with Laser in the preparation, execution, delivery and filing of any other reports, statements, applications and information which may be required to be filed by Sunbeam, the Company or any of their respective subsidiaries in connection with the transactions contemplated by the Coleman Merger Agreement, including the Holdings Merger, or any other agreement contemplated thereunder, pursuant to the statutes, rules and regulations of the federal government or any applicable state, local or foreign authority or regulatory body; and

Certificate of Merger

RESOLVED, that in order for the Company to comply with all applicable requirements of the DGCL, the appropriate officers of the Company be, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, with the assistance of counsel, to prepare, execute, deliver or cause to be prepared, executed, delivered and, at the appropriate time as contemplated by the Coleman Merger Agreement following the approval thereof by the Company's stockholders in accordance with the provisions of the DGCL, file or cause to be filed with the Secretary of State of the State of Delaware, a certificate of merger as required by the DGCL in order to effect the Coleman Merger, and any and all additional documents and information required to be filed therewith; and

Delisting of Coleman Common Stock from the NYSE

RESOLVED, that subject to the consummation of the Coleman Merger, any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of

NOT A CERTIFIED COPY

0166632

CONFIDENTIAL SASMF 08888
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634072

16div-024776

the Company, (i) to take all steps necessary or appropriate, upon the advice of counsel, to cause the Coleman Common Stock to cease to be listed on the NYSE, (ii) to appear before and respond to inquiries of officials of the NYSE in connection with the foregoing, and (iii) to take such other actions and do such other things in connection therewith as the officers taking or doing the same shall deem necessary, appropriate or advisable; and

Payment of Necessary Fees

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to pay all fees incurred by the Company in connection with the transactions, including, without limitation, fees and expenses of the Company's financial advisors, fees and expenses of the Company's legal counsel, filing fees and printing expenses, and to make all payments as they, or any of them individually, shall determine to be necessary or appropriate, such payment to be conclusive evidence of their determination; and

Litigation

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take any steps in connection with initiating, defending or settling legal proceedings in any federal or state court or agency as they, upon the advice of counsel, deem necessary or appropriate in connection with the transactions contemplated by the foregoing resolutions; and

Expenses

RESOLVED, that any officer be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to pay any and all expenses and fees arising in connection with the matters contemplated by these resolutions; and

General

RESOLVED, that any officer of the Company or any person or persons authorized in writing by any of them be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to enter into, execute, deliver and perform any and all agreements, amendments, consents, certificates, instruments, documents, notices, requests, directions, approvals, instructions, reports, schedules, statements, information and other communications as any of such officers or such other authorized persons may determine to be required by, or otherwise necessary, advisable or appropriate in connection with, the Coleman Merger or contemplated in connection with the matters authorized in this and the preceding resolutions, and to make any filings pursuant to federal, state and foreign laws and to take all other actions that

NOT A CERTIFIED COPY

016633

CONFIDENTIAL SASMF 08889

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634073

16div-024777

any of such officers or such other authorized persons may determine to be necessary, desirable, appropriate or advisable in order to comply with the applicable laws and regulations of any jurisdiction (domestic or foreign), or otherwise to effectuate and carry out the purposes of the foregoing resolutions and to permit the transactions contemplated thereby to be consummated lawfully, and to take any and all such other actions, including, without limitation, filings with the SEC, the National Association of Securities Dealers or other entities, as any of such officers or such other authorized persons may determine to be necessary, advisable or appropriate in connection with any of the foregoing or for the purpose of otherwise carrying into effect the purposes of this and the preceding resolutions, such determination conclusively to be evidenced by such entry, execution, delivery, performance, or the taking of such action, by and of such officers or such other authorized persons; and

RESOLVED, that the Board of Directors hereby adopts, as if expressly set forth herein, the form of any and all resolutions required by any authority to be filed in connection with any applications, reports, filings, consents to service of process, powers of attorney, issuer's covenants and other papers, instruments and documents if in the opinion of an officer of the Company executing the same, the adoption of such resolutions is necessary, desirable, appropriate or advisable, and that the Secretary or an Assistant Secretary of the Company be, and each of them individually hereby is, authorized to evidence such adoption by inserting in this these resolutions copies of such resolutions, which will thereupon be deemed to be adopted by the Board of Directors with the same force and effect as if originally set forth herein.

RESOLVED, that all actions previously taken by any officer, director, representative or agent of the Company, in the name or on behalf of the Company or any of its affiliates in connection with the transactions contemplated by the foregoing resolutions be, and each of the same hereby is, adopted, ratified, confirmed and approved in all respects as the act and deed of the Company; and

RESOLVED, that any officer of the Company be, and each of them individually hereby is, authorized, in the name and on behalf of the Company, to take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered all such further agreements, documents, certificates and undertakings, and to incur all such fees and expenses, as in his or her judgment shall be necessary, desirable, appropriate or advisable to carry out and effectuate the purpose and intent of any and all of the foregoing resolutions.

Following Mr. Shapiro's presentation, the directors asked questions and a discussion ensued.

Mr. Levin then stated that Sunbeam is holding its Board meeting during this afternoon, and that this meeting of the Company's Board would continue through the time of the conclusion

NOT A CERTIFIED COPY

0166634

CONFIDENTIAL SASMF 08890

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634074

16div-024778

of the Sunbeam meeting.

Following the conclusion of the Sunbeam Board meeting, the directors unanimously approved the resolutions presented earlier in the day (which resolutions are included herein).

At 10:30 p.m. (EST), the meeting was adjourned.

Secretary

NOT A CERTIFIED COPY

016635

CONFIDENTIAL SASMF 08891

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0634075

16div-024779

NOT A CERTIFIED COPY

016636

CREDIT SUISSE FIRST BOSTON

CREDIT SUISSE FIRST BOSTON CORPORATION

Eleven Madison Avenue
New York, NY 10010-3629

Telephone 212 325 2000

NOT A CERTIFIED COPY

February 27, 1998

Board of Directors
The Coleman Company, Inc.
625 Madison Avenue
New York, NY 10022

Members of the Board:

You have asked us to advise you with respect to the fairness from a financial point of view to the stockholders of The Coleman Company, Inc. (the "Company"), other than Coleman Worldwide Corporation ("Worldwide") and its affiliates, of the Consideration (as hereinafter defined) to be received by such stockholders pursuant to the terms of an agreement and plan of merger dated as of February 27, 1998 (the "Company Merger Agreement") among Sunbeam Corporation (the "Acquiror"), Camper Acquisition Corp., a newly formed, wholly owned subsidiary of the Acquiror ("Merger Sub"), and the Company. The Company Merger Agreement provides, among other things, for the merger (the "Company Merger") of Merger Sub with and into the Company, whereby each outstanding share of common stock, par value $0.01 per share, of the Company (the "Company Common Stock") (other than shares of Company Common Stock held by the Company, the Acquiror or their respective subsidiaries (other than Worldwide or Holdings (as defined below)), and other than Dissenting Shares (as defined in the Company Merger Agreement)) will be converted into the right to receive (1) 0.5677 shares (the "Share Consideration") of common stock, par value $0.01 per share, of the Acquiror (the "Acquiror Common Stock") and (b) $6.44 in cash, without interest thereon (the "Cash Consideration" and, together with the Share Consideration, the "Consideration"). In connection with the Company Merger, the Acquiror, Laser Acquisition Corp., a newly formed, wholly owned subsidiary of the Acquiror ("Sunbeam Merger Sub"), Coleman (Parent) Holdings Inc. ("Parent Holdings") and CLN Holdings Inc., a wholly owned subsidiary of Parent Holdings ("Holdings"), will also enter into an agreement and plan of merger dated as of February 27, 1998 (the "Holdings Merger Agreement"), which provides, among other things, for the merger (the "Holdings Merger" and, together with the Company Merger, the "Mergers") of Sunbeam Merger Sub with and into Holdings, whereby the outstanding shares of common stock, par value $1.00, of Holdings (the "Holdings Common Stock") will be converted into the right to receive (1) 14,099,749 shares of Acquiror Common Stock and (2) $159,956,756 in cash, without interest thereon.

010637

MS 120
5-12-04 WDS

CP 010587
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1400750

16div-024781

The Company Merger is subject to and conditioned upon, among other things, consummation of the Holdings Merger.

In arriving at our opinion, we have reviewed certain publicly available business and financial information relating to the Company and the Acquiror, as well as the Company Merger Agreement and the Holdings Merger Agreement. We have also reviewed certain other information, including financial forecasts, provided to us by the Company and the Acquiror, and have met with the managements of the Company and the Acquiror to discuss the business and prospects of the Company and the Acquiror as well as the business, operational and strategic benefits and implications of the Mergers and the synergies and operating cost savings expected by the managements of the Company and the Acquiror to be achieved through the combination of the operations of the Company and the Acquiror.

We have also considered certain financial and stock market data of the Company and the Acquiror, and we have compared that data with similar data for other publicly held companies in businesses similar to the Company and the Acquiror and we have considered the financial terms of certain other business combinations and other transactions that have recently been effected. We also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which we deemed relevant.

In connection with our review, we have not assumed any responsibility for independent verification of any of the foregoing information and have relied on its being complete and accurate in all material respects. With respect to the financial forecasts, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of the Company and the Acquiror as to the future financial performance of their respective companies and the synergies and operating cost savings expected to be achieved through the combination of the operations of the Company and the Acquiror. In addition, we have not been requested to make, and have not made, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of the Company or the Acquiror, nor have we been furnished with any such evaluations or appraisals. Our opinion is necessarily based upon financial, economic, market and other conditions as they exist and can be evaluated on the date hereof. We are not expressing any opinion as to what the actual value of the shares of Acquiror Common Stock will be when issued to the Company's stockholders pursuant to the Company Merger or the prices at which such shares of Acquiror Common Stock will trade subsequent to the Mergers.

NOT A CERTIFIED COPY

016538

We have acted as financial advisor to the Company in connection with the Mergers and will receive a fee for our services, a significant portion of which is contingent upon the consummation of the Mergers.

In the past we have performed certain investment banking services for the Company and the parent of Parent Holdings and certain of its affiliates and have received customary fees for such services.

In the ordinary course of our business, we and our affiliates may actively trade the debt and equity securities of the Company, its affiliates and the Acquiror for our and such affiliates' own accounts and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

It is understood that this letter is for the information of the Board of Directors of the Company in connection with its consideration of the Mergers, does not constitute a recommendation to any stockholder with respect to the Company Merger and is not to be quoted or referred to, in whole or in part, in any registration statement, prospectus or proxy statement, or in any other document used in connection with the offering or sale of securities, nor shall this letter be used for any other purposes, without our prior written consent.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration is fair from a financial point of view to the stockholders of the Company (other than Worldwide and its affiliates).

Very truly yours,

CREDIT SUISSE FIRST BOSTON CORPORATION

By:
Gordon A. Rich
Managing Director

NOT A CERTIFIED COPY

016639

NOT A CERTIFIED COPY

016540

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

CAMPER ACQUISITION CORP.

and

THE COLEMAN COMPANY, INC.

Dated as of

February 27, 1998

NOT A CERTIFIED COPY

01664

MS 117
5-12-04 WDF

TABLE OF CONTENTS

		PAGE
	ARTICLE I	
	DEFINITIONS	
Section 1.1	Definitions	1
	ARTICLE II	
	THE COMPANY MERGER	
Section 2.1.	The Company Merger	7
Section 2.2	Closing	7
Section 2.3	Company Effective Time of the Company Merger	7
Section 2.4	Certificate of Incorporation	7
Section 2.5	By-Laws	7
Section 2.6	Directors	8
Section 2.7	Officers	8
	ARTICLE III	
	CONVERSION OF SHARES	
Section 3.1.	Effect on Capital Stock	8
Section 3.2	Exchange of Certificates Representing Shares	9
Section 3.3	Dividends; Transfer Taxes	10
Section 3.4	No Fractional Shares	11
Section 3.5	Termination of Exchange Fund	11
Section 3.6	Investment of Exchange Fund	11
Section 3.7	Closing of Company Transfer Books	11
Section 3.8	Dissenting Shares	11
	ARTICLE IV	
	REPRESENTATIONS AND WARRANTIES OF THE COMPANY	
Section 4.1	Organization	12
Section 4.2	Capitalization	12
Section 4.3	Subsidiaries	13
Section 4.4	Authority Relative to this Agreement	13
Section 4.5	Consents and Approvals; No Violations	14
Section 4.6	Reports and Financial Statements	14
Section 4.7	Absence of Certain Changes or Events	15
Section 4.8	Litigation	16
Section 4.9	Information in Disclosure Documents and Registration Statement	17

NOT A CERTIFIED COPY

016942

		PAGE
Section 4.10	Taxes	17
Section 4.11	Compliance with Applicable Law	18
Section 4.12	Labor Matters	18
Section 4.13	ERISA Compliance	18
Section 4.14	Environmental Matters	20
Section 4.15	Intellectual Property	20
Section 4.16	Contracts	20
Section 4.17	Opinion of Financial Advisor	21
Section 4.18	Takeover Statute	21
Section 4.19	Brokers	21

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Section 5.1	Organization	21
Section 5.2	Capitalization	22
Section 5.3	Merger Sub	22
Section 5.4	Authority Relative to this Agreement	22
Section 5.5	Consents and Approvals; No Violations	23
Section 5.6	Reports and Financial Statements	23
Section 5.7	Absence of Certain Changes or Events	24
Section 5.8	Litigation	24
Section 5.9	Information in Disclosure Documents and Registration Statement	24
Section 5.10	Taxes	25
Section 5.11	Compliance with Applicable Law	25
Section 5.12	Brokers	25

ARTICLE VI
COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1	Conduct of Business by the Company	26
Section 6.2	Other Actions	28
Section 6.3	Advice of Changes	28
Section 6.4	Conduct of Business of Merger Sub	28
Section 6.5	The Section 14(f) Notice	28

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1	Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice	29
Section 7.2	Access and Information; Confidentiality	29

NOT A CERTIFIED COPY

0166143

16div-024787

		PAGE
Section 7.3	Comfort Letters	29
Section 7.4	Listing Application	30
Section 7.5	Affiliates	30
Section 7.6	HSR Act; Competition Laws	30
Section 7.7	Employee Matters	31
Section 7.8	Continuance of Existing Indemnification Rights	32
Section 7.9	Expenses	34
Section 7.10	Public Announcements	34
Section 7.11	Reasonable Best Efforts	34

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1	Conditions to Each Party's Obligation to Effect the Company Merger	35

ARTICLE IX
TERMINATION, AMENDMENT AND WAIVER

Section 9.1	Termination	35
Section 9.2	Effect of Termination	35
Section 9.3	Amendment	35
Section 9.4	Extension; Waiver	36

ARTICLE IX
GENERAL PROVISIONS

Section 10.1	No Survival of Representations and Warranties	36
Section 10.2	Notices	36
Section 10.3	Descriptive Headings	37
Section 10.4	Entire Agreement; No Third-Party Beneficiary	37
Section 10.5	Interpretation	37
Section 10.6	Severability	38
Section 10.7	Assignment	38
Section 10.8	Disclosure Schedules	38
Section 10.6	Governing Law	38
Sectoin 10.10	Specific Performance	38
Section 10.11	Counterparts	39
Section 10.12	Certain Terms	39

NOT A CERTIFIED COPY

0199910

MORGAN STANLEY CONFIDENTIAL 0008014

16div-024788

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. ("Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY, INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by"

NOT A CERTIFIED COPY

016945

and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commonly Controlled Entity" shall have the meaning ascribed to it in Section 4.13(a).

"Company Balance Sheet Date" shall have the meaning ascribed to it in Section 4.6(c).

"Company Business Personnel" shall have the meaning ascribed to it in Section 4.12.

"Company Common Stock" shall mean the common stock, par value $.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

"Company Material Adverse Effect" shall have the meaning ascribed to it in Section 4.1.

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

NOT A CERTIFIED COPY

0196946

"Company Preferred Stock" shall mean the preferred stock, par value $.01 per share, of the Company.

"Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section 7.5.

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise

NOT A CERTIFIED COPY

016647

relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

NOT A CERTIFIED COPY

0196948

MORGAN STANLEY CONFIDENTIAL 0008018

16div-024792

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value $.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value $.01 per share, of Laser.

"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value $.01 per share, of Merger Sub.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

NOT A CERTIFIED COPY

016549

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Per Share Merger Consideration" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company

NOT A CERTIFIED COPY

016650

or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

ARTICLE II

THE COMPANY MERGER

Section 2.1 The Company Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2 Closing. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3 Company Effective Time of the Company Merger. The Company Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4 Certificate of Incorporation. From and after the Company Effective Time, the certificate of incorporation of the Company as in effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

Section 2.5 By-Laws. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008021

16div-024795

Section 2.6 Directors. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

Section 2.7 Officers. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) $6.44 in cash, without interest thereon (the consideration referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be

NOT A CERTIFIED COPY

0166652

MORGAN STANLEY CONFIDENTIAL 0008022

16div-024796

issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

Section 3.2 Exchange of Certificates Representing Shares.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the

NOT A CERTIFIED COPY

016653

certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

Section 3.3 Dividends; Transfer Taxes. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008024

16div-024798

Section 3.4 No Fractional Shares. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

Section 3.5 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

Section 3.6 Investment of Exchange Fund. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

Section 3.7 Closing of Company Transfer Books. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

Section 3.8 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company

NOT A CERTIFIED COPY

0016955

Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

Section 4.2 Capitalization. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued,

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008026

16div-024800

fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

Section 4.3 Subsidiaries. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

Section 4.4 Authority Relative to this Agreement. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions

NOT A CERTIFIED COPY

0166571

contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

Section 4.6 Reports and Financial Statements.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

NOT A CERTIFIED COPY

0016958

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

NOT A CERTIFIED COPY

0019559

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

(xi) agreed to do any of the foregoing.

Section 4.8 Litigation. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its

NOT A CERTIFIED COPY

0116960

subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 4.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.10 Taxes. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the

NOT A CERTIFIED COPY

0166961

MORGAN STANLEY CONFIDENTIAL 0008031

16div-024805

assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

Section 4.11 Compliance with Applicable Law. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

Section 4.12 Labor Matters. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

Section 4.13 ERISA Compliance.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material

NOT A CERTIFIED COPY

016662

employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability, which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008033

16div-024807

Section 4.14 Environmental Matters.

(a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental Permits") and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.

(b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.

(c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.

(d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.

(e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

Section 4.15 Intellectual Property. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

Section 4.16 Contracts. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by

NOT A CERTIFIED COPY

0169564

16div-024808

any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

Section 4.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

Section 4.18 Takeover Statute. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

Section 4.19 Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Organization. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

NOT A CERTIFIED COPY

599910

MORGAN STANLEY CONFIDENTIAL 0008035

16div-024809

Section 5.2 Capitalization. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

Section 5.3 Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.4 Authority Relative to this Agreement. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of

NOT A CERTIFIED COPY

0 1 6 9 6 9

equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

Section 5.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.6 Reports and Financial Statements.

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted

NOT A CERTIFIED COPY

016667

16div-024811

by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

Section 5.8 Litigation. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 5.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0008038

16div-024812

The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

Section 5.10 Taxes.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

Section 5.11 Compliance with Applicable Law. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

Section 5.12 Brokers. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

NOT A CERTIFIED COPY

016669

16div-024813

ARTICLE VI

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

NOT A CERTIFIED COPY

016670

MORGAN STANLEY CONFIDENTIAL 0008040

16div-024814

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the

NOT A CERTIFIED COPY

016671

MORGAN STANLEY CONFIDENTIAL 0008041

16div-024815

Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

Section 6.2 Other Actions. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

Section 6.3 Advice of Changes. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.4 Conduct of Business of Merger Sub. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

Section 6.5 Section 14(f) Notice. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

NOT A CERTIFIED COPY

0169672

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

Section 7.2 Access and Information; Confidentiality. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

Section 7.3 Comfort Letters.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to

NOT A CERTIFIED COPY

0169673

Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

Section 7.4 Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 7.5 Affiliates. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form, that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

Section 7.6 HSR Act; Competition Laws. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of

NOT A CERTIFIED COPY

016674

MORGAN STANLEY CONFIDENTIAL 0008044

16div-024818

all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

Section 7.7 Employee Matters.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for the purposes of certain of such Company Plans and certain of such other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

NOT A CERTIFIED COPY

016675

MORGAN STANLEY CONFIDENTIAL 0008045

16div-024819

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of $27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

Section 7.8 Continuance of Existing Indemnification Rights.

(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is

NOT A CERTIFIED COPY

0116576

now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably

NOT A CERTIFIED COPY

016977

acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

Section 7.9 Expenses. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 7.10 Public Announcements. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

Section 7.11 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with, and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such

NOT A CERTIFIED COPY

0016978

MORGAN STANLEY CONFIDENTIAL 0008048

16div-024822

party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger. The respective obligations of each party to effect the Company Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

Section 9.3 Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not

NOT A CERTIFIED COPY

016679

MORGAN STANLEY CONFIDENTIAL 0008049

16div-024823

following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company Effective Time.

Section 10.2 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

NOT A CERTIFIED COPY

0016980

MORGAN STANLEY CONFIDENTIAL 0008050

16div-024824

with a copy to:

Skadden, Arps, Slate, Meagher
& Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 10.3 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.4 Entire Agreement; No Third-Party Beneficiary. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

Section 10.5 Interpretation. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular

NOT A CERTIFIED COPY

16910

provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

Section 10.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

Section 10.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.8 Disclosure Schedules. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

Section 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

Section 10.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in

NOT A CERTIFIED COPY

016682

MORGAN STANLEY CONFIDENTIAL 0008052

16div-024826

accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

Section 10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 10.12 Certain Terms. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

NOT A CERTIFIED COPY

0166883

MORGAN STANLEY CONFIDENTIAL 0008053

16div-024827

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name: Russell A. Kersch
Title: Executive Vice President

CAMPER ACQUISITION CORP.

By: _____
Name: Russell A. Kersch
Title:

THE COLEMAN COMPANY, INC.

By: _____
Name: Paul E. Shapiro
Title: EVP

NOT A CERTIFIED COPY

016984

16div-024828

NOT A CERTIFIED COPY

0166685

THE COLEMAN COMPANY, INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, and among Sunbeam Corporation ("Laser"), The Coleman Company, Inc. (the "Company") and Camper Acquisition Corp. ("Merger Sub"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

NOT A CERTIFIED COPY

0169896

16div-024830

SCHEDULE 4.4

Subsidiaries

(As of Jan. 19, 1998)

Application des Gaz, S.A.
Bafiges S.A.
CC Outlet, Inc.
Camping Gaz (Gb) Limited
Camping Gaz (India) Pvt. Ltd.
Camping Gaz AG
Camping Gaz GmbH
Camping Gaz International Hellas Sarl
Camping Gaz K.K.
Camping Gaz Philippines, Inc.
Camping Gaz S.r.l.
The Canadian Coleman Company, Limited
Coleman Asia Offices, Ltd.
Coleman do Brasil Ltda
Coleman (Deutschland) GmbH
Coleman Japan Co., Ltd.
Coleman Manufacturing de Mexico, S.A. de C.V.
Coleman Powermate Compressors, Inc.
Coleman Safety & Security Products, Inc.
Coleman International
Coleman SVB S.r.l.
Coleman U.K. Holdings Limited
Coleman Venture Capital, Inc.
Eastpak Manufacturing Corporation
General Archery Industries, Inc.
Kansas Acquisition Corp.
Nippon Coleman, Inc.
Productos Coleman, S.A.
River View Corporation of Barling, Inc.
Taymar Gas Limited
Woodcraft Equipment Company
Australian Coleman, Inc.
Beacon Exports, Inc.
Camping Gaz (Brazil)
Camping Gaz (Hong Kong)
Camping Gaz (Poland)
Camping Gaz Cs, Spol, S.r.l.
Camping Gaz International
Camping Gaz International (Portugal) Ltda
Camping Gaz Kft
Camping Gaz Senegal
Campiran S.A.
Coleman Argentina, Inc.
Coleman Europe
Coleman Country, Ltd.
Coleman Holland B.V.
Coleman Lifestyles K.K.
Coleman Mexico S.A. de C.V.
Coleman Powermate, Inc.
Coleman SARL
Coleman Spas, Inc.
Coleman Taymar Limited
Coleman U.K. PLC
Eastpak Corporation
Epigas International Limited
Jasan Products Ltd.
Neves Caria & Ca Ltda
Pearson Holdings, Inc.
PT Camping Gaz
Sierra Corporation of Fort Smith
Tsana Internacional, S.A.

NOT A CERTIFIED COPY

016687

SCHEDULE 4.5

Consents and Approvals; No Violations

1. The Company's Amended and Restated Credit Agreement
2. LYONs
3. Senior Secured First Priority Discount Notes due 2001;
   Senior Secured Second Priority Discount Notes due 2001;
   Senior Secured First Priority Discount Exchange Notes due 2001;
   Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings
4. Company Stock Option Plans
5. Employment, Severance and Retention Agreements with the following executives:

Jerry Levin	Paul Shapiro	Frank Cancelloni
Björn Blomberg	Anthony Lenders	Robert Rosenzweig
Harlan Gardner	Steven Isko	Patrick McEvoy
David Stearns	George Mileusnic	David Yuen
Michael Hammes	Larry Sanford	Fritz van der Bergh
Frederick Fritz	Pietro Perrone	James Reilly
Robert Carter	Brian Althoff	Ron Lazarus
Randy Johnson	Steven Volante	Glen Moore
Steve Kaplan	Robert Ring	Kent Crudup

6. Insurance policies including but not limited to General Liability, Automobile, Umbrella Liability and Excess Liability, and Workers' Compensation policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings Inc. ("Mafco Holdings") with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements ("Self-Insured Arrangements")

NOT A CERTIFIED COPY

0168888

SCHEDULE 4.7

Absence of Certain Changes or Events

1. Increase in base salaries for Company employees effective as of March 1, 1998
2. Authorization of payments of discretionary bonuses under the Company's Management Incentive Plan for 1997
3. Executive Severance Policy
4. Setting of 1998 Targets under the Management Incentive Plan
5. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
6. Stock Purchase Agreement (the "Stock Purchase Agreement"), dated February 18, 1998, by and among the Company, Ranco Incorporated of Delaware ("Ranco") and Siebe PLC ("Siebe"), for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

NOT A CERTIFIED COPY

016689

SCHEDULE 4.8

Litigation

None

NOT A CERTIFIED COPY

069910

SCHEDULE 4.10

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings consolidated federal income tax return for the years 1989 and 1990

NOT A CERTIFIED COPY

169691

16div-024835

SCHEDULE 4.13

ERISA

4.13(c)

1. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
2. The Special Medical Plan
3. The Basic Medical Plan
4. The Regular Medical Plan

4.13(f)

1. 1996 Stock Option Plan
2. Executive Severance Policy
3. Employment, Severance and Retention Agreements (see Schedule 4.13(c))
4. Certain foreign jurisdictions may provide for special severance payments

NOT A CERTIFIED COPY

269910

16div-024836

SCHEDULE 4.15

Intellectual Property

None

NOT A CERTIFIED COPY

016693

SCHEDULE 4.16

Contracts

1. Hedging Agreement with Koch Industries
2. Amended and Restated License Agreement dated as of January 1, 1998 between the Company and The Timberland Company
3. Open Purchase Order with Wespak Corporation for cardboard coolers
4. Agreements with Ernst & Young and Oracle Corporation for update of software system
5. Agreement between the Company and AT&T Corporation dated April 3, 1996, as amended
6. Agreement dated as of September 7, 1997 between the Company and Wolverine World Wide Inc.
7. Agreement dated as of April 4, 1994 between the Company and Char-Broil, a division of W.C. Bradley Corporation
8. Stock Purchase Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe, for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

NOT A CERTIFIED COPY

016694

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety & Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto

2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out of certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act

3. The Company may take all actions necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure

4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement

5. Increase base salaries for Company employees effective as of March 1, 1998

6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997

7. Mafco Demand Note will be cancelled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

NOT A CERTIFIED COPY

016695

SCHEDULE 7.7

Employee Matters

7.7(b)

Years of Service	Period of Base Salary
0 - 5	6 weeks
5 - 10	3 months
over 10	6 months

7.7(c)

Joe Tesoriero

Robin Esterson

Bobby Jenkins

Marc Shiffman

Joseph Page

Gwen Wisler

NOT A CERTIFIED COPY

669910

NOT A CERTIFIED COPY

016697

Privileged and Confidential
Draft - Not for Distribution

02/28/98 1:07 PM

Questions and answers

Deal

1. **Why is Sunbeam making these acquisitions?**

   Coleman and Mr. Coffee are great brand names that will complement our existing brands, adding great value to Sunbeam shareholders. They're also a good fit geographically, opening up distribution channels in new parts of the world for us. They'll add critical mass and synergies that will accelerate our growth..

2. **Why is this transaction good for shareholders, retailers and employees?**

   This transaction is going to build shareholder value for Sunbeam employees for the long term. These acquisitions are accretive and will add to earnings within the next 12 months. They'll bring strong brands to the mix, adding synergies in our core businesses. They'll give us tremendous opportunities for global growfth.

   Our retailers will do well because they want a large consolidated supplier of top-quality brands – consolidation will drive customer traffic and help retailers run more efficiently and profitably.

   I've made a commitment to stay with Sunbeam for the next three years to drive this growth.

   As the company grows, that means new opportunities for Sunbeam employees in their jobs and as shareholders; every Sunbeam employee is also a shareholder.

3. **Is this going to mean major restructuring at any or all of the companies? What kind?**

   Whenever I do a deal, my MO is to work with Coopers and Lybrand to evaluate each new company. We don't know exactly what kind of restructuring there will be but we expect to see between $150 and ~~$250 million~~ in savings from eliminating redundancies.

4. **Will Sunbeam take a restructuring charge to consolidate these companies?**

   Yes. Again, I'm going to handle these deals the way I handle all deals. I'm going to be working closely with my turnaround team and with Coopers and Lybrand to assess each of these companies – their products and their plants. Then we will decide how to move forward. Yes there will be a restructuring charge.

5. **Why does Sunbeam need to buy Mr. Coffee when you already have a line of coffee makers?**

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT CPH 140

CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Mr. Coffee is a wonderful brand name that we will add to our product line and expand around the world.

6. **You're taking on a lot of debt to do this. Why?**

It's cheaper to finance using debt. Even after this deal we'll still be a relatively low-debt company. We don't look at having additional debt as a problem. We focus on turnarounds and on adding long-term shareholder value.

7. **What will your new debt ratio be?**

We'll still have excellent debt coverage. Our debt-to-equity ratio will be about 59% this year and about 50.8% in 1999.

8. **What rating will the debt of the new company have?**

Probably BB or BB+.

9. **How soon will these deals be final?**

We want to move quickly on all of these deals. We hope to close in 30 to 60 days.

10. **What is Ron Perelman's role going to be? Did he take stock in the company?**

He will become Sunbeam's largest shareholder after this deal is completed, with 23 percent of the stock. Moreover, he is required to hold onto that stock for awhile. After 90 days he can see 25 percent, after another 90 days he can sell another 25 percent then after nine months after the close he can sell the remaining 50 percent.

11. **What does Michael Price think of this transaction?**

He's always been very supportive and expects that acquisitions will add further to our growth. He said recently that we're one of his favorite companies. He invested $60 million in Sunbeam at the start and now has over $1 billion. He said recently that we're his favorite company, although he thinks the management is a little bashful. I'm trying to work on that.

12. **When can Michael Price sell his stock in the company?**

Price can sell his stock only through a secondary offering.

NOT A CERTIFIED COPY

016699

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248701

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483400

16div-024843

13. When will you have a secondary offering?

We'll pursue a secondary offering when it makes appropriate economic sense. We'll focus on paying down the debt as quickly as we can, probably in around 90 days. During that time we'll continually evaluate the demand for our equity.

14. What are the combined revenues of the companies?

In 1997, Signature Brands' revenues were $278.9 million ; First Alert's were $187 million and Coleman's were $1.07 billion. When we make these companies part of Sunbeam, we expect to see revenues of over $3 billion in 1998, and up to $5.5 billion by 2002.

15. Why doesn't this require shareholder approval?

It was important to structure these deals so that they would not require shareholder approval. We wanted to be able to move quickly. Besides that, the second quarter is a critical time for Coleman. We want to avoid disruption during their busiest time of the year.

16. What is the financial structure of these transactions?

Signature and First Alert are all cash. The Coleman transaction is a combination of cash and stock.

17. How much did Sunbeam pay for these three companies?

The total value of the three transactions is approximately $2.5 billion. The Coleman transaction is valued at $2.1 billion and is a combination of cash and stock. Signature Brands and First Alert are both all cash transactions and are valued at $240 million and $175 million.

18. Why did you pay so much for Coleman? The effective price is about $28 a share when the stock is trading at around $20 today.

Coleman is the number one brand globally in outdoor camping. It's an area we believe is growing. This acquisition will greatly expand our geographic reach. With Coleman, we are buying a top-notch company that we expect will grow into a bigger and more efficient company than it is today. We expect to see real shareholder value in this area.

19. Is this accretive?

Yes it will be accretive within 12 months. We are only interested in pursuing accretive deals because we want to increase shareholder value over the long term.

NOT A CERTIFIED COPY

016700

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248702

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483401

16div-024844

20. Why did Mr. Dunlap overpay for these companies?

I don't think we overpaid for these companies. My main interest is turnarounds so I see value where other people might not see it. I have a proven track record in going farther to turn companies around than other people do. All of these companies are going to enhance shareholder value over the long haul.

21. Why didn't Sunbeam use more of their "paper" to finance this transaction?

Handling the transaction the way we did meant we could act quickly, which was important to me in this deal. Doing it this way was the most efficient, most cost-effective solution for our shareholders.

22. What will this mean for employees at the companies you've just bought?

We work hard to keep good employees and good operations. And we reward our employees. Good employees have nothing to worry about. They'll share in the growth and increased shareholder value that these deals will make happen. Remember, all of our employees re shareholders.

23. Layoffs and changes – When can employees begin to see the changes?

24. Coopers and Lybrand will be making an initial assessment of these companies. After they and my turnaround team have a chance to assess each of these companies, we'll begin to make some decisions.

25. When will that be?

TBD

26. Last week, First Alert was ordered to pay $16.9 million in a lawsuit. Why buy that company now? Are you responsible for that liability?

That lawsuit is a one-time charge. Yes we will be picking up the liability if the case is not turned down on appeal.

Operations

27. How can you assimilate three companies at once?

We're putting plans together. We see an excellent fit with all three companies to fit into our core businesses and add value. We have a great turnaround team here that will be working with Coopers and Lybrand to come up with a plan to incorporate these businesses into Sunbeam.

NOT A CERTIFIED COPY

016701

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248703

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483402

16div-024845

28. How are you going to make these companies part of Sunbeam?

Sunbeam is in the business of building brand names. These are all brand leaders that will be a great addition to Sunbeam.

29. I don't see the fit with Coleman.

All of these companies have strong brands. Coleman is a good fit geographically for us. They're stronger in Asia and Europe; we're stronger in Latin America. They're consumer-branded products that are sold through the same distribution channels we use – the mass merchants. There will be synergies in sales and marketing and even in purchasing (resins and steel).

30. What are the synergies of these companies?

All of these companies will add synergies that will leverage our global distribution – in Latin America, Europe and Asia. They are all dominant brands that, when part of our mix, will accelerate and enable growth across the board for our new combined company.

31. What benefit, if any, will retailers see?

By consolidating the suppliers that work with our major customers we'll help them make more money. As a bigger company, we'll have more money to invest in infrastructure. We'll have access to better market research; we'll have the capital to invest in creating a more differentiated product line. We'll be able to support the brands with more consumer advertising – all things our customers have been telling us they want and need.

32. How many employees will Chainsaw lay-off?

I don't know exactly what we're going to do with these companies yet. Good employees will do well. I'll be working with Coopers and Lybrand to decide how to restructure these businesses to make them fit into Sunbeam.

33. Where are these companies located?

Coleman is based in Wichita, KS and has 21 locations in the US, England, France, Italy, Mexico and Puerto Rico. Signature is based in Glenwillow, OH and has two US locations. First Alert is based in Aurora, IL and has six facilities in the US, Canada, Mexico, England and Australia.

34. Who are their top retail accounts?

Signature does most of its business with Wal-Mart, as do we. We have a great relationship with Wal-Mart; they're one of our most efficient retailers. Twenty-one

NOT A CERTIFIED COPY

016702

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248704

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483403

16div-024846

percent of our business is through Wal-Mart. Coleman works a lot with a different set of retailers – hardware/home centers – That opens up a new distribution channel for us.

35. What name brands will the company use to sell products?

We are a company of name brands. We feel strongly about maintaining these name brands. They are all leaders.

36. What are the leading revenue product lines of these companies?

With this transaction, we're buying a group of dominant brands. Mr. Coffee is a dominant brand. Coleman is a dominant brand in the outdoor market. Campin Gaz is a dominant brand in Europe. Eastpak and Coleman are dominant in Asia. Health-o-Meter is a dominant brand in the home health care arena here in the US.

37. What kind of marketshare positions do these companies have?

They are each the dominant brands in their marketplaces.

38. You mentioned that Coleman does a lot of business in Asia. Given the current economic situation in Asia, does that pose a problem?

East Pak is a dominant player in South Korea. And Coleman as a whole is a dominant player in Japan. Most of Coleman's difficulties in Asia were due to its prior management's philosophy of overselling demand. We believe that problem is behind us. Jerry Levin has done a great job of making that company more productive.

We will be accelerating a lot of the sourcing to ride the cost curve down as the currencies devalue. We don't see the current situation as a problem because Coleman does source. Sunbeam is committed to changing its make-buy ratio to 50-50 by yearend. So we don't see the Asia situation as a long term or systemic problem.

Al Dunlap/Long term strategy

39. How do investors know you're going to stay with Sunbeam?

Concurrent with this deal, I any two key executives have just signed three-year contracts to stay on at Sunbeam. I am absolutely committed to remaining at Sunbeam to help make this company grow. I'm eager to continue my tenure because I believe there is enormous value to be created. Russell Kersh will become Vice Chairman as part of this contract.

40. How much are those new contracts going to cost shareholders?

NOT A CERTIFIED COPY

016703

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248705

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483404

16div-024847

The financial impact of these contracts is around 34 cents a share in the first quarter. This is a small price to pay for a proven team with a commitment to continued growth. (You can never overpay a good executive.)

41. How do these acquisitions fit a larger strategy for Sunbeam?

These acquisitions will help us to become more of a global player. They're strong in parts of the world where we don't do much business yet; we're strong in other parts of the world where they don't do much business yet. We plan to bring each of these brands to new parts of the world – Mr. Coffee to Latin America for instance, where Oster is so strong – or Sunbeam products to Europe and Asia, where Coleman is already strong.

42. You talk about long-term strategy for the company. Do you consider three years long term?

43. When are you going to retire?

I tried that twice and hated it. Right now, I am committed to Sunbeam and this project.

44. Are we going to be seeing more acquisitions?

Yes. We're going to continue to make synergistic accretive acquisitions when they are a good fit for Sunbeam and when they will add value for our shareholders. I am confident that we will achieve a quantum leap in shareholder value in 1998, which will be attained in all likelihood by acquisitions or mergers.

45. What companies are next?

We've just strengthened our appliance business with Mr. Coffee, our health at home division with Health-o-meter, our personal care and comfort business with First Alert. With Coleman we're expanding into the outdoor products market, an area we think will grow a great deal. We will focus first and foremost on consolidating in the industries in which Sunbeam competes, but we will also look beyond our immediate industry groups. Big or small? We would probably concentrate on midsized companies. Those deals are the most accretive.

46. What is the financial impact of Al Dunlap's new employment agreement?

That information will be in the 10-K.

47. When was Mr. Dunlap's other contract up?

NOT A CERTIFIED COPY

011704

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248706

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483405

16div-024848

My contract was up this July. I wanted to move forward with these deals only if I knew I had the board's support for the long-term. I've just signed a three-year contract along with other key members of my executive committee.

48. What kind of "out" does Al Dunlap have in his contract?

Just the usual change of control provisions.

49. How much has Mr. Dunlap made at Sunbeam on stock?

50. How much stock does Mr. Dunlap own?

51. What is Mr. Dunlap's compensation package?

My base is going from $1 million to $2 million. I have no bonus. No one in the company does. Like every other employee at Sunbeam, though, I am a shareholder.

52. What EPS does the company anticipate in 1998 and 1999?

We expect accretion in 1999. These companies together will add 10 percent to earnings within 12 months.

53. How much money did Mr. Dunlap make in 1997?

My salary is $1 million. I have no bonus but am a shareholder ,as is every Sunbeam employee.

54. What type of growth rate does the company expect to have/achieve?

We expect double-digit growth to revenues and earnings over the next few years.

55. Why did the company choose to acquire?

Sunbeam saw acquiring as the best way to enhance shareholder value over the long term.

56. Were there any buyers for the company?

We decided that the best way to add value to our shareholders was through transactions like his one.

57. Has Al Dunlap ever acquired a company before?

I worked for Sir James Goldsmith for seven years and was chairman and CEO of his global holdings. Yes I've been involved in many acquisitions.

NOT A CERTIFIED COPY

016705

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248707

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483406

16div-024849

58. Did Mr. Uzzi's contract get renegotiated too?

Don was promoted last year and is only one year into his current contract. Because he has two years left in his contract we saw no need to redo that contract.

59. Which factories will Chainsaw close?

We have no plans to close any plants as part of this deal. If we find that, after a detailed analysis, it makes sense to close a factory, we will do it.

60. How will Chainsaw achieve the cost synergies?

Through eliminating redundancies in sales and marketing.

###

NOT A CERTIFIED COPY

016706

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248708

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483407

16div-024850

430

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 3 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 7
(EXHIBITS 60-74)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

016707

972

16div-024851

TABLE OF CONTENTS
VOLUME 7

	TAB
CPH Ex. 141	60
CPH Ex. 142	61
CPH Ex. 143	62
Lawrence Bornstein Deposition Transcript	63
CPH Ex. 123	64
CPH Ex. 31	65
CPH Ex. 32	66
Andrew Savarie Deposition Transcript	67
Amended Complaint (*Morgan Stanley & Co. Inc., et. al. v. Arthur Andersen LLP, et. al*)	68
CPH Ex. 17	69
CPH Ex. 24	70
CPH Ex. 344	71
Alan Dean Deposition Transcript	72
James Lurie Deposition Transcript	73
Ruth Porat Deposition Transcript (11/23/04)	74

NOT A CERTIFIED COPY

016708

NOT A CERTIFIED COPY

016709

Questions and answers

Hard Questions

1. ***Why did you overpay for these companies? Your strategy was supposed to be buying underperforming companies. You paid full price for this.***

   I don't think we overpaid for these companies. These are all dominant brands. Each deal is accretive by itself.

   My main interest is restructuring and repositioning companies so I see value where other people don't. You have to remember that my team has a proven track record: when we turn around a company, we go further than anyone else does.

   Each of these companies fits nicely into our core business.
   - First Alert is well run but it can do better under our health and safety umbrella.
   - Signature Brands is a poorly run company. We will make the necessary changes to restructure it and reposition it quickly.
   - Coleman is a great brand that has been managed by a transitional management team. We will put people in there full time. Ron's managers had begun restructuring. We will do it infinitely faster. No one does that better than we do it.

2. **Why did you pay so much for Coleman? The effective price is about $29 a share when the stock is trading at around $20 today.**

   Coleman is the number one global brand in outdoor recreation. It's an area that we believe will continue to grow. This acquisition will greatly expand our geographic reach. With Coleman, we are buying a top-notch company that we expect will grow into a bigger and more efficient company than it is today. There are always opportunities for efficiencies. We find them and create them better than anyone else.

   Our evaluation showed Coleman was well priced. When you take the number one brand in a growing area and you combine that with my management team, you'll see substantial value.

3. **Weren't there any buyers for Sunbeam? Are you doing this because you couldn't sell the company?**

   I'm in the business of creating shareholder value. I have THE best turnaround team in the business and we can create shareholder value better by making acquisitions than by selling the company. Our analysis showed we could generate phenomenal value by consolidating the industry in which we compete.

4. **Why are you buying these smaller companies? We were expecting to hear about a bigger acquisition – a Whirlpool or a Maytag.**

   I haven't got to W yet. Deals like the ones we announced today are the most accretive. We looked at various alternatives to create increased shareholder value.

   Do the math. This is a $2.5 billion deal.

NOT A CERTIFIED COPY

016710

DEPOSITION EXHIBIT CPH 141

CONFIDENTIAL TREATM
F.O.I.A. REQUES

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

5. **How can you assimilate three companies at once? Isn't this too much to handle? Isn't this too aggressive?**

   After fixing Sunbeam, this will be easy.

   Look at our track record. We've done it before and we'll do it again. We have a great turnaround team. It's unrivaled.

   First Alert, Mr. Coffee and Health-o-Meter are product lines that we can fit into our business rapidly. Coleman provides us with a means to expand globally.

6. **Last week, First Alert was ordered to pay $16.9 million in a lawsuit. Why buy that company now? Are you responsible for that liability? Haven't you just turned yourself into a target?**

   We're fully aware of all these issues and we don't see them as material. The question relates to an individual lawsuit. The lawsuit was over a tragic incident but you need to fix blame where it belongs. The products are safe. First Alert's products are supported by every fire department, every consumer safety group. Knowing the facts of the case we were very surprised with the outcome.

7. **Where's the $150 million coming from?**

   Obviously there are synergies when companies in the same industry combine. We believe that number is conservative.

8. ***Which factories are you going to close?***

   Our estimates don't include the closing of plants as part of this deal. If, later on, we find that it makes sense to close a factory, we will do it. But that would add to the $150 million we're predicting in initial savings; it's not part of it.

9. **Why didn't Sunbeam use more of their "paper" to finance this transaction?**

   -> Our stock is low to us
   -> Doing it this way was the most efficient, most cost-effective solution for our shareholders. Debt is cheap right now. We'll pursue other opportunities in the future.
   -> Right capital structure to allow us to continue to make acquisitions

10. **What will this mean for employees at the companies you've just bought?**

    We look for the best athletes. We want them on our team. We're going to continue to build, grow and acquire, and we'll need good people to lead the way.

11. **Who's going to run Coleman?**

    We just bought the company. We want to have a chance to meet all the managers. I'll look for the best athletes. If we find them on the field, they'll continue to play ball with us. If not, we'll go elsewhere.

NOT A CERTIFIED COPY

016711

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248643

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483342

16div-024855

12. **You sold your scale business. Why are you buying back into it with this deal? Isn't that a market you decided you didn't want to be part of?**

First of all, Health-o-Meter is more than a scale company. But Sunbeam did stay in the business with our mid-priced scales because we recognized that it's a critical part of the health and safety business. Today we're buying the market leader, one that competes in all price ranges.

13. **What's your first quarter going to look like? Are you comfortable with analyst estimates?**

We're happy with our first quarter so far. We're on target. At this point I'm comfortable with the street estimates.

14. **Why didn't Perelman take all stock?**
- It's the proper capital structure for the company. And Ron is the largest
- Ron took $589 in stock and the rest in cash.
- We believe that the amount of stock he took is a strong endorsement of our management.
- The way this deal was structured gave the right balance to our corporate structure.

15. **You say these acquisitions are in your core business. What exactly is your core business?**

=> durable consumer branded company

Mr. Coffee fits well into our appliance business. Health-o-Meter and First Alert will form the cornerstone of our health and safety business. Coleman dramatically enhances what was just an outdoor cooking business for us.

16. **You mentioned that Coleman does a lot of business in Asia. Given the current economic situation in Asia, does that pose a problem?**

=> Thank you for visiting
=> only 3% of
=> Excellent Asian source
=>

We're building shareholder value for the long term. We believe our timing is very good. Eastpak is a dominant player in South Korea. And Coleman as a whole is a dominant player in Japan. Most of Coleman's difficulties in Asia were due to its prior management's philosophy of overselling demand. We believe that problem is behind us. Jerry Levin has done a great job of making that company more productive.

We will be accelerating a lot of the sourcing to ride the cost curve down as the Asian currencies have devalued. We don't see the current situation as a problem because Coleman does source from the Far East. Sunbeam is committed to changing its make-buy ratio from 70-30 to 50-50 by yearend. So we don't see the Asia situation as a long term or systemic problem. In fact, we see it as an opportunity.

17. How big of a charge will you take to Restructure the company?

->
->

NOT A CERTIFIED COPY

019712

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248644

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483343

16div-024856

Deal

17. Why is Sunbeam making these acquisitions?

Coleman, Mr. Coffee, First Alert and Health-o-Meter are all great brand names that will complement our existing brands, adding great value to Sunbeam shareholders. They're also a good fit geographically, opening up distribution channels in new parts of the world for us. They'll add critical mass and synergies that will accelerate our growth. It's going to enable to us to cross-brand around the world.

18. Why is this transaction good for shareholders, retailers and employees?

This transaction is going to build shareholder value for Sunbeam employees for the long term. These acquisitions are accretive and will add to earnings within the next 12 months. They'll bring strong brands to the mix, adding synergies in our core businesses. They'll give us tremendous opportunities for global growth.

Our retailers will do well because they want a large consolidated supplier of top-quality brands – consolidation will drive customer traffic and help retailers run more efficiently and profitably.

I've made a commitment to stay with Sunbeam for the next three years to drive this growth.

As the company grows, that means new opportunities for Sunbeam employees in their jobs and as shareholders; every Sunbeam employee is also a shareholder.

19. Is this going to mean major restructuring at any or all of the companies? What kind?

Yes we will restructure and reposition all of these companies. It will start to happen on day one. We expect to see around $150 million in savings from synergies and from eliminating duplicate functions.

20. Will Sunbeam take a restructuring charge to consolidate these companies?

Yes. I'm going to handle these deals the way I handle all my turnarounds. I'm going to be working closely with my turnaround team and ~~with Coopers and Lybrand~~ to assess each of these companies – their products and their plants. Then we will decide how to move forward. Yes there will be a restructuring charge.

21. Why does Sunbeam need to buy Mr. Coffee when you already have a line of coffee makers?

We had the opportunity to buy a dominant brand in the most significant category in the appliance field. It's a $500 million market. We're a small player in that market right now. Sunbeam was out of the business for the last 15 years. Mr. Coffee is the dominant player in that market, with around $200 million.

NOT ACCERTIFIED COPY

016713

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248645

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483344

16div-024857

2: Does not require shareholder vote

22. You're taking on a lot of debt to do this. Why? What happened to being net debt-free?

Right now, debt terms are the best they've been in years. It's very cheap to finance using debt. Even after this deal we'll still have a relatively low debt-to-cap ratio. We don't look at having additional debt as a problem. We focus on turnarounds and on adding long-term shareholder value.

When we started we made being net debt-free a goal. I always said I would use it as a tool to leverage the company and create shareholder value when appropriate.

23. What will your new debt to cap ratio be?

Debt to market cap will be about 33%

We'll still have excellent debt coverage. Our debt-to-cap ratio will be about 61.7% this year and about 53.1% in 1999. Of course, we'll work to rapidly pay down that debt.

24. What rating will the debt of the new company have?

Probably BB or BB+. / There are no junk bonds, we have a strong balance sheet. Rgtd Cap structure to continue our strats to ....

25. How soon will these deals be final?

We want to move quickly on all of these deals. We plan to close in the next two months.

26. What is Ron Perelman's role going to be? Did he take stock in the company?

He will become Sunbeam's second largest shareholder after this deal is completed, with about 13 percent of the stock. He's required to hold onto that stock for awhile. After 90 days he can see 25 percent, after another 90 days he can sell another 25 percent then after nine months after the close he can sell the remaining 50 percent.

27. What does Michael Price think of this transaction?

He's always been very supportive and expects that acquisitions will add further to our growth. He said recently that we're one of his favorite companies. He invested $60 million in Sunbeam at the start and now has over $1 billion. He said recently that we're his favorite company, although he thinks the management is a little bashful. I'm trying to work on that.

and our biggest shareholder

28. How much stock does Michael Price have? When can Michael Price sell his stock in the company?

Michael is still our largest shareholder with about 17 percent of the company. Price can sell his stock only through a secondary offering.

29. When will you have a secondary offering?

We'll pursue a secondary offering when it makes appropriate economic sense. We'll focus on paying down the debt as quickly as we can, probably in around 90 days. During that time we'll continually evaluate the demand for our equity.

NOT A CERTIFIED COPY

016714

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248646

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483345

16div-024858

30. What are the combined revenues of the companies?

In 1997, Signature Brands' revenues were $278.9 million ; First Alert's were $187 million and Coleman's were $1.07 billion. When we make these companies part of Sunbeam, we expect to see revenues of over $3 billion in 1998, and up to $5.5 billion by 2002.

31. Why doesn't this require shareholder approval?

The structure didn't require shareholder approval. We believe our shareholders are very happy with the wealth we're creating.

32. What is the financial structure of these transactions?

Signature and First Alert are all cash. The Coleman transaction is a combination of cash and $814 million in Sunbeam stock.

33. How much did Sunbeam pay for these three companies?

The total value of the three transactions is approximately $2.5 billion. The Coleman transaction is valued at $2 billion and is a combination of cash and stock. Signature Brands and First Alert are both all cash transactions and are valued at $250 million and $175 million.

34. Is this accretive?

Yes. All three of these acquisitions will be accretive within 12 months. We are only interested in pursuing accretive deals because we want to increase shareholder value over the long term.

35. Layoffs and changes – When can employees begin to see the changes?

We will move very quickly once we gain control of these companies. I've always said that restructurings have to be completed in one year.

Operations

36. How are you going to make these companies part of Sunbeam?

Sunbeam is in the business of building brand names. These are all brand leaders that will be a great addition to the Sunbeam family of brands.

37. I don't see the fit with Coleman.

Coleman is the number one brand in the outdoor recreation market. We're already dominant in that area with our Grillmaster brand of gas grills. This is a perfect fit for us. Coleman's products are sold through the same distribution channels we use – the mass merchants. Coleman is a great fit geographically for us. They're stronger in Asia and Europe; we're stronger in Latin America. There will be lots of synergies and growth opportunities with this deal.

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248647

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH048334(

16div-024859

016715

38. What are the synergies of these companies?

All of these companies will add synergies that will leverage our global distribution – in Latin America, Europe and Asia. They are all dominant brands that, when part of our mix, will accelerate and enable growth across the board for our new combined company.

39. What benefit, if any, will retailers see?

- They'll see more of the same.
- Our ability to invest in new products and infrastructure will be expanded to these brands. We believe this is exactly what major retailers are looking for.
- By consolidating the suppliers that work with our major customers we'll help those customers make more money. As a bigger company, we'll have more money to invest in infrastructure. We'll have access to better market research; we'll have the capital to invest in creating a more differentiated product line. We'll be able to support the brands with more consumer advertising – all things our customers have been telling us they want and need.

40. Where are these companies located?

Coleman is based in Wichita, KS and has 17 locations in the US, England, France, Italy, Mexico and Puerto Rico. Signature is based in Glenwillow, OH and has two US locations. First Alert is based in Aurora, IL and has two facilities in the US and Mexico.

41. Who are their top retail accounts?

They work with the same customers we do – Wal-Mart, K-Mart, Target and Home Depot.

42. What name brands will the company use to sell products?

We're going to use all of these name brands. We are a company of name brands. We feel strongly about maintaining these name brands. They are all leaders in their categories.

43. What are the leading revenue product lines of these companies?

With this transaction, we're buying a group of dominant brands. Mr. Coffee is the dominant brand. Coleman is the number one brand in the outdoor market. Camping Gaz is a dominant brand in Europe. Eastpak and Coleman are dominant in Asia. Health-o-Meter is a dominant brand in the home health care arena here in the US.

44. What kind of marketshare positions do these companies have?

They are each the dominant brands in their respective product lines.

NOT ACCERTIFIED COPY

0116716

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248648

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483347

16div-024860

Al Dunlap/Long term strategy

45. How do investors know you're going to stay with Sunbeam?

Concurrent with this deal, I and two key executives have just signed three-year contracts to stay on at Sunbeam. I am absolutely committed to remaining at Sunbeam to help make this company grow. I'm eager to continue my tenure because I believe there is enormous value to be created. Russell Kersh will become Vice Chairman as part of this contract.

46. How much are those new contracts going to cost shareholders?

=> one time charge so it wouldn't affect future earnings

The financial impact of these contracts is around 34 cents a share in the first quarter. This is a small price to pay for a proven team with a commitment to continued growth. (You can never overpay a good executive.)

47. How do these acquisitions fit a larger strategy for Sunbeam?

These acquisitions will help us to become more of a global player. They're strong in parts of the world where we don't do much business yet; we're strong in other parts of the world where they don't do much business yet. Coleman is strong in Europe and Asia; we're strong in Latin America. These are all great brands that will make us a global player.

48. When are you going to retire?

I tried that twice and hated it. Right now, I am committed to Sunbeam and this project.

49. Are we going to be seeing more acquisitions?

Yes. We're going to continue to make synergistic accretive acquisitions when they are a good fit for Sunbeam and when they will add value for our shareholders. I am confident that we will achieve a quantum leap in shareholder value in 1998, which will be attained in all likelihood by acquisitions or mergers.

50. What companies are next?

We've just strengthened our appliance business with Mr. Coffee, our health and safety division with Health-o-Meter and First Alert. With Coleman we're expanding into the outdoor products market, an area we think will grow a great deal. We will focus first and foremost on consolidating in the industry in which Sunbeam competes, but we will also look beyond our immediate industry groups. Big or small? We would probably concentrate on midsized companies. Those deals are the most accretive.

51. What is the financial impact of Al Dunlap's new employment agreement?

That information will be in the 10-K.

NOT A CERTIFIED COPY

016717

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248649

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0483348

16div-024861

52. When was your other contract up?

Although my contract had some time on it, the board wanted my commitment to stay on before they would agree to embark on this new route of building shareholder value through acquisitions.

53. What kind of "out" does Al Dunlap have in his contract?

Just the usual change of control provisions.

54. What is your compensation package?

My base is going from $1 million to $2 million. I have no bonus. No senior executive in the company does. Like every other employee at Sunbeam, though, I am a shareholder.

55. What EPS does the company anticipate in 1998 and 1999?

We expect meaningful accretion in 1999. These companies together will add at least 10 percent to EPS within 12 months.

56. What type of growth rate does the company expect to have/achieve?

We expect double-digit growth to revenues and earnings over the next few years.

57. Why did the company choose to acquire?

Sunbeam saw acquiring as the best way to enhance shareholder value over the long term. We're still committed to our initial strategy of doubling revenues through internal growth.

58. Has Al Dunlap ever acquired a company before?

I worked for Sir James Goldsmith for seven years and was chairman and CEO of his global holdings. Yes I've been involved in many acquisitions.

59. Did Mr. Uzzi's contract get renegotiated too?

Don was promoted last year and is only one year into his current contract. Because he has two years left in his contract we saw no need to redo that contract.

60. How will Chainsaw achieve the cost synergies?

Through eliminating redundancies in sales and marketing.

###

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 248650

CPH04833

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-024862

Third Party Spokespeople

Alice Walton	Llama Company
Phone number:	(501) 444-4095
Elizabeth "Lisa" Fontenelli	Goldman Sachs
Phone number:	(212) 902-8192
Scott Graham	CIBC Oppenheimer
Phone number:	(212) 667-7256
Connie Maneaty	Bear Stearns
Phone number:	(212) 272-4249
Charles Elson	Sunbeam Board Member – "Shareholder Activist"
Phone number:	(813) 562-7861

Peter Langerman Sunbeam - Board

NOT A CERTIFIED COPY

016719

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

016720

- Strong Brands
- Lasting Value

Questions and answers

Hard Questions

1. **Why did you overpay for these companies? Your strategy was supposed to be buying underperforming companies. You paid full price for this.**

   I don't think we overpaid for these companies. These are all dominant brands. Each deal is accretive by itself.

   My main interest is restructuring and repositioning companies so I see value where other people don't. You have to remember that my team has a proven track record: when we turn around a company, we go further than anyone else does.

   Each of these companies fits nicely into our core business.
   - First Alert is well run but it can do better under our health and safety umbrella.
   - Signature Brands is a poorly run company. We will make the necessary changes to restructure it and reposition it quickly.
   - Coleman is a great brand that has been managed by a transitional management team. We will put people in there full time. ~~Ron's managers had begun restructuring~~. We will do it infinitely faster. No one does that better than we do it.

2. **Why did you pay so much for Coleman? The effective price is about $29 a share when the stock is trading at around $20 today.** a year from now will look very good. Accretive Wenfire did not overpay

   Coleman is the number one global brand in outdoor recreation. It's an area that we believe will continue to grow. This acquisition will greatly expand our geographic reach. With Coleman, we are buying a top-notch company that we expect will grow into a bigger and more efficient company than it is today. There are always opportunities for efficiencies. We find them and create them better than anyone else.

   Our evaluation showed Coleman was well priced. When you take the number one brand in a growing area and you combine that with my management team, you'll see substantial value.

3. **Weren't there any buyers for Sunbeam? Are you doing this because you couldn't sell the company?**

   I'm in the business of creating shareholder value. I have THE best turnaround team in the business and we can create shareholder value better by making acquisitions than by selling the company. Our analysis showed we could generate phenomenal value by consolidating the industry in which we compete.

4. **Why are you buying these smaller companies? We were expecting to hear about a bigger acquisition – a Whirlpool or a Maytag.**

   I haven't got to W yet. Deals like the ones we announced today are the most accretive. We looked at various alternatives to create increased shareholder value.

   Do the math. This is a $2.5 billion deal.

NOT A CERTIFIED COPY

0167121

SB 0014697

DEPOSITION EXHIBIT
CPH 142

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

5. **How can you assimilate three companies at once? Isn't this too much to handle? Isn't this too aggressive?**

   After fixing Sunbeam, this will be easy.

   Look at our track record. We've done it before and we'll do it again. We have a great turnaround team. It's unrivaled.

   First Alert, Mr. Coffee and Health-o-Meter are product lines that we can fit into our business rapidly. Coleman provides us with a means to expand globally.

6. **Last week, First Alert was ordered to pay $16.9 million in a lawsuit. Why buy that company now? Are you responsible for that liability? Haven't you just turned yourself into a target?**

   We're fully aware of all these issues and we don't see them as material. The question relates to an individual lawsuit. The lawsuit was over a tragic incident but you need to fix blame where it belongs. The products are safe. First Alert's products are supported by every fire department, every consumer safety group. ~~Knowing the facts of the case we were very surprised with the outcome~~.

7. **Where's the $150 million coming from?**

   Obviously there are synergies when companies in the same industry combine. We believe that number is conservative.

8. **Which factories are you going to close?**

   Our estimates don't include the closing of plants as part of this deal. If, later on, we find that it makes sense to close a factory, we will do it. But that would add to the $150 million we're predicting in initial savings; it's not part of it.

9. **Why didn't Sunbeam use more of their "paper" to finance this transaction?**

   Doing it this way was the most efficient, most cost-effective solution for our shareholders. Debt is cheap right now. We'll pursue other opportunities in the future.

10. **What will this mean for employees at the companies you've just bought?**

    We look for the best athletes. We want them on our team. We're going to continue to build, grow and acquire, and we'll need good people to lead the way.

11. **Who's going to run Coleman?**

    We just bought the company. We want to have a chance to meet all the managers. I'll look for the best athletes. If we find them on the field, they'll continue to play ball with us. If not, we'll go elsewhere.

NOT A CERTIFIED COPY

0016722

[redacted] Lisa Ivan

12. **You sold your scale business. Why are you buying back into it with this deal? Isn't that a market you decided you didn't want to be part of?**

First of all, Health-o-Meter is more than a scale company. But Sunbeam did stay in the business with our mid-priced scales because we recognized that it's a critical part of the health and safety business. Today we're buying the market leader, one that competes in all price ranges.

13. **What's your first quarter going to look like? Are you comfortable with analyst estimates?**

We're happy with our first quarter so far. [redacted]et. At this point I'm comfortable with the street estimates.

14. **Why didn't Perelman take all stock?**

- Ron took $589 in stock and the rest in cash.
- We believe that the amount of stock he took is a strong endorsement of our management.
- The way this deal was structured gave the right balance to our corporate structure.

15. **You say these acquisitions are in your core business. What exactly is your core business?**

Durable Branded Consumer Products

Mr. Coffee fits well into our appliance business. Health-o-Meter and First Alert will form the cornerstone of our health and safety business. Coleman dramatically enhances what was just an outdoor cooking business for us.

16. **You mentioned that Coleman does a lot of business in Asia. Given the current economic situation in Asia, does that pose a problem?**

We're building shareholder value for the long term. We believe our timing is very good. Eastpak is a dominant player in South Korea. And Coleman as a whole is a dominant player in Japan. Most of Coleman's difficulties in Asia were due to its prior management's philosophy of overselling demand. We believe that problem is behind us. Jerry Levin has done a great job of making that company more productive.

We will be accelerating a lot of the sourcing to ride the cost curve down as the Asian currencies have devalued. We don't see the current situation as a problem because Coleman does source from the Far East. Sunbeam is committed to changing its make-buy ratio from 70-30 to 50-50 by yearend. So we don't see the Asia situation as a long term or systemic problem. In fact, we see it as an opportunity.

Less than 5% of Total Sales of New Co

0016723

SB 0014699

NOT A CERTIFIED COPY

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Deal

17. Why is Sunbeam making these acquisitions?

Coleman, Mr. Coffee, First Alert and Health-o-Meter are all great brand names that will complement our existing brands, adding great value to Sunbeam shareholders. They're also a good fit geographically, opening up distribution channels in new parts of the world for us. They'll add critical mass and synergies that will accelerate our growth. It's going to enable to us to cross-brand around the world.

18. Why is this transaction good for shareholders, retailers and employees?

This transaction is going to build shareholder value for Sunbeam employees for the long term. These acquisitions are accretive and will add to earnings within the next 12 months. They'll bring strong brands to the mix, adding synergies in our core businesses. They'll give us tremendous opportunities for global growth.

Our retailers will do well because they want a large consolidated supplier of top-quality brands – consolidation will drive customer traffic and help retailers run more efficiently and profitably.

I've made a commitment to stay with Sunbeam for the next three years to drive this growth.

As the company grows, that means new opportunities for Sunbeam employees in their jobs and as shareholders; every Sunbeam employee is also a shareholder.

19. Is this going to mean major restructuring at any or all of the companies? What kind?

Yes we will restructure and reposition all of these companies. It will start to happen on day one. We expect to see around $150 million in savings from synergies and from eliminating duplicate functions.

20. Will Sunbeam take a restructuring charge to consolidate these companies?

Yes. I'm going to handle these deals the way I handle all my turnarounds. I'm going to be working closely with my turnaround team and with Coleman and Eyebrand to assess each of these companies – their products and their plants. Then we will decide how to move forward. Yes there will be a restructuring charge.

21. Why does Sunbeam need to buy Mr. Coffee when you already have a line of coffee makers?

We had the opportunity to buy a dominant brand in the most significant category in the appliance field. It's a $500 million market. We're a small player in that market right now. Sunbeam was out of the business for the last 15 years. Mr. Coffee is the dominant player in that market, with around $200 million.

NOT A CERTIFIED COPY

0167124

SB 0014700

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0253550
16div-024868

20

22. You're taking on a lot of debt to do this. Why? What happened to being net debt-free?

Right now, debt terms are the best they've been in years. It's very cheap to finance using debt. Even after this deal we'll still have a relatively low debt-to-cap ratio. We don't look at having additional debt as a problem. We focus on turnarounds and on adding long-term shareholder value.

When we started we made being net debt-free a goal. I always said I would use it as a tool to leverage the company and create shareholder value when appropriate.

23. What will your new debt to cap ratio be?

We'll still have excellent debt coverage. Our debt-to-cap ratio will be about 61.7% this year and about 53.1% in 1999. Of course, we'll work to rapidly pay down that debt.

24. What rating will the debt of the new company have?

Probably BB or BB+. Moody's Speculative Interval.

25. How soon will these deals be final?

We want to move quickly on all of these deals. We plan to close in the next two months.

26. What is Ron Perelman's role going to be? Did he take stock in the company?

He will become Sunbeam's second largest shareholder after this deal is completed, with about 13 percent of the stock. ~~He's required to hold onto that stock for awhile. After 90 days he can see 25 percent, after another 90 days he can sell another 25 percent then after nine months after the close he can sell the remaining 50 percent.~~

27. What does Michael Price think of this transaction?

He's always been very supportive and expects that acquisitions will add further to our growth. ~~He said recently that we're one of his favorite companies. He invested $60 million in Sunbeam at the start and now has over $1 billion. He said recently that we're his favorite company, although he thinks the management is a little bashful. I'm trying to work on that.~~

28. How much stock does Michael Price have? When can Michael Price sell his stock in the company?

Michael is still our largest shareholder with about 17 percent of the company. Price can sell his stock only through a secondary offering. 13 Pleasers

29. When will you have a secondary offering?

We'll pursue a secondary offering when it makes appropriate economic sense. We'll focus on paying down the debt as quickly as we can, probably ~~in around 90 days~~. During that time we'll continually evaluate the demand for our equity.

NOT A CERTIFIED COPY

0167125

SB 0014701

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0253551

16div-024869

30. What are the combined revenues of the companies?

In 1997, Signature Brands' revenues were $278.9 million ; First Alert's were $187 million and Coleman's were $1.07 billion. When we make these companies part of Sunbeam, we expect to see revenues of over $3 billion in 1998, and up to $5.5 billion by 2002.

31. Why doesn't this require shareholder approval?

The structure didn't require shareholder approval. We believe our shareholders are very happy with the wealth we're creating. If you want more than 20%

32. What is the financial structure of these transactions?

Signature and First Alert are all cash. The Coleman transaction is a combination of cash and $814 million in Sunbeam stock.

33. How much did Sunbeam pay for these three companies?

The total value of the three transactions is approximately $2.5 billion. The Coleman transaction is valued at $2 billion and is a combination of cash and stock. Signature Brands and First Alert are both all cash transactions and are valued at $250 million and $175 million.

34. Is this accretive?

Yes. All three of these acquisitions will be accretive within 12 months. We are only interested in pursuing accretive deals because we want to increase shareholder value over the long term.

35. Layoffs and changes – When can employees begin to see the changes?

We will move very quickly once we gain control of these companies. I've always said that restructurings have to be completed in one year.

Operations

36. How are you going to make these companies part of Sunbeam?

Sunbeam is in the business of building brand names. These are all brand leaders that will be a great addition to the Sunbeam family of brands.

37. I don't see the fit with Coleman.

Coleman is the number one brand in the outdoor recreation market. We're already dominant in that area with our Grillmaster brand of gas grills. This is a perfect fit for us. Coleman's products are sold through the same distribution channels we use – the mass merchants. Coleman is a great fit geographically for us. They're stronger in Asia and Europe; we're stronger in Latin America. There will be lots of synergies and growth opportunities with this deal.

NOT A CERTIFIED COPY

0016726

SB 0014702

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0253552

16div-024870

38. What are the synergies of these companies?

All of these companies will add synergies that will leverage our global distribution – in Latin America, Europe and Asia. They are all dominant brands that, when part of our mix, will accelerate and enable growth across the board for our new combined company.

39. What benefit, if any, will retailers see?

- They'll see more of the same.
- Our ability to invest in new products and infrastructure will be expanded to these brands. We believe this is exactly what major retailers are looking for.
- By consolidating the suppliers that work with our major customers we'll help those customers make more money. As a bigger company, we'll have more money to invest in infrastructure. We'll have access to better market research; we'll have the capital to invest in creating a more differentiated product line. We'll be able to support the brands with more consumer advertising – all things our customers have been telling us they want and need.

40. Where are these companies located?

Coleman is based in Wichita, KS and has 17 locations in the US, England, France, Italy, Mexico and Puerto Rico. Signature is based in Glenwillow, OH and has two US locations. First Alert is based in Aurora, IL and has two facilities in the US and Mexico.

41. Who are their top retail accounts?

They work with the same customers we do – Wal-Mart, K-Mart, Target and Home Depot.

42. What name brands will the company use to sell products?

We're going to use all of these name brands. We are a company of name brands. We feel strongly about maintaining these name brands. They are all leaders in their categories.

43. What are the leading revenue product lines of these companies?

With this transaction, we're buying a group of dominant brands. Mr. Coffee is the dominant brand. Coleman is the number one brand in the outdoor market. Camping Gaz is a dominant brand in Europe. Eastpak and Coleman are dominant in Asia. Health-o-Meter is a dominant brand in the home health care arena here in the US.

44. What kind of marketshare positions do these companies have?

They are each the dominant brands in their respective product lines.

NOT A CERTIFIED COPY

016727

Al Dunlap/Long term strategy

45. How do investors know you're going to stay with Sunbeam?

Concurrent with this deal, I and two key executives have just signed three-year contracts to stay on at Sunbeam. I am absolutely committed to remaining at Sunbeam to help make this company grow. I'm eager to continue my tenure because I believe there is enormous value to be created. Russell Kersh will become Vice Chairman as part of this contract.

46. How much are those new contracts going to cost shareholders?

The financial impact of these contracts is around 34 cents a share in the first quarter. This is a small price to pay for a proven team with a commitment to continued growth. (You can never overpay a good executive.)

47. How do these acquisitions fit a larger strategy for Sunbeam?

These acquisitions will help us to become more of a global player. They're strong in parts of the world where we don't do much business yet; we're strong in other parts of the world where they don't do much business yet. Coleman is strong in Europe and Asia; we're strong in Latin America. These are all great brands that will make us a global player.

48. When are you going to retire?

I tried that twice and hated it. Right now, I am committed to Sunbeam and this project.

49. Are we going to be seeing more acquisitions?

Yes. We're going to continue to make synergistic accretive acquisitions when they are a good fit for Sunbeam and when they will add value for our shareholders. I am confident that we will achieve a quantum leap in shareholder value in 1998, which will be attained in all likelihood by acquisitions or mergers.

50. What companies are next?

We've just strengthened our appliance business with Mr. Coffee, our health and safety division with Health-o-Meter and First Alert. With Coleman we're expanding into the outdoor products market, an area we think will grow a great deal. We will focus first and foremost on consolidating in the industry in which Sunbeam competes, but we will also look beyond our immediate industry groups. Big or small? We would probably concentrate on midsized companies. Those deals are the most accretive.

51. What is the financial impact of Al Dunlap's new employment agreement?

That information will be in the 10-K.

NOT A CERTIFIED COPY

016728

52. When was your other contract up?

Although my contract had some time on it, the board wanted my commitment to stay on before they would agree to embark on this new route of building shareholder value through acquisitions.

53. What kind of "out" does Al Dunlap have in his contract?

Just the usual change of control provisions.

54. What is your compensation package?

My base is going from $1 million to $2 million. I have no bonus. No senior executive in the company does. Like every other employee at Sunbeam, though, I am a shareholder.

55. What EPS does the company anticipate in 1998 and 1999?

We expect meaningful accretion in 1999. These companies together will add at least 10 percent to EPS within 12 months.

56. What type of growth rate does the company expect to have/achieve?

We expect double-digit growth to revenues and earnings over the next few years.

57. Why did the company choose to acquire?

Sunbeam saw acquiring as the best way to enhance shareholder value over the long term. We're still committed to our initial strategy of doubling revenues through internal growth.

58. Has Al Dunlap ever acquired a company before?

I worked for Sir James Goldsmith for seven years and was chairman and CEO of his global holdings. Yes I've been involved in many acquisitions.

59. Did Mr. Uzzi's contract get renegotiated too?

Don was promoted last year and is only one year into his current contract. Because he has two years left in his contract we saw no need to redo that contract.

60. How will Chainsaw achieve the cost synergies?

Through eliminating redundancies in sales and marketing.

###

NOT A CERTIFIED COPY

016729

SB 0014705

CONFIDENTIAL TREATMENT
UNDER FOIA REQUESTED

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH02535

16div-024873

NOT A CERTIFIED COPY

016730

EXHIBIT NO. 269
MAC WISE

Sunbeam announcement:
Coleman, Signature Brands and First Alert Acquisition announcement

QUESTIONS AND ANSWERS

Hard Questions

1. **Why did you overpay for these companies? Your strategy was supposed to be buying underperforming companies. You paid full price for this.**

   I don't think we overpaid for these companies. These are all dominant brands. Each deal is accretive by itself.

   My main interest is restructuring and repositioning companies so I see value where other people don't. You have to remember that my team has a proven track record: when we turn around a company, we go further than anyone else does.

   Each of these companies fits nicely into our core business.
   - First Alert is well run but it can do better under our health and safety umbrella.
   - Signature Brands is a poorly run company. We will make the necessary changes to restructure it and reposition it quickly.
   - Coleman is a great brand that has been managed by a transitional management team. We will put people in there full time. Ron's managers had begun restructuring. We will do it infinitely faster. No one does that better than we do it.

2. **Why did you pay so much for Coleman? The effective price is about $29 a share when the stock is trading at around $20 today.**

   When you look back at this a year from now it will look very cheap. Our evaluation showed Coleman was well priced.

   We were able to acquire the global leader in a market that's growing. We accomplished the deal. I see Coleman as a total redo of Sunbeam -- a déjà vu.

   I believe strongly in the road we're taking with this. I've turned down other opportunities to sign this contract and continue to grow Sunbeam.

   When you take the number one brand in a growing area and you combine that with my management team, you'll see substantial value.

3. **Weren't there any buyers for Sunbeam? Are you doing this because you couldn't sell the company?**

   I'm in the business of creating shareholder value. I have the best turnaround team in the business and we can create shareholder value better by making acquisitions than

NOT A CERTIFIED COPY

0167731

DEPOSITION EXHIBIT
CPH 143

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

by selling the company. Our analysis showed we could generate phenomenal value by consolidating the industry in which we compete.

I've said all along that we would add shareholder value by selling, merging or acquiring. This deal gives our shareholders the most value.

4. **Why are you buying these smaller companies? We were expecting to hear about a bigger acquisition – a Whirlpool or a Maytag.**

I haven't got to W yet. Deals like the ones we announced today are the most accretive. We looked at various alternatives to create increased shareholder value.

Do the math. This is a $2.5 billion deal.

5. **How can you assimilate three companies at once? Isn't this too much to handle? Isn't this too aggressive?**

After fixing Sunbeam, this will be easy.

Look at our track record. We've done it before and we'll do it again. We have a great turnaround team. It's unrivaled.

First Alert, Mr. Coffee and Health-o-Meter are product lines that we can fit into our business rapidly. Coleman provides us with a means to expand globally.

6. **Last week, First Alert was ordered to pay $16.9 million in a lawsuit. Why buy that company now? Are you responsible for that liability? Haven't you just turned yourself into a target?**

We're fully aware of all these issues and we don't see them as material. The question relates to an individual lawsuit. The lawsuit was over a tragic incident but you need to fix blame where it belongs. The products are safe. First Alert's products are supported by every fire department, every consumer safety group.

7. **Where's the $150 million coming from?**

I'm not going to discuss the details. Obviously there are synergies when companies in the same industry combine. We believe that number is conservative.

8. **Which factories are you going to close?**

Look at what we did to make Sunbeam more efficient. We'll use the same strategy. We'll keep open the plants that are running efficiently. Of course some plants will close. Of course some employees will lose their jobs. But those people who do stay with us will have a better future with us than they had before.

NOT A CERTIFIED COPY

019732

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

9. **You've said you loathe headquarters. What's going to happen to the headquarters of these companies?**

   We will be one company with one headquarters.

10. **Who's going to run Coleman?**

    We just bought the company. We'll determine who the senior executives will be once we take over. It could include Coleman people. It could be Sunbeam people or it could be people from the outside.

    We want to have a chance to meet all the managers. I'll look for the best athletes. If we find them on the field, they'll continue to play ball with us. If not, we'll go elsewhere.

11. **What about those people? What's their severance plan?**

    We've always had a severance plan for people we can't keep.

12. **Why didn't Sunbeam use more of their "paper" to finance this transaction?**

    Our stock is precious at these value levels. Debt is cheap right now. Doing it this way was the most efficient, most cost-effective solution for our shareholders. It gives us the right capital structure to pursue other acquisitions.

13. **What will this mean for employees at the companies you've just bought?**

    We look for the best athletes. We want them on our team. We're going to continue to build, grow and acquire, and we'll need good people to lead the way.

14. **You sold your scale business. Why are you buying back into it with this deal? Isn't that a market you decided you didn't want to be part of?**

    We did not get out of the scale business. The sale you're referring to was less than a $1 million deal. We stayed in the scale business with Sunbeam scales – in the mid-priced market. Today we're buying the market leader, one that competes in all price ranges.

15. **What's your first quarter going to look like? Are you comfortable with analyst estimates?**

    We're in the last month of the quarter. We have a policy of not discussing financials during the last month of the quarter. I will tell you that we have a great track record. The core business is healthy. We're in great shape. We expect that our sales will be up double digits over 1997.

NOT A CERTIFIED COPY

0167733

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1026944
16div-024877

16. Why didn't Perelman take all stock?

- Ron's our second largest shareholder.
- The way we structured this deal gives us the right capital structure as we go forward.

17. You say these acquisitions are in your core business. What exactly is your core business?

We are in the business of making and selling durable branded consumer products. Mr. Coffee fits well into our appliance business. Health-o-Meter and First Alert will form the cornerstone of our health and safety business. Coleman dramatically enhances what was just an outdoor cooking business for us.

18. You mentioned that Coleman does a lot of business in Asia. Given the current economic situation in Asia, does that pose a problem?

The risk is small. Coleman's business in Asia will be less than 5 percent of the total sales of the new corporation. We're building shareholder value for the long term. We believe our timing is very good. This deal makes us a global player.

NOT A CERTIFIED COPY

0167314

CONFIDENTIAL
HK SOC 00797

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1026945
16div-024878

The Deal

19. Why is Sunbeam making these acquisitions?

Coleman, Mr. Coffee, First Alert and Health-o-Meter are all great brand names that will complement our existing brands, adding great value to Sunbeam shareholders. They're also a good fit geographically, opening up distribution channels in new parts of the world for us. They'll add critical mass and synergies that will accelerate our growth. It's going to enable to us to cross-brand around the world.

20. Why is this transaction good for shareholders, retailers and employees?

This transaction is going to build shareholder value for Sunbeam employees for the long term. These acquisitions are accretive and will add to earnings within the next 12 months. They'll bring strong brands to the mix, adding synergies in our core businesses. They'll give us tremendous opportunities for global growth.

Our retailers will do well because they want a large consolidated supplier of top-quality brands – consolidation will drive customer traffic and help retailers run more efficiently and profitably..

I've made a commitment to stay with Sunbeam for the next three years to drive this growth.

As the company grows, that means new opportunities for Sunbeam employees in their jobs and as shareholders; every Sunbeam employee is also a shareholder.

21. Is this going to mean major restructuring at any or all of the companies? What kind?

Yes we will restructure and reposition all of these companies. It will start to happen on day one. We expect to see around $150 million in savings from synergies and from eliminating duplicate functions.

22. Will Sunbeam take a restructuring charge to consolidate these companies?

Yes. I'm going to handle these deals the way I handle all my turnarounds. I'm going to be working closely with my turnaround team to assess each of these companies – their products and their plants. Then we will decide how to move forward. Yes there will be a restructuring charge.

NOT A CERTIFIED COPY

0166735

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

23. Why does Sunbeam need to buy Mr. Coffee when you already have a line of coffee makers?

We had the opportunity to buy a dominant brand in the most significant category in the appliance field. It's a $500 million market. We're a small player in that market right now. Sunbeam was out of the business for the last 15 years. Mr. Coffee is the dominant player in that market, with around $200 million.

24. You're taking on a lot of debt to do this. Why? What happened to being net debt-free?

Right now, debt terms are the best they've been in years. It's very cheap to finance using debt. Even after this deal we'll still have a relatively low debt-to-cap ratio. We don't look at having additional debt as a problem. We focus on turnarounds and on adding long-term shareholder value.

When we started we made being net debt-free a goal. I always said I would use it as a tool to leverage the company and create shareholder value when appropriate.

25. What will your new debt to cap ratio be?

We'll still have excellent debt coverage. Our debt-to-market cap ratio will be about 31.7% this year and about 23.3% in 1999. Of course, we'll work to rapidly pay down that debt.

26. What rating will the debt of the new company have?

We have a strong balance sheet with no junk bonds. We structured this deal to give us the right capital structure to move forward.

27. How soon will these deals be final?

We want to move quickly on all of these deals. We plan to close in the next two months.

28. What is Ron Perelman's role going to be? Did he take stock in the company?

He will become Sunbeam's second largest shareholder after this deal is completed, with about 13 percent of the stock.

29. What does Michael Price think of this transaction?

Michael is our largest shareholder and he's always been our biggest supporter. He has 17 percent of the company.

NOT A CERTIFIED COPY

0167136

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

30. When can Michael Price sell his stock in the company?

Price can sell his stock only through a secondary offering.

31. Will you have a secondary offering?

We'll focus on paying down the debt as quickly as we can.

32. What are the combined revenues of the companies?

In 1997, Signature Brands' revenues were $278.9 million ; First Alert's were $187 million and Coleman's were $1.07 billion. When we make these companies part of Sunbeam, we expect to see revenues of over $3 billion in 1998, and up to $5.5 billion by 2002.

33. Why doesn't this require shareholder approval?

The structure didn't require shareholder approval. It was predominantly cash.

34. What is the financial structure of these transactions?

Signature and First Alert are all cash. The Coleman transaction is a combination of cash and $814 million in Sunbeam stock.

35. How much did Sunbeam pay for these three companies?

The total value of the three transactions is approximately $2.5 billion. The Coleman transaction is valued at $2 billion and is a combination of cash and stock. Signature Brands and First Alert are both all cash transactions and are valued at $250 million and $175 million.

36. Is this accretive?

Yes. All three of these acquisitions will be accretive within 12 months. We are only interested in pursuing accretive deals because we want to increase shareholder value over the long term.

37. Layoffs and changes – When can employees begin to see the changes?

We will move very quickly once we gain control of these companies. I've always said that restructurings have to be completed in one year.

NOT A CERTIFIED COPY

0167137

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Operations

38. How are you going to make these companies part of Sunbeam?

Sunbeam is in the business of building brand names. These are all brand leaders that will be a great addition to the Sunbeam family of brands.

39. I don't see the fit with Coleman.

Coleman is the number one brand in the outdoor recreation market. We're already dominant in that area with our Grillmaster brand of gas grills. This is a perfect fit for us. Coleman's products are sold through the same distribution channels we use – the mass merchants. Coleman is a great fit geographically for us. They're stronger in Asia and Europe; we're stronger in Latin America. There will be lots of synergies and growth opportunities with this deal.

40. What are the synergies of these companies?

All of these companies will add synergies that will leverage our global distribution – in Latin America, Europe and Asia. They are all dominant brands that, when part of our mix, will accelerate and enable growth across the board for our new combined company.

41. What benefit, if any, will retailers see?

- They'll see more of the same.
- Our ability to invest in new products and infrastructure will be expanded to these brands. We believe this is exactly what major retailers are looking for.
- By consolidating the suppliers that work with our major customers we'll help those customers make more money. As a bigger company, we'll have more money to invest in infrastructure. We'll have access to better market research; we'll have the capital to invest in creating a more differentiated product line. We'll be able to support the brands with more consumer advertising – all things our customers have been telling us they want and need.

42. Where are these companies located?

Coleman is based in Wichita, KS and has 17 locations in the US, England, France, Italy, Mexico and Puerto Rico. Signature is based in Glenwillow, OH and has two US locations. First Alert is based in Aurora, IL and has two facilities in the US and Mexico.

NOT A CERTIFIED COPY

016738

CONFIDENTIAL
HK SOC 00801

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1026949
16div-024882

43. Who are their top retail accounts?

They work with the same customers we do – Wal-Mart, K-Mart, Target and Home Depot.

44. What name brands will the company use to sell products?

We're going to use all of these name brands. We are a company of name brands. We feel strongly about maintaining these name brands. They are all leaders in their categories.

45. What are the leading revenue product lines of these companies?

With this transaction, we're buying a group of dominant brands. Mr. Coffee is the dominant brand. Coleman is the number one brand in the outdoor market. Camping Gaz is a dominant brand in Europe. Eastpak and Coleman are dominant in Asia. Health-o-Meter is a dominant brand in the home health care arena here in the US.

46. What kind of marketshare positions do these companies have?

They are each the dominant brands in their respective product lines.

NOT A CERTIFIED COPY

0116739

CONFIDENTIAL
HK SOC 00802

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Al Dunlap/Long term strategy

47. How do investors know you're going to stay with Sunbeam?

Concurrent with this deal, I and two key executives have just signed three-year contracts to stay on at Sunbeam. I am absolutely committed to remaining at Sunbeam to help make this company grow. I'm eager to continue my tenure because I believe there is enormous value to be created. Russell Kersh will become Vice Chairman as part of this contract.

48. How much are those new contracts going to cost shareholders?

The financial impact of these contracts is a one-time charge so that it won't affect future earnings. Charge of 34 cents a share in the first quarter. This is a small price to pay for a proven team with a commitment to continued growth. (You can never overpay a good executive.)

49. How do these acquisitions fit a larger strategy for Sunbeam?

These acquisitions will help us to become more of a global player. They're strong in parts of the world where we don't do much business yet; we're strong in other parts of the world where they don't do much business yet. Coleman is strong in Europe and Asia; we're strong in Latin America. These are all great brands that will make us a global player.

50. When are you going to retire?

I tried that twice and hated it. Right now, I am committed to Sunbeam and this project.

51. Are we going to be seeing more acquisitions?

Yes. We're going to continue to make synergistic accretive acquisitions when they are a good fit for Sunbeam and when they will add value for our shareholders. I am confident that we will achieve a quantum leap in shareholder value in 1998, which will be attained in all likelihood by acquisitions or mergers.

52. What companies are next?

We've just strengthened our appliance business with Mr. Coffee, our health and safety division with Health-o-Meter and First Alert. With Coleman we're expanding into the outdoor products market, an area we think will grow a great deal. We will focus first and foremost on consolidating in the industry in which Sunbeam competes, but we will also look beyond our immediate industry groups. Big or small? We would probably concentrate on midsized companies. Those deals are the most accretive.

NOT A CERTIFIED COPY

016740

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1026951
16div-024884

53. What is the financial impact of Al Dunlap's new employment agreement?

That information will be in the 10-K.

54. When was your other contract up?

Although my contract had some time on it, the board wanted my commitment to stay on before they would agree to embark on this new route of building shareholder value through acquisitions.

55. What kind of "out" does Al Dunlap have in his contract?

Just the usual change of control provisions.

56. What is your compensation package?

My base is going from $1 million to $2 million. I have no bonus. No senior executive in the company does. Like every other employee at Sunbeam, though, I am a shareholder.

57. What EPS does the company anticipate in 1998 and 1999?

We expect meaningful accretion in 1999. These companies together will add at least 10 percent to EPS within 12 months.

58. What type of growth rate does the company expect to have/achieve?

We expect double-digit growth to revenues and earnings over the next few years.

59. Why did the company choose to acquire?

Sunbeam saw acquiring as the best way to enhance shareholder value over the long term. We're still committed to our initial strategy of doubling revenues through internal growth.

60. Has Al Dunlap ever acquired a company before?

I worked for Sir James Goldsmith for seven years and was chairman and CEO of his global holdings. Yes I've been involved in many acquisitions.

61. Did Mr. Uzzi's contract get renegotiated too?

Don was promoted last year and is only one year into his current contract. Because he has two years left in his contract we saw no need to redo that contract.

NOT A CERTIFIED COPY

016741

CONFIDENTIAL
HK SOC 00804

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1026952
16div-024885

62. How will you achieve the cost synergies?

Through eliminating redundancies in sales and marketing.

###

NOT A CERTIFIED COPY

0167142

CONFIDENTIAL
HK SOC 00805

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOT A CERTIFIED COPY

016743

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No.CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-vs-

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

DEPOSITION OF LAWRENCE ALAN BORNSTEIN
(Videotaped)
VOLUME I

Thursday, January 15, 2004
9:05 - 1:42 p.m.

2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Reported By:
Rachel W. Bridge, RMR, CRR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office
Phone: 800.330.6952
561.659.4155

APPEARANCES:
On behalf of the Plaintiff:
ROBERT T. MARKOWSKI, ESQUIRE
CHRISTOPHER M. O'CONNOR, ESQUIRE
JENNER & BLOCK, LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Phone: 312.222.9350

On behalf of the Defendant:
THOMAS A. CLARE, ESQUIRE
KATHRYN REED DEBORD, ESQUIRE
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Phone: 202.879.5078

On behalf of the Witness:
MICHAEL MOSCATO, ESQUIRE
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
101 Park Avenue
New York, New York 10178-0061
Phone: 212.696.8817
ALSO PRESENT:
EITAN ROSEN, VIDEOGRAPHER

- - -

INDEX

- - -

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Lawrence Bornstein				
By Mr. Markowski	5			
By Mr. Clare		117		

- - -

EXHIBITS

- - -

EXHIBIT	PAGE
CPH Exhibit 118	12
CPH Exhibit 119	17
CPH Exhibit 120	44
CPH Exhibit 121	84
CPH Exhibit 122	93
CPH Exhibit 123	100
CPH Exhibit 124	110
MS Exhibit 55	156
MS Exhibit 56	172
MS Exhibit 57	172

PROCEEDINGS

- - -

Deposition taken before Rachel W. Bridge, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

THE VIDEOGRAPHER: We are now going on video record. The time on the monitor is 9:05 a.m.

(Thereupon, the case was introduced by the court reporter.)

MR. MARKOWSKI: Bob Markowski from Jenner & Block on behalf of Coleman (Parent) Holdings.

MR. O'CONNOR: Chris O'Connor from Jenner & Block on behalf of plaintiff, Coleman (Parent) Holdings.

MR. CLARE: Tom Clare and Kathryn Debord from Kirkland & Ellis, LLP on behalf of the defendant, Morgan Stanley & Company.

MR. MOSCATO: Mark Moscato from Curtis Mallet on behalf of the witness, Larry Bornstein.

Thereupon,

(LAWRENCE A. BORNSTEIN)

having been first duly sworn or affirmed, was examined and testified as follows:

NOT A CERTIFIED COPY

DIRECT EXAMINATION

BY MR. MARKOWSKI:

Q. Mr. Bornstein, as you know, my name is Bob Markowski. I'm one of the attorneys for Coleman (Parent) Holdings in its lawsuit here in Palm Beach County against Morgan Stanley.

Mr. Bornstein, would you please state your full name?

A. Lawrence Alan Bornstein.

Q. Mr. Bornstein, where were you employed in 1998?

A. Arthur Andersen.

Q. Where was your office location?

A. West Palm Beach, Florida.

Q. How long had you been employed by Arthur Andersen at that time?

A. '98, approximately ten years.

Q. What was your position?

A. I believe at the time I was an experience manager, I think was the title.

Q. And in general, what were the responsibilities in 1998 that you had as a senior manager at Arthur Andersen?

MR. MOSCATO: Experience manager?

MR. MARKOWSKI: Excuse me, experience

manager.

THE WITNESS: Supervising and performing tests, audit functions primarily.

BY MR. MARKOWSKI:

Q. How long had you been employed in the West Palm Beach office?

A. I believe approximately, probably six years.

Q. At that time did you hold any licenses?

A. Yes, a CPA, licensed in Massachusetts.

Q. When did you obtain your licenses as a certified public accountant?

A. I believe in '91 or '92.

Q. Mr. Bornstein, do you recall that in the first quarter of 1998 Sunbeam made three acquisitions?

A. Yes.

Q. Do you recall the names of the three companies that Sunbeam acquired in the first quarter of 1998?

A. Yes.

Q. Can you tell me what they are?

A. Coleman -- I don't know the exact name, but Coleman was one. First Alert was another. And I believe the third was Signature Brands.

Q. Do you recall that Coleman was the largest of the three companies that Sunbeam acquired at that time?

A. Yes.

Q. Do you recall as part of the Coleman acquisition that Sunbeam acquired all of the Coleman stock that my client, Coleman (Parent) Holdings, owned?

MR. CLARE: Objection, foundation.

THE WITNESS: I don't know, I don't know exactly who owned what and where and when, to be honest with you.

BY MR. MARKOWSKI:

Q. Do you recall that Sunbeam acquired the Coleman company stock that Coleman (Parent) Holdings had as part of the transaction?

A. I don't remember the exact structure, but I do believe they acquired a good chunk of it during that time period.

Q. From Coleman (Parent) Holdings?

A. I believe so, yes.

Q. Did you perform any work relating to the transaction by which Sunbeam acquired the Coleman company stock?

A. I did a limited amount of work, yes.

Q. What were the nature of the projects that you were involved in concerning Sunbeam's acquisition of Coleman company?

A. I accompanied various management of Sunbeam

at the time in a due diligence, limited due diligence process.

Q. Were there other activities that related in any respect to Sunbeam's acquisition of Coleman that you were involved in?

A. A limited amount of review of, I believe their pro forma financial statements or pro forma projections that was done by, I believe it was done by Morgan Stanley.

Q. Do you recall being involved in activities related to Sunbeam's financing of the acquisition?

A. Yes.

Q. And what was your involvement in the financing aspect of the transaction?

A. Assisting in the preparation of a 140 section, I think it was Section 144 document, bond offering document.

Q. That's the document by which Sunbeam sold convertible debentures to finance the acquisition?

A. Yes.

Q. Do you recall what your involvement was in that process?

A. Assisting in the preparation of the pro forma financial statements that were within the document, drafting the document, the body of the document prior

NOT A CERTIFIED COPY

016715

Page 9

to the pricing of the bonds, coordinating and assisting the other accounting firms in getting the information that's needed in the document. That's pretty much all I can remember.

Q. That activity all took place in the first quarter of 1998?

A. For the most part, yes.

Q. Do you recall when during the first part of 1998 that activity was occurring?

A. I think it was middle to end of February through late March of I guess -- my year, I think it might have been, I think '98.

Q. Mr. Bornstein, did Arthur Andersen -- let me take a step back.

Arthur Andersen was involved in these activities because it served as the outside auditor for Sunbeam during that time period; is that correct?

A. Yes.

Q. Did Arthur Andersen, in connection with its function as the outside auditor for Sunbeam, do anything special at the end of the first quarter of 1998 to monitor Sunbeam's product shipments at the end of the first quarter?

MR. CLARE: Objection to the form.

THE WITNESS: Can you --

Page 10

BY MR. MARKOWSKI:

Q. I can restate it.

At the end of the first quarter of 1998, in its capacity as the outside auditor for Sunbeam, did Arthur Andersen do anything special to monitor the shipments of Sunbeam's products at the end of the first quarter?

MR. CLARE: Same objection.

THE WITNESS: Yes.

BY MR. MARKOWSKI:

Q. What do you recall that involving?

A. I would call them expanded cutoff procedures, expanded I would say shipping and receiving type of procedures at the end of the first quarter.

Q. Did you have any role in making the decision to cause those procedures to be implemented?

A. Yes.

Q. And what was the role?

A. It was my decision to expand procedures sufficient enough to conclude that shipments were made in a timely fashion prior to the end of the quarter and that they were in fact built, shipped and ordered by customer.

Q. Now at that point in the first quarter of 1998, were you the senior Arthur Andersen person

Page 11

responsible for the Sunbeam audits?

A. No, I was not.

Q. Who was?

A. The partner was Phil Harlow.

Q. Did you recommend to Mr. Harlow that these procedures be used or did you make the decision on your own?

A. I recommended to Mr. Harlow that the procedures be done.

Q. And what was his reaction to your recommendation?

A. I don't remember.

Q. But were the procedures in fact employed?

A. Yes.

Q. When did you decide that Arthur Andersen -- excuse me, when did you decide that Arthur Andersen should use these expanded cutoff procedures at the end of the first quarter of 1998?

A. I don't know the exact date, but probably March 17th or 18th.

Q. Mr. Bornstein, I'm going to show you what we're going to mark as Coleman (Parent) Exhibit Number 118. It's a March 21 e-mail from you to William Biese, B-i-e-s-e. It bears Bates number AA120304.

Page 12

(CPH Exhibit No. 118 was marked for identification.)

MR. CLARE: Do you have a copy? Thanks.

BY MR. MARKOWSKI:

Q. Mr. Bornstein, I'd like you to take a moment to look at Exhibit 118.

Can you tell me what this document is?

A. Correspondence with a, I believe, I believe, I think he was the partner for Arthur Andersen that worked, I think he -- let me think about this. He, I think he resided in Mexico City. He was the partner in charge of the work that was done in Mexico for Sunbeam.

And based on reading this, it's a memorandum letting him know that we're going to be doing additional work at the end of the quarter on cutoff procedures.

Q. The memorandum is dated March 21, 1998; is that correct?

A. Yes.

Q. Sunbeam had facilities in Mexico City, or in Mexico? Excuse me.

A. Yeah, they had facilities in Mexico City and I think I recall them having one or two in, I think it was called Maquiladora and a couple of other locations in surrounding Mexico City.

NOT A CERTIFIED COPY

Page 13

Q. What was the purpose of your sending this memo to Mr. Biese?
A. I believe -- I mean reading this right now, it's to let him know what was going on, let him know there was going to be additional work for him, and then to advise him of, that additional cutoff procedures were going to be needed. And in reading this at this time, it talks about bill and hold transactions as well as the emphasis on sales.
Q. Does your memorandum to Mr. Biese explain why Andersen would be conducting additional cutoff procedures at the end of the first quarter of 1998?
A. No, not specifically.
Q. Does it provide the background concerning the reasons why you wanted to implement additional procedures to monitor cutoffs?
A. Not specifically.
Q. Does it do it in general terms?
A. I believe it does, yes.
Q. And what did you advise Mr. Biese as the reason for your desire to do the additional cutoff procedures at the end of the first quarter?
A. I don't remember specifically telling him anything, but looking at this memorandum, it's clear that it talks about where they, where they were going,

Page 14

where they were planning on going in sales and where they were. And the notation, as you can see, there is a big push on sales and we've been told that they having bill and hold transactions.
Q. When you say it says where the company expected to go in sales for the quarter, what are you referring to?
A. The company just released an early warning to the street that sales are not going to meet expectations of 285 to 295 million for the quarter.
That's specifically where it talks about that.
Q. And what does it say about where the company in fact was at that point in time in terms of sales?
A. 72 million as of March 1st.
Q. And how does, how do those figures relate to your desire to do additional end-of-the-quarter shipping cutoff procedures?
A. There is obviously a big spread between what was, what was recorded through March 1st and what the expectations of the company were.
So that spread led me to believe that we should be doing additional work at the end of the first quarter.
Q. And what is it about that spread that caused

Page 15

you to come to that conclusion, that it was appropriate to do additional work at the end of the first quarter?
A. I believe that the spread was extremely aggressive and that it warranted additional work to make sure that they -- mentioned earlier that the product was ordered, was built, and it was properly shipped.
Q. What was your concern?
MR. MOSCATO: I object. I think he just said so.
Do you have anything to add?
THE WITNESS: No, I don't believe I have anything.
BY MR. MARKOWSKI:
Q. How did monitoring cutoff procedures have a relationship to what you've just described?
A. Monitoring cutoff procedures would in fact give you a much greater assurance that a customer had requested that the product be sold to them; i.e., to clear purchase order, and that the product was in fact built and shipped.
Q. Were you concerned that in order to increase the reported sales for the first quarter of 1998, that Sunbeam might attempt to claim shipments had taken place during the first quarter when in fact they had

Page 16

not?
A. Can you repeat that, please?
Q. Were you concerned that because of the great spread as of this point in time between Sunbeam's sales for the first two months of the first quarter and Sunbeam's original expectations for sales for the first quarter, that in order to close the gap between those two numbers, that Sunbeam might attempt to claim shipments in the first quarter that had actually not occurred?
MR. CLARE: I object to the form.
THE WITNESS: I don't believe that that was my thought process at the time. I wanted to make sure that they were actually going to ship the product and the product was ordered.
So I guess in thinking about that, then there is a possibility the concern was that there, you know, that it was a possibility that they would ship product that wasn't ordered, as well as logistically being able to ship that much product in such a short period of time, based on my experience with the company at that point in time.
MR. MARKOWSKI: Mr. Bornstein, I'll show you what we're marking as CPH Exhibit 119. It's a memorandum from Dennis Pastrana to you dated

NOT A CERTIFIED COPY

015747

Page 17

March 24, 1998. The subject is cutoff testing, and it bears Bates number AA55758 through -- actually it looks like it's made up of two documents, first. First page is AA55758, and then the pages behind it are AA36921 through 36925.

(CPH Exhibit No. 119 was marked for identification.)

THE WITNESS: These are just extra copies?

BY MR. MARKOWSKI:

Q. Yes, right, thank you. If you would, I'd like you to take a moment to take a look at CPH Exhibit Number 119.

Mr. Bornstein, can you tell me what CPH Exhibit Number 119 is?

A. I apologize. I'm getting a cold, so it's kind of hard for me to hear. Can you repeat that?

Q. Can you tell me what CPH Exhibit Number 119 is?

A. Appears to be a draft of a memorandum outlining the additional procedures on cutoff and shipping that was performed at the end of the first quarter of '98.

Q. These are instructions relating to what we've been discussing, the implementation of additional procedures to monitor Sunbeam's

Page 18

end-of-the-first-quarter shipping practices?

A. Yes.

Q. Who is Dennis Pastrana?

A. He was, he was the senior auditor who worked for me during the Sunbeam audit, who, for lack of a better term, did, supervised the field work on a day-to-day basis.

Q. Did you ask Mr. Pastrana to prepare instructions for the additional cutoff procedures?

A. Yes, based on this memorandum. I don't recall specifics, but based on this, I would say the answer is yes.

Q. Did you provide Mr. Pastrana with guidance concerning what you wanted the procedures to involve?

A. Yes.

Q. The -- let me direct your attention to the page that has Bates number 36293. The heading starts General Information.

A. Yes.

Q. Do you have that page in front of you?

A. Yes.

Q. Would you read the first two paragraphs under General Information out loud, please.

A. "Although the information that follows is public information, it is summarized here for your use

Page 19

only and is not to be shared with client personnel at the facilities you visit. Sunbeam's first quarter fiscal 1998 will end on March 29, 1998," in brackets, "the Sunday closest to the end of the month," end of brackets. "As of March 1, 1998, the company reported sales of approximately 72 million versus 143 million for the corresponding period of the preceding year. Despite this decrease, management has announced to the public that it expects first quarter sales for 1998 to exceed first quarter 1997 sales of 253.5 million. That means that the company expects to ship over 181 million," in brackets, "greater than 70 percent expected sales for the quarter," end of brackets, "in the month of March."

Q. Now the, did you believe the statement that the company had sales of $72 million through the first two months of the year to be an accurate statement?

A. I believe at the time domestically the $72 million was the number.

Q. Do you know what that number was based on? Let me ask a different question. I asked that poorly.

Do you know how Andersen determined that Sunbeam sales for the first two months of 1998 totaled approximately $72 million?

A. I believe based on the company's financial

Page 20

information that was given to us.

Q. Now a statement is made at the beginning of that two paragraphs that I had you read that the information that follows is public information.

Do you know whether in fact Sunbeam had announced to the public as of this point in time that its sales for the first two months of 1998 were only $72 million?

A. I don't believe it was. I'm not 100 percent sure, though.

Q. You don't have any recollection of the company publicly making that statement, correct?

A. No.

Q. I'd like to direct your attention down to the bottom third of the page. There is a heading that reads Revenue Recognition Policy. Do you see that?

A. Yes.

Q. Would you read that first paragraph into the record, please.

A. "Because of management pressures to meet earnings expectations, we are taking additional steps in connection with our quarterly review work to ensure that the client achieves a proper sales cutoff."

Q. Does that statement accurately reflect the reasons why you decided that Andersen should implement

NOT A CERTIFIED COPY

Page 21

additional cutoff testing procedures at the end of the first quarter of 1998?
A. Yes.
Q. Now, Mr. Bornstein, I note that this document indicates that Sunbeam's first quarter will end on March 29, 1998.
Do you see that statement at the top of the page?
A. Yes.
Q. Did Sunbeam's first quarter in fact end on March 29, 1998?
A. I don't believe it did, no.
Q. Do you recall what happened?
A. Yes.
Q. Can you explain?
A. One second, I'm sorry.
Q. Sure.
A. As I recall, Sunbeam decided to extend the quarter, I believe it was I think two days, in order to -- because they were going to close the Coleman acquisition I believe on March 31st, they wanted to include the additional two days of revenue related to Coleman in their first quarter.
Q. Would extending the quarter also permit Sunbeam to count its first quarter sales, additional

Page 22

sales that Sunbeam itself made during those three days?
A. I believe that was their intention, yes.
Q. As of the time -- this memorandum appears to have been written on or about March 29 -- well, excuse me, March 24, I believe.
A. Yes.
Q. As of that point in time, had the first quarter been extended?
A. No, I don't believe so.
Q. So the decision to extend the first quarter that Sunbeam made was sometime between the time this memorandum was prepared and the end of the quarter?
A. Yeah, I believe I testified, somewhere in the records I'm sure there is a paper trail of the date, because I specifically remember the phone call I had. My daughter was in the hospital sick, and I remember getting the phone call related to the request to extend the quarter.
Q. Who did you get that call from?
A. I don't recall specifically.
Q. Do you recall that it was Bob Gluck that called you?
A. It's possible that it was Bob Gluck, yes.
Q. Who is Bob Gluck?
A. He was the corporate controller of Sunbeam.

Page 23

Q. Did the fact that Sunbeam advised you that it wished to extend the first quarter of 1998 have any effect on your thinking concerning the need to conduct additional cutoff procedures for the quarter?
A. Yes.
Q. And what was your thought in that regard?
A. Honestly, at that point in time I believe that they needed to come up with some additional ways to make the quarter on the revenue side, and that was one of them, one of a couple as opposed to -- I'm sorry, but that was one of them.
Q. And how did that conclusion affect your thinking with respect to the cutoff procedure project?
A. The cutoff procedure project was already implemented, but it emphasized the need to do it.
Q. Were you concerned that Sunbeam might play games with respect to its first quarter numbers?
MR. CLARE: Objection to form.
THE WITNESS: I don't consider it playing games, but there was never a clear definition of whether or not they intended to include Coleman sales or not when they made their press releases.
BY MR. MARKOWSKI:
Q. Was the fact that Sunbeam had advised you that it wished to extend the first quarter consistent

Page 24

with your conclusion that management was being pressed to do whatever it could to maximize first quarter sales results?
MR. CLARE: Objection to form.
THE WITNESS: That they needed to be aggressive, yes. That is the way I would characterize it.
BY MR. MARKOWSKI:
Q. And they needed to be aggressive for what reason, Mr. Bornstein?
MR. CLARE: Objection, foundation.
MR. MOSCATO: You're asking him what his view is, not his trying to read their minds?
MR. MARKOWSKI: That's correct.
BY MR. MARKOWSKI:
Q. Why did you think Sunbeam needed to be aggressive with respect to its first quarter sales activities?
A. Because again, that was a big spread of sales that were in fact recorded at March 1st, and what they had told the public they planned on doing for the first quarter.
Q. Mr. Bornstein, in general, what did -- let me ask a foundational question. In fact, Andersen did take additional steps to monitor Sunbeam's first

NOT A CERTIFIED COPY

Page 25

quarter sales shipments at the end of the quarter?
A. Yes.
Q. In general, what did Andersen do?
A. We sent people out to a number of material locations, manufacturing locations, where Sunbeam in fact built and shipped product at the end of the first quarter.
Q. What did those people, what were those people asked to do?
A. It's pretty much detailed in the memorandum, but basically to monitor the shipment of product, to make sure the product was actually shipped at the end of a quarter, to obtain shipping and receiving documents, to physically observe the shipping locations, to do additional work on additional bill and hold transactions that the company had told us that they were entering into, and to basically make sure that the product was there and ready to be shipped or shipped and do all the cutoff work that we talked about.
Q. We've been using the term cutoff. What does cutoff mean?
A. It's just, cutoff means, it's just a period of time that you take a snapshot. You freeze the, kind of freeze that period in time and you, exactly what it

Page 26

sounds, cut off when a sale is made and when a sale is not made.
Q. And the cutoff moment in this instance was what?
A. I believe the policy, the revenue recognition policy was that it had to have been placed in a truck and the truck needed to either be filled or pushed off the dock and title passed to the customer.
Q. By what moment in time?
A. Technically, midnight of whatever the date was. I think it was March 31st that the quarter ended.
Q. It ultimately was March 31st, correct?
A. Yes.
Q. At the time this memo was written, the end of the quarter would have been March 29?
A. Yes.
Q. And it was the extension of the quarter by three days from the 29th to the 31st that resulted in that change, correct?
A. Yes, being the 31st as opposed to the 29th, yes.
Q. All right. Now did Andersen staff or, Andersen staff ask to be physically present on the Sunbeam shipping docks at midnight on the last day of the quarter?

Page 27

A. Yes.
Q. And the purpose for that was so that they could do what?
A. To make sure that the process I just explained was adhered to.
Q. Verify it with their own eyes, correct?
A. Yes.
Q. Now is that something that Andersen did at the end of each Sunbeam quarter?
A. No.
Q. And the reason for the difference here was what you've already described, the gulf between where Sunbeam sales were at the end of March -- or excuse me, at the end of February, and where the company had told the public it would end up at the end of the first quarter, correct?
A. Yes. It was, as I explained earlier, a decision I made sometime in March, March 18th, 19th, that that was something I was going to have done.
Q. Mr. Bornstein, let me show you what we previously marked as CPH Exhibit Number 20. Bears Bates number CPH 0129292 through 192296.
A. Okay.
Q. Can you tell me what this document is?
A. Just give me a couple of minutes to look at

Page 28

it.
Q. Sure.
A. It's a, looks like a memo from Vance Kistler, who was a, I don't know, a staff accountant or it might have been a higher level, maybe a senior accountant, on his inventory observation work at Hattisburg.
Q. Who was Vance Kistler again? I'm sorry, he's an Andersen employee?
A. Yes.
Q. Does this report relate to the sales cutoff procedures that we've been talking about?
A. Yes.
Q. Does this reflect Mr. Kistler's work and the work of others at the Hattisburg facility?
A. Yes.
Q. Hattisburg was a Sunbeam facility?
A. Yes.
Q. And what did Sunbeam do at Hattiesburg, do you know?
A. I don't remember specifically what they built there, but they manufactured equipment and had a distribution center where product was put on trucks and shipped to customers.
Q. Do you recall that Hattiesburg is one of the more significant facilities that Sunbeam had for

NOT A CERTIFIED COPY

Page 29

shipping product?
MR. CLARE: Objection to form.
THE WITNESS: Yes, I believe their largest at the time.
BY MR. MARKOWSKI:
Q. Mr. Bornstein, let me show you what we've also previously marked as CPH Exhibit 113.
A. Does anyone else who lives in Florida need air conditioning in this room? Is there any way we can do that? Us Floridians need air conditioning.
Q. If at any point, Mr. Bornstein, you need to take a break or need something else like air conditioning, just let us know. We'll try to make sure you are comfortable.
A. Thank you.
Q. If you would take a moment to look at CPH Exhibit Number 113, my first question is going to be if you can identify it for me, tell me what it is.
A. Okay.
Q. The question was if you can identify the document for me.
A. The document, after reading it, appears to be a documentation of work done by -- I'm not sure who this guy is, but another employee of Arthur Andersen on cutoff work done at a warehouse in DC, a warehouse in

Page 30

Aurora. I think that might have been a, I believe that was a third-party warehouse.
And again, work, additional work done on cutoff, shipping cutoff, as well as additional work done on bill and hold sales.
Q. And this relates to the project we've been talking about, correct?
A. Yes.
Q. The monitoring of Sunbeam's end-of-quarter sales shipments, correct?
A. Yes.
Q. Is it fair to say that it took a fair amount of effort, Mr. Bornstein, to arrange and implement the additional cutoff monitoring procedures?
A. I would characterize it as a huge amount of effort. Probably more effort on a quarterly inventory cutoff than -- probably safe to say on probably any work that was done probably for the previous 15 years in auditing history.
Q. And the huge effort was warranted because of what again, Mr. Bornstein?
MR. MOSCATO: I object.
You can answer again, Larry.
BY MR. MARKOWSKI:
Q. Let me ask a different question,

Page 31

Mr. Bornstein.
A. Sure.
Q. Was that huge effort in your mind justified?
A. Yes.
Q. And why did you think that huge effort was justified under the circumstances that you were confronted with?
A. You know, based on the spread, the aggressiveness of management and the spread between what was recorded as sales, as well as what was, what was out on the street, we talked about them extending the quarter.
Another thing that happened post the March 18th time frame was the announcement or the information to us that they were going to, Sunbeam was in the process of implementing an additional bill and hold series of transactions, I guess.
So again, that was kind of the second thing that, that kind of emphasized that additional work needed to be done.
Q. And the work needed to be done in order to do what you thought necessary to assure that Sunbeam properly reported its sales for the quarter?
A. Yes.
Q. And didn't report more sales than it was

Page 32

entitled to report, correct?
A. Yes.
Q. When did you first learn, Mr. Bornstein, that Sunbeam's sales for the first two months of 1998 were about half of what Sunbeam's sales had been for the first two months of 1997?
MR. MOSCATO: The question is focused on the first two months? That's your question?
MR. MARKOWSKI: That's correct.
MR. MOSCATO: First two months.
THE WITNESS: I believe sometime towards maybe the first, the end of the first week of March. Maybe the second, I'd say anywhere between March 7th and maybe March 10th to 13th, in that time frame.
BY MR. MARKOWSKI:
Q. And how did you learn that information?
A. From Dennis Pastrana, the senior accountant working for me.
Q. Do you recall whether you were present in a room with Mr. Pastrana?
A. No, it was via telephone.
Q. Where were you at?
A. I was working on the 144 offering, I believe in New York.

NOT A CERTIFIED COPY

Page 33

Q. And where was Mr. Pastrana?
A. In Delray Beach, Florida, at Sunbeam's location.
Q. Do you recall whether he called you or whether you called him in connection with that phone call?
A. No, I don't recall.
Q. What do you recall Mr. Pastrana telling you?
A. Just the fact of where they were, where they were from a revenue standpoint. And I don't recall anything else specifically.
Generally he was doing work to support the work that we were doing up in New York. He was working on a comfort letter, which entailed reviewing the company's financial information for the most recent periods.
Q. Did you consider the information he provided to you about Sunbeam's sales for the first two months of 1998 to be significant in any way?
MR. CLARE: Objection to form.
THE WITNESS: Did I think it was significant, the information that he gave me?
BY MR. MARKOWSKI:
Q. Correct, concerning Sunbeam's sales for the first two months of the first quarter of '98.

Page 34

A. Yes, I did.
Q. In what way?
A. That it was much lower than the previous year.
Q. Do you know if the public was expecting Sunbeam's sales for the first quarter of 1998 to be lower than Sunbeam's sales for the first quarter of 1997?
MR. CLARE: Objection, no foundation.
THE WITNESS: Did I know at that time?
BY MR. MARKOWSKI:
Q. Right. Did you know if the financial community was expecting Sunbeam's sales in the first quarter of 1998 to be lower or higher than Sunbeam's sales for the first quarter of 1997 had been?
MR. CLARE: Same objection.
THE WITNESS: I knew that they were expecting I believe to be higher than the previous year.
BY MR. MARKOWSKI:
Q. Your understanding was the financial community was expecting Sunbeam's sales to grow in the first quarter of 1998 over the first quarter of 1997 results, correct?
A. Yes.
Q. You said that Mr. Pastrana was doing work

Page 35

relating to the preparation of a comfort letter?
A. Yes.
Q. What's a comfort letter?
A. A comfort letter is, for lack of a better word, it gives the underwriters and underwriter's counsel comfort that the numbers that are within the bond offering are derived from the company's books and records.
Q. Now the letter is prepared by whom?
A. By Arthur Andersen.
Q. And it goes to whom in this case?
A. I believe it goes to underwriter's counsel. So I'm not sure who exactly it's addressed to, to be honest with you, but I believe it was underwriter's counsel.
Q. The underwriting you are referring to in this case was whom?
A. Morgan Stanley.
Q. And Morgan Stanley is underwriting what in this context, just so we're clear?
A. The bond offering.
Q. And by underwriting, what do you mean?
A. They were the ones helping the company sell the bonds.
Q. Why was Andersen preparing a comfort letter

Page 36

for Morgan Stanley relating to the bond offering?
A. It was requested by Morgan Stanley to prepare.
Q. Do you know why Sunbeam was issuing the bonds?
A. In order to finance a portion of the three acquisitions you talked about earlier.
Q. Including the acquisition of Coleman Company, correct?
A. Yes.
Q. What's the relevance of Sunbeam's sales results in January and February of 1998 to the work Mr. Pastrana was doing on the comfort letter?
A. The comfort letter asked for -- the standard comfort letter, there are certain things that are required to be disclosed and certain things that aren't required to be disclosed, but, for example, you'd have to look at net worth of the company compared to the prior year. I forget the exact one. Net assets of the company compared to the prior year. Really any material variation from the same period of the prior year required to disclose to the, to put in the document, put in the comfort letter.
Again, the standard things, I don't know what they are. And then if there is anything that's out of

NOT A CERTIFIED COPY

Page 37

the ordinary, typically that might go in there.
Q. Mr. Bornstein, in connection with -- as I understand your prior testimony in connection with the Sunbeam audits, you were the second-most senior person assigned in the audit; is that correct, the audit team?
A. There was a, there were, I think a concurring partner was also assigned to the team, but that partner didn't actually do the field work. He was more of an advisory partner. So I would consider myself probably the third senior person on the team.
Q. All right. In connection with the work you did as the third most senior Andersen person on the Sunbeam audit, if we include Mr. -- the concurring partner was Mr. Pruitt; is that correct?
A. Yes.
Q. And the engagement partner was Mr. Harlow, the audit partner?
A. Yes.
Q. And Mr. Harlow would have been more actively involved in the actual audit process than Mr. Pruitt, correct?
A. Correct.
Q. In connection with the work that you did regarding Andersen's audits of Sunbeam, did you try to keep abreast of statements that Sunbeam made to the

Page 38

financial community relating to its performance?
A. Yes, I did.
Q. And is it in that connection that you had an understanding that Sunbeam had led the financial community to expect that its first quarter 1998 sales would be higher than its first quarter 1997 sales?
MR. CLARE: Objection to form.
THE WITNESS: It was a combination of a lot of things, newspaper reports, the budgets, statements Mr. Dunlap had made to the financial community and the world on growth projections. So I mean it's a combination of things how you keep track of things like that.
Andersen at the time had a system in place where you would get, you know, consensus, first call type of information that can be supplied also.
So I mean we were kept pretty -- you know, it was part of our job to be in tune to that information.
BY MR. MARKOWSKI:
Q. And you considered yourself in the first quarter of 1998 well informed on those issues as they related to Sunbeam?
A. Yes.

Page 39

Q. When Mr. Pastrana advised you that Sunbeam's sales for the first two months of 1998 were about half of what they had been in the first two months of 1997, did you report that information to anyone else at Arthur Andersen?
A. Yes.
Q. To whom did you report it?
A. I think you can see in the memorandums that we reported that to whoever was on the engagement team working on the cutoff procedures, Mr. Harlow, Mr. Pruitt. I don't specifically remember anyone else, but I'm sure I mentioned it to other people.
Q. Did you make certain personally that Mr. Harlow knew that Sunbeam's sales in the first two months of '98 were about half of what they had been in the first two months of '97?
A. Yes.
Q. Did you personally make sure that Mr. Pruitt knew that as well?
A. Yes.
Q. Do you recall when you informed Mr. Harlow of that fact?
A. As soon as I was aware of it.
Q. Do you recall when you advised Mr. Pruitt of that?

Page 40

A. I believe not until March 17th or 18th. The night before the, the date before the press release went out and prior to the bonds being priced.
Q. Can you tell me what the context of that conversation was? Was it a conversation?
A. Yes, just in -- Mr. Pruitt, as part of his responsibility, needed to read the comfort letter in its entirety. And I do recall pointing that out to him specifically, that sales were half of what they were, and --
Q. Where were you both at?
A. He was in Miami. I believe I was, I was in West Palm Beach.
And I recall the conversation that, that the company was at 72 million versus 143 million, and explained to him where they were versus their estimates on the street. And I don't remember specifically the conversation, but I do recall letting him know that I wasn't 100 percent sure if all parties involved in the transaction were informed of that information.
Q. What did Mr. Pruitt say to you?
A. He told me that he was going to talk to Mr. Harlow and discuss the issue.
Q. And did you tell Mr. Pruitt who you weren't certain -- let me rephrase that.

NOT A CERTIFIED COPY

Page 41

You indicated, if I understood you correctly, Mr. Bornstein, that you raised with Mr. Pruitt an issue concerning whether everyone involved in the debenture offering was aware of the difference between Sunbeam's sales in the first two months of '98 and the first two months of '97, correct?
A. Yes.
Q. Was there somebody specific you had in mind?
A. I wasn't 100 percent sure if Morgan Stanley and Morgan Stanley's counsel, as well as any of the other people working on the transaction other than the people at Sunbeam, knew where the company sales were at that point in time.
Q. Did you want to make certain that Morgan Stanley was advised of that information?
A. Yes.
Q. Is that what you told Mr. Pruitt?
A. I didn't tell him that specifically, no.
(Thereupon, a cellphone rang.)
MR. MARKOWSKI: Can we go off the record.
THE VIDEOGRAPHER: We are now going off the video record. The time on the monitor, 10:05 a.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 10:05 a.m.

Page 42

BY MR. MARKOWSKI:
Q. Mr. Bornstein, did you specifically tell Mr. Pruitt you weren't certain if Morgan Stanley knew these facts?
A. No, I didn't specifically say that.
Q. Okay. What did Mr. Pruitt say to you when you raised an issue with respect to whether everyone was on notice of this drop in Sunbeam's sales?
A. He told me that if everyone wasn't aware, that we wouldn't issue a comfort letter.
Q. And did Mr. Pruitt give you any instruction?
A. No.
Q. Did Mr. Pruitt tell you he intended to take some action?
A. He told me he was going to talk to Mr. Harlow.
Q. Mr. Bornstein, I'm going to show you what we previously marked as CPH Exhibit Number 12. It's a two-page document on Morgan Stanley stationery bearing Bates number AA31057 through 058, and it's a letter dated March 11, 1998, from John D. Tyree of Morgan Stanley to Arthur Andersen; attention, Phil Harlow.
Would you take a moment to take a look at CPH Exhibit Number 12 for me, Mr. Bornstein.
A. Okay.

Page 43

Q. Have you seen this letter before?
A. I don't remember the specific one, but I've seen the form letter before.
Q. Were you aware that Morgan Stanley had written to Arthur Andersen to formally request Arthur Andersen provide it with a comfort letter?
A. Yes, I was.
Q. In connection with the Sunbeam debenture offering?
A. Yes. I believe we requested that this form letter be provided to Arthur Andersen.
Q. I see. So it was Andersen's request that Morgan Stanley provide it with a written request for a comfort letter?
A. Yes, because the issue was that this was a 144 offering and not in accordance with the, specifically what -- similar to like an IPO or a 33 Act filing, I believe a 144 offering was a 34 Act filing, which is a requirement of Andersen to make sure that the underwriter would sign off on a letter requesting that they were doing the same amount of work that would have been required in the 33 Act filing.
Q. That's what Morgan Stanley represented to Andersen in connection with this bond offering?
A. Yes.

Page 44

Q. Did Andersen wait to receive this letter before beginning work on the comfort letter?
A. No, I don't believe so.
MR. MARKOWSKI: Mr. Bornstein, I'm going to show you what we're marking as CPH Exhibit Number 120. It's a three-page document on Sunbeam stationery dated March 16, 1998, bearing Bates number AA31053 through 055.
(CPH Exhibit No. 120 was marked for identification.)
BY MR. MARKOWSKI:
Q. If you would take a moment, sir, I'd like you to review this document, and my first question is whether you can identify it for me.
A. Yes.
Q. Can you tell me what it is?
A. It's a management representation letter from Sunbeam to Arthur Andersen utilized to issue our comfort letter.
Q. This is the comfort letter that you've been referring to that Morgan Stanley requested?
A. Yes.
Q. In connection with the debenture offering, correct?
What's the purpose of this letter?

NOT A CERTIFIED COPY

Page 45

A. When you, any time you're, basically you're bringing -- let me back up.

The purpose of this letter again is to issue a comfort letter. And basically what you're doing is enough, the same amount of work sufficient that if you were going to issue a consent to update your opinion on the financial statements that were whatever the previous period was.

So it's mainly analytical work and work done sufficient to issue a comfort letter.

Q. Does this document contain information relating to Sunbeam's sales for the first two months of 1998?

A. Yes, it does.

Q. Where do you see that?

A. On paragraph 9C.

Q. Would you read that into the record, please?

A. "Net sales from December 29, 1997, through March 1, 1998, were 72 million, 72,018,000, as compared to 143,499,000 for the corresponding period of the preceding year."

Q. That's the information that we've been talking about that showed that Sunbeam's sales for the first two months of 1998 were approximately half of what they had been in the prior year period, correct?

Page 46

A. Yes.

Q. And this letter is signed by who, sir?

A. Signed by Albert Dunlap, Russell Kersh, David Fanin and Bob Gluck, who were all senior executives of Sunbeam.

Q. Mr. Dunlap's position at this time was what?

A. States here chairman and chief executive officer.

Q. Of Sunbeam?

A. Of Sunbeam, yes.

Q. Mr. Kersh was what?

A. Executive vice-president of finance and administration.

Mr. Fanin was executive vice-president, general counsel.

Mr. Gluck was vice-president and chief accounting officer.

Q. Four very senior Sunbeam executives, correct?

A. Yes.

Q. Does this letter offer an explanation for the primary reason for the substantial decline in Sunbeam's sales for the first two months of '98 compared to the first two months of '97?

MR. CLARE: Objection to form.

THE WITNESS: In the preceding paragraph, 9B, I believe it does.

BY MR. MARKOWSKI:

Q. What does it say? Would you read that into the record, sir?

A. "For the period from December 29th, 1997, through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily to the company's Early Buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997. Additionally, decreased consolidated net sales during the period as compared to the corresponding period of the preceding year results, in part, from a nonrecurring sale in January of 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the company's November 1996 restructuring. Net income decreased primarily due to the aforementioned sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers."

Q. And this is a statement being made to Arthur Andersen by the senior management of Sunbeam, correct?

A. Yes.

Page 48

Q. What does it mean to be accelerating outdoor grill sales into the fourth quarter of 1997, sir?

A. It talks -- what it means is just what it says, accelerating sales of grills to the fourth quarter of the previous year.

Q. How does that affect first quarter sales?

MR. MOSCATO: Objection.

BY MR. MARKOWSKI:

Q. I'm just trying to understand what the reference to accelerating sales means so that the jury can understand.

A. Right. The Early Buy program and the bill and hold program that they had in effect at the end of 1997, you know, based on the facts as of the end of February, showed that it did have an impact on moving some of the sales that might have previously been recorded in the fourth quarter -- in the first quarter, excuse me, of the corresponding year might have been accelerated into the previous quarter.

Q. So sales that otherwise would have normally taken place in the first quarter of 1998 had in fact already occurred in the fourth quarter of 1997?

MR. CLARE: Object to the form.

THE WITNESS: Yes.

NOT A CERTIFIED COPY

Page 49

BY MR. MARKOWSKI:
Q. That's identified here as the primary reason for the drop in Sunbeam's sales in the first two months of 1998, correct?
A. That's what it states, yes.
THE WITNESS: Could we take like a five-minute break for the restroom?
MR. MARKOWSKI: Sure.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 10:17 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor is 10:29 a.m.
BY MR. MARKOWSKI:
Q. Mr. Bornstein, as you just testified, Albert Dunlap was the chief executive officer of Sunbeam in the first quarter of 1998, correct?
A. Yes.
Q. Do you recall that Mr. Dunlap at that point had been the chief executive of Sunbeam for something less than two years?
A. Yes.
Q. Are you aware of Mr. Dunlap's reputation at that time as a turnaround specialist?
A. Yes.

Page 50

Q. What do you know about that? Let me go back to 1998. Back in the first quarter of 1998, what was your understanding of Mr. Dunlap's reputation for turnarounds?
A. That he had a reputation for cutting costs, turning around companies and selling them.
Q. And doing that all in very short order?
A. Yes.
Q. And were you aware of any public statements that Mr. Dunlap had made about his success in turning Sunbeam around during his tenure as Sunbeam's chief executive officer? Focusing again on what your knowledge was in the first quarter of 1998.
A. Yes.
Q. What was your understanding of what Mr. Dunlap had said publicly on that subject?
A. That it was turned around and headed for brighter and greater pastures.
Q. Mr. Dunlap was projecting significant growth in sales and profits for 1998 for Sunbeam?
A. Yes.
Q. Compared to its 1997 performance?
A. Yes.
Q. Did you have any personal doubts about that in the first quarter of 1998?

Page 51

A. Yes.
Q. And what were those doubts based upon?
A. The financial performance really through the first two months of the, of '98, and as well as me, as well as my observation and review of at least the operations that I had seen, which included several of the domestic facilities as well as the Mexico City facility.
Q. First quarter of 1998, did you consider yourself to be familiar with Sunbeam's financial results and performance?
A. For what period of time?
Q. For the prior year.
A. Yes.
Q. And for the first two months of 1998?
A. Yes.
Q. And did you consider yourself generally familiar with Sunbeam's management?
A. Some of management, yes, from a corporate standpoint.
Q. And you considered yourself to be familiar with Sunbeam's facilities?
A. As I mentioned, domestically and in Mexico, part of Mexico anyway.
Q. Did you think Mr. Dunlap was overstating his

Page 52

accomplishments at Sunbeam?
A. I thought there was a possibility that he was, yes.
Q. And that was your belief in the first quarter of 1998, correct?
A. Yes.
Q. Mr. Bornstein, let me show you what we've previously marked as CPH Exhibit Number 17. It's a document on Arthur Andersen stationery bearing Bates numbers MS375 through 381.
If you could take a moment, my first question is going to be whether you can identify that document for me.
A. Yeah, this is a copy of a, a copy of the comfort letter.
Q. And it's a letter dated March 19, 1998, correct?
A. Yes.
Q. And it's from Arthur Andersen to Morgan Stanley & Company, Inc.?
A. Yes.
Q. And it's signed Arthur Andersen LLP, correct?
A. Yes. I believe it's my handwriting.
Q. You believe you signed the name Arthur Andersen LLP to the letter?

NOT A CERTIFIED COPY

016756

Page 53

A. This was signed about five o'clock in the morning on the 19th, I believe, the night of the pricing of the bonds, the following subsequent a.m.
Q. So that process I think from prior testimony started on the 19th, if it was 5:00 a.m., it would have been 5:00 a.m. on the 20th?
A. 20th, I believe.
Q. Even though the letter is dated the 19th, correct?
A. Yes.
Q. Were you authorized to sign this letter on behalf of Morgan Stanley -- excuse me, I misspoke.
Were you authorized to sign this letter on behalf of Arthur Andersen?
A. Yes, I was.
Q. And who provided you with that authorization?
A. Phil Harlow.
Q. And Mr. Harlow was the engagement partner, as you've previously testified, correct?
A. Yes.
Q. And the letter is addressed to Morgan Stanley.
Do you know if the letter was delivered to Morgan Stanley?
A. Yes, it was.

Page 54

Q. When did that occur? I'm talking about this version of it signed by you.
A. Four or five o'clock in the morning on the 20th.
Q. And how do you know it was delivered to Morgan Stanley at that time?
A. I handed it to them.
Q. Who did you hand it to?
A. Probably Bob Lurie. Bob Lurie was an attorney from Davis Polk, I believe.
Q. I believe Mr. Lurie's name may be James.
A. Maybe. Robert, wasn't it? No?
Q. Maybe I'm mistaken, but Mr. Lurie from Davis Polk?
A. It's been six years, so yeah.
Q. And he was acting at that time as counsel for Morgan Stanley?
A. I believe so, yes.
Q. Does the March 19 comfort letter contain information relating to Sunbeam's sales results for the first two months of 1998?
A. Yes.
Q. And can you tell me where that appears?
A. Six, paragraph 6C.
Q. Does this contain the identical language that

Page 55

you've read into the record from the March 16 letter from Sunbeam management to Arthur Andersen?
A. It's similar. It's not identical.
Q. CPH Exhibit Number 120. Are the figures identical?
A. Yes.
Q. And the, just so the record is clear, Mr. Bornstein, would you read paragraph 6C into the record.
A. Says, "Although the company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from the December 29, 1997, through March 1st, 1998, which was 72,018,000 as compared to 143,499,000 for the corresponding period of the preceding year."
Q. And that again reflects a decline of about 50 percent in sales for the first two months of 1998 from the first two months of 1997, correct, sir?
A. Yes.
Q. And does this letter also repeat the explanations management provided to Arthur Andersen for that decline?
A. Yes, the previous paragraph, 6B.
Q. And what is the primary reason that

Page 56

management provided again?
A. I believe this is the exact wording. "Primarily due to the company's new Early Buy program for outdoor grills, which accelerated outdoor grills sales into the fourth quarter of fiscal 1997."
Q. Sir, you indicated that you personally handed this to Morgan Stanley's counsel --
A. Yes.
Q. -- in the early morning hours of March 20th, correct?
A. Yes, I believe so, yes.
Q. Do you know if this letter with these facts and figures, the ones that you've just testified about, had been provided to Morgan Stanley at any earlier point, either that evening or otherwise?
MR. MOSCATO: You mean a prior draft?
MR. MARKOWSKI: Correct.
THE WITNESS: I believe that it was, but I can't be certain.
BY MR. MARKOWSKI:
Q. Had you discussed these numbers with anyone from Morgan Stanley earlier in the evening on March 19th?
A. Yes, I had.
Q. Who did you discuss them with?

NOT A CERTIFIED COPY

01757

Page 57

A. I think his name was John Tyree, specifically from Morgan Stanley. I don't remember anyone else from Morgan Stanley being there.
Q. I'm going to take you back in time a little bit from that moment, Mr. Bornstein.
You indicated that you had had a conversation two or three days earlier, as I understand it, with Phil Pruitt relating to these facts, correct?
A. Bill Pruitt.
Q. I'm sorry, Bill Pruitt, the concurring partner on the Sunbeam audit engagement.
A. I believe the 17th, two days earlier.
Q. And Mr. Pruitt advised you that he was going to speak with Mr. Harlow concerning making sure that everyone involved in the transactions that were underway had notice of these facts, correct?
A. Yes.
Q. What's the next thing you recall happening bearing on this subject?
MR. CLARE: Object to the form.
THE WITNESS: Personally, I remember that on the, I think the 19th -- let me think about this, 17th, 18th, 19th.
I believe the 19th I recall was the next time I got any information on the subject, when I was

Page 58

in a hotel room in New York waiting to go to the printer.
BY MR. MARKOWSKI:
Q. Do you recall what hotel you were in?
A. I think it was the Helmsley Palace Hotel.
Q. You said you were getting ready to go to the printer. What printer?
A. I think it was Global Financial Press is where we were doing the work. And I was with an associate of mine, Mark Brockelman.
Q. What was going to be happening at the printer?
A. We were going to be finalizing the bond offering. I believe the bonds were being priced. The quantity of the bonds was, what was being sold was going to be finally determined, the interest rate.
And we were going to basically change whatever numbers needed to be changed in the document as a result of the pricing, as well as issue a final comfort letter.
Q. The document that was being finalized was what?
A. The 144 offering memorandum.
Q. That's the document that would be provided to potential purchasers of the bonds?

Page 59

A. Yes. So that's when I found out about it. I was, saw it on TV.
Q. You were there with Mr. Brockelman, you indicated?
A. Yes.
Q. Mr. Brockelman, what was -- he was employed by Arthur Andersen?
A. Yes.
Q. And his reason for being there with you was what?
A. To assist me in the process, to have an extra set of eyes looking at numbers when they changed.
Q. And what happened while you were at the hotel?
A. We were watching or I was watching CNBC and saw the crawler on the bottom that Sunbeam had released an early warning release that they weren't going to make the number. I forget what the numbers were, but they were still going to exceed, I think it was first quarter of the prior year. I think that was the, I think that's what it was. I'd have to look at the press release again.
And then I, I think I saw a notation that the stock went down significantly.
Q. So you recall that there was some notice on

Page 60

the CNBC broadcast concerning an announcement by Sunbeam concerning its first quarter performance?
A. Yes.
Q. And when you saw that, what was your reaction?
A. My reaction was to learn more about what the release was.
Q. What did you do?
A. I believe I called Mr. Harlow or I called someone back, back at Arthur Andersen. Possibly could have been Bob Gluck, I don't remember, but I wanted to physically get a copy of the press release.
Q. Did you speak with someone? Did you succeed in reaching someone to talk to them about the contents of the press release?
A. Yes.
Q. You can't remember at the moment whether that was Mr. Harlow or Mr. Gluck?
A. It might have been Dennis Pastrana. I don't remember who, to be honest with you, I spoke with.
Q. But you spoke with someone who had the press release itself?
A. Yes.
Q. Let me show you what's been previously marked as CPH Exhibit Number 14, Mr. Bornstein. It's a

NOT A CERTIFIED COPY

Page 61

two-page document that bears Bates number Morgan Stanley confidential 16944 through 945. And it's headed "For Immediate Release, Sunbeam states that first quarter revenues may be lower than street estimates."

I'd like you to take a moment to take a look at this document for me, sir.

A. Okay.

Q. Can you tell me what this is?

A. This appears to be the press release that I was referring to earlier.

Q. And do you recall while you were at the hotel you succeeded in reaching someone who read to you the contents of this document?

A. Yes.

Q. Would you read the first sentence of this press release into the record for me, sir.

A. "Sunbeam Corporation said today that it's possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of 285 million to 295 million, but net sales are expected to exceed 1997's first quarter net sales of 253.4 million."

Do you want me to keep going?

Q. Well, does this document explain the reason

Page 62

why Sunbeam thought that sales might be lower than Wall Street analysts' estimates of 285 to 295 million for the quarter?

A. Yes.

Q. What does it say on that subject?

A. It says, "The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the company's major retail customers. The company further stated"-- well, actually that's a different sentence, but that's the sentence they put in there.

Q. It doesn't mention the Early Buy program, does it?

A. No.

Q. And it was the Early Buy program that management's letter to Sunbeam identified as the primary reason for sales shortfall in the first quarter of 1998, correct?

A. Yes.

Q. Did Andersen, to your knowledge, sir, have any involvement in the preparation of the Sunbeam March 19 press release?

A. Not that I'm aware of, no.

Q. Did you personally have any involvement?

A. No.

Page 63

Q. Did you advise Sunbeam in any way what the March 19 press release should say?

A. No.

Q. Did you see it before it was issued?

A. No.

Q. Did anyone from Sunbeam or anyone from any other entity read to you or provide you any information concerning the contents of the March 19 press release before it was issued?

A. No.

Q. Mr. Bornstein, is this the kind of press release that you would have expected Sunbeam management to review with Andersen before it was released publicly?

MR. MOSCATO: I object.

MR. CLARE: I join in the objection.

THE WITNESS: In my opinion, yes.

BY MR. MARKOWSKI:

Q. And what is that based on?

A. Just previous, previous experience and kind of joint, joint coordination and understanding of the relationship between the auditor and the client.

Q. On prior occasions had Sunbeam previously shown Andersen drafts of press releases relating to financial information before they were publicly

Page 64

disclosed?

A. Yes.

Q. Do you know why that was not done in this case?

A. No, I do not.

Q. Mr. Bornstein, does the press release, the March 19 press release, CPH Exhibit Number 14, set forth the January and February sales results numbers that are contained in management's representation letter to Andersen?

A. No.

Q. Does the press release state that Sunbeam's January and February sales were one half of 1997 sales for the same time period?

A. No.

Q. Does it state in any way that Sunbeam's sales for the first two months of 1998 were below to any extent Sunbeam's sales for the first two months of 1997?

A. No.

Q. Does the press release state that Sunbeam had in fact determined that it could not accomplish Wall Street analysts' estimates of 285 million to 295 million in sales for the quarter?

A. They said it's possible.

NOT A CERTIFIED COPY

Page 65

Q. They don't say it's not going to happen, do they?
A. No.
Q. Does the press release say anything about not meeting Wall Street's expectations for earnings for the first quarter of 1998?
A. No, it does not.
Q. Does the press release say anything about Sunbeam's earnings for the first two months of 1998 being below earnings for the first two months of 1997?
A. No.
Q. Given what you knew at the time, sir, still focusing on the hotel room, the time you were at the hotel room, what was your reaction to what was read to you concerning the contents of Sunbeam's March 19 press release?
A. Thought it was very poorly written and described and thought that it was still very aggressive.
Q. When you say it was very aggressive, what in particular are you focusing on, sir?
A. Exceeding 1997 first quarter sales of 253.4 million.
Q. When you say you think that's aggressive or at the time you thought that was aggressive, what do

Page 66

you mean?
A. Based on, again, the sales where they were for the first two months at 72 million, they needed to sell 100 and whatever it is, 180 million to meet that number.
Q. To meet the minimum $253 million number?
A. Yes.
Q. And by aggressive, you mean that it would be difficult to achieve?
A. Less likely than not. How's that?
Q. You thought it was not probable that Sunbeam could achieve 253 million in sales for the first quarter of 1998?
MR. MOSCATO: Objection.
MR. CLARE: Object to the form.
THE WITNESS: I thought it was aggressive.
BY MR. MARKOWSKI:
Q. Were you skeptical?
A. Yes.
Q. And the reason why you were skeptical was because Sunbeam had so far to go? Is that basically it?
A. That, and based on my review of the facilities and the distribution capabilities of the company.

Page 67

Q. And your knowledge generally of Sunbeam's operations?
A. Yes.
Q. If you were skeptical of Sunbeam's ability to achieve $253 million in sales, Mr. Dunlap -- excuse me, Mr. Bornstein. Let me start over with that again.
A. I wish I had his money.
Q. No offense.
MR. MOSCATO: Not his personality.
BY MR. MARKOWSKI:
Q. No offense intended, sir.
A. No problem.
Q. If you were skeptical, Mr. Bornstein, of Sunbeam's ability to accomplish $253 million in net sales for the first quarter of 1998, what was your view of the company's likelihood of accomplishing 285 to $295 million in net sales for the quarter?
A. Never considered it. It was, I didn't think the 253 was likely, so I never really even, never really went to the higher number, to be honest with you.
Q. Did you think Sunbeam had any chance of achieving 285 to 295 million in sales?
MR. MOSCATO: Now I object. He just answered the question.

Page 68

THE WITNESS: Never gave it any thought.
BY MR. MARKOWSKI:
Q. I assume you thought it was less likely than accomplishing 253, right?
A. Logic would say that.
Q. Even more difficult, even more aggressive?
A. Yes.
Q. After the contents of the press release was read to you, Mr. Bornstein, what happened next?
A. We went to the printer's. Mark Brockelman and I took a taxi to the printer's.
Q. Do you remember what time of the day that was?
A. I believe it was between five and 6:00 p.m.
Q. And the printer is Global Financial Press?
A. Yes.
Q. Who else was there that evening?
A. Myself and Mr. Brockelman, John Tyree from Morgan Stanley, Mr. Lurie from Davis Polk. There were two, I think two attorneys from Scadden Arps.
Q. Do you remember their names?
A. One guy was foreign, I think his name was Adrien Dietz. I don't remember where he was from. Another guy, I think Todd Freed maybe, and I believe Davis Polk had one or two other people there.

NOT A CERTIFIED COPY

016760

Page 69

Q. Do you recall if there was more than one person for Morgan Stanley?
A. No, I don't recall.
Q. The person you recall from Morgan Stanley being there is John Tyree?
A. Yes.
Q. Was anyone there from Sunbeam?
A. No.
Q. What happened when you arrived at the printer?
A. I think we, we met in a conference room. I don't remember specifically the, what first happened. I know we were told about the success of the offering and that they, it was oversubscribed and that they increased the size to -- I think we were informed about that earlier, but that they, even the fact of the warning release, that everything was still a go.
And again, it was oversubscribed and there was no issues.
Q. Do you remember how much the offering was originally expected to raise?
A. I think the net was about 500 million, I think.
Q. And you were told on the 19th when you got to the printer that the marketing activity had been very

Page 70

successful; is that correct?
A. Yes.
Q. That's manage Morgan Stanley's effort to market the debentures on behalf of Sunbeam?
A. Yes.
Q. So you were being told that Morgan Stanley has had great success in marketing Sunbeam's debentures to potential investors, correct?
A. Yes.
Q. So successful that the debenture offering is being substantially increased in size, correct?
A. Yes.
Q. I'm sorry, did you say what the increased amount was?
A. I think it was 750 million net.
Q. So people are feeling pretty good about the success of the marketing activity, I take it, correct?
MR. CLARE: Object to the form and foundation.
THE WITNESS: Yeah, they were very excited and pleased with the marketing effort.
BY MR. MARKOWSKI:
Q. That was being expressed to you at the meeting?
A. Yes.

Page 71

Q. Do you recall who was expressing that to you?
A. It was Tyree and Bob Lurie. Bob? Robert? James? Whatever, Mr. Lurie.
Q. Let's call him Mr. Lurie today.
A. I don't remember his first name.
Q. Did the subject at some point of the March 19 press release come up?
A. Yes.
Q. How did that happen?
A. I asked a couple of questions about, you know, the reaction of the press release when marketing the bonds and doing the final allocation and asked about the press release.
And they went into the story of kind of how the press release came to be and what time of the night it was and how difficult it was between Scadden Arps and Morgan Stanley and Sunbeam to actually disclose this information and agree on the wording.
Q. Can you paint the picture for me a little bit about the setting? You're in a conference room?
A. Yeah, it's a very very large, large conference room, probably similar at the time one we're in now at the printer there, multiple locations of different size conference rooms, hallways. There was also rooms for where there is pool and TV and things

Page 72

like that, pool table.
So this would be kind of to the side, a side conversation with myself and Mr. Lurie and Mr. Tyree. And then everybody else would be sitting around the conference room table.
Q. When you asked Mr. the March 19 press release, with whom were you speaking?
A. Mr. Tyree and Mr. Lurie.
Q. And Mr. Lurie is Mr. Tyree's, Morgan Stanley's attorney?
A. Yes.
Q. And what were you told?
A. That it was a very difficult night. It lasted to the morning. And that Mr. Dunlap was incensed and irate and crazed, I guess, for lack of better terminology, and made the comment that he was going to lose $100 million because of this, I think was what I recall.
Q. So they told you the background leading up to the issuance of the press release, correct?
A. Yes.
Q. Did you ask any other questions concerning the press release?
A. No.
Q. Was there any discussion about putting the

NOT A CERTIFIED COPY

Page 73

information from the press release in any way into the offering memorandum that you were in the process of finalizing?
A. Yes.
Q. How did that subject come up?
A. I asked the question of what they intended on putting into the document to disclose where the company was with their sales forecast and what their revised estimates were going to be.
Q. So you asked a general question, what the company intended to disclose relating to its performance in the first part of 1998, correct?
A. It wasn't really what the company was going to disclose. I mean I understand -- no one from the company was present, but what the consensus of the group was.
Q. What would be disclosed in the offering memorandum?
A. Yes.
Q. So you asked a general question, what is the offering memorandum going to say about Sunbeam's performance so far in the first quarter of 1998?
A. Yes.
Q. And who did you ask that question of?
A. I think it was a general question to Tyree,

Page 74

to the Scadden Arps folks, because I believe they -- I don't even remember who the hell they were representing. They were representing Sunbeam, right?
MR. MOSCATO: Scadden, yes.
THE WITNESS: And Mr. Tyree.
BY MR. MARKOWSKI:
Q. And what was the response?
A. That they were going to put the press release in verbatim into the document.
Q. Who said those words to you?
A. I think it was Mr. Lurie.
Q. Did anyone disagree with that when Mr. Lurie made that statement?
A. I did.
Q. Did anyone else other than you disagree?
A. No, I don't recall.
Q. How far into the evening is this conversation taking place?
A. Early.
Q. What did you say to Mr. Lurie in response to Mr. Lurie's statement to you that the intention was to include the contents of the press release as the disclosure relating to Sunbeam's performance to that point in the first quarter of '98?
A. I didn't think it was -- I told him I didn't

Page 75

think it was appropriate to put in there.
Q. Who was present when you made that statement to Mr. Lurie?
A. I made the statement to whoever was in the room at the time.
Q. Was Mr. Tyree there?
A. Yes.
Q. What did you say, do you remember?
A. I said I don't think it's appropriate to put this in the, in the 2 billion-dollar bond offering, that it was an extremely forward-looking statement, it was aggressive, and that I didn't think it was a good idea.
Q. Do you remember anything else you said at that point?
A. That I was going to discuss this with Sunbeam as well as Mr. Harlow.
Q. What was the reaction from the others present, Mr. Tyree, Mr. Lurie, the Scadden lawyers?
A. At that point I don't know. I left the room.
Q. Did anyone say to you at that point that your views didn't change their thinking?
A. No.
Q. Okay. So the next thing that happened is you left the room?

Page 76

A. Yes.
Q. And you left the room for what purpose, sir?
A. To call Mr. Harlow to discuss the issue of what was going to go into the offering memorandum and to get in touch with Sunbeam, Mr. Gluck.
Q. When you said to discuss with him what was going to go into the offering memorandum, were you focusing on what was going to be said in the offering memorandum relating to Sunbeam's first quarter '98 performance?
A. Yes, the sales numbers.
Q. Did you succeed in reaching Mr. Harlow?
A. Yes.
Q. Where was he located, do you know?
A. I believe he was at his house.
Q. In Florida?
A. In Florida.
Q. And what did you tell Mr. Harlow when you got him on the phone?
A. Similarly, that they wanted to put the press release into the document and that I didn't think it was a good idea, given the aggressiveness and the forward-looking statement that was being made.
Q. Do you recall what Mr. Harlow said to you?
A. He agreed with me, and we got Mr. Gluck on

NOT A CERTIFIED COPY

29910

Page 77

the phone.
Q. How did you get Mr. Gluck on the phone?
A. I don't recall. I don't believe I -- I'm not sure if I had the capability or Phil dialed him in, but we had a three-way conversation.
Q. So Mr. Gluck, Mr. Harlow and you are all on the telephone together at that point?
A. Yes.
Q. Was anyone else on the phone?
A. No.
Q. Was anyone else present in the room with you when you had this conversation that you can recall?
A. No. I was in the pool room.
Q. And as far as you can recall now, you were by yourself?
A. Yes.
Q. Tell me what you can recall of the conversation that you had with Mr. Gluck and Mr. Harlow at that point.
A. Just went through the press release, it was aggressive and wasn't clear. And it was a very large forward-looking statement and that it wasn't appropriate in a bond offering.
And the consensus was at the time that we all agreed; however, that because I don't think Mr. Gluck

Page 78

was involved in the press release, he deferred to get in touch with Mr. Fanin, and I think her name was Janet Kelly.
Q. So Mr. Gluck -- is it your testimony that Mr. Gluck agreed with you and Mr. Harlow that it would be inappropriate to include the contents of the press release as the statement concerning where Sunbeam was at so far in the first quarter of '98?
A. Yes.
Q. Did Mr. Gluck tell you whether he had been involved in preparing a press release?
A. I recall he said he was not intimately involved. I don't know if he was at all. I think he knew about it, but he wasn't really involved.
Q. Did Mr. Gluck say anything to you about his views of the press release by itself? Taking it out of the context of whether it's going to go into the offering memorandum, did he offer any views concerning the statements made in the press release?
A. Generally I recall that he didn't like the way that it was written. I don't remember specifically on the numbers or anything like that.
Q. You don't have a recollection of what he said, but you remember he didn't like the contents of the press release?

Page 79

A. Yes.
Q. So did that conclude your conversation with Mr. Gluck at that point?
A. Yes. Mr. Gluck and Mr. Harlow continued the conversation. I got off the phone to go back to the room to relay that, that my partner as well as Mr. Gluck agreed with me, and that they were going to continue the conversation and get in touch with Mr. Fanin.
Q. Who did you make that statement to?
A. When I walked back in the room, to the, again, to whoever was in the room.
Q. Do you remember if Mr. Tyree was there?
A. Yes, he was.
Q. What happened at that point that you recall?
A. My colleague, Mr. Brockelman, asked me to leave the room with him. And he informed me that the conversation around the table was, was very derogatory towards me and that a lot of bad language was being used about me, who the fuck do I think I am and why didn't he tell me about this prior? And basically that I was, you know, cocky, and so on and so forth.
Q. You said it was bad language being used about you, derogatory language.
Did Mr. Brockelman tell you what was being

Page 80

said? Did he use any of the words?
A. Basically "Who the fuck does this guy think he is," basically is what I recall.
Q. What happened after you had this side conversation with Mr. Brockelman?
A. I remember walking back into the conference room and asking Mr. Lurie and Mr. Tyree to have a side conversation in the conference room but over to the side, and asking Mr. Tyree if he had anything to say to me.
I said, you know, "My colleague says that you have some words to say about me, and if you have something to say, say it to my face."
And he basically asked me, he says, "Are these guys fucking with me," was the exact quote. "Is Sunbeam fucking with us? Is Sunbeam fucking with me? And are these guys, you know, going to make their numbers?"
And, you know, I was obviously very upset and pissed off about the comments and the tone. And, you know, obviously we were in disagreement with the press release.
Q. I'm sorry, whose comments and tone are you referring to?
A. Mr. Tyree specifically.

NOT A CERTIFIED COPY

Page 81

And I basically said to Mr. Tyree that, you know, "I'm a conservative accountant, that, you know, I can't specifically answer if they're fucking with you. I haven't seen any of the sales projections that you've seen or whatever it is that they have given you, that I've done basic math, that they have done a million dollars in sales a day for the first 72 days and now they have to do" -- whatever it was, 12 to $15 million in sales for the next-- it was, I don't remember the date, but it was, you know, let's say 17 days, whatever the numbers were, and that I was very skeptical, that I remember saying to him that I don't think this company's turned around.

No one has ever seen an Al Dunlap company ever turned around, and if it is turned around and he has the numbers, he's going to make the numbers. And I'm going to make sure that they make the numbers and I'm going to send people to every shipping dock in the country in the world that I have to, if I have to, to make sure that they do make the numbers.

I said to him, "You better hope to God that they do, because if not, you're all going to get sued."

And I left the room.

Q. Did anyone before you left the room say anything in response to your comments to you?

Page 82

A. No, not that I recall.

Q. Were your comments well received by Mr. Tyree, as far as you could tell?

A. I left the room. He was, for lack of a better word, stunned.

Q. Mr. Bornstein, did you tell Mr. Tyree that night that you intended to have Andersen personnel monitor Sunbeam's shipping docks at the end of the first quarter of 1998?

A. Yes, I did.

Q. Did you explain to him why you intended to do that?

A. To make sure that they had borders and the product was built and shipped.

Q. Did anyone that night, Mr. Bornstein, provide you with any documents concerning Sunbeam's sales plan for the rest of the first quarter?

A. Yeah, I believe after that conversation, I went back and made another phone call. And I believe, as a result of Mr. Fanin, them calling Mr. Fanin and discussing it, that a document or one-page spreadsheet was provided to myself, Phil. I'm not sure who else got it. I know that the folks from Morgan Stanley had it.

And I believe I was faxed -- I don't recall

Page 83

specifically if I was faxed or handed this by the folks from Morgan Stanley after our conversation that I just discussed with you.

Q. Let me show you what's previously been marked as CPH Exhibit Number 16, sir. It's a one-page document, bears Bates number Morgan Stanley confidential 28858.

Is that the document that was handed to you that night?

MR. MOSCATO: Well, can I just clarify one thing? Are you asking the basic form of the document? Does your question include all of the writing on the document?

MR. MARKOWSKI: For now I'm including everything right now.

MR. MOSCATO: So the question is do you recall whether this document containing all the writing on the document was handed to you?

THE WITNESS: The handwriting, I'm not sure. I mean I've seen several renditions of the same document with different handwriting on it.

What I've seen, what I recall is the actual typed numbers and words as well as the writing on the bottom.

MR. MARKOWSKI: Let me show you what we're

Page 84

going to mark for identification as CPH Exhibit Number 121. It also is a one-page document, bears Bates number LAB43.

MR. MOSCATO: There is no question pending.

MR. MARKOWSKI: We're going to change the videotape right now.

THE VIDEOGRAPHER: We are now going off video record on tape number one. We'll be back on tape number two. The time on the monitor is 11:15 a.m.

(Discussion held off the record.)

THE VIDEOGRAPHER: We are now back on video record. It is tape number two. The time on the monitor, 11:15 a.m.

(CPH Exhibit No. 121 was marked for identification.)

BY MR. MARKOWSKI:

Q. Mr. Bornstein, I've handed you CPH Exhibit Number 121.

Have you seen this document before?

A. 121, I don't specifically remember. Again, I've seen the general, this general -- this is what I got. I believe the actual copy I got, I attached to a memorandum that I drafted sometime after the night at the printer's.

Q. The typed portion of this, does this appear

NOT A CERTIFIED COPY

Page 85

to be the information that was provided to you at the printer --
A. Yes.
Q. -- on the night of March 19th?
A. Yes.
Q. When you saw this, did it give you comfort with respect to Sunbeam's ability to accomplish Wall Street's expectations for first quarter sales?
A. No, it did not.
Q. What conclusions did you reach after reviewing this document that night?
A. That the numbers were even more aggressive than I thought.
Q. And they were more aggressive than you had thought for what reason, sir?
A. Because they had close to $100 million of sales that haven't been ordered yet.
Q. Built into their sales plan for the balance of the quarter?
A. Yes.
Q. So Sunbeam was counting in its plan to get to at least $253 million, by your count, approximately $100 million in product sales that hadn't even been ordered yet at that point, correct?
MR. MOSCATO: Well, you know, I object to the

Page 86

rounding, but you can answer.
THE WITNESS: I'm okay with the rounding, sorry. 86 rounds up to 100 million to me.
Yeah, it was just numbers on the page to me.
BY MR. MARKOWSKI:
Q. So this document didn't cause you looking at it to conclude that Sunbeam's statements in the press release about its expectations for the first quarter were reasonable, correct?
A. No.
Q. What was your reaction, sir, to the manner in which Mr. Tyree had treated you that night?
A. Can you repeat the question?
Q. What was your reaction, sir, to the manner in which Mr. Tyree had treated you on the night of March 19th when these issues came up?
A. I was, felt like I was being treated disrespectfully, not being listened to.
Q. Did you think that Mr. Tyree was trying to steamroll you in any way?
MR. CLARE: Object to the form and object to foundation, calls for speculation, what Mr. Tyree was trying to do.
BY MR. MARKOWSKI:
Q. By that I mean, sir, do you think he was

Page 87

trying to get you to back off of the statements that you had made?
MR. CLARE: Same objection.
THE WITNESS: I believe he was, yes.
BY MR. MARKOWSKI:
Q. Did you?
A. No, I did not.
Q. What was the final decision that night, sir, concerning what would be put in the offering memorandum relating to Sunbeam's performance to that point in the first quarter of 1998?
MR. MOSCATO: Number one, I object. I would like some clarification when you answer as to whose decision it was, who made the decision.
BY MR. MARKOWSKI:
Q. Let me ask a little different, maybe more pointed question, sir.
What was ultimately put in the offering memorandum concerning Sunbeam's performance to that date for the first quarter of 1998?
A. I believe it was the press release, the wording from the press release, but I'd have to look at the document.
Q. I'm going to show you, Mr. Bornstein, what previously has been marked as CPH Exhibit Number 10.

Page 88

It's a document entitled Offering Memorandum, 214 billion-dollar Sunbeam zero coupon convertible senior subordinated debentures, due 2018, dated March 19, 1998, bears Bates number CP33169 through 33240.
A. I just want to check the press release.
I believe the first paragraph of the press release was put in verbatim into the document.
Q. And where do you see that, sir?
A. On Recent Announcements, page eight of the offering memorandum, Exhibit CPH 10.
Q. So the contents of the press release ultimately were placed into the offering memorandum, correct?
A. Right. And I recall that the last paragraph on page eight was something that I insisted on being put in there.
Q. The last paragraph refers to what, sir?
A. It's a reference to the forward-looking statement and risk factor sections, which basically it reads, "Actual results could differ materially from the statements in the press release due to various factors, including those set forth in risk factors, management discussion analysis and financial condition end results of operation and business. See forward-looking

NOT A CERTIFIED COPY

CP 16765

Page 89

information."
Q. Was it your decision, sir, to repeat the contents of the March 19 press release in the offering memorandum as in the manner we see here on page eight?
A. No, it was Sunbeam, the company's decision to do that.
Q. Did you recommend, by the end of the evening had you changed your mind with respect to that being appropriate?
A. No.
Q. Did at any point in the evening to your knowledge Arthur Andersen advise the company that that was the appropriate form of disclosure concerning Sunbeam's first quarter results?
A. Not that I recall.
Q. Do you know, how was that decision communicated to you, the decision to put the contents of the press release in the offering memorandum over the objections that you had raised?
A. I don't remember specifically. I think I got a phone call late in the evening, two, three o'clock in the morning from, either directly from Janet Kelly or from Phil Harlow saying that it was the company's decision to put the same wording in.
Q. Were you personally at the end of the evening

Page 90

satisfied with that conclusion?
A. No, I was not; however, I have the caveat that again, I went along, I went along with the decision by the company. It was the company's decision, the company's document, and that I would strongly advise not putting it in, and also putting the, if it was going to be put in, that it would be cross referenced to the risk factors and have a statement that, you know, that the actual results could differ materially from the wording here.
Q. So at the beginning of the evening on March 19 it was your personal view that it was a bad idea to repeat the contents of the press release in the offering memorandum, and it remained your view that that was a bad idea right through the finalization of the document; is that right?
MR. CLARE: Object to the form.
THE WITNESS: Yes.
BY MR. MARKOWSKI:
Q. Do you know did if Mr. Harlow's views changed on that subject?
MR. CLARE: Objection, calls for speculation.
MR. MOSCATO: Don't speculate. Just answer the question if you can based on conversations you had with Mr. Harlow that evening. If you can't

Page 91

answer the question based on those conversations, don't attempt to read his mind.
THE WITNESS: Again, I alluded to a memorandum that I wrote about the night, and I believe that would refresh my memory, but I do believe Mr. Harlow was in agreement with myself.
BY MR. MARKOWSKI:
Q. Mr. Bornstein, I'm not going to ask you to read the entire offering memorandum while we sit here. It will speak for itself on this issue, but do you know from your recollection of having worked on it whether that document contains the specific information that's set forth in the management March 16 representation letter to Arthur Andersen and Andersen's March 19 comfort letter relating to Sunbeam's actual sales results for the first two months of 1998?
MR. CLARE: Object to the form.
THE WITNESS: I don't believe that it does, no.
BY MR. MARKOWSKI:
Q. Do you know if it contains a statement that Sunbeam's sales for the first two months of 1998 are below Sunbeam's sales for the first two months of 1997?
A. I don't believe that it does, no.
Q. Do you know if it states that the reason why

Page 92

Sunbeam's sales for the first quarter of 1998 may be lower than Sunbeam's sales for the first quarter of 1997 at the end of that quarter, that the primary reason for that was Sunbeam's acceleration of grill sales into the fourth quarter of 1997?
A. Specifically, no, but someone who actually reads the statement might come to that conclusion.
Q. But that statement is not made; is that correct, sir?
A. This statement is about the Early Buy program, but one would have to make a thesis that that could in fact be the reason.
Q. But the specific statement in the management representation letter that that is the primary reason for the shortfall is not made, correct?
A. I don't believe so, no.
Q. Let me show you what's been marked as CPH Exhibit Number 122 sir, a two-page document, bears Bates AA105868 -- excuse me.
Let me show you a document that we've put together. It's got two different Bates numbers that aren't consecutive, but I believe the document is, was originally part of a single two-page memo. It bears Bates number AA105868 and AA105248, and ask you if you've seen this document before, sir.

NOT A CERTIFIED COPY

(CPH Exhibit No. 122 was marked for identification.)

THE WITNESS: No, I don't recall ever seeing this document.

BY MR. MARKOWSKI:

Q. I take it you don't recognize the handwriting?

A. No.

Q. It's not yours?

A. No, it's not.

Q. Mr. Bornstein, let me show you what we previously marked as CPH Exhibit Number 114.

A. I'm sorry, I just want to -- just figuring out what this is, but that's okay.

Q. There is nothing you want to add to your prior answer?

A. No, it appears this was probably something that was used to draft the paragraph that went into this document.

Q. That's why I asked you about it, if you remembered seeing it before.

A. I don't remember seeing itself, no.

Q. Let me show you what we previously marked as CPH Exhibit Number 114, sir. It's a two-page document, the first page of which, the Bates numbers on the

document are AAR10538 through AAR15040.

A. Okay.

Q. The first page of the document is, bears Arthur Andersen letterhead and is dated March 31, 1998, and a memorandum from Lawrence A. Bornstein to the files, West Palm Beach.

I ask you to look at this document, sir, and tell me whether you can identify it for me.

Can you identify it for me, sir?

A. It's a memorandum that I drafted, looks like several days after the March 19th night at the printer to document, document the discussions that we've been speaking about.

Q. Did you personally draft this document, sir?

A. Yes, I did.

Q. And in drafting it, did you attempt to be accurate at the time?

A. Yes.

Q. The third page of the document, sir, can you tell me what that is?

A. That is the fax that I received from Sunbeam that we were talking about before that showed the estimate of sales, the date and the potential orders to meet the $253 million expectation that they put in the press release.

Q. Can I refer you back, sir, to Exhibit 121?

A. Yes.

Q. The two documents are the same, are they not, sir?

A. Yeah, one is a better copy than the other.

Q. All right.

MR. MOSCATO: Counsel, do you have a copy of this that you could actually read all of the handwritten notes?

MR. MARKOWSKI: I think that's the best we've been able to do.

BY MR. MARKOWSKI:

Q. For what purpose did you prepare your March 31 memorandum, Mr. Bornstein?

A. To document the material events that occurred the night at the printer.

Q. Did you want to have a record of what you had said to Mr. Tyree?

A. Yes, I did.

Q. And why was that?

A. I thought it was a prudent thing to do, given the differences of opinion that transpired the night at the printer.

Q. Mr. Bornstein, I want to move on to something different for a moment.

A. Okay.

Q. Do you recall being involved in a conference call earlier in 1998 with Morgan Stanley personnel relating to Sunbeam's accounting practices?

A. Yes.

Q. Do you recall that call happening on or about March 12?

A. I don't remember specifically when it was, but it's possible that was the time frame.

Q. Was it approximately a week before the events at the printer?

A. It was probably before the original, the original 144 memorandum was released, before they went out to, on the road show or priced the bonds.

MR. MOSCATO: Larry, what do you mean by the original 144 memorandum?

THE WITNESS: There was a, I think there was one that -- there is a different one than that one that I think talks about the $500 million offering size.

Typically you have an original document that's kind of based on the best estimate at the time, and they use that to market the bonds.

Then they go out and do the road show and market the bonds, and then they price and they

NOT A CERTIFIED COPY

016767

Page 97

update the document. So I believe the due diligence call that you're talking about was done prior to the first document.

BY MR. MARKOWSKI:

Q. Before the road show started?

A. Yes.

MR. MOSCATO: Sorry, counsel. I just wanted to --

MR. MARKOWSKI: That's fine, appreciate it.

BY MR. MARKOWSKI:

Q. Let me show you what we previously marked, sir, as CPH Exhibit 31. It's a one-page memorandum on Morgan Stanley letterhead from John Tyree to Sunbeam Financing Team; subject, accounting due diligence call, dated March 7, 1998. Bears Bates number SASMF10709.

Have you seen this document before, sir?

A. I don't remember specifically, no.

Q. Does it appear to relate to the accounting due diligence call you participated in?

A. Yes.

Q. Do you see that there is an entry -- there is a schedule on this document, correct?

A. Yes.

Q. And there is an entry for a time for a conference call with Arthur Andersen, correct?

Page 98

A. Correct.

Q. And that time is 12:00 p.m. on March 12?

A. Yes.

Q. And the name identified there is yours, correct?

A. Correct.

Q. Do you recall, do you see that the time for the next call with KPMG is scheduled for 12:30?

A. Yes.

Q. Do you recall there was approximately 30 minutes allotted to this accounting due diligence call with Morgan Stanley?

A. Yes.

Q. Were you in fact the spokesperson for Arthur Andersen during that telephone call?

A. No, I was not.

Q. Who was?

A. Phil Harlow.

Q. What -- did you do anything, sir -- were you involved in the call? Did you personally participate?

A. Yes, I was.

Q. What did you do to prepare for the call, if anything?

A. I believe we were provided a list of questions that were going to be asked, and that

Page 99

Mr. Harlow and myself went through the list and made notations or discussed what was going to be said on the call.

Q. And then Mr. Harlow ultimately was the spokesperson when the call took place?

A. Yeah, he did 98 percent of the speaking, and I filled in when necessary.

Q. Were you two together when the call took place?

A. No.

Q. Where was Mr. Harlow?

A. He was in Florida in his office.

Q. And where were you?

A. I was at Global Financial Press working on the document.

Q. Just an earlier occasion when you were at the printer working on the offering memorandum?

A. Yeah, there was probably several days that we were working at the printer, that being one of them.

MR. MARKOWSKI: Let me show you, Mr. Bornstein, what we'll mark as CPH Exhibit Number 123. It's a four-page document, bears Bates number AA55761 through 55764, first page of which is on Arthur Andersen letterhead and is a memorandum from Lawrence A. Bornstein, West Palm

Page 100

Beach, to the files; subject, due diligence call with Morgan Stanley.

(CPH Exhibit No. 123 was marked for identification.)

BY MR. MARKOWSKI:

Q. Can you identify this document for me, sir?

A. Yeah, let me take a minute to read it.

Q. Sure.

A. Okay.

Q. Can you identify it for me, sir.

A. It was a memorandum that I put together to document the due diligence call from, I guess it's March 12th. Looks like -- I have noted here the request is March 7th, so these dates coincide with the previous exhibit.

Q. Right. The March 7th -- your memorandum indicates, CPH Exhibit Number 123 indicates that Andersen was requested on March 7 to participate in a due diligence call with Morgan Stanley, correct?

A. Right.

Q. And we were just looking at CPH Exhibit Number 31 that set up a date for that call to occur on March 12, correct?

A. Correct.

NOT A CERTIFIED COPY

Page 101

Q. And the date of that memo is March 7?
A. Yes. And then in addition is the list of questions that I mentioned earlier that we were provided with my notations of what was going to be said on the call.
You can see a number of the items are crossed out, which means that they were discussed.
Q. So the document has two, there is two pieces to the document, sir?
A. Yes.
Q. First two pages are a memo that you prepared in July of '98?
A. Yes.
Q. And the second two pages are the list of questions that Morgan Stanley provided to Andersen in advance of the call?
A. Yes.
Q. And the notations there relating to what would be said?
A. Yeah, and again, I believe that everything on here was, was discussed.
Q. And you and Mr. Harlow had agreed that in response to these questions, this is the information that Morgan Stanley would be provided, correct?
A. For the most part, yes.

Page 102

Q. Now there is a gap between the time this call took place, sir, on March 12 and your preparation of this memo on July 2. Correct?
A. Yes.
Q. Can you explain that?
A. I believe it was just going back and making sure that all the documentation was in the file, and at the time I thought it was a good idea to note, to memorialize what happened at the meeting.
Q. And you had had your notes from back at that time, correct?
A. Yes.
Q. And you prepared the memo later, but you dated it later, correct?
A. Yes.
Q. And July 2 is the date on which this memorandum was in fact prepared?
A. Yes.
Q. Now the participants in the call, sir, in your memo are identified as whom?
A. Mr. Harlow and myself, Bob Gluck from Sunbeam, John Tyree from Morgan Stanley, Bob Lurie from Davis Polk, Andy Savart from Morgan Stanley, George Scott, First Union, and then I have a name, I don't know the name, representative from Bank of America.

Page 103

Q. Someone from Bank of America was on the call, but you don't have that name, correct?
A. Yes.
Q. That's the same John Tyree that you had, you met with and spoke with on March 19 at Global Financial, correct?
A. Yes.
Q. Did anyone, sir, from Morgan Stanley suggest to you either during this call or at some other point that it would be inappropriate for Mr. Gluck, as a representative of Sunbeam management, to listen in on Morgan Stanley's due diligence call with Sunbeam's outside auditors?
MR. CLARE: Object to the form.
THE WITNESS: No, I don't recall that.
BY MR. MARKOWSKI:
Q. That issue wasn't raised that you can recall?
A. No. I believe we were required to have someone from the company present.
Q. Morgan Stanley didn't object, to your knowledge?
A. Not that I recall.
Q. Do you recall, sir, that Mr. Harlow was asked, among other things, to comment on how aggressive Sunbeam was in its accounting policies?

Page 104

A. Yes.
Q. You say that's item eight on the checklist, agenda?
A. Yes.
Q. So you and Mr. Harlow knew that question would be asked in advance of the telephone call, correct?
A. Yes.
Q. Do you recall what Mr. Harlow said in response to that question during the conference call itself?
A. I believe he said that the accounting, some of the accounting policies were aggressive.
Q. Do you recall that he identified any particular examples of that?
A. Bill and hold was one. And I have a note here of Encore, and I have 100 percent right of return, which I believe was one of the issues from the audit. There was an adjustment recorded, but I'm not 100 percent certain.
Then it keeps going on, a couple of other ones. EPI was another one where we had an adjustment. It was a transaction that occurred at the end of the year and was aggressive.
Q. The end of 1997?

NOT A CERTIFIED COPY

0167169

Page 105

A. '97.
Q. Can you read the fourth item on that, on your handwritten note, sir?
A. Yeah, I think it's -- no, I would be speculating. The first three I can read. It says aggressive/bill and hold, Encore 100 percent right of return, EPI printer's.
The fourth one I can't -- it's my handwriting. If you want to give me a few minutes, I can probably figure it out.
Q. I'll come back. Let me focus on the first three for a moment.
A. Right.
Q. The first three entries, aggressive/bill and hold, Encore 100 percent right of return, and EPI printers were all things said by Mr. Harlow to Morgan Stanley during this March 12 conference call as examples of Andersen's view that Sunbeam at least on occasion was aggressive in its accounting positions?
MR. CLARE: Object to the form.
THE WITNESS: Yes, I believe so.
BY MR. MARKOWSKI:
Q. All of those items related to events that occurred in 1997; is that correct?
A. Yes.

Page 106

Q. All of them relate to revenue recognition; is that correct?
A. Yes.
Q. Do you recall that on Encore and EPI -- well, let me pause for a moment on bill and hold.
Do you recall that Andersen had raised its reservations with Sunbeam relating to Sunbeam's extensive use of bill and hold accounting for sales in 1997?
MR. CLARE: Object to the form.
MR. MOSCATO: I object to that.
THE WITNESS: Can you repeat the question?
BY MR. MARKOWSKI:
Q. Do you recall that Andersen had raised with Sunbeam its reservations about Sunbeam's business practice of using extensively bill and hold accounting and sales transactions for 1997 sales?
MR. MOSCATO: I object.
Larry, you don't have to adopt his language in answering the question. Answer it in your own words.
THE WITNESS: I don't consider it reservation, but understanding of the accounting policy in making sure that it met the rules and that the appropriate testing was done.

Page 107

BY MR. MARKOWSKI:
Q. I'm putting aside the accounting.
Do you recall that Mr. Harlow or yourself told Sunbeam that it was a poor business practice to engage extensively in bill and hold sales?
MR. MOSCATO: I object again.
You can answer in your own words.
MR. CLARE: I object to the form.
THE WITNESS: I believe at one point that it was said, but probably later than this.
BY MR. MARKOWSKI:
Q. Okay. Do you recall -- with respect to Encore and EPI, do you recall that Andersen took the position that Sunbeam should reverse the accounting treatment on these two transactions and not recognize the sales revenue and profits in 1997?
A. I believe that was the case, yes.
Q. And do you recall that Sunbeam refused to do that?
A. Yes.
Q. In connection with finalizing the 1997 audit?
A. Yes.
Q. And you advised or Mr. Harlow advised Morgan Stanley of those three situations during the March 12 conference call, correct?

Page 108

MR. CLARE: I object to the form.
THE WITNESS: Yes.
BY MR. MARKOWSKI:
Q. Let me go to the fourth note that you've got there that you're having some trouble deciphering.
A. Yes.
Q. You said you could speculate, and I guess I invite that at this point, because maybe that will help us figure out what that might be a reference to.
Do you have some thought with respect to what this entry is either from your recollection or what you can read here?
A. Looks like something, discount accurate, either accuracy or accounting reports. I'm not -- I don't know.
Q. Okay.
A. Sorry.
Q. During the March 12 conference call, sir, did Morgan Stanley request an opportunity to review Andersen's 1997 audit work papers?
A. I don't remember that specifically, no.
Q. Do you remember at any point Morgan Stanley requesting an opportunity to review Andersen's 1997 audit work papers?
A. No.

NOT A CERTIFIED COPY

016770

Page 109

Q. Do you remember at any point Andersen asking to review -- excuse me, do you remember at any point Morgan Stanley asking to review Andersen's list of proposed audit adjustments relating to the 1997 financial statements of Sunbeam?
A. No.
Q. Is it your recollection that Morgan Stanley in fact did not request an opportunity to review your work papers?
MR. CLARE: Object to the form.
THE WITNESS: I don't believe so.
BY MR. MARKOWSKI:
Q. When you say you don't believe so, you don't believe that request was ever made?
A. No, I don't believe it was ever made.
MR. MOSCATO: Counsel, when you come to a logical breaking point, can we take a two- or three-minute break?
MR. MARKOWSKI: I can be finishing up I think in the next ten minutes or so.
MR. MOSCATO: That's fine.
MR. MARKOWSKI: If you'd like to break sooner, we can do that and finish up.
MR. MOSCATO: I'm indifferent.

Page 110

BY MR. MARKOWSKI:
Q. Mr. Bornstein, do you recall that Arthur Andersen provided a second comfort letter to Morgan Stanley in connection with the debenture offering?
A. No. Could be a bring-down letter, but I'm not sure. Have to look at it.
MR. MARKOWSKI: Let me show you, sir, what we'll mark as CPH Exhibit Number 124. It's a three-page document bearing Bates number AA30995 through 997. And it's a letter on Sunbeam stationery dated March 23, 1998, to Arthur Andersen.
(CPH Exhibit No. 124 was marked for identification.)
BY MR. MARKOWSKI:
Q. Can you identify this document for me, sir?
A. This appears to be an updated representation letter from Sunbeam to Arthur Andersen in connection with the comfort letter.
Q. And this letter is signed by Mr. Dunlap, Mr. Kersh, Mr. Fanin and Mr. Gluck; is that correct?
A. Yes.
Q. The same four people that signed the March 16 representation letter, correct?
A. Yes.

Page 111

Q. This letter contains the same information relating to Sunbeam sales for the first two months of 1998, correct? Net sales figures? If you look at paragraph eight.
A. Yes. This is updated through, has the same sales number, but it actually has net income or loss through March 1st.
Q. Right. In addition, it also provides the net income for Sunbeam's performance in January and February 1998, correct?
A. Correct.
Q. The March 16 letter only had net income information for January; is that right?
A. Yes.
MR. MOSCATO: March 19 letter.
MR. MARKOWSKI: March 19 letter, I'm sorry.
MR. MOSCATO: I'm sorry, it was the March --
BY MR. MARKOWSKI:
Q. The March 16 representation letter and the March 19 comfort letter both only had net income information through January, correct?
A. Yes.
Q. And this letter provides net income information for both January and February of 1998, correct?

Page 112

A. Yes.
Q. And it compares Sunbeam's net income for January and February of 1998 to Sunbeam's net income for the first two months of 1997, correct?
A. Yes.
Q. And it does that in paragraph eight?
A. Yes.
Q. And what does that comparison show us?
A. Net income for the two months ended March 2nd, 1997, of 9,765,000 and net loss of 41,190,000 for the two months ended in March of '98.
Q. So in the first two months of 1997 --
A. I mean ended February, excuse me, first two months of '98.
Q. So for the first two months of 1997, Sunbeam, according to this document, had a profit of $9,765,000, correct?
A. Correct.
Q. And in the first two months of 1998, this document shows that Sunbeam had a net loss of $41,190,000, correct?
A. Yes.
Q. Swaying of more than $50 million; is that correct?
A. Yes.

NOT A CERTIFIED COPY

Page 113

Q. In a negative direction, correct?
A. Yes.
Q. Mr. Bornstein, I'm going to show you what was -- I'm sorry, it was already marked.
Mr. Bornstein, let me show you what has been previously marked as CPH Exhibit Number 112. It's a four-page document bearing Bates number CPH 129613 through CPH 129616.
A. Okay.
Q. We'll mark this and I'll ask you if you can identify it for me.
MR. CLARE: I thought this was previously marked.
MR. MARKOWSKI: I'm sorry, I got myself confused again.
BY MR. MARKOWSKI:
Q. Sir, let me show you what we previously marked as Exhibit Number 112. It bears Bates number 129613 through 129616, and ask you if you can identify that document for me.
A. This appears to be the bring-down letter to Morgan Stanley related to the bond offering.
Q. And this letter is dated March 25, 1998; is that correct?
A. Yes.

Page 114

Q. And in paragraph E of the letter --
A. Yes.
Q. -- at the top of the second page of the letter itself?
A. Yes.
Q. The net sales information and net income information for the first two months of 1998 is provided, correct?
A. Correct.
Q. And that's the same information that Sunbeam provided to Morgan Stanley that we just reviewed in the March 23 representation letter, correct?
MR. CLARE: Object to the form. I think you misspoke, Bob.
THE WITNESS: Yeah, you provided to Arthur Andersen, not Morgan Stanley.
BY MR. MARKOWSKI:
Q. I'm sorry. Let me ask a new question.
The net income and net sales information in paragraph E of Exhibit CPH Exhibit 112 for the first two months of 1998 is the same as the net sales and net income information contained in the Sunbeam representation letter to Arthur Andersen dated March 23, 1998, correct?
A. Correct.

Page 115

Q. And it shows a $50 million decline in profits for that time period from the first two months of 1997, correct?
A. Yes.
Q. And it shows the net sales for the first two months of 1998 are about 50 percent of Sunbeam's net sales for the first two months of 1997, correct?
A. Yes.
Q. Do you know who signed this letter on behalf of Arthur Andersen?
A. Doesn't look like my handwriting. It might have been Phil Harlow's.
Q. Do you know what the purpose of this letter dated March 25 is, Mr. Bornstein?
A. I don't specifically know, to be honest with you. It's typical that you issue a bring-down letter. I don't recall specifically if this is when the money is released to Sunbeam or not.
Q. Do you recall that the debenture offering closed on March 25, 1998?
A. It might have. I don't recall.
Q. Do you recall that Sunbeam requested that Arthur Andersen give Morgan Stanley a bring-down due diligence letter prior to the actual closing of the bond offering?

Page 116

A. I don't recall who requested it, if it was Sunbeam or Morgan Stanley.
Q. But you do recall that a request was made either by Morgan Stanley or by Sunbeam that Morgan Stanley provide an updated comfort letter at the time of the closing of the bond offering?
A. I believe that's the case, yes.
Q. Do you know whether this letter was delivered to Morgan Stanley prior to the close of the bond offering?
A. No.
Q. Do you know who would have been responsible for delivering this letter to Morgan Stanley?
A. It could have been myself or Dennis Pastrana.
Q. And as you sit here, you can't recall precisely when this letter was delivered to Morgan Stanley?
A. No.
Q. Do you know that it was?
A. Specifically, no.
Q. Would it have been signed by Arthur Andersen if it wasn't finalized for delivery to Morgan Stanley?
MR. CLARE: Objection to the form, calls for speculation.
THE WITNESS: I don't know.

NOT A CERTIFIED COPY

016772

Page 117

MR. MARKOWSKI: Why don't we take our break right now and I'll see if I'm finished.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 12:03 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 12:18 p.m.
MR. MARKOWSKI: Mr. Bornstein, that concludes my examination for this morning.
THE WITNESS: Okay, thank you.
CROSS (LAWRENCE A. BORNSTEIN)
BY MR. CLARE:
Q. Good afternoon, Mr. Bornstein. Again, my name is Tom Clare. I'm with the law firm of Kirkland & Ellis in Washington, D.C., and I represent Morgan Stanley in this matter, and I'm going to ask you some questions this afternoon.
If you don't understand any of my questions or want me to rephrase them, I'll be happen to do it. I know you've been deposed numerous times before and know the rules.
A. Okay.
Q. But make sure that you understand my question before you answer it and I'll be happy to try to rephrase and make things more clear.

Page 118

Mr. Bornstein, were you contacted earlier this year by attorneys representing Coleman (Parent) Holdings about this lawsuit?
A. Yes.
Q. And can you place in time for me when you were contacted?
A. It was probably two or three months ago.
Q. And do you remember the name of the person that called you?
A. Not specifically, no.
Q. Was it somebody from Mr. Markowski's firm, Jenner & Block?
A. Yes.
Q. And you said you think this was a few months ago?
A. Yes.
Q. Are you aware that Andersen had entered into a settlement agreement with Coleman (Parent) Holdings relating to these transactions?
Were you aware of that fact?
A. No, I was not.
Q. So you don't have an understanding one way or the other of the timing of when that settlement agreement would have taken place?
A. No.

Page 119

Q. Was this a telephone conversation or an in-person meeting?
A. Telephone.
Q. Was it a single telephone conversation or multiple?
A. I believe it was two phone conversations.
Q. Same person on both calls?
A. I believe so.
Q. And you don't recall the name of the person on either call?
A. No.
Q. During these telephone conversations, both conversations were with lawyers from Mr. Markowski's firm, Jenner & Block?
A. Yes.
Q. Were there more than one lawyer on the phone?
A. I believe there were.
Q. And tell me what you remember about those telephone calls, what was said, what they said to you and what you said back.
A. The first one was that they were going to be sending me some documentation and wanted me to take a look at it if I didn't mind, and then give them a call back once I had a chance to look at it, because they wanted to ask me a few questions.

Page 120

They asked me if I was represented by counsel at the time. At the time I told them no, I was not, and that I would be willing to give them some time.
Q. Did they tell you that Coleman(Parent) Holdings had filed a lawsuit against Morgan Stanley?
A. I believe they did, yes.
Q. And did they ask whether you would be willing to be a witness against Morgan Stanley in that lawsuit?
A. No.
Q. So just to make sure I understand correctly, the first telephone call was fairly short, they asked you if you would be willing to spend some time looking at some documents?
A. Yes. I believe they were going to tell me they -- they were going it send me the, I think there were two lawsuits, one I think Coleman suing Morgan Stanley, and another one where I think it was Morgan Stanley suing Coleman maybe.
I'm not sure. It was two separate lawsuits.
Q. Was there anything else discussed on that first telephone call?
A. No.
Q. And did they in fact send you some documents to look at?
A. Yes.

NOT A CERTIFIED COPY

016773

Page 121

Q. Do you recall what the documents were?
A. I believe it was the two lawsuits that we, I mentioned earlier.
Q. So the complaint that was filed by Coleman against Morgan Stanley was one of the documents?
A. Yes.
Q. And then a complaint that was filed by Morgan Stanley against Coleman?
A. I believe so.
Q. Were those the only two documents that you were sent?
A. I believe so.
Q. Did you receive any of the documents that you were questioned about this morning that were sent to you?
A. No.
Q. During the second telephone call, did they ask you questions about the lawsuit or the documents that they had sent you?
A. No, not specifically.
Q. Tell me what you remember about the second telephone call.
A. They asked me some general questions on the timing of the comfort letters, when those were released and delivered to Morgan Stanley.

Page 122

And then asked me some questions about my conversation with Mr. Tyree.
Q. Is that all you remember?
A. Yes.
Q. Did you read the documents that they sent you?
A. I believe I did, yes.
Q. Did you notice that your name was included in the complaint that Coleman had filed against Morgan Stanley?
A. Yes.
Q. Did you have any discussion with the lawyers about that, the fact that your name had been included?
A. No, not specifically, no.
Q. Did anybody from Coleman, and I'm specifically referring to their lawyers, ask you if you would mind if your name and a description of your testimony was included in the complaint that they were going to file against Morgan Stanley before it was filed?
A. No.
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: No, it wasn't.

Page 123

BY MR. CLARE:
Q. So your name was put in the complaint without your permission, without your knowledge?
A. Yes.
Q. Did, during either of these telephone calls, did anyone representing Coleman ask whether you agreed with the statements that were made in the complaint that was filed against Morgan Stanley?
A. No.
Q. Did they ask whether you had a belief that Morgan Stanley had conspired with Sunbeam to commit fraud?
A. No.
Q. Do you believe that Morgan Stanley conspired with Sunbeam to commit fraud as you sit here today?
A. I have no knowledge of that, no.
Q. So the answer is no, you don't believe that Morgan Stanley conspired with Sunbeam to commit fraud?
MR. MARKOWSKI: Object to the form of the question, misstates his testimony.
THE WITNESS: You're asking me if I have an opinion today in hindsight?
BY MR. CLARE:
Q. I'm asking based on everything that you know about the interactions that you had with Morgan Stanley

Page 124

and the interactions that you had with Sunbeam, whether you think that Morgan Stanley conspired with Sunbeam to commit fraud.
A. I have no idea. I have my opinions of the work that Morgan Stanley did, but I have no idea if they conspired to commit fraud.
MR. MOSCATO: Just answer the specific question.
THE WITNESS: No, I do not.
BY MR. CLARE:
Q. And no, you don't have an opinion, or no, you do not believe that Morgan Stanley conspired with Sunbeam to commit fraud?
MR. MOSCATO: I think he said he didn't have an opinion.
THE WITNESS: I don't have an opinion.
BY MR. CLARE:
Q. Okay. Do you have any evidence or information in your mind that Morgan Stanley conspired with Sunbeam to commit fraud?
MR. MOSCATO: I'm sorry.
MR. MARKOWSKI: Objection to the form of the question.
MR. MOSCATO: I don't understand.

NOT A CERTIFIED COPY

016714

Page 125

BY MR. CLARE:
Q. I asked if you had a belief or an opinion, and you stated that you did not have an opinion or belief.
MR. MOSCATO: And you're not happy with that answer?
MR. CLARE: No, I'm fine with that answer, but regardless of whether or not you have an opinion or a belief, is there any information in your mind, is there any evidence in your mind that there was such a conspiracy between Morgan Stanley and Sunbeam, or similarly, do you have no view on that?
MR. MARKOWSKI: Object to the form of the question. Are you asking him whether any of the facts he knows are consistent with that? Is that what you're trying to ask?
MR. CLARE: No, I'm asking -- he says he has no opinion one way on the other on that.
THE WITNESS: I have no idea if they committed fraud. I believe that they were reckless and --
MR. MOSCATO: Larry, answer the question, please.
THE WITNESS: I have no idea if they

Page 126

committed fraud or not. I can't answer that.
MR. MARKOWSKI: That's for the jury to decide. I don't know why we're asking Mr. Bornstein to rule on that.
MR. MOSCATO: Larry, you have to be very disciplined on that. It's getting late in the morning, but answer the specific question that you're being asked, please, all right? Thank you.
BY MR. CLARE:
Q. Putting aside the question of fraud, let me ask a more simple question.
Do you have any evidence that Morgan Stanley was, intended to deceive Coleman?
MR. MARKOWSKI: Object to the form of the question. He's testified about the evidence that he has, and someone else will make a judgment about its legal significance.
MR. CLARE: That's fine.
THE WITNESS: Will you repeat the question?
BY MR. CLARE:
Q. Do you have any evidence that Morgan Stanley conspired with Sunbeam to deceive anybody?
A. No.
Q. Did the lawyers representing Coleman ask if you'd be willing to sign any documents, declaration or

Page 127

an affidavit of any kind?
A. No.
Q. Is there anything else about those telephone calls that you remember?
A. I believe I made a comment about the lawsuit that was being filed by Morgan Stanley against Coleman with respect to representations about synergies. I think I made a comment about that.
Q. What was your comment about that?
A. That I thought it was a silly thing to make an accusation about, because I never, I never had seen a seller make representation of cost savings, so I just thought that was interesting and not on point, I guess.
Q. Do you have any personal knowledge based on your experience in 1997 or 1998 what representations were made by Coleman to Sunbeam about synergies?
A. No.
Q. So you don't have any firsthand evidence or comment on that?
A. No.
Q. It was a comment on the legal theory?
A. Yes.
Q. I want to talk about March 1998, and specifically the very beginning of March 1998, the first week. There was some testimony about that this

Page 128

morning.
You were in New York working on the offering memorandum for the debenture offering?
A. I believe I was, yes.
Q. Mr. Pastrana was in Florida doing some post audit work?
A. Yes.
Q. Including working on the comfort letters?
A. Yes.
Q. And was Mr. Pastrana also working with your company to close the books for Sunbeam for January and February?
A. No.
Q. As part of Mr. Pastrana's work for the bond offering, was one of the things he was tasked to look at were sales figures for January and February 1998?
A. Yes.
Q. And Mr. Pastrana reported to you at some point that the January and February 1998 sales figures were lower than they were in the previous year, correct?
A. Yes.
Q. And that was the first time you had heard that information from anyone at Sunbeam?
A. Yes.

NOT A CERTIFIED COPY

Page 129

Q. Did you know from any source at the end of January whether the January '98 sales were lower than the January '97 sales?
A. No, I don't remember specifically.
Q. Did in that time period Sunbeam close its books every month so that January sales would have been available separate from February?
A. I believe they were, yes.
Q. So January 1998 figures would have been available at some point in February?
A. Yes.
Q. And the February sales would have been available at some point in early March?
A. Yes.
Q. And I think you said you believed this was in the first week of March 1998 that you heard this about January and February 1998?
A. Might have been the second one week. I'm not 100 percent sure.
Q. If we had a calendar from March 1998, would that help you in placing the date?
A. Probably not.
Q. You discussed with Mr. Pastrana that Sunbeam's lower year-over-year sales performance should be disclosed to Morgan Stanley, correct?

Page 130

A. Say that again.
Q. Did you discuss with Mr. Pastrana whether Sunbeam's lower year-over-year sales performance needed to be disclosed to Morgan Stanley?
A. I don't recall specifically talking to Mr. Pastrana about that.
Q. But you do remember talking to Mr. Harlow about it?
A. I remember talking to Mr. Harlow that the company should be disclosing it to Morgan Stanley, yes.
Q. And you also had a conversation with Mr. Gluck about that?
A. Yes.
Q. And those conversations took place within a day or two of you first learning this information from Mr. Pastrana?
A. Yes.
Q. Now you were in New York at the time working on the bond offering?
A. Yes.
Q. And you were there working with representatives from Morgan Stanley?
A. Yes.
Q. And you were at Global Financial Press attending drafting sessions?

Page 131

A. Right.
Q. And Morgan Stanley personnel were there?
A. Right.
Q. Was there any consideration given to you informing Morgan Stanley there and then during the drafting session?
MR. MARKOWSKI: Consideration by whom?
BY MR. CLARE:
Q. By you, Mr. Bornstein.
A. No. The question was never asked of me.
Q. Was that discussed with Mr. Harlow or Mr. Gluck whether that might be one way to communicate this information to Morgan Stanley?
MR. MOSCATO: The question was whether you discussed that with Mr. Harlow and Mr. Gluck.
THE WITNESS: No.
BY MR. CLARE:
Q. Was there any discussion about how this information should be disclosed to Morgan Stanley?
MR. MOSCATO: Objection, I think he answered that a couple of questions ago, but go ahead.
THE WITNESS: That the company should disclose it to them.
BY MR. CLARE:
Q. When you say the company, you're referring to

Page 132

Sunbeam?
A. Sunbeam.
Q. So it was your view and Mr. Harlow's view that Sunbeam needed to disclose this information to Morgan Stanley?
A. Yeah, to be honest with you, I'm not 100 percent sure they were aware of it or not, but it was the company's responsibility to disclose the information.
Q. And you and Mr. Harlow communicated that view to Mr. Gluck at Sunbeam?
A. Yes.
Q. And you communicated to Mr. Gluck that you believed it was Sunbeam's responsibility to communicate this information to Morgan Stanley?
A. Yes.
Q. Did Mr. -- did you tell Mr. Gluck that you, Arthur Andersen, were not going to tell Morgan Stanley and that you were waiting for Sunbeam to disclose that information?
MR. MOSCATO: I object to that.
Did you say those words to Mr. Gluck?
THE WITNESS: No.
BY MR. CLARE:
Q. Did Mr. Gluck -- I'll withdraw that.

NOT A CERTIFIED COPY

01976

Page 133

Was there any discussion with Mr. Harlow or Mr. Gluck when this disclosure would be made to Morgan Stanley?

MR. MARKOWSKI: By whom?

MR. CLARE: By the company.

THE WITNESS: Again, I had no idea if Morgan Stanley knew or didn't know. I just know they never asked me the question.

BY MR. CLARE:

Q. But you and Mr. Harlow wanted to assure yourselves that Morgan Stanley had been informed?

A. Yes.

Q. And you and Mr. Harlow told Mr. Gluck that you thought it was the company's responsibility to tell Morgan Stanley?

A. Yes.

Q. And as part of those conversations, did you or Mr. Harlow express a view as to when the company ought to provide that information to Morgan Stanley?

A. As soon as possible.

Q. And did you communicate that to Mr. Gluck?

A. Yes.

Q. You and Mr. Harlow told Mr. Gluck that that information should be provided by Sunbeam to Morgan Stanley as soon as possible?

Page 134

A. I believe so.

Q. Are you able to put a date, an approximate one, on that conversation with Mr. Gluck where you communicated that information?

A. Maybe March 12th, March 13th.

Q. Okay. And did you, did Mr. Gluck -- what did Mr. Gluck say about what the company was going to do with this information as far as providing it to Morgan Stanley?

A. I don't remember.

Q. Did he tell you in words or in substance that he agreed and that the company would provide this information to Morgan Stanley?

A. Again, I don't recall.

Q. Do you recall, now moving forward a couple of days, that there was a follow-up discussion with Mr. Gluck about whether this information had been communicated to Morgan Stanley?

A. I don't recall.

Q. Do you know when, if at all, Sunbeam told Morgan Stanley this information about January and February 1998 sales?

A. I know they were aware of it March 17th or 18th, prior to the press release going out.

Q. How do you know that?

Page 135

A. I believe a draft, I believe a draft of the comfort letter was delivered or it was communicated by either -- I don't remember specifically. I just, like I testified earlier, that when I found out about it, my last thing was having a conversation with Bill Pruitt. The next thing I knew, I was seeing it on TV.

Q. You testified a moment ago and then also this morning about a belief that a draft comfort letter was provided to Morgan Stanley on March 17th or thereabouts.

Did you personally fax or send a draft of the comfort letter to Morgan Stanley?

A. I don't remember.

Q. As you sit here today, do you have any recollection of having done that?

A. Me personally, no.

Q. Did anybody tell you at Andersen that they had faxed a copy of the comfort letter, a draft of the comfort letter to Morgan Stanley or its counsel?

A. No, I'm not aware of that.

Q. And so do you have any personal knowledge as you sit here today whether, that a draft comfort letter was actually sent to Morgan Stanley or its counsel?

A. Prior to March 19th, no.

Q. So as far as you are able to testify, the

Page 136

first time a comfort letter was physically provided to Morgan Stanley or faxed or sent was March 19th, 1998, at Global Financial Press?

A. I do recall going through certain portions of the comfort letter with underwriter's counsel as to the form of pieces of it, but I don't recall specifically issuing them a draft comfort letter personally.

Q. These recollections that you have, were these in-person meetings with underwriter's counsel?

A. Yes.

Q. During these in-person meetings, did you observe that underwriter's counsel had a draft of the comfort letter in front of them?

A. I don't recall if they had a draft of other comfort letters that they used as a sample or if it was ours, but there was definitely wording, substantive wording, examples communicated back and forth.

Q. But as you sit here today, can you testify from your own personal knowledge that Morgan Stanley or its lawyers were provided with a draft of the March 19th comfort letter before March 19th?

A. Prior to the night at the printer, no.

Q. And you testified about meetings that you had with underwriter's counsel to go through the language.

A. Uh huh.

NOT A CERTIFIED COPY

Page 137

Q. And am I correct that you don't know whether the documents that underwriter's counsel had in front of them were in fact a draft of the March 19th letter or perhaps sample comfort letters from other transactions and other companies?

You just don't know one way or the other?

A. No. Again, the only thing I recollect is finalizing the draft that night and them having a draft early that night, if not, if not -- I don't recall sooner than me physically being there that a draft was delivered to them.

My point is it wasn't like at five o'clock in the morning, said here it is. As soon as we got there, they had it, you know, and they were making changes and we made changes on realtime.

Q. So you were working on the comfort letter with underwriter's counsel at Global Financial Press the night of the 19th?

A. Yes.

Q. These meetings that you described with underwriter's counsel were that evening, March 19th, at the print shop?

A. As well as previously.

Q. Okay. And those are the meetings that you're just not sure what documents underwriter's counsel had

Page 138

with them?

A. Correct.

Q. But you know that that evening at the print shop, you worked on the draft of the comfort letter and it was shared and exchanged --

A. Yes.

Q. -- between underwriter's counsel and you?

A. Correct.

Q. And I think I asked you this, but I can't recall your answer.

Do you know when, if at all, anybody from Sunbeam told Morgan Stanley about lower year-over-year sales?

A. No, other than prior to the press release going out, I'm not aware of any other time.

Q. Okay. What information do you have about disclosures that were made by Sunbeam to Morgan Stanley prior to the press release going out?

A. I don't.

Q. You don't have any information?

A. No.

Q. So from your own personal knowledge, you don't have any information about when, if at all, Sunbeam disclosed lower year-over-year sales to Morgan Stanley?

Page 139

A. I am aware that as I sit here today, that the document with the earnings forecast was provided to Morgan Stanley the night before the, the night of the press release going out.

Q. When you say the document of an earnings forecast, you're referring to a sales buildup sheet that Mr. Markowski showed you this morning?

A. Yes.

Q. In the form of document that was marked as CPH Exhibit 121?

A. Yes.

Q. That form of document?

A. Yes, I'm aware that that was provided to, or at least represented to me that it was provided to Morgan Stanley.

Q. And Mr. Tyree told you that?

A. No, Mr. Fanin told me that.

Q. So Mr. Fanin informed you that the sales buildup, CPH 121, or a document in that form, was sent to Morgan Stanley the day before the press release was issued?

A. I don't know if the day before or the night of. That was subsequent to that night.

Q. Is that the only information that you have about disclosures that were made by Sunbeam to Morgan

Page 140

Stanley about first quarter 1998 sales?

MR. MOSCATO: I'm sorry, can I have the question back?

I'm concerned there is a little confusion as the timing here. But I just need to hear the last question.

(Thereupon, a portion of the record was read by the reporter.)

THE WITNESS: I am, other than what I testified earlier that I was told by Mr. Tyree at the printer that they were informed the night before about the sales forecast.

BY MR. CLARE:

Q. So what Mr. Tyree told you at the printer was consistent with what Mr. Fanin had told you, that Sunbeam had provided this information to Morgan Stanley the night before the press release?

MR. MOSCATO: Objection, that's where the confusion is. I'm not sure he said Fanin told him prior to this happening or Fanin told him after.

THE WITNESS: It was after. It was during the restatement work when things, things kind of -- I don't remember. I do recall Mr. Fanin specifically drafting a memo and handing me this document and after the fact and wanted it to get

NOT A CERTIFIED COPY

Page 141

into the files.
BY MR. CLARE:
Q. And I appreciate that. I'm not trying to confuse you on the timing. I just want to make sure that I understand that what Mr. Fanin told you was consistent with what Mr. Tyree told you about when Morgan Stanley was provided this information by Sunbeam.
MR. MARKOWSKI: Object to the form of the question. I think the reference to this information at this point is kind of detached from what you're referring to.
MR. CLARE: Okay, let me address that, because I think that point is well taken.
BY MR. CLARE:
Q. Mr. Fanin told you that Sunbeam provided information about its January and February 1990 sales to Morgan Stanley the day or night before the press release was issued, correct?
MR. MARKOWSKI: I think you misspoke there in terms of the date.
THE WITNESS: Yes. You said 1990.
MR. CLARE: Thanks.
THE WITNESS: I believe so, yes.

Page 142

BY MR. CLARE:
Q. Let me make sure I've got the right question so we're all on the same page and in the same decade.
Mr. Fanin told you during the restatement investigation that Sunbeam had provided Morgan Stanley with information about January and February 1998 sales the day or night before the press release was issued; is that correct?
A. Yes.
Q. And Mr. Tyree told you at the print shop that Morgan Stanley had been informed of that same information the day or night before the press release was issued?
A. I believe he was personally. I don't know about Morgan Stanley, but yes, he was.
Q. So what Mr. Tyree was telling -- what Mr. Tyree told you about the timing of Morgan Stanley getting this information was the same as what Mr. Fanin told you?
MR. MARKOWSKI: This information is that one-page sheet, the sales buildup that you are referring to?
BY MR. CLARE:
Q. How about any information about Sunbeam's January or February sales?

Page 143

MR. MOSCATO: Can we have the question again then?
MR. CLARE: Let me rephrase it.
MR. MOSCATO: My client made a distinction between Tyree's knowledge and Morgan Stanley's knowledge. I'm afraid -- listen, we're a neutral party here. I just want there to be a clean record, and that's why I'm making these objections. I just want clarity. So if you can ask the question again, I'd appreciate it.
MR. CLARE: Sure.
BY MR. CLARE:
Q. Let me ask it this way and hopefully we can cut through it.
Do you have any information from any source that Morgan Stanley or Mr. Tyree or anybody representing Morgan Stanley was advised of Sunbeam's first quarter 1998 sales before the day or the night before the press release was issued?
A. No, I'm not aware of anything else.
Q. The only information that you have is what you previously testified to about, Mr. Fanin's conversation with you?
A. Yes.
Q. And what Mr. Tyree told you at the print

Page 144

shop?
A. Yes.
Q. And in both instances, the timing of those disclosures were the day or night before the press release was issued?
A. Yes.
Q. The press release, and we can look at it, was dated March 19th, 1998? It is CPH Exhibit --
A. I have it here, yes, March 19th.
Q. Can you estimate for me the number of days prior to the issuance of the press release that you informed Mr. Gluck that you believed January and February 1998 sales needed to be disclosed to Morgan Stanley?
A. Like I said, March 12th or March 13th.
Q. So five or six days elapsed between this conversation with Mr. Gluck where you and Mr. Harlow spoke with him and the date that Sunbeam issued the press release, to the best of your recollection?
A. Yes.
Q. And during that time period, that five or six-day period, you were working with Morgan Stanley and its counsel on the bond offering documents?
A. Yes.
Q. And you were in New York together?

NOT A CERTIFIED COPY

016779

Page 145

A. For the most part, yes.
Q. And during that five or six-day time period, am I correct that you never discussed with Morgan Stanley or its counsel Sunbeam's January and February 1998 sales performance?
A. Not that I recall, no.
Q. And it was because you believed it was Sunbeam's responsibility to disclose that information to Morgan Stanley?
A. Or if Morgan Stanley asked the question, I would answer it truthfully.
Q. But Morgan Stanley didn't bring it up?
A. Right.
Q. And to your knowledge, Sunbeam did not tell Morgan Stanley at any point during that five or six-day period?
MR. MOSCATO: Do you know one way or the other?
THE WITNESS: I don't know one way or the other if they did or not.
BY MR. CLARE:
Q. But again, the only information you have about that topic is that Sunbeam informed Morgan Stanley and John Tyree the day before the press release was issued?

Page 146

MR. MOSCATO: Do you really want to keep asking the same question over and over?
MR. CLARE: Yeah, I do. I just want to make sure that we're all on the same page.
MR. MOSCATO: One last time. Answer the question one more time, Larry.
THE WITNESS: Can you read that question again.
(Thereupon, a portion of the record was read by the reporter.)
THE WITNESS: Yes.
BY MR. CLARE:
Q. Mr. Bornstein, we talked about these drafting sessions that you attended in New York. How many days were you in New York in that first two- or three-week period in March 1998, approximately?
A. I don't know, probably between four and six days.
Q. And all of the time that you spent there in New York was working on the bond offering documents?
A. For the most part, yes.
Q. And where did those meetings take place?
A. The preliminary ones took place I believe at Scadden Arps' office, and then there was a, as they further went down the line, I think they moved over to

Page 147

Global Financial Press.
Q. Did you attend any meetings at the offices of Morgan Stanley?
A. No.
Q. Were representatives of Morgan Stanley present for those meetings, some of them?
A. Yeah, I believe Tyree and there might have been someone else in the first couple, but after that, there wasn't anybody there.
Q. So the only person that you remember being present at those sessions was John Tyree?
A. Yes.
Q. Do you remember anything about your conversations with John Tyree during those drafting sessions?
Does anything stick out as having been discussed with Mr. Tyree?
A. The form of the pro forma, financial statements and probably certain disclosures or certain, the way certain things were presented. Specifically I remember talking with Mr. Tyree.
Q. Now the pro forma information that was put into the offering memorandum, was that pro forma information that was prepared by Andersen?
A. No. It was the company's pro formas, but we,

Page 148

we assisted in preparing them.
Q. When you say the company's, it was Sunbeam's pro formas?
A. Yes.
Q. So this morning in response to a question from Mr. Markowski, and I may have misheard you, I think you said that the pro forma information was prepared by Morgan Stanley. And I wanted to ask you about that.
Was any of the pro forma information that you were reviewing prepared by Morgan Stanley?
A. I reviewed pro forma information that included cost savings and synergies that was supplied by a guy named Tyrone Chang from Morgan Stanley. Those were separate and different from pro formas that went into the bond offering, because the pro formas going into the bond offering were specific to the transaction, and the new debt, those types of things, but don't have anything to do with cost savings or synergies or any of those types of things.
Q. The information that you indicated Mr. Chang provided, for what purpose were you reviewing that?
A. I reviewed it for, if they needed help on the tax treatment to how to show the tax benefit. I don't remember anything else other than that from my review

NOT A CERTIFIED COPY

016780

Page 149

of the pro formas.
Q. But none of the pro forma information that was prepared or provided to you by Mr. Chang was put into the offering memo?
A. Not that I'm aware of, no.
Q. So the pro forma information that you discussed, reviewed and that was ultimately included in the offering memorandum was prepared by Sunbeam?
A. Sunbeam, and as well as the other companies that were involved. There was Signature Brands, First Alert, Coleman. They were all involved in preparing the pro formas.
Q. But as far as the information that went into the offering memorandum, you don't have any information to suggest that Morgan Stanley was involved in preparing those pro forma financial statements?
A. As it relates to the numbers, no, but to the disclosures and the footnotes, yes.
Q. And you remember discussing those with Morgan Stanley?
A. Yes.
Q. And there was give and take during those sessions where you discussed with John Tyree, the lawyers at Scadden, about the narrative of the offering memorandum?

Page 150

A. Yes.
Q. And the disclosures that needed to be made?
A. Yes.
Q. And during that time everybody was making suggestions and edits to the document?
A. Yes.
Q. And that was the purpose of that six-day time period that you believe you were in New York was to do that work on the offering memorandum?
A. Yes.
Q. Now during that time you were in New York, you were aware that Sunbeam's January and February 1998 sales were lower than for the prior time period in 1997, correct?
A. Honestly, I don't remember the timing of it. I believe so, but I'm not certain.
Q. Is it fair to say that for at least a portion of those drafting sessions, you were aware of that information?
A. Yes.
Q. And were you in any way frustrated that you had this information, but Morgan Stanley did not?
MR. MOSCATO: I object to that.
You can answer.
THE WITNESS: I don't know if I was, I

Page 151

wouldn't call it frustrated, but unsure if they did or not.
BY MR. CLARE:
Q. Okay. And you had recommended that to Mr. Gluck or told Mr. Gluck that you believed Sunbeam should disclose that information to Morgan Stanley?
A. Yes.
MR. MARKOWSKI: Isn't that where we started about half an hour ago?
BY MR. CLARE:
Q. Were you frustrated that Sunbeam hadn't followed through on that while you were at these drafting sessions working day and night with the people from Morgan Stanley and so far as you could tell, they didn't appear to know?
MR. MOSCATO: I'm sorry, I have to object to that. That's, I think that's a real compound question.
BY MR. CLARE:
Q. Okay. Were you frustrated that you couldn't tell whether Morgan Stanley knew this information or not?
A. I said I wasn't frustrated. I just at the time found it amazing that it wasn't a topic of conversation of theirs. No one asked the question. I

Page 152

wasn't aware if they knew or didn't know. I just know that it wasn't something that was discussed.
Q. Okay. Did you have any follow-up conversations with Mr. Gluck during that time period about whether Sunbeam had provided that information to Morgan Stanley?
A. I don't recall specifically, no.
MR. MOSCATO: While you're doing that, is there any way we can get a little air in here?
BY MR. CLARE:
Q. And you testified that at some point during the same time period, you had a discussion with Mr. Pruitt about the same subject matter?
A. Yes.
Q. And during that discussion, Mr. Pruitt made a reference to withholding the comfort letter if Sunbeam did not disclose this information to Morgan Stanley?
A. I believe I did say that, yes.
Q. Is that consistent with your recollection?
A. Yes.
Q. And you were a part of that conversation?
A. Yes.
Q. Did you agree with Mr. Pruitt that that was an appropriate thing to do if Sunbeam did not disclose the information to Morgan Stanley about its January and

NOT A CERTIFIED COPY

016701

Page 153

February 1998 sales?
A. Did I have an opinion? Is that what you said?
No, I left it up to him.
Q. Okay. But you didn't think it was inappropriate for Mr. Pruitt to reach that conclusion?
A. Honestly, I was unaware whether or not Sunbeam had advised Morgan Stanley at that time. I was, my understanding was that they did not.
Q. Your understanding was that Sunbeam had not advised Morgan Stanley?
A. Yes.
Q. And your conversation with Mr. Pruitt was that if that situation wasn't remedied, that Andersen would withhold its comfort letter?
A. That's what he told me, yes.
Q. Some questions this morning about an accounting due diligence call that you had with Morgan Stanley during this time period.
A. Yes.
Q. You participated in that call?
A. Yes.
Q. And that was a due diligence call that was requested by Morgan Stanley?
A. Yes.

Page 154

Q. You and Mr. Harlow were the participants for Andersen?
A. Yes.
Q. Do you recall, as of the date of the accounting due diligence call, whether Mr. Pastrana had already advised you about the January and February 1998 sales? Does that help you place in time --
A. Yeah, I'm not sure. I'm not 100 percent sure that I knew about this on the 12th.
Q. Mr. Gluck was on the call for Sunbeam?
A. Yes.
Q. Was there anybody else on the phone from Sunbeam?
A. Not that I'm aware of, no.
Q. Am I correct that you requested Mr. Gluck be on the call?
A. Yes.
Q. And why?
A. I believe it was an Andersen policy to have someone present from the company on the call or at the meeting.
Q. Was it, and this is a standard practice, at least at the time that you were at Andersen, to have somebody from the company on the call with underwriters in a due diligence situation like this?

Page 155

A. That was my understanding, yes.
Q. Was there any discussion with Morgan Stanley about this topic, about whether Mr. Gluck would be on the call or not?
A. Not that I recall.
Q. Was there any discussion between you and Mr. Harlow about Mr. Gluck's presence on the call?
A. No.
Q. And you had been on other due diligence calls with underwriters where there had been representative from management on the phone with you?
A. Yes.
Q. In accordance with Andersen's policy?
A. Yes.
Q. Was it your hope at the time that if Mr. Gluck was on the line with you during this due diligence call, that he might take that as an opportunity to tell Morgan Stanley about the company's performance in the first two months of 1998?
A. No. I'm not -- no. That wasn't my hope.
Q. Okay. I'm going to show you some of your prior deposition testimony on this subject and see if that refreshes your recollection about that topic and I'll ask you some follow-up questions about it.
MR. CLARE: Let's mark this as Morgan Stanley

Page 156

Exhibit 55.
(MS Exhibit No. 55 was marked for identification.)
THE WITNESS: Okay, where would you like me to look?
BY MR. CLARE:
Q. I'm going to invite your attention to page 780 of this transcript.
A. Can you just, someone tell me when and where this took place? Which one was this?
Q. Sure.
MR. MARKOWSKI: We're celebrating the third anniversary of it.
THE WITNESS: Is it really that long?
BY MR. CLARE:
Q. This is a deposition transcript taken on Monday, January 15, 2001. Appears to be day five of your deposition testimony.
A. Okay. Where would you like me to turn?
Q. And you can read as much it as you'd like to see if it refreshes your recollection, but specifically I want to invite your attention to page 780 at the top of the page. And it might be helpful if you back up to page 778 for context.
A. Okay.

NOT A CERTIFIED COPY

16div-024926

Page 157

Q. Have you had an opportunity to review a few pages of your deposition from January of 2001?
MR. MARKOWSKI: I think we should be specific about what portion of this he's --
MR. MOSCATO: Now Larry, you've reviewed it. Now close the transcript.
BY MR. CLARE:
Q. I don't know exactly which pages you reviewed but I invited your attention to pages 778 through 780.
A. Yes, that's what I read.
Q. Okay. And does having reviewed that deposition testimony, does that refresh your recollection in any way about the sequence of events that we've been discussing; specifically, your conversation with Mr. Gluck about the need to disclose this information to Morgan Stanley and the March 12, 1998 accounting due diligence call?
A. Yes.
Q. Okay. And now testifying from your refreshed recollection, is it correct that you had discussed this issue with Mr. Gluck prior to March 12, 1998?
A. Yes.
Q. And prior to March 12, 1998, you and Mr. Harlow had informed Mr. Gluck that Sunbeam's January and February 1998 sales information needed to

Page 158

be disclosed to Morgan Stanley?
A. Yes.
Q. And is it correct that at least one of the reasons that you wanted Mr. Gluck on the line for the accounting due diligence call was a hope that he would disclose information about Sunbeam's first quarter performance to Morgan Stanley?
A. If the question came up, yes.
Q. Okay. But it was your view, independent of whether the question came up, that Sunbeam had a responsibility to disclose it to Morgan Stanley?
A. Yes.
Q. And was it your hope that independent of whether the question came up, that Mr. Gluck might take this opportunity of talking with Morgan Stanley to disclose that information?
A. I believe so, yes.
Q. Did Mr. Gluck tell Morgan Stanley about Sunbeam's January and February 1998 sales on the March 12, 1998, accounting due diligence call?
A. I don't believe so, no.
Q. Do you have any recollection of that topic coming up?
A. No.
Q. Morgan Stanley didn't raise it?

Page 159

A. No.
Q. And Mr. Gluck didn't raise it?
A. No.
Q. And you didn't raise it and Mr. Harlow didn't raise it?
A. Correct.
Q. Were the answers that you provided -- strike that.
Were you answers that you and Mr. Harlow provided on the March 12, 1998, accounting due diligence call any different because Mr. Gluck was on the line?
A. No.
Q. If Mr. Gluck had not been on the line, would you or Mr. Harlow have volunteered information about Sunbeam's first quarter sales performance to date?
MR. MARKOWSKI: May I have the question back, please.
(Thereupon, a portion of the record was read by the reporter.)
MR. MARKOWSKI: Object, calls for --
MR. MOSCATO: Answer as to yourself.
MR. MARKOWSKI: I would object that it calls for speculation.
THE WITNESS: I can't answer for Harlow. If

Page 160

asked the question, I would have answered it truthfully. I wouldn't have volunteered anything.
BY MR. CLARE:
Q. Because you thought it was Sunbeam's responsibility to tell that information?
A. Yes.
Q. But your willingness or unwillingness to volunteer that information had nothing to do with whether Mr. Gluck was on the line or not?
A. No.
Q. Were you any less truthful with Morgan Stanley because Mr. Gluck was on the phone with you for the March 12, 1998, due diligence call?
A. No.
Q. Were you any less candid with Morgan Stanley because Mr. Gluck was on that call?
A. No.
Q. If Morgan Stanley had asked the question on March 12, 1998, about Sunbeam's first quarter performance, would you have deferred the response to that question to Mr. Gluck, since he was on the line?
A. I have no idea what I would have done.
Q. But you believed it was Sunbeam's responsibility to provide that information?
A. Yes.

NOT A CERTIFIED COPY

16div-024927

Page 161

Q. Was there any discussion before the March 12, 1998, accounting due diligence call how you or Mr. Harlow would respond if Morgan Stanley asked that question?

MR. MARKOWSKI: Any discussion between Mr. Bornstein and Mr. Harlow?

MR. CLARE: That's correct.

THE WITNESS: Specifically on that point, I don't recall.

BY MR. CLARE:

Q. Even generally?

A. No.

Q. How about between you and Mr. Harlow or with Mr. Gluck?

A. No.

Q. Mr. Bornstein, I'm going to ask you to dig out CPH Exhibit 123 that we marked and looked at this morning.

MR. MOSCATO: I'm sorry, which one was 123?

MR. CLARE: CPH Exhibit 123 is the July 2nd, 1998.

THE WITNESS: This one right on the top.

MR. MOSCATO: This one?

BY MR. CLARE:

Q. And Mr. Markowski asked you some questions

Page 162

about the delay between the date of the call and the date that you started to prepare the memo. Is that correct?

A. Yes.

Q. And you can tell me again if I've got this in any way wrong, but you said you felt it was important to have a record of what was said during that call.

A. Yeah, I thought it was more important than, you know, to have something other than the contemporaneous documentation from the call.

Q. And that contemporaneous documentation were the handwritten notes that appear on the third and fourth page of CPH Exhibit 123?

A. Yes.

Q. And those notes that were placed on the third and fourth page of CPH Exhibit 123, some of those notes were prepared there in advance of the call as a result of discussions between you and Mr. Harlow about how you would respond to the questions?

A. Yeah, they were all prepared prior. It was all prepared prior to.

Q. That's my next question. You anticipated it, whether any of the handwriting on the third or fourth page of Exhibit 123 was placed there during the call.

A. I think some of the items that are crossed

Page 163

out were placed on there during the call.

Q. Okay.

MR. MOSCATO: The items were placed there or the crossing out?

THE WITNESS: The crossing out.

BY MR. CLARE:

Q. So the items, the handwriting of the specific items were discussed with you and Mr. Harlow before the call, and then during the call as issues came up, you crossed them off as they were discussed?

A. Some of them. These I recall were important issues that I wanted to make sure were discussed.

Q. If there is handwriting on pages three and four that's not crossed off, does that mean that they weren't discussed on the call or you just didn't cross them off?

A. No, I know that a lot more of these were discussed, but these were items that I wanted to make sure that were discussed by Harlow.

Q. Now the date of CPH Exhibit 123 is July 2nd, 1998, correct?

A. Yes.

Q. And that's the date that you prepared the memo documenting your March 12, 1998, accounting due diligence call?

Page 164

A. Yes.

Q. Did you start working on this memo at any point before July 2nd, 1998?

A. I don't think so, no.

Q. So you did not document your discussions with Morgan Stanley for the accounting due diligence call in this memo format at least until July 2nd, 1998?

A. Yes.

Q. And that was after Mr. Dunlap had been fired from Sunbeam on June 15, 1998?

A. I believe so, yes.

Q. And after Sunbeam had announced that the SEC was investigating its accounting practices on June 22nd, 1998?

A. Yes.

Q. And that was after Sunbeam announced that it was delaying an SEC filing relating to the debenture offering?

A. Yes.

Q. And that was after Sunbeam had announced that its 1997 financial statement should not be relied upon?

A. I believe so, yes.

Q. That was --

A. I think that was June 30.

Q. That was June 30?

NOT A CERTIFIED COPY

Page 165

A. Yes.
Q. So you did not begin to document that conversation with Morgan Stanley until after Sunbeam announced that its 1997 financial statement could not be relied upon?
A. Yes.
MR. MARKOWSKI: Can I have the question back, please.
(Thereupon, a portion of the record was read by the reporter.)
MR. MARKOWSKI: I object, mischaracterizes his prior testimony with respect to this.
BY MR. CLARE:
Q. So you did not begin to document your discussions with Morgan Stanley in memo form until after Sunbeam had announced that its 1997 financial statements should not be relied upon?
A. Yes.
Q. Same question, after Sunbeam announced that its 1997 financial statements may need to be restated, that was also on June 30, 1998.
A. I believe so, yes.
Q. In drafting your July 2nd, 1998 memo, did you consult with Mr. Harlow about his recollection of what was said on the call?

Page 166

A. He reviewed it. I don't specifically remember asking him.
Q. So you prepared a draft and Mr. Harlow reviewed it?
A. Yes.
Q. Do you remember any discussions with Mr. Harlow about the draft that you had prepared or any changes that he asked to be made to your draft?
A. I don't recall, no.
Q. What about Mr. Gluck? Did you provide a draft of the July 2nd, 1998, memo to Mr. Gluck?
A. No.
Q. Why not?
A. It was for Arthur Andersen's files.
Q. The typewritten memo that's the first two pages of CPH Exhibit 123, this was your effort to distill from the notes the questions that were asked and the responses that were given on the call?
A. For the most part, yes.
Q. The third paragraph says, "Attached is the agenda as well as notes from that meeting. Mr. Savori and Mr. Lurie asked the questions and Mr. Harlow provided responses."
A. Yes.
Q. "The questions from the agenda were asked in their entirety and the responses were as follows."
Do you see that?
A. Yes.
Q. Item 4A --
A. Yes.
Q. Question four relates to the adequacy of internal controls. Do you see that on the agenda?
A. Yes.
Q. And the response that was indicated on your memo says in part, "No material weaknesses in internal controls were noted."
Do you see that?
A. Yes.
Q. Do you recall Mr. Harlow telling Morgan Stanley that no material weaknesses in internal controls were noted by Andersen?
A. Yes.
Q. That's consistent with your recollection of the call?
A. I believe so, yes.
Q. Do you remember Morgan Stanley asking that question and Mr. Harlow providing that answer?
A. Yes.
Q. Number eight asks, "How aggressive is the company in its accounting policies?"

Page 167

Page 168

Do you see that?
A. Yes.
Q. There was some testimony this morning about bill and hold and Encore and EPI, and those items are crossed off on page three.
A. Right.
Q. Do you see that?
A. Yes.
Q. Looking at your typewritten memo, the response that appears after item eight, "On a scale of one to ten, around a five or six."
Do you see that?
A. Yes.
Q. Do you recall Mr. Harlow ranking how aggressive Sunbeam's accounting policies are on a scale of one to ten?
A. Yes. That's, I recall him addressing initially the issue that way.
Q. Okay.
A. And then going into some of the detail we talked about earlier.
Q. But it's your recollection that on a scale of one to ten, Mr. Harlow told Morgan Stanley that Sunbeam was about a five or six in terms of the aggressiveness of its accounting policies?

NOT A CERTIFIED COPY

Page 169

A. Yes.
Q. And Mr. Harlow's ranking of the aggressiveness of the accounting policies were part of the same conversation when he was discussing bill and hold, Encore, EPI?
A. Yes.
Q. Item ten on the agenda asks whether any major adjustments were recommended.
A. Yes.
MR. MOSCATO: Material.
MR. CLARE: Thank you, material.
BY MR. CLARE:
Q. Item ten on the agenda -- my copy says major.
THE WITNESS: Material.
MR. MOSCATO: I'm sorry. You're right. My abject apologies.
MR. CLARE: That's okay.
THE WITNESS: The Morgan Stanley letter requesting the question is major and on my typewritten it's material.
BY MR. CLARE:
Q. Okay. So just to make sure we're all clear, on page three of CPH Exhibit 123, item ten, the question that Morgan Stanley provided to you in writing was whether any major adjustments were recommended.

Page 170

A. Correct.
Q. And in handwriting under that it says, "Not material, Encore or EPI."
A. Yes.
Q. Do you remember discussing that issue with Morgan Stanley; in other words, Andersen's view that the Encore and EPI adjustments were not material?
A. Yes, I do remember that.
Q. And that recollection is in fact recorded on point 10 of your typewritten memo, which says no material adjustments were recorded?
A. Yes.
Q. Now page three of the Exhibit CPH 123 has a header on it that says Project One Time accounting due diligence. Do you see that?
A. Yes.
Q. What does Project One Time refer to?
A. I have no idea.
Q. Are you aware that the project name that Sunbeam had given to these acquisitions was Project Laser?
A. Yeah, I recollected that from something I just looked at earlier, yes.
Q. But that's consistent with your recollection from 1998?

Page 171

A. Yes.
Q. Do you have an understanding as to why the sheet that you have here as part of your exhibit says Project One Time, when the project name was Project Laser?
A. You'd have to ask the person who put it together and sent it to me. I have no idea.
Q. That was my question. You don't have any understanding of that?
A. No, no idea.
Q. I will represent to you and I can show you the documents that other people who were on the call --
A. Yes.
Q. -- got an agenda sheet that said the word Project Laser --
A. Really? Interesting.
Q. -- on it, and I wanted to know if you had any explanation for why the document that was attached to CPH 123 from your files says Project One Time.
A. No.
MR. MARKOWSKI: When you represent, Tom, that other people on the call got a different agenda, what call are you referring to, the Arthur Andersen call, or the call with the other accounting firms?

Page 172

MR. CLARE: I'm representing the Arthur Andersen call. In fact, why don't we just mark those as exhibits and I'll ask you about it specifically, the two documents.
THE WITNESS: Okay.
MR. CLARE: This is 56.
(MS Exhibit Nos. 56 and 57 were marked for identification.)
THE WITNESS: Okay.
BY MR. CLARE:
Q. And I'm showing you what's been marked as Morgan Stanley Exhibit 56 and Morgan Stanley 57. These are a series of faxes, two faxes from Shani Boone at Morgan Stanley to Mr. Freed at Scadden Arps in Exhibit 56 and Mr. Molitor at First Union in 57.
Do you see that?
A. Yes.
Q. Just looking at Exhibit 56 for a moment, the second page of it is the agenda that Mr. Markowski went through with you this morning.
A. Yes.
Q. And it shows a series of accounting due diligence calls beginning at 11:30 a.m. and going through start time of 1:00.
A. Yes.

NOT A CERTIFIED COPY

16div-024930

Page 173

Q. And then after that, there are documents, an agenda for those calls --
A. Yes.
Q. -- that are similar in form to the ones that we were just looking at attached to your typewritten memo?
A. Yes, similar.
Q. Similar in form, but not identical?
A. I don't believe identical, but I haven't proofed them both.
Q. One of the ways in which they are not identical is the header on the documents that were sent to Mr. Freed and Mr. Moliter say Product Laser accounting due diligence, and the agenda that is attached to your July 2nd memo says Project One Time.
A. Yes.
Q. Do you see that?
A. Yes.
Q. And there are other differences in the agenda are that are, speak for themselves.
A. Yes.
Q. And do you have any explanation for why your agenda was different than other participants in the call?
A. No. It would only be speculation.

Page 174

Q. But you don't have any explanation for the discrepancy between the agenda that First Union and Scadden Arps had and the agenda that's attached to your July 2nd --
A. No.
Q. -- '98 memo?
MR. MARKOWSKI: I think you've assumed something that you haven't proved yet at this point in time, which is the agenda used in 56 and 57 was in fact the agenda used by those other parties in connection with the call as opposed to a draft of what was ultimately sent to Mr. Bornstein and to Mr. Harlow.
MR. CLARE: All I'm trying to do is understand whether Mr. Bornstein has any information about that, and he has told me -- and correct me if I'm wrong -- that you don't have any understanding or explanation for why others that were on the call had a different agenda than the one attached to your July 2nd.
MR. MARKOWSKI: Well, that's the fact I'm saying, I'm objecting to on the ground it assumes facts not in evidence. You haven't shown that the documents attached to 56 and 57 were in fact the agendas used by Scadden or by First Union in

Page 175

connection with the telephone call.
MR. CLARE: Okay. Well, I'll show that through different witnesses, and we'll take that up not on Mr. Bornstein's time.
THE WITNESS: I have no idea.
BY MR. CLARE:
Q. Do you recall -- you don't have any explanation for that discrepancy as you sit here today?
A. No.
Q. I want to go back to your July 2nd, 1998, memo for a moment.
Question 16 on the agenda asks the question, "Company is conservative and leans to full disclosure," question mark. Do you see that?
A. Yes.
Q. And your handwritten note says yes, and it's circled. Do you see that?
A. Yes.
Q. On July 2nd, 19 -- I'm sorry, new question.
On March 12, 1998, did you or Mr. Harlow tell Morgan Stanley that Sunbeam was conservative and leans toward full disclosure?
A. As it relates to their financial statements, yes.
Q. Okay. Is there a distinction there? Did you

Page 176

make any discussion with Morgan Stanley about ways in which Sunbeam was not conservative and leaned towards full disclosure on the call?
A. No, not that I'm aware of.
Q. So the question was asked the company is conservative and leans to full disclosure, and the answer that you and Mr. Harlow gave was yes.
A. I believe as it relates to the financial statements is what we were talking about.
Q. Okay. But did you say that, do you have a recollection of saying that on the call?
A. No, I don't.
Q. And in fact, your typewritten memo memorializing the answers that were given to Morgan Stanley answers the question yes?
A. Yes.
Q. And that's consistent with your recollection of what was said on the call?
A. Yes.
MR. CLARE: We need to take a short break to change the videotape.
THE VIDEOGRAPHER: We are now going off videotape number two. We'll be back on videotape number three. The time on the monitor is 1:30 p.m.

NOT A CERTIFIED COPY

016781

Page 177

(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. This is tape number three. The time on the monitor, 1:31 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, just before the break, I was asking you about item 16 from your July 2nd, 1998 memo.
And this relates to the question that Morgan Stanley asked about whether Sunbeam was conservative and leans to full disclosure.
On the March 12, 1998 accounting due diligence call, did you tell Morgan Stanley that Sunbeam had resisted including disclosures of its bill and hold sales in its 1997 10K?
A. Did we tell Morgan Stanley --
MR. MOSCATO: I'm sorry, repeat that question.
(Thereupon, a portion of the record was read by the reporter.)
MR. MOSCATO: Answer the question yes or no. Did you?
THE WITNESS: No.
BY MR. CLARE:
Q. Did you tell Morgan Stanley on the March 12, 1998 call that Mr. Gluck was resistant about disclosing

Page 178

Sunbeam's bill and hold sales from the first day that you had raised the issue with them until the day that the 10K was filed?
A. I don't know about the time period.
Q. But you didn't say that to Morgan Stanley?
MR. MOSCATO: Did you say those words to Morgan Stanley?
THE WITNESS: No, I did not.
BY MR. CLARE:
Q. Did you say anything like that to Morgan Stanley about Sunbeam's bill and hold disclosures?
A. No.
Q. Did you tell Morgan Stanley in words or in substance that Sunbeam had resisted disclosing its reclassification of restructuring reserves in connection with its 10K?
A. No.
Q. And, Mr. Bornstein, I've read your prior deposition testimony, and there are a series of discussions that are reflected in that testimony that I want to ask you about.
On several occasions during your interactions with Sunbeam you approached Mr. Gluck relating to disclosure issues; is that correct?
A. Yes.

Page 179

Q. And one of them related to bill and hold sales?
A. Yes.
Q. And one of them related to the reclassification of restructuring reserves?
A. Yes.
Q. And there were other times that you approached Mr. Gluck about disclosure issues?
A. Yes.
Q. And during those approaches to Mr. Gluck, in several of those conversations Mr. Gluck told you to fuck off when you raised those issues with him?
A. Yeah, that was pretty common.
Q. And it happened on a number of occasions when you raised disclosure issues with Mr. Gluck?
A. Yes.
Q. On the March 12, 1998, accounting due diligence call with Morgan Stanley, did you tell Morgan Stanley in words or in substance that Mr. Gluck had told you to fuck off when you had raised disclosure issues with him?
A. No.
Q. Now the March 12, 1998, telephone conversation was not the only time that you had an opportunity to talk about Sunbeam with Morgan Stanley,

Page 180

correct?
A. Correct.
Q. You had participated in drafting sessions for the offering memo in New York?
A. Yes.
Q. And during that session or sessions, did Morgan Stanley ask additional questions of you about Sunbeam?
A. No.
Q. Is there any documentation of those conversations?
A. No.
Q. So in the course of preparing the offering memorandum and the back and forth that occurred, your testimony is that at no point during those discussions did Morgan Stanley ask you for information about Sunbeam or its financial statements?
A. They asked questions, but nothing specific that I can recall.
Q. Okay. But they asked you questions during those drafting sessions?
A. Right.
Q. And there was a give and take in preparing the offering memorandum?
A. Yes.

NOT A CERTIFIED COPY

016788

Page 181

Q. And that give and take related to the subject of Sunbeam?
A. Yes.
Q. And that how Sunbeam would be described in the offering memorandum that you were collectively working on?
A. Yes.
Q. March 19, 1998, the meeting you had with Mr. Tyree and others at Global Financial Press, that was another opportunity that you had time to spend with Morgan Stanley?
A. Yes.
Q. And how many hours would you say that you spent with Morgan Stanley that evening?
A. Ten.
Q. And during that evening, did Morgan Stanley and its representatives ask you questions about Sunbeam?
A. Yes.
Q. Mr. Bornstein, this morning and in prior depositions you've offered your opinion about Morgan Stanley's due diligence, correct?
A. Yes.
Q. And your opinion is that Morgan Stanley's due diligence in connection with the bond offering is poor?

Page 182

A. Yes.
Q. Can you give me the basis for your belief that Morgan Stanley's due diligence for the bond offering was poor?
A. Basically that they never asked very simple questions that should have been asked and that, at least my understanding of the people that were involved, which was basically Mr. Tyree, that he was very distracted and had a lot of other things going on and didn't really know what the hell was going on with this deal basically.
Q. So you've identified two reasons why you think Morgan Stanley's due diligence was poor.
Are there any others that you can think of?
A. You know, that they were aware that the due diligence, financial due diligence that was performed by Arthur Andersen & Company of First Alert, Signature Brands and Coleman was limited at best, and probably, you know, was in a four or five-day period of time.
Q. Now you're talking, in your answer to my last question, you're answering specifically with regard to the due diligence that was performed by Morgan Stanley on the target companies, correct?
A. I'm not sure what Morgan Stanley did on the target companies, but they were aware of the limited

Page 183

amount of due diligence that the company had done on the three target acquisition companies.
Q. Okay. Anything else that forms the basis for your opinion that Morgan Stanley's due diligence was poor?
A. No, not that I can think of.
Q. What were the simple questions that Morgan Stanley should have asked in your opinion but didn't?
A. How is the company doing now? Simple as that.
Q. Is that the only one?
A. They probably should ask more questions on the financial statement. They should have probably asked more detailed questions on bill and hold transactions. They probably should have asked a lot more questions on the estimates and the projections that Mr. Dunlap had touted. I forget what they were, but basic questions.
Q. Were all of the questions that you've just identified suggested by the public statements that Sunbeam had made?
A. I don't understand the question.
MR. MARKOWSKI: Object to the form.
BY MR. CLARE:
Q. You asked, you said that Morgan Stanley

Page 184

should have asked additional questions about the financial statements, correct?
A. Yes.
Q. And the assumptions that went into the financial statements?
A. They should ask some questions on the financial statements, yes.
Q. These were Sunbeam's audited financial statements that you're referring to?
A. Yes.
Q. And those financial statements at least for 1997 were publicly available?
A. Yes.
Q. You said that Morgan Stanley should have asked some additional questions about bill and hold.
A. Yes.
Q. Bill and hold transactions were also publicly disclosed by Sunbeam in its 1997 10K, correct?
A. Yes.
Q. And were there any other questions that you think Morgan Stanley should have asked that they didn't beside the ones you've testified to?
A. Specifically, no.
Q. Do you have any knowledge or information about the trip that Morgan Stanley made to Sunbeam

NOT A CERTIFIED COPY

Page 185

headquarters on March 4th and 5th to conduct due diligence?
A. No.
Q. You weren't present for any of those meetings?
A. No.
Q. Did anybody ever report to you what was discussed during that due diligence meeting?
A. No.
Q. Do you have any knowledge or information about Morgan Stanley's bring-down due diligence telephone conference with Sunbeam's management?
A. I don't recall if I was part of that. I don't believe so.
Q. I don't believe you were either, but do you have any knowledge or information about that?
A. No.
Q. Did anybody report to you what was said or discussed during those telephone calls?
A. No.
Q. Specifically, the bring-down telephone calls that were done with Sunbeam management by Morgan Stanley to conduct due diligence.
A. No.
Q. Do you have any knowledge or information

Page 186

about trips that were taken by Morgan Stanley to Sunbeam in September of 1997 to conduct due diligence on Sunbeam?
A. No.
Q. Were you present for any of those meetings?
A. I don't believe so, no.
Q. And nobody has reported to you what was said or discussed during those due diligence meetings?
A. No.
Q. Do you have any knowledge or information about what documents Morgan Stanley requested and received from Sunbeam management?
A. No.
Q. Were you involved in communicating either requests from Morgan Stanley to Sunbeam management or communicating those documents back from Sunbeam management to Morgan Stanley?
A. No.
Q. So you don't know one way or the other what documents were requested and received by Morgan Stanley?
A. No.
Q. Are you, do you have any knowledge or information about the documents that were provided to Morgan Stanley by Scadden Arps as part of the due

Page 187

diligence process?
A. No.
Q. Do you have any knowledge or information about other documents that Morgan Stanley reviewed as part of the due diligence process?
A. No.
Q. And so your opinion about Morgan Stanley's due diligence is based strictly on your personal interaction with representatives from Morgan Stanley?
A. Yes.
Q. So do you have any basis one way or another to evaluate the overall due diligence conducted by Morgan Stanley in connection with the bond offering?
A. No.
MR. CLARE: Why don't we break for lunch.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor, 1:42 p.m.
(Thereupon, a lunch recess was taken.)

(End of Volume I)

Page 188

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No.CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,
-vs-

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

DEPOSITION OF LAWRENCE ALAN BORNSTEIN
(Videotaped)
VOLUME II

Thursday, January 15, 2004
2:03 - 5:30 p.m.

2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Reported By:
Rachel W. Bridge, RMR, CRR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office
Phone: 800.330.6952
561.659.4155

NOT A CERTIFIED COPY

016790

APPEARANCES:
On behalf of the Plaintiff:
ROBERT T. MARKOWSKI, ESQUIRE
CHRISTOPHER M. O'CONNOR, ESQUIRE
JENNER & BLOCK, LLP
One IBM Plaza
Chicago, Illinois 60611-7603
Phone: 312.222.9350

On behalf of the Defendant:
THOMAS A. CLARE, ESQUIRE
KATHRYN REED DEBORD, ESQUIRE
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Phone: 202.879.5078

On behalf of the Witness:
MICHAEL MOSCATO, ESQUIRE
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
101 Park Avenue
New York, New York 10178-0061
Phone: 212.696.8817
ALSO PRESENT:
EITAN ROSEN, VIDEOGRAPHER

- - -

INDEX

- - -

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Lawrence Bornstein				
By Mr. Markowski		330, 343		
By Mr. Clare	191 (cont'd)		341	

- - -

EXHIBITS

- - -

EXHIBIT	PAGE
MS Exhibit 58	273
MS Exhibit 59	307
MS Exhibit 60	314
MS Exhibit 61	314

PROCEEDINGS

- - -

Deposition taken before Rachel W. Bridge, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 2:03 p.m.

CROSS EXAMINATION (Continued)

BY MR. CLARE:

Q. Mr. Bornstein, before the break we were talking about your opinions about Morgan Stanley's due diligence. You indicated in response to one of my questions that one of the bases for your opinion was your observation that Mr. Tyree was distracted.

Do you have any basis for that other than your personal observation?

A. During the time period trying to communicate with him and talk to him, he was working on another deal I think at the time, I believe, and it was difficult to get in touch with him if needed.

Q. Other than the fact that it was difficult to get in touch with Mr. Tyree, do you have any basis for your opinion that he was distracted?

A. The lack of knowledge of what I saw of what he knew about the company.

Q. But again --

A. That's --

Q. Please.

A. That's just my opinion.

Q. But you don't know what steps Mr. Tyree took outside of your presence to obtain information or knowledge about the company?

A. No.

Q. And do you know whether Mr. Tyree was performing Sunbeam-related duties on some of the occasions when you could not get in touch with him or on another deal?

A. No, I have no idea.

Q. You don't know one way or the other?

A. No.

Q. I want to switch now to a different topic.

Back in the first quarter of 1998, you knew that Sunbeam was acquiring the Coleman company, correct?

A. Yes.

Q. And you knew that the acquisition was a stock and cash deal?

A. Yes.

NOT A CERTIFIED COPY

016791

Page 193

Q. And by that, I mean that Sunbeam would be providing to the owners of Coleman cash as a portion of the purchase price and stock as a portion of the purchase price?
A. Yes.
Q. And that is Sunbeam stock?
A. Yes.
Q. And did you know that the acquisition required for Coleman (Parent) Holdings Company which owned a portion of Coleman to receive over 14 million shares of Sunbeam stock as part of the purchase price?
A. Yes.
Q. You knew that back in the first quarter of 1998?
A. Yes.
Q. And did you also know that after the sale had taken place that Coleman (Parent) Holdings Company would be a significant shareholder of Sunbeam?
A. Yes.
Q. Were you informed in the first quarter of 1998 by anybody that Coleman and its corporate parents would be conducting their own due diligence on Sunbeam?
A. I wasn't aware of anything, no.
Q. You were not told anything by the people at Sunbeam that Coleman or its parent corporations would

Page 194

be conducting due diligence?
A. Not that I'm aware of, no.
Q. Were you ever informed by any source that Morgan Stanley had been tasked to perform due diligence on behalf of Coleman and its corporate parent?
A. No.
Q. Did you receive any instructions from Sunbeam about any inquiries that you might get from Coleman (Parent) Holdings and its corporate parent?
A. No.
Q. Did anybody ever tell you in words or in substance not to provide Coleman (Parent) Holdings and its corporate parent with any information that they requested?
A. No.
Q. Did anybody ever instruct you to channel all information for Coleman (Parent) Holdings through Morgan Stanley?
A. No.
Q. Do you have a recollection of any inquiry that you received that you understood to be made on behalf of Coleman (Parent) Holdings?
A. No.
Q. Are you aware of any due diligence that was performed by Coleman (Parent) Holdings or its

Page 195

representatives as part of the acquisition transaction?
A. No.
Q. You were not part of any in-person meetings with Coleman (Parent) Holdings or any of its representatives for that purpose?
A. No.
Q. Any telephone conferences?
A. No.
Q. Were you ever asked to participate in an accounting due diligence call with Coleman (Parent) Holdings like the one that Morgan Stanley had conducted that you participated in?
A. Not that I recall.
Q. Were you aware that Coleman (Parent) Holdings was, and Coleman were being represented in the transaction by Credit Suisse First Boston as their investment advisor?
A. No.
Q. Did you have any dealings with CSFB during the first quarter of 1998?
A. No.
Q. Did you receive any inquiries from CSFB during the first quarter of 1998 about Sunbeam or its financial performance?
A. No.

Page 196

Q. Are you aware of any inquiries that Andersen received, even if you were not personally involved, from anybody representing Coleman (Parent) Holdings?
A. Not that I'm aware of.
Q. Are you aware of any inquiries from Coleman (Parent) Holdings on the subject of Sunbeam's bill and hold sales?
A. No.
Q. Are you aware of any inquiries from anyone representing Coleman (Parent) Holdings about the bill and hold disclosures that were in Sunbeam's 1997 10K?
A. No.
Q. Or whether Sunbeam was engaged in bill and hold sales in the first quarter of 1998?
A. No.
Q. Or Sunbeam's Early Buy program?
A. No.
Q. Or the Early Buy program disclosures that were in the 1997 10K?
A. No.
Q. Or the impact of Sunbeam's Early Buy program on Sunbeam's first quarter 1998 sales?
A. No.
Q. Or Sunbeam's quarter-to-date sales in the first quarter of 1998?

NOT A CERTIFIED COPY

016792

Page 197

A. No.
Q. At any point in time?
A. No.
Q. Are you aware of any inquiries from anyone representing Coleman (Parent) Holdings after the March 19, 1998, press release about Sunbeam's first quarter performance?
A. Can you repeat the question?
(Thereupon, a portion of the record was read by the reporter.)
THE WITNESS: No, not until after Mr. Dunlap was terminated.
BY MR. CLARE:
Q. When you say not until after Mr. Dunlap was terminated, it was at that point that a new management team was installed?
A. Yes.
Q. And then inquiries were made by the new management team?
A. Yes.
Q. But limiting ourselves to the first quarter of 1998 and inquiries that may have been received from Coleman (Parent) Holdings during the first quarter of 1998, are you aware from any source of any inquiries that were made by Coleman (Parent) Holdings or any of

Page 198

its representatives after the March 19, '98 press release?
A. No.
Q. So no inquiries between March 19, 1998, and the end of the first quarter?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: Not that I'm aware of, no.
BY MR. CLARE:
Q. Are you aware that on April 3rd, 1998, Sunbeam announced that its first quarter 1998 sales were, had fallen short of the first quarter 1997? Were you generally aware of that?
A. I believe it was the second press release. I don't remember specifically what it said.
Q. But you're aware that shortly after the first quarter, Sunbeam issued a press release like the one I just described?
A. Yes.
Q. Were you aware of any inquiries from Coleman (Parent) Holdings or anyone representing Coleman(Parent)Holdings after that April 3rd, 1998 press release?
MR. MARKOWSKI: I want to make sure we're clear here. You've been focusing on inquiries of

Page 199

Andersen. Are you broadening the question now?
MR. CLARE: No. Any inquiries that Mr. Bornstein is aware of, made to anyone, but specifically within his knowledge.
MR. MARKOWSKI: So an inquiry to anyone, not specifically to Arthur Andersen?
MR. CLARE: Correct.
THE WITNESS: I'm not aware of anything.
BY MR. CLARE:
Q. In 1998, the first quarter, as you prepared to assist Sunbeam with these acquisition transactions, did you have an expectation that Coleman or its corporate parent might want it ask questions of Arthur Andersen?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I thought it was possible, yes.
BY MR. CLARE:
Q. So that thought did occur to you back in the first quarter of 1998?
A. Yes.
Q. And you testified that you're not aware of any inquiries that were made to Andersen and certainly not to you from Coleman (Parent) Holdings or its corporate parent?

Page 200

A. Yes.
Q. In the first quarter of 1998, did you, were you surprised by the lack of inquiry from Coleman (Parent) Holdings or its corporate parent?
A. I'd say yes.
Q. And did you form an opinion about the quality of due diligence done by Coleman (Parent) Holdings on Sunbeam in the first quarter of 1998?
MR. MARKOWSKI: Objection, lack of foundation.
THE WITNESS: I wasn't aware of any that they did, so if you want to repeat the question, I don't know if I answered it.
BY MR. CLARE:
Q. Sure. You were surprised that they didn't do any due diligence, to your knowledge?
MR. MARKOWSKI: Object to the form of the question. Mischaracterizes his answer.
THE WITNESS: Yes.
BY MR. CLARE:
Q. If there had been inquiries that were made by Coleman (Parent) Holdings or any of its representatives to Sunbeam -- strike that, withdrawn.
If there had been any inquiries made by Coleman (Parent) Holdings or any of its representatives

NOT A CERTIFIED COPY

016793

Page 201

to Andersen about Sunbeam, would you have expected to be notified?
A. Yes.
Q. And because you were the number three person on the Andersen team advising Sunbeam at the time?
A. Yes.
Q. And because you were the point person for these acquisition transactions and working with Morgan Stanley on its due diligence, you and Mr. Harlow?
A. We were working for Sunbeam on the due diligence, not Morgan Stanley.
Q. Correct, but you were working with Morgan Stanley in responding to their inquiries as part of their due diligence?
A. Yes.
Q. And so you would expect that if there were inquiries from Coleman (Parent) Holdings, that you and Mr. Harlow would also be involved in those?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I would think so, yes.
BY MR. CLARE:
Q. Okay. Based on the total lack of due diligence that you observed from Coleman (Parent) Holdings, would you agree with me that Morgan Stanley's

Page 202

due diligence of Sunbeam was more comprehensive than Coleman (Parent) Holdings?
MR. MARKOWSKI: Object, lack of foundation.
BY MR. CLARE:
Q. From your observation.
A. From my observation, yes.
MR. MARKOWSKI: Same objection.
BY MR. CLARE:
Q. Sorry?
A. From where I stood, yes.
Q. So from your perspective, Morgan Stanley spent more time conducting due diligence of Sunbeam than Coleman (Parent) Holdings?
MR. MARKOWSKI: Same objection, lack of foundation.
THE WITNESS: From my vantage point, yes.
BY MR. CLARE:
Q. And from your vantage point -- and again, that's all I'm asking you about is what you have personal knowledge of -- from your vantage point, Morgan Stanley conducted more comprehensive due diligence than Coleman (Parent) Holdings?
MR. MARKOWSKI: Same objection.
THE WITNESS: I would have to say more. I don't know how comprehensive it was, but more.

Page 203

BY MR. CLARE:
Q. It was more comprehensive than the due diligence performed by Coleman (Parent) Holdings?
MR. MARKOWSKI: Same objection.
THE WITNESS: I wasn't aware of any due diligence done by Coleman that I was aware of.
BY MR. CLARE:
Q. So Morgan Stanley did due diligence and Coleman (Parent) Holdings did not, from your perspective?
MR. MARKOWSKI: Same objection.
THE WITNESS: From my perspective, yes.
BY MR. CLARE:
Q. And you were surprised by the fact that Coleman (Parent) Holdings had not done any due diligence that had been directed to you?
MR. MOSCATO: I'm not going to make a big deal of it. I kind of have an objection of repeating the same question numerous times.
You can answer, Larry.
THE WITNESS: I think I just stated I was surprised.
BY MR. CLARE:
Q. And you were surprised back in the first quarter of 1998?

Page 204

A. Yes.
MR. MOSCATO: Part of my objection goes to the fact that he's a busy man. I really would appreciate it if you are making points, just not to belabor them.
MR. CLARE: I understand. I just want to make sure, as you pointed out earlier, that the record is clear about Mr. Bornstein's testimony.
MR. MOSCATO: I think it's more than clear at this point. Go ahead, I'm sorry to interrupt.
MR. CLARE: That's okay.
BY MR. CLARE:
Q. Have you had experience in other engagements when you were at Andersen in which you were advising the client that was involved in an acquisition?
MR. MOSCATO: I'm sorry.
BY MR. CLARE:
Q. In other words, besides Sunbeam, were you involved in other acquisition transactions while you were at Andersen?
MR. MOSCATO: Is that your question?
MR. CLARE: Yes.
MR. MOSCATO: My objection was to advising the client about an acquisition, because I don't think there is any testimony --

NOT A CERTIFIED COPY

0019794

Page 205

MR. CLARE: That's fine, I withdraw that.
MR. MOSCATO: Okay.
BY MR. CLARE:
Q. Were you involved in any engagement at Andersen in which Andersen was involved in responding to due diligence inquiries in an acquisition setting besides the Sunbeam one?
A. Yes.
Q. And in those situations, were you involved in receiving or responding to requests that were made by the party that was investing in Andersen's client?
A. Yes.
Q. And were you involved in those other situations in responding to requests from the investor's financial advisors?
A. Yes.
Q. And their lawyers?
A. Yes.
Q. And in those situations, you had also met with the investing company's accountants?
A. Yes.
Q. But none of that happened in connection with the Sunbeam acquisition of Coleman; is that right?
MR. MARKOWSKI: None of what?
MR. CLARE: None of those items that I just

Page 206

described.
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: That's all over the place, the question, I'm sorry.
BY MR. CLARE:
Q. Okay. Did you accompany -- let me withdraw that.
Were you involved in conducting due diligence on Coleman?
A. Yes.
Q. And you met with Coleman's outside accountants as part of that due diligence?
A. Yes.
Q. And you asked questions of them about Coleman's financial condition?
A. Yes.
Q. And how many days did you spend doing that with Coleman specifically?
A. One.
Q. And then you spent one day each with the other acquisition targets?
A. Yes.
Q. And that was as part of Sunbeam's due diligence on Coleman, that one day of due diligence?

Page 207

A. Yes.
Q. Did you think you had done an adequate job of conducting due diligence on Coleman from an accounting perspective?
MR. MOSCATO: I object.
BY MR. CLARE:
Q. Did you have a view at the time?
A. I didn't think it was adequate, no.
Q. And did you inform anybody of your view that it was inadequate?
A. The people I was traveling with. Yes, the answer is yes.
Q. Who?
A. Bob Gluck.
Q. So you told --
A. Janet Kelly, there was another guy there, Bob Tottie, I believe his name was.
Q. Was there anybody from Morgan Stanley present at that meeting?
A. No.
Q. Did you ever express that view to Morgan Stanley that you thought the due diligence that had been done on Coleman by Sunbeam was inadequate?
A. I believe I probably did, yeah.
Q. As you sit here today, do you have a

Page 208

recollection of when and where and to whom that information was provided at Morgan Stanley?
A. No, not specifically, no.
Q. Generally?
A. No.
Q. So you can't testify about a particular conversation that you had or a particular document that was written to communicate that information to Morgan Stanley?
A. No.
Q. I want to switch topics to focus on the day at the print shop.
A. Okay.
Q. And I want to start where you started earlier this morning about when you were in the hotel room with Mr. Brockelman watching television.
And again, just to be clear, this was March 19, 1998, the day that the press release was issued?
A. Yes.
Q. And you were watching television with Mr. Brockelman?
A. Yes.
Q. And it was a report on CNBC?
A. I believe so, yeah.

NOT A CERTIFIED COPY

016795

Page 209

Q. And your recollection is it was a text crawler on the bottom of the screen?
A. Yes.
Q. It was not a news report with a live interview or a news person that was communicating this information, to the best of your recollection?
A. Yeah, I think I do remember alive conversation on it, but I'm not 100 percent sure.
Q. And you recall that the news report indicated that the first quarter 1998 sales might not meet analysts' expectations? That was part of the news report that you remember hearing?
A. Honestly, I just remember early morning release Sunbeam's sales reports, sales are going to be below expectations. I don't remember anything specific about it.
Q. That was my question, was whether you remember whether the statement in the press release about first quarter 1997 sales was part of the report that you saw.
A. I don't remember.
Q. You don't remember one way or the other?
A. No.
Q. Was there any mention of Morgan Stanley in the press release, the press report that you saw on

Page 210

CNBC?
A. I don't remember.
Q. Do you remember if there were any mention of the debenture offering?
A. No.
Q. Or the pending acquisitions?
A. I don't recall anything, no.
Q. Was CNBC reporting on the reaction of the stock to this news?
A. I believe so, yeah.
Q. And what do you recall was the stock price that day?
A. I thought it went down significantly. I don't remember exactly what it was.
Q. Is that all you remember about the press report that you saw?
A. On TV?
Q. Yes.
A. Yes.
Q. And at the time that you saw the press release -- sorry, withdrawn.
At the time that you saw the press report on CNBC, you knew from your prior conversation with Mr. Pastrana that Sunbeam sales for the first two months of 1998 were lower than the prior year, right?

Page 211

A. Yes.
Q. So this news report on CNBC was not the first time you were hearing that information?
MR. MARKOWSKI: I'm going to object. He said he can't remember whether the information about the first quarter of '97 was part of the announcement.
MR. CLARE: And I didn't ask him about that.
MR. MARKOWSKI: Could you read the question back, please.
MR. CLARE: Fair enough. Now I understand your objection, Bob, I'm sorry.
BY MR. CLARE:
Q. Was Mr. Brockelman present when you called Mr. Harlow to ask him about the, what had happened?
A. Yes.
Q. About the press release?
A. Yes.
Q. And you said you couldn't remember whether it was Mr. Harlow or Mr. Gluck that you ultimately got in touch with from your hotel room?
A. Yes.
Q. Did either Mr. Harlow or Mr. Gluck read you the entire press release over the phone?
A. I don't remember if they did or if I got it

Page 212

faxed, I don't recall.
Q. Did you learn from any source during that phone conversation who had drafted the press release?
A. I don't remember.
Q. During that telephone conversation, was there any discussion about what role, if any, Morgan Stanley had in the decision to issue the press release or its content?
A. At the hotel room, no.
Q. The first time you had a discussion on that topic was at the print shop with Mr. Tyree?
A. Yes.
Q. During that initial telephone call that you had in your hotel room, was there any discussion with Mr. Harlow or Mr. Gluck about Sunbeam's ability to exceed first quarter 1997 sales?
MR. MARKOWSKI: Could you read that back?
(Thereupon, a portion of the record was read by the reporter.)
MR. MARKOWSKI: You're talking about discussion other than reading the text of the press release?
MR. CLARE: That's correct. Any discussion about the achievability.
THE WITNESS: Not that I'm aware.

NOT A CERTIFIED COPY

01/16/96

Page 213

BY MR. CLARE:
Q. Was there any discussion between you and Mr. Harlow and Mr. Gluck about whether the press release that Sunbeam had issued should be retracted or withdrawn?
A. No.
Q. Did you think that the press release should be retracted or withdrawn?
A. No.
Q. Did you think the press release was false?
A. No.
Q. Did you think the press release was misleading?
A. Yes.
Q. Did you discuss your view that the press release was misleading with either Mr. Harlow or Mr. Gluck?
A. Again, at the hotel room, talking about the hotel room?
Q. Yes, I am.
A. Not that I'm aware of.
Q. Was there any discussion about withholding Andersen's comfort letter as a result of the issuance of the press release, again focusing on the conversation in the hotel room?

Page 214

A. Not that I'm aware of, no.
Q. Was there any discussion about what disclosure needed to be made in the offering memorandum of the press release with Mr. Harlow or Mr. Gluck?
A. No.
Q. So the first time that topic was raised was later at the print shop?
A. Yes.
Q. Was there a discussion with you and Mr. Harlow and Mr. Gluck about approaching Morgan Stanley with that question?
A. No.
Q. You testified that you did ask Mr. Tyree and Mr. Lurie about what would be included in the offering memorandum, correct?
A. Yeah, I did that myself.
Q. That was on your own initiative?
A. Yes.
Q. In other words, prior to that, you had not had a discussion with anybody from Andersen about asking that question?
A. No.
Q. Or anybody from Sunbeam?
A. No.
Q. You stated that you held a view that the press release was misleading.
A. Yes.
Q. But you never asked Sunbeam to withdraw or retract the press release, did you?
A. No.
Q. And you did not express that suggestion to anybody internally at Sunbeam?
A. No.
Q. And/or anybody internally at Andersen?
A. No.
Q. Or anybody at Morgan Stanley?
A. No.
Q. And the reason that you thought it was misleading is because you thought it was aggressive?
A. Yes.
Q. Is there any other reason that you thought it was misleading?
A. The language about the reasons for it were I thought misleading.
Q. In what way?
A. Just I'd have to look at it again, but --
Q. Let's pull it out. It's Exhibit Number 14.
A. Just the wording, changes in inventory management and order patterns. I'm not really sure exactly how that impacts sales.

Page 215

Page 216

Q. Could that be a reference to Sunbeam's Early Buy program?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I have no idea exactly at this point.
BY MR. CLARE:
Q. But is that the way you understood it?
A. Yes, and then the whole comment about new products, because I don't believe that at that time any of the new products had significant sales, the new products that they talked about here.
Q. Now you testified earlier that you discussed with Morgan Stanley and the Davis Polk lawyers your belief that you had that the statement in the press release was aggressive, correct?
A. Yes.
Q. Did you discuss with Morgan Stanley or Davis Polk these additional concerns that you had about the wording of the reasons for the softer sales?
A. I don't remember specifically.
Q. As you sit here today, can you recall any discussion that you had with Morgan Stanley or Davis Polk about the reasons stated in the press release for the softer sales?

NOT A CERTIFIED COPY

Page 217

A. No.
Q. Did you discuss that issue with Mr. Gluck or Mr. Harlow in your hotel room?
MR. MARKOWSKI: That issue being the statement made in the press release?
MR. CLARE: About the reasons, yes.
THE WITNESS: No.
BY MR. CLARE:
Q. Did you raise that issue with anybody?
A. The reasons in the press release? I don't remember. I just, I just remember focusing on the $253 million number that I didn't think that was going to be met and that they should have just left it at lower, it's going to be lower basically.
Q. They, Sunbeam should have just left it at that?
A. Yeah.
Q. Did anyone ever tell you that Morgan Stanley had been involved in drafting the press release?
A. Drafting specifically, no, but Tyree mentioned that they were involved in the conversation that led up to the issuance of the release.
Q. With regard to the particular wording of the press release --
A. I have no idea.

Page 218

Q. You have no idea what role, if any, Morgan Stanley played in the drafting of the press release from any source?
A. Yes.
Q. Yes, you have --
A. I have no idea.
Q. You have no idea, thank you.
When was the first time you saw a hard copy of the press release? Was it in your hotel room or at the printer?
A. I think it was in my hotel room.
Q. Were you informed by anyone who had decided to include the statement about expecting to exceed 1997 first quarter sales in the press release?
MR. MARKOWSKI: Could you read that back for me, please?
(Thereupon, a portion of the record was read by the reporter.)
THE WITNESS: No.
BY MR. CLARE:
Q. That was the portion of the press release that you objected to, correct?
A. For the most part, yes.
Q. And you don't have any understanding as to who put that clause in the press release?

Page 219

A. No.
Q. Mr. Tyree didn't tell you?
A. No.
Q. Or Mr. Gluck or anybody?
A. No.
Q. I want to go back to the discussion that you had with Mr. Tyree at the print shop. So we're leaving your hotel room now, and you and Mr. Brockelman go to Global Financial Press.
You said that there was a meeting that you had with the individuals present where you discussed the subscription for the bond offering, the fact that it was oversubscribed? That was the first thing that you remember when you arrived at the print shop?
A. Yeah, I was very surprised it was oversubscribed.
Q. Why were you surprised?
A. Because we just had pretty devastating news about the results of the company and the stock price was going down significantly and the bonds were oversubscribed and they were convertible bonds into stocks, so I just thought it was ironic at best that it was, the bonds were oversubscribed.
Q. And did the discussion of the press release and what should be put in the offering memo about the

Page 220

press release come up during that conversation?
A. No.
Q. When did that issue come up? Did it come up in the course of working through the offering memorandum in the manner that you described?
A. No, I'd say the first 15 minutes of the conversation were about the surprise of the size of the offering, and then the conversation about what happened the night before and Dunlap yelling and screaming.
The next 15 minutes were based on what was going to be put in the offering related to the disclosure of the press release.
Q. Tell me about the conversation with Mr. Tyree and others about the night before. Tell me everything you remember about that discussion.
A. Just that there was a lot of yelling and screaming, and Dunlap would say, "Who the hell do these guys think they are making us disclose this? We're going to lose $100 million. They don't know our business." Those types of things.
Q. So it was your understanding that Mr. Dunlap was reluctant to issue the press release?
A. Yes.
Q. It was your understanding that Morgan Stanley had insisted that Sunbeam issue the press release, is

NOT A CERTIFIED COPY

016796

16div-024942

Page 221

that what Mr. Tyree told you?
A. No, nothing about insisting.
Q. Or had suggested?
A. I have no idea who suggested it.
Q. Well, what I'm trying to get at is you referenced a statement by Mr. Dunlap, "Who do these guys think they are, making me lose $100,000?"
A. I think they were talking about Arthur Andersen.
Q. So it was your understanding that Mr. Dunlap was upset with Andersen?
A. Yes.
Q. Now I'm a little confused, because I thought to your knowledge Andersen had not played any role in the decision to issue the press release or the drafting of it.
A. No. The decision was that the information needed to be disclosed to Morgan Stanley and the public, or else they weren't getting that comfort letter.
Q. Okay. And so you understood Mr. Dunlap to be upset with Andersen for insisting that it be disclosed to Morgan Stanley?
A. And the public.
Q. And the public?

Page 222

A. Yes.
Q. And it was your understanding that unless that information was disclosed to the public, that Andersen would withhold its comfort letter?
A. Unless reasonable disclosure was made, yes.
Q. And that if reasonable disclosure was made, that Andersen would issue its comfort letter?
A. That's my understanding, yes.
Q. In terms of the discussion about what portion of the press release ought to be included in the offering memorandum, you didn't have any objection to including the statement that Sunbeam might miss the expectation of Wall Street analysts, did you?
Did you have any objection to including that portion of the press release in the offering memorandum?
A. No.
Q. Your only objection was the clause that follows that about net sales being expected to exceed 1997 first quarter sale?
MR. MARKOWSKI: Object to the form of the question, mischaracterizes what he has said about his views of various other statements in this.
MR. MOSCATO: Well, answer the question.
THE WITNESS: My main objection was the

Page 223

caveat to the $253 million in sales.
BY MR. CLARE:
Q. And that's the objection that you raised with Morgan Stanley?
A. Yes.
Q. You didn't raise any of your other objections about the wording with Morgan Stanley?
A. I don't remember specifically.
Q. You don't remember doing it?
A. I don't think any of it should be in other than really the facts as they were.
Q. Which was what?
A. They weren't going to make the top number.
Q. So you didn't have any objection to that information being disclosed?
A. No.
Q. You see here on the second page of CPH Exhibit 14 there is a cautionary statement.
A. Yes.
Q. You're familiar with those cautionary statements?
A. Yes.
Q. In the press release that you saw on March 19th, the hard copy that you saw included these cautionary statements?

Page 224

A. Yes.
Q. And these are akin to the cautionary statements that you wanted to be included in the offering memorandum --
A. Yes.
Q. -- to accompany the press release disclosure?
A. Yes.
Q. You didn't have any objection to including those cautionary statements in the offering memorandum?
A. No.
Q. Did anyone from Morgan Stanley or Davis Polk object to your suggestion that you include cautionary language in the offering memorandum about forward-looking statements or risk factors?
A. Not that I'm aware of, no.
Q. Do you remember anybody resisting that idea?
A. No.
Q. You testified that after this initial conversation with Mr. Tyree where you raised these objections, it was Mr. Lurie who said the press release would be going in verbatim?
A. Yes.
Q. Did Mr. Tyree say anything during that conversation that you remember?
A. No, not specifically.

NOT A CERTIFIED COPY

01/16/99

Page 225

Q. Do you have any recollection of, even without recalling his specific words, what his position on that was?
A. No.
Q. Did he ever say he disagreed with you?
A. I don't remember.
Q. You don't remember him saying that?
A. No.
Q. Did you have that impression that he disagreed with you?
A. Yes.
Q. But you can't recall what it was that he said?
A. It was his counsel sitting right next to him that disagreed with me and he didn't differ his opinion, so --
Q. Did Mr. Lurie explain the reasons for his statement that the press release would go in verbatim?
A. That those were the company's representations.
Q. So Mr. Lurie told you that these were Sunbeam's representations and that they would be included in Sunbeam's bond offering; is that a fair summary?
A. Yes.

Page 226

Q. Did Mr. Lurie express an independent view of whether it ought to be included or not?
A. He -- yes, he said he -- yes.
Q. But he was -- let me put it this way. Did Mr. Lurie communicate to you whether the company believed the press release ought to be included verbatim?
A. No.
Q. Did you think Mr. Lurie was the final decision maker as to what would go in the offering memorandum?
A. No, I thought it was the company's decision.
Q. So you didn't think it was Mr. Lurie?
A. No.
Q. You didn't think it was anybody from Davis Polk?
A. Anybody could have said the deal's not going through if we put this in. I mean it's their decision.
Q. My question is different. My question is who was the, who was the final decision maker about what would be included in the Recent Development section of the offering memorandum?
And I believe your testimony is you believe that it was the company's decision ultimately.
A. Yeah, I believe so.

Page 227

Q. Okay. Did, so you didn't think it was Mr. Tyree's decision to make ultimately?
A. No.
Q. You testified that there were at least one and maybe more lawyers from Scadden Arps present for this discussion, correct?
A. Yes.
Q. And they were there as lawyers to Sunbeam?
A. Yes.
Q. Did they participate in this discussion?
A. I don't specifically remember.
Q. Do you remember any of the lawyers from Scadden expressing a view as to what ought to be included in the Recent Development section?
A. No.
Q. Do you remember them agreeing or disagreeing with the objection that you made?
A. No.
Q. Did you solicit their view?
A. I'm pretty sure that I did. I don't remember specifically, though.
Q. Do you have an impression about the position that the Scadden lawyers had on this issue that you were discussing with Mr. Lurie and Mr. Tyree?
A. I think I was the only one in the room that

Page 228

had a difference of opinion about what should be in there.
Q. So it wasn't just Morgan Stanley and Davis Polk. Your impression was that Sunbeam's lawyers, Scadden Arps --
A. Yes.
Q. -- had the same view?
A. Yes.
Q. Is there anything else about that discussion that we haven't talked about today --
A. No.
Q. -- that you can recall?
A. No.
Q. At that point you left the room and you went into the pool room?
A. Uh huh.
Q. And you called Mr. Harlow?
A. (Witness nods head up and down.)
Q. Is that a yes?
A. Yes.
Q. I'm sorry, the court reporter has to take down your verbal answers.
A. Sorry, I'm eating ice.
Q. And Mr. Harlow conferenced in Mr. Gluck?
A. Yes.

NOT A CERTIFIED COPY

016600

Page 229

Q. How long did you talk to Mr. Harlow before he conferenced in Mr. Gluck?
A. Ten minutes probably.
Q. Do you remember anything that you discussed with Mr. Harlow specifically before you brought in Mr. Gluck?
A. Other than the fact as we discussed earlier about my opinion not to put that in.
Q. Mr. Harlow shared your view?
A. Yes.
Q. And why did you conference in Mr. Gluck?
A. To get an understanding of the company's, what they believed what should be included, as well as to get more information on the basis for making the statement.
Q. Because it was the company's decision about what would be included in the offering memorandum?
A. Yes.
Q. And that was the reason you went to the company for that?
A. Yes.
Q. Did you and Mr. Harlow attempt to or discuss conferencing in anybody else from Morgan Stanley?
A. No. They were in the next room. They knew what I was doing, so they knew who I was speaking with.

Page 230

Q. I understand that, but you or Mr. Harlow didn't suggest to conference in somebody perhaps more senior from Morgan Stanley to discuss this issue?
A. Never met anybody more senior from Morgan Stanley so --
Q. That was my next question. Did you know anybody from Morgan Stanley who was working on the deal other than Mr. Tyree?
A. And Tyrone Chang, no.
Q. Other than what you testified to this morning, do you remember anything about the discussion that you had with Mr. Gluck?
A. No.
Q. And Mr. Harlow?
A. No.
Q. Mr. Harlow told you he was going to follow up with Mr. Fanin?
A. Yes.
Q. Did he say why he was going to follow up with Mr. Fanin?
A. To discuss the issue and get support for the sales estimates.
Q. And Mr. Gluck had not been involved in the discussion of the sales estimates the night before?
A. I have no idea.

Page 231

Q. But you thought Mr. Fanin had --
A. Yes.
Q. -- some additional information on that?
A. Yes.
Q. And was there a consideration or discussion that the question about what should be included in the offering memorandum might have legal implications, and that's why it made sense to bring somebody from Sunbeam's legal department into the conversation?
A. I don't know what the thought process was, to be honest with you.
Q. Did that thought occur to you?
A. No, my understanding was he was part of the discussion in the press release.
Q. But did that thought occur to you that the question of what ought to be included in the offering memorandum might have legal implications for Sunbeam and therefore a Sunbeam lawyer needed to be involved in the decision making?
A. Yes.
Q. That thought occurred to you that night?
A. As well as other counsel that were there, yes.
Q. But again, it was the company's decision about what would be included in the offering

Page 232

memorandum?
A. Yes.
Q. And so it would make sense that the company's lawyers were involved in that decision?
A. Correct.
Q. And in fact, later in the evening it was the company's lawyers that communicated to you the company's decision to include the press release verbatim, correct?
A. Yes.
Q. And that was either Mr. Fanin or Miss Kelly?
A. I believe it was Miss Kelly to Harlow, Harlow to me.
Q. But it was your understanding that Miss Kelly was the ultimate decision-maker on including the press release verbatim?
MR. MARKOWSKI: Objection, lack of foundation.
THE WITNESS: My belief, it was Fanin's decision. It was legal counsel, Sunbeam's legal counsel.
BY MR. CLARE:
Q. Sunbeam's legal counsel?
A. In-house legal counsel.
Q. Just to be clear action, it's your testimony

NOT A CERTIFIED COPY

CONT #972

Page 233

that the final decision to include the entire text of the press release verbatim in the press release was made by Sunbeam's in-house legal counsel?
A. Yes.
MR. MARKOWSKI: Objection to lack of foundation.
BY MR. CLARE:
Q. But from your perspective, that was true?
A. Yes.
Q. You returned to the room with Mr. Brockelman and Mr. Tyree and Mr. Lurie and the Scadden lawyers were and you had a side bar conversation with Mr. Brockelman?
A. Outside of the room, yes.
Q. And Mr. Brockelman told you that Mr. Tyree was making derogatory comments to you?
A. Yes.
MR. MARKOWSKI: When you say to you --
THE WITNESS: Toward me.
BY MR. CLARE:
Q. Directed towards you while you were outside of the room?
A. Yes.
Q. Did Mr. Brockelman tell you what he thought Mr. Tyree was upset about?

Page 234

A. I think it was the fact that he wasn't aware of the results of the sales for the first two months, where the company was.
Q. And it was, was that your sense as well? Did you share that sense that that's what Mr. Tyree was upset about?
A. Yes.
Q. So Mr. Tyree, in using profanity that was directed towards you outside of your presence and then again to you in your presence, it was your sense that he was upset about not knowing this information sooner?
A. Yes.
Q. He wasn't using this profanity in an argument with you over your objection to including the text of the press release?
A. No.
Q. That wasn't the context of Mr. Tyree's profanity?
A. Not that I believe.
Q. How about raising his voice?
A. I don't think so.
Q. Did Mr. Tyree ever say to you during that discussion after you had reentered the room that he believed that the press release should be included verbatim in the offering memorandum?

Page 235

A. I don't recall specifically him saying that.
Q. Do you recall him saying that in substance?
A. Yes.
Q. After you came back into the room?
A. Yes.
Q. And did he elaborate on his reasons for that?
A. No.
Q. Did Mr. Tyree ever indicate to you that it was his decision to make?
A. No.
Q. Did he ever say to you, "I don't care what you think, Mr. Bornstein, we're putting it in," in words or in substance?
A. For the most part, yeah, that was the gist of what was being told to me.
Q. And did you tell Mr. Tyree that the issue had been submitted to Sunbeam's legal counsel?
A. He was aware of that, yes.
Q. Because you told him?
A. Yes.
Q. You told him that you had spoken with Mr. Fanin?
A. I never spoke to Fanin, but someone had, yes.
Q. You told Mr. Tyree that Andersen had raised the issue with Mr. Fanin?

Page 236

A. Yes.
Q. And at that point, what happened with regard to this issue? Did everybody sit and wait for --
A. People kept working and it was several hours later that the decision finally came back.
Q. So people kept working on other issues related to the offering memorandum?
A. Yes.
Q. At that point in time when Mr. Tyree had this discussion with you, no decision had been made about what would be included in the offering memorandum?
A. Correct.
Q. During that same discussion with Mr. Tyree, you indicated that he said, "Are these guys fucking with me? Are they going to make their numbers or not?" Is that correct?
A. Yes.
Q. Best of your recollection of what he said?
A. Yes.
Q. Who did you understand Mr. Tyree to be referring to when he said these guys?
A. Sunbeam.
Q. So he wasn't saying Andersen? He wasn't referring to Andersen?
A. No.

NOT A CERTIFIED COPY

015802

Page 237

Q. And he wasn't suggesting that you or Mr. Brockelman might be fucking with him about the numbers?
A. Correct.
Q. He seemed to be directing his anger towards Sunbeam in raising this question?
A. Yeah. It was these guys, so it wasn't you.
Q. Okay. And you understood him to be referring to Sunbeam?
A. Yes.
Q. Did you -- what did you understand him to be asking, less colloquially, when he asked you that question?
A. If I thought they were going to be able to make these numbers.
Q. Did you think it was appropriate for him to ask that question?
A. Yes.
Q. Did you think it was legitimate for Mr. Tyree and Morgan Stanley to want to know that information?
A. Yes.
Q. Did he appear sincere to you in wanting to know that information?
A. He seemed very upset and nervous about it.
Q. Did he appear to you to be concerned that

Page 238

Sunbeam's management was fucking with him about their ability to meet the numbers?
A. He had a concern, yes.
Q. And did you think that, in asking that question, Mr. Tyree was being diligent in wanting to find out that information?
MR. MOSCATO: I object to that.
BY MR. CLARE:
Q. Did you have an impression about that?
A. No. I don't think he was being diligent about it.
Q. But you thought it was appropriate for him to ask that question?
A. Sure.
Q. And what did you tell him in response to that question?
A. I told him what I said before. I didn't think -- I thought it was a stretch.
Q. Did you tell him in words or in substance that Sunbeam was lying to Morgan Stanley about its sales objectives for the quarter?
A. No.
Q. Did you think that Sunbeam was lying to Morgan Stanley about its sales objectives for the quarter?

Page 239

A. I thought it was aggressive.
Q. But did you think that Sunbeam's management was lying to Morgan Stanley about its sales objectives?
A. No.
Q. Did you have any basis to suspect that that was the case?
A. No.
Q. Did Mr. Tyree discuss with you in any detail the schedule of sales that's been marked at least in form as CPH Exhibit 121?
A. No.
Q. Did you have any discussions about these numbers beyond you expressing the view that they were aggressive?
A. I believe I mentioned that I think they were numbers on a page and they were aggressive at this point in time.
Q. Did Mr. Tyree tell you where this document had come from?
A. No.
Q. Was there any discussion about the fact that Morgan Stanley had spent several hours on the phone the night before going through this document with Sunbeam's management?
A. No.

Page 240

Q. Was there any discussion about the fact that Mr. Uzzi and several members of Sunbeam's sales team had given a presentation to Morgan Stanley about this document?
A. No.
Q. Was there any discussion about Sunbeam's confidence in meeting these numbers that are reflected on the buildup, CPH 121?
A. Not that I recall.
Q. Did Mr. Harlow ever tell you that Mr. Uzzi was very confident about exceeding the first quarter 1997 numbers?
A. I believe he did toward later in the night.
Q. So later in the evening Mr. Harlow reported back to you that as a result of his additional inquiries, he had been informed that Mr. Uzzi was very confident that Sunbeam would exceed its first quarter 1990 sales numbers?
MR. MARKOWSKI: You said 1990 again.
MR. CLARE: Okay. I apologize.
THE WITNESS: I believe that the board got back to Phil. I don't know who he spoke to specifically. I don't know, I don't think he spoke to Uzzi directly.

NOT A CERTIFIED COPY

016803

Page 241

BY MR. CLARE:
Q. Okay. Did you provide any other response to Mr. Tyree about the sales buildup document except for what you just testified about to say that it was aggressive?
MR. MARKOWSKI: Other than what he testified about this morning?
MR. CLARE: Well, let me ask you that.
BY MR. CLARE:
Q. Did you tell Mr. Tyree that you believed, having seen this document, that it was even more aggressive for Sunbeam to be projecting these sales?
A. I don't know about more aggressive, but I, as I testified to earlier, I said if they are going to make it, they are going to make it legitimately, because I'm going to do additional procedures to ensure that they do.
Q. We're going to get to that part of the conversation in just a second. I just want to focus on CPH Exhibit 121 and the sales buildup sheet.
A. Okay.
Q. Let me know when you have that in front of you.
A. Okay.
Q. You testified a moment ago that you told

Page 242

Mr. Tyree that you believed the numbers on CPH Exhibit 121 were just numbers on a page; is that right?
A. For lack of a better definition, yeah, because I didn't see support for it.
Q. Okay. But you didn't know, Mr. Tyree didn't tell you that he had additional support beyond this document --
A. No.
Q. -- from Sunbeam sales force?
A. No.
Q. I want to get as close as I can to the exact word that you told Mr. Tyree in response to this document. Can you tell me what your best recollection is?
A. I think I've already testified to that.
Q. Okay. Can you tell me again, please.
A. That I thought it was aggressive and a bunch of numbers on a page.
Q. Now this morning, in response to a question from Mr. Markowski, you testified to a belief that you had after seeing this document, that it was even more aggressive.
And I want to know, did you communicate that belief to Mr. Tyree that your skepticism about the numbers escalated after having seen the sales buildup

Page 243

that's CPH 121?
A. I don't recall specifically.
Q. Do you recall at all discussing that issue with Mr. Tyree?
A. That it was escalated above where it was before? No.
Q. Did you provide Mr. Tyree or any of the Davis Polk lawyers with any information about any of the customers that are listed here on CPH Exhibit 121?
A. No.
Q. For example, did you tell Morgan Stanley anything that you or Arthur Andersen knew about potential orders at Wal-Mart?
A. No.
Q. Or past sales to that customer?
A. No.
Q. Or ordering patterns?
A. No.
Q. Or trends?
A. No.
Q. Did you have this information in your mind about any of the customers that are listed here on CPH Exhibit 121?
A. No.
Q. Did you have any specific information about

Page 244

the sales or ordering patterns for these customers that night on March 19, 1998?
A. No.
MR. MOSCATO: Is it possible to take 30 seconds and hunt up a cup of coffee?
MR. CLARE: Sure, let's go off the record.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor, 3:01 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor is 3:11 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, before the break we were talking about your discussions with Mr. Tyree at the print shop on the evening of March 19th.
You testified that you told Mr. Tyree you were skeptical of Sunbeam's abilities to exceed first quarter 1997; is that correct?
A. Yes.
Q. Other than the word skeptical, did you use any other word with Mr. Tyree to describe your views about the achievability of that sales objective?
A. I might have used the word conservative.
Q. In referring to yourself as a conservative accountant?

NOT A CERTIFIED COPY

016004

Page 245

A. I believe so, yes.
Q. And did you tell Mr. Tyree in words or in substance that it was impossible for Sunbeam to exceed its first quarter 1997 sales objective, of exceeding -- let me rephrase.
Did you tell Mr. Tyree in words or in substance that it would be impossible for Sunbeam in the first quarter of 1998 to exceed first quarter 1997 sales?
A. I don't believe I used the word impossible. I think I used the words logistically difficult.
Q. Okay. So we have skeptical and logistically difficult.
A. I think those are the words I used.
Q. Are there any other words that you used in talking to Mr. Tyree to describe your view of the achievability of that sales objective?
MR. MARKOWSKI: He already -- are you excluding what he already testified to this morning? Just to get him to repeat it as a memory test? Because he testified on this.
BY MR. CLARE:
Q. No, I'm asking you whether you remember using any other exact words. I'm asking you for exact words.
A. I don't remember the exact words, to be

Page 246

honest with you, so many years.
(Thereupon, a cellphone rang.)
MR. CLARE: Let's go off the record.
THE VIDEOGRAPHER: We are now going off the video record. The time on the monitor is 3:12 p.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 3:18 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, before the break I was asking you to the best of your ability to tell me the exact words that you used with Mr. Tyree and Mr. Lurie in describing your views on the achievability of Sunbeam's objective to exceed first quarter 1997 sales.
And can you testify beyond what you've already told me that you used the word skeptical and logistically difficult to describe your exact words?
A. Healthy skepticism. I did the math for them, and I think I testified to everything else I've said.
Q. As you sit here today, other than just do the math, skepticism or healthy skepticism and logistically difficult, do you remember any of the exact words that you used with Mr. Tyree or with Mr. Lurie?
A. No.

Page 247

Q. Now when you said you did the math for them, that was basis for your skepticism; is that correct, the gap that existed at that point in time between sales to date and the number of days left in the quarter? Is that the math that you're referring to?
A. Yes.
Q. And you went through that with Mr. Tyree and Mr. Lurie?
A. Yes.
Q. Other than that calculation that you did, let me ask you this. Did you actually physically do it out on paper with Mr. Lurie and Mr. Tyree?
A. No. I did it in my head.
Q. And that's your testimony where you said they would have to ship between 10 and $15 million a day for the rest of the quarter?
A. Correct.
Q. And that was the basis for your statements to Mr. Tyree and Mr. Lurie about your skepticism?
A. That, and I've been to every location throughout the country and thought it would be difficult to ship that much product --
Q. Okay.
A. -- so quickly.
Q. Was it based on anything else besides that?

Page 248

A. No.
Q. Had you done any study or analysis of sales trends at Sunbeam?
MR. MOSCATO: You mean like a formal study or analysis or any kind of understanding?
MR. CLARE: Any kind of understanding.
THE WITNESS: Yes.
BY MR. CLARE:
Q. And what had you done?
A. Just looked at quarterly results and looked at sales by month.
Q. Did you have an understanding that there was a history at Sunbeam of sales being back-ended at the end of the quarter?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: There was a recent history, yes.
BY MR. CLARE:
Q. An uptake of sales in the last few days or weeks of a quarter?
A. Yes.
Q. And you knew that on March 19th?
A. Yes.
Q. Was your skepticism based on anything you

NOT A CERTIFIED COPY

016805

Page 249

knew about a particular customer of Sunbeam's?
A. No.
Q. You didn't have any additional information about a customer?
A. No.
Q. Did you know anything, did you have any additional information about the likelihood of the sales coming in based on a particular customer or conversation that you had had with a customer?
A. No.
Q. Or with a member of Sunbeam's sales staff?
A. No.
Q. You testified that you told Mr. Tyree and Mr. Lurie and, in the Scadden lawyer's presence, that you were going to be conducting some additional procedures at the end of the quarter, correct?
A. Yes.
Q. And I believe you said that your statement was something to the effect that if they are going to make their revenue number, they are going to make it, because I'm going to be sending people out to every shipping dock all over the country at midnight at the end of the quarter, correct?
A. Yes.
Q. Those were the additional procedures that you

Page 250

were describing?
A. Yes.
Q. And those are the procedures that you discussed with Mr. Markowski this morning?
A. Yes.
Q. What was your intent of telling that to Morgan Stanley? Why did you tell Morgan Stanley you were going to be doing that?
A. Because I was skeptical that they were going to be able to make the numbers.
Q. And you wanted to take additional steps to make sure that the first quarter 1998 sales numbers that Sunbeam reported were right; is that correct?
A. Yes.
Q. And that was due in part to the pressure that you believed management was putting on the sales staff to get product out the door?
A. Yes, for the most part, my decision to do that was made at that point in time because of the way I was being treated by the people in the room and my conservatism and wanting to make sure that it was actually going to be achieved.
Q. Because you wanted the numbers that Sunbeam reported at the end of the quarter to be right?
A. Yes.

Page 251

Q. And you meant it when you said it, right?
A. I meant it.
Q. And you actually followed through on it?
A. Yes.
Q. And did anybody from Morgan Stanley or Davis Polk object to Andersen conducting those additional procedures?
A. Not that I'm aware of, no.
Q. Well, did they say anything to you in response to your statement that you intended to carry out those additional procedures?
A. No, they didn't say a word.
Q. But they didn't object?
A. No.
Q. Do you think it would be fair for the people in the room to believe that you were serious about wanting to carry through on that statement?
A. I have no idea what they wanted to believe or not.
Q. But you said it in a serious way, you weren't joking around?
A. Right.
Q. Did you, in doing the math with Mr. Tyree and Mr. Lurie, did you ever indicate a particular number that you believed could be shipped on a per-day basis

Page 252

through the end of the quarter by Sunbeam?
A. No.
Q. And did you have a particular number in your mind about how much could be shipped by Sunbeam on a per-day basis through the end of the first quarter?
A. No.
Q. So you didn't say that for the Neosho facility?
A. I don't remember specifically talking about any specific facility other than I visited, I think I specifically listed off the names of the locations I had visited.
Q. Well, that's why I'm asking you the question, because you testified you told Morgan Stanley that you had been to Neosho.
A. Yes.
Q. Did you ever tell Morgan Stanley that the Neosho facility can only ship x dollars' worth of product per day?
A. No. Specifically, no.
Q. Generally?
A. No.
Q. How about the Hattiesburg facility?
A. No.
Q. Did you ever tell anyone from Morgan Stanley

NOT A CERTIFIED COPY

016306

Page 253

that you believed that only x dollars' worth of product could be shipped from the Hattiesburg facility on a per-day basis?
A. No.
Q. You testified that you said that night at the printer that "I hope to God they do make their sales numbers; otherwise, you're all going to get sued."
A. Yes.
Q. Do you recall that testimony?
A. Yes.
Q. That statement is not documented in your March 31st, 1998, memo.
A. Correct.
Q. And you previously testified that this was an off-the-cuff comment that you had made.
A. Yes.
Q. Do you think the people in the room understood it that way in the context of the discussion that you had?
A. I have no idea.
Q. Is that the way you intended it to be taken, was as an off-the-cuff comment?
A. Yes.
Q. Did you really think that everybody was going to get sued?

Page 254

A. Possibility if the numbers didn't come in, yeah.
Q. And did you tell anyone at Andersen of your belief that everybody was going to get sued if the numbers didn't come in?
Did you discuss that with anyone internally at Andersen?
A. Not before making that comment, no.
Q. How about afterwards?
A. I don't recall specifically.
Q. You didn't tell Mr. Harlow that?
A. I'm sure at some point in time I did, that I made the comment, but I don't remember specifically.
Q. At that point in time, March 19, 1998, did you think it was necessary to delay the bond offering as a result of Sunbeam's sales performance to date in the first quarter of 1998?
A. In March?
Q. Uh huh.
A. What part of March?
Q. On March 19th, that night at the print shop.
A. No, I didn't know it was a decision that I needed to make, to be honest with you.
Q. Did you, did that thought ever occur to you that the bond offering should be delayed as a result of

Page 255

the slower sales performance through that point in the quarter?
A. I was surprised that the bond offering was going forward that night, and I made that perfectly clear to people.
Q. How did you make that perfectly clear?
A. Just surprised how, that the bond offering was continuing to go on and that the amount was much higher given the recent developments.
Q. Okay. But I want to be clear.
You said you were surprised that the bond offering was going forward because of the announcement that had been made that day.
A. Yes.
Q. And it was bad news that was announced, correct?
A. Yes.
Q. It was an early warning to the markets about Sunbeam's financial performance?
A. Yes.
Q. And you were surprised that the pricing and the subscription of the bonds had gone as well as it did in light of that news?
A. Yes.
Q. Were you surprised that Sunbeam was

Page 256

continuing to go forward with the bond offering? That's a separate question.
A. Not surprised that Sunbeam was, no.
Q. Were you surprised that Sunbeam decided to continue, given the fact that it had a fully subscribed bond offering?
A. No, I was surprised that Morgan Stanley was continuing with it, not Sunbeam.
Q. Did you tell Morgan Stanley that you were surprised they were continuing with it?
A. Yes.
Q. What did you say?
A. That I was surprised that things were proceeding the way they were, given what was going on.
Q. Okay. Tell me exactly what you told Morgan Stanley in that regard.
MR. MOSCATO: If you remember the exact words, use the exact words. If you remember in substance, just give the substance.
THE WITNESS: That was in the first 15 minutes of the conversation, we talked about the oversubscriptions of the bonds and what happened that night. I don't know the exact words.
BY MR. CLARE:
Q. But I want to be clear. Your testimony is

NOT A CERTIFIED COPY

016007

Page 257

that you told Morgan Stanley that the bond offering should be cancelled or delayed in light of the Sunbeam sales situation?
A. No.
MR. MOSCATO: I object.
THE WITNESS: I said I was surprised that it was continuing to go on. I never said it should be cancelled or delayed.
BY MR. CLARE:
Q. Did you think it should be cancelled or delayed?
MR. MOSCATO: I thought he answered that a couple of minutes ago. I mean you keep getting yourself in this because you ask the same question five times.
Larry, answer the question again, please.
I would really ask you for your sake, if nothing else, not to keep covering the same territory again and again. It's not helpful.
BY MR. CLARE:
Q. Well, I'm entitled to understand the surprise that you expressed. And I understand and I'm not, have no intention to ask you more questions about your surprise that the bond offering was oversubscribed, okay? We've covered that.

Page 258

A. Okay.
Q. And I understand that you were surprised that the bonds had been priced the way they were, right?
A. Right.
Q. And you were surprised that the bond offering had been oversubscribed.
A. Yes.
Q. Were you surprised that Morgan Stanley had decided to go forward with the bond offering apart from those two points?
A. Yes.
Q. Why were you surprised?
A. Just was, given that the stock price went down and the recent announcement of the information of the sales of not meeting their original forecast.
Q. So what did you think Morgan Stanley should have done?
MR. MOSCATO: Objection. Did you have a feeling as to what Morgan Stanley should do or were you just surprised?
THE WITNESS: I was just surprised.
BY MR. CLARE:
Q. Did you have a feeling what Morgan Stanley should have done?
A. No, I've never sold bonds myself, so I didn't

Page 259

have an opinion other than being surprised.
Q. And as you sit here today, you don't have an opinion one way or the other about whether Morgan Stanley should have delayed or cancelled the bond offering?
A. As I sit here today, my opinion is they should have, yes.
Q. With the benefit of hindsight.
A. Yes.
Q. As you sat there in the conference room on March 19, 1998, did you have an opinion as to whether Morgan Stanley should have cancelled or delayed the bond offering?
A. No.
Q. That opinion was formed after Sunbeam imploded?
A. Yes. That's a good way to put it.
Q. Do you need to attend to your --
A. No, I'm okay. I'll do it on the next break.
Q. You testified that you received a telephone call later that evening from somebody informing you that a decision had been made to include the press release verbatim in the offering memorandum?
A. Yes.
Q. Up until that point in time, the group was

Page 260

working on other aspects of the offering memo.
A. Yes.
Q. You received a telephone call?
A. Yes.
Q. And then you came back into the room?
A. I don't remember if I left the room or not.
Q. And did you inform those present that the decision had been made?
A. Yes.
Q. And what did you say?
A. That the decision has been made to use the press release verbatim.
Q. And did you inform those present who had made that decision?
A. Yes.
Q. And what did you say?
A. That it was made by Janet Kelly. I have no -- don't remember if they corroborated that or not directly with them.
Q. Was there any other discussion beyond your informing the room about Miss Kelly's decision?
A. Other than to make sure that the forward-looking statement information was cross referenced.
Q. And do you know who physically accomplished

NOT A CERTIFIED COPY

Page 261

that?
In other words, who put in the forward-looking statement cross referencing that you had asked to be included?
A. I think I pulled the information and gave it to, I think Todd Freed was the guy that was taking control of what was getting put into the printer and taken out.
Q. Mr. Freed was an attorney at Scadden?
A. Yes.
Q. Later in the morning you signed and delivered a comfort letter to Morgan Stanley?
A. Yes.
Q. Did you disagree with the decision of Andersen to issue a comfort letter in connection with the bond offering?
A. No.
Q. Did you disagree with the decision that was made by Miss Kelly to include the press release verbatim in the offering memorandum?
A. I think I've already said that I disagreed that it shouldn't have been in there.
Q. Was it your understanding that your objections to that conclusion had been overruled by the company?

Page 262

A. Yes.
Q. And is that why you were comfortable in issuing the press release, that your objections had been considered and then rejected by the company?
MR. MOSCATO: I'm sorry, in issuing the press release?
MR. CLARE: In issuing the comfort letter.
MR. MOSCATO: Why don't you start again?
BY MR. CLARE:
Q. Is that the reason why you were comfortable in issuing the comfort letter, because your objections had been considered by the company and overruled?
MR. MOSCATO: I don't understand the question.
BY MR. CLARE:
Q. Here's what I'm getting at.
You disagreed with the conclusion of the press release in the offering memorandum. We've covered that.
A. Yeah.
Q. But you signed and delivered a comfort letter to Morgan Stanley on behalf of Arthur Andersen that allowed the bond offering to go forward.
MR. MOSCATO: I object to that.
THE WITNESS: I don't know if it allowed the

Page 263

bond offering to go forward.
MR. MOSCATO: I don't think there is anything in the record that the bond offering, that that somehow was a prerequisite to the bond offering going forward.
BY MR. CLARE:
Q. Did you understand that Morgan Stanley had requested a comfort letter from Andersen in connection with the bond offering?
A. Yes.
Q. Did you understand that the offering memorandum would include Sunbeam's audited financials?
A. Yes.
Q. Did you understand that that bond offering memorandum would be registered at some later point in time?
A. Portions of it would have.
Q. Including the portions that included the audited financials?
A. The audited financials would definitely be included. I'm not sure about the rest of it.
Q. And you knew that evening on, at the print shop that Andersen would have to issue its consent to allow those audited financials to be included in that registered memorandum, correct?

Page 264

A. Yes.
Q. So did you believe that Andersen should have withheld its consent for the offering memorandum to be finalized with the audited financials that night at the print shop?
MR. MOSCATO: Objection, he didn't give his consent to this offering memorandum. They just didn't. So I object. No foundation to your question.
BY MR. CLARE:
Q. You didn't have an objection to giving the comfort letter to Morgan Stanley that evening?
A. No.
Q. And you knew when you delivered the comfort letter to Morgan Stanley that Andersen audited financial statements would be included in that offering memo?
A. Yes.
Q. And you knew that Andersen's name was going to be used in the offering memorandum as Sunbeam's auditor?
A. Yes.
Q. And you had looked at those pages that night at the print shop?
A. The audited financials?

NOT A CERTIFIED COPY

016009

Page 265

Q. Yes.
A. Yes.
Q. And in fact, you read through the offering memorandum and made cross preferences, you had been working on that for the last couple of days leading up to that, correct?
A. Correct, but you're not opining on the information on the front of the document.
Q. But again, you knew that Andersen's name was in the offering memorandum?
A. Yes.
Q. And you knew that that document was going to be provided to the debenture investors?
A. Yes.
Q. And you knew that at some later point in time portions of that offering memorandum would be registered?
A. Yes.
Q. In fact, you worked on the registration process in June, didn't you?
A. Yes.
Q. And you knew that as part of the registration process, Andersen would have to issue a consent?
A. Yes.
THE WITNESS: I need to get this faxed.

Page 266

MR. CLARE: Go off the video record.
THE VIDEOGRAPHER: We are now going off the video record. The time on the monitor is 3:39 p.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 3:42 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, after the last conversation that we discussed, the one where you informed the participants in the room that night that a decision had been made about the Recent Development section, did you work amicably with Mr. Tyree for the rest of the evening?
A. For the most part, yeah.
Q. There were no other issues, no other issues that you can recall as you sit here today that came up that night?
A. Three o'clock in the morning, they wanted to change the way that we put our debits and credits in the pro formas, and I said no. That was the only other issue I know that came up. It just never would have, you know, just never would have gotten done.
Q. Other than that, is there anything else that you remember?

Page 267

A. No.
Q. When you left the print shop that night, did you take with you a copy of the document CPH Exhibit 121 in that form, the buildup that was provided to you?
A. I believe so, yes.
Q. And what, if anything, did you do with it after leaving the print shop?
A. I don't remember specifically what I did with it.
Q. Generally.
A. Put it in a file.
Q. Did you discuss it with anybody at Sunbeam?
A. I don't remember.
Q. Did you perform any additional procedures or testing on this document, CPH Exhibit 121?
A. No, not that I'm aware of.
Q. Putting aside the document, did you have any discussions with anybody from Sunbeam after you left the print shop about Sunbeam's first quarter 1998 sales?
MR. MARKOWSKI: Ever?
MR. CLARE: Between March 19th or 20th, 1998, and the end of the quarter.
THE WITNESS: Yeah.

Page 268

BY MR. CLARE:
Q. Who did you talk to?
A. Bob Gluck. I don't remember if it was before or after the end of the quarter, but before anything was released, Al LaFever, Lee Griffith, Russ Kersh. I believe counsel from Scadden Arps on the Coleman issue, extra two days of sales before the end of the quarter, a few people.
Q. Specifically in any of those conversations did you discuss your skepticism that Sunbeam would exceed its first quarter 1997 sales in the first quarter of 1998?
MR. MARKOWSKI: Can you read back the prior question and answer please for me? Sorry.
(Thereupon, a portion of the record was read by the reporter.)
MR. MARKOWSKI: Now your question was about Sunbeam. Mr. Bornstein gave you an answer that included people other than Sunbeam.
Your follow-up question concerns what now, Tom? Sunbeam conversations?
MR. CLARE: Yes. My follow-up question is any conversations between March 19th and the end of the first quarter with anyone from Sunbeam about Sunbeam's ability to exceed first quarter

NOT A CERTIFIED COPY

016810

Page 269

1997 sales.
THE WITNESS: Not specifically that I can recall between that period of time.
The Coleman stuff we talked about. The sales were probably after March 31st.
BY MR. CLARE:
Q. You are aware that Andersen issued a bring-down letter to Morgan Stanley, and the date of that was March 25th, 1998, correct?
A. Yes.
Q. And you looked at that. At any point between the March 19, 1998, comfort letter and the March 25th, 1998 comfort letter, did you receive from any source information about Sunbeam's progress in making sales?
A. I don't remember.
Q. Do you remember receiving any?
A. I don't remember.
Q. And then I'll ask the same question between the time of the bring-down comfort letter and the end of the quarter, do you remember receiving any information about Sunbeam's progress and making sales in the first quarter?
A. No, not specifically.
Q. Generally?
A. I don't remember.

Page 270

Q. During that time period, again, before the end of the first quarter, in any of your conversations with Sunbeam, did you ever have them in words or in substance what was the basis for their expectation that was expressed in the press release about exceeding first quarter 1997 sales?
A. This was basically it at the time.
Q. That was your understanding as to what it was?
A. Yes.
Q. Did you ask anybody from Sunbeam about that document, the document you just indicated, CPH Exhibit 121?
A. Specifically, no, but specifically about sales I know between -- you know, you asked specifically, but generally, you know, we were informed after this they were going to continue to do both bill and hold. So there was conversation about that and procedures that needed to be done to ensure that that was in accordance with the rules, and confirmations were going to be signed off, et cetera.
Q. And that the bill and hold sales that Sunbeam did would be accounted for properly?
A. Correct.
Q. But putting aside that question for a moment,

Page 271

any discussions with anyone from Sunbeam before the end of the quarter about the pace at which orders were coming in?
A. Not that I'm aware of, no.
Q. Or that shipments were being made?
A. Not that I'm aware of, no.
Q. So the next information that you had about that was not until after the end of the quarter and after the additional procedures were done by either of your colleagues to do the sales cutoff testing; is that right?
A. Sorry, can you repeat that? Losing my train of thought here.
(Thereupon, a portion of the record was read by the reporter.)
MR. MOSCATO: What do you mean by that? What is that?
MR. CLARE: About Sunbeam, about the amount of product that was being shipped by Sunbeam.
MR. MARKOWSKI: Tom, why don't you ask at this point a cohesive question so it's clear in the record what you're asking.
MR. CLARE: Sure.
BY MR. CLARE:
Q. At any point after -- let me put it this way.

Page 272

At any point before the end of the first quarter, did you have any other information besides what is reflected here on CPH Exhibit 121 about actual or potential sales by Sunbeam in the first quarter?
A. I think we got information on the bill and hold sales that were going to take place prior to the end of the quarter.
Q. But other than the bill and hold sales, did you have any other information?
A. Not that I'm aware of.
Q. And when did you first learn that Sunbeam had not in fact exceeded its first quarter 1997 sales in the first quarter of 1998?
A. Wasn't there a second press release that was sent out? Does anyone have a copy of that?
Q. Yes, I can show it to you, but was that the first time you were informed?
A. I think it was and I believe that -- I don't believe that that press release was shown to Arthur Andersen either, to be honest with you, so I think that was the time that the company decided that they weren't going to -- I don't know what they said.
MR. MOSCATO: So in answer to his question, the April 3rd press release is the first time you learned that Sunbeam in fact was not going to

NOT A CERTIFIED COPY

Page 273

exceed in first quarter 1998 its first quarter 1997 sales figures?
THE WITNESS: Yes.
MR. CLARE: Let's mark that press release.
(MS Exhibit No. 58 was marked for identification.)
BY MR. CLARE:
Q. Mr. Bornstein, I'm showing you what's been marked as Exhibit 58. It's a multi-page document. I recognize the first page is a fax cover sheet that you probably have never seen before.
A. No. Can I read it, though?
Q. Sure.
A. I don't want to really read this whole thing, to be honest with you.
MR. MOSCATO: Just answer the question.
THE WITNESS: What was the question?
MR. MOSCATO: Quickly and succinctly, please.
MR. CLARE: Well, I do want a complete answer to my questions.
MR. MOSCATO: Well, succinctly does imply completeness.
BY MR. CLARE:
Q. Mr. Bornstein, I've handed you what's been marked as Morgan Stanley Exhibit 58. It's a fax cover

Page 274

sheet. Attached to it is an April 3rd, 1997 press release by Sunbeam. Have you seen that?
A. Yes.
Q. Have you ever seen this entire document before; in other words, with the cover sheet on it?
A. No.
Q. But you have seen the press release that's attached to it before?
A. I don't -- I remember -- I don't remember seeing the press release. I remember hearing or reading the first paragraph about it.
Q. What was your reaction to hearing that news?
A. That these guys were all a bunch of fucking morons. How's that?
Q. Which guys are you referring to?
A. Mostly the people from Sunbeam and their attorneys.
Q. Because they had issued the prior press release?
A. Right, and they did, they had the same moronic caveat again that we're not going to make this number, but they are still going to make this number.
Q. Was it your understanding that -- withdrawn.
The April 3rd press release reports that Sunbeam sales expected to be approximately 5 percent

Page 275

below first quarter of '97. Do you see that?
A. Yes.
Q. Did you think, did you have a reaction to that figure?
A. Yeah. I, I wasn't sure at that point in time if that was accurate or not.
Q. The five percent figure?
A. Yes.
Q. Why not?
A. Because they hadn't closed their books for March yet.
Q. Okay. Did you have a reaction as to whether or not you thought that Sunbeam would even be able to get that close to '97 numbers, given where they were on March 19th when you had these discussions with Mr. Tyree?
A. At what point in time? In April?
Q. Yes.
A. I didn't know, I didn't -- it was the same rationale and thought process. I wasn't sure until -- I wasn't sure whether or not they would or would not. Work was still being done.
Q. Did you ever get any information as to how close Sunbeam had come at the end of the first quarter to achieving first quarter 1997 sales?

Page 276

A. At what point in time?
Q. In April of '97.
A. Eventually I did, yes.
Q. And do you recall in order of magnitude what percentage they were close to reaching first quarter '97 sales?
A. At that point in time, no.
Q. Mr. Bornstein, I'm handing you what we previously marked yesterday as Morgan Stanley Exhibit 42 and ask that you take a look at it.
Do you recognize this document?
A. No.
Q. Do you recognize this form of document?
A. No.
Q. Is the signature on the third page over engagement partner or manager, is that your signature?
A. Yes.
Q. So you don't recognize this document at all or this form of document, what it was used for at Andersen? That's going to be my question.
A. No, I believe it's a document that you sign after you had a document referenced. Any document where it was issued by Andersen that was needed to be referenced by an independent person to make sure that the form of the letter is in accordance with the rules

NOT A CERTIFIED COPY

Page 277

and the numbers tie back, et cetera.
Q. And does this document, Morgan Stanley 42, appear to be the form for the documentation of those procedures for the comfort letter dated March 19, 1998?
A. Appears that way, yes.
Q. Do you recall that comfort letter being referenced in the manner that you described?
A. I don't remember specifically, no.
Q. Do you know who the person is whose initials appear on pages two and apparently performed these procedures?
A. Yes.
Q. Who is that?
A. Her name was Patricia Rich.
Q. And did you work with Miss Rich on the March 19th, '98 comfort letter?
A. She referenced it. I don't remember specifically working with her on it.
Q. And when you say she referenced it, can you describe for those not familiar with that procedure what that means?
A. You would read the document, make sure it's in accordance with the specific language that's required by -- I don't know what rules they are anymore, to be honest with you, and then to make sure

Page 278

that the numbers tie back to the supporting work papers at Andersen's work.
Q. And it was Miss Rich that performed those procedures for the March 19th comfort letter, to the best of your recollection?
A. Yes, what it says here.
Q. You don't have a recollection of working with her on that?
A. No.
Q. Do you have a recollection of Miss Rich raising any issues with you in her work done referencing the March 19th comfort letter?
A. I don't recall one way or the other.
Q. On the second page, item number four, procedure states that "If applicable, trace information regarding contingencies, litigation or uncertainties to the financial statements and to legal or management representation letters or other source documents in the working papers."
Do you see that?
A. Yes.
Q. Is that one of the referencing procedures that you just described?
A. That's what it says here.
Q. What's a management representation letter?

Page 279

A. Those are the letters that we looked at earlier that were on Sunbeam letterhead issued to Arthur Andersen.
Q. And as part of Andersen's work on comfort letters, Andersen requests a management representation letter for the items that are discussed in the comfort letter; is that correct, at least some of them?
A. Some of them, yeah.
Q. And would Andersen be able to issue a comfort letter unless it had a management representation letter?
In other words, did Andersen procedures allow that, to your knowledge?
A. I don't believe so, but I'm not certain.
Q. Have you ever been involved in issuing a comfort letter where there wasn't a management representation letter that would back it up?
A. Not that I recall.
Q. What role does Andersen have in drafting management representation letters typically?
A. They draft quite a bit of it.
Q. So the initial draft of a management representation letter is done at Andersen, worked on, and then at some point provided to management for review, approval and signature?

Page 280

A. I don't know the procedure, but if it's at Andersen or at the client, but yeah.
Q. Do you recall that being done in connection with these comfort letters and these management representation letters that were in March of 1998 in connection with the bond offering?
A. I don't recall specifically, but I'm sure that that is what happened.
Q. I'm going to hand you the next document that was marked yesterday as Morgan Stanley Exhibit 43.
A. This is a good one.
MR. MOSCATO: I'll give you my copy.
THE WITNESS: Keep that for my files. Okay.
BY MR. CLARE:
Q. I've handed you what's been marked as Morgan Stanley Exhibit 43, a document entitled Post Audit Review for Subsequent Material Transactions and Events After the Date of the Auditor's Report.
Do you see that title on the page?
A. Yes.
Q. And do you recognize the handwriting on the bottom of the first page to be yours?
A. For the most part, yeah. Phil Harlow, looks like he signed it also.
Q. So there is some handwriting and then there

NOT A CERTIFIED COPY

CH 6813

Page 281

is a signature by you and a date?
A. Yeah, the handwriting is mine.
Q. And then there is a signature by Mr. Harlow?
A. Correct.
Q. And the writing there appears to be the date, is that a three, is that March '98?
A. Yes.
Q. What is this document and how is it used internally at Andersen?
A. It's a checklist that's done to go through their requirements to do a post audit review and allow Andersen to issue a consent to update their opinion.
Q. And a document like this and the procedures that are described in this document are used in connection with --
A. The registration statement, I think a 133 registration statement, or 33 Act registration statement.
Q. It was your understanding in March of '98 that the Sunbeam convertible debenture offering would be registered in that way?
A. Eventually, yes.
Q. And did you prepare or mark on this document in March of 1998 in anticipation of that work on the registration?

Page 282

A. No.
Q. The handwriting at the bottom of the first page, can you read that as best you can for me?
A. Says, "No consent required on section 144 offering; however, PAR," which means post audit review, "work and AP 187 work done in its entirety as the firm's name appears in the financial statements included with this document. Work done herein sufficient as if we were to issue our consent."
Q. What are you communicating here?
MR. MOSCATO: I object. It's perfectly clear.
Are you communicating anything other than what's written in the plain wording of this note?
THE WITNESS: No.
BY MR. CLARE:
Q. And you wrote those words in March of 1998?
A. Yes.
Q. And you signed your name below those words in March of 1998?
A. Yes.
Q. And the date on the front of the document that discusses post audit review having been completed is March 16, 1998, do you see that?
A. Yes.

Page 283

Q. Is that the date that you would have made that notation on the document?
A. I don't know what I, if I reviewed it the same day or not.
Q. Would this document have to be completed under Andersen's internal procedures before a comfort letter like the one on March 19th could be issued to Morgan Stanley?
A. The form might not necessarily have to be filled out, but the work should have been done.
Q. So that these procedures that are described here in Morgan Stanley Exhibit 43 would need to be completed in March of 1998 before the offering memorandum could be completed?
MR. MOSCATO: The offering memorandum or the comfort letter?
BY MR. CLARE:
Q. Well, let's start with the comfort letter. Before the comfort letter could be issued?
A. Yes.
Q. And before the offering memorandum would be finalized?
A. I don't recall specifically about that.
Q. Your handwriting here indicates that the post audit work and AP187 work was done in its entirety as

Page 284

the firm's name appears in the F1.
Can you tell me what AP187 --
A. That's financial statements.
Q. Appears in the financial statements included with this document.
A. Yeah.
Q. Can you tell me what AP187 refers to?
A. This document. If you look on the bottom left-hand corner, it says AA & Company, AP187.
Q. I see. So you're stating here in the handwritten notation that the post audit work that was done by Andersen and the procedures that were performed that are described in Morgan Stanley Exhibit 43 were done as if Andersen would be issuing a formal consent for the inclusion of its audited financials in the financial offering memorandum; is that correct?
A. Yes.
Q. So the standard of care that Andersen used in going through its internal procedures was the same as if it were required to issue a formal consent?
A. Yes.
Q. That's what you're communicating here in March of 1998?
A. Yes.
THE VIDEOGRAPHER: We have to change the

NOT A CERTIFIED COPY

Page 285

tape.
We are now going off video record on tape number three. We'll be back on tape number four. The time on the monitor, 4:09 p.m.
(Discussion held off the record.)
THE VIDEOGRAPHER: We are now back on video record, tape number four. The time on the monitor is 4:10 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, I want to have you turn over to the second page of Exhibit 43. And the first procedure, I'd like to ask you to read that, please, to yourself.
A. Okay.
Q. And this procedure requires that somebody from Andersen read the entire registration statement including the prospectus and perform certain procedures, correct?
A. Yes.
Q. And it requires Andersen to cross reference amounts in the narrative section to similar amounts in the audited financials, correct?
A. Correct.
Q. And ascertain that there are no inconsistencies or conflict between the narrative

Page 286

section and the audited financials, correct?
A. Yes.
Q. And your initials are listed to the right?
A. Yes.
Q. And did you perform those procedures with regard to the offering memorandum?
A. Yes.
Q. And you performed those procedures in March of 1998?
A. Yes.
Q. On March 19th, 1998, or before? In other words, before the offering memorandum was finalized or printed at Global Financial Press?
A. Before and during.
Q. Those procedures were not carried out any time after that evening at the printer?
A. They were performed after, but on different documents.
Q. Correct, but with respect to the offering memorandum, those procedures were performed before you left the printer that morning?
A. Yes.
Q. I'm going to hand you the next exhibit. That's Morgan Stanley Exhibit 44.
This is another copy of the March 16, 1998

Page 287

management representation letter that you looked at this morning with Mr. Markowski.
A. Is it exactly the same or is it different?
Q. It's another copy.
A. Okay.
Q. And you see it's signed on page three by the same group of individuals that you discussed this morning.
A. Okay.
Q. What role did you personally play in drafting the management representation letters for the comfort letters that were issued to Morgan Stanley in the first quarter of 1998?
A. I don't remember specifically.
Q. Do you remember having seen drafts?
A. Yes.
Q. Before they were issued and commenting on them?
A. I believe so, yes.
Q. Did you discuss as part of your work on the management representation letters with Sunbeam management the contents of the letter?
A. I don't remember specifically myself doing that.
Q. Who was working with you on the management

Page 288

representation letter?
A. I believe Dennis Pastrana.
Q. Did, as far as you know and can recall, did you have any discussions with Mr. Pastrana about what Sunbeam management would or would not be willing to represent in the management letter?
A. No.
Q. Did you have any conversations with anyone in Sunbeam management about what Sunbeam management would be willing or not willing to represent in a management letter?
A. Not that I recall.
Q. I hand you the next document, Morgan Stanley Exhibit 45. Just let me know when you're ready.
A. Okay.
Q. This is an undated draft, appears to be an undated draft of the management representation, of a management representation letter. Do you see that?
A. Yes.
Q. If you look in format and style, it's similar to the representation letter that we just looked at.
A. Okay.
Q. If you turn over and look at the second page of the document on item eight, there is a table of information there. Do you see that?

NOT A CERTIFIED COPY

Page 289

A. Table of information?
Q. Well, there is net sales and net income information for two different time periods.
A. I'm sorry, what page?
Q. On the second page.
A. Right, okay.
Q. Okay? And you discussed with Mr. Markowski this morning that net income and loss information was one item that would be included in the management representation letter; do you see that?
A. Right.
Q. Are you able to place this draft of the management representation letter in time in any way by looking at this?
A. No.
Q. And you recall that there were two different management representation issues issued? There was one in connection with the first comfort letter and then a second one that was issued in connection with the bring-down letter?
Do you remember that from this morning?
A. Yes.
Q. Are you able to recognize this as a draft of the second management comfort letter?
MR. MOSCATO: One way or the other? Yes or

Page 290

no.
THE WITNESS: This is a draft of the second?
BY MR. CLARE:
Q. Yes.
A. No, I can't.
Q. You can't tell which version it's a draft of?
MR. MARKOWSKI: I'm sorry, I missed the thread here. Are you asking whether this is a version of the March 25?
MR. CLARE: I'm asking if he can place it in time as to whether it's a draft of the initial March 16th management representation letter or whether it's a draft of the March 25 representation letter.
MR. MARKOWSKI: Actually I guess it's March 23. I'm sorry to mislead you. I think it was March 23.
THE WITNESS: I have no idea one way or the other.
BY MR. CLARE:
Q. Okay. If you turn to the last page of the document -- next-to-the-last page, page marked Bates number CPH 00441653, item ten.
A. Right.
Q. It states, "Despite the decrease in net sales

Page 291

described in the preceding paragraph, management believes that net sales for the first quarter of fiscal 1998 will exceed net sales of the first quarter of fiscal 1997."
Do you see that?
A. Yes.
Q. And that's a similar statement to the one that was included in the press release?
A. Correct.
Q. Do you recall in your work on the management representation letter discussing that provision?
A. No, I don't. Sorry.
Q. Do you recall any discussion about whether Andersen wanted a representation, an affirmative representation from Sunbeam's management that it had that expectation?
A. It was already made in the press release. I don't believe so.
MR. MOSCATO: The answer is yes or no. It's getting late in the day.
THE WITNESS: I think the answer was no. Can you answer -- read the question again.
(Thereupon, a portion of the record was read by the reporter.)
THE WITNESS: I don't, I don't remember.

Page 292

BY MR. CLARE:
Q. I'm going to hand you the next exhibit that's Morgan Stanley Exhibit 46. It appears to be another draft of the management representation letter. Do you see that?
A. Uh huh.
Q. And this document, Exhibit 46, has a fax line across the top of the page indicating it was faxed on March 23rd, 1998. Do you see that?
A. Yes.
Q. Do you recognize that fax number?
A. Yeah, I, it looks vaguely familiar. I don't know exactly where it is.
Q. It appears that this fax was sent by somebody on March 23rd, 1998.
Is this your handwriting on Morgan Stanley Exhibit 46?
A. On page one it is, but not on page four, I guess, on the top.
Q. So the edit that's made on the first page is an edit that you made, correct?
A. Yes.
Q. And the edit that was made to paragraph ten, somebody else's handwriting?
A. Right.

NOT A CERTIFIED COPY

Page 293

Q. Do you know whose handwriting that is? Do you recognize it?
A. No.
Q. Again, on the last page. The edited paragraph ten.
A. No.
Q. I'd like you to keep that in front of you for just a minute while I hand you the next document, Morgan Stanley Exhibit 47, which is the March 23rd, 1998 management representation letter.
A. Okay.
Q. Now we've looked at a couple of drafts of representation letter, Exhibits 45 and 46, that included a paragraph --
A. Right.
Q. -- stating that management believed it would exceed first quarter sales in 1997. Correct?
A. I'm sorry, just give me one minute so I can get my bearing here. Say it again.
Q. The drafts that we've been looking at, Exhibits 45 and 46, have a paragraph ten that states an expectation by management regarding net sales in the first quarter of 1998 exceeding net sales in the first quarter of 1997.
A. Right.

Page 294

Q. But that paragraph does not appear in the March 23rd, 1998 representation letter as it was finally signed.
Do you have any knowledge or information about how that paragraph got deleted?
A. Actually I, it's actually coming back to me what happened here.
I remember, I remember getting -- I do remember getting this fax and starting to review it.
Q. Okay. Just to be clear --
A. Fax, I remember getting the fax that's dated whatever it is, 3/23/98.
Q. Morgan Stanley Exhibit 46?
A. Yeah.
Q. Okay. I remember reading the first page, I read the first paragraph, and then basically just stopping and calling and saying we've already done a rep letter dated March 16th. You guys are pulling from the wrong file. I remember I stopped reviewing this.
Follow me?
There is a rep letter dated the 16th.
Q. Right.
A. We had updated the 23rd. So whoever started working on this pulled a different file to start updating.

Page 295

MR. MOSCATO: You mean this was -- what you wanted someone to do was do a draft of the bring-down, and they pulled the comfort instead?
THE WITNESS: No, no. What I'm saying is we did a rep letter, March 16th.
MR. MOSCATO: I'm sorry.
THE WITNESS: So I know we did a rep letter the 16th with the $2 billion on there, or whatever the number was.
And I remember reviewing this one and it showing 1.3 million, which was the original amount.
So after reading the first paragraph, I just said this is the wrong one. You must be updating the wrong file. And I never reviewed the rest of it.
BY MR. CLARE:
Q. Okay. Well, the March 16th rep letter that you have in front of you, which is Morgan Stanley Exhibit 44, as the final version also does not contain that paragraph that we were looking at in drafts.
A. Yeah, I never saw that paragraph before.
Q. So you don't have any information about who put it in?
A. No.

Page 296

Q. Or why it was taken out?
A. No.
Q. Or why it does not appear in the March 16th version of the rep letter?
A. None whatsoever.
Q. Or the March 23rd version?
A. No.
Q. Now you worked on the 1997 audit?
A. Yes.
Q. Do you believe as you sit here today that Sunbeam withheld material information from you in connection with the 1997 audit?
A. As I sit here today? Yes.
Q. And now those subjects, the audit and the work that was done on the restatement were covered in detail in your prior depositions, and I'm not going to ask you to go through them in detail, but in general, do you believe that Sunbeam withheld material information from Andersen regarding its reserves?
MR. MOSCATO: I'm going to make an objection. Years ago in front of the SEC he gave exhaustive testimony about what he thought Sunbeam had misrepresented and concealed from him and what they didn't.
I really think it's unfair and really not

NOT A CERTIFIED COPY

Page 297

terribly productive to get into it again now. There is a full, complete record of his testimony on that subject when it was a lot closer to the events.

And my concern is any testimony he gives now will necessarily be incomplete. I don't believe he has reviewed any of that testimony, and it's been six years now.

MR. CLARE: Okay.

MR. MOSCATO: That's my objection. So, you know, I guess I'll let him answer, but under the caveat that I can't imagine he is capable of giving anything close to a complete answer at this time.

MR. CLARE: Okay, I will accept that, and as I mentioned to you at the outset of this questioning, I'm not going to belabor the point. I've read that prior testimony and I believe that it is a complete recount, recitation of your testimony in this regard, and I'm not intending to replow it and I'm not trying to play gotcha with you and identify other areas.

I'm just trying to understand the general subject areas, we talked about a number of them today, in connection with what information Morgan

Page 298

Stanley asked about and what information we had when we, Morgan Stanley, were doing the due diligence.

BY MR. CLARE:

Q. So I guess let me just ask you this general question.

As you sit here today, do you have any reason to know that Morgan Stanley had more information than Andersen in the first quarter of 1998?

MR. MARKOWSKI: On what subject?

MR. CLARE: Well, on any subject.

THE WITNESS: I have no idea what they had or didn't have.

BY MR. CLARE:

Q. You felt, though, that Sunbeam had withheld material information from Andersen on a number of different areas, correct?

MR. MOSCATO: Objection, can you please pin down when he came to that frame of mind?

BY MR. CLARE:

Q. You worked on the restatement investigation, correct?

A. Yes.

Q. And as part of the restatement investigation, you conducted interviews of Sunbeam employees?

Page 299

A. Yes.

Q. And you did a number of additional procedures?

A. Yes.

Q. And those interviews and those additional procedures resulted in you and Andersen having information about Sunbeam that it didn't have in connection with the 1997 audit; is that correct?

A. Yes.

Q. A lot more information?

A. Yes.

Q. Okay. And those interviews and those additional procedures also resulted in Andersen and you having information about Sunbeam that it didn't have in the first quarter of 1998?

A. Yes.

Q. And it was at that point that you concluded that Sunbeam had withheld material information from Andersen?

MR. MOSCATO: That point being during the restatement process?

MR. CLARE: During the restatement process.

THE WITNESS: For the most part, yes.

BY MR. CLARE:

Q. Is that a fair statement?

Page 300

A. That made it pretty iron clad that that was the case, yes.

Q. Did you consider the information that was withheld by Sunbeam from Andersen to be material?

A. Yes.

Q. And as you sit here today, do you consider the information that was withheld by Sunbeam from Andersen to be important to an understanding of Sunbeam's business?

A. Yes.

Q. And as you sit here today, do you have any reason to believe as a result of your work on the restatement investigation that Morgan Stanley had information about Sunbeam that was withheld from Andersen?

A. I have no idea.

Q. Do you have any information that occurs to you today as a result of your work on the restatement investigation where you said Morgan Stanley knew x facts and we, Andersen, did not?

MR. MOSCATO: Larry, the question is do you have any information? So the answer is either yes, you do have information, or no, you don't have information.

THE WITNESS: I think there is information --

NOT A CERTIFIED COPY

Page 301

I've come to understand that there was information given to Morgan Stanley that wasn't given to Arthur Andersen. Is that your question?
BY MR. CLARE:
Q. Sure. Now tell me what that information was.
A. Just reading the -- you know, I can't tell you if it's true or not. Reading the complaints.
Q. Oh, the complaints that were filed in this lawsuit?
A. Right.
Q. So putting aside the allegations that are made in the complaints that were filed in this lawsuit, and I want you to exclude them from your mind, because those are legal allegations that were made and have not been proven and there is no evidence has been submitted yet to support them, but based than your own personal knowledge and recollection of the events --
A. I think --
MR. MOSCATO: Let him finish.
BY MR. CLARE:
Q. Based on your own personal knowledge and events, involved in these events, are you aware of any information that Morgan Stanley had in 1997 or the first quarter of 1998 that Andersen did not?
A. I believe there were, there is correspondence

Page 302

and documentation of previous meetings with Coleman and Al Dunlap, and I recall specifically after going through all of the documents that were furnished to the SEC.
Q. I'm not sure I understand your answer.
A. Well, I believe that there were documents. I reviewed all the documents that were given to the SEC by everybody, all of Sunbeam, whatever, first, second, third phase.
And there was documentation on various meetings and conversations and initial meeting, conversation with Dunlap and representatives of Coleman. I don't remember specifically, but I believe there were also people from Morgan Stanley at those meetings.
Q. You're saying that these were documents that related to negotiations between Sunbeam and Coleman for the acquisition?
A. Before the contemplated acquisition in March, there was I think another series of conversations before the end of the year. That's all I can recall specifically.
Q. Okay. So putting aside information that related to the acquisition, and I want to focus on your work on the restatement investigation, you reviewed the

Page 303

restatement report that was issued by Andersen?
A. Yes.
Q. Are you generally familiar with the areas in which a restatement of Sunbeam's financial statements were done?
A. Generally, yes.
Q. Bill and hold transactions and reserves and supplier rebates, those type of areas?
A. Correct.
Q. In any of the areas that were covered by the restatement investigation and the subsequent restatement report, did you learn any information that Morgan Stanley had that was not available to Andersen?
A. I believe there were forecasts and detailed information that was given to Morgan Stanley that we didn't get copies of.
Q. Can you identify them?
A. Not specifically. I remember meetings with, having meetings with Lisa Galbarth, I think her name was, or I think the -- I forget the name of the other one, a number of documents to go through the forecast and as such to get ready for the bank syndicate.
So there were a lot of documents that we never saw, but that we knew were supplied to Morgan Stanley.

Page 304

Q. What about information that related to the specific restatement items? Putting aside the fact that Andersen -- that Sunbeam may have provided documents that were different than the documents that were provided to Andersen, was there any information relevant to your restatement inquiry that Morgan Stanley had that Andersen did not?
A. I have no idea.
Q. You don't recall any as you sit here today?
A. No.
Q. As part of the work that you did on the restatement, did you discover any evidence or information that Morgan Stanley was involved in any of the accounting judgments that led to the restatement?
A. No.
Q. Or any of the individual transactions that are described in the restatement report?
A. I don't believe so, no.
Q. We've talked about a couple of them today, EPI and Encore and some of those. Did you uncover any information that Morgan Stanley was involved in any of those transactions?
A. No.
Q. As part of the work that you did on the restatement, you interviewed Sunbeam employees,

NOT A CERTIFIED COPY

Page 305

correct?
A. Some.
Q. And you participated in a number of those interviews?
A. Yes.
Q. You've seen more than 30 interviews. Can you estimate how many of those you participated in?
A. I don't know, six to twelve maybe.
Q. And those interviews were conducted in connection, in conjunction with the attorneys at Scadden Arps?
A. Among others, yes.
Q. And they were conducted after Al Dunlap had been fired?
A. Yes.
Q. And after Kersh was gone?
A. I believe so, yes.
Q. This was after Mr. Levin had been installed as the CEO?
A. Yes.
Q. After Mr. Levin had instituted what became known as the amnesty program?
A. Yes.
Q. Are you familiar with the amnesty program that Mr. Levin instituted generally?

Page 306

A. I think I might have been the first one to let an employee know about it.
Q. But the --
A. Speak now or forever hold your peace type thing.
Q. The purpose was to encourage employees to be candid with Andersen and Scadden in conducting these interviews as part of the restatement?
A. Yes.
Q. Because Andersen wanted to get as much information as possible from Sunbeam about what was really going on?
A. Yes.
Q. Can you describe just generally what your role was in the restatement?
A. To help coordinate the efforts, to interview the people you mentioned, to do some additional work myself, to deal with Deloitte & Touche, Scadden Arps, the management team, and basically review and look for items, things that were withheld from Arthur Andersen.
Q. And you discovered items that were withheld from Arthur Andersen, correct?
A. Yes.
Q. How much time did you spend, roughly, on the restatement investigation?

Page 307

A. I don't know.
Q. We've seen reports in the production showing that you spent more than 1,000 hours on the restatement investigation. Does that sound about right?
A. Probably.
Q. And in addition to the interviews that we described, you did additional accounting procedures?
A. Yes.
Q. One of the interviews that you conducted was Deborah MacDonald?
A. Yes.
Q. Were you present for that interview?
A. I believe so, yes.
Q. Do you recall Miss MacDonald telling you that the only contact that people from Sunbeam had with investment bankers was through Mr. Kersh and Mr. Goudis?
A. Sounds familiar, but I'm not 100 percent sure.
MR. CLARE: Mark this as the next exhibit, please.
(MS Exhibit No. 59 was marked for identification.)

Page 308

BY MR. CLARE:
Q. I've handed you what's been marked as Morgan Stanley Exhibit 60.
A. Okay.
Q. It's a July 24th, 1998, memo from Donald Denkhaus to the files, memorializing an interview conducted with Deborah MacDonald.
Have you seen this document before?
A. Yes.
Q. The document states in the first paragraph that "On July 21st, 1998, Larry Bornstein and Chris Malloy, attorney with Scadden Arps, and Mr. Denkhaus conducted an interview."
Do you recall being present in the interview with Miss MacDonald?
A. Yes.
Q. Flip to page five of the interview memo. Top of the page says, "MacDonald indicated that the only contact that the investment bankers, Morgan Stanley, had with the company was through Kersh and Goudis."
Do you see that?
A. Yes.
Q. Do you recall Miss MacDonald telling you that?

NOT A CERTIFIED COPY

016820

Page 309

A. Not specifically, no.
Q. Do you recall generally her telling you that?
A. No.
Q. In the course of the work that you did on the restatement investigation, did you learn that Morgan Stanley had contact with Sunbeam employees other than Mr. Kersh and Mr. Goudis?
A. No, not specifically, no.
Q. Is what Miss MacDonald -- let me withdraw that.
It's reported here in the interview memo, Miss MacDonald's statement, that all the information for Morgan Stanley had to go through Mr. Kersh and Mr. Goudis.
Is that consistent -- well, I don't want to -- is that consistent with what you learned in the restatement investigation about how Sunbeam's management controlled information from outsiders?
MR. MARKOWSKI: Object to the form of the question.
MR. MOSCATO: I have to object.
THE WITNESS: Are you going to object?
MR. MOSCATO: I already did object.
THE WITNESS: Sorry about that.

Page 310

BY MR. CLARE:
Q. Here's my question. You testified before that material information had been withheld from Andersen during 1997 and the first quarter of 1998, correct?
A. Yes.
Q. And that information was withheld from Andersen by members of Sunbeam management, right?
A. In some cases, yes.
Q. Okay. And information that was known to other employees at Sunbeam was shielded from Andersen, correct?
A. In some cases, yes.
Q. So you, as part of the restatement investigation, you concluded that Sunbeam employees had information that was not provided to Andersen. And what I'm asking is what Miss MacDonald is reporting here, that information had to be channeled through senior management to go to Morgan Stanley, is that consistent with what, the conclusion you formed about how Sunbeam controlled information from outsiders?
MR. MARKOWSKI: Object to the form of the question.
MR. MOSCATO: I have to object to it. I even object to -- I don't know, the memo itself is just

Page 311

so internally inconsistent, I'm not sure what generalizations you can make out of this document and I'm not sure how you can generalize the generalizations in this document to what happened with Andersen. I just think it's very confusing and I don't think it's a fair question as posed.
MR. CLARE: Well, I'm not trying to confuse. All I'm trying to get at is if this were in fact the case.
MR. MOSCATO: I'm sorry, what?
THE WITNESS: If it was the case.
BY MR. CLARE:
Q. Were you surprised, are you surprised to learn that Sunbeam employees thought that information they had was withheld from Morgan Stanley?
Does that surprise you based on what you heard in the restatement investigation?
MR. MARKOWSKI: Object to the form of the question.
MR. MOSCATO: You can answer that question.
THE WITNESS: No.
BY MR. CLARE:
Q. Why doesn't that surprise you?
A. Based on where we sit today, what happened.
Q. Okay. Is one of the reasons it doesn't

Page 312

surprise you is because information was also withheld from Andersen?
A. Yes.
Q. As part of the restatement investigation, did Andersen ultimately reach an opinion as to whether Sunbeam's internal controls were adequate in 1997 and the first quarter of 1998?
A. As part of the restatement? I believe they did.
Q. And do you recall what that opinion was?
A. Not specifically, no.
Q. And as part of the restatement investigation, did Andersen reach an opinion as to whether Sunbeam was able to produce accurate financial statements in 1997 and the first quarter of 1998?
A. I believe we did, yes.
Q. And do you know what that opinion was?
A. Which opinion is this?
Q. Regarding Sunbeam's ability to produce accurate financial statements in 1997, in the first quarter of --
A. I don't remember specifically what the opinion said.
Q. Isn't it true that Sunbeam concluded -- strike that.

NOT A CERTIFIED COPY

128910

Page 313

Isn't it true that Andersen concluded at the conclusion of the restatement investigation that Sunbeam's internal controls were inadequate in 1997 and the first quarter of 1998?
A. I believe so, yes.
Q. And isn't it true that Andersen concluded at the end of the restatement investigation that Sunbeam was unable to produce accurate financial statements in 1997 and the first quarter of 1998?
MR. MARKOWSKI: Object to the form.
THE WITNESS: I'm not sure exactly if that's the way it -- I know there was a restatement, so I don't remember what the opinion says.
MR. CLARE: I'm going to hand you the next exhibit we'll mark as Morgan Stanley 61.
THE REPORTER: 60.
MR. MARKOWSKI: If that's right, you might want to adjust the numbering, because he was testifying about a document you were calling 60 already, so you might want to make this one 59 and that one 60.
THE WITNESS: The Deborah MacDonald document was 59.
MR. MARKOWSKI: But it was referred to in the transcript as 60.

Page 314

MR. MOSCATO: Why don't we just correct the transcript then.
MR. MARKOWSKI: Either one, one way or the other.
MR. CLARE: Let's mark this as 61.
(MS Exhibit No. 60 was marked for identification.)
MR. MARKOWSKI: What are we doing about the MacDonald exhibit?
MR. CLARE: We'll correct it in the transcript.
THE WITNESS: She put 60 on here.
MR. CLARE: Let's re-mark the October 16, 1998 management letter as Morgan Stanley Exhibit 61.
(Thereupon, the document was re-marked 61.)
THE REPORTER: So there is no 60?
MR. CLARE: Not yet. And let's re-mark the Deborah MacDonald interview memo as Exhibit 60 to conform with testimony.
(MS Exhibit No. 60 was marked for identification.)
BY MR. CLARE:
Q. Mr. Bornstein, I'm handing you what has now been marked as Morgan Stanley Exhibit 61, a document, first page says Sunbeam Corporation Management Letter, October 16, 1998.
Have you seen this document before?
A. Yes.
Q. And if you turn to the third page of the exhibit, it's a letter dated October 16, 1998, from Andersen addressed to the board of directors, management of Sunbeam Corporation.
A. Yes.
Q. If you look at page two of the letter, which is Bates number CPH 0084409, second full paragraph, I ask you to read that to yourself.
A. Okay.
Q. The last sentence there expresses the opinion that "The company's design and effectiveness of its internal controls were inadequate to detect material misstatements in the preparation of the company's 1997 annual and quarterly financial statements."
Do you see that?
A. Yes.
Q. That was a conclusion that Andersen reached in October of 1998?
A. Yes, that's what it says here.
Q. Okay. This was at the conclusion of the restatement investigation?

Page 315

Page 316

A. I believe so.
Q. And did you share that conclusion in October 1998?
A. I don't specifically remember if I did or didn't, but I was part of the engagement team, so --
Q. In 1997 while you were working on the Sunbeam audit, did you have any reason based on the work that you performed to question the design or effectiveness of Sunbeam's internal controls?
A. In some areas, yes.
Q. Can you tell me what they were?
A. There was a draft of a management letter that was, I don't think it was ever issued, but given to people from Sunbeam that probably had several of these in there.
Q. This was provided to Sunbeam management in 19, in connection with the 1997 audit?
A. Yes.
Q. And did you believe that the conditions that were described in the draft management letter were material weaknesses as that term is defined in Morgan Stanley Exhibit 61?
A. Not at that time, no.
Q. At that time those were suggestions by Andersen on how internal control could be improved?

NOT A CERTIFIED COPY

Page 317

A. Yes.
Q. But the conclusion that there was a material weakness was not reached by you or Andersen until October 1998; is that correct?
A. I don't know the specific date, but that's when the report was given.
Q. The report here identifies -- you can flip through it -- a number of areas that are identified as material weaknesses. Do you see that?
A. I do.
Q. Okay. Were any of the material weaknesses that are identified as material weaknesses in this report known to you in 1997?
A. Any of the material weaknesses known to me during when?
MR. MOSCATO: Any material weaknesses?
MR. CLARE: Correct.
BY MR. CLARE:
Q. I'm asking you while you were working on the 1997 audit, were you aware of anything that rose to the level of a material weakness of Sunbeam's internal controls?
MR. MOSCATO: I thought he answered that.
MR. CLARE: The answer is no?
THE WITNESS: That's what I answered a few

Page 318

minutes ago.
BY MR. CLARE:
Q. In the first quarter of 1998, were you aware of any material weaknesses in Sunbeam's internal controls?
A. No.
Q. In 1997, did you believe that Andersen -- I'm sorry, did you believe that Sunbeam was incapable of producing reliable financial statements?
A. No.
Q. Did you believe that in the first quarter of 1998?
A. No.
Q. Did you have any reason in the first quarter of 1998 to believe that Sunbeam was incapable of producing reliable financial statements?
MR. MOSCATO: I object. I just don't see the difference between that question and one he just answered two minutes ago. I'm really, I have to object in the strongest terms of repeating the same thing over and over.
We're getting near the eight-hour limit, and I'd ask you to be just a little less repetitive in your questioning. And I do that in all respect. I think you're conducting a very professional

Page 319

examination. I just think it's a little repetitive.
MR. CLARE: This is my last question in this area and I plan to move on, so the objection took longer than the repetitive questioning.
MR. MOSCATO: I think it needs to be said, though, but go on.
MR. CLARE: Can you reread my question, please. We'll get an answer and move on to the next topic.
(Thereupon, a portion of the record was read by the reporter.)
THE WITNESS: No.
BY MR. CLARE:
Q. In August of 1998 were you aware of a settlement between Sunbeam and MacAndrews & Forbes?
A. No.
Q. Did you have any involvement in --
A. Actually, say that again, in August of --
Q. 1998, were you aware of a settlement that took place in that time period between Sunbeam and MacAndrews & Forbes?
A. Generally I did, yeah.
Q. And this was a settlement whereby MacAndrews and Forbes received warrants to purchase additional

Page 320

shares of Sunbeam stock?
A. I believe so.
Q. Did you have any involvement or do any work on behalf of Sunbeam in connection with that settlement?
A. No.
Q. Did you have any involvement in valuing those warrants?
A. No.
Q. Or disclosing that settlement in Sunbeam's financial statements?
A. No.
Q. Have you ever seen any documents or reports relating to the valuation of those warrants?
A. No.
Q. You were involved in drafting the disclosures that were in the 1997 10K, weren't you, some of them?
A. Yes.
Q. And specifically you were involved in the drafting of disclosures in the 10K about Sunbeam's bill and hold sales?
A. I don't know about drafting, but recommending that something be put in there.
Q. Okay. At one of your prior depositions you said that you were involved in at least reviewing and

NOT A CERTIFIED COPY

16div-024967

Page 321

commenting on the disclosures. Is that correct?
A. Yeah, I think that's fair.
Q. And the deposition you indicated that you thought those disclosures were very good disclosures.
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: I don't know if they were very good, I don't remember what I said, very good or good, but --
BY MR. CLARE:
Q. But you thought they were either very good or good?
A. Well, they were reasonable.
Q. Okay. And at the time were you aware of any bill and hold transactions beyond those that had been disclosed in the 1997 10K?
A. No.
Q. And do you think that the disclosures that you reviewed and that ultimately ended up in the 1997 10K adequately informed investors that Sunbeam had engaged in hold sales?
MR. MARKOWSKI: Object to the form of the question.
THE WITNESS: Yes.

Page 322

BY MR. CLARE:
Q. Are you aware that the 1997 10K includes disclosures about Sunbeam's Early Buy program?
A. Yes.
Q. You were involved in drafting those disclosures, too?
A. I don't remember specifically.
Q. Did you play a similar role as you just described with regard to bill and hold?
A. I don't remember.
Q. This morning Mr. Markowski asked you some questions about the Early Buy program and the, what it means to accelerate sales from one quarter into an earlier quarter. Do you recall that?
A. Yes.
Q. Do you recall that that subject, the possibility of sales being advanced into an earlier quarter, was among the information contained in the disclosures?
MR. MARKOWSKI: Object to the form of the question, lack of foundation.
THE WITNESS: I'd have to look at it.
MR. CLARE: Let's look at what was previously marked as Morgan Stanley Exhibit 12.

Page 323

BY MR. CLARE:
Q. If you look at the document, the Bates number at the bottom, CPH 1409071.
A. Okay.
Q. The paragraph at the top of the page, carryover paragraph, if you just read that to yourself. My question is going to be whether you had any involvement in drafting this disclosure.
THE WITNESS: I don't remember having any specific involvement in that specific paragraph.
BY MR. CLARE:
Q. Do you recognize that paragraph as in part a disclosure of the Sunbeam's Early Buy program and the risks associated with the Early Buy program?
A. One of the risks.
Q. And that risk is that it increases the company's risk of collecting accounts receivable?
A. Correct.
Q. And this is, this disclosure is contained in the section labeled Cautionary Statements of the 10K?
A. Couldn't tell you. There is like eight different fonts here.
Q. If you look at the page before, page seven?
MR. MOSCATO: I object. You don't need Mr. Bornstein to say where in a publicly-filed

Page 324

document with the SEC a particular paragraph exists. This is really becoming abusive now.
Can you please ask him factual questions other than identifying that particular words exist in a particular document that's publicly filed.
BY MR. CLARE:
Q. Do you see on page seven it says the words Cautionary Statements?
A. Yes.
Q. So the disclosure that you just read appears in that section?
A. Yes.
Q. If you turn to the next page, two pages later, page nine of the 10K, the third bullet from the bottom, the bullet that begins "Sales of certain of the company's products," do you see that?
A. Yes.
Q. Read that bullet to yourself, and I'm going to ask you if you were involved in drafting that disclosure.
A. I don't remember having any involvement in drafting that.
Q. The discussion that you had with Mr. Markowski this morning about accelerating sales in one quarter or one financial period into an earlier

NOT A CERTIFIED COPY

Page 325

period --
A. Yes.
Q. Is the paragraph that you just read on page nine of the 10K, is that a disclosure that, of that phenomena that you were describing?
A. I have no idea. I can read it 100 times. It's too late in the day to give you a conclusion on that.
Q. Well, this morning, in response to questions from Mr. Markowski, you testified that in looking at various iterations of the comfort letter --
A. The comfort letter?
Q. Yes. There was a discussion there about reasons for the shortfall --
A. Right, right.
Q. -- in January and February of 1998. Do you recall that?
A. Yes.
Q. And you testified this morning about the impact of an Early Buy program and how one of the reasons identified in the comfort letter was the acceleration of sales into an earlier time period.
Do you recall that?
A. Right.
Q. And my question is does this disclosure that

Page 326

we've just looked at in the middle of page nine, is that the same phenomena that you were discussing with Mr. Markowski this morning, to your knowledge?
MR. MARKOWSKI: Objection, asked and answered, and object to the form of the question.
THE WITNESS: It could be similar.
BY MR. CLARE:
Q. The statement specifically that such a program, meaning the Early Buy program, could have a negative impact on future financial performance.
THE WITNESS: Yes, you can read that well. Same thing I read.
BY MR. CLARE:
Q. You don't have a view one way or the other as to whether that's the same phenomena that you were describing with Mr. Markowski?
A. Similar.
Q. Similar. Did you ever have an in-person meeting with Morgan Stanley in the state of Florida?
A. No.
Q. The accounting due diligence call that you participated in, you participated in from New York?
A. Yes.
Q. Was Mr. Tyree with you physically at the printer during that due diligence call?

Page 327

A. I'm not sure about him. Mr. Lurie was.
Q. Mr. Lurie was also on the call?
A. He was physically present.
Q. And he was physically present with you in New York.
And the only in-person meeting that you had with Morgan Stanley was the one at Global Financial Press in New York?
A. Several meetings, yes.
Q. A series of meetings?
A. And Scadden Arps.
MR. CLARE: Let's take a two-minute break and I think we may be done or close to done.
THE VIDEOGRAPHER: We are now going off video record. The time on the monitor is 5:05 p.m.
(Thereupon, a recess was taken.)
THE VIDEOGRAPHER: We are now back on video record. The time on the monitor, 5:11 p.m.
BY MR. CLARE:
Q. Mr. Bornstein, I appreciate your patience. A few final items for now.
You discussed earlier in your testimony the decision by Sunbeam to extend first quarter of 1998, do you recall that?
A. Yes.

Page 328

Q. Did you have any discussions with Morgan Stanley on that subject?
A. Bob Lurie and I did, but not Morgan Stanley.
Q. And this conversation with Mr. Lurie, was that after Global Financial Press?
A. Yes.
Q. That issue didn't arise until closer to the end of the quarter?
A. Yes.
Q. And tell me about your conversation with Mr. Lurie.
A. I don't remember specifics about it, to be honest with you.
Q. Did you have an understanding one way or the other about whether Morgan Stanley had a position on extending the quarter?
A. No.
Q. You described this morning in response to questions from Mr. Markowski and again in response to questions by me this afternoon about the additional procedures, the sales cutoff testing that was done at your direction.
A. Yes.
Q. At the end of the first quarter. Do you recall that?

NOT A CERTIFIED COPY

CZ0 01 0021

Page 329

A. Yes.
Q. Do you recall either from the documents that we looked at today or from your recollection whether there were any inconsistencies or irregularities that were reported to you as a result of that cutoff testing?
A. Not, no irregularities. There was nothing that wasn't resolved.
Q. So the additional procedures that you asked to be performed were in fact performed?
A. Yes.
Q. To your satisfaction?
A. Yes.
Q. And Mr. Kistler or the other individuals that were informed in those procedures never advised you specifically of an issue with regard to the cutoff testing that led you to believe that Sunbeam's cutoff had been done improperly?
A. No.
MR. CLARE: Those are all the questions that I have for now.
THE WITNESS: Okay.
REDIRECT (Lawrence Bornstein)
BY MR. MARKOWSKI:
Q. Mr. Bornstein, hopefully just a few brief

Page 330

items.
Do you have Morgan Stanley Exhibit 58 in front of you? It's the April 3 press release announcing the fact that Sunbeam had missed accomplishing first quarter 1997 sales levels.
MR. CLARE: Take this one, Larry.
THE WITNESS: Okay.
BY MR. MARKOWSKI:
Q. Do you see the first paragraph purports that Sunbeam expected to be approximately five percent below 1997's first quarter net sales result?
A. Yes.
Q. And I think you testified that the books had been close at that point, correct?
A. Correct.
Q. Do you recall that the actual shortfall was greater than five percent?
A. At that point, at the end of the day, you mean?
Q. At the end of the day do you recall that the actual shortfall was something greater than five percent?
A. It depend how it was defined.
Q. That's what I was going to get at next. Whatever the shortfall was, do you recall that Sunbeam

Page 331

in its first quarter 1998 net sales results was including Coleman Company sales?
A. Yes.
Q. For the three-day or two-day period at the end of the quarter after the closing of the Coleman transaction, correct?
A. Yes.
Q. So there was an amount of sales that didn't come from Sunbeam's business, but yet came from the business that Sunbeam had acquired Coleman Company, correct?
A. Correct.
Q. Do you recall approximately how many millions of dollars that was?
A. No.
MR. CLARE: Objection, foundation.
BY MR. MARKOWSKI:
Q. But you recall that was part of what Sunbeam claimed at its first quarter sales results, correct?
A. Yes.
Q. And that was as a result of extending the quarter?
A. Yes.
Q. And there were additional days of Sunbeam sales included first quarter results too, correct?

Page 332

A. Yes.
Q. Do you recall as you sit here today what the shortfall from 1997 first quarter results was if Sunbeam had not extended the quarter, thereby including Coleman Company sales and additional days of Sunbeam sales?
A. No.
Q. But the shortfall would be even greater as a result of that adjustment, correct?
A. I don't even know if it was a shortfall. I don't know what the numbers were.
Q. Well, this press release announces that there is a shortfall.
A. Five percent lower, yeah, right.
Q. Without waiving my objection to the questions that Mr. Clare asked on these subjects, you recall that he asked you questions concerning whether you had information indicating that Morgan Stanley had been involved in committing a fraud on my client.
Do you recall those questions?
A. Yes.
Q. With respect to that, do you have any knowledge, sir, concerning the statements that Morgan Stanley made to my client concerning the success of Sunbeam's turnaround?

NOT A CERTIFIED COPY

926910

Page 333

A. That Morgan Stanley -- can you read that back?
Q. Let me ask it again.
Do you have any knowledge, Mr. Bornstein, of the statements that were made by Morgan Stanley to my client concerning the success of Mr. Dunlap's turnaround of Sunbeam?
A. No.
Q. You don't have any knowledge of what Morgan Stanley said to my client on that subject, do you?
A. No.
Q. Do you have any knowledge of what Morgan Stanley said to my client on Sunbeam's performance in the first quarter of 1998?
A. No.
Q. Or that Sunbeam said to my client concerning its performance in the first quarter of 1998 in Morgan Stanley's presence?
A. No idea.
Q. Do you have any knowledge of the statements that were made by Morgan Stanley to my client about Sunbeam's prospects for 1998?
A. No.
Q. Do you have any knowledge of the statements made in Morgan Stanley's presence by Sunbeam concerning

Page 334

Sunbeam's prospects for the full fiscal year 1998?
A. No.
Q. When you left -- Mr. Clare asked you some questions about the statement that you made to Mr. Tyree that you hoped to God that Sunbeam at least accomplished sales equal to first quarter 1997 sales or otherwise people should expect to be sued.
Do you recall the questions on that, relating to this comment?
A. Yes.
Q. You did make a comment to that effect during the session at Global Financial Press on March 19, correct?
A. Yes.
Q. And you made that comment to Mr. Tyree, correct?
A. Yes.
Q. When you made it, were you joking?
A. No.
Q. Was Mr. Tyree laughing?
A. No.
Q. Was it said in jest?
A. No.
Q. When you said it was an off-the-cuff statement, was it something that you didn't understand

Page 335

to be a real risk at that point in time?
A. No.
Q. And that's the way you meant it when you said it to Mr. Tyree, correct?
A. Yes.
Q. You said, sir, that you found it amazing that Morgan Stanley during the course of its communications with you or contacts with you didn't inquire about the status of Sunbeam's first quarter sales results.
Do you recall that testimony today?
A. Yes.
Q. Why did you find it amazing that Morgan Stanley didn't make that inquiry during the various times it was in contact with you or others from Arthur Andersen?
A. Should have been the first question on the list.
Q. And why did you think that, sir?
A. Why did I think that?
Q. Why did you think it was the first question that Morgan Stanley should have been asking you?
A. Because they were selling bonds based on current and future performance.
Q. Now we're getting a document that I want to use for another question, sir.

Page 336

Mr. Clare asked you whether Morgan Stanley objected during, to your statement, during the session at the printer on March 19, to your statement that you intended to implement special procedures to monitor Sunbeam's end-of-the-quarter shipments.
Do you recall that?
A. That they objected?
MR. MOSCATO: I'm sorry, say that again?
BY MR. MARKOWSKI:
Q. Do you recall that Mr. Clare asked you whether Morgan Stanley objected when you told Mr. Tyree that you intended to implement special procedures to monitor Sunbeam's shipments at the end of the first quarter? Do you recall that question?
MR. CLARE: I object to the form.
THE WITNESS: I remember the question, yes.
BY MR. MARKOWSKI:
Q. Did Morgan Stanley say to you when you told Mr. Tyree -- strike that.
Did Mr. Tyree say to you when you told him that that was your intention that he thought that was a good idea and that you should for sure go ahead and do that?
A. No, they were silent.
Q. Did the lawyers from Davis Polk say that's a

NOT A CERTIFIED COPY

016927

Page 337

great idea, go ahead and do that?
A. No. Silent.
Q. That list of, the sales buildup that you were shown for -- let me see if I can get it in front of me -- that you were provided at the printer on March 19th, the one-page list of potential sales, do you recall that?
MR. MOSCATO: Does he need it in front of him for this question?
THE WITNESS: I have it here.
MR. MARKOWSKI: Let me see if I can find it.
MR. MOSCATO: He's got it.
BY MR. MARKOWSKI:
Q. Have you got it?
A. Yeah.
Q. Did -- one of the things you said you told Mr. Tyree was he should just do the math with respect to trying to determine whether this was a reasonable forecast of Sunbeam's sales expectations for the first quarter, correct?
A. Yes.
Q. Mr. Clare asked you this morning or this afternoon questions concerning the fiscal capability of Sunbeam's facilities to ship a certain level of product per day.

Page 338

A. Yes.
Q. Do you recall those questions?
Did the fact that some substantial portion, approximately $86 million, as I read this chart, of these potential sales had not been booked as orders by this point in time have an effect on your thinking with respect to the feasibility of Sunbeam being able to accomplish this level of sales in the remaining days of the quarter?
MR. CLARE: Object to the form.
MR. MOSCATO: I object to that too.
THE WITNESS: I don't remember specifically if that was my thought process.
BY MR. MARKOWSKI:
Q. Well, if the sales had all been in and recorded at that point in time, would you have had a -- strike that. Let me put it this way.
When you read this chart, did you understand that Sunbeam was going to be able to divide into equal daily segments the amount of product that needed to be shipped out each day in order to accomplish at least $254 million in sales?
MR. CLARE: I object to the form.
MR. MOSCATO: I object.
THE WITNESS: I did a straight line division,

Page 339

calculation in my head, yes.
BY MR. MARKOWSKI:
Q. Okay. Do you know whether that was in fact what Sunbeam would be able to do based on where it stood with respect to having booked orders for product? Did you know that one way or the other?
MR. MOSCATO: Objection.
THE WITNESS: No.
BY MR. MARKOWSKI:
Q. I don't think we need to mark this as an exhibit, sir, but I want to show you your, a transcript of your testimony before the, your prior testimony on October 13, 1999, in connection with related proceedings.
MR. MOSCATO: Counsel, for what purpose are you showing him the document?
MR. MARKOWSKI: There is just one question I want to show him to see if I can refresh his recollection to a particular aspect of the testimony.
MR. MOSCATO: If you can ask the question first.
MR. MARKOWSKI: It was asked. I'll ask it again.

Page 340

BY MR. MARKOWSKI:
Q. Do you recall, sir, that Mr. Tyree, when you told him your views concerning whether the substance of the press release should be put in the offering memorandum, that Mr. Tyree said to you --
MR. MOSCATO: Wait, Larry, don't look at anything yet.
BY MR. MARKOWSKI:
Q. "You know, this is going in. I don't care what you say. This is going in."
A. As I sit here, I don't recall him saying that, but if I said that, if it's in the testimony from four or five years ago, it's a lot closer to the time.
Q. Let me give you a chance to take a look at that specific question and answer. It's on page 492 and 493, if you could just read.
MR. MOSCATO: You're asking him to refresh his recollection?
MR. MARKOWSKI: Right.
MR. MOSCATO: Okay.
MR. MARKOWSKI: Whether he recalls today Mr. Tyree in fact saying those words to him.
MR. MOSCATO: Read it, Larry, then close it up, and then testify as to whether or not that actually refreshes your recollection.

NOT A CERTIFIED COPY

Page 341

MR. CLARE: I'm sorry, what page are you asking him to read?
MR. MARKOWSKI: The questioning starts at 492, carries over onto 493 at the top.
THE WITNESS: Okay.
MR. MOSCATO: Wait for a question.
BY MR. MARKOWSKI:
Q. Sir, does that refresh your recollection that in response to your objection to including the press release in the offering memorandum, the March 19 press release in the offering memorandum, that Mr. Tyree said to you, "You know, this is going in. I don't care what you say, this is going in."
A. It doesn't refresh my memory.
Q. Did I accurately read that statement from your prior testimony?
A. Yes.
Q. And that testimony was given at a point in time closer to the events than today, correct?
A. Yes.
Q. Do you have any reason to believe your testimony at that time was inaccurate on that point?
A. No.
MR. MARKOWSKI: I don't have any further questions.

Page 342

RECROSS (LAWRENCE BORNSTEIN)
BY MR. CLARE:
Q. Mr. Bornstein, you responded to a question from Mr. Markowski about Morgan Stanley's due diligence. He asked you why you were amazed at Morgan Stanley's due diligence. Do you recall that?
A. Yes.
Q. Let me ask you the same question that he asked you with regard to inquiries from Nafco, MacAndrews and Forbes and Coleman (Parent) Holdings. And you told me earlier that you were surprised that you didn't receive any inquiries from Coleman (Parent) Holdings or its representatives in connection with the acquisition, correct?
A. Yes.
Q. And was your statement that an inquiry about how the company was doing should have been the first question on the list, does that apply equally to inquiries that you would have expected to receive from Coleman (Parent) Holdings?
A. No.
Q. Would you have expected that to be unimportant question that you would receive?
A. That me personally would receive? I wasn't with them, so the answer is no.

Page 343

Q. But my question is in terms of your surprise at not receiving any inquiries, would that question, how is the company doing, be among the inquiries that you would have expected to receive in connection with diligence that was done by Coleman (Parent) Holdings?
A. If any questions were asked, that would have been one of them that I would have believed should have been asked.
Q. It would have been on the list?
A. It would have been on the list.
Q. And it would have been an important question on the list?
A. Yes.
MR. CLARE: That's all I have.
MR. MARKOWSKI: One more question.
REDIRECT (LAWRENCE BORNSTEIN)
BY MR. MARKOWSKI:
Q. Mr. Bornstein, do you know whether -- excuse me, do you know what my client, Coleman (Parent) Holdings, asked Sunbeam and asked Morgan Stanley on the subject of how Sunbeam was doing in the first quarter of 1998 and what my client was told by them?
A. No.
MR. MARKOWSKI: Thank you.
THE VIDEOGRAPHER: This is the conclusion of

Page 344

the videotape deposition of Mr. Bornstein. We are now going off video record. The time on the monitor is 5:30 p.m.
(Witness excused.)
(Deposition was concluded.)

NOT A CERTIFIED COPY

016829

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that the witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 19th day of January, 2004.

_____

Rachel W. Bridge, RMR, CRR
Notary Public - State of Florida
My Commission Expires: 1/15/07
My Commission No.: DD164752

CERTIFICATE

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachel W. Bridge, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of January, 2004.

_____

Rachel W. Bridge, RMR,CRR
Notary Public State of Florida
My Commission Expires: 1/15/07
My Commission No.: DD164752

CERTIFICATE

- - -

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____, 2004.

_____

Lawrence A. Bornstein

ERRATA SHEET

IN RE: Coleman(Parent)Holdingsvs. Morgan Stanley
DEPOSITION OF: Lawrence Bornstein TAKEN: 1-15-04
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

PAGE #	LINE #	CHANGE	REASON

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE: _____

SIGNATURE OF DEPONENT: _____

016830

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

016831

ARTHUR ANDERSEN

To: The Files

From: Lawrence A. Bornstein, West Palm Beach

Date: July 2, 1998

Subject: Due Diligence call with Morgan Stanley

On March 7, 1998, we were requested to participate on an oral due diligence call with Sunbeam's lead underwriter, Morgan Stanley "Morgan" as well as other representatives of the Project Laser team. We requested a standard release from the Company and Morgan who replied that it was not in accordance with their policy to sign such a letter and that they have recently worked with AA in New York with out such a letter. Phil Harlow, engagement partner discussed with Don Denkhaus, Audit Division Head that Morgan was unwilling to sign the release letter and Don stated it was not uncommon and to proceed with the meeting providing that the client was involved on the call.

On March 12, 1998, I participated in the conference call from New York, in addition the following were on the line or in attendance in New York. Phil Harlow, engagement partner, Larry Bornstein, engagement manager, Bob Gluck, Corporate Controller, Sunbeam, John Tyree, Morgan Stanley, Bob Lurie, Davis Polk, Andy Savari, Morgan Stanley, George Scott, First Union as well as a representative from Bank of America.

Attached is the agenda, as well as notes from that meeting Mr. Savori and Mr. Lurie asked the questions and Mr. Harlow provided responses.

The questions from the agenda were asked in their entirely and the responses were as follows:

1 Introduction made by Phil Harlow

2. 7 years

3 a. As disclosed in the Company's 10-K the Company has engaged in a bill and hold policy reporting approximately 3% of gross sales.

b. Nothing of a material nature.

4. a. Our audit was primarily substantive in nature. No material weaknesses in internal controls were noted.

b The Company is in the process of implementing Year 2000 software.

5 - Cutoff issues
- Restructuring reserves
- Receivables and inventory

6. None

7. No items of material nature.

NOT A CERTIFIED COPY

AA055761 Confidential Treatment Requested by Arthur Andersen LLP

EXHIBIT
CPH- 123
RWB 1-15-04

Date: July 2, 1998

Subject: Due Diligence call with Morgan Stanley

8. On a scale of 1-10 around a 5 or 6.

9. Yes. Management letter points related to the Mexico operations, Year 2000 and sales practices.. No items of material nature.

10. No material adjustments were recorded.

11. and 12. Yes, reasonable

13. One RAR pending 94 RAR recent taxable treatment.

14. Full timely reviews, no opinion rendered.

15. Very frequent involvement in major transactions

16. Yes

17. No.

SHP/sun000/project one-time due diligence

NOT A CERTIFIED COPY

016833

AA055762 Confidential Treatment Requested by Arthur Andersen LLP

PROJECT ONE-TIME

Accounting Due Diligence

1. Describe your history with the Company and your personal qualifications.

2. Policy to rotate Partner on job? 7 yr

3. Anything peculiar to the Company that is not generally the way the industry accounts for:
   a. revenue recognition - [illegible]
   b. capitalizing costs vs. expensing/deferring costs [illegible]

4. Adequacy of internal controls
   a. [illegible] adequate for [illegible]?
      1. [illegible] detection - [illegible]
      2. Adequate personnel and supervisory controls? - Yes
   b. Operating system integrated w/ accounting? Yes MRP - EDI [illegible] SAP fully Int system

5. In preparing for your annual audit, do you do a risk analysis to determine what areas to focus on? What was the focus for last audit? Yes - Cutoff - Restructuring - Rec related [illegible] - Inv

6. Any irregularities or errors covered by SAS 53?

7. Any claims, rumors of fraud, misconduct, illegal acts covered by SAS 54/Foreign Corrupt Practices? - [illegible] NO Amer Proc spec/fic

8. How aggressive is the Company in its accounting policies? [illegible]

9. Do you prepare management letters? If no - what would management letter have covered for most recent year? Yes - Mexico - Year 2000 - [illegible]

10. Any major adjustment recommended? NOT mat'l - Encore SPI - [illegible]

11. Comfortable with Depreciation lives? Yes
    Comfortable with Amortization periods? Yes

12. Comfortable with reserves for bad debt? - Reasonable

13. Status of any audits by IRS - Pending - [illegible] 94 - RAR - Final

14. Level of Quarterly Review/SAS 71 - Full review timely Rec'd - No opn

15. Frequency & Level of involvement in major transactions
    Good / Timely / Adeq

NOT A CERTIFIED COPY

AA055763 Confidential Treatment Requested by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH0021367
16div-024978

PROJECT ONE-TIME

Accounting Due Diligence
(continued)

16. Company is conservative and leans to full disclosure? Yes

17. During the period in which you have been the auditor for the Company, have any material discrepancies been noted by the SEC as it relates to the Company's auditing and accounting procedures? No

NOT A CERTIFIED COPY

AA055764 Confidential Treatment Requested by Arthur Andersen LLP

NOT A CERTIFIED COPY

016836

EXHIBIT NO. 31

MORGAN STANLEY *MEMORANDUM*

TO: Sunbeam financing team **DATE:** March 7, 1998

FROM: John Tyree

SUBJECT: Accounting Due Diligence call

There will be an accounting Due Diligence conference call on **Thursday, March 12, 1998** starting at 11:30 AM (EST) and continuing to 1:00 PM. The call will consist of four separate 30 minute sessions with each Company's auditors. The auditors will be connected to the call at the beginning of their session (i.e. they will be conferenced in by John Tyree). The conference call information and time schedule is as follows:

Conference Call

Time:	11:30 AM (EST) - 1:30 PM
Call-in Number:	(800) 736-0013
Participant code:	3985903
Conference host:	John Tyree

Schedule

11:30 AM (EST)	Ernst & Young (Coleman), Jim Havel
12:00 PM	Arthur Anderson (Sunbeam), Larry Bornstein
12:30	KPMG (Signature Brands), Scott Decker
1:00	Price Waterhouse (First Alert), Jim Eidam

If there are any questions, please call.

John Tyree
(212) 761-7738

Shani Boone
(212) 761-4941

NOT A CERTIFIED COPY

016837

NOT A CERTIFIED COPY

016838

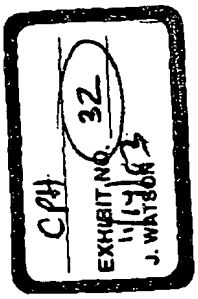
PROJECT LASER

Accounting Due Diligence

1. Describe your history with the Company and your personal qualifications.
2. Policy to rotate Partner on job?
3. Anything peculiar to the Company that is not generally the way the industry accounts for:
   a. revenue recognition
   b. capitalizing costs vs. expensing/deferring costs
4. Adequacy of internal controls
   a. Are controls adequate for current operations?
      1. Fraud detection
      2 Adequate personnel and supervisory controls?
   b. Operating system integrated w/ accounting?
5. In preparing for your annual audit, do you do a risk analysis to determine what areas to focus on? What was the focus for last audit?
6. Any irregularities or errors covered by SAS 53?
7. Any claims, rumors of fraud, misconduct, illegal acts covered by SAS 54/Foreign Corrupt Practices?
8. How aggressive is the Company in its accounting policies?
9. Do you prepare management letters? If no - what would management letter have covered for most recent year?
10. Any major adjustment recommended?
11. Comfortable with Depreciation lives?
    Comfortable with Amortization periods?
12. Comfortable with reserves for bad debt?
13. Status of any audits by IRS
14. Level of Quarterly Review/SAS 71
15. Frequency & Level of involvement in major transactions

NOT A CERTIFIED COPY

016833



PROJECT LASER

Accounting Due Diligence
(continued)

16. Company is conservative and leans to full disclosure?

17. Issues we may have w/SEC

18. Anything not asked that should have been asked?

NOT A CERTIFIED COPY

016840

NOT A CERTIFIED COPY

016910

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,)
Plaintiff,)
-vs-)
MORGAN STANLEY & CO., INC.,)
Defendant.)

The videotaped deposition of ANDREW SAVARIE, called by the Plaintiff for examination, taken before CORINNE T. MARUT, C.S.R. No. 84-1968, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, at the offices of Jenner & Block, LLC, Suite 4000, One IBM Plaza, Chicago, Illinois, on the 22nd day of January, A.D. 2004, commencing at 9:28 a.m.

PRESENT:
JENNER & BLOCK, LLC,
(One IBM Plaza,
Chicago, Illinois 60611-7603,
312-222-9350), by:
MR. MICHAEL T. BRODY,
MS. SUZANNE J. PRYSAK,
appeared on behalf of the Plaintiff;

KIRKLAND & ELLIS LLP,
(655 Fifteenth Street, N.W.,
Washington, D.C. 20005,
202-879-5993), by:
MR. THOMAS A. CLARE,
appeared on behalf of the Defendant and the Deponent.

VIDEOTAPED BY:
MR. MARC BUHMANN,
Esquire Deposition Services.

REPORTED BY: *CORINNE T. MARUT, C.S.R. No. 84-1968*

THE VIDEOGRAPHER: Good morning. We are going on the video record at 9:28 a.m.

My name is Marc Buhmann and I am a legal videographer in association with Esquire Video Services. My address is 155 North Wacker Drive, Chicago, Illinois. The Court Reporter today is Corey Marut of Esquire Deposition Services.

Here begins the videotaped deposition of Andrew Savarie taking place at Jenner & Block, One IBM Plaza, 40th floor, Chicago, Illinois.

Today's date is January 22, 2004. This deposition is being taken in the matter of Coleman Holdings, Inc. vs. Morgan Stanley & Co., Inc., in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. CA 03-5045 IA.

Will counsel please state their names for the record.

MR. BRODY: Michael Brody and Suzanne Prysak on behalf of Coleman (Parent) Holdings.

MR. CLARE: And Thomas Clare, Kirkland & Ellis, LLP, on behalf of Defendant Morgan Stanley & Company and the witness.

THE VIDEOGRAPHER: Will the reporter now swear in the witness, please.

(WHEREUPON, the witness was duly sworn.)

MR. BRODY: All set?

ANDREW SAVARIE,

called as a witness herein, having been previously duly sworn and having testified, was examined and testified further as follows:

EXAMINATION (Resumed)

BY MR. BRODY:

Q. Will you please state your name.
A. Andrew Savarie.
Q. And spell your last name for the Court Reporter.
A. S-a-v-a-r-i-e.
Q. Sir, you used to work at Morgan Stanley?
A. Correct.
Q. At the time you did was there anyone else at Morgan Stanley with your name?
A. Not that I'm aware of.
Q. Okay. Mr. Savarie, have you ever been deposed before?
A. No.
Q. Then let me go over a little bit of this procedure. I'm sure your counsel has told you.
You've just taken an oath, the same oath

NOT A CERTIFIED COPY

you would take at trial. I'll be asking you questions and it's your obligations to answer them to the best of your ability.

If you don't understand any of my questions, I would ask you to ask me for a clarification and I will try to do so.

If you need to take a break at any time, just say so and we will do it although I'd prefer not to take a break with a question pending.

And the last thing, and this is more important for the Court Reporter than for you and me, is since she has to take down everything that you say, it's important that you wait for me to finish before you answer and I will try to do the same before I ask another question.

Fair enough?

A. Fair enough.

Q. Have you ever given any testimony under oath before?

A. No, not that I can recall.

Q. And, Mr. Savarie, you are here pursuant to subpoena?

A. Yes.

Q. A subpoena was served upon you?

A. Yes.

Q. Do you have any documents responsive to the subpoena?

A. No.

Q. At the time you left Morgan Stanley did you have in your possession at home or outside of your office at Morgan Stanley any documents relating to the Sunbeam or Coleman matter?

A. No.

Q. Let me just lay out a couple of definitions just so we're clear.

I'm going to refer in this deposition to Sunbeam, and by that I mean the company that Al Dunlap headed and to which Morgan Stanley provided investment banking services. Correct?

A. Okay.

Q. And I'll refer to Morgan Stanley meaning the company you were once employed by and its affiliated companies. Is that acceptable?

A. Okay.

Q. I will also refer to Coleman; and by Coleman, I mean the publicly traded company, camping goods company, based in Wichita, Kansas.

A. Fair enough.

Q. Understand?

A. Yep.

Q. And my client, Coleman (Parent) Holdings, is an affiliate of MacAndrews & Forbes; and I may refer to them collectively as MAFCO. Is that acceptable?

A. Yes.

Q. In the Morgan Stanley documents I've seen references to Project Laser. Was "Laser" Sunbeam?

A. Laser was the name assigned to the project. So, I don't know if you would assign it to Sunbeam, but it was to the project.

Q. And that was the project by which Morgan Stanley provided services to Sunbeam?

A. Yeah, broadly, yes.

Q. Okay. And I also saw references to "Camper." Do you understand that to be Coleman?

A. I actually don't know.

Q. Okay.

A. If that -- I'm not as familiar with "Camper" as a name used associated with this transaction.

Q. Fair enough. We'll see if that pops up on any of the documents I show you today.

Mr. Savarie, you're represented by counsel today?

A. Yep.

Q. Mr. Clare is your lawyer?

A. Yes.

Q. When did you retain Mr. Clare?

A. I was introduced to Mr. Clare at the point where I received the subpoena and upon contacting Morgan Stanley to let them know that I had received the subpoena, they directed me to him.

Q. Who did you contact at Morgan Stanley?

A. It was Miss Lee, Soo Mi Lee.

Q. And then Morgan Stanley introduced you to Mr. Clare?

A. Correct.

Q. Is Morgan Stanley paying for Mr. Clare's representation of you today?

A. I'm not familiar with the details of who's -- who's paying what bills. But I would assume so.

Q. Are you paying?

A. No.

Q. Prior to receiving the subpoena, had you had any contact with Mr. Clare?

A. No.

Q. And prior to receiving the subpoena, were you aware that we were trying to arrange your

NOT A CERTIFIED COPY

016343

Page 9

deposition?
A. I had been made aware that it was potential that it might happen.
Q. And how did you learn that?
MR. CLARE: I would in answering the question instruct you, and I don't know how you're planning to answer the question, but to the extent that you had communications or discussions with members of my firm on that topic or with in-house attorneys for Morgan Stanley to not reveal the substance of the communications.
So, if you want to -- if you're able to answer the question subject to that limitation, you can answer.
BY THE WITNESS:
A. I had been given an indication from Morgan Stanley.
BY MR. BRODY:
Q. Who at Morgan Stanley gave you that indication?
A. Soo Mi Lee.
Q. At the time Ms. Lee gave you that communication, did you work for Morgan Stanley?
A. No.
Q. What was it that she told you?

Page 10

MR. CLARE: I object and instruct the witness not to answer.
BY MR. BRODY:
Q. I take it you're going to follow your lawyer's instruction?
A. Yep.
MR. BRODY: Can we have an understanding that I don't have to go through that ritual on further instructions?
MR. CLARE: Yes.
MR. BRODY: Thank you.
BY MR. BRODY:
Q. Do you know when it was that you learned that it was a possibility that you might be deposed in the case?
A. I don't recall specifically, but I would say several months ago.
Q. Prior to that contact from Ms. Lee were you aware that there was a lawsuit between MacAndrews & Forbes and Morgan Stanley arising out of the Sunbeam matter?
A. I was not aware.
Q. Mr. Savarie, what did you do to prepare for today's deposition?
A. A couple of phone calls with Tom to set

Page 11

up logistics and then some time spent just reviewing how this would be conducted today.
Q. When did you have that review?
A. Yesterday.
Q. How long did you meet?
A. I guess it was half day.
Q. In that meeting did you review any documents?
A. Yes.
Q. Do you remember any of them?
A. Some of them.
Q. Which ones did you review?
A. I don't recall all the documents that we looked at, but it was a number of documents relating to the transaction.
Q. Any that you remember in particular?
A. I think there was the offering memorandum, some of the internal documents prepared within Morgan Stanley, roadshow, and I can't -- a number of other documents. I can't remember specifically which -- which ones we looked at.
Q. And no other ones you recall?
A. Not specifically.
Q. Did you review any transcripts of testimony by other witnesses in this case or in

Page 12

other cases?
A. I don't believe I reviewed any of those.
Q. Are you aware of testimony given by others in this case or in other cases concerning the Sunbeam engagement?
A. I'm aware that others have provided testimony.
Q. Do you know the substance of any of their testimony?
A. I don't or at least not -- not specifically.
Q. Have you ever been, aside from communications with Morgan Stanley's counsel or with Mr. Clare and people in his office, have you ever been contacted by anyone else about the work that Morgan Stanley did for Sunbeam?
A. When you say "anyone else," my immediate answer to that would be no. And I'm trying to recall over the period of the last six years whether there's been any reference to any of that work in any way, shape or form. And I would say no in substance.
Q. Okay. Let me give you some specifics.
Have you been contacted by any regulators, for example --

NOT A CERTIFIED COPY

A. No.
Q. -- with questions? Have you been contacted by lawyers for anyone else suing Morgan Stanley about the work Morgan Stanley did?
A. No, not that I can recall.
Q. Now, before we focus on the Sunbeam transaction and the work that you did, sir, I'd like to spend a little time on your background.
A. Okay.
Q. You attended college?
A. Correct.
Q. Where was that?
A. Duke University.
Q. Did you receive a degree from Duke?
A. Yes.
Q. What degree?
A. Bachelor of Science in engineering.
Q. Any particular field of engineering?
A. Electrical.
Q. When did you receive that degree?
A. 1986.
Q. After you received your Bachelor of Science Degree in education -- in electrical engineering, did you work?
A. Yeah.

Q. For whom?
A. I spent four years in the Air Force.
Q. Were you in an ROTC program?
A. Yes.
Q. What was your -- what were your duties within the Air Force?
A. Defense contract acquisition work.
Q. Where were you stationed?
A. Bedford, Massachusetts, Hanscomb Air Force Base.
Q. Were you a pilot?
A. No.
Q. Did you leave the Air Force in 1990?
A. Correct.
Q. What was the nature of your separation from the Air Force?
A. It was a four-year commitment. So, it was at the end of it.
Q. Did you receive an honorable discharge?
A. Yes.
Q. What did you do after you left the Air Force?
A. Went to business school.
Q. Where did you attend business school?
A. Northwestern.

Q. Is that the Kellogg School?
A. Correct.
Q. Did you have a particular area of study or expertise at Kellogg?
A. You know, I think there were majors, but I would say that doesn't really constitute much of a concentration.
Q. Did you have a major?
A. It will tell you how important it was. I'm not sure I remember what it was.
Q. Did you receive any honors or awards while at Kellogg?
A. I did.
Q. And what were those?
A. Beta Gamma Sigma and then I got an academic award for being top of the class.
Q. What was the name of that academic award?
A. I think it may have been a Kellogg academic achievement award or something, something like that.
Q. Okay. After -- you graduated from Kellogg in '92?
A. Correct.
Q. June of '92?

A. Yep.
Q. After leaving Kellogg did you go to work for Morgan Stanley?
A. Yes, and I had actually worked for Morgan Stanley during the summer between the two years.
Q. When you were in their summer program where were you stationed?
A. New York.
Q. In a particular division?
A. It was generalist pool.
Q. When you returned to Morgan Stanley after graduation in 1992 where did you work?
A. New York.
Q. In what area were you assigned?
A. Again, a generalist pool.
Q. You were with Morgan Stanley from 1992 until when?
A. Until the end of or November, I believe, of 2001.
Q. Where did you go after Morgan Stanley?
A. Bank of America Securities.
Q. Where?
A. Here in Chicago.
Q. Are you still with Bank of America

NOT A CERTIFIED COPY

0169

Page 17

Securities?
A. I am.
Q. What are your -- what's your position with Bank of America?
A. I run the automotive and transportation banking effort.
Q. What is the business of your automotive and transportation banking effort? What is it you do? Are you underwriting securities? Are you doing debt offerings? Are you doing --
A. Yes, all of that. It's the investment banking arm of the bank.
Q. You remain in Chicago?
A. Correct.
Q. What is your title?
A. Managing director.
Q. Is that the title you were hired to?
A. Yes.
Q. In your current position at Bank of America do you have current dealings with Morgan Stanley?
A. Occasionally, as an underwriter side by side on transactions or -- yes.
Q. Is the main business of Bank of America Securities the underwriting of -- of various types

Page 18

of securities offerings?
MR. CLARE: I object to the form.
You can answer if you understand.
BY THE WITNESS:
A. Is the -- in terms of what the main business is, it's really providing our clients with a broad array of financial services.
BY MR. BRODY:
Q. Can you estimate what percentage of the business of your automotive and transportation group is involved in the underwriting of securities?
A. That's a -- it's a number I don't have off the -- off the top of my head. I would say it's a meaningful portion of the business we do, but I couldn't tell you specifically what percentage it is of the business we do. And it varies by year by period, certainly by client.
Q. When you refer to automotive and transportation sector, that's the area of commerce that you work with?
A. Correct.
Q. Automotive I understand. Transportation, what types of businesses are involved in the transportation sector?

Page 19

A. I would say the bulk of my time is spent on the automotive space, but it does include logistics companies. Rail companies are generally under my responsibility and a few other logistics providers.
Q. Aviation?
A. Less so.
Q. Or is that separate?
A. Less so.
Q. And when you say "logistics providers," do you mean? Give me an example whether or not it's --
A. Trucking companies, a UPS, a Fed Ex, names like that.
Q. Got it. Since you left Morgan Stanley have you had any involvement with Sunbeam?
A. No.
Q. Or -- or its present form, American Household?
A. No.
Q. Now, let's focus on that roughly nine-year period that you were at Morgan Stanley.
A. Okay.
Q. You arrived at the company in the summer of 1992?

Page 20

A. Yes. Again, following -- having spent the summer there the year prior.
Q. Right.
A. Right.
Q. Focusing on the time --
A. Summer of '92.
Q. What was your first position?
A. It was an associate in the generalist pool.
Q. How long were you an associate in the generalist pool?
A. It was a two-year, sort of two-year program broadly. However, during the second year, you had the option to specialize; and I actually did spend some concentrated periods of times -- time in healthcare and in telecom.
Q. As a member of the generalist pool was your work in the investment banking area?
A. Yes.
Q. Any particular field within investment banking?
A. Very broad.
Q. Okay.
A. Included, you know, work on all kinds of projects.

NOT A CERTIFIED COPY

016818

Page 21

Q. In 1994 did you take a new position?
A. In 1994, and I can't recall specifically when, I was asked to join the Chicago office. I believe it was 1994.
Q. And did you do so?
A. Yes.
Q. Did you remain in the Chicago office until you left in '92 -- excuse me -- in 2001?
A. Yes.
Q. What position did you move to the Chicago office to take?
A. It was an associate, again, mostly as a generalist.
Q. Just focusing on the titles, we'll talk about the responsibilities later, how long did you remain an associate?
A. I think in total four years.
Q. So, in about 1996 you took a new position, new title?
A. Yeah, that sounds right.
Q. And what was that?
A. Vice president.
Q. And how long were you vice president?
A. Three years.
Q. So, roughly '99?

Page 22

A. I think it was three years. Yeah.
Q. And then what position did you take?
A. Principal.
Q. Is that the position you held when you left?
A. Yeah, and they may have renamed it director at some point, but it was ostensibly principal.
Q. Is the step above principal managing director?
A. Correct.
Q. . Focusing on the work you did in the Chicago office, from '94 to 2001 how big was the Chicago office?
A. Well, it varied obviously over time, and I'm not certain of precisely how many folks there were. I would say anywhere from 15 to 20 professionals probably in total, investment banking professionals.
Q. And by "professionals," do you include associates?
A. Yeah.
Q. Analysts?
A. Yeah. It may have been as many as 25 at some points during that period.

Page 23

Q. Did the Chicago office have an area of specialization?
A. Generally no. It was an office designed for -- to provide generalist coverage and regional coverage.
Q. Who was in charge of the Chicago office during that time period?
A. Bill Strong.
Q. The entire period?
A. Yeah, and I guess Bill Strong and Frank English were the two senior members of the office. In terms of who was responsible for the office, it may have actually been Frank with Bill providing even more senior oversight.
Q. Did the Chicago office report to a particular division within Morgan Stanley?
A. In the investment banking division, although I'm not certain precisely how it reported in; and that tended to change with changes in the management structure.
Q. During your time in the Chicago office, to whom did you report?
A. Both Frank and Bill.
Q. Focusing on the period you were in the Chicago office, what were your duties and

Page 24

responsibilities as an associate?
A. As an associate, you would participate in the preparation of presentation materials for meetings, various items that you would work on or prepare in support of other senior members of a client team for execution of transactions, business development discussions, really any number of things related to the services we were providing those clients, oversee the analysts in terms of the work being done, the analysis being prepared.
Q. Would you do the analysis yourself?
A. At times, depending on the analysis, depending on the situation.
Q. As an associate was there an area within which you -- you worked?
A. What do you mean by that?
Q. Well, a substantive area, an area of commerce.
A. Meaning sort of an industry area?
Q. Yes.
A. Initially not much although over time I began to gravitate towards spending a portion of my time in the automotive space.
Q. As an associate, in addition to reporting to Mr. Strong, did you also report to

NOT A CERTIFIED COPY

0169-1

Page 25

members of Morgan Stanley's investment banking department in New York?
A. No, not -- not directly. I mean, my reporting relationships were to the people that ran the office in Chicago.
Q. On particular projects did you work with people in New York?
A. Yes.
Q. How was it decided -- do you know how it was decided whether people from Chicago would become involved in a particular project?
A. Well, I can't tell you how it was in every case. It oftentimes was a function of either where the senior officer was involved, whether that senior officer happened to be in Chicago. It may be a project being driven out of New York but involving one of the professionals in Chicago, in which case I could have been involved.
And it may well have been an instance where the client had some relationship with or association with the Midwest region, which was oftentimes a -- a reason to have someone in the Chicago office involved.
Q. In 1996 you became a vice president?
A. Yes.

Page 26

Q. Did you --
A. As I recall, yeah.
Q. Or thereabouts?
A. Yeah, right.
Q. Did your responsibilities change?
A. They did.
Q. In what way?
A. In that you tend to play more significant roles in situations where you're involved. More oversight of, in that case, associates, including analysts, or associates in addition to analysts, beginning to development client relationships.
Q. Did your work focus in a particular industry as a vice president?
A. Again, it was a -- it continued that my focus or that an area of focus was automotive. So, I spent more -- more time developing my expertise in automotive.
Q. In roughly 1999 you were promoted to a principal or a director. How did your responsibilities change with that promotion?
A. I think similarly, just in, you know, subtle increases in independence and responsibility.

Page 27

Q. Now, the work that Sunbeam did for -- excuse me.
The work that Morgan Stanley did for Sunbeam in the 1997-'98 time frame, you were a vice president at the time?
A. Correct.
Q. Did you do any work for Sunbeam when you were an associate?
A. No.
Q. And you're aware of the engagement Project Laser that Sunbeam did -- excuse me -- that Morgan Stanley did for Sunbeam. Did you work on any other Sunbeam projects other than Project Laser?
A. No.
Q. Aside from your M.B.A. from the Kellogg School, have you taken any further educational programs?
A. Other sort of continuing education. I think I took a few classes, you know, while I was in the Air Force. But no degrees.
Q. No course work toward a degree?
A. No. None -- none that were intended to achieve a degree, no. I took some other engineering classes because I was in the

Page 28

engineering part of the military service.
Q. I believe you testified you left Morgan Stanley in November of 2001?
A. Correct.
Q. Why was it you left?
A. I was dismissed.
Q. Did that have anything to do with work you did for Sunbeam?
A. No.
Q. To your knowledge?
A. Not to my knowledge.
Q. Mr. Savarie, when you were at Morgan Stanley, what did you understand the policy of the company regarding the retention of documents relating to client matters?
A. What did I understand the policy to be?
Q. Yes.
A. I think generally to retain the documents that you felt were important for you to retain.
Q. Did you ever see a formal written policy on document retention?
A. I can recall having reviewed one at -- at probably several points during my time at Morgan Stanley. But -- but just vaguely.

NOT A CERTIFIED COPY

Page 29

Q. Do you remember anyone ever talking to you about documents to keep or documents to throw away?
A. In general or --
Q. In general.
A. Generally, no. It was not a topic that, you know, was sort of raised frequently or, you know, where there was a lot of focus on -- on that necessarily.
Q. Do you remember any discussion about whether to keep particular documents relating to the Sunbeam engagement?
A. I don't remember having any specific conversation about that.
Q. Sir, I'm going to show you what's previously been marked as Exhibit 6, and I'll just represent for the record that this is a portion of a document taken out of a document produced to us by Morgan Stanley.
Have you ever seen this before?
A. I don't recall having seen this document.
Q. At the beginning, it states that:
"Files should be kept lean and unnecessary material should be

Page 30

discarded on a regular basis."
Do you remember any discussion about that?
A. No.
Q. When -- when an engagement closed, when a -- when a deal closed, what was your practice about going through your files and keeping or discarding documents?
A. As a practical matter, I would just go through and keep those documents that I thought were central to the transaction and perhaps something that I would need at some later date.
Q. Was it your practice to do that within a short period after the closing of a deal?
A. I would say that there was no standard practice, no, you know, particular sort of regimen that I followed consistently. It would depend on how big the file was, how much stuff I had in it that I thought I didn't need; and those would be the factors that would determine how quickly, for instance, I might do that.
Q. Focusing on the Sunbeam matter, do you remember going through your file on Sunbeam and keeping some things and not keeping other things?
A. Not specifically. I don't recall

Page 31

actually having accumulated a whole lot of paper as -- as a result of my limited role in the transaction.
Q. Do you remember at any point paring down your file on the Project Laser or Sunbeam matter?
A. I remember generally having thrown some things away, but I can't recall when I did it or what -- what I had that I didn't think I needed to keep.
Q. You earlier indicated that you, when you did that, when you went through a file, you kept things you thought you might need later or want to use later. Is that correct?
A. Correct.
Q. Would it be your practice to keep notes of telephone conversations with the client?
MR. CLARE: Again, are you asking generally now --
MR. BRODY: Yes.
MR. CLARE: -- or with regard to Sunbeam?
BY THE WITNESS:
A. I would say, you know, generally no; that it would be more likely that I would keep documents that, for instance, might be used to, you know, provide a framework or ideas or sort of a

Page 32

precedent for other transactions as opposed to things of that sort.
BY MR. BRODY:
Q. Was it your practice to keep drafts of documents, drafts of presentations or offering memoranda?
A. Generally, no. I mean, what -- what typically would be most useful would be the final version of a document that had been created.
Q. So, is it correct to say you would typically discard the predecessor drafts and keep the final?
MR. CLARE: I object to the form.
BY THE WITNESS:
A. I mean, I would say that, you know, that final document is -- is the one that would be most helpful I think for me.
BY MR. BRODY:
Q. When you were at Morgan Stanley, in the '97-'98 time frame, did you communicate with others using e-mail?
A. I'm sure I did.
Q. Do you know if in connection with the Morgan Stanley deal you communicated with people -- I keep saying Morgan Stanley when I mean Sunbeam.

NOT A CERTIFIED COPY

016849

Page 33

Let me start over.
In connection with the work Morgan Stanley did for Sunbeam, did you communicate with people in other Morgan Stanley offices using e-mail?
A. While I can't specifically recall how much I did or when I did, I would suspect that e-mail was part of the means I used to communicate.
Q. Do you know if you communicated with people at Sunbeam using e-mail, people at the client?
A. I don't recall, but I also recall that e-mail was not the primary means of communication that it is, for instance, today. So, I suspect if it were used, it were -- it was substantially less than it would be today.
Q. Did you -- were you instructed to do anything to save or retain e-mails?
A. No.
Q. Do you know what happened with e-mails after you sent them? Do you know if they were saved or backed up in any manner?
A. I -- I don't know.
Q. Do you know what type of e-mail system you used when you were at Morgan Stanley?

Page 34

A. No, I wouldn't be -- I mean, I was a user, not a technician.
Q. I understand.
Did you use a Morgan Stanley system or was it an external system such as Bloomberg Mail or something like that?
A. To my recollection, it was a Morgan Stanley system, if I was using it at all.
Q. Okay. I think for the remainder of the deposition, sir, unless I say otherwise, I'm going to focus on the time period beginning in '97 and ending in '98 in which Project Laser took place. And at that time you were working in the Chicago office of Morgan Stanley?
A. Correct.
Q. And you were a vice president?
A. Correct. I assume. Yeah, thinking back to -- yeah, if the promotion took place before, and I don't know when this all started, but assuming that I had been promoted before it started, yes.
Q. Okay. At the time you were in the Chicago office reporting to Mr. Strong primarily?
A. Yep. In addition to the other managing directors.
Q. What other managing directors were there

Page 35

in the Chicago group?
A. Frank English, John Adams, I believe Frank Ulrich -- well, he may not have been an MD at that point. You know, maybe Frank Ulrich if he had been an MD at the point -- at that point in time.
Q. In that period, sir, you were assigned to work on the Morgan Stanley representation of Sunbeam, is that correct?
A. I was asked to participate in a portion of the work that Morgan Stanley had done for Sunbeam.
Q. What portion did you -- were you asked to participate in?
A. I was asked to join the team at the point where the financing plan had been determined and there was a need to add to the team to help with the execution of the financing.
Q. Can you place that in time? Do you know when it was?
A. I think it was, you know, in the early March time frame.
Q. Early March 1998?
A. Yes.
Q. If I were to tell you that the deals closed in late March, would that be consistent with

Page 36

your recollection --
A. Yeah.
Q. -- that you started in early March?
A. Sounds right.
Q. Did you do any work on the Sunbeam engagement after the deals closed?
A. After the deal was closed?
Q. After the financing closed.
A. You know, my role, given that it was principally to help with the execution of the financing, was fairly limited thereafter.
Q. Who asked you to become involved in this project?
A. Bill Strong.
Q. Who did you work with, other Morgan Stanley professionals, in connection with this deal? Mr. Strong I assume?
A. With -- with Bill, and I'm not going to remember I'm sure all the -- the members of the team, but John Tyree.
Again, we had some -- there was obviously an M & A team who had done a lot of work prior to that, and I had some interface with them as well; and then as well we had a bank team that had been assembled as part of the financing

NOT A CERTIFIED COPY

0168750

Page 37

project. And I can't -- I just can't recall all the names. It's been too long.
Q. I understand. In a bit I'll show you a working group list. That may help.
A. Sure.
Q. So, just to generalize, there was an M & A team, a bank team and then could we describe your group as a financing team?
A. Well, I would say that the financing team, broadly defined, you know, really included, you know, a combination of members from all sort of aspects of the transaction.
Q. The M & A team, was that a New York function?
MR. CLARE: I object to the form.
MR. BRODY: You're right. Bad question.
BY MR. BRODY:
Q. Were the people on the M & A team from the New York office?
A. Yes. Generally. I mean the majority of them were in New York.
Q. Who do you remember on -- on what you described as the M & A team?
A. Bob Kitts, Jim Stynes, Alex Fuchs were the three names that -- and I'm sure there were

Page 38

associates and analysts involved as well.
Q. Okay.
MR. BRODY: Please mark this as Exhibit 125.
(WHEREUPON, a certain document was marked CPH Exhibit No. 125, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Mr. Savarie, I've given you what's been marked as Exhibit 125.
A. Okay.
Q. Do you recognize this as a document circulated by Morgan Stanley?
A. Certainly looks like it.
Q. And the document is dated March 11 and in fact it bears a fax transmittal indicating it was faxed at 3:00 in the morning on March 11.
A. Okay.
Q. Do you recognize this document and its attachment to be a circulated working group list?
A. Yes.
Q. If you'd please turn to the page bearing the production number at the bottom right beginning with the number or ending with the number 4677.
A. Uh-huh.
Q. You see there is a reference to

Page 39

participants from Morgan Stanley?
A. Yes.
Q. Do you see that?
A. Yes.
Q. Okay. The first individual listed is Bruce Fiedorek. Did you work with Mr. Fiedorek?
A. I did not have a lot of direct contact with Mr. Fiedorek.
Q. Did you work with him on the Sunbeam deal?
A. No.
Q. Mr. Strong and yourself were -- are listed as the two individuals from the Chicago office?
A. That's correct.
Q. To your knowledge, did anyone else from the Chicago office work on this matter?
A. No.
Q. Do you know how it was the Chicago office was involved in the transaction?
MR. CLARE: Object to form and foundation.
BY THE WITNESS:
A. I am not that familiar with all the background that led to the involvement other than a general knowledge of Bill's relationship as being

Page 40

part of the reason.
BY MR. BRODY:
Q. And he had a relationship with Mr. Dunlap?
A. Yes, that's my understanding, although I don't know a lot about the history or the substance of it.
Q. Did you ever talk to Mr. Strong about that relationship?
A. I would say, you know, generally, yes. When he asked me to be involved, I got, you know, some background on what -- what the transaction was, how it had come about, but it was very general.
Q. In connection with the work that you did on Project Laser, did you ever learn of what projects Mr. Strong had done with Mr. Dunlap in the past?
A. You know, at points later in the process, you know, as I sort of heard a little bit more about the history, I learned a little bit more about it, but never really had an in-depth discussion about it.
Q. What did you learn about his prior relationship with Mr. Dunlap or his companies?

NOT A CERTIFIED COPY

Page 41

A. Just that he had known him from prior dealings with him, and I can't recall what specific dealings those were.
Q. The next set of individuals, sir, that begin on the bottom of page 4677 and continue to 4678 are identified from the M & A group?
A. Um-hmm.
Q. They were involved in this project before you became involved?
A. Yes.
Q. Do you know what they were retained to do? Do you know what their assignment was?
A. I don't know, you know, at the initiation of this what all the details were and what they were asked to do. In retrospect I know obviously what the transaction entailed as it -- as it unfolded, but was not involved in any -- any -- well, don't know the details of precisely what they did and when they did it.
Q. Okay. At the time you became involved, had it already been decided that Sunbeam would acquire Coleman and two other companies?
A. Yes, as I recall, that -- that was the transaction as it was outlined to me was that the portion of the transaction I was being asked to

Page 42

participate in was the financing of that collection of acquisitions.
Q. Did you have anything to do with advising Sunbeam on whether to enter into the acquisition transactions?
A. No. As a matter of fact, you know, my involvement was really after, and I'm not sure technically when everything happened because I wasn't involved in the M & A process, so I don't know where they were precisely in those processes at that point. But I was not involved in advising Sunbeam on that aspect of the overall transaction.
Q. In the course of the work you did, did you go back and review any of the proposals that Morgan Stanley had made to Sunbeam or that Sunbeam had made to potential acquisition targets about performing these transactions?
A. I don't recall exactly what work I reviewed, but I know in the process of getting up to speed, getting some further background on what the transaction was, that I did review some of the presentations that Morgan Stanley had prepared.
Q. Do you know if you reviewed the presentation that Morgan Stanley made to MacAndrews & Forbes?

Page 43

A. I don't specifically -- specifically recall that presentation.
Q. Did you review, to your recollection, the presentation that Morgan Stanley made to the Board of Directors of Sunbeam about going forward with these transactions?
A. Again, I don't specifically recall -- I don't specifically recall in general what documents I looked at, but know that I reviewed some that summarized sort of what this transaction was because without some of that general knowledge, to start work on the financing would have been more difficult.
Q. If you turn to the next page, sir, 4679, there's what's identified as the Client Services Group. What's the business of the Client Services Group?
A. Generally this is a group that is focused on execution of financings.
Q. So, their responsibility in this project was similar to yours?
A. I would -- in -- in many respects. I had been asked obviously as a member of the team to work closely with the members of this team involved in the transaction.

Page 44

Q. Were there any other groups you were asked to work closely with?
A. No, it was really -- and to a degree, I had some peripheral involvement with the bank team and the bank process given the overlap.
Q. Could you turn to the next page, page 4680. There's a reference to Equity Capital Markets?
A. Um-hmm.
Q. Is that the bank group?
A. No. This would be the group that would have been more focused on the equity financing.
Q. Did you work with the individuals listed here?
A. Yes.
Q. Let me -- in connection with the Sunbeam deal?
A. Yes.
And, again, I would say people are in buckets, they're in groups, but it's really a collective effort where the lines of responsibility are not that clearly defined between groups and who does what for what purpose.
Q. The next page, page 4681, refers to the credit group. Do you recall what their

NOT A CERTIFIED COPY

016851

Page 45

responsibility was on this project?
A. Generally the credit team assists in any credit-related matters, which could relate to, you know, assessments of, you know, pro forma credit to, you know, elements of, you know, structure in any transaction or security that's being issued.
Q. Did you --
A. So, any credit-related matters, these folks might be sought for advice.
Q. It identifies two individuals. Mr. Whelan is a man, Chris Whelan?
A. Yes.
Q. And Mr. Kunreuther. Do you know what work they did on this deal?
A. It would be hard for me to -- to specifically identify what they did.
Q. Did you work with them?
A. Yes.
Q. What do you recall doing with them?
A. I remember having discussions with them about, you know, transaction structure and, you know, as is the case with -- with any instance where Morgan Stanley or anyone is getting involved as a lender, it's a -- there is a credit component to that decision-making process.

Page 46

Q. Were they shown drafts of memoranda to Morgan Stanley management about whether to go forward with the deal?
MR. CLARE: Objection; foundation.
BY THE WITNESS:
A. You know, I don't know exactly what they saw and what they didn't see.
Q. Okay.
A. You know, all I can speak to is sort of what dealings I had with them.
Q. Okay. Next page describes the Leverage Finance Group.
A. Okay.
Q. Is that the bank group?
A. That would be the team more directly responsible for the bank portion of the execution.
Q. Did you work with the individuals identified there?
A. Yes. Not necessarily all of them to the same degree, but yes.
Q. With whom did you work?
A. I would say Mike Hart was probably, you know, more a primary interface than others on the team.
Q. How did you --

Page 47

A. Tom Burchill too.
Q. I'm sorry. Tom Burchill as well?
A. Yes.
Q. On what matters did you interface with the Leverage Finance Group?
A. Again, given sort of the collective sort of team-oriented nature of the way we go about executing a transaction like this, there are a number of meetings where we would have -- we might have attended it together or we would have discussed certain issues together, we would have shared information for purposes of all the documents that get prepared as part of a transaction like this.
Q. Do you work -- excuse me.
Did you work with Mr. Smith, Bram Smith?
A. Yes. I mean, he was the senior member of the team. So, my contact with him would have been more limited.
Q. If you turn to the next page, sir, there are three additional groups, High Yield Research. Did you work with Mr. Foley at High Yield Research in connection with the Sunbeam matter?
A. I don't recall spending a lot of time with him.

Page 48

Q. Do you recall doing anything with him?
A. Not specifically.
Q. What about Equity Research, it identifies Andrew Conway and James Dormer. Did you do any work with them?
A. I recall having some contact with them but not -- not -- not substantial contact or contact with them.
Q. What contact do you recall having with them?
A. You know, again, I can't recall. You know, I can't give you a number of times that I -- that I talked to them six years ago. But it was, you know, an occasional conversation about, you know, the process, the company.
Q. What was the -- withdraw that.
Within Morgan Stanley what did Equity Research do?
A. Well, I think generally Equity Research provides equity research on companies.
Q. When Morgan Stanley provides coverage for an issued stock --
A. Correct.
Q. -- it's done by Equity Research?
A. Correct.

NOT A CERTIFIED COPY

016853

Page 49

Q. Do you know if Morgan Stanley provided coverage of Sunbeam at any time?
A. I don't believe so.
Q. Was it discussed at the time of this transaction that Morgan Stanley would begin providing equity -- equity coverage for Sunbeam securities?
A. I don't recall specifically having conversations like that myself. But I'm generally aware that that I believe had been discussed, but I don't know in what context or to what degree.
Q. The last entry is for the Fixed Income Division. Did you work at all with the Fixed Income Division?
A. I don't even recognize that name. It was a big team obviously.
Q. I understand. You've identified some of the individuals you worked with, sir, and I believe you testified that your primary responsibility on the deal was to assist in executing the financing plan?
A. Correct.
Q. Within that general responsibility of executing the financing plan did you have particular responsibilities or things that you were

Page 50

responsible for?
A. Again, as part of the team, I was involved in reviewing documentation that would be used to execute the transaction to include the prospectus, reviewing materials that would be used by the company in a roadshow, and then in assembling documents that would be used for internal meetings and approvals that would take place as part of the execution.
Q. Did you have any involvement in preparing the selling memorandum?
A. As I recall, I would have had a role in reviewing it and perhaps preparing portions of it.
Q. Aside from those major areas of responsibility do you remember other areas that you were involved in?
A. You know, I participated in a lot of the general discussions at due diligence meetings that we would have to prepare a lot of these documents to ask the questions and get an understanding of the business that we needed to proceed with the execution of the transaction.
So, I would say, you know, a lot of general internal and discussions with the company relating to gathering information appropriate for

Page 51

the execution of the transaction.
Q. When you became involved in the deal in -- in early March, prior to that time you had no involvement in it, is that correct?
A. That's correct.
Q. Prior to that time were you even aware that the deal was going forward?
A. I may have been generally aware that, you know, Bill was working on something and -- but it would have been, you know, a bit or a piece here or there. Not enough to really understand the substance of the transaction.
Q. When you became involved in the transaction in I believe you said early March of 1998, what did you do to get up to speed on the deal?
A. Well, as I said, I reviewed some of the presentations that had been prepared by the rest of the team and then, you know, had conversations with members of the team just to sort of catch up on where things were and where the transaction stood.
Q. As you sit --
A. Including Bill.
Q. As you sit here do you remember any of those particular presentations that you looked at?

Page 52

A. I don't. I don't. I remember, you know, the presentations being summary in nature, summarizing the nature of the transaction, some of the analysis that may have been prepared. But I don't specifically remember which presentations or what analysis.
Q. When you were at Morgan Stanley, did you have to keep track of the hours you spent on particular matters or engagements?
A. I would say sort of broadly that we tried to do that, but it was not with the precision, for instance, that you guys do in the legal profession.
Q. How about that we guys like to do in the legal profession?
A. Right, right.
Q. If you turn to the working group list that I circulated earlier, if you look at the first page of the working group list, it describes the convertible debt and leverage finance. Do you see those words at the heading?
A. Which one is this?
Q. Go to any page of the working group list.
A. Oh, yeah, okay. Yeah.

NOT A CERTIFIED COPY

Page 53

Q. And towards the top there is a reference to convertible debt and leverage finance?
A. Yeah.
Q. And then following that are some numbers, 0726-001 and 0726-002?
A. Um-hmm.
Q. Are these numbers for these particular engagements?
A. Yes, those would be project numbers.
Q. Did you -- when you kept track of your time in the general way that you did, did you record it to those particular numbers?
A. That would have been the way to do it. I -- and whether I recorded all of it with one or the other or mixed the two might have depended on, you know, what I was doing.
Q. And the other individuals whose names we've looked at, do you know if they were supposed to record their time to those numbers as well?
A. Again, it -- I don't recall specifically how rigorously tracked, you know, that process was at that point in time and that sort of, you know, because it was really more an internal tracking tool than anything else.
Q. But I guess my question was --

Page 54

A. And I can't comment. I'm sure some people did a good job of doing it and some people didn't.
Q. Was it the practice of the Chicago office to keep track of time or was it a practice of Morgan Stanley to keep track of time?
A. I would say that it was not something only specific to Chicago.
Q. Did you ever see printouts or reports showing how much time had been spent on an engagement by a particular person or a particular group?
A. I don't recall specifically reviewing that nor can I recall a need to have done that.
Q. In connection with your work on any Morgan Stanley matter and perhaps as you grew more senior and moved into more management positions, do you know if Morgan Stanley had the ability to generate reports showing how much time was spent on a project and by whom?
A. You know, I think they did. But I can't recall many instances of having the need to see that because it didn't really -- was never particularly relevant.
Q. At the time, March of '98, thereabouts,

Page 55

did you keep a calendar or a diary or some other record showing what you did other than whatever time records you kept in the Morgan Stanley system?
A. I don't know. I mean we didn't -- I don't recall what I did.
Q. Okay.
A. And at that level of seniority I didn't have somebody tracking my time to the degree I might have had I been more senior or had -- to the degree I do today, for instance.
Q. Okay. You may be thinking -- I may be asking the question imprecisely, but I'm sure in business you've seen some people who are always keeping notes and writing down everything they possibly do and they have a notebook or so on describing the sorts of things they worked on.
Did you keep notes in that manner of the work that you were performing?
A. Not -- I mean, I had notebooks, but, you know, not to the extent that I would mark every day and have a page for every day. I did not keep those kinds of records or notes.
Q. What sorts of things did you keep in your notebooks?
A. I mean, it would be notes and it would

Page 56

be points that are relevant for -- from calls that I've had or to do lists, you know, summary of things that I need to follow up on from conversations with a variety of clients.
Q. Did you keep a spiral-bound notebook?
A. Yeah, I had had those.
Q. Is that what you used in the spring of 1998?
A. I don't recall whether I used a spiral or a -- something like the one you've got or -- or had something else that I kept, you know, whatever notes I, you know, made at the time.
Q. Did you retain those notes -- did you keep them?
A. Well, I kept those notes for some time, some period of time but, you know, don't have any of that stuff anymore and, you know, like I said, you know, wouldn't -- only kept those notes to the extent they were sort of timely and relevant to the -- to the extent I had done what I needed to do, the issues had been addressed, sort of old items, I'd throw it away.
Q. Okay. In answering one of the questions, sir, you indicated that you were involved to an extent in due diligence?

NOT A CERTIFIED COPY

Page 57

A. Yep.
Q. Describe just generally what you mean by due diligence.
A. Participating in some of the broad meetings that took place where the company and others were giving presentations, summaries of the business, as well as, you know, calls, you know, with the company and others discussing the business; and then I would say participating in, you know, reviewing various drafts of the offering documents, you know.
My view of the due diligence process is one that is a collection of all of the teams' efforts throughout the -- the entirety of the process, the entirety of the transaction, and really a continuous and ongoing portion of the -- of the transaction execution.
Q. You indicated that you participated in calls with the company and others?
A. Um-hmm.
Q. Did you ever go down to Sunbeam's offices in Florida?
A. Yes.
Q. How many times?
A. I'm sure, you know, you'd have records

Page 58

of it, but I don't know specifically how many times. I would say several times.
Q. I'll show you in a second a record I have of a particular visit. We'll see if you remember others.
Aside from visiting Sunbeam in Florida, did you visit any other Sunbeam locations?
A. I don't recall personally visiting any other locations, whether an office in New York or -- you know, I -- what I recall were most of the visits were in Florida, if not all of them.
Q. Aside from calls to Sunbeam, either in person or on the telephone, in the due diligence work that you did, did you speak with people from outside of the company?
A. Yes.
Q. Who?
A. The accountants.
Q. Aside from the accountants, anyone else?
A. Lawyers.
Q. Lawyers for the company?
A. Lawyers for the company, lawyers that we were working with, other banks. There were other banks involved in the process. There may have -- there may be others. I can't recall. I mean,

Page 59

obviously, other, you know, parties on the roadshow. I mean, there were other -- all kinds of people you come in contact with in that context.
Q. Did you ever speak to any of Sunbeam's customers?
A. I don't recall myself participating in those calls or any calls like that.
Q. Do you know of anyone who did?
A. I don't specifically recall, you know, when that happened, how that happened, whether that happened. I just -- I can't remember.
Q. Okay. Now, referring to the work that you did in executing the finance plan, you worked, among others, with the Client Services Group?
A. Correct.
Q. You worked with Mr. Tyree?
A. Correct.
Q. Did you work with Mr. Groeller? I'm referring to the players listed on page 4679.
A. Again, in looking at the names, yeah, I'm sure I did.
Q. Do you remember conversations or meetings with Mr. Groeller?
A. Generally I would -- yeah, I remember the names rings a bell. But, again, six years

Page 60

after the fact, I couldn't tell you --
Q. Did you spend --
A. -- when specifically.
Q. -- more time working with Mr. Tyree or Mr. Groeller?
A. With Mr. Tyree.
Q. There are two analysts listed, Ms. Boone and Mr. Derito. Did you work with them?
A. Yes.
Q. And the managing director, Mr. Wright?
A. Yes.
Q. Did you work with him?
A. Yep.
Q. How was it that your involvement in this project was -- let me withdraw that.
How were your responsibilities allocated with members of other groups such as the Client Services Group or the bank group?
A. My responsibilities were to assist the team in general, much as the coverage function does in executing a transaction, meaning, you know, there are lots of roles to be played, there are lots of things to be done, including taking the client on the roadshow, which is something generally done by the coverage team on a

NOT A CERTIFIED COPY

016856

Page 61

transaction.
And in this instance, you know, Bill added me to the team to assist in that function.
Q. By the coverage team, do you mean what's referenced here as the Client Services Group?
A. No, I would say that would be more accurately defined as the corporate finance function, which would have been Bill and myself.
Q. Bill Strong?
A. Bill Strong.
Q. Okay. So, you were assigned to take the client on the roadshow?
MR. CLARE: You have to answer verbally so the Court Reporter can take it down.
BY THE WITNESS:
A. Yeah. In addition to preparing for, you know, sort of participating in the preparation for the financing in general. But certainly one of the responsibilities was to accompany the client on the roadshow.
BY MR. BRODY:
Q. You referred to this being a team effort. Was there a captain of the team, someone in charge?
A. Again, I think given the collection of

Page 62

senior members of the team, it was really a collaboration of, you know, a number of those senior members.
So, while I wouldn't say any one person was the, quote, "team captain," there was probably a committee of senior -- senior team members here that were leading the transaction and as a result were, you know, participating in a lot of these discussions and stages of the process along the way.
Q. On the particular matters that you worked on, were you assigned to those by Mr. Strong?
A. When you say assigned to -- assigned to -- what do you mean "assigned to"?
Q. For example, when you were asked to work in assembling the documents used internally to get approvals for the deal, was that something Mr. Strong asked you to do?
A. Well, I -- it wouldn't be explicit. I mean, having worked on a number of these transactions prior to this, I know what's involved, what roles I played in the past, what roles get played by the various parties, how we worked together.

Page 63

So, it -- it wouldn't have required an explicit sort of direction, you will do this, this, this and nothing more. It was you're going to join the team and help with various aspects of what was going on.
Q. Did the team have regular team meetings?
A. Not that I recall, anything sort of formally on the calendar or a weekly basis, I don't recall having meetings like that.
Q. Did it meet occasionally?
A. I would say various subsets of the team were meeting regularly, discussing things regularly on the phone, in person. In my case, a lot by phone because I was in Chicago.
Q. During the time period that you worked on this project, basically March of '98 and then some follow-on work, what percentage of your time was spent on the Morgan Stanley engagement?
MR. CLARE: Objection to form. I think you misspoke. Sunbeam engagement?
MR. BRODY: Yes, on the Sunbeam engagement. Thank you, Tom.
BY THE WITNESS:
A. I would say during that time frame I spent, and while I can't tell you what percentage

Page 64

it is and don't specifically recall what else was going on at the time, I know I had other projects that would have been taking place at the same time.
I spent a fair amount of time involved in this, and then certainly when I was on the roadshow with the client was out of pocket for ostensibly the whole roadshow process.
BY MR. BRODY:
Q. Okay.
A. So, it was -- it was an intensive process.
Q. You said you spent a fair amount of time. More than 50 percent of your time?
A. I would say on certain days, certain weeks, yes.
Q. Aside from the roadshow when it was 100 percent of your time, on other days did you spend more than 50 percent of your time on this project?
A. Well, certainly when there was a meeting somewhere that I needed to attend or if I was spending a lot of time either assisting or reviewing the document or iterating on a document with the team in New York, yes.
Q. Okay. Let's take a step back and talk

NOT A CERTIFIED COPY

016857

Page 65

about some of the particular things that you did. We've talked about due diligence, and I'd like to focus on the due diligence work done by you --

A. Okay.

Q. -- and by others at Morgan Stanley.

Do you know what investigation Morgan Stanley did into the prior work at Scott Paper by Mr. Dunlap?

A. I do not know.

Q. You didn't work in that area?

A. I didn't. I did not work on that.

Q. And in connection with the work you did to get up to speed on the transaction, you didn't review any materials about Scott Paper?

A. No -- I don't have any specific recollection of looking at papers like that. I, you know, knew generally that that was something he had been involved in and had heard it from various people at various points along the way but never did an in-depth review of that.

Q. In connection with the work that you did at Morgan Stanley, did you ever hear anyone speak about whether the Scott Paper turnaround was successful, was not successful, was real, was illusory?

Page 66

MR. CLARE: Object to the form.

BY THE WITNESS:

A. I don't recall what specific conversations or comments were made by people on that specific topic.

BY MR. BRODY:

Q. You participated in the roadshow and Mr. Dunlap was on the roadshow?

A. Correct.

Q. Prior to the roadshow had you had any dealings with Mr. Dunlap?

A. No.

Q. Did you have any knowledge --

A. Well, aside from whatever participation there was in, you know, the meetings that took place prior to the roadshow.

Q. The preparatory meetings?

A. The preparatory, you know, meetings that we might have had with the company or had with the company in advance of the roadshow.

Q. Concerning the roadshow?

A. Well, concerning the financing.

Q. Okay. Prior to your being involved in this transaction had you ever done any work with Mr. Dunlap?

Page 67

A. No.

Q. Do you know if -- did Mr. Dunlap have a reputation for a particular type of business style?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I mean, I think he -- he was viewed as a -- he was certainly a high-profile personality.

BY MR. BRODY:

Q. At the time had you heard him referred to as "Chainsaw Al"?

A. Yes.

Q. Had he been described to you as someone who was difficult to deal with?

A. He had been described again as a, you know, a strong personality and he may have been described as, in one conversation or another, as, you know, potentially difficult.

Q. Did you have any understanding of what his reputation was for dealing with co-workers or other people in his companies?

A. Not specifically.

Q. Do you know if anyone at Morgan Stanley looked into that, looked into Mr. Dunlap's style and its effect on dealing with others in the company?

Page 68

MR. CLARE: Object to foundation.

You can answer.

BY THE WITNESS:

A. I don't know. I don't know to what degree, but I -- you know, the team obviously spent a lot of time working with him. So...

BY MR. BRODY:

Q. Did you do any investigation as part of due diligence into how Sunbeam developed its financial targets through the budgeting process?

A. I recall generally -- I mean, obviously, as part of this process there would have been a number of discussions about the business and the forecasts for the business. I don't specifically recall all the conversations that we had. But we would have had and I would have participated in conversations on that topic.

Q. So, you participated in conversations where the business' forecasts were brought to your attention?

A. Correct.

Q. Do you know if anyone at Morgan Stanley did any work into how those forecasts were derived?

A. I can't comment on what the collective group did, but I know that we did a lot of work to

NOT A CERTIFIED COPY

Page 69

understand those forecasts. Much of that work certainly was done in the context of the M & A process, in testing the projections and what those projections were going to look like. So, yes.
Q. Do you know who did that work?
A. Again, a collective effort. I couldn't tell you who specifically on the team was responsible for any one piece of that.
Q. Okay. Do you know if any -- can you tell me who on the team looked into Sunbeam's development of its budget for 1998?
A. I don't recall who specifically, and I wouldn't say that any one person was necessarily tasked with that specific task to understand. That was something that a broad range of participants in the execution of the transaction team would have been involved in, whether it was the bank team understanding, you know, what that forecast looked like, the financing team, the M & A team, you know, all members of the team.
Q. But that's not an analysis you performed?
A. I don't specifically recall focusing on that analysis.
Q. Sunbeam had various earnings per share

Page 70

targets. Are you aware of those?
A. I certainly can't recall them.
Q. I'm not asking you to recall what the numbers were, but you're aware that Sunbeam did have targets for earnings per share?
A. I would -- I would expect that they would have, yes.
Q. Do you know who at Morgan Stanley, if anyone, looked into how those targets were developed or derived?
A. Again, I think that would have been a collective process across the team.
Q. But as you sit here you can't tell me who I should talk to to determine how that was done?
A. I wouldn't be able -- I just don't recall who specifically had more or less of a role in that.
Q. Now, you've testified that you believe that Morgan Stanley did a lot of work regarding its forecasts, regarding Sunbeam's forecasts. What's the basis for that?
A. That as a part of this process, we are thorough in trying to understand the basis for the projections that the company has presented so that

Page 71

we can be comfortable with them and that -- it's principally for that reason.
Q. Okay.
A. Again, that's a comment I'd make sort of in general. But I -- I can't recall all the steps that were taken in the case of this transaction.
Q. Okay. So, is it correct to summarize that your testimony is based on your understanding of what Morgan Stanley typically does in a transaction?
A. Yeah.
Q. Okay. And typically in a transaction Morgan Stanley understands the company's budgeting process and the company's projections and the assumptions underlying them?
A. Yes.
Q. That's something that Morgan Stanley typically looks into?
A. Yeah, and I would say we -- we do that by having conversations with the company, upon whom we rely very heavily for the information they provide us, and the accountants and really sort of the team in its entirety to get an understanding of how those numbers have been put together and on what basis and -- and what they represent.

Page 72

Q. Now, are you aware that Sunbeam was describing itself as a turnaround success story?
A. Generally.
Q. And you're aware that after Mr. Dunlap came in, Sunbeam's fortunes were reported to have improved?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. I don't specifically recall sort of how -- how everything was being cast at the time.
BY MR. BRODY:
Q. Do you know what investigation or due diligence Morgan Stanley did into Sunbeam's turnaround story?
A. Again, I don't have any specific recollection of all the conversations and how those conversations focused.
Q. Okay. Are you familiar with an issue in Sunbeam's accounting and its financial reporting relating to bill and hold transactions?
A. I remember a reference to the terminology, but -- but nothing beyond that in terms of how big an issue it might have been. I just don't -- don't recall.
Q. Do you personally recall

NOT A CERTIFIED COPY

016856

Page 73

participating -- let me withdraw that.
Do you personally recall participating in any trans -- in any discussions about bill and hold accounting at Sunbeam?
A. I don't recall any specific discussions, and I also don't recall it ever being raised as an issue of particular concern.
Q. Do you recall participating in any discussions with Morgan Stanley people, Sunbeam people or anyone else about whether Sunbeam had accelerated sales from one quarter or one year into a prior period in order to meet financial targets?
A. I don't -- again, my recollection of, you know, the conversations about, you know, topics like that are very vague.
I do recall some aspects of that being discussed, and I don't remember in what context and with whom. But, again, I don't -- I specifically recall that none of these issues appeared problematic.
Q. What do you recall being discussed about whether sales had been accelerated from one period into another in order to meet targets?
A. Well, I don't know that it was ever construed to be for that reason.

Page 74

Q. Okay.
A. And I don't recall in what context it was discussed. But I do recall, you know, discussions about certain, you know, selling practices I guess. But, again, not in any manner that had appeared problematic.
Q. Aside from the fact that selling practices were discussed, do you remember what was discussed in words or in substance about them?
A. I don't. And, again, that would have been in the normal context of understanding how they deal with their customers and how they do business.
Q. In the due diligence that you were aware of, did Morgan Stanley retain any experts or consultants to advise it on Sunbeam's business or the industry?
A. Not that I'm aware of, but that doesn't mean that it didn't happen without my knowledge.
Q. I understand. And are you aware of any person on the Sunbeam team, the Morgan Stanley team for Sunbeam, that had particular knowledge or experience in Sunbeam's consumer product area?
A. I don't know what the back -- what the specific background or experience of all the

Page 75

members of the team is. So, I can't -- I can't comment on that.
Q. We talked some about Mr. Dunlap, and you're aware that Mr. Dunlap wrote a book called "Mean Business"?
A. Um-hmm.
Q. Have you read that book?
A. I have. I did.
Q. Did you read it at the time you were working on this engagement?
A. I did.
Q. Why?
A. Because I was -- I was alerted that he would have a particular interest in whether I had or not.
Q. He'd like to know that you had read it?
A. He'd like to know that I had read his book.
Q. Do you know if other people read the book, other people on the team read the book?
A. I don't recall who specifically did, but I'm sure that others did.
Q. Do you remember --
A. Or had.
Q. Do you remember giving the book to

Page 76

others, passing it out?
A. Yeah. As a matter of fact, he -- he liked to pass them out at roadshows, at the roadshow.
Q. Do you remember if you passed them out at the roadshow?
A. Whether I physically passed them out?
Q. No, whether you got some in order to pass them out.
A. Yeah, we had -- we had books that we were using, you know, that were being passed out. That he was passing out. I mean, I wasn't really -- wasn't -- it wasn't my book.
Q. Okay.
MR. BRODY: Let's mark this 126. This is going to be 126, Tom.
(WHEREUPON, a certain document was marked CPH Exhibit No. 126, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Mr. Savarie, I've given you what's been marked as CPH 126. Do you recognize this as an expense report you prepared for the period February 13 it appears through March 19 --
A. Yeah.

NOT A CERTIFIED COPY

Page 77

Q. -- of 1998?
A. Um-hmm.
Q. There are certain things I'm going to ask you about on here --
A. Sure.
Q. -- more just to refresh your recollection about when certain things happened.
But I'm like to turn you to a particular page, direct your attention to page, it appears to be 5558 at the bottom, bottom right; and then the following page, 5559.
Item referenced 17, 18 and 22 are receipts for the purchase of "Mean Business," Mr. Dunlap's book?
A. Um-hmm.
Q. Do you know why you purchased so many copies of his book?
A. And I think at some point during the process we had run out.
Q. And, so, these were to use at the roadshow to hand to people at the roadshow?
A. Yeah.
Q. Okay. You can put that aside for now.
In response to a prior question about due diligence, I believe you indicated that you had

Page 78

conversations with accountants?
A. (Nodding head.)
Q. You recall that the accountants for Sunbeam were from Arthur Andersen?
A. I do recall that.
Q. What individuals do you recall discussing Sunbeam with from Arthur Andersen?
A. I don't -- I don't remember all the names.
Q. Do you remember any of the names?
A. I'm sure if I looked at a list, I could probably, you know, point to some of the names I do recall.
Q. Well, I'm going to direct you to a list, because I believe Arthur Andersen is on the working group list. If you turn to Exhibit 125, pages 4694 and 95.
Any of those names refresh your recollection of who you spoke with?
A. I remember the last name there, Larry Bornstein.
Q. Okay.
A. And vaguely Phil Harlow, but vaguely.
Q. And on the following page there are some people from Arthur Andersen's office in Miami. Do

Page 79

you remember discussing this matter with them?
A. I don't remember those names.
Q. Do you remember a Mr. Pruitt?
A. No.
Q. Mr. Pastrana?
A. No.
Q. Mr. Denkhaus?
A. No.
Q. What do you remember about your conversations with Mr. Harlow, if anything?
A. I don't remember the specifics of the conversations I had with these guys other than participating in some scheduled calls that we had with the accountants and the ongoing discussions that would have taken place at drafting sessions and other discussions about the business and the company and the transactions along the way.
But I couldn't tell you who was on any one of those calls or what specifically was discussed.
Q. Okay.
A. Now, having -- having trouble with six years in the --
Q. I understand.
A. -- of time passing.

Page 80

Q. I'm only asking you for your recollection, sir.
A. Yeah.
Q. You indicated you attended drafting sessions. Do you remember people from Arthur Andersen being present at drafting sessions?
A. I don't remember -- in some cases they may have been there and in other cases not. I couldn't tell you definitively whether they were or not.
Q. Okay. But as you sit here do you remember any conversations with Andersen people at drafting sessions?
A. I don't specifically remember discussions with them.
Q. Do you remember them generally?
A. I would expect to have had them, but I can't recall them specifically.
Q. Okay. And as for the scheduled calls, what scheduled calls do you remember?
A. Well, as -- as a part of our process, in addition to all the diligence that we do in the -- in the process of reviewing drafts of the documents and discussing the transaction in general, we also try to schedule a call with the accountants to

16861

NOT A CERTIFIED COPY

Page 81

review items that we feel either require further review or have not been reviewed in the context of the other discussions we've had with them. It's a fairly customary practice for the underwriters to have such a call.

Q. Aside from the custom that Morgan Stanley typically followed, do you remember any particular conversations with the accountants, what you discussed or when?

A. I don't.

Q. In the discussions with the accountants, do you remember any conversations about Sunbeam's first quarter 1998 performance?

A. I don't. I don't specifically recall that topic.

MR. BRODY: Why don't we take a few minutes, Tom.

MR. CLARE: Okay.

MR. BRODY: We have been going for a while.

THE VIDEOGRAPHER: We are going off the video record at the end of Tape No. 1 at 11:02 a.m.

(WHEREUPON, a recess was had from 11:02 to 11:11 a.m.)

THE VIDEOGRAPHER: We are going back on the video record at the start of Tape 2 at 11:11 a.m.

Page 82

BY MR. BRODY:

Q. Mr. Savarie, I'd like to return to the issue of due diligence.

What do you know, if anything, was done to preserve, that is, to keep in written form or some other recorded form, a record of the due diligence done by Morgan Stanley of Sunbeam?

A. I don't know what was kept by various members of the team at various points in the process.

Q. Was anything kept showing the due diligence done by you, to your knowledge?

A. Not that I recall.

Q. Do you know --

A. Other than, you know, outlines that may have been used as a guide for some of the conversations or an outline to prompt certain topics to be discussed.

Q. Aside from outlines prompting topics to be discussed, are you aware of anything that was kept to reflect what actually was discussed, what the back-and-forth was?

A. Not that I'm aware of. Again, I only know what I may have kept and don't know what others kept.

Page 83

Q. Was there a person at Morgan Stanley designated as the contact person or responsible person for preserving what was done or what was not done in due diligence?

A. Not that I'm aware of.

Q. Do you know if Morgan Stanley when you were there had a system for filing and preserving records of due diligence that had been performed?

A. Again, I don't know what records were kept by various members of the team or whether within -- I was not aware of a policy.

Q. Okay. If any notes were made by you, do you know if those notes remain?

A. I don't know.

Q. At the time you left the company, what did you do with your files?

A. There -- I didn't take any files. I'm expressly prohibited from taking anything with me. So, I didn't take anything with me.

Q. I understand that. But whatever were files that you had created just remained there when you walked out the door?

A. No idea.

Q. You don't remember giving them to a particular person?

Page 84

A. No.

Q. At the time you were at Morgan Stanley where was your office in Chicago? Where was your Chicago office, what building?

A. It's in the same building it is now, 440 South LaSalle I think.

Q. During the tenure -- your tenure at Morgan Stanley, did you ever move from that location to another one?

A. No. That was where the office was the whole time. In Chicago.

Q. The same floor?

A. Yes.

Q. You may have answered this, but do you have any understanding of what Morgan Stanley's policy was in 1997-'98 about preserving records of due diligence?

A. I don't.

Q. Did you ever receive any training at Morgan Stanley on how to do due diligence?

A. What I recall are, you know, general and the nature of the business is to get -- have general training; but most of what you learn, you learn from other members of the team on prior transactions as a junior banker and in conducting

NOT A CERTIFIED COPY

016862

Page 85

diligence or continuously getting guidance from other members, other senior members of the team.
Q. You referred to general training. In connection with whatever general training there was, do you remember due diligence being discussed or addressed?
A. I mean, again, I couldn't specifically tell you how it was addressed or in what context but other than to say that due diligence was clearly identified as an important part of a -- any transaction that you're involved in.
Q. Do you remember any manuals or procedures or guidelines for doing due diligence in a transaction?
A. I remember sort of -- I am generally aware of them, but I don't recall, you know, when I may have reviewed them in the past.
Q. What do you remember being aware of for Morgan Stanley?
A. Just that one existed.
Q. Do you know where it was kept?
A. No
Q. Okay.
A. I mean, again, there are copies of those documents. I mean, it -- I don't know what -- when

Page 86

you say where is it kept, what do you mean by where is it kept?
Q. In the Chicago office, for example, was there a repository for that sort of thing?
A. I think you probably could have found it in any number of people's offices on their shelf.
Q. Okay. Do you know what it was called?
A. I don't.
Q. Let me show you what's previously been marked as Exhibit 29.
And I'll state for the record -- Mr. Clare has heard this speech before -- that this is an excerpt from a larger document produced by Morgan Stanley and not necessarily continuous pages.
Do you recognize this as a portion of a manual prepared by Morgan Stanley relating to how to do a deal?
A. Yes.
Q. Had you seen this before?
A. Yeah.
Q. Did you see this at the time you were at Morgan Stanley?
A. Yes.
Q. Does this describe -- let me withdraw

Page 87

that.
In what connection did you see this?
A. Probably on one of the initial transactions that I worked on, I reviewed it.
Q. And did this manual assist you in teaching you how to do due diligence?
A. Yes.
Q. If you turn -- as I said, this is not a continuously numbered document; but if you turn towards the end, there's a section that begins with page 80766, and it's a memorandum written by some lawyers, which is a portion of the manual that Morgan Stanley produced to us.
I was just wondering if that's part of the document that you remember seeing?
A. I don't recall seeing this portion of the document, if this is a portion of that document.
Q. Well, I -- it was produced to us as -- in conjunction with something else. It may not have been in that manner when you saw it.
Let me show you one additional document, sir, which has previously been marked as Plaintiff's Exhibit 5 or CPH Exhibit 5 and ask if that's a document you had seen before.

Page 88

A. I am not certain if I have seen this particular document.
Q. Okay. Well, then, you can put that one aside.
In connection with -- some of these I'm going to ask you, sir, I think I may have asked you portions of before and I apologize for repeating them.
But in connection with the work that Morgan Stanley did in due diligence in this matter, are you aware of any customers of Morgan Stanley that were contacted -- let me withdraw -- any customers of Sunbeam that Morgan Stanley contacted in its due diligence process?
A. I don't recall.
Q. Do you know if Morgan Stanley spoke to any commercial banks that lent money to Sunbeam prior to the deal?
A. I don't know that either. There are obviously other banks involved in the financing process, but I don't know whether they had been prior lenders or not to the company.
Q. Do you know if anyone at Morgan Stanley spoke with suppliers to Sunbeam, the companies that supplied it with goods or raw materials?

NOT A CERTIFIED COPY

Page 89

A. Again, I don't recall whether those conversations took place or, if so, who had them.
Q. In the scheduled calls that you referred to with the auditors, did Morgan Stanley use a checklist of items to go over?
A. As I recall, and would be customary, we had a list of topics that is not necessarily intended to be all inclusive or comprehensive, but items that from a variety of people that contribute to a list like that are items to raise on a call.
But it's not a -- it's not a rigorous outline and one that, you know, couldn't be departed from during the course of the conversation and one that ultimately is intended to prompt the accountants to discuss the items that we think would be relevant and is oftentimes, you know, concluded by asking a question about whether there's anything else that we haven't asked or haven't discussed either on that call or otherwise that we need to be aware of.
Q. Do you recall in discussions with the auditors or with Sunbeam any conversations about the accuracy of Sunbeam's first quarter projections?
A. I don't recall any specific discussion

Page 90

of that.
Q. Okay. Now, Mr. Savarie, do you remember attending a due diligence session at Sunbeam's headquarters in Florida? I think you believe you --
A. I believe so. I think it was one of the first instances -- the first meetings I had with the company.
Q. And if you look at the document we've marked as Exhibit 126, your expense report, it's referenced on the first page but also referenced on page bearing the Bates No. 5554, a receipt for a hotel stay at the Ritz-Carlton in Palm Beach.
Do you see that?
A. That sounds right, yeah.
Q. So, you appeared to have traveled to Florida on or about the 4th of March?
A. Yeah.
Q. You stayed over one night?
A. Sounds right.
Q. Okay. Do you remember if that was a one-day meeting or a two-day meeting?
A. I don't remember specifically. I vaguely recall that it may have been a two-day meeting or there may have been some portion of it

Page 91

that spilled over into a second day.
Q. Aside from that visit to Florida, do you remember any other visits to Florida?
A. I don't specifically, but I -- I don't specifically recall whether I made another trip or not.
Q. If you did make another trip prior to the 19th of March of 1998, it would be on this expense report, wouldn't it?
A. It -- again, I don't know. Probably would be unless there were some reason that I didn't have the receipts or didn't include it. But...
Q. But as you sit here --
A. It ought to be.
Q. As you look at that report you don't see a second Florida trip on there, do you?
A. No.
Q. What do you remember about that visit to Florida in March of 1998?
A. I remember it being a large meeting that included all of the representatives as I recall from a lot of the participants in the financing, to include Morgan Stanley, other banks. I don't recall who from management, although I am certain

Page 92

the company was there. But whether accountants and lawyers were there, I don't -- I don't recall.
Q. Do you remember the substance of any conversations during that meeting?
A. I don't. I mean, I remember it being a very broad and high level review.
Q. Was it a broad and high level review of the financing transaction?
A. I would -- what I recall, which is not very clear, is that that was the topic being discussed. But whether it was a lot of time spent on the financing itself or the structure or the company, I don't recall.
Q. Do you remember who from Morgan Stanley was there?
A. I don't specifically. I mean, I -- I know that who logically from our team might have been there, but I don't know. I couldn't tell you who specifically was there.
Q. Referring to the people at the company, do you know if Mr. Dunlap participated?
A. I don't recall.
Q. Or Mr. Kersh?
A. I don't recall specifically. Again, I don't recall who specifically was there from the

NOT A CERTIFIED COPY

Page 93

company or whether they stepped in for some portion of it and out for the rest. I just don't recall.
Q. Do you remember at that time that Sunbeam had a series of operating businesses or divisions?
A. It --
Q. For example, it had its outdoor cooking business and its health and home business; it had a variety of business lines?
A. I do recall that.
Q. Do you know how the management of those business lines was set up, do you remember?
A. I don't specifically recall, you know, how their management structure was set up around their business units.
Q. At the meeting you attended in March, that visit you were there on the night of the 4th, do you know if anyone from any of those operating businesses participated in the meeting?
A. Again, because I don't recall who from management was there, I can't -- can't tell you.
Q. Do you remember ever discussing the operations of Sunbeam with its internal audit people?
A. Ask that question again.

Page 94

Q. With its internal audit staff, the company's internal auditors.
A. Were they in attendance at this meeting?
Q. This meeting or any other.
A. I don't specifically recall.
Q. Now, at the meeting you attended in January -- excuse me -- in March, do you know if Sunbeam's January or February sales were discussed at all?
A. I don't recall.
Q. Aside from that visit, which I've referenced from the expense report, as you sit here do you remember any other face-to-face meeting you had in Florida with Sunbeam people?
A. I still don't remember any specific meetings.
Q. Okay. Let's talk a little more about meetings with Arthur Andersen. And you've identified a scheduled call, I believe you described it?
A. Um-hmm.
Q. As you sit here, do you remember more than one scheduled call?
A. I don't.
Q. Okay. Let me show you what we've

Page 95

previously marked, sir, as Exhibit 31.
Have you ever seen this before?
A. Yes.
Q. Prior to your preparation session had you seen this document?
A. I believe so.
Q. It shows that it was sent on March 7 to the Sunbeam financing team. At that time you were a member of the Sunbeam financing team?
A. Yes.
Q. And it -- the memo refers to an accounting due diligence conference call set for March 12, 1998, starting at 11:30, continuing to 1:00?
A. Yes.
Q. And it refers to four separate 30-minute sessions with each company's auditors?
A. Um-hmm.
Q. Do you understand what four companies are being referenced here?
A. Yes.
Q. What four companies are?
A. The company and the three acquisitions that were involved.
Q. So, this conference call, accounting due

Page 96

diligence conference call, allotted 30 minutes to Arthur Andersen for Sunbeam and then 30 minutes for the auditors for Coleman, Signature Brands and First Alert, is that correct?
A. Yeah, at least as scheduled, yes.
Q. Do you have a recollection of the call taking more than the allotted time?
A. I don't specifically recall how long it took.
Q. Do you --
A. Or, for that matter, whether it actually happened that day. But I don't remember whether it fell under the allotted time or not.
Q. Sure. As you earlier testified, there -- you referred to a scheduled call. Is this one such scheduled call?
A. Yes.
Q. Do you remember other scheduled calls with the auditors besides this one?
A. I don't remember any other specifically scheduled calls.
Q. Do you remember who participated in this call -- let me withdraw that.
I'm going to focus on the portion of the call in which Arthur Andersen was on the line --

P-16865

NOT A CERTIFIED COPY

Page 97

A. Okay.
Q. -- as Sunbeam's auditors.
Do you remember who participated in the call either on behalf of Morgan Stanley, Sunbeam or Arthur Andersen?
A. I don't specifically recall.
Q. You did, is that right?
A. I did.
Q. Do you know if Mr. Tyree participated?
A. I don't know whether he participated in all of them or a portion of them.
Q. Do you know if the auditors were told in advance what they'd be asked on the call?
A. I recall that a list of, you know, topics to guide the conversation may have been prepared.
Q. Was that provided --
A. And I'm not sure that -- I'm not sure if that was for one or all of these calls.
Q. In the instance in which a list of topics was prepared, would it be sent to the auditors before the call?
A. In this instance I don't know specifically, but that would be typical.
Q. Okay. But you don't recall here

Page 98

specifically?
A. I --
Q. Is that correct?
A. Yeah.
Q. Okay. As you sit here, do you remember any discussion in that call about Sunbeam's first quarter performance?
A. I don't. And nor do I recollect -- recall, you know, any of the detailed items that may have been discussed on these calls six years ago.
Q. Okay. Well, that was going to be my next question, but let me see if I can refresh your recollection, sir, by giving you what's been previously marked as Exhibit 32.
Next question -- and I will just state for the record Exhibit 32 appears to be the following pages of the fax. If you look at the fax tag line, they appear to be pages 3 and 4 of the same fax that Exhibit 31 is page 2 of. Do you agree?
A. Yes.
Q. Do you understand Exhibit 32 to reflect the accounting due diligence issues discussed in the conference call?

Page 99

A. I do, in reviewing this document, recall that this was a list prepared to guide the conversation but not necessarily a reflection of all the topics discussed on the call.
Q. As you sit here and using Exhibits 31 and 32 to refresh your recollection, if indeed they do, do you recall now anything that was discussed in the conference call with the auditors?
A. Nothing in particular.
Q. Do you know who wrote the questions that are in Exhibit 32?
A. I don't recall specifically who on the team prepared this.
Q. Did you?
A. I don't recall having done it myself. I may well have contributed to it in conversations with other team members, but I don't specifically recall it.
Q. In 1998 did you create documents, Word Perfect -- word processing documents?
A. I would suspect I did create some.
Q. Did you -- did you type your own or did other people do them for you, some of each?
A. Probably very few done myself. And whether I prepared them or whether someone in

Page 100

New York prepared them, I mean, I can't recall.
Q. Do you know if at the time Morgan Stanley's document management system for documents saved on its computers were networked so that people in New York and people in Chicago could access the same documents?
A. I don't recall. I -- I don't recall.
Q. That's not something you have a recollection of?
A. Again, I was a user, not a technician.
Q. I understand. In the conference call held on March 12, if indeed it was held on the date indicated in the memorandum, did you speak?
A. I'm sure that I did.
Q. Do you have a recollection of anything that you asked or said in that call?
A. No.
Q. And do you have a recollection of anything that the Arthur Andersen auditors for Sunbeam said or asked in that call?
A. No.
Q. Do you remember if bill and hold accounting practices were addressed in that call?
A. I don't know if they were specifically addressed in this call.

NOT A CERTIFIED COPY

016986

Page 101

Q. Do you remember if you took any notes of the call?
A. I don't.
Q. Item 8 on the list of questions is:
"How aggressive is the company in its accounting policies?"
Do you remember any discussions about that?
A. I don't, but it is a question that we regularly ask in the context of a call like this. And, certainly, if you get an answer that causes concern, it's something that would be either cause for further discussion or brought to someone's attention.
Q. But --
A. And I don't recall any -- any such concern being raised on any of these calls.
Q. Okay. But nor do you recall what was said or what was not said?
A. But I don't recall having participated in them and been troubled by what was discussed.
Q. Item 18:
"Anything not asked that should have been asked?"
Do you recall if -- specifically as you

Page 102

sit here, do you recall if that question was asked or not?
A. I don't specifically, but I know that that is a common practice, to make sure that to the extent this list is not inclusive or not all-inclusive and nor is it intended to be all-inclusive, that that provides the accountants an opportunity to raise issues that might not otherwise have been discussed.
Q. Returning to Question 8, the how aggressive is the company in its accounting practices -- policies, do you recall ever receiving an answer to that on a scale of 1 to 10?
A. No. I mean, I don't specifically. I mean, that question could be asked in lots of different ways and I don't specifically recall that.
MR. BRODY: Please mark this as 127.
(WHEREUPON, a certain document was marked CPH Exhibit No. 127, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Mr. Savarie, I've given you what's been marked as CPH Exhibit 127. Have you ever seen that before?

Page 103

A. Yes.
Q. When did you see it?
A. Yesterday.
Q. Prior to yesterday had you ever seen it before?
A. No.
Q. Do you understand this is a memorandum of -- written by Mr. Bornstein of the call that's referenced in Exhibits 31 and 32?
A. Say that again. Sorry.
Q. Do you understand that what we've marked as Exhibit 127 is Mr. Bornstein's memorandum referencing the call that was marked -- that is described in paragraph -- in the documents marked as Exhibits 31 and 32?
A. Yes, I do understand that. I have not reviewed the memo in its entirety. But --
Q. Okay.
A. -- that's what I understand it to be, yes.
Q. Please review the second paragraph of the letter and just tell me when you -- or the memorandum and tell me when you've had a chance to do it.
A. Okay.

Page 104

Okay. I've read it.
Q. Does that refresh your recollection as to who participated in the call?
A. Yes.
Q. Do you recall that Mr. Harlow and Mr. Bornstein were both on the call?
A. I don't recall, you know, who was doing the speaking at any point in time, but, again, they worked as a team. So, I'm not surprised to -- to know that they were both on the call.
Q. Do you recall Mr. Gluck being on the call?
A. I don't specifically recall that, but if -- you know, unless this is not an accurate depiction, he may well have been on the call.
Q. Is it customary to have a representative of the corporation on the call with the auditors?
MR. CLARE: Object to the form.
BY THE WITNESS:
A. The -- these calls obviously in each and every transaction, you know, are very different. Sometimes management participants. Sometimes they don't.
Q. More often than not, do they participate or not?

NOT A CERTIFIED COPY

Page 105

A. I -- it's hard to say. I mean, I would say in some cases they don't and in some cases they do. It really depends on the circumstances.
Q. The paragraph continues that yourself and Mr. Tyree were participants in the call. Does this refresh your recollection that Mr. Tyree was on the call?
A. Yeah.
Q. And it also says Bob Lurie of Davis Polk was on the call. Do you know Mr. Lurie?
A. The name rings a bell. Again, you know, it won't have been -- it will have been six years since I have even seen the name. So. But it does.
Q. Do you know that Davis Polk represented Morgan Stanley in the deal?
A. Yes.
Q. Looking at the memorandum that's been marked as Exhibit 127, Item 8, which is on the second page, appears to correspond to Item 8 on the question list, how aggressive is the company in its accounting practices -- policies.
And in Exhibit 127 Mr. Bornstein writes:
"On a scale of 1 to 10 around a 5 or 6."
Does that refresh your recollection that

Page 106

that was the nature of the conversation?
A. It does not remind me of having specifically had that discussion.
Q. Paragraph 3, which refers to whether there is anything peculiar to the company that is not generally the way the industry accounts for revenue recognition.
A. Which --
Q. I'm sorry. Let me take a step back.
I'm comparing the questions in Exhibit 32 to Mr. Bornstein's memo --
A. Okay.
Q. -- in Exhibit 127.
A. Okay.
Q. And 3-A on Exhibit 32 asks if there is anything peculiar to the company that's not generally the way the industry accounts for revenue recognition, to which Mr. Bornstein has written:
"As disclosed in the company's 10-K the company has engaged in a bill and hold policy reporting approximately 3 percent of gross sales."
Does that refresh your recollection of any discussion about bill and hold?

Page 107

A. Again, not -- not in specific reference to this call. It's -- it's been too long since I participated to remember specifically whether and how that was discussed.
Q. Mr. Bornstein's memorandum only goes up through 17. There is not a reference to the 18th question about anything not asked that should have been asked.
Does that refresh your recollection that, in fact, that issue was not addressed?
A. No. I mean, I -- I don't know how this was prepared or by whom or at what point. And as I indicated earlier, I don't know if that question was or was not asked but indicated that it would be customary to ask the accountants to identify any issue that had not been addressed that we should know about.
Q. I understand. We've now gone over some documents, sir, relating to a due diligence call in -- on March 12, 1998.
As you sit here, do you recall any other communications with the accountants about Sunbeam's accounting practices?
A. I don't specifically recall any further conversations that I was a part of. However, I

Page 108

can't comment on what conversations took place with other members of the team throughout the process.
Q. I understand. Okay. Now, putting the accountants behind for a while, did you ever attend any Board meetings of the Sunbeam Board?
A. No.
Q. Did you ever read any minutes of such meetings?
A. I don't recall.
Q. At the time you became involved in this transaction, in early March 1998, are you aware that the Board had already approved doing the transaction and the financing?
A. I don't know that I was ever specifically aware of precisely what had happened at the Board, and I don't remember whether I was aware of that or not.
Q. Okay. Mr. Savarie, did you participate in any due diligence of the acquisition targets starting with Coleman?
A. What I -- those calls that took place, my recollection is that I was on those calls with the accountants associated with those companies. But I was not involved in the diligence involved in the M & A process.

NOT A CERTIFIED COPY

Page 109

Q. So, for example, you never visited Coleman's headquarters in Wichita?
A. I don't recall ever having visited any of the facilities for the other companies.
Q. And you said the -- let me withdraw that.
Who was involved in doing due diligence on those companies, to your knowledge?
A. I don't remember. I just don't remember who on the team would have been a part of that process or, for that matter, what that process entailed.
MR. BRODY: 128, please mark that as 128.
(WHEREUPON, a certain document was marked CPH Exhibit No. 128, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Mr. Savarie, I've given you what's been marked as Exhibit 128, a memorandum from Mr. Tyree and Ms. Boone dated March 9, 1998, with an attachment.
First, as you sit here, do you remember having seen that before?
A. I don't remember specifically, but I suspect, it having come to me, I did -- did see it.

Page 110

Q. Okay. We've seen a couple of these documents that have your name at the top of the list?
A. Yeah.
Q. Do you know why that is?
A. I don't.
Q. In terms of seniority, are you senior to the people whose names fall below yours?
A. No.
Q. Was there a custom at Morgan Stanley on how you put people on a memorandum like this?
A. No, other than, you know, perhaps having done one that way, he did all the rest that way or because he and I were spending as much time working together on this as we were, that I was the first name on the list.
Q. Mr. Freed is listed on the memorandum. Do you know who Mr. Freed was, Todd Freed?
A. That name doesn't ring a bell.
Q. Do you know Alan Dean?
A. Yes.
Q. Who's Alan Dean?
A. He was one of the guys from Davis Polk.
Q. And Jake Foley?
A. Jake Foley is a member of

Page 111

Morgan Stanley. As I recall, he was a high yield analyst at the time.
Q. Was it customary or unusual in your experience to include the company's lawyers in due diligence calls such as the one described in this memorandum?
A. Ask that question again. The company's lawyers?
Q. Yes. No. Thank you. That wasn't the question I intended to ask.
Was it unusual or customary to include Morgan Stanley's lawyers in conference calls such as the one described?
A. I think generally, while I can't remember the specifics for why we did or didn't include them here, that it would be customary.
Q. If I were to tell you that Mr. Freed was a lawyer at Skadden, Arps which represented Sunbeam in this transaction, does that refresh your recollection as to who he was?
A. Not particularly.
Q. Was it customary to include the company's lawyers, in this case, Sunbeam's lawyers, in due diligence calls conducted by Morgan Stanley?
A. Yes, and -- and the reason is that the

Page 112

lawyers are in the process of drafting relevant documents and as a result, information that may be covered in a call like this would be used in that.
Q. Do you remember participating in the call described in Exhibit 128?
A. I don't specifically remember participating in this call.
Q. And if you look at the second page, Item 3 refers to "Financial Forecast Review." Do you see that?
A. Um-hmm.
Q. Do you remember any discussions with Coleman or First Alert or Signature Brands about its financial forecasts?
A. I don't.
Q. And do you personally recall any discussions that you participated in with Sunbeam about its financial forecasts?
A. I generally recall having participated in conversations like that, but cannot specifically recall the content or nature or timing of the specific conversation.
Q. The due diligence agenda that's attached here, do you know if that's something you drafted?
A. I don't recall who drafted it. And,

NOT A CERTIFIED COPY

D 6869

Page 113

again, I don't recall whether I did or didn't participate in this, this particular discussion, if it took place. I just -- I don't remember.
Q. Okay. You can put that document aside.
In answering a question about that document, sir, you indicated that you were spending a lot of time working with Mr. Tyree or words to that effect?
A. Um-hmm.
Q. What projects did you and Mr. Tyree work on together, among the projects that you worked on on this deal?
A. On this transaction?
Q. Yes.
A. Well, he in his role, you know, was very central to our internal team in terms of preparation of all the relevant documents and -- and documents that were used internally, reviewing documents prepared by the attorneys, really all the relevant steps in the execution of the transaction.
And given my role in assisting him as a team member in various parts of that transaction execution, he and I worked fairly closely together. More so on certain pieces than others.
Q. Are you aware that Mr. Tyree went to the

Page 114

printer on this deal?
A. I don't -- I suspect he did at some point, but I don't know how many times or precisely when he was at the printer.
Q. Did you accompany him on any of the visits to the printer?
A. I don't recall having been to the printer on this particular transaction, although it's possible that I was at some point.
Q. Do you recall Mr. Tyree --
A. In other words, I don't even know whether the draft -- all the drafting sessions were there or in lawyers' offices or where they all. I just don't remember where they took place.
Q. And when you refer to "drafting sessions," it's drafting of the offering memorandum?
A. Yes.
Q. Did Mr. Tyree ever have any discussions with you about things that had happened at the financial printer?
A. I don't recall any specific conversations like that. But I -- you know, I suspect we did talk about some things that happened --

Page 115

Q. As you --
A. -- during the course of the execution. I mean, just, you know -- it's a fairly elaborate process to get those documents, you know, together. The lawyers do a lot of work drafting them. We review them. All kinds of items, you know, are discussed on a fairly continuous basis throughout this process.
Q. Do you remember anything that Mr. Tyree told you about what happened or didn't happen at the printer?
A. No.
Q. Okay. In describing the projects that you had worked on in connection with the deal, one of the things you said was that you assisted in assembling documents used internally, and I'd like to return to that.
What documents used internally were you referencing?
A. We prepare documents or a document that is used to brief the Equity Commitment Committee on the transaction that the firm is contemplating participating in. That would certainly be one of the documents.
Q. Any other documents for internal use

Page 116

that you prepared?
A. You know, there may well have been others that I, you know -- I think there is a similar document that would have been prepared for the bank process.
Q. Were you involved in that?
A. I don't recall to what degree or on what pieces, but I suspect I reviewed it at -- at some point in the process.
Q. Any other documents that you recall being involved in the preparation of for internal purposes?
A. No, not specifically.
Q. Now, you referred to the Equity Commitment Committee?
A. Right.
Q. What was the Equity Commitment Committee?
A. Well, that's an internal process to review the transactions that the firm is involved in and assess the firm's participation in them, and it's an audience of senior members of the firm.
Q. Is there physically a meeting or is it done by circulation of memoranda?
A. Depends on the circumstances. Sometimes

NOT A CERTIFIED COPY

016870

Page 117

there's a -- a meeting. In my case, not having been in New York, I don't know how frequently it was a meeting versus everybody just being on the phone. But I think oftentimes there was a nucleus of people in a room somewhere.

Q. Did you --

A. Likely in New York.

Q. Did you attend a meeting or participate in a phone call about a meeting at which the Equity Commitment Committee letter was discussed?

A. I don't recall whether I did or didn't end up participating in a call.

Q. What portion of the transaction did the Equity Commitment Committee have authority to review?

A. Well, in terms of having authority, I mean, it -- it was a committee focused on the equity issuance, meaning the convertible issuance, component of the transaction.

Q. Because the securities were convertible into stock, they had to be reviewed by the Equity Committee?

A. Yes.

Q. Now, prior to the presentation to the -- to the Equity Committee, had Morgan Stanley issued

Page 118

a "Highly Confident" letter?

A. I was not party to -- to all the steps and all the sort of letters that may or may not have been developed or issued. So, I -- I'm aware of that having happened but was not directly involved in that.

Q. Was the "Highly Confident" letter issued before you were involved?

A. I don't -- I don't recall when it was issued.

Q. Did you have anything to do with the issuance of the "Highly Confident" letter?

A. No.

Q. What is a "Highly Confident" letter?

A. Well, it is -- and I'm not that familiar with what a "Highly Confident" letter is and have never actually prepared one myself, but it is generally to provide a view on the financing in the context of a transaction.

Q. Before the company issues a "Highly Confident" letter does there need to be some internal approval?

A. I don't know. I don't know what -- what approvals were required for that.

Q. Do you know if there are any approvals

Page 119

that are required?

A. I don't know what they are specifically, but I suspect someone has to decide or approve it. But I don't know if it's a committee. I don't know if it's an individual. I don't know who it was or is --

Q. Okay.

A. -- at Morgan Stanley.

Q. Now, in order to do the financing that was done here, Morgan Stanley needed to get the approval of the Equity Commitment Committee?

A. Correct.

Q. And also the Leverage Finance Committee?

A. Well, and for different pieces of the transaction.

Q. Did any other committees have to weigh in on this, to your knowledge?

A. Not to my knowledge.

Q. And I believe you've testified that you participated in the drafting of the equity letter. Aside from your participation in the drafting, did you have any other involvement in obtaining the approval of the committee?

A. I don't -- I don't remember specifically what role or what pieces of the commitment

Page 120

committee memo I did or would have drafted. But in terms of seeking or receiving the approval, it is -- that is the process.

The process is compiling the memo and then a member of the team -- I can't remember who did it in this instance -- presents it to the committee, the committee having reviewed the memo, and then that meeting takes place to arrive at the approval.

Q. Okay. I'm just trying to figure out the pieces of this process you were involved in. You were involved in helping to put together the letter, the memorandum to the committee?

A. Again, without knowing specifically what I did, I suspect that I was. It would have been a natural portion of the process for me to be involved in.

Q. Do you remember anything else in that process you were involved in?

A. I mean, I think we've talked about some of them, some -- reviewing drafts of the offering memorandum, reviewing the company's roadshow materials and then, you know, assisting in scheduling and logistics and then ultimately participating, you know, accompanying the company

NOT A CERTIFIED COPY

016871

Page 121

on --
Q. The roadshow?
A. On the roadshow.
MR. BRODY: I'm going to mark this as Exhibit 128.
THE REPORTER: It should be 129.
MR. BRODY: It should be 129? Thank you.
(WHEREUPON, a certain document was marked CPH Exhibit No. 129, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Sir, I've given you what's been marked as Exhibit 129. This is the letter to the Equity Commitment Committee, is it not?
A. Um-hmm. It appears to be that, yes.
Q. Does it appear to be the final form of the document?
A. Without reviewing it in detail, I don't know; and even if I did, I wouldn't know. But it looks like it.
Q. Okay. And you're listed as one of the people it's from, is that correct?
A. That's correct.
Q. Now, if you look at this list, there are quite a few people that it's from, probably about

Page 122

20 names there.
A. Um-hmm.
Q. Were you one of the principal drafters of this letter?
A. Again, I don't recall to what degree I was the drafter. I suspect that I was. I certainly would have reviewed it and been cleaning it up; but it may have been, you know, aggregating pieces written by different members of the team.
As is evidenced here, the team that contributes to the production of a memo like this is very broad and includes a lot of the members of the team.
Q. Was there one member of the team who was primarily responsible for shepherding this document through and getting it finished?
A. I would say that that generally would fall into a combination of my and the CSG group, their sort of collective responsibility.
Q. So, the letter would be the collective responsibility of yourself and then the group headed by Mr. Wright?
A. Yeah. More from a -- from the standpoint of actually assembling it, putting it together. But it was likely the junior team there

Page 123

that put it through word processing.
Q. As you sit here can you identify any portion of this that you had anything to do with?
A. Not specifically.
Q. Okay. If you look at the beginning of the second page, there is a reference to the "Highly Confident" letter.
Why is that reference relevant to the approval being sought here?
A. I mean, I think that in the case of a transaction that involved as many different bits and pieces, that simply providing a comprehensive summary of what the transaction is and what has happened at this point is what's intended by the "Background" section.
Q. In the next paragraph, the first full paragraph on the second page of the document, there is some references to the roadshow, and we'll talk about the roadshow in a moment, but the references to investor conference calls. Do you see that?
A. Yeah.
Q. Did those investor conference calls take place?
A. I don't specifically recall, but, you know, they could easily have been sort of woven

Page 124

into the schedule at various points where we had time for them.
Q. And --
A. And it's an efficient way to reach investors beyond the people you can see face to face.
Q. As you sit here do you recall any investor conference calls in that time frame?
A. I don't specifically recall.
Q. Okay. Turn to page 4 of the document, ending in No. 516, and I refer in particular to the "Restructuring" paragraph.
The second sentence of that paragraph says:
"The restructuring portion of the plan has been substantially completed with only the final 'refinement' stage remaining."
Did you write that?
A. I don't recall who wrote that. I don't know who wrote that. I don't recall writing it.
Q. Okay. The next page, page 5 of the document, refers to "Pre-Acquisition Strategy/Goals."
Please read that to yourself.

NOT A CERTIFIED COPY

016872

Page 125

A. Okay.
Q. Do you remember where that information came from?
A. I don't.
Q. Do you remember who wrote that?
A. I don't.
Q. Do you remember what work, if any, Morgan Stanley did to look into whether those goals were achievable?
A. I don't specifically, no.
Q. Turn to page 7 of the document. There's a transaction timeline and there is some references to due diligence.
Did you create or write this transaction timeline?
A. I don't recall. I don't recall doing it myself and I don't recall who did.
Q. There's a reference at March 5 to the "Sunbeam Business Due Diligence," and I believe you've testified that you were present in Florida for some meetings about that time, is that right?
A. That makes sense, yeah.
Q. And then at March 10 there's reference to the "Target Due Diligence," and we looked at a document marked as Exhibit 128 that shows some

Page 126

conference calls with the "Target."
Did that appear to refer to the same thing?
A. I assume so. I don't remember specifically, but, yeah, I assume so.
Q. And then at March 12 there's a reference to "Accounting Due Diligence," and we've looked at documents showing an accounting due diligence call on that day, correct?
A. Correct.
Q. Do you recall any other due diligence that was done within the time frame of this transaction?
A. Again, the diligence process is an ongoing, continuous process conducted by the whole team in the context of a wide variety of meetings that take place around a transaction like this. So, it is not isolated to one call or two calls.
Q. But in describing the transaction to the senior management of the company, those are the only entries you identified, correct?
A. I think they are highlighted. It doesn't mean that they are the only -- nor is it implied that that's the only diligence that's taken place here.

Page 127

I think clearly all of the work done in the context of the M & A process was used to build upon for purposes of the comprehensive due diligence conducted here.
Q. That's not described in the document, though, is it, sir?
A. No. Not specifically in this -- this transaction timeline.
Q. Turn to page 11 of the document, "Equity Valuation."
There's some financial numbers contained in that box for Sunbeam and for a pro forma Sunbeam. Do you know where those came from?
A. I don't recall.
Q. Was there someone on the team tasked with putting together a pro forma estimate of earnings for 1998 and 1999?
A. I'm sure that there were various members of the team working on it based on projections that the company had provided us and I'm sure some refinements. But I don't know who in particular did them or when or how.
Q. When you refer to refinements, you mean -- do you mean refinements performed by Morgan Stanley?

Page 128

A. Potentially. It may have been the case. I don't know. I don't remember.
Q. Now, on this same page, the third bullet point refers to "expected synergies." Do you see that?
A. Sorry. Say it.
Q. The third bullet point.
A. Okay.
Q. That begins, "The Company's current trading levels"?
A. Okay.
Q. And it refers to "expected synergies." Do you see that?
A. Yes.
Q. Do you know where that came from?
A. I don't recall. I suspect that that came from a combination of the -- the company, the work that had been done by the team in the context of the M & A transaction.
Q. But as you sit here you don't remember -- you don't know where that number came from?
A. No.
Q. Are you aware of work done on this transaction by Coopers & Lybrand?

NOT A CERTIFIED COPY

016873

A. Not in a -- I mean, I vaguely recall them being involved. I can't recall in what role, though, other than I recall generally in some sort of a consulting capacity.
Q. Do you know what they consulted about?
A. I think it had more to do with the M & A transaction. But I just -- I don't remember.
Q. Okay. If you turn a couple of pages further, page 13 of the document, the third item refers to "Realizable Synergies of 150 Million From Combination." Do you see that?
A. Yes.
Q. And it refers to 100 million from combination with Coleman, 28 million from combination with First Alert and 25 million from combination with Signature Brands.
Did I read that correctly?
A. Yes.
Q. Do you know where those numbers came from?
A. I don't. Again, I -- I would suspect they came from the work done by the team or, for that matter, some of the discussions with the other companies involved in the transaction.
Q. You didn't participate in any of those

companies --
A. No.
Q. Excuse me.
Transaction -- conversations --
A. No.
Q. -- with the other companies?
A. No.
Q. It continues to refer to substantial functional redundancies and cost savings.
Is this part of the document something that you created?
A. I don't recall creating this.
Q. Do you know who did?
A. I don't.
Q. Turn to page 16 of the document. Item 7 refers to "Potential Investor Concerns." Is that a section you wrote?
A. Which page are we on?
Q. Page 16 of the document. It ends with production number 528.
A. Okay.
MR. CLARE: VII.
THE WITNESS: Okay.
MR. CLARE: That's what threw me.
BY MR. BRODY:

Q. Is that a section that you wrote or edited?
A. Again, I don't recall what portions of the document I specifically wrote, but I would likely have reviewed this or contributed to it.
Q. Turn to the next page. Item 5 discusses synergies again. I'm going to ask you if that's something you recall writing or reviewing.
A. I don't recall specifically.
Q. Does that reference refresh your recollection of what Coopers & Lybrand had to do with the deal?
A. Yeah, it does.
Q. What do you now recall?
A. That they functioned in a consulting capacity in assessing the transaction -- transactions.
Q. And they were consulting to Sunbeam, is that correct?
A. Well, that's what it says here. I --
Q. I'm asking if you recall that.
A. I don't -- I don't recall how that arrangement was in place.
Q. Fair enough.
Further down in the same paragraph, it

states:
"Sunbeam management has expressed a high degree of confidence in their ability to achieve the stated synergies of approximately 150 million by the end of 1999."
Do you remember those conversations with Sunbeam management?
A. I don't specifically.
Q. Do you believe that they would have happened otherwise this wouldn't have been put in there?
MR. CLARE: Objection; calls for speculation.
You can answer if you can.
BY THE WITNESS:
A. I mean, yeah, you know, I think in general those are numbers that, you know, would likely have come from the company. And certainly a statement like that would not have been made were that not the case.
BY MR. BRODY:
Q. Okay. Two sentences further on, it says:
"They," and I believe this is

NOT A CERTIFIED COPY

06871

Page 133

again referring to Sunbeam management, "informed the Sunbeam Board of Directors that the synergies are likely to be in the 225 million to 275 million pre-tax range."

Do you remember any discussions in which those numbers were mentioned?

A. I don't specifically recall those numbers.

Q. Do you remember any discussions with anyone at Sunbeam in which Sunbeam people put forward their numbers for expected synergies?

A. Again, beyond a general recollection of synergies being discussed, I don't recall any specific conversations.

Q. Do you recall any discussions about synergies being proposed or discussed by people from Coleman?

A. I don't because I -- I did not participate in any conversations where that would have been discussed. Or don't recall it anyway.

Q. If you'd turn, sir, to page 21 of the document. It appears to be Bates stamped 533. There is some pro forma Sunbeam financials.

Page 134

Do you have a recollection of who on the team put together these financials?

A. Not specifically. Again, I think a lot of this work being done in concert with the financing and M & A team, I don't know who on the team would have done this.

Q. Okay. Now, this document was -- the document we've marked as Exhibit 129, was submitted to the senior management of Morgan Stanley in order to obtain Morgan Stanley's approval to go forward with the deal, is that right?

MR. CLARE: I object to the form of the question. Vague as to "deal."

BY MR. BRODY:

Q. Go forward with the Rule 144A zero coupon convertible offering of $500 million. Is that correct?

A. Again, this was a document prepared to get an internal approval for us to participate as an underwriter on the transaction.

Q. And that internal approval came from senior management, is that correct?

A. Yes.

Q. And the internal approval was in fact obtained, it was received?

Page 135

A. And my recollection was -- again, not recalling how this meeting took place, whether this was the only discussion or not, I don't know. I don't know if there was a follow-up to this, if there were open items. I just -- I don't recall.

Q. Okay. Well, that was going to be my next item.

Do you know if there were any follow-up or subsequent letters?

A. I don't know.

Q. Approval was eventually obtained for this transaction, was it not?

A. Presumably. We wouldn't have proceeded otherwise.

Q. And the transaction was closed, Morgan Stanley went forward with the deal?

MR. CLARE: Same objection. Vague as to "deal."

BY MR. BRODY:

Q. With the deal that's referenced in this memorandum.

MR. CLARE: The financing.

MR. BRODY: Yes.

MR. CLARE: Okay.

BY THE WITNESS:

Page 136

A. Ask the question again, then.

BY MR. BRODY:

Q. Morgan Stanley in fact went forward with the financing --

A. Yes.

Q. -- that's described here?

A. Yes.

Q. In the ordinary course of obtaining approval within the company, is there some other document submitted to senior management to obtain approval of the Equity Committee other than a document in the form that's been marked as Exhibit 129?

A. There may well be other documents that various members of the committee review. Some may have reviewed the offering memorandum. Others may -- in whatever draft form it existed at the time.

I don't know what else other people on the committee review in addition to this, but this is intended to summarize the transaction for that committee.

Q. Did you hear any reports or feedback to you of discussions from the committee, what was discussed at the committee level?

NOT A CERTIFIED COPY

016875

Page 137

A. I don't recall.
Q. This memorandum is for a $500 million transaction. Do you know if the transaction was closed as a $500 million transaction?
A. I don't remember if -- the transaction may have been upsized. I don't remember, though. I don't remember specific -- what the specific result was at the end of the transaction.
Q. Did you learn that the amount of public debt, the convertible offering, was increased and the bank debt was decreased before the transaction concluded?
A. I don't remember specifically.
Q. Okay. Do you know if Mr. Tyree attended either in person or on the telephone a meeting of the Equity Commitment Committee?
A. Again, I don't know who either -- who would normally attend or who on the distribution list actually attended it and don't recall if I did. So, I don't know if he did.
Q. Do you know if the Equity Commitment Committee has minutes or notes reflecting what's discussed before it?
A. I don't know.
Q. Now, let me show you an additional

Page 138

document, sir, see if you were involved in this one. It was previously marked as Exhibit 100.
You've had a chance to look at Exhibit 100?
A. Um-hmm.
Q. And that's a document entitled a selling memorandum, correct?
A. Correct.
Q. And the selling memorandum is prepared by Morgan Stanley to assist its -- let me withdraw that.
What's the purpose of this document?
A. It is to provide a summary of the transaction for the sales force who is engaged in the marketing of the transaction.
Q. To Morgan Stanley's sales force?
A. To Morgan Stanley's sales force.
Q. So, in connection with its role as underwriter, Morgan Stanley's attempting to sell these convertible debentures to -- to investors, correct?
A. Correct.
Q. And this is the document given to the sales force to summarize the deal?
A. Right.

Page 139

Q. What role did you have in reviewing or preparing this selling memorandum?
A. Again, I don't specifically recall what portions of this I may have created or contributed to, but I certainly would have been involved in reviewing and assembling this document, in many cases using materials that had been prepared in other documents, other internal documents like the Equity Commitment Committee memo.
Q. Do you know who else was involved in the preparation of the selling memorandum we've marked as Exhibit 100?
A. Again, I don't know who specifically did what on this document, but it would have been a group similar to the group assembling the Equity Commitment Committee memo.
Q. The document is dated March 12, 1998. Does this appear to be the final document to you?
A. Again, it's hard for me to know if it is. It looks to be complete; but whether a further draft was created at some point, I don't know.
Q. Looking at the list of contacts shown on the first page of Exhibit 100, are any of those individuals responsible for this document? Is it the responsibility of one of those people in

Page 140

particular?
A. Again, it is a document prepared as part of the, in this case, convertible financing and therefore the teams -- the members of the team most involved in the convertible financing would be most likely to be more involved in the creation of this document.
Again, taking -- the creation of this document at this stage is taking a lot of materials that have already been prepared for other purposes.
Q. I understand that. But was there a person or department that was primarily responsible for this rather than just saying it was the work of the team?
A. Well, and, again, I would say that given the role that CSG in general plays in the preparation of documents like this, CSG and the team in CSG would have been very central in preparing this document.
Q. I understand. Okay. If you turn to the third page of the exhibit, bears Bates No. 0062862, there's some financial information. Do you know the source of that information?
A. Not the specific source of it, no. I have -- again, I think it's a -- a set of numbers

NOT A CERTIFIED COPY

Page 141

that have probably been, you know, refined, you know, throughout the process at this point.
Q. And if you look at the summary financial information.
A. Right.
Q. Earnings per share number in the far right column for 1998 estimated is $1.80 per share?
A. Okay.
Q. Do you know what the source of that was?
A. Again, I think it's the product of a range of discussions around projections provided by the company that have been reviewed and refined by, and I'm not sure who on the Morgan Stanley team to get -- to get to that number.
Q. Do you have any understanding or knowledge why that number is different than the pro forma 1998 estimated earnings contained in Exhibit 129?
I can refer you to a page if you want me to.
A. What page is that?
Q. Sure. It's page 11 of the document. Estimates pro forma Sunbeam of $2.34; whereas, here it's $1.80.
A. I don't know. I don't -- I don't recall

Page 142

what changes led to that change in the -- the numbers.
Q. Okay. Is there any portion of this document, Exhibit 100, that you can identify today as something that you drafted or revised?
A. Not -- not specifically, no.
Q. Turn to page 22 of the document, bearing Bates No. 0062882. There's a further discussion of synergies.
I'll just state for the record that this is different than the description of synergies contained in Exhibit 129. I can refer you to that if you'd like.
A. Okay.
Q. Page 17 of that document.
Do you know why the description of synergies changed between the 10th and the 12th?
A. I haven't figured out what the changes were.
But, again, these documents are, in the case of the selling memo, being used for a different purpose. I don't know what transpired to lead to that change either.
Q. Okay. The last --
A. Whatever the change is. What is the

Page 143

change?
Q. Well, for example, the Exhibit 129 refers to the management advising the Board of Directors that synergies were likely to be in the 225 to $275 million range and that's not in Exhibit 100, the selling memorandum. Among other changes.
A. I -- yeah, again, I don't know. I know there's an element of conservatism that -- that oftentimes, you know, is adopted to varying degrees in these documents. So, I don't know if -- if that's part of the reason.
Q. Okay. The last sentence in that description of synergies in Exhibit 100, the selling memorandum, refers to work done by Andrew Conway modeling $150 million in synergies.
Do you know what that's referring to?
A. I don't specifically know what that's referring to. However, it -- you know, it may well have been that he became more involved at that point to provide some perspective on his thoughts.
Q. Okay. But you don't recall as you sit here what it was?
A. And I don't recall sort of what he had done or how much work he had done at this point in

Page 144

the process.
Q. Having looked at the document marked as Exhibit 100, do you recall any work that you personally did in reviewing or preparing the selling memorandum?
A. Again, I suspect that I reviewed it in its entirety but don't know where specifically I made changes, contributions or, you know, specifically contributed.
Q. Okay.
MR. BRODY: Why don't we go off the record and take a lunch break.
MR. CLARE: Okay.
THE VIDEOGRAPHER: We are going off the video record at 12:28 p.m.
(WHEREUPON, at 12:28 p.m. the videotaped deposition of ANDREW SAVARIE was recessed, to be recommenced at 12:50 p.m.)

016877

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,)
Plaintiff,)
-vs-)
MORGAN STANLEY & CO., INC.,)
Defendant.)

January 22, 2004
1:08 p.m.

The videotaped deposition of ANDREW SAVARIE resumed pursuant to recess at the offices of Jenner & Block, LLC, Suite 4000, One IBM Plaza, Chicago, Illinois.

PRESENT:
JENNER & BLOCK, LLC,
(One IBM Plaza,
Chicago, Illinois 60611-7603,
312-222-9350), by:
MR. MICHAEL T. BRODY,
MS. SUZANNE J. PRYSAK,
appeared on behalf of the Plaintiff;

KIRKLAND & ELLIS LLP,
(655 Fifteenth Street, N.W.,
Washington, D.C. 20005,
202-879-5993), by:
MR. THOMAS A. CLARE,
appeared on behalf of the Defendant and the Deponent.

VIDEOTAPED BY:
MR. MARC BUHMANN,
Esquire Deposition Services.

REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968

THE VIDEOGRAPHER: We are going back on the video record at 1:08 p.m.

ANDREW SAVARIE,
called as a witness herein, having been previously duly sworn and having testified, was examined and testified further as follows:

EXAMINATION (Resumed)

BY MR. BRODY:

Q. Mr. Savarie, you have mentioned a number of times that you were involved, among other things, in the roadshow?

A. Correct.

Q. I'd like to direct our attention to that.

What was your involvement in the roadshow presentation?

A. In the presentation?

Q. Well, in the roadshow process.

A. In the roadshow process?

I was involved in -- in the case of the scheduling, that's a process largely done by the capital markets team working with the desk and the various members of the sales force that had the relationships.

So, but there is a process surrounding

getting the meeting set up, getting it scheduled, getting logistics in place, making sure that all that is coordinated with the company, that the participants from the company are available on the days when we intend to take them on the road.

There is a -- a roadshow presentation that is prepared to use for the presentations with accounts and, you know, I and other members of the team review that as it's being prepared and accompany -- ultimately accompany the members of the management team on the roadshow and in the context of these meetings, provide a brief introduction at the start of each of the sessions, whether it's a lunch session or a one-on-one.

Q. Just so we're talking about the same things, can you explain what is meant by a roadshow?

A. A roadshow would be the process where or during which the company takes their presentation out to give to the various institutional investors that are the prospective purchasers of the security. And that usually spans a period of, you know, four or five days, depends on the nature of the transaction.

Q. In this case, who drafted the roadshow

NOT A CERTIFIED COPY

0-16978

Page 149

materials?
A. I don't specifically recall all of the details around who drafted, but I have a general recollection of it being largely prepared by the company, which is not uncommon given that it's ultimately the senior management of the company that's going to give it. So, they tend to be comfortable with pages they've either seen or pages they have gotten accustomed to and as a result will oftentimes develop talking points, a script to go with it, because it's again something that has to be internalized by the company given that they are giving the presentation.
Q. Whose word processing system was the presentation kept on?
A. I don't know, and it may have changed hands a couple of times at various points in the process. It's not uncommon for that to happen. I don't know whether or not -- I don't recall specifically, you know, where it started. It may have been an outline that led to a first draft.
Again, my general recollection, though, is that the bulk of the iterations were done on the company's computers. But it's -- again, that's not terribly clear.

Page 150

Q. Well, let's see if we can firm that up a little bit.
Aside from yourself who was involved from Morgan Stanley in the roadshow?
A. In terms of the --
Q. People.
A. -- presentation preparation?
Q. Yeah, the whole process.
A. Again, it would have been, you know, members of the same team, whether it's, you know, the Equity Capital Markets team, members of that team, whether it's reviewing it, in some cases attending certain of the bigger meetings, you know, an analyst resource that would have accompanied me and it, you know, it may have varied depending on which day and who was available.
Q. Okay.
A. And there were other people who during the course of the roadshow accompanied me at various points along the way.
Q. Let's take this in steps.
The logistics of setting up the meeting, the various roadshow meetings.
A. Right.
Q. That was done by Morgan Stanley,

Page 151

correct?
A. Correct.
Q. And Morgan Stanley set up meetings whereby members of company management could speak to potential investors?
A. Correct.
Q. And I believe you testified that the scheduling was largely done by the capital markets and the trading desk and sales force, is that correct?
A. Yeah, I mean in conjunction with we as sort of the logistical coordinators who had to make sure it was going to work for the company, make sure that, you know -- we could cover it and that all the, you know, all the pieces could come together to work on those particular days.
Q. Okay. Appearing at the presentation, you attended all the roadshows?
A. I attended I would say the majority of them, but not necessarily all of them. There would be instances where, and I don't remember specifically which -- which ones I was in and not in, but sometimes you have to step out, you know, coordinate sort of the next step in the process.
Sometimes accounts, you know, want to

Page 152

meet with the company without the bankers present. I don't remember how much of that took place on this particular roadshow. But in general I was tasked with sort of participating in as much of the roadshow as I could.
Q. Aside from yourself, who else attended?
A. Um.
Q. From the company -- I'm sorry. From your company, from Morgan Stanley.
A. From Morgan Stanley.
My recollection is that I had an analyst with me and I think just looking at the list, I think it was Boone for a good portion of the roadshow.
I don't recall -- well, I know Bill Strong was with me for a portion of it, Alex Fuchs for a -- what I recall is a very small portion of it.
And then I don't know at the bigger meetings who in addition to those people was in attendance. I know Ruth Porat was present at the New York roadshow. But, again, the fact that it's in New York, a big group, there may well have been many people there.
Q. Okay. In terms of preparing the text of

NOT A CERTIFIED COPY

Page 153

the document, who from Morgan Stanley was involved in preparing or making comments or revising the presentation materials and the text of the speech?
A. Again, I would say that -- that's a collection of myself, and I can't recall if -- if, you know, Bill Strong would have reviewed it at any point. He may have. A couple of members of the Equity Capital Markets team probably reviewed it at various points.
Q. Do you know who?
A. I mean, there are obviously -- I don't, not specifically I mean.
And my guess is Ruth had looked at it, Brooks Harris who was the convertible product specialist, Jill Woodworth I'm certain did. She was an associate I believe at the time.
And then it would have been the CSG team, again, sort of at the center of the -- the procedural aspects of executing the transaction.
Q. Okay. Before the presentation was given the first time did you rehearse it?
A. I don't recall whether we actually had a formal full-blown rehearsal or not.
Q. Did you have a pre-meeting where you sat down and talked through what you were going to do?

Page 154

A. I would suspect we did. I don't recall when that took place, but that would be typical to talk through the slides and understand who's doing what to whom and make sure that, you know, it is -- it is I think as everyone thinks it should be.
MR. BRODY: Please mark that as Exhibit 130.
(WHEREUPON, a certain document was marked CPH Exhibit No. 130, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Sir, I've given you what's been marked as Exhibit 130. I'd like you to flip through it and tell me if you have ever seen it before.
A. I'm sure -- I'm sure -- excuse me.
I'm sure I've seen this.
Q. Do you recognize that as the roadshow presentation?
A. Yes.
Q. Do you believe this is the final text that was used in the roadshow?
A. Again, I don't know for certain that this is the final text nor do I know that this wouldn't -- it may well have changed during the course of the roadshow. Oftentimes you will change a slide or two in the midst of it for one reason or

Page 155

another.
Q. Do you remember changes being made in the midst of the roadshow?
A. I don't specifically remember that.
Q. If you look down at the bottom of this page there is a word processing tag, F14\161901 and so on.
A. Right.
Q. That's a Morgan Stanley document tag, is it not?
A. I can't say for certain, but it appears to be.
Q. For example, if you were to look at Exhibit 129, which is the Equity Commitment Committee report, or Exhibit 100, which is the selling memorandum, or really most of the other documents we've marked today, that's a Morgan Stanley tag line, isn't it?
A. Again, it looks to be.
Q. Does that indicate to you --
A. I'm not -- I am not in any way indicating that it couldn't be. I'm just saying I don't know for certain that it is. But it looks to be.
Q. Well, does that indicate to you that

Page 156

this document was in fact maintained on the Morgan Stanley word processing system?
A. That's -- that's likely.
Q. Now, there is some handwriting on the first page. Who's is that?
A. I don't know.
Q. Is it yours?
A. No.
Q. Now, if you turn to the page bearing production number CPH 0251871, there's a slide and then a little bullet point underneath it?
A. Yep.
Q. Do you recognize the slide at the top as the portion that was exhibited to the attendees at the roadshow?
A. That looks familiar, yeah. That looks like the slide we would have used or something like that, yeah.
Q. And then the portion at the bottom, the bullet point that you see on that page and there are similar bullet points on other pages --
A. Right.
Q. -- that's not put up on the screen for the participants in the roadshow, is that correct?
A. Correct.

NOT A CERTIFIED COPY

Page 157

Q. Instead, that's just a description for almost like a stage direction for someone else to read or to pay attention to?
A. That's correct.
Q. Does this reflect that someone from Morgan Stanley began the presentations by describing the deal and then by introducing the management?
A. Yes.
Q. And did you on occasion do that?
A. Yes.
Q. If you turn to page 3 of the document, it lists management, Mr. Dunlap, Mr. Kersh, Mr. Fannin and Mr. Goudis.
Did those four gentlemen attend all the roadshows?
A. They -- I'm not certain if they all attended all of the presentations, but by and large this was the management team tasked with the roadshow process.
Q. Do you know if Mr. Dunlap attended all of them?
A. I -- my recollection is that -- well, I can't recall when he didn't, but I'm not -- I can't say for certain.

Page 158

Q. Turn to the next page, bearing document production number ending in 73, page 4.
A. Yep.
Q. There there's an extended bullet point.
Do you recognize those bullets as something that Mr. Dunlap or some other participant in the transaction would have read or spoken from in giving the comments when this slide was up on the screen?
A. I mean, again, I recognize this document as something that may have been prepared. Whether those bullet points were used on this page in any one of the presentations, I can't speak to, meaning I don't know how -- how strictly they adhered to this script, if you will, in each and every one of these meetings.
Q. Fair enough. Morgan Stanley reviewed the slides before they were presented, correct?
A. Yes.
Q. And as we've discussed, it appears that they were kept on the Morgan Stanley word processing system?
A. Well, I think they may have ended up there. I'm not sure that at all points in their preparation that they were there.

Page 159

Q. Okay. When --
A. Again, that is a process where, you know, working with the company, I mean, it's oftentimes the case and most naturally the case that the company is preparing a presentation that they're going to give.
And at what point they put it on our system so that we could, you know, prepare the slides, do some of the logistics they don't want to do, that's ultimately what happens.
Q. Okay. But just for point of reference, we look down at our word processing code again, this document appears to have been edited on 3/13, March 13, 1998, at 3:40 in the afternoon?
A. Okay.
Q. So, at least at that point it's on the Morgan Stanley word processing system. Fair enough?
A. Yes.
Q. And when it goes on the Morgan Stanley word processing system, the slides go on and then the bullet points below are also something that you had on your system?
A. Yes, I would assume that, yeah.
Q. And the document was commented on by a

Page 160

variety of people at Morgan Stanley?
A. Again, I don't know who had an opportunity to review it, but it would have been distributed to a variety of members of the team for input and comment.
Q. And when it was distributed for input and comment, the slides were distributed as well as the bullet point script or items underneath. That was also distributed, was it not?
A. It may be. It may have been that the slides were prepared before the rest of the script on the page and there may have been members of the team that reviewed just the slides and never saw the script.
Q. Okay. But you would agree with me before the first presentation was given, the slides and the script had been reviewed by Morgan Stanley, including yourself?
A. Yeah.
Q. Now, if you look at the page we were on, page 4 --
A. I would clarify that, though.
I'm not sure that we would have spent as much time on precisely the wording that the company was going to -- in other words, because this is not

NOT A CERTIFIED COPY

Page 161

something that they read or that the format is something that, you know, suggests they're going to read this, we're more focusing on what are the slides there are going to appear in front of the investor.

Q. Well, if -- if the company, if Sunbeam, puts something in the text below the slides that you thought was incorrect, you wouldn't let it pass, would you?

A. We would certainly to the extent we could identify something we didn't believe to be the case, we would -- we would, you know, make a point of that and look to correct it.

Q. The second point here, second subbullet under the first bullet that references Mr. Perelman, do you know who wrote that?

A. No.

Q. Do you know if you made any comments on that or to that?

A. I don't recall any specific comments or changes to that.

Q. If you look at page 6 of the document, and the slide at the top is entitled "Dunlap Value Creation Model." Do you see that?

A. Um-hmm.

Page 162

Q. That's a -- let me withdraw that.

Do you know where that slide came from?

A. No.

Q. Turn to Exhibit 100, the selling memorandum, and its page 8, that slide is there, is it not?

A. Yeah, looks to be the same slide, yes.

Q. Aside from that Morgan Stanley document, have you seen that slide in other Morgan Stanley documents or presentations that you recall?

A. You know, again, I don't know if that was in other -- because these documents share a lot of content, I don't know if that appears in another internal Morgan Stanley document or not.

Q. Do you know who put together that document?

A. This document --

Q. I'm sorry.

A. You mean this slide?

Q. Thank you. Who put together the slide that's found in the selling memorandum and also found in the roadshow presentation?

A. I don't remember.

Q. In the bullet points under that slide there's a description of the restructuring effort.

Page 163

Do you remember making any comments on that?

A. I don't and my -- again, my general recollection is that most of the input for these bullet points came from the company.

Q. Right, but -- but you wouldn't allow it to pass if you thought it was incorrect, would you?

A. That's true.

Q. Do you know what investigation -- let me withdraw that.

Would it be Morgan Stanley's custom to allow something to go into the bullet point portion of a roadshow presentation that Morgan Stanley hadn't done any investigation into?

MR. CLARE: Objection to form and speculation.

BY THE WITNESS:

A. Again, while these are intended to be I think talking points or a guide for the company, they are oftentimes prepared by the company and will include information that the company very logically knows about their story that, you know, they are sharing with us and we are relying upon them as to its accuracy.

We don't necessarily have the ability to -- to know that everything that they've said is

Page 164

something we, you know, completely and fully understand, particularly in the context of an interactive roadshow discussion where they're talking about a business that they manage.

Q. You would agree with me, though, wouldn't you, sir, that the roadshow presentations were being given to potentially -- to people who could purchase large quantities of these debentures?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. I mean, conceptually. I mean, it's being given to, you know, the institutional investor audience that are the potential buyers of the security.

BY MR. BRODY:

Q. So, the institutional investors you were speaking to were not people that were buying a few of these debentures; they would buy large quantities of them if they were interested?

A. Potentially.

Q. And you wouldn't want to make -- Morgan Stanley wouldn't want to participate in a presentation to them that was incorrect, would it?

A. We would certainly not intentionally do

NOT A CERTIFIED COPY

01623

Page 165

that. However, this is a presentation that the company is giving to those investors.
Q. Turn to page 9 of the document. The last bullet point refers to the implementation of the comprehensive plan to improve the cost structure.
Do you know what investigation Morgan Stanley did to determine whether that was correct or not?
A. Again, I -- I don't know specifically what was done or which members of the team participated in a lot of the background work that had been done, you know, along the way as part of this transaction.
Q. Turn to the next page, page 10. The second bullet point refers to Sunbeam's improvement in bottom line margin, top and bottom line percentage improvements. And it concludes by saying:
"Most importantly, in the fourth quarter, we proved to ourselves that we could achieve a 20 percent operating margin."
Do you remember anything -- did you hear that statement made at any of the roadshows?

Page 166

A. I don't recall. I'm not -- I'm going to have a very difficult time recalling which statements were made specifically in a roadshow six years ago.
Q. Well, would you agree that operating margin is a pretty important statistic for a manufacturing company?
MR. CLARE: Objection to form.
BY THE WITNESS:
A. I mean, I think obviously, you know, the -- the metrics of financial performance of the business would, you know, logically be one of the topics discussed and highlighted during a presentation like this.
BY MR. BRODY:
Q. And operating margin is essentially a measure of the company's profit on its operations?
A. Yeah, certainly one of them.
Q. And that's an important thing for investors to know?
MR. CLARE: Objection to form and foundation.
BY THE WITNESS:
A. You know, I think so. I mean, this, in addition to this, a lot of this information is disclosed in the offering memorandum as well.

Page 167

BY MR. BRODY:
Q. Do you recall from looking at the documents that you did to familiarize yourself with this deal when you became assigned to it or the work that you did after that that there were references to Morgan Stanley's goal of reaching a 20 percent operating margin?
MR. CLARE: Objection.
BY MR. BRODY:
Q. Excuse me. Sunbeam's goal of reaching a 20 percent operating margin.
MR. BRODY: Sorry, Tom.
BY THE WITNESS:
A. Again, I don't specifically recall that topic.
BY MR. BRODY:
Q. Do you remember any work that Morgan Stanley did to determine whether that operating margin, 20 percent operating margin, was achievable by Sunbeam?
A. Again, I don't recall what was specifically done to investigate that.
Q. Okay. If you turn to page 13 of the presentation, it's a slide that has text in it that begins "Initial Synergies." Do you see that?

Page 168

A. Yes.
Q. And there are a number of items in the slide that compare the two -- excuse me -- the various companies and in the bullet points, the last one says:
"We have identified approximately $150 million of synergies."
Do you remember synergies being discussed at the roadshow?
A. You know, I generally do, but not in any great degree of specificity. I -- but it certainly would have been a logical topic to discuss on this page with -- without question, and in the case of a transaction involving acquisitions as this one did.
Q. Do you remember reviewing this text before the roadshow presentation was finalized?
A. Again, I don't have any specific recollection of how and when and whether it was in this form and -- and, again, I think the primary sort of responsibility for this was the -- the company and members of the company management team doing the speaking.
Q. But Morgan Stanley didn't -- Morgan Stanley wouldn't have permitted the company

NOT A CERTIFIED COPY

016883

Page 169

to make a presentation that it believed was false, would it?
MR. CLARE: Objection; asked and answered.
BY MR. BRODY:
Q. With regard to the synergies presentation. If you didn't think that that was correct or borne out by the work you did, you would have objected to that, wouldn't you?
A. Well, but I --
MR. CLARE: Objection to form and argumentative. You can answer.
BY THE WITNESS:
A. You know, the company is, you know, providing their own perspective on what they believe is achievable to the investors. This is their presentation.
But, you know, we clearly, you know, would have guided the company had we any reason to believe that this was not achievable.
BY MR. BRODY:
Q. Right. You wouldn't want the company making false statements to your good customers?
A. Right, certainly not intentionally and not to our knowledge.
Q. Okay. Turn to page 15. There's some

Page 170

handwriting. Do you recognize that?
A. No.
Q. It appears to read "Lee Scot." Do you know a gentleman by the name of Lee Scot?
A. No.
Q. Maybe a woman by that name?
A. No.
Q. And it references in that bullet point that it's next to:
"When we talked with the president of Wal-Mart, he said, 'I love what you guys did,'" and continues.
Do you remember Mr. Dunlap or others stating in presentations what someone from Wal-Mart said about Sunbeam?
A. I don't.
Q. Do you know if anyone from Morgan Stanley ever went out and talked to anyone at Wal-Mart about Sunbeam?
A. I don't specifically recall whether we did or not or whether Morgan Stanley did or not.
Q. If you turn to page 16, down at the bottom, the bullet point refers to turning the presentation over to Mr. Kersh. Do you see that?
A. Yes.

Page 171

Q. Is it your understanding from here on Mr. Kersh is the one speaking in the presentation?
A. I can't recall how these guys ham-and-egged, but that certainly lends itself to it transitioning to -- to Mr. Kersh.
However, it's important to know that just because he is leading the discussion doesn't mean he's the only one speaking when that slide is -- is up.
Q. I understand. If you turn to page 19, a couple of pages later, again there is some handwriting. Do you recognize that handwriting?
A. I don't.
Q. There's a reference to flat sales, "With flat sales." Do you remember any discussion about whether sales were flat or would be flat?
A. No.
Q. When the presentation was over, when the Sunbeam people finished the last slide, did someone from Morgan Stanley get up and sum up or ask for questions?
A. You know, depends on the format.
Q. Were there occasions in which you did that?
A. I suspect in closing it out there may

Page 172

have been instances where I said, you know, unless there are any other questions we have to go to our next meeting.
Q. Do you --
A. But it would have been about that much given this was -- that was -- that was the role that we played in these presentations was just to introduce them and really let them go from there.
Q. Do you know Richard Goudis? Do you know Mr. Goudis?
A. Yeah.
Q. What was Mr. Goudis' position at Morgan Stanley -- excuse me -- at Sunbeam?
A. He was a member of the management team; and while I don't recall exactly what his title was, he was along for most, if not all, of the roadshow presentations and was really in an investor relations sort of capacity sort of generally.
Q. Okay. I was going to refer you -- if you needed to, to the roadshow slide that says he was the V.P. investor relations and corporate planning. Does that sound right?
A. Yeah, that sounds right.
Q. And his responsibilities as the V.P. for

NOT A CERTIFIED COPY

Page 173

investor relations and corporate planning, do you know what they involved, what his job was?
MR. CLARE: Objection. Objection; foundation.
BY MR. BRODY:
Q. You can go ahead.
MR. CLARE: You can answer if you know.
BY THE WITNESS:
A. He -- I don't know exactly what his responsibilities were but only can comment on what his role was or at least his role as relates my involvement.
And he was, you know, one of the members of the team that was actively involved was preparing a lot of the materials that were either presented or provided to us as well as playing a major role in the preparation of these materials. He was sort of the primary interface from a company's standpoint.
BY MR. BRODY:
Q. If you turn to your expense report, sir, which we've marked previously as Exhibit 126, and if you look on page bearing Bates No. 5550, I think it's the third page of the document, there's a reference to you having dinner with Mr. Goudis on the 15th of March at Maloney & Porcelli in

Page 174

New York. Do you see that?
A. Which page?
Q. Under "Entertainment Details."
A. Yes.
Q. Now, if you turn to page 5559, there's what appears to be the receipt for that dinner.
A. Okay.
Q. And I'm just wondering -- my first question is going to be let's see if we can straighten out the date. Up at the top is written in someone's handwriting "Laser 3/15." Is that your handwriting?
A. "Laser" is my handwriting.
Q. And then the 3 --
A. That's my signature and the names at the bottom.
Q. The "3/15" to the right of Laser, is that your handwriting also, with a circle around it?
A. It doesn't look like my handwriting.
Q. Okay. Now, if you look at the receipt from Maloney & Porcelli --
A. Um-hmm.
Q. -- the date appears to be March 18, 1999 -- 1998, is that correct?

Page 175

A. That's what it appears to be, yeah.
Q. So, if you go back to the date on the expense report, you had dinner with Mr. Goudis on the 18th or the 15th?
A. Well, I don't know what that discrepancy is, whether that's a problem with the credit card machine at the restaurant or -- I don't know what date that was in this process.
Q. Okay. We may come back to that when we get up to March 18 and see if you can place it in time.
A. Okay.
Q. But do you remember having dinner, just you and Mr. Goudis, at the Maloney & Porcelli restaurant in New York?
A. Yes.
Q. Was that during the roadshow?
A. Yes.
Q. What do you remember discussing?
A. You know, it was a fairly -- at that point I had spent, you know, several days with these guys on the road and it was a fairly personal discussion.
Q. It was just the two of you?
A. Just the two of us.

Page 176

Q. Do you remember discussing any aspects of Sunbeam's performance on that evening?
A. No.
Q. Did you discuss any aspects of Sunbeam's first quarter results?
A. No. I mean, again, it was not a discussion about, you know, Sunbeam. We were probably talking about how the roadshow's going, how the process is going. But it was not a due diligence discussion with him.
Q. Okay. Now, given that this was after you had spent a couple days on the roadshow already, it pretty much has to be the 18th, doesn't it, rather than the 15th?
A. Yeah, I don't remember when it started.
Q. We'll go through the schedule and establish that.
A. Okay.
Q. Once the roadshow started, do you know if any changes were made to the slides that were shown to the attendees at the roadshow?
A. I don't recall whether there were specifically any changes made, whether there were changes to the script made. There may have been changes. I don't recall. It would not be atypical

NOT A CERTIFIED COPY

Page 177

for there to be slight changes made.
Q. Okay.
MR. BRODY: I've lost track.
THE REPORTER: 131.
MR. BRODY: Please mark this as 131.
(WHEREUPON, a certain document was marked CPH Exhibit No. 131, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Sir, I've given you what's been marked as Exhibit 131, which is also a -- I was going to say it was a document produced by Morgan Stanley, but it was actually produced by Sunbeam.
Do you recognize that document as an information package prepared by Morgan Stanley for use in the roadshow?
A. Yes.
Q. And did you have any role in the preparation of this document marked as Exhibit 131?
A. Again, I would have had a role in certainly reviewing it as it was being prepared. But, you know, other members of the team would have been involved in actually putting it together.
Q. Okay. And if you look down at the bottom of really all the pages, it has that word

Page 178

processing code again from Morgan Stanley's system, is that correct?
A. Yes. Yeah.
Q. Look at the page ending with the words -- the numbers 93, 1893, identified as "Roadshow Participants."
A. Um-hmm.
Q. Is that consistent with your recollection as to the individuals who attended some or all of these presentations?
A. Yes. To -- you know, again, in addition to others who attended or who may have attended some of the luncheons where there is room to accommodate more than just a couple of people.
Q. Okay. If you turn to page 1896, there's a list of a variety of key roadshow contacts off the road.
A. Um-hmm.
Q. Those are all Morgan Stanley people, are they not?
A. Yes. Except for the travel -- I don't know about the travel people or --
Q. For example, travel emergency number?
A. Yeah, I guess they are. They look to be Morgan Stanley people.

Page 179

Q. Down at the bottom there is an entry for "Morgan Stanley Creative Services." Do you know what that is?
A. That would be graphics.
Q. Are they the ones who put together the slides?
A. Yes, likely that they would have. Or -- or handle projector setup or things of that nature potentially.
Q. Turn a couple of pages further to page 1898, and the several pages that follow through page 1901.
A. Um-hmm.
Q. Well, I'm sorry. I misspoke. Go a couple of pages beyond that. The detailed travel itinerary runs through page 1908.
Is that the itinerary that the participants in the roadshow followed?
A. Yes.
Q. Started in the West Coast and worked its way East?
A. And, again, I don't know if in all its detail whether all of these meetings ended up as they are depicted here, meaning sometimes the meetings get moved around, reordered, canceled,

Page 180

filled in with somebody else. I don't know if this was -- this was sort of the -- probably not the last iteration of this.
Q. Well, it's the last one I have seen. There may be other ones out there, but it's the last one I have seen. I have not seen any further ones.
MR. BRODY: Why don't we go off the record for a second. We need to change videotapes.
THE VIDEOGRAPHER: We are going off the video record at the end of Tape 2 at 1:46 p.m.
(WHEREUPON, a recess was had from 1:46 to 1:47 p.m.)
THE VIDEOGRAPHER: We are going back on the video record at the start of Tape 3 at 1:47 p.m.
BY MR. BRODY:
Q. Before we broke to change the tape we were looking at the schedule and I just want to turn to the schedule that begins on page 1899.
If you look at the first day, Monday, March 16, that's the day the roadshow began?
A. Right.
Q. The first. And given that your dinner with Mr. Goudis was during the roadshow, it wasn't the 15th, is that?

NOT A CERTIFIED COPY

Page 181

A. Right. It appears the 18th was the date of that dinner. So, there must have been a mistake in the expense report.
Q. I understand.
Now, in looking at this, there appear to be two different kinds of events listed. Some are described as one-on-one and some are described as R.S. can you explain the differences?
A. Well, the one-on-one is the -- is a meeting between the company and one, typically one investor, sometimes more than one, but generally one, in their offices, around a conference room table.
Whereas the -- and I don't know what the R.S. refers to specifically, but the lunch meetings tend to be in, you know, bigger rooms with more attendees. More likely to be a presentation from a podium with slides projected on a screen.
Q. In the presentations that were one-on-one, how were the slides displayed?
A. If I recall -- it would typically be a flip book and I don't recall that it would be -- there would have been anything other than that here.
Q. Do you know if participants were given a

Page 182

copy or attendees, rather, were given a copy?
A. I don't recall specifically. It -- as I do recall, it was the policy to take back all the presentations that were used, and that's fundamentally because we're not carrying enough of them around to give them out at each meeting.
Q. If you look at the first day, the California trip, for example, the 10:30 -- assuming the schedule happened as indicated here, 10:30 a.m., the meeting with Oak Tree Capital Management was a one-on-one meeting followed by a lunch meeting at which a presentation was made to a bigger group of potential investors?
A. Um-hmm.
Q. Is that correct?
A. Yes.
Q. Now, the meeting ended in San Mateo late in the day on Monday the 16th and began the next morning in Minneapolis at 7:30.
How did you get from one place to another?
A. We would get on an airplane.
Q. Private plane?
A. I think, as I recall, yes, that's the way we got around for this roadshow.

Page 183

Q. Did you travel on the same plane with Mr. Dunlap and Mr. Kersh and the other participants from Sunbeam?
A. Yes.
Q. Did you --
A. At least in most cases. I mean, there may have been instances where they went and we went later but some -- but for the most part, yes.
Q. Did you talk with them on the plane?
A. Yes.
Q. Did you talk about Sunbeam's business?
A. We tended not to focus on, you know, the business and the roadshow and tried to use that time to talk about other things simply because the, you know, the days were pretty consuming as it was.
Q. Do you remember any discussion during the roadshow but not at the roadshow presentations about Sunbeam's performance and its results from the first part of 1998?
A. No, I don't specifically recall discussing that.
Q. Looking at the first page here of the detailed itinerary, page 1899, are there any of those meetings identified on the schedule that you don't believe happened?

Page 184

A. I -- I don't remember. I just -- I don't have a clear enough recollection of, you know -- these meetings all blend together. So, I couldn't tell you if any one of these did or didn't happen.
Q. Okay. Now, Tuesday night -- let me withdraw that.
The Tuesday presentations on March 17 included a presentation in -- started with a presentation in Minneapolis, then the Milwaukee area, then the Chicago area, is that correct?
A. Yes.
Q. And then Wednesday morning began in New York?
A. Right. That's --
Q. Did you --
A. Yeah.
Q. Did you fly that evening from Chicago area to New York?
A. I would -- I would think that's what happened, yeah.
Q. Okay. If you -- there's a more detailed itinerary I think, sir, that shows where you're staying in particular days. If you turn to page 1904 to 1905.

NOT A CERTIFIED COPY

Page 185

A. Right.
Q. You spent the evening on the night of the 17th in the Palace Hotel in New York?
A. Yes.
Q. And then the day began the next -- the next presentations began at 8:00 in the morning at Salomon Brothers in New York?
A. Yeah, that looks right, yeah. Again, I don't know if that's the last version of this or not.
Q. Okay.
A. But based on this, that -- that makes sense.
Q. Do you remember the -- any presentation to Salomon Brothers at the World Trade Center?
A. No.
Q. The next one shown is at New York Life Insurance Company on Madison Avenue. Do you remember that presentation?
A. That one in particular?
Q. Yes.
A. No.
Q. The next one is at Alliance Capital on Avenue of the Americas, also in New York. Do you remember that?

Page 186

A. I mean, I remember one-on-ones taking place as they would normally the morning -- you know, at all the stops along. But do not remember the specific meeting.
Q. Okay. The next item on the schedule is a lunch in New York at the St. Regis Hotel?
A. Um-hmm.
Q. Do you remember that lunch?
A. I do.
Q. What do you remember about that lunch?
A. You know, the New York lunch on these roadshows is always a big -- a big event. So, it's one of the things you would remember about the roadshow.
Q. When you say it's a big event, what do you mean?
A. You know, a big room, lots of people, you know, a more sort of formal presentation, sort of at the podium where candidly in my role of orchestrating logistics, you know, the logistics around making sure that that's set up the way it should be, that we're there when we need to be, that things happen the way they're supposed to is important.
Q. A lot of things can go wrong?

Page 187

A. Yes.
Q. Did you speak at the podium?
A. I don't believe at this one I did.
Q. Who did?
A. I don't remember, but it's common that, you know, at a -- at the larger presentations like this that one of the senior or even the most senior member of the Morgan Stanley team present would do the introduction. But I don't remember -- I just don't remember who it was.
Q. You don't remember, for example, if Mr. Strong were there?
A. I don't. Again, this is a room with probably 100 people in it. And it could have been, you know, a member of our Equity Capital Markets team. I just don't remember. I don't remember doing it myself.
Q. Do you remember being at podium or a -- excuse me -- a front table next to a podium, a dais kind of table? Do you remember where you sat?
A. No, definitely not. I may not have sat.
Q. Do you remember anything being mentioned during or after that lunch about the company's performance?
A. No, not to me, not to me.

Page 188

Q. Do you remember something being mentioned to someone else?
A. Well, I -- I was at one point made aware that something had been mentioned.
Q. What were you made aware and by whom?
A. I don't remember who or how I was made aware of it. But just that there had been -- that there were discussions taking place on an update, and I believe it was to Ruth Porat.
Q. So, let's just take a step back.
You became aware that there were some discussions going on?
A. Yeah.
Q. Do you remember how you became aware of those?
A. I don't. You know, it could have been that Ruth mentioned something to me. It could have been that a member of management had mentioned it to me. I don't specifically recall how I was generally made aware of it.
Q. And you said there were discussions of an update. Do you know what was being updated?
A. At the time I did not.
Q. Did you later come to learn what was being updated?

NOT A CERTIFIED COPY

Page 189

A. Yes.
Q. What was that?
A. Well, that it was an updated sort of view of sales.
Q. When did you come to learn that there was an updated view of sales, that day?
A. I don't recall because I was not sort of at the center of any of these discussions. I was sort of on the periphery, again, with much more of a focus on everything else that was going on, you know, at this presentation and, candidly, the next steps we had to take to continue the roadshow that day. So, I was not centrally involved in that series of discussions.
Q. I believe you testified that the update was given to Ruth Porat, is that correct?
A. I'm not certain of that.
Q. Is that your understanding?
A. That's -- it's a vague recollection.
Q. Do you know what that's based upon?
A. That vague recollection?
Q. Yes.
A. A vague recollection.
Q. Okay. As you sit here do you remember who it was who gave the update to Ms. Porat?

Page 190

A. I don't remember that.
Q. And do you remember what the substance was?
A. I don't.
Q. Was it news that sales had improved?
A. Knowing what transpired after that, I doubt that was the case. At the time I really didn't have a lot of -- I didn't have a very good sense for what it was, the nature of it. Again, because I hadn't been party to the direct discussion, I didn't -- didn't have a good sense for it, certainly at that time.
Q. Do you remember anything else happening at the -- at the luncheon there in New York at the St. Regis Hotel concerning this update or potential update?
A. No, not in particular, no.
Q. Did the roadshow continue that afternoon?
A. Yes, yes.
Q. The next item shown here is meeting with Mackay Shields. Do you know if you attended that meeting?
A. I -- I would suspect I did, but I -- could have been one where I stepped out to do

Page 191

something, but I don't know specifically but I probably was there.
Q. And the next item is meeting with General Motors on Fifth Avenue in New York. Do you believe you did that?
A. I believe so.
Q. And then --
A. Again, I don't have specific recollection about each and every one of these meetings six years ago.
Q. Do you have a recollection of attending the meeting at The Travelers or not?
A. Same. I mean, I would expect that I did, although in New York there's a possibility that somebody else stepped in to -- to attend one or more of these so that I could do something else. I just don't know. I don't remember.
Q. On this day of the roadshow, on the 18th, when news of an update came to someone, perhaps Ms. Porat, were there discussions within Morgan Stanley that afternoon about the update?
A. I don't know. I mean, I was not party to them. I'm told that there were.
Q. By whom were you told that?
A. I think I was told by other colleagues

Page 192

at Morgan Stanley after the fact.
Q. How long after the fact?
A. I think it was really the following day when I was more fully apprised of what had developed.
Q. What did you learn the following day about what happened?
A. Again, it was sort of a general discussion, and I don't remember specifically what I was told.
Q. Do you remember generally what the discussion was about or generally what was communicated?
A. That there was going to be, and at this point there had been a number of discussions already that had taken place to arrive at a course of action. So, it was an indication around a press release and the need for a press release.
Q. Do you recall what you were told the press release was going to say?
A. I don't specifically. I don't recall what I was told when I was made aware that this was happening.
Q. Do you recall in substance what was discussed in terms of the need for a press release?

NOT A CERTIFIED COPY

Page 193

A. No, other than the view was that there was a need for a press release.
Q. Do you know who was involved in that decision to issue a press release?
A. I don't know all the detailed or all the details of who the participants were in that discussion. I know that it involved a number of Morgan Stanley -- my Morgan Stanley colleagues, but I don't know who specifically. Having not been on the calls, I don't know who was on the calls or who wasn't.
Q. Were the calls ever related to you, that is, did anyone ever describe to you what was said in the calls, in substance or in words?
A. Not in any great degree of detail simply because my views were not being sought centrally in the decision about what to do or how to -- or no one was seeking my input for those calls or for those discussions.
Q. Now, that evening you went to dinner with Mr. Goudis?
A. Correct.
Q. Was there any discussion with Mr. Goudis that night about the update, the press release or the need for a press release?

Page 194

A. We didn't discuss that. And we may well have discussed that there were conversations, but I'm not even certain that I was aware of that at the time.
Again, as I indicated, that was more of a -- as these tend to be, when you finally spend some personal time, you know, out of a presentation with these guys, you're not talking about the roadshow, you're not talking about the presentations.
Q. As the vice president for investor relations, was it Mr. Goudis' job to be involved in commenting on or making press releases to the investors?
A. Yes.
MR. CLARE: Objection; no foundation. You can answer.
BY THE WITNESS:
A. Well, I would say, you know, yes. He wouldn't be the only one involved, but that certainly would be a logical role for him to play.
BY MR. BRODY:
Q. During your dinner with Mr. Goudis did he take any calls or was he called away to talk about press releases?

Page 195

A. I don't remember.
Q. If you look at the detailed schedule, sir, beginning at page 1906 and carrying on to 1907.
A. Okay.
Q. And you see there after going to Travelers, the schedule called for you to go from Teterboro, which is a private airport in the New York area, isn't it?
A. Small, yeah.
Q. To go from there to Boston Logan that evening on a private plane I assume?
A. On this --
Q. On this draft schedule.
A. Yeah.
Q. And you were to arrive at Logan at about 6:30. But as we've established, you were having dinner with Mr. Goudis that evening?
A. Yeah. Again, I don't know, to my comment earlier, I don't know if this schedule changed at some point along the way.
Q. Do you know if you made it to Boston the night of the 18th?
A. My recollection of that is that we flew that following morning.

Page 196

Q. When you flew the following morning, were the Sunbeam people along with you?
A. Yes.
Q. Mr. Dunlap and so on?
A. Yes, it was on -- I can't recall if I was alone. I think the analyst accompanying me was with us. But, yes, that was with -- with the management team.
Q. Do you have any recollection now with the review of this update to Ms. Porat and whatever discussions took place about the press release, does that refresh your recollection why the plane trip was put off for a day?
A. I don't recall that being the reason, but I don't remember what the reason was.
Q. That morning --
A. I mean, I do remember staying in New York, having dinner that night, but I don't remember at what point during the day it had been determined that that was going to be the change to the schedule.
Q. Returning to the schedule of visits, not the detailed schedule, but page 1900 shows some -- some roadshows in Boston. Do you know if there was an 8:00 or a 9:30 a.m. roadshow scheduled?

NOT A CERTIFIED COPY

Page 197

A. I don't remember.
Q. Do you recall meeting with Putnam at 11:00?
A. Again, I don't remember what meetings took place that morning when we arrived. I just don't recall specifically.
Q. Do you recall the roadshow luncheon at the Boston Harbor?
A. Yes.
Q. That's a hotel there on Rowes Wharf?
A. Yes.
Q. Was that another big crowd?
A. Not as big as New York but -- but a big crowd, a bigger crowd, bigger than a one-on-one, I mean a lunch meeting.
Q. Sir, if you turn to Exhibit 126, your expense report.
A. Okay.
Q. And the page bearing No. 5568. It's one of the receipts.
A. 5568.
Okay.
Q. I may have read this wrong, and you're going to have to tell me if I'm right.
But at the top there, there's a cab

Page 198

receipt for a fare from -- it appears to be from Boston to Logan. Do you see that?
A. Um-hmm.
Q. Do you understand if that's a receipt going to the airport or from the airport or can you tell from that what time of day it is?
A. I can't, but -- I can't, but I suspect it was my cab ride back to the airport to fly back to Chicago when I was leaving.
Q. Then you can put that aside. Turning to the presentation at the Boston Harbor Hotel, do you recall if you were the person who introduced the roadshow that day?
A. In Boston?
Q. In Boston.
A. I know that day Bill Strong accompanied me, and I don't recall in one-on-ones whether he or I did the introduction. My recollection is he did the introduction, though, at the lunch. Again, for the reasons I stated earlier, that in the bigger, broader venues, it's customary for the senior-most member of the team to do the introduction.
Q. Do you recall anything being said differently in the presentation in Boston than had been said in prior presentations?

Page 199

A. I definitely don't remember the specific discussions, you know, from any one of these meetings. Obviously, though, the nature of, you know, the press release must have been discussed.
Q. Do you recall what was said in words or in substance about the press release?
A. I don't.
Q. Returning to the detailed schedule once again, page 1906 to 1907, the schedule reflects that after the presentations in Boston, the group would return to New York for a dinner at Mr. K's on Lexington Avenue.
Do you know if you did that?
A. I don't recall doing that. I don't recall that happening.
Q. And if you turn to the next page, it reflects people are to stay at the Plaza Hotel once again, and you and Mr. Strong and others are listed.
MR. CLARE: The Palace Hotel?
MR. BRODY: Yes, the Palace. I'm sorry.
BY THE WITNESS:
A. Yeah, again, I don't -- I don't recall coming back to New York. I -- I don't recall coming back to New York personally, but I don't

Page 200

recall whether any member or any portion of the group did.
BY MR. BRODY:
Q. Okay. I think I'm pretty much done with that document, sir, but I'd ask you to go back to your expense report one last time.
A. Okay.
Q. Again, page 5568, the page that we saw the cab receipt for going to Logan.
A. Okay. Okay.
Q. Item 26 there identifies some tips at the Palace Hotel in New York?
A. Yeah.
Q. Does that refresh your recollection that you might have indeed gone back there?
A. Well, this was -- these tips were throughout the course of the roadshow. So, the Beverly Wiltshire would have been on the West Coast. The Marquette would have been in Minneapolis. So, this is not date-specific.
Q. Okay. So that --
A. I don't know -- again, I don't have a clear recollection of precisely how it ended. My -- my memory is that I took a cab back to the airport and flew back to Chicago.

NOT A CERTIFIED COPY

Page 201

Q. Okay. Came back home?
A. Yeah.
Q. I'm going to show you, sir, what's been marked as an additional exhibit. It's previously been marked as Exhibit 75. And you'll see a great deal of similarity to the last two documents we've looked at.
Do you recognize the cover page of this to be a Morgan Stanley document cover page?
A. Yeah, I don't know what this is. But I don't know if this is a picture of a binder or what it is. But --
Q. And if you turn to -- I'm sorry, sir. I'm missing the page number. The numbers are a little hard to read but on the bottom it's 18231. There are various check marks next to some visits.
A. Okay.
Q. Do you recognize those as your own?
A. Those check marks?
Q. Yes.
A. No.
Q. Sometimes people have customary ways of doing things. I was wondering if that was yours. Okay.
Now, let's turn to the text of the

Page 202

document, sir. I'm interested in asking you about page SB 18225.
Do you recognize that handwriting?
MR. CLARE: I'm sorry. 225?
MR. BRODY: Yes.
BY THE WITNESS:
A. No.
BY MR. BRODY:
Q. Did you during the roadshow ever see a copy of someone's script marked up in this manner or in any manner?
A. I don't recall. I can recall looking at, you know, versions of this where -- but I don't recall looking at this.
Q. Do you recall after the press release was issued having discussions with anyone from Morgan Stanley or from Sunbeam about making changes to the roadshow presentation to reflect the press release?
A. No, I don't recall having done that myself.
Q. Do you recall hearing that that in fact happened?
A. Well, I -- no, I don't recall even being party to the discussion about what -- what to say,

Page 203

having not been particularly involved -- involved at all in really what ought to be said.
Q. Do you have any understanding as to who was involved in that discussion about what should be said or should not be said?
A. Again, not knowing who was on the call, I'm not sure who, you know, may have had a discussion with the company about how to add to or amend the discussion or the presentation they were going to give the next day.
Candidly, when Bill Strong arrived, I was being sort of overshadowed in terms of the company's interface with us anyway.
Q. Looking at the handwriting on page 18225, and I'm going to start about four lines down, after that line that goes through the middle. It appears to read or to be written, "As you may know."
Do you see where I'm reading?
A. Right.
Q. Now this is not your writing I understand, but I'm going to take a stab at reading it to you.
A. Okay.
Q. My question when I'm done is going to be

Page 204

do you remember these words or this concept in substance being discussed at the -- at the roadshow in Boston.
But it appears to read, at least to me to say:
"As you may know we issued a press release this morning regarding sales for the current quarter," and then it jumps down to the bottom, "whereby we announced that sales may be below street estimates but above last year's."
Can't quite read the rest but when you return to the middle of the text, it appears to say:
"In the absence of this offering, we would not have issued this release. This was" -- hard to read -- "cautionary."
Do you remember any discussion about those concepts?
A. I don't specifically recall what was said, you know, about the press release. I'm certain that the issue was addressed, but I'm not -- I can't recall what specifically was said.

NOT A CERTIFIED COPY

268910

Page 205

Q. Do you remember questions being raised by any members of the -- any participants or attendees at the roadshow about it?
A. Again, I'm sure there were questions, but I don't recall specifically what those questions were.
Q. Do you remember if --
A. Or where -- or where those questions were asked.
Q. I understand. Do you remember if any of the attendees at the earlier roadshows, that is, the ones before the press release, called Morgan Stanley and asked about it?
A. I have no knowledge of that.
Q. Do you know if anyone from Morgan Stanley called attendees at the earlier roadshows to discuss the press release?
A. Also have no knowledge of that nor would I have been involved in that.
Q. During this roadshow presentation, and in the off time, the breaks between roadshows, the cab rides here and there, the plane rides, the stays at the hotel and so on, did you have any discussions that you recall with Sunbeam people about Sunbeam's first quarter performance?

Page 206

A. I did not and I do not recall having those conversations. Again, those were not conversations that were logically or naturally to happen with me at that point in this process.
Q. Between that visit, that last roadshow on the 19th of March, and the closing of the transaction at the end of March, did you have further conversations with people from Sunbeam, to your recollection?
So, after you said good-bye to the crowd from the roadshow and they went their way and you went -- you went yours, did you have any further discussions with the company?
A. I mean, I -- I don't recall any specific conversations. But, you know, could have had -- could have had a conversation. I just don't recall having it or what it may have been about.
Q. In connection with the work that you did on the deal, did you ever learn that Arthur Andersen had sent Morgan Stanley a copy of a comfort letter describing, among other things, the financial performance of Sunbeam in the first quarter of the year?
A. I don't recall being involved in the comfort letter and, as a result, you know, am not

Page 207

aware of sort of when it was delivered, to whom, by whom, at whatever point in the process. That logically would have been happening sort of away from what I was doing on the transaction at the time.
Q. Okay. Well, let me show you a document, sir, and this has previously been marked as CPH Exhibit 17 and my first question is: Have you ever seen this before?
A. Until yesterday I had not seen this document before.
Q. In connection with the work that you did in drafting sessions and facilitating the financing, getting the final documents done and so on, did you have any discussions about the comfort letter?
A. Not that I can recall.
Q. If you turn to the page -- the third page of the document, Item 5-B describes or, rather, compares Sunbeam's sales in two periods, December 30, '96 through February 2, '97, compared to December 29, '97 through February 1, '98 and the results are shown there.
Prior to the closing, sir, were you aware of those results, to your knowledge?

Page 208

A. I don't recall to what degree I was aware of these, whether at some point someone made me aware in greater detail than I had gotten earlier. But I don't recall having reviewed this letter or these figures.
Q. Do you participate in any discussions within Morgan Stanley about whether to disclose to the public or to disclose to MacAndrews & Forbes the fact that results in these two periods were as indicated in this letter?
A. No, I don't recall participating in those discussions, any discussions like that.
Q. In connection with the work that you did, did you have any conversations with anyone from MacAndrews & Forbes?
A. Not that I'm aware of. I'm not sure if I would have known that they were. So, unknowingly perhaps, but I don't believe so.
Q. And do you recall any conversations with any people from Coleman or Coleman Parent?
A. Not specifically other than perhaps in one of these meetings again. I don't recall any specific conversations.
Q. I understand. And if you turn, please, to the fifth page of the letter, it begins with

NOT A CERTIFIED COPY

Page 209

subparagraph C, in which Arthur Andersen reports to Morgan Stanley that net sales for the first two months of 1998 are roughly half net sales for the corresponding period for the prior year.

Do you know when you became aware of that decline in sales?

A. I don't recall when and whether I became aware of that. Again, I was not -- not centrally involved in review of this comfort letter.

Q. You may put that document aside, sir.

If you return -- I should have asked you this before. Return to the document with the Morgan Stanley cover.

A. Right.

Q. Exhibit 75, and I'm going to ask you about some pages toward the end.

Page 18285, about four or five pages from the end of the document, there is some handwriting. Do you recognize that handwriting?

A. No.

Q. The following page is a sheet with some customer names and numbers on it. Have you ever seen that before, excluding your preparation session with Mr. Clare?

A. No. I don't recall seeing this.

Page 210

Q. In this case I've seen other versions of this document. Have you seen similar documents -- documents that are similar to this but perhaps with different handwriting or slightly different numbers?

A. I don't specifically recall this page.

Q. Do you generally recall Sunbeam documents similar to this?

A. I really don't recall it. I may have seen it, but I don't recall when or in what context.

Q. Turn to the next page. Is that a document you recognize?

A. I can barely read it. I don't -- I don't recall having seen this.

Q. Okay. Then you can put that aside.

Did there come a time, sir, when you read the press release? Did you read the press release that had been issued on the 19th of March?

A. I'm sure that I did, but I don't recall -- I don't recall doing it, but I'm sure I did.

Q. Do you know if you read it before the roadshow completed, was completed?

A. I again suspect that I did, but don't

Page 211

recall specifically whether I did or when I did.

MR. BRODY: Why don't we take a five-minute break. I'm going to move on to another topic.

MR. CLARE: Okay.

THE VIDEOGRAPHER: Going off the video record at 2:26 p.m.

(WHEREUPON, a recess was had from 2:26 to 2:34 p.m.)

THE VIDEOGRAPHER: We are going back on the video record at 2:34 p.m.

BY MR. BRODY:

Q. Ready?

A. Ready.

Q. Okay. Before the break we were talking about news that came in in the first quarter about first quarter sales performance. Do you remember any discussions before the closing of the financing relating to Sunbeam's first quarter earnings per share performance?

A. I don't specifically recall those conversations.

Q. In connection with the press release, the discussions around the press release, the roadshow, do you remember anyone saying anything, either by way of a question or as an answer, about

Page 212

what earnings per share looked like from the first quarter?

A. I don't recall.

Q. Okay. Now, after -- withdraw that.

We looked at the report sent to the Equity Committee to get approval to do a portion of this financing deal. There was also a report to the Leveraged Finance Commitment Committee, is that correct?

A. That would make sense, yeah.

Q. Okay. And as you sit here do you remember what your role was in that memorandum?

A. I don't specifically recall, much like the Equity Commitment Committee memo, but I -- my role would have likely been even less on that but for the fact that there -- that I would suspect the documents are, you know, largely similar.

Q. Okay. Well, let me show you what I believe is the document, sir, and we'll talk about it a little.

Giving you what's previously been marked as Exhibit 76. Do you recognize that as the memorandum to the Leveraged Finance Committee and a cover memorandum reflecting that there's to be a -- a conference call about it?

NOT A CERTIFIED COPY

0016894

A. Yeah.
Q. Or a meeting?
A. That looks like the document, yeah.
Q. Starting with the cover page, bearing Bates No. 25829, it references a meeting of the Leveraged Finance Commitment Committee on March 20 at 7:30 a.m. and it gives some dial-in numbers.
As you sit here do you remember participating in that meeting?
A. I don't remember if I did or not.
Q. Do you think you did?
A. I might have, but I might not have and would not have been a critical participant.
Q. Who would have been a more critical participant?
A. I think it would likely have been the leveraged finance team.
Q. And in this deal who are they? Is that Mr. Smith's team?
A. Yes.
Q. Now, on the cover page of Exhibit 76, there's some handwriting. Do you recognize any of that handwriting?
A. No.
Q. There's some numbers down at the bottom.

285-295, 267-295. Do you recognize those numbers? Do you know what they represent?
A. No.
Q. And to the right, the number 21, 15, 10, 45?
A. No.
Q. Above the numbers I just referenced, there appears to be something that looks like maybe "5 percent/25." Do you know what that refers to?
A. I don't.
Q. And then above that, "112.5 short." Do you know what that references?
A. No.
Q. Turning to the next page of the document, this is the -- the memorandum to the committee itself, correct?
A. Yes, sure looks like it, yeah.
Q. And, again, there is some handwriting on the first page. Do you recognize that?
A. No.
Q. On the second page of the document, sir, some additional handwriting. Do you recognize that?
A. No.
Q. Looking at this document, is there any

portion as you sit here today that you believe you drafted or revised?
A. Not that I'm aware of. Again, I think a lot of this was taken from prior documents prepared. But no.
Q. Turn to page 4 to 5 of the memorandum to the committee itself, there's a section on "Due Diligence."
A. Okay.
Q. Just read that to yourself and I'm going to ask you, first, if that's something you wrote.
A. I don't know who wrote that.
Q. You don't recall having done so?
A. No, I don't recall having written it.
Q. At the top of page 5, it is written:
"Additionally, comprehensive accounting due diligence was conducted with Sunbeam's and all the targets' auditors on March 12."
Do you understand that to refer to anything other than the four 30-minute phone calls we earlier talked about?
MR. CLARE: Objection; calls for speculation. You can answer.
BY MR. BRODY:

Q. Let me ask it differently.
Do you know of any due diligence that was done with Sunbeam's and the targets' auditors other than the four 30-minute phone calls you earlier testified about?
A. Well, again, I am not specifically aware, can't specifically cite when those conversations may have taken place.
However, the accountants were involved in other portions of the preparation process. So, to assume there were no conversations with them, I wouldn't assume there were no other conversations with them. But clearly what this is referring to is those scheduled conference calls.
Q. Aside from what we can assume or infer, are you aware of any conversations with the auditors other than those four conversations on the 12th?
A. I'm aware that other conversations took place, whether I was a part of them or not. I know that, you know, the accountants were working closely with the rest of the team in preparation of and review of the document, for one.
Q. And when you --
A. So, I would assume there were

NOT A CERTIFIED COPY

Page 217

conversations taking place while that was happening.
Q. And when you talk about review of the document, you mean the offering memorandum?
A. Yes.
Q. And the information from the accountants contained in the offering memorandum are the historical financial statements?
MR. CLARE: Objection; calls for --
BY MR. BRODY:
Q. Is that correct?
MR. CLARE: Objection; lack of foundation.
BY THE WITNESS:
A. Ask that -- ask the question again.
BY MR. BRODY:
Q. Did the accountants provide information for the offering memorandum other than the historical financial statements of the companies?
MR. CLARE: Objection; lack of foundation. You can answer.
BY THE WITNESS:
A. The accountants review a lot of the facts and figures in the document in addition to the financial statements.
BY MR. BRODY:

Page 218

Q. Do you know what facts and figures they reviewed?
A. I don't specifically know what they reviewed, but it's customary for them to review and provide comfort on a lot of the figures beyond the financial statements in the document.
Q. Do you know if they did that in this case?
A. I, you know, may not have been the primary participant in those discussions, but I would assume that they had. But I don't -- I don't recall specifically what happened.
Q. Okay. I think that answers my question.
Do you know if you reviewed any drafts of this document before it was sent to the committee?
MR. CLARE: Now we're referring to --
MR. BRODY: I'm referring to Exhibit --
MR. CLARE: 76.
MR. BRODY: -- 76.
BY THE WITNESS:
A. I don't recall specifically reviewing this document.
BY MR. BRODY:
Q. I believe you testified you weren't

Page 219

certain whether you participated in this -- this meeting of the committee.
A. Right.
Q. Was it reported to you anything that was said at the committee meeting?
A. I can't recall.
Q. Now, the meeting of the committee took place on the 20th of March, which is the day after the press release was issued.
Do you recall any discussion within the company of the impact of the press release on the deal or on approval by the Leveraged Finance Committee?
A. I don't recall.
Q. Do you know if the Leveraged Finance Committee letter was changed in any way to reflect the information contained in the press release?
A. I don't know.
Q. Aside from what you've testified about, do you remember anything else you did in connection with the preparation, circulation and consideration of the memo to the Leveraged Finance Committee that we've marked as Exhibit 76?
A. No.
Q. Now, between March 20, the date this

Page 220

committee meeting took place, and March 25, the day the deal closed, did you do any further work on the deal that you remember?
MR. CLARE: Object to form. I hate to be picky about this. You keep saying "the deal" and there were a number of financial transactions that closed on different dates.
MR. BRODY: The financing.
MR. CLARE: So, the financing.
BY MR. BRODY:
Q. That's fine. The financing that you worked on.
A. I don't specifically recall what additional discussions or conversations I participated in during that period.
Q. After the press release came out, are you aware of anyone at Morgan Stanley who did any further investigation into the first quarter numbers, either sales or earnings per share?
A. I don't remember.
Q. Do you know of anyone from Morgan Stanley that investigated whether Sunbeam could make its sales projections, could achieve them?
A. Again, I don't remember.

NOT A CERTIFIED COPY

0108696

Page 221

Q. During that time period do you know of anyone from Morgan Stanley that visited any Sunbeam locations, such as shipping docks or shipping facilities?
A. I don't know. And I might not -- you know, wouldn't necessarily know what other members of the team were doing.
Q. Not necessarily. I understand.
Do you know if Sunbeam did anything to monitor -- excuse me.
Do you know if Morgan Stanley did anything to monitor Sunbeam's sales after the press release?
A. I don't know.
Q. Do you know if Morgan Stanley received or requested updates on actual sales during this time period?
A. I don't remember, and I -- I don't remember.
Q. Okay. Are you familiar with a Sunbeam document referred to as the "Daily Scorecard" or the "Daily Sales Report"?
A. No.
Q. Were you involved in a bring-down due diligence call on this matter?

Page 222

A. I don't recall being involved, but I'm aware that one took place.
Q. How are you aware one took place?
A. Because I remember -- I remember it happening. It's a typical, very customary part of the procedure, and I'm aware -- I remember that one happened.
Q. Do you remember who participated in that call?
A. I don't.
Q. And do you remember anything that was said in words or in substance?
A. No, and I don't recall being a part of it.
Q. Okay. Now, if you look at the exhibit we just marked as -- just used, rather, as Exhibit 76, and the description of the financial transaction includes a revolving credit facility and two term loans. Do you see that?
MR. CLARE: What page are you on?
BY THE WITNESS:
A. What page are we on?
BY MR. BRODY:
Q. I'm referring to the second page of the report to the Leveraged Finance Committee.

Page 223

A. Okay.
Q. The $2 billion facility is described here as consisting of a $500 million revolving credit plus two term loans, totaling 1.5 billion. Do you see that?
A. Yes.
Q. And then in the paragraph above that box there is a reference to the 500 million zero coupon convertible subordinated debenture deal.
Do you know if when the deals closed, they closed in those amounts?
A. I don't remember.
Q. Are you aware that at some point after March 19 the amount of the subordinated debenture offering was increased by $250 million?
A. I vaguely -- I mean, I now at that suggestion remember that, yes.
Q. And at the same time the amount of the bank debt was decreased by 250 million?
A. Again, I -- I don't remember all the details. So, you may have the facts. I don't remember.
Q. Do you know why the amounts of the deals were changed?
A. Not specifically or how that

Page 224

determination was made, whether to increase the size of the deal and change the composition of the financing; but assuming there was a fixed need of financing, need for financing, that would make sense.
Q. Do you know who was involved in making that decision?
A. Not specifically.
Q. Do you have a recollection whether the subordinated debenture offering was oversubscribed?
A. I recall that it was, but I don't recall to what degree or the details.
Q. Now --
A. And they often are.
Q. Right. I'd like to focus on a different topic, sir; and, that is, your involvement in preparing the offering document.
A. Okay.
Q. In earlier testimony you think you once referred to the prospectus.
You're aware that there was an offering memorandum for the subordinated debenture offering?
A. Say that -- for the subordinated debenture offering?
Q. For the convertible.

NOT A CERTIFIED COPY

016897

Page 225

A. For the convertible, yes, yes.
Q. And you were involved in working on that?
A. Yes.
Q. What was your involvement in working on the offering memorandum?
A. In reviewing the document that's principally prepared and authored by company and underwriters counsel but principally company counsel and the company.
Q. Okay. So, there are a number of parties that participate in the preparation of the document?
A. Yes, absolutely.
Q. Company's involved?
A. Yes.
Q. Company's counsel's involved?
A. Yes.
Q. Morgan Stanley was involved?
A. Yes.
Q. Morgan Stanley's counsel was involved?
A. Yes.
Q. Morgan Stanley and its counsel made suggestions on the document?
A. Yes.

Page 226

Q. Some of those suggestions went into the document?
A. I'm sure they did, yeah.
Q. Did you make any proposed changes, suggest any proposed changes to the document?
A. I'm sure I did.
Q. Do you recall any of the ones you made?
A. No, not specifically.
Q. In addition to -- withdraw that.
There were drafting sessions at which the document was discussed?
A. Yes.
Q. And in a drafting session representatives of Morgan Stanley as well as from the company and their lawyers were present?
A. I would say typically, yeah. Is that the case in each and every case? I don't know. In this case, I don't know. But --
Q. Do you remember if you were ever present at a drafting session?
A. I do believe I was.
Q. Do you remember where that took place?
A. No. I vaguely recollect that most of that happening in New York, but I don't -- don't recall.

Page 227

Q. Do you know if they ever took place at Morgan Stanley offices?
A. I don't remember.
Q. At --
A. That would be -- that would not be typical. They tend to be at the -- one of the attorney's offices or a printer.
Q. Or? I'm sorry?
A. Or a printer.
Q. Okay. Do you know if any of those meetings took place at the Davis Polk law firm?
A. I don't remember.
Q. Aside from commenting on the offering memorandum for the convertible debentures, did you offer comments on any of the other deal documents, financing documents?
A. To what document -- what document are you referring to?
Q. Well, in connection with a transaction of this type there are frequently a variety of documents, underwriting agreements, agreements among underwriters, offering memoranda, various other securities filings.
A. I don't remember if I made comments to some of those other documents. They would tend to

Page 228

be more mechanical and not something that I would have spent a lot of time with.
Q. Aside from yourself, sir, do you remember other representatives of Morgan Stanley making comments or suggestions to the offering document?
A. Yes.
Q. Who else?
A. John Tyree. That's all. That's the only other name that -- that I can recall or would specifically recall having made comments.
(WHEREUPON, a certain document was marked CPH Exhibit No. 132, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Sir, I've given you what's been marked as Exhibit 132, and it identifies a distribution list and I see your name on it.
Do you have a recollection of having received this document?
A. Not specifically.
Q. And in the -- the document is sent by Mr. Dietz and Mr. Freed who are counsel for Morgan Stanley -- excuse me -- counsel for Sunbeam, is that correct?

NOT A CERTIFIED COPY

Page 229

A. I'm looking to see who --
Q. They're from Skadden, Arps, if that assists.
A. Yeah, okay.
Q. In the cover memo, the second sentence refers to riders proposed by Morgan Stanley, proposed riders prepared by Morgan Stanley.
Did you have anything to do with -- with drafting those proposed riders?
A. I don't remember.
Q. Do you remember them being discussed at the meeting on the 12th of March?
A. No, I don't remember this meeting, if I attended it.
Q. If you turn to the second page, the list of attendees, do you remember all of those individuals -- excuse me. I said attendees. I mean distribution list.
Do you remember whether all of those attendees for Morgan Stanley attended some of the drafting sessions?
A. Whether all of them?
Q. Well, you attended a drafting session, correct?
A. I -- I recall generally attending. I

Page 230

don't know if it was this one or another one.
Q. Do you know if Mr. -- do you know if Mr. Yoo attended a drafting session, Y-o-o?
A. I don't remember.
Q. Do you know if Mr. Derito did?
A. I don't remember.
Q. Mr. Hart?
A. Similarly, don't remember. Don't remember if this one or another one.
Q. I mean any of them.
A. I don't remember.
Q. Okay. And, finally, Mr. Burchill?
A. Don't remember.
Q. After the final offering memorandum was completed, did you receive a copy?
A. Yes.
Q. Is that one of the documents that you kept about this deal?
A. It probably would have been one of the documents I kept.
Q. Do you believe there was anything in the offering -- offering memorandum that was false or misleading in any way?
MR. CLARE: Object to the form.
BY THE WITNESS:

Page 231

A. I mean, I wouldn't consider myself in a position to comment on the accuracy of every piece of information in that document.
BY MR. BRODY:
Q. But as you --
A. There was nothing that I knew blatantly to be -- to be false.
Q. In connection with any of those drafting sessions, do you recall discussions with Morgan Stanley people, the counsel, Sunbeam people or any of the participants about making disclosures about Sunbeam's first quarter performance?
A. I don't specifically recall those conversations or any conversation like that.
MR. BRODY: I'm going to mark an additional document, sir.
(WHEREUPON, a certain document was marked CPH Exhibit No. 133, for identification, as of 1/22/04.)
MR. BRODY: 133. I think this will be brief, but I'm going to ask you anyway.
BY MR. BRODY:
Q. I'm not going to ask you about this document, sir, other than the handwriting. Is any of that handwriting yours?

Page 232

A. No.
Q. And I'm going to refer to a couple of specific pages. The page bearing No. 59257.
MR. CLARE: 257?
MR. BRODY: Yes.
BY THE WITNESS:
A. There is nothing on that one.
BY MR. BRODY:
Q. That's not yours?
A. There's nothing on it. 59257?
Q. 59257.
MR. CLARE: Here.
BY THE WITNESS:
A. No.
MR. CLARE: You are talking, Mike, about the number under the EBITDA line.
MR. BRODY: I am.
MR. CLARE: Okay.
BY THE WITNESS:
A. No.
BY MR. BRODY:
Q. Okay. And I think you saw the page numbers on the cover up in the upper right corner. That's not yours?
A. No.

NOT A CERTIFIED COPY

0168

Page 233

Q. Okay. Then put that aside.
Mr. Savarie, I'm handing you what's previously been marked as Exhibit 36. This is a press release issued by the company on April 3, 1997.
Have you ever seen that before?
A. Yeah, I saw it yesterday.
Q. Prior to yesterday had you seen it before?
A. I -- I may have seen this. I don't -- I don't recall specifically, though.
Q. In the cover memo from Mr. Fannin, he refers to the fact that Mr. Goudis was leaving the company.
Did you have conversations with Mr. Goudis about his departure from the company?
A. I don't believe I had conversations until after he had departed and I met with him once after he had gone to Rexall Sundown.
Q. What do you recall discussing with him at Rexall?
A. I was, as I recall, introducing a colleague of mine to him --
Q. Did you discuss --
A. -- and it was about Rexall Sundown.

Page 234

Q. Did you discuss at all his experience at Sunbeam?
A. No.
Q. Did you have --
A. Not that I can remember. I don't remember. I don't remember exactly what we talked about. But I don't remember it being focused around Sunbeam.
Q. I understand. The press release itself, do you recall seeing that before it was issued or being aware of it before it was issued?
A. I don't specifically recall whether and when I saw it.
Q. Do you have any recollection of having seen it prior to its issuance?
A. Not specifically.
Q. The press release refers to Mr. Uzzi's departure from the company. Were you advised prior to his departure that Mr. Uzzi was leaving the company?
A. No. Was I personally advised?
Q. Yes.
A. No, no.
Q. Did you ever have any dealings or conversations with Mr. Uzzi?

Page 235

A. I don't specifically recall any conversations. He may well have been in a meeting that I was in, but I don't specifically recall him personally.
Q. After April 3, the date of this press release, did you personally have any involvement in Morgan Stanley's work for Sunbeam that you recall as you sit here?
A. Yeah, I was still, if you will, in the wings to help Bill as needed. But can't specifically recall what it was I was doing or did.
Q. Do you recall anything that you did?
A. You know, later, I attended a presentation in New York. I remember sort of being part of a big group that attended a presentation in New York, and then Bill had me help him with some of the work.
There was a PR firm that got involved at some point, and I was, you know, helping them get some of the background information, et cetera.
Q. We'll turn to that briefly in a moment.
But were you involved in any effort of Morgan Stanley to syndicate its financing, to get other lenders to participate?
A. I was not directly involved in that, in

Page 236

that part of the process.
Q. Did you have any indirect involvement?
A. Only to the extent I highlighted sort of the -- the cross-coordination between various members of the team sort of working together on all these projects in parallel.
Q. Okay. I'm not sure I understand what that means. Let me ask you a couple of questions.
A. Well, meaning that we -- we attended, in some cases, the bank team and the convertible team attended meetings together. There were memos obviously that shared a lot of content.
Q. I think I understand what you mean.
A. Right.
Q. Focusing on the time after the closing of the financing deals at the end of March, were you involved in efforts after that point to try to involve other bank participants in the syndication of --
A. Was I?
Q. Yes.
A. No, I was not -- you know, not involved in the bank syndication, at least to my recollection.
Q. Okay. At some point -- let me withdraw

NOT A CERTIFIED COPY

Page 237

that.
Morgan Stanley's financial performance in the first quarter of 1998 did not meet its sales or earnings estimates on the street, did it?
MR. CLARE: Objection. I think, again, you misspoke.
MR. BRODY: I said Morgan Stanley?
MR. CLARE: Sunbeam.
MR. BRODY: Yeah.
BY MR. BRODY:
Q. Sunbeam's earnings and sales for the first quarter of 1998 did not meet street projections, did they?
A. Again, I don't recall all the specifics, but that's right.
Q. And isn't it also true that Sunbeam's first quarter 1998 sales fell short of its first quarter 1997 sales?
A. Again, I'm not familiar with the -- how all the numbers came out, but I recall that generally.
Q. And the -- do you know if the convertible debentures that you were involved in the financing of were ever paid?
A. Were ever --

Page 238

MR. CLARE: Object to the form.
BY MR. BRODY:
Q. Were they repaid by Sunbeam?
A. I don't know.
Q. Do you know if the investors in those bonds have been made whole?
A. I don't know.
Q. Is that something you've participated in or followed?
A. No.
Q. Turning to the meeting with the analysts that you referred to, do you know why it was, sir, that you were involved in that presentation, that meeting?
A. Again, because I had been involved with the company, I had worked with Bill. I think Bill continued to maintain dialogue with the company. I vaguely recall he may have played a role in introducing them to the PR firm and asked me as a -- as a result of that to help him with certain aspects of that.
Q. Okay. So, you participated at the request of Mr. Strong?
A. Right.
Q. At the presentation -- well, let me

Page 239

withdraw that.
There was ultimately a presentation given to analysts?
A. Yeah, I can't remember who the audience was but, yeah, there was a big presentation I remember in New York.
Q. Did you participate? Did you attend?
A. Yeah, I sat in the audience.
Q. You didn't speak?
A. No.
Q. Did you prepare any of the slides or materials used in the presentation?
A. I don't recall preparing any slides for that.
Q. Do you know if you reviewed slides that were presented at the presentation?
A. I may have. I may have or may have, you know, put things together, provided certain pieces of information that were used in those slides. I don't recall specifically, though, what I did.
Q. Okay.
(WHEREUPON, a certain document was marked CPH Exhibit No. 134, for identification, as of 1/22/04.)
BY MR. BRODY:

Page 240

Q. Mr. Savarie, the Court Reporter has given you what's been marked as Exhibit 134.
A. Okay.
Q. You can look at as much of this as you want, but I'm going to focus on the beginning portions of it. So, let me know when you've had a chance to look at those.
A. Okay.
Q. The recipients of this -- of this memorandum, Sard, Verbinnen and Bailey, are they at the PR firm?
A. That's my recollection, yeah.
Q. Do you remember the name of the PR firm as you sit here?
A. I think it was Sard Verbinnen.
Q. Beginning -- do you remember receiving a copy of this memorandum from anyone?
A. I don't. I don't specifically. I saw it again yesterday, but I don't recall.
Q. At the beginning -- at the beginning Mr. Fannin says:
"Some slides are available from Morgan Stanley. You can call Bill Strong or Andy Savarie to get those."

NOT A CERTIFIED COPY

Page 241

Do you recall receiving a call from anyone asking for slides for use in this presentation?
A. Again, I don't recall specifically a call. However, as I indicated, I -- I do generally remember being asked to provide materials that we may have had, whether they were slides or other things, for their use in helping to prepare these presumably.
Q. After you provided those slides, do you know if you were -- withdraw that.
After you provided the slides, did the PR firm edit them in any way?
MR. CLARE: Objection; lack of foundation.
BY THE WITNESS:
A. I mean, I don't remember specifically what was done with anything that I may or may not have provided.
Q. Okay.
(WHEREUPON, a certain document was marked CPH Exhibit No. 135, for identification, as of 1/22/04.)
BY MR. BRODY:
Q. Sir, I've given you what's been marked as Exhibit 135.

Page 242

Do you recognize these as the slides that were used in that presentation on May 11?
A. I don't recognize them because I haven't seen them in six years. But they look to be the slides used in that presentation.
Q. I'm going to ask you about several of the slides, and my question on all of them really is going to be did these come from Morgan Stanley and then, if so, we'll see what you remember about them.
And we'll start with the slide at page 63740, the "Chain Reaction" slide. Do you recall that slide?
A. No.
Q. Do you know if that slide came from Morgan Stanley?
A. I don't know where that slide came from.
Q. The next slide I'd like to ask you about is at page 63748, the "Cost Savings and Synergies" slide. Is that a slide that Morgan Stanley provided?
A. I don't know.
Q. That -- you don't recall that slide?
A. No, I don't recall that slide.
Q. The following page is an additional

Page 243

"Synergies" slide. Do you have a recollection of that or know its source?
A. No.
Q. Page 63751 entitled "Sources of Growth."
A. No, I don't recall -- recall this slide.
Q. A few pages further, page 63755, various savings summaries. Do you recognize that?
A. No.
Q. Having seen these slides, do they refresh your recollection at all as to the work done by Coopers & Lybrand for Sunbeam at the time?
A. Not particularly. Whether there was any work being done by them after the fact, I was not intimately involved in. And much after -- after the conclusion of the financing.
Q. Okay. And if you'd turn further, pretty far back in the document, to page 63790.
A. I don't recall this either.
Q. Okay. Okay. You can put that document aside, sir.
I think we're pretty much done. I just want to ask a couple follow-up things.
In 1997 and 1998 when you worked on this deal, by whom were you evaluated? How was your performance at the company evaluated?

Page 244

A. At Morgan Stanley?
Q. Yes.
A. It would be, you know, a combination of the managing directors that I worked for, Bill Strong, Frank English, John Adams and other people that were evaluating me.
Q. Did they fill out forms and send them in?
A. Yeah.
Q. Was there a self -- I'm sorry.
A. Yeah. I'd say in the -- in the sort of the normal process, yes.
Q. Was there a self-evaluation that you also had completed?
A. I'm sure there was. I don't -- at that point -- I don't know what we did at that stage six years ago, but -- so, I don't specifically remember if that year we had to do one or not.
Q. But there were years when you did one?
A. Yeah.
Q. At that time were you compensated with a base pay and a bonus?
A. Yes.
Q. Do you know how the base pay was determined?

NOT A CERTIFIED COPY

016902

Page 245

A. The base pay?
Q. Yes.
A. The base pay was pretty common across the bank based on seniority.
Q. So, that was more --
A. Level.
Q. -- a lockstep compensation?
A. Yes. The base pay.
Q. And the bonus, was that decided based on your performance at the company?
A. Yes, presumably, although I don't know how, but...
Q. In fact, many companies have bonuses where the employees have no idea how they work, which somewhat defeats their purpose but...
A. Right.
Q. In terms of relationship to your base pay, how did your bonus compare, in 1997?
A. I don't remember what I made in 1997, but I would -- and I'm speculating. I would guess it was, you know, probably two times, three times, perhaps what my base pay was.
Q. And in 1998, do you know if it was the same?
A. Probably about the same.

Page 246

Q. Was that customary for people at your level of seniority within the company, to have a bonus --
A. I don't know, candidly. Is it customary that it be a multiple of it? Yes. Is it the difference between two, three and four? Perhaps, and there's a range of compensation.
Q. Do you know who made the decision about what bonus to pay you?
A. No.
Q. Were you evaluated by anyone for your work on the Sunbeam engagement?
A. I'm sure that I was, but I don't specifically recall who.
Q. The next question --
A. I mean, I, you know -- it would have logically been something to have asked someone to -- not necessarily on that transaction, but it may well have been members of the team that I worked on that and other things with or during the course of the year.
Q. Do you recall if your base pay or bonus compensation were affected in any way by the work you did on Sunbeam?
A. I don't recall any specific reference to Sunbeam.
Q. Do you know if your departure from the company, from Morgan Stanley, had anything to do with your work for Sunbeam?
A. I don't think it did.
Q. Were you told why?
A. Why I departed?
Q. Yeah.
A. Yeah. It had more to do with at that point in my career spending a lot more time on automotive and how that was, you know, less a priority.
Q. You've answered more than I asked.
When you were told the reasons why you were leaving the company, was Sunbeam mentioned in any way?
A. No.
MR. BRODY: I don't have anything further. Thank you for your time.
MR. CLARE: I don't have any questions.
THE VIDEOGRAPHER: We are going off the video record at the end of Tape 3 at 3:19 p.m.
MR. BRODY: You're reserving signature.
MR. CLARE: Yes.
(Time Noted: 3:19 p.m.)

Page 247

Page 248

FURTHER DEPONENT SAITH NAUGHT.

016903

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,)
Plaintiff,)
-vs-)
MORGAN STANLEY & CO., INC.,)
Defendant.)

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 248, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

ANDREW SAVARIE

SUBSCRIBED AND SWORN TO before me this day of , A.D. 2004.
Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF DU PAGE)

I, CORINNE T. MARUT, C.S.R. No. 84-1968, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That the reading and signing by the witness of the deposition transcript was agreed upon as stated herein;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand and affix my seal of office at Chicago, Illinois, this 26th day of January, 2004.

CORINNE T. MARUT, C.S.R. No. 84-1968
Notary Public, DuPage County, Illinois.
My commission expires July 3, 2005.

NOT A CERTIFIED COPY

INDEX

ANDREW SAVARIE	EXAMINATION
MR. BRODY (a.m. session)	4
MR. BRODY (p.m. session)	147

EXHIBITS

CPH EXHIBIT	MARKED FOR ID
No. 125	38
No. 126	76
No. 127	102
No. 128	109
No. 129	121
No. 130	154
No. 131	177
No. 132	228
No. 133	231
No. 134	239
No. 135	241

016904

EXHIBITS PREVIOUSLY MARKED
FIRST REFERRED TO
CPH EXHIBITS

Exhibit 5	87
Exhibit 6	29
Exhibit 17	207
Exhibit 29	86
Exhibit 31	95
Exhibit 32	98
Exhibit 75	201
Exhibit 76	212
Exhibit 100	138

NOT A CERTIFIED COPY

016905

NOT A CERTIFIED COPY

016906

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

MORGAN STANLEY & CO. INCORPORATED, MORGAN STANLEY SENIOR FUNDING, INC., and MORGAN STANLEY,

Plaintiffs,

v.

ARTHUR ANDERSEN LLP (an Illinois limited liability partnership), AWSC SOCIÉTÉ COOPÉRATIVE, *en liquidation* (a Swiss cooperative corporation), ARTHUR ANDERSEN LLP (an Ontario limited liability partnership), ARTHUR ANDERSEN & CO. (a Hong Kong partnership), RUIZ, URQUIZA Y CIA, S.C. (a Mexico partnership), PORTA CACHAFEIRO, LARIA & ASOCIADOS (a Venezuela partnership), PHILLIP E. HARLOW, WILLIAM PRUITT, and DONALD DENKHAUS,

Defendants.

CASE NO. 502004CA002257XXXXMB
Division AA

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CRIMINAL DIVISION
AUG 06 2004
COPY / ORIGINAL
RECEIVED FOR FILING

NOT A CERTIFIED COPY

FIRST AMENDED COMPLAINT

In March 1998, Morgan Stanley & Co. Incorporated ("MS & Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), and Morgan Stanley — in direct reliance on certified financial statements that were audited by Defendant Arthur Andersen LLP (an Illinois limited-liability partnership) ("Andersen") with the assistance of and in coordination with the other Defendants named in this Complaint[1] — underwrote a multi-million dollar offering of convertible notes and

[1] AWSC, Société Coopérative, *en liquidation*, a Swiss cooperative corporation ("Andersen-Worldwide") (formerly known as Andersen Worldwide, Société Coopérative), Arthur Andersen LLP (an Ontario limited liability partnership) ("Andersen-Canada"), Arthur Andersen & Co. (a

016907

provided a $680 million loan to Sunbeam Corporation, Inc., in connection with Sunbeam's acquisition of three companies. As Sunbeam's subsequent restatement of its financial results showed, these certified financial statements grossly misrepresented Sunbeam's true financial condition. Andersen and the other Defendants had full knowledge of these misstatements, and they intended that MS & Co. and MSSF would rely on these unqualified audit opinions. Plaintiffs — as a direct consequence of this deceit — have lost hundreds of millions of dollars. Accordingly, Plaintiffs bring this action and allege the following:

Nature of Action

1. In March 1998, Sunbeam announced the acquisition of The Coleman Company, Inc., Signature Brands USA, Inc., and First Alert, Inc. In order to finance these acquisitions, Sunbeam issued $750 million of convertible notes, which MS & Co. underwrote, and borrowed $1.2 billion in secured financing, including a loan of $680 million from MSSF.

2. In serving as an underwriter (which required MS & Co. to act as the initial purchaser of the convertible notes) and in agreeing to extend the loan, MS & Co. and MSSF relied on the accuracy of Sunbeam's financial statements, including its 1996 and 1997 financial statements that had been audited and certified by Andersen, as well as other representations made to them by Andersen. The Andersen-certified Sunbeam financial statements portrayed Sunbeam as a financially sound company in the midst of an extraordinary financial turnaround.

Hong Kong partnership) ("Andersen-Hong Kong"), Ruiz, Urquiza y Cia, S.C. (a Mexico partnership) ("Andersen-Mexico"), Porta Cachafeiro, Laria & Asociados (a Venezuela partnership) ("Andersen-Venezuela"), Phillip E. Harlow, William Pruitt, and Donald Denkhaus.

NOT A CERTIFIED COPY

016908

16div-025052

3. In reality, unbeknownst to Plaintiffs, Sunbeam's "turnaround" was an illusion facilitated by the Defendants. As became apparent in the summer of 1998 and as confirmed by Sunbeam's subsequent restatement of its financial results, the 1996 and 1997 statements that Andersen had certified — and upon which MS & Co. and MSSF had relied — did not, contrary to the representations that Andersen made to MS & Co. and MSSF, conform with generally accepted accounting principles ("GAAP"). Andersen, with full knowledge of the material misstatements contained in Sunbeam's financial reports, issued unqualified audit opinions for both 1996 and 1997. In so doing, it failed to perform its audit in accordance with generally accepted auditing standards ("GAAS").

4. In fact, the statements that Andersen audited and certified as in compliance with GAAP and as representing Sunbeam's true financial condition, were replete with accounting improprieties. As a consequence, and contrary to the representations that Andersen made to MS & Co. and MSSF, Sunbeam's true financial condition was misstated by millions of dollars.

5. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow (the Sunbeam engagement partner) and Pruitt (the Sunbeam concurring partner) were senior partners of Andersen and members of Andersen-Worldwide and undertook direct responsibility for directing, managing, and approving the work that was done on the Sunbeam audits. Denkhaus, who also was a senior partner of Andersen and a member of Andersen-Worldwide, was the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region and in this role undertook responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. Harlow, Pruitt, and Denkhaus also knew or recklessly disregarded that the

NOT A CERTIFIED COPY

016909

erroneous financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the convertible notes and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

6. This fraud was also knowingly perpetrated by the foreign Andersen branches named in this complaint, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela (collectively, the "Foreign Andersen Branches"). Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

7. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

8. This fraud ultimately forced Sunbeam and several of its subsidiaries to seek relief under Chapter 11 of the Bankruptcy Code, in February 2001. As part of the bankruptcy court-approved reorganization plan, MSSF's $680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, the convertible notes issued by Sunbeam and held by MS & Co. had been rendered substantially less valuable.

NOT A CERTIFIED COPY

016910

9. By this complaint, Plaintiffs seek compensatory damages of several hundreds of millions of dollars.

THE PARTIES AND OTHER RELEVANT ENTITIES

10. MS & Co. is a financial services firm that engages in underwriting, investment banking, financial advisory services, securities sales and trading, and research. In late 1997 and early 1998, MS & Co. assisted Sunbeam in identifying potential acquisition targets and served as Sunbeam's financial advisor with respect to certain aspects of Sunbeam's acquisitions of Coleman, Signature Brands, and First Alert. MS & Co. also served as the underwriter of a $750 million offering of convertible notes that Sunbeam used to finance these acquisitions. MS & Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

11. MSSF is a company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide a loan to Sunbeam in connection with Sunbeam's acquisition of Coleman, Signature Brands, and First Alert. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

12. Morgan Stanley is a financial services company. It owns 100 percent of the stock of both MS & Co. and MSSF. Morgan Stanley is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

NOT A CERTIFIED COPY

016911

13. Andersen was a member in or business unit of Andersen-Worldwide. Andersen is a partnership formed under the laws of the State of Illinois. Once one of the world's largest accounting firms, almost all of its partners have left the firm. Andersen participated in and coordinated the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. In addition, Andersen's partners and employees provided consulting services to Sunbeam as part of due diligence work performed in conjunction with Sunbeam's acquisition of Coleman, as well as on other projects.

14. Andersen-Worldwide is a cooperative corporation organized under the laws of Switzerland. Its members included more than 2,000 individuals from 390 offices in 84 countries. Various individuals who were members of Andersen-Worldwide participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. Andersen-Worldwide and Andersen dictated the policies and procedures to be used by Andersen members and affiliates throughout the world. Andersen and Andersen-Worldwide at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise comprising "one firm" with "one voice" and "common values and vision," (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics, (c) failed to observe corporate formalities, and (d) used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities, employees, and business opportunities were their own.

15. Andersen-Canada was a member in or part of Andersen-Worldwide. Andersen-Canada is a partnership organized under the laws of the province of Ontario, Canada. Andersen-Canada audited the 1996 and 1997 audits of Sunbeam's Canadian subsidiary for inclusion in

NOT A CERTIFIED COPY

016912

Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

16. Andersen-Hong-Kong was a member in or part of Andersen-Worldwide. Andersen-Hong Kong is a partnership organized under the laws of Hong Kong. Andersen-Hong Kong audited the 1996 and 1997 audits of Sunbeam's Hong Kong subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

17. Andersen-Mexico was a member in or part of Andersen-Worldwide. Andersen-Mexico is a partnership organized under the laws of Mexico. Andersen-Mexico audited the 1996 and 1997 audits of Sunbeam's Mexican subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

18. Andersen-Venezuela was a member in or part of Andersen-Worldwide. Andersen-Venezuela is a partnership organized under the laws of Venezuela. Andersen-Venezuela audited the 1996 and 1997 audits of Sunbeam's Venezuelan subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

19. Defendant Harlow is a resident of Florida and at all times material hereto was a partner in Andersen and a member in Andersen-Worldwide. He served as the engagement partner on the audits of Sunbeam's financial statements from 1993 to 1998. As engagement partner, Harlow undertook the primary responsibility for supervising the 1996 and 1997 audits of Sunbeam, including directing and overseeing the activities with respect to the Sunbeam work

NOT A CERTIFIED COPY

016913

performed by numerous persons at Andersen. Harlow also participated as a member of Sunbeam's due diligence team in connection with Sunbeam's acquisition of Coleman.

20. Defendant Pruitt is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. He served as the concurring partner on the Sunbeam audits for at least 1996 and 1997. As such, he undertook responsibility for independently reviewing the Sunbeam audit work that had been conducted under Harlow's supervision and ensuring that it complied with GAAP and GAAS.

21. Defendant Denkhaus is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. Denkhaus was Audit Division Head and manager of Andersen's audit practice for the entire South Florida region. As such, Denkhaus undertook responsibility for ensuring that the audit work performed by Andersen in the South Florida region was conducted in accordance with GAAP and GAAS. Denkhaus also served as the engagement partner on Sunbeam's ultimate restatement of its financial statements.

22. At all times material hereto, Sunbeam Corporation was headquartered in Palm Beach County, Florida. Sunbeam Corporation, through its operating subsidiaries and affiliates, manufactured, marketed, and distributed durable household and outdoor leisure consumer products through mass-market and other consumer channels. On February 6, 2001, Sunbeam and several of its affiliates filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Sunbeam has since emerged from bankruptcy and now operates under the name American Household.

23. The Coleman Company, Inc. was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman was a Delaware corporation, with its principal place of business in Kansas. Prior to March 30, 1998, Coleman (Parent)

NOT A CERTIFIED COPY

016914

Holdings Inc. ("Coleman-Parent") owned 44,067,520 shares (or approximately 82 percent) of Coleman. Coleman-Parent is a Delaware corporation, with its principal place of business in New York and is a wholly-owned subsidiary of MacAndrews and Forbes Holdings, Inc. ("MAFCO"). MAFCO is a global investment firm owned and operated by financier Ronald O. Perelman. Through its various subsidiaries and affiliates, MAFCO owns and/or controls a number of multi-billion dollar global corporations, including Revlon, Inc., the international consumer cosmetics company. MAFCO is a Delaware corporation, with its principal place of business in New York.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action pursuant to section 26.012(2)(a), Florida Statutes, because Plaintiff seeks damages in excess of $15,000 exclusive of interest, costs, and attorneys' fees.

25. This Court has personal jurisdiction over Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela pursuant to section 48.193(1)(a), (b), and (f), Florida Statutes, because each of them, directly or through its partners, members, agents, or employees, (1) operated, conducted, engaged in, or carried on a business or business venture in Florida from which the acts and injuries complained of in this action arose, (2) committed within Florida the tortious acts complained of in this action, or (3) by an act or omission outside of Florida, caused the complained-of injuries to Plaintiffs to occur within Florida at or about the time that it was engaged in service activities in Florida or that its services were used or consumed within Florida in the ordinary course of commerce, trade, or use.

26. This Court has personal jurisdiction over Defendants Harlow, Pruitt, and Denkhaus, because each of them is a resident of Florida.

NOT A CERTIFIED COPY

016915

27. Venue is proper in this Court pursuant to section 47.011, Florida Statutes, because Andersen maintained an office with more than 30 employees and partners in Palm Beach County, and the cause of action accrued in Palm Beach County.

FACTUAL BACKGROUND

Andersen's and Sunbeam's Fraudulent Scheme

28. In July 1996, to address its growing financial difficulties, Sunbeam hired Albert Dunlap as Chairman and Chief Executive Officer. Dunlap was a well-known "turnaround" specialist who had a history of apparent success at other companies. He was nicknamed "Chainsaw Al" because of his practice of cutting staff and closing plants to achieve quick turnaround results.

29. Immediately after he was hired, Dunlap publicly predicted that, as a result of the Company's restructuring, Sunbeam would attain significant increases in its margins and sales. Dunlap replaced almost all of top management with his own selections, hiring Russell A. Kersh (Chief Financial Officer); Donald R. Uzzi (Vice President, Marketing and Product Development, and later Executive Vice President, Consumer Products Worldwide); Lee B. Griffith (Vice President, Sales); and Robert J. Gluck (Principal Accounting Officer).

30. Unbeknownst to the public and to Plaintiffs, Sunbeam's new senior management embarked upon a scheme designed to misrepresent Sunbeam's financial condition. Sunbeam's subsequent November 1998 restatement of its 1996 and 1997 financial statements revealed the plan that Sunbeam's management had adopted and Andersen facilitated. In 1996, Sunbeam's management, with Andersen's knowing assistance, caused Sunbeam to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against

NOT A CERTIFIED COPY

0116916

16div-025060

which the company's performance in 1997 would be measured. In 1997, by contrast, management caused Sunbeam dramatically to overstate its earnings. When 1997 operating earnings were eventually corrected and restated, they were $95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

31. In order to convince the public that Sunbeam's turnaround was real, Sunbeam needed an outside auditor to validate its financial reports. Andersen — desperate to retain a valuable client — stood ready to assist Sunbeam in its scheme.

32. After Dunlap assumed control of Sunbeam, Andersen had reason to fear that its relationship with Sunbeam was in jeopardy. Harlow, Pruitt, and Denkhaus knew that Dunlap had employed Coopers & Lybrand, one of Andersen's major competitors, as a financial consultant and independent auditor in past turnaround assignments. In fact, Dunlap had already engaged Coopers & Lybrand to assist in planning Sunbeam's massive restructuring.

33. Andersen had a significant stake in retaining Sunbeam, a long-time major client. Being dropped by a high-profile client such as Sunbeam would have been a severe blow to Andersen's reputation. The company generated substantial income for Andersen's Florida office, paying over $1 million in fees for its 1995 audit alone and providing it with substantial income from lucrative consulting assignments. Indeed, Andersen was so eager to keep Sunbeam as its client that it agreed to a 30-percent reduction in its 1996 audit fees.

34. Andersen's fees were particularly important to Andersen's partners, whose incomes were dependent on the continued business from Sunbeam. Andersen tied part of its audit partners' compensation to the solicitation and marketing of non-audit consulting services, and created other revenue-sharing arrangements between audit and consulting partner groups.

NOT A CERTIFIED COPY

016917

35. Andersen put tremendous pressure on partners to generate more fees. A "depth chart" was developed for each audit client based upon the level of services provided to that client. Partner compensation was determined based on the additional services sold, and the ability of an Andersen partner to increase his income depended directly upon the level of fees that the partner "controlled" or sold to his or her assigned clients. These pressures led directly to a conflict of interest for the auditors on the Sunbeam engagement and were a significant factor that caused Andersen, Harlow, Pruitt, and Denkhaus, as well as the Foreign Andersen Branches, to abandon their independence, objectivity, and integrity on the Sunbeam financial statement audits and reviews.

Andersen's Worldwide Operations

36. Andersen was formed in Illinois in 1913 as an accounting and consulting partnership under the name "Arthur Andersen & Co." In 1977, as Andersen increased its global presence, it created a new structure called the "Andersen Worldwide Organization." The Andersen Worldwide Organization was overseen by Andersen-Worldwide, which acted as an umbrella organization for the Andersen, the other Andersen Worldwide Organization member firms, the members and contract partners of Andersen-Worldwide, and the individual members and partners of the Andersen Worldwide Organization member firms. The model adopted by the Andersen Worldwide Organization was intended to preserve "The Heart of Partnership Culture," including income sharing among the member firms of the Andersen Worldwide Organization and a common governance model. Thus, partners (or equivalents) in the various branches of the Andersen Worldwide Organization were also members of Andersen-Worldwide, resulting in a global partnership of more than 2,000 individuals from 390 offices in 84 different countries. In

NOT A CERTIFIED COPY

016918

addition to overlapping partners and members, Andersen-Worldwide and Andersen shared officers in common. For example, the former CEO and Managing Partner of Andersen-Worldwide, Joseph Berardino, was also the CEO and Managing Partner of Andersen.

37. Andersen-Worldwide and Andersen also shared the same address. In its promotional literature, Andersen-Worldwide stated that its headquarters were located at 33 West Monroe Street, Chicago, Illinois 60603. That is the same address as the headquarters of Andersen.

38. Andersen-Worldwide set uniform professional standards for all its offices and required the members and partners in its international offices to agree to be bound by those professional standards and principles. Andersen-Worldwide coordinated the sharing of costs and allocation of revenues and profits among its members and partners and its offices around the world. Andersen-Worldwide operated under a worldwide tax structure. In addition, Andersen-Worldwide handled all borrowing on behalf of its international offices and maintained those offices' financial records, payroll, and employee health-benefits plans. All of Andersen's offices also shared global computer operations and training facilities.

39. The components of the Andersen Worldwide Organization ignored corporate formalities in referring to themselves and each other. For example, personnel affiliated with Andersen and Andersen-Worldwide regularly exchanged correspondence and e-mails that were labeled "Andersenwo" — short for "Andersen World Organization." Documents prepared by Andersen often bore the insignia and logos of Andersen-Worldwide, including "Andersen-Worldwide," "Andersen," and "Arthur Andersen." In its promotional literature, Andersen used the names "Andersen Worldwide," "Andersen," and "Arthur Andersen" interchangeably. In addition, Andersen sometimes used only the name "Andersen" when referring to all or part of the

NOT A CERTIFIED COPY

016919

16div-025063

Andersen Worldwide Organization and did not differentiate between Andersen-Worldwide and its offices around the globe.

40. In promotional literature, Andersen, Andersen-Worldwide, and the member firms of the Andersen Worldwide Organization marketed themselves as "one firm," "a single worldwide operating structure," that "think[s] and act[s] as one."

41. News releases issued by Andersen, Andersen-Worldwide, and other member firms confirmed that the Andersen Worldwide Organization and Andersen operated as a single worldwide organization:

- Andersen referred to the brand identity adopted by the member firms of the Andersen "global client service network."
- "With world-class skills in assurance, tax, consulting and corporate finance, Arthur Andersen has more than 77,000 people in 84 countries who are united by a single worldwide operating structure that fosters inventiveness, knowledge sharing, and a focus on client success."
- "Arthur Andersen is significantly different from the other firms in structure, governance and culture — differences which can be pivotal in terms of the quality of service a client company receives. Important distinctions mark our firm from the rest. We have evolved a unique organizational culture that today unites the people of Andersen Worldwide. We are the only true global firm, sharing knowledge and doing business across borders, sharing costs which fund methodologies, research and development, lines and industry groups."
- Andersen spokesman David Tabolt stated: "We conduct more than 30,000 audits around the world every year."
- "AA is already much more integrated globally than the rest of the Big Five. As Mr. Berardino [Andersen-Worldwide's former CEO, who resigned in March 2002] points out, 'there is one name over the door. We're not an alphabet soup.' The cohesiveness of AA's culture has been a source of humor to outsiders, who have labeled its bean counters 'Androids.' While some rivals are still struggling with a complicated array of national partnerships, and thus different systems for sharing pay, AA partners enjoy a single, and possibly unique, system of remuneration: they receive a list of what each of them has earned in the past year."

NOT A CERTIFIED COPY

016920

- "Arthur Andersen is a global professional services organization consisting of over 100 member firms and more than 61,000 people united by a single worldwide operating structure and a common culture of innovation and knowledge sharing. This unique 'one-firm' approach qualifies the people of Arthur Andersen to serve clients by bringing together any of more than 40 competencies in a way that transcends geographic borders and organizational lines. Arthur Andersen's people provide effective business solutions to over 100,000 clients in 81 countries around the world. Since its beginning in 1913, Arthur Andersen has realized 85 years of uninterrupted growth. With revenues of more than US $6 billion, it stands today as a world leader in professional services. Arthur Andersen is a business unit of Andersen Worldwide."

The Andersen-Worldwide website (Andersen.com) confirmed that there was a single worldwide organization:

- "Our 390 offices may be scattered amid 84 different countries, but our voice is the same. No matter where you go, or who you talk to, we act with one vision. Without boundaries."
- "One world. One organization."

Andersen's recruiting brochures reflected that it was a single worldwide organization:

- "We will, in Arthur Andersen's own words, 'act as one firm and speak with one voice. It is a united family that operates across hierarchies, geographical boundaries, client groupings, service lines and competencies and feels the kinship of understanding and shared responsibility."

42. Andersen-Worldwide managed its operations by practice groups, as well as by geographical region. Each practice group was headed by a global practice director who oversaw, directed, and controlled the operations of each practice group worldwide. Regional practice directors (*e.g.*, Denkhaus was the director of Andersen-Worldwide's audit practice in South Florida) reported to the global practice director and managed the practice group within their regions.

NOT A CERTIFIED COPY

016921

43. As a result of the "one firm" approach, all actions taken by members of Andersen-Worldwide, as well as all actions taken by member firms of Andersen-Worldwide, may be attributed to Andersen-Worldwide.

44. Andersen applied the "one firm" approach in its work with Sunbeam. Top partners responsible for the Sunbeam audits and restatement were partners of Andersen and members of Andersen-Worldwide, including the engagement partner on the Sunbeam audits, Harlow, the concurring partner on those audits, Pruitt, and the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, Denkhaus.

45. In addition, various international offices of Andersen-Worldwide did substantial work for Sunbeam. Sunbeam was a multinational corporation with operations in Canada, Mexico, Venezuela, and Hong Kong. The Sunbeam engagement required the participation of auditors from each of those countries and numerous American cities. Harlow, on behalf of both Andersen and Andersen-Worldwide, developed work plans that he circulated to Andersen's branches in other countries, including the Foreign Andersen Branches. Those offices worked closely with Harlow and others within Andersen and Andersen-Worldwide to complete the tasks outlined in the plans. They sent their work product to Harlow for inclusion in an Andersen-Worldwide Management Letter, as well as for incorporation in Andersen's audit work.

The Fraudulent 1996 Financial Statements

46. In 1996, after Dunlap took control of Sunbeam, Andersen permitted Sunbeam management to employ numerous accounting practices that — as Sunbeam's November 1998 restatement of its 1996 financial statements and an SEC investigation later showed — did not

NOT A CERTIFIED COPY

016922

comply with GAAP. The objective of these accounting violations was to set an artificially bleak financial backdrop against which Sunbeam's 1997 performance would be judged.

47. Among other things, Sunbeam's 1996 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts No. 2, §§ 58-97; Accounting Principles Board ("APB") Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

48. Among the accounting frauds that Andersen knowingly allowed was the artificial inflation of Sunbeam's reserves. Because the reserves were charged as an expense against income, this accounting practice allowed Sunbeam to overstate the 1996 loss against which its 1997 financial results would be compared.

49. For example, Sunbeam created a $338 million reserve for "restructuring" charges. As the November 1998 restatement made clear, included in these charges were costs of redesigning product packaging; costs of relocating employees and equipment; bonuses to be paid to employees who were told that they were being laid off but were asked to stay on temporarily; advertising expenses; and certain consulting fees. Because these items benefited future activities, GAAP did not permit them to be classified as restructuring charges. Andersen also permitted Sunbeam to violate GAAP by creating a $12 million reserve for a lawsuit alleging that

NOT A CERTIFIED COPY

016923

Sunbeam was liable for cleanup costs associated with a hazardous waste site, even though Sunbeam's estimated liability was, at best, half that amount.

50. Andersen also permitted Sunbeam improperly to write down its household products inventory in 1996. In connection with the restructuring, Sunbeam had decided to eliminate half of Sunbeam's product lines and to liquidate its inventory of those product lines. Although only half of Sunbeam's product lines were eliminated, Andersen allowed Sunbeam to apply, at year-end 1996, the special accounting treatment that it had accorded the eliminated lines to its entire inventory of household products. As a result, as the November 1998 financial restatement later showed, Sunbeam understated the balance sheet value of its inventory at year-end 1996 by approximately $2 million and overstated its 1996 loss by the same amount.

51. Andersen also allowed management improperly to recognize, as a 1996 expense, $2.3 million in 1997 advertising expenses and related costs. In addition, Andersen permitted Sunbeam to manipulate its 1996 liabilities for "cooperative advertising." It was Sunbeam's practice to fund a portion of its retailers' costs of running local promotions. As required by GAAP, Sunbeam accrued its estimated liabilities for this expense. At year-end 1996, Sunbeam set its cooperative advertising accrual at an inflated value of $21.8 million. According to the November 1998 restatement, this accrual was improper under GAAP because it was approximately 25 percent higher than the prior year's accrual amount, without a proportional increase in sales providing a basis for the increase. Ultimately, as the November 1998 restatement showed, $5.8 million of that excessive accrual was used (without disclosure) to inflate Sunbeam's 1997 income.

NOT A CERTIFIED COPY

016924

Andersen's 1996 Unqualified Audit Opinion

52. In the course of auditing Sunbeam's 1996 financial statements, Andersen became aware of these and other improper accounting practices. Indeed, an Andersen employee questioned a Sunbeam employee about the restructuring reserves and was told that the reserve included "everything but the kitchen sink." Harlow, the Andersen engagement partner, knew of this statement.

53. Harlow informed Kersh and Gluck, who were part of Sunbeam's senior management, that certain of the restructuring reserves that Sunbeam had established were not properly accounted for as restructuring costs under GAAP because they benefited Sunbeam's future operations. He proposed that Sunbeam reverse the accounting entries on its books and records reflecting the establishment of these reserves. However, when Kersh and Gluck refused to reverse these items, Harlow caused Andersen to acquiesce to Sunbeam's fraudulent accounting for the reserves.

54. In March 1997, Andersen issued an unqualified audit opinion regarding Sunbeam's 1996 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1996 Form 10-K filed with the SEC. A copy of the 1996 Audit Opinion is exhibit "A" attached hereto. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhaus, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

55. Despite its knowledge of the many improper accounting practices that Sunbeam's management had employed, Andersen's opinion stated:

NOT A CERTIFIED COPY

016925

> We conducted our audits in accordance with generally accepted auditing standards.
>
> Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996, and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles.

56. Andersen also knowingly provided false descriptions of certain of Sunbeam's specific accounting practices. For example, it characterized Sunbeam's treatment of its restructuring charges in Note 2 to the audited 1996 consolidated financial statements as follows:

> In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKUs and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Notes 12 and 13) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million.

In fact, however, Andersen knew that Sunbeam had improperly inflated its restructuring costs by millions of dollars.

NOT A CERTIFIED COPY

016926

57. Andersen's 1996 audit violated GAAS because, among other things, Andersen failed (1) to perform the audits with an attitude of professional skepticism as required by the Statement on Auditing Standards ("SAS") No. 53; (2) to conclude that there was a significant risk that Sunbeam management would intentionally distort the company's financial statements, in violation of American Institute of Certified Public Accountants Professional Standards, AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

58. In addition, in conducting the 1996 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact, and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); and (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative

NOT A CERTIFIED COPY

016927

of matters that could affect their use, understanding, and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)).

59. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to prevent Andersen from certifying Sunbeam's 1996 financial statements. However, they did nothing to stop Andersen's unqualified 1996 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

60. In all, the 1996 financial statements audited by Andersen were materially false and misleading and overstated Sunbeam's operating losses for 1996 by at least $40 million. Moreover, Andersen's unqualified audit opinion was false in at least two material respects. First, the financial statements that Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

The Fraudulent 1997 Financial Statements

61. The accounting frauds in which Andersen permitted Sunbeam to engage in 1997 were aimed at inflating the company's earnings. To accomplish this — as the November 1998 restatement and an SEC investigation subsequently showed — Andersen allowed Sunbeam to

NOT A CERTIFIED COPY

016928

record fraudulent sales, to account improperly for one-time events, and improperly to use "cookie-jar" reserves, all in violation of GAAP.

62. Among other things, Sunbeam's 1997 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, FASB Statement of Financial Accounting Concepts No. 2, §§ 58-97; APB Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

63. One of the revenue inflation tactics permitted by Andersen in 1997 was improper accounting for "bill-and-hold" sales. A bill-and-hold sale occurs when a seller bills a customer for a purchase while retaining the merchandise for later delivery. During 1997, Dunlap's management team offered financial incentives to various customers to purchase products. Under GAAP, revenue under bill-and-hold transactions may be recognized only if, among other things, the buyer — not the seller — requests a sale on that basis. As Andersen subsequently learned in the course of its 1997 audit, the purported bill-and-hold customers had not requested that treatment, and, in numerous cases, the risks of ownership and legal title were never passed to the customer. Sunbeam added more than $29 million to its 1997 sales and $4.5 million to income by improperly accounting for these transactions.

64. Another income-boosting tactic that Andersen sanctioned was Sunbeam's improper use of its inflated 1996 reserves, which artificially increased the company's 1997 income by almost $5 million. Andersen also let Sunbeam improperly treat $19 million that it received from

NOT A CERTIFIED COPY

016929

the sale of discounted and obsolete inventory as ordinary income. Although the recognition of that revenue was permitted under GAAP, Sunbeam was required to disclose that revenue as a non-recurring event. Sunbeam failed to do so, again with Andersen's blessing.

65. In addition, Andersen and Andersen-Hong Kong allowed Sunbeam's Hong Kong subsidiary to book sales that violated applicable accounting principles because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated. On Andersen's and Andersen-Hong Kong's watch, Sunbeam's Hong Kong subsidiary improperly recorded sales revenue of $8.6 million from various sales made during the fourth quarter of 1997. Andersen and Andersen-Hong Kong also permitted Sunbeam's Hong Kong subsidiary to under-provide for warranty and product liability expenses; improperly to include in 1997 net sales of $0.5 million of goods that were not shipped until 1998; and improperly to defer 1997 advertising costs to future periods.

66. Andersen and Andersen-Canada also permitted Sunbeam's Canadian subsidiary improperly to book sales that did not meet the applicable sales recognition criteria because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated.

67. Andersen and Andersen-Mexico also permitted Sunbeam to employ several improper accounting tricks with respect to its Mexican subsidiary. Sunbeam's Mexican subsidiary engaged in $900,000 in bill-and-hold transactions in 1997 that should not have been recognized as income until 1998. In addition, the subsidiary's inventory was overvalued by $2 million, and the financial statements for Sunbeam's Mexico operations failed to include a $3 million expense for the profit-sharing obligations of that business.

NOT A CERTIFIED COPY

016930

68. Andersen and Andersen-Venezuela also permitted Sunbeam's Venezuela subsidiary improperly to value its inventory of raw materials. Its books reflected purchases of raw materials that were held at various suppliers. Andersen failed to confirm that the booked amounts represented materials that were actually in the possession of suppliers. Had it done so, it would have discovered that the materials did not exist.

69. One of the most egregious accounting abuses that Andersen permitted in 1997 was to allow Sunbeam to record a profit on a sham sale of its warranty and spare parts business to its spare parts provider, EPI Printers, Inc. Prior to 1997, EPI satisfied spare parts and warranty requests of Sunbeam customers on a fee basis. To raise additional revenue at year-end 1997, however, Sunbeam entered into a sham "sale" of the warranty and spare parts inventories already in EPI's warehouse. As a result of the transaction, management fraudulently recognized millions of dollars of bogus sales and profits in 1997.

70. The problem with the EPI transaction was that the transaction was not a sale at all, for at least three reasons. First, there was never a final agreement between Sunbeam and EPI. The closest the parties ever came to a meeting of the minds was the execution of a mere "agreement to agree." Second, by its terms, the proposed sale was to terminate on January 23, 1998, with no payment obligation on the part of EPI, absent a subsequent agreement between Sunbeam and EPI on the value of the inventory. In other words, the sale could be completely unwound just after year-end without EPI ever having paid a cent. Third, Sunbeam had agreed as part of the proposed sale to pay certain fees to EPI and to guarantee a 5-percent profit to EPI on the eventual resale of the inventory. In essence, even after the proposed sale, EPI remained a contractor compensated by Sunbeam on a fee basis for its services. In sum, the relationship between EPI and Sunbeam was not materially altered by the purported "sale."

NOT A CERTIFIED COPY

016931

71. As a result of these and other violations of accounting standards, in 1997, Sunbeam reported $186 million in income, much of which was, according to the November 1998 restatement, improper under GAAP. In all, the overstatements included over $90 million of improper net income, including approximately $10 million from a sham sale of inventory to a contractor, approximately $4.5 million from non-GAAP bill-and-hold sales, approximately $35 million in income derived from the use of non-GAAP reserves and accruals taken at year-end 1996, and approximately $6 million from improper revenue recognition.

Sunbeam's Purchase of Coleman

72. Toward the end of 1997, Sunbeam engaged MS & Co. to advise it with respect to the possible sale of its core businesses and/or the initiation of one or more major acquisitions. Ultimately, Coleman, Signature Brands, and First Alert were identified as three companies interested in being acquired by Sunbeam.

73. On January 28, 1998, Sunbeam announced its financial results for 1997, reporting total revenues of $1.168 billion, and total earnings from continuing operations of $189 million (or $1.41 per share).

74. On February 3, 1998, Harlow met with key officers of Sunbeam to discuss the acquisition of Coleman and its financial impact on Sunbeam. By that time, as a result of reviewing Sunbeam's 1997 financial statements in the course of its audit, Harlow and Andersen knew that Sunbeam's 1997 results were false.

75. On February 20, 1998, Andersen agreed to act as a Sunbeam financial advisor and perform financial due diligence in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands, further compromising Andersen's duty as an auditor to maintain its

NOT A CERTIFIED COPY

016932

independence from its client. In agreeing to undertake that assignment, Andersen became an active member of the team working to assist Sunbeam in its acquisitions. Harlow and other Andersen employees who worked on Sunbeam's audit also served as members of Sunbeam's due diligence team.

76. On February 27, 1998, Sunbeam's Board of Directors met in New York to discuss Sunbeam's possible purchase of Coleman. During the February 27, 1998 meeting, MS & Co. provided Sunbeam's Board of Directors with a written "fairness" opinion regarding the fair acquisition price of Coleman. The opinion made clear that, even in the context of issuing a fairness opinion on the Coleman acquisition price, MS & Co. had relied upon Andersen's representations regarding Sunbeam's financial health. The fairness opinion explicitly stated that MS & Co. had reviewed "certain publicly available financial statements and other information" of Sunbeam. The opinion advised that MS & Co. had "assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion."

77. The Sunbeam Board of Directors approved the Coleman acquisition. That same day, Coleman-Parent — the 82-percent shareholder of Coleman — agreed to sell Coleman to Sunbeam for a purchase price of $2.2 billion. Sunbeam agreed to provide Coleman-Parent with $160 million in cash, to assume $584 million in Coleman-related debt, and to provide Coleman-Parent with 14,099,749 shares of Sunbeam stock. Sunbeam also agreed to purchase Signature Brands and First Alert for approximately $300 million.

NOT A CERTIFIED COPY

016933

Andersen's 1997 Unqualified Audit Opinion

78. In the first week of March 1998, shortly after the agreement for Sunbeam's purchase of Coleman was signed, but before the transaction closed, Andersen rendered an unqualified audit opinion for Sunbeam's 1997 financial statements. With Andersen's express consent, management included that opinion in Sunbeam's 1997 Form 10-K filed with the SEC on March 6, 1998.

79. Andersen was well aware of the potential for fraud in Sunbeam's 1997 books, including the risk that Sunbeam management would attempt to claim profits and revenue on transactions before the earnings process was completed. Harlow had specifically advised Andersen's foreign offices (including Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela), for example, that Dunlap had made promises to the public regarding earnings-per-share to be attained in 1997, and that management had a vested interest in achieving the promised earnings levels because management's primary form of compensation was based on the company's stock price. Harlow had also noted the presence of the possibility of a third-party purchase of the company's stock or assets.

80. In the course of its audit of Sunbeam's 1997 financial records, Andersen learned that Harlow's concerns were well-founded. It discovered that Sunbeam had improperly accounted for certain bill-and-hold sales, had misused its reserves, and had overvalued its inventories. Harlow discussed these problems with Sunbeam's senior management and proposed that Sunbeam reverse these improper entries.

81. For example, as part of Andersen's 1997 year-end audit, Harlow raised with Sunbeam's management the improper accounting treatment accorded to the EPI transaction. He proposed that Sunbeam reverse the accounting entries reflecting the revenue recognition for that

NOT A CERTIFIED COPY

016934

transaction, pointing out that the profit guarantee and the indeterminate value of the contract rendered revenue recognition inconsistent with GAAP. Kersh and Gluck refused to reverse the transaction. Harlow caused Andersen to acquiesce in management's actions. As a result, Sunbeam's 1997 audited financial statements reflect almost $10 million of false profit on the sham EPI transaction.

82. Harlow also raised with Kersh and Gluck Sunbeam's inappropriate use of reserves and recorded the full $4.9 million of costs that Sunbeam had improperly offset against reserves on the list of proposed audit adjustments. Kersh and Gluck, however, refused to make the proposed adjustments. Harlow again failed to insist on honest, accurate accounting. Instead, he caused Andersen to acquiesce in Sunbeam's refusal to reverse these improper reductions in current-period costs, although he knew or recklessly disregarded facts indicating that this improper accounting would materially distort Sunbeam's reported results of operations. In fact, this use of reserves increased 1997 fourth-quarter income by almost 8 percent.

83. Harlow also proposed adjustments to reverse $2.9 million related to Sunbeam's inventory overvaluation by its Mexican subsidiary and $563,000 related to various miscellaneous terms. Kersh and Gluck refused to make appropriate adjustments, and Harlow again caused Andersen to acquiesce in their refusal to reverse these errors — despite the fact that these items added over 5.4 percent to Sunbeam's reported earnings for the fourth quarter and contributed to the larger misstatement of Sunbeam's reported results of operations stemming from the fraudulent conduct of Sunbeam's management.

84. These improper accounting techniques raised clear red flags that should have — and must have — alerted Andersen to the need for greater scrutiny regarding all of Sunbeam's revenue recognition decisions. At a minimum, Andersen should have been on guard as to all of

NOT A CERTIFIED COPY

016935

the proposed audit adjustments that Harlow initially proposed but later rejected, and any previously recognized improper items that were ultimately dismissed as "immaterial."

85. Despite these clear red flags, Andersen once again gave Sunbeam a clean bill of financial health, issuing an unqualified audit opinion regarding Sunbeam's 1997 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1997 Form 10-K filed with the SEC. A copy of the 1997 Audit Opinion is exhibit "B" attached hereto. The Audit Opinion is signed by Andersen. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhaus, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

86. In this opinion, Andersen stated:

> We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the financial statements . . . , present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

87. In fact, Andersen's 1997 audit violated GAAS because, among other things, Andersen had failed (1) to perform the audits with an attitude of professional skepticism as

NOT A CERTIFIED COPY

016936

required by SAS No. 53; (2) to reach a conclusion that there existed a significant risk of intentional distortion of financial statements by Sunbeam management, in violation of AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

88. In addition, in conducting the 1997 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative of matters that could affect their use, understanding and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)); and (5) failed to report that a change in the application of accounting principles in Sunbeam's 1997 financial statements had materially affected their

NOT A CERTIFIED COPY

016937

comparability with the financial statements for prior periods, especially 1996, due to a different treatment of sales and reserves in those periods, in violation of SAS Nos. 1 and 43 (AU § 420.02).

89. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to withhold Andersen's unqualified certification of Sunbeam's 1997 financial statements. However, Harlow, Pruitt, and Denkhaus did nothing to stop Andersen's unqualified 1997 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that MSSF, as a lender, and MS & Co., as an underwriter, would rely on these financial statements.

90. The Foreign Andersen Branches also knew of or recklessly disregarded the fact that the financial statements of Sunbeam's foreign subsidiaries, which they had reviewed and audited, were not prepared in accordance with GAAP or reviewed in accordance with GAAS. The Foreign Andersen Branches nevertheless certified that their audit work complied with GAAP and GAAS. Each of the Foreign Andersen Branches also knew that the false financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

91. In all, the 1997 financial statements audited by Andersen reported operating income of $186 million — an overstatement of at least 50 percent. Like its 1996 unqualified audit opinion, Andersen's 1997 opinion was false in two material respects. First, the financial

NOT A CERTIFIED COPY

016938

statements Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

Reliance by Plaintiffs on Andersen's Unqualified Audit Opinions

92. After it agreed to acquire Coleman, First Alert, and Signature Brands, Sunbeam needed to raise approximately $2.3 billion to refinance existing debt and to fund these acquisitions. To accomplish these financing objectives, Sunbeam's management elected to issue $500 million in subordinated convertible notes (an amount later increased to $750 million) (the "Convertible Note Offering") and to enter into a new $2 billion senior credit agreement (later reduced to $1.7 billion) with secured lenders (the "Bank Facility"). MS & Co. served as the lead underwriter for the Convertible Note Offering. MSSF served as the Syndication Agent for the Bank Facility and coordinated the Bank Facility with First Union and Bank of America, Sunbeam's other secured lenders.

93. Andersen, Harlow, Pruitt, and Denkhaus knew of these proposed financing arrangements. Specifically, they knew that the Coleman and other acquisitions would not close unless Sunbeam secured the financing necessary to cover the acquisition prices. They knew that MS & Co. would underwrite a notes offering that Sunbeam would use to finance the transaction. Moreover, they knew that MSSF was a principal participant in the Bank Facility, and that MSSF would be relying on the representations Andersen made regarding Sunbeam's financial condition.

94. In addition, Andersen, Harlow, Pruitt, and Denkhaus knew that documents issued in connection with the Convertible Note Offering clearly stated that "[Sunbeam] is currently

NOT A CERTIFIED COPY

016939

16div-025083

negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. *The New Credit Facility is being arranged by an affiliate of [Morgan Stanley].*" Andersen, Harlow, Pruitt, and Denkhaus knew that the affiliate referred to in this document was MSSF.

95. In addition to their knowledge of MS & Co.'s and MSSF's roles in Sunbeam's acquisitions, Andersen, Harlow, Pruitt, and Denkhaus had many reasons to know that MS & Co. and MSSF would rely on Sunbeam's audited financial statements. To begin with, Andersen, Harlow, Pruitt, and Denkhaus, in their substantial experience working on multi-billion dollar mergers and acquisitions, understood that Sunbeam's lenders and underwriters would rely on an auditor's certification of Sunbeam's financial condition. As would any lender engaged in a deal of this scale, MSSF looked to the financial statements provided by Sunbeam and audited by Andersen to evaluate annual cash flow and to assess Sunbeam's ability, following the acquisition, to promptly and comfortably pay interest and, ultimately, pay back the loan. Indeed, reasonable and professional lenders such as MSSF, Bank of America, and First Union would not have loaned over $1 billion dollars to any person or entity without strong assurance that their money would be returned. Andersen, Harlow, Pruitt, and Denkhaus knew that MS & Co., the underwriter of the Convertible Note Offering, would similarly refuse to underwrite a $750 million offering without strong assurance that Sunbeam's financial condition was sound.

96. Not only were Andersen, Harlow, Pruitt, and Denkhaus aware that any prudent business in MS & Co.'s or MSSF's position *would* rely on Andersen's financial statements, but they also knew that MS & Co. and MSSF *were* specifically relying on Andersen's certifications. In a letter dated March 11, 1998, MS & Co. wrote a letter to Andersen — to the attention of

NOT A CERTIFIED COPY

016940

Harlow — notifying Andersen that MS & Co. would be "reviewing certain information relating to Sunbeam that will be included in the Offering Memorandum." MS & Co. requested that Andersen deliver to it a "'comfort' letter concerning the financial statements" of Sunbeam.

97. In response to this request, Andersen expressly represented to MS & Co. that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. On March 19, 1998, Andersen sent MS & Co. a "comfort" letter stating that, in Andersen's opinion, "the consolidated financial statements [for 1996 and 1997] audited by [Andersen] and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the [Securities Act of 1933] and the related published rules and regulations." Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering. Andersen also knew that Sunbeam's acquisitions were contingent on Sunbeam's obtaining the necessary financing for the transactions, including the underwriting of the convertible notes. Andersen knew that, absent its representations, MS & Co. would not have underwritten the notes, and therefore the financing, including MSSF's loan to Sunbeam, would not have gone forward. A copy of the March 19, 1998 letter is exhibit "C" attached hereto.

98. Harlow and Pruitt authorized the issuance of the March 19, 1998 comfort letter, which was signed by Andersen. Upon information and belief, Denkhaus knew of this letter and did nothing to stop its issuance.

99. In a follow-up letter to MS & Co. dated March 25, 1998, Andersen reaffirmed its previous representation, stating that it "reaffirm[ed] as of the date hereof (and as though made on the date hereof) all statements made in that letter." Again, Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering and that,

NOT A CERTIFIED COPY

016910

absent its representations, the financing, including MSSF's loan to Sunbeam, would not have gone forward. A copy of the March 25, 1998 letter is exhibit "D" attached hereto.

100. Again, Harlow and Pruitt authorized the issuance of this letter, which was likewise signed by Andersen. Upon information and belief, Denkhaus also knew of this letter and did nothing to stop its issuance.

101. In addition to Andersen's written representations regarding Sunbeam's financial condition, Andersen partners and employees, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate. For example, on March 12, 1998, representatives of MS & Co. participated in a conference call with Harlow and another Andersen employee to discuss Sunbeam's financial statements. In this call, Harlow assured MS & Co.'s representatives that there were no material inaccuracies in Sunbeam's financial statements. Upon information and belief, Harlow made these statements with the knowledge and approval of Pruitt and Denkhaus.

102. Andersen, Harlow, Pruitt, and Denkhaus also knew that MS & Co. had stated in a February 27, 1998 "fairness" opinion that MS & Co. had presented to Sunbeam's Board of Directors that MS & Co. had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements that were available at that time.

103. In addition, Andersen, Harlow, Pruitt, and Denkhaus knew that Sunbeam had expressly represented, in loan negotiations with MSSF, that Andersen's audit opinions were accurate. Specifically, Andersen knew that, in the Sunbeam-MSSF credit agreement, Sunbeam had warranted that it had provided MSSF with accurate information regarding Sunbeam's consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. According to Sunbeam, its financial statements — certified by

NOT A CERTIFIED COPY

0169142

Andersen — "present[ed] fairly, in all material respects, the financial position and results of operations and cash flows . . . in accordance with GAAP."

104. Similarly, Andersen, Harlow, Pruitt, and Denkhaus knew that, in connection with the Convertible Note Offering, Sunbeam had included its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and had represented to MS & Co. that its audited financial statements were reliable.

105. Andersen, Harlow, Pruitt, and Denkhaus also knew that, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam had represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate and not misleading, and that they would continue to be accurate and not misleading as of the transaction's closing date. Sunbeam further represented that its audited financial statements were prepared in accordance with GAAP, and that at the time of the closing of the transaction, that representation would continue to be true and correct.

106. Although it knew that MS & Co. and MSSF had based multi-million dollar financing decisions on its representations, Andersen did not tell Plaintiffs' of the accounting concerns that it had raised with Sunbeam management in the course of its 1996 and 1997 audits or that Sunbeam's financial statements had not been fairly stated in 1996 and 1997.

107. On March 25, 1998, the $750 million Convertible Note Offering closed. In justifiable reliance on Andersen's 1996 and 1997 unqualified audit opinions, on Andersen's March 19, 1998, and March 25, 1998, "comfort" letters, and on the oral representations made by Harlow and other partners, members or employees of Andersen and Andersen-Worldwide, MS & Co. underwrote this offering to finance Sunbeam's acquisitions of Coleman, Signature Brands, and First Alert.

NOT A CERTIFIED COPY

016943

108. Sunbeam closed its acquisition of Coleman on March 30, 1998. On that date, Sunbeam, through a wholly owned subsidiary, acquired approximately 81 percent of the then-outstanding shares of Coleman common stock. These shares were acquired by Sunbeam in exchange for 14,099,749 shares of Sunbeam's common stock and approximately $160,000,000 in cash. In addition, Sunbeam assumed or repaid approximately $1,016,000,000 in debt belonging to Coleman and Coleman-Parent. Included in the repaid debt portion of the transaction was an immediate cash payment by Sunbeam to Coleman-Parent of $590 million.

109. MSSF and Sunbeam closed the Bank Facility on March 31, 1998. In accordance with the terms of the Bank Facility, MSSF — unaware of the falsity of Sunbeam's financial statements and Andersen's audit reports and in justifiable reliance on Andersen's representations — loaned Sunbeam $680 million in immediately available funds to be used for the acquisitions. First Union, which served as the Administrative Agent for the Bank Facility, loaned Sunbeam an additional $510 million. Bank of America, which served as the Documentation Agent for the Bank Facility, loaned Sunbeam an additional $510 million.

110. As Andersen, Harlow, Pruitt, and Denkhaus knew, MS & Co. had relied on Sunbeam's 1996 and 1997 financial statements in deciding to underwrite the Convertible Note Offering. Andersen, Harlow, Pruitt, and Denkhaus further knew that MSSF had relied on Sunbeam's 1996 and 1997 financial statements in deciding to loan Sunbeam $680 million. Moreover, they knew that the Sunbeam-MSSF credit agreement provided that a condition precedent to MSSF's obligations under the agreement was the absence of any event, change, or development that would have a material adverse effect on the business, results of operation, or financial condition of Sunbeam. Andersen knew that an additional condition precedent to

NOT A CERTIFIED COPY

0169114

MSSF's obligations was the absence of any material misrepresentation or omissions in Sunbeam's SEC filings, including Andersen's 1996 and 1997 audit reports in the Form 10-Ks.

111. But for Andersen's fraud and its failure to issue qualified or adverse reports exposing the falsity of Sunbeam's financial statements, MS & Co. and MSSF would have had notice of an adverse material change affecting Sunbeam before funding, and of a material misstatement in Sunbeam's SEC filings. Not only would MS & Co. never have agreed to underwrite the Convertible Note Offering, but MSSF's obligation to loan Sunbeam $680 million also would have been discharged by the failure of conditions precedent to its obligations under the credit agreement. Andersen's fraud directly caused the extensive losses that Plaintiffs suffered.

112. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. They caused Andersen to represent to MS & Co. and MSSF that Sunbeam's financial statements were reliable. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work that was performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

NOT A CERTIFIED COPY

016945

16div-025089

113. This fraud was also knowingly perpetrated by the Foreign Andersen Branches. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified that their audit work complied with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

114. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

Andersen's Improper Accounting and Misrepresentations Are Revealed

115. In an April 3, 1998 conference call with securities analysts, Sunbeam revealed that sales for the first quarter of 1998 were 5 percent below reported sales for the same period of the prior year.

116. On April 22, 1998, a class of Sunbeam shareholders sued Sunbeam and its senior officers in the United States District Court for the Southern District of Florida, alleging that the company had violated the securities laws by issuing materially false and misleading statements regarding Sunbeam's financial condition. Andersen was subsequently added as a defendant in that lawsuit.

NOT A CERTIFIED COPY

016946

117. On June 8, 1998, an article was published in Barron's that raised serious questions regarding Sunbeam's apparent success under Dunlap, suggesting that it was the result of "accounting gimmickry." On June 15, 1998, Sunbeam's Board announced that it had removed Dunlap as Chairman and CEO. On June 17, 1998, Sunbeam received a letter from the SEC informing it that the SEC had initiated an investigation into the company.

118. Andersen continued to stand behind its fraudulent audit opinions. On June 15, 1998, Andersen allowed Sunbeam's Board of Directors to assert that Andersen had "assured the Board that Sunbeam's audited financial statements [were] accurate in all material respects." Andersen made this statement knowing that it was false. Harlow, Pruitt, and Denkhaus likewise knew the statement was false, but caused Andersen to make this statement. It was not until June 25, 1998 — when Andersen withheld its consent for use of its 1997 audit opinion in a registration statement that was to have been filed with the SEC — that Andersen gave any hint that its unqualified audit opinions were unreliable.

119. On June 30, 1998, Sunbeam announced that the Audit Committee of its Board of Directors would conduct an inquiry into the accuracy of its 1997 financial statements. The Audit Committee subsequently retained Deloitte & Touche LLP to assist in the review, in addition to Andersen. Sunbeam stated that "pending the completion of the review, its 1997 financial statements and the report of Arthur Andersen LLP should not be relied upon." Sunbeam added that the review "could result in a restatement of the 1997 financial statements and the first quarter 1998 Form 10-Q."

120. On August 6, 1998, Sunbeam announced that its Audit Committee had determined that Sunbeam would be required to restate its audited financial statements for 1997 and possibly for 1996, as well as its unaudited financial statements for the first quarter of 1998. On

NOT A CERTIFIED COPY

016947

October 20, 1998, Sunbeam and Andersen announced a restatement of its 1996 and 1997 financial statements.

121. Holders of the convertible notes sued Sunbeam on October 30, 1998, and Andersen was later named as a defendant in that suit.

122. On November 12, 1998, Sunbeam released its restated 1996 and 1997 financial results, again audited by Andersen. The restated 1996 financial statements reported operating losses for 1996 that were approximately $40 million less than originally reported, losses from continuing operations that were approximately $26 million less than previously reported and net losses that were approximately $20 million less than previously reported.

123. For 1997, the restated financial statements reported operating earnings that were approximately $95 million less than originally reported, earnings from continuing operations that were approximately $70 million less than previously reported and net earnings that were approximately $70 million less than previously reported. The new operating income figure for 1997 was approximately half the amount that Andersen had previously certified.

Sunbeam Declares Bankruptcy

124. On February 6, 2001, as a direct result of the deceit that Andersen had committed, with the knowledge and assistance of the other Defendants named in this Complaint, Sunbeam and several of its subsidiaries were forced to seek relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. As part of the bankruptcy court-approved reorganization plan, MSSF's $680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, as a result of Andersen's actions, the convertible notes issued by Sunbeam and held

NOT A CERTIFIED COPY

016948

by MS & Co. had been rendered substantially less valuable. The shareholders of Sunbeam saw the value of their stock decline by over $5 billion from its peak in early March 1998 to February 5, 2001.

Subsequent Censure of Andersen's Conduct

125. Both courts and regulators have scrutinized Andersen's facilitation of Sunbeam's fraud. In their judgments against the firm and Harlow, they have denounced Andersen's conduct.

126. In December 1999, for example, the United States District Court for the Southern District of Florida, which presided over the Sunbeam shareholders' class action securities fraud lawsuit, refused to dismiss any claims against Andersen. The court found that the plaintiff class had, by alleging the material misstatements made by Andersen in its unqualified audit opinions, describing the violations of GAAP and GAAS that had occurred, and setting forth why the statements in the audit opinions were false and misleading, pled fraud against Andersen with sufficient particularity to satisfy Federal Rule of Civil Procedure 9(b)'s pleading requirements. *See In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1344 n.11 (S.D. Fla. 1999).

127. The *In re Sunbeam* court also rejected Andersen's argument that the plaintiffs had merely alleged that Andersen violated GAAP and GAAS and had not set forth facts sufficient to show that it acted with knowing fraudulent intent or recklessness. The court ruled that Andersen's arguments "fail[ed] to appreciate the breadth" of the plaintiffs' allegations, which described much more than "innocent auditing and accounting slip-ups." *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. The court concluded (*id.* at 1344-45) that the following facts established that Andersen had acted with requisite scienter:

NOT A CERTIFIED COPY

016949

- Andersen violated a GAAS requirement that it have a sufficient understanding of Sunbeam's internal control structure;
- Andersen failed to adhere to GAAS by not identifying numerous fraud risk factors suggesting that there was a significant risk that Sunbeam had fraudulently misstated its financials;
- Andersen was alerted by Sunbeam employees to material misstatements in Sunbeam's financial statements;
- Andersen failed to stop Sunbeam from recognizing, in violation of GAAP, revenues from guaranteed sales and consignment transactions, with the result that its sales were substantially overstated;
- Andersen ignored a June 8, 1998, Barron's article that accused Sunbeam of accounting improprieties, continued to stand behind its audit opinions, and did not given any hint that its unqualified audit opinions were unreliable until June 25, 1998, when it withheld consent to the use of its audit opinion in an SEC registration statement; and
- The sheer magnitude of the restatements of Sunbeam's financial statements indicated that Andersen was at least severely reckless not to know that its unqualified audit opinions were misleading.

128. The United States District Court for the Southern District of Florida concluded that these facts were sufficient to "demonstrate that Arthur Andersen acted with severe recklessness in issuing its misleading Unqualified Audit Opinion," and therefore supported a valid federal securities law fraud claim. *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. Andersen subsequently settled this lawsuit in 2001 for $110 million.

129. On May 15, 2001, the SEC filed a civil action in the United States District Court for the Southern District of Florida against five former Sunbeam officers and Harlow, Andersen's engagement partner. The SEC alleged that Harlow, by causing Andersen to issue materially incorrect audit opinions, had engaged in fraud in violation of the federal securities laws.

130. In January 2003, Harlow consented to an injunction and agreed not to contest the SEC's charges against him. In the SEC's consent order, it made numerous factual findings

NOT A CERTIFIED COPY

016950

16div-025094

regarding Harlow's improper conduct. It concluded that Harlow had proposed, on many occasions, adjustments to rectify Sunbeam's false financial statements. After management refused to make these adjustments, Harlow improperly acceded to that decision. *In re Phillip E. Harlow*, Rel. No. 34-47261, 2003 WL 169818, at *1-*3 (SEC Rel. Jan. 27, 2003).

131. The SEC's assessment of Harlow's conduct was damning. Among many other things, it concluded that Harlow (1) "failed to exercise professional skepticism when performing audit procedures and gathering and analyzing audit evidence," (2) "accepted uncorroborated representations of Sunbeam's management in lieu of performing appropriate audit procedures," (3) "failed to exercise due professional care in performing the audit and preparing the audit report," (4) "failed to perform sufficient audit procedures to determine whether the financial statements were in conformity with GAAP," even after he had "identified a number of audit risks and accounting issues associated with the Sunbeam engagement," and (5) "failed to obtain sufficient competent evidential matters through inspection, observation, inquiries, and confirmation to afford a reasonable basis for an audit opinion." *Id.* at *4. Based on these factual findings, the Commission concluded that the 1996 and 1997 financial statements that Harlow had audited were not in conformity with GAAP, and the audit was not performed in accordance with GAAS. *Id.* (citing AU §§ 410, 411, 508.07).

132. Other participants in the Coleman acquisition have also sued Andersen for its fraudulent conduct. On June 8, 2001, Coleman-Parent sued Andersen and Harlow for fraudulent misrepresentation, fraudulent inducement to contract (conspiracy and concerted action), and negligent misrepresentation. *See Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP*, No. 502001CA006062XXOCAN (Fla. 15th Cir. Ct., filed June 8, 2001). That case was assigned to Judge Stephen A. Rapp. Andersen and Harlow moved to dismiss. However, after an

NOT A CERTIFIED COPY

016951

16div-025095

October 29, 2001, hearing on their motion, Andersen and Harlow answered Coleman-Parent's complaint. On March 15, 2002, the complaint in this matter was amended to add Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, and Andersen's United Kingdom branch as defendants. *See* Amended Complaint, *CPH v. Andersen* (filed Mar. 15, 2002). The Court denied Andersen-Worldwide's Motion To Dismiss on June 19, 2002, and the matter was voluntarily dismissed on January 28, 2003, after the parties had settled for an undisclosed amount.

Tolling Agreements

133. On March 8, 2001, Morgan Stanley, MSSF, and all of "their respective successors, predecessors, subsidiaries, affiliates, and assigns" executed the first of a series of tolling agreements with the Defendants. Additional tolling agreements were executed on April 4, 2001, April 19, 2001, April 24, 2001, April 23, 2002, October 16, 2002, April 10, 2003, and October 21, 2003. Copies of these Tolling Agreements are exhibits "E" through "L" attached hereto.

134. These agreements were signed by Andersen. The individuals that signed the agreements on behalf of Andersen represented that they had the "authority to bind and act on behalf of" Andersen and all of its "successors, predecessors, subsidiaries, affiliates, assigns, partners, employees, agents, officers, or directors."

135. Taken together, these agreements show that, in consideration for forbearance from commencing an action against the Defendants, Andersen agreed to toll from March 8, 2001, to March 1, 2004, the statute of limitations on all Morgan Stanley entities' claims against Andersen, its partners and agents (including Harlow, Pruitt, and Denkhaus), and its affiliates (including

NOT A CERTIFIED COPY

016952

Andersen-Worldwide and the Foreign Andersen Branches) that arose out of Andersen's audits of Sunbeam's financial statements.

COUNT I

Fraudulent Misrepresentation

136. Paragraphs 1 through 135 are repeated and realleged as if set forth herein.

137. Andersen consented to the publication of its audit reports to the public and business world by permitting Sunbeam to include them in Sunbeam's SEC filings. Given that publication, Andersen knew and intended that the public — including MS & Co. and MSSF — would rely on Andersen's representations.

138. Andersen knew of Sunbeam's proposed financing arrangements and of MS & Co.'s and MSSF's roles in Sunbeam's acquisitions. Andersen also knew that MS & Co. and MSSF would rely and had relied upon Andersen's 1996 and 1997 unqualified audit opinions for the particular purpose of determining whether to underwrite the Convertible Note Offering and to provide Sunbeam with a loan for $680 million.

139. Andersen itself invited MS & Co to rely on its unqualified audit opinions, expressly representing to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. Andersen knew that, absent its representations, MS & Co. would not have underwritten the notes, and therefore the financing, including MSSF's loan to Sunbeam, would not have gone forward. In addition, Andersen's and Andersen-Worldwide's members, partners, and employees, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

NOT A CERTIFIED COPY

016953

140. Andersen knew that Sunbeam's financial statements were replete with accounting irregularities and that the information in Sunbeam's 1996 and 1997 financial statements and in Andersen's 1996 and 1997 unqualified audit opinions was materially false and misleading.

141. Although Andersen knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform MS & Co. or MSSF that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

142. Andersen made its materially false representations regarding its unqualified audit opinions and the accuracy of Sunbeam's financial statements with the intent to deceive Plaintiffs.

143. Andersen knew that the false information that had been provided to Plaintiffs would be critical to Plaintiffs' decisions to participate in the financing of Sunbeam's acquisitions. But for Andersen's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

144. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow, as engagement partner, and Pruitt, as concurring partner had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied

NOT A CERTIFIED COPY

016954

upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

145. This fraud was also knowingly perpetrated by the Foreign Andersen Branches. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

146. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

147. As a direct result of this fraud, MS & Co., MSSF, and Morgan Stanley have collectively suffered hundreds of millions of dollars in damages.

NOT A CERTIFIED COPY

016951

COUNT II

(Conspiracy to Defraud)

148. Paragraphs 1 through 135 are repeated and realleged as if set forth herein.

149. Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus acted in concert and wrongfully conspired with Dunlap, Kersh, Gluck, and other

16div-025099

senior Sunbeam executives to create the appearance that Sunbeam was performing at a high level. The purpose of this conspiracy was artificially to inflate the stock price of Sunbeam and thereby to induce MS & Co. to underwrite the Convertible Note Offering and MSSF into loaning Sunbeam $680 million to finance Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs and committed overt acts in furtherance of this fraudulent scheme.

150. In furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives agreed to misstate Sunbeam's true financial condition by millions of dollars in order to create the illusion that Sunbeam had undergone a radical financial turnaround. Pursuant to this scheme, Dunlap, Kersh, Gluck, and other Sunbeam executives caused Sunbeam, in 1996, to overstate its operating losses by at least $40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, Dunlap, Kersh, Gluck, and the other Sunbeam executives caused Sunbeam dramatically to overstate its earnings.

151. In late 1997 to early 1998, in furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives decided to acquire Coleman, First Alert, and Signature Brands. They communicated this decision to Andersen and Harlow. Thereafter, Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs.

152. In March 1998, in furtherance of the conspiracy, Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, committed overt acts in furtherance of the conspiracy, including, but not limited to, issuing Andersen's false and

NOT A CERTIFIED COPY

016956

misleading 1997 unqualified audit opinion with respect to Sunbeam's 1997 financial statements and consenting to its publication to the SEC as part of Sunbeam's Form 10-K filing on March 6, 1998.

153. The members of the conspiracy all knew or recklessly disregarded the fact that Sunbeam's 1996 and 1997 financial statements and Andersen's audit opinions concerning those financial statements contained false statements of material fact. All of the co-conspirators that the representations regarding Sunbeam's 1996 and 1997 financial statements were false when made and/or made these representations with reckless disregard as to their truth.

154. In furtherance of the conspiracy, and to induce MS & Co. into underwriting the Convertible Note Offering and MSSF into loaning Sunbeam $680 million, Andersen and Sunbeam represented to MS & Co. and MSSF that Sunbeam's audited financial statements and Andersen's audit opinions were accurate and not misleading. The co-conspirators invited MS & Co. and MSSF to rely on Andersen's unqualified audit opinions. In furtherance of the conspiracy, Andersen expressly represented to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable.

155. In furtherance of the conspiracy, Andersen, Harlow, other Andersen-Worldwide members and employees, and Sunbeam employees participated in meetings and telephone calls in which they represented to employees of MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

156. In furtherance of the conspiracy, Sunbeam's senior management caused Sunbeam expressly to represent, in loan negotiations with MSSF, that Andersen's audit opinions were accurate. They caused Sunbeam to warrant, in the Sunbeam-MSSF credit agreement, that it had

NOT A CERTIFIED COPY

016957

provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. They caused Sunbeam to include its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and to represent to MS & Co. that its audited financial statements were reliable. As part of the Coleman merger agreement executed on February 27, 1998, they caused Sunbeam to represent and warrant that all of Sunbeam's filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Andersen and the other Defendants named in this Complaint had full knowledge and approved of these false representations.

157. In reasonable and justifiable reliance on the co-conspirators' representations that Sunbeam's financial statements and Andersen's audit reports were accurate and truthful, MS & Co. agreed to underwrite the Convertible Note Offering, and MSSF agreed to loan Sunbeam $680 million to finance Sunbeam's acquisition of Coleman. But for the co-conspirators' fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

158. Harlow, Pruitt, and Denkhaus had full knowledge of and participated in this conspiracy. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly

NOT A CERTIFIED COPY

016958

disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

159. The Foreign Andersen Branches also knowingly participated in this scheme. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

160. Andersen-Worldwide also participated in this conspiracy through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

161. As a direct result of this conspiracy of fraudulent inducement, Plaintiffs have collectively suffered hundreds of millions of dollars in damages.

COUNT III

Aiding and Abetting Fraud

162. Paragraphs 1 through 135 are repeated and alleged as if set forth herein.

NOT A CERTIFIED COPY

016959

163. To induce MSSF into loaning Sunbeam $680 million to finance its acquisition of Coleman, First Alert, and Signature Brands, Sunbeam represented to MSSF in loan negotiations that Sunbeam's audited financial statements were accurate and not misleading. In the Sunbeam-MSSF credit agreement, Sunbeam warranted that it had provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Sunbeam included its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and represented to MS & Co. and MSSF that its audited financial statements were reliable.

164. As part of the Coleman merger agreement executed on February 27, 1998, Sunbeam expressly represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Sunbeam knew that its many representations regarding its 1996 and 1997 financial statements were materially false when made and/or made these representations with reckless disregard as to their truth. It also knew that Andersen's 1996 and 1997 unqualified audit opinions were materially false and misleading.

165. Sunbeam knew that MS & Co. would rely on Sunbeam's representations in determining whether to act as Sunbeam's underwriter and that MSSF would rely on its representations in deciding to loan Sunbeam $680 million to finance its acquisitions. Although Sunbeam knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform them that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

NOT A CERTIFIED COPY

016960

166. Sunbeam made its materially false representations regarding its financial statements and Andersen's unqualified audit opinions with the intent to deceive MS & Co. and MSSF and to induce them to participate in the financing of Sunbeam's acquisitions.

167. Sunbeam knew that the false information that it had provided to MS & Co. and MSSF, and its intentional failure to correct the misrepresentations contained in Sunbeam's financial statements, would be critical to their decision to participate in the financing of Sunbeam's acquisitions. But for Sunbeam's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam $680 million.

168. Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, knowingly and substantially assisted Sunbeam in its fraud. Andersen itself expressly represented to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. In addition, employees, partners, and members of Andersen and Andersen-Worldwide, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

169. Harlow, Pruitt, and Denkhaus substantially and knowingly assisted Sunbeam's fraud. They each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

NOT A CERTIFIED COPY

016961

170. The Foreign Andersen Branches substantially and knowingly assisted Sunbeam's fraud. They each reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

171. As a direct result of Sunbeam's fraud, aided and abetted by Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus, MS & Co., MSSF, and Morgan Stanley collectively have suffered hundreds of millions of dollars in damages.

WHEREFORE, Plaintiffs, MS & Co., MSSF, and Morgan Stanley, demand judgment against Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, Harlow, Pruitt, and Denkhaus, jointly and severally, for:

(A) compensatory damages;

(B) prejudgment interest;

(C) attorneys' fees and costs; and

(D) such other relief as may be just and appropriate.

Plaintiffs reserve the right to amend their complaint pursuant to section 768.72, Florida Statutes, to assert claims for punitive damages in excess of $1.2 billion as allowed by law.

NOT A CERTIFIED COPY

016962

DEMAND FOR JURY TRIAL

Plaintiffs request a trial by jury on any and all issues raised by this complaint that are triable of right by a jury.

D. Culver Smith III
Florida Bar No. 105933
of
D. CULVER SMITH III, P.A.
Suite 401, Northbridge Centre
515 North Flagler Drive
West Palm Beach, FL 33401
Tel. 561-833-3772
Fax 561-833-4585
<dcs@dcsmithlaw.com>

with
Mark C. Hansen
Michael K. Kellogg
James M. Webster
Rebecca A. Beynon
all pro hac vice
of
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
Tel. 202-326-7900
Fax 202-326-7999

Counsel for Plaintiffs

NOT A CERTIFIED COPY

016963

CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof was furnished by regular U.S. Mail to counsel on the attached list on August 6, 2004.

D. Culver Smith III

LIST OF COUNSEL
(Service of pleadings, etc.)

Counsel for U.S. Andersen Defendants[2]:

Steven L. Schwarzberg
SCHWARZBERG & ASSOCIATES
Suite 210, Esperanté
222 Lakeview Avenue
West Palm Beach FL 33401

Michael J. Moscato
CURTIS MALLET-PREVOST COLT & MOSLE LLP
101 Park Avenue
New York, NY 10178-0061

Counsel for Foreign Andersen Defendants[3]:

Sidney A. Stubbs, Jr.
JONES FOSTER JOHNSTON & STUBBS, P.A.
Suite 1100, Flagler Centre Tower
505 South Flagler Drive
West Palm Beach FL 33401

Counsel for Andersen Worldwide[4]:

Gerald F. Richman
RICHMAN GREER WEIL BRUMBAUGH MIRABITO
& CHRISTENSEN, P.A.
Suite 1504, One Clearlake Centre
250 Australian Boulevard South
West Palm Beach FL 33401

1037-001.list.counsel.pldg

NOT A CERTIFIED COPY

016964

[2] Arthur Andersen LLP (an Illinois limited-liability partnership), Phillip E. Harlow, William D. Pruitt, Jr., and Donald Denkhaus

[3] Arthur Andersen LLP (an Ontario limited-liability partnership), Arthur Andersen (a United Kingdom partnership), Arthur Andersen & Co. (a Hong Kong partnership), Ruiz, Urquiza Y Cia, S.C. (a Mexican partnership), and Porta Cachafeiro, Laria & Asociados (a Venezuelan partnership)

[4] Andersen Worldwide, Societé Cooperative (a Swiss cooperative)

NOT A CERTIFIED COPY

016965

ARTHUR ANDERSEN

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4133

March 19, 1998

Morgan Stanley & Co., Inc.
1585 Broadway
New York, New York 10036-8293

Gentlemen:

We have audited the consolidated balance sheets of Sunbeam Corporation and subsidiaries (the "Company") as of December 28, 1997 and December 29, 1996 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997 included in the offering memorandum for the $2,014,000,000 Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018; our report with respect thereto is also included in the offering memorandum. The offering memorandum dated March 19, 1998 is herein referred to as the Offering Memorandum.

This letter is being furnished in reliance upon your representation to us that –

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

NOT A CERTIFIED COPY

DEPOSITION EXHIBIT CP1417

016966

In connection with the Offering Memorandum—

1. We are independent certified public accountants with respect to the Company under rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations.

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 28, 1997; although we have conducted an audit for the fiscal year ended December 28, 1997, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 28, 1997, and for the fiscal year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the financial position, results of operations or cash flows as of any date or for any period subsequent to December 28, 1997.

4. For purposes of this letter, we have read the minutes of meetings of the Board of Directors of the Company and its subsidiaries as set forth in the minute books at March 16, 1998, except for the meetings of the Board of Directors which took place on February 3, 1998 and February 28, 1998, for which we have read the agendas. Officials of the Company have advised us that these constitute a complete record of minutes of all such meetings through March 16, 1998. We have carried out other procedures to March 16, 1998, as follows (our work did not extend to the period from March 17, 1998, to March 19, 1998, inclusive):

   a. With respect to the period from December 29, 1997 to February 1, 1998, we have

      (i) Read the unaudited consolidated financial statements of the Company and its subsidiaries for the period from December 29, 1997 to February 1, 1998 furnished us by the Company, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to February 1, 1998, were available. The financial information for the period from December 29, 1997 to February 1, 1998 is incomplete in that it omits the statements of cash flows and other disclosures.

      (ii) Inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated

NOT A CERTIFIED COPY

016967

financial statements referred to in a(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the Offering Memorandum.

The foregoing procedures do not constitute an audit conducted in accordance with generally accepted auditing standards. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that –

   a. At February 1, 1998, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated net current assets or consolidated shareholders' equity of the Company as compared with amounts shown in the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum, except as follows (in thousands):

	December 28, 1997	February 1, 1998
Long-term debt	$ 194,580	$ 219,449
Shareholders' Equity	531,937	525,913

   b. For the period from December 29, 1997, to February 1, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in net income (loss), except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows (in thousands):

	The Period	
	December 30, 1996 Through February 2, 1997	December 29, 1997 through February 1, 1998
Net sales	$ 72,945	$ 28,984
Net income (loss)	4,786	(9,510)

NOT A CERTIFIED COPY

016968

6. As mentioned in 4(a), Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to February 1, 1998, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after February 1, 1998 have been, of necessity, even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether (a) at March 16, 1998, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or shareholders' equity of the consolidated companies as compared with amounts shown on the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum; or (b) for the period from December 29, 1997, to March 16, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the amount of net income. On the basis of these inquiries and our reading of the minutes and meeting agendas described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows:

   a. Between December 29, 1997 and March 16, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased from $194,580,000 to $299,580,000 as a result of drawings on the Company's credit facility and (iii) consolidated shareholders' equity has decreased primarily because of net losses during the period offset, in part, by contributions received for stock option exercises.

   b. For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997. Additionally, the decrease in consolidated net sales during the period as compared to the corresponding period of the preceding year results, in part, from a non-recurring sale in January 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the Company's November 1996 restructuring. Net income decreased primarily due to the aforementioned sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers.

NOT A CERTIFIED COPY

696910

c. Although the Company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to $143,499,000 for the corresponding period of the preceding year.

7. At your request, we have –

a. Read the unaudited pro forma condensed consolidated balance sheet as of December 28, 1997, and the unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 28, 1997 included in the Offering Memorandum.

b. Inquired of certain officials of the Company who have responsibility for financial and accounting matters about –

(i) The basis for their determination of the pro forma adjustments, and

(ii) Whether the unaudited pro forma condensed consolidated financial statements referred to in 7a comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

c. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. The foregoing procedures would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representation about the sufficiency of such procedures for your purposes.

NOT A CERTIFIED COPY

016970

8. Nothing came to our attention as a result of the procedures specified in paragraph 7, however, that caused us to believe that the unaudited pro forma condensed consolidated financial statements referred to in 7a included in the Offering Memorandum do not comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements. Had we performed additional procedures or had we made an examination of the pro forma condensed consolidated financial statements, other matters might have come to our attention that would have been reported to you.

9. Our audit of the consolidated financial statements for periods referred to in the introductory paragraph of this letter was comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

10. We compared the information included under the heading "Selected Historical Financial Data" with the requirements of item 301 of Regulation S-K. We also inquired of certain officials of the Company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of item 301 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 301 of Regulation S-K.

11. For purposes of this letter, we have also read the items identified by you on the attached copy of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

    ✓ Compared to corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

    A Recomputed from corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

NOT A CERTIFIED COPY

016971

✓ Compared to, or recomputed from, amounts included in an unaudited schedule or report prepared by the Company, which we were informed by officers of the Company responsible for accounting matters, were derived from the accounting records of the Company, and found them to be in agreement. We confirmed the mathematical accuracy of the schedule or report and found it to be mathematically accurate. We make no representations regarding the completeness or accuracy of the Company's assumptions underlying such schedule or report.

✓ Compared to, or recomputed from, the accounting records of the Company and noted agreement.

✓ Compared to, or recomputed from, corresponding amounts appearing in the Company's unaudited proforma condensed combined financial statements included in the Offering Memorandum and found them to be in agreement.

12. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of amounts reflected in the Offering Memorandum. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

13. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

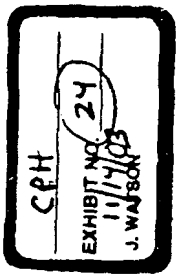
Arthur Andersen L.L.P.

NOT A CERTIFIED COPY

016972

NOT A CERTIFIED COPY

016973



Davis Polk & Wardwell
Chronology Prepared in Response to June 30, 2000 Subpoena
Sunbeam Securities Litigation

The chronology below was prepared in August 2000 in accordance with discussions among counsel concerning the response by Davis Polk & Wardwell to a subpoena dated June 30, 2000, served by Arthur Andersen in the Sunbeam securities litigation pending in the Southern District of Florida. It is based on a review of Davis Polk & Wardwell ("DPW") time records and file documents. The time records were in most cases very general in their descriptions of activities and did not provide sufficient detail to identify with greater particularity timing, place, or attendance. Moreover, the time records may not reflect all meetings and conversations that may have occurred during the relevant period. Similarly, the files may not contain copies of all documents, transmittal letters, memoranda, etc., that may have existed at the time. Consequently, the chronology is only a best efforts attempt to reconstruct events based on available information and may be incomplete or inaccurate to the extent events occurred differently than reflected in the time records and documents that were retained in the file.

Pursuant to the understandings reached among counsel, the chronology covers the period from the inception of DPW's work on the issuance of Sunbeam's zero coupon convertible debentures at the end of February 1998 through April 15, 1998. It identifies communications between DPW and Sunbeam, Arthur Andersen, or debenture purchasers during that time.

In addition to the events specifically listed below, the time records indicate numerous phone calls and document reviews, as to which details do not exist, but many of which may have involved communications between DPW and Sunbeam and its counsel, or Arthur Andersen. Because no detail exists, however, it is impossible at this time to provide specific times and dates for such communications other than to say that such communications took place on a regular basis throughout the period.

Dates	Description
February 25, 1998	Initial time charge relating to proposed offering; introductory telephone calls.

NOT A CERTIFIED COPY

01697

March 2, 1998	Organizational conference call with issuers' counsel, Skadden Arps.
March 5, 1998	DPW transmits underwriter prepared portions of draft offering memorandum to Skadden.
March 6, 1998	Due diligence conference calls with Sunbeam re: acquisitions and environmental issues.
March 8, 1998	Due diligence review of documents at Skadden.
March 9, 1998	Due diligence meeting at Skadden.
March 10, 1998	Due diligence conference calls with First Alert, Signature, and Sunbeam (Brendel - environmental issues).
March 11, 1998	Additional due diligence calls with Skadden.
March 12, 1998	Drafting session at Skadden; Coleman due diligence calls; accounting due diligence calls.
March 16, 1998	Offering memo reds (subject to completion) distributed.
March 18, 1998	Telephone conference calls re: Sunbeam first quarter results and proposed press release; review of draft comfort letters from Arthur Andersen and KPMG.
March 19, 1998	Pricing; printing of final offering memorandum.
March 24, 1998	Bring down due diligence conference call; pre-closing.
March 25, 1998	Closing.

NOT A CERTIFIED COPY

016975

NOT A CERTIFIED COPY

016976

14013 MS
984 SUNBEAM ZERO COUPON CONVERTS DUE 2018

Lurie JM	1998032313790001	03/18/98	9.5	b	Review-AA & KPMG comfort letters, calls Bernstein, MS & Skadden; conference calls w/same re various matters; conference call re PA changes, call w/other accts re comfort; conference calls re Q/W/Co; meetings w/FJM, AD, JS
GRAND TOTAL			9.5		

NOT A CERTIFIED COPY

LL6910

NOT A CERTIFIED COPY

016978

Dean

IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

----------x

ALAN DEAN

New York, New York

Thursday, June 3, 2004

Reported by: Steven Neil Cohen, RPR
Job No. 161001

NOT A CERTIFIED COPY

016979

Dean
June 3, 2004
9:51 a.m.

Videotaped Deposition of ALAN DEAN, taken by Plaintiff, pursuant to notice at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York, before Steven Neil Cohen, a Registered Professional Reporter and Notary Public of the State of New York.

Dean
APPEARANCES

JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611-9350
Attorneys for Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.
BY: CLARK C. JOHNSON, ESQ.

KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for Morgan Stanley & Co., Inc.
BY: THOMAS A. CLARE, ESQ.

DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
Attorneys for Alan Dean
BY: ROBERT F. WISE, JR., ESQ.

ALSO PRESENT: Victor Disla, Videographer

Dean

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath; that all objections, except as to form are reserved to the time of trial.

Dean

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. Alan Dean in the matter Coleman Holdings, Inc., plaintiff, versus Morgan Stanley & Co., Inc., defendant, in the 15th Judicial Court in and for Palm Beach County, Florida.

This deposition is being held at 450 Lexington Avenue, New York, New York on June 3, 2004 at approximately 9:51 a.m.

My name is Victor Disla. I am from the firm of Esquire Video Services. I am the legal video specialist.

The court reporter is Mr. Steve Cohen in association with Esquire Deposition Services.

Will counsel please introduce themselves for the record?

MR. JOHNSON: Clark Johnson, Jenner & Block, Chicago, for Coleman (Parent) Holdings and MacAndrews & Forbes Holdings, Inc.

NOT A CERTIFIED COPY

016980

Dean

MR. CLARE: Tom Clare from Kirkland & Ellis here for Morgan Stanley & Company.

MR. WISE: Bob Wise of Davis Polk & Wardwell representing Mr. Dean.

ALAN DEAN,

called as a witness by the Plaintiff, having been duly sworn, testified as follows:

BY MR. JOHNSON:

Q. Good morning, Mr. Dean. Would you please state your full name for the record?

A. My name is Alan Dean.

Q. Could you give your address please?

A. My address is 30 Hampton Road, Scarsdale, New York.

Q. Mr. Dean, have you ever given a deposition before?

A. Yes, I have.

Q. On how many occasions?

A. Twice.

Q. When was the most recent of those occasions?

Dean

A. I can't remember. It was several years ago.

Q. How about the first of the occasions?

A. It was more than ten years ago.

Q. Were both of those depositions given concerning your work as an attorney for Davis Polk?

A. Yes, they were.

Q. What matters were involved in those depositions?

A. Well, the matters that -- the matter that the depositions emerged out of was a representation of Morgan Stanley in connection with a Bank of New England -- Bank of New England debt offering.

MR. WISE: Let's stop for a minute. The reporter has asked that we switch mics.

(Pause)

BY MR. JOHNSON:

Q. Mr. Dean, before the brief interruption you indicated that your, was it the most recent deposition, was in

Dean

connection with a Morgan Stanley matter concerning a Bank of New England debt offering; is that correct?

A. That's correct.

Q. What was the other deposition?

A. The depositions both arose out of the same transaction.

Q. Was that civil litigation?

A. Yes, it was civil litigation.

Q. Was it litigation brought by purchasers of the debt?

A. One of the lawsuits was brought by purchasers of the debt.

Q. What was the nature of the allegations in that matter?

MR. WISE: If you want to find that out you can go look at the court records. That is wasting his time.

BY MR. JOHNSON:

Q. Can you go ahead and answer?

A. The case involved allegations that there had been material misstatements and omissions in a prospectus relating to a debt offering for the Bank of New England

Dean

Corporation.

Q. Did those depositions occur in the 1990s?

A. May have occurred in the 1980s and there was -- the depositions occurred in a different lawsuit arising out of the same facts sometime in the '90s, I think. I can't remember the precise dates. It was years and years ago.

Q. One of the lawsuits was brought by investors?

A. I am sure that one of the lawsuits was brought by investors. I have forgotten whether or not the other lawsuit was also brought by investors.

There may have been a different party -- a different defendant involved in the second lawsuit.

Q. You as a Davis Polk attorney were counsel to Morgan Stanley, the underwriter for the Bank of New England debt offering; is that correct?

A. That is correct.

Q. Who from Morgan Stanley was

NOT A CERTIFIED COPY

016981

Dean

involved in that debt offering?
MR. WISE: I am going to object to that and direct him not to answer.
MR. JOHNSON: The basis for that instruction?
MR. WISE: It is totally irrelevant. It is not what he is here to testify about today.
We are not going to have a rehash of the Bank of New England matter.
BY MR. JOHNSON:
Q. Was Ruth Porat involved in the Bank of New England debt offering?
A. No, she was not.
Q. Was John Tyree?
A. No, he was not.
Q. Was Brooks Harris?
A. No, he was not.
Q. Is it fair to say, Mr. Dean, you are familiar with the deposition process?
A. I haven't given very many depositions so I would say that I am not as familiar with the process as you are.
Q. If you don't understand any of my

Dean

questions let me know and I will try to rephrase them.
If you want to take a break at any time let me know that and we will try to accommodate your request.
The court reporter is obviously taking down what everyone says. As a result, your responses to my questions need to be stated out loud rather than a nod of the head or shrug of the shoulders, that sort of thing.
Are you represented by counsel today?
A. Yes, I am represented by counsel today.
Q. Who is your counsel?
A. Robert Wise is my counsel.
Q. Mr. Clare is not your counsel?
A. No, Mr. Clare is not my counsel.
Q. Have you testified in any judicial proceedings?
A. No, I have not.
Q. Any arbitrations?
A. No, I have not.

Dean

Q. What did you do to prepare for the deposition today?
A. There was a meeting that I had on Monday with Mr. Wise and a brief meeting that I had with Mr. Wise this morning.
Q. How long did you meet with Mr. Wise on Monday?
A. I believe it was for about two-and-a-half hours.
Q. This morning?
A. Less than half an hour.
Q. When was the first time you met Mr. Clare?
A. On Monday.
Q. Did he attend the meeting with you and Mr. Wise?
A. He attended the Monday meeting with Mr. Wise and myself.
Q. Was he present at the meeting this morning?
A. No, he was not.
Q. Other than Mr. Wise have you spoken with any attorneys concerning this deposition?

Dean

A. No, I have not.
Q. No in-house lawyers for Morgan Stanley?
A. No, I have not.
Q. Did you sign a protective order in this litigation?
A. I did sign a protective order. I don't know if it is the one that you are referring to but I was furnished a copy of an order by Mr. Clare on Monday which I signed.
Q. Do you know what other Morgan Stanley lawyers -- strike that.
What other Davis Polk lawyers have signed that protective order?
A. I am unaware of which lawyers have signed it.
Q. Do you know whether Mr. Wise has signed the protective order?
A. I don't know.
Q. Is Morgan Stanley compensating you or Mr. Wise for your time spent in connection with this deposition?
A. I don't know whether or not they

NOT A CERTIFIED COPY

286910

Dean

will be or not.

MR. WISE: That is an excellent question. I would like to know the answer to that question.

BY MR. JOHNSON:

Q. So as far as you know there is no understanding with Morgan Stanley concerning Davis Polk's efforts in connection with this litigation?

A. There is no -- there are no compensation arrangements that I am aware of in connection with this deposition.

MR. WISE: We are not saying that we will not have discussions with the client about --

MR. JOHNSON: I will not stop you from that. That is between you and Mr. Clare.

BY MR. JOHNSON:

Q. Did you review any materials that refreshed your memory concerning the Sunbeam transaction?

A. I was furnished two documents I believe on Monday to try to refresh my

Dean

recollection about Sunbeam.

I was also furnished a closing binder of the closing documents relating to Sunbeam but I didn't look at those very -- in any depth at all.

Q. You didn't look at any of those materials in any depth or the closing binder?

A. The closing binder I did not look at in depth nor did I really study the other documents that had been furnished to me.

Q. Did those documents refresh your memory in any way concerning the events of March of 1998?

A. They -- I don't think that they did.

Q. Do you have an understanding as to who has been deposed in the litigation that brings us here today?

A. I don't know who has been deposed in this -- in this matter today.

Q. You are not aware of any Morgan Stanley witness who has been deposed so far

Dean

in this litigation?

A. I am not specifically aware of any Morgan Stanley person that has been deposed.

Q. Do you have any general awareness of who has been deposed so far?

A. I have been told that Heather Stack and James Lurie may have been noticed for depositions and I was told by Mr. Wise that Heather Stack had given her deposition.

Q. Did he describe any of her testimony?

A. No, he did not.

Q. How about Arthur Andersen personnel; do you know of any Andersen personnel that have been deposed?

A. I am unaware of any depositions that have been taken in this case except my own.

Q. Among the Davis Polk attorneys who worked on the Sunbeam subordinated debt offering do you think you are the most knowledgeable person concerning Davis

Dean

Polk's work?

A. Well, I was the partner in charge of the matter. That does not necessarily mean that I was knowledgeable about all aspects of the transaction.

There is delegation that goes on in any transaction.

Q. Did you have a team of lawyers working on the subordinated debt offering?

A. Yes. There was a Davis Polk team that was working on the subordinated debt offering.

Q. Who was on the team?

A. I was on the team. James Lurie was on the team. Heather Stack was on the team. There was another woman, an associate who has left the firm, whose name I have forgotten now.

Q. Nicole Duncan?

A. Yes, that is Nicole Duncan.

Q. Anybody else?

A. I can't recall anybody else. I mean, there may have been paralegals involved in it.

NOT A CERTIFIED COPY

016983

Dean

It has been a long time since the transaction occurred. The names that we have just gone over are the ones that I recall at this time.

MR. JOHNSON: Let's mark this as CPH Exhibit 213.

(CPH Exhibit 213 marked for identification)

BY MR. JOHNSON:

Q. Mr. Dean, I have given you a document we have marked as CPH Exhibit 213 which has the Bates stamp Morgan Stanley confidential 0029159 through 162.

Have you ever seen this document before?

A. I can't recall whether or not I have seen this document before.

Q. Feel free to consult any portion of Exhibit 213 but I would like to call your attention particularly to the last paragraph on the first page carrying over to the top of page 2 and ask whether the information set forth there refreshes your recollection as to which Davis Polk lawyers

Dean

were in fact working on the subordinated debt offering?

A. The list of lawyers, I think, on the top of page 2 is consistent with what we were talking about.

Mr. Megevick had been consulted. I can't recall whether Ms. Fassberg and Mr. Hall and Mr. Morrison and Mr. Small were consulted.

Q. Mr. Morrison and Mr. Small were consulted in connection with the press release; is that correct?

A. That may be an area of privilege. I am not sure whether or not --

MR. WISE: Certainly what is in the letter I think we do not disagree with.

BY MR. JOHNSON:

Q. The question is whether that is a correct statement. Mr. Wise has already answered that but if you would answer it as well I would appreciate it.

A. Yes, they were consulted in connection with the proposed press release.

Dean

Q. What was the division of responsibility among the team that is set forth here at the top of page 2 of Exhibit 213?

A. Well, I can't -- it has been a long time since the transaction happened so it is hard for me to precisely say who was responsible for what.

In general terms Heather Stack and Nicole were responsible for the documentary due diligence in connection with the transaction.

Mr. Lurie was involved in drafting the convertible -- the documents underlying the convertible security.

All of us were involved in disclosure matters and reviewing the offering memorandum.

Q. Did any other Davis Polk lawyers work on any Sunbeam related issues to your knowledge?

A. What Sunbeam issues? I am not sure I understand the question.

Q. Let me just ask it more

Dean

specifically.

Are you aware of any Davis Polk attorneys representing any officers of Sunbeam Corporation at any time?

A. I am not aware of any Davis Polk lawyers who would have represented any Sunbeam officers at the time they were Sunbeam officers.

Q. Are you aware of anyone's representation of Janet Kelley?

A. I think that Ms. Kelley may have been represented by Dennis Glazer of Davis Polk.

Q. Did you have any conversations with Mr. Glazer concerning that representation?

A. I don't recall whether or not I did or not. He may have consulted me. I don't remember at this time.

Q. At the time that the subordinated debt offering was proceeding Sunbeam was also looking to syndicate a credit facility; is that correct?

A. Yes, that is correct.

NOT A CERTIFIED COPY

016984

Dean

Q. Was Davis Polk involved in that work as well?

A. Yes. Davis Polk was involved in that work as well representing Morgan Stanley and the syndicate of banks.

Q. Was there a partner in charge, so to speak, of that aspect of the work?

A. I believe it was Peter Levin that was in charge of that work.

Q. Was there any protocol in place to share information among Mr. Levin's team and your team?

A. No, there was not.

Q. Let's back up. We will come back to this. Let's back up to a little more background if we could.

I would like you to describe your educational background for me.

A. Starting from when?

Q. Graduation from high school.

A. I graduated from Stuyvesant High School in New York City.

I then attended Harvard College and received an undergraduate degree there.

Dean

Then I went to the University of California at Berkeley where I received a Master's degree in mathematics, and then I received a law degree at Harvard Law School.

Q. Would you kindly put years on each of these degrees for me?

A. I graduated from high school in 1969. I graduated from college in 1973. I received a Master's degree from Berkeley in 1974 and I received my law degree from Harvard in 1978.

Q. Have you been with Davis Polk your entire legal career?

A. Yes, I have been, since graduating from Harvard Law School.

Q. At some point you became a partner at Davis Polk?

A. I did.

Q. When was that?

A. In 1986.

Q. Is it your view that Davis Polk is one of the premier law firms in the world in the area of corporate securities

Dean

work?

A. Davis Polk has a world reputation for doing securities work.

Q. I assume you are proud of that reputation?

A. Yes, I am proud of that reputation.

Q. Do you have any particular areas of expertise in corporate and securities law?

A. Well, I give general corporate advice to corporations. I have a specialization in providing advice in doing securities offerings both for issuers and for underwriters.

Q. Do you view most of your clients as highly sophisticated?

A. Most of my clients are very sophisticated.

Q. Morgan Stanley is a sophisticated client, isn't it?

A. Yes, I believe Morgan Stanley is a sophisticated client.

Q. How many securities offerings

Dean

have you been involved in either for the issuer or underwriter?

A. I can't count. I mean, it is scores, probably 100 offerings.

Q. Over the past 25 years?

A. Yes, for the past 25 years.

Q. Tell me about Davis Polk's relationship with Morgan Stanley.

A. Davis Polk is one of the counsel that Morgan Stanley routinely uses in connection with public offering work and Davis Polk also counsels Morgan Stanley on other legal matters as well.

Q. How long has Davis Polk been a counsel of choice for Morgan Stanley?

A. I don't know. I think that our relationship with Morgan Stanley extends back to when Morgan Stanley was founded.

Morgan Stanley has used many counsel over the years and I wouldn't necessarily characterize Davis Polk as being Morgan Stanley's exclusive counsel of choice.

Q. When you joined Davis Polk in

NOT A CERTIFIED COPY

016985

Dean

1978 Morgan Stanley was a client of the firm?

A. Yes. Morgan Stanley was a client of the firm in 1978.

Q. And has been a client continuously since then?

A. Yes, it has been.

Q. Have you worked on Morgan Stanley matters your entire tenure at Davis Polk?

A. I don't remember which was the first Morgan Stanley transaction that I worked on but certainly -- I don't remember whether or not my first year as an associate, whether or not I worked on -- on a Morgan Stanley transaction but I certainly began working on Morgan Stanley transactions shortly after I joined the firm.

Q. You personally have worked on Morgan Stanley matters for upwards of 20 years?

A. Yes.

Q. Do you consider Morgan Stanley a major client of Davis Polk?

Dean

A. Morgan Stanley is a -- I don't know what you mean by "major client." It is -- we represent Morgan Stanley in many matters.

Q. In terms of fees are they in the top ten percent of clients for Davis Polk?

A. Yes. Morgan Stanley would be in the top ten percent.

Q. As an approximate matter how much in fees does Davis Polk collect from Morgan Stanley on an annual basis?

MR. WISE: I am going to object and direct him not to answer that.

BY MR. JOHNSON:

Q. I assume that it exceeds $10 million a year?

A. I assume that it does. I am not -- I am frankly -- I don't know what the exact number is.

Q. Within Davis Polk how is the fee credit for Morgan Stanley apportioned?

A. There is no fee credit allocation among the partners.

Q. Is there any evaluation of the

Dean

partners at Davis Polk on an annual basis or not?

A. Yes, there is an evaluation.

Q. Tell me about that process.

A. The evaluation process involves questionnaires today sent out to the partners of the firm where each partner is allowed to evaluate their own work at the firm and then to comment on other partners.

Q. That is done on an annual basis?

A. That is done on an annual basis.

Q. Did your 1998 self-evaluation reference the Sunbeam transaction in any way?

A. I don't believe that at the time we had a -- I don't remember that. I don't remember whether or not my evaluation in that year involved the Sunbeam transaction.

Q. Have you ever mentioned Sunbeam in any of your evaluations?

A. I don't remember doing so.

Q. Do you know whether any of your partners discussed your work on the Sunbeam transaction in evaluating you?

Dean

A. I am not aware of it.

Q. As you sit here today do you think there is anything noteworthy about the Sunbeam transaction you worked on?

MR. CLARE: Object to the form of the question.

THE WITNESS: I don't know what "noteworthy" means.

BY MR. JOHNSON:

Q. Was there anything particularly challenging about that transaction?

A. All transactions are challenging in their own way.

Q. That is why I said "particularly."

Was there anything distinctive about the transaction?

A. Well, I think the fact that lawsuits were brought in connection with the transaction is significant and noteworthy.

Q. Were you ever interviewed by anyone in relation to those lawsuits?

A. A reporter attempted to interview

NOT A CERTIFIED COPY

986910

Dean

me but our standard firm policy is not to comment on matters that involve client representation.

Q. Who was the reporter?

A. I have forgotten his name. I believe it was -- I think it was a reporter for Business Week but I have forgotten.

Q. Did you view the time frame for completing the offering to be unreasonably short?

A. No, I did not.

Q. Was it a fairly standard time frame?

A. Yes, it was a fairly standard time frame.

Q. Did the fact that the offering you were working on was made in connection with the acquisition of three companies by Sunbeam present any complexity?

A. Since the transaction did involve the acquisition of three companies and the three companies were going to be part of the new combined Sunbeam entity there was -- there were due diligence efforts

Dean

that needed to be done in connection with those three companies.

Q. It was not simply the preacquisition issuer that needed diligence; it was the three targets as well?

A. That is correct.

Q. Did you view the offering as successful for Morgan Stanley?

A. I don't know how Morgan Stanley views success in characterizing transactions.

The transaction was successfully placed by Morgan Stanley.

Q. Morgan Stanley made a lot of money on the transaction?

MR. CLARE: I object to the form of the question.

BY MR. JOHNSON:

Q. Is that a fair statement?

A. I don't know how much money Morgan Stanley made on the transaction.

There was a difference between the price that Morgan Stanley paid for the

Dean

securities and the price at which they sold them but in the overall scheme of things -- I mean, they could have lost money in connection with the transaction even though the securities were purchased at a price that was lower than the public offering price.

It really depends on how the transaction went.

Q. Do you have any basis to state that Morgan Stanley & Company lost money on the transaction?

A. I have no basis to know how much money Morgan Stanley made on the transaction.

I can state what -- if I looked at the cover page of the prospectus I can tell what you the spread was on the underwriting transaction.

Q. They made that spread to your knowledge?

A. I have no basis to conclude one way or the other. I assume that they did.

Q. Do you have any basis to conclude

Dean

that Morgan Stanley & Co. lost money on the transaction?

A. No, I have no basis.

Q. Morgan Stanley & Company was your client in this transaction, wasn't it?

A. Yes, they were.

Q. Is it fair to assume you would have heard about it if they lost money on this transaction?

MR. CLARE: Object to the form; calls for speculation.

THE WITNESS: I am not sure -- that -- Morgan Stanley does not necessarily share information about how much money they make on transactions with me on a routine basis after a transaction.

BY MR. JOHNSON:

Q. Have you been involved in any Morgan Stanley matter where Morgan Stanley lost money on the transaction?

A. I mean, I am not aware of any but I am not -- at the same time I am not aware of whether or not a transaction is

NOT A CERTIFIED COPY

016987

Page 34

Dean

profitable to Morgan Stanley.
Q. Was the transaction successful from Davis Polk's perspective?
A. I don't know what you mean by "successful."
We were able to -- we gave advice to Morgan Stanley in connection with the transaction. We sent a fee for our services in connection with the transaction.
That is what we did in connection with the transaction.
Q. I assume you collected the fee?
A. Yes, we did collect the fee.
Q. What was the fee on this transaction?
A. I don't recall.
Q. Can you give me an estimate?
A. I just don't have any idea. I am sure if we looked at our billing records we could figure out what the fee was.
Q. Based on your experience in transactions of this sort do you have a sense of whether a million dollars would be

Page 35

Dean

a fee typical in this sort of transaction?
A. A fee charged by Davis Polk in this transaction?
Q. Right.
A. For the subordinated debt offering, that would be very high.
Q. You mentioned that one potentially noteworthy thing about this transaction was the lawsuits that were brought concerning it.
When did you first hear about those lawsuits?
A. I don't remember when I heard about them. I assume that was shortly after the lawsuits were brought.
Q. Do you know when the lawsuits were brought?
A. I don't have any recollection of that now. I mean, I would have at the time but I don't now.
Q. Did you ever read any of the lawsuits that -- complaints that were filed?
A. Yes. I have read complaints. I

Page 36

Dean

don't remember which complaints I have read but I know that I have read the complaints -- a complaint.
Q. Was it a complaint of the bondholders or was it an equity holder complaint?
A. I don't remember.
Q. How did you come to read a copy of one of those complaints?
A. I don't know how I -- I don't know who furnished me a copy of the complaint. I just don't know. I don't remember right now.
Q. Based on your work on the transaction did you have any opinion as to the accuracy of the allegations in the complaint?
A. Well, I can't -- I don't remember what the allegations in the complaint were at this time so I would have to take a look at the complaint and then -- I am sure that my opinion would have been that the allegations were false at least insofar as Morgan Stanley was concerned.

Page 37

Dean

Q. Can you explain that qualification for me?
A. I don't know who the lawsuits were brought against and my only knowledge about the transaction relates to my representation of Morgan Stanley and no one else.
Q. As you sit here today do you have an opinion as to whether the offering memorandum for this offering was materially false and misleading?
A. I think that at the time that the offering memorandum was issued we believed that it -- that it did not contain any material misstatements or omissions.
Q. Would you acknowledge as you sit here today and with the benefit of hindsight that it does contain materially false and misleading information?
A. If the allegations against the company are correct, yes, it does contain -- one could allege that it contains material misstatements or omissions.

NOT A CERTIFIED COPY

016988

Dean

Q. Are you saying you have no opinion as to whether there was a fraud at Sunbeam?

A. From -- from what I have read in the newspapers and -- it does appear there was a fraud at Sunbeam.

Q. That was a fraud that came to light within months of the debt offering; isn't that correct?

A. The allegations -- the facts surrounding that fraud became -- began coming out after the offering.

Q. Do you regret Davis Polk's involvement in the offering?

A. No, I don't. I think that we did the job we were asked to do in the connection with the offering.

Q. What was the job that you were asked to do?

A. To assist Morgan Stanley in reviewing the offering memorandum and to render an opinion to Morgan Stanley about -- that the securities were validly issued and that the offering memorandum in

Dean

our opinion did not contain any material misstatements or omissions.

Q. Did anyone at Sunbeam provide false information to you, meaning Davis Polk, or Morgan Stanley?

A. I think, viewed in hindsight, it appears that people at Sunbeam did not -- were not, did not provide accurate information to us at the time.

Q. Any particular Sunbeam personnel do you think provided you false information?

A. I mean, I know I can't speak to the frame of mind of the Sunbeam personnel who provided the information and whether or not they in fact believed it to be true at the time.

We were certainly -- we were given assurances by them and we believed them, that the statements that they gave us at the time of the preparation of the offering memorandum were accurate.

Q. Who in particular gave you assurances?

Dean

A. Well, I think that the financial officers at Sunbeam did. I don't remember their names.

Q. Russ Kersh, does that ring a bell?

A. Yes.

Q. He is the CFO; is that right?

A. The CFO. There was a -- I don't remember. There was a treasurer or controller.

Q. Bob Gluck; is that right?

A. Bob Gluck, yes, that is right.

Q. Anyone else?

A. I have forgotten -- there was also a legal vice chairman or legal officer.

Q. David Fannin?

A. That name doesn't ring a bell.

There were a number of Sunbeam personnel who were involved in conversations relating to the offering and I can't call up all of their names at this time.

Q. We will get to that in a little

Dean

more detail shortly.

Did Davis Polk have any responsibility for determining what diligence would be appropriate in connection with the offering?

A. Due diligence is a team effort in connection with an offering and the advice that we would give about the scope of diligence is probably a privileged matter. I think.

MR. WISE: He hasn't asked you for the advice.

BY MR. JOHNSON:

Q. Whether you gave advice on the scope is all I am asking. That is a yes or no question.

A. Yes, we did.

Q. Did Davis Polk perform diligence on the transaction as well as advising on the scope of diligence?

A. Yes, we were assigned tasks to perform in connection with the diligence investigation.

Q. Did Morgan Stanley provide you

NOT A CERTIFIED COPY

016989

Dean

with a due diligence plan for your review?
MR. WISE: Answer that yes or no.
THE WITNESS: I don't remember whether or not they did or not.
MR. JOHNSON: You have to answer yes or no.
THE WITNESS: I don't remember. It would have been -- in many transactions it is customary for Morgan Stanley to prepare questions for due diligence that we might review.
BY MR. JOHNSON:
Q. You just don't recall whether that happened in this transaction or not?
A. I just don't recall. There are so many transactions. Some transactions it happens and some transactions it doesn't.
Q. Have you ever been involved in an offering by a consumer products company other than Sunbeam?
A. I can't remember whether or not I had or not. I have done offerings in a very wide range of industries.
Q. No consumer products companies

Dean

come immediately to mind?
A. There may well have been but I just don't remember any right now.
Q. Is it fair to say that the industry sector of the issuer is a consideration that informs what due diligence might be appropriate?
A. Yes, it is.
Q. You mentioned that Davis Polk's job in the transaction was to assist Morgan Stanley in reviewing the offering memorandum?
A. Yes.
Q. Did Davis Polk have any other responsibilities in connection with the transaction?
A. We were assigned the responsibility of doing diligence on reviewing legal documents at Sunbeam and at the three acquired companies.
Q. Did Davis Polk negotiate or draft any ancillary contracts in connection with the offering?
A. We would have drafted the

Dean

purchase agreement between Morgan Stanley and Sunbeam.
We also drafted the indenture that set forth the terms of the subordinated notes that were issued and there were -- we would have been -- we would have also drafted a closing memorandum for the transaction.
Q. Lockup agreements to draft those?
A. That would be part of the purchase agreement.
Q. What is the purpose of due diligence?
A. The purpose of due diligence is to provide a basis upon which the underwriter -- the underwriters in connection with the securities offering have liability in connection with the offering unless they are able to establish a due diligence defense.
The purpose of diligence is to -- both to provide a basis for establishing the due diligence defense but also as well to prevent misstatements from occurring.

Dean

Q. So it is to, to a reasonable degree, confirm that the offering memorandum is fair and accurate?
A. That is correct.
Q. Would you say it is typical in due diligence to talk to an issuer's customers?
A. It depends on the -- it depends on the issuer and the business they are in.
Q. How about for a consumer products company? Don't you think that would be appropriate due diligence?
A. Depends on the concentration of -- depends on whether or not there was a concentration of clients or not.
Q. How would that circumstance inform whether talking to customers would be appropriate?
A. The materiality of the customers to a company's revenues would be a factor in determining whether or not customer due diligence was appropriate.
Q. If an issuer had sales concentrated in five or six major companies

NOT A CERTIFIED COPY

016990

Page 46

Dean

such as Wal-Mart, Home Depot, et cetera, it would make sense to talk to those customers?

A. Yes, it might make sense in those particular companies.

I think one of the other issues is that many of those companies have arrangements where they won't talk to third parties or -- and it is also widely known in the industry that they do not necessarily serve -- tell people what their purchase commitments are.

Q. Are you, as you sit here today, aware of any policy within Home Depot that prevents Home Depot from advising an underwriter as to, say, the amount of inventory it has on hand?

A. I am not aware of any policy that Home Depot has.

I have certainly been told that Home Depot, in particular, may have policies against that.

Q. But you are not aware of any?

A. No.

Page 47

Dean

Q. How about Wal-Mart?

A. The same answer would -- as to Wal-Mart, I don't think that I have ever heard specific information about Wal-Mart but it wouldn't surprise me if they had some more policies.

Q. You are not aware of a policy?

A. No.

Q. How about Target?

A. The same answer as for Wal-Mart.

Q. K-Mart?

A. Same answer.

Q. Is it correct that the underwriter should not take senior management of the issuer at its word?

MR. CLARE: Object to the form of the question.

THE WITNESS: The case law says that it is -- independent verification is the standard in Section 11 cases.

I have forgotten whether or not this transaction involved a registered offering or whether or not it was done on a Rule 144A basis.

Page 48

Dean

Q. Does that, putting aside what the case law says and whether this was a 144A offering or not, do you believe that the underwriter should obtain independent verification of senior management's statements concerning the company and its prospects?

MR. CLARE: I object to the form; an incomplete hypothetical.

THE WITNESS: Could you clarify that question for me?

BY MR. JOHNSON:

Q. Sure.

Putting aside what -- whether it is a registered offering or not should an underwriter obtain independent verification of senior management's representations concerning the health of the issuer?

A. It depends on the statements that are made and whether or not an investigation is one that would be reasonable under those circumstances so I don't think that there is a rigid answer to that question.

Page 49

Dean

Q. Would independent verification be particularly appropriate when the underwriter comes across negative or -- negative information or information contrary to what management is contending?

MR. CLARE: Same objections.

THE WITNESS: I think it is impossible to generalize and give a yes or no answer to a question like that.

It really depends on the particular facts and circumstances of the situation.

MR. WISE: I would add that we have produced Mr. Dean here today as a fact witness in a case.

If you are interested in hiring Davis Polk to be an expert witness in the case so that you may ask hypothetical questions we could discuss that but I think we would be unable to do that given our continuing representation of Morgan Stanley so I would appreciate it if we can move to the fact issues rather than

NOT A CERTIFIED COPY

016991

hypotheticals.
MR. JOHNSON: We are moving there shortly. I am trying to get a basis of this witness' understanding of the requirements which we will then put in the context of what happened in this transaction.
MR. WISE: I think you can assume Mr. Dean, based upon the testimony you have already elicited, is an experienced practitioner in the area of securities transactions of this type so I think you probably can skip some of this and move to the facts.
BY MR. JOHNSON:
Q. I will take that advice.
Did Morgan Stanley or Davis Polk ever talk to a Sunbeam customer?
MR. CLARE: Objection; calls for speculation.
THE WITNESS: I am not aware of -- I can't recall at this time whether or not we were involved in any conversations with -- whether or not

Davis Polk was involved in any conversations with the Sunbeam customer, and I don't recall at this time.
I can't say for sure whether or not Morgan Stanley did or did not talk to a Sunbeam customer.
BY MR. JOHNSON:
Q. As you sit here today you can't identify any customers that either Davis Polk or Morgan Stanley spoke with?
A. I can't identify any right now and I don't remember any.
Q. Can you name for me all of the Sunbeam personnel that Morgan Stanley and Davis Polk spoke with in connection with diligence?
A. No, I can't. I mean, there were a host of individuals.
Q. Name as many as you can for me.
A. I think that we talked about Russell Kersh, we talked about Bob Gluck. I think that -- I was told that there was a conversation with the CEO of Sunbeam,

Mr. Dunlap. Janet Kelley was involved. There was a sales manager at Sunbeam whose name I can't recall was involved.
Q. Don Uzzi?
A. Yes.
I am sure there must have been others. It is six years ago and I have met a lot of people in transactions since then.
Q. When you say you are sure there must be others, why do you say that?
A. It -- just in the context of the offering process. You wind up consulting with many people during an offering.
Q. You mentioned Mr. Dunlap. Did Davis Polk ever have any communications with Mr. Dunlap?
A. I don't remember any direct communications that anybody at Davis Polk had with Mr. Dunlap.
Q. Apparently you would remember them if you had them?
A. I don't know.
Q. In seriousness, had you heard anything about Mr. Dunlap's reputation?

A. I don't know whether or not I knew it at the time of the transaction or whether or not it was after the transaction but he was regarded to be a very hard taskmaster.
Q. Did Davis Polk or Morgan Stanley investigate his business background prior to Sunbeam?
A. I think -- I don't recall whether or not Davis Polk did any investigation into his background.
I think I was aware of the fact that he had been involved in a turnaround situation, I think it was Scott Paper. I have forgotten what the name of the company was.
I don't know to what extent Morgan Stanley did an independent investigation.
Q. Other than what we have already talked about can you tell me any other due diligence that Morgan Stanley or Davis Polk performed on Sunbeam?
A. We would have read the minutes at

NOT A CERTIFIED COPY

016992

Page 54

Dean
Sunbeam and I believe that we would have read them at the acquired companies. I am not certain at this time.
Other things -- I just don't remember right now but I would have remembered back at the time what we had looked at.
Accountants management letters would have been an area that we would have looked at. I am sure we did it but, you know, I can't say that I positively sort of remember doing that right now.
It would have been our routine practice to do it.
Q. Anything else?
A. We probably reviewed the acquisition agreements.
Again, there are many documents that we would review in connection with an offering and I would remember exactly which documents we had looked at if we had been closer in time to the transaction but we would have done the -- we would have done the -- we would have reviewed the documents

Page 55

Dean
that in our professional opinion would have been required to be reviewed in connection with an offering of this sort.
Q. What work did you do concerning the company's business projections?
A. That is primarily a financial sort of analysis and so that part of the due diligence would fall more on Morgan Stanley's shoulders and they would not really rely upon a law firm to do that.
Q. Do you know what work Morgan Stanley did in that regard?
A. No.
Can we take a brief break to get some water?
MR. JOHNSON: Sure.
THE VIDEOGRAPHER: The time is 10:41 a.m. We are going off the video record.
(Recess)
THE VIDEOGRAPHER: The time is 10:58 a.m. We are back on the video record.
BY MR. JOHNSON:

Page 56

Dean
Q. Mr. Dean, how is it that you first got involved in the Sunbeam transaction that we are talking about today?
A. I have forgotten who assigned the Sunbeam matter to me. Somebody came to my office and said that Davis Polk had been retained to represent Morgan Stanley in connection with a new offering.
I don't remember who did that.
Q. It was one of your law partners?
A. Yes.
Q. When did that occur?
A. I don't know right now. I assume shortly -- I just don't have any recollection of that. I mean, it was just a long time ago.
We could take a look at our time records and the time records might indicate that.
Q. I have something that maybe is a little more concise than your time records that may refresh your memory.
This is a document that has been

Page 57

Dean
previously marked as Exhibit 24. Have you ever seen Exhibit 24 previously?
A. I have seen it before. I don't know if I have -- I have seen a version of this document before.
I don't know whether or not I have seen this exact document.
Q. When did you see a version of this document, Exhibit 24?
A. I saw it on Monday, I think, in connection with the deposition preparation. I may have seen it before when it was prepared.
Q. You weren't involved in preparing it in August of 2000?
A. No, I was not.
Q. This -- this is a chronology prepared by Davis Polk; is that correct?
A. The document says that it was prepared by Davis Polk. I assume that it was.
Q. The chronology prepared here has as its first date February 25, 1998.
Is that when you first became

NOT A CERTIFIED COPY

016693

Dean

involved in this matter?
A. I still don't have any specific recollection as to whether or not that was the date.
Q. Do any of the other dates listed in Exhibit 24 appear to be more likely your first involvement in the matter?
A. No. There is no other date that is more likely than not.
It could well be that my -- it really depends on what the time records show. It is just so long ago.
Q. Did you have any role in connection with the public announcement of the acquisitions?
A. No, I did not.
Q. Did anyone at Davis Polk?
A. I am not aware of anyone. Somebody at Davis Polk might have been but I am not aware of anyone.
Q. Did you attend the press conference where the acquisitions were announced?
A. No, I did not.

Dean

By "the acquisitions," I assume that you are talking about the three acquisitions.
Q. That's correct.
A. That were disclosed in the offering memorandum?
Q. Correct.
Did anyone from Davis Polk play any role in the question and answer script to be used at the press conference?
A. Not that I am aware of.
Q. You didn't personally?
A. No, I did not.
Q. I am going to focus on the first half of March, if I can, prior to March 15.
At any time prior to March 15 did Morgan Stanley or Davis Polk inquire of Sunbeam concerning how its first quarter of 1998 was looking?
A. Yes.
Q. Tell me about those inquiries.
A. Well, my recollection would be that the first inquiry probably would have been made in connection with the due

Dean

diligence investigations, due diligence meeting in Florida, and I don't remember what date that meeting occurred on.
That would have been a routine question that would have been asked in the context of doing an offering like this and so I assume that it was asked at that meeting.
I don't have any specific recollection that the question was actually asked.
Q. Were you at that meeting?
A. Yes, I was.
Q. That was your only trip to Florida in connection with this transaction?
A. Yes, it was.
Q. That was in the first half of March?
A. Yes.
Q. Do you know what date it was?
A. No, I don't recall what date it was. Again, it is six years ago.
Q. I certainly don't see a reference

Dean

to a trip to Florida in Exhibit 24.
Does one of those meetings refer to a meeting in Florida?
A. No. There doesn't seem to be any reference to a Florida meeting.
Q. You recall one?
A. Yes.
Q. Who attended the Florida meeting?
A. From Davis Polk, I attended it, Mr. Lurie attended it. I don't remember whether or not Heather Stack or Nicole Duncan, whether or not they attended it, but those would be the two other people who might have attended it.
Q. Who from Morgan Stanley was present?
A. Well, I will try to remember. Some of the names based on the names that we have talked about earlier this morning.
John Tyree was definitely there. I don't remember whether or not Andy Savarie was there.
Bram Smith who was in charge of the lending effort at Morgan Stanley

NOT A CERTIFIED COPY

016994

Dean

attended that meeting.
I can't recall the other names.
Q. Was Lily Rafii, does that name ring a bell?
A. I don't remember.
Q. Gene Yoo?
A. Again, I don't remember.
Q. Tyrone Chang?
A. I don't remember.
Q. Michael Hart?
A. I don't remember.
Q. This was a meeting at Sunbeam's headquarters in Del Ray Beach, Florida?
A. Yes.
Q. How long did the meeting last?
A. I have forgotten. It was a day meeting in Florida.
I can't -- well, I don't actually remember whether or not we flew down the night before or we flew down the day of. It was just a single-day meeting.
Q. With whom did you meet, the Davis Polk -- the Morgan Stanley contingent?
A. We met with representatives of

Dean

Sunbeam. I don't remember whether or not Arthur Andersen, the accountants to Sunbeam, were there or not. They may have been there for a portion of the meeting. I would have known back then but I don't now.
There were also representatives of some of the other lending institutions. I just don't remember.
It was a meeting that was attended by a very large number of people.
Q. As best as you can recall who were the Sunbeam representatives?
A. Bob Gluck was certainly there. I think Janet Kelley came in and out. I don't -- there were other representatives of Sunbeam that came into the session. I don't recall their names.
Q. What was said about Sunbeam's first quarter 1998 results?
A. I don't recall what exactly was said at the time.
The standard questions that would have been asked at the time would have been whether or not Sunbeam's current outlook

Dean

was consistent with Wall Street's expectations about the first quarter performance.
Q. You don't remember what Sunbeam said in response to that question?
A. No. I assume what Sunbeam said in response to the question was that, yes, they were on track to meet expectations.
Q. Do you assume that because you don't remember any alarming information coming out of the meeting?
A. Well, I don't remember anything eventful coming out of the meeting. I don't know if "alarming" is -- I don't know what you mean by "alarming." It was a routine meeting.
Q. Why is it customary to ask whether the current outlook is consistent with Wall Street estimates?
A. It is customary because investors would find it -- might find it to be a material fact if in fact the company believed that its results were not going to be in line with expectations of research

Dean

analysts.
Q. So it would be information that would need to be disclosed?
A. Yes. Normally that would be information that would be disclosed.
Q. Other than the participants and the length of the meeting in Florida what else do you recall about that trip?
A. I don't have any other specific recollections about the trip.
Q. You left that meeting without any concerns about Sunbeam's performance?
A. I don't remember having any concerns about Sunbeam's performance after leaving that meeting.
Q. Did you have a primary contact at Morgan Stanley?
A. There -- the primary transaction person would have been -- I guess it was John Tyree and maybe Andy Savarie were contacts on the transaction.
In different parts of the transaction we would have contact with different people at Morgan Stanley

NOT A CERTIFIED COPY

0169955

Dean

depending what part of the transaction was involved.

Q. Did you ever talk to Bill Strong in connection with this transaction?

A. Yes, we did.

Q. On how many occasions?

A. I can't recall.

Q. Numerous occasions?

A. No, a handful occasions. I mean I don't remember how many times I talked to him. I don't remember whether or not I had any direct conversations with him or whether or not it was in the context of conference calls that he participated in.

Q. Did you have any contact with Bob Kitts in connection with this transaction?

A. No, not that I am aware of.

Q. Alex Fuchs?

A. No. I may have. I mean, in the course of a transaction you wind up talking to a lot of people.

Q. How about Jim Stynes?

A. I don't remember talking to Mr. Stynes. Again, it was a long time ago

Dean

and I could well have spoken to any one of these individuals.

Q. When did you first become aware of problems with Sunbeam's first quarter 1998 results?

MR. CLARE: I object to the form of the question.

THE WITNESS: I first became aware of the fact that Sunbeam's revenues might not be -- first quarter revenues for 1998 might not be consistent with Street estimates sometime in March.

I think it was the day before the offering memorandum was finalized.

BY MR. JOHNSON:

Q. Looking at Exhibit 24, the Davis Polk chronology, that would be March 18, 1998?

A. Yes, yes. Looking at the chronology the date appears to be March 18.

Q. Prior to March 18 then to your knowledge neither Davis Polk nor Morgan Stanley had any inkling of any sales

Dean

shortfall at Sunbeam?

A. That's correct. I can only speak to Davis Polk.

I mean, I assume that Morgan Stanley would have informed us, yes.

Q. Why do you say that?

A. Because it -- one would have had to evaluate whether or not it was a material fact that needed to be disclosed.

Q. Prior to March 18 Morgan Stanley had on at least one occasion asked how Sunbeam's first quarter looked?

A. Yes.

Q. That was the meeting in Florida?

A. I don't have a specific recollection as to whether or not the question was asked. That would be a standard forum in which that question would be aired and there might be other opportunities as well.

Q. We are going to come back to March 18 but I want to back up again just for a few minutes.

Were you aware that Morgan

Dean

Stanley signed -- strike that.

Are you familiar with the term "a highly confident letter?"

A. Yes, I am familiar with the term "highly confident letter."

Q. Are you aware that Morgan Stanley provided Sunbeam a highly confident letter in connection with financing the acquisitions?

A. I would have known at the time. I don't recall now.

It wouldn't surprise me if Morgan Stanley furnished a highly confident letter.

Q. Were you involved in -- let me show it to you.

Do you recall being involved in issuing this?

Counsel, I apologize. I only have one copy of this which -- if you could look at what has been previously marked as Exhibit 74 and tell me whether you recognize that?

A. I don't recognize it. I don't

NOT A CERTIFIED COPY

966910

Dean

know what the question is.

Do I recognize it in what context?

Q. Let me ask it a little differently.

Does that letter, Exhibit 74, refresh your recollection of your role, if any, in preparing the highly confident letter?

A. The letter does not refresh my recollection and as far as I am aware I was not involved in preparing the highly confident letter.

Q. In connection with this transaction did you have any communications with anyone from MacAndrews & Forbes Holding?

A. Not that I recall.

Q. Do you know whether anyone from Davis Polk had any communications with anyone from MacAndrews & Forbes?

A. As far as I know no one had had any contact with MacAndrews & Forbes.

Q. At some point during the due

Dean

diligence process did you speak with anyone from Arthur Andersen?

A. Yes.

Q. When was that?

A. I don't recall exactly when. We talked to Arthur Andersen.

Q. Was it on more than one occasion?

A. I can't recall how many occasions I personally talked to Arthur Andersen.

Q. Do you know how many Davis Polk -- how many conversations attorneys from Davis Polk had with auditors from Arthur Andersen?

A. No. I am sure that we had several conversations with Arthur Andersen during the course of the transaction.

Q. This has been marked as Exhibit 31 previously.

Mr. Dean, I have handed you Exhibit CPH31 which appears to be a memo from John Tyree to the Sunbeam financing team scheduling an accounting due diligence call for March 12, 1998.

Did you participate in that call?

Dean

A. I can't recall which of these conference calls I participated in. My recollection is that Mr. Lurie who also worked on the transaction with me and the rest of the Davis Polk team, that we split up these conference calls.

Q. So as you sit here today you have no idea what was discussed on the March 12 accounting due diligence call?

A. I can't -- I don't have any specific recollection as to what was discussed.

Q. Do you have a general idea?

A. I don't even know -- I am not positive I actually participated in that due diligence phone call.

Q. Would it be expected that Mr. Lurie or Ms. Stack would report to you the events of the call?

A. Yes.

Q. Based on your own participation and that of other Davis Polk lawyers do you know what happened during the March 12 accounting due diligence conference call?

Dean

A. Well, I don't remember anything out of the ordinary being raised in the accounting due diligence phone calls.

Q. Do you remember ever speaking to Larry Bornstein, the Andersen auditor listed on the conference call schedule?

A. The name is familiar but I don't personally remember whether or not I actually spoke to Mr. Bornstein or not. I could well have spoken to him during the course of the transaction.

Q. Can you say with certainty that you spoke with any Andersen auditor?

A. I don't recall now whether or not I did or not.

Q. I thought you testified there were several conversations with Andersen.

A. Yes.

Q. What is your basis for that testimony?

A. In the course of preparing the comfort letter for the transaction there would have been numerous phone calls with Andersen and the fact that there was --

NOT A CERTIFIED COPY

016997

Dean

that there was a due diligence phone call with the accountants, and in the ordinary course of doing a transaction like this from time to time I would -- I could easily be involved in the phone call with one of the accountants.

Q. You say in the course of preparing the comfort letter you would expect multiple conversations?

A. Yes.

Q. Why do you say that?

A. There is just give and take in first scoping out what the comfort letter covers and then reviewing the letter as -- through its drafts until it becomes finalized.

Q. It is kind of an ongoing process between counsel and the auditor?

A. Yes, it is.

Q. Do you have a sense of how many drafts are ordinarily provided during the process?

MR. CLARE: Object to form; an incomplete hypothetical.

Dean

THE WITNESS: It depends on the transaction. I don't think that there is a standard number of drafts.

BY MR. JOHNSON:

Q. This can occur over a several-day period?

MR. CLARE: Same objections.

THE WITNESS: It can occur over a several-day period or several-week period depending on the course of the transaction.

BY MR. JOHNSON:

Q. I apologize if I have already asked this.

The conversations with Andersen in March of 1998, you can't recall specifically your own involvement in any of those telephone calls?

A. I can't but I have been involved in scores of accounting due diligence phone calls since then.

If we had asked this question in 1998, I mean, I probably would remember whether or not I did or not.

Dean

Q. You may have, you just don't remember?

A. I just don't remember.

Q. You don't remember any reports from your Davis Polk colleagues about any conversations with Andersen?

A. I don't recall any specific conversations. It would have been my ordinary course to sit down with other Davis Polk people who had the conversations to make -- to review what was discussed on the conference calls.

Mr. Lurie was a very senior lawyer at the time and that was a task that could be delegated to Mr. Lurie.

Q. Do you remember Mr. Lurie conveying to you any information that he learned from the auditors?

A. I don't remember his -- I am sure that we sat down and reviewed what occurred during those conversations.

I don't have any specific recollection of what was communicated in those conversations.

Dean

Q. Do you have any recollection of what occurred during any of those conference calls?

A. I don't have a -- I don't have any specific recollection of what occurred during those conference calls.

Q. Do you have any recollection whatsoever as to what occurred?

A. I don't have. At the time, I mean, as I have said before, there have been probably hundreds of these due diligence phone calls that I have been on.

Q. Is half an hour in your view a typical time for speaking with an issuer's auditors in an accounting due diligence call?

MR. CLARE: Objection to form; incomplete hypothetical.

THE WITNESS: I think that there is no set period of time that is -- that one can say is a normal period of time that an accounting due diligence phone call would take.

A half an hour would not be

NOT A CERTIFIED COPY

866910

Dean

unusual. It depends on the circumstances of the transaction and it would not necessarily be the only opportunity that you would have a chance to talk to the accountants about issues in connection with the transaction.

BY MR. JOHNSON:

Q. So even time less than a half hour might be appropriate is what you are saying?

MR. CLARE: Same objections.

THE WITNESS: It depends on the transaction.

Yes, it might be.

BY MR. JOHNSON:

Q. With respect to Sunbeam does half an hour strike you as appropriate with the benefit of hindsight?

MR. CLARE: Same objection.

THE WITNESS: I don't know. I can only speak as to what we did at that time and I think that we concluded that what we did at the time was a

Dean

reasonable amount of time.

BY MR. JOHNSON:

Q. At any point in your conversations with Arthur Andersen did you learn that Sunbeam engaged in bill and hold transactions?

A. I don't remember now. I would have remembered when we did this transaction in 1998.

Q. You would have remembered because that is something out of the ordinary?

A. No. I mean, I think that I just would have been closer to the transaction and remembered things.

Q. Bill and hold doesn't have any negative connotation with you?

A. It depends on the nature of the bill and hold transaction.

The bill and hold is used in reference to transactions that -- where revenue recognition is inappropriate but there may also be situations where a bill and hold situation is a situation where revenue can be recognized, I believe.

Dean

Q. Putting aside the accounting treatment and complexity of bill and hold, is there any business concern associated with bill and hold?

A. Well, I think you would have to describe the nature of the bill and hold transaction.

There can be situations where bill and hold may raise concerns.

Q. Channel stuffing concerns?

A. Yes. Channel stuffing would be a concern in bill and hold transactions.

Q. Did Morgan Stanley or Davis Polk investigate whether Sunbeam engaged -- had engaged in any channel stuffing?

A. I don't recall whether or not we specifically asked about channel stuffing.

We would have -- Davis Polk and Morgan Stanley would have been involved in making sure -- well, in making a reasonable investigation into whether or not Sunbeam's revenue recognition practices were appropriate.

Q. Putting aside revenue recognition

Dean

practices and focusing specifically on channel stuffing, can you tell me anything that Morgan Stanley or Davis Polk did to determine whether Sunbeam had stuffed its channels?

A. No. I don't remember at this time what specific inquiry if any we made at the time.

I think, again, in 1998 I could have been much more specific about it. Six years has gone by and I don't remember.

Q. You don't remember any specific inquiry. Do you remember any effort undertaken whatsoever on the issue of whether Sunbeam's channels were stuffed?

A. Well, I don't remember one way or the other. That is six years that has elapsed.

Q. Did Davis Polk or Morgan Stanley suggest to Sunbeam any revisions to the offering memorandum?

A. Yes. We did suggest a revision to the preliminary offering memorandum.

Q. What was the nature of that

NOT A CERTIFIED COPY

016999

Dean

revision?

A. We suggested many revisions to the document. I am sure the one that comes to mind that was of some controversy was to add disclosure in the offering memorandum with respect to Sunbeam's expected first quarter 1998 results.

Q. We are going to get that one.

Prior to that one, let's say prior to March 15, can you think of any particular changes that Morgan Stanley or Davis Polk proposed to Sunbeam?

A. I am sure that we -- in the ordinary course of a transaction, reviewing the documents, we would -- Morgan Stanley and/or Davis Polk might make suggestions to an offering document.

I don't have any specific recollection of what suggestions we might have made other than the one that we have just discussed.

Q. Let's look at what has been marked previously as Exhibit 11.

Mr. Dean, CPH Exhibit 11 appears

Dean

to be a memo from John Tyree to Ms. Kelley, Mr. Gluck, you and Mr. Fernicola.

Does that document Exhibit 11 refresh your memory as to any changes that Morgan Stanley or Davis Polk proposed to the offering memorandum?

A. Well, the memorandum on its face contains a number of riders, suggested riders to the offering memorandum.

It does reflect -- refresh my recollection that a memorandum like this was presented in the course of the drafting process.

Q. We have already spoken about Ms. Kelley and Mr. Gluck.

Who is Mr. Fernicola?

A. Mr. Fernicola is a partner at Skadden, Arps who represented Sunbeam.

Q. Did -- this is a yes or no question.

Did you have any conversations with Mr. Tyree as to the appropriateness of these revisions?

A. I don't recall whether or not we

Dean

spoke about the appropriateness of these revisions.

Q. Did you -- again, a yes or no question.

Did you speak with him as to the factual predicate of the revisions that he was proposing?

A. I don't remember having conversations about these revisions. I may have. I may not have.

I just don't have any specific recollection six years after these facts occurred.

Q. With respect to rider 1 Mr. Tyree states that the addition is proposed in order to "communicate to the investor the recent restructuring success of the management team."

Do you see that?

A. Yes, I see that reference in the exhibit.

Q. Did Davis Polk or Morgan Stanley satisfy itself that the restructuring of Sunbeam was authentic?

Dean

A. I can't -- I don't know what the term "authentic" means in this context.

I mean, Davis Polk and Morgan Stanley -- I can speak to Davis Polk.

I mean, we did the normal investigation that we would do in connection with preparing -- assisting Morgan Stanley in preparing an offering memorandum and we concluded at the time that there were no material misstatements or omissions.

Q. Were you aware in March of 1998 of Morgan Stanley's investment banking work for Sunbeam in the months leading up to the announcement of Sunbeam's acquisitions?

A. Well, I knew that Morgan Stanley was involved as a financial adviser to Sunbeam in connection with the acquisition transactions in the context of doing the subordinated debt offering and I also knew that Morgan Stanley was involved in providing bank lending to finance these transactions.

Q. Do you know how long Morgan

NOT A CERTIFIED COPY

01/000

Dean

Stanley had been a financial adviser to Sunbeam?

A. No, I do not.

Q. Did you ever learn that Morgan Stanley was initially hired to sell Sunbeam to another party?

A. I don't have any firm recollection of that.

I mean, now that you mention it, I may have been aware that one of the assignments was to sell Sunbeam but I wouldn't have had any recollection of that without being refreshed by you.

Q. Referring again to Exhibit 11, was there any hesitation on the part of Sunbeam or Skadden to include the riders that are set forth in Exhibit 11?

A. There may have been. I just don't have any recollection again because it was six years ago.

Q. Did anyone from Morgan Stanley propose to tone down the offering memorandum as far as the reports of Sunbeam's success?

Dean

MR. CLARE: Object to the form.

THE WITNESS: I don't know what "tone down" means but Morgan Stanley -- Davis Polk did review the offering memorandum and we concluded that did it not contain any material misstatements or omissions.

BY MR. JOHNSON:

Q. It was fair and accurate in all material respects?

A. Insofar as we knew at the time.

Q. You said a few minutes ago that it is customary to receive drafts of the comfort letter and have a dialogue with the auditor in the course of finalizing an offering memorandum; is that correct?

A. Yes, that is correct.

Q. Do you recall receiving drafts of any of the comfort letters prepared by Arthur Andersen in connection with this offering?

A. I don't have any specific recollection of drafts that I did review. I know that I did take a look at the -- I

Dean

know that I did take a look at the comfort letter that was delivered in connection with the pricing of the transaction and I could well have looked at drafts of the comfort letters prepared before.

I don't have any -- I just don't have any specific recollection.

And the nature of the process is, a lot of times you get these things at the last minute.

Q. I will provide what has been marked previously as CPH Exhibit 110.

Mr. Dean, CPH Exhibit 110 has been marked previously and appears to be a draft of the comfort letter from Arthur Andersen to Morgan Stanley.

The letter is dated March 19, 1998. It bears a fax header of March 17, 1998. Do you see that?

A. I do.

Q. Does this document refresh your recollection in any way as to whether or when you saw drafts of Andersen's comfort letter related to the Sunbeam offering?

Dean

A. No, it doesn't.

Q. The top of the first page bears a header. In fact each of the pages bears a header Preliminary and Tentative for Discussion Purposes Only.

A. Yes, I see that.

Q. That is discussion between Andersen and Morgan Stanley?

MR. CLARE: Objection; calls for speculation.

MR. WISE: There is no indication that this witness knows who wrote this or what the person who wrote it intended by that.

THE WITNESS: I don't know who wrote it and I don't know what was intended by it.

MR. JOHNSON: Nice coach.

MR. WISE: You wouldn't have gotten the question anyway because it is an improper question.

THE WITNESS: I can say that the language that appears at the legend, and I have not studied the legend, is a

NOT A CERTIFIED COPY

017001

Cont 912

Dean

standard legend that accounting firms place on drafts of comfort letters.

Whether or not this draft was delivered -- I mean, this could have been an internal draft prepared by Arthur Andersen prior to being submitted for -- to review by the underwriters.

BY MR. JOHNSON:

Q. If you would look at page 3 of the letter which has the Bates stamp CPH38672, there is handwriting at the bottom of that page that states, "We had fire sale of inventory."

Do you know what that refers to?

A. No. I don't have -- I don't know what that refers to.

Q. During the course of your work on the Sunbeam transaction did you ever hear that Sunbeam had had a fire sale of inventory?

A. No. I don't recall that.

I know that he had engaged in some transactions where they, at the end of

Dean

a quarter, they would discount some of the merchandise to make sure that sales occurred by the end of the quarter; not an unusual practice for any manufacturer.

Q. You mentioned that you first became aware of a potential sale shortfall at Sunbeam on March 18.

Was that in connection with reviewing drafts of the comfort letter?

A. No, it was not.

Q. Was that information communicated to you by Morgan Stanley?

A. Yes. I think I was alerted to it by Morgan Stanley.

Q. Prior to that time you hadn't seen any numbers depicting the shortfall?

A. No, we had not, none that I recall at this time.

Q. If you would look at paragraph 6B for me, you have it already, 5B, I think, is a necessary predicate of 6B.

If you would look at those two paragraphs for me?

Prior to March 18 had you heard

Dean

that the company had accelerated sales into the fourth quarter of 1997?

A. I don't recall when I learned that.

Q. You did learn it at some point?

A. Yes.

Q. Were you aware of that information prior to the March 19 press release?

A. I can't recall. I assume that I was but I can't recall when exactly I learned about it.

Q. You were aware of it by the time the offering memorandum was finalized?

A. When the final offering memorandum was being prepared.

Q. Did you have any reaction to that information?

A. Reaction to what information? The fact that there was --

Q. There was acceleration of sales into 1997.

A. It is a timing issue about recognition of sales and it might impact

Dean

upon what the first quarter sales would be so it would be an area of interest.

Q. Did Morgan Stanley or Davis Polk investigate the extent to which sales had been accelerated into the fourth quarter of 1997?

A. I don't recall now what investigations were done. We did the investigations that we thought were appropriate at the time.

I don't have any specific recollection of what exactly we did then.

Q. On what basis do you say that you did do some investigation?

A. I am not -- I can't -- I think that in the context of doing an offering of this sort we did the level of investigation that was appropriate to ensure that there were no material misstatements or omissions and can I point to a specific investigation that we did? I can't now.

Q. You are saying you did what you viewed to be appropriate but you can't tell me what you did?

NOT A CERTIFIED COPY

017002

Dean

A. I am saying that I don't remember what was done because it was six years ago.
Q. You do remember that it was appropriate?
A. Yes.
Q. How do you remember that?
A. I think that to the extent that we were comfortable in delivering a legal opinion in connection with the offering memorandum I didn't contend any material misstatements or omission -- one of the predicates to that in our professional responsibility is to have concluded that a reasonable investigation was made.
Q. Let's talk about March 18. You testified that you learned from Morgan Stanley that there was a potential shortfall in Sunbeam's first quarter 1998 results; is that correct?
A. In its revenues.
Q. Revenue.
Who from Morgan Stanley conveyed that information to you?
A. I don't recall at this time who

Dean

called me to alert me to that possibility.
Q. What did you or Morgan Stanley do as a result of that possibility?
A. Another telephone conference call, due diligence phone call was established to have Sunbeam review its first quarter results.
Q. That call was also on March 18?
A. Yes, it was.
Q. The first call where you were alerted to the possibility of a shortfall, it is your testimony that you don't remember who conveyed that information to you?
A. That's correct.
Q. Do you know who else was on that call?
A. The phone call where the information was communicated to me?
Q. Correct.
A. I don't have any -- I don't have any specific recollection.
Q. Presumably that information came from Sunbeam originally; is that fair to

Dean

say?
MR. WISE: That is your assumption.
MR. JOHNSON: That is a question.
THE WITNESS: I have no basis upon which to know where the information came from.
BY MR. JOHNSON:
Q. The second phone call that you mentioned on March 18, who was involved in that phone call?
A. Representatives of Morgan Stanley, representatives of Sunbeam, representatives from Skadden, Arps, and those are the parties that I remember being on the phone call. And did I mention representatives of Davis Polk?
Q. I assumed at least you were on.
Was there anyone from Davis Polk other than you on that phone call?
A. Yes.
Q. Who was that?
A. James Lurie was on the phone call. I believe Heather Stack was in the

Dean

room as well and at some point. I don't know whether or not it was this phone call or another phone call. Jeffrey Small and Frank Morrison were in the room.
Q. Were there more than two phone calls concerning Sunbeam's first quarter results on March 18?
A. Yes.
Q. How many calls were there?
A. I can't recall how many. I don't remember all of the participants. Some of them may have been -- I am certain there were many phone calls that just involved Davis Polk and Morgan Stanley.
Q. He won't let me ask about those probably.
We will see about that.
Who were the Morgan Stanley representatives on the all-hands phone call, for lack of a better term?
A. Ruth Porat, Brooks Harris. I don't remember specifically whether or not John Tyree and/or Andy Savarie were involved in that phone call but they could

NOT A CERTIFIED COPY

01/7003

Dean

well have attended.

I am certain -- my recollection right now is I am certain that Ruth Porat and Brooks Harris were on that phone call.

Q. On March 18 did you have conversations with Mr. Tyree concerning Sunbeam's first quarter 1998 revenue situation?

MR. WISE: You can answer that yes or no.

THE WITNESS: I don't remember. I think I must have had phone calls with him about the subject.

BY MR. JOHNSON:

Q. How about Mr. Savarie?

A. Again, I don't remember specific conversations but I could well have had conversations with Mr. Savarie directly.

Q. How about Bill Strong?

A. I think I did have -- I think I was involved in the conference call with Mr. Strong but I am not positive again.

MR. JOHNSON: Why don't we change the tape?

Dean

THE VIDEOGRAPHER: The time is 11:53 a.m. and this completes tape number one.

(Pause)

THE VIDEOGRAPHER: The time is 11:55 a.m. and this begins tape number two.

BY MR. JOHNSON:

Q. Mr. Dean, referring again to the all-hands meeting on March 18, that was a meeting that took place by telephone?

A. Yes, it was.

Q. You have already identified, I believe, the Morgan Stanley participants and the Davis Polk participants.

Could you tell me please the Sunbeam and Skadden participants?

A. Well, that will tax my memory. I mean, I can't say for certain but I think Gluck must have been on the phone call.

There was a salesperson who was on that phone call so I suspect that was Mr. Uzzi and I think Mr. Kersh was on the

Dean

phone call as well.

Q. How about Skadden, Arps?

A. Skadden, Arps, I am aware that Finn Fogg and Greg Fernicola were on the phone call.

I can't say whether or not they were on the phone call for the entire duration of it or not.

Q. When you say you are aware they were on the phone call, do you remember that or was your memory refreshed?

A. No. I remember that they were on that phone call.

Q. This phone call strikes me as more memorable than some of the events from that time period. How long did that telephone call last?

MR. CLARE: I move to strike the preamble to the question.

THE WITNESS: I don't have a recollection of how long the phone call lasted.

BY MR. JOHNSON:

Q. Was it minutes, hours?

Dean

A. It was not minutes. It was also not two or three hours. Somewhere in between.

I don't have a specific recollection as to exactly how long it lasted.

Q. Tell me about what you can remember about the substance of the conversation.

A. I remember that the purpose of the phone call was to review Sunbeam's first quarter results and to get an update from Sunbeam with respect to what their expectations were with respect to first quarter.

I believe it was at that phone call where Sunbeam led the group through what their current expectations were for the first quarter of 1998 on the revenue side.

Q. Was there any discussion during that call concerning the earnings side for the quarter?

A. I don't have any specific

NOT A CERTIFIED COPY

01/0014

Dean

recollection of whether or not we talked about earnings. I do remember that -- being told --

THE VIDEOGRAPHER: The time is 11:58 and we are going off the video record.

(Discussion off the record)

THE VIDEOGRAPHER: The time is 11:59 a.m. and we are back on the video record.

BY MR. JOHNSON:

Q. Mr. Dean, before the slight interruption I posed a question which I will ask the court reporter to read back for you.

(Record read)

THE WITNESS: Let's start over again.

BY MR. JOHNSON:

Q. Okay.

A. I don't have any specific recollection of whether or not we discussed earnings in that telephone conference.

I do remember being aware during

Dean

the phone conversation that Sunbeam was really valued in the marketplace on the basis of its revenues and that it was a so-called momentum play and that revenues were more significant than that income.

Q. Can you explain to me why you -- why Sunbeam was viewed as being -- strike that.

Can you explain to me why Sunbeam revenue was viewed as more significant to the market than Sunbeam earnings?

A. I don't know -- there are some companies in the marketplace who -- whose valuation really depends on a forecast of increasing revenues over time and that the marketplace is less sensitive to net income for those types of companies.

Sunbeam was one of those companies that was measured more on revenues than on net income.

Q. On revenue growth more specifically?

A. Revenue growth.

Q. So you viewed it was significant

Dean

information that Sunbeam's revenue appeared not to be growing in the first quarter of 1998?

A. It was significant information to know that Sunbeam's revenues were going to not grow at the pace that research analysts expected them to grow.

Q. Or perhaps not grow at all?

A. Or not grow at all.

Q. That was a possibility that you learned during the all-hands call on March 18?

MR. CLARE: Object to the form. You asked him multiple questions and now you are asking what that was a possibility.

It is unclear to me at least what you are referring to.

BY MR. JOHNSON:

Q. Did you know what I was referring to?

A. No. Could you restate the question?

Q. If you don't understand at any

Dean

time let me know.

The possibility that Sunbeam would have a decline in revenues as opposed to a growth in revenues was something that was recognized during the all-hands telephone call on March 18?

A. I don't have a specific recollection. I would have to sort of refresh my recollection in taking a look at the press release and what the numbers actually showed, but my recollection is that it was news to the group that Sunbeam was not going -- that its revenues were not going to grow at the rate that the Wall Street research analysts expected it to grow.

Q. Did you look at the press release this week to prepare for your deposition?

A. I don't remember looking at the press release. I may have.

Q. I am going to hand you what has been marked previously as Exhibit 16.

Mr. Dean, can you identify Exhibit 16 for me?

NOT A CERTIFIED COPY

01/2005

Page 106

Dean

A. Exhibit 16 appears to be a document that was prepared by Sunbeam with net sales numbers for January, February and March.

And it is -- I can't -- since it is six years from when these events occurred we discussed a similar sheet of information on the conference call, the all-hands conference call on March 18.

Q. It could have been this sheet, Exhibit 16, or a document like it is what you are saying?

A. That's correct.

Q. Is that your fax number written in the -- written by hand in the upper right-hand corner?

A. Yes, it is.

Q. Do you see the handwriting in the center of the page, I guess, center right of the page? It says Porat sees this or Porat sees through.

Do you know what that refers to?

A. No, I do not.

Q. Do you know whose handwriting

Page 107

Dean

this is?

A. No, I do not.

Q. It was a document, either Exhibit 16 or a document like Exhibit 16, that was used during the course of the all-hands conference call?

A. That's correct.

Q. What was said about this document?

A. Well, the subject of the conference call was to try to have an update on Sunbeam's first quarter 1998 results on the revenue side.

This sheet was a breakdown of what Sunbeam's forecasts were for its revenues at the time.

Q. The primary listing here is of potential orders. Do you see that?

MR. CLARE: Object to the form of the question.

BY MR. JOHNSON:

Q. Let me strike that. That is a fair objection.

Do you see the column for

Page 108

Dean

"potential orders?"

A. Yes, I see a column with potential orders.

Q. That shows potential orders of $86 million?

A. It shows 86. I assume that it is 86 million.

Q. This document also shows international sales forecasts in the second half of March of 1998 of $39.5 million, do you see that?

A. Yes, I do see that.

Q. Let's start with the international number.

What was said during the conference call about the feasibility of selling $39.5 million of product in the last two weeks of March?

A. I don't have any specific recollection of a discussion about the international sales, the achievability of the international sales.

At the time, immediately after this phone call, I would have had a

Page 109

Dean

recollection but I don't now.

Q. Did Mr. -- strike that.

Did anyone from Sunbeam during this conference call assure you that Sunbeam could achieve $39.5 million in international sales in the last two weeks of March?

A. I don't remember any specific assurances with respect to the international sales.

There were assurances that the numbers -- the revenue numbers that we were shown during the course of the meeting were completely achievable.

Q. There were assurances that they were achievable. Were there any assurances that they would be achieved?

MR. CLARE: Object to the form of the question.

THE WITNESS: There were assurances during the course of the conference -- during the course of the conference call that the revenue numbers would be achieved.

NOT A CERTIFIED COPY

Dean
BY MR. JOHNSON:
Q. To the best of your recollection who provided those assurances that the numbers would be achieved?
A. All of the representatives of Sunbeam who participated in that phone call.
Q. Did Davis Polk or Morgan Stanley do anything to confirm those assurances?
A. I don't have any specific recollection of anything that Davis Polk did at the time. I can't say what Morgan Stanley did.
Q. You know as you sit here today that these numbers were not achieved, don't you?
A. Yes, I do know that these numbers were not achieved.
Q. So is it your view that Sunbeam lied to you during this conference call?
A. I think that Sunbeam assured us that these numbers would be achieved.
Whether or not they believed -- whether or not they knew they couldn't be

Dean
achieved at the time, I guess that is a question that you have to ask people from Sunbeam.
We certainly felt as if we had been misled.
Q. Going back to the potential orders column for a minute, that shows $86 million in sales?
A. Yes, I see a total for that column to 86.
Q. That is of possible orders, potential orders, right?
A. The column is labeled Potential Orders and we were probably given assurances that these potential orders had a very high probability of being consummated.
Q. You say you were probably given assurances of a very high probability that the potential orders would be consummated. Why do you say that?
A. We must have been given assurances to that effect because we crafted disclosure that we later became

Dean
comfortable with to place in the final offering memorandum.
Q. The -- in the right column towards the bottom there is a --
A. Let me correct myself.
We did not craft the disclosure that finally appeared in the disclosure document but we reviewed the disclosure that was prepared by Sunbeam.
Q. Okay.
Who -- so Sunbeam crafted the disclosure in the offering memorandum?
A. Yes, they did.
Q. Did --
A. Sunbeam and their representatives. I don't know who.
Q. That would be Skadden, Arps, wouldn't it?
A. Yes.
Q. That is the same -- the disclosure you are referring to is the same disclosure that appeared in the press release; is that correct?
A. That is correct.

Dean
Q. Did Davis Polk have any role in preparing the press release?
A. No. We may have been furnished copies of the press release and given an opportunity to review it. I don't know whether or not -- I can't recall at this time whether or not we were given the opportunity to propose revisions to it.
Q. Did you have any revisions to it?
A. I don't recall at the time, at this time.
Q. We will get to the press release itself in a little more detail in a minute.
Exhibit 16 shows at the bottom right, prior year Q1-97, $253.5 million.
Do you see that?
A. Yes, I do.
Q. That was Sunbeam's revenue for the first quarter of 1997?
A. I haven't verified it but I assume that is true.
Q. So the -- I assume -- strike that.
Were there discussions on the

NOT A CERTIFIED COPY

01/007

Page 114

Dean

March 18 all-hands call concerning whether the prior year first quarter results would be met or exceeded in the first quarter of 1998?

A. Yes. I think that what we discussed during the conference call was what the first quarter 1998 revenue results would be and then there is a question as to how that would compare with historical performance.

Q. This shows that if all of the potential orders are made and recognized prior to the end of the quarter and the international sales forecast is accurate that Sunbeam would exceed the prior year's quarter by just over a million dollars?

A. If these numbers are accurate, yes.

The sheet may not reflect all of the sales possibilities that were possible at Sunbeam but simply the ones that had the highest probability of being achieved.

Q. Did anyone from Sunbeam explain on an account-by-account basis why each of

Page 115

Dean

these potential orders was highly probable to be consummated?

A. I don't have any specific memory of that but Uzzi could well have done that during the phone call and it would be customary for a salesperson to do this in the context of reviewing a sheet like this.

Q. But, again, you are not aware of anyone verifying what Home Depot, for example -- what Home Depot's order plans were for the last two weeks of March of 1998?

A. I am not aware of anyone at Davis Polk who verified that.

Q. Are you aware of anyone verifying that?

A. No, I am not aware.

Q. During the all-hands call was the possibility of issuing a press release discussed?

A. My memory is that, yes, the possibility of issuing a press release was discussed in the context of that conference call.

Page 116

Dean

Q. Who discussed that possibility?

A. Well, I certainly raised that possibility as a way of disseminating the information out in the marketplace.

I think I was the one who actually raised the issue during the conference call.

Q. Other than what is set forth in Exhibit 16 did you have any other information that caused you to raise the idea of a press release?

A. No. I don't recall of any other information.

Q. What was the reaction to the idea that you raised?

A. Sunbeam was opposed to it as well as their counsel, Skadden, Arps, who flatly rejected it as being inappropriate.

Q. That is Finn Fogg and Greg Fernicola?

A. That is correct.

Q. When -- did anyone give any explanation as to why a press release would be unnecessary or inappropriate?

Page 117

Dean

A. The best recollection I have is that somebody from Skadden said it was very unusual within a quarter to announce intraquarter results and that there was no -- in light of the fact that the company felt that it was comfortable that it was going to make these numbers, that they didn't think it was appropriate to put a press release out at this time.

Q. Obviously the company was dissuaded from that position. How did that happen?

A. I don't know when that happened. I mean, after the end of this all-hands conference call -- I mean we were at a stalemate about the issue and then I was later informed that Bill Strong had had a conversation with Al Dunlap and Dunlap agreed -- acceded to having the disclosure appear.

Q. How were you later informed of that conversation between Strong and Dunlap?

A. I don't know who at Morgan

NOT A CERTIFIED COPY

Page 118

Dean

Stanley called me to inform me of that.
Q. Someone from Morgan Stanley called you?
A. Someone from Morgan Stanley then called me up and told me.
Q. If I understand your testimony Sunbeam had been telling you in the first two weeks of March of 1998 that they were on target with Street estimates for the first quarter results; is that correct?
A. That is correct.
Q. Then you received this sheet on March 18 which showed that they would need to strive to beat first quarter 1997 results; is that correct?
MR. CLARE: Object to the form of the question, the characterization of the document.
You can answer.
THE WITNESS: Can you repeat -- now that I have been interrupted can I hear the question again?
MR. JOHNSON: Sure.
Could you read that for us?

Page 119

Dean

(Record read)
MR. CLARE: Same objection.
THE WITNESS: I am not sure what the question is.
The question -- did we receive a sheet that showed that their revenue outlook was now comparable to what they achieved in the first quarter of 1997.
Yes, that is the document we received on March 18.
BY MR. JOHNSON:
Q. What I am getting at is: Isn't Exhibit 16 contrary to what the company had been telling you just a week or two weeks before concerning it being on target with Street estimates?
A. Yes, it was.
Q. Didn't that cause you concern about the veracity of Sunbeam management?
A. Well, not necessarily.
I mean, there is obviously skepticism about the numbers but it is not uncommon for manufacturers to make a lot of their sales in the last two weeks of a

Page 120

Dean

quarter or the last week of a quarter, frankly, and so it is quite possible that Sunbeam didn't have visibility about this.
Q. Did you have any sense of whether as a physical matter Sunbeam could ship the amount of product necessary for it to meet first quarter 1997 results in the last two weeks of March of 1998?
A. I was not aware of Sunbeam's physical capacity to ship product.
Q. Did anyone ask that question during the all-hands conference call?
A. I don't have any specific recollection, no, as to whether that question was asked.
Again it was six years ago. It could have been asked. I just don't have any memory of it now.
Q. What was Morgan Stanley's view as to whether a press release would be appropriate?
A. Morgan Stanley's view was that it was appropriate to issue a press release if there was uncertainty with respect to

Page 121

Dean

whether or not Sunbeam would achieve its revenue results.
Q. Was there any concern about the press release and the effect it would have on pricing the debt offering?
A. I wouldn't characterize it as concern. I think that Morgan Stanley felt that it was important to have this news out in the marketplace so that the marketplace could digest it before a pricing of the offering.
Q. Was there any concern that Sunbeam's first quarter results could constitute a materially adverse change prior to the closing of the acquisitions?
A. There was a concern, in the context of doing the subordinated debt offering, disclosing this information might have an impact on the stock price of Sunbeam and as a result of that Morgan Stanley and we felt that disclosure was appropriate.
Q. The disclosure that was made in the press release in fact did have some

NOT A CERTIFIED COPY

01/09

Dean

impact on Sunbeam's equity trading price; is that correct?

A. Yes, it did. I am not familiar -- I can't recall now what impact it did have but it did have a depressing impact on the price of Sunbeam's stock.

Q. In relation to -- you are aware that Sunbeam also issued a press release after the first quarter detailing its first quarter 1998 results?

A. Yes, I am.

Q. Are you aware that that press release had a substantially more severe depressive impact on Sunbeam's trading price as compared to the March 19 press release?

MR. CLARE: Object to the form.

THE WITNESS: I am aware there was a subsequent press release that was put out after the first quarter results were recorded at Sunbeam and that Sunbeam actually recorded revenues that were lower than the 254.7 that was covered in the press release and as a

Dean

result the stock price of Sunbeam fell even more.

BY MR. JOHNSON:

Q. Sunbeam, in fact, showed a loss for the first quarter of 1998; isn't that correct?

A. I don't remember. We could take a look at the press release. That could well have been the case.

Q. The April press release, do you know how many days after the March 19 press release that one issued?

A. No, I don't know.

Q. After the all-hands telephone call -- by the way, can you remember anything else about that phone call that we haven't already talked about?

A. I don't have any other specific recollections of that phone call.

Q. Was it combative in any way? Was the discussion heated?

A. It was heated on the disclosure question.

Sunbeam was clearly resisting

Dean

disclosure and quite adamant that they felt as if -- that they were going to achieve these numbers and the fact that there was a discount from these numbers versus the Street estimates, they did not think that that was appropriate to put out in the marketplace.

They probably made the argument but I don't recall whether or not they did or not that they -- that maybe they could still make their numbers.

I am just not certain whether or not they made that argument or not but that would be the kind of argument that I would expect them to make.

Q. You can't recall them actually saying that they would still possibly make the Street estimates?

A. I don't have a specific recollection of that but that could well have been something that they said on that phone call.

Q. Based on Exhibit 16 was there any information that would lead you to believe

Dean

that Sunbeam could still make the Street estimates?

A. What Exhibit -- again, this was six years ago but I think what Exhibit 16 -- the case that it laid out was a -- the confidence that Sunbeam had that they would actually make the 254.7 number at least.

Q. So that they would beat first quarter 1997?

A. I forget what the words were that were used in the press release that was issued after we reviewed this information but it was language along the lines that they expected revenues to be comparable, I think, to the first quarter of 1997 revenues. I just don't remember the language.

Q. Was there any basis to believe that Sunbeam could still make Street estimates for the first quarter of 1998?

A. I don't recall whether or not they presented a case that Sunbeam could still make its numbers.

NOT A CERTIFIED COPY

01/010

Page 126

Dean

Q. Was there -- during the all-hands phone call was there any discussion about possibly delaying the subordinated debt offering?

A. I don't remember whether or not that subject came up. It may have. I don't have any specific recollection of it.

Q. Was there any procedure installed to closely monitor Sunbeam's sales for the remainder of the quarter?

A. Well, there were -- as part of the normal sort of closing process for the transaction we would have had another bring down -- we did have another bring-down conference to discuss the numbers again and make sure they were comfortable.

That would have been six days after the pricing of the offering.

Q. Again, that would be a call with Gluck, Kersh or Uzzi?

A. Some combination of those people.

Q. Other than a subsequent telephone call did Davis Polk or Morgan Stanley do anything else to monitor Sunbeam's sale

Page 127

Dean

situation after March 19?

A. I am not aware of any efforts that were made. I think that during the course of an offering like this there are day-to-day contacts between Morgan Stanley and Sunbeam officials and so that could well have been something that they did on a day-to-day basis.

Q. You are not aware of it actually?

A. I am not aware of that actually occurring.

Q. Did you look at a draft of the March 19 press release before it was issued?

A. I don't remember whether or not we were furnished a draft of it before or whether or not we were told what the contents would be and whether or not it was read to us over the telephone and then it was issued.

I don't have any specific recollection as to what protocol was followed there.

Q. Do you have any recollection of

Page 128

Dean

being troubled by anything in the press release?

A. No. I -- my recollection is that we reviewed the press release in light of the facts that were disclosed in the conference call and were comfortable that it was consistent with what we had learned.

Q. Andersen, to your knowledge, was not consulted in any way in connection with the issuance of the press release?

A. I don't know whether or not Andersen was consulted or not in connection with the press release.

Q. You mentioned two of your partners who were involved in the press release.

If you look at Exhibit 213, your attorney over here says, "Two other partners, Frank Morrison and Jeff Small, did not work on the offering generally but appeared to have been consulted briefly on March 18, 1998 in connection with the proposed March 19, 1998 press release by Sunbeam."

Page 129

Dean

Can you tell me again who Messrs. Morrison and Small are?

A. Mr. Morrison and Small are two of my partners who also practice in the securities area.

Q. Were they on any of the phone calls with anyone from Sunbeam or Skadden?

A. They -- I don't know how -- whether or not they participated in the phone calls from the very beginning of the phone call, whether or not they joined in late as the phone call was in process after having received an update as to what was being discussed.

Q. At some point they were on some portion of calls with Skadden and/or Sunbeam?

A. That's correct.

Q. What were their positions on those calls?

A. I remember -- I don't remember anything about Frank Morrison saying anything on the phone call.

I do remember that Jeff Small was

NOT A CERTIFIED COPY

017011

Dean

also -- had echoed my position that we felt that disclosure was appropriate here.

Q. You testified a few minutes ago that Skadden and Sunbeam were very resistant to doing a press release.

Did that fact in and of itself cause you any concern about what was going on at the company?

A. No. I thought it was consistent with the aggressive style of representation that Skadden adopts with its clients and its client, Sunbeam, clearly did not want to have the disclosure made and Skadden presented the best possible case as to why disclosure was not appropriate.

Q. Let's put Skadden aside then.

How about Sunbeam? Sunbeam's strong reluctance to do a press release, did that in and of itself cause you any concern about your dealings with this company?

A. No. I think at the time -- I mean, there was still a high degree of confidence in the management at Sunbeam,

Dean

that they would make statements that were truthful and that they would not make assurances if they didn't feel as if the statements had no basis.

Q. During the all-hands phone call did anyone ask anyone from Sunbeam whether they would guarantee that the first quarter 1998 results would exceed first quarter 1997 results?

A. I don't recall that question being asked but the level of certainty that one would want to have from management with respect to revenue numbers of this sort is at the level of a guarantee.

Q. I think you said earlier that assurances were made that the numbers would be achieved; is that correct?

A. Yes.

Q. After this phone call -- let's back up.

I will probably end up asking this question several times.

MR. WISE: I hope not.

MR. JOHNSON: At different points

Dean

throughout the day, Bob.

BY MR. JOHNSON:

Q. Having now talked about the heated nature of this conference call and Sunbeam's reluctance, can you remember anything else at all about that conference call, and that two of your partners also participated in portions of it?

A. No. I don't recall any specific details.

We may well have gone into the reasons why some comparison of January and February of 1998 versus January and February of 1997, the reasons behind why there was a shortfall compared to the prior year.

Q. Was there any discussion on the all-hands call as to what the press release should say?

A. There was -- there was a discussion about the level of detail that should be in the press release.

I think that there was -- I think I may have proposed that we disclose what

Dean

January and February sales actually were so that one would have a sense of how much -- what sales would have to be achieved in March and that was soundly rejected by Skadden and by Sunbeam.

Q. Tell me again why you thought it might be appropriate to give the actual numbers for January and February.

A. To put the numbers in context.

Q. Was there any discussion of the possibility of putting earnings information in the press release?

A. I don't recall whether or not we discussed earnings as a possibility or not.

Q. Why did Skadden and/or Sunbeam strongly reject your idea of putting in January and February sales numbers?

A. Because it was not -- it was not standard practice for a public company to begin disclosing monthly performance results.

Q. Didn't anyone have a concern that the numbers in and of themselves show a dramatic shortfall?

NOT A CERTIFIED COPY

017012

Dean

MR. CLARE: Object to the form of the question.

THE WITNESS: I don't recall whether or not anyone on the phone call raised the question as to whether or not it would be appropriate -- the appropriateness of disclosing the actual January and February results.

BY MR. JOHNSON:

Q. Didn't you just say that you raised the idea that it would be appropriate to disclose that?

A. I raised the issue but I don't recall whether or not anybody else on the phone call other than Skadden who rejected the idea -- whether or not anyone else on the phone call supported disclosure of January and February.

Q. Skadden's stated reason for opposing that is because it would put the company in the position of releasing monthly results?

A. That is my recollection.

Q. They weren't concerned that the

Dean

numbers themselves were too negative to put in the press release?

A. No. That is -- I don't have any recollection as to that, to that effect.

Q. How about a discussion of, during the all-hands call, as to whether the press release should identify reasons for the poor revenue performance?

A. I don't have a specific recollection as to whether or not -- what reasons, if any, would be stated in the press release for the revenue shortfall.

Q. You didn't, for example, propose that the press release state that this shortfall resulted in part from acceleration of sales into 1997?

A. I don't have any recollection of that.

Q. You don't remember anyone discussing whether the press release should identify a reason for the shortfall?

A. I don't have any specific recollection now. I would have six years ago but I just don't now.

Dean

Q. During the all-hands call was there any discussion as to the impact of the first quarter 1998 on the remainder of the year?

A. I don't remember at this time whether or not there was a discussion of that.

Q. That was -- it was after this call that the size of the subordinated debt offering rose from 500 million to 750 million?

A. My recollection was that there was an increase in the size of the offering and I don't know the specific amount and it would have happened between the time that the preliminary was prepared and the deal was actually priced.

Q. Didn't it, in fact, happen after the conference call concerning Sunbeam's sales situation?

A. I can't say for certain. That would not be unusual.

It is frequently a tactic in doing securities offerings to go out with

Dean

an offering that is smaller than the one you would like to achieve rather than going out with the full size offering and then failing to achieve that.

Q. The ability to increase the size of the offering is contingent upon the market's excitement about the offering?

A. Excitement? I don't know if "excitement" is the right word.

Q. Debt offerings are almost never exciting.

A. This was a convertible debt offering.

Q. You can take the top down?

A. There is an equity component associated with it. You clearly cannot increase the size of an offering without having investor demand for the securities.

Q. There was high demand for these?

A. There was demand for the securities sufficient to allow Morgan Stanley to raise the size of the offering.

Q. By 50 percent?

A. I don't know if 50 percent is the

NOT A CERTIFIED COPY

011013

Dean

right number or not but to raise the offering.

Q. By the way, did the amount of money that Morgan Stanley would make on this transaction depend on the size of the debt offering?

A. The gross spread that they would earn from doing an underwriting transaction on the convertible bond would vary directly with the size of the convertible debt offering.

Q. The bigger the offering the more money Morgan Stanley makes?

A. Yes. The percentage would be fixed but -- since the spread is calculated as a percentage of the offering size.

Q. Morgan Stanley also was leading a bank facility in connection with financing the acquisitions; is that correct?

A. Yes. There was a concurrent bank financing that was going on.

Q. That was senior to the debt offering you were working on?

A. I can't say for sure but I think

Dean

that was the case.

Q. So by increasing the size of the debt offering Morgan Stanley also reduces its exposure on its own loans to Sunbeam; is that correct?

MR. CLARE: Object to the form of the question.

THE WITNESS: I would say that there was a specific dollar amount that Sunbeam needed to raise in order to consummate the acquisition transactions.

How that money was raised and divided up among the various pieces really was a function of which piece, the size of the individual pieces of the debt offering and the bank loan.

BY MR. JOHNSON:

Q. So if the subordinated debt offering were increased to $750 million, doesn't that mean that the secured loan is reduced by $250 million?

A. I think it is just a mathematical calculation.

Dean

To the extent that you increase the amount that was raised by the subordinated financing it reduces the funding need from other sources and if the other funding source was a bank loan, yes, that is the case.

It is also the case that Sunbeam would find the convertible financing more attractive to itself because it was subordinated financing and not subject to the covenants that a senior facility would provide.

Q. How did you learn that the size of the debt offering, convertible debt offering, would be increased?

A. I don't recall at this time. Somebody at Morgan Stanley must have told us or told somebody at Davis Polk who later communicated it to me.

Q. That is a decision that Morgan Stanley would make independent of your counsel?

A. Yes. I don't think that we have great insight into market demand for

Dean

securities.

Q. I will give what you has been marked previously as Exhibit 14.

You got page 2 this time.

MR. CLARE: You know that is my issue. It is about time.

MR. JOHNSON: That is all you got.

BY MR. JOHNSON:

Q. Mr. Dean, is Exhibit 14 the March 19, 1998 Sunbeam press release we have been speaking about?

A. Yes. It appears to be a copy of the press release that was issued.

Q. This press release leaves open the possibility that Sunbeam would still meet the range of analyst estimates for the first quarter of 1998; is that correct?

A. Let me read the release.

Q. Sure.

A. I think the release doesn't really answer the question. I think the release -- the words of the release say that it may be lower than the range of Wall

NOT A CERTIFIED COPY

017014

Dean

Street analyst estimates.

By its terms it leaves open the possibility that they still may achieve it.

Q. It further says, "A shortfall from estimates, if any, would be due to changes in inventory management and order patterns at certain of the companies major retail customers."

Do you see that?

A. Yes, I do see those words.

Q. Did you have any discussion with anyone from Sunbeam or Skadden concerning this stated reason for the potential shortfall from analyst estimates?

A. I don't recall now. I mean, we must have had conversations at the time to make ourselves comfortable that the press release was consistent with what we had been told by Sunbeam and what we could confirm independently.

Q. Didn't Andersen say that the sales decline was the result of acceleration of sales into 1997?

A. Is that what was in -- I don't

Dean

remember whether or not that was in the comfort letter, the final comfort letter that was delivered.

If it was, I mean, that would be consistent with the press release.

Q. It is your testimony that this press release fairly discloses that the reason for the shortfall in sales was because Sunbeam accelerated sales into the fourth quarter of 1997?

A. My testimony is that based on what we knew at the time we felt comfortable with the substance of the press release.

I can't recall right now all of the constellation of facts that we took into account when we made that determination but I would not have felt comfortable proceeding with the offering unless I felt that the disclosure in the press release was consistent with what we had learned.

Q. It is possible you may have learned of Andersen's stated reason for the

Dean

shortfall after the press release?

A. Well, it is -- I am aware of the fact that there was information in the Andersen comfort letter about a shortfall.

I am not aware of when during the process I became aware of that, whether or not that was in the context of the all-hands meeting or not. I just don't have a specific recollection.

Q. But it is your testimony that even if you were aware of Andersen's stated reason for the shortfall prior to the press release you would still be comfortable with the press release?

A. It depends on the Andersen statements and whether or not they were consistent with the -- with the substance of the press release.

If they were consistent I would have felt comfortable with it.

Q. I guess that is the question. Is it your view that the Andersen statement that we looked at is consistent with the press release?

Dean

A. I don't know whether or not this Andersen statement was one that we saw prior to the issuance of the press release.

Q. I understand that.

A. So let me take a look at the Andersen draft.

Q. Paragraph 6B, I believe; maybe 6C?

MR. WISE: 6B.

THE WITNESS: If the language in paragraph 6B of Exhibit -- what exhibit number is this?

BY MR. JOHNSON:

Q. 110.

A. 110, that statement appears to be consistent with the disclosure that is in the press release.

Q. You think it fairly discloses the acceleration of sales into 1997?

A. I think that the disclosure is consistent with the Andersen accounts.

I mean, there frequently -- there can be variations between what is disclosed and more detail.

NOT A CERTIFIED COPY

017015

Page 146

Dean

Q. It is consistent with -- the statements are consistent with one another is your testimony?
A. Yes.
Q. You testified already that you favored putting January and February sales information in the press release?
A. Well, I -- what I did was I suggested that as a course of action that the group might consider.
I was not wedded to having the January and February numbers being disclosed.
Q. That information though would be more specific and less subjective than the information that ultimately ended up in the press release concerning sales results?
A. It would -- if we had reported January and February numbers, yes, that would have been more specific.
Q. Would you agree that Andersen's statement for the reason for the shortfall is more specific than the statement that ended up in the press release concerning

Page 147

Dean

the reasons for the shortfall?
A. Yes. I would say there is more detail in the Andersen sort of explanation than what appeared in the press release.
Q. The press release obviously doesn't call into question the quality of Sunbeam's 1997 results, does it?
MR. WISE: Are you going to argue with him about it? Is that a fact question?
MR. JOHNSON: That was a question.
MR. CLARE: I object to the question on form and foundation.
MR. JOHNSON: Let me state it slightly differently.
BY MR. JOHNSON:
Q. The Andersen draft, Exhibit 110, has the potential to call into question the quality of Sunbeam's 1997 results, doesn't it?
A. I don't know what you mean by "the quality of 1997 results."
I mean, it -- the Andersen letter

Page 148

Dean

does state that some of the revenues could have been accelerated into 1997.
Q. The press release doesn't refer in any way to 1997 results, correct?
MR. CLARE: Objection. That misstates the document.
THE WITNESS: Could you repeat the question?
BY MR. JOHNSON:
Q. Yes.
The press release doesn't indicate in any way that sales were accelerated into 19 -- the fourth quarter of 1997, does it?
A. I think that it is -- what the press release -- the language in the press release could be construed to capture that, the 1997 increases in sales under the words due to changes in the inventory management and order patterns.
It is not -- it is not specific as to what happened in 1997.
Q. You are not suggesting, are you, that that sentence would be sufficient to

Page 149

Dean

put investors on notice that sales had been accelerated into 1997?
MR. CLARE: Objection to the form of the question.
THE WITNESS: I think that the press release does not specifically state that there was an early buy program in effect for 1997 and it does talk about inventory management and ordering patterns at the major retail customers which could encompass that behavior.
BY MR. JOHNSON:
Q. You are not aware of any market reaction or analyst reaction to the press release that called into question the validity of 1997 results, are you?
A. I am not aware of anything at this time.
MR. JOHNSON: We will mark this as CPH Exhibit 214.
(CPH Exhibit 214 marked for identification)
BY MR. JOHNSON:

NOT A CERTIFIED COPY

011716

Dean

Q. Mr. Dean, I have given you a document we have marked as CPH1257359.

Can you identify that document for us?

A. It appears to be a memorandum prepared by Morgan Stanley from John Tyree and Ben Derito to Bob Gluck, myself and Ben Fernicola.

Q. Who is Ben Derito?

A. I don't know. I assume he was a Morgan Stanley person, an employee of Morgan Stanley at the time.

Q. How about the name at the bottom, Shani Boone; do you know who that is?

A. She was also -- I forget what her position was, whether or not she was also an employee of Morgan Stanley at the time of the Sunbeam transaction.

Q. This memo schedules a conference call, a bring-down due diligence conference call for March 19, 1998.

Do you see that?

A. I do.

Q. Did that call go forward?

Dean

A. I don't have any recollection as to whether or not it did or not.

Q. I ask because the Davis Polk chronology, Exhibit 24, doesn't appear to list that conference call if you look at Exhibit 24.

A. My time records would not necessarily have sufficient detail to identify whether or not my time related to a particular conference call or not.

Q. It is your testimony as I understand it that as of the date of this memo, March 17, 1998, you had no inkling that there were any problems with Sunbeam's first quarter 1998 results?

A. That's right. I mean, the first inkling that I had was on March 18.

Q. That was the same day as the New York road show for the debt offering?

A. I don't know when the New York road show was. If it was on March 18, yes.

Q. Did you attend the New York road show?

A. No, I did not.

Dean

Q. Did anyone from Davis Polk?

A. Not that I am aware of.

Q. Do you have any knowledge as to what happened at the road show?

A. No, I do not.

Q. Did you or anyone from Davis Polk attend any road shows?

A. I did not attend any road shows. I don't think anybody else from Davis Polk did either.

Q. Did you ever hear what happened at any of the road shows?

A. I don't remember hearing about what happened at the road shows.

Q. Did you ever hear that Sunbeam talked about the March 19 press release at any of the road shows?

A. I don't remember whether or not they -- I have no recollection as to whether or not they did or not.

I assume they had to address it after the press release was issued.

Q. Would it concern you if Sunbeam downplayed the press release in any way?

Dean

A. I think that the press release speaks for itself. How Sunbeam responded to it, I really can't sort of say what would be in Sunbeam's minds.

Q. If you had heard that Sunbeam said that they issued the press release only because the lawyers made them do it, would that give you any concern?

A. I think that the press release speaks for itself and that the marketplace would evaluate it on that basis and then the marketplace could evaluate what Sunbeam said at the same time.

Q. I take that as a no.

MR. WISE: No. You take that as the answer that he gave.

You -- actually, you can take it any way you want. I don't care how you take it. His answer stands the way he gave it.

BY MR. JOHNSON:

Q. Let me try it again slightly differently and see if I can get a direct answer.

NOT A CERTIFIED COPY

017017

Dean

MR. WISE: I object to that. You got a direct answer. You just didn't like it.

MR. JOHNSON: He didn't like it.

MR. WISE: I said you got a direct answer. You just didn't like it.

BY MR. JOHNSON:

Q. Would you be concerned in any way if you had learned that Sunbeam tried to downplay the significance of the press release after its issuance?

A. I would be concerned if Sunbeam said something inconsistent with the press release.

How Sunbeam decided how to characterize the press release would be -- I didn't represent Sunbeam so I don't know how they were advised.

I think that the press release that Sunbeam put out speaks for itself and any comments that Sunbeam made in connection with the press release would be absorbed by the marketplace in whatever

Dean

fashion the marketplace -- whatever weight the marketplace wanted to put on it.

Q. Don't you as counsel to the underwriter have concern with the candor of issuer management?

A. Yes, we do.

MR. JOHNSON: Do you want to take your lunch break?

MR. WISE: Sure. Let's do that.

THE WITNESS: If it is another 15, 20 minutes --

MR. JOHNSON: It is not. I don't think it is more than another 90 minutes or so but -- so you guys do what you want to do. I do need to use the restroom.

THE VIDEOGRAPHER: The time is 1:02 p.m. We are going off the video record.

(Luncheon recess: 1:02 p.m.)

Dean

AFTERNOON SESSION

2:07 p.m.

THE VIDEOGRAPHER: The time is 2:07 p.m. and we are back on the video record.

BY MR. JOHNSON:

Q. Mr. Dean, before lunch we were talking about the press release and the telephone conferences leading up to the press release. Do you recall that testimony?

A. Yes, I do.

Q. Did Davis Polk and Morgan Stanley's diligence work continue after the press release issued after March 19?

A. Yes, it did.

Q. I assume you had telephone conferences with somebody in management in connection with that due diligence?

A. Yes.

Q. Did you ask them how the first quarter was progressing?

A. Yes, we did.

Q. Did you ask them how the first

Dean

half of 1998 was progressing?

A. I don't remember. That would have been a natural question to ask.

Q. How about 1998 as a whole, did you ask them how that was looking?

A. I don't recall whether or not that was the subject of any of the conversations.

Q. When you say that asking about the first half of 1998 would be a natural question what do you mean by that?

A. I think that in the -- at Sunbeam generally there were Street estimates out with respect to the full year or the first half and that would have been a natural series of questions to ask as well.

Q. Did you have any concern that Sunbeam was stretching to make first quarter numbers with the result that the second quarter would be severely impacted?

A. I had -- I had no recollection as to any specific conversations we had about the second quarter and so I wouldn't have any comment about whether or not they were

NOT A CERTIFIED COPY

017018

Page 158

Dean

trying to stretch -- whether or not they would need to stretch to get the second quarter results.

Q. I guess the question is a little different.

Did you have any concern that the push to make numbers in the first quarter of 1998 would have a negative impact on Sunbeam's performance in the second quarter of 1998?

A. I don't recall any concern about that.

Q. Let me show you what was marked previously as Exhibit 35. Actually that is Exhibit 33, believe it or not. That is a poor copy. I will represent to you that is 33.

Exhibit 33 is a memo from John Tyree and Johannes Groeller to you among others; is that correct?

A. That is correct.

Q. I think Johannes Groeller will be a new name for us today.

Who is Johannes Groeller?

Page 159

Dean

A. Since this is a Morgan Stanley memorandum I assume that Johannes Groeller is another employee of Morgan Stanley who worked on the financing team.

Q. I take it from your answer though you don't recall ever dealing with him?

A. I don't remember dealing with him.

Q. This memo is dated March 19, the same day as the press release, do you see that?

A. I do see that.

Q. That is also the day of the pricing of the debt offering, isn't it?

A. Yes, it is.

Q. The first agenda item provides top and bottom line outlook for first quarter first half of the year, do you see that?

A. I do see that.

Q. Do you recall any conversation on that topic during this telephone call?

A. I don't have any recollection now since the events were six years ago. These

Page 160

Dean

are -- these would be typical sort of areas of review in the due diligence phone call.

Q. By "top and bottom line" that refers to revenue and earnings?

A. Yes. Some sort of bottom line would refer to some sort of earnings measure.

Q. The third bullet refers to any significant customer account, wins, losses.

During any of the conference calls you had after the press release issued do you recall any customer account wins or losses identified by Sunbeam?

A. I don't recall any at this time.

Q. Do you recall that question being discussed?

A. I don't recall it being discussed and based on this memorandum it looks like it was one of the issues that was discussed and I would have been able to comment on it closer to the 1998 time frame than now.

Q. Now you just don't remember?

A. I just don't remember now.

Q. The sixth bullet point states,

Page 161

Dean

"Are the expected synergy estimates for the three acquisitions still up to date."

What does that refer to?

A. Well, I can't read into the minds of the person who wrote this memorandum but what I would interpret that question to revolve around is whether or not the -- after the closing of the acquisitions whether or not there would be any efficiencies realized by eliminating some of the duplicative functions.

Q. Did you or anyone at Davis Polk do any analysis of synergies to be achieved from the acquisitions?

A. It would not have been our role to do a financial analysis into a synergy -- into a synergy analysis. In the course of the offering we might well have reviewed the pro forma financial statements.

Q. Did you, in fact, review the pro forma financial statements?

A. I can't -- I am sure that I did because it would be part of a normal sort

NOT A CERTIFIED COPY

017019

Page 162

Dean

of process of preparing the offering memorandum but I can't -- I can't say that I remember positively doing it.

Q. Can you recall any revisions to the pro formas during the course of March of 1998?

A. I don't recall any revisions. There might have been some.

Q. The phrase "the expected synergy estimates," who had made synergy estimates on this transaction?

A. I don't know who made the synergy estimates. Typically the acquirer, Sunbeam, would have synergy estimates prepared in order to evaluate the financial aspects of the acquisition transaction.

Q. Let me give you what we marked previously as Exhibit 111.

Mr. Dean, Exhibit CPH111 is another draft of the comfort letter. This draft has a fax header From Global Financial Press New York at about 11:48 in the evening of March 19. Do you see that?

A. I do see that.

Page 163

Dean

Q. Did you receive this draft?

A. I don't recall at this time whether or not I have seen -- whether or not I saw the draft.

Q. What is Global Financial Press?

A. Global Financial Press is a financial printing firm.

Q. Located here in New York?

A. Located in New York City.

Q. Have you ever been to Global Financial Press?

A. Yes, I have.

Q. Did you go to Global Financial Press in connection with the Sunbeam transaction?

A. I did go at least once to Global Financial Press in connection with Sunbeam.

Q. Do you know on how many different occasions Davis Polk lawyers attended drafting sessions at Global Financial Press?

A. I believe we attended drafting sessions twice at Global Financial Press.

Q. Did you attend the first or the

Page 164

Dean

second or you don't recall?

A. I attended the first.

Q. The first session, that was not the session on March 19; is that correct?

A. That's correct. The first session would have been to prepare the preliminary prospectus.

Q. Who was at the first session?

A. From Davis Polk?

Q. I want to know everyone who was at the first session.

A. Again, since the events were six years ago I will try to remember as many as I can but I may not get them all.

I attended that meeting from Davis Polk. Heather Stack also attended that meeting.

I know that Jim Lurie from Davis Polk did not attend that meeting because we decided to split up attendance at the printing sessions.

There was a representative of Skadden, Arps there. I can't recall who it was.

Page 165

Dean

I don't remember whether or not any Sunbeam personnel came up for the meeting. There may have been an Arthur Andersen representative there but I can't recall for sure. That would have been Mr. Bornstein who we talked about earlier today.

Q. Right.

Other than Mr. Bornstein did you ever deal with anyone else from Andersen in connection with the Sunbeam transaction?

A. I don't recall whether or not I did or not. There may have been conference calls I participated in but Mr. Bornstein is the only one that I have a definitive recollection of today.

Q. Can you visualize Mr. Bornstein?

A. No. I don't think so. There have been many accountants since Mr. Bornstein.

Q. They all seem to run together.

The CPH Exhibit 111 differs from the earlier comfort letter draft that we looked at in several respects. One is the

NOT A CERTIFIED COPY

017020

Dean

addition of paragraph 6C on page 5.
A. Yes, I see paragraph 6C.
Q. This draft was circulated apparently after the press release issued?
A. It appears to have -- it appears to have been faxed after the press release was issued.
I don't know who it was faxed to. It appears to have been faxed from the printer.
Q. Do you know whether Morgan Stanley saw this draft?
A. I don't know whether or not Morgan Stanley saw it or not. It would be our normal practice at Davis Polk if we had received a copy of this to forward it on to Morgan Stanley.
Q. Did Davis Polk or Morgan Stanley receive any information after the press release was issued that they thought needed to be enclosed in the offering memorandum?
A. Not that I am aware of.
Q. Did you have any discussions with any Davis Polk personnel the night of March

Dean

19?
A. I don't recall. I probably did.
Q. Who from Davis Polk was at the printer on March 19?
A. Jim Lurie was at the printer and I don't know whether or not Heather Stack went to the printer that evening or not.
Q. Do you recall any discussion with Mr. Lurie calling you either at the office or at home from the printer?
A. I don't remember a phone call. He very well could have made a phone call to me in the course of the transaction.
Q. Nothing stands out to you today as a phone call occurring from the printer?
A. I don't recall a phone call at this time but again it was six years ago. Lots of phone calls from the printer since then.
Q. Did you ever talk to Mr. Lurie or anyone else about what happened at the printer?
A. I don't remember any specifics -- specific conversation with Mr. Lurie about

Dean

what happened at the printer.
He could have well reviewed what happened at the printer but I don't have any specific memory of that.
Q. He didn't convey to you any disagreements or heated discussions that occurred at the printer?
A. I don't recall. Nothing that I recall at this time.
Q. You don't recall Mr. Lurie telling you that Mr. Bornstein said that everybody in the room would get sued if Sunbeam didn't beat the first quarter 1997 number?
A. No. I don't recall that having been said.
Q. Did Mr. Lurie tell you that Mr. Bornstein advised skepticism as to Sunbeam's ability to beat the first quarter 1997 number?
A. I don't recall such a conversation. Having said that, this was six years ago.
Q. Did you have any discussion with

Dean

anyone from Skadden or Sunbeam as to whether the full text of the press release should be contained in the recent developments section of the offering memorandum?
A. Yes, we did have discussions with Skadden about whether or not the substance of the press release should be in the offering memorandum.
Q. What was Skadden's position on that?
A. I don't remember what Skadden's position on it was.
Our position was that it should be in the document.
Q. Was there any discussion about changing the substance of the press release?
A. I don't recall any discussion about that, that I was involved in.
Q. This has been marked previously as Exhibit 17.
Mr. Dean, Exhibit 17 is a letter from Arthur Andersen to Morgan Stanley

NOT A CERTIFIED COPY

017021

Dean

dated March 19, 1998.

Have you ever seen that letter before?

A. I can't say for certain whether or not I have seen exactly a copy of this letter.

This letter seems to be the comfort letter that was issued to Morgan Stanley upon the pricing of the offering and I would have reviewed this letter.

Q. It would be your practice to review a comfort letter issued in connection with any securities that you are involved --

A. That would be my general practice unless I had somebody that I delegated the task to.

Q. Did you have any reaction or do you recall having any reaction upon reading this comfort letter?

A. I remember that -- one of my focuses was to make sure that the comfort letter was consistent with the disclosures that had gone into the press release and

Dean

what would have been told by Sunbeam in connection with our due diligence sessions on the 18th and any followup due diligence sessions we had after the 18th.

Q. Upon reading the comfort letter you were satisfied with that?

A. At the time I was comfortable that it was consistent with the disclosure that had been made.

Q. Did you still have the view that you would have preferred the inclusion of the actual January and February sales numbers in the press release?

A. I think that I was comfortable having the press release go out in the form that it went out without mentioning the January and February results.

Q. You testified previously that you had raised the possibility of including that?

A. Yes. I had raised that possibility.

Q. The comfort letter didn't change your view as to whether that information

Dean

should be included in the offering memorandum?

A. No, it did not, and I might have been aware of the January-February -- the amounts of the January-February revenue results before they appeared in the comfort letter that I had reviewed.

Q. Did you ask upon receipt of this press release how the quarter looked for earnings for Sunbeam?

A. I don't recall whether or not I did or not. The focus from a materiality perspective was really the revenues.

Q. After this -- after this comfort letter was issued late on the 19th or early on the 20th of March what did you do on the Sunbeam transaction after that?

A. We prepared for the closing of the transaction, we delivered a legal opinion at the closing to Morgan Stanley and we also conducted bring down due diligence.

Q. What is bring down due diligence?

A. It would be a due diligence

Dean

conference call with the -- with Sunbeam and -- with Sunbeam.

Q. In terms of diligence that consisted of a phone call with Sunbeam after the March 19 comfort letter?

A. Those are, at this point, six years after the events, those are the events that I recall.

There could have been additional diligence procedures that we participated in.

Q. This may help you remember.

Here is what has been marked previously as Exhibit 34. Exhibit 34 is a March 20 memo from Ruth Porat and others at Morgan Stanley to you, among other individuals.

A. Yes, I see that.

Q. Is this the due diligence -- bring down due diligence call you are referring to or were there several calls?

A. It is consistent with what would be covered in the bring down due diligence call immediately before the closing of the

NOT A CERTIFIED COPY

017022

Dean

transaction.

Q. If you look back at Exhibit 33 that we looked at which was also a bring down due diligence agenda, Exhibit 33 refers to results for the first quarter, the first half and the year whereas Exhibit 34 refers only to the first quarter revenues and earnings.

Do you know why that is?

A. No, I don't, but we could well have covered the first half of the year in the conference call.

Q. Do you have any recollection of doing that?

A. I don't have any recollection now. I would have back then. It strikes me as it is a standard thing that would have been done.

Q. You have no idea why the agenda that is Exhibit 34 doesn't refer to the first half of 1998?

A. No.

Q. This has been marked previously as Exhibit 35.

Dean

Exhibit 35 appears to be another due diligence agenda from a slightly different set of authors and slightly different set of recipients although you are a recipient on Exhibit 35 as well.

A. Yes, I see that.

Q. Exhibit 35 is a March 23, 1998 memo. Do you see that?

A. I do see that.

Q. Like Exhibit 34, Exhibit 35 refers to the first quarter revenues and earnings but not the first half of 1998 results. Do you see that?

A. Yes, I do see that.

Q. What was -- on March 23, what was Sunbeam saying about its first quarter earnings and -- revenue and earnings?

A. I don't have a specific recollection as to what they said. I am sure that they confirmed the matters that they had assured us would occur in the March 18 bring down phone call.

Q. Did they tell you that as of March 23 Sunbeam was showing a loss for the

Dean

quarter?

A. No, they did not. I can't -- that is something that I would have remembered.

Q. Why do you say that?

A. Because Sunbeam had been projected to earn money during the first quarter.

Q. You would have been surprised by a loss as of that point in the quarter?

A. Yes, I would have been surprised. It would have been inconsistent with the information that we just received on the 18th.

Q. You think on the 23rd they were telling you that they were going to show a profit for the quarter?

A. Well, I can't recall at this time, six years down the road but that must have been what they said, otherwise, we would not have felt comfortable closing the transaction given the disclosure that was in the marketplace.

Q. I will show you what has been

Dean

marked previously as Exhibit 112.

Can you identify Exhibit 112 for the record, Mr. Dean?

A. Exhibit 112 appears to be a bring down comfort letter delivered at the closing of the subordinated debt offering reconfirming the matters in the comfort letter, earlier comfort letter delivered on the pricing date of the offering.

Q. The bring down letter includes, doesn't it, a paragraph -- at paragraph E a revision to the sales and income statement set forth in the March 19 comfort letter?

A. I would have to see where -- which revision are you referring to?

Q. The bring down comfort letter has sales and income figures through March 1 whereas the comfort letter had sales and incomes through February 1 and sales through March 1?

A. Could you repeat that? I will sort of double-check.

Q. I am not trying to be tricky here.

NOT A CERTIFIED COPY

017023

Page 178

Dean

A. I understand.
Q. I want to highlight a comparison.
A. I haven't looked at these documents in a while. So --
Q. Sure.
Exhibit 17 which is the March 19 comfort letter --
A. Yes.
Q. -- at paragraph 5B includes a table for sales and income through February 1, 1998?
A. Right.
Q. The bring down letter includes at paragraph E an update on that table through March 1?
A. Yes.
Q. It shows through March 1 a loss of $41 million for Sunbeam, do you see that?
A. I do see that.
Q. Did Davis Polk or Morgan Stanley do anything in reaction to that information?
A. I don't remember doing anything

Page 179

Dean

in reaction to that information.
It would have been -- I just don't have any recollection at this time. It may have been consistent with the sales shortfall relative to the prior year period.
Q. Did you ask what earnings looked like as of March 25 as opposed to as of March 1?
A. I don't recall whether or not we would have. It would not be a question that we would address to Arthur Andersen if the cutoff of this letter was March 1.
Q. Did you ask Sunbeam?
A. We may -- we may well have asked Sunbeam that question. I assume we did ask Sunbeam that question.
Q. But you can't recall who asked whom?
A. No, I can't recall who asked whom.
Q. Your testimony is that as of late March the Street was still expecting Sunbeam to show a profit for the first

Page 180

Dean

quarter of 1998?
A. That is my recollection. This comfort letter also -- this bring down comfort letter also tries to explain the magnitude of the $41 million loss by saying there was a one time $30.2 million item.
Q. Excluding that, it is a little over a $11 million shortfall?
A. Right. Just taking a look at the sales, shortfalls, it would not be -- it wouldn't be -- it would not have been surprising to see a loss for the first two months.
Q. Sales were running about half of the prior year period?
A. Right.
Q. The bring down comfort letter is delivered in connection with the closing of the debt offering; is that correct?
A. That's correct.
Q. After the debt offering closed, what, if anything, did you do in connection with the Sunbeam transaction?
A. Probably filed my documents away

Page 181

Dean

and I don't think that I paid -- I didn't do any substantive work on Sunbeam immediately after the closing.
Q. Did you track the company in any way or keep an eye out for Sunbeam news?
A. I don't remember doing that. I may have at the time. I don't recall at this time whether or not I did or not.
Q. I believe you testified already today that you recall an early April press release with the actual first quarter 1998 results?
A. Yes.
Q. Did you get that on or about the time that it was issued?
A. Yes, I did.
Q. If I can find my copy of it. This has been marked as Exhibit 36 previously.
How did you -- let me -- I will identify it for the record.
Exhibit 36 is the April 3, it says, 1997 but it is in fact a 1998, press release.

NOT A CERTIFIED COPY

011024

Page 182

Dean
It also has a fax cover sheet from David Fannin to four Morgan Stanley personnel and two Skadden personnel.
A. Yes, I see that.
Q. How did you come to see the April 3 press release?
A. I can't recall how I got a copy of this press release, whether or not Morgan Stanley gave it to me or who notified me about it.
Q. Did you talk to anyone with Morgan Stanley about the substance of the press release?
A. After the press release was issued? I don't recall any specific conversations now.
I must have had conversations with personnel from Morgan Stanley about it.
Q. How about before the press release was issued did you know this press release was coming out?
A. No, I did not.
Q. Did you know that Sunbeam would

Page 183

Dean
issue a press release with its first quarter results in it?
A. Sunbeam would be required to issue a release with its first quarter results in it.
I wasn't aware of what the timing of that would be.
Q. That is what I am getting at.
Did you have any reaction to the press release?
A. I was surprised when I saw the press release.
Q. Did you -- I take it then you didn't have an opportunity to review or comment on the April 3 press release?
A. No, I did not.
Q. Did you call anyone at Skadden concerning this press release?
A. I don't remember whether or not I did or not.
Q. Did you continue to follow Sunbeam after the April 3 press release?
A. I don't recall now whether or not I did. I know that I read press reports

Page 184

Dean
about what happened to Sunbeam after this press release was issued.
Q. Let's mark this as 215.
(CPH Exhibit 215 marked for identification)
BY MR. JOHNSON:
Q. Mr. Dean, what is Exhibit 215?
A. Exhibit 215 appears to be a fax cover sheet to Donald Uzzi from me attaching -- faxing a copy of a lockup agreement that Mr. Uzzi signed in connection with the offering.
Q. The fax cover sheet is dated April 2, 1998, 7:00 p.m.
A. Yes, it is.
Q. The lockup agreement restricts Mr. Uzzi's ability to sell Sunbeam's securities?
A. Yes, it does.
Q. Did you have any concerns about Mr. Uzzi's request for a copy of his lockup agreement on April 2?
A. I don't recall any concerns at the time. I don't even recall sending this

Page 185

Dean
fax out.
Q. Did you have any conversations with anyone in connection with sending this out?
A. Well, the fax cover sheet suggests that I must have had conversations with John Tyree because it is at his request that I was faxing Mr. Uzzi a copy of the lockup agreement.
Q. Other than what is on the face of the fax cover sheet you don't have any memory of talking to John Tyree?
A. I don't have any specific recollection of it, no. Again, it was six years ago. Many phone calls since then.
Q. This is the day before Mr. Uzzi is terminated as well; is that correct?
A. I am not aware of the date that Mr. Uzzi was terminated.
Q. I want to change gears just slightly and talk for a few moments about the purchase agreement between Morgan Stanley and Sunbeam.
I believe you have already

NOT A CERTIFIED COPY

01/025

Dean
testified today that Davis Polk counseled Morgan Stanley in connection with the negotiation and drafting of that agreement?
A. Yes, we did.
Q. Do you remember as you sit here the negotiation points that were in dispute with Sunbeam or Skadden, Arps?
A. Sitting here I don't remember, nor do I recall any specific negotiations that I may have participated in in connection with the purchase agreement.
Q. Let me see if I can refresh your memory a little bit.
This would be 216.
(CPH Exhibit 216 marked for identification)
BY MR. JOHNSON:
Q. Mr. Dean, I recognize I have given you a fairly voluminous exhibit. I will call your attention just to one provision in particular but feel free to look at any of the document.
As an initial matter, can you identify for the record what we have marked

Dean
as CPH Exhibit 216?
A. Yes, it appears to be a memorandum from Skadden, Arps to Davis Polk and to John Tyree at Morgan Stanley attaching comments on a draft of the purchase agreement.
Q. These would be Sunbeam's comments on the draft purchase agreement?
A. Yes, Sunbeam's comments and Skadden's comments.
Q. Looking at page 4 of the draft which has the Bates stamp CPH0632913 --
A. It is the page that has page 4 on it?
Q. Correct.
A. 7729, the Skadden, Arps Bates stamping?
Q. That is exactly right.
Paragraph L has a proposed revision that I want to ask you about. If you would read that for me?
A. Yes, I can see the proposed revision.
Q. Did Sunbeam articulate or did

Dean
Skadden articulate why that change was desired?
A. I don't remember negotiating this point. This is a standard comment that is received in negotiating purchase agreements.
Q. Sorry. You say it is a standard comment?
A. It is a standard comment that an issuer's counsel would raise in connection with negotiating a purchase agreement, crossing out the words or any development involving a prospective material adverse change.
Q. Did that proposed revision give you any concerns?
A. Well, I don't know if I -- I was copied on this memorandum. I don't know if I reviewed this specifically.
I can't recall at the time whether or not it would have raised any concern today looking at it again in the context of standard practices and negotiating purchase agreements, an issuer

Dean
requesting this change, this would not set off any concern on my part.
Q. If this deal were to close -- strike that.
Were there any discussions with Skadden or Sunbeam concerning whether Sunbeam's deteriorating financial condition in the first quarter of 1998 constituted a material adverse change?
A. The condition in the underwriting contract would have been a condition that applied after the underwriting agreement was signed and before the transaction closed and typically this kind of representation has an exception for disclosures made in the final offering memorandum.
Q. The final offering memorandum does not disclose that Sunbeam would likely show a loss for the first quarter of 1998?
A. The Sunbeam offering -- the final Sunbeam offering memorandum did not disclose that there might be a loss.
MR. JOHNSON: Why don't we change

NOT A CERTIFIED COPY

011026

Dean

the tape?

THE VIDEOGRAPHER: The time is 2:53 p.m. and this completes tape number two.

(Pause)

THE VIDEOGRAPHER: The time is 2:55 p.m. and this begins tape number three.

BY MR. JOHNSON:

Q. Mr. Dean, I am going to show you another draft of the purchase agreement if I can. This was marked previously as CPH Exhibit 211.

Exhibit 211 includes a fax cover sheet from Nicole Duncan to Lurie, Stack and Dietz at Global Financial Press.

Then behind the fax cover sheet is a memorandum on which you are copied with an attachment which includes a draft of the purchase agreement.

Do you see that?

A. I do see that.

Q. Do you recall reviewing this draft?

Dean

A. I don't recall at this time whether or not I reviewed this draft or not.

Q. I want to call your attention again to paragraph L. That would be 1L.

A. Is that the page that is identified 019?

Q. Correct. On the CPH Bates stamp it is 633019.

A. Yes, I see that.

Q. Do you see the proposed revisions there?

A. I see a -- an L and addition at the end of the paragraph.

Q. How did that proposed revision come to be?

A. I can't say with accuracy why. It occurred back six years ago.

Looking at it now it is clearly understandable why that was put in. It is because this material adverse change clause applied to the disclosures that were in the preliminary memorandum.

There was a subsequent press

Dean

release that was issued that contained additional information and Sunbeam wanted to make it clear that the material adverse change condition did not apply to the disclosures that had already been made and had been absorbed by the marketplace and there may have been an argument that could have been made that that disclosure could have constituted a material adverse change.

Q. The phrase that is proposed says, "The press release shall not in and of itself constitute a material adverse change or prospective material adverse change."

Do you know why that phrasing is used?

A. No. I have no insight to add on that.

Q. Did you ever hear from any source that Arthur Andersen sent personnel to monitor Sunbeam's shipping docks at the end of the first quarter of 1998?

A. I am not aware of that.

Q. Other than having to give a deposition in this matter do you have any

Dean

regrets concerning the Sunbeam transaction?

MR. CLARE: I object to the form of the question.

THE WITNESS: I have no regrets about the Sunbeam transaction.

BY MR. JOHNSON:

Q. You do feel that Sunbeam lied to you?

A. We -- Sunbeam -- the document, with the benefit of hindsight, I don't know -- I can't say what was in the minds of the Sunbeam people once -- when they disclosed what they disclosed to us on the eve of the offering.

I don't know, I can't say whether or not they in good conscience really believed and we were convinced that they were going to make the numbers.

Q. Do you wish that Morgan Stanley or Davis Polk had done more to verify the assurances that Sunbeam management gave you?

A. No. I think we did what was reasonable at the time and that in our

NOT A CERTIFIED COPY

017027

Dean

professional judgment that enabled us -- enabled Davis Polk to render an opinion that there were no material misstatements or omissions based on our investigation at the time.

Q. That investigation consisted of one or more telephone conferences with Sunbeam management?

A. The investigations included those conference calls. I can't recall all of the other things that Davis Polk or Morgan Stanley may have done.

Q. Again, focusing specifically on the representations made to you on March 18 by Sunbeam management, what else did Morgan Stanley or Davis Polk do to confirm the accuracy of the assurances that Sunbeam management gave?

A. We -- apart from the conference calls?

Q. Correct.

A. Davis Polk did not do anything more than those assurances.

We also reviewed the Arthur

Dean

Andersen comfort letters which were consistent with the disclosures and I can't say what else Morgan Stanley did apart from the conference calls that I participated in.

Q. You can't say because you don't know?

A. Because I don't know.

MR. JOHNSON: That is all I have got.

MR. CLARE: I don't have any questions.

THE VIDEOGRAPHER: The time is 3:03 p.m. This completes tape three and also the videotaped deposition of Mr. Alan Dean.

(Time noted: 3:03 p.m.)

_____

ALAN DEAN

Subscribed and sworn to before me this day of 2004.

_____

Dean

CERTIFICATE

STATE OF NEW YORK)
: Ss
COUNTY OF NEW YORK)

I, Steven Neil Cohen, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify: That ALAN DEAN, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 7th day of June, 2004.

_____

STEVEN NEIL COHEN, RPR

Dean

INDEX OF EXAMINATION

Witness
ALAN DEAN
By Mr. Johnson.....6

CPH EXHIBITS

Exhibit No. Marked
213 Letter.....18
214 Memorandum.....149
215 Fax.....184
216 Memorandum.....186

NOT A CERTIFIED COPY

017028

NOT A CERTIFIED COPY

017029

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN(PARENT)HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.
No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.
No. CA 03-5165 AI

NOT A CERTIFIED COPY

VIDEOTAPED DEPOSITION OF JAMES M. LURIE
New York, New York
Friday, June 18, 2004

Reported by:
Jane Watson
JOB NO. 161083

June 18, 2004
9:51 a.m.

Videotaped Deposition of JAMES M. LURIE, held at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, pursuant to Notice, before Jane D. Watson, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK, L.L.P.
Attorneys for: Coleman (Parent) Holdings, Inc. and MacAndrews & Forbes Holdings, Inc.
One IBM Plaza
Chicago, Illinois 60611-7603
BY: CLARK C. JOHNSON, ESQ.
RONALD MARMER, ESQ.

KIRKLAND & ELLIS, L.L.P.
Attorneys for: Morgan Stanley & Co., Inc., and Morgan Stanley Senior Funding, Inc.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

DAVIS POLK & WARDWELL
Attorneys for: James M. Lurie
450 Lexington Avenue
New York, N.Y. 10017
BY: ROBERT F. WISE, JR., ESQ.

ALSO PRESENT:
Ruben Martinez, Videographer
Wendy Coats

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: Will counsels please introduce themselves.

MR. JOHNSON: Yes. Clark Johnson, Jenner & Block, Chicago, for Coleman (Parent) Holdings and MacAndrews & Forbes Holdings, Inc.

MR. CLARE: Tom Clare from Kirkland & Ellis L.L.P. on behalf of Morgan Stanley & Co. and Morgan Stanley Senior Funding, Inc.

MR. WISE: And Bob Wise of Davis Polk & Wardwell and here representing Mr. Lurie as the witness.

THE VIDEOGRAPHER: Will the Court Reporter please swear in the witness.

JAMES M. LURIE, having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. JOHNSON:

Q. Good morning, Mr. Lurie.

A. Good morning.

Q. Would you please state your full name for the record.

A. James Michael Lurie.

NOT A CERTIFIED COPY

017030

Lurie

Q. And where do you reside?
A. Hewlett, Long Island, 130 Cedar Avenue, H-E-W-L-E-T-T.
Q. And you've given a deposition before; is that correct?
A. Yes.
Q. On how many occasions?
A. Once.
Q. About how long ago was that?
A. Ten, twelve years ago, I think.
Q. And what -- that was the Avon matter; is that correct?
A. Correct.
Q. Have you testified in any kind of court proceeding?
A. No.
Q. Arbitration, any type of --
A. No.
Q. -- judicial proceeding?
A. No. The reason I stuttered, I was called before a -- you know, a jury. And they asked me questions. But that wasn't really testifying --
Q. So you've been voir dired but not

Lurie

testified?
A. Yes.
Q. Well, as Mr. Wise has probably told you, as you will recall from your prior experience --
MR. JOHNSON: Let's take a short break here for one second. We'll go off the record.
THE VIDEOGRAPHER: We're going off the record. The time is 9:53.
(Discussion off the record.)
(Whereupon, Mr. Marmer joined the deposition.)
THE VIDEOGRAPHER: The time is 9:54. We're back on the record.
BY MR. JOHNSON:
Q. Mr. Lurie, before the break, I was explaining some of the ground rules of the deposition. Obviously, if you don't understand one of my questions, let me know, and I'll try to rephrase it. If you need to take a break, let me know that, and we can try to accommodate it.
The Avon matter where you were previously deposed, that was a matter where

Lurie

Morgan Stanley represented Avon; is that correct?
A. That's correct.
Q. What do you recall about the Avon litigation?
A. It had to do -- with my recollection, it had to do with some language that was in the certificate of designations for the security, which was called a percs security, and what certain language meant is my recollection what this suit was about.
Q. And it was a securities fraud case?
A. I don't remember what the claim in this case was.
Q. Was Morgan Stanley a defendant in that case?
A. I believe so. But what was that? Ten, twelve years ago?
Q. Do you know how that case was resolved?
A. Actually, I don't.
Q. Have you served as an expert witness?
A. No.
Q. Why don't you take me briefly through your educational background from graduation of

Lurie

college to the present.
A. Graduated Washington University in St. Louis in 1974. I spent two years working at Irving Trust, in the bank there. Then I went to law school. I went to Rutgers Camden, the Camden campus, graduated in '77, spent two years as a law clerk to Henry Bramwell in the Eastern District of New York.
During that period while as a law clerk, I started going to NYU for an LLM. I started at Davis Polk in 1979, I believe. Yeah, 1979. I was at Davis Polk through May of -- through April of 1998; then went to O'Sullivan Graev & Karabell, which, in 2002, merged with O'Melveny & Meyers. So I was with O'Melveny & Meyers through about -- just about a year ago and joined Holland & Knight a year ago, the end of this June, and got my L.L.M. from NYU. I think it was 1986.
Q. What was the area of specialty, if any, for your L.L.M.
A. Corporate.
Q. So you have -- is it a B.A. or B.S. from Washington?

NOT A CERTIFIED COPY

Lurie

A. B.A., A.B., whatever.
Q. And a J.D.?
A. And a J.D. and an L.L.M.
Q. Any other degrees?
A. No.
Q. Do you have any professional certifications of any sort?
A. No.
MR. WISE: He's member of the bar, I suppose.
A. Yeah. Well, that's a professional. Yes. Thank you.
MR. JOHNSON: We'll have you raise your right hand as well.
MR. WISE: Just trying to be helpful.
A. No. That would be a professional certification.
BY MR. JOHNSON:
Q. What titles did you hold at Davis Polk?
A. I was an associate. When I left, I was a senior attorney.
Q. And you went to O'Sullivan as a

Lurie

partner?
A. Correct.
Q. Why did you leave Davis Polk?
A. I got a great opportunity at O'Sullivan.
Q. Why was it a great opportunity?
A. I got to go head their corporate securities, SEC practice. It was a niche firm specializing in private equity and needed to build up their securities practice.
Q. What did you do to prepare for your deposition today?
A. Really just was yesterday. I came over, met with Bob and Tom, and just sort of reviewed what the deposition was going to be. They --
MR. WISE: Well, let's not discuss what the substance of our discussions were.
BY MR. JOHNSON:
Q. So you met with Mr. Wise and Mr. Clare?
A. (Indicating.)
Q. What else did you do?
A. To prepare? Nothing.

Lurie

Q. Did you review any documents?
A. Yes. Yesterday I was shown some documents.
Q. Did those help your memory on the events in question?
A. No.
Q. Do you have an understanding of who's given depositions in this law suit so far?
A. I was told that some of my former colleagues -- two of my former colleagues at Davis Polk had given depositions and that there had been others. I don't recall -- if you told me who the other ones were --
Q. And which colleagues from Davis Polk?
A. Alan Dean.
Q. Right.
A. Heather Stack.
Q. And did you get a sense of what their testimony was in their depositions?
A. No.
Q. Have you spoken with anyone from Morgan Stanley about this deposition?
A. No.
Q. How is it that you learned you were

Lurie

going to be deposed in this matter?
A. James Murray from Davis Polk called -- I don't know -- three, four months ago and said it was possible and then called again about six, eight weeks ago and asked if we could schedule something. And here I am.
Q. Since you left Davis Polk, have you done any legal work for Morgan Stanley?
A. They may have been involved in one or more transactions deals that I have done. I'd have to go back and look. I don't recall specifically.
Q. Have you represented Morgan Stanley since leaving Davis Polk?
A. No. Not directly, no.
Q. What do you mean by that?
A. They could have been an underwriting syndicate. They could have been a colead manager in an offering.
Q. But as you sit here, you can't think of any transaction --
A. Not specifically, no.
Q. Since leaving --
A. There actually was one.

NOT A CERTIFIED COPY

0-7032

Lurie

Q. Okay.
A. We were representing a client -- and I can't think of the name of the client right now -- in a high-yield offering. Morgan Stanley was the -- was going to be the lead underwriter.
Q. And you represented the issuer?
A. Yes.
Q. Was that at Holland & Knight or O'Melveny or O'Sullivan --
A. It was O'Sullivan.
Q. A high-yield offering, a junk bond offering?
A. High yield.
Q. Those are different terms?
A. I like high yield.
Q. Who was that issuer?
A. It could have been one of a couple of different ones. I'd have to go back and look to see which one it was.
Q. And so is that transaction the last time you've had any interaction with anyone from Morgan Stanley?
A. On a business level, yes. I mean, I know some people from other places, you know,

Lurie

through personal associations.
Q. So you've had personal contacts with Morgan Stanley personnel?
A. Absolutely. Yes.
Q. Okay. And which Morgan Stanley personnel?
A. I'm literally dealing with one on another matter at Holland & Knight.
Q. And who is that?
A. Fred Whittemore (phonetic).
Q. But that's not in his capacity as a Morgan Stanley --
A. No.
Q. -- employee?
A. No -- well, he is a Morgan Stanley employee, but he's a director of another company we're representing.
Q. Since leaving Davis Polk, have you had any contact of any sort with Ruth Porat?
A. No.
Q. John Tyree?
A. No.
Q. Bill Strong?
A. No.

Lurie

Q. Andy Savare?
A. No.
Q. Bob Kitts?
A. No.
Q. Jim Stynes?
A. No. I presume these are all Morgan Stanley people, but the answer is still no.
Q. How about Alex Fuchs?
A. No.
Q. And other than Mr. Wise and Mr. Clare, have you spoken to anyone about the fact that you're giving a deposition today?
MR. WISE: James Murphy, my office.
A. Right. And I advised a couple of my partners that I would be out this morning because I was being deposed.
BY MR. JOHNSON:
Q. Anyone else?
A. Not that I can recall. My wife.
Q. When you were at Davis Polk -- and the remainder of the day, there are going to be questions focused on your time at Davis Polk -- is it fair to say that Morgan Stanley was a major client of the firm?

Lurie

A. Yes.
Q. And you personally had worked on numerous matters for Morgan Stanley?
A. Yes.
Q. We talked about the Avon matter already. Obviously, there's the Sunbeam matter.
A. Yes.
Q. Can you think of any other matters that you handled for Morgan Stanley?
A. Well, not for Morgan Stanley. I believe Morgan Stanley was the lead underwriter on the Irvine Apartment Communities offering that we represented Irvine Apartment Communities; Morgan Stanley was the lead underwriter. We represented them in the IPO of an entity called TIG, T-I-G.
Q. Was that a Transamerica entity --
A. Yeah. It was a Transamerica spin-off of their P&C company. Those are the ones that come quickly to mind. There are enumerable others. I did a lot of work for Morgan Stanley in the swap area.
Q. So your work for Morgan Stanley was not limited to public offerings. It was M&A work

NOT A CERTIFIED COPY

Lurie

as well?
A. I didn't do a great deal of M&A work here at Davis Polk.
Q. I take that to mean that you did some?
A. Yes, I did some.
Q. Can you estimate for me the number of public offerings that you worked on while at Davis Polk.
A. Any kind of public offering?
Q. Yes.
A. Registered with the SEC?
Q. Yes.
A. Seventy-five, a hundred -- I don't know. Seventy-five. Pick a number.
Q. How is it that you came to work on the Sunbeam transaction?
A. This is -- it's six years ago. Someone would have come in and said, You've got some time to work on this matter.
Q. You didn't receive a call from Morgan Stanley?
A. I have no recollection six years later how I specifically got involved.

Lurie

Q. You recall it was in the late February, early March '98 time frame?
A. Yes.
Q. Do you have any more specific recollection on when you started your work?
A. Not specifically other than having been told it started around February 25th, seeing it in a letter, I guess, that we looked at yesterday.
Q. That was a Davis Polk chronology?
A. Yes.
Q. So that document refreshed your memory --
A. It didn't refresh it. That's the date it said. I still have no specific recollection of when I actually would have begun.
Q. But that's not inconsistent with whatever recollection you had?
A. It's not inconsistent with the lack of recollection when specifically, but that would be the time frame about when. Whether it was February or January or early February, I couldn't tell you.
Q. And when you initially got involved,

Lurie

what did you understand Davis Polk's assignment to be?
A. We were underwriter's counsel.
Q. Did you have a sense of the nature of the offering contemplated?
A. I -- absolute -- I mean, I would have had to have had. We were doing a convertible -- zero coupon convertible debt offering.
Q. I guess what I'm asking is, Did, to your knowledge, Davis Polk advise Morgan Stanley on the nature of the offering; or was Davis Polk advised of the nature of the offering and --
A. You need to explain to me what you mean by nature of the offering.
Q. Sure. Sure. When Davis Polk was first assigned, it was already decided that there would be a convertible debt offering; is that correct?
A. I presume so. I have no recollection of the timing of the assignment and what we were told.
Q. So you don't recall any discussion about how Sunbeam ought to finance the acquisition in question?

Lurie

A. I don't recall any specific discussions.
Q. So, to your knowledge, the issue of how the financing would operate had already been decided?
A. I don't recall any specific discussions. So I can't tell you six years later how the decision was made to determine it would be a convertible debt offering and who was involved and who made those decisions.
Q. But you don't recall Davis Polk being involved in those decisions?
A. I don't have any recollection personally of being involved in those decisions.
Q. Who from Davis Polk was on the convertible debt offering team?
A. The only one I know specifically remember being on it was Alan Dean. I understand that Heather Stack was involved. But to be honest, I don't recall her involvement at this point.
Q. How about Nicole Duncan? Do you recall her involvement?
A. I don't recall.

NOT A CERTIFIED COPY

01-1034

Lurie

Q. Do you know who she is?
A. I don't even remember the name. I apologize.
Q. Do you remember the name Heather Stack?
A. I remember the name Heather Stack. I know Heather Stack. I've had dealings with Heather Stack since she's been at Goldman.
Q. Have you spoken with her about this deposition?
A. No.
Q. Have you spoken with her about Sunbeam at all?
A. No.
Q. Alan Dean was the head of the convertible team; is that correct?
A. Correct.
Q. And did you have an understanding of Morgan Stanley's responsibilities in connection with the convertible debt offering?
A. If you simply mean were they the lead underwriter, the sole underwriter, yes. I don't know quite what you mean by an understanding of their responsibilities.

Lurie

Q. As lead or sole underwriter, what were they supposed to do in order to make the convertible debt offering happen?
A. They were going to market. We were going to do the necessary due diligence with them, prepare an offering memo. They would then potentially do a road show, market the security, sell it, close it.
Q. And Davis Polk was to provide legal advice along the way --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. Did -- and this is a yes-or-no question.
Did Davis Polk comment on the scope of the due diligence that would be appropriate in connection with this transaction?
A. I don't -- when you say "comment on the scope," we did due diligence.
Q. Davis Polk did due diligence?
A. Davis Polk did due diligence.
Q. And, again, yes or no: Did you advise Morgan Stanley as to what due diligence

Lurie

they should conduct?
A. I do not recall now six years later what specific advice on this transaction we might have given to anyone at Morgan Stanley.
Q. In your prior dealings with Morgan Stanley, was it customary for you to comment on or provide advice in connection with what due diligence would be performed?
A. Generally, you would discuss with the people from the underwriters, whether it was Morgan Stanley or another underwriter, the scope, the level, who would do what, who would be involved.
Q. But you don't have a recollection of that happening in this transaction?
A. No specific recollection, though, again, it -- since it's general practice to talk to them about that.
Q. So you assume that you did, but you just don't remember?
A. Correct.
Q. And who was your primary contact, if you had one, at Morgan Stanley in this transaction?

Lurie

A. Simply because I remember the name, it would be -- John Tyree would be the name that I remember the best out of the transaction. So I'm assuming my recollection is that he was sort of the lead corporate finance guy from Morgan Stanley. So my dealings would have been often with him.
Q. Did you -- as you sit here, can you give me the names of any other Morgan Stanley personnel who you dealt with?
A. Who I dealt with? I mean, the only other name that comes to mind, as you mentioned a second ago, was Ruth Porat. But I don't remember any specific dealings that I individually just had with Ruth on the transaction. You mentioned a bunch of other names a few minutes ago. And several of them, the names rang a bell, but a lot of them didn't. And I don't remember any specific dealings with any of them.
Q. Your answer now, you just said -- you gave a qualification, any individual dealings with --
A. Right.
Q. -- Let's put aside a one-on-one type

NOT A CERTIFIED COPY

Lurie

dealing.

What kind of meetings or telephone conferences did you have -- strike that.

Give me the names of Morgan Stanley personnel with whom you had telephone conferences or other meetings.

A. I do not recall today who was at any specific due diligence meetings, organizational meetings or conference calls from Morgan Stanley. The only call I do recall was one on the night of, I believe, March 18th. And Ruth -- at least Ruth Porat I know was on the phone.

Q. Did you have any dealings with Shani Boone?

A. Would you repeat that name.

Q. Shani Boone?

A. The name doesn't even ring a bell.

Q. Jean Ewe (phonetic)?

A. The name doesn't ring a bell.

Q. Lily Rafii?

A. No.

Q. You mentioned one of Morgan Stanley's responsibilities was to prepare an offering memorandum for the convertible offering?

Lurie

A. Correct.

Q. Did Morgan Stanley have any responsibility to determine that the offering memorandum was fair and accurate?

A. Under the '33 Act, they have a due diligence obligation, yes.

Q. And what did you understand that to be?

A. To undertake a reasonable investigation.

Q. A reasonable investigation into what?

A. The affairs of the company.

Q. In order to determine that the offering memorandum is fair and accurate?

A. That's a fair way to put it.

Q. To your knowledge, was there anything secret or confidential about the fact that Morgan Stanley was contemplating a convertible debt offering?

Let me give you a better question.

To your knowledge, was there anything secret or confidential about the fact that Sunbeam was contemplating a convertible debt offering?

Lurie

A. I don't recall today anything being secret or confidential.

Q. And at some point, they would obviously try to sell it?

A. Yes. Other than it was a 144A offering. So you can't do a general solicitation. So there were those Security Act obligations.

Q. When you first began working on the Sunbeam transaction, did you gain any understanding of Morgan Stanley's existing relationship with Sunbeam?

A. I don't recall those -- any discussions along those lines. I have no specific knowledge at this point. I may have at an earlier date, but certainly not now.

Q. Did you understand that Morgan Stanley had been Sunbeam's representative in connection with the acquisitions that were to be financed?

A. I recall that they were financial advisor to Sunbeam.

Q. And when I refer to the acquisitions --

Lurie

A. There were three.

Q. And those were?

A. Coleman, Signature Brands and --

Q. -- First Alert?

A. First Alert. Thank you.

Q. Did you gain any understanding about how long Morgan Stanley had been working with Sunbeam?

A. Today, I don't recall that specific discussions or understanding. Again, I may have known something back then about how long the relationships were, but I do not recall anything today.

Q. Would the length of the relationship between Morgan Stanley and Sunbeam be significant to you in connection with your work on the convertible offering?

A. Not necessarily. It all depends. That's one fact that may be relevant, given a whole bunch of other facts in any individual situation and depending upon what you're doing. But that one fact would not today raise an issue in my mind, and I do not think it would have raised an issue in my mind.

NOT A CERTIFIED COPY

Lurie

Q. Well, would you take any comfort in the fact that Morgan Stanley was familiar with the company's operations having worked with it in the M&A context?

A. I might have. I don't know again what I thought back then.

Q. Did you have any understanding as to how Morgan Stanley was to be compensated in connection with the convertible debt offering?

A. I do not recall anything specific today. Normally -- and you can confirm -- there would be an underwriting fee that they would receive in a 144A offering. That would be standard. And I -- without having gone back and looked, that is what I'm assuming they received here.

Q. That fee would be contingent upon closing the convertible offering?

A. Generally, it would be.

Q. Did you have any understanding as to how Morgan Stanley was compensated in connection with the M&A work it did for Sunbeam?

A. Again, today I don't have any recollection. Normally, they would have received

Lurie

a financial advisory fee. That would be a standard market practice.

Q. And that would be contingent upon closing?

A. Again, it depends. And I don't recall how it might have been structured here.

Q. Do you think you had some knowledge about the fee arrangement six years ago?

A. I probably back then would have, but today I don't recall. It might have been described in the offering memo.

Q. Did you understand that Morgan Stanley had attempted to sell Sunbeam to a third party in connection with its M&A work?

A. I do not today recall that being discussed. It may have been. But it's six years later. I don't remember what the background to the offering at this point was.

Q. Would Morgan Stanley's fee arrangements inform in any way the due diligence that Davis Polk performed?

A. No.

Q. Would the fact that Morgan Stanley had unsuccessfully tried to sell Sunbeam inform

Lurie

what due diligence might be appropriate for the convertible offering?

A. I don't believe it would have. We were doing a convertible offering.

Q. Did you, when you initially began working on the Sunbeam transaction, know who Al Dunlap was?

A. I knew the name.

Q. How did you know the name?

A. His name was well known.

Q. He had a reputation at the time?

A. I believe he still had the reputation back then, yes.

Q. What's the reputation?

A. Well, he had some nicknames, "Chain Saw Al."

Q. Do you know what the basis of that nickname was?

A. I believe it was he came into some other companies and fired a lot of people very quickly, very rapidly, very harshly, cut expenses very quickly. A chain saw.

Q. So he was known as a turnaround specialist?

Lurie

A. I think that's correct, yes.

Q. When you began working on the Sunbeam convertible offering, did you investigate Mr. Dunlap's background in any way?

A. I do not recall doing any investigation. We -- it may have -- I just -- but six years later, I just don't recall what we may have looked into his background or if anybody else did.

Q. But do you think that would be an appropriate due diligence step?

A. Under certain aspects, certain transactions, yes. If there are questions, you might look into whether at the time we thought there was an issue we should look into. I just do not recall at this point.

Q. What do you mean, "if there are questions"?

A. I'm not focusing specifically on the Sunbeam transaction. But if there are in general reasons that give rise to questionable practices in the past, it often might be an appropriate due diligence investigation to check into the history of a senior officer.

NOT A CERTIFIED COPY

01703

Page 34

Lurie

Q. So if there were questions about the --

A. Again, I don't recall us ever having that concern -- I don't recall today having that concern that we would have done that.

Q. You may have; you just don't recall?

A. I do not recall doing anything.

Q. If there were questions about the authenticity of Mr. Dunlap's turnaround at other companies, would you look into those questions?

A. I would have investigated -- I think we might have investigated if there were questions. I do not recall there ever having been any questions.

Q. How would you determine if there were questions?

A. At this point, I have no recollection. I have no idea how I might necessarily determine that. If there was another company, and there were issues, you may have read something in the newspaper. There are a lot of possible ways.

Q. Business Week, something like that?

A. Possibly.

Page 35

Lurie

Q. Did you gain an understanding about the structure of the acquisitions? And by that I mean, how it was as a legal matter Sunbeam was going to acquire the three companies.

A. We would have at the time, because it would have had to have been described in the offering circular.

Q. And would you look at the source documents of the description and the offering memorandum?

A. We would have looked at the acquisition agreements, if that's what you mean by the "source documents."

Q. Merger agreement?

A. Merger agreement, whatever. If it were a merger, it could have been a cash purchase of stock. I just don't remember what the agreements were.

Q. Were you involved in the public announcement of the acquisitions?

A. Not -- Jim Lurie -- when you say "you," you mean Jim Lurie?

Q. We'll start there.

A. Yeah. I do not recall being involved

Page 36

Lurie

in the public announcements.

Q. Do you, Jim Lurie, recall being involved before the acquisitions were publicly announced?

A. I don't recall when the acquisitions were publicly announced. So I can't answer when, whether it was before or after.

Q. I'll tell you it's March 2, 1998.

A. March 2nd is when the three acquisitions were publicly announced, right.

Q. Does that help you recall whether you were involved before or after the announcement?

A. Only through having seen Mr. Wise's letter saying the process started before that.

Q. So the chronology you're referring to, does that help you recall that you probably were involved prior to the public announcement?

A. It indicates. I do not recall when I started.

Q. Did you understand that Hill & Knowlton was helping with the publicity surrounding the acquisitions?

A. I have no recollection today of that.

Q. You may have known it then?

Page 37

Lurie

A. I may have known it then, but it's six years. I don't remember who else was involved.

Q. Have you worked with Hill and Knowlton in the public announcement of transactions in the past?

A. From time to time, yes.

Q. You don't recall doing it here?

A. Not in this deal, no.

Q. And, again, this is a question you're going to hear a lot today: Does that mean it didn't happen or that it may have happened; you just don't remember?

A. That Hill and Knowlton was involved? I do not recall. Did I have any contact with Hill and Knowlton? I do not recall.

Q. Let me see if I can show you some documents that would help you recall. This has been marked previously as Exhibit 140.

MR. JOHNSON: For the record, Exhibit 140 is marked CPH 0483399 through '407.

BY MR. JOHNSON:

Q. Mr. Lurie, does this document look familiar to you at all?

NOT A CERTIFIED COPY

070038

Lurie

A. No, it does not.
Q. Does this look like a script that Davis Polk may have prepared?
A. That's too speculative. I mean, a script that Davis Polk may have prepared? It's a script that anyone could have prepared.
Q. So you have no recollection of who prepared this?
A. None whatsoever. I don't even recall this document.
Q. Did you or anyone at Davis Polk have any discussions with Morgan Stanley or anyone else concerning what statements should or should not be made at the public announcement of the acquisitions?
A. I do not recall any specific discussions, any general discussions regarding those matters six years -- today. I just don't recall anything specific.
Q. And so you don't know whether those discussions occurred or not?
A. I do not recall whether they occurred or not.
Q. Is that different from my question?

Lurie

A. I don't recall. Something may have happened. I may have known something closer to 1998 or remembered something in '98, '99, 2000 that I just don't know today. So I'm using the word, I don't recall those discussions.
Q. Well, let give you something a little more specific.
Do you recall any discussions in your first days on the Sunbeam transaction concerning Sunbeam's first quarter 1998 performance?
A. I again don't recall any specific discussions relating to first quarter or year numbers estimates at that point in time or later on. We generally would have had those kind of discussions, though that would be part of the normal due diligence investigation in any offering.
Q. So while you don't recall those discussions today, you believe that you would have had those discussions in this transaction?
A. I believe that is correct.
Q. Would that be an ongoing discussion or subject of inquiry during the course of the transaction?

Lurie

A. Yes.
Q. So you would expect to ask about the first quarter as one of your first questions on the transaction?
A. I would expect to ask about it many times to get updates during the course of it. I wouldn't necessarily say it's one of the first questions.
Q. Early and often?
A. Early and often is fair.
Q. And did Sunbeam give you answers to those questions?
A. I presume they gave us answers to whatever questions we would ask -- we would have asked.
Q. Was it your custom to ask specific questions about what the numbers were or more general trends or both?
A. Both. As a general matter, it would be both.
Q. And in the specific context of this transaction, do you have any reason to believe that you didn't ask both specific numbers and trends?

Lurie

A. I believe we would have asked both.
Q. Did you make any trips to Florida?
A. I don't recall making. I may have. I just don't recall where the due diligence -- where the organizational meeting was, which often might have been at the issuer in Florida.
Q. It was still late winter in New York, and you don't remember a trip to South Florida?
A. Not now, not six years later.
Q. So, again, that may have happened; you just don't remember?
A. It might happened. I do not recall today where those meetings took place.
Q. But you did have organizational meetings early in the assignment?
A. Organizational meeting, yes, would have been the first thing in the assignment. And then there would have been other meetings throughout the process.
Q. And the organizational meeting would be among Davis Polk, Morgan Stanley, Sunbeam and Skadden Arps. Is that --
A. Correct. And their accountants.
Q. So Arthur Andersen would be at the

NOT A CERTIFIED COPY

01703

Lurie

organizational meeting?
A. Again, I do not recall who was at an organizational meeting. It would be very common to have the accountants in any transaction at an organizational meeting.
Q. So, again, Andersen may have been there; they may not. You just don't remember?
A. That's correct.
Q. While we're on the organizational meeting, I want to show you a document. This has been marked previously as CPH 207.
Mr. Lurie, if you can just flip through that, and then I'm going to ask you a handful of specific questions.
A. Sure. Okay.
Q. Does this appear to be the organizational materials relating to the Sunbeam transaction?
A. It looks like an organizational meeting's document that Morgan Stanley would have prepared. Whether this is the one we had at the meeting, I don't recall.
Q. Would Davis Polk have been involved in commenting on these materials before they were

Lurie

circulated?
A. It varies from transaction to transaction. Sometimes we would have been asked to review it, give comments. Sometimes we just got them.
Q. And in this transaction --
A. I do not -- I do not recall what involvement we had, if any, in the preparation of this (indicating).
Q. I want to call your attention to the last page of this document first.
A. The initial information requirement page?
Q. Exactly. And there's a text box which I will read for the record. It states: "To prepare a 144A offering memorandum and senior credit facility's information memorandum on an accelerated basis, the following information must be supplied within the first two weeks of drafting."
Do you see that?
A. Yes.
Q. Was the Sunbeam transaction one that was occurring on an accelerated basis?

Lurie

A. I don't recall if it was -- if it was accelerated or if it was considered an accelerated basis at this point. I mean, I see the language, but I don't have any recollection.
Q. Do you have any basis to disagree with the language and the text that we just looked at?
A. I don't have any reason to disagree. I don't have any reason to agree.
Q. Let me put it more generally -- well, let me strike that. If you look at the calendar at Pages -- it's Pages 9 and 10 of the original numbering.
A. Uh-huh.
Q. This suggests that closing would occur on the convertible transaction 24 days after the organizational meeting?
A. Uh-huh.
Q. Does that strike you as an accelerated schedule?
A. I've done deals faster. I've done deals slower. I've done deals about the same time frame. I would not necessarily consider that fast, slow; just the time frame we got it

Lurie

done in.
Q. So you didn't, as a result of that time frame, view this as an accelerated transaction?
A. Not today. To my recollection, I don't. I didn't then. I don't know what I thought then.
Q. If you could look at Page 3 of the original numbering. And for the record, that's Bates Page CPH 0471617.
Do you see there are two columns there?
A. Yeah.
Q. One for the convertible and one for the senior credit?
A. Yes.
Q. Did you have any responsibility for the senior credit facilities?
A. I don't believe so, but I don't recall. Responsibility in drafting, no. That would have been handled by other people. To the extent it needed to be described in the offering memo, I probably was looking at other documents.
Q. Were other Davis Polk lawyers, to

0471704

NOT A CERTIFIED COPY

Lurie

your knowledge, working on that side of the deal?
A. I believe they were, yes.
Q. Do you know within Morgan Stanley whether a different group of Morgan Stanley personnel were working on the senior credit facilities?
A. I don't specifically today recall if there was. Generally, it would have been a different group.
Q. Would you expect any interface, so to speak, between the different teams at Davis Polk or at Morgan Stanley?
A. Interface amongst the Davis Polk teams and amongst the Morgan Stanley teams or cross --
Q. The first.
A. Yes. I can't speak for Morgan Stanley, but I think there would be interface between the offering side at Davis Polk and the debt -- the credit facility side. We had to work together to -- so they would have to give me description of documents or review the description in an offering memo of the credit facilities, or I would have potentially drafted

Lurie

it. I don't recall what I did. And they would have reviewed it.
Q. But you can't speak to what Morgan Stanley did as far as interaction between the senior credit and the debt --
A. I can't speak to what they did. Generally, in a deal, any deal, there would have been interaction between the underwriting providing part of the bank and the credit facility provider part of the bank.
Q. Why do you say that?
A. Practice.
Q. Just experience?
A. Experience and practice.
Q. If you could look under the zero coupon convertible column again on Page 3 of Exhibit CPH 207. There's an Item D that states, "next quarterly earnings announcement."
What does that refer to?
A. The next announcement that the company would make regarding quarterly earnings.
Q. Okay. And as I read this list of Items A through J, that is arranged in roughly chronological order of events; is that correct?

Lurie

A. A through J?
Q. Correct.
A. Yeah. That's pretty close, yes.
Q. So it was contemplated, at least as of March 3, 1998, that Sunbeam would make a quarterly earnings announcement during the process of writing the convertible?
A. It looks like that way.
Q. Do you know whether that earnings announcement occurred?
A. Well, there was -- my recollection is there was an announcement. It was pre the end of the quarter. I believe they were a March 30 or a March 28th, 29, whatever the last Friday of March was. So their quarterly earnings announcement normally would have been after that.
Q. When you say you recall something before the end of the quarter --
A. Yes.
Q. -- what are you referring to?
A. The press release that went out the 18th or 19th of March regarding expectations, estimates, forecasts for the quarter.
Q. That press release did not refer to

Lurie

earnings in any way, did it?
A. I don't believe -- I don't recall. But I don't believe it did. I'd have to look at it to remember exactly what it covered.
Q. So that certainly is not the quarterly earnings announcement referenced by Item D on Page 3?
A. Probably not. This was probably talking about a later postquarter announcement.
Q. So at least as of March 3, it was contemplated there would be a quarterly earnings announcement before the close of the convertible?
A. It looks that way, yeah. I mean, to be fair, you can look at this, and they could just have been asking the question, When would be the next earnings quarterly announcement? And someone might have said, depending when we close, it could be before or after. I mean, it's in here on the list. But they might have just wanted to know when the next announcement was to be able to take it into consideration.
Q. Didn't you tell me, though, that Items A through J are in roughly chronological order?

NOT A CERTIFIED COPY

Page 50

Lurie

A. They are. But it doesn't necessarily mean to me, just looking at it -- yes, you can look and see there might have been. But whether that would have been before rating agency presentations and before sales force presentations -- I wouldn't necessarily say just because D is there that that means that would be chronologically before that. It may have been simply that this would occur.

Q. Although you mentioned the rating agency presentation as an example.

Do you see the parenthetical after that?

A. It says, "none?"

Q. Exactly. I don't see any question concerning whether Item D would occur.

Do you recall any question about that issue?

A. I don't recall specifically discussing the issue.

Q. Now, under the title on the same Page 3 of Exhibit 207, there is a section called "Composition of Working Group."

Do you see that?

Page 51

Lurie

A. Uh-huh.

Q. Item C in the left column, the initial purchaser is Morgan Stanley?

A. Correct.

Q. And D, initial purchaser's counsel, that's Davis Polk?

A. Correct.

Q. If you would flip back to the calendar that we looked at briefly, which is on Page 9 continuing on to 10 of Exhibit 207. The timetable entry for March 5th provides "business due diligence, including projections."

Do you see that?

A. Yes, I do.

Q. And Davis Polk is listed among those having responsibility?

A. Uh-huh.

Q. For that item?

A. Uh-huh.

Q. And Morgan Stanley is as well?

A. Yes.

MR. WISE: So is Skadden --

A. And so is Skadden.

MR. WISE: I mean, we can all read

Page 52

Lurie

this document.

BY MR. JOHNSON:

Q. Sure. Sure. Why was --

A. I mean, you also used the word "responsibility." And I know the word "responsibility" is there. This probably just means who would be attending the business due diligence, not necessarily who had responsibility for preparing projections.

Q. Well, let's focus on that.

Did Morgan Stanley have any responsibility for business due diligence on Sunbeam's projections?

A. Yes.

Q. And did Davis Polk?

A. Yes.

Q. Why is due diligence performed on projections?

A. Well, due diligence is performed on a lot of different things. And you sit and you ask questions. You understand the assumptions used. You try to get a feeling for the basis upon which the projections are prepared.

Q. And the reason you do those things?

Page 53

Lurie

A. As part of your due diligence for your offering.

Q. And that is, with respect to projections in particular, to determine that the projections are well-grounded, in fact?

A. That they're fair, reasonable projections.

Q. What specifically did Morgan Stanley do in terms of due diligence on projections?

A. I have today, six years later, no recollection to date of any discussion regarding the projections, what we might have done, who we might have spoken to.

Q. Do you remember anybody from Sunbeam who worked with Morgan Stanley or Davis Polk on due diligence?

A. No one specific. There were people from Sunbeam, obviously, involved.

Q. Do you remember Al Dunlap?

A. I do not recall ever speaking to or meeting or being in a meeting with Mr. Dunlap on the phone or at present.

Q. How about Russ Kersh?

A. The name rings a bell. I assume --

NOT A CERTIFIED COPY

017012

Lurie

and he was on a number of meetings and phone calls. But I could not today tell you which ones.

Q. He was the CFO of the company?

A. I believe so.

Q. You would expect to have multiple conversations with the CFO of the company?

A. Absolutely.

Q. How about Bob Gluck, the controller?

A. The name doesn't ring a bell. But, again, it would be very normal to have the controller involved throughout the process.

Q. Do those names trigger the memory of any other names from Sunbeam?

A. I want to say Hennesy, but I can't recall. I may be confusing deals at this point.

Q. Did you deal with Janet Kelly?

A. The name does not ring a bell.

Q. David Fanin?

A. That names rings a bell. He would have been involved. I don't recall what his tile was. But it's a name that came up and, I think, would have been involved.

Q. I'll tell you, he was the general

Lurie

counsel of the company.

A. Okay.

Q. And, again, you would expect multiple conversations with the general counsel of the issuer?

A. I would have expected he would have been involved in a variety of different aspects of the transaction.

Q. Can you recall any communications that, in fact, occurred with Mr. Fanin?

A. Not today.

Q. How about Don Uzzi? Do you remember that name?

A. That name does ring a bell.

Q. Do you remember who Mr. Uzzi was?

A. Fairly senior -- the name rings a bell. He was a fairly senior -- I don't know -- marketing guy, maybe, or something.

Q. He was the VP of sales.

Does that help you remember whether you had any conversations with him --

A. He would have certainly been involved throughout the process on the due diligence process.

Lurie

Q. You mentioned that Mr. Uzzi was a senior executive.

Is it fair to say that Morgan Stanley talked to personnel other than senior executives?

A. They generally would talk to a variety of different people.

Q. Do you know whether Morgan Stanley did so in this transaction?

A. I have no -- have recollection today of who they would have spoken to back then.

Q. So as you sit here, you have no basis to -- strike that.

As you sit here, you have no basis to believe that Morgan Stanley did not talk to low-level employees of the company?

A. Could you repeat that? There were a couple of double-negatives there. So I have no recollection today whether they spoke to or did not speak to junior people. Or you used "lower-level employees."

Q. But you would expect those conversations to occur as part of due diligence?

A. Well, in part. It sort of means -- what do you mean by lower level and junior level

Lurie

employees? I mean, they would not necessarily have spoken to someone in a factory.

Q. But they wouldn't limit their communications to senior management?

A. There would have been communications to a variety of people.

Q. But, again, you don't know any specifics?

A. Correct. I don't recall anything specific.

Q. Going back again to Page 9 of Exhibit 207. The entry on March 9th includes an item indicating that Davis Polk would receive drafts of auditors' comfort letters.

Do you see that?

A. Yes, I do.

Q. Did you, in fact, receive drafts of the auditors' comfort letters?

A. I would have certainly during the course received one or more drafts. Whether I received one on May -- excuse me -- March 9, I could not tell you. But I would have received drafts and reviewed drafts during the course.

Q. This timetable here on Page 9 and 10

NOT A CERTIFIED COPY

0 1 7 0 4 3

Lurie

provides that you would receive drafts exactly two weeks before the pricing of the convertible transaction.

Do you see that?

A. I see the 9th. And the pricing two weeks is 23.

Q. So is that two weeks time frame customary as far as when you would start receiving drafts of the comfort letter?

A. Customary is a very broad term. I've received them three months in advance. I've received them 48 hours in advance. I've received them two weeks in advance on various deals.

Q. Is there any reason why you would expect to receive a draft two weeks in advance of a closing?

A. That's just when it was on here. I have no reason -- no recollection of why they picked that date for the first draft, even if it was received that date.

Q. You say that sometimes you receive a draft as late 48 hours before a pricing?

A. Uh-huh.

Q. Is that the shortest time period

Lurie

you've ever had on a draft?

A. Yeah. Maybe I may have had one the day before pricing. Different kind of deals, you get different kind of things.

Q. How about this convertible offering? Is that -- does that inform how soon --

A. Two weeks doesn't say a lot to me. I mean, it doesn't mean anything that I got it two weeks. If I had gotten it in the week before, we would have still gone through the same process.

Q. So the nature of the transaction doesn't give you an idea of how far in advance of pricing you would get a draft?

A. No.

Q. I note here that the responsibility for receiving drafts of the auditors' comfort letter rests with Andersen, Davis Polk and Skadden.

Do you see that?

A. Yes.

Q. Would you share drafts, if you received them, with Morgan Stanley?

A. Would I?

Q. If you received drafts of the comfort

Lurie

letter, would you share that with Morgan Stanley?

A. I would have sent them a copy. That would be my practice.

Q. And you have no reason to believe that you deviated from your practice in the context of the Sunbeam transaction?

A. Correct. Again -- but I don't recall having sent it to them. But that would have been my practice.

Q. Did Davis Polk or Morgan Stanley provide any content or revisions to the offering memorandum?

A. We would have clearly reviewed the offering memorandum. We would have given components on the offering memorandum. We would potentially have provided suggested revisions, riders. We would have received comments and looked at comments from Skadden, from the company, from the accountants, from whoever else might have been involved.

There was probably descriptions of the three companies being acquired. We might have received comments from those management -- the management of those companies on their

Lurie

sections.

Q. But Skadden or Sunbeam was the keeper, so to speak, of the offering memorandum?

A. I believe Skadden was sort of. It was their master.

Q. But you had opportunity to comment on the offering memorandum?

A. Yes.

Q. Do you recall, as you sit here, any of the revisions or suggestions you had on the offering memorandum?

A. I couldn't tell you six years later what my comments were.

Q. Let's see if I can refresh your memory a little bit.

MR. JOHNSON: We're going to mark this as CPH Exhibit 230.

(CPH Exhibit 230, 3/10/98 memo re: Draft Customer Concentration Risk Factor, Bates-stamped CPH 0635890 through CPH 0635891, marked for identification, as of this date.)

BY MR. JOHNSON:

Q. Mr. Lurie, we've given you what we've

NOT A CERTIFIED COPY

011704

Page 62

Lurie

marked CPH Exhibit 230, which, for the record, has the Bates stamp CPH 0635890 through '891. I'd ask you just to review that for me.

A. Okay.

Q. Does this Exhibit 230 refresh your memory about a proposed revision that you had on the offering memorandum?

A. Other than it's got my name (indicating), it seems to -- appears to be something that I would have sent out. I have no recollection of this memo or specifically drafting this proposed rider insert.

Q. And this is a customer concentration risk factor insert?

A. That's what it says.

Q. Do you have any recollection as to why you would propose this revision?

A. In this specific transaction, Sunbeam's transaction, I have no recollection of how this came up or why we decided to put this in. I will tell you, generally risk factors or paragraphs like that are very common in public offerings, in 144A offering memos.

Q. Did you view -- based on your

Page 63

Lurie

investigation of Sunbeam, did you view customer concentration as a genuine risk with Sunbeam?

A. I can't tell you today what my thoughts were about risks back then. I have no specific recollection regarding what the thinking was or why we would have proposed this.

Q. Had you in your practice had experience with customer concentration problems?

A. Yes.

Q. And can you recall a specific example of that?

A. Yes.

Q. Who was the issuer in that transaction?

A. MiniScribe.

Q. Why are you laughing?

A. It's a long story.

Q. In the MiniScribe transaction, did you represent Morgan Stanley?

A. Yes. I believe it was, actually.

Q. Was that a public offering?

A. It was an IPO.

Q. And MiniScribe, did they go bankrupt after their IPO?

Page 64

Lurie

A. They went bankrupt. It was after their IPO. It was after at least one other, possibly two other offerings after their IPO. But they did, I believe, ultimately go bankrupt.

Q. Did Morgan Stanley get sued in connection with their IPOs?

A. I believe they did get sued --

MR. WISE: Not in connection with the IPO.

BY MR. JOHNSON:

Q. Do you recall, based on Mr. Wise's testimony --

A. I recall they got sued. I do not -- I believe from what Bob said, it would not have been in connection with the IPO.

Q. Other than what Bob said, do you have any basis for believing it was not in connection with the IPO --

A. I have no recollection. That was literally 1981 or '82, '83, maybe.

Q. If you look at the last sentence of your proposed revision in Exhibit 230. And if you would be good enough to read that for the record, I'd appreciate that.

Page 65

Lurie

A. The last sentence?

Q. Yes.

A. "If any of these customers or any of the company's other significant customers were to substantially reduce their orders or cease buying from the company, such an occurrence would have a material adverse effect on the company's business should the company be unable to replace that business with other customers."

Q. Was there any discussion about that sentence in particular in connection with your circulation of this proposed revision?

A. Today, I don't recall -- again, I don't recall drafting this (indicating). I don't recall any specific discussions on this sentence (indicating) or any other sentence. I don't recall if this was actually drafted by me or someone else, that I reviewed that and we just attached to a memo that appears to be under my signature, that I would have sent out.

Q. Do you have any reason to believe that last sentence that you just read for the record there was not an accurate statement?

A. It was not an accurate statement?

NOT A CERTIFIED COPY

01705

Lurie

Q. Correct.
A. It seems that that would be the normal conclusion. "You might have in this kind of risk factor" is the way I phrased it.
Q. I'll represent to you that sentence does not appear in the offering memorandum.
A. Okay.
Q. Do you have any idea why that is?
A. I have no recollection regarding any discussions about putting this in or why that might have been deleted.
Q. I'll also represent to you -- and this is just to save time. If you want to see the offering memorandum, I'm happy to show it to you.
A. Okay. No.
Q. The title of the risk factor as it appears in the offering memorandum is "no long term contracts" as opposed to what you have here --
A. -- "customer concentrations."
Q. Do you have any idea why that change was made?
A. This is six years later. I don't

Lurie

recall. That to me is no big deal to change the heading.
Q. When there is customer concentration, is it appropriate to diligence the customers to determine what their plans are?
MR. CLARE: Objection to form; incomplete; hypothetical.
You can answer.
A. Can you now repeat the question.
BY MR. JOHNSON:
Q. Sure.
When there is a risk associated with customer concentration, is it appropriate to diligence the customers?
A. It would generally be the case that there would be calls with major customers. If there's specific concentrations in any transaction with any issuer, you would obviously want to call the top ones.
Now, there is concentration here -- I don't know if these are the right numbers. But ten customers accounting for 35 percent, according to this draft, it would be normal to call -- for the underwriter, possibly the

Lurie

underwriter's counsel, to be on the phone, to call customers. It would be also customary probably to call suppliers.
Q. To determine what inventory they have on hand and what their buying expectations are?
A. Generally. Or to find out what the relationship is, how the relationship is going, what do they think of the company.
Q. And did that happen in connection with the Sunbeam transaction?
A. I today, 2004, don't have any recollection of what -- who or what calls may have occurred and who would have made them and who would have been on them.
Q. Do you have any reason to believe those calls didn't occur?
A. I have no reason to believe they did not occur, no reason at this point to recollect whether they did occur.
Q. If you look at the first page of Exhibit 230 --
A. Which is this, this one (indicating)?
Q. Correct.

Lurie

A. Okay.
Q. The memorandum is addressed to Janet Kelly, who we've already mentioned today?
A. It still doesn't ring a bell who it is.
Q. In case you're curious --
A. Who is it?
Q. She was an assistant general counsel at Sunbeam at the time.
A. Okay.
Q. Do you know who Greg Fernicola is?
A. He was the partner at Skadden.
Q. And Todd Freed?
A. He was an associate at Skadden.
Q. Having looked at that proposed revision, do you recall any other revisions that Davis Polk or Morgan Stanley proposed to the offering memorandum?
A. No.
Q. I'm going to give you what we marked previously as CPH Exhibit 11 (handing).
A. Do you want me to read each of these?
Q. That won't be necessary. I'm going

NOT A CERTIFIED COPY

01706

Page 70

Lurie

to ask you about just the first rider --
A. Rider 1?
Q. Correct.
A. "Certain" something.
Q. "Certain refinements."
A. Okay.
Q. Having looked at Rider 1 and the cover memo contained in CPH Exhibit 11, does that refresh your memory as to revisions proposed by John Tyree to the offering memorandum?
A. Other than this says it's a memo from him to a variety of people, I have no recollection of him proposing this. But I see what it says.
Q. Rider 1 is directed to the successful restructuring of Sunbeam; is that correct?
A. That's correct.
Q. And is it the case that Morgan Stanley would need to satisfy itself that the company had, in fact, been successfully restructured?
A. They would have looked into the restructuring and what transpired and what the results appear to be, yes.

Page 71

Lurie

Q. And this memo that we're looking at, CPH Exhibit 11, is dated March 9, 1998?
A. Correct.
Q. Do you know how long Mr. Tyree had been working on this transaction as of March 9?
A. I have absolutely no idea.
Q. Do you know what Mr. Tyree had done to satisfy himself as to the validity of the turnaround by March 9?
A. I have no recollection today what anyone did relating to this paragraph.
Q. Is it fair to say that the restructuring of Sunbeam was an important part of the story for the street concerning Sunbeam?
A. I'm going to assume today that it might have been. But I have no recollection today what the thinking behind putting together the offering circular was back in 1998.
This kind of disclosure would be disclosure you would normally see. They're SEC requirements actually to put in restructuring information.
Q. The last paragraph of Rider 1 indicates percentages of --

Page 72

Lurie

A. Okay.
Q. If you can read it to yourself, and then I'm going to have a few questions.
A. The last paragraph?
Q. Correct. Beginning the restructuring resulted.
Do you see that?
A. Zero point 2 percent. Okay. What's the word after --
Q. Operation -- excuse me. Operating margins reaching 20 percent?
A. Okay.
Q. And I apologize for the copy.
A. Don't worry.
Q. Did Morgan Stanley have any responsibility to determine the sustainability of this growth rate or the operating margins?
A. They had a due diligence obligation to review. They had a due diligence obligation to consider trends. They had a due diligence obligation generally with respect to the transaction.
I don't want to put words in anyone's mouth about specific obligations, but they would

Page 73

Lurie

have certainly -- I mean, this information could have been in the company's 10(k) for all I know. And he could have just taken it out of that.
Q. Other than taking it out of the 10(k), would there be any other --
A. You would have still due-diligenced it, but --
Q. And to determine its sustainability?
A. To look into sustainability, to look into a whole variety of things. Would it grow? Would it stay the same? Would it decrease a little bit?
Q. And as you sit here today, you have no reason to believe that Mr. Tyree did not undertake that due diligence?
A. I have no reason to believe he did not do that due diligence. But I don't recall what due diligence he or I or anyone else did on this -- on this paragraph -- paragraphs.
Q. So you assume that he did it, but you don't know what he did?
A. I assume something might have occurred, but I don't know if it did occur.
Q. Now, you participated on an

NOT A CERTIFIED COPY

01704

Page 74

Lurie

accounting due diligence call in this transaction; is that correct?

A. I assume I did.

Q. Why do you assume?

A. Because I don't have any recollections from today what I did in 1998.

Q. But in that time frame --

A. It would have been normal. And I assume I did participate in one or more calls with the accountants.

Q. When you say "one or more," is it typical, is it customary to have more than one phone call?

A. Oh, God, yeah. It's more than just calls. There could have been drafting sessions. You could have been discussing MD&A and financials with them. You could have called them on those things. You could have questions. You could get phone calls to discuss comfort letters, to give comments on comfort letters, to ask for additions to comfort letters. There's a myriad of reasons to be talking with accountants.

Q. So it's customary to be in frequent communications with the accountants?

Page 75

Lurie

A. Yes.

Q. We're going to deal with some of this stuff in more detail, but I want to see what you can specifically remember as to your dealings with the accountants in this case. We talked about the accountant due diligence call. And your testimony is you assume you participated in at least one call, but you don't remember; is that correct?

A. That's right.

Q. What other interactions did you have with Sunbeam's accountants in connection with this transaction?

A. As I said just a minute ago, it could have been a whole myriad of them.

Q. I don't want to interrupt. Let's put the could-have-beens aside for a second.

Do you remember any other meetings with any other accountants?

A. I remember the accountants. I don't remember who being at the printers the night we printed. I recall generic -- I recall speaking to them. I couldn't tell you which ones I spoke to. I couldn't tell you today what the substance

Page 76

Lurie

of the conversations were. It could have been -- it would have been on a variety of different issues relating to the offering.

Q. We've already mentioned that Arthur Andersen was the auditor of Sunbeam.

Do you recall that?

A. Yes.

Q. Do you remember the names of any of the auditors from Andersen?

A. Other than I was reminded the names yesterday, I'm not even sure I remember today what their names were, but I remember there were three -- there were two people principally -- they were managers, I believe their title was -- and there was a partner.

Q. So you had dealings with three folks from Andersen?

A. Probably all three, yeah.

Q. Did you learn at any point prior to the closing of the convertible offering that Sunbeam had bill-and-hold sales?

A. That rings a bell. But I don't remember specifically what was going on at that point in time.

Page 77

Lurie

Q. Are you familiar with the term "bill-and-hold sales"?

A. Yeah.

Q. And so your testimony is you may have been aware of bill-and-hold sales, but you don't remember?

A. That's correct.

Q. Do bill-and-hold sales have any negative connotation with you?

A. Well, you want to understand what they are, why -- who the parties are, why they're set up that way. The accountants would usually have some issues relating to those.

Q. Is there a concern with channel stuffing when you hear about bill-and-hold sales?

A. It raises a question about channel stuffing.

Q. As you sit here today, can you tell me anything that Davis Polk did or Morgan Stanley did to determine whether Sunbeam had engaged in channel stuffing?

A. I don't recall any specific discussions or investigations from 1998 that we would have done regarding channel stuffing,

NOT A CERTIFIED COPY

Page 78

Lurie

bill-and-hold sales, customer concentrations.
Q. Did you in March 1998 gain any sense as to whether Sunbeam was aggressive in its accounting practices?
A. I don't recall what my thinking was back then. We would have asked questions of the accountants. As a general practice, you would ask questions of the accountants regarding the accounting policies, procedures that are used by an issuer, whether Sunbeam or any other. You often ask the accountants whether, in their mind, they consider it conservative or nonconservative, whether they had suggested any alternative accounting practices, GAP requirements that the company -- alternatives that the company could be doing.
Q. And why does the underwriter ask those questions?
A. It's part of their due diligence investigation. And when you say "the underwriter," it could have been equally me.
Q. And I take it, the answers to those questions could inform what other due diligence may be required?

Page 79

Lurie

A. Absolutely.
Q. Did there come a point that you learned of a potential sales shortfall at Sunbeam in the first quarter of 1998?
A. I'm sorry. Did I learn of a potential --
Q. -- sales shortfall?
A. At some point we must have learned about some questions and issues regarding potential shortfalls, yes.
Q. And how did you learn about the potential sales shortfall?
A. I have no recollection today of how in 1998 it came up in the course, either of the transaction to me specifically or to -- within Davis Polk or to Morgan Stanley.
Q. Do you have any idea when, in the process of underwriting, Davis Polk or Morgan Stanley learned of the sales shortfall?
A. I don't know when we would have learned -- I mean, I do recall right around the 18th of March -- 19th of March there were meetings and discussions regarding potential sales for the quarter.

Page 80

Lurie

My Blackberry is going crazy.
Q. Actually, do you want to take a break?
A. No. Let's continue.
Q. Did you learn of a potential sales shortfall through receiving drafts of the comfort letter?
A. I apologize. Again, I do not recall how I or anyone else may have learned about a potential, you know, shortfall. I'm sure shortly after the transaction and for a year or so, I probably would have remembered, but I just don't remember today.
Q. By the way, let me jump back for a second. I apologize. I see a note to myself --
A. Go right ahead.
Q. Was someone from Sunbeam management on the accounting due diligence call?
A. I don't recall whether anyone was. It is often the case that at least for a portion of the phone call someone from management would be on the phone. Often, though, and generally, we would recommend that an underwriter have an executive session, so to speak, just with the

Page 81

Lurie

accountants, without management.
So whether they were -- if they were, they would have been asked to step off the phone or if it was a meeting, to step out of the meeting. Again, I don't remember if it was a phone call or a meeting.
Q. So you view it a good practice to have a session between strictly the underwriter and the auditor?
A. Correct.
Q. Why is that?
A. Just because sometimes the auditors will be a little more forthcoming without management there. They may be willing to say things -- they often do say things in slightly different way without management being in the room.
Q. And in connection with the accounting due diligence call with Sunbeam, do you have any idea whether management was or was not on the call?
A. Again, I don't recall whether they were -- whether it was a call or meeting. I'm assuming -- you're saying it was a call. So I'll

NOT A CERTIFIED COPY

017019

Lurie

assume it was a call. I don't recall if they were on that phone call today. If they were, I don't recall if they were asked to step off.

Q. I take it, the accounting due diligence call session is a fairly involved undertaking?

A. Fairly involved? I mean, it's an important session. I don't know what you mean by "fairly involved."

Q. Well, do you have any sense of how long it should take or how much time you should spend with the auditor?

A. It varies from transaction to transaction. You know, fifteen minutes would be short. Three hours might be long. In IPOs, it might be four or five hours. I mean, it varies.

Q. Do you have any recollection of the length you spent -- length of time you spent on the accounting due diligence call with Sunbeam's auditors?

A. Not today.

Q. I take it, the length of the call turns on the complexity of the issuer?

A. The complexity of the issuer, the

Lurie

familiarity that the underwriter and the underwriter's counsel might have with the issuer, whether it was the first or second, third or fourth offering. It varies.

Q. You said fifteen minutes is short. Have you ever had a fifteen-minute accounting due diligence phone call?

A. Yes.

Q. Is that a common occurrence?

A. That's fairly rare that it's that short.

Q. Jumping back to the sales shortfall issue --

A. Go right ahead.

Q. -- you told me earlier today that you were having early and often conversations with Sunbeam concerning how it was doing in the first quarter?

A. Uh-huh.

Q. And you also testified that those conversations would be specific as to numbers and general as to trends. Do you recall that?

A. I recall that, yeah. I recall saying

Lurie

that. I don't remember what the --

Q. Okay. Does that testimony in any way inform when you would have learned of the sales shortfall at Sunbeam?

A. No.

Q. Is it safe to assume that you learned of it as it was happening?

A. I don't even want to venture a guess. Safe to assume? I can't tell you today in 2004 when I learned of potential sales shortfalls in 1998 in the first quarter in the midst of an offering. It could have been at any point in time, and it could have come from a variety of different people.

Q. Do you think that anyone at Sunbeam gave you false numbers as to sales in the first quarter of 1998?

A. I don't -- I don't have any thoughts about false numbers today. I didn't think they were false back then, certainly.

Q. Prior to mid-March, did the company say anything in general terms other than that it was doing fine?

A. To who?

Lurie

Q. To Morgan Stanley or Davis Polk?

A. I don't recall any specific comments that the company made back in 1998 regarding their first quarter and how they were doing.

Q. So you may have known then, in March 1998, that the company was expecting a loss for the quarter?

A. I may have known a lot of different things. I may have known that it was not a loss. But there could have been other reasons that it would have been a flat quarter in earnings. There could have been offsetting adjustments. Expenses could have gone down even though sales had gone down. There could have been a lot of different things.

Q. Did anything happen in the first quarter of '98 that caused you to question the candor of Sunbeam's management?

A. There was discussions regarding the first quarter. I don't know if we were thinking there were questions. I don't recall any questions we had about the candor of Sunbeam's management. I don't recall what I thought back then about the candor of Sunbeam's management.

NOT A CERTIFIED COPY

0-1052

Lurie

We just inquired regarding the quarter and the full year.

Q. And those questions -- the answers to those questions didn't cause you any concern about whether Sunbeam management was being candid?

A. I don't recall any concerns today that I might have had back then.

Q. Is it fair to say the underwriter is supposed to have skepticism in dealing with management?

A. Absolutely.

Q. Since March of 1998, have you formed any opinion about the candor of Sunbeam's management you were dealing with?

A. To be honest, other than being told, I haven't thought about Sunbeam too much and Sunbeam's management.

Q. You did learn that the SEC had sued Al Dunlap and Ron Kersh?

A. Absolutely. I had not thought about it.

Q. You followed the Wall Street Journal articles --

Lurie

A. Uh-huh.

Q. -- on the demise of Sunbeam?

A. Uh-huh.

Q. Did that cause you to question anything that you were told in March of 1998?

A. I don't recall what I would have thought when I read those articles. I probably looked at the articles and went "wow" and knew that there was a problem. I don't recall it doing anything to my thinking about candor at the time of the offering.

Q. When you say you've read the articles and knew there was a problem, what do you mean by that?

A. Well, whatever was in the articles about the problems -- I think you mentioned the word "channel stuffing" before. I think that became a really significant issue. I think there was clearly some revenue -- my recollection is there were revenue recognition issues with Sunbeam. There may have been others. I remember there were questions about Mr. Dunlap's resume.

Q. And reading that information didn't cause you to rethink any of the work that you

Lurie

performed?

A. It may have. I do not recall what it caused me to rethink about what I had done back in 1998.

Q. Did you learn any lessons from Sunbeam that have informed your practice today?

A. That despite as good a due diligence as you think you can do -- you don't necessarily find out -- you do the best you can, but you don't always find out everything that occurred. And sometimes bad things do occur.

Q. And so I take it from your testimony then that you believe Morgan Stanley did the best due diligence they could on this transaction?

A. I would think with Davis Polk and Morgan Stanley doing it, it would have been-- our due diligence would have been appropriate.

Q. By "appropriate," do you mean thorough?

A. Thorough, complete.

Q. We've already touched on briefly today the press release that issued on March 19th?

A. Okay.

Lurie

Q. And I want to focus for a few minutes on the events that led to the issuance of that press release.

A. Okay.

Q. Why don't you tell me how it came to pass that Sunbeam issued a press release on March 19th.

A. I can't today remember exactly what -- this exact time frame of when and who proposed the press release and how it was put together. There was -- there were phone calls the night of the 18th regarding the quarter -- the sales quarter, how they were, and if they were going to be able to meet their earnings or their revenues, I guess.

At some point in time, someone prepared a draft of a press release. I don't recall today if that was prepared by Skadden, by the company, by Morgan Stanley or by us. It most likely have been -- the first draft would have come from Skadden, but I don't recall if they did.

Q. But the issuance of the press release would be a joint effort?

NOT A CERTIFIED COPY

01705I

Lurie

A. It would have been a joint discussion of the press release and what should be in the press release, because then you'd have to consider whether the press release -- how it would impact the offering and the offering memo.

Q. So Morgan Stanley and Davis Polk had an opportunity to comment on the press release before its issuance --

A. I assume we did, yes. I don't recall any comments that we may have made or when we would have been given the press release to comment on.

Q. You said that there were phone calls on the night of March 18th?

A. Correct.

Q. What event animated the phone calls?

A. What event? I have -- there was --

Q. Let me phrase it slightly different.

Did any event or information cause those phone calls to occur?

A. I think it just related to the issue of what the first quarter revenues were going to be. I don't know what event precipitated a specific phone call occurring or what piece of

Lurie

information we might have had at any point in time that would have caused us to make a phone call in 1990 -- or have a conference call in 1998.

Q. So you don't know why it was the 18th as opposed to the 13th --

A. I don't know. I couldn't tell you.

Q. Do you know how many calls there were on the 18th on the issue of the potential sales shortfall?

A. It was one or more. And I say one or more because I don't know if we -- I don't recall today whether it was we had first phone calls with Morgan Stanley or first phone calls with Sunbeam, and then they may have dropped; or first Morgan Stanley, and then maybe Sunbeam hooked in and Skadden hooked in, or whether it was a series of phone calls. It was just one or more phone calls that a variety of people were involved in.

Q. Let's try and get more specific on who was involved in the phone calls.

Who from Davis Polk was involved in the March 18th phone calls?

A. Myself, Alan Dean. It was in Jeff

Lurie

Small's office, at least the specific phone call I'm recollecting right now. Jeff Small. I believe Frank Morrison was in that office. Maybe Rich Sandler was in. I just don't specifically recall him, but maybe he was there.

Q. We haven't heard Mr. Small's name yet today.

A. Okay.

Q. He is a Davis Polk partner?

A. Yes.

Q. And does he have an area of expertise?

A. Corporate and securities.

Q. How about Frank Morrison?

A. He was managing partner at the time, right? In corporate and securities? Wasn't he managing partner back then?

MR. WISE: I don't remember.

A. I think he may have been managing partner back then, but he was also corporate securities expert.

BY MR. JOHNSON:

Q. And prior to March 18th, Mr. Small and Mr. Morrison had no involvement in this

Lurie

transaction --

A. I have no recollection of whether they would have been involved earlier.

Q. And you don't have any recollection of them, in fact, being involved earlier?

A. No, I don't.

Q. Are Mr. Small and Morrison senior to Mr. Dean?

A. Yes.

Q. And they were on calls with Sunbeam and Skadden as well?

A. Again, the phone call or the meeting in Mr. Small's office, I don't recall if it was one phone call -- one long phone call that people kept coming in and out of the multiple phone calls. But my recollection, there would have been a variety of different people at different points in time on one or more phone calls.

Q. Was Heather Stack or Nicole Duncan on any of the phone calls?

A. I do not recall whether Heather and Nicole were involved in those phone calls.

Q. How about from Morgan Stanley? Who from Morgan Stanley was involved in the March

NOT A CERTIFIED COPY

017053

Lurie

18th phone calls?
A. The only one -- again, the one I'm thinking of in Mr. Small's office, I know Ruth Porat was on the phone. I do not recall who else. I can presume who might have been. John Tyree, I'm sure, would have been involved, but I don't recall.
Q. How about from Sunbeam?
A. There would probably have been a variety of people from Sunbeam, some of the people that you mentioned earlier.
Q. But not Dunlap?
A. I do not ever recall having been on a phone call with Mr. Dunlap, having met Mr. Dunlap or heard Mr. Dunlap's voice.
Q. But Kersh?
A. Kersh, Fanin.
Q. Gluck?
A. Gluck's name -- I think you said he was controller?
Q. Right.
A. I don't recall him. He likely might have been. Kersh, Fanin. Uzzi. I think you named another name that would have been on those

Lurie

phone calls.
Q. How about from Skadden?
A. Greg Fernicola would have been on as the partner. Probably Tod Freed. But I don't specifically recall. But if you asked who from their shop would have likely been involved, it would have been at least those two.
Q. Was Andersen on any of those calls?
A. I don't recall.
Q. Anyone else besides the parties we've mentioned?
A. Davis Polk, Skadden, Sunbeam and Morgan Stanley --
Q. Correct.
A. And possibly Andersen. I can't think of anyone else who might have been on those phone calls.
Q. And tell me in as much detail as you can the substance of those calls.
MR. WISE: I'm going to caution the witness that with respect to any calls that were between Davis Polk and Morgan Stanley, that he should be careful not to reveal privileged communications. Morgan Stanley

Lurie

has maintained the privilege. So to the extent that there were phone calls that he can recall where people from Sunbeam were present or other third parties, obviously, he can respond to your question.
A. Could you repeat your question? It was specifically with Morgan Stanley, or was it just generically?
BY MR. JOHNSON:
Q. Subject to Mr. Wise's instruction, I'm trying to get you to tell me as much information as you can about what was said on the March 18th phone calls.
A. I do not today in 2004 recollect what the specific substance of the discussions were with anyone, whether it was with Morgan Stanley or with Sunbeam or with -- who am I missing? -- Skadden or Arthur Andersen relating to any phone calls that occurred March 18th. I think the general scope of the discussions related to first quarter revenues.
Q. Was it a crisis situation in any way?
A. It was issues. I don't want to necessarily use the term "crisis." But,

Lurie

obviously, when you're having a phone call like that there were concerns that people wanted to understand what was going on and what had transpired and what the first quarter numbers were going to be.
Q. Why would people be interested in what the first quarter numbers were?
A. Well, again, we may have had some disclosure in the prospectus on expectations.
There was clearly -- a public company would have forecast -- there would be forecast out on the street of what their first quarter numbers were going to be. Whether it was earnings or revenue estimates, I don't know. This was a convertible debt offering. So, obviously, the common stock and where the common stock was trading, what the value of it is, what the future expectations for the growth and the share value of the common stock were obviously issues that everyone would have considered, if the expectations out on the street were significantly different than what possibly would be happening that quarter or for the year. Those are things underwriters -- underwriters' counsel,

NOT A CERTIFIED COPY

Lurie

the company would be considering.
Q. That information could have a negative impact on the ability to complete the transaction?
A. Possibly.
Q. Was that possibility discussed?
A. I do not recall any discussions today about not completing the transactions. They may have occurred; they may have not occurred. I do not recall.
Q. Was there any discussion concerning the impact of first quarter performance on Sunbeam's ability to close the acquisitions?
A. Again, I don't recall whether those discussions occurred or did not occur.
Q. Would you be surprised if they did occur?
A. I'm not sure I would be surprised or not surprised. If they occurred, they occurred; if they didn't occur, they didn't occur.
Q. But the sales situation was sufficiently significant to be a material event?
MR. CLARE: Object to form.
You can answer.

Lurie

A. It was. Obviously, as I said earlier, the first quarter and full year expectations are areas of -- that underwriters and underwriters' counsel will be reviewing through the entire process of an offering. So, yes, changes in expectations, changes in company forecasts are things that underwriters want to understand the reasons for.
Q. And that's --
A. If it's a half a penny change versus a ten cent change, you know, some things are material, the size of the company, than others. I mean, if they're going to be within a range that's out on the street, what can I say?
Q. But, in essence, you would agree it's important information?
A. Absolutely. Underwriters are interested in.
Q. Whose idea was it to issue a press release?
A. I have no recollection from today back in 1998 who said to issue a press release or who wanted to or who didn't want to.
Q. So you don't recall any resistance to

Lurie

the idea?
A. I don't recall any resistance. I don't recall any train to say, let's issue it.
Q. I assume, given these discussions, it was something that was discussed at some length?
A. I would presume there were discussions regarding a press release. I know we did issue a press release --
Q. Did you later learn that there was resistance to the press release?
A. Did I later learn? I don't recall that there was. I mean, I've been now advised there may have been resistance.
Q. Who advised you of that?
A. I think it was in conversations yesterday that there may have been some, but I'm not sure. I was talking to Bob and Tom, but I don't think I should go any further.
Q. But you never learned from Morgan Stanley and Sunbeam --
A. I haven't spoken to Morgan Stanley in years regarding this transaction.
Q. Let's put aside the years --
A. Okay.

Lurie

Q. In the days following --
A. In the time frame of 1998.
Q. We're starting to talk over each other. So the Court Reporter is going to wince, if she hasn't already.
In the days following the issuance of the press release, did you ever learn that Sunbeam was upset about having to issue the press release?
A. I don't recall ever having heard or been told by anyone that they were upset.
Q. Would that fact be of any significance to you?
MR. WISE: What fact?
A. That they were upset?
BY MR. JOHNSON:
Q. Yes.
A. It might have. I might have raised an eyebrow and tried to understand why they were upset. But I don't know what my thinking was back then. It's one fact in a myriad of things that are going on in an offering that you have to weigh and consider. So how I would have reacted? I can't tell you.

NOT A CERTIFIED COPY

017054

Page 102

Lurie

Q. But it would have been in the mix?
A. It would have been in the mix.
Q. Do you recall reviewing any documents during the course of the March 18th phone call?
A. I recall that there was a sheet of paper, maybe a couple of sheets of paper, that we all had that was sort of the basis on which we were discussing the first quarter numbers.
THE VIDEOGRAPHER: I'm going to change tape.
MR. JOHNSON: Sure.
THE VIDEOGRAPHER: This is 11:45. This completes tape number one.
(Recess taken.)
THE VIDEOGRAPHER: The time is 12 p.m. We're back on the record. This begins tape number two.
BY MR. JOHNSON:
Q. Before the break, we were talking about the March 18th phone calls. And I want to return to that subject.
Was there any discussion during the course of those calls concerning Sunbeam's earnings situation for the first quarter of 1998?

Page 103

Lurie

A. Again, I don't recall any specific discussions that were had that evening. It would have been generally about the first quarter, probably discussions also about the year estimate forecasts.
Q. When you say "about the first quarter," do you mean revenue or earnings or one or the other?
A. It could have been both.
Q. You don't remember?
A. I do not recall today.
Q. Did you know what Sunbeam's earnings situation was as of March 18th for the first quarter?
A. Did I know then? I probably had an idea what their earnings for 2002 were -- or excuse me -- 1997. I probably had an idea then what their expectations for both 2000 -- or 1998 the full year and probably the first quarter. I have no recollection today what those were.
Q. Was there any discussion during any of the March 18th phone calls concerning whether Sunbeam's actual sales through the first two months of 1998 should be included in the press

Page 104

Lurie

release?
A. I'm sorry. Could you repeat that question.
Q. Sure. Was there any discussion during any of the March 18th phone calls concerning whether the press release should include Sunbeam's actual sales figures for January and February?
A. I do not recall any discussion today regarding whether -- about what should be included in the press release, whether it related to the first two months of 1998 or otherwise.
Q. As you sit here today, do you have any negative reaction or an idea as to why that information would not be included in the press release?
A. Often you don't want to include just interim monthly numbers, because it doesn't necessarily represent what a full quarter is going to be. Sometimes, depending upon the facts of a given situation, you might include interim by interim, I mean, part of month sales numbers.
Q. Or part of quarter sales --
A. Excuse me. Part of quarter sales

Page 105

Lurie

numbers.
Q. So it just depends on the particular circumstances?
A. And the facts and everything else that's going on in the company.
Q. Can you think of any facts, as you sit here today, indicating that it would be inappropriate to give interim quarter sales information in the March 19th press release?
A. I'm sorry. Can you repeat that question again.
Q. Sure.
A. It was a little convoluted at the beginning to the end.
Q. I apologize. These questions are getting longer.
Can you think of any reason why Sunbeam did not include January and February sales information in the March 19th press release?
A. Can I recall any reasons why we did not include it?
Q. Correct.
A. I today don't recall what we said or

NOT A CERTIFIED COPY

017055

Lurie

what the thinking was or the reasons for how the ultimate press release came out or any specific discussions regarding what should or should not be included in 2004. I don't recall what we were thinking back in 1998.

Q. I guess here's what I'm getting at. You testified that it may be appropriate to give interim results depending on the circumstance. What I'm getting at, Were there any circumstances that indicated it would be inappropriate to give that information in this press release?

A. I don't recall, truthfully, what the other circumstances going around the time in March of 1998, middle of March 1998, were of what the thinking would have been and whether we even discussed the question of including the first two -- the specific numbers for the first two months.

Q. So is it fair to say, then, as you sit here today, you can't think of any reason why that information was not included?

A. I can't think of any information today why we would not have included it.

Lurie

Q. Why doesn't the press release refer to the earnings situation at Sunbeam?

A. It doesn't? I don't recall. I have no -- again, the thinking of what we were going to say in the press release and why we decided to say what was said and who made the ultimate decision to say what was said or that we all agreed upon, I don't recall why it was made the way it was today. I'm sure back in 1998 and '99, maybe even 2000, I could have told you more. But six years later, the specific thinking is just beyond me at this point. I don't recall.

Q. As you sit here today, can you think of any reason why it would be inappropriate to give interim earnings information in the March 19th press release?

A. In general? Specifically related to Sunbeam? Specifically related to -- I mean, there are a lot of companies that do 85 percent of their sales in the last two weeks of the quarter.

Q. Do you know whether that's the situation --

A. I have no recollection of how

Lurie

Sunbeam's sales in 1998 were staggered during the quarter.

Q. Well, why was a press release issued at all?

A. I --

MR. WISE: To the extent that you know.

A. I'm trying to recollect. And it's more surmising at this point why it might have been issued.

I think there were questions about whether they would meet it -- let me phrase that differently -- whether they would meet the analysts' expectations what was out on the street. And I think there was a feeling if they were not going to be within the range. And analysts generally have ranges, first call numbers where what people would look at for earnings or revenues, whatever was out on the street. And if they were not, there was probably a feeling, one, maybe the offering memo needed to include it. And if we wanted to include the information in an offering memo, which was in a 144A, in effect, private placement, we had to get

Lurie

similar information out to the street in general.

So to the extent you were going to be putting it in an offering memo, you would also be issuing a press release. That very likely could have been the thinking. I just don't recall specifically what it was.

Q. So you don't know as a matter of fact whether inclusion of the offering memorandum motivated the issuance of the press release?

A. I don't recall which way, whether it was the issuance of the press release motivated putting it in the offering memo or whether we felt we needed to put something in the offering memo and therefore motivated the press release --

Q. And to the extent --

A. -- or whether something else even motivated it.

Q. To the extent Sunbeam was not going to make analysts' estimates on earnings, that would also be information that should be in the press release?

A. If they didn't think they were going to make the earnings, that might be something you

NOT A CERTIFIED COPY

Lurie

would also include. Again, I don't remember what estimates were out on the street. I think we were focused on revenues. But whether we also had earnings estimates for the quarter and for the year, I just don't recall.

Q. Can you think of any reason why you would advise the street that revenue estimates would not be met but not advise them that earnings estimates would not be met?

A. I'm sure there are a variety of scenarios where you know what's going to happen with revenues but you're not sure what's going to happen with earnings. There could be expense reductions. There could be other things going on.

Q. But if you know that earnings estimates are not going to be met, why wouldn't you include that in the same press release?

A. If you know. I don't recall what we knew.

Q. Did you know that the street was expecting Sunbeam to have a profit for the first quarter?

A. What I knew back then I can't tell

Lurie

you. I don't recall what we thought, what I knew back then of what the expectations on the street for the first quarter of 1998 were.

Q. I want to show you what's been marked previously as Exhibit 16, Mr. Lurie, Exhibit 16, the document that you mentioned that was discussed during the March 18th phone call.

A. This looks like the document. It seems to be the document, but I don't recall specifically today what was on the document. But this does look like something we would have looked at.

Q. And do you see the handwriting in the upper right corner: "Ruth," "Alan," "David"?

A. "Ruth," "Alan," "David," okay.

Q. Do you know who those are?

A. Ruth, I presume, is Ruth Porat. Allen, I presume, is Alan Dean. Because that's his phone number. And David -- I'm not sure who David is.

You're not going to tell me?

Q. It's David Fanin.

A. Okay.

Q. What did you understand this document

Lurie

to represent?

A. I can tell you what I think this represents looking at it today. I can't remember exactly what I might have thought this represented back then, but this looks like an estimate of actual sales for the first two months of 1998. It says, "January consolidated, February consolidated net sales actual." And then there appears to be some interim international sale numbers for the first 15 days of March and some forecasted international sales through the rest of March, actual domestic sales for the first 17 days of March. And then I guess open orders is probably forecasted sales for the remainder of March or through -- I guess the remainder of March.

Q. What does the potential orders represent?

A. Those look like to me would mean they were orders that are possibly coming in but haven't yet been booked by the company. They haven't received a formal sales order yet from any of these listed companies.

Q. When you say they haven't received

Lurie

the formal sales order, do you know whether there's been any discussion with respect to any of these accounts with respect to any orders in the last 12 days of the quarter?

A. I'm sorry. Can you repeat the question again? Because --

Q. Sure. Actually, I'll have her read this one.

(Record read.)

(Interruption at the door.)

(Record read.)

A. Are you asking me did I have any discussions regarding these accounts? Did I speak to these accounts? Did anyone speak to these accounts?

BY MR. JOHNSON:

Q. All of those questions.

A. I do not recall any specific discussions that I had or that anyone else had with any of these, let's say, 15, 18 companies (indicating). I don't recall any specific discussions we had on the phone in March 18th of 1998 regarding any of these specific companies and order numbers that are listed under potential

NOT A CERTIFIED COPY

017057

Page 114

Lurie

orders.

I do know we were discussing them, but I don't recall what was said. I don't know whether there were ever any actual calls in the last 12 days of the quarter with any of these entities by -- certainly, I do not recall having those phone calls. I don't believe anyone, to my knowledge, from Davis Polk had them. Whether Morgan Stanley in the last 12 days of the quarter spoke to any of these companies, I don't know if they did. I don't know if Sunbeam spoke to any of these companies. I don't recall.

Q. Do you have any view as to whether it would be appropriate to contact those customers to see what their plans would be for the last 12 days of the quarter?

A. It's something that would often be done. But, again, it really depends on facts of a given situation. For example -- I mean, we could have been told or we could have known through prior other due diligence that Home Depot puts in their biggest order in the last 12 days of the quarter. And we might have had evidence. I don't know if we had any of this. But there

Page 115

Lurie

are a myriad of facts with every one of these that would lead us to make one decision versus another decision. I just don't recall what transpired during these phone calls or in the days after the phone calls or the days before the phone calls with regard to these companies and these potential orders.

Q. This sheet is designed to show how the company can make $254.7 million in revenues for the first quarter?

A. Uh-huh. That's what it looks like. That's the subtotal, I presume.

Q. And that was below the street estimates, wasn't it?

A. If the next lines down appear to be where it says -- the handwriting looks like it says, "low and high." Those look like the street estimates between 167 and 193 for revenues --

MR. WISE: 267 and 293.

THE WITNESS: What did I say?

A. 267 and 293. And then the last line looks like what the first quarter of 1997 was, which says 253.5.

BY MR. JOHNSON:

Page 116

Lurie

Q. So this sheet would indicate that if all of the potential orders are obtained, and if the international net sales forecast is met, the company would beat the first quarter of '97?

A. Would be slightly above the first quarter of '97, it looks like.

Q. But would be below the street estimates?

A. Correct.

Q. Was there any discussion on March 18 concerning whether the company could, in fact, still beat the street estimates in the first quarter of '98?

A. There may have been in 2004. I don't today recall what those discussions -- I wish I could give you more, but I just don't recall what those discussions in 1998, March 18th or 17th or 22nd, regarding first quarter numbers.

Q. But you would agree with me that Exhibit 16 does not illustrate any way for the company to meet street estimates for the first quarter of '98?

A. It clearly -- based on the buildup to the 254.7, it's clearly below the low. So it

Page 117

Lurie

would look like there was nothing on this sheet that would indicate they could beat it. Whether there was other information provided us in 1998 that led us to believe that 254.7 was low, I don't recall. There may have been.

Q. You just don't know?

A. I just don't recall.

Q. Was there any discussion on March 18th concerning the company's ability to obtain orders and ship product in the amount of $86 million in the last 12 days of the quarter?

A. Again, there may have been; there may not have been. I don't recall the substance of the discussions that related to this (indicating), which, I believe, was the subject of the March 18th phone call in Mr. Small's office that we were talking about before. But I don't remember the specifics of who said what, what questions were asked. I'm sure there were a lot of questions that were asked. I just don't recall what they were.

Q. So you don't recall whether there was any discussion about the company's physical ability to ship this much product in this time

NOT A CERTIFIED COPY

01705

Lurie

period?
A. I do not recall if we had those. We may have. We may have looked into a variety of different questions. I don't know if it's a shipping issue, a manufacturing issue. It could have been a variety of issues.
Q. The last item in the potential buildup shows $10.4 million for "other"?
A. Yup.
Q. Was there any discussion about entities that would comprise the "other" category?
A. I do not recall what we discussed regarding the "other" category.
Q. Was there any discussion or skepticism as to whether the "other" category would exceed Wal-Mart's purchases?
A. Would exceed the 10.4 -- where is Wal-Mart? Oh, it's up -- the 9.4? I don't recall any relationship between Wal-Mart and the other category. There may be; there may not be.
Q. You don't remember any skepticism on that issue?
A. I don't remember the specifics of the

Lurie

phone call. I mean, we would have had a long discussion. What we would have discussed and responses that the company gave, whatever they were got us comfortable.
Q. At any point in the first quarter of '98, did Morgan Stanley share Sunbeam's sales information with any other banks?
A. I have no idea. I have no recollection of that. I wouldn't necessarily know. When you say "other banks," you mean another investment bank or --
Q. Well, I'll give you a more specific question.
Did you understand that other banks were participating in the senior credit facility?
A. I think I was told, yeah. I mean, senior credit facility, I don't recollect that, that Morgan Stanley was providing the whole thing. So there may have been other banks --
Q. I'll tell you, it was First Union and Bank of America.
A. Okay.
Q. Do you have any reason to believe that Morgan Stanley shared any information

Lurie

concerning Sunbeam's first quarter sales situation with either of those banks?
A. I don't know what -- I presume they did. But I have no knowledge of what sharing and what information and what discussions transpired between Morgan Stanley and the other two banks that you mentioned.
Q. Why do you assume that they did?
A. Because they were normal discussions that would go on between an arranger and the other banks. I mean, there is an information flow between them, just like there's an information flow if you have comanagers of an offering.
Q. So any important information would be shared?
A. Normally, yeah.
Q. Do you recall how the street reacted to the March 19th press release?
A. I do not recall today how the street reacted.
Q. Obviously, the reaction was not significant enough to impair the closing of the convertible offering; is that correct?

Lurie

A. I'm sorry. The market reaction was not --
Q. -- sufficiently dramatic to impair your ability to close the convertible offering?
A. I don't know if there's a necessary relationship between the two, but we closed the offering.
Q. You didn't delay the offering, even?
A. I don't believe we delayed the offering.
Q. Was the subject of delaying the offering discussed at any point?
A. Today, I cannot recall any discussions on that. There may have been. I don't recall today.
Q. When you say "there may have been" --
A. Well, there may have been or there may not have been. I just don't recall.
Q. I'll show you what's been marked as Exhibit 14 previously.
A. Okay.
Q. Exhibit 14 is the March 19th press release that we've been discussing?
A. It appears to be, yeah.

NOT A CERTIFIED COPY

017059

Lurie

Q. You would agree with me that the press release indicates that Sunbeam may still meet first quarter '98 street estimates in revenue?

A. May still?

Q. Correct.

A. Well, it's expected to be lower. So I guess there's -- it's possible the net sales would be lower. So, yeah, they could maybe still meet it. But they're saying their reading is it's going to be lower than the estimates that were on the street.

Q. Well, if you look at midway through the first paragraph it says, "the shortfall from analysts' estimates, if any, would be due to" --

A. Yeah. I mean, there is still a possibility they'll be within the range.

Q. What's the basis for that statement?

A. Today, I recall nothing about the discussions that would have led to that statement or how the statement -- this press release got prepared. I'm sure we had a basis for belief back then. This, I believe, did go into the offering memo. We would have wanted to be

Lurie

comfortable with the statements. So we would have done due diligence. That was probably part of the phone call.

I mean, I'm looking at the language here. I'm assuming there were discussions in the phone call that led us to be comfortable with the inventory management and other pattern issues that this was the statement we were comfortable in disclosing and putting in an offering memo. But today I can't tell you what the basis was from what we knew in 1998.

Q. Can you tell me what diligence was performed to get comfortable with those statements?

A. Today, no. Other than I know we had at least one or more phone calls on the night of the 18th. There were probably a variety of other things going on, phone calls, discussions, either internally with the company. There may have been other pieces of information that we had that back this up that I don't recall today (indicating).

Q. But other than a conversation with senior management, you can't tell me any specific diligence that was performed?

Lurie

A. Again, as I said before, I do not recall anyone calling these customers. That may have been done; they may not have been done. We may have been able to see the -- what their earlier patterns of buying were, but I don't recall what we did in 1998.

Q. Was there any -- strike that.

Does this press release indicate -- strike that too.

Did you have drafts of comfort letters from Andersen when this press release was issued?

A. I resume we did. But I don't recall when we received the drafts. I mean, there was an indication, I believe, in the letter earlier that I was supposed to get a draft on March 9, I think it said. I don't remember if I actually received one March 9.

Q. I'm going to give you something we marked previously as CPH 110.

Does Exhibit 110 appear to be a draft comfort letter to Morgan Stanley in connection with the convertible debt offering?

A. It appears to be a draft of a comfort

Lurie

letter addressed to Morgan Stanley.

Q. And the fax header shows a date of March 17, 1998.

Do you see that?

A. I do see that.

Q. Does that refresh your memory in any way as to when you received the drafts of the comfort letter?

A. No, it doesn't at all. But if you look -- continue, it's a 561 fax. I don't know who this came to. I don't know if I received this. 561 is South Florida. So I presume it's either Sunbeam's or Arthur Andersen's office down there. Whether it was sent to me, I can't tell. Whether I saw this specific draft, I have no idea.

Q. This is sent, as it notes at the top, "for discussion purposes only."

Do you see that?

A. Yup.

Q. Is that a customary header for draft cover letters?

A. Some don't put the bold headings. Some just have the draft paragraph. Accountants

NOT A CERTIFIED COPY

017060

Lurie

have different ways they handle it. Some say for what this says; others don't.

Q. So your testimony is that while you think you had a draft of the comfort letter before the press release, you don't know that for sure; and you don't know when you had this draft, Exhibit 110. Is that correct?

A. That's correct.

Q. If you look at the third page of the comfort letter, the draft comfort letter, Exhibit CPH 110, there is handwriting at the bottom that says, "we had fire sale of inventory"?

A. Yup.

Q. Do you know what that refers to?

A. I can guess. I have no idea. At some point in time, there was an inventory fire sale that means.

Q. Is that an explanation as to why first quarter '98 revenues were low?

A. It could. I have absolutely no idea who wrote this or what their reasons for it. Maybe that there was sales were made in the first quarter as part --

MR. WISE: You don't need to

Lurie

speculate. You testified you don't know what they meant.

THE WITNESS: Okay.

BY MR. JOHNSON:

Q. I wonder if you could look at the Paragraph 6(b) for me, which is on Page 4 of the draft comfort letter.

A. Uh-huh.

Q. 6(b) indicates that revenues in the first quarter of '98 decreased primarily due to a program that accelerated sales in the fourth quarter of '97.

Do you see that?

A. Yup.

Q. Was that news to you when you received a draft comfort letter?

MR. WISE: He hasn't testified that he received this draft comfort letter.

BY MR. JOHNSON:

Q. When was the first time, if ever, that you heard that Sunbeam had accelerated sales into the fourth quarter of '97?

A. I believe there was disclosure in the prospectus about their early buy programs and the

Lurie

potential effect of early buy programs. When I first heard of the concept of early buy programs in the course of the offering, I have no recollection today.

Q. Was there any discussion about including in the March 19th press release that sales had been accelerated into the fourth quarter of 1997?

A. Again, I do not recall what the discussions relating to including or excluding information in that press release were. I don't recall today what those discussions in '98 were.

Q. Does the acceleration of sales into the fourth quarter of '97 raise any concerns about the quality of 1997 earnings or revenue?

A. The quality of 1997?

Q. Correct.

A. I'm not even quite sure what you're getting at. But I can't -- I don't know how to respond to that.

Q. Let me try and rephrase it, then.

Does information indicating sales had been accelerated into the fourth quarter of '97 raise any concerns about the sustainability of

Lurie

the company's revenue performance?

A. It raises due diligence questions that you're going to ask, sure. If you have early buy programs, what the meaning of it is how they're impacted, what impact they may have had in previous early buy programs on revenues. I mean, again, it's one issue in the overall context that you have to take into account.

Q. So you would say it's a potentially significant fact?

A. A potential fact that I'd certainly want to -- I'm not going to try to quantify it. I'm just going to say it's something you certainly might want to look into and have further discussions on it.

Q. By the way, the last page of the press release --

A. Of the press release?

Q. -- Exhibit 14, indicates that statements in the press release -- certain statements are forward-looking statements.

What's the significance of that?

A. Of, well, the significance of the word "forward-looking statements," whatever?

NOT A CERTIFIED COPY

017061

Page 130

Lurie

Q. The significance of forward-looking statement.

A. Because it's in the middle of a quarter, you're giving estimates about what your expectations are for a quarter. It is for the full quarter. That is a forward-looking statement.

Q. Does that relieve any obligation to provide fair and accurate information?

A. No.

Q. Did -- in the days following the issuance of the press release, Exhibit 14, did you ever hear any comments to the effect that lawyers made the company do it?

A. I don't recall ever hearing those comments, but I don't recall any comments regarding the press release after it was issued.

Q. You never heard any effort by Sunbeam to downplay the significance of the press release?

A. I don't recall any efforts by anyone, Sunbeam or otherwise, the downplay, up-play of the press release.

Q. Would the efforts by the company to

Page 131

Lurie

downplay the significance of the press release concern you in any way?

A. I guess I might have wanted to understand what their thinking was and what they were doing. I mean, I don't know how they were downplaying the significance of the press release. I don't know what they did or didn't do.

Q. But, again, depending on the circumstances, that may be an issue that concerns you?

A. Of all the facts that we had at the time, it's something that we might have looked into or tried to understand.

Q. This has been marked previously as Exhibit 17. Mr. Lurie, Exhibit 17 is the March 19th comfort letter that was presented to you; is that correct?

A. This is -- appears to be a signed copy of the final comfort letter provided by Arthur Andersen to Morgan Stanley. Whether this was, quote, presented to me, an actual signed copy, I don't recall.

Q. So you don't have any recollection of

Page 132

Lurie

the final letter being signed and delivered to you by hand?

A. No, I do not. It may have been. But I don't recall if it did or whether it didn't.

Q. Or when it did, for that matter?

A. When -- no. I don't recall. Generally, it would have been the day of pricing.

Q. And that was March 19th?

A. That's my recollection. Correct.

Q. I assume you've seen many comfort letters in your career?

A. Yes.

Q. Is there anything about this comfort letter that is out of the ordinary?

A. Are you going to give me 10, 15 minutes to review it?

Q. Sure.

A. Do you want to point me to anything?

Q. I'm asking: Based on your experience, is there anything about it that is out of the ordinary?

A. The Page 3 at the top, I wouldn't necessarily say out of the ordinary, but there were notations of it, an interim period,

Page 133

Lurie

shareholder's equity had decreased as well as long term debt having increased.

The next paragraph, 5(a), the numbers in 5(a). Then in 5(b), there is an indication that net sales for the two months of 1998 were below the period -- the corresponding period of 1997 as well as a net income going from a gain, a net income from last year to a net loss this year.

So those are clearly -- you know, those are clearly somewhat out of the ordinary disclosures that you would be looking into.

Do you want me to continue? Is there anything further?

Q. Let's focus on 6(b). We looked at an earlier draft of that?

A. 6(b)?

Q. Correct.

A. Okay. That's the next page.

Q. Is there anything out of the ordinary about Paragraph 6(b)?

A. It's an explanation. I can't tell you today if I thought it was out of the ordinary. There is the early buy program

NOT A CERTIFIED COPY

Page 134

Lurie

reference. I don't recall if the next sentence was in the earlier version of the document that you showed me before -- of this document that you showed me before.

Okay. There is this additional sentence regarding -- somewhat out of the ordinary, I'm using that -- nonrecurring January of 1997 sales of excess inventory.

And then there is the compensation charge discussion. Again, I'd have to go back and look to see if it was in the earlier version.

Q. And I'm going to ask the same question about 6(c).

A. 6(c)? It's showing that now throughout the first two full months of '97, that net sales continue to be down, I guess, the first.

Q. So 6(c) says that through the first two months of '98, the company's sales are at half of what they were in the prior period?

A. Correct.

Q. Was that an out-of-the-ordinary revelation to you?

A. I have no recollection today of what

Page 135

Lurie

-- when I first would have received this. But if this came the 19th, this (indicating) is subsequent to having had conversations regarding Exhibit 16 (indicating). So I -- at least if the timing of these came in accordance with what we have been discussing, that this was the 18th and this was the 19th (indicating), we would have had more detailed information based on what Exhibit 16 and the discussions that related to that.

And I believe -- I'm just curious -- the 72 million is what is shown for this list (indicating) is what actually occurred. So this is a more recent version.

Q. So it was not news to you that Sunbeam's sales were running at half for the first two months of '98 over '97?

A. I'm assuming, given the timing, that by the time I had received this, we had already received that (indicating). So we knew there were some discussions that we had the night before regarding first quarter sales. So getting this delivered to me, if it was delivered to me, or seeing a copy of this on the 19th would not necessarily have surprised me, given what we knew

Page 136

Lurie

from the days beforehand.

Q. So you can't recall any specific reaction to the comfort letters --

A. Yes.

Q. -- as opposed to other information?

A. I cannot recall any specific reaction to this comfort letter (indicating).

Q. This letter is addressed to Morgan Stanley.

Why is that?

A. The underwriter -- the comfort letter is always addressed to the underwriter.

Q. Why is it always addressed to the underwriter?

A. That's what FAS, now 110, says. It's FAS 72. It's addressed to someone with a due diligence obligation. Morgan Stanley had to give them a representation letter. They had a due diligence obligation. So...

Q. And did Morgan Stanley give this letter -- this comfort letter, Exhibit 17, to anyone besides Davis Polk?

A. I have no idea who Morgan Stanley would have given this to. I have no recall of

Page 137

Lurie

any discussion of who they should or should not have given it to. I don't recall giving it to anyone. I don't remember if Morgan Stanley gave it to me or I gave it Morgan Stanley. A signed copy is what I'm getting at.

Q. Well, you have no reason to believe that Morgan Stanley and Davis Polk lacked copies of the signed comfort letter?

A. I have no reason to believe that we did not have a signed comfort letter.

Q. The first page of the comfort letter, Exhibit 17, indicates the offering memorandum is for --

A. -- two billion.

Q. -- two billion, fourteen million.

Did the size of that offering increase at any point in time?

A. Apparently it did. I had forgotten that. But when I saw the original offering memo and the final, it had increased. Yes, there had been an increase in the offering size.

Q. How did that come about?

A. I have no -- I apologize. I have no recollection today of when we were advised, how

NOT A CERTIFIED COPY

0 7 0 6 3

Lurie

or why we were advised it was increasing.
Q. Do you recall the convertible portion of the offering increased while the senior credit facility decreased?
A. I have no recollection of the two being tied or how that all transpired.
Q. Or when it transpired?
A. Or when it transpired.
Q. Or why it transpired?
A. Or why it transpired.
Q. You mentioned already today that you were at the printer for the final printing of the offering memorandum?
A. Yes.
Q. And that was on March 19th?
A. I believe so. That's correct.
Q. Who was at the printer?
A. I have to be honest. I don't recall. I remember one or two people from Arthur Andersen were there. At some point there must have been one or more people from Skadden. I don't remember who it was.
Morgan Stanley would have either been there in the beginning, or someone from Morgan

Lurie

Stanley, most likely John Tyree or someone else, would have been there at some point during the evening. When they actually got there, I do not recall. They would have normally always been at the printer. So that's four main players. I do not recall that anyone from Sunbeam, you know, the management themselves, were at the printer.
Q. And other than you being there yourself, you can't specifically identify any other person who was there?
A. I can't remember if Alan Dean or Heather Stack from Davis Polk were there. I know I was there.
Q. And I think you said a couple of people from Andersen?
A. I have a vague recollection there were two people from Arthur Andersen that were there.
Q. Males or females?
A. I think there were only males on the transaction. So I'm going to say males.
Q. How about Skadden? How many people from Skadden?
A. I don't recall. I'm sorry. I don't

Lurie

recall.
Q. And Morgan Stanley?
A. I don't recall how many.
Q. And this was on the evening of March 19th; is that correct?
A. Yes.
Q. And was there any decision about whether the March 19th press release should be included verbatim in the offering memorandum?
A. At the printers?
Q. Yes.
A. I have no recollection of any discussions relating to that.
Q. Did anyone from Andersen advise you, or anyone from Morgan Stanley, that the press release should not be included verbatim in the offering memorandum?
A. I have no recollection of any discussions relating to the press release at all at the printers the night of the 19th.
Q. The press release did end up verbatim in the offering memorandum?
A. That's my recollection, yes.
Q. How did that come to pass?

Lurie

A. I -- was agreed to be put in. I don't remember who we discussed it with, how it was discussed, but there was a consensus and a general understanding it would go in the offering memo.
Q. So there was a consensus. You don't recall any dissent?
A. Absolutely, no. I don't recall any dissent by anyone.
Q. Was there any heated discussion of any nature at the printer?
A. Heated discussion?
Q. Yes.
A. Absolutely not. Not that I recall. It was, to my recollection, a very -- it was a very normal, uneventful evening at the printers until you were there between 2 and 5 a.m. in the morning.
Q. There was nothing uneventful about this printing?
A. Nothing eventful. It was totally uneventful.
Q. Totally uneventful, okay.
Did anyone use any profanity?

NOT A CERTIFIED COPY

011064

Lurie

A. Profanity?
Q. Yes.
A. Not that I recall.
Q. Did Mr. Tyree get upset about anything?
A. Not that I recall.
Q. Did you?
A. Not that I recall.
Q. Was anyone upset about anything?
A. If there was someone upset, I think I would -- or if there was profanity being used or if it was an eventful evening, I think I would have remembered. This was a very -- to my recollection, it was very uneventful. I don't remember anything going on other than making sure the numbers got in and it got printed properly.
Q. So you have no recollection of anyone from Andersen saying that everyone in the room would get sued if Sunbeam didn't make its numbers in the first quarter?
A. I have no recollection of that comment. Someone from Andersen saying that or anyone else saying that, I don't remember.
Q. Did anyone voice skepticism about

Lurie

whether Dunlap had truly turned Sunbeam around?
A. I do not recall any discussions about that back in March 19th or 18th or 22nd of 1998.
Q. Did anyone from Andersen indicate that Andersen was going to send personnel to all of Sunbeam's shipping docks to monitor the quarter close?
A. No. I don't recall that anyone -- I don't recall ever being told that Andersen was going to do that.
Q. Did anyone explain that certain personnel within Sunbeam objected to the inclusion of the press release in the offering memorandum?
A. Did anyone from Andersen say that people from Sunbeam --
Q. Let's start even broader than that.
A. Okay.
Q. Did you hear from anyone at the printer that there were Sunbeam personnel who objected to the inclusion of the press release in the offering memorandum?
A. I do not recall any discussions relating to anyone objecting or anyone

Lurie

questioning putting the press release into the offering memo. There was probably just someone said it's going in the offering memo.
Q. Did anyone voice skepticism about the company's ability to exceed first quarter '97 revenue results?
A. I do not recall any discussions relating to that at the printer that night.
Q. If Andersen told you that it was skeptical that the company could make the first quarter '97 numbers in the first quarter of '98, would that cause you any concern?
A. If they had told me that, it was certainly something that I would have questioned them further on to see what information and what concerns they had. It probably -- if it was serious enough from their mind, I probably would have picked up the call [sic] and called Alan Dean or other people at Davis Polk. But I don't recall any discussions, anyone saying anything like that. But, again, in the whole mix of things, yeah, that might be something that you would look into.
Q. How about if you heard that certain

Lurie

Sunbeam personnel objected to including the press release in the offering memorandum? Is that something that would have been significant to you?
A. It depends upon why, the reason for the objection, what their concern was. I mean, again, yes, as an individual, it's something that I might have questioned. But you have to give me more of the facts that relate to what was going on the night of the 19th or the evening of the 18th, I guess, whatever day it was.
Q. And if you had heard that Andersen doubted whether Dunlap had really turned Sunbeam around, if you had heard that at the printer, would that be something that you would want to investigate further?
A. Again, it depends what the context was, what they were saying with those words. You're asking me to speculate what we were all thinking and what we all knew at the time and what due diligence we had done to get comfortable.
Q. So it's possible, if Andersen told you they didn't believe the turnaround was

CD 16 95

NOT A CERTIFIED COPY

Lurie

authentic, that wouldn't have mattered to you?
A. Using those words, it's probably something that would have raised some eyebrows. And I might have asked some more questions and looked into it. Depending on who said it, I might have wanted to speak to more senior people or have Alan or others at Davis Polk or Morgan Stanley speak to more senior people. There's a lot of things that I can speculate today of what I might have done, but I just don't recall any of this occurring.
Q. In connection with either the press release or the offering memorandum, was there any discussion about issuing a release that simply stated that the company would not meet the street estimates for the company revenue?
A. There nay have been -- again, I apologize. I do not recall the specific discussions relating to the content or what the wording of the press release would be. All I can tell you, you showed me what appears to be the press release. I assume it's the press release. We somehow reached the conclusion as a group that this would be the press release. The basis for

Lurie

determining the words in there, I can't tell you today.
Q. Although Andersen was not involved in the press release issuance?
A. I have absolutely no idea if that's the case. They may have been involved. They may have seen it early. The more senior people at Andersen -- I forgot the name of the gentlemen you mentioned before -- may have seen it before. Whether the two younger people from Andersen had seen it, I just don't know.
Q. Can you remember anything that happened at the press release that is a specific event -- excuse me -- anything that happened at the printer that is a specific event?
A. Anything that happened at the printer that's a specific event? No. I mean, it was an uneventful evening.
Q. So as you sit here today, you don't remember nothing out of the ordinary?
A. Nothing out of the ordinary.
Q. Does that mean that nothing out of the ordinary happened or that you can't remember anything out of the ordinary?

Lurie

A. That I can't remember anything out of the ordinary. But that likely means that if something out of the ordinary happened, that I probably would have remembered it.
THE WITNESS: Can I ask that we take a break? My wife is trying to reach me about a room for my daughter --
MR. JOHNSON: Sure.
THE WITNESS: -- at law school for next year.
THE VIDEOGRAPHER: The time is 12:57. We're going off the record.
(Luncheon recess taken.)
A F T E R N O O N S E S S I O N
(1:42 p.m.)
THE VIDEOGRAPHER: The time is 1:42. We're back on the record.
J A M E S M. L U R I E,
resumed, having been previously duly sworn, was examined and testified further as follows:
EXAMINATION (Cont'd.) BY
MR. JOHNSON:
Q. Mr. Lurie, on our break I gave you an

Lurie

exhibit marked CPH Exhibit 114 to review.
Have you had a chance to look at that?
A. Yes.
Q. And this is a letter from Lawrence Bornstein to the files dated March 31, 1998.
Do you see that?
A. Yes.
Q. And this memorandum concerns events at the printer on March 19, 1998; is that correct?
A. That's what it purports to discuss.
Q. Does this memorandum, Exhibit 114, refresh your memory in any way about any of the events that happened at the printer?
A. What's in here does not refresh my recollection, and what's in here is news to me.
Q. What's in Exhibit 114, is it inconsistent with your recollection?
A. My recollection, it was a very uneventful meeting at the printer. I do not remember any of -- no specific recollection of any of the discussions that he refers to here in this memo. I -- he says, "Mr. Tyree and Mr.

NOT A CERTIFIED COPY

Page 150

Lurie

Lurie were very upset." I have no recollection of there being any upset. It being uneventful and cordial is my recollection of the meeting at the printers.

Q. Is it possible that your recollection six years later is mistaken?

A. I don't want to say it's mistaken. I would think, if this was an event, something transpired that would have suggested that I was upset, it is probably something that I would have remembered.

Q. So are you saying that Mr. Bornstein's memo prepared or dated 12 days or so after the event is incorrect?

A. I have no recollection of any of what he says here occurring. And I certainly do not remember any discussions about or me being upset. I have no knowledge of him talking to any of these other people. But I've read the memo, and it was interesting reading in places, but --

Q. Is it possible that the memo is correct?

A. I have no way of knowing what his thinking of what transpired that evening were or

Page 151

Lurie

what his recollection was or what he thought was going on that night.

Q. So it is possible that this is Mr. Bornstein's recollection?

A. This is obviously what he wrote down. That is all I can tell you. This is words that he put on this piece of paper. I don't know what his thinking was or why he phrased it the way he did.

Q. And you have no reason to believe that Mr. Bornstein was making this up?

A. I don't want to criticize Mr. Bornstein at all. I don't want to question Mr. Bornstein at all. There are things in here that I just have no recollection. And I think I would. It didn't happen.

Q. Were you involved in preparing the purchase agreement whereby Morgan Stanley purchased the convertible offering from Sunbeam?

A. I would have probably -- I think I was the primary draftsman of the purchase agreement, correct.

Q. I want to show you a draft of that, if I could, previously marked as Exhibit 216.

Page 152

Lurie

Can you identify Exhibit 216 for the record.

A. It's a letter from, it looks like -- who's it from? -- from Adrian Deitz, who is an attorney at Skadden, to Alan Dean, myself, the Davis Polk team, John Tyree of Morgan Stanley, attaching the draft of a purchase agreement with their comments, "their" being Skadden and Sunbeam's comments on the purchase agreement.

Q. I wonder if you could look at subparagraph (l), which appears on Page 4 of the draft. And that's the Bates page CPH 0632913.

A. Page 4, you said, correct?

Q. Correct.

A. Okay.

Q. In subparagraph (l), there is a handwritten notation deleting the phrase "or any development involving a prospective material adverse change."

Do you see that?

A. Yes, I do.

Q. Do you have any understanding as to why Sunbeam or Skadden was proposing deleting that phrase?

Page 153

Lurie

A. Because every issuer and every issuer's counsel proposes to delete that phrase.

Q. And why is that?

A. It's prospective, forward-looking, and they think it's too generic. And there may be other references in this document to prospects and prospective. What does that mean? It is a standard comment from underwriters -- to underwriters' counsel from issuers and their counsel.

Q. And there is obviously a bit of humor associated with that?

A. I saw it crossed out. And you asked me about it. I'm just chuckling, because it's always crossed out.

Q. Were there any discussions concerning the applicability of that clause to this transaction?

A. I would have -- I have absolutely no recollection of any discussions on the underwriting agreement, generically or on this clause in particular, with either Morgan Stanley, Skadden or the company.

Q. Was there any discussion to the

NOT A CERTIFIED COPY

Lurie

effect that Sunbeam's deteriorating first quarter might be a prospective material adverse change?

A. I do not recall having those discussions in 1998 at this point.

Q. Does that mean those discussions could have occurred?

A. It means they could have occurred. It means they could not have occurred. I just have no recollection in 2004 of what was discussed in 1998.

Q. Is the fact that Sunbeam's sales through the first two months of the first quarter of '98, those sales running at half of the prior year period, is that a potential prospective material adverse change?

A. In certain context it could be, absolutely. Again, you need to look at the entire situation.

Q. Did you work on this purchase agreement at the printer?

A. I have no recollection if this was worked on at the printer. What's the date of the memo? The 17th. So this would have been two days before the printers, right? Three days

Lurie

before the printers? Somewhere in the interim I probably worked on it.

Q. Let me show you what we've marked as 211.

MR. JOHNSON: And I'm going to have to ask you guys to share. For some reason I don't have a spare.

A. Okay.

BY MR. JOHNSON:

Q. Exhibit 211 is a markup of the purchase agreement and fax cover sheet; is that correct?

A. It's a fax cover sheet. It's a cover memo from Nicole Duncan addressed to Adrian Deitz with cc's to me and other people with a, quote, marked copy of the purchase agreement. It's dated two days later. I have no recollection whether there were interim versions between the one we just looked at and this one.

Q. And it's faxed to you, among others, at the printer?

A. Yes.

Q. I wonder if you could look at subparagraph (l) again for me. This time it's on

Lurie

Page 5.

A. Okay.

Q. Do you see the change reflected in Paragraph (l)?

A. Yes.

Q. Can you tell me why that revision was proposed.

A. I have no recollection of who proposed it, why it was proposed. I can speculate, but I don't recall any discussions relating to it.

Q. There's a particular part of the revision that I want to focus on. The revision states that "The press release shall not in and of itself constitute a material adverse change or prospective material adverse change."

Do you see that?

A. Yes, I do.

Q. What's the significance of the "in and of itself" phrase?

A. You want me to speculate now what I think the wording was intended to mean? I do not recall why those words were put in or the discussions that may have been around the use of

Lurie

those words today. I don't remember what we discussed in 2004 --

MR. WISE: In 1998.

A. -- in 1998. Excuse me. And I can read them and try to come up with reasons why I think they're there. But I'm speculating now. It's not what I know from before.

BY MR. JOHNSON:

Q. Have you seen that phrase in other purchase agreements?

A. Yes, I've seen the term "in and of itself."

Q. What's its significance in other context?

A. That it could be one of many things. It would be considered as part of something that might lead to a conclusion that a material adverse change in the financial condition or results of operations, earnings, business or prospects of the company had occurred.

Q. Is this revision designed to avoid any dispute about whether the press release constituted a material adverse change?

A. I can speculate that that may have

NOT A CERTIFIED COPY

017068

Lurie

been suggested why this should be put in, so it could not be debated.

Q. Because, otherwise, it might have been debated?

A. It might have been a debate.

Q. Did Morgan Stanley keep track of Sunbeam's sales buildup after March 19th?

A. I today do not know exactly -- do not recall what Morgan Stanley or Davis Polk would have been doing on the 19th, 20th through the end of the quarter or actually through, I guess, the closing on the sales buildup. What we might have done, I just do not recall.

Q. Do you have any expectation about what would be done?

A. Do I have any expectation?

Q. Sure.

A. I could guess about things you might want to do. But I don't know what we thought about back then or what we advised to do. I don't recall any discussions relating to it.

Q. What did Morgan Stanley do on this transaction after March 19th?

A. I have no recollection of what Morgan

Lurie

Stanley did with regard to the sales buildup, because I think we're still premised that's the question.

Q. I'm asking more generally now.

Putting aside the sales buildup, what, if anything, did Morgan Stanley do in connection with the convertible debt offering after March 19th?

A. There would have been a closing. They would have had to fund. They would have had to distribute the preliminary prospectus to the purchasers and the offering. There would have been a bring down due diligence phone call. There would have been a bring down comfort letter. There would have potentially been calls with the company on a variety of different matters. I mean, you know.

Q. But as you sit here today, you don't know which of those events occurred?

A. Well, I mean, there was a closing.

Q. Right.

A. There was a bring down due diligence phone call. There would have been that. There would have been Morgan Stanley distributing the

Lurie

preliminary -- I mean, the final prospectus or offering memo. I mean, there would have been virtually all of those things.

Q. The bring down due diligence phone call, did you participate in that?

A. I believe I did, but I don't know specifically recall. Again, it would have been normal for me to participate in that phone call. So I'm assuming I did.

Q. Do you have any recollection of when that occurred?

A. Well, if the closing was the 25th, if I recall we discussed before, then it would probably have been the morning of the 25th or more possibly the evening before.

Q. Was there any discussion about Sunbeam's sales situation in the first quarter as part of the bring-down call?

A. I apologize. But I don't remember the specifics of that 1998 March 23rd, 24th, whatever day it was, phone call.

Q. This has been marked as Exhibit 35 previously.

Does Exhibit 35 refresh your memory

Lurie

in any way concerning the subjects of the bring down due diligence calls?

A. Other than reading and seeing this is what they would have liked to discuss, it doesn't make me any more recollect what actually transpired on that phone call.

Q. Do you have any reason to believe that buildup of first quarter revenues was not a subject?

A. I have no reason to believe it was not a subject. I would assume it was a subject.

Q. So is it fair to say that Morgan Stanley knew as of the last week of March where Sunbeam was with its first quarter sales?

A. They would have known through the date of the bring down comfort letter, which would have brought through a date prior to that date of that comfort letter.

Generally, I think back then -- I think it was maybe two days, that the accountants would have been able to confirm -- there would have been discussions with the company. So they would have known through the date of the phone call, which may again, as we were looking at

NOT A CERTIFIED COPY

Page 162

Lurie

before, may be actually more information than would be in the bring down comfort letter. They would have, obviously, a better sense March 23rd, 24th what the quarter was than March 19th or 18th.

Q. Do you recall learning that Sunbeam was $75 million below first quarter '97 numbers during the bring-down call?

A. I have no recollection of that discussion during the bring-down call.

Q. Would that information warrant an additional press release?

A. Again, I can't tell you what other discussions went on. I see this piece of paper (indicating). Whether there were other pieces of paper that had more detailed information, for example, similar to the buildup numbers page we had before -- again, I just have no specific recollection. And for you to just simply say it was 75 million, I don't know what else we knew back in 1998 when those calls were occurring.

Q. So simply knowing that with less than a week to go in the quarter Sunbeam was $75 million behind in revenue to make the first

Page 163

Lurie

quarter '97 number, that alone is insufficient for you to determine whether that is material that needs to be disclosed?

MR. WISE: He says he doesn't know where the 75 million -- I don't know whether you're testifying or on what basis you are presenting that to him, but he's already told you he doesn't recognize that number. The question is, at best, hypothetical, assuming that your information is correct.

BY MR. JOHNSON:

Q. Can you answer the question?

A. I'm not sure what the question is at this point. Because, again, where is the 75 million? How do we get that information?

Q. If Sunbeam advised you that it was $75 million below first quarter '97 numbers as of March 24, would information, in and of itself, be sufficient for you to determine that it needed to be disclosed?

A. It would have certainly raised at March 23rd, 24th, with seven days left in the quarter, questions about further due diligence on the quarterly numbers, and it would have

Page 164

Lurie

potentially raised issues about a new press release. It could have raised issues about stickering the offering memo, because this is now after the final offering memo had been printed. But, again, I don't know what other information we had. And I don't know where the 75 million number comes from.

Q. And you don't know whether any additional due diligence was performed after March 24th?

A. After March 24th?

Q. Correct.

A. We closed the next morning, I recall. So I'm not sure what more due diligence would have been done between the night of -- assuming it was the evening of the 24th, when the bring-down call occurred, and 10 o'clock the next morning, when the underwriters like to close, or 9 o'clock, whatever.

Q. Aside from the bring down due diligence phone call on the 24th or 25th, did Morgan Stanley do any other diligence activities between March 19th and the bring-down call?

A. Again, I do not recall today what

Page 165

Lurie

other work either Davis Polk or Morgan Stanley did back in the March 1998, between the dates, the 19th and the 23rd, 24th, what we would have done, what we did back then.

Q. Were there any discussions in March 1998 concerning the impact on Sunbeam's second quarter of its efforts to make first quarter numbers?

A. I don't again recall any specific questions today that were discussed back in 1998 relating to impact on second quarter of first quarter.

Q. Would you expect that to be an area of inquiry?

A. Well, it's just part of the whole issue that we were talking about earlier on that was in the offering memo about what one of the earlier sales programs, whatever they were called. I mean, it would be issues and questions that you would be looking into as part of the whole process.

Q. I'm going to give you what we've marked previously as Exhibit 33. Exhibit 33 is another bring down due diligence call agenda; is

NOT A CERTIFIED COPY

Lurie

that correct?
A. Yeah. From -- dated previous, it looks like. This is dated March 19th. The earlier memo is dated four days later, March 23rd.
Q. And the first bullet point in Exhibit 33 refers to the top and bottom line outlook for first quarter, first half and the year?
A. Uh-huh.
Q. That doesn't appear in Exhibit 35?
A. That was the other one?
Q. Correct.
A. Those specific words obviously don't appear in 35.
Q. Why is that?
A. Why? I don't know. I can't recall why it got changed, why it was different. I mean, the concepts are in the Exhibit 35: Are you still comfortable with 1998 earning estimates? So that's a bottom-line number for a full fiscal year.
Q. So you don't recall any discussions concerning revisions to the bring down due diligence call agenda?

Lurie

MR. WISE: Besides which, if he did, I would tell him not to answer.
BY MR. JOHNSON:
Q. Looking again at Exhibit 35, the March 23 agenda, the first bullet provides, "Please update us on the build up of first quarter revenue and earnings"?
A. Uh-huh.
Q. What did you hear about Sunbeam's earnings in that bring down due diligence call?
A. I don't recall any specific discussions in that bring-down call regarding earnings.
Q. Do you think you would recall if you learned that Sunbeam was showing a loss?
A. Well, again, it depends. I mean, what we knew, when we knew -- I mean, if that was the first time I had heard of a loss, yes, it might have caused me to be surprised. But I don't remember when in the whole process we knew what was going on and what the issues were. So I can't tell you if I was surprised --
Q. But you don't recall anything out of the ordinary?

Lurie

A. No.
Q. Did you ever learn that Sunbeam was extending the ending date of its first quarter?
A. I do not recall ever being told that or hearing that or learning that.
Q. So you had no discussions with Andersen about whether the first quarter time frame would be extended?
A. I have no recollection. That would be very surprising to me.
Q. Surprising that the quarter would be extended or surprising that you had the discussions, or both?
A. Certainly extending the quarter would have surprised me.
Q. Why do you say that?
A. Because you can't do that.
Q. So if you had known that, that would be something that would cause you to make further inquiry?
A. I would have inquired, How can you do that under the accounting rules?
Q. Do you know how much bill-and-hold revenue Sunbeam recognized in the first quarter

Lurie

of '98?
A. Absolutely no recollection.
Q. Did you make any inquiry as to how much bill-and-hold revenue was being recognized in the first quarter of 1998?
A. I have no recollection of any discussions -- any specific discussions on that subject at this point.
Q. Would the amount of the bill-and-hold revenue in the first quarter be an area of inquiry or concern?
A. Again, depends on the context of all the other pieces of information you have at the point in time. You can't necessarily just take one fact and say that's -- it may change the mix of facts that are going to have you do certain things because of that.
Q. So if you had known there was $30 million of bill-and-hold revenue in the first quarter, that fact by itself wouldn't cause you any concern?
A. Depends on what bill and hold were in the prior quarter. It depends on what we had heard about why there was going to be that amount

NOT A CERTIFIED COPY

017071

Lurie

of bill and hold and if that was a large amount. I don't recall any of that.

Q. Did you receive a bring-down letter from Andersen?

A. We would have received a bring-down comfort letter.

Q. Do you recall, in fact, receiving it in this case?

A. I don't recall specifically, but practice with Morgan Stanley and other underwriters would be to receive a bring-down comfort letter.

Q. But you don't remember how you got it or where you were when you first received a copy?

A. It would have been delivered at the closing, often coming in by fax. Whether that's how it was delivered in this. But that's often how it's handled.

Q. I'm going to show you Exhibit 112. Does this appear to be the bring-down comfort letter delivered to Morgan Stanley?

A. Yes, it does.

Q. Do you recall anyone from Davis Polk or Morgan Stanley having any reaction to the

Lurie

information in this letter?

A. I have no recollection of anyone's reaction, positive or negative, to this letter.

Q. You don't recall anyone being surprised by it?

A. I don't recall anyone being surprised by it.

Q. Were there any discussions at all surrounding its contents?

A. I don't recall any specific discussions relating to the contents of this or the drafts that we had most likely received beforehand.

Q. And you don't recall any shock over the loss of $40 million in the first two months of 1998?

A. No. I'd have to go back also and look at what the earlier March 19th one said. Again, this is through -- the period that they're covering is through March 1 of '98. The buildup that we talked about is from the April -- excuse me -- from the March 18th meeting had more updated information. The bring down due diligence call would have had more updated

Lurie

information that we would have had. Their procedures and work actually is only through the 23rd. That's back in paragraph (c). So we actually had potentially more updated information than was in here.

Q. So this information didn't cause you any shock?

A. Again, I don't recall it causing any shock, annoyance or surprise.

Q. Did Morgan Stanley or Davis Polk share this information in the comfort letter with anyone?

A. I mean, I would have obviously given a copy to Alan and probably the other people on our team. Morgan Stanley would have probably given it around in-house. Whoever else they might have shared it with, I have no knowledge. I don't think we would have shared it with anyone.

Q. Why do you say that?

A. Because it wouldn't be our practice to share a comfort letter with anyone else. I mean, if there were other underwriters that weren't in this offering, they would have

Lurie

received copies, but --

Q. But, otherwise, it's for underwriters?

A. Yeah.

Q. At any point during your work on the Sunbeam transaction, did you have any dealings of any sort with anyone from MacAndrews & Forbes?

A. I don't recall speaking to anyone from Andrews [sic] & Forbes. There may have been -- they may have been on the phone at some point in time, but I don't recall today.

Q. You can't tell me the name of any MacAndrews & Forbes person who was on any phone call with you?

A. Not that I recall today, no. I'm sorry.

Q. How about Wachtel Lipton? Did you have any dealings with them in connection with the Sunbeam transaction?

A. Not to my recollection.

Q. How about Credit Suisse First Boston?

A. Today, not to my recollection. We may have, but I know that they represented.

Q. Anyone associated with the Coleman

NOT A CERTIFIED COPY

0172

Page 174

Lurie

company? Did you have any dealings with anyone from Coleman?

A. Well, at some point in time during the due diligence process, we would have done due diligence. And we would have had phone calls with management of Coleman, First Alert and -- what's the --

MR. WISE: Signature Brands.

A. -- Signature Brands. We would have done due diligence on those companies. There would have been someone from management of those companies on the phone that we would have spoken to. So, yes, at some point, I presume we had conversations with people from Coleman.

BY MR. JOHNSON:

Q. But as you sit here today --

A. I don't recall specifically who it would have been.

Q. Or even if it, in fact, occurred?

A. I'm only assuming. And knowing the practice and the process for an offering related to three acquisitions, or even one acquisition that's described, we would have spent time with the management, with the accountants of the

Page 175

Lurie

acquired target company.

Q. Are you aware of anyone outside of Morgan Stanley, Skadden Arps, Davis Polk or Sunbeam who was aware of -- and Andersen -- who was aware of the sales shortfall during the first quarter of 1998?

MR. WISE: You said there was a press release that went out. Assuming anyone read that press release.

BY MR. JOHNSON:

Q. Let me phrase the question differently.

Do you know of anyone outside of Andersen, Skadden, Sunbeam, Morgan Stanley and Davis Polk who was aware of the fact through the first two months of '98 sales were running at half of the prior year period?

A. I have no knowledge of who else might have been advised or been told of those facts.

Q. But, to your knowledge, Davis Polk and Morgan Stanley didn't advise anyone of those facts?

A. I do not recall advising anyone. I cannot tell you what Morgan Stanley might have

Page 176

Lurie

done, whether they advised the other bank syndicate members. Often, they probably would have. But I can't tell you, because I don't know what they did and have no recollection of what they might have done.

Q. From your perspective, was the Sunbeam convertible offering a successful one for Morgan Stanley?

A. At the time I thought it was.

Q. How about today?

A. Today, knowing what happened, probably wasn't so successful for them.

Q. Why do you say that?

A. I have a sneaking suspicion they may have had to buy back a good portion of the bonds.

Q. What's your basis for that suspicion?

A. Just word of mouth and understanding what often happens in failed deals. In failed deals, in the sense that the company does not meet its expectations.

Q. This was a failed deal, it's safe to say?

A. Ultimately, you could say that Sunbeam did not meet its expectations. And,

Page 177

Lurie

therefore, there might have been some significant issues. And Morgan Stanley, I'm assuming, had to buy back a number of bonds.

Q. When you say you're assuming that, do you actually know one way or the other whether Morgan Stanley did buy back bonds?

A. I do not know as a fact, just word of mouth, understanding this may have occurred.

Q. When you say word of mouth, understanding that this may have occurred, can you tell me in any more detail?

A. Generally in the market, I could have been -- by the time that might have occurred, I was no longer at Davis Polk. I might have heard it through other underwriters -- other investment banks. Excuse me. And I don't recall how I heard. But that's just what my understanding is, that that's what happened.

Q. That it did happen or -- are you assuming that it happened, or did you hear that it happened?

A. Well, that is semantics. I'm assuming it happened, because that's what I understood happened. So I don't know as a fact,

NOT A CERTIFIED COPY

Lurie

because I was not at Morgan Stanley, hearing them specifically tell me they bought back X dollars of those bonds.

Q. But you heard that happened?

A. That is -- I heard that happened.

Q. Do you know when that happened?

A. I don't know. I don't recall. I presume it was within the first few months after -- three to six months after the offering.

Q. And can you give me any more detail on the word of mouth or from whom you heard it?

A. I apologize. This is 2004. This is a long time ago. I don't recall.

Q. Do you know one way or the other whether Morgan Stanley & Company lost money on the Sunbeam transaction?

A. I have no -- I have no knowledge of those facts. I don't know if they made money, lost money, whatever.

Q. To your knowledge, was Morgan Stanley or Davis Polk denied access to any information or personnel at Sunbeam?

A. Not to my knowledge. I have no recollection of being denied access to anyone.

Lurie

And if I was, it would certainly have raised a question in my mind. But I have no recollection of having that concern.

Q. Have you formed the view, with hindsight, that Sunbeam lied to Morgan Stanley, though?

A. I really haven't thought about whether they were lying or whether they just missed their sales expectations. I know there were issues later on with channel stuffing and revenue recognition and potentially sales that didn't occur or that were empty boxes, sort of, but I don't know when those -- I don't recall today when those occurred, whether they were in connection with the offering -- or in connection with the first quarter, not saying in connection with the offering. It's just a long time ago. And I don't remember the specifics of the time frame.

Q. So as you sit here, you are not in a position to say that Sunbeam lied to Morgan Stanley?

A. At the time I didn't -- not think they were lying. I don't know again what all the

Lurie

transactions were and when all the questionable practices occurred. I don't recall, at least.

Q. And you were nodding your head "no," which the Court Reporter can't pick up.

A. Oh, I'm sorry.

Q. You left Davis Polk in April of '98?

A. End of April.

Q. Were you negotiating with O'Sullivan while you were -- during March of '98?

A. I had agreed -- I think I told people that I was leaving back in February. I think it was like two months before. In fact, Sunbeam was the last real deal I did at Davis Polk.

Q. So you had already given notice before you worked on the transaction?

A. Yeah. Yeah.

Q. But you were still at Davis Polk when the April 3 press release came out; is that correct?

A. Yes.

Q. That was the press release -- well, let me just show it to you.

This was marked previously as Exhibit 36.

Lurie

A. Do you want me to read this whole thing?

Q. If you could. Thanks.

A. Okay.

Q. Did you see this press release at around the time it was issued?

A. I have absolutely no recollection of seeing this press release.

Q. Do you have any recollection, then, of being surprised by Sunbeam's first quarter '98 results when they were announced?

A. I do not today -- recall today when I heard about the first quarter or this press release or anything else about the Sunbeam.

Q. So it's safe to say, then, that you don't recall any surprise about hearing the results?

A. That's correct. I don't remember any surprise.

Q. I want to ask you about one sentence which is on -- in the second paragraph of the release itself.

A. Okay.

Q. Towards the middle there is a

NOT A CERTIFIED COPY

017074

Page 182

Lurie

sentence that states, "We were offered opportunities to sell additional product at margins which we felt were unacceptable and we rejected that business."

Had you heard anything like that during the course of your diligence?

A. I don't recall any discussion relating to that.

Q. How about the next sentence and, in particular, the phrase that "Sunbeam felt it was important to preserve the integrity of our brands and not to sacrifice the future of our business for short term results."

Do you see that?

A. Yeah.

Q. At any time in March of 1998 did you have any discussions concerning Sunbeam's long-term performance as opposed to its short-term results?

A. Well, we obviously talked about, as I said earlier, the full year expectations versus quarterly expectations. We very well may have seen projections for 1999 during the course of the due diligence process. So you're always

Page 183

Lurie

looking at both short-term projections and long-term forecast projections.

Q. Did you satisfy yourself that Sunbeam was -- strike that.

Did you determine whether Sunbeam was a company being run on a short-term basis?

A. I don't remember making -- I don't remember what determination or conclusions we reached back in 1998.

Q. Did you have any discussions with anyone at Davis Polk after the convertible offering closed concerning Sunbeam, excluding the past few months?

A. I don't recall any discussions. I mean, the last month I was pretty much packing up my office, passing on other transactions, other clients I had been working on. I don't remember really today anything that might have happened regarding Sunbeam during my last month at Davis Polk.

Q. So you don't recall any discussions with, say, Mr. Dean after the first quarter closed?

A. I do not recall any discussions with

Page 184

Lurie

Mr. Dean.

Q. Did Davis Polk do any kind of postmortem on the convertible offering?

A. Not to my recollection. I'm also -- I'm not sure what you mean by "postmortem." But I'll assume -- I don't remember anything out of the ordinary. Let's put it that way.

Q. You testified earlier today that you looked at the acquisition documents to get a sense of -- the merger documents to get a sense of how they were described in the offering memorandum?

A. Uh-huh.

Q. I'm going to show you one of those, if I could.

A. Sure.

Q. It's been marked previously as MS 117. And, obviously, it's a lengthy document. So we're not going to have you read the whole thing now.

A. Thank you. Thank you.

Q. Does this look to be the merger agreement between Sunbeam and Coleman?

A. It looks to be the merger agreement

Page 185

Lurie

between Sunbeam and Coleman, yes.

Q. And this would be the document that you reviewed in March of '98?

A. Well, again, I can't tell you specifically that I actually looked at that agreement. It could have been looked at by Heather or someone else at Davis Polk. And they may have summarized any provisions to me. I don't recall when I specifically read this document. It varies from deal to deal and transaction to transaction of what I do or someone else may do.

Q. But it would be at least subject for discussion within Davis Polk?

A. It would have been reviewed as part of the due diligence process. Whether it would have been a subject of discussion is another question, but it clearly would have been reviewed.

Q. I wonder if you could look at paragraph -- excuse me -- Section 7.3, which is on Page 29 --

A. Uh-huh.

Q. -- and, in particular, 7.3(b) and

NOT A CERTIFIED COPY

017075

Lurie
read that for me.
A. You want me to read it out loud?
Q. Just read it to yourself.
A. Oh. Okay.
Q. Laser --
A. I was just going to look back. Laser, I presume, is Sunbeam?
MR. WISE: If you look on the first page, Laser is Sunbeam. The company is the Coleman company.
BY MR. JOHNSON:
Q. As long as we're looking at definitions, I want to call your attention to the definition of information statement, which is on Page 4.
A. Okay.
Q. And, of course, that refers you to another section?
A. 4.9.
Q. 4.9.
A. Why should it be any different than any other merger agreement? Uh-huh.
Q. Do you see the definition of information statement in 4.9?

Lurie
A. Uh-huh.
Q. And that's the information statement referred to in 7.3(b)?
A. I have to go back and look. I don't see (b). Is there a reference -- oh, there it is. Yeah. That would be the same definition.
Q. Based on the definition of information statement in 4.9, do you have a sense of what that document is?
A. It would be the information statement that was distributed in connection with the merger. They must have needed shareholder approval of the merger. So there was some information statement that was being delivered. That appears to be, on a quick reading, what's being referred to. I guess 13(e)(3) is a going private provision of the securities law. So there must have been -- the Coleman transaction must have constituted going private transaction.
Were they a public company? I don't even recall beforehand.
Q. If you look at Section 4.9, it also refers to a Section 14F, "Notice."
Do you see that?

Lurie
A. Yes, I do.
Q. That's a different document than the information statement?
A. Yes.
Q. I want to mark a document, if I could. This will be CPH 231.
(CPH Exhibit 231, Coleman Company, Inc. Notice of Merger and Appraisal Rights and Information Sheet, Bates-stamped CPH 1398266 through CPH 1398501, marked for identification, as of this date.)
BY MR. JOHNSON:
Q. Exhibit 231, for the record, is entitled "Coleman Company, Inc. Notice of Merger and Appraisal Rights and Information Statement." And it has the Bates stamp CPH 1398266 through '501. And I recognize this too is a lengthy document.
Does this appear to be the information statement referred to in 7.3(b) of the agreement and plan of merger?
MR. CLARE: I object to the form of the question, and foundation, as it relates to Mr. Lurie's involvement. He has already

Lurie
testified he didn't have any involvement in the merger agreement. So I think it's improper for you to ask him any questions.
BY MR. JOHNSON:
Q. You can answer.
A. It appears to be the information statement registration statement S4 that's being referred to, or whatever in this other document, in the merger agreement.
Q. In 7.3(b) of the merger agreement?
A. 4.9.
Q. Actually both.
MR. WISE: Okay. If you're testifying, then we can all leave --
MR. JOHNSON: No, no, no.
MR. WISE: And since you know the answers to the questions --
MR. JOHNSON: I'm trying --
MR. WISE: I'm sorry. I'm talking. Since you seem to know the answers to the questions, there's no sense in, you know, holding us here. So maybe we could wrap it up, then, since you already know the answers.

NOT A CERTIFIED COPY

01076

Lurie

MR. JOHNSON: It's exactly my effort to move things along.

MR. WISE: Why don't we get to a question that this witness can answer.

BY MR. JOHNSON:

Q. Okay. Does Exhibit CPH 231 appear to be the information statement referenced in Section 4.9 of the agreement and plan of merger?

MR. CLARE: If you know.

A. It looks like an information statement. I do not recall ever seeing this. I do not recall any involvement in this. I'm just looking at what the words are. And it appears to be the document.

MR. WISE: What's the question?

MR. JOHNSON: He answered.

MR. WISE: I understand. He doesn't know what it is. So go ahead. What's the question that you want to get at? Because this is obviously prefatory.

MR. JOHNSON: No, it's not.

If you want to take a break, I may, in fact, be done.

MR. WISE: Sure. I'm always in favor

Lurie

of that.

THE VIDEOGRAPHER: The time is 2:35. This completes tape number two.

(Recess taken.)

THE VIDEOGRAPHER: The time is 2:44. We're back on the record. This begins tape number three.

MR. JOHNSON: I have no questions.

MR. CLARE: Mr. Lurie, I just have a few questions for you.

THE WITNESS: Okay.

EXAMINATION BY

MR. CLARE:

Q. Did you work on any aspect of the merger and acquisition part of the transaction between Coleman and Sunbeam?

A. No, not to my recollection. I had no involvement in that part of the transaction.

Q. Did you ever represent Coleman in any portion of this transaction?

A. Absolutely not.

Q. Are you aware of what, if any, filings Coleman made with the SEC related to that transaction?

Lurie

A. I have no recollection of what filings they made or may have had to made or what they did make. I just don't know.

Q. Mr. Johnson showed you an exhibit, CPH Exhibit 231. As you sit here today, do you have any understanding or knowledge what, if any, other mailings may have been --

A. Any other what?

Q. -- mailings or filings were made by Coleman in connection with the transaction?

A. None whatsoever. I just note, this is a date of 2000 it's talking about, which is January, which is 18 months after my involvement.

Q. Are you aware one way or the other whether other filings or mailings were made by Coleman?

A. I have no idea.

MR. CLARE: Those are all the questions I have.

MR. JOHNSON: I have just a few follow-up, naturally.

FURTHER EXAMINATION BY

MR. JOHNSON:

Q. Do you have any understanding as to

Lurie

why Exhibit 231 is dated, as you say, about 18 months after the transaction?

A. I do not ever recall seeing this document. I'd have to go through and figure out what this is all. I'm assuming this is the information memo.

Q. Did you learn at some point that Arthur Andersen withheld its consent to the filing of the registration statement on the convertible offering?

A. On the registration statement on the -- on the convertible offering?

Q. Yes.

A. It was a 144A. I don't recall there being a registration related to it.

Q. You don't recall any subsequent registration?

A. I don't recall any subsequent registration.

Q. Do you recall more generally Andersen withholding its consent to any SEC filings for Sunbeam?

A. I don't recall anything. This is, to my knowledge, the first I've heard that they

NOT A CERTIFIED COPY

011077

Lurie

withheld their consent.
Q. As you sit here today, do you have an opinion as to whether the offering memorandum that you worked on was materially false and misleading at the time it was issued?
A. I'm sorry. Could you repeat the question.
Q. As you sit here today, with the benefit of hindsight, do you have opinion as to whether, when it issued, the offering memorandum was materially false and misleading?
A. I haven't really thought about it. There are obviously questions I might want to reconsider today, but I haven't really thought about it. It depends on what we knew and what we felt at the time we issued the offering memorandum that was issued that we had done the appropriate, necessary thorough due diligence, and we thought it was an appropriate offering memo.
Q. But with the benefit of hindsight, you now acknowledge it may not have been an accurate offering memorandum?
A. I don't want to acknowledge anything.

Lurie

I mean, again, I'd have to go back and understand what the issues related to Sunbeam's actual problems were, which I don't specifically recall today, what the related SEC concerns and investigations were, have to tie it back to what was in the offering memo and what we may have known at the time. And I just haven't spent any time, to be honest, thinking about those.
Q. So, as you sit here today, you don't have an opinion as to whether there was, in fact, a massive fraud at Sunbeam?
A. I understand there was significant fraud at Sunbeam through the papers, through the SEC proceeding, that there was fraud related to Sunbeam. I do not recall today where and how and what period that fraud related to or specifically how it might have related to the audited financials that were in our offering memo. I'd have to go back and review all of that if you want a specific answer.
Q. And so you don't have a recollection of Sunbeam unraveling within months of the offering memorandum?
MR. WISE: That's not what he said,

Lurie

and that's not a fair way to put the question. And you've gone way beyond the questions that Mr. Clare had asked. So I would suggest you wrap it up.
BY MR. JOHNSON:
Q. Can you answer the question?
DI MR. WISE: No. I'm going to direct him not to answer that.
BY MR. JOHNSON:
Q. As you sit here today, you don't know where the Sunbeam fraud fits in relation to the work that you did for Sunbeam?
MR. WISE: He just said that. That's repetitive. I object and direct him not to answer.
Do you have some new questions for this witness?
MR. JOHNSON: No, I don't. And if --
DI MR. WISE: Then if you don't, we're finished. I direct him not to answer. It's repetitive. He answered that. It's in the transcript. You already have that answer.
MR. JOHNSON: Okay. No further questions.

Lurie

MR. WISE: Thank you.
THE VIDEOGRAPHER: The time is 2:49 p.m. This completes the videotaped deposition of Mr. James Lurie.

_____
JAMES M. LURIE

Subscribed and sworn to before me this ____ day of _____, 2004.

_____

011078

NOT A CERTIFIED COPY

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF WESTCHESTER)

I, JANE WATSON, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That, the witness JAMES M. LURIE whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of June, 2004.

_____
JANE WATSON

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
James M. Lurie	Mr. Johnson	5, 192
	Mr. Clare	191

---------- INFORMATION REQUESTS ----------

DIRECTIONS: 196

---------- EXHIBITS ----------

CPH FOR ID.

CPH Exhibit 230, 3/10/98 memo re:"Draft Customer Concentration Risk Factor," Bates-stamped CPH 0635890 through CPH 0635891..... 61

CPH Exhibit 231, Coleman Company, Inc. Notice of Merger and Appraisal Rights and Information Sheet, Bates-stamped CPH 1398266 through CPH 1398501..... 188

*** ERRATA SHEET ***
ESQUIRE DEPOSITION SERVICES
155 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 782-8087

NAME OF CASE: Coleman V Morgan Stanley
DATE OF DEPOSITION: June 18, 2004
WITNESS: James M. Lurie

PAGE	LINE	FROM	TO

_____
JAMES M. LURIE

Subscribed and sworn to before me this ____ day of _____, 2004.

_____ _____
(Notary Public) My Commission Expires:

NOT A CERTIFIED COPY

017079

NOT A CERTIFIED COPY

017080

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

VIDEOTAPED DEPOSITION OF RUTH PORAT

New York, New York

Tuesday, November 23, 2004

Reported by:
Yaffa Kaplan
JOB NO. 167717

NOT A CERTIFIED COPY

017081

November 23, 2004
8:04 a.m.

Videotaped deposition of RUTH PORAT, held at the offices of Esquire Deposition Services, 216 East 45th Street, New York, New York, pursuant to Notice, before Yaffa Kaplan, a Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for Plaintiff
One IBM Plaza
Chicago, Illinois 60611-7603
BY: ROBERT T. MARKOWSKI, ESQ.
-and-
CHRISTOPHER M. O'CONNOR, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Defendant
655 Fifteenth Street N.W.
Washington, D.C. 20005
BY: THOMAS A. CLARE, ESQ.

ALSO PRESENT:
JAMES DOYLE
STEVEN L. FASMAN
VICTOR DISLA, Legal Video Specialist

THE VIDEOGRAPHER: This is tape number 1 of the videotaped deposition of Ruth Porat in the matter Coleman (Parent) Holdings, Inc., Plaintiff versus Morgan Stanley & Co., Inc. Defendant, in the 15th Judicial Circuit in and for Palm Beach County, Florida. This deposition is being held at Esquire Deposition Services, 216 East 45th Street, New York, New York, on November 23, 2004 at approximately 8:04 a.m.

My name is Victor Disla, from the firm of Esquire Video Services, and I am the legal video specialist. The court reporter is Yaffa Kaplan, also in association with Esquire Deposition Services.

Will counsel please introduce themselves for the record.

MR. MARKOWSKI: Bob Markowksi from Jenner & Block, on behalf of Coleman (Parent) Holdings.

MR. O'CONNOR: Christopher O'Connor of Jenner & Block LLP on behalf of Coleman (Parent) Holdings.

MR. CLARE: Tom Clare with Kirkland & Ellis LLP, here on behalf of Morgan Stanley

and the witness, Ruth Porat. And I have with me Jim Doyle, from Morgan Stanley's law department.

MR. MARKOWSKI: And also with us today is Steven Fasman from MacAndrews & Forbes.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

RUTH PORAT, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. MARKOWSKI:

Q. Would you please state your full name for the record?

A. Ruth Porat.

Q. And again I ask you for your home address.

A. 1 West 72nd Street, New York, New York 10023.

Q. And who is your current employer today, Ms. Porat?

A. Morgan Stanley.

Q. Are you represented by counsel today?

A. Yes.

Q. Who is that?

NOT A CERTIFIED COPY

A. The two gentlemen here.
Q. Did you have an opportunity to prepare for your deposition today?
A. Briefly.
Q. How did you do that?
A. Spent time with counsel and looked at a couple of documents from a prior deposition.
Q. Did you review your prior deposition transcript?
A. Yes.
Q. Let me show you that.
MR. MARKOWSKI: Can you mark that as Coleman (Parent) Holdings Exhibit 342.
(Coleman (Parent) Holdings Exhibit 342, transcript of Ruth Porat's deposition of February 6, 2001, marked for identification, as of this date.)
Q. Do you have Exhibit 342 in front of you?
A. Yes.
Q. Can you tell me what it is?
A. From my deposition from February 6, 2001.
Q. In the case of Camden Asset Management versus Sunbeam, correct?
A. Correct.

Q. And this is the testimony you gave in that litigation?
A. I believe so from the cover.
Q. And you gave this testimony under oath, correct?
A. Yes.
Q. And you read this deposition transcript prior to coming here today to prepare?
A. Is this the one I -- yes.
Q. In reading -- how recently did you read it?
A. Yesterday.
Q. In reading it, did you come across any testimony that you gave that you believe to be inaccurate today?
A. No.
Q. In reading it, did you recall things today that you did not recall at the time you testified in February of 2001?
A. No.
Q. Did reviewing this transcript refresh your recollection as to certain things?
A. Yes.
Q. When did you first meet with counsel to prepare for today?

A. Last Thursday or Friday. I don't remember exactly. It was last week.
Q. Where was that?
A. In my office.
Q. With whom did you meet?
A. Tom and Jim.
Q. Mr. Clare and Mr. Doyle?
A. Yes.
Q. Anyone else?
A. No.
Q. In addition to the testimony that you gave in the Camden Asset litigation in February of 2001, Ms. Porat, you have been deposed on other occasions; is that correct?
A. Yes.
Q. How many others?
A. I am guessing, but not very many, maybe a handful. I am not sure.
Q. How would you define "a handful" in this context?
A. I am completely guessing here, but maybe five times.
Q. Can you recall any of the matters in which you were deposed?
A. I was deposed on regarding a company

called Perrigo and on Sunbeam a couple of times, it feels like at this point. And once on Martha Stewart, and that's all I can recall. There may be more, but that's all I can recall.
Q. The Perrigo matter involved litigation against Morgan Stanley, correct?
A. I don't remember. It was a long time ago.
Q. It involved a transaction in which you were involved while you were employed at Morgan Stanley in the early 1990s, correct?
A. Yes.
Q. The Martha Stewart matter in which you testified, what did that litigation involve?
A. That was more background around the case of Morgan Stanley. It wasn't -- I don't think there was -- there was no case against Morgan Stanley that I recall.
Q. Did it relate to Ms. Stewart's recent criminal prosecution?
A. Yes.
Q. Did you testify in the criminal case?
A. No.
Q. What was the nature of the proceeding in which you testified?

NOT A CERTIFIED COPY

Page 10

THE WITNESS: Can I just ask something? Is it okay to talk about other cases?
MR. CLARE: Within reason.
THE WITNESS: It's a little uncomfortable.
MR. CLARE: You can describe generally the substance.
A. The U.S. Attorney's office had me come down and talk about events around the trade that was the subject of the litigation.
Q. Was this before the grand jury?
A. No. It was just it was in their office. It was the U.S. Attorney and I came with a couple of other people there and it was background. It lasted, as I recall, maybe an hour. It was pretty short. There wasn't much that was relevant.
Q. Did you have any personal knowledge relating to the facts concerning Ms. Stewart's situation?
A. No. That's why it was so short.
Q. One of the things we will try to do today is not talk at the same time. It's a little tricky at times because the court reporter can only record -- I am sure she will do well, but it's easier for her if only one of us speaks at the same

Page 11

time. So I will wait until you finish your answer and I would appreciate if you try to pause and wait till I finish my questions, so we will go more smoothly.
Is there any reason today, Ms. Porat, why you would have difficulty testifying truthfully or accurately?
A. No.
Q. Are you taking any medications that might affect your testimony in any way?
A. I don't know whether it would affect my testimony, but yes.
Q. You believe that you may be taking medications currently that could have an affect on your ability to testify today?
A. I am taking an oral chemotherapy and it may or may not affect my memory.
Q. Have you been told that?
A. I was told when I was on chemo, on the big dose, that it could and I don't know if it does.
Q. Have you noticed that occurring to you?
A. That my memory is not as good? I have been told it's not as good. I don't think it is. I will do my best and tell you if I have problems.

Page 12

Q. Are you currently working?
A. Yes.
Q. Do you currently have client responsibilities?
A. Yes.
Q. Would you characterize your current client responsibilities for Morgan Stanley clients as involving financially significant transactions?
A. Yes.
Q. Has the firm modified your work-related responsibilities at all as a result of your current medical condition?
A. They have been, I think, very supportive and said I should handle as much as I can handle, which is what I am doing.
Q. But they haven't taken away responsibility for client matters?
A. No.
Q. Are you currently responsible for supervising the activities of others at Morgan Stanley?
A. Yes.
Q. What's the general nature of that?
A. On any client matter we have a team that works on it and I am generally responsible for the

Page 13

team that works on those situations.
Q. What's your current work schedule?
A. In around -- I mean, hours?
Q. Daily schedule, yes.
A. In around 7:30 or 8, out around 7. Oftentimes I have something in the evening.
Q. So your normal workday would be from 7 in the morning until 7 at night and then you might have further responsibilities outside the office?
A. Give or take.
Q. Is that every day of the week?
A. It varies, but that's a reasonable estimate.
Q. What's your current position at Morgan Stanley?
A. Vice chairman of investment banking.
Q. To whom do you report?
A. Terry Meguid, who is the head of investment banking.
Q. What do you think of Mr. Meguid?
MR. CLARE: Objection to form.
Q. What do you think of him?
A. What do you mean by that?
Q. What do you think of him professionally, what's your opinion of him?

NOT A CERTIFIED COPY

017084

A. I think he is a very strong professional.
Q. What do you think of him as a manager?
MR. CLARE: Same objection.
A. I think he is a very good manager.
Q. What do you think of him as a judge of other people at the firm?
MR. CLARE: Same objection.
A. I think highly of him.
Q. Do you think he is capable of judging other Morgan Stanley personnel well?
MR. CLARE: Same objection.
A. Yes.
Q. The position of vice chairman of investment banking, Ms. Porat, what responsibilities does that entail?
A. It implies a certain role on -- with respect to clients, and I am involved in other matters for the division, like involved in the year-end review process and other areas that could be helpful in running the division, basically supporting Terry Meguid's efforts.
Q. Is Mr. Meguid's title --
A. Meguid.
Q. I'm sorry?

A. Meguid.
Q. Is Mr. Meguid's title chairman of investment banking?
A. No.
Q. What is his title?
A. I think it's head of investment banking. I am not sure.
Q. Is there more than one vice chairman of investment banking at Morgan Stanley today?
A. Yes.
Q. How many are there?
A. Approximately a dozen. I am not sure exactly.
Q. Are there any administrative responsibilities associated with that position?
A. Other than what I just described?
Q. Yes.
A. No.
Q. Can you briefly give me an overview of the kinds of client-related matters for which you are currently responsible?
A. It varies across M&A equity and debt. That's basically whatever issues a client is trying to solve.
Q. What's the general nature of the role

you play in those client transactions?
A. Trying to understand what the issues are, support clients, and then making sure we have the right Morgan Stanley colleagues involved, and who are most proficient in the relevant area, focused on the problem.
Q. Do you have any responsibility for business investment?
A. Yes.
Q. What is the nature of that?
A. Well, that's when I said trying to understand clients' problems. To me, that's what business investment is. It's meeting with clients, trying to understand what their issues are and trying to -- you can call it business investment, trying to understand their for -- what business is most relevant for them.
Q. Do you have responsibility for trying to obtain engagements for Morgan Stanley?
A. Yes.
Q. How do you go about doing that?
A. Meet with clients and, feeling a little repetitive, but trying to understand what the issues are that are most important to them.
Q. And make presentations about Morgan

Stanley capabilities?
A. Yes, at times.
Q. Are you currently doing that?
A. Yes.
Q. You graduated from business school in 1987?
A. Correct.
Q. And you went to work directly after business school with Morgan Stanley, correct?
A. Yes.
Q. And you remained with Morgan Stanley until 1993?
A. Correct.
Q. Can you give me an overview of your responsibilities between 1987 and 1993 while you were employed at Morgan Stanley?
A. In 1987 when I joined Morgan Stanley, I was in the M&A department and then in approximately 1990 I moved to the corporate finance department.
Q. What kinds of matters were you involved in while you were in the corporate finance department in the early '90s with Morgan Stanley?
A. I spent most of my time covering what is now called financial sponsors, leveraged buyout firms, looking for acquisitions for them, and

NOT A CERTIFIED COPY

011705

Page 18

helping with equity offerings.
Q. During your employment at Morgan Stanley from '87 through 1993, you became very experienced in conducting due diligence associated with mergers and acquisitions, did you not?
MR. CLARE: Objection to the form of the question.
A. I was involved in due diligence.
Q. You became very familiar with that process in that six-year period, did you not?
A. I became familiar. I am not sure where you are going with "very experienced." I don't know how you calibrate that, but I was involved in diligence processes.
Q. I'm sorry, I didn't mean to interrupt. On a regular basis?
A. Yes.
Q. And you had due diligence responsibilities yourself during that time period, correct?
A. Yes.
Q. I think one of the things you -- in fact, one of the things you testified about in the Perrigo litigation related to due diligence that Morgan Stanley conducted, correct?

Page 19

A. Yes.
Q. You left Morgan Stanley in 1993 and went to work for Smith Barney, correct?
A. Yes.
Q. And you stayed at Smith Barney until 1996?
A. Yes.
Q. Why did you leave Morgan Stanley?
A. Two of the people I worked with closely went to Smith Barney and I went with them.
Q. Who were they?
A. Bob Greenhill and Bob Lessom.
Q. What did you do while you were at Smith Barney?
A. I similarly focused on the financial sponsors of the OBO firm and in the corporate finance department.
Q. And you left Smith Barney in '96 and returned to Morgan Stanley, correct?
A. Yes.
Q. How did that come about?
A. What do you mean by how did that come about?
Q. How did it happen that you left Smith Barney and went to work for Morgan Stanley again?

Page 20

A. I indicated to a couple of people at Morgan Stanley I would be interested in returning if I had the opportunity. And in 1996 a friend called and said if you are interested in talking about coming back, and I did and reinterviewed with a number of people and returned to the firm.
Q. Who called you?
A. Someone by the name of John Adams.
Q. What was the position you were when you rejoined Morgan Stanley in 1996, what was your position?
A. Principal.
Q. In what department did you work?
A. I rejoined in the equity capital markets.
Q. What's the nature of the business that the equity capital markets department in Morgan Stanley conducts?
A. There are a number of different roles. Equity capital markets is a joint venture between investment banking and the equity division, so it is involved in a number of steps related to equity offering. I was on the side that was more of what's called coverage business investment, meeting with clients in the earlier stages of a

Page 21

transaction. And then there is another part of the business that is called syndicate. That's more involved in the execution base of the business.
Q. What kind of transactions does equity capital markets assist Morgan Stanley clients in effectuating?
A. Many different equity and equity-linked transactions, so IPOs, secondary sales of common stock convertible securities.
Q. How long did you remain a principal?
A. I think until 1997, but I am not sure.
Q. You were promoted to a managing director after that?
A. Yes.
Q. At least by the time of the events that we are going to be talking about today in 1997, 1998, when you were involved in work for Sunbeam, you were a managing director for Morgan Stanley, correct?
A. Yes.
Q. What does the title managing director at Morgan Stanley mean, Ms. Porat?
MR. CLARE: I object to the form of the question.
A. I am not exactly sure what you mean by

NOT A CERTIFIED COPY

Page 22

the question.
Q. What's the significance of the title managing director?
A. Managing director is the title that you -- it is -- it's essentially about the highest title you can have.
Q. I have sometimes heard Morgan Stanley managing directors refer to other Morgan Stanley managing directors as their partners?
A. Yes.
Q. Is that a term that you use sometimes to refer to other managing directors?
A. Yes.
Q. Was a managing director in your mind equivalent to a partner in a law firm partnership, for example?
MR. CLARE: Objection to the form of the question.
A. Never worked in a law firm, so.
Q. Or partner in any partnership?
A. I use the term "partner" to refer to my colleagues who are managing directors.
Q. You are using that in the context of a partner in a partnership?
A. I am using it to connote someone who is

Page 23

very senior in an organization and for whom we collectively feel a responsibility.
Q. Equivalent to an owner in a business?
MR. CLARE: Same objection.
A. Perhaps in a way. Not quite sure where you are going with it, so.
Q. When you returned to Morgan Stanley, Ms. Porat, in 1996 you became involved in doing IPO work, correct?
A. Yes.
Q. That was a fairly significant part of the work that you were engaged in during the late 1990s, correct?
A. Correct, from the equity capital markets group.
Q. And a great deal of your work in 1998 involved IPOs, correct?
A. Yes.
Q. A lot of the IPOs in which you were engaged in 1998 involved Internet companies, correct?
A. Yes.
Q. Morgan Stanley in the late 1990s did more Internet IPOs than any other major investment bank, correct?

Page 24

A. No, not correct.
Q. Who did more?
A. Well, I am guessing here, but when we looked, as I recall, when we looked at the numbers, we actually didn't do as many as others like first Boston, as I recall, at certain points, and some others. Wouldn't necessarily do the largest number.
Q. Is it the case that there were various points where Morgan Stanley believed it was more -- doing more IPOs for Internet companies than any other major investment bank?
MR. CLARE: Objection, foundation.
A. I don't know.
Q. Let me put it this way. Were there times that you believed that Morgan Stanley was doing more Internet IPO transactional work than any other investment bank?
A. Well, as I recall, we were doing more technology underwriting, which is different than Internet, so I am not -- are you asking specifically about Internet IPOs?
Q. Yes.
A. I don't recall that we -- the reason I asked the technology question is we were, as I

Page 25

recall, doing more technology underwriting.
Q. In any event, Morgan Stanley was doing a significant number of Internet IPOs in the late 1990s, correct?
A. Yes.
Q. And you were involved in those, correct?
A. Yes.
Q. Were you involved in all the Internet IPO transaction work that Morgan Stanley was doing in the late 1990s?
A. In all likelihood I was involved. I was involved, if not all, with a lot of it.
Q. You were considered a key member of that Morgan Stanley team for that kind of work, correct?
MR. CLARE: Objection to the form of the question.
A. Yes.
Q. You considered yourself a key member of the Morgan Stanley team doing IPO transactional work for Internet companies in the late 1990s, correct, Ms. Porat?
A. Yes.
Q. You worked extensively with Mary Meeker?
A. Yes.
Q. Who is Mary Meeker?

NOT A CERTIFIED COPY

A. Mary Meeker is a research analyst who covers -- has covered the technology sector for many years and covers the Internet sector.
Q. She is a managing director at Morgan Stanley?
A. Yes.
Q. What was her position in the late 1990s?
A. I don't know when she was promoted to managing director, but at some point in that period she was promoted to managing director and I think by the end of -- she became managing director by the end of the '90s.
Q. Can you describe for me the nature of your working relationship with Mary Meeker in the late 1990s?
MR. CLARE: Object to the form of the question and object to this line of questioning as irrelevant to issues related to this lawsuit and a waste of time.
Q. The nature of your working relationship with Mary Meeker in the late 1990s?
MR. CLARE: And to form.
A. Can you be more specific?
Q. Sure. In what way in the transactions that you were involved in relating to Internet IPOs

in the late 1990s at Morgan Stanley did you work with Mary Meeker?
A. Well, she was in the research department and would have a point of view about various companies and their prospects and whether they were the type of company that she would, you know, feel confident researching and following and so there was typically a team that included equity capital markets, corporate finance, and research, and we would meet the company, assess the prospects and determine collectively whether it was a company that we would bank or not bank.
Q. In the late 1990s you were involved in attempting to obtain engagements for Morgan Stanley involving IPO transactions for Internet companies, correct?
MR. CLARE: I am going to renew my objection. This has absolutely nothing to do with Sunbeam and it's a complete waste of the witness's time. And I object to the form of your question.
Q. Do you recall the question, ma'am?
A. No.
MR. MARKOWSKI: Can you read the question back.

(Record read.)
A. Yes.
Q. And you worked with Mary Meeker in that effort, correct?
A. Yes.
Q. Has Morgan Stanley been sued in any of the Internet IPO deals in which you worked with Mary Meeker?
A. I believe so.
Q. Can you tell me the transactions that it involved, that have resulted in litigation -- excuse me.
Can you identify for me the IPO transactions that have resulted in litigation against Morgan Stanley?
A. No, I can't.
Q. Do you believe it's more than one?
A. I would be completely guessing. I don't know.
Q. But you know there has been litigation filed against Morgan Stanley in at least one Internet IPO that you and Mary Meeker worked on together?
A. I assume so, yes.
Q. Have you been deposed in any of those

cases?
A. If I have, I don't recall.
Q. You have been described in the financial press as a "rainmaker" at Morgan Stanley, Ms. Porat, are you aware of that?
A. Yes.
Q. You think that's a fair characterization of at least one aspect of what you bring to Morgan Stanley?
A. How are you defining --
Q. Are you familiar with the term "rainmaker"?
A. I just want to make sure I understand how you are understanding it.
Q. Let work with your definition. Are you familiar with the term?
A. Yes.
Q. What do you understand it to mean in the context of the investment banking business?
A. Bringing in business.
Q. Do you think that's a fair characterization of the value that you bring to Morgan Stanley?
A. Yes.
Q. Have you heard the term "rainmaker" used

NOT A CERTIFIED COPY

017088

at Morgan Stanley?
A. Not very often.
Q. Do you know Bill Strong?
A. Yes.
Q. Who is Bill Strong?
A. He is a managing director based in our Chicago office.
Q. You worked with Mr. Strong in connection with the Sunbeam transactions, correct?
A. Yes.
Q. In the late 1990s, did you consider Mr. Strong to be a rainmaker at Morgan Stanley?
A. Yes.
Q. Mr. Strong was well known for his ability to bring in business, correct?
MR. CLARE: Objection, calls for speculation.
You can answer.
A. Yes.
Q. I have seen an indication in the financial press, Ms. Porat, that in the spring of 2002 there was speculation that you might be leaving Morgan Stanley to go to work at UBS Warburg. Have you ever seen -- well, let me strike that question.

Was there a time in the spring of 2002 that you considered leaving Morgan Stanley?
A. Yes.
Q. And did you consider going to UBS Warburg?
A. Yes.
Q. Why did you consider leaving Morgan Stanley at that time?
MR. CLARE: I want to renew my objection to this whole line of questioning as irrelevant to anything related to Sunbeam, as a complete waste of time.
You can answer.
A. I was someone -- I had known for years that people at UBS had been trying to recruit me there for some time.
Q. Was there any particular reason why you were considering leaving Morgan Stanley?
A. The opportunity at UBS I thought might be more interesting.
Q. Is there anything about your work environment at Morgan Stanley that you were unhappy with at that time?
A. It was really the -- what I thought might be the relative comparison.

Q. Did Morgan Stanley take any steps to keep you?
A. I spoke to a number of people at Morgan Stanley and concluded that, actually, I would prefer to stay.
Q. Did they offer you any inducements to stay?
A. What do you mean by "inducements"?
Q. Additional compensation, a change in job responsibility, a change in work environment, something that would induce you to stay at Morgan Stanley and not leave to go to a competitor?
A. They had me -- they made up an error in the compensation decision, but that was it. It wasn't an inducement. It wasn't -- they didn't -- it wasn't more than that.
Q. You had some complaint about a compensation decision that had been made?
A. Yes.
Q. And that was rectified?
A. Correct.
Q. How much money did that involve?
A. I don't recall.
Q. Was it significant, in your mind?
MR. CLARE: Objection to the form of the

question.
A. It was more about a promise.
Q. What was the nature of the promise?
A. Just an expectation on what compensation would have been.
Q. Who made the promise?
A. I don't even actually recall.
Q. And you felt that someone had reneged on that promise?
A. Yes.
Q. And who rectified it for you?
A. It was -- I wouldn't know one person to name. It was just whoever the group was.
Q. Was Mr. Meguid involved in that?
A. Yes.
Q. Was he the person who reneged on the promise?
A. Again, I don't think it's one person. It was just a process.
Q. Did you blame him for it?
A. I don't think I understand "blame."
Q. Did you think he was responsible in some way for the disappointment that you realized when this promise wasn't fulfilled related to your compensation?

NOT A CERTIFIED COPY

017089

Page 34

A. I think he was part of it.
Q. Was he involved in rectifying it?
A. He was part of it.
Q. Was there someone more senior to Mr. Meguid that was involved in rectifying it?
A. I don't know who else was involved at the end of the day in making the decision.
Q. Do you know anyone who was involved?
A. What do you mean?
Q. In rectifying the complaint that you had about the promise that was unmet relating to your compensation, do you know anybody other than Mr. Meguid who was involved in rectifying that situation to your satisfaction?
A. Probably Joe Perella. I am not sure who else made the decision.
Q. How was compensation set at Morgan Stanley?
MR. CLARE: Object to the form of the question.
Q. Let me rephrase the question. How was compensation for managing directors set at Morgan Stanley?
A. I actually don't fully know the answer to that, but...

Page 35

Q. What's your understanding?
A. A group of people review it to see whether it's appropriate.
Q. How do they gather information?
MR. CLARE: Objection, calls for speculation, no foundation.
Q. Your understanding?
A. My understanding is a lot of it is tied to what we call a 360 process, where people are reviewed by colleagues, that are reviewed by people that work for them, reviewed by people in different departments, different geographies.
Q. Is that the same -- is that the situation that you are describing today?
A. Yes.
Q. Was it the same in the late 1990s?
A. Essentially the same.
Q. The review process that you referred to as the 360 degree review process --
A. Yes.
Q. -- what does that refer to?
A. That people all around you, upwards, downwards, sideways, review you.
Q. And in the late 1990s you were a managing director at Morgan Stanley, correct,

Page 36

Ms. Porat?
A. Yes.
Q. Was it your understanding at the time that the 360 review process was significant with respect to the process by which compensation would be set for you?
A. Yes.
Q. Other than meeting with Mr. Clare and Mr. Doyle, Ms. Porat, did you discuss the fact that you would be -- strike that?
Other than your conversations with Mr. Doyle and Mr. Clare, have you discussed with anyone else the fact that you would be deposed today?
A. No.
Q. Have you had any conversations with Mr. Strong relating to the Sunbeam litigation?
A. No.
Q. Have you had any discussions with any of your colleagues at Morgan Stanley relating to the lawsuit that my client, Coleman (Parent) Holdings, has filed against Morgan Stanley?
A. No.
Q. Other than Mr. Doyle, I assume?
A. I'm sorry, I thought that was the

Page 37

exception. Yes.
Q. Ms. Porat, you are aware that Morgan Stanley began performing work for Sunbeam in the spring of 1997, correct?
A. I'm sorry, can you repeat that?
Q. Are you aware that Morgan Stanley began performing work for Sunbeam in the spring of 1997?
A. I have been told that. I don't know when they actually began doing work.
Q. Who were you told that by?
A. I think it came out in a deposition or somewhere else.
Q. You are aware that Mr. Strong was instrumental in helping Morgan Stanley obtain the Sunbeam engagement, correct?
MR. CLARE: Objection to the form of the question and lack of foundation.
A. That's what I have been told, but I don't have personal knowledge of it.
Q. When you began working on the Sunbeam transaction, you had an understanding that Mr. Strong was involved in obtaining that engagement for Morgan Stanley, correct?
A. Mr. Strong and some others, yes.
Q. That was your understanding at that

NOT A CERTIFIED COPY

017000

Page 38

time, correct?
A. Yes.
Q. Who else other than Mr. Strong was involved in obtaining that engagement, to your understanding?
A. As I recall, Bob Kitts, who was in -- I think, I am not sure actually what he was doing at the time.
Q. You know that Mr. Strong had had a prior working relationship with Mr. Dunlap, correct?
MR. CLARE: You are asking whether she knew that at the time --
MR. MARKOWSKI: Yes.
MR. CLARE: -- or knows it today?
A. I don't recall.
Q. When you were working on the transaction, did you know that Mr. Strong had a prior working relationship with Mr. Dunlap when Mr. Dunlap was at other firms?
A. Sitting here today, I don't remember if it was with Mr. Dunlap or other people at Sunbeam.
Q. You had an understanding that he had a prior relationship with someone in Sunbeam management?
A. Yes.

Page 39

Q. And as you sit here today you are not certain if that was Mr. Dunlap or Mr. Kersh or someone else?
A. I can't recall if it was Mr. Dunlap or Mr. Fannin. I can't remember.
Q. Let me show you what we have previously marked as CPH Exhibit 129. It's a March 10, 1998 memorandum to the equity commitment committee from a number of individuals at Morgan Stanley, including you. I would like you to take a moment to read the first paragraph under "Background." We are going to spend more time with this document later, but can you tell me to start with what this memorandum is, Ms. Porat?
A. This is a memo that goes before what's called the equity commitment committee to determine whether we -- whether Morgan Stanley wants to underwrite whatever that particular security is, in this case a convertible offering.
Q. This memorandum relates directly to the project in which you were involved in connection with the work that Morgan Stanley was doing for Sunbeam, correct?
A. Yes.
Q. Were you involved in preparing this

Page 40

memorandum for the equity commitment committee?
A. I don't recall if I was.
Q. Did you at least read it before it was presented to the equity commitment committee?
A. I assume I did.
Q. It states in the first paragraph that Bill Strong had a prior working relationship with Mr. Dunlap, doesn't it?
A. Yes.
Q. And that Mr. Strong first met Mr. Dunlap in 1986 when Mr. Dunlap was working for Sir James Goldsmith?
A. Yes.
Q. And that Mr. Strong had been involved with three transactions for Mr. Dunlap in Sir James Goldsmith, correct?
A. Yes.
Q. And that the most recent of those was a $275 million regulation S sale of New Mining common stock in 1993 and successfully executed by Morgan Stanley, correct?
A. Yes.
Q. So you were aware of those facts at the time that you were working on the Sunbeam transactions for Morgan Stanley, correct?

Page 41

A. Yes.
Q. Does this refresh your recollection of that?
A. Well, having just read it.
Q. Do you recall being aware, Ms. Porat, that Morgan Stanley's initial efforts for Sunbeam were directed at trying to find a company to buy Sunbeam?
A. I only recall that from reading the deposition, where I was asked that last time.
Q. Did you have that understanding in 1997 and 1998 when you were working on Sunbeam work?
A. I don't recall.
Q. Let me show you a document that's previously been marked CPH Exhibit Number 11, Ms. Porat. It's an October 22, 1997 interoffice memorandum from the Sunbeam Corporation team to Morgan Stanley Worldwide IBD professionals.
I think we have given you the wrong exhibit. Let me see if I can find the correct one.
Let me show you what we have previously marked as CPH Exhibit 71. It's an October 23, 1997 -- excuse me -- an October 22, 1997 memorandum from the Sunbeam Corporation team to Morgan Stanley Worldwide IBD professionals and the subject is

NOT A CERTIFIED COPY

Sunbeam Corporation strategic advisory assignment. I would like you to take a moment, Ms. Porat, and review the document and tell me if you recall seeing it?

A. I don't recall seeing it.

Q. The distribution of Worldwide IBD professionals, Ms. Porat, who would that have included in October of 1997?

A. I believe that would include everybody from analyst through managing director in investment banking worldwide.

Q. Would you have been in that group in October of 1997?

A. Yes.

Q. So this as a memorandum that in the ordinary course would have come to you, correct?

A. Yes.

Q. And this memorandum advises that Morgan Stanley -- there has been a public announcement that Morgan Stanley has been engaged to represent Sunbeam Company, correct?

A. Yes.

Q. And that that engagement involves either looking for a company to acquire Sunbeam or looking for potential acquisition candidates, correct?

A. Yes.

Q. And this is something you would have been advised of in October of 1997 when you received this memorandum, correct?

A. Yes.

Q. Ms. Porat, did you -- were you told at any point during the work that you performed for Sunbeam in 1997 and 1998 that Morgan Stanley had attempted, but had been unable to find a company to acquire Sunbeam?

A. I don't recall that other than, again, reading it in the prior deposition where I was asked that question.

Q. Were you aware that Mr. -- referring back to the time period you were working on the engagement in 1997 and 1998, being advised that Mr. Dunlap was unhappy with Morgan Stanley's inability to find a company to acquire Sunbeam?

A. I don't recall that.

Q. In any event, Morgan Stanley assisted Sunbeam in connection with acquisitions, correct?

A. Yes.

Q. Sunbeam, in fact, acquired three companies in the first quarter of 1998, correct?

A. Yes.

Q. Coleman Company, Signature Brands and First Alert, correct?

A. Right.

Q. And you were involved in assisting Sunbeam in arranging the financing necessary to effect those acquisitions, correct?

A. Correct.

Q. You understand that I represent Coleman (Parent) Holdings, correct, Ms. Porat?

A. Yes.

Q. Coleman (Parent) Holdings owned approximately 82 percent of Coleman Company stock at that time.

MR. CLARE: Objection, lack of foundation.

A. I don't recall that.

Q. You are aware that my client owned a controlling interest in Coleman Company at the time of Sunbeam's acquisition?

MR. CLARE: Same objection.

A. I'm sorry, what is the question?

Q. You are aware that Coleman Company owned a controlling interest in Coleman (Parent) at the time Coleman Company -- at the time of Sunbeam's acquisition of Coleman Company in 1998?

A. I don't recall the year.

Q. Did you know who Sunbeam was acquiring Coleman Company from?

A. I am guessing, but I would have assumed MacAndrews & Forbes.

Q. You understand that MacAndrews & Forbes had a controlling interest in Coleman Company at that time, correct?

A. Yes.

Q. Just so it's clear to you today, Ms. Porat, I will represent to you that MacAndrews & Forbes owns Coleman (Parent) Holdings --

A. Okay.

Q. -- the plaintiff in this litigation against Morgan Stanley.

Ms. Porat, let me refer you to the attachments to CPH Exhibit 71, in particular the third page, that's entitled "Sunbeam Corporation Investment Rationale." Do you have that page in front of you?

A. Yes.

Q. Take a moment to read it.

Did you understand when you began your work for Sunbeam in connection with the financing of the acquisitions at Sunbeam completed in the

NOT A CERTIFIED COPY

17092

Page 46

first quarter of 1998, that Sunbeam was representing itself to the public as having undergone a profound transformation since the arrival of Mr. Dunlap?
A. Vaguely, yes.
Q. That was the story that Morgan Stanley used to assist in selling the debenture, correct?
MR. CLARE: Objection, lack of foundation.
A. Well, it was the combination of work that had been done and the acquisitions.
Q. But a big part of the selling story that Morgan Stanley used in selling the debentures to -- was to promote the success that Mr. Dunlap had had in turning Sunbeam around, correct?
MR. CLARE: Objection to form and foundation.
A. Again, as I recall, it was the combination that work had been done and the acquisitions would be -- would add to the story.
Q. And the work that had been done was that Mr. Dunlap was -- had completed a successful turnaround at Sunbeam, correct?
A. You keep asking the same thing. As I recall, I don't know, I can't

Page 47

remember how much -- how that the work that had been done was characterized. As I recall sitting here today, there had been successful steps done to Sunbeam when he got there and he was going to add to the story with the acquisitions.
Q. When you got this memorandum in October of 1997, Ms. Porat, you understood that this attachment represented the information, the selling themes that Morgan Stanley was attempting to promote with respect to either finding a company to buy Sunbeam or finding companies that might be willing to merge themselves with Sunbeam, correct?
MR. CLARE: Objection, calls for speculation and there is no foundation that she ever saw the document. She already testified to that.
You can answer if you can.
A. That's what I was going to say. I already told you I don't recall receiving the document.
Q. But you would have received it, you indicated, as a member of the worldwide IBD professional group?
A. I should have received it.
Q. You don't have any reason to dispute

Page 48

that, do you?
A. No, but you are asking what I recall when I received it, and I don't recall receiving it. I don't recall one way or the other.
Q. Looking at the document today, Ms. Porat, as somebody that's worked at Morgan Stanley since 1987, with the exception of a three-year period of time, would you agree with me that the reason this information is attached to the exhibit is to identify for others within the investment banking group themes that the Morgan Stanley Sunbeam team wanted to share with other professionals at Morgan Stanley relating to the Sunbeam story?
MR. CLARE: Same objection, calls for speculation.
A. I don't recall seeing documents where it's a press release and then things attached like this. It would be logical to assume if, in fact, this was circulated stapled as you have given it to me today, there was a reason someone wanted to do that and that would be to expand upon the themes, but I am completely speculating. I am trusting that it was all circulated and stapled. I don't recall getting it, but that's a logical conclusion

Page 49

if, in fact, it was circulated like this.
Q. Given that assumption, can you answer my question?
A. I thought I just did.
Q. That these are the themes that Morgan Stanley Sunbeam team wanted to communicate to other professionals at Morgan Stanley relating to Sunbeam?
MR. CLARE: Objection, calls for speculation.
A. Well, I thought I answered the question because, as I said, I don't recall seeing something like this stapled all together. If, in fact, it was stapled together, it would be logical to assume that somebody wanted other bankers to read the investment rationale and do something with it, but I am just responding to you handing me a stapled document and asking me why would you put the front part with the back part, so a little uncomfortable doing that.
Q. Focus on the bullet points in the third page. See the first line, it states, "Sunbeam represents an attractive growth story and investment opportunity"; do you see that?
A. Yes.

NOT A CERTIFIED COPY

017609

Q. The second major bullet point, "Sunbeam has undergone a profound transformation since the arrival of new management in July 1996"; do you see that?
A. Yes.
Q. Third major bullet point, "Tremendous intrinsic value in the company"; do you see that?
A. Yes.
Q. And the last major bullet point, "Valuable opportunity to penetrate and become a global market leader of branded consumer devices"; do you see that?
A. Yes.
Q. Are those four selling themes or investment rationales consistent with the themes that Morgan Stanley presented in the marketing of the debentures that you were involved in in the first quarter of 1998?
MR. CLARE: Objection, lack of foundation.
A. I think generally, as I recall, that would have been consistent, but I am not sure. I need to look at the selling document that was used during marketing the debenture to tell you whether it was exactly the same or how similar it was or if

it was modified.
Q. We will get a chance to go through those documents, but as you sit here at the moment, these things are consistent in your mind with the Sunbeam Morgan Stanley selling story for the Sunbeam debentures in the first quarter of 1998, correct?
MR. CLARE: I renew my objection.
A. Well, as I just said, generally yes, and I would be concerned about stating more than that.
MR. CLARE: Bob, we have been going for about an hour. Do you mind if we take a short break?
MR. MARKOWSKI: We can do that.
Before we go off the record, if at any time this morning you would like to take a break, indicate that to me and as long as there is not a pending question I will be happy to accommodate you.
THE VIDEOGRAPHER: The time is 9:03 a.m. We are going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 9:11 a.m. We are back on the video record.
BY MR. MARKOWSKI:
Q. Let me show you what we have previously

marked as Coleman (Parent) Holdings Exhibit 151. It's a document dated August 8, 1997, on Morgan Stanley letterhead, entitled "Project Laser Discussion Materials."
Have you seen this document before?
A. I don't recall seeing it.
Q. "Project Laser" is the term that Morgan Stanley used for the work it was doing for Sunbeam; is that correct?
A. Is that a statement or question?
Q. It's a question.
A. I don't recall.
Q. Let me direct your attention to a page fairly far into the document that you will look -- there are what we refer to as Bates numbers in the bottom corner of the document and the number that I would like you to page to is Morgan Stanley Confidential 65772. Do you see that page?
A. I do.
Q. It's entitled "Project Laser, the Morgan Stanley Team"; do you see that?
A. Yes.
Q. And at the top in the center, "For Management," there is a box entitled "Firm for Management" and the name Bruce Fiedorek appears.

A. Yes.
Q. Am I pronouncing Mr. Fiedorek's name correctly?
A. No.
Q. How it is pronounced?
A. Fiedorek.
Q. What was Mr. Fiedorek in 1997, what responsibilities did he have at Morgan Stanley?
A. I don't recall what his responsibilities were, but he had always been firm management, either one of the senior people in the M&A department or running the M&A department. I don't know what he was doing in 1997.
Q. He was a very senior person in the Morgan Stanley mergers and acquisitions department at that time, correct?
A. I believe so.
Q. And in the left-hand corner, "Corporate Finance," there is a box entitled "Corporate Finance"; do you see that?
A. Yes.
Q. And Bill Strong's name appears there, correct?
A. Yes.
Q. What's the relationship of the corporate

NOT A CERTIFIED COPY

0709

finance department at Morgan Stanley to the mergers and acquisitions group?
MR. CLARE: In 1997 or '8?
MR. MARKOWSKI: Correct.
A. The mergers and acquisitions group is a group that focuses almost primarily on helping clients do either mergers and acquisitions, divestitures, and it's more what you can refer to as a product group. Corporate finance will cover companies as well as be involved in execution of transactions.
Q. So corporate finance people are also involved in mergers and acquisitions, correct?
A. Yes, but not as deeply in the execution as mergers and acquisitions people usually.
Q. And then in the right-hand corner at the top of this page there is another box entitled "Equity Capital Markets"; correct?
A. Yes.
Q. That's the group you were working in in 1997 and 1998, correct?
A. Yes.
Q. And your name appears there, correct?
A. Yes.
Q. And Scott Sipprelle's name appears there

also?
A. Yes.
Q. What was Scott Sipprelle's responsibility in the equity capital markets group in 1997?
A. He was responsible for the other part of equity capital markets that I described previously, that I referred to as syndicate, which was more of the execution function.
Q. How did it come to be that you were assigned to the Morgan Stanley Project Laser team in August 1997?
A. I don't recall.
Q. Do you remember being asked to participate in the Sunbeam assignment in August of 1997 or at some time before that?
A. No.
Q. Do you know who would have been responsible as an organizational matter for making that assignment in August of 1997?
A. No.
Q. Would it have been Mr. Strong's responsibility to do that?
MR. CLARE: Objection, calls for speculation, no foundation.

Q. Let me rephrase the question. Would Mr. Strong have had the ability to assign you as a member of the equity capital markets group to the Morgan Stanley team for the Sunbeam engagement?
A. I am not sure that he would have. He may have gone in to the person that was running it, running equity capital markets at the time. I don't recall how it would get assigned because it wasn't necessarily an industry group, so I don't know how it was assigned.
Q. Did you have a prior working relationship with Mr. Strong?
A. I had worked with him on some deals previously.
Q. Do you know if Mr. Strong personally asked that you become involved at some point in the work that Morgan Stanley was doing for Sunbeam?
A. I don't recall.
Q. Did Mr. Strong speak to you at some time, Ms. Porat, about whether you would be in a position to assist him in connection with the Sunbeam engagement?
A. I don't recall.
Q. What was your responsibility as a member of the Morgan Stanley team working on the Sunbeam

engagement?
A. As I recall when I was brought in, and I don't recall this document in front of me, as I recall, is much later the question was, how would the acquisitions be financed and what were the various financing options.
Q. When did you recall -- when do you first recall being consulted with respect to Morgan Stanley work for Sunbeam?
A. I don't recall the date but, as I recall, it was at the point where Sunbeam had identified the acquisition targets and so the question was how were those acquisitions going to be financed.
Q. So your first recollection of being consulted with respect to Sunbeam was at the point in time where Sunbeam had identified Coleman Company, First Alert and Signature Brands as acquisition targets?
A. That's all that I remember sitting here today, yes.
Q. You don't remember being consulted previously?
A. I don't remember that I wasn't. I just don't remember.

NOT A CERTIFIED COPY

001795

Page 58

Q. Do you recall doing any more general work with respect to the Sunbeam engagement and before that point in time in which you assessed Sunbeam's ability to raise capital or borrow money to finance potential acquisitions?
A. Are you asking prior to the identification of the three acquisitions that you just --
Q. Right. I am asking whether you identified a point in time where you were consulted with respect to the alternatives available to Sunbeam with respect to the financing the specific acquisitions that Sunbeam made in the first quarter of 1998, correct?
A. Yes.
Q. That is something you have in mind today?
A. Right.
Q. I am asking you whether if prior to that point in time, you can recall being consulted more generally with respect to providing input to the Sunbeam -- either to Sunbeam or to the Morgan Stanley team engaged in working for Sunbeam, concerning Sunbeam's ability to raise capital for acquisitions generally or to borrow funds to

Page 59

acquire other companies?
A. I don't recall anything prior to any of those acquisitions.
Q. So your first recollection as you sit here today, it's your recollection that your first involvement in performing services relating to Sunbeam occurred at a point in time after Sunbeam had identified the companies it acquired in the first quarter of 1998, correct?
A. Correct, as I sit here today that's what I recall.
Q. Do you recall if at that point in time Sunbeam had identified all three acquisition candidates?
A. I believe so. I am not sure, though.
Q. Do you know for sure that Sunbeam had at least identified the Coleman Company?
A. I think so.
Q. Coleman Company was the largest of the three acquisitions, correct?
A. Yes, correct.
Q. Do you know whether Sunbeam had entered into an agreement to acquire those three companies at the point in time where you first became involved?

Page 60

A. I can't recall if they had identified them and had entered into agreements or were about to, but it was around -- I recall they were trying to figure out how to finance the acquisition. Whether they were acquisitions that had been agreed to or were going to be agreed to if they can finance it, I don't recall.
Q. Do you recall that you attended the February 27th meeting of the Sunbeam board of directors, where the Sunbeam board voted to approve the three acquisitions?
A. I recall attending a board meeting at which I was asked to comment on the financing. I don't know when it was and I don't recall that that was the board meeting in which they voted on the acquisitions.
Q. I am going to show you the minutes of the February 27th Sunbeam board meeting to see if that refreshes your recollection.
A. Okay.
Q. Let me show you what we previously marked as CPH Exhibit 206. It's a document entitled "Meeting Minutes of a Special Meeting of the Board of Directors of Sunbeam Corporation, February 27, 1998." Have you seen that, this

Page 61

document, before today?
A. I don't recall seeing it.
Q. Let me direct your attention to the second paragraph, where it lists participants in the board meeting; do you see that?
A. Yes.
Q. It indicates the entire board attended, correct?
A. Correct.
Q. And then at the bottom it identifies several Morgan Stanley participants, William Strong, James Stynes, Robert Kitts, Alexander Fuchs, Michael Hart, Bron Smith and Ruth Porat, correct?
MR. CLARE: I object to the characterization of the document; you identified them as participants. The document describes them as attendees.
Q. With that correction, human beings were in the room while the meeting was occurring, do you see that?
A. It indicates that I was in attendance, yes.
Q. I am not going to ask you to read the minutes. I will represent to you that this is the

NOT A CERTIFIED COPY

Page 62

meeting where the Sunbeam board voted to approve the acquisition of the Coleman Company.

Do you recall how long in advance of this board meeting you first became involved in providing services in connection with the Sunbeam engagement?

A. I don't.

Q. Do you recall if it was a matter of days?

A. I don't. I don't recall.

Q. Do you recall how you came to be one of the attendees at the meeting?

A. Well, as I mentioned previously, I was asked to help think through the financing alternatives for the various acquisitions and, as part of that, was asked to attend a board meeting to review the recommendation.

Q. Did you speak at the February 27th board meeting, ma'am?

A. I can't recall if I did.

Q. What work did you do in advance of the board meeting that you attended to assess Sunbeam's options with respect to funding the acquisitions that it was undertaking in the first quarter of 1998?

Page 63

A. I don't actually recall.

Q. You say looking at options; what options would you have -- strike that.

When you say looking at options, what options did you consider in connection with that assignment prior to the Sunbeam board meeting?

A. I think the question was common stock or a convertible, I think.

Q. You were asked to focus on equity alternatives?

A. Yes.

Q. Did you have any involvement in assessing Sunbeam's abilities to borrow funds?

A. Not that I recall.

Q. Can you explain to me in more detail the nature of the options that you personally were evaluating?

A. What do you mean by that?

Q. The nature of the securities that would be involved in raising funds for Sunbeam's acquisitions?

A. Well, in the equity capital markets area, this would be either a straight common stock or a convertible security, which converts into common stock.

Page 64

Q. Do you recall evaluating whether Sunbeam could make a stock offering in connection with raising the funds?

A. I don't specifically recall that.

Q. I'm sorry, is that actually something you considered evaluating?

A. I don't, sitting here today, I don't recall.

Q. Did you limit your evaluation of Sunbeam's equity alternatives to various forms of convertible securities?

A. I don't recall.

Q. What's a convertible security?

A. Generally, it can be structured in a number of different ways, but it's a security that if the stock performs at a certain level will convert into common stock. So it's a debenture until the stock performs, at which point it converts and it can or cannot pay a cash coupon.

Q. What's a debenture, can you explain that?

A. Essentially a debt-like instrument.

Q. What various forms of convertible securities do you recall evaluating in connection with the work that you did for Sunbeam in the first

Page 65

quarter of '98?

A. I don't actually recall which ones were considered.

Q. Was there a point where you came to the conclusion that Sunbeam could raise funds associated with the three acquisitions in the first quarter of 1998 through some form of convertible security?

A. Yes.

Q. Do you recall if you had come to that conclusion by the time of the February 27th board meeting that you attended?

A. I think that was right.

Q. So you believe by the time you attended that Sunbeam February 27th board meeting you had come to the conclusion that Sunbeam would be able to raise at least some amount of money to finance the three acquisitions that it was undertaking through the issuance of some form of convertible debt security, correct?

A. Yes, but just to clarify one thing. You keep saying you had identified. We have a group that focuses on convertible securities and my role would have been to work closely with the convertible group that would have had to assess a

NOT A CERTIFIED COPY

Page 66

lot of different aspects of pricing and structuring, et cetera, so I just want to clarify the word "you."
Q. I would like to understand this a little bit better if I could. Are there two groups involved in assessing -- two groups at Morgan Stanley involved in assessing the options available to Sunbeam with respect to raising funds through the issuance of some form of convertible debt security?
A. What do you mean?
Q. Well, you referred to a convertibles group, correct?
A. Correct.
Q. Is that the title those people have or is there a specific terminology used at Morgan Stanley to describe that group or function at the firm in the first quarter of 1998?
A. I think it may have been called the convertibles desk, but essentially it was a group of professionals who focused exclusively on convertible securities.
Q. When you say focused on exclusively on convertible securities, what do you mean, buying and selling them, or structuring them and issuing

Page 67

them, or both?
A. Well, that's a good question. There are within equity capital markets, the convertibles desk would be responsible for structuring and setting what they thought were indicative terms, relevant terms, or terms in which the securities could be sold. The actual marketing and sales of it went to yet another group in the institutional equities division, which was the convertibles sales force.
Q. I'm sorry, the sales group would be -- they were entitled what, institutional?
A. The convertible sales group worked in the institutional equities division, so that was yet another group of professionals.
Q. Those are the people that would be involved in actually assisting Sunbeam in marketing the debentures ultimately?
A. The convert -- the number of people would be involved in creating the marketing materials, but the people who actually met with accounts were in the institutional equities division. That was the sales group.
Q. So that's another service that Morgan Stanley provided to Sunbeam in connection with

Page 68

this, correct?
A. Correct.
Q. Determining whether the convertible securities could be effectively structured and then also assisting Sunbeam in actually selling the debenture to investors, correct?
A. Correct.
Q. And in the scheme of those activities, what was your involvement?
MR. CLARE: Object to the form of the question.
A. I actually, what is -- I don't understand the question.
Q. Well, you described a number of activities that Morgan Stanley was engaged in with respect to the process of evaluating the option of some form of convertible securities for Sunbeam --
A. Right.
Q. -- up to and including the actual sale of those securities to investors.
What I am trying to understand at the moment is your personal involvement in those activities, where did Ruth Porat fit in this -- that process?
A. So I was, as I indicated previously, on

Page 69

the coverage side in equity capital markets, so I would work with the convertible professionals in equity capital markets to think about the alternative approaches to the convertible security and they would come up with the pricing and structuring.
Q. Would you be the person responsible for making, within Morgan Stanley, making the judgment concerning the best alternatives to recommend to Sunbeam?
A. Anything like that would be a group decision. It wasn't -- I didn't unilaterally conclude that, as I recall, that one form is the right form.
Q. Who did you -- did you make recommendations within Morgan Stanley to the best form of security Sunbeam could issue?
A. Internally?
Q. Yes.
A. I would guess so.
Q. Do you recall to whom on this transaction you made those recommendations at Morgan Stanley?
A. No.
Q. Did you have discussions with Mr. Strong

NOT A CERTIFIED COPY

Page 70

on that subject?
A. I would be guessing. I would assume so, but I don't know. I don't know.
Q. What was your understanding of the nature of Mr. Strong's responsibility for the Sunbeam engagement?
A. As the person in -- senior person in corporate finance, he would be basically the relationship account manager.
Q. Was Sunbeam considered Mr. Strong's client in this transaction?
MR. CLARE: Objection, calls for speculation.
A. I don't recall.
Q. Was there a particular person at Morgan Stanley that you understood to be the -- strike that.
Did you consider Sunbeam to be someone other than Mr. Strong's client in connection with the work that Sunbeam was doing in the first quarter of 1998?
A. As I indicated previously, I remember Bob Kitts was very involved.
Q. Do you know whether Mr. Strong or Mr. Kitts claimed credit as the originating

Page 71

managing director for the Sunbeam engagement?
A. I don't recall that.
Q. Now the security that Sunbeam ultimately issued in connection with the financing was a zero coupon convertible debenture, correct?
A. Correct.
Q. What are the characteristics of a zero coupon convertible debenture of the sort that Sunbeam issued in the first quarter of 1998?
A. Generally it creates, instead of paying a cash dividend, it increases in value -- increases in value over a certain time, and if the stock price hits a certain level, the debenture will convert to common stock.
Q. Was it preferable from Sunbeam's perspective, in your view, to be able to finance some aspect of the three acquisitions through the issuance of a convertible debenture, as opposed to having to borrow the funds from lenders?
MR. CLARE: Objection, speculation.
A. I don't recall the comparative analysis.
Q. Were you involved in that evaluation, recommending to Sunbeam this security as opposed to increased direct borrowing?
A. I don't recall that.

Page 72

Q. Is that part of work that you would have been responsible for?
A. Not necessarily.
Q. Who would have been responsible for that evaluation?
A. Corporate finance or credit.
Q. Are there advantages to a company associated with the issuance of a convertible debenture of the sort that Sunbeam issued in the first quarter of 1998 generally over the issuance or borrowing of funds directly?
MR. CLARE: Objection, incomplete hypothetical.
You can answer.
Q. Let me rephrase the question. In general are there advantages that a convertible debenture offering offers companies over debt borrowings?
A. For certain issuers, yes.
Q. And what are those?
A. Well, if you are confident, I guess if you are confident about your stock price, then the debenture converts to equity.
Q. And in this case, the debt security, the debenture portion of the security is a zero coupon

Page 73

debenture, correct?
A. Correct.
Q. Which means Sunbeam had no current cash payment obligations, correct?
A. Correct.
Q. Is that another advantage over direct borrowing this form of security offers companies?
A. Yes.
Q. You were also involved in activities relating to the Sunbeam road show to market the debentures, correct?
A. Certain of the activities.
Q. What are those?
A. Well, again it would have been a group including the sales force and the convertibles desk, but how long the road show would be, what cities to go to, things along those lines.
Q. What do you recall about those discussions?
A. Actually don't recall much about those discussions.
Q. Do you recall with whom you worked on that aspect of things?
A. As I recall, the person in the convertibles desk in equity capital markets was

NOT A CERTIFIED COPY

one -- someone by the name of Brooks Harris.
Q. Were you involved in making recommendations concerning the specific investors to be invited to participate or receive the road show presentations?
A. I doubt it.
Q. Do you recall anything about the timing of Sunbeam's road show relating to the debenture offering?
A. I'm sorry, what do you mean?
Q. The timing, how long it would last, what cities?
A. No, I don't.
Q. When it had to be accomplished by?
A. I don't -- I remember it was in New York and Boston, but other than that I don't remember.
Q. Do you remember that there was a need to complete the road show by a certain point in time?
A. I don't recall.
Q. Were you involved in preparing the materials that were used in connection with the road show?
A. I recall discussing the potential questions that the investors might ask, but that was it, not the actual road I don't recall being

involved in preparing the road show presentation.
Q. Did you review the road show presentation?
A. I don't recall if I did.
Q. Who do you believe was responsible for preparing the road show presentation materials within Morgan Stanley?
A. I would be guessing if I said.
Q. You don't have a current recollection of that?
A. No.
Q. You knew at the time, though, correct?
A. I assume I knew at the time, right.
Q. I am going to show you again CPH Exhibit 129. It's the document you looked at previously, the March 10, 1998 memorandum to the commitment committee. Do you have that in front of you?
A. I do.
Q. And as you indicated to me previously, this was the document that was presented to the equity commitment committee to obtain approval for Morgan Stanley to underwrite the debenture offering, correct?
A. Yes.
Q. Let me direct your attention to the page

that bears the Bates number Morgan Stanley Confidential 0000524 in the bottom corner. Do you have that in front of you?
A. I did.
Q. Do you see towards the bottom an expected time table?
A. Yes.
Q. And the expected time table is a Monday, March 16th launch transaction presentation, and the sales force distribute preliminary offering memoranda; do you see that?
A. I do.
Q. And then the road show schedule set forth here is Wednesday through Monday, March 18th through the 23rd; do you see that?
A. I do.
Q. With a pricing on March 23rd; do you see that?
A. Yes.
Q. And closing on March 27th --
A. Yes.
Q. -- correct?
Do you know how those dates were set?
A. I don't.
Q. Were you involved in that?

A. I don't recall if I was.
Q. Do you know that -- you are aware that that schedule changed, correct?
A. Yes.
Q. It was accelerated, correct?
A. Correct.
Q. How did that come about?
A. I don't know. I can only answer the question because I know the relevant dates were, I think, priced the 19th or thereabouts.
Q. The road show was completed by March 19th, correct?
A. Yes.
Q. And the pricing happened on March 19th or the night of March 19th?
A. I think that's correct.
Q. It's four days earlier than the schedule set forth here, correct?
A. Right.
Q. Did Sunbeam change that schedule or did Morgan Stanley change that schedule?
A. I have no recollection of the schedule being moved up or changed.
Q. Do you recall that Sunbeam was particularly anxious to close the three

NOT A CERTIFIED COPY

0171

Page 78

acquisitions?
MR. CLARE: Object to the form of the question.
A. I don't recall that.
Q. Did anyone at Morgan Stanley say to you that the marketing of the debentures needed to be accelerated in order to permit Sunbeam to complete the closing of the three acquisitions within the first quarter of 1998?
A. I don't recall anyone saying that to me.
Q. Did anyone at Sunbeam say that to you?
A. I don't recall anyone at Sunbeam saying that.
Q. How did the period of this road show, in your view, compare generally to road shows of this sort, four-day road show; is that typical or is that short?
A. For a convertible offering, it's actually pretty typical.
Q. Was the timing on this typical, a March 10th presentation to the equity commitment committee for approval of the underwriting and a March 19th pricing date, closing March 25th?
A. I'm sorry, are you asking was it typical to go to the commitment committee?

Page 79

Q. To closing within about two weeks?
A. Well, you would usually get a commitment committee very shortly before launching a transaction, so I don't -- I don't see anything odd in that. And then the closing is whatever the rules were at the time. T plus 1, T plus 3, I don't know what they were at the time. But those are very standard closing dates and this doesn't seem unusual.
Q. So the timing of this March 10th presentation to the equity commitment committee and a March 25th closing offering on the debenture offering doesn't seem to you to be unusual?
A. I'm sorry, are you asking the gap between March, the date of the commitment committee, and the launch of the road show; is that the question?
Q. No. The period between the presentation to the equity commitment committee for approval of the underwriting and a closing approximately two weeks later of the offering; is that an unusually short period of time?
A. I don't think it is. I am just basing it on the date of the committee memo shortly preceding the launch of the transaction, and then

Page 80

the time line for the transaction and closing just falls out of the launch date from the transaction.
Q. You made reference in one of your earlier answers to something about a T-1 and T-2, T-3, something of that sort?
A. Yes.
Q. What was that a reference to?
A. There are some standard rules and I can't actually tell you what they are, about the normal period between pricing a transaction and closing, and I think as of 1998 you would close within one to three days of pricing.
Q. And does pricing typically occur on the very last day of the road show?
A. Yes.
Q. Ms. Porat, in addition to the responsibilities that you have identified for us in connection with the Sunbeam debenture offering, you also had lead due diligence responsibility with respect to the debenture offering from the equity capital markets perspective; is that correct.
MR. CLARE: I object to the form of the question.
Q. Sorry; is that correct?
A. Well, it's an odd question because

Page 81

equity capital markets doesn't actually lead due diligence.
Q. I'm sorry, I am not sure I heard you. Equity capital markets does not lead due diligence, is that what you said?
A. Well, equity capital markets actually isn't involved in due diligence, so I object to the characterization.
Q. Well, Mr. Strong has testified that you had lead due diligence responsibility with respect to the debenture offering, from the equity capital markets perspective. Do you understand what he meant by that?
MR. CLARE: Objection, calls for speculation and also to the extent it mischaracterizes or takes out of the context the prior testimony.
You can answer if you are able.
A. I would be guessing if I answered.
Q. Do you have an understanding about what he said with respect to Ruth Porat had the lead due diligence responsibility with respect to the debenture offering from an equity capital markets perspective?
A. As I said, I would be guessing if I

EXHIBIT 7101

NOT A CERTIFIED COPY

Page 82

interpreted what those words meant. I don't know.
Q. Excuse me, I didn't mean to interrupt you.
Do you agree with that statement?
A. Well, I previously said that it wasn't the responsibility of equity capital markets to lead the due diligence.
Q. Did equity capital markets have a responsibility for any aspect of the due diligence relating to the Sunbeam debenture offering or any other aspect of the work that Morgan Stanley was doing for Sunbeam?
A. I'm sorry, can you repeat that?
Q. Sure. Did equity capital markets have any due diligence responsibility with respect to the debenture offering that Sunbeam was undertaking or with respect to any other aspect of the work that Morgan Stanley was doing for Sunbeam in the first quarter of 1998?
A. Corporate finance team ran the due diligence process and in my role in equity capital markets, one of the key questions that I would typically ask is are we comfortable on due diligence, you know, is due diligence done, are we comfortable on due diligence.

Page 83

Q. Other than asking the question whether others are comfortable with the due diligence that had been performed, did you have any due diligence responsibility with respect to any aspect of the work that Morgan Stanley did for Sunbeam?
A. Well, I'm sorry, repeat that again.
MR. MARKOWSKI: Can you read that back?
(Record read.)
A. There, I think you will probably get to this. The due diligence was led by the corporate finance team, but at a certain point when there was concern expressed about the estimates for -- the Wall Street research estimates for the first quarter, then I became involved. But up to that point, the corporate finance team, as it's typical, had led the due diligence.
Q. We will get to that in some depth. But what I am trying to understand initially is your general responsibility in connection with the engagement, before we get to that moment in the process.
Did you review or have any responsibility, in your own mind, for the due diligence that Morgan Stanley was doing with respect to either the Sunbeam debenture offering or

Page 84

any other aspect of the work that Morgan Stanley was doing for Sunbeam in the first quarter of 1998?
A. Not directly. As I said, I wasn't running the due diligence or in the due diligence sessions.
Q. When you say "not directly," what do you mean by that? Did you have some indirect responsibility for the due diligence that Morgan Stanley was performing for Sunbeam?
A. Well, I think I am being a little repetitive, but as I said, I would ask the corporate finance team who was responsible for due diligence if the due diligence was completed, was acceptable, was complete, et cetera.
Q. So you would inquire whether people had done their due diligence and whether they are comfortable with it, correct?
A. Correct.
Q. Other than that, did you, Ruth Porat, believe that you had any responsibility for the conduct -- the execution of Morgan Stanley's due diligence?
A. No.
Q. So if Mr. Strong said you had lead due diligence responsibility with respect to the

Page 85

debenture offering, in the equity capital markets perspective, you don't understand what he means by that, correct?
MR. CLARE: I renew my prior objection.
A. I understand what those words are.
Q. You didn't think you had such responsibility, correct?
MR. CLARE: Objection. That misstates her testimony.
A. I'm sorry, was there a question?
Q. The question was you didn't think you had such responsibility, did you?
A. To conduct due diligence for the transaction?
Q. You didn't think you had lead due diligence responsibility with respect to the debenture offering, from the equity capital markets perspective, as Mr. Strong has stated?
A. I think the -- well, I would be reading things into -- I don't know the context in which that was said, but in terms of the due diligence that -- the customary due diligence that's conducted, it is conducted by the corporate finance department.
Q. And you weren't responsible for that,

NOT A CERTIFIED COPY

011710

Page 86

correct?
A. Correct.
Q. Would you -- would it be fair to characterize the due diligence done by Morgan Stanley with respect to the debenture offering as piggyback due diligence?
MR. CLARE: Objection to the form of the question.
A. I'm sorry, what do you mean?
Q. Are you familiar with the term "piggyback due diligence"?
A. Yes.
Q. That's one of the things you have testified about in the Perrigo litigation, correct?
A. Correct.
Q. In your mind, what does the term "piggyback due diligence" mean?
A. Well, if you have done due diligence previously, you can just build off of that due diligence in another setting, but I think the meaning -- well, that's what it means.
Q. Was that the case in connection with the due diligence on the debenture offering, was it piggyback due diligence, in your view?
A. No, but it was an ongoing process, which

Page 87

is the key point, but there was no prior transaction to piggyback on, if that's what you are trying to ask.
Q. So you don't think that would be a correct reference to use in connection with the due diligence done on the debenture offering, correct, piggyback due diligence?
A. Correct.
Q. It's not a term that you would have used at the time to describe the due diligence done on the debenture offering?
A. I don't think so.
Q. Do you recall if you ever did use that term to describe the debenture offering due diligence that Morgan Stanley did?
A. I mean, maybe I did because it was, you know, in conjunction with acquisitions, you can say we are piggybacking on that, but I don't know if I did, so I don't have -- I don't want to have a declarative answer given that it may have been tied to M&A diligence, but I am guessing here.
Q. So you don't rule out that you may have referred to the due diligence on the debenture offering as piggyback due diligence?
A. I may have. I don't recall if I did.

Page 88

Q. Ms. Porat, let me show you what we previously marked at Coleman (Parent) Holdings Exhibit 100. It's a document dated March 12, 1998. It's entitled "Confidential, for Internal Use Only, Sunbeam 500 Million, Rule 140 A, Zero Coupon Convertible Subordinated Debt Offering Selling Memorandum." Take a moment to look at the document for me at least sufficiently and tell me if you have seen it before.
A. I believe I have.
Q. Can you tell me what this is?
A. It's what we call a selling memorandum, it's indicated on the cover, which would be used to take the sales force, the convertible sales force, through everything that's listed here in the table of contents.
Q. And you are identified as one of the Morgan Stanley contacts with respect to this transaction, correct?
A. Correct.
Q. What would the purpose of that be, identifying you as a contact person?
A. In case somebody had a question.
Q. A salesman?
A. Well, salesman -- usually it was just

Page 89

convention to put the team that was involved in this on the cover, but the sales force usually coordinated mostly with the convertibles professionals.
Q. Did you have any role in helping to prepare this document for the sales force?
A. I don't recall if I did.
Q. Do you know who did prepare this?
A. No.
Q. Did you read it at the time?
A. I would assume I did, but I don't specifically recall.
Q. Let me direct your attention to page 15, the section entitled "Key Selling Points." Do you see that?
A. Yes.
Q. And the first major bullet point is "Successful restructuring, creation of a growth company"; do you see that?
A. Yes.
Q. And the second major bullet point is "Experienced and committed management team"; do you see that?
A. Yes.
Q. Underneath {Successful restructuring,"

NOT A CERTIFIED COPY

017103

the first sub-point states that "During 1997 Sunbeam completed its restructuring program and initiated a growth strategy which resulted in double-digit sales growth with operating margins reaching 20 percent in 4Q '97, up from .2 percent before the term." Do you see that?

A. Yes.

Q. You understood that to be one of the key selling themes with respect to the debenture offering, correct?

A. That would make sense from this document.

Q. It's the very first point listed, correct?

A. Correct.

Q. Let me show you, Ms. Porat, what we previously marked at CPH Exhibit 11. It's a document dated March 9, 1998, from John Tyree to Janet Kelly, Bob Gluck, Alan Dean and Gregory Fernicola; subject: Writers offering memorandum. Take a moment to look to see Exhibit 11.

A. I'm sorry, what was that, read the document?

Q. Take a moment, please.

A. It's hard to read this document.

Q. Actually, I am going to limit my questions to the first two pages, so to ease your burden.

A. No, I mean it's poorly copied, so you can't actually see the words, but go ahead.

Q. Can you tell me what John Tyree was in connection with the Sunbeam transaction?

A. John Tyree, as I recall, is one of the key corporate finance people involved in the execution.

Q. Did you have contact with Mr. Tyree in connection with the work that you were doing --

A. Yes.

Q. -- for Sunbeam?

A. Yes.

Q. You worked with Mr. Tyree in connection with aspects of the debenture offering?

A. Yes.

Q. And in connection with the debenture offering, Morgan Stanley prepared an offering memorandum for the debentures, correct?

A. Correct.

Q. And let me ask an initial question, ma'am. Have you seen this document before?

A. I don't think I ever have.

Q. Mr. Tyree is -- do you know who Janet Kelly, Bob Gluck, Alan Dean and Gregory Fernicola are?

A. I know who Alan Dean is. I don't know the other people.

Q. Alan Dean is a lawyer at Davis Polk, correct?

A. Correct.

Q. Mr. Fernicola, do you know that Mr. Fernicola is with Skadden Arps?

A. No, I did not know that.

Q. Ms. Kelly and Mr. Gluck were Sunbeam -- were in 1998 Sunbeam executives; is that correct?

A. I didn't know that.

Q. Mr. Tyree is transmitting proposed inserts for the debenture offering memorandum, in connection with this memorandum; is that correct?

A. That's what this says in the first sentence.

Q. Were you involved in assisting in the preparation of these inserts?

A. I don't believe I was.

Q. Let me read to you the description that Mr. Tyree provides for the first rider, on the first page. Follow along with me and correct me if

I misread it.

"We would propose inserting this rider into the summary section directly following the company's strength section, and before the acquisition section, to communicate to the investor the recent restructuring success of the management team." Do you see that?

A. Yes.

Q. Was there any point where you suggested to Mr. Tyree or to anyone else in connection with the debenture offering that Sunbeam should do more in the text of the offering memorandum to emphasize the success of the company's turnaround?

A. I don't recall if I did.

Q. Did you have any discussion with anyone concerning the need or desirability of emphasizing that theme in connection with the debenture offering?

A. I don't recall if I did.

Q. Let me try to break the question into two pieces, Ms. Porat.

Did anyone say to you that it's important in connection with the debenture offering for Morgan Stanley to emphasize the success of Sunbeam's turnaround?

NOT A CERTIFIED COPY

A. I don't recall someone saying that.
Q. Did you say to anyone in connection with marketing the debenture offering or in pricing it in an optimum way, that it's important for us, or for Sunbeam, to emphasize the success of Sunbeam's turnaround?
A. I don't recall saying that.
Q. Do you recall that being discussed at Morgan Stanley?
A. I don't recall. I don't recall it being discussed.
Q. But that is the theme that we have just seen in the sales memorandum that was prepared for internal use by the Morgan Stanley sales force, correct?
A. That was one of the things, correct.
Q. In March of 1998, Ms. Porat, did you know the total revenue that Morgan Stanley expected to earn on the various aspects of the work that was associated with the three acquisitions that Sunbeam was executing in the first quarter or the associated financing?
A. I don't know of any of the total fees from the various components of the deal, but I assume I would have known the equity fees.

Q. Did you know that the total fees that Morgan Stanley expected to earn on the work that it was doing for Sunbeam in the first quarter of 1998 exceeded $40 million?
A. I don't know if I knew that then. It's news to me now.
Q. There were three things essentially that Morgan Stanley was doing for Sunbeam in 1998, that it was providing M&A services, it was providing services in connection with the debenture offering, and it was also participating in a senior loan to Sunbeam, correct?
A. Yes.
Q. And it was earning fees on all three aspects of that, correct?
A. I would assume so.
Q. Was there ever a point in time, Ms. Porat, where you said to anyone at Sunbeam in connection with the debenture offering, that it was important to the success of that offering that Sunbeam continued to hit its numbers?
A. I don't specifically recall saying that.
Q. Are you familiar with the phrase "hit your numbers" in this context?
A. Yes.

Q. What does that mean?
A. That means if the Wall Street research analysts are expecting a certain level of performance, certain earnings level, that you should meet or exceed those numbers.
Q. You advised Sunbeam management, did you not, that in connection with the debenture offering it was important for the company to continue to hit its numbers?
MR. CLARE: Objection, asked and answered.
A. Yes, I don't recall specifically saying that, as I said.
Q. Is that something that you think you may have said?
MR. CLARE: Objection to the form of the question.
A. I would be speculating. As I said, I don't recall specifically saying that.
Q. Is it your, in your view -- strike that.
Was it, in your view, important in connection with contemplating the debenture offering, that Sunbeam continue to hit its numbers?
A. Yes.
MR. MARKOWSKI: We are going to take a

break while we change the tape.
THE VIDEOGRAPHER: The time is 10:09 a.m. and this completes tape number 1.
(Recess taken.)
THE VIDEOGRAPHER: The time is 10:21 a.m. This begins tape number 2.
BY MR. MARKOWSKI:
Q. Ms. Porat, the disappointment that you referred to earlier in relating to your compensation, that you said was ultimately rectified, did that have anything to do with work that you did for Sunbeam?
A. No.
Q. Let me show you what we previously marked as CPH Exhibit 146. Ms. Porat, it's a Morgan Stanley invoice and some attached documents. The invoice is dated March 31, 1998 and it's to Sunbeam Corporation. Bears Bates number Morgan Stanley Confidential 80325. Take a moment to look at these pages, Ms. Porat, and tell me if you have seen any or all of them.
A. I don't think I have ever seen them.
Q. Let me direct your attention to the page that bears Bates number 80328, fourth page in the document. "Project Laser fee calculation"; do you

NOT A CERTIFIED COPY

017505

see that?
A. Yes.
Q. And the client file, written in handwriting in the upper right-hand corner, is Sunbeam; do you see that?
A. Yes.
Q. And this fee calculation document breaks fees out into three major categories, coupon convertible financing, fee financing, and it's broken off in that left-hand column, but I believe this is financing related to the senior loan, and the bottom is mergers and acquisitions for Coleman (Parent), Signatures Brand and First Alert; do you see that?
A. Yes.
Q. And there is a column entitled "Fees to Morgan Stanley."
A. Yes.
Q. And there are three columns under that heading, "Gross," "Credit" and "Net"; do you see that?
A. Yes.
Q. And the total under net fees to Morgan Stanley is 42,644,443; do you see that?
A. Yes.

Q. Does that refresh your recollection that the total fees that Morgan Stanley expected to make on the Sunbeam transactions that it was engaged in in the first quarter of 1998 exceeded $42 million?
A. This exhibit summarizes that it did, but I don't recall ever seeing this exhibit before sitting here today.
Q. But does it refresh your recollection as you sit here today that Morgan Stanley expected in the first quarter of 1998 to earn somewhere in the neighborhood of $40 million on the work it was doing for Sunbeam?
A. Well, as I said, it's not refreshing my memory because I am not sure if I ever saw it, but it presents it, sitting here today.
Q. Do you have any reason to dispute the figures set forth here as Morgan Stanley's expectations in the first quarter of 1998?
A. No reason to dispute it here.
Q. There is nothing in here that you see that jumps out at you as somehow incorrectly setting forth Morgan Stanley's expectations in the first quarter of 1998 with respect to fees from Sunbeam?
A. I would -- sorry, I would have no idea

what the debt or M&A fees would be because I am just reading the document that you presented to me.
Q. There is nothing that you know that would enable you to tell me that those numbers are inaccurate, though?
A. No, nor to tell you that they are accurate.
Q. You are familiar with the convertible fee, correct?
A. Correct, a portion of it.
Q. The fee is set forth here as being a two-piece, it's gross and a $3,750,000 credit; do you see that?
A. Yes.
Q. Do you know what that refers to?
A. That's why -- no, actually, I don't recall what the credit was. When I said I am familiar with the convertible fee, a portion of it, that's what I meant. The 3 percent gross spread on a convertible is basically a standard fee. And I don't recall the credit.
Q. So the standard fee that Morgan Stanley would charge in connection with a debenture offering of the sort that it assisted Sunbeam in executing was 3 percent of the proceeds?

A. Typically right around there.
Q. Here in this chart, the transaction value, there is a heading, "Transaction Value"; do you see that in the second column?
A. Yes.
Q. The transaction value, next to convertible coupon convertible financing fee, is $750,744,020; do you see that?
A. Yes.
Q. Do you understand what that figure relates to?
A. The size of the convertible offering.
Q. Does that figure represent the total gross proceeds that were raised in connection with the debenture offering?
A. I would think so, but I couldn't tell you definitively.
Q. Is that the figure against which the fee would be typically calculated?
A. I would think so.
Q. As you sit here, you are not -- you don't recall there being a half of a percent credit against that fee to Sunbeam?
A. I don't recall one way or the other.
Q. At 3 percent, the fee payable to Morgan

NOT A CERTIFIED COPY

011706

Page 102

Stanley for the transaction in which you were engaged is about 22 and a half million dollars, correct?
A. Correct.
Q. Did you get personal credit of any sort for that fee?
A. I don't understand. What do you mean?
Q. Does Morgan Stanley award fee credits in connection with transactions?
A. I don't think so. I mean basically you monitor the transactions in which you are involved and the fees generated on an annual basis, but I don't believe you are paid -- it's not -- you are not -- I am not -- I wasn't paid a percentage of that.
Q. Well, in terms of your evaluation for the year 1998, would that 22 and a half million dollars fee have any bearing on your 360 degree evaluation that year?
MR. CLARE: Objection, calls for speculation.
You can answer.
A. I don't know that it would or wouldn't. The 360 degrees is what -- how people evaluate the work that you have done. It's not a revenue sheet.

Page 103

A revenue sheet is different.
Q. What's a revenue sheet?
A. I mean what you are asking is something that summarizes the deals that you have worked on and the case you have been involved with, but that's not, as far as I know, it may be, but I don't know that it is part of 360, which is just what others think of how you performed.
Q. Would you have been given credit somehow in the Morgan Stanley evaluation process for originating the convertible debenture offering?
MR. CLARE: Same objection.
Q. By originating, I mean obtaining that business for Morgan Stanley?
A. I don't know if I would have been given credit for originating it.
Q. Do you know if anybody was?
A. I don't know.
Q. Do you know if Mr. Strong took credit for it --
A. I don't know. I would be guessing.
Q. -- as obtaining that business for Morgan Stanley?
A. I would be guessing. I can't answer that.

Page 104

Q. Did anyone ever tell you that Bill Strong has taken credit for the convertible offering fee, for originating that transaction?
A. I don't recall. They may have. I don't know.
Q. Let me direct your attention to -- let's see if I can get the page. I think the very next page of the document. There is some handwriting at the bottom of the page; do you see that?
A. Yes.
Q. It reads, "Client paid fee 5,619,429" and then there is a notation, "$3,750,000 unpaid"; do you see that?
A. Yes.
Q. And beneath that there is handwriting that reads "B Strong," the letter B Strong, "M&A should receive 3,750,000 from ECMS for unpaid portion of bill."
And then to the right of that there is some further handwriting and in a circle that reads, "Okay, R. Porat"; do you see that?
A. Yes.
Q. Does this bring back any recollection on your part with respect to there being an issue with respect to either a credit to Sunbeam for

Page 105

$3,750,000 or some sort of issue with respect to the allocation of that portion of the underwriting fee?
A. It doesn't refresh my memory, any memory. Doesn't bring back a recollection of what that was, other than reading the words.
Q. Do you have any memory of there being an issue where the M&A group wanted some portion of the fee revenue that was generated as a result of the convertible to the debenture offering?
A. I don't remember that.
Q. Why would that be relevant?
MR. CLARE: Objection to the form of the question. Calls for speculation.
Q. Do you know?
MR. CLARE: Relevant to what?
A. I actually don't understand the question.
Q. Well, is it relevant in any way, from an internal accounting perspective at Morgan Stanley, whether a fee credit is realized by the equity capital marks group or by the M&A group?
MR. CLARE: Objection, no foundation.
A. That, I would be speculating.
Q. ECMS in this reference is a reference to

NOT A CERTIFIED COPY

01107

Page 106

equity capital markets, correct, that's your understanding of those initials here?
A. Yes.
Q. Are there separate financial statements or fee records kept for equity capital markets versus the M&A group at Morgan Stanley?
A. I would be guessing. I haven't seen any financial statements in this period. I don't know.
Q. Have you ever been involved in a situation where there was some disagreement over -- or let me start, there some disagreement over a fee credit and whether it should go to equity capital markets or some other group, such as the M&A group, at Morgan Stanley?
A. I can't think of one, although I can't say that there wasn't one.
Q. Bill Strong was assigned to the corporate finance department at Morgan Stanley in 1998, correct?
A. Yes.
Q. How would it matter to Mr. Strong, from an internal perspective at Morgan Stanley, whether fee credit on the Sunbeam work was allocated more heavily to the M&A group and less heavily to your group equity capital markets group?

Page 107

MR. CLARE: Objection, calls for speculation.
A. I don't know why. I would be guessing if I said it would.
Q. You don't have a understanding of why that would be the case?
A. I don't know why it would be -- why that would make a difference.
Q. You don't recall being consulted about whether it was -- whether equity capital markets was in agreement that $3.75 million of its fee be allocated to the M&A group?
A. Other than seeing this document, I don't recall it, no.
Q. Have you ever negotiated with another group within Morgan Stanley over the issue of fee credits?
A. You know, I may have. I just said I don't recall if I have.
Q. You don't recall doing that in connection with Sunbeam?
A. I don't recall, actually.
Q. Did you find Mr. Strong to be somebody who was particularly focused on issues relating to fee credits back in 1998?

Page 108

A. I don't recall that I did.
Q. Ms. Porat, let me show you what we are going to mark as Coleman (Parent) Exhibit Number 343. It's a document entitled "Morgan Stanley Written Responses to Rule 1.310 Topics."
(Coleman (Parent) Exhibit 343, Morgan Stanley Written Responses to Rule 1.310 Topics," marked for identification, as of this date.)
Q. I would also like to keep next to you CPH Exhibit 146, Ms. Porat. It's the March 31st invoice. Do you have that? And go to the page that says "Project Laser Fee Calculation." Just keep that page handy.
Let me direct your attention to page 3 of CPH Exhibit 343. There is a section entitled "Underwriting Revenues"; do you see that?
A. Yes.
Q. I would like you to read those two paragraphs to yourself. I have some questions for you about them.
Have you done that?
A. Yes.
Q. Referring back to Exhibit 146, the fee calculation sheet, it's this document.

Page 109

A. Yes.
Q. There is the gross fee of 3 percent, or there is the gross fee 3 percent of gross proceeds; do you see that number on there, $22.5 million?
A. Yes.
Q. How does that gross fee relate to the figures set forth on page 3 of Exhibit 343 for the underwriting revenues Morgan Stanley realized on the debenture offering?
MR. CLARE: Objection, no foundation.
A. I don't know.
Q. Do you know if that $22 million relates to the gross selling concessions, is that the terminology that would be used to describe the 3 percent gross proceeds on the debenture offering?
A. I would assume so.
Q. Did Morgan Stanley, in addition to the $22 million fee set forth in CPH Exhibit 146 for the debenture offering, realize fees over and above that for other services provided to Sunbeam in connection with the debenture offering?
A. I'm sorry, can you repeat that?
Q. Over and above the 3 percent of gross proceeds that Morgan Stanley charged Sunbeam with respect to the debenture offering set forth in the

NOT A CERTIFIED COPY

Page 110

fee calculation in Exhibit 146, the 22 and a half million dollars fee, or the $18.75 million net fee, did Morgan Stanley realize other revenues in connection with the debenture offering?
A. Not that I recall. I mean other than, not that I recall.
Q. I don't mean to confuse you referring you back and forth between the two documents, but let me direct you to Exhibit 343, Page 3 of Exhibit 343. Do you understand, as you sit here today, what the reference to management fees relating to the underwriting offering relates to?
A. I know how the term is generally used, but I have never seen this document before.
Q. I am asking generally what does the term "management fees" mean in connection with a transaction like the Sunbeam zero coupon convertible debenture offering?
A. Very generally the -- a gross spread, the commission paid is broken into management fee and underwriting fee and a selling concession, and I don't know how they are split, but they are split up in this table, similarly splitting them into the three components.
Q. So it's your understanding that the 3

Page 111

percent gross spread includes these elements?
A. Again I don't know who created this document or what -- I am talking about generally in the equity sense there is a split of the selling -- of the gross spread into three components.
Q. Does this relate to a split within Morgan Stanley organizationally or what components of the Morgan Stanley organization received credit for some part of the fees generated by the convertible debenture offering?
A. No. What I was characterizing as the split of the gross spread into three parts is the industry terminology.
Q. This doesn't relate to some internal allocation of the fee revenue among various components of the firm?
A. I hate doing this, but I am guessing at what this is. Those terms are used in breaking up a gross spread dollar on equity deals. If there was another reason for this or -- I would be guessing. I don't know of one.
Q. Do you know if the agreement with -- if Sunbeam allocated fees into these different categories or whether the Sunbeam fee agreement simply specifies that Morgan Stanley will receive a

Page 112

certain percentage after the gross proceeds?
A. I don't know.
Q. In connection with your work at Morgan Stanley, Ms. Porat, have you ever had discussion with any of your superiors or managers concerning your compensation in which the subject of revenue sheets arose?
A. I'm sorry, what's the question?
Q. In connection with your compensation, have you ever had discussion with any of your superiors at Morgan Stanley concerning the subject of revenue sheets?
A. I don't think so. I don't -- revenue sheets are put together. I don't, frankly, I don't recall ever linking compensation to a revenue sheet. I don't actually think it's done that way, but I am guessing.
Q. You have never had a discussion with any of your managers where you have made a case for your compensation by pointing to the fee revenue that you have been involved in assisting a firm in realizing?
A. I don't know that I have. I mean in the year-end review, self-evaluation, maybe I referenced it, but I don't recall having a

Page 113

conversation, if that's the question.
Q. Did anyone ever tell you in connection with his 1998 self-evaluation Bill Strong took credit for originating all of the fees on the Sunbeam engagement, including the M&A fees, the debenture offering fees, and the senior financing fees?
A. I don't recall hearing that.
Q. Do you think that would have been inappropriate for Mr. Strong to take that position?
MR. CLARE: Objection to form and foundation.
A. I need -- I don't have any basis, I don't know that he did it.
Q. I am just asking you whether, as you sit here today, you believe it would be inappropriate for Mr. Strong to have taken the position that he should receive credit for originating all of the fees that Morgan Stanley realized on the work that it was doing for Sunbeam in the first quarter of 1998, including the M&A fee, the debenture offering fee, and the senior financing fee?
MR. CLARE: Same objection.
A. Sorry, I lost you. Whether it's -- it was problematic if Bill Strong did that?

NOT A CERTIFIED COPY

0117

Page 114

Q. Yes. Do you think that would be inappropriate?
A. I don't really have a view on it.
Q. Do you think that would have been overreaching on Mr. Strong's part?
MR. CLARE: Objection to the form of the question.
A. I think a number of people could work on any transaction and I don't see a problem.
Q. With Mr. Strong claiming credit for the entire fee that Morgan Stanley realized as a result of the work being done in -- for Sunbeam in the first quarter of '98?
A. I am hesitant only because I don't -- you are asking me to speculate about what he did or didn't say.
Q. No, I am not. I am asking you if he did it, do you think it would have been inappropriate for Mr. Strong, based on your involvement in this transaction, to have taken credit for all of the fee revenue that Morgan Stanley realized on all of the aspects of its work for Sunbeam, including the M&A work, the convertible debenture offering work, and the senior loan work?
MR. CLARE: Objection to the form of the

Page 115

question and move to strike the preamble.
You can answer if you can.
A. I don't see an issue because I don't think he would be the only one who was working on the transaction, so I don't see an issue.
Q. You think that would be -- you think that would not have been inappropriate for Mr. Strong to have claimed credit for all those fees?
A. Probably not. I am guessing, but...
Q. I am just asking from your personal point of view.
A. So I have answered.
Q. And so from your personal point of view, you don't think that would have been inappropriate?
MR. CLARE: Objection, asked and answered.
You can answer again.
THE WITNESS: I am supposed to answer again?
MR. CLARE: Yes.
A. As I said, I don't think it would be inappropriate.
Q. What was Bill Strong's involvement, from your perspective, in the various aspects of the

Page 116

work that Morgan Stanley was doing for Sunbeam in the first quarter of '98?
A. I'm sorry, can you ask that again?
Q. From your perspective, what was Mr. Strong's involvement in the various aspects of the work that Morgan Stanley was doing for Sunbeam in the first quarter of '98?
A. Well, as a managing director responsible for the relationship, he would be responsible for bringing in whoever was appropriate to deal with whatever issue needed to be addressed.
Q. So he would be responsible for making sure that Morgan Stanley had the right people working in the assignment?
A. Yes.
Q. Anything else that Mr. Strong was responsible for?
A. Well, to clarify, I don't want to make it -- nothing is a solo act, so he -- that would be part of a team ensuring that we get the right people, but he wouldn't be doing that alone, and he would be responsible for being involved in parts of the transaction.
Q. What did you observe Mr. Strong doing in connection with providing services to Sunbeam or

Page 117

assisting the Morgan Stanley team in that regard?
A. I saw him on different calls, but I can't specifically say what he was doing throughout the transaction.
Q. Was Mr. Strong providing direction to the Morgan Stanley personnel involved in the projects?
A. I don't specifically recall what he was doing with the various teams. There were different teams working on different things.
Q. Did he give you on any direction on any points?
A. I don't recall getting direction from him. I don't recall not getting direction from him.
Q. What do you recall Mr. Strong doing, if anything, in connection with the convertible debenture offering?
A. The one thing I remember most clearly is when we were involved in additional diligence regarding the company's performance, that he was involved in those discussions.
Q. We'll get to that in some detail. Anything else that you recall?
A. No, not that I don't recall, I mean not

NOT A CERTIFIED COPY

0-7110

Page 118

that I recall he didn't do things. I just don't know what people were doing along the way.
Q. I am focusing right now to make sure we are clear on the activities involved in the convertible debenture offering. The only thing you can recall, sitting here today, that Mr. Strong was specifically involved in providing services to Sunbeam or working with the Morgan Stanley team on that project related to the issues relating to Sunbeam's first quarter sales that arose in mid-March, correct?
A. That's the only specific event, although I recall he was constantly around. I don't -- I can't give you specific events.
Q. You recall that he was extensively involved in communicating with people in connection with the deal, correct?
MR. CLARE: Objection to the form of the question.
A. I recall that he was constantly involved, but I am not sure what you mean by saying constantly communicating, so he was involved, I would speak to him, he would speak to others, but I can't remember specific conversations. I remember he was visible.

Page 119

Q. He was keeping track of the work your team was doing on the convertible debenture offering, correct?
A. Again, I feel like you are putting words in my mouth, so I am trying to answer as clearly as I can.
Q. Go ahead. I don't mean to interrupt.
A. As I said, I am trying to answer as clearly as I can. I remember him being present. I can't remember exactly what he was doing.
Q. Do you recall that Mr. Strong was keeping track of the progress with respect to the convertible debenture offering so that he can communicate with Sunbeam related to that?
A. I don't recall that.
Q. Do you recall that Mr. Strong --
A. And just to clarify, I don't recall that he did or didn't. I am being very specific about what he did and, as I said, I recall generally that he was there. I can't recall generally what he was doing and that's the only reason I am saying I don't recall whether you characterized it correctly or incorrectly.
Q. So Mr. Strong may have been keeping track with you or others on the progress of the

Page 120

convertible debenture offering, you just don't recall as you sit here today?
A. Correct.
Q. You said that you had worked with Mr. Strong previously, correct?
A. Yes.
Q. In 1998, were you aware of Mr. Strong's reputation for honesty and candor with his fellow colleagues at Morgan Stanley?
A. I personally viewed him that way. I can't speak to a big group of colleagues, but personally, yes.
Q. I am asking if you are aware of his reputation within Morgan Stanley for honesty and candor in dealing with his colleagues within the firm?
A. That was my understanding of him, but again, that's the way I viewed him.
Q. I am not quite sure you are tracking my question. Let me put it to you again.
I am asking you whether you were aware of Mr. Strong's reputation within Morgan Stanley in 1997, first part 1998, among his colleagues for his reputation for honesty and candor in dealing with others at Morgan Stanley?

Page 121

MR. CLARE: Objection to the form of the question, and move to strike the preamble, and calls for speculation with regard to other colleagues.
You can answer if you can.
A. My view as to his reputation in my dealings with him is that he was candid and operated with integrity.
Q. Do you know what views others had of him? Did you hear from others about their views on that subject?
A. I don't recall hearing anything differently.
Q. Were you warned in connection with the work that you were doing in the first quarter of 1998 in connection with the Sunbeam convertible debenture offering, that senior Morgan Stanley executives were concerned about Mr. Strong's lack of candor in dealing with his colleagues at Morgan Stanley?
A. I never heard that.
Q. Nobody at Morgan Stanley management alerted you to those concerns?
A. No.
Q. No one at Morgan Stanley senior

NOT A CERTIFIED COPY

Page 122

management advised you that numerous people within Morgan Stanley had raised concerns about Mr. Strong's lack of candor in dealing with his colleagues?

MR. CLARE: Objection to the form of the question. Mischaracterizes the evidence.

You can answer.

A. I don't recall hearing that.

Q. Did anyone at Morgan Stanley management alert you to the fact that Mr. Strong was viewed by fellow managing directors and senior members of Morgan Stanley management as having questionable judgment?

MR. CLARE: Same objection.

A. I don't recall hearing that.

Q. As being overly ambitious?

MR. CLARE: Same objection.

A. I don't recall hearing that.

Q. Did Mr. Strong ever tell you that he had ambitions to become a member of Morgan Stanley's board of directors?

A. I don't recall hearing that.

Q. Do you know how many insiders at Morgan Stanley are on the Morgan Stanley board of directors?

Page 123

A. No. I should, but I don't.

Q. You don't know that it's just two?

A. I was going to guess two, but that would have been a guess. I don't know.

Q. Did Mr. Strong ever tell you that he believed senior management at Morgan Stanley had failed to recognize his management capabilities?

A. I don't recall hearing him say that.

Q. You know Terry Meguid, correct?

A. Yes.

Q. You have told us that Mr. Meguid is a very senior person within the mergers and acquisitions group at Morgan Stanley, correct?

A. No.

Q. All right, I misunderstood that. What is Mr. Meguid's current responsibility at Morgan Stanley?

A. Head of investment banking.

Q. Head of investment banking, I'm sorry.

Do you recall that in the first part of 1998, Mr. Meguid was vice chairman of the M&A group?

A. I don't recall that.

Q. Maybe I misspoke. Vice chair of investment banking?

Page 124

A. That's sounds right.

Q. You recall he was the number 2 person at that point in investment banking?

A. At one point he held that role. Very well could have been 1998.

Q. And then he became the head of investment banking; is that, correct?

A. Correct.

Q. It was around that time frame, correct?

A. Somewhere around there.

Q. Did Mr. Meguid ever tell you that he had concluded that Mr. Strong makes some judgments that are sometimes very close or if not over the line?

A. I don't recall hearing that.

Q. Did Mr. Meguid ever tell you that as of 1997, first part of 1998, that Mr. Meguid had concluded that Mr. Strong continues to suffer the consequences of a less-than-straightforward approach in dealing with his colleagues at Morgan Stanley?

A. I don't recall hearing that.

Q. Did Mr. Meguid warn you in connection with the work you were doing on the convertible debenture offering that Mr. Strong gave people, including himself, the impression that he is not

Page 125

completely upfront?

MR. CLARE: Objection to the form of the question.

A. I don't recall hearing that.

Q. From Mr. Meguid?

A. Correct.

Q. You know Joseph Perella, do you not?

A. Yes.

Q. What is Mr. Perella's responsibility at Morgan Stanley today?

A. He is chairman of investment banking and institutional securities.

Q. It's a very senior position within the firm, correct?

A. Correct.

Q. Do you recall what Mr. Perella's responsibilities were in 1997, first part of 1998?

A. I think at that point he was head of investment banking.

Q. Did Mr. Perella warn you in connection with the work you were doing on the convertible debenture offering that the problem that Mr. Perella continued to have with Mr. Strong is that you never seemed to get the whole story from him unless you probe very hard?

NOT A CERTIFIED COPY

017112

Page 126

A. I don't recall hearing that.
Q. Did anyone within Morgan Stanley senior management warn you, Ms. Porat, in connection with the work that you were doing on the convertible debenture offering that the Morgan Stanley firm management had concluded that Mr. Strong had a problem with straightforwardness and he gave people the impression that he is not completely upfront with them?
A. I don't recall hearing that.
Q. Did anyone within Morgan Stanley senior management, Ms. Porat, warn you that firm management had concluded with respect to Mr. Strong, as of the time that you were doing the debenture offering work, that Mr. Strong needed to become more open and transparent in dealing with his colleagues at Morgan Stanley?
A. I don't recall hearing that.
Q. So nobody told you any of the things along the lines that I asked you about with respect to Mr. Strong?
A. As I said, I don't recall hearing these things.
Q. Did you at any point in connection with the work you were doing in the first quarter of

Page 127

1998, Ms. Porat, develop any concerns with respect to Mr. Strong's candor dealing with you?
A. I don't recall that I did.
Q. If senior official management at Morgan Stanley had reached the conclusions relating to Mr. Strong of the sort that I just outlined for you in my questions, are those things that you would have wanted to know in connection with your dealings with Mr. Strong in connection with the work you were doing on the convertible debenture offering?
MR. CLARE: Objection to the incomplete hypothetical and one that assumes facts not in evidence.
You can answer.
A. I assume you are asking me to speculate.
Q. No. I am asking you whether, if Morgan Stanley senior management had come to the conclusions relating to Mr. Strong and his lack of candor in dealing with colleagues at Morgan Stanley, are those things that you would have wanted to know in connection with the work that you were doing in the first quarter of 1998 in connection with the Sunbeam convertible debenture offering?

Page 128

MR. CLARE: I renew my objection.
A. I guess it would be nice to know, but there were a lot of people who were working on the transaction.
Q. Ms. Porat, do you recall that the convertible debenture offering was originally expected to raise proceeds of about $500 million? That was the original structure of that deal?
A. Yes.
Q. And that was later increased to $750 million, correct?
A. Correct.
Q. Why?
A. Well, as I recall, it was a lot of demand for -- investor demand for the security.
Q. What was the investor demand driven by, in your view; do you have an understanding of it?
MR. CLARE: Objection, calls for speculation.
A. Investors' generally demand is driven by a whole list of different factors during marketing, what's discussed about the company.
Q. In connection with the Sunbeam offering in particular, do you have any understanding why demand for the Sunbeam debenture was, as you

Page 129

characterized it, strong?
A. I'm sorry, also the pricing in terms of the securities, that was the -- what you are getting and what price you are paying for it. I'm sorry, your question?
Q. Let me take a step back. Originally it contemplated that the debenture offering would raise about $500 million for Sunbeam, correct?
A. Correct.
Q. Ultimately Sunbeam raised about $750 million, correct?
A. Correct.
Q. And a conscious decision was made at Sunbeam at some point in the process to increase the amount of the offering to raise an additional $250 million, correct?
A. Correct.
Q. Is it fair to say that the reason from -- in your view, that that decision was made was primarily driven by the demand that was experienced for the debentures?
A. I would assume so.
Q. From Sunbeam's perspective, was there a reason why it would be preferable for Sunbeam to issue $250 million more in convertible debentures

NOT A CERTIFIED COPY

Page 130

and to reduce its borrowing in a senior loan facility by $250 million?
MR. CLARE: Objection, foundation and calls for speculation as to Sunbeam.
A. I don't actually recall the discussion about increasing the size of the offering, so I can't answer that.
Q. As you sit here today, though, do you have an opinion concerning whether, from Sunbeam's perspective, it would be preferable for Sunbeam to borrow $250 million less and raise an additional $250 million through the convertible offering?
MR. CLARE: Same objection and incomplete hypothetical.
A. No.
Q. Did you offer Sunbeam any views on that subject in connection with the ultimate decision to increase the amount of the debenture offering?
A. I don't recall any conversations. I assume there were some, but I don't recall.
Q. You have indicated, correct me if I am wrong, that your perception was demand for the debenture was strong, correct?
A. By virtue of you reminding me that the offering was increased from 500 to 750, I am saying

Page 131

the demand for the debentures was strong.
Q. In this particular case in connection with Sunbeam's convertible debenture offerings, do you have any understanding as you sit here concerning what factors caused there to be strong demand for the convertible debentures Sunbeam was selling?
A. I don't specifically recall, so I would be guessing.
Q. Let me show you what we have previously marked as CPH Deposition Exhibit Number 74. It's a Morgan Stanley letter dated March 5, 1998, signed by R. Bron Smith, managing director, and it is directed to Sunbeam Corporation, attention: Russell A. Kersh, vice chairman and chief financial officer. Have you seen that document before, Ms. Porat?
A. I may have. I don't recall seeing it.
Q. Are you familiar with the term "highly confident letter"?
A. Yes.
Q. Does this appear to be a highly confident letter written by Morgan Stanley to Sunbeam in Marhc 5, 1998 relating to the financing of the Sunbeam acquisitions in the first quarter of

Page 132

1998?
A. Just reading the document, on page 12 it says, "We are highly confident," but I have just taken a quick scan of it, so I don't know if there are caveats.
Q. Take a moment to look at it.
A. It looks like one.
Q. Does this letter have any relationship to the convertible debenture offering?
A. I'm sorry, I am looking to see if it refers to a convertible being done. I don't see it. I don't think this has anything to do with the convertible.
Q. Do you know if Sunbeam received a highly confident letter from Morgan Stanley in connection with the debenture offering?
MR. CLARE: Objection, no foundation.
A. I don't know that they did.
Q. Would that be something that would be typical to provide in connection with a convertible debenture offering?
MR. CLARE: Same objection and incomplete hypothetical.
Q. In your experience with Morgan Stanley?
A. I don't know. There was some kind of

Page 133

letter like this. Maybe. I don't know.
Q. In connection with work you have done in the equity capital markets group within Morgan Stanley, have you been involved in transactions where the firm had provided highly confident letters with respect to convertible debt offerings?
A. In my experience, letters related to any equity-linked security would be very different from a highly confident letter for a debt issuance.
Q. Were you ever advised, Ms. Porat, that Morgan Stanley had committed to Sunbeam that it would provide the necessary financing for Sunbeam's three acquisitions even if the convertible debenture offering was not executed?
A. I don't remember one way or the other.
Q. Do you know if Morgan Stanley, as you sit here today, had any obligation to provide Sunbeam of the financing necessary to complete the three first quarter 1998 acquisitions, even if Morgan Stanley did not proceed with the underwriting of the convertible debenture offering?
A. As I just said, I don't, sitting here today, I don't recall if there was ever such a conversation.
Q. Did you ever hear anyone at Sunbeam say

NOT A CERTIFIED COPY

Page 134

that Morgan Stanley had an obligation to provide all of the financing that Sunbeam needed to complete the three first quarter 1998 acquisitions, even if Morgan Stanley did not proceed with the debenture offering?

A. Listening to the question, I think I have answered it. I don't recall hearing anything about Morgan Stanley being required to fund everything if the convertible couldn't be sold type of thing.

Q. I was asking two slightly different questions, so I want to make sure you understood the distinction I was trying to draw.

I was asking first whether you understand whether Morgan Stanley had an obligation to provide the financing necessary for Sunbeam to complete the three first quarter acquisitions, even if it did not proceed with the debenture offering?

A. I don't recall any conversation like that.

Q. And my second question is whether, regardless of whether you understood Morgan Stanley to have such an obligation, did you ever hear someone from Sunbeam take that position?

A. I don't remember hearing that statement.

Page 135

Q. Did Mr. Strong ever say to you at any point that the firm was committed to providing the necessary financing to complete the acquisitions, even if Morgan Stanley did not proceed with the underwriting of the debenture offering?

A. I don't remember hearing that.

Q. The decision to increase the debenture offering from 500 million to $750 million occurred at the very end of the road show, correct?

A. I would assume so.

Q. It occurred at the time of the pricing, correct?

A. It usually does. I don't recall in this instance.

Q. I can get it back out for you if you like, but the March 10th memo to the equity commitment committee for approval to proceed with the underwriting sought approval to underwrite a $500 million convertible offering; do you recall that?

A. Yes.

Q. Did anyone go back to the equity commitment committee to advise it in any way that Morgan Stanley was increasing the amount of the debt offering from $500 million to $750 million

Page 136

prior to the implementation of that change?

A. Specifically reconvening the committee?

Q. Communicating in any way?

A. Well, what would be customary is a number of people on the committee are involved throughout the marketing, so it's not a formal reconvening of the committee. But there is a broader group that's familiar with what's -- whether the market demand supports a change in terms of the commitment committee goes to whether we are comfortable underwriting and the indicative terms. So the answer is it is not atypical to increase or decrease, depending on demand, the size of an offering relative to what was discussed with the commitment committee.

Q. Who has authority at Morgan Stanley, and the position, to approve a decision? Who within Morgan Stanley has authority to approve an increase in, in this case, a convertible debenture offering above the level approved by the equity commitment committee initially?

MR. CLARE: Objection, lack of foundation.

A. I don't know the answer to that question.

Page 137

Q. Was approval sought from anyone within Morgan Stanley with respect to the decision in this case to increase the convertible debenture offering by 50 percent?

A. I don't recall the specific pricing size and discussion. This -- what is usually -- what usually happens is that there is a pretty broad group of people involved in the ultimate pricing and allocation and it's based, as I just said, on how much demand there is and whether that fairly large group believes it could be increased or should be decreased.

Q. In this case, did the Morgan Stanley team working on the Sunbeam transaction, itself have authority to implement a 50 percent increase in the debenture offering above the level initially approved by the equity commitment committee?

MR. CLARE: Objection to the form of the question and foundation.

A. Can you repeat the question?

Q. Sure. Did the individuals working at Morgan Stanley, as part of the Sunbeam working team, themselves have authority to cause the firm to increase the size of the convertible debenture offering by $250 million, or 50 percent above the

NOT A CERTIFIED COPY

Page 138

level initially approved by the equity commitment committee, or do they need to go to someone else within the firm to obtain that authority?
MR. CLARE: Same objection.
A. Well, anyone who -- anyone would need to go to, they would have, I believe, have gone to. It's not just -- it's not the corporate finance team that is involved in those kind of decisions, I would say, so my guess would be the answer is yes.
Q. Your guess -- I am not sure what question you have answered at this point, so let me rephrase it.
Let me ask a factual question first. To your knowledge, did anyone on the Morgan Stanley team working on the Sunbeam transaction seek approval from the equity commitment committee to increase the size of the convertible debenture offering by 50 percent?
A. As I think I said, I don't recall the specifics or the process of increasing the size of the offering.
Q. So you don't know whether that happened or not?
A. I don't recall.
Q. Was it required by Morgan Stanley

Page 139

procedures for that to occur?
A. To go back to the formal commitment committee, no.
Q. Was it required that authority be obtained from someone within Morgan Stanley's firm management before, in this case, the debenture offering was increased by 50 percent?
MR. CLARE: Objection, lack of foundation.
You can answer.
A. I am only hesitating because it was -- I don't recall exactly what was required, but it was always a broad group that was involved, many people of whom were on the commitment committee. So I don't -- I am hesitant because I don't know exactly what the procedures were back then.
Q. Did you personally have authority to authorize the firm to increase the size of the debenture offering by 50 percent?
A. I may have, but I wouldn't have done it alone.
Q. Did Mr. Strong have that authority?
A. I would doubt it. He wasn't on the -- in the equity part of the firm.
Q. Is there anybody else on the Morgan

Page 140

Stanley Sunbeam working team that you think individually had that authority?
A. On one of the memos you showed me, the selling memo, you have Richard Kauffman, who was the head of equity capital markets at the time. He would have and, based on this team, I don't think anybody else would have.
Q. Do you know if Mr. Kauffman -- do you know if the Sunbeam team sought Mr. Kauffman's approval for the 50 percent increase in the debenture offering?
A. I don't know.
Q. Ms. Porat, when did you first --
A. I'm sorry. Just to add, another document you showed me had Scott Sipprelle on it. I can't recall which document it was. He would be another person who would have an important vote.
Q. Do you know if his approval was sought?
A. I don't recall.
Q. Ms. Porat, when did you first learn that Sunbeam was having problems with its first quarter 1998 performance?
A. I don't recall precisely when, but it was somewhere in that -- towards the end of the road show, which you have reminded me is around

Page 141

March 17th, 18th, 19th, somewhere in there.
MR. CLARE: If you are turning to a different area, this might be a good place for another short break. We are going for about an hour.
THE VIDEOGRAPHER: Time is 11:18 a.m. We are going off the video record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 11:28 a.m. and we are back on the video record.
BY MR. MARKOWSKI:
Q. You knew that as part of the due diligence that Mr. Tyree was conducting, that he was interviewing Sunbeam's outside accounting firm, correct?
A. I believe so.
Q. And that was Arthur Andersen?
A. Correct.
Q. Let me show you a copy of a memorandum dated March 7, 1998 from Mr. Tyree to the Sunbeam financing team, subject: Accounting due diligence call. It's previously been marked as CPH Exhibit Number 31. Have you seen that document before?
A. I don't remember seeing it.
Q. Were you part of the Sunbeam financing

NOT A CERTIFIED COPY

Page 142

team?
A. I am not sure what he meant by that, whether that was the corporate finance financing team. I don't recall seeing this document.
Q. The financing that does due diligence relates to a convertible debenture offering, correct?
MR. CLARE: Objection, calls for speculation.
A. I don't know.
Q. Did Mr. Tyree -- did you participate in the accounting due diligence call with Arthur Andersen?
A. No.
Q. Why is that?
A. In my role on the equity capital markets desk, it would have been extremely unusual. I am not sure if I have ever done, in that capacity, an accounting due diligence call.
Q. Did Mr. Tyree brief you on the results of his conversation with Arthur Andersen?
A. As I recall, yes.
Q. Did Mr. Tyree tell you that during the due diligence call with Arthur Andersen on March 12, 1998, that Arthur Andersen had advised

Page 143

Morgan Stanley that, in Arthur Andersen's view, Sunbeam had used a number of aggressive techniques to enhance its 1990 sales revenue?
A. I don't recall hearing that.
Q. Do you think that Mr. Tyree -- is it your testimony that Mr. Tyree failed to tell you that?
A. No. It's my testimony that I don't recall that he told me that.
Q. So you don't rule it out. You think Mr. Tyree may have told you that Andersen has advised us that, in Andersen's view, Sunbeam have used a number of aggressive techniques to enhance its 1997 sales results?
A. As I said, I don't remember any such conversation.
Q. I am asking whether you are ruling it out or whether you just don't remember one way or the other?
A. I am saying I don't remember one way or the other.
Q. So you don't rule it out?
MR. CLARE: Objection, asked and answered.
Q. Did Mr. Tyree advise you that one of the

Page 144

aggressive techniques that Sunbeam used to enhance its 1997 sales results was the use of bill-and-hold accounting transactions?
A. I don't remember a discussion about bill-and-hold.
Q. Did Mr. Tyree advise you that Arthur Andersen informed Morgan Stanley during the course of the March 12th due diligence call that Sunbeam in 1997 had booked as sales transactions where the customer had a 100 percent right of return of the product?
A. I don't remember hearing that.
Q. Did Mr. Tyree advise you that Arthur Andersen, in the course of a March 12th call, informed Morgan Stanley that Sunbeam had engaged in a transaction with EPI Printers that Arthur Andersen viewed as bogus, in order to enhance its 1997 sales results?
MR. CLARE: Objection to the form of the question.
A. I don't recall ever hearing anything about an EPI Printer.
Q. Do you remember hearing about any reports of bogus transactions?
MR. CLARE: Objection to the form of the

Page 145

question.
A. No. As I recall, John and I spoke and he didn't -- I don't recall him saying there were any issues that came out of the accounting diligence.
Q. So your recollection is Mr. Tyree's report to you was basically simply the conclusion that the accounting due diligence call went fine?
A. That's all I remember.
Q. As you sit here, you don't recall him flagging for your attention any concerns that Arthur Andersen raised about Sunbeam's efforts to enhance its 1997 revenues?
A. I don't recall any problems raised, no.
Q. Would you have expected Mr. Tyree to inform you of such things if Arthur Andersen raised issues of that sort during the accounting due diligence call?
MR. CLARE: Objection, incomplete hypothetical.
A. As I said, I recall that we discussed the accounting due diligence call and his summary was that -- I don't recall him raising any issue in the -- in his summary of that call.
Q. Who was responsible for determining

NOT A CERTIFIED COPY

Page 146

whether or not any of the information that Arthur Andersen provided during that accounting due diligence call is significant? Mr. Tyree, or was he responsible for informing someone else, who would make that judgment?

A. If he would have any concerns, I would have assumed he would raise that, raise those concerns. I don't recall any concerns being raised.

Q. Would your expectation have been that he would have raised those concerns with you or with someone else?

A. It could have been either. Either or both.

Q. So it's your testimony, Ms. Porat, that nothing that occurred as part of the accounting due diligence that Mr. Tyree conducted caused you to suspect that Sunbeam had taken steps to inflate its 1997 sales revenue at the expense of results from the first quarter of 1998?

A. No.

Q. Just before we broke, I asked you when you recall first hearing indications that Sunbeam was having problems with its first quarter 1998 performance, and you indicated it was at the end of

Page 147

the road show.

A. As I recall, I think it was towards the end.

Q. Do you recall a specific point in time where that was first brought to your attention?

A. No.

Q. What do you recall?

A. About -- I'm sorry?

Q. When it was first brought to your attention that Sunbeam was having difficulty in its first quarter 1997 -- excuse me, let me start over.

When did you recall that it was first brought to your attention that Sunbeam was having problems with its first quarter 1998 performance?

A. I can't -- I don't know if I recall this or it was in the prior deposition, in reviewing that, but I believe it was at a road show, at the New York road show lunch, that somebody raised a concern that first quarter sales may not be as strong as expected.

Q. The road show was scheduled to end on March 19th, correct, at that point?

A. I don't remember that, but sounds right from everything we have gone through this morning.

Q. Do you recall that it was that New York

Page 148

was the second-to-last stop?

A. I think that sounds right.

Q. The New York road show was on March 18th and the road show was concluding in Boston on the following day?

A. Right.

Q. And you attended the luncheon in New York on the 18th?

A. Yes.

Q. Had you attended any of the other road show presentations that day in New York?

A. I don't believe I did.

Q. There were a series that day, correct?

A. There would have been a number of what are called one-on-one meetings, meetings of one institution, and I don't believe I attended any of those.

Q. Did you attend any of the road show events on any of the other days of the road show, whether one-on-one presentations or luncheons or dinners?

A. No. Nor would it have been customary for the equity capital markets desk to do that.

Q. Why did you attend on the 18th the luncheon?

Page 149

A. Because that's the customary thing is when you are on the equity capital markets desk you go to the New York luncheon. It's one big event and it's a good time to catch up with management at the end of the day at a point in the road show, whether it's the beginning or the end.

Q. Who was there that day from Morgan Stanley?

A. For some reason, all I can remember is Jim Stynes. I don't remember if more people were there.

Q. Do you remember John Tyree being there?

A. I don't remember if he was or wasn't. I don't know.

Q. Who did you sit with?

A. No recollection.

Q. Did you sit with Mr. Stynes?

A. I don't recall.

Q. Who spoke that day at the presentation?

A. I don't recall the presentation.

Q. Do you recall if Mr. Dunlap spoke?

A. The structure, I remember the structure of the presentation was he would speak a lot, but whether he was the only one who spoke, I don't know.

NOT A CERTIFIED COPY

0171

Page 150

Q. Do you know who from Morgan Stanley spoke?
A. I don't.
Q. I take it it wasn't you?
A. I was waiting for you to tell me it was. I don't remember. It would have been a brief introduction.
Q. But somebody from Morgan Stanley introduced the company that day, correct?
A. Usually would. I don't remember if someone did.
Q. I know you don't recall the specifics of the presentation that day. Do you remember the company in the course of its presentation announcing any bad news?
A. No, I don't believe so.
Q. Is it fair to say that the take-away you had that day was that the company's presentation remained bullish with respect to its prospects?
MR. CLARE: Object to the form of the question.
A. I don't remember what the presentation said.
Q. You said that at some point during the events at the luncheon, someone came up to you and

Page 151

said first quarter sales might not be as strong as expected?
A. There was something was said, as I recall, that I don't believe it was as definitive as you just summarized it, but it was something that was said that led us to say, well, let's look further into the sales patterns of the quarter.
Q. What's your best recollection of the words that were expressed to you?
A. I don't remember the words, other than the conclusion from the words, which was we should revisit the financial performance for the first quarter.
Q. This wasn't a general announcement that was made in the course of the company's presentation?
A. No.
Q. It was a private conversation of some sort?
A. Some sort.
Q. Do you remember whether it was a conversation you had -- let me take a step back.
Do you remember anyone other than yourself participating in this conversation?
A. For some reason, I think Jim Stynes was

Page 152

involved, but I can't specifically say why, whether he told me -- I don't. I just remember him as part of the conversation, but I don't know why.
Q. Who do you recall being the source of the comment?
A. I don't recall the source.
Q. Was it someone else at Morgan Stanley?
A. I don't know. As I am saying, I don't know whether Jim Stynes was relating a conversation, if he was part of a conversation that I had with some of the company. I can't remember. But I remember there was something that was said at that lunch that resulted in additional due diligence.
Q. Did the comment that was made to you relating to the company's first quarter performance cause you concern?
A. To the extent that it encouraged us to do additional due diligence.
Q. So it caused you some concern; is that correct?
MR. CLARE: Objection. That misstates her testimony.
A. No. I mean the reason I am hesitating is the company was consistently of the view that

Page 153

there was not a problem with the first quarter, and but there was something that was said, and again I don't recall precisely what it was, that led us to conclude that it made sense to do additional due diligence.
Q. Do you remember anything else happening while you were still at the road show luncheon on this subject?
A. No.
Q. Did you say anything to anyone else while you were at the luncheon relating to the information that had been imparted to you?
A. I don't remember if I did.
Q. Did you call anyone from the road show?
A. I don't recall if I did.
Q. Did you go around to other Morgan Stanley people who were present at the road show and say, we have got to get back to the office to discuss this?
A. I don't recall.
Q. Did you say that to Mr. Stynes?
A. I don't recall specifics of a conversation other than to say that we eventually later that day did do more due diligence on the first quarter.

NOT A CERTIFIED COPY

Q. What did you do after the road show luncheon ended -- let me take a step back.
Did you stay for the conclusion of the road show luncheon?
A. I can't recall if I did.
Q. Do you recall if this comment caused you to leave early?
A. I don't recall.
Q. What do you recall doing after you left the luncheon?
A. I don't recall the specifics other than when you get later in the day, I do recall being on a rather lengthy conference call with the company and a number of other people to talk about the quarter, but I wish I can remember more details between the lunch and that and I don't.
Q. You called Mr. Strong in San Francisco after lunch, didn't you?
A. I don't recall calling him in San Francisco. I don't recall him being in San Francisco. But I do know he was in on a call later that day with the company.
Q. Before that before the call involving the company, you called Mr. Strong, who was not in New York, and alerted him to the information that

you received at the luncheon on this subject, correct?
A. I don't recall that. I don't recall not doing it. I don't recall doing it.
Q. You don't recall calling Mr. Strong, making an effort to reach him in California and having him return your telephone message?
A. I don't recall.
MR. CLARE: Objection, asked and answered.
Q. What do you recall happening when you went back to the office?
A. I am feeling quite repetitive, but I don't recall the details leading up to a conference call that included quite a number of different people to review performance in the quarter.
Q. Is it fair to say that you devoted the rest of the day to this subject?
A. As I recall, it was a pretty long period of time that day, yes.
Q. This was after you got back to your office, this was the focus of your attention for the rest of that day?
A. I can't say if it was exclusively, but I remember spending a lot of time on it.

Q. Prior to -- well, let me take a step back. Do you remember speaking to Davis Polk that day about the subject?
MR. CLARE: Let me just instruct the witness for now that's a yes or no answer.
A. What's the question?
Q. Do you remember speaking with Davis Polk relating to this subject?
A. At any point?
Q. During the day on March 18th after you came back from the road show?
A. Yes.
Q. With whom?
A. I think it was Alan Dean.
Q. When did you first speak with Mr. Dean that day?
A. I don't recall.
Q. Was it a private conversation or were there representatives of the company on the phone?
A. I don't recall.
Q. Did you speak with anyone else at Davis Polk that day, other than Mr. Dean?
A. I may have, but I don't recall.
Q. Who are the other possibilities in your mind?

A. I don't have a recollection.
Q. Do you recall Mr. Lurie working on the transaction?
A. No, I don't recall one way or the other.
Q. Ms. Porat, if Mr. Strong stated that he did receive a call from you that day after the road show, and that you expressed concern about the information that you received and that you wanted to report that information to him, do you have any reason to dispute that description of the events?
A. Given we ended up on a conference call to go through it, I have no reason to dispute it. I don't specifically remember the conversation.
Q. You knew that if Sunbeam was not doing well in the first quarter, that was a potential problem, right?
A. Depending on the issue.
Q. But that was a potential problem is my question?
MR. CLARE: Objection to the form of the question.
A. I knew that I wanted to understand what the issue was.
Q. And if Sunbeam sales weren't performing as expected in the first quarter of 1998, that was

NOT A CERTIFIED COPY

01-20

Page 158

a potential problem?
A. As I said, it depended on all of the issues around the question and what the performance was.
Q. I am simply asking whether you understood that if Sunbeam wasn't doing well with respect to its sales or as expected with respect to its sales in the first quarter of 1998, you knew that was a potential problem?
MR. CLARE: Asked and answered.
A. It depended on what the performance was, what the issues were, and if there was -- and it was important to understand that there was a real deviation from what the consensus of Wall Street was expecting.
Q. I am simply asking, Ms. Porat, whether you understood when you received this information about Sunbeam, there being an issue with respect to Sunbeam's first quarter sales, those circumstances might be a problem with respect to the transaction in which you were engaged?
MR. CLARE: Same objection.
A. I feel like I answered this a couple of times. I understood if anybody was raising an issue, I wanted to understand what the issue was,

Page 159

to understand if there was a problem.
Q. And you previously told me that you knew it was important that Sunbeam continued to hit its numbers in the first quarter of '98, correct?
A. Correct.
Q. Let me show you a document that we previously marked as Coleman (Parent) Holding Exhibit Number 12. It's a letter dated March 11, 1998, to Arthur Andersen from Morgan Stanley, and it's signed by John D. Tyree.
Have you had a chance to read Exhibit 12?
A. Quickly, yes.
Q. Do you know what it is?
A. In reading it. It says it's a request to deliver a comfort letter.
Q. And this request for a comfort letter relates to the convertible debenture offering, correct, that you were involved in performing for Sunbeam?
A. Yes.
Q. What's the purpose of a -- let me take a step back.
Do you know that Mr. Tyree had written to Arthur Andersen and requested a comfort letter

Page 160

in connection with the convertible debenture offering?
A. I don't think I have ever seen this letter.
Q. But did you know that he had written to Arthur Andersen in a request for a comfort letter?
A. No, but I assume, you know, his standard to get a comfort level letter in conjunction with a transaction.
Q. That's something that you knew that would be occurring in connection with the debenture offering due diligence, correct?
A. I could have assumed that at the time.
Q. And one purpose for the comfort letter is to obtain information from the company's outside accounting firm with respect to the current period financial performance of the company, correct?
A. It make sure that anything -- in my understanding of it is to make sure that anything that's in the offering document, the accountants can give you comfort is accurate.
Q. Do you understand that the comfort letter also requests that the auditor provide information with respect to the financial performance of the company since the date of the

Page 161

company's last publicly reported financial reports?
A. I remember seeing the form of the comfort letter that provided a bit of an update.
Q. In connection with the Sunbeam transaction?
A. Correct.
Q. And that update was more current financial information with respect to Sunbeam's first quarter performance, correct?
A. Correct.
Q. Now when this issue arose at the road show luncheon with respect to Sunbeam's first quarter sales results, did you ask anyone at that point whether Morgan Stanley had received the comfort letter that had been requested from Arthur Andersen?
A. I don't recall one way or the other.
Q. So you don't rule that out, correct?
A. Correct.
Q. Did Davis Polk at any point in the day on March 18th report to you that it had received a copy of the Arthur Andersen comfort letter?
MR. CLARE: I am going to object to the question and instruct the witness to limit your answer in this way. Mr. Markowski has

NOT A CERTIFIED COPY

Page 162

asked you whether Davis Polk attorneys, representing Morgan Stanley, communicated certain information to you. That's a legitimate question for him to ask only if in that communication there were other people who were present, people from Sunbeam or other people outside of Morgan Stanley.

If the answer to your question would require you to disclose information just in a private conversation with Morgan Stanley people and Davis Polk, I will instruct you not to answer; but if you can answer his question without disclosing that attorney-client privileged communication, you are free to answer.

A. Kind of an easy answer. I don't recall any conversation to -- about the comfort letter.

MR. MARKOWSKI: I disagree with Mr. Clare's limitations on your answer. I think I am entitled to know the answer to that question regardless of whether it's a private conversation or not.

A. The answer doesn't change.

Q. At any point of the day on March 18th did you learn that Davis Polk had a copy of the

Page 163

Arthur Andersen comfort letter?

A. I don't recall one way or the other.

Q. On March 18th did you see a draft of the comfort letter?

A. I don't believe so.

Q. Do you rule it out?

A. I don't recall seeing a copy of a comfort letter.

Q. But I just want to understand -- I am trying to be fair really -- whether that's something that you say did not happen or whether it's something that you can't recall one way or the other?

A. I don't think it happened, but I wouldn't rule it out. A long time ago.

Q. I am going to show you a copy of a document that's been produced to us in this litigation by Davis Polk. It's an excerpt from a Davis Polk time entry for March 18, 1998 and the attorney whose time entry this relates to is James Lurie at Davis Polk. We are going to mark this as Coleman (Parent) Exhibit 344.

(Coleman (Parent) Exhibit 344, time excerpt from James Lurie at Davis Polk for March 18, 1998, marked for identification, as

Page 164

of this date.)

Q. I am just going to read the time entry into the record, Ms. Porat.

"Review AA and KPMG comfort letters. Calls Bernstein," I think that's a typographical error for Borenstein, "MS and Skadden. Conference calls with same re various matters. Conference call with," excuse me, "conference call re PA changes. Call with other accounts re comfort. Conference calls re Q/W/Co. meetings with FJM, AD and JS."

Does reviewing this time record, Ms. Porat, refresh your memory concerning any communications you had with Davis Polk relating to the Andersen comfort letter?

A. No.

Q. Does it refresh your recollection concerning your having seen or been advised of the contents of the comfort letter on March 18th?

A. No.

Q. Does this refresh your recollection relating to James Lurie's participation in conversations on March 18th relating to the events of the first quarter?

A. No.

Page 165

Q. Do you see the initials FJM, AD and JS at the end of that time entry?

A. Yes.

Q. Did you have any conversations that day with, I believe it's Mr. Morris or Mr. Small at Davis Polk relating to disclosure issues or Morrison?

A. I don't recall if I did.

Q. Do you know who those individuals are at Davis Polk?

A. I know Jeffrey Small.

Q. Do you recall having any communication with him relating to Sunbeam?

A. I don't recall having conversations with him.

Q. Do you know Mr. Morrison?

A. I don't think I do.

Q. Mr. Small is a senior securities lawyer at Davis Polk?

A. Yes.

Q. Was he otherwise involved at any time in the Sunbeam transaction, other than with respect to -- well, let me strike that. And if I just asked this a moment ago, I apologize.

Do you recall if Mr. Small was brought

NOT A CERTIFIED COPY

01711

Page 166

in to provide advice with respect to the issues that were being discussed on March 18th?
A. I don't recall one way or the other.
Q. You don't recall being on the phone with him at all that day?
A. No. I worked on other deals with him, which is how I know him. I don't know if he was involved.
Q. You don't recall meeting with him that day?
A. No, I don't recall.
Q. Let me show you a copy of what we have previously marked CPH Exhibit 17. It's a copy of a March 19, 1998 letter from Arthur Andersen to Morgan Stanley & Company.
Can you tell me what this is, ma'am?
A. A letter from Arthur Andersen to Morgan Stanley.
Q. It relates to the Sunbeam transaction, correct?
A. Yes.
Q. This is the comfort letter that Mr. Tyree requested in his March 7th letter to Arthur Andersen, correct?
MR. CLARE: Objection, no foundation.

Page 167

A. I have no idea.
Q. You can't tell from this document whether this was the letter that Mr. Tyree requested Arthur Andersen provide?
A. No, I can't.
Q. When did you first see this document?
A. I think I first saw it in a prior deposition.
Q. Is it your testimony that you did not see this back in 1998?
A. I don't recall seeing it in 1998. I may have, but I don't recall.
Q. Let me direct your attention to the fourth page of the exhibit.
A. Page 378.
Q. Actually, it's page 5, I'm sorry.
A. Page 379.
Q. Correct. Actually, there is a page number on the top too. It says page 5. I would like you to read out loud paragraph C at the top.
A. Paragraph C reads "Although the company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which

Page 168

were $72,018,000, as compared to $43,499,000 for the corresponding period of the preceding year.
Q. In this letter dated March 19, 1998 Arthur Andersen advises Morgan Stanley that Sunbeam's sales for the first two months of 1998 are approximately half of Sunbeam's sales for the comparable period in 1997, correct?
A. Correct.
Q. I direct your attention to the prior page. I would like you to read the first sentence in paragraph B at the bottom.
A. Paragraph B, "From the period of December 29, 1997 through March 16, 1998 consolidated net sales decreased as compared to the corresponding period of the preceding year, primarily due to the company's new early buy program for outdoor grills, which accelerated outdoor grill sales into the fourth quarter of fiscal 1997."
Q. So that statement advises Morgan Stanley that the primary reason for the decline in -- 50 percent decline in Sunbeam's net sales in the comparable period 1997 is due to the fact that the company had accelerated its sales into the fourth quarter of 1997, correct?

Page 169

MR. CLARE: Objection, that mischaracterizes the document.
A. I'm sorry, can you repeat your question?
Q. The statement advises Morgan Stanley that the primary reason why Sunbeam's sales in the first two months of 1998 have declined by 50 percent from the level of the comparable period in 1997 is due to the fact that the company had accelerated the outdoor grill sales into the fourth quarter of fiscal 1997, correct?
A. Well it says primarily due to.
Q. Correct. That's the primary cause of the 50 percent decline in sales from the comparable period in 1997, correct?
A. That's what the document says.
Q. Morgan Stanley knew that at least as of March 1998, correct?
MR. CLARE: Objection, no foundation.
A. As I indicated, I don't recall seeing this letter.
Q. After you came back from the road show luncheon, what events do you recall?
A. I recall a series of conference calls to go into a lot of detail about the sales for the first quarter and the pipeline for the balance of

NOT A CERTIFIED COPY

071123

Page 170

the quarter.
Q. Tell me what you can recall about that. Is there anything, any more detail that you can recall?
A. Well, the main thing is just a fairly detailed line-by-line discussion of sales and expected sales globally, with the company expressing a very high level of confidence that their sales for the quarter would not, in fact, deviate from the street's expectations.
Q. Who do you recall being involved in those discussions?
A. From the company?
Q. Well, let me ask a background question before we get to that.
Can you separate in your mind any of the phone conversations or meetings that you had that day into separate and distinct discussions?
A. Well, as I recall, there were some kind of internal Morgan Stanley names pulled from the conversations, and I don't remember how many or the sequence. The main thing I remember is a fairly large call with Morgan Stanley, the company, Skadden and Davis Polk, and I don't know who else was on the call, and a lot of back-and-forth

Page 171

throughout the -- throughout the evening.
Q. And those conversations led to a discussion with Mr. Dunlap at the end of the evening, correct?
A. Correct.
Q. Do you recall being a participant in that conversation?
A. I can't remember if I was actually on the call with him or was subsequently told of the contents of it. I can't remember who was on it when.
Q. So you can distinguish -- let me rephrase it.
Is it fair to say that you recall three sets of the conversations, some initial back-and-forth conversations between Morgan Stanley personnel and people at Davis Polk; the second set of conversations is with the company, Davis Polk, Skadden, and Morgan Stanley personnel; and then there being at least a conversation with Mr. Dunlap after that?
A. My only concern on what you said is that you packaged it a little too neatly. What I remember is a whole series of conversations that at one point enlarged the group of participants from

Page 172

the company to get more information. So it was as opposed to three discrete events, it was much more of an iterative, if we need more information.
I remember at one point we hooked somebody in from the company from Florida, to get more information. So this was an ongoing couple of hours or -- I can't remember how long, but it was a long series of discussions and, again, the only thing I am objecting to is it wasn't as neatly packaged as you spoke to Davis Polk, then you spoke to the company, then you spoke to Mr. Dunlap. As I recall, we were on and off and on and off with different people, so as we were getting the information.
Q. Well, do you recall that before you became -- before you first started speaking to people at the company, you did have some internal discussion about what you learned at the road show initially?
A. I don't specifically recall the internal discussions, other than something that got us onto this conference call with the company, but I don't recall what it was.
Q. Do you recall before you got involved in that conference call with the company, you also had

Page 173

some communications with Davis Polk?
MR. CLARE: That's a yes or no answer.
A. No, I don't recall that. I don't recall one way or the other.
Q. Once the company became involved in the conversations, can you separate in your mind today those communications into separate telephone calls of any sort, separate events, so that we can deal with them one at a time?
A. No.
Q. Who do you recall internally at Morgan Stanley being involved in any of these conversations that day?
A. I remember Bill Strong and John Tyree were involved and I don't know who else was.
Q. Who do you remember at Skadden being involved in any of the conversations that day?
A. You are going to have to help me with names.
Q. Can you remember anybody by name?
A. I could if you gave me some names. I can't remember names.
Q. Do you recall Blaine Fogg being involved?
A. Yes, I believe he was involved.

NOT A CERTIFIED COPY

01214

Page 174

Q. Is there anyone else at Skadden that you recall participating on the phone call -- any of the phone calls that day?
A. I can't, but if you --
Q. Did you think there were other people from Skadden involved?
A. I -- if you give me some names, I can probably tell you if I remember them, but I don't recall any other names. There may have been.
Q. Let me simply ask this question. Do you recall whether, in addition to Mr. Fogg, there was anyone else from Skadden Arps involved in conversations that day, whether you can remember their names or not?
A. I can't remember.
Q. Who do you remember from the company being involved?
A. I think -- I think it was Fannin, Kersh, and Uzzi, but I am not sure why I remember those names. I think I have those names right.
Q. Mr. Fannin was the general counsel, correct?
A. Right.
Q. Mr. Kersh was the CFO?
A. Correct.

Page 175

Q. Do you remember Mr. Uzzi's job responsibility or was it described to you?
A. As I remember, it was something to do with sales. I don't know what his job was.
Q. Who do you remember from Davis Polk being involved that day in any of the conversations, whether it's your separate side conversations with them or these larger group conversations?
MR. CLARE: He is just asking you to identify them by name.
A. No, I understood. I think the only one I think I can remember is Alan Dean.
Q. Who from Morgan Stanley was taking the lead with respect to obtaining information from Sunbeam on the subject of its first quarter sales?
A. Well, I remember, as I recall, I was playing a pretty lead role in those calls on that day and as I recall, Bill was similarly quite actively involved in parts of the conversation.
Q. Was Mr. Strong involved in the conversations when the company was presenting facts relating to its first quarter sales situation?
A. I can't remember specifically.
Q. Do you know if he was on the phone when

Page 176

Mr. Uzzi was making his presentation?
A. I can't remember.
Q. How did it come that you were -- come to be that you were playing lead role for Morgan Stanley in connection with obtaining these facts?
A. Well, John Tyree had been running a lot of the due diligence and then as we were coming up to the completion of the offering and we became concerned that maybe there were some other issues, as we previously discussed, I just kind of asserted myself.
Q. So no one gave you that assignment?
A. No, I can't recall anyone asking me to do it.
Q. You don't recall Mr. Strong saying, Ruth, I want you to be the person responsible for obtaining all the facts for me?
A. I don't remember him saying that.
Q. You just took it upon yourself to do it?
A. That's my recollection of it.
Q. Let me show you, Ms. Porat, what we have previously marked as CPH Deposition Exhibit 16. It's a one-page document Bates labelled Morgan Stanley Confidential 28858. Can you identify this for me?

Page 177

A. It looks like something we went over that afternoon that the company prepared, and that we reviewed by line to support the company's repeated assertion that there was no risk about the strength for their supporting numbers.
Q. Do you recall the company sent to you something in writing on that subject?
A. Yes.
Q. And is it your best recollection that this is that document?
MR. CLARE: Without the handwriting?
A. Without the handwriting. I don't -- I got a clean document, no handwriting, that looks something like that, so very well could have been this.
Q. Do you believe this to be the document?
A. I think so.
Q. Do you see the note "Porat sees this"?
A. Yes.
Q. Do you know whose handwriting this is?
A. No.
Q. Do you see a set of three fax numbers at the top of the page?
A. Yes.
Q. Is that fax number in the first line

NOT A CERTIFIED COPY

Page 178

your fax number, where it says next to the words "Ruth fax"?
A. Yes.
Q. And do you see beneath that the word "Alan"?
A. Yes.
Q. Do you know that to be Mr. Dean's fax number?
A. I don't, but 450 is a Davis Polk prefix. Could be.
Q. And do you see the word "David"?
A. Yes.
Q. Do you know if the 212-735 number listed next to the word "David" is Mr. Fogg's fax number?
A. I don't know.
Q. Do you know if 735 is the Skadden Arps exchange?
A. I think it's the Skadden Arps exchange. I am not sure.
Q. Tell me what you were told about this document during the course of the conversations you had that day with the company.
A. Well, the company, as I recall, used this document as support that, in their view, it was absolutely no risk to the company hitting the

Page 179

first quarter numbers.
Q. Do you remember anything else the company said about it?
A. The thing I remember most was they were extremely strident that it provided the detail behind the buildup to the first quarter, and I remember them going through literally every line item on it.
Q. Do you remember that at this point in time the street -- Wall Street analysts were expecting the company to achieve sales from 285 to 295 million dollars?
A. I don't recall that.
Q. Jumping ahead a little bit, but let me show you a copy of what we marked previously as CPH Exhibit 14. It's a document that bears Morgan Stanley Bates numbers 16944 through 945, and it's entitled "Sunbeam states that first quarter revenues may be lower than street estimates," and it's dated March 19, 1998.
Do you see that the first sentence in this document, Ms. Porat, states that Sunbeam's -- excuse me, states that the range of Wall Street estimates of 285 million to 295 million are the -- were the then current Wall Street expectations for

Page 180

Sunbeam's first quarter sales?
A. Yes.
Q. Do you remember anything else that you were told about Exhibit 16, the one-page -- sheet information you received that day from the company?
A. I can give you some pretty general categories. Those are categories that I remember.
Q. But do you remember anything else factually that you were told by the company?
A. I am not sure what you are asking. I don't think so.
Q. You told me the company was very strident in saying they are going to achieve Wall Street expectations and that you went through on an item-by-item basis some of the information on here, correct?
A. Correct.
Q. Is there anything else you can recall the company sharing with you relating to the substance of the information set forth on this page?
A. I think we went through how do they, you know, the process by -- of putting this page together and who put it together and what it meant, all the process issues around it. But I think

Page 181

other than that, no, I don't recall anything else.
Q. Let's go through the document for a moment. You see that it states on the first line that January consolidated net sales for $29 million; do you see that?
A. Yes.
Q. And do you see that it states that February consolidated net sales actual for $43 million?
A. Yes.
Q. So the total that this document tells you is that Sunbeam has realized in net sales for January and February were $72 million, correct?
A. Correct.
Q. And we have just seen that Wall Street's expectations for the first quarter were 285 million to 295 million, correct?
A. Correct.
Q. So you knew as of the time that you were looking at this document that Sunbeam for the first two months of 1998 had achieved sales that represented only about 25 percent of Wall Street's expectations for the first quarter of 1998, correct?
A. Correct.

NOT A CERTIFIED COPY

Q. You knew the third line of this document indicates that March -- international sales through March 15th were $6.9 million; do you see that?
A. Yes.
Q. And March international -- domestic sales through --excuse me, March domestic net sales through March 17th were $22.7 million?
A. Yes.
Q. So if you add up the actual sales that Sunbeam had realized through the first two and a half months of 1998, the total is approximately $101 million, 72 plus 6.9 plus 22.7?
A. Right.
Q. And you understood that from looking at this document, when you were speaking with the company that day, correct?
A. Correct.
Q. So $101.2 million is about 35 percent of Wall Street's expectations at that point, right?
A. About.
Q. With about two weeks or less to go in the quarter, correct?
A. Correct.
Q. And the company was telling you at that point not to worry, we are going to get to 285 to

295 million dollars, correct?
A. Correct.
Q. You didn't believe them, did you?
MR. CLARE: Objection, argumentative.
A. I certainly wanted to have them explain the -- why they remained so confident in the forecast for the first quarter.
Q. I am simply asking you whether you believed that they were, in fact, with two months to go -- two weeks to go in the quarter, or less, having achieved only $100 million in sales, going to reach a level of 285 to 295 million dollars in the next 12 days?
A. I wanted to understand, as I said, the basis for that type of forecast for the year, because there can be reasons that there are -- that sales are front-end loaded, back-end loaded, you know, proportionate throughout the quarter, and wanted them -- to have them explain the buildup. I thought it was proper due diligence to go back through what they asserted was, they were so comfortable they would obtain.
Q. Did you believe the story?
MR. CLARE: Objection to the form of the question.

A. At the end of the evening, when they went through all of the sales, collectively our view was that we were concerned that they would not -- there was risk they would not hit the numbers, and therefore wanted -- felt it was appropriate for them to issue a press release, which they continued to maintain was completely unnecessary.
Q. I am asking you personally?
A. And I answered you.
Q. No. You referred to "we" and I am asking you personally. You personally, Ruth Porat, didn't believe management's claim that they were going to release in the last two weeks, 12 days of the first quarter of 1998, sufficient sales to achieve Wall Street's estimates of 285 to 295 million dollars, did you?
MR. CLARE: Objection, argumentative. Asked and answered.
A. As I said, after going through hours of review, my concern was they could be a bit lighter than the 285 than 295, and the importance is that nuance of how far off would they be relative to the street, what was the risk that they would not hit the street's numbers, and if they didn't, what --

how far off could they be.
Q. So your testimony is that your personal belief at the end of that evening was that, at worst, Sunbeam might be a bit lower at the end of the quarter than Wall Street's estimates of 285 to 295 million dollars in sales?
MR. CLARE: Objection, misstates the testimony.
A. As I said, I thought there was a risk that they could not hit it, and if they did the press release that they drafted from the discussion that had occurred, seemed to provide ample guidance in and some cushion relative to the expectation for the first quarter.
Q. At any point during the conversations you had with the company that day, Ms. Porat, did the company state that in the past it had accomplished anything like $180 million in sales in the last 12 days of any quarter in the company's history?
A. I don't recall.
MR. MARKOWSKI: Let's change the tape.
THE VIDEOGRAPHER: The time is 12:30 p.m. This completes tape number 2.
(Recess taken.)

NOT A CERTIFIED COPY

Page 186

THE VIDEOGRAPHER: The time is 12:42 p.m. and this begins tape number 3.
BY MR. MARKOWSKI:
Q. Is there anything else you can remember about the conversations you had during the course of March 19th with Sunbeam relating to its first quarter 1998 performance?
A. I don't think so.
Q. Is there anything else you can recall about the conversations you had within Morgan Stanley relating to that subject?
A. Well, I gave you fairly broad categories and I think that accurately reflects it.
Q. Is there any more detail that you have relating to the conversations that you had within Morgan Stanley relating to the circumstances of Sunbeam's first quarter in 1998 performance which you haven't testified to yet?
A. I don't think so.
Q. Is there anything else you remember about your conversations with Mr. Strong on March 18th that you haven't testified to?
A. I just recall that the company, as I have said previously, was very much of the view that a press release was completely unnecessary,

Page 187

was -- I don't know if they used it, but the tone was it was belt-and-suspenders Morgan Stanley being overly concerned, and it was -- in fact, would lead people to the wrong conclusion because they remained so confident in the numbers. And towards the end of the evening Bill was very active with the company in persuading them that some form of press release had to go out.
Q. That's the decision that was made that night, correct?
A. Correct.
Q. And there was a call with Mr. Dunlap, and you are not sure if you were on it or not, where that was the conclusion, correct?
A. Correct.
Q. And then after that telephone call, a press release was drafted, correct?
A. Correct.
Q. And you were involved in that process, right?
MR. CLARE: Objection to the form of the question.
A. The company drafted the press release and then, as I recall, they sent it to -- they sent the draft press release to us before the final was

Page 188

actually issued.
Q. You received a copy of the press release in draft form, correct?
A. Correct.
Q. And you made comments on it, correct?
A. I don't recall if I did actually.
Q. Well, isn't it the case that you, in fact, believed that you made comments on the press release?
A. As I just said, I don't recall if I did.
Q. Let me direct you to page 49 of the transcript that you -- of your deposition in February of 2001 in the Camden asset litigation. We previously marked it as CPH Number 342. Do you have page 49 --
A. Yes.
Q. -- in front of you?
Have you had an opportunity to read that?
A. Yes.
Q. Does that refresh your recollection that, in fact, you believed that at least of the time of your testimony in February 2001, that you had, in fact, made comments on the draft press release?

Page 189

A. Well, it's fairly fuzzy to me. I said I believe so, but I don't actually recall. And when asked what my comments were, I don't recall. Just as I said today, I remember getting it, but I don't recall comments on it.
The thing I remember most about it was that the first time we had seen a number of, you know, the company had quantified a number that would be the floor to where the first quarter sales guidance could be.
Q. Just so the record is clear, in your February 2001 testimony in the Camden asset litigation, you were asked these questions and did you give these answers?
"Question: Did you have a role in drafting any of the contents of the press release?
"Answer: As I recall, I saw it at some point before it went out, but I don't recall who drafted it.
"Question: Did you comment on it to anyone?
"Answer: I believe so, but I don't actually recall."
That was your testimony in February

NOT A CERTIFIED COPY

Page 190

2001.
A. Yes.
Q. Let me show you an exhibit that we previously marked as CPH Exhibit 13. Let me show you what we have previously marked as CPH Exhibit 13, Ms. Porat. It's a fax cover sheet from Skadden Arps to John Tyree dated March 18, 1998, and the text of the message on the cover page reads "Under no circumstances should this press release be disseminated prior to its signoff by Albert J. Dunlap and/or David C. Fannin." Do you see that?
A. Yes.
Q. Is this consistent with your recollection that Morgan Stanley was provided with a draft of the Sunbeam press release?
A. I guess so.
Q. Do you remember if the original draft for the press release that you saw was different in any respect from the press release that was ultimately issued by the company the next morning?
A. I don't recall.
Q. I direct your attention to CPH 14. Do you have that?
A. Yes.
Q. I would like you to take a moment to

Page 191

read it. That's -- stop there. Take a moment to read it.
This is the press release that Sunbeam issued on March 19; is that correct?
A. It looks like it.
Q. As far as you can tell?
A. As far as I can tell.
Q. Looking at the press -- Exhibit CPH 14, do you recall anything in any of the earlier drafts that you received of the press release that differed in any way, any respect, with respect to the statements contained in this document?
A. I don't remember any difference of any prior -- any draft that was different from this.
Q. Do you remember any drafts that had more information than we see here on CPH Exhibit 14?
A. I don't.
Q. Do you remember seeing any drafts that had less?
A. I don't. I don't remember the different drafts.
Q. In the course of -- you have indicated, Ms. Porat, that you took it upon yourself to take the lead on March 18th to obtain additional information from Sunbeam relating to its first

Page 192

quarter sales situation.
In the course of your efforts that day, did you consult with any senior Morgan Stanley personnel relating -- who were not directly involved in the Sunbeam deal, concerning what you were learning and what you should do?
A. Yes.
Q. Who did you consult with?
A. I remember talking to Richard Kauffman, who was the head of equity capital markets.
Q. When did you speak to Mr. Kauffman?
A. Sometime that night.
Q. At what point in the process do you recall that happening in relationship to the other events that you testified about?
A. I don't recall exactly, but it had to have been after we had done quite a bit of due diligence and indicated to the company that we believed that some kind of press release was needed because the substance of the conversations I recall was something along the lines of without some kind of press release, I didn't feel comfortable recommending that we would proceed with the transaction.
Q. What did you tell Mr. Kauffman?

Page 193

A. Essentially something along those lines. I don't remember more specifics, and just wanted to ensure he agreed that if there was no press release, we would not be pricing the transaction.
Q. Did you advise Mr. Kauffman of the information you had obtained relating to the status of Sunbeam's first quarter sales?
A. I can't remember the specifics. If anything, it would have been general terms or conclusions.
Q. Did you tell him where Sunbeam stood at that point in terms of its actual sales through the first two and a half months of the quarter?
A. I don't recall the details.
Q. Do you think you did?
A. I don't recall.
Q. Did you tell him that Sunbeam needed to realize $180 million in sales to accomplish the street's expectations for the quarter?
A. As I said, I don't recall the specifics of the conversation.
Q. Do you think you told him that?
A. I don't recall.
Q. Did you tell him what the actual sales results for any of the time period were during the

NOT A CERTIFIED COPY

017129

Page 194

first two and a half months of Sunbeam's first quarter?
A. As I said, I don't recall the specifics other than the conclusions. Just the conclusions.
Q. Did you tell him what the reasons were why Sunbeam's sales for the first two months of 1998 were so far below its sales for the first two months of 1997?
MR. CLARE: Objection to the form of the question.
A. I don't recall.
Q. Did you tell him what the press release would state?
A. I don't recall how specific we were in that conversation about what would or would not be in the press release.
Q. Did you ask him his advice about what should go in the press release?
A. I don't recall the specific conversation, specific details of the conversation.
Q. Did you call him in order to obtain advice from him about what the press release should say, if there was going to be a press release?
A. As I recall, I called him because if there was any concern that the company may miss

Page 195

their first quarter numbers, in my judgment it was appropriate to indicate that to investors before pricing a transaction, and if the company didn't want to do that, I wanted to see if he was in agreement that we then shouldn't price the transaction.
Q. My question is a little bit different. It was whether you asked him for advice concerning what information should be included in the press release to potential investors, advising them of the circumstances of Sunbeam's first quarter performance?
A. Well, there was from -- I don't recall that and the reason I am answering it the way I did is it's the company's press release.
The big issue that I was focused on was some indication that the company may not hit their numbers, which was our concern. That appropriately reflected all of the prior conversations that evening and that was -- I didn't -- I don't recall asking him how the press release should be drafted because it wasn't ours to draft.
Q. I'm sorry, were you finished?
A. Yes.
Q. Did you ask him for any advice

Page 196

concerning what the press release would have to say before Morgan Stanley would be prepared to proceed with the underwriting of the debenture offering?
A. I don't recall.
Q. Was there any -- I am limiting myself to people who were not working directly on the Sunbeam transaction. Did you have any other conversations that day with any Morgan Stanley personnel not working directly on the Sunbeam transaction, where you did seek advice concerning what the press release should say?
A. I don't recall if I did.
Q. Did you speak with Mr. Fiedorek with respect to that?
A. I don't believe I would have.
Q. Did you speak with Mr. Perella?
A. I don't know if I did.
Q. Is it possible, in your mind?
A. I may have. I don't recall speaking to him.
Q. Is he someone you think would be a good source, in circumstances like this, for advice with respect to what an appropriate disclosure would have to be under these circumstances?
MR. CLARE: Objection to the form of the

Page 197

question and incomplete hypothetical.
A. The only reason I distinguish my answer about Bruce Fiedorek from Joe Perella is that Bruce Fiedorek is really more on the M&A side, so I can't say any reason why I would have called him, and I just honestly have no idea whether I spoke to Mr. Perella.
Q. What about Terry Meguid, did you speak to him that night or any time that day for any advice concerning, if there was going to be a Sunbeam press release, what facts should be contained in it?
A. I don't recall if there was any conversation.
Q. Can you think of anyone, other than people working on the Sunbeam team, that you did discuss, that you had any discussions with that night concerning what the press release should say?
A. No. I mean, just to clarify, I think if there had been a conversation, I am completely -- forget it, I am completely speculating. I can't answer your question about having a conversation with him.
Q. Or anyone else, correct?
A. No.

NOT A CERTIFIED COPY

Q. Concerning what the press release should say?
A. No.
Q. Did Mr. Strong at any point tell you what he wanted the press release to say?
A. I don't recall him telling me what he thought the press release should say.
Q. During the course of the evening when the press release was being prepared, did you speak with Mr. Strong to advise him of what the press release in draft form did say?
A. Well, as I indicated previously, I remember when we got, I guess it was a faxed copy, we got a copy of the press release somehow and at some point discussed it. I don't know if he had a copy of it as well. I can't remember the details of that.
Q. Are you referring now to a conversation with Mr. Strong?
A. Correct.
Q. That was before the press release was released to the public, correct?
A. Correct.
Q. Do you know if it was that night or the following morning?

A. What was that night or the following morning?
Q. This conversation with Mr. Strong?
A. That night.
Q. It was that night? What do you remember about that conversation?
A. I think the main thing I remember is two issues: One, would they actually release the press release; and two, the way they chose to word the first sentence, just in terms of the guidance it gave with respect to where sales might be for the first quarter.
Q. What do you remember on that subject being discussed between you and Mr. Strong that night?
A. That their conclusion was that if they were going to issue a press release, they might as well, the way they characterize it, build in a bit of cushion. They didn't think it needed to go out and yet they indicated that sales were expected to exceed first quarter net sales of 253.4.
Q. Did Mr. Strong indicate that he thought that was a good thing to include or a bad thing?
MR. CLARE: Objection to the form of the question.

A. I don't remember. It was more an observation than a judgment. I don't remember the judgment.
Q. Did you have an opinion on that, whether it was a good or bad thing to include in the press release?
A. It seemed, given how confident they were in the 285 to 295, that it gave them a little more room, which is better than not having room.
Q. You thought it was a good thing?
MR. CLARE: Objection to the form of the question, argumentative.
Q. Did you think it was -- you thought it was good thing, correct?
A. I thought it was helpful.
Q. Ms. Porat, did you consider yourself to be sophisticated in public offerings as of March of 1998, public stock offerings?
A. What do you mean by "sophisticated"?
Q. Is "sophisticated" a word you don't understand?
A. I am not sure what you mean by it.
Q. Did you consider yourself an experienced investment banker in terms of significant public offerings of stock or other similar investments as

of March 1998?
A. I viewed myself as having experience in equity offerings.
Q. It's what you had been doing for most of your career, correct?
A. I was -- I joined the equity capital markets group in 1996.
Q. You knew in March 18th -- March 19, 1998 that the Sunbeam press release that was issued was materially inaccurate, didn't you?
MR. CLARE: Objection to the form of the question and argumentative.
You can answer.
A. Absolutely not.
Q. The Sunbeam press release that was issued on March 19, 1998 didn't include any information with respect to Sunbeam's sales for January that quarter, correct?
A. Correct.
Q. Didn't include any information with respect to sunbeam's sales for February of that quarter, correct?
A. Correct.
Q. Didn't include any information relating to Sunbeam's sales for the first 15 to 17 days of

NOT A CERTIFIED COPY

01731

Page 202

March, correct?
A. Correct.
Q. Didn't advise investors that Sunbeam's sales for the first two months of 1998 were about half of what they had been for the first two months of 1997, correct?
MR. CLARE: Objection to the form of the question.
A. Correct.
Q. Didn't advise anyone reading it that the primary reason for that, according to the company's public accounting firm, was that the company had accelerated sales from the first quarter 1998 into the fourth quarter of 1997, correct?
MR. CLARE: Objection to form.
A. I think the press release speaks to itself.
Q. Doesn't disclose that, right?
That the reason why for -- first of all, it doesn't disclose that there has been a sales shortfall, but it doesn't disclose anything about the fact that Sunbeam has accelerated sales from the first quarter of 1998 into the fourth quarter of 1997, and that was having at that point of time a significant adverse effect on Sunbeam's first

Page 203

quarter performance, correct?
MR. CLARE: Objection to form, compound question.
A. It included a sentence that says the shortfall, from analysts' estimates, if any, would be due to changes in inventory management. It didn't specifically include the language that you just cited.
Q. It didn't advise the public about where Sunbeam stood with respect to its first quarter earnings either, did it?
A. No.
Q. Doesn't make any mention of the possibility that Sunbeam may fall short of Wall Street's expectations that Sunbeam would earn $.28 to $.30 per share in their quarter, correct?
A. Correct.
Q. Didn't include any indication that Sunbeam needed to sell and book in the first quarter of 1998 about $180 million in sales to achieve Wall Street's expectations for first quarter, correct?
A. Correct.
Q. You knew all of those things, didn't you, as of the time the press release was issued?

Page 204

A. I also know a lot more than that, which was the buildup that they had account by account that got them to continue to maintain hour after hour that there was no risk to their numbers. Notwithstanding that, they insisted on the very unusual act of putting out something that said that they could because there was concern. Notwithstanding a lot more detail provided by accounts.
Q. But you knew the things that I have just identified that were not included in the press release too, right?
MR. CLARE: Objection, asked and answered.
Q. On March 18, 1998, when you were involved in reviewing the draft press release that's now been prepared?
A. Correct. Which led to the conclusion that a press release was needed that encapsulated the key points.
Q. A press release that omitted all of the factual information about Sunbeam's sales for January, February and the first two weeks of March, correct?
MR. CLARE: Objection, argumentative.

Page 205

A. That summarized the conclusions.
Q. That omitted the facts relating to Sunbeam's actual results for January, February and the first two weeks of March, correct?
MR. CLARE: Asked and answered and argumentative.
Q. Correct?
A. You made your speech.
Q. No. That's a question.
MR. CLARE: Well, you have asked the same question again and again, and she has answered it several times.
Q. Are you declining to answer the question?
A. I am telling you that it had the summary, it didn't have all of the detail behind it.
Q. Didn't have any of the detail, did it?
MR. CLARE: Objection, argumentative and to form.
A. It had the summary. It did not have the detail by account, by month.
Q. It didn't have any information relating to -- that would advise investors what Sunbeam needed to do in the final 12 days of the first

NOT A CERTIFIED COPY

017132

Page 206

quarter of 1998 to achieve the results, either that Wall Street was then expecting, or that the company said it would certainly exceed, correct?
MR. CLARE: Objection to form.
A. It did not have all of the detail. It had, we thought, the important message about a potential risk to sales.
Q. Morgan Stanley was happy with the press release?
MR. CLARE: Objection to form and foundation.
A. I am not going to comment on or speak for Morgan Stanley. My view was that it was important to let investors know there was a risk.
Q. Do you know if Mr. Strong was happy with the form of the press release?
MR. CLARE: Objection, calls for speculation.
A. I don't know.
Q. At any point during the preparation of the press release, Ms. Porat, did you suggest to anyone internally at Morgan Stanley, to Sunbeam, to Sunbeam's counsel, Skadden Arps, that the press release should include actual information relating to Sunbeam's sales results for the first two and a

Page 207

half months of the quarter?
A. I don't recall suggesting it should.
Q. At any point during the discussions that day, did you suggest to anyone that the press release should include a warning with respect to earnings?
A. I don't recall discussing it.
Q. At any point during the discussions that day with Ms. Porat, did anyone, in your presence or to your knowledge, suggest that the press release should include information relating to Sunbeam's actual sales results for any period of time in March -- excuse me, in the first quarter of 1998?
A. As I just said, I don't recall that.
Q. My first questions were did you suggest it to anyone, and now I am asking you do you recall if anyone made that suggestion?
A. I don't recall if anyone did.
Q. Did anyone suggest to you that the press release should include earnings, an earnings warning?
A. I don't recall.
Q. Did anyone suggest that the press release should disclose in a straightforward way the reasons that Arthur Andersen had identified as

Page 208

the primary cause for the sales shortfall that the company was experiencing in the first quarter of 1998?
MR. CLARE: Objection to form.
A. Can you repeat the question?
Q. Sure. Did anyone, whether it's you or anyone else, during the course of the conversations on March 18th relating to the draft press release suggest that the press release should disclose in a straightforward way the reason that Arthur Andersen had identified as the primary cause for the sales shortfall that Sunbeam was experiencing in the first two months of 1998?
MR. CLARE: Repeat my objection.
A. I don't recall any discussion.
Q. Do you agree with me, Ms. Porat, that a reader of the March 19th press release that Sunbeam issued could reasonably conclude that it was still possible that Sunbeam would achieve Wall Street expectations of 285 million to 295 million in sales for the first quarter of 1998?
MR. CLARE: Objection, calls for speculation.
A. Theoretically, I don't know.
Q. It doesn't -- the press release doesn't

Page 209

state that Sunbeam is going to miss its first quarter 1998 expected results for net sales, does it?
A. The company believes that this was an overstatement, that there was no risk that they were going to miss the numbers.
Q. I am simply asking what the press release said. A reasonable reader of this press release could conclude that was still possible as of March 19, 1998, that Sunbeam could still achieve first quarter results of $285 million to $295 million, correct?
MR. CLARE: Objection to form and move to strike the preamble to the question.
A. A press release like this right before pricing a transaction looks like, if there was a possibility, it was a low possibility in particular with guidance that says sales -- the only guidance on the floor is that sales are expected to exceed 253.4, so somewhere between 253.4 and 295.
Q. Do you agree in this press release that Sunbeam was not being upfront with the public regarding the state of its first quarter 1998 performance?
MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

Page 210

A. At the time that they drafted the press release, based on the guidance of the various calls that we had with a number of people at Sunbeam, our view at the time was that -- or my view at the time was that they were being upfront.
Q. Is your view different now?
A. Well, having missed their numbers, I think there was -- it was a problem with the company somewhere.
Q. The text of the first paragraph in the March 19th press release, Ms. Porat, is included in the offering memorandum for the debentures; are you aware of that?
A. I'm sorry, what? First paragraph?
Q. The first paragraph of CPH Exhibit 14, the March 19th press release, that text is included *verbatim* in the debenture offering memorandum; are you aware of that?
A. No.
Q. Let me show you what we have previously marked as CPH Exhibit 10. It's a document dated March 19, 1998 and it's encaptioned "Offering Memorandum, $2,014,000,000 Sunbeam zero coupon, convertible senior subordinated debentures due 2018," and at the bottom it bears the legend

Page 211

"Morgan Stanley, Dean Witter."
Do you recognize this document, Ms. Porat?
A. Yes.
Q. What is it?
A. The operating memorandum for the convertible debenture we have been discussing.
Q. What's the purpose of this document? Do you know?
A. To summarize pertinent issues for investors about the security in the company.
Q. So people can make decisions about whether to purchase the debentures that Morgan Stanley is selling?
A. Yes.
Q. Let me direct your attention to page 8. There is a section at the bottom entitled "Recent Announcement"; do you see that?
A. Yes.
Q. Take a moment to read that to yourself? Have you read it?
A. Yes.
Q. Do you know how it came to be that the text of the press release, CPH Exhibit 14, that Sunbeam issued on March 19th was repeated in the

Page 212

debenture offering memorandum?
A. No.
Q. Did you recommend to anyone that the press release text be repeated in the debenture offering memorandum?
A. I don't recall if I did.
Q. Did you have a role with respect to reviewing the debenture offering memorandum before it was finalized?
A. I don't believe I did.
Q. Mr. Tyree was involved in that process, was he not?
A. I don't believe he was.
Q. Are you aware that the debenture offering memorandum was being finalized at the printer on the evening of March 19th?
A. I don't recall.
Q. Would that be typical after the pricing decision is made by the company, that the debenture offering memorandum would then be promptly finalized and issued?
MR. CLARE: Objection to the form of the question.
A. Just to make sure my date is straight, March 19th is the date of the pricing.

Page 213

Q. It's the last day of the road show, the day of the press release, and the Boston road show is that day.
A. So the press release went out in the morning and then the document is finalized.
Q. I am asking you if it's typical, putting aside the dates for a moment, is it typical that the debenture offering memorandum for a transaction, or the offering memorandum for a transaction is finalized promptly after the pricing decisions are made?
A. Yes.
Q. Did anyone, Ms. Porat, advise you that during the course of the events of the printer where this document was finalized, that Arthur Andersen objected strongly to including the text of the press release?
A. I don't recall anyone telling me that there was any objection from Arthur Andersen.
Q. Did anyone report to you at any time up until today that the printer, when the offering memorandum was being finalized for the Sunbeam debenture offering, Arthur Andersen representatives present that night said that that the press release statement should not be included in the offering

NOT A CERTIFIED COPY

Page 214

memorandum?
A. That it should not be included, no.
Q. Did anyone advise you that Arthur Andersen took the position that the March 19th press release was materially misleading?
A. No.
Q. Mr. Tyree didn't report that to you?
A. No.
Q. What can you recall, Ms. Porat, about the -- let me ask a foundational question. Did you participate in the conversations with management at the conclusion of the road show relating to pricing the debentures?
A. I believe I did, but I can't remember the specific conversations.
Q. Do you recall that Mr. Kersh and Mr. Dunlap and Mr. Strong spoke to you the evening of March 19th at the conclusion of the Boston road show meetings, from Morgan Stanley's Boston office, relating to pricing the transaction?
A. I remember having one conversation that Mr. Dunlap was on on that day, but I don't recall if it was the pricing. I thought it was actually earlier in the day. I don't recall which one it was.

Page 215

Q. Do you have any recollection of the discussion with Mr. Strong and Mr. Dunlap relating to pricing after the conclusion of the Boston road show?
A. No, unless it was the same conversation. The only conversation I remember was one in which Mr. Dunlap was furious about the impact that the press release had on the stock price, but I don't know if that was the same call. That's the only call I remember.
Q. The press release caused the stock price to drop?
A. Correct.
Q. At least that was Mr. Dunlap's perception?
A. Correct.
Q. Why was that bad?
MR. CLARE: Objection to the form of the question.
Q. From Mr. Dunlap's perspective, why was he raising that issue?
MR. CLARE: Objection, calls for speculation.
Q. Did he articulate a reason?
A. His view was that any -- all I remember

Page 216

is him yelling about the stock price going down and he wasn't happy about it.
Q. The stock price going down had an effect on the stock price of the debenture offering, right?
A. Correct.
Q. It made the deal less attractive, from Sunbeam's perspective?
MR. CLARE: I object to the form of the question and calls for speculation with respect to Sunbeam.
A. I believe so.
Q. Essentially became more expensive for Sunbeam, correct?
A. Correct.
Q. If the stock price had dropped even further that day, would the debenture offering have become even more expensive to Sunbeam?
A. Taking the logical extent.
Q. I am trying to understand. I am not the expert in this area, but the farther the stock price drops, the more expensive the debenture price becomes to Sunbeam? Is that the way this works?
A. Effectively.
MR. MARKOWSKI: This is a -- if we are

Page 217

going to be breaking around now, this is the end of a line of questions for me.
MR. CLARE: Just say for the record that we are going to be breaking for the day and while I appreciate your accommodation of Ms. Porat, you know we are disappointed that we wasted so much time this morning on matters unrelated to Sunbeam. I sent you a letter about dates for resumption of the deposition and we will communicate offline about that.
MR. MARKOWSKI: If we are going to start plastering on the record with respect to the circumstances here, I suppose I should go into what happened with respect to scheduling.
MR. CLARE: There is no reason to do that, Bob.
MR. MARKOWSKI: The implicit is I should have gotten this done and it's my problem that this has to be continued. I don't feel that way. I think I have done my best to conduct the examination appropriately, much more appropriately than Mr. Beamus did with Mr. Pearlman, for example, and if we want to spend time now trying to find out why Ms. Porat isn't available on the dates that

NOT A CERTIFIED COPY

she promised she would be available, and we spoke last weak about that, we can do that. Otherwise, we can about talk about rescheduling off the record.

MR. CLARE: I already stated what I want to state on the record. I think to the extent that anyone was posturing, what that last speech was, but it's unnecessary because we are bringing Ms. Porat back. I already sent you a letter on it. It went out last night. And we are done for the day.

THE VIDEOGRAPHER: The time is 1:24 p.m. and we are now off the record.

(Time noted: 1:24 p.m.)

_____

RUTH PORAT

Subscribed and sworn to before me this ___ day of _____, 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF QUEENS)

I, YAFFA KAPLAN, a Notary Public within and for the State of New York, do hereby certify:

That RUTH PORAT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of November, 2004.

_____

YAFFA KAPLAN

INDEX

WITNESS	EXAMINATION BY	PAGE
Ruth Porat	Mr. Markowski	5

EXHIBITS

COLEMAN (PARENT) HOLDINGS	FOR ID.
Coleman (Parent) Holdings Exhibit 342, transcript of Ruth Porat's deposition of February 6, 2001	6
Coleman (Parent) Exhibit 343, Morgan Stanley Written Responses to Rule 1.310 Topics,"	108
Coleman (Parent) Exhibit 344, time excerpt from James Lurie at Davis Polk for March 18, 1998	163

*** ERRATA SHEET ***

ESQUIRE DEPOSITION SERVICES
155 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 782-8087

NAME OF CASE: COLEMAN VS. MORGAN STANLEY
DATE OF DEPOSITION: NOVEMBER 23, 2004
NAME OF WITNESS: RUTH PORAT

PAGE	LINE	FROM	TO

_____

RUTH PORAT

Subscribed and sworn to before me this ____ day of _____, 2004.

_____ _____

(Notary Public) My Commission Expires:

01713

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

KJM

MORGAN STANLEY & CO. INC.,

Defendant.
_____/

05 JAN -4 AM 11:16
PALM BEACH COUNTY, FL
CLERK OF CIRCUIT COURT

NOT A CERTIFIED COPY

AGREED ORDER REVISING SUMMARY JUDGMENT DEADLINES

THIS CAUSE having come before the Court upon an agreement between Coleman (Parent) Holdings, Inc. ("CPH") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") to revise certain summary judgment deadlines by one day, and the Court noting the agreement of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

In the absence of further extensions by Order of the Court, CPH's response to Morgan Stanley's Proposed Findings of Fact and Conclusions of Law in Support of its Motion for Summary Judgment is due December 24, 2004. Morgan Stanley's Summary Judgment Reply Briefs shall be served on January 7, 2005. All other deadlines remain unchanged.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4 day of January, 2005.

19061 0

ELIZABETH T. MAASS
Circuit Court Judge

WPB#587862.1

979

16div-025282

Copies furnished to:

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W. – Suite 1200
Washington, D.C. 20005

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOG, HUBER, HANSEN,
TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Jack Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
CHICAGO, IL 60611

NOT A CERTIFIED COPY

290610

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

KJM

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

03 JAN -4 AM 11:16
CLERK OF CIRCUIT COURT

ORDER ON COLEMAN (PARENT) HOLDINGS, INC.'S MOTION TO STRIKE MORGAN STANLEY & CO. INCORPORATED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion to Strike Morgan Stanley & Co. Incorporated's Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Court finds there is insufficient time available to permit the MSJ to be heard prior to hearing the MSJ's in January 2005.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Jan., 2005

ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

NOT A CERTIFIED COPY

01906

980

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
Sumner Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036-3206

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart
& Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

NOT A CERTIFIED COPY

019064

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

v.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

KJM

05 JAN -4 PM 4:28
FILED

NOT A CERTIFIED COPY

RE-NOTICE OF HEARING
(Changes date from January 6, 2005)

NOTICE IS HEREBY GIVEN that a hearing has been set in the above-styled case as follows:

DATE:	January 12, 2005
TIME:	8:45 a.m.
PLACE:	Palm Beach County Courthouse, Courtroom 11A 205 North Dixie Highway West Palm Beach, Florida 33401
BEFORE:	Judge Elizabeth T. Maass
CONCERNING:	Morgan Stanley's Motion to Compel a Better Answer to Interrogatory No. 2 of Morgan Stanley's Fifth Set of Interrogatories to Plaintiff, Coleman (Parent) Holdings, Inc.

019065

KINDLY GOVERN YOURSELVES ACCORDINGLY.

The undersigned counsel hereby certifies that a good faith attempt to resolve the issues contained in the foregoing motions or matters will be made with opposing counsel prior to hearing on these matters on the Court's Motion Calendar.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no costs to you, to the provision of certain assistance. Please contact the ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West

961

Palm Beach, Florida 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8771.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 4th day of January, 2005.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: Joseph Ianno, Jr.
Florida Bar No. 655351

Counsel for Morgan Stanley & Co. Incorporated

NOT A CERTIFIED COPY

019066

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

019067

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

KJM

Case No. CA 03-5165 AI

FILED
05 DEC -4 AM 11:16
PB CO FL
CIRCUIT CIVIL

ORDER ON COLEMAN (PARENT) HOLDINGS INC.'S MOTION FOR EXTENSION OF TIME IN WHICH TO RESPOND TO MORGAN STANLEY & CO., INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come to be considered upon Coleman (Parent) Holdings Inc.'s Motion for Extension of Time in Which to Respond to Morgan Stanley & Co., Inc.'s Proposed Findings of Fact and Conclusions of Law in Support of Its Motion for Summary Judgment, and the Court having reviewed the file and being fully advised in the premises, it is hereby,

ORDERED and ADJUDGED: the Motion is granted, in part. Plaintiff shall have until Jan. 10, 2005 to serve by facsimile transmission or hand delivery* those portions of its response to Defendant's motion for summary judgment which Plaintiff contends asserts facts not necessary to the motion or underlying claims. Defendant shall serve its reply to Plaintiff's response by hand delivery or facsimile transmission by Jan. 17, 2005.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 4 day of Dec, 2005.

_____
ELIZABETH T. MAASS
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

NOT A CERTIFIED COPY

19059

978

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
Sumner Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036-3206

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart
& Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

NOT A CERTIFIED COPY

019060

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

CASE NO.: 2003 CA 005045 AI KJM

FILED
05 MAY -5 PM 3:52

NOT A CERTIFIED COPY

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: January 12, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

CPH's Motion to Compel Adequate Answers to Morgan Stanley's Supplemental Responses to CPH's First Set of Interrogatories.

Moving counsel certifies that he or she contacted opposing counsel and attempted to resolve the discovery dispute without hearing.

019068

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 5th day of January, 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for Plaintiffs

NOT A CERTIFIED COPY

690610

Coleman Holdings, Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
Sumner Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036-3206

NOT A CERTIFIED COPY

019069A
16div-025293

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
KIM
05 JAN -5 PM 3:52

NOT A CERTIFIED COPY

MATERIAL REDACTED WITHOUT PRIOR DETERMINATION OF PROTECTABILITY BY COURT

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO COMPEL ADEQUATE ANSWERS TO MORGAN STANLEY'S SUPPLEMENTAL RESPONSES TO CPH'S FIRST SET OF INTERROGATORIES

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court enter an order directing Morgan Stanley to provide sufficient supplemental responses to Interrogatory Nos. 1, 2, 3, 4, 5, and 10 in CPH's First Set of Interrogatories. *See* Ex. A (Morgan Stanley's responses); Ex. B (CPH's interrogatories).[1]

Introduction

This motion arises because of significant inadequacies in the supplemental interrogatory responses that Morgan Stanley served on December 23, 2004. The interrogatories at issue seek information about important matters such as Morgan Stanley's due diligence of Sunbeam and Coleman, Morgan Stanley's communications about Sunbeam's first quarter 1998 sales prior to the March 30, 1998 closing on Sunbeam's acquisition of Coleman, the identity of the Morgan Stanley employees who received and commented on the March 19, 1998 press release prior to its issuance, and Morgan Stanley's contacts with representatives of Sunbeam in the State of Florida. Despite the fact that CPH's interrogatories seek relevant information within the knowledge of

019070

[1] CPH has been required to file this motion under seal because Morgan Stanley designated its responses as Confidential.

493

Morgan Stanley's own employees, over and over again in its supplemental response, Morgan Stanley has failed to identify by name the persons who participated in the "communications" that Morgan Stanley includes in its answers — referring instead to [redacted] Morgan Stanley's answers also hedge and fudge on a '[redacted]

The inadequate interrogatory responses — which are attached as Exhibit A with the deficient passages underlined — are addressed below:

Interrogatory No. 1: Identify each individual who conducted due diligence of Sunbeam or is knowledgeable about the due diligence conducted of Sunbeam by or on behalf of Morgan Stanley or MSSF. For each individual, identify his or her role and/or the basis and substance of his or her knowledge.

Morgan Stanley's supplemental response to this interrogatory is deficient in multiple respects:

First, the response repeatedly refers to [redacted] *See* Ex. A at 3-9. To take just one of many examples, the response states that [redacted] That is insufficient. [redacted]

NOT A CERTIFIED COPY

019071

[redacted] If a communication or contact is cited, the individuals involved in the contact must be identified with specificity, along with the other details of the contact or communication.

Second, the response repeatedly refers to '[redacted]. *See id.* at 4-9. For example, the response states that [redacted] CPH is entitled to know the participants in and the details of these and the other communications that Morgan Stanley has identified in only the vaguest way.

Third, the response also refers to [redacted] *See id.* at 7-9 (emphasis added). For example, [redacted] *Id.* at 9. That is insufficient. CPH is entitled to know which contacts in fact formed the basis for identified employees' knowledge regarding the due diligence of Sunbeam along with the details of those contacts.

Fourth, the response refers to [redacted] *See id.* at 7-9 (emphasis added). [redacted]

NOT A CERTIFIED COPY

019072

[redacted] *Id.* at 9. Again, that is insufficient. CPH is entitled to the identity of all individuals involved in the pertinent conferences and meetings.

Interrogatory No. 2: Identify each individual who conducted due diligence of Coleman or is knowledgeable about the due diligence conducted of Coleman by or on behalf of Morgan Stanley or MSSF. For each individual, identify his or her role and/or the basis and substance of his or her knowledge.

Morgan Stanley's interrogatory response suffers from several similar defects:

First, the response fails to identify the individuals with whom the named Morgan Stanley employees had contacts. Instead, the response repeatedly states that [redacted] *See id.* at 10-15. For example, Morgan Stanley's response identifies [redacted] *Id.* at 10. But Morgan Stanley [redacted]

Second, as in the response to Interrogatory No. 1, the response to Interrogatory No. 2 refers to [redacted] *Id.* at 10-11. Thus, for example, the response states that [redacted] *Id.* at 10. Vague responses such as that are insufficient.

NOT A CERTIFIED COPY

019073

Third, the response once again [redacted]

[redacted] *See id.* at 12-13. [redacted]

[redacted] (*id.* at 12):

[redacted]

Such [redacted] responses are insufficient.

Fourth, the response refers to [redacted]

[redacted] *See id.* at 12. The multiple vagaries in this response render it inadequate.

Fifth, the response also contains [redacted]

[redacted] *See id.* at 12-13. For example, [redacted]

[redacted] *Id.* at 12. Such responses are inadequate. CPH is entitled to the identification of all individuals involved in the communications identified in the response.

Interrogatory No. 3: Identify each discussion, telephone conference, meeting, document, or other communication any Morgan Stanley employee or other representative (including attorneys) had or received prior to March 30, 1998 concerning Sunbeam's first quarter 1998 sales/or profits and, for each such communication, identify the individuals participating in the communication, the date of the communication, and state the substance of the communication.

Morgan Stanley's response to this interrogatory also is too vague to pass muster:

First, Morgan Stanley once again [redacted]

[redacted] For example, Morgan Stanley [redacted]

NOT A CERTIFIED COPY

019074

[redacted] *See id.* at 13-17. That is insufficient.

Second, the response also [redacted] *Id.* In a similar vein, in referring to [redacted]. Failing to identify the participants in the communications, and lumping multiple communications together, are insufficient responses to CPH's interrogatory.

Third, the response to Interrogatory No. 3 fails to provide [redacted] For example, the response [redacted] Finally, the response fails to [redacted] *See id.* at 13-17. This information clearly is within Morgan Stanley's knowledge, and given the importance of the communications to the issues in this case, there is no basis for Morgan Stanley's failure to provide a forthright response.

Fourth, Morgan Stanley's response also refers to [redacted] *Id.* at 14-16. CPH is entitled to the specific identity of the documents and the details concerning any additional communications responsive to Interrogatory No. 3.

NOT A CERTIFIED COPY

019075

Interrogatory No. 4: Identify each Morgan Stanley employee or representative (including attorneys) who received, reviewed, discussed, and/or commented upon Sunbeam's March 19, 1998 Press Release (or any drafts thereof) prior to its issuance by Sunbeam on March 19, 1998.

Morgan Stanley's response to this interrogatory is deficient in several respects:

First, Morgan Stanley [redacted] *See id.* at 17. This limitation is as improper as it is arbitrary. Morgan Stanley should be required to identify all Morgan Stanley employees or representatives who received a draft of the press release before it was issued.

Second, [redacted] *Id.* at 17. That answer is insufficient. CPH is entitled to know who in fact received, reviewed, discussed, and/or commented on the press release prior to its issuance.

Third, the response is inadequate for the additional reason that it [redacted] *See id.* at 18. There is no basis for Morgan Stanley's refusal to [redacted]

Interrogatory No. 5: Identify each Morgan Stanley employee or representative (including attorneys) who communicated with John Tyree on or after March 19, 1998 concerning, in any way, Sunbeam's first quarter 1998 sales and/or Sunbeam's March 19, 1998 Press Release.

Morgan Stanley's response merely [redacted] *See id.* at 18. That is insufficient for the reasons discussed above in connection with Interrogatory Nos. 3 and 4. To take one example, in Morgan Stanley's answer to Interrogatory No. 3, [redacted]

NOT A CERTIFIED COPY

019076

[redacted] *Id.* at 17. But that answer [redacted]

[redacted] Interrogatory No. 5, like Interrogatory Nos. 3 and 4, should be answered meaningfully.

Interrogatory No. 10: Identify each instance in which Morgan Stanley employees or representatives (including attorneys) communicated by telephone, in writing, by email, telecopy, or overnight courier with individuals in Florida in connection with Morgan Stanley's work for Sunbeam and, for each instance, identify the Morgan Stanley employees or representatives who participated in the communication and the substance and date of the communication.

[redacted] *See id.* at 23-24. [redacted]s improper — especially given Morgan Stanley's continuing and baseless pursuit of its *forum non conveniens* appeal in the Appellate Court and the important choice of law issues remaining in this Court. If Morgan Stanley is going to continue to insist that New York law applies to all of CPH's claims, purportedly because Florida has no connection to this case, then Morgan Stanley should be required to disclose the facts necessary to rebut those assertions.

For the foregoing reasons, CPH respectfully requests that Morgan Stanley be required to provide more specific supplemental answers to Interrogatory Nos. 1, 2, 3, 4, 5, and 10 in CPH's First Set of Interrogatories, within seven days.

NOT A CERTIFIED COPY

019077

Dated: January 5, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

#1196008

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

019078

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 5th day of January, 2005.

JOHN SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

NOT A CERTIFIED COPY

019079

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

NOT A CERTIFIED COPY

019080

Exhibit Excluded Without Prior Determination Of Protectability By Court

NOT A CERTIFIED COPY

180610

EXHIBIT
tabbies
A

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,	)	
Plaintiff,	)	Case No. 2003 CA 005045 AI
v.	)	Judge Elizabeth T. Maass
MORGAN STANLEY & CO., INC.,	)	
Defendant.	)	

COLEMAN (PARENT) HOLDINGS INC'S FIRST SET OF INTERROGATORIES TO DEFENDANT MORGAN STANLEY & CO., INC.

Pursuant to Florida Rules of Civil Procedure 1.280 and 1.340, Plaintiff Coleman (Parent) Holdings, Inc., by its attorneys, hereby requests that Defendant Morgan Stanley & Co., Inc. answer the following Interrogatories within thirty (30) days from the date of service.

DEFINITIONS

The following definitions apply to each Interrogatory:

1. "Identify," when used with respect to natural persons, means to state the full name of such person, and his or her last known address and telephone number, and if employed, the occupation and the job title or position of the person, and the name, address, and telephone number of the employer.

2. "Identify," when used with respect to a person other than a natural person, means to state the type of person (corporation, partnership, government agency, etc.), full name and address of its principal place of business concerned with each matter inquired of in these Interrogatories.

NOT A CERTIFIED COPY

019082

EXHIBIT
tabbies
B

3. "Coleman Transaction" means the transaction by which Sunbeam acquired CPH's interest in The Coleman Company, Inc.

4. "Morgan Stanley" means Morgan Stanley & Co., Inc. and any of its present and former employees, representatives, agents, attorneys, accountants, and advisors.

5. "MSSF" means Morgan Stanley Senior Funding, Inc. and any of its present and former employees, representatives, agents, attorneys, accountants, and advisors.

6. "Subordinated Debenture Offering" means the offering of Sunbeam's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

7. "Sunbeam" means Sunbeam Corporation.

INSTRUCTIONS

8. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory all responses that might otherwise be construed to be outside the scope.

9. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each individual who conducted due diligence of Sunbeam or is knowledgeable about the due diligence conducted of Sunbeam by or on behalf of Morgan Stanley or MSSF. For each individual, identify his or her role and/or the basis and substance of his or her knowledge.

NOT A CERTIFIED COPY

019083

INTERROGATORY NO. 2: Identify each individual who conducted due diligence of Coleman or is knowledgeable about the due diligence conducted of Coleman by or on behalf of Morgan Stanley or MSSF. For each individual, identify his or her role and/or the basis and substance of his or her knowledge.

INTERROGATORY NO. 3: Identify each discussion, telephone conference, meeting, document, or other communication any Morgan Stanley employee or other representative (including attorneys) had or received prior to March 30, 1998 concerning Sunbeam's first quarter 1998 sales and/or profits and, for each such communication, identify the individuals participating in the communication, the date of the communication, and state the substance of the communication.

INTERROGATORY NO. 4: Identify each Morgan Stanley employee or representative (including attorneys) who received, reviewed, discussed, and/or commented upon Sunbeam's March 19, 1998 Press Release (or any drafts thereof) prior to its issuance by Sunbeam on March 19, 1998.

NOT A CERTIFIED COPY

019084

INTERROGATORY NO. 5: Identify each Morgan Stanley employee or representative (including attorneys) who communicated with John Tyree on or after March 19, 1998 concerning, in any way, Sunbeam's first quarter 1998 sales and/or Sunbeam's March 19, 1998 Press Release.

INTERROGATORY NO. 6: State with particularity all actions Morgan Stanley took to "perform[] all of [Morgan Stanley's] obligations as an underwriter of Sunbeam securities" as alleged in Morgan Stanley's answer to paragraphs 58, 59, and 87 of the complaint in this action.

NOT A CERTIFIED COPY

019085

INTERROGATORY NO. 7: Itemize the fees, expenses, payments, and any other cash or non-cash compensation Morgan Stanley received from Sunbeam for any project, including but not limited to Sunbeam's acquisition of The Coleman Company, Inc.; Sunbeam's

acquisition of Signature Brands USA; Sunbeam's acquisition of First Alert, Inc.; the Subordinated Debenture Offering; the tender offer for Signature Brands USA; the tender offer for First Alert, Inc.; and any other project for Sunbeam for which Morgan Stanley received compensation of any kind from Sunbeam.

INTERROGATORY NO. 8: Identify all claims that have been threatened, communicated, or otherwise asserted against Morgan Stanley involving allegations that Morgan Stanley failed to conduct due diligence properly in a public or private offering or in any transaction where a portion of the consideration for the transaction consisted of stock.

INTERROGATORY NO. 9: Identify each instance on which Morgan Stanley employees or representatives (including attorneys) traveled to Florida in connection with Morgan Stanley's work for Sunbeam and, for each such instance, identify the Morgan Stanley employees or representatives who traveled to Florida and the purpose, date, and duration of the trip.

NOT A CERTIFIED COPY

019086

INTERROGATORY NO. 10: Identify each instance in which Morgan Stanley employees or representatives (including attorneys) communicated by telephone, in writing, by e-mail, telecopy, or overnight courier with individuals in Florida in connection with Morgan Stanley's work for Sunbeam and, for each such instance, identify the Morgan Stanley employees or representatives who participated in the communication and the substance and date of the communication.

NOT A CERTIFIED COPY

019087

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List, this 28th day of August, 2003.

COLEMAN (PARENT) HOLDINGS INC.

By: Deirdre Connell
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Robert T. Markowski
Michael T. Brody
Deirdre E. Connell
JENNER & BLOCK, LLC
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 686-6300

NOT A CERTIFIED COPY

019088

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

05 JAN -5 PM 3:57
FILED
KJM

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION

To:

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W., Suite 400
Washington, D.C. 20036-3209

PLEASE TAKE NOTICE that Coleman (Parent) Holdings Inc. will take the deposition upon oral examination of the following party pursuant to Florida Rule of Civil Procedure 1.310 on the dates set forth below:

DEPONENT	DATE AND TIME
Morgan Stanley & Co., Inc. on topics identified on Exhibit A.	January 17, 2005 at 9:30 a.m.

The deposition will be conducted at Esquire Deposition Services, 216 E. 45th Street, 8th floor, New York, New York 10017. The deposition will be recorded by videotape and stenographic means. The videographer will be Esquire Deposition Services. The deposition will be taken before a person authorized to administer oaths and will continue day to day until completed.

With respect to the deposition identified above, please designate one or more officers, directors, managing agents, or other persons to testify on your behalf and state the matters on which each person designated will testify.

NOT A CERTIFIED COPY

019089

954

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by facsimile and mail to all counsel on the attached Service List this 4th day of January 2005.

Dated: January 4, 2005

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
JENNER & BLOCK LLP
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
(312) 222-9350

Jack Scarola
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409
(561) 686-6300

NOT A CERTIFIED COPY

060610

SERVICE LIST

Mark C. Hansen, Esq.
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square, 1615 M Street N.W.
Suite 400
Washington, D.C. 20036-3209

Thomas A. Clare, Esq.
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Joseph Ianno, Jr., Esq.
CARLTON FIELDS, P.A.
222 Lake View Avenue
Suite 1400
West Palm Beach, FL 33401

NOT A CERTIFIED COPY

160610

Exhibit A

CORPORATE DEPOSITION TOPICS

1. The authenticity, source, use, creation, maintenance and business purpose of documents responsive to Coleman (Parent) Holdings Inc.'s Seventh Request for Production of Documents.

2. Morgan Stanley & Co.'s net worth, income, revenue, profits, losses, cash flow, and global holdings for each fiscal year between and including 2003-2004.

3. Morgan Stanley & Co.'s ability to satisfy a punitive damages judgment.

NOT A CERTIFIED COPY

019092

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
03 JAN -5 PM 3:52
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY, FL

KJM

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH

Coleman (Parent) Holdings Inc. ("CPH"), by its attorneys, respectfully requests that this Court extend the time for the submission of the rebuttal expert report of Samuel Kursh. In support of this motion, CPH states as follows:

1. This motion arises because of Morgan Stanley's refusal to extend the time in which Samuel Kursh, one of CPH's damages experts, has to prepare and submit his rebuttal expert report. Following his timely submission of his initial expert report on December 7, Mr. Kursh was advised by his doctor that he had to have open heart surgery as soon as possible. Mr. Kursh had that surgery two weeks ago today, on December 21.

2. Once CPH learned of Mr. Kursh's condition and the need for surgery, CPH promptly notified counsel for Morgan Stanley, and indicated that an extension of the rebuttal expert deadline may be necessary with respect to Mr. Kursh's report. Morgan Stanley thereafter contacted CPH and requested an extra week, to January 4, 2005, for one of its own rebuttal expert reports. The stated reason for the requested extension of time was an undisclosed medical problem involving one of the family members of Morgan Stanley's expert. CPH consented to that extension, and subsequently, Morgan Stanley stated that it would not object to an extension to January 4, 2005 for the submission of the rebuttal expert report of Mr. Kursh.

NOT A CERTIFIED COPY

019096

986

3. Since Mr. Kursh underwent open heart surgery on December 21, he has not been cleared by his doctor to do any work. As a result, on January 3, CPH wrote to Morgan Stanley requesting a further extension of time for Mr. Kursh's rebuttal expert report. Today, January 4, 2005, Morgan Stanley wrote refusing to provide any further extensions.

4. Because of Morgan Stanley's unreasonable refusal to accommodate Mr. Kursh's serious and unavoidable medical condition, CPH respectfully requests that this Court extend the time for Mr. Kursh to submit his rebuttal expert report.

Dated: January 4, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

#1196874

NOT A CERTIFIED COPY

019097

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all counsel on the attached list on this 4th day of Jan., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816
Attorneys for Coleman(Parent)Holdings Inc.
and MacAndrews & Forbes Holdings, Inc.

NOT A CERTIFIED COPY

019098

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

NOT A CERTIFIED COPY

019099

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

KJM

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

FILED
05 DEC -5 PM 3:12

RE-NOTICE OF HEARING
(at the request of defense counsel)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: January 12, 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH.

019100

NOT A CERTIFIED COPY

987

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Re-Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 5th day of January ~~2004~~. 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

NOT A CERTIFIED COPY

101610

16div-025322

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
Sumner Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036-3206

NOT A CERTIFIED COPY

201610

#230580/mep

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant,

_____/

Case No. CA 03-5045 AI

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant,

_____/

Case No. CA 03-5165 AI

KJM

FILED
03 JAN -5 PM 3:52
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY, FLA.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

DATE: January 11 2005

TIME: 8:45 a.m.

JUDGE: Hon. Elizabeth T. Maass

PLACE: Palm Beach County Courthouse, Room #11.1208, 205 North Dixie Highway, West Palm Beach, FL 33401

SPECIFIC MATTERS TO BE HEARD:

COLEMAN (PARENT) HOLDINGS INC.'S MOTION TO EXTEND THE TIME FOR SUBMISSION OF THE REBUTTAL EXPERT REPORT OF SAMUEL KURSH

NOT A CERTIFIED COPY

019093

985

Coleman (Parent) Holdings Inc. vs Morgan Stanley & Company
Case No.: 2003 CA 005045 AI
Notice of Hearing

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and Federal Express to all Counsel on the attached list, this 4th day of Jan., 2005.

JACK SCAROLA
Florida Bar No.: 169440
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 478-0754
Attorney for CPH and MAFCO

NOT A CERTIFIED COPY

019094

COUNSEL LIST

Joseph Ianno, Jr., Esquire
Carlton Fields, et al.
222 Lakeview Avenue
Suite1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett McGurk
Kirkland and Ellis
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jerold S. Solovy, Esq.
Jenner & Block LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
Sumner Square
1615 M. Street, N.W.
Suite 400
Washington, D.C. 20036-3206

NOT A CERTIFIED COPY

019095

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,

Defendant.

_____/

FILED
Jan 7 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

REPLY MEMORANDUM IN SUPPORT OF MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUMMARY JUDGMENT

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Christopher Landau
Thomas A. Clare
KIRKLAND & ELLIS LLP
655 15th St. N.W., Suite 1200
Washington, DC 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL P.L.L.C.
1615 M St., N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: January 7, 2005

NOT A CERTIFIED COPY

01911 9

996

16div-025327

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 3

I. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT (NEGLIGENT MISREPRESENTATION) 3

A. The Absence Of A Special Relationship Between CPH And Morgan Stanley Is A *Legal* Matter Subject To Summary Adjudication. 3

B. Based On The Undisputed Facts, Morgan Stanley Is Entitled To Summary Judgment On The Negligent Misrepresentation Claim. 6

C. CPH's Contrary Arguments Are Unavailing. 8

1. CPH's "Prior Relationship" With Morgan Stanley Does Not Create A "Special Relationship" With Respect To This Transaction. 8

2. CPH's "Extensive Contacts" With Morgan Stanley During The Course Of This Transaction Do Not Create A "Special Relationship." 11

II. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT (FRAUDULENT MISREPRESENTATION) 14

A. The Undisputed Facts Demonstrate That CPH Was Not Justified In Relying On Morgan Stanley's Supposed Misrepresentations As A Matter Of Law. 14

1. CPH's *Admitted* Failure To Inspect Sunbeam's Books And Records Negates Justifiable Reliance On Misrepresentations Or Omissions By Morgan Stanley As A Matter Of Law. 15

2. CPH's Express Disclaimer Of Reliance On Any "Evaluation Material" Furnished By Morgan Stanley Estops It, As A Matter Of Law, From Asserting Justifiable Reliance On Any Statements Made By Morgan Stanley During The Course Of The Parties' Engagement 19

B. CPH Cannot Establish Morgan Stanley's Scienter As A Matter Of Law 24

III. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT II OF THE COMPLAINT (AIDING AND ABETTING FRAUD) 27

NOT A CERTIFIED COPY

019120

A. There Is No Record Evidence Showing Morgan Stanley Had Actual Knowledge Of Fraud At Sunbeam And All Testimony Is To The Contrary.....27

B. *CPH* Cannot Demonstrate Substantial Assistance As A Matter Of Law.....33

IV. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT III OF THE COMPLAINT (CONSPIRACY).....35

CONCLUSION.....38

NOT A CERTIFIED COPY

019121

TABLE OF AUTHORITIES

Page(s)

Cases

Abrahami v. UPC Constr. Co.,
574 N.Y.S.2d 52 (App. Div. 1991) 37

AES Corp. v. Dow Chemical Co.,
325 F.3d 174 (3d Cir. 2003) 24

Alexander v. Evans,
No. 88 Civ. 5309(MJL), 1993 WL 427409 (S.D.N.Y. Oct. 15, 1993) 19

American Baptist Churches of Metro N.Y. v. Galloway,
710 N.Y.S.2d 12 (App. Div. 2000) 35

American Protein Corp. v. AB Volvo,
844 F.2d 56 (2d Cir. 1988) 6

Atkins Nutritionals, Inc. v. Ernst & Young, LLP,
754 N.Y.S.2d 320 (App. Div. 2003) 9

Banque Arabe et Internationale d'Investissement v. Maryland Nat'l Bank,
57 F.3d 146 (2d Cir. 1995) 10

Benjamin Shapiro Realty Co., LLC. v. Kemper Nat'l Ins. Cos.,
756 N.Y.S.2d 45 (App. Div. 2003) 4

Bennett v. Citicorp Mortgage, Inc.,
778 N.Y.S.2d 806 (App. Div. 2004) 4

Bombardier Capital, Inc. v. Naske Air GmbH,
No. 02 CV 10176, 2003 WL 22137989 (S.D.N.Y. Sep. 17, 2003) 5

Borden, Inc. v. Spoor Behrins Campbell & Young, Inc.,
828 F. Supp. 216 (S.D.N.Y. 1993) 36

Bryant v. Shands Teaching Hosp. & Clinics, Inc.,
479 So. 2d 165 (Fla. 1st DCA 1985) 27, 30, 33

Citibank, N.A. v. Itochu Int'l Inc.,
No. 01 Civ. 6007(GBD), 2003 WL 1797847 (S.D.N.Y. Apr. 4, 2003) 5

Citibank, N.A. v. Plapinger,
66 N.Y.2d 90 (Ct. App. 1985) 24

Cohan v. Sicular,
625 N.Y.S.2d 278 (App. Div. 1995) 21

NOT A CERTIFIED COPY

019122

Compania Sud-Americana de Vapores v. IBJ Schroder Bank & Trust Co.,
785 F. Supp. 411 (S.D.N.Y. 1992) 16

Congress Fin. Corp. v. John Morrell & Co.,
790 F. Supp. 459 (S.D.N.Y. 1992) 16

Consolidated Edison, Inc. v. Northeast Utilities,
249 F. Supp. 2d 387 (S.D.N.Y. 2003) 4

Cromer Fin. Ltd. v. Berger,
137 F. Supp. 2d 452 (S.D.N.Y. 2001) 25, 34

Curanovic v. New York Cent. Mut. Fire Ins. Co.,
762 N.Y.S.2d 148 (App. Div. 2003) 4

Czarnecki v. Roller,
726 F. Supp. 832 (S.D. Fla. 1989) 35

Dallas Aerospace, Inc. v. CIS Air Corp.,
352 F.3d 775 (2d Cir. 2003) 3

Danann Realty Corp. v. Harris,
5 N.Y.2d 317 (1959) 21, 23

Diamond State Ins. Co. v. Worldwide Weather Trading LLC.,
No. 02 Civ. 2900 LMM GNG, 2002 WL 31819217 (S.D.N.Y. Dec. 16, 2002) 35

Diamond v. Rosenfeld,
511 So. 2d 1031 (Fla. 4th DCA 1987) 37

DIMON Inc. v. Folium, Inc.,
48 F. Supp. 2d 359 (S.D.N.Y. 1999) 4, 12, 13, 19

Diodato v. Eastchester Dev. Corp.,
489 N.Y.S.2d 293 (App. Div. 1985) 22

Donofrio v. Matassini,
503 So. 2d 1278 (Fla. 2d DCA 1987) 36

EED Holdings v. Palmer Johnson Acquisition Corp.,
No. 04 Civ. 0505(RWS), 2004 WL 2348093 (S.D.N.Y. Oct. 20, 2004) 5

Elliot v. Nelson,
301 F. Supp. 2d 284 (S.D.N.Y. 2004) 4

Estevez-Yalcin v. Children's Village,
331 F. Supp. 2d 170 (S.D.N.Y. 2004) 4

NOT A CERTIFIED COPY

019123

Felfe v. CIBA Vision Corp.,
No. 03 Civ. 3357, 2004 WL 551200 (S.D.N.Y. Mar. 19, 2004) 5

First Nationwide Bank v. 965 Amsterdam, Inc.,
623 N.Y.S.2d 200 (App. Div. 1995) 37

Ford v. Sivilli,
770 N.Y.S.2d 414 (App. Div. 2003) 5

Friedman v. Arizona World Nurseries Ltd. P'ship,
730 F. Supp. 521 (S.D.N.Y. 1990),
aff'd, 927 F.2d 594 (2d Cir. 1991) 25

General Motors Corp. v. Villa Martin Chevrolet, Inc.,
Nos. 98-CV-5206, 5208, 6167 & 99-CV-3750,
2000 WL 271965 (E.D.N.Y. March 7, 2000) 21

Goldman v. Strough Real Estate, Inc.,
770 N.Y.S.2d 94 (App. Div. 2003) 4

Gordon P. Getty Family Trust v. Peltz,
No. 93 Civ. 3162(DAB), 1998 WL 148425 (S.D.N.Y. Mar. 27, 1998) 10, 11

Greater N.Y. Mut. Ins. Co. v. White Knight Restoration, Ltd.,
776 N.Y.S.2d 257 (App. Div. 2004) 4

Grumman Allied Indus., Inc. v. Rohr Indus., Inc.,
748 F.2d 729 (2d Cir. 1984) 12

Harsco Corp. v. Segui,
91 F.3d 337 (2d Cir. 1996) 24

Home Town Muffler Inc. v. Cole Muffler Inc.,
608 N.Y.S.2d 735 (App. Div. 1994) 37

Hydro Investors Inc. v. Trafalgar Power Inc.,
227 F.3d 8 (2d Cir. 2000) 12

I.L.G.W.U. Nat'l Ret. Fund v. Cuddlecoat, Inc.,
No. 01 Civ. 4019(BSJ), 2004 WL 444071 (S.D.N.Y. Mar. 11, 2004) 5

In re AHT Corp.,
292 B.R. 734 (S.D.N.Y. 2003) 4, 7, 12, 26

In re Indep. Energy Holdings PLC Sec. Litig.,
154 F. Supp. 2d 741 (S.D.N.Y. 2001) 25

NOT A CERTIFIED COPY

019124

In re Philip Servs. Corp. Sec. Litig.,
No. 98 Civ. 0835(MBM), 2004 WL 1152501 (S.D.N.Y. May 24, 2004) 25

JPMorgan Chase Bank v. Winnick,
No. 03 Civ. 8535(GEL), 2004 WL 1418197 (S.D.N.Y. June 23, 2004) 5, 17, 18

Kalnit v. Eichler,
99 F. Supp. 2d 327 (S.D.N.Y. 2000),
aff'd, 264 F.3d 131 (2d Cir. 2001) 26

Karnegis v. Oakes,
296 So. 2d 657 (Fla. 3d DCA 1974),
cert. denied, 307 So. 2d 450 (Fla. 1975) 36

Korea Life Ins. Co. v. Morgan Guar. Trust Co. of N.Y.,
269 F. Supp. 2d 424 (S.D.N.Y. 2003) 4

LaSalle Bank Nat'l Assoc. v. Citicorp Real Estate Inc.,
No. 02 Civ. 7868(HB), 2003 WL 1461483 (S.D.N.Y. Mar. 21, 2003) 5

Linden v. Lloyd's Planning Serv. Inc.,
750 N.Y.S.2d 20 (App. Div. 2002) 35

Manufacturers' Hanover Trust Co. v. Yanakas,
7 F.3d 310 (2d Cir. 1993) 22

Marcellus Constr. Co. v. Village of Broadalbin,
755 N.Y.S.2d 474 (App. Div. 2003) 4

Marine Midland Bank v. Palm Beach Moorings, Inc.,
403 N.Y.S.2d 15 (App. Div. 1978),
appeal denied, 44 N.Y.S.2d 644 (1978) 16

McManus v. Moise,
691 N.Y.S.2d 166 (App. Div. 1999) 18

Menendez v. Beech Acceptance Corp.,
521 So. 2d 178 (Fla. 3d DCA 1988) 36, 37

Morse v. Swank,
459 F. Supp. 660 (S.D.N.Y. 1978) 11

Murphy v. Kuhn,
90 N.Y.2d 266 (1997) 9

Nairobi Holdings Ltd. v. Brown Bros. Harriman & Co.,
No. 02 Civ. 1230(LMM), 2003 WL 21088506 (S.D.N.Y. May 14, 2003) 25

NOT A CERTIFIED COPY

019125

Onanuga v. Pfizer, Inc.,
No. 03 Civ. 5405(CM), 2003 WL 22670842 (S.D.N.Y. Nov. 7, 2003) 5

Palm Beach County v. Trinity Indus.,
661 So. 2d 942 (Fla. 4th DCA 1995) 1

Parts Depot Co., L.P. v. Florida Auto Supply, Inc.,
669 So. 2d 321 (Fla. 4th DCA 1996) 37

Pearce v. Knepper,
53 N.Y.S.2d 845 (Sup. Ct. 1945) 23

Peoples Gas Sys., Inc. v. Acme Gas Corp.,
689 So. 2d 292 (Fla. 3d DCA 1997) 27, 30, 33

Poe & Assoc., Inc. v. Estate of Vogler,
559 So. 2d 1235 (Fla. 3d DCA 1990) 1

Polycast Technology Corporation v. Uniroyal, Inc.,
792 F. Supp. 244 (S.D.N.Y. 1992) 13

PPI Enters. (U.S.), Inc. v. Del Monte Foods Co.,
No. 99 Civ. 3794(BSJ), 2003 WL 22118977 (S.D.N.Y. Sept. 11, 2003) 4, 12

Raimi v. Furlong,
702 So. 2d 1273 (Fla. 3d DCA 1997) 37

Rotterdam Ventures, Inc. v. Ernst & Young LLP,
752 N.Y.S.2d 746 (App. Div. 2002) 5

Schnell v. Conseco, Inc.,
43 F. Supp. 2d 438 (S.D.N.Y. 1999) 25

Shields v. Citytrust Bancorp, Inc.,
25 F.3d 1124 (2d Cir. 1994) 25

Sidamonidze v. Kay,
757 N.Y.S.2d 560 (App. Div. 2003) 4

Siemens Westinghouse Power Corp. v. Dick Corp.,
299 F. Supp. 2d 242 (S.D.N.Y. 2004) 5

Skow v. Department of Transp.,
468 So. 2d 422 (Fla. 1st DCA 1985) 1

Sofia v. Massachusetts Mut. Life Ins. Co.,
No. 02-CV-6088T, 2004 WL 1792441 (W.D.N.Y. Aug. 10, 2004) 4

NOT A CERTIFIED COPY

019126

Soule v. Norton,
750 N.Y.S.2d 692 (App. Div. 2002) 37

St. Lucie Harvesting & Caretaking Corp. v. Cervantes,
639 So. 2d 37 (Fla. 4th DCA 1994) 1

St. Paul Fire & Marine Ins. Co. v. Health Fielding Ins. Broking Ltd.,
976 F. Supp. 198 (S.D.N.Y. 1996) 7

Stan Winston Creatures, Inc. v. Toys "R" Us, Inc.,
No. 604183/02, 2004 WL 1949071 (N.Y. Sup. Sept. 1, 2004) 5

Stepp v. State Farm Fire & Cas. Co.,
656 So. 2d 494 (Fla. 1st DCA 1995) 30, 33

Struna v. Wolf,
484 N.Y.S.2d 392 (Sup. Ct. 1985) 7

THC Holdings Corp. v. Chinn,
No. 95 Civ. 4422(KMW), 1998 WL 50202 (S.D.N.Y. Feb. 6, 1998) 25

Tradewinds Fin. Corp. v. Refco Secs., Inc.,
773 N.Y.S.2d 395 (App. Div. 2004) 5

Trizzano v. Allstate Ins. Co.,
780 N.Y.S.2d 147 (App. Div. 2004) 4

UniCredito Italiano SPA v. JPMorgan Chase Bank,
288 F. Supp. 2d 485 (S.D.N.Y. 2003) 5

UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney,
733 N.Y.S.2d 385 (App. Div. 2001) 14, 15

Vogel v. Sands Bros. & Co.,
126 F. Supp. 2d 730 (S.D.N.Y. 2001) 25

Waksman v. Cohen,
No. 00 Civ. 9005(WK), 2002 WL 31466417 (S.D.N.Y. Nov. 4, 2002) 16

Wells Fargo Bank Northwest, N.A. v. TACA Int'l Airlines, S.A.,
247 F. Supp. 2d 352 (S.D.N.Y. 2002) 21

WIT Holding Corp. v. Klein,
724 N.Y.S.2d 66 (App. Div. 2001) 7

Rules

Fla. R. Civ. P. 1.510(c) 1

NOT A CERTIFIED COPY

019127

INTRODUCTION

Coleman (Parent) Holdings Inc. ("CPH") predictably opposes summary judgment by trying to bury the simple and clear legal issues presented under an avalanche of irrelevant facts. But Florida law is well settled that a party cannot avoid summary judgment by simply throwing out facts; rather, summary judgment is appropriate if "'there is no ***genuine*** issue as to any ***material*** fact.'" Dec. 10, 2004 Mem. In Supp. of MS Mot. for Summ. J. 12 ("MS Br.") (emphasis added) (quoting Fla. R. Civ. P. 1.510(c); citing *Poe & Assoc., Inc. v. Estate of Vogler*, 559 So. 2d 1235, 1236 (Fla. 3d DCA 1990)); *see also, e.g.*, *St. Lucie Harvesting & Caretaking Corp. v. Cervantes*, 639 So. 2d 37, 40 (Fla. 4th DCA 1994) (citing *Skow v. Department of Transp.*, 468 So. 2d 422, 424 (Fla. 1st DCA 1985)). The problem for CPH is that the ***material*** facts here are not in dispute, and CPH's unprecedented attempt to impose liability on the financial advisor to its counterparty in a corporate transaction fails as a matter of law. Thus, as explained below, summary judgment is appropriate, and indeed has routinely been granted even in cases where the record was far less compelling than here.

Nor can CPH avoid summary judgment by simply insisting throughout its brief that Morgan Stanley, as the movant, bears the burden of proof at this stage. That argument is a straw man. Morgan Stanley has never argued to the contrary; rather, in setting forth the legal standard, Morgan Stanley explained that summary judgment is appropriate here because "the material facts in this case are undisputed." MS Br. 12. Where, as here, the material facts are undisputed, saying that the movant has conclusively established those facts or that the non-movant has failed to dispute those facts is saying the same thing. Either way, the movant is entitled to judgment as a matter of law, and there is no basis for allowing the non-movant to proceed to trial. *See* MS Br. at 12-13 (citing *Palm Beach County v. Trinity Indus.*, 661 So. 2d 942, 944 (Fla. 4th DCA 1995)).

NOT A CERTIFIED COPY

019128

Notwithstanding CPH's lengthy brief, the only facts necessary to decide this motion (*i.e.*, the only legally "material" facts) stand uncontradicted in the record:

- CPH is a sophisticated investor, represented by its own team of expert legal and financial advisors, that sat across the negotiating table from Morgan Stanley in this transaction, Findings ¶¶ 1, 6, 20-43;

- CPH had a contractual right of access to all of the same Sunbeam information to which Morgan Stanley had access, but failed to exercise that access, even though CPH's own expert Levin raised red flags about Sunbeam's operating results in 1998 and its business plan for the next three years, Findings ¶¶ 214-15, 219-36, 180-81, 184;

- If CPH had exercised its contractual right of access to Sunbeam information, it would have discovered everything that it now accuses Morgan Stanley of fraudulently misrepresenting or omitting, Findings ¶¶ 219-35, 240-44, 247, 262-63, 273-75, 280, 295-96, 319-21;

- CPH expressly disclaimed reliance on any statements by Morgan Stanley, Findings ¶¶ 201-03, 213;

- Morgan Stanley's participation in the alleged fraud would have been economically irrational, Findings ¶¶ 18-19, 299-302, 331-32;

- Morgan Stanley did not know that Sunbeam had engaged in accounting fraud, and hence could not have agreed to participate in such fraud, *See infra* Section III.A;

- Sunbeam, not Morgan Stanley, proximately caused the injury of which CPH complains, Findings ¶¶ 116-21, 163-67, 195-206, 240-41, 249-50, 310-11, 323-24, 326-30.

At bottom, this case is nothing more than a legally untenable attempt to hold a financial advisor liable for its client's ***accounting*** irregularities (which occurred long before Morgan Stanley arrived on the scene), now that (and only after) both the client (Sunbeam) and the client's accounting firm (Arthur Andersen) have collapsed. What CPH is trying to do, in other words, is to conflate the underlying accounting fraud by ***Sunbeam*** with alleged fraud in the Coleman transaction by ***Morgan Stanley.*** Needless to say, this attempt to establish guilt by association is foreign to our legal system. Accordingly, as explained below, Morgan Stanley is entitled to summary judgment.

NOT A CERTIFIED COPY

019129

ARGUMENT

I. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT (NEGLIGENT MISREPRESENTATION)

A. The Absence Of A Special Relationship Between CPH And Morgan Stanley Is A *Legal* Matter Subject To Summary Adjudication.

CPH acknowledges, as it must, that a negligent misrepresentation claim under New York law requires a "special relationship" between the plaintiff and the defendant, but asserts that "courts applying New York law almost uniformly consider the existence of a special relationship ... to be one of fact that must be left for trial." Dec. 23, 2004 CPH's Resp. in Opp. to MS's Mot. for Summ. J. 37, 38 ("CPH Br."). That assertion is simply incorrect.

As this Court noted in its choice-of-law ruling, New York's law of negligent misrepresentation "circumscribes a tight[] circle of potential claimants, engrafting a requirement that the information's recipient be in a position of trust or confidence to its publisher." Aug. 11, 2004 Order at 4 (citing cases). This Court anticipated that the application of this strict legal standard to CPH's negligent misrepresentation claim might be "outcome determinative," *id.*, and it is. Courts applying New York law ***routinely*** resolve misrepresentation claims on dispositive motions—often finding ***as a matter of law*** that the ***undisputed facts*** demonstrate the absence of any special relationship between the parties, the plaintiff's lack of legally justifiable reliance on any purported misrepresentations, or both.[1] Indeed, during the past two years alone, such courts have dismissed no fewer than 17 negligent misrepresentation actions at the summary judgment stage, as a matter of law, on those grounds. *See Dallas Aerospace, Inc. v. CIS Air Corp.*, 352 F.3d 775, 778-79 (2d Cir. 2003) (no special relationship or justifiable reliance); *Sofia v. Massachusetts Mut. Life Ins. Co.*, No. 02-CV-6088T, 2004 WL 1792441, at *3 (W.D.N.Y. Aug.

[1] As in its opening brief, Morgan Stanley addresses the issue of justifiable reliance below, in connection with CPH's fraudulent misrepresentation claim.

NOT A CERTIFIED COPY

019130

10, 2004) (no special relationship); *Estevez-Yalcin v. Children's Village*, 331 F. Supp. 2d 170, 178-79 (S.D.N.Y. 2004) (no justifiable reliance); *Elliot v. Nelson*, 301 F. Supp. 2d 284 (S.D.N.Y. 2004) (no justifiable reliance); *Korea Life Ins. Co. v. Morgan Guar. Trust Co. of N.Y.*, 269 F. Supp. 2d 424, 436-37 (S.D.N.Y. 2003) (no justifiable reliance); *PPI Enters. (U.S.), Inc. v. Del Monte Foods Co.*, No. 99 Civ. 3794(BSJ), 2003 WL 22118977, at *20-*21 (S.D.N.Y. Sept. 11, 2003) (no justifiable reliance on statements by Morgan Stanley); *In re AHT Corp.*, 292 B.R. 734 (S.D.N.Y. 2003) (no justifiable reliance, no special relationship); *Consolidated Edison, Inc. v. Northeast Utilities*, 249 F. Supp. 2d 387, 400-09 (S.D.N.Y. 2003) (no justifiable reliance); *Bennett v. Citicorp Mortgage, Inc.*, 778 N.Y.S.2d 806 (App. Div. 2004) (no justifiable reliance); *Trizzano v. Allstate Ins. Co.*, 780 N.Y.S.2d 147, 150 (App. Div. 2004) (no special relationship); *Greater N.Y. Mut. Ins. Co. v. White Knight Restoration, Ltd.*, 776 N.Y.S.2d 257 (App. Div. 2004) (no justifiable reliance because no special relationship); *Goldman v. Strough Real Estate, Inc.*, 770 N.Y.S.2d 94 (App. Div. 2003) (no justifiable reliance); *Curanovic v. New York Cent. Mut. Fire Ins. Co.*, 762 N.Y.S.2d 148, 151-52 (App. Div. 2003) (no special relationship); *Sidamonidze v. Kay*, 757 N.Y.S.2d 560 (App. Div. 2003) (no special relationship); *Benjamin Shapiro Realty Co., LLC. v. Kemper Nat'l Ins. Cos.*, 756 N.Y.S.2d 45 (App. Div. 2003) (no special relationship); *Marcellus Constr. Co. v. Village of Broadalbin*, 755 N.Y.S.2d 474 (App. Div. 2003) (no special relationship).

Indeed, no fewer than 14 cases during that same limited timeframe—including one of CPH's two leading authorities[2]—summarily resolved negligent misrepresentation claims on

NOT A CERTIFIED COPY

019131

[2] Though decided beyond the limited two-year timeframe of the cases cited in the text, the other of CPH's leading authorities, *DIMON Inc. v. Folium, Inc.*, 48 F. Supp. 2d 359 (S.D.N.Y. 1999), ***also*** dismissed a negligent misrepresentation claim on the pleadings, *see id.* at 367 n.42—thus refuting CPH's repeated assertion that *DIMON* stands for the proposition that negligent

threshold motions to dismiss on the pleadings, thereby underscoring the amenability of such claims to disposition as a matter of law. *See JPMorgan Chase Bank v. Winnick*, No. 03 Civ. 8535(GEL), 2004 WL 1418197, at *8 (S.D.N.Y. June 23, 2004) (no special relationship); *see also EED Holdings v. Palmer Johnson Acquisition Corp.*, No. 04 Civ. 0505(RWS), 2004 WL 2348093, at *13-*14 (S.D.N.Y. Oct. 20, 2004) (no special relationship); *Felfe v. CIBA Vision Corp.*, No. 03 Civ. 3357, 2004 WL 551200, at *3-*5 (S.D.N.Y. Mar. 19, 2004) (no justifiable reliance); *I.L.G.W.U. Nat'l Ret. Fund v. Cuddlecoat, Inc.*, No. 01 Civ. 4019(BSJ), 2004 WL 444071, at *2-*3 (S.D.N.Y. Mar. 11, 2004) (no special relationship); *Siemens Westinghouse Power Corp. v. Dick Corp.*, 299 F. Supp. 2d 242, 246-48 (S.D.N.Y. 2004) (no justifiable reliance); *Onanuga v. Pfizer, Inc.*, No. 03 Civ. 5405(CM), 2003 WL 22670842, at *3 (S.D.N.Y. Nov. 7, 2003) (no special relationship); *UniCredito Italiano SPA v. JPMorgan Chase Bank*, 288 F. Supp. 2d 485, 499-501 (S.D.N.Y. 2003) (no justifiable reliance); *Bombardier Capital, Inc. v. Naske Air GmbH*, No. 02 CV 10176, 2003 WL 22137989, at *4-*5 (S.D.N.Y. Sep. 17, 2003) (no justifiable reliance); *Citibank, N.A. v. Itochu Int'l Inc.*, No. 01 Civ. 6007(GBD), 2003 WL 1797847, at *5 (S.D.N.Y. Apr. 4, 2003) (no special relationship); *LaSalle Bank Nat'l Assoc. v. Citicorp Real Estate Inc.*, No. 02 Civ. 7868(HB), 2003 WL 1461483, at *5 (S.D.N.Y. Mar. 21, 2003) (no special relationship); *Tradewinds Fin. Corp. v. Refco Secs., Inc.*, 773 N.Y.S.2d 395, 397 (App. Div. 2004) (no special relationship); *Ford v. Sivilli*, 770 N.Y.S.2d 414, 415-16 (App. Div. 2003) (no special relationship); *Rotterdam Ventures, Inc. v. Ernst & Young LLP*, 752 N.Y.S.2d 746, 749 (App. Div. 2002) (no justifiable reliance); *Stan Winston Creatures, Inc. v. Toys "R" Us, Inc.*, No. 604183/02, 2004 WL 1949071, at *5-*6 (N.Y. Sup. Sept. 1, 2004) (no special relationship or justifiable reliance).

---

misrepresentation claims are not amenable to adjudication by dispositive motion. *See* CPH Br.

NOT A CERTIFIED COPY

0191132

Thus, contrary to CPH's assertion, it is simply not true that "New York courts almost uniformly consider the special relationship question to be one of fact that must be left for trial." CPH Br. 38. As highlighted by the foregoing cases, negligent misrepresentation claims under New York law are ***especially*** amenable to summary adjudication.

B. Based On The Undisputed Facts, Morgan Stanley Is Entitled To Summary Judgment On The Negligent Misrepresentation Claim.

Summary judgment is appropriate here, as Morgan Stanley explained in its opening brief, because the material facts are undisputed. In short, the record conclusively demonstrates, and CPH does not contest, that:

- CPH is a sophisticated business entity, controlled by a savvy and sophisticated businessman (Ronald O. Perelman), who retained world-class financial and legal advisors to provide advice in connection with his acquisition of hundreds of millions of dollars in stock as part of a complex commercial transaction conducted at arm's-length between unrelated parties—precisely the kind of transaction that has made Mr. Perelman a veritable superstar of the global financial community, Findings ¶¶ 1-14, 20-43;
- CPH had a contractual right to "full access … to all of [Sunbeam's] books, records, properties, plants, and personnel," and, had it chosen to take advantage of such access, it would have discovered everything that it now accuses Morgan Stanley of fraudulently misrepresenting or omitting, Findings ¶¶ 214-15; *see also* Findings ¶¶ 201-05, 219-36; and
- CPH's merger agreement with Sunbeam contained an integration clause ***that expressly incorporated a specific disclaimer of reliance***, which remained "in full force and effect" well beyond the date of the parties' merger, Findings ¶ 213.

Given that CPH is a sophisticated party that sat across the negotiating table from Morgan Stanley, CPH cannot claim that it enjoyed a "special relationship" with Morgan Stanley in this transaction as a matter of law, and hence CPH cannot establish that Morgan Stanley had a duty to exercise "reasonable care" in its statements to CPH. *See, e.g.*, *American Protein Corp. v. AB Volvo*, 844 F.2d 56, 64 (2d Cir. 1988) ("Since [the plaintiff] alleges nothing more than ordinary

---

39.

NOT A CERTIFIED COPY

019133

arm's length negotiations, its negligent misrepresentation claim fails as a matter of law."); *In re AHT Corp.*, 292 B.R. at 747 (relationship of negotiating adversaries in a business transaction is the very "***antithesis*** of a relationship of special trust and confidence") (emphasis added; internal quotations omitted); *Struna v. Wolf*, 484 N.Y.S.2d 392, 397 (Sup. Ct. 1985) ("[P]laintiff was acting at arm's length in attempting to achieve a sale .... This relationship between the parties thus appears to be the very ***antithesis*** of the 'special relationship' ordinarily required which would support holding the defendant to a higher duty of care than is otherwise required.") (emphasis added). Indeed, the whole point of the "special relationship" doctrine is to prevent sophisticated parties from claiming that they entered into business deals based on allegedly careless remarks by their negotiating counterparties. *See, e.g., St. Paul Fire & Marine Ins. Co. v. Health Fielding Ins. Broking Ltd.*, 976 F. Supp. 198, 203 (S.D.N.Y. 1996) ("Something more than the trust and reliance between an ordinary buyer and seller must be established."). If Ron Perelman, armed with an army of investment bankers and lawyers, can claim a "special relationship" with the financial advisor to his counterparty in this transaction, the "special relationship" test has no bounds and no meaning.

Accordingly, CPH's startling assertion that "[t]he fact that CPH is a so-called sophisticated investor that sat across the negotiating table from Morgan Stanley ***makes no difference***," CPH Br. 39 (emphasis added), is demonstrably false. To the contrary, under settled New York law, these facts conclusively negate the existence of a "special relationship" between Morgan Stanley and CPH in connection with this transaction and are legally dispositive of CPH's negligent misrepresentation claim. *See, e.g., WIT Holding Corp. v. Klein*, 724 N.Y.S.2d 66, 67-68 (App. Div. 2001).

NOT A CERTIFIED COPY

0191134

C. CPH's Contrary Arguments Are Unavailing.

Notwithstanding the foregoing, CPH insists that "there exists a jury question as to whether a special relationship existed between CPH and Morgan Stanley" on two grounds: "[1] Morgan Stanley's prior relationship with CPH and [2] its continuing contacts with CPH throughout the transaction at issue." CPH Br. 40. Both grounds are meritless.

1. CPH's "Prior Relationship" With Morgan Stanley Does Not Create A "Special Relationship" With Respect To This Transaction.

CPH first contends that it had a "special relationship" with Morgan Stanley with respect to the Sunbeam transaction because "Morgan Stanley and CPH had a longstanding prior relationship." CPH Br. 40 (capitalization modified). That contention is both factually and legally baseless.

As a factual matter, the record is undisputed that Morgan Stanley ***never worked with CPH before the transaction at issue in this litigation***. Indeed, in CPH's Responses and Objections to Morgan Stanley's Fifth Set of Interrogatories—which CPH actually cites to support its allegation of a longstanding prior relationship, *see* CPH Br. 41 ("listing 23 transactions")—CPH fails to identify even one transaction in which it was involved with Morgan Stanley. Instead, CPH identifies transactions in which Morgan Stanley worked with ***other*** companies in the Perelman empire that are not parties to this lawsuit, including Pantry Pride, Inc., National Health Laboratories, National Health Care Group, Revlon, Marvel III Holdings, National Health Laboratories Intermediate Holdings Corp. II, New World Communications Group, Toy Biz, Consolidated Cigar Holdings, Mafco Consolidated Group, MAFCO, and The Coleman Company. Thus, CPH's repeated references to "Morgan Stanley's prior relationship with ***CPH***" are misleading at best. CPH Br. 40 (emphasis added); *see also* CPH Br. 40 ("Morgan Stanley's prior dealings with ***CPH***") (emphasis added); CPH Br. 41 ("***the parties*** had

NOT A CERTIFIED COPY

019135

developed a 'very close' working relationship"); CPH Br. 42 ("Morgan Stanley's extensive prior dealings with ***CPH***"). Particularly given that CPH insists on corporate formalities to argue (erroneously) that it is not bound by the Confidentiality Agreements, CPH cannot simply ignore its own corporate identity to allege a "special relationship" with Morgan Stanley based on a "prior relationship" that never existed. *See, e.g., Atkins Nutritionals, Inc. v. Ernst & Young, LLP*, 754 N.Y.S.2d 320, 322 (App. Div. 2003) ("The fact that E&Y performed personal accounting services for Dr. Atkins did not give rise to a fiduciary relationship with Atkins, the corporate entity.").

In any event, above and beyond this indisputable ***factual*** point, any "prior relationship" between Morgan Stanley and other companies in Perelman's empire is irrelevant as a ***legal*** matter because any such "prior relationship" had ***nothing to do*** with the transaction at issue here. CPH's suggestion that a relationship of trust and confidence with respect to ***any*** transaction translates into a relationship of trust and confidence with respect to ***every*** transaction has no basis in law or common sense. *See, e.g., Murphy v. Kuhn*, 90 N.Y.2d 266, 271 (1997) (holding that without regard to the parties' longstanding professional relationship "over an extended period of time," no "special relationship" arose in the context of an ordinary arm's-length insurance transaction). With respect to the transaction at issue here, Morgan Stanley sat across the negotiating table from CPH as Sunbeam's financial advisor, and CPH had its own financial advisor, Credit Suisse First Boston ("CSFB"). The notion that, under these circumstances, a sophisticated party like CPH was in a "special relationship" with Morgan Stanley (akin to a fiduciary) makes no sense. CPH certainly never suggested that Morgan Stanley's presence on the other side of the negotiating table presented a conflict of interest, and CPH was under no illusion that Morgan Stanley was looking after CPH's interests with respect to this transaction.

NOT A CERTIFIED COPY

019136

CPH insists, however, that it had a "very close" working relationship with William Reid, a Morgan Stanley employee whom Perelman considered to be "very smart" and "very nice." CPH Br. 41. But the alleged misrepresentations at issue in this case were not made by Reid. Rather, by CPH's own account, Reid's only involvement in this transaction was "to revive the negotiations" at a point in time when they had broken down. CPH Br. 42; *see also* Nov. 22, 2003 Dec. of William Reid.[3] The act of reviving negotiations, without more, does not give rise to a "special relationship" in those negotiations; even the bitterest enemy can seek to revive negotiations. The allegation that Reid helped to revive the negotiations, thus, in no way establishes that Morgan Stanley had a "special relationship" with CPH in connection with this transaction. Indeed, CPH has never even sought to take Reid's deposition in this case and it cannot compel his attendance at trial—thus underscoring the make-weight nature of CPH's current suggestion that Reid stands at the core of their negligent misrepresentation claim.

The cases on which CPH relies are not to the contrary. In *Gordon P. Getty Family Trust v. Peltz*, No. 93 Civ. 3162(DAB), 1998 WL 148425 (S.D.N.Y. Mar. 27, 1998), the alleged negligent misrepresentations were made in the entirely different context of a run-of-the-mill investment decision, not a intensely negotiated corporate transaction between sophisticated parties. Indeed, *Getty* emphasized that its approach would not apply in "a strictly arms-length commercial transaction." 1998 WL 148425, at *8 (citing *Banque Arabe et Internationale d'Investissement v. Maryland Nat'l Bank*, 57 F.3d 146, 158 (2d Cir. 1995) (finding no special relationship as a matter of law where negotiations were at arms-length, agreement disclaimed reliance, and buyer's due diligence would have provided access to allegedly concealed information)). Moreover, the individual who made the alleged misrepresentations in *Getty* was

[3] Documents and testimony not submitted with Morgan Stanley's December 10, 2004 Summary

NOT A CERTIFIED COPY

019137

uniquely aware that the plaintiff's investment strategy would lead it to rely on his representations. He knew that:

> the [plaintiff] preferred transactions where its investment would be "co-extensive with that of another investor having comparable financial resources but also ***having the investment banking and other financial resources to evaluate the investment in detail," as the [plaintiff] would "rely heavily on that other investor and its advisors***" since their interests were aligned.

Id. at *2 (quoting the plaintiff's filings) (emphasis added). Here, there is no evidence of any such unique knowledge; to the contrary, given Perelman's financial sophistication and that of his in-house brain trust—not to mention the millions he spent securing Credit Suisse's "advice and/or assistance to CPH in connection with the [Sunbeam] transaction," Findings ¶ 35—no reasonable jury could conclude that CPH ***needed*** to rely (or, indeed, that it ***would rely***) on Morgan Stanley's evaluation of Sunbeam—much less that the Morgan Stanley advisors working on the deal were ***personally aware*** of any such reliance.

CPH's reliance on *Morse v. Swank*, 459 F. Supp. 660 (S.D.N.Y. 1978), is similarly misplaced. The plaintiff there (an unsophisticated businessman unrepresented by counsel) had a longstanding relationship with the defendant involving the sale of Pierre Cardin lighters, and the alleged negligent misrepresentations ***related to that very relationship***. *Id.* at 662-63. Here, in contrast, CPH (the ultimate sophisticated party represented by counsel) had no prior dealings with Morgan Stanley, and even the other entities in Perelman's empire had no prior dealings with Morgan Stanley relating to this transaction.

2. CPH's "Extensive Contacts" With Morgan Stanley During The Course Of This Transaction Do Not Create A "Special Relationship."

CPH next argues that Morgan Stanley's "extensive contacts with CPH throughout the course of the Sunbeam transaction" give rise to a special relationship. CPH Br. 43. That

---

Judgment Appendix are submitted with the Supplemental Appendix filed with this Reply.

NOT A CERTIFIED COPY

0191138

argument again defies both law and logic. The bitterest enemies may have "extensive contacts" sitting across the negotiating table from each other, but that fact alone in no way supports an inference that they have developed a "special relationship of trust and confidence" in connection with that transaction. Were that the law, New York's "special relationship" requirement would have utterly no meaning, because a special relationship could always be derived from the very negotiating adversity that refutes a special relationship in the first place. Not surprisingly, thus, cases too numerous to cite have dismissed negligent misrepresentation claims notwithstanding the (all too common) existence of lengthy transactional engagements between sophisticated parties to complex deals. *See, e.g.*, *Hydro Investors Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 12 (2d Cir. 2000) (transactional engagement at least two years); *Grumman Allied Indus., Inc. v. Rohr Indus., Inc.*, 748 F.2d 729, 730-31 (2d Cir. 1984) (transactional engagement at least eighteenth months); *PPI Enters. (U.S.), Inc. v. Del Monte Foods Co.*, No. 99 Civ. 3794(BSJ), 2003 WL 22118977 (S.D.N.Y. Sept. 11, 2003) (transactional engagement at least sixteen months); *In re AHT Corp.*, 292 B.R. at 737-40 (transactional engagement about one year). Indeed, CPH's argument in this regard is totally circular: it argues that it was entitled to rely on Morgan Stanley's statements because it ***did*** rely on Morgan Stanley's statements. CPH Br. 45. The whole point of the "special relationship" requirement, however, is that a party ***cannot*** rely on the statements of its negotiating counterpart.

Once again, the cases on which CPH relies are inapposite. In *DIMON Inc. v. Folium, Inc.*, 48 F. Supp. 2d 359 (S.D.N.Y. 1999), the individuals who made the alleged misrepresentations had access to superior information, as the transaction details undergirding the fraud they helped to orchestrate were concealed, off-the-books, in secret computer data files "inaccessible without special access codes," and discoverable only after DIMON hired the

NOT A CERTIFIED COPY

0191139

software consultant responsible for servicing the defendant's computer system to engineer a complicated backdoor software restoration of these "audited-off" accounting entries. *Id.* at 370. And, under the terms of the negotiated deal, the individuals responsible for making the negligent misrepresentations were to "receive[] positions of trust within DIMON, thus establishing a continued relationship ...." *Id.* at 374. Here, as explained in detail below, CPH had unfettered (albeit unexercised) access to the very information that it now accuses Morgan Stanley of misrepresenting or omitting. *DIMON* in no way stands for the proposition that "extensive contacts" between negotiating adversaries can, in themselves, create a special relationship as a matter of law.

CPH's appeal to *Polycast Technology Corporation v. Uniroyal, Inc.*, 792 F. Supp. 244 (S.D.N.Y. 1992), is equally unavailing. CPH bases its argument solely on the following passage, which does not even rise to the level of dicta:

> [D]uring an extended negotiation period, defendants repeatedly vouched for their projections of Plastics' earnings, knowing that such earnings were critical to Polycast's willingness to consummate the transaction.... Further, Polycast has alleged that defendants had superior information about Plastics throughout the negotiation period, and that it only gained complete access to the books after the deal was consummated.

Id. at 270. This passing reference to the length of the parties' negotiations hardly amounts to a holding that extended negotiations alone can support the existence of a special relationship between the parties. Instead, the court's legal analysis focused purely on the defendants' exploitation of its superior information to induce reliance. Again, as explained in detail below, it is undisputed here that CPH had unfettered (albeit unexercised) access to the very information that it now accuses Morgan Stanley of misrepresenting or omitting.

Because the undisputed facts conclusively establish that Morgan Stanley and CPH were not in a special relationship with respect to the Coleman transaction, Morgan Stanley is entitled

NOT A CERTIFIED COPY

019140

to summary judgment on CPH's negligent misrepresentation claim. Indeed, allowing this claim to proceed to trial would render New York's special relationship requirement meaningless.

II. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT (FRAUDULENT MISREPRESENTATION)

CPH next acknowledges, as it must, that a fraudulent misrepresentation claim under New York law requires, among other things, (1) justifiable reliance by the plaintiff on the defendant's alleged misrepresentation, and (2) scienter, or intent to defraud, by the defendant, but asserts that both these issues are "fact-intensive," and hence not amenable to resolution on summary judgment. *See* CPH Br. 47, 63-64. CPH is wrong on both scores.

A. The Undisputed Facts Demonstrate That CPH Was Not Justified In Relying On Morgan Stanley's Supposed Misrepresentations As A Matter Of Law.

As this Court noted in its choice-of-law ruling, under New York law, "a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations." Aug. 11, 2004 Order at 5 (citing *UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386 (App. Div. 2001)). Again, this Court anticipated that the application of this strict legal standard to CPH's fraudulent misrepresentation claim might be "outcome determinative," *id.* at 4, and it is. Courts applying New York law ***routinely*** resolve such claims on dispositive motions—often finding ***as a matter of law*** that the ***undisputed facts*** entitle the defendant to judgment as a matter of law. *See supra* Section I.A.

In this regard, it is critical to keep in mind that the defendant here is ***Morgan Stanley***, not ***Sunbeam***, and hence the issue here is whether ***Morgan Stanley*** committed fraud by allegedly failing to alert CPH to information that cast Sunbeam's financial health in a less positive light, not whether ***Sunbeam*** committed underlying accounting fraud. Accordingly, the first five pages of CPH's discussion of fraudulent misrepresentation—in which CPH insists that it "conducted a

NOT A CERTIFIED COPY

019141

reasonable investigation into Sunbeam's finances," CPH Br. 48 (capitalization modified), but failed to uncover the accounting fraud—are beside the point. Morgan Stanley did not uncover that fraud either, and was in fact victimized by that fraud, which is why Morgan Stanley is suing Arthur Andersen. The key point here is that CPH cannot maintain a fraud claim against ***Morgan Stanley*** because it cannot establish justifiable reliance on any statements or omissions by ***Morgan Stanley*** for two separate and independent reasons: (1) CPH had unfettered access to all of the same information, including interim financial information, that it now accuses Morgan Stanley of fraudulently misrepresenting or omitting, and (2) in any event, CPH expressly disclaimed reliance on any statements by Morgan Stanley. These reasons are discussed in turn below.

1. CPH's *Admitted* Failure To Inspect Sunbeam's Books And Records Negates Justifiable Reliance On Misrepresentations Or Omissions By Morgan Stanley As A Matter Of Law.

As noted above, this Court already has acknowledged the key legal point that disposes of CPH's fraudulent misrepresentation claim as a matter of law: "a sophisticated investor may not claim it was fraudulently induced to enter into a transaction if it failed to use the means available to test the representations." Aug. 11, 2004 Order at 5 (citing *UST*, 733 N.Y.S.2d at 386). This Court's reliance on *UST* was prescient, because the court there granted summary judgment in the defendant's favor on the ground that, "[a]s a matter of law, a sophisticated plaintiff cannot establish that it entered into an arm's length transaction in justifiable reliance on an alleged misrepresentation if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of other parties." *UST*, 733 N.Y.S.2d at 386.

As Morgan Stanley explained in its initial brief, New York courts routinely grant summary judgment on fraudulent misrepresentation claims under these circumstances. *See* MS Br. 18-21; *see also Waksman v. Cohen*, No. 00 Civ. 9005(WK), 2002 WL 31466417, at *6

NOT A CERTIFIED COPY

019142

(S.D.N.Y. Nov. 4, 2002) (granting summary judgment on ground that "New York courts have repeatedly found that reasonable reliance was absent where a party failed to review available records or secure available documentation which would have otherwise armed it with the truth."); *Compania Sud-Americana de Vapores v. IBJ Schroder Bank & Trust Co.*, 785 F. Supp. 411, 419 (S.D.N.Y. 1992) (granting summary judgment on ground that "there is no basis to dispute that [plaintiff] had access to the critical information underlying its fraud claim and, had it exercised ordinary intelligence or made simple inquiries, [plaintiff] would have been able to discover the alleged misrepresentations."); *Congress Fin. Corp. v. John Morrell & Co.*, 790 F. Supp. 459, 471-72 (S.D.N.Y. 1992) (granting summary judgment in part on ground that "[t]he undisputed evidence … shows that [cross-plaintiff] is a sophisticated entity which possessed the ability and expertise to make effective use of [its] access" to cross-defendant's financial records); *Marine Midland Bank v. Palm Beach Moorings, Inc.*, 403 N.Y.S.2d 15, 17 (App. Div. 1978) (holding that a claim of justifiable reliance could not be sustained because the plaintiff indisputably "had the opportunity to examine the corporate records before assuming the obligations"), *appeal denied*, 44 N.Y.S.2d 644 (1978).

Here, CPH freely admits that it bargained for unfettered access to Sunbeam's books, records, properties, plants, and personnel—at least the same access available to Morgan Stanley—and that CPH not only failed to exercise that right, but "never contemplated" doing so, and "would never have asked for that kind of access." CPH Br. 58 (quoting June 8, 2004 Shapiro Dep. at 132). That undisputed point alone, under settled New York law, is the beginning and the end of CPH's fraudulent misrepresentation claim against Morgan Stanley. Regardless of whether CPH "conducted a reasonable investigation into Sunbeam's finances," CPH Br. 48-52 (capitalization modified); regardless of whether Morgan Stanley's impeccable record of integrity

NOT A CERTIFIED COPY

019143

might have led CPH to "assume" the companies Morgan Stanley represents are better than "Schlock, Inc.," CPH Br. 53-54; regardless of whether it is "customary" for companies to forego an inspection of a target company's books and records prior to the close of a merger and to blindly rely on assertions made by financial advisors to their transaction counterparts, CPH Br. 54-55; the inescapable fact—and the only fact that matters—is that New York law does not allow a sophisticated plaintiff to pursue a fraudulent misrepresentation claim if it failed to avail itself of access to the very information that it accuses the defendant of misrepresenting or omitting. CPH's assertion that it did not have a contractual "duty to inquire into or discover material adverse changes," CPH Br. 52 (capitalization modified), because ***Sunbeam*** was supposed to notify CPH of such changes thus misses the point: whether Sunbeam breached its duty under the ***contract*** in no way relieves CPH of its ***common-law*** duty under New York law to exercise its contractual right of access to information to preserve a fraudulent misrepresentation claim against Morgan Stanley.

There is no question here that if CPH had availed itself of its unfettered contractual "access to truth-revealing information," *Winnick*, 2004 WL 1418197, at *14—and it had every incentive to do so[4]—***it would have discovered everything that it now accuses Morgan Stanley of fraudulently misrepresenting or omitting***. After all, CPH's claim that Morgan Stanley had knowledge of the true state of Sunbeam's financial health is based on the fact that:

NOT A CERTIFIED COPY

019144

[4] Indeed, CPH was equally (if not more) incentivized than Morgan Stanley to examine Sunbeam's books and records, especially after (1) Sunbeam's publicly reported miss of 4Q1997 estimates, Findings ¶¶ 116-21; (2) the warnings about "sales slow" during the February 23 meeting, Findings ¶¶ 161-69; (3) the disclosures in the publicly filed 10-K on March 6, 1998, Findings ¶¶ 240-44; and (4) the March 19 press release, Findings ¶¶ 249-75. After all, once the acquisition closed, CPH would own 14.1 million shares of Sunbeam. Findings ¶ 307. And, as CPH knew, Morgan Stanley would only be a creditor of Sunbeam going forward, and would not have an equity stake in the future performance of the company.

- Morgan Stanley sent its "representatives to Sunbeam's headquarters" to perform due diligence, CPH Br. 55; *cf.* MS 93 § 6.7 (Feb. 27, 1998 CLN Merger Agreement) (providing CPH and its world-class team of legal, investment, and accounting experts "full access …to all of [Sunbeam's] … properties, plants");

- William Strong repeatedly "spoke with [Albert] Dunlap and/or [Russell] Kersh," CPH Br. 55; *cf.* MS 93 § 6.7 (CLN Merger Agreement) (providing CPH and its world-class team of legal, investment, and accounting experts "full access … to all of [Sunbeam's] … personnel"); and

- Morgan Stanley was informed by Sunbeam's accountants that their review of Sunbeam's financial dealings revealed that the company "engaged in aggressive revenue recognition practices" and that those practices were responsible for a projected first quarter sales shortfall, as reflected by, *inter alia*, "Mr. Uzzi's sales chart." CPH Br. 55-56; *cf.* MS 93 § 6.7 (CLN Merger Agreement) (providing CPH and its world-class team of legal, investment, and accounting experts "full access … to all of [Sunbeam's] books, records").

Accordingly, it is simply not true that "[t]he fraud was peculiarly within the knowledge of Morgan Stanley." CPH Br. 55 (capitalization modified). CPH's conceded failure to exercise its contractually-guaranteed right of "full access … to all of [Sunbeam's] books, records, properties, plants and personnel," MS 93 § 6.7 (CLN Merger Agreement), does not mean that the information was somehow beyond CPH's reach. Indeed, CPH never even alleges that it would not have discovered the truth had it actually exercised its contractual right of access. *See, e.g., McManus v. Moise*, 691 N.Y.S.2d 166, 167-68 (App. Div. 1999) (granting summary judgment on fraud claim against plaintiffs who failed to inspect for termites behind drywall when purchasing a house because "[i]t was their own lack of diligence that is responsible for their current predicament").

None of the cases CPH cites is to the contrary. CPH begins by once again relying on *Winnick*. But, contrary to CPH's assertion, *Winnick* does ***not*** contradict the general rule that sophisticated entities must avail themselves of their bargained-for access to books and records; it merely recognizes that a failure to exercise that right can be excused in the limited circumstances where taking advantage of such access would ***not*** have revealed the alleged fraud. *Winnick*,

NOT A CERTIFIED COPY

019145

2004 WL 1418197, at *14 (holding, in light of an allegation that the defendant's fraud was so well concealed that access would not have led to its discovery, that "the obligation to exercise the right of inspection must be understood as contingent on either 'indisputable access to truth-revealing information,' or some suspicious event or information triggering the duty to inquire. The mere existence of the right to inquire, without more, is not dispositive.") (citation and alteration omitted). *DIMON*, described in detail above at pages 12-13, is little more than another example of that unremarkable principle at work. And *Alexander v. Evans*, No. 88 Civ. 5309(MJL), 1993 WL 427409 (S.D.N.Y. Oct. 15, 1993), simply has nothing to do with a sophisticated party's contractually-secured-but-unexercised access to otherwise confidential, non-public information, including a company's records and books, its facilities, and its personnel; it merely addresses a run-of-the-mill shareholder suit based on misrepresentations contained in prospectuses and SEC filings, where such rights were neither bargained nor otherwise provided for.

Here, where CPH secured a contractual right of full access to information that would have led it to discover everything it now accuses Morgan Stanley of fraudulently misrepresenting or omitting, CPH cannot, ***as a matter of well-settled law***, demonstrate that it justifiably relied on any misrepresentations or omissions by Morgan Stanley.

2. CPH's Express Disclaimer Of Reliance On Any "Evaluation Material" Furnished By Morgan Stanley Estops It, As A Matter Of Law, From Asserting Justifiable Reliance On Any Statements Made By Morgan Stanley During The Course Of The Parties' Engagement.

As an independent and alternative reason why CPH cannot establish justifiable reliance as a matter of law, CPH expressly ***disclaimed*** reliance on all information provided to it by Morgan Stanley in connection with the transaction at issue in this litigation. *See* MS 93 §§ 6.7, 12.5 (CLN Merger Agreement). CPH concedes, as it must, that the February 23 Confidentiality

NOT A CERTIFIED COPY

0191h6

Agreement contained "provisions stating that no reliance is being placed on evaluation materials that are being supplied ...." CPH Br. 61; *see also* MS 134 (Feb. 23, 1998 Confidentiality Agreement) (defining "Evaluation Material" to include "all information ... which [Sunbeam] or any ... representatives (***including ... bankers and financial advisors***) ... of [Sunbeam] furnishes to you ....") (emphasis added). CPH argues, however, that this disclaimer is irrelevant here, on the ground that CPH "is not identified as a party in" that agreement. CPH Br. 61. That argument is misleading at best. Though delivered to Coleman, the opening paragraph of the February 23 Agreement states that "[t]he term 'you' is, for all purposes of this Agreement, deemed to include ***all of your affiliates that are involved in the possible Transaction***." MS 134 (emphasis added). Nor can CPH avoid the February 23 Agreement by asserting that "Coleman never signed the document and thus never became bound by it." CPH Br. 61. Again, that argument is misleading at best in light of the indisputable (and undisputed) fact that the CLN Merger Agreement between CPH and Sunbeam ***expressly referenced*** the February 23 Agreement, and provided that it shall "***remain*** in full force and effect" for its term. MS 93 § 12.5 (CLN Merger Agreement) (emphasis added). Needless to say, this express ratification of the Agreement by CPH would make no sense if, as CPH now suggests, the February 23 Agreement is invalid on the ground that it was never signed by Coleman in the first place.

Nor can CPH avoid the February 23 Agreement by arguing that ***Morgan Stanley*** was not a party to that Agreement. That argument is a red herring. Morgan Stanley is neither suing CPH here nor trying to assert any rights under the Agreement. Rather, Morgan Stanley is simply trying to defend itself against CPH's lawsuit by pointing out that CPH cannot have justifiably relied on any statements by Morgan Stanley when CPH ***expressly disclaimed*** such reliance in a contract. Under these circumstances, it makes no difference that Morgan Stanley is not a party to

NOT A CERTIFIED COPY

0191147

the contract; CPH could have expressly disclaimed such reliance in a message trailing from an airplane in the sky, and, under New York law, the point would be the same. Regardless of the forum in which CPH expressly disclaimed reliance on Morgan Stanley's statements, the fact that CPH unequivocally did so now estops CPH from claiming justifiable reliance on such statements as a matter of law. *See, e.g., Wells Fargo Bank Northwest, N.A. v. TACA Int'l Airlines, S.A.*, 247 F. Supp. 2d 352, 370 (S.D.N.Y. 2002) ("Defendants cannot plead that they reasonably relied on representations from C-S Aviation, Wells Fargo's agent and trust beneficiary, in entering the Leases with Wells Fargo that specifically disclaim having received or relied on precisely such representations. It is ***irrelevant*** that C-S Aviation was not a signatory to the contract in which Defendants disclaimed the reliance it now says it placed.") (internal citation omitted; emphasis added); *General Motors Corp. v. Villa Martin Chevrolet, Inc.*, Nos. 98-CV-5206, 5208, 6167 & 99-CV-3750, 2000 WL 271965, at *31 n.34 (E.D.N.Y. March 7, 2000) ("As it is unreasonable, as a matter of law, for a party to claim that it was fraudulently induced to enter into a contract by a prior representation of another party where reliance was specifically disclaimed in the agreement, it is unreasonable, *a fortiori*, to claim reliance on a non-party to that agreement.") (internal citation omitted); *see also Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 323 (1959) ("If the language here used is not sufficient to ***estop*** a party from claiming that he entered the contract because of fraudulent representations, then no language can accomplish that purpose. To hold otherwise would be to say that it is impossible for two businessmen dealing at arm's length to agree that the buyer is not buying in reliance on any representations of the seller as to a particular fact.") (emphasis added).[5]

NOT A CERTIFIED COPY

019148

[5] Not surprisingly, the cases relied upon by CPH are materially distinguishable. *Cohan v. Sicular*, 625 N.Y.S.2d 278, 280 (App. Div. 1995), rested its conclusion on grounds that the non-party seeking to invoke the disclaimer had separately "established a contractual relationship"

Because CPH expressly disclaimed reliance on any statements by Morgan Stanley, CPH now sets up a straw man by arguing that the CLN Merger Agreement's integration clause, by itself, would not defeat CPH's claims. *See* CPH Br. 62. Here, the integration clause is ***not*** by itself; it specifically references and ratifies the February 23 Confidentiality Agreement that expressly disclaims reliance. CPH's reliance on *Manufacturers' Hanover Trust Co. v. Yanakas*, 7 F.3d 310 (2d Cir. 1993) ("*MHT*") is thus misplaced. The integration clause at issue in *MHT* "contain[ed] no disclaimer of the existence of or reliance upon representations by MHT," the party seeking to invoke the clause. *Id.* at 317. Here, in contrast, the integration clause in the CLN Merger Agreement signed by CPH expressly incorporates an ***explicit*** disclaimer immunizing representations by "financial advisors."

Second, *MHT* addressed a ***boilerplate*** personal guarantee. *Id.* ("[T]here is no indication that the [clause], which is in a preprinted form, is anything but a generalized boilerplate exclusion. The form was one that MHT apparently used routinely.... There was no evidence that the scope or character of the [clause] was the product of any negotiations between the parties."). Here, the terms of the integration clause were hardly boilerplate—indeed, the fact that the integration clause in the CLN Merger Agreement, which was signed by CPH, ***expressly*** ratifies the Confidentiality Agreement, while the Coleman Merger Agreement, which was not signed by CPH, only ***implicitly*** ratifies the terms of the Confidentiality Agreement, indicates that the CLN Merger Agreement's integration clause was carefully and conscientiously drafted and

NOT A CERTIFIED COPY

019149

---

with the plaintiff, thus giving rise to a duty of care not present here. Equally far afield, *Diodato v. Eastchester Dev. Corp.*, 489 N.Y.S.2d 293, 294 (App. Div. 1985), involved a putative disclaimer so ambiguous the court held it could "be reasonably interpreted to ***allow*** such reliance instead of prohibiting it." (Emphasis added). The court's unreasoned afterthought that "the purported disclaimer would not inure to the benefit of defendant L'Hommedieu as he was not a party to the contract," *id.*, thus constitutes pure dicta; and it, in any event, may simply have

that CPH quite deliberately disclaimed reliance on any representations made by Morgan Stanley. *Compare* MS 93 § 12.5 (CLN Merger Agreement) ("This Agreement (including all Schedules and Exhibits hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understanding, oral or written, with respect to such matters, ***except for the Confidentiality Agreements which will remain in full force and effect for the term provided therein***.") (emphasis added); *with* MS 117 § 10.4 (Feb. 27, 1998 Coleman Merger Agreement) ("This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all prior understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof ...").

In a last-ditch effort to escape the consequences of the Merger Agreement's integration clause, CPH argues that "a party cannot enter into a contract that would relieve it of the consequences of its fraud." CPH Br. 63. That argument is simply inconsistent with the reams of New York case law, cited in Morgan Stanley's opening brief and above, squarely holding that a party (particularly a sophisticated party) is free to disclaim reliance on the statements of another, and, if it does so, cannot turn around and claim reliance on such statements. It is not suprising, thus, that CPH's only authority for this anomalous argument is a sixty-year old trial-court case. *See Pearce v. Knepper*, 53 N.Y.S.2d 845, 846 (Sup. Ct. 1945). Regardless of whether that was ever the law in New York, it is certainly not the law now. *See, e.g.*, *Danann Realty*, 5 N.Y.2d at 319, 323 ("accept[ing] as true plaintiff's statements that during the course of negotiations defendants misrepresented the operating expenses and profits," but holding "plaintiff made a representation in the contract that it was not relying on specific representations not embodied

---

reflected the fact that (in contrast to the clause at issue here) the supposed disclaimer clause did

NOT A CERTIFIED COPY

019150

[therein], while, it now asserts, it was in fact relying on such oral representations. Plaintiff admits then that ***it*** is guilty of deliberately misrepresenting to the seller its true intention. To condone ***this*** fraud would place the purchaser in a favored position.... If the plaintiff has made a bad bargain he cannot avoid it in this manner.") (citation omitted; emphasis added).[6]

At bottom, this Court should reject CPH's attempt to escape the consequences of the contractual clauses to which it agreed. To do otherwise "would in effect condone [CPH's] own fraud in deliberately misrepresenting [its] true intention when putting [its] signature[] to [the Merger Agreement]." *Citibank, N.A. v. Plapinger*, 66 N.Y.2d 90, 95 (Ct. App. 1985) (internal citation and quotations omitted).

B. CPH Cannot Establish Morgan Stanley's Scienter As A Matter Of Law.

Above and beyond CPH's legal inability to demonstrate justifiable reliance on Morgan Stanley's representations, summary judgment is also warranted on the fraudulent misrepresentation claim in light of CPH's legal inability to demonstrate Morgan Stanley's scienter, or intent to defraud. Yet again, however, CPH insists that "a triable issue of fact exists" on this issue. CPH Br. 63 (capitalization modified). But the only such issue CPH identifies is whether Morgan Stanley's compensation for its services rendered to Sunbeam was "ordinary." CPH Br. 65. That is nothing more than a word game.

NOT A CERTIFIED COPY

01915I

---

not identify ***whose*** statements could not (or, as the court held, perhaps could) be relied upon.

[6] CPH's tack-on citation to *AES Corp. v. Dow Chemical Co.*, 325 F.3d 174 (3d Cir. 2003), is even more revealing. Not only is *AES* a ***Third Circuit*** case that does ***not*** address or apply New York law, *id.* at 179-80; and not only does it hold that "cases involving a non-reliance clause in a negotiated contract between sophisticated parties will ***often*** be appropriate candidates for resolution at the summary judgment stage," *id.* at 181 (emphasis added); it rejects the ***Second Circuit***'s decision in *Harsco Corp. v. Segui*, 91 F.3d 337 (2d Cir. 1996), *see AES*, 325 F.3d at 182-83, which, relying heavily on the sophisticated nature of the parties' contacts, 91 F.3d at 344, 345, 346, holds that non-reliance clauses ***can*** work to preclude both federal securities claims ***and also state law misrepresentation claims***—the particular state law being ***New York's***.

Settled New York law ***presumes*** that companies are in business to make money, and ***instructs*** that a desire to make money is not evidence of intent to defraud. *See, e.g.*, *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1130 (2d Cir. 1994) ("In looking for a sufficient allegation of motive, [courts] assume that the defendant is acting in his or her informed economic self-interest."); *In re Philip Servs. Corp. Sec. Litig.*, No. 98 Civ. 0835(MBM), 2004 WL 1152501, at *5 (S.D.N.Y. May 24, 2004) ("[A] generalized economic interest in professional fees is insufficient to establish ... motive to commit fraud."); *Nairobi Holdings Ltd. v. Brown Bros. Harriman & Co.*, No. 02 Civ. 1230(LMM), 2003 WL 21088506, at *6 (S.D.N.Y. May 14, 2003) ("[C]ourts in this district have consistently held that a defendant's desire to artificially inflate stock in order to realize greater transaction fees alone cannot show an improper motive.") (*citing, inter alia, In re Indep. Energy Holdings PLC Sec. Litig.*, 154 F. Supp. 2d 741, 765-66 (S.D.N.Y. 2001); *Vogel v. Sands Bros. & Co.*, 126 F. Supp. 2d 730, 739 (S.D.N.Y. 2001); *Schnell v. Conseco, Inc.*, 43 F. Supp. 2d 438, 449 (S.D.N.Y. 1999)); *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 495 (S.D.N.Y. 2001) ("Ordinary economic motive ... is insufficient...."); *THC Holdings Corp. v. Chinn*, No. 95 Civ. 4422(KMW), 1998 WL 50202, at *9 (S.D.N.Y. Feb. 6, 1998) ("[T]hat defendant was in a position to receive normal compensation for professional services rendered is not sufficient to support a showing of motive in the fraud scienter analysis.") (citing *inter alia*, *Friedman v. Arizona World Nurseries Ltd. P'ship*, 730 F. Supp. 521, 532 (S.D.N.Y. 1990) (dismissing fraud-based claim on ground that incentive of receiving fee for professional services is insufficient to allege scienter), *aff'd*, 927 F.2d 594 (2d Cir. 1991)).

CPH tries to get around these cases by conflating "ordinary economic motive" with "economic motive to earn ordinary fees." The issue here is not whether the particular fees are "ordinary" or not; the issue is that a firm's ordinary (*i.e.*, presumptive) desire to earn fees cannot

NOT A CERTIFIED COPY

01915152

substitute for intent to defraud. CPH cannot manufacture a triable issue by simply challenging the ***amount*** of Morgan Stanley's fees; that approach would allow the exception to swallow the rule. It is telling, in this regard, that CPH fails to cite even ***a single case*** in support of its approach. *See* CPH Br. 65.[7]

Finally, CPH does not dispute that summary judgment is appropriate on a fraud claim "[w]here plaintiff's view of the facts defies economic reason," *Kalnit v. Eichler*, 99 F. Supp. 2d 327, 343 (S.D.N.Y. 2000), *aff'd,* 264 F.3d 131 (2d Cir. 2001), or that the alleged fraud here defies economic reason. Instead, CPH argues that "it is an unfortunate matter of public record that banks do indeed lend money to companies that the banks know are misrepresenting their true financial conditions," even if the banks themselves thereby lose money, and cites a number of news articles regarding settlements paid by banks in connection with the collapse of Enron and WorldCom. CPH Br. 66. That argument (based on material outside the record) is a complete *non sequitur*. Whatever may have led the defendant banks to settle whatever charges were leveled against them with respect to Enron and WorldCom does not change the fact that New York law does not allow a common-law fraud claim to proceed when the alleged fraud would have been economically irrational for the defendant. Indeed, it is telling that CPH fails to cite a single case (as opposed to news accounts of settlements) suggesting that a civil plaintiff can establish a common-law fraud claim against a defendant for allegedly perpetrating a fraud of which it was one of the primary victims.

NOT A CERTIFIED COPY

019153

[7] CPH's aiding and abetting fraud claim, discussed *infra* at § III, necessarily fails for the same reason. *See In re AHT Corp.*, 292 B.R. 734, 746 (S.D.N.Y. 2003) ("[T]he fact that [defendant] had his own economic interests in mind is not sufficient to satisfy the scienter requirement. Ordinary economic motives are insufficient to support the scienter element of an aiding and abetting claim.") (citation and quotations omitted).

III. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT II OF THE COMPLAINT (AIDING AND ABETTING FRAUD)

A. There Is No Record Evidence Showing Morgan Stanley Had Actual Knowledge Of Fraud At Sunbeam And All Testimony Is To The Contrary.

CPH acknowledges, as it must, that an aiding and abetting fraud claim under either New York or Florida law requires the plaintiff to prove that the defendant ***actually knew*** of the fraud, but asserts that it is "inconceivable" that Morgan Stanley did not know of the fraud at Sunbeam. CPH Br. 77-78.[8] However, CPH's factual citations establish only that Morgan Stanley carried out the normal business of a financial advisor and underwriter. Indeed, CPH not only ignores abundant and uncontradicted testimony that Morgan Stanley personnel had no knowledge of fraud at Sunbeam; its inferential bases for ascribing knowledge to Morgan Stanley are flatly contradicted by the record. Because the evidence conclusively demonstrates that Morgan Stanley was unaware of fraud at Sunbeam prior to when the transaction closed, summary judgment on Count II is appropriate. *See, e.g., Peoples Gas Sys., Inc. v. Acme Gas Corp.*, 689 So. 2d 292, 299 (Fla. 3d DCA 1997) ("[B]are self-serving assertions ... are insufficient to defeat a summary judgment."); *Bryant v. Shands Teaching Hosp. & Clinics, Inc.*, 479 So. 2d 165, 168 (Fla. 1st DCA 1985) ("[A] summary judgment motion supported by appropriate proof may not rely on bare, conclusory assertions found in the pleadings to create an issue and thus avoid summary judgment.").

NOT A CERTIFIED COPY

0191514

[8] For some unknown reason, CPH spends no fewer than ***eight pages*** arguing that Florida, not New York, law should govern the aiding and abetting claim, *see* CPH Br. 67-75, even though CPH ultimately concludes that the choice of law issue makes no difference for purposes of this motion, *see* CPH Br. 75. Why CPH believes that the same acts that require application of New York law with respect to the negligent and fraudulent misrepresentation claims suddenly require application of Florida law when an "aiding and abetting" (or, for that matter, conspiracy) label is slapped on them is a mystery, but it is a mystery that both sides now agree need not be solved to resolve this motion.

While CPH cites the testimony of Morgan Stanley personnel for the unremarkable proposition that Morgan Stanley conducted due diligence of Sunbeam, *see* CPH Br. 78, CPH ignores the testimony by those same individuals (and others) that they were unaware of the underlying accounting fraud. For example, Gene Yoo, an associate who participated in onsite due diligence for Morgan Stanley, testified that "[*t*]***here was nothing in anything that we had seen [during due diligence] that indicated that there was any kind of fraud or anything else going on that was out of the ordinary***," June 16, 2004 Yoo Dep. at 174:19-175:1 (emphasis added)—which is hardly surprising, given Arthur Andersen's clear opinion on Sunbeam's financial statements. All the other testimony is to the same effect:

- Shani Boone, a then-Morgan Stanley analyst who went to Florida for due diligence, testified that she did not learn of any problems at Sunbeam until "after the deal had closed and … when it was publicized in the Journal." Apr. 22, 2004 Boone Dep. at 17:2-8;

- Tyrone Chang, a then-Morgan Stanley analyst working on the transaction models, testified that he did not recall learning of accelerated sales at Sunbeam, and first heard of Sunbeam's bill and hold practice after the deal closed and he had left Morgan Stanley. Jan. 8, 2004 Chang Dep. at 139:11-140:10;

- Andrew Conway, a then-Morgan Stanley principal, felt that Sunbeam officials lied to him regarding Sunbeam's revenues and growth story, and also testified that he would have stopped the process if he felt that there was an "inkling" of impropriety at Sunbeam during the actual transaction. June 4, 2004 Conway Dep. at 42:9-43:12;

- Karen Eltrich, a then-Morgan Stanley analyst, testified that she was unaware that Sunbeam accelerated sales into 1997 during 1998 until sometime in June 1998 because it "took us a while to figure out exactly what they [Sunbeam's management] had done." Oct. 15, 2004 Eltrich Dep. at 198:4-22;

- Alexandre Fuchs, a then-Morgan Stanley vice president, testified that, during the course of his onsite due diligence in Florida, he never once had the impression "that the company was being managed to an inordinate degree to earnings per share calculations." Feb. 13, 2004 Fuchs Dep. at 201:21-25. Further, he only learned of a possible sales shortfall by reading Sunbeam's March 19, 1998 press release. Fuchs Dep. at 170:11-171:7. When word of Dunlap's termination came out, Fuchs recalled being disappointed to learn "that many of the things [he] had heard were not as they appear to be." Fuchs Dep. at 58:13-59:12;

NOT A CERTIFIED COPY

019155

- Johannes Groeller, a then-Morgan Stanley associate, testified that he did not hear about Sunbeam's poor financial performance in the first quarter 1998 until the results were publicly announced by Sunbeam. Nov. 17, 2004 Groeller Dep. at 50:13-23;

- Brooks Harris, a then-Morgan Stanley principal, did not know that Sunbeam had engaged in bill and hold sales while working on the transaction. Oct. 26, 2004 Harris Dep. at 91:6-9;

- Michael Hart, a then-Morgan Stanley vice president, believed that Sunbeam's management had misled Morgan Stanley regarding its financial performance in first quarter 1998, and testified that he did not become aware of the misstatements until after the first quarter ended. May 19, 2004 Hart Dep. at 258:16-259:11;

- Robert Kitts, a then-Morgan Stanley managing director who CPH cites as a participant in Morgan Stanley's visits to Sunbeam in Florida, testified that Sunbeam "misled" him regarding its sales and he "didn't fully understand or appreciate the magnitude of what was going on at the company" before the transaction closed. Feb. 12, 2004 Kitts Dep. at 150:12-22, 164:6-9. He was "surprised" by the financial information in the April 3, 1998 press release. Kitts Dep. at 149:18-25;

- William Kourakos, a Morgan Stanley managing director, did not learn that Sunbeam had accelerated sales into 1997 from 1998 until after the Coleman transaction closed and Sunbeam's problems became known to the public. Oct. 29, 2004 Kourakos Dep. at 38:10-23;

- Ruth Porat, a Morgan Stanley managing director, testified that she first learned that first quarter 1998 sales were slow for Sunbeam on March 18, 1998 during a debenture road show. Nov. 23, 2004 & Dec. 10, 2004 Porat Dep. at 147:12-20, 247:15-248:2. She was "very surprised" by the bad news in the April 3, 1998 press release based on her knowledge of Sunbeam. Porat Dep. at 284:24-285:11;

- Lilly Rafii, a then-Morgan Stanley analyst, was not aware of Sunbeam's financial performance at any point during first quarter 1998 and did not recall hearing sales were slow. Apr. 2, 2004 Rafii Dep. at 153:13-17, 160:22-25;

- Andrew Savarie, a then-Morgan Stanley vice president, testified that he was not aware of Sunbeam's interim first quarter results before the closing and did not recall conversations about Sunbeam's earnings. Jan. 22, 2004 Savarie Dep. at 207:18-208:5, 211:14-212:3;

- Ishaan Seth, a then-Morgan Stanley analyst, testified that the information about Sunbeam's finances and accounting practices in the June 1998 Barron's Article "represented a fairly significant change in information that had previously been provided to us by [Sunbeam] management" July 30, 2004 Seth Dep. at 109:2-8;

- Bram Smith, a then-Morgan Stanley managing director, testified that Morgan Stanley had been "misled" as to the financial condition of Sunbeam through representations

NOT A CERTIFIED COPY

019156

by Sunbeam management. Feb. 24, 2004 Smith Dep. at 52:8-53:15. He also testified that he had not learned anything that would give him a reason to doubt Dunlap's claims of Sunbeam's turnaround during the first quarter of 1998. Smith Dep. at 119:15-20;

- Bill Strong, a Morgan Stanley managing director, testified that, during the 50 to 100 phone calls CPH cites in its brief, Dunlap did not inform him that Sunbeam was accelerating sales into fourth quarter 1997 at the expense of 1998, or that net sales for January and February 1998 were running behind January and February 1997. Dec. 4, 2003 Strong Dep. at 231:11-232:4. He also testified that the knowledge Morgan Stanley had during first quarter 1998 was based on Sunbeam's insistence that it would make the street estimate for sales, and he was "disappoint[ed], ang[ry], and shock[ed]," when he learned from Sunbeam's April 3, 1998 press release that Sunbeam's sales would be short for the entire first quarter because it was contrary to what he had been told. Strong Dep. at 249:10-23, 342:11-343:2;

- Jim Stynes, a then-Morgan Stanley managing director, testified that he did not come across or hear any information suggesting that Sunbeam had not undergone a profound transformation, that Sunbeam had inappropriately used bill and hold sales, or that Sunbeam had engaged in channel stuffing before the transaction closed. July 13, 2004 Stynes Dep. at 89:15-90:5, 96:14-20, 130:3-20. He also had not seen evidence of "inappropriate accounting behavior" while working of the Sunbeam transaction, and was surprised that Sunbeam missed its first quarter numbers. Stynes Dep. at 122:14-20, 127:10-22;

- John Tyree, a then-Morgan Stanley associate who CPH claims should have known of the fraud, testified that he was not aware of any fraud at Sunbeam until "well after the closing of the Sunbeam convertible notes offering." Sept. 15, 2003 Tyree Dep. at 141:20-142:18;

- Josh Webber, a then-Morgan Stanley associate, testified that he did not "uncover any bad news about Sunbeam" during his time on the Morgan Stanley team. May 18, 2004 Webber Dep. at 68:16-20.

Needless to say, this uncontradicted record evidence—particularly when measured against CPH's unadulterated speculation and innuendo—conclusively refutes CPH's allegation that Morgan Stanley personnel had ***actual knowledge*** of the fraud at Sunbeam. *See, e.g., Peoples Gas*, 689 So. 2d at 299; *Bryant*, 479 So. 2d at 168; *see also Stepp v. State Farm Fire & Cas. Co.*, 656 So. 2d 494, 496 (Fla. 1st DCA 1995) (holding that "inferences ... based impermissibly on speculation and conjecture" are insufficient to overcome contrary deposition testimony).

NOT A CERTIFIED COPY

019157

Neither of CPH's inferential bases for alleging that Morgan Stanley had to have known about Sunbeam's fraud bears weight in light of the undisputed evidence. ***First***, CPH's allegation that Morgan Stanley "knew about Sunbeam's fraud" because Arthur Andersen "warned" Morgan Stanley of Sunbeam's "aggressive revenue recognition practices" during the March 12, 1998 due-diligence conference call, CPH Br. 78, conveniently ignores the undisputed fact that the memo on which CPH relies (even assuming its questionable authenticity) states that Morgan Stanley asked "How aggressive is the Company in its accounting policies?" and that Andersen then rated the practices only 5 or 6 on a scale from 1 to 10. CPH 123 at 3 (July 2, 1998 Due Diligence call with Morgan Stanley, authenticated at Jan. 15, 2004 Bornstein Dep. at 100:3-16). Moreover, the memo (drafted months after the call) states that Andersen informed Morgan Stanley that, as reported publicly on March 6, 1998 in Sunbeam's 1997 10-K, Sunbeam's bill and hold transactions accounted for ***only 3 percent*** of gross sales. CPH 123 at 1. Significantly, CPH likewise fails to inform the Court that the memo also states that, during the same call, ***Morgan Stanley directly asked if there were "[a]ny claims, rumors of fraud, misconduct, [or] illegal acts" at Sunbeam,*** and that fresh off its audit of Sunbeam's 1997 results, Andersen replied in the ***negative***. CPH 123 at 3. CPH's misleading description of the memo thus provides no basis for refusing to credit the unequivocal testimony cited above.

Second, the record similarly belies CPH's pure speculation that Morgan Stanley removed a question about Sunbeam's second quarter 1998 performance from its late-March "bring down" due diligence call agenda "because it knew Sunbeam would try to accelerate second quarter sales to obscure its first quarter collapse." CPH Br. 79. In fact, John Tyree, the Morgan Stanley associate who conducted the "bring down" call, testified that a different question on the agenda incorporated a discussion of Sunbeam's second quarter performance. Nov. 14, 2003 Tyree Dep.

NOT A CERTIFIED COPY

0191538

at 543:10-19 ("Q. Do you see anything on CPH Exhibit Number 35, the March 23 version of the list of bring-down due diligence topics, relating to Sunbeam's views of its prospects for the second quarter of 1998? A. No. But I would make the point that on this document, you have the comment 'Are you still comfortable with your '98 earnings estimate of $1.80?' which, obviously, would have to incorporate into it a view on the second quarter."). Moreover, Morgan Stanley specifically asked, "Are you comfortable with the market update in the March 19 press release?" Further, Morgan Stanley's "bring down" due diligence agenda included a "catch-all" question asking Sunbeam if there were "[a]ny other material developments that [Morgan Stanley] should be aware of." MS 35 (March 23, 1998 Sunbeam Bring-down due diligence, authenticated at Nov. 22, 2004 MS's Resps. & Objs. to CPH's 6th Set of Reqs. for Admiss., Req. 1). CPH's unadulterated speculation and unfounded innuendo cannot be squared with this clear and conclusive record evidence.

In addition to the direct testimony by Morgan Stanley personnel, the testimony of Blaine Fogg, Sunbeam's outside counsel at Skadden Arps Meagher Flom LLP ("Skadden"), undercuts CPH's speculative assertion that Morgan Stanley must have been aware of the fraud by virtue of the information provided by Sunbeam and Arthur Andersen on March 18-19, 1998. It is undisputed that Fogg participated on the March 18, 1998 conference call where Sunbeam personnel explained that Sunbeam's sales for the first quarter 1998 were lower than the previous year's first quarter and presented a detailed explanation of Sunbeam's projected performance over the remaining days in the quarter. Dec. 16-17, 2004 Fogg Dep. at 111:23-118:22. It is undisputed that, immediately following Sunbeam's presentation, Fogg helped David Fannin, Sunbeam's General Counsel, draft the March 19, 1998 press release in Fogg's office. Fogg Dep. at 119:3-120:8. Based on the information provided during the March 18, 1998 conference call,

NOT A CERTIFIED COPY

0191159

Fogg testified that he believed, "as [Sunbeam's] legal counsel, that the press release was accurate." Fogg Dep. at 130:6-12.

Further, Skadden produced from its own records a binder of closing documents for the subordinated debentures that included both comfort letters prepared by Arthur Andersen. MS 530 at CPH0628848-58 (March 25, 1998 Closing Binder). CPH boldly proclaims that anyone reading these letters would recognize Sunbeam's fraudulent prognostication of first quarter 1998 sales—indeed, that the falsity of the projections was "indisputably clear." CPH Br. 78-79. Yet it is undisputed that Skadden's March 25, 1998 opinion letter to Morgan Stanley found there to be no basis for concern about the offering memorandum's veracity, notwithstanding Skadden's possession of those letters and awareness that the offering memorandum included the March 19, 1998 press release. *See* MS 530 at CPH0628958; *see also* Fogg Dep. at 151:21-154:8.

At bottom, the undisputed record conclusively demonstrates that the information provided by Sunbeam and Arthur Andersen did not "foreshadow[]" Sunbeam's poor first quarter performance, Fogg Dep. at 177:7-15, and that actual knowledge of fraud at Sunbeam could not have been gleaned through the events comprising CPH's allegations. Summary judgment on CPH's aiding and abetting claim is clearly appropriate in these circumstances. *See, e.g., Peoples Gas*, 689 So. 2d at 299; *Bryant*, 479 So. 2d at 168; *Stepp*, 656 So. 2d at 496.

B. CPH Cannot Demonstrate Substantial Assistance As A Matter Of Law.

Morgan Stanley is also entitled to summary judgment on the aiding and abetting claim for the separate and independent reason that the undisputed evidence establishes that Morgan Stanley did not provide "substantial assistance" to Sunbeam in carrying out the alleged fraud.[9]

[9] Again, both New York and Florida law require a plaintiff to prove "substantial assistance" to prove an aiding and abetting claim, so the choice of law issue is beside the point for present purposes.

NOT A CERTIFIED COPY

0191160

As Morgan Stanley explained, and CPH's response ignores, "[s]ubstantial assistance requires the plaintiff to [demonstrate] that the actions of the aider/abettor ***proximately caused*** the harm on which the primary liability is predicated. ... ***'But-for' causation*** is insufficient; aider and abettor liability requires the injury to be a direct or reasonably foreseeable result of the conduct." *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) (emphasis added).

The actions on which CPH bases its aiding and abetting claim against Morgan Stanley do not amount to "substantial assistance" under this stringent legal standard. As an initial matter, the "substantial assistance" alleged by CPH is nothing more than the ordinary business practices of a financial advisor and underwriter. *See, e.g.*, CPH Br. 81 (claiming simply that Morgan Stanley assisted Sunbeam in closing the transaction by providing a loan to Sunbeam, but adding that the loan was necessary to "conceal Sunbeam's dire financial situation."). Needless to say, such unremarkable actions by Morgan Stanley cannot remotely be characterized as the proximate cause (as opposed to, at most, the "but for" cause) of CPH's alleged injuries. *See, e.g., Cromer*, 137 F. Supp. 2d at 470.

Further, CPH cannot legally establish the requisite causal connection between Morgan Stanley's supposed provision of false information to CPH during the course of negotiations and the injuries CPH asserts because it is undisputed that CPH had exactly the same access as Morgan Stanley to Sunbeam's "books, records, properties, plants, and personnel." Findings ¶¶ 214-15. Likewise, it is undisputed that CPH had at its disposal its own army of legal and financial experts to comb through those records to independently assess Sunbeam's financial status. *See* Findings ¶¶ 26-41. Morgan Stanley's disclaimed representations cannot serve as the proximate cause of CPH's harm when CPH, itself, chose to ignore its own internal experts, and

NOT A CERTIFIED COPY

0191619

forego review of Sunbeam's records before consummating the transaction. *See* Findings ¶¶ 135-60, 170, 175-79, 183, 219-35, 240-44, 256-75, 279-80, 286-96.

IV. MORGAN STANLEY IS ENTITLED TO SUMMARY JUDGMENT ON COUNT III OF THE COMPLAINT (CONSPIRACY)

Finally, CPH acknowledges that its conspiracy claim requires proof of an actual agreement between Morgan Stanley and Sunbeam to defraud CPH, *see* CPH Br. 83-85, but argues that summary judgment is unwarranted on that claim on the ground that "there is ample evidence from which the trier of fact" could find such an agreement, CPH Br. 83. Once again, CPH is wrong.

As a threshold matter, CPH's conspiracy claim against Morgan Stanley fails for the simple reason that (as described above) its underlying claims against Morgan Stanley fail. It is elementary, under both New York and Florida law, that conspiracy is not an independent tort, so that "[a]n act which does not constitute a basis for an action cannot serve [as] the basis for a conspiracy claim." *Czarnecki v. Roller*, 726 F. Supp. 832, 840 (S.D. Fla. 1989); *see also Diamond State Ins. Co. v. Worldwide Weather Trading LLC.*, No. 02 Civ. 2900 LMM GNG, 2002 WL 31819217 (S.D.N.Y. Dec. 16, 2002); *American Baptist Churches of Metro N.Y. v. Galloway*, 710 N.Y.S.2d 12 (App. Div. 2000). Because the acts challenged in CPH's conspiracy claim, *see* Compl. ¶ 91, "do[] not constitute the basis for an action," *Czarnecki*, 726 F. Supp. at 840, they cannot serve as the basis for a conspiracy claim, *see id.* ("Inasmuch as Count I fails to state a claim against [the defendant] for fraudulent misrepresentation, [the conspiracy claim] must be dismissed to that extent."); *Linden v. Lloyd's Planning Serv. Inc.*, 750 N.Y.S.2d 20, 21 (App. Div. 2002) ("[S]ince plaintiff has no viable underlying claim for fraud or any other tort, her civil conspiracy claim was properly dismissed.").

NOT A CERTIFIED COPY

019162

Even if there were a basis for stating a conspiracy claim here, moreover, CPH has failed to do so because there is absolutely no evidence of an agreement between Morgan Stanley and Sunbeam to defraud CPH. In this regard, it is worth noting that CPH misrepresents the summary judgment standard for civil conspiracy claims. According to CPH, "[i]t is not CPH's burden to come forward with evidence of an actual agreement"; rather, "Morgan Stanley ... must prove a negative, *i.e.*, the non-existence of a genuine issue of material fact." CPH Br. 83 (internal quotation and brackets omitted). That is incorrect; rather, "[s]ome proof of knowledge of a conspiracy, and participation in it by the alleged tortfeasor, must be shown in order to survive a motion for summary judgment." *Menendez v. Beech Acceptance Corp.*, 521 So. 2d 178, 180 (Fla. 3d DCA 1988) (citing *Karnegis v. Oakes*, 296 So. 2d 657, 659 (Fla. 3d DCA 1974) ("[P]laintiff has no evidence to overcome [defendant's] testimony that he knew nothing of the project. To speculate that he may have participated because he might ultimately have received some benefit from the [enterprise] is not sufficient."), *cert. denied*, 307 So. 2d 450 (Fla. 1975)).

In addition, although CPH tacitly concedes that there is no evidence of an ***actual*** agreement to defraud CPH between Sunbeam and Morgan Stanley, CPH nonetheless argues that it is entitled to pursue a conspiracy claim because "'[t]he existence of a conspiracy and an individual's participation may be ***inferred*** from circumstantial evidence.'" CPH Br. 83 (emphasis added) (quoting *Donofrio v. Matassini*, 503 So. 2d 1278, 1281 (Fla. 2d DCA 1987), and citing *Borden, Inc. v. Spoor Behrins Campbell & Young, Inc.*, 828 F. Supp. 216, 225 (S.D.N.Y. 1993)). Fair enough—but, as the Fourth DCA has explained:

> [C]ircumstantial evidence is sufficient, if it meets the standards required in civil cases generally, to sustain a verdict for a plaintiff in an action for damages arising out of an alleged conspiracy. However, in a civil case, a fact may be established by circumstantial evidence alone ***only when the inference sought to be created by such circumstantial evidence outweighs all reasonable inferences to the contrary***.

NOT A CERTIFIED COPY

019163

Diamond v. Rosenfeld, 511 So. 2d 1031, 1034 (Fla. 4th DCA 1987) (emphasis added; internal quotations and citations omitted); *see also Parts Depot Co., L.P. v. Florida Auto Supply, Inc.*, 669 So. 2d 321, 324-25 (Fla. 4th DCA 1996) (rejecting conspiracy claim based on legally untenable and speculative inferences).

Here, the circumstantial "evidence" offered by CPH to bolster its conspiracy claim does not remotely satisfy this standard. Contrary to CPH's assertion, "Morgan Stanley's initial agreement to work with Sunbeam toward a common goal that led to the Coleman transaction" hardly constitutes "strong evidence of an actual agreement between Morgan Stanley and Sunbeam to accomplish a common tortious objective." CPH Br. 85. Instead, it is merely a description of what financial advisors do. None of the other conduct cited by CPH provides competent evidence of an actual agreement to defraud CPH. Again, it consists only of perfectly lawful cooperation between a financial advisor and its client, and plainly fails to "outweigh[] all reasonable inferences to the contrary." *Diamond*, 511 So. 2d at 1034. ***Of course*** Morgan Stanley was Sunbeam's financial advisor with respect to the challenged transaction. ***Of course*** Morgan Stanley acted in concert with Sunbeam to that extent. But that fact alone is not enough to establish a conspiracy; or else ***every*** financial advisor (or attorney, or other service provider) would be potentially liable for "conspiracy" based on the wrongful acts of its client. Under settled law, merely asserting a relationship between two parties will not give rise to an inference that the parties conspired to engage in wrongdoing. *See, e.g., Soule v. Norton*, 750 N.Y.S.2d 692, 695 (App. Div. 2002); *First Nationwide Bank v. 965 Amsterdam, Inc.*, 623 N.Y.S.2d 200, 202 (App. Div. 1995); *Home Town Muffler Inc. v. Cole Muffler Inc.*, 608 N.Y.S.2d 735, 737 (App. Div. 1994); *Abrahami v. UPC Constr. Co.*, 574 N.Y.S.2d 52, 53 (App. Div. 1991); *Raimi v. Furlong*, 702 So. 2d 1273,1285 (Fla. 3d DCA 1997) (citing *Menendez*, 521 So. 2d at 180).

NOT A CERTIFIED COPY

0191644

What CPH essentially seeks to do here, thus, is to hold Morgan Stanley vicariously liable for Sunbeam's conduct, and the law of conspiracy provides no basis to take that radical step.

CONCLUSION

For the foregoing reasons, this Court should grant Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

019165

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 7th day of January 2005.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Christopher Landau
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th St. N.W., Suite 1200
Washington, DC 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL P.L.L.C.
Sumner Square
1615 M St. N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____
Joseph Ianno, Jr.
Florida Bar # 655351

NOT A CERTIFIED COPY

016166

SERVICE LIST

John Scarola
SEARCY, DENNEY, SCAROLA,
BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

019167

253

Confidential

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED,
Defendant.
_____/

FILED
Jan 7 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal - Subject to Confidentiality Order

REPLY MEMORANDUM IN SUPPORT OF MORGAN STANLEY & CO. INCORPORATED'S MOTION FOR SUMMARY JUDGMENT

APPENDIX VOLUME 5
PLEADINGS, MS & CPH DEPOSITION EXHIBITS & DEPOSITION TESTIMONY

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar # 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5132
Facsimile: (202) 879-5200

Joseph Ianno, Jr. (FL Bar # 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for:
Defendant Morgan Stanley & Co. Incorporated

Dated: January 7, 2005

NOT A CERTIFIED COPY

019171

998

VOLUME 5

Pleadings:

May 8, 2003 Compl.

Nov. 22, 2004 MS's Resps. & Objs. to CPH's 6th Set of Reqs. for Admiss., Req. 1

MS Exhibits:

MS 530 (March 25, 1998 Closing Binder)

CPH Exhibits:

CPH 35 (March 23, 1998 Sunbeam Bring-down due diligence)

CPH 123 (July 2, 1998 Due Diligence Call with Morgan Stanley)

Declarations:

Nov. 22, 2004 Reid Declaration

Depositions:

Apr. 22, 2004 Boone Dep.

Jan. 15, 2004 Bornstein Dep.

Jan. 8, 2004 Chang Dep.

June 4, 2004 Conway Dep.

Oct. 15, 2004 Eltrich Dep.

Dec. 16-17, 2004 Fogg Dep.

Feb. 13, 2004 Fuchs Dep.

Nov. 17, 2004 Groeller Dep.

Oct. 26, 2004 Harris Dep.

May 19, 2004 Hart Dep.

Feb. 12, 2004 Kitts Dep.

Oct. 29, 2004 Kourakos Dep.

Nov. 23 & Dec. 10, 2004 Porat Dep.

Apr. 2, 2004 Rafii Dep.

Jan. 22, 2004 Savarie Dep.

July 30, 2004 Seth Dep.

NOT A CERTIFIED COPY

019172

June 8, 2004 Shapiro Dep.

Feb. 24, 2004 Smith Dep.

Dec. 4, 2003 Strong Dep.

July 13, 2004 Stynes Dep.

Sept. 15 & Nov. 14, 2003 Tyree Dep.

May 18, 2004 Webber Dep.

June 16, 2004 Yoo Dep.

NOT A CERTIFIED COPY

019173

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,	2003 CA 005045 AI
Plaintiff,	Case No. _____
v.	JURY TRIAL DEMANDED
MORGAN STANLEY & CO., INC.,	
Defendant.	

DCY

COMPLAINT

Plaintiff Coleman (Parent) Holdings Inc. ("CPH") alleges the following against Morgan Stanley & Co., Inc. ("Morgan Stanley"):

NATURE OF THE ACTION

1. This action arises from Morgan Stanley's participation in a massive fraud centered on Florida-based Sunbeam Corporation ("Sunbeam"). As a direct result of that fraud, CPH was induced to accept 14.1 million shares of Sunbeam stock when CPH sold its 82% interest in The Coleman Company, Inc. ("Coleman") to Sunbeam on March 30, 1998. Morgan Stanley misrepresented Sunbeam's financial condition and assisted Sunbeam's CEO, Albert Dunlap, in concealing Sunbeam's true financial condition so that Sunbeam could complete the purchase of Coleman on March 30, 1998.

2. In April 1997, Morgan Stanley began serving as Sunbeam's investment banker. Morgan Stanley originally attempted to find someone to buy Sunbeam. When Morgan Stanley was unable to find a buyer, Morgan Stanley developed a strategy for Sunbeam to use its

NOT A CERTIFIED COPY

01917S

consideration; and (h) underwriting the $750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

88. As a result of Morgan Stanley's misconduct, CPH has suffered damages in excess of $485 million.

COUNT III

Conspiracy

89. CPH repeats and realleges the allegations of paragraphs 1 through 77 above as if set forth fully herein.

90. As detailed above, Morgan Stanley conspired with Dunlap and other senior Sunbeam executives to conceal the truth about Sunbeam's financial performance and business operations.

91. As detailed above, Morgan Stanley committed overt acts in furtherance of the conspiracy, including: (a) concealing Sunbeam's first quarter 1998 sales collapse; (b) assisting with the false March 19, 1998 press release; (c) arranging road shows and meetings with prospective debenture purchasers at which Morgan Stanley, Dunlap, and others made false statements concerning Sunbeam's financial condition and business operations; (d) preparing and disseminating the preliminary and final offering memoranda for the subordinated debenture offering, both of which contained false information concerning Sunbeam's financial condition and business operations; (e) providing CPH with false financial and business information concerning Sunbeam; (f) scripting Dunlap's false public statements concerning Sunbeam's acquisition of Coleman; (g) persuading CPH to sell its interest in Coleman and to accept 14.1 million shares of Sunbeam stock and other

NOT A CERTIFIED COPY

019176

consideration; and (h) underwriting the $750 million convertible debenture offering, proceeds from which were used to fund Sunbeam's purchase of Coleman.

92. As a result of Morgan Stanley's misconduct, CPH has suffered damages in excess of $485 million.

COUNT IV

Negligent Misrepresentation

93. CPH repeats and realleges the allegations of paragraphs 1 through 77 above as if set forth fully herein.

94. As detailed above, Morgan Stanley negotiated directly with CPH concerning the transfer of CPH's 82% interest in Coleman to Sunbeam. During the course of Morgan Stanley's dealings with CPH, Morgan Stanley provided CPH with information concerning Sunbeam, which, in the exercise of reasonable care, Morgan Stanley would have known was materially false and misleading. Morgan Stanley failed to use reasonable care in providing CPH with truthful and accurate information concerning Sunbeam's 1996 and 1997 financial performance, Sunbeam's business operations, the value of Sunbeam's stock, and Sunbeam's first quarter 1998 performance.

95. As detailed above, Morgan Stanley intended for CPH to rely, and CPH justifiably relied, on the information provided by Morgan Stanley.

96. As a result of Morgan Stanley's negligence, CPH has suffered damages in excess of $485 million.

WHEREFORE, plaintiff Coleman (Parent) Holdings Inc. demands judgment against defendant Morgan Stanley & Co., Inc. as follows:

NOT A CERTIFIED COPY

019177

IN THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO. INCORPORATED'S RESPONSES AND OBJECTIONS TO COLEMAN (PARENT) HOLDINGS INC.'S SIXTH SET OF REQUESTS FOR ADMISSION

Defendant Morgan Stanley & Co. Incorporated ("MS & Co."), by its attorneys and pursuant to Florida Rule of Civil Procedure 1.370, hereby responds and objects to Coleman (Parent) Holdings Inc.'s ("CPH") Sixth Set of Requests for Admission.

INITIAL OBJECTIONS

1. MS & Co. objects to CPH's Sixth Set of Requests for Admission, including all Definitions, to the extent that they purport to impose upon MS & Co. any requirements that exceed or are otherwise inconsistent with the Florida Rules of Civil Procedure or any other applicable rule or court order.

2. MS & Co. objects to CPH's Sixth Set of Requests for Admission to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, immunity or rule.

3. MS & Co. objects to the definition of "Morgan Stanley" to the extent that it includes MS & Co.'s counsel in this litigation and entities not a party to this action. Specifically, MS & Co. interprets these definitions to exclude Kirkland & Ellis LLP, Carlton Fields, P.A.,

NOT A CERTIFIED COPY

019179

Kellogg Huber, Hansen, Todd & Evans, PLLC and affiliates, parents, and others not a party to this action.

4. MS & Co. objects to the Requests for Admission as unduly burdensome, abusive, and vexatious, since many of them are duplicative and constitute an unnecessary waste of time and concern factual allegations uniquely within the possession of CPH, MAFCO, or third parties, which could be confirmed with less expense and burden on the parties through other techniques of discovery

5. In the instances where Morgan Stanley admits to Request One and Request Eight for a document, Morgan Stanley objects to the remaining Requests related to the same document because such Requests are redundant, unduly burdensome, and harassing.

6. In the instances where Morgan Stanley has noted that a document is incomplete, the responses below pertain only to the portion of the document identified in the respective Requests and Morgan Stanley reserves all other objections.

7. MS & Co. incorporates, as though fully set forth therein, these General Objections into each of the Responses set forth below.

RESPONSES

1. Admit that the documents listed in the attached Exhibits A and B are what they purport to be or are otherwise true and authentic copies of original documents within the meaning of Florida Evidence Code § 90.901.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia ["HW"], Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

NOT A CERTIFIED COPY

019180

2. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

3. Admit that the documents listed in the attached Exhibits A and B were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

4. Admit that the documents listed in the attached Exhibits A and B were kept by Morgan Stanley in the course of a regularly conducted business activity within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

5. Admit that it was Morgan Stanley's regular practice to make the documents listed in the attached Exhibits A and B within the meaning of Florida Evidence Code § 90.803(6)(a).

NOT A CERTIFIED COPY

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia.

6. Admit that the documents being [sic] Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley at or near the time of the event recorded within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

7. Admit that the documents bearing Bates numbers Morgan Stanley Confidential 0084771 through 0085783, and Morgan Stanley Confidential 0094003 through 0094032 were made by Morgan Stanley by or from information transmitted by a person with knowledge within the meaning of Florida Evidence Code § 90.803(6)(a).

RESPONSE: See the attached Table B.

8. Admit that Morgan Stanley authored the documents listed in the attached Exhibit B.

RESPONSE: See the attached Table A. In the instances where there is a notation that the document bears handwritten marginalia, Morgan Stanley is without sufficient information to make any admission and therefore denies the Request with respect to the handwritten marginalia. Morgan Stanley denies that it "authored" CPH Exhibits 9 and 138 and MS Exhibits 85 and 238 {and any other version of the February 1998 Discussion Materials provided to CPH on February 23, 1998}. Morgan Stanley admits that Sunbeam provided Morgan Stanley certain information contained in those exhibits, that other information in those

NOT A CERTIFIED COPY

exhibits was obtained from public records, and that Morgan Stanley assisted Sunbeam in the formatting and organization of such information. For MS Exhibit 183 and CPH Exhibit 278, Morgan Stanley admits that one of its employees "authored" the handwritten notations on that document, but denies that Morgan Stanley authored the underlying printed text.

NOT A CERTIFIED COPY

019183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached service list by facsimile and Federal Express on this 22nd day of November, 2004.

Thomas D. Yannucci, P.C.
Lawrence P. Bemis (FL Bar No. 618349)
Thomas A. Clare
Zhonette M. Brown
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Mark C. Hansen
James M. Webster, III
Rebecca A. Beynon
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

Counsel for Morgan Stanley & Co. Incorporated

Joseph Ianno, Jr. (FL Bar No. 655351)
CARLTON FIELDS, P.A.
222 Lakeview Ave., Suite 1400
West Palm Beach, FL 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-mail: jianno@carltonfields.com

BY: _____

NOT A CERTIFIED COPY

SERVICE LIST

Jack Scarola
SEARCY, DENNEY, SCAROLA, BARNHARDT & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jerold S. Solovy
Michael Brody
JENNER & BLOCK, LLC
One IBM Plaza, Suite 400
Chicago, IL 60611

NOT A CERTIFIED COPY

019185

Response to CPH 6th Request for Admission:
Table A

Party	Ex. No	Bates	Notes	RFA 1	RFA 2	RFA 3	RFA 4	RFA 5	RFA 8
MS	13	MSC 0027828-0027829	Incomp.	A	D	D	D	D	-
MS	40	MSC 0000001-0000175		A	D	D	D	D	D
MS	48	CPH 0041655-0041661		A	D	D	D	D	-
MS	57	FUNB016564-016567		A	OBJ	OBJ	OBJ	OBJ	A
MS	79	CPH 0467007	Incomp.	A	OBJ	OBJ	OBJ	OBJ	A
MS	80	CPH 1426289-01426296	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	81	CPH 1421814-1421817		A	OBJ	OBJ	OBJ	OBJ	A
MS	82	CPH 1406962-1406964	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	83	CPH 1427250-1427253	HW	A	OBJ	OBJ	OBJ	OBJ	A
MS	85	CPH 1411216-1411300		A	D	D	D	D	D
MS	115	MSC 0063805-0063811		A	D	D	D	D	-
MS	166	CPH 1362487-1326662		A	D	D	D	D	D
MS	175	CPH 0482090-0482098		A	OBJ	OBJ	OBJ	OBJ	A
MS	182	CPH 1412533-1412551	HW	A	D	D	D	D	D
MS	183	CPH 1109095-1109115		A	D	D	D	D	A - HW D - Balance
MS	189	CPH 1399821-1399822		A	OBJ	OBJ	OBJ	OBJ	A
MS	194	CPH 1185762-1185784		A	D	D	D	D	D
MS	238	CPH 1418423-1418499		A	D	D	D	D	D
CPH	3	MSC 0080435-0080437		A	OBJ	OBJ	OBJ	OBJ	A
CPH	4	MSC 0031171-0031176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	5	MSC 0031177-0031220		A	OBJ	OBJ	OBJ	OBJ	A
CPH	6	MSC 0080438-0080439		A	OBJ	OBJ	OBJ	OBJ	A
CPH	9	CP 026286-026370		A	D	D	D	D	D
CPH	10	CP 033169-033240		A	D	D	D	D	D
CPH	11	SASMF 10699-10705		A	OBJ	OBJ	OBJ	OBJ	A
CPH	12	CPH 0012526-0012527		A	OBJ	OBJ	OBJ	OBJ	A
CPH	13	CPH 0635991-0635992		A	D	D	D	D	-

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

A = Admit
D = Deny

OBJ = Object
I = Document is incomplete

NOT A CERTIFIED COPY

019186

Response to CPH 6th Request for Admission:
Table A

CPH	14	MSC 0016944-0016945		A	D	D	D	D	D
CPH	16	MSC 0028858		D	D	D	D	D	-
CPH	17	MSC 00375-00381		A	D	D	D	D	-
CPH	24	DPW000001-000002		A	D	D	D	D	D
CPH	25			A	D	D	D	D	-
CPH	26	CPH 1412961-1413007		A	OBJ	OBJ	OBJ	OBJ	A
CPH	27	MSC 0026219		A	OBJ	OBJ	OBJ	OBJ	A
CPH	28			A	OBJ	OBJ	OBJ	OBJ	A
CPH	29	MSC 0080440-0081556		A	OBJ	OBJ	OBJ	OBJ	A
CPH	31	CPH 0635893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	32	CPH 0635894-0635895		A	OBJ	OBJ	OBJ	OBJ	-
CPH	33	MSC 0029176		A	OBJ	OBJ	OBJ	OBJ	A
CPH	34	CPH 0520973-0520974		A	OBJ	OBJ	OBJ	OBJ	A
CPH	35	CPH 1257351		A	OBJ	OBJ	OBJ	OBJ	A
CPH	36	CPH 0639323-0639327		A	D	D	D	D	-
CPH	37	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	38	MSC 0041766-0041858		A	OBJ	OBJ	OBJ	OBJ	A
CPH	61	CPH 0284977-0285008		A	OBJ	OBJ	OBJ	OBJ	A
CPH	62	CPH 0283484	HW	W/O	D	D	D	D	-
CPH	64	MSC 0028423		A	D	D	D	D	-
CPH	65	CPH 0088703		W/O	D	D	D	D	-
CPH	66	CPH 0038717		W/O	D	D	D	D	-
CPH	67	MSC 0063827-0063833		A	OBJ	OBJ	OBJ	OBJ	A
CPH	68	MSC 0003995-0004001		A	D	D	D	D	-
CPH	69	MSC 0003894-0003930		A	OBJ	OBJ	OBJ	OBJ	A
CPH	70	SB 237825-237830		A	OBJ	OBJ	OBJ	OBJ	A
CPH	71	MSC 0005984-0005995		A	OBJ	OBJ	OBJ	OBJ	A
CPH	72	MSC 0064865-0064866	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	74	MSC 0080356-0080358		A	OBJ	OBJ	OBJ	OBJ	A
CPH	75	SB 0018203-0018288	HW	A	D	D	D	D	D
CPH	76	MSC 0025829-0025886		A	OBJ	OBJ	OBJ	OBJ	A
CPH	78	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	79	MSC 0031855-0031856		A	OBJ	OBJ	OBJ	OBJ	A
CPH	80	CPH 0465134		A	D	D	D	D	-

HW = Handwritten Marginalia

A = Admit
D = Deny

W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

NOT A CERTIFIED COPY

019187

Response to CPH 6th Request for Admission:
Table A

CPH	81	MSC 0036393-0036395		A	OBJ	OBJ	OBJ	OBJ	A
CPH	81-A			D	D	D	D	D	D
CPH	82	CPH 0469477-0469561		A	OBJ	OBJ	OBJ	OBJ	A
CPH	83			D	D	D	D	D	D
CPH	84	MSC 0033255-0033263		A	OBJ	OBJ	OBJ	OBJ	A
CPH	84-A			D	D	D	D	D	D
CPH	85	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	86	MSC 0045112-0045113		A	OBJ	OBJ	OBJ	OBJ	A
CPH	87	MSC 0035967-0035969		A	OBJ	OBJ	OBJ	OBJ	A
CPH	88	MSC 0031791-0031799		A	OBJ	OBJ	OBJ	OBJ	A
CPH	89	MSC 0083960-0084026		A	OBJ	OBJ	OBJ	OBJ	A
CPH	90	CPH 1332631-1322633		A	OBJ	OBJ	OBJ	OBJ	A
CPH	91			D	D	D	D	D	D
CPH	92	MSC 0003389-0003415		A	OBJ	OBJ	OBJ	OBJ	A
CPH	93			D	D	D	D	D	D
CPH	94			D	D	D	D	D	D
CPH	95			A	OBJ	OBJ	OBJ	OBJ	A
CPH	96	CPH 0472488-0472496		A	OBJ	OBJ	OBJ	OBJ	A
CPH	97	MSC 0033910-0033911		A	OBJ	OBJ	OBJ	OBJ	A
CPH	98	CPH 0482089-0482098		A	OBJ	OBJ	OBJ	OBJ	A
CPH	99			D	D	D	D	D	D
CPH	100	MSC 0062860-0062896		A	OBJ	OBJ	OBJ	OBJ	A
CPH	110	CPH 0038670-0038676	HW	A	D	D	D	D	-
CPH	111	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	112	CPH 0129613-0129616	HW	A	D	D	D	D	-
CPH	115	CPH 0038700-0038706	HW	A	D	D	D	D	-
CPH	117	CPH 0038523-0038524	HW	A	D	D	D	D	-
CPH	120	CPH 0012522-0012524		A	D	D	D	D	-
CPH	121	CPH 1145796	HW	A	D	D	D	D	-
CPH	122	CPH 0039327; CPH 0038707	HW	A	D	D	D	D	D
CPH	124	CPH 0012464-0012466		A	D	D	D	D	-
CPH	125	MSC 0004673-004702		A	OBJ	OBJ	OBJ	OBJ	A

NOT A CERTIFIED COPY

019188

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	126	MSC 0042248-0042275		A	OBJ	OBJ	OBJ	OBJ	A
CPH	128	MSC 0029199-0029201		A	OBJ	OBJ	OBJ	OBJ	A
CPH	129	MSC 0000513-0000541		A	OBJ	OBJ	OBJ	OBJ	A
CPH	130	CPH 0251869-0251889	HW	A	D	D	D	D	D
CPH	131	CPH 0251890-0251985		A	OBJ	OBJ	OBJ	OBJ	A
CPH	132	CPH 0636135-0636136	HW	A	D	D	D	D	-
CPH	133	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	135	MSC 0063735-0063804		A	D	D	D	D	D
CPH	136	MSC 0083748-0083904		A	OBJ	OBJ	OBJ	OBJ	A
CPH	137	MSC 0039543		A	OBJ	OBJ	OBJ	OBJ	A
CPH	138	CPH 1411216-1411300		A	D	D	D	D	D
CPH	139	MSC 0026540-0026544	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	140	CPH 0483399-0483407	HW	A	D	D	D	D	D
CPH	141	CPH 0483341-0483350	HW	A	D	D	D	D	D
CPH	142	CPH 0253547-0253555	HW	A	D	D	D	D	D
CPH	143	CPH 1026942-1026953		A	D	D	D	D	D
CPH	144	MSC 0016944	Incomp.	A	D	D	D	D	D
CPH	145	MSC 0028214-0028271	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	146	MSC 0080325-0080333	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	148	MSC 0047892		A	OBJ	OBJ	OBJ	OBJ	A
CPH	149	MSC 0047893		A	OBJ	OBJ	OBJ	OBJ	A
CPH	150	CPH 0470006-0470016	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	151	MSC 0065651-0065784	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	152	CPH 1145796	HW	A	D	D	D	D	-
CPH	153	MSC 0018885-0018942	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	154	CPH 1258265-1258266		W/O	D	D	D	D	-
CPH	155	CPH 1346133-1346250		A	OBJ	OBJ	OBJ	OBJ	A
CPH	156	CPH 1346276-1346342		A	D	D	D	D	D
CPH	157	MSC 0018702-0018703	HW	A	D	D	D	D	-
CPH	160	MSC 0003143	HW	A	D	D	D	D	D

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

NOT A CERTIFIED COPY

019189

Response to CPH 6th Request for Admission:
Table A

CPH	162	MSC 0026888-0026891	HW	A	D	D	D	D	-
CPH	163	MSC 0080427-0080430		A	OBJ	OBJ	OBJ	OBJ	A
CPH	164	MSC 0045133-00445139		A	OBJ	OBJ	OBJ	OBJ	A
CPH	165			D	D	D	D	D	D
CPH	166	MSC 0045102-00445108		A	OBJ	OBJ	OBJ	OBJ	A
CPH	167			D	D	D	D	D	D
CPH	168			D	D	D	D	D	D
CPH	169	MSC 0044556-0044573		A	OBJ	OBJ	OBJ	OBJ	A
CPH	170	MSC 0042538-0042540		W/O	D	D	D	D	D
CPH	171			D	D	D	D	D	D
CPH	172	MSC 0044462		A	OBJ	OBJ	OBJ	OBJ	A
CPH	173	MSC 0043129		A	OBJ	OBJ	OBJ	OBJ	A
CPH	174	MSC 0042570		A	OBJ	OBJ	OBJ	OBJ	A
CPH	175			D	D	D	D	D	D
CPH	176			D	D	D	D	D	D
CPH	177	MSC 0085779		A	OBJ	OBJ	OBJ	OBJ	A
CPH	178	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	179	CPH 0635892-0635895		A	OBJ	OBJ	OBJ	OBJ	A
CPH	180	MSC 0029194-0029196		A	OBJ	OBJ	OBJ	OBJ	A
CPH	181	MSC 0006284-0006335		A	D	D	D	D	D
CPH	182	MSC 0004703-0004723		A	D	D	D	D	D
CPH	183	MSC 0063286-006330		A	OBJ	OBJ	OBJ	OBJ	A
CPH	184			D	D	D	D	D	D
CPH	186	MSC 0041901-0041912		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187	MSC 0041870-0041888		A	OBJ	OBJ	OBJ	OBJ	A
CPH	187-A	CPH 0254621-0254640		A	D	D	D	D	D
CPH	188	CPH 1408952-1408956		A	OBJ	OBJ	OBJ	OBJ	A
CPH	189	CPH 0642933-0642937		A	OBJ	OBJ	OBJ	OBJ	A
CPH	190			D	D	D	D	D	D
CPH	194			D	D	D	D	D	D
CPH	195	MSC 0040237-0040305		A	D	D	D	D	D
CPH	196	MSC 0085612-0085613		A	OBJ	OBJ	OBJ	OBJ	A
CPH	200	CPH 0472360-0472361	HW	A	D	D	D	D	-
CPH	202	MSC 0003931	HW	A	OBJ	OBJ	OBJ	OBJ	A

NOT A CERTIFIED COPY

0191910

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	203	MSC 0042314-0042327		A	OBJ	OBJ	OBJ	OBJ	A
CPH	204	MSC 0042328-0042341		A	OBJ	OBJ	OBJ	OBJ	A
CPH	205	MSC 0004005-0004007		W/O	D	D	D	D	D
CPH	207	CPH 0471614-0471629		A	OBJ	OBJ	OBJ	OBJ	A
CPH	208	CPH 0632817-0632905		A	D	D	D	D	-
CPH	209	CPH 1348404-1348475		A	D	D	D	D	D
CPH	210	CPH 0632981-0632981		A	D	D	D	D	D
CPH	211	CPH 0633012-0633049		A	D	D	D	D	D
CPH	212	CPH 1257349-1257349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	213	MSC 0029159-0029162		A	D	D	D	D	D
CPH	214	CPH 1257359		A	OBJ	OBJ	OBJ	OBJ	A
CPH	215			A	D	D	D	D	D
CPH	217	MSC 0045665-0045758		A	D	D	D	D	D
CPH	217-A	MSC 0080431-0080434		A	OBJ	OBJ	OBJ	OBJ	A
CPH	218	MSC 0004724-0004728	HW	A	D	D	D	D	D
CPH	218-A	MSC 0045760-0045761		A	OBJ	OBJ	OBJ	OBJ	A
CPH	219	MSC 0036347-0036349		A	OBJ	OBJ	OBJ	OBJ	A
CPH	220	CPH 0467090-0467126		A	D	D	D	D	D
CPH	221	MSC 0045474-0045475		A	OBJ	OBJ	OBJ	OBJ	A
CPH	222	MSC 0003431-0003464		A	OBJ	OBJ	OBJ	OBJ	A
CPH	223	MSC 0042482-0042483		A	OBJ	OBJ	OBJ	OBJ	A
CPH	224			D	D	D	D	D	D
CPH	225	CPH 0147626-0147627		A	D	D	D	D	-
CPH	226	CPH 0147608-0147616		A	D	D	D	D	-
CPH	227	CPH 0639174-0639182		A	D	D	D	D	-
CPH	228	MSC 0085750-0085751		A	OBJ	OBJ	OBJ	OBJ	A
CPH	229	MSC 0085763-0085765		A	OBJ	OBJ	OBJ	OBJ	A
CPH	230	CPH 0635890-0635891		A	D	D	D	D	D
CPH	232	MSC 0085589-0085609		A	OBJ	OBJ	OBJ	OBJ	A

NOT A CERTIFIED COPY

016191

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

A = Admit
D = Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	233	MSC 0085274-0085283		A	OBJ	OBJ	OBJ	OBJ	A
CPH	234	MSC 0084771-0084778		A	OBJ	OBJ	OBJ	OBJ	A
CPH	235	MSC 0085726-0085727		A	OBJ	OBJ	OBJ	OBJ	A
CPH	238	CPH 1412552-1412570	HW	A	D	D	D	D	D
CPH	242	MSC 0045156		A	OBJ	OBJ	OBJ	OBJ	A
CPH	243	MSC 0026587-0026588	HW	A	D	D	D	D	D
CPH	244	MSC 0031982-0031984		A	OBJ	OBJ	OBJ	OBJ	A
CPH	245	MSC 0043210		A	OBJ	OBJ	OBJ	OBJ	A
CPH	246	CPH 0473192-0473193	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	247	MSC 0004132-0004143	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	248	MSC 0085175-0085181		A	OBJ	OBJ	OBJ	OBJ	A
CPH	249	MSC 0036633-0036634		A	OBJ	OBJ	OBJ	OBJ	A
CPH	250	CPH 0146467		A	OBJ	OBJ	OBJ	OBJ	A
CPH	251	MSC 0005547-0005599		A	D	D	D	D	D
CPH	252	MSC 0019638-0019725		A	D	D	D	D	D
CPH	255	MSC 0045317-0045318		A	OBJ	OBJ	OBJ	OBJ	A
CPH	256	MSC 0019097-0019114		A	D	D	D	D	D
CPH	257	FUNB 021139		A	D	D	D	D	D
CPH	258	FUNB 021243		A	D	D	D	D	D
CPH	260	CPH 0485371-0485376		A	D	D	D	D	D
CPH	261	MSC 0024383-0024451		A	D	D	D	D	D
CPH	262	MSC 0018660-0018725	HW	W/O	D	D	D	D	D
CPH	263	MSC 0018730-0018731	HW	W/O	D	D	D	D	D
CPH	264	MSC 0024863		W/O	D	D	D	D	D
CPH	265	MSC 0024864-0024866		W/O	D	D	D	D	D
CPH	266	CPH 1349253-1349282	HW	A	OBJ	OBJ	OBJ	OBJ	A
CPH	272	CPH 0473148-0473165		A	OBJ	OBJ	OBJ	OBJ	A
CPH	273	MSC 0023225-0023229		A	D	D	D	D	-
CPH	274	MSC 0054921-0054925		A	D	D	D	D	-
CPH	275	MSC 0001575-0001579		A	OBJ	OBJ	OBJ	OBJ	A

NOT A CERTIFIED COPY

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request for Admission:
Table A

CPH	277	MSC 0004673-0004702		A	OBJ	OBJ	OBJ	OBJ	A
CPH	278	MSC 0036700-0036720		A	D	D	D	D	A - HW D - Balance
CPH	279	MSC 0006375-0006432		A	OBJ	OBJ	OBJ	OBJ	A
CPH	280	MSC 0018885-0018942		A	OBJ	OBJ	OBJ	OBJ	A
CPH	281	MSC 0059244-0059266		A	OBJ	OBJ	OBJ	OBJ	A
CPH	284	MSC 0025887		A	D	D	D	D	-
		MSC 0015896-0015970		W/O	D	D	D	D	-
		MSC 0015626-0015703	Incomp.	W/O	D	D	D	D	-
		MSC 0020477-0020552		W/O	D	D	D	D	-
		MSC 0061553-0061621		W/O	D	D	D	D	-
		MSC 0061191-0061251	Incomp.	W/O	D	D	D	D	-
		MSC 0067528-0067602		W/O	D	D	D	D	-
		MSC 0072800-0072863	Incomp.	W/O	D	D	D	D	-
		MSC 0073484-0073562		W/O	D	D	D	D	-
		MSC 0067258-0067341		W/O	D	D	D	D	-
		MSC 0087405-0087490		W/O	D	D	D	D	-
		MSC 0070445-0070542		W/O	D	D	D	D	-
		MSC 0086753-0086799	Incomp.	W/O	D	D	D	D	-
		MSC 0092043-0092076		W/O	D	D	D	D	-
		MSC 0092077-0092111		W/O	D	D	D	D	-
		MSC 0092032-0092042		W/O	D	D	D	D	-
		MSC 0092146-0092177		W/O	D	D	D	D	-
		MSC 0092178-0092188		W/O	D	D	D	D	-
		MSC 0092112-0092133		W/O	D	D	D	D	-
		MSC 0092134-0092145		W/O	D	D	D	D	-

NOT A CERTIFIED COPY

A = Admit
D = Deny

HW = Handwritten Marginalia
W/O = Morgan Stanley is without sufficient information to Admit or Deny

OBJ = Object
I = Document is incomplete

Response to CPH 6th Request For Admission: Table B

Bates	RFA 6	RFA 7
MSC 0084771-0084778	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084779-0084792	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084793-0084811	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084812-0084813	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084814-0084820	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084821-0084826	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084827-0084832	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084833-0084834	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084835-0084844	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084845-0084859	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084860-0084861	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084862-0084870	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084871-0084887	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084888-0084905	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084906-0084910	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084911-0084926	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084927-0084946	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084947-0084960	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084961-0084975	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084976-0084994	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0084995-0085012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085013-0085033	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085034-0085055	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085056-0085057	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085058-0085075	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085076-0085098	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085099-0085108	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

NOT A CERTIFIED COPY

016194

Response to CPH 6th Request For Admission: Table B

MSC 0085109-0085122	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085123-0085136	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085137-0085153	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085154-0085174	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085175-0085191	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085192-0085206	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085207-0085231	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085232-0085250	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085251-0085273	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085274-0085297	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085298-0085314	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085315-0085333	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085334-0085351	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085352-0085357	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085358-0085373	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085374-0085390	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085391-0085402	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085403-0085419	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085420-0085435	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085436-0085452	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085453-0085471	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085472-0085493	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085494-0085514	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085515-0085524	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085525-0085540	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085541-0085557	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085558-0085571	A (per 11/5 Order)	A (per 11/5 Order)

A = Admit

NOT A CERTIFIED COPY

019195

Response to CPH 6th Request For Admission: Table B

MSC 0085572-0085588	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085589-0085609	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085610-0085622	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085623-0085642	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085643-0085660	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085661-0085663	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085664-0085684	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085685-0085699	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085700-0085721	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085722-0085747	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085748-0085760	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085761-0085776	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0085777-0085783	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094003-0094007	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094008-0094010	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094011-0094012	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094013-0094015	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094016-0094018	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094019-0094020	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094021-0094022	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094023-0094025	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094026-0094028	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0094029-0094032	A (per 11/5 Order)	A (per 11/5 Order)
MSC 0095652-0095653	A (per 11/5 Order)	A (per 11/5 Order)

NOT A CERTIFIED COPY

019196

A = Admit

Nick S.

$2,014,000,000

SUNBEAM CORPORATION

Zero Coupon Convertible Senior
Subordinated Debentures
Due 2018

March 25, 1998

VOLUME I

NOT A CERTIFIED COPY

8616198

MS 530
12-16-04 TT

CONFIDENTIAL

SASMF 03184

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-025400
CPH0628368

INDEX

Document	Tab No.
Memorandum of Closing	1
Preliminary Offering Memorandum dated March 16, 1998	2
Offering Memorandum dated March 19, 1998	3
A. Delivered by the Issuer	
Charter of the Issuer (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	4
Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of the Issuer	5
Bring-down telegram updating 4 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	6
Charter of Sunbeam Products, Inc. (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	7
Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of Sunbeam Products, Inc.	8
Bring-down telegram updating 7 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	9
Certificate of the Secretary of the Issuer	10

NOT A CERTIFIED COPY

661610

CONFIDENTIAL SASMF 03185

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0628369

16div-025401

Document	Tab No.
Certificate of an executive officer of the Issuer pursuant to the Purchase Agreement	11
Comfort letter from the Accountants	12
Bring-down comfort letter from the Accountants	13
Comfort letter from Ernst & Young LLP	14
Bring-down comfort letter from Ernst & Young LLP	15
Comfort letter from KPMG Peat Marwick LLP	16
Bring-down comfort letter from KPMG Peat Marwick LLP	17
Comfort letter from Price Waterhouse LLP	18
Bring-down comfort letter from Price Waterhouse LLP	19
Officer's Certificate regarding payment under the Credit Agreement	20
Officer's Certificate regarding covenants under the Credit Agreement	21
Certificate of officers of the Issuer pursuant to the Indenture	22
Order to the Trustee pursuant to the Indenture to authenticate and deliver the Securities	23
Registration Rights Agreement	24
Letter of Representations to DTC from the Issuer and the Trustee	25
B. Delivered by Issuer's Counsel	
Opinion of Issuer's Counsel pursuant to the Purchase Agreement	26
Opinion of Janet Kelley, Associate General Counsel of the Issuer pursuant to the Purchase Agreement	27
Letter of Issuer's Counsel permitting the Trustee to rely on certain pertions of its opinion to the Initial Purchaser	28

NOT A CERTIFIED COPY

Document	Tab No.
I. Miscellaneous	
QIB Notes	40
Debentures	41
Purchase Agreement	42
Lock-up Agreements	43
Accredited Investor Letters	44
NYSE Authorization	45

NOT A CERTIFIED COPY

019201

Cont #98

Document	Tab No.
Opinion of Issuer's Counsel to the Trustee pursuant to the Indenture	29
C. Delivered by the Trustee	
Executed Indenture	30
Certificate of the Trustee	31
Letter delivering the authenticated Securities to the Company against receipt therefor	32
D. Delivered by Initial Purchaser's Counsel	
Opinion of Initial Purchaser's Counsel pursuant to the Purchase Agreement	33
E. Delivery of Securities and Payment of Purchase Price	
Cross-receipt between the Issuer and the Initial Purchaser	34
F. Delivered by CLN Holdings Inc.	
Certificate of the Secretary of CLN Holdings Inc.	35
Certificate of the Secretary of the Coleman Company, Inc.	36
Certificate of the Secretary of Coleman Worldwide Corporation	37
G. Delivered by Signature Brands USA, Inc.	
Certificate of an Officer of Signature Brands USA, Inc.	38
H. Delivered by First Alert, Inc.	
Certificate of the Secretary of First Alert, Inc.	39

NOT A CERTIFIED COPY

019202

CONFIDENTIAL SASMF 03188

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16CV-025404

NOT A CERTIFIED COPY

019203

MEMORANDUM OF CLOSING

March 25, 1998

$2,014,000,000

SUNBEAM CORPORATION

Zero Coupon Convertible Senior
Subordinated Debentures
Due 2018

Accountants	Arthur Andersen LLP, independent public accountants for the Issuer
[Additional Securities]	[Up to $[302,100,000] aggregate principal amount at maturity of Zero Coupon Convertible Senior Subordinated Debentures Due 2018 to be purchased by the Initial Purchaser solely to cover over-allotments]
Closing Date	March 25, 1998
DTC	The Depository Trust Company
Exchange	The New York Stock Exchange, Inc.
Firm Securities	$2,014,000,000 aggregate principal amount at maturity of Zero Coupon Convertible Senior Subordinated Debentures Due 2018
Indenture	Indenture dated as of the Closing Date between the Issuer and the Trustee

(NY) 14013/984/MOC/moc.wpd

NOT A CERTIFIED COPY

019204

Initial Purchaser	Morgan Stanley & Co. Incorporated
Initial Purchaser's Counsel	Davis Polk & Wardwell, counsel for the Initial Purchaser
Issuer	Sunbeam Corporation, a Delaware corporation
Issuer's Counsel	Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Issuer
Offering Date	March 19, 1998
Offering Memorandum	Offering Memorandum dated the Offering Date relating to the offering of the Securities in the form first used to confirm sales of the Securities
Registration Rights Agreement	Registration Rights Agreement dated as of the Closing Date between the Issuer and the Initial Purchaser
Securities	The Firm Securities and the Additional Securities
Trustee	The Bank of New York, as Trustee under the Indenture
Trustee's Counsel	Emmet Martin & Marvin, LLP counsel for the Trustee
Purchase Agreement	Purchase Agreement dated the Offering Date between the Issuer and the Initial Purchaser

NOT A CERTIFIED COPY

019205

CONFIDENTIAL SASMF 03191

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0628375 16div-025407

I.

ACTION TAKEN PRIOR TO THE CLOSING DATE

A. *Corporate Proceedings*

1. The Board of Directors of the Issuer adopted resolutions authorizing, among other things, (a) the issuance by the Issuer of the Securities, (b) a committee to determine, the terms of the Securities, the price at which such Securities are to be sold to the Initial Purchaser and the Initial Purchasers to be used in connection with any such sale, (c) the forms of the Indenture, the Registration Rights Agreement and the Purchase Agreement, (d) certain designated officers to sign and deliver an indenture, registration rights agreement and purchase agreement substantially in the forms approved, (e) the registration or qualification of any Securities under state securities or blue sky laws and (f) any other action necessary in connection with the issuance and sale of any Securities.

2. On the Offering Date, the committee designated by the Board of Directors determined the terms of the Securities, the price at which the Securities are to be sold to any Initial Purchaser and the Initial Purchaser to be used in connection with any such sale.

B. *Offering*

1. Prior to the Offering Date, the Issuer prepared a Preliminary Offering Memorandum relating to the Securities and distributed it to prospective purchasers.

2. On the Offering Date:

(a) the Initial Purchaser and the Issuer signed the Purchase Agreement;

(b) the Issuer prepared the Offering Memorandum; and

(c) the offering of the Securities began.

NOT A CERTIFIED COPY

019206

CONFIDENTIAL SASMF 03192

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0628376 16div-025408

C. *Listing on the Exchange*

The Issuer filed with the Exchange a preliminary listing application relating to the shares of Common Stock of the Issuer issuable upon conversion of the Securities.

D. *Actions Taken to Prepare for the Closing*

1. The Initial Purchaser notified the Trustee of the names and denominations in which the Securities were to be registered.

2. The Trustee made available for inspection by the Initial Purchaser certificates for the Securities registered in the names and in the denominations requested by the Initial Purchaser.

3. A preliminary closing was held at the offices of the Initial Purchaser's Counsel, 450 Lexington Avenue, New York, New York, at 4:00 P.M. (local time) on the business day prior to the Closing Date for the presentation and examination of the closing documents listed in the attached Schedule B. All documents deemed satisfactory were held in escrow until the closing.

II.

THE CLOSING

The closing was held at the offices of the Initial Purchaser's Counsel, 450 Lexington Avenue, New York, New York, at 9:00 A.M. (local time) on the Closing Date. All of the transactions at the closing were considered to have taken place simultaneously, and no delivery or payment was considered to have been made until all transactions to be taken at the closing had been completed. The documents delivered in connection with the closing are listed in the attached Schedule B. Such documents were dated the Closing Date unless otherwise specified or indicated by the context. The persons listed on Schedule A were present at the closing.

NOT A CERTIFIED COPY

019207

SCHEDULE A

Persons Present at the Closing

Issuer

By:

Issuer's Counsel

By:

Representative

By:

Underwriter's Counsel

By:

Trustee

By:

Trustee's Counsel

By:

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

SASME 03195

CPH0628379

SCHEDULE B

		Issuer	Issuer's Counsel	Trustee	Trustee's Counsel	Initial Purchaser	Initial Purchaser's Counsel	Total
A.	To be delivered by the Issuer							
1.	Charter of the Issuer (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	copy	copy	copy	copy	copy	1	1 + 5 copies
2.	Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of the Issuer	copy	copy	copy	copy	copy	1	1 + 5 copies
3.	Bring-down telegram updating 3 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	copy	copy	copy	copy	copy	1	1 + 5 copies
4.	Charter of Sunbeam Products, Inc. (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	copy	copy	—	—	copy	1	1 + 3 copies
5.	Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of Sunbeam Products, Inc.	copy	copy	—	—	copy	1	1 + 3 copies

NOT A CERTIFIED COPY

019209

16div-025411

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

SASMF 03196

CPH0628380

		Issuer	Issuer's Counsel	Trustee	Trustee's Counsel	Initial Purchaser	Initial Purchaser's Counsel	Total
6.	Bring-down telegram updating 4 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	copy	copy	—	—	copy	1	1 + 3 copies
7.	Certificate of the Secretary of the Issuer (form attached)	1	1	1	1	1	1	6
8.	Certificate of an executive officer of the Issuer pursuant to the Purchase Agreement (form attached)	1	1	1	1	1	1	6
9.	Comfort letter from the Accountants	1	1	—	—	1	1	4
10.	Comfort letter from Ernst & Young LLP	1	1	—	—	1	1	4
11.	Comfort letter from KPMG Peat Marwick LLP	1	1	—	—	1	1	4
12.	Comfort letter from Price Waterhouse LLP	1	1	—	—	1	1	4
13.	Certificate of officers of the Issuer pursuant to the Indenture (form attached)	1	1	1	1	1	1	6
14.	Order to the Trustee pursuant to the Indenture to authenticate and deliver the Securities (form attached)	1	1	1	1	1	1	6
15.	Registration Rights Agreement	1	1	1	1	1	1	6
16.	Letter of Representations to DTC from the Issuer and the Trustee (form to be obtained from DTC)	copy	copy	—	—	copy	copy	4 copies

NOT A CERTIFIED COPY

(NY) 14013/984/MOC/misc.wpd

012610

16div-025412

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

		Issuer	Issuer's Counsel	Trustee	Trustee's Counsel	Initial Purchaser	Initial Purchaser's Counsel	Total
B.	To be delivered by Issuer's Counsel							
17.	Opinion of Issuer's Counsel pursuant to the Purchase Agreement	1	1	1	1	1	1	6
18.	Opinion of Janet Kelley, Associate General Counsel of the Issuer pursuant to the Purchase Agreement	1	1	1	1	1	1	6
19.	Letter of Issuer's Counsel permitting the Trustee to rely on certain portions of its opinion to the Initial Purchaser	1	1	1	1	1	1	6
C.	To be delivered by the Trustee							
20.	Executed Indenture	1	1	1	1	1	1	6
21.	Certificate of the Trustee (form provided)	1	1	1	1	1	1	6
22.	Letter delivering the authenticated Securities to the Company against receipt therefor (form attached)	1	1	1	1	1	1	6
D.	To be delivered by Initial Purchaser's Counsel							
23.	Opinion of Initial Purchaser's Counsel pursuant to the Purchase Agreement	1	1	—	—	1	1	4
E.	Delivery of Securities and Payment of Purchase Price							
24.	Cross-receipt between the Issuer and the Initial Purchaser (form attached)	1	1	1	1	1	1	6

SASMF 03197 CPH0628381

112610

NOT A CERTIFIED COPY

16div-025413

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL

SASME 03198

CPH0628382

		Issuer	Issuer's Counsel	Trustee	Trustee's Counsel	Initial Purchaser	Initial Purchaser's Counsel	Total
F.	To be delivered by CLN Holdings Inc.							
25.	Certificate of the Secretary of CLN Holdings Inc.	1	1	—	—	1	1	4
G.	To be delivered by Signature Brands USA, Inc.							
26.	Certificate of an Officer of Signature Brands USA, Inc.	1	1	—	—	1	1	4
H.	To be delivered by First Alert, Inc.							
27.	Certificate of the Secretary of First Alert, Inc.	1	1	—	—	1	1	4

NOT A CERTIFIED COPY

212610

16div-025414

EXHIBIT 27

CLN HOLDINGS, INC.

Secretary's Certificate

I, _____, Secretary of CLN Holdings, Inc., a Delaware corporation (the "**Company**"), do hereby certify as follows:

The minute books and records of the Company relating to all proceedings of the stockholders, the Board of Directors, the Audit and Executive Committees of the Board of Directors of the Company, Coleman Worldwide Inc. and The Coleman Company, Inc. made available to Davis Polk & Wardwell are true, correct and complete copies of the original minute books and records of the Company, with respect to all proceedings of said stockholders, Board of Directors and committees since February 2, 1996. The minute books, records and other documents of the Company made available to Davis Polk & Wardwell were true, correct and complete in all respects. There have been no material changes, additions or alterations in said minute books, records and other documents that have not been disclosed to Davis Polk & Wardwell in writing.

IN WITNESS WHEREOF, I have signed this certificate and affixed the corporate seal of the Company.

Date: March 25, 1998

_____
Name:
Secretary

[SEAL]

I, _____, an Assistant Secretary of the Company do hereby certify that _____ is on the date hereof and has been at all times since February 1, 1998 the duly elected or appointed, qualified and acting Secretary of the Company, and the signature set forth above is the genuine signature of such officer.

_____
Name:
Assistant Secretary

(NY) 14013/984/MOC/moc.wpd

NOT A CERTIFIED COPY

SUNBEAM CORPORATION

Secretary's Certificate

I, David C. Fannin, Secretary of Sunbeam Corporation, a Delaware corporation (the "Issuer"), do hereby certify as follows:

1. No amendment to the Issuer's restated certificate of incorporation has been approved by the Board of Directors or stockholders of the Issuer or filed with the Delaware Secretary of State, since the Issuer filed its restated certificate of incorporation on July 11, 1996.

2. No proceeding for the dissolution, merger, consolidation or liquidation of the Issuer or for the sale of all or substantially all of its assets is pending or, to the best of my knowledge, threatened, and no such proceeding is contemplated by the Issuer.

3. Attached hereto as Exhibit A is a true, correct and complete copy of the bylaws of the Issuer as in effect at the date hereof and at all times since January 1, 1998

4. Attached hereto as Exhibits B-1 and B-2, are true, correct and complete copies of resolutions duly adopted by (i) the Board of Directors of the Issuer on March 19, 1998 and (ii) the committee designated by the Board of Directors on March 19, 1998. Such resolutions have not been amended or modified, are in full force and effect in the form adopted and are the only resolutions adopted by the Board of Directors or by any committee of, or designated by, the Board of Directors relating to the offering of the Issuer's Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Securities").

5. Attached hereto as Exhibit C is a true, correct and complete specimen of the certificates representing the Securities. The facsimile signature of each of the officers of the Issuer appearing thereon is the genuine facsimile signature of such officer, who was duly elected or appointed, qualified and acting as such officer on the date hereof.

NOT A CERTIFIED COPY

019214

6. The Purchase Agreement (the "Purchase Agreement") dated March 19, 1998 between the Issuer and Morgan Stanley & Co. Incorporated as Initial Purchaser, the Indenture (the "Indenture") dated as of March 25, 1998 between the Issuer and The Bank of New York, as Trustee, as executed and delivered by the Issuer, the specimen of the certificates representing the Securities attached as Exhibit C hereto and the Registration Rights Agreement (the "Registration Rights Agreement") dated as of March 25, 1998 between the Issuer and Morgan Stanley & Co. Incorporated, are each in substantially the form approved by the Pricing Committee of the Issuer's Board of Directors in the resolutions referred to in paragraph 4 above.

7. Each person who, as an officer of the Issuer, signed (a) the Purchase Agreement, (b) the Indenture, (c) the Registration Rights Agreement, (d) the Securities or (e) any other document delivered in connection with the sale and offering of the Securities and the closing related thereto was duly elected or appointed, qualified and acting as such officer at the respective times of the signing and delivery thereof and was duly authorized to sign such document on behalf of the Issuer, and the signature of each such person appearing on each such document is the genuine signature of such officer.

8. The minute books and records of the Issuer relating to all proceedings of the stockholders, the Board of Directors, the Audit and Executive Committees of the Board of Directors of the Issuer and the minutes of Sunbeam Products, Inc., Sunbeam America Holdings Ltd., GHI, Inc., OPII, Inc. and DDG, Inc. made available to Davis Polk & Wardwell are the original minute books and records of the Issuer, or are true, correct and complete copies thereof, with respect to all proceedings of said stockholders, Board of Directors and committees since January 1, 1993. The minute books, records and other documents of the Issuer made available to Davis Polk & Wardwell were true, correct and complete in all respects. There have been no material changes, additions or alterations in said minute books, records and other documents that have not been disclosed to Davis Polk & Wardwell in writing.

9. From March 19, 1998 through the date hereof, there have been no reports filed by the Issuer pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), or proxy statements or information statements filed by the Issuer pursuant to Section 14 of the 1934 Act.

NOT A CERTIFIED COPY

019215

IN WITNESS WHEREOF, I have executed this certificate.

Date: March 25, 1998

By: _____
Name: David C. Fannin
Title: Secretary

I, Janet Kelley, an Assistant Secretary of the Issuer do hereby certify that David C. Fannin is on the date hereof and has been at all times since March 17, 1994 the duly elected or appointed, qualified and acting Secretary of the Issuer, and the signature set forth above is the genuine signature of such officer.

By: _____
Name: Janet Kelley
Title: Assistant Secretary

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

019217

SUNBEAM CORPORATION

Executive Officer's Certificate

I, David C. Fannin, Executive Vice President, General Counsel and Secretary of Sunbeam Corporation, a Delaware corporation, (the "Issuer"), do hereby certify as follows:

1. The representations and warranties of the Issuer in the Purchase Agreement referred to below are true and correct as of the date hereof.

2. The Issuer has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied under the Purchase Agreement on or before the Closing Date.

3. There has not occurred any material adverse change , or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Issuer and its subsidiaries, taken as a whole, from that set forth in the Preliminary Offering Memorandum dated March 16, 1998, it being understood that the information set forth in the Company's March 19, 1998 press release shall not in and of itself constitute any such material adverse change or prospective material adverse change.

Terms defined in the Purchase Agreement dated March 19, 1998 between the Issuer and Morgan Stanley & Co. Incorporated, and not otherwise defined herein are used herein as therein defined.

IN WITNESS WHEREOF, I have signed this certificate.

Date: March 25, 1998

By: _____
Name: David C. Fannin
Title: Executive Vice President,
General Counsel and Secretary

NOT A CERTIFIED COPY

019218

218754.02-New YorkS6A

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16civ-023420 GRU023847

NOT A CERTIFIED COPY

019219

ARTHUR ANDERSEN

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4433

March 19, 1998

Morgan Stanley & Co., Inc.
1585 Broadway
New York, New York 10036-8293

Gentlemen:

We have audited the consolidated balance sheets of Sunbeam Corporation and subsidiaries (the "Company") as of December 28, 1997 and December 29, 1996 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997 included in the offering memorandum for the $2,014,000,000 Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018; our report with respect thereto is also included in the offering memorandum. The offering memorandum dated March 19, 1998 is herein referred to as the Offering Memorandum.

This letter is being furnished in reliance upon your representation to us that –

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

NOT A CERTIFIED COPY

019220

In connection with the Offering Memorandum—

1. We are independent certified public accountants with respect to the Company under rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations.

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 28, 1997; although we have conducted an audit for the fiscal year ended December 28, 1997, the purpose (and therefore the scope) of the audit was to enable us to express our opinion on the consolidated financial statements as of December 28, 1997, and for the fiscal year then ended, but not on the financial statements for any interim period within that year. Therefore, we are unable to and do not express any opinion on the financial position, results of operations or cash flows as of any date or for any period subsequent to December 28, 1997.

4. For purposes of this letter, we have read the minutes of meetings of the Board of Directors of the Company and its subsidiaries as set forth in the minute books at March 16, 1998, except for the meetings of the Board of Directors which took place on February 3, 1998 and February 28, 1998, for which we have read the agendas. Officials of the Company have advised us that these constitute a complete record of minutes of all such meetings through March 16, 1998. We have carried out other procedures to March 16, 1998, as follows (our work did not extend to the period from March 17, 1998, to March 19, 1998, inclusive):

   a. With respect to the period from December 29, 1997 to February 1, 1998, we have

      (i) Read the unaudited consolidated financial statements of the Company and its subsidiaries for the period from December 29, 1997 to February 1, 1998 furnished us by the Company, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to February 1, 1998, were available. The financial information for the period from December 29, 1997 to February 1, 1998 is incomplete in that it omits the statements of cash flows and other disclosures.

      (ii) Inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited consolidated

NOT A CERTIFIED COPY

0192211

financial statements referred to in a(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements included in the Offering Memorandum.

The foregoing procedures do not constitute an audit conducted in accordance with generally accepted auditing standards. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations regarding the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that –

   a. At February 1, 1998, there was any change in the capital stock, increase in long-term debt or any decrease in consolidated net current assets or consolidated shareholders' equity of the Company as compared with amounts shown in the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum, except as follows (in thousands):

	December 28, 1997	February 1, 1998
Long-term debt	$ 194,580	$ 219,449
Shareholders' Equity	531,937	525,913

   b. For the period from December 29, 1997, to February 1, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in net income (loss), except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows (in thousands):

	The Period	
	December 30, 1996 Through February 2, 1997	December 29, 1997 through February 1, 1998
Net sales	$ 72,945	$ 28,984
Net income (loss)	4,786	(9,510)

NOT A CERTIFIED COPY

6. As mentioned in 4(a), Company officials have advised us that no consolidated financial statements as of any date or for any period subsequent to February 1, 1998, are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after February 1, 1998 have been, of necessity, even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters whether (a) at March 16, 1998, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or shareholders' equity of the consolidated companies as compared with amounts shown on the December 28, 1997, audited consolidated balance sheet included in the Offering Memorandum; or (b) for the period from December 29, 1997, to March 16, 1998, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the amount of net income. On the basis of these inquiries and our reading of the minutes and meeting agendas described in 4, nothing came to our attention that caused us to believe that there was any such change, increase, or decrease, except in all instances for changes, increases, or decreases that the Offering Memorandum discloses have occurred or may occur, and except as follows:

   a. Between December 29, 1997 and March 16, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased from $194,580,000 to $299,580,000 as a result of drawings on the Company's credit facility and (iii) consolidated shareholders' equity has decreased primarily because of net losses during the period offset, in part, by contributions received for stock option exercises.

   b. For the period from December 29, 1997 through March 16, 1998, consolidated net sales decreased as compared to the corresponding period of the preceding year primarily due to the Company's new early-buy program for outdoor grills which accelerated outdoor grill sales into the fourth quarter of fiscal 1997. Additionally, the decrease in consolidated net sales during the period as compared to the corresponding period of the preceding year results, in part, from a non-recurring sale in January 1997 of discontinued stock keeping units and excess and obsolete inventory in connection with the Company's November 1996 restructuring. Net income decreased primarily due to the aforementioned sales decrease and a first quarter compensation charge from restricted stock issued in connection with new employment agreements for key officers.

NOT A CERTIFIED COPY

0119223

c. Although the Company has not provided us with any financial statements as of any date or for any period subsequent to February 1, 1998, management has provided net sales from December 29, 1997 through March 1, 1998, which were $72,018,000 as compared to $143,499,000 for the corresponding period of the preceding year.

7. At your request, we have –

a. Read the unaudited pro forma condensed consolidated balance sheet as of December 28, 1997, and the unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 28, 1997 included in the Offering Memorandum.

b. Inquired of certain officials of the Company who have responsibility for financial and accounting matters about –

(i) The basis for their determination of the pro forma adjustments, and

(ii) Whether the unaudited pro forma condensed consolidated financial statements referred to in 7a comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X.

c. Proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the unaudited pro forma condensed consolidated financial statements.

The foregoing procedures are substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assumptions, the pro forma adjustments, and the application of those adjustments to historical financial information. Accordingly, we do not express such an opinion. The foregoing procedures would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representation about the sufficiency of such procedures for your purposes.

NOT A CERTIFIED COPY

019224

8. Nothing came to our attention as a result of the procedures specified in paragraph 7, however, that caused us to believe that the unaudited pro forma condensed consolidated financial statements referred to in 7a included in the Offering Memorandum do not comply as to form in all material respects with the applicable accounting requirements of rule 11-02 of Regulation S-X and that the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements. Had we performed additional procedures or had we made an examination of the pro forma condensed consolidated financial statements, other matters might have come to our attention that would have been reported to you.

9. Our audit of the consolidated financial statements for periods referred to in the introductory paragraph of this letter was comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.

10. We compared the information included under the heading "Selected Historical Financial Data" with the requirements of item 301 of Regulation S-K. We also inquired of certain officials of the Company who have responsibility for financial and accounting matters whether this information conforms in all material respects with the disclosure requirements of item 301 of Regulation S-K. Nothing came to our attention as a result of the foregoing procedures that caused us to believe that this information does not conform in all material respects with the disclosure requirements of item 301 of Regulation S-K.

11. For purposes of this letter, we have also read the items identified by you on the attached copy of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

✓ Compared to corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

A Recomputed from corresponding amounts appearing in the Company's audited consolidated financial statements and notes thereto for the period indicated contained in the Offering Memorandum and found them to be in agreement.

NOT A CERTIFIED COPY

019225

☑ Compared to, or recomputed from, amounts included in an unaudited schedule or report prepared by the Company, which we were informed by officers of the Company responsible for accounting matters, were derived from the accounting records of the Company, and found them to be in agreement. We confirmed the mathematical accuracy of the schedule or report and found it to be mathematically accurate. We make no representations regarding the completeness or accuracy of the Company's assumptions underlying such schedule or report.

N Compared to, or recomputed from, the accounting records of the Company and noted agreement.

✓** Compared to, or recomputed from, corresponding amounts appearing in the Company's unaudited proforma condensed combined financial statements included in the Offering Memorandum and found them to be in agreement.

12. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of amounts reflected in the Offering Memorandum. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

13. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Arthur Andersen L.L.P.

NOT A CERTIFIED COPY

NOT A CERTIFIED COPY

019227

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-025429
CPH0628856

ARTHUR ANDERSEN

March 25, 1998

Arthur Andersen LLP

Suite 700
100 Northeast Third Avenue
Fort Lauderdale FL 33301-1166
954 523 4433

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036-8293

NOT A CERTIFIED COPY

Gentlemen:

We refer to our letter of March 19, 1998, relating to the offering memorandum for the sale of $2,014,000,000 of Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Offering Memorandum"). We reaffirm as of the date hereof (and as though made on the date hereof) all statements made in that letter except that, for the purposes of this letter –

a. The Offering Memorandum to which this letter relates is as amended on March 25, 1998.

b. The reading of minutes described in paragraph 4 of that letter has been carried out through March 23, 1998.

c. The procedures and inquiries covered in paragraph 4 of that letter were carried out to March 23, 1998 (our work did not extend to the period from March 23, 1998, to March 25, 1998, inclusive).

d. The period covered in paragraph 4a of that letter is changed to the period from December 29, 1997 to March 1, 1998, officials of the Company having advised us that no such financial statements as of any date or for any period subsequent to March 1, 1998, were available.

e. The references to February 1, 1998, in paragraph 5 of that letter are changed to March 1, 1998, and the tables included in that paragraph are modified as follows:

Table in paragraph 5a (in thousands) –

	December 28, 1997	March 1, 1998
Common stock	$ 900	$ 913
Long-term debt	194,580	279,580
Shareholders' equity	531,937	522,843

82210-019228

ARTHUR ANDERSEN

Table in paragraph 5b (in thousands) –

	For the Period	
	December 30, 1996 through March 2, 1997	December 29, 1997 Through March 1, 1998
Net sales	$ 143,499	$ 72,018
Net income (loss)	9,765	(41,190)

The net loss for the period from December 29, 1997 through March 1, 1998 includes a compensation charge of approximately $30.2 million recorded in February 1998 from restricted stock issued in connection with new employment agreements with key officers.

f. The references to February 1, 1998, and March 16, 1998, in paragraph 6 of that letter are changed to March 1, 1998, and March 23, 1998, respectively. Paragraph 6a has been modified to read as follows:

Between December 29, 1997 and March 23, 1998, (i) capital stock increased primarily due to stock issued in connection with stock option exercises, (ii) long-term debt has increased from $194,580,000 to $ 309,580,000 as a result of drawings on the Company's credit facility and (iii) consolidated shareholders' equity has decreased primarily because of net losses during the period offset, in part, by contributions received for stock option exercises.

g. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any purpose, including but not limited to the registration, purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Arthur Andersen LLP

NOT A CERTIFIED COPY

622610

NOT A CERTIFIED COPY

0192310

ERNST & YOUNG LLP

750 NationsBank Financial Center
100 North Broadway
Wichita, Kansas 67202

Phone: 316 265 9537
Fax: 316 292 3888

March 20, 1998

CLN Holdings, Inc.
and
Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Dear Sirs:

We have audited the consolidated balance sheets of CLN Holdings, Inc. and subsidiaries (the Company) as of December 31, 1997 and 1996, and the consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997, included in the Offering Memorandum for $2,014,000,000 of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the Debentures) to be issued by Sunbeam Corporation. Our report with respect thereto is included in the Offering Memorandum dated March 19, 1998 (the Offering Memorandum).

This letter is being furnished in reliance upon your representation to us that:

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

In connection with the Offering Memorandum:

1. We are independent auditors with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations thereunder.

NOT A CERTIFIED COPY

019231

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 1997. The purpose (and therefore the scope) of our audits was to enable us to express our opinion on the consolidated financial statements as of December 31, 1997 and 1996, and for each of the three years in the period ended December 31, 1997, but not on the financial statements for any interim period within these years. Therefore, we are unable to and do not express any opinion on the financial position, results of operations, or cash flows as of any other date or for any period subsequent to December 31, 1997.

4. For purposes of this letter we have obtained a summary of topics discussed during the 1998 meetings of the Board of Directors of the Company, for which minutes have not been approved.

5. The Company's officials have advised us that no financial statements as of any date or for any period subsequent to December 31, 1997 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after December 31, 1997 have, of necessity, been even more limited than those with respect to the periods referred to in 3. above. We have inquired of Company officials who have responsibility for financial and accounting matters as to whether: (i) at March 18, 1998 there was any increase in long-term debt or any decrease in net current assets of the Company as compared with the amounts shown on the December 31, 1997, audited balance sheet included in the Offering Memorandum, or (ii) for the period from January 1, 1998, to March 18, 1998, there was any decrease, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or increase in net loss. On the basis of these inquiries and our summary of the minutes as described in 3. above, nothing came to our attention that caused us to believe that there was any such increase or decrease, except for approximately $60 million additional long term borrowing under the revolving credit facility and in all other instances for increases or decreases which the Offering Memorandum discloses have occurred or may occur.

6. At your request, we have read the items identified by you on the attached copies of certain pages of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

   A Compared the dollar amounts to the amounts in the audited consolidated financial statements described in the introductory paragraph of this letter to the extent such amounts are included in or can be derived from such statements and found them to be in agreement.

   B Compared the dollar and other amounts not derived directly from the audited consolidated financial statements, or that could not be compared directly to the

NOT A CERTIFIED COPY

019232

Company's accounting records, to amounts in analyses prepared by the Company from its accounting records and found them to be in agreement. In addition, proved the arithmetic accuracy of analyses prepared by the Company.

C Proved the arithmetic accuracy of the percentages or amounts based on the data in the above-mentioned financial statements, accounting records, and analyses.

7. Our audits of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter were comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For neither the periods referred to therein nor any other period did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above and, accordingly, we do not express an opinion thereon.

8. It should be understood that we make no representations as to questions of legal interpretation or as to the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the information identified in 6. above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations as to the adequacy of disclosure or as to whether any material facts have been omitted.

9. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to for any purpose, including but not limited to the purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

NOT A CERTIFIED COPY

Very truly yours,

Ernst & Young LLP

Ernst & Young LLP

019233

distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Restructuring and Growth Plan

In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed Chairman and Chief Executive Officer Albert Dunlap. The restructuring, which was recently completed, included the redefinition of Sunbeam's core products, divestiture of non-core businesses, assembling a new management team, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also consolidated all purchasing functions, reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000 and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force (approximately 6,000 jobs). In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997.

The Acquisitions

Following the successful restructuring of the Company, the management team has extended its strategic focus to identify underperforming companies with strong brand names. The Company intends to capitalize on its proven capability in cost containment and operational improvement by acquiring such companies and their premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

On March 2, 1998, the Company announced that it had entered into separate agreements to acquire Coleman, Signature Brands and First Alert (collectively, the "Acquisitions"). The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions will give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman. With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.
- *Hardware:* This product category includes portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue and deliver approximately 21.3 million shares of Common Stock (with an aggregate value of approximately $1 billion based on current market prices) and to pay an aggregate of $221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately $2.2 billion (including the assumption of approximately $976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of $261 million in connection with the Coleman acquisition.

Signature Brands. With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution

NOT A CERTIFIED COPY

019234

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16civ-625486

THE ACQUISITIONS

On March 2, 1998, the Company announced the signing of separate definitive agreements to acquire Coleman, Signature Brands and First Alert. The three transactions are subject to customary conditions, including the receipt of required regulatory approvals, and are expected to close early this spring of 1998.

The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman

With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, and breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.
- *Hardware:* Following the divestiture of the safety and security products business anticipated in March 1998, this product category will include portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Outdoor Recreation	$ 859.7	74.5%	Domestic	$ 933.5	80.9%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.3)	(14.3)
Total	$1,154.3	100.0%	Total	$1,154.3	100.0%

Signature Brands

With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands, founded in 1919, is one of the oldest and largest domestic manufacturers of scales for home and medical use.

- *Consumer Products:* Signature Brands markets its consumer products under the *Mr. Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of

NOT A CERTIFIED COPY

019235

CONFIDENTIAL SASMF 03680

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma condensed balance sheet as of December 28, 1997 was prepared to illustrate the estimated effects of (i) the Acquisitions, accounted for under the purchase method of accounting, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and from the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if the Pro Forma Transactions had occurred on December 28, 1997. The following unaudited pro forma statement of operations for the year ended December 28, 1997 was prepared to illustrate the estimated effects of the Pro Forma Transactions as if they had occurred as of December 30, 1996.

The fiscal year of the Company ended on December 28, 1997 and the fiscal years of CLN Holdings and First Alert ended on December 31, 1997. The fiscal year of Signature Brands ended on September 28, 1997. The unaudited pro forma condensed financial statements have been derived from the audited financial statements of the Company as of and for the year ended December 28, 1997, the audited financial statements of CLN Holdings and First Alert as of and for the year ended December 31, 1997 and the unaudited financial statements of Signature Brands as of and for the year ended December 31, 1997. The unaudited statement of operations of Signature Brands for the year ended December 31, 1997 has been derived from the audited statement of operations for the year ended September 28, 1997 and the unaudited statements of operations from the thirteen weeks ended December 31, 1997 and December 31, 1996 in order to present Signature Brands operating results on a basis consistent with the Company's fiscal year.

The pro forma condensed financial statements were prepared utilizing the accounting principles of the respective entities as outlined in each entity's historical financial statements. Certain reclassifications were made to sales, cost of sales and selling, general and administrative expenses as reported in the historical financial statements of CLN Holdings, First Alert and Signature Brands to conform to the classifications of the Company as follows:

	Decrease		
	Sales	Cost of Sales	Selling, General and Administrative
		(in thousands)	
CLN Holdings	$(71,488)	$(63,886)	$(7,602)
First Alert	(9,902)	(4,760)	(5,142)
Signature Brands	(23,171)	(3,725)	(19,446)

(A) Included in the historical Statement of Operations of CLN Holdings are cash and non-cash restructuring and other charges totaling $36.4 million and related tax benefits of $13.9 million. These costs have been allocated to cost of goods sold and selling, general and administration expense in the amounts of $19.5 million and $16.9 million, respectively. These costs primarily relate to closing and relocating certain administrative and sales offices, closing several manufacturing facilities, write-down of inventory and fixed assets, as well as severance costs. Additionally, the expense of the early extinguishment of debt of $15.2 million shown on the CLN Holdings' historical statement of operations has been excluded from the unaudited pro forma condensed statement of operations.

The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable under the circumstances. For purposes of developing the unaudited pro forma condensed financial statements, the assets and liabilities of CLN Holdings, First Alert and Signature Brands have been recorded at historical cost. The allocation of purchase price for the Acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial increase in goodwill. The pro forma condensed financial statements do not include a one-time after-tax $30 million first quarter 1998 charge by the Company related to the execution of new employment contracts with the Company's Chairman and Chief Executive Officer and two other senior officers of the Company as further discussed in Note 14 of the Company's audited financial statements for the year ended December 28, 1997 or any adjustments for potential synergies or cost savings as a result of the Acquisitions.

The unaudited pro forma financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," the financial statements of each of the Company, CLN Holdings, First Alert and Signature Brands and the notes thereto, and the other financial information included elsewhere or incorporated by reference in this Offering Memorandum. This pro forma financial information is provided for informational purposes only and does not purport to be indicative of the results of operations or financial position which would have been obtained had the Pro Forma Transactions been completed on the dates indicated or the financial condition or results of operations for any future date or period.

NOT A CERTIFIED COPY

019236

NOT A CERTIFIED COPY

019237

ERNST & YOUNG LLP

750 NationsBank Financial Center
100 North Broadway
Wichita, Kansas 67202

Phone: 316 265 9537
Fax: 316 292 3888

March 25, 1998

CLN Holdings, Inc.
and
Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Dear Sirs:

We have audited the consolidated balance sheets of CLN Holdings, Inc. and subsidiaries (the Company) as of December 31, 1997 and 1996, and the consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997, included in the Offering Memorandum for $2,014,000,000 of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the Debentures) to be issued by Sunbeam Corporation. Our report with respect thereto is included in the Offering Memorandum dated March 19, 1998 (the Offering Memorandum).

This letter is being furnished in reliance upon your representation to us that:

a. You are knowledgeable with respect to the due diligence review process that would be performed if this placement of securities were being registered pursuant to the Securities Act of 1933 (the Act).

b. In connection with the Offering Memorandum, the review process you have performed is substantially consistent with the due diligence review process that you would have performed if this placement of securities were being registered pursuant to the Act.

In connection with the Offering Memorandum:

1. We are independent auditors with respect to the Company under Rule 101 of the AICPA's Code of Professional Conduct, and its interpretations and rulings.

2. In our opinion, the consolidated financial statements audited by us and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations thereunder.

NOT A CERTIFIED COPY

0119238

Ernst & Young LLP is a member of Ernst & Young International, Ltd.

3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 1997. The purpose (and therefore the scope) of our audits was to enable us to express our opinion on the consolidated financial statements as of December 31, 1997 and 1996, and for each of the three years in the period ended December 31, 1997, but not on the financial statements for any interim period within these years. Therefore, we are unable to and do not express any opinion on the financial position, results of operations, or cash flows as of any other date or for any period subsequent to December 31, 1997.

4. For purposes of this letter we have obtained a summary of topics discussed during the 1998 meetings of the Board of Directors of the Company, for which minutes have not been approved.

5. The Company's officials have advised us that no financial statements as of any date or for any period subsequent to December 31, 1997 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after December 31, 1997 have, of necessity, been even more limited than those with respect to the periods referred to in 3. above. We have inquired of Company officials who have responsibility for financial and accounting matters as to whether: (i) at March 25, 1998 there was any increase in long-term debt or any decrease in net current assets of the Company as compared with the amounts shown on the December 31, 1997, audited balance sheet included in the Offering Memorandum, or (ii) for the period from January 1, 1998, to March 25, 1998, there was any decrease, as compared with the corresponding period in the preceding year, in total operating revenues, income from operations or increase in net loss. On the basis of these inquiries and our summary of the minutes as described in 3. above, nothing came to our attention that caused us to believe that there was any such increase or decrease, except for approximately $60 million additional long term borrowing under the revolving credit facility and management has advised us net revenues for the quarter ended March 31, 1998, are anticipated to be no more than $10 million less than the corresponding quarter of the prior year and there may be some related impact on operating results, and in all other instances for increases or decreases which the Offering Memorandum discloses have occurred or may occur.

6. At your request, we have read the items identified by you on the attached copies of certain pages of the Offering Memorandum, and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

   A Compared the dollar amounts to the amounts in the audited consolidated financial statements described in the introductory paragraph of this letter to the extent such amounts are included in or can be derived from such statements and found them to be in agreement.

NOT A CERTIFIED COPY

019239

B Compared the dollar and other amounts not derived directly from the audited consolidated financial statements, or that could not be compared directly to the Company's accounting records, to amounts in analyses prepared by the Company from its accounting records and found them to be in agreement. In addition, proved the arithmetic accuracy of analyses prepared by the Company.

C Proved the arithmetic accuracy of the percentages or amounts based on the data in the above-mentioned financial statements, accounting records, and analyses.

7. Our audits of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter were comprised of audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For neither the periods referred to therein nor any other period did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above and, accordingly, we do not express an opinion thereon.

8. It should be understood that we make no representations as to questions of legal interpretation or as to the sufficiency for your purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the information identified in 6. above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Offering Memorandum and make no representations as to the adequacy of disclosure or as to whether any material facts have been omitted.

9. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of securities covered by the Offering Memorandum, and it is not to be used, circulated, quoted, or otherwise referred to for any purpose, including but not limited to the purchase or sale of securities, nor is it to be filed with or referred to in whole or in part in the Offering Memorandum or any other document, except that reference may be made to it in the purchase agreement or in any list of closing documents pertaining to the offering of securities covered by the Offering Memorandum.

Very truly yours,

Ernst & Young LLP

NOT A CERTIFIED COPY

019240

N.D.S

$2,014,000,000

SUNBEAM CORPORATION

Zero Coupon Convertible Senior
Subordinated Debentures
Due 2018

March 25, 1998

VOLUME II

NOT A CERTIFIED COPY

019241

(NY) 14013/984/MOC/index.wpd

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16EH-025943

INDEX

Document	Tab No.
Memorandum of Closing	1
Preliminary Offering Memorandum dated March 16, 1998	2
Offering Memorandum dated March 19, 1998	3
A. Delivered by the Issuer	
Charter of the Issuer (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	4
Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of the Issuer	5
Bring-down telegram updating 4 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	6
Charter of Sunbeam Products, Inc. (with all amendments thereto), certified as of a recent date by an appropriate official of the State of Delaware	7
Certificate(s) dated as of a recent date of an appropriate official of the State of Delaware listing all charter documents and as to the good standing and tax status of Sunbeam Products, Inc.	8
Bring-down telegram updating 7 above from an appropriate official of the State of Delaware dated as of the close of business on the business day prior to the Closing Date	9
Certificate of the Secretary of the Issuer	10

NOT A CERTIFIED COPY

242610

Document	Tab No.
Certificate of an executive officer of the Issuer pursuant to the Purchase Agreement	11
Comfort letter from the Accountants	12
Bring-down comfort letter from the Accountants	13
Comfort letter from Ernst & Young LLP	14
Bring-down comfort letter from Ernst & Young LLP	15
Comfort letter from KPMG Peat Marwick LLP	16
Bring-down comfort letter from KPMG Peat Marwick LLP	17
Comfort letter from Price Waterhouse LLP	18
Bring-down comfort letter from Price Waterhouse LLP	19
Officer's Certificate regarding payment under the Credit Agreement	20
Officer's Certificate regarding covenants under the Credit Agreement	21
Certificate of officers of the Issuer pursuant to the Indenture	22
Order to the Trustee pursuant to the Indenture to authenticate and deliver the Securities	23
Registration Rights Agreement	24
Letter of Representations to DTC from the Issuer and the Trustee	25
B. Delivered by Issuer's Counsel	
Opinion of Issuer's Counsel pursuant to the Purchase Agreement	26
Opinion of Janet Kelley, Associate General Counsel of the Issuer pursuant to the Purchase Agreement	27
Letter of Issuer's Counsel permitting the Trustee to rely on certain pertions of its opinion to the Initial Purchaser	28

NOT A CERTIFIED COPY

019243

CONFIDENTIAL

SASMF 03714

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16cv629449 PHO628888

Document	Tab No.
Opinion of Issuer's Counsel to the Trustee pursuant to the Indenture	29
C. Delivered by the Trustee	
Executed Indenture	30
Certificate of the Trustee	31
Letter delivering the authenticated Securities to the Company against receipt therefor	32
D. Delivered by Initial Purchaser's Counsel	
Opinion of Initial Purchaser's Counsel pursuant to the Purchase Agreement	33
E. Delivery of Securities and Payment of Purchase Price	
Cross-receipt between the Issuer and the Initial Purchaser	34
F. Delivered by CLN Holdings Inc.	
Certificate of the Secretary of CLN Holdings Inc.	35
Certificate of the Secretary of the Coleman Company, Inc.	36
Certificate of the Secretary of Coleman Worldwide Corporation	37
G. Delivered by Signature Brands USA, Inc.	
Certificate of an Officer of Signature Brands USA, Inc.	38
H. Delivered by First Alert, Inc.	
Certificate of the Secretary of First Alert, Inc.	39

NOT A CERTIFIED COPY

019244

Document	Tab No.
I. Miscellaneous	
QIB Notes	40
Debentures	41
Purchase Agreement	42
Lock-up Agreements	43
Accredited Investor Letters	44
NYSE Authorization	45

NOT A CERTIFIED COPY

019245

CONFIDENTIAL SASMF 03716

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16CIV-025947

NOT A CERTIFIED COPY

20 019246

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 THIRD AVENUE
NEW YORK 10022-3897

TEL: (212) 735-3000
FAX: (212) 735-2000

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

March 25, 1998

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Re: Sunbeam Corporation -
Zero Coupon Convertible Senior
Subordinated Debentures due 2018

Ladies and Gentlemen:

We have acted as special counsel for Sunbeam Corporation, a Delaware corporation (the "Company"), in connection with the Purchase Agreement, dated March 19, 1998 (the "Purchase Agreement"), between the Company and you (the "Initial Purchaser"), relating to the sale by the Company to you of $2,014,000,000 aggregate principal amount at maturity of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Securities") to be issued under an indenture, dated as of March 25, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee").

This opinion is being furnished to you pursuant to Section 5(c) of the Purchase Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

In connection with this opinion, we have examined originals or copies (including facsimile transmissions), certified or otherwise identified to our satisfaction, of (i) the final offering memorandum, dated March 19, 1998, relating to the Securities (including the document incorporated by reference therein, the "Offering Memorandum"); (ii) an executed copy of the Purchase Agreement; (iii) the form of the Securities and a specimen certificate thereof and a specimen certificate evi-

NOT A CERTIFIED COPY

019247

dencing the Company's common stock, par value $0.01 per share (the "Common Stock"); (iv) an executed copy of the Indenture; (v) an executed copy of the Registration Rights Agreement, dated March 25, 1998, between the Company and the Initial Purchaser (the "Registration Rights Agreement");(vi) the Certificate of Incorporation of the Company, as currently in effect (the "Certificate of Incorporation"); (vii) the By-laws of the Company, as currently in effect (the "By-laws"); and (viii) certain resolutions of the Board of Directors of the Company and of a Pricing Committee established by the Board of Directors of the Company. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates or receipts of public officials, certificates of officers or other representatives of the Company, and such other documents, certificates and records as we have deemed necessary or appropriate as a basis for the opinions set forth herein. The Purchase Agreement, the Indenture and the Registration Rights Agreement are hereinafter referred to collectively as the "Transaction Documents."

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, facsimile or photostatic copies, and the authenticity of the originals of such copies. In making our examination of documents executed or to be executed by parties other than the Company, we have assumed that such parties had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents and that such documents constitute the valid and binding obligations of such parties. As to any facts material to the opinions expressed herein which we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others.

NOT A CERTIFIED COPY

019248

For the purposes of this opinion, the term (i) "Applicable Laws" means the Delaware General Corporation Law (the "DGCL") and those laws, rules and regulations of the State of New York and the United States of America, in each case, which, in our experience, are normally applicable to transactions of the type contemplated by the Transaction Documents (other than the United States federal securities laws, state securities or Blue Sky laws, antifraud laws and the rules and regulations of the National Association of Securities Dealers, Inc.), but without our having made any special investigation with respect to any other laws, rules or regulations; (ii) "Applicable Contracts" means those agreements and instruments listed on Schedule I hereto; (iii) "Applicable Orders" means those judgments, orders or decrees of any Governmental Authorities specifically identified to us by the Company to be applicable to the Company or any of its subsidiaries, as identified on Schedule II hereto; (iv) "Governmental Approval" means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any Governmental Authority required under Applicable Laws, other than any consent, approval or authorization which may have become applicable as a result of your involvement in the transactions contemplated by the Purchase Agreement or because of your legal or regulatory status or because of any other facts specifically pertaining to you; and (v) "Governmental Authorities" means any court, regulatory body, administrative agency, or governmental body of the State of New York or the United States of America having jurisdiction over the Company or any of its subsidiaries under Applicable Laws.

Members of our firm are admitted to the bar in the State of New York, and we do not express any opinion as to the laws of any other jurisdiction other than the DGCL and the federal laws of the United States to the extent specifically referred to herein.

Based upon and subject to the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that:

NOT A CERTIFIED COPY

019249

1. The Company has been duly incorporated, and is validly existing and in good standing under the laws of the State of Delaware. The opinion set forth in this paragraph 1 with respect to the valid existence and good standing of the Company is based solely upon a certificate and telegram from the Secretary of State of the State of Delaware.

2. The Company has the corporate power and authority to own its properties and to conduct its business as described in the Offering Memorandum.

3. The Purchase Agreement has been duly authorized, executed and delivered by the Company.

4. The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Offering Memorandum.

5. The Indenture has been duly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

6. The Registration Rights Agreement has been duly authorized, executed and delivered by the Company is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that (a) enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally, and (ii) general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity), and (b) the enforceability of indemnification and contribution provisions may be limited by

NOT A CERTIFIED COPY

019250

Federal and state securities laws or the public policies underlying such laws.

7. The issuance and sale of the Securities have been duly authorized by the Company, and the Securities, when executed and authenticated in accordance with the terms of the Indenture and delivered to and paid for by you in accordance with the terms of the Purchase Agreement, will be valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

8. The Common Stock initially issuable upon conversion of the Securities has been duly authorized and reserved for issuance by the Company and (assuming payment for the Securities by you in accordance with the Purchase Agreement), when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable and will not be subject to any preemptive or similar rights arising under the DGCL or the Certificate of Incorporation or By-laws. In rendering the opinion set forth in this paragraph 8, we have assumed that the stock certificate evidencing the shares of Common Stock issuable upon conversion of the Debentures will conform to the specimen certificate examined by us and that the transfer agent and registrar for the Common Stock will duly counter sign such stock certificates and register such shares in the share register.

9. The statements in the Offering Memorandum under the captions "The Acquisitions - Acquisition Structure and Agreements", "Description of Debentures", "Registration Rights" and "Plan of Distribution" insofar as such statements purport to summarize the provisions of documents referred to therein, fairly summarize such provisions in all material respects.

NOT A CERTIFIED COPY

019251

10. Although the discussion set forth in the Offering Memorandum under the caption "Certain United States Federal Income Tax Considerations" does not purport to discuss all possible United States federal income tax consequences of the purchase, ownership, conversion and disposition of Securities, such discussion constitutes, in all material respects, a fair summary of the United States federal income tax consequences of the purchase, ownership, conversion and disposition of Securities under current law.

11. The execution and delivery by the Company of, and the consummation by the Company of the transactions contemplated by the Transaction Documents and the Securities will not contravene (i) the Certificate of Incorporation or By-laws, (ii) any Applicable Laws, (iii) any Applicable Contracts or (iv) any Applicable Orders.

12. No Governmental Approval is required for the consummation by the Company of the transactions contemplated by the Transaction Documents or the Securities.

13. The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds as described in the Offering Memorandum, will not be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

14. Assuming (i) the accuracy of the representations and warranties of the Company set forth in Sections 1(q) and 1(s) of the Purchase Agreement and of your representations and warranties set forth in Section 7 of the Purchase Agreement, (ii) the due performance by the Company of the covenants and agreements set forth in Sections 6(f) and 6(g) of the Purchase Agreement and the due performance by you of the covenants and agreements set forth in Section 7 of the Purchase Agreement, (iii) your compliance with the offering and transfer procedures and restrictions described in the Offering Memorandum, (iv) the accuracy of the representations and warranties made in accordance with the Purchase Agreement and the Offering Memorandum by purchasers to whom you initially

NOT A CERTIFIED COPY

019252

resell Securities and (v) that purchasers (other than qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933 (the "Securities Act")) to whom you initially resell Securities duly execute and deliver to you and the Company an investor letter in the form set forth as Appendix A to the Offering Memorandum, the offer, sale and delivery of the Securities to you in the manner contemplated by the Purchase Agreement and the Offering Memorandum, and the initial resale of the Securities by you in the manner contemplated in the Offering Memorandum and the Purchase Agreement, do not require registration under the Securities Act, and the Indenture does not require qualification under the Trust Indenture Act of 1939, as amended, it being understood that we do not express any opinion as to any subsequent resale of any Security or any shares of Common Stock issuable on conversion thereof.

With your consent, we do not express any opinion as to the effect on the opinions set forth above of any possible violation of or default under the Guaranty Agreement dated as of June 1, 1994 (the "Guaranty") between Sunbeam-Oster Company, Inc., as guarantor, and Continental Bank, National Association, as trustee, relating to the Industrial Revenue Development Notes due 2009 (the "IRD Notes") issued by the Mississippi Business Finance Corporation or any possible cross default to the Credit Agreement dated as of September 16, 1996 among the Company, The Chase Manhattan Bank and the lenders named therein, as amended (the "Credit Agreement"); however, we understand that the Company has irrevocably deposited with the trustee for the IRD Notes all amounts due in respect of the Guaranty and has given appropriate notice of repayment to the issuer of the IRD Notes and we also understand that the Company has delivered to you a certificate to the effect that it will repay all amounts outstanding under the Credit Facility to the lenders thereunder as soon as is reasonably practicable.

In addition, we have participated in conferences with officers and other representatives of the Company and the Targets, representatives of the independent accountants of the Company and your representatives and counsel at which the contents of the Offering Memo-

NOT A CERTIFIED COPY

019253

randum and related matters were discussed. We did not participate in the preparation of the documents incorporated by reference in the Offering Memorandum but have, however, reviewed such documents and discussed the business of the Company with representatives of the Company. Although we are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Offering Memorandum and have made no independent check or verification thereof (other than to the extent specified in paragraphs 9 and 10 above), on the basis of the foregoing, no facts have come to our attention that have led us to believe that the Offering Memorandum, as of its date and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that we express no opinion or belief with respect to the financial statements, schedules and other financial and statistical data included therein or excluded therefrom.

In rendering the opinions set forth in paragraphs 5 through 7 above, we have also assumed that the execution and delivery by the Company of the Transaction Documents and the Securities and the consummation of the transactions contemplated thereby do not and will not violate, conflict with or constitute a default under (i) any agreement or instrument to which the Company or its properties is subject (except that we do not make the assumption set forth in this clause (i) with respect to the Certificate of Incorporation, the By-laws or the Applicable Contracts), (ii) any law, rule, or regulation to which the Company is subject (except that we do not make the assumption set forth in this clause (ii) with respect to Applicable Laws), (iii) any judicial or regulatory order or decree of any governmental authority (except that we do not make this assumption with respect to Applicable Orders) or (iv) any consent, approval, license, authorization or validation of, or filing, recording or registration with any governmental authority (except that we do not make this assumption with respect to Governmental Approvals). With respect to the foregoing clause (i) we note that the issuance of the Securi-

NOT A CERTIFIED COPY

019254

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-02456 CP-10025958

ties may result in a possible violation of or default under the Guaranty and a possible cross default to the Credit Agreement; however, we understand that the Company has irrevocably deposited with the trustee under the IRD Notes all amounts due in respect of the Guaranty and has given appropriate notice of repayment to the issuer of the IRD Notes and we also understand that the Company has delivered to you a certificate to the effect that it will repay all amounts outstanding under the Credit Facility to the lenders thereunder as soon as is reasonably practicable.

This opinion is furnished to you solely for your benefit in connection with the closing under the Purchase Agreement occurring today and is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person without our express prior written consent.

Very truly yours,

NOT A CERTIFIED COPY

019255

Schedule I

Applicable Contracts

Employment Agreement dated as of February 20, 1998, by and between the Company and Albert J. Dunlap

Employment Agreement dated as of February 20, 1998, by and between the Company and Russell A. Kersh

Employment Agreement dated as of February 20, 1998, by and between the Company and David C. Fannin

Sunbeam Corporation Executive Benefit Replacement Plan

Amended and Restated Sunbeam Corporation Stock Option Plan

Sunbeam Corporation Performance Based Compensation Plan

Agreement and Plan of Merger among the Company, Laser Acquisition Corp., CLN Holdings, Inc., and Coleman (Parent) Holdings, Inc. dated as of February 27, 1998.

Agreement and Plan of Merger among the Company, Camper Acquisition Corp., and The Coleman Company, Inc. dated as of February 27, 1998.

Agreement and Plan of Merger between the Company, Java Acquisition Corp., and Signature Brands USA, Inc. dated as of February 28, 1998.

Stock Purchase Agreement among Java Acquisition Corp. and the Sellers named therein dated as of February 28, 1998.

Agreement and Plan of Merger by and among the Company, Sentinel Acquisition Corp., and First Alert, Inc. dated as of February 28, 1998.

Stock Sale Agreement among the Company and the Shareholders named therein dated as of February 28, 1998.

NOT A CERTIFIED COPY

019256

Schedule II

Applicable Orders

None

NOT A CERTIFIED COPY

019257

CONFIDENTIAL SASMF 03777
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16div-025459 CPH0628961

NOT A CERTIFIED COPY

019258

Sunbeam

Sunbeam Corporation
Sunbeam Corporate Center
1615 South Congress Ave.
Suite 200
Delray Beach, FL 33445
561 243 2100 Fax 561 243 2029

March 25, 1998

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Re: Sunbeam Corporation -
Zero Coupon Convertible Senior
Subordinated Debentures due 2018

Ladies and Gentlemen:

I am the Vice President, Associate General Counsel of Sunbeam Corporation, a Delaware corporation (the "Company"), and have acted in such capacity in connection with the Purchase Agreement, dated March 19, 1998 (the "Purchase Agreement"), between the Company and you (the "Initial Purchaser"), relating to the sale by the Company to you of $2,014,000,000 aggregate principal amount at maturity of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Securities") to be issued under an indenture, dated as of March 25, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee").

This opinion is being furnished to you pursuant to Section 5(c) of the Purchase Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

In connection with this opinion, I have examined originals or copies (including facsimile transmissions), certified or otherwise identified to my satisfaction, of (i) the final offering memorandum, dated March 19, 1998, relating to the Securities (including the documents incorporated by reference therein, the "Offering Memorandum"); (ii) an executed copy of the Purchase Agreement; (iii) the form of the Securities and a specimen certificate thereof and a specimen certificate evidencing the Company's common stock, par value $0.01 per share (the "Common Stock"); (iv) an executed copy of the

NOT A CERTIFIED COPY

019259

CONFIDENTIAL

SASMF 03779

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-025461 CPH0028963

Indenture; (v) an executed copy of the Registration Rights Agreement, dated March 25, 1998 between the Company and the Initial Purchaser (the "Registration Rights Agreement"); (vi) the Certificate of Incorporation of the Company, as currently in effect (the "Certificate of Incorporation"); (vii) the By-laws of the Company, as currently in effect (the "By-laws"); and (viii) certain resolutions of the Board of Directors of the Company and of a Pricing Committee established by the Board of Directors of the Company. I have also examined originals or copies, certified or otherwise identified to my satisfaction, of such records of the Company and such agreements, certificates or receipts of public officials, certificates of officers or other representatives of the Company, and such other documents, certificates and records I have deemed necessary or appropriate as a basis for the opinions set forth herein. The Purchase Agreement, the Indenture and the Registration Rights Agreement are hereinafter referred to collectively as the "Transaction Documents."

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as certified, conformed, facsimile or photostatic copies, and the authenticity of the originals of such copies. In making my examination of documents executed or to be executed by parties other than the Company, I have assumed that such parties had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents and that such documents constitute the valid and binding obligations of such parties. As to any facts material to the opinions expressed herein which I did not independently establish or verify, I have relied upon oral or written statements and representations of officers and other representatives of the Company and others.

As used herein, the term "Applicable Laws" means the Delaware General Corporation Law (the "DGCL") and those laws, rules and regulations of the State of New York and the United States of America, in each case,

NOT A CERTIFIED COPY

019260

Sunbeam

CONFIDENTIAL

SASMF 03780

16div-035468

CP-H0028964

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

which, in my experience, are normally applicable to transactions of the type contemplated by the Transaction Documents (other than the United States federal securities laws, state securities or Blue Sky laws, antifraud laws and the rules and regulations of the National Association of Securities Dealers, Inc.), but without my having made any special investigation with respect to any other laws, rules or regulations.

In rendering the opinion set forth in paragraph 6 below, I note that the issuance of the Securities may result in a possible violation of or default under the Guaranty Agreement dated as of June 1, 1994 (the "Guaranty") between Sunbeam-Oster Company, Inc., as guarantor, and Continental Bank, National Association, as trustee, relating to the Industrial Revenue Development Notes due 2009 (the "IRD Notes") issued by the Mississippi Business Finance Corporation and a possible cross default to the Credit Agreement dated September 16, 1996, among the Company, The Chase Manhattan Bank and the Lenders named therein, as amended (the "Credit Agreement"); however, the Company has irrevocably deposited with the Trustee thereunder all amounts due in respect of the Guaranty and has given appropriate notice of repayment to the issuer of the IRD Notes and I also understand that the Company has delivered to you a certificate to the effect that it will repay all amounts outstanding under the Credit Agreement to the Lenders thereunder as soon as is reasonably practicable.

I am admitted to the bar in the Commonwealth of Kentucky, and I do not express any opinion as to the laws of any other jurisdiction other than the DGCL and laws of the State of New York and the federal laws of the United States to the extent specifically referred to herein.

Based upon and subject to the limitations, qualifications, exceptions and assumptions set forth herein, I am of the opinion that:

1. The Company has been duly incorporated, and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Offering

NOT A CERTIFIED COPY

0192611

CONFIDENTIAL SASMF 03781
16div 035463
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0028965

Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

2. Each Significant Subsidiary of the Company has been duly incorporated, and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Offering Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, (except for jurisdictions not recognizing the legal concept of good standing), except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each Significant Subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable, and are owned directly, by the Company, free and clear of all liens, encumbrances, equities or claims (collectively, "Liens"), except for, as disclosed in the Offering Memorandum, Liens contemplated by the New Credit Facility.

3. The Purchase Agreement has been duly authorized, executed and delivered by the Company.

4. The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Offering Memorandum.

5. The shares of Common Stock outstanding on the date hereof have been duly authorized and are validly issued, fully paid and non-assessable.

6. The execution and delivery by the Company of, and the performance by the Company of its obliga

NOT A CERTIFIED COPY

019262

Sunbeam

CONFIDENTIAL SASMF 03782

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16div-035464 CP-H00289966

tions under, the Transaction Documents and the Securities will not contravene any provision of Applicable Law or the Certificate of Incorporation or By-laws or, to the best of my knowledge, any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole, or, to the best of my knowledge, any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under the Transaction Documents or the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities and by Federal and state securities laws with respect to the Company's obligations under the Registration Rights Agreement. Although I have had discussions with the Company with respect to the financial covenants contained in the agreements and instruments referred to in this paragraph 6, I do not express any opinion, however, as to whether the execution and delivery by the Company of, and the performance by the Company of its obligations under the Transaction Documents and the Securities will constitute a violation of or a default under any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of the Company; I understand that the Company has delivered to you a certificate dated the date hereof with respect to such matters.

7. I do not know of any legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject other than proceedings fairly summarized in all material respects in the Offering Memorandum and proceeding which I believe are not likely to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under the Transaction Documents or the Securities or to consummate

NOT A CERTIFIED COPY

019263

Sunbeam

CONFIDENTIAL SASMF 03783
16civ-035465
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER CPH0029967

the transactions contemplated by the Offering Memorandum.

8. The Company and its Significant Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except as described in the Offering Memorandum or where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

9. The statements in the Offering Memorandum under the captions "The Acquisitions-Acquisition Structures and Agreements", "Management-New Employment Contracts", "Description of Capital Stock", in "Item 1-Business-Environmental Matters" of the Company's most recent Annual Report on Form 10-K and in "Item 3-Legal Proceedings" of the Company's most recent Annual Report on Form 10-K, insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, fairly summarize the matters referred to therein in all material respects.

10. Each document incorporated by reference in the Offering Memorandum (except for financial statements and schedules and other financial and statistical data included therein as to which I do not express any opinion), complied as to form when filed with the Securities and Exchange Commission in all material respects with the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder.

NOT A CERTIFIED COPY

019264

Sunbeam

CONFIDENTIAL SASMF 03784
16div-025466 OF 16626668
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

In addition, I have participated in conferences with officers and other representatives of the Company, representatives of the independent accountants of the Company and your representatives and counsel at which the contents of the Offering Memorandum and related matters were discussed. Although I am not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Offering Memorandum and have made no independent check or verification thereof (other than to the extent specified in paragraph 9 above), on the basis of the foregoing, no facts have come to my attention that have led me to believe that the Offering Memorandum, as of its date and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that I do not express any opinion or belief with respect to the financial statements, schedules and other financial and statistical data included therein or excluded therefrom.

This opinion is furnished to you solely for your benefit in connection with the closing under the Purchase Agreement occurring today and is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person without my express prior written consent.

Very truly yours,

Janet Kelley

Janet Kelley
Vice President, Associate
General Counsel

NOT A CERTIFIED COPY

019265

g:\shared\legal\wpdata\jgk\laser\opinion.325

203045.01-New YorkS3A

Sunbeam.

NOT A CERTIFIED COPY

019266

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 THIRD AVENUE

NEW YORK 10022-3897

TEL: (212) 735-3000

FAX: (212) 735-2000

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

March 25, 1998

The Bank of New York
101 Barclay Street
New York NY 10286

Ladies and Gentlemen:

Reference is made to the indenture, dated as of March 25, 1998, between Sunbeam Corporation (the "Company") and The Bank of New York, as trustee (the "Trustee"), relating to the issuance of $2,014,000,000 aggregate principal amount at maturity of the Company's Zero Coupon Convertible Senior Subordinated Debentures Due 2018.

Attached hereto is an opinion letter of this firm, dated the date hereof, addressed to Morgan Stanley & Co. Incorporated (the "Initial Purchaser"), pursuant to Section 5(b) of the Purchase Agreement, dated March 19, 1998 (the "Purchase Agreement"), among the Company and the Initial Purchaser. In your capacity as Trustee, you are hereby authorized to rely on the opinions set forth in paragraphs 1, 5, 6, 7, 8 and 14 of such opinion letter as though addressed to you, subject to the limitations, qualifications, exceptions and assumptions set forth in such opinion letter.

This letter is furnished to you solely for your benefit in connection with the closing under the Purchase Agreement occurring today, and is not to be used, circulated, quoted or otherwise referred to for any other reason without our express prior written consent.

Very truly yours,

NOT A CERTIFIED COPY

019267

NOT A CERTIFIED COPY

019268

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

919 THIRD AVENUE

NEW YORK 10022-3897

TEL: (212) 735-3000

FAX: (212) 735-2000

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

March 25, 1998

The Bank of New York
101 Barclay Street
New York, NY 10286

Re: Sunbeam Corporation Zero Coupon Convertible Senior Subordinated Debentures due 2018

Ladies and Gentlemen:

We have acted as special counsel for Sunbeam Corporation, a Delaware corporation (the "Company"), in connection with the sale by the Company of $2,014,000,000 aggregate principal amount at maturity of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Securities") to be issued under an indenture, dated as of March 25, 1998 (the "Indenture"), between the Company and you, as trustee (the "Trustee").

This opinion is being rendered to you pursuant to Section 12.04 of the Indenture.

In connection with this opinion, we have examined originals or copies (including facsimile transmissions) of (i) an executed copy of the Indenture, (ii) an Officers' Certificate (the "Officers' Certificate") pursuant to Sections 12.04 and 12.05 of the Indenture and (iii) an authentication order (the "Company Order") pursuant to Section 2.02 of the Indenture. We have also examined originals or copies (including facsimile transmissions), certified or otherwise identified to our satisfaction, of such other documents, certificates and records as we have deemed necessary for the opinion set forth in this letter.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all

NOT A CERTIFIED COPY

0192669

signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, facsimile or photostatic copies, and the authenticity of the originals of such copies. As to any facts material to the opinions expressed herein which we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others. We have also assumed that you have received the Officers' Certificate and the Company Order.

Members of our firm are admitted to the Bar in the State of New York and we do not express any opinion as to the laws of any jurisdiction other than the laws of the State of New York.

Based upon the foregoing and subject to the assumptions set forth herein, we are of the opinion that all conditions precedent under the Indenture to the issuance and authentication of the Securities have been complied with.

This opinion is given to you solely for your benefit as Trustee under the Indenture and is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person without our express prior written consent.

Very truly yours,

NOT A CERTIFIED COPY

019270

NOT A CERTIFIED COPY

019271

CLN HOLDINGS, INC.

CERTIFICATE OF SECRETARY

CLN Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), does hereby certify, through its Secretary Glenn P. Dickes, that the copies of the minutes of meetings and actions by written consent of the Board of Directors and the committees thereof (if any) and the stockholders of the Company contained in the minute books of the Company provided to Davis Polk & Wardwell on March 11, 1998, by letter of Steven R. Isko of The Coleman Company, Inc. ("Coleman"), are true, correct and complete copies, in all material respects, of such minutes of meetings and actions by written consents since the incorporation of the Company on May 7, 1997 contained in the minute books of the Company, except that such copies of minutes and actions by written consents excludes copies of minutes and actions by written consents of corporate proceedings relating to the acquisition of the Company and Coleman by Sunbeam Corporation ("Sunbeam") pursuant to the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, the Company, Coleman (Parent) Holdings Inc. and Laser Acquisition Corp., and the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, Coleman and Camper Acquisition Corp.

CLN HOLDINGS, INC.

Glenn P. Dickes
Secretary

Dated: As of March 25, 1998

NOT A CERTIFIED COPY

019272

NOT A CERTIFIED COPY

019273

THE COLEMAN COMPANY, INC.

CERTIFICATE OF SECRETARY

The Coleman Company, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), does hereby certify, through its Secretary Barbara Allen, that the copies of the minutes of meetings and actions by written consent of the Board of Directors and the committees thereof and the stockholders of the Company contained in the minute books of the Company provided to Davis Polk & Wardwell on March 12, 1998, by letter of Steven R. Isko of the Company, are true, correct and complete copies, in all material respects, of such minutes of meetings and actions by written consents since January 1, 1996, contained in the minute books of the Company except that such copies of minutes and actions by written consents excludes copies of minutes and actions by written consents of corporate proceedings relating to the acquisition of the Company and CLN Holdings, Inc. by Sunbeam Corporation ("Sunbeam") pursuant to the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, CLN Holdings, Coleman (Parent) Holdings Inc. and Laser Acquisition Corp., and the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, the Company and Camper Acquisition Corp.

THE COLEMAN COMPANY, INC.

Barbara Allen
Secretary

Dated: As of March 25, 1998

NOT A CERTIFIED COPY

019274

03/24/98 TUE 08:35 [TX/RX NO 5107] 002

NOT A CERTIFIED COPY

019275

COLEMAN WORLDWIDE CORPORATION

CERTIFICATE OF SECRETARY

Coleman Worldwide Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), does hereby certify, through its Assistant Secretary Barbara Allen, that the copies of the minutes of meetings and actions by written consent of the Board of Directors and the committees thereof and the stockholders of the Company contained in the minute books of the Company provided to Davis Polk & Wardwell on March 12, 1998, by letter of Steven R. Isko of The Coleman Company, Inc. ("Coleman"), are true, correct and complete copies, in all material respects, of such minutes of meetings and actions by written consents since January 1, 1996, contained in the minute books of the Company except that such copies of minutes and actions by written consents excludes copies of minutes and actions by written consents of corporate proceedings relating to the acquisition of Coleman and CLN Holdings, Inc. by Sunbeam Corporation ("Sunbeam") pursuant to the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, CLN Holdings, Coleman (Parent) Holdings Inc. and Laser Acquisition Corp., and the Agreement and Plan of Merger dated as of February 27, 1998 by and among Sunbeam, the Company and Camper Acquisition Corp.

COLEMAN WORLDWIDE CORPORATION

Marvin Schaffer
Assistant Secretary

Dated: As of March 25, 1998

NOT A CERTIFIED COPY

019276

NOT A CERTIFIED COPY

APPENDIX A

ACCREDITED INVESTOR LETTER

Sunbeam Corporation
1615 S. Congress Avenue, Suite 200
Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the accounts of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than $100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

NOT A CERTIFIED COPY

019278

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent thereof) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

(Name of Purchaser)

Trust Company of the West

By: _____

Name: Kevin Hunter
Title: Managing Director
Date: March 19, 1998

Trust Company of the West as Trustee
of the TCW Convertible Strategy Fund
3.22Om bonds

Upon transfer, the securities would be registered in the name of the new beneficial owner as follows:

Name: Salkeld & Co.
Address: Bankers Trust Co.
16 Wall Street, Fourth Floor
Corporate Receive Department, Window 44
For Samura Bank of California #92303

Tax ID: 113-6065491

NOT A CERTIFIED COPY

(TUE)03 24' 98 13:09/ST. 13:07/NO. 3560731342 P 5
MAR 24 1998 17:32
FROM TCW TRADING
212 761 0192

APPENDIX A

ACCREDITED INVESTOR LETTER

March 24, 1998

Sunbeam Corporation
1615 S. Congress Avenue, Suite 200
Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than $250,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

NOT A CERTIFIED COPY

019280

CONFIDENTIAL SASMF 04044
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER GRH0629228
16div-025482

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer, and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

Quantity: 625,000 Principal Amount

If the securities purchased by Institutional Accredited Investors are not available for delivery in book entry form through DTC, then upon transfer, the Securities would be registered, on behalf of the beneficial owner, in the nominee of Boston Safe Deposit and Trust Company, (the custodial bank) as follows:

Name: Bost & Co
Address: P.O. Box 3197
Pittsburgh, PA 15230-3197
Attn: Bond Unit

Taxpayer ID Number: 04-6013753

OCM Convertible Limited Partnership
Name of Purchaser

Oaktree Capital Management, LLC
as General Partner for
OCM Convertible Limited Partnership

By: Richard Wicklins
Name: Richard Wicklins
Title: Vice President, Legal
Date: March 24, 1998
Address: Oaktree Capital Management, LLC
c/o OCM Convertible Limited Partnership
550 South Hope St, 22nd Floor
Los Angeles, CA 90071

NOT A CERTIFIED COPY

CONFIDENTIAL
SASMF 04045
CPH0629229
16div-025483
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

APPENDIX A

ACCREDITED INVESTOR LETTER

Sunbeam Corporation
1615 S. Congress Avenue, Suite 200
Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank" within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than $100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below, provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

NOT A CERTIFIED COPY

0192822

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgements and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

ZAZOVE ASSOCIATES, LLC *
(Name of Purchaser)

By: Steve Kleiman
Name: Steve Kleiman
Title: Chief Equity Officer

* Registered investment adviser with discretionary accounts.

NOT A CERTIFIED COPY

CONFIDENTIAL SASMF 04047
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 16cv025485

NOT A CERTIFIED COPY

01/28/14

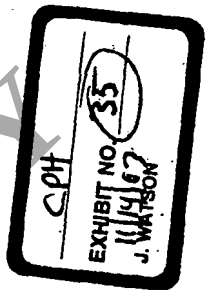
MORGAN STANLEY *MEMORANDUM*

TO: Russell Kersh
David Fannin
Janet Kelly
Donald Uzzi
Bob Gluck
Alan Dean
Greg Fernicola

DATE: March 23, 1998

FROM: John Tyree
Johannes Groeller
Shani Boone

SUBJECT: Sunbeam Bring-down due diligence



Here are some of the areas we would like to cover during our bring-down due diligence call:

- Please update us on the build-up of the first quarter revenues and earnings
  - booked revenues
  - probable orders (degree of probability?)
  - potential orders
  - domestic/international mix
- Are you still comfortable with the market update in the March 19 press release?
- Are you still comfortable with a 1998 earnings estimate of $1.80?
- Any further information on the impact of the Asian crisis on the overall business?
- Any significant customer account wins? Losses?
- Any indications of a management change/departure in the near future?
- What is the status of the acquisitions? Hart Scott approval?
- Are the expected synergy estimates for the three acquisitions still up-to-date?
- Any issues with the bank financing? Still on target? Disclosure still accurate?
- Any material business or litigation issues that have arisen at the three acquisitions that you are aware of?
- Any additional acquisitions/dispositions pending?
- Any material developments in litigation?
- Any other material developments that we should be aware of?

NOT A CERTIFIED COPY

019286

ARTHUR ANDERSEN

To: The Files

From: Lawrence A. Bornstein, West Palm Beach

Date: July 2, 1998

Subject: Due Diligence call with Morgan Stanley

On March 7, 1998, we were requested to participate on an oral due diligence call with Sunbeam's lead underwriter, Morgan Stanley "Morgan" as well as other representatives of the Project Laser team We requested a standard release from the Company and Morgan who replied that it was not in accordance with their policy to sign such a letter and that they have recently worked with AA in New York with out such a letter. Phil Harlow, engagement partner discussed with Don Denkhaus, Audit Division Head that Morgan was unwilling to sign the release letter and Don stated it was not uncommon and to proceed with the meeting providing that the client was involved on the call.

On March 12, 1998, I participated in the conference call from New York, in addition the following were on the line or in attendance in New York. Phil Harlow, engagement partner, Larry Bornstein, engagement manager, Bob Gluck, Corporate Controller, Sunbeam, John Tyree, Morgan Stanley, Bob Lurie, Davis Polk, Andy Savari, Morgan Stanley, George Scott, First Union as well as a representative from Bank of America.

Attached is the agenda, as well as notes from that meeting Mr. Savori and Mr. Lurie asked the questions and Mr. Harlow provided responses.

The questions from the agenda were asked in their entirely and the responses were as follows:

1 Introduction made by Phil Harlow

2. 7 years

3 a. As disclosed in the Company's 10-K the Company has engaged in a bill and hold policy reporting approximately 3% of gross sales.

b. Nothing of a material nature.

4. a. Our audit was primarily substantive in nature. No material weaknesses in internal controls were noted.

b The Company is in the process of implementing Year 2000 software.

5
- Cutoff issues
- Restructuring reserves
- Receivables and inventory

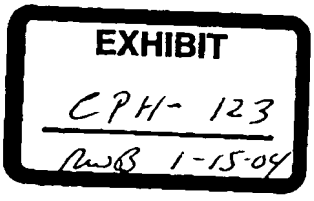
6. None

7. No items of material nature.

NOT A CERTIFIED COPY

019288

AA055781 Confidential Treatment Requested by Arthur Andersen LLP



Date: July 2, 1998

Subject: Due Diligence call with Morgan Stanley

8. On a scale of 1-10 around a 5 or 6.

9. Yes. Management letter points related to the Mexico operations, Year 2000 and sales practices.. No items of material nature.

10. No material adjustments were recorded.

11. and 12. Yes, reasonable

13. One RAR pending 94 RAR recent taxable treatment

14. Full timely reviews, no opinion rendered.

15. Very frequent involvement in major transactions

16. Yes

17. No.

SHP/sun000/project one-to-one due diligence

NOT A CERTIFIED COPY

019289

AA055762 Confidential Treatment Requested by Arthur Andersen LLP

PROJECT ONE-TIME

Accounting Due Diligence

1. Describe your history with the Company and your personal qualifications.
2. Policy to rotate Partner on job? 7 yr
3. Anything peculiar to the Company that is not generally the way the industry accounts for:
   a. revenue recognition - ~~Bill and Hold 40 million 99 2001~~
   b. capitalizing costs vs. expensing/deferring costs ~~nearly material ... FAT Reserve Rev~~
4. Adequacy of internal controls
   a. ~~Internal controls adequate for current operations?~~
      1. ~~Fraud detection - Code of conduct - ... whistle blower ...~~
      2. Adequate personnel and supervisory controls? - Yes
   b. Operating system integrated w/ accounting? ~~Some~~ MRP - EDI ~~not~~ technology S.O fully Int system
5. In preparing for your annual audit, do you do a risk analysis to determine what areas to focus on? What was the focus for last audit? Yes - Cutoff - Restructuring
6. Any irregularities or errors covered by SAS 53? ~~82~~ - Rec) related rev... - Inv
7. Any claims, rumors of fraud, misconduct, illegal acts covered by SAS 54/Foreign Corrupt Practices? - ~~Mexico Bribe Int - SEC Rule 10b-5~~ NO Amort Price spec/dr.
8. How aggressive is the Company in its accounting policies? ~~Aggressive/... and ... Financial 100's ...~~
9. Do you prepare management letters? If no - what would management letter have covered for most recent year? Yes - Bill and Hold - Mexico - Year 2000 - ~~EPI Printers~~
10. Any major adjustment recommended? Not mat'l - Encore EPI - ~~Discount Accounts Rep's~~ none
11. Comfortable with Depreciation lives? Yes
    Comfortable with Amortization periods? Yes
12. Comfortable with reserves for bad debt? - Reasonable
13. Status of any audits by IRS - Pending - ~~current~~ 94 - RAR - Final
14. Level of Quarterly Review/SAS 71 - Full review timely Rec'd - No opn
15. Frequency & Level of involvement in major transactions

Good / Timely / Adl

NOT A CERTIFIED COPY

AA055763 Confidential Treatment Requested by Arthur Andersen LLP

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-025490

PROJECT ONE-TIME

Accounting Due Diligence
(continued)

16. Company is conservative and leans to full disclosure? (Yes)

17. During the period in which you have been the auditor for the Company, have any material discrepancies been noted by the SEC as it relates to the Company's auditing and accounting procedures? (NO)

NOT A CERTIFIED COPY

019291

AA055764 Confidential Treatment Requested by Arthur Andersen LLP

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

v. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
_____/

DECLARATION OF WILLIAM REID

1. I am William Reid. I was employed by Morgan Stanley & Co. Incorporated from 1993 to 2003. In that capacity, I have personal knowledge of the matters set forth herein.

2. I am a citizen and resident of the State of New York. I do not own or maintain a residence in the State of Florida, nor do I transact business in person in Florida.

3. I know Ronald O. Perelman. I had one telephone conversation with Mr. Perelman about a potential acquisition transaction involving Sunbeam and Coleman. That conversation occurred in mid-to-late January 1998. I cannot recall any other conversations about the transaction with Mr. Perelman (or any other employee or agent of Coleman, MacAndrews & Forbes Holdings Inc. or any of their affiliated companies) before the closing of the acquisition on March 30, 1998.

4. I called Mr. Perelman in January 1998 to determine whether Mr. Perelman had any interest in restarting discussions with Sunbeam concerning a possible acquisition transaction between Sunbeam and Coleman. Sunbeam and Mr. Perelman had discussed a possible acquisition on December 18, 1997, but those discussions ended on that date.

NOT A CERTIFIED COPY

019293

5. During the January 1998 telephone call, I told Mr. Perelman that Morgan Stanley had been retained by Sunbeam in connection with the proposed acquisition transaction, and that I was calling on Sunbeam's behalf. Any claim that I (or Morgan Stanley) established any relationship with Coleman, MacAndrews & Forbes Holdings Inc., or any of their affiliated companies in connection with the negotiation of the Sunbeam / Coleman transaction would be false.

6. At no time during the January 1998 telephone call did I give Mr. Perelman financial or other advice about the potential acquisition transaction between Sunbeam and Coleman.

7. During the January 1998 telephone call, the only information I gave Mr. Perelman is accurately described on page 2 of Exhibit A to the attached March 30, 1998 letter from Wachtell, Lipton Rosen & Katz.

UNDER PENALTY OF PERJURY, I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.

William Reid

NOT A CERTIFIED COPY

019294

MS
DEPOSITION
EXHIBIT # 70
FOR ID TRN
4-8-04

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

227 WEST MONROE STREET
CHICAGO, ILLINOIS 60606
TELEPHONE: (312) 236-8080
FACSIMILE: (312) 236-8595

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE GEWERTZ
BERNARD W. NUSSBAUM
RICHARD D. KATCHER
DOUGLAS S. LIEBHAFSKY
STEVEN M. BARNA
CHARLES T. MEDERRICK
CHAIM J. FORTGANG
PETER C. CANELLOS
MICHAEL W. SCHWARTZ
ALLAN A. MARTIN
BARRY A. BRYER
LAWRENCE B. PEDOWITZ
ROBERT B. MAZUR
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
DAVID M. EINHORN
KENNETH B. FORREST
MEYER G. KOPLOW
THEODORE N. MIRVIS
EDWARD D. HERLIHY
RICHARD D. FEINTUCH
DANIEL A. NEFF
ERIC M. ROTH
WARREN R. STERN
ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
PAUL K. ROWE
MICHAEL B. BENNER
MARC WOLINSKY

DAVID GRUENSTEIN
PATRICIA A. VLAHAKIS
STEPHEN G. GELLMAN
SETH A. KAPLAN
BARBARA ROBBINS
STEVEN A. ROSENBLUM
PAMELA S. SEYMON
STEPHANIE J. SELIGMAN
ERIC S. ROBINSON
ELLIOTT V. STEIN
JOHN F. SAVARESE
SCOTT K. CHARLES
ANDREW C. HOUSTON
PHILIP MINDLIN
DAVID S. NEILL
JODI J. SCHWARTZ
ADAM O. EMMERICH
CRAIG M. WASSERMAN
ADAM D. CHINN
GEORGE T. CONWAY III
RALPH M. LEVENE
RICHARD G. MASON
KAREN G. KRUEGER
DOUGLAS K. MAYER
DAVID M. SILK
ROBIN PANOVKA
DAVID A. KATZ
MITCHELL S. PRESSER
ILENE KNABLE GOTTS
JEFFREY R. BOFFA
DAVID M. MURPHY
JEFFREY M. WINTNER

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)

COUNSEL

WILLIAM T. ALLEN*
LAWRENCE P. KING
PETER D. MCKENNA
NORMAN REDLICH
JOHN M. RICHMAN
LEONARD M. ROSEN
AMY R. WOLF

MICHAEL S. KATZKE
DEBORAH L. PAUL
TREVOR S. NORWITZ
TONI P. REAMER
STEVEN M. ABRAMOWITZ
BRADLEY A. ROBINS
STUART C. BERMAN
YOCHEVED COHEN
BEN M. GERMANA
DAVID R. LURIE
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEPHEN R. BLACKLOCKS
DAVID C. BRYAN
STEVEN A. COHEN
ERIC L. PRESS
GAVIN O. SOLOTAR
ADRIENNE ATKINSON
JUDITH G. FEDERBUSH
LAWRENCE GERSCHWER
DAVID C. KARP
BARBARA S. KOHL
MIRIAM P. LONGCHAMP
HOWARD A. MERGELKAMP III
EDWARD A. STELZER
ELIZABETH K. STEPP
KEITH H. WOFFORD
MARC D. ASHLEY
JOSHUA R. CAMMAKER
SETH GARDNER
MARK GORDON
BARRY P. KLEINER
JOSEPH D. LARSON
LAWRENCE S. MAKOW
THAO P. MATLOCK
JEANNEMARIE O'BRIEN
MELANIE L. OXHORN
JARED M. RUSHAN
EUGENE P. STEIN
SHEENA WRIGHT
LARA ADAMSONS
SCOTT L. BLACK
JAMES COLE, JR.
STEPHEN R. DIPRIMA
DAVID L. ELSBERG
DOUGLAS C. FREEMAN
NANCY B. GREENDAUM
SALIL KUMAR
FRANK L. MILLER
ARRIE R. PARK
JULIUS R. SCHWARZ
ALEXANDER SHAKNES
KEVIN P. SHEEHAN
SARAH E. STRASSER
GARY M. SWIDLER
WAYNE W. YU
NICOLE E. CLARK
BRUCE N. GOLDBERGER
JEFFREY B. GOLDEN
RICHARD B. HARDEGREE
MICHAEL F. MASLANSKY

*OF DELAWARE BAR ONLY

March 30, 1998

VIA TELECOPIER AND FEDERAL EXPRESS

Susie Youn, Esq.
Staff Attorney
Division of Enforcement
United States Securities and
Exchange Commission
Central Regional Office -
1801 California St., Suite 4800
Denver, Colorado 80202-2648

Re: Trading in the Securities of Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (MD-1200)

Dear Ms. Youn:

We are counsel to The Coleman Company, Inc. ("Coleman" or the "Company"). This letter is in response to your letter of March 3, 1998, requesting that Coleman voluntarily provide to the Commission certain information relating to the March 2, 1998 announcement concerning Sunbeam Corporation and Coleman.

The information herein and provided herewith represents a reconstruction of events and was compiled based upon a reasonable review of the documents in the possession of Coleman and reasonable inquiries made by Coleman of its personnel and certain of its legal and other advisors and representatives. The information is based in substantial part on the recollection of the individuals involved, as many of the events leading up to the March 2

NOT A CERTIFIED COPY

019295

CP 011337
CONFIDENTIAL

announcement were not documented. In addition, although the Company of course seeks to provide the SEC with accurate information, the information included herein and provided herewith was collected on an expedited basis and it is possible that supplementation, correction and/or modification by the Company may be needed in the future.

A chronology of events leading up to the March 2, 1998 announcement is attached hereto as Exhibit A. A list of individuals known to Coleman who had knowledge of a potential transaction between Coleman and Sunbeam prior to the March 2 announcement (other than those already identified in the Chronology) is attached hereto as Exhibit B. In response to your request for the identity of persons from whom the Company received inquiries regarding the acquisition prior to the March 2 announcement:

(i) during a February 27, 1998 telephone conversation between Jerry W. Levin, the Chairman of Coleman, and Timothy B. Horne, the Chief Executive Officer of the Charbroil Division of W.C. Bradley Co., Mr. Horne told Mr. Levin he had heard rumors that Coleman was contemplating a transaction with Sunbeam. Mr. Levin did not respond.

(ii) Marc Shiffman, the person principally responsible for investor relations at Coleman, received several calls from buy- and sell-side analysts, equity holders and bondholders in February 1998, particularly following the February 19 release of Coleman's financial results. During the course of some of those discussions, inquiries were made of Mr. Shiffman regarding the possibility of a transaction with Sunbeam. Mr. Shiffman, who at that time was not aware that any discussion had taken place between Coleman and Sunbeam, does not recall which specific individuals made such inquiries. Mr. Schiffman responded to all such inquiries by stating that it is Coleman's policy not to comment on rumors.

The materials attached hereto bear Bates numbers COLEMAN 00001-COLEMAN 00007, and are marked "confidential." We request confidential treatment for this letter and the accompanying materials pursuant to 18 U.S.C. § 1905, 17 C.F.R. § 200.83, and other applicable laws and regulations and further request that these materials not be made part of any public record and not be disclosed to any person.

The information contained in this letter and the accompanying materials is maintained in confidence and is not available to competitors or other parties. In addition, the information has been provided voluntarily in connection with the above-referenced inquiry. We believe that the disclosure of this information could have adverse affects on our client's competitive position and/or would constitute an unwarranted invasion of personal privacy. Accordingly, such documents are exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(6) and (b)(7), and disclosure is prohibited pursuant to 18 U.S.C. § 1905.

If any person (including any government employee who is not an employee of the Securities and Exchange Commission) should request an opportunity to inspect or copy this

NOT A CERTIFIED COPY

019296

letter or the accompanying materials, we request that we be immediately notified of any such request, be furnished with a copy of all documents pertaining to such requests (including, but not limited to, the request itself or any agency determinations with respect to such request) and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. If the Securities and Exchange Commission is not satisfied that the information set forth in this letter and the accompanying materials is exempt (or protected) from disclosure pursuant to the Freedom of Information Act, we stand ready to supply further particulars, and we would request in such event a hearing on this claim of exemption.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any such whatsoever which are made by or at the direction of any employee of the Securities and Exchange Commission (or any other governmental agency) which incorporate, include or relate to any of the confidential information contained in this letter or the accompanying materials.

If you have any questions about the foregoing, please contact the undersigned at 212-403-1000.

Very truly yours,

Paul K. Rowe

cc: Freedom of Information Act Officer
Joram C. Salig, Esq.
Steven R. Isko, Esq.

NOT A CERTIFIED COPY

019297

CP 011339
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1401527

16div-025496

Exhibit A

Early Dec. 1997	Albert J. Dunlap (Chairman and Chief Executive Officer, Sunbeam), called Ronald O. Perelman (Chairman and Chief Executive Officer of Mafco Holdings Inc. ("MacAndrews"), indirectly the largest stockholder of The Coleman Company ("Coleman"), with an interest of in excess of 80%, and a director of Coleman) to talk about a possible transaction involving Sunbeam and Coleman.
Dec. 12, 1997	Jerry Levin (Chairman, Coleman), Paul E. Shapiro (Executive Vice President and General Counsel, Coleman) and Joseph P. Page (Executive Vice President and Chief Financial Officer, Coleman) gave a presentation to David C. Fannin (Executive Vice President, General Counsel and Secretary, Sunbeam Corporation ("Sunbeam")), Russell A. Kersch (Vice Chairman and Chief Financial Officer, Sunbeam) and Peter A. Langerman (a director of Sunbeam) on Coleman's business and potential synergies that could result from a combination of Sunbeam and Coleman. Later that day, Mr. Perelman met with Howard Gittis (Vice Chairman of MacAndrews), James R. Maher (also of MacAndrews), Gordon Rich (of Credit Suisse First Boston ("CSFB")) and Mr. Levin and discussed a potential transaction involving Coleman and Sunbeam. Coleman retained CSFB to act as financial advisor in connection with a potential transaction between Sunbeam and Coleman.
Dec. 16, 1997	Messrs. Perelman, Maher, Gittis, Levin and Shapiro, and William G. Nesbitt and Norman J. Ginstling (both of MacAndrews), Donald G. Drapkin (a director of Coleman and an officer of MacAndrews) and Gordon Rich, Robert Duffy and Stephen Geller (all from CSFB) met and discussed a potential transaction involving Coleman and Sunbeam.
Dec. 17, 1997	Messrs. Perelman, Maher, Gittis, Shapiro, Nesbitt, Drapkin, Rich, Duffy and Geller met and discussed a potential transaction involving Coleman and Sunbeam.

NOT A CERTIFIED COPY

019298

Dec. 18, 1997	Messrs. Perelman, Dunlap and Michael Price (President of Franklin Mutual Advisors, Inc., the largest holder of Sunbeam stock) met in Florida to discuss a potential transaction between Coleman and Sunbeam. Mr. Dunlap indicated an interest in acquiring Coleman in a transaction valued in the range of $18-22 per Coleman share. Mr. Perelman advised Mr. Dunlap that the price was too low and indicated that he would not be prepared to support a transaction at that price.
Week of Dec. 22, 1997	Mr. Price called Mr. Gittis and indicated that Sunbeam might be willing to consider a transaction valued as high as $25 per Coleman share. Mr. Gittis indicated that a proposal at that level would not be of interest.
Early Jan.1998	William Reid (a Managing Director of Morgan Stanley, Sunbeam's financial advisor) called Mr. Perelman and advised him that Sunbeam still had interest in a potential transaction with Coleman. Mr. Reid further advised Mr. Perelman that Sunbeam would consider a proposal that involved the payment by Sunbeam of both cash and stock, and that Sunbeam might be prepared to make an offer valued in excess of $25 per share. Mr. Perelman advised Mr. Reid that he would be willing to discuss supporting a transaction at $30 per share.
Jan. 23, 1998	Mr. Nesbitt met with James B. Stynes, Alexandre J. Fuchs and Tyrone Chang (each from Morgan Stanley) to discuss a potential transaction involving Sunbeam and Coleman.
Jan. 28, 1998	Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton") is retained as special counsel to Coleman.
Jan. 29, 1998	Barry F. Schwartz of MacAndrews telephoned Wachtell Lipton to indicate that a form of confidentiality agreement to be proposed to Sunbeam in connection with the provision of confidential information to Sunbeam will be faxed to Wachtell Lipton for review. Joram C. Salig of MacAndrews faxed the confidentiality agreement to Wachtell Lipton and Paul Shapiro, General Counsel of Coleman, for their respective review. Messrs. Stynes, Fuchs, Chang, Fannin and Kersch met with Messrs. Levin, Page, Shapiro, Maher, Nesbitt and Rich discussed potential synergies that could be created by a combination of Coleman and Sunbeam. They further discussed how the companies might proceed with due diligence and related matters if Sunbeam made an acceptable proposal.

NOT A CERTIFIED COPY

019299

Feb. 4, 1998	Sunbeam entered into a confidentiality agreement with Coleman.
Feb. 6, 1998	Messrs. Stynes, Fuchs, Chang and Robert Kitts of Morgan Stanley met with Messrs. Maher, Nesbitt, Rich and Duffy in New York. The representatives of Morgan Stanley made a presentation reflecting a transaction in which Coleman would be acquired by Sunbeam for consideration of .6017 Sunbeam shares per Coleman share (which was approximately $22 per share), plus warrants that Morgan Stanley valued at $4 per share. Mr. Maher indicated that MacAndrews would not be prepared to support such a proposal and advised Morgan Stanley that only an all-stock transaction that valued Coleman's stock at $30 per share, or an amount slightly lower than $30 per share if the transaction involved a combination of stock and cash, would be of interest.
Feb. 13, 1998	Messrs. Stynes and Kitts called Mr. Maher and said they were making a "best and final" proposal of .65116 shares of Sunbeam stock per share of Coleman (which was approximately $24.50 per share). Mr. Maher again indicated that the proposal was not of interest.
Feb. 18, 1998	During a telephone conversation between Messrs. Maher and Kitts, Mr. Kitts invited a counter-proposal.
Feb. 19, 1998	Following discussion among Messrs. Perelman and Maher, Mr. Maher conveyed to Mr. Kitts by telephone that management and MacAndrews would be willing to recommend a proposal of .789 Sunbeam shares per Coleman share (which was approximately $30 per share). Mr. Kitts called Mr. Maher later that day and proposed .711 Sunbeam shares per share of Coleman stock (which was approximately $26.90 per share). Mr. Maher indicated that he believed that Coleman would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock per share of Coleman stock (which was approximately $28.20 per share).
Feb. 23, 1998	Messrs. Nesbitt, Page, Levin, Shapiro, Duffy and Geller met with Messrs. Stynes, Fuchs and Richard Goudis (Vice President, Finance and Investor Relations of Sunbeam) in New York to conduct due diligence. Later that day, Messrs. Maher, Nesbitt, Duffy and Chuck Ward (of CSFB) met to discuss the potential transaction.

NOT A CERTIFIED COPY

019300

That night, Messrs. Nesbitt, Shapiro, Levin, Page, Maher, Duffy and Steven R. Isko (Vice President - Legal of Coleman) and Messrs. Fannin, Kersch, Kitts, Stynes, Fuchs, Chang and Goudis met at Morgan Stanley's offices. Sunbeam made a presentation regarding its 1998 operating projections.

Feb. 24-27, 1998 — Coleman and Sunbeam, and their respective advisors, negotiated the structure of the transaction, conducted due diligence, and drafted the necessary documentation.

Feb. 24, 1998 — Mr. Levin called the Coleman directors and advised them of the proposed transaction, described the principal terms of the deal, and notified them of a board meeting to be held the following day. Mr. Levin reached all of the directors except Lawrence M. Jones.

Representatives of Coopers & Lybrand visited Coleman's headquarters in Wichita, Kansas on behalf of Sunbeam in order to tour the Wichita plant facility. They were accompanied by Messrs. David Ramone and Joseph Nold, two senior Coleman executives.

Feb. 25, 1998 — By February 25, the negotiations had resulted in a proposed transaction in which each share of Coleman common stock would be converted into the right to receive (A) 0.6258 shares of Sunbeam common stock and (B) $4.40 in cash. The Board of Directors of Coleman met. The meeting was attended by directors Jerry W. Levin, Donald G. Drapkin, Frank Gifford, Ann D. Jordan, John A. Moran (by telephone), Ronald O. Perelman, Bruce Slovin and William H. Spoor (by telephone); representatives of Coleman (Joseph P. Page, Paul E. Shapiro and Steven R. Isko); representatives of MacAndrews (Howard Gittis, Barry F. Schwartz, James R. Maher, William G. Nesbitt); representatives of Wachtell Lipton (Adam O. Emmerich, Paul K. Rowe, Michael S. Katzke); and representatives of CSFB (Gordon Rich, Robert Duffy). Directors Lawrence M. Jones and James D. Robinson III did not attend the meeting. Messrs. Levin and Maher and the outside advisers advised the Board of the history of the negotiations, the structure of the transaction, and various legal and financial issues regarding the proposal. The meeting adjourned with the expectation that the directors would meet again on February 27, 1998 to discuss the transaction further.

NOT A CERTIFIED COPY

019301

Feb. 27, 1998	The Board of Directors of Coleman met to consider the proposed transaction. The meeting was attended by directors Levin, Drapkin, Gifford, Jones, Jordon, Moran (by telephone), Perelman, Robinson, Slovin, Spoor (by telephone); representatives of Coleman (Messrs. Page, Shapiro, Isko); representatives of MacAndrews (Messrs. Gittis, Maher and Nesbitt); representatives of Wachtell Lipton (Messrs. Emmerich, Rowe and Katzke); and representatives of CSFB (Messrs. Rich and Duffy). The directors were updated on the status of the transaction, and were advised that that transaction contemplated that each share of Coleman common stock would be converted into the right to receive (A) 0.5677 shares of Sunbeam common stock and (B) $6.44 in cash. The Board heard presentations from Mr. Levin and the outside advisers regarding the structure and terms of the transaction and related financial and legal matters, and the Board approved the transaction.
Feb. 28, 1998	Coleman and Sunbeam executed a final agreement early Saturday morning.
March 2, 1998	Coleman and Sunbeam publicly announced the transaction prior to the opening of the securities markets.

NOT A CERTIFIED COPY

019302

Exhibit B

In addition to the individuals identified in the Chronology, the following individuals were aware of a potential transaction involving Coleman and Sunbeam prior to the public announcement on March 2, 1998:

MacAndrews & Forbes

Lenny Ajzenman
Lorelei Joy Borland
James T. Conroy
Glenn P. Dickes
Jaymie A. Durnan
Irwin Engelman
Steven L. Fasman
Norman J. Ginstling
Richard E. Halperin
J. Eric Hanson
Anthony J. Ian
Robert I. Knibb
Gary L. Leshko
Paul G. Savas
Marvin Schaffer
Todd J. Slotkin
A. Ernst Toth
John Winkel
Laurence Winoker
Gregory J. Woodland

The Coleman Company

Karen C. Clark
James Rasmus
Cynthia Rosel

Credit Suisse First Boston

Ramesh Chakrapani

NOT A CERTIFIED COPY

Wachtell, Lipton, Rosen & Katz

Andrew R. Brownstein
Michael H. Byowitz
Peter C. Canellos
Steven A. Cohen
David M. Einhorn
Ilene Knable Gotts
Michael W. Jahnke
Karen G. Krueger
Martin Lipton
Frank L. Miller
Deborah L. Paul

Robinson, Lerer & Montgomery

Linda Gosden Robinson
Walter Montgomery
Jim Badenhausen
Mary Ann Dunnell
John Franklin
John Quirk
Carey Monserrate
Deborah Bohac
Julie Lougee
Jennifer Kipe

NOT A CERTIFIED COPY

019304

CP 011346
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1401534

16div-025503

Volume: I

Pages: 1 - 197

Exhibits: 178 - 186

COPY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff, Case No. CA 03-5045 AI

v.

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

v.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants.

----------x

VIDEOTAPED DEPOSITION of SHANI BOONE, a witness called for examination taken pursuant to the Applicable Provisions of the Florida Rules of Civil Procedure, before Laurie K. Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of

NOT A CERTIFIED COPY

019306

A. -- that I heard.
Q. And you heard that that was a problem at Sunbeam?
A. Yes.
Q. When did you first hear about those problems?
A. I believe it was -- it was after the deal had closed and it was when it was publicized in the Journal, I believe.
Q. Would it be fair to say it was shortly after the deal was closed?
MS. BROWN: Objection.
A. I cannot say.
Q. How is it that you came to work on the Sunbeam engagement?
A. I do not recall.
Q. As a general matter how is work assigned out to analysts at Morgan Stanley?
A. There is a staffer.
Q. And that's a person who does what?
A. Who assigns projects. Also, sometimes the vice president of the deal will request a specific analyst to work on the deal.
Q. And when approximately were you assigned to the Sunbeam engagement?

NOT A CERTIFIED COPY

019307

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No.CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-vs-

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

DEPOSITION OF LAWRENCE ALAN BORNSTEIN

(Videotaped)

VOLUME I

Thursday, January 15, 2004
9:05 - 1:42 p.m.

2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Reported By:
Rachel W. Bridge, RMR, CRR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office
Phone: 800.330.6952
561.659.4155

NOT A CERTIFIED COPY

COPY

019309

Beach, to the files; subject, due diligence call with Morgan Stanley.

(CPH Exhibit No. 123 was marked for identification.)

BY MR. MARKOWSKI:

Q. Can you identify this document for me, sir?

A. Yeah, let me take a minute to read it.

Q. Sure.

A. Okay.

Q. Can you identify it for me, sir.

A. It was a memorandum that I put together to document the due diligence call from, I guess it's March 12th. Looks like -- I have noted here the request is March 7th, so these dates coincide with the previous exhibit.

Q. Right. The March 7th -- your memorandum indicates, CPH Exhibit Number 123 indicates that Andersen was requested on March 7 to participate in a due diligence call with Morgan Stanley, correct?

A. Right.

Q. And we were just looking at CPH Exhibit Number 31 that set up a date for that call to occur on March 12, correct?

A. Correct.

NOT A CERTIFIED COPY

019310

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC., Plaintiff,	)	
vs.	)	No. 2003 CA005045 AI
MORGAN STANLEY & CO., INC., Defendants.	)	

CERTIFIED COPY

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF TYRONE CHANG

Los Angeles, California

Thursday, January 8, 2004

Reported by:

PAMELA A. STITT

CSR No. 6027

JOB No. 130476

NOT A CERTIFIED COPY

019312

A (Witness nods head.)
Q How experienced was she at Morgan Stanley?
A She started --
MR. CLARE: Object to form.
You can answer.
THE WITNESS: She started after I did.
BY MR. BRODY:
Q What was her position?
A Analyst.
Q Okay. What -- Withdraw that.
13:10 In connection with the due diligence work you did at Sunbeam, what did you discover about any efforts at Sunbeam to accelerate sales at the end of one year or one quarter in order to improve the results of its earnings?
A I don't remember.
Q Do you know if you discovered anything about that?
A I don't remember.
Q Did you ever discover any evidence or hear suggestions that at the end of 1997 Sunbeam made a great effort to meet sales targets by accelerating sales that
13:11 otherwise would have been made in 1998?
MR. CLARE: Objection to form.
THE WITNESS: I don't remember.

NOT A CERTIFIED COPY

019313

BY MR. BRODY:

Q Did you do any investigation into Sunbeam's bill and hold practices?

A I don't remember.

Q Have you heard anything about bill and hold in connection with your work for Sunbeam?

A Not during, no.

Q When did you hear of it?

A Afterwards as I was reading in business school.

13:11 Q Okay. What did you read about this --

Did you read anything about the Sunbeam case in business school?

A I read the book. There wasn't a case specifically, but I read his book.

Q Okay. Meaning Mr. Dunlap's book?

A Yes, Mr. Dunlap's book.

Q Did you follow what had happened to Sunbeam after you left Morgan Stanley?

A I saw it in the news, but it wasn't like an intentional effort to follow anything.

Q In connection with the due diligence of Sunbeam that you did, what, if anything, did you discover about

13:12 Sunbeam's treatment of its restructuring reserves?

A I don't remember.

NOT A CERTIFIED COPY

0193114

* * * CONFIDENTIAL * * *

IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,	)	
Plaintiff,	)	
vs.	)	No. CA 03-5045 7AI
MORGAN STANLEY & CO., INC.,	)	
Defendant.	)	
MORGAN STANLEY SENIOR FUNDING, INC.,	)	
vs.	)	No. CA 03-5165 AI
McANDREWS & FORBES HOLDINGS, INC.,	)	
Defendant.	)	

CONFIDENTIAL VIDEOTAPED DEPOSITION
OF ANDREW CONWAY
New York, New York
Friday, June 4, 2004

Reported by:
SHAUNA STOLTZ-LAURIE
JOB NO. 160457

NOT A CERTIFIED COPY

COPY 019316

Confidential - Conway

have stuck your chin out on Sunbeam?

A. No.

MR. CLARE: Same objection.

Q. You've already testified that an analyst's reputation is of critical importance, correct?

A. Um-hm.

Q. Okay, with the benefit of hindsight, you wish your name hadn't been associated in any way with the convertible offering?

A. No, but -- but -- but with the benefit of hindsight, you know, if -- if I felt there was any impropriety or any issue in the numbers, the cash flow, the story, you know, as an equity analyst and a senior one, had I had an inkling that, you know, what was told to me by Sunbeam's management was, you know, an outright falsehood, I would have stopped the process right there.

Q. Sure.

A. That I could tell you. So that -- that's -- you know so from a reputation standpoint if -- if I had discovered, you

NOT A CERTIFIED COPY

019317

know, that I was outright lied to, the process would have stopped right there.

Q. So you're saying Mr. Kersh or Mr. Fannin lied to you outright during your calls with them.

A. Well, the -- the -- the postmortem is that the revenues and the growth story did not materialize.

Q. Right. So that's the basis of your belief that you were lied to.

A. Yes.

Q. Okay. You said a few minutes ago that the convertible sold very well, so you as a result didn't need to talk to a lot of institutional investors to try and help sell the convertibles; is that correct?

A. That is correct.

Q. Okay. Do you recall the size of the convertible offering initially or -- or as it closed?

A. I don't.

Q. Okay. I'll represent that it was initially $500 million and then closed at $750 million. Does that refresh your memory

NOT A CERTIFIED COPY

019318

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff(s),

vs.

Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant(s).

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff(s),

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants(s)

COPY

NOT A CERTIFIED COPY

VIDEOTAPED DEPOSITION OF KAREN HAYCOX-ELTRICH

New York, New York

Friday, October 15, 2004

Reported by:
JOAN WARNOCK
JOB NO. 166116

019320

MS. BROWN: Object to form.

A. I know I learned it at some point. I couldn't tell you when.

Q. And have you come to learn that one of the reasons for that was that Sunbeam had accelerated sales from 1998 into 1997?

MS. BROWN: Objection to form.

A. I learned it at some point, but, honestly, it took us a while to figure out -- from my memory, it took us a while to figure out exactly what they had done.

Q. And I think we've established that you went on maternity leave between the 20th and the 25th of March?

A. Correct.

Q. And you returned on June 15th?

A. Correct.

Q. When you refer to the figuring out of what Sunbeam had done, was that after June 15th or before March 25th?

A. From my own figuring out, it was after June.

Q. Now, in connection with the financings, the convertible debenture offering, are you aware that Morgan Stanley

NOT A CERTIFIED COPY

019321

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

-v- CA 03-35045

MORGAN STANLEY & CO., INC.,

Defendant.

DEPOSITION OF BLAINE V. FOGG

New York, New York

Thursday, December 16, 2004

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 167797

ORIGINAL

NOT A CERTIFIED COPY

019323

about the events of March 18th?

A. Yes.

Q. Is this the same document that you testified to in your deposition in August -- excuse me -- June of 2000 that you had in front of you when you spoke to Mr. Uzzi on this conference call?

A. I don't remember that testimony, but --

Q. It's not a trick question. It wasn't identified in your transcript and that's why I ask you. Let me try it a different way.

Do you recall receiving only one document from Mr. Uzzi on the -- on March 18th?

A. I don't remember. I think so, but I'm not -- I couldn't be 100 percent sure.

Q. All right. Is any of the handwriting on Exhibit MS 411 yours?

A. Doesn't appear to be, no, none of it.

Q. All right. Could you, as best you can, take me through the conference -- the conference call with Mr. Uzzi which we've

NOT A CERTIFIED COPY

0019324

identified as the third conference call.

A. Well, again, I'm not sure I can give you a who said what in any great specifics. But the focus of the call was, okay, what sales are already in -- have been booked? What do those add up to? What sales are in the works that probably will be booked? And where does that leave Sunbeam for the quarter compared with the analyst estimates and with the first quarter of 1997?

And we discussed all of that at great length. A large part of the call related to going down this list of potential orders and hearing from Uzzi primarily -- McDonald didn't say much, as I recall -- from Uzzi why he thought these orders were going to be booked for each of these major accounts.

And he was very optimistic they would be booked. He said he talked to the people out in the field, the sales force. And he was just very confident that this was going to happen.

And he was pretty optimistic that this was going to come within the range of analyst expectations and ahead of last

NOT A CERTIFIED COPY

019325

year's -- first quarter of 1997.

Q. Did I hear you say -- sorry.

A. And all us questioned him on each of these items. And what makes you so sure of this and that and the other thing, at great length. I don't know how long the call went on, but it was quite a while.

And the Morgan Stanley people asked questions, the Davis Polk people asked questions. I asked questions, Fannin asked questions. And that was it.

Q. Did anyone from Morgan Stanley ask questions?

A. I just said so, yes.

Q. Who on behalf of Morgan Stanley asked -- asked questions?

A. I believe both -- I recall both Bill Strong and Ruth Porat asking questions, saying things on the call. I can't, as I indicated earlier, give you a who said what, when. I just can't do that after six years or six and a half years.

Q. Was Mr. -- strike that.

Did Mr. Uzzi express confidence that he -- that he -- withdrawn.

NOT A CERTIFIED COPY

01932G

Was -- withdrawn.

Did Mr. Uzzi express confidence in this third call that Sunbeam would meet analyst expectations for Sunbeam sales in the first quarter of 1998?

A. He did.

Q. Did he express even more confidence that Sunbeam would meet, at least, sales for Sunbeam's first quarter of 1997?

A. I'm -- I'm not sure about my earlier answer. I think he was quite confident they were going to beat the first quarter of 1997. I don't know -- and he was very confident on that basis, on that.

I'm not sure that he was -- how confident he was about the analyst expect -- estimates, meeting those or beating those. But I think he was -- felt there was a good shot at doing so.

Q. How would you describe Ms. Porat's questioning?

MR. MARKOWSKI: Object to the form.

A. As I sit here today, I can't -- I can't really characterize what she said, as opposed to what I said, as opposed to what --

NOT A CERTIFIED COPY

0193271

I don't recall who said what.

But everyone on the call who was sitting in my office, as well as the Morgan Stanley people and the Davis Polk people, asked a lot of questions. They were, you know, challenging questions, probing questions. How can you possibly think that, this, so forth?

Q. You described in your earlier deposition Ms. Porat, in effect, quote, hammering at a point. Do you recall that testimony?

MR. MARKOWSKI: Object to the form.

A. I don't really recall that testimony, but it sounds like her.

Q. Why do you say that?

A. She's -- she's a strong person.

Q. Well, in your deposition on June 16th, 2000, you were asked the following questions and gave the following answers. And this is on page 73, sir, line 12 through 24:

"Q. When Uzzi was going through the numbers on your summary report, did anyone voice the opinion that they didn't believe those numbers?

NOT A CERTIFIED COPY

019328

"A. Well, I think that Morgan Stanley's people, especially Ruth Porat, was of the view that this is all very good, Mr. Uzzi, but there is a real chance you are not going to make these high end numbers the analysts are projecting, isn't there?

She was hammering at that point. He finally had to admit yes. He was trying to convince us that all he was -- all he was going to do to make the numbers."

Was that testimony accurate at the time you gave it, sir?

MR. MARKOWSKI: Object to the form.

A. When I testified under oath, what I say is what I believe, so the answer is yes.

Q. And your -- your description of -- strike that.

I think you described Ms. Porat as a strong person?

A. Very strong person, yes, capable person.

Q. Have you dealt with her -- had you dealt with her before this phone call with Mr. Uzzi?

NOT A CERTIFIED COPY

019329

A. No, no.
Q. Do you recall anything --
A. I'm sorry. I had.
Q. And what was that?
A. I think she was involved, at the time of the Sunbeam board meeting, when the merger -- the Coleman and the other two acquisitions were approved and the financing of them was discussed, I believe. I'm not sure, but I believe.
Q. Do you recall anything that Mr. Strong said?
A. Not specifically, no.
Q. Do you recall anything that Mr. Fannin said?
A. I'll say it again. I don't recall who said what specifically and when. I just recall the gist of the whole thing.
Q. Sometimes when you talk through these things, some things come back. And that's why I'm asking. I'm not trying to make it any longer, but occasionally you do remember something.
Is it -- how was the telephone -- the third telephone conference left on

NOT A CERTIFIED COPY

019330

March 18th after you went through the items on MS 411?

A. Well, the bottom line was that we weren't confident that there was 100 percent sure we were going to make the analyst estimates. Pretty -- we were pretty confident that we were going beat the first quarter of '97. But since the analysts' estimates were out there and since probably the analysts had reached their estimates based on company information, that we ought to correct it, better put out a press release that accurately gives the best picture of where we are.

So, a public disclosure of some kind was -- was decided upon. And --

Q. Was there any dissent -- I interrupted you. I apologize.

Was there any dissent at the conference call amongst those who were in your office or in the Morgan Stanley locations about the wisdom of issuing a press release?

A. No dissent.

Q. Was the issue of issuing a press release discussed directly with Mr. Uzzi in this phone call?

NOT A CERTIFIED COPY

019231

A. I don't recall -- I really don't recall.

Q. Given the consensus that a press release should be issued, was someone assigned the task of taking pen to paper and drafting a press release?

A. Yes.

Q. Who?

A. Well, it was not so much an assignment, but Fannin, I guess, grabbed a yellow pad in my office and started writing. He produced a draft. We had it typed. People in my office looked at it. I don't recall the specifics of what it said versus what the final thing said.

And I believe we circulated it to the other people who were on the previous call and discussed it with them. Except I don't think -- I don't think I ever called any -- I had any other discussion with Uzzi or McDonald on this subject.

I do recall discussing the press release with the Morgan Stanley people and the Davis Polk people. I'm not sure if we faxed it to them or read it to them or what, but we

NOT A CERTIFIED COPY

019332

did discuss it.

Q. Stepping back, Mr. Fannin then -- Mr. Fannin started the drafting process, as you remember it?

A. Yes.

Q. And then you -- your office had the press release typed up; is that fair?

A. Yes.

Q. I will now hand you what has previously been marked as Morgan Stanley Exhibit 504. Do you have that in front of you, sir?

A. I do.

Q. If you care to, please, take a moment and look at it. And, please, look at the footers on the document and in particular --

A. Yes.

Q. Is this document, Morgan Stanley Exhibit 504, a draft of the March 18th press -- or March 19th press release?

A. Yes, that's what it appears to be.

Q. And on the lower right-hand corner of both pages, it has draft March 18, 1998. And I believe it says 11:12 p.m.; is that

NOT A CERTIFIED COPY

In these conferences and face-to-face meetings as you've described them for us, you -- you were acting as legal counsel to Sunbeam, correct?

A. Yes.

Q. Did you believe at the time, as their legal counsel, that the press release was accurate?

A. Yes.

Q. Based on the information that you had at the time?

A. Yes.

Q. Was there anyone, other than Mr. Dunlap -- withdrawn.

Did you ever speak to Mr. Goudis before the press release was issued about the subject of the press release?

A. I don't recall.

Q. Do you recall sending Mr. Goudis a copy of the press release by facsimile?

A. I don't recall.

Q. Was there anyone on the Skadden Arps team that reviewed the press release, and you've identified Mr. Fernicola and Mr. Shehan as well as yourself, that echoed -- or I

NOT A CERTIFIED COPY

019334

letter which we identified in MS 530 as of the date of the closing, March 25, 1998?

A. No reason to believe one way or the other.

Q. Is it customary as -- is it customary to prepare closing binders for something as -- like a debenture offering of a $2 billion face amount of securities?

A. Yes.

Q. Is it customary for your law firm to prepare the closing binder in the manner -- with the indexes such as we have looked at in MS 530?

A. Yes.

Q. Is it customary in a closing binder for a debenture offering, in which auditors issue comfort letters, to include the comfort letters within the closing binder?

A. I don't know, since I don't work on those kinds of things, but I would think so.

Q. Would you, please, look at the pages identified with the Bates numbers ending -- well, I'll tell you what. I'll use the Skadden Bates numbers. They will be a little shorter. Please look at the page beginning

NOT A CERTIFIED COPY

016335

with the Skadden Arps Bates number 03767.

A. 03767, yes.

Q. 03767. Are you there?

A. Yes.

Q. If you'll turn to the -- this -- this is a letter to Morgan Stanley addressed to Morgan Stanley in Skadden's capacity as special counsel to Sunbeam, right?

A. Yes, it's an opinion letter.

Q. It's an opinion letter, right?

A. Yes.

Q. And it's signed at the end, and the last page I see is 03775.

A. Yes.

Q. I have to confess the photocopy is pretty bad here, but is that signed Skadden Arps, just the firm's name? Is that how it's signed?

A. Yes.

Q. Is that the traditional manner in which your opinion letters are provided?

A. I believe so, yes.

Q. Now, according to -- who would have been responsible for preparing this opinion letter to Morgan Stanley?

NOT A CERTIFIED COPY

019336

A. Greg Fernicola and his team.
Q. Okay. Would you ever view this letter before it was signed by Skadden Arps?
A. I might have, but I don't recall.
Q. Please turn to the page marked 03774, again, using the Skadden Arps Bates numbers.
A. Yes.
Q. If you'll look at the first -- the first paragraph, not the first full paragraph, but the --
A. Yes.
Q. Is -- there is language midway down that begins, "No facts." Would you please turn your attention to that.
A. Yes.
Q. Now, that language reads as follows: No facts have come to our attention that have led us to believe that the offering memorandum as of its date and as of the date hereof contained or contains an untrue statement of material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not

NOT A CERTIFIED COPY

0193237

misleading, except that we express no opinion or belief with respect to the financial statements, schedules or other financial information -- excuse me -- financial and statistical data included therein or excluded therefrom.

Do you see that language?

A. I do.

Q. Is that language a customary language for an opinion letter of this type, assuming that nothing has come to your attention?

A. In my limited experience, yes. It's known as a 10(b)(5) opinion.

Q. That was my next question. Thank you.

All right. You may set this aside.

MR. BEMIS: It's 5 o'clock and we said we would break at 5:00. And I will easily finish tomorrow within the time frame that we have.

MR. SOLOVY: Whoa, whoa, whoa, say it a little louder.

MR. MALLOY: Yes.

MR. SOLOVY: You will easily finish?

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

CONTINUED DEPOSITION OF BLAINE FOGG

New York, New York

Friday, December 17, 2004

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 167799

ORIGINAL

NOT A CERTIFIED COPY

019339

Q. Yes.
A. Um --
Q. I will withdraw the question.
Did Mr. Strong appear concerned about the April 3rd press release?
A. Absolutely, yes.
Q. I think you used the term, he said the market was "in disarray"?
A. Yes. We were both concerned. I was concerned -- not about the press release, but about the company, what was really going on.
Q. Before April 3rd, did you have any foreshadowing of the results that were going to be announced on April 3rd?
A. None whatsoever.
MR. MARKOWSKI: Objection to the form.
A. David Fannin call the night before, hit me out of the blue, and I was in shock to hear this.
Q. You referred to "this." Are you referring to Sunbeam's results for the first quarter?
A. That, the firing of Uzzi and, I believe, the leaving of Goudis.

NOT A CERTIFIED COPY

019340

COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.

Plaintiff,

vs.

MORGAN STANLEY & CO, INC.,

Defendant.

February 13, 2004
9:35 a.m.

VIDEOTAPED DEPOSITION OF

ALEXANDRE FUCHS

Reported by: David Henry
Job Number: 157146

NOT A CERTIFIED COPY

019342

Fuchs

the original question.

Were you surprised by the events that unfolded after the acquisition transactions were announced?

MR. CLARE: Objection to form.

A. When after?

Q. Well, Mr. Clare has given you a good hint at -- let's be specific about the events.

A. I would have answered the same way.

Q. Were you surprised when Mr. Dunlap was removed from office?

A. I believe I said yes, and let me frame it. We worked for the better part of a year based upon, as I described, a number of interactions with the company, a number of interactions with external sources of information such as reading the public record of newspaper articles and newspaper accounts, very laudatory public investment research, a number of successful large important institutional investors such as Michael Price and others invested in the

NOT A CERTIFIED COPY

019343

stock, you know, interaction with the firm and its executives. So it was a surprise when at the end of that overall process, if you want, by the time you find out many months after our direct involvement in the transaction gets -- is terminated, to find out that many of the things you had heard were not as they appear to be, was a surprise and disappointing, which is why I use the word disappointing and I don't say surprise at all.

Q. And again at Mr. Clare's suggestion I want to be specific about the events after your involvement.

A. Sure.

Q. Other than the termination of Mr. Dunlap, were there any other events after your involvement was over that you found surprising?

A. I don't recall. I don't recall both the events and my reaction.

Q. Did you have a sense during your work on the Sunbeam engagement as to Mr. Dunlap's management style?

NOT A CERTIFIED COPY

019344

Fuchs

on the front of the exhibit?

A. Yes.

Q. Do you know whose handwriting that is?

A. No, I don't.

Q. Do you know what any of those numbers signify?

A. I can read Don Uzzi, VP sales. No.

Q. And again, the first you learned of any sales shortfall at Sunbeam was upon the issuance of the March 19 press release, is that correct?

A. I don't remember what a press release says and I'm not sure whether it's a sales shortfall, or even whether the press release that you mention is the one which happened after the launching of the convertible debt, but prior to the closing of the convertible debt. To restate what I said before, I remember there being a press release between those two dates, between the beginning and the end of the convertible debt that talked about something related to

NOT A CERTIFIED COPY

016315

the sales, which was -- to describe the way you described it before, lower than generally accepted expectations.

Q. And that's the first you'd heard of that issue?

A. Yes.

(Recess taken.)

FURTHER EXAMINATION BY MR. JOHNSON:

Q. Mr. Fuchs, directing your attention again to CPH Exhibit 76, the cover memorandum refers to a leveraged finance committee meeting to occur on March 20. Did you attend that meeting?

A. I don't believe I did.

Q. Mr. Fuchs, I give you a document that we marked previously as CPH Exhibit 145. I believe you will see and I will represent for the record that Exhibit 145 is the same printed matter as is contained on Exhibit 76. But there is different handwriting. Do you see that?

A. Yes.

Q. Do you recognize any of the handwriting?

NOT A CERTIFIED COPY

019346

(Recess taken.)

FURTHER EXAMINATION BY MR. JOHNSON:

Q. Mr. Fuchs, I believe you testified that you, Mr. Kitts and Mr. Chang spent approximately the same amount of time in Florida in connection with your work on the Sunbeam engagement, is that true?

A. That is in substance my recollection, yes.

Q. And that was time spent at the Del Rey Beach headquarters of Sunbeam?

A. Yes.

Q. Did you form any opinion as to the work environment at that headquarters?

A. Can you define work environment?

Q. Sure. Did the work environment appear to you to be inordinately high pressure?

A. No.

Q. Did you gain any impression that the company was being managed to an inordinate degree to earnings per share calculations?

A. No.

NOT A CERTIFIED COPY

019347

THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,

Plaintiffs,

vs. CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

_____/

COPY

Videotaped deposition of:

JOHANNES GROELLER

taken at:
Barlow Lyde & Gilbert
Beaufort House
15 St Botolph Street
London EC3A 7NJ
UNITED KINGDOM

on
17th November 2004

NOT A CERTIFIED COPY

019349

A No.

Q You didn't attend any of the roadshow meetings?

A No.

Q Did you ever have occasion to look at or hear about any projections of Sunbeam's performance for any period during 1998?

MS. BROWN: Can I have that question back?

(RECORD READ)

Objection, compound, and form.

A I do not recall that I was -- looked at something like that. I do not recall that.

MR. CHORVAT: Did you ever hear that Sunbeam's financial performance in the first quarter of 1998 fell short of its performance in the similar period in 1997?

A I did not hear that during my involvement in the project.

Q When did you hear that?

A At a certain point much later, I think, it became public knowledge, and I read the newspaper, but I did not hear it in any way, shape or form when I was in the role I was in during the project.

Q Did you hear anything about Sunbeam's financial performance during the period that you

NOT A CERTIFIED COPY

019350

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDING INC.,

Plaintiff,

vs.) CA No. 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.) CA No. 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

COPY

CONFIDENTIAL
VIDEOTAPED DEPOSITION OF W. BROOKS HARRIS
New York, New York
Tuesday, October 26, 2004

Reported by:
JOYCE G. ABELES
JOB NO. 166125

NOT A CERTIFIED COPY

019352

A. Yes, I'm not sure -- I'm not sure what you mean by aggressive. But no, I mean, if that's a bad thing. I don't understand what you mean by aggressive revenue recognition practices.

Q. Well, were you ever informed, sir, that Sunbeam was engaging in what's called bill and hold transactions?

A. That term is not familiar to me.

Q. Did you have any communications with Sunbeam's outside accountants, Arthur Andersen, in connection with the debenture offering?

A. No.

Q. Do you know if anyone did?

A. I believe they did.

Q. Who do you believe had conversations or communications with Arthur Andersen in connection with the debenture offering?

A. I don't know specifically.

Q. Did you have any communications with Davis Polk in connection with the debenture offering?

MR. CLARE: That's a yes or no

NOT A CERTIFIED COPY

019353

C O N F I D E N T I A L

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,
vs. CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs. CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

DEPOSITION OF MICHAEL HART
New York, New York
Wednesday, May 19, 2004

Reported by:
TAMI H. TAKAHASHI, RPR
JOB NO. 160655

NOT A CERTIFIED COPY

COPY

0935

CONFIDENTIAL - Hart

Mischaracterizes the document.

A. I'm not aware of it having any effect one way or the other, at this point. I don't recall it having an effect one way or the other, I should more properly state.

Q. When you became aware that Sunbeam had failed to achieve the sales results that the March 19 press release had predicted, did you have any -- did you come to the conclusion that you had been, in any way, misled in the communications between Sunbeam and Morgan Stanley?

A. Bob, could you repeat the middle part of that, please.

Q. When you learned that Sunbeam had failed to achieve the first quarter's sales results that the March 19 press release predicted, did you have any sense that Morgan Stanley & Company had been misled, in any way, by Sunbeam with respect to those matters?

A. I don't recall, at that time, drawing that conclusion, given that set of circumstances.

Q. Have you subsequently come to that conclusion with respect to statements that

NOT A CERTIFIED COPY

019356

CONFIDENTIAL - Hart

Sunbeam made to Morgan Stanley relating to its first quarter sales performance, that Sunbeam mislead Morgan Stanley?

A. I think it's fair to say, perhaps, moving away from first quarter, but, in general, we had been mislead by Sunbeam management.

Q. I'm focusing on the first quarter situation.

A. Today, I would believe that we had been mislead.

Q. And on what do you base that?

A. Overall, the things that have occurred subsequent to that.

Q. You didn't have any communications with Sunbeam yourself relating to Sunbeam's first quarter sales performance; is that -- is that correct?

A. Not that I recall, no.

Q. Now, the -- I believe I'm correct about this, Mr. Hart, but my understanding is that the last stop on the Sunbeam convertible debenture road show was in Boston.

MR. CLARE: Objection.

Q. And that the Boston road show

NOT A CERTIFIED COPY

019357

COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.	)
Plaintiff,	)
vs.	)
MORGAN STANLEY & CO, INC.,	)
Defendant.	)

February 12, 2004
9:30 a.m.

VIDEOTAPED DEPOSITION OF

ROBERT KITTS

Reported by: David Henry
Job Number: 156649

NOT A CERTIFIED COPY

019359

Kitts

Q. And it's from Mr. Fannin to you, among other people?

A. Yes.

Q. Why was Mr. Fannin sending you this press release?

MR. CLARE: Objection, calls for speculation.

A. I can only go based on what is written or typed here, that I wanted to give you a heads-up, so I take this to mean that I received it either shortly before or at the time of public dissemination.

Q. And did you have any conversations upon receiving this fax with any of the other recipients of it?

A. No, I don't remember.

Q. Did you have any reaction when you read the press release?

A. I was surprised.

Q. Why were you surprised?

A. Well, based on what had been in the prior release, you know, I was surprised that sales were now expected to be below last year's first quarter.

NOT A CERTIFIED COPY

019360

Kitts

Q. When you say the prior release, you mean the March 19 release?

A. Yes.

Q. Did you talk to Mr. Fuchs about the April press release?

A. I probably did. I probably had, you know, my assistant copy it and make sure to get a copy of it to the rest of the team.

Q. Were you upset in any way?

A. I don't remember.

Q. Did you feel that Sunbeam had misled you in any way?

A. Probably.

Q. Did you communicate that feeling with anyone?

A. I don't remember.

Q. Did you have a person in mind at Sunbeam who had misled you?

A. My view would have been that, you know, I would have felt that Alan Russ had misled us.

Q. Did you ever talk to Al or Russ after the March 2 announcement of the transaction?

NOT A CERTIFIED COPY

019361

Q. Did that come as a surprise to you?

A. Yes.

Q. Why is that?

A. Well, it surprised me because I didn't fully understand or appreciate the magnitude of what was going on at the company.

Q. Did you around that same time frame read a Barron's article about Sunbeam?

A. I'm sure I did. I don't recall the content of it specifically now, but I was actively involved in maintaining -- reading anything related to Sunbeam that was in the public domain.

Q. Did you have, after the March 2 announcement of the phase one progress, did you have any additional anticipated roles with M&A work for Sunbeam?

A. I believe there were discussions as to whether or not some of the smaller pieces of Coleman, I can't remember the name of the backpack company that --

Q. Eastpak?

NOT A CERTIFIED COPY

019562

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
----------x
COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
-against-
MORGAN STANLEY & CO., INC.,
Defendant.
Case No.: CA 03-5045 AI
----------x

COPY
NOT A CERTIFIED COPY

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
WILLIAM KOURAKOS
New York, New York
October 29, 2004

REPORTED BY:LINDA SALZMAN
Job No:166600A

166610

A. Not much other than Sunbeam having to make an announcement that their performance was going to be below what expectations were by Wall Street analysts.

Q. Did there come a time when you learned of problematic business practices that Sunbeam had utilized?

MR. CLARE: Objection to form.

A. No.

Q. Did there come a time when you became aware that Sunbeam had accelerated sales from one quarter or year-end to another financial period?

A. Did I become aware of that?

Q. Yes.

A. Yes.

Q. When did you become aware of that?

A. Well, you know, after Sunbeam's problems became well-known to us and the public.

Q. And by that answer do you mean after the Sunbeam Coleman transaction closed?

A. Yes.

Q. At any point in time did you have occasion to review one or more comfort

NOT A CERTIFIED COPY

019365

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

COPY

NOT A CERTIFIED COPY

VIDEOTAPED DEPOSITION OF RUTH PORAT

New York, New York

Tuesday, November 23, 2004

Reported by:
Yaffa Kaplan
JOB NO. 167717

019267

the road show.

A. As I recall, I think it was towards the end.

Q. Do you recall a specific point in time where that was first brought to your attention?

A. No.

Q. What do you recall?

A. About -- I'm sorry?

Q. When it was first brought to your attention that Sunbeam was having difficulty in its first quarter 1997 -- excuse me, let me start over.

When did you recall that it was first brought to your attention that Sunbeam was having problems with its first quarter 1998 performance?

A. I can't -- I don't know if I recall this or it was in the prior deposition, in reviewing that, but I believe it was at a road show, at the New York road show lunch, that somebody raised a concern that first quarter sales may not be as strong as expected.

Q. The road show was scheduled to end on March 19th, correct, at that point?

A. I don't remember that, but sounds right from everything we have gone through this morning.

Q. Do you recall that it was that New York

NOT A CERTIFIED COPY

019626

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

----------x

COLEMAN (Parent))
HOLDINGS, INC.,)
Plaintiffs,)
vs.)No.
MORGAN STANLEY & CO,)CA03-5045-AI
INC.,)
Defendant.)

----------x

VIDEOTAPED DEPOSITION OF RUTH PORAT

New York, New York

Friday, December 10, 2004

Reported by:
LINDA SALZMAN
JOB NO. 168056A

NOT A CERTIFIED COPY

COPY

019369

A. Correct.

MR. CLARE: Objection to form. You can answer.

A. Correct.

Q. So if in fact you were an attendee at the March 10 1998 Equity Commitment Committee meeting, or whatever date that meeting took place concerning the Sunbeam convertible debenture offering, you didn't hear anyone advise the participants in that meeting that there was a problem with respect to Sunbeam's first quarter 1998 sales, correct?

A. If I was there, I didn't hear it.

Q. Take a brief look, Ms. Porat, at the written report that was provided to the committee. Let me ask this question. You've testified that you didn't learn that there was a problem with respect to Sunbeam's first quarter 1998 sales until sometime significantly after March 10, correct?

A. It was -- just to make sure I'm clear on what "significantly" means -- it was in that couple of days prior to pricing, so it was within a week that it was -- I don't

NOT A CERTIFIED COPY

019370

remember hearing it until right prior to pricing.

Q. You first heard it, according to the testimony you gave at your last deposition session, at the end of the road show, correct?

A. Right.

Q. And the Equity Commitment Committee meeting occurred before the beginning of the road show, correct?

A. Correct.

Q. And you didn't have any knowledge before the road show began that there was a problem with respect to Sunbeam's first quarter 1998 sales, correct?

A. Correct.

Q. Based on that, are you comfortable saying that there is nothing in this March 10 report that alerts any reader of it to a problem with respect to Sunbeam's first quarter 1998 sales, or would you like to take a moment to look at it?

MR. CLARE: Objection to the form of the question.

A. I would assume there is not.

NOT A CERTIFIED COPY

019371

A. I believe I did.

Q. Among other things, the April 3 announcement advises that Sunbeam now expects that its first quarter 1998 sales will be, quote, somewhat below 1997 levels, close quote. Do you see that?

A. Yes.

Q. And it also indicates that the company now expects to realize a loss in the first quarter of 1998. Do you see that?

A. Yes.

Q. Do you know what analysts' expectations were as of March 31, 1998 for Sunbeam's first quarter earnings?

A. I don't recall.

Q. That's something you would have been aware of at the time correct?

A. Probably.

Q. You testified previously that it was important to the debenture offering that Sunbeam continued to hit its numbers in the first quarter correct?

A. Correct.

Q. I'm sorry, did you tell me at some point you saw Sunbeam's announcement?

NOT A CERTIFIED COPY

019372

A. I believe I did.
Q. How did you see it?
A. I remember an announcement. I can't remember if it was this one or some subsequent news that -- across the tape. I don't remember receiving a document like this, but I remember, when there was some bad news, being very surprised.
Q. What did you do?
A. I don't recall one way or the other. I just remember being surprised.
Q. At that point did you have any continuing work-related responsibilities concerning Sunbeam?
A. I don't believe I did.
Q. After you saw some Sunbeam announcement that surprised you with its bad news, do you recall doing anything?
A. I don't recall.
Q. Do you recall having any conversations with any members of the Sunbeam team at Morgan Stanley concerning the bad news that you saw?
A. I don't recall one way or the other.

NOT A CERTIFIED COPY

0193731

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.

) CASE NO. 2003 CA 005045 AI

VIDEOTAPED EXAMINATION OF LILY RAFII
New York, New York
Friday, April 2, 2004

Reported by:
ANGELA GRANT
JOB NO. 158835

NOT A CERTIFIED COPY

0193375

COPY

Rafii

of 1998 was the last time I was involved in the deal. And, again, are you asking me specifics of what I did or?

Q. I'm just trying to get anything you can recall about what you were doing the first quarter of 1998 for Sunbeam.

A. From what I recall it's what I've expressed before, compiling information, contributing to the presentations and a lot of administrative and clerical work to a certain extent.

Q. Did you make any inquiries of anyone in the first quarter of 1998 concerning Sunbeam's sales or earnings per share for the first quarter of 1998?

A. Not that I recall.

Q. Did you work on any synergies analyses in the first quarter of 1998?

A. Not that I recall.

MR. JOHNSON: Lets get folder 24. Where are we, 170?

MS. BROWN: I think you need 172 next.

MS. PRYSAK: No, 174.

NOT A CERTIFIED COPY

019376

Rafii

Forbes?

A. Not that I recall.

Q. Were you ever at any meetings where any individuals from McAndrews & Forbes attended?

A. Not that I recall. I could have been, I just don't remember.

Q. Were you on any telephone calls with anyone from McAndrews & Forbes?

A. I can't remember. It could have been some kind of conference call or something, but I don't remember.

Q. Do you remember the name of anyone from McAndrews & Forbes who you dealt with at all during the Sunbeam engagement?

A. No. I don't remember the names.

Q. Have you ever dealt with anyone from McAndrews & Forbes in any context?

A. I don't recall. Not that I remember.

Q. Did you ever hear that there was softness in Sunbeam's first quarter 1998 results?

A. I don't recall.

NOT A CERTIFIED COPY

019377

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS, INC.,)
Plaintiff,)
-vs-)
MORGAN STANLEY & CO., INC.,)
Defendant.)

The videotaped deposition of ANDREW SAVARIE, called by the Plaintiff for examination, taken before CORINNE T. MARUT, C.S.R. No. 84-1968, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, at the offices of Jenner & Block, LLC, Suite 4000, One IBM Plaza, Chicago, Illinois, on the 22nd day of January, A.D. 2004, commencing at 9:28 a.m.

NOT A CERTIFIED COPY

019379

aware of sort of when it was delivered, to whom, by whom, at whatever point in the process. That logically would have been happening sort of away from what I was doing on the transaction at the time.

Q. Okay. Well, let me show you a document, sir, and this has previously been marked as CPH Exhibit 17 and my first question is: Have you ever seen this before?

A. Until yesterday I had not seen this document before.

Q. In connection with the work that you did in drafting sessions and facilitating the financing, getting the final documents done and so on, did you have any discussions about the comfort letter?

A. Not that I can recall.

Q. If you turn to the page -- the third page of the document, Item 5-B describes or, rather, compares Sunbeam's sales in two periods, December 30, '96 through February 2, '97, compared to December 29, '97 through February 1, '98 and the results are shown there.

Prior to the closing, sir, were you aware of those results, to your knowledge?

NOT A CERTIFIED COPY

019380

14:21:12 A. I don't recall to what degree I was
14:21:14 aware of these, whether at some point someone made
14:21:18 me aware in greater detail than I had gotten
14:21:24 earlier. But I don't recall having reviewed this
14:21:33 letter or these figures.
14:21:36 Q. Do you participate in any discussions
14:21:38 within Morgan Stanley about whether to disclose to
14:21:42 the public or to disclose to MacAndrews & Forbes
14:21:45 the fact that results in these two periods were as
14:21:50 indicated in this letter?
14:21:52 A. No, I don't recall participating in
14:21:54 those discussions, any discussions like that.
14:21:57 Q. In connection with the work that you
14:21:59 did, did you have any conversations with anyone
14:22:01 from MacAndrews & Forbes?
14:22:03 A. Not that I'm aware of. I'm not sure if
14:22:08 I would have known that they were. So, unknowingly
14:22:14 perhaps, but I don't believe so.
14:22:15 Q. And do you recall any conversations with
14:22:17 any people from Coleman or Coleman Parent?
14:22:20 A. Not specifically other than perhaps in
14:22:24 one of these meetings again. I don't recall any
14:22:30 specific conversations.
14:22:31 Q. I understand. And if you turn, please,
14:22:33 to the fifth page of the letter, it begins with

NOT A CERTIFIED COPY

0193811

recall specifically whether I did or when I did.

MR. BRODY: Why don't we take a five-minute break. I'm going to move on to another topic.

MR. CLARE: Okay.

THE VIDEOGRAPHER: Going off the video record at 2:26 p.m.

(WHEREUPON, a recess was had from 2:26 to 2:34 p.m.)

THE VIDEOGRAPHER: We are going back on the video record at 2:34 p.m.

BY MR. BRODY:

Q. Ready?

A. Ready.

Q. Okay. Before the break we were talking about news that came in in the first quarter about first quarter sales performance. Do you remember any discussions before the closing of the financing relating to Sunbeam's first quarter earnings per share performance?

A. I don't specifically recall those conversations.

Q. In connection with the press release, the discussions around the press release, the roadshow, do you remember anyone saying anything, either by way of a question or as an answer, about

NOT A CERTIFIED COPY

019382

what earnings per share looked like from the first quarter?

A. I don't recall.

Q. Okay. Now, after -- withdraw that.

We looked at the report sent to the Equity Committee to get approval to do a portion of this financing deal. There was also a report to the Leveraged Finance Commitment Committee, is that correct?

A. That would make sense, yeah.

Q. Okay. And as you sit here do you remember what your role was in that memorandum?

A. I don't specifically recall, much like the Equity Commitment Committee memo, but I -- my role would have likely been even less on that but for the fact that there -- that I would suspect the documents are, you know, largely similar.

Q. Okay. Well, let me show you what I believe is the document, sir, and we'll talk about it a little.

Giving you what's previously been marked as Exhibit 76. Do you recognize that as the memorandum to the Leveraged Finance Committee and a cover memorandum reflecting that there's to be a -- a conference call about it?

NOT A CERTIFIED COPY

019383

IN THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Case No: CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Case No: CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF ISHAAN SETH

Friday, July 30, 2004

New York, New York

Reported By:

LINDA J. GREENBERG

JOB NO. 163262

NOT A CERTIFIED COPY

019385

COPY

probably would have.

Q. Why is it that you think you probably would have?

A. Because it represented a fairly significant change in information that had previously been provided to us by management and this was a quote-unquote "live deal" at that point, so --

Q. Let me ask you to turn to the page that's got the Bates number 18687.

Do you recognize that handwriting or any part of that handwriting?

A. I couldn't say for sure, no.

Q. Do you have a sense, your best understanding, as to whose handwriting that is, even if you're not sure?

MS. BROWN: Objection. Foundation. Calls for speculation.

A. I can't speculate.

Q. Leaving aside speculation, do you have a sense of whose handwriting that is?

MS. BROWN: Same objection.

A. No. I would not be able to say

NOT A CERTIFIED COPY

019386

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Case No: CA 03-5045 AI

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Case No: CA 03-5165 AI

Plaintiff,

vs.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

DEPOSITION OF PAUL E. SHAPIRO
Tuesday, June 8, 2004
New York, New York

NOT A CERTIFIED COPY

ORIGINAL

Reported By:
LINDA J. GREENBERG
JOB NO. 161095

had announced their '97 earnings. They had not filed their 10-K. But they had announced the earnings and there were three quarters of Qs available as public records that carried you through the third quarter of '97.

It was never contemplated that we would, for example, go in and do an audit or any -- it would have been simply impossible. This was not like buying a small company that wasn't public. We didn't treat it as such.

So we were not denied access, but we would never have asked for that kind of access, nor do I believe that the other side asked for it of us.

Q. The "other side" being Sunbeam?

A. Yes.

I mean they had some very specific requests, but when you talk about books and records, I think about, like, reviewing the financial performance, literally going in and reviewing the financial performance as opposed to what's

NOT A CERTIFIED COPY

019389

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,

Defendant.

DEPOSITION OF R. BRAM SMITH
New York, New York
Tuesday, February 24, 2004

Reported by:
PAMELA J. MAZZELLA, RPR
JOB NO. 157119

NOT A CERTIFIED COPY

COPY

019391

Smith

Q. During the course of this day and a half interview at the U.S. Attorney's Office did you express the view that Morgan Stanley Senior Funding had been the victim of fraud with respect to the loan it made to Sunbeam?

A. I don't really remember.

Q. As you sit here today, you don't remember whether during the day and a half interview with the U.S. Attorney's Office you indicated that you believe Morgan Stanley Senior Funding had been the victim of a loan, the victim of a fraud with respect to its loan to Sunbeam; is that correct?

A. Well, what, I think a better way to put it was that the three banks were -- I don't know if I ever used the word "fraud" -- were misled by what we were told with the financial condition of the company.

Q. Financial condition of the company in this context is Sunbeam?

A. Sunbeam.

Q. Do you recall that you did indicate that you believe Morgan Stanley Senior Funding had been misled by Sunbeam related to

NOT A CERTIFIED COPY

019392

its financial condition?

A. I think I said that Morgan Stanley and the other lenders were misled.

Q. Did you explain what, in what way you thought Morgan Stanley Senior Funding had been misled?

A. I remember that I said that I felt that the three banks were misled by the financial statements as well as representations made by the company.

Q. The financial statements you are referring to are the audited financial statements of Sunbeam?

A. Yes.

Q. What representations by management did you tell the U.S. Attorney's Office you believe were misleading?

A. I don't remember the specifics.

Q. Do you remember if you offered specifics to the U.S. Attorney's Office with respect to statements made to Morgan Stanley Senior Funding by Sunbeam management that you considered to be misleading?

A. No, I cannot remember.

NOT A CERTIFIED COPY

019393

Smith

have seen it.

Q. Did you ask, does this refresh your recollection whether you asked any members of the Morgan Stanley due diligence team to investigate reports relating to Mr. Dunlap's tenure at Scott Paper?

A. I did not ask anybody to do that.

Q. Do you recall being aware that there were questions being raised publicly relating to Mr. Dunlap's claimed accomplishments at Scott Paper?

A. I guess tangentially. I knew he was a controversial figure.

Q. At the time the transactions closed at the end of March 1998 did you have any personal reason to question on the turn-around claims that Mr. Dunlap had made at Sunbeam?

A. Did I personally have any, no.

Q. Do you have any reason to question his reputation as a turn-around specialist?

A. No.

Q. I'm sorry if I asked this previously, but did you have any personal

NOT A CERTIFIED COPY

019394

CONFIDENTIAL - STRONG

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.

The videotaped deposition of WILLIAM STRONG, taken before CARIANN BILLS, CSR No. 84-003836, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 4000, One IBM Plaza, Chicago, Illinois, on the 4th day of December, A.D. 2003, at 8:00 a.m.

NOT A CERTIFIED COPY

019396

COPY

CONFIDENTIAL - STRONG

by Sunbeam management during your conversations with Mr. Dunlap and Mr. Kersh in January and February about the company's performance in the first quarter of '98?

MR. CLARE: Objection to form.

BY THE WITNESS:

A. How do they compare? I don't recall any differences at this point in time.

BY MR. MARKOWSKI:

Q. Mr. Dunlap kept you advised that Sunbeam had accelerated sales revenue into the fourth quarter of 1998 by taking sales that would have otherwise occurred in the first quarter of 1998 and recognizing those sales in the first quarter of 1997?

A. Not that I recall.

Q. Did Mr. Dunlap tell you during his conversations in January and February with you that his net sales were far below the net sales Sunbeam had accomplished in the first two months of 1998? Let me rephrase that.

Is it your testimony that Mr. Dunlap told you during your conversations with him in January and February of 1998 that Sunbeam's net

NOT A CERTIFIED COPY

019397

CONFIDENTIAL - STRONG

sales were running far below Sunbeam's net sales for January and February of 1997?

A. Not that I recall.

Q. You don't recall Mr. Dunlap telling you that?

A. No.

MR. MARKOWSKI: We will take our break now.

THE VIDEOGRAPHER: Going off the video record at 12:40 p.m.

(Whereupon a short break was taken.)

THE VIDEOGRAPHER: We're going back on the video record at 1:17 p.m.

BY MR. MARKOWSKI:

Q. Mr. Strong, Sunbeam issued a press release in late March relating to its first quarter sales. Do you recall that?

A. Yes. I recall around March 19, I think.

Q. Your memory is good on that.

Let me show you what we have previously marked as CPH Exhibit No. 14. This bears Bates No. Morgan Stanley Confidential 16944. And the title of the document is "Sunbeam

NOT A CERTIFIED COPY

019398

CONFIDENTIAL - STRONG

BY THE WITNESS:

A. Again, as I have said several times, the press release is the responsibility in this case of Sunbeam. And whether or not it's to be issued at all and what its content is, they have sole responsibility for its content. Every company does, obviously.

BY MR. MARKOWSKI:

Q. Do you agree with me, sir, that if Morgan Stanley was aware of facts that were known to Morgan Stanley that showed the statements made in the press release were misleading, that Morgan Stanley had a responsibility to address that with Sunbeam?

MR. CLARE: Same objection.

BY THE WITNESS:

A. The knowledge we had was that they were going to make -- the client was absolutely insisting upon the fact that they would make street estimates for sales for the first quarter as they had stated. That's the information that we had.

BY MR. MARKOWSKI:

Q. Other than speaking with Sunbeam

NOT A CERTIFIED COPY

01936

CONFIDENTIAL - STRONG

Q. Don't you think that would have been an appropriate aspect of Morgan Stanley's due diligence?

A. Not necessarily. Again, we were relying upon the unqualified opinion from Arthur Andersen, the fact that their financial statements were prepared consistent with Generally Accepted Accounting Principles. Not necessarily, no.

Q. Now, Sunbeam, in fact, did not accomplish the results that the financial community had expected for first quarter sales, correct?

A. Correct.

Q. It made a press release on April 3 to that effect?

A. Sometime early April, yes.

Q. When did you first learn that Sunbeam was going to fail to meet Wall Street's net sales expectations for the first quarter?

A. As I recall, almost simultaneous with that press release going out.

Q. What was your reaction?

A. My reaction? My reaction was

NOT A CERTIFIED COPY

01940

CONFIDENTIAL - STRONG

disappointment, anger, shock.

Q. Who did you have that initial communication with?

A. I simply recall receiving a fax -- I believe a fax. I believe it was from Mr. Fannin.

Q. What did you do after receiving notice that Sunbeam had failed to meet Wall Street's expectations for net sales for the first quarter?

A. My recollection was I spoke with team members. I don't recall who. I probably spoke with Ms. Porat and I may have spoke with Mr. Fannin as well, but I don't recall specifically.

Q. Was anybody at Morgan Stanley criticized in any way for their performance in connection with work done for Sunbeam in connection with any of the three acquisitions or the financings?

A. Not to my knowledge, no.

Q. One of the things you did after Sunbeam announced that it had failed to meet Wall Street's expectations for first quarter sales was assist Sunbeam in obtaining a new public relations firm, correct?

NOT A CERTIFIED COPY

10'1910

CONT #998

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

VS.

MORGAN STANLEY & CO., INC.,

Defendant.

VIDEOTAPED CONFIDENTIAL DEPOSITION
OF JAMES STYNES
New York, New York
Tuesday, July 13, 2004

NOT A CERTIFIED COPY

COPY

019403

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 162719

that what has been accomplished to date has been remarkable and there is room for further improvement. In fact, there are a number of analysts' comments on page 295 that talk about some of these points here and the rationale.

Q. So, you are suggesting that the, one of the bases for the bullet point we were discussing is what other analysts were saying about the company?

A. That could be one of the bases, yes, just reading the book.

Q. Okay.

Can you think of any other bases?

A. Not off the top of my head.

Q. At any point during or prior to February, 1998, did you come across or hear any information suggesting that Sunbeam, in fact, had not undergone a profound transformation?

A. Not that I recall.

Q. As far as you can recall, Sunbeam had a -- an entirely upbeat story through February of 1998?

MR. CLARE: Objection to form.

A. As far as I can recall, I don't

NOT A CERTIFIED COPY

019404

remember anything that would suggest anything to the contrary.

And, as I said, there seemed to be evidence in the marketplace that would support that.

Q. Was anyone within Morgan Stanley skeptical about Sunbeam's margins?

A. No.

MR. CLARE: Objection, calls for speculation.

A. Not that I recall.

Q. Did you ever hear any skepticism about Sunbeam's projected growth rate?

A. Not that I recall.

Q. Do you recall any meetings with any Coleman or Mafco representatives at Morgan Stanley's offices?

A. No, I don't.

Q. Do you recall, more specifically, any nighttime meetings with anyone from Coleman or Mafco?

A. No, I don't.

Q. Do you recall attending any meetings where Mr. Kersh or Mr. Goudis gave any kind of a presentation about Sunbeam's strategic plan?

NOT A CERTIFIED COPY

019405

late February of 1998?

MR. CLARE: Objection, calls for speculation.

A. I don't recall.

Q. You, personally?

A. Not that I remember.

Q. I think we covered this already. You don't have an opinion on whether that is something that typically would be known to Morgan Stanley?

A. Well, as I said, every situation is different. We may or may not have asked that question.

Q. Do you recall anyone discussing whether Sunbeam had engaged in channel stuffing?

A. No, I don't recall that.

Q. Would you recall any discussion concerning Sunbeam's bill-and-hold practices?

A. No.

Q. Prior to the road show, had you heard anything less than fully optimistic about Sunbeam's results?

MR. CLARE: Objection to form.

A. Honestly, I don't recall what I

NOT A CERTIFIED COPY

0194906

MR. JOHNSON: This has been marked previously as Exhibit 16.

Q. Other than in a deposition, have you ever seen that document before?

A. No.

Q. Have you ever had any discussions with anyone concerning the document?

A. No. Not that I recall.

Q. Did you ever learn, at any point in the first quarter of 1998, that Sunbeam had accelerated sales from the first quarter of 1998 into the fourth quarter of 1997?

A. No, I don't recall that.

Q. Is that information that would surprise you in any way?

MR. CLARE: Objection to form.

A. I had never seen any evidence at Sunbeam of inappropriate accounting behavior; so -- that is not something that I would have expected.

Q. If you had been told that Sunbeam was accelerating sales from one period into a prior period, is that something that you would want to know more about?

MR. CLARE: Objection to form.

NOT A CERTIFIED COPY

019407

say it more precisely: The focus of activity was on the financing side; and so, I was doing very little, because very little was required.

Q. Did you have a reaction to the press release, upon reviewing it?

A. Um, well -- obviously, announcing that sales were down, um, it is not positive. So, I guess, my reaction was, ah, I was not happy with it.

Q. This press release indicates the company would show a loss for the quarter. Did that component of the press release trouble you?

A. Well, I don't remember what I knew at that time, whether, for example, I already knew that prior to the press release or whether I was finding out from the press release, but obviously announcing that they were going to show a loss, whatever -- that would be troubling.

Q. And surprising?

A. Yes.

Q. After the close of the first quarter of 1998, did you discuss Sunbeam's first quarter results with anyone at Morgan Stanley?

NOT A CERTIFIED COPY

019408

transaction was?

A. No. I just don't remember.

Q. Did you ever form the opinion that Sunbeam management had lied to you?

A. I would say, much after the fact, as I learned about some of the things that happened, I certainly felt that they did not tell us all of the information that they should have.

And the two things that you cited, ah, the idea of -- I don't know the name --

Q. Channel stuffing?

A. Channel stuffing. If that were the case, then that was something that they never told us about.

Q. You say "much after the fact." Is that in connection with media?

A. Yes. As things came out and I read about them, my reaction was that they hadn't told us about it.

Q. Is there any particular member of Sunbeam management that you think was not forthcoming?

A. Well, you know -- no. I guess any one of them could have been forthcoming.

NOT A CERTIFIED COPY

019409

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.
Plaintiff,
vs.
MORGAN STANLEY & CO, INC.,
Defendant.

September 15, 2003
9:40 a.m.

VIDEOTAPED DEPOSITION OF
JOHN TYREE

Reported by: David Henry
Job Number: 152526

NOT A CERTIFIED COPY

COPY

011910

Tyree

Q. Do you recall that Mr. Dunlap was terminated by the Sunbeam board in June of 1998?

A. I recall him being terminated. I don't recall the date at which he was terminated.

Q. All right, can you place the time when you first began personally to have concerns about the accuracy of these statements in relationship to Mr. Dunlap's termination?

A. Well, first, I never had any concern about the accuracy of these statements because I have just seen them. So are you asking a different question?

Q. Well, I'm asking you, you see these statements?

A. Yes.

Q. I'm asking you if there came a time when information came into your possession that would have caused you to doubt the accuracy of the statements here, and you've indicated that the answer to that is yes because at some time information came to your

NOT A CERTIFIED COPY

019412

Tyree

attention that caused you to believe that the Sunbeam management team may have committed fraud, is that correct?

MR. CLARE: Objection. Misstates the prior testimony. Incomplete and out of context. You can answer the question if you understand it.

A. That is not how I would characterize it, so I'll try and characterize it. Over a period of time, I became aware that it appeared that the Sunbeam management team had engaged in fraud. That period of time was sometime well after the closing of the Sunbeam convertible notes offering. I can't define for you one point in time when I came to that conclusion. It came over a period of time.

Q. Did that process begin before Mr. Dunlap was terminated?

A. I don't remember when it began.

Q. So you can't relate your first concerns about the truthfulness or the accuracy of these statements to the time when Mr. Dunlap was terminated?

NOT A CERTIFIED COPY

019413

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.
MORGAN STANLEY & CO., INC.,
Defendant.

CONTINUED VIDEOTAPED DEPOSITION
OF JOHN D'A. TYREE
New York, New York
Friday, November 14, 2003

Reported by:
Jane Watson
JOB NO. 154649

NOT A CERTIFIED COPY
COPY

Tyree

second quarter of 1998?

MR. CLARE: Are you asking 34 or 35 now?

MR. MARKOWSKI: I'm sorry. I was on 35.

BY MR. MARKOWSKI:

Q. Let me ask a question so the record is clear.

Do you see anything on CPH Exhibit Number 35, the March 23 version of the list of bring-down due diligence topics, relating to Sunbeam's views of its prospects for the second quarter of 1998?

A. No. But I would make the point that on this document, you have the comment "Are you still comfortable with your '98 earnings estimate of 180?" which, obviously, would have to incorporate into it a view on the second quarter.

Q. I'm asking specifically about the second quarter.

A. Okay. No. That's not written on this page.

Q. Do you know why that topic was dropped from the March 23 version of the

NOT A CERTIFIED COPY

019415

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH,
COUNTY, FLORIDA
C.A. No.: CA 03-5045 AI

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff(s),
vs.
MORGAN STANLEY & CO., INC.,
Defendant(s),
_____/
MORGAN STANLEY SENIOR FUNDING, INC.
Plaintiff(s),
vs.
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant(s).
_____/

VIDEO TAPED DEPOSITION OF JOSHUA A. WEBBER, a witness called on behalf of the Plaintiff, pursuant to the Florida Rules of Civil Procedure, before Mary P. Peacock, Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Esquire Deposition Services, 175 Federal Street, Boston, Massachusetts, on May 18, 2004, commencing at 9:30 a.m.

COPY
NOT A CERTIFIED COPY
01911

A. I don't recall there being a specific policy, no.
Q. If in the course of performing due diligence about a company, you, as an investment banker, uncovered some bad news about the company, what are you supposed to do with that information?
MS. BROWN: Objection to form.
A. I think it's -- it would be my role to understand the news, understand -- understand what we uncovered, why it's happening.
Q. And beyond that what would you do with it? What is your understanding?
MS. BROWN: Objection to form, hypothetical.
A. Well, it depends. Specifically what situation am I in?
Q. Well, let me ask it a little differently.
In the Sunbeam transaction did you ever uncover any bad news about Sunbeam?
MS. BROWN: Objection to form.
A. No, I did not uncover that. I was not involved in the due diligence process for Sunbeam.
Q. Can you identify anyone at Morgan Stanley in the investment banking department on the M&A side that was involved in due diligence of Sunbeam?
A. I can't. I don't recall the due diligence efforts on

NOT A CERTIFIED COPY

019418

EUGENE YOO

Volume: I

Pages: 1 - 227

Exhibits: 217 - 229

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

----------x

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff, Case No. CA 03-5045 AI

v.

MORGAN STANLEY & CO., INC.,

Defendant.

----------x

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff, Case No. CA 03-5165 AI

v.

MACANDREWS & FORBES HOLDINGS, INC.,

Defendants.

----------x

VIDEOTAPED DEPOSITION of EUGENE YOO, a witness called for examination, taken pursuant to the Applicable Provisions of the Florida Rules of Civil Procedure, before Laurie K. Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of

COPY

NOT A CERTIFIED COPY

01942D

EUGENE YOO

had shown us.

Q. Did you ever review a comfort letter provided by Arthur Andersen to Morgan Stanley in connection with this transaction?

A. In connection with the MNA transaction?

Q. With -- well, in connection with the acquisition of the Coleman Company in the subsequent financing of that transaction.

A. I don't think I've seen that.

Q. Let's find it. I'm handing you what's previously been marked as CPH Exhibit 17. Do you recall seeing this document?

A. I don't think I've seen this.

Q. While conducting your due diligence did you discover any information indicating that Sunbeam was employing bill and hold transactions?

A. I'm sorry, what was the question again?

Q. In conducting your due diligence of Sunbeam did you acquire any information indicating that Sunbeam was employing bill and hold practices?

A. There was nothing in anything that we had seen that indicated that there was any kind of fraud or anything else going on that was out of the ordinary, just, you know, regular normal course

NOT A CERTIFIED COPY

019421

EUGENE YOO

of business.

Q. At that time were you familiar with the concept of a bill and hold transaction?

A. At the time I was not.

Q. Are you now aware of what a bill and hold transaction is?

A. Vaguely.

Q. Okay. How did you come to that information?

A. I, in reading about what had happened with Sunbeam through the newspapers.

Q. While conducting your due diligence did you acquire any information indicating that Sunbeam was engaging in other aggressive revenue recognition practices?

MS. BROWN: Object to form.

A. Again, as far as I could see there was really nothing that I saw that was out of the ordinary course of business.

Q. Okay. How about with respect to restructuring reserves. Did you find anything that indicated that they were improperly reserving?

A. No. Not that I can remember.

Q. You never had any conversations with Mr. Tyree on those issues?

NOT A CERTIFIED COPY

019422

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 11 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 1
(EXHIBITS 184-189)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

019816

10116

16div-025599

TABLE OF CONTENTS

	TAB
Barry Schwartz Deposition Transcript	184
MS Ex. 185	185
MS Ex. 73	186
MS Ex. 520	187
MS Ex. 169	188
Steven Fasman Deposition Transcript	189

NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs. Case No: CA 03-5045 AI
MORGAN STANLEY & CO, INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff
vs. Case No: CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant

DEPOSITION OF BARRY SCHWARTZ
FRIDAY, JUNE 25, 2004
9:30 A.M.

CORRECTED

June 25, 2004
9:30 a.m.
New York, New York

Deposition of Barry Schwartz, held at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, New York 10022, Pursuant to Notice, before Adrienne M. Mignano, a Notary Public of the State of New York.

Reported by:
Adrienne M. Mignano, RPR
JOB NO. 162025

APPEARANCES:

KIRKLAND & ELLIS, LLP
Attorneys for Morgan Stanley
655 Fifteenth Street N.W.
Washington, D.C. 20005
BY: LAWRENCE P. BEMIS, ESQ.
LARISSA PAULE-CARRES, ESQ.

JENNER & BLOCK P.C.
Attorneys for Coleman
One IBM Plaza, Suite 4400
Chicago, Illinois 60611
BY: RONALD MARMER, ESQ.

ALSO PRESENT:
Steven Fasman, Esq.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing of the transcript be waived, and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

NOT A CERTIFIED COPY

019819

THE VIDEOGRAPHER: This is tape number one of the videotaped deposition of Mr. Barry F. Schwartz in the matter of Coleman Holdings, Inc. versus Morgan Stanley & Co., Inc., defendants, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

This deposition is being held at 153 East 53rd Street, New York, New York on June 25, 2004 at approximately 9:37 a.m.

My name is Victor Disla from the firm of Esquire Deposition Services and I'm the legal video specialist. The court reporter is Adrienne Mignano in association with Esquire Deposition Services.

Will counsel please introduce themselves for the record.

MR. BEMIS: Lawrence Bemis on behalf of Morgan Stanley.

MS. PAULE-CARRES: Larissa Paule-Carres also on behalf of Morgan Stanley.

MR. MARMER: Ronald Marmer on

behalf of CPH, and also with me is Steven Fasman from Coleman.

THE VIDEOGRAPHER: Will the court reporter please swear the witness.

BARRY SCHWARTZ, called as a witness, having been duly sworn by a Notary Public was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:

Q Good morning, Mr. Schwartz. My name is Larry Bemis and I'll be asking you some questions today.

Would you tell the jury your full name including your middle name?

A My name is Barry Frederick Schwartz.

Q How old are you, Mr. Schwartz?

A 55.

Q What is your date of birth?

A April 16, 1949.

Q Are you represented by Mr. Marmer here as your counsel?

A I am.

Q Where do you live?

A I live at 16 Brookside Park in Greenwich, Connecticut.

Q What is your zip code there?

A 06831.

Q And how long have you lived there?

A Since 1999.

Q Do you have any present intention to move from there?

A No, sir.

Q Do you have a listed telephone number in your home?

A I don't know the answer to that. I'm happy to tell you the number.

Q Go ahead.

A It's (203)629-8405.

Q Are you married?

A I am.

Q Does your spouse live with you at that address?

A She does.

Q Are you currently working for MacAndrews & Forbes Holdings, Inc.?

A Yes, sir.

Q What is your title there?

A Executive vice-president, general

counsel.

Q How long have you had those titles at MacAndrews & Forbes Holdings, Inc.?

A Since roughly 1992, I believe.

Q When did you start work there?

A In October of 1989.

Q Do you hold any positions in any other companies affiliated with Ronald O. Perelman and the companies that he owns directly or indirectly?

A Yes.

Q What other companies do you hold positions in today?

A The list is too long for me to recall. The position is the position that I articulated that I have at MacAndrews & Forbes Holdings, that is executive vice-president and general counsel.

Q So in all of the companies that you hold a position, that position is executive vice-president and general counsel?

A Yes, but if I'm remembering your question, I think you used the word affiliated, did you say?

NOT A CERTIFIED COPY

019820

Page 9

Q Yes.
A We have an interest, that is MacAndrews & Forbes has an interest in a company called Scientific Games, and that company I am not an officer but I am a director.
Q As you sit here today, are you the executive vice-president and general counsel of Coleman (Parent) Holding, Inc., one of the parties to this litigation?
A I believe so, yes, sir.
Q What is your office address today?
A 35 East 62nd Street, New York, New York 10021.
Q I understand your office is just down the hall from the offices of Mr. Drapkin; is that correct?
A Yes, sir, it's the third floor of a five-story building.
Q Did Mr. Shapiro have an office on that floor at one time?
A No, sir.
Q Mr. Slovin?
A Yes, I believe he did.
Q Mr. Gittis?

Page 10

A No, he did not.
Q Mr. Maher?
A Yes, I think he did, yes.
Q Does Mr. Perelman have an office on that floor?
A No, he does not.
Q Is he in the same building?
A Yes.
Q Is he above those floors?
A No, he is on the second floor.
Q Do you see Mr. Perelman on a regular basis?
A I do.
Q Every day, if he is in the office?
A Virtually every day if he is in the office.
Q Do you see Mr. Maher on a regular basis if he is in the office?
A When he was with us, if he was in the office, likely I would see him.
Q When did Mr. Maher leave us, as you put it?
A I meant to say MacAndrews & Forbes, sorry. I'm not certain, but I think it was at least three years ago.

Page 11

Q Where is he today?
A I don't know the answer to that.
Q Where is the last place you knew he was?
A He was at a private equity fund, the name of which I don't remember, which was located here in New York on Park Avenue.
Q Is Mr. Nesbitt still with MacAndrews & Forbes?
A No, he is not.
Q Where is he today?
A I don't know the answer to that.
Q Where is the last place you recall him working?
A He was working with Mr. Maher at that same Park Avenue address.
Q And did Mr. Nesbitt and Mr. Maher leave MacAndrews & Forbes at about the same time, three years ago?
A At or about the same time, although my recollection is that Mr. Nesbitt left earlier than Mr. Maher.
Q Have you ever had your deposition taken before?
A Yes, I have.

Page 12

Q So you understand that you're being videotaped, correct?
A Yes.
Q And you understand that your videotape can be played back to the jury?
A Yes.
Q And you understand too that you are under oath and that oath you took this morning has the same force and effect as if you were testifying in court?
A Yes, sir.
Q Is there any reason you can think of today that you cannot testify truthfully?
A No.
Q Any medication that might affect your memory?
A I read that Lipitor might affect your memory.
Q I'm taking it too.
A We'll both joust with memory.
Q Anything else?
A No, sir.
Q Did you have an opportunity to consult with Mr. Marmer before you came here this morning?

NOT A CERTIFIED COPY

019821

A Sure.
Q Now, you're a lawyer, aren't you?
A I am.
Q And I understand you graduated from Georgetown Law Center 1974; is that right?
A That's right.
Q Where are you licensed to practice today?
A I'm licensed in the state of Illinois, the state of Pennsylvania and the state of New York.
Q When were you licensed to practice in Illinois?
A 1974.
Q And Pennsylvania, the same year?
A Yes, sir.
Q And when were you licensed to practice in New York?
A 1991, '92, I'm not certain.
Q Are you licensed to practice in all of those states today?
A I'm not sure of the answer to that. I think I maintain a current license but I'm not sure about active versus

inactive status and what that means with regard to being able to practice.
Q Are you allowed to practice actively in New York today?
A Yes, sir.
Q I asked you earlier if you had an opportunity to meet with Mr. Marmer and you were kind enough to tell me that you had.
How long did you have a chance that meet with him?
A This morning?
Q Either this morning or before in preparation of your deposition?
A I was mindful of the question when you asked me this morning, about five minutes this morning. I have met with Mr. Marmer numerous times over the years that we have worked together.
Q I'm focusing on your deposition today, whether it be at an earlier session that we didn't make because of inclement weather or other reasons, how much time did you spend preparing for your testimony?
A We met on two occasions, and the total number of hours, given the

interruptions that I forced upon Mr. Marmer, is somewhere between three and four.
Q Did you review documents with Mr. Marmer?
A There were some documents that we looked at, yes.
Q What documents did you look at to prepare for your deposition?
A I recall the complaint in this matter, a complaint that was filed by Morgan Stanley.
Q The Senior Funding case?
A I'm not certain of the caption.
Q Okay. Go ahead.
A A comfort letter, two comfort letters from Arthur Anderson addressed to Morgan Stanley and a press release of March 19th. There may have been some other documents I'm not recalling them now. If I do recall them as we sit here today, I'll try and supplement my answer.
Q Have you seen the comfort letters --
MR. BEMIS: Withdrawn.
Q Let me show you two comfort

letters and then I will ask you a couple of brief questions about them.
A Sure.
MR. BEMIS: May I see MS 9 and MS 10, please.
Q I'll show you first Morgan Stanley Exhibit 9, which was previously marked at a deposition earlier in the case and this letter is dated March 19, 1998.
Is this one of the comfort letters that you saw in your deposition preparation?
A Yes, sir.
Q I'm going to show you now --
A It didn't have this nice stamp on it, I don't remember, but this is a copy of what I did see, yes.
MR. BEMIS: Just for the record, all of us being lawyers know that what you are referring to is just the deposition exhibit sticker that were placed on after the document was produced.
Q I'll show you what was previously marked as Morgan Stanley 10.. Do you have that in front of you?

NOT A CERTIFIED COPY

019822

Page 17

A I do.
Q That is a letter dated March 25, 1998 from Arthur Anderson and addressed to Morgan Stanley & Co., Inc.
Is this one of the two comfort letters that you saw?
A Yes, sir.
Q You may set those aside for now.
In fact, why don't you return them to me and I'll give them back to you at a later point when we talk about them in detail.
A Thank you.
MR. BEMIS: Let me see the press release, MS 39, I think.
Q I'm going to hand you what has been previously marked as MS 39, which has been identified as a copy of a Sunbeam press release dated March 19, 1998.
Is that the press release that you saw?
A Yes, it is.
Q You may hand that back to me.
Have you given testimony in any litigation related to the Sunbeam Coleman

Page 18

acquisition, whether it be in an administrative proceeding such as before the SEC or in a shareholder litigation, bankruptcy proceeding, anything at all?
A No.
Q So this is the first time you have been under oath since 1998 in all of these cases?
A First time I have been asked.
Q First time you have been asked the question?
A Yes.
Q So this is the first testimony that you have given under oath concerning the Sunbeam Coleman acquisition in any of the litigation that has ensued therefrom?
A Yes, sir.
Q Well, let's get to the merits then.
You attended the board of directors meetings of The Coleman Company, Inc. in 1998 when the merger documents were considered and eventually approved, did you not?
A I don't have a very clear

Page 19

recollection, but I did attend a meeting of the Coleman board in connection with this transaction, yes.
Q Let me show you first what's been marked as Morgan Stanley 88. These are the minutes of the board of directors previously marked for The Coleman Company, Inc. on February 25, 1998.
Do you have those in front of you?
A I do.
Q Did you attend this meeting as shown on the first page of the minutes?
A The first page reflects me being in attendance. And as I say, I recall attending one meeting of the Coleman board and this, perhaps, was it.
Q Would you please take a minute or whatever time is appropriate, skim through the minutes until you're satisfied that you're comfortable with them, and tell me if this refreshes your recollection whether this meeting was the one that you remember attending?
A Thank you.
Q Having reviewed those minutes, are

Page 20

those the minutes of the board of directors meeting of The Coleman Company, Inc. that you attended in February of 1998?
A They purport to be minutes of a Coleman board meeting, and I believe that this is the meeting that I attended, yes.
Q And in what capacity did you attend the meeting?
A I attended in my role as an officer of MacAndrews & Forbes and Coleman Holdings.
Q Coleman Holdings, CLN Holdings?
A Coleman (Parent) Holdings, the ultimate Coleman holding company.
Q You didn't have any position with The Coleman Company, Inc., did you?
A I did not.
Q Did you have a position with Coleman Worldwide Corporation?
A I don't think so but I'm not certain.
Q And you did have a position with CLN Holdings, Inc., correct?
A It's probably right, yes.
Q And going upstream, then you also

NOT A CERTIFIED COPY

019823

Page 21

had the position as general counsel and executive vice-president with Coleman (Parent) Holdings Inc.?
A That's probably also correct.
Q Did you regularly attend Coleman company board meetings about this time, say, 1997, 1998?
A Probably not, as I think some of these meetings were in that period held in either Wichita, Kansas or some earlier period in Colorado.
Q Where was this meeting held other than I know it was in New York City?
A According to these minutes and my recollection, it is not inconsistent with these minutes at 35 East 62nd Street.
Q And whose offices were they held in?
A 35 East 62nd Street is the corporate headquarters of MacAndrews & Forbes Holdings.
Q Just out of curiosity more than anything, is this the second floor, third floor, where?
A This is the first floor. And if

Page 22

you're really curious, I'll tell you, it's a board room that we have there. The building used to be a school. It was called the Flemming School and the building was acquired in '91. It was converted. And that board room is the former gym of the school, which you would know because of the very high ceilings in the room.
Q Let me show you a document that we will mark as 273.
(Morgan Stanley Exhibit 273 marked for identification as of this date.)
Q Do you have Morgan Stanley Exhibit 273 in front of you?
A I do.
Q And do you recognize these documents?
A I do not.
Q In your position as executive vice-president and general counsel of CLN Holdings Inc. in February of 1998, did you have responsibility for preparing the resolutions for the board of directors of CLN Holdings?
A I guess I can say ultimately the

Page 23

resolutions are my responsibility but I did not prepare these or typically did I prepare corporate resolutions for any of our companies.
Q Who would have prepared MS 273 in the ordinary course of the operation of your legal affairs as you have described them?
A I don't know the answer but it is likely to have been a lawyer working for me within MacAndrews & Forbes, Coleman, CLN Holdings Inc. or outside counsel in this case, Wachtell, Lipton.
Q Based on these documents which have been produced in the litigation, have you had a brief opportunity to review them?
A I just looked at them as you requested.
Q And based on your position as being the general counsel and executive vice-president of CLN Holdings Inc. at the time, these resolutions are dated and the consent attached thereto on the first page, do these appear to be true and correct copies of all of the resolutions dated as of February 27, 1998?

Page 24

A I can't answer that for you. I can identify the signatures if you like.
Q Okay.
Whose signatures are they?
A I recognize Mr. Perelman's signature and Mr. Gittis' signature as members of the board.
Q Who were the members of the board of directors as of February 27, 1998 of CLN Holdings?
A According to this unanimous written consent, which I have no reason to doubt, Mr. Perelman and Mr. Guinness were all the members of the board of CLN Holdings.
Q Do you have any reason to doubt the authenticity of these resolutions and the unanimous written consent as they have been produced in this litigation?
A No, sir.
Q Now, having reviewed --
MR. BEMIS: Withdrawn.
Q Having reviewed the documents, MS 273, are these resolutions approving the CLN merger agreement with Sunbeam Corporation?

NOT A CERTIFIED COPY

019824

Page 25

And I'll hand you a copy of the agreement and that may help you.
MR. BEMIS: Can I have MS 93, please.
A May I have your question again?
Q You should have now in front of you MS 93, which is the agreement and plan of merger among Sunbeam Corporation, Laser Acquisition Corporation, CLN Holdings Inc. and Coleman (Parent) Holding, Inc., dated as of February 27, 1998.
A It appears to be yes, sir.
Q Would you please look at --
MR. BEMIS: Withdrawn.
Q Please look at MS 93, which you may refer to as the holdings merger agreement for shorthand because that's the way it's been referred to in the past, and look at the signature pages which appear, and I'm going to refer to the Bates numbers at the bottom of the document, sir, and the Bates number is 7984.
A Okay.
Q Is that your signature, sir, that appears below the heading CLN Holdings Inc.?

Page 26

A Yes, it is.
Q And did you place your signature there on or about February 28, 1998?
A I have no clear recollection of that, but this document suggests that I did and I have no reason to doubt it.
Q And the next signature block is for Coleman (Parent) Holdings Inc.
Is that your signature that appears there?
A It is my signature.
Q And did you sign on behalf of Coleman (Parent) Holding, Inc. on or about February 28, 1998?
A It certainly looks like I did.
Where are you getting this February 28th date?
Q I think the documents are drafted as of the 27th but they were signed on the morning of Saturday, February 28th, but if I'm incorrect in that, you can tell me.
A I can't tell if you're incorrect. Is there something in the documents that tells you that?
Q There is other testimony that they

Page 27

were dated on a Saturday.
A I did see that as of February 27th.
Q If you think it's a different date, you let me know. The most important thing is that is your signature, right?
A Yes.
Q In both instances you signed MS 93 and you were acting in your official capacity as executive vice-president of Coleman, Inc.?
A Yes, sir.
Q Were you acting as general counsel as well?
A I was general counsel as well.
Q Did you read the merger agreement, MS 93, before you signed it?
A I'm sure that I did but I don't have a memory of that now.
Q If you had any questions after you read it, MS 93, and before you signed it, would it have been your practice to ask your legal counsel, outside legal counsel your questions and obtain answers?
A Either I would have asked

Page 28

questions or lawyers working for me would have asked questions or we would have talked about issues amongst ourselves as drafts of this document were prepared. But I'm certain at the time when I signed this document on behalf of those two entities, any issues that we had with respect to the document had been resolved.
Q To your knowledge, were there any face to face meetings of the CLN board of directors in connection with MS 93? And again, face to face meetings as opposed to meetings by written consent, such as we have discussed in Exhibit MS 273.
MR. MARMER: You mean CLN Holdings board?
Q I thought that's what I said. I meant the CLN Holdings board.
Let me put the question to you again. It might be confusing later when we read it back.
Are you aware of any face to face meetings of the CLN Holdings board in connection with the approval of MS 93, the merger agreement?

NOT A CERTIFIED COPY

019828

Page 29

A As we said to each other a few minutes ago, the CLN Holdings board was Mr. Perelman and Mr. Gittis. They both have offices on the second floor of 35 East 62nd Street. They meet and confer with each other on a daily, sometimes seemingly continuous basis.

And to the extent that they had a conversation, discussion about this document, one might consider that to be a meeting.

If you're looking for a meeting that had minutes attached to it, I'm not recalling any such meeting. If you show me the minutes, it might refresh me.

(Morgan Stanley Exhibit MS 274 - Document dated 2-27-98 marked for identification as of this date.)

Q Let me show you now what's been marked by the reporter as MS 274.

I've handed you now what the reporter has marked as MS 274, which is entitled Resolutions of the Board of Directors Coleman Worldwide Corporation approving proposed merger transactions and

Page 30

related agreements dated February 27, 1998.

Do you have that in front of you?

A I do.

Q Now, at the time of this document --

MR. BEMIS: Withdrawn.

Q As of February 27, 1998, as I recall your testimony, you thought you were the executive vice-president and general counsel of Coleman Worldwide Corporation but you weren't sure.

Do I have that right?

A Yes, likely I was but I'm not remembering it.

Q The copy of the minutes that I have -- excuse me, the resolution that I have provided to you, do not have attached to it a cover page similar to MS 273, which was the approval by the directors without a meeting.

Were these resolutions of Coleman Worldwide Corporation approved by the board of directors of Coleman Worldwide?

A I'm certain that they would have been, sure.

Page 31

Q Who were the directors of Coleman Worldwide Corporation on February 27, 1998?

A I don't remember specifically.

Q When you -- now I lost my train of thought.

A Sorry.

Q That's okay.

How many directors were there of Coleman Worldwide Corporation at this time, February of 1998?

A I don't know.

Q Would it be similar to CLN Holdings Inc., just a couple of directors?

A It could be but I don't know.

Q Let me show you a document previously marked as MS 119, please. This is a document that was filed in a lawsuit by Coleman (Parent) holdings Inc. against Arthur Anderson LLP and Phillip E. Harlow.

Have you seen this document before?

A Not that I recall, no.

Q Did you as the general counsel and executive vice-president of Coleman (Parent) Holdings at the time that this document was

Page 32

dated, which is January 2, 2002, did you review filings that were submitted to the court in this action against Arthur Anderson and on behalf of Coleman (Parent) Holdings?

A Yes, but not all.

Q Did you review these documents?

A I don't recall that I did.

Q Turn to page four of the document which is Bates numbered CPH 1315402.

Are you there?

A Yes, sir.

Q Read paragraph seven to yourself, please?

A Okay.

Q Before I ask you a question about that paragraph, this document is signed by Mr. Jack Scarola or John Scarola, if you will, on page nine; do you see that?

A I do.

Q Do you know Mr. Scarola?

A Yes, I do.

Q Is he an attorney retained by Coleman (Parent) Holdings in the matter that Coleman (Parent) Holdings brought against Arthur Anderson LLP and Phillip E. Harlow?

NOT A CERTIFIED COPY

928610

Page 33

A He was.
Q He was authorized to speak on behalf of Coleman (Parent) Holdings in court?
A He was.
Q Focus please beginning with the third sentence starting with "this case," do you see that?
A Yes, sir.
Q That sentence reads as follows: "This case involves a transaction negotiated at arm's length by two large sophisticated and publicly traded corporations. Each side was represented by prominent highly paid advisors, Morgan Stanley, Skadden, Arps and Arthur Anderson for Sunbeam and CS First Boston by Wachtell, Lipton. Sunbeam conducted due diligence just like any third-party buyer would do."
Based on your positions in the MacAndrews & Forbes companies, are those true statements?
A Yes, they are true statements.
Q You can set that document aside.
Now, in terms of the advisors to

Page 34

The Coleman Company or --
MR. BEMIS: Withdrawn.
Q In terms of the advisors to those parties relying with the MacAndrews & Forbes group of companies in the Sunbeam-Coleman transaction, did you have any involvement in retaining the law firm of Wachtell, Lipton?
A Yes.
Q What was your involvement?
A I retained them.
Q And did anyone direct you to retain Wachtell, Lipton?
A No one directed me to retain Wachtell, Lipton. I'm certain, although I'm not recalling it, a conversation would have been had with people at MacAndrews and Coleman as to appropriate counsel for the transaction. A conclusion was reached that Wachtell, if they could do it, would be that counsel and I made the phone call.
Q And who did you call at Wachtell, Lipton?
A I called a partner there named Adam Emmerich, E-M-M-E-R-I-C-H.
Q Did the MacAndrews & Forbes side

Page 35

of this transaction, that is the Sunbeam-Coleman transaction, which we will be talking about, retain an investment banking firm?
A Can you repeat that?
Q Did the MacAndrews & Forbes side of the transaction retain an investment banking firm?
A Not that I recall, no.
Q Do you recall the firm Credit Suisse First Boston being involved in this transaction?
A I do.
Q Who retained them?
A I believe ultimately they were retained by The Coleman Company.
Q What were they retained to do?
A I did not retain them. I don't know what, if anything, is stated in an engagement letter, if there is one, but I do recall from the minutes that you showed me this morning, that they did present at the board of directors' meeting on February 25th, if I'm recalling the date correctly, to the Coleman board.

Page 36

Q They presented what?
A They presented an analysis of this transaction.
Q Did you have any role in the drafting of the engagement letter between Credit Suisse First Boston and The Coleman Company, Inc.?
A I don't think so.
Q Did you have to approve it?
A If I did, I'm not remembering it, but I doubt it.
Q If I am mistaken, my recollection is Mr. Shapiro was the executive vice-president and general counsel of The Coleman Company, Inc. in 1998?
A Indeed he was.
Q On legal matters did he report up through you?
A On legal matters involving The Coleman Company. Ultimately he reported to the CEO of The Coleman Company with regard to our interaction with Coleman, yes, I would have conversations with and deal with Paul.
Q In terms of the MacAndrews &

NOT A CERTIFIED COPY

019827

Page 37

Forbes side of the same transaction, did anyone on that side have an accounting representative or advisor would be a better term?
A I'm not sure I understand the question.
Q Fair enough. It was probably poorly phrased.
On your side, that is the MacAndrews & Forbes side of the Sunbeam transaction, was there an accounting firm retained to provide financial or accounting advice for the transaction?
A I don't think so.
Q Did The Coleman Company have as their auditors at the time of the transaction Ernst & Young LLP?
A I believe so.
Q And they did annual audits of the company's financial statements?
A Yes, sir.
Q And who is responsible for the public filings of The Coleman Company, Inc. in 1997, such as, for example, a 10-K or a 10-Q or an 8-K? Who would do that?

Page 38

A The Coleman Company.
Q And would that be Mr. Shapiro's responsibility as the general counsel and executive vice-president?
A Well, he certainly played a role, as did the chief financial officer of The Coleman Company. And in connection with audited financials included in any public filing, the outside auditor would have played a role, and then, of course, the board.
Q And my question may not have been clear and let me try it one more time.
In terms of public filings, given the MacAndrews & Forbes organization that you at least partially laid out for me, were the public filings for The Coleman Company, which was a public company, were they handled executively within The Coleman Company or did they also utilize the services of other people within the MacAndrews & Forbes chain of companies?
A I think it would only be fair to say that they utilized the services. Although we participated from time to time

Page 39

in dealing with issues. There would be issues. We would review public filing. We were 80 or 81 percent shareholder of the company, so we had a keen interest in the company and various offices, directors of MacAndrews & Forbes were also directors of The Coleman Company.
Q I'll take just one example and we'll move on to a different topic.
The Coleman Company, Inc. would file annual reports on form 10-K each year, correct?
A Yes, sir.
Q Taking the year 1997 just as an example, would the 10-K for The Coleman Company before it was filed, would it be reviewed outside of The Coleman Company, Inc. by someone higher up within the MacAndrews & Forbes organization?
A Well, I'll take issue with the higher up part. The answer is that there were directors at The Coleman Company who would be responsible for that 10-K at MacAndrews & Forbes.
And as a result, we paid, I paid

Page 40

from time to time attention to public filings before they were filed, yes, sir. Whether I paid attention to that particular public filing which you used in your example, I'm not recalling.
Q Let me ask you something, just kind of some general questions about Morgan Stanley, and I'm going to limit myself to a very particular time frame and it will be after February 27, 1998 up until the closing of the CLN Holdings transaction, which the record established is March 30th of 1998.
Do you recall the closing?
A I don't recall the closing. I have a date in mind, yes.
Q Did you have any meeting with Morgan Stanley between February 27, 1998 and March 30th?
A I don't think so, no.
Q Any correspondence with Morgan Stanley during that same time period?
A None that I remember, no.
Q Did you participate in any conference calls with Morgan Stanley in that same time period, February 27th to March 30,

NOT A CERTIFIED COPY

928610

Page 41

1998?
A I think not.
Q Did you use e-mail during this time period of 1998?
A I don't know. It may be a little early for me.
Q Do you recall receiving any e-mails between yourself or among yourself and others at Morgan Stanley between February 27th and March 30, 1998?
A No, I do not recall.
Q Let's go forward after the closing. March 30, 1998 -- let's go up to, say, July 1st of 1998.
Did you have any communications of any kind with Morgan Stanley, and I'll include in that documents, telephone calls, conference calls, e-mails, facsimiles; anything that you can remember?
A No, but as I'm sitting here now, I did from time to time see in our offices and, therefore, would have had conversation with Bill Reid from Morgan Stanley. Whether I did at that time, that earlier time frame and the current time frame we're talking

Page 42

about, I don't remember.
Q Were any of these conversations with Mr. Reid that you had, did they involve the Coleman-Sunbeam transaction?
A None that I remember, no.
Q Now, I've asked you some questions about Morgan Stanley now and I probably should have been clear. I wasn't speaking of Morgan Stanley & Co., Incorporated. And I want to ask you some questions now about Morgan Stanley Senior Funding.
Would your answer be the same with regard to Morgan Stanley Senior Funding, and that is that you didn't have any communication with them at any time between February 27, 1998 and March 30, 1998?
A Yes, sir.
Q Okay.
A May I take one of your waters?
Q You may at any time.
MR. BEMIS: Let's take a five-minute break.
THE VIDEOGRAPHER: The time is 10:30 a.m. and we're going off the video record.

Page 43

(Recess.)
THE VIDEOGRAPHER: The time is 10:38 a.m. and we're back on the video record.
BY MR. BEMIS:
Q I want to ask you a couple of questions about your background before I get into some more specifics on the merger agreement.
I know you told me that you graduated from Georgetown and when you started practicing in Illinois.
Were you in private practice before you went to MacAndrews & Forbes?
A Yes.
Q Who were you with?
A I was a partner in a law firm in Philadelphia known as Wolf Block Schorr & Solis-Cohen.
Q When was that, sir?
A I was at Wolf Block from 1976 until October of 1989.
Q Did you practice between 1974 and 1976?
A Yes, sir.

Page 44

Q Where did you practice?
A I practiced in Chicago, Illinois, the firm at that time was known as Straknof, Schraeger, Jones and Weaver.
Q You and I took the bar exam at the same time at, I bet, Loyola University?
A I took it at a hotel downtown.
Q The old Anderson Hotel?
A Yes.
Q You and I took it together. Congratulations to both of us.
A I flew back to Pennsylvania to take the bar in Pennsylvania the same summer because the multi state was right in the middle.
Q Small world.
When you practiced at Wolf Block, did you specialize in any particular area of law?
A I was a partner in the litigation department.
Q Did you try any cases?
A Yes.
Q What kind of cases did you try?
A An antitrust case involving the

NOT A CERTIFIED COPY

019829

Page 45

price fixing of a product known as consumer bags.
Q Did you do -- did you exclusively do litigation work while you were with Wolf Block and Schorr?
A For the most part, although I did, I was involved in matters which were outside of the litigation department for clients of mine. But typically I worked with partners in the firm who had expertise and the disciplines that were called upon.
Q Did you do corporate work?
A Not really.
Q Mergers and acquisitions?
A No.
Q How is it that you came to come to MacAndrews & Forbes Holdings, Inc. in 1989 from Wolf Block?
A In 1984 or '85, one of the senior partners at Wolf Block left the firm to become the vice chairman of MacAndrews & Forbes. That was Howard Gittis.
From roughly that time until I joined MacAndrews & Forbes, I would from time to time be retained by MacAndrews &

Page 46

Forbes in various different matters. As a result of that, and as a result of the perceived need by MacAndrews & Forbes, they approached me in 1989 to join them and to leave Philadelphia and to relocate to New York. And ultimately I did.
Q How would you describe your job today --
MR. BEMIS: Withdrawn.
Q Once you got promoted to the position you have today, which is executive vice-president and general counsel, which is, I believe you said, two years after you came to MacAndrews & Forbes, do I have that right?
A '91, '92, yes.
Q How would you describe your job during this, say, 12 to 13 year period?
A Varied, quite interesting, energizing, exciting. I get to work with a fine group of people, a fine group of outside lawyers on very interesting matters. And I'm one of the few lawyers I know that's happy being a lawyer.
Q Don't include me in the unhappy

Page 47

ones, okay, I'm very happy.
A I don't know you.
Q Fair enough.
I appreciate that you enjoy your job and you work with interesting people.
Can you give me a description of what you do in your job?
A Sure.
I am the chief legal officer at MacAndrews & Forbes and I'm ultimately responsible for legal matters at MacAndrews & Forbes. And in that regard, I pay attention to legal matters and issues concerning the holding company as well as legal matters and issues that relate to the operating businesses in which we have an interest.
Q Do you have ultimately responsibility in-house, if you will, for legal matters related to the holding companies?
A Yes, sir.
Q And do you have legal responsibility in-house for Malcolm & Forbes -- MacAndrews & Forbes' interests in

Page 48

companies that you do not own one hundred percent but own some interest in?
A From the point of MacAndrews & Forbes, yes.
Q That was my question.
A Yes.
Q I'd like to show you a chart. It's in a document that was previously marked as 279. I just want to ask if you can confirm the organizational chart that's in this public filing.
I'm going to hand you now what's previously been marked as MS 279, and I'll have to give you the page number, so just one second.
Turn to page 69.
Tell me when you're there.
A I'm there.
Q Sir, this chart is in a document marked as Morgan Stanley 279, which is entitled Coleman Company, Inc. Notice of Merger and Appraisal Rights Information Statements; and below that, Sunbeam Corporation Prospectus.
On page 69 there is a chart or

NOT A CERTIFIED COPY

019830

Page 49

stating ownership structure before the M&F with an ampersand transaction; do you see the chart?
A I do.
Q And it begins at the top with Mafco Holdings and concludes at the bottom with Coleman Company, Inc.
Do you see that?
A I do.
Q Is that a correct representation of the structure of the holding of The Coleman Company, Inc. immediately before the closing of the CLN merger on March 30, 1998?
A It is.
Q And just directly above Mafco Holdings, if we were to add one more box, would that Mr. Perelman?
A Mr. Perelman, Ronald O. Perelman is the sole shareholder of Mafco Holdings.
Q Then the transaction you worked for then, the next company, MacAndrews & Forbes Holdings, Inc., correct?
A When you say I worked for --
Q You worked for, that's the name on your card?

Page 50

A I'm also an officer of Mafco Holdings and its general counsel as well.
Q And then if we move down to -- was that true in 1998 as well as today?
A It's been true since Mafco Holdings was formed.
Q When was Mafco Holdings formed?
A I knew you were going to ask me that. I don't remember.
Q Then below MacAndrews we have Coleman (Parent) Holding, Inc., one of the parties to this action, and you told us you were an officer of that company as well, correct?
A Yes, sir.
Q And that directors that we identified were Mr. Perelman and Mr. Gettis, correct? Excuse me, that was for CLN Holdings. I misspoke.
A That's right.
Q As I recall, you did not recall who the directors were of Coleman (Parent) Holding, Inc. in 1998; is that right?
A That's what I said, yes, sir.
Q CLN Holdings Inc., we identified

Page 51

the directors, Mr. Perelman and Mr. Gittis in 1998?
A As reflected in that resolution, yes.
Q Moving down to Coleman Worldwide Corporation, that was one hundred percent as it is shown owned by CLN Holdings Inc., right?
A Yes, sir.
Q And then as I remember, you were unsure who the directors were of Coleman Worldwide Corporation, correct?
A That's correct.
Q And according to this chart, Coleman Worldwide Corporation owned 81 percent approximately of the shares of The Coleman Company, Inc., correct?
A Yes, sir.
Q And then the balance of the shares, according to this chart, were owned by what are labeled minority stockholders?
A Yes, sir.
Q And setting aside the Coleman Worldwide holdings, these would be for lack of a better term, public shareholders?

Page 52

A Yes, that's right.
Q Now, is the -- the offices of Mafco Holdings are in New York City at the offices where your offices are today, correct?
A That's correct.
Q And the offices of MacAndrews & Forbes Holdings, Inc., those offices were in New York as of 1998, correct?
A That's right.
Q And Coleman (Parent) Holdings offices, they were in New York as well in 1998, correct?
A I was certainly in New York but I think either Coleman (Parent) or CLN Holdings or maybe both also had an office in Florida.
Q Where was -- did Coleman (Parent) Holdings have an office in both Florida and New York?
A If mail were sent to Coleman (Parent) Holdings in New York, it wouldn't be sent back.
Q Okay, how about if mail was sent to CLN Holdings in New York, would it be

NOT A CERTIFIED COPY

019831

Page 53

sent back?
A I'm not sure.
Q Tell me what the business of CLN Holdings Inc. was in 1998 immediately before the merger?
A It certainly owned the ownership interest in Coleman Worldwide as reflected on this chart. Beyond that, I can't tell you as I sit here today what it was.
Q To your knowledge, did it have any operating assets?
A I don't know the answer as we sit here today.
Q Did it have any employees other than offices?
A There were a few employees of either Coleman (Parent) or CLN Holdings, I believe. I'm not sure which. They may have been both in Florida, one by the name of Howard Gordon and I think the other was Dave Cook. And there may have been a few others.
Q What did Mr. Howard Gordon do for CLN Holdings?
A He was a lawyer. From time to time he was asked to do things that lawyers

Page 54

are asked to do. And I can't remember any specific tasks in regard to CLN Holdings or for that matter Coleman (Parent) Holdings.
Q Where did he have his office in Florida?
A He was located in the same building as our cigar business, which at the time I think was called Consolidated Cigar.
Q And Mr. David Cook, what was his job? Was it for CLN or Coleman (Parent), whichever he was employed by?
A His function was an accounting/tax function. And I'm not going to be able to help you as to what, if anything, he did for either of those entities at the time.
Q Did Mr. Howard Gordon also work for Consolidated Cigar?
A I don't think so, no.
Q Did he work for any other company affiliated with Mr. Perelman's companies?
A There was a time when Harold Gordon was employed by Pantry Pride, a company acquired by ultimately Mr. Perelman.
Frankly, I don't remember if Cook worked for Pantry Pride as well. He may

Page 55

have.
Q Can you identify any other employees in Florida other than Mr. Gordon and Mr. Cook who may have worked for CLN Holdings Inc. at the time of the merger?
A There may have been an administrative assistant or two and I'm not recalling, if so, and I certainly don't recall the name of such a person or persons.
Q What was the address of either starting with Coleman (Parent) Holdings Inc. in Florida, what was the address in Florida, I'm sorry, of their office?
A I think it's a Fort Lauderdale address. After that I can't help you.
Q Just take a look at MS 93 and if you'll turn to page -- I'll give it to you, it's in the notice section, page 30, sir, you'll see an office address of CLN Holdings Inc. 5900 North Andrews Avenue, Suite number 700-A, Fort Lauderdale, Florida, 33309 and then a fax number followed by attention: General counsel.
Do you see that?
A Yes, I do.

Page 56

Q Is that the address of the CLN Holdings?
A The North Andrews Avenue address?
Q Yes.
A I believe so, yes.
Q Is that where Mr. Gordon worked?
A I believe so, yes.
Q Mr. Cook?
A Yes, sir.
Q Isn't that also the offices where the Consolidated Cigar had its operations in New York?
MR. MARMER: Excuse me, I think you misspoke.
MR. BEMIS: May I have that question back.
(Record read.)
MR. BEMIS: I misspoke. Withdrawn.
Q Is that the address that Consolidated Cigar had for its offices in Florida?
A I think so. I'm not sure about the Suite 700-A part, but I think it's the same location as I said. Either CLN

NOT A CERTIFIED COPY

Page 57

Holdings or Coleman (Parent) or both had space within the Consolidated Cigar space.
Q Isn't it also true that one of the Revlon entities had an office at that address in Fort Lauderdale, Florida; your international operations for Revlon for Latin America?
MR. BEMIS: Let me withdraw that.
Q Did Revlon's international operations as they pertain to Latin American maintain an address at this same suite?
A I don't know.
Q Was there a general counsel resident at 5900 North Andrews Avenue?
A I don't know unless Howard was called from time to time general counsel but I don't know.
Q Did you have a phone number there other than a fax number for CLN Holdings?
A I'm virtually certain we did but I don't remember the number, but there was a number to call Howard Gordon.
Q Did you have a phone listing in the telephone book?
A I don't know.

Page 58

Q Did you have a business occupancy license for CLN Holdings in Florida?
A I don't know.
Q Who would know those things?
A Howard, Dave Cook or, perhaps, some people within our accounting function.
Q Where is Mr. Gordon today?
A I think he is still in Florida.
Q And does he still work for MacAndrews & Forbes?
A No, I think he is retired.
Q Did he work for a law firm as well as for CLN Holdings?
A I don't know but I don't think so.
Q Do you know where he is retired in Florida?
A I would just be guessing. I don't know.
Q Realizing you may not know, what's your best guess as to where he might be in Florida? If he is not there, we won't find him. If he is, it may be helpful.
A I think he is in Florida. I don't have a best guess as to where in Florida he is.

Page 59

Q Where is the last place that you knew him to be resident?
A I don't think I ever knew where he resided.
Q How about David Cook, is he still an employee of any of the MacAndrews & Forbes companies?
A I don't believe so, no.
Q Is he still alive?
A I don't know.
Q Do you know where he --
MR. BEMIS: Strike that.
Q When did he cease working for one of the MacAndrews & Forbes companies?
A Sometime after -- I think after 1999, but I'm not sure when.
Q Do you know what he did after he left MacAndrews & Forbes?
A No, I don't.
Q Did Gordon go to Faller White in Miami, the law firm Faller White?
A I don't know.
Q Is the last place of residence that you -- excuse me, the last place that you could associate with Mr. Cook is in the

Page 60

Fort Lauderdale office address that you gave us?
A Yes.
Q Do you know why Mr. Cook left sometime after 1999?
A No.
Q Can you tell me any other --
MR. BEMIS: Strike that.
Q Other than Mr. Gordon and Mr. Cook and, perhaps, an administrative assistant, do you recall any other employees at any time of CLN Holdings Inc., employees now not directors and not an officer such as yourself, if you were an officer?
A No.
Q And as I understand your testimony, the only asset you can think of that was held by CLN Holdings was Coleman stock, and if there were others, you don't remember them; is that right?
A If there are others, I don't remember them. That's correct.
Q Did CLN Holdings ever go by another name such as Coleman Escrow Corporation?

NOT A CERTIFIED COPY

019833

Page 61

A I don't know.
Q Do you know Mr. Joram Salig, S-A-L-I-G?
A Yes.
Q Did I pronounce his name right?
A No.
Q How do you pronounce it?
A Joram Salig.
Q Is Mr. Joram Salig still employed by one of the MacAndrews & Forbes companies?
A He is not.
Q Is he retired?
A He retired from MacAndrews & Forbes. What he is doing today, I'm not certain.
Q When did he leave MacAndrews & Forbes?
A I want to say three or four years ago. It might have been five years ago.
Q What was his position within the organization?
A He was a member of my legal staff.
Q Was he terminated or did he resign?
A We had a reduction in force and

Page 62

Joram was not unhappy about being part of that reduction in force at the time.
Q What was his title when he left the MacAndrews & Forbes group of companies in this reduction of force?
A He was vice-president in law, I believe.
Q Was he also the assistant secretary of CLN Holdings Inc.?
A He may have been.
Q Was he always stationed, was his office always in New York for CLN Holdings?
A He had an office in New York. Whether he had space available to him in Florida, I don't know.
Q Can you identify any specific business of CLN Holdings Inc. that was conducted out of the office at I think it's 5900 North Andrews Avenue in Fort Lauderdale?
A Well, I think the books and records of CLN Holdings were maintain there, and I think various reports and filings and whatnot that had to be prepared and maintained by CLN Holdings either were

Page 63

prepared there or drafts prepared there. And from time to time odd matters that would come up regarding CLN Holdings would have been dealt with down there.
Q Did you ever go to those offices?
A Yes, sir.
Q And did you ever conduct any business of CLN Holdings there?
A That I can't remember.
Q Were there ever any board of directors meetings for CLN Holdings held in Florida that you remember?
A None that I remember, no.
Q And your testimony is that -- who was the secretary of CLN Holdings Inc. in 1998?
A I don't know but I wouldn't be surprised if it was Glenn Dickes.
Q Mr. Dickes has offices in New York?
A He had an office in New York.
Q His central office was in New York?
A Absolutely, yes.
Q Was he on the third floor with

Page 64

you?
A No, he was in a different building.
Q Different building?
A Yes.
Q And as secretary, Mr. Dickes was responsible for maintaining the corporate books of CLN Holdings?
A I considered Mr. Dickes to be ultimately responsible for that.
Q When we say "books," we're talking about the minute books, resolutions?
A Right, yes, sir.
Q So did Mr. Dickes prepare the corporate records of CLN Holdings in New York and then fly them down or ship them down to Florida for storage?
A I don't know if he shipped them down for storage. I don't know if they were stored there. I don't know if drafts were not prepared in Florida of books and records from time to time.
Q Was Mr. Dickes a lawyer?
A He is.
Q And did he report to you?

NOT A CERTIFIED COPY

Page 65

A He did.
Q And is he still with the company?
A He is not.
Q Where is he today?
A He is happily retired.
Q Do you know where he lives today?
A I did but I don't know anymore.
He has just moved, I'm told.
Q Where is the last place that he lived before he moved?
A In New York City.
Q Do you know where he has moved to?
A Out of New York City.
Q That's a big area.
A I don't know. It's a town in New York State.
Q But he is in New York State?
A He is in New York State but I don't know the name.
Q Was CLN Holdings Inc. incorporated in Florida?
A I don't know. Would this document tell me?
Q I don't think -- I don't know if it is in there or not. I don't know. Let

Page 66

me look real fast. Fair question.
A I don't mean to hold this up to go look for that. I don't know the answer.
Q Now I'm curious.
It says CLN Holdings is a Delaware Corporation.
A Okay.
Q Did CLN Holdings file a --
MR. BEMIS: Strike that.
Q Was CLN Holdings Inc. authorized to do business in Florida in 1998?
A I think so.
Q So if someone filed the appropriate documentation with the secretary of state, it would be Ms. Harris at that time, that would have been handled, would that have been handled by Mr. Dickes, the secretary of the corporation?
A Probably by Gordon or Cook.
Q Did CLN Holdings pay its corporate franchise taxes in New York in 1998?
A I don't know.
Q And would that be Mr. Dickes or Mr. Gordon that would know that?
A Or Mr. Cook.

Page 67

Q Did CLN Holdings --
MR. BEMIS: Strike that.
Q Coleman Worldwide Corporation actually held 82 percent or so interest in The Coleman Company, Inc., correct according to that organizational chart we looked at?
A I think that's right, yes.
Q And did Coleman Worldwide have actual stock certificates representing the 82 percent interest, which I think was about 44.1 million shares, if my memory serves me correctly?
A I don't know the answer to that.
Q Well, if there were stock certificates, where were they held, New York, Florida, someplace else?
A I don't know.
Q Don't know?
A I don't know the answer to that.
Q Where the CLN Holdings Inc. being one hundred percent owner of Coleman Worldwide, did it hold stock certificates in Coleman Worldwide?
A Can I have that again, sir?
Q Yes, sir.

Page 68

Did CLN Holdings Inc. as the one hundred percent owner of Coleman Worldwide Corporation have stock certificates representing that ownership?
A I'm sure there was a stock book. Where the stock book was kept, I can't tell you.
Q Where do you think it was kept?
A I don't know the answer.
Q Do you think it was in Florida?
A Could be.
Q It could be Wichita too.
Do you think it was there, do you think it is in Wichita?
A I think it is unlikely to have been in Wichita.
Q Do you think it is unlikely it could be in Florida?
A No, I think it is likely to be in Florida or New York.
Q Who would know if you don't know?
A I don't know.
Q Who does know in the organization?
A I think it was Mr. Gordon, Mr. Cook or Mr. Dickes.

NOT A CERTIFIED COPY

019835

Q None of those people work for you any more, so who would know today, if anyone, in your organization?
A I don't know if anyone today would know if the corporate minute book for CLN Holdings was kept in or about 1998 in the offices of, CLN Holdings offices in Florida.
Q Just going down the list of the companies on that organization chart, I think you still have it open.
A Page 69?
Q Yes.
A Just a couple of more quick questions on that.
Mafco Holdings, did it have any operating businesses or was it just a holding company?
I believe it was just a holding company.
Q And its principal office address was where your office is located today, correct?
A That's right.
Q And was Mr. Perelman in 1998 -- I'm going to try to focus my questions

around the time of the merger for you.
Was he the chief executive officer, if you will, of Mafco Holdings?
A Certainly chairman of the board. I don't know if he had the title of CEO.
Q Did anyone have that title?
A I don't remember.
Q Do you know who the directors were in 1998 again, Mafco Holdings?
A I don't remember.
Q Do you know how many there were?
A I think there were four or five.
Q Do you know any of the directors at that time, 1998?
A Ronald O. Perelman, Howard Gittis, Donald Drapkin, probably Bruce Slovin, and possibly either Jim Maher or Irwin Engleman, E-N-G-L-E-M-A-N.
Q Did Mafco Holdings have any employees other than its officers?
A When you say "employees," you mean on a payroll?
Q Yes, sir.
A I don't think so.
Q By the way, who pays you today?

A I'm not sure since it's a direct deposit.
Q You know, you're the second person if not the third who says I don't know because it's direct deposit.
Let me ask you another question. At the end of the year, do you get a statement that you can submit with your federal income taxes that shows the income that you have been paid by your employer?
A I do, indeed.
Q Whose name is on that form?
A Certainly the names MacAndrews & Forbes are on the form. After that I'm not sure if it says Holdings or Group.
Q I have to ask, I'm embarrassed but I have forgotten the MacAndrews Group is above MacAndrews?
A Mafco Holdings is the top tier holding company.
Q When you said "Holdings," you were referring to Mafco Holdings?
A I'm not sure if I was. I don't know the context of the question.
Q Where your income is.

A MacAndrews & Forbes Holding, Inc. or MacAndrews & Forbes Group when you were asking about my W-2.
Q Where does MacAndrews & Forbes Group -- is that the name of the entity?
A Yes, MacAndrews & Forbes Group.
Q Inc., Co.?
A I think it's Inc.
Don't ask me about the comma.
Q I deserve that. Fair enough.
Where does that the "Group" fit within the chart that appears on page 69?
A It's not on the chart. I think it's below Holdings. MacAndrews & Forbes Holdings, Inc.
Q Did it exist before 1998?
A I don't remember.
Q I'm going to take a second and make a note so I don't forget this, because it's something that I wanted to ask you again.
So as you recall, it is the name is MacAndrews & Forbes Group; is that right?
A Yes.
Q And you believe it's between Mafco

NOT A CERTIFIED COPY

U19836

Page 73

Holdings and MacAndrews & Forbes Holdings?
A It may be off to the side of one of those. I can certainly find out for you.
Q Is it an ampersand?
A Yes, sir.
Q What is the business of MacAndrews & Forbes Group?
A I don't know if it has an operating business, which it has an interest.
Q Are you an officer -- excuse me, are you the executive vice-president and general counsel of Group?
A Likely that I am, yes.
Q Are you a director?
A No.
Q Do you know who the directors are?
A No.
Q Let me turn now to MacAndrews & Forbes Holding, Inc.
In 1988 --
MR. BEMIS: Withdrawn.
Q In 1998, did MacAndrews & Forbes Holding, Inc. have any operating business?
A It certainly had ownership

Page 74

interest.
Q If we could, I'll try to separate that out. When I ask for operating business I mean something that you make, something you're selling, some goods, something like that as opposed to holding an interest in stock in another company.
A It had interest in other companies and its employees, me being -- one part of our responsibilities are to oversee those operating companies and our interests in those operating companies. And from time to time, MacAndrews & Forbes Holdings makes investment on its own and not necessarily controlling interests of various companies.
Q Did it own any manufacturing facilities in 1998?
A When you say did it own --
Q I don't mean to stock, ownership. I own stock in General Motors but I don't own any of their plants or facilities.
A But General Motors does.
Q I understand.
A No, we had no factory.
Q Did you buy and sell any products?

Page 75

A MacAndrews & Forbes Holdings did not.
Q Did you have any offices outside of your offices in New York at 35 East 62nd Street?
A Yes, I believe I had an office in California, in Los Angeles.
Q Where was that in Los Angeles?
A In 1998 it was in Beverly Hills, but I'm not exactly sure of the street address.
Q Did they have employees there in that office?
A I believe that it had one employee in that office.
Q What did the employee do?
A It was an administrative assistant.
Q Is it an administrative assistant for Mr. Perelman?
A For whomever from MacAndrews & Forbes was utilizing an office from time to time.
Q Did the company have a chief executive officer in 1998?

Page 76

A I don't know.
Q Did it have directors on its board of directors?
A Oh, sure.
Q Do you know who they were?
A No.
Q Do you know how many there were?
A Somewhere between three and five.
Q Do you know who -- was Mr. Perelman one of the directors?
A I'm sure he was.
Q Any of the others you can identify?
A Gittis and Drapkin.
Q Did the company have any employees outside of this administrative assistant in Beverly Hills that you identified for me?
A No.
Q Can you identify any offices of the company, whatever their titles?
A I'm one.
Q That's right, you are one. Sorry. Other than yourself, sir.
A I think that some of the people that you have identified here today were

NOT A CERTIFIED COPY

019837

officers, not executive officers but officers, Dickes, Salig.

Q Let me turn now to Coleman (Parent) Holdings and again go back to 1998 before the merger.

You have explained to me that that company was one hundred percent owned by MacAndrews & Forbes Holding, correct?

A Yes.

Q Did CPH have any operating businesses?

A No.

Q What was its business?

A They owned the shares of Coleman Holdings, CLN Holdings.

Q And, indeed, did it have any other material assets other than --

MR. BEMIS: Withdrawn.

Q Did it have any employees in 1998?

A I don't know.

Q Did it have any officers other than yourself, because I think you said you thought you were executive vice-president and general counsel?

A Yeah, I'm not recalling exactly

today except by and large the slate of officers that we have for our various holding companies is consistent throughout.

Q Without holding you to it because I understand you don't have all the paperwork in front of you, in general, are the slate of directors down the chain of companies going to be the same?

A At the holding company level, yes, sir.

Q Once we get to the operating company like Coleman, that's a different story entirely?

A Absolutely.

Q Now we've talked about CLN Holdings, you were the executive vice-president and general counsel when the company was formed, were you not, that would be CLN Holdings?

A I don't have an independent recollection of that. I'm assuming so, yes.

Q Do you recall why the company was formed?

A The particular reason why on a particular day we formed CLN Holdings?

Q I'm not trying to get you down to a particular date but a reason why the company was organized.

A I don't have a recollection of that, no.

Q Do you remember that it issued something called senior secured first priority discount notes?

A Do I remember that? No.

Q Other than yourself, are you aware of any employees that CLN Holdings had in 1998, and I guess I should add to the people Mr. Gordon and I think was it Mr. Cook was the other person?

A Right.

Q Other than those people.

A Look, as I said earlier, I don't know if CLN Holdings had employees in the sense of a payroll, but it had officers and it had directors. We talked about that and there may have been one or more people in a CLN Holdings payroll, I just don't know.

Q Have we even asked about the people you believe were employees of CLN Holdings? As we sit here today, you don't

know if they were paid by CLN Holdings as opposed to some other company within MacAndrews & Forbes?

A I'm assuming that Gordon and Cook were but I don't know that. I can find that out for you but I don't know that.

Q I appreciate that. Let's turn to Coleman Worldwide Corporation first.

Did Coleman Worldwide Corporation have any business other than its ownership of The Coleman Company, Inc. common stock?

A Coleman Worldwide was the issuer, was it not, of the Liquid Yield Option Notes?

Q I believe it was.

A Certainly did that and owned the shares of -- certainly did that.

Q Did Coleman Worldwide Corporation have any operating business, as we have been using that term?

A No.

Q And if I asked you this, I apologize. Where was its principal office address?

A That, I don't know.

NOT A CERTIFIED COPY

019838

Q Did it have any employees that you know of?
A I don't know.
Q And did it have a payroll, if you know?
A It may have but I don't know.
Q Of all the companies in the chain that you have on page 69 of MS 279, which you have in front of you, on the top chart the only operating company in that chain that is some big company that we described as operating company is The Coleman Company, correct?
A Yes.
Q How many mergers and acquisition transactions have you been involved with since 1987 when you joined MacAndrews & Forbes in your initial position?
A I joined in '89.
Q Did you say '87 earlier?
A Yes.
Q I misspoke. I apologize it was '89. You got promoted two years later. I subtracted those years.
A There have been a number of

transactions, acquisitions, divestitures, mergers that I played some role in from time to time over that period of time.
Q Can you give me your best estimate of how many?
A No.
Q Acquisitions, divestitures, mergers?
A No.
Q No estimate at all?
A A number of transactions.
Q Were you involved in -- you were involved in the Coleman transaction because you signed the merger documents, right?
A Yes.
Q Did you have any other involvement in the transaction other than just signing the document?
A During the course of the negotiations, I am certain that I was involved in discussions about various issues that would arise. I'm certain that there were drafts of the agreements that I signed that I did see. Otherwise, I was available for counsel, if sought.

I became much more involved after the transaction was consummated
Q Is the -- when Mr. Perelman's entities engage in acquisitions, divestitures, mergers or other forms of corporate transactions, are you the chief in-house legal officer who one would go to for legal advice?
A The answer is I'm the chief legal officer, yes.
Q The reason I ask is given the size and number of the companies that you are involved with, is there any other legal officer at your parallel level with you within the company, Mr. Perelman's companies?
A There are other enormously talented lawyers at MacAndrews & Forbes now and then who are available to give counsel, but there is only one general counsel. And that in the period of time we're talking about and today is me.
Q How many lawyers in 1998 did you supervise within your responsibilities at Mr. Perelman's companies?

A Somewhere between six and eight. I'm just not certain of the number because I'm just not certain of changes over the period of time, and I'm focused on your year of 1997/'98.
Q You identified Joram Salig, right?
A Yes.
Q You identified that gentleman. What other lawyers were in your group that you supervised during this period, 1997, 1998?
A Glenn Dickes, D-I-C-K-E-S.
Q Is there one "N" or two in Glenn?
A There is one.
I stand corrected. There is two.
Q Who else?
A Steven Fasman, who is here today. A lawyer named Gary Leshko, L-E-S-H-K-O. A lawyer named Lorelei Borland.
Q How do you spell Lorelei?
A L-O-R-E-L-E-I.
Q What was her last name again?
A B-O-R-L-A-N-D.
Q Borland?
A Yes.

NOT A CERTIFIED COPY

019839

Page 85

Q Anyone else?
A A lawyer named Dexter Kenfield.
Q K-E-N-F-I-E-L-D?
A Yes.
Q Anyone else?
A I think that's it.
Q During this time period 1997, '98, what was Mr. Dickes' primary area of responsibilities?
A He was corporate secretary for most of the companies. And I would say he was our principal corporate lawyer assisted by Mr. Salig.
Q Did Mr. Salig also acted for some companies as a corporate secretary, as I recall?
A Either secretary or assistant secretary.
Q Fair enough.
Did Mr. Salig report up to Mr. Dickes or were they on parallel within the organization?
A I consider them to be parallel.
Q What did Mr. Fasman do during this time?

Page 86

A His principal area of expertise was litigation, but he is a Jack of many trades.
Q Mr. Leshko, what was his principal area of responsibility?
A Litigation matters.
Q Ms. Borland -- anything else?
A We all do other things than our principal focus as we're called upon from time to time to do that. It's a small group and the legal issues are not small.
Q Ms. Borland, what did she do?
A Her principal area of expertise was environmental.
Q And Mr. Dexter Kenfield, what did he do?
A Litigation, but principally he managed the asbestos docket for a company called Pneumo Abex.
Q So in terms of corporate law, two principal people beside yourself if someone were called upon in-house were Mr. Dickes and Mr. Salig?
A That's right.
MR. BEMIS: Why don't we take a break here so we can change the tapes.
THE VIDEOGRAPHER: The time is 11:39 a.m. and this completes tape number one.
(Recess was taken.)
THE VIDEOGRAPHER: The time is 11:51 a.m. and this begins tape number two.
MR. BEMIS: We're back on the record.
Q In terms of the Coleman Sunbeam transaction, I wanted to ask you what involvement certain people had in the transaction, if any. And to the extent that you can answer the question, please do so. If you don't know, just tell me.
Let's start with Mr. Perelman. What was his involvement with the Sunbeam-Coleman transaction?
A I'll start backwards. He is certainly a director of The Coleman Company and attended the meetings of the Coleman board. And determined to go forward with the transaction, I believe his involvement began with the approach made either directly

Page 87

Page 88

to him or indirectly to him or someone else at the company at MacAndrews & Forbes by Morgan Stanley about the prospect of Sunbeam buying Coleman.
I'm aware of the meeting that Mr. Perelman attended, Mr. Dunlap, the CEO of Sunbeam, sometime in December, I believe of 1997.
Q Is this the meeting where Mr. Dunlap is reputed to have stormed out of the meeting?
A That's what I heard too.
Q Go ahead.
A And in between that meeting, the Dunlap meeting and the Coleman board meeting, I'm certain Mr. Perelman was kept apprised by the people negotiating the transaction as to what was occurring.
Q Has Mr. Perelman, to your knowledge, ever given a deposition in any proceedings related to the Coleman-Sunbeam acquisition or the lawsuits that resulted therefrom?
A I don't believe he has.
Q Mr. Howard Gittis --

NOT A CERTIFIED COPY

Page 89

A G-I-T-T-E-S.
Q What was his involvement?
MR. MARMER: We are at a level that's relatively innocuous but we are dealing with the general counsel so we always have the problem that he could have learned certain information in his capacity as counsel, since that's what he does full time there.
So I just want to admonish the witness to the extent that he can give general answers that are responsive he should do so, but if as he is thinking about information, he has information that he learned by virtue of his role as the general counsel, he should be cautious not to disclose anything that might intrude into the attorney-client privilege.
That's a pretty vague instruction but I'll try to help you with specifics as we go.
I don't want to foreclose his entire inquiry but I want to be careful.
Q I'm not asking you about any

Page 90

particular conversation with anyone, a more generalized issue of what people's involvement was in the transaction and we may go into detail later.
And if that helps at all and your counsel can, of course, object and deal with it as appropriate, let's go back to Mr. Gittis.
What, if any, involvement did he have in the Sunbeam-Coleman merger transaction?
A I think he attended the same meeting with Mr. Dunlap that Mr. Perelman participated, which as I say was in December of '97 in the state of Florida.
Thereafter, I'm not certain what involvement, if any, Mr. Gittis had, as he was not a director of The Coleman Company.
Q Before I forget to ask you this, Mr. Drapkin told us yesterday that he had frequently, when he is in town and Mr. Perelman when he is in town, has breakfast with Mr. Perelman at his townhouse I believe at 8:30 a.m., do you ever attend those breakfast meetings?

Page 91

A I do.
Q Regularly?
A Regularly.
Q And Mr. Drapkin also told us that he often has lunch and dinner with Mr. Perelman, if, obviously, they are both in town; do you likewise do that?
A Not regularly.
Q So your regular attendance at the meal meetings, and I'm not trying to be pejorative about it, but you do attend the breakfast meetings when you are in town?
A I attend the breakfast meetings when I am in town. From time to time I attend luncheon meetings or dinner meetings. And they are not meal meetings, as you say, they are substantive discussions which occur around a meal.
Q They are business meetings where you eat over your food, like so many of us have to do sometimes.
A I believe there was a board of directors meetings this morning at MacAndrews & Forbes Holdings along with breakfast.

Page 92

Q What was your -- how would you describe your specific role in the Coleman-Sunbeam merger transaction up to the closing, recognizing I know you had a little different involvement afterwards; how would you describe your involvement?
A I describe it as general oversight and not very hands on. Most of my conversations with regard to the transaction were with either Wachtell, Lipton or probably lawyers on my staff in-house.
Q And Wachtell, Lipton at this time was your outside counsel in the transaction, correct?
A Wachtell, Lipton represented, I'll call it, the sell side of the transaction.
Q And was your primary point of contact Adam Emmerich?
A Yes.
Q And the next person I would like to ask about is James Maher, M-A-H-E-R.
What was his involvement in the Coleman-Sunbeam transaction?
A I think Jim was the principal negotiator of the transaction for MacAndrews

NOT A CERTIFIED COPY

019841

Page 93

& Forbes.
Q Did he then report directly to Mr. Ronald O. Perelman?
A I'm not sure I know what you mean. Did he report every step of the way to Mr. Perelman?
Q I'm suggesting --
A Or a chain of command?
Q In the chain of command sense?
A In the chain of command sense, we all report to Mr. Perelman.
Q Did Mr. Perelman have the final say so with regard to whether the merger agreement between Sunbeam and CLN Holdings Inc. and Coleman (Parent) Holding, Inc. would be entered into?
A He had the final say so as to the disposing of his shares of Coleman. That's for sure. If that's what you mean, and I think that's what you meant, the answer is yes.
Q What involvements did Mr. William Nesbitt have in the Coleman-Sunbeam transaction?
A He assisted Mr. Maher. And I

Page 94

think they both worked with the Coleman folks involved in the transaction.
Q Who was the --
MR. BEMIS: Strike that.
Q Do you know Lenny, I'm going to pronounce it wrong, so I'll spell it, A-J-Z-E-M-A-N-N?
A Lenny Ajzenman.
Q Ajzenman.
What involvement did he have in the Coleman-Sunbeam transaction?
A I don't know.
Q Jerry Levin?
A If you're referring to the chairman --
Q I am.
A -- of the board of The Coleman Company --
Q Yes.
A -- he pronounces his name Jerry Levin because there is a Jerry Levin.
Q I know a Paul Shapiro too, but it's Shapiro in this case. I apologize in his absence.
What was Jerry Levin's

Page 95

responsibility with regard to the Coleman transaction, as you understood it?
A He was the CEO of The Coleman Company and was very much involved along with others at the Coleman Company and Maher and Nesbitt.
Q Did you ever attend any breakfast meetings with Mr. Perelman and Mr. Levin was present and the transaction with Sunbeam was discussed?
A I attended breakfast meetings and if Jerry Levin was there and if this topic came up, the answer is yes. I don't have a specific recollection of breakfast meetings with Levin present. And we're talking about this transaction?
Q Did Mr. Levin ever express to you his views about Mr. Dunlap before the merger?
A I don't think so, no.
Q What was Norman Ginstling's responsibilities with regard to the merger transaction?
A I don't know if he had any. Norman has been the principal player advisor

Page 96

with regard to tax issues at MacAndrews & Forbes and is often consulted about tax issues by the operating companies in which we have an economic interest.
Q What was Glenn Dickes' responsibilities in connection with the merger transaction?
A I don't recall what his responsibilities were, if he had any. I'm remembering vaguely that Joram Salig was involved in the transaction.
Q Let's then turn to Joram Salig.
Would you please tell me what his responsibilities were in connection with the transaction?
A He was a lawyer at MacAndrews who from time to time would interface with Wachtell, Lipton and, perhaps, others.
Q Did he have any particular area of responsibility in the Sunbeam transaction where he interfaced with Wachtell, Lipton?
A I don't think so.
Q Did Steven Isko, I-S-K-O, have any responsibilities with regard to the Sunbeam Coleman transaction?

NOT A CERTIFIED COPY

016042

Page 97

A I think he was a lawyer at Coleman.
Q And did he report to Mr. Shapiro?
A He would have reported to Paul Shapiro, the general counsel of Coleman, correct.
Q What responsibilities did Anthony, I think it's Ian, I-A-N, have with regard to the transaction?
A I don't know if he had any.
Q What responsibilities did Marvin Schaffer have?
A I don't know.
Q I'm handing you, sir, what has been marked in a previous deposition as MS 69. It is entitled MacAndrews & Forbes/Project Laser Working Group List and below there is a table of contents.
Do you have that document in front of you?
A I do.
Q And there is a date at the top of the document. And it is, I believe, it's February 27, '98, but there is also a date at the bottom of the document, it may be a

Page 98

print date, I'm not certain, of 3-6-98.
Have you seen this document before?
A I don't know.
Q I see that this is -- you are listed on page two, are you not?
A I am.
Q Was this document prepared by MacAndrews & Forbes or any of its companies or is it prepared by outside counsel?
A I don't know if it was prepared by either MacAndrews & Forbes or outside counsel. It could have been prepared by an investment banker. It might have been prepared by Sunbeam, their banker, Morgan Stanley. It might have been prepared by Coleman, I don't know.
Q All the names on this list --
MR. BEMIS: Withdrawn.
Q Turn to page 11 of the document. There is an address for someone's home for Joseph Page, and there is 277 Forrester Drive, Los Angeles, California; do you see that?
A I do.

Page 99

Q Did Mr. Page work at the address of the office in California which is to the left, 10880 Wilshire Boulevard, Suite 1400?
A There came a time when he had an office on Wilshire Boulevard. I'm not certain of the address.
Q Is that the address of the California entity that you were thinking of? You said it was in Beverly Hills but that address is on the foot hill of Beverly Hills. I know exactly where it is at only because I live very close to that.
A No, it's a different address.
Q Okay.
A It's not in the table of contents. Can I look at this for a minute?
Q Sure. You're free to look at any of the documents.
A I don't know who prepared this as I look through it now.
Q Do you see any addresses for any --
MR. BEMIS: Withdrawn.
Q Did you see any addresses in Florida for MacAndrews & Forbes in here?

Page 100

There are Florida addresses for Arthur Anderson and Sunbeam, but I don't see any Florida addresses for anyone at MacAndrews & Forbes. Perhaps I missed them and I ask you to let me know if I missed something?
A There is a residence address for Howard Gittis on page two in Palm Beach, Florida.
Q What's under the heading "weekends" as I see it?
A Yes. Mr. Perelman, likewise, has a house in Florida where that meeting that you described with Mr. Dunlap took place as it was told to me.
Q In fairness, I was repeating a description. I wasn't there either. We both know of what you speak.
A Okay.
With regard to MacAndrews & Forbes, other than what I just said to you, that's all that I see.
MR. BEMIS: Let me see MS 70 please.
Q I'm going to hand you what has previously been marked as MS 70, which is

NOT A CERTIFIED COPY

019843

Page 101

another project laser working group list under the heading MacAndrews & Forbes.
This one is for your assistance. I offer this the date on the upper right-hand corner appears to be 5-21-98. There is also a print date at the bottom which appears to be August 14th of 1998.
Have you seen this document before?
A I don't think so.
Q Under MacAndrews & Forbes, other than a weekend address, which you pointed out, there is a handwritten note to a Florida phone I think under Mr. Shapiro's name. Do you see any other Florida addresses for anyone in the MacAndrews group?
A Shapiro had a Florida residence too, which I assume that number on page 3 relates, but I don't know.
The answer to your question is no.
Q On either list under any heading I did not see Mr. Gordon's name, for example. I did not see his name. Did you see it anyplace?

Page 102

A I did not see it in the table of contents.
Q Or Coleman (Parent) Holdings, I didn't see that?
A Neither did I.
Q I didn't see Mr. David Cook's name anywhere either, did you?
A No.
Q What was your very first involvement in the Sunbeam-Coleman transaction that you can recall today?
MR. BEMIS: Let me withdraw the question.
Q What was your first involvement with the Coleman-Sunbeam transaction?
A Should I confer with you before I answer this question?
My involvement was as a lawyer, that's for sure.
Q When was it, let's start with when?
A It was sometime before that meeting that took place in Florida with Mr. Dunlap, Mr. Gittis, Mr. Perelman and, perhaps, Michael Price.

Page 103

Q Just so the jury would know, who is Michael Price?
A Michael Price at the time I believe was still running a mutual fund called Mutual Series Fund, which was the largest single shareholder of Sunbeam.
Q Anyone from Morgan Stanley present?
A I don't know. And what I said to you about Price is just based upon a recollection of what someone may have said to me.
Q But Mr. Price was at the meeting?
A I don't know.
Q Was Mr. Dunlap at the meeting?
MR. MARMER: I think there is a confusion here between which meeting you're asking him about.
Q I think that may be true. I think this is a meeting where Sir Dunlap wasn't present, am I correct?
A I don't know.
Q Let me try it again.
Your first contact before the meeting in Palm Beach where Mr. Perelman,

Page 104

Mr. Gittis and Mr. Dunlap met and departed in the fashion we've described?
A Yes.
Q Who was present at this very first meeting?
A I don't know who was present. I was told that it certainly was Dunlap, Perelman and Gittis.
Q Did you attend this --
A I did not.
Q My question, it may not have been clear, I'm looking now to find out when you first became involved as opposed to hearing something right now.
When did you first become involved in doing something in connection with the Sunbeam-Coleman transaction?
A I think the first thing I did is engage Wachtell, Lipton.
Q In the course of preparing for your deposition, did you look at a chronology that was prepared by Wachtell, Lipton, and it has an Exhibit A attached to it which describes various meetings, attendees, subject matters of meetings; did

NOT A CERTIFIED COPY

019844

Page 105

you look at that?
A The answer is yes, I did.
Q Did that refresh your recollection about events or would you have to look at it again to truthfully answer questions about dates and who was present at meetings?
A I would have to look at it again.
Q I'm going to let you look at it to see if it will assist you with your testimony.
I take it it will assist you with your testimony if I give it to you?
A I think so.
Q Okay, I'll give a copy to your counsel and I'll show you MS 75, which has been previously marked.
Do you have MS 75 in front of you?
A I do.
Q Would you just confirm for me, sir, this document was reviewed by you in preparation for your deposition today?
A I did look at it in connection with this deposition here today, yes, sir.
Q Did you see the whole document or just Exhibit A which begins on the fourth

Page 106

page?
A I don't remember. I think it was the whole document.
Q Did you see MS 75 before it was sent to the Securities & Exchange Commission?
A Yes, sir.
Q Did you approve its sending?
A I don't know if I was asked to approve it or not. I did see it.
Q Did you make any changes to it after you saw it?
A I don't remember.
Q Wachtell, Lipton at the time of this letter, March 30, 1998 was your counsel -- excuse me, was counsel for The Coleman Company, Inc., correct?
A Yes.
Q And this is also the same firm that Mr. Emmerich worked for and with whom you communicated on behalf of the MacAndrews & Forbes companies in the transaction?
A Yeah, and there is a lot of information here that relates to what MacAndrews folks did, and I'm certain that I

Page 107

was consulted about that.
Q Now, at the time this letter was written, March 30, 1998, which happens to be the closing date of the transaction, did you consider, you, Mr. Schwartz consider Wachtell, Lipton to be your legal counsel?
MR. MARMER: Objection. Asked and answered.
MR. BEMIS: If I have, I apologize. I'm not trying to do it again. I want to know if it was his legal counsel, and his in the sense of MacAndrews & Forbes as opposed to The Coleman Company, Inc.?
MR. MARMER: Same objection.
A With regard to this letter and this chronology, I think Wachtell was counsel for The Coleman Company who has been asked to respond to this, which is the SEC's inquiry.
Q But you were the one, as I remember your earlier testimony, you were the one who retained Wachtell, correct?
A Yes, Wachtell was retained on the sell side of the transaction. The sell side

Page 108

of the transaction was Coleman and we as principal shareholder of Coleman because this was a two-step transaction, as you know.
Q The first entry that I identified for you is January 29, 1998, which is on page 2 of Exhibit A of MS 75. Would you turn there, please?
A Yes, I see it.
Q Now, did you -- is this accurate in terms of your first involvement because I do not --
MR. BEMIS: Withdrawn.
Q I do not see your name appearing anywhere before January 29, 1998 in the chronology.
A Yes, I see that.
Q Did you have any direct involvement as opposed to hearing something about the transaction before January 29, 1998?
A I did not.
Q Now, I note that on January 20, 1998 Wachtell, Lipton writes that they were retained as special counsel to Coleman; do

NOT A CERTIFIED COPY

019845

Page 109

you see that?
A Yes, I do.
Q You are the one who made that retention?
A As I see this, I may be mistaken. It may be that Shapiro called them on the 28th and I spoke to them on the 29th about this confidentiality agreement.
Q Let's turn to the --
A But Wachtell and Emmerich are no strangers to me with regard to this transaction. I don't want to mislead you.
Q I'm not suggesting you are. I just want to get to the beginning and take you back so we get done fast.
We're at January 29th and my understanding then is according to this chronology, that you telephoned Wachtell, Lipton and said that a form of confidentiality agreement to be proposed to Sunbeam in connection with the provision of confidential information to Sunbeam was going to be faxed to Wachtell for their review; is that correct?
A That's what it says and I have

Page 110

such a vague memory of such a call.
Q Now, did you -- did someone at MacAndrews & Forbes prepare a draft confidentiality agreement and send it to Wachtell?
A I don't know.
Q Let me show you what's been previously marked as MS 133?
A Yes.
Q First of all, have you seen this document before, MS 133?
A Not that I remember, no.
Q Looking at the document, and in particular the print of the document, do you recognize whether the document was prepared by MacAndrews?
A We literally look at scores of confidentiality letters like this from year to year. I can't tell you based upon the type who or where it was prepared. I see the address says 625 Madison Avenue on the letterhead of The Coleman Company, which is where I think Levin and Shapiro and Isko had offices at that time, but I can't tell you whether it's a document that we would have

Page 111

sent by way of a form to them or to Wachtell, but the type doesn't look like McAndrews's & Forbes type.
Q Does it look like something that was typed by the Coleman Company at their Madison Avenue address?
A I can't determine that.
Q Well, in any event, is it based on the chronology and your review of events? Did someone at MacAndrews prepare this confidentiality agreement which was ultimately sent to Sunbeam?
A I don't know.
Q Well, according to the next entry under January 29, it provides that Norm G is a colleague of MacAndrews faxed the confidentiality agreement to Wachtell, Lipton, Paul Shapiro general counsel of Coleman for their respective review; do you see that?
A I do.
Q Is that what happened?
A I don't know.
Q Well, let's step back then. Did you tell Wachtell, Lipton that

Page 112

a form of confidentiality agreement was going to be faxed to Wachtell for review?
A I have no reason to doubt that that's what is reflected on this chronology.
Q And do you have in your documentation, your forms, if you will or precedent at MacAndrews & Forbes forms of confidentiality agreement that you have used in the past when you are operating on, in this case I think you called it the sell side?
A As I said, we receive literally scores of confidentiality agreements in the course of a year. We send out confidentiality agreements, we get more than we send out. And I don't know if someone maintains a form file with forms of confidentiality agreements.
Q Have you seen agreements used by MacAndrews & Forbes on either the buy or sell side where they have used the term "evaluation material" as set forth in the second paragraph of MS 133?
A It's -- the term evaluation material is quite common to letters like

NOT A CERTIFIED COPY

Page 113

this. Definition of evaluation material is often very different in confidentiality letters.
Q Is there anything in this confidentiality agreement which previously identified as having actually been executed by Mr. Shapiro and counter executed by Mr. Fannin that appears to you to be out of the ordinary, if you will, from the scores of such letters that you have either received or sent in the course of your business at MacAndrews & Forbes?
A I haven't read it before, at least that I can recall, and I haven't read it now. If you want me to, I will. The one thing I will note is that it seems longer than most.
Q Why don't you take a look at it. I would like you to read it to see if you can answer my question. I apologize that it is going to take some time. If you want to step outside so nobody is watching you while you read, feel free to do so.
A Other than what I said to you about its length I'm not sure I can help you

Page 114

with this question, but I'm happy to go through it for you.
Q I would appreciate that.
(Pause)
A Okay, I have gone through it.
Q Okay, would you like my question re-read?
A Yes.
(Record read.)
A No.
Q I note that in the merger agreement, MS 93, you might want to take it out of the pile in front of you, it's the merger agreement, turn to page 5.
A Okay.
Q Do you see the definition of Morgan Stanley about five six lines down by underscoring?
A Yes.
Q And therein, as you signed this document, it refers to Morgan Stanley as meaning Morgan Stanley Co., Incorporated, Laser's financial advisor, correct?
A Yes.
Q And Laser is Sunbeam, right?

Page 115

A It was referred to as Laser in this transaction.
Q Now, financial advisor is a term that is also used in MS 133 in the second paragraph under evaluation materials; do you see that?
A Right, but MS 133 is between Sunbeam and Coleman.
Q I understand that. I'm asking you to look at financial advisor.
A Where is that?
Q It's the second paragraph under evaluation materials.
A Is that page 2?
Q It's page 1, sir, the second paragraph as used herein.
A Yes.
Q You use that as The Coleman Company uses the term financial advisors?
A At which the company, the company being Coleman, in this February 4th letter?
Q Right.
A So the words financial advisors appears.
Q Now, my question is not whether

Page 116

the term financial advisor, recognizing that this went the other way, but financial advisor includes investment banking firm such as Morgan Stanley or Credit Suisse First Boston in the case of the Coleman Company?
A I think it would include Credit Suisse First Boston for The Coleman Company.
Q If there is a cross comfort letter that is going in the other direction that became the identical term financial advisors in its definition, that would include Morgan Stanley in definition of financial advisor, would it not, sir?
MR. MARMER: I object to the form of the question. I think you ought to have it read back. I think you may have misspoken.
Q Let me just ask another question.
The term financial advisor as a generic term does include investment bankers when describing evaluation materials, does it not?
A It can.
Q Well, it does in this letter, MS

NOT A CERTIFIED COPY

019847

Page 117

133?
A I have seen letters that use financial advisor also refer to investment bankers, separate term.
Q Well, in this case let's focus not on this letter, not other cases, in this letter, as in MS 133, did the determine financial advisor include here let's say Credit Suisse First Boston?
A I don't know if The Coleman Company intended that or not.
Q Well, let's look at the -- let's see if we can look at the agreement that you signed, MS 93 on page 3. Look at the definition of Credit Suisse First Boston.
A Page three?
Q Yes, sir, line underscore 4.
A Okay.
Q You see Credit Suisse First Boston, Credit Suisse First Boston Corporation, the company's financial advisor?
A Yes, I see that.
Q And company's refers to the Coleman Company, does it not?

Page 118

A Yes, it does.
Q And in the context --
A Excuse me, one second.
Q It's up on the front page.
A Yes, I see it. Thank you. It does.
Q And, indeed, so in the context of MS 93, at least with regard to The Coleman Company, financial advisor as that term is used in MS 133 included the investment banking firm of Credit Suisse First Boston?
MR. MARMER: Objection to the form.
A If the definitions as included in this definition agreement plan and merger, Exhibit 93, that I signed are the definitions intended in this February 4, 1998 letter Sunbeam and Coleman that I didn't sign, the answer is yes.
Q All right. Let's make sure that you intended to incorporate -- did you intend to incorporate within to the merger agreement, MS 93, the terms in MS 133?
A Like I say, MS 133 is a letter between Sunbeam and Coleman wheres this

Page 119

merger agreement is between Sunbeam and Coleman Holdings and Coleman (Parent) Holdings. Is there a confidentiality letter between these entities, that is the entities subject to Exhibit 93?
Q Are you asking me a question?
A Yes, because I think that's the piece that's missing.
Q Well, let me ask you then to turn to -- let's do it a different way.
Turn to page 18 of the merger agreement, MS 93?
A Okay.
Q And, again, now so the jury understands, MS 93 you did sign in two capacities, right?
A I did. I signed --
Q Read section 6 -- I didn't mean to interrupt you.
A I just want to go back to the signature line. I think I signed as an officer of CLN Holdings and also Coleman (Parent) Holdings.
Q Yes, sir, you did.
Look at 6.7 and you might want to

Page 120

read over to the next page.
A Okay. Okay.
Q Am I correct, sir, that there is a reference in that paragraph, Section 6.7 of MS 93 to a February 4, 1998 confidentiality agreement?
A There is reference in 6.7 to confidentiality agreements with an "S".
Q Well, that's true. There are two of them. We're talking about one of them right now, the February 4th one which you have as MS 143.
A That is referenced in 6.7.
Q And MS 133 was the document that you were referring to when you read this agreement, MS 93, and before you signed it in the two capacities that you did so, correct?
A If you're asking me to remember that, the answer is I don't. If you're asking me based upon what I just read 6.7, like I say, there is reference to two agreements, one of which you showed me one of which I haven't seen.
Q Let's talk about the February 4th

NOT A CERTIFIED COPY

16div-025630

Page 121

agreement. You have an agreement of February 4th. It is a confidentiality agreement, is it not?
A I have read it.
Q Is it the same agreement that you were identifying as a February 4, 1998 agreement at MS 93 at paragraph 6.7?
A I don't want to fence with you. I don't know. I'm assuming so.
Q Do you know of any other February 4, 1998 agreement?
A I didn't know of this one until you showed it to me.
Q I'm not trying to hide anything from you.
A I didn't suggest you were.
Q Oh, okay.
And the company which is in MS 133 is The Coleman Company, correct, that's defined Capital C Company?
A The Coleman Company, Inc. together with its subsidiaries, collectively The Company, that's correct.
Q The conditions used in MS 93 and the definitional section on page 2 means

Page 122

again, The Coleman Company, Inc., right?
A That is correct.
Q Now, in terms of the February 4th agreement, am I correct that under the provisions which appear on page 4, if you will, beginning of the paragraph you understand, refers to representations and warranties concerning evaluation materials.
A Yes, provided by the company, right.
Q That is correct. In this case, The Coleman Company or its representatives, correct?
A That's what it says, yes.
Q And representatives includes its financial advisors, right, sir, as set forth on the definition on page 1?
A I'm going back to look.
Q Fair enough.
A Representatives includes financial advisors.
Q Such as Credit Suisse First Boston, as you have identified?
A Yes.
Q According to this agreement, was

Page 123

sent to Sunbeam, Sunbeam was required to agree if they signed this, you, being Sunbeam, "agree that any liability to you or any representatives resulting from the use of -- I misspoke.
MR. BEMIS: I withdraw that.
Q According to this agreement, if you look at the first sentence of that paragraph of page 4, Sunbeam agreed in the following language "you understand that except as may otherwise be agreed in writing, neither the company, meaning Coleman, nor its representatives, which includes Credit Suisse First Boston, make any representation or warranty as to the accuracy or completeness of the capital E, evaluation, capital M, material."
Did I read that correctly?
A That's what's set forth in this February 4, 1998 letter. You read it correctly.
Q You intended then that would be incorporated into the merger agreement at paragraph 6.7 by virtue of the incorporation of the agreement of February 4, 1998,

Page 124

correct, sir?
A I don't read it that way.
Q Okay. I won't argue with you about it.
A Okay.
Q Now, sir, is it customary in transactions on a buy/sell transaction such as the Coleman-Sunbeam transaction to get cross confidentiality agreements?
A I don't know about it being customary. I'm not surprised to hear there is reference to two agreements.
Q When you signed the agreement, you saw the reference to the February 23, 1998 confidentiality agreement, right?
A I saw that, yes.
Q Did you ask to see it before you signed the agreement?
A I don't remember that. I wouldn't mind seeing it now.
Q You're going to see it in a minute.
Did you have someone at the closing who was responsible for checking off the documentations and making sure everybody

NOT A CERTIFIED COPY

019849

Page 125

had signed as required by the merger agreements, sometimes called a closing checklist, they even put them on plasma screens nowadays?
A I don't know if Wachtell had a closing checklist at a closing or not.
Q Who was -- Mr. Joram Salig, was he the one responsible for handling the exchange of confidentiality agreements between the parties?
A I don't remember that. I do see the reference in the chronology you showed to me. To Salig sending a form of confidentiality agreement to Wachtell on the 29th.
What happened to that form after that, I don't know.
Q Let me show you what's been marked as -- I have one more question on MS 133.
A By the way, I don't know if he sent what ultimately moved into the Sunbeam-Coleman letter or something else and I can't get much help from the chronology either.
Q Would you look at MS 133 one more

Page 126

time, please, and in particular if you turn to page 7 and the last paragraph beginning "this agreement."
A Yes.
Q And the sentence begins "this agreement will be governed by and construed with the laws of the State of New York without regard to the principles of conflicts of law."
Do you see that?
A Yes.
Q Have you associated other provisions --
MR. BEMIS: Strike that.
Q Have you used language like this in other confidentiality agreements that MacAndrews & Forbes or any of its affiliated entities have executed confidentiality agreements?
A I don't know.
Q Who would know?
A You have to check the agreements.
Q Well, in the scores of agreements that you told me about, that you both received and have sent out, do you

Page 127

customarily, that is in your case, have a provision providing that New York law controls?
A No, there is no customary provision.
Q Do you know where this language came from that apparently you sent to Mr. Fannin?
MR. MARMER: Objection. Mischaracterizes the record.
A So I'm clear at least, this February 4th confidentiality letter is a document by and between The Coleman Company signed off by its general counsel, Paul Shapiro.
Q Fair enough.
A Sunbeam signed off by David Fannin.
MR. BEMIS: I withdraw the question.

Q Did you have any follow up at your call to Wachtell about the confidentiality agreement in which you discuss with Wachtell or any attorney there, whether the

Page 128

confidentiality agreements referred to in the January 29 entry of MS 75 had, indeed, been prepared, sent out and executed by both parties?
MR. MARMER: Let me just caution you here. It's possible to answer this question, I think, without revealing attorney-client privileges, but you want to stay focused on that in forming your answer not to stray into anything else, not that you would, but just a little caution.
A I can't help you based on my recollection, Mr. Bemis, but in looking at the chronology that you showed to me, the reference to January 29th is to me phoning Wachtell to indicate that a form of confidentiality agreement to be proposed to Sunbeam, an agreement to Sunbeam in connection with the provision of confidential information to Sunbeam would be sent over.
Q And my question is: Did you do any follow up to see whether, indeed, that happened?

NOT A CERTIFIED COPY

Page 129

A That a document was sent over to Wachtell?
Q Yes, sir.
A No.
Q Were you interviewed by Wachtell for this fact entry on January 29th?
A I don't know if Wachtell was the source of the entry or we were, that is, I was.
Q Do you recall any confidentiality agreements being sent to MacAndrews & Forbes that were drafted by Wachtell, Lipton as opposed to MacAndrews & Forbes drafting the confidentiality agreement?
A No, but I'm highly suspect that this document, MS 133, is a MacAndrews & Forbes drafted document.
Q Why do you think that?
A As I say, it's very long. It includes every possible term and provision one may see in a confidentiality agreement. And I doubt very much that this is the complete work product of what Salig said but it could be.
Q If it wasn't Mr. Salig's complete

Page 130

work product, would you believe based on your work of the transaction that it was revised and edited by Wachtell?
A It could have been revised and edited by Wachtell, by Salig, by Shapiro. And I don't know whether it went back and forth to Fannin, frankly, for his edits.
Q I can't help you there.
A I can't help you and I'm sorry.
Q I want to now focus you on the February --
MR. MARMER: Just find a convenient lunch break. It doesn't have to be this second.
Q Let me show you the February 23rd --
MR. BEMIS: Withdrawn.
Q I want you to look at MS 93 again, the February -- please look at MS 93 and tell me when you're at Section 6.7 again.
A Okay, page 18.
Q You see a reference to the February 23, 1998 confidentiality agreement, correct?
A Yes, I do.

Page 131

Q Was it your understanding at the time that you signed this document, that is MS 93, that there was indeed a confidentiality agreement between Laser, that is Sunbeam, and The Coleman Company, Inc. dated as of February 23, 1998?
A And I can't answer that. I have no recollection of my understanding at that time as to --
Q Reading it now as the chief legal officer of the company, is it your belief that when you signed it that that is what you understood?
MR. MARMER: I object to the form.
A I can't answer that. You're asking me to speculate about a point in time six years ago.
Q Well, seeing what it says and being you, that is, you, the person that signed the document, that is MS 93, and you told me you read it before you signed it, when you read it, did you assume that there was such a confidentiality agreement dated February 23, 1998 in place between Laser and The Coleman Company as recited here?

Page 132

MR. MARMER: Objection, asked and answered.
A And what I said to you was that I was certain that various drafts of this document provisions of this document had been reviewed by me over the course of the negotiations and the drafting of this document. And I am certain, I am certain that among the lawyers working on our behalf, people inside MacAndrews & Forbes, people inside Coleman and people at Wachtell that the document in this form that I saw it was appropriate for me to sign.
Now you're asking me to go to 6.7 and you're asking for my specific memory and I don't have it. I see what it says. The document referenced two confidentiality agreements.
Q And you knew that at the time that you signed MS 93, at the time you signed it because you read it?
A I don't remember if I read 6.7 at the time I signed it or not.
Q Even if you don't remember you read it, you took responsibility for having

NOT A CERTIFIED COPY

0019851

Page 133

read it because you put your name on it?
A I'll take responsibility for the party on whose behalf I signed as being bound by this document.
Q That's all I can ask you, I guess.
Let me show you what's marked as MS 134. You may want to keep open Section 6.7 of the merger agreement, MS 93.
A Okay.
Q I'm handing you what's been previously marked as MS 134, which was produced to Morgan Stanley as shown by the CPH Bates numbers on the bottom of the documents; do you see those?
A I see the Bates numbers, yes, sir.
Q All right.
Have you ever seen this document before in any form? This one is not -- I will tell you it is not signed. Have you seen this document before?
A No.
Q Do you know who prepared it?
A No. It's on a Sunbeam letterhead or seeming Sunbeam letterhead.
Q It says "Sunbeam" on the top and

Page 134

no emblem.
A Fair point.
Q And if you look at the type on MS 133 and 134 and one having been copied more than one time, would you agree with me that they are identical in terms of language in the first couple of paragraphs?
A Are you asking me about typeface?
Q Let's start with typeface.
A I'm not a type face expert.
Q I don't know what that is, but we have enough common sense --
A They look different to me.
Q Is the language virtually identical on the first page? It's not perfect, I'll give you that.
A If you represent to me it's virtually identical, I'll accept that representation.
Q I will.
So let me show you another document which is marked as MS 134 or 133.
A Is there a final version of 134? I withdraw the question. I apologize.
Q I show you what's been identified

Page 135

previously as Morgan Stanley 101, and here is a copy for you, sir.
Do you have MS 101 in front of you, sir?
A I do.
Q And have you seen this document before?
A No, sir.
Q Now, the fax number that appears at the top (212)527-5888 MacAndrews & Forbes, do you recognize that fax number?
A I do not.
Q Look at the working list if you would which we showed you earlier?
A Okay.
Q 69, I think it is. Look at 69 and look at Joram Salig's fax number and just confirm for me that's his number?
A Okay, what page is that on?
Q Page 4.
A The fax number for Salig at 625 Madison Avenue is the fax number reflected on Morgan Stanley 101.
Q There is a fax header on this document on all pages; do you see it?

Page 136

A What do you mean by header?
Q A banner. I should have said banner is probably a better term. Look at 101 there should be a banner. It says MacAndrews & Forbes with a fax number.
A I see it, okay.
Q Is that MacAndrews & Forbes' fax banner?
A I can't identify it as such.
Q Do you know whose it is?
A It says MacAndrews & Forbes.
Q You said you can't identify it?
A I can read the words. You asked me about the banner. I'm not sure what a banner is. It's MacAndrews & Forbes', absolutely.
Q Does that machine it came from, MacAndrews & Forbes fax machine it was sent and received from MacAndrews & Forbes' fax machine?
A Probably so.
Q Was Mr. Salig at the time that is recorded on the fax banner, February 23, 1998 at 4:37 p.m., was he still employed by MacAndrews & Forbes?

NOT A CERTIFIED COPY

Page 137

A Absolutely.
Q And he was the person to whom you directed the first request with regard to a confidentiality agreement between The Coleman Company and Sunbeam that we identified as MS 133, right?
A Yes, sir.
Q And did Mr. Salig have the responsibility within MacAndrews & Forbes for the execution of the confidentiality agreements which are referenced in paragraph 6.7 of MS 97?
A I don't think anybody had a particular responsibility. If you're asking me could he have signed such a document --
Q I'm asking did he have the responsibility for preparing and signing as set forth -- and, again, I'm referring to the confidentiality agreements that you executed and signed off on on MS 93?
MR. MARMER: I object to the form. It misstates the record.
A Is there a confidentiality agreement that I signed? You didn't show me that.

Page 138

Q I'm not saying you signed it.
A Sorry, sorry.
Q You're not being quarrelsome. It's all right.
Was Mr. Salig responsible for the preparation of the two confidentiality agreements which are identified in MS 93 at Section 6.7?
A I don't know.
Q If not him, who at MacAndrews & Forbes, who else?
A From the chronology you showed me, Salig sent a form of confidentiality agreement whether it's something like these two documents or three documents you have shown me or something else, I don't know, to Wachtell.
What happened after that then gave rise to two or three exhibits you have shown me. I can't answer for you.
Q Did you make any inquiry of anyone at or before the closing whether the two confidentiality agreements which are specifically referenced in Section 6.7 had indeed been executed by the parties as of

Page 139

the dates referred to in Section 6.7 of MS 93?
A Not that I recall.
Q Please take a look now, one more question on this and we'll break for lunch.
Take a look at MS 101, the one with the fax banner on it and read through it real quickly. Read through it at whatever pace you would like.
I will tell you that it is virtually identical to the other one. You're not going to see any changes. And I'll have one question or two for you and then we'll break.
A I'll accept your representation to me.
Q All right.
Would it be fair to say then given what you read in MS 133 that what you find in MS 101 are confidentiality provisions which are customary in buy and sell agreements such as the Coleman-Sunbeam merger?
A Like I said, none of this here strikes me as being unusual except that

Page 140

there is so much of it.
Q And when you said "this," are you referring to Exhibit MS 101 in front of you?
A The various terms and conditions in these confidentiality agreements.
Q When you're talking about the agreements, you're talking about MS 101 and MS 133, which was the first one we're looking at, right?
A I'm talking about 134 too.
Q The answer is yes.
MR. BEMIS: And we'll break for lunch.
THE VIDEOGRAPHER: The time is 1:09 p.m. and we're going off the video record.
(Luncheon recess.)
THE VIDEOGRAPHER: The time is 2:20 p.m. and we're back on the video record.
BY MR. BEMIS:
Q Good afternoon, Mr. Schwartz.
A Good afternoon, Mr. Bemis.
Q Let's pick up where we left off.
We were at January 28th or 29th of

NOT A CERTIFIED COPY

019853

Page 141

1998, which you identified as pretty much your first actual hands on with the transaction; is that correct?
A Yes, sir.
Q Did you going forward from the date of January 28th have any responsibility for the due diligence on the seller's side?
A I did not participate in any of the due diligence on our side of the transaction, no.
Q Was there one person on the seller's side that did have responsibility for due diligence either coordinating it or doing it?
A I don't know the answer to that. As I said, Maher was sort of leading the charge. We had Wachtell and CFSB and I'm certainly determined to do whatever they thought was appropriate to do in connection with the transaction.
Q As you're sitting here today, you don't know, for example, what Mr. Maher did with respect to due diligence?
A I do not.
Q And with respect to Wachtell to

Page 142

the extent that they did something, you don't have any firsthand knowledge of it?
A That's right.
Q Would the same be true for CFSB?
A We all had the benefit and I did look at some of the publicly filed documents from Sunbeam.
Q Were those documents that were assembled for you by CFSB?
A I don't know.
Q Let me show you, there is a package of documents that CFSB did prepare and I'll show you that and see if that's what you recall.
A Okay.
Q Is this the package -- have you seen this package of materials before?
A I don't know.
Q Look at the index, there is a series of publicly filed documents.
A It's possible but I'm not recalling it particularly now.
Q Did you look at any analysts' reports for Sunbeam?
A I think in the course of the two

Page 143

or three months from beginning to end of this negotiation and ultimate signing and closing I did, but I'm not recalling which analysts or when.
Q In the course of your due diligence, did you look at any of the audited financial statements of Sunbeam that were, perhaps, attached to the publicly filed reports?
A I suspect so. I'm not recalling with any specificity that I did.
Q According to MS 75, which you should have in the pile in front of you, if you please look at the dates of February 24th through the 27th, page four, tell me when you're there.
A Yes.
Q Wachtell writes to the right of that date "Coleman and Sunbeam, and their respective advisors, negotiated the structure of the transaction, conducted due diligence, and drafted the necessary documentation."
Do you see that paragraph?
A I do.

Page 144

Q Do you recall any specific due diligence done by Coleman before February 24th?
A There were, and I think these documents referenced various meetings that took place by and between Coleman, Sunbeam Morgan Stanley. And to the extent that information was exchanged at those meetings, I think I would call that fitting under due diligence.
Q You have no specific knowledge --
MR. BEMIS: Withdrawn.
Q Do you have any specific knowledge of whatever due diligence was done before the 24th of February 1998?
A No, nor do I have specific knowledge as to what occurred between February 24th and 27th as reflected on Exhibit 75.
Q Let's go forward from February 27th between February 28th and the closing, do you have any knowledge of any due diligence that were done on the buyer's side, excuse me, on the seller's side of the transaction on behalf of MacAndrews & Forbes

NOT A CERTIFIED COPY

019854

Page 145

and various entities involved here?
A I think there were analysts' reports to look at. There may have been road show presentations to observe. Beyond that, no.
Q Did you attend any road shows?
A I did not.
Q These road shows in connection with the underwriting of the two billion fourteen million dollars of zero coupon subordinated convertible debentures?
A I thought it was 750 million.
Q That is the amount, roughly, that was received for the sale I was speaking of, the face amount of the debentures zero coupons therefore discounted.
A Same bonds.
Q Did you attend any of the road shows?
A I did not but I recall that one or more people from our side did.
Q Who?
A I'm recalling Will Nesbitt did.
Q Anyone else?
A I don't know but I don't think he

Page 146

went alone. I could be mistaken.
Q Did Mr. Nesbitt make any reports to you about the road shows?
A He made no reports to me. Whether we had any conversations about what he heard or what he observed, it's possible, but I'm not remembering any.
Q Did anyone from the MacAndrews & Forbes entity purchase any of these zero coupon debentures we have been speaking of?
A As far as I know, no. That is to say no purchases remain.
Q Let's focus on the events of February 27th. You identified the road show and you looked at some analyst reports, I think. What analyst reports are you referring to?
A I have no specific analyst or report in mind. I do have a vague recollection of seeing some analyst reports and having seen them, I probably read them.
Q Are these analyst reports prepared by someone such as Andrew Schorr, a name that's come up frequently?
A Could be.

Page 147

Q Did you review any materials after February 27th that were prepared by Morgan Stanley?
Let me rephrase the question.
Between February 27th and the closing on December 30th, did you review any type of reports prepared by Morgan Stanley?
MR. BEMIS: I'm going to withdraw the question. I already asked you that earlier this morning.
Q Other than the road shows and the analyst reports now, can you think of any other due diligence activity between February 27th and the closing on December 30th that was undertaken on the seller's side?
A I think a number of people -- I certainly did read the press release that was put out on March 19th.
Q Anything other than the press release and other things that you told me about?
A Whatever public filings would have been available I'm confident that our side would have looked at those things.

Page 148

Q For example, you would have read the Sunbeam form 10-K for the year ending December 31, 1997, right?
A Yes. Whether I read it at the time it was disseminated by Sunbeam, that is early in March or not, I'm not recalling.
Q It was available for the closing?
A Indeed.
Q Is there anything else that you can identify that you looked at that you might consider, you personally would consider to be due diligence after February 27th before the closing other than what you have identified, which is somebody attended a road show, perhaps, Mr. Nesbitt and you saw the March 19th press release and, perhaps, public filings, one of which we identified as the Sunbeam 10-K for 1997?
A If there was something put out in connection with the closing of the bond deal, I'd have read that too.
Q Like the offering memorandum, is that what you're referring to?
A Perhaps that but I think the bond deal closed on the 25th of March.

NOT A CERTIFIED COPY

019855

Page 149

Q Yes, it did, the actual purchase.
A There was some sort of announcement surrounding that.
Q Did you look at the purchase agreement itself between Sunbeam and Morgan Stanley?
A I don't think I have, no.
Q Did you look at the offering memorandum that was prepared in connection with the offering?
A I'm not certain that I did. I don't think that I did then but I think if it was available to us, I assume that we did.
Q So if it was available, for example, at or about the time of the road shows and it was available, you would have looked at it; is that what you're saying?
A I may have. I'm not remembering that ID.
Q To your knowledge, did anyone on behalf of the sell side make any investigation of Sunbeam's interim financial performance that is the end of the year, 12-31-97 and March of 1998?

Page 150

A I don't know what was discussed at these various meetings that took place with Sunbeam representatives and Coleman representatives and Morgan Stanley. I did not.
Q Are you aware of any -- are you aware of the sell side --
A You can call it the Coleman side.
Q Okay if we can use that, that's fine.
Are you aware of anyone on the Coleman side interviewing any of, for example, the middle management of Sunbeam to assess anything about their operations or financial performance?
A I'm not aware, no.
Q Are you aware of anyone on Coleman's side visiting, for example, Sunbeam plants anywhere in the United States to see how they were doing in a larger sense?
A You mean how they manufactured what they sold?
Q Yes, we'll start there.
A I don't know if anyone did or not.

Page 151

Q Do you know if anyone from the Coleman side visited any Sunbeam plants to see what their inventory situation was?
A You mean to take the inventory?
Q Just to see what the inventory build up was, for example, at a plant they have warehouses of unsold goods?
A I don't know who, if anyone, did that.
Q Do you know if anyone on the Coleman side contacted any of the major customers of Sunbeam such as Walmart, for example, to see what their order situation was or their inventory situation was during this interim period from the end of 1997 and the closing, March 30th?
A I don't know, no.
Q After the signing of the agreements and up to March 30th, did anyone from the Coleman side meet with any analysts about Sunbeam, for example, Mr. Schorr or any of the other analysts that were following Sunbeam?
A I don't know. The analysts liked Sunbeam, as I remember.

Page 152

Q Did anyone from the Coleman side at any time between your first involvement in January of 1998 and up to the closing interview any of the auditors at Sunbeam on the subject matter of Sunbeam's financial statements?
A The outside auditors, Arthur Anderson?
Q Yes, sir.
A I'm not aware of any such interview.
Q Did you attend the closing, the actual physical closing on March 30, 1998 where, shall we say, the money changed hands and the stock changed hands?
A I did not.
Q Was there an actual physical closing anywhere?
A I don't know.
Q Did you sign any document -- do you know where you were on March 30, 1998?
A No.
Q For example, skiing, off in Italy?
A Not likely I was skiing or off in Italy.

NOT A CERTIFIED COPY

958610

Page 153

Q Wasn't trying to be facetious, but I know some people were out of the country.
A I have two children both of whom are in the public schools. Both of their vacation time is March 30th. Most likely I was home and in the office.
Q Did you review any documents before the closing and up to the closing after you signed MS 93, the merger agreement?
A The February 27th agreement?
Q Yes, sir.
A When you say documents, you mean documents in connection with the transaction?
Q Yes, that's what I'm referring to.
A I don't think so.
Q As I understand it, the last time that you affixed your signature to any of the legal documents, if you will, that covered this transaction would have been as of the February 27, 1998 agreement, which we marked as MS 93 today?
A I think that's right but I'm happy for you to show me my signature on a

Page 154

subsequent document, if there is such a thing.
Q I'm not trying to trap you. I'm trying to find out if there was anything.
Did you at the time of the signing of the merger agreement, February 27, 1998, did you own any Coleman stock?
A I don't think so.
Q Did you have any Coleman options?
A No, never had, and I own none of the Worldwide bonds.
Q The LYONS?
A The LYONS.
Q Was there anyone on the Coleman side that you can identify that you assigned the responsibility for the physical closing of the transaction on March 30th?
A I'm not remembering who that was.
Q Even if you don't remember who it was, was there someone who was assigned that task?
A If it was necessary for someone to have been assigned that task, I'm sure I don't know whether it was necessary.
Q Well at some point, Sunbeam paid

Page 155

the Coleman side approximately 160 million dollars in cash on March 30th or by immediately available funds in New York City, right?
A I don't know if that was by tendering a check or by wire.
Q If you looked in the agreements, it was to be by wire transfer but I could be wrong.
A Okay.
Q If someone was responsible for giving wire instructions or sending a check, who was that person, who was the person that was doing that?
A There are a number of people who it could have been. I don't know who it was.
Q Are these people inside the Coleman Group or are they the Wachtell law firm that were handling all these details?
A It could have been Wachtell, it could have been people at MacAndrews, it could have been a combination of all of them, somebody at the bank. It wasn't me.
Q Let's focus on CFSB a little bit

Page 156

and getting up to the board meeting.
Other than the presentation that is identified in the board minutes by CFSB, and I think you were at a meeting where they spoke on February 25, 1998?
A Yes.
Q Did you have any e-mails with CFSB about the Sunbeam-Coleman transaction?
A I don't think so, no.
Q Is it fair to say that your sole involvement, if you will, even with CFSB was listening to their presentation on February 25, 1998?
A That's probably right. The lead presenter, as I'm recalling it, is Gordon Rich, an investment banker, who I knew. I could have had conversation with Gordon as the transaction proceeded.
Q Did you know Gordon Rich as a result of his employment with CSFB?
A Yes.
Q And had MacAndrews & Forbes done business with CFSB before?
A Yes.
Q And was it in their capacity as

NOT A CERTIFIED COPY

019867

Page 157

financial advisors?
A Could have been. Investment banks often come in to -- I don't mean this in a disparaging way, to pitch transactions. CFSB would do that, Morgan Stanley, Goldman Sachs. I knew Gordon Rich.
Q And when you said --
MR. BEMIS: Can you read that back, please.
(Record read.)
Q When you say "pitch transactions," would you consider the first contact between Morgan Stanley that you're aware of and the Coleman side to be pitching a transaction?
A I wasn't there, but what I have heard of it, yeah, sure.
Q And you don't consider that in any way to be untoward or dishonest in and of itself?
A Not at all.
Q In fact, one of businesses in a broader sense is that you do deals?
A Indeed we do.
Q And one of the ways you get deals is deals are brought to you?

Page 158

A That's absolutely correct.
Q And one of the sources for deals being brought to you at MacAndrews & Forbes is through companies like Credit Suisse First Boston or Morgan Stanley, right?
A We try and deal with investment banks that we know and that we believe have credibility and we like to see involved in the transaction because of that.
Q How many deals, mergers, acquisitions, divestitures other corporate combinations has MacAndrews & Forbes used CFSB in the past, the past being before the Coleman-Sunbeam transaction?
A I don't know the number but deals include finance, not just financings with acquisitions but financings in the course of an acquisition. That is, as you own a company, you do various different structuring and financings to buy things within the company.
CFSB could have been involved in those, in other acquisitions, divestitures. They were and are an investment bank that we have an ongoing relationship.

Page 159

Q Would you consider it a substantial relationship?
A I don't know what you mean by substantial.
Q I'm kind of asking you what you mean. I'm asking you the question. It's not a trick question, you answer it how you deem appropriate.
A I think we have an ongoing business relationship with CFSB.
Q Could you put a dollar figure on your ongoing relationship with CFSB?
A No.
Q My understanding is that in this transaction on the Coleman side that approximately four million dollars was paid to CFSB; is that correct?
A I don't know.
Q Does that sound --
MR. BEMIS: Strike that.
Q What other --
MR. BEMIS: Strike that.
Q Have you used CFSB on any of your financing transactions in the last, say --
MR. BEMIS: Withdrawn.

Page 160

Q Let me put a time period on it.
Did you use CFSB, the MacAndrews & Forbes companies, in any financing transactions before 1998? By financing, for example, an underwriting of LYONS, subordinated senior notes, first subordinated senior notes, debentures, whatever the name given to the debt instrument?
A It could very well be. I would have to go back and look at records to determine that.
Q You don't recall any as you sit here today?
A I don't.
Q Have you participated on the legal side for underwriting debt instruments issued by the MacAndrews & Forbes Company such as the LYONS, and I'm not suggesting that that's the only one; have you done that?
A With the LYONS, I'm not going to shirk the ultimate responsibility, it's mine, but most of that involvement on the legal side from my group was with Glenn

NOT A CERTIFIED COPY

019853

Page 161

Dickes.
Q But you're familiar with, even if you didn't have the first chair responsibility, if you will, in terms of day-to-day work, are you familiar with underwriting debt instruments when the instruments are securities under the 33 Act?
A I become familiar, as I have to, sure.
Q Well, you used the word earlier in your deposition when I asked you what documents you referred to, you said you looked at comfort letters.
Do you recall telling me that?
You said you looked at two comfort letters.
A In connection with my preparation here?
Q Yes.
A Right.
Q What is a comfort letter?
A An example of a comfort letter are the two documents that I showed to you. I never prepared a comfort letter. I never had a comfort letter addressed to me. Those two documents were described to me as

Page 162

comfort letters.
Q Who told you they were comfort letters?
A Probably one of my lawyers.
Q You didn't know what they were when you looked at them?
A I didn't put a title on it. It was given to me as a comfort letter.
Q Did you know what they were issued in connection with?
A I think they speak for themselves. You can turn to them.
Q It's not a test.
A They say what they are issued in connection with.
Q They are issued in connection with the underwriting of the zero coupon subordinated debentures that raised some of the cash that was used to pay the Coleman side at the closing on March 30th, right?
A They were two letters written to Morgan Stanley in connection with Morgan Stanley's firm underwriting what I remember to be the ultimately 750 million dollars worth of bonds, that's right.

Page 163

Q They were not bonds, they were debentures.
A Okay. To me it's the same thing.
Q It is the same thing to you?
A It's an IOU.
Q Let me go back to the question.
Have you ever seen in connection with any debt securities that were issued by MacAndrews & Forbes comfort letters from auditors?
A I don't think so.
Q Had you ever requested that your auditors issue to the underwriters comfort letters to the underwriter in connection with an underwriting of debt securities under the 33 Act?
A Not that I remember, no.
Q Did you ever have any specific discussions with Gordon Rich about the Coleman-Sunbeam transaction other than listening to him at the board meeting? Let me exclude those.
A I think I answered that by saying we may have because I may have seen him at the building around that time, and since I

Page 164

knew Gordon Rich, we may have had a conversation about it. I don't recall any specific conversation.
Q Same question with a man by the name of Steven Geller?
A I don't know Steven Geller.
Q Do you know Robert Duffy?
A I think I met Rob Duffy but I don't recall any conversation with him about anything.
Q I think you told me that you had nothing to do with the engagement letter of CFSB on behalf of The Coleman Company; is that correct?
A Not that I recall, that is correct.
Q Did you see it in preparation for your deposition here today?
A I did not. At least I don't remember but I don't think I did.
Q I'm going to show you MS 84. I have handed you what's been previously marked as Morgan Stanley 84.
Do you have that in front of you?
A I do.

NOT A CERTIFIED COPY

019859

Page 165

Q Have you ever seen that document before?
A I don't think so.
Q There was a meeting, according to the chronology, prepared by Wachtell on February 23, 1998 in the evening. If you need to turn to the chronology, please do so, but my question is: Did you attend that meeting?
A No.
Q Did you see any documents that were used at that meeting?
A Not that I recall, no.
Q Please turn to --
A There are a bunch of notes on this, you're aware of that?
Q That's what I'm going to ask you about.
Turn to the first page, which I believe is CPH 1324959, if I'm wrong we'll have to go back, but I think that's right.
I am wrong. The first page I think the notes appear at CPH 1324759. Please turn to that. It's entitled Number 2 Strength Sunbeam and Oster Brands Globally;

Page 166

are you there?
A Yes, sir.
Q Do you recognize the handwriting?
A I do not.
Q Any idea whose it is?
A No.
Q Look through the rest of the document, I guess there is handwriting throughout and it appears it's the same, and see if there is any handwriting that you can identify. Or if you look at the rest of the document, see if it brings to mind who might be the author of the writing?
A I don't recognize any of the handwriting, and none of the words suggest to me whose handwriting it might be.
Q One last question on this document and we'll stop and change the tapes. If you'll turn to CPH 1324771. Look for the last two digits 71. Long Range Strategic Objectives. Tell me when you're there.
A I'm there.
Q There is next to the line entry for net sales initial caps the handwriting J and JAN and then February; do you see that?

Page 167

A I do.
Q Did you ever hear in either February or --
MR. BEMIS: Withdrawn.
Q Did you hear at any time in February of 1998 that Sunbeam's net sales were slow in January?
A No.
Q Did you hear that they were slow in February from any source?
A I did, but that was in March.
Q I'm asking you about February. We'll go to March in a second.
A No.
Q When did you hear in March that sales for Sunbeam were slow for either January or February?
A The press release from March 19th.
Q Any time before the press release, did you hear that information?
A No.
MR. BEMIS: Let's stop here and change the tape.
THE VIDEOGRAPHER: The time is 2:57 p.m. and this completes tape number

Page 168

two.
(Recess.)
THE VIDEOGRAPHER: The time is 3:03 p.m. and this begins tape number three.
MR. BEMIS: Ms. Reporter, will you mark as MS 182 a document entitled Sunbeam Long Range Strategic Plan.
(Morgan Stanley 182 - Sunbeam long range strategic plan marked for identification as of this date.)
Q Would you please take a look at this document. This is textually the same document as the one you looked at before the break.
What I would like you to do is look at the handwriting on it and tell me whether you can identify the handwriting, and even if you're not sure, if you have any idea who it might be to please tell me.
Most of the handwriting, and there isn't a lot, is at the very end of the document.
A The only handwriting that I have observed is on the cover page. There is the

NOT A CERTIFIED COPY

Page 169

date 2-23, I don't recognize that. And I see some handwritten notes on the last page of this document, and I can't recognize that handwriting either.
Q All right.
You may set that document aside.
MR. BEMIS: Now, we'll have the court reporter mark as MS 183 another copy of the documents we have been looking at. This one, however, has a cover page on it as well.
Ms. Reporter, would you please mark that.
(Morgan Stanley 183 - Document with cover letter marked for identification as of this date.)
Q Do you have MS 183 in front of you, sir?
A I do.
Q And by looking at either the cover page and you should also look on the inside of the document, identify any of the handwriting. And, again, even if you are not sure, if you have any judgments that you can make, tell us who you think it might be,

Page 170

please do so.
A Sorry. I don't recognize any of the handwriting on the cover page or any of the handwriting on the document itself.
Q Do you know who Karen is on the front page of the document?
A No.
Q And do you know who the from is, and it's Isaiah, is that -- Mr. Fasman is shaking his head like I can't read, so I must have read it wrong. Isian Seth my colleague tells me.
Do you know who that is?
A I don't know these names and I don't know the people. Are they in the contact list?
Q They may well be but let's not take your time to go through them again. I'm more interested in the handwriting, and I don't know if the top page is the same as the bottom. That's why we're asking you.
A I can't help you.
Q Let me show you now what the court reporter will mark as MS 184.
(Morgan Stanley 184 - Document

Page 171

marked for identification as of this date.)
Q Do you have that in front of you?
A I do.
Q I'd like you to look at the handwriting on that document, and if you can identify that or give me your best understanding as to who it might be, please do. It's awful small.
A I don't recognize the handwriting.
Q You may set that aside.
A I have looked at several copies of these. I may have seen this in the '98 time frame.
Q When you say "this," you're referring to the long range strategic plan?
A Yes, sir.
Q And any one of the multiple versions.
Did you see it without handwriting, with handwriting?
A I don't remember that. I guess it was without handwriting.
Q Did you see it in connection with gathering documents for this litigation?

Page 172

A No.
Q Do you know the circumstances under which you saw it, if you did?
A No, I just, having gone through it about five times it's coming back to me, maybe I have seen this before.
Q Let's see if the sixth time does it for you.
MS 185, another copy of this document.
(Morgan Stanley 186 - Document marked for identification as of this date.)
Q Please look at the handwriting. It starts at the top -- excuse me, it starts on the first page with sales '96, it looks like, eliminated 40-50 and there is some other writing on the far right side.
A Sorry, I don't recognize the handwritten notes.
Q And when you say you don't recognize, just so we're clear, you don't have even the faintest idea of who they might be?
A Not even a suspicion.

NOT A CERTIFIED COPY

019861

Q Fair enough. If you don't you don't.
Put that aside.
I hand you what has previously been marked as MS 186. Do you have that in front of you, sir?
A I do.
Q Just take a moment and look at them and tell me whether you have ever seen the document before?
A I'm going to remove this clip, all right?
Q Sure, sure.
A I just quickly turned the pages. I don't believe I have ever seen this before.
Q All right. There is initials in the upper right-hand corner on the front page, I think it's RSE.
A R what?
Q I thought it was "S," but I could be mistaken.
A I don't know.
Q Do you know whose initials those are?

A No.
Q What was Mr. Engleman's first name or Engleman --
A Irwin Engleman.
Q With an "E" or an "I"?
A With an "I".
Q Have you ever seen any documents that purport to summarize the due diligence that the Coleman side of the transaction did before the signing of the merger agreements as of February 27, 1998?
A No.
Q Have you seen any documents that in any way summarize, itemize the due diligence, if any, conducted by the Coleman side of this transaction after February 27, 1998 and up into the closing of April 30, 1998?
A No.
Q Sunbeam maintained a room of materials concerning their business operations at the Skadden, Arps law firm.
Are you aware of anyone from the Coleman side going over to the Skadden, Arps firm to look at the materials that had been

assembled about Sunbeam and its business?
A I'm not aware.
Q Do you know that that room even existed, the room of materials, excuse me?
A I'm trying to remember if I knew it six years ago and I don't recall if I did know it six years ago.
Q Did you know it now before I said it to you?
A No. Is it still there?
Q You did not attend the February 27, 1998 board meeting of The Coleman Company, correct? You're not shown as on the attendee list.
Let me rephrase the question because it's awkwardly put to you.
Did you attend the February 27, 1998 Coleman Company board of directors meeting when the board actually voted to approve the --
A I don't remember.
Q If you had attended, you should have been included in the minutes, correct, as being in attendance?
A I would think so, although I may

have attended for a short period of time and maybe by the time whoever was the keeper of the minutes listed the attendees, I was gone. I have no specific memory of being present, however.
Q Who was the keeper of the minutes for The Coleman Company, Inc. at the February 25th board meeting that you did attend?
A If I looked at the minutes it might refresh me, but I'm not certain.
Q Why don't you take a look at the minutes. I think it's MS 118, I'm not positive. I think it's MS 88, I misspoke.
A MS 88?
Q I think so, sir.
That should be it.
A It looks like it was Steve Isko.
Q And Mr. Isko is the same Mr. Isko that you identified for us earlier today?
A Yes, sir.
Q And would Mr. Isko then actually cause the minutes to be prepared in the typed form that you reviewed them in, MS 88?
A I don't know. I assume so.

NOT A CERTIFIED COPY

298610

Page 177

Q Let me show you what's been marked as MS 237.
For the record, MS 237 was marked in an earlier deposition. This is a press release of three pages dated March 2, 1998 entitled "Sunbeam Acquires Three Publicly Traded Consumer Product Companies, Coleman, Signature Brand and First Alert."
Do you see that, sir?
A I do.
Q Have you seen this press release before?
A I don't know.
Q Did you have any input into the drafting of this press release and in particular Mr. Perelman's remarks as they are attributed to him on page two in the second from the last paragraph?
A Can I take a minute and read it now, sir?
Q You may, sir, at any time.
A Okay, I've read it. I had no participation in the preparation of this document.
Q You may set it aside. Look at MS

Page 178

93 again, which is the merger agreement, if you would put that in front of you, please.
Thank you, sir. If you would look at Article 5 entitled Representations and Warranties of Laser.
A Okay.
Q First of all, Laser, as we said, is Sunbeam Corporation, correct?
A Yes, sir.
Q There are three representations -- excuse me, four representations in warranties on behalf of this section, 5.1 through 5.4?
A I guess there is really five. The first paragraph is not numbered, but that's where Laser makes the same representations on warranties, parent holdings as it made to the company in the company agreement.
Q Fair enough. So there are five, four of which --
A I don't know if there are within each paragraph more numbered representations than warranties, but yes, there seems to be five at least.
Q Are you aware of any amendments to

Page 179

MS 93 with regard to the representations and warranties of Sunbeam Corporation a/k/a Laser in this document, MS 93?
A I am not, no.
Q Let's identify the representations and warranties in the company merger agreement which was previously marked as MS 117, which I will have to give to you.
Do you have MS 117 in front of you?
A I do, sir.
Q This, if you will accept my representation, if not, you can check it, is the company merger agreement that is identified in the precatory paragraph that you pointed out for me in Article 5 of MS 93, fair enough?
A I accept that, sir.
Q I would like you now turn to section -- excuse me, Article 5, which is entitled Representation and Warranties of Laser and Merger Sub, S-U-B.
Tell me when you're there.
A It starts with page 21 on there.
Q After February 27, 1998, are you

Page 180

aware of any representations of or warranties of Laser and Merger Sub that are in addition to these set forth in Article 5 of MS 117?
A I am not.
Q Are you aware of any amendment or modifications of the provisions of MS 117 at least up to March 30, 1998?
A No, sir.
Q You may set that aside.
Are you as the chief legal officer of MacAndrews & Forbes aware of any contractual arrangements between MacAndrews & Forbes on behalf of the Coleman side of the transaction in Morgan Stanley, my clients?
A Any contractual arrangements between MacAndrews & Forbes and Morgan Stanley with regard to this transaction?
Q Yes, sir.
A I'm not aware.
Q Are you aware of any written representations and warranties --
MR. BEMIS: Withdrawn.
Q Are you aware of any written

NOT A CERTIFIED COPY

019863

Page 181

representations and warranties by my client, Morgan Stanley to MacAndrews & Forbes, as we have put it, the Coleman side of this transaction?
A I'm not aware of any such writing, sir.
Q Are you aware of any confidentiality agreements, signed or unsigned, other than the three we looked at today, which are identified as MS 101, MS 133 and 134, one of which is dated February 4, 1998 and signed by both parties, and then the other two, which is MS 134 and MS 101 which are unsigned; are you aware of any other confidentiality agreements signed or unsigned between the Coleman side of the transaction or the Sunbeam side of the transaction?
A No.
Q Are you aware of any agreements that make reference to the confidentiality agreements dated February 4th and February 23, 1998, whether signed or unsigned other than the references that appear in MS 93, for example, and also in MS 117 at Section

Page 182

7.2?
A What is 117?
Q That is the merger agreement between the Coleman company, the company merger agreement.
A This one right here?
Q Yes, it is.
A Can I have the question back?
Q Let me have that back, let me look.
A No, I'm not.
Q Thank you. You can set that aside.
A You know, with regard to your earlier question with regard to an agreement with Morgan Stanley, a writing with Morgan Stanley and MacAndrews, there is no such writing that I'm aware of. But I do believe that Morgan Stanley was aware of both of these merger agreements.
Q So they would be aware of the confidentiality agreements that you identified as having been signed by the parties, correct?
A They were aware of everything in

Page 183

the document, including that particular paragraph.
Q Thank you, sir. Let's talk about the March 19th press release. You have been waiting for me to get there, MS 39, it's probably the very first document in your pile. I'll give you this one.
Do you have MS 39 in front of you, sir?
A I do.
Q All right, and we've previously identified that as the press release that you reviewed in preparation for your deposition, correct?
A I read it, yes.
Q And my understanding of your earlier testimony, and just to put this in context is that you think you saw it at or about the time that it was -- it is dated March 19th of 1998; is that correct?
A Yes, sir.
Q And if I asked you this I do apologize but it's been hours since we talked about it.
Did you receive it from someone at

Page 184

MacAndrews & Forbes, did you pick it up off a wire service or receive it in some other fashion?
A I don't know.
Q When you received the press release, did you read it?
A I think so.
Q When you received it, were you alone or were you with someone else, for example, Mr. Maher or Mr. Nesbitt or Mr. Perelman in which you had it and you had a discussion about the contents of the press release?
A I don't remember if I was with anyone.
Q Well, did you consider the information in the press release to be a material event?
A I consider the information to be material, yes.
Q Now, you are aware, are you not, sir, that the following day, that is the day following the March 19th issuance of the press release, that Sunbeam's stock as it traded on the New York Stock Exchange fell

NOT A CERTIFIED COPY

019864

Page 185

approximately 9.4 percent in value?
A I'm not aware of that.
Q Were you aware of that without trying to pin you to the exact percentage to a tenth of a point, were you aware that the stock dropped, Sunbeam stock?
A Yeah, I think the stock dropped and I think it came back up after the analysts wrote their reports about the significance of this, what's in this press release.
Q When you received this press --
MR. BEMIS: Strike that.
Q Following this press release, did you or anyone on the Coleman side of the transaction contact Sunbeam and ask for more specific information about sales during the first quarter of 1998?
A I did not.
Q Do you know of anyone on the Coleman side that did?
A I think there were communications between the Coleman side and the Sunbeam side about what is set forth in this press release.

Page 186

Q And who are the people on the Coleman side that you believe had these communications with people on the Sunbeam side?
A I'm not certain about this, but either Maher, Nesbitt, and it's possible that there was conversations initiated by the Sunbeam side to the Coleman side.
Q I don't mean to be brusk, setting aside possibilities today, let's try to focus if we can on what you know.
Do you know of any people on the Sunbeam side that were in communication with the Coleman side about the sales figures for the first quarter of 1998, again, after March 19th press release was issued?
A I have a vague and uncertain memory, sir, of either Mr. Kirsch or Mr. Dunlap calling from the Sunbeam side about what's set forth in this release.
Q Do you have any recollection --
MR. BEMIS: Withdrawn.
Q Just so the jury is clear, if they don't by the time they hear this testimony, Mr. Kirsch worked for Sunbeam, correct?

Page 187

A Yes, sir, he was the chief financial officer, I believe.
Q And Mr. Dunlap was the chief executive officer and chairman of the board of Sunbeam at this time, correct?
A I certainly knew him to be the CEO. I didn't know he was the chairman of the board.
Q Did anyone on the Coleman side of the transaction to your knowledge have any communications with anyone at Morgan Stanley after March 19th and before March 30, 1998 on the subject matter of Sunbeam's first quarter 1998 sales?
A I don't know that.
Q Did anyone on the Coleman side of this transaction after March 19th ask Sunbeam for daily sales numbers for the first quarter of 1998 as the deal approached the closing on March 30th?
A I don't think anybody did and I don't think there was a reason to do so.
Q Did anyone on the Coleman side of the transaction after March 19th ask anyone at Sunbeam for an update on the figures in

Page 188

the press release?
A I don't know.
Q Did anyone on the Coleman side of the transaction ask anyone at CSFB for an update on the information in the March 19th press release with regard to Sunbeam's first quarter 1998 sales?
A Can I have that again?
(Record read.)
A I don't know.
Q Did anyone on the Coleman side ask Morgan Stanley for an update on the information on Sunbeam's first quarter sales in 1998 as set forth in the March 19th press release?
A I don't know.
Q Did anyone on the Coleman side after March 19th and before the closing on March 30th ask Arthur Anderson, Sunbeam's accountants for an update on the sales figures in the --
MR. BEMIS: Let me ask the whole question again.
Q Did anyone on the Coleman side of the transaction ask Arthur Anderson after

NOT A CERTIFIED COPY

019865

Page 189

March 19th and before March 30th for an update on the sales figures in the press release of March 19th?
A I don't know. The only request to Anderson about that that I'm aware of is made by Morgan Stanley.
Q Sir, do you have any documents showing Morgan Stanley made that request of Anderson as a request to Sunbeam?
A I recall a letter of March 25th addressed to Morgan Stanley.
Q You may recall a letter being addressed. Do you know how that letter got to Morgan Stanley, who requested it?
A May I see it again?
Q Sure, it's MS 9 and MS 10.
A Is it in this pile?
Q Sure, it should be. If it's not, I can pull it out for you.
A I don't see it in this pile.
Q We may have picked them up. It's possible that they are in this pile and we picked them up.
I'll hand you MS 9 and MS 10. There you go, sir.

Page 190

A The letter to which I just referred of March 25th is addressed to Morgan Stanley and addresses Morgan Stanley as "gentlemen," and refers the gentlemen back to Arthur Anderson's letter, again, to Morgan Stanley to March 19th again to Arthur Anderson, again to Morgan Stanley in connection with the offering memorandum that Morgan Stanley was the underwriter for.
Q That wasn't my question.
The question was: Who requested that Arthur Anderson send the letter to Morgan Stanley, not to whom it was addressed eventually?
A I gave you the best answer I can.
Q The answer is you don't know, right?
A I gave you the best answer I can.
Q But you don't know who requested the letter be sent to Morgan Stanley; do you or don't you know?
A Whether there was a conversation --
MR. MARMER: Objection.
Q I didn't mean to interrupt you.

Page 191

If you're not finished, go ahead and answer.
A The letters of March 19th and 25th are direct to Morgan Stanley from Arthur Anderson, no copies shown to anyone else.
Q My question to you, if you can't answer, we'll go on, do you know who requested Arthur Anderson to send the letter to Morgan Stanley?
A I don't know if anyone did.
Q Sir, just between the LYONS, L-Y-O-N-S, and the Senior Secured, I think they are priority notes and then the --
MR. BEMIS: Let me withdraw the question. Let me make sure I get the name of the debt instruments correct.
Q Sir, I hand you what has been marked as Morgan Stanley Exhibit 241. Do you have that in front of you?
A Yes, I do.
Q Now, do you recognize this offering memoranda by Coleman Escrow Corporation for $600,475,000 senior secured first priority discount notes through 2001 and $131,560,000 senior secured second priority discount notes through 2001?

Page 192

A That's what the offering memorandum is. Do I recognize it? I'm not remembering seeing this. I'm sure I did.
Q This date of the offering memorandum is May 15, 1997, correct?
A That's what it says, yes, sir.
Q And Credit Suisse First Boston as well as Bear Stearns & Co., Inc. and Chase Securities, Inc. are underwriters of this offering, are they not?
A They are indeed.
Q And not to be flip about the matter, but do you consider $732,035,000 in offerings to be a material amount of money in an underwriting?
A That's a lot of money, sure.
Q And, indeed, prior to this offering memoranda -- by the way, this offering memorandum did go forward and these notes were, indeed, issued, were they not?
A Absolutely.
Q And the Coleman Escrow Corporation which at this time was in the Coleman chain that we discussed earlier today when looked at Exhibit 279 at page 669, was a company

NOT A CERTIFIED COPY

Page 193

owned by Mr. Perelman, right?
A Was Coleman Escrow on that list we had?
Q Coleman changed its name to CLN Holdings Inc.
A Right, that was on the list we had?
Q Right.
In addition to this $732,035,000 that had been issued before this time by a company called Coleman Holdings, the -- excuse me, I misspoke.
Before this offering memorandum, MS 241, Coleman Worldwide Corporation had issued approximately $561,553,000 of the so-called LYONS, correct?
A I accept what you say. I would have to go back and look.
Q I'm reading right off the offering memoranda.
A A document I have not read recently, but I accept what you say.
Q Would you consider $561,553,000 to be a material amount of money?
A That's a lot of money.

Page 194

Q And that money was, indeed, raised through the issuing of the LYONS, was it not?
A Yes, sir.
Q And it was underwritten by investment banking houses, was it not?
A I recall Merrill Lynch to be involved. I don't recall if there are others.
Q But Merrill Lynch was acting in its capacity as an investment banking house doing the underwriting, correct?
A Yes, sir.
Q And did a firm underwriting, as I recall it; isn't that right?
A I'm not recalling but I can't quarrel with you about it.
Q In connection with these offerings which total over 1.2 billion dollars by the Coleman related entities, Coleman Worldwide and Coleman Escrow Corporation, did the underwriters request of The Coleman Company comfort letters in advance of the purchase of the debt securities they were underwriting?

Page 195

A I don't know.
Q You have no idea?
A We went through this this morning, I think.
Q Not with these we didn't.
A We didn't focus on these specifically?
Q That's what we're focusing on, 1.2 billion dollars of debt by the companies that you were either an executive vice-president, general counsel or director.
My question is: Did those underwriters request comfort letters from The Coleman Company, the Coleman Escrow Corporation or in this case, Coleman Worldwide before they purchased this debt securities?
A These notes, the LYONS were issued, interest was paid, the notes were paid in full, you know that. I don't know, I don't know, sir, if comfort letters were requested.
Q In your experience, in all the years you have been doing deals for Mr. Perelman's companies, are you familiar

Page 196

with any underwriting of securities that are defined as securities under the 1933 Act, which are underwritten by an investment banking firm where that firm did not request a comfort letter from the auditors prior to the effective date of the registration statements for the securities?
A Sir, I'm not aware. My focus with you on these comfort letters are letters addressed to your client, Morgan Stanley, and a press release that came and --
Q Would you answer my question?
A I did. I'm not aware.
Q You're not aware of any comfort letters being issues?
MR. MARMER: Excuse me.
A That's not the question you asked.
MR. MARMER: If you want, you can have the last question read back.
(Record read.)
Q Please answer that question.
A It's the answer I gave you, I'm not aware.
Q Is there any reason, sir, you didn't ask Morgan Stanley if they had

NOT A CERTIFIED COPY

019867

Page 197

received a comfort letter from Arthur Anderson in connection with the offering of the zero coupon subordinated debentures that had closed on March 25, 1998?
A There was no reason to ask for it since we closed the deal.
Q I didn't ask you if there was a reason.
A That's exactly what you asked me. You want to read it back?
Q Let me try again and I'll ask it a different way to make it easier for you.
A I didn't have difficulty with that question.
Q Let's not get quarrelsome, it's getting late in the day.
A I'm not getting quarrelsome. I'm answering the questions you're putting to me.
Q The jury will decide that later.
Are you aware of any requests by anyone on the Coleman side to Sunbeam, let's start with Sunbeam, for a copy of any comfort letter or letters issued by Arthur Anderson to Morgan Stanley in connection

Page 198

with the debenture offerings which closed on March 25, 1998?
A I think you have asked me this and the answer is I'm not aware.
Q Are you aware of anyone on the Coleman side asking Anderson directly for a copy of the comfort letters that were issued in connection with the March 25th closing of the debenture offering?
A You asked me this before because we quarreled about whether Morgan Stanley asked for the letter. Same answer as before.
Q What was your answer before?
A I said I'm not aware other than Morgan Stanley.
Q Are you aware of Anderson declining under any circumstances to provide a copy of the comfort letters which were marked as MS 9 and MS 10 to the Coleman side of the transaction, if such letters had been requested?
A I don't know how I can answer that. I'm not aware of requests being made so I can't be aware if Arthur Anderson

Page 199

declined a request of which I'm not aware.
Q Now, let's assume, I want you to assume that you received a comfort letter, and it could be either MS 9 or MS 10 or both of them.
Would you have closed, that is the Coleman side have closed the merger agreement MS 93?
A I think not.
Q Please tell me what provision you would have relied upon in MS 93 if you had not proceeded with the closing?
A I believe that those comfort letters demonstrated a material adverse change at the Sunbeam Company, and I believe in those documents there was the ability in the face of a material adverse change to which you received notice, which we did not, to close.
Q Tell me where those provisions are in the agreement?
A Offhand, I don't know.
Q Would you be so kind as to take the agreement, and being the man that signed them, please point out the provisions that

Page 200

you are relying upon for not closing?
A We did close, however.
Q Oh, I know you closed.
A Because we didn't have notice of the comfort letters.
Q That will be for the jury to decide that. We'll let the jury decide about the letters.
I would like you to look at MS 93, which is the document that closed on March 30th.
A Okay.
Q Do you have my question in mind or should I ask it again?
A I'm not as currently familiar with this document as you, so you have to be patient as I go through it.
Q I'll give you as much time as you need. That's why I offered you the courtesy of repeating the questions, otherwise I'll let you answer.
A When I find what I'm looking for, if I need the question, I'll ask for it.
Q I appreciate that and I'll sit and wait patiently.

NOT A CERTIFIED COPY

019868

Page 201

A Thank you.
MR. MARMER: Is there a particular reason we're going through this since you and I know both know the sections? Wouldn't it be easier to point him to the sections?
THE WITNESS: It would be, it would help me.
Q I'll be happy to help you out.
I think the sections you're going to want to start with are Section 8.2 but I leave that up to you. I think the other two sections you're looking at are in Artificial 6?
A Okay.
Q I didn't draft the agreement and I didn't sign it, so I don't want to suggest to you that I know the document better than you.
A Do you have a question?
Q I thought you might ask me again. Tell me the section that is the Coleman side of the transaction would not have closed had it had the information in the comfort letter MS 9 or MS 10?

Page 202

A I think 8.2 provides for a Laser material adverse affect and it's a condition of closing.
Q Is it a condition of termination?
A Should I turn to the termination section?
Q If you look to Section 11 -- this is from memory. I think it's Section 11. It is.
A Well, we didn't close on August 31st, it comes and goes, the agreement terminates, and with a material adverse change we went on and with the material adverse change, we weren't obligated to close and we would not have.
Q And at the time of the closing on March of --
MR. BEMIS: Strike that.
Q Can you tell me is there any provision other than the provision for passage of time in Section 11.1, I believe it is (b) that you're relying upon to terminate the merger agreement --
MR. BEMIS: Withdrawn. Terrible question.

Page 203

Q Other than Section 11.1(b), which I believe is the passage of time provision, is there any other provision in termination that you were relying upon for stating that you would not have closed and you would have terminated the agreement?
A Maybe (d) too. I think the critical point is not closing as opposed to terminating the agreement.
Q Well, you did close. You did close. You did close with knowledge of the March 19th press release and you did accept the consideration under the merger agreement, did you not, the Coleman side did?
A We closed with that knowledge and without the knowledge of the two comfort letters, that's correct.
Q And you closed when you closed --
MR. BEMIS: Withdrawn.
Q Is there any provision in the merger agreement, MS 93, which requires Morgan Stanley to send to anyone on the Coleman side or provide any notice on the Coleman side of the transaction of the

Page 204

comfort letters that Morgan Stanley receives in connection with its duties as an underwriter of the zero coupon debentures that closed on March 25, 1998?
A Morgan Stanley had an absolute obligation to us and to the bond holders who sold the bond --
Q Sir, you didn't buy any bond.
MR. MARMER: Just a moment.
Q I didn't mean to interrupt you.
A But you did.
Q I apologize.
A I think Morgan Stanley had an absolute obligation to us and the bond holders to whom it sold the bonds to disclose the existence of the facts contained in these comfort letters, if not the letters themselves.
Q Now, setting aside the bond holders because you didn't buy any bonds, you're not a bond holder, right?
A I'm not a bond holder.
Q No one on the Coleman side is a bond holder?
A As best I know.

NOT A CERTIFIED COPY

019869

Page 205

Q Let me ask you to focus on the merger document, Article, excuse me, MS 93, are you there, MS 93?
A Morgan Stanley is not a party to this agreement.
Q Just answer my question. Are you focused on MS 93?
A I am now.
Q Is Morgan Stanley a party to the agreement?
A No, sir.
Q Is there any provision in this agreement that you can identify that provides that Morgan Stanley is an underwriter, is obligated to provide the Coleman side of the transaction copies of documents it received from Anderson in its capacity as underwriting for the debenture offering for which you weren't a purchaser?
MR. MARMER: I object to the form of the question.
A There is nothing in this document that gives Morgan Stanley the right to assist anyone, including Sunbeam or Arthur Anderson, in a fraud.

Page 206

Q You can make that speech to the jury.
MR. BEMIS: I move to strike your answer. Repeat my question, please to the witness.
MR. MARMER: Move to strike the gratuitous comments of counsel. The witness has answered the question.
Please put the next question.
MR. BEMIS: I'm putting the question to the witness. He did not answer the question. He made a speech.
I move to strike his answer.
Please repeat the question, Ms. Reporter.
(Record read.)
MR. MARMER: Same objection.
A I stand by my answer, sir.
MR. BEMIS: Repeat the question to him.
A I've heard the question. This would be the third time.
Q Why don't you answer it one of the three times?
A I did answer it.

Page 207

MR. MARMER: That will end our colloquy on it. Mr. Bemis made his record. We made ours. If he has anything further to ask you, he will otherwise we'll conclude.
MR. BEMIS: Fair enough. We'll let the judge decide whether you have to answer the question, and I guarantee you I am going to ask the judge to have you come back to answer the question.
Let's take a break, and we'll come back for the last hour.
THE VIDEOGRAPHER: The time is 4:06 p.m. and we're going off the video record.
(Recess.)
(Morgan Stanley Exhibit 282, 283 - Documents marked for identification as of this date.)
THE VIDEOGRAPHER: The time is 4:16 p.m. and we're back on the video record.
Q Sir, can you tell me by how much Sunbeam missed its projections with regard to its sales in the first quarter of 1998 as

Page 208

referenced in the press release of March 19th, which we marked as MS 39?
MR. MARMER: I object to the form of the question.
A It was fairly wide at that point. I can't -- I don't remember.
Q It was fairly wide?
A I think so.
Q What does wide mean to you, so the jury knows what you're talking about, 20 million, 30 million, 50 million, 100 million; what are we talking about?
A Do you have the release?
Q I can give you MS 39. I think it is in the papers that you have in front of you. I don't have my copy.
Did you find it? Otherwise I'll give you mine. There you go.
A Well, in the release of March 19th they say that the revenues may be lower and they say that it is possible the net sales will be lower than the range for analysts, as they say between 285 million and 295 million but the net sales for the quarter are expected to exceed last year, which was

NOT A CERTIFIED COPY

019870

Page 209

253.
Q Point 4?
A Point 4.
Q My question is: Do you know what Sunbeam reported, and this is not a trick question, we're going to do this for both the original reporting and so-called restated reporting at a later time.
Let's just right now on the original reporting, do you know how much Sunbeam missed its estimate of 253.4 million dollars?
A No, but your earlier question was at this point in time and the comfort letter at this point in time demonstrated a wide gap between where they wanted to be and where they were. We're now talking about the end of the quarter the actual results?
Q Yes, sir, the actual results. These are forward looking statements in the press release, are they not?
MR. MARMER: Just a moment. So the question is are these forward looking statements in the press release? That's the only pending question,

Page 210

correct?
MR. BEMIS: I think so.
Q The statements in the press release are forward looking statements?
A Some statements can be forward looking, some statements can be outright misrepresentations.
Q Are those statements in the press release stated to be forward looking statements?
A They are indeed.
Q My question is: Do you know going forward from March 19th to the closing on March 30, 1997 of that period for the first quarter what Sunbeam then actually reported as its first quarter 1998 sales before the restatement; do you know what it reported?
A I'm remembering on an apples to apples basis that it was off by more than ten percent.
Q Let me show you what's been marked as Exhibit 281, which is the form 10-Q that Sunbeam Corporation filed with the Securities and Exchange Commission on or about I believe it's May. I think it would

Page 211

be May 11, 1998?
A Okay.
Q Turn to page two of the financial statement.
A Okay.
Q Now, do you see that the March 31, 1998 reported sales were $244,296,000?
A That's what it says.
Q And the March 30, 1997 is $253,450,000, which is the same figure that's set forth in the press release, MS 39, right?
A That's the reported sales figure for 1997, that's correct.
Q So the difference, there is just slightly under nine million dollars; is it not? The difference between the two numbers is over nine million dollars?
A The math is correct.
Q So I don't want to be accused of misleading you, the auditors did go back and later in a restatement was done for both the first quarter of 1997 -- excuse me, for the March 30, 199 --
MR. BEMIS: Let me withdraw that

Page 212

and start all over again.
Q There was a restatement of certain of Sunbeam's financial statements in 1998, correct?
A There was a restatement and I don't recall whether it was in '99 or '98. It was finally done.
Q Well, without quarelling with you, it's 1998, but I don't want to get bogged down in that. By the period of October of 1998, Mr. Perelman's representatives were, indeed, running The Company Inc., were they not, sir?
A Jerry Levin was running The Coleman Company, Inc. In fact, I take it back. Jerry Levin was running Sunbeam. Sunbeam controlled Coleman. Coleman had its own management and he was CEO and he was there because the Sunbeam board of directors asked him to be there.
Q And they asked Mr. Perelman to ask Mr. Levin to come back and run the company, did they not at a board meeting on June 15th or 16th of 1998?
A It was about that time. I didn't

NOT A CERTIFIED COPY

019871

Page 213

know it was at a board meeting.
Q And in addition to Mr. Levin, Mr. Shapiro was asked to go to Sunbeam from one of Mr. Perelman's companies or after he just recently left one of Mr. Perelman's companies, correct?
A Yes.
Q And Mr. Steven Isko went as well, did he not?
A Yes.
Q And Mr. Gittis, I believe, went on the board of directors of Sunbeam; is that correct?
A Mr. Gittis?
Q I keep mispronouncing it. I mean no offense.
A He was on the board of Sunbeam.
Q There were other representatives of Mr. Perelman's company who were also on Sunbeam's board of directors on or about the middle of June of 1998 when there was the management change at Sunbeam, correct?
A I don't think that was correct.
Q We'll set that issue aside.
In any event, let me show you

Page 214

what's been marked as MS 282, and the court reporter was gracious enough to mark that during the recess, so you have that in front of you?
A This Q that you have shown me, you said it was filed in or about May of 1998?
Q Yes, sir, I think May 11th is the date and it is the one before the restatement. I think I told you that so that you there would be no confusion later.
A And these sales figure for 1998 include at least two days of the Coleman Company sales figures, sir?
Q I'm not the auditor. I'm just asking you what they show. If you say that they do, I'll take your word for it?
A Okay, all right. You want me to look at what now, sir?
Q I want you to look at MS 282, do you have that in front of you?
A I do.
Q And this is a form 10-QA, is it not?
A That's what it purports to be.
Q And it was filed as of November

Page 215

25, 1998 for Sunbeam Corporation, correct?
A Do you want to show the date you're looking at for filing?
Q It's actually right on the very -- it's right on the very first page printed off of Edgar. You know what Edgar is, right?
A I do.
Q The SEC filing system.
Very top file date November 25, 1998.
A Okay.
Q Does that answer your question?
A It tells me where you got the date, yes, sir.
Q Now, this is a form 10-QA and you know what that is, right?
A Yes, sir.
Q What is it, tell the jury what it is?
A It's an amended 10-Q.
Q So does this form, which is form 10-QA, MS 282, does it amend Exhibit MS 281, which was the original Sunbeam 10-Q that was filed on or about May 11, 1998?

Page 216

A It amends the 10-Q for the period ended March 31, 1998. That's what this document is and that is what Exhibit 281 is and that's what it does, yes, sir.
Q All right. Now, let's look at this document. If you'll turn to the very back of the document it could be page 28 on the signatures, it is signed by Bobby G. Jenkins, the executive vice-president and chief financial officer, or excuse me principal financial officer of Sunbeam Corporation, correct?
A He is identified, sir, as the chief financial officer and as the principal financial officer.
Q You're right, I misspoke. Thank you for correcting me. We got it right, we now who he is now?
A Yes, sir.
Q Mr. Levin, he was still the chief operating officer, if you will, of Sunbeam at the time the 10-QA was filed, correct?
A I don't think so. I think he was the chief executive officer. I don't recall if they had a chief operating officer.

NOT A CERTIFIED COPY

019072

Page 217

Q I didn't know if he was CEO or COO. He was the man running Sunbeam subject to the board of the directors, correct?
A I believe he was the CEO.
Q CEO meaning chief executive officer?
A Yes.
Q Which means he was running the company subject to the board of directors?
A He is running the company and the board discharges its function of oversight, yes, sir.
Q Now, please turn to page two of the document MS 282 and look at the restated figures for net sales for Sunbeam for the first -- the period March 30, 1997.
Do you see that?
A Yes, sir.
Q Now, according to this, the net sales for the period ending March 30, 1997, which would be the first quarter of 1997 were $252,488,000, right?
A Right.
Q And even looking at the press release, MS 39, Sunbeam had reported 253.4

Page 218

million, approximately one million difference that's shown on the restated 10-Q, correct?
A The numbers are what they are, right, sure.
Q Right. Just so we're clear, it's a one million dollar difference, isn't there?
A There is a one million dollar difference between this restated March 30, 1997 figure and the earlier stated 1997 figure as reflected in the document that you marked as MS 281.
Q And according to the restated 10-Q, which was filed by Sunbeam while Mr. Levin and Mr. Shapiro were officers of Sunbeam shows that the March 31, 1998 first quarter sales as restated are $247,601,000, right?
A Right, and the document also shows for the period March 30, 1997 operating earnings of 17 million. The earlier shown document to me showed operating earnings of 34 million and in point of fact, there is a loss in this restatement of 37.3 million.

Page 219

Q I'm only focusing right now on the net sales?
A As I say, the numbers are what they are.
Q And the numbers are just slightly under five million dollars difference between March 30, 1997 first quarter sales and March 31, 1998 first quarter sales as restated by Sunbeam after the extensive audits that were done by Arthur Anderson and Deloitte & Touche.
Let me rephrase the question.
The restatement was done after an extensive period of audit work by both Arthur Anderson and Deloitte & Touche, correct?
A I don't know that, sir.
Q You don't know that?
Well, I can do the math and I think you can do the math. The difference in net sales is not even five million dollars on a restated basis, is it?
A These numbers are dramatically different than the numbers stated in in the comfort letters.

Page 220

Q They are dramatically different for the net sales figures?
A For which year?
Q Let me just focus you on the press release. Set aside the comfort letters, comfort letters written on March 19th before the quarter is over, correct, and they are projections before the financial statements are finalized even on an unaudited basis for the month; isn't that right?
MR. MARMER: Objection to the question.
Q If you take your hand out of your mouth, it will be easier on the videotape.
A I'm trying to listen to your question. I don't remember projections in the comfort letter.
Q The press release is issued on March 19th as a forward looking statement for results that are expected as of the end of a period; is that not true?
A You keep mixing and matching the press release and the comfort letter.
Q I didn't even refer to the comfort letter on the press release.

NOT A CERTIFIED COPY

019873

Page 221

The press release is a forward looking statement for results anticipated at the end of the period, which is March 30, 1998, is that true or is that wrong

A The press release is a document that speaks for itself.

Q I don't know talking documents.

A Fine. You want me to read it to you?

Q You want to tell me, if you would like to read the document, read any portion you want. I'd like you to answer my question.

The document is dated March 19, 1998 the press release. It is referring to a forward looking results as of a period ending March 30, 1998 which is at least 11 days hence into the future, is it not, sir?

MR. MARMER: I object to the form of the question. Argumentative. I object to the form of the question, essentially asked and answered.

Q Can you answer the question, sir?

A The press release begins with a headline that states "Sunbeam's revenues may

Page 222

be lower than street estimates."

That's how it begins. It has a first and only substantive paragraph that says that "Sunbeam said today that it is possible that its net sales for the first quarter of '98 may be lower than the range of Wall Street analyst estimates, that is 285 to 295 million, but net sales are expected to exceed 1997 first quarter net sales of 253.4 million."

That's the first sentence. The second sentence says, "The company stressed that the sales of its products at retail remains very strong."

The next sentence, "The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns of certain of the company's major retail customers. The company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlet for its product for the entire year."

There then is a paragraph that

Page 223

describes Sunbeam, which I'll call boiler plate. And there is a paragraph called cautionary statements, and it says, "Statements contained in this press release including statements relating to the company's expectations regarding anticipated performance in the future are forward looking statements as such term is defined in the Private Securities Litigation Reform Act of 1995."

That's what it says.

Q That wasn't my question.

A That's my answer.

Q I'm not looking to quarrel with you.

MR. BEMIS: Can you find my question and reread it?

(Record read.)

Q Can you answer that question?

A Like I said, the press release says what it says and I just read it.

Q Can you answer my question?

A I did the best I can, sir.

Q Can you answer my question? If not, tell me you're not going to answer

Page 224

it --

A I did the best I can, sir.

Q You may say that but I don't believe you have answered my question.

MR. BEMIS: I'll move to strike your answer.

Q I would like you to answer the question.

MR. MARMER: You can take that to Judge Maas because you made your record and we have made ours. Let's continue.

MR. BEMIS: You're not instructing him not to answer, are you?

MR. MARMER: No, I'm advising you that we have only a little bit of time left. It makes more sense to get whatever information you want to get.

Q Now, if the sales shortfall had been as reported in MS 281, we'll start there of nine million dollars roughly between the first quarter of 1997 and the first quarter of 1998, would the Coleman side of the transaction close the transaction?

A Sir, this document, 281 is a

NOT A CERTIFIED COPY

01987h

Page 225

document filed in May, filed in May. The transaction was closed in March. The information that was not available that reflected a material adverse change was reflected in the comfort letter of March 19, and March 25th, before March 30th.

With that information in hand, The Coleman Company would not have closed.

Q My question is different, and I would like you to listen to it, and if you don't want to answer it, we'll deal with the judge with you later, as your counsel suggested.

If the sales shortfall for net sales had been nine million dollars plus or minus $100,000 between the first quarter of 1997 and the first quarter of 1998, would you have closed the transaction?

A I think you're asking me to speculate and I'm not going to.

Q Oh, but you'll speculate that if you had received a comfort letter, you wouldn't have closed?

MR. MARMER: I'm going to instruct you not to answer that question.

Page 226

MR. BEMIS: On what grounds?

MR. MARMER: The question is clearly argumentative, and I think after you have had a chance to reread it after things quiet down, that you probably will not want to endorse the question.

Q Sir, is it your testimony, is it your testimony --

MR. BEMIS: Withdrawn.

Q Sir, if you had had the restated sales figures for the first quarter of 1997 and 1998 as reflected in the form 10-QA, MS 282, at the time of the closing on March 30th, would you have closed the transaction?

MR. MARMER: Objection to the form. Complete hypothetical.

A You just want to focus on the sales figures. You have to look at the sales figures and the earnings per share figures.

Q There are only sales figures in the press release. There are no earnings per share.

A The comfort letter addresses both earnings per share as well as sales figures.

Page 227

We did have the benefit of the press release, yes, sir, we did.

Q There are no reference to earnings per share in the press release, are there?

A That is correct.

Q You made no inquiry, that is the Coleman side of the transaction, of Arthur Anderson, of Morgan Stanley, of Sunbeam, of Credit Suisse First Boston, of your attorneys at Wachtell, Lipton or, indeed, anyone of what Sunbeam's projected earnings per share would be in light of the March 19th press release?

MR. MARMER: I object to the form of the question; asked and answered I object to the form of the question; argumentative. I object to the form of the question; compound.

Q I can do it for all of the companies. If you look --

A We have been through this. I'm going to give you the answer again. You didn't like it the first time.

Q Don't tell me what I like and don't like. Just answer --

Page 228

A Mr. Bemis, you're getting a little testy.

Q I apologize if you think that's the case. Trust me, I don't get testy. We will let the jury decide who is testy.

I'll ask it five different ways from Sunday for you.

A I'll give you the same answer. We had no reason to ask those questions based upon the press release, sir. We would have asked those questions based upon the comfort letter that we did not have the benefit of seeing.

Q The comfort letter that you didn't ask anyone for, right?

A The two comfort letters of March 19th and March 25th addressed to Morgan Stanley which we never saw.

Q I understand that you didn't ask for a copy of the comfort letter though from any source, right? The Coleman side -- you didn't ask for a copy of the comfort letter from anyone, whether it be on the Coleman side or whether it be on the Sunbeam side, you didn't ask for a copy of the comfort

NOT A CERTIFIED COPY

019815

Page 229

letters?
A Sir, those comfort letters, as you know, were issued to Morgan Stanley in connection with an underwriting that Morgan Stanley did for debentures for a material amount. And you would agree with me that Morgan Stanley closed that transaction and there was no reason for anyone to think on the Morgan Stanley side what they said there was a material adverse change in the Sunbeam Company.
Q You didn't read it at the time of the offering, did you?
A I think I told you I don't recall.
Q Are you aware that March 19th was included in the offering memorandum?
A The press release?
Q Yes, the March 19th press release.
A I don't know if it was or wasn't. I don't recall seeing the March 19th press release.
Q My understanding, sir, is that after the closing of the deal, that you, that is the Coleman side of the transaction, you sued Arthur Anderson, the accountants,

Page 230

for Sunbeam, correct?
A There came a time when a lawsuit was initiated against Arthur Anderson, yes, sir.
Q And you recovered from Arthur Anderson 70 million dollars; is that correct?
A The case was resolved and Arthur Anderson paid 70 million dollars.
MR. MARMER: I'm designating at least this portion of the transcript confidential.
MR. BEMIS: I don't object to you doing that for the time being, but I'm not, so we're clear, I'm not agreeing that the rest of the transcript is subject to confidentiality, just so we're clear what we're both speaking of.
Q Now, in addition to the 70 million dollars that -- and you -- excuse me, the theory under which the Coleman side sued Arthur Anderson was that Arthur Anderson had conducted the audits of Sunbeam in a negligent manner, that was one theory, correct?

Page 231

A There was a complaint we filed, if you want to show it to me to refresh me, you can.
Q If you don't know, just tell me. If you don't know what the theories are, I don't want to take the time to force you to read this late in the day.
A I haven't reviewed that complaint in a long time.
Q So we'll set that aside. Whatever the allegations are in the complaint are the allegations that you would respond to if I showed it to you as being the allegations made against Anderson?
A If those, in fact, were the allegations, yes, sir.
Q If you accused Arthur Anderson of fraud in that case, that would be one of the allegations that the Coleman side made against Arthur Anderson, right?
A Yes, sir.
Q And when you sued Arthur Anderson, you didn't at that time bring any claims against Morgan Stanley for defrauding the Coleman side of the transaction, did you?

Page 232

A That complaint was limited to claims against Arthur Anderson, that's right.
Q And then in addition to suing Arthur Anderson, you, that is the Coleman side of the transaction, threatened to sue Sunbeam, did you not, again the Coleman side?
A There were discussions with Sunbeam in the summer of 1998 well before any lawsuit was initiated against Arthur Anderson about claims that certainly Coleman (Parent) Holdings felt it had against Sunbeam, yes, sir.
Q And eventually the claims that were asserted by the Coleman side against Sunbeam were settled, were they not?
A Correct.
Q Those claims were settled on agreement dated August 12, 1998, correct?
A It's an agreement of the summer of 1998. It could very well be August 12th did you say?
Q August 12, 1998.
A Could very well be.

NOT A CERTIFIED COPY

Page 233

Q Let me show you what's marked as MS 96.

Let me show you what's been marked as MS 96, which is, which, I believe, is a copy of the settlement agreement entered into between Sunbeam Corporation and Coleman (Parent) Holdings Inc.

Do have you that document in front of you?

A I do.

Q And is this a copy of the settlement agreement?

A It appears to be.

Q And did you sign the settlement agreement as it appears on page 15 under the heading Barry F. Schwartz, executive vice-president and general counsel?

A I recognize my signature.

Q And this settlement agreement, was this settlement agreement subject to court approval?

A There was no pending court case that I'm recalling back then.

Q You're right, I misspoke. I'm sorry, I was thinking of something else.

Page 234

The warrants that were issued in this case, was a value ever placed on those warrants as of the date of the settlement?

A I'm not aware of any value being placed on the warrants.

Q Let me show you what's been marked as MS 260.

A Of course you know there were warrants to buy shares of Sunbeam, right?

Q There is no question pending right at the moment.

A I want to make sure we're talking about the same warrants.

Q I'm talking about the warrants there in the settlement agreement. Does that help?

A Sunbeam warrants, right.

Q Are we clear what we're talking about?

A Yes, sir.

Q Would you mark this as Exhibit 260.

(Morgan Stanley Exhibit 260 marked for identification as of this date.)

Q Do you have Exhibit MS 260 in front of you?

Page 235

A Yes.

Q And this purports to be an agenda for the audit committee meeting of Sunbeam December 14, 1998 with a copy to Mr. Jerry W. Levin, who you have identified as the -- you said he was the chief executive officer of Sunbeam at this time, correct?

A Levin was the CEO. I have never seen this before, and one of the pages in the document you have given me, it's the third page, appears to be an agenda for an audit committee meeting at Sunbeam.

Q If you turn to CPH 1039848, you will see that there is a specific reference to the valuation of warrants with Mafco of 70 million dollars; can you see that?

A I see that, yes.

Q Did Coleman (Parent) Holdings ever place a value, as of the time of the settlement, which was September 12, 1998, on the Sunbeam warrants that were issued pursuant to the terms of the settlement agreement, MS 96?

A I suspect so.

Page 236

Q What was that value?

A I don't know.

Q Who would know?

A Our auditors would know. Our internal financial people would know.

Q Well, can you give me a name because I'm not looking for a descriptor, I'm looking for --

A Our auditors are Ernst & Young.

Q So Ernst & Young would know the valuation placed upon the warrants as of September 12th?

A Ernst & Young would know and our chief financial officer at the time or one of the people in our accounting function, the chief financial officer at the time was either Engleman or Slotkin and the accounting person that comes to my mind is either Larry Winoker, probably Larry Winoker.

Q Could you spell Larry's last name?

A W-I-N-O-K-E-R.

Q You can set that aside for the time being.

Did you give a deposition in the

NOT A CERTIFIED COPY

019817

Page 237

Monica Lewinsky investigation by the office of the special prosecutor?
A I was interviewed. I don't think I gave a deposition.
Q The interview, was it under oath?
A I don't think so. I'm not sure.
Q When did you do that?
A Sometime after that investigation began.
Q Well, I'm not quite sure what you mean by when the investigation began. By point of reference, I can tell you that my understanding based on researching the issue is that the story about Ms. Lewinsky and any connection to Revlon began by a disclosure in the Washington Post and the L.A. Times on January 21 of 1998. Is that square with your recollection?
A Sometime early '98, sure.
Q And as the chief legal officer of MacAndrews & Forbes, did you have any responsibility for handling any legal matters that arose out of the Monica Lewinsky investigation by the office of the special prosecutor?

Page 238

A Sure.
Q What were your responsibilities in a generalized sense for the jury?
A I dealt with an outside law firm that represented various different MacAndrews & Forbes, and I think in a few instances Revlon employees, who were summoned by agents for the office of the special prosecutor.
Q In addition to yourself being interviewed, Mr. Perelman, indeed, was deposed, was he not, by the office of the special prosecutor?
A I believe that's correct.
Q Were you present during the deposition?
A I don't think so.
Q And who is the outside law firm that represented you in this investigation?
A Stillman & Friedman.
Q And the investigation involving Miss Lewinsky which was first disclosed on or about January 21st of 1998 continued all the way through the closing of the Coleman-Sunbeam transaction, did it not?

Page 239

A I don't know. There were interviews that took place during that period of time.
Q If it's of any assistance, we can go on the internet to check these things, the prior report by the office of the special prosecutor.
Mr. Perelman was deposed on April 28, 1998. Is that consistent with your recollection?
A You asked me if I knew how long the investigation went on. I don't know how long the investigation went on. I do know that there were various people, including Mr. Perelman, who were interviewed or deposed and that happened during that period, yes, sir.
Q And that period it occurred during that period between February 27, 1998 when the merger agreements were signed, like MS 93, MS 117 and the date of the closing of March 30th of 1998, correct?
A Yeah, and beyond. You just told me that Perelman was deposed in April.
Q I did tell you that. Based on the

Page 240

records I have seen, he was deposed on April 23rd.
A I don't doubt it.
Q And during this time when the Lewinsky investigation was going on involving Revlon and the subpoena to -- excuse me.
During this period, Mr. Perelman actually received a subpoena from the special prosecutor in the Lewinsky investigation, did he not?
MR. MARMER: You're talking about from your partner?
MR. BEMIS: I think that is inappropriate. I'm not even going to comment on that.
Q Did Mr. Perelman not receive a subpoena from the special prosecutor?
A We were asked to gather documents. I don't remember if there was a subpoena directed to any person. Frankly, I don't remember if we received a subpoena. We did gather documents and they were turned over to Stillman and they, in turn, were turned over to investigators for the special

NOT A CERTIFIED COPY

019878

Page 241

prosecutor.
Q Again, this was during the --
MR. BEMIS: Withdrawn.
Q The subpoena that you're referring to, this was issued and responded to during the time the Coleman transaction was pending closing, correct?
A I don't remember. My guess is yes.
Q And at the time -- also during this time, Mr. Jordan --
MR. BEMIS: Strike that.
Q Before the closing on March 30th, Mr. Vernon Jordan also testified before the grand jury that was investigating the matter, did he not?
A I remember that. I don't know when I learned that.
Q Well, is it fair to say that you as chief legal officer of MacAndrews & Forbes was monitoring closely the Lewinsky investigation to the extent that it implicated or involved Mr. Perelman or the Revlon -- or Revlon, of which he owns a substantial interest?

Page 242

A It's fair to say that I paid attention to the matter and it's fair to say that I relied heavily on the Stillman & Friedman firm in connection with that matter.
Q Was there anybody else in your legal department who was tasked with monitoring the Lewinsky investigation and the inquiries that were being made by the special prosecutor by Mr. Perelman and Revlon officials and, indeed, yourself, as you said, you were interviewed other than yourself --
MR. BEMIS: That is a terrible question. Let me try that again.
A There was another lawyer who worked with us then who I don't think I identified for you earlier this morning. His name is Eric Golden. He may have also been dealing with the Stillman firm.
Q Golden just like it sounds, G-O-L-D-E-N?
A Yes.
Q Eric, E-R-I-C?
A Yes.

Page 243

Q Does he work for MacAndrews & Forbes now?
A He does not.
Q And do you know where is he today? And in that, obviously, not this exact moment but where he lives today.
A He lives in Santa Monica, California.
Q And what does he do there?
A He is the general counsel of a public company called Panavision.
Q Panavision, a company that is owned by Mr. Perelman, correct, at least in part?
A A company in which we have a substantial ownership interest in.
Q You have more than a majority interest but it is more than 50 percent?
A It is.
Q Something like 78 percent?
A It's closer to 86 percent.
Q I apologize for my math errors. My memory does not serve me well on all your companies.
Was he then -- did he move to --

Page 244

did he move to Panavision after the Lewinsky investigation?
MR. MARMER: You mean directly after?
Q Temporally after?
A Our involvement with the inquiry about --
Q Can I ask -- your counsel --
A Can I answer your question?
Q He has a good point. The question is really so poorly framed timewise I don't know how you can answer it fairly.
Assuming Mr. Perelman was deposed on the date that I said, April 23rd of 1998, did Mr. Goldman go to Panavision after that date?
A Yes, substantially after that date. He left us to become the general counsel of the Washington Redskins. And after he was at the Washington Redskins, he was determined to leave that position and we offered him a job at Panavision. I believe that was calendar 2002.
Q I have to give that one some thought because I think I know what you're

NOT A CERTIFIED COPY

0198179

talking about but it's not important for us right now so we'll let it go.

A You asked me if it was close in time.

Q I'm not quarelling with you. I was thinking of something else trying to put a date in my mind and I couldn't do it.

MR. BEMIS: Why don't you give me five minutes alone and we might be done. Kind of stay close.

THE VIDEOGRAPHER: The time is 5:05 p.m. and we're going off the video record.

(Recess)

THE VIDEOGRAPHER: The time is 5:10 p.m. and we're back on the video record.

MR. BEMIS: We have no further questions at this time.

THE WITNESS: Thank you.

MR. BEMIS: We thank you for your courtesy for appearing here today and it's a pleasure to meet you, sir.

THE WITNESS: Likewise.

THE VIDEOGRAPHER: The time is 5:10 p.m.

This completes tape three and also the videotaped deposition of Mr. Barry Schwartz.

(Time noted: 5:20 p.m.)

_____

BARRY SCHWARTZ

Subscribed and sworn to
before me this day
of , 2004.

_____

CERTIFICATE

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, Adrienne M. Mignano, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That BARRY SCHWARTZ, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of June 2004.

_____

ADRIENNE M. MIGNANO

INDEX

WITNESS	EXAMINATION BY	PAGE
B. Schwartz	Mr. Bemis	6

MORGAN STANLEY EXHIBITS

Exhibit No.	
MS 273	22
MS 274	29
MS 182	168
MS 183	169
MS 184	170
MS 186	172
MS 282	207
MS 260	234

NOT A CERTIFIED COPY

019880

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sales '96
Eliminated $ 40-350

NOT A CERTIFIED COPY

Sunbeam®

Long Range Strategic Plan

MS 185
10/25/04 AMW
CPH 1406920

CP 016727
CONFIDENTIAL

288610

16div-025663

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1. Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.).

2. Strengthen Sunbeam and Oster brands globally.

3. Continually introduce innovative and highly differentiated products globally.

4. Optimize worldwide supply chain.

5. Achieve industry leadership in customer service.

NOT A CERTIFIED COPY

CPH 1406921

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1) Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.)

- Leverage our brand halo to further strengthen our image and reputation with the consumer, customer and investor, worldwide.
- Develop comprehensive Go-To-Market plans to drive worldwide activity.
- Sharpen international market focus to Latin America, Mexico, Venezuela, Japan, UK and Canada and tailor product bundles to the individual markets.
- Continue to be the consumer's first choice for innovative and differentiated solutions in both the value and premium segments of our core businesses.
- Deliver product to market better and faster than the competition.

NOT A CERTIFIED COPY

CPH 1406922

CP 016729
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

2) Strengthen Sunbeam and Oster brands globally..

- Position and differentiate the Sunbeam and Oster brands globally with targeted marketing and advertising.

- Improve competitive positioning through core business focus on the consumer and technology:

  Sunbeam - Value and Innovation segments
  Oster - Quality and Performance segments

- Leverage Oster brand recognition in Latin America.

- Explore licensing opportunities. $6 Licensing before 1997

Pets appliances
Home cleaners

NOT A CERTIFIED COPY

CPH 1406923

CP 016730
CONFIDENTIAL

588610

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Product Development X

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

3) *Continually introduce innovative and highly differentiated products globally.*

- Continue to develop highly differentiated products.

89 New products 1997

- Focus development resources on "Home Runs" (e.g., air and water).

5-10 mm minimum

Air/Water + 10mm

- Respond to and meet consumer needs better than the competition.
- Explore alternative uses for proprietary technology (i.e., utilize PTC wire technology to enter the heated carpet market).
- Continue to enhance the product development process and turn around.

NOT A CERTIFIED COPY

CPH 1406924

988610

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

4) Optimize worldwide supply chain.

- Shift make versus buy mix from 70/30 to 50/50.

Close Mexico City Facility - $75mm savings; move to 2 border facilities (max production at from facility to 3rd party)
2,000 employees makes everything
Land worth $20mm

- Balance proximity of supplier, plant and customer locations to minimize logistical requirements and associated costs and accelerate delivery.

- Exploit cost savings opportunities associated with Asia Pacific economies via joint ventures and acquisitions.

- Simplify and standardize processes and practices.

NOT A CERTIFIED COPY

CPH 1406925

L88610

CP 016732
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

5) Achieve industry leadership in customer service.

- Define and monitor customer satisfaction from forecasting to invoicing through Project Full Time. 95% on-time delivery
- Fill distribution voids and achieve new product sell-in leveraging Full Time performance. Wal-mart 21% of sales
  Poor presence b/c of delivery skill
- Achieve preferred supplier status with joint partnering and 98% on time and in full shipments to key customers.
- Implement systems to track and resolve total quality issues incorporating ISO 9000 requirements.

NOT A CERTIFIED COPY

CPH 1406926

888610

CP 016733
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam APPLIANCES

Strategic Headlines

1. Strengthen Sunbeam and Oster trademarks globally.

2. Continually introduce a constant stream of consumer-driven new products concentrated in three focus areas:
   - Blending and Mixing – $0.50/share of blending
   - Smart Cooking
   - Everyday Best

   MKT Share
   Black Decker
   Kitchen Aid
   P

   1-2 in every niche

3. Broaden distribution with existing customers.

   New categories
   W/ Crock Pot

$MM	1997	1998	1999	2000
U.S. Sales	288	356	430	480
% Increase	16%	24%	21%	12%

NOT A CERTIFIED COPY

CPH 1406927

688610

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam HEALTH AT HOME

Filters very competitive

WATER PRODUCT
- Use filter (proprietary)
- Compete w/ Brita

AIR CLEANER
Use laser to control setting

Strategic Headlines

1. Leverage Sunbeam brand equity to become the category expert.

2. Expand the business to healthy environment (i.e., air and water) and home safety (e.g., emergency carbon monoxide or smoke notification, security alarms, first aid monitoring.)

3. Fill distribution voids and extend product seasons.

4. Use Air & Water to launch our core Health at Home product lines globally.

Healthy Air Category did not exist

98 Air & Water

$MM	1997	1998	1999	2000
U.S. Sales	93	189	240	300
% Increase	7%	103%	27%	25%

068610

CP 016735
CONFIDENTIAL

NOT A CERTIFIED COPY

CPH 1406928

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. PERSONAL CARE & COMFORT - Bedding

Strategic Headlines

1. Advance technology advantage with continuous development of new wire technology (lower EMF) and electronic controls (solid state controls).

Jarden NPI
~300 manuals
50% Penetration
US 20i

2. Launch new products that address consumer's safety concerns and provide heating comfort in places other than the bedroom.

3. Globalize the business focusing on high potential countries.

Lower Margins
Oster : Sold Bithford facility (make shells)
- was not able to meet demand
- looking for alternative sources

4. Increase household penetration by introducing new packaging and promoting the "Blanket with a Brain" concept.

40% Margin

$MM	1997	1998	1999	2000
U.S. Sales	169/[illegible]227		260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

Clippers (Philips/Norelco/Retail ~40/45% margin)

168610

NOT A CERTIFIED COPY

CP 016736
CONFIDENTIAL

CPH 1406929

16div-025672

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam PERSONAL CARE & COMFORT - Clippers and Other Personal Care

Strategic Headlines

1. Grow household penetration by focusing on high potential targets:
   - large and low income families
   - teens
   - African Americans
2. Introduce new products with better performance than the competition.
3. Grow business globally.
4. Enter new personal care categories leveraging our Sunbeam and Oster brand names.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

CPH 1406930

268610

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OUTDOOR COOKING

Strategic Headlines

1. Continue to entrench GrillMaster as the dominant worldwide brand of grills and accessories/replacement parts.
2. Achieve category growth by promoting grilling in high-growth, high-profit segments. Address category negatives/barriers.
3. Dramatically increase the profit importance of GrillMaster and Outdoor Cooking to Sunbeam and the trade.
4. Develop outdoor cooking business globally, focusing on countries with high disposable income and high meat consumption.

12/96 Consolidated Production
8/97 Shut down to enhance line & create common parts

- 50% margin dollars in grills over $300
- Added [illegible] and made it

$MM	1997	1998	1999	2000
U.S. Sales	297	341	390	420
% Increase	25%	15%	14%	8%

[illegible] margin
=> 20-25% margin

NOT A CERTIFIED COPY

CPH 1406931

CP 016738
CONFIDENTIAL

E68610

16div-025674

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OTHER CHANNELS

Strategic Headlines

❶ Away From Home

- Bundle existing products to effectively grow lodging.
- Expand beyond lodging into commercial food service.

❷ Outlet Stores

21 Stores (16 US / 5 Can)

- Continue to expand in "A" locations.
- Continue to serve as more profitable alternative channel for excess inventory.

97 of 101 at new product
Some Professional Opps.

$MM	1997	1998	1999	2000
U.S. Sales	65	111	135	150
% Increase	55%	71%	20%	15%

Retail 15
1

168610

NOT A CERTIFIED COPY

CPH 1406932

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam INTERNATIONAL

Strategic Headlines

1. Focus on high growth areas where we can leverage Sunbeam and Oster brand names, such as Latin America, Canada, Southeast Asia.

2. Tailor product bundles to the individual markets (i.e., pick and choose product lines in the rest of the world). Sell highly differentiated products larger bundles

3. Continue to develop license and distributor arrangements (25 in 97) ↓ 50

4. Minimize capital investment.

5. Globalize core business successes (i.e., blenders, clippers and blankets).

Asia 35 15 ? (1) Distribution (2) Products

$MM	1997	1998	1999	2000
Int'l. Sales	240	360	529	734
% Increase	25%	50%	47%	39%

S68610

CP 016740
CONFIDENTIAL

NOT A CERTIFIED COPY

CPH 1406933

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam CHANGING COMPETITIVE DYNAMICS

- Reinvestable Returns Differentiates the Winners from the Losers.
  - Market Leaders are those who will invest in the business (i.e., New Products, Advertising, Working Capital).
    - Philips
    - KitchenAid
    - Sunbeam
    - Braun
    - Krups
    - Hamilton Beach / Proctor Silex
  - Other Companies will not remain competitive
    - Rival
    - National Presto
    - Mr. Coffee
    - Health O'Meter
    - Black & Decker
    - West Bend
- Sunbeam Maintains a Unique Global Position
  - No global competitor
  - No competitor in more than one category in the U.S./Abroad
  - Two strong global brands

NOT ACCEPTED COPY

CPH 1406934

968610

CP 016741
CONFIDENTIAL

16div-025677

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 331 28%	$ 511 32%	$ 640 32%	$ 773 32%
Selling, General and Administrative Expenses	$ 131 11%	$ 193 12%	$ 240 12%	$ 288 12%
Operating Profit	$ 200 17%	$ 318 20%	$ 400 20%	$ 485 20%
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 190	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

TAX RATE: 35% allows use of NOL carryforwards

NOT A CERTIFIED COPY

CPH 1406935

L68610

CP 016742
CONFIDENTIAL

16div-025678

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED BALANCE SHEET

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Cash and Cash Equivalents	$ 52	$ 229	$ 396	$ 633
Receivables,Net	$ 296	$ 328	$ 400	$ 460
Inventories, Net	$ 256	$ 264	$ 309	$ 351
Other Current Assets	$ 54	$ 34	$ 39	$ 51
Total Current Assets	$ 658	$ 855	$ 1,144	$ 1,495
Property, Plant and Equipment, Net	$ 241	$ 274	$ 310	$ 355
Goodwill and Trademarks & Other	$ 221	$ 215	$ 208	$ 200
Total assets	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Current Liabilities	$ 198	$ 213	$ 252	$ 295
Long Term Debt	$ 195	$ 195	$ 195	$ 195
Other Long Term Liabilities	$ 195	$ 199	$ 221	$ 249
Shareholders Equity	$ 532	$ 737	$ 994	$ 1,311
Total Liabilities and Shareholders Equity	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Net Debt	$ 143	$ (34)	$ (201)	$ (438)

NOT A CERTIFIED COPY

CPH 1406936

CP 016743
CONFIDENTIAL

868610

16div-025679

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED STATEMENT OF CASH FLOW

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Income, Continuing	$124	$199	$252	$308
Depreciation and amortization	$39	$54	$71	$83
Deferred Income Taxes	$58	$0	$5	$15
Change in Working Capital	($237)	($7)	($73)	($61)
Cash Flow from Operations	($16)	$246	$255	$345
Proceeds from Asset Sales	$91	$0	$0	$0
Capital Expenditures	($58)	($81)	($100)	($120)
Dividends	($3)	($3)	($3)	($3)
Proceeds from Exercised Options	$27	$15	$15	$15
Cash Flow before Debt Repayment	$41	$177	$167	$237
Net Debt	$143	($34)	($201)	($438)

5.6% of Sales

NOT A CERTIFIED COPY

CPH 1406937

668610

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES - NET SALES GROWTH ANALYSIS

97 New Products : Good orders — but placement less than

		Long Range Strategic Plan		
		1998	1999	2000
Base Net Sales	120 Volt Coffee Mate Blenders 15 9	$ 1,168	$ 1,600	$ 2,000
Domestic				
# New Products	89	30		
New Products	190	227	165	145
New and Existing Channels	Home Depot Costco	65	51	30
Price (97 3% Worldwide)		20	15	20
Total Domestic		312	231	195
International				
New Products		50	70	80
New Geography and Franchise Growth		70	99	125
Total International		120	169	205
Net Sales Plan		$ 1,600	2,000	$2,400

Air/Wake 100

NOT A CERTIFIED COPY

CPH 1406938

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MS

DEPOSITION
EXHIBIT # 73
FOR ID TRN
4-8-04

INFORMATION STATEMENT PURSUANT TO SECTION 14(f) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 14f-1 THEREUNDER

THE COLEMAN COMPANY, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	1-988	13-3639257
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2111 East 37th Street North
Wichita, Kansas 67219
(Address of Principal Executive Offices)

(316) 832-2700
(Registrant's telephone number, including area code)

NOT A CERTIFIED COPY

019902

CP 033123
CONFIDENTIAL

127301v3 03/13/98 1:31 PM

THE COLEMAN COMPANY, INC.
2111 East 37th Street North
Wichita, Kansas 67219

Information Statement Pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended, and Rule 14f-1 thereunder

---

This Information Statement is being mailed on or about March __, 1998 to holders of record as of March __, 1998 of shares of Common Stock, par value $.01 per share ("Company Common Stock" or "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation (the "Company" or "Coleman"), in connection with (i) the election of persons designated by Sunbeam Corporation, a Delaware corporation ("Sunbeam"), as directors of the Company otherwise than at a meeting of the stockholders of the Company and (ii) the resignation of the current directors of the Company, in each case, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), among Sunbeam, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("LAC"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ("CLN Holdings"). CLN Holdings is an indirect wholly owned subsidiary of Mafco Holdings Inc., a corporation wholly owned by Ronald O. Perelman ("Mafco"), and is the indirect beneficial owner of 44,067,520 shares of Company Common Stock, representing approximately 82.4% of the total number of outstanding shares.

Pursuant to the Holdings Merger Agreement, LAC will be merged with CLN Holdings (the "Holdings Merger"). In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid nonassessable shares of common stock, par value $.01 per share, of Sunbeam ("Sunbeam Common Stock") and (ii) $159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of Sunbeam and Sunbeam will become the indirect owner of approximately 82.4% of the outstanding Company Common Stock.

At the same time that it entered into the Holdings Merger Agreement, Sunbeam also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Company Merger Agreement"), with the Company and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("CAC"). Pursuant to the Company Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with the Company (the "Company Merger"). In the Company Merger, each outstanding share of Company Common Stock (other than shares held indirectly by Sunbeam and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Sunbeam Common Stock and (ii) $6.44 in cash, without interest thereon. Upon consummation of the Company Merger, the Company will become a wholly owned subsidiary of Sunbeam.

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the satisfaction of certain other customary conditions. It is currently anticipated that the Holdings Merger will be completed later this month or early next month. Consummation of the Company Merger is subject to the completion of the Holdings Merger and the preparation and filing of definitive documents with the Securities and Exchange Commission. It is anticipated that the Company Merger will be consummated later this Spring. Neither the Holdings Merger nor the Company Merger requires the approval of Sunbeam's or the Company's stockholders.

Additional information with respect to the Holdings Merger and the Company Merger and the shares of Sunbeam Common Stock to be received by the Company's stockholders in the Company Merger will be contained

NOT A CERTIFIED COPY

019903

CP 033124
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421227

16div-025683

in an Information Statement and Prospectus to be mailed to all holders of the Company Common Stock prior to the consummation of the Company Merger.

Pursuant to the Holdings Merger Agreement, all current members of the Company's board of directors will remain as directors until the consummation of the Holdings Merger, at which time they will resign from their positions as directors of the Company, and up to six individuals designated by Sunbeam will become directors of the Company. Sunbeam has elected to designate five individuals to become directors of the Company (the "Sunbeam Designees"), and information with respect to the Sunbeam Designees is set forth below.

No action is required on the part of the stockholders of the Company in order to effect the election of the Sunbeam Designees. Nevertheless, Section 14(f) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires the mailing to the Company's stockholders of the information set forth in this Information Statement at least ten days prior to a change in a majority of the Company's directors otherwise than at a meeting of the Company's stockholders.

The information contained in this Information Statement concerning the Sunbeam Designees and the information set forth in the section entitled "Source and Amount of Funds for Change in Control" has been furnished to the Company by Sunbeam and the Company assumes no responsibility for such information. The principal executive offices of the Company are located at 2111 East 37th Street North, Wichita, Kansas 67219, and the principal executive offices of Sunbeam are located at 1615 South Congress Avenue, Suite 200, Delray Beach, Florida, 33445.

INFORMATION REGARDING DIRECTORS TO BE DESIGNATED BY SUNBEAM

As described below, the Sunbeam Designees are officers and/or directors of Sunbeam. None of the Sunbeam Designees is a director of, or holds any position with, the Company, and none of the Sunbeam Designees owns any shares of Company Common Stock. The name, age, present principal occupation or employment and five-year employment history of each of the Sunbeam Designees are set forth below. Each of the Sunbeam Designees' term of office as a director of the Company will expire when their successors are duly elected and shall have qualified. Unless otherwise indicated, the business address of each of the Sunbeam Designees is Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445. Each of the Sunbeam Designees is a citizen of the United States.

ALBERT J. DUNLAP, age 60, has been Chairman and Chief Executive Officer of Sunbeam since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

CHARLES M. ELSON, age 38, has been a Director of Sunbeam since his appointment to the Sunbeam Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is a Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October, 1997. Mr. Elson's business address is Stetson University College of Law, 1401 61st Street South, St. Petersburg, Florida 33707.

DAVID C. FANNIN, age 52, has been Executive Vice President, General Counsel and Secretary of Sunbeam since January 1994. From 1979 until 1993, Mr. Fannin was a partner in the law firm of Wyatt, Tarrant & Combs, Louisville, Kentucky.

RUSSELL A. KERSH, age 44, has been Vice Chairman and Chief Financial Officer of Sunbeam since February 1, 1998, and has been a Director of Sunbeam since his appointment on August 6, 1996. He served as Ex-

NOT A CERTIFIED COPY

019904

CP 033125
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421228

16div-025684

ecutive Vice President, Finance and Administration of Sunbeam from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

PETER A. LANGERMAN, age 42, has been a Director of Sunbeam since 1990 and served as the Chairman of the Board of Directors of Sunbeam from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Hein Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997. Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

INFORMATION REGARDING CURRENT DIRECTORS OF COLEMAN

The name, age, principal occupation for the last five years, selected biographical information, and period of service as a director of the Company of each of the current directors of the Company are set forth below.

RONALD O. PERELMAN, age 55, a director of the Company since 1989, has been Chairman of the Board and Chief Executive Officer of Mafco Holdings Inc., MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1980. Mr. Perelman is also Chairman of the Executive Committee of the Board of Consolidated Cigar Holdings Inc. ("Cigar Holdings"), M&F Worldwide Corporation, and Revlon, Inc. ("Revlon") and Chairman of the Board of Meridian Sports Incorporated ("Meridian"). Mr. Perelman is a director of the following corporations which file reports pursuant to the Exchange Act: California Federal Bank, A Federal Savings Bank, The Coleman Company, Inc., CLN Holdings Inc. ("Coleman Holdings"), Coleman Worldwide Corporation ("Coleman Worldwide"), Cigar Holdings, First Nationwide Holdings Inc., First Nationwide (Parent) Holdings Inc., Meridian, M&F Worldwide Corporation., Revlon Consumer Products Corporation ("Revlon Products"), Revlon, and REV Holdings Inc. ("REV Holdings"). (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc. and Marvel Entertainment Group, Inc. ("Marvel"), of which Mr. Perelman was then a director, and Marvel III Holdings Inc., of which Mr. Perelman is a director, and several of the subsidiaries of Marvel filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

DONALD G. DRAPKIN, age 49, a director of the Company since 1989, has been a director and Vice Chairman of MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1987. Mr. Drapkin was a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom in New York for more than five years prior to 1987. Mr. Drapkin is also a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Worldwide, The Cosmetic Center, Inc., Revlon Products, Revlon, Algos Pharmaceutical Corporation, Black Rock Asset Investors, Cardio Technologies, Inc., Genta, Inc., Playboy Enterprises, Inc., and VIMRx Pharmaceuticals Inc. and Weider Nutrition International Inc. (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc., and Marvel, of which Mr. Drapkin was a director, and several of their subsidiaries and Marvel II Holdings Inc., of which Mr. Drapkin is a director, filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

LAWRENCE M. JONES, age 66, has been a director of the Company since 1989. Mr. Jones was Chairman and Chief Executive Officer from October 1990 to December 1993 and has been associated with the Company for more than 36 years, including serving as President and Chief Executive Officer from July 1989 to September 1990. Prior to rejoining the Company in 1989, Mr. Jones was Vice Chairman and Chief Financial Officer of Fleming Companies, Inc. (distributor of food products, health and beauty items) from December 1987 to June 1989. Mr. Jones presently serves as a director of Union Pacific Resources, and was a director of Fourth Financial Corpo-

NOT A CERTIFIED COPY

019905

ecutive Vice President, Finance and Administration of Sunbeam from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

PETER A. LANGERMAN, age 42, has been a Director of Sunbeam since 1990 and served as the Chairman of the Board of Directors of Sunbeam from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Hein Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997. Mr. Langerman's business address is Franklin Mutual Advisers, Inc., 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

INFORMATION REGARDING CURRENT DIRECTORS OF COLEMAN

The name, age, principal occupation for the last five years, selected biographical information, and period of service as a director of the Company of each of the current directors of the Company are set forth below.

RONALD O. PERELMAN, age 55, a director of the Company since 1989, has been Chairman of the Board and Chief Executive Officer of Mafco Holdings Inc., MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1980. Mr. Perelman is also Chairman of the Executive Committee of the Board of Consolidated Cigar Holdings Inc. ("Cigar Holdings"), M&F Worldwide Corporation, and Revlon, Inc. ("Revlon") and Chairman of the Board of Meridian Sports Incorporated ("Meridian"). Mr. Perelman is a director of the following corporations which file reports pursuant to the Exchange Act: California Federal Bank, A Federal Savings Bank, The Coleman Company, Inc., CLN Holdings Inc. ("Coleman Holdings"), Coleman Worldwide Corporation ("Coleman Worldwide"), Cigar Holdings, First Nationwide Holdings Inc., First Nationwide (Parent) Holdings Inc., Meridian, M&F Worldwide Corporation., Revlon Consumer Products Corporation ("Revlon Products"), Revlon, and REV Holdings Inc. ("REV Holdings"). (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc. and Marvel Entertainment Group, Inc. ("Marvel"), of which Mr. Perelman was then a director, and Marvel III Holdings Inc., of which Mr. Perelman is a director, and several of the subsidiaries of Marvel filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

DONALD G. DRAPKIN, age 49, a director of the Company since 1989, has been a director and Vice Chairman of MacAndrews & Forbes Holdings Inc. and various of its affiliates since 1987. Mr. Drapkin was a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom in New York for more than five years prior to 1987. Mr. Drapkin is also a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Worldwide, The Cosmetic Center, Inc., Revlon Products, Revlon, Algos Pharmaceutical Corporation, Black Rock Asset Investors, Cardio Technologies, Inc., Genta, Inc., Playboy Enterprises, Inc., and VIMRx Pharmaceuticals Inc. and Weider Nutrition International Inc. (On December 27, 1996, Marvel Holdings Inc., Marvel (Parent) Holdings Inc., and Marvel, of which Mr. Drapkin was a director, and several of their subsidiaries and Marvel II Holdings Inc., of which Mr. Drapkin is a director, filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

LAWRENCE M. JONES, age 66, has been a director of the Company since 1989. Mr. Jones was Chairman and Chief Executive Officer from October 1990 to December 1993 and has been associated with the Company for more than 36 years, including serving as President and Chief Executive Officer from July 1989 to September 1990. Prior to rejoining the Company in 1989, Mr. Jones was Vice Chairman and Chief Financial Officer of Fleming Companies, Inc. (distributor of food products, health and beauty items) from December 1987 to June 1989. Mr. Jones presently serves as a director of Union Pacific Resources, and was a director of Fourth Financial Corpo-

NOT A CERTIFIED COPY

019906

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

ration until January 1996, of Fleming Companies, Inc. until December 1996, and of Prince Sports Group, Inc. until March 1997. Mr. Jones also served as Chairman of Rollerblade, Inc. from February 1996 to April 1997.

ANN D. JORDAN, age 63, has been a director of the Company since June 1997. Ms. Jordan is a consultant and a director of Johnson & Johnson, Automatic Data Processing, Inc., The Travelers Corporation, and Salant Corporation. Ms. Jordan also serves on the Board of Directors of the National Symphony Orchestra, Sloan Kettering Memorial Medical Center, Child Welfare League, Sasha Bruce Youthworks, University of Chicago, Spellman College, The John F. Kennedy Center for the Performing Arts and the SEC Consumer Affairs Advisory Commission. She was formerly a Field Work Associate Professor at the School of Social Service Administration of the University of Chicago and served as Director of the Department of Social Services for the University of Chicago Medical Center.

JERRY W. LEVIN, age 53, has been Chairman and Chief Executive Officer of the Company since February 1997, and a past Chairman of the Company from 1989 to 1991, and a director since 1989. Mr. Levin has been Chairman of the Board of Revlon and of Revlon Products since their respective formations in 1992 and Chairman of the Board of The Cosmetic Center, Inc., since April 1997. Mr. Levin served as Chief Executive Officer of Revlon and of Revlon Products from 1992 until January 1997, and President of Revlon and of Revlon Products from their respective formations in 1992 to November 1995. Mr. Levin has been Executive Vice President of MacAndrews & Forbes Holdings Inc. since March 1989. For 15 years prior to joining MacAndrews & Forbes Holdings Inc. he held various senior positions with The Pillsbury Company ("Pillsbury"). Mr. Levin is also a director of the following corporations which file reports pursuant to the Exchange Act: Coleman Holdings, Coleman Worldwide, The Cosmetic Center, Inc., Ecolab Inc., U.S. Bancorp Inc., Meridian Sports Incorporated, Revlon, Revlon Products, and REV Holdings.

JOHN A. MORAN, age 65, has been a director of the Company since July 1996. Mr. Moran currently serves as Chairman of Rutherford-Moran Oil Corporation. From 1967, Mr. Moran was affiliated with Dyson-Kissner-Moran Corporation, a private holding company, serving in various executive positions including Chairman of the Board, President and Chief Executive Officer, and Executive Vice President. He is a director of Bessemer Securities Corporation. He is a member and former Chairman of the National Advisory Council of the University of Utah, as well as a member of World Presidents Organization, the Chief Executives Organization and The Foreign Policy Association. He is a former director of the United Nations Association and trustee of the Brooklyn Museum.

JAMES D. ROBINSON, age 62, has been a director of the Company since June 1997. Mr. Robinson is Chairman and Chief Executive Officer of RRE Investors, LLC, a private venture investment firm, and Chairman of Violy, Byorum & Partners Holdings, LLC, a private firm specializing in financial advisory and investment banking activities in Latin America. He previously served as Chairman, and Chief Executive of the American Express Company from 1977 to 1993. Mr. Robinson is a Director of Bristol-Myers Squibb Company, Cambridge Technology Partners, Inc., The Coca-Cola Company, First Data Corporation and Union Pacific Corporation.

BRUCE SLOVIN, age 62, a director of the Company since 1993, has been President of MacAndrews & Forbes Holdings Inc., and various of its affiliates since 1980. Mr. Slovin is also a director of the following corporations which file reports pursuant to the Exchange Act: Cantel Industries, Inc., Coleman Worldwide, Continental Health Affiliates, Inc., Infu-tech, Inc., Meridian Sports Incorporated, and M&F Worldwide Corporation.

WILLIAM H. SPOOR, age 75, has been a director of the Company since May 1992. Mr. Spoor retired in September 1985 as Chairman and Chief Executive Officer of Pillsbury after 14 years in that position and 36 years with Pillsbury. He returned to Pillsbury as Chairman of the Executive Committee in September 1987, and resumed as Chairman, Chief Executive Officer and President of Pillsbury in March 1988, from which he retired in August 1988. Mr. Spoor now serves as Chairman Emeritus of Pillsbury, and is in the business of personal investments. He is a director of L & L Holdings and Inner City Tennis.

FRANK GIFFORD, age 65, has been a Director of the Company since 1997. Mr. Gifford has been a commentator with ABC Sports since 1997. (On December 27, 1996, Marvel, of which Mr. Gifford was a director, and

NOT A CERTIFIED COPY

019907

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

BOARD OF DIRECTORS AND ITS COMMITTEES

During 1997, the Board met five times. The average attendance of all directors at Board and Committee meetings during 1997 was 95%. During 1997, Mr. Hammes missed the one board meeting held while he was still a director.

The Committees established by the Board to assist it in the discharge of its responsibilities are the Executive Committee, the Audit Committee, and the Management Compensation and Stock Option Committee, all of which are described below. The Company does not have a Nominating Committee.

The Executive Committee consists of four members, Messrs. Perelman, Drapkin, Levin, and Slovin. The Executive Committee is authorized and empowered to act on behalf of and in place of the Board of Directors to exercise all the power and authority of the Board of Directors consistent with the Certificate of Incorporation and Bylaws of the Company and the General Corporation Law of the State of Delaware. The Executive Committee took action by unanimous written consent seven times during 1997, and did not meet during 1997.

The Audit Committee consists of three members, Messrs. Moran, Jones, and Spoor, all of whom are directors who are not receiving compensation as employees of the Company or its affiliates. The Audit Committee provides assistance to the Board in fulfilling its responsibilities to the stockholders, potential stockholders, and the investment community relating to corporate accounting and reporting practices, and the quality and integrity of the financial reports. In carrying out these responsibilities, the Audit Committee reviews and recommends the selection of the Company's independent public accountants to the Board, meets with the independent public accountants and management to review proposed audits, reviews adequacy and effectiveness of accounting and financial controls of the Company, and gives recommendations for the improvement of such internal control procedures. The Audit Committee met five times during 1997.

The Management Compensation and Stock Option Committee (the "Compensation Committee") consists of four members, Ms. Jordan and Messrs. Robinson, Drapkin, and Slovin, none of whom is an officer or employee of the Company and each of whom is ineligible to participate in any of the Company's executive compensation plans. The Compensation Committee's responsibilities include approving compensation policies and determining compensation for all of the Company's Board-elected officers, except junior officers; determining the eligibility of participants and the amount of all stock options and/or stock appreciation rights granted to any employee of the Company pursuant to the terms of the Company's stock option plans, as well as administering and interpreting those plans; and administering and overseeing The Coleman Company, Inc. Executive Annual Incentive Plan (the "Incentive Plan"). The Compensation Committee took action by unanimous written consent four times and met seven times during 1997.

COMPENSATION OF DIRECTORS

Directors who are not currently receiving compensation as employees of the Company or any of its affiliates are paid an annual retainer fee of $25,000 and are reimbursed for reasonable out-of-pocket expenses incurred in connection with Company business. In addition, such directors receive a fee of $1,000 for each meeting of the Board of Directors or any committee meeting that they attend.

NOT A CERTIFIED COPY

019908

CP 033128
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421231

16div-025688

EXECUTIVE OFFICERS AND MANAGEMENT

The following table sets forth as of the date hereof the executive officers of the Company.

Name	Position
Jerry W. Levin	Chairman and Chief Executive Officer
Mark Goldman	Executive Vice President (Chairman — Eastpak)
Patrick McEvoy	Executive Vice President (President — Coleman Safety & Security Products, Inc.)
Joseph P. Page	Executive Vice President and Chief Financial Officer
David A. Ramon	Executive Vice President (President — Outdoor Recreation Group)
Paul E. Shapiro	Executive Vice President and General Counsel
David K. Stearns	Executive Vice President
James L. Rasmus	Senior Vice President — Human Resources
Karen Clark	Vice President — Finance

The following sets forth the age, position with the Company, and selected biographical information for the executive officers of the Company who are not directors.

Mark Goldman, age 42, has been Executive Vice President since April 1995 and President of Eastpak since 1978. He joined Eastpak in 1976.

Patrick McEvoy, age 47, has been Executive Vice President since March 1996 and President of Coleman Safety & Security Products, Inc. since January 1996. He joined Coleman in April 1994 as the Senior Vice President of Product Development and Operations for the Company's North American Recreation business unit. Prior to joining Coleman, he served as Vice President of Black & Decker Corporation from 1990 to 1994, and Vice President for the Chrysler Corporation from 1988 to 1990.

Joseph P. Page, age 44, joined the Company in August 1997 as Executive Vice President and Chief Financial Officer. Since December 1993, Mr. Page has served as Executive Vice President and Chief Financial Officer of Andrews Group Incorporated. From December 1993 through January 1997, Mr. Page was Executive Vice President and Chief Financial Officer of New World Communications Group. Prior to Andrews Group Incorporated, Mr. Page was a partner in the accounting firm of Price Waterhouse for more than five years.

David A. Ramon, age 41, has been Executive Vice President since May 1997. Prior to joining the Company, Mr. Ramon was a Director, President, and Chief Operating Officer for New World Television Incorporated from 1995 to 1997, and Executive Vice President and Chief Financial Officer for Gillett Holdings, Inc. from 1985 to 1994.

Paul E. Shapiro, age 56, has been Executive Vice President and General Counsel of the Company since July 1997. Mr. Shapiro has been Executive Vice President of Andrews Group since 1994, and from January 1994 to June 1997, served as the Executive Vice President and General Counsel of Marvel Entertainment Group, Inc. Prior to January 1994, Mr. Shapiro was a shareholder in the law firm of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quental from 1991 to 1993, and is currently Of Counsel to that firm. Mr. Shapiro is a director of Toll Brothers, Inc. (On December 27, 1996, Marvel Entertainment Group, Inc., of which Mr. Shapiro was an executive officer and director, and several of subsidiaries of Marvel Entertainment Group, Inc., filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.)

NOT A CERTIFIED COPY

019909

CP 033129
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421232

16div-025689

David K. Stearns, age 49, has been Executive Vice President since January 1995, and Senior Vice President - Marketing from October 1991 to January 1995. He joined the Company in 1976 and has served in various positions, including Vice President/General Manager — Import Division from 1985 to 1990.

James L. Rasmus, age 46, joined the Company in April 1997 as Senior Vice President — Human Resources. Prior to joining Coleman, Mr. Rasmus was the Executive Project Director, Shared Services for Tenneco. He has also held senior human resource positions with Case Corporation, United Technologies and Xerox Corporation.

Karen Clark, age 37, has been Vice President — Finance since July 1997. Prior to joining Coleman, Ms. Clark served as Corporate Controller for Precision Castparts Corp. from 1994 to 1997. She has also been Manager — Corporate Planning for Tektronix from 1990 to 1994. Ms. Clark is a member of the Financial Executives Institute and the American Institute of Certified Public Accountants.

All of the executive officers serve at the pleasure of the Board.

SUMMARY COMPENSATION TABLE

The following table sets forth information concerning annual, long term and other compensation of the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers.

NOT A CERTIFIED COPY

019910

CP 033130
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421233

16div-025690

Name and Principal Position	Year	Annual Compensation			Long Term Compensation		
					Awards	Payouts	
		Salary	Bonus	Other Annual Compensation	Securities Underlying Options	LTIP Payouts	All Other Compensation
JERRY W. LEVIN (1) Chairman and Chief Executive Officer	1997	$300,000	$300,000	$2,567	500,000	0	0
DAVID A. RAMON (2) Executive Vice President	1997	$400,000	$125,000	$2,912	100,000	0	0
MARK GOLDMAN (3)	1997	$250,000	0	$6,300	40,000	0	$4,230
Executive Vice President	1996	$250,000	0	0	0	0	$4,270
	1995	$250,000	0	0	20,000	0	$4,492
DAVID K. STEARNS (4)	1997	$240,000	$134,844	$105,930	20,000	0	$6,212
Executive Vice President	1996	$222,500	0	$16,899	25,000	0	$4,455
	1995	$189,996	$159,425	$121,880	40,000	0	$3,877
PATRICK MCEVOY (5)	1997	$200,000	0	$72,675	0	0	$4,064
Executive Vice President	1996	$200,000	0	$190,114	15,000	0	$3,717
	1995	$190,000	$159,290	$34,213	20,000	0	$794
MICHAEL N. HAMMES (6)	1997	$116,668	0	$27,441	0	0	$1,212,035
Former Chief Executive Officer	1996	$625,000	0	0	80,000	0	$3,270
	1995	$600,000	$891,103	$163,590	100,000	0	$3,117
FREDERIK B. VAN DEN BERGH (7)	1997	$250,000	0	$15,123	10,000	0	0
Former Executive Vice President	1996	$333,333	$233,333	$204,266	130,000	0	$2,124
STEVEN KAPLAN (8)	1997	$186,666	$180,666	$1,713	10,000	0	$175,686
Former Executive Vice President	1996	$116,667	$50,000	$31,592	125,000	0	$501

(1) "Bonus" in 1997 includes $300,000 paid in January 1998 for 1997 performance. "Other Annual Compensation" in 1997 includes $2,567 for company-paid parking expenses.

(2) "Bonus" in 1997 includes $125,000 paid in March 1998 for 1997 performance. "Other Annual Compensation" in 1997 includes Company-paid expense of $2,912 related to relocation.

(3) "Other Annual Compensation" in 1997 includes $6,300 for car allowance. "All Other Compensation" in 1997 includes $3,230 for Company's 401(k) matching and $1,000 for premiums paid for term life insurance.

(4) "Bonus" in 1997 includes $60,000 bonus paid for relocation during 1997, and $74,844 paid in March 1998 for 1997 performance. "Other Annual Compensation" includes (i) for 1997, $82,500 ordinary income realized upon the exercise/sale of certain stock options during 1997, $4,284 interest differential housing allowance, $8,700 car allowance, $5,455 relocation expenses and $4,991 tax gross-up thereon, (ii) for 1996, $10,155 for interest differential housing allowance, $3,844 for personal use of Company vehicle, $2,900 for car allowance, and (iii) for 1995, includes $113,561 for relocation costs. "All Other Compensation" includes (i) for 1997, $3,230 and $2,982, respectively, for the Company's 401(k) matching and premiums paid for term life insurance, (ii) for 1996, $3,164 and $1,291, respectively, for the Company's 401(k) matching and premiums paid for term life insurance, and (iii) for 1995, $3,077 and $800, respectively, for the Company's 401(k) matching and premiums paid for term life insurance.

(5) "Bonus" for 1995 includes $159,290 paid in February 1996 for 1995 performance. "Other Annual Compensation" includes (i) for 1997, $42,222 forgiveness of a loan, $21,753 interest differential housing allowance, $8,700 car allowance, (ii) for 1996, $141,376 reimbursement of capital loss due to relocation ($45,877 of which is a tax gross-up), $20,844 for other payments related to relocation (3,510 of which is a tax gross-up), $19,194 interest differential housing allowance, $8,700 car allowance, and (iii) for 1995, $25,513 (which includes a $4,402 tax gross-up) related to the forgiveness of a loan, $8,700 for a vehicle allowance, $4,092 related to various gifts ($1,410 of which is a tax gross-up on the gifts). "All Other Compensation" includes (i) for 1997, $3,230 and $834, respectively, for the Company's 401(k) matching and premiums paid for term life insurance, (ii) for 1996, $3,183 and $534, respectively, for the Company's 401(k) matching and premiums paid for term life insurance, and (iii) for 1995, $0 and $794, respectively, for the Company's 401(k) matching and premiums paid for term life insurance.

(6) "Bonus" includes $591,103 paid in February 1996 for 1995 performance pursuant to the Executive Incentive Plan (which has since been terminated) and a $300,000 special bonus paid in 1995 pursuant to Mr. Hammes employment agreement. "Other Annual Compensation" includes (i) for 1997, $13,663 for personal use of a Company vehicle, $10,853 for relocation costs ($4,912 of which is a tax gross-up), $2,925 interest differential housing allowance, and (ii) for 1995, $137,703 for relocation costs. "All Other Compensation" includes (i) for 1997,

NOT CERTIFIED COPY

0119611

CP 033131
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421234

16div-025691

$380 and $0, respectively, for the Company's 401(k) matching and premiums paid for term life insurance, and $1,209,655 for termination of employment payments including but not limited to severance payments, lump sum payments, and the value of benefits received pursuant to a severance agreement entered into with Mr. Hammes as of February 28, 1997 (see "Employment Agreements and Termination of Employment Arrangements"), (ii) for 1996, $3,230 and $40, respectively, for the Company's 401(k) matching and premiums paid for term life insurance and (iii) for 1995, $3,077 and $40, respectively, for the Company's 401(k) matching and premiums paid for term life insurance.

(7) "Bonus" for 1996 includes $233,333 guaranteed incentive payment made in 1996 pursuant to Mr. van den Bergh's employment agreement. "Other Annual Compensation" includes (i) for 1997 $9,630 for Company vehicle expenses, $5,493 for tax preparation expenses, $6,822 for housing allowance, $6,822 for representation allowance, $824 and (ii) for 1996 includes a $153,100 payment made to Mr. van den Bergh to compensate him for the loss of stock option price appreciation upon leaving his former employer. "All Other Compensation" includes (i) for 1997, $641,409 for termination of employment payments including, but not limited to, severance payments, lump sum payments, and the values of benefits received pursuant to a severance agreement entered into with Mr. van den Bergh as of June 30, 1997 (see "Employment Agreements and Termination of Employment Arrangements"), and (ii) for 1996, $0 and $2,124, respectively, for the Company's 401(k) matching and premiums paid for term life insurance.

(8) "Bonus" includes for 1997, $130,666 guaranteed incentive and $50,000 (final installment) signing bonus payments made in 1997 pursuant to Mr. Kaplan's employment agreement and (ii) for 1996, $50,000 payment made during 1996 for first installment of signing bonus pursuant to Mr. Kaplan's employment agreement. "Other Annual Compensation" includes (i) for 1997, $1416 for the personal use of a Company vehicle, $297 relocation costs, and $174,812 for payments including, but not limited to, severance payments, lump sum payments and values of benefits received pursuant to a termination agreement entered into with Mr. Kaplan as of August 31, 1997 (see "Employment Agreements and Termination of Employment Arrangements"), and (ii) for 1996, $31,592 relocation costs ($14,103 of which is a tax gross-up). "All Other Compensation" includes (i) for 1997, $0 and $874, respectively, for the Company's 401(k) matching and premiums paid for term life insurance and (ii) for 1996, $0 and $501, respectively, for the Company's 401(k) matching and premiums paid for term life insurance.

NOT A CERTIFIED COPY

OPTION GRANTS IN LAST FISCAL YEAR

The following table sets forth information concerning individual grants of stock options during 1997 to the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers.

Name	Options Granted	% of Total Options Granted to Employees in Fiscal Year	Exercise Price	Expiration Date of Options	Grant Date Present Value
Jerry W. Levin (1)	200,000	9.27%	$12.25	02/11/07	$1,257,120
	300,000	13.91%	$14.00	04/15/07	$2,150,835
David A. Ramon (2)	62,500	2.89%	$12.25	02/11/07	$392,850
	37,500	1.73%	$16.875	05/13/07	$334,558
Mark Goldman (3)	20,000	.92%	$15.00	02/12/07	$100,422
	20,000	.92%	$16.125	12/17/07	$160,930
David K. Stearns (4)	20,000	.92%	$16.125	12/17/07	$158,532
Patrick McEvoy	0	0	0	0	0
Michael N. Hammes	0	0	0	0	0
Frederik B. Van den Bergh (5)	10,000	.46%	$14.00	04/15/07	$67,527
Steven F. Kaplan (6)	10,000	.46%	$14.00	04/15/07	$67,527

(1) Mr. Levin's options were granted on February 12, 1997 and April 15, 1997, respectively. The February 12, 1997 and 200,000 of the April 15, 1997 options were granted pursuant to the 1996 Stock Option Plan. The remainder of the April 15, 1997 option was granted pursuant to the 1993 Stock Option Plan. The options are exercisable in installments of 50%. The earlier option vested on April 15, 1997 and December 31, 1997. The later option vested on April 15, 1997 and will vest again on April 15, 1998.

(2) Mr. Ramon's options were granted on February 11, 1997 and May 13, 1997, respectively. The February 11, 1997 and May 13, 1997 options were granted pursuant to the 1996 Stock Option Plan. The options are exercisable in installments of 50%. The earlier option vested on April 15, 1997 and December 31, 1997. The later option vested on May 13, 1997 and December 31, 1997.

(3) Mr. Goldman's options were granted on February 12, 1997 and December 17, 1997, respectively. The February 12, 1997 option was granted pursuant to the 1996 Stock Option Plan and the December 17, 1997 option was granted pursuant to the 1993 Stock Option Plan. The February 12, 1997 option is exercisable in installments of 33%, 33%, and 34%. This option vests on February 12, 2000, February 12, 2001, and February 12, 2002, respectively. The December 17, 1997 option is exercisable in installments of 50%. This option vests on June 17,1998 and December 17, 1998.

(4) Mr. Stearn's options were granted on December 17, 1997 pursuant to the 1996 Stock Option Plan. The option becomes exercisable in installments of 25%. The option vests on December 17, 1998, December 17, 1999, December 17, 2000, and December 17, 2001, respectively.

(5) Mr. van den Bergh's options were granted on April 15, 1997 pursuant to the 1996 Stock Option Plan. Pursuant to an agreement entered into with Mr. van den Bergh as of June 30, 1997, Mr. van den Bergh's options expired unexercised.

(6) Mr. Kaplan's options were granted on April 15, 1997 pursuant to the 1996 Stock Option Plan. Pursuant to an agreement entered into with Mr. Kaplan as of August 31, 1997, Mr. Kaplan's options expired unexercised.

NOT A CERTIFIED COPY

019913

CP 033133
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421236

16div-025693

AGGREGATED OPTION EXERCISES IN LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

The following table sets forth aggregated option exercises in the last fiscal year and fiscal year-end option values for the Company's Chief Executive Officer and the next four most highly-compensated executive officers, and three of its former executive officers.

Name	Shares Acquired on Exercise (#)	Value Realized ($)	Number of Unexercised Options at FY-End (#) Exercisable/ Unexercisable	Value of Unexercised In-the-Money Options at FY-End ($) Exercisable/ Unexercisable (1)
Jerry W. Levin	0	0	350,000/ 150,000	$1,071,875/ $309,375
David A. Ramon	0	0	100,000/ 0	$238,281/ 0
Mark Goldman	0	0	0/ 60,000	$0/ $21,250
David K. Steams	15,000	$82,500	28,720/ 110,280	$41,790/ $46,253
Patrick McEvoy	0	0	21,900/ 63,100	$35,989/ $39,923
Michael N. Hammes	0	0	0/ 580,000 (2)	$0/ $0
Frederik van den Bergh	0	0	0/ 130,000 (3)	$0/ $0
Steven F. Kaplan	0	0	0/ 135,000 (4)	$0/ $0

(1) Market closing price of $16.0625 per share on December 31, 1997, was used in computing year-end values.

(2) Mr. Hammes' right to exercise the options expired on May 29, 1997, pursuant to the agreement entered into with Mr. Hammes on February 28, 1997. The options expired by their terms unexercised on May 29, 1997.

(3) Mr. van den Bergh was paid in lieu for the vested options that were in-the-money on August 27,1997, pursuant to the agreement entered into with Mr. van den Bergh as of June 30, 1997. The options were allowed to expire by their terms unexercised on September 30, 1997.

(4) Mr. Kaplan's right to exercise the options expired on November 30, 1997, pursuant to the agreement entered into with Mr. Kaplan as of August 31, 1997. The options expired by their terms unexercised on November 30, 1997.

NOT A CERTIFIED COPY

019914

CP 033134
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421237

16div-025694

EMPLOYMENT AGREEMENTS AND TERMINATION OF EMPLOYMENT ARRANGEMENTS

The Company has an employment agreement with Mr. Levin effective for the term October 1, 1997 through December 31, 2000. In connection with the Company Merger Agreement with Sunbeam Corporation, the Company will not have any responsibility for the Company's obligations under Mr. Levin's employment agreement following consummation of the Holdings Merger, except for payment of the transaction bonus described below. Pursuant to the employment agreement, Mr. Levin is entitled to a transaction bonus equal to 1.5% of the enterprise value of certain divestitures, up to a maximum aggregate amount of $1.5 million. The consummation of the sale of Coleman Safety & Security Products, Inc. would result in a transaction bonus payable to Mr. Levin of $1.5 million.

The Company has an employment agreement with Mr. Shapiro effective for the term July 1, 1997 through June 30, 2000. In connection with the Company Merger Agreement with Sunbeam, the Company will not have any responsibility for the Company's obligations under Mr. Shapiro's employment agreement following consummation of the Holdings Merger.

The Company has an employment agreement with Mr. McEvoy effective for the term January 1, 1996 through December 31, 1998. Pursuant to the employment agreement, Mr. McEvoy is paid a base salary of $200,000 per annum, and is entitled to participate in the Company's Management Incentive Plan with a 70% target bonus opportunity. The employment agreement with Mr. McEvoy also provides for, among other things, participation in the Company's other benefit plans and payments upon death, disability, termination without cause and, subject to certain conditions, change of control of the Company. Upon a termination of employment without cause, or termination of employment upon a change of control, Mr. McEvoy would be entitled to, for two years, among other things, to receive payments equal to base salary and target bonus and to participate in the Company's medical plans. In addition, Mr. McEvoy's employment agreement provides for a gross-up for certain excise taxes resulting from payments and benefits under the employment agreement. In addition, in connection with the sale of Coleman Safety & Security Products, Inc., the Company and Mr. McEvoy entered into a retention agreement. Pursuant to such retention agreement, Mr. McEvoy will receive, among other things, a special bonus for one year in an amount equal to Mr. McEvoy's base salary, provided that if Mr. McEvoy becomes entitled to severance payments under his employment contract as a result of a termination of employment within three months of a sale of Coleman Safety & Security Products, Inc., the severance payments to Mr. McEvoy under his employment agreement will be reduced by the payments of the special bonus.

Mr. Goldman had two employment agreements with the Company which became effective November 1, 1994 and terminated December 31, 1997. Under the agreements, which have identical material terms, Mr. Goldman's base salary was $250,000 per year, and Mr. Goldman was is eligible for a discretionary incentive payment each year.

Mr. Hammes had an employment agreement with the Company effective January 1, 1996, which provided for, among other things, a base salary of $700,000 per annum. Mr. Hammes' employment was terminated February 28, 1997. Effective such date, Mr. Hammes' entered into a severance agreement with the Company having a severance period of two years. Pursuant to the severance agreement, Mr. Hammes is entitled to, among other things, severance payments during the severance period at the rate of $700,000 per annum, and continued participation in the Company's medical plans during the severance period, and is entitled to certain pension payments beginning March 1, 1999. In addition, pursuant to the severance agreement, Mr. Hammes was paid a lump sum payment during 1997 of $450,000 and is entitled to another $450,000 lump sum payment at the end of the severance period.

Mr. van den Bergh had an employment agreement with the Company effective as of May 1, 1996, which provided for, among other things, a base salary of $500,000 per annum. Mr. van den Bergh's employment was terminated effective June 30, 1997. Effective such date, Mr. van den Bergh entered into a severance agreement with the Company having a severance period of one year. Pursuant to the severance agreement, Mr. van den Bergh is entitled to, among other things, severance payments during the severance period at the rate of $500,000 per annum, and continued participation in the Company's medical plans during the severance period. In addition, pursuant to the severance agreement, Mr. van den Bergh was paid two lump sum payment during 1997 totaling $550,000.

NOT A CERTIFIED COPY

CP 033135
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421238

019915

16div-025695

Mr. Kaplan had an employment agreement with the Company effective as of August 1, 1996, which provided for, among other things, a base salary of $280,000 per annum. Mr. Kaplan's employment was terminated effective August 1, 1997. Effective such date Mr. Kaplan entered into a severance agreement with the Company having a severance period of two years. Pursuant to the severance agreement, Mr. Kaplan is entitled to, among other things, severance payments during the severance period at the rate of $426,000 per annum, and continued participation in the Company's medical plans during the severance period.

REPORT ON EXECUTIVE COMPENSATION BY THE COMPENSATION COMMITTEE*

The Compensation Committee is comprised entirely of directors who are not officers or employees of the Company. The Compensation Committee is composed of Messrs. Robinson (Chairman), Drapkin and Slovin, and Ms. Jordan. The Compensation Committee is responsible for:

- Reviewing and approving the salary and annual incentive compensation of the Company's executive officers;
- Reviewing, approving or modifying performance standards against which annual incentive compensation awards will be made for executive officers;
- Reviewing, approving or modifying annual incentive compensation awards for executive officers;
- Reviewing, approving or modifying stock option awards for all employees, including executive officers;
- Reviewing, approving or modifying supplemental benefit or compensation plans which are available to designated executives;
- Reviewing and recommending to the Board of Directors changes to current executive officer benefit plans or the adoption of new executive compensation programs requiring shareholder approval; and
- Reviewing and acting as appropriate on any other issues relating to executive compensation and brought to the Compensation Committee by the Chairman for its consideration.

COMPENSATION PHILOSOPHY

In 1994, the compensation philosophy for the Company was developed and adopted. The philosophy includes the following principles:

- Support the achievement of the Company's desired financial performance and return to shareholders;
- Provide compensation that will attract and retain the required high level talent; and
- Align executive officers' interests with the Company's success by linking both annual incentive compensation and long-term incentive compensation, in the form of stock option and/or stock appreciation rights awards, with the Company's success in achieving performance goals.

NOT A CERTIFIED COPY

019916

* Compensation Committee report is subject to the approval of the Compensation Committee.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

The executive compensation philosophy for the Company, as approved and adopted by the Compensation Committee, provides for an overall level of potential compensation opportunity that, if aggressive financial goals are achieved and superior shareholder returns are realized, will be at a 75th percentile level of competitiveness with consumer products companies of comparable size. To determine pay level opportunities, the Compensation Committee consulted with outside consultants and with the Company's officer responsible for human resources.

The Compensation Committee intends to provide a median competitive level of base salary and executive benefits when compared to like-sized consumer products companies. Annual incentive and stock option opportunities are intended to be set above predicted competitive norms. Actual individual compensation levels will be greater or lesser than median competitive levels, based upon annual and long-term Company performance. The Compensation Committee, at its discretion, sets executive compensation at levels which it judges are justified by external, internal and other circumstances.

COMPLIANCE WITH FEDERAL TAX LEGISLATION

The Omnibus Reconciliation Act of 1993 added Section 162(m) to the Internal Revenue Code of 1986, as amended (the "Code"), which generally precludes the Company and other public companies from taking a tax deduction for compensation over $1 million which is not "performance-based" and is paid or otherwise taxable, to executives named in the Summary Compensation Table and employed by the Company at the end of the applicable tax year. The Company attempts to preserve as much deduction as possible without undercutting the compensation objectives set forth above. Each director on the Compensation Committee is an "outside director" within the meaning of Section 162(m) of the Code.

BASE COMPENSATION

During 1997, the base compensation of each executive officer was reviewed and compared to median levels of competitiveness for similarly sized consumer products companies. The Company has adopted the practice of base compensation increases for executive officers based on an annual review of the executive performance and to adjust compensation to keep it approximately to the standard described above.

ANNUAL CASH INCENTIVE COMPENSATION

The Chief Executive Officer was paid a bonus based on the targets in the Management Incentive Plan, even though certain conditions to payments of the target bonus were not satisfied. The bonuses were paid to recognize the substantial progress made in the restructuring of Coleman. The other named executive officers who were employed by Coleman at the end of the year were also paid a bonus based on the same criteria. During 1997, no bonus was paid to the former Chief Executive Officer.

LONG TERM INCENTIVES

In 1997, the Compensation Committee approved option grants to the Chief Executive Officer of 200,000 shares on February 11, 1997, at an exercise price of $12.25 and 300,000 shares on April 14, 1997 at an exercise price of $14.00. It also approved grants totaling in the aggregate 160,000 shares to the other named executive officers employed by the Company at the end of 1997. The options generally have terms of 10 years, and vest ratably over three successive years, beginning three years following the date of grant. The Compensation Committee believes that these grants, which were primarily made in the first half of 1997, provides an appropriate link between the interests of executives with those of the Company's shareholders.

OTHER BENEFITS

The Company provides medical and retirement benefits to executive officers that are generally available to Company salaried employees, including participation in medical and dental benefit plans, a qualified 401(k) employee savings plan and a qualified defined benefit retirement plan. In addition, the Company offers executive officers and other key management employees a nonqualified benefit equalization plan which is designed to make up

NOT A CERTIFIED COPY

019917

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

for benefits that would otherwise be lost due to various tax limitations. The Company's benefit plans are intended to provide a median level of benefits when compared to similarly sized consumer products companies. The Company also offers executive officers certain executive perquisites which may be deemed to be a personal benefit or constitute compensation to such executive officers, including (for example) car allowances and reimbursements, and club membership dues.

The Compensation Committee believes the executive compensation philosophy and programs are appropriate and serve the interests of the shareholders and the Company.

Compensation Committee:

James D. Robinson, Chairman
Donald G. Drapkin
Ann D. Jordan
Bruce Slovin

CUMULATIVE SHAREHOLDER RETURN PERFORMANCE GRAPH

The graph set forth below presents a comparison of cumulative shareholder return for the Company Common Stock since the date of the initial public offering, on an indexed basis, as compared with the S&P Midcap 400 stock index and a selected peer group of companies.

The group of companies selected for the peer group represents a portfolio of companies which share certain characteristics considered relevant to the earnings performance and related cumulative shareholder return for the Company Common Stock. Selection of the peer group for the performance line was impacted by the fact that many of the Company's direct competitors are privately held or are subsidiaries of much larger public companies. Selection criteria applied in formulating the group of 12 companies, each of whose stock is publicly traded, required each company to share one or more of the following characteristics representative of the Company: (a) competitors with the Company in one or more of its product lines; (b) companies which serve mass merchandisers and their customers; (c) companies offering strong brand name consumer products; and (d) companies serving recreational products consumers.

The 12 companies selected as the peer group are as follows: Johnson Worldwide Associates, Inc.; Anthony Industries, Inc.; Huffy Corporation; Kellwood Company (parent of American Recreation Products, Inc.); Russell Corporation; Snap-on Tools Corporation; Sunbeam-Oster Company, Inc.; Brunswick Corporation; V.F. Corporation (parent of JanSport, Inc.); Newell Co.; Rubbermaid Incorporated; and Cooper Industries, Inc.

NOT A CERTIFIED COPY

019918

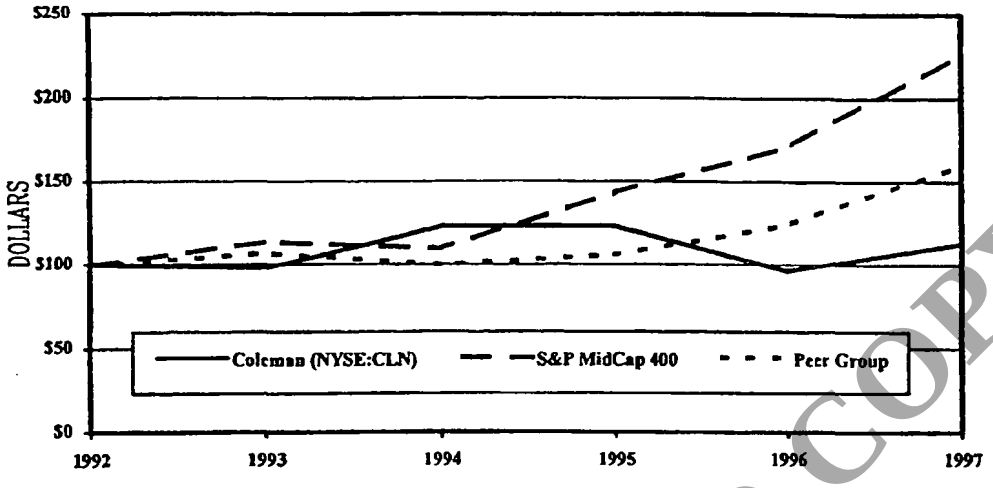
CP 033138
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421241

16div-025698

STOCK PRICE PERFORMANCE GRAPH



PENSION PLANS

Retirement Plan. The Company participates in the New Coleman Company, Inc. Retirement Plan for Salaried Employees (the "Salaried Pension Plan") which replaced a prior plan that was terminated on June 30, 1989. Participants in the Salaried Pension Plan include participants under the prior plan and certain salaried exempt employees who are at least 21 years old and have completed at least one year of service with the Company.

Benefits to participants vest fully after five years of Vesting Service (as defined in the Salaried Pension Plan) and such benefits are determined primarily by a formula based on the average of the five consecutive years of greatest compensation earned during the last ten years of the participant's service to the Company, and the number of years of service attained by the individual participant. Such compensation is composed primarily of regular base salary and contributions to qualified deferred compensation plans and does not include amounts paid pursuant to the Company's annual cash incentive compensation plans. Participants make no contributions to the Salaried Pension Plan.

Excess Benefit Plan. The Company participates in the New Coleman Holdings Inc. Excess Benefit Plan (the "Excess Benefit Plan") for designated employees who are participants in the Salaried Pension Plan and whose retirement income from the Salaried Pension Plan in the form of payment to be made under the Salaried Pension Plan exceeds the maximum permissible under the Employee Retirement Income Security Act, as amended, and certain Internal Revenue Code provisions. The Excess Benefit Plan supplements the Salaried Pension Plan by providing additional retirement benefits to its participants in excess of the maximum amount permitted under the Salaried Pension Plan, which benefits generally are payable in conjunction with payments made under the Salaried Pension Plan. Benefits payable under the Excess Benefit Plan have been included in the estimated annual benefits payable listed on the table following discussion of the Consolidated Supplemental Retirement Plan. The Excess Benefit Plan was amended and restated effective January 1, 1995 to add a provision allowing annual cash incentive compensation plan payments to designated participants to be included as compensation in the formula used to determine benefits under the Excess Benefit Plan. Thirteen executives participated in this feature of the Excess Benefit Plan during 1997.

Consolidated Supplemental Retirement Plan. In addition to the obligation of the Company under the Salaried Pension Plan and the Excess Benefit Plan, the Company had committed to provide other supplemental retirement benefits solely for Mr. Hammes, including credit for additional years of service and certain other formula

NOT A CERTIFIED COPY

616610

CP 033139
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421242

16div-025699

changes. Pursuant to an agreement entered into with Mr. Hammes in February 1997, discussed above, Mr. Hammes is no longer a participant in the Consolidated Supplemental Retirement Plan.

The following table shows estimated annual benefits payable under the Salaried Pension Plan and the Excess Benefit Plan, and reflects the straight life benefit form of payment for employees, assumes normal retirement at age 65, and reflects deductions for Social Security and other offset amounts:

NOT A CERTIFIED COPY

019920

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Final Average Earnings	Estimated Annual Pension 10 Years of Service	20 Years of Service	30 Years of Service	35 Years of Service
$ 100,000	$ 15,896	$ 31,792	$ 47,688	$ 55,636
200,000	35,896	71,792	107,688	125,636
300,000	55,896	111,792	167,688	195,636
400,000	75,896	151,792	227,688	265,636
500,000	95,896	191,792	287,688	335,636
600,000	115,896	231,792	347,688	405,636
700,000	135,896	271,792	407,688	475,636
800,000	155,896	311,792	467,688	545,636
900,000	175,896	351,792	527,688	615,636
1,000,000	195,896	391,792	587,688	685,636
1,100,000	215,896	431,792	647,688	755,636
1,200,000	235,896	471,792	707,688	825,636
1,300,000	255,896	511,792	767,688	895,636
1,400,000	275,896	551,792	827,688	965,636
1,500,000	295,896	591,792	887,688	1,035,636
1,600,000	315,896	631,792	947,688	1,105,636
1,700,000	335,896	671,792	1,007,688	1,175,636
1,800,000	355,896	711,792	1,067,688	1,245,636

Benefits under the Salaried Pension Plan are payable upon normal retirement at age 65, and at age 55 following vested termination, disability, and death. A participant may elect to commence early benefit payments at any time after the participant's 55th birthday or may retire with 30 years of Vesting Service at amounts reduced from those payable upon normal retirement age. As of December 31, 1997, credited years of service for each of the individuals listed on the Summary Compensation Table are as follows: Mr. Levin, 8.7 years; Mr. Ramon, 4.6 years; Mr. Goldman, 4 years; Mr. Stearns 21.2; Mr. McEvoy, 3.8 years; Mr. Hammes, 3.4 years; Mr. van den Bergh, zero years; and Mr. Kaplan 1.1 years. In accordance with Mr. Hammes' termination of employment agreement (see, Employment Agreements and Termination of Employment Arrangements) discussed above, Mr. Hammes will be entitled to receive a pension of $15,110 per month commencing March 1, 1999.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information concerning beneficial ownership, as of the close of business on March 3, 1998, of the Company's Common Stock by its 5% beneficial owners, directors, its Chief Executive Officer, and the next four most highly-compensated executives, and of directors and executive officers as a group.

NOT A CERTIFIED COPY

019921

CP 033141
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421244

16div-025701

Name and Address of Beneficial Owner	Shares of Company Common Stock Beneficially Owned	Percentage of Class Outstanding
Ronald O. Perelman 35 East 62nd Street New York, New York 10021	44,067,520 (1)	82%
Sunbeam Corporation 1615 South Congress Avenue, Suite 200 Delray Beach, Florida 33445	44,067,520 (2)	82%
Donald G. Drapkin	30,000 (3)	*
Frank Gifford	0	*
Lawrence M. Jones	40,512	*
Ann D. Jordan	0	*
Jerry W. Levin	373,000 (4)	*
John A. Moran	10,000	*
James D. Robinson	0	*
Bruce Slovin	52,600 (5)	*
William H. Spoor	6,000 (6)	*
David A. Ramon	100,000 (7)	*
Mark Goldman	0	*
David K. Stearns	25,342 (8)	*
Patrick McEvoy	0	*
Michael N. Hammes	0 (9)	*
Steven Kaplan	0 (9)	*
Frederick van den Bergh	11,000	*
All Directors and Executive Officers as a Group (21 persons)	44,768,474 (10)	83%

(1) Substantially all of the shares owned are pledged to secure obligations of Coleman Worldwide Corporation and CLN Holdings Inc., and shares of intermediate holding companies are or from time to time may be pledged to secure obligations of MacAndrews & Forbes Holdings Inc. or its affiliates.

(2) The Statement on Schedule 13D filed by Sunbeam on March 9, 1998 indicates that Sunbeam may be deemed to be the beneficial owner of 44,067,520 shares by reason of its execution of the Holdings Merger Agreement.

(3) Includes 10,000 shares held by trusts for the benefit of Mr. Drapkin's children and as to which beneficial ownership is disclaimed.

(4) Includes 2,000 shares owner by trusts for his children and as to which beneficial ownership is disclaimed. Includes 350,000 shares which may be acquired within 60 days pursuant to stock options.

(5) Includes 46,300 shares held in trust for family members and as to which beneficial ownership is disclaimed.

(6) Includes 4,000 shares held in trust for the benefit of Mr. Spoor pursuant to the IDS Bank & Trust, Trustee, The Pillsbury Company 401(k) Savings Plan.

(7) Includes 100,000 shares which Mr. Ramon has a right to acquire within 60 days pursuant to stock options.

(8) Includes 520 shares held by spouse and as to which beneficial ownership is disclaimed. Includes 20,720 shares which may be acquired within 60 days pursuant to stock options.

(9) No current information is available as to share ownership. Reflects information in the Company's records as of the dates of termination of employment.

(10) Includes an additional 52,500 shares which may be acquired by directors and executive officers as a group within 60 days pursuant to stock options. Excludes 1,002,380 shares which may be acquired by directors and executive officers pursuant to stock options which will vest upon consummation of the Holdings Merger.

NOT A CERTIFIED COPY

019922

CP 033142
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421245

16div-025702

SOURCE AND AMOUNT OF FUNDS FOR CHANGE IN CONTROL

Upon consummation of the Holdings Merger, Sunbeam will have acquired control of the Company. The total amount of funds and other consideration required by Sunbeam to consummate the Holdings Merger is $159,956,756 in cash and 14,099,749 shares of Sunbeam Common Stock (collectively, the "Holdings Merger Consideration"). Sunbeam expects to obtain the cash portion of the Holdings Merger Consideration from a combination of new revolving and term credit facilities and the issuance of other debt securities that are expected to be issued by Sunbeam concurrently with the closing of the Holdings Merger. Sunbeam has made no decision with respect to repayment or refinancing of such indebtedness and may repay such indebtedness out of its internally generated funds or from proceeds of a subsequent financing. Any decisions with respect to such repayment or refinancing will be made based on a review from time to time of the advisability of particular transactions, as well as on prevailing interest rates and financial and economic conditions.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Relationship with MacAndrews & Forbes. Ronald O. Perelman, through MacAndrews & Forbes, beneficially owns indirectly approximately 82% of Coleman's Common Stock. Due to its stock ownership, MacAndrews & Forbes controls Coleman and is able to elect the entire board of directors. On February 27, 1998, the Holdings Merger Agreement and the Company Merger Agreement were executed as described in further detail above. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of Sunbeam and Sunbeam will become the indirect owner of approximately 82% of the outstanding Coleman Common Stock. Additionally, upon consummation of the Holdings Merger, all of the current members of Coleman's board of directors will will resign from their positions as directors and the five Sunbeam Designees will become directors of the Company.

MacAndrews & Forbes is a diversified holding company with interests in several industries. The principal executive offices of MacAndrews & Forbes are located at 35 East 62nd Street, New York, New York 10021.

Cross-Indemnification Agreement. Coleman and New Coleman Holdings Inc. ("New Coleman Holdings") are parties to a cross-indemnification agreement (the "Cross-Indemnification Agreement"), pursuant to which Coleman has agreed to indemnify New Coleman Holdings against all liabilities related to the outdoor products business transferred to Coleman, and New Coleman Holdings has agreed to indemnify Coleman and its immediate corporate parent against all liabilities of New Coleman Holdings other than liabilities related to the outdoor products business transferred to Coleman. The liabilities that Coleman will indemnify New Coleman Holdings against include (i) asserted and potential product liability claims arising out of products manufactured or sold by the outdoor products business, and (ii) asserted and potential environmental claims and liabilities related to facilities currently or formerly owned or used by the outdoor products business.

Tax Sharing Agreement. Coleman is included in the consolidated tax group of which Mafco is the common parent and Coleman's tax liability will be included in the consolidated Federal income tax liability of Mafco. Coleman is also included in certain state and local tax returns of Mafco or its affiliates. Coleman participates in a Tax Sharing Agreement (the "Tax Sharing Agreement") pursuant to which it pays to Coleman Worldwide amounts equal to the taxes that Coleman would otherwise have to pay if it were to file separate Federal, state or local income tax returns (including any amounts determined to be due as a result of a redetermination of the tax liability of Mafco arising from an audit or otherwise). Under Federal law, Coleman is subject to liability for the consolidated Federal income tax liabilities of the consolidated group of which Mafco is the common parent, for any taxable period during which Coleman or a subsidiary is a member of that consolidated group. Mafco has agreed, however, to indemnify Coleman for such Federal income tax liability (and certain state and local tax liabilities) of Mafco or any of its subsidiaries that Coleman is actually required to pay. Because the payments to be made by Coleman under the Tax Sharing Agreement are determined by the amount of taxes that Coleman would otherwise have to pay if it were to file separate Federal, state or local income tax returns, the Tax Sharing Agreement will benefit Mafco to the extent that Mafco can offset the taxable income generated by Coleman against losses and tax credits generated by Mafco

NOT A CERTIFIED COPY

019923

CP 033143
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421246

16div-025703

and its other subsidiaries. Following the consummation of the Holdings Merger, Coleman will no longer be a part of Mafco's consolidated tax group and the Tax Sharing Agreement will terminated.

Insurance Programs. Coleman is insured under policies maintained by MacAndrews & Forbes or its affiliates, including health and life insurance, workers compensation, and liability insurance. The Company's expense represents its expected costs for self-insured retentions and premiums for excess coverage insurance. For 1997, the expense for such insurance was approximately $13.3 million. Management believes that the terms for such insurance are at least as favorable as terms that would be obtainable were the Company separately insured.

Services Provided by and to Other Affiliates. From time to time, Coleman purchases at negotiated rates specialized accounting and other services provided by an affiliate. Coleman also provides at negotiated rates specialized accounting services and other services to an affiliate. The net expense for such services was approximately $400,000 during 1997. Coleman believes that the terms of such arrangements are at least as favorable to Coleman as those it could have negotiated with nonaffiliated parties. In addition, certain employees of the Company have been paid by MacAndrews & Forbes or other affiliates of the Company, and the Company reimburses such affiliates for the compensation expense for such employees.

Purchases of Inactive Subsidiaries. During the first quarter of 1997, Coleman purchased an inactive subsidiary from an affiliate for approximately $1.0 million, plus a portion of certain tax benefits to the extent such benefits are realized by Coleman. During the fourth quarter of 1997, Coleman purchased an inactive subsidiary from an affiliate for which the Company agreed to pay 50% of the tax benefits realized by Coleman when and if such benefits are realized. Coleman expects to realize certain tax benefits from the tax losses of such subsidiaries.

Office Lease. Coleman subleases its office space in New York City from an affiliate. The rent paid by Coleman represents the allocable portion, based on the space leased, of the rent paid by the affiliate to its third party landlord. The expense for such rent during 1997 was approximately $158,000. Coleman believes that the terms of the sublease are at least as favorable to Coleman as those it could have negotiated with nonaffiliated parties.

Pension Plans. Holdings maintains pension and other retirement plans in various forms covering employees of Coleman who meet eligibility requirements. Holdings also has an unfunded excess benefit plan covering certain of Coleman's U.S. employees whose benefits under the plans described above are limited by provisions of the Internal Revenue Code. Coleman pays to Holdings its allocable costs of maintaining such plans for Coleman's employees. As part of the consummation of the Holdings Merger, such pension and other benefits plans will be assigned to and assumed by Coleman.

Other Arrangements. At the beginning of 1995, Mr. McEvoy, an Executive Vice President of Coleman, had a noninterest-bearing loan from Coleman in the amount of $63,333. At the end of 1997, the principal balance of the loan was $0.

During 1997, Coleman purchased licensing services from an affiliate, for which it paid approximately $650,000.

During 1997, Coleman sold products to an affiliate, for which it received approximately $0.9 million.

During 1997, Coleman used an airplane owned by a corporation of which a director of Coleman is a stockholder, for which Coleman paid approximately $158,000.

During 1997, a subsidiary of Coleman paid approximately $254,000 for warehouse space leased from a real estate partnership in which Mr. Goldman, an Executive Vice President of Coleman, and three other immediate family members of Mr. Goldman's are partners. A manufacturing business owned by Mr. Goldman's father contracted with Coleman's subsidiary for the manufacture of goods sold to the subsidiary, for which the subsidiary paid approximately $2.6 million during 1997. Pursuant to the agreement by which Coleman acquired the Eastpak business, Mr. Goldman is entitled to certain additional payments from Coleman upon Eastpak achieving certain operating targets. In accordance with such agreement, a final additional payment of $12.0 million was paid to Mr. Gold-

NOT A CERTIFIED COPY

019924

CP 033144
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421247

16div-025704

man for 1997 financial performance.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires the Company's directors and executive officers, and persons who own more than 10 percent of the Company Common Stock, to file reports of ownership and changes in ownership with the Securities and Exchange Commission.

Based solely on the Company's review of the reporting forms received by it, the Company believes that for 1997 all such filing requirements were satisfied.

THE COLEMAN COMPANY, INC.

March ___, 1998

NOT A CERTIFIED COPY

019925

CP 033145
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1421248

16div-025705

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Parent or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with the Parent, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"**ERISA Event**" means (a) any "**reportable event**", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "**accumulated funding deficiency**" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Parent or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Parent or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Parent or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

NOT A CERTIFIED COPY

01994

"**Event of Default**" has the meaning assigned to such term in Article VII.

"**Excess Cash Flow**" means, for any period, the excess (if any), determined without duplication, of:

the sum of (i) Consolidated EBITDA for such fiscal period, (ii) cash interest income and extraordinary cash income of the Parent and its Consolidated Subsidiaries for such fiscal period (to the extent not included in Consolidated EBITDA) and (iii) any decrease in Consolidated Net Working Investment between the beginning and the end of such period;

minus

the sum of (i) Consolidated Capital Expenditures made in cash in accordance with Section 6.11 during such period, (ii) cash interest expense and extraordinary cash expense of the Parent and its Consolidated Subsidiaries for such period (to the extent not included in Consolidated EBITDA), (iii) any increase in Consolidated Net Working Investment between the beginning and the end of such period, (iv) mandatory reductions of long-term Indebtedness of the Parent and its Consolidated Subsidiaries during such period (adjusted to eliminate the effect of prepayments on account of Excess Cash Flow for a prior period), (v) repayments during such period of the revolving credit loans and short-term Indebtedness of the Parent and its Consolidated Subsidiaries which were not made with the proceeds of other Indebtedness and which repaid amounts cannot be reborrowed or redrawn under the instruments evidencing such loans and short-term Indebtedness, (vi) optional repayments during such period of long-term Indebtedness, including Term Loans, of the Parent and its Consolidated Subsidiaries which were not made with the proceeds of other Indebtedness and which repaid amounts cannot be reborrowed under the instrument evidencing such long-term Indebtedness, and (vii) cash payments with respect to taxes made during such period;

provided that Consolidated Net Working Investment at the beginning of such period shall be determined on a pro forma basis adjusted to give effect (as if such event had occurred on the first day of such period) to each Permitted Acquisition made in accordance with Section 6.04 during such period.

"**Exchange Act**" has the meaning set forth in Section 5.01(a).

"**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or

NOT A CERTIFIED COPY

019942

MORGAN STANLEY CONFIDENTIAL 0007559

16div-025707

on account of any obligation of a Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which a Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by a Borrower under Section 2.18(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.16(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from a Borrower with respect to such withholding tax pursuant to Section 2.16(a).

"**Existing BANTSA Letter of Credit**" means Letter of Credit No. C7285660 issued by Bank of American National Trust and Savings Association for the benefit of National Union Fire Insurance Company of Pittsburgh, Pennsylvania in the maximum stated amount of $13,275,000 having an expiry date of November 3, 1998, as the same may be terminated in accordance with the provisions thereof.

"**Existing CoreStates Letters of Credit**" means the trade letters of credit issued by CoreStates Bank, N.A. or its subsidiaries for the account of Coleman or any of its subsidiaries up to an aggregate maximum stated amount of $60,000,000, each of which shall expire no later than July 31, 1998.

"**Existing Receivables Program**" means the accounts receivable sales program established pursuant to (i) the Receivables Sale and Contribution Agreement dated as of December 4, 1997 between Sunbeam Products, Inc. and Sunbeam Asset Diversification, Inc. and (ii) the Receivables Purchase and Servicing Agreement dated as of December 4, 1997 by and among Llama Retail Funding, L.P., Capital USA, L.L.C., Sunbeam Asset Diversification, Inc. and Sunbeam Products, Inc.

"**Federal Funds Effective Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received

NOT A CERTIFIED COPY

019943

MORGAN STANLEY CONFIDENTIAL 0007560

16div-025708

by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"**Financial Officer**" means the chief financial officer, principal accounting officer, treasurer or controller of the Parent.

"**First Alert**" means First Alert, Inc., a Delaware corporation.

"**First Alert Acquisition**" means the collective transactions contemplated by the First Alert Acquisition Documents, which, if consummated, will result in the Parent and its Subsidiaries owning, collectively, at least 50.1% of the issued and outstanding shares of common stock of First Alert.

"**First Alert Acquisition Documents**" means (i) the Agreement and Plan of Merger dated as of February 28, 1998 by and among the Parent, Sentinel Acquisition Corp. and First Alert and (ii) each other document executed and delivered at the closing of the First Alert Acquisition, each as in effect on the Effective Date and substantially in the form provided to the Lenders on or prior to the Effective Date and as further amended from time to time in accordance with Section 6.09.

"**Fixed Charge Coverage Ratio**" means, at the last day of any fiscal quarter, the ratio of (i) Consolidated EBITDA for the period of four consecutive fiscal quarters then ended to (ii) Consolidated Fixed Charges for the same four-quarter period.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**GAAP**" means generally accepted accounting principles in the United States of America.

"**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guarantee**" of or by any Person (the "**guarantor**") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other

NOT A CERTIFIED COPY

019944

MORGAN STANLEY CONFIDENTIAL 0007561

16div-025709

Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or obligation; *provided*, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"**Hedging Agreement**" means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"**Indebtedness**" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result

NOT A CERTIFIED COPY

019945

of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, it is expressly agreed that the sale, transfer or other disposition of accounts receivable shall be treated, for all purposes of this Agreement, as an Asset Sale.

"Indebtedness Incurrence" means any incurrence by the Parent or any of its Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01(a) through (g), inclusive.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnity Proceeds" means any amounts constituting indemnity payments received by the Parent or any of its Subsidiaries pursuant to indemnity provisions contained in the Acquisition Documents.

"Indenture" means the Indenture dated as of March 25, 1998 between the Parent and The Bank of New York, as Trustee, as amended from time to time in accordance with Section 6.09.

"Interest Coverage Ratio" means, at the last day of any fiscal quarter, the ratio of (i) Consolidated EBITDA for the period of four consecutive fiscal quarters then ended to (ii) Consolidated Interest Expense for the same four-quarter period.

"Interest Election Request" means a request by a Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.06.

"Interest Payment Date" means (a) with respect to any ABR Loan, the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"Interest Period" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as a Borrower may elect, *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end

NOT A CERTIFIED COPY

019946

on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (iii) if any Interest Period pertaining to a Eurodollar Term Loan includes a date on which a scheduled payment of principal of the Term Loans included in such Borrowing is required to be made under Section 2.09(a) but does not end on such date, then (a) the principal amount of each Eurodollar Term Loan required to be repaid on such date shall have an Interest Period ending on such date and (b) the remainder (if any) of each such Eurodollar Term Loan shall have an Interest Period determined as set forth above. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, thereafter, shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Issuing Bank**" means (i) in the case of the Existing BANTSA Letter of Credit, Bank of America National Trust and Savings Association, (ii) in the case of the Existing CoreStates Letters of Credit, CoreStates Bank, N.A. or its subsidiaries and (iii) in all other cases, First Union National Bank, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.04(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term "**Issuing Bank**" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"**LC Disbursement**" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"**LC Exposure**" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, the Existing BANTSA Letter of Credit and the Existing CoreStates Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of a Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage (determined on the basis of the Revolving Commitments) of the total LC Exposure at such time.

"**LC Reimbursement Account**" has the meaning set forth in the Parent Pledge and Security Agreement.

"**Lenders**" means the Persons listed on Schedule 2.01 under the heading "Lenders" and any other Person that shall have become a party hereto as a Lender pursuant to an Assignment and Acceptance, other than any such Person that

NOT A CERTIFIED COPY

019947

MORGAN STANLEY CONFIDENTIAL 0007564

16div-025712

ceases to be a party hereto as a Lender pursuant to an Assignment and Acceptance.

"**Letter of Credit**" means any letter of credit issued pursuant to this Agreement.

"**Leverage Ratio**" means, at the last day of any fiscal quarter, the ratio of (i) Consolidated Indebtedness on such day (other than Indebtedness consisting of contingent obligations with respect to letters of credit and letters of guarantee) to (ii) Consolidated EBITDA for the period of four consecutive fiscal quarters ended on such day. For purposes of determining Consolidated EBITDA at any time during the fiscal quarter in which a Permitted Acquisition has been made and the three fiscal quarters immediately succeeding such fiscal quarter, Consolidated EBITDA shall be increased for any fiscal quarter which began prior to such Permitted Acquisition by the amount of Consolidated EBITDA which the Parent shall determine would have been attributable to the acquired assets for the fiscal quarter most recently ended on or prior to the date of such Permitted Acquisition; *provided* that (i) the Administrative Agent shall have consented to the calculation on the basis of which the Parent determined such amount to be so attributed and (ii) for the fiscal quarter in which the Permitted Acquisition has occurred, such increase shall be prorated to reflect only the days during such fiscal quarter prior to the consummation of the Permitted Acquisition.

"**LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Telerate Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "**LIBO Rate**" with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of $5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"**Lien**" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale

NOT A CERTIFIED COPY

019948

agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Loan Documents**" means this Agreement, the Letters of Credit, the Subsidiary Guarantees, the Collateral Documents and any Subsidiary Borrowing Agreement executed pursuant to Section 2.19.

"**Loans**" means Term Loans or Revolving Loans or any combination thereof, as the context may require.

"**Major Casualty and Indemnity Proceeds Account**" has the meaning set forth in the Parent Pledge and Security Agreement.

"**Major Casualty Proceeds**" means (i) the aggregate insurance proceeds received from a Person other than the Parent or any of its Subsidiaries in connection with one or more related events by the Parent or any of its Subsidiaries under any insurance policy maintained by the Parent or any of its Subsidiaries covering losses with respect to tangible real or personal property or improvements or (ii) any award or other compensation with respect to any condemnation of property (or any transfer or disposition of property in lieu of condemnation) received by the Parent or any of its Subsidiaries, in either case only if the amount of such aggregate proceeds or award or other compensation exceeds $10,000,000, in each case less any taxes actually paid or to be payable by the Parent or any of its Subsidiaries (as estimated by a Financial Officer, giving effect to the overall tax position of the Parent) in respect of receipt of such insurance proceeds or award or other compensation, as the case may be.

"**Margin Stock**" has the meaning ascribed to such term in Regulations G and U of the Board, as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Parent and the Subsidiaries taken as a whole, (b) the ability of any Borrower to perform any of its obligations under the Loan Documents or (c) the ability of the Lenders or the Administrative Agent to practically realize the rights and benefits, taken as a whole, intended to be afforded to the Lenders or the Administrative Agent, as the case may be, under the Loan Documents.

"**Material Indebtedness**" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Parent and its Subsidiaries in an aggregate principal

NOT A CERTIFIED COPY

019949

MORGAN STANLEY CONFIDENTIAL 0007566

16div-025714

amount exceeding $25,000,000. For purposes of determining Material Indebtedness, the "**principal amount**" of the obligations of the Parent or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Parent or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

"**Material Subsidiary**" means (i) any Subsidiary Borrower, (ii) as of any date, any other Subsidiary that meets or that, had it then been a Subsidiary, would have met the definition of "significant subsidiary" contained as of the date hereof in Regulation S-X of the Securities and Exchange Commission as of the last day of the fiscal year of the Parent ending on (or most recently ended prior to) such date; *provided that*, for purposes of this definition of "Material Subsidiary", all references in Regulation S-X to "10 percent" shall be deemed to be references to "5 percent", (iii) any other Subsidiary of the Parent from time to time designated by the Parent as a "Material Subsidiary" for purposes of this Agreement and (iv) any Subsidiary that directly or indirectly owns common stock of a Material Subsidiary; and *provided further* that, for the period from the Effective Date until December 31, 1998, the determination of whether a Subsidiary constitutes a Material Subsidiary within the meaning of the foregoing shall be made on a pro forma basis taking into account the Acquisition. Notwithstanding the foregoing, if the combined assets of all Subsidiaries that are not Material Subsidiaries under the preceding sentence equals or exceeds 10% of the consolidated total assets of the Parent and its Consolidated Subsidiaries, or if the combined income (before taxes, extraordinary items and the cumulative effect of a change in accounting principle) of all Subsidiaries that are not Material Subsidiaries under the preceding sentence equals or exceeds 10% of such income of the Parent and its Consolidated Subsidiaries, then one or more of such non-Material Subsidiaries designated by the Parent (or, if the Parent shall make no designation, then one or more of such subsidiaries in descending order based on their respective contributions to consolidated total assets or combined income, as determined by the Administrative Agent) shall be deemed for purposes of this Agreement to be Material Subsidiaries to the extent necessary to eliminate such excess.

"**Maturity Date**" means (i) with respect to the Revolving Loans and the Tranche A Term Loans, March 30, 2005 and (ii) with respect to the Tranche B Term Loans, September 30, 2006.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"**Net Cash Proceeds**" means, with respect to any Indebtedness Incurrence or Asset Sale, an amount equal to the cash proceeds received by the Parent or any

NOT A CERTIFIED COPY

019950

of its Subsidiaries therefrom or in respect thereof (including any cash proceeds received as income or other cash proceeds of any noncash proceeds of any Asset Sale, but only as and when received), less (x) any expenses reasonably incurred by such Person in respect thereof and (y) solely with respect to any Asset Sale, (i) the amount of any Indebtedness secured by a Lien on any asset disposed of in such Asset Sale and required to be discharged from the proceeds thereof and (ii) any taxes actually paid or to be payable by such Person (as estimated by a Financial Officer, giving effect to the overall tax position of the Parent) in respect of such Asset Sale.

"**Notice of Account Designation**" means the notice of account designation substantially in the form of Exhibit L delivered by the Parent to the Administrative Agent.

"**Obligor**" means each of the Parent, the Subsidiary Borrowers and the Subsidiary Guarantors.

"**Other Taxes**" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents.

"**Parent**" means Sunbeam Corporation, a Delaware corporation, and its successors.

"**Parent Pledge and Security Agreement**" means the pledge and security agreement substantially in the form of Exhibit B between the Parent and the Administrative Agent entered into as of the Effective Date, as amended from time to time.

"**PBGC**" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Performance Period**" shall mean each of the periods commencing after June 30, 1998 on the day that is five Business Days following the day that a complete set of all financial statements required to be delivered to the Administrative Agent under Section 5.01(a) or 5.01(b), as the case may be, is received by it and ending on a day immediately preceding the day that is five Business Days following the day on which the next subsequent complete set of all the financial statements required to be delivered to the Administrative Agent under Section 5.01(a) or 5.01(b), as the case may be, is received by it.

NOT A CERTIFIED COPY

019951

MORGAN STANLEY CONFIDENTIAL 0007568

16div-025716

"**Permitted Acquisition**" means any acquisition (other than the Acquisition), whether in a single transaction or series of related transactions, by the Parent or any one or more Subsidiaries, or any combination thereof, of (i) all or a substantial part of the assets, or a going concern business or division, of any Person, whether through purchase of assets or securities, by merger or otherwise, (ii) control of securities of an existing corporation or other Person having ordinary voting power (apart from rights accruing under special circumstances) to elect a majority of the board of directors of such corporation or other Person or (iii) control of a greater than 50% ownership interest in any existing partnership, joint venture or other Person, *provided* that:

(w) both before and immediately after giving effect to such acquisition, no Default shall have occurred and be continuing;

(x) the Person whose assets, securities or equity interests are being acquired is engaged in businesses of the type conducted by the Parent and its Subsidiaries and businesses reasonably related thereto or to the sale and distribution of household consumer products;

(y) the Parent shall be in compliance with Sections 6.12, 6.13, and 6.14, after the Leverage Ratio, Interest Coverage Ratio, Fixed Charges Coverage Ratio and Consolidated EBITDA are each adjusted with respect to such acquisition on the date of consummation or proposed consummation thereof (the "Transaction Date") as follows: in calculating Consolidated EBITDA, Consolidated Interest Expense and Consolidated Rental Expense, (1) the incurrence of any Indebtedness in connection with such acquisition and the application of the proceeds therefrom shall be assumed to have occurred on the first day of the period of four consecutive fiscal quarters (or other period) for which such amounts are required to be determined in accordance with the definitions of Leverage Ratio, Interest Coverage Ratio and Fixed Charges Coverage Ratio (the "Reference Period"), (2) pro forma effect shall be given to any acquisition (including adjustments to operating results required to be made in accordance with GAAP) which occurs during the Reference Period or subsequent to the Reference Period and prior to the Transaction Date as if such acquisition had occurred on the first day of the Reference Period, (3) the incurrence of any Indebtedness during the Reference Period or subsequent to the Reference Period and prior to the Transaction Date and the application of the proceeds therefrom shall be assumed to have occurred on the first day of such Reference Period and (4) Consolidated Interest Expense attributable to any Indebtedness (whether existing or being incurred) bearing a floating interest rate shall be computed on a pro forma basis as if the rate in effect on the date of computation had been the applicable rate

NOT A CERTIFIED COPY

019952

for the entire period, unless such Person or any of its Subsidiaries is a party to an interest party swap or cap or similar agreement (which shall remain in effect for the twelve month period after the Transaction Date) which has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used; and

(z) at least thirty days prior to the closing date for any such acquisition (or, in the case of any acquisition that occurs within 30 days after the Effective Date, within such time as the Parent and the Administrative Agent agree), the Parent shall have delivered to the Administrative Agent (1) a compliance certificate certifying the Parent's compliance with the provisions of this Agreement, including, without limitation, Sections 6.12, 6.13 and 6.14, after giving effect on a pro forma basis to such acquisition and (2) a report of the chief financial officer or chief accounting officer of the Parent, in a form and providing sufficient detail and justification for the information provided therein, including assumptions, as shall be found to be reasonable by the Administrative Agent in its good faith discretion after completion of reasonable due diligence, establishing (A) the basis for such certification and (B) that after giving effect to such acquisition and the financing therefor, the Parent shall be in compliance on a pro forma basis until the end of the fiscal year immediately following the fiscal year in which such acquisition is proposed to be consummated with the covenants contained in Sections 6.12, 6.13 and 6.14.

"**Permitted Encumbrances**" means:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business or with respect to obligations that are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; and

NOT A CERTIFIED COPY

019953

(e) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Parent or any Subsidiary;

provided that the term "**Permitted Encumbrances**" shall not include any Lien securing Indebtedness (other than the Loans and reimbursement obligations in respect of LC Disbursements).

"**Permitted Investments**" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-1 from Standards & Poor's Rating Group or at least P-1 from Moody's Investor Service Inc.;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) investments in money market funds which invest substantially all of their assets in securities of the types described in the foregoing clauses (a) through (d).

"**Permitted Liens**" means any Lien permitted under Section 6.02.

NOT A CERTIFIED COPY

019954

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Parent or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "**employer**" as defined in Section 3(5) of ERISA.

"**Plan Reversion Proceeds**" means the aggregate amount of payments received by the Parent or any of its Subsidiaries from the termination of a Plan.

"**Pledge and Security Agreement**" means the Parent Pledge and Security Agreement, the Subsidiary Pledge and Security Agreement or the Subsidiary Borrower Pledge and Security Agreement, as the context may require, and "**Pledge and Security Agreements**" means all of the foregoing.

"**Prepayment Account**" has the meaning set forth in the Parent Pledge and Security Agreement.

"**Prime Rate**" means the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate in effect at its principal office; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"**Reduction Percentage**" means (i) in the case of Excess Cash Flow, 50% prior to the Trigger Date and 25% thereafter and (ii) in all other cases, 100%. For the purpose of this definition, "Trigger Date" means the first day of the next succeeding fiscal quarter of the Parent following delivery of financial statements pursuant to Section 5.01 for the immediately preceding fiscal quarter demonstrating a Leverage Ratio of less than 2.75 to 1.0.

"**Refinanced Indebtedness**" means the Indebtedness to be refinanced in connection with the transactions contemplated hereunder as set forth on Schedule 5.08.

"**Register**" has the meaning set forth in Section 10.04.

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

NOT A CERTIFIED COPY

019955

"**Required Lenders**" means, at any time, Lenders having in the aggregate at least 51% of the sum of (i) Revolving Credit Exposures and unused Revolving Commitments at such time, (ii) the principal amount of Tranche A Term Loans and unused Tranche A Term Commitments at such time and (iii) the principal amount of Tranche B Loans and unused Tranche B Term Commitments at such time.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any shares of any class of capital stock of the Parent or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of the Parent or any option, warrant or other right to acquire any such shares of capital stock of the Parent.

"**Revolving Commitment**" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (x) reduced from time to time pursuant to Section 2.07(c) and (y) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Revolving Commitment is set forth on Schedule 2.01 under the heading "**Revolving Commitment**", or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. The initial aggregate amount of the Lenders' Revolving Commitments is $600,000,000.

"**Revolving Credit Availability Period**" means the period from and including the Effective Date to but excluding the earlier of (i) the Maturity Date and (ii) the date of termination of the Revolving Commitments.

"**Revolving Credit Exposure**" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure at such time.

"**Revolving Loan**" means a loan made pursuant to Section 2.01(c).

"**Signature**" means Signature Brands USA, Inc., a Delaware corporation.

"**Signature Acquisition**" means the collective transactions contemplated by the Signature Acquisition Documents, which, if consummated, will result in

NOT A CERTIFIED COPY

019956

the Parent and its Subsidiaries owning, collectively, at least 51% of the issued and outstanding shares of common stock of Signature.

"Signature Acquisition Documents" means (i) the Agreement and Plan of Merger dated as of February 28, 1998 between the Parent, Java Acquisition Corp. and Signature and (ii) each other document executed and delivered at the closing of the Signature Acquisition, each as in effect on the Effective Date and as further amended from time to time in accordance with Section 6.09.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurodollar funding (currently referred to as **"Eurodollar Liabilities"** in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurodollar funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Notes" means the Zero Coupon Convertible Senior Subordinated Notes Due 2018 issued by the Parent pursuant to the Indenture.

"subsidiary" means, with respect to any Person (the **"parent"**) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Parent.

NOT A CERTIFIED COPY

019957

"**Subsidiary Borrower**" means at any time, any Eligible Subsidiary of the Parent designated as a Subsidiary Borrower by the Parent pursuant to Section 2.19 that has not ceased to be a Subsidiary Borrower pursuant to such Section.

"**Subsidiary Borrower Pledge and Security Agreement**" means a pledge and security agreement substantially in the form of Exhibit H between a Subsidiary Borrower and the Administrative Agent, as amended from time to time.

"**Subsidiary Borrowing Agreement**" means a subsidiary borrowing agreement substantially in the form of Exhibit G among the Parent, an Eligible Subsidiary and the Administrative Agent, as amended from time to time.

"**Subsidiary Guarantee**" means a guarantee agreement substantially in the form of Exhibit D executed by each Subsidiary Guarantor for the benefit of the Administrative Agent, as amended from time to time.

"**Subsidiary Guarantors**" means each Material Subsidiary identified on Schedule 3.01(a) and Schedule 3.01(b) and each other Person who becomes a party to the Subsidiary Guarantee pursuant to Section 5.09.

"**Subsidiary Pledge and Security Agreement**" means the pledge and security agreement substantially in the form of Exhibit E among each Subsidiary Guarantor and the Administrative Agent, as amended from time to time.

"**Taxes**" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"**Term Commitments**" means Tranche A Term Commitments and Tranche B Term Commitments, or any combination thereof, as the context may require.

"**Term Loans**" means Tranche A Term Loans and Tranche B Term Loans, or any combination thereof, as the context may require.

"**Tranche A Availability Period**" means the period from and including the Tranche A Effective Date to but excluding the earlier of (i) June 30, 1998 and (ii) the date of termination of the Tranche A Term Commitments.

"**Tranche A Effective Date**" means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 10.02).

NOT A CERTIFIED COPY

019958

MORGAN STANLEY CONFIDENTIAL 0007575

16div-025723

"**Tranche A Term Commitment**" means, with respect to each Lender, the commitment of such Lender to make Tranche A Term Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Tranche A Term Loans hereunder, as such commitment may be (x) reduced from time to time pursuant to Sections 2.07(c) and 2.09(b) and (y) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Tranche A Term Commitment is set forth on Schedule 2.01 under the heading "**Tranche A Term Commitment**", or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Tranche A Term Commitment, as applicable. The initial aggregate amount of the Lenders' Tranche A Term Commitments is $900,000,000.

"**Tranche A Term Loan**" means a loan made pursuant to Section 2.01(a).

"**Tranche B Effective Date**" means the date on which the conditions specified in Section 4.03 are satisfied (or waived in accordance with Section 10.02).

"**Tranche B Availability Period**" means the period from and including the Tranche B Effective Date to but excluding the earlier of (i) May 15, 1998 and (ii) the date of termination of the Tranche B Term Commitments.

"**Tranche B Term Commitment**" means, with respect to each Lender, the commitment of such Lender to make Tranche B Term Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Tranche B Term Loans hereunder, as such commitment may be (x) reduced from time to time pursuant to Section 2.07(c) and 2.09(b) and (y) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Tranche B Term Commitment is set forth on Schedule 2.01 under the heading "**Tranche B Term Commitment**", or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Tranche B Term Commitment, as applicable. The initial aggregate amount of the Lenders' Tranche B Term Commitments is $500,000,000.

"**Tranche B Term Loan**" means a loan made pursuant to Section 2.01(b).

"**Transactions**" means the execution, delivery and performance by the Borrowers of the Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

NOT A CERTIFIED COPY

019959

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"**Wholly Owned Subsidiary**" means any Subsidiary of which all of the equity securities or other ownership interests (other than, in the case of a corporation or other similar legal entity, directors' qualifying shares or shares held by residents of the jurisdiction in which such corporation or other similar legal entity is organized as required by the law of such jurisdiction) are directly or indirectly owned or controlled by the Parent or one or more Wholly Owned Subsidiaries or by the Parent and one or more Wholly Owned Subsidiaries of the Parent.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. *Classification of Loans and Borrowings*. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "**Revolving Loan**") or by Type (*e.g.*, a "**Eurodollar Loan**") or by Class and Type (*e.g.*, a "**Eurodollar Revolving Loan**"). Borrowings also may be classified and referred to by Class (*e.g.*, a "**Revolving Borrowing**") or by Type (*e.g.*, a "**Eurodollar Borrowing**") or by Class and Type (*e.g.*, a "**Eurodollar Revolving Borrowing**").

SECTION 1.03. *Terms Generally*. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "**include**", "**includes**" and "**including**" shall be deemed to be followed by the phrase "**without limitation**". The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "**herein**", "**hereof**" and "**hereunder**", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "**asset**" and "**property**" shall

NOT A CERTIFIED COPY

019960

MORGAN STANLEY CONFIDENTIAL 0007577

16div-025725

be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. *Accounting Terms; GAAP.* Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time (subject to Section 6.10; *provided* that, if the Parent notifies the Administrative Agent that the Parent requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Parent that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE 2
THE CREDITS

SECTION 2.01. *Commitments.* (a) *Tranche A Term Loans.* Subject to the terms and conditions set forth herein, each Lender agrees to make loans to any Borrower on not more than four dates during the Tranche A Availability Period in an aggregate principal amount that will not result in such Lender's Tranche A Term Loans to all Borrowers exceeding such Lender's Tranche A Term Commitment. Loans made pursuant to this paragraph are not revolving in nature and amounts of such loans repaid or prepaid may not be reborrowed.

(b) *Tranche B Term Loans.* Subject to the terms and conditions set forth herein, each Lender agrees to make a single loan to any Borrower during the Tranche B Availability Period in a principal amount that will not result in such Lender's Tranche B Term Loans to all Borrowers exceeding such Lender's Tranche B Term Commitment. Loans made pursuant to this paragraph are not revolving in nature and amounts of such loans repaid or prepaid may not be reborrowed.

(c) *Revolving Loans.* Subject to the terms and conditions set forth herein, each Lender agrees to make loans to any Borrower from time to time during the Revolving Credit Availability Period in an aggregate principal amount

NOT A CERTIFIED COPY

019961

MORGAN STANLEY CONFIDENTIAL 0007578

16div-025726

that will not result in such Lender's Revolving Credit Exposure to all Borrowers exceeding such Lender's Revolving Commitment; *provided* that, prior to the Tranche B Term Loan Borrowing, the aggregate amount of the Revolving Credit Exposure of all of the Lenders shall not exceed $100,000,000. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. *Loans and Borrowings.* (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the relevant Class made by the Lenders ratably in accordance with their respective Commitments of such Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000; *provided* that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e). Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of twelve Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing of any Class if the Interest Period requested with respect thereto would end after the Maturity Date for the relevant Class.

SECTION 2.03. *Requests for Borrowings.* To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., Charlotte, North Carolina time, three Business Days before the date of the proposed Borrowing or

NOT A CERTIFIED COPY

019962

(b) in the case of an ABR Borrowing, not later than 10:00 a.m., Charlotte, North Carolina, on the same Business Day of the proposed Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e), may be given not later than 9:00 a.m., Charlotte, North Carolina time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the identity of the Borrower and the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be a Tranche A Term Borrowing, a Tranche B Term Borrowing, or a Revolving Borrowing;

(iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "**Interest Period**"; and

(vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender with a Commitment of the relevant Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. *Letters of Credit.* (a) Subject to the terms and conditions set forth herein, a Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Credit

NOT A CERTIFIED COPY

019963

MORGAN STANLEY CONFIDENTIAL 0007580

16div-025728

Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Borrower to, or entered into by a Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), a Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (at least three Business Days before the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed $200,000,000 and (ii) the total Revolving Credit Exposures shall not exceed the total Revolving Commitments.

(c) *Expiration Date.* Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is thirty Business Days prior to the Maturity Date for Revolving Loans.

(d) *Participations.* By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage (if any) of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage (if any)

NOT A CERTIFIED COPY

019964

MORGAN STANLEY CONFIDENTIAL 0007581

16div-025729

of each LC Disbursement made by the Issuing Bank and not reimbursed on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) *Reimbursement.* If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, Charlotte, North Carolina time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Charlotte, North Carolina time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, Charlotte, North Carolina time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., Charlotte, North Carolina time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than $500,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender with a Revolving Commitment of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each such Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing

NOT A CERTIFIED COPY

019965

MORGAN STANLEY CONFIDENTIAL 0007582

16div-025730

Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) *Obligations Absolute.* Each Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement or any other Loan Document, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders or the Issuing Bank, or any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or

NOT A CERTIFIED COPY

996610

MORGAN STANLEY CONFIDENTIAL 0007583

16div-025731

refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) *Disbursement Procedures.* The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) *Interim Interest.* If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) *Replacement of the Issuing Bank.* The Issuing Bank may be replaced at any time by written agreement among the Parent, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Parent shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "**Issuing Bank**" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

NOT A CERTIFIED COPY

019967

MORGAN STANLEY CONFIDENTIAL 0007584

16div-025732

(j) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that a Borrower receives notice from the Administrative Agent or the Lenders with LC Exposure representing at least 51% of the total LC Exposure demanding the deposit of cash collateral pursuant to this paragraph, such Borrower shall deposit in the LC Reimbursement Account established pursuant to Section 6(C) of the Parent Pledge and Security Agreement an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in clause (h) or (i) of Article 7. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing at least 51% of the total LC Exposure), be applied to satisfy other obligations of the Borrowers under this Agreement. If a Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to such Borrower within three Business Days after all Events of Default have been cured or waived.

(k) *Existing CoreStates Letters of Credit.* The parties hereto agree that, as of May 15, 1998 (or such later date on which the merger of CoreStates Bank, N.A. and First Union National Bank is consummated), the Existing CoreStates Letters of Credit shall be deemed to have been issued pursuant to this Agreement and all provisions hereof shall apply thereto as if such CoreStates Letters of Credit were issued hereunder on such date.

SECTION 2.05. *Funding of Borrowings.* (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Charlotte, North Carolina time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent and designated by the Borrower in the Notice of Account Designation; *provided* that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(e) shall be remitted by the Administrative Agent to the Issuing Bank.

NOT A CERTIFIED COPY

019968

MORGAN STANLEY CONFIDENTIAL 0007585

16div-025733

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing (if any), the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.06. *Interest Elections.* (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

NOT A CERTIFIED COPY

699610

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "**Interest Period**".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Parent, then, so long as an Event of Default is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.07. *Termination and Reduction of Commitments*. (a) Unless previously terminated, the Tranche A Commitments shall terminate on the last day of the Tranche A Availability Period; the Tranche B Commitments shall terminate on the Tranche B Effective Date simultaneous with the funding of the Loans made under the Tranche B Commitments on the Tranche B Effective Date;

NOT A CERTIFIED COPY

019970

MORGAN STANLEY CONFIDENTIAL 0007587

16div-025735

and the Revolving Commitments shall terminate on the last day of the Revolving Credit Availability Period.

(b) (i) The Parent may at any time terminate, or from time to time reduce, the Commitments of any class; *provided* that (A) each reduction of the Commitments shall be in an amount that is an integral multiple of $500,000 and not less than $1,000,000 and (B) the Parent shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.10, the total Revolving Credit Exposures would exceed the total Revolving Commitments.

(ii) The Tranche A Commitments shall be reduced by (A) $180,000,000 if the First Alert Acquisition is not consummated on or prior to the last day of the Tranche A Availability Period and (B) $275,000,000 if the Signature Acquisition is not consummated on or prior to the last day of the Tranche A Availability Period.

(c) The Parent shall notify the Administrative Agent of any election to terminate or reduce the Commitments of any Class under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders having Commitments of the affected Class of the contents thereof. Each notice delivered by the Parent pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitments delivered by the Parent may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Parent (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.08. *Maturity of Loans; Evidence of Debt.* (a) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender to such Borrower on the relevant Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

NOT A CERTIFIED COPY

019971

MORGAN STANLEY CONFIDENTIAL 0007588

16div-025736

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, each Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.09. *Mandatory Repayment and Prepayment of Loans and Reduction of Commitments.* (a) *Repayment.* Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender having Term Loans, on each date set forth below, an aggregate principal amount of such Loans made to such Borrower so that the aggregate principal amount of all Loans being repaid by all of the Borrowers on such date is equal to the amount set forth below for such Class opposite such date (as such amount may be reduced pursuant to paragraph (b)(iv) below or Section 2.10(c)):

Date	Tranche A Term Loans Amount	Tranche B Term Loans Amount
September 30, 1998	$ 0	$ 2,500,000
March 31, 1999	$ 0	$ 2,500,000
September 30, 1999	$ 75,000,000	$ 2,500,000

NOT A CERTIFIED COPY

019972

MORGAN STANLEY CONFIDENTIAL 0007589

16div-025737

Date	Tranche A Term Loans Amount	Tranche B Term Loans Amount
March 31, 2000	$ 75,000,000	$ 2,500,000
September 30, 2000	$ 75,000,000	$ 2,500,000
March 31, 2001	$ 75,000,000	$ 2,500,000
September 30, 2001	$ 75,000,000	$ 2,500,000
March 31, 2002	$ 75,000,000	$ 2,500,000
September 30, 2002	$ 75,000,000	$ 2,500,000
March 31, 2003	$ 75,000,000	$ 2,500,000
September 30, 2003	$ 75,000,000	$ 2,500,000
March 31, 2004	$ 75,000,000	$ 2,500,000
September 30, 2004	$ 75,000,000	$ 2,500,000
March 31, 2005	$ 75,000,000	$ 2,500,000
September 30, 2005	$ 0	$157,500,000
March 31, 2006	$ 0	$157,500,000
September 30, 2006	$ 0	$150,000,000

(b) *Prepayment and Reduction.* (i) In addition, the Parent shall prepay or cause a Subsidiary Borrower to prepay Term Loans (or the Term Commitments shall be reduced) as follows:

(x) on the date which the Parent or any of its Subsidiaries shall receive any Net Cash Proceeds with respect to (1) any Asset Sale made in any fiscal year, but solely if, and solely to the extent that, the aggregate Net Cash Proceeds from such Asset Sale, when combined with all other Asset Sales previously made during such fiscal year, exceeds $15,000,000 or (2) any Indebtedness Incurrence, the Parent shall prepay, or cause a Subsidiary Borrower to prepay, Term Loans (or, if Term Commitments are outstanding, the Term Commitments shall be reduced until the Term Commitments have been reduced to zero), in the aggregate, by an amount equal to the Reduction Percentage of such Net Cash Proceeds; *provided* that (A) if the Net Cash Proceeds are less than $5,000,000, such prepayment or reduction shall be made upon receipt of proceeds such that, together with all other such amounts not previously applied, aggregate Net Cash Proceeds are equal to at least $5,000,000; (B) the Parent or the Subsidiary Borrower receiving the Net Cash Proceeds shall not be required to apply to such prepayment or reduction up to $50,000,000 of Net Cash Proceeds of Asset Sales which would otherwise be required to be applied to such prepayment or reduction, to the extent such Net Cash Proceeds are reinvested within 365 days of such Asset Sales in productive assets of a kind used or usable in

NOT A CERTIFIED COPY

019973

the business of the Parent or such Subsidiary; and (C) such prepayment shall not be required with respect to Net Cash Proceeds from Asset Sales consisting of sales of accounts receivables by the Parent or any of its Subsidiaries, whether pursuant to the Existing Receivables Program or otherwise, to the extent that the aggregate principal amount to be recovered from the sales of such accounts receivables shall not exceed at any time outstanding $100,000,000.

(y) on or before the 95th day after the end of each fiscal year beginning with the fiscal year ending in 1998, the Parent shall prepay, or cause a Subsidiary Borrower to prepay, Term Loans by an amount equal to the Reduction Percentage of Excess Cash Flow for such fiscal year.

(ii) In addition, promptly following receipt by the Parent or any of its Subsidiaries of any Major Casualty Proceeds or Indemnity Proceeds, the Parent shall deposit in the Major Casualty and Indemnity Proceeds Account established pursuant to Section 6(A) of the Parent Pledge and Security Agreement an amount of cash equal to the amount of such Major Casualty Proceeds or Indemnity Proceeds, as the case may be. So long as no Default has occurred and is continuing, an amount equal to the aggregate amount of such cash proceeds which such Person has expended or committed to expend for the restoration, replacement or environmental remediation of the asset in respect of which such Major Casualty Proceeds payment was made or to remedy the event giving rise to such Indemnity Proceeds payment, shall be released by the Administrative Agent to the Parent; *provided* that if within 180 days of receipt of such payment such Person shall not have expended or committed to expend an equivalent amount for the restoration, replacement or environmental remediation of the asset in respect of which such Major Casualty Proceeds payment was made, or to remedy the event giving rise to such Indemnity Proceeds payment, the excess of the amount of such payment over the amount of such expenditures and commitments shall be applied to prepay the Term Loans (or, if Term Commitments are outstanding, reduce the Term Commitments until the Term Commitments have been reduced to zero) on such 180th day.

(iii) The Parent shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment or reduction under this paragraph not later than 11:00 a.m., Charlotte, North Carolina time, three Business Days before the date of prepayment or reduction, as the case may be (or, solely if such prepayment will be a prepayment of ABR Loans only, no later than 11:00 a.m., Charlotte, North Carolina time, one

NOT A CERTIFIED COPY

019974

MORGAN STANLEY CONFIDENTIAL 0007591

16div-025739

Business Day before the date of such prepayment). Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Each prepayment of Loans of any Class made pursuant to this Section shall be applied to such Borrowing or Borrowings of such Class as the Parent may designate in the notice of prepayment delivered with respect thereto (or, failing such designation, as determined by the Administrative Agent), and shall be applied to repay ratably the Loans of such Class of the several Lenders included in such Borrowing or Borrowings. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the affected Lenders of the contents thereof. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12 and shall be subject to the provisions of Section 2.15.

(iv) The amount of any prepayment of the Term Loans made pursuant to clauses (i) or (ii) of this paragraph shall be applied to reduce ratably the amount of each subsequent scheduled repayment of the Term Loans to be made by the Borrowers pursuant to paragraph (a) of this Section.

(c) *Option of Tranche B Lenders Not to Accept Prepayments.* (i) The Parent shall (x) at least one Business Day prior to any date (an "**Unscheduled Prepayment Date**") on which any prepayment of the Tranche B Term Loans (an "**Unscheduled Prepayment**"), other than a prepayment of such Loans in whole, would, but for the provisions of this paragraph (c), otherwise have been made pursuant to this Section or Section 2.10, deliver a notice conforming to the requirements set forth below (a "**Prepayment Notice**") to the Administrative Agent and (y) on or prior to such Unscheduled Prepayment Date, deposit in the Prepayment Account established pursuant to Section 6(D) of the Parent Pledge and Security Agreement an amount equal to the principal amount that would have been payable pursuant to this Section or Section 2.10 on such Unscheduled Prepayment Date in respect of such Unscheduled Prepayment. Such Unscheduled Prepayment shall not occur on such Unscheduled Prepayment Date but shall instead be deferred as hereinafter provided in this paragraph (c). Upon receipt of any Prepayment Notice, the Administrative Agent shall promptly notify each affected Lender of the contents hereof. Amounts on deposit in the Prepayment Account shall be deemed to reduce the aggregate principal amount of Loans outstanding as if applied to the repayment thereof, but only with respect to

NOT A CERTIFIED COPY

019975

MORGAN STANLEY CONFIDENTIAL 0007592

16div-025740

calculations made for purposes of determining compliance with the covenants set forth in Sections 6.12, 6.13, and 6.14.

(ii) Each Prepayment Notice shall be in writing, shall refer to this paragraph (c) and shall (w) set forth the amount of the Unscheduled Prepayment and the prepayment that the applicable Term Lender will be entitled to receive if it accepts prepayment of its Tranche B Term Loans in accordance with this subsection, (x) contain an offer to prepay on a specified date (each such date, a "**Deferred Unscheduled Prepayment Date**"), which shall not be less than 20 days or more than 25 days after the date of such Prepayment Notice, the Tranche B Term Loans of such Lender by an aggregate principal amount equal to such Lender's ratable share of such Unscheduled Prepayment (determined by reference to the outstanding principal amount of such Lender's Tranche B Term Loan as a proportion of the aggregate outstanding principal amount of the Tranche B Term Loans of all of the Lenders), (y) request such Lender to notify the Parent and the Administrative Agent in writing, no later than the fifth Business Day prior to the Deferred Unscheduled Prepayment Date, of such Lender's acceptance or rejection (in each case, in whole and not in part) of such offer of prepayment and (z) inform such Lender that the failure by such Lender to reject such offer in writing on or before the fifth day prior to such Deferred Unscheduled Prepayment Date shall be deemed an acceptance of such prepayment offer. Each Prepayment Notice shall be given by telecopy, confirmed hand delivery or overnight courier service, in each case addressed to the Administrative Agent and each affected Lender as provided in Section 10.01.

(iii) On each Deferred Unscheduled Prepayment Date, the Administrative Agent shall withdraw from the Prepayment Account the aggregate amount required to prepay the Tranche B Term Loans of each of the Lenders that shall have accepted (or been deemed to have accepted) prepayment in accordance with the related Prepayment Notice (each, an "**Accepting Lender**") and shall cause such amount to be applied to prepay the outstanding Tranche B Term Loans of the Accepting Lenders.

(iv) Any amount remaining in the Prepayment Account on any Deferred Unscheduled Prepayment Date after giving effect to the prepayments required by clause (iii) above (exclusive of any interest or profits with respect to amounts held in the Prepayment Account) shall be withdrawn and applied by the Administrative Agent (x) to prepay the principal of the then outstanding Tranche A Term Loans ratably in proportion to their then outstanding principal amounts, and/or (y) after all Term Loans have been repaid, or all Tranche B Lenders having Tranche B

NOT A CERTIFIED COPY

019976

MORGAN STANLEY CONFIDENTIAL 0007593

16div-025741

Term Loans outstanding have declined to accept prepayments, to reduce the Commitments, all in accordance with paragraph (b) above or Section 2.10, as applicable.

SECTION 2.10. *Optional Prepayment of Loans*. (a) Each Borrower shall have the right at any time and from time to time to prepay any Borrowing of any Class in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) A Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

(c) Each prepayment of the Term Loans made pursuant to this Section shall be allocated pro rata on the basis of principal amount among the then outstanding Tranche A Term Loans and Tranche B Term Loans. The amount of any prepayment of the Term Loans made by a Borrower pursuant to this Section shall be applied to reduce ratably the amount of each subsequent scheduled repayment of the Term Loans in order of maturity to be made by the Borrowers pursuant to Section 2.09(a).

SECTION 2.11. *Fees*. (a) The Parent agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue (i) during the period from and including the Effective Date to but excluding the first day of the initial Performance Period, at the rate of .375% per annum and (ii) during the period from and including the first day of the initial Performance Period to but excluding the date on which the last Commitment terminates, at the Applicable Rate, in each case on the daily aggregate unused amount of the

NOT A CERTIFIED COPY

019977

Commitments of such Lender; *provided* that, if such Lender continues to have any Revolving Credit Exposure after its Revolving Commitment terminates, then such commitment fee shall continue to accrue on the daily amount of such Lender's Revolving Credit Exposure from and including the date on which its Revolving Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Credit Exposure. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the relevant Commitments terminate, commencing on the first such date to occur after the date hereof; *provided* that any commitment fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Parent agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue (x) during the period from and including the Effective Date to but excluding the first day of the initial Performance Period, at the rate of 1.25% per annum and (y) during the period from and including the first day of the initial Performance Period to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, at the Applicable Rate, in each case on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of ¼% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued participation fees and fronting fees shall be payable on the last day of March, June, September and December of each year and on the later of the date on which the Revolving Commitments terminate and the date on which the Lenders cease to have any LC Exposure, commencing on the first such date to occur after the Effective Date; *provided* that any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

NOT A CERTIFIED COPY

019978

MORGAN STANLEY CONFIDENTIAL 0007595

16div-025743

(c) The Parent agrees to pay to each Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Parent and such Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to each of the other Agents and the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the relevant Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.12. *Interest.* (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus (i) for each day during the period from and including the Effective Date to but excluding the first day of the initial Performance Period, the rate of .25% per annum (with respect to Revolving Loans and Tranche A Term Loans) or .75% per annum (with respect to Tranche B Term Loans) and (ii) thereafter, the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus (i) for each day during the period from and including the Effective Date to but excluding the first day of the initial Performance Period, the rate of 1.50% per annum (with respect to Revolving Loans and Tranche A Term Loans) or 2.00% per annum (with respect to Tranche B Term Loans) and (ii) thereafter, the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Revolving Credit Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor,

NOT A CERTIFIED COPY

019979

MORGAN STANLEY CONFIDENTIAL 0007596

16div-025744

accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. *Alternate Rate of Interest.* If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Parent and the Lenders by telephone or telecopy as promptly as practicable thereafter and. until the Administrative Agent notifies the Parent and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.14. *Increased Costs.* (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or

NOT A CERTIFIED COPY

019980

Continued 10/16

MORGAN STANLEY CONFIDENTIAL 0007597

16div-025745

Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivabie by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Parent will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of the Loan Documents or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Parent will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Parent shall be conclusive absent manifest error. The Parent shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Parent shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Parent of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim

NOT A CERTIFIED COPY

019981

compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15. *Break Funding Payments.* In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by a Borrower pursuant to Section 2.18, then, in any such event, the Parent shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Parent and shall be conclusive absent manifest error. The Parent shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.16. *Taxes.* (a) Any and all payments by or on account of any obligation of any Borrower under the Loan Documents shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that if any Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

NOT A CERTIFIED COPY

019982

MORGAN STANLEY CONFIDENTIAL 0007599

16div-025747

(b) In addition, each Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of such Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to such Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by such Borrower as will permit such payments to be made without withholding or at a reduced rate.

SECTION 2.17. *Payments Generally; Pro Rata Treatment; Sharing of Set-offs.* (a) Each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.14, 2.15 or 2.16, or otherwise) prior to 12:00 noon, Charlotte, North Carolina time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at Charlotte, North Carolina,

NOT A CERTIFIED COPY

019983

except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans of any Class or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class or participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender with respect to its Loans of the relevant Class or participations in LC Disbursements and accrued interest thereon, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of the relevant Class and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to a Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under

NOT A CERTIFIED COPY

019984

MORGAN STANLEY CONFIDENTIAL 0007601

16div-025749

applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(d) or 2.04(e), 2.05(b) or 2.17(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.18. *Mitigation Obligations; Replacement of Lenders.* (a) If any Lender requests compensation under Section 2.14, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16 as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14, or if any Borrower is required to pay any additional amount to any Lender or any

NOT A CERTIFIED COPY

019985

MORGAN STANLEY CONFIDENTIAL 0007602

16div-025750

Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender defaults in its obligation to fund Loans hereunder, then such Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) such Borrower or the Parent shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or such Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling a Borrower to require such assignment and delegation cease to apply.

SECTION 2.19. *Subsidiary Borrowings*. Subject to the prior or concurrent satisfaction of each of the following conditions, any Eligible Subsidiary may be designated by the Parent as a Subsidiary Borrower hereunder following the acquisition of Control of such Eligible Subsidiary by the Parent, entitled to the rights and subject to the obligations incident thereto:

(a) The Administrative Agent (or its counsel) shall have received from the Parent and such Subsidiary Borrower a counterpart of a Subsidiary Borrowing Agreement signed on behalf of such party or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page) that such party has signed a counterpart thereof.

(b) The Administrative Agent (or its counsel) shall have received from such Subsidiary Borrower a counterpart of a Subsidiary Borrower Pledge and Security Agreement signed on behalf of such party or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page) that such party has signed a counterpart thereof.

NOT A CERTIFIED COPY

019986

(c) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the date that such Borrowing Subsidiary is making its Initial Borrowing) of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Subsidiary Borrower, substantially in the form of Exhibit I, and of Davis Polk & Wardwell, special counsel for the Agents, substantially in the form of Exhibit J, and each covering such other matters relating to the Obligors, the Loan Documents or the Transactions as the Required Lenders shall reasonably request.

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence, good standing and solvency of such Subsidiary Borrower, the authorization of the Transactions and any other legal matters relating to any of the foregoing, all in form and substance satisfactory to the Administrative Agent and its counsel.

SECTION 2.20. *Competitive Bid Amendment.* As promptly as practicable following (i) the date on which the Parent's long-term Indebtedness is assigned an investment grade rating by Standard & Poor's Rating Group or Moody's Investor Service Inc. or (ii) if the Parent's long-term Indebtedness is not rated, the date on which the Parent delivers financial statements pursuant to Section 5.01 demonstrating that the Leverage Ratio for the immediately preceding four fiscal quarters is equal to or less than 2.0 to 1, this Agreement shall be amended in a manner reasonably satisfactory to the Parent and the Required Lenders to provide that Loans may be made to the Parent bearing interest at a rate based on competitive bids by the Lenders.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Each of the Parent and each Subsidiary Borrower (to the extent applicable to such Subsidiary Borrower) represents and warrants to the Lenders that:

SECTION 3.01. *Organization; Powers.* (a) Each of the Obligors and its Material Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required. Schedule 3.01(a) identifies each Material Subsidiary organized under the laws of the United States of America or any State thereof.

NOT A CERTIFIED COPY

019987

MORGAN STANLEY CONFIDENTIAL 0007604

16div-025752

(b) Schedule 3.01(b) lists each Material Subsidiary organized under the laws of any jurisdiction outside of the United States of America.

SECTION 3.02. *Authorization; Enforceability.* The Transactions are within each Obligor's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. Each Loan Document has been duly executed and delivered by each Obligor party thereto and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. *Governmental Approvals; No Conflicts.* The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Parent or any of its Material Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Parent or any of its Material Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent or any of its Material Subsidiaries (other than as set forth in Schedule 3.03), and (d) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Material Subsidiaries (other than the Liens created by the Collateral Documents).

SECTION 3.04. *Financial Condition; No Material Adverse Change.* (a) The Parent has heretofore furnished to the Lenders (i) its consolidated statements of operations, stockholders equity and cash flows as of and for each of the fiscal years ended December 28, 1997, December 29, 1996 and December 31, 1995 and (ii) its consolidated balance sheets as of and for each of the fiscal years ended December 28, 1997 and December 29, 1996, reported on by Arthur Andersen LLP, independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP.

(b) Since December 28, 1997, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Parent and its Subsidiaries, taken as a whole.

(c) The Parent has heretofore furnished to the Lenders the pro forma balance sheet of the Parent as of December 28, 1997 certified by one of its

NOT A CERTIFIED COPY

019988

Financial Officers. Such balance sheet presents fairly, in all material respects, the financial position of the Parent and its Consolidated Subsidiaries as of December 28, 1997 in accordance with GAAP on a pro forma basis, adjusted to give effect (as if such events had occurred on such date) to (i) the consummation of the Acquisition, (ii) the Transactions contemplated to occur in connection therewith (including without limitation the making of Loans), (iii) the application of the proceeds therefrom as contemplated by the Acquisition Documents and the Loan Documents and (iv) the payment of all legal, accounting and other fees related thereto to the extent known at the time of the preparation of such balance sheet. As of the date of such balance sheet and the Effective Date, the Parent had and has no material liabilities, contingent or otherwise, including liabilities for taxes, long-term leases or forward or long-term commitments, which are not properly reflected on such balance sheet.

SECTION 3.05. *Properties*. (a) Each of the Parent and its Material Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Parent and its Material Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Parent and its Material Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. *Litigation and Environmental Matters*. (a) Other than as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Parent, threatened against or affecting the Parent or any of its Material Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, considering, among other things, reserves established by the Parent or its applicable Material Subsidiaries, or (ii) that involve the Loan Documents, or the Transactions, the Acquisition Documents or the Acquisition.

(b) Except as set forth on Schedule 3.06, neither the Parent nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability

NOT A CERTIFIED COPY

019989

or (iv) knows of any basis for any Environmental Liability which, in each case, could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, considering, among other things, reserves established by the Parent or its applicable Material Subsidiaries.

(c) Since the date of this Agreement, there has been no change in the status of the matters disclosed on Schedule 3.06 that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. *Compliance with Laws and Agreements*. Each of the Parent and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. *Investment and Holding Company Status*. Neither the Parent nor any of its Subsidiaries is (a) an "**investment company**" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "**holding company**" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.09. *Taxes*. Each of the Parent and its Material Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which the Parent or such Subsidiary, as applicable, has set aside on its books adequate reserves.

SECTION 3.10. *ERISA*. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $25,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $25,000,000 the fair market value of the assets of all such underfunded Plans.

NOT A CERTIFIED COPY

019990

SECTION 3.11. *Disclosure*. The Parent has disclosed to the Lenders all material agreements, instruments and corporate or other restrictions to which it, any of its Material Subsidiaries or any of Coleman, First Alert, Signature or any Subsidiary of Coleman, First Alert or Signature is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information (taken as a whole) furnished by or on behalf of any Obligor to the Administrative Agent or any Lender in connection with the negotiation of the Loan Documents or delivered thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Parent represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. *Guarantors*. The Subsidiary Guarantors are all of the Material Subsidiaries (other than Subsidiaries organized under the laws of any jurisdiction outside the United States of America), and each Subsidiary Guarantor is a wholly-owned Subsidiary.

SECTION 3.13. *Collateral Documents*. Each of the representations and warranties made by the Obligors in the Collateral Documents is true and correct.

SECTION 3.14. *Acquisition Documents*. As of each of the Effective Date, the Tranche A Effective Date and the Tranche B Effective Date, each of the representations and warranties made in the Acquisition Documents by the Parent is true and correct in all material respects.

SECTION 3.15. *Solvency*. As of each of the Effective Date, the Tranche A Effective Date and the Tranche B Effective Date, after giving effect to the transactions contemplated hereby to occur on such date: (i) the aggregate fair market value of the assets of each of the Parent and the other Obligors will exceed its liabilities (including contingent, subordinated, unmatured and unliquidated liabilities), (ii) each of the Parent and the other Obligors will be able to pay its debts as they mature and (iii) each of the Parent and the other Obligors will not have unreasonably small capital for the business in which it is engaged.

SECTION 3.16. *Outstanding Indebtedness*. Schedule 3.16 identifies all outstanding Indebtedness (other than intercompany Indebtedness), as of the Effective Date, of any of the Parent, CLN, Coleman, First Alert or Signature or any of their respective subsidiaries.

NOT A CERTIFIED COPY

019991

MORGAN STANLEY CONFIDENTIAL 0007608

16div-025756

ARTICLE 4

CONDITIONS

SECTION 4.01. *Effective Date*. The Effective Date hereunder shall occur on the first date on which each of the conditions set forth in Schedule 4.01 is satisfied (or waived in accordance with Section 10.02), it being understood that with respect to the conditions set forth in clauses (e) and (h) of Schedule 4.01, each Lender shall be deemed to have determined that such conditions shall have been satisfied unless the Administrative Agent shall have received notice from such Lender prior to the Effective Date that such Lender does not consider such conditions to have been satisfied (or, solely with respect to the conditions set forth in clause (e), the Lenders shall not have received any documents referred to therein).

The Administrative Agent shall notify the Parent and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the conditions set forth in Schedule 4.01 is satisfied (or waived pursuant to Section 10.02) at or prior to 3:00 p.m., New York City time, on April 15, 1998 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 4.02. *Tranche A Effective Date*. The Tranche A Effective Date shall occur hereunder on the first date on which each of the conditions set forth in Schedule 4.02 is satisfied (or waived in accordance with Section 10.02). The Administrative Agent shall notify the Parent and the Lenders of the Tranche A Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Tranche A Term Loans shall not become effective unless each of the conditions set forth in Schedule 4.02 is satisfied (or waived in accordance with Section 10.02) at or prior to 3:00 p.m., New York City time, on June 30, 1998 (and, in the event such conditions are not so satisfied or waived, the Tranche A Commitments shall terminate at such time).

SECTION 4.03. *Tranche B Effective Date*. The Tranche B Effective Date shall occur hereunder on the first date on which each of the conditions set forth in Schedule 4.03 is satisfied (or waived in accordance with Section 10.02). The Administrative Agent shall notify the Parent and the Lenders of the Tranche B Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Tranche B Term Loans shall not become effective unless each of the conditions set forth in Schedule 4.03 is satisfied (or waived in accordance with Section 10.02) at or prior to 3:00 p.m.,

NOT A CERTIFIED COPY

019992

MORGAN STANLEY CONFIDENTIAL 0007609

16div-025757

New York City time, May 15, 1998 (and, in the event such conditions are not so satisfied or waived, the Tranche B Commitments shall terminate at such time).

SECTION 4.04. *Each Credit Event.* The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The Effective Date shall have occurred and, in the case of any Tranche A Term Loans, the Tranche A Effective Date shall have occurred, and, in the case of any Tranche B Term Loans, the Tranche B Effective Date shall have occurred.

(b) The representations and warranties of the Obligors set forth in the Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Parent and each Subsidiary Borrower on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section.

ARTICLE 5
AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees and other amounts payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Parent covenants and agrees with the Lenders that:

SECTION 5.01. *Financial Statements and Other Information.* The Parent will furnish to the Administrative Agent:

(a) within 90 days after the end of each fiscal year of the Parent, its audited consolidated balance sheet and related statements of operations,

NOT A CERTIFIED COPY

019993

MORGAN STANLEY CONFIDENTIAL 0007610

16div-025758

stockholders' equity and cash flows as of the end of and for such year (which may be on Form 10-K, so long as the Parent is subject to periodic reporting requirements of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")), setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Arthur Andersen LLP or other independent public accountants of recognized national standing (without a "**going concern**" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year (which may be on Form 10-Q, so long as the Parent is subject to the periodic reporting requirements of the Exchange Act), setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Parent and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Sections 6.01 and 6.11 through 6.15, inclusive and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007611

16div-025759

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Parent or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Parent to its shareholders generally, as the case may be;

(f) prior to the end of each fiscal year of the Parent, copies of an operating plan and financial forecast for the next fiscal year, by the management of the Parent for internal use;

(g) promptly following the delivery thereof to the Parent or its board of directors or management, a copy of any management letter or written report by independent public accountants with respect to the policies and procedures of the Parent and its Subsidiaries that notes a "reportable condition"; and

(h) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Parent or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.02. *Notices of Material Events*. The Parent will furnish to the Administrative Agent prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Parent or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Parent and its Subsidiaries in an aggregate amount exceeding $25,000,000; and

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Parent setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

NOT A CERTIFIED COPY

019995

MORGAN STANLEY CONFIDENTIAL 0007612

16div-025760

SECTION 5.03. *Existence; Conduct of Business.* The Parent will, and will cause each of its Material Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. *Payment of Obligations.* The Parent will, and will cause each of its Material Subsidiaries to, pay its obligations, including liabilities for Taxes, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Parent or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. *Maintenance of Properties; Insurance.* The Parent will, and will cause each of its Material Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies or through programs of self-insurance (including levels of self-insured retention), insurance in such amounts and against such risks and, in the case of self-insurance, at such levels and in such amounts (including without limitation comprehensive general liability insurance, workers compensation insurance, product liability insurance, business interruption insurance and environmental insurance) as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06. *Books and Records; Inspection Rights.* The Parent will, and will cause each of its Material Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Parent will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 5.07. *Compliance with Laws and Contracts.* (a) The Parent will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except

NOT A CERTIFIED COPY

019996

MORGAN STANLEY CONFIDENTIAL 0007613

16div-025761

where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) The Parent will, and will cause each of its Material Subsidiaries to, comply with all provisions of all contracts to which the Parent or such Subsidiary, as the case may be, is a party, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. *Use of Proceeds and Letters of Credit.* The proceeds of the Revolving Loans will be used only (i) to consummate the Acquisition, (ii) to repay certain of the Refinanced Indebtedness, (iii) to pay related fees and expenses, (iv) to finance Consolidated Capital Expenditures and Permitted Acquisitions permitted hereunder, and (v) for general corporate purposes (including without limitation the making of intercompany loans to Subsidiaries, the proceeds of which loans will be used by such Subsidiaries for general corporate purposes). The proceeds of the Tranche A Term Loans will be used to repay certain of the Refinanced Indebtedness. The proceeds of the Tranche B Term Loans will be used (i) to consummate the Acquisition and (ii) to repay certain of the Refinanced Indebtedness. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations G, U and X. Letters of Credit will be issued only to support obligations of the Parent and its Subsidiaries incurred in the ordinary course of business and will not be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations G, U and X. No part of the proceeds of any Loan will be used, whether directly or indirectly, in connection with the initiation or participation by the Parent or any of its Subsidiaries as a member of a "group" (as that term is used for the purposes of Section 13(d)(3) of the Exchange Act or the rules and regulations thereunder) or as a "**participant**" or a "**participant in a solicitation**" (as defined in Rule 14a-11 under the Exchange Act) in (i) a tender offer for the securities of any Person, if the board of directors (or similar body) of such Person recommends, in a Schedule 14D-9 filed under the Exchange Act or otherwise, that holders of securities of such Person not tender their securities pursuant to such tender offer or (ii) in any solicitation of any proxy, consent or authorization for the purpose of opposing the board of directors (or other similar body) of any Person.

SECTION 5.09. *Further Assurances.* (a) The Parent will, and will cause each Material Subsidiary to, at the Parent's sole cost and expense, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment and transfers as the Administrative Agent shall from time to time reasonably request, which may be necessary or desirable (in the reasonable judgment of the Administrative Agent or the Required Lenders)

NOT A CERTIFIED COPY

019997

MORGAN STANLEY CONFIDENTIAL 0007614

16div-025762

from time to time to assure, perfect, convey, assign and transfer to the Administrative Agent the property and rights conveyed or assigned pursuant to the Collateral Documents.

(b) The Parent will:

(i) cause (A) each Person (other than Coleman, First Alert or Signature) which becomes a Material Subsidiary (other than a Subsidiary organized under the laws of any jurisdiction outside of the United States) after the Effective Date and (B) each of Coleman, First Alert and Signature (in each case after the date on which such entity becomes a Wholly Owned Subsidiary) to become a party to the Subsidiary Guarantee as guarantor by executing the Subsidiary Guarantee or a supplement thereof in form and substance satisfactory to the Administrative Agent; and

(ii) pledge, or cause to be pledged, pursuant to the Parent Pledge and Security Agreement or the Subsidiary Pledge and Security Agreement (or another pledge agreement in form and substance satisfactory to the Administrative Agent) all of the capital stock or other equity interests (or, in the case of Material Subsidiaries organized under the laws of any jurisdiction outside of the United States, 66% of such capital stock or other equity interests) owned directly or indirectly by the Parent of (A) each Person (other than Coleman, First Alert and Signature) which becomes a Material Subsidiary after the Effective Date, (B) Coleman, First Alert and Signature, in each case after the date on which such entity becomes a Wholly Owned Subsidiary, and (C) any joint venture in which the Parent or any Subsidiary has an ownership interest.

The Parent shall cause each Person described in clause (i) or (ii) above to take such actions as may be necessary or desirable to effect the foregoing within 30 days after such Person becomes a Material Subsidiary or, in the case of Coleman, First Alert and Signature, a Wholly Owned Subsidiary, including without limitation causing such Person to (1) execute and deliver to the Administrative Agent such number of copies as the Administrative Agent may specify of such supplements and security and pledge agreements and other documents creating security interests and (2) deliver such certificates, evidences of corporate action or other documents as the Administrative Agent may reasonably request, all in form and substance satisfactory to the Administrative Agent, relating to the satisfaction of the Parent's obligations under this Section.

(c) The Parent will take all actions necessary to ensure that each of First Alert and Signature becomes a Wholly Owned Subsidiary on or before June 30,

NOT A CERTIFIED COPY

019998

MORGAN STANLEY CONFIDENTIAL 0007615

16div-025763

1998 and that Coleman becomes a Wholly Owned Subsidiary on or before August 15, 1998.

(d) Concurrently with any Person becoming party to the Subsidiary Guarantee, the Parent will cause such Person to deliver to the Administrative Agent a legal opinion of counsel substantially in the form of Exhibit K, and covering such other matters relating to the Subsidiary Guarantor, the Loan Documents or the Transactions as the Required Lenders shall reasonably request.

SECTION 5.10. *Approved Hedging Agreements*. Not later than 60 days after the Effective Date, the Parent shall have entered into and thereafter maintain in full force and effect Hedging Agreements providing for a fixed rate of interest for at least 50% of Consolidated Indebtedness and otherwise on terms and conditions satisfactory to the Agents.

SECTION 5.11. *Liens on Assets*. The Required Lenders shall have the right from time to time to require the Parent, pursuant to a written request from the Administrative Agent, to provide, or to cause any Subsidiary Guarantor to provide, Liens upon such assets as may be specified in such request to secure the obligations of the Parent and such Subsidiary Guarantor hereunder and under the Subsidiary Guaranty. Any such request shall be made by the Required Lenders in the good faith exercise of their discretion. Within 30 days after any such request, the Parent shall and shall cause the appropriate Subsidiary Guarantor of the Parent to, (i) execute and deliver to the Administrative Agent such number of copies as the Administrative Agent may specify of documents creating such Liens and ii) do all other things which may be necessary or which the Administrative Agent may reasonably request in order to confer upon and confirm to the Lenders the benefits of such security. Within 45 days after a request for security pursuant hereto, the Parent shall, and shall cause the appropriate Subsidiary Guarantor of the Parent to, deliver such legal opinions, certificates, evidences of corporate action or other documents as the Administrative Agent may reasonably request, all in form and substance satisfactory to the Administrative Agent, relating to the satisfaction of the Parent's obligations under this Section.

SECTION 5.12. *Repayment of Outstanding Indebtedness*. The Parent shall repay, or shall cause a Subsidiary Borrower to repay or defease, on or before June 15, 1998, each item of outstanding Indebtedness listed on Schedule 5.08.

SECTION 5.13. *Year 2000 Compatibility*. The Parent shall take all action necessary to ensure that the computer based systems of the Parent and its Material Subsidiaries are able to operate and effectively process data including dates on or after January 1, 2000. At the request of the Administrative Agent, the Parent shall

NOT A CERTIFIED COPY

019999

MORGAN STANLEY CONFIDENTIAL 0007616

16div-025764

provide assurance reasonably acceptable to the Administrative Agent of the year 2000 compatibility of the Parent and its Material Subsidiaries.

ARTICLE 6
NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees and other amounts payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all L.C Disbursements shall have been reimbursed, the Parent covenants and agrees with the Lenders that:

SECTION 6.01. *Indebtedness*. The Parent will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created hereunder;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and (except with respect to (i) the item of Indebtedness identified as the "Montey Contingent Debt", (ii) the Existing BANTSA Letter of Credit, (iii) the Existing CoreStates Letters of Credit and (iv) the item of Indebtedness identified as the CoreStates Bankers' Acceptances) extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(c) Indebtedness of the Parent to any Subsidiary and of any Subsidiary to the Parent or any other Subsidiary;

(d) Guarantees by the Parent of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Parent or any other Subsidiary;

(e) Indebtedness of the Parent or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; *provided* that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed $25,000,000 at any time outstanding;

NOT A CERTIFIED COPY

020000

MORGAN STANLEY CONFIDENTIAL 0007617

16div-025765

(f) Indebtedness of any Person that becomes a Subsidiary after the date hereof; *provided* that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed $25,000,000 at any time outstanding;

(g) Indebtedness of foreign Subsidiaries for borrowings in local currency in an amount not to exceed $40,000,000; and

(h) other unsecured Indebtedness in an aggregate principal amount not exceeding 5% of Consolidated Net Worth at any time outstanding.

SECTION 6.02. *Liens*. The Parent will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Parent or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; *provided* that (i) such Lien shall not apply to any other property or asset of the Parent or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Parent or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Parent or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Parent or any Subsidiary; *provided* that (i) such security interests secure

NOT A CERTIFIED COPY

020001

MORGAN STANLEY CONFIDENTIAL 0007618

Conf 10/6

16div-025766

Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 80% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Parent or any Subsidiary;

(e) any Lien on Margin Stock, if and to the extent the value of all Margin Stock owned by the Parent and its Subsidiaries exceeds 25% of the value of the total assets subject to this Section;

(f) Liens consisting of security interests in accounts receivable (and in property securing or otherwise supporting such accounts receivable) in connection with agreements for limited recourse sales by the Parent or any of its Subsidiaries for cash of such accounts receivable; and

(g) Liens arising under the Collateral Documents.

SECTION 6.03. *Fundamental Changes; Asset Sales.* (a) The Parent will not, and will not permit any Material Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets, or all or substantially all of the stock (other than Margin Stock that is disposed of for fair value) of any of its Material Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Material Subsidiary may merge into the Parent in a transaction in which the Parent is the surviving corporation, (ii) any Material Subsidiary may merge into any Material Subsidiary in a transaction in which the surviving entity is a Subsidiary Guarantor and (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Parent or to a Subsidiary Guarantor; *provided* that any such merger involving a Person that is not a Wholly Owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) The Parent will not, and will not permit any of its Material Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Parent and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto or to the sale and distribution of household consumer products.

NOT A CERTIFIED COPY

020020

(c) The Parent will not, and will not permit any of its Subsidiaries to, make any Asset Sale other than (i) Asset Sales consisting of sales of accounts receivable by the Parent or any of its Subsidiaries whether pursuant to the Existing Receivables Program or otherwise; *provided* that (x) the consideration received therefor shall be cash and (y) the aggregate principal amount to be received from the sales of such accounts receivable shall not exceed at any time outstanding $250,000,000 and (ii) other Asset Sales the fair market value of which, when combined with all other such Asset Sales previously made since the date of this Agreement in reliance on this clause (ii), does not exceed $400,000,000. The Parent will not, and will not permit any of its Subsidiaries to, make any Asset Sale unless at least 80% of the consideration received in connection therewith consists of cash payable at the closing thereof.

SECTION 6.04. *Investments, Loans, Advances, Guarantees and Acquisitions*. The Parent will not, and will not permit any of its Material Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (any of the foregoing, an "Investment"), except:

(a) Permitted Investments;

(b) investments by the Parent in the capital stock of, and capital contributions to, its Material Subsidiaries;

(c) loans or advances made by the Parent to any Subsidiary and made by any Subsidiary to the Parent or any other Subsidiary;

(d) Guarantees constituting Indebtedness permitted by Section 6.01;

(e) the Acquisition; and

(f) Permitted Acquisitions.

SECTION 6.05. *Hedging Agreements*. The Parent will not, and will not permit any of its Subsidiaries to, enter into any Hedging Agreement, other than Hedging Agreements entered into in the ordinary course of business to hedge or

NOT A CERTIFIED COPY

020003

MORGAN STANLEY CONFIDENTIAL 0007620

16div-025768

mitigate risks to which the Parent or any Subsidiary is exposed in the conduct of its business or the management of its liabilities.

SECTION 6.06. *Restricted Payments; Voluntary Payments.* (a) The Parent will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that, so long as no Default has occurred and is continuing, (i) the Parent may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock, (ii) the Parent may declare and pay dividends with respect to its common stock in cash in an aggregate amount not in excess of $15,000,000 with respect to any fiscal year of the Parent, (iii) Subsidiaries may declare and pay dividends ratably with respect to their capital stock, (iv) the Parent may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans or employment arrangements for management or employees of the Parent and its Subsidiaries, (v) the Parent may purchase common stock of the Parent from any employee of the Parent in connection with the termination of such employee's employment so long as the aggregate amount paid in respect of such purchases during the term of this Agreement does not exceed $10,000,000, (vi) the Parent may purchase shares of its common stock for consideration, not exceeding $10,000,000 in any fiscal year and (vii) so long as the Leverage Ratio at the last day of the most recently ended fiscal quarter is less than 2.75 to 1 (adjusted to give effect to the Restricted Payments referred to in this clause), the Parent may make Restricted Payments from Excess Cash Flow after the application of such funds pursuant to Section 2.09 (and to the extent such funds are not expended pursuant to Section 6.11).

(b) The Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, optionally redeem, retire, purchase, acquire, defease or otherwise make any payment other than required interest payments in respect of any Indebtedness which is subordinated in right of payment to the Indebtedness of the Parent or such Subsidiary (including, without limitation, the Subordinated Notes) under the Loan Documents; provided that, with respect to the purchase of Subordinated Notes at the option of any holder thereof, the Parent may pay the purchase price thereof with its common stock.

SECTION 6.07. *Transactions with Affiliates.* The Parent will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) to the extent otherwise permitted under this Agreement, but only if such transaction is in the ordinary course of business at prices and on terms and conditions not less favorable to the Parent or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the

NOT A CERTIFIED COPY

020004

MORGAN STANLEY CONFIDENTIAL 0007621

16div-025769

Parent and its Wholly Owned Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.06.

SECTION 6.08. *Restrictive Agreements*. The Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Parent or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or perform any of its obligations under Section 5.09, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Parent or any other Subsidiary or to Guarantee Indebtedness of the Parent or any other Subsidiary; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

SECTION 6.09. *Modification of Certain Documents*. Without the consent of the Required Lenders, the Parent will not, and will not permit any of its Subsidiaries to, (i) consent to or solicit or enter into any amendment or supplement to, or any waiver or other modification of, the Acquisition Documents which would impair materially the benefit to the Parent or any of its Subsidiaries of such agreement or arrangements or (ii) consent to or solicit or enter into any amendment or supplement to, or any waiver or other modification of, the certificate of incorporation or bylaws of the Parent or any of its Subsidiaries, or the Indenture or any other agreement or instrument governing the terms of the Subordinated Notes or of any other Indebtedness which by its terms is expressly subordinated in right of payment to the Loans and the reimbursement obligations with respect to LC Disbursements, which amendment, supplement, waiver or modification, as the case may be, could reasonably be expected to have an adverse effect on the rights of the Lenders or the Administrative Agent under the Loan Documents.

NOT A CERTIFIED COPY

020005

MORGAN STANLEY CONFIDENTIAL 0007622

16div-025770

SECTION 6.10. *Accounting Changes.* The Parent will not change its fiscal year from a fiscal year ending on the Sunday closest to December 31, other than to a fiscal year ending on December 31. The Parent will not adopt any non-mandatory change in GAAP or the application thereof without 30 days' prior notice to the Administrative Agent, accompanied, in the case of any material change, by evidence of concurrence in such change by the public accounting firm regularly employed by the Parent.

SECTION 6.11. *Capital Expenditures.* Consolidated Capital Expenditures for any fiscal year of the Parent will not exceed the sum of:

(i) the Base Amount for such fiscal year, plus

(ii) the amount of Excess Cash Flow not required to be applied to prepay Term Loans, or applied to make Restricted Payments, during such fiscal year, plus

(iii) an amount equal to the excess (if any) of (A) the aggregate amount of Consolidated Capital Expenditures permitted by clauses (i) and (ii) above for all fiscal years of the Parent ending prior to such fiscal year over (B) the aggregate amount of Consolidated Capital Expenditures made in such prior fiscal years.

For purposes of this Section, "**Base Amount**" means, (i) for each fiscal year of the Parent ending on or prior to December 31, 1999, 6%, and (ii) for each fiscal year thereafter, 5%, in each case of the Parent's consolidated gross sales for the previous fiscal year. For purposes of determining the Parent's consolidated gross sales for any fiscal year ending on or prior to December 31, 1998, the amount shall be based on pro forma calculations (giving effect to the consummation of the Acquisition) that are reasonably satisfactory to the Administrative Agent.

SECTION 6.12. *Leverage Ratio.* At the last day of any fiscal quarter of the Parent ending during any period set forth below, the Leverage Ratio will not exceed the ratio set forth below opposite such period:

Period	Ratio
Effective Date - September 30, 1998	5.75:1
October 1, 1998 - September 30, 1999	5.25:1
October 1, 1999 - September 30, 2000	4.00:1
October 1, 2000 - September 30, 2001	3.00:1
On or after October 1, 2001	2.00:1

NOT A CERTIFIED COPY

SECTION 6.13. *Interest Coverage Ratio.* At the last day of any fiscal quarter of the Parent ending during any period set forth below, the Interest Coverage Ratio will not be less than the ratio set forth below opposite such period:

Period	Ratio
Effective Date - September 30, 1998	2.5:1
October 1, 1998 - September 30, 1999	3.0:1
October 1, 1999 - September 30, 2000	4.0:1
October 1, 2000 - September 30, 2001	5.0:1
On or after October 1, 2001	6.0:1

SECTION 6.14. *Fixed Charge Coverage Ratio.* At the last day of any fiscal quarter of the Parent, the Fixed Charge Coverage Ratio will not be less than 1.05 to 1.

SECTION 6.15. *EBITDA Calculations.* (a) For purposes of determining compliance with the covenants set forth in Sections 6.12, 6.13 and 6.14 during any period ending on or prior to March 30, 1999, the calculation of Consolidated EBITDA shall include $60,000,000 in respect of the Parent's good faith estimate of the value of synergies associated with consummation of the Acquisition.

(b) For purposes of calculating compliance with the covenants set forth in Sections 6.12, 6.13 and 6.14 in the case of any four fiscal quarter period ended prior to April 1, 1999, each of Consolidated EBITDA, Consolidated Fixed Charges and Consolidated Interest Expense shall equal Consolidated EBITDA, Consolidated Fixed Charges and Consolidated Interest Expense, respectively, for the period beginning April 1, 1998 and ending on the last day of such four fiscal quarter period (an "**Annualized Period**"), multiplied by a fraction, the numerator of which is 12 and the denominator of which is the number of months included in such Annualized Period.

NOT A CERTIFIED COPY

ARTICLE 7
EVENTS OF DEFAULT

If any of the following events ("**Events of Default**") shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the

020007

MORGAN STANLEY CONFIDENTIAL 0007624

16div-025772

same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days, or any Borrower shall fail to pay any other amount (other than an amount referred to in clause (a) of this Article or interest on any Loan) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 15 days;

(c) any representation or warranty made or deemed made by or on behalf of any Obligor in or in connection with the Loan Documents or any amendment or modification thereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with the Loan Documents or any amendment or modification thereof or waiver hereunder, shall prove to have been materially incorrect when made or deemed made;

(d) the Parent shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to the Parent's existence) or 5.08, Article VI or Section 9.01 of this Agreement, or in provisions substantially similar to the foregoing set forth in any other Collateral Document to which the Parent is a party;

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in the Loan Documents (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Parent (which notice will be given at the request of any Lender);

(f) the Parent or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure constitutes a default under such Material Indebtedness;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

NOT A CERTIFIED COPY

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Parent or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Parent or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Parent or any Material Subsidiary shall become unable, admit in writing or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $25,000,000 shall be rendered against the Parent, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Parent or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Parent and its Subsidiaries in an aggregate amount exceeding $25,000,000 during the term of this Agreement;

(m) a Change in Control shall occur;

(n) any Lien created by any of the Collateral Documents shall at any time fail to constitute a valid and (to the extent required by the Collateral

NOT A CERTIFIED COPY

Documents) perfected first priority Lien on the Collateral securing the obligations purported to be secured thereby, or any party shall so assert in writing; or

(o) the Subsidiary Guarantee shall at any time fail to constitute a valid and binding agreement of each Subsidiary Guarantor, or any party shall so assert in writing;

then, and in every such event (other than an event with respect to any Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Parent, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of each Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower; and in case of any event with respect to any Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of each Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower.

ARTICLE 8
THE ADMINISTRATIVE AGENT

SECTION 8.01. *Appointment, Powers and Immunities.* Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

(a) The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally

NOT A CERTIFIED COPY

020010

MORGAN STANLEY CONFIDENTIAL 0007627

16div-025775

engage in any kind of business with the Parent or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

(b) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02), and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Parent or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02) or in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by a Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with the Loan Documents, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth therein, (iv) the validity, enforceability, effectiveness or genuineness of the Loan Documents or any other agreement, instrument or document, (v) the existence or the value of any of the Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein or in any other Loan Document, other than to confirm receipt of items expressly required to be delivered to, and make determinations expressly required to be made by, the Administrative Agent.

SECTION 8.02. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent

NOT A CERTIFIED COPY

020011

MORGAN STANLEY CONFIDENTIAL 0007628

16div-025776

may consult with legal counsel (who may be counsel for any Obligor), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.03. *Appointment of Sub-agents*. The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.04. *Successor Administrative Agents*. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Parent. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Parent, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a bank with an office in the United States, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by any Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between such Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 10.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

SECTION 8.05. *Non-reliance on Administrative Agent and Other Lenders*. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and

NOT A CERTIFIED COPY

020012

decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon the Loan Documents, any related agreement or any document furnished thereunder.

SECTION 8.06. *Other Agents*. Neither Morgan Stanley Senior Funding, Inc. nor Bank of America National Trust and Savings Association shall have any responsibility, obligation or liability under the Loan Documents in their respective capacities as Syndication Agent and Documentation Agent.

ARTICLE 9
GUARANTY

SECTION 9.01. *The Guaranty*. The Parent hereby unconditionally guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the principal of and interest on each Loan made to any Subsidiary Borrower pursuant to this Agreement, and the full and punctual payment of all other amounts payable by any Subsidiary Borrower under this Agreement. Upon failure by any Subsidiary Borrower to pay punctually any such amount, the Parent shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement.

SECTION 9.02. *Guaranty Unconditional*. The obligations of the Parent hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of any Subsidiary Borrower under this Agreement, by operation of law or otherwise;

(b) any modification or amendment of or supplement to this Agreement;

(c) any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of any Subsidiary Borrower under this Agreement;

(d) any change in the corporate existence, structure or ownership of any Subsidiary Borrower, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Subsidiary Borrower or its assets or any resulting

NOT A CERTIFIED COPY

020013

release or discharge of any obligation of any Subsidiary Borrower contained in this Agreement;

(e) the existence of any claim, set-off or other rights which the Parent may have at any time against any Subsidiary Borrower, any Agent, any Lender, the Issuing Bank or any other Person, whether in connection with this Agreement or any unrelated transactions, *provided* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(f) any invalidity or unenforceability relating to or against any Subsidiary Borrower for any reason of this Agreement, or any provision of applicable law or regulation purporting to prohibit the payment by any Subsidiary Borrower of the principal of or interest on any Loan or any other amount payable by any Subsidiary Borrower under this Agreement; or

(g) any other act or omission to act or delay of any kind by any Subsidiary Borrower, any Agent, any Lender, the Issuing Bank or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to the Parent's obligations hereunder.

SECTION 9.03. *Discharge Only upon Payment in Full; Reinstatement In Certain Circumstances*. The Parent's obligations hereunder shall remain in full force and effect until the principal of and interest on the Loans and all other amounts payable by each Subsidiary Borrower under this Agreement shall have been paid in full or assumed by the Parent pursuant to an instrument acceptable to the Administrative Agent. If at any time any payment of the principal of or interest on any Loan or any other amount payable by any Subsidiary Borrower under this Agreement is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of such Subsidiary Borrower or otherwise, the Parent's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

SECTION 9.04. *Waiver by the Parent*. The Parent irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Subsidiary Borrower or any other Person.

SECTION 9.05. *Subrogation*. Upon making full payment with respect to any obligation of any Subsidiary Borrower hereunder, the Parent shall be subrogated to the rights of the payee against such Subsidiary Borrower with respect to such obligation; *provided* that the Parent shall not enforce any payment by way of subrogation so long as (i) any Lender has any Commitment hereunder

NOT A CERTIFIED COPY

020014

or (ii) any amount payable by such any Subsidiary Borrower hereunder remains unpaid.

SECTION 9.06. *Stay of Acceleration.* If acceleration of the time for payment of any amount payable by any Subsidiary Borrower under this Agreement is stayed upon the insolvency, bankruptcy or reorganization of any Subsidiary Borrower, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable by the Parent hereunder forthwith on demand by the Administrative Agent made at the request of the Required Lenders.

ARTICLE 10
MISCELLANEOUS

SECTION 10.01. *Notices.* Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to a Borrower, to it at Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, FL 33445, Attention of Treasurer (Telecopy No. 561-243-2027]);

(b) if to the Administrative Agent, to First Union National Bank, 301 South College Street, One First Union Center TW-10, Charlotte, NC 28288-0608, Attention of Tom Molitor (Telecopy No. (704) 374-3300);

(c) if to the Issuing Bank, to it at First Union National Bank, 301 South College Street, One First Union Center TW-10, Charlotte, NC 28288-0608, Attention of Tom Molitor (Telecopy No. (704) 374-3300); and

(d) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

NOT A CERTIFIED COPY

020015

MORGAN STANLEY CONFIDENTIAL 0007632

16div-025780

SECTION 10.02. *Waivers; Amendments.* (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Parent and the Required Lenders or by the Parent and the Administrative Agent with the consent of the Required Lenders; *provided* that no such agreement shall

(i) unless signed by all the Lenders with a Commitment of a Class, increase or decrease the Commitments of such Class (except for a ratable decrease in all the Commitments of such Class), or postpone the date fixed for the scheduled termination of any Commitment of such Class;

(ii) unless signed by all Lenders holding Loans of any Class, reduce the principal of or (except as expressly provided in the definition of "Applicable Leverage Ratio") rate of interest on any Loans of, or fees with respect to, such Class, postpone the date fixed for any scheduled payment of such fees or the principal of or interest on any such Loans, or decrease the aggregate amount by which such Loans are required to be repaid on any date scheduled pursuant to Section 2.09(a) or postpone any date for such repayment;

(iii) unless signed by all Lenders with Revolving Commitments, reduce the amount of any LC Disbursement or of any interest thereon or any fees payable with respect to the Letters of Credit hereunder, postpone the date fixed for any payment of any LC Disbursement or any interest

NOT A CERTIFIED COPY

020016

MORGAN STANLEY CONFIDENTIAL 0007633

16div-025781

thereon or any fees payable with respect to the Letters of Credit hereunder or (except as expressly provided in Section 2.04) the expiry date of any Letter of Credit;

(iv) unless signed by all the Lenders, change any of the provisions of this Section or the definition of "**Required Lenders**" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; or

(v) unless signed by all the Lenders, change Section 2.17(b) or 2.17(c) in a manner that would alter the pro rata sharing of payments required thereby; and

provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Bank hereunder without the prior written consent of the Administrative Agent or the Issuing Bank, as the case may be.

(c) Neither any Collateral Document nor the Subsidiary Guarantee nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Obligors party thereto and the Administrative Agent with the consent of the number or percentage of Lenders set forth therein.

SECTION 10.03. *Expenses; Indemnity; Damage Waiver.* (a) The Parent shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

NOT A CERTIFIED COPY

020017

MORGAN STANLEY CONFIDENTIAL 0007634

16div-025782

(b) The Parent shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Parent or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) To the extent that the Parent fails to pay any amount required to be paid by it to the Administrative Agent or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Bank in its capacity as such.

(d) To the extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Loan Documents or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

NOT A CERTIFIED COPY

020018

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 10.04. *Successors and Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that a Borrower may not assign or otherwise transfer any of its rights or obligations hereunder to any Person other than the Parent without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment of any Class and the Loans of such Class and, if applicable, the related participations in LC Disbursements and Letters of Credit); *provided* that (i) except in the case of an assignment to a Lender or an Affiliate of a Lender, the Administrative Agent (and, in the case of an assignment of all or a portion of a Revolving Commitment or any Lender's obligations in respect of its LC Exposure, the Issuing Bank and, after the Agents have notified the Parent that primary syndication has been completed, the Parent) must give prior written consent to such assignment (which consent shall not be unreasonably withheld), (ii) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitments, the amount of the Commitments of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Parent and the Administrative Agent otherwise consent, (iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Commitment or Loans (and, if applicable, the related participations in LC Disbursements and Letters of Credit) of the relevant Class, (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,000 (which shall be reduced to $1,500 in the case of an assignment to another Lender, and shall not be payable during primary syndication or in the case of an assignment to an Affiliate of the assigning

NOT A CERTIFIED COPY

020019

Lender), and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and *provided further* that any consent of the Parent otherwise required under this paragraph shall not be required if an Event of Default under clause (h) or (i) of Article VII has occurred and is continuing. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 10.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section.

(c) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and each Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph(b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

NOT A CERTIFIED COPY

020020

(e) Any Lender may, without the consent of any Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment of any Class and the Loans of such Class and, if applicable, the related participations in LC Disbursements and Letters of Credit); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (f) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph(b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.14 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Parent's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Parent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Parent, to comply with Section 2.16(e) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 10.05. *Survival*. All covenants, agreements, representations and warranties made by any Borrower herein and in the certificates or other instru-

NOT A CERTIFIED COPY

020021

MORGAN STANLEY CONFIDENTIAL 0007638

16div-025786

ments delivered in connection with or pursuant to the Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 10.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 10.06. *Counterparts; Integration.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. The Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

SECTION 10.07. *Severability.* Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 10.08. *Right of Setoff.* If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower against any of and all the obligations of any Borrower now or hereafter existing under the Loan Documents held by such Lender or any of its Affiliates, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section

NOT A CERTIFIED COPY

020022

are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 10.09. *Governing Law; Jurisdiction; Consent to Service of Process.* (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any Borrower or its properties in the courts of any jurisdiction.

(c) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 10.10. *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS OR THE

NOT A CERTIFIED COPY

020023

TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 10.11. *Headings*. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 10.12. *Confidentiality*. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to the Loan Documents, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the Loan Documents or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under the Loan Documents, (g) with the consent of the Parent or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than a Borrower. For the purposes of this Section, "**Information**" means all information received from a Borrower relating to such Borrower or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by such Borrower; *provided* that, in the case of information received from a Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the

NOT A CERTIFIED COPY

020024

same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 10.13. *Interest Rate Limitation.* Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

NOT A CERTIFIED COPY

020025

MORGAN STANLEY CONFIDENTIAL 0007642

16div-025790

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNBEAM CORPORATION

By _____
Name: David Fannin
Title: Secretary

MORGAN STANLEY SENIOR FUNDING, INC.,
individually and as Syndication Agent

By _____
Name:
Title:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
individually and as Documentation Agent

By _____
Name:
Title:

FIRST UNION NATIONAL BANK,
individually and as Administrative Agent

By _____
Name:
Title:

020026

NOT A CERTIFIED COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNBEAM CORPORATION

By _____
Name:
Title:

MORGAN STANLEY SENIOR FUNDING, INC.,
individually and as Syndication Agent

By _____
Name: Michael R. Hart
Title: Principal

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
individually and as Documentation Agent

By _____
Name:
Title:

FIRST UNION NATIONAL BANK,
individually and as Administrative Agent

By _____
Name:
Title:

NOT A CERTIFIED COPY

020027

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNBEAM CORPORATION

By _____
Name:
Title:

MORGAN STANLEY SENIOR FUNDING, INC.,
individually and as Syndication Agent

By _____
Name:
Title:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
individually and as Documentation Agent

By _____
Name: Laurens F. Schaad, Jr.
Title: Vice President

FIRST UNION NATIONAL BANK,
individually and as Administrative Agent

By _____
Name:
Title:

NOT A CERTIFIED COPY

020028

(NY) 14013/995/CA/credit.agt.2.wpd

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNBEAM CORPORATION

By _____
Name:
Title:

MORGAN STANLEY SENIOR FUNDING, INC.,
individually and as Syndication Agent

By _____
Name:
Title:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
individually and as Documentation Agent

By _____
Name:
Title:

FIRST UNION NATIONAL BANK,
individually and as Administrative Agent

By _____
Name: Thomas M Mellon
Title: Senior Vice President

NOT A CERTIFIED COPY

020029

(NY) 14013/995/CA/credit.agt.2.wpd

Schedule 2.01

Commitments

Lender	Revolving Commitment	Tranche A Term Commitment	Tranche B Term Commitment
Morgan Stanley Senior Funding, Inc.	$240,000,000	$360,000,000	$ 200.000.000
Bank of America National Trust and Savings Association	$180,000,000	$270,000,000	$ 150.000.000
First Union National Bank	$180,000,000	$270,000,000	$ 150.000.000
Total	$ 600,000,000	$900,000,000	$500.000.000

NOT A CERTIFIED COPY

020030

(NY) 14013/995/CA/sched.2.01.wpd

SCHEDULE 3.01(a)

MATERIAL DOMESTIC SUBSIDIARIES

NAME	OWNER-SHIP INTEREST	SHAREHOLDER	STATE OF INC.
Sunbeam Products, Inc.	100%	GHI I, Inc.	Delaware
Sunbeam Americas Holdings Ltd.	100%	Sunbeam Corporation	Delaware
OP II, Inc.	100%	Sunbeam Products, Inc.	Florida
GHI, Inc.	100%	Sunbeam Americas Holdings, Ltd.	Delaware
DDG I, Inc.	100%	Sunbeam Corporation	Delaware
Laser Acquisition Corp.	100%	Sunbeam Corporation	Delaware
Coleman Worldwide Corp.	100%	Laser Acquisition Corp.	Delaware
The Coleman Company, Inc.	82.4%	Coleman Worldwide Corporation	Delaware
Coleman Powermate, Inc.	100%	The Coleman Company, Inc.	Nebraska
Coleman Powermate Compressors Inc.	100%	The Coleman Company, Inc.	Delaware
Kansas Acquisition Corp	100%	The Coleman Company, Inc.	Delaware
Eastpak Manufacturing Corporation	100%	The Coleman Company, Inc.	Delaware
Nippon Coleman, Inc.	100%	The Coleman Company, Inc.	Kansas

NOT A CERTIFIED COPY

020031

Signature Brands, Inc.	100%	Signature Brands USA, Inc.	Ohio
Signature Brands USA, Inc.	100%	Sunbeam Products, Inc.	Delaware
BRK Brands, Inc.	100%	First Alert, Inc.	Delaware
First Alert, Inc.	100%	Sunbeam Products, Inc.	Delaware

NOT A CERTIFIED COPY

020032

SCHEDULE 3.01(b)

MATERIAL FOREIGN SUBSIDIARIES

NAME	OWNER-SHIP INTEREST	SHAREHOLDER	JURISDICTION OF INCORPORATION
Sunbeam Holdings S.A. de C.V.	100%	Sunbeam Products, Inc.	Mexico
Sunbeam Mexicana S.A. de C.V.	100%	Sunbeam Holdings S.A. de C.V.	Mexico
Sunbeam Corporation (Canada) Limited	100%	Sunbeam Americas Holdings, Ltd.	Ontario
Oster de Venezuela	100%	OP II, Inc.	Venezuela
Application Des Gaz, S.A.	100%	Bafiges, S.A.	France
Coleman Japan Co., Ltd.	100%	Nippon Coleman, Inc.	Japan
Bafiges S.A.	99.97%	Kansas Acquisition Corp.	France

NOT A CERTIFIED COPY

020033

SCHEDULE 3.03

DEFAULTS; REQUIRED PAYMENTS

Agreement	Action
1. Guaranty Agreement dated as of June 1, 1994 (the "Guaranty") between Sunbeam-Oster Company, Inc., as guarantor, and Continental Bank, National Association, as trustee, relating to the Industrial Revenue Development Notes due 2009 (the "IRD Notes") issued by the Mississippi Business Finance Corporation, as issuer	Sunbeam Corporation has irrevocably deposited with the trustee all amounts due in respect thereof and has given appropriate notice of repayment to the issuer.
2. Indenture, dated as of May 20, 1997, between Coleman Escrow Corp. and First Trust National Association.	Upon a Change of Control, each holder shall have the right to require that the CLN Holding, Inc. repurchase all or any part of such holder's notes. Notice of a Change of Control must be given no later than 45 days thereafter. Notice of Redemption given on the Effective Date.
3. Indenture, dated as of May 27, 1993, between Coleman Worldwide Corporation and Continental Bank, National Association.	Upon a Change of Control, each holder shall have the right to require that Coleman Worldwide Corporation repurchase all or any of such holder's notes. Notice of a Change of Control must be given no later than 15 days thereafter. Notice of Redemption given on the Effective Date.

NOT A CERTIFIED COPY

020034

SCHEDULE 3.06

LITIGATION & ENVIRONMENTAL MATTERS

SUNBEAM CORPORATION

Litigation Matters

None

Environmental Matters

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1997, the Company had been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant. The seven sites subject to the federal Superfund law are (i) Bally Groundwater Site, Bally, Pennsylvania, (ii) Crossley Farm Site, Huffs Church, Pennsylvania, (iii) True Temper Sports Site, Geneva, Ohio, (iv) I.J. Stephens Farm Site, Newton County, Missouri, (v) Thermo Chem Site, Muskegon, Michigan, (vi) Summit Equipment & Supplies Site, Akron, Ohio and (vii) Tiger Metal Services, Inc. Site, Ironton, Ohio. The two sites subject to state Superfund laws comparable to the federal law are (i) Lydell Avenue Site, Glendale, Wisconsin and (ii) Morton Springer Company, Inc. Site, Newark, New Jersey.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order the PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, theCompany recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that

NOT A CERTIFIED COPY

020035

MORGAN STANLEY CONFIDENTIAL

16div-025800

a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at nine (9) sites, four (4) of which are among the Environmental Sites referred to above, and five (5) of which have not been designated as Superfund sites under federal or state law. The nine sites are (i) Bally Groundwater Site, Bally, Pennsylvania, (ii) True Temper Sports Site, Geneva, Ohio, (iii) I.J. Stephens Farm Site, Newton County, Missouri, (iv) Thermo Chem Site, Muskegon, Michigan, (v) Former Sunbeam Household Products Facility, Coushatta, Louisiana, (vi) Woodshaft, Inc. property, Amory, Mississippi, (vii) Eliskim, Inc. property, Anderson, South Carolina, (viii) Sunbeam Products Inc. facility, McMinnville, Tennessee and (ix) Former Sunbeam Outdoor Products facility, Portland, Tennessee.

NOT A CERTIFIED COPY

020036

MORGAN STANLEY CONFIDENTIAL 0007653

16div-025801

THE COLEMAN COMPANY, INC.

Litigation Matters

None

Environmental Matters

GILBERT AND MOSLEY SITE. As a result of investigations undertaken in 1986, the Kansas Department of Health and Environment ("KDHE") discovered that groundwater in the downtown Wichita area (the "Gilbert and Mosley Site") was contaminated with volatile organic chemicals ("VOCs"). Coleman occupied a facility within the boundaries of the Gilbert and Mosley Site. Subsequent investigations in the area, including investigations in November 1988 by Coleman, indicated that the groundwater beneath the Coleman property is contaminated with VOCs. Coleman is in the process of remediating the contamination on its property.

The City of Wichita has entered into a voluntary agreement with KDHE in which the City agreed to investigate and then remediate contamination in the Gilbert and Mosley Site. Coleman has entered into an agreement with KDHE in which Coleman agreed to perform a similar study for the Coleman property and to implement remedial activities at its property. In addition, Coleman entered into an agreement with the City of Wichita in which Coleman agreed to fund its proportionate share of the City's study and remediation of the Gilbert and Mosley site.

All previously filed lawsuits alleging that properties in the downtown Wichita area were diminished in value as a result of discharges of volatile organic chemicals from Coleman's downtown Wichita facility have been settled and dismissed.

MAIZE SITE. Coleman has undertaken a soil and groundwater investigation at its facility in Maize, Kansas (the "Maize Site"). Results indicated that limited VOC contamination is present in the groundwater under and to the southeast of the facility. The data has been reported to the KDHE, and Coleman has entered into an agreement with KDHE to implement appropriate remedial actions. The remediation system has been installed, and Coleman is in the process of remediating the contaminated groundwater.

NOT A CERTIFIED COPY

020037

NORTHEAST SITE. In 1990 Coleman undertook a soil and groundwater investigation of its facility in northeast Wichita (the "Northeast Site"). Results indicated the presence of VOCs in the groundwater and soils. Although some of the contamination may be a result of Coleman's operations at the facility, the data also indicated that contamination was migrating onto the Coleman property from up gradient sources. Coleman reported the initial results of its study to KDHE. Coleman has also provided copies of all data to the United States Environmental Protection Agency (the "EPA"), at its request. The EPA has not initiated any actions against the Company with respect to the Northeast Site. An agreement has been entered into with KDHE to undertake additional investigatory activities, and an interim remediation system has been installed.

NOT A CERTIFIED COPY

020038

MORGAN STANLEY CONFIDENTIAL 0007655

16div-025803

[Upon the acquisition of Signature Brands USA, Inc.]

SIGNATURE BRANDS USA, INC.

Litigation Matters

On May 27, 1994, Mr. Coffee, Inc. was served with a complaint in the case captioned *Miriam Brown v. Mr. Coffee, Inc. et. al.* (Civil Action No. 13531), in the Delaware Court of Chancery, New Castle County. The complaint names Mr. Coffee, Inc., a former major shareholder of Mr. Coffee, Inc. and each member of the Board of Directors of Mr. Coffee, Inc. prior to the Acquisition as defendants in a purported class action lawsuit. The complaint alleged that the Director defendants breached their fiduciary duties as Directors of Mr. Coffee, Inc. by, among other things, alleged efforts to entrench themselves in office and prevent Mr. Coffee, Inc.'s public stockholders from maximizing the value of their holdings, engaging in plans and schemes unlawfully to thwart offers and proposals from third parties, and approving and or causing the major shareholder to agree to vote in favor of the merger with the Company. The plaintiff originally sought to enjoin the merger and to obtain an order requiring the Director defendants to fulfill their fiduciary duties by exploring third party interest and obtaining the highest offer obtainable for the public stockholders. The plaintiff also seeks unspecified compensatory damages and costs and disbursements in connection with the action, including attorneys' and experts' fees, and such other and further relief as the court deems just and proper. In October 1996, the plaintiffs filed a Second Amended Complaint containing the above claims, but focusing on allegations that the Director defendants failed to engage in a process designed to maximize the value of Mr. Coffee, Inc. for its shareholders. Signature Brands USA, Inc. (the "Company") has filed a Motion to Dismiss the Second Amended Complaint. No briefing schedule has been established as yet for this Motion. Discovery commenced with the filing of this lawsuit. However, no discovery activity by any party has taken place during the 1995, 1996 and 1997 fiscal years or through the time of filing this document. Other than the filing of the Second Amended Complaint, plaintiffs have not taken further action in prosecution of this lawsuit. The Company believes that the plaintiff's allegations are without merit and intends to contest vigorously the allegations in the Second Amended Complaint. Management believes that the ultimate outcome of such matters will not have a material adverse effect upon the operations or financial position of the Company.

NOT A CERTIFIED COPY

0200039

MORGAN STANLEY CONFIDENTIAL 0007656

16div-025804

On July 23, 1997, an action captioned *Bunn-O-Matic Corporation v. Signature Brands USA, Inc. et al.* was filed in the United States District Court for the Central District of Illinois. The complaint alleges that Signature, through its manufacture and sale of the Speedbrew (TM) displacement-type coffeemakers, has infringed on two of plaintiff's patents. The complaint seeks an injunction against further infringement, and also seeks costs, actual damages, attorneys' fees and treble damages, based upon allegations of willful infringement. At this point, Signature has filed an Answer denying the allegations of the complaint and asserting a counterclaim of patent invalidity and non-infringement. No further activity has occurred in the case, and no trial date has been set. Signature intends to vigorously defend this action, and Management does not believe that the ultimate outcome will have a material adverse effect upon the operations or financial position of Signature.

Environmental Matters

None

NOT A CERTIFIED COPY

020040

MORGAN STANLEY CONFIDENTIAL 0007657

16div-025805

[Upon the acquisition of First Alert, Inc.]

FIRST ALERT, INC.

Litigation Matters

A purported class action entitled *Betley et al. v. First Alert, Inc. et al. ("Betley")* was filed in the Circuit Court of Cook County, Illinois on January 3, 1995, against the Company and its wholly owned subsidiary, BRK Brands, Inc., alleging common law fraud, breach of warranties, and a statutory violation of the Illinois Consumer Fraud Act, all related to alleged defects in the original *First Alert®* Carbon Monoxide Detector (Model FACO) design and the manner in which the detector was marketed. The Company does not believe that the plaintiffs claim any personal injuries or property damage; nor do the plaintiffs claim that their detectors failed to detect dangerous levels of carbon monoxide. Instead, they claim (i) that the Company failed to disclose that the product alarms in non-life threatening conditions (which they state in their complaint to be a "nuisance"), (ii) that the Company falsely proclaims the product resets "automatically" when, in fact, the product can take several hours or days to reset after it has gone into alarm and (iii) that the Company falsely claims that the product met Underwriters Laboratories' listing criteria for residential carbon monoxide detectors in effect at the time the Model FACO was manufactured. The plaintiff's seek a refund of their purchase price, other out-of-pocket expenses, punitive damages, and attorney's fees. The Company has raised numerous defenses to this claim and will continue to oppose it forcefully.

Environmental Matters

None

NOT A CERTIFIED COPY

020041

MORGAN STANLEY CONFIDENTIAL 0007658

16div-025806

Schedule 3.16

Outstanding Principal Indebtedness

I.	Sunbeam		
	A.	Outstanding Letters of Credit	
		1. Standby Letters of Credit	
		(a) Workers Comp.	13,275,000.00
		(b) Forrest County Backup	$6,346,527.00
		(c) U.S. Env. Prot. Agency	$4,960,000.00
		2. Commercial Letters of Credit	
		(a) First Chicago	$796,736.60
	B.	Outstanding Debt	
		1. McMinnville	$23,240.00
		2. Forrest County	$5,960,000.00
		3. Waynesboro	$4,265,000.00
		4. MBFC Private Placement	$75,000,000.00
		5. Montey Contingent Debt	$18,016,000.00

[Upon the acquisition of CLN Holdings Inc.]

II.	CLN Holdings, Inc.		
	1.	Indenture, dated May 20, 1997	$525,000,000.00
III.	Coleman Worldwide Corporation		
	1.	Indenture, dated May 27, 1993	$2,950,000.00

NOT A CERTIFIED COPY

020042

IV.	The Coleman Company, Inc.		
	A.	Credit Agreement	$76,000,000.00
	B.	Senior Notes	$360,000,000.00
	C.	NationsBank Letters of Credit	$5,292,137.81
	D.	Chase Manhattan Letter of Credit	$50,786.50
	E.	CoreStates Letters of Credit	$27,915,572.06
	F.	CoreStates Banker's Acceptances	$4,006,707.70
V.	Coleman ADG		$23,508,000.00
VI.	Camping Gaz German/ADG		$2,184,000.00
VII.	Coleman Japan		$32,000,000.00
VIII.	Coleman Portugal/ADG		$665,000.00
IX.	Coleman Spain		$625,000.00
X.	Camping Gaz Switzerland/ADG		$357,000.00
XI.	Coleman Powermate, Inc.		$313,000.00
XII.	Coleman Powermate Compressors Inc.		
	1.	CoreStates Letter of Credit	$303,164.46

NOT A CERTIFIED COPY

020043

MORGAN STANLEY CONFIDENTIAL 0007660

16div-025808

XIII. Eastpak Corporation

1.	CoreStates Letters of Credit	$4,682,391.46

[Upon the acquisition of Signature Brands USA, Inc.]

VII. Signature

1.	Revolving Credit Agreement	$87,250,000.00
2.	Senior Subordinated Notes	$70,000,000.00
3.	Letters of Credit	$553,000.00
4.	Capital Lease Obligation	$1,750,000.00

[Upon the acquisition of First Alert, Inc.]

VIII. First Alert

B.	Financing and Security Agreement	$45,500,000.00

NOT A CERTIFIED COPY

020044

MORGAN STANLEY CONFIDENTIAL 0007661

16div-025809

Conditions to Effective Date

(a) The Administrative Agent (or its counsel) shall have received from each party hereto a counterpart of this Agreement signed on behalf of such party or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent (or its counsel) shall have received (i) from each party to each Collateral Document a counterpart of such Collateral Document signed on behalf of such party or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page) that such party has signed a counterpart of such Collateral Document and (ii) duly executed financing statements on Form UCC-1 in quantity sufficient for filing in all jurisdictions in which such filing is necessary or desirable to perfect the Liens created by the Collateral Documents.

(c) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Obligors and of Janet Kelley, Esq., associate general counsel for the Obligors, collectively addressing the matters set forth in Exhibit E and of Davis Polk & Wardwell, special counsel for the Agents, substantially in the form of Exhibit F, and each covering such other matters relating to the Obligors, the Loan Documents or the Transactions as the Required Lenders shall reasonably request.

(d) The Lenders shall have received all the financial statements referred to in Sections 3.04(a) and 3.04(c).

(e) The Administrative Agent shall have received insurance certificates setting forth the insurance programs maintained (i) with respect to the Parent and its Material Subsidiaries and (ii) with respect to any joint venture to which the Parent or any of its Material Subsidiaries are a party, all in form and substance, and from Persons, reasonably satisfactory to the Administrative Agent.

(f) In the judgment of the Lenders, there shall be no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or threatened against or affecting the Parent or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if

NOT A CERTIFIED COPY

020045

MORGAN STANLEY CONFIDENTIAL 0007662

16div-025810

adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve the Loan Documents, the Transactions, the Acquisition Documents or the Acquisition.

(g) The Administrative Agent shall have received evidence satisfactory to it that the outstanding obligations of the Parent and its Subsidiaries under the agreements and instruments specified in Schedule 5.08 to be repaid or defeased on the Effective Date (including without limitation principal and interest with respect to any loans and all accrued fees and expenses) shall have been paid in full or otherwise discharged, all commitments thereunder shall have been terminated and all Liens securing such obligations and all Guarantees thereof shall have been released (or arrangements satisfactory to the Administrative Agent, including without limitation the giving of notice of prepayment, redemption or defeasance, to effect the foregoing shall have been made).

(h) The aggregate amount of funds required by the Parent with respect to the Acquisition (including without limitation for the payment of fees, commissions and expenses) shall not exceed $2,250,000,000 and the sources and uses of such funds (and the assumptions relating thereto) shall be as agreed upon between the Parent and the Lenders prior to the Effective Date.

(i) The Coleman Acquisition Documents shall be in full force and effect, and all consents, approvals, registrations, or other actions to be obtained, made or taken in connection with the consummation of the Coleman Acquisition and the Transactions to be consummated on the Effective Date (including without limitation any consents or approvals to be obtained from the board of directors of the Parent, the shareholders of the Parent and any consents, approvals, registrations or other actions to be obtained from, made with or taken by any Governmental Authority) shall have been obtained, made or taken and shall be in full force and effect.

(j) The Administrative Agent shall have received evidence satisfactory to it, which may include a certificate of the Parent, that (i) all conditions to the consummation of the transactions contemplated by the Coleman Acquisition Documents to be consummated on the Effective Date as set forth in the Coleman Acquisition Documents shall have been satisfied (without waiver of any material condition, unless such waiver is approved by the Required Lenders), (ii) all such transactions will take place prior to or simultaneously with the transactions contemplated hereby to take place on the Effective Date and (iii) the consummation of all such transactions and all transactions contemplated hereby to take place on the Effective Date shall not violate any applicable law or regulation (including without limitation any of the Regulations of the Board, including Regulations G, U and X).

NOT A CERTIFIED COPY

020046

MORGAN STANLEY CONFIDENTIAL 0007663

16div-025811

(k) The Administrative Agent shall have received evidence satisfactory to it that the Liens created by the Collateral Documents constitute perfected first priority Liens on the Collateral.

(l) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Parent, confirming compliance with the conditions set forth in paragraphs (b) and (c) of Section 4.04.

(m) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Parent hereunder.

(n) The Administrative Agent shall have received a certificate of a Financial Officer of the Parent to the effect that the Parent shall have (i) received net cash proceeds of at least $726,600,000 from the issuance of the Subordinated Notes and (ii) issued 14,099,749 shares of its common stock (including treasury shares) as partial consideration for the Coleman Acquisition.

(o) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence, good standing and solvency of the Parent, the authorization of the Transactions and any other legal matters relating to any of the foregoing, all in form and substance satisfactory to the Administrative Agent and its counsel.

NOT A CERTIFIED COPY

020047

MORGAN STANLEY CONFIDENTIAL 0007664

16div-025812

Conditions to Tranche A Effective Date, First Alert Acquisition Date and Signature Acquisition Date

(a) Each of the Effective Date and the Tranche B Effective Date shall have occurred.

(b) In the judgment of the Lenders, there shall be no actions, suits or proceedings by or before any arbitrator or governmental authority pending against or threatened against or affecting the Parent or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve the Loan Documents, the Transactions, the Acquisition Documents or the Acquisition.

(c) The Administrative Agent shall have received evidence satisfactory to it that the outstanding obligations of the Parent and its Subsidiaries under the agreements and instruments specified in Schedule 5.08 to be repaid or defeased with the proceeds of the Tranche A Term Loans (including without limitation principal and interest with respect to any loans and all accrued fees and expenses) shall have been paid in full or otherwise discharged, all commitments thereunder shall have been terminated and all Liens securing such obligations and all Guarantees thereof shall have been released (or arrangements satisfactory to the Administrative Agent, including without limitation the giving of notice of prepayment, redemption or defeasance, to effect the foregoing shall have been made).

(d) The Administrative Agent shall have received a certificate, dated the Tranche A Effective Date and signed by the President, a Vice President or a Financial Officer of the Parent, confirming compliance with the conditions set forth in paragraphs (b) and (c) of Section 4.04.

(e) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Tranche A Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Parent hereunder.

(f) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence, good standing and solvency of each Obligor, the authorization of the Transactions and any other legal matters relating

NOT A CERTIFIED COPY

020048

MORGAN STANLEY CONFIDENTIAL 0007665

16div-025813

to any of the foregoing, all in form and substance satisfactory to the Administrative Agent and its counsel.

If any of the proceeds of the Tranche A Term Loans are to be used in connection with the First Alert Acquisition, the following additional conditions will apply on the date of the consummation thereof (the "**First Alert Acquisition Date**"):

(i) The First Alert Acquisition Documents shall be in full force and effect, and all consents, approvals, registrations, or other actions to be obtained, made or taken in connection with the consummation of the First Alert Acquisition and the Transactions to be consummated on the First Alert Acquisition Date (including without limitation any consents or approvals to be obtained from the board of directors of the Parent, the shareholders of the Parent and any consents, approvals, registrations or other actions to be obtained from, made with or taken by any Governmental Authority) shall have been obtained, made or taken and shall be in full force and effect; and

(ii) The Administrative Agent shall have received evidence satisfactory to it, which may include a certificate of the Parent, that (i) all conditions to the consummation of the transactions contemplated by the First Alert Acquisition Documents to be consummated on the First Alert Acquisition Date as set forth in the First Alert Acquisition Documents shall have been satisfied (without waiver of any material condition, unless such waiver is approved by the Required Lenders), (ii) all such transactions will take place prior to or simultaneously with the transactions contemplated hereby to take place on the First Alert Acquisition Date and (iii) the consummation of all such transactions and all transactions contemplated hereby to take place of the First Alert Acquisition Date shall not violate any applicable law or regulation (including without limitation any of the Regulations of the Board, including Regulations G, U and X).

If any of the proceeds of the Tranche A Term Loans are to be used in connection with the Signature Acquisition, the following additional conditions will apply on the date of the consummation thereof (the "**Signature Acquisition Date**"):

(i) The Signature Acquisition Documents shall be in full force and effect, and all consents, approvals, registrations, or other actions to be obtained, made or taken in connection with the consummation of the Signature Acquisition and the Transactions to be consummated on the Signature Acquisition Date (including without limitation any consents or approvals to be obtained from the board of directors of the Parent, the shareholders of the Parent and any consents, approvals, registrations or

NOT ACCREDITED COPY

020049

other actions to be obtained from, made with or taken by any Governmental Authority) shall have been obtained, made or taken and shall be in full force and effect; and

(ii) The Administrative Agent shall have received evidence satisfactory to it, which may include a certificate of the Parent, that (i) all conditions to the consummation of the transactions contemplated by the Signature Acquisition Documents to be consummated on the Signature Acquisition Date as set forth in the Signature Acquisition Documents shall have been satisfied (without waiver of any material condition, unless such waiver is approved by the Required Lenders) (ii) all such transactions will take place prior to or simultaneously with the transactions contemplated hereby to take place on the Signature Acquisition Date and (iii) the consummation of all such transactions and all transactions contemplated hereby to take place of the Signature Acquisition Date shall not violate any applicable law or regulation (including without limitation any of the Regulations of the Board, including Regulations G, U and X).

NOT A CERTIFIED COPY

020050

MORGAN STANLEY CONFIDENTIAL 0007667

16div-025815

Conditions to Tranche B Effective Date, First Alert Acquisition Date and Signature Acquisition Date

(a) The Effective Date shall have occurred.

(b) In the judgment of the Lenders, there shall be no actions, suits or proceedings by or before any arbitrator or governmental authority pending against or threatened against or affecting the Parent or any of its Material Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve the Loan Documents, the Transactions, the Acquisition Documents or the Acquisition.

(c) The Administrative Agent shall have received evidence satisfactory to it that all outstanding obligations of the Parent and its Subsidiaries under the agreement and instruments specified in Schedule 5.08 to be repaid or defeased with the proceeds of the Tranche B Term Loans (including without limitation principal and interest with respect to any loans and all accrued fees and expenses) shall have been paid in full or otherwise discharged, all commitments thereunder shall have been terminated and all Liens securing such obligations and all Guarantees thereof shall have been released (or arrangements satisfactory to the Administrative Agent, including without limitation the giving of notice of prepayment, redemption or defeasance, to effect the foregoing shall have been made).

(d) The Administrative Agent shall have received a certificate, dated the Tranche B Effective Date and signed by the President, a Vice President or a Financial Officer of the Parent, confirming compliance with the conditions set forth in paragraphs (a), (b) and (c) of Section 4.04.

(e) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Tranche B Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Parent hereunder.

(f) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence, good standing and solvency of each Obligor, the authorization of the Transactions and any other legal matters relating to any of the foregoing, all in form and substance satisfactory to the Administrative Agent and its counsel.

NOT A CERTIFIED COPY

020051

16div-025816

If any of the proceeds of the Tranche B Term Loans are to be used in connection with the First Alert Acquisition, the following additional conditions will apply on the date of the consummation thereof (the "**First Alert Acquisition Date**"):

(i) The First Alert Acquisition Documents shall be in full force and effect, and all consents, approvals, registrations, or other actions to be obtained, made or taken in connection with the consummation of the First Alert Acquisition and the Transactions to be consummated on the First Alert Acquisition Date (including without limitation any consents or approvals to be obtained from the board of directors of the Parent, the shareholders of the Parent and any consents, approvals, registrations or other actions to be obtained from, made with or taken by any Governmental Authority) shall have been obtained, made or taken and shall be in full force and effect; and

(ii) The Administrative Agent shall have received evidence satisfactory to it, which may include a certificate of the Parent, that (i) all conditions to the consummation of the transactions contemplated by the First Alert Acquisition Documents to be consummated on the First Alert Acquisition Date as set forth in the First Alert Acquisition Documents shall have been satisfied (without waiver of any material condition, unless such waiver is approved by the Required Lenders), (ii) all such transactions will take place prior to or simultaneously with the transactions contemplated hereby to take place on the First Alert Acquisition Date and (iii) the consummation of all such transactions and all transactions contemplated hereby to take place of the First Alert Acquisition Date shall not violate any applicable law or regulation (including without limitation any of the Regulations of the Board, including Regulations G, U and X).

If any of the proceeds of the Tranche B Term Loans are to be used in connection with the Signature Acquisition, the following additional conditions will apply on the date of the consummation thereof (the "**Signature Acquisition Date**"):

(i) The Signature Acquisition Documents shall be in full force and effect, and all consents, approvals, registrations, or other actions to be obtained, made or taken in connection with the consummation of the Signature Acquisition and the Transactions to be consummated on the Signature Acquisition Date (including without limitation any consents or approvals to be obtained from the board of directors of the Parent, the shareholders of the Parent and any consents, approvals, registrations or other actions to be obtained from, made with or taken by any

NOT A CERTIFIED COPY

020052

Governmental Authority) shall have been obtained, made or taken and shall be in full force and effect; and

(ii) The Administrative Agent shall have received evidence satisfactory to it, which may include a certificate of the Parent, that (i) all conditions to the consummation of the transactions contemplated by the Signature Acquisition Documents to be consummated on the Signature Acquisition Date as set forth in the Signature Acquisition Documents shall have been satisfied (without waiver of any material condition, unless such waiver is approved by the Required Lenders) (ii) all such transactions will take place prior to or simultaneously with the transactions contemplated hereby to take place on the Signature Acquisition Date and (iii) the consummation of all such transactions and all transactions contemplated hereby to take place of the Signature Acquisition Date shall not violate any applicable law or regulation (including without limitation any of the Regulations of the Board, including Regulations G, U and X).

NOT A CERTIFIED COPY

020053

SCHEDULE 5.08

REFINANCED INDEBTEDNESS

Company	Agreement	Amount Outstanding
Sunbeam Corporation	Credit Agreement, dated as of September 16, 1996	$0
	Loan Agreement, dated as of June 1, 1994, relating to the Industrial Revenue Development Notes due 2009 issued by the Mississippi Business Finance Corporation	$75 MM
	Letter of Credit regarding Forrest County General Obligation Bonds issued by First Union National Association.	$6.3 MM
	Letter of Credit for the benefit of the U.S. Environmental Protection Agency.	$4.9 MM
	TOTAL	**$99.4 MM**

NOT A CERTIFIED COPY

020054

MORGAN STANLEY CONFIDENTIAL 0007671

16div-025819

Upon the Acquisition of CLN Holdings

Company	Agreement	Amount Outstanding
CLN Holdings Inc.	Indenture, dated as of May 20, 1997	$525 MM
Coleman Worldwide Corporation	Indenture, dated as of May 27, 1993, relating to the Liquid Yield Option Notes due 2013	$2.95 MM
The Coleman Company, Inc.	Amended and Restated Credit Agreement, dated as of August 3, 1995	$76 MM
	Note Purchase Agreement, dated as of May 1, 1996	$160 MM
	Note Purchase Agreement, dated as of August 3, 1995	$200 MM
	NationsBank Letters of Credit	$5.2 MM
	Chase Manhattan Letter of Credit regarding a product liability settlement	$.05 MM
	TOTAL	**$969.2 MM**

NOT A CERTIFIED COPY

020055

MORGAN STANLEY CONFIDENTIAL 0007672

16div-025820

Upon the Acquisition of Signature Brands USA, Inc.

Company	Agreement	Amount Outstanding
Signature Brands, Inc.	Credit Agreement, dated as of August 17, 1994	$87.25 MM
	Indenture, dated as of August 17, 1994 (to be defeased)	$70 MM
	Letters of Credit	$0.553 MM
	TOTAL	**$157.8 MM**

NOT A CERTIFIED COPY

020056

MORGAN STANLEY CONFIDENTIAL 0007673

16div-025821

Upon the Acquisition of First Alert, Inc.

Company	Agreement	Amount Outstanding
First Alert, Inc.	Financing and Security Agreement, dated as of May 14, 1997	$45.5 MM
	TOTAL	$45.5 MM

NOT A CERTIFIED COPY

020057

MORGAN STANLEY CONFIDENTIAL

0007674

16div-025822

SCHEDULE 6.01

OUTSTANDING INDEBTEDNESS

The following schedule assumes the repayment, redemption or defeasance of all of the Refinanced Indebtedness:

I.	Sunbeam		
	1.	McMinnville	$23,240
	2.	Forrest County	$5,960,000
	4.	Waynesboro	$4,265,000
	4.	Montey Contingent Debt	$18,016,000
	5.	First Chicago LC	$796,736
	6.	Letter of Credit regarding workers compensation issued by Bank of America National Trust and Savings Association.	$13,275,000
II.	The Coleman Company, Inc.		
	1.	CoreStates Letters of Credit	$27,915,572
	2.	CoreStates Banker's Acceptances	$4,006,707
III.	Coleman ADG		$23,508,000
IV.	Camping Gaz German/ADG		$2,184,000
V.	Coleman Japan		$32,000,000
VI.	Coleman Portugal/ADG		$665,000

NOT A CERTIFIED COPY

020058

MORGAN STANLEY CONFIDENTIAL 0007675

16div-025823

VII.	Coleman Spain	$625,000
VIII.	Camping Gaz Switzerland/ADG	$357,000
IX.	Coleman Powermate, Inc.	$313,000
X.	Coleman Powermate Compressors Inc.	
	1. CoreStates Letter of Credit	$300,000
XI.	Eastpak Corporation	
	1. CoreStates Letters of Credit	$4,680,000 MM
XII.	Signature Brands, Inc.	
	1. Capital Lease Obligation	$1,750,000

NOT A CERTIFIED COPY

020059

SCHEDULE 6.02

EXISTING LIENS

1. Liens existing on the date hereof in an aggregate amount not exceeding $25,000,000.

2. Liens on inventory financed by the Existing CoreStates Letters of Credit and the CoreStates Banker's Acceptances in an aggregate amount not exceeding $50,000,000.00, which liens shall terminate on or prior to August 31, 1998.

NOT A CERTIFIED COPY

020060

MORGAN STANLEY CONFIDENTIAL

16div-025825

SCHEDULE 6.08

EXISTING RESTRICTIONS

1. Coleman Worldwide Corporation	Indenture, dated as of May 27, 1993
2. CLN Holdings Inc.	Indenture, dated as of May 20, 1997

NOT A CERTIFIED COPY

020061

MORGAN STANLEY CONFIDENTIAL

0007678

16div-025826

EXHIBIT A TO
CREDIT AGREEMENT

ASSIGNMENT AND ACCEPTANCE

AGREEMENT dated as of _____, ____ among [NAME OF ASSIGNOR] (the "**Assignor**") and [NAME OF ASSIGNEE] (the "**Assignee**").

WHEREAS, this Assignment and Acceptance (the "**Agreement**") relates to the Credit Agreement dated as of [March 30], 1998 among Sunbeam Corporation, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent, and First Union National Bank, as Administrative Agent (the "**Administrative Agent**") (as amended from time to time, the "**Credit Agreement**");

[WHEREAS, as provided under the Credit Agreement, the Assignor has a Commitment to make Tranche A Term Loans to the Borrower in an aggregate principal amount of $_____;]

[WHEREAS, as provided under the Credit Agreement, the Assignor has a Commitment to make Revolving Loans to the Borrower and participate in Letters of Credit in an aggregate principal amount at any time outstanding not to exceed $_____;]

[WHEREAS, Tranche A Term Loans made to the Borrower by the Assignor under the Credit Agreement in the aggregate principal amount of $_____ are outstanding at the date hereof;]

[WHEREAS, Tranche B Term Loans made to the Borrower by the Assignor under the Credit Agreement in the aggregate principal amount of $_____ are outstanding at the date hereof;]

[WHEREAS, Revolving Loans made to the Borrower by the Assignor under the Credit Agreement in the aggregate principal amount of $_____ are outstanding at the date hereof;]

[WHEREAS, Letters of Credit with a total amount available for drawing thereunder of $_____ are outstanding at the date hereof; and]

WHEREAS, the Assignor proposes to assign to the Assignee all of the rights of the Assignor under the Credit Agreement in respect of a portion of its

NOT A CERTIFIED COPY

020062

[Revolving Commitment thereunder in an amount equal to $_____ (the "**Revolver Assigned Amount**"), together with a corresponding portion of each of its outstanding Revolving Loans and its LC Exposure,] [Tranche A Commitment thereunder in an amount equal to $_____ (the "**Tranche A Assigned Amount**"), together with a corresponding portion of each of its outstanding Tranche A Term Loans][outstanding Tranche B Term Loans thereunder in an amount equal to $_____ (the "**Tranche B Assigned Amount**")] and the Assignee proposes to accept such assignment and assume the corresponding obligations of the Assignor under the Credit Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1.01. *Definitions.* All capitalized terms not otherwise defined herein have the respective meanings set forth in the Credit Agreement.

SECTION 2.01. *Assignment.* The Assignor hereby assigns and sells to the Assignee all of the rights of the Assignor under the Credit Agreement to the extent of the [Revolver Assigned Amount and a corresponding portion of each of its outstanding Revolving Loans and its LC Exposure] [Tranche A Assigned Amount and a corresponding portion of each of its outstanding Tranche A Loans] [Tranche B Assigned Amount], and the Assignee hereby accepts such assignment from the Assignor and assumes all of the obligations of the Assignor under the Credit Agreement to the extent of the [Revolver Assigned Amount and the corresponding portion of each of its Revolving Loans and its LC Exposure] [Tranche A Assigned Amount and the corresponding portion of each of its outstanding Tranche A Loans] [Tranche B Assigned Amount]. Upon the execution and delivery hereof by the Assignor and the Assignee [and by the Parent, the Administrative Agent and the Issuing Bank] */ , the payment of the amounts specified in Section 3.01 required to be paid on the date hereof and the satisfaction of all other applicable conditions set forth in Sections 10.04(b) and (d) of the Credit Agreement (i) the Assignee shall, as of the date hereof, succeed to the rights and be obligated to perform the obligations of a Lender under the Credit Agreement [with a Revolving Commitment in an amount equal to the Revolver Assigned Amount and acquire the rights of the Assignor with respect to a corresponding portion of each of its outstanding Revolving Loans and its LC Exposure] [with a Tranche A Term Loan Commitment in an amount equal to the Tranche A Assigned Amount and acquire the rights of the Assignor with respect to a corresponding portion of each of its outstanding Tranche A Loans] [and acquire the rights of the Assignor with respect to its outstanding Tranche B Loans

020063

---

*/ Delete if consent is not required.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007680

16div-025828

in an amount equal to the Tranche B Assigned Amount] and (ii) [the Revolving Commitment of the Assignor shall, as of the date hereof, be reduced by the Revolver Assigned Amount, and] [the Tranche A Term Commitment of the Assignor shall, as of the date hereof, be reduced by the Tranche A Assigned Amount] and the Assignor shall be released from its obligations under the Credit Agreement to the extent such obligations have been assumed by the Assignee. The assignment provided for herein shall be without recourse to the Assignor.

SECTION 3.01. *Payments*. As consideration for the assignment and sale contemplated in Section 2.01 hereof, the Assignee shall pay to the Assignor on the date hereof in Federal funds the amount heretofore agreed between them. */ Commitment fees and letter of credit participation fees accrued before the date hereof are for the account of the Assignor and such fees accruing on and after the date hereof with respect to the Assigned Amount are for the account of the Assignee. Each of the Assignor and the Assignee agrees that if it receives any amount under the Credit Agreement which is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party's interest therein and promptly pay the same to such other party.

[SECTION 4.01. *Consent of the Administrative Agent and the Issuing Bank*. This Agreement is conditioned upon the consent of the Parent, the Administrative Agent and the Issuing Bank pursuant to Section 10.04(b) of the Credit Agreement.] **/

SECTION 5.01. *Non-Reliance on Assignor*. The Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition or statements of any Obligor, or the validity and enforceability of any Obligor's obligations under the Loan Documents or any note issued thereunder. The Assignee acknowledges that it has, independently and without reliance on the Assignor, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of the Obligors.

---

*/ Amount should combine principal together with accrued interest and breakage compensation, if any, to be paid by the Assignee, net of any portion of any upfront fee to be paid by the Assignor to the Assignee. It may be preferable in an appropriate case to specify these amounts generically or by formula rather than as a fixed sum.

**/ Delete if consent is not required.

(NY) 14013/995/CA credit.agt.2.wpd

NOT A CERTIFIED COPY

020064

MORGAN STANLEY CONFIDENTIAL 0007681

16div-025829

SECTION 6.01. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 7.01. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[The undersigned consent to the foregoing assignment.

FIRST UNION NATIONAL BANK,
as Administrative Agent and as Issuing Bank

By: _____
Name:
Title:

SUNBEAM CORPORATION

By: _____

Name:
Title:] */

020065

NOT A CERTIFIED COPY

---

*/ Delete if consent if not required.

EXHIBIT B
TO CREDIT AGREEMENT

PARENT
PLEDGE AND SECURITY AGREEMENT

AGREEMENT dated as of March 30, 1998 between SUNBEAM CORPORATION (with its successors, the "**Parent**") and First Union National Bank, as Administrative Agent.

WITNESSETH:

WHEREAS, the Parent, the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent, and First Union National Bank, as Administrative Agent, are parties to a Credit Agreement dated as of March 30, 1998 (as the same may be amended from time to time, the "**Credit Agreement**"); and

WHEREAS, the Parent is, or may hereafter become obligated to one or more of the Lenders under one or more Hedging Agreements (as defined in the Credit Agreement) as contemplated by Section 5.10 of the Credit Agreement; and

WHEREAS, in order to induce said Lenders and Administrative Agent to enter into the Credit Agreement and in order to induce the Lenders to enter into any Hedging Agreements, the Parent has agreed to grant a continuing security interest in and to the Collateral (as hereafter defined) to secure the Secured Obligations as hereafter defined;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Definitions*. Terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein except that the term "Loan Documents" shall include any document with respect to any Hedging Obligations. The following additional terms, as used herein, have the following respective meanings:

"**Collateral**" has the meaning assigned to such term in Section 3(A).

NOT A CERTIFIED COPY

020066

"**Collateral Accounts**" means the LC Reimbursement Account, the Major Casualty and Indemnity Proceeds Account and the Prepayment Account.

"**Direct Domestic Subsidiary**" means a Direct Subsidiary organized under the laws of the United States of America or a state thereof.

"**Direct Domestic Subsidiary Shares**" means the shares of capital stock or other equity interest of each Direct Domestic Subsidiary listed on Schedule I opposite such Direct Domestic Subsidiary's name.

"**Direct Foreign Subsidiary**" means a Direct Subsidiary organized under the laws of any jurisdiction outside the United States.

"**Direct Foreign Subsidiary Shares**" means the shares of capital stock or other equity interests of each Direct Foreign Subsidiary listed on Schedule II opposite such Direct Foreign Subsidiary's name.

"**Direct Subsidiary**" means a Material Subsidiary of the Parent the capital stock or other equity interests of which is held directly by the Parent.

"**Direct Subsidiary Notes**" means the Intercompany Agreements of each Direct Subsidiary listed on Schedule I or Schedule II opposite such Direct Subsidiary's name.

"**Hedging Obligations**" means all obligations of the Parent under any Hedging Agreement between the Parent and any Lender.

"**Intercompany Agreements**" means all instruments owned by the Parent evidencing Indebtedness owed to it by any of its Direct Subsidiaries.

"**LC Reimbursement Account**" has the meaning set forth in Section 6(C).

"**Liquid Investments**" has the meaning set forth in Section 6(E).

"**Major Casualty and Indemnity Proceeds Account**" has the meaning set forth in Section 6(A).

"**Pledged Instruments**" means (i) the Direct Subsidiary Notes and (ii) any instrument required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

NOT A CERTIFIED COPY

190070

"**Pledged Securities**" means the Pledged Instruments and the Pledged Stock.

"**Pledged Stock**" means (i) the Direct Domestic Subsidiary Shares, (ii) 66% of the Direct Foreign Subsidiary Shares and (iii) any other capital stock required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

"**Prepayment Account**" has the meaning set forth in Section 6(D).

"**Secured Obligations**" means the obligations secured under this Agreement including (i) all principal of and interest (including, without limitation, any interest which accrues after or would accrue but for the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Parent, whether or not allowed or allowable as a claim in any such proceeding) on any loan under, or any note issued pursuant to, the Credit Agreement, (ii) all reimbursement obligations with respect to any Letter of Credit, (iii) any Hedging Obligations, (iv) all other amounts payable by the Parent under the Loan Documents, and (v) any renewals or extensions of any of the foregoing.

"**Security Interests**" means the security interests in the Collateral granted hereunder securing the Secured Obligations.

Unless otherwise defined herein, or unless the context otherwise requires, all terms used herein which are defined in the New York Uniform Commercial Code as in effect on the date hereof shall have the meanings therein stated.

SECTION 2. *Representations and Warranties*. The Parent represents and warrants as follows:

(A) Title to Pledged Securities. The Parent owns all of the Pledged Securities, free and clear of any Liens other than the Security Interests. The Pledged Stock includes (i) all of the issued and outstanding capital stock of each Direct Domestic Subsidiary and (ii) 66% of the issued and outstanding stock of each Direct Foreign Subsidiary. The Pledged Instruments include all instruments owned by the Parent evidencing Indebtedness owed to it by any of its Direct Subsidiaries. All of the Pledged Stock has been duly authorized and validly issued, and is fully paid and non-assessable, and is subject to no options to purchase or similar rights of any Person. The Parent is not and will not become a party to or otherwise become bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Pledged Securities with respect thereto.

NOT A CERTIFIED COPY

890020

(B) Validity, Perfection and Priority of Security Interests. Upon the delivery of the Pledged Instruments and certificates representing the Pledged Stock to the Administrative Agent in accordance with Section 4 hereof and the filing of UCC financing statements in the form specified in Exhibit A in the appropriate filing office in the jurisdiction specified on the signature pages of the Credit Agreement, the Administrative Agent will have valid and perfected security interests in the Collateral subject to no prior Lien other than Permitted Liens. Except for the filing of the UCC financing statements described in the immediately preceding sentence, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of this Agreement or necessary for the validity or enforceability hereof or for the perfection or enforcement of the Security Interests. Neither the Parent nor any of its Subsidiaries has performed or will perform any acts which might prevent the Administrative Agent from enforcing any of the terms and conditions of this Agreement or which would limit the Administrative Agent in any such enforcement. Other than financing statements or other similar or equivalent documents or instruments with respect to the Security Interests, no financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a Lien on such Collateral. No collateral is in the possession of any Person (other than the Parent) asserting any claim thereto or security interest therein, except that the Administrative Agent or its designee may have possession of Collateral as contemplated hereby.

(C) UCC Filing Locations. The chief executive office of the Parent is located at its address set forth on the signature pages of the Credit Agreement. Under the Uniform Commercial Code as in effect in the State in which such office is located, no local filing is required to perfect a security interest in collateral consisting of accounts or general intangibles.

SECTION 3. *The Security Interests*. In order to secure the full and punctual payment of the Secured Obligations in accordance with the terms thereof, and to secure the performance of all the obligations of the Parent hereunder:

(A) The Parent hereby assigns and pledges to and with the Administrative Agent for the benefit of the Lenders and grants to the Administrative Agent for the benefit of the Lenders security interests in all of the following property of the Parent (collectively, the "**Collateral**"):

NOT A CERTIFIED COPY

020069

(1) the Pledged Securities, and all of its rights and privileges with respect to the Pledged Securities, and all income and profits thereon, and all interest, dividends and other payments and distributions with respect thereto;

(2) all Indebtedness now or hereafter owed to the Parent by any of its Direct Subsidiaries (whether or not evidenced by instruments (as defined in the UCC));

(3) all other Investments made by the Parent in any of its Direct Domestic Subsidiaries; and

(4) The Collateral Accounts, all cash deposited therein from time to time, the Liquid Investments made pursuant to Section 6(E) and all other monies and property of any kind on deposit therein; and

(5) all proceeds of all or any of the collateral described in clauses (1) through (4) hereof.

Contemporaneously with the execution and delivery hereof, the Parent is delivering the Direct Subsidiary Notes and certificates representing the Direct Domestic Subsidiary Shares and the Direct Foreign Subsidiary Shares in pledge hereunder.

(B) In the event that at any time any Person becomes a Direct Domestic Subsidiary, or any Direct Domestic Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to the Parent, or the Parent makes any other Investment in any Direct Domestic Subsidiary, the Parent will immediately pledge and deposit with the Administrative Agent certificates representing all such shares or equity interests and such note or an instrument evidencing such other Indebtedness or other Investment as additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(C) In the event that at any time any Person becomes a Direct Foreign Subsidiary, or any Direct Foreign Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to the Parent, or the Parent makes any other Investment in any Direct Foreign

NOT A CERTIFIED COPY

020070

Subsidiary, the Parent will immediately pledge and deposit with the Administrative Agent certificates representing additional shares or equity interests sufficient to cause the Secured Parties to have a security interest in 66% (but not more than 66%) of all the outstanding capital stock of or other equity interests in such Direct Foreign Subsidiary and such note or an instrument evidencing such other Indebtedness or other Investment as additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(D) The Security Interests are granted as security only and shall not subject the Administrative Agent or any Lender to, or transfer or in any way affect or modify, any obligation or liability of the Parent or any of its Direct Subsidiaries with respect to any of the Collateral or any transaction in connection therewith.

SECTION 4. *Delivery of Pledged Securities.* All Pledged Instruments shall be delivered to the Administrative Agent by the Parent pursuant hereto indorsed to the order of the Administrative Agent, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent. All certificates representing Pledged Stock delivered to the Administrative Agent by the Parent pursuant hereto shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent.

SECTION 5. *Further Assurances.*

(A) The Parent agrees that it will from time to time, at its expense and in such manner and form as the Administrative Agent may require, execute, deliver, file and record any financing statement, specific assignment or other paper and take any other action that may be necessary or desirable, or that the Administrative Agent may request, in order to create, preserve, perfect, confirm or validate any Security Interest or to enable the Administrative Agent to exercise and enforce any of its rights, powers or remedies hereunder with respect to any of the Collateral. To the extent permitted by applicable law, the Parent hereby authorizes the Administrative Agent to execute and file, in the name of the Parent or otherwise, Uniform Commercial Code financing statements (which may be carbon, photographic, photostatic or other reproductions of this Agreement or of a financing statement relating to this Agreement) which

NOT A CERTIFIED COPY

020071

MORGAN STANLEY CONFIDENTIAL 0007688

16div-025836

the Administrative Agent in its sole discretion may deem necessary or appropriate to further perfect the Security Interests.

(B) The Parent agrees that it will not change (i) its name, identity or corporate structure in any manner or (ii) the location of its chief executive office, in each case unless it shall have given the Administrative Agent not less than 30 days' prior notice thereof.

SECTION 6. *Collateral Accounts.*

(A) Promptly upon and at all times after the receipt of any Major Casualty Proceeds or Indemnity Proceeds, the Parent shall establish and shall thereafter maintain a cash collateral account (the "**Major Casualty and Indemnity Proceeds Account**") at the offices of the Administrative Agent, in the name and under the exclusive dominion and control of the Administrative Agent. The Parent hereby agrees to cause an amount of cash equal to the amount of such Major Casualty Proceeds or Indemnity Proceeds received from time to time after the establishment of the Major Casualty and Indemnity Proceeds Account to be deposited therein as set forth in this paragraph. Any income received with respect to the balance from time to time standing to the credit of the Major Casualty and Indemnity Proceeds Account, including any interest or capital gains on Liquid Investments, shall remain, or be deposited, in the Major Casualty and Indemnity Proceeds Account. All right, title and interest in and to the cash amounts on deposit from time to time in the Major Casualty and Indemnity Proceeds Account together with any Liquid Investments from time to time made pursuant to Section 6(E) hereof shall vest in the Administrative Agent, shall constitute part of the Collateral hereunder and shall not constitute payment of the Secured Obligations until applied thereto as hereinafter provided. The Administrative Agent shall (i) apply to prepayment of the Term Loans, those amounts on deposit in the Major Casualty and Indemnity Proceeds Account which are required to be applied to the prepayment of the Term Loans in accordance with Section 2.09(b)(ii) of the Credit Agreement and (ii) release those amounts on deposit in the Major Casualty and Indemnity Proceeds Account which are required to be released in accordance with Section 2.09(b)(ii) of the Credit Agreement..

(B) The balance from time to time standing to the credit of the Major Casualty and Indemnity Proceeds Account (to the extent not applied pursuant to the last sentence of Section 6(A)) shall be subject to withdrawal only upon the instructions of the Administrative Agent.

NOT A CERTIFIED COPY

020072

MORGAN STANLEY CONFIDENTIAL 0007689

16div-025837

(C) All amounts required to be deposited by the Parent as cash collateral pursuant to Section 2.04(j) of the Credit Agreement (any such amounts, a "**LC Reimbursement Amount**") shall be deposited in a cash collateral account (the "**LC Reimbursement Account**") established and maintained by the Parent at the offices of the Administrative Agent, in the name and under the exclusive dominion and control of the Administrative Agent. The Parent hereby agrees to cause any LC Reimbursement Amount to be deposited therein as set forth in this paragraph. Any income received with respect to the balance from time to time standing to the credit of the LC Reimbursement Account, including any interest or capital gains on Liquid Investments, shall remain, or be deposited, in the LC Reimbursement Account. All right, title and interest in and to the cash amounts on deposit from time to time in the LC Reimbursement Account together with any Liquid Investments from time to time made pursuant to Section 6(E) shall vest in the Administrative Agent, shall constitute part of the Collateral hereunder and shall not constitute payment of the Secured Obligations until applied thereto as hereinafter provided. The Administrative Agent shall apply amounts on deposit in the Prepayment Account to reimburse the Issuing Bank for LC Disbursements or to satisfy the reimbursement obligations of the Borrower for LC Exposure or other obligations of the Borrower in accordance with Section 2.04(j) of the Credit Agreement and shall return the amounts on deposit in the Prepayment Account to the Borrower in accordance with Section 2.04(j)..

(D) All amounts required to be deposited by the Parent as cash collateral pursuant to Section 2.09(c) of the Credit Agreement (any such amounts, a "**Prepayment Amount**") shall be deposited in a Prepayment Account (the "**Prepayment Account**") established and maintained by the Parent at the offices of the Administrative Agent, in the name and under the exclusive dominion and control of the Administrative Agent. The Parent hereby agrees to cause any Prepayment Amount to be deposited therein as set forth in this paragraph. Any income received with respect to the balance from time to time standing to the credit of the Prepayment Account, including any interest or capital gains on Liquid Investments, shall remain, or be deposited, in the Prepayment Account. All right, title and interest in and to the cash amounts on deposit from time to time in the Prepayment Account together with any Liquid Investments from time to time made pursuant to Section 6(E) shall vest in the Administrative Agent, shall constitute part of the Collateral hereunder and shall not constitute payment of the Secured Obligations until applied thereto as hereinafter provided. The Administrative Agent shall apply to prepayment of the Tranche B Term Loans, amounts on deposit in the Prepayment Account in accordance with Section 2.09(c) of the Credit Agreement.

NOT A CERTIFIED COPY

020073

MORGAN STANLEY CONFIDENTIAL 0007690

16div-025838

(E) Amounts on deposit in the Collateral Accounts shall be invested and re-invested from time to time in such Liquid Investments as the Parent shall determine, which Liquid Investments shall be held in the name and be under the control of the Administrative Agent; *provided* that, if an Event of Default has occurred and is continuing, the Administrative Agent shall, if instructed by the Required Lenders, cause such Liquid Investments to be liquidated and apply or cause to be applied the proceeds thereof to the payment of the Secured Obligations in the manner specified in Section 14. For this purpose, "**Liquid Investments**" means Permitted Investments; *provided* that (i) each Liquid Investment shall mature within 30 days after it is acquired by the Administrative Agent and (ii) in order to provide the Administrative Agent, for the benefit of the Secured Parties, with a perfected security interest therein, each Liquid Investment shall be either:

(i) evidenced by negotiable certificates or instruments, or if non-negotiable then issued in the name of the Administrative Agent, which (together with any appropriate instruments of transfer) are delivered to, and held by, the Administrative Agent or an agent thereof (which shall not be the Parent or any of its Affiliates) in the State of New York or North Carolina; or

(ii) in book-entry form and issued by the United States and subject to pledge under applicable state law and Treasury regulations and as to which (in the opinion of counsel to the Administrative Agent) appropriate measures shall have been taken for perfection of the Security Interests.

SECTION 7. *Record Ownership of Pledged Stock.* Upon the occurrence and during the continuance of any Default, the Administrative Agent may at any time or from time to time, in its sole discretion, cause any or all of the Pledged Stock to be transferred of record into the name of the Administrative Agent or its nominee. The Parent will promptly give to the Administrative Agent copies of any notices or other communications received by it with respect to Pledged Stock registered in the name of the Parent and the Administrative Agent will promptly give to the Parent copies of any notices and communications received by the Administrative Agent with respect to Pledged Stock registered in the name of the Administrative Agent or its nominee.

SECTION 8. *Right to Receive Distributions on Collateral.* The Administrative Agent shall have the right to receive and, during the continuance of any Default, to retain as Collateral hereunder all dividends, interest and other

NOT A CERTIFIED COPY

020074

MORGAN STANLEY CONFIDENTIAL 0007691

16div-025839

payments and distributions made upon or with respect to the Collateral and the Parent shall take all such action as the Administrative Agent may deem necessary or appropriate to give effect to such right. All such dividends, interest and other payments and distributions which are received by the Parent shall be received in trust for the benefit of the Administrative Agent and the Lenders and, if the Administrative Agent so directs during the continuance of a Default, shall be segregated from other funds of the Parent and shall, forthwith upon demand by the Administrative Agent during the continuance of a Default, be paid over to the Administrative Agent as Collateral in the same form as received (with any necessary endorsement). After all Defaults have been cured, the Administrative Agent's right to retain dividends, interest and other payments and distributions under this Section 8 shall cease and the Administrative Agent shall pay over to the Parent any such Collateral retained by it during the continuance of a Default.

SECTION 9. *Right to Vote Pledged Stock.* Unless a Default shall have occurred and be continuing, the Parent shall have the right, from time to time, to vote and to give consents, ratifications and waivers with respect to the Pledged Stock, and the Administrative Agent shall, upon receiving a written request from the Parent accompanied by a certificate signed by its principal financial officer stating that no Default has occurred and is continuing, deliver to the Parent or as specified in such request such proxies, powers of attorney, consents, ratifications and waivers in respect of any of the Pledged Stock which is registered in the name of the Administrative Agent or its nominee as shall be specified in such request and be in form and substance satisfactory to the Administrative Agent.

If a Default shall have occurred and be continuing, the Administrative Agent shall have the right to the extent permitted by law and the Parent shall take all such action as may be necessary or appropriate to give effect to such right, to vote and to give consents, ratifications and waivers, and take any other action with respect to any or all of the Pledged Stock with the same force and effect as if the Administrative Agent were the absolute and sole owner thereof.

SECTION 10. *General Authority.* The Parent hereby irrevocably appoints the Administrative Agent its true and lawful attorney, with full power of substitution, in the name of the Parent, the Administrative Agent, the Lenders or otherwise, for the sole use and benefit of the Administrative Agent and Lenders, but at the expense of the Parent, to the extent permitted by law to exercise, at any time and from time to time while an Event of Default has occurred and is continuing, all or any of the following powers with respect to all or any of the Collateral:

(i) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof,

NOT A CERTIFIED COPY

020075

MORGAN STANLEY CONFIDENTIAL 0007692

16div-025840

(ii) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto,

(iii) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof, as fully and effectually as if the Administrative Agent were the absolute owner thereof, and

(iv) to extend the time of payment of any or all thereof and to make any allowance and other adjustments with reference thereto;

provided that the Administrative Agent shall give the Parent not less than ten days' prior notice of the time and place of any sale or other intended disposition of any of the Collateral except any Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. The Administrative Agent and the Parent agree that such notice constitutes "**reasonable notification**" within the meaning of Section 9-504(3) of the Uniform Commercial Code.

SECTION 11. *Remedies upon Event of Default.* If any Event of Default shall have occurred and be continuing, the Administrative Agent may exercise on behalf of the Lenders all the rights of a secured party under the Uniform Commercial Code (whether or not in effect in the jurisdiction where such rights are exercised) and, in addition, the Administrative Agent may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, (i) withdraw all cash and Liquid Investments in the Collateral Accounts and apply such cash and other cash, if any, then held by it as Collateral as specified in Section 14 and (ii) if there shall be no such cash or Liquid Investments or if such cash or Liquid Investments shall be insufficient to pay all the Secured Obligations in full, sell the Collateral or any part thereof at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery, and at such price or prices as the Administrative Agent may deem satisfactory. Any Lender may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale). The Administrative Agent is authorized, in connection with any such sale, if it deems it advisable so to do, (i) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, (ii) to cause to be placed on certificates for any or all of the Pledged Securities or on any other securities pledged hereunder a legend to the effect that such security

NOT A CERTIFIED COPY

020076

has not been registered under the Securities Act of 1933 and may not be disposed of in violation of the provisions of said Act, and (iii) to impose such other limitations or conditions in connection with any such sale as the Administrative Agent deems necessary or advisable in order to comply with said Act or any other law. The Parent will execute and deliver such documents and take such other action as the Administrative Agent deems necessary or advisable in order that any such sale may be made in compliance with law. Upon any such sale the Administrative Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the Collateral so sold absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Parent which may be waived, and the Parent, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted. The notice (if any) of such sale required by Section 10 shall (1) in the case of a public sale, state the time and place fixed for such sale, (2) in the case of a sale at a broker's board or on a securities exchange, state the board or exchange at which such sale is to be made and the day on which the Collateral, or the portion thereof so being sold, will first be offered for sale at such board or exchange, and (3) in the case of a private sale, state the day after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix in the notice of such sale. At any such sale the Collateral may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may determine. The Administrative Agent shall not be obligated to make any such sale pursuant to any such notice. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In the case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the selling price is paid by the purchaser thereof, but the Administrative Agent shall not incur any liability in the case of the failure of such purchaser to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may again be sold upon like notice. The Administrative Agent, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interests and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

SECTION 12. *Expenses*. The Parent agrees that it will forthwith upon demand pay to the Administrative Agent:

NOT A CERTIFIED COPY

020077

MORGAN STANLEY CONFIDENTIAL 0007694

16div-025842

(i) the amount of any taxes which the Administrative Agent may have been required to pay by reason of the Security Interests or to free any of the Collateral from any Lien thereon, and

(ii) the amount of any and all out-of-pocket expenses, including the fees and disbursements of counsel and of any other experts, which the Administrative Agent may incur in connection with (w) the administration or enforcement of this Agreement, including such expenses as are incurred to preserve the value of the Collateral and the validity, perfection, rank and value of any Security Interest, (x) the collection, sale or other disposition of any of the Collateral, (y) the exercise by the Administrative Agent of any of the rights conferred upon it hereunder or (z) any Default or Event of Default.

Any such amount not paid on demand shall bear interest at the rate applicable to ABR Borrowings plus 2% and shall be an additional Secured Obligation hereunder.

SECTION 13. *Limitation on Duty of Administrative Agent in Respect of Collateral.* Beyond the exercise of reasonable care in the custody thereof, the Administrative Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any agent or bailee selected by the Administrative Agent in good faith.

SECTION 14. *Application of Proceeds.* Upon the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, or other realization upon, all or any part of the Collateral and any cash held in the Collateral Account or otherwise, shall be applied by the Administrative Agent in the following order of priorities:

first, to payment of the expenses of such sale or other realization, including reasonable compensation to agents and counsel for the Administrative Agent, and all expenses, liabilities and advances incurred or made by the Administrative Agent in connection therewith, and any other unreimbursed expenses for which the Administrative Agent or any Lender is to be reimbursed

NOT A CERTIFIED COPY

020078

MORGAN STANLEY CONFIDENTIAL 0007695

16div-025843

pursuant to Section 10.03 of the Credit Agreement or Section 12 hereof and unpaid fees owing to the Administrative Agent under the Credit Agreement;

second, to the ratable payment of unpaid principal of the Secured Obligations and unpaid reimbursement obligations which constitute Secured Obligations;

third, to the ratable payment of unpaid Hedging Obligations and accrued but unpaid interest on the Secured Obligations in accordance with the provisions of the Credit Agreement;

fourth, to the ratable payment of all other Secured Obligations, until all Secured Obligations shall have been paid in full; and

finally, to payment to the Parent or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

The Administrative Agent may make distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

SECTION 15. *Concerning the Administrative Agent.* The provisions of Article 8 of the Credit Agreement shall inure to the benefit of the Administrative Agent in respect of this Agreement and shall be binding upon the parties to the Credit Agreement in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Administrative Agent therein set forth:

(A) The Administrative Agent is authorized to take all such action as is provided to be taken by it as Administrative Agent hereunder and all other action reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the Collateral) the Administrative Agent shall act or refrain from acting in accordance with written instructions from the Required Lenders or, in the absence of such instructions, in accordance with its discretion.

(B) The Administrative Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Security Interests in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder. The Administrative Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Agreement by the Parent.

NOT A CERTIFIED COPY

020079

MORGAN STANLEY CONFIDENTIAL 0007696

16div-025844

SECTION 16. *Appointment of Co-Agents.* At any time or times, in order to comply with any legal requirement in any jurisdiction, the Administrative Agent may appoint another bank or trust company or one or more other persons, either to act as co-agent or co-agents, jointly with the Administrative Agent, or to act as separate agent or agents on behalf of the Lenders with such power and authority as may be necessary for the effectual operation of the provisions hereof and may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for the protection of such co-agent or separate agent similar to the provisions of Section 15).

SECTION 17. *Termination of Security Interests; Release of Collateral.*

(A) Upon the repayment in full of all Secured Obligations, the cancellation of all Letters of Credit and the termination of the Commitments under the Credit Agreement, the Security Interests shall terminate and all rights to the Collateral shall revert to the Parent. At any time and from time to time prior to such termination of the Security Interests, the Administrative Agent may release any of the Collateral with the prior written consent of the Required Lenders; *provided* that the Administrative Agent may not release all or substantially all of the Collateral (as defined in the Credit Agreement) without the prior written consent of all the Lenders.

(B) Unless otherwise instructed by the Required Lenders at a time when an Event of Default shall have occurred and be continuing, the Administrative Agent shall upon a sale of Collateral permitted by the Credit Agreement release the portion of the Collateral so sold (but not any proceeds of such sale). No such release shall require the consent of any Lender, and the Administrative Agent shall be fully protected in relying on a certificate of the Parent as to whether any particular sale is permitted by the terms of the Credit Agreement.

(C) Upon any termination of the Security Interests or release of Collateral in accordance with this Section, the Administrative Agent will, at the expense of the Parent, execute and deliver to the Parent such documents as the Parent shall reasonably request to evidence the termination of the Security Interests or the release of such Collateral, as the case may be.

SECTION 18. *Notices.* All notices hereunder shall be given in accordance with Section 10.01 of the Credit Agreement.

NOT A CERTIFIED COPY

020080

SECTION 19. *Waivers, Non-Exclusive Remedies.* No failure on the part of the Administrative Agent to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent of any right under the Credit Agreement or this Agreement preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the Credit Agreement are cumulative and are not exclusive of any other remedies provided by law.

SECTION 20. *Successors and Assigns.* This Agreement is for the benefit of the Administrative Agent and the Lenders and their successors and assigns, and in the event of an assignment of all or any of the Secured Obligations, the rights hereunder, to the extent applicable to the Indebtedness so assigned, may be transferred with such Indebtedness. This Agreement shall be binding on the Parent and its successors and assigns.

SECTION 21. *Changes in Writing.* Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by the Parent and the Administrative Agent with the consent of the Required Lenders (except that any change, waiver, discharge or termination of Section 17 hereof shall require the consent of all of the Lenders).

SECTION 22. *New York Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than New York are governed by the laws of such jurisdiction.

SECTION 23. *Severability.* If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent and the Lenders in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

NOT A CERTIFIED COPY

020081

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNBEAM CORPORATION

By _____
Name:
Title:

FIRST UNION NATIONAL BANK,
as Administrative Agent

By _____
Name:
Title:

NOT A CERTIFIED COPY

020082

MORGAN STANLEY CONFIDENTIAL 0007699

16div-025847

Schedule I

Direct Domestic Subsidiaries

Name of Domestic Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020083

MORGAN STANLEY CONFIDENTIAL 0007700

16div-025848

Schedule II

Direct Foreign Subsidiaries

Name of Foreign Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020084

MORGAN STANLEY CONFIDENTIAL 0007701

16div-025849

Exhibit A

UCC Collateral Description

All shares of capital stock and instruments issued by each direct subsidiary of the Parent, all indebtedness and other obligations owed to the Parent by each direct subsidiary of the Parent, and all other investments made by the Parent in any direct subsidiary of the Parent, and all income and profits thereon, and all dividends and other payments and distributions with respect thereto, and all proceeds of any and all of the foregoing, including all cash and non-cash proceeds, in each case now owned or hereafter acquired and wherever located.

NOT A CERTIFIED COPY

020085

MORGAN STANLEY CONFIDENTIAL 0007702

16div-025850

EXHIBIT C
TO CREDIT AGREEMENT

SUBSIDIARY GUARANTEE

GUARANTEE dated as of March 30, 1998 by each of the Persons parties hereto (each, with its successors, a "**Guarantor**" and collectively, with their respective successors, the "**Guarantors**") in favor of FIRST UNION NATIONAL BANK, as Administrative Agent (with its successors in such capacity, the "**Administrative Agent**").

WITNESSETH:

WHEREAS, Sunbeam Corporation (with its successors, the "**Parent**"), the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent and the Administrative Agent (together with the Documentation Agent and Syndication Agent, the "**Agents**") are parties to a Credit Agreement dated as of March 30, 1998 (as the same may be amended from time to time, the "**Credit Agreement**"); and

WHEREAS, the Parent is, or may hereafter become, obligated to one or more of the Lenders under one or more Hedging Agreements (as defined in the Credit Agreement) as contemplated by Section 5.10 of the Credit Agreement; and

WHEREAS, in consideration of the financial and other support that the Parent has provided, and such financial and other support as the Parent may in the future provide, to the Guarantors, the Guarantors are willing to guarantee the Guaranteed Obligations (as herein defined); and

WHEREAS, in order to induce the Lenders and the Agents to enter into the Credit Agreement and in order to induce the Lenders to enter into any Hedging Agreements, the Parent has covenanted in the Credit Agreement that, subject to certain exceptions, each Person which becomes a Material Subsidiary shall execute and deliver a Subsidiary Guarantee substantially in the form hereof;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Definitions*. Terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided

NOT A CERTIFIED COPY

020086

MORGAN STANLEY CONFIDENTIAL 0007703

16div-025851

for therein, except that the term "Loan Documents" shall include any document with respect to any Hedging Obligations. The following additional terms, as used herein, have the following respective meanings:

"Guaranteed Obligations" means all principal of and interest (including, without limitation, any interest which accrues after or would accrue but for the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any Obligor, whether or not allowed or allowable as a claim in any such proceeding) on any loan under, or any note issued pursuant to, the Credit Agreement, (ii) all reimbursement obligations with respect to any Letter of Credit, (iii) any Hedging Obligations, (iv) all other amounts payable by any Obligor under the Loan Documents and (v) any renewals, or extensions of any of the foregoing.

"Hedging Obligations" means all obligations of the Parent under any Hedging Agreement between the Parent and any Lender.

SECTION 2. *The Guarantee.* Each of the Guarantors, jointly and severally, hereby unconditionally guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the Guaranteed Obligations. Upon failure by the Parent to pay punctually any Guaranteed Obligation, each Guarantor agrees jointly and severally that it shall forthwith on demand pay the amount not so paid at the place and in the manner specified in the Credit Agreement or the other relevant Loan Document, as the case may be.

SECTION 3. *Guarantee Unconditional.* The obligations of each Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Parent, any other Obligor or any other Person under any Loan Document, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Credit Agreement, any Note, any Letter of Credit or any other Loan Document or any Acquisition Document;

(iii) any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of the Parent, any other Obligor or any other Person under any Loan Document;

(iv) any change in the company existence, structure or ownership of the Parent, any other Obligor or any other Person or any of their

NOT A CERTIFIED COPY

0200087

MORGAN STANLEY CONFIDENTIAL 0007704

16div-025852

respective Subsidiaries, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Parent, any other Obligor or any other Person or any of their assets or any resulting release or discharge of any obligation of the Parent, any other Obligor or any other Person contained in any Loan Document or any Acquisition Document;

(v) the existence of any claim, set-off or other rights which such Guarantor may have at any time against the Parent, any other Obligor, any Agent, any Lender or any other Person, whether in connection herewith or any unrelated transactions, *provided* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) any invalidity or unenforceability relating to or against the Parent, any other Obligor or any other Person for any reason of the Credit Agreement, any Note, any Letter of Credit or any other Loan Document or any Acquisition Document, or any provision of applicable law or regulation purporting to prohibit the payment by the Parent, any other Obligor or any other Person of the principal of or interest on any Note or any other amount payable by the Parent under any Loan Document; or

(vii) any other act or omission to act or delay of any kind by the Parent, any other Obligor, the Administrative Agent, any other Party to any Loan Document or any Acquisition Document, any Lender or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to obligations of any Guarantor hereunder.

SECTION 4. *Discharge Only upon Payment in Full; Reinstatement In Certain Circumstances; Release of Guarantors.* (a) Subject to subsections (b) and (c) below, each Guarantor's obligations hereunder shall remain in full force and effect until the repayment in full of all Guaranteed Obligations, the termination of the Commitments under the Credit Agreement and the expiration or cancellation of all Letters of Credit. If at any time any payment of Guaranteed Obligations payable by the Parent is rescinded or must be otherwise restored or returned upon the insolvency or receivership of the Parent or otherwise, each Guarantor's obligations hereunder with respect thereto shall be reinstated as though such payment had been due but not made at such time.

(b) Except as provided otherwise in the Credit Agreement, upon the consummation of any Asset Sale permitted by the terms of the Credit Agreement and consisting of the disposition of all of the capital stock of a Guarantor (any such Asset Sale, a "Guarantor Asset Sale"), the Administrative Agent shall release such Guarantor from all of its obligations hereunder. Such release shall not

NOT A CERTIFIED COPY

880020

require the consent of any Lender, and the Administrative Agent shall be fully protected in relying on a certificate of the Parent as to whether any particular Asset Sale constitutes a Guarantor Asset Sale.

(c) In addition to the release of any Guarantor from its obligations hereunder permitted pursuant to subsection (b), at any time and from time to time prior to the termination of each Guarantor's obligations hereunder, the Administrative Agent may release any Guarantor from its obligations hereunder with the prior written consent of all of the Lenders.

SECTION 5. *Waiver by the Guarantors.* Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any corporation or person against the Parent, any other Guarantor or any other Person.

SECTION 6. *Liens on Assets.* Upon the written request of the Required Lenders to the Administrative Agent, any Guarantor may be required to provide Liens upon such assets as may be specified in such request to secure the obligations of such Guarantor hereunder. Any such request shall be made by the Required Lenders in the good faith exercise of their discretion. Within 30 days after any such request, such Guarantor shall (i) execute and deliver to the Administrative Agent such number of copies as the Administrative Agent may specify of documents creating such Liens and (ii) do all other things which may be necessary or which the Administrative Agent may reasonably request in order to confer upon and confirm to the Lenders the benefits of such security. Within 45 days after a request for security pursuant hereto, such Guarantor shall deliver such legal opinions, certificates, evidences of corporate action or other documents as the Administrative Agent may reasonably request, all in form and substance satisfactory to the Administrative Agent, relating to the satisfaction of such Guarantor's obligations under this Section.

SECTION 7. *Subrogation.* Upon making any payment with respect to the Parent hereunder, each Guarantor shall be subrogated to the rights of the payee against the Parent with respect to such payment; *provided* that such Guarantor shall not enforce any payment by way of subrogation, or by reason of contribution against the Parent or any other guarantor of the Parent's obligations guaranteed hereunder (including without limitation any other Guarantor), until the repayment in full of all Guaranteed Obligations, the termination of the Commitments under the Credit Agreement and the expiration or cancellation of all Letters of Credit.

SECTION 8. *Stay of Acceleration.* If acceleration of the time for payment of any Guaranteed Obligations payable by the Parent is stayed upon the

NOT A CERTIFIED COPY

020089

MORGAN STANLEY CONFIDENTIAL 0007706

16div-025854

insolvency, bankruptcy or reorganization of the Parent or otherwise, all such Guaranteed Obligations otherwise subject to acceleration under the terms of any Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent made at the request of the Required Lenders.

SECTION 9. *Representations and Warranties*. Each Guarantor represents and warrants as follows:

(a) Such Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

(b) The execution, delivery and performance by such Guarantor of the Loan Documents to which it is a party are within such Guarantor's company powers and have been duly authorized by all necessary company and, if required, member or stockholder action. Each Loan Document to which such Guarantor is a party has been duly executed and delivered by such Guarantor and constitutes a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The execution, delivery and performance by such Guarantor of the Loan Documents to which it is a party (i) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (ii) will not violate in any material respect any applicable law or regulation or the charter, by-laws or other organizational documents of such Guarantor or any of its Subsidiaries or any order of any Governmental Authority, (iii) will not violate or result in a default under any indenture, agreement or other instrument binding upon such Guarantor or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by such Guarantor or any of its Subsidiaries and (iv) will not result in the creation or imposition of any Lien on any asset of such Guarantor or any of its Subsidiaries (other than the Liens created by the Collateral Documents).

SECTION 10. *Amendments*. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only in

NOT A CERTIFIED COPY

020090

writing signed by each Guarantor and the Administrative Agent with the consent of the Required Lenders (or, solely in the case of this Section, the first sentence of Section 4(a) or any provision of Section 4(c) specifying the circumstances under which the consent of all Lenders is required to release any Guarantor from its obligations hereunder, all the Lenders). The Guarantors shall be entitled to assume that the Administrative Agent has obtained the requisite consent of the Lenders to any such change, waiver, discharge or termination hereunder to which the Administrative Agent has consented in writing.

SECTION 11. *Notices.* All notices and other communications provided for herein shall be in writing and shall be delivered to the relevant party by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy at the address of such party set forth below. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Addresses for Notices:

To Subsidiary Guarantors:

DDG I, Inc.
201 West 9th Street
Plaza, Suite 415
Wilmington, DE 19801

GHI I, Inc.
201 West 9th Street
Plaza, Suite 415
Wilmington, DE 19801

OP II, Inc.
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Attention: Treasurer
Telecopy No: (561) 243-2027

Sunbeam Americas Holdings, LTD.
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Attention: Treasurer

NOT A CERTIFIED COPY

160020

MORGAN STANLEY CONFIDENTIAL

0007708

16div-025856

Telecopy No: (561) 243-2027

Sunbeam Products, Inc.
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445
Attention: Treasurer
Telecopy No: (561) 243-2027

To Administrative Agent:

First Union National Bank
301 South College Street
One First Union Center
TW-10
Charlotte, North Carolina 28288-0608
Attention: Tom Molitor
Telecopy No.: (704) 374-3300

SECTION 12. *No Waiver; Remedies.* No failure on the part of the Administrative Agent to exercise, and no delay in exercising and no course of dealing with respect to. any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent of any right under this Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other remedies provided by law.

SECTION 13. *Right of Set-off.* If any Guarantor fails to pay any Guaranteed Obligation when due, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of such Guarantor against any and all of the obligations of such Guarantor now or hereafter existing under the Loan Documents held by such Lender or any of its Affiliates, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 14. *Continuing Guarantee.* This Guarantee is a continuing Guarantee and shall be binding upon each of the Guarantors and its respective

NOT A CERTIFIED COPY

020092

successors and assigns, and inure to the benefit of and be enforceable by each of the Agents, each of the Lenders and their respective successors, transferees and assigns. This Guarantee is for the benefit of each Lender and its successors and assigns, and in the event of an assignment of all or any of any Lender's interest in and to its rights and obligations under the Credit Agreement or any Hedging Agreement in accordance with the Credit Agreement or such Hedging Agreement, the assignor's rights hereunder, to the extent applicable to the indebtedness or obligation so assigned, shall automatically be transferred with such indebtedness or obligation.

SECTION 15. *Severability.* If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent, the other Agents and the Lenders in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

SECTION 16. *Limitation on the Obligations.* The obligations of each Guarantor hereunder shall be limited to an aggregate amount that is equal to the largest amount that would not render the obligations of such Guarantor hereunder subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of applicable law.

SECTION 17. *Governing Law; Jurisdiction; Consent to Service of Process.* (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Agent or Lender may otherwise have to bring any action or proceeding relating to this Agreement or the

NOT A CERTIFIED COPY

020093

other Loan Documents against such Guarantor or its properties in the courts of any jurisdiction.

(c) Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01 of the Credit Agreement. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 18. *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

NOT A CERTIFIED COPY

020094

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee to be duly executed by their respective authorized officers as of the day and year first above written.

DDG I, Inc.

By: _____
Name:
Title:

GHI I, Inc.

By: _____
Name:
Title:

OP II, Inc.

By: _____
Name:
Title:

SUNBEAM AMERICAS
HOLDINGS, LTD.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020095

MORGAN STANLEY CONFIDENTIAL 0007712

16div-025860

SUNBEAM PRODUCTS, INC.

By: _____
Name:
Title:

FIRST UNION NATIONAL BANK
as Administrative Agent

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020096

BRK BRANDS, INC

By: _____
Name:
Title:

FIRST ALERT, INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020098

(NY) 14013/995/AGT/guar.sub.wpd

SI II, INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020099

EXHIBIT D
TO CREDIT AGREEMENT

SUBSIDIARY
PLEDGE AND SECURITY AGREEMENT

AGREEMENT dated as of March 30, 1998 between DDG I, INC., GHI I, INC., OP II, INC., SUNBEAM AMERICAS HOLDINGS, LTD., SUNBEAM PRODUCTS, INC., LASER ACQUISITION CORP., COLEMAN WORLDWIDE CORP., SIGNATURE BRANDS INC., SIGNATURE BRANDS USA, INC., BRK BRANDS, INC., FIRST ALERT, INC., AND SI II, INC. (with their respective successors, the "**Grantors**" and each a "**Grantor**") and FIRST UNION NATIONAL BANK, as Administrative Agent.

WITNESSETH:

WHEREAS, Sunbeam Corporation (with its successors, the "**Parent**"), the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent, and First Union National Bank, as Administrative Agent, are parties to a Credit Agreement dated as of March 30, 1998 (as the same may be amended from time to time, the "**Credit Agreement**"); and

WHEREAS, the Parent is, or may hereafter become obligated to one or more of the Lenders under one or more Hedging Agreements (as defined in the Credit Agreement) as contemplated by Section 5.10 of the Credit Agreement; and

WHEREAS, as of the date hereof, the Grantors have entered into a Subsidiary Guarantee Agreement (the "**Subsidiary Guarantee**") to guarantee the Borrower's obligations under the Credit Agreement, Hedging Agreements and certain related agreements; and

WHEREAS, in order to secure their obligations under the Subsidiary Guarantee, the Grantors have agreed to grant a continuing security interest in and to the Collateral (as hereafter defined) to secure the Secured Obligations (as hereafter defined);

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

NOT A CERTIFIED COPY

020100

SECTION 1. *Definitions*. Terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein except that the term "Loan Documents" shall include any document with respect to any Hedging Obligations. The following additional terms, as used herein, have the following respective meanings:

"**Collateral**" has the meaning assigned to such term in Section 3(A).

"**Direct Domestic Subsidiary**" means a Direct Subsidiary organized under the laws of the United States of America or a state thereof.

"**Direct Domestic Subsidiary Shares**" means the shares of capital stock or other equity interest of each Direct Domestic Subsidiary listed on Schedule I opposite such Direct Domestic Subsidiary's name.

"**Direct Foreign Subsidiary**" means a Direct Subsidiary organized under the laws of any jurisdiction outside the United States.

"**Direct Foreign Subsidiary Shares**" means the shares of capital stock or other equity interests of each Direct Foreign Subsidiary listed on Schedule II opposite such Direct Foreign Subsidiary's name.

"**Direct Subsidiary**" means a Material Subsidiary of any Grantor, the capital stock or other equity interests of which is held directly by such Grantor.

"**Direct Subsidiary Notes**" means the Intercompany Agreements of each Direct Subsidiary listed on Schedule I or Schedule II opposite such Direct Subsidiary's name.

"**Hedging Obligations**" means all obligations of the Parent under any Hedging Agreement between the Parent and any Lender.

"**Intercompany Agreements**" means all instruments owned by any Grantor evidencing Indebtedness owed to it by any of its Direct Subsidiaries.

"**Pledged Instruments**" means (i) the Direct Subsidiary Notes and (ii) any instrument required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

"**Pledged Securities**" means the Pledged Instruments and the Pledged Stock.

NOT A CERTIFIED COPY

020101

0007718

MORGAN STANLEY CONFIDENTIAL

16div-025865

"**Pledged Stock**" means (i) the Direct Domestic Subsidiary Shares, (ii) 66% of the Foreign Direct Subsidiary Shares and (iii) any other capital stock required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

"**Secured Obligations**" means the obligations secured under this Agreement including all obligations of the Grantors under or in respect of the Subsidiary Guarantee, including without limitation their obligations in respect of (i) all principal of and interest (including, without limitation, any interest which accrues after or would accrue but for the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Obligors, whether or not allowed or allowable as a claim in any such proceeding) on any loan under, or any note issued pursuant to, the Credit Agreement, (ii) all reimbursement obligations with respect to any Letter of Credit, (iii) any Hedging Obligations, (iv) all other amounts payable by the Obligors under the Loan Documents, and (v) any renewals or extensions of any of the foregoing.

"**Security Interests**" means the security interests in the Collateral granted hereunder securing the Secured Obligations.

Unless otherwise defined herein, or unless the context otherwise requires, all terms used herein which are defined in the New York Uniform Commercial Code as in effect on the date hereof shall have the meanings therein stated.

SECTION 2. *Representations and Warranties*. Each Grantor represents and warrants as follows:

(A) Title to Pledged Securities. The Grantors own all of the Pledged Securities, free and clear of any Liens other than the Security Interests. The Pledged Stock includes (i) all of the issued and outstanding capital stock of each Direct Domestic Subsidiary and (ii) 66% of the issued and outstanding stock of each Foreign Direct Subsidiary. The Pledged Instruments include all instruments owned by the Grantors evidencing Indebtedness owed to them by any of their Direct Subsidiaries. All of the Pledged Stock has been duly authorized and validly issued, and is fully paid and non-assessable, and is subject to no options to purchase or similar rights of any Person. No Grantor is or will become a party to or otherwise become bound by any agreement, other than this Agreement and the Subsidiary Guarantee, which restricts in any manner the rights of any present or future holder of any of the Pledged Securities with respect thereto.

NOT A CERTIFIED COPY

020102

MORGAN STANLEY CONFIDENTIAL 0007719

16div-025866

(B) Validity, Perfection and Priority of Security Interests. Upon the delivery of the Pledged Instruments and certificates representing the Pledged Stock to the Administrative Agent in accordance with Section 4 hereof and the filing of UCC financing statements in the form specified in Exhibit A in the appropriate filing office in the jurisdiction specified on the signature pages of the Subsidiary Guarantee, the Administrative Agent will have valid and perfected security interests in the Collateral subject to no prior Lien other than Permitted Liens. Except for the filing of the UCC financing statements described in the immediately preceding sentence, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of this Agreement or necessary for the validity or enforceability hereof or for the perfection or enforcement of the Security Interests. None of the Grantors nor any of their subsidiaries has performed or will perform any acts which might prevent the Administrative Agent from enforcing any of the terms and conditions of this Agreement or which would limit the Administrative Agent in any such enforcement. Other than financing statements or other similar or equivalent documents or instruments with respect to the Security Interests, no financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a Lien on such Collateral. No collateral is in the possession of any Person (other than the Grantors) asserting any claim thereto or security interest therein, except that the Administrative Agent or its designee may have possession of Collateral as contemplated hereby.

(C) UCC Filing Locations. The chief executive office of each Grantor is located at its address set forth on the signature pages of the Subsidiary Guarantee. Under the Uniform Commercial Code as in effect in the State in which each office is located, no local filing is required to perfect a security interest in collateral consisting of accounts or general intangibles.

SECTION 3. *The Security Interests.* In order to secure the full and punctual payment of the Secured Obligations in accordance with the terms thereof, and to secure the performance of all the obligations of the Grantors hereunder:

(A) Each Grantor hereby assigns and pledges to and with the Administrative Agent for the benefit of the Lenders and grants to the Administrative Agent for the benefit of the Lenders security interests in all of the following property of such Grantor (collectively, the "**Collateral**"):

NOT A CERTIFIED COPY

020103

(1) the Pledged Securities, and all of its rights and privileges with respect to the Pledged Securities, and all income and profits thereon, and all interest, dividends and other payments and distributions with respect thereto;

(2) all Indebtedness now or hereafter owed to such Grantor by any of its Direct Subsidiaries (whether or not evidenced by instruments (as defined in the UCC));

(3) all other Investments made by such Grantor in any of its Direct Domestic Subsidiaries; and

(4) all proceeds of all or any of the collateral described in clauses (1) through (3) hereof.

Contemporaneously with the execution and delivery hereof, each Grantor is delivering the Direct Subsidiary Notes and certificates representing the Direct Domestic Subsidiary Shares and the Foreign Direct Subsidiary Shares in pledge hereunder.

(B) In the event that at any time any Person becomes a Direct Domestic Subsidiary, or any Direct Domestic Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to any Grantor, or any Grantor makes any other Investment in any Direct Domestic Subsidiary, such Grantor will immediately pledge and deposit with the Administrative Agent certificates representing all such shares or equity interests and such note or an instrument evidencing such other Indebtedness or other Investment as additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(C) In the event that at any time any Person becomes a Direct Foreign Subsidiary, or any Direct Foreign Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to any Grantor, or any Grantor makes any other Investment in any Direct Foreign Subsidiary, such Grantor will immediately pledge and deposit with the Administrative Agent certificates representing additional shares or equity interests sufficient to cause the Secured Parties to have a security interest in 66% (but not more than 66%) of all the outstanding capital stock of or other equity interests in such Direct Foreign Subsidiary and such note or an instrument evidencing such other Indebtedness or other Investment as

NOT A CERTIFIED COPY

020104

additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(D) The Security Interests are granted as security only and shall not subject the Administrative Agent or any Lender to, or transfer or in any way affect or modify, any obligation or liability of the Grantors or any of their Direct Subsidiaries with respect to any of the Collateral or any transaction in connection therewith.

SECTION 4. *Delivery of Pledged Securities.* All Pledged Instruments shall be delivered to the Administrative Agent by the Grantors pursuant hereto indorsed to the order of the Administrative Agent, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent. All certificates representing Pledged Stock delivered to the Administrative Agent by the Grantors pursuant hereto shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent.

SECTION 5. *Further Assurances.*

(A) Each Grantor agrees that it will from time to time, at its expense and in such manner and form as the Administrative Agent may require, execute, deliver, file and record any financing statement, specific assignment or other paper and take any other action that may be necessary or desirable, or that the Administrative Agent may request, in order to create, preserve, perfect, confirm or validate any Security Interest or to enable the Administrative Agent to exercise and enforce any of its rights, powers or remedies hereunder with respect to any of the Collateral. To the extent permitted by applicable law, each Grantor hereby authorizes the Administrative Agent to execute and file, in the name of such Grantor or otherwise, Uniform Commercial Code financing statements (which may be carbon, photographic, photostatic or other reproductions of this Agreement or of a financing statement relating to this Agreement) which the Administrative Agent in its sole discretion may deem necessary or appropriate to further perfect the Security Interests.

(B) Each Grantor agrees that it will not change (i) its name, identity or corporate structure in any manner or (ii) the location of its chief executive office, in each case unless it shall have given the Administrative Agent not less than 30 days' prior notice thereof.

NOT A CERTIFIED COPY

020105

SECTION 6. *Record Ownership of Pledged Stock.* Upon the occurrence and during the continuance of any Default, the Administrative Agent may at any time or from time to time, in its sole discretion, cause any or all of the Pledged Stock to be transferred of record into the name of the Administrative Agent or its nominee. Each Grantor will promptly give to the Administrative Agent copies of any notices or other communications received by it with respect to Pledged Stock registered in the name of such Grantor and the Administrative Agent will promptly give to each Grantor copies of any notices and communications received by the Administrative Agent with respect to Pledged Stock registered in the name of the Administrative Agent or its nominee.

SECTION 7. *Right to Receive Distributions on Collateral.* The Administrative Agent shall have the right to receive and, during the continuance of any Default, to retain as Collateral hereunder all dividends, interest and other payments and distributions made upon or with respect to the Collateral and each Grantor shall take all such action as the Administrative Agent may deem necessary or appropriate to give effect to such right. All such dividends, interest and other payments and distributions which are received by any Grantor shall be received in trust for the benefit of the Administrative Agent and the Lenders and, if the Administrative Agent so directs during the continuance of a Default, shall be segregated from other funds of such Grantor and shall, forthwith upon demand by the Administrative Agent during the continuance of a Default, be paid over to the Administrative Agent as Collateral in the same form as received (with any necessary endorsement). After all Defaults have been cured, the Administrative Agent's right to retain dividends, interest and other payments and distributions under this Section 7 shall cease and the Administrative Agent shall pay over to the appropriate Grantor any such Collateral retained by it during the continuance of a Default.

SECTION 8. *Right to Vote Pledged Stock.* Unless a Default shall have occurred and be continuing, the Grantors shall have the right, from time to time, to vote and to give consents, ratifications and waivers with respect to the Pledged Stock, and the Administrative Agent shall, upon receiving a written request from any Grantor accompanied by a certificate signed by its principal financial officer stating that no Default has occurred and is continuing, deliver to the Parent or as specified in such request such proxies, powers of attorney, consents, ratifications and waivers in respect of any of the Pledged Stock which is registered in the name of the Administrative Agent or its nominee as shall be specified in such request and be in form and substance satisfactory to the Administrative Agent.

If a Default shall have occurred and be continuing, the Administrative Agent shall have the right to the extent permitted by law and each Grantor shall

NOT A CERTIFIED COPY

020106

take all such action as may be necessary or appropriate to give effect to such right, to vote and to give consents, ratifications and waivers, and take any other action with respect to any or all of the Pledged Stock with the same force and effect as if the Administrative Agent were the absolute and sole owner thereof.

SECTION 9. *General Authority.* Each Grantor hereby irrevocably appoints the Administrative Agent its true and lawful attorney, with full power of substitution, in the name of such Grantor, the Administrative Agent, the Lenders or otherwise, for the sole use and benefit of the Administrative Agent and Lenders, but at the expense of such Grantor, to the extent permitted by law to exercise, at any time and from time to time while an Event of Default has occurred and is continuing, all or any of the following powers with respect to all or any of the Collateral:

(i) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof,

(ii) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto,

(iii) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof, as fully and effectually as if the Administrative Agent were the absolute owner thereof, and

(iv) to extend the time of payment of any or all thereof and to make any allowance and other adjustments with reference thereto;

provided that the Administrative Agent shall give each Grantor not less than ten days' prior notice of the time and place of any sale or other intended disposition of any of the Collateral except any Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. The Administrative Agent and the Grantors agree that such notice constitutes "**reasonable notification**" within the meaning of Section 9-504(3) of the Uniform Commercial Code.

SECTION 10. *Remedies upon Event of Default.* If any Event of Default shall have occurred and be continuing, the Administrative Agent may exercise on behalf of the Lenders all the rights of a secured party under the Uniform Commercial Code (whether or not in effect in the jurisdiction where such rights are exercised) and, in addition, the Administrative Agent may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, (i) apply the cash, if any, then held by it as Collateral as specified in Section 13 and (ii) if there shall be no such cash or if

NOT A CERTIFIED COPY

020107

MORGAN STANLEY CONFIDENTIAL 0007724

16div-025871

such cash shall be insufficient to pay all the Secured Obligations in full, sell the Collateral or any part thereof at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery, and at such price or prices as the Administrative Agent may deem satisfactory. Any Lender may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale). The Administrative Agent is authorized, in connection with any such sale, if it deems it advisable so to do, (i) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, (ii) to cause to be placed on certificates for any or all of the Pledged Securities or on any other securities pledged hereunder a legend to the effect that such security has not been registered under the Securities Act of 1933 and may not be disposed of in violation of the provisions of said Act, and (iii) to impose such other limitations or conditions in connection with any such sale as the Administrative Agent deems necessary or advisable in order to comply with said Act or any other law. Each Grantor will execute and deliver such documents and take such other action as the Administrative Agent deems necessary or advisable in order that any such sale may be made in compliance with law. Upon any such sale the Administrative Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the Collateral so sold absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of any Grantor which may be waived, and each Grantor, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted. The notice (if any) of such sale required by Section 9 shall (1) in the case of a public sale, state the time and place fixed for such sale, (2) in the case of a sale at a broker's board or on a securities exchange, state the board or exchange at which such sale is to be made and the day on which the Collateral, or the portion thereof so being sold, will first be offered for sale at such board or exchange, and (3) in the case of a private sale, state the day after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix in the notice of such sale. At any such sale the Collateral may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may determine. The Administrative Agent shall not be obligated to make any such sale pursuant to any such notice. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In the case of any

NOT A CERTIFIED COPY

020108

sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the selling price is paid by the purchaser thereof, but the Administrative Agent shall not incur any liability in the case of the failure of such purchaser to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may again be sold upon like notice. The Administrative Agent, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interests and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

SECTION 11. *Expenses.* Each Grantor agrees that it will forthwith upon demand pay to the Administrative Agent:

(i) the amount of any taxes which the Administrative Agent may have been required to pay by reason of the Security Interests or to free any of the Collateral from any Lien thereon, and

(ii) the amount of any and all out-of-pocket expenses, including the fees and disbursements of counsel and of any other experts, which the Administrative Agent may incur in connection with (w) the administration or enforcement of this Agreement, including such expenses as are incurred to preserve the value of the Collateral and the validity, perfection, rank and value of any Security Interest, (x) the collection, sale or other disposition of any of the Collateral, (y) the exercise by the Administrative Agent of any of the rights conferred upon it hereunder or (z) any Default or Event of Default.

Any such amount not paid on demand shall bear interest at the rate applicable to ABR Borrowings plus 2% and shall be an additional Secured Obligation hereunder.

SECTION 12. *Limitation on Duty of Administrative Agent in Respect of Collateral.* Beyond the exercise of reasonable care in the custody thereof, the Administrative Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any agent or bailee selected by the Administrative Agent in good faith.

NOT A CERTIFIED COPY

020109

MORGAN STANLEY CONFIDENTIAL 0007726

16div-025873

SECTION 13. *Application of Proceeds.* Upon the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, or other realization upon, all or any part of the Collateral and any cash held shall be applied by the Administrative Agent in the following order of priorities:

first, to payment of the expenses of such sale or other realization, including reasonable compensation to agents and counsel for the Administrative Agent, and all expenses, liabilities and advances incurred or made by the Administrative Agent in connection therewith, and any other unreimbursed expenses for which the Administrative Agent or any Lender is to be reimbursed pursuant to Section 10.03 of the Credit Agreement or Section 11 hereof and unpaid fees owing to the Administrative Agent under the Credit Agreement;

second, to the ratable payment of unpaid principal of the Secured Obligations and unpaid reimbursement obligations which constitute Secured Obligations;

third, to the ratable payment of unpaid Hedging Obligations and accrued but unpaid interest on the Secured Obligations in accordance with the provisions of the Credit Agreement;

fourth, to the ratable payment of all other Secured Obligations, until all Secured Obligations shall have been paid in full; and

finally, to payment to the Grantors or their successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

The Administrative Agent may make distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

SECTION 14. *Concerning the Administrative Agent.* The provisions of Article 8 of the Credit Agreement shall inure to the benefit of the Administrative Agent in respect of this Agreement and shall be binding upon the parties to the Credit Agreement in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Administrative Agent therein set forth:

(A) The Administrative Agent is authorized to take all such action as is provided to be taken by it as Administrative Agent hereunder and all other action reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the

NOT A CERTIFIED COPY

020110

MORGAN STANLEY CONFIDENTIAL 0007727

16div-025874

Collateral) the Administrative Agent shall act or refrain from acting in accordance with written instructions from the Required Lenders or, in the absence of such instructions, in accordance with its discretion.

(B) The Administrative Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Security Interests in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder. The Administrative Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Agreement by any Grantor.

SECTION 15. *Appointment of Co-Agents.* At any time or times, in order to comply with any legal requirement in any jurisdiction, the Administrative Agent may appoint another bank or trust company or one or more other persons, either to act as co-agent or co-agents, jointly with the Administrative Agent, or to act as separate agent or agents on behalf of the Lenders with such power and authority as may be necessary for the effectual operation of the provisions hereof and may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for the protection of such co-agent or separate agent similar to the provisions of Section 14).

SECTION 16. *Termination of Security Interests; Release of Collateral.*

(A) Upon the repayment in full of all Secured Obligations, the cancellation of all Letters of Credit and the termination of the Commitments under the Credit Agreement, the Security Interests shall terminate and all rights to the Collateral shall revert to the Grantors. At any time and from time to time prior to such termination of the Security Interests, the Administrative Agent may release any of the Collateral with the prior written consent of the Required Lenders; *provided* that the Administrative Agent may not release all or substantially all of the Collateral (as defined in the Credit Agreement) without the prior written consent of all the Lenders.

(B) Unless otherwise instructed by the Required Lenders at a time when an Event of Default shall have occurred and be continuing, the Administrative Agent shall upon a sale of Collateral permitted by the Credit Agreement release the portion of the Collateral so sold (but not any proceeds of such sale). No such release shall require the consent of any Lender, and the Administrative Agent shall be fully protected in relying on a certificate of the Parent as to whether any particular sale is permitted by the terms of the Credit Agreement.

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007728

16div-025875

(C) Upon any termination of the Security Interests or release of Collateral in accordance with this Section, the Administrative Agent will, at the expense of the Grantors, execute and deliver to each Grantor such documents as such Grantors shall reasonably request to evidence the termination of the Security Interests or the release of such Collateral, as the case may be.

SECTION 17. *Notices*. All notices hereunder shall be given in accordance with Section 11 of the Subsidiary Guarantee.

SECTION 18. *Waivers, Non-Exclusive Remedies*. No failure on the part of the Administrative Agent to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent of any right under the Credit Agreement or this Agreement preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the Credit Agreement are cumulative and are not exclusive of any other remedies provided by law.

SECTION 19. *Successors and Assigns*. This Agreement is for the benefit of the Administrative Agent and the Lenders and their successors and assigns, and in the event of an assignment of all or any of the Secured Obligations, the rights hereunder, to the extent applicable to the Indebtedness so assigned, may be transferred with such Indebtedness. This Agreement shall be binding on the Grantors and their successors and assigns.

SECTION 20. *Changes in Writing*. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each Grantor and the Administrative Agent with the consent of the Required Lenders (except that any change, waiver, discharge or termination of Section 16 hereof shall require the consent of all of the Lenders).

SECTION 21. *New York Law*. This Agreement shall be construed in accordance with and governed by the laws of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than New York are governed by the laws of such jurisdiction.

SECTION 22. *Severability*. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent

NOT A CERTIFIED COPY

020112

MORGAN STANLEY CONFIDENTIAL 0007729

16div-025876

and the Lenders in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

NOT A CERTIFIED COPY

020113

MORGAN STANLEY CONFIDENTIAL 0007730

16div-025877

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DDG I, Inc.

By: _____
Name:
Title:

GHI I, Inc.

By: _____
Name:
Title:

OP II, Inc.

By: _____
Name:
Title:

SUNBEAM AMERICAS
HOLDINGS, LTD.

By: _____
Name:
Title:

020114

NOT A CERTIFIED COPY

MORGAN STANLEY CONFIDENTIAL 0007731

16div-025878

SUNBEAM PRODUCTS, INC.

By: _____
Name:
Title:

FIRST UNION NATIONAL BANK
as Administrative Agent

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020115

MORGAN STANLEY CONFIDENTIAL 0007732

16div-025879

LASER ACQUISITION CORP.

By: _____
Name:
Title:

COLEMAN WORLDWIDE CORP.

By: _____
Name:
Title:

SIGNATURE BRANDS, INC.

By: _____
Name:
Title:

SIGNATURE BRANDS USA, INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020116

MORGAN STANLEY CONFIDENTIAL 0007733

16div-025880

BRK BRANDS. INC

By: _____
Name:
Title:

FIRST ALERT, INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020117

MORGAN STANLEY CONFIDENTIAL 0007734

16div-025881

SI II, INC.

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020118

MORGAN STANLEY CONFIDENTIAL 0007735

16div-025882

Schedule I

Direct Domestic Subsidiaries

Grantor	Name of Domestic Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020119

MORGAN STANLEY CONFIDENTIAL 0007736

16div-025883

Schedule II

Direct Foreign Subsidiaries

Grantor	Name of Domestic Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020120

Exhibit A

UCC Collateral Description

All shares of capital stock and instruments issued by each direct subsidiary of the Debtor, all indebtedness and other obligations owed to the Debtor by each direct subsidiary of the Debtor, and all other investments made by the Debtor in any direct subsidiary of the Debtor, and all income and profits thereon, and all dividends and other payments and distributions with respect thereto, and all proceeds of any and all of the foregoing, including all cash and non-cash proceeds, in each case now owned or hereafter acquired and wherever located.

NOT A CERTIFIED COPY

020121

EXHIBIT E TO
CREDIT AGREEMENT

[FORM OF OPINION OF COUNSEL TO OBLIGORS]

March 31, 1998

To the Lenders, the Syndication Agent,
the Documentation Agent and the
Administrative Agent referred to below
c/o First Union National Bank,
as Administrative Agent
301 South College Street
One First Union Center TW-10
Charlotte, North Carolina 28288

Ladies and Gentlemen:

We have acted as special New York counsel for Sunbeam Corporation, a Delaware corporation (the "**Parent**") and the subsidiaries of the Parent that are parties to the Subsidiary Guarantees referred to below (the "**Subsidiary Guarantors**"; the Subsidiary Guarantors and the Parent are hereinafter referred to collectively as the "**Obligors**"), in connection with (i) the Credit Agreement dated as of March 30, 1998 (the "**Credit Agreement**") among the Parent, the Subsidiary Borrowers referred to therein, the lenders from time to time party thereto (the "**Lenders**"), Morgan Stanley Senior Funding, Inc., as Syndication Agent, First Union National Bank, as Administrative Agent, and Bank of America National Trust and Savings Association, as Documentation Agent, (ii) the Subsidiary Guarantee, (iii) the Parent Pledge and Security Agreement and (iv) the Subsidiary Pledge and Security Agreement (each of the foregoing capitalized terms in clauses (ii) through (iv) as defined in the Credit Agreement, and all of the foregoing documents, including the Credit Agreement, the "**Transaction Documents**"). The capitalized terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined. This opinion is being rendered to you at the request of our clients pursuant to Section 4.01 of the Credit Agreement.

NOT A CERTIFIED COPY

020122

MORGAN STANLEY CONFIDENTIAL

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for purposes of this opinion.

Upon the basis of the foregoing, we are of the opinion that:

1. Each Obligor is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation (the "**Jurisdiction**"), and has all requisite powers and authority to carry on its business as now conducted and, except where failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

2. The execution, delivery and performance by each Obligor of the Transaction Documents to which it is a party are within such Obligor's corporate powers and have been duly authorized by all necessary corporate action required by such Obligor, and do not contravene, or constitute a breach of or default under the certificate of incorporation or the by-laws of such Obligor or, to our knowledge after due inquiry, of any material agreement, judgment, injunction, order, decree or other instrument binding upon such Obligor or any of its Subsidiaries or result in the creation or imposition of any Lien on any revenues or assets of such Obligor or any of its Subsidiaries (other than the Liens created by the Collateral Documents) pursuant to any such material agreement or other instrument.

3. The execution, delivery and performance by each Obligor of the Transaction Documents to which it is a party (A) require no action by or in respect of, or filing with, any Governmental Authority and (B) do not contravene, or constitute a default under, any law or regulation.

4. Each of the Transaction Documents constitutes a valid and binding agreement of each Obligor party thereto, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity, and except that certain of the remedial provisions in the Collateral Documents may be limited by applicable law, although such limitations do not in our opinion make the remedies provided for therein inadequate for the practical realization of the benefits of the security intended to be afforded thereby.

NOT A CERTIFIED COPY

020123

5. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against, or to our knowledge threatened against or affecting, any Obligor or any of its Subsidiaries before any arbitrator or Governmental Authority (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any of the Transaction Documents, the Transactions, the Acquisition Documents or the Acquisition.

6. Under the Uniform Commercial Code as currently in effect in the State of New York (the "UCC"), upon delivery to the Administrative Agent of the certificates evidencing the Pledged Stock (as defined in each Pledge and Security Agreement), together with the related duly executed stock powers, and assuming that (i) the Agents and the Lenders have no knowledge of any adverse claim in, on or to such Pledged Stock and (ii) the Administrative Agent maintains continuous possession of such stock certificates, the Administrative Agent has, for the benefit of the Lenders, a perfected security interest in each Obligor's right, title and interest in and to such Pledged Stock, free of any adverse claim (as provided for under Article 8-303(b) of the UCC).

7. None of the Obligors is (i) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

8. There are no taxes imposed by the Jurisdiction (a) on or by virtue of the execution, delivery, enforcement or performance of the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement or (b) on any payment to be made by the Subsidiary Guarantor pursuant to the Subsidiary Guarantee. */

9. To ensure the legality, validity, enforceability or admissibility in evidence of the Subsidiary Guarantee and the Subsidiary Pledge and Security Agreement, it is not necessary that the Subsidiary Guarantee, the Subsidiary Pledge and Security Agreement or any other Loan Document or any other document be filed, registered or recorded with, or executed or notarized before, any court or other authority of the Jurisdiction or that any registration charge or stamp or similar tax be paid on or in respect of the Subsidiary Guarantee or any other Loan Document.*

NOT A CERTIFIED COPY

020124

---

*/ Opinion required only with respect to Obligors that are organized under the laws of a jurisdiction other than New York or Delaware.

10. Each of the Subsidiary Guarantee and the Subsidiary Pledge and Security Agreement is in proper legal form under the laws of the Jurisdiction for the enforcement thereof against the Subsidiary Guarantor under the laws of the Jurisdiction. */

11. In any action or proceeding arising out of or relating to the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement in any court in the Jurisdiction, such court would recognize and give effect to the choice of law provisions in the Subsidiary Guarantee and the Subsidiary Pledge and Security Agreement wherein the parties thereto agree that the same shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.*

12. It is not necessary under the laws of the Jurisdiction (a) in order to enable the Administrative Agent and the Lenders or any of them to enforce their respective rights under the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement or (b) by reason of the execution of the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement or the performance of the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement that any of them should be licensed, qualified or entitled to carry on business in the Jurisdiction.*

13. Neither the Administrative Agent nor any of the Lenders will be deemed to be resident, domiciled, carrying on business or subject to taxation in the Jurisdiction merely by reason of the execution of the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement or the performance or enforcement of any thereof. The performance by the Administrative Agent and the Lenders or any of them of any action required or permitted under the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement will not violate any law or regulation, or be contrary to the public policy, of the Jurisdiction.*

14. The irrevocable submission of the Subsidiary Guarantor to the non-exclusive jurisdiction of the State and Federal courts in the Southern District New York (each a "New York court") and the waiver by the Subsidiary Guarantor of any objection to the venue of a proceeding in a New York court are legal, valid and binding under the laws of the Jurisdiction and will be respected by the Jurisdiction courts.*

020125

---

*/ Opinion required only with respect to Obligors that are organized under the laws of a Jurisdiction other than New York or Delaware.

NOT A CERTIFIED COPY

15. If any judgment of a competent court outside the Jurisdiction were rendered against the Subsidiary Guarantor in connection with any action arising out of or relating to the Subsidiary Guarantee or the Subsidiary Pledge and Security Agreement, such judgment would be recognized and could be sued upon in the courts of the Jurisdiction, and such courts would grant a judgment which would be enforceable against the Subsidiary Guarantor in the Jurisdiction without any retrial unless it is shown that (a) the foreign court did not have jurisdiction in accordance with its jurisdictional rules, (b) the party against whom the judgment of such foreign court was obtained had no notice of the proceedings or (c) the judgment of such foreign court was obtained through collusion or fraud or was based upon clear mistake of fact or law. */

Very truly yours,

NOT A CERTIFIED COPY

020126

---

*/ Opinion required only with respect to Obligors that are organized under the laws of a Jurisdiction other than New York or Delaware.

EXHIBIT F
TO CREDIT AGREEMENT

March 31, 1998

To the Lenders, the Syndication Agent,
the Documentation Agent and the
Administrative Agent referred to below
c/o First Union National Bank,
as Administrative Agent
301 South College Street
One First Union Center TW-10
Charlotte, North Carolina 28288

Dear Sirs:

We have participated in the preparation of the Credit Agreement dated as of March 30, 1998 (the "**Credit Agreement**") among Sunbeam Corporation, a Delaware corporation (the "**Parent**"), the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National Trust and Savings Association, as Documentation Agent and First Union National Bank, as Administrative Agent, and have acted as special counsel for the Agents for the purpose of rendering this opinion pursuant to Section 4.01 of the Credit Agreement. Terms defined in the Credit Agreement are used herein as therein defined.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for purposes of this opinion.

Upon the basis of the foregoing, we are of the opinion that, assuming that the execution, delivery and performance by the Parent of the Credit Agreement are within the Parent's corporate powers and have been duly authorized by all necessary corporate action, the Credit Agreement constitutes a valid and binding agreement of the Parent, enforceable in accordance with its terms, subject to

NOT A CERTIFIED COPY

020127

applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York. In giving the foregoing opinion, we express no opinion as to the effect (if any) of any law of any jurisdiction (except the State of New York) in which any Lender is located which limits the rate of interest that such Lender may charge or collect.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by any other Person without our prior written consent.

Very truly yours,

NOT A CERTIFIED COPY

020128

MORGAN STANLEY CONFIDENTIAL 0007745

16div-025892

EXHIBIT G
TO CREDIT AGREEMENT

[FORM OF SUBSIDIARY BORROWING AGREEMENT]

SUBSIDIARY BORROWING AGREEMENT, dated as of _____, 1998 (this "**Agreement**") among [NAME OF SUBSIDIARY BORROWER] a _____ (the "**Subsidiary**"), SUNBEAM CORPORATION, a Delaware corporation ("**Parent**"), and FIRST UNION NATIONAL BANK, as administrative agent (in such capacity, the "**Administrative Agent**") for the several banks and other financial institutions or entities (the "**Lenders**") from time to time parties to the Credit Agreement, dated as of March 30, 1998 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Parent, the Subsidiary Borrowers (as defined in the Credit Agreement) from time to time parties thereto, the Lenders, the Administrative Agent, Bank of America National Trust and Savings Association, as Documentation Agent, and Morgan Stanley Senior Funding, Inc., as Syndication Agent and Arranger.

The parties hereto hereby agree as follows:

1. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

2. Pursuant to Section 2.19 of the Credit Agreement, the Parent hereby designates the Subsidiary as a Subsidiary Borrower under the Credit Agreement.

3. The Parent and the Subsidiary, jointly and severally, represent and warrant that the representations and warranties contained in the Credit Agreement are true and correct on and as of the date hereof.

4. The Parent agrees that its guaranty contained in Article 9 of the Credit Agreement will apply to the obligations of the Subsidiary as a Subsidiary Borrower.

5. Upon execution of this Agreement by the Parent, the Subsidiary and the Administrative Agent, (i) the Subsidiary shall be a party to the Credit Agreement and shall be a Subsidiary Borrower and a Borrower for all purposes thereof, and the Subsidiary hereby agrees to be bound by all provisions of the Credit Agreement, until such time as the principal of and interest on the Loans and all other amounts payable by the Subsidiary Borrower under the Credit

NOT A CERTIFIED COPY

020129

Agreement shall have been paid in full or assumed by the Parent pursuant to an instrument acceptable to the Administrative Agent.

6. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

7. This Agreement may be executed in any number of counterparts (including by facsimile transmission), each of which shall be an original, and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers as of the date first appearing above.

[SUBSIDIARY]

By: _____
Name:
Title:

SUNBEAM CORPORATION

By: _____
Name:
Title:

FIRST UNION NATIONAL BANK,
as Administrative Agent

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020130

MORGAN STANLEY CONFIDENTIAL 0007747

16div-025894

EXHIBIT H
TO CREDIT AGREEMENT

SUBSIDIARY BORROWER
PLEDGE AND SECURITY AGREEMENT

AGREEMENT dated as of March 30, 1998 between [SUBSIDIARY BORROWER] (with its successors, the "**Subsidiary Borrower**") and First Union National Bank, as Administrative Agent.

WITNESSETH:

WHEREAS, Sunbeam Corporation (with its successors, the "**Parent**"), the Subsidiary Borrowers referred to therein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Syndication Agent, Bank of America National. Trust and Savings Association, as Documentation Agent, and First Union National Bank, as Administrative Agent, are parties to a Credit Agreement dated as of March 30, 1998 (as the same may be amended from time to time, the "**Credit Agreement**"); and

WHEREAS, as of the date hereof, the Subsidiary Borrower, the Parent and the Administrative Agent have entered into a Subsidiary Borrowing Agreement (as the same may be amended from time to time, the "**Subsidiary Borrowing Agreement**"); and

WHEREAS, in order to induce the Lenders and Administrative Agent to permit the Subsidiary Borrower to become a party to the Credit Agreement by executing the Subsidiary Borrowing Agreement, the Subsidiary Borrower has agreed to grant a continuing security interest in and to the Collateral (as hereafter defined) to secure the Secured Obligations (as hereafter defined);

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Definitions*. Terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein except that the term "Loan Documents" shall include any document with respect to any Hedging Obligations. The following additional terms, as used herein, have the following respective meanings:

NOT A CERTIFIED COPY

020131

"**Collateral**" has the meaning assigned to such term in Section 3(A).

"**Direct Domestic Subsidiary**" means a Direct Subsidiary organized under the laws of the United States of America or a state thereof.

"**Direct Domestic Subsidiary Shares**" means the shares of capital stock or other equity interest of each Direct Domestic Subsidiary listed on Schedule I opposite such Direct Domestic Subsidiary's name.

"**Direct Foreign Subsidiary**" means a Direct Subsidiary organized under the laws of any jurisdiction outside the United States.

"**Direct Foreign Subsidiary Shares**" means the shares of capital stock or other equity interests of each Direct Foreign Subsidiary listed on Schedule II opposite such Direct Foreign Subsidiary's name.

"**Direct Subsidiary**" means a Material Subsidiary of the Subsidiary Borrower, the capital stock or other equity interests of which is held directly by the Subsidiary Borrower.

"**Direct Subsidiary Notes**" means the Intercompany Agreements of each Direct Subsidiary listed on Schedule I or Schedule II opposite the Direct Subsidiary's name.

"**Hedging Obligations**" means all obligations of the Parent under any Hedging Agreement between the Parent and any Lender.

"**Intercompany Agreements**" means all instruments owned by the Subsidiary Borrower evidencing Indebtedness owed to it by any of its Direct Subsidiaries.

"**Pledged Instruments**" means (i) the Direct Subsidiary Notes and (ii) any instrument required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

"**Pledged Securities**" means the Pledged Instruments and the Pledged Stock.

"**Pledged Stock**" means (i) the Direct Domestic Subsidiary Shares, (ii) 66% of the Foreign Direct Subsidiary Shares and (iii) any other capital stock required to be pledged to the Administrative Agent pursuant to Section 3(B) and Section 3(C).

NOT A CERTIFIED COPY

020132

"**Secured Obligations**" means the obligations secured under this Agreement including all obligations of the Subsidiary Borrower under or in respect of the Subsidiary Borrowing Agreement, including without limitation its obligations in respect of (i) all principal of and interest (including, without limitation, any interest which accrues after or would accrue but for the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any Obligor, whether or not allowed or allowable as a claim in any such proceeding) on any loan under, or any note issued pursuant to, the Credit Agreement, (ii) all reimbursement obligations with respect to any Letter of Credit, (iii) any Hedging Obligations, (iv) all other amounts payable by any Obligor under the Loan Documents, and (v) any renewals or extensions of any of the foregoing.

"**Security Interests**" means the security interests in the Collateral granted hereunder securing the Secured Obligations.

Unless otherwise defined herein, or unless the context otherwise requires, all terms used herein which are defined in the New York Uniform Commercial Code as in effect on the date hereof shall have the meanings therein stated.

SECTION 2. *Representations and Warranties.* Each Subsidiary Borrower represents and warrants as follows:

(A) Title to Pledged Securities. The Subsidiary Borrower owns all of the Pledged Securities, free and clear of any Liens other than the Security Interests. The Pledged Stock includes (i) all of the issued and outstanding capital stock of each Direct Domestic Subsidiary and (ii) 66% of the issued and outstanding stock of each Foreign Direct Subsidiary. The Pledged Instruments include all instruments owned by the Subsidiary Borrower evidencing Indebtedness owed to it by any of its Direct Subsidiaries. All of the Pledged Stock has been duly authorized and validly issued, and is fully paid and non-assessable, and is subject to no options to purchase or similar rights of any Person. The Subsidiary Borrower is not and will not become a party to or otherwise become bound by any agreement, other than this Agreement and the Subsidiary Borrowing Agreement, which restricts in any manner the rights of any present or future holder of any of the Pledged Securities with respect thereto.

(B) Validity, Perfection and Priority of Security Interests. Upon the delivery of the Pledged Instruments and certificates representing the Pledged Stock to the Administrative Agent in accordance with Section 4 hereof and the filing of UCC financing statements in the form specified in

NOT A CERTIFIED COPY

Exhibit A in the appropriate filing office in the jurisdiction specified on the signature pages of the Subsidiary Borrowing Agreement, the Administrative Agent will have valid and perfected security interests in the Collateral subject to no prior Lien other than Permitted Liens. Except for the filing of the UCC financing statements described in the immediately preceding sentence, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of this Agreement or necessary for the validity or enforceability hereof or for the perfection or enforcement of the Security Interests. Neither the Subsidiary Borrower nor any of its subsidiaries has performed or will perform any acts which might prevent the Administrative Agent from enforcing any of the terms and conditions of this Agreement or which would limit the Administrative Agent in any such enforcement. Other than financing statements or other similar or equivalent documents or instruments with respect to the Security Interests, no financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a Lien on such Collateral. No collateral is in the possession of any Person (other than the Subsidiary Borrower) asserting any claim thereto or security interest therein, except that the Administrative Agent or its designee may have possession of Collateral as contemplated hereby.

(C) UCC Filing Locations. The chief executive office of the Subsidiary Borrower is located at its address set forth on the signature pages of the Subsidiary Borrowing Agreement. Under the Uniform Commercial Code as in effect in the State in which each office is located, no local filing is required to perfect a security interest in collateral consisting of accounts or general intangibles.

SECTION 3. *The Security Interests*. In order to secure the full and punctual payment of the Secured Obligations in accordance with the terms thereof, and to secure the performance of all the obligations of the Subsidiary Borrower hereunder:

(A) The Subsidiary Borrower hereby assigns and pledges to and with the Administrative Agent for the benefit of the Lenders and grants to the Administrative Agent for the benefit of the Lenders security interests in all of the following property of the Subsidiary Borrower (collectively, the "**Collateral**"):

NOT A CERTIFIED COPY

020134

(1) the Pledged Securities, and all of its rights and privileges with respect to the Pledged Securities, and all income and profits thereon, and all interest, dividends and other payments and distributions with respect thereto;

(2) all Indebtedness now or hereafter owed to the Subsidiary Borrower by any of its Direct Subsidiaries (whether or not evidenced by instruments (as defined in the UCC));

(3) all other Investments made by the Subsidiary Borrower in any of its Direct Domestic Subsidiaries; and

(4) all proceeds of all or any of the collateral described in clauses (1) through (3) hereof.

Contemporaneously with the execution and delivery hereof, the Subsidiary Borrower is delivering the Direct Subsidiary Notes and certificates representing the Direct Domestic Subsidiary Shares and the Foreign Direct Subsidiary Shares in pledge hereunder.

(B) In the event that at any time any Person becomes a Direct Domestic Subsidiary, or any Direct Domestic Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to the Subsidiary Borrower, or the Subsidiary Borrower makes any other Investment in any Direct Domestic Subsidiary, the Subsidiary Borrower will immediately pledge and deposit with the Administrative Agent certificates representing all such shares or equity interests and such note or an instrument evidencing such other Indebtedness or other Investment as additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(C) In the event that at any time any Person becomes a Direct Foreign Subsidiary, or any Direct Foreign Subsidiary issues any additional or substitute shares of capital stock of any class or any other equity interests or any substitute note, or owes any other Indebtedness to the Subsidiary Borrower, or the Subsidiary Borrower makes any other Investment in any Direct Foreign Subsidiary, the Subsidiary Borrower will immediately pledge and deposit with the Administrative Agent certificates representing additional shares or equity interests sufficient to cause the Secured Parties to have a security interest in 66% (but not more than 66%) of all the outstanding capital stock of or other equity interests in such

NOT A CERTIFIED COPY

020135

Direct Foreign Subsidiary and such note or an instrument evidencing such other Indebtedness or other Investment as additional security for the Secured Obligations. All such shares, notes and instruments constitute Pledged Securities and are subject to all provisions of this Agreement.

(D) The Security Interests are granted as security only and shall not subject the Administrative Agent or any Lender to, or transfer or in any way affect or modify, any obligation or liability of the Subsidiary Borrower or any of its Direct Subsidiaries with respect to any of the Collateral or any transaction in connection therewith.

SECTION 4. *Delivery of Pledged Securities*. All Pledged Instruments shall be delivered to the Administrative Agent by the Subsidiary Borrower pursuant hereto indorsed to the order of the Administrative Agent, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent. All certificates representing Pledged Stock delivered to the Administrative Agent by the Subsidiary Borrower pursuant hereto shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, and accompanied by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent.

SECTION 5. *Further Assurances*.

(A) The Subsidiary Borrower agrees that it will from time to time, at its expense and in such manner and form as the Administrative Agent may require, execute, deliver, file and record any financing statement, specific assignment or other paper and take any other action that may be necessary or desirable, or that the Administrative Agent may request, in order to create, preserve, perfect, confirm or validate any Security Interest or to enable the Administrative Agent to exercise and enforce any of its rights, powers or remedies hereunder with respect to any of the Collateral. To the extent permitted by applicable law, the Subsidiary Borrower hereby authorizes the Administrative Agent to execute and file, in the name of the Subsidiary Borrower or otherwise, Uniform Commercial Code financing statements (which may be carbon, photographic, photostatic or other reproductions of this Agreement or of a financing statement relating to this Agreement) which the Administrative Agent in its sole discretion may deem necessary or appropriate to further perfect the Security Interests.

(B) The Subsidiary Borrower agrees that it will not change (i) its name, identity or corporate structure in any manner or (ii) the location of

NOT A CERTIFIED COPY

020136

its chief executive office, in each case unless it shall have given the Administrative Agent not less than 30 days' prior notice thereof.

SECTION 6. *Record Ownership of Pledged Stock.* Upon the occurrence and during the continuance of any Default, the Administrative Agent may at any time or from time to time, in its sole discretion, cause any or all of the Pledged Stock to be transferred of record into the name of the Administrative Agent or its nominee. The Subsidiary Borrower will promptly give to the Administrative Agent copies of any notices or other communications received by it with respect to Pledged Stock registered in the name of the Subsidiary Borrower and the Administrative Agent will promptly give to the Subsidiary Borrower copies of any notices and communications received by the Administrative Agent with respect to Pledged Stock registered in the name of the Administrative Agent or its nominee.

SECTION 7. *Right to Receive Distributions on Collateral.* The Administrative Agent shall have the right to receive and, during the continuance of any Default, to retain as Collateral hereunder all dividends, interest and other payments and distributions made upon or with respect to the Collateral and the Subsidiary Borrower shall take all such action as the Administrative Agent may deem necessary or appropriate to give effect to such right. All such dividends, interest and other payments and distributions which are received by the Subsidiary Borrower shall be received in trust for the benefit of the Administrative Agent and the Lenders and, if the Administrative Agent so directs during the continuance of a Default, shall be segregated from other funds of the Subsidiary Borrower and shall, forthwith upon demand by the Administrative Agent during the continuance of a Default, be paid over to the Administrative Agent as Collateral in the same form as received (with any necessary endorsement). After all Defaults have been cured, the Administrative Agent's right to retain dividends, interest and other payments and distributions under this Section 7 shall cease and the Administrative Agent shall pay over to the Subsidiary Borrower any such Collateral retained by it during the continuance of a Default.

SECTION 8. *Right to Vote Pledged Stock.* Unless a Default shall have occurred and be continuing, the Subsidiary Borrower shall have the right, from time to time, to vote and to give consents, ratifications and waivers with respect to the Pledged Stock, and the Administrative Agent shall, upon receiving a written request from the Subsidiary Borrower accompanied by a certificate signed by its principal financial officer stating that no Default has occurred and is continuing, deliver to the Subsidiary Borrower or as specified in such request such proxies, powers of attorney, consents, ratifications and waivers in respect of any of the Pledged Stock which is registered in the name of the Administrative Agent or its

NOT A CERTIFIED COPY

0201137

nominee as shall be specified in such request and be in form and substance satisfactory to the Administrative Agent.

If a Default shall have occurred and be continuing, the Administrative Agent shall have the right to the extent permitted by law and the Subsidiary Borrower shall take all such action as may be necessary or appropriate to give effect to such right, to vote and to give consents, ratifications and waivers, and take any other action with respect to any or all of the Pledged Stock with the same force and effect as if the Administrative Agent were the absolute and sole owner thereof.

SECTION 9. *General Authority*. The Subsidiary Borrower hereby irrevocably appoints the Administrative Agent its true and lawful attorney, with full power of substitution, in the name of the Subsidiary Borrower, the Administrative Agent, the Lenders or otherwise, for the sole use and benefit of the Administrative Agent and Lenders, but at the expense of the Subsidiary Borrower, to the extent permitted by law to exercise, at any time and from time to time while an Event of Default has occurred and is continuing, all or any of the following powers with respect to all or any of the Collateral:

(i) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof,

(ii) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto,

(iii) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof, as fully and effectually as if the Administrative Agent were the absolute owner thereof, and

(iv) to extend the time of payment of any or all thereof and to make any allowance and other adjustments with reference thereto;

provided that the Administrative Agent shall give the Subsidiary Borrower not less than ten days' prior notice of the time and place of any sale or other intended disposition of any of the Collateral except any Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. The Administrative Agent and the Subsidiary Borrower agree that such notice constitutes "**reasonable notification**" within the meaning of Section 9-504(3) of the Uniform Commercial Code.

SECTION 10. *Remedies upon Event of Default*. If any Event of Default shall have occurred and be continuing, the Administrative Agent may exercise on

NOT A CERTIFIED COPY

020138

behalf of the Lenders all the rights of a secured party under the Uniform Commercial Code (whether or not in effect in the jurisdiction where such rights are exercised) and, in addition, the Administrative Agent may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, (i) apply the cash, if any, then held by it as Collateral as specified in Section 13 and (ii) if there shall be no such cash or if such cash shall be insufficient to pay all the Secured Obligations in full, sell the Collateral or any part thereof at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery, and at such price or prices as the Administrative Agent may deem satisfactory. Any Lender may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale). The Administrative Agent is authorized, in connection with any such sale, if it deems it advisable so to do, (i) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, (ii) to cause to be placed on certificates for any or all of the Pledged Securities or on any other securities pledged hereunder a legend to the effect that such security has not been registered under the Securities Act of 1933 and may not be disposed of in violation of the provisions of said Act, and (iii) to impose such other limitations or conditions in connection with any such sale as the Administrative Agent deems necessary or advisable in order to comply with said Act or any other law. The Subsidiary Borrower will execute and deliver such documents and take such other action as the Administrative Agent deems necessary or advisable in order that any such sale may be made in compliance with law. Upon any such sale the Administrative Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the Collateral so sold absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Subsidiary Borrower which may be waived, and the Subsidiary Borrower, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted. The notice (if any) of such sale required by Section 9 shall (1) in the case of a public sale, state the time and place fixed for such sale, (2) in the case of a sale at a broker's board or on a securities exchange, state the board or exchange at which such sale is to be made and the day on which the Collateral, or the portion thereof so being sold, will first be offered for sale at such board or exchange, and (3) in the case of a private sale, state the day after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix in the notice of such sale. At any such sale the

NOT A CERTIFIED COPY

020139

Collateral may be sold in one lot as an entirety or in separate parcels. as the Administrative Agent may determine. The Administrative Agent shall not be obligated to make any such sale pursuant to any such notice. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In the case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the selling price is paid by the purchaser thereof, but the Administrative Agent shall not incur any liability in the case of the failure of such purchaser to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may again be sold upon like notice. The Administrative Agent, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interests and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

SECTION 11. *Expenses*. The Subsidiary Borrower agrees that it will forthwith upon demand pay to the Administrative Agent:

(i) the amount of any taxes which the Administrative Agent may have been required to pay by reason of the Security Interests or to free any of the Collateral from any Lien thereon, and

(ii) the amount of any and all out-of-pocket expenses, including the fees and disbursements of counsel and of any other experts, which the Administrative Agent may incur in connection with (w) the administration or enforcement of this Agreement, including such expenses as are incurred to preserve the value of the Collateral and the validity, perfection, rank and value of any Security Interest, (x) the collection, sale or other disposition of any of the Collateral, (y) the exercise by the Administrative Agent of any of the rights conferred upon it hereunder or (z) any Default or Event of Default.

Any such amount not paid on demand shall bear interest at the rate applicable to ABR Borrowings plus 2% and shall be an additional Secured Obligation hereunder.

SECTION 12. *Limitation on Duty of Administrative Agent in Respect of Collateral*. Beyond the exercise of reasonable care in the custody thereof, the Administrative Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to the preservation of rights against prior parties or any other rights

NOT A CERTIFIED COPY

020140

pertaining thereto. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any agent or bailee selected by the Administrative Agent in good faith.

SECTION 13. *Application of Proceeds.* Upon the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, or other realization upon, all or any part of the Collateral and any cash held shall be applied by the Administrative Agent in the following order of priorities:

> first, to payment of the expenses of such sale or other realization, including reasonable compensation to agents and counsel for the Administrative Agent, and all expenses, liabilities and advances incurred or made by the Administrative Agent in connection therewith, and any other unreimbursed expenses for which the Administrative Agent or any Lender is to be reimbursed pursuant to Section 10.03 of the Credit Agreement or Section 11 hereof and unpaid fees owing to the Administrative Agent under the Credit Agreement;
>
> second, to the ratable payment of unpaid principal of the Secured Obligations and unpaid reimbursement obligations which constitute Secured Obligations;
>
> third, to the ratable payment of unpaid Hedging Obligations and accrued but unpaid interest on the Secured Obligations in accordance with the provisions of the Credit Agreement;
>
> fourth, to the ratable payment of all other Secured Obligations, until all Secured Obligations shall have been paid in full; and
>
> finally, to payment to the Subsidiary Borrower or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

The Administrative Agent may make distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

SECTION 14. *Concerning the Administrative Agent.* The provisions of Article 8 of the Credit Agreement shall inure to the benefit of the Administrative

NOT A CERTIFIED COPY

020141

MORGAN STANLEY CONFIDENTIAL 0007758

16div-025905

Agent in respect of this Agreement and shall be binding upon the parties to the Credit Agreement in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Administrative Agent therein set forth:

(A) The Administrative Agent is authorized to take all such action as is provided to be taken by it as Administrative Agent hereunder and all other action reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the Collateral) the Administrative Agent shall act or refrain from acting in accordance with written instructions from the Required Lenders or, in the absence of such instructions, in accordance with its discretion.

(B) The Administrative Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Security Interests in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder. The Administrative Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Agreement by the Subsidiary Borrower.

SECTION 15. *Appointment of Co-Agents.* At any time or times, in order to comply with any legal requirement in any jurisdiction, the Administrative Agent may appoint another bank or trust company or one or more other persons, either to act as co-agent or co-agents, jointly with the Administrative Agent, or to act as separate agent or agents on behalf of the Lenders with such power and authority as may be necessary for the effectual operation of the provisions hereof and may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for the protection of such co-agent or separate agent similar to the provisions of Section 14).

SECTION 16. *Termination of Security Interests; Release of Collateral.*

(A) Upon the repayment in full of all Secured Obligations, the cancellation of all Letters of Credit and the termination of the Commitments under the Credit Agreement, the Security Interests shall terminate and all rights to the Collateral shall revert to the Subsidiary Borrower. At any time and from time to time prior to such termination of the Security Interests, the Administrative Agent may release any of the Collateral with the prior written consent of the Required Lenders; *provided* that the Administrative Agent may not release all or substantially all of the Collateral (as defined in the Credit Agreement) without the prior written consent of all the Lenders.

NOT A CERTIFIED COPY

020142

(B) Unless otherwise instructed by the Required Lenders at a time when an Event of Default shall have occurred and be continuing, the Administrative Agent shall upon a sale of Collateral permitted by the Credit Agreement release the portion of the Collateral so sold (but not any proceeds of such sale). No such release shall require the consent of any Lender, and the Administrative Agent shall be fully protected in relying on a certificate of the Parent or the Subsidiary Borrower as to whether any particular sale is permitted by the terms of the Credit Agreement.

(C) Upon any termination of the Security Interests or release of Collateral in accordance with this Section, the Administrative Agent will, at the expense of the Subsidiary Borrower, execute and deliver to the Subsidiary Borrower such documents as the Subsidiary Borrower shall reasonably request to evidence the termination of the Security Interests or the release of such Collateral, as the case may be.

SECTION 17. *Notices.* All notices hereunder shall be given in accordance with Section 10.01 of the Credit Agreement.

SECTION 18. *Waivers, Non-Exclusive Remedies.* No failure on the part of the Administrative Agent to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent of any right under the Credit Agreement or this Agreement preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the Credit Agreement are cumulative and are not exclusive of any other remedies provided by law.

SECTION 19. *Successors and Assigns.* This Agreement is for the benefit of the Administrative Agent and the Lenders and their successors and assigns, and in the event of an assignment of all or any of the Secured Obligations, the rights hereunder, to the extent applicable to the Indebtedness so assigned, may be transferred with such Indebtedness. This Agreement shall be binding on the Subsidiary Borrower and its successors and assigns.

SECTION 20. *Changes in Writing.* Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by the Subsidiary Borrower and the Administrative Agent with the consent of the Required Lenders (except that any change, waiver, discharge or termination of Section 16 hereof shall require the consent of all of the Lenders).

NOT A CERTIFIED COPY

020143

MORGAN STANLEY CONFIDENTIAL 0007760

16div-025907

SECTION 21. *New York Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than New York are governed by the laws of such jurisdiction.

SECTION 22. *Severability.* If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent and the Lenders in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

NOT A CERTIFIED COPY

020144

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

[SUBSIDIARY BORROWER]

By_____
Name:
Title:

FIRST UNION NATIONAL BANK
as Administrative Agent

By _____
Name:
Title:

NOT A CERTIFIED COPY

020145

MORGAN STANLEY CONFIDENTIAL 0007762

16div-025909

Schedule I

Direct Domestic Subsidiaries

Name of Domestic Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020146

Schedule II

Direct Foreign Subsidiaries

Name of Foreign Subsidiary	Equity Held	Intercompany Agreement

NOT A CERTIFIED COPY

020147

Exhibit A

UCC Collateral Description

All shares of capital stock and instruments issued by each direct subsidiary of the Debtor, all indebtedness and other obligations owed to the Debtor by each direct subsidiary of the Debtor, and all other investments made by the Debtor in any direct subsidiary of the Debtor, and all income and profits thereon, and all dividends and other payments and distributions with respect thereto, and all proceeds of any and all of the foregoing, including all cash and non-cash proceeds, in each case now owned or hereafter acquired and wherever located.

NOT A CERTIFIED COPY

020148

EXHIBIT I TO
CREDIT AGREEMENT

[FORM OF OPINION OF COUNSEL FOR SUBSIDIARY BORROWER]

[Date]

To the Lenders, the Syndication Agent,
the Documentation Agent and the
Administrative Agent referred to below
c/o First Union National Bank,
as Administrative Agent
[address]
[address]

Ladies and Gentlemen:

We have acted as counsel for [Name of Subsidiary Borrower], a _____ corporation (the **"Subsidiary Borrower"**), in connection with (i) the Credit Agreement dated as of March 30, 1998 (the **"Credit Agreement"**) among the Parent, the Subsidiary Borrowers referred to therein, the lenders from time to time party thereto (the **"Lenders"**), Morgan Stanley Senior Funding, Inc., as Syndication Agent, First Union National Bank, as Administrative Agent, and Bank of America National Trust and Savings Association, as Documentation Agent, (ii) the Subsidiary Borrowing Agreement and (iii) the Subsidiary Borrower Pledge and Security Agreement (each of the foregoing capitalized terms in clauses (ii) and (iii) as defined in the Credit Agreement, and all of the foregoing documents, including the Credit Agreement, the **"Transaction Documents"**). The capitalized terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for purposes of this opinion.

Upon the basis of the foregoing, we are of the opinion that:

NOT A CERTIFIED COPY

0201149

MORGAN STANLEY CONFIDENTIAL

0007766

16div-025913

1. The Subsidiary Borrower is a corporation duly organized, validly existing and in good standing under the laws of _____ [specify the jurisdiction of its organization] (the "**Jurisdiction**").

2. The execution, delivery and performance by the Subsidiary Borrower of the Transaction Documents are within such Subsidiary Borrower's corporate powers and have been duly authorized by all necessary corporate action, and do not contravene, or constitute a breach of or default under the certificate of incorporation or the by-laws of the Subsidiary Borrower or, to our knowledge after due inquiry, of any material agreement, judgment, injunction, order, decree of other instrument binding upon the Subsidiary Borrower or any of its Subsidiaries or result in the creation or imposition of any Lien on any revenues or assets of the Subsidiary Borrower or any of its Subsidiaries (other than the Liens created by the Collateral Documents) pursuant to any such material agreement or other instrument.

3. The execution, delivery and performance by the Subsidiary Borrower of the Transaction Documents (a) require no action by or in respect of, or filing with, any Governmental Authority and (b) do not contravene, or constitute a default under, any law or regulation.

4. Each of the Transaction Documents constitutes a valid and binding agreement of the Subsidiary Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity, and except that certain of the remedial provisions in the Collateral Documents may be limited by applicable law, although such limitations do not in our opinion make the remedies provided for therein inadequate for the practical realization of the benefits of the security intended to be afforded thereby.

5. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against, or to our knowledge threatened against or affecting, the Subsidiary Borrower or any of its Subsidiaries before any arbitrator or Governmental Authority (a) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (b) that involve any of the Transaction Documents, the Transactions, the Acquisition Documents or the Acquisition.

6. Under the Uniform Commercial Code as currently in effect in the State of New York (the "**UCC**"), upon delivery to the Administrative Agent of the certificates evidencing the Pledged Stock (as defined in the Subsidiary Borrower Agreement), together with the related duly executed stock powers, and

NOT A CERTIFIED COPY

020150

assuming that (a) the Agents and the Lenders have no knowledge of any adverse claim in, on or to such Pledged Stock and (b) the Administrative Agent maintains continuous possession of such stock certificates, the Administrative Agent has, for the benefit of the Lenders, a perfected security interest in the Subsidiary Borrowers right, title and interest in and to such Pledged Stock, free of any adverse claim (as provided for under Article 8-303(b) of the UCC).

7. The Subsidiary Borrower is not (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

Very truly yours,

NOT A CERTIFIED COPY

020151

EXHIBIT K TO
CREDIT AGREEMENT

[FORM OF OPINION OF COUNSEL FOR SUBSIDIARY GUARANTOR]

[Date]

To the Lenders, the Syndication Agent,
the Documentation Agent and the
Administrative Agent referred to below
c/o First Union National Bank,
as Administrative Agent
[address]
[address]

Ladies and Gentlemen:

We have acted as counsel for [Name of Subsidiary Guarantor], a _____ corporation (the **"Subsidiary Guarantor"**), in connection with (i) the Credit Agreement dated as of March 30, 1998 (the **"Credit Agreement"**) among the Parent, the Subsidiary Borrowers referred to therein, the lenders from time to time party thereto (the **"Lenders"**), Morgan Stanley Senior Funding, Inc., as Syndication Agent, First Union National Bank, as Administrative Agent, and Bank of America National Trust and Savings Association, as Documentation Agent, (ii) the Subsidiary Guarantee and (iii) the Subsidiary Pledge and Security Agreement (each of the foregoing capitalized terms in clauses (ii) and (iii) as defined in the Credit Agreement, and all of the foregoing documents, including the Credit Agreement, the **"Transaction Documents"**). The capitalized terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as we have deemed necessary or advisable for purposes of this opinion.

Upon the basis of the foregoing, we are of the opinion that:

NOT A CERTIFIED COPY

020152

1. The Subsidiary Guarantor is a corporation duly organized, validly existing and in good standing under the laws of _____ [specify the jurisdiction of its organization] (the "**Jurisdiction**").

2. The execution, delivery and performance by the Subsidiary Guarantor of the Transaction Documents are within the Subsidiary Guarantor's corporate powers and have been duly authorized by all necessary corporate action required, and do not contravene, or constitute a breach of or default under the certificate of incorporation or the by-laws of the Subsidiary Guarantor or, to our knowledge after due inquiry, of any material agreement, judgment, injunction, order, decree or other instrument binding upon the Subsidiary Guarantor or any of its Subsidiaries or result in the creation or imposition of any Lien on any revenues or assets of the Subsidiary Guarantor or any of its Subsidiaries (other than the Liens created by the Collateral Documents) pursuant to any such material agreement or other instrument.

3. The execution, delivery and performance by the Subsidiary Guarantor of the Transaction Documents (i) require no action by or in respect of, or filing with, any Governmental Authority and (ii) do not contravene, or constitute a default under, any law or regulation.

4. Each of the Transaction Documents constitutes a valid and binding agreement of the Subsidiary Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity, and except that certain of the remedial provisions in the Collateral Documents may be limited by applicable law, although such limitations do not in our opinion make the remedies provided for therein inadequate for the practical realization of the benefits of the security intended to be afforded thereby.

5. There are no taxes imposed by the Jurisdiction (a) on or by virtue of the execution, delivery, enforcement or performance of the Transaction Documents or (b) on any payment to be made by the Subsidiary Guarantor or any Lender in connection with the Transaction Documents */

6. To ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents, it is not necessary that any Transaction Document or any other Loan Document or any other document be filed, registered or recorded with, or executed or notarized before, any court of other authority of

---

*/ Opinion required only with respect to Subsidiary Guarantors that are organized under the laws of a jurisdiction other than New York or Delaware.

NOT A CERTIFIED COPY

020153

MORGAN STANLEY CONFIDENTIAL 0007770

16div-025917

the Jurisdiction or that any registration charge or stamp or similar tax be paid on or in respect thereof. */

7. Transaction Documents are in proper legal form under the laws of the Jurisdiction for the enforcement thereof against the Subsidiary Guarantor under the laws of the Jurisdiction.*

8. In any action or proceeding arising out of or relating to the Transaction Documents in any court in the Jurisdiction, such court would recognize and give effect to the choice of law provisions in the Transaction Documents wherein the parties thereto agree that the Transaction Documents shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.*

9. It is not necessary under the laws of the Jurisdiction (i) in order to enable the Administrative Agent and the Lenders or any of them to enforce their respective rights under any Transaction Document or (ii) by reason of the execution of any Transaction Document or the performance of the Transaction Document that any of them should be licensed, qualified or entitled to carry on business in the Jurisdiction.*

10. Neither the Administrative Agent nor any of the Lenders will be deemed to be resident, domiciled, carrying on business or subject to taxation in the Jurisdiction merely by reason of the execution of any Transaction Document or the performance or enforcement of any thereof. The performance by the Administrative Agent and the Lenders or any of them of any action required or permitted under any Transaction Document will not violate any law or regulation, or be contrary to the public policy, of the Jurisdiction.*

11. The irrevocable submission of the Subsidiary Guarantor to the non-exclusive jurisdiction of the State and Federal courts in the Southern District New York (each a "**New York court**") and the waiver by the Subsidiary Guarantor of any objection to the venue of a proceeding in a New York court are legal, valid and binding under the laws of the Jurisdiction and will be respected by the Jurisdiction courts.*

12. If any judgment of a competent court outside the Jurisdiction were rendered against the Subsidiary Guarantor in connection with any action arising out of or relating to any Transaction Document, such judgment would be

---

*/ Opinion required only with respect to Subsidiary Guarantors that are organized under the laws of a jurisdiction other than New York or Delaware.

NOT A CERTIFIED COPY

0201154

MORGAN STANLEY CONFIDENTIAL 0007771

16div-025918

recognized and could be sued upon in the courts of the Jurisdiction, and such courts would grant a judgment which would be enforceable against the Subsidiary Guarantor in the Jurisdiction without any retrial unless it is shown that (i) the foreign court did not have jurisdiction in accordance with its jurisdictional rules, (ii) the party against whom the judgment of such foreign court was obtained had no notice of the proceedings or (iii) the judgment of such foreign court was obtained through collusion or fraud or was based upon clear mistake of fact or law. */

Very truly yours,

NOT A CERTIFIED COPY

020155

---

*/ Opinion required only with respect to Subsidiary Guarantors that are organized under the laws of a jurisdiction other than New York or Delaware.

EXHIBIT L
TO CREDIT AGREEMENT

[FORM OF NOTICE OF ACCOUNT DESIGNATION]

Dated _____

First Union National Bank
One First Union Center, TW-10
301 South College Street
Charlotte, North Carolina 28288-0608
Attn: Syndication Agency Services

Ladies and Gentlemen:

This Notice of Account Designation is delivered to you by Sunbeam Corporation (the "Parent"), a corporation organized under the laws of Delaware, under Section 4.01 of the Credit Agreement dated as of March 30, 1998 (as amended, restated or otherwise modified, the "Credit Agreement") among the Parent, the Subsidiary Borrowers referred to herein, the Lenders party thereto, Morgan Stanley Senior Funding, Inc. (as Syndication Agent), Bank of America National Trust and Savings Association (as Documentation Agent) and First Union National Bank (as Administrative Agent).

The Administrative Agent is hereby authorized to disburse all Loan proceeds into the following account(s):

[Insert name of bank/
ABA Routing Number/
and Account Number/

IN WITNESS WHEREOF, the undersigned has executed this Notice of Account Designation this ___ day of _____, 19__.

_____

By: _____

Name: _____

Title: _____

(NY) 14013/995/CA:credit.agt.2.wpd

NOT ACERTIFIED COPY

020156

CREDIT SUISSE FIRST BOSTON

CREDIT SUISSE FIRST BOSTON CORPORATION

Eleven Madison Avenue
New York, NY 10010-3629

Telephone 212 325 2000

NOT A CERTIFIED COPY

December 10, 1997

The Coleman Company, Inc.
625 Madison Avenue
New York, NY 10022

Attention: Jerry W. Levin
Chairman and Chief Executive Officer

Ladies and Gentlemen:

This letter agreement confirms our understanding that The Coleman Company, Inc. (the "Company" or "you") has engaged Credit Suisse First Boston Corporation and its affiliates, successors and assigns, as appropriate ("CSFB" or "we"), to act as its exclusive financial advisor with respect to the evaluation of a proposed Transaction (as defined below) with a company we have code-named Laser ("Laser").

As part of our engagement, we will, if appropriate and if requested:

(a) assist you in analyzing and evaluating the business, operations and financial position of the Company;

(b) assist you in evaluating any proposal which is received from Laser;

(c) assist you in structuring and negotiating any proposed Transaction with Laser;

(d) be available at your request to meet with your Board of Directors to discuss the proposed Transaction and its financial implications; and

(e) render an opinion as to the fairness from a financial point of view to the Company's stockholders (other than Coleman (Parent) Holdings Inc. and its affiliates) of the consideration to be received in any proposed Transaction.

In connection with CSFB's engagement, the Company will furnish CSFB with all information concerning the Company which CSFB reasonably deems appropriate and will provide CSFB with access to the Company's officers, directors, employees, accountants, counsel and other representatives (collectively, the "Representatives"), it being understood that CSFB will rely solely upon such information supplied by the Company and its Representatives without assuming any responsibility for independent investigation or verification thereof. All non-public information concerning the Company which is given to CSFB will be used solely in the course of the performance of our services hereunder and will be treated confidentially by us for so long as it remains non-public. Except as

020158

MS 169

CP 012044
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402232

16div-025921

otherwise required by law, CSFB will not disclose this information to a third party without the consent of the Company.

As compensation for our services hereunder, the Company agrees to pay CSFB as follows:

(1) a financial advisory fee of $250,000, payable upon execution of this agreement (the "Financial Advisory Fee");

(2) a transaction fee of $3,750,000 (the "Transaction Fee") payable upon the consummation of the Transaction; and

(3) reimbursement of all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its legal counsel, if any, and any other advisor retained by CSFB (it being understood that the retention of any such advisor, other than legal counsel, will be made with the prior approval of the Company), resulting from or arising out of this engagement.

All fees and expenses payable hereunder are net of all applicable withholding and similar taxes (but not of income or any similar taxes).

For purposes of this agreement, the term "Transaction" shall be defined to include, in any transaction involving Laser or any affiliate of Laser; the disposition (whether in one or a series of transactions) of all or a substantial amount of the assets or the capital stock of the Company, as well as any merger, recapitalization, restructuring or liquidation of the Company by the current owners, a third party or any combination thereof, or any other form of disposition which results in the effective sale of the principal business or operations of the Company by the current owners or an effective change of control of the Company's ownership.

If we are requested to render an opinion, the nature and scope of our analysis as well as the form and substance of our opinion shall be such as we deem appropriate. If requested by you, our opinion shall be delivered in writing.

No advice or opinion rendered by CSFB, whether formal or informal, may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to without our prior written consent. In addition, CSFB may not be otherwise referred to without its prior written consent. If requested by CSFB, the Company shall include a mutually acceptable reference to CSFB in any press release or other public announcement made by the Company regarding the matters described in this letter.

Since CSFB will be acting on behalf of the Company in connection with its engagement hereunder, the Company has entered into a separate letter agreement, dated the date hereof, providing for the indemnification by the Company of CSFB and certain related persons and entities.

NOT A CERTIFIED COPY

CSFB's engagement hereunder may be terminated at any time, with or without cause, by either CSFB or the Company upon ten days' prior written notice thereof to the other party; provided, however, that in the event of any termination of CSFB's engagement hereunder, CSFB will continue to be entitled to its full Transaction Fee provided for herein in the event that at any time prior to the expiration of two years after any such termination the Company consummates, or enters into an agreement providing for a Transaction and such Transaction is subsequently consummated; and provided, further, that no termination of CSFB's engagement hereunder shall affect the Company's obligations to pay the Financial Advisory Fee, other fees and expenses to the extent provided for herein, and to indemnify CSFB and certain related persons and entities as provided in the separate letter agreement referred to above.

In connection with this engagement, CSFB is acting as an independent contractor and not in any other capacity, with duties owing solely to the Company. All aspects of the relationship created by this agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable to contracts made and to be performed therein.

We are delighted to accept this engagement and look forward to working with you on this assignment. Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this agreement.

Very truly yours,

CREDIT SUISSE FIRST BOSTON CORPORATION

By: _____
Name: Gordon A. Rich
Title: Managing Director

Accepted and agreed to as of the date first written above:

THE COLEMAN COMPANY INC.

By: _____
Name: ~~Jerry W. Levin~~ Paul Shapiro
Title: ~~Chairman and Chief Executive Officer~~ EVP

NOT A CERTIFIED COPY

020160

80520060/3

CP 012046
CONFIDENTIAL

TO: Credit Suisse First Boston Corporation
Eleven Madison Avenue
New York, New York 10010-3629

December 10, 1997

In connection with your engagement (the "engagement") to advise and assist us with the matters described in our engagement letter dated December 10, 1997, we agree to indemnify and hold harmless CREDIT SUISSE FIRST BOSTON CORPORATION ("CSFB" or "you") and its affiliates, the respective directors, officers, partners, agents and employees of CSFB and its affiliates, and each other person, if any, controlling CSFB or any of its affiliates (collectively, "Indemnified Persons"), from and against, and we agree that no Indemnified Person shall have any liability to us or our owners, parents, affiliates, security holders or creditors for, any losses, claims, damages or liabilities (including actions or proceedings in respect thereof) (collectively "Losses") (A) related to or arising out of (*i*) our actions or failures to act (including statements or omissions made, or information provided, by us or our agents) or (*ii*) actions or failures to act by an Indemnified Person with our consent or in reliance on our actions or failures to act, or (B) otherwise related to or arising out of the engagement or your performance thereof, except that this clause (B) shall not apply to any Losses that are finally judicially determined to have resulted primarily from your bad faith or gross negligence. If such indemnification is for any reason not available or insufficient to hold you harmless, we agree to contribute to the Losses involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by us and by you with respect to the engagement or, if such allocation is judicially determined unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of us on the one hand and of you on the other hand; provided, however, that, to the extent permitted by applicable law, the Indemnified Persons shall not be responsible for amounts which in the aggregate are in excess of the amount of all fees actually received by you from us in connection with the engagement. Relative benefits to us, on the one hand, and you, on the other hand, with respect to the engagement shall be deemed to be in the same proportion as (*i*) the total value paid or proposed to be paid or received or proposed to be received by us or our security holders, as the case may be, pursuant to the transaction(s), whether or not consummated, contemplated by the engagement bears to (*ii*) all fees actually received by you in connection with the engagement.

We will reimburse each Indemnified Person for all expenses (including without limitation reasonable fees and disbursements of counsel and expenses incurred in connection with preparing for and responding to third party subpoenas) as they are incurred by such Indemnified Person in connection with investigating, preparing for or defending any action, claim, investigation, inquiry, arbitration or other proceeding ("Action") referred to above (or enforcing this agreement or any related engagement agreement), whether or not in connection with pending or threatened litigation in which any Indemnified Person is a party, and whether or not such Action is initiated or brought by you . We further agree that we will not settle or compromise or consent to the entry of any judgment in any pending or threatened Action in respect of which indemnification may be sought hereunder (whether or not an Indemnified Person is a party therein) unless we have given you reasonable prior written notice thereof and used all reasonable efforts, after consultation with you, to obtain an unconditional release of each Indemnified Person from all liability arising therefrom. In the event we are considering entering into one or a series of transactions involving a merger or other business combination or a dissolution or liquidation of all or a significant portion of our assets, we shall promptly notify you in writing. If requested by CSFB, we shall then establish alternative means of providing for our obligations set forth herein on terms and conditions reasonably satisfactory to CSFB.

If multiple claims are brought against you in any Action with respect to at least one of which indemnification is permitted under applicable law and provided for under this agreement, we agree that any judgment, arbitration award or other monetary award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for. Our obligations hereunder shall be in addition to any rights that any Indemnified Person may have at common law or otherwise. Solely for the purpose of enforcing this agreement, we hereby consent to personal jurisdiction and to service and venue in any court in which any claim which is subject to this agreement is brought by or against any Indemnified Person. We acknowledge that in connection with the engagement you are acting as an independent contractor with duties owing solely to us. YOU HEREBY AGREE, AND WE HEREBY AGREE ON OUR OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF OUR SECURITY HOLDERS, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION ARISING OUT OF THE ENGAGEMENT, YOUR PERFORMANCE THEREOF OR THIS AGREEMENT.

The provisions of this agreement shall apply to the engagement (including related activities prior to the date hereof) and any modification thereof and shall remain in full force and effect regardless of the completion or termination of the engagement. This agreement and any other agreements relating to the engagement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles.

Very truly yours,
THE COLEMAN COMPANY INC.

By: Paul Shapiro
~~John W. Lovin~~ PAUL SHAPIRO
Title: ~~Chairman and Chief Executive Officer~~ SVP

Accepted and agreed to as of the date hereof:

CREDIT SUISSE FIRST BOSTON CORPORATION

By:
Gordon A. Rich
Title: Managing Director

191020

80520060/4

CP 012047
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1402235

16div-025924

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

MORGAN STANLEY SENIOR FUNDING, INC.,)
Plaintiff,)
vs.)
MacANDREWS & FORBES HOLDINGS,) INC., and COLEMAN (PARENT) HOLDINGS, INC.,)
Defendant.)

VIDEOTAPED DEPOSITION OF
STEVEN L. FASMAN, ESQ.
New York, New York
Wednesday, January 21, 2004

Reported by:
ANDREA L. KINGSLEY, RPR
CSR NO. 001055
JOB NO. 156575

January 21, 2004
1:09 p.m.

Videotaped deposition of STEVEN L. FASMAN, ESQ., held at the offices of Kirkland & Ellis, LLP, 153 East 53rd Street, New York, New York, pursuant to Rule 1.310, before Andrea L. Kingsley, a Notary Public of the State of New York.

APPEARANCES:
KIRKLAND & ELLIS, LLP
Attorneys for Plaintiff
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: LARISSA PAULE-CARRES, ESQ.

JENNER & BLOCK
Attorneys for Defendants
One IBM Plaza
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.

ALSO PRESENT:
MARCELLO RIVERA, Videographer

Fasman

STEVEN L. FASMAN,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MS. PAULE-CARRES:

Q. Good afternoon, Mr. Fasman.
A. Good afternoon.
Q. Could you please state your full name for the record?
A. Steven Lawrence Fasman.
Q. Can you please provide your business address?
A. 35 East 62nd Street, New York, New York.
Q. It's my understanding that you've provided deposition testimony before; is that correct?
A. Yes.
Q. When did you provide prior deposition testimony?
A. On many occasions.
Q. Can you please tell me some of them?

NOT A CERTIFIED COPY

020163

Fasman

A. In this case, a few months ago.
Q. This case being --
A. Being Coleman (Parent) Holdings versus Morgan Stanley.
Q. What was the substance of that testimony?
A. It was a Rule 1.310 deposition concerning document production.
Q. What other cases have you provided testimony in?
A. A large number of cases.
Q. Could you list one for me?
A. Product liability a couple of times.
Q. What was the subject matter of that testimony?
A. I was called as a witness in a couple of product liability cases.
Q. As a fact witness?
A. Yes.
Q. How long ago was that testimony provided?
A. I can recall a session maybe about two years ago.

Fasman

Q. Was that the last time that you had provided deposition testimony prior to --
A. I'm sorry, that was not deposition testimony, that was trial testimony.
Q. Was that the most recent time, absent your September deposition in this case, that you provided any form of testimony, sworn testimony?
A. Probably.
Q. Have you served as a corporate representative for Coleman (Parent) before?
A. At the prior deposition.
Q. At any time prior to the prior deposition had you served as a representative of Coleman (Parent)?
A. No.
Q. Have you ever served as a corporate representative for MacAndrews & Forbes?
A. Yes.
Q. When was that?
A. In a case called LaSalle National

Fasman

Bank versus Perelman.
Q. What was the subject matter of that deposition?
A. Document production.
Q. Have you served as a corporate representative for MAFCO in any other cases?
A. Possibly.
Q. You don't recall?
A. Not at this point.
Q. If you took a moment and thought about it, would you recall?
A. Possibly.
Q. I will ask you again in a few moments.
Have you ever been asked to provide testimony regarding the use of e-mail at Coleman (Parent)?
A. No.
Q. Have you ever been asked to provide testimony regarding the use of e-mail at MAFCO?
A. No.
Q. Have you ever been asked to

Fasman

provide testimony regarding back-up procedures of computer systems at Coleman (Parent)?
A. No.
Q. Have you ever been asked to provide testimony regarding back-up procedures of computer systems used at MacAndrews & Forbes?
A. No.
Q. Have you ever been asked to provide testimony regarding data restoration processes used by Coleman (Parent)?
A. No.
Q. Have you ever been asked to provide testimony regarding data restoration processes used at MacAndrews & Forbes?
A. No.
Q. Have you ever been asked to provide testimony regarding e-mail or document retention policies at Coleman (Parent)?
A. No.

NOT A CERTIFIED COPY

020164

Fasman

Q. Have you ever been asked to provide testimony regarding e-mail or document retention policies at MacAndrews & Forbes?

A. No.

MR. BRODY: In those cases, you mean aside from questions he was asked in the prior session in this case?

MS. PAULE-CARRES: Yes.

MR. BRODY: Thank you.

Q. Have you ever been asked to provide testimony regarding e-mail or document destruction policies at Coleman (Parent) with the limitation that absent the prior deposition in this case?

A. I'm sorry, you have to ask the question again.

Q. Other than your deposition in September of this past fall, have you ever been asked to provide testimony regarding e-mail or document destruction policies employed by Coleman (Parent)?

A. No.

Q. Have you ever been asked to

Fasman

testify regarding e-mail or document destruction policies at MacAndrews & Forbes?

A. It sort of depends what you mean by that. In the context of the LaSalle case which also concerned document production, there may have been questions on that subject. I don't recall precisely at this point.

Q. You commented that the LaSalle case you provided trial testimony?

A. Deposition.

Q. Do you recall when that deposition took place?

A. My best guess would be 1998.

Q. In light of the fact that you provided testimony in the past, I'm sure you know how a deposition works but I'm just going to go over a few of the rules of the road. Obviously, if you don't understand one of my questions or if I speak too fast, whatever, please let me know, I will repeat or I will clarify the question. Okay?

Fasman

A. Yes.

Q. Obviously, this is all being transcribed so I would ask that you allow me to finish questions prior to answering and I will extend the same courtesy and try not to interrupt you while you're answering. Okay?

A. Yes.

Q. If you need a break or need to speak to your counsel, just let me know and as soon as the pending question has been answered, we will recess for a few minutes. Okay?

A. Okay.

Q. After a question has been asked and answered, if you remember any additional information at a later point in time, just let me know and we'll go back to it. Okay?

A. Okay.

Q. Is there any reason today that you feel that you are unable to provide a full and complete testimony?

A. No.

Fasman

Q. Can you please tell me briefly your educational background starting with your undergraduate?

A. I attended Princeton University, graduated in 1984. I attended Yale Law School, graduated in 1987.

Q. Any other graduate schools or professional schools?

A. No.

Q. At Princeton, what was your major?

A. Mathematics.

Q. Did you have a minor as well?

A. No.

Q. Did any of your major course work of mathematics provide you any technical experience?

A. In my mathematics course?

Q. Um-hmm.

A. No.

Q. Did you take any other course work that provided you with any technical or computer experience?

A. Yes.

NOT A CERTIFIED COPY

020165

Fasman
Q. What was that?
A. Courses in physics, organic chemistry, molecular biology, astrophysics, civil engineering. Limited to my Princeton education?
Q. Um-hmm.
A. That's it.
Q. Did you ever take any course work pertaining to computer science while you were at Princeton?
A. The civil engineering course was a course an advanced computer graphics.
Q. Did you ever have any employment during your undergraduate years in which you utilized your civil engineering experiences?
A. My civil engineering experiences?
Q. The things you learned in your civil engineering course.
A. Those things in particular as opposed to other computer related things?
Q. Those things in particular.
A. Yes. I was an instructor in a course in another semester.

Fasman
Q. What course was that?
A. Civil engineering 3.01. I also used that experience in my employment at the IBM Thomas J. Watson Research Center.
Q. Can you please explain what your employment at the IBM Thomas J. Watson Research Center entailed?
A. The Watson center is IBM's headquarters for advanced research projects. I worked there on high intensity computing graphics research.
Q. Did you have any other employment which utilized any other computer skills beyond what you learned in your civil engineering course work?
A. Yes.
Q. What were those?
A. I also worked on two different occasions for the -- what is most recently known as the Nathan Klein Research Center which is part of the New York State Department of Mental Health. It was an advanced research center into mental health drug related research. And I also worked

Fasman
for Princeton University as a user consultant aiding users with any of a wide variety of problems concerning their use of the university's computer systems. I did work for the Yale Law Review setting up a computerized subscription system for them. I did work with what at the time were advanced word processing programs assembling complicated documents.
Q. Is this while you were at Yale?
A. No, that was while I was at Princeton. That may be it.
Q. While at the Nathan Klein Research Center, what computer skills did you use there?
A. My principal work was in turning mathematical models of drug performance and interactions into computer software codes so that theories could be modeled on a computer.
Q. While at the Nathan Klein Research Center, did you ever do any work regarding the construction or maintenance of a network system?

Fasman
A. Yes.
Q. Can you please describe that experience?
A. Part of the work involved taking different computer related componentry and getting them to work in synchrony with one another.
Q. How many computers were networked while you were there at the Nathan Klein Research Center?
A. It was all part of a single computer system but there were different pieces of equipment that had to be made to work together.
Q. While you were at Nathan Klein Research Center, did you ever have to handle any data restoration issues?
A. No.
Q. While you were at the Nathan Klein Research Center, were you involved with formulation of data retention programs or policies?
A. No.
Q. At Princeton you said that you

NOT A CERTIFIED COPY

991020

Page 17

Fasman

were a user consultant for the school's computer systems?
A. Yes.
Q. What systems were in use at Princeton at that time?
A. The principal system was either an IBM 370 or IBM 390 and it may have switched in the middle which is why I have difficulty recalling.
Q. Were you assisting students in word processing issues?
A. Among other things.
Q. What other things?
A. Anything having to do with computers and Princeton.
Q. Were you assisting students -- first of all, let me ask you, were you only assisting students?
A. No.
Q. Faculty as well?
A. Yes.
Q. Anybody other than faculty and students?
A. Administrators, others with

Page 18

Fasman

permission to use the university's computer systems.
Q. In your capacity as a user consultant at Princeton, did you ever assist people in restoration of lost data?
A. Yes.
Q. What did you do?
A. They had data that was lost, I helped them restore it.
Q. How did you do that?
A. It depended upon the particular situation.
Q. Give me an example please.
A. Somebody had a data tape that did not seem responsive to normal commands to retrieve data, I retrieved it for them.
Q. How did you retrieve it?
A. By performing system level functions on the computer system in order to extract the data from -- at a much lower level than the user was capable of doing.
Q. Approximately what percentage of your experience at Princeton as a user consultant was consumed with data

Page 19

Fasman

restoration?
A. I couldn't say.
Q. 50 percent?
A. I couldn't say.
Q. You couldn't estimate like was it a high percentage or a low percentage? I mean, there's got to be --
A. What's high and low for this purpose?
Q. Nine calls out of ten, were they data restoration?
A. I've never tried to compute it. I don't know what the percentage would be.
Q. One percent?
A. Whether you say one or you say 90, I've not tried to compute the percentage.
Q. I'm not asking you to compute the percentage, I am asking whether a lot of your calls related to data restoration or if it was an infrequent experience.
MR. BRODY: Objection to form.
A. Then I don't understand what you are asking. You asked me if it was one

Page 20

Fasman

percent, at least I thought that's what you were asking.
Q. Did you often have calls requesting assistance in data restoration?
MR. BRODY: Objection to the form.
A. What does often mean in this context?
Q. On a daily basis.
A. I only worked there part time.
Q. On the days that you were working there, were you receiving calls requesting data restoration?
A. On days that I was working there I did receive such calls.
Q. On the daily basis of the days that you worked there, did you receive calls requesting data restoration assistance?
A. Did I receive such a call everyday that I worked there?
Q. Yes.
A. No.
Q. Do you recall if within a week's

NOT A CERTIFIED COPY

020167

Fasman

time working as a Princeton user consultant you would receive a call for data restoration?

A. I don't understand the question.

Q. I'm taking the last question and changing it from daily to weekly.

A. Did that happen every week that I was working?

Q. Yes.

A. No.

Q. Now I'm changing it to monthly.

A. I don't know.

Q. At Yale, you were talking about your experience at the Law Review setting up a computer subscriber system?

A. Yes.

Q. Did you have any other experiences with computer systems while you were at Yale?

A. I typed my note on one.

Q. Did you have any experiences involving data restoration while you were at Yale?

A. No.

Fasman

Q. Never lost your note?

A. No.

Q. While you were at Yale, did you take any course work regarding computer systems?

A. No.

Q. During the period of time that you were at Yale, did you have any employment which provided you with any experiences with computer systems?

A. No.

Q. After you graduated Yale, what did you do employment wise?

A. I joined Paul Weiss Rifkin Wharton & Garrison.

Q. As an associate?

A. Yes.

Q. What type of law did you practice?

A. Litigation.

Q. Did your litigation experiences at Paul Weiss provide you with any technical or computer system experience?

A. Yes.

Fasman

Q. Can you please describe that?

A. I worked on a number of patent matters.

Q. How did that provide you with computer related experiences?

A. It did not.

Q. So it was technical related?

A. Yes, ma'am.

Q. While you were at Paul Weiss, did you have any responsibilities with regard to the firm's computer systems?

A. No.

Q. With their networks?

A. No.

Q. Did you have any experiences regarding data restoration while you were at Paul Weiss?

A. I assume you mean electronic data?

Q. Um-hmm.

A. No.

Q. How long were you at Paul Weiss?

A. Five years.

Q. After you left Paul Weiss, what

Fasman

did you do?

A. I joined MacAndrews & Forbes.

Q. So that would be in 1992?

A. Yes.

Q. What was your position when you joined MacAndrews & Forbes?

A. Senior counsel.

Q. What were your job responsibilities as senior counsel?

A. To do whatever the company needed me to do.

Q. What did that entail?

A. A wide variety of things.

Q. Please list some of the things that you were asked to do by MacAndrews & Forbes in your capacity as senior counsel.

A. Hundreds of things that I worked on.

Q. Start with one.

A. The collapse of Executive Life Insurance Company.

Q. In your capacity as senior counsel working on the collapse of Executive Life Insurance Company, what were

NOT A CERTIFIED COPY

020168

Fasman

your responsibilities?
A. To mitigate the effects of that collapse on companies in which MacAndrew held an interest.
Q. In your role as senior counsel, did you ever represent MacAndrews & Forbes in court?
A. Yes.
Q. Solely or with outside counsel as well?
A. Solely and with outside counsel as well.
Q. In your capacity as senior counsel, did you ever represent Coleman (Parent) in court proceedings?
A. I'm sorry, ask the question again.
Q. In your capacity as senior counsel for MacAndrews & Forbes, did you ever represent Coleman (Parent) in court proceedings?
A. No.
Q. In your capacity as senior counsel, did your job responsibilities

Fasman

include a management of MacAndrews & Forbes computer systems?
A. I was not the manager of MacAndrews & Forbes' computer systems, no.
Q. Who was the manager of MacAndrews & Forbes' computer systems?
MR. BRODY: This is during the time period he's senior counsel?
MS. PAULE-CARRES: When he's senior counsel.
A. I wouldn't say that anybody at MacAndrews & Forbes was the manager of computer systems.
Q. How about currently?
A. No.
Q. Currently your job responsibilities do not include management of the computer systems?
A. Correct.
Q. Currently, whose job responsibilities include management of MacAndrews & Forbes' computer systems?
A. I don't think anybody at MacAndrews & Forbes could be said to have

Fasman

management of the computer systems as one of their responsibilities.
Q. Does MacAndrews & Forbes use computers?
A. Yes.
Q. What types of computers are used at MacAndrews & Forbes?
A. Principally personal computers.
Q. Desktops?
A. Yes.
Q. Are laptops used?
A. Sometimes.
Q. Are laptops reserved for people on travel?
A. No.
Q. In what instance is somebody issued a laptop as opposed to a desk top?
A. When they need it.
Q. When would somebody need a laptop versus a desktop if not for travel?
MR. BRODY: Objection to the form.
A. Travel may be a reason why they need a laptop.

Fasman

Q. Would there be any other reasons in which a person would need a laptop in your experience?
A. Yes.
Q. What would those be?
A. Somebody is working in a location that doesn't have a computer in it.
Q. A location out of the office?
A. Sometimes.
Q. In your offices, are you referring to perhaps a conference room that wouldn't have a computer?
A. That could be a situation as well.
Q. Are there any other types of computers which are issued beyond desktops or laptops at MacAndrews & Forbes?
A. What do you mean by issued?
Q. Provided to employees.
A. You mean physically handed to employees?
Q. How else would somebody be provided a computer? If you have another way then I'll take that as well.

NOT A CERTIFIED COPY

020169

Fasman

A. A computer can be accessed remotely. One could be provided access to a computer as opposed to being physically handed a box.

Q. And employees of MacAndrews & Forbes are provided external access to a system?

A. Sometimes.

Q. In what circumstances would somebody be provided that access?

A. There are a number of different circumstances.

Q. Could you please list them for me?

A. Certain departments use many computers for certain of their functions. Certain functions are centralized on server computers.

Q. And those functions need to be accessed remotely?

A. Yes.

Q. From within MacAndrews & Forbes' offices or from a site beyond the physical office?

Fasman

A. Both.

Q. Does MacAndrews & Forbes issue personal data, PDAs to its employees?

A. No, not generally.

Q. Has it in the past?

A. Not generally.

Q. Ever, has it ever issued a PDA to an employee?

A. I can't recall a situation.

Q. Does MacAndrews & Forbes issue Blackberries to its employees?

A. Generally, no.

Q. By employees I'm including senior executives. Does it issue Blackberries to its senior executives?

A. Some of them.

Q. Who at MacAndrews & Forbes have you issued Blackberries to?

A. I don't have a full list.

Q. I will take a partial list.

A. I have one. Michael Borofsky has one. Larry Schwartz has one. Ronald Cohen has one. John Winkel has one. Caroline Orenski has one. I can't think of anyone

Fasman

else.

Q. Does Mr. Gittis have one?

A. I don't know.

Q. Does Mr. Perelman have one?

A. I don't know.

Q. Let me go back to my questions regarding the PDAs. Are PDAs issued by MacAndrews & Forbes to any of its senior executives?

A. I don't know.

Q. Were you issued a PDA by MacAndrews & Forbes?

A. No.

Q. Does Coleman (Parent) have any employees?

A. No.

Q. So Coleman (Parent) doesn't have any computers either, does it?

A. No.

Q. I sort of got off track. I was talking about your job responsibilities when you were senior counsel. I want to jump forward. Are you currently senior counsel at MacAndrews & Forbes?

Fasman

A. No.

Q. What was your position following your job as senior counsel?

A. Vice president law.

Q. When did you become vice president law?

A. January 1, 1998.

Q. Is that your current position?

A. No.

Q. How long were you vice president law?

A. Six years.

Q. So until January 1 of 2004?

A. Yes.

Q. What happened on January 1, 2004?

A. I became senior vice president law.

Q. Who was senior vice president law from the period of 1/1/98 to 1/1/04?

A. At least one person may have held that title and maybe two.

Q. Who was the one that you know held the title?

A. Glenn Dickes.

NOT A CERTIFIED COPY

020170

Fasman

Q. Who may have held the title?
A. Gary Leshko.
Q. Was Glenn Dickes issued a Blackberry by MacAndrews & Forbes?
A. I don't know.
Q. Do you know whether Gary Leshko was issued a Blackberry?
A. No, he was not.
Q. You are currently senior vice president law?
A. Yes.
Q. Have your responsibilities changed from senior counsel to vice president law? Had they changed?
A. No.
Q. Did they change when you went from vice president law to senior vice president law?
A. No.
Q. So when you were vice president law your job responsibilities still did not include management of a computer system at MacAndrews & Forbes?
A. Correct.

Fasman

Q. And that stands true today as well?
A. Correct.
Q. When you were senior counsel, did your job responsibilities include a management of MacAndrews & Forbes' network?
A. No.
Q. Did you manage MacAndrews & Forbes' network at all during your period as vice president law?
A. No.
Q. How about today?
A. No.
Q. At any point from the time that you were senior counsel through today, have you been responsible for the management of UNIX servers?
A. We do not have any UNIX servers.
Q. Have you had any responsibility from the time you were senior counsel through today for data storage infrastructure at MacAndrews & Forbes?
A. I'm sorry, repeat the question.
Q. From the time that you were

Fasman

senior counsel through today, at any point, did you have any responsibility for managing the data storage, electronic data storage at MacAndrews & Forbes?
A. No.
Q. Did you have any responsibility specifically with regard to the storage of e-mails at MacAndrews & Forbes?
A. Yes.
Q. Can you please explain -- first of all, during what time period were you responsible for the management of the storage of e-mail?
MR. BRODY: Objection to the form.
A. That wasn't what I said.
MS. PAULE-CARRES: Could you please read back the prior two questions ago.
(Record read.)
Q. When did you have responsibility with regard to the storage of e-mail at MacAndrews & Forbes?
A. I am the principal author of the

Fasman

company's policy regarding the use of e-mails.
Q. When did you author the policy regarding the use of e-mail?
A. 1997.
Q. Have you revised the policy since then?
A. No.
Q. Did anybody assist you in authoring the company policy with regard to the use of e-mail?
A. No.
Q. What is the company policy regarding the use of e-mail?
A. I cannot recall it verbatim. I can tell you that it generally suggests that e-mail is company property and it must be used with that in mind, that it cannot be used for an illegal purpose or for a purpose that would be considered offensive, discriminatory, defamatory, harassing. It confirms the company has the right to review e-mails at any time. It suggests that computer storage space is a valuable

NOT A CERTIFIED COPY

02171

Fasman

A. No.
Q. Who would be doing it?
A. Well, policy has a number of different aspects to it so I suppose he might have been responsible for implementing part of it.
Q. What part would he have been responsible for implementing?
A. If there were any complaints regarding use, probably they would at one point or another end up in Ron's hands, such complaints.
Q. What discussions did you have with John Henderson regarding the implementation of the e-mail policy?
A. How to set up the equipment so that the 30 day provision would be implemented in a reasonable fashion.
Q. What's the 30 day provision?
A. The first full paragraph on page 3.
Q. Page 3 being CPH 1433328?
A. No.
Q. Bates number 1433329?

Fasman

A. Yes.
Q. That paragraph reads, "Employees should delete promptly any e-mail messages they send or receive that no longer require action or not necessary to an ongoing project. Employees should audit stored e-mail messages weekly to identify messages that are no longer needed and should be deleted. In addition, the e-mail system will only back-up and preserve messages for a period of 30 days. Accordingly, every 30 days all messages will be purged from the e-mail system. Specific documents requiring longer storage will need to be moved elsewhere."
Is that the 30 day plan that you were referring to?
A. I didn't call it a plan.
Q. What did you call it?
A. I don't know, whatever I said.
Q. Is that what you are referring to when you are referring to a 30 day issue or whatever you called it?
A. Yes.

Fasman

Q. How did Ron Henderson help you with implementing this 30 day purging of e-mail?
A. He took care of it.
MR. BRODY: Ron Henderson? You mean John --
Q. I'm sorry, John Henderson.
A. He took care of it.
Q. Do you know what he did to take care of it?
A. No. Well, specifically or in broad terms? I thought you meant specifically.
Q. I meant specifically but if you know in broad terms then I'm happy to hear that.
A. Yes. He set up our back-up and review system so that materials would be saved for at least 30 days but not necessarily for longer.
Q. Is John Henderson still employed by MacAndrews & Forbes?
A. He was never employed by MacAndrews & Forbes.

Fasman

Q. Who was he employed by?
A. I don't know.
Q. Was he employed by one of MacAndrews & Forbes' affiliates?
A. No.
Q. You don't know who he was employed by?
A. I don't even know if he's employed.
Q. How did you come in contact with John Henderson?
A. He runs Access Systems for us.
Q. How does he -- through what company does he run Access Systems?
A. Through Access Systems, that's the company.
Q. You have a program called Access Systems?
A. We have a company called Access Systems.
MR. BRODY: Objection to the form of the question. Go ahead.
Q. Please explain the relationship of Access Systems to MacAndrews & Forbes.

NOT A CERTIFIED COPY

0201173

Fasman

A. Access Systems is our outsourced computer consultant provider maintainer.
Q. Does MacAndrews & Forbes currently employ the services of Access Systems?
A. Yes.
Q. Do you know how long MacAndrews & Forbes has been employing the services of Access Systems?
A. Roughly 10 years.
Q. Is John Henderson currently working with MacAndrews & Forbes through Access Systems?
A. Yes.
Q. Has John Henderson been working with MacAndrews & Forbes through Access Systems through the duration of that 10 years?
A. Yes.
Q. Does anybody else work with Mr. Henderson?
A. Yes.
Q. Can you please tell me their names?

Fasman

MR. BRODY: You mean from Access Systems?
MS. PAULE-CARRES: Yes.
A. I'm sorry, can I have the question back again?
Q. I will rephrase the question.
Can you please list the names of Mr. Henderson's colleagues at Access Systems who also work on the MacAndrews & Forbes account?
A. Joe Eger, Nick Roman, Chris Weisinger and another fellow whose name is slipping my mind.
Q. Is Mr. Henderson the project manager or team leader for that group?
A. Yes.
Q. Has Mr. Eger been working on the MacAndrews & Forbes account for the 10 year duration that MacAndrews & Forbes has used Access Systems?
A. I don't know.
Q. Do you know how long he's been there?
A. No, because that's why I can't

Fasman

answer the previous question.
Q. Has he been there for five years?
A. At least.
Q. How long has Nick Roman been working at Access Systems on MacAndrews & Forbes' account?
A. I don't know.
Q. Has he been working for MacAndrews & Forbes for at least five years?
A. Yes.
Q. How about Mr. Weisinger?
A. I would say about four years.
Q. Who at MacAndrews & Forbes interfaces with Access Systems currently?
A. Many people.
Q. Who?
A. Just about everybody in the company that has a computer problem.
Q. They are told to call Access Systems when they have a computer problem?
A. Yes.
Q. Is there a manager at MacAndrews & Forbes or senior executive who is

Fasman

responsible for managing the Access Systems account?
A. Yes.
Q. Who is that?
A. Caroline Orenski.
Q. What is her title?
A. I don't know.
Q. Has she been in charge of working, interfacing, being the primary interface with Access Systems during the 10 years you've used them?
A. No.
Q. Who did it before her?
A. Ron Cohen.
Q. And was there anyone prior to Mr. Cohen?
A. No.
Q. So earlier in the deposition when you were commenting that nobody at MAFCO had a job with responsibilities including the management of MAFCO's computer systems, is that because you used the services of Access Systems?
MR. BRODY: Objection to the

NOT A CERTIFIED COPY

02011

Fasman

form.
A. That was not my previous testimony.
Q. The record will reflect what the testimony is but I asked you whether or not -- I will ask you again. Whose job responsibilities at MAFCO include the management of MAFCO computer systems?
A. Nobody.
Q. Why not?
A. Because we've outsourced that function.
Q. And you've outsourced that to Access Systems?
A. Yes.
Q. Whose job responsibilities at MAFCO include management of a network system?
A. Nobody.
Q. Is that also because you've outsourced that to Access Systems?
A. Yes.
Q. Do you also outsource data storage infrastructure management to Access

Fasman

Systems?
A. Yes.
Q. Do you also outsource the management and performance of data back-ups to Access Systems?
A. Yes.
Q. Do you also outsource responsibility for data archiving to Access Systems?
A. We do not engage in data archiving.
Q. Do you know why you do not engage in data archiving at MacAndrews & Forbes?
A. No need.
Q. Were you involved in the decision to forego data archiving?
A. There was no such decision.
Q. Do you also outsource responsibility for data recovery from Access Systems?
A. I'm sorry?
Q. Do you also outsource responsibility for data recovery from Access Systems?

Fasman

A. Yes.
Q. Nobody at MacAndrews & Forbes performs data recovery?
A. I can't say definitively that's never happened.
Q. Have you ever performed data recovery while at MacAndrews & Forbes?
A. I've lost a file and figured out another way to get at it.
Q. Have you ever done it beyond -- for your personal use, have you ever performed data recovery for anybody else at the company?
A. My best guess would be yes.
Q. At what point do you determine that somebody within MacAndrews & Forbes will handle something such as data recovery versus calling Access Systems?
A. There's no principal distinction.
Q. Does Access Systems have personnel on-site?
A. Yes.
Q. How many people are on-site?
A. It may vary during the course of

Fasman

a given day, given week, given month.
Q. Is there a desk set up for Access Systems at MacAndrews & Forbes?
A. Yes.
Q. Are there two desks set up for Access Systems?
A. There's an office.
Q. Is there always at least one person from Access Systems at the MacAndrews & Forbes office?
A. During business hours, yes.
Q. If the need requires then perhaps another more will come, is that how it works?
A. Sort of.
Q. Do they have a separate office?
MR. BRODY: Objection to the form.
Q. Does Access Systems have a separate office, corporate office beyond the physical office in MacAndrews & Forbes' headquarters?
A. I don't know.
Q. Are you responsible for any

NOT A CERTIFIED COPY

020175

Page 53

Fasman
billing to Access Systems?
A. No.
Q. Have you ever had to call Access Systems off-site?
A. I have called people with Access Systems who are not on-site.
Q. How do you call them?
A. I have their phone numbers.
Q. So they have phone numbers for phones other than that which is at MacAndrews & Forbes?
A. Yes.
Q. But you don't know if that's for a separate office?
A. No.
Q. Are employees of MacAndrews & Forbes allowed to seek out the assistance of Access Systems unilaterally or do they need to go through yourself or Caroline Orenski or somebody else at MacAndrews & Forbes?
A. No.
Q. They do not need to seek out permission, they can just go directly to

Page 54

Fasman
the Access Systems personnel?
A. Correct.
Q. Do you know how you're billed by Access Systems for the services that they perform for MacAndrews & Forbes?
A. No.
Q. You don't know if it's an hourly rate?
A. I don't know if it's an hourly rate.
Q. Correct me if I'm wrong but you commented that you were not sure how many employees are assigned to MAFCO's account?
A. Correct.
Q. Do you know how many employees are full time at Access Systems?
MR. BRODY: I will interpose an objection. I let this go on pretty far. The purpose of the notice is to enquire about CPH's e-mail retention policies and CPH's ability to delete or restore e-mail. It seems to me the number of employees working for Access Systems has nothing to do with that.

Page 55

Fasman
So you are getting way far beyond the scope of the notice on which Mr. Fasman is being offered as the corporate representative. So I object to the form of the question and direct you to constrain the questions to the things we're here for.
MS. PAULE-CARRES: I'm laying the ground work for getting to the e-mail retention and recovery, what not. Are you directing him not to answer?
MR. BRODY: I'm not directing him not to answer. Asking a question how many people are working for Access Systems strikes me as having nothing to do with CPH's e-mail retention policy.
MS. PAULE-CARRES: I am laying some ground work for myself but I will move on though.
Q. In preparing for this deposition today, did you communicate with anybody from Access Systems?
A. In preparing for this deposition, no.

Page 56

Fasman
Q. Did MacAndrews & Forbes employ the services of a different IT contractor prior to Access Systems?
A. No.
Q. Did MacAndrews & Forbes have in-house personnel who managed its information technology systems?
A. At any time?
Q. Prior to its contract with Access Systems.
A. No.
Q. Since contracting with Access Systems it has never had an IT person; correct?
A. Correct.
(Morgan Stanley Exhibit 63, amended notice to videotape deposition, marked for identification, as of this date.)
Q. I'm handing you what has been marked as Morgan Stanley Exhibit 63. Do you recognize this document?
A. All except the last page.
Q. The last page being the service

NOT A CERTIFIED COPY

020176

Fasman

list?
A. No, the last page being the fax cover sheet.
(Discussion off the record.)
Q. I've handed you the amended notice to videotape deposition. Do you recognize this document?
A. Yes.
Q. And you understand that you are here today to testify as a corporate representative regarding e-mail retention policies, practices and procedures from 1997 to the present?
A. Yes.
Q. Regarding the e-mail programs used, the frequency of e-mail back ups? Do you understand that that's what you are here for today?
A. Yes.
Q. And to testify regarding the media used for the storage of current backed up or archived e-mail; correct?
A. Yes.
Q. The identity of any vendors?

Fasman

A. Yes.
Q. And regarding your company's ability to retrieve, restore e-mail?
A. Yes.
Q. Including time, labor, procedure and expense involved; correct?
A. Yes.
Q. When did you first see this document, Exhibit 63?
A. Around the time that it was served.
Q. What did you do to prepare to testify today?
A. My job.
Q. Can you please elaborate?
A. Doing my job allowed me to be in a position to testify as the corporate representative with respect to these topics.
Q. What in your job allowed you to prepare for testimony on the topics listed?
A. I've had more than 12 years with the company dealing with it day-to-day in many different respects, all of those

Fasman

things collectively have prepared me to testify today.
Q. Did you meet with anybody to discuss preparations for your testimony today?
A. Yes.
Q. Who did you meet with?
A. Mr. Brody.
Q. Did you meet with anybody other than Mr. Brody?
A. No.
Q. Is Mr. Cohen still employed by MacAndrews & Forbes?
A. Yes.
Q. Did you meet with Mr. Cohen?
A. Ever?
Q. To discuss the topics of today's deposition.
A. No.
Q. Did you review any documents prior to -- in preparation for giving your testimony today?
A. Yes.
Q. What documents did you review?

Fasman

A. Exhibit 63.
Q. The amended notice of videotape deposition?
A. Yes.
Q. Did you review any other documents?
A. No.
Q. Currently does Coleman (Parent) utilize an electronic mail system?
A. The officers and directors of Coleman (Parent) are all employees of MacAndrews & Forbes. I don't know how you put on one hat or take off one hat when an individual is sitting down at a keyboard.
Q. So do the officers and directors of Coleman (Parent) utilize the same e-mail program that is utilized by MacAndrews & Forbes?
A. No meaningful distinction can be made in terms of when somebody who has a MacAndrews & Forbes role or Coleman (Parent) role as everybody at Coleman (Parent) does something. I don't know how else to answer the question.

NOT A CERTIFIED COPY

020177

Page 61

Fasman

Q. So yes, they use the same system that they use when they are working as employees of MacAndrews & Forbes; is that correct?

A. If they were doing something in their capacity as a Coleman (Parent) person they would have to be using the same stuff that they would be using in their capacity as a MacAndrews & Forbes person.

Q. In that vein, I'm going to ask all the questions using MacAndrews & Forbes to avoid any confusion. Is that okay with you?

A. Depends on what the question is.

Q. All right. Well, stop me if you have a question about it but in the meantime I'm going to not distinguish between the two systems.

A. Okay.

Q. Currently does MacAndrews & Forbes utilize an electronic mail system?

A. Yes.

Q. What system is that?

A. Microsoft Exchange. It's

Page 62

Fasman

implemented through the Microsoft Outlook program.

Q. How long has MacAndrews & Forbes used Microsoft Exchange and Outlook?

A. Approximately seven years.

Q. Does everybody employed by MacAndrews & Forbes use that system while at the MacAndrews & Forbes offices?

A. No.

Q. What other systems are used?

A. None.

Q. Who does not use the Microsoft Exchange or Outlook systems?

A. There are numerous employees who have no need for computer access to do their jobs.

Q. So they don't use any e-mail system then?

A. Correct.

Q. So it's safe to say that anybody who's using an e-mail system in their job at MacAndrews & Forbes is using Microsoft Exchange and Outlook?

A. Yes.

Page 63

Fasman

Q. Do all computers have e-mail capabilities?

MR. BRODY: Objection to the form.

Q. Do all desktop computers used by employees at MacAndrews & Forbes have e-mail systems installed on them?

A. I believe so.

Q. Do all of the laptops owned by MacAndrews & Forbes have e-mail systems installed on them?

A. I don't know.

Q. Do employees of MacAndrews & Forbes have the ability to access e-mail from off-site?

A. Yes.

Q. So from home, if they're working from home, they can access the e-mail system?

A. Yes.

Q. Are you aware of anybody at MacAndrews & Forbes who works from home?

A. Yes.

Q. Who are you aware of that works

Page 64

Fasman

from home?

A. Many, many people.

Q. It's a common thing that people work from home? Do you ever work from home?

A. Yes.

Q. Do you access the e-mail system from your house?

A. Yes.

Q. What system was in use at MacAndrews & Forbes, what e-mail system was in use at MacAndrews & Forbes prior to Microsoft Exchange and Outlook?

A. WP Mail.

Q. How long was WP Mail in use?

A. Roughly two or three years.

Q. During the period that WP Mail was used, did everybody who had e-mail services have to use WP Mail?

A. Yes.

Q. Prior to using WP Mail what e-mail system was used at MacAndrews & Forbes?

A. None.

NOT A CERTIFIED COPY

020178

Fasman

Q. Does the current e-mail system, Microsoft Outlook, reside on a mainframe computer?
A. No.
Q. Where does it reside?
A. On a Compaq Proliant server.
Q. Does MacAndrews & Forbes have any Internet or web based e-mail systems?
A. Yes.
Q. What is that?
A. Microsoft Web Outlook.
Q. Is the Compaq Proliant server located at MacAndrews & Forbes' headquarters?
A. What's the headquarters?
Q. At your office.
A. In my office, no.
Q. Not in your physical office, in MacAndrews & Forbes' offices, is the Compaq Proliant server there?
A. Yes.
Q. Was the WP Mail system, was that located on a mainframe computer?
A. No.

Fasman

Q. Was that located on a server?
A. Yes.
Q. What server was that located on?
A. I believe a previous version of the Proliant.
Q. While MacAndrews & Forbes was using WP Mail, did they also use an Internet or web based e-mail system?
A. No.
Q. Does Microsoft Outlook allow for users to archive their e-mail on the hard drives of their computer?
A. Repeat the question please.
(Record read.)
A. No.
Q. I'd like to look again at Exhibit 62 which you stated earlier was the corporate e-mail policy that you authored in 1997.
A. That's not what I testified.
Q. How would you characterize this document?
A. It is the MacAndrews & Forbes holdings, Inc. electronic mail security

Fasman

policy.
Q. Is it not the document that you primarily authored?
A. I was the principal author, yes.
Q. If you turn to Bates number 1433329, we were discussing earlier a paragraph regarding a 30 day period after which e-mail messages would be purged from the system. Do you recall that?
A. Yes.
Q. Can you please explain in your words, your understanding, what that policy provides?
A. It provides that the company has -- it provides for several things. First, it provides that employees should delete e-mails they no longer need or are not necessary or no longer require action. They should audit their e-mails on a routine basis in order to prevent the system from being overloaded with unnecessary e-mails. And it warns employees not to expect that e-mails will routinely be preserved for more than 30

Fasman

days.
Q. So after 30 days, what happens to the e-mail?
MR. BRODY: Objection to the form.
A. What do you mean the e-mail?
Q. After 30 days, what happens to an employee's e-mail that is on the employee's company, on their system?
MR. BRODY: Same objection.
A. The way we've actually implemented this policy is slightly different than what that says.
Q. How has it been implemented? How has this policy been implemented?
A. We engage in a process that removes e-mails progressively from active use in the Outlook system.
Q. What do you mean by it removes e-mails progressively from the Outlook system?
A. For example, an e-mail which is in an employee's in-box after a period of time will be moved to the deleted box.

NOT A CERTIFIED COPY

020179

Fasman

After a further of period of time, messages in the deleted box will be purged.

Q. What is the period of time that must elapse before an e-mail message is moved from an employee in-box to the deleted box?

A. It doesn't quite work that way.

Q. How does it work?

A. Every two weeks, this is generally speaking, every two weeks messages that are more than two weeks old in the in-box are moved to the deleted box. Every two weeks, messages that are more than one month old in the deleted box are purged. Really four weeks. Every two weeks messages that are more than four weeks old are moved to the deleted box -- are purged from the deleted box.

Q. Do employees have access to the deleted box?

A. Yes.

Q. Are employees provided with this policy upon the commencement of their employment?

Fasman

A. Supposed to be.

Q. How do employees learn that it's in fact a two-week period from which an e-mail in the in-box goes to the deleted box and then after a second two-week period it goes from the deleted box to being purged?

MR. BRODY: Objection to the form.

A. Every week when the system performs these clean-up operations, a notice is sent to the user telling them what happened to their e-mails.

Q. Are they provided with a list of the e-mail subject line --

A. No, simply that a number of e-mails were moved from one box to another or purged.

Q. But not identifying specifically which e-mails they were?

A. No.

Q. You said generally speaking this is how it happens. That leads me to believe there's an exception.

Fasman

A. If the worker who is doing the purge is sick, it might be delayed a day, it might be a week with a technical glitch, it doesn't happen. There are various reasons why there might be exceptions here and there.

Q. Are there ever exceptions due to reasons other than employee absence or sickness or technical errors?

A. Yes.

Q. What would those be?

A. Occasionally because of particular work that's being done, particular issues that have arisen, we will suspend the operation for a period of time.

Q. You will suspend the automatic purging after 30 days?

A. Yes, done for individual employees or that can become system wide.

Q. To do that it requires somebody at MacAndrews & Forbes or Access Systems to go in to the system and physically change the settings?

A. Access Systems, yes.

Fasman

Q. If a user, an e-mail user at MacAndrews & Forbes wants to save e-mail, do they have any mechanism by which they can do it?

A. Yes.

Q. How does that happen?

A. They can print it out, they could put it into a saved folder, they could keep sending it to themselves so it refreshes. Probably other ways too.

Q. So the saved folder is sort of a shelter from the automatic purging?

MR. BRODY: Objection to the form.

A. I'm not quite sure what that means.

Q. Do e-mail that have been moved by the user from say their in-box to the saved folder, are those e-mails subject to the automatic purging?

A. No, they are not.

Q. Are they indefinitely saved in that folder?

A. Yes.

NOT A CERTIFIED COPY

020180

Fasman

Q. Absent being removed by the user?
A. Yes.
MS. PAULE-CARRES: Why don't we take a five minute break.
THE VIDEOGRAPHER: The time is 2:36 p.m. We're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 2:46 p.m. We're back on the record.
BY MS. PAULE-CARRES:
Q. Prior to the break we were discussing the e-mail policy whereby e-mail are kept in a user's in-box for two weeks and moved to the deleted box; is that correct?
A. We were discussing the implementation of the policy.
Q. Is that how it's implemented, after two weeks in the in-box it gets moved to the deleted box?
A. Every two weeks, e-mails in the in-box that are more than two weeks old are sent to the deleted items box.
Q. Does the in-box reside on a

Fasman

user's hard drive?
A. No.
Q. Where does it reside?
A. On the Compaq server.
Q. So the deleted box also resides then on the server; is that correct?
A. Yes.
Q. The saved box or folder we called it earlier, does that reside on a user's hard drive?
A. No.
Q. That also is on the server?
A. Yes.
Q. Is the Compaq server separate from MacAndrews & Forbes other network servers?
A. I'm not sure what you mean by that.
Q. Does MacAndrews & Forbes have multiple network servers?
A. Yes.
Q. How many does it have?
A. At least eight or nine.
Q. Is there anything on the Compaq

Fasman

server other than e-mail and Microsoft Outlook?
A. The Compaq Proliant server that has Microsoft Exchange on it does not have any other function.
Q. How is the Compaq Pro -- how do you spell that by the way?
A. P-R-O-L-I-A-N-T.
Q. How is the Compaq Proliant server backed up?
A. Tape.
Q. Is that a magnetic tape?
A. Yes.
Q. Who backs up the Compaq Proliant server?
A. Access Systems.
Q. How often does Access Systems back-up the Proliant server?
A. Everyday.
Q. So when the Proliant server is backed up, the e-mail system is being backed up?
A. Yes.
Q. Is it a complete daily back-up?

Fasman

A. What do you mean by complete?
Q. Is it the entire system, the entire Microsoft Outlook -- Microsoft Exchange system that's being backed up?
A. Sometimes.
Q. When is it a complete back-up of the Microsoft Exchange program?
A. Once a month.
Q. What is the daily back-up then?
A. For every other day of the month -- every other business day of the month, it backs up all the changes to the system.
Q. The changes to the system which are backed up daily, do they overwrite each other?
MR. BRODY: Objection to the form.
Q. Did you understand my question?
A. The tapes are regularly overwritten.
Q. So MacAndrews & Forbes' back-up today of its Proliant server will overwrite what was saved yesterday?

NOT A CERTIFIED COPY

020181

Fasman
A. No.
Q. How long will yesterday, the June 20th back-up of the Proliant server be maintained on a back-up tape, on a magnetic tape?
A. Until Friday --
MR. BRODY: You mean January 20, you said June.
Q. I meant January 20. Hopeful thinking, this cold weather. So for one business week it's maintained?
A. No.
Q. Is that how it happens?
A. You asked about January 20th in particular?
Q. Yes.
A. January 20th's will be overwritten on January 23rd.
Q. When will January 21st's back-up be overwritten?
A. January 28.
Q. And January 24th's?
A. January 24th is a Saturday, there will be no back-up.

Fasman
Q. Is it correct to say it will reside on a back-up magnetic tape for five days?
A. No. January 20th's back-up tape will be overwritten on January 23rd, that's three days.
Q. Explain to me how you determine how frequently to overwrite a magnetic tape for a daily as opposed to a monthly back-up?
A. There is a Monday tape, a Tuesday and Friday tape a Wednesday tape and a Thursday tape.
Q. The Monday tape will be overwritten when?
A. The following Monday.
Q. The Tuesday/Friday tape did you say?
A. Yes.
Q. Does that mean it tapes both Tuesday and Friday or it overwrites Tuesday on Friday? What does it mean, the Tuesday/Friday tape?
A. Both of those things you just

Fasman
said. It's used on Tuesdays and Fridays so therefore Tuesday's data will be overwritten on Friday.
Q. And Wednesday will be overwritten the following Wednesday?
A. Yes.
Q. And Thursday the following Thursday?
A. Yes.
Q. That's just for the daily back-ups though; correct?
A. Yes.
Q. After a month, explain to me the monthly back-up procedure.
A. There are two monthly back-up tapes. So that a monthly back-up tape will be overwritten every second month.
Q. If the saved folder is on this Proliant server, how does it remain exempt from these back-ups and overwriting?
A. It doesn't.
Q. Than how is it that the saved folder could possibly still be in existence, an e-mail could be there six

Fasman
months later if it were put in a saved folder?
A. It remains on the server.
Q. So the server will keep e-mail on it for longer than a period of 30 days?
MR. BRODY: Objection to the form.
A. Not in general.
Q. What circumstances will the server maintain e-mail for longer than 30 days?
A. If it's in a saved folder.
Q. Are there ever instances in which a daily tape is saved for longer than its either weekly or biweekly cycle in the case of a Tuesday/Friday tape?
A. I cannot think of an instance where that has occurred.
Q. Can you explain an instance in which a monthly tape has been saved for longer than it's monthly cycle?
A. I think the same would be in connection with the Arthur Andersen litigation, the oldest monthly tape still

NOT A CERTIFIED COPY

020182

Fasman

extant was removed from the normal overwriting cycle and saved.

Q. Was that just one tape that was removed from the cycle?

A. Actually, both tapes I think were removed but for this purpose, it's the older one that makes the difference.

Q. Why is that?

A. Because that happened in 2001 and the events in this case took place during 1997 and 1998 so any data that was on the older tape would have been merely replicated on the newer tape. The newer tape wouldn't have had anything else.

Q. Do you know the date at which that back-up tape was created?

MR. BRODY: Which back-up tape?

Q. The Arthur Andersen back-up tape that was removed from the overwriting cycle.

A. I believe the oldest extant tape was either from August or September 2001.

Q. Do you know what program or application is used to perform the back-ups

Fasman

of the Compaq Proliant server?

A. It's built into the server.

Q. Does it have a special name?

A. Not that I'm aware of.

Q. Has MacAndrews & Forbes ever used optical disks to store its backed up data?

A. No.

Q. Is there a policy or practice of backing up individual user's computers at MacAndrews & Forbes?

A. No.

Q. Is there a practice or policy of saving data off of a user's computer onto the network server at MacAndrews & Forbes?

MR. BRODY: This e-mail data?

MS. PAULE-CARRES: Yes.

Q. I want to clarify a comment you made earlier, I want to make sure I understood your response. There is no component of the MacAndrews & Forbes e-mail system that resides on a user's hard drive; is there?

A. I believe that the Outlook program itself which retrieves the data

Fasman

from the server relies on an individual's hard drive.

Q. But in terms of the data or messages, none of that resides on an individual's hard drive; is that correct?

A. Correct.

Q. Earlier we were discussing laptop computers. The data created through Microsoft Exchange from a laptop, does any of that reside on the laptop itself, the hard drive?

A. As I explained in response to one of your previous questions, I'm not sure and am inclined to think that's not the case, that all of the laptops even have Outlook on them. So I can't really answer your question.

Q. How about we were discussing Blackberries earlier in the deposition. Can you please explain to me how data and messages on a Blackberry are saved?

A. The whole way a Blackberry works is that it is constantly being synchronized with the e-mail system, in this case

Fasman

Outlook. So that every time a Blackberry device is placed in its cradle, it is synchronized with the larger e-mail system.

Q. So are all Blackberry messages created or received by MacAndrews & Forbes employees residing ultimately on the Compaq Proliant server?

A. Not necessarily.

Q. Where would they be?

A. They might be nowhere.

Q. Explain that please.

A. If I send an e-mail message from my Blackberry and delete that e-mail message before I synchronize the Blackberry in its cradle, the message will have been gone from the Blackberry already so there's nothing to synchronize and the message will not be saved on the exchange server.

Q. If the Blackberry has been synced, synchronized, then does the e-mail data reside on the Compaq Proliant server?

A. Yes.

Q. Have you ever in your experience at MAFCO recovered previously deleted data

NOT A CERTIFIED COPY

3810270

Fasman

from a Blackberry?
A. No.
Q. Are you aware of whether it can be done?
A. I have no knowledge of its ability to be done.
Q. Can you also save e-mail data on the Blackberry itself?
A. Yes.
Q. So once you synchronize the Blackberry the data can be in two places?
A. Oh, I see. That wasn't what I meant. Now I understand your question. I guess it's theoretically possible but I don't know that anybody at MacAndrews & Forbes has tried to use that capability.
Q. Can you explain to me what you were responding to before?
A. You can save a message on the Blackberry and when you synchronize the Blackberry to the system it would save it on the system but if the normal purging took it off the system, it would also be removed from the Blackberry in the same --

Fasman

at the next time it was synchronized. So in that case it wouldn't be sort of two independent lives to the e-mail which is what I thought you were getting at.
Q. So once it's synchronized onto the system, if it is purged from the system, are you saying it's also purged from your Blackberry the next time it's synchronized?
A. Correct. The Blackberry doesn't have a deleted box.
Q. Does it have a saved box?
A. Yes, but that's what I was referring to before.
Q. So if it gets purged off the system it could still reside on the saved file on the Blackberry?
A. No.
Q. It would be synchronized as a saved file on the system?
A. Correct. That's why I was hesitating because I think there's theoretically another way to do it with a Blackberry but I don't think anybody at

Fasman

MacAndrews & Forbes has ever utilized that capability.
Q. What's that way?
A. Not having done it myself, I'm not familiar enough with the protocol to be --
Q. How did you hear of this third way?
A. It's just playing with the Blackberry, it's something that I've noticed seems to be a function with the Blackberry but I've never utilized it myself so I don't know exactly how it works.
Q. What do you think you need to do --
A. I'd have to sit with the Blackberry and fiddle with the buttons and see if I could actually make it happen.
Q. It's not a test. You don't have to get 100 percent or anything. There's no right or wrong answer. Can you generally explain to me what you are referring to?
A. I just tried to the best of my

Fasman

ability to do so. I can't offer any further information on the subject.
Q. Where are the back-up tapes, the daily back-up tapes maintained or stored?
A. At our offices.
Q. Are the weekly back-up tapes also stored at your offices?
A. There are no weekly --
Q. I'm sorry, I meant to say monthly.
A. Yes.
Q. Prior to using Microsoft Exchange you said that MacAndrews & Forbes used WP Mail?
A. Yes.
Q. How was WP Mail backed up?
A. It was closer to the implementation that this policy suggests. There was tapes made more occasionally and anything more than 30 days old wasn't saved.
Q. Did WP Mail also have some equivalent to Microsoft Exchange's saved folder?

NOT A CERTIFIED COPY

0201814

Page 89

Fasman
A. Not to the best of my recollection.
Q. So there was no way for a user of WP Mail to keep an electronic copy of an e-mail document?
A. Not to the best of my knowledge. I suppose one could go to a manual for the programming and try to figure that out definitively but --
Q. In 1997 was that the year that you switched from WP Mail to Microsoft Exchange?
A. It was late '96, early '97, something like that.
Q. So every 30 days e-mail older than 30 days would be purged from the system; is that correct?
A. I'm sorry --
MR. BRODY: Under what system?
Q. Under the WP Mail system, every 30 days, give or take system -- the --
A. As I say, it was closer to the way this policy is written but it's been too long and precise details are no longer

Page 90

Fasman
at the top of my memory.
Q. Were daily back-ups performed of the WP Mail system?
A. I'm not aware that they were.
Q. Do you know of somebody else who might know that?
A. Not as I sit here today.
Q. Are you aware of the existence of any magnetic back-up tapes relating to WP Mail?
A. No.
MR. BRODY: From its prior use?
MS. PAULE-CARRES: Yes.
A. No.
Q. Let me clarify my question. Not in existence today, at the time you used WP Mail, were you aware of the existence of these magnetic tapes?
A. Oh, I don't understand that question at all. I'm sorry.
Q. The confusion when I was thinking about the question, I'm distinguishing not current tapes that exist with WP Mail data on them, but back in 1997 and prior when

Page 91

Fasman
you used WP Mail, were you aware of the existence of magnetic back-up tapes?
A. First of all, as I said, we switched over sometime late '96, early '97 so I can't -- I have trouble with the predicate of your question to the extent you are asking about '97.
Q. I said '97 and periods before when you were using WP Mail.
A. I don't know that there was a '97 period when we were using WP Mail. Second, I said before that there were back-up tapes done. I've already testified to that.
Q. I thought you said that you purged every 30 days?
A. No, I said that the way the saving of the system worked, when things were no longer saved, back-up or otherwise, more than 30 days.
Q. So how were they backed up? That was my next question.
A. Tape.
Q. Daily?
A. As I said before, I don't believe

Page 92

Fasman
so.
Q. How frequently were they backed up to tape?
A. I think -- I guess it must have been -- yes, I guess it must have been daily.
Q. When using the WP Mail system, was there -- were the daily tapes kept then for a period of -- a duration of the month or were they overwritten?
THE WITNESS: I thought our case related to '97, '98?
MR. BRODY: It did. The notice relates to current or former.
MS. PAULE-CARRES: I'm covering my bases -- he's unsure of the date, I'm going to make sure I got everything covered.
MR. BRODY: He's sure the date predates any discovery of Morgan Stanley and MAFCO about this deal by a year or maybe more so it doesn't have any relevance to the issue in the case.
MS. PAULE-CARRES: If you could

NOT A CERTIFIED COPY

020195

Fasman

answer a couple more questions we could be done with this.

A. What was the question?

Q. Whether or not --

A. -- very old stuff.

Q. Whether or not there was an overwrite procedure.

A. Well, nothing was saved for more than a month or so. So to the extent there were back-up tapes, they would have been overwritten.

Q. In your experiences at MAFCO, have you ever tried to reconstruct overwritten back-up tapes using ghost files or fragments?

A. No.

Q. Ever?

A. Correct.

Q. In relation to the Microsoft Exchange back-up tapes, we've established they are overwritten every month. How many times is a tape overwritten before its unusable any more?

A. I don't think there's a general

Fasman

rule. I think that -- I think some tapes seem to last longer than others. And I don't believe we put them to the test so I don't really have any experience with how long one could make it last.

Q. What does MacAndrews & Forbes or Access Systems do with tapes when they retire them and stop using them for overwriting?

A. They're purged and trashed.

Q. Thrown away?

A. Um-hmm.

Q. But you delete the data first?

A. I believe so.

THE VIDEOGRAPHER: The time is 3:16 p.m. This completes tape number 1 of the videotaped deposition of Mr. Steven Fasman.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:18 p.m. This is tape number 2 of the videotaped deposition of Mr. Steven Fasman.

BY MS. PAULE-CARRES:

Fasman

Q. Has MacAndrews & Forbes e-mail network systems ever resided on a distributed network?

A. No.

Q. Has MacAndrews & Forbes ever utilized the Legato network or product?

A. No.

Q. Has MacAndrews & Forbes ever used the Veritas Net back-up product?

A. No.

Q. Has MacAndrews & Forbes ever utilized any product other than the one that's internal to the Proliant server that we discussed earlier for backing up its e-mail data?

A. No.

Q. Has MacAndrews & Forbes ever relied on APL Mail?

A. No.

Q. Has it ever relied on EMC Technologies?

MR. BRODY: For e-mail purposes?

MS. PAULE-CARRES: Yes.

A. No.

Fasman

Q. We discussed earlier how certain back-up tapes are not overwritten given certain circumstances such as the Andersen litigation. Do you recall that?

A. Yes.

Q. Where are those tapes stored?

MR. BRODY: Objection to the form.

A. At our offices.

Q. Who is in charge of keeping these tapes?

A. MacAndrews & Forbes and Access Systems.

Q. Is there an individual who is responsible for maintaining those tapes?

A. I wouldn't say it was any one individual's responsibility, no.

Q. Is it several individuals' responsibility?

A. Yes.

Q. Who would that be?

A. The personnel at Access Systems and the personnel at MacAndrews & Forbes with oversight for Access Systems.

NOT A CERTIFIED COPY

020186

Page 97

Fasman

Q. That personnel at MacAndrews & Forbes with oversight for Access Systems was Ron Cohen?
A. And Caroline Orenski.
Q. Is there anyone else?
A. No. I guess in some sense their supervisors but.
Q. Who are their supervisors?
A. I don't know.
Q. In your experience, has MacAndrews & Forbes ever had to recover data from back-up tapes?
A. Yes.
Q. Who at MacAndrews & Forbes performs --
A. I'm sorry, are we limited to e-mail here?
MR. BRODY: Yes.
Q. Yes.
A. I'm not aware of that ever needing to happen.
Q. Are you aware of it ever happening?
A. No.

Page 98

Fasman

Q. So in your experience MacAndrews & Forbes has never recovered backed up e-mail?
A. I didn't say that.
Q. In your experience, has MacAndrews & Forbes ever recovered backed up e-mail data?
A. Yes.
Q. Who at MacAndrews & Forbes performs the data recovery for those backed up e-mails?
A. Nobody.
Q. Who at Access Systems performed the data recovery for backed up e-mail?
A. Nick Roman.
Q. Anybody else?
A. I believe he had assistance but I don't know.
Q. Who at MacAndrews & Forbes instructed Nick Roman on the parameters of the recovery of back-up e-mail?
A. I did.
Q. When did you do this?
A. In -- sometime in the last few

Page 99

Fasman

months.
Q. What data did you have Mr. Roman recover?
MR. BRODY: This is e-mail?
MS. PAULE-CARRES: Yes.
A. I had him recover the e-mail that was on the August or September 2001 back-up tape.
Q. You said you had him do this a few months ago?
A. Back-up tapes I guess. Yes. Within the last few months.
Q. Are you aware of any other back-up tapes aside from the August and September 2001 back-up tapes that have been preserved from overwriting?
A. I said August or September.
Q. Well, any other than the August or September.
A. I'm sorry, what was the question again?
Q. Are you aware of any back-up tapes other than the August or September 2001 tapes which have been preserved from

Page 100

Fasman

overwriting?
A. Yes. As I said, a second set was also preserved at the same time for the same purpose. That is during the Arthur Andersen litigation.
Q. What months would they have covered?
A. November or December, something like that. October, November. Something in that range.
Q. Any other instances in which back-up tapes were preserved from overwriting?
A. It may have happened more recently in connection with another litigation.
Q. Would that litigation have been related to the Sunbeam acquisition of Coleman?
A. No.
Q. Other than the August or September and the October or November or December back-up tapes related to the Arthur Andersen case, are you aware of any

NOT A CERTIFIED COPY

020187

Fasman

other back-up tapes that pertained to data relating to the Sunbeam acquisition of Coleman that have been preserved?
A. E-mail data?
Q. Yes.
A. No.
Q. Can you please describe for me how the data recovery from these back-up tapes occurs?
A. How it occurred in the one instance I'm aware?
Q. Um-hmm.
A. Nick loaded the tapes on an old server and restored the tapes on to the server.
Q. What was the purpose of using an old server?
A. Because if I stored them onto the current server I would have lost all the current e-mails.
Q. Once it was loaded on the old server, is it fully usable data as if it were on my computer? Do you understand my question?

Fasman

A. I think the question you mean to ask as opposed to the question you asked the answer is yes but let me explain. As you phrased the question the answer is no because the server is not linked to anything.
Q. So I can't send or receive anything beyond what's there?
A. Correct. But the usability of the data as it sits on the server once restored is theoretically -- at least identical barring any glitches in either the backing up or in the restoring -- theoretically identical to the situation it was on the date of back-up. That's the whole point of the back-up.
Q. For what purpose did you have Mr. Roman restore those tapes?
A. To verify the completeness of the document production in this case.
Q. Did you also have him restore the tape from October, November or December?
A. No.
Q. Why did you not have him restore

Fasman

that tape?
A. I think as I mentioned earlier, since the relevant period is '97, '98 there's nothing that the October, November, December tape, whatever it was, would have had that wouldn't have already been on the August, September tape.
Q. Wouldn't it have had data from October, November or December?
A. But the relevant events here are '97, '98.
Q. That was a 2001 tape?
A. Correct.
Q. But theoretically there could have been communications about the events in '97 or '98 in 2001, could there not?
A. Theoretically but highly, highly unlikely. Not so as to justify the effort involved.
Q. Did you find any information on the August or September tape that was responsive and necessary to complete your document production?
A. No.

Fasman

Q. Is it a cost intensive process to restore these back-up tapes?
MR. BRODY: Objection to the form.
Q. How expensive is it -- what is the cost to MAFCO to restore a back-up tape?
A. Well, in this case we happen to have the server lying around. So that eased the cost on this one instance. It took a fair amount of time for Nick and/or his team to put it together. It took a lot of paper to printout the e-mails so that I could review them and it took a great deal of my time to review them.
Q. How much time did it take Nick and his team to restore the back-up tape?
A. I received the last of the printouts maybe a week or so, maybe as much as two weeks after my initial request.
Q. Are you aware whether they began the restoration procedure immediately upon receiving your request?
A. I'm sure I could answer yes to promptly. Immediately, I don't know

NOT A CERTIFIED COPY

020188

Page 105

Fasman
whether they had a cup of coffee first or something.
Q. I guess my question is is it your testimony that it took two business weeks for them to restore completely a back-up tape?
A. Somewhere between one and two business weeks. And they do work nights and weekends so I would say one or two weeks.
Q. Once the tape was restored on the server, how did you identify which documents, e-mail documents you were interested in reviewing?
A. By keyword searching.
Q. Is there any manner in which to retrieve back-up tapes other than by date? Do you ever back-up an individual user's files?
MR. BRODY: E-mail files?
MS. PAULE-CARRES: Yes.
A. No.
Q. No, it hasn't happened or no, you are not aware of it having happened?

Page 106

Fasman
A. To the best of my knowledge, it has not happened.
Q. I guess in that vein, has it ever occurred where a search for certain e-mail documents, a subject matter search say, has been done and that universe of documents has been saved separately?
A. Yes.
Q. When did that happen?
A. In connection with two or three different litigations I can think of.
Q. Any of those litigations related to the Sunbeam acquisition of Coleman?
A. No.
Q. Is the entire universe of MacAndrews & Forbes e-mail system residing on that Proliant server?
MR. BRODY: Currently?
MS. PAULE-CARRES: Currently.
A. Yes.
Q. Has it ever been split to multiple servers?
A. Yes. There was a period of time when we used two servers, consolidated to

Page 107

Fasman
one.
Q. At what point did you consolidate to one server?
A. 2001.
Q. When you consolidated, did MAFCO purge the data on the other two servers?
A. I believe so, yes.
Q. What servers were they? Were they also Compaq Proliant servers?
A. Yes.
Q. Both of them?
A. Yes. We consolidated from two to one.
Q. What was the underlying rationale for having two servers prior to 2001?
A. I don't know for sure.
Q. Are you familiar with how data was stored between the two servers?
A. Some users were on one server, the rest of the users were on the other server.
Q. How frequently were users moved from one server to the other and vice versa?

Page 108

Fasman
A. Never.
Q. Have you ever searched for --
A. I take that back. I think one person may have switched from one department to another department and therefore that person may have switched.
Q. Are you familiar with the concepts of having partitions within a server?
A. This is not a partition server. It's a single server.
Q. Currently, how many magnetic back-up tapes does MAFCO have in its possession?
MR. BRODY: For e-mail?
MS. PAULE-CARRES: Yes. For e-mail.
Q. I'm sorry, the predicate to all my questions is related to e-mail.
A. Well, there would be the two from August, September 2001, the two from October, November, December, whenever that is, 2001. There would be the six currently in use. And I'm not aware of any others.

NOT A CERTIFIED COPY

020189

Page 109

Fasman

Q. Does MacAndrews & Forbes have a disaster recovery plan with regard to electronic mail?

A. It depends on how big the disaster is. I mean the whole point of back-up tapes is disaster recovery. If the building is destroyed we don't have off-site duplication if that's what you are getting at.

Q. I'm getting at whether you have any form of recovery beyond the magnetic back-up tapes.

A. I have this vague recollection that our tapes are -- while stored on site, are stored within a safe or secure kind of thing so that they should survive a normal fire or something like that.

Q. Is there a recovery plan in the event that the server malfunctions, not a fire that destroys the physical tapes but an internal malfunction within the system?

A. That's what the back-up tapes are for. Precisely what the back-up tapes are for.

Page 110

Fasman

Q. So only the back-up tapes then? Okay, that's fine.

Again, with the disaster recovery, that would be something that Access Systems would handle?

A. Yes.

Q. Can you tell me what Mr. Cohen's responsibilities are as head of facilities?

A. He currently is assigned to work principally with one of our operating companies so he doesn't have much in the way of day-to-day duties relating to the holding company any more.

Q. Does anybody else have any responsibilities regarding facilities or administration for MAFCO?

A. Ms. Orenski.

Q. What are Ms. Orenski's responsibilities with regard to the facilities at MacAndrews & Forbes?

A. Overall oversight.

Q. Has she had any prior technical or computer experience?

A. I don't believe so.

Page 111

Fasman

Q. But she is the primary interface with Access Systems; correct?

A. You will have to be more precise.

Q. Other than a user calling up Access Systems and saying I'm having a problem with my computer, who goes to Access Systems with a large project?

A. It would depend.

Q. Is there no clearing house so that there's like a bird's eye overview of their management of projects?

A. No.

Q. Who supervises the back-ups that Access Systems is performing?

A. There's nobody who supervises the back-ups per se. Ms. Orenski is generally charged with the relationship with Access Systems so if I had a problem with the back-ups and I wanted to talk to somebody within MacAndrews & Forbes to complain, I guess I would complain to Ms. Orenski but she's not there, she doesn't call up and say did you do the back-up okay tonight.

Q. Regarding the back-ups that are

Page 112

Fasman

performed on the e-mail server, is there an index of what would be on the tapes or is it purely by date?

A. Purely by date.

Q. Does MAFCO have a written policy regarding the retention of documents?

MR. BRODY: We're going way beyond the scope.

MS. PAULE-CARRES: Regarding the retention of e-mail documents.

MR. BRODY: Okay.

A. Not really. The closest thing would be the paragraph to which we've referred several times in Exhibit 62.

Q. Is there any understood or oral policy at MAFCO regarding retention of e-mails?

A. No.

Q. Are MAFCO employees provided training regarding the retention of their e-mail documents?

A. No.

Q. Are MAFCO employees informed at any point during a training period that in

NOT A CERTIFIED COPY

020190

Page 113

Fasman

the event of a litigation they must not destroy any of their electronic mail?

A. MacAndrews & Forbes doesn't have any kind of training program.

Q. Are employees ever told that in the event of a litigation, they are not to delete e-mail related to that litigation?

A. Yes.

Q. At what point are they told that?

A. When there's a litigation for which they need to retain their e-mails.

Q. How are they told?

A. I could tell them.

Q. You just walk up to them and tell them?

A. It's not a big company. It's pretty easy to do.

Q. How many employees are employed by MAFCO?

A. Including custodial staff and such, a hundred.

Q. Excluding custodial staff, I'm limiting it to people who are accessing the e-mail system, how many employees are

Page 114

Fasman

there?

A. 40. Maybe as many as 50. Roughly speaking. I'm not trying to count up.

Q. Have you personally ever told an employee of MAFCO to be sure not to delete e-mail as it may be related to a litigation?

A. Yes.

Q. In what circumstances did you do that?

MR. BRODY: Are we now asking about other cases? If so I'm going to object. It's beyond the scope.

Q. In what circumstances did you do that with regard to cases related to the Sunbeam acquisition of Coleman?

A. I came into the picture after the fact. I was not involved in that effort.

Q. So you never told anybody during -- there was never an instance in which you told an employee of MAFCO not to delete e-mail as it may relate to the Sunbeam acquisition of Coleman?

Page 115

Fasman

MR. BRODY: You are asking him personally?

MS. PAULE-CARRES: Yes.

A. That predated me.

Q. Is there anybody else at MAFCO who would communicate with an employee of MAFCO that they should not destroy e-mail as a result of impending litigation?

MR. BRODY: I will object to the form of the question. I also object as going beyond the scope of the notice in this case.

Q. You can still answer the question.

A. In my document production deposition, Ms. Brown went through this subject with me and we discussed memos from Eric Golden and requests to retain documents and such. So that's all covered there.

Q. I'm handing you what has been previously marked as Exhibit 2. It is CPH Bates number 2000000 through 2000007. Mr. Fasman, do you recognize this document?

A. Yes.

Page 116

Fasman

Q. Is this the document, what you were referring to as a memo from Mr. Golden?

A. This is one of the ones I was referring to and this particular one was actually from Mr. Schwartz.

Q. Oh, that's correct. But it's one of the ones you were referring to?

A. Yes.

Q. Where in this memo do you see an instruction to employees not to destroy e-mail?

A. All of these individuals were experienced with litigations and document productions previously and they are aware that when a document request production comes through you are not to destroy anything relating. So by transmitting the document production request, he was transmitting an instruction not to destroy anything relating to the subject of the request.

Q. So its implicit in this memo even though it's not explicitly stated?

NOT A CERTIFIED COPY

161020

Fasman

A. Yes.
Q. Was a written instruction to preserve e-mail documents ever issued to MAFCO employees at the inception of CPH's case against Morgan Stanley?
MR. BRODY: You done?
MS. PAULE-CARRES: Um-hmm.
MR. BRODY: I object to that. It's beyond the scope of this 30(b)6 notice and it was covered in prior testimony. And exhibits. I know there's been prior testimony on precisely this.
Q. You can still answer the question.
MS. PAULE-CARRES: I disagree. It does go to the retention policies whether or not notices are issued, that is part of a policy and, you know, he's here to speak to that matter.
MR. BRODY: He's also already spoken to what was done in this case four months ago.
MS. PAULE-CARRES: I'm asking if an instruction was provided to MAFCO

Fasman

employees not to destroy documents.
THE VIDEOGRAPHER: The time is 3:52 p.m. We're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 3:57 p.m. We're back on the record.
BY MS. PAULE-CARRES:
Q. Before the break, we were discussing whether or not MacAndrews & Forbes has a written policy for the retention of documents. Now I want to ask you whether MacAndrews & Forbes has a written policy regarding the destruction of documents.
MR. BRODY: Objection. Beyond the scope of this deposition which relates to e-mails.
MS. PAULE-CARRES: I already have said that the underlying predicate for all my questions is e-mail.
MR. BRODY: Written policy about e-mails.
A. The only policy concerning e-mails is the policy which was marked as part of

Fasman

Exhibit 62.
Q. So there's no written policy provided to employees at MacAndrews & Forbes that discusses retention or destruction of e-mail in the event of a litigation; is that correct?
A. Exhibit 62.
Q. Where in Exhibit 62 does it discuss the procedure that a MacAndrews & Forbes employee is supposed to follow with regard to his or her e-mail retention or destruction in event of a litigation?
A. "The company reserves the right to access, review copy and delete any message sent received or stored on e-mail. E-mail system may not be used to engage in any communications that are in violation of the company's corporate policies." One of our policies is not to violate the law. "Employees should delete promptly any e-mail messages they send or receive that no longer require action or are not necessary to an ongoing project." Litigation is by definition an ongoing

Fasman

project. As long as there is litigation, employees are not to delete e-mails.
Q. Let me stop you there and ask you a particular question on that particular phrase. Are employees of MAFCO instructed at any point in time that in the event of a litigation they are to take the e-mail from their in-box and move it to the stored file so that it does not -- it is not subject to the automatic 30 day purge?
A. No. That's hardly the only way to make sure that the e-mails related to litigation are available.
Q. How else are they made available electronically?
A. Why does it have to be electronic?
Q. Other than printing out an e-mail, how else is it available to the employee?
A. We've already discussed two ways. One can take care of that centrally by the server, that's a third way and, actually, that's several different ways because the

NOT A CERTIFIED COPY

201020

Page 121

Fasman
server provides a number of different means.
Q. The employee can't do that though, can they? The individual MAFCO employee cannot control the server, can they?
A. They can ask that things be done with the server.
Q. Like what?
A. Like I called up and asked for a restore to be made on the server.
Q. Will an individual employee's request to not delete e-mail from the server be responded to?
A. Sure.
MR. BRODY: Objection to the form of the question.
A. Sure.
Q. So it's your testimony today that the three ways that documents can be preserved pursuant to this Exhibit 62 is by printing them out, is that correct, that's one?
A. That is a way.

Page 122

Fasman
Q. By putting them into the saved file?
A. That's another way.
Q. Or by calling up -- would they call up Access Systems and say don't overwrite the tape this week because I have data on it that needs to be saved?
A. Access Systems, that is a third way.
Q. If Access Systems --
A. We're not done. There are lots of other ways too.
Q. Tell me.
A. One can cut and paste e-mails, Microsoft products are generally interoperable. One could save an e-mail into a word document or some other Microsoft product. In fact, one could do it into a word perfect document and other word processing programs too. They could be sent to an alternate system for saving.
Q. What would that system be?
A. Any place you wanted. You could send them to outside counsel for example.

Page 123

Fasman
Q. Any other ways?
A. I'm sure. Just off the top of my head, thinking about it for two seconds, I came up with seven different ways. I'm sure there are more.
Q. How are MAFCO's word processing programs, the data contained within them backed up?
MR. BRODY: Objection. Beyond the scope.
MS. PAULE-CARRES: It's not if people are cutting and pasting e-mails and putting them into word processing files.
MR. BRODY: The foundational predicate is missing from your question so I guess if that's where you are going, I would object for lack of foundation but, yes, it is beyond the scope --
MS. PAULE-CARRES: No, it's not if that's one of the ways that e-mail are retained at MacAndrews & Forbes, then it's not beyond the scope of an e-mail

Page 124

Fasman
retention and preservation deposition.
A. There's no testimony to that effect.
MR. BRODY: There's no foundation.
Q. You can go ahead and answer the question. We can argue about it later.
DI MR. BRODY: No, I'm instructing him not to answer. You haven't established the foundation. Now we're using a boot strap to get into the area that's far beyond the scope of this examination.
MS. PAULE-CARRES: You are going to instruct not to answer?
MR. BRODY: Unless you lay some foundation --
Q. Is it your understanding that anybody has ever taken an e-mail and copied it into a word processing file in order to save it?
A. No.
Q. You also commented earlier that part of the policy -- give me a moment, I

NOT A CERTIFIED COPY

020193

Fasman

want to get the wording correct.
A. Shall I pull out the exhibit?
Q. The company reserves right to access, view, copy and delete any messages sent. In your experience, have you ever reviewed e-mail that has been on the server prior to its being overwritten to insure that data relevant to litigation is not destroyed?
A. Yes.
Q. You have. In what instances have you done that?
A. In litigation unrelated to this matter.
Q. Did you review the server data prior to overwriting to insure that data related to the Sunbeam acquisition of Coleman was not destroyed?
A. That was all taken care of before I joined the matter.
Q. Who took care of that?
A. I don't know precisely who had what roles. It was before I joined the matter.

Fasman

Q. Who potentially could have had the role to do that at that time?
MR. BRODY: What's that?
Q. Review e-mail to make sure that it's not destroyed in light of pending litigation.
MR. BRODY: This is going beyond the scope of the notice.
MS. PAULE-CARRES: I disagree.
MR. BRODY: Well, it's -- are you asking him -- what you are asking is what was done to produce documents in this case. That was the subject of the last notice of deposition on which he testified for a day.
MS. PAULE-CARRES: We're talking about document retention and destruction and he commented earlier that one of the ways is the company has a right to access, review and copy and delete messages sent, received or stored on e-mail. That is the policy that we're discussing. I'm asking whether that policy is fulfilled.

Fasman

That's part of the purpose of this deposition.
MR. BRODY: How is that -- I don't see how that is -- you've taken a notice which asks about e-mail retention policies, practices and procedures and are trying to use that to morph into --
MS. PAULE-CARRES: I'm talking about e-mail practices, the practices of retaining and destroying documents. Whether or not they reviewed them before they destroyed them is perfectly within the parameters of the dep notice.
MR. BRODY: I disagree but there's already been prior testimony from Mr. Fasman in the prior deposition about what precisely and in this one about what was precisely done with the e-mails in this case.
MS. PAULE-CARRES: We have not discussed what I'm talking about. What I'm questioning him on now. Are you

Fasman

instructing him not to answer?
MR. BRODY: Let's have the question back again.
MS. PAULE-CARRES: My question to Mr. Fasman is:
Q. Who performed the responsibilities that you took over? You said you were not responsible for that oversight for the Sunbeam acquisition of Coleman period, who was at that time?
MR. BRODY: I will let you answer that one question. We'll do it on a question-by-question basis.
A. I replaced Eric Golden in the role of in-house management litigation in the Sunbeam litigation. I replaced Sina Toussi and Sina Toussi replaced Eric Golden.
Q. Are you aware of whether Sina Toussi reviewed the back-up tape of relevant e-mail data that pertained to the Sunbeam acquisition of Coleman before those back-up tapes were destroyed?
A. The back-up tapes have not been destroyed.

NOT A CERTIFIED COPY

20019h

Page 129

Fasman
Q. Is MAFCO in possession of back-up tapes dating from 1997?
A. No.
Q. Where are the back-up tapes?
A. Which back-up tapes are we talking about? The 2001 back-up tapes?
Q. I'm talking about back-up tapes that were created in 1997 on a daily and monthly basis.
A. There wasn't litigation at that time.
Q. 1998.
A. There was no litigation requiring production of e-mails at that time.
Q. In 1998 MAFCO received a document request; did it not?
A. And we objected to producing anything electronic in that document request.
Q. But the issue was before MAFCO, was it not, that electronic documents were being sought?
A. No, we told everybody we weren't going to do that.

Page 130

Fasman
Q. Regardless of whether you told them that you weren't going to do it, they were requested, were they not?
A. I don't think so. We made it clear we weren't going to do it and nobody ever had a problem with that.
Q. Were they requested initially?
A. I don't know. We just clarified that we weren't going to do that. Nobody said boo about that so I guess it really wasn't.
Q. So it's your position here today, your testimony today that there was no issue as to the preservation of e-mail because MAFCO took the position that electronic documents would not be produced; is that correct?
MR. BRODY: Object to the form of the question. Beyond the scope.
Q. You can still answer the question.
A. There was no issue of preserving e-mail documents until the Arthur Andersen litigation.
Q. That was not my question.

Page 131

Fasman
MS. PAULE-CARRES: Could you please repeat my question.
A. That's what I understood your question to be.
(Record read.)
Q. I will add to that, at the end of 1998.
A. I think I answered your question.
MR. BRODY: Yes, asked and answered.
MS. PAULE-CARRES: Could you please read back his answer.
(Record read.)
Q. Is it your testimony today that from 1998 until the Arthur Andersen litigation in 2001, MAFCO consistently overwrote its back-up of its e-mail server?
A. I'm not sure what you mean by consistently.
Q. Repeatedly, regularly, routinely.
A. We followed our normal procedures regarding the use of back-up tapes.
Q. And the normal procedures entailed purging and deletion of e-mail

Page 132

Fasman
from 1998 until the inception of the Andersen litigation in 2001; correct?
MR. BRODY: Objection to the form of the question.
A. There was a progressive process which did involve in part the purging of old and unneeded e-mails, yes.
Q. My question was did you from 1998 until the inception of the Andersen litigation on a monthly basis, I'm ignoring the daily stuff now, on a monthly basis overwrite e-mail back-up tapes?
A. I think it was every other month.
Q. From 1998 until the inception of the Andersen litigation, did MAFCO save any e-mail back-up tapes that related to the Sunbeam acquisition of Coleman?
A. There are no e-mail back-up tapes relating to the Sunbeam acquisition of Coleman.
Q. Did they save any back-up tapes which contained data which related to the Sunbeam acquisition of Coleman from 1998 until the inception of the Andersen

NOT A CERTIFIED COPY

020195

Fasman
litigation?
A. Not beyond their normal retention period.
Q. Which we've already discussed?
A. Yes.
Q. In your experiences at MAFCO, if a dispute is drawn over the potential production of electronic data such as e-mail, would you suspend the back-up tape overwriting?
MR. BRODY: Objection to the form of the question. Can you ask that not as a question asking for expert witness testimony which is how it was phrased? Just ask what the policy and practice is.
MS. PAULE-CARRES: That's what I intended it to be.
MR. BRODY: Object to the form.
A. My personal practice as a litigator is to treat each litigation individually under its individual circumstances so I don't know how to answer that question.

Fasman
Q. Just for clarification, the 1998 litigation that we were discussing earlier, do you recall the name of it?
A. I'm sorry, which litigation?
MR. BRODY: I object to the form. I'm not sure we were.
Q. When we were discussing a 1998 litigation that had ensued, thereby -- in which you had a dispute over the production of e-mail, electronic documents, what litigation was that?
A. We never had a dispute.
Q. MAFCO said they were not going to produce electronic documents and nobody disputed it?
A. Correct.
Q. What litigation was that?
MR. BRODY: Asking for the name of the case?
MS. PAULE-CARRES: Yes.
A. I don't know -- In Re: Sunbeam's Securities Litigation or this one is entitled Goldstein versus Langerman but I know there was some kind of consolidation.

Fasman
It was the shareholder cases. Bondholder cases. There was a whole set of cases. We were sort of a peripheral player in those cases.
Q. On October 20, 1998, a litigation ensued, was filed, Shallal versus a series of defendants one of which was MacAndrews & Forbes.
(Morgan Stanley Exhibit 64, complaint to the Shallal case, marked for identification, as of this date.)
Q. I'm marking the complaint to the Shallal case as Morgan Stanley Exhibit 64.
MR. BRODY: Wait a second. There's a Kirkland & Ellis memo on the back --
MS. PAULE-CARRES: It's not related to this case.
MR. BRODY: I'd love to keep it anyway. You need this too.
MS. PAULE-CARRES: Not really.
Q. On October 20, when this case was filed naming MacAndrews & Forbes a defendant, are you aware of any notices

Fasman
given to MacAndrews & Forbes employees advising them to retain their e-mail, not to destroy them?
A. My recollection is that we were dismissed out of the Shallal versus Ellison case very quickly so there was never a need to worry about any obligation we might have as a party in that case.
Q. So it's your testimony that you were dismissed within the 30-day period of which a back-up tape was overwritten?
A. I don't remember the precise timing but it was very quickly.
Q. Did anybody receive any notice not to --
A. To produce documents?
Q. -- not to destroy e-mail data that could be related to the Sunbeam acquisition of Coleman?
A. Not because the Shallal case where we were not a party very quickly.
Q. I'm just asking yes or no, once you received the Shallal complaint, was anybody given notice at MacAndrews & Forbes

NOT A CERTIFIED COPY

020196

Page 137

Fasman
not to destroy e-mail that could be relevant to the case?
A. If I recall correctly, I have gone and studied the Shallal complaint again, a reading of the Shallal complaint suggested that the only individual who was really at issue in the Shallal case was Howard Gittis and at the time Howard Gittis did not use e-mail so it was not an issue.
Q. So is it your testimony today that nobody at MacAndrews & Forbes was provided notice that they should not destroy e-mail that could potentially relate to Shallal and the Sunbeam acquisition of Coleman?
A. It is my testimony that no notice was sent to a null set of people, that is I didn't send a notice to nobody because there was nobody to send a notice to.
Q. So nobody got the notice?
A. There was nobody to send the notice to. So nobody got no notice to nobody for nothing. It doesn't make sense to say nobody got a notice because you have

Page 138

Fasman
to send a notice to somebody or decide not to send a notice to somebody. There was nobody to send a notice to.
Q. So I'm guessing that MAFCO also did not suspend its automatic purge of e-mail as a result of the filing of the Shallal case?
MR. BRODY: Objection to the form.
A. There would have been no reason to, it wouldn't make any sense.
Q. Similarly, did MacAndrews & Forbes save any back-up tapes that were produced subsequent to the filing of the Shallal case in anticipation that there could potentially be documents relevant to Shallal or the Sunbeam acquisition of Coleman on the back-up tape?
A. On a theoretical possibility that has no basis in reality, no, nothing was done like that.
(Morgan Stanley Exhibit 65, complaint captioned Deutscher against the Coleman Company, marked for

Page 139

Fasman
identification, as of this date.)
Q. I've just handed you what has been marked as Morgan Stanley's Exhibit 65. It is a complaint captioned Deutscher against a series of defendants including the Coleman company. This complaint -- first of all, are you familiar with when this complaint was filed?
A. No.
Q. Obviously the file stamp is blurry and illegible. I believe it was filed in 1999. Following the filing of that complaint, did MAFCO issue any notices to its employees advising them to preserve e-mail that related to Sunbeam's acquisition of Coleman or potentially to this complaint?
A. I'm sorry, what does this complaint have to do with MacAndrews & Forbes?
Q. It relates to the Coleman company. So I'm asking in its relationship to the Coleman company, did MacAndrews & Forbes --

Page 140

Fasman
A. If somebody sued every time somebody sticks a mascara brush in their eye, is MacAndrews & Forbes supposed to save documents? It doesn't compute. I don't understand the fact that the Coleman company is a defendant has to do with MacAndrews & Forbes. How do I even know about this case when it's filed? I just don't understand the question. I don't understand what the first half of your question has to do with the second half of your question.
Q. Can you explain to me the relationship between the Coleman company and MacAndrews & Forbes prior to Sunbeam's acquisition?
A. At the time of the filing of this complaint?
Q. Prior to Sunbeam's acquisition.
A. We owned an equity interest in the company.
Q. Following Sunbeam's acquisition, MacAndrews & Forbes had no further interest in the Coleman company; correct?

NOT A CERTIFIED COPY

0201697

Page 141

Fasman

A. Well, we owned a minority passive interest in Sunbeam which owned a majority of the Coleman company.
Q. So based on that relationship, did --
A. Being a passive investor in a company that owns another company.
Q. All you have to do is answer yes or no.
A. I'm just trying to answer the question, that's all.
Q. Based on that relationship, did MacAndrews & Forbes issue any notices to its employees to preserve any potentially relevant e-mail relevant to the Sunbeam acquisition of the Coleman company?
A. I still don't understand. Again, what does -- just because we have this passive ownership interest, what does that have to do with this complaint and something that MacAndrews & Forbes would do? Are you assuming that we know about this complaint?
Q. Yes.

Page 142

Fasman

A. Why are you assuming that? Because I don't know when we learned about this complaint.
Q. Well, if you don't know you don't know and that's all you have to say.
A. I'm trying to understand the question. I'm having trouble computing the question because you are asking about a case in which MacAndrews & Forbes wasn't even a party so I'm trying to figure out what it is that you are asking.
Q. I'm asking whether MacAndrews & Forbes issued a notice to its employees to preserve documents that were related to Sunbeam's acquisition of Coleman after the filing of this case. If you didn't know about the filing of this case, that's all you need to tell me.
A. I don't know when we learned about this case.
Q. Did you ever learn about this case until today?
A. Me personally?
Q. Yes.

Page 143

Fasman

A. This particular one is not familiar to me.
Q. Are you familiar with the Prescott Group litigation?
A. That name means nothing to me.
(Morgan Stanley Exhibit 66, complaint encaptioned Shallal against MacAndrews & Forbes, marked for identification, as of this date.)
Q. You've just been handed Morgan Stanley Exhibit 66 which is a complaint, a derivative complaint encaptioned Shallal against a series of defendants including MacAndrews & Forbes Holding, Inc. This complaint was filed on April 4, 2000. Subsequent to the filing of Exhibit 66, did MacAndrews & Forbes issue notices to any of its employees advising those employees not to destroy or delete e-mail in light of this pending litigation?
A. That's your representation as to when it was filed?
Q. If you look at page 47 of the complaint, it's the signature page, it has

Page 144

Fasman

a date line.
A. I see that. But that's when it was dated, that's not necessarily when it was filed.
Q. Fair point. At some point on or around April 4th -- if you look at the last page of the document, it's dated April 6th, that's the civil cover sheet. So I'll use that date then. On or about April 6th, did MacAndrews & Forbes issue notice to its employees to preserve e-mail, not to destroy e-mail in light of this complaint?
MR. BRODY: Meaning April 6, 2000?
A. Why do you think it was filed April 6, 2000?
Q. The civil cover sheet has a date in the bottom left-hand corner.
A. That can be filled out any time.
Q. I'm not going to debate the date. On or about April 6th did MacAndrews & Forbes --
A. There's a built-in predicate to your question which I want to understand if

NOT A CERTIFIED COPY

020198

Page 145

Fasman
I'm going to answer it. The built-in predicate to your question is that this was filed on that date and, therefore, some obligation commenced. If it was not filed on that date then whatever your predicate is doesn't make any sense. So I'd like to understand why it is you think that about this document so I can appreciate the document and I can appreciate your question. If that's not what your question is asking I'm happy to try again but I don't understand your question.
Q. I'm thinking it's April 6 because it's -- for office use only, the attorneys did not fill out the civil cover sheet portion of that sheet --
A. Why do you say that?
Q. It says under the date, for office use only, signed by Ferguson, --
A. It says underneath, the bottom line, proceed, amount, applying, judge, magistrate judge.
Q. I'm going to remove the date restriction in my question. At any point

Page 146

Fasman
subsequent to learning of the Shallal litigation filed at some point in spring or later of 2000, did MacAndrews & Forbes issue a notice to its employees to preserve e-mail, not to destroy e-mail in light of the Shallal complaint?
A. At some point after the filing of the Shallal complaint there was a notice sent around, as there had been earlier, about preserving documents. But since I don't know when the Shallal complaint was filed, I can't tie it to the Shallal complaint. There was the '98 document that we've already marked as Exhibit 2 and there were other documents that were marked and discussed at length in my prior deposition. But I can't tie to a specific date based on your vague recollections which, I'm sorry to say, they don't seem all that well-grounded in fact as to what exactly the timing is of this particular complaint so I can't tie them altogether.
Q. Do you recall issuing a notice with regard to the Shallal complaint

Page 147

Fasman
requesting that MacAndrews & Forbes employees cease destroying or deleting e-mail?
A. I was not involved in the subject matter at that time.
Q. Do you recall issuing such a notice at any point prior to spring of 2000?
A. I was not involved in the Sunbeam matters prior to that time.
Q. Did you discuss with anyone the Sunbeam matters in preparation for your deposition today, people who would have been involved in the preservation or destruction of documents prior to your coming on to the scene?
A. I'm sorry, I understood that to be two different questions. I don't know what you are asking.
Q. Did you discuss matters of document retention or destruction of e-mail that could possibly be related to Sunbeam's acquisition of Coleman prior to your being involved in the case with either Eric

Page 148

Fasman
Golden who you testified preceded you --
A. I was asked to preserve my own documents.
Q. By Mr. Golden?
A. Yes.
Q. In regards to what case?
A. I don't remember.
Q. Did it pertain to Sunbeam?
A. Yes.
Q. Was anybody else asked to retain their documents?
A. I believe so.
Q. Do you know who?
A. I believe it wasn't restricted to me. I know he had a general program of going to people who might have documents relating to Sunbeam and Coleman and asking them and I was just one on a list.
Q. It was e-mail as well; correct?
A. It was everything.
MR. BRODY: E-mail being the only subject of this deposition.
MS. PAULE-CARRES: Exactly.
Q. At what point did your involvement

NOT A CERTIFIED COPY

020199

Page 149

Fasman
begin in the Sunbeam matter?
MR. BRODY: In what regard?
MS. PAULE-CARRES: He keeps saying, "I wasn't involved in Sunbeam at that point, I wasn't involved in Sunbeam, I have no knowledge," so I'm asking at what point --
A. I was asked to produce documents as I said before.
Q. I want to know at what point you became the person in control of the documents.
A. Late 2002 or late 2003. Something like that.
Q. When you were told by Mr. Golden not to destroy your e-mail, what did you do?
A. I was told by Mr. Golden to give him whatever I had. So if I had had e-mail, I would have given copies of whatever e-mails I had and then he would have had them.
Q. You would have given him hard copies?

Page 150

Fasman
A. Probably. But I didn't have any so it wasn't an issue.
Q. You did not have any hard copy e-mails to provide to him?
A. That related to Sunbeam or Coleman, no.
Q. He told you to give him *everything you had. Did he also tell you* to save your electronic e-mail?
A. If I'd given him a hard copy than I would have been saving the electronic e-mail.
MR. BRODY: You mean save it in electronic form?
A. Saving it is saving it. What difference does it make what form it is?
Q. So your answer is no?
MR. BRODY: Objection to the form.
A. He wasn't -- he wanted what I had.
Q. In hard copy?
A. There was no discussion one way or the other.
Q. So it's possible that if you gave

Page 151

Fasman
him the hard copy the e-mail could still be destroyed?
A. Anything is possible.
Q. Did he ask you to both give him the hard copy and save the electronic version?
A. This is a theoretical question. I didn't have any e-mail.
Q. But he didn't -- it's not a theoretical. He didn't know you had e-mail. Did he ask you to give him the hard copy and save an electronic version?
A. He asked me to give him what I had.
Q. You commented that you were aware of a notice that went out to MAFCO employees to preserve documents related to the Shallal litigation --
A. I testified that I am aware.
Q. Are you aware --
A. No, no -- that's not what I testified to. I'm sorry. I misunderstood and I interrupted you in the middle of your question which is why I didn't understand.

Page 152

Fasman
I apologize. Do you want to start again?
Q. Are you aware of a notice that went out to MAFCO employees advising them to preserve e-mail in light of the Shallal litigation?
A. That wasn't the question you asked me last time.
Q. *That's what I am asking you now.*
A. There was an e-mail -- there was a memo that went out asking people to preserve e-mail subsequent to the Shallal litigation. I don't recall the e-mail referencing any particular litigation. So I can't say whether or not it was in light of the Shallal litigation. I certainly wouldn't think so because, again, this Shallal litigation, like the previous litigation, was dismissed as to MacAndrews & Forbes very quickly. So I don't know why that would have been done but whether or not it was done through the memo that I'm recalling I cannot say because it didn't reference a particular litigation.
Q. Are you aware of whether or not

NOT A CERTIFIED COPY

002020

Page 153

Fasman
this memo that you are recalling was produced to Morgan Stanley?
A. I am aware that it was.
Q. You are. Do you recall the date of the memo?
A. No.
Q. Do you recall who sent the memo?
A. I believe Eric Golden.
Q. Who succeeded Eric Golden?
A. Sina Toussi but for a very brief period.
Q. Do you know at what point he took over Mr. Golden's responsibilities?
A. I think it was a matter of months prior to my taking them over.
MS. PAULE-CARRES: Why don't we take a five minute break.
THE VIDEOGRAPHER: The time is 442 p.m. we're going off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 4:53 p.m. we're back on the record.
BY MS. PAULE-CARRES:
Q. Before we broke we were

Page 154

Fasman
discussing the Shallal litigation. I believe you told me that at some point, you don't recall if it was with regard to Shallal or not, Mr. Golden issued a notice to MAFCO employees to preserve documents. Do you recall that?
A. Yes.
Q. Do you recall the substance of the memo?
A. Preserve documents.
Q. Any documents?
A. Relating to Sunbeam.
Q. Did that include e-mail?
A. Yes.
Q. So it did say to preserve e-mail?
A. Yes.
Q. Did it say to preserve electronic versions?
A. It was not that specific.
Q. From your experience, were MacAndrews & Forbes employees given notice to preserve both hard copies and electronic versions of e-mails?
A. In my experience, we're rarely

Page 155

Fasman
that specific.
Q. With regard to the Shallal litigation, are you aware as to whether or not the 30 day purge function attributed to the Microsoft Exchange system was disabled as it pertained to Sunbeam, documents relating to Sunbeam's acquisition of Coleman?
A. As I said before, my recollection is that this Shallal versus Ellison case, like the previous Shallal versus Ellison case, was dismissed very quickly as against MacAndrews & Forbes so this was not an issue.
Q. So no, that automatic purge was not disabled?
A. Well, there was a saving of all the e-mails in the system as of August or September 2001. Since we can't seem to pin down exactly when this was filed, I don't know whether it was done within the 30 days following Shallal -- the filing of Shallal or not.
Q. The tapes you have are from

Page 156

Fasman
August and September of 2001; correct?
A. August or September.
Q. Assuming that Shallal was filed at some point in April of 2000 for the time being, those tapes from August and September of 2001 would not have the content that tapes from April of 2000 would have on them; is that correct?
MR. BRODY: Objection to the form.
A. Relevant to Sunbeam?
Q. Um-hmm.
A. I have no reason to think they wouldn't or, stated affirmatively, I have every reason to believe they would.
Q. Wouldn't the Sunbeam materials have been purged?
A. Correct. So that the tapes from 2000 would be identical to the tapes of 2001, that is neither would have anything. Because relevant events were in 1998 and everything was long gone by then unless somebody had saved it in which case it would still be there.

NOT A CERTIFIED COPY

10 2020

CONT #1016

Page 157

Fasman

Q. In October of 1998, when the first Shallal case had been filed, that would have been in the relevant time period in which you might have had Sunbeam and Coleman acquisition related documents, is that not correct?

A. No.

Q. You don't think so?

MR. BRODY: Objection to the form. Go ahead.

A. No, I don't think so.

Q. Why not?

A. Because the deal closed in March and October -- March is the third month, October is the 10th month, that's seven months later. In our normal procedures any e-mails from March would have been long gone by October.

Q. When did you personally learn of these accounting problems at Sunbeam?

DI MR. BRODY: Objection to the form of the question. Beyond the scope. Not even close to the scope. Hearing no defense, I guess I will instruct him

Page 158

Fasman

not to answer?

MS. PAULE-CARRES: He can still answer it.

MR. BRODY: He can answer it, he can also answer stuff that goes way beyond the scope.

MS. PAULE-CARRES: We can argue it later. If it's an objection to the scope, that's not a form, we can argue it to the judge later.

MR. BRODY: But you have this witness here as a corporate representative on narrowly defined topics. That's the scope of the examination today. That's what he is permitted to talk about.

MS. PAULE-CARRES: And you are --

MR. BRODY: Unless you can tell me why it has anything to do with anything we're here for, yes.

MS. PAULE-CARRES: It has to do with the preservation of documents at MAFCO and at what point in time they learned or should have learned that

Page 159

Fasman

they should have been preserving. That's wholly within the scope and we can debate it until kingdom come, that's why we have a judge, so he can answer them now or he can answer them later.

MR. BRODY: I think he can -- you can argue he should answer them later but I will instruct -- we've been here for hours. Now you are asking him nothing -- you know what he did, you know what the procedures were, you know what the practices were, if you want to argue that they should have done something differently, you have to establish that they should have done something differently with a different witness. That's beyond the scope of this examination.

MS. PAULE-CARRES: So you are instructing him not to answer?

MR. BRODY: That question I am, yes.

Q. Are you going to heed your

Page 160

Fasman

counsel's instruction?

A. Yes.

(Morgan Stanley Exhibit 67, complaint Coleman (Parent) Holdings filed against Andersen June 8, 2001, marked for identification, as of this date.)

Q. You've just been handed what's been marked as Morgan Stanley Exhibit 67. It is the complaint that Coleman (Parent) Holdings filed against Andersen on June 8, 2001. Prior to filing this complaint, did MacAndrews & Forbes issue a notice to its employees to preserve e-mail that could potentially be related to this case and the Sunbeam acquisition of Coleman?

A. Yes.

Q. Was that issued in written form?

A. Yes.

Q. Who issued that notice?

A. Barry Schwartz.

Q. And that notice is what has been labeled Exhibit 2? That's a question not a statement.

NOT A CERTIFIED COPY

202020

16div-025963

Fasman

A. Yes.
Q. Were the people, Mr. Perelman, Mr. Gittis, Mr. Maher, Mr. Engleman, Mr. Slotkin and Mr. Nesbitt also instructed to preserve electronic versions of any documentation that they may have?
A. I'm not sure what you mean by also.
Q. Your prior testimony regarding this document was that this memo dated November 2, 1998 which in fact pertained to a case different from the Arthur Andersen case, was implicitly stating that people should retain their documents, not destroy documents. I'm asking whether people also received an instruction to retain electronic documents.
A. Again, I don't understand what you mean by also. They were instructed to retain documents. All documents.
Q. Did anyone ever question whether or not it was paper and electronic?
MR. BRODY: You are talking about e-mails again?

Fasman

MS. PAULE-CARRES: Yes.
A. No.
Q. This letter is with regards to Goldstein v. Langerman?
MR. BRODY: Exhibit 2?
MS. PAULE-CARRES: Yes. Exhibit 2.
Q. Are you aware of a document that was submitted to MacAndrews & Forbes employees that pertained to the Coleman versus Arthur Andersen action?
A. That specifically related to that action?
Q. Yes.
A. Because by that point many documents had already been collected and preserved.
Q. I'm talking about specifically related to that action.
A. Yes.
Q. Do you know whether that letter was produced to Morgan Stanley?
A. Yes.
MS. PAULE-CARRES: I'm making a

Fasman

request that you double check and make sure these letters have been produced to Morgan Stanley. Mr. Fasman has now testified to two letters that have been --
MR. BRODY: Is that what you are referring to?
THE WITNESS: That's one.
MR. BRODY: Exhibit 5 is one such example.
THE WITNESS: Exhibit 6 as well.
MR. BRODY: Exhibit 6 would be another example. They have been produced and marked.
A. I testified about them. By me.
Q. After the decision to file the Andersen complaint, did MacAndrews & Forbes suspend the 30 day auto purge function on the Microsoft Outlook and Exchange system?
A. Yes.
Q. It did?
A. Yes.
Q. Who arranged for that suspension to occur?

Fasman

A. Eric Golden.
Q. How long did MacAndrews & Forbes suspend the auto purge function of Microsoft Exchange?
A. From the day he issued the instruction until today.
Q. So from the date -- do you know what day he issued the instruction?
A. Sometime in October or November of 2001.
Q. But the complaint was filed in June 2001.
A. Yes.
Q. He issued the instruction four months later?
A. As I said, lots of documents had already been collected in an exercise of an abundance of caution based on the breadth of the Arthur Andersen requests just to make sure there was nothing left out through all the previous document collection and production efforts. A supplemental request went out to preserve electronic versions of the e-mails.

NOT A CERTIFIED COPY

020203

Fasman

Q. But the auto purge function wasn't suspended until fall of 2001?

A. Yes.

Q. So if I were to look at a back-up tape today, it would have e-mail on it from fall of 2001 to the present date?

A. No.

Q. Can you explain to me how the auto purge function has been disabled yet I will not be able to access e-mail from that date forward?

A. We preserved -- we continue to preserve the back-up tapes relating to August or September 2001 even today. Under any circumstances if we were to restart our systems, those tapes would be purged because they are too old. But we continue to preserve them. We've been preserving them since September -- August or September of 2001 when they were collected.

Q. I'm confused. You are saving back-up tapes, the monthly back-up tapes from August or September of 2001 until today?

Fasman

A. Right.

Q. So you have 12 back-up tapes from 2002 in storage; is that what you are saying?

A. No.

Q. You just said that you are saving back-up tapes since 2001 forward; right?

A. Yes.

Q. What do you mean by you're saving the back-up tapes from fall of 2001 to today?

A. I'm saying we haven't overwritten them or thrown them away.

Q. So your testimony is that you have one back-up tape for every month in 2002, one back-up tape for every month in 2003?

A. That's not what I said.

Q. If they are not being overwritten and you are not throwing them away, then they must be stored somewhere; isn't that correct?

A. Now you've used pronouns all over the place. I don't know what you mean by

Fasman

them.

Q. Back-up tapes from 2001, fall of 2001 until today.

A. The back-up tapes from the fall of 2001 have been preserved until today.

Q. So how many back-up tapes is that?

A. Two.

Q. Okay. I see. So you are not saving back-up tapes from 2000 through today, you have two back-up tapes dating from 2001 that you have saved?

A. Through today.

Q. I don't understand what you mean by through today.

A. I'm saving -- I'm continuing to save them.

Q. But you don't have back-up tapes from 2001 to today for every month during that period, you are just saving those two?

A. I never said that I did.

Q. Okay. Now I'm asking you what I started asking you about was the auto purge function. The auto purge you said was

Fasman

disabled in fall of 2001.

A. Correct.

Q. So you disabled the system --

A. We pulled those -- you mean, you make it sound like some robotic mechanical system. We took a set of back-up tapes that normally would have been overwritten in our normal systems and put them to the side. If I reinstated our systems, I put them back in the cue and they would get overwritten. But I've suspended it from -- MacAndrews & Forbes has suspended it from the fall of 2001 through today.

Q. But nobody physically went into the system, the server's system and said after 30 days don't delete them, wait 180 days or 360 days, whatever, nobody changed that parameters?

A. There's no need because I already have the copy from August of 2001.

Q. As of the filing of the Coleman (Parent) complaint against Morgan Stanley, when it was decided to file that complaint, did MacAndrews & Forbes issue any notices

NOT A CERTIFIED COPY

020204

Fasman
to its employees informing them not to delete any e-mail that could be potentially related to the action?
A. Didn't we just cover this?
Q. Different case.
A. I don't understand the question.
Q. CPH versus Morgan Stanley.
A. I'm sorry. I got it. What was the question?
Q. Upon the decision to file that case, did MacAndrews & Forbes issue any notices to employees to save any e-mails in either hard copy or electronic form that could be related to the litigation?
A. No. We'd already done it.
Q. So are you saying there could be no more relevant documents because it had already been done?
A. Right.
Q. Same thing with the automatic purge and making back-up tapes and what not, you didn't do it because it had already been done?
A. Right.

Fasman
Q. Do you know what the storage size in megabytes is for your back-up tapes?
A. No.
Q. I can't remember if I asked you this earlier in the day. Has MacAndrews & Forbes ever attempted to restore data using ghost files or fragments?
A. You asked and as I answered then, no.
Q. Do you know what operating systems are in use by MacAndrews & Forbes?
A. For e-mail?
Q. Yes.
A. Microsoft Exchange.
Q. Right. Sorry.
Are you aware -- we discussed Blackberries and PDAs earlier and we discussed the synchronizing factor specifically for the PDAs. With regard to the device themselves not synchronized, do you have any idea how long that machine will retain data?
(Continued on the following page.)

Fasman
A. Until the battery runs out.
MS. PAULE-CARRES: I think I'm finished.
MR. BRODY: Okay. I have no questions.
THE VIDEOGRAPHER: The time is 5:19 p.m. We're going off the record.
(Time noted: 5:19 p.m.)

_____
STEVEN L. FASMAN, ESQ.

Subscribed and sworn to before me this ____ day of _____, 2004

_____

CERTIFICATE
STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)
I, ANDREA L. KINGSLEY, a Notary Public within and for the State of New York, do hereby certify:
That STEVEN L. FASMAN, ESQ., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of January, 2004.

_____
ANDREA L. KINGSLEY

NOT A CERTIFIED COPY

502020

---------- I N D E X ----------

WITNESS	EXAMINATION BY	PAGE
S. Fasman	Ms. Paule-Carres	4

---------- INFORMATION REQUESTS ----------

DIRECTIONS: 124, 157
RULINGS:
TO BE FURNISHED:
REQUESTS:
MOTIONS:

---------- EXHIBITS ----------

MORGAN STANLEY FOR ID.
Morgan Stanley Exhibit 62, CPH 1433326 through 1433329..... 37
Morgan Stanley Exhibit 63, amended notice to videotape deposition..... 56
Morgan Stanley Exhibit 64, complaint to the Shallal case..... 135
Morgan Stanley Exhibit 65, complaint captioned Deutscher against the Coleman Company..... 138

---------- EXHIBITS ----------

MORGAN STANLEY FOR ID.
Morgan Stanley Exhibit 66, complaint encaptioned Shallal against MacAndrews & Forbes..... 143
Morgan Stanley Exhibit 67, complaint Coleman (Parent) Holdings filed against Andersen June 8, 2001..... 160

NOT A CERTIFIED COPY

902020

246

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 11 2005
SHARON R. BOCK
CLERK & COMPTROLLER
BY
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

COLEMAN (PARENT) HOLDING INC.'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc.

020207

1017

16div-025968

TABLE OF CONTENTS

INTRODUCTION 1

CPH'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT 1

A. Morgan Stanley's Request for Pretrial Findings of Fact Is an Abuse of the Summary Judgment Rule. 1

B. CPH's Objection Applicable To All Proposed Findings. 4

C. CPH's Paragraph-By-Paragraph Response to Morgan Stanley's Proposed Findings of Fact (Repeating, But Not Adopting, Morgan Stanley's Headings). 5

I. The Plaintiff And The Holding Companies Controlled By Ronald O. Perelman 5

A. Ronald O. Perelman 6

B. The Holding Companies Controlled by Perelman 7

C. The Coleman Co., Inc. Holding Company Structure 8

D. Perelman's Holding Companies Are Form over Substance 10

II. Morgan Stanley & Co. Incorporated 13

III. Perelman Is A Sophisticated Businessman Operating Through A Complex Network Of Holding Companies 18

A. MAFCO Is in the Business of Doing "Deals" 18

B. Perelman's In-House Brain Trust 22

C. Perelman Uses Investment Bankers to Advise Him on Mergers and Acquisitions 28

D. Perelman Uses Sophisticated Legal Advisors to Advise Him on Mergers and Acquisitions 30

E. Perelman Uses Sophisticated Accounting Advisors to Advise Him on Mergers and Acquisitions 32

F. The Sunbeam-Coleman Merger Transaction Was an Arm's-Length Transaction 33

IV. The Coleman Company, Inc. 35

A. Perelman Acquires Coleman in 1989 35

NOT A CERTIFIED COPY

020208

B. Perelman Steadily Increases the Debt of Coleman 38

C. A Debt-Ridden Coleman Underperforms in 1997 40

D. Perelman Leverages His Investment in Coleman to Issue $732 million in Debt and Pledges Coleman Shares as Collateral 42

V. PERELMAN MEETS DUNLAP AND SEES THE "FUTURE" 45

VI. In Late 1997 Michael Price Initiates Discussions Between Sunbeam And Perelman 50

A. Michael Price Asks Perelman to Meet Dunlap 50

B. Perelman Prepares to Meet Dunlap and MAFCO Does Its Own Analysis of a Sunbeam-Coleman Transaction 54

C. Perelman Does an Analysis of Dunlap's Employment Contract with Sunbeam 59

D. CSFB's December 1997 Analysis of a Sunbeam-Coleman Merger Transaction 61

E. Dunlap and Perelman Meet at Perelman's Mansion in Palm Beach on December 18, 1997 61

VII. Perelman And Sunbeam Restart Discussions About Coleman 65

A. Perelman Rejects Sunbeam's January 23, 1998 Offer 65

B. MAFCO Retains Wachtell to Represent Coleman and to Prepare Confidentiality Agreements 73

C. Sunbeam Stock Tumbles after It Announces Lower than Projected Profits for the 4th Quarter of 1997 80

D. Perelman and Sunbeam Agree to Defer Due Diligence until Sunbeam Makes an Acceptable Offer 85

E. Perelman Rejects Sunbeam's February 6, 1998 Proposal 88

VIII. Perelman Agrees To Sell Coleman To Sunbeam For $27.50 Per Share 91

IX. MAFCO Performs Virtually No Due Diligence Of Sunbeam Before The Execution of The Merger Agreement 94

A. The MAFCO Due Diligence Team Is Leaderless 97

B. Maher Does No Due Diligence of Sunbeam 105

NOT A CERTIFIED COPY

020209

C. CSFB Does No Due Diligence of Sunbeam 107

D. Wachtell Does No Due Diligence of Sunbeam 110

E. Ernst & Young Does No Due Diligence of Sunbeam 112

X. Sunbeam Discloses To MAFCO That Sunbeam's January And February 1998 Sales Are "Slow" 115

A. MAFCO Representatives Hear Sunbeam's Plans for the Next Three Years 115

B. Sunbeam Alerts MAFCO that Sunbeam's Sales are "Slow" 120

C. In the Elevator, Levin Tells Maher and Nesbitt that Sunbeam's Plans Are "Quite a Stretch" and Not Achievable 129

XI. Perelman And His Holding Companies Approve The Merger Agreements 135

A. Perelman and the Coleman Board Meet on February 25, 1998 135

B. Perelman and the Coleman Board Meet Again on February 27, 1998 140

C. Perelman and Gittis Approve the Merger 143

XII. The Parties Execute The Merger Agreements As Of Friday, February 27, 1998 144

A. CLN Holdings Merger Agreement Is Approved by Perelman and Gittis 144

B. The Coleman Merger Agreement Is Approved by Coleman's Board 146

C. MAFCO Gains Full and Complete Access to Sunbeam's Books and Records 151

XIII. From Signing To The March 19 Press Release — Sunbeam Makes Disclosures And CPH Looks Away 155

A. MAFCO Elects Not to Inspect Sunbeam's Books and Records 156

B. MAFCO Insiders Bail Out of Coleman Stock as Soon as the Merger Is Publicly Announced 167

C. MAFCO Elects Not to Read Sunbeam's 1997 Annual Report on Form 10-K ... 170

XIV. Morgan Stanley First Learns Of Sunbeam's First Quarter Sales And Insists That Sunbeam Issue The March 19 Press Release. 173

A. Morgan Stanley Learns of a Possible Sales Shortfall. 174

B. The March 19, 1998 Press Release 178

NOT A CERTIFIED COPY

020210

C. Perelman Asks No Questions of Sunbeam Following the March 19, 1998 Press Release. 183

XV. The Sunbeam Debenture Offering 200

A. The Debenture Offering Memorandum 200

C. MAFCO Does Not Request Copies of Either the Ernst & Young or Arthur Andersen Comfort Letters 206

D. Morgan Stanley Closes the Debenture Offering on March 25, 1998 213

XVI. Morgan Stanley Senior Funding Closes The Credit Facility 214

XVII. Perelman And Sunbeam Close On The CLN Merger Agreement On March 30, 1998.. 217

XVIII. Sunbeam's April 3, 1998 Press Release Announces Its First Quarter 1998 Results. 220

XIX. Perelman Gives Dunlap MAFCO's Proxy For 14,099,749 Shares Of Sunbeam Stock . 223

XX. Sunbeam Announces Its First Quarter Results On May 11, 1998 223

XXI. Burdened By Debt, Sunbeam Slides Into Bankruptcy 223

CONCLUSION OF LAW 223

CONCLUSION 223

NOT A CERTIFIED COPY

020211

16div-025972

INTRODUCTION

The Court should reject Morgan Stanley's proposed findings because it is inappropriate to find these facts for purposes of trial on a piecemeal basis at this preliminary stage, as they are immaterial to Morgan Stanley's summary judgment motion. Morgan Stanley abuses the summary judgment procedure here by seeking what amounts to a massive untimely request for admissions after discovery has closed. Nearly half of Morgan Stanley's proposed findings of fact are not even cited in Morgan Stanley's summary judgment brief. Adopting these selectively chosen proposed findings, plucked out of context, would distort the summary judgment function, confuse the issues at trial, mislead the jury, and impede an orderly trial process. Usurping the jury's role by adopting these proposed findings would undermine, not further, the purposes of Rule 1.510(d). Therefore, the Court should reject Morgan Stanley's extraordinarily broad request for pretrial fact-finding.

CPH'S RESPONSE TO MORGAN STANLEY'S PROPOSED FINDINGS OF FACT

A. Morgan Stanley's Request for Pretrial Findings of Fact Is an Abuse of the Summary Judgment Rule.

Rule 1.510(d) of the Florida Rules of Civil Procedure authorizes trial courts to enter findings of fact at the summary judgment phase of a case only when five conditions are met:

- the court's decision on the summary judgment motion must not end "the whole case," Fla. R. Civ. P. 1.510(d);
- the findings must involve "material" facts, *id.*;
- the material facts must "exist without substantial controversy," *id.*;
- it must be "practicable" for the court to separate those material, uncontroverted facts from controverted ones, *id.* (emphasis added); and

NOT A CERTIFIED COPY

020212

- those material, uncontroverted facts must "be admissible in evidence" at trial, Fla. R. Civ. P. 1.510(e).

Not only do Morgan Stanley's 332 proposed findings of fact fail these tests, but Morgan Stanley's entire pleading ignores the very purpose for establishing this rule — to promote judicial economy. Morgan Stanley is not simply asking the Court to enter findings of uncontroverted facts that the Court might reach as it decides (and denies) the summary judgment motion. Rather, Morgan Stanley wants the Court to enter 332 discrete factual findings ranging across the entire subject matter of the case, and far beyond. Such an untethered fact-finding procedure bears no relationship to the purposes of the summary judgment rule. *See Mendenhall v. Barber-Greene Co.*, 531 F. Supp. 947, 948 (N.D. Ill. 1981) (explaining that the rule "is not an independent provision permitting the singling out of limited issues on which the Court's advice may be obtained"). The main effect of granting Morgan Stanley's request would be to disrupt Plaintiff's presentation of its case in chief, forcing it to put witnesses on the stand while attempting to skirt areas that have already been deemed "established" by the Court. Rule 1.510(d) was not designed to subvert the ordinary order of proof at trial, and this Court should decline Morgan Stanley's invitation to misuse the Rule that way.

Even a cursory glance at the 332 paragraphs of fact findings that Morgan Stanley has proposed demonstrates the impracticability, indeed the futility, of trying to craft a Rule 1.510(d) order here. The Rule instructs courts to distinguish "material facts [that] exist without substantial controversy" from facts that are immaterial or that "are actually and in good faith controverted" — but only if making those distinctions at the summary judgment phase is "practicable." Fla. R. Civ. P. 1.510(d) (emphasis added). Here, the task Morgan Stanley asks the Court to perform is anything but practicable.

As stated above, perhaps the most obvious sign of Morgan Stanley's abuse of the

NOT A CERTIFIED COPY

020213

summary judgment rule is the fact that Morgan Stanley does not even bother to cite nearly half of its proposed findings of fact anywhere in its summary judgment brief. Indeed, three whole sections of Morgan Stanley's proposed findings (Parts IV, XVII, and XX) do not contain a single paragraph cited in Morgan Stanley's summary judgment brief, and three other sections (Parts II, VIII, and IX) each contain only one paragraph cited in the brief. In one stretch, Morgan Stanley rattles on for 26 straight paragraphs (¶¶ 136 to 161, inclusive) without saying anything cited in its summary judgment brief.

Of the 175 proposed findings that are cited in Morgan Stanley's brief, most are plainly inappropriate for pretrial judicial fact-finding under Rule 1.510(d). The first 31 of those 175 cited paragraphs (scattered among Paragraphs 1 to 60) inappropriately attempt to support the proposition that Plaintiff is a sophisticated company. The next 8 cited paragraphs, recounting early contacts between Dunlap and Perelman, are most notable for their melodramatic heading: "Perelman Meets Dunlap and Sees the 'Future.'" Indeed, many of Morgan Stanley's headings and subheadings (which were not numbered as proposed findings) read like the chapter titles in a dime-store novel, as they distort the "facts" that follow the heading by making sweeping and often inaccurate generalizations.

Once Morgan Stanley's document finally exhausts its introductory material and reaches the core chronological narrative, focused primarily on the events of early 1998, the remaining paragraphs cited in Morgan Stanley's brief suffer from a bevy of defects. For example, at least 16 of those paragraphs merely quote a snippet from a deposition transcript, and at least four do the same for a snippet of a document. *See, e.g.*, Morgan Stanley's Proposed Findings ¶ 110 (quoting document), *id.* ¶ 256 (quoting deposition transcript). But those transcripts and documents speak for themselves. Plucking isolated lines out of context and presenting them to

NOT A CERTIFIED COPY

020214

the jury as freestanding findings, with the Court's imprimatur — rather than allowing witnesses to testify about them, to be subjected to cross-examination in the courtroom, and to be evaluated by jurors — would do nothing but create chaos during the ordinary order of proofs. At least another 21 of the proposed findings cited in Morgan Stanley's brief merely describe one witness' failure to recollect certain facts. *See, e.g.*, Morgan Stanley's Proposed Findings ¶ 212 (witness "testified that he was not aware of . . ."), *id.* ¶ 221 (witness "did not know of . . ."), *id.* ¶ 225-29 (witness "could not recall any . . ."). Again, this sort of fact, taken in isolation, is hardly material to the pending motion — much less helpful to the efficient progress of the litigation.

Once these and other clearly defective proposed findings are set aside, we are left with only a few dozen material facts contained in Morgan Stanley's proposed findings. But as explained in detail below, each of these remaining proposed findings is heavily controverted, or cannot practicably be determined at this stage of the proceedings, or both.

B. CPH's Objection Applicable To All Proposed Findings.

CPH respectfully submits that the Court should reject each and every proposed finding of fact on the basis of the following Objection (hereinafter referred to as the "Objection Applicable to All Proposed Findings"), which is incorporated by reference into CPH's response to each paragraph:

> The Court should reject this proposed finding because it is inappropriate to find these facts for purposes of trial on a piecemeal basis at this preliminary stage, as they are immaterial to Morgan Stanley's summary judgment motion. Indeed, Morgan Stanley abuses the summary judgment procedure here, by seeking what amounts to an untimely request for admission after discovery has closed. Moreover, adopting this selectively chosen proposed finding, plucked out of context, would distort the summary judgment function, confuse the issues at trial, mislead the jury, and impede an orderly trial process. Usurping the jury's role by adopting this proposed finding would undermine, not further, the purposes of Rule 1.510(d). For a detailed exposition of the facts that are material to Morgan Stanley's summary judgment motion,

NOT A CERTIFIED COPY

020215

see CPH's brief opposing that motion, which is incorporated herein.

C. CPH's Paragraph-By-Paragraph Response to Morgan Stanley's Proposed Findings of Fact (Repeating, But Not Adopting, Morgan Stanley's Headings).

The following paragraph-by-paragraph response to Morgan Stanley's proposed findings shows that each proposed finding is immaterial to the pending summary judgment motion, is based on evidence that is inadmissible, is substantially controverted, or would be impracticable for the Court to resolve at this stage of the proceedings. For each paragraph, Morgan Stanley's proposed finding is reproduced in boldface, followed by CPH's response in regular type. For the convenience of the Court, CPH has repeated Morgan Stanley's headings, but CPH does not agree with or adopt them.

I. The Plaintiff And The Holding Companies Controlled By Ronald O. Perelman

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

In this heading and throughout the proposed findings, Morgan Stanley uses the term "Perelman" to have a variety of meanings in addition to the individual Ronald O. Perelman, such as shorthand for one or more companies owned directly or indirectly, wholly or in part, by Mr. Ronald O. Perelman, or for individuals working for MacAndrews & Forbes Holdings Inc. Indeed, Morgan Stanley improperly seeks to ignore corporate formalities and pierce the corporate veil without any basis or support in the record by phrasing many of its proposed findings in terms of "Perelman" rather than proper corporate entities. Because Morgan Stanley does not use the term "Perelman" in a consistent or predictable manner, and because Morgan Stanley frequently uses "Perelman" synonymously to mean CPH, other companies, or other

NOT A CERTIFIED COPY

020216

individuals, all of Morgan Stanley's proposed findings referencing "Perelman" should be rejected.

A. Ronald O. Perelman

1. Ronald O. Perelman is an individual residing in New York, New York. He holds an MBA from the Wharton School at the University of Pennsylvania. He is a sophisticated businessman who owns and controls hundreds of companies through a complex series of holding companies.

CPH admits that Ronald O. Perelman resides in New York and that he received an MBA from the Wharton School at the University of Pennsylvania.

The proposed finding is unsupported insofar as it asserts that Perelman owns and controls hundreds of operating companies, which he does not. In fact, Perelman testified that he owns seven operating companies. CPH App. 32 (Perelman Dep. at 49-50).[1] In addition, the proposed finding labels Mr. Perelman as "a sophisticated businessman" without articulating how Morgan Stanley defines or uses that term. In using this emotionally charged term, Morgan Stanley fails to indicate whether Morgan Stanley is using it colloquially, or as a term of art under Florida law, or as a term of art under New York law, or in some other way. Likewise, the proposed finding characterizes the structure of Mr. Perelman's business as a "complex series of holding companies" without explaining what Morgan Stanley means.

Further, the Court should reject this proposed finding on the basis of CPH's General Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020217

[1] "CPH App." refers to the 12-volume Appendix accompanying CPH's summary judgment brief, filed on December 23, and "CPH Supp. App." refers to the Supplemental Appendix accompanying this response.

2. Perelman, through his 100 percent ownership of his holding companies, owned over 82 percent of the common stock of The Coleman Company, Inc. ("Coleman") before the merger with Sunbeam Corporation ("Sunbeam").

CPH admits that Perelman was the ultimate indirect owner of over 82% of the common stock of Coleman before that stock was acquired by Sunbeam. However, the Court should reject this proposed finding on the basis of CPH's objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. The Holding Companies Controlled by Perelman

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

3. The top company in Perelman's holding company structure is MAFCO Holdings Inc. Perelman is the sole shareholder of MAFCO Holdings Inc.

CPH admits that Perelman is the sole shareholder of MAFCO Holdings Inc. and that MAFCO Holdings Inc. is a holding company. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

4. MAFCO Holdings Inc. owned 100 percent of the common stock of MacAndrews & Forbes Holdings Inc. ("MAFCO"), the next holding company in Perelman's structure.

CPH admits that MAFCO Holdings Inc. owned 100 percent of the common stock of MacAndrews & Forbes Holdings Inc. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020218

5. Howard Gittis is the vice-chairman of the board and chief administrative officer of MAFCO. He testified that Perelman's holding company structure eventually splits into lines of holding companies for each operating company, including Coleman. As Gittis described the business:

> **A. Once you go down below MacAndrews & Forbes Group, each of the operating businesses go off into a series of companies, so that you don't mix the candy money with the beer money.**
>
> **That is, Coleman stays in its own line, no cross collateral, no obligation for any debt of, say, Revlon, which has its own line.**
>
> **And then the banks, which had their own line.**
>
> **And then the cigar company, when that was there, had its own line.**

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

C. The Coleman Co., Inc. Holding Company Structure

NOT A CERTIFIED COPY

020219

6. The top holding company within the Coleman structure was Coleman (Parent) Holdings Inc. ("CPH"), the plaintiff in this action. CPH is a Delaware corporation with its principal place of business at 35 E. 62nd Street, New York, New York. Perelman and Gittis were the two directors of CPH at the time of the merger transaction with Sunbeam.

CPH admits that it is a Delaware corporation, that CPH's current principal place of business is 35 E. 62nd Street, New York, New York, and that Perelman and Gittis were the two directors of CPH at the time of the merger transaction with Sunbeam.

The Court should reject this proposed finding because it is misleading and incorrect insofar as it implies that CPH's principal place of business was in New York at the time of the transaction. At the time of Sunbeam's acquisition of CPH's interest in Coleman, CPH's principal place of business was 5900 North Andrews Avenue, Fort Lauderdale, Florida. CPH Supp. App. 184 (Schwartz Dep. at 55-56); CPH Supp. App. 185 (MS Ex. 244 at 5).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

7. CLN Holdings Inc., formerly known as Coleman Escrow Corporation, was the next holding company and was 100 percent owned by CPH. Perelman and Gittis were the sole directors of this holding company.

CPH admits that CPH owned 100% of the common stock of CLN Holdings Inc., that CLN Holdings was formerly known as Coleman Escrow Corporation, and that Perelman and Gittis were CLN Holdings Inc.'s directors. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020220

8. Coleman Worldwide Corporation was owned 100 percent by CLN Holdings Inc. and held 82 percent of the common stock of Coleman.

CPH admits that CLN Holdings Inc. owned 100% of the common stock of Coleman Worldwide Corporation. However, the proposed finding misstates the exact amount of Coleman stock held by Coleman Worldwide Corporation. Coleman Worldwide Corporation held approximately 82.4% of the Coleman stock before the exercise of options. CPH Supp. App. 186 (MS Ex. 73).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

9. Coleman was a public operating company trading on the New York Stock Exchange under the symbol CLN. The business of Coleman was the manufacture and marketing of consumer products for outdoor recreation and home hardware.

CPH admits that Coleman was a public company that traded on the New York Stock Exchange under the symbol CLN. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

D. Perelman's Holding Companies Are Form over Substance

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, the references to Perelman and "form over substance" are incorrect, unsupported, and argumentative. Moreover, this heading and the proposed findings in this section regarding MAFCO's corporate structure are irrelevant and immaterial to Morgan Stanley's summary judgment motion.

NOT A CERTIFIED COPY

020221

10. Donald Drapkin, the vice chairman and member of the board of directors of MAFCO, as well as a director of Coleman, testified that "there are lots of holdings [sic] companies" under Perelman's control, and "I have trouble keeping the names [of the holding companies] straight."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The Court also should reject this proposed finding because it is argumentative.

11. Bruce Slovin was the president of CPH and a member of the board of directors of Coleman. Slovin "do[es] not recall" what his "general job description as the president Coleman (Parent) Holdings Inc. [was] in 1998," at the time of the transaction with Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The Court also should reject this proposed finding because it is argumentative.

NOT A CERTIFIED COPY

020222

12. Perelman, chairman of the board and 100 percent owner of MAFCO and, through it, 100 percent owner of CPH, testified that he was "not sure" if he was a director of CPH.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The Court also should reject this proposed finding because it is argumentative.

13. Gittis testified that there are "hundreds of companies" within MacAndrews & Forbes' holding company structure and Perelman himself did not "know the intermediate holding company structure . . . between MacAndrews & Forbes and the Coleman Company . . . ."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The Court also should reject this proposed finding because it is argumentative.

NOT A CERTIFIED COPY

020223

14. William Nesbitt, senior vice president of MAFCO, explained that separating Coleman and MAFCO is a "distinction without a difference."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The Court also should reject this proposed finding because it is argumentative.

Moreover, the Court should reject this proposed finding because it is misleading and incorrect. Morgan Stanley has mischaracterized Nesbitt's testimony. Nesbitt's "distinction without a difference" statement was made in the specific context of answering whether the numbers used for cost projects had come from MAFCO or Coleman. CPH App. 35 (Nesbitt Dep. at 154-55). Morgan Stanley inappropriately expands Nesbitt's testimony into an observation concerning the entire MAFCO corporate structure.

The Court also should reject this proposed finding because it is misleading and incorrect. Nesbitt was not a senior vice president of MAFCO. CPH App. 35 (Nesbitt Dep. at 55). Moreover, Nesbitt is no longer an employee of MAFCO. *Id.*

II. Morgan Stanley & Co. Incorporated

NOT A CERTIFIED COPY

020224

15. The defendant, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), is a Delaware corporation with its principal place of business in New York, New York. Morgan Stanley is an investment banking firm that provides a wide range of financial and securities services, including underwriting the sale of both equity and debt securities.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

16. Investment bankers and underwriters are not auditors. They do not perform the function of auditors. Sunbeam has its own external auditor, Arthur Andersen. Similarly, Coleman had its own auditor, Ernst & Young LLP.

The Court should reject this proposed finding because it is misleading and substantially controverted because it implies that investment bankers and underwriters have no obligations to investigate the financial statements of the companies they represent. As Sunbeam's investment banker and the sole underwriter for the debenture offering, Morgan Stanley had a duty to investigate Sunbeam's finances and business operations. As a matter of law, that duty included an obligation to verify management's claims about Sunbeam's finances and business. The United States District Court for the Southern District of New York recently reemphasized that point in its December 15, 2004 decision in *In re Worldcom, Inc. Securities Litigation*: "The public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed." CPH App. 112 (Decision at 121-22).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020225

17. On September 11, 1997, Sunbeam retained Morgan Stanley to act as its investment banker and to assist with either the sale of Sunbeam or its acquisition of other companies.

The Court should reject this proposed finding as misleading. Morgan Stanley began working with Sunbeam in April 1997 before it was formally retained and without compensation. CPH App. 9 (Strong Dep. at 49-51).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

18. Morgan Stanley served as the underwriter for Sunbeam's issuance of Zero Coupon Convertible Senior Subordinated Debentures ("Debentures"). By virtue of its position as underwriter, Morgan Stanley agreed to be the direct purchaser of the Debentures. CPH did not purchase any of the Debentures.

The Court should reject this proposed finding because it is incomplete and misleading. It is undisputed that CPH relied on the due diligence CPH knew that Morgan Stanley was required to conduct as the underwriter for the debentures. CPH App. 48 (Maher Dep. at 373-74); CPH App. 10 (Gittis Dep. at 108-09). Indeed, CPH took considerable comfort in the fact that Morgan Stanley was the underwriter of the debentures, received comfort letters in connection with that offering, and continued with its $2 billion (face amount) offering following the March 19, 1998 press release. *Id.* CPH also took comfort in the fact that Morgan Stanley was involved in the transaction because CPH had a long history with and trusted Morgan Stanley. CPH App. 34 (Perelman Dep. at 352); CPH App. 10 (Gittis Dep. at 86); CPH Supp. App. 224 (CPH 11/24/04 Resp. to 5th Set of Interrogs., No. 1). Morgan Stanley knew that investors would rely on Morgan Stanley's association with a company in making investment decisions: "[I]nstitutional

NOT A CERTIFIED COPY

020226

investors I think believe . . . that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies." CPH App. 114 (Perella Dep. at 126); *see also id.* at 127 ("We like to be associated with first class companies and do business in a first class way, and try every day to live to that standard."); CPH App. 115 (Porat Dep. at 297-98).

This proposed finding also is misleading and substantially controverted because it implies that Morgan Stanley's only material responsibility as underwriter was to be the initial purchaser of the Debentures. Morgan Stanley's duties also included the obligation to conduct a thorough investigation of Sunbeam's business and financial condition. *See* CPH's Response to ¶ 16, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

19. Morgan Stanley Senior Funding, Inc. ("MSSF") is a financial services company that provides credit services to its clients. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York. In 1998 MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide senior secured financing to Sunbeam in connection with Sunbeam's acquisition of Coleman and two smaller competitors. Pursuant to the credit agreement, Sunbeam borrowed $680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions.

The Court should reject this proposed finding because it is misleading and incomplete. MSSF intended to syndicate its position in the Sunbeam loan so that MSSF would have minimal exposure and risk on the loan. The Court should also reject this proposed finding on the basis of

NOT A CERTIFIED COPY

020227

CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

When Morgan Stanley's Leveraged Finance Commitment Committee met to approve the $1.7 billion loan, a key issue was how quickly Morgan Stanley could syndicate it (i.e., transfer virtually all of the obligations to other lenders). CPH App. 12 (Smith Dep. at 139-40, 212, 251). While the LFCC technically approved the loan, Morgan Stanley knew it had made no "operative commitment" to fund it. CPH App. 87 (Hart Dep. at 275). Moreover, the testimony that Morgan Stanley cites suggests only that Morgan Stanley's practice was to keep *some* portion of the loan, not "a significant" portion because it was not possible as a practical matter to fully syndicate a loan: "In my experience, Morgan Stanley never syndicated 100 percent of a syndicated loan, primarily for the reason that no lending institution would partake in a loan that was fully syndicated out." CPH Supp. App. 217 (Burchill Dep. at 91). And Bram Smith's testimony establishes only that Morgan Stanley "sometimes" kept a substantial portion of the loan. In this case they intended to risk only "50 to 60 million" on the $1.7 billion loan or even "less" if they were "lucky." CPH App. 12 (Smith Dep. at 139, 140-41). Morgan Stanley's goal all along was to transfer as much of the loan to the other banks as it could, as quickly as it could, not to retain a significant portion.

Moreover, before MSSF's loan was approved, the Committee specifically discussed the problem with Sunbeam's first quarter sales and earnings and the fees that Morgan Stanley could earn on the engagement and determined to go ahead with the loan. CPH App. 86 (CPH Ex. 76); CPH App. 12 (Smith Dep. at 203-04).

This proposed finding also should be rejected because Morgan Stanley is judicially estopped from arguing that MSSF's losses are indistinguishable from Morgan Stanley's losses

NOT A CERTIFIED COPY

020228

because in the proceedings associated with the Sunbeam bankruptcy, MSSF defeated an equitable subordination claim predicated on the improper conduct of Morgan Stanley by successfully arguing that MSSF and Morgan Stanley are separate and distinct corporate entities whose conduct is not attributable to each other: "the lenders [including MSSF] are independent legal entities from Morgan Stanley [and] no facts are alleged to justify disregarding their separateness." *See* CPH App. 239 (Lenders Mot. to Dismiss Br. 10/1/01 at 17); *see also* CPH App. 240 (Order at 16-19, *In re Sunbeam*, No. 01-40291 (Bankr. S.D.N.Y. Oct. 18, 2002) (refusing to impute Morgan Stanley's conduct to MSSF)).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

III. Perelman Is A Sophisticated Businessman Operating Through A Complex Network Of Holding Companies

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, the Court should reject Morgan Stanley's improper characterization of Mr. Perelman's business as a "complex network of holding companies" and Morgan Stanley's use of the misleading term "sophisticated." *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

A. MAFCO Is in the Business of Doing "Deals"

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020229

20. MAFCO is a holding company whose business purpose is the "buy[ing] and sell[ing] [of] companies."

The Court should reject this proposed finding because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Taking partial quotations out of context, as in this proposed finding of fact, presents a particular danger of bias and unfair prejudice. Drapkin testified that "[w]e own a number of companies, and we buy and sell companies." CPH App. 97 (Drapkin Dep. at 23). However, Morgan Stanley's selective quotation omits the first part of Drapkin's answer to give the misleading impression that MAFCO only buys and sells companies. *See also id.* ("As I said, our business is owning and running companies, as well as buying and selling."); *id.* at 33 (Drapkin specifically correcting Morgan Stanley's attorney that MAFCO also "operate[s]" businesses). As Perelman made clear: "[W]hat we do is identify businesses that we like and hopefully over time help them grow and develop. Our plan is not to sell them. Our plan is to make them grow . . . . You posed the question as if buying and selling is our business. That is not our business. Buying and operating companies is our business." *See* CPH App. 32 (Perelman Dep. at 52-53).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

21. Since 1987, MAFCO has bought or sold as many as fifty public and private companies and currently owns at least seven operating companies. These operating companies include Revlon, Inc. (cosmetics), Consolidated Cigar Holding Inc. (tobacco), Panavision (motion picture camera systems), Scientific Games (games), California Federal Bank (financial services), Allied Security (protective services), M&F Worldwide (licorice

NOT A CERTIFIED COPY

020230

and other flavoring), and AM General (automobiles). Additionally, in the past, MAFCO has owned Marvel Entertainment, New World, Technicolor, and Meridian Sports.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court also should reject this proposed finding because it mischaracterizes the testimony of Drapkin, who was asked to provide an "estimate" of the number of companies MAFCO had bought or sold since 1987. Drapkin replied: "I don't have a good number. It's more than one and less than 50." CPH App. 97 (Drapkin Dep. at 34-35.)

The Court also should reject this proposed finding as unsupported insofar as it implies that MAFCO owned either the entire interest or a controlling interest in the listed companies. The proposed finding also is misleading and unsupported insofar as it confuses whether the companies are currently or were formerly owned.

22. Perelman, in buying and selling public and private companies through stock acquisitions or otherwise, has participated in transactions that have involved billions of dollars.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject Morgan Stanley's improper and misleading reference to Mr. Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

NOT A CERTIFIED COPY

020231

23. Perelman, operating through MAFCO and the companies it controls, has issued billions of dollars of debt securities, such as debentures.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject Morgan Stanley's improper and misleading reference to Mr. Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

24. Perelman, operating through MAFCO, is a financially sophisticated individual with extensive merger and acquisition experience. Indeed, Slovin testified:

> **Q. Do you agree with Drapkin' s statement that: "This is what we do, we do big deals, little deals, deals"?**
>
> **A. Yes, we were very active in mergers and acquisitions of all types.**
>
> **Q. And this was true in 1998, as well; correct?**
>
> **A. Yes, we were very active.**
>
> **Q. And when you did deals, you customarily retained advisors to assist you in the deals; correct?**
>
> **A. The large deals, yes.**
>
> **Q. . . .And when you did — —the Coleman deal was a large deal; was it not?**
>
> **A. Yes.**
>
> **Q. $2 billion, roughly?**
>
> **A. Yes.**

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

0202232

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

In addition, the Court should reject Morgan Stanley's improper and misleading reference to Mr. Perelman and Morgan Stanley's use of the term "sophisticated." *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

25. Perelman himself is a "sophisticated businessman" who "over the course of [his] business career [has] hired sophisticated advisers," including both in-house and outside lawyers and investment bankers, "to help [him]."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

In addition, the Court should reject Morgan Stanley's improper and misleading reference to Mr. Perelman and Morgan Stanley's use of the term "sophisticated." *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

B. Perelman's In-House Brain Trust

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, CPH objects to the use of the term "brain trust" as inappropriate and argumentative.

NOT A CERTIFIED COPY

020233

26. Gittis has been involved in every deal Perelman has conducted and characterizes himself as the number-two man in MAFCO and Perelman's right-hand man. Prior to working at MAFCO, Gittis practiced law for 25 years until 1985. Gittis is licensed to practice law in Pennsylvania and Florida. He is currently the vice chairman and chief administrative officer of MAFCO.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject the proposed finding because it is misleading and unsupported. Morgan Stanley cites no evidence to support its assertion that Gittis was involved in every deal Perelman conducted prior to 1985, when Gittis joined MAFCO. The proposed finding also is misleading and unsupported insofar as it implies that Gittis's law licenses are active.

27. Jerry W. Levin was the president, chief executive officer, and chairman of the Coleman Company at the time of the Sunbeam-Coleman merger. In fact, Levin twice served as the senior executive at Coleman, from 1989 to 1991 and 1997 to 1998, both times at the request of Perelman. In between his two stints as top executive at Coleman, Levin was chief executive officer at Revlon, another of Perelman's companies. Levin, who has an MBA from the University of Chicago Business School, is a "specialist in consumer branded products" whose "forte" is "execut[ing] turnarounds at consumer branded products companies" like Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial

NOT A CERTIFIED COPY

020234

because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

The Court also should reject this finding because it is unsupported by the evidence cited. During the first time period reference, Levin did not work for The Coleman Company, Inc. CPH App. 7 (Levin Dep. at 15, 19).

28. Donald Drapkin, the vice chairman of MAFCO, served as Perelman's "in-house strategic thinker" and "in-house investment banker." Drapkin graduated from Columbia Law School and worked at Cravath, Swaine & Moore until 1977, when he joined Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"). While at Skadden, Drapkin specialized in mergers and acquisitions. He left Skadden to join MAFCO in January 1987.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Moreover, the Court should reject this proposed finding because it is controverted insofar as Drapkin disputed Morgan Stanley's attempt to characterize him as Perelman's "in-house investment banker." CPH App. 97 (Drapkin Dep. at 156).

29. James Maher, the president of MAFCO and, according to Perelman, the individual who was "the head negotiator for MacAndrews & Forbes in the Coleman-Sunbeam transaction," was "a sophisticated individual in financial transactions." After

NOT A CERTIFIED COPY

020235

Maher received his MBA from Columbia in June 1976, he worked for First Boston Corporation in the investment banking department. Maher was the head of investment banking and oversaw all issues related to underwriting at First Boston. In 1992, Maher went to work at National Health Labs as the CEO. Later, in 1995, he worked at MAFCO Consolidated Group, Inc., another of Perelman's holding companies.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

The Court should reject this proposed finding because it is misleading and substantially controverted. Maher was not the president of MAFCO. CPH App. 39 (Maher Dep. at 6-7). Moreover, Maher formerly was the president of MAFCO Consolidated Group Inc. — not MAFCO. CPH App. 39 (Maher Dep. at 18-19). Moreover, Maher has no current employment with any company affiliated with MAFCO. CPH App. 39 (Maher Dep. at 6-7). The proposed finding is misleading insofar as it asserts that Maher "oversaw all issues relating to underwriting at First Boston." Maher was the executive to whom the underwriting function reported at one point, but Maher had little personal familiarity with underwriting. CPH App. 39 (Maher Dep. at 42-43). This proposed finding also is misleading and unsupported insofar as the characterization of MAFCO Consolidated Group Inc. as one of Perelman's "holding companies" implies that MAFCO Consolidated Group was wholly-owned, directly or indirectly by Perelman at the relevant time.

NOT A CERTIFIED COPY

020236

In addition, this Court should reject Morgan Stanley's use of the term "sophisticated." *See* CPH's Response to ¶ 1, which is incorporated by reference.

30. Barry Schwartz is executive vice president and general counsel of both MAFCO and CPH. Schwartz has a law degree from Georgetown University and is licensed to practice law in Illinois, Pennsylvania, and New York. Before joining MAFCO in 1989, Schwartz practiced law for 15 years and was a partner in the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen LLP, the same firm at which Gittis worked before joining MAFCO. According to Perelman, Schwartz was a "good business lawyer" and served as his "in-house legal adviser in connection with the [Sunbeam-Coleman] transaction."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

31. William Nesbitt, senior vice president of MAFCO, served as an in-house analyst for MAFCO. After Nesbitt graduated from Duke University in 1984 with an economics degree, he was a financial analyst at First Boston Corporation in mergers and acquisitions. In 1988 Nesbitt received his MBA from Harvard Business School. Nesbitt is "a financial analyst of some intelligence, he is a bright kid, and he worked mostly with Jimmy Maher" on the Sunbeam-Coleman transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020237

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

The Court also should reject this proposed finding because it is misleading. Nesbitt was not a senior vice president of MAFCO. CPH App. 35 (Nesbitt Dep. at 55). Moreover, Nesbitt is no longer an employee of MAFCO. *Id.*

32. Todd J. Slotkin is executive vice president and chief financial officer of MAFCO. At the time of the Sunbeam-Coleman transaction, Slotkin was a senior vice president at MAFCO. After receiving his MBA from Cornell Business School in 1974, Slotkin went to work for Citibank, where he eventually became head of Citibank's leveraged buyout division and a senior managing director. In 1992, he left Citibank to join MAFCO, where he was responsible for "arrang[ing] financing for acquisitions and divestitures and refinancings for Perelman's companies."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

33. Irwin Engleman, a lawyer and accountant by training, was executive vice president and chief financial officer of MAFCO from 1992 to 1999 before becoming vice chairman and chief administrative officer at Revlon. In addition to MAFCO and Revlon,

NOT A CERTIFIED COPY

020238

Engleman has served as a senior executive at corporations such as Xerox, General Foods, CitiTrust, and GAF Corporation.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, the proposed finding misspells Engelman's name.

C. Perelman Uses Investment Bankers to Advise Him on Mergers and Acquisitions

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

34. Over the past twenty years, MAFCO has used investment bankers to advise it "[i]n almost every transaction" in which MAFCO has been involved.

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. First, it is undisputed that Morgan Stanley first contacted CPH concerning a possible transaction with Sunbeam. *See* CPH's Responses to ¶¶ 71-72, which are incorporated herein by reference. Second, Morgan Stanley's assertion that Perelman personally contacted or retained CSFB is unsupported. Third, CSFB was retained only by The Coleman Company, Inc. -- not CPH. CPH App. 32 (Perelman Dep. at 56); *see also* CPH App. 7 (Levin Dep. at 35); CPH Supp. App. 188 (MS Ex. 169).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020239

opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

35. When Sunbeam approached Perelman with the idea of purchasing Coleman, Perelman contacted the investment bank of Credit Suisse First Boston ("CSFB") to "provide[]advice and/or assistance to CPH in connection with the transaction" with Sunbeam. CSFB also was retained by the Coleman Company, Inc. to serve as its "exclusive financial advisor with respect to the evaluation of a proposed Transaction" with Sunbeam. CSFB requested and received a fee of $4 million plus expenses to serve as the investment banker for Coleman.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Contrary to Morgan Stanley's assertion, CSFB was retained only by The Coleman Company, Inc. — not CPH — and "provided advice to the board of Coleman." CPH App. 32 (Perelman Dep. at 56); *see also* CPH App. 7 (Levin Dep. at 35); CPH Supp. App. 188 (MS Ex. 169).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

NOT A CERTIFIED COPY

020240

36. At the time it served as Coleman's "exclusive financial advisor," CSFB was a "sophisticated financial advisor."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, for the same reasons set forth in CPH's Response to Paragraph 1, the Court should reject Morgan Stanley's use of the term "sophisticated."

D. Perelman Uses Sophisticated Legal Advisors to Advise Him on Mergers and Acquisitions

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In addition, for the same reasons set forth in CPH's Response to Paragraph 1, the Court should reject Morgan Stanley's use of the term "sophisticated."

37. On January 28, 1998, Wachtell, Lipton, Rosen & Katz ("Wachtell") was retained by Barry Schwartz, MAFCO's executive vice president and general counsel, to provide legal counsel to MAFCO, CPH, and Coleman regarding a potential transaction with Sunbeam. Schwartz was neither an officer nor a director of Coleman.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual

NOT A CERTIFIED COPY

020241

controversy at this stage of the proceedings. Wachtell was not retained to provide legal counsel to "MAFCO, CPH, and Coleman regarding a potential transaction with Sunbeam." Wachtell was retained by The Coleman Company, Inc. regarding a potential transaction with Sunbeam and retained by CPH and MAFCO for various matters. *See, e.g.*, CPH Supp. App. 189 (Fasman Dep. at 67); CPH Supp. App. 225 (CPH's Resp. to MS & Co. Inc.'s 1st Set of Interrogs., at 9 (Sept. 2, 2003)); CPH Supp. App. 236 (CPH's Resp. to MS & Co. Inc.'s 2d Set of Reqs. for Admis., at 3-4 (March 17, 2004)).

Moreover, the Court should reject this proposed finding because it is misleading and unsupported insofar as it implies that Schwartz's retention of Wachtell was somehow inappropriate. Schwartz's actions were both authorized and appropriate. *See* CPH App. 184 (Schwartz Dep. at 35-36, 111-112).

38. At the time it served as legal counsel for MAFCO, CPH, and Coleman, Wachtell was "a law firm that was sophisticated . . . in mergers and acquisitions . . . ."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Wachtell was retained by The Coleman Company, Inc. regarding a potential transaction with Sunbeam and retained by CPH and MAFCO for

NOT A CERTIFIED COPY

020242

various matters. *See* CPH's Response to ¶ 37, which is incorporated herein by reference. Furthermore, for the same reasons set forth in CPH's Response to Paragraph 1, the Court should reject Morgan Stanley's use of the term "sophisticated."

E. Perelman Uses Sophisticated Accounting Advisors to Advise Him on Mergers and Acquisitions

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Furthermore, for the same reasons set forth in CPH's Response to Paragraph 1, the Court should reject Morgan Stanley's use of the term "sophisticated."

39. Either directly or through Coleman, Perelman "had access from an accounting standpoint to [the] auditors Ernst & Young" in connection with the Sunbeam-Coleman transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it is misleading and unsupported insofar as it implies that Perelman or Coleman had Ernst & Young generally available on some sort of retainer.

NOT A CERTIFIED COPY

020243

40. MAFCO has audited financial statements. The statements were audited by Ernst & Young or Peat Marwick in 1997 and 1998.

The Court should reject this proposed finding because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. MAFCO did not have audited financials in 1997 or 1998. *See* CPH App. 10 (Gittis Dep. at 189-90).

The Court also should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

41. According to Maher, Joe Page, the chief financial officer of Coleman, would have given Ernst & Young instructions on the due diligence investigation of Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court also should reject this proposed finding because it is misleading and unsupported insofar as it implies that Page is the only person who would have provided instruction to Ernst & Young, or that Ernst & Young's only task on the transaction was to perform due diligence on Sunbeam.

F. The Sunbeam-Coleman Merger Transaction Was an Arm's-Length Transaction

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. The Court also should reject Morgan Stanley's use of the term "arm's-length," because that term implies that Morgan Stanley and Sunbeam were honest and fair in their dealings with CPH and Coleman, which clearly was not the case.

NOT A CERTIFIED COPY

020244

42. The Sunbeam-Coleman merger transaction was an arm's-length transaction between two large and sophisticated companies, each advised by sophisticated in-house and outside lawyers, investment bankers, and accountants.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. Furthermore, for the same reasons set forth in CPH's Response to Paragraph 1, the Court should reject Morgan Stanley's use of the term "sophisticated." Further, this Court should reject Morgan Stanley's characterization of the transaction as "arm's-length" because that term implies that Morgan Stanley and Sunbeam were honest and fair in their dealings with CPH, which clearly was not the case.

43. Schwartz confirmed this in his deposition:

Q. Do you know Scarola?

A. Yes, I do.

Q. Is he an attorney retained by Coleman (Parent) Holdings in the matter that Coleman (Parent) Holdings brought against Arthur Andersen LLP and Phillip E . Harlow?

A. He was.

Q. He was authorized to speak on behalf of Coleman (Parent) Holdings in court?

A. He was.

Q. Focus please beginning with the third sentence starting with "this case," do you see that? [CPH 1315402.]

A. Yes, sir.

Q. That sentence reads as follows: "This case involves a transaction negotiated at arm's length by two large sophisticated and publicly traded corporations. Each side was

NOT A CERTIFIED COPY

020215

represented by prominent highly paid advisors, Morgan Stanley, Skadden, Arps and Arthur Andersen for Sunbeam and CS First Boston by Wachtell, Lipton. Sunbeam conducted due diligence just like any third-party buyer would do." Based on your positions in the MacAndrews & Forbes companies, are those true statements?

A. Yes, they are true statements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it is vague and cannot serve as a stand-alone finding because of its use of the word "this" in the first sentence. Further, Morgan Stanley has not quoted the document accurately. It actually says: "Each side was represented by prominent, highly paid advisors: Morgan Stanley, Skadden Arps, and Andersen for Sunbeam, and CS First Boston and Wachtell, Lipton for the Coleman Company." (CPH's Resp. to Andersen's Mtn. to Compel at 4. *CPH v. Andersen*, No. CA-01-06062AN (Jan. 2, 2002)).

IV. The Coleman Company, Inc.

A. Perelman Acquires Coleman in 1989

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020246

44. The original Coleman company was founded in 1901. For many years Coleman was a closely held and privately owned corporation. Coleman was "a leading manufacturer and marketer of consumer products for outdoor recreation and home hardware use on a global basis."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

The Court also should reject this proposed finding because it is vague, misleading, unsupported and inaccurate. Morgan Stanley uses the defined term "Coleman" in its proposed findings to mean The Coleman Company, Inc., which was incorporated in 1992, and is a very different company than what MAFCO indirectly purchased in 1989. CPH Supp. App. 241 (MS Ex. 241, at 6).

45. In 1989, Perelman, through a holding company, purchased 100 percent of the privately held common stock of Coleman for approximately $455 million. Perelman outbid the younger members of the Coleman family who were trying to do a leveraged buyout of the company.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020147

Further, the Court should reject the proposed finding's reference to Mr. Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference. In addition, the Court should reject this proposed finding because it is misleading, unsupported, and inaccurate in its description of the transactions through which MAFCO indirectly purchased the Company, which was publicly-held at the time. The Court also should reject the use of the term "outbid" and the reference to the "younger members of the Coleman family" because it is unsupported, irrelevant, and prejudicial.

46. At about the same time, Perelman hired Levin to run Coleman. Levin was brought in to restructure Coleman and build up its core businesses. Levin left in April of 1991 to run Revlon, Inc., another of Perelman's companies.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

47. In 1992, Perelman, through his holding company, made a public offering of a small percentage of Coleman's common stock. Perelman raised $125.7 million (9,670,000 shares of Coleman stock at $13 per share), but retained over 80 percent of the common stock, thus ensuring his control.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court also should reject this proposed finding as misleading and unsupported insofar as it implies that the offering was made "through a holding company" — as opposed to a primary offering of shares by Coleman. In addition, this Court should reject this proposed finding as misleading, unsupported, confusing, and prejudicial insofar as it implies that $125.7 million was the net amount and that Perelman received the proceeds.

NOT A CERTIFIED COPY

020248

Further, the Court should reject this proposed finding's misleading and improper reference to Mr. Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

B. Perelman Steadily Increases the Debt of Coleman

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, the Court should reject Morgan Stanley's misleading and improper reference to Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference. In addition, this heading is misleading as it suggests that Coleman's debt was increased inappropriately — which is unsupported.

48. With Levin out, Coleman began taking on debt. In 1993 Coleman's long-term debt was $168,858,000.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, CPH objects to the unsupported and argumentative assertion that Coleman "began taking on debt" once Levin was "out" or that there is any connection between Levin's "departure" and the "taking on" of debt. In addition, the Court should reject this proposed finding because it is misleading and unsupported insofar as it implies that Coleman's debt was increased inappropriately.

Moreover, the Court should reject Morgan Stanley's misleading and selective citation to Coleman's long-term debt without providing the jury any context or explanation for those amounts.

NOT A CERTIFIED COPY

020249

49. Within a year, Coleman had increased its long-term debt to $291,175,000, and by 1995, long-term debt had risen to $355,257,000.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, the Court should reject this proposed finding because it is misleading and unsupported insofar as it implies that Coleman's debt was increased inappropriately.

Moreover, the Court should reject Morgan Stanley's misleading and selective citation to Coleman's long-term debt without providing the jury any context or explanation for those amounts.

50. Coleman saw the high-water mark of long-term debt in 1996, reporting $583,613,000 in debt — a 350 percent increase over 1993 amounts.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, the Court should reject this proposed finding because it is misleading and unsupported insofar as it implies that Coleman's debt was increased inappropriately.

Moreover, the Court should reject Morgan Stanley's misleading and selective citation to Coleman's long-term debt without providing the jury any context or explanation for those amounts.

51. By 1997, Coleman's long-term debt was $477,799,000, up over 250 percent from the $168,858,000 it was carrying in 1993.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. The Court

NOT A CERTIFIED COPY

020250

should reject this proposed finding because it is misleading and unsupported insofar as it implies that Coleman's debt was increased inappropriately.

Moreover, the Court should reject Morgan Stanley's misleading and selective citation to Coleman's long-term debt without providing the jury any context or explanation for those amounts.

C. A Debt-Ridden Coleman Underperforms in 1997

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, this heading is argumentative, misleading, and unsupported.

52. Despite having shown a net profit of $39 million in 1995, Coleman reported net sales of almost $42 million the following year in 1996.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Moreover, the Court should reject this finding because it is unsupported and substantially controverted. In 1996, Coleman's net sales were $291.7 million. *See* MS's Ex. 251 at 13 (cited by Morgan Stanley at ¶ 52).

53. Faced with poor performance by Coleman and its management team, Perelman tapped Jerry Levin to return to Coleman as chief executive officer in February 1997, with the objective of making Coleman "profitable and sustainable."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, taking partial quotations out of context, as in this proposed finding of fact, presents a particular danger of bias and unfair prejudice. This proposed finding's statement that Levin was hired because of "poor performance by Coleman and its management team" is

NOT A CERTIFIED COPY

020251

unsupported. Contrary to Morgan Stanley's assertion, Perelman never testified that Levin was asked to return to Coleman because of "poor performance by Coleman and its management team." *See* CPH App. 32 (Perelman Dep. at 248 (indicating that he thought Coleman could do better), *id.* at 248-49 (he hired Levin to drive the level of growth); CPH Supp. App. 190 (Clark Dep. at 70 ("It was [Levin's] objective to make it a profitable and sustainable, solid business.")).

54. Showing some signs of financial improvement, Coleman reported a net loss of $2,536,000 in 1997.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding because it is unsupported, misleading, and argumentative. Coleman was showing far more than "some signs of financial improvement," as Morgan Stanley itself recognized at the time. *See* CPH App. 119 (CPH Ex. 272 (October 9, 1997 Morgan Stanley analyst report expecting "a return to full earnings momentum in 1998")).

55. Despite the marginal improvements in 1997, Coleman's stock price fell from a high of $26 per share in 1996 to a high of only $19-1/8 in 1997. Indeed, during the fourth quarter of 1997, Coleman's common stock traded between only $16-13/16 and $12-3/8.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is unsupported, misleading, and argumentative. Coleman was showing far more than "marginal improvements in 1997," as Morgan Stanley itself acknowledged at the time. *See* CPH App. 119 (CPH Ex. 272 (October 9, 1997 Morgan Stanley analyst report)). Moreover, Coleman's stock price as quoted on the New York Stock Exchange

NOT A CERTIFIED COPY

020252

alone is not an accurate measure of the value of Coleman because it fails to take into account the fact that CPH owned 82% of the stock, and therefore the remaining stock held by the public was thinly traded. CPH App. 32 (Perelman Dep. at 260-261); CPH App. 10 (Gittis Dep. at 40, 68, 73, 76).

56. Karen Clark, vice president of finance for Coleman, testified that the restructuring of Coleman was not expected to be complete until 2002, and that the very earliest the restructuring could be completed was sometime in 2000.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

57. Upon learning of the impending transaction, Clark was "surprise[d]" that Coleman "was selling so quickly" and "selling at for what appeared to such a high premium."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, taking partial quotations out of context, as in this proposed finding of fact, presents a particular danger of bias and unfair prejudice. Clark made clear that the reason for her surprise was not the price for Coleman per se, but only the price in light of the stage of turnaround. CPH Supp. App. 190 (Clark Dep. at 60-61); *see also* CPH App. 119 (CPH Ex. 272 (October 9, 1997 Morgan Stanley analyst report expecting "a return to full earnings momentum in 1998")). Coleman's sale price reflected the value expected to result from the Coleman restructuring. CPH App. 10 (Gittis Dep. at 73, 76-77).

D. Perelman Leverages His Investment in Coleman to Issue $732 million in Debt and Pledges Coleman Shares as Collateral

NOT A CERTIFIED COPY

020253

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. The Court also should reject Morgan Stanley's misleading and improper references to Mr. Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

58. In May 1997, Perelman utilized his investment in Coleman stock to generate cash. Through Coleman Escrow Corporation (later renamed CLN Holdings Inc.), Perelman ultimately issued $732,035,000 in Senior Secured Priority Discount Notes due 2001 and Senior Secured First Priority Discount Notes due 2001 (collectively, "the Notes"). Perelman pledged his 44,067,520 shares of Coleman as collateral for the Notes.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. The proposed finding's references to Mr. Perelman are incorrect, misleading and improper. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference. In addition, Morgan Stanley cites no evidence to support its assertion that Perelman, as an individual, "utilized his investment . . . to generate cash." Similarly, Morgan Stanley's contention that "Perelman pledged his 44,067,520 shares of Coleman as collateral" is unsupported by the record and misleading because any shares that were pledged were not pledged by Perelman. Moreover, this proposed finding is misleading because the $732,035,000 figure is the face value of the notes at maturity, not the amount of proceeds raised by the sale. CPH Supp. App. 191 (Slotkin Dep. at 154-55).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020254

59. As of the end of 1997, CLN Holdings Inc. was carrying $980,447,000 of long-term debt (including the Notes) and had pledged all of its shares of Coleman stock to secure portions of that debt.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. As required by the Securities and Exchange Commission rules, CLN Holdings issued consolidated financial statements that included Coleman and Coleman Worldwide Corporation. Morgan Stanley erroneously lumps the debt of CLN Holdings Inc. ("CLN Holdings"), the holding company, with the debt of other holding companies and The Coleman Company, Inc. *See* CPH's Responses to ¶¶ 308-09, which are incorporated herein by reference. As of December 30, 1997, CLN Holdings had long-term debt of $503,171,000. *See* CPH Supp. App. 191 (Slotkin Dep. at 162-74, 210-19); CPH Supp. App. 192 (MS Ex. 166 at F-27, F-31, F-39-41); *see also* CPH Supp. App. 221 (12/17/98 Grinblatt Report at 12) (stating that the accreted value of CLN Holdings' debt at the time of the merger was $512 million).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

60. As of March 30, 1998, MAFCO had pledged all of the Coleman stock to support the holding companies' indebtedness and the indebtedness of MAFCO under two bank agreements, a revolving credit agreement, and a term credit agreement.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, Morgan Stanley's assertion that MAFCO had pledged "all of the Coleman stock" as of March 30, 1998 is controverted and unsupported. The materials cited by Morgan

NOT A CERTIFIED COPY

020255

Stanley do not support the assertion that MAFCO pledged any Coleman shares. Moreover, on March 30, 1998, Sunbeam acquired Coleman Worldwide Corporation. At the time of that transfer, there was no pledge of Coleman shares owned by Coleman Worldwide. *See also* CPH Supp. App. 222 (MS Ex. 239 at 17 n.1 (Coleman Rule 14-F Information Statement noting that "substantially all" of the Coleman stock was or "from time to time may be pledged")); CPH App. 97 (Drapkin Dep. at 92).

V. PERELMAN MEETS DUNLAP AND SEES THE "FUTURE"

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Further, this heading is argumentative.

61. In 1997, "Mr. Perelman and [Jerry Levin] made a trip to Boca Raton[, Florida] to meet with Bernie Marcus of Home Depot." While on that trip, Perelman met with Albert Dunlap, the CEO of Sunbeam.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Perelman was asked specifically about this alleged trip to Boca Raton with Levin and stated that he did not recall either the trip or this meeting. CPH App. 32 (Perelman Dep. at 277-78 (" Q. At least one of those meetings where you ran into Mr. Dunlap and I think you said likely in a social setting, were you in Florida with Mr. Levin to call on Home Depot? A. Not that I recall.")); CPH App. 32 (Perelman Dep. at 283 ("I don't recall having drinks with Dunlap in Florida.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020256

62. Perelman had met Dunlap on several occasions in 1997 and had spoken with Dunlap about "possibly coming on the board of Coleman."

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Perelman stated that he had met Dunlap "maybe three times" prior to the meeting with Dunlap at Perelman's house in Palm Beach on December 18, 1997, and that those meetings had been social in nature. CPH App. 32 (Perelman Dep. at 275, 274). There were no "meetings" between Perelman and Dunlap about Dunlap joining the board of Coleman. Instead, Perelman characterized those "maybe two at the most" discussions with Dunlap as "very casual" and "social conversations" not specifically about joining the Coleman board at times when Perelman "bumped into" Dunlap in either Florida or New York. CPH App. 32 (Perelman Dep. at 274-75).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

63. At the time, "Dunlap [was] currently the most admired and respected CEO in America" and "Wall Street's absolute darling." In addition to being "admired and respected," Dunlap was "a true great celebrity CEO at that point."

Although CPH does not contest the facts contained in this proposed finding, the Court should reject it on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

64. Indeed, Perelman himself contributed to Dunlap's burgeoning celebrity by providing a jacket blurb for Dunlap's 1996 bestseller, MEAN BUSINESS: HOW I SAVE BAD

NOT A CERTIFIED COPY

020257

COMPANIES AND MAKE GOOD COMPANIES GREAT, in which Perelman described Dunlap as "lively, funny and provocative" and encouraged readers to "find out what he's all about."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Perelman testified that he did not supply the "jacket blurb" for Dunlap's book. *See* CPH App. 32 (Perelman Dep. at 254-55). In addition, Morgan Stanley cites no evidence to support its assertion that this quote contributed anything to Dunlap's "burgeoning celebrity."

65. The morning after Perelman's meeting with Dunlap in Florida, while Perelman and Levin were driving to the airport to return to New York, Levin inquired about the meeting with Dunlap and was told "the guy [Dunlap] is doing a tremendous job [at Sunbeam] has extraordinary financial returns." Perelman further told Levin that "he couldn't understand why [Levin] couldn't produce profitability [at Coleman] like Dunlap was doing at Sunbeam."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020258

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Although Morgan Stanley attributes these quotes to Perelman, Perelman testified that he has no recollection of making these comments to Levin. CPH App. 32 (Perelman Dep. at 280, 284).

66. When Levin expressed skepticism about the financial returns Dunlap had reported to Perelman, Perelman immediately telephoned Dunlap from the car and personally requested that Dunlap fax a copy of Sunbeam's interim financial statements to New York for Levin to review.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. As stated in CPH's Response to Paragraph 65, Mr. Perelman does not recall these events. CPH App. 32 (Perelman Dep. at 280, 284). Moreover, Mr. Perelman does not recall calling Dunlap and requesting (or receiving) any Sunbeam financial statements — interim or otherwise. CPH App. 32 (Perelman Dep. at 278-79). Moreover, Morgan Stanley's assertion that the financial statements that Perelman obtained were Sunbeam's "interim" financial statements is wholly unsupported. Levin testified that he did not recall whether the documents he reviewed were Sunbeam's interim financial statements or something else. CPH App. 7 (Levin Dep. at 101).

67. A review of the Sunbeam interim financial statements that Dunlap provided at Perelman's request convinced Levin that Dunlap's plans for Sunbeam were "a business

NOT A CERTIFIED COPY

020259

model that I was unfamiliar with." Indeed, Levin - a man whose "forte" was turning around underperforming branded consumer products companies like Sunbeam — "did not understand how [Dunlap's] model would be successful over the long term."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. There is no evidence whatsoever that Sunbeam or Dunlap provided "interim" financial statements to Perelman or Levin. *See* CPH's Response to ¶ 66, which is incorporated herein by reference.

68. Levin informed Perelman that he, Levin, "did not know based on my own experiences how to do what [Dunlap] is doing" and that "[i]f . . . Perelman, want[ed] somebody to try [Dunlap's approach]" he should "find somebody else because this is not in my business skill base."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020260

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, Perelman does not recall Levin making these comments. *See* CPH App. 32 (Perelman Dep. at 283-87).

VI. In Late 1997 Michael Price Initiates Discussions Between Sunbeam And Perelman

CPH disagrees with the "facts" and characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, Morgan Stanley was the first to contact CPH about the possibility of a transaction with Sunbeam. *See* CPH's Responses to ¶¶ 71-72.

A. Michael Price Asks Perelman to Meet Dunlap

CPH disagrees with the "facts" and characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

69. Michael Price — chairman of Mutual Benefit Shares, a mutual fund which owned a "ton" of Sunbeam stock in 1997 — called Howard Gittis in late November or early December to discuss the potential acquisition of Coleman by Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court also should reject this finding because Morgan Stanley has produced no evidence that Mutual Benefit Shares owned a "ton" of Sunbeam stock or what amount would constitute a "ton" of stock. Further, the correct name of the mutual fund was Mutual Series Fund. CPH Supp. App. 184 (Schwartz Dep. at 103).

70. Price told Gittis that Dunlap had a significant interest in seeing Sunbeam acquire Coleman and would like to do the deal very quickly. Gittis told Price that

NOT A CERTIFIED COPY

020261

"Coleman is in the early stages of its turnaround, its stock market price is not going to reflect what [Perelman] consider[ed] to be its real intrinsic value," and indicated that any meeting regarding a Sunbeam-Coleman transaction should not occur for six months to a year.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

71. There was no mention of Morgan Stanley during the initial call between Gittis and Price. As Gittis put it, "[t]his was all Al."

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Contrary to Morgan Stanley's assertion, Morgan Stanley was discussed during Gittis's conversation with Price. Gittis testified that Price told him, "I will have Morgan Stanley, who was representing the company — call you." Gittis replied, "[D]on't have them call me, have them call Jim Maher. And, some time subsequent to that call, the call went in to Maher" from Morgan Stanley. CPH App. 10 (Gittis Dep. at 70). Moreover, prior to Price's call to Gittis, Morgan Stanley approached CPH representatives at least twice to discuss a Sunbeam-Coleman transaction. CPH App. 39 (Maher Dep. at 148); *see also* CPH Supp. App. 193 (MS Ex. 374).

NOT A CERTIFIED COPY

020262

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

72. As a result of Price's efforts, a meeting was arranged on December 18, 1997 at Perelman's mansion in Palm Beach. Present at the meeting were Dunlap, Price, Gittis, and Perelman.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is misleading and substantially controverted. Morgan Stanley is simply wrong in asserting that the December 18, 1997 meeting took place solely "[a]s a result of Price's efforts" and implying that Morgan Stanley played no role with respect to that meeting. Morgan Stanley laid the groundwork for this meeting. Morgan Stanley first approached CPH representatives during the summer of 1997 and again on November 6, 1997 to discuss a potential transaction with Sunbeam. *See* CPH App. 48 (Maher Dep. at 144-48); CPH Supp. App. 193 (MS Ex. 374). At those meetings, Morgan Stanley provided CPH with written materials concerning Sunbeam.

Morgan Stanley also was the primary impetus for the meeting held between Sunbeam and Coleman management on December 12, 1997. As Gittis testified: "Maher started these conversations with Morgan. Morgan expressed the view that the companies should be together, that Al [Dunlap] had accomplished a lot with Sunbeam already, more to do, but he could do . . . the same thing with Coleman that he had done with Sunbeam. Maher said great . . . so, somehow or other, a meeting got set up for sometime in mid-December, where the Coleman guys met with the Sunbeam people." CPH App. 10 (Gittis Dep. at 71).

NOT A CERTIFIED COPY

020263

Morgan Stanley also clearly had prepared Dunlap for the December 18, 1997 meeting in Palm Beach. Prior to the December, 18, 1997 meeting, Morgan Stanley met with Sunbeam representatives and provided them with an analysis of a potential Coleman-Sunbeam transaction, including an "overview of the Coleman Company, Inc.," a "transaction rationale," a "preliminary merger analysis," and information on Coleman's financial condition. CPH App. 135 (CPH Ex. 222). At the December 18, 1997 Palm Beach meeting, Dunlap repeatedly referred to the work Morgan Stanley had done in preparation for the meeting. For example, Dunlap told Perelman and Gittis that, "Morgan has looked all over, Morgan determined who should be our next acquisition. You are our favorite candidate. You are the only one we want to do this merger with. Morgan is prepared to finance it." CPH App. 10 (Gittis Dep. at 79). As one witness put it, it was Morgan Stanley who "broker[ed] the deal" and it was Morgan Stanley who "brought the parties together." CPH App. 40 (Duffy Dep. at 85).

Finally, the Court should reject Morgan Stanley's attempt to bias the jury by referring to Perelman's Florida home as a "mansion."

NOT A CERTIFIED COPY

020264

B. Perelman Prepares to Meet Dunlap and MAFCO Does Its Own Analysis of a Sunbeam-Coleman Transaction

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

73. On or about December 8 and 10, 1997, MAFCO prepared its own internal analyses of the financial consequences of a merger transaction with Sunbeam. Nesbitt, an analyst by trade, was the "primary person" at MAFCO who "conducted the numerical analyses of the [Sunbeam] transaction."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, Nesbitt relied upon analyst reports and other public sources of information that Morgan Stanley later vouched for by including them in the materials it prepared and provided CPH on February 23, 1998. *See* CPH App. 29 (CPH Ex. 9).

74. Nesbitt based his numerical assumptions for Coleman on information he received internally from Coleman. In addition, he turned to public sources for information about Sunbeam, like Sunbeam's Securities [sic] Exchange Commission filings and estimates created by financial analysts at Goldman Sachs, not Morgan Stanley.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020265

Furthermore, Nesbitt relied upon analyst reports and other public sources of information that Morgan Stanley later vouched for by including them in the materials it prepared and provided CPH on February 23, 1998. *See* CPH App. 29 (CPH Ex. 9).

75. Under Nesbitt's models, the potential transaction between Coleman and Sunbeam would consist of an all stock deal because Perelman wanted as much Sunbeam stock as he could get. Perelman did not want cash.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Nesbitt testified that his models analyzed an all-stock transaction because that is the only consideration Sunbeam offered. CPH App. 35 (Nesbitt Dep. at 287). CPH admits that Perelman wanted stock by the time the transaction was agreed upon, but that is because Perelman believed what Morgan Stanley told him about Sunbeam. CPH App. 10 (Gittis Dep. at 126). Perelman's preference for an all-stock transaction arose after Morgan Stanley persuaded him that Sunbeam had been turned around and was poised for future growth and that Sunbeam's stock was fairly valued. *Id.*

76. Nesbitt, upon consultation with Maher, placed the value of Coleman somewhere along a range of $22 to $30 per share. Nesbitt did not share any of his numerical analyses of the potential transaction with Morgan Stanley or Sunbeam.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Nesbitt was not "valuing" Coleman. Nesbitt was analyzing

NOT A CERTIFIED COPY

020266

whether the transaction was dilutive or accretive using different assumptions — e.g., differing levels of cost savings, assumed cost savings, and assumed, projected, and actual historical operating performance. CPH App. 35 (Nesbitt Dep. at 18). Moreover, Nesbitt testified that the type of analysis he performed in MS 104 was a quick "back of the envelope, how are we doing, how are they doing" analysis. CPH App. 35 (Nesbitt Dep. at 117).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

77. On December 11, 1997, Nesbitt prepared a spreadsheet reflecting Sunbeam's third quarter 1997 performance against the prior year's third quarter and estimating Sunbeam's fourth quarter 1997 performance against the prior year's fourth quarter. Nesbitt identified several "items that jumped out" about Sunbeam's quarter and noted these concerns in a footnote. Nesbitt identified that one "concern has been international pipeline filling."

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Nesbitt testified that what Morgan Stanley characterizes as Nesbitt's "concerns" reflect what analysts speculated might be happening at Sunbeam. CPH App. 35 (Nesbitt Dep. at 228 ("I am referring to comments in the analyst community that perhaps this was the case.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

78. Nesbitt also concluded that the "[u]ptick in [Sunbeam's] third quarter receivables supposedly relates to one half of the quarter sales being shipped in September."

NOT A CERTIFIED COPY

020267

He testified that the impetus for his footnote about the "uptick" in receivables was his awareness that financial analysts covering Sunbeam had reported that one half of Sunbeam's sales for the entire third quarter of 1997 arose in the final month of the quarter.

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Nesbitt testified that CPH Supp. App. 234 (MS Ex. 165) does not reflect conclusions that he himself reached about Sunbeam. As Nesbitt testified, CPH Supp. App. 234 (MS Ex. 165) merely summarized analyst speculation about what might be happening at Sunbeam. *See* CPH App. 35 (Nesbitt Dep. at 227-288 ("Q. So you knew, at least based on what you wrote in your memorandum, that in 1997 the uptick in, at least Sunbeam's receivables, was supposedly the result of one half of its third quarter sales of 1997 being recorded in the last month of the quarter, right? A. Not necessarily. . . . what I wrote at the time would suggest that I am referring to comments in the analyst community that perhaps this was the case.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

79. Nesbitt circulated his December 11, 1997 analysis of Sunbeam to the "operating management team" of Coleman - including Levin - for their "judgment as to whether this was an issue or not and to follow up." The "operating guys at Coleman" never expressed that the footnotes to his December 11, 1997 analysis were of any concern to them, and he did not recall a need for further investigation by MAFCO.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020268

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

80. On December 12, 1997, Perelman, Maher, and Gittis met with Gordon Rich of CSFB and Levin to discuss a potential transaction with Sunbeam. There were no Morgan Stanley representatives at the meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

81. That same day, Coleman executives (Levin, Shapiro, and Page) gave Sunbeam representatives (Russell Kersh, David Fannin, and Peter A. Langerman) a presentation on Coleman's business and the potential "synergies that could result from a combination of Sunbeam and Coleman." Morgan Stanley did not attend the meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Furthermore, the Court should reject this proposed finding because it is misleading insofar as it implies that Morgan Stanley was not involved in this meeting. To the contrary, Morgan Stanley arranged this meeting, spoke with CPH representatives in advance of the

NOT A CERTIFIED COPY

020269

meeting, met with Sunbeam representatives to prepare them for the meeting, and provided Sunbeam with written materials concerning Coleman in advance of the meeting. *See* CPH App. 30 (MS Ex. 75); CPH App. 135 (CPH Ex. 222); CPH App. 10 (Gittis Dep. at 71); CPH Supp. App. 237 (CPH's Supp. Resp. to Interrogs. No. 4 and No. 6 of MS & Co.'s 2nd Set of Interrogs.); s*ee also* CPH's Response to ¶ 72, which is incorporated herein by reference. Further, after the meeting, Fannin sent Morgan Stanley the list of ideas Coleman brought to the meeting. *See* MS Ex. 78 (cited in Morgan Stanley's Proposed Findings at ¶ 81).

82. As of the December 12, 1997 meeting, MAFCO had not received any documents from Morgan Stanley about a potential acquisition of Coleman by Sunbeam.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Maher testified that "[w]e were provided with documents by Morgan Stanley about Sunbeam prior to [December] 12th." CPH App. 39 (Maher Dep. at 189). Indeed, Morgan Stanley met with CPH representatives on at least two occasions prior to December 12, 1997 and provided CPH representatives with documents and information about Sunbeam at both of those meetings. CPH App. 39 (Maher Dep. at 148); *see also* CPH Supp. App. 193 (MS Ex. 374). Morgan Stanley also spoke with CPH representatives in the week leading up to the meeting. *See* CPH App. 10 (Gittis Dep. at 71); CPH Supp. App. 237 (CPH's Supp. Resp. to Interrogs. No. 4 and No. 6 of MS & Co.'s 2nd Set of Interrogs.).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

C. Perelman Does an Analysis of Dunlap's Employment Contract with Sunbeam

NOT A CERTIFIED COPY

020270

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Further, Morgan Stanley's assertion that Perelman conducted this analysis is unsupported and incorrect. CPH App. 28 (Nesbitt Dep. at 257-58).

83. On December 15, 1997, Nesbitt prepared a memorandum detailing the compensation structure of Dunlap's employment contract with Sunbeam and circulated this memorandum to Perelman, Gittis, and Maher.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

84. Nesbitt prepared the December 15, 1997 memorandum to gauge Dunlap's "economic incentives" and concluded that Dunlap's employment contract created "the incentive to increase the stock price" of Sunbeam. Perelman did not recall why the memo was prepared. Perelman, Gittis, and Maher agreed with Nesbitt's conclusion.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. There is no evidence to support Morgan Stanley's assertion that Perelman, Gittis, and Maher "agreed with Nesbitt's conclusion." Indeed, Perelman testified at his deposition that he did not believe he ever saw this memorandum before it was shown to him at his deposition in this case. CPH App. 32 (Perelman Dep. at 301). Similarly, Maher testified that he had no recollection of requesting, reading, or discussing this memorandum from Nesbitt. CPH App. 39 (Maher Dep. at 193-94). Gittis was never asked about this memorandum at his deposition.

NOT A CERTIFIED COPY

020271

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

D. CSFB's December 1997 Analysis of a Sunbeam-Coleman Merger Transaction

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

85. Gittis requested that CSFB prepare an analysis of analyst reports on Sunbeam in advance of the December 18, 1997 meeting between Perelman, Price, Gittis, and Dunlap.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

86. On December 16, 1997, representatives of MAFCO met with representatives of CSFB to discuss a possible transaction between Coleman and Sunbeam and to prepare for the December 18, 1997 meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

E. Dunlap and Perelman Meet at Perelman's Mansion in Palm Beach on December 18, 1997

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, the Court should not accept Morgan Stanley's attempt to bias the jury by referring to Perelman's house in Palm Beach as a "mansion."

NOT A CERTIFIED COPY

020272

87. At the behest of Michael Price, Perelman and Gittis met with Dunlap and Price at Perelman's Florida home on December 18, 1997 to discuss Sunbeam acquiring Coleman.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted. Morgan Stanley —not Price — laid the groundwork for this meeting. *See* CPH's Response to ¶ 72, which is incorporated herein by reference.

88. Morgan Stanley did not have any role in laying the groundwork for the December 18, 1997 meeting and did not attend the meeting.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Morgan Stanley, in fact, laid the groundwork and prepared Sunbeam representatives for the December 18, 1997 meeting. *See* CPH's Response to ¶ 72, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

89. At the December 18, 1997 meeting, Dunlap expressed to Perelman and Gittis that he wanted Sunbeam to acquire Coleman and believed that the "deal cri[ed] out to be done."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial

NOT A CERTIFIED COPY

020273

because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is misleading. In stating that the "deal cried out to be done," Dunlap was repeating to Perelman and Gittis what Morgan Stanley had said about a Coleman-Sunbeam transaction. *See* CPH App. 10 (Gittis Dep. at 79).

90. Gittis informed Dunlap that MAFCO had "asked CSFB to calculate out one thing for [him], which is what price can Sunbeam pay depending upon the amount of synergies that we would agree might be available. Without us being dilutive to Sunbeam. And that is 30 bucks a share. And I have zero interest in selling for less than that."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020274

91. Dunlap was visibly upset by Gittis' proposal and proceeded to shout and use scatological terms about the offer, Coleman, and Gittis. During the meeting, Dunlap told Gittis and Perelman that they didn't know what they were doing, and that he was a fabulous manager who would save Coleman. At one point, Gittis had to calm Dunlap down, warning him that he looked as if he would have a heart attack. Dunlap responded that he was fine and that it was he who would give them a heart attack. Perelman responded by laughing at Dunlap.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject this proposed finding because it mischaracterizes Perelman's testimony. Perelman did not "respond by laughing at Dunlap." Rather, Perelman laughed at what Dunlap said.

92. The December 18, 1997 meeting ended with Dunlap cursing and storming out of the meeting.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

93. Following Dunlap's blow-up at the December 18, 1997 meeting, the prospect of a transaction between Sunbeam and Coleman was, in the view of Perelman, "dead in the water."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is

NOT A CERTIFIED COPY

020275

particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

94. Levin learned of the outcome of the December 18 meeting and concluded the deal was dead. He had no further involvement in the negotiations that he can recall until February 20, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted. Levin testified only that he began participating in negotiations "in earnest" on or about February 20, 1998. CPH App. 7 (Levin Dep. at 30). Other testimony and documents establish that Levin was involved in the transaction between December 18, 1997 and February 20, 1998. For example, Levin participated in a telephone call with Morgan Stanley on February 3, 1998 and a meeting on January 29, 1998. *See* CPH App. 123 (CPH Ex. 169); *see also* CPH App. 7 (Levin Dep. at 168-69; 170-71); CPH App. 30 (MS Ex. 75).

VII. Perelman And Sunbeam Restart Discussions About Coleman

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Furthermore, this heading is misleading because it was Morgan Stanley — not Sunbeam — that revived discussions with Coleman.

A. Perelman Rejects Sunbeam's January 23, 1998 Offer

NOT A CERTIFIED COPY

020276

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

95. In late December, and after the meeting in Palm Beach at Perelman's mansion, Price contacted Gittis to apologize for Dunlap's behavior at Perelman's home. Price also told Gittis that Sunbeam would be willing to consider a transaction valued as high as $25 per Coleman share, but Gittis indicated that such a proposal would not be of interest to MAFCO.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should not accept Morgan Stanley's attempt to bias the jury by referring to Perelman's home as a "mansion."

96. In mid to late January 1998, William Reid of Morgan Stanley called Perelman and told him that Sunbeam was still interested in a transaction with Coleman.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

97. Perelman could not recall "anyone at either Coleman or MacAndrews & Forbes having any communications with Morgan Stanley about a Coleman-Sunbeam transaction" prior to Reid's telephone call. The telephone call from Reid is the only direct conversation Perelman can recall ever having with any Morgan Stanley representative in

NOT A CERTIFIED COPY

020277

connection with the Sunbeam-Coleman transaction before the closing of the transaction on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted. CPH representatives had numerous communications with Morgan Stanley about a Sunbeam-Coleman transaction both before and after Reid's telephone call. *See* CPH App. 123 (CPH Ex. 169); CPH App. 30 (MS Ex. 75); CPH Supp. App. 193 (MS Ex. 374); CPH App. 29 (CPH Ex. 9); CPH App. 138 (CPH Ex. 379); CPH Supp. App. 194 (MS Ex. 80); CPH Supp. App. 195 (MS Ex. 81); CPH Supp. App. 196 (MS Ex. 82); CPH Supp. App. 197 (MS Ex. 83); CPH Supp. App. 198 (MS Ex. 175); CPH Supp. App. 199 (MS Ex. 182); CPH Supp. App. 200 (MS Ex. 188); CPH Supp. App. 201 (MS Ex. 189); CPH Supp. App. 202 (MS Ex. 340)). For example,

> Prior to November 6, 1997: Representatives of Morgan Stanley, including Robert Kitts, met with representatives of CPH, including James Maher, to discuss a potential transaction involving Sunbeam.
>
> November 6, 1997: Representatives of Morgan Stanley, including Messrs. Reid, Kitts, and Fuchs, met with representative of CPH, including James Maher, to discuss a potential transaction involving Sunbeam. At that time, Morgan Stanley provided Maher with written materials concerning Sunbeam.
>
> December 11, 1997: Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

NOT A CERTIFIED COPY

020278

December 15, 1997: Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

December 16, 1997: Representatives of Morgan Stanley discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

January 27, 1998: Representatives of Morgan Stanley, including William Reid, discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH.

January 29, 1998: Representatives of Morgan Stanley, including Messrs. Stynes, Fuchs, and Chang discussed a potential transaction involving Sunbeam and Coleman with representatives of CPH and Coleman.

February 3, 1998: Representatives of Morgan Stanley, including Alexandre Fuchs, discussed a potential transaction involving Sunbeam and Coleman with Jerry Levin.

February 23, 1998: At a meeting in Morgan Stanley's offices, Morgan Stanley provided CPH representatives with Morgan Stanley's "Discussion Materials" concerning Sunbeam and Sunbeam Long Range Strategic Plan.

On or around March 16, 1998: Morgan Stanley provided CPH representatives with a copy of the "red herring" for the offering of Sunbeam's subordinated debentures.

March 18, 1998: William Nesbitt attended Morgan Stanley's road show presentation for the offering of Sunbeam's subordinated debentures and was provided a hard copy of Morgan Stanley's presentation materials.

Following the issuance of the March 19, 1998 press release: Representatives of CPH spoke with representatives of Morgan Stanley concerning the information contained in Sunbeam's March 19, 1998 press release and received assurances concerning Sunbeam's condition and prospects.

On or around March 20, 1998: Morgan Stanley provided CPH representatives with a copy of the final offering memorandum for the offering of Sunbeam's subordinated debentures.

On or around March 25, 1998: CPH received a copy of the March 25, 1998 Press Release concerning the closing of the Subordinated Debenture Offering.

See CPH Supp. App. 237 (CPH Supp. Resp. to MS & Co.'s 2nd Set of Interrogs.). Indeed, it was Morgan Stanley who "broker[ed] the deal" and it was Morgan Stanley who "brought the parties together." CPH App. 40 (Duffy Dep. at 85).

98. Gittis testified that Reid's call was not improper: "[I]t was perfectly appropriate for [Morgan Stanley] to call Ronald or to call me, or to have some of the

NOT A CERTIFIED COPY

020279

younger guys call Maher. There was no problem at all with that. And they were trying to get a deal done. It is their job."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it is misleading and controverted. CPH admits that Mr. Reid's call was not viewed as improper at the time. In retrospect, however, it is clear that Morgan Stanley was trading on Reid's relationship with CPH representatives to restart the discussions with Coleman and CPH and that Reid misrepresented Sunbeam during the course of the call. *See* CPH App. 32 (Perelman Dep. at 394-95).

99. Perelman believed that there was more "upside" in taking Sunbeam stock rather than cash.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020280

Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted insofar as it seeks to imply that Perelman held this view at the outset of the negotiations. Although Perelman may have believed that there was more "upside" in taking Sunbeam stock rather than cash, Perelman formed this opinion because he "believed in what Morgan Stanley told him about Sunbeam." CPH App. 10 (Gittis Dep. at 126). Perelman's preference for an all-stock transaction arose after Morgan Stanley misrepresented that Sunbeam's stock was fairly valued and that Sunbeam had been turned around and was poised for future growth. *Id.*

100. Perelman therefore instructed his negotiators to negotiate a transaction structure with Sunbeam that provided consideration in the form of Sunbeam stock, and to seek a deal where Sunbeam stock was 100 percent of the consideration that MAFCO would receive. Indeed, Perelman would have taken 100 percent stock if he could have done so without delaying the deal.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted insofar as it implies that Perelman "instructed his negotiators" at the outset of negotiations to seek consideration consisting of all Sunbeam stock. Perelman testified that he rejected Dunlap's offer to buy Coleman in a 100% stock deal at the December 18, 1997 meeting in Florida. CPH App. 34 (Perelman Dep. at 341-42); *see also* CPH App. 28 (Nesbitt Dep. at 287 (Sunbeam originally proposed an all-stock deal in December)). Perelman's preference for an all-stock transaction arose after Morgan Stanley misrepresented that Sunbeam's stock was fairly valued and that Sunbeam had been turned around and was poised for

NOT A CERTIFIED COPY

020281

future growth. CPH App. 10 (Gittis Dep. at 126). Moreover, contrary to Morgan Stanley's implication, Sunbeam and Morgan Stanley also were very opposed to anything that might "delay[] the deal." *See* CPH App. 10 (Gittis Dep. at 98-99).

101. On January 23, 1998, following Reid's telephone call, representatives from Morgan Stanley met with Nesbitt to discuss a potential transaction between Coleman and Sunbeam. At the meeting, Morgan Stanley gave Nesbitt a document (MS 80) entitled "Laser Corporation Key Assumptions." Nesbitt testified that he did not view anything in the document provided by Morgan Stanley on January 23, 1998 to be a "misrepresentation of a fact." Morgan Stanley conveyed Sunbeam's offer to purchase Coleman in exchange for Sunbeam stock. Nesbitt listened to the offer, but he had no authority to negotiate a transaction. Nobody within MAFCO had authority to negotiate a particular price for the transaction unless Perelman had approved that price.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. First, Morgan Stanley has misstated Nesbitt's testimony. Nesbitt specifically testified that MS Ex. 80 contained misrepresentations. CPH App. 28 (Nesbitt Dep. 305-06). Moreover, Nesbitt further testified that he could not believe based on the facts and Morgan Stanley's involvement with Sunbeam that Morgan Stanley did not know that Sunbeam "was a house of cards." CPH App. 28 (Nesbitt Dep. at 414-15); *see also* CPH Supp. App. 235 (CPH's Supp. Resp. to MS & Co.'s 1st Set of Interrogs.).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020282

102. Nesbitt understood that the projections Morgan Stanley presented regarding Sunbeam's EBITDA came from I/B/E/S ("Institutional Brokers Estimates Service"), a reporting service that provides combined analyst projections. I/B/E/S estimates are "[u]niversally used in the investment banking profession."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This Court also should reject this proposed finding because it mischaracterizes what I/B/E/S does. I/B/E/S merely aggregates information disseminated by others. *See* CPH App. 28 (Nesbitt Dep. at 303).

Furthermore, Morgan Stanley gave credibility to and vouched for these figures by incorporating them and relying on them in its models. *See* CPH App. 114 (Perella Dep. at 125-26); CPH App. 115 (Porat Dep. at 297-98); CPH App. 10 (Gittis Dep. at 152-53).

103. Although he was the head negotiator for MAFCO, Maher did not have the power to approve any deal on behalf of MAFCO regarding the potential transaction. Maher informed Morgan Stanley that the January 23, 1998 offer was unacceptable.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

104. Shortly after the January 23, 1998 meeting, Nesbitt created two additional spreadsheets analyzing the financial consequences of a transaction with Sunbeam. These

NOT A CERTIFIED COPY

020283

spreadsheets, MS 106 and 107, were not based on information provided by Morgan Stanley at the January 23, 1998 meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. MAFCO Retains Wachtell to Represent Coleman and to Prepare Confidentiality Agreements

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. This heading is particularly misleading in that it implies there was more than one confidentiality agreement, which there was not. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

105. On January 28, 1998, Barry Schwartz, MAFCO's executive vice president and general counsel, retained Wachtell to represent MAFCO, CPH, and Coleman in the discussions with Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. *See* CPH's Response to ¶ 37, which is incorporated herein by reference.

106. On January 29, 1998, Schwartz called Wachtell and informed them that a form of the "confidentiality agreement" to be proposed to Sunbeam would be faxed to them for their review. On the same day, Joram Salig, an in-house MAFCO attorney, prepared a

NOT A CERTIFIED COPY

020284

confidentiality agreement and faxed it to Paul E. Shapiro, then general counsel of Coleman, and Wachtell.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

107. According to Maher (and others), it was customary for "parties in a transaction being negotiated such as the Coleman-Sunbeam transaction to exchange confidentiality agreements."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this Court should reject this proposed finding because it is misleading, would confuse a jury, and is not relevant. Whether an "exchange" of confidentiality agreements is "customary" is not relevant to whether Coleman executed a confidentiality agreement in the form of CPH Supp. App. 204 (MS Ex. 134). There is no evidence that CPH or Coleman ever did so. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020285

108. To facilitate the exchange of information between CPH and Sunbeam, on or about February 4, 1998, Shapiro signed and sent a confidentiality agreement to Sunbeam. David C. Fannin, the executive vice president and general counsel of Sunbeam, executed the confidentiality agreement as of February 4, 1998. The confidentiality agreement is specifically referenced in the parties' merger agreements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding because it is misleading and inaccurate. There is no evidence that the purpose of the February 4, 1998 agreement was to "facilitate the exchange of information between CPH and Sunbeam." Coleman — not CPH — was the counterparty to the February 4, 1998 agreement. *See* CPH App. 203 (MS Ex. 133).

109. Schwartz, who was ultimately responsible for all in-house legal matters for MAFCO and its holding companies, agrees that the term "financial advisor" in the February 4, 1998 confidentiality agreement includes Coleman's investment banking firm, CSFB.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

110. The February 4, 1998 confidentiality agreement contains a provision whereby Sunbeam "understand[s] that, except as may otherwise be agreed in writing,

NOT A CERTIFIED COPY

020286

neither the Company [Coleman], nor its Representatives, make any representation or warranty as to the accuracy or completeness of the Evaluation Material."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

The Court should also reject this proposed finding because it is not relevant to CPH's claims against Morgan Stanley and would mislead and confuse the jury.

111. On or about February 23, 1998, Sunbeam and Coleman entered into a second confidentiality agreement. This confidentiality agreement complemented the February 4, 1998 confidentiality agreement. The confidentiality agreement is specifically referenced in the parties' merger agreements.

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

Morgan Stanley has produced no evidence that Coleman entered into a confidential agreement on February 23, 1998 in the form of CPH Supp. App. 204 (MS Ex. 134) — or, indeed, proving that Coleman entered into a second confidentiality agreement at all. The draft "agreement" that Sunbeam sent Coleman on February 23, 1998 identified precisely what was required to execute the document: "If you are in agreement with the foregoing, please sign two copies of this Agreement and return one to the undersigned, whereupon this Agreement will constitute the agreement between the Company and you with respect to the subject matter hereof.

NOT A CERTIFIED COPY

020287

This Agreement may be executed and delivered, including by facsimile transmission, in one or more counterparts, all of which together will constitute one and the same agreement." CPH Supp. App. 204 (MS Ex. 134 at 6-7). There is no version of MS Ex. 134 that has been executed by Coleman. *Id.* at 7 (showing a blank signature line under the words "Confirmed and agreed to"); *see also* CPH App. 47 (Shapiro Dep. at 116, 119-20). Indeed, there is no version of MS Ex. 134 that has been executed by Sunbeam. CPH Supp. App. 204 (MS Ex. 134 at 4, 7). *See Hinote v. Brigman*, 33 So. 303, 305-06 (Fla. 1902) (where a "party neither had nor signified such an intention to close the contract until it was fully expressed in a written instrument and attested by signatures, then he will not be bound until the signatures are affixed"); *Strong & Trowbridge Co. v. H. Baars & Co.*, 54 So. 92, 95 (Fla. 1910); 11 FLA. JUR. *Contracts* § 100 (2004).

By contrast, the executed February 4, 1998 Confidentiality Agreement, which bound Sunbeam to treat Coleman's information with confidence, was executed by both Sunbeam and Coleman and did not contain any blanks with missing information. CPH Supp. App. 203 (MS Ex. 133 at 1-8); *see also* CPH App. 30 (MS Ex. 75) (chronology reflecting the execution of the February 4, 1998, Confidentiality Agreement, but not reflecting the execution of another confidentiality agreement on February 23, 1998 or any other date).

In any event, the draft agreement would not be binding on CPH -- because Coleman, not CPH -- is identified as the counter-party to both the executed February 4, 1998 agreement and the draft February 23, 1998 agreement. CPH Supp. App. 204 (MS Ex. 134); CPH Supp. App. 203 (MS Ex. 133).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

882020

112. Schwartz, executive vice president and general counsel of MAFCO, testified that the Merger Agreement that he signed on behalf of CPH and CLN Holdings Inc. "referenced two confidentiality agreements."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

113. Schwartz testified that there was nothing unusual about the "various terms and conditions in these confidentiality agreements."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that there was more than one confidentiality agreement, which there was not. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

114. Pursuant to these Confidentiality Agreements, CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including Morgan Stanley, would not have any liability to CPH by virtue of CPH's use of the information supplied to it by

NOT A CERTIFIED COPY

020289

Sunbeam and its representatives, including Morgan Stanley, while the parties were negotiating Sunbeam's purchase of Coleman.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. First, this proposed finding is misleading and substantially controverted insofar as it implies that there was more than one confidentiality agreement, which there was not. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

Second, the executed February 4, 1998 agreement contains no agreement by Coleman or CPH that Sunbeam and Morgan Stanley "would not have any liability to CPH by virtue of CPH's use of the information supplied to it by Sunbeam and its representatives, including Morgan Stanley, while the parties were negotiating Sunbeam's purchase of Coleman." CPH App. 203 (MS Ex. 133).

Third, even if the February 23, 1998 draft agreement was executed, which it was not, this "non-reliance" clause would have no effect on CPH's claims against Morgan Stanley. Among other things, CPH was not even contemplated as a party to the February 23 draft document. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

Finally, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

115. In the Confidentiality Agreements, CPH also agreed that Sunbeam and its representatives, including Morgan Stanley, did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at

NOT A CERTIFIED COPY

020290

this stage of the proceedings. First, this proposed finding is misleading and substantially controverted insofar as it implies that there was more than one confidentiality agreement, which there was not. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

Second, the executed February 4, 1998 agreement contains no agreement by Coleman or CPH that Sunbeam and Morgan Stanley "did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH [or Coleman]." CPH App. 203 (MS Ex. 133).

Third, even if the February 23, 1998 draft agreement was executed, which it was not, this "non-reliance" clause would have no effect on CPH's claims against Morgan Stanley. Among other things, CPH was not even contemplated as a party to the February 23 draft document. *See* CPH's Response to ¶ 111, which is incorporated herein by reference.

Finally, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

C. Sunbeam Stock Tumbles after It Announces Lower than Projected Profits for the 4th Quarter of 1997

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

116. On January 29, 1998, an article appeared in the Wall Street Journal entitled, "Sunbeam Posts Profits Below Forecast, A Stumble That Sends Stock Down 9.5%." MAFCO was aware of the article.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020291

Furthermore, the Court should reject this proposed finding because it is misleading. Following Sunbeam's announcement that its fourth quarter profits would be lower than expected, analysts continued their bullish statements about Sunbeam. *See, e.g.,* CPH Supp. App. 205 (CPH Ex. 388 (Bear Stearns analyst report giving Sunbeam a "buy" recommendation and noting room for earnings growth)); CPH Supp. App. 206 (MS Ex. 144 (Merrill Lynch analyst report giving Sunbeam a "buy" rating and noting that it considered Sunbeam "solid")); CPH Supp. App. 207 (CPH Ex. 389 (Goldman Sachs analyst report recommending Sunbeam and noting a "great trading opportunity" and that "targeted sales growth and operating margins are real")); CPH Supp. App. 208 (MS Ex. 202 (CIBC Oppenheimer analyst report giving Sunbeam a "strong buy" recommendation and noting that its "fundamentals [were] strong and balance sheet improved")); CPH Supp. App. 209 (MS Ex. 138 (Paine Webber analyst report giving Sunbeam a "buy" recommendation and noting its "solid momentum")).

117. MAFCO continued to receive news clippings regarding the performance of various companies, including Sunbeam, in January 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

118. Following the January 29, 1998 Wall Street Journal article, Nesbitt, the primary internal analyst for MAFCO, did not contact any financial analysts who followed Sunbeam. Nesbitt did, however, review analyst reports revised in the wake of Sunbeam's announcement of fourth quarter 1997 results. He also participated in a conference call conducted by Dunlap.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020292

Furthermore, the Court should reject this proposed finding because it is misleading. Following Sunbeam's announcement that its fourth quarter profits would be lower than expected, analysts continued their bullish statements about Sunbeam. *See* CPH's Response to ¶ 116, which is incorporated herein by reference.

In addition, this proposed finding is unsupported and substantially controverted insofar as it implies that Nesbitt should have contacted analysts in the wake of Sunbeam's fourth quarter 1997 earnings announcement. To the contrary, it would have been inappropriate and possibly illegal for Nesbitt to contact analysts to discuss Sunbeam before the transaction was announced because doing so would have revealed non-public information to the analyst community, which was anticipating some type of transaction involving Sunbeam. CPH App. 8 (Levin Dep. at 350-351); CPH App. 28 (Nesbitt Dep. at 133).

119. Andrew Shore, an analyst at PaineWebber and acquaintance of Levin, covered Sunbeam. Shore reported on or about January 29, 1998 that "Sunbeam has been and continues to be a very risky story"; that Sunbeam's "BPS growth target of 40 percent in 1998 is very aggressive and comes in the face of a difficult economic climate in Asia and very solid growth in [the second half of 1997]"; and that Sunbeam "is employing a risky strategy to capture a larger share of the grill market."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of

NOT A CERTIFIED COPY

020293

having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Furthermore, the Court should reject this proposed finding because Morgan Stanley's selective quotation from the report renders the proposed finding misleading. Shore's report also contains very positive comments about Sunbeam, which Morgan Stanley ignores. For example, Shore's overall conclusion is that Sunbeam was a "good buy." Shore also stated: "Sticking with our revised 'low-end' outlook, our 12-18 month price target is $50, representing 20x the low-end of our 1999 estimate." CPH Supp. App. 210 (MS Ex. 204). Taking partial quotations out of context, as in this proposed finding of fact, presents a particular danger of bias and unfair prejudice.

120. On February 6, 1998, Shore issued another report that noted Sunbeam's "aggressive balance sheet management" and "high inventory and receivable levels" and stated that "some 'warning signs' persist."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Furthermore, the Court should reject this proposed finding because Morgan Stanley's selective quotation from the document renders the proposed finding misleading. Shore's February 6, 1998 report contains very positive comments about Sunbeam, which Morgan Stanley

NOT A CERTIFIED COPY

020294

ignores. Shore again reached the overall conclusion in his February 6, 1998 report that Sunbeam was a "good buy." Shore also stated: "Sticking with our revised 'low-end' outlook, our 12-18 month price target is $50, representing 20x the low-end of our 1999 estimate." CPH Supp. App. 210 (MS Ex. 204). Taking partial quotations out of context, as in this proposed finding of fact, presents a particular danger of bias and unfair prejudice.

121. Perelman was aware that PaineWebber was reporting "warning signs" at Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Perelman testified that he had not seen Shore's report nor had he heard what Shore reported about Sunbeam at the time. *See* CPH App. 32 (Perelman Dep. at 448-51). In the specific passage of Perelman's testimony herein cited by Morgan Stanley, Perelman was asked to look at MS Ex. 138: "[I]f you look at the bottom of that same paragraph, at the very bottom, that there were warning signs, do you see that?" Perelman replied, "Yes." Perelman was testifying only that he saw what the report said, but he never testified that he had read the report or was aware of the report's contents at the time. CPH App. 32 (Perelman Dep. at 448-51).

NOT A CERTIFIED COPY

020295

Moreover, Morgan Stanley has taken the quotes from Shore's report out of context and neglected to mention that Shore reached the overall conclusion in the same report that Sunbeam was a "good buy." *See* CPH's Response to ¶ 120, which is incorporated herein by reference.

D. Perelman and Sunbeam Agree to Defer Due Diligence until Sunbeam Makes an Acceptable Offer

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Contrary to the heading, the parties did not "agree to defer" due diligence. CPH had been conducting due diligence since December 1997. In fact, CPH and CSFB reviewed publicly available information concerning Sunbeam, analyzed the transaction using varying assumptions, and conferred extensively with Morgan Stanley about Sunbeam and the potential transaction. *See* CPH's Response to ¶ 122, which is incorporated herein by reference.

122. On January 29, 1998, representatives from Sunbeam, Coleman, MAFCO, Morgan Stanley, and CSFB met in New York to discuss potential synergies that would result from a combination of Coleman and Sunbeam and to set a time frame for due diligence. This was the first meeting between representatives of Sunbeam and Coleman since December 12, 1997.

The Court should reject this proposed finding because it is misleading and substantially controverted insofar as Morgan Stanley implies the participants at the January 29, 1998 meeting discussed a time frame to conduct the only due diligence to be conducted on the transaction. Both CPH and CSFB had been conducting due diligence since December 1997. *See* CPH App. 41, 42 (MS Ex. 104 & 105); *see also* CPH App. 48 (Maher Dep. at 237 ("[T]he specific due diligence relating to interaction between representatives of Sunbeam and Coleman would take place after an acceptable proposal was on the table. It doesn't mean that Levin wasn't doing

NOT A CERTIFIED COPY

020296

work, due diligence work. It doesn't mean that Nesbitt wasn't doing it, it doesn't mean that First Boston wasn't doing it in the interim.")).

For example, beginning in December 1997, CPH representatives prepared financial analyses of the merger, *see, e.g.,* CPH App. 35 (Nesbitt Dep. at 117); CPH App. 41 (MS Ex. 104); CPH App. 42 (MS Ex. 105); CPH App. 43 (MS Ex. 106); CPH App. 44 (MS Ex. 107). As Sunbeam was a public company, CPH representatives and analysts at CSFB, CPH's investment advisor, reviewed publicly available information on Sunbeam, including Sunbeam's 10-Q for the period ending September 1997, Sunbeam's 1996 Form 10-K, and various research and analyst reports, CPH App. 45 (MS Ex. 76); CPH App. 47 (Shapiro Dep. at 131); CPH App. 48 (Maher Dep. at 415); CPH App. 49 (Geller Dep. at 31); CPH App. 40 (Duffy Dep. at 32); CPH App. 7 (Levin Dep. at 69, 100-02, 159-62). CPH representatives also made numerous inquiries of Morgan Stanley and Sunbeam in early 1998 regarding Sunbeam's financial status since the end of the 1997 calendar year, and what Sunbeam's future "growth plan" looked like, *see* CPH App. 47 (Shapiro Dep. at 143). These inquiries culminated in the series of due diligence meetings held on February 23, 1998. CPH App. 47 (Shapiro Dep. at 134); CPH App. 28 (Nesbitt Dep. at 366-68). At those meetings, Morgan Stanley and Sunbeam presented CPH and CSFB with oral and written information concerning Sunbeam's business, Sunbeam's first quarter 1998 and full year sales and earnings expectations, and Sunbeam's position for future growth. CPH App. 40 (Duffy Dep. at 134, 146-49); CPH App. 52 (MS Ex. 84) ("Sunbeam's Long Range Strategic Plan"); CPH Supp. App. 212 (MS Ex. 85) ("Sunbeam Discussion Materials"). Following the February 23 meeting, CPH representatives conducted additional due-diligence, including discussions with Sunbeam on the company's "future operations," CPH App. 48 (Maher Dep. at 351), and inquiries about outstanding litigation, environmental matters, and business operations.

NOT A CERTIFIED COPY

020297

CPH App. 50 (Shapiro Dep. at 298-99). Additionally, on February 24, CSFB met again with Sunbeam senior management to discuss Sunbeam's strategic plan and 1997 results. CPH App. 125 (MS Ex. 230). After the merger agreements were signed, CPH continued to conduct due diligence. For example, CPH obtained and reviewed copies of Sunbeam's 1997 Form 10-K, the March 16, 1998 preliminary offering memorandum, CPH Supp. App. 223, and the March 19, 1998 final offering memorandum, CPH Supp. App. 119 (MS Ex. 166); *see also* CPH App. 10 (Gittis Dep. at 171). CPH also attended Morgan Stanley's debenture offering "road show" and received a copy of the presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484); CPH App. 10 (Gittis Dep. at 105-06). Upon receipt of the March 19, 1998 press release, *see* CPH App. 79 (CPH Ex. 14), CPH representatives reviewed the release and discussed its contents. CPH App. 50 (Shapiro Dep. 333-34). Following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release and canvassed the analyst community for reaction. CPH App. 28 (Nesbitt Dep. at 433).

Likewise, CSFB began conducting its due diligence on the Sunbeam transaction immediately after CSFB was retained by Coleman in December 1997. CPH App. 40 (Duffy Dep. at 271-72). CSFB prepared a report on the valuation of Coleman. CPH App. 40 (Duffy Dep. at 272-73); CPH App. 46 (CPH Ex. 236). CSFB studied public filings and analyst reports on Sunbeam. CPH App. 40 (Duffy Dep. at 294). CSFB prepared voluminous materials for Coleman's review, including Sunbeam's 10-Q for the period ending September 1997, Sunbeam's 1996 10-K, and numerous financial analyst research reports. CPH App. 45 (MS Ex. 76). CSFB participated in several due diligence meetings with Morgan Stanley and Sunbeam. CPH App. 40 (Duffy Dep. at 61); CPH App. 40 (Duffy Dep. at 134). CSFB made presentations to the Coleman Board of Directors on February 25th and 27th that analyzed the proposed transaction.

NOT A CERTIFIED COPY

020298

CPH App. 53 (CPH Ex. 239); CPH App. 54 (MS Ex. 112); CPH App. 55 (MS Ex. 88); CPH App. 56 (MS Ex. 113). Based on its due diligence and the analysis it conducted, CSFB issued an opinion to the Coleman Board that the transaction was fair from a financial point of view. CPH App. 57 (MS Ex. 120).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

123. At the January 29, 1998 meeting, the parties agreed that "the specific due diligence relating to interaction between representatives of Sunbeam and Coleman would take place after an acceptable proposal was on the table."

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. In the portion of the Maher deposition that Morgan Stanley cites, Maher was asked, "So the due diligence was to proceed once Sunbeam made an acceptable proposal; is that correct?" Maher replied, "Not necessarily," and reiterated that due diligence was ongoing and that the only due diligence discussion that was to take place after a proposal was on the table was the due diligence related to the mechanics of combining Coleman and Sunbeam and how their management would interact with one another after the merger. CPH App. 48 (Maher Dep. at 237); CPH App. 45 (MS Ex. 76); CPH App. 46 (CPH Ex. 236).

Moreover, CPH and CSFB conducted extensive due diligence beginning in December 1997. *See* CPH's Response to ¶ 122, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

E. Perelman Rejects Sunbeam's February 6, 1998 Proposal

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley

NOT A CERTIFIED COPY

020299

has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

124. On February 6, 1998, James Stynes, Alexandre Fuchs, Tyrone Chang, and Robert Kitts of Morgan Stanley met with Maher, Nesbitt, and Gordon Rich and Robert Duffy of CSFB. At that meeting, the Morgan Stanley representatives made a presentation reflecting a proposed transaction in which Coleman would be acquired by Sunbeam for consideration of .6017 Sunbeam shares per Coleman share (which was approximately $22 per share) plus warrants that Morgan Stanley valued at $4 per share.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

125. Nesbitt does not believe that there were any misrepresentations in the document (MS 81) Morgan Stanley gave Nesbitt as part of its presentation at the February 6, 1998 meeting.

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Moreover, it is not material whether Nesbitt believed that Morgan Stanley had intended to misrepresent any facts in MS Ex. 81. There is ample evidence that Morgan Stanley did so. Morgan Stanley assisted Sunbeam in falsely portraying Sunbeam as a "turnaround" success at this and other meetings with CPH in December 1997 and February 1998. CPH App. 32 (Perelman Dep. at 196-99, 273-74, 308); CPH App. 7 (Levin Dep. at 182-87); CPH App. 30 (MS Ex. 75 at CPH 1401528-31); CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238); CPH App. 38 (CPH Ex. 316). Nesbitt himself testified that he could not believe based on the facts and Morgan Stanley's involvement with Sunbeam that

NOT A CERTIFIED COPY

020300

Morgan Stanley did not know that Sunbeam "was a house of cards." CPH App. 28 (Nesbitt Dep. at 414-15). *See also* CPH Supp. App. 235 (CPH Supp. Resp. to MS & Co. 1st Set of Interrogs.).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

126. Maher told Morgan Stanley that MAFCO would not be prepared to support the proposed transaction and "advised Morgan Stanley that only an *all-stock transaction* that valued Coleman stock at $30 a share or an amount slightly lower than $30 a share if the transaction involved cash and stock would be of interest."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the emphasis supplied by Morgan Stanley in this proposed finding is misleading and unclear. Insofar as Morgan Stanley is suggesting that Maher's February 6, 1998 proposal reflected a preference for an all-stock transaction over a transaction involving cash consideration, that suggestion is unsupported by the citations.

NOT A CERTIFIED COPY

020301

127. Also at the February 6, 1998 meeting, James Maher suggested that, as part of an eventual Sunbeam-Coleman transaction, Sunbeam assume Coleman Worldwide's and CLN Holdings' indebtedness, which was approximately $519,000,000 as of December 31, 1997.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is incorrect and unsupported insofar as it asserts that Coleman Worldwide's and CLN Holdings' indebtedness was approximately $519,000,000 as of December 31, 1997. CPH Supp. App. 221 (Grinblatt Rep., 12/17/04, at 12). *See also* CPH's Responses to ¶¶ 59, 308-09, which are incorporated herein by reference.

VIII. Perelman Agrees To Sell Coleman To Sunbeam For $27.50 Per Share

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its heading in its numbered paragraphs or asked this Court to enter them as findings of fact. Among other things, the consideration for the transaction was based on an exchange ratio and there was no fixed price per share. Further, the proposed heading's reference to Mr. Perelman is incorrect, misleading and improper. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference. In addition, CPH only agreed to sell the shares of Coleman that it owned. CPH did not agree to sell the publicly-owned shares of Coleman.

128. On February 13, 1998, Morgan Stanley representatives contacted Maher and proposed what was termed Sunbeam's best and final proposal, offering .65116 shares of Sunbeam stock per share of Coleman, which was approximately $24.50 per share, but Maher indicated that the proposal was not of interest. Maher then flew back to Aspen, Colorado on the afternoon of February 13, 1998.

NOT A CERTIFIED COPY

020302

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject Morgan Stanley's reference to Maher's travel as immaterial, irrelevant, misleading, and prejudicial.

129. Maher returned to New York from Aspen on February 18, 1998, and on that day was contacted by Kitts of Morgan Stanley, who invited MAFCO to make a counterproposal to Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject Morgan Stanley's reference to Maher's travel as immaterial, irrelevant, misleading, and prejudicial.

130. On February 19, 1998, Maher, having consulted with Perelman, made a counterproposal to Kitts of .789 shares of Sunbeam per Coleman share, or $30 per share.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

131. Kitts responded to Maher's counterproposal on February 19, 1998, offering an exchange rate of .711 Sunbeam shares per Coleman share, or $26.90. Maher informed Kitts that Coleman "would be prepared to consider an exchange ratio of .745 shares of Sunbeam stock which was approximately $28.20 per share." Maher then flew to Aspen, Colorado, where he spent the weekend skiing before returning to New York on February 22, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020303

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject Morgan Stanley's reference to Maher's travel and weekend activities as immaterial, irrelevant, misleading, prejudicial, and as an attempt to bias the jury.

132. On February 20, 1998, MAFCO received documents entitled Project Laser Proposed Summary Transaction Terms, which contained two consideration packages for the proposed transaction between Sunbeam and Coleman. This document (MS 83) "formed the basis for further negotiations and those negotiations ultimately led to an execution of the merger agreement" between Coleman and Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

133. On or about February 20, 1998, Gittis returned to New York from vacation and received an update on the negotiations undertaken in his absence. Similarly, on February 20, 1998, Levin, while in Puerto Rico, received a call from either Perelman or Gittis and was told to return to New York because Perelman had agreed to sell Coleman to

NOT A CERTIFIED COPY

020304

Sunbeam. This was Levin's first involvement with the Sunbeam negotiations since December 1997.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

First, the details of the phone call that Levin received while in Puerto Rico are not supported by the excerpt of Levin's testimony cited by Morgan Stanley. The testimony does not establish that Levin received a phone call on February 20, 1998, does not show that Gittis called Levin on this date, and does not reveal the contents of any such conversation. Moreover, the referenced phone call was not Levin's "first involvement with the Sunbeam negotiations since December 1997." Levin was involved in the transaction between December 1997 and February 20, 1998. *See* CPH's Response to ¶ 94, which is incorporated herein by reference.

In addition, CPH objects to the reference to Mr. Gittis' vacation as immaterial, irrelevant, misleading, and prejudicial. The proposed finding also is unsupported insofar as it seeks to imply that Gittis was uninformed concerning the conduct of negotiations while he was away from the office.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

134. The deal was signed one week later.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

IX. MAFCO Performs Virtually No Due Diligence Of Sunbeam Before The Execution of The Merger Agreement

NOT A CERTIFIED COPY

020305

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In particular, CPH and CSFB conducted due diligence on Sunbeam beginning in December 1997. *See* CPH's Response to ¶ 122 which is incorporated herein by reference.

135. With the Confidentiality Agreements in place, Sunbeam and MAFCO engaged in due diligence between February 23 to February 27, 1998, with each party represented by its own advisors. During this due diligence MAFCO had direct access to Sunbeam's management.

The Court should reject this proposed finding of fact because it is substantially controverted, at least some of the supporting evidence is inadmissible, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

First, the proposed finding is misleading and substantially controverted insofar as Morgan Stanley asserts that the February 23, 1998 confidentiality "agreement" was "in place." The February 23, 1998 draft agreement was never executed. *See* CPH's Responses to ¶¶ 111, 114-15, which are incorporated herein by reference.

Second, the proposed finding is misleading and substantially controverted insofar as Morgan Stanley implies that due diligence was conducted by CPH and Coleman only between February 23 and February 27 or that due diligence during that period was insignificant. To the contrary, there is ample evidence that CPH, along with Coleman and CSFB, conducted due diligence appropriate to the proposed transaction beginning in December 1997. *See* CPH's Response to ¶ 122, which is incorporated herein by reference.

Third, Morgan Stanley's assertion that CPH representatives had "direct access to Sunbeam management" between February 23 to February 27 is ambiguous and misleading. The

NOT A CERTIFIED COPY

020306

only evidence cited by Morgan Stanley in support of this assertion establishes that CPH representatives had face-to-face discussions with senior Sunbeam executives during this period, but Morgan Stanley also was present and participated in these meetings. *See* CPH's Response to ¶ 167, which is incorporated herein by reference. At these meetings, Morgan Stanley also provided written materials concerning Sunbeam to CPH to bolster the information provided by Sunbeam to CPH. *Id.*

Morgan Stanley's participation in these meetings and discussions lent credibility to Sunbeam and to Sunbeam's representations, as Morgan Stanley well knew. For example, in Morgan Stanley's presence, Sunbeam assured CPH representatives "in no uncertain terms" that Sunbeam would meet its long term strategic plan for sales and earnings in the first quarter of 1998 and the full year. CPH App. 48 (Maher Dep. at 305-306). CPH trusted Morgan Stanley to deal honorably with CPH in the transaction. CPH App. 34 (Perelman Dep. at 352); CPH App. 10 (Gittis Dep. at 86). As two of Morgan Stanley's senior executives have testified in this case, Morgan Stanley supposedly associates itself only with quality companies, and understands and expects investors to rely on that fact in making their investment decisions. *See* CPH App. 114 (Perella Dep. at 126 ("[I]nstitutional investors I think believe . . . that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies.")); *id.* ("So, you know, you ask me about what Schlock, Inc. means. It's — it's — it's something we don't like to be associated with. We like to be associated with first class companies and do business in a first class way, and try every day to — to live to that standard."); CPH App. 115 (Porat Dep. at 297-98).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020307

A. The MAFCO Due Diligence Team Is Leaderless

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, the heading is argumentative and misleading.

136. It was unclear who at MAFCO was responsible for conducting due diligence of Sunbeam. Even the most basic tasks, such as reviewing Sunbeam's financial statement for the year ending December 27, 1997, were neglected. More importantly, no one even asked for, let alone reviewed, Sunbeam's interim financial statements for January 1998, February 1998, and March 1998 prior to the Closing on March 30, 1998.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. The proposed finding also is argumentative, unsupported, and misleading.

First, and contrary to Morgan Stanley's assertion, the record reflects that due diligence on behalf of CPH and Coleman was conducted by several people, each responsible for a different aspect of due diligence. *See* CPH App. 28 (Nesbitt Dep. at 479-480); CPH App. 48 (Maher Dep. at 324-28 (although Levin and Page made up the "laboring oar from a business standpoint," due diligence obligations were shared among the Coleman/MAFCO team)). Morgan Stanley representatives testified that Morgan Stanley itself did not place one person in charge of due diligence. CPH App. 20 (Tyree Dep. at 94, 118).

Second, there is ample evidence that CPH representatives reviewed Sunbeam's 1997 financial statements. *See* CPH App. 32 (Perelman Dep. at 512-13) (Perelman reviewed the Sunbeam 1997 10-K); CPH App. 10 (Gittis Dep. at 171) (Gittis reviewed the March 19, 1998 Offering Memorandum, which contained the same Sunbeam 1997 financial statements as the 10-

NOT A CERTIFIED COPY

020308

K); CPH Supp. App. 184 (Schwartz Dep. at 153-54) (Schwartz reviewed the Sunbeam 1997 10-K); CPH Supp. App. 223 (March 16, 1998 Preliminary Offering Memorandum, which contained the same Sunbeam 1997 financial statements as the 10-K).

Moreover, the Court should reject the proposed finding insofar as Morgan Stanley implies that CPH should have been on notice of Sunbeam's fraud as a result of its review of Sunbeam's 1997 financial statements. Sunbeam's 10-K for 1997 was false and misleading because it contained no disclosure about the various forms of earnings management practiced by the Company and their implications for future sales and liquidity. Moreover, Sunbeam's 1997 10-K fraudulently misrepresented both the scope of the early-buy program and its effect on earnings. The 10-K did not reveal that Sunbeam was stealing revenue from 1998 to increase 1997 sales and did not disclose the true extent of Sunbeam's bill-and-hold revenue or that Sunbeam's bill-and-hold sales were not true bill-and-hold sales in accordance with GAAP. *See, e.g.*, CPH App. 34 (Perelman at 515-16). These false and misleading partial disclosures relating to "bill-and-hold" revenue recognition were fraudulent, and CPH disputes that the 10-K gave notice that Sunbeam and Morgan Stanley were engaged in fraud. Indeed, Morgan Stanley's own analyst, Andrew Conway, testified that he saw no areas of concern in Sunbeam's 1997 10-K. CPH Supp. App. 211 (Conway Dep. at 23-24).

Third, the assertion that CPH failed to ask for Sunbeam's January through March 1998 "interim" financial information is misleading and substantially controverted. CPH representatives made numerous inquiries regarding Sunbeam's sales and earnings during the first quarter of 1998. CPH App. 48 (Maher Dep. at 305, 316 ("there was a substantial amount of discussion about the first quarter" at the February 23 meeting)); CPH App. 35 (Nesbitt Dep. at 187 (questions were asked at the February 23 meeting "related to how is [Sunbeam's]

NOT A CERTIFIED COPY

020309

performance today, how is it going relative to analyst expectations . . . are you going to meet your numbers for the remainder of the year")); CPH App. 7 (Levin Dep. at 231 (Levin felt that Sunbeam had disclosed its sales through February 23, 1998 at the February 23, 1998 meeting so that there was no need to request detailed sales information)).

Moreover, CPH had bargained for a material adverse change clause, which placed the burden on Sunbeam and Morgan Stanley to advise CPH of changes in Sunbeam's business and financial health. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. There is no question that information for Sunbeam's interim financial first quarter should have been disclosed under this provision. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184). Instead, CPH was falsely reassured by Morgan Stanley and Sunbeam that Sunbeam would meet first quarter 1998 and full year 1998 sales and earnings expectations. *See* CPH's Responses to ¶¶ 135, 263, which are incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

137. Engelman said MAFCO' s due diligence leaders were Maher and Schwartz: "Q: [D]id you ever learn who on behalf of MacAndrews & Forbes has been responsible for due diligence of Sunbeam corporation in connection with the acquisition? A: It would have been Jim Maher and to some extent Barry Schwartz."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020310

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

138. Schwartz, however, denied that he had any responsibility for due diligence: "Q: Did you going forward from the date of January 28 have any responsibility for the due diligence on the seller's side? A: I did not participate in any of the due diligence on our side of the transaction, no." Schwartz testified that "Maher was sort of leading the charge."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

139. Gittis said Maher and Levin were responsible for due diligence: "Now, turning to the Coleman Sunbeam transaction, the negotiations, externally — was Mr. Maher, in your view, the head negotiator? A. Mr. Maher and Mr. Levin. Q. Mr. Levin on behalf of Coleman? A. Mr. Levin on behalf of the Coleman Company Inc. Mr. Maher on behalf of the various Coleman holding companies and the MacAndrews companies."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020311

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the proposed finding is unsupported because the quoted testimony from Gittis describes responsibility for "negotiations," not "due diligence" as Morgan Stanley's proposed finding asserts.

140. Nesbitt said it was Maher: "I think it is fair to say that Mr. Maher was responsible for coordinating the transaction generally which included due diligence."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

141. But Maher denied he had responsibility for due diligence: "Q: Did you [James Maher] have overall responsibility for monitoring the due diligence? A: No."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

The proposed finding also is substantially controverted insofar as it implies that Maher disclaimed any responsibility for due diligence. Maher testified that due diligence obligations

NOT A CERTIFIED COPY

020312

for CPH and Coleman were shared among several people. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

142. Maher, in turn, pointed the finger at Levin, Joe Page (Coleman's Chief Financial Officer), and Coleman's accountants (Ernst & Young LLP): "Q: [L]et me ask you whether there was a person on behalf of MacAndrews & Forbes that had overall responsibility for this due diligence that was conducted between February 24 and February 27, 1998? A: I would say the laboring oar was, from a business standpoint, was Jerry Levin and Joe Page and their accountants [Ernst & Young]. Obviously from a legal standpoint it was Wachtell, Lipton and First Boston was involved with both the legal and financial, business due diligence."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding because it is argumentative, misleading, and highly prejudicial insofar as it asserts that Maher "pointed the finger" at others. The proposed finding also is substantially controverted insofar as it implies that Maher disclaimed any responsibility for due diligence. Maher testified that due diligence obligations for CPH and Coleman were shared among several people. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020313

143. Page's testimony, however, reveals that he considered his due diligence responsibilities to be somewhat more limited:

> **Q. Were you involved with or responsible for conducting any due diligence on Sunbeam prior to the acquisition?**
>
> **A. No.**
>
> **Q. Did you work with any of Coleman's outside advisors who were tasked with doing due diligence on Sunbeam?**
>
> **A. No.**
>
> **Q. Did you perform an evaluation of the deal for Coleman?**
>
> **A. No.**
>
> **Q. Do you know who, if anyone, did perform such evaluation?**
>
> **A. I don't have a direct recollection of anybody performing that that I would have known. If it would have been done, it would have been done by MacAndrews & Forbes staff.**

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020314

144. Levin, the individual Maher identified as taking the "laboring oar" on due diligence, testified that his due diligence responsibilities consisted of "review[ing] Sunbeam's business plan and long term strategy" and "going to the [February 23, 1998] meeting."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the Court should reject this proposed finding because it is controverted to the extent it implies that Levin was the "laboring oar" with respect to all due diligence on Sunbeam or did not fulfill his due diligence responsibilities. Levin was not responsible for all due diligence of Sunbeam, but charged with conducting operating due diligence. CPH App. 48 (Maher Dep. 324 (Levin was "laboring oar" from a business standpoint)). *See* CPH's Response to ¶ 136, which is incorporated herein by reference. Thus, Levin's review of Sunbeam's business plan and long-term strategy is consistent with his responsibilities. Moreover, Levin's operational due diligence was intensive, as he questioned the company about its new product lines and sought additional detail for several elements of Sunbeam's long range strategic plan. CPH App. 7, 8 (Levin Dep. at 182-242; 252-55).

NOT A CERTIFIED COPY

020315

145. Levin had no responsibility for due diligence of Sunbeam after the signing of the merger agreements. Indeed, Levin testified that he "was out of the company completely" following the signing of the merger agreements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

B. Maher Does No Due Diligence of Sunbeam

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

146. Maher was capable of performing due diligence in connection with a merger such as the Sunbeam-Coleman merger.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

147. Maher did not review the Sunbeam 10-K for 1997 —which contained Sunbeam's audited financial statements for the year ending December 27, 1997 — before the closing of the merger agreements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual

NOT A CERTIFIED COPY

020316

controversy at this stage of the proceedings. First, Maher testified that he did "not recall" reading the Sunbeam's 1997 Form 10-K — not that he did not do so. CPH App. 39 (Maher Dep. at 27-28).

Moreover, this proposed finding is misleading insofar as it implies that CPH and Maher failed to review Sunbeam's 1997 financial statements. Maher was given a copy of the same Sunbeam financial statements as are contained in Sunbeam's Form 10-K, and several other CPH representatives also reviewed Sunbeam's 1997 financial statements. *See* CPH Supp. App. 223 (March 16, 1998 offering memorandum addressed to Jim Maher); *see also* CPH's Response to ¶ 136, which is incorporated herein by reference. This proposed finding also is misleading insofar as it implies that readers of Sunbeam's 10-K would have been on notice of Sunbeam's fraud. Morgan Stanley's own analyst saw no areas of concern in Sunbeam's 1997 10-K. *Id.*

148. Maher did not read the March 19, 1998 Offering Memorandum (MS 166) for the Sunbeam debentures underwritten by Morgan Stanley in connection with the Sunbeam-Coleman transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, for the same reasons that are set forth in CPH's Response to Paragraph 147, which is incorporated herein by reference, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

NOT A CERTIFIED COPY

020317

149. Maher did not read or even request copies of Sunbeam's 1998 interim financial statements before the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, for the same reasons that are set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

150. MAFCO was aware that Sunbeam maintained a room of material (a so-called, data room) that contained a collection of documents that might be required for due diligence. Nesbitt testified that he never visited this room, and did not know if anyone from the Coleman team actually visited the room.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

C. CSFB Does No Due Diligence of Sunbeam

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

151. CSFB, the exclusive financial advisor to MAFCO, CPH, and Coleman, was capable of performing due diligence in connection with a merger such as the Sunbeam-Coleman merger in 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020318

The Court also should reject the proposed finding because it is inaccurate and misleading insofar as it characterizes CSFB as the "exclusive financial advisor to MAFCO [and] CPH." CSFB was the "exclusive" financial advisor to The Coleman Company, Inc. *See* CPH App. 122 (Slovin Dep. at 182). CPH and MAFCO also received and relied upon financial information and projections from Morgan Stanley, including Morgan Stanley's "Sunbeam Corporation Discussion Materials," and "Sunbeam's Long Range Strategic Plan," CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238), which were presented to CPH representatives at the meeting conducted by Morgan Stanley at its offices on February 23, 1998.

152. CSFB was instructed by MAFCO "to do their normal due diligence that they would conduct in a transaction like this."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

153. Among its responsibilities, CSFB was assigned the task of reviewing Sunbeam's audited and unaudited financial statements. CSFB, however, never asked for or reviewed Sunbeam's unaudited interim financial statements for January, February or March 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020319

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that CSFB should have reviewed Sunbeam's unaudited "interim" financial statements for the first quarter of 1998. For the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

154. Perelman testified that he was not aware of anyone from CSFB who "review[ed] any unaudited financial statements such as interim financial statements of Sunbeam" for any period in 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that CSFB should have reviewed Sunbeam's unaudited "interim" financial statements for the first quarter of 1998. For the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

155. In a February 25, 1998 internal memorandum to the CSFB Investment Banking Committee, Gordon Rich, Steven Duffy, Robert Geller, Ramesh Chakrapani — the CSFB personnel who worked on the Sunbeam-Coleman transaction — described the extent of CSFB's "normal due diligence" which did not include reviewing Sunbeam's interim financial statements for any period in 1998:

> **12. Due Diligence**
>
> **CSFB has had a long relationship with Coleman. It participated in the**

NOT A CERTIFIED COPY

020320

initial public offering of the Company in 1992 and several financings since then. In connection with this transaction, the CSFB team has met several times with Coleman senior management (primarily Jerry Levin, the CEO, and Joe Page, the CFO) to discuss the Company's historical and financial results.

CSFB also met with Sunbeam senior management on February 23, 1998 and February 24, 1998 to discuss Sunbeam's strategic plan and 1997 results. CSFB attendees were Robert Duffy and Steven Geller.

The Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Nothing in the February 25, 1998 internal CSFB memorandum suggests that the due diligence listed in that memo was "the extent" of the due diligence conducted by CSFB. Indeed, the memorandum does not mention much of the due diligence performed by CSFB. As set forth in CPH's Response to Paragraph 122, which is incorporated herein by reference, CSFB conducted due diligence appropriate to the transaction contemplated.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that CSFB should have reviewed Sunbeam's unaudited "interim" financial statements for the first quarter of 1998. For the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

D. Wachtell Does No Due Diligence of Sunbeam

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020321

156. The law firm of Wachtell, Lipton, Rosen & Katz, the legal advisor to MAFCO, CPH, and Coleman, was capable of performing due diligence in connection with a transaction like the Sunbeam-Coleman merger in 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that Wachtell was qualified or expected to conduct the same sort of business due diligence as investment bankers or that Wachtell had the same access to Sunbeam's information as Morgan Stanley. *See* CPH Supp. App. 224 (CPH's Resps. and Objs. to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogs., at 7).

157. MAFCO instructed Wachtell to perform "the normal drill" with respect to due diligence on the Sunbeam-Coleman transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that Wachtell was qualified or expected to conduct the same sort of business due diligence as investment bankers or that Wachtell had the same access to Sunbeam's information as Morgan Stanley. *See* CPH Supp. App. 224 (CPH's Resps. and Objs. to Morgan Stanley & Co. Inc.'s Fifth Set of Interrogs., at 7).

NOT A CERTIFIED COPY

020322

158. Adam Emmerich, MAFCO' s "primary point of contact" at Wachtell, could not recall doing any due diligence between the date Wachtell was retained and the date the merger agreements were signed.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

E. Ernst & Young Does No Due Diligence of Sunbeam

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

159. In conducting due diligence, both MAFCO and Morgan Stanley relied upon the financial statements of Sunbeam as audited by Arthur Andersen.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

CPH relied on far more that Sunbeam's audited financial statements. For example, CPH, Coleman, and CSFB met extensively with Morgan Stanley; met with Sunbeam's senior executives together with Morgan Stanley; reviewed analyst reports; reviewed materials provided by Morgan Stanley; reviewed the debenture offering memoranda, reviewed press releases, and attended the debenture roadshow. *See, e.g.,* CPH's Response to Paragraph 122, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020323

Morgan Stanley was in a much different position than CPH. After all, Morgan Stanley had a duty, as Sunbeam's investment banker and as the sole underwriter of Sunbeam's subordinated debenture offering, to investigate Sunbeam's finances and business operations. As a matter of law, that duty included an obligation to verify management's claims about Sunbeam's finances and business. The United States District Court for the Southern District of New York recently reemphasized that point in its December 15, 2004 decision in *In re Worldcom, Inc. Securities Litigation*: "The public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed." CPH App. 112 (Decision at 121-22).

Morgan Stanley had had a wealth of information about Sunbeam's true financial condition that was not available to CPH. As Morgan Stanley itself put it, Morgan Stanley had "gained an extremely sound knowledge of the Company" as a result of "working closely with Sunbeam" since April 1997. CPH App. 86 (CPH Ex. 76). Beginning in April 1997, Morgan Stanley conducted extensive due-diligence on Sunbeam, sending more than a dozen representatives to Sunbeam's headquarters to study every facet of the business. CPH App. 19 (CPH Ex. 37); CPH App. 12 (Smith Dep. at 91); CPH App. 20 (Tyree Dep. at 575-81); CPH App. 21 (CPH Ex. 84); CPH App. 11 (Kitts Dep. at 16-19); CPH App. 22 (CPH Ex. 172); CPH App. 23 (Rafii Dep. at 106-08); CPH App. 24 (CPH Ex. 173); CPH App. 25 (CPH Ex. 221); CPH App. 26 (Yoo Dep. at 83-88); CPH App. 27 (CPH Ex. 245). During that time, Strong personally spoke with Dunlap and/or Kersh in Florida between 50 and 100 times. CPH App. 9 (Strong Dep. at 53-54).

On March 12, 1998, just one week before the issuance of the March 19 press release, Morgan Stanley received a warning from Sunbeam's auditors that Sunbeam had engaged in

NOT A CERTIFIED COPY

020324

aggressive revenue recognition practices, with a robust bill-and-hold strategy and many sales that included a 100% right of return. CPH App. 63 (Bornstein Dep. at 104-06); CPH App. 64 (CPH Ex. 123). On March 18, Morgan Stanley and its attorneys received a draft comfort letter from Sunbeam's outside auditors precisely detailing Sunbeam's massive sales shortfall in the first quarter of 1998, its disastrous earnings, and massive increase in long-term debt, as well as the primary cause of the sales shortfall. The letter proved false all the representations made at the February 23, 1998 face-to-face meeting, all the representations made in the written presentations Morgan Stanley had given to CPH, and all the representations made at other meetings about Sunbeam's turnaround and position for future growth. CPH App. 70 (CPH Ex. 24); CPH App. 69 (CPH Ex. 17); CPH App. 71 (CPH Ex. 344). One of Morgan Stanley's attorneys at Davis Polk stated that, as a matter of general practice, comfort letters would not be shared with anyone other than the underwriter (in this case, Morgan Stanley) on the transaction. CPH App. 73 (Lurie Dep. at 172-73).

Morgan Stanley also had in its possession Mr. Uzzi's "build-up" chart showing Morgan Stanley that Sunbeam had only $101.6 million in net sales as of March 18, 1998. CPH App. 76 (CPH Ex. 16) On March 25, five days before the Coleman transaction closed, Arthur Andersen sent Morgan Stanley a "bring down" comfort letter revealing that Sunbeam's first quarter 1998 situation had deteriorated even further. Morgan Stanley now knew that Sunbeam had incurred a net *loss* of $11 million in the first two months of the first quarter of 1998, excluding one-time charges. CPH App. 88 (CPH Ex. 112 at CPH 129615); CPH App. 72 (Dean Dep. at 177); CPH App. 73 (Lurie Dep. at 170-72). Thus, it is clear that Morgan Stanley knew far more about Sunbeam than simply just some audited financial statements.

Further, the Court should reject this proposed finding on the basis of CPH's Objection

NOT A CERTIFIED COPY

020325

Applicable to All Proposed Findings, which is incorporated herein by reference.

160. Maher testified that an accounting due diligence by Ernst & Young would have been done under the direction of Joe Page, Coleman's CFO. Page testified that he did not know of any such due diligence.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, to the extent that the proposed finding of fact implies that Joe Page was told to instruct Ernst & Young to "conduct accounting due diligence," that fact is controverted. Page testified that he "would have alerted Ernst & Young that we were going to be acquired; that they may be requested to make their working papers available to Sunbeam's auditors." CPH App. 51 (Page Dep. at 124).

X. Sunbeam Discloses To MAFCO That Sunbeam's January And February 1998 Sales Are "Slow"

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. In fact, as shown below, this heading mischaracterizes the record evidence. Moreover, "slow" does not even begin to described Sunbeam's first quarter 1998 sales meltdown.

A. MAFCO Representatives Hear Sunbeam's Plans for the Next Three Years

NOT A CERTIFIED COPY

020326

161. On February 23, 1998, a series of three meetings were held regarding the potential transaction between Coleman and Sunbeam. At the first meeting, representatives of MAFCO, Coleman, Morgan Stanley, and CSFB met to conduct due diligence on Coleman.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

162. At the second February 23, 1998 meeting, representatives from MAFCO met with CSFB "to discuss the status of the transaction" between Coleman and Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

163. The third and final meeting on February 23, 1998 took place at the offices of Morgan Stanley and was attended by Nesbitt, Shapiro, and Maher of MAFCO; Isko, Fannin, Goudis, and Kersh of Sunbeam; Levin and Page from Coleman; Duffy of CSFB; and Messrs. Chang, Kitts, Fuchs, and Stynes of Morgan Stanley. The meeting lasted for "at least an hour."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020327

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, the proposed finding is misleading insofar as it implies that the meeting lasted only 1 hour. CPH App. 40 (Duffy Dep. at 288). The evidence that Morgan Stanley cites does not support the statement that Isko attended the meeting on behalf of Sunbeam. Isko attended the meeting on behalf of Coleman. CPH App. 30 (MS Ex. 75). Further, Shapiro was an employee of Coleman, not MAFCO. CPH App. 47 (Shapiro Dep. at 26-27).

164. Levin attended the third meeting because he was, in his own words, "probably in the best position to evaluate [Sunbeam's] business plans from our group."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

165. At the third meeting, Russell Kersh, chief financial officer of Sunbeam, gave a presentation using overheads of a document entitled "Sunbeam Strategic Long Range Plan," which summarized in bullet-point fashion Sunbeam's projections for 1998 through 2000, as well as other information about Sunbeam.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020328

This proposed finding is misleading, incomplete, and substantially controverted insofar as it suggests that Morgan Stanley played no role in the February 23, 1998 presentation and that Sunbeam was the sole source of information presented at the February 23, 1998 meeting. To the contrary, Morgan Stanley played a critical role in the presentation, and Morgan Stanley's presence lent credibility to Sunbeam's presentation, and gave CPH comfort. *See* CPH's Responses to ¶ 135, which is incorporated herein by reference.

Further, the proposed finding is misleading and unsupported insofar as it asserts that the Long Range Plan "summarized in bullet point fashion."

166. Levin "understood that the financial matters that were presented [by Kersh] were projections three years into the future."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This proposed finding is misleading, incomplete, and substantially controverted insofar as it suggests that only projections were presented at the February 23, 1998 meeting. To the contrary, Sunbeam and Morgan Stanley made numerous misrepresentations concerning historical and current facts concerning Sunbeam, as well as projections that both Sunbeam and Morgan Stanley knew had no basis in fact. *See* CPH Supp. App. 225 (CPH's Resp. to Morgan Stanley's First Set of Interrogs. at 10-14); CPH Supp. App. 226 (CPH's Resp. to Morgan Stanley's Fourth

NOT A CERTIFIED COPY

020329

Set of Interrogs. at 3-4); CPH Supp. App. 227 (CPH's Amended Resp. to Morgan Stanley's Fourth Set of Interrogs. at 2-3).

167. Morgan Stanley did not make a presentation at the third February 23, 1998 meeting.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. To the extent that this proposed finding of fact implies that Morgan Stanley did not make representations at the third February 23, 1998 meeting, that fact is plainly wrong. At that meeting, which was held at Morgan Stanley's offices, Morgan Stanley gave CPH an 85-page book — in a blue Morgan Stanley binder with the Morgan Stanley logo on every page — that it had created. CPH App. 29 (CPH Ex. 9); CPH App. 38 (CPH Ex. 316 at MSC 27062-63); CPH App. 34 (Perelman Dep. at 367-69); CPH App. 10 (Gittis Dep. at 48); CPH App. 26 (Yoo Dep. at 114). Morgan Stanley's book promoted Sunbeam's supposed turnaround and represented that Sunbeam was well-positioned to continue its extraordinary growth in sales and earnings through 1998 and beyond. CPH App. 29 (CPH Ex. 9).

CPH and Coleman representatives also received a second document at the February 23 meeting entitled "Sunbeam Long Range Strategic Plan." CPH App. 37 (CPH Ex. 238). Morgan Stanley introduced Kersh's oral presentation of Sunbeam's long-range strategic plan and fielded questions from CPH representatives. CPH App. 48 (Maher Dep. at 308-09). Sunbeam senior management — with the imprimatur of Morgan Stanley, which had been representing Sunbeam for months — represented that "Sunbeam was going to make their numbers." CPH App. 35 (Nesbitt Dep. at 187); *see also* CPH App. 48 (Maher Dep. at 306 ("Mr. Kersh in no uncertain

NOT A CERTIFIED COPY

020330

terms said that not only was he going to make 'what the Street's forecast was,' but they were going to make their budget in the first quarter and for the year.")); *accord* CPH App. 50 (Shapiro Dep. at 388). Morgan Stanley's presence and participation lent credibility to Sunbeam and gave CPH substantial comfort in the information that CPH received. *See* CPH's Response to ¶ 135, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. Sunbeam Alerts MAFCO that Sunbeam's Sales are "Slow"

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. As shown below, this heading mischaracterizes the record evidence. Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse.

168. Attendees at the third February 23, 1998 meeting received a hard copy version of Kersh's presentation. Levin made notations on his copy of the document. MS 84 is Levin's copy of the "Long Range Plan" with his handwritten notes.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

169. Specifically, in the section of the presentation that covered Sunbeam's net sales in 1998, Levin made the notation "Jan Feb Slow," as set forth below.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. First, to the extent that Morgan Stanley implies that Levin's notations indicate he was told that January and February were slow, this proposed fact is

NOT A CERTIFIED COPY

020331

misleading and substantially controverted. CPH App. 52 (MS Ex. 84) plainly shows that Levin wrote "slow" next to "Jan." but not next to "Feb." At his deposition, Levin testified that he did not recall what he was told about February sales. CPH App. 7 (Levin Dep. at 229). Morgan Stanley also cites Perelman's testimony, but Perelman contradicts Morgan Stanley's assertion that the notation meant that February sales were slow. CPH App. 32 (Perelman Dep. at 371 ("I think the notes should be taken in context for the whole notes that January is slow, February good")). Perelman also testified that Levin reported to him after the meeting that January sales were "slow," February sales were "fine," and that the statements by Morgan Stanley and Sunbeam were "bullish." CPH App. 34 (Perelman Dep. at 372-73); *see also* CPH App. 10 (Gittis Dep. at 102). Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse.

Moreover, Morgan Stanley's own documents and witness testimony debunk Morgan Stanley's suggestion that the attendees at the February 23, 1998 meeting were told that Sunbeam's January and February 1998 sales were slow or that Sunbeam was performing poorly. The Morgan Stanley participants at the meeting prepared a March 10, 1998 internal Morgan Stanley memorandum seeking approval to underwrite the debenture offering. That memorandum contains no reference to any sales slowdown in either January or February of 1998. CPH App. 126 (CPH Ex. 129); CPH App. 74 (Porat Dep. at 245-50). Indeed, Ruth Porat, the Managing Director of Morgan Stanley's equity capital markets, who was Morgan Stanley's Rule 1.310 designee on the procedures for obtaining such internal approvals and who was heavily involved in the debenture offering, testified that the first time she heard Sunbeam's sales were slow was on March 18. CPH App. 74 (Porat Dep. at 96, 147). Consistent with Porat's testimony, no other participants in the February 23 meeting recall any comments that Sunbeam's first quarter

NOT A CERTIFIED COPY

020332

sales were slow and no other copies of the Long Range Strategic Plan contains that notation. CPH App. 48 (Maher Dep. at 305); CPH App. 35 (Nesbitt Dep. at 188-89); CPH App. 40 (Duffy Dep. at 151); CPH App. 49 (Geller Dep. at 111-12).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

170. Between February 23, 1998 and the March 30, 1998 closing, Levin does not know of anyone at MAFCO or Coleman, including himself, who asked Sunbeam for "detailed information on Sunbeam's net sales for any period in the first quarter of 1998."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This proposed finding should be rejected because it is misleading and substantially controverted for the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference. Those facts demonstrate that CPH requested "detailed information" regarding Sunbeam's first quarter 1998 sales and earnings.

171. Levin further noted that Sunbeam's estimated earnings per share for 1998 would be "$1.99" rather than the $2.20 that was indicated in the text of the document.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. First, Morgan Stanley's characterization of Levin's notations is

NOT A CERTIFIED COPY

020333

misleading and substantially controverted. As Levin testified, his notation of "$1.99" on MS 84 referred to the street estimate — not Sunbeam's estimate.

> Q. Below the earnings per share line it looks like you have written 1.99 and then there's something in writing after that. Can you read that into the record for us?
>
> A. Yes. It's 1.99 street.
>
> Q. Was that the street estimate for earnings?
>
> A. Yes.

CPH App. 7 (Levin Dep. at 235).

Second, Levin testified that he believed, based on what he was told at the February 23, 1998 meeting, that the street estimate of $1.99 was "certainly achievable." CPH App. 8 (Levin Dep. at 258).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

172. At the meeting, Sunbeam also provided a packet of information entitled "Sunbeam Corporation Discussion Materials February 1998." Levin, Coleman's expert on consumer products for MAFCO, said he never saw the documents.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the Court should reject this proposed finding of fact because it is substantially controverted. Morgan Stanley prepared and distributed to CPH the "Sunbeam Corporation Discussion Materials February 1998." *See* CPH's Response to ¶ 167, which is incorporated herein by reference. In fact, Gittis, whose testimony Morgan Stanley cites in support of its assertion, testified that the document "had a beautiful blue Morgan Stanley cover on it." CPH App. 10 (Gittis Dep. at 48).

NOT A CERTIFIED COPY

020334

Second, Morgan Stanley has mischaracterized Levin's testimony. Levin testified that he did "not recall" Morgan Stanley's discussion materials. Taken in isolation, that Levin does not recall seeing the document is not probative of whether he actually saw it six years ago. In any event, other CPH representatives including Perelman and Gittis, testified that they reviewed it in detail. CPH App. 10 (Gittis Dep. at 48; 133-34); CPH App. 34 (Perelman Dep. at 367-68).

173. These Discussion Materials are Evaluation Materials as defined in the Confidentiality Agreements. The financial information contained in MS 85 regarding Sunbeam came from various public sources, including an Oppenheimer research report. Gittis testified that he was "sure" that MAFCO already possessed the Oppenheimer research report cited by Morgan Stanley in the "Sunbeam Corporation Discussion Materials February 1998" packet.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

First, to the extent that the proposed finding of fact implies that CPH was not entitled to rely on Morgan Stanley's "Sunbeam Corporation Discussion Materials February 1998," CPH App. 29, pursuant to provisions in the Confidentiality Agreements, that fact is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. The February 4, 1998 agreement contains no provision that would preclude CPH's reliance on information provided by Morgan Stanley. *See* CPH's Response to ¶ 114, which is incorporated herein by reference. The February 23, 1998 draft confidential "agreement," CPH Supp. App. 204, also does not bar CPH's claims. *See* CPH's Responses to ¶¶ 111, 114, which are incorporated herein by reference.

NOT A CERTIFIED COPY

020335

Second, by using and relying on publicly available information concerning Sunbeam, Morgan Stanley vouched for and gave that information credibility. CPH App. 10 (Gittis Dep. at 140 ("Q. With regard to the projections going forward that you mentioned, those are also footnoted as being projections from Oppenheimer, an Oppenheimer research report; correct? A. Yeah, that doesn't excuse them. They were — are being presented to me by Morgan Stanley as being accurate")). Whether CPH also had access to some of the same underlying information is controverted. *See* CPH Supp. App. 227 (CPH's Resps. and Objs. to MS & Co.'s Fourth Set of Reqs. for Admis., at 8-9).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, to the extent the proposed finding incorporates a snippet of Gittis' deposition testimony, it is particularly inappropriate for piecemeal judicial fact-finding before trial. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

174. Gittis did not participate in the third February 23, 1998 meeting, but he testified that he reviewed the materials distributed at the meeting that same day.

Although CPH does not contest the facts set forth in this proposed finding, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020336

175. Gittis did not ask CSFB to investigate any of the statements in the "Sunbeam Corporation Discussion Materials February 1998." Nor did Gittis know if anyone on the MAFCO team investigated any of the statements about Sunbeam made in the "Sunbeam Corporation Discussion Materials February 1998."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court should reject this proposed finding because it is misleading and substantially controverted insofar as it implies that CPH did not investigate the statements contained in Morgan Stanley's Discussion Materials. That investigation plainly took place. *See, e.g.*, CPH's Response to ¶ 167, which is incorporated herein by reference (describing the discussions of the February 23, 1998 meeting).

176. Maher was asked if he could recall "any specific question ever asked of Morgan Stanley at the February 23 meeting [about] whether Sunbeam would meet its net sales objectives for the first quarter of 1998." Maher did not recall any such question.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, Morgan Stanley has misstated Maher's testimony. Maher testified that he did "not recall" whether any questions regarding Sunbeam's sale objectives for the first quarter of 1998 were asked of Morgan Stanley. Taken in isolation, that Maher does not recall any such

NOT A CERTIFIED COPY

020337

question is not probative of whether those questions were asked of Morgan Stanley. Moreover, Maher testified that Sunbeam assured CPH representatives, in Morgan Stanley's presence, that Sunbeam stated "in no uncertain terms" that Sunbeam would meet its long term strategic plan for sales and earnings in the first quarter of 1998 and the full year. CPH App. 48 (Maher Dep. at 305-306). *See also* CPH App. 35 (Nesbitt Dep. at 187 (questions were asked at the February 23 meeting "related to how is [Sunbeam's] performance today, how is it going relative to analyst expectations . . . are you going to meet your numbers for the remainder of the year")); CPH App. 7 (Levin Dep. at 231 (Levin felt that Sunbeam had disclosed its sales through February 23, 1998 at the February 23, 1998 meeting); (CPH App. 50 (Shapiro Dep. at 388). Morgan Stanley's participation gave credibility to those representations. *See* CPH's Responses to ¶¶ 102, 135, which are incorporated herein by reference. *See* CPH App. 114 (Perella Dep. at 126); *see also* CPH App. 115 (Porat Dep. at 297-98); CPH App. 10 (Gittis Dep. at 152-53); *see also* CPH's Response to ¶ 135, which is incorporated herein by reference.

177. Maher was asked if he could recall "any question asked of Morgan Stanley at the February 23 meeting [about] whether Sunbeam would meet its earnings per share estimates of $2.20 for the first quarter of 1998." Maher did not recall any such question.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020338

Furthermore, taken in isolation, the fact that Maher does not recall any specific question asked of Morgan Stanley about whether Sunbeam would meet its earnings per share estimates of $2.20 for the first quarter of 1998 is not probative of whether questions were asked of Morgan Stanley on this issue. Sunbeam assured CPH representatives, in Morgan Stanley's presence, that Sunbeam would achieve earnings of $2.20 per share in 1998. CPH App. 50 (Shapiro Dep. at 283-84); CPH App. 35 (Nesbitt Dep. at 185-87). Moreover, this proposed finding of fact is misleading because the $2.20 figure was for the year of 1998, and not only for the first quarter, as Morgan Stanley suggests. CPH App. 35 (Nesbitt Dep. at 198-199). Morgan Stanley's participation gave credibility to those representations. *See* CPH's Responses to ¶¶ 102, 135, which are incorporated herein by reference. *See* CPH App. 114 (Perella Dep. at 126); *see also* CPH App. 115 (Porat Dep. at 297-98); CPH App. 10 (Gittis Dep. at 152-53); *see also* CPH's Response to ¶ 135, which is incorporated herein by reference.

178. Maher was asked whether "anyone ask[ed] Morgan Stanley at the [February 23, 1998] meeting whether Sunbeam would meet its long term strategic plan net sales goals." Maher testified that no one posed such a question to Morgan Stanley.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is substantially controverted. Sunbeam assured CPH representatives, in Morgan Stanley's presence, that Sunbeam would achieve earnings of $2.20

NOT A CERTIFIED COPY

020339

per share in 1998 and that net sales were on track with Sunbeam's long term strategic plan. CPH App. 50 (Shapiro Dep. at 283-84; 334); CPH App. 34 (Perelman Dep. at 421; CPH App. 35 (Nesbitt Dep. at 185-87). Morgan Stanley's participation gave credibility to those representations. *See* CPH's Response to ¶ 135, which is incorporated herein by reference.

179. Maher could not recall anyone at the meeting asking Sunbeam for a copy of Sunbeam's interim financial statements for the month of January 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that CPH should have requested Sunbeam's "interim" financial statements at the February 23, 1998 meeting. Thus, for the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

C. In the Elevator, Levin Tells Maher and Nesbitt that Sunbeam's Plans Are "Quite a Stretch" and Not Achievable

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, the heading is argumentative and misleading.

180. Levin left the February 23, 1998 meeting with Maher and Nesbitt and rode down in the elevator with them. In the elevator, Levin told them both that Sunbeam's projections were "quite a stretch" and not achievable.

Q. Was there any further discussion that evening, outside of the presence of Sunbeam or Morgan Stanley, about the materials in Exhibit 84?

MR. MARKOWSKI: Objection to the form.

A. Yes.

NOT A CERTIFIED COPY

020340

Q. There was? Did you say Yes?

A. Yes.

Q. Where did that discussion take place?

A. Between the conference room we were in and reaching the lobby of the Morgan Stanley building.

Q. Do you recall the discussion?

A. I recall some of it.

Q. What do you recall?

A. I voiced an opinion.

Q. What was your opinion? Who did you voice the opinion to from — while you were traveling from the Morgan Stanley conference room to the lobby of the building?

A. The MacAndrews & Forbes people.

Q. What did you tell them?

A. That I thought the sales in that, and net income expectations of the long-range plan were quite a stretch and I did not think they were achievable.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. In addition, this proposed finding is substantially controverted insofar as it implies that Levin knew that Sunbeam and Morgan Stanley were committing a fraud or that Sunbeam was experiencing any financial difficulties prior to February 27, 1998. The proposed finding of fact is also misleading insofar as it selectively quotes Levin and mischaracterizes his assessment of Sunbeam's condition and position for future growth. In fact, Levin testified that he believed Sunbeam was performing well and that analyst estimates for Sunbeam were "certainly achievable." CPH App. 8 (Levin

NOT A CERTIFIED COPY

020341

Dep. at 258). Levin's testimony certainly does not support a finding that he was aware of the information contained in the March 19 and March 25 comfort letters. That is confirmed by Levin's vote in favor of the transaction as a member of Coleman's board of directors with fiduciary duties to the public shareholders.

Moreover, Levin concedes that any concerns he had about accepting Sunbeam stock went against conventional wisdom at the time: "I was a lone voice in the wilderness with all of Wall Street and the stock is high and Dunlap's book being a best seller, all those things, I was one voice and [Perelman] chose to ignore me and go with the conventional wisdom ... that Dunlap was the future of CEOs, that that was the right way of running a company." CPH App. 7 (Levin Dep. at 136-37).

Moreover, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. Except where the rules permit a party to designate portions of the deposition transcripts for use at trial, the jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

181. Levin reiterated his opinion the next morning to Perelman, Gittis, and Maher:

> **Q. Between the evening of February 23rd, 1998 and the conclusion of the meeting that we have been going over, discussing Morgan Stanley Exhibit 84 and the actual execution of the merger agreements, as of February 27th, 1998, did you have any discussions with anyone at MacAndrews & Forbes or Coleman**

NOT A CERTIFIED COPY

020342

about Morgan Stanley Exhibit 84?

BIDEAU: Other than the elevator —

Q. Other than the elevator conversation, yes.

A. Probably.

Q. Did you have any specific recollection of those conversations, as you sit here today?

A. Not specific, no.

Q. Do you have any general recollection of discussions of the, of Morgan Stanley Exhibit 84, of —

A. That was the presentation?

Q. Yes, sir. From the conclusion of the presentation up to the signing of the merger agreements on February 27th.

A. Yes.

Q. What is your general recollection?

A. That I felt the strategic plan, as presented, was a stretch, unlikely to be achieved, but that I thought it was reasonable that they would achieve growth and earnings in line with whatever, where Wall Street was, which was considerably below the strategic plan at that point.

And I did not have any particular thoughts, one way or the other, as to whether the stock was valued high or low, as a result.

Q. Who did you have these discussions with?

A. I am sure I had them with Mr. Perelman and Mr. Gittis and associates.

Q. Would Mr. Maher be within that group?

A. Yes, sir.

Q. Would Mr. Nesbitt be in that group?

A. He may or may not have been in attendance.

NOT A CERTIFIED COPY

0203343

Q. Where did these discussions take place, if you remember?

A. They — almost certainly took place the next morning. Assuming that was not the Friday night — I don't — February 23rd?

Q. It was a Monday, I believe.

A. I am almost certain they took place the next morning, either at breakfast at the townhouse or after breakfast at the townhouse — the MacAndrews & Forbes headquarters, I should say.

Q. And the townhouse, and the headquarters are virtually within 100 yards of each other; correct?

A. It is a lot closer.

For the same reasons that are set forth in CPH's Response to Paragraph 180, which is incorporated herein by reference, the Court should reject this proposed finding of fact because it is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

182. Nesbitt did not believe that Morgan Stanley intended to misrepresent any information presented at the third February 23, 1998 meeting.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

This proposed finding of fact is misleading and unsupported because Morgan Stanley has misstated Nesbitt's testimony. Morgan Stanley cites Nesbitt's testimony that "based on information that I am aware of, that I have been shown through discovery, I am not aware at this point that there was an intent to misrepresent." CPH App. 28 (Nesbitt Dep. at 384). Moreover,

NOT A CERTIFIED COPY

020344

it is not material whether Nesbitt believed that Morgan Stanley intended to misrepresent any facts at the February 23, 1998 meeting. There is ample evidence that Morgan Stanley did so by, among other things, assisting Morgan Stanley in falsely portraying Sunbeam as a "turnaround" success at this and other meetings with CPH. *See* CPH's Response to ¶ 125, which is incorporated herein by reference. As Nesbitt explained, Sunbeam, in the presence of Morgan Stanley, reassured CPH representatives that Sunbeam would exceed analysts' expectations for net sales and earnings in the first quarter of 1998 and the full year. CPH App. 35 (Nesbitt Dep. at 185-87). Morgan Stanley's presence and participation in the meeting lent credibility to the representations about Sunbeam. *See* CPH's Responses to ¶¶ 102, 135, which are incorporated herein by reference. *See* CPH App. 114 (Perella Dep. at 126); *see also* CPH App. 115 (Porat Dep. at 297-98); CPH App. 10 (Gittis Dep. at 152-53); *see also* CPH's Response to ¶ 135, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

183. Following the third February 23, 1998 meeting where MAFCO was informed that sales were "slow," Nesbitt did not speak with any financial analysts who followed Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

For the reasons set forth in CPH's Response to Paragraph 169, which is incorporated herein by reference, the Court should reject this proposed finding of fact insofar as it asserts that CPH was informed that Sunbeam's sales were "slow" because the proposed finding is misleading, substantially controverted, and it would be impracticable for the Court to resolve this

NOT A CERTIFIED COPY

020345

factual controversy at this stage of the proceedings. Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse.

Further, the proposed finding is misleading and substantially controverted insofar as it implies that Nesbitt should have spoken to financial analysts about Sunbeam following the February 23, 1998 meeting. It would have been improper and possibly illegal for Nesbitt to do so. *See* CPH's Response to ¶ 118, which is incorporated herein by reference.

184. Following the February 23, 1998 meeting, Levin informed both Perelman ("the final decision maker") and Gittis (his "right hand") that Sunbeam was experiencing slow sales in 1998.

This proposed finding is misleading and substantially controverted insofar as it asserts that Levin knew or told Perelman and Gittis that "Sunbeam was experiencing slow sales in 1998." Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 169, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

XI. Perelman And His Holding Companies Approve The Merger Agreements

A. Perelman and the Coleman Board Meet on February 25, 1998

NOT A CERTIFIED COPY

020346

185. The CLN Merger Agreement between Sunbeam and Coleman was first presented to the full Coleman board of directors at a board meeting on February 25, 1998, only 2 days after Sunbeam and Coleman began their due diligence of each other. The meeting lasted about 90 minutes.

This proposed finding is misleading and substantially controverted insofar as it asserts that CPH did not begin its due diligence of Sunbeam until February 23, 1998. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 122, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

186. At the February 25, 1998 board meeting Levin made a presentation to the board, telling them the transaction was "structured to put Sunbeam in control as quickly as possible in order to reduce disruption to [Coleman's] business."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and unsupported insofar as it implies that Sunbeam and Morgan Stanley had no interest in closing the transaction quickly. To the contrary, both Sunbeam and Morgan Stanley were eager to close the transaction quickly. CPH App. 10 (Gittis Dep. at 98-99).

NOT A CERTIFIED COPY

020347

187. At the February 25, 1998 meeting, Maher made a presentation to the board about the history of the negotiations between Sunbeam and MAFCO. Maher reported that there were no other bidders interested in Coleman.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

188. At the February 25, 1998 meeting, CSFB made a presentation to the Coleman board regarding the proposed transaction. CSFB advised the board that Sunbeam was paying a 44.2 percent premium over Coleman's stock based on the closing price of Coleman's stock on February 24.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading and unsupported insofar as it implies that Sunbeam overpaid for Coleman.

189. Although Maher, Levin, Perelman, Nesbitt, and Gittis attended the board meeting, no one told the board about Sunbeam's slow sales in early 1998 or Levin's opinion that Sunbeam's "Strategic Long Term Plan" was "quite a stretch" and "probably not achievable."

This proposed finding is misleading and substantially controverted insofar as it implies that any of Maher, Levin, Perelman, Nesbitt, or Gittis knew of Sunbeam's "slow sales" in February or March 1998. Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse.Thus, for the same reasons that are set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

NOT A CERTIFIED COPY

020348

In addition, to the extent that Morgan Stanley is referring to slow sales in January, numerous witnesses testified that Sunbeam and Morgan Stanley indicated that slow January sales would have no impact on Sunbeam's ability to make sales and earnings expectations for the quarter and year. *See* CPH App. 10 (Gittis Dep. at 101-02 ("It could have been Mr. Levin said that January sales were slow. But that February was okay. And that they were going to make the quarter.")); CPH App. 34 (Perelman Dep. at 370-71 ("Q. You discuss — did you discuss with Mr. Levin his handwritten notes on this page that net sales Jan. was slow? A. Yes, but you have to continue on. 'Jan. slow, operating profit 296' which is what they were told in front of Morgan Stanley that the company was going to do and that January slow was of no concern to anybody.")); CPH App. 7 (Levin Dep. at 229 ("Well, I must have asked them or they volunteered that January was a slow month in sales, not unusual for a company in these businesses, January should be — December or January should be their smallest month. So it doesn't mean that much when you're off somewhat in January. I wrote something about February, I really don't recall what the comment was.")); CPH App. 48 (Maher Dep. at 306 ("[M]y recollection is that Mr. Kersh in no uncertain terms said that not only was he going to make "what the Street's forecast was," but they were going to make their budget in the first quarter and for the year.")).

Further, the proposed finding is substantially controverted insofar as it implies that the board was unaware of Levin's views concerning Sunbeam's future prospects. Levin testified that his views about Sunbeam's plan were reflected in CSFB's Board presentation. *See* CPH App. 8 (Levin Dep. at 300 ("Q: Was there any discussion at the February 27, 1998 meeting about your opinions that you formed following the February 23, 1998 meeting about Sunbeam's long-range strategic plan — that it was 'a stretch,' as you put it? A: I believe my comments were reflected per the documents that you showed me in the CSFB analysis where they actually took

NOT A CERTIFIED COPY

020349

more Street estimates and a more conservative view, and that apparently was presented to the board.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

190. There were no Morgan Stanley representatives at the February 25, 1998 meeting of the Coleman board of directors.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Moreover, this proposed finding is misleading insofar as it implies that Morgan Stanley played no role in the Board's decision-making process. Members of Coleman's Board relied on Morgan Stanley's involvement, which is exactly what Morgan Stanley expected. CPH App. 34 (Perelman Dep. at 352); CPH App. 10 (Gittis Dep. at 86); CPH Supp. App. 224 (CPH 11/24/04 Resp. to 5th Set of Interrogs., No. 1); CPH App. 114 (Perella Dep. at 126 ("[I]nstitutional investors I think believe . . . that if we put our name on an underwriting, that we've done due diligence at a very high standard, and that we work for quality companies.")); CPH App. 115 (Porat Dep. at 297-98). Moreover, because Morgan Stanley failed to tell the truth about Sunbeam to CSFB, CPH, and Coleman, the information presented to the Board did not reflect the truth about Sunbeam.

191. Morgan Stanley made no presentation at the February 25, 1998 meeting, nor were any materials prepared by Morgan Stanley distributed to the attendees at that meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020350

In addition, this proposed finding is misleading insofar as it implies that the board did not receive any information provided by Morgan Stanley. CSFB's February 25 and February 27 presentations to the Coleman board relied upon and incorporated information directly from "Sunbeam's Long Range Strategic Plan" — which Morgan Stanley and Sunbeam provided to CSFB and CPH on February 23, 1998. *See* CPH's Response to ¶ 193, which is incorporated herein by reference.

Further, this proposed finding is misleading insofar as it implies that Morgan Stanley played no role in the Board's decision-making process. *See* CPH's Response to ¶ 190, which is incorporated by reference herein.

B. Perelman and the Coleman Board Meet Again on February 27, 1998

192. The Coleman board met again to consider the proposed merger with Sunbeam on February 27, 1998.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

193. At the February 27, 1998 meeting, CSFB, the exclusive financial adviser to MAFCO, made a presentation to the Coleman board. CSFB opined that the proposed transaction was fair. In reaching its opinion, CSFB did not rely on Sunbeam's Long Range Strategic Plan (MS 84) or the Discussion Materials (MS 85). Instead, CSFB presented its models and evaluations, which were based on analysts' models of Sunbeam.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

In particular, CSFB attended the February 23, 1998 due diligence meetings at which

NOT A CERTIFIED COPY

020351

Morgan Stanley and Sunbeam misrepresented Sunbeam's condition and prospects, *see* CPH App. 40 (Duffy Dep. at 134, 146-49); CPH App. 52 (MS Ex. 84) ("Sunbeam's Long Range Strategic Plan"); CPH Supp. App. 212 (MS Ex. 85) ("Sunbeam Discussion Materials"). CSFB's February 25 and February 27 presentations to the Coleman board relied upon and incorporated information directly from "Sunbeam's Long Range Strategic Plan" — which Morgan Stanley and Sunbeam provided to CSFB and CPH on February 23, 1998. *See* CPH App. 54 (MS Ex. 112) (February 25, 1998 CSFB Draft Materials Prepared for the Board of Directors) (models based on Sunbeam's "Long-Term Strategic Plan"); CPH Supp. App. 213 (MS Ex. 118) (February 27, 1998 CSFB Draft Materials Prepared for the Board of Directors) (same); *see also* CPH App. 97 (Drapkin Dep. at 103). CSFB's presentations also relied on "public" information that Morgan Stanley had vouched for by incorporating and relying on that information in materials provided to CPH. CPH App. 10 (Gittis Dep. at 140). In sum, CSFB's presentations were heavily influenced both by what Morgan Stanley disclosed and what Morgan Stanley kept hidden about Sunbeam.

Moreover, the proposed finding is inaccurate and misleading insofar as it characterizes CSFB as the "exclusive financial advisor to MAFCO." CSFB was the "exclusive" financial advisor to The Coleman Company, Inc. *See* CPH App. 122 (Slovin Dep. at 182). Aside from information provided by CSFB, CPH received and relied upon financial information and projections from Morgan Stanley, including Morgan Stanley's "Sunbeam Corporation Discussion Materials," and "Sunbeam's Long Range Strategic Plan," CPH App. 29 (CPH Ex. 9); CPH App. 37 (CPH Ex. 238), which were presented to CPH representatives at the meeting conducted by Morgan Stanley at its offices on February 23, 1998. CPH App. 34 (Perelman Dep. at 481); CPH App.10 (Gittis Dep. at 108-09).

NOT A CERTIFIED COPY

020352

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

194. As was the case on February 25, 1998, Perelman, Maher, Levin, Gittis, and CSFB were all present at the meeting. No one told the board about Sunbeam's slow sales in early 1998 or Levin's opinions about Sunbeam's Long Term Plan.

This proposed finding is misleading and substantially controverted insofar as it implies that any of Maher, Levin, Perelman, Gittis or CSFB knew of Sunbeam's "slow sales" in early 1998. Moreover, "slow" does not even begin to accurately describe Sunbeam's first quarter 1998 sales collapse. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 189, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

195. The Coleman board voted to approve the merger agreement between Sunbeam and Coleman at the February 27, 1998 board meeting.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

196. No Morgan Stanley representative attended the February 27, 1998 meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

This proposed finding also is misleading insofar as it implies that Morgan Stanley played no role in the Board's decision-making process. To the contrary, Morgan Stanley played a significant role. *See* CPH's Response to ¶ 190, which is incorporated by reference herein.

NOT A CERTIFIED COPY

020353

197. No materials prepared by Morgan Stanley were handed out to the board members at the February 27, 1998 meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated by reference herein.

This proposed finding also is misleading insofar as it implies that Morgan Stanley played no role in the Board's decision-making process. To the contrary, Morgan Stanley played a significant role. *See* CPH's Response to ¶ 190, which is incorporated by reference herein.

Further, this proposed finding is misleading insofar as it implies that the board did not receive any information provided by Morgan Stanley. CSFB's February 25 and February 27 presentations to the Coleman board relied upon and incorporated information directly from "Sunbeam's Long Range Strategic Plan" — which Morgan Stanley and Sunbeam provided to CSFB and CPH on February 23, 1998. *See* CPH's Response to ¶ 193, which is incorporated herein by reference.

C. Perelman and Gittis Approve the Merger

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

198. On February 27, 1998, Perelman and Gittis, in their capacities as directors of CPH, signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020354

199. On February 27, 1998, Perelman and Gittis, in their capacities as directors of Coleman Worldwide Corporation, signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

200. On February 27, 1998, Perelman and Gittis, in their capacities as directors of CLN Holdings Inc., signed a resolution approving and authorizing the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc. and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement").

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

XII. The Parties Execute The Merger Agreements As Of Friday, February 27, 1998

A. CLN Holdings Merger Agreement Is Approved by Perelman and Gittis

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020355

201. As of February 27, 1998, CPH and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Laser Acquisition Corp., CLN Holdings Inc., and Coleman (Parent) Holdings Inc. ("CLN Merger Agreement"). Pursuant to this CLN Merger Agreement Sunbeam acquired CPH's approximately 82 percent interest in Coleman.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

202. Schwartz signed the CLN Merger Agreement on behalf of CPH in his capacity as executive vice president and general counsel of CPH.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

203. Schwartz also signed the CLN Merger Agreement of behalf of CLN Holdings Inc. in his capacity as executive vice president and general counsel of CLN Holdings Inc.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

204. Schwartz testified that he was "certain at the time when [he] signed this document on behalf of those two entities [that] any issues that we had with respect to the document had been resolved."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020356

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

205. Morgan Stanley was not a party to the CLN Merger Agreement.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. The Coleman Merger Agreement Is Approved by Coleman's Board

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

206. On February 27, 1998, Coleman and Sunbeam entered into the Agreement and Plan of Merger Among Sunbeam Corporation, Camper Acquisition Corp., and The Coleman Company, Inc. ("Coleman Merger Agreement").

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

207. Both the CLN Merger Agreement (MS 93) and the Coleman Merger Agreement (MS 117) contain extensive representations and warranties between CPH and Coleman on the one hand and Sunbeam on the other. The respective parties each bargained for the representations and warranties that were material to them.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020357

Further, this proposed finding is incomplete and misleading. The representations and warranties in the merger agreements were to be true at the time of signing and the time of closing, and CPH bargained for a material adverse change clause and for an "advice of change" clause, which placed the burden on Sunbeam and Morgan Stanley to advise CPH of any developments that might lead to material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference.

208. The parties to the Merger Agreements agreed that "there were no other representations and warranties other than [those] set forth in the definitive documents that [the parties] signed."

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the court to resolve this factual controversy at this stage of the proceedings.

First, the proposed finding of fact is substantially controverted. Morgan Stanley materially misquotes both agreements, as well as Maher's deposition testimony. Maher testified only that the agreements speak for themselves. CPH App. 48 (Maher Dep. at 344-345 ("Q. And in customary fashion the parties in those agreements agreed there were no other representations and warranties other than set forth in the definitive documents that they signed? . . . THE WITNESS: I don't know that for a fact. If it says it, if you want to tell me that it says it, then it says it. BY MR. BEMIS: Q. You would agree with me if it says that, right? A. Yes.")) (emphasis added); CPH App. 95 (MS Ex. 93 § 12.5 (Private Merger Agreement); CPH App. 58 (MS Ex. 117 § 10.4 (Public Merger Agreement)).

Second, this proposed finding is misleading and substantially controverted insofar as it implies that that the integration clause absolves Morgan Stanley of liability. As CPH explains in

NOT A CERTIFIED COPY

020358

its Response in Opposition to Summary Judgment [hereinafter "CPH Opp."], the boilerplate integration clause in the Private Merger Agreement is irrelevant to whether Morgan Stanley is liable to CPH for fraud, conspiracy, aiding and abetting, or negligent misrepresentation. *See* CPH Opp. at 60-63.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

209. Neither the CLN Merger Agreement nor the Coleman Merger Agreement contain any representations or warranties concerning (i) Sunbeam's performance against the expectations of "Wall Street analysts" on a quarterly or annual basis; (ii) the "turnaround" of Sunbeam since 1996; or (iii) any increase in revenues, sales, profits, or earnings.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the court to resolve this factual controversy at this stage of the proceedings.

First, the proposed finding of fact is immaterial to Morgan Stanley's summary judgment motion. Morgan Stanley was not a party to either Merger Agreement, and CPH is not suing Morgan Stanley for breach of contract. Second, the proposed finding of fact is substantially controverted. Both agreements contained representations and warranties that Sunbeam's filings with the SEC — which portrayed Sunbeam as having been successfully turned around — were accurate, *see* CPH App. 95 (MS Ex. 93 § 4.7 & Art. V); CPH App. 58 (MS Ex. 117 § 5.6). The agreements also contained representations and warranties that those representations and warranties remained accurate through the date of closing, and that no event having an "adverse effect on the business, results of operation or financial condition" of Sunbeam had taken place.

NOT A CERTIFIED COPY

020359

See CPH App. 95 (MS Ex. 93 §§ 8.2(a), 8.2(c)); CPH App. 58 (MS Ex. 117 § 5.7).

Moreover, as Morgan Stanley was well aware, CPH bargained for a material adverse change clause and an "advice of change" clause, which placed the burden on Sunbeam and Morgan Stanley to inform CPH of any development that might lead to a material adverse change in Sunbeam's business, result of operations, or financial condition. *See* CPH App. 95 (MS Ex. 93 § 6.8, at 19); *see also id.* § 1.1, at 4 (defining material adverse effect).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

210. The CLN Merger Agreement contains an integration clause that states that the Agreement is the entire agreement and understanding between CPH and Sunbeam and "supersedes all prior agreements and understandings, oral or written."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Furthermore, this proposed finding of fact is substantially controverted insofar as it implies that the integration clause has any impact on Morgan Stanley's liability. For the same reasons that are set forth in CPH's Response to Paragraph 208, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

NOT A CERTIFIED COPY

020360

211. Schwartz, who signed the CLN Merger Agreement on behalf of CPH and CLN Holdings Inc., testified that he was not aware of any other representations or warranties after February 27, 1998 beyond those already contained in Article 5 of the CLN Merger Agreement. Schwartz also testified that he was not aware of any amendments or modifications to the CLN Merger Agreement prior to the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

212. Schwartz also testified that he was not aware of any contractual arrangements between MAFCO and Morgan Stanley with regard to the Sunbeam transaction or any representations or warranties by Morgan Stanley to any MAFCO or Coleman entity with regard to the Sunbeam transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

213. The Coleman Merger Agreement also contains an integration clause that states that the Agreement is the entire agreement and understanding and "supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which shall remain in full force and effect for the term provided therein."

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the court to resolve this factual controversy at this stage of the proceedings.

First, this proposed finding is immaterial insofar as it cites a provision of the Public Merger Agreement entered into by The Coleman Company Inc. and Sunbeam, CPH App. 58.

NOT A CERTIFIED COPY

020361

CPH was not a party to the Public Merger Agreement. *See id.*

Second, this proposed finding is misleading and substantially controverted insofar as it implies that the integration clause in the Public Merger Agreement has any impact on CPH's claims against Morgan Stanley. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 208, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

Third, the proposed finding is misleading and substantially controverted insofar as it suggests that more than one Confidentiality Agreement was "in full force in effect" between Sunbeam and Coleman. Only the February 4, 1998 Confidentiality Agreement was executed. For the same reasons that are set forth in CPH's Responses to Paragraphs 111 and 114, which are incorporated herein by reference, the Court should reject this proposed finding of fact.

Finally, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

C. MAFCO Gains Full and Complete Access to Sunbeam's Books and Records

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, as is laid out in the responses below, the heading misleadingly suggests that CPH should have inspected Sunbeam's "books and records." As a widely-followed, publicly-traded company, Sunbeam was required to file its financial statements and certain business information with the Securities and Exchange Commission. Sunbeam had warranted that these filings were accurate at the time the Merger Agreement was signed and would be accurate as of the date of closing. And, as Morgan Stanley well knew, Sunbeam was obligated to inform CPH of any such developments that might lead to a material adverse change in Sunbeam's business or financial results. *See* CPH's Response to ¶ 209, which is incorporated

NOT A CERTIFIED COPY

020362

herein by reference.

214. The CLN Merger Agreement gave CPH access to Sunbeam's books, records, personnel, and facilities. Specifically, the Agreement required Sunbeam to provide CPH and all of its "financial advisors, legal counsel, accountants, consultants and other representatives [with] full access . . . to all of [Sunbeam's] books, records, properties, plants and personnel."

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion and because it is substantially controverted insofar as it implies that this clause has any impact on CPH's claims against Morgan Stanley. As CPH shows in its Response in Opposition to Summary Judgment, CPH Opp. at 57-59, the merger agreement provisions dealing with access to Sunbeam's books do not render CPH's reliance on Morgan Stanley's misrepresentations unjustified. In addition, for the same reasons that are set forth in CPH's Response to Paragraph 209, which is incorporated herein by reference, the Court should reject this proposed finding of fact because the merger agreement required CPH to proceed to closing absent a "material adverse change" and because the agreement contained an "advice of changes" clause that required Sunbeam and Morgan Stanley to disclose any development that might lead to a material adverse change in Sunbeam's business or financial results.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020363

215. The Coleman Merger Agreement likewise required Sunbeam to provide Coleman and all of its "financial advisors, legal counsel, accountants, consultants and other representatives [with] full access . . . to all of [Sunbeam's] books, records, properties, plants and personnel."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

This proposed finding of fact is immaterial insofar as it involves the Coleman Merger Agreement, CPH App. 58 (MS Ex. 117), to which CPH was not a party, *see id.*, and is also misleading and substantially controverted. *See* CPH's Responses to ¶¶ 213-14, which are incorporated herein by reference.

216. Gittis testified that it was "absolutely" important that the people signing the Coleman Merger Agreement and the CLN Merger Agreement understand what was contained in the agreements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

0203364

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

217. Maher, the president of MAFCO and its head negotiator on the Sunbeam-Coleman transaction, "didn't read the final version of the [merger] agreement."

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. CPH is not suing for fraud in the factum; whether CPH representatives had read the agreement CPH entered with Sunbeam is irrelevant to whether CPH was fraudulently induced to enter the Private Merger Agreement, or defrauded into closing the transaction after that agreement was executed.

Moreover, this proposed finding is argumentative and misleading insofar as it implies that Maher should have read the merger agreement. Maher was not responsible for signing or executing the finalized agreement and was not expected to read the finalized version. CPH App. 48 (Maher Dep. at 341-42). In fact, the Private Merger Agreement was executed by Barry F. Schwartz, the general counsel for MAFCO, who testified that he read it before signing it, and the Public Merger Agreement was executed by Paul E. Shapiro, General Counsel for Coleman, who testified that he read it before signing it. CPH App. 58 (MS Ex. 117 at 40); CPH App. 95 (MS Ex. 93 at 34); CPH Supp. App. 184 (Schwartz Dep. at 28 ("Q: Did you read the merger agreement, MS 93, before you signed it? A: I'm sure that I did but I don't have a memory of that now.")); CPH App. 47 (Shapiro Dep. at 76 ("Q. And you had, as the chief legal officer and general counsel, reviewed the document before you signed it, correct? A. Yes.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection

NOT A CERTIFIED COPY

020365

Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

218. Slovin, the president of both MAFCO and CPH and a Coleman board member, "[does not] recall reading any specific page [of the merger agreement] . . . in February 1998" or at any time "after [the] board voted to approve the merger."

First, taken in isolation, that Slovin does not recall reading the agreement is immaterial to the issues before the Court at summary judgment, including whether he indeed read the agreement, and accordingly is not material to the issues before the Court at summary judgment.

Furthermore, for the same reasons that are set forth in CPH's Response to Paragraph 217, which is incorporated herein by reference, the Court should reject this proposed finding of fact because it is misleading, argumentative, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

XIII. From Signing To The March 19 Press Release — Sunbeam Makes Disclosures And CPH Looks Away

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley

NOT A CERTIFIED COPY

020366

has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, the heading is argumentative and misleading. As is laid out in greater detail in the responses below, CPH kept itself informed of Sunbeam's "disclosures" prior to the March 19 press release, but those "disclosures" were false and misleading. CPH App. 48 (Maher Dep. at 376).

A. MAFCO Elects Not to Inspect Sunbeam's Books and Records

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, as is laid out in the responses below, the heading misleadingly suggests that CPH should have inspected Sunbeam's "books and records." As a widely followed, publicly traded company, Sunbeam was required to file its financial statements and certain business information with the Securities and Exchange Commission. Sunbeam had warranted that these filings were accurate at the time the Merger Agreement was signed and would be accurate as of the date of closing. And, as Morgan Stanley well knew, Sunbeam was obligated to inform CPH of any such developments that might lead to a material adverse change in Sunbeam's business or financial results. *See* CPH's Response to ¶ 209, which is incorporated herein by reference.

219. Gittis testified that both MAFCO and Sunbeam had an "opportunity to do whatever due diligence they chose to do before signing the documents and, indeed, closing the transaction."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the

NOT A CERTIFIED COPY

020367

opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

220. Although both merger agreements explicitly gave CPH full access to Sunbeam's books and records, Perelman was not aware of "anyone from MAFCO or its subsidiary companies [who] had examined the books and records of Sunbeam after the signing of the merger agreements and before the closing on March 30."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This proposed finding is misleading and substantially controverted insofar as it implies that CPH should have examined Sunbeam's books and records prior to the closing on March 30, 1998. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 273, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

221. Gittis, the number two man at MAFCO, did not know of any due diligence conducted by the MAFCO team after the third February 23, 1998 meeting and before the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading insofar as it implies that CPH conducted no due diligence after February 23, 1998. Following the February 23 meeting, CPH representatives

NOT A CERTIFIED COPY

020368

conducted additional due diligence, including discussions with Sunbeam on the company's "future operations," CPH App. 48 (Maher Dep. at 351), and inquiries about outstanding litigation, environmental matters, and business operations. CPH App. 50 (Shapiro Dep. at 298-99). Additionally, on February 24, CSFB met again with Sunbeam senior management to discuss Sunbeam's strategic plan and 1997 results. CPH App. 125 (MS Ex. 230). Further, on March 18, 1998, Nesbitt attended the New York debenture road show. CPH App. 28 (Nesbitt Dep. at 425-29, 483-85). CPH also reviewed Sunbeam's 10-K, issued on March 6, 1998, and the preliminary and final offering memoranda for the debenture offering. CPH App. 32 (Perelman Dep. 512-13); CPH App. 10 (Gittis Dep. at 171); CPH Supp. App. 223. Upon receipt of the March 19, 1998 press release, *see* CPH App. 79 (CPH Ex. 14), CPH representatives reviewed the release and discussed its contents. CPH App. 50 (Shapiro Dep. 333-34). In addition, CPH representatives also conducted their own independent research following the press release. William Nesbitt testified that he "canvassed the institutional research community" to see what "the response was to this release." CPH App. 28 (Nesbitt Dep. at 433). CPH also spoke to Sunbeam and Morgan Stanley about the press release. CPH App. 10 (Gittis Dep. at 106); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.).

222. Levin, the top Coleman executive and Perelman's expert on consumer products companies, did not know of any due diligence done by the MAFCO or Coleman teams between February 23, 1998 and the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, as described in CPH's Response to Paragraph 221, which is incorporated herein by reference, CPH representatives conducted additional due diligence following the February 23

NOT A CERTIFIED COPY

0203369

meeting.

223. Maher was not aware of "any request by the MacAndrews and Forbes due diligence team directed to either Sunbeam or its accountants to examine Sunbeam's books and records, properties, [and] copies of any documents filed with the federal or state securities authorities pursuant to Section 6.7 of MS 93 [CLN Merger Agreement]."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

224. Maher was not aware of "any request by Coleman pursuant to . . . section 7.2 [of the Coleman Merger Agreement] made to either Sunbeam or its accountants or its legal counsel or its financial advisers for access to books and records relating to properties, plants, personnel, business operations, et cetera."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This proposed finding is misleading and substantially controverted insofar as it implies that CPH should have examined Sunbeam's books and records prior to the closing on March 30,

NOT A CERTIFIED COPY

020370

1998. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 273, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

In addition, the Court should reject this proposed finding because it is not relevant to CPH's claims against Morgan Stanley and would mislead and confuse the jury.

225. Levin could not recall any request by Coleman between February 27 and March 30, 1998 "to inspect the books and records of Sunbeam corporation pursuant to" the merger agreements.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

This proposed finding is misleading and substantially controverted insofar as it implies that CPH should have examined Sunbeam's books and records prior to the closing on March 30, 1998. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 273, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

In addition, the Court should reject this proposed finding because it is not relevant to CPH's claims against Morgan Stanley and would mislead and confuse the jury.

NOT A CERTIFIED COPY

020371

226. Maher could not recall having any communications with anyone at Morgan Stanley about the Sunbeam-Coleman transaction between February 28, 1998 and the closing of the transaction on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period. For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

227. Maher could not recall Levin, Page, Nesbitt, or anyone from CSFB having any communications with anyone at Morgan Stanley about the Sunbeam-Coleman transaction from February 28, 1998 until the closing of the transaction on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period. For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

NOT A CERTIFIED COPY

0203372

228. Levin could not recall attending "any face-to-face meetings with Morgan Stanley employees after the merger agreements were signed and up to the date of closing [on] March 30, 1998."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period. For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

229. Drapkin, the vice chairman of MAFCO and a board member of both CPH and Coleman, had no face-to-face meetings or conference calls with anyone at Morgan Stanley between the signing of the merger agreements and the closing on March 30, 1998. He also could not recall receiving any correspondence from Morgan Stanley between the signing of the merger agreements and the closing.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period.

NOT A CERTIFIED COPY

020373

For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

230. Slovin, president of both MAFCO and CPH and a Coleman board member, did not attend any meetings with, participate in any conference calls with, or receive any documents from Morgan Stanley concerning the Sunbeam-Coleman merger between the Coleman board's approval of the merger and the closing of the transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period. For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

231. Schwartz, who had ultimate responsibility for in-house legal matters at MAFCO and its holding companies, did not have any meetings, correspondence, or conference calls with Morgan Stanley between signing the CLN Merger Agreement and the closing.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, this proposed finding is misleading, unsupported, and controverted insofar as it implies that no CPH representatives communicated with Morgan Stanley during this period. For example, Nesbitt attended Morgan Stanley's roadshow presentation on March 18, 1998, and

NOT A CERTIFIED COPY

020374

received a copy of Morgan Stanley's presentation materials. CPH App. 28 (Nesbitt Dep. at 425-26, 484).

232. Barry Schwartz, who had ultimate responsibility for in-house legal matters at MAFCO and its holding companies, was not aware of anyone on the MAFCO side of the transaction:

- **interviewing middle management at Sunbeam regarding its operations or financial performance;**
- **visiting any Sunbeam plants to evaluate the inventory of Sunbeam products;**
- **contacting Sunbeam's major customers about Sunbeam;**
- **contacting any analysts who followed Sunbeam; or**
- **interviewing anyone at Arthur Andersen, Sunbeam's outside auditors, regarding Sunbeam's financial performance.**

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

233. Lawrence Bornstein, the audit manager on the Arthur Andersen engagement with Sunbeam, testified that he was not aware of:

- **any due diligence conducted by MAFCO or its representatives as part of the transaction;**
- **any in-person meetings between MAFCO or its representatives and Arthur Andersen as part of the transaction;**
- **any telephone conferences between MAFCO or its representatives and Arthur Andersen as part of the transaction;**
- **any due diligence by CSFB of Sunbeam;**
- **any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's disclosures about "bill and hold" sales made in Sunbeam's annual report for the year 1997;**

NOT A CERTIFIED COPY

020375

- **any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's "bill and hold" sales in first quarter 1998;**

- **any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's disclosures about the "Early Buy Program" made in Sunbeam's annual report for the year 1997;**

- **any inquiries by MAFCO or its representatives of Arthur Andersen regarding Sunbeam's "Early Buy Program" in first quarter 1998; or**

- **any accounting due diligence call with MAFCO.**

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

234. In sum, Bornstein testified he was "surprised" by the lack of inquiry from MAFCO regarding Sunbeam.

The Court should reject this proposed finding of fact because at least some of the supposedly supporting evidence is inadmissible, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Bornstein testified that he does not have personal knowledge of what CPH did to inform itself of Sunbeam's condition. *See* CPH App. 63 (Bornstein Dep. at 343 ("Q: Mr. Bornstein, do you know whether — excuse me, do you know what my client, Coleman (Parent) Holdings, asked Sunbeam and asked Morgan Stanley on the subject of how Sunbeam was doing in the first quarter of 1998 and what my client told them? A: No.")). His testimony about an alleged "lack of inquiry from MAFCO regarding Sunbeam" therefore lacks foundation. Indeed, if anything Bornstein was "surprised" by Morgan Stanley's failure to inquire about first-quarter 1998. CPH App. 63 (Bornstein Dep. at 183).

The proposed finding of fact is impracticable for the court to determine at this stage of the proceedings. The jury, acting as factfinder in the first instance, will have ample opportunity

NOT A CERTIFIED COPY

020376

to listen to Bornstein's testimony and evaluate the weight, if any, it wishes to give his opinion. For the court to adopt Bornstein's testimony as a finding of fact prior to trial would confuse and hinder, rather than aid, the jury in that determination.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

235. Gittis believed that Levin contacted Sunbeam's customers, but was unable to recall if the contact occurred before or after the closing on March 30, 1998. In fact, such contact occurred after the closing.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Levin testified that it would have been highly improper for him to engage in the investigation described. *See* CPH App. 8 (Levin Dep. at 350 ("Q. Just so we are clear, before the closing of the merger transaction on March 30th, 1998, no one at MacAndrews & Forbes asked you to contact any of Sunbeam's customers, such as Wal-Mart, Target or K-Mart to see what the status of their relationship was with Sunbeam? A. That would have been disastrous and probably illegal.")).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

236. On March 2, 1998, the merger between Coleman and Sunbeam was announced. Perelman stated that "[t]his is a fantastic situation for all Sunbeam shareholders giving them the opportunity to participate in the wealth that Al Dunlap and

NOT A CERTIFIED COPY

020377

his team are building. Coleman will thrive as part of Sunbeam's unbeatable family of brands."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

B. MAFCO Insiders Bail Out of Coleman Stock as Soon as the Merger Is Publicly Announced

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, the heading is argumentative, misleading, and highly prejudicial. The facts below describe nothing more than stock sales by Coleman board members for personal, well-founded reasons, not a "bail out" by "MAFCO Insiders."

237. Levin testified that a "particular point[] of interest" for him in the transaction was that the "management [of the Coleman Company] not be put in a position of having to hold Sunbeam stock or options unless they voluntarily chose to do so." Levin further testified that he "didn't want to wind up in a situation where . . . most of my wealth would be tied up in Sunbeam stock options. It was just something I did not want to do. . . . I did not want Sunbeam stock."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020378

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

In addition, the Court should reject this proposed finding because it is based solely on inadmissible evidence: (a) a deposition of a third-party (Levin) in an entirely different proceeding and (b) a newspaper article that Morgan Stanley never used as an exhibit.

Furthermore, this proposed finding is misleading and unsupported insofar as Morgan Stanley asserts that Levin "bailed out" of Coleman. The newspaper article cited by Morgan Stanley, "Coleman's Levin profits by selling stock after sale to Sunbeam," provides Levin's explanation for why he sold his Coleman stock: "I tend to invest only in things I'm involved in." MS Ex. 398 (cited in Morgan Stanley's Proposed Findings at ¶ 238).

238. Accordingly, Levin advocated for and received a provision that allowed Coleman insiders to exercise any Coleman options they had and "receive no less than $27.50 in price" for those options. Levin himself exercised options on about 500,000 shares of Coleman stock at about $12 per share and sold them for about $34 per share.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020379

Levin testified in this litigation that the purpose of the voluntary option cash-out provision was to put Coleman employees, many of whom would no longer be employed at the company after the acquisition, on the same footing as the public shareholders who had the ability to hold or sell their stock. CPH App. 7 (Levin Dep. at 89-91). Furthermore, this proposed finding is misleading and unsupported insofar as Morgan Stanley asserts that Levin "bailed out" of Coleman. The newspaper article cited by Morgan Stanley, "Coleman's Levin profits by selling stock after sale to Sunbeam," provides Levin's explanation for why he sold his Coleman stock: "I tend to invest only in things I'm involved in." MS Ex. 398 (cited in Morgan Stanley's Proposed Findings at ¶ 238).

239. Soon thereafter, and before the March 30, 1998 closing date, at least two other inside directors of Coleman, Bruce Slovin and Donald Drapkin, sold their shares of Coleman stock. Slovin sold 52,600 shares and sold Drapkin 20,000 shares at around $32 per share.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject this proposed finding because it is misleading, unsupported, and controverted insofar as it implies that Drapkin's and Slovin's stock sales reflect a "bail out" of Coleman stock. Both Drapkin and Slovin explained their stock sales. Drapkin, who sold 20,000 of his shares, but retained his children's 10,000 shares, testified: "My position is in all the companies in which I'm a director, as long as I'm a director I think it's appropriate that I own shares. When I no longer serve as a director, I no longer feel the need to own shares. . . . I was not going to be a director of the combined companies. I had no continuing interest." CPH App. 97 (Drapkin Dep. at 193). Drapkin also testified that because of his decision to sell

NOT A CERTIFIED COPY

020380

his stock immediately following the announcement of the merger based upon the fact that he would no longer be director of the combined companies, he actually missed out on the subsequent increase in the value of the stock between the time of the announcement and the issuance of the March 19, 1998 press release. CPH App. 97 (Drapkin Dep. at 193-95). Slovin similarly testified that he "held the stock when it was part of the Perelman enterprises" and sold his 52,600 shares because Coleman would no longer be a Perelman company after the merger. CPH App. 122 (Slovin Dep. at 82). He also testified that he "made a judgment on behalf of [his] children that it was . . . in their best interest and [his], as well, to liquidate the stock." CPH App. 122 (Slovin Dep. at 83).

C. MAFCO Elects Not to Read Sunbeam's 1997 Annual Report on Form 10-K

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Moreover, this heading is argumentative and substantially controverted because CPH representatives did read Sunbeam's 1997 Form 10-K. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

240. On March 6, 1998, Sunbeam filed with the SEC Sunbeam's Form 10-K annual report for 1997. In its Annual Report, Sunbeam disclosed that it engaged in "bill-and-hold" revenue recognition for certain sales amounting to 3 percent of Sunbeam's consolidated revenues.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

This proposed finding is misleading and substantially controverted insofar as it implies that Sunbeam publicly disclosed its deteriorating financial status prior to the March 30, 1998

NOT A CERTIFIED COPY

020381

closing because the disclosures in Sunbeam's 1997 10-K did not put readers on notice of the fact that Sunbeam's bill-and-hold sales were not true bill-and-hold sales. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

241. Sunbeam's 1997 annual report also disclosed that in 1997 Sunbeam had created an "early buy" program for highly seasonal products such as grills. Sunbeam explained that the early buy program would help levelize grill sales, which typically occurred in the first half of the year. Sunbeam also disclosed that the early buy program would shift certain sales risks to later periods and that grills had begun to ship in the fourth quarter of 1997 under the program.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

The Court should reject this finding because it is misleading and substantially controverted to the extent that it implies that Sunbeam's 10-K disclosures were sufficient to put readers on notice of that Sunbeam's "early buy" program was simply an earnings manipulation technique designed to accelerate sales from future periods. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020382

242. Gittis did not see Sunbeam's annual report on form 10-K for the year 1997 before the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding of fact is misleading, substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Gittis testified that he reviewed Morgan Stanley's debenture offering memorandum, which included the financial statements from Sunbeam's 1997 10-K. CPH App. 10 (Gittis Dep. at 171); CPH Supp. App. 192 (MS Ex. 166). Moreover, Perelman testified that he reviewed Sunbeam's 10-K before the March 30, 1998 closing, *see* CPH App. 34 (Perelman Dep. at 513 ("Q: Did you see Sunbeam's form 10-K before the March 30 closing? A: Yes.")), as did other CPH representatives. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

This proposed finding also is misleading insofar as it implies that readers of Sunbeam's 1997 Form 10-K would have been on notice of Sunbeam's fraud. *Id.*

243. Levin does not recall reading a copy of Sunbeam's annual report on form 10-K for the year 1997 before closing on the Sunbeam-Coleman transaction on March 30, 1998. At the time the annual report was released, Levin was in Tucson, Arizona at his vacation home.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding of fact is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceeding

NOT A CERTIFIED COPY

020383

because CPH representatives reviewed Sunbeam's 1997 10-K. *See* CPH's Response to ¶ 136, which is incorporated herein by reference. This proposed finding also is misleading insofar as it implies that readers of Sunbeam's 1997 Form 10-K would have been on notice of Sunbeam's fraud. *Id.*

Furthermore, CPH objects to the reference to Levin's whereabouts at the time the annual report was released as immaterial, irrelevant, misleading, and prejudicial.

244. Maher did not see or read Sunbeam's 1997 annual report before the closing on March 30, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding of fact is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. Maher testified that he does not recall whether it saw Sunbeam's 1997 Annual Report before the closing. CPH App. 39 (Maher Dep. at 27). In addition, Maher received a copy of Sunbeam's 1997 financial statements. *See* CPH App. 223 (March 16, 1998 Preliminary Offering Memorandum). Moreover, other CPH representatives reviewed Sunbeam's 1997 10-K. *See* CPH's Response to ¶ 136, which is incorporated herein by reference. Further, this proposed finding is misleading insofar as it implies that readers of Sunbeam's 1997 Form 10-K would have been on notice of Sunbeam's fraud. *Id.*

XIV. Morgan Stanley First Learns Of Sunbeam's First Quarter Sales And Insists That Sunbeam Issue The March 19 Press Release.

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact. Additionally, this heading is inconsistent with Morgan Stanley's heading X.B.,

NOT A CERTIFIED COPY

020384

and its proposed findings of fact at Paragraphs 169, 183, 184, 189, and 194.

A. Morgan Stanley Learns of a Possible Sales Shortfall.

245. On March 18, 1998, Ruth Porat of Morgan Stanley learned that Sunbeam's first quarter 1998 sales were not as strong as expected. She promptly brought this concern to the attention of other Morgan Stanley employees working on the Sunbeam transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, CPH does not dispute that Morgan Stanley received on March 18, 1998, a copy of the "comfort letter" from Sunbeam's auditors and a chart of "potential" sales from Donald Uzzi, Sunbeam's Executive Vice President of Consumer Products. These documents advised Morgan Stanley that Sunbeam's purported turnaround was a sham, that Sunbeam's projected 1998 performance promoted by Sunbeam and Morgan Stanley was unattainable, and that Sunbeam already was in the midst of a disastrous collapse in sales and earnings. CPH App. 69 (CPH Ex. 17 at MS 379); CPH App. 70 (CPH Ex. 24); CPH App. 71 (CPH Ex. 344); CPH App. 72 (Dean Dep. at 132-33). The letter warned Morgan Stanley that Sunbeam's actual January and February 1998 net sales of $71 million were less than 25 percent of Wall Street's first quarter expectations of $285 to $295 million, and were just half of the $143.5 million in net sales Sunbeam had made in the first two months of 1997. The auditors' letter also disclosed that the primary reason for the collapse in Sunbeam's net sales was that Sunbeam had "accelerated" sales that would have been received in the first quarter of 1998 into the fourth quarter of 1997. CPH App. 69 (CPH Ex. 17 at MS 378).

The sales chart from Uzzi detailed the severity of the sales crisis and showed that matters were even worse than shown in the comfort letter. CPH App. 76 (CPH Ex. 16); CPH App. 74 (Porat Dep. at 176-79). This document revealed that Sunbeam's average daily sales for the first

NOT A CERTIFIED COPY

020385

18 days in March were a mere $1.6 million, and that Sunbeam somehow needed to sell $151.8 million in products — an average of $13.8 million per day — simply to match 1997 first quarter sales. CPH App. 76 (CPH Ex. 16); CPH App. 75 (Tyree Dep. at 232-35). In order to reach analysts' estimates of $285 to $295 million in net sales, Sunbeam somehow needed to sell $183.4 to $193.4 million in products — an average of $16.7 to $17.5 million per day. *Id.* The Uzzi sales chart contains no indication of how Sunbeam could even hope to achieve $285 to $295 million in net sales. CPH App. 117 (Fogg Dep. at 112). The chart did purport to show how Sunbeam might barely match its 1997 net sales of $253.4 million, but to do so, Sunbeam had to obtain and close more than $125.5 million of "potential orders" or "forecasted" orders in 11 days. CPH App. 76 (CPH Ex. 16); CPH App. 117 (Fogg Dep. at 112-16). It thus became clear, as one of Morgan Stanley's lawyers admitted, that Sunbeam's first quarter 1998 sales certainly would be lower than Wall Street analysts had expected. CPH App. 77 (Stack Dep. at 123, 147-48). Indeed, Porat feared Sunbeam might not meet analysts' estimates, yet she did not receive any assurance that Sunbeam had ever accomplished $180 million in sales in the last 11 days of any prior quarter. CPH App. 74 (Porat Dep. at 184-85).

246. On March 18, 1998, Morgan Stanley and its counsel participated in several conference calls with Sunbeam's management and Sunbeam's outside counsel regarding Sunbeam's sales in the first quarter of 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, as described in CPH's Response to Paragraph 245, which is incorporated herein by reference, the information that Morgan Stanley received on March 18, 1998 advised Morgan Stanley that Sunbeam's purported turnaround was a sham, that Sunbeam's projected

NOT A CERTIFIED COPY

020386

1998 performance promoted by Sunbeam and Morgan Stanley was unattainable, and that Sunbeam already was in the midst of a disastrous collapse in sales and earnings.

247. In the afternoon, Sunbeam management faxed a build-up of first quarter sales to Morgan Stanley for discussion. Morgan Stanley then participated in a conference call with Sunbeam's management, including David Fannin, Russell Kersh, and Donald Uzzi, as well as attorneys from Davis Polk and Skadden Arps. During this call, Sunbeam walked through the build-up of Sunbeam's sales and projections and assured Morgan Stanley that Sunbeam would make its expected numbers.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, as described in CPH's Response to Paragraph 245, which is incorporated herein by reference, the documents that Morgan Stanley received on March 18, 1998 advised Morgan Stanley that Sunbeam's purported turnaround was a sham, that Sunbeam's projected 1998 performance promoted by Sunbeam and Morgan Stanley was unattainable, and that Sunbeam already was in the midst of a disastrous collapse in sales and earnings.

Further, the Court should reject this proposed finding because it is substantially controverted insofar as Morgan Stanley asserts that Sunbeam "assured Morgan Stanley that Sunbeam would make its expected numbers." *See* CPH's Response to ¶ 248, which is incorporated herein by reference.

248. Despite Sunbeam's assurances, Morgan Stanley demanded that Sunbeam issue a press release alerting investors that Sunbeam may not make its expected numbers in the first quarter.

The Court should reject this proposed finding of fact because it is substantially

NOT A CERTIFIED COPY

020387

controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. In particular, it is controverted whether Sunbeam made "assurances" to Morgan Stanley that it would reach its first quarter 1998 sales targets, because evidence not cited by Morgan Stanley indicates that Sunbeam never made such promises. For example, other witnesses, such as Morgan Stanley's Tyree and Strong, did not recall Sunbeam guaranteeing that it would be able to reach its sales (or profit) targets for first quarter 1998. *See, e.g.*, CPH App. 75 (Tyree Dep. at 239); CPH App. 9 (Strong Dep. at 307). The evidence shows that Morgan Stanley and its lawyers knew that Sunbeam could not attain the sales and profits expected for first quarter 1998 and Morgan Stanley participated in the preparation of a press release carefully crafted so as to not throw a "monkey wrench" into the Coleman transaction. *See, e.g.*, CPH App. 118 (Fogg Dep. at 315-16); CPH App. 74 (Porat Dep. at 184); CPH App. 9 (Strong Dep. at 307); CPH App. 77 (Stack Dep. at 47, 123, 147-48 (Morgan Stanley's attorney, indicating that the group believed Sunbeam would not be able to meet analysts' expectations, based on information about first-quarter sales)). As the "build up" chart cited by Morgan Stanley makes clear, Sunbeam had no chance of making its first quarter 1998 sales. *See* CPH's Response to ¶ 245, which is incorporated herein by reference.

Furthermore, the proposed factual finding is misleading insofar as it asserts that the press release was issued by Sunbeam, when the evidence shows that Morgan Stanley worked hand-in-hand with Sunbeam. *See* CPH's Response to ¶ 249, which is incorporated herein by reference. In addition, the proposed finding's term "expected numbers" is vague and undefined, as it does not explain which numbers and by whom they were expected, and is therefore inappropriate as a factual finding. Indeed, Morgan Stanley's use of the vague term "numbers" incorrectly suggests that Morgan Stanley pushed for the issuance of a press release that revealed Sunbeam's truly dire

NOT A CERTIFIED COPY

020388

state. In fact, Morgan Stanley — despite knowing that Sunbeam could not make Wall Street's first-quarter 1998 estimates for net sales or match first-quarter 1997 sales, and that first-quarter 1998 earnings would indeed be a loss — ultimately signed off on the false and misleading press release that did not disclose this information and the true reason behind the sales shortfall. CPH App. 118 (Fogg Dep. at 343-344). Morgan Stanley considered a suggestion that the press release include Sunbeam's actual sales figures, so that the public would have more complete information, but this suggestion was "soundly rejected." *See, e.g.*, CPH App. 72 (Dean Dep. at 123-24, 132-33). This was so, even though Morgan Stanley knew full well that the more negative (and therefore candid) the press release, the greater the risk to the Coleman deal, CPH App. 118 (Fogg Dep. at 333), and the more likely that the Sunbeam stock price would decline, making the debenture offer more expensive for the company. CPH App. 74 (Porat Dep. at 96, 216). Had Morgan Stanley been unsatisfied with the disclosures in the press release, it simply could have declined to price the debentures the next day. *See* CPH App. 118 (Fogg Dep. at 190-192). Indeed, Morgan Stanley signed off on the contents of the press release before it was issued on March 19. *Id.* at 343-344.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. The March 19, 1998 Press Release

249. On March 19, 1998, Sunbeam issued a press release stating that its sales for the first quarter of 1998 might be lower than the range of Wall Street analysts' estimates.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. A press release was issued on March 19, 1998, but Sunbeam did not issue this press release alone, as the proposed finding suggests. Rather, Morgan Stanley was

NOT A CERTIFIED COPY

020389

closely involved in the process of drafting, reviewing, and issuing the press release. *See, e.g.*, CPH App. 72 (Dean Dep. at 123-24, 132-33); CPH App. 74 (Porat Dep. at 187-90); CPH App. 118 (Fogg Dep. at 343-44); CPH App. 137 (CPH Ex. 13).

Furthermore, this proposed finding mischaracterizes the press release by failing to describe it fully and accurately. Although the press release included a statement that first quarter 1998 sales "might be lower" than analysts' expectations, it concealed the actual results in January, February, and the first half of March, it did not disclose that Sunbeam was $185-$195 million short of net sales expectations, and it also asserted that sales were expected to exceed those for first quarter 1998, which Morgan Stanley knew to be untrue. *See* CPH App. 79 (CPH Ex. 14). The press release also was silent with respect to Sunbeam's undisclosed (and bleak) earnings expectations and falsely blamed any shortfall on inventory management and order patterns, rather than Sunbeam's "early buy" program, *see id.*, which Morgan Stanley knew (from the draft comfort letter it had reviewed) to be the real reason for Sunbeam's shortfall, *see* CPH App. 69 (CPH Ex. 17 at 3-4). The press release was carefully prepared to avoid "throw[ing] a monkey wrench" into Sunbeam's pending deals. *See* CPH's Response to ¶ 248, which is incorporated herein by reference.

In addition, the Perelman testimony cited does not describe the contents of the press release. And, to the extent that the Court's August 11, 2004 Choice of Law Order can serve as basis for undisputed facts in light of discovery that has since occurred, that Order does not characterize or describe the press release in the manner that this proposed finding does. Moreover, the Court's Order expressly recognized that Morgan Stanley reviewed the press release before it was released. *See* CPH App. 96 (Aug. 11, 2004 Order at 7-8).

Further, the Court should reject this proposed finding on the basis of CPH's Objection

NOT A CERTIFIED COPY

020390

Applicable to All Proposed Findings, which is incorporated herein by reference.

250. The press release was drafted by Sunbeam and its attorneys at Skadden Arps.

The Court should reject this proposed finding of fact because it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. It is telling that Morgan Stanley cites the testimony of one of Morgan Stanley's junior lawyers as support for this proposed finding, because the testimony of other principals reveals that it was not merely Sunbeam and its attorneys who drafted the press release, but that Morgan Stanley had an integral role in the process. *See, e.g.*, CPH App. 72 (Dean Dep. at 123-24, 132-33); CPH App. 74 (Porat Dep. at 187-90).

Moreover, the scant evidence cited by Morgan Stanley does not support the proposed finding. Rather, Stack stated, in full:

> Q. And do you recall who was charged with drafting the press release?
> A. I think it was probably Skadden, as the company's counsel.
> Q. Do you recall —
> A. Yeah, I am probably just speculating, I don't remember specifically.
> Q. Do you know if Morgan Stanley or its counsel, Davis Polk, reviewed drafts of the press release?
> A. I am sure that we did. I don't remember reviewing it myself. But, again, as the junior person, it probably would have gone to the more senior people.

CPH App. 77 (Stack Dep. at 158-59). As this complete excerpt of testimony reveals, Stack did not testify that Sunbeam drafted the release, but merely speculated that Skadden Arps may have drafted it, conceding a lack of personal knowledge. Furthermore, Stack confirmed that Morgan Stanley knew, while assisting with the press release, that Sunbeam's first quarter 1998 sales certainly would be lower than Wall Street analysts had expected. *See* CPH App. 77 (Stack Dep. at 123, 147-48). Thus, if anything, the witness relied upon by Morgan Stanley confirms that Morgan Stanley and its attorneys were intimately involved in the drafting process and knew that

NOT A CERTIFIED COPY

020391

Sunbeam would not meet analysts' expectations. *See* CPH's Responses to ¶¶ 248-49, which are incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

251. Perelman saw the press release "at the time it was issued or right about the time it was issued."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

252. Although he was skiing in Aspen, Colorado at the time, Maher saw the press release issued by Sunbeam "[s]omewhere on that day [March 19, 1998] or thereafter."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020392

Furthermore, CPH objects to the reference to Mr. Maher's whereabouts at the time of the March 19, 1998 press release as immaterial, irrelevant, misleading, and prejudicial.

253. Gittis recalled that Sunbeam's stock dropped nearly 10 percent following the March 19, 1998 press release, but testified that he "would have taken the Sunbeam stock at that price" and that the sudden change in value "did not bother" him.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

In addition, the Court should reject this proposed finding because the selective quotations are misleading. As Gittis explained, even after the March 19, 1998 press release, Sunbeam's stock was trading at levels higher than when the CPH-Sunbeam merger agreement was signed on February 27, 1998, CPH App. 10 (Gittis Dep. at 110-11), and thus, if anything, CPH was better off than at the time of signing.

254. Under the terms of the CLN Merger Agreement, Perelman was to receive 14,099,749 shares of Sunbeam common stock. Sunbeam's stock fell $4-11/16 on March 19, 1998 and was the 20th most active stock on the NYSE. On paper, Perelman lost over $66,000,000 dollars.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020393

In addition, the Court should reject this proposed finding because it is misleading, unsupported, and controverted. After the March 19 press release, Sunbeam's stock was trading at levels higher than when the CPH-Sunbeam deal was signed. *See* CPH's Response to ¶ 253, which is incorporated herein by reference. Moreover, this proposed finding should be rejected because it is misleading, unsupported, and would confuse the jury insofar as it suggests that CPH had a "paper loss" where the stock was trading at levels higher than where the deal was signed. *See* CPH Supp. App. 238 (12/7/04 Nye Report at ¶¶ 21-22). Finally, the Court should reject Morgan Stanley's improper and misleading reference to Perelman. *See* CPH's Responses to Heading I and ¶ 1, which are incorporated herein by reference.

255. Schwartz testified that he considered the information in the March 19, 1998 press release to be "material," but he believed that the stock's value rebounded "after the analysts wrote their reports about the significance of . . . what's in the press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

C. Perelman Asks No Questions of Sunbeam Following the March 19, 1998 Press Release.

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020394

256. According to Perelman, the March 19, 1998 Sunbeam press release "point[ed] up some issues that ha[d] to be addressed."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

257. Perelman testified that he does not recall making any inquiries regarding the March 19, 1998 press release but that "[he] would *imagine* that [he] would have asked either [James] Maher and/or Jerry Levin" to "make inquiry about the March 19 press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020395

Further, this proposed finding is misleading and controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

This proposed finding is also argumentative, unsupported, and misleading insofar as it implies (through supplied emphasis or otherwise) that Perelman did not make personal inquiry or ask someone to make inquiry of Sunbeam or Morgan Stanley. *See* CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs).

258. Schwartz did not ask anyone at Sunbeam for more specific information about its sales during the first quarter of 1998 after receiving the March 19, 1998 press release.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

259. Nesbitt testified that he understood the March 19, 1998 press release to be "an indication that [Sunbeam] might not meet their results."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this

NOT A CERTIFIED COPY

020396

proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

260. Maher, who was skiing in Aspen, Colorado at the time of the March 19 press release, "believe[s] that [Jerry] Levin talked to [Sunbeam]" about the March 19, 1998 press release.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to

NOT A CERTIFIED COPY

020397

¶ 263, which is incorporated herein by reference. CPH also objects to the reference to Mr. Maher's activities in Colorado as immaterial, irrelevant, misleading, and prejudicial.

261. Levin testified that he took no action to inquire of Sunbeam about the March 19 press release because it was "not [his] problem."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is misleading and substantially controverted. Levin testified that "anything that could happen that could affect Coleman Company and its shareholders would be my problem." CPH App. 8 (Levin Dep. at 316). Additionally, Levin testified that the press release, on its face, did not reveal any problems that needed to be addressed, and therefore, "it was not my problem, it was not their problem, there was really no action necessary." *Id.* at 320-321.

This proposed finding also is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

262. Maher does not know whether "anyone on the MacAndrews & Forbes due diligence team call[ed] [Sunbeam CEO] Mr. [Albert] Dunlap and ask him about the

NOT A CERTIFIED COPY

020398

statements that were being attributed to him in connection with the March 19 press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

263. Maher never saw — and neither he nor anyone else on the MAFCO due diligence team ever requested from Sunbeam, or its auditor, Arthur Andersen — a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998.

This proposed finding is misleading and substantially controverted insofar as it implies that CPH should have requested Sunbeam's "interim" financial statements. Thus, for the same reasons that are set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the Court should reject this proposed finding of fact.

Further, CPH was obligated, absent a material adverse change at Sunbeam, to proceed to closing after the merger agreement was executed on February 27, 1998. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any

NOT A CERTIFIED COPY

020399

developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference.

Moreover, CPH was falsely reassured by Sunbeam and Morgan Stanley in the March 19, 1998 press release, the March 25, 1998 press release, and elsewhere — that Sunbeam was in good business and financial health. CPH was certainly entitled to believe that the press releases were a full and complete disclosure, particularly where CPH was told by Morgan Stanley that the press releases were no cause for concern. CPH App. 10 (Gittis Dep. at 106); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.). Indeed, Christopher Whelan, the employee in Morgan Stanley's credit department responsible for the Sunbeam loan, saw nothing in the press release that would raise red flags for him. CPH App. 113 (Whelan Dep. at 96-98); *see also* CPH App. 8 (Levin Dep. at 320-321) (Levin testified that he did not believe that the March 19, 1998 revealed any problems that needed to be addressed).

Indeed, proof that the press release did not provide a meaningful warning of an adverse change can be seen from the fact that Sunbeam and Morgan Stanley were able to increase the size of the expected proceeds from the debenture offering from $500 million to $750 million. CPH App. 12 (Smith Dep. at 223-24); CPH App. 129 (Harris Dep. at 104); CPH App. 74 (Porat Dep. at 130).

In addition, Nesbitt canvassed research analysts' reports, which included Sunbeam's roundly optimistic statements about the press release. CPH App. 35, 28 (Nesbitt Dep. 16, 431-33); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.). The record is replete with evidence that Wall Street analysts reiterated their "buy" or "strong buy" ratings of the company and raised no concerns over Sunbeam's anticipated profits. CPH App. 89 (CPH 1241513-14 ("we think the timing of the pricing of the convertible deal so

NOT A CERTIFIED COPY

020400

close to the end of the quarter, coupled with orders now on the books prompted the company's press release")); CPH App. 90 (CPH 1039208 (the "cautious comment was driven by Sunbeam's legal staff" on the eve of pricing debentures)); CPH App. 91 (CPH 1059641 ("Continue to recommend purchase of SOC")). Analysts also believed that the decline in Sunbeam's stock price was "unwarranted," and an overreaction to the information contained in the press release. CPH App. 89 (CPH 1241513).

CPH could reasonably be expected to, and reasonably did in fact, rely on the reassurances provided by (1) knowing that Morgan Stanley was proceeding to close the $2 billion face amount debenture offering even after receiving comfort letters from Morgan Stanley, (2) the reassuring March 19, 1998 and March 25, 1998 press releases, and (3) the lack of notification by Sunbeam of a material adverse change. CPH thus had no reason to scrutinize Sunbeam's financial statements — particularly when it knew that Morgan Stanley was doing so. CPH App. 10 (Gittis Dep. at 108-09); CPH App. 48 (Maher Dep. at 373-74); CPH App. 92 (CPH Ex. 380). As Morgan Stanley witnesses have testified, CPH was entitled to rely on Morgan Stanley because of its good "name." *See* CPH's Response to ¶ 135, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

264. Perelman could not recall "any communication by anyone at MacAndrews & Forbes or its subsidiary companies with Morgan Stanley about the March 19 press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial

NOT A CERTIFIED COPY

020401

CONT 1017

because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

265. Though Perelman believed that "there was a point in talking to the analysts and getting their input" regarding Sunbeam, he could not supply the name of "a single analyst that anyone at MacAndrews & Forbes spoke to before March 30, 1998 about their thoughts, that is the analyst thoughts on Sunbeam."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

204020

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, that CPH failed to follow up on the press release, or that no one at CPH assessed analyst reaction to the March 19, 1998 press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

266. Perelman was not aware of "anyone from CSFB," MAFCO's exclusive financial advisor on the transaction, "making any inquiry of Sunbeam about the subject matter of the March 19 press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. To the contrary,

NOT A CERTIFIED COPY

020403

following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

This proposed finding is misleading and substantially controverted insofar as it labels CSFB "MAFCO's exclusive financial advisor on the transaction." *See* CPH's Response to ¶ 193, which is incorporated herein by reference.

267. Following the issuance of the March 19, 1998 press release, Nesbitt did not contact any financial analysts who followed Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it implies that Nesbitt and others did not analyze analyst reaction to the March 19, 1998 press release. CPH App. 28 (Nesbitt Dep. at 433); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

268. Perelman was not aware of "anyone from CSFB," MAFCO's exclusive financial advisor, "making any inquiry of Morgan Stanley" about the March 19, 1998 press release.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial

NOT A CERTIFIED COPY

020404

because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

This proposed finding is misleading and substantially controverted insofar as it labels CSFB "MAFCO's exclusive financial advisor." See CPH's Response to ¶ 193, which is incorporated herein by reference.

269. Schwartz was not aware if anyone on the Coleman side of the transaction asked Morgan Stanley any questions about the March 19, 1998 press release or Sunbeam's sales after March 19, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of

NOT A CERTIFIED COPY

020405

Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

270. Robert Duffy of CSFB, MAFCO's exclusive financial advisor, testified that the March 19, 1998 press release was "bad news that caused [Sunbeam] stock to drop." Duffy, however, could not recall anyone at CSFB undertaking "any additional inquiry" as a result of the press release.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release informed CPH, analysts, and other investors of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand

NOT A CERTIFIED COPY

020406

Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

This proposed finding is also misleading and substantially controverted insofar as it labels CSFB "MAFCO's exclusive financial advisor." See CPH's Response to ¶ 193, which is incorporated herein by reference.

271. On March 20, 1998, an article in the Wall Street Journal about Sunbeam's press release stated: "While Sunbeam's announcement didn't discuss the company's earnings outlook, analysts said the sales disappointment is bound to affect profit[s]."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Further, the record is replete with evidence that analysts and others did not consider the press release cause for concern. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

272. Slovin, president of CPH and a Coleman board member, acknowledged that, "if you read the Wall Street Journal on March 20, 1998, you knew at least by that date, ten

NOT A CERTIFIED COPY

020407

days before the closing [of the Sunbeam-Coleman transaction], that not only had there been a downturn in [Sunbeam's] sales but [also] that [the downturn] was bound to affect the company's profits."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the record is replete with evidence that analysts and others did not consider the press release cause for concern. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

273. Despite receiving the March 19, 1998 press release, CPH failed to exercise its contractual rights under the CLN Merger Agreement and Coleman Merger Agreement to examine Sunbeam's books, records, financial statements, facilities, results of operations, and business plans ("Sunbeam Information").

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that CPH should have demanded access to Sunbeam's books and records in reaction to the March 19, 1998 press release, that the March 19, 1998 press release put CPH, analysts, and other investors on notice of Sunbeam's sales and earnings collapse, or that CPH failed to follow

NOT A CERTIFIED COPY

020408

up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

In addition, the Court should reject this proposed finding because it is not supported by the material cited by Morgan Stanley. Nesbitt did not testify that he or others at CPH did not request the "Sunbeam Information" as defined in Morgan Stanley's proposed finding, but merely stated that he did not personally request certain of Sunbeam's financial statements and that he was not aware if others made such a request. CPH App. 28 (Nesbitt Dep. at 437-39).

Moreover, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

274. At no time prior to the closing on March 30, 1998 "did anyone on the MacAndrews & Forbes due diligence team even request of Sunbeam either directly or through [Sunbeam's] accountants, Arthur Andersen, a copy of Sunbeam's interim financial statements for any period in the first quarter of 1998."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

02020704209

Further, this proposed finding is misleading and substantially controverted insofar as it implies that CPH should have requested Sunbeam's "interim" financial statements in reaction to the March 19, 1998 press release, that the March 19, 1998 press release put CPH, analysts, and other investors on notice of Sunbeam's sales and earnings collapse, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

275. As far as Nesbitt was aware, "no one from MacAndrews & Forbes had any communications with Arthur Andersen, Sunbeam's certified public accountants."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, this proposed finding is misleading and substantially controverted insofar as it implies that CPH should have followed up with Arthur Andersen in reaction to the March 19, 1998 press release, that the March 19, 1998 press release put CPH, analysts, and other investors on notice of Sunbeam's sales and earnings collapse, or that CPH failed to follow up on the press release. To the contrary, following the issuance of the March 19, 1998 press release, CPH took

NOT A CERTIFIED COPY

020208 020410

steps to understand Sunbeam's position on the press release, received reassurance from Sunbeam and Morgan Stanley, and canvassed the analyst community to determine their reaction. CPH App. 28 (Nesbitt Dep. at 433); CPH Supp. App. 229 (CPH Am. Supp. Resp. to Interrogs. No. 2 of MS & Co.'s 5th Set of Interrogs.); *see also* CPH's Response to ¶ 263, which is incorporated herein by reference.

In addition, this proposed finding is incorrect and misleading, because record evidence establishes that, among other things, Coleman's auditors met with Arthur Andersen. CPH Supp. App. 121 (Harlow Dep. at 135-36).

XV. The Sunbeam Debenture Offering

A. The Debenture Offering Memorandum

276. MS 166 is a true and correct copy of the offering memorandum for Sunbeam's offering of $2.014 billion of Zero Coupon Convertible Subordinated Debentures Due 2018.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

277. The offering memorandum for the Sunbeam debentures included Sunbeam's audited financial statements for 1997, Coleman's audited financial statements for 1997, and CLN Holdings Inc.'s financial statements for 1997, which is customary in such an offering.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020209 020411

278. Sunbeam's audited financial statements for 1997 — and therefore, by extension, the Sunbeam debenture offering memorandum — included references to Sunbeam's "early buy" program and to "bill-and-hold" sales.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court should also reject this finding because it is misleading and substantially controverted to the extent that it implies that Sunbeam's 10-K disclosures were sufficient to put readers on notice of that Sunbeam was engaged in fraudulent bill-and-hold sales or of Sunbeam's channel stuffing, acceleration of sales from future periods, or that Sunbeam had engaged in massive and fraudulent sales and earnings manipulation. To the contrary, the disclosures in Sunbeam's 1997 10-K did not put readers on notice of Sunbeam's fraud. CPH App. 34 (Perelman Dep. at 515); *see also* CPH's Response to ¶ 136, which is incorporated herein by reference.

279. Maher testified that he "doesn't think" he ever saw the Sunbeam debenture offering memorandum.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Furthermore, this proposed finding is substantially controverted because the record shows that Maher received the March 16, 1998 preliminary offering memorandum distributed at

NOT A CERTIFIED COPY

020210—020412

Morgan Stanley's roadshows, CPH Supp. App. 223, and that other CPH representatives reviewed Sunbeam's 1997 financial statements. *See* CPH's Response to ¶ 136, which is incorporated herein by reference.

280. Maher acknowledged that, had he read the offering memorandum, he would have been aware of Sunbeam's early buy program and its practice of using "bill-and-hold" sales.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. For the reasons set forth in CPH's Response to Paragraph 136, which is incorporated herein by reference, the disclosures in Sunbeam's 1997 financial statements failed to put readers adequately on notice of Sunbeam's fraud, that Sunbeam's bill-and-hold sales were fraudulent, or that Sunbeam's "early buy" program was a fraudulent revenue manipulation technique rather than a legitimate business practice.

Moreover, CPH's William Nesbitt attended the debenture road show in New York on March 18, and reviewed and circulated the materials prepared in connection with that road show — and nothing in Sunbeam's or Morgan Stanley's road show presentation mentioned any unusual business or accounting practices. CPH App. 28 (Nesbitt Dep. at 425-26, 483-85); CPH Supp. App. 214 (CPH Ex. 130). To the contrary, Morgan Stanley emphasized to its debenture sales force that they should promote the success of Sunbeam's turnaround, that they should minimize below-expectation fourth quarter 1997 earnings by pointing out that in the analysts' eyes, "business has shown significant improvement," and that they should predict a rise in Sunbeam's value. CPH Supp. App. 215 (CPH Ex. 183 at 18, 23, 27).

NOT A CERTIFIED COPY

020413

Further, to the extent the proposed finding consists of nothing more than a snippet of deposition testimony, it is particularly inappropriate for piecemeal judicial fact-finding before trial. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

B. The Comfort Letters

281. It is customary for the underwriter of an offering of securities to obtain "comfort letters" from the offering company's outside auditor to "provide comfort" to the underwriter with regard to the period of time between the company's last audited financial statement and the offering memorandum. Comfort letters summarize interim financial information since the issuer's last audited financial statement.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

The Court also should reject this proposed finding because Morgan Stanley's overbroad generalization that comfort letters "customarily" "provide comfort" to underwriters. *See* CPH App. 97 (Drapkin Dep. at 145-46 (discussing "cold comfort" letters)).

282. The Coleman Merger Agreement provided for an exchange of Comfort Letters from Sunbeam and CPH's respective auditors. As a sophisticated party, CPH was aware of the general content of Comfort Letters.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, at least some of the supposedly supporting evidence is

NOT A CERTIFIED COPY

020414

inadmissible, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

This proposed finding also is misleading, confusing, and prejudicial insofar as it implies that CPH or Coleman would have been entitled to receive the comfort letters at the same time or containing the same information as Morgan Stanley received in March 1998. The Coleman Merger Agreement contemplated that Coleman could receive comfort letters when the SEC declared Sunbeam's "Registration Statement" effective (which happened on December 6, 1999) and when Sunbeam began mailing its "Information Statement" to Coleman's public shareholders to close the second step of the merger (which happened on December 7, 1999). *See* CPH App. 58 (MS Ex. 117 at § 4.9, 7.3(b)); CPH Supp. App. 230 (CPH 1352691) (Sunbeam 12/6/99 press release); CPH Supp. App. 231 (CPH Ex. 253) (Information Statement mailed to public shareholders on 12/7/99). Moreover, the Court should reject this finding because of substantial danger that the jury might confuse these comfort letters, which have minimal, if any relevance, with the Andersen comfort letters at issue. CPH App. 69.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

283. Similarly, the registration rights agreement for Perelman's 14.1 million shares of Sunbeam stock (Exhibit A to the CLN Merger Agreement) included a provision entitling Perelman to a comfort letter from Sunbeam's auditors.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, at least some of the supposedly supporting evidence is inadmissible, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

NOT A CERTIFIED COPY

020415

This proposed finding also is misleading, confusing, and prejudicial insofar as it implies that the registration rights agreement entitled CPH to receive a comfort letter at the same time or containing the same information as Morgan Stanley received in March 1998. The registration rights agreement contemplated that CPH could receive a comfort letter only upon a future "sale of Registerable Securities by or through an underwriter," and the Holdings Merger provided that no such sale could take place until "three (3) months" *after* the close of the transaction. CPH Supp. App. 216 (MS Ex. 278 at § 2.4(a)(12)); CPH App. 95 (MS Ex. 93 at § 7.1). Because of Sunbeam's collapse, there was never such a sale, and there was never such a comfort letter. Moreover, the Court should reject this finding because of substantial danger that the jury might confuse this comfort letter, which has minimal, if any relevance, with the Andersen comfort letters at issue, (MS App. 69).

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

284. In connection with the offering memorandum for the Sunbeam debentures, the Coleman Company's auditors, Ernst & Young, provided a comfort letter to Morgan Stanley.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Moreover, the Court should reject this finding because of substantial danger that the jury might confuse the Ernst & Young comfort letter, which has minimal, if any relevance, with the Andersen comfort letters at issue.

285. On March 20, 1998, Arthur Andersen provided a comfort letter, dated as of March 19, 1998, to Morgan Stanley indicating that through February 1, 1998, Sunbeam's

NOT A CERTIFIED COPY

020416

net sales were approximately half of what they were in the first two months of the first quarter of the proceeding year.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, the proposed finding contains material factual errors. The March 19, 1998 comfort letter indicates that, as of March 1, 1998, Sunbeam's net sales were approximately half of what they were in the corresponding period in 1997. CPH App. 69 (CPH Ex. 17).

C. MAFCO Does Not Request Copies of Either the Ernst & Young or Arthur Andersen Comfort Letters

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked the Court to enter them as findings of fact. As discussed below, this heading is incomplete and misleading, because CPH had no reason to request the comfort letters because Sunbeam was obligated to inform CPH of any relevant developments concerning Sunbeam's condition.

286. Maher never requested and has not seen the comfort letter (MS 243) provided by Coleman's auditors, Ernst & Young, to Morgan Stanley in connection with the offering of Sunbeam debentures, although a copy of the letter is addressed to CLN Holdings, Inc.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that Maher should have requested or reviewed Ernst & Young's comfort letter to Morgan Stanley. Morgan Stanley has not suggested any reason why CPH should have reviewed Ernst & Young's comfort letter concerning Coleman's financials, which CPH already knew. Moreover,

NOT A CERTIFIED COPY

020417

the Court should reject this finding because of substantial danger that the jury might confuse the Ernst & Young comfort letter, which has minimal, if any relevance, with the Andersen comfort letters at issue.

287. Perelman was not aware of anyone at MAFCO who made any request of Coleman for a copy of the comfort letter that was provided to Morgan Stanley by Coleman's auditors, Ernst & Young.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested or reviewed Ernst & Young's comfort letter to Morgan Stanley. Morgan Stanley has not suggested any reason why CPH should have reviewed Ernst & Young's comfort letter concerning Coleman's financials, which CPH already knew. Moreover, the Court should reject this finding because of substantial danger that the jury might confuse the Ernst & Young comfort letter, which has minimal, if any relevance, with the Andersen comfort letters at issue.

288. Perelman was not aware of anyone at MAFCO who made any request of Sunbeam for a copy of the comfort letter that was provided to Morgan Stanley by Sunbeam's auditors, Arthur Andersen.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger

NOT A CERTIFIED COPY

020418

agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

289. Maher is not aware of anyone on the MAFCO due diligence team who, following the March 19, 1998 press release, requested the contents of the comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the offering of Sunbeam debentures.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

This proposed finding also is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release put CPH, analysts, and other investors on notice of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised

NOT A CERTIFIED COPY

020419

by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

290. Drapkin, the vice chairman of MacAndrews & Forbes Holdings and the in-house investment banker for Perelman's companies, does not recall anyone at any of Perelman's companies asking Morgan Stanley if Morgan Stanley received a comfort letter from Arthur Andersen in connection with the debenture offering.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

Moreover, the Court should reject this proposed finding because it is controverted insofar as Drapkin disputed Morgan Stanley's attempt to characterize him as Perelman's "in-house investment banker." CPH App. 97 (Drapkin Dep. at 156).

NOT A CERTIFIED COPY

020420

291. Gittis is not aware of anyone on the MAFCO due diligence team who, following the March 19, 1998 press release, requested the contents of the comfort letter provided by Arthur Andersen to Morgan Stanley in connection with the offering of Sunbeam debentures.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

This proposed finding also is misleading and substantially controverted insofar as it implies that the March 19, 1998 press release put CPH, analysts, and other investors on notice of Sunbeam's sales and earnings collapse, that CPH was obligated to investigate the matters raised by the press release, or that CPH failed to follow up on the press release. *See* CPH's Response to ¶ 263, which is incorporated herein by reference.

292. Emmerich, CPH's lead outside lawyer on the Sunbeam-Coleman transaction, was not aware of any request by anyone at MAFCO for a comfort letter from Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020421

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

293. Maher did not ask Ernst & Young, the auditors on the MAFCO due diligence team for the Sunbeam-Coleman transaction, to make any inquiries about Arthur Andersen's comfort letter to Morgan Stanley in connection with the debenture offering.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested Andersen's comfort letters to Morgan Stanley. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

NOT A CERTIFIED COPY

020422

294. CPH did not request from Morgan Stanley any comfort letters or other documents or information that Morgan Stanley had obtained in the course of Morgan Stanley's due diligence as an underwriter for the Debentures.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading, argumentative, and unsupported insofar as it implies that anyone at MAFCO should have requested comfort letters addressed to Morgan Stanley or other information that Morgan Stanley had in its possession concerning Sunbeam. As Morgan Stanley well knew, Sunbeam was obligated under the terms of the merger agreement to inform CPH of any developments that might constitute or lead to a material adverse change in Sunbeam's condition. *See* CPH's Response to ¶ 209, which is incorporated herein by reference. Clearly, the information contained in Andersen's comfort letters should have been disclosed to CPH under that clause. CPH App. 34 (Perelman Dep. at 517-18); CPH App. 10 (Gittis Dep. at 184).

295. "Q. What I understand you just to have said is if you had known what was in the comfort letters today you would not have done the transaction? A. Absolutely not."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated

NOT A CERTIFIED COPY

020423

quotes read to them from the bench at the start of the trial. Indeed, this proposed finding does not even identify the source of the quotation.

296. "Q. ... If you had seen the comfort letter before March 30, 1998 is it your statement that you would have known what was happening at Sunbeam; is that right? A. It is my statement that I would not have closed [the transaction]."

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial. Indeed, this proposed finding does not even identify the source of the quotation.

D. Morgan Stanley Closes the Debenture Offering on March 25, 1998

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked the Court to enter them as findings of fact.

297. The Debenture offering closed in New York on March 25, 1998.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020424

298. None of Perelman's companies purchased any of the Debentures issued by Sunbeam and underwritten by Morgan Stanley in March 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further this proposed finding is misleading and incomplete because it is undisputed that CPH relied on the due diligence that CPH knew Morgan Stanley was required to conduct as the underwriter for the debentures. *See* CPH's Response to ¶ 18, which is incorporated herein by reference.

XVI. Morgan Stanley Senior Funding Closes The Credit Facility

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked the Court to enter them as findings of fact.

299. In addition to its issuance of the Debentures, Sunbeam further financed the acquisition of Coleman and two other companies through a credit facility with Morgan Stanley Senior Funding ("MSSF"), First Union, and Bank of America.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

300. Pursuant to this credit facility, MSSF agreed to loan Sunbeam $680 million. MSSF determined that it would extend this facility and closed upon the facility after Morgan Stanley performed its due diligence and after Sunbeam issued its March 19, 1998 press release.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020425

This proposed finding is misleading because MSSF intended to syndicate its position in the Sunbeam loan as quickly as possible so that MSSF would have minimal exposure and risk on the loan. *See* CPH's Response to ¶ 19, which is incorporated herein by reference.

This proposed finding also should be rejected because Morgan Stanley is judicially estopped from using MSSF's losses to argue that MS was a "victim" of Sunbeam's fraud. *Id.*

301. Additionally, Bank of America and First Union each loaned Sunbeam $510 million under the credit facility.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

302. MSSF, pursuant to its policy and practice, intended to retain a significant portion of the credit facility, even if or after the bank loan was syndicated.

The Court should reject this proposed finding of fact because it is substantially controverted and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings. *See* CPH's Response to ¶ 19, which is incorporated herein by reference.

Further, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

303. Gittis testified that Sunbeam was driving Morgan Stanley to complete the deal and that Morgan Stanley liked the financing markets around the time the deal closed.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

304. Gittis testified that it was not unusual to arrange the closing of a deal during a time where the financial markets were favorable to the financing of the deal and that

NOT A CERTIFIED COPY

020426

"February is historically a good time to finance" the debentures and bank loans that were necessary for the Sunbeam transaction.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

305. Levin was unconcerned with the financial markets and testified that he wanted the transaction to close quickly because "once the Coleman Company employees realized that we were willing to sell the company to Dunlap, it would have been hard to restore the morale [and] the trade relations."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

NOT A CERTIFIED COPY

020427

XVII. Perelman And Sunbeam Close On The CLN Merger Agreement On March 30, 1998.

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked the Court to enter them as findings of fact. Further, the Court should reject Morgan Stanley's improper and misleading reference to Perelman. *See* CPH's Responses to Heading I and ¶ 1.

306. On March 30, 1998, Sunbeam and Coleman closed the Sunbeam transaction in New York.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, this proposed finding is misleading insofar as Coleman did not close the transaction on March 30, 1998. Rather, the only portion of the transaction that closed on March 30, 1998 was Sunbeam's acquisition of CPH's interest in Coleman. The Coleman closing took place in January 2000. CPH App. 224 (CPH's Resps. and Objs. to MS & Co.'s Fifth Set of Interrogs., at 8); CPH Supp. App. 232 (CPH Ex. 254, at 6); CPH App. 218 (MS Ex. 279).

307. In exchange for his shares of Coleman, Perelman received 14,099,749 shares of Sunbeam stock and $159,956,756 in cash.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject Morgan Stanley's improper and misleading reference to Perelman. *See* CPH's Responses to Heading I and ¶ 1.

NOT A CERTIFIED COPY

020428

308. Sunbeam also assumed and repaid $1.016 billion in indebtedness of Coleman and its parent, CLN Holdings Inc. This figure represented $519 million of debt carried by CLN Holdings Inc. and the $497 million of debt carried by Coleman at the time of the closing.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

First, the proposed finding is unsupported insofar as Morgan Stanley asserts that Coleman and CLN Holdings had debt of $1.016 billion and that CLN Holdings carried $519 million in debt. The document cited states instead the $1.016 billion debt belonged to "Coleman and its parent corporations" (which were CLN Holdings and Coleman Worldwide Corporation) and that Coleman's indebtedness amounted to $497 million. CPH Supp. App. 218 (MS Ex. 279) at 11.

Second, this proposed finding incorrectly implies that part of CPH's consideration in this transaction included the assumption of Coleman debt, which it did not. Even Morgan Stanley's damages expert agrees that it would be wrong to include the operating company debt as consideration to CPH. Dr. Mark Grinblatt, one of Morgan Stanley's experts, makes absolutely no reference to Coleman's debt in calculating the consideration received by CPH. His own report shows that the only consideration that CPH received consisted of cash, Sunbeam shares, and the assumption of debt held by CLN Holdings Inc. *See* CPH App. 221 (Grinblatt Rep., 12/17/04, at 7, 11-12.)

Third, following the Coleman-Sunbeam merger, Sunbeam's consolidated balance sheet included the Coleman Company debt; but that debt should not be separately valued as part of the

NOT A CERTIFIED COPY

020429

consideration to CPH because the value of Coleman shares inherently included the value of the debt owed by that company. Therefore, to include that debt as a separate element of consideration would double-count it.

Finally, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

309. As an integral part of the transaction, Sunbeam assumed or defeased the $980,447,000 of long-term debt of CLN Holdings Inc. and its subsidiaries, which included CPH.

The Court should reject this proposed finding of fact because it is immaterial to Morgan Stanley's summary judgment motion, it is substantially controverted, and it would be impracticable for the Court to resolve this factual controversy at this stage of the proceedings.

First, Morgan Stanley's proposed finding is unsupported and incorrect insofar as it asserts that CPH was a subsidiary of CLN Holdings Inc. Second, this proposed finding is unsupported insofar as it asserts that Sunbeam's defeasance of debt was "an integral part of the transaction."

Third, as shown above in CPH's Response to Paragraph 308, this proposed finding incorrectly implies that part of CPH's consideration in this transaction included the assumption of Coleman debt, which it did not. Indeed, this proposed finding is based on a misreading of CLN Holdings' 1997 Consolidated Financial Statement. *See* CPH Supp. App. 192 (MS Ex. 166 at F-27, F-31, F-39-41). CLN Holdings' 1997 Consolidated Financial Statement presents on a consolidated basis the financial statements of CLN Holdings and all subsidiaries in which CLN Holdings owned more than 80% of the stock. Because CLN Holdings owned (through a wholly-owned subsidiary) more than 80% of the stock in Coleman, the consolidated financial statements also include the assets and liabilities of Coleman as if they had been directly owned by CLN

NOT A CERTIFIED COPY

020430

Holdings. The line item for "Long Term Debt" lumps together the debt of CLN Holdings, Coleman, and other companies to reach an amount of $980.447 million as of December 30, 1997. *See id.* at F39-F42. The financial statement goes on, however, to explain each piece of that debt in detail, including the obligor of that debt. *See id.* at F39-F42. Thus, the financial statement makes clear that CLN Holdings had long term debt of $503.171 million as of December 30, 1997 (*id.* at F40 n.9(e)), and that the remaining debt was owed by other companies, including Coleman. *Id.* at F39-F42.

Fourth, the testimony cited by Morgan Stanley does not support its proposed finding, and, indeed, those witnesses controvert it elsewhere in their depositions. For example, Slotkin testified that Perelman and the MAFCO holding companies were not responsible for repayment of the debt of the operating company Coleman. *See, e.g.*, CPH App. 191 (Slotkin Dep. at 162-74; 210-19). Similarly, Drapkin testified that even if Sunbeam assumed debt of the operating company Coleman, that assumption of debt could not have been merger consideration because CPH had no obligation for that debt. CPH App. 97 (Drapkin Dep. at 85-86). Likewise, the Perelman testimony does not support Morgan Stanley's proposed finding that Sunbeam assumed nearly $1 billion of CLN Holdings Inc.'s debt, including debt of the operating company Coleman. CPH App. 32 (Perelman Dep. at 237).

Finally, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

XVIII. Sunbeam's April 3, 1998 Press Release Announces Its First Quarter 1998 Results.

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its number paragraphs or asked this Court to enter them as findings of fact.

NOT A CERTIFIED COPY

020431

310. On April 3, 1998, Sunbeam issued a press release announcing that it expected sales for the first quarter to be 5 percent below those of the first quarter of 1997 and that the company would post a loss for the quarter.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the April 3, 1998 press release was false and misleading because it failed to disclose the full extent of Sunbeam's sales shortfall in the first quarter of 1998. The press release provided a conservative estimate of the sales shortfall and failed to disclose that Sunbeam had extended the first quarter by two days to capture additional Sunbeam sales along with two days of Coleman sales. *See* CPH App. 63 (Bornstein Dep. at 21-22).

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

311. Sunbeam's stock dropped nearly 25 percent on April 3, 1998 following the issuance of the press release.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

0204432

312. Following the April 3, 1998 press release, Perelman made no attempt "to communicate directly with Sunbeam to obtain additional information about . . . Sunbeam's results for the first quarter 1998." Perelman "[did]n't think that [it] [was] his place" to "confront or tell [his] people to confront" Dunlap, Kersh, or Morgan Stanley.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

313. Perelman is not "aware of anyone associated in any way with MacAndrews & Forbes who contacted anyone at Sunbeam about the April 3 press release."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020433

314. Perelman could not recall anyone associated with MAFCO or any of its affiliates, including Coleman, who contacted Morgan Stanley about the April 3 press release.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

315. Gittis contacted Michael Price following the April 3, 1998 press release. Price assured Gittis that everything was going to be fine and that Donald Uzzi, Sunbeam's executive vice president of consumer products, had misled Dunlap but that Dunlap would be able to correct the problem.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020434

XIX. Perelman Gives Dunlap MAFCO's Proxy For 14,099,749 Shares Of Sunbeam Stock

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its number paragraphs or asked this Court to enter them as findings of fact.

316. Sunbeam scheduled a meeting with analysts on May 11, 1998 to present Sunbeam's results of operations for the first quarter of 1998. In advance of this meeting, as well as Sunbeam's annual stockholders meeting on May 12, 1998, representatives of Sunbeam and Perelman scheduled a meeting at MAFCO's offices in New York.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

317. On May 7 or 8, 1998, there was a meeting at MAFCO's offices among Perelman, Schwartz, Levin, Dunlap, and Fannin to discuss "what was going on at Sunbeam." Perelman and Gittis were "concerned" about what was transpiring at Sunbeam.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020435

318. At the meeting, Dunlap led the attendees through a presentation he planned to give to Wall Street analysts on May 11, 1998.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

319. At the conclusion of Dunlap's presentation, Levin inquired about Sunbeam being "discontinued from a large part of [its] grill sales and grill accessories at Wal-Mart" and Dunlap responded by "proceed[ing] to scream at the top of his voice as to what an incompetent [Levin] was."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020436

320. After Dunlap finished haranguing Levin, Levin repeated his question about Sunbeam's grill sales to Wal-Mart and Dunlap again flew into a rage — so much so that attendees at the meeting "actually were concerned about his physical well-being because he was so out of control."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

321. When Dunlap failed to answer Levin's question, David Fannin, Sunbeam's general counsel, confirmed that Sunbeam's grill sales to Wal-Mart had diminished. Levin had learned this news before the meeting with Dunlap when he, Levin, contacted individuals at Wal-Mart who informed him of the lost grill sales.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. Furthermore, the Court should reject this proposed finding because it is misleading and substantially controverted insofar as it suggests that Sunbeam's general counsel fully and accurately informed CPH representatives of the shortfall in Sunbeam's grill sales. Levin testified that Sunbeam's general counsel understated the extent of Sunbeam's losses. *See* CPH App. 7 (Levin Dep. at

NOT A CERTIFIED COPY

020437

120). Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

322. Nevertheless, at the end of the meeting, MacAndrews & Forbes "sign[ed] their proxy in favor of Sunbeam's management." Dunlap then walked out of the meeting.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

XX. Sunbeam Announces Its First Quarter Results On May 11, 1998

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its number paragraphs or asked this Court to enter them as findings of fact.

323. On May 11, 1998 Sunbeam reported its first quarter 1998 results.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, Sunbeam's May 11, 1998 report of results for the first quarter of 1998 was false and misleading. Those results ultimately were restated. *See* CPH Supp. App. 233 (MS Ex. 282).

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020438

324. On May 15, 1998, Sunbeam issued its 10-Q for the first quarter of 1998. Sunbeam reported that its first quarter sales for 1998 were $244,296,000 versus $253,450,000 in the first quarter of 1997. These figures were eventually restated to be $247,601,000 (1998) versus $252,488,000 (1997).

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, this proposed finding is misleading and substantially controverted insofar as it attempts to compare Sunbeam's first quarter 1997 sales to first quarter 1998 sales on a restated basis in isolation. An examination of Sunbeam's restated financials for first quarter 1998 (which restore sales that improperly were book in the fourth quarter of 1997) necessarily must examine the effect on Sunbeam's restated financials for the fourth quarter 1997. The restated 1996, 1997, and first quarter 1998 financials — viewed in their entirety — demonstrate that the Sunbeam turnaround never occurred.

In addition, Morgan Stanley's comparison ignores Sunbeam's earnings. On a non-restated basis, Sunbeam had first quarter 1998 loss of $0.45 before extraordinary charges versus a profit of $0.24 over the same period in 1997. On a restated basis, Sunbeam's first quarter 1998 loss was $0.53 before extraordinary charges versus a profit of $0.10 over the same period in 1997. *See* CPH Supp. App. 233 (MS 282 at 2). It is clear, when one considers Sunbeam's sales, earnings, and the reasons for the collapse, that Morgan Stanley and Sunbeam concealed from CPH the Sunbeam fraud and the sales and earnings collapse that took place in the first quarter of 1998.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020439

XXI. Burdened By Debt, Sunbeam Slides Into Bankruptcy

CPH disagrees with the characterizations in this heading but notes that Morgan Stanley has not included its headings in its numbered paragraphs or asked this Court to enter them as findings of fact.

325. Following the closing of the financing, the merger transaction, and the release of Sunbeam's first quarter 1998 results, Arthur Andersen repeatedly assured Sunbeam and its board that the audited financial statements for 1997 and 1998 were "accurate in all material respects." In June of 1998, however, those assurances began to unravel.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess each witness' testimony as it is delivered in the courtroom, without the confusion of having isolated quotes read to them from the bench at the start of the trial.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

326. On June 15, 1998, Sunbeam's board of directors unanimously voted to terminate Dunlap because it had "lost confidence in Dunlap's leadership," and brought in Jerry Levin to run Sunbeam.

CPH does not contest the facts set forth in this proposed finding. However, the Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of

NOT A CERTIFIED COPY

020440

selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

327. In the same press release in which it announced Dunlap's determination, the Sunbeam board stated that Andersen had provided assurances as to the accuracy of Sunbeam's audited financial statements. A mere ten days later, however, Andersen withdrew its audit opinion.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

328. In withdrawing its opinion on Sunbeam's audited financial statements, Arthur Andersen indicated that they were "lied to in a fraudulent fashion by management."

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference. In addition, this proposed finding is particularly inappropriate for piecemeal judicial fact-finding before trial because it consists of selective quotations taken out of context. The jurors should have the opportunity to assess such statements as they appear in the documents, without the confusion of having isolated quotes read to them from the bench at the start of the trial. The documents speak for themselves.

NOT A CERTIFIED COPY

020441

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

329. Arthur Andersen did not claim that Morgan Stanley had lied to them in any way.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

330. As a result of Andersen's withdrawal of its audit opinion, Sunbeam ultimately was forced to restate its financial results.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

Furthermore, Morgan Stanley cites no evidence — because there is none — to support its claim that Sunbeam's restatement was caused by Arthur Andersen's decision to withhold consent to the use of its 1997 audit opinion in Sunbeam's S-3. To the contrary, Sunbeam's financial statements were restated because they were false.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

331. On February 6, 2001, Sunbeam filed for bankruptcy in the United States District Court for the Southern District of New York, ending three years of declining shareholder value.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

NOT A CERTIFIED COPY

020442

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

332. Morgan Stanley Senior Funding Inc. was the single largest creditor in Sunbeam's bankruptcy proceeding, with a valid claim for approximately $664,000,000.

The Court should reject this proposed finding on the basis of CPH's Objection Applicable to All Proposed Findings, which is incorporated herein by reference.

In addition, the Court should reject this proposed finding because it is not relevant, and Morgan Stanley is judicially estopped from asserting that MSSF's losses demonstrate that Morgan Stanley was a victim of Sunbeam's fraud. Moreover, this proposed finding is misleading and unsupported insofar as it implies that $664 million is the actual amount of MSSF's loss. Accordingly, the rush of jury confusion and prejudice outweighs any minimal probative value of this proposed finding.

Further, the Court should reject this proposed finding because it has no relevance to Morgan Stanley's motion for summary judgment.

NOT A CERTIFIED COPY

020443

CONCLUSIONS OF LAW

1. As this Court has already determined, CPH's negligent misrepresentation claim is governed by New York law. *See* Aug. 11, 2004 Order, at 11.

CPH satisfies all the elements necessary to prevail on a negligent-misrepresentation claim under New York law. *See* CPH's Response in Opposition to Morgan Stanley's Motion for Summary Judgment [hereinafter "CPH Opp."] at 37-45.

2. Under New York law, a plaintiff cannot establish liability for negligent misrepresentation without establishing, among other things, that the challenged information was imparted in the context of a "special relationship of confidence or trust" with the defendant. *See, e.g., American Protein Corp. v. AB Volvo*, 844 F.2d 56, 64 (2d Cir. 1988); *Dyncorp v. GTE Corp.*, 215 F. Supp. 2d 308, 329 (S.D.N.Y. 2002); *WIT Holding Corp. v. Klein*, 724 N.Y.S.2d 66, 68 (App. Div. 2001).

There is a genuine issue of material fact concerning whether Morgan Stanley held a special relationship of confidence or trust, and Morgan Stanley has not demonstrated conclusively the non-existence of such a relationship. *See* CPH Opp. at 37-45.

3. Here, CPH has not produced any evidence that the challenged information was imparted in the context of a "special relationship of confidence or trust" with Morgan Stanley, which sat across the negotiating table from CPH as the financial advisor to CPH's counterpart Sunbeam.

There is a genuine issue of material fact concerning whether Morgan Stanley held a special relationship of confidence or trust, and Morgan Stanley has not demonstrated conclusively the non-existence of such a relationship. *See* CPH Opp. at 37-45.

NOT A CERTIFIED COPY

020444

4. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's negligent misrepresentation claim.

Morgan Stanley is not entitled to summary judgment on CPH's negligent-misrepresentation claim. Among other things, there is a genuine issue of material fact concerning whether Morgan Stanley held a special relationship of confidence or trust, and Morgan Stanley has not demonstrated conclusively the non-existence of such a relationship. *See* CPH Opp. at 37-45.

5. As this Court has already determined, CPH's fraudulent misrepresentation claim is governed by New York law. *See* Aug. 11, 2004 Order, at 11.

CPH satisfies all the elements necessary to prevail on a fraudulent-misrepresentation claim under New York law. *See* CPH Opp. at 46-67.

6. Under settled New York law, a sophisticated plaintiff cannot establish liability for fraudulent misrepresentation with respect to the purchase of securities without establishing, among other things, that it conducted its own due diligence into the company whose securities were being purchased. *See, e.g., Schlaifer Nance & Co. v. Estate of Andy Warhol*, 119 F.3d 91, 98 (2d Cir. 1997); *Rotterdam Ventures, Inc. v. Ernst & Young LLP*, 752 N.Y.S.2d 746, 749 (App. Div. 2002); *UST Private Equity Investors Fund, Inc. v. Salomon Smith Barney*, 733 N.Y.S.2d 385, 386 (App. Div. 2001); *Abrahami v. UPC Constr. Co., Inc.*, 638 N.Y.S.2d 11, 14 (App. Div. 1996).

There is a genuine issue of material fact concerning whether CPH conducted a reasonable investigation into Sunbeam's finances, and Morgan Stanley has not demonstrated conclusively that CPH did not conduct such an investigation. *See* CPH Opp. at 46-63.

NOT A CERTIFIED COPY

020445

7. Here, it is undisputed that CPH is a sophisticated plaintiff, and CPH has produced no evidence that it conducted its own due diligence into Sunbeam, despite express warnings from its own team regarding Sunbeam's financial health and the credibility of Sunbeam's financial statements.

There is a genuine issue of material fact concerning justifiable reliance, and Morgan Stanley has not demonstrated conclusively the non-existence of justifiable reliance. *See* CPH Opp. at 46-63.

8. In addition, under settled New York law, fraudulent misrepresentation is an intentional tort, so a party seeking to establish such a claim must establish scienter, *i.e.*, intent to deceive. As a matter of law, a plaintiff cannot establish scienter by alleging that the defendant was motivated by ordinary economic motives, such as the desire to receive reasonable and ordinary compensation for its services. *See, e.g., THC Holdings Corp. v. Chinn*, No. 95 Civ. 4422, 1998 WL 50202, *9 (S.D.N.Y. Feb. 6, 1998); *Friedman v. Arizona World Nurseries Ltd. P'ship*, 730 F. Supp. 521, 532-33 (S.D.N.Y. 1990), *aff'd*, 927 F.2d 595 (2d Cir. 1991); *In re Philip Servs. Corp. Sec. Litig.*, No. 98 Civ. 0835, 2004 WL 1152501, at *5 (S.D.N.Y. May 24, 2004).

There is a genuine issue of material fact concerning whether Morgan Stanley had the necessary knowledge and intent to satisfy the scienter requirement, and Morgan Stanley has not demonstrated conclusively the non-existence of the necessary scienter. *See* CPH Opp. at 63-67.

NOT A CERTIFIED COPY

020446

9. Here, CPH has produced no evidence that Morgan Stanley acted with scienter beyond simply alleging that Morgan Stanley was motivated by ordinary economic motives, such as the desire to receive reasonable and ordinary compensation for its services.

There is a genuine issue of material fact concerning whether Morgan Stanley had the necessary knowledge and intent to satisfy the scienter requirement, and Morgan Stanley has not demonstrated conclusively the non-existence of the necessary scienter. *See* CPH Opp. at 63-67.

10. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's fraudulent misrepresentation claim.

Morgan Stanley is not entitled to summary judgment on CPH's fraudulent-misrepresentation claim. Among other things, there are genuine issues of material fact concerning justifiable reliance and concerning whether Morgan Stanley had the necessary knowledge and intent to satisfy the scienter requirement, and Morgan Stanley has not demonstrated conclusively the non-existence of justifiable reliance or of the necessary scienter. *See* CPH Opp. at 46-67.

NOT A CERTIFIED COPY

020447

11. Under settled New York law, a plaintiff cannot establish liability for aiding and abetting fraud without establishing, among other things, that the defendant (1) had actual knowledge of the underlying fraud, and (2) provided substantial assistance in the commission of that fraud. ***See, e.g., Stolow v. Greg Manning Auctions Inc.*****, 258 F. Supp. 2d 236, 250 (S.D.N.Y. 2003);** ***Cromer Fin. Ltd. v. Berger*****, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001),** ***aff'd mem.*** **2003 WL 22717684 (2d Cir. Nov. 17, 2003);** ***Filler v. Hanvit Bank*****, 339 F. Supp. 2d 553, 557 (S.D.N.Y. 2004);** ***see also Wassall v. Payne*****, 682 So. 2d 678, 681 (Fla. 1st DCA 1996);** ***Allerton v. State Dep't of Ins.*****, 635 So. 2d 36, 38 (Fla. 1st DCA 1994).**

Florida law applies to CPH's aiding and abetting claim, and, in any event, there are genuine issues of material fact concerning whether Morgan Stanley had the necessary knowledge of the fraud and concerning whether Morgan Stanley provided substantial assistance, and Morgan Stanley has not demonstrated conclusively that it lacked that knowledge or that it did not provide substantial assistance. *See* CPH Opp. at 67-82.

12. Here, CPH has not produced any evidence that Morgan Stanley had actual knowledge of the underlying Sunbeam fraud (which involving Sunbeam's accounting), or provided substantial assistance in the commission of that fraud. To the contrary, Morgan Stanley itself was a victim of that fraud, and lost hundreds of millions of dollars in connection with Sunbeam.

There are genuine issues of material fact as to whether Morgan Stanley knew of the Sunbeam fraud and whether Morgan Stanley substantially assisted its execution, and Morgan Stanley has not demonstrated conclusively that it lacked that knowledge or that it did not provide substantial assistance. *See* CPH Opp. at 75-82.

NOT A CERTIFIED COPY

020448

13. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's aiding and abetting claim.

Morgan Stanley is not entitled to summary judgment on CPH's aiding-and-abetting claim. Among other things, there are genuine issues of material fact as to whether Morgan Stanley knew of the Sunbeam fraud and whether Morgan Stanley substantially assisted its execution, and Morgan Stanley has not demonstrated conclusively that it lacked that knowledge or that it did not provide substantial assistance. *See* CPH Opp. at 67-82.

14. Under New York law, however, a plaintiff cannot establish liability for conspiracy to defraud without establishing, among other things, that the defendant actually entered into an agreement with another to commit fraud. *See, e.g., Gabriel Capital, L.P. v. NatWest Fin., Inc.*, 94 F. Supp. 2d 491, 511 (S.D.N.Y. 2000); *see also Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997).

Florida law applies to CPH's conspiracy claim, and, in any event, there is a genuine issue of material fact concerning the existence of an agreement between Morgan Stanley and Sunbeam, and Morgan Stanley has not demonstrated conclusively the non-existence of such an agreement. *See* CPH Opp. at 82-85.

15. Here, CPH has not produced any evidence that Morgan Stanley entered into an actual agreement with Sunbeam to commit fraud.

There is a genuine issue of material fact concerning the existence of such an agreement, and Morgan Stanley has not demonstrated conclusively the non-existence of such an agreement. *See* CPH Opp. at 83-85.

NOT A CERTIFIED COPY

020449

16. Accordingly, Morgan Stanley is entitled to summary judgment on CPH's conspiracy claim.

Morgan Stanley is not entitled to summary judgment on CPH's conspiracy claim. Among other things, there is a genuine issue of material fact concerning the existence of an agreement to commit fraud, and Morgan Stanley has not demonstrated conclusively the non-existence of such an agreement. *See* CPH Opp. at 82-85.

CONCLUSION

Morgan Stanley's request for a fact-finding order under Rule 1.510(d) of the Florida Rules of Civil Procedure should be denied.

Dated: January 10, 2005

Respectfully submitted,

COLEMAN (PARENT) HOLDINGS INC.

By: _____
One of Its Attorneys

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

NOT A CERTIFIED COPY

020450

1194127

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile to all counsel on the attached list on this 10th day of January, 2005.

Deirdre E. Connell
JENNER & BLOCK LLP
One IBM Plaza
Suite 4400
Chicago, IL 60611
Phone: (312) 222-9350
Fax: (312) 840-7643

Jack Scarola
Florida Bar No. 169440
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: (561) 686-6300
Fax: (561) 684-5816

Attorneys for Coleman (Parent) Holdings Inc. and MacAndrews & Forbes Holdings, Inc.

NOT A CERTIFIED COPY

020451

COUNSEL LIST

Joseph Ianno, Jr.
CARLTON FIELDS P.A.
222 Lakeview Avenue
Suite 1400
West Palm Beach, FL 33401

Thomas D. Yannucci, P.C.
Thomas A. Clare
Brett H. McGurk
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, DC 20005

Jack Scarola
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Mark C. Hansen
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3206

#1198043

NOT A CERTIFIED COPY

020452

341

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

vs.

MORGAN STANLEY & CO., INC.,
Defendant.
_____/

CASE NO. CA 03-5045 AI

FILED
Jan 11 20 05
SHARON R. BOCK
CLERK & COMPTROLLER
BY _____
DEPUTY CLERK

Filed Under Seal — Subject To Confidentiality Order

SUPPLEMENTAL APPENDIX TO COLEMAN (PARENT) HOLDINGS INC.'S SUMMARY JUDGMENT FILING

VOLUME 2
(EXHIBITS 190-199)

NOT A CERTIFIED COPY

Jerold S. Solovy
Ronald L. Marmer
Jeffrey T. Shaw
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

Attorneys for Coleman (Parent) Holdings Inc

020453

1018

16div-026214

TABLE OF CONTENTS

	TAB
Karen Clark Deposition Transcript	190
Todd Slotkin Deposition Transcript	191
MS Ex. 166	192
MS Ex. 374	193
MS Ex. 80	194
MS Ex. 81	195
MS Ex. 82	196
MS Ex. 83	197
MS Ex. 175	198
MS Ex. 182	199

NOT A CERTIFIED COPY

0204541

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF KAREN C. CLARK
Los Angeles, California
Friday, October 8, 2004
CONFIDENTIAL

NOT A CERTIFIED COPY

020456

Reported by:
REBECCA CORRAL
CSR No. 7021
Job No. 903095

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,
vs.) Case No. CA 03-5045 AI
MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,
vs.) Case No. CA 03-5165 AI
MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

Videotaped Deposition of KAREN C. CLARK, taken on behalf of Defendant, at 777 S. Figueroa Street, Suite 3400, Los Angeles, California, beginning at 10:07 a.m. and ending at 2:49 p.m. on Friday, October 8, 2004, before REBECCA CORRAL, Certified Shorthand Reporter No. 7021.

APPEARANCES:

For Coleman Holdings and Macandrews & Forbes Holdings:
JENNER & BLOCK
BY: MICHAEL T. BRODY
Attorney at Law
One IBM Plaza
Chicago, Illinois 60611-7603
(312) 222-9350

For Morgan Stanley & Co., Inc. and Morgan Stanley Senior Funding:
KIRKLAND & ELLIS LLP
BY: LAWRENCE P. BEMIS
Attorney at Law
777 S. Figueroa Street
Los Angeles, CA 90017
(213) 680-8413

KIRKLAND & ELLIS LLP
BY: MICHAEL C. OCCHUIZZO
Attorney at Law
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5205

Also Present:
ESQUIRE DEPOSITION SERVICES
Jay Wertzberger, videographer
6222 Wilshire Boulevard, Suite 204
Los Angeles, California 90048
(323) 938-2461

INDEX

WITNESS: EXAMINATION
KAREN C. CLARK
BY MR. BEMIS 7
BY MR. BRODY 155

EXHIBITS

DEFENDANT
(ALL EXHIBITS RETAINED BY COUNSEL)
236 Form 10-K for the Coleman Company, Inc. for 1998 14
392 Employment letter with Sunbeam as of 4-24-98 17
393 Employment letter with Sunbeam as of 8-31-98 20
395 Audit Standards for 1998 108
389 Letter dated 7-14-98 from Ms. Clark to Mr. Feuerabendt 126
397 Letter from Ms. Clark to Mr. Rowe 128
396 Facsimile from Ms. Clark to Mr. Rowe 131
387 Valuation of Pearlman Warrants and Coleman Public Shareholder Warrants 141

EXHIBITS (CONTINUED)

CPH
267 Script of Conference Call 159
268 Script of Q4 Earnings Release Conference Call for 4-21-99 161
269 Sunbeam Corporation Q1 Earnings Release Conference Call for 6-7-99 162
270 Conference Call Script for Second Quarter Earnings Release Conference Call for 1999 164
271 Script for Q3 Earnings Release Conference Call for 3rd Quarter 1999 166

INFORMATION REQUESTED
(None)

INSTRUCTION NOT TO ANSWER
(None)

020457

NOT A CERTIFIED COPY

Los Angeles, California, Friday, October 8, 2004
10:07 a.m. - 2:49 p.m.

THE VIDEOGRAPHER: Good morning. Here begins videotape No. 1 in the deposition of Karen Clark in the matter of Coleman Parent Holdings, Inc. vs. Morgan Stanley and Co., Inc., and related actions in the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. CA 03-5045 AI.

Today's date is October 8, 2004. The time is 10:07 a.m. This deposition is taking place at 777 South Figueroa, 35th floor in Los Angeles, California at the request of Lawrence Bemis of the law offices of Kirkland & Ellis.

The videographer is Jay Wertzberger. The court reporter is Rebecca Corral here on behalf of Esquire Deposition Services, Chicago.

Would counsel and all present please identify yourselves and state whom you represent.

MR. BEMIS: Good morning. Lawrence Bemis on behalf of the Morgan Stanley entities.

MR. OCCHUIZZO: Michael Occhuizzo, also for the Morgan Stanley entities.

MR. BRODY: Good morning. Michael Brody on behalf of Coleman Parent Holdings, MacAndrews & Forbes Holdings, and the witness.

THE WITNESS: I am the witness, Karen Clark.

THE VIDEOGRAPHER: Thank you.

And would the court reporter please administer the oath.

KAREN CLARK,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BEMIS:

Q Good morning, Ms. Clark. My name, again, is Larry Bemis and I'm representing Morgan Stanley. You have been introduced to the court reporter and the videographer.

Would you tell the jury your full name, including your middle name, please.

A Karen Kay Clark.

Q It is Kay, K-a-y, Clark?

A Correct.

Q How old are you, Ms. Clark?

A 44.

Q And what's your date of birth?

A 6/27/60.

Q And you are represented here today by Mr. Brody?

A Correct.

Q Where do you live today?

A Thousand Oaks, California.

Q Would you give us your full address, please?

A 1674 Amarelle, A-m-a-r-e-l-l-e, Street, Thousand Oaks.

Q And your zip code?

A 91320.

Q Do you have a listed telephone number there?

A Yes.

Q What is your listed telephone number?

A (805) 375-0906.

Q Are you married?

A Yes.

Q You live at that residence with your spouse?

A Yes.

Q Who do you work with today?

A Capstone Turbine.

Q Is that C-a-p-s-t-o-n-e?

A Yes.

Q Is it Capstone Turbine, Corp.?

A Corporation.

Q Corporation. What is your position there?

A Chief financial officer.

Q Are you also a vice president?

A I am a senior vice president.

Q So your full title is senior vice president and chief financial officer?

A Correct.

Q When did you join Capstone?

A In 2002.

Q Where is Capstone located, its actual address?

A 21211 Nordhoff Street, Chatsworth, California 91311.

Q And do you have -- is there a general telephone number for the company?

A Yes.

Q What is it?

A (818) 734-5300.

Q And is that the number through which you could be reached if we reached this switchboard?

A Theoretically.

Q Do you have a direct line there?

A Yes.

Q What is it?

A (818) 407-3616.

Q It's my understanding, looking at the record in this case, that you did work for the Coleman Company, Inc. before the merger with Sunbeam in 1998; correct?

NOT A CERTIFIED COPY

020458

A Correct.
Q What was your position at Coleman?
A Vice president, finance.
Q Is that a position similar to what you have now, although not with the title chief financial officer?
A Not quite.
Q How did it differ?
A I worked for the chief financial officer, but similar to many chief financial officer positions, the controller and other people in the finance function reported to me.
Q Who did you report to at Coleman before the merger with Sunbeam in 1998?
A Joe Page.
Q Was he the chief financial officer at that time?
A He was the interim chief financial officer.
Q After the merger, did you go to work for Sunbeam?
A Yes.
Q What position did you have?
A Vice president, operations, finance.
Q You said operations and finance?
A No, it is operation or operational finance.

Q And you stayed at Sunbeam until when?
A 2000.
Q During the time that you were at Sunbeam, who did you report to first?
A Rus Kersh.
Q Was he the chief financial officer of the company at that time?
A Yes.
Q And after Mr. Kersh left Sunbeam, I think it was in June of 1998, who did you report to next?
A The next clearly delineated reporting was to Bobby Jenkins.
Q Did you report to Mr. Jenkins until you left Sunbeam in the year 2000?
A Yes.
Q Did your title remain the same, vice president of operations, finance through the entire period that you worked for Sunbeam?
A No.
Q What -- did you have a change in title?
A Yes.
Q When was your first change in title?
A I don't recall precisely, but it would have been around late June, July time frame.
Q Is this when you signed your employment

contract with Sunbeam?
A Likely.
Q What was your new title?
A Senior vice president, finance.
Q Now, I -- looking at your records as to the extent they appear in public filings, you were a pretty senior person in Coleman during the time you were there; correct?
A Yes.
Q You were relatively highly paid; right?
A Relatively.
Q Well, my records that I looked at show that you had a 1997 -- you had a base salary of $97,000.
Does that sound about right?
A No.
Q What was it?
A Probably closer to 170,000.
Q $170,000. Well, we don't read very well.
You also had a bonus, as well?
A Correct.
MR. BEMIS: Excuse me one second. Let's go off the record. We are going to have to stop the noise outside.
THE VIDEOGRAPHER: We are off the record at 10:14 a.m.

(Recess taken.)
THE VIDEOGRAPHER: We are going back on the record at 10:15 a.m.
BY MR. BEMIS:
Q Ms. Clark, in addition to your base salary and, again, focusing on Coleman in 1997, you also received a bonus during that year; correct?
A I don't recall if I received one or not, but I believe I was eligible for one.
Q Do you recall what the size of the bonus you were eligible for in 1997?
A No.
Q You don't have any idea at all today as you sit here?
A No.
Q Was it a percentage of your base salary?
A Likely.
Q Was it based on your performance?
A I don't recall what the construct of the plan was.
MR. BEMIS: Let me see M.S. 236.
Let me show you what's previously been marked as -- let me show you what the court reporter will mark as Morgan Stanley Exhibit 236.
Ms. Reporter, if you could please initial that

NOT A CERTIFIED COPY

020459

and date it.
(Defendant's Exhibit 236 was marked for identification by the court reporter.)
BY MR. BEMIS:
Q Do you have Morgan Stanley Exhibit 236 in front of you?
A Yes.
Q In the lower right-hand corner there are numbers on the pages and I -- given your experience, you know that those are called Bates numbers; right?
A Correct.
Q I want you to turn to the page that is numbered CPH 0627125, last three digits again being 125, and it is under Title 11 of the document called Executive Compensation. Tell me when you are there.
A I am there.
Q Now, all right. The Karen K. Clark that is -- well, first of all, is this the Form 10-K for the Coleman Company, Inc. for 1998?
A It appears to be.
Q All right. And I didn't look, but are you one of the signatories of this at this time? And if you will turn to the very last page before the financial statements, see if your name is there.
A I believe you are looking for Bates CH -- or

CPH 0627152.
Q Right. Are you one of the signatories?
A No.
Q Would you take a look, go back now to page CPH 0627125, which was the Executive Compensation table. Tell me when you are there.
A I am there.
Q Now, the compensation listed under your -- or across your name is for two years, 1997 and 1998; correct?
A Correct.
Q For 1998 it shows your base compensation, as I understand it, a salary of 88 -- is that $88,173?
A That's not for 1998.
Q For -- if I misspoke, I meant to say 1997. Let me ask you the question again.
For 1997, was your base compensation $88,173?
A According to this, yes.
Q So when you said $160,000, you were mistaken?
A No. You asked what my base salary level was, which is an annualized number. This is only a portion of the year.
Q A portion of a year for 19 -- I see, because you only worked a portion of 1997?
A Correct.

Q Okay. I appreciate that clarification.
Then did you receive a bonus in that year, that is, 1997, of $81,761?
A According to this, yes.
Q So that would, again, be a part of a bonus for a partial year?
A It was all of the bonus offered for my services in that year.
Q All right. All right. So then you went to work for Sunbeam in 1998, as you have told us; correct?
A Correct.
Q Now, did you receive, in addition to your salary from Sunbeam in 1998, did you also receive the compensation shown beside your name for 1998, which is a salary of $160,501? And you also might want to look at footnote 6.
A Could you restate what your question was, please.
Q Sure. Is the amount of salary that is shown payable to you in 1998 on an annual compensation, which is $160,501, is that your compensation paid to you by the Coleman Company, Inc. in 1998?
A Yes.
Q Then in addition to that, you also received a salary from Sunbeam; correct?

A No.
Q So this is a combination of the two with appropriate offsets?
A I don't believe they are offsets. It is a combination of the two of which they settled up among themselves who paid which portion.
Q That's a better way to describe it than offsets. Thank you.
Then in addition to the compensation that you received, you also received a bonus in 1998 of $43,561; is that correct?
A According to this, yes.
Q Now, is that a bonus strictly from Coleman or does that include a bonus also from Sunbeam?
A It appears to be a bonus from Coleman.
Q You also, in that year, received a bonus from Sunbeam; did you not?
A I don't recall.
MR. BEMIS: Well, in 1998 -- let me show you what's been marked by the court reporter as M.S. 392.
(Defendant's Exhibit 392 was marked for identification by the court reporter.)
MR. BEMIS: Ms. Reporter, if you would initial and date the sticker, please. You don't need to put new stickers on it.

NOT A CERTIFIED COPY

020460

Q Do you have -- you have a Morgan Stanley Exhibit 392 in front of you?
A Yes.
Q Now, is this your employment letter with Sunbeam as of April 24, 1998?
A Yes.
Q And does it correctly state that your salary for the year of 1998, on an annual basis, is $205,000?
A Correct.
Q And in addition, you were eligible for participation in the Sunbeam 1998 bonus plan; correct?
A Correct.
Q And it is described as a 50 percent target performance based on salary dollars paid.
Do you see that?
A Yes.
Q Is that -- withdrawn.
Am I correct that that means that if you meet your performance requirements, that you could earn up to 50 percent of your base salary as a bonus?
A If you can -- no, because if you continue reading the next sentence, it says, "Actual payouts could exceed 50 percent based on the achievement of stretch targets during our 1998 performance year."
Q Stretch targets means if you went over and

above the business plan targets, you might be eligible for additional compensation; correct?
A Well, this seems to be achievement of stretch targets, so they could be targets established. Whether those would be where the budget was, I don't know, I can't say at this time.
Q Well, whatever it is, it would be more than 50 percent if you reach the stretch targets; right?
A It had the potential to be.
Q Okay. On this -- so when you went to work for Sunbeam, you got -- strike that.
When you went to work for Sunbeam in 1998, you got an increase in your base compensation over what you were being paid at the Coleman Company, Inc.; correct?
A Correct.
Q Then shortly after -- you can set aside M.S. 392.
Then shortly after you joined the Coleman Company, Inc., you signed another employment contract; did you not?
A I believe so.
MR. BEMIS: Let me show you what the court reporter --
MR. BRODY: Just for clarification, you mean after she joined Sunbeam?

MR. BEMIS: I thought that's what I said.
MR. BRODY: I think you said Coleman.
MR. BEMIS: I will withdraw the question.
Let me ask the court reporter to mark the following document as M.S. 393. I will hand you the original.
(Defendant's Exhibit 393 was marked for identification by the court reporter.)
BY MR. BEMIS:
Q Do you have Morgan Stanley Exhibit 393 in front of you, ma'am?
A Yes.
Q Is that your employment agreement with Sunbeam Corporation dated as of August 31, 1998?
A Yes.
Q Is that your signature that appears on page 11 above the signature of Mr. Shapiro?
A No. Mine is below the signature of Mr. Shapiro.
Q Excuse me, below. Thank you for correcting that.
So when you signed this agreement, which commenced -- well, strike that.
Although this agreement is dated August 31, it actually commenced, if I read section 2.1 correctly, on

June 15, 1998; is that right?
A Yes.
Q Did this agreement stay in place until you resigned from Sunbeam in the year 2000?
A To the best of my recollection, yes.
Q Did you work all the way through June 14 of the year 2000?
A No.
Q When did you leave in 2000?
A January.
Q In January of 2000. Under the terms of this agreement, your salary was increased from that shown in M.S. 392, which was your, I think, April 24 employment letter, to $270,000; is that correct?
A Yes.
Q You also were eligible for an annual bonus as set forth in section 3.2 of your employment agreement; correct?
A Correct.
Q This was -- was this a performance bonus, as well as -- withdrawn.
Was this a performance bonus?
A It was a performance-based bonus.
Q Did you receive a bonus in 1998 from Sunbeam?
A I don't recall.

NOT A CERTIFIED COPY

020461

Q You don't recall one way or the other?
A No.
Q Did you have other employment besides Sunbeam in 1998?
A Continuing my duties at Coleman.
Q Well, other than your duties at Sunbeam and Coleman, did you have any other employment?
A No.
Q When you left Coleman, did you have stock options?
A When I left Coleman, would you define when I left Coleman.
Q I am not trying to play games with you. I understand you had some options that you cashed out at the time of the merger; right?
A Some time, as a result of the merger, I was one of the last people to be cashing out.
Q You cashed out about 25,000 options, didn't you?
A I don't recall the number.
Q You don't have any idea at all?
A No.
Q Do you know how much profit you made on the options that you cashed out at Coleman when you left?
A No.

MR. BRODY: Object to form.
BY MR. BEMIS:
Q You don't have any idea at all?
A No.
Q You are an accountant by trade, too, aren't you?
A Yes.
Q Graduated from Montana State?
A Correct.
Q Degree in -- you had a degree in what?
A Business accounting.
Q Economics; right?
A No.
Q What did you say?
A Business accounting.
Q I'm sorry. Business accounting. And you were also, at some point, you were a certified public accountant, weren't you?
A Yes.
Q What states licensed you to be a certified public accountant?
A I believe I was licensed in Idaho, Montana, and Washington.
Q Washington State; right?
A Washington State.

Q Okay. Well, when you left -- well, strike that.
Are you a certified -- withdrawn.
Are you still licensed as a certified public accountant today?
A No.
Q When did you let your last license lapse?
A I don't recall.
Q No idea at all?
A Probably some time in the '90s.
Q Now, just -- you have been deposed before; right?
A Correct.
Q You have been deposed before in connection with the Sunbeam cases; right?
A Yes.
Q And you understand that you are being videotaped; right?
A Yes.
Q And you understand that the videotape can be played to the jury in the case?
A Yes.
Q You have had an opportunity to consult with Mr. Brody, who says he is appearing on your behalf today?

A Yes.
Q And you understand that the oath that you took this morning has the same force and effect as if you were testifying in court; correct?
A Absolutely.
Q And is there any reason that you can't testify truthfully today?
A No.
Q Is there anything wrong with your memory today that may cause you not to remember something, for example, you are on some medication that impairs your memory?
A I am not on medication that would impair my memory.
Q So there is nothing that would impair your memory?
A Nothing besides the normal things like passage of time and aging.
Q When did you retain Mr. Brody to represent you, by the way?
A In the last few months.
Q And do you have like a written agreement, retainer agreement with him?
A I don't have a written document.
Q Are you paying him fees or is someone else

NOT A CERTIFIED COPY

02464

paying his legal fees for appearing here?
A Someone else is paying his fees.
Q And do you know who that is?
A I don't know precisely what entity it is.
MR. BEMIS: Could you reread that.
(Record read.)
BY MR. BEMIS:
Q I'd ask you if you could just keep your voice up just a little bit. You are a little soft-spoken.
Is Mr. Brody -- withdrawn.
Has Mr. Brody represented you in any other matters?
A No.
Q Have you ever met him before he became your attorney in this matter?
A No.
Q How did you come in contact with him?
A I was given his name by an individual at MacAndrews & Forbes.
Q Who was that?
A I don't recall who it ultimately was who gave me his name.
Q Well, who called you from MacAndrews & Forbes to tell you that there was a request to take your deposition?

A No one.
Q How did you find out about your deposition?
A I was called -- well, the deposition itself, Mr. Brody informed me about.
Q So Mr. Brody called you? You have to answer yes or no.
A Yes.
Q Sorry. Head nods are pretty good, but we need an answer, if we can.
Had you spoken to someone at MacAndrews & Forbes before you spoke to Mr. Brody?
A Yes.
Q So that person told you you were going to receive a call from Mr. Brody?
A Yes.
Q Whom did you speak to at MacAndrews & Forbes?
A I don't recall who it was.
Q Did you speak to more than one person?
A Yes.
Q Do you recall any of the other people you spoke to?
A I can't come up with any other names.
Q Did Mr. Barry Schwartz call you?
A No.
Q Was it Mr. Fasman who called you?

A I don't know.
Q What did they tell you, whoever called you?
A That Mr. Brody would be contacting me.
Q Did they tell you what the deposition was about?
A Not other than there was an action that MacAndrews was involved in. I really didn't get very many details about it.
Q Did you ever work for MacAndrews & Forbes?
A No.
Q Did they tell you why they were offering to have Mr. Brody represent you in the deposition?
A I had asked if they would offer representation.
Q You asked that of MacAndrews & Forbes?
A Yes.
Q They agreed to it?
A Yes.
Q Did they offer -- withdrawn.
Did you talk to anybody about your -- withdrawn.
Did you talk to anyone at Sunbeam about your deposition?
A Yes.
Q Who was that?
A Steve Berreth.

Q Would you spell his last name, please?
A B-e-r-r-e-t-h.
Q And where is Mr. Berreth located?
A Chicago.
Q Who does he work for?
A Today, I don't know.
Q Well, who did he report to at the time you spoke to him?
A Coleman.
Q What was -- what is his position at Coleman or was -- withdrawn.
What was his position at Coleman at the time you spoke to him?
A I believe he was general counsel.
Q What did you say to him and what did he say to you?
A I told him I had received a telephone call from some attorneys who wanted to interview me about some situation with, I believe it was, Coleman Parent Holdings or some M & F entity and asked him if he knew anything about what it was and he told me he did not.
Q Did he say he would get back to you?
A No.
Q Did you ask him to get back to you?
A No.

NOT A CERTIFIED COPY

Q What happened next?
A I asked him who might know and he referred me to Mr. Schwartz's office.
Q Mr. Barry Schwartz?
A Correct.
Q Did you then call Mr. Schwartz's office?
A Yes.
Q Did you speak to Mr. Schwartz?
A No.
Q Who did you speak to?
A His admin assistant.
Q His administrative assistant?
A Yes.
Q What did you say -- what did the administrative assistant to Mr. Schwartz say to you?
A I will get back to you.
Q I will get back to you. Did someone get back to you?
A Yes.
Q Who was that?
A I don't remember.
Q What was said when this person you cannot remember got back to you at a time you don't remember?
A They said that they would have Mr. Brody give me a call.

Q How long ago was this conversation with the administrative assistant you can't remember, at a time you can't remember that you were told you would speak to Mr. Brody?
MR. BRODY: Object to the form.
MR. BEMIS: You can answer.
THE WITNESS: The messages were a few months ago.
BY MR. BEMIS:
Q Did you eventually meet with Mr. Brody -- strike that.
Did -- Mr. Brody and you did, at some point, then, speak on the telephone; is that right?
A Yes.
Q And did you ever have any face-to-face meeting before your -- with Mr. Brody before your deposition here today?
A Yes.
Q When was -- how many times have you met with him?
A Face-to-face?
Q Yes, ma'am.
A Once.
Q And was that yesterday?
A Yes.

Q Before you met with Mr. Brody yesterday, had you spoken to him on the telephone about matters other than just scheduling?
A I believe he gave me a very high level overview of the nature of this issue.
Q The issue. What are you referring to?
A That there was some action going on between MacAndrews and is it Morgan Stanley, that's who you are representing.
Q And that's it?
A That's about it.
Q Then you met yesterday?
A Yes.
Q And where did you meet yesterday, in Chatsworth?
A No.
Q Where did you meet?
A At my home.
Q Where is -- how close is that to Chatsworth where you wanted to have your deposition taken?
A It is about 35 miles away.
Q How long did you meet yesterday at your home?
A A few hours.
Q Did you provide any documents to either Mr. Brody -- or withdrawn.

Did you provide any documents to Mr. Brody, to Coleman, or to anyone from MAFCO or Sunbeam in relationship to this deposition?
A No.
Q Did you review yesterday, while you were preparing for this a couple of hours, any documents with Mr. Brody?
A Yes.
Q Did those documents help you remember events?
A Yes.
Q What documents did you look at?
MR. BRODY: Object to the form of the question. I would instruct her not to answer because as we have addressed before, it invades work product. I think you ought to ask her what documents refreshed her recollection.
MR. BEMIS: I just asked her that question.
MR. BRODY: No, you asked her what documents she looked at, not what documents refreshed --
MR. BEMIS: I asked her whether the documents refreshed her recollection and she said yes. Now I asked her what documents.
MR. BRODY: Well, if the question is considered what documents did you review that refreshed your recollection --

NOT A CERTIFIED COPY

Page 34

MR. BEMIS: Are you instructing her not to answer?
MR. BRODY: I am trying to get a clarification of the question, Larry.
MR. BEMIS: I am trying to do the same thing that you have done in every other deposition, so if you are instructing her not to answer, give her the instruction and let's get on with it.
MR. BRODY: I asked you to rephrase your question because, apparently, we don't understand each other.
MR. BEMIS: Apparently, we don't.
Q What documents did you review yesterday with Mr. Brody that refreshed your recollection of events?
MR. BRODY: Thank you.
MR. BEMIS: You are welcome.
THE WITNESS: There were a variety of them.
BY MR. BEMIS:
Q Well, I understand that, but it was less than 24 hours ago that you looked at the documents; right?
A Correct.
Q Do the best you can and tell me what documents you looked at.
A There were minutes of meetings. There were schedules. There were pages out of presentations.

Page 35

There were e-mails --
Q What kind of presentations? Excuse me.
A Presentations that, apparently, had been made to various boards or presentations related to meetings.
Q That's all you can remember from yesterday?
A It is a lot of documents. I mean, I don't recall specifically which ones. I could name some memos, if you would like. How detailed do you want to get?
Q Well, do the best you can and I will -- if I have additional questions, I will ask you.
A I looked at a memo about a 3 by 3 by 6 meeting.
Q What's a 3 by 3 by 6 meeting?
A It was a meeting that was being called at Sunbeam that was to review three months of performance expectations, the next three months, and the six months following that.
Q What was the date of this meeting?
A In the summer of 1998.
Q What else?
A I looked at what appeared to be a draft of a memo about a project that was named something like 265.
Q Project 265?
A I believe that's what it was called, I don't --

Page 36

Q Did you know what that was?
A No.
Q So had you ever seen the memo before?
A No.
Q Just -- we'll go on in a second, get some more of these documents, but the minutes of the meetings that you looked at, were these Board of Directors minutes?
A No.
Q What kind of minutes were they?
A Audit committee.
Q Audit committee of Sunbeam?
A Correct.
Q And all -- were these all like post June of 1998?
A I can't say specifically what date because it was a very cursory -- there are minutes.
Q Had you seen them before yesterday?
A On an item by item basis, I can't recall if I had seen them in writing.
Q Were you on the audit committee of Sunbeam at any time?
A No.
Q Did you make presentations to the audit committee of Sunbeam while you were there?
A Yes.

Page 37

Q Okay. You also said you looked at some schedules. What kind of schedules are you referring to?
A Schedules that were attached to documents like forecast schedules or schedules that had forecast numbers on them, schedules that had actual numbers on them.
Q Were these Sunbeam forecasts or were they Coleman forecasts?
A I recall yesterday looking at a column that had Coleman forecast numbers on them.
Q Were these for 1998?
A I believe there was a portion of 1998.
Q And were these comparing forecasts and actual results for 1998 at Coleman?
A For a portion of the period, yes.
Q Did you look at any forecasts for -- versus actual performance for Coleman for 1997?
A I don't recall that.
Q Going back to the 1998 forecast and comparison to actual, were these for the entire year 1998?
A No.
Q What period were these forecasts for?
A I believe it was a comparison of the first quarter forecast versus actual results.
Q And did these forecasts that you looked at --

NOT A CERTIFIED COPY

020465

excuse me, for Coleman for the first quarter of 1998 and the comparison to actual results, did they show that Coleman had not met its forecasts for the first quarter of 1998?

A Correct.

Q And in what -- strike that.

Did Coleman miss its forecast for EBITDA?

A I don't recall.

Q Do you remember any of the items that Coleman -- that you looked at yesterday that Coleman did not meet its forecast for the first quarter of 1998?

A Sales.

Q Anything else?

A I don't recall anything else.

Q How about earning per share?

A I didn't look at it.

Q Do you recall how much Coleman missed its forecast for the first quarter of 1998 on the schedules that you looked at yesterday with Mr. Brody?

A No.

MR. BRODY: Objection to form.

BY MR. BEMIS:

Q All right. Other than -- any other schedules that you now recall looking at yesterday?

A I know there were others, but I can't

specifically recall what they were at this time.

Q I didn't mean to interrupt you.

What period of time were they for?

A The documents that I looked at predominantly were in the 1997 and 1998 time frame, generally.

Q Were these other schedules for the 1997 and 1998 time frame, were they comparisons of forecasts to actuals for those years for Coleman's performance?

A Not that I recall.

Q What were they?

A As I mentioned, I can't recall what they were. Would you like to know about other memos that I remember?

Q Sure.

A Okay. I remember looking at a copy of the memo that Frank Feraco, Lee Griffith, Al LeFevre, and I prepared for Al Dunlop regarding the performance of Sunbeam.

Q For what period?

A It was a memo done in June of 1998 and it was addressing a prospective period.

Q Was this a prospective period of meeting certain earnings per share target for the year 1998?

A I believe it addressed the performance expectations of the company, which would have been in

response to those expectations.

Q And did this memo conclude that the performance expectations that you were calculating were not going to meet what certain analyses had been made as to what the company's performance might be for 1998?

A That's my recollection of the memo, although I did not read it yesterday.

Q What other memos did you look at yesterday?

A I can't recall specifics.

Q Do you recall any nonspecifics?

A I have given you the nonspecifics.

Q Do you recall any other types of documents you reviewed yesterday?

A No.

Q Did you review any public filings, by the way, such as Morgan Stanley 236 that you have in front of you?

A No.

Q Let me ask you a couple questions about your -- a little bit more about your background, and then we'll get into some more details about your employment at Coleman.

I know you told me earlier you graduated from Montana State; correct?

A Correct.

Q When was that?

A 1981.

Q My son is at the University of Montana, by the way.

A I am sorry?

Q Yes.

A What's he studying?

Q He is studying business and computer science. Maybe he'll get -- be on the opposite side some day.

When you graduated, you graduated with a degree in business accounting?

A Correct.

Q And did you graduate with honors?

A Yes.

Q And when did you take your first C.P.A. examination?

A 1981.

Q 1981?

A Correct.

Q Did you pass the first time?

A Yes.

Q All four sections?

A Yes.

Q Congratulations.

A Thank you.

NOT A CERTIFIED COPY

020466

Q And did you have to take the examination -- which state was that in?
A I took it in Montana.
Q And I know you told me you were also licensed in Washington, and where did you say another state was?
A Idaho.
Q That's what I thought. You didn't have to take the test again, did you?
A No. We are lucky.
Q And you maintained your license as a certified public accountant in at least one other state up until some time in the 1990's; right?
A I believe that's correct.
Q Now, are you still, today, a member of the AICPA?
A Yes.
Q And for the jury's benefit, that's the American Institute of Certified Public Accountants; correct?
A Correct.
Q And are you also -- are you a member of any other professional organizations?
A Not at this time.
Q Were you once a member of a group called the Financial Executives Institute?
A Yes.

Q What is that, for the jury?
A It is an organization of financial executives.
Q When you -- are there any other professional organizations that you have been a member of since you graduated in 1981 from Montana State?
A Yes.
Q What?
A National Association of Accountants. I have also been a member of a number of state society organizations, the Institute of Management Accountants, I have also had participation with.
Q When you went to -- excuse me. When you -- withdrawn.
When you completed your degree work at Montana State and shortly thereafter got your C.P.A. license, did you go into private employment?
A I was in public accounting.
Q And who did you work for first?
A Arthur Andersen.
Q The same auditors that were Sunbeam's auditors?
A Correct.
Q What -- when did you work for Arthur Andersen?
A 1981 to 1983.
Q What area were you -- strike that.
What area did you work in?

A Do you mean geography or practice area?
Q I meant practice area.
A I was in audit and consulting and computer audit.
Q I will ask you to keep your voice up. I can barely hear your answers. If you could, I would appreciate it.
MR. BRODY: Is it coming through all right on the tape?
THE VIDEOGRAPHER: It is.
MR. BRODY: Good.
BY MR. BEMIS:
Q If I heard you correct, you did auditing; correct?
A Correct.
Q And, in particular, you did -- did you say computer auditing?
A Computer auditing and also business consulting.
Q Business control test?
A Yes.
Q What are business control tests?
A I'm sorry, I said business consulting, but business control tests are -- an audit control test can be part of an audit procedure.
Q After you left -- where did you work for Arthur

Andersen, by the way, geographically, where did you work?
A Boise, Idaho.
Q Nice place.
A Not bad.
Q Then after you left Arthur Andersen, where did you go to work next?
A A small company called Skyland Scientific.
Q What did you do there?
A I was the controller.
Q How long did you stay there?
A About one month.
Q Where did you go after that?
A I went to a public accounting practice called Dobbins, DeGuire & Tucker.
Q Is that D-e, capital G-u-i-r-e, ampersand, Tucker?
A Correct.
Q And what did you do there?
A I was an auditor. I also did business consulting.
Q How long were you at Dobbins, DeGuire & Tucker?
A I believe until about 1997.
Q '97 or '87?
A I am sorry, '87. Thank you for the correction.

NOT A CERTIFIED COPY

020467

Q After you left the Dobbins firm, what did you do next?
A I went to Arthur Young.
Q Which became, eventually, Ernst & Young?
A Correct.
Q What did you do at -- I will refer to them as Ernst & Young. What did you do with Ernst & Young?
A I did auditing and business consulting.
Q Was that -- and how long did you work for what is now Ernst & Young?
A For the combined practice, until 1990.
Q Ernst & Young was, at the time that you worked for the Coleman Company, was the auditor for the Coleman Company; correct?
A I don't recall how long they had that assignment to know if they were the auditors in 1990 or not.
Q I wasn't -- I may have misspoken.
When you worked at the Coleman Company in 1997 and 1998, Ernst & Young was the outside accounting firm for Coleman; correct?
A Correct.
Q And Arthur Andersen, who you worked for before, when you went to work for Sunbeam, was the outside auditor for Sunbeam?

A Correct.
Q All right. After -- so you had about, with the exception of a month that you spent at Skyland Scientific, you had about 18 or 19 years of audit practice; did you not?
A No. It was nine years.
Q Nine years?
A From 1981 to 1990.
Q I can't add either, but that's right. That would be nine years. So --
A It felt like 18.
Q I know it. I hear you.
What was the highest audit position you achieved within any of the organizations that you worked for?
A My title was an audit manager. The level now is generally described as a senior manager.
Q Did you audit any public companies in your assignments for Arthur Andersen, Dobbins, or Ernst & Young in this nine-year period?
A Yes.
Q Give me a couple names of the public companies that you audited.
A Boise Cascade Corporation.
Q Any others?

A Yes. I believe Todd Shipyards was still public at the time I worked on them.
Q Do you want to give us the name again?
A Todd Shipyards. I did some work with Aldus Corporation, although not in an auditing role with them. There were others. I can't recall their names at this time.
Q Did you ever work on any -- strike that.
Did you ever do any work, while you were in the accounting profession from 1981 to 1990, in connection with mergers and acquisitions?
A I am sorry, can you repeat the question.
Q Yes. During that nine-year period that you were in the accounting profession, did you ever do any work as part of your professional work in connection with mergers and acquisitions, something like Sunbeam, Coleman, although it could have been structured differently?
A Yes.
Q What mergers and acquisitions did you work on in your professional capacity in this time frame?
A A number of acquisitions typically of one company, of a private company. They generally aren't names you would recognize.
Q Okay. And did you have some experience, when

you worked in the accounting profession, with public filings with the Securities and Exchange Commission?
A Yes.
Q When you went -- withdrawn.
When you left Ernst & Young, which I believe you said was in about 1990?
A Correct.
Q Where did you go to work next?
A Tektronix.
Q That's T-e-k-t-r-o-n-i-x?
A Correct.
Q Where is Tektronix located?
A In the Portland, Oregon area.
Q Are you from Portland?
A No.
Q Are you from Oregon?
A No.
Q Where are you from?
A Trick question.
Q Trick question. Where are you from?
A A variety of places. Pennsylvania, Delaware, Montana.
Q What did you do at Tektronix?
A I worked as an accounting manager, a planning manager, cost accounting manager. In the color printer

NOT A CERTIFIED COPY

020468

Page 50

division, I also worked as corporate planning manager.
Q Did you report in that capacity -- those capacities to the chief financial officer?
A No.
Q To the controller?
A To a division controller and -- in the first three positions, and to the corporate vice president of planning. I don't recall what his title was in the last position.
Q In corporate planning, did you do financial planning?
A Yes.
Q Prepare forecasts and budgets?
A Yes.
Q And track performance against forecasts and budgets?
A To a degree, yes.
Q Did you create business plans?
A I assisted the business units in their creation of the business plans.
Q After you left -- well, strike that.
When did you leave Tektronix again?
A 1994, I believe.
Q Where did you go, then?
A Precision Cast Parts.

Page 51

Q Where is that located?
A Portland, Oregon.
Q What does that company do or did?
A Still do.
Q What does it still do?
A They are a heavy metal manufacturer.
Q What did you do there as controller? That's a bad question. Withdraw that.
Were you the corporate controller the entire time?
A Yes.
Q Did you report to the chief financial officer?
A Yes.
Q Were you involved in corporate planning, as you have described it earlier?
A Yes.
Q Forecasting, budgeting; correct?
A Correct.
Q Business plans?
A Yes.
Q When you -- withdrawn.
How long did you stay with Precision Cast Parts?
A Approximately three years.
Q So that would bring us up to about 1997; is

Page 52

that right?
A Yes.
Q Is that the time, then, that you joined the Coleman Company?
A Yes.
Q Did you also work for one of the other -- another company related to the Coleman Company?
A Like whom?
Q Like Coleman Worldwide Corporation.
A No.
Q Never had a position with them?
A I didn't have an active day-to-day job with them.
Q Well, did you have a nonactive, non-day-to-day job with them?
A There were various entities that I became an officer of, but they weren't really operating entities, so it is not --
Q These are holding companies?
A Holding companies or other entities.
Q All right. So let's set Coleman Worldwide Corporation aside right now, but we know you went to work for the Coleman Company, Inc.; right?
A Correct.
Q Again, so the jury can understand the time

Page 53

frame, we are at about 1997; right?
A Correct.
Q And just to put this in context, you were vice president of finance; right?
A Correct.
Q And you stayed in that position as vice president of finance until you went to work for Sunbeam in 1998 pursuant to your letter agreement dated April 24, 1998; right?
A I was exactly in both jobs.
Q Both jobs, that is, what you mean by that is you worked for both Sunbeam and Coleman; correct?
A And retained both titles at the same time.
Q Because after -- as of April 24, 1998, Sunbeam had acquired the majority interest in the Coleman Company, Inc.; right?
A Well, I will trust you on the date, but that's about the story.
Q Where -- when you were vice president of finance at Coleman, where were you, where was your office?
A In a building in Wichita, Kansas.
Q So you had to move from Portland to Wichita?
A Yes. There are worse things.
Q I am sure there are, but Wichita is a fine

NOT A CERTIFIED COPY

020469

place.
When you joined the Coleman Company, Inc., you initially -- you reported first to Mr. Joe Page; right?
A No.
Q I am sorry. Who did you report to initially?
A Steve Kaplan.
Q Steve Kaplan. What was his title?
A Chief financial officer.
Q Then you reported to Mr. Page?
A Correct.
Q You said Mr. Page was the acting chief financial officer; isn't that what you said earlier?
A I believe I said interim.
Q Interim. Who hired you to work at the Coleman Company?
A Mr. Kaplan.
Q Did you know him, did you know him before you went to work for him at the Coleman Company?
A Only from having met him in the interview process.
Q How did you come to go to work for the Coleman Company from Portland, Oregon to Wichita, Kansas?
A I was recruited.
Q By a headhunter?
A Correct.

Q When you joined the Coleman Company in 1997 and moved to Wichita, what did you understand you were going to be doing as you reported to Mr. Kaplan and later to Mr. Page?
A I understood that I was going to be actively involved in rebuilding the corporate office, that I would have responsibilities for the controller function, and add on, then, tax and treasury, and that I would be helping to work in a turnaround business.
Q Basically, when you came to work for the Coleman Company, you went there because you knew that as a turnaround situation; correct?
A You are saying I went there because it was a turnaround?
Q No, you went there because Coleman was in the process of a restructuring or turnaround; right?
A I went there because we put together an offer and acceptance on a job, that was one of the features.
Q One of the features was that you were going to a company that was in the process of a restructuring; correct?
A Correct.
Q And that you were going to be a participant in restructuring the company; correct?
A Correct.

Q And that if you were successful in restructuring the company, you expected to benefit monetarily, if you will, from stock options that you were granted as a consequence of your successful work; right?
A My bigger incentive was the ability to do that with an expanded role in the financial background. You could tell from my earlier testimony my focus is not on what I get compensated, but on the experience that I get.
Q Well, whether it be your compensation or your experience, you did go to Wichita because you wanted to participate in the restructuring of the Coleman Company; right?
A Yes.
Q And I think you called it the rebuilding of the corporate office?
A Yes.
Q What did you mean by that?
A The corporate office had been in Denver, Colorado, it was being moved to Wichita, and most of the people from Denver were not being asked to go back to Wichita, and so it meant finding people for various positions, building a team, building new processes and procedures.

Q Was the objective of this restructuring eventually to position the Coleman Company so that it could be an attractive acquisition target for another corporation?
A That's one of the possible outcomes of it.
Q And according to M.S. 236, which we looked at earlier, that's the December 31, 1998 Form 10-K, you had granted to you 25,000 options -- and that's, if you would like to look, that's at CPH 0627125. Am I correct?
A Yes.
Q Did you get -- strike that.
Were you awarded those 25,000 Coleman options at the time you accepted employment with the Coleman Company?
A I can't recall if they were all on the first day or not, but according to this report, it was all done by the end of 1997.
Q And then at the time of the -- withdrawn.
Was the strike price of the underlying options equal to the market price of the options on the day you -- day or days that you received the grants of the 25,000 options?
A I can't recall specifically, but that would be normal.

NOT A CERTIFIED COPY

020470

Q So if, for example -- withdrawn.
Now, at the time of the merger -- strike that.
At the time of the closing of the Sunbeam-Coleman merger transaction, the nonpublic closing as of March 30, 1998, did you exercise your options, your Coleman options?
A I don't believe -- I don't recall if I exercised them then or not, but I didn't monetize it for some time.
Q What do you mean? Please tell us what you mean by "monetize" them.
A I didn't get any cash.
Q You eventually got cash, though, didn't you?
A Eventually.
Q So you monetized them at some point?
A Correct.
Q And you monetized them at the difference between the stock price, which was the market price of the stock at the time you were issued, if custom followed -- practice followed custom, and what was the market price you exercised at?
A I don't remember.
Q Did you have a profit?
A I believe so, yes.
Q Did you have a pretty substantial profit?

MR. BRODY: Objection to the form.
THE WITNESS: I don't remember.
BY MR. BEMIS:
Q Well, was it in the hundreds of thousands of dollars?
A I don't remember.
Q Now, at the time of the -- when did you learn, by the way, that the Coleman Company was going to be acquired by Sunbeam?
A Not long before it happened or before the announcement. I believe the announcement was in early March and it wasn't long before that, maybe just about a few days that I heard it was going to be acquired by Sunbeam.
Q Were you surprised at the announcement?
A Not on the day of the announcement because I obviously knew a few days before that it was going to be acquired.
Q Let's put it this way. On the day that you learned that there was to be an acquisition, whether it was at that point public or not public, were you surprised at the announcement?
A Yes.
Q Were you surprised at the price that Sunbeam was paying?

A Yes.
Q Why were you surprised first at the announcement that Sunbeam was acquiring the Coleman Company?
A I was surprised that anyone would be acquiring the Coleman Company at that point in time because it was a company in turnaround, not a company turned around.
Q Did you read any of your deposition transcripts before you came in here today?
A I read like four pages. When I say "pages," I mean the little boxes that are numbered pages of one, but that's all I had time for.
Q Who gave you those little boxes of testimony, Mr. Brody?
A I had them.
Q You had them. Was your prior testimony on that subject, one of the boxes that you read, what you just told me?
A No.
Q Did -- why were you surprised about the price that Sunbeam was paying for the Coleman stock?
A I was surprised about the price because, as I recall, it was a rather significant premium to where the stock was trading at that time. And significant enough that, you know, one would question the price in light of

the stage of turnaround.
Q When you came to work for the Coleman Company in 1997, do you remember the month?
A My first day was June 30.
Q Of 1997?
A 1997.
Q Do you remember what the approximate market price was for the Coleman stock as it was publicly traded?
A No, I don't.
Q You don't have any idea at all?
A No.
Q It wasn't $50 a share?
A I don't recall it being that high. I would want to say it was kind of a teens stock.
Q Kind of a 14, 15, $12 share; right?
MR. BRODY: Object to the form.
THE WITNESS: You probably looked at it more recently than I have and it's a factual point we can look up.
BY MR. BEMIS:
Q All right. Do you remember what the approximate per price share was for Coleman stock as announced in the acquisition that closed on March 30, 1998?

NOT A CERTIFIED COPY

020471

A Again, I don't remember specifics, but my gut reaction is that it was somewhere in like the high 20's or low 30's; is that right? You have the facts.
Q It is lower. It is much higher than that.
Did you share your surprise at both the acquisition and the price of the acquisition with anyone at the Coleman Company?
A Yes.
Q With whom?
A Joe Page.
Q And what did you say to Mr. Page on this subject matter?
A I don't recall the specifics of the conversation, but the context of it was that it was surprising it was selling so quickly and surprising it was selling for what appeared to be such a high premium.
Q What did, if anything, did Mr. Page say in response to your surprise?
A I believe he concurred.
Q He was surprised?
A Yes.
Q On both points?
A Yes.
Q That is, both the timing and the price?
A Yes.

Q Just to close out this area, you told us you left Sunbeam January of 2000; right?
A Correct.
Q Where did you go then?
A I went to PacifiCorp.
Q And is that in Portland?
A Yes.
Q PacifiCorp is P-a-c-i-f-i, and then Corp, C-o-r-p, but one word; right?
A Correct, with a capital C.
Q What does it do?
A It is a utility.
Q You stated -- what was your position there?
A Chief financial officer.
Q Were you -- was that your first position as a chief financial officer?
A Yes.
Q PacifiCorp is a public utility, isn't it?
A Correct.
Q Its stock is traded; is it not, on the Exchanges?
A Not any longer.
Q Not any longer. How long did you stay at PacifiCorp?
A Approximately two years.

Q Then you went to your present position at Capstone; right?
A Correct.
Q And you are -- you went -- you went as senior vice president of chief financial officer; correct?
A Correct.
Q You are still in those positions today?
A Correct.
Q You are also the secretary to the corporation; right?
A Correct. I am also the chief legal officer, if that matters.
Q You are also the chief legal officer. Congratulations.
A Great.
Q I assume you have some -- you are not a licensed attorney, are you?
A No.
Q Do you have lawyers working, reporting to you?
A No, but I hire outside counsel.
Q You hire outside counsel, okay.
Let's go back now and spend a few minutes on what the Coleman Company was like when you got there as part of this restructuring effort that you described for us earlier. Did you work on the business plan for the

restructuring in 1997 when you came in June of that year?
A I don't recall working on one in June.
Q Was there one in place when you arrived at the Coleman Company in June of 1997, that is, a business plan for restructuring?
A I don't recall what plan there would have been at that time, but I do recall that we would be on a path building a different one.
Q On the path to a different one?
A Yes.
Q That's because in 1996 the company lost quite a bit of money, didn't it?
A I don't recall the specifics, but I do recall that Jerry Levin had just been put in as the president of the company with the idea to get it back on track with its turnaround efforts that had waned in recent history.
Q Well, just -- why don't we take -- take a look at M.S. 236 again, which is the -- let me ask you to set that aside. Let me show you a better one to look at is 1997. Get the right date. It will be easier to work with.
A Let me grab some water while you get that.
Q If you would like to take a short break, we

NOT A CERTIFIED COPY

have been going an hour. If you would like to take a short break, we can break or we can continue. It's up to you.

A We can go for a little while longer.

Q I understand. Believe me, I understand.

I'm going to hand you, Ms. Clark, what's previously been marked as Morgan Stanley Exhibit 251, which is the December 31, 1997 Form 10-K or annual report in shorthand for the Coleman Company, Inc. I am sorry to slide that over to you, but I can't reach.

Mr. Brody, I have a copy for you to follow along, if you like.

Now, I would like you to look at, I think page 13, if I remember correctly, of the report, which is entitled Selected Financial Data. It is -- tell me when you are there.

A I'm there.

Q Before we talk about that financial data, maybe keep a thumb on that page, you did sign this annual report Form 10-K M.S. 251; did you not? I direct your attention to page 46.

A Yes.

Q You signed it as an officer of the Coleman Company, vice president of finance; right?

A Correct.

Q Now, this document reflects combined data for 1996 and 1997; right, as well as other periods?

A Correct.

Q So let's turn to the highlights of Coleman's financial data on page 13 of the Form 10-K for 1997. Tell me when you are there again.

A I am there.

Q All right. Just want to ask you a couple questions about what the situation was when you arrived on June of 1997.

According to the document that you signed and filed with the Securities and Exchange Commission, M.S. 251, Coleman had a net loss in 1996 of $4,893,000; is that right?

A Yes.

Q And that was in contrast to a profit of $39,280,000 in 1995; right?

A Correct.

Q Now, if I understood you correctly, you were one of the people who were brought in along with Mr. Levin to assist in a turnaround of the company, that is, the Coleman Company; right?

A Correct.

Q And now, as part of your job to turn around Coleman, what specific tasks were assigned to you as

part of the restructuring?

A Well, to work on rebuilding the corporate finance group, to work on --

Q Is that like hire the right people to get the job done?

A That's a part of it.

Q Okay. What else were you to do?

A To work on improving systems and processes.

Q Is that so you can reduce your G & A?

A That might be one of the benefits of it, but really more to provide timely, accurate, and insightful information for use in running the business.

Q Better information so you know what's really going on in the business; right?

A Well, so you get the information more timely and in a consistent fashion.

Q And then you can apply that information, hopefully, to be more profitable?

A One would hope so.

Q What else were you charged with doing?

A Participating with the business units as requested and needed in their efforts.

Q Now, there are, in this selected -- well, strike that.

When you joined the Coleman Company as part of

this restructuring effort, how large was the department that reported to you?

A At the time I got there, I can't say precisely how large it was. I don't remember. I remember three people.

Q Did you say you remembered the people?

A Three people.

Q And did your group have a name within the company? I know you had titles, but did you have like a group name?

A Well, I had the accounting group and then eventually I worked with the tax group. The intention was that I would also, at some point, have responsibility for the treasury group, but on the first day I came in, my focus area was the accounting group.

Q That's your internal accounting group?

A The corporate accounting group.

Q Who prepares the internal financial statements of the company?

A As well as external ones.

Q When you say the "external," you mean the ones that are then audited by your accountants?

A Correct.

Q Your outside accountants?

A It is the same financials.

NOT A CERTIFIED COPY

0204713

Page 70

Q I hope so.
A It is a feature.
Q Now, did you have any specific role in creating the turnaround or restructuring plan for the Coleman Company?
A Just supporting the business units, it was a business plan.
Q Who was in charge of the Coleman -- at the Coleman Company when you arrived in June of 1997 for the business restructuring plan for the Coleman Company?
A Jerry Levin.
Q And Mr. Levin, was it his charge, as you understood it, that he was to turn around the company and reverse the type of results that the company had in 1996 losing almost $42 million?
A It was his objective to make it a profitable and sustainable, solid business.
Q Now, as I read page 13, the selected financial data, which is in Morgan Stanley 251, for 1997, the company, that is, the Coleman Company, lost $2,536,000; correct?
A Correct.
Q And if I -- looking down further to balance sheet data, do you see the heading Long Term Debt?
A Yes.

Page 71

Q Now, if I look at -- am I reading this correctly, in 1993, Coleman's long term debt was only $168,858,000; is that correct?
A Correct.
Q By 1997, Coleman's long term debt had swollen -- strike swollen. Increased to $477,799,000; is that correct?
A The debt had increased, as had other numbers in the business at that point.
Q Well, let me look at -- what is stockholders equity under balance sheet data, what does that mean?
A It is the source of the assets that came from stockholders or the interest of stockholders.
Q Well, am I correct that the total interest of stockholders, that had increased from $228,104,000 in 1993 to $240,469,000 in 1997?
A Correct.
Q Now, when you went through this restructuring of the Coleman Company while you were there in 1997 and up -- well, withdrawn.
Did the restructuring, was it ongoing at the time of the acquisition by Sunbeam in March of 1998?
A Yes.
Q So it was a work in progress at the Coleman Company; right?

Page 72

A Absolutely.
Q Now, as I read the footnotes to your selected financial data, looking first at footnote A, are you with me, do you see that?
A Yes.
Q You have, for example, in your financial statement, restructuring charges; correct?
A Yes.
Q Then it looks to me like -- excuse me, I withdraw that.
Am I reading footnote A correctly, that there were restructuring charges, and this is net of tax, as described here, of $22,501,000 in 1997; is that right?
A Correct.
Q And then there were, for 1996, there were restructuring charges of $52,516,000; is that right?
A Correct.
Q And then that's just referring to the restructuring charges that appear under the title -- under the statement of operations data for selling, general, and administrative expenses; right?
A I would have to take a look at it to answer that.
Q You will see that's footnote A that I am -- next to that line item.

Page 73

A Okay, I am sorry, what was your question again?
MR. BEMIS: Could you re-read the question again, please, to the witness.
(Record read.)
THE WITNESS: I have to say no. The 22,501,000 appears to be the summation of the 19,673,000 that was reported in cost of sales plus the 16,746,000 recorded in SG&A net of the tax benefit of 13,918,000. Those together appear to be the 22501 total.
BY MR. BEMIS:
Q Okay. Those are all restructuring charges net of the taxes as set forth; right?
A Those later numbers identify where that first number was set out in the above, so it wasn't on one line, it was spread among several lines.
Q So the 22,501,000 is a number of restructuring charges that were for the year 1996; correct?
A It is a number of elements of a restructuring, yes. It is restructuring and certain other charges, and I don't recall at this time what the certain other charges may have been.
Q Now, part -- and the same would be true for the 1997 figures; correct?
A You mean 1996?

NOT A CERTIFIED COPY

020474

Page 74

Q Correct. They are in that order. Let me ask the question again.
Same would be true for the 1996 charges?
A Correct.
Q All right. If you turn to the next page, which is page 14 of the Form 10-K, do you see the heading Management Discussion and Analysis of Financial Condition and Results of Operations?
A Yes.
Q This -- did you -- when you signed Morgan Stanley Exhibit 251, you had reviewed these results of operations figures and the text material; correct?
A Yes.
Q And in your view and in your position as a senior officer of Coleman, these are correct, what's stated here; right?
A These are factually correct within all material respects.
Q And the restructuring that is identified for the period during 1997, about halfway down the page, would you please direct your attention to that paragraph. Tell me when you are there.
A I am there.
Q As I read this, part of the restructuring and other charges includes, for example, in 1997, an

Page 75

expenditure of $15.7 million to exit various low margin products; is that right?
A Correct.
Q "Exit" means stop selling; right?
A It may mean a decision was taken to exit the business. Whether that meant immediate stop selling or not, I can't recall.
Q Well, it means -- "exit" means to get out of the business; right?
A Correct.
Q And then also it includes, for example, an expenditure of $15 million to close and relocate administrative and sales offices; right?
A Correct.
Q And then there is another charge of 5.7 million to close manufacturing facilities; correct?
A Correct.
Q If I go down a paragraph, I come to the restructuring of 1996 discussion; right?
A Correct.
Q Then if I read -- am I reading this correctly that there was, for example, a 29.1 million charge in 1996 to integrate the camping GAZ -- and that's G-A-Z, Ms. Reporter -- and Coleman operations into a global recreation products business; is that right?

Page 76

A Correct.
Q And then there is a $19 million charge to exit, again, get out of business, at some point, electric pressure and washer businesses; right?
A It was an electric pressure washer business.
Q And then there is another charge for 14.1 million to exit a portion of the Coleman Company's battery powered light business; right?
A Correct.
Q And then you have -- did you have, during that period in 1996 and 1997, charges for reductions in employees?
A I don't recall. We haven't seen it yet.
Q Turn to page 15, midway down, which identifies termination costs. Are you at that paragraph?
A No. Now, I am.
Q The termination -- are the termination costs, which you identified on page 15 of this exhibit, M.S. 251, are these termination costs in connection with termination of employees as part of the restructuring?
A Give me a minute and I will read it and find out.
Q Okay.
A Yes, they appear to be.
Q So in 1996, for example, as part of the

Page 77

restructuring, approximately 200 employees were terminated; right?
A The accrual was taken for the termination of approximately 200 employees.
Q And in 1997, the -- which you called the accrual, was for the termination of approximately 525 employees?
A Correct.
Q And then there is a reference to a charge on December 31 of 1997 of $11.3 million for costs that were paid on behalf of the -- it says approximately 700 employees who were terminated as of that date.
Do you see that?
A I don't believe it is appropriate to characterize it as a charge.
Q Okay. Setting aside whether it is -- whether "charge" is the right word, and I don't want to quarrel with you about that, there is -- there were termination costs paid of $11.3 million as of December 31, 1997; right?
A Correct.
Q These payments, were they for the employees terminated in the -- withdrawn.
Is -- are the 700 employees, are they the same employees that are identified in the first sentence of

NOT A CERTIFIED COPY

that paragraph?
A I believe that's correct.
Q Okay. The math didn't quite square, so I wasn't sure.
A I believe that the first part is the accrual for the full termination benefit. The second part is the actual cash paid in the period related to their termination benefits.
Q And these 700 employees or so who had been terminated -- withdrawn.
These employees who had been terminated by the Coleman Company as part of the restructuring, these were all people who had been terminated as of December 31, 1997; correct?
A I'm not sure they were all actually terminated at that date. I can't tell from reading this.
Q Well, then, what does the language, "700 employees who were terminated as of that date" mean?
A It could relate to the termination, the individuals who had actually been terminated as of that date. Accruals were taken for, it looks like, 725. So approximately 700, it appears, had actually gone by that point in time. So --
Q Just so the jury understands the question, because it could get somewhat confusing, at least as of

December 31 of 1997, based on what we are reading in your Form 10-K, 700 Coleman employees had been terminated as of that date as part of Mr. Levin's restructuring; right?
A It appears about 700 employees had been terminated as of that date as a result of somebody's restructuring, because I don't believe Mr. Levin was in charge for the full period at that time.
Q And as you put it, in 1998, at the time that you learned of the merger of Coleman and Sunbeam, the restructuring had not been completed, it was a work in progress; right?
A Correct.
Q So more employees were going to be terminated, weren't they?
A Hard to tell.
Q Well, did you expect -- withdrawn. Let me ask you that.
Did you increase your head count in 1998 up to the time of the merger?
A I know I did in my department. I don't recall the overall answers for the corporation.
Q Now, if you turn back to -- withdrawn.
Please turn back to page 14 of M.S. 251. And I would ask you to look at the last paragraph beginning,

"1996 pretext restructuring charges."
Do you see that?
A Yes.
Q Now, in the first sentence it refers to "the termination cost for 174 administrative employees."
Do you see that?
A Yes.
Q Are those 174 administrative employees included in the 700 that we were talking about on page 15 of this exhibit?
A I haven't studied it, but on the surface, it would appear that's the case.
Q At the time of the announcement -- withdrawn.
At the time you learned of the pending merger between Sunbeam and Coleman, which I believe you said was shortly before the public announcement, what remained to be done at Coleman to complete the restructuring plan that you were working on?
A A lot.
Q Could you tell the jury what "a lot" means?
A Improving the overall performance of the business, building a trend of improvements in sales and profitability, enhancing the value of the company, as reflected in the stock price.
All those things are a result of a number of

underlying fundamentals, such as enhancing a product offering, building better relationships with the channel, building more success with the channel, reducing costs, improving systems, front to back building a better business.
Q You know, from front to back, how much longer did you expect the restructuring to take, assuming there had not been a merger between Coleman and Sunbeam?
A When I was hired, I was told the expectation was approximately five years, really, no less than three, and potentially longer, but I had set my expectations around a horizon of approximately five years.
Q And the acquisition was announced approximately eight months after you joined the company, if you joined on June 30, 1997; right?
A That's right.
MR. BEMIS: If you could set aside Morgan Stanley Exhibit 251.
THE WITNESS: Is this a good time for a break?
MR. BEMIS: It sure is, ma'am. You are very gracious to go as long as you did. Ten minutes, is that enough for you?
THE WITNESS: That would be great.
MR. BEMIS: Okay. Off the record, please.

NOT A CERTIFIED COPY

02047691

THE VIDEOGRAPHER: We are going off the record at 11:44 a.m.
(Recess taken.)
THE VIDEOGRAPHER: We are going back on the record at 11:55 a.m., October 8, 2004. This is the beginning of videotape No. 2 in the deposition of Karen Clark.
BY MR. BEMIS:
Q Do you feel comfortable going another hour at least before we break for lunch? If so, we can assess where we are in an hour.
A That would be good. Thank you.
Q You just let me know if you think you get to the point where you think you need to get something to eat, we'll stop.
Let's change topics now. I want to talk about the events leading up to the signing of the merger agreements in February of 1998. You are at least familiar with the agreements themselves, that they got signed and the deal went forward; right?
A At about that level, that's correct.
Q Tell me when it was -- withdrawn.
Tell me how you learned about the pending merger between Sunbeam and Coleman.
A I called Joe Page, who I believe was in New

York at the time, and asked him to just give me enough time to put together a data room before they came in. I didn't know who they were, but I knew something was up.
Q You must have heard something about, quote, "they," closed quote, in order to make a call to Mr. Page. How did you find out there was a "they" out there?
A I figured there had to be one because I couldn't get the attention of a lawyer if my hair was on fire and normally they were all over and accessible, and I couldn't get the lawyers or anybody else to pay attention to whatever my issue was at the time.
And I thought whatever they have must be pretty big because it tops what I have, and so I just surmised and said that to Mr. Page, and he then wondered how I knew and I said, well, I just figured it out.
Q And your options vested at that point in time. I will withdraw that. Just kidding.
When you spoke to Mr. Page, you said, if I heard you correctly, you asked him about setting up a data room; right?
A Correct.
Q And a data room, as you are using that term, refers to a room of materials about the Coleman Company that a potential acquirer would like to look at in the

process of conducting due diligence; right?
A Straight out of Webster's, yes.
Q I got it right, didn't I?
A Correct.
Q And my -- did you ever -- strike that.
Did Mr. Page or anyone else at Coleman, for that matter, ever direct you to set up a data room?
A No.
Q Did anyone at the Coleman Company set up a data room?
A I don't recall there ever being a physical room at Coleman that would serve the purpose of a data room.
Q Did you, at any time -- strike that.
So this call to Mr. Page, you announced to him that, in effect, you knew and asked about the data room, that was your first communication internally with your seniors where you discussed or suggested you knew about the merger; right?
A Correct.
Q And the transaction, the record will show, was announced on March 2 of 1998. Can you place, with that date in mind, your conversation with Mr. Page?
A I don't recall the specific time of that. He was at a meeting in New York, and we can probably go back to his diary and figure out when that was.

Q Was it -- withdrawn.
The documents for the merger, the contracts, if you will, they are dated as of February 28 -- excuse me, February 27 of 1998. That's a Friday. When you signed, I think, on Saturday, February 28, does that in any way help you place your call with Mr. Page?
A I believe it would have been before that, but I don't know whether it was a matter of days or weeks.
Q But not much before that?
A I can't recall. I do recall him saying that it was almost done, but I don't know what "almost done" means in terms of where that was relative to the preparation of signing of the document.
Q So when you say "he" referred to it being almost done, the "he" refers to Mr. Page; correct?
A Correct.
Q And the "it" refers to the merger agreements; correct?
A The transaction of the merger.
Q The transaction agreements.
MR. BRODY: I'll object to the form. I don't think you have correctly heard her answer.
MR. BEMIS: Okay. I will stand on what I have.
Q Had you ever met Mr. Dunlop before you went to work for Sunbeam?

NOT A CERTIFIED COPY

02047

A No. Besides my interview.
Q And you interviewed with him after the closing of the transaction on March 30, 1998?
A Yes.
Q Did you have -- strike that.
Did you, up to the point in time where you spoke to Mr. Page about setting up the data room, ever have any communications with the investment banking firm of Credit Suisse First Boston?
A Not unless they would have been, you know, in a normal course of business with a debt of a company, but not as to this transaction, not at all.
Q Are you aware that Credit Suisse First Boston was retained by the Coleman Company as its exclusive financial advisor in the transaction with Sunbeam?
A I may have been at a point in time, but I didn't recall that today.
Q Okay. Did you, at any time, have any working relationship with Credit Suisse First Boston up to the time of the closing of the merger transaction on March 30, 1998?
A I had, in my prior life, but not related to this transaction.
Q I am only, at this point, just on the Sunbeam transaction.

A No.
Q Let me see M.S. 206.
Were you personally or Coleman following Sunbeam at any time before you learned of the possible merger?
A I wasn't. I am not aware of anyone who said they were.
Q Let me show you what --
MR. BRODY: Before you -- can I have that question back.
(Record read.)
MR. BEMIS: Let me show you what's been marked as M.S. 206 in an earlier deposition.
Here is an extra copy, Mr. Brody, if you want to follow along.
Q I have handed you M.S. 206 and this is a photocopy of a January 29, 1998 Wall Street Journal article and there is an attachment in which is a distribution, which has your name on it.
Do you see that?
A Yes.
Q Let me ask you, first of all, did you receive M.S. 206 as shown on the distribution list?
A I don't recall getting it. Doesn't mean that I might not have.

Q Who is Mark Shiffman?
A He is an individual who worked at Coleman in investor relations.
Q Do you know why you were on the distribution list for this article from the Wall Street Journal on Thursday, January 28 -- excuse me, 29, 1998?
MR. BRODY: Object to the form.
THE WITNESS: It would not have been unusual to receive information about the performance of consumer products companies just to be getting a sense of what was happening in the market and in the sector. So I would surmise that that's why I would have been on this type of a distribution.
BY MR. BEMIS:
Q Did you -- withdrawn.
There has been previous testimony by a number of MAFCO witnesses, MacAndrews & Forbes witnesses, that they received periodic distributions of newspaper or financial services clippings, like a clipping service. Did you receive that type of information in your position at Coleman?
A Yes.
Q Did you receive that in 1997 and 1998 while you were employed by Coleman?
A That would have been normal.

Q How often did you receive the clipping services?
A I don't recall specifically, but it is typically something that's periodic.
Q Was Mr. Shiffman the person that circulated within Coleman the clippings on the matters such as set forth in M.S. 206?
A I would expect the clipping service information to be distributed by Mr. Shiffman.
Q And did Coleman subscribe to an outside service that provided the information to Mr. Shiffman who, in turn, circulated it, or did Coleman just gather it itself internally?
A I don't recall specifically. I believe it was a service, but I can't say for sure at this point.
Q Was the -- strike that.
Was the distribution of clippings, such as M.S. 206, was that handled by the investor relations department, if you will, of Coleman?
A I think I previously said that's something I believed Mr. Shiffman's department would typically have done, and so he was in charge of investor relations, yes.
Q So in addition to monitoring, I guess, everything that was being set in the marketplace by

NOT A CERTIFIED COPY

0047978

Page 90

Coleman, I understand that the investor relations department at Coleman monitored what was being set by other consumer products companies; is that correct?
A Correct.
MR. BRODY: I'm sorry, object to form, foundation.
BY MR. BEMIS:
Q And was this the first -- strike that.
So you are not surprised that you were on the distribution list for M.S. 206; right?
A No.
Q And did you receive, in the course of your employment by the Coleman Company from June of 1997 up until the time you became, by letter agreement, employed by Sunbeam as well, did you receive clippings on Sunbeam?
A I can't say they weren't in the mix. As I recall, clipping files, they are usually pretty hefty documents.
Q How often did you get the clippings files?
MR. BRODY: Objection. Form.
THE WITNESS: Again, I said I don't recall the specific frequency, but it was a periodic thing that occurred.
BY MR. BEMIS:

Page 91

Q Once a week at least?
A Once a week, once every two weeks, something of that frequency. It was not like it was semiannually.
Q And was this -- when you received the clippings files, did you review them so you could keep yourself abreast of business information of other companies in the consumer products business?
A Usually not.
Q You can set that aside. You did not attend -- strike that.
Did you attend any meetings at all with Morgan Stanley before the closing of the acquisition on March 30, 1998?
A No.
Q Have you ever, in any -- did you ever have any communications with anyone that you understood to be employed by any Morgan Stanley entity before the closing on March 30, 1998 of the transaction we are discussing?
A Not that I recall.
Q Any -- and I use communications just so we are clear in writings, E-mails, letters, voice mails, anything at all that you can think of?
A It is possible, but I don't recall any of it.
Q And you didn't attend any of the Board of Directors meetings of the Coleman Company, did you,

Page 92

that -- where the merger was discussed?
A No.
Q Let me show you what's been previously marked as Morgan Stanley Exhibit 133, which is a confidentiality agreement executed by Morgan Stanley and -- excuse me, by Sunbeam and the Coleman Company.
A Can you make it a little cooler in here? It's getting kind of warm, isn't it?
MR. BEMIS: Let's go off the record.
THE VIDEOGRAPHER: We are off the record at 12:10 p.m.
(Recess taken.)
THE VIDEOGRAPHER: We are going back on the record at 12:12 p.m.
BY MR. BEMIS:
Q I have handed you what the reporter has marked in a previous deposition as Morgan Stanley Exhibit 133.
Do you have that in front of you?
A Yes.
Q This is a document that has been identified as a confidentiality agreement dated February 4, 1998 between Sunbeam and the Coleman Company.
Have you seen this document before?
A I don't recall having seen it.
Q In your experience in working in earlier

Page 93

mergers and acquisitions and business transactions as an auditor or even in your business life when you were in accounting, was it customary, in your experience, to have confidentiality agreements executed between or among parties when they were in preliminary discussions about a business compensation?
MR. BRODY: Object to the form.
THE WITNESS: Yes.
BY MR. BEMIS:
Q In the course of -- withdrawn.
In the days leading up to the closing of the first step of the transaction, that is, March 30, 1998, did you participate in any way in the due diligence investigation, if any, of either Sunbeam or Coleman by any of the parties? That's a terrible question. Let me withdraw. Rephrase it.
Between the time you spoke to Mr. Page and talked to him about the data room and the actual closing of the first leg of the transaction, which was March 30, 1998, did you participate in due diligence in any fashion?
A I believe, during that time frame, I had discussions with people from Sunbeam, but whether that was a portion of their due diligence activities or not, I don't know.

NOT A CERTIFIED COPY

0204 79

Page 94

I would expect that due diligence would have been completed by the signing and announcement of the transaction and that the closing was just a passage of time, and I believe that was pretty much the better part of the month of March.

Q So at some point in time before the closing, you did speak with people at Sunbeam; is that correct?

A I believe that we had started some conversations and even providing information to them prior to the actual closing.

Q Was there a single person at the Coleman Company that was responsible for coordinating, if you will, any due diligence inquiries of Sunbeam to Coleman?

A I don't know who that would have been. Again, I believe the due diligence process would have been completed by the beginning of March, and the events prior to that beginning of March period, prior to the announcement, I didn't see those taking place in our business from either side.

Q So as you -- at least up to the announcement, you didn't see any due diligence, as you put it, from either side, either the Sunbeam or the Coleman side with regard to the businesses of either company; is that right?

A Correct. Not in our facility. I did hear that

Page 95

there were conversations that were happening in New York where there was some review of some information going on.

Q Are you aware of anyone at -- withdrawn.

So that what you have described takes us up to the public announcement, and I want to now go forward with you from the public announcement, which I told you before was May 2, 1998.

A May or March?

Q Did I say May? I apologize. Let me rephrase the question.

I want to go forward with you and take you from the public announcement March 2, 1998 up to the first closing, which is on March 30, 1998. Are you with me on the time frame?

A Yes, I am.

Q Okay. During that one-month time frame, I am going to ask you first, did you respond to any requests for information from Sunbeam about Coleman's business, regardless of whether you thought it was due diligence or not?

A I believe I did.

Q Who did you -- strike that.

Who, at Sunbeam, did you speak to?

A I am a little hazy on the specific dates of the

Page 96

time frame, whether it would have been during that March time frame or the early -- or the early April time frame.

But generally in that early March from the announcement to mid-May time frame -- I'm sorry, mid-April time frame, I provided information to a number of people at Sunbeam. They included Ken Huff, Rus Kersh, Debra McDonald, I believe Al LeFevre asked for some information, Robert Gluck. There may have been others.

Q Now, this was information that you provided about Coleman's business to business people at Sunbeam; correct?

A Correct.

Q Now, I want to now ask you to separate out that flow of information. I want you to reverse the flow and that is Coleman requesting information from Sunbeam.

Are you aware, during the period March 2, 1998 through the closing, March 30, of any due diligence inquiries made by Coleman that you are aware of of Sunbeam?

MR. BRODY: Object to the form of the question.

Go ahead.

THE WITNESS: Again, I said anything that would

Page 97

be a due diligence inquiry by either party, I would have expected to be pre that public announcement.

Whether there was any flow of information, assuming you take out the words "due diligence," but as you did it going the other way, just flow of information was Coleman requesting information about Sunbeam's business only to the effect of trying to understand what it meant to be an acquired company, what they were going to expect from us, what kind information they were going to need so that we could begin to adapt to providing it.

BY MR. BEMIS:

Q So in the period from March 2, 1998 to March 30, to the extent that there was information -- withdrawn.

In the period between March 2, 1998 and March 30, to the extent Coleman was asking questions of Sunbeam, without trying to characterize them as due diligence, the inquiries were in the nature of how are we going to integrate with the business of Sunbeam?

MR. BRODY: Objection, foundation.

Go ahead.

THE WITNESS: Of that nature, correct.

BY MR. BEMIS:

Q Did you -- strike that.

To your knowledge, did anyone at Coleman,

NOT A CERTIFIED COPY

020480

Page 98

during the period March 2 to March 30, 1998, make any inquiries of Sunbeam about Sunbeam's business plan going forward after the acquisition of Coleman?

A Well, I think we were all trying to figure out what was going to happen with the combined businesses and how we would fit in.

I know that to the extent people had an opportunity, it was not uncommon to try to poke and figure out what this meant to our lives being acquired and what that would mean to our businesses and our operations which, of course, relates to what Sunbeam's go forward plans are.

Q Did you see, in the period we are discussing, March 2 to March 30, 1998, any what I think you just characterized as, quote, "go forward," closed quote, plans of Sunbeam for Coleman?

A No, I don't recall seeing any.

Q Were the types of inquiries that -- about the go forward plans, the type of kind of office discussion you had with your coworkers and seniors about just how are things going to be a month from now if this deal closes?

A Well, and as opportunities presented themselves with the people from Sunbeam, as we had opportunities to speak with them, we tried to elicit what we could about

Page 99

what they knew about what was going to happen.

Q Did you refer to a -- withdrawn.

Earlier you talked -- strike that.

Earlier you told the jury about your question to Mr. Page for the establishment of a data room at Coleman. Did you ever hear that there was a data room set up for Sunbeam?

A No, I didn't, but I wouldn't expect one to. They were the buyer, not the seller.

Q So, I take it, you never looked at the Sunbeam data room?

A No. And as I mentioned, I wouldn't expect there to be a data room. As a buyer of companies in my past, I never had a data room as a buyer. I always had a data room as a seller.

Q Did you -- in the case when you were a buyer, did you ever -- withdrawn.

In the course of the other deals that you have been involved with, in business combinations, did you work on transactions where they were essentially stock transactions, stock for stock as opposed to stock for cash?

A I am trying to remember the combinations. I have done a fair number. I have to believe in there somewhere there was stock for stock, but I don't recall

Page 100

public company stock for public company stock.

Q Now, you told the jury in your earlier testimony that you would have assumed that any due diligence that was going to be done about the transaction would have been done before the signing of the merger agreements; right?

A Yes.

Q And can you tell me what, if any, due diligence you are aware of being performed by the Coleman Company first before the signing of the merger agreements?

A I don't know of any.

Q Do you know of any due diligence done by Sunbeam before the signing of the merger agreements, which are dated as of February 28, 1998?

A I had heard from Mr. Page that he had a briefcase of material at his meeting in New York and that information in that briefcase was reviewed.

Q But did you see that information?

A The information we discussed that he had, much of it I had prepared before he left.

Q So this was -- was this information about the Coleman Company that Mr. Page took to his meetings in New York?

A That's my understanding.

Q So are you aware of Mr. -- strike that.

Page 101

So just so the jury understands what is in the briefcase. Now, this is, again, Coleman information being provided to Sunbeam; correct?

A That's my understanding.

Q Setting that aside now, is there any other due diligence inquiry that you can think of that was done before the signing of the February 28, 1998 merger documents other than what -- other than this briefcase of materials from Mr. Page?

A Nothing that I heard of.

Q Did anyone at the Coleman -- strike that.

Are you aware of anyone at the Coleman Company doing any research, if you will, of the Sunbeam company before the signing of the merger documents?

A I have no idea if they did or didn't.

Q You didn't do any?

A No.

Q And Mr. Page, did he tell you whether he did any?

A We never had a conversation that said whether he did or didn't.

Q Are you aware of anyone at the Coleman Company interviewing any Sunbeam employees prior to the signing of the merger agreements?

MR. BRODY: Objection, foundation.

NOT A CERTIFIED COPY

020481

Page 102

THE WITNESS: Again, I had very little involvement or knowledge even of what was happening prior to the signing of the document. I think I told you about my two instances.
BY MR. BEMIS:
Q At any point -- strike that.
Before the closing on March 30, 1998, are you aware of anyone at the Coleman Company conducting any interviews or inquiries of Arthur Andersen about Sunbeam's financial results for the first quarter of 1998?
MR. BRODY: Same objection.
THE WITNESS: I am not aware of that.
BY MR. BEMIS:
Q Were you personally aware that Arthur Andersen was Sunbeam's outside accountants in 1998 before the closing?
A I might have been, but it wouldn't have mattered to me, so it doesn't really strike me that I did know.
Q Did anyone at, to your knowledge, at the Coleman Company, request any interim financial statements from Sunbeam before the closing?
MR. BRODY: Same objection.
THE WITNESS: I don't recall.

Page 103

BY MR. BEMIS:
Q You didn't see any?
A Not that I remember.
Q The Coleman Company, for example, in the first quarter of 1998, generated monthly financial statements internally; correct?
A Correct.
Q So by the time of the closing, you would have closed the books at least on January; right?
A Correct.
Q Would you have closed them by -- for February?
A Yes.
Q Now, when you -- strike that.
So as you sit here today, you don't recall anyone at the Coleman Company asking to see, from Sunbeam, its January or February internal financial statements; is that correct?
MR. BRODY: Object to form.
THE WITNESS: No, I don't recall that.
BY MR. BEMIS:
Q In the course of the -- strike that.
You were aware that part of the acquisition was being funded by an offering of debentures, weren't you?
A I really didn't pay attention to where they were getting their money from.

Page 104

Q Well, regardless of whether you paid attention to it or not, did you have any role in Ernst & Young providing a comfort letter to Morgan Stanley in connection with the debenture offering that was used to finance the transaction?
MR. BRODY: Object to form.
THE WITNESS: I don't recall any role in it.
BY MR. BEMIS:
Q Did you know that the comfort letter existed?
A It doesn't strike me that I knew that.
Q Well, let me back up. You have done a number of transactions in various business -- in various forms -- withdrawn.
You have done a number of business combination transactions with public and nonpublic companies; correct?
A Correct.
Q And you being a certified public accountant licensed in three states at one time and an auditor, you know what a comfort letter is, don't you?
A Yes.
Q You have read the accounting and auditing standards on comfort letters at least at some point in your career?
A Yes.

Page 105

Q And it is customary in your experience if one is going to issue debentures which are securities under the 1933 act, particularly section 11, that it is customary for the underwriters to request comfort letters from the auditors for the issuer; correct?
A Correct.
Q Now, in this instance, I am going to show you what's been marked as Morgan Stanley 243. Slide that over there for you.
Mr. Brody, here's one for you.
I have handed you what's been marked as Exhibit M.S. 243. Please take a look at it and then I have a couple questions for you.
A How detailed would you like me to look at it?
Q You don't have to read it. I don't have questions on the individual paragraphs. It is more what the nature of the document itself is, so if you are ready, my first question is: Have you ever seen this document before?
A Not that I recall.
Q Did you, at the time of the -- withdrawn.
Who would have been responsible at the Coleman Company at this time, March 20, 1998, the date of the comfort letter, for requesting that Ernst & Young -- withdrawn.

NOT A CERTIFIED COPY

Page 106

Based on your knowledge of accounting and as a certified public accountant, at least licensed at one time, comfort letters are requested by management to be issued, in this instance, to the underwriter; correct?

A Correct.

Q Now, given that this is Ernst and Young's comfort letter to Morgan Stanley, who is an underwriter, who, at the Coleman Company, would have been the person responsible for requesting Ernst & Young provide the comfort letter?

MR. BRODY: Object to form.

THE WITNESS: It could have come from a variety of places.

BY MR. BEMIS:

Q Did it come from you?

A I don't know if it did or not.

Q Could it have come from you?

A Possibly.

Q If it had, how would you have made the request?

MR. BRODY: Object to form.

THE WITNESS: I would have called someone on the engagement and said we need a comfort letter.

BY MR. BEMIS:

Q When you said "on the engagement," you would have called someone at Ernst & Young?

Page 107

A Correct.

Q Now, if Sunbeam was issuing debentures, the offering documents would include financial statements of the Coleman Company; right?

A Yes.

Q They would also include financial statements from Sunbeam, wouldn't they?

A Correct.

Q And it would be customary, in your experience, in a debenture offering of public companies where both companies' financial statements are attached to a debenture offering, to obtain cross-comfort letters from both companies' auditors, wouldn't it?

MR. BRODY: Object to form. For who to obtain, for Morgan Stanley?

MR. BEMIS: For the issuer of the debentures.

THE WITNESS: Both financial statements would contain -- would have accompanying them comfort letters from their respective auditors.

BY MR. BEMIS:

Q Are you comfortable with the term "cross-comfort letters"?

A I am not familiar with how you are using it in this moment.

MR. BEMIS: Okay. Let me show you what's been

Page 108

marked as Exhibit 395, which is the audit standard, and see if you are comfortable with using that term after I show it to you.

I will ask the court reporter to mark, as Exhibit 395, the -- this is the 1998 version we are going to be looking at. It is not the current one.

THE WITNESS: I hope --

MR. BEMIS: There is no change to what we are going to be looking at. Nonetheless, we will give you the 1998 version.

Ms. Reporter, please mark the date and give it to the witness.

(Defendant's Exhibit 395 was marked for identification by the court reporter.)

BY MR. BEMIS:

Q I have handed you what is an excerpt, obviously, from the AICPA's codification of statements on auditing standards, numbers 1 through 82. You have seen this, the full text of these at some time; have you not, in your profession?

A I can't say I have read them all.

Q I don't mean that. None of us have probably read them all, but you have seen the auditing standards in connection with your work as an auditor; right?

A Correct.

Page 109

Q Look at what is identified on page 575 and, again, we are looking at the 1998 edition, AU, section 634, letters for underwriters and certain other requesting parties.

Are you there?

A Yes.

Q Have you read, if not even in full, are you familiar with this section of auditing standards?

A I may have been at one point in time. Today, I would not say I am current on it.

Q All right. Well, look at section .05, which begins, "Accountants may also issue a comfort letter in connection with the acquisition transactions," parentheses, "for example, cross-comfort letters in the typical form S4 or merger proxy situation," closed parentheses, "in which there is an exchange of stock and such comfort letters are requested by the buyer or the seller or both, et cetera."

Do you see that?

A Yes.

Q Now, I was referring to cross-comfort letters in this context when you asked me the question. Now, would you agree that in the circumstance here, where you had financial statements attached to the offering documents for the debentures, that you would have

NOT A CERTIFIED COPY

Page 110

expected cross-comfort letters to have been issued by the auditors?
MR. BRODY: Object to form.
THE WITNESS: Again, based on where I sit today, I am not up to speed on the technicalities of how these things were done at that point in time, and even at that point in time, I wasn't involved in the transaction, and so what they would have wanted and needed would not have been my area of concern and work at that point. I wasn't involved in that aspect of the transaction.
BY MR. BEMIS:
Q My question really was whether -- I really got kind of off track. I was focusing on the term just "cross-comfort letters" and giving you a point of reference.
A Well, it doesn't define cross-comfort short of, "Accountants may issue a comfort letter in connection with an acquisition transaction, for example, cross-comfort letters." It doesn't define that term here.
Q Well, comfort letters can take various forms, depending on the transaction; right?
A Right.
Q You know that based on your experience in

Page 111

business combinations; right?
A Right.
Q One of the forms they can take is to bring current, if you will, interim financial statements from the date of the last audit to the date of the closing of the business combination; correct?
A Basically to -- the ones I am familiar with have a tendency to say, you know, nothing has come to our attention since that point in time that would cause us to change our opinion on those financials as previously issued.
Q Other than the following?
A Correct, if there is information.
Q And then that information would be set forth in the comfort letter?
A Correct.
Q That's called the negative assurance; right?
A Correct.
Q You set that aside. You actually remember more than you think.
To your knowledge -- strike that.
As you sit here today, you do not recall ever seeing the Ernst & Young comfort letter that we looked at, M.S. 243; correct?
A I don't recall.

Page 112

Q And as you sit here today, you don't ever recall seeing the comfort letters issued by Arthur Andersen in connection with the debenture offering; correct?
A No.
Q And as you sit here today, you don't recall anyone at the Coleman Company ever asking to see the Arthur Andersen comfort letters; is that true?
A If somebody did it, I am not aware of who it would have been.
Q Are you aware of anyone at CLN Holdings, Inc. asking for a copy of the Andersen comfort letters issued in connection with the debenture offerings?
A Not aware of any of the activities related with the comfort letters.
Q Are you aware of Ernst & Young, the Coleman companies' auditors, doing any due diligence investigation of the interim financial statements of Sunbeam for the period January through the closing of 1998? That's a poor question. Let me rephrase the question.
Are you aware of Ernst & Young doing any due diligence on Sunbeam's audited financial statements as audited by Arthur Andersen?
A No.

Page 113

Q Why, you would find that unusual?
A Yes, quite.
Q Why would you find that unusual?
A Well, auditors are supposed to be public representatives that represent what's going on. You don't often have two auditors check out the same company. You hire one set of auditors to do a job and that's what people rely on.
Q So are you telling me that you would have relied on Arthur Andersen's financial statements as audited of Sunbeam?
A I would have gotten a certain degree of comfort from the fact they are there. I know auditors are not responsible for the financial statements. They audit the financial statements of management, but it is their role in society is to provide a degree of assurance.
Q Well, the auditors may not own the financial statements, if you will, but they do express an opinion on the financial statements; correct, in their public function?
A Correct.
Q And you, at Coleman, would -- are you telling the jury that you would have relied on Sunbeam's accountant's certification of Sunbeam's financial statements without further investigation?

NOT A CERTIFIED COPY

Page 114

MR. BRODY: Object to form and foundation.
THE WITNESS: Well, the financials are put into the public domain for reliance by society based, first, on the integrity of management to prepare the financial statements in accordance with Generally Accepted Accounting Principles and also S.E.C. requirements.
The auditors' role is really a detect function to see if they see anything that leads them to believe, as to the financial statements, that they are not compliant. It doesn't give you absolute assurance, but it is a degree of comfort.
BY MR. BEMIS:
Q Are you aware of -- strike that.
I want to move now from audited financial statements of Sunbeam. I will ask you a couple quick questions on unaudited and, again, the period we would be addressing is January of 1998 through, perhaps, the closing of March 30, 1998.
Do you have that time frame in mind?
A Absolutely.
Q Are you aware of Ernst & Young doing any examination of unaudited financial statements of Sunbeam?
A No, I am not aware of that.
Q Are you aware of Ernst & Young doing any

Page 115

analysis of projections prepared by Sunbeam for the year 1998 following the merger?
A Again, if they were asked to do something like that in relation to the due diligence, I would have had no visibility to it.
Q Are you aware of Ernst & Young doing any examination of the books and records of Sunbeam?
A No, I am not.
Q Are you aware of anyone at CPH, Coleman Parent Holdings, or CLN Holdings, Inc., or MAFCO or MacAndrews & Forbes, whatever name we use, doing any investigation of the books and records of Sunbeam during the period leading up to the signing of the merger agreements?
MR. BRODY: Objection, foundation.
THE WITNESS: I am not aware of that.
BY MR. BEMIS:
Q Are you aware of any such examination being done by these same groups, whether it be Coleman, Coleman Parent Holdings, CLN Holdings, MAFCO, MacAndrews & Forbes, doing any examination of the books and records of Sunbeam after the signing of the merger agreements and before the closing on March 30?
MR. BRODY: Same objection to form.
MR. BEMIS: You can answer.
THE WITNESS: No.

Page 116

BY MR. BEMIS:
Q Did you see the press release that Sunbeam issued on or about March 19, 1998 concerning its results for the first quarter?
A I believe I had seen that at a point in time.
Q Let me show you a copy of it just to show you in point of context.
A That will help a lot.
Q This is not something that I would expect you to have on the tip of your tongue. Here, I will give you what has been previously marked as M.S. 39. Excuse me. Let me slide it. There we go.
A Thank you.
Q I have handed you what's been marked as M.S. 39. Do you have that in front of you?
A Yes.
Q This previously has been identified as a press release issued by Sunbeam on or about March 19, 1998. Would you take a second and read it and when you are done, let me know. I don't have detailed questioning on it, but I wanted to give you a chance to look at it before I ask you a couple questions.
A Okay.
Q Have you -- by the way, did you see this yesterday when you were preparing for your deposition

Page 117

with Mr. Brody?
A I did see this.
Q You did see it. Okay. I didn't recall you mentioning this one.
A I didn't remember it until you mentioned it.
Q I believe you.
Now that you have seen it again, do you recall seeing it in March of 1998?
A I don't remember if I saw it at that time or not.
Q When do you first recall seeing it?
A I know I have seen it in prior depositions.
Q Okay.
A Or in preparation for them.
Q Do you recall discussing the text of the March 19 press release with anyone following its release to the public?
A No.
Q Why don't you hand that back to me. We'll put that one away.
Do you recall any action undertaken by Coleman following the issuance of the March 19 press release to make further inquiry of Sunbeam about the contents of the press release?
MR. BRODY: Object to form.

NOT A CERTIFIED COPY

020485

Page 118

THE WITNESS: I don't recall that.
BY MR. BEMIS:
Q Do you recall anyone at CLN Holdings doing that?
MR. BRODY: Same objection.
THE WITNESS: I don't recall that.
BY MR. BEMIS:
Q Do you recall anyone at MacAndrews & Forbes doing that?
MR. BRODY: Objection.
THE WITNESS: I don't recall that.
BY MR. BEMIS:
Q Did you see Sunbeam's annual report before the closing -- strike that.
Did you see Sunbeam's 1997 annual report before the closing on March 30, 1990?
A I don't recall seeing it.
Q Were you personally following public filings by Sunbeam following the signing of the merger agreements and before the closing?
A I don't recall really focusing on their public filings.
Q Was there someone at the Coleman Company that was following public filings by Sunbeam during this period between signing of the merger agreements and the

Page 119

closing on March 30, 1998?
A I have no idea who it was.
Q Let me show you what's been marked as M.S. 390. I will withdraw the question.
What involvement did you have with -- strike that.
You are aware of a settlement agreement between Sunbeam and MacAndrews & Forbes following the closing of the transaction; correct?
A A settlement agreement as in settling up on that or a settlement of disputes? What are you referring to?
Q It is the latter, but it is such a poor question, I will withdraw it and ask you a different one.
When you went to work for Sunbeam as of April 24, 1998, you actually moved to Del Rae Beach, didn't you?
A Eventually.
Q Eventually. And you did have an office there in Del Rae Beach once you got moved up until the time that you left in January of 2000; correct?
A I eventually got an office, but I did have one through most of that time.
Q Now, were you -- you are aware that Sunbeam

Page 120

issued a number of warrants to purchase Sunbeam stock and they issued those warrants to MacAndrews & Forbes; correct?
A Correct.
Q What role did you have, if any, in the warrant -- in the settlement that -- and the issuance of the warrants?
A I think I just provided information to people who were doing analyses on that.
Q Who were the people that were doing analyses to whom you provided information?
A I don't recall specifically, but I think it was some group like Blackstone or something like that; is that right?
Q Well, I believe it is right. I think it is called the Blackstone Group. Does that name ring a bell with you?
A Vaguely.
Q How was it that you came to provide information to the Blackstone Group?
A I would have been asked to provide it.
Q Who asked you to do that?
A It could have been Bobby Jenkins or lawyers, I can't say precisely.
Q Do you know what the Blackstone Group was asked

Page 121

to do on behalf of Sunbeam?
MR. BRODY: I would ask you to answer that yes or no. There may be a privilege here and we can do it a step at a time.
THE WITNESS: Can you read the question again, please.
(Record read.)
THE WITNESS: I believe I do.
BY MR. BEMIS:
Q What were they asked to do?
MR. BRODY: Before we go into that, as you know, Mr. Bemis, this is an area in which Sunbeam has asserted privilege in this litigation and in others. And I don't want your examination of her in a capacity when she is working for Sunbeam to inadvertently or advertently inquire into that privilege.
I think this question probably can be answered at a very high level. If we go into specifics of it, though, I think it will impinge upon the privilege.
So I would ask for a friendly modification for your question in that it be described in general terms, and if we can go beyond that, there may be privilege issues when we find out who is involved.
BY MR. BEMIS:
Q The question is -- you can answer in general

NOT A CERTIFIED COPY

0204186

terms, and this is public knowledge, as far as I know, in court published opinions, so can you answer that in general terms what was the Blackstone Group's assignment on behalf of somebody?

A My recollection, and for your benefit, the best I am going to be able to do is general, was valuation work.

Q Valuation of what?

A I believe it was valuation related to the warrants.

Q Now, at some point, the warrants were issued; correct?

A Correct.

Q And at some point, a valuation was placed on the warrants by Sunbeam; right?

A I believe that's correct.

Q Sunbeam had to book the warrants as an expense of some kind; correct?

A They had to record the warrants, correct.

Q And they would have recorded it as probably an extraordinary item for whatever fiscal period was involved?

A I can't recall that that would have hit the extraordinary item accounting, but it certainly would have been something that would have been called out.

Q In -- now, at the time that the valuation was -- strike that.

In what -- strike that.

Was the -- withdrawn.

Were the warrants valued for financial statement purposes during the time you were an employee of Sunbeam? And for your benefit, they were issued in August of 1998.

A I was not there in August of 1998. I am sorry. It was 2000. I was there in August 1998. You are correct.

Q So if the warrants were issued in August of 1998, they would have been reflected as an expense in 1998 by Sunbeam; correct?

A They would have been recorded in 1998.

Q And the recordation of the warrants would have been reflected as a dollar value on the financial statements of Sunbeam; correct?

A I would want to refer to the financials themselves to answer that question.

Q Did you have any role in the valuation of the warrants for financial statement purposes?

A I don't recall that I did.

Q For example, I heard your answer, but let me just probe a little bit deeper with you.

For example, did you review, at some point, the Blackstone Group's valuation of the warrants?

A I don't recall at what level I would have gotten into that. That's a technical area that the company would more than likely have relied on the work of experts.

Q Well, setting aside the actual computation of the value, did you, at some point, see a valuation for the warrants ascribed to the warrants by the Blackstone Group?

A I surmise I must have seen something to be able to disclose them in the financials.

Q Other than the -- did you see any valuations done of the warrants by Deloitte & Touche and other public accounting firms?

A I don't recall if I did or not.

MR. BEMIS: Let me show you what has been previously marked as M.S. 97. We may have to print it off the PDF file.

It is one o'clock. I think I am going to finish in about 30 minutes with you. Do you want to break for lunch or do you want to finish?

THE WITNESS: How long are you going to need?

MR. BRODY: I may need 30 minutes after that. I may not, but it may be 30 minutes.

MR. BEMIS: Okay. So what do you want to do? Are we talking an hour? An hour -- do you want to take like 30 minutes for lunch and come back?

MR. BRODY: Works for me.

MR. BEMIS: It is up to you.

THE WITNESS: If we can seriously do it in an hour, I will stay, but if it is like an hour and 20 minutes, then we better break. So you guys judge. Are you apt to go short or long?

MR. BEMIS: You know, it is really -- if we told you one thing, I suspect we are going to get done, but I -- there is no way to promise you that with certainty without penalty. So if you want to break for 20, 30 minutes and grab something quick and come on back up and --

THE WITNESS: Yes, better safe than sorry.

MR. BRODY: Is that possible?

MR. BEMIS: Go downstairs, go to the food court, and you can just walk into that little -- let's start about -- grab a sandwich. There is food you can eat.

THE WITNESS: Substance is all we need.

MR. BRODY: Why don't we go off the record.

MR. BEMIS: Off the record, and we'll see you back up here in probably 30 minutes would be great, and

NOT A CERTIFIED COPY

020487

we'll try to get you out of here within an hour.
THE WITNESS: Great. At 1:30 we'll be back, then.
MR. BEMIS: Okay. 1:30 is perfect.
THE VIDEOGRAPHER: We are off the record at 12:57 p.m.
(Lunch recess.)
THE VIDEOGRAPHER: We are going back on the record at 1:39 p.m.
BY MR. BEMIS:
Q Ms. Clark, thank you for returning. When we had adjourned, we were about to look at a document called M.S. 97. I am going to set that aside for a second and ask you to -- about a couple of other documents and then we'll come back to that, if that's all right.
The first one I want to show you is a document the court reporter is going to mark as Morgan Stanley 389.
(Defendant's Exhibit 389 was marked for identification by the court reporter.)
MR. BEMIS: A copy for Mr. Brody.
MR. BRODY: Thank you.
BY MR. BEMIS:
Q Do you have M.S. 389 in front of you?

A Yes.
Q Did you send this letter to Mr. Stefan, S-t-e-f-a-n, R. Feuerabendt, F-e-u-e-r-a-b-e-n-d-t, on or about July 14, 1998?
A It appears I did.
Q The first item that you had sent -- strike that.
Who is Mr. Feuerabendt?
A I don't know.
Q Do you know why you sent this material to him?
A I must have been asked to do this.
Q Do you -- you refer in item No. 2 to the Morgan Stanley books for each of the acquisitions. Do you see that?
A Yes.
Q And what are you referring to there?
A As I recall, there were books on each of the companies that were acquired.
Q You are talking about the three companies that were acquired at the March 30 closing?
A On or about that time.
Q First learned of Mr. Coffee and Coleman; right?
A Signature brands.
Q These books that you are referring to, those -- are those books that you found at Sunbeam?

A Yes.
Q Were these presentations to Sunbeam's Board of Directors?
A I don't know who they were presented to.
Q Where did you find them?
A At Sunbeam.
Q I understand that. Where, at Sunbeam, did you find them?
A In the office. I don't know specifically where I would have gotten them from at that time.
Q Were you requested by Mr. -- is it Feuerabendt? You probably don't know.
A I don't even remember who he is.
Q Okay. Did you get any further requests from him for information?
A I have no idea, since I can't place who he is.
MR. BEMIS: Okay. You can set Exhibit 389 aside.
I am going to show you now another document which the reporter will mark as Morgan Stanley 397.
(Defendant's Exhibit 397 was marked for identification by the court reporter.)
BY MR. BEMIS:
Q Do you have Exhibit 397 in front of you?
A Yes.

Q Did you send this letter to Mr. Paul K. Rowe, R-o-w-e?
A It appears I did.
Q What plan information are you referring to in the first paragraph?
A I believe this was the financial plan of Coleman that was built for the 1998 year.
Q And you provided this information to the Blackstone Group; correct?
A That appears to be the case.
Q And when you refer in Exhibit M.S. 397 in connection with the work for Sunbeam, you were referring to their work in connection with the valuation of the warrants?
A To the extent that's all that Blackstone Group was doing, that would have been consistent.
Q And the plan information that was Coleman's 1998 business plan, as I understand you have been telling me, that was also provided to Sunbeam before the acquisition; is that right?
MR. BRODY: Object to form.
Go ahead.
THE WITNESS: It appears that's the case.
BY MR. BEMIS:
Q Now, you also conclude -- withdrawn.

NOT A CERTIFIED COPY

You conclude that you will continue to provide the information to Mr. Rowe as is being shared with Blackstone.

Do you see that?

A Yes.

Q Did you continue to do that?

A I would surmise I did.

Q What was Mr. Rowe's relationship to the work that Blackstone was doing for Sunbeam?

A I can't say for sure, but it appears he worked for what I think is a law firm.

Q Well, I will give you it is a law firm. Wachtel Lipton is a law firm in New York.

Were you working with anyone -- strike that.

Was -- did you receive instructions from someone at Sunbeam to communicate with the Wachtel Lipton firm?

A I would have received instructions from someone to send this information to Mr. Rowe.

Q Do you know who gave you -- strike that.

Who gave you those instructions?

A At this point in time, I can't recall who would have done that.

Q And your immediate supervisor on July 22, 1998 was who?

A Bobby Jenkins.

Q And for the jury's benefit, his title as of July 22, 1998 was what?

A I believe he was the chief financial officer on that day.

Q He reported directly to Mr. Jerry Levin at this time; right, or did he report to Mr. Shapiro?

A No, he reported to Mr. Levin.

Q Were you the -- strike that.

Let me show you now Exhibit M.S. 396, which the court reporter will mark for me.

(Defendant's Exhibit 396 was marked for identification by the court reporter.)

BY MR. BEMIS:

Q Ms. Clark, do you have in front of you Morgan Stanley Exhibit 396?

A Yes, I do.

Q This appears to be a handwritten facsimile to Mr. Paul Rowe again at the Wachtel firm from you; is that correct?

A Correct.

Q This is your handwriting; right?

A Yes.

Q And was this further -- strike that.

Were you providing further information to

Mr. Rowe in connection with the work that the Blackstone Group was doing for Sunbeam about this time?

A That appears to be the case.

Q Now, please turn to the second page of the document M.S. 396.

Are you there?

A Yes.

Q This is entitled Coleman 1998, and then it says, in quotations, "Original plan bridge to 1998 final plan."

Do you see that?

A Yes.

Q What does that mean?

MR. BRODY: In connection with this document?

MR. BEMIS: Yes.

MR. BRODY: Okay.

THE WITNESS: It appears to be a bridge between different iterations of the plan document.

BY MR. BEMIS:

Q What do you mean by a "bridge"?

A A bridge would reconcile changes.

Q From forecast to actual?

A No. In this case, from an original plan to a final plan.

Q I see. So this is the original plan, for

example, has sales of $1,184,900,000; right?

A Correct.

Q And then the final plan, at least as it existed on the date of this document, was sales were declining to $1,122,400,000; is that right?

A They had been adjusted to that number.

Q And reading across we have EBITA and it declines from $136,300,000 to 114 -- I misspoke. Look at the column EBITA, E-B-I-T-A.

Do you see that?

A Yes.

Q That stands for Earnings Before Income Taxes and Amortization; right?

A Earnings Before Interest, Taxes, Amortization.

Q And amortization. And the original plan was that the earnings, as described, would be $136.3 million; correct?

A Correct.

Q And now, the 1988 final plan, at least as it existed in July, that's been -- it has decreased to 114.1 million; right?

A Correct.

Q The third column is a variation on EBITA and it adds depreciation, as well; correct?

A It removes the depreciation effect. I am

NOT A CERTIFIED COPY

0020489

sorry, it adds it back for the before.
Q I was going to say --
A Yes, it adds it back, you are right.
Q If we -- this, again, shows that the original plan, that would be -- that the earnings would be 167.6 million, but they are declining in the final plan as of July of 145.2 million; right?
A Correct.
Q Did you prepare this page 2 of Exhibit M.S. 396?
A I don't know if I did or not.
Q But you provided this information to the Blackstone Group before you gave it to Mr. Rowe; correct?
A It appears that way, yes.
Q Now, if you will turn to -- by the way, is this one of the documents you looked at in your preparation yesterday?
A No.
Q Did you look at the attachments in your preparation?
A No.
Q Okay. Look at now the third page of M.S. 396. Are you there?
A Yes.

Q Now, if you will direct your attention to the title bar, for lack of a better term, where it says Coleman-1997 Bridge to 1998 Final Plan.
Do you see that?
A Yes.
Q What does that title mean?
A It means it is a reconciliation of the 1997 results to the 1998 final plan.
Q To the 1998 final plan?
A Correct.
Q So you are comparing what your actual results were in 1997 as titled and then you are comparing that to what your plans are for 1998 at least as of July 1998; correct?
A As of some day, but that's what was sent on July 1998. I don't know what day this document was prepared.
Q Fair enough. I was using July because that's the day of the transmittal, but I hear you that it might be a slightly different date. All right.
So if I am reading this correctly, you don't have the 1997 plan figures on this page of M.S. 396; right?
A Correct.
Q So we are just making -- we are comparing, for

example, 1997 actual sales, looks like they were 1,154.3 million before adjustments; is that right?
A Correct.
Q And then if we -- then you add, you have less CSS actual, what does that stand for?
A Coleman Safety and Security. It's a business that was sold or was being sold.
Q Now, was the business -- strike that.
Was Coleman Safety and Security sold in 1997?
A I believe it was sold in 1998.
Q That's what I thought, so why is it in the 1997 column?
A If you are trying to compare what the results would be, if in 1997 it produced revenue, then in 1998 it doesn't exist, it is not an apples to apples comparison. So the 1997 results would have been adjusted to pull it out to show what the business would have done without it.
Q Thanks. I appreciate that.
So what you are taking out, then, is $88.3 million of Coleman Safety and Security sales from the 1997 figures because you are going to take them out of the 1998 plan, as well; right?
A Correct. They would never have been in -- my supposition is this final 1998 plan did not happen in

there, and I believe if you look at the prior page, that is a component of the adjustment from the 1998 original plan to the 1998 final plan. It is removing some aspects of Coleman Safety and Security.
Q So the line entry on page 2 removed Q1 CSS, means remove first quarter, Coleman Safety and Security sales and EBITDA in both forms?
A Correct.
Q Now, when you have the -- withdrawn.
Looking at the 1997 actual where you have the add back restructuring expense in the EBITDA column, it looks like $36.4 million.
Am I reading that correctly?
A Correct.
Q Why are you adding that back on this chart?
A Again, to enhance the comparability of the numbers presented. That type of restructuring charge, it appears the way it is presented, would not be an expected recurring item, and so to try to peel out the unusual or nonrecurring things to get at the core business, it would be added back.
Q Turn to the last page of the Exhibit 396 which is headed the Coleman Company, Inc. Proforma Without Safety and Security, it looks like semicolon, Without Restructuring 1998 Final Plan Without Management

NOT A CERTIFIED COPY

020490

Page 138

Adjustment in Millions. Am I reading that correctly?
A Correct.
Q So is this -- this is a summary of the 1998 final plan as it existed as of the date that you sent this to Mr. Paul Rowe in July of 1998?
A It appears to be.
Q Were you working for Coleman at the time that Coleman Safety and Security was sold?
A Well, I was either at Coleman or Sunbeam. I think they were sold in the first quarter of 1998 right around the time of the announcement of the transaction so, yes, I was at Coleman at that time, if my recollection of the timing of that transaction is correct.
Q Who purchased Coleman Safety and Security?
A I don't remember.
Q Could you tell the jury what the business was?
A Smoke detectors and fire suppression.
Q Primarily for homes; right?
A They also had some commercial lines and you can find their products in buildings.
Q What was the sales price, as close as you can recall, for Coleman Safety and Security?
A I have no idea.
Q Was it reported -- the sale was reported in the

Page 139

financial statements; right?
A Yes.
Q That would have appeared, if it was in the first quarter of 1998, would appear in the 1998 form, now 10-K, for the Coleman Company; right?
A Correct.
Q And the number that appears in the 1998 10-K for the Coleman Company for the sale would be the number as accurate as you could pinpoint it today; correct?
A Correct.
Q Were there any further revisions to the 1998 plan after Exhibit 396?
A I don't know. It appears to be the final plan, but I don't know without having reference to some of the files.
Q Did you continue, after July 27, which was the transmittal we just looked at, to continue to send material to the Blackstone Group and Mr. Rowe?
A I have no idea what the date of my last communication to them was.
Q Do you have -- did you keep any type of log of material that you were sending to the Blackstone Group?
A Odds are I kept a file of the information until it was no longer relevant.
Q You said you kept it until it was no longer

Page 140

relevant?
A Correct.
Q When was the point in time when the file was no longer relevant?
A More than likely when the valuation was determined and we had closure, I would have cleaned up the file and put those documents that needed to be in the corporate records filing and cleaned out the rest.
Q Cleaned out, being thrown out, disposed of?
A I would dispose of miscellaneous notes and things that weren't necessary.
Q Were you the primary -- withdrawn.
Were you the primary point of information at Sunbeam for providing information to the Blackstone Group?
A I don't --
MR. BRODY: Object to form.
Go ahead.
THE WITNESS: I don't really recall. I know that in presenting information to the Blackstone Group, I was getting requests to do it, but whether I was the primary one sending them information or not, I don't know.
BY MR. BEMIS:
Q Well, let me ask the question in a slightly

Page 141

different way. Do you know of anyone else at Sunbeam who was providing information directly to the Blackstone Group?
A I can't say who it might -- that there would have been somebody else. Odds are, there was. There were other people involved in the transaction.
Q But as you sit here today, you don't know who, if there was -- if, indeed, there was another person sending the information?
A I don't know other sources of information.
Q Now, there comes a point in time when Arthur Andersen asks you for information about the valuation of the warrants; right?
A Perhaps. I can't recall the day.
MR. BEMIS: It is not supposed to be a trick question, so if you thought it was, it is not.
Let me show you a document that I will ask the reporter to mark as Morgan Stanley 387.
(Defendant's Exhibit 387 was marked for identification by the court reporter.)
BY MR. BEMIS:
Q Do you have Morgan Stanley 387 in front of you?
A Yes.
Q Did you receive this document from Mr. Larry Bornstein?

NOT A CERTIFIED COPY

020491

Page 142

A I don't recall it specifically, but it is to me, so I might have.
Q There is a reference four bullets down of the primary bullets, I will call them, the first level, and it is -- excuse me, fifth bullet down.
Do you see the word "valuation"?
A Yes.
Q It reads as follows, "Valuation of Pearlman," and here it is spelled P-e-a-r-l-m-a-n, "Warrants and Coleman Public Shareholder Warrants."
Do you see that?
A Yes.
Q Did you provide this valuation to Arthur Andersen as requested?
A I can't say that I, per se, did, but I would surmise someone in the accounting function did.
Q And was the Blackstone report -- strike that.
Was there a report eventually prepared by the Blackstone Group on the warrants?
A Again, as I testified, I am not entirely clear on my recollection of what Blackstone did, but to the extent that they were engaged to do the valuation of the warrants, then I would surmise they did a report, but I can't recall the report.
Q So you don't recall, as you sit here today, you

Page 143

cannot tell the jury whether you saw the report?
A I can't recall a report. If they did issue one that was the basis upon which the warrants were valued and relied on for the financials, then I surmise, at some point, I would have seen at least a portion of it.
Q Did you provide Arthur Andersen with a copy of the Pearlman settlement, which is another one of the bulleted items about midway down the page?
A Again, I am not sure if I would have provided information, but to the extent Andersen requested information on here, we would have provided it. I'm not seeing the specific point you are referring to, though.
Q The heading -- excuse me, the language is "Copy of the Pearlman settlement."
A Okay. So somebody in accounting would have provided them the information.
Q Who is Don Jackson?
A He was one of the individuals in accounting.
Q Did he work for you?
A He worked for the controller, who worked for me.
Q Now, if you had not -- withdrawn.
So as you sit here today, it would be your belief that if there was a valuation of the Pearlman warrants, it would have been provided to Arthur Andersen

Page 144

pursuant to their request?
MR. BRODY: Object to form.
THE WITNESS: We would have provided them information to address their review concerns.
BY MR. BEMIS:
Q And if there was a copy of the Pearlman settlement in Sunbeam's files, you would have provided that to Arthur Andersen as requested?
MR. BRODY: Same objection.
Go ahead.
THE WITNESS: Somebody would have.
BY MR. BEMIS:
Q Somebody at Sunbeam?
A Somebody at Sunbeam.
Q Why don't you please set that exhibit aside for right now.
Did you ever see the final settlement agreement between Sunbeam and Mr. Pearlman's companies?
A I don't know if I did. If you have the document, it might refresh my memory.
Q Let me show it to you real quickly. If it does, you can tell us.
I'm going to hand you what has been marked in another deposition as Morgan Stanley Exhibit 96.
Do you need a copy of this? I don't have any

Page 145

specific questions on it.
MR. BRODY: Sure.
BY MR. BEMIS:
Q I have handed you now what's previously been identified as a copy of the settlement between Sunbeam and the company identified as Coleman Parent Holdings, no comma, Inc.
Do you have that now in front of you?
A Yes.
Q Have you seen this before?
A I may have. It is -- nothing is ringing a bell. It is pretty unremarkable.
Q Did you review -- withdrawn.
At some point, I think you told me there had to be a valuation placed on the warrants that were issued pursuant to the settlement agreement you just looked at; right?
A Yes.
Q As you told me earlier, they would have been reported on the books and records of the company, that is, Sunbeam; right?
A Right.
Q That would have been done unless accepted with the concurrence of your auditors; right?
A Correct.

NOT A CERTIFIED COPY

Q Are you aware that the valuation, at some point, was placed on the warrants at Sunbeam?
A Yes.
Q Do you recall the auditors ever taking exception to the valuation placed on the warrants on Sunbeam's books and records?
A I don't recall that they had any exception to it, but they also are not experts in that area for that particular case.
Q You say they were not experts. You mean the auditors were not experts?
A Well, the valuation is something that would typically be performed by an independent organization engaged to provide a professional opinion, and I wouldn't expect my auditors to override that opinion, but rather to get some comfort that it was done by a reasonably qualified organization and who had not just prepared it capriciously, but rather had done some process.
Q Was it your understanding or is it -- withdrawn.
Is it your understanding, as you sit here today, that the professional organization that did that valuation was the Blackstone Group?
A Yes.

Q All right. Let me now return to the issue of the actual valuation of the warrants. I am going to show you some minutes of the audit committee. I think you said you actually saw some audit committee minutes?
A Yes.
Q I will hand you Morgan Stanley Exhibit 260, which was marked in an earlier deposition, and I'm going to direct your attention in particular to the page ending with the last two digits 48, 48. Just tell me when you are there.
A I am there.
Q For the record, that Bates number on here is CPH 1039848. There is -- well, withdrawn.
Did you see these minutes, M.S. 260, in your deposition preparation yesterday with Mr. Brody?
MR. BRODY: Object to the form of the question.
Go ahead.
THE WITNESS: I don't believe I saw these.
BY MR. BEMIS:
Q Now, these minutes are dated December 14, 1998. And --
MR. BRODY: I am sorry, I don't mean to be a pest. Can we call them an agenda rather than minutes because I think that's what they are.

THE WITNESS: Right.
MR. BEMIS: That's fine with me. I will call them an agenda.
MR. BRODY: Thank you.
BY MR. BEMIS:
Q Did you see this agenda for the audit committee meeting which is identified in Morgan Stanley Exhibit 260?
A No. You mean yesterday; right?
Q Yesterday, yes. Your answer was no?
A Correct.
Q Have you ever seen this agenda before?
A Possibly.
Q Let's look at the page that I originally identified ending with 48 and the heading Third Quarter 1998 Significant Issues.
Are you there?
A Yes.
Q This is a reference to third quarter -- to Sunbeam's third quarter 1998 results of operations; correct?
A It appears to be the case.
Q And there is an item B, as in Baker. Do you see that?
A Yes.

Q And it reads, quote, "Valuation of warrants on settlement with MAFCO," all capital letters, "of $70 million."
Do you see that?
A Yes.
Q Is this the valuation, that is, $70 million, that Sunbeam placed on the settlement with MAFCO?
A I refer to the published financial statements to confirm that, but that appears to be at least where they were on this day.
Q Did you attend the audit committee that is identified as relating to this agenda, M.S. 260?
A I don't know if I was there or not.
Q You can set that aside. Now, when we broke at lunch, I told you I was going to show you Exhibit 97, so now I will show you that exhibit. I will hand a copy to Mr. Brody and a copy to you. There you go.
Exhibit 97, it was previously marked in other depositions. Do you have that in front of you now, ma'am?
A Yes.
Q My first question is: Have you ever seen it before?
A I may have, but it is not ringing a bell.
Q Do you know Susan C. Tripp?

NOT A CERTIFIED COPY

Page 150

A The name is familiar, but I can't place her.
Q Was she an employee of Sunbeam or an employee of Deloitte & Touche?
A Well, given those choices, I would choose the latter because it wasn't the former.
Q What was Deloitte & Touche's role as of April 2, 1999 with regard to the Warrant Accounting and Valuation, as this document is headed on page 2?
A I can't recall what their role was at that point in time, whether they were an auditor or not. I don't remember the timing.
Q Did there come a point in time when Deloitte & Touche did become the auditors of Sunbeam?
A I believe so, correct.
Q Did they replace Arthur Andersen?
A Yes.
Q And did -- you were still employed by Sunbeam, as you told us, at year end 1999; correct?
A Correct.
Q And was Deloitte -- strike that.
For the jury's benefit, could you tell us was Deloitte & Touche the auditor for Sunbeam at -- for the year ending December 31, 1999?
A I believe that's the case.
Q Now, according to the memorandum from Deloitte

Page 151

& Touche, if you turn to, I think it is page 4 of the memorandum under Valuation of Warrants, you will see some figures for the valuation. Tell me when you are there.
A I am there.
Q Ms. Tripp writes that Sunbeam engaged the Blackstone Group, initial capitals, to --
A Where are you reading from? I'm sorry.
Q Directly under Valuation of Warrants.
MR. BRODY: It's the prior page. It's page 4 of the exhibit, page 3 of the attachment. That's okay. We are there now.
THE WITNESS: Okay, I am there now.
BY MR. BEMIS:
Q So for the record, we are on Bates No. Page CPH 1308868; right?
A Correct.
Q Good. Under the heading Valuation of Warrants, Ms. Tripp writes, "Sunbeam engaged the Blackstone Group to assist them with the valuation of the warrants." Period.
Do you see that?
A Yes, I do.
Q Based on your position at Sunbeam, that's a correct statement; right?

Page 152

A I believe that's a correct statement.
Q Okay. The next sentence reads, "The Blackstone report estimated a value of the warrants to range from 30 million to 107 million with a midpoint of 70 million."
Do you see that?
A Yes.
Q Is that consistent with your recollection of the report issued by the Blackstone Group?
MR. BRODY: I'll object there. This has been litigated in another case. I know, Mr. Bemis, your client was not a party to it and the court has found the Blackstone report itself to be a privileged document. So I think asking her in this kind of roundabout way to disclose the contents of the Blackstone report violates Sunbeam's privilege, and I instruct her not to answer.
I think you could ask some foundational questions to see if there is recollection here, but I think the question, as phrased, would violate the privileges already found by the court.
BY MR. BEMIS:
Q Did you -- are you going to follow those instructions, and let's close this out.
A I will follow his instructions.
Q All right. The report continues over onto the

Page 153

next page of the document, and I'm now on Page CPH 1308869. Are you there?
A Yes.
Q And there is, in paragraph numbered 3, a paragraph below a table identified as Blackstone's, apostrophe S, warrant sensitivity analysis.
Do you see that?
A Yes.
Q It reads as follows, quote, "The boxed range of 30 to $107 million is the range recommended by Blackstone. The company recorded the warrants," plural, "at 70 million, the midpoint of the range."
Do you see that -- those two sentences?
A I think you missed one word in reading it, but it is there.
Q Now, based on reading this, does this refresh your recollection as to what Sunbeam, during your tenure, recorded the warrants that were issued to Coleman Parent Holdings pursuant to the settlement agreement which, I think, was Morgan Stanley Exhibit 96?
A That's what Mr. Pass, in her memo, I would guess that she's accurate again. If I really wanted a definitive answer, I would go back to the financials.
Q Did you -- Deloitte & Touche concludes on the very last page of the report as follows, quote, "Based

NOT A CERTIFIED COPY

on the independent calculation performed by Deloitte," D & T, which I understand to be Deloitte & Touche, "financial instrument specialists, the estimate for the value of the warrants of $70 million appears to be reasonable," period, closed quote.

Do you see that sentence?

A Yes.

Q Did -- to your -- withdrawn.

Did Deloitte & Touche ever express to Sunbeam, during your tenure, that they thought, that is, Deloitte & Touche, that the valuation of $70 million for the warrants issued to Coleman Parent Holdings was unreasonable?

A I don't recall any such statements.

MR. BEMIS: You may set that aside. That's all I have.

MR. BRODY: Why don't we go off the record for a few minutes and set up. I will just have a few questions.

THE VIDEOGRAPHER: We are going off the record at 2:20 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We are going back at 2:25 p.m., October 8, 2004. This is the beginning of videotape No. 3 in the deposition of Karen Clark.

EXAMINATION

MR. BRODY: Thank you. This is also the beginning of cross-examination by counsel from MAFCO.

Q Ms. Clark, I want to ask you a few follow-up questions based on the things Mr. Bemis addressed and then touch on a couple of additional topics.

I believe you testified in describing your background that you were at a company known as Skyland Scientific for a month; is that right?

A Correct.

Q Can you explain why you were only there one month?

A I identified that the company was not keeping its books correctly. I approached management with that finding and they said that they liked the way their bookkeeper kept the books and that I could learn from her, and I quit that day.

Q That was after you had been there one month?

A Approximately.

Q Mr. Bemis also asked you some questions about the fact that Coleman was restructuring or turnaround mode. Do you remember those questions?

A Yes.

Q I believe you said that it was only part of the way through that process?

A Correct.

Q Was that fact, that is, the fact that it was in a restructuring mode and that there was work still to be done, had that been publicly disclosed?

A Yes, as far as I recall, that was reasonably well-known.

Q The financial statements that you looked at that Mr. Bemis showed you referred to restructuring charges. Were those financial statements publicly available?

A Yes.

Q So those financial statements were available to Sunbeam or to Morgan Stanley; is that right?

A To anyone who wanted access to the public records.

Q Mr. Bemis asked you about your reaction to the deal when you learned of the purchase price, and I think you said that you seemed -- it seemed you were surprised, it seemed like a large premium.

Do you recall that testimony?

A Yes.

Q Did you ever perform any analysis of the premium or the sales price that Sunbeam was paying?

A I don't know if you call it an analysis. Kind

of a back of the envelope, but it would have been just considering what the trading price was for the stock and some of the things you could attribute that somebody might ascribe a premium to. It just seemed like a hefty premium.

Q Did you write anything down?

A Not that I recall.

Q Did you do, for example, a discounted cash flow analysis or a comparable company analysis, the way an investment banker might?

A Definitely not.

Q In the same area you described, in your conversation with Mr. Page, that you asked if he wanted a data room before they came in. I believe that was your testimony.

Who was the "they"?

A The counter party.

Q In this case, would that be Sunbeam?

A As we learned subsequently, yes. At the time, I didn't know who the party was.

Q So the data room would have been information about Coleman for Sunbeam to look at?

A Correct.

Q And after our lunch break Mr. Bemis showed you some documents that you sent to Mr. Rowe, Paul Rowe,

NOT A CERTIFIED COPY

020495

Page 158

referencing other documents sent to Blackstone, I believe. Mr. Bemis asked you some questions about it and you, I believe, answered a number of times that you surmised what Blackstone was doing.

As you sit here, do you recall actually sending those documents to Mr. Rowe or to Blackstone?

MR. BEMIS: Object to the form of the question.

You can answer.

THE WITNESS: They had my handwriting on them and so it would seem reasonable that I sent them, but do I recall at this moment walking to the fax machine and sticking the paper on? No.

BY MR. BRODY:

Q I guess that was my first question. Do you have a recollection who requested that you send that information to them?

A No, I don't specifically recall that.

Q And I believe you said that you know that Blackstone was involved in valuing the warrants. Do you know if Blackstone was involved in other things, as well?

A I don't remember them being an entity that was around doing a lot of work. I just put them in context with one -- that one project.

Page 159

MR. BRODY: I will ask the court reporter to mark some exhibits, and our practice is to mark them as CPH exhibit and we'll start with the number 267. So the first one will be CPH 267 and then following.

Please mark that Exhibit 267.

(CPH Exhibit 267 was marked for identification by the court reporter.)

BY MR. BRODY:

Q Ms. Clark, after the transaction when you were working -- continuing to do work for Coleman and also working for Sunbeam, did you participate in the preparation for and the actual calls to investors about the results of Sunbeam?

A Yes.

Q I am going to show you a document that's been marked as CPH 267 and ask you if you recognize it?

A I recognize the form of the document. I can't say I specifically recall this one.

Q What do you recognize, based on the form of the document, that the document is?

A It appears to be a script of a conference call.

Q What does a script of a conference call mean?

A It means that in advance of a call where the company is going to be on kind of an open phone line that is publicly accessible, people can dial in and

Page 160

listen to the call and, in some cases, pick up recordings of it or transcripts.

And there are usually analysts or major investors on the call who can ask questions of the company. Before the company goes into a call like that, they script out what they are going to say in prepared comments.

Q Does this appear to be the prepared comments for the Monday, August 24, 1998 investor call?

MR. BEMIS: Objection, form, leading.

THE WITNESS: It appears to be a script and the date at the top says that, so that's what it would look like.

BY MR. BRODY:

Q Were you involved in the collection of information to go into scripts of investor conference calls?

A Usually, yes.

Q What sort of information did you collect or were you asked to collect?

A I provided information about financial results, about analysis of variances of financial results versus prior period results, helped to basically put together the document.

Q Would the document then be read verbatim?

Page 161

MR. BEMIS: Objection, form, leading.

THE WITNESS: Normally, people would get pretty close to what was written. They wouldn't always say every single word, just like when you read things in church, you sometimes mess up. You usually get the content pretty close.

BY MR. BRODY:

Q I understand.

To your recollection, was the information that Sunbeam provided in the investor conference calls correct?

MR. BEMIS: Objection. Form. No foundation.

THE WITNESS: We did our best to provide factual, useful, insightful information on these calls.

MR. BRODY: Put that document aside, please, and I will show you another one.

Please mark this as Exhibit 268.

(CPH Exhibit 268 was marked for identification by the court reporter.)

BY MR. BRODY:

Q Ms. Clark, I have given you what's been marked as Exhibit 268. Can you tell us what this document is?

A This appears to be a script of a Q4 earnings release conference call for April 21, 1999.

Q It appears to be -- excuse me. There is some

NOT A CERTIFIED COPY

020496

handwriting on the top. Do you recognize that handwriting?
A I can't be sure whose it is.
Q Fair enough.
Do you recall providing information in response to a request from other people at Sunbeam for inclusion in the script for this conference call?
A I can't recall this one specifically, but I did it as a matter of course on a pretty routine basis.
Q Do you have an understanding as to whether the information contained in document 268 was correct at the time of its inclusion in that document?
MR. BEMIS: Objection. Form. Foundation.
THE WITNESS: Again, as I mentioned with respect to the other one, with all of these, we did our best to provide accurate information at the date that it was provided.
MR. BRODY: You may put that document aside. Please mark that as 269.
(CPH Exhibit 269 was marked for identification by the court reporter.)
BY MR. BRODY:
Q Ms. Clark, I will give you what's been marked as Exhibit 269. Can you tell us what that document is?
A The title of it says Sunbeam Corporation Q1

Earnings Release Conference Call, June 7, 1999, and it appears to be the script for that call.
MR. BEMIS: Objection. Move to strike. No foundation.
BY MR. BRODY:
Q Ms. Clark, if you look at the first bullet point after Introduction, do you see that you were a participant in that call?
A It has my name on here.
Q Do you recall participating in some of the conference calls?
A I usually participate in the conference calls.
Q Do you recall speaking in the conference calls or just listening?
A I normally did not speak. As a matter of fact, I can't recall I ever spoke in one of the Sunbeam ones.
Q Again, do you believe the information communicated by Sunbeam to its investors on June 7, 1999 was correct to the best of Sunbeam's knowledge at that time?
MR. BEMIS: Objection. Form, foundation.
THE WITNESS: I believe, as I said before, that every time Sunbeam did one of these conference calls, that at least during the time I was there, we did our best to provide accurate information at that time.

MR. BRODY: Just a couple more of these. Ask the court reporter to mark our next exhibit as Exhibit 270.
(CPH Exhibit 270 was marked for identification by the court reporter.)
BY MR. BRODY:
Q Did you -- can you describe what Exhibit 270 is?
A This appears to be a conference call script for second quarter earnings release, conference call for 1999.
Q That second quarter release would have been done in August or thereabouts of '99?
A That would seem appropriate.
Q Does this document reflect that you participated in the conference call?
A It does say I was there.
Q I am sorry?
A It does say that I was there.
Q Again, do you believe the information communicated to the investors on August 11, 1999, on or about that date was correct to the best of someone's knowledge at that time?
MR. BEMIS: Objection. Form, foundation.
THE WITNESS: I do believe the company made its

best efforts to provide accurate information on the dates it communicated such information.
BY MR. BRODY:
Q Before this information was communicated, I refer to the information contained in Exhibits 267 through 270, before it was, in fact, communicated to the investors, what would be done to come up with these documents, these scripts?
MR. BEMIS: Objection to form, foundation.
BY MR. BRODY:
Q Was there a custom or practice at Sunbeam?
A There was a practice, as there has been in most of the companies I worked in, that there is what I would consider a more standard portion of the script that reviews the financial results, and then there is another portion of the script that discusses the business more broadly than what was just covered in the financials.
And so the typical practice would be that someone, often the accounting group, would put together the financial analysis portion and then a team of people would work on the discussion about the business section.
And as I recall, Mr. Shiffman had a lot to do with helping to set some of the tone and direction for the business section but, of course, he was the

NOT A CERTIFIED COPY

020497

facilitator for the work of many in the company.
Q Were drafts of this information of these releases circulated before they were presented to the investors?
A Yes.
Q Did you and others comment on those drafts?
A Yes.
MR. BRODY: Please mark this as Exhibit 271.
(CPH Exhibit 271 was marked for identification by the court reporter.)
MR. BRODY: Can we go off the record for a second?
THE VIDEOGRAPHER: We are off the record at 2:40 p.m.
(Recess taken.)
THE VIDEOGRAPHER: And we are going back on the record at 2:41 p.m.
BY MR. BRODY:
Q Thank you. While we were off the record, we corrected a pagination problem on the exhibit.
Ms. Clark, I will give you what's been marked as Exhibit 271, CPH Exhibit 271. What do you recognize this document to be?
A This, again, appears to be a script of -- this script for the Q3 earnings release conference call for

third quarter 1999.
Q Does it identify you as a participant in that conference call?
A It does.
Q Do you have any reason to doubt that identification?
A No.
Q You recently, in response to a prior question, you described your custom and practice at Sunbeam in developing these scripts. Do you believe that practice was followed in connection with this script, as well?
MR. BEMIS: Objection. Form, foundation.
You can answer.
THE WITNESS: Yes, generally.
BY MR. BRODY:
Q Okay. Ma'am, looking at -- just looking at these exhibits altogether, Exhibits 267 through 271, do you believe them to be true and accurate copies of earnings conference call scripts prepared by the Sunbeam company?
MR. BEMIS: Objection. Form, foundation, breadth.
THE WITNESS: I have no reason to believe they are not.
MR. BRODY: Thank you. You can put those

aside.
Q Ms. Clark, I will show you one additional exhibit. I am showing you what's been previously marked as CPH Exhibit 9, and before I ask you a lot of questions about it, first, is this a document that you saw prior to the closing of the first stage of the Coleman transaction on March 30, on or about March 30, 1998?
A I don't recall that I would have seen it at that time.
Q Now, after the transaction closed, you became employed by Sunbeam; correct?
A Towards the end of April, 1998.
Q I am sorry.
A And to the extent that they were the majority owner of Coleman prior to that, I was employed by a Sunbeam entity.
Q I understand. You remained at Sunbeam until January of 2000?
A Correct.
Q In connection with the work you did at Sunbeam, did you come to understand what the Sunbeam business was like in this time frame of 1998?
A Yes.
Q I would ask you to turn to what I believe is

the fifth page of the document, bears Bates No. CPH 026290, and it is entitled Investment Rationale. The first bullet item in this presentation states, "Sunbeam represents an attractive growth story and investment opportunity."
Based on what you know about Sunbeam, do you believe that that was a true statement in February 1997?
MR. BEMIS: Objection. Form, foundation.
THE WITNESS: Based on what I learned after that date?
BY MR. BRODY:
Q Yes, ma'am.
A I don't believe that was accurate.
Q Why is that?
A Sunbeam --
MR. BEMIS: Same objection.
You can answer.
THE WITNESS: Sunbeam, as I later learned, was in a state of disarray. Early on in the beginning of Sunbeam's acquisition of Coleman, there was someone, I can't exactly place the party, it was like a third party consulting firm, somehow he said something about, you know, Coleman was a company being turned around and had issues. And they said, well, compared to Sunbeam,

NOT A CERTIFIED COPY

020498

Page 170

Coleman runs like a Swiss watch.
And we thought that was a pretty funny statement because we were nothing close to the precision of a Swiss watch, and to hear someone say we looked like a Swiss watch by comparison seemed curious to me at the time because I had every reason to believe, at that stage of the game, that Sunbeam was a reasonably well run company, certainly one that had the capacity to be taking on acquiring a lot of other companies.
And one doesn't, in my experience, do that when you are in a period of disarray because you have got too many other things to do, but what I learned later is they were in quite a bit of disarray and that the Swiss watch comment seemed appropriate in hindsight.
BY MR. BRODY:
Q The next major bullet items says, "Sunbeam is undergoing a profound transformation since the arrival of new management in July 1996."
The third item there underneath it refers to a renewed focus on profitability and growth. Based on your knowledge that Sunbeam acquired after the transaction, did you understand that to be a -- those to be true statements or not?
MR. BEMIS: Objection. Form, foundation. Calls for speculation.

Page 171

You can answer.
THE WITNESS: Sunbeam, having undergone a profound transformation since the arrival of new management in July 1996, I have to believe, based on my observation, that it was pretty profound because it certainly had a very well-entrenched corporate culture when I got there, which was quite different than corporate cultures I had experienced previously, and so that would represent a component of a transformation.
Renewed focus on profitability and growth, my perception was that Sunbeam had a very intense quarter to quarter focus on profitability and growth and that had gone on for quite some time, so I can't say that, at this point in time, it was renewed. I got the perception that that had existed during most of Dunlop's tenure.
BY MR. BRODY:
Q What do you mean by saying there was a quarter to quarter emphasis?
A The understanding I got from people who were at Sunbeam was every quarter they were driven to make the numbers, the numbers being what were pushed down expectations.
Q The next bullet item refers to tremendous intrinsic value in the company. Did you believe that

Page 172

there was tremendous intrinsic value in Sunbeam after you moved to Sunbeam and came to realize what the company was doing?
MR. BEMIS: Objection to form, foundation, calls for speculation.
You may answer.
THE WITNESS: When I got there, you know, at first, I believed it was what seemed to be publicly known at the time. I had every reason to believe the company was -- what it appeared to be on the surface, but as I participated in things with the company, it was clear that it was, in that particular period, quite a ways off.
I still believed in the potential to leverage some of the channels from the acquisition, but Sunbeam, by itself, where it was at that point in time, I can't say it would have had a lot of intrinsic value. I think it had a lot of problems.
MR. BRODY: You can put that document aside. Thank you very much. I have no further questions.
MR. BEMIS: I have nothing further. Thank you very much.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: Stipulation?
MR. BEMIS: No, there are no stipulations.

Page 173

Well, usual stipulation, you mean, for California? That's fine with me. Just has to do with signing and handling the transcripts. It has nothing to do with the evidence.
MR. BRODY: We reserve.
MR. BEMIS: We all reserve.
MR. BRODY: We reserve signature.
THE VIDEOGRAPHER: Thank you, Counsel.
This is the end of videotape No. 3 and concludes today's deposition of Karen Clark. The number of tapes used was three. We are going off the record at 2:49 p.m., October 8, 2004.

020499

NOT A CERTIFIED COPY

I, KAREN C. CLARK, do hereby declare under penalty of perjury that I have read the foregoing transcript, consisting of pages 1 to 173, inclusive; that I have made such corrections as noted on any errata sheet(s) attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____,

2004, at _____, _____.
(City) (State)

_____
KAREN C. CLARK

I, the undersigned, a Certified Shorthand Reporter, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed by name.

Dated: October 20, 2004

_____
REBECCA CORRAL
CSR NO. 7021

020500

NOT A CERTIFIED COPY

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

----------X

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No. CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

----------X

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No. CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

----------X

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF TODD J. SLOTKIN

New York, New York

Wednesday, July 7, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 162480

NOT A CERTIFIED COPY

020502

July 7, 2004
9:32 a.m.

Videotaped Deposition of TODD J. SLOTKIN, held at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York, pursuant to Notice, before Wendy D. Boskind, a Registered Professional Reporter and Notary Public of the State of New York.

APPEARANCES:

JENNER & BLOCK LLP
Attorneys for Coleman (Parent) Holdings Inc., MacAndrews & Forbes, and the Witness
One IBM Plaza
Chicago, Illinois 60611-7603
BY: MICHAEL T. BRODY, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Morgan Stanley
777 South Figueroa Street
Los Angeles, California 90017
BY: LAWRENCE P. BEMIS, ESQ.
-and-
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
BY: KATHRYN REED DeBORD, ESQ.

ALSO PRESENT: Kristen Zarnetske, The Legal Video Specialist

THE LEGAL VIDEO SPECIALIST: This is tape number one of the videotaped deposition of Mr. Todd J. Slotkin, taken by Defendants, in the matter Coleman (Parent) Holdings, Inc., Plaintiff, versus Morgan Stanley & Co., Inc., Defendants, Case Number CA 03-5045 AI, and Morgan Stanley Senior Funding, Inc., Plaintiffs, versus MacAndrews & Forbes Holdings, Inc., Defendant, Case Number CA 03-5165 AI, In the 15th Judicial Circuit, In and For Palm Beach County, Florida.

This deposition is being held on July 7, 2004, at approximately 9:32 a.m. My name is Kristen Zarnetske, I am the legal videographer representing Esquire Deposition Services. The court reporter, also in association with Esquire, is Wendy Boskind.

This deposition is being held at the law firm of Kirkland & Ellis, at 153 East 53rd Street, New York,

New York.

Will counsel present please introduce themselves for the record.

MR. BEMIS: Good morning. Laurence P. Bemis, Kirkland & Ellis.

MS. DeBORD: Kathryn R. DeBord, Kirkland & Ellis.

MR. BRODY: Good morning. Michael Brody, Jenner & Block, Chicago, for Coleman (Parent) Holdings, MacAndrews & Forbes Holdings, and the witness.

THE LEGAL VIDEO SPECIALIST: Will the court reporter please swear in the witness.

TODD J. SLOTKIN, business address at MacAndrews & Forbes Holdings Inc., 35 East 62nd Street, New York, New York 10021, having been first duly sworn by the Notary Public, (Wendy D. Boskind), was examined and testified as follows:

EXAMINATION BY
MR. BEMIS:

020503

NOT A CERTIFIED COPY

Q. Good morning, Mr. Slotkin. My name is Larry Bemis. Nice to meet you.
Would you state your full name, including your middle initial, for the jury, please.
A. Todd J. Slotkin.
Q. What does the "J" stand for?
A. James.
Q. How old are you, sir?
A. 51.
Q. Are you represented by Mr. Brody here this morning?
A. Yes.
Q. What is your residence address today?
A. 888 Park Avenue, New York, New York.
Q. Do you have a listed telephone number there?
A. Yes.
Q. And what is it?
A. 212-439-9455.
Q. Are you married?
A. Yes.
Q. Does your spouse live with you

at that address?
A. Yes.
Q. Who are you employed by today?
A. MacAndrews & Forbes Holdings.
Q. MacAndrews & Forbes Holding Inc.?
A. Inc.
Q. And what is your title?
A. Chief financial officer and executive vice president.
Q. Do you hold any other positions with any companies associated with Mr. Perelman?
A. Yes.
Q. What?
A. Similar types of responsibilities, in a variety of different companies.
Q. Are you -- when you say "similar positions", you mean executive vice president and chief financial officer?
A. Yes.
Q. And with all of the -- is that -- withdrawn. Is that true for all of the other companies that you are

associated with that are owned or controlled by Mr. Perelman?
A. Many of them.
Q. So there are some variations in your titles?
A. Yes.
Q. How many companies, roughly, do you -- withdrawn. How many companies in Mr. Perelman's group of companies are you employed in these positions?
A. Active companies, only a few -- three.
Q. What do you mean by "active companies", as opposed to what, inactive companies?
A. Correct.
Q. Okay. What do you mean by that?
A. Holding company.
Q. A holding company is an inactive company?
A. In our case, yes.
Q. And then an "active company" would be a company such as Revlon that has an operating business?
A. Correct.

Q. And is MacAndrews & Forbes Holding Inc., is that an "inactive company", in your definition?
A. It's a holding company.
Q. We will go into this in a little bit more detail later, but let me ask you where your office is today.
A. 35 East 62nd Street.
Q. In New York, New York?
A. Yes.
Q. 10021?
A. Yes.
Q. What floor do you work on in that building?
A. Fourth floor.
Q. What is your office telephone number?
A. 212-572-5035.
Q. Who are the -- withdrawn. Who are the people who are immediately adjacent to your office on the fourth floor of your office, as you have described it?
And I don't mean secretaries, I mean others.

NOT A CERTIFIED COPY

020504

A. On one side is a conference room, on the other side is Paul Savas, S-A-V-A-S.
Q. What does he do?
A. He is a senior vice president of finance.
Q. Do you understand that you are being videotaped here today?
A. Yes.
Q. And you understand that your videotape can be played back to the jury in this case, should it go to trial?
A. Yes.
Q. Did you have an opportunity to consult with Mr. Brody before you appeared here today?
A. Yes.
Q. Did you have a chance to look at documents?
A. Some documents.
Q. Did he bring the documents -- withdrawn. Did Mr. Brody show you documents in preparation for your deposition?
A. Yes.

Q. Did you -- withdrawn. Do you understand that the oath that you took this morning has the same force and effect as if you were testifying in front of a jury?
A. Yes.
Q. Is there any reason that you wish to tell us now that you cannot testify truthfully?
A. No.
Q. Any medication, for example, that might affect your memory?
A. No.
Q. Any medical condition that might affect your memory?
A. No.
Q. Have you ever been deposed before, by the way?
A. Yes.
Q. How many times?
A. I never counted.
Q. So there must have been more than a few, huh?
A. 25 years, probably half a dozen times.

Q. Is it in connection with your work, as opposed to personal matters?
A. Yes, most of it happened when I was working for Citibank, running the buyout business for Citibank.
Q. I asked you where your residence was today. How long have you lived there?
A. A year-and-a-half.
Q. Where did you live before that?
A. Across the street.
Q. Okay. Have you lived in New York since 1998?
A. Yes.
Q. Is that your tax residence?
A. Yes.
Q. Are you registered to vote in New York?
A. Yes.
Q. Do you carry a New York driver's license?
A. Yes.
Q. And you receive your personal mail at that address?
A. Yes.
Q. My understanding is that you

graduated from Cornell University and then went on and got an M.B.A. there; is that right?
A. Yes.
Q. When did you get your M.B.A.?
A. The class of '75, I received it in December of '74. That's when I fulfilled my number of credits for -- required.
Q. And did you go -- you went into the work force right after that; didn't you?
A. I'm sorry?
Q. You went into the work force right after that; did you not?
A. Yes, I got a job.
Q. You didn't do any military service, anything like that; right?
A. No.
Q. Let me ask you a couple questions about some of your job background, and then we will turn to more substantive things.
Did you first go to work for Citicorp in 1975, after you graduated from

020505

NOT A CERTIFIED COPY

Page 14

Cornell?
A. Yes.
Q. What did you do there?
A. I worked as a loan -- corporate loan officer for Citibank, in their Rochester office. I attended their credit analysis program and returned to Rochester.
Q. How long were you a corporate loan officer?
A. I don't understand the question.
Q. Well, you started in 1975.
A. Yes.
Q. Did you stay a corporate loan officer until the time you left Citibank?
A. In one form or another.
Q. Did you become eventually the head of Citicorp's leveraged buyout business?
A. Yes.
Q. When did that happen?
A. Approximately 1987.
Q. And how long did you do that, that is --
A. For four years.

Page 15

Q. Four years.
Would you describe for the jury what the leveraged -- what a "leveraged buyout business" is?
A. It was a lending organization, primarily, that would lend to either entrepreneurs or corporations to help finance the acquisitions, sometimes the divestitures of other corporate assets.
Q. And did you assume another position after you -- well, at some point, did you get a promotion or a change of position from your head of the Citicorp's leveraged buyout business?
A. Yes.
Q. What was that position?
A. Senior managing director.
Q. Of Citicorp?
A. Yes.
Q. Where were you located?
A. 399 Park Avenue.
Q. What did you do in that position?
A. I ran the non-investment grade businesses for Citibank and the corporate

Page 16

bank for Europe, North America, and Africa -- Europe, North America, and Asia.
Q. What did you do in that position?
A. I managed the non-investment grade businesses for the bank on the corporate side.
Q. Well, tell the jury what "non-investment grade businesses" are on the corporate side.
A. "Investment-grade business" would be primarily well-known companies that are -- have a great deal of access to the capital markets and are well-known names.
The "non-investment grade" companies would be a larger group of companies but they would be smaller and they would have a little bit less access to the capital markets.
Q. How long did you do that?
A. Approximately, two years.
Q. So, from about 1990 to 1992?
A. Correct.
Q. Was that -- and then after --

Page 17

withdrawn. Did you then leave Citicorp and go to MacAndrews & Forbes Holding Inc.?
A. Yes.
Q. Did you join MacAndrews & Forbes Holding Inc. in 1992?
A. Yes.
Q. What was your first position there?
A. Senior vice president.
Q. Of what?
A. It was -- the title was senior vice president.
Q. What did you do, as senior vice president?
A. Finance.
Q. Did you do finance for Mr. Perelman's various companies?
A. Yes.
Q. When you say you "did finance", what do you mean by that?
A. I would arrange financing for acquisitions and divestitures and refinancings for Mr. Perelman's companies.
Q. Well, for example, would you

020506

NOT A CERTIFIED COPY

Page 18

arrange for the issuance of debt securities through an underwriter, for example?
A. Yes.
Q. So you are familiar with underwriting of debt securities that are securities under the 1933 Securities Act; right?
A. Yes.
Q. And I take it that, in that position, you also would -- you would be involved with the negotiation and entering into, for example, revolving credit agreements; wouldn't you?
A. Yes.
Q. MacAndrews & Forbes Holdings Inc., through one or more of its subsidiary companies or parent companies, has entered into revolving credit agreements with lending institutions during the time you have been there; right?
A. I'm sorry, where was the question?
Q. "Where was the question?"

Page 19

A. Or what was the question?
Q. Oh, okay, I'm sorry, better yet.
A. It sounded like a statement.
Q. Many of them are, and I ask you to answer them "Yes" or "No".
While you have been at MacAndrews & Forbes Holdings, Inc., have you been involved with the negotiation and execution of revolving credit agreements on behalf of either MacAndrews & Forbes Holdings Inc. or one of its subsidiary or parent companies?
A. Yes, most of them.
Q. You have been involved in most of the revolving credit agreements; right?
A. Most of the negotiations.
Q. And do you know Mr. Dickes, D-I-C-K-E-S?
A. I'm sorry?
Q. Do you know Mr. Dickes, D-I-C-K-E-S?
A. Mr. Dickes?
Q. Is it Dickes?
A. Glenn?
Q. Glenn, yes.

Page 20

A. Dickes, yes.
Q. Did I spell his name right, though, at least?
A. Yes, but the pronunciation --
Q. I apologize, because I didn't have the pronunciation correct.
Does he work for you?
A. No, he does not work for me.
Q. Does he work in your department?
A. No, he does not work in my department.
Q. What department does he work in?
A. He doesn't work at MacAndrews & Forbes right now.
Q. Well, who did he work for?
A. He worked for the general counsel.
Q. Mr. Schwartz?
A. Mr. Schwartz.
Q. I asked you about some debenture underwritings, for example -- withdrawn. I asked you about underwriting of debt securities, and we just talked about revolving credit agreements. Have you also worked on term -- T-E-R-M -- credit

Page 21

agreements while at MacAndrews & Forbes, for either that company or one of its parents or one of its subsidiaries?
A. Yes.
Q. Are you -- strike that. Let's go forward a little bit, from 1998. Did you get a promotion in 1998 to the executive vice president position?
A. Approximately, either the end of '98 or the middle of '99, I don't know the exact date.
Q. I'm sorry. I didn't mean to interrupt you.
Were you still responsible for finance?
A. Yes.
Q. When you were a senior -- when you were a senior vice president, in the period 1992 to 1998, around that period of time, who did you report to?
A. Mr. Howard Gittis.
Q. Was he the CFO at that time?
A. No.
Q. What was his position?
A. Chief administrative officer.

020507

NOT A CERTIFIED COPY

Q. Did MacAndrews & Forbes Holdings Inc. have a chief financial officer during the period 1992 to 1998?
A. Yes.
Q. Who was that?
A. Irwin Engleman.
Q. Is that the same Irwin Engleman who then became the chief financial officer of the Coleman Company, Inc?
MR. BRODY: Object to the form.
A. I don't know what title he became, if any, at Coleman, but it would be highly coincidental.
Q. Coincidental with what?
A. It wasn't the same person.
Q. Okay. Did you ever report to Mr. Engleman?
A. No.
Q. Did you always report to Mr. Gittis while you were a senior vice president?
A. Yes.
Q. When you became executive vice president of finance, to whom did you report?

A. Mr. Gittis.
Q. And how long did you have the title of executive vice president finance?
MR. BRODY: Object to the form.
Q. Did I misspeak your title? Are you more comfortable just with executive vice president?
A. It doesn't matter --
Q. Okay.
A. -- whether it's the -- sometime approximately beginning of 1999 through today.
Q. And when did you get the title chief financial officer?
A. Approximately the end of 1998, the beginning of 1999, I don't have the specific date.
Q. And who do you report to in your position of executive vice president and chief financial officer?
A. Howard Gittis.
Q. Still Mr. Gittis, okay.
Now, you had said that you were an officer with approximately the same title, if I understand your testimony, in

other companies associated with Mr. Perelman. Can you give us a list of those companies that you worked -- that you are an employee of?
A. I am sure our office could supply you with a list.
Q. Well, given that I can't go to your office, and I am only -- can you tell me today? If you can't, just tell me and we will move on and do something else. I don't want to take your time unnecessarily, if you don't remember.
A. The only one that would be of interest would be the chief financial officer of MacAndrews & Forbes Worldwide, which is a public company.
Q. And you are the executive vice president and chief financial officer of that company, as well?
A. Yes.
Q. How long have you had that title with MacAndrews & Forbes Worldwide?
A. Approximately the same time period.
Q. Since 1992?

A. No, since -- end of 1998 or beginning of 1999.
Q. Are your duties at MacAndrews & Forbes Worldwide essentially the same as your duties as executive vice president and chief financial officer for MacAndrews & Forbes Holdings Inc?
A. Yes.
Q. Did you hold any -- do you hold any positions in Mr. Perelman's public companies -- or, I misspoke, let me try the question again.
Do you hold any positions in any of the companies that Mr. Perelman holds an interest but are -- also have other shareholders?
A. No.
Q. So, for example, you do not hold any position in Revlon, for example, or any of the Revlon companies?
A. Correct.
Q. Are you a director of any of the companies owned directly or indirectly by Mr. Perelman?
A. Yes.

NOT A CERTIFIED COPY

020508

Q. Which companies?
A. TransTech Pharma, Pharma Corp., Spectraguard Acquisition. I believe that's it.
Q. Is it TransTech Pharma? Is that the name of the company?
A. Yes.
Q. What does it do?
A. Biotech business.
Q. Where is it headquartered?
A. North Carolina.
Q. Is your only position as a director?
A. And shareholder.
Q. And shareholder.
What is Spectraguard Acquisition? And if I got the name wrong, please correct me.
A. It's the name of the company that owns Mr. Perelman's stake in Allied Security, which is a guard company, a security guard company.
Q. Are you a director, then, of Spectraguard Acquisition?
A. It's actually a director of the

board of managers. It's not a -- or maybe it's a member of the board of managers. It's not a director of a corporation, it's a member of the managing board.
Q. Are you a shareholder of that, as well?
A. No.
Q. Do you receive a salary from MacAndrews & Forbes Holding Inc.?
A. Yes.
Q. Do you receive a salary from any of the other companies that you hold positions with in Mr. Perelman's organization of companies?
A. No.
Q. Do you receive director fees for the companies that you serve as a director and that are affiliated with Mr. Perelman or his companies?
A. No.
Q. Is your sole compensation that you receive from Mr. Perelman's companies your salary as executive vice president and chief financial officer of MacAndrews & Forbes Holdings Inc?

A. Yes.
Q. In addition to a salary, do you receive a bonus at the year end or any time during the year.
A. One is eligible for a bonus.
Q. Do you -- you did indicate -- strike that. You did testify that you were a shareholder of Pharma Corp. Are you a shareholder in any other company that is affiliated with Mr. Perelman or his companies?
A. Yes.
Q. What?
A. Well, I own some public shares in Revlon. I am a custodian for an account of some shares for one of my sons that has shares of Scientific Games.
Q. Scientific Games?
A. Yes.
Q. Thank you.
A. And there are a variety of privately-owned companies, including TransTech and Pharma Corp., that Mr. Perelman has investments in that I also have investments in.

Q. Did you make these investments at the same time that Mr. Perelman made his investments in these companies?
A. Approximately.
Q. Did you ever own any stock in The Coleman Company, Inc.?
A. No.
Q. Any options?
A. No.
Q. Warrants?
A. No.
Q. Did you ever -- there is -- withdrawn. I want to go through a list of a couple of companies that are what I think are in an ownership line, and just see if you ever had any positions with those companies. It won't take long. And if you haven't just tell me and we will just move on.
Have you ever had any positions in MAFCO Holdings Inc.?
A. Do you have an organization chart that I also could look at?
Q. The answer is no, because your client -- not your client, but CPH has

NOT A CERTIFIED COPY

020509

Page 30

refused to produce organization charts, so unfortunately I have to do this the way I am going to do it. But I think I am going to start at the top and walk -- I think I have the organization correct, and if I don't you can qualify your answer however you like. And I appreciate that it can be difficult to do this without a chart.

With that, let's just start with MAFCO Holdings Inc.

MR. BRODY: Before you ask your question, I'm going to object to the speech because I don't think that's an accurate description of what the parties agreed to do.

MR. BEMIS: I don't think there was an agreement, but let's just set it aside, you made your objection, and let's see if we can get a question and answer.

MR. BRODY: There was an agreement, actually.

MR. BEMIS: Okay. If there was, so then I misspoke, so it is what it is.

Page 31

Q. Let me put the question to you again.

Are you -- have you ever held any position -- officer, director -- of a company called MAFCO Holdings Inc.?

A. I don't think so.

Q. Have you ever held a position in a company, which is a Plaintiff in this case, Coleman (Parent) Holdings, Inc.?

A. No, I do not believe so.

Q. Have you ever held a position in a company called CLN Holdings Inc.? no comma after the Holdings.

A. No, I do not believe so.

Q. CLN Holdings Inc., as I understand it, was formerly known as Coleman Escrow Corporation. Have you ever held -- did you ever hold a position in that company as an officer or a director?

A. No, I don't believe so.

Q. Did you ever hold a position as an officer or director in a company called Coleman Worldwide Corporation?

A. No, I don't believe so.

Q. Did you have any involvement in

Page 32

the 1993 offering at maturity of approximately $575 million of liquid yield option notes for that company sometimes referred to as LYONS, L-Y-O-N-S, all caps.

A. No.

Q. Did you ever hold a position in The Coleman Company, Inc., either as an officer or a director?

A. No.

Q. Given that your principal employer appears to be MacAndrews & Forbes Holdings Inc., where your paycheck comes from, I would like to ask you a couple questions about that company.

How would you describe to the jury its business?

A. I'm sorry, I didn't hear the last part of --

Q. How would you describe the business of MacAndrews & Forbes Holding Inc. to the jury?

Tell the jury what the company does.

A. The company acquires -- makes an investment in assets, it builds assets and

Page 33

holds them for a variety of length of period of time, and it sometime monetizes either part of the asset or sells all of the asset.

Q. You used the term "monetize". Tell the jury what you mean by "monetize".

A. If it's a hundred-percent privately-owned company, and you wanted to do a public offering and do an IPO for approximately 10 percent or 20 percent of the company, so those shares would then be available to the public, then the company would have a market value, because it trades in the marketplace. So that the remaining stake of ownership would then have a value that was tied to the value of the stock of the IPO.

Q. When you say you "acquire businesses", you mean you buy businesses; correct?

A. Sometimes.

Q. You sell businesses sometimes.

A. Sometimes.

Q. And you may sell a part of a business after you have bought a business;

NOT A CERTIFIED COPY

020510

correct?
A. Yes.
Q. And, as you put it, when you -- on a totally private transaction, you said you may do an "IPO" -- that's an initial public offering; correct?
A. Correct.
Q. -- where you sell some percentage of the shares of the private company to the public; correct?
A. Yes.
Q. For cash; right?
A. Yes.
Q. And the seller, in this case would be MacAndrews & Forbes Holding, gets the cash for the sale of the stock; correct?
A. Not necessarily. The company in most cases would receive the cash.
Q. And that's part of the monetization, isn't it, getting the cash.
A. Well, there is a difference.
Q. Well, I understand there is a difference, but "monetization" is a word that's used in a lot of different ways in

the deal business; isn't it?
MR. BRODY: Object to the form.
A. I don't know.
Q. Well, are you in the deal business?
A. I am just the chief financial officer of the company.
Q. Is MacAndrews & Forbes in the deal business, doing deals?
A. They make investments, they do divestitures.
Q. Do they do deals?
A. You can call them what you wish.
Q. Have you ever heard the business of MacAndrews & Forbes Holdings Inc. being described as a company that does deals?
A. I haven't.
Q. You have never heard the term "deals" used at MacAndrews & Forbes?
MR. BRODY: Object to the form.
A. That's not what you asked.
Q. Don't worry about what I asked, just answer the current question, if you don't like the old one.
A. What's the current question?

Q. Have you ever heard the term at MacAndrews & Forbes that: We are a company that does deals?
A. No, that's not how they think of their business.
Q. Who is the "they" that thinks of their business? Who are you referring to?
A. The senior people in the firm.
Q. And who are you talking about?
A. Mr. Perelman.
Q. Anybody else?
A. Mr. Gittis.
Q. Anybody else?
A. No.
Q. Now, in addition to selling -- if you sell the stock, as you have described it, in an IPO, in whatever percentage you happen to sell to the public, the public sale of the stock establishes a market for the stock that is not part of the IPO; is that correct?
A. Yes.
Q. And that's another way you have used the term "monetize"; correct?
A. It gives a easily understandable

market value for the remaining shares.
Q. Does MacAndrews & Forbes Holdings Inc. have any operating businesses today?
A. They have investments in operating businesses.
Q. No, that's not my question. Does it have any operating businesses itself?
A. No.
Q. Are all of its offices -- strike that. Does it have -- withdrawn. Within MacAndrews & Forbes Holdings Inc., is Mr. Perelman the most senior officer?
A. Yes.
Q. And what is his title?
A. Chairman.
Q. Who is directly below Mr. Perelman, if you were going down an organizational chart in the company on the officers?
A. Mr. Gittis.
Q. And below Mr. Gittis?
A. Since he's the chief administrative officer, essentially

NOT A CERTIFIED COPY

020511

everyone else.
Q. You are a direct report to Mr. Gittis; is that right?
A. Yes.
Q. Who are -- withdrawn. Does Mr. Gittis have other direct reports at the company?
A. Yes.
Q. And who are they?
A. Mr. Schwartz, the general counsel, Mr. Drapkin. Those are the main ones.
Q. Are you one of the individuals who frequently has breakfast with Mr. Perelman at his townhouse?
A. There are business meetings that we have at breakfast time, usually during the week, and I would attend those.
Q. Well, Mr. Drapkin, for example, described it as has breakfast virtually every day with Mr. Perelman, if they are in town, at Mr. Perelman's townhouse. Do you attend those breakfast meetings?
A. Most of them.
Q. So would you describe yourself

as one of the inner circle at MacAndrews & Forbes Holdings Inc.?
MR. BRODY: Object to the form.
A. I don't describe myself that way.
Q. Well, who else attends these breakfast meetings, on a regular basis, at Mr. Perelman's townhouse in Manhattan?
A. I don't know, whoever Mr. Perelman would like to have at the meeting.
Q. I'm sure -- I appreciate that, but given that you do attend, who are the regular attendees of these meetings, if people are in town?
A. Today, it would be Mr. Drapkin, Mr. Gittis, Mr. Schwartz, myself, then other guests as they might be invited.
Q. When was the last time that you saw Mr. Perelman, by the way?
A. This morning.
Q. For breakfast?
A. I attended the breakfast meeting, yes.
Q. Did you go over your

deposition -- you were being deposed today?
A. I'm sorry?
Q. Did you discuss that you were being deposed today?
A. "Discussed" is a little broad.
Q. Well, let me just -- let me limit the question.
Did the word "deposition" come up at all over breakfast in connection with your name?
A. I indicated that I would not be available today because I was going to be having my deposition filmed, yes.
Q. And who did you indicate that to?
A. Mr. Perelman.
Q. Did Mr. Perelman say anything?
A. No.
Q. Has Mr. Perelman indicated -- and I am using "indicated" the way you used it, that he is going to be deposed in this action?
A. No.
Q. Did you discuss at the breakfast

meeting at all anything about your deposition today, other than you were going to be filmed?
A. No.
Q. Now, in addition to these breakfast meetings with Mr. Perelman, Mr. Drapkin said, as well, that he frequently lunches with Mr. Perelman. Do you do likewise?
A. No.
Q. Mr. Drapkin also said that he frequently has dinner with Mr. Perelman, if they are in town. Do you do likewise?
A. No.
Q. Is your compensation from MacAndrews & Forbes Holding Inc. in any way related to the outcome of this lawsuit?
A. No.
Q. Is your bonus in any way related to it?
A. I don't believe so.
Q. Well, let's -- do you know how much money that Mr. Perelman's companies are asking for in this lawsuit, from

NOT A CERTIFIED COPY

020512

Morgan Stanley?
A. No.
Q. Do you have any idea at all?
A. I don't guess.
Q. Well, I am not asking you to guess, we are all adults, we don't have to be children to guess, you are telling the jury you don't have any idea how much is in controversy in this lawsuit between the parties, as the chief financial officer of the company you don't know.
A. How much the lawsuit is for? No.
I know how much money, approximately, we lost in the transaction.
Q. How much money did you lose in the transaction?
A. Approximately, half a billion dollars.
Q. So you lost approximately half a billion dollars. If you were to recover a half a billion dollars from Morgan Stanley in this transaction, would your compensation be affected by that recovery?
A. No.

Q. Would your bonus be affected by that recovery?
A. No.
Q. Would Mr. Gittis's compensation be in any way affected by a recovery in this lawsuit?
MR. BRODY: Object to form, foundation.
A. I don't know, you would have to ask him.
Q. I will, when the time comes.
How about Mr. Perelman?
A. I don't understand the question.
Q. What is it that you don't understand? I will try to fix it.
A. Mr. Perelman owns the company.
Q. Well, then, I would think that he would get -- are you saying, then, that he would get the 500 million, if it was recovered?
A. I am just saying that he owns the company.
Q. Does he own it alone or does he own it with other people?
A. I think I have indicated the

answer to that.
Q. I'm sorry, then I misunderstood. Does he own all of the company?
A. Mr. Perelman owns the company.
Q. As chief financial officer of the company, is Mr. Schwartz's compensation in any way tied to the recovery in this lawsuit?
MR. BRODY: Object to the form.
A. I don't know.
Q. How about Mr. Drapkin's, is his compensation tied to a recovery in this lawsuit in any way?
MR. BRODY: Same objection.
A. I don't know.
Q. Well, who knows at MacAndrews & Forbes Holdings Inc. the compensation arrangements for yourself, for example, what your compensation -- withdrawn. Who at MacAndrews & Forbes has knowledge of how much you are paid?
A. Mr. Perelman, Mr. Gittis, Mr. Schwartz, and the -- and Ms. Kessel.
Q. What is her -- spell her last name, please.

A. K-E-S-S-E-L.
THE LEGAL VIDEO SPECIALIST: Mr. Slotkin, can you put that on your tie?
THE WITNESS: (Putting microphone on tie.)
Q. What is her first name?
A. Gerry.
Q. "J" or a "G"?
A. "G."
Q. G-E-R-R-Y?
A. Correct.
Q. There is so many different spellings for Gerrys, and Jerrys, so I always like to ask.
What is her position?
A. Treasurer.
Q. Do you have a written employment contract?
A. Yes.
Q. And does your employment contract -- is it for a period of years?
A. Yes.
Q. How many years is your current contract for?

NOT A CERTIFIED COPY

020513

A. Four years.
Q. When did it begin and when does it end?
A. It started at the beginning of 2004, ends four years later.
Q. Now, does Mr. Schwartz have an employment contract?
A. I believe so.
Q. Does Mr. Drapkin have an employment contract?
A. I believe so.
Q. And does Mr. Gittis have an employment contract?
A. I believe so.
Q. And does Mr. Perelman have an employment contract?
A. I am not aware of one.
Q. And who has possession of these employment contracts? Strike that. Do you have a copy of your employment contract? Not with you today but, I mean, do you have one?
A. Yes.
Q. And is there a person in the company, MacAndrews & Forbes Holdings

Inc., that has custody of the employment contracts as business records of the company?
A. Mr. Schwartz.
Q. Is Mr. -- does Mr. Schwartz -- strike that. Did Mr. Schwartz countersign your employment contract?
A. I don't remember, either Mr. Schwartz or Mr. Gittis.
Q. And does your employment contract set -- withdrawn. That was terrible.
Does your employment contract set forth your compensation on an annual basis?
A. Yes.
Q. Does it set forth the manner in which your bonuses are determined, if any?
A. It identifies that there could be discretionary bonuses.
Q. Are there -- in the terms of this -- withdrawn. When you say "discretionary bonus", what do you mean by that?
A. I have a compensation. If, for

some reason, the managers of the business believe that I deserved a bonus, they could give me one, if they saw fit. If they did not see fit, they would not give me one. So they have full discretion.
Q. And who is the manager who determines whether you receive a bonus on an annualized basis?
A. Mr. Gittis and Mr. Perelman.
Q. Have you ever received a bonus while working at MacAndrews & Forbes Holdings Inc.?
A. No, I have not received a discretionary bonus.
Q. Do you have any non-discretionary bonuses in your employment contract today?
A. Basically, part of my compensation, it's a guarantied compensation. You have a salary and you have a -- there is a -- you can either pay the guarantied bonus during the year or pay it at the end of the year, so to me that's basically salary.
Q. So, in your parlance, and I may

have been slightly confused in your past answers, you have a guarantied compensation which is, nonetheless -- in your view, is called a "guarantied bonus"?
A. I have a base-level compensation. There is two parts. One part is a salary, one part is a fixed guarantied bonus.
Q. And then do you have on top of those two items, which are your base level of compensation, do you have a possible discretionary bonus; is that right?
A. Correct.
Q. And my understanding is that while you have been employed by MacAndrews & Forbes Holdings Inc., you have never received a discretionary bonus; is that correct?
A. That's right, I have never been paid a discretionary bonus.
Q. What is your current compensation on -- strike that. What is your current base-level compensation at MacAndrews & Forbes Holding Inc.?
MR. BRODY: I am going to object

020514

NOT A CERTIFIED COPY

Page 50

to the form.
And can you explain to me why his personal information is at all relevant to this case?
MR. BEMIS: I think it's relevant. I am not going to argue with you on the record over my reasoning for asking the question. He can answer it or tell him not to answer.
MR. BRODY: I will instruct him not to answer. But let me advise you, Larry, that I will -- I assume your follow-up question would be to ask him the amount of his bonus, the guarantied bonus, as it's been described, and I would revisit those questions at the end of the deposition, if you wish, and I will think about your question in the meantime.
MR. BEMIS: So you are instructing him not to answer now?
MR. BRODY: I am.
(DIRECTION NOT TO ANSWER.)

Page 51

MR. BEMIS: Okay. Unless you tell me at the end of the deposition you have changed your mind, I am going to assume that you have instructed him not to answer the question and we will deal with it at the appropriate --
MR. BRODY: That's fair.
MR. BEMIS: Is that fair?
MR. BRODY: If you want to remind me, I think that might make it easier.
MR. BEMIS: Well, I don't guaranty you I will remember to remind you, but right now that instruction is what it is and we will deal with it if we decide to pursue it.
MR. BRODY: I understand.
Q. Now, other than the officers that you have identified for us, from Mr. Perelman to Mr. Gittis and then yourself, Mr. Schwartz, Mr. Drapkin, and Gerry Kessel -- did I pronounce her name wrong?

Page 52

A. Yes.
Q. It's "Kessel"?
A. "Kessel."
Q. K-E-S-S-E-L.
-- are there any other officers of MacAndrews & Forbes Holding Inc. today?
A. Yes.
Q. And who are they?
A. There is a vice president in charge of -- senior vice president is Paul Savas, you have a controller that is Larry Winoker.
Q. Would you spell Larry's last name, please?
A. W-I-N-O-K-E-R.
You have a vice president of taxes, which is Adam Ingber, I-N-G-B-E-R.
Q. Anyone else?
A. There is a long list of officers. I don't have them off the top of my head.
Q. Are those the ones you can remember as you sit here today?
A. There is a long list of officers.

Page 53

Q. I appreciate that, but I was just asking if there are any others that you remember today.
If you don't, we will just move on.
A. I don't remember all of them right now.
Q. Does MacAndrews & Forbes Holding Inc. have any other office locations, other than your office at 35 East 62nd Street?
A. Could you elaborate?
Q. Could you help -- in what way would you like me to elaborate, and I will try to do that for you.
A. Executive offices? No.
Q. Earlier, I asked you if you had met with your counsel before the deposition, and you told me that you had had an opportunity to do so. And I also asked you if you looked at any documents during your preparation.
Do you recall your testimony, that you did see documents?
A. Yes.

NOT A CERTIFIED COPY

020515

Q. What documents did you look at?
MR. BRODY: I am going to instruct him not to answer, in keeping with our custom, I would ask you to ask him which, if any, refreshed his recollection, which I think is the formulation you have allowed your witnesses to answer.
(DIRECTION NOT TO ANSWER.)
Q. Do you want to answer the question? What documents did you look at?
MR. BRODY: There is a -- I have instructed the witness not to answer.
Q. Did you look at any documents that you had seen before?
A. Yes.
Q. And how long has it been since you had seen these documents?
A. A couple years, since whenever I put them together upon the request of counsel to send documents. It's been a while.
Q. Did you assemble the documents that you reviewed or did Mr. Brody or someone from his office bring them to

New York to show to you?
A. Someone from Mr. Brody's office, perhaps Mr. Brody himself, assembled the documents and brought them.
Q. Okay, my question probably was not clear, let me try again.
What I was trying to differentiate, between you collecting documents for your preparation and Mr. Brody or someone from his office bringing a collection of documents for you to look at in your preparation.
Which was it, or was it a combination of both?
A. The documents that I looked at yesterday were documents that were showed to me by my attorney.
Q. No, I understand --
A. I don't know who assembled them.
Q. Oh, okay. You didn't assemble them, your office?
A. No.
Q. So whatever you saw you believe are documents that you or your office assembled several years ago?

A. No, not exactly.
I said -- you had asked me --
Q. I'm sorry, I misunderstood. Clear it up for me.
A. -- if I had seen any of the documents, and I said I had seen some of them when I had put them together and sent them to the attorneys, whenever it was requested, a couple years ago. What I saw yesterday were some of those documents and some other documents.
Q. So you saw some of the documents that had been collected by your office a few years ago as well as documents that had not necessarily been collected by your office, but had come from some other source; is that accurate?
A. Correct.
Q. Had you seen all of these documents, whether you collected them or someone else had collected them at some other time, had you seen them all before?
A. No.
Q. Some of them you looked at yesterday for the first time.

A. Yes.
Q. How long did you spend preparing for your deposition with Mr. Brody or people in his office?
A. A few hours.
Q. And did you do that yesterday?
A. Yes.
Q. Was that the first time that you had met with attorneys in Mr. Brody's office about the matters at issue in the litigation that you are now giving testimony in?
A. Yes.
Q. Had you ever been interviewed before by any attorneys concerning the matters at issue in this litigation?
A. No.
Q. Did you review -- did you review any transcript -- withdrawn. Did you review any transcripts of depositions yesterday while you were preparing?
A. No.
Q. Any partial transcripts?
A. No.
Q. Did any of the documents that

NOT A CERTIFIED COPY

020516

Page 58

you reviewed yesterday refresh your recollection of documents you had collected several years ago?
A. Some documents looked familiar, some did not.
Q. Which ones looked familiar to you?
A. I didn't make a list of them.
Q. Oh, I understand that, but do you have any idea at all what you looked at, less than -- roughly 24 hours ago, what documents you looked at?
A. Yes.
Q. Okay, what ones?
MR. BRODY: Is the question what documents did he look at or what documents refreshed his recollection as having seen them before?
MR. BEMIS: The latter question was what we were on.
A. There were some -- there was a document on The Coleman Company zeros, some indentures.
Q. Was this an offering memorandum?
A. I don't know the exact name of

Page 59

it, it was in the indenture.
Q. The thick -- (indicating) a thick document?
A. It was a --
Q. I wasn't trying to --
A. It was a bond debenture, but I didn't measure how thick it was. I guess it's a half an inch thick.
Q. Let me show you what's been marked as MS 166, and tell me if that's what you looked at.
(Deposition Exhibit MS 166, previously marked for identification.)
Q. Is this what you looked at?
A. No.
Q. Okay.
MR. BRODY: May I see that?
A. Do you want me to read what it was?
It says "Sunbeam $2,014,000,000 offering memorandum.
Q. Right.
A. I did not see that.
Q. Okay. Did you see the actual --

Page 60

you saw the actual -- did you call it an "indenture agreement"?
A. Coleman indenture agreement.
Q. I'm sorry, Coleman indenture agreement.
A. Yes. You showed me Sunbeam.
Q. I know, and I apologize. I misunderstood what you looked at.
The Coleman indenture agreement for what, indenture for what?
A. For the zero coupon bonds.
MR. BEMIS: May I see 242.
(Deposition Exhibit MS 241, previously marked for identification.)
Q. Let me show you what's been marked as MS 241. Is that what you are referring to?
A. (Pause.)
It was a -- it wasn't in a form like this, it was in a -- the original form, the original indenture form, so I don't know -- I didn't look at something that looked like this, but it may have been this.

Page 61

Q. Well --
A. What's the date on this? Yes, this is it, May 15th, '97 -- 1997, this is the Coleman Escrow Corp. agreement for $732,035,000, but it was not in this form.
Q. But when you referred to "the Coleman indenture", you were referring to at least the securities that are represented --
A. Yes.
Q. -- by MS 241; correct?
A. I don't know what "MS 241" is.
Q. Well, that's the exhibit number that we put on the exhibit.
A. Well, I am just telling you that I looked at the escrow -- I saw the escrow agreement.
Q. We have to try to reach a little common understanding. I am going to refer to documents by numbers, because the record, that way, when it is written down, we know for all time what document you are referring to because we have identified these, so that's what I will use these numbers for. And if you are confused by

020517

NOT A CERTIFIED COPY

Page 62

what that means at any point, let me know and I will sort it out for you.
A. I thought you were asking me to tell you what it was numbered, I have no idea what it was numbered.
Q. No, that was not my question, but, so the record is clear, whatever Coleman indenture you looked at yesterday, it was for debt securities which are the securities for the Coleman Escrow Corporation which had been previously identified in a document marked as MS 241; is that right?
A. Yes.
Q. Okay, thanks very much. We may come back to that later, we will just set that aside.
What other documents did you look at yesterday that refreshed your recollection?
A. There was a Sunbeam press release in April of 1998.
Q. April or March of 1998?
A. (Gesturing.)
Q. What was the subject matter of

Page 63

the press release -- strike that. What was the subject matter of the press release?
A. That they were going to miss their numbers.
Q. I will show you a copy of what I believe is a version of the press release that you looked at, and ask you to take a look at that, 210.
(Deposition Exhibit 210, previously marked for identification.)
MR. BRODY: May I see it? Thank you.
A. (Pause.)
There was this one and there were subsequent ones.
Q. Okay. You can hand 210 back to me. We may talk about it later.
MR. BEMIS: Hand me your copy back. Thanks.
Q. Any other documents that you recall now beyond the indenture and the press release?
MR. BRODY: That refreshes --

Page 64

A. That refreshed my --
Q. Yes.
A. Not that I recall.
Q. Have you ever read the complaint in this action that Coleman (Parent) Holdings, Inc. filed against Morgan Stanley?
A. No.
Q. Did you review any documents yesterday that you had written or were copied on?
A. I don't think there was any that I had written. There might have been some that I was copied on.
Q. Have you provided to your counsel any affidavits related to any of the claims in this civil litigation?
A. No.
Q. Have you given any statements, whether under oath or not under oath, to anyone in connection with the events in this litigation?
A. I don't understand the question.
Q. What is it you don't understand and I will try to correct it.

Page 65

A. Did I make any statements?
Q. Give a statement.
A. No.
Q. Before yesterday, had you been interviewed, even if it wasn't in a face-to-face interview, were you interviewed by any attorneys for the Plaintiff here, Coleman (Parent) Holdings, or its affiliates, upward or down, in connection with any of the allegations in this civil litigation?
MR. BRODY: Object to the form.
A. Can you restate the question?
Q. Sure. Have you given any interviews, whether in person or by telephone, with attorneys representing Coleman (Parent) Holdings, Inc. in this civil litigation?
A. No.
Q. You said that at a point in time -- withdrawn. Several years ago, I understand you were asked to collect documents by someone, and you turned them over to either your counsel or someone in-house; is that correct?

020518

NOT A CERTIFIED COPY

A. Yes.
Q. Who made the request for you to collect documents?
A. I don't remember.
Q. When was the request made?
A. I don't know.
There were a variety of different requests, I don't remember all of the different people that sent them and I don't remember all the different people that they were sent to. We just try to comply with requests.
Q. Was the request from Mr. Schwartz's office?
A. I don't remember.
Q. Were these written requests or verbal requests?
A. Written.
Q. Did you personally undertake to look for documents or did you delegate the task to someone else?
A. I personally did it.
Q. How many documents -- strike that. Did you locate documents that were responsive to the request that was made to

you?
A. Yes.
Q. Did you keep a -- strike that. Do you have a record of the documents that you collected?
A. No.
Q. Did you keep a copy of the documents that you collected?
A. No, but I wish I had.
Q. Why?
A. Then it would have been easier to be prepared yesterday.
Q. To whom did you provide the documents that you collected several years ago?
A. I don't remember.
Q. Did you provide them to -- strike that. Did you give them to Mr. Fasman?
A. Might have. Whoever requested it, I complied with.
Q. How many documents -- and by this I mean total pages, as opposed to one document of a hundred pages -- how many pages of documents did you collect and

provide to whomever in your company in response to these requests?
A. I don't have any way of estimating the number of pages.
Q. Earlier, you described a document that was about one-half-inch thick. Without telling me how many pages there were, about how large a stack, if you will, of documents did you produce?
A. I really don't remember. More than an inch.
Q. But less than a box, (indicating), like we have these transfer cases here on the floor?
A. Less than a box.
Q. So bigger than an inch and less than a box.
A. Correct.
Q. And you gave them to somebody in your -- at MacAndrews & Forbes Holdings Inc.; right?
A. I gave them to whoever requested them, whether it was MacAndrews & Forbes, whether it was -- (indicating Mr. Brody) --

THE WITNESS: Your law firm.
Q. He works for Jenner & Block.
A. Whatever.
Q. Okay. Do you -- and -- withdrawn. Did you ever see those documents again before yesterday? Assuming some of them were the same documents you had collected.
A. No.
Q. Did you ever meet with anyone before yesterday to go over the documents that you had collected?
A. No.
Q. Since the first request was made of you to collect documents, several years ago, have any other requests been made of you to go back and look for additional documents?
A. There was more than one request for documents, which I have already indicated, and it was signed by different parties, and I assumed that they would not have been asking for exactly the same information that the first request had, but I don't recollect which documents they

NOT A CERTIFIED COPY

020519

were asking for.
Q. In the last year -- well, withdrawn. Since May of 2003, a little over a year ago, have you been asked to review your files for any documents that might be relevant to the litigation between the parties here in the deposition you are giving?
A. I think all the requests were before that.
Q. Let me show you what's been marked as MS 2 at a previous deposition.
(Deposition Exhibit MS 2, previously marked for identification.)
Q. I'm sorry. Do you have Morgan Stanley Exhibit Number 2 in front of you?
A. Yes.
Q. You are listed as one of the parties this memorandum is addressed to. Do you see that?
A. Yes.
Q. Is this one of the requests that you received to locate documents in connection with litigation?

A. It must have been.
Q. Do you know whose handwriting that is in the upper right-hand corner where it says "file colon Sunbeam litigation"?
A. No.
Q. Now, if Mr. Schwartz -- if Mr. Schwartz sent you this request, as indicated, Exhibit Number 2, and you had documents, would you then have given them to Mr. Schwartz?
A. I would ask Mr. Schwartz when they were put together what he wanted done with them and then he would direct me to forward them to someone.
Q. Okay. You may hand that back to me.
MR. BEMIS: Hand that back to me.
Q. Let me show you now what's been marked as MS 123.
MR. BEMIS: I am going to ask the reporter to mark that, I'm sorry.
MR. BRODY: It has not previously been used?

MR. BEMIS: Apparently, not. I don't see any -- I do not see any initial by the court reporter.
MR. BRODY: Fair enough.
(Deposition Exhibit MS 123, memorandum from Mr. Schwartz, dated November 11th, 1998, re: document request in Shallal -v- Elson, and Mr. Slotkin is shown as a copy on this document, marked for identification, as of this date.)
Q. I have shown you now what is marked by the reporter as MS 123. Do you have that in front of you?
A. Yes.
Q. This is a memorandum from Mr. Schwartz, dated November 11th, 1998, re: document request in Shallal, S-H-A-L-L-A-L, -v- Elson, E-L-S-O-N, and you are shown as a copy on this document; correct?
A. Yes.
Q. Now, did you collect documents in response to this request by Mr. Schwartz?

A. I don't remember.
Q. If you had located any documents in response to this, would you have followed the same procedure, that is, called Mr. Schwartz and: Mr. Schwartz, please tell me what to do with the documents that I found, if I found any?
A. Yes.
Q. Okay, you can hand that back.
MR. BEMIS: You are going to get copies of all these. We are going to get you initialled copies. I am just not lugging -- I am no longer going to lug, if at all possible, eight or nine boxes around, trying to reduce the cartage for Federal Express, and we will try to get you a set, even this evening.
MR. BRODY: Okay.
MR. BEMIS: Can I see 124?
Ms. Reporter, would you mark, as MS 124, a one-page document, from Mr. Barry F. Schwartz, to the listees, dated June 19th, 2001.
(Deposition Exhibit MS 124,

020520

NOT A CERTIFIED COPY

Page 74

one-page document, from Mr. Barry F. Schwartz, to the listees, dated June 19th, 2001, marked for identification, as of this date.)

THE WITNESS: Thank you.

Q. The reporter has shown you what's been marked as MS 124. Did you receive a copy of this document?

A. I don't remember.

Q. Do you know whose handwriting that appears in the upper right-hand corner?

A. No.

Q. In response to this document from Mr. Schwartz, which is in relationship to litigation, quote, "commenced", closed quote, against Arthur Andersen, there is a request for preservation of documents which includes electronic documents.

Do you see that in the first paragraph?

A. Yes.

Q. And what, if any, steps did you

Page 75

take to comply with Mr. Schwartz's direction to preserve documents?

A. I already stated, I don't remember receiving the request.

Q. Well, do you recall taking any steps at any time to preserve documents as requested by this memorandum?

A. I don't remember receiving the document -- receiving this document, (indicating). We do preserve documents.

Q. What steps did you take personally to preserve documents related to Sunbeam's purchase of the assets of The Coleman Company in March of 1998?

A. I don't remember.

Q. Do you have any record of what steps you took to preserve documents?

A. No.

Q. So today you could not, for example, go back to your office, locate a file where you had written out or -- the steps that you took to preserve documents.

A. No.

Q. Is that true?

A. That's correct.

Page 76

Q. Okay, you can hand that document back to me.

Did you have any documents -- withdrawn. Do you recall receiving before June 19th of 2001, which was the date of Mr. Schwartz's memorandum, any steps being taken by MacAndrews & Forbes Holdings Inc. to preserve documents related to the Sunbeam/Coleman merger transaction?

MR. BRODY: Object to the form of the question.

Q. You may answer.

A. No, I don't remember

(Deposition Exhibit Morgan Stanley 5, previously marked for identification.)

Q. I am handing you what has previously been marked as Morgan Stanley Exhibit Number 5, which is an October 5th, 2001 document, from Mr. Eric W. Golden, concerning document production for Coleman (Parent) -v- Arthur Andersen.

Do you have that document in front of you?

A. Yes.

Page 77

Q. Did you receive a copy of MS 5 from Mr. Eric W. Golden?

A. I don't remember.

Q. Did you review this document in your deposition preparation yesterday?

A. I don't believe so.

Q. Did you review any documents concerning document retention yesterday, while you were being prepared for your deposition?

A. No.

Q. Did you -- withdrawn. Did you at any time search your files for documents relating to the six categories identified by Mr. Golden on the first page of MS 5?

A. All I know is that I searched my files for documents related to Coleman and Sunbeam, I don't remember which category they might have fit into or which category they didn't fit into.

Q. Am I correct that you don't remember which memorandum prompted you to conduct the search?

A. No, but there was more than one.

NOT A CERTIFIED COPY

020521

Q. Did you do more than one document collection in response to these memoranda or were you able to get all of your documents collected at one time?
A. I don't remember.
I think that the subsequent -- the subsequent request asked for other things, so....
Q. Well, did you find any documents responsive to the later request?
A. I don't remember.
I didn't keep a log of what went for which request.
Q. Okay, you can hand that back to me for the time being.
MR. BEMIS: Ms. Reporter, will you mark, as MS 125, a one-page document, which is an E-mail from Eric Golden to distribution, including Mr. Slotkin.
(Deposition Exhibit MS 125, one-page document, dated November 6th, 2001, which is an E-mail from Eric Golden to distribution, including Mr. Slotkin, marked for

identification, as of this date.)
Q. Do you have MS 125 in front of you, sir?
A. Yes.
Q. Did you have an E-mail system at MacAndrews & Forbes Holding Company Inc. at the date of this E-mail, November 6th, 2001?
A. Yes.
Q. And did you receive this E-mail?
A. I don't remember.
Q. Do you remember -- strike that. Did you at any point in the request that you are identified as a -- on the distribution list, search in your electronic files for documents requested by Mr. Schwartz, for example, or Mr. Golden?
A. I'm sorry, could you -- what's the question in it?
Q. Let me try again.
Do you recall ever searching for electronic documents, such as E-mails or a Word, W-O-R-D, document, or a spreadsheet on your computer, whether it be on

diskette, whether it be on your hard drive, or whether it be resident on a server somewhere, in response to these requests for production of documents from Mr. Schwartz or Mr. Golden.
A. I remember looking at my E-mail system, yes.
Q. When you looked at your E-mail system, did you have documents that were responsive to the request by Mr. Schwartz or Mr. Golden?
A. I don't remember. But whatever I had, I forwarded to whoever asked for it.
Q. Do you want to hand that document back to me, please?
MR. BEMIS: We will take a break here.
THE LEGAL VIDEO SPECIALIST: The time is 11:05 a.m., we are going off the record.
(Recess taken.)
THE LEGAL VIDEO SPECIALIST: The time is 11:19 a.m., on July 7, 2004, this is tape number two of the

videotaped deposition of Mr. Todd Slotkin.
(Deposition Exhibit MS 126, memorandum, dated November 8th, 2001, from Mr. Eric Golden, and Mr. Slotkin is shown as one of the people receiving the document, marked for identification, as of this date.)
Q. Mr. Slotkin, I am now going to hand you what the reporter has marked as MS 126.
Do you have that in front of you, sir?
A. Yes.
Q. Please take a moment and look at it, and I just have a few questions.
A. (Pause.)
Q. Are you finished?
A. Mm-hmm -- yes.
Q. This is a memorandum, dated November 8th, 2001, from Mr. Eric Golden, and you are shown as one of the people receiving the document. Did you receive it?
A. I don't remember.

NOT A CERTIFIED COPY

020522

Q. Well, did you receive a request at any time to locate your calendars for the period, as set forth in this memorandum, November 1st, 1997 to March 30th, 1998?
A. Either for this request or for some other request, I did check my calendar.
Q. From your answer, then, I take it that during the period of November 1st, 1997 through March 30th, 1998, you kept a calendar of some kind; am I right?
A. I looked to see if they had anything on record.
Q. Let's just step back a question. Let's get the foundation question first. Did you have a calendar, regardless of the entries on the calendar, for the time period asked for in MS 126?
A. I don't have a calendar per se. I have a calendar that I keep track of expenses that are related to meals or related to travel, or whatever.
Q. You do not keep a "daily planner", I use that term in a large

sense, daily planner calendar?
A. I have a sheet that my secretary would put out every day for what I was doing.
Q. Did your secretary maintain a calendar for you on a computer?
A. I am not aware of it.
Q. Did she keep one in a hard copy form, such as in a daily planner book?
A. I don't think so.
Q. How did you keep track of your calendar appointments without using either a written or electronic calendar?
A. I don't have that many meetings, I can keep track of them.
I knew I had a meeting this morning with you.
Q. Do you keep a calendar, for example, today?
A. No.
Q. Does your secretary keep a calendar for you today?
A. No.
Q. In any event, when you looked for calendar entries, did you --

regardless of what you looked at, whether they be expense reports or some other type of notation, did you find anything in your search, pursuant to MS 126, relating to Sunbeam and its purchase of Coleman between the period November 1st, 1997 and March 30th, 1998?
A. I don't remember.
Q. If you had found anything, you would have provided it to Mr. Golden or to whomever he directed; is that right?
A. Yes.
Q. Okay, you can hand that back to me.
MR. BEMIS: Thank you.
(Deposition Exhibit MS 70, previously marked for identification.)
Q. I will hand to you now what a reporter previously has marked as Deposition Exhibit MS 70.
Do you have that in front of you, sir?
A. Yes.
Q. Have you ever seen this document

before?
A. I don't remember.
Q. If you will turn to page 2, and I am referring now to the numbered pages, you will see your name and a phone number below there.
Do you see that?
A. I see my name and a fax number below it.
Q. Is that fax number for -- at the time of this -- strike that. Was that your fax telephone number at the time that this document is dated, which appears to be May 21st, 1998, from the first page.
A. That was my phone number at the time. I don't know whether this was as of. I can't really identify the date.
Q. If you look at the first page of the document, in the upper right-hand corner, it has a date of 5-21-98. But at the bottom of the page, there is also a date which I think is probably a print date, which is August 14th, 1998.
Do you see those two dates?
A. I see the dates, I am not sure

NOT A CERTIFIED COPY

020523

that's the date of the document.
Q. What was your role, if any -- well, strike that. Do you know what Project Laser refers to?
A. Not exactly.
Q. Well, you know "Laser" refers to Sunbeam; doesn't it?
A. You just asked me the question. If I knew that, then I would have said I knew that, but I didn't know that. I guess now if that's what it means then that's what it means.
Q. Well, did you know at some point that there was -- withdrawn. Did you know at some point in time that there were discussions between Sunbeam and representatives of Mr. Perelman's companies concerning a merger agreement between Sunbeam and The Coleman Company, Inc.?
A. Yes.
Q. When did you first learn that there were any ongoing discussions of that nature?
A. Approximately, December of 1997.

Q. Were you ever given any specific assignments with regard to the Sunbeam/Coleman transaction, either before or after the merger agreements were signed, which if it helps you is February 27th, 1998.
A. No, not that I remember.
Q. Do you know why your name is on a working group list as evidenced by MS 70 under the Andrews Group Incorporated?
A. Because I worked at MacAndrews & Forbes.
Q. And I misspoke, it's not under Andrews Group Incorporated, you are listed under MacAndrews & Forbes Holdings Inc., so I stand corrected.
Even with that correction, did you have any responsibilities, either before the merger agreements were signed or after the merger agreements were signed, with regard to the Sunbeam/Coleman merger transaction?
A. Not that I remember.
Q. Your first -- withdrawn. Did you have a general phone number at

MacAndrews & Forbes Holdings Inc. in 1998?
MR. BRODY: "You" meaning was there a switchboard number? Is that what you mean?
Q. Yeah, a general phone number for you.
MR. BRODY: For the company?
Q. For the company, yeah.
A. Uh -- yes, it's listed on page 1.
Q. Is that the 212-572-8600 number?
A. Yes.
Q. And -- withdrawn. Did you have a direct line to your office that I could call, for example, and bypass the switchboard general number?
A. Yes.
Q. And what was that number?
A. 212-572-5035.
Q. You can set that aside for right now. We may come back to it later, but I don't think we are going to use it right at the moment.
Let's go backwards from that last document to December of 1997, when

you told me that you first heard of negotiations concerning a possible transaction between Sunbeam and The Coleman Company. How did you learn about that?
A. I learned at breakfast, there had been a discussion.
Q. When you say "at breakfast", this would be a breakfast meeting at Mr. Perelman's townhouse in Manhattan?
A. It could have been in that building or in the office building.
Q. Who was present at the meeting where you --
A. I don't remember.
Q. Well, you know you were present. Do you remember anyone else who was present?
A. Um -- Mr. Perelman, Mr. Gittis, and there might have been others.
Q. What was said about the transaction?
A. Well, there was no transaction. There had just been a conversation that Mr. Dunlap had had with Mr. Perelman about

NOT A CERTIFIED COPY

020524

Page 90

their expressing their interest in acquiring Coleman.
Q. Was this a conversation with -- withdrawn. Was this conversation between Mr. Perelman and Mr. Dunlap the meeting that took place in Palm Beach in December of 1997 at Mr. Perelman's home there?
A. I believe so.
Q. How did Mr. Perelman describe the meeting with Mr. Dunlap?
A. It was a short meeting.
Q. Is that all he said, it was a short meeting?
A. Mr. Dunlap indicated he was interested in Coleman and was interested in a price for buying Coleman. I believe that Mr. Perelman -- he asked Mr. Perelman at what price would he sell his stake in Coleman, because it was a publicly-owned company, and whatever number Mr. Perelman gave at the time, which I do not remember, was not found to be interesting at that time to Mr. Dunlap.
Q. Did Mr. Perelman describe -- strike that. Mr. Gittis was also at this

Page 91

meeting with Mr. Dunlap; was he not?
A. I don't know. I wasn't at the meeting with Mr. Dunlap.
Q. Well, even if you weren't at the meeting, did you come to learn based on your breakfast meeting that Mr. Gittis was at the meeting with Mr. --
A. I don't remember.
Q. Okay. Did Mr. Perelman in any way describe the atmosphere of the meeting?
A. I am not sure I understand the question.
Q. What is it that you don't understand? I will try to correct it or help you out with it.
A. Well, you said -- you said the meeting was at Mr. Perelman's house, so I am not sure what you mean, can I describe the atmosphere of the meeting.
Q. Did Mr. Perelman -- I think my question was slightly different. If it wasn't, it's my error. And let me fix it for you.
Did Mr. Perelman or anyone else

Page 92

at the breakfast meeting describe the atmosphere of the meeting at Mr. Perelman's home in Palm Beach where Mr. Dunlap was present?
A. And, again, I will try -- what would you -- please define for me the -- what you mean by "atmosphere".
Q. Well, for example, it was a warm, friendly conversation, it was hostile, people used profanities, someone stormed out of the meeting.
A. The only thing that I remember about the conversation was that there was a meeting and that Mr. Dunlap did -- was not interested in the price level that Mr. Perelman had indicated, and shortly thereafter Mr. Dunlap left the meeting. Since I wasn't at the meeting, I really can't give you anymore description or -- of the atmosphere.
Q. Well, please understand, I am not asking you to give me a firsthand account, because I appreciate you were not there. What I am asking for is a firsthand account of what you were told at

Page 93

the breakfast meeting about the atmosphere, if you will, at Mr. Perelman's home in Palm Beach when Mr. Dunlap made whatever approach he did to Mr. Perelman about selling his interest in The Coleman Company.
Now, does that help you at all answer the question?
A. No, I think I have answered it.
Q. So no one told you at this breakfast meeting that Mr. Dunlap, for example, stormed out of Mr. Perelman's home.
A. He left.
Q. Well, I didn't ask you how he left --
A. That's correct.
Q. You weren't there. Did anyone tell you he stormed out of the house?
A. I don't remember that.
Q. Did anyone tell that you Mr. Dunlap used profanities during the meeting with Mr. Perelman?
A. No, not that I remember.
Q. So, as far as you can remember

NOT A CERTIFIED COPY

020525

Page 94

the conversation, when Mr. Dunlap left, it was on an amicable basis with Mr. Perelman, is that fair, as far as you know.
A. I am not sure I quite understand your use of the word "amicable".
Q. You know what "amicable" means?
A. Yes.
Q. Okay, that's how I mean it.
A. Well, then, I don't know what it means.
Q. Then you don't know what it means.
A. That's correct.
Q. Friendly, amicable, friendly?
A. Well, since I wasn't there, I couldn't -- I don't think I could really give an opinion.
Q. Okay, I am not asking you to put yourself in me, I am asking you what you understand the manner in which the meeting ended at Mr. Perelman's home based on what you were told at the breakfast meeting.
Now, are you clear on what I am asking you?

Page 95

A. Uh -- no.
Q. What is it that you are confused about, because I would like to help you with this.
A. I don't know how you -- I don't understand what the question is that you want me to try to recollect.
Q. Okay, let me try again for you, and I think we can probably communicate, we are both pretty smart guys.
I understand you were not at Mr. Perelman's home in Palm Beach. All right? We are both in agreement on that. Correct?
A. Yes, I didn't know that was a question.
Q. And to the extent you know what happened at Mr. Perelman's home in December of 1997, you know that by virtue of attending a breakfast meeting, as you have described it; correct?
A. Yes.
Q. Now, that's what I am focusing on. Based on the breakfast meeting, did the meeting end with Mr. Dunlap on an amicable basis.
MR. BRODY: Object to form.
A. I think you have asked the question.
Q. I know I have, but I don't think you have answered because I thought you were confused over what I was asking and I tried to fix it for you.
A. Well, I don't know -- I am not able to guess what Mr. Dunlap thought as he left the meeting.
If somebody asks you if they want to buy something at a price and it's at a different price than you want to pay, I don't know whether you -- because you are disagreeing with that price, you still leave on an amicable basis or you don't leave on an amicable basis, I don't know what was in his mind.
Q. My question isn't what was in his mind, because you weren't there, and I wouldn't ask you that. I am asking you what you understood at the breakfast meeting, or the circumstances, if you will, of how the meeting ended. Was it on an amicable basis? Did it -- or did it end otherwise, such as one of the participants, Mr. Dunlap for example, quote, "storming out of the meeting", closed quote?
A. I just remember that he left.
Q. What was the next "involvement", and I am using "involvement" now in a very broad sense with you, that you had in relationship to the Coleman/Sunbeam merger transaction?
A. I don't remember offhand what the next involvement was.
Q. Well, what is the next thing that you do remember happening with regard to the Coleman/Sunbeam merger transaction that you had any involvement with, whether it be by a discussion, a meeting, an assignment, what happened?
A. Well, probably the next one would be approximately when the deal was signed in the -- the banks of MacAndrews & Forbes Holdings would be informed that we were going to -- we were entering into an agreement to sell an asset.

Page 96

Page 97

NOT A CERTIFIED COPY

020526

Q. Now, when you say the banks were being informed that MacAndrews & Forbes was about to sell an asset, you are referring to banks that loaned money to MacAndrews & Forbes or one of its subsidiaries or senior companies -- "parent companies" would be a better term.
A. Yes.
Q. And, at that time, which would be March of -- would that time be about March of 1998?
A. It could have been late February.
Q. Okay.
A. I think the document was signed sometime late February, if I remember correctly.
Q. It was signed as of February 28th, 1998, if that helps you.
A. Okay.
MR. BRODY: February 28th or February 27th.
MR. BEMIS: It was signed as of February 27th, but it was signed on the 28th, on Saturday morning. If I

misspoke, I didn't mean to, but I think that's a correct statement.
Q. Is it your recollection that the banks were -- of MacAndrews & Forbes, were first informed of the sale after the documents, that is, the merger documents, were signed?
A. I remember that it occurred approximately around when the merger documents were signed. I don't know whether it was just before, very soon thereafter, it was approximately.
Q. Now, the banks that you are referring to were lenders to -- is it MAFCO Holdings Inc.?
A. What are you asking? The borrower is MAFCO Finance.
Q. Is it MAFCO Finance.
A. Right, which was wholly owned by MacAndrews & Forbes Holdings Inc.
Q. Let me show you first what we will mark as MS 299.
(Deposition Exhibit MS 299, document which is entitled Fifth amended and restated MAFCO guaranty,

dated as of March 20th, 1997, marked for identification, as of this date.)
MR. BEMIS: All right, back on the record. Actually, we never left the record.
Q. Do you have MS 299 in front of you?
A. Yes.
Q. Have you seen this document before, which is entitled Fifth amended and restated MAFCO guaranty, dated as of March 20th --
A. Yes.
Q. -- 1997.
Now, is this document a guaranty by MAFCO Holdings Inc. of debt incurred by MAFCO Finance under two other -- two credit agreements?
A. It's definitely debt that's owed by MAFCO Finance Corp. I am not sure where you get the two credit agreements, but --
Q. Well, I am going to show them to you, but that's why I had hoped you would be able to clarify that before I started.

So let me show you the credit agreements and we'll see if I have got it right.
(Deposition Exhibit MS 300, document titled the Fifth Amended and restated revolving credit agreement dated as of March 20th, 1997 among MAFCO Finance Corp. (formerly known as Marvel IV Holdings Inc.), as the borrower, and then a number of financial institutions listed thereafter, marked for identification, as of this date.)
Q. Let me show you what's been marked first as MS 300.
(Discussion off the record.)
A. Okay.
Q. Do you have now MS 300 in front of you?
A. Yes.
Q. Now, is MS 300 -- well, strike that. Have you seen MS 300 before?
A. Yes.
Q. And is this the -- as it's titled, the Fifth Amended and restated revolving credit agreement dated as of

NOT A CERTIFIED COPY

020527

March 20th, 1997 among MAFCO Finance Corp., C-O-R-P with a period, (formerly known as Marvel IV Holdings -- no comma -- Inc. period closed parentheses, as the borrower, and then a number of financial institutions listed thereafter?
A. Yes.
Q. Now, when you now were referring to the banks that had lent money to MAFCO Finance Corp., is this agreement, that is, MS 300, one of the credit agreements with the banks?
A. Yes.
Q. And is this credit agreement, MS 300, subject to the guaranty you have in front of you as MS 299?
A. Yes.
Q. Also, dated March 20th, 1997.
A. Yes.
Q. All right. Now let's look at one other document.
A. Do I keep these?
Q. You should probably just keep those in front of you for the time being.
MR. BEMIS: Ms. Reporter, would

you mark this as MS 301.
(Deposition Exhibit MS 301, document which is entitled 400 million, and then Amended and restated term credit agreement dated as of March 20th, 1997, among MAFCO Finance Corp. (formerly known as Marvel IV Holdings Inc.), as borrower, and then a number of financial institutions, marked for identification, as of this date.)
MR. BEMIS: I lost my lifeline here. (Pause.)
Q. Do you have MS 301 in front of you?
A. Yes.
Q. Have you seen this document before?
A. Yes.
Q. This document is entitled 400 million, and then Amended and restated term credit agreement dated as of March 20th, 1997, among MAFCO Finance Corp. (formerly known as Marvel Roman numeral IV Holdings Inc., period closed parentheses,

as borrower, and then a number of financial institutions.
A. Yes.
Q. Is this document, MS 301, one of the credit agreements between the banks that you identified as being informed of the asset sale?
A. Yes.
Q. And does MS 299, the MAFCO Holdings Inc. guaranty, apply to MS 301 as it did to MS 300?
A. Yes.
Q. So, at the time -- excuse me. Withdraw that question. Is the term of the revolving credit agreement, of $250 million two years, the revolving agreement.
A. (Pause.)
The termination date is March 20th, 1999.
Q. And what section are you reading from in MS 300?
A. Definitions, page 39.
Q. And the term credit agreement, MS 301, also terminates on the same date,

March 20th, 1999, does it not, sir?
Do you want to check that for me? I think it's under Section 2.03 on page 38 in this one, as opposed to page 39, but I could be wrong, I will let you check that.
A. (Pause.)
It's at page 38?
Q. Yes. I think it's under Section 2.03.
And if I have this wrong, that's why I am asking, to make sure I understand it, prepayment refers to a termination date and the termination date --
A. The termination date is on page 35.
Q. That's correct.
A. That's the definition, says March -- the earlier of March 20th, 1999 or, B, the date of termination in whole the term commitments pursuant to Sections 2.04 or 6.01.
Q. And the amount -- excuse me, the repayment of the amount then outstanding in the aggregate under the term credit

NOT A CERTIFIED COPY

020528

Page 106

agreement has to be repaid under Section 2.03 on the termination date; is that right?
A. I am not exactly sure why you keep referring to 2.03. Section 2.03 --
Q. That's what I was referring to.
A. It just says: "The borrower shall repay to the administrative agent" --
(Discussion off the record.)
MR. BRODY: You can read it, just do it a little slower.
A. "The borrower shall repay to the administrative agent for the ratable account of the lenders on the termination date the aggregate principal amount of the term advances then outstanding."
Q. Maybe my question was poorly -- or maybe I don't understand the documents. My understanding of this was, please tell me if I am wrong, that on the termination date, that whatever is the outstanding aggregate principal amount of the advances made, as defined, that those are to be repaid; is that right?

Page 107

A. Yes.
Q. And the termination date, by virtue of the definitional section that you read to us, is March 20th, 1999.
A. The earlier of March 29, 1999 or, B, the date of termination in whole of the term commitments pursuant to Sections 2.04 or 6.01.
Q. Okay. I appreciate that clarification. These are very complicated documents, and I appreciate your help with them.
So the term -- both the term credit agreement for $400 million, evidenced by MS 301, and the $250 million revolving credit line, evidenced by MS 300, both have a term of two years, commencing on March 20th, 1997 and terminating no later than March 20th, 1999; is that right?
A. Correct.
Q. Now, on March -- withdrawn. Just to bring us forward, you had -- up to the time of the notification of the lenders, did you have any involvement at

Page 108

all with the negotiation of the merger agreements?
A. Not that I remember.
Q. Was your involvement with the transaction between Sunbeam and Coleman strictly in connection with advising the banks of the sale of an asset of MAFCO Holdings Inc. that was subject to the credit agreements, MS 300, MS 301, and the guaranty, MS 299?
A. Yes.
Q. Now, as a consequence of the merger agreement closing, did MAFCO Holdings -- let me rephrase that, I want to make sure I have the right entity here.
MR. BEMIS: Ms. Reporter, would you mark this as MS 302, entitled Third amended and restated pledge agreement, dated as of March 30th, 1998, from Coleman (Parent Holdings Inc. as pledger to Citibank, N.A. as collateral agent.
(Deposition Exhibit MS 302, document entitled Third amended and restated pledge agreement, dated as

Page 109

of March 30th, 1998, from Coleman (Parent) Holdings Inc., as pledger, to Citibank, N.A., as collateral agent, Bates numbers beginning CPH 2006618 and ending at Bates numbers CPH 2006640, marked for identification, as of this date.)
Q. Sir, do you have MS 302 in front of you?
A. Yes.
Q. Have you seen this before?
A. Not recently.
Q. I appreciate that, but have you seen it before today?
A. Yes, but not recently.
Q. The signature that appears on the -- probably three pages from the back, I believe, Glenn P. Dickes, is that how he pronounces his name?
A. Yes.
Q. At that time -- is that his signature?
A. Yes.
Q. Now, I realize this is a long document and, just so we can shortcut

020529

NOT A CERTIFIED COPY

Page 110

this, does this document, that is, MS 302, pledge the Sunbeam shares acquired in the merger transaction by Mr. Perelman's companies to the banks as collateral for the loans evidenced in the revolving credit agreement and the term credit agreement, Morgan Stanley Exhibits 300 and 301?
A. You have to wait a second, I will have to check.
Q. Okay.
A. (Pause.)
Q. I think what you are looking for is on page 3 of the document. CPH 2006623. And I direct your attention to Preliminary Statement Number 9, in parentheses, and then Section 1, Grant of security and, also, Schedule 1 to the document, which lists approximately 14.1 million shares of Sunbeam stock.
A. Schedule 1?
Q. (Indicating), Schedule 1.
A. My Schedule 1 is blank.
Q. You know, I may have made a mistake. It may be Schedule -- let me

Page 111

take a look. My Schedule 1 has pledged shares. Let me see --
A. (Indicating.)
Q. Is there one behind there? Look behind there and see if there is another one.
A. Well, there is Schedule 2 behind there, but it looks exactly the same as Schedule 1 except it is blank.
MR. BRODY: I think the witness is referring to the schedules to the guaranty --
MR. BEMIS: Ah.
MR. BRODY: -- that somehow became a copy of our exhibit.
THE WITNESS: Oh.
Q. Let me take a look -- let's stop for a second. Let me look at the exhibit to see if we have got it assembled improper for you, because I know I have got it right. (Pause.)
MR. BRODY: (Indicating.)
A. Well, on his exhibit, (indicating Mr. Brody), there is a Schedule 1, (indicating).

Page 112

Q. Right. Let's stay off -- let's just rest one second, and let me make sure I have got the documents organized properly. (Pause.) If you -- let's try this one more time.
I was -- attached to MS 302 is an execution copy of the Fifth amended and restated Coleman guaranty, dated as of March 30, 1998 from Coleman (Parent) Holdings, Inc. as guarantor in favor of the lenders referred to in the document, and should that -- is that a separate document from the Third amended and restated pledge agreement? Or is it --
A. I would think so --
Q. Or is it an attachment to the Third amended and restated pledge agreement?
A. I don't know, I am not a lawyer.
Q. Well, I don't guaranty you that by being a lawyer would help you figure this out.
A. Well --
Q. What I am just trying to find out is whether the documents were somehow

Page 113

assembled incorrectly. It is possible that the Fifth amended and restated Coleman guaranty is simply an attachment to the pledge agreement that we marked as 302, and that's what I want to sort out for a second.
A. Well, if you go to the table of contents of the Third amended and restated pledge agreement --
Q. Right.
A. -- it doesn't refer to the Fifth Amended and restated Coleman guaranty as being an attachment.
Q. Okay. So, let's do this. I am going to ask you -- I am going to just separate out the Fifth Amended and restated Coleman guaranty for the time being.
A. Okay.
Q. If you will hand that back to me, I just want to make sure your exhibit looks like mine. Can I have 302 back, please?
MR. BRODY: That's my copy.
A. That's his 302, you already have

020530

NOT A CERTIFIED COPY

Page 114

my 302.
MR. BEMIS: Let me do the same thing with yours, Mr. Brody, and we will mark it separately. And I apologize for the....
(Pause.)
MR. BRODY: Okay, so 302 --
MR. BEMIS: Let me get it done and we will go on the record and we will sort it out for you.
MR. BRODY: Okay.
MR. BEMIS: (Pause.)
MR. BRODY: You already gave me 302.
MR. BEMIS: I gave you 302.
MR. BRODY: Let's just confirm the beginning and ending Bates number.
MR. BEMIS: We will go back on the record -- or, we never left the record.
To clarify, Exhibit MS 302 has Bates numbers beginning CPH 2006618 and ends at Bates numbers CPH 2006640.

Page 115

Everyone have the right exhibit now?
MR. BRODY: I do.
A. Yes.
Q. And I apologize for the paper shuffling. Normally we are a little better at that, but it does happen.
Now, my question, I think, it's been a while, but I think my question was, does MS 302 result in a pledge to the banks pursuant to the credit agreement and revolving credit agreement, MS 301 and 300, the 14.1 million shares of Sunbeam stock acquired by Mr. Perelman's entities in the merger transaction with Sunbeam.
MR. BRODY: Object to the form of the question.
Go ahead.
A. It's 14 million -- according to this Schedule 1, it says it's 14,099,749 shares.
Q. We have rounded that up usually to 14.1, but I appreciate your helping me with that.
A. So that's what it was.

Page 116

Q. Now, before the merger transaction which resulted in the pledge evidenced by MS 302, Mr. Perelman's entities owned approximately 82.4 percent of the Coleman common stock; correct?
A. Approximately.
Q. And that stock was held by Coleman Worldwide Corporation; is that right?
A. I don't recall.
Q. But one of the Holding entities had the stock or owned the stock of The Coleman Company, Inc.; correct?
A. Yes.
Q. Now, was The Coleman Company stock, the 82.4 percent of the stock, was it, at the time of the signing of the merger agreements, February 27th, 1998, was that stock pledged to any of the lending institutions under the term credit agreement or the revolving credit agreement identified as MS 300 and 301?
A. I believe so.
Q. And can we -- can you, by looking at either of the credit agreements

Page 117

or the guaranty agreements, identify where it is -- where in those agreements it evidenced that the Coleman stock was pledged to those lending institutions pursuant to either the term credit agreement or the revolving credit agreement.
A. (Pause.)
On page 30, it's --
Q. Give me the Exhibit Number first, and then I will follow along with you.
A. MS 300 in the revolving credit agreement refers --
Q. Could you just wait one second here? Let me get the paper out.
All right. Could you give me the page number, sir, you are referring to?
A. I was just going to page 30.
Q. Page 30, okay. All right, I am there.
A. Just talked about new Coleman and new Coleman pledge agreement.
Q. (Pause.) Perhaps I don't -- I

020531

NOT A CERTIFIED COPY

Page 118

didn't understand your answer, or my question was poorly phrased.
Is the Coleman stock, common stock, the 82.4 percent, owned by what I believe is Coleman Worldwide Corporation, as of March 1st, 1998, is it pledged to secure the obligations of MAFCO Finance Corp. in MS 300 and, if so, where is the specific reference to that stock being pledged.
MR. BRODY: Object to the form.
Go ahead.
A. I already said that I believe that it is pledged, and on page 30 of the definitions it talks about the new Coleman pledge agreement which -- do you want me to read it?
Q. No, no, you don't need to read it, but if that's the provision you are referring to, is that the only way -- is that the only place that the pledge is referred to? Because I can't trace it through to that.
A. I am sure it's not, but I would have to go through all the documents to

Page 119

find the exact reference to it, but can we assume that it was pledged?
Q. No, we can't, that's what my question is.
A. Well, I already said that I believe that it was pledged.
Q. I know you did, and I am trying to find out why you think that is the case based upon the documents.
A. The reason I believe so is because I was the architect of the business transaction, I was not the architect nor the writer of the document.
Q. Did you draft the term sheet for the transactions in March of 1997 when these documents were executed?
MR. BRODY: Wait, which transactions?
MR. BEMIS: The 1997 lending transactions, evidenced, at least in part now, by MS 299 through MS 302.
A. I didn't actually draft -- do the drafting of the term sheet, but I was the architect of all the MAFCO Finance (indicating) business transactions.

Page 120

Q. Okay. Well, let's step back then. Let's go back and look at the term sheet, and we will come back to this question. Let me see if the term sheet helps at all.
MR. BEMIS: I will ask the court reporter to mark, as MS 308, a document entitled MAFCO Finance Corp. summary of terms and conditions.
(Deposition Exhibit MS 308, document entitled MAFCO Finance Corp. summary of terms and conditions, marked for identification, as of this date.)
Q. Sorry about that.
MR. BEMIS: Do you want to just mark the first page of this.
(Deposition Exhibit MS 311, document which is entitled Fifth Amended and restated Coleman guaranty dated as of March 30th, 1998 from Coleman (Parent) Holdings, Inc. as guarantor in favor of lenders, et cetera, marked for identification, as of this date.)

Page 121

MR. BEMIS: Okay.
Q. Do you have MS 308 in front of you?
A. Yes.
Q. Have you seen this document before?
A. Yes.
Q. Do you know who prepared it?
A. I don't remember.
Q. Was it prepared by someone at your direction?
A. I am not sure I understand the question.
Q. Well, was it prepared by someone who works for you?
A. No, it was prepared by a lawyer.
Q. At Shearman & Sterling?
A. I don't know who prepared it.
Shearman & Sterling doesn't work for me.
Q. Well, I understand that. I am not looking at -- for the name of a lawyer, although I think I know who it was. My question is, was that the law firm that you were using to prepare the

020532

NOT A CERTIFIED COPY

Page 122

loan documentation?
A. No.
Q. Was someone else using Shearman & Sterling to prepare the loan documentation, that is, the lenders?
A. Yes, the lenders were using Shearman & Sterling.
Q. Did you have counsel in the lending transactions in March of 1997 that we have been discussing?
A. Yes.
Q. And who was it?
A. I believe it was Skadden.
Q. Is it your believe, then, that MS 308 was a document prepared by the law firm of Shearman & Sterling?
A. I don't know whether it was prepared by Shearman & Sterling or Skadden.
Q. But it was prepared --
A. It is not indicated on the document.
Q. Well, there is a document identifier in the lower left-hand corner.
A. Okay.

Page 123

Q. And I didn't know if you see it, I don't know if that helps you at all.
A. All I see is 2-- this number "230742.6/NYL3"?
Q. Yes.
A. No, I don't recognize that.
Q. Okay.
MR. BEMIS: Ms. Reporter, please mark, as MS 291, memorandum from Maura E. O'Sullivan, dated February 12, 1997, on the letterhead of Shearman & Sterling, with distribution to, among others, Mr. Slotkin.
(Deposition Exhibit MS 291, document dated February 12, 1997, on the letterhead of Shearman & Sterling, with distribution to, among others, Mr. Slotkin, marked for identification, as of this date.)
MR. BEMIS: I'm sorry, there you go.
Q. All right. Do you have MS 291 in front of you?
A. Yes.

Page 124

Q. Did you receive a copy of this memorandum from Maura E. O'Sullivan?
A. Yes.
Q. And was Ms. O'Sullivan an attorney at Shearman & Sterling working on the proposed financing for MAFCO Finance Corp., which eventually was documented in MS 300 and 301, as well as other exhibits?
A. Yes.
MR. BRODY: Object to the form. That's okay.
Q. Now, is -- the term sheet in this transmittal has a date of 12-12-97, and I realize the term sheet that I gave you has a little bit later date, I think it's February 24th. Was Shearman & Sterling the law firm then that was drafting the term sheet for people to review?
A. For the lenders to agree to, yes.
Q. Explain to me how the circulation of the term sheet works amongst the parties in a financing transaction such as we are talking about

Page 125

in March of 1997.
MR. BRODY: Object to the form.
A. The attorneys that were involved representing the borrower and the lender would agree amongst themselves who would do the term sheet, who would do the first cut of the term sheet, who would do the revisions of the term sheet, who would do which documents. Sometimes the lender would say they will do other -- all the documents, sometimes they would do the term sheets. I don't know what the arrangement was on this one, seven years ago.
Q. Is it customary, however, in a financing of this size, and complexity, to have -- to have a term sheet that purports to summarize the transaction in a short form, if you will, for the parties?
A. Yes.
Q. And is it customary in a transaction of this size, that is, the March 1997 transaction, to have the borrower review the term sheet and approve it before the documents are drafted?

NOT A CERTIFIED COPY

020533

Page 126

A. Yes.
Q. And did that happen in this transaction for the borrowings of March 1997?
A. I believe so.
Q. Now, looking at the term sheet, can you -- which is MS 308, can you show me anywhere on the term sheet where we could identify that The Coleman Company, Inc. common stock owned by Mr. Perelman's entities were pledged as collateral for either the revolving credit agreement or the term credit agreement?
A. Yes. On page 5, under the Securities section, 1 G and H refers to New Coleman Holdings and Coleman guarantor, and it says: "Pledge of stock together with all dividends, distributions, and other proceeds in respect of such pledged stock".
Q. Yes, but you are assuming that new Coleman Holdings Inc. or Coleman -- well, withdrawn. Are you assuming that New Coleman Inc. owned The Coleman Company, Inc. common stock?

Page 127

A. Yes.
Q. Well, if it's not owned by that company but it's owned by Coleman Worldwide Corporation, is it still pledged pursuant to what you have just identified for me?
A. No, only the pledge of the stock from New Coleman Holdings and from Coleman guarantor are pledged.
Q. And that's the stock of those two entities; right?
A. Yes.
Q. And The Coleman Company, Inc. stock at the time of the merger transaction was owned by Coleman Worldwide Corporation.
MR. BRODY: Object to the form.
A. (Gesturing.)
Q. Well, let me put it this way. If it is the case, sir, that at the time of the merger transaction The Coleman Company, Inc. common stock owned by the Perelman entities was owned, indeed, by Coleman Worldwide Corporation, is it pledged under this -- under the term sheet

Page 128

to secure either the revolving credit or the term credit agreement?
MR. BRODY: Object to the form.
A. (Pause.)
I can infer, from page 7 of the term sheet, little 2 I, that the lender is looking to the fair market value of the collateral which includes the net equity value of The Coleman Company, Inc. So, from that, I would conclude that the banks would have that as collateral.
Q. Now, when you say "that as collateral", what do you mean, the "that"?
A. The shares are shares of The Coleman Company, Inc.
Q. The net equity value of those shares.
A. Yes.
Q. If previously pledged, however, to secure an obligation of another Perelman entity -- withdrawn. That's poorly phrased. I know what I am thinking, I have to get it out clearly.
At the time of the merger agreements, February 27th, 1998, was any

Page 129

of The Coleman Company, Inc. stock pledged to secure any other debt obligations of Mr. Perelman's companies except, if you are correct, MS 300 and 301?
MR. BRODY: For -- can I have a time frame?
MR. BEMIS: At the time of the merger transaction.
A. All I can remember is that there were some shares that were tied up with the Coleman LYONS --
Q. That's correct.
A. -- which you mentioned, but I am really not very familiar with how many shares, but you could only pledge shares once.
Q. That's correct. And isn't it a fact, sir, that at the time of the closing -- excuse me. Isn't it true that at the time of the merger agreements being signed, February 27th, 1998, that indeed The Coleman Company common stock had already been pledged to secure the LYONS, L-Y-O-N-S, that we looked at earlier, issued by Coleman Escrow Corporation

NOT A CERTIFIED COPY

020534

or -- well, you are shaking your head. Do I have it wrong?
A. I haven't said anything, I am just listening.
Q. Okay.
A. I am allowed to move.
Q. No, I am not being critical, I thought maybe I made a mistake. Let me try it again for you.
At the time of the merger transaction documentation, February 20th, 1998, isn't it true that The Coleman Company common stock owned by Mr. Perelman's entities had been pledged to secure obligations of the Coleman Escrow Corporation in the -- for securities, both the LYONS and two note issues.
MR. BRODY: Object to the form.
A. I am a little confused at what you are trying to get to.
Q. Well, don't worry about what I am trying to get to.
A. Okay, I can't understand your question.

Q. What is it that you don't understand about it?
A. Are you talking about March of 1997? Are you talking about February of 1998? I am a little confused.
Q. All right. Well, let's set the time period for you.
As -- and maybe, as a point of reference, we will pull out the Coleman Escrow Corporation offering memorandum, see if that helps at all. And I genuinely want to make sure I get it right because it's possible you know this better than I. I suspect it is true that you know it better than I.
(Deposition Exhibit MS 241, previously marked for identification.)
A. (Pause.)
Q. All right, do you have MS 241 in front of you?
A. Yes.
Q. Now, my question is as follows. As of the date of the offering memorandum, May 15th, 1997, was the common stock of

The Coleman Company, Inc. owned by Mr. Perelman's entities pledged or to be pledged, if that's the case, to secure the -- either the LYONS or the $732,035,000 of senior secured first priority discount notes due 2001 or senior secured second priority discount notes due 2001?
A. Mm-hmm.
Q. Is your answer "yes"?
A. Yes.
Q. All right. Now, if they were pledged to secure those obligations, they couldn't be pledged a second time; am I correct?
A. You can have a second on it, which is called a "residual value", yes.
Q. I used -- you couldn't do it twice, because that's what you said to me --
A. You can't make a first --
Q. I appreciate that, I didn't think of that.
Now, at the time, then, of the credit agreements, MS 300 and 301, I ask

you again, was The Coleman Company stock owned by Mr. Perelman's entities, which we know was pledged to secure the debt instruments in MS 241 as well as the LYONS, was it pledged to secure the revolving credit line or the term credit lines totalling $650 million?
A. The net equity value, after taking into account the debt of these instruments, which have a prior claim to the collateral, was -- the residual value was pledged to -- 300 and 301 -- or 300 was the revolver and 301 was the term.
Q. So the first call on The Coleman Company, Inc. common stock as a pledge was pursuant to the debt instruments that are represented by MS 241; correct?
MR. BRODY: Object to the form.
A. I'm sorry, 241 has the first. (Indicating.)
Q. Thank you, sir.
MS 241 --
A. Right.
Q. -- has the first pledge of the Coleman stock; correct?

NOT A CERTIFIED COPY

020535

Page 134

A. That's correct.
And if you look back to the term sheets, on page 7, I read to you little two I, the net equity value of The Coleman Company, so there must be a defined term for "net equity value", but it basically would be after the debt that has the first claim.
Q. Which is evidenced by MS 241.
A. Yes.
Q. Thank you very much.
MR. BEMIS: Let's take a break for lunch.
THE LEGAL VIDEO SPECIALIST: The time is 12:35 p.m., and we are going off the record.
(Luncheon recess: 12:35 p.m.)

Page 135

AFTERNOON SESSION
(1:27 p.m.)

TODD J. SLOTKIN,
resumed, having been previously duly sworn, was examined and testified as follows:

CONTINUED EXAMINATION
BY MR. BEMIS:
THE LEGAL VIDEO SPECIALIST: The time is 1:27 p.m., we are back on the record.
Q. Let me hand you what has been previously marked as Morgan Stanley Exhibit 311.
MR. BRODY: Previously marked or marked today?
MR. BEMIS: It just was marked today, and your copy doesn't have a sticker number on it because we --
MR. BRODY: That's fine.
MR. BEMIS: The one we had a little bit of disassembly issues.
MR. BRODY: No problem.

Page 136

Q. Do you have Morgan Stanley Exhibit 311 in front of you?
A. Yes.
Q. Earlier, we discussed Morgan Stanley 299, which was the pledge of the Sunbeam stock by -- I think it's by -- by MAFCO Holdings Inc. Do you recall that testimony?
A. Yes.
Q. Now, that document is dated March 30th, 1998, correct, MS 299?
A. No.
Q. Excuse me, that's dated --
A. March 20th, 1997.
Q. Now --
A. Am I looking at the right document?
Q. I don't think so. Let me look --
A. It says "299".
Q. I know, I may have made a mistake.
My error, just give me one second.
I misspoke. If you will pull

Page 137

302 out.
A. Yes, here's 302.
Q. All right. Sorry for the confusion.
Earlier, we were discussing Exhibit MS 302, which you now have in front of you, which is the Third amended and restated pledge agreement which dealt with the pledge of the Sunbeam stock to the lending banks; correct?
A. Yes.
Q. All right. Now, I have handed you what we have marked as MS 311, which is entitled, again, Fifth Amended and restated Coleman guaranty dated as of March 30th, 1998 from Coleman in parentheses Parent Holdings, Inc. as guarantor in favor of lenders, et cetera.
Do you have that in front of you?
A. Yes.
Q. Now, is MS 311 a guaranty in favor of the lending banks under the term credit agreement and the revolving credit agreement which we marked as MS 300 and

NOT A CERTIFIED COPY

020536

301 earlier today?
A. I believe so.
Q. So, the documents -- this -- withdrawn. And as I understand MS 311, in its broadest sense, that CLN -- excuse me, Coleman (Parent) Holdings, Inc. is guarantying the obligations of MAFCO Finance Corporation; is that correct?
MR. BRODY: Object to the form.
A. Yes.
Q. Pursuant -- and when I say -- withdrawn. And I am referring now, of course, to the loan documents we have been discussing, MS 300 and 301.
A. Right.
Q. Okay. You may set that aside for the time being. We are essentially done with that document.
MR. BEMIS: We will get you one with a sticker on it.
Q. At the time of the closing of the merger agreement, which the record has previously established to be March 30th, 1998, had MAFCO Finance Corp. incurred any debt obligations under the term credit

agreement in the amount of $400 million?
A. Which date, March 30th, 1998?
Q. As of March 30th, 1998.
A. Yes, I believe that it was pre-existing.
Q. How much debt was existing on the term agreement as of March 30th, 1998?
A. I don't know.
Q. Who would know, if not you?
A. Who would know on a specific date?
Q. Yes, who would you ask that question if not you as the chief financial officer?
A. The controller would have a record of it.
Q. And who is that today, the controller?
A. Larry Winoker.
Q. Would you spell his last name for the reporter and me?
A. W-I-N-O-K-E-R.
Q. As of March -- strike that. Would he have the same information for the indebtedness, if any, on the term credit

agreement as of March 1st, 1998?
A. Sure.
Q. Let me ask you to shift agreements now, and focus on the revolving credit agreement, which is marked as MS 300.
Do you know the -- if there was any indebtedness by MAFCO Finance Corp. pursuant to the revolving credit agreement as of March 1st, 1998?
A. I don't remember.
Q. Would Mr. Winoker know, if someone knows that answer?
A. He would either know or he could find it.
Q. Do you know whether MAFCO Finance Corp. had any indebtedness under the line of credit, MS 300, as of March 30th, 1998?
A. I don't know.
MR. BRODY: By "line of credit", you are referring to the revolver?
A. Revolver.
Q. Yes, the "revolver" credit. Did I say "line of credit"?

MR. BEMIS: Thank you.
Q. The revolving credit agreement.
A. I still don't know.
Q. And that would be Mr. Winoker, again?
A. Yes.
Q. Is he based here in New York?
A. Yes.
Q. Same office as yourself?
A. Essentially.
Q. Under the terms of the loan documents that we have been discussing, MS 300 and MS 301 in particular, along with the pledge agreements, was there a provision whereby if the borrower or its affiliates disposed of assets that they had to make certain payments directly to the banks or their agents as a consequence of the disposition of assets?
MR. BRODY: Object, foundation. Go ahead.
A. Somewhere in the documents there will be a sharing of proceeds between what the company, MAFCO Finance, can retain versus what it has to repay.

NOT A CERTIFIED COPY

020537

Q. Would you look at the -- do you need to take a break?
A. No.
Q. Okay. If you would please look at MS 308, the term sheet, please, and tell me when you have it.
A. Okay.
Q. There is a section on page 8 with the left-hand heading Mandatory prepayments.
Do you see that?
A. Mm-hmm -- yes.
Q. Is this what you were referring to when you referred to the sharing of the payments?
A. Yes.
Q. Without taking the time to walk through each one of the long credit agreements, is the term sheet a fair summary of the mandatory prepayment provisions in the credit agreement subject to whatever detail is in the agreements themselves?
MR. BRODY: Object to form, foundation.

Go ahead.
Q. You can answer.
A. It should be.
Q. If there is any -- let me ask you a couple of questions, and if there is anything you would take exception with just let me know because I know it's a more laborious process to walk through each one of the paragraphs of the master documents.
A. Well, you know, there are times when the term sheet is -- the terms, under the term sheet, are modified somewhat when you get to the (indicating) full document.
Q. I appreciate that. And if you get to one of those points, let me know or tell me it's subject to the final documentation, and we will go from there.
A. Fine. I am not going to remember each.
Q. I understand it, these are difficult questions.
Having said that --
A. (Laughing.)
Q. -- as I understand it, if I look

at sub-paragraph A on page 8 under Mandatory prepayments of MS 308, that the first $265 million in net cash proceeds from the sale of an asset would be retained by MAFCO and its subsidiaries without any mandatory prepayment to the banks; am I reading that right?
A. Correct.
Q. Now, as of March 30th, 1998, had there been any net cash proceeds from the sale or disposal of assets such that there had been a reduction in the $265 million in sub-paragraph A that would be paid directly to MAFCO?
A. I believe it was set accordingly.
Q. Perhaps my question wasn't clear.
From the date of the credit agreements, which is -- strike that. The mandatory prepayment is a provision that is applicable both to the revolving credit agreement and the term credit agreement; correct?
A. Yes.

Q. All right. So, having said that, from the period of March 20th, 1997, which is when the agreements were signed, and the merger agreements closing, which is March 30th, 1998, had MAFCO or any of its affiliates disposed of the assets that triggered an application against the $265 million provision in sub-paragraph A as we have been discussing on page 8 of Exhibit 308?
A. I don't remember.
Q. Well, isn't -- my understanding, and you can see if this helps, is that after March 20th of 1997, and before March 30th of 1998, MAFCO had sold -- and I am using "MAFCO" as for the whole set of companies -- had sold a company called Coleman Safety & Security. Is that correct?
A. I don't remember.
Q. Well, do you remember whether the company Coleman Safety & Security was sold at some point?
MR. BRODY: By anyone?
MR. BEMIS: Well, yes, it would

NOT A CERTIFIED COPY

020538

Page 146

be sold by the owners.
Q. And I am referring, of course, to a time when it was owned by MAFCO or its affiliates, however --
MR. BRODY: Object to the form.
MR. BEMIS: Okay.
Q. You can answer, anyway.
A. I am not familiar with what that exact business is.
Q. Okay. Did you -- who --
A. But those proceeds, if they were something that was owned by Coleman, would not be (indicating) monies that they are talking about. They are only talking about the sale of the security that is pledged to the lenders, for ex-- do you understand my answer?
Q. Yes, I think I do understand your answer.
A. Sorry.
Q. No, don't be sorry, I appreciate it.
Who would know if Coleman Safety & Security had been sold in this 1997 to 1998 time period in the amount of the

Page 147

proceeds of the sale? Who would I ask today?
A. You would either have to go back to the controller or our head of taxes, and they would have to investigate it, but you would get a different outcome if it's -- if the business that you are talking about was owned by Coleman than if it was -- than if it was owned by MAFCO Finance, because the proceeds of the -- of a business sale in a normal operating unit of a publicly-owned company are retained by the publicly-owned company. Those are not -- the only proceeds that they are talking about in the MAFCO Finance loan agreement are the proceeds of the sale of publicly-owned stock that we had pledged.
Q. Who owned Coleman -- withdrawn. Who owned Coleman Safety & Security?
A. I don't know.
Q. Okay.
A. I am not exactly sure which business it is.
If you could tell me which business it is, it could refresh my

Page 148

memory. Otherwise --
Q. I have done the best I can, Coleman Safety & Security. And if you don't remember, we will move on to another question.
A. Okay.
Q. After the $265 million application, as we discussed, in paragraph A, am I correct that if there is another sale that the next 150 million then gets split 50/50 between MAFCO and its subsidiaries and the banks, which are referred to as "senior facilities" here?
MR. BRODY: Referring to the term sheet?
MR. BEMIS: Yes, again, referring to the term sheet, MS 308.
A. It could be a separate sale or the same sale.
Q. Thank you. And after the $150 million amount is used up, either in one or multiple sales, am I correct that under the credit documents, MS 300 and 301, any remaining net cash proceeds would then be applied or paid directly to the banks or

Page 149

senior facilities as used in these documents?
A. Yes, unless it was negotiated separately at that time -- differently at that time.
Q. Please look at Exhibit 299.
MR. BRODY: Do we have it?
MR. BEMIS: You should have it in there. It was the one I misspoke about earlier.
MS. DeBORD: Here is a copy.
Q. Do you have Exhibit 299 in front of you, sir?
A. Yes.
Q. If you would look, please, at page 15, and direct your attention to Section 6 Q, as in "queen".
A. Mm-hmm -- yes.
Q. Please look at Section Q, and tell me when you have read it, and I just have a couple of questions about it and Schedule 5.
A. (Pause.)
Okay, I have read it.
Q. Am I correct that, pursuant to

NOT A CERTIFIED COPY

020539

Page 150

Section 6 Q, there is a schedule attached that lists debt -- with a capital "R" -- Relevant -- capital "P" -- Party which is not debt which qualifies as intercompany debt, debt under the loan documents, and debt under the term loan documents, which I understand to be the credit agreement, term credit agreement, and the revolving credit agreement. Is that right?

A. I am not sure I understand your question.

Q. All right. Well, let me try again.

A. Is there a Schedule 5 attached?

Q. There is a Schedule 5 attached. Tell me when you have that, and then I will ask --

A. Okay, I have Schedule 5.

Q. What is Schedule 5?

A. It looks as if it is a listing of the debt of each of the legal entities that are parties to the loan agreement.

Q. And this is debt that exists as of the date of the term credit agreement and the revolving credit agreement, MS 300

Page 151

and 301; is that right?

A. (Pause.)
Well, it's definitely under the 300 and 301.
What was the rest of the question?
(The record was read.)

A. This is the debt of the different entities that were party to the agreement.

Q. So assuming there had -- and I want you to make this assumption, and just so I can understand the document -- assuming there had been no payments down of any of the debt listed on Schedule 5 as of March 30th, 1998, and assuming that there had been borrowings under the term credit agreement and under the revolving credit agreement as of March 30th, 1998, if we added up those three classifications of debt, we would have at least for the parties to the credit agreements the total amount of material debt that they have outstanding; is that correct?

MR. BRODY: Object to the form.

Page 152

A. Well, the only thing that you wouldn't have would be if there was a party that wasn't one of the loan parties and they had debt, then that debt would not be on that list.

Q. Okay. I think we are -- I think I understand what you said. Let me make sure that I do, and then we will move on to another topic.
As of March 20th, 1997, the Schedule 5 gives a listing of debt that is the obligation of the companies listed in the schedule which does, of course, not include the revolving credit debt or the term credit debt because none has yet been incurred; correct?

A. (Pause.)
No.

Q. All right. Well, let me try one more time.
In Schedule 5, is there any debt reflected under a revolving credit agreement for MAFCO Finance Corp.?

A. No, there is not.

Q. Okay. Is there any debt

Page 153

reflected in Schedule 5 under a term credit agreement for MAFCO Finance Corp.?

A. No, there is not.

Q. Was there outstanding indebtedness by those entities -- excuse me. Was there -- withdrawn. Did MAFCO Finance Corp. have outstanding indebtedness to the lenders as of March 20th, 1997 which was being, in effect, refinanced?

A. I believe so.

Q. All right. So the March 20th, 1997s were refinanced documents; is that right?

A. Refinanced and amended documents, yes.

Q. All right. Now, so as of March 20th, 1997, Schedule 5 of MS 299, as I understand it, lists out the debt other than the revolving credit debt and the term debt that might exist as of that date for the companies who are parties to the two credit agreements; is that right?

A. That's what it says.

Q. Okay. Now, Schedule 5 is not a

NOT A CERTIFIED COPY

020540

Page 154

listing -- excuse me. Schedule 5 is a listing of debt just of the companies affiliated with Mr. Perelman who are parties to the MAFCO Finance Corp. credit agreements, MS 300 and 301; right?
A. Yes.
Q. So there can be other debt by other companies affiliated with Mr. Perelman who are not on this Schedule 5; correct?
A. Yes.
Q. And, indeed, there is other debt outstanding as of March 20th, 1997 from these other companies; isn't that true?
A. There was other debt outstanding.
Q. For example, we talked about the LYONS and the senior first notes and the senior second notes in Morgan Stanley Exhibit 241, the Coleman Escrow Holdings offering memorandum. That would be an example of such debt; right?
A. I am not sure of Number 241, but there is other -- the LYONS, which is not an obligation of any of the parties here,

Page 155

would be outside of this listing.
Q. And it would also include the 600 million 475 senior secured first priority discount notes due 2001; right? (Indicating.)
A. That would be outside of the list because it is not to one of the parties on this list.
Q. And, just to close this out, so that other outstanding debt not included on the list would be the 131,560,000 senior secured second priority discount notes reflected in MS 241; right?
A. I can't read the numbers from here, but I believe you.
MR. BRODY: The numbers, again, are numbers at maturity; correct?
THE WITNESS: Yes.
MR. BEMIS: Yes.
Q. If you will look at Exhibit 301, at page 75, sir, under Section 5.01, (small O), use of proceeds. Tell me when you are there.
A. Okay, page 75 what? Then what?
Q. Sub-paragraph -- or subsection,

Page 156

excuse me, Section 5.01 (o). It's right above --
A. Yes, 5.01 yes, little O.
Q. Under Use of proceeds. Are you there?
A. Yes.
Q. Am I correct that the proceeds of the term credit agreement of $400 million were used to defease -- D-E-F-E-A-S-E -- all or a portion of -- initial caps -- Revlon Worldwide -- one word -- bonds?
A. Well, it actually says to purchase or defease all or a portion of the Revlon Worldwide bonds.
Q. What does it mean to "defease" in banking parlance?
A. If monies were owed under a bond, and you wanted to pre-pay them, sometimes there is a mechanism set up by the indenture that the trustee is responsible for that would allow this -- whatever monies would be necessary to be invested in an instrument that's acceptable to the bondholders and to the

Page 157

bond trustee so that at the maturity it would cover all principal and interest and fees thereof, therefore extinguishing said bonds.
Q. In effect, the bond is extinguished and there is substituted for the bond on some parallel terms another instrument acceptable to the bondholders, is that what that means?
A. No. It means the bond continues but that the bondholders -- let's say they are owed a hundred dollars. Let's say the interest over the next two years would be $14, and a mechanism was set up that $114 was deposited with the bond trustee for the sole beneficiary of the bondholders at maturity and invested in an instrument acceptable to the bond trustee, usually dictated by the document, typically Treasuries or some form of risk-free value, so that the bond continues to maturity but the bondholders have, in effect, the cash on hand to be satisfied in full.
Q. Is that how the term "defease"

NOT A CERTIFIED COPY

020541

is used in MS 301 at Subsection 5.02 (o)?
MR. BRODY: Object to form, foundation.
A. Yes, to purchase or defease.
Q. Correct, "to purchase" would be simply to go into the marketplace and purchase the bonds if they wanted to thereby extinguish them.
A. Right, but sometimes you can't always purchase all the bonds because you can't find the people that own the bonds. So in order to satisfy the bonds, you would have to defease them.
Q. Understood. Thank you.
MR. BEMIS: Let's stop here and change the tape, please.
MR. BRODY: Okay.
THE LEGAL VIDEO SPECIALIST: The time is 1:59 p.m., on July 7th, 2004, this is the end of tape number two of the videotaped deposition of Mr. Todd Slotkin.
(Pause in proceedings.)
THE LEGAL VIDEO SPECIALIST: The time is 2:01 p.m., on July 7th, 2004,

this is tape number three of the videotaped deposition of Mr. Todd Slotkin.
Q. Were there any major assets of MAFCO Holdings Inc. through its subsidiary Holdings that had not been pledged against existing debt as of the first quarter of 1998?
MR. BRODY: Object to the form.
A. All of the material assets were pledged.
Q. Okay, you can set that aside.
At any time under the term credit agreement or the revolving credit agreement, MS 300 and 301, from March 20th, 1997 up to, say, March 30th of 1998, had there ever been a notice of default by the banks to MAFCO Finance Corp.
A. No.
Q. Well, had there ever -- strike that. As of March 30th, 1998, was MAFCO Holdings Inc. in breach of any of the debt covenants in the loan documents, MS 300 or 301?
A. No.

Q. By pledging the Sunbeam stock pursuant to the pledge agreement of March 30th, 1998, which is -- I will withdraw the question until I get the number of the exhibit. (Pause.)
Excuse me, I'm sorry for the interruption.
Did the pledge of the Sunbeam common stock, the approximately 14.1 million shares that we identified on Schedule 1, I believe, of Exhibit MS 303 -- excuse me, 302, did that have the effect of increasing the banks' or the lenders' security under the two credit agreements, MS 300 and 301?
MR. BRODY: Object to the form.
A. It replaced the security.
Q. Which security did it replace?
A. Coleman.
Q. Coleman security. The Coleman security that had been pledged for the -- for the debt instruments we identified, the LYONS and those notes issued by the -- by Coleman Escrow; correct?
A. There was a residual value --

Q. I understand.
A. -- of equity that was pledged to the banks. That was in excess -- the amount of monies, that was in excess of the total value of the Coleman shares that we owned minus whatever debt that had stock pledged to it that had a first priority lien on that stock.
Q. Well, let's talk about what the amount of that debt was as of March 30th, 1998, so perhaps we can arrive at a net value at some point.
At the closing --
MR. BRODY: Which closing?
MR. BEMIS: I am not finished with the question.
MR. BRODY: Sorry.
Q. At the closing of the merger agreements --
MR. BRODY: Thank you.
Q. -- as of March 30th, consideration was paid by Sunbeam in connection with the merger transaction; correct?
A. Yes.

NOT A CERTIFIED COPY

020542

Page 162

Q. And do you know what that consideration was?
A. There was cash and shares of Sunbeam.
Q. And was there an assumption of debt as well by Sunbeam?
A. Yes, there was.
Q. The amount of the securities, the Coleman -- excuse me. The amount of the common stock, Sunbeam stock, we have established was a shade under 14.1 million shares; right?
A. Correct.
Q. And the amount of the cash, based on prior testimony, is just a few dollars under $160 million. Is that consistent with your recollection?
A. Approximately.
Q. What is the amount of debt that Sunbeam Corporation assumed from the seller's side of the transaction, the MAFCO-affiliated companies, as part of the consideration in the merger?
A. I don't remember the exact number or the approximate number.

Page 163

Q. Well, was it in excess of a billion dollars?
A. Was the amount of the --
Q. Assumed debt in excess of $1 billion.
A. Are you combining the operating company debt with the --
Q. I am combining all of the debt that was assumed as a consequence of the merger agreements and then paid by Sunbeam.
MR. BRODY: Object to the form of the question.
A. You are mixing apples and oranges.
Q. Okay, tell me why.
A. Well, when you buy an operating company, there is debt that is on the operating company, and the value that you are willing to pay for that operating company, that trades on the Stock Exchange, is the value after that debt. In addition, above that number, there could be additional debt, if there was debt against the pledge of the shares,

Page 164

which in this case there was.
Q. So what's the total amount of the debt that was assumed and paid by Sunbeam Corporation after the merger?
A. I don't know the exact or the approximate number.
Q. Who would know that?
A. Certainly, the chief financial officer of Coleman.
Q. Mr. Engleman?
A. Mr. Engleman might -- he would have known it at the time. Whether he knows it now, I don't know -- whoever was the controller of the -- of MacAndrews Company, we could -- you know, go back in the records and try to figure out what it was.
Q. Am I correct that as a consequence of the merger and as part of the consideration, all of the debt of CLN Holdings Inc. was assumed by Sunbeam?
MR. BRODY: Object to form, foundation.
Go ahead.
A. Is the --

Page 165

Q. Do you want to see the merger agreement?
A. No.
Q. Would that help?
A. I wasn't looking for the merger agreement, I was looking for the first and second secured (indicating) instruments and who the issuer was so I could answer your question.
Q. Okay. I will give it to you. It was Coleman Escrow Corp., but I think this is probably a year or two earlier, you can get the figures you are looking for.
A. I am not trying to get the figures, I am just trying to figure out if that was the entity that you are referring to. Sometimes the names of the companies are --
Q. Confusing?
A. -- hard for me to remember.
(Pause.)
A. So the -- I am looking at an organization chart in MS 241, and it doesn't refer specifically to the entity

NOT A CERTIFIED COPY

020543

Page 166

that you asked me about.
Q. That is because that document (indicating) is earlier than the merger agreement and there were changes in the organization. That's why I didn't refer you to it earlier.
A. Okay.
Q. You don't have to take my word for it, but there were some changes from --
A. I am not disagreeing with you --
Q. And I am not trying to be quarrelsome, I am just trying to explain the answer to you. Sometimes it is confusing.
Here you go. Here is some water.
A. Thank you very much.
Q. You are welcome.
Well, let's go back to the question of the assumption of debt at the closing, and see if we can sort out what some of it was, based upon your knowledge as the chief financial officer.
MR. BRODY: Objection to the

Page 167

characterization.
MR. BEMIS: Let the ice settle.
Q. Let me hand you what's been marked as MS 166.
If you would turn to the page marked F 27, I will give you a Bates numbered page for it, so it will be easier to find, it is Bates number page CPH 1326585 and it's headed CLN Holdings Inc. and subsidiaries consolidated balance sheets.
A. 6585?
Q. 6585, CPH 1326585.
A. Okay, I think I have got the same page you do.
Q. Is it entitled Consolidated balance sheets CLN Holdings Inc. at the top?
A. Yes.
Q. Okay. Look down under the heading Liabilities and stockholders deficit on the balance sheet, and tell me when you are there.
A. Yes.
Q. Do you see long-term debt for

Page 168

the periods December 30th, 1997 and 1996?
A. Yes.
Q. All right. What was the amount of long-term debt -- well, withdrawn. Just as a foundational matter, what we are looking at is the audited financial statements of CLN Holdings Inc.; correct?
You can take a look --
A. I didn't prepare them.
Q. I assume you are not the certified auditor.
A. No, but you picked a page and said look at it, so I don't know what -- oh, I know it's part of the Morgan Stanley offering memorandum.
Q. Well, you know that the --
A. So let me go back and see what this is --
Q. If you like, if you will turn to page F -- I will get the right number here for you -- the footnotes are longer than the financial statements --
A. It's on page --
Q. 55, F 55; correct?
A. I wouldn't have picked F 55,

Page 169

but --
Q. I wouldn't have picked that one, either.
A. But I am on page -- the last four digits are 6557 and it says in it: "The consolidated financial statements of CLN Holdings and its subsidiaries included in this offering memorandum have been audited by Ernst & Young LLP".
Q. Were those the auditors of CLN Holdings at this time, 1997?
A. Yes.
Q. All right. Now, go back now to F 27.
A. Right.
Q. And the long-term debt is shown there as $980,447,000 as of December 31st, 1997; correct?
A. Correct.
Q. Was that long-term debt assumed by Sunbeam as a consequence of the merger transaction which closed March 30th, 1998, subject to whatever adjustment occurred within the three months prior to the merger?

NOT A CERTIFIED COPY

020544

Page 170

A. I don't know whether it was assumed, paid off, defeased, but somehow it had to be -- or it just could have been assumed by the company, I don't know, but there is that amount of debt.
Q. That's pretty close to a billion dollars, isn't it, 980 million?
A. Well, I guess it all depends who you are.
If I had the extra $20 million, I would think that would be a good thing for me personally.
Q. Me, too.
A. It's more than a rounding error.
Q. Me, too. But if we round up to the nearest hundred million here, we get to a billion dollars on the debt, don't we, sir?
A. Yes.
Q. Are you aware of any material reduction in the CLN long-term debt of $980,447,000 that's reflected on page F 27 of Exhibit MS 166 prior to the closing of the merger transaction on March 30th, 1998?

Page 171

A. I am not aware of any.
Q. Now, after the closing of the -- strike that. As of the time of the closing, CLN Holdings Inc. was a wholly-owned subsidiary of one of Mr. Perelman's companies; correct?
MR. BRODY: Object to the form.
The confusion on "closing", you mean prior to March 30?
MR. BEMIS: Let me try again.
A. Prior to March 30, Coleman was a publicly-owned company.
Q. We are talking about CLN Holdings now. Let me just focus on that.
Before March 30th, 1998, CLN Holdings was a wholly-owned subsidiary of one of Mr. Perelman's companies; right?
A. I have to check to make sure.
Q. Okay. I will tell you right now, it's a wholly-owned subsidiary of Coleman (Parent) Holdings, Inc., if that helps you.
A. Okay.
Q. Now, after the closing, Mr. Perelman's companies -- or, excuse me,

Page 172

CLN Holdings Inc. merged into the Laser Acquisition Corporation.
MR. BRODY: Is that --
Q. Is that correct?
MR. BRODY: Object to the form.
Q. You don't know?
A. It was an acquisition.
Q. Okay.
A. There was a merger. Since I wasn't party to it, I can't tell you exactly how the entities worked but, at the end of the day, Sunbeam acquired three companies that day, one of them was Coleman.
Q. As a consequence of the -- as a consequence of the closing of the merger on March 30th, 1998, the $980,447,000 of long-term debt that appears on the CLN Holdings Inc. and subsidiaries consolidated balance sheet no longer became an obligation of Mr. Perelman or any of his companies; is that right?
MR. BRODY: Object to the form.
A. That's not actually -- it's not exact.

Page 173

Q. Well, tell me why it's not exact.
A. Well, because there is a difference between debt that is owed or guarantied by Mr. Perelman and there is -- between debt that is owed by companies that are the majority of which or a portion of which might be owned by Mr. Perelman that are not guarantied by Mr. Perelman.
Q. I don't think I said anything about guaranties. Maybe the question may have appeared too broad. Let me see if I can try it again.
As of the closing -- withdrawn. Immediately before the closing, CLN Holdings Inc. and its subsidiaries, which is wholly-owned by Mr. Perelman's entities, had long-term debt of $980,447,000, at least, as of December 31st, 1997; is that right? According to the financial statement.
A. Yes.
Q. After the closing on March 30th, 1998, subject to any adjustment in the

NOT A CERTIFIED COPY

020545

Page 174

long-term debt, that long-term debt of CLN Holdings became an obligation of Sunbeam -- became an obligation of Sunbeam Corporation.

MR. BRODY: Object to the form.

A. It either became a -- it's either assumed, part repaid, or defeased in some manner.

Q. Okay, thank you very much.

A. You can't buy the stock without paying off the debt.

Q. That's all I need. Thank you very much. You can set that aside. I will take that back, we are all done with that.

Did you participate in any discussion about hedging the Sunbeam stock following the closing on March 30th, 1998?

A. Could you restate the question?

Q. Sure. Did you participate in any discussions with anyone about hedging the 14.1 million shares of Sunbeam stock following the closing on March 30th, 1998 of the merger transaction?

A. I -- at one of the breakfast

Page 175

meetings that we had, the topic came up to whether or not it was allowed under the agreement, and I believe that the conclusion was that it wasn't.

Q. That hedging was not permitted under the merger agreements?

A. Without notification and filings and -- yes.

(Deposition Exhibit MS 86, previously marked for identification.)

Q. Let me show you what's previously been marked as MS 86, which is previously -- well, let me withdraw that. I am showing you what's been marked previously as MS 86, which I understand to be a portion of Mr. Maher's calendar.

And if you turn to the very last page --

MR. BRODY: Can I have a copy?

MR. BEMIS: Sure. All you have to do is ask, and if I forget --

MR. BRODY: Yes, I did.

Q. Do you have that document in front of you? And are you on the last

Page 176

page?

A. Yes.

Q. There is at 3 p.m. noted a "per", and it says: "Slotkin slash Citibank Steve Sellhausen", S-E-L-L-H-A-U-S-E-N, and then some other individuals.

Do you see that?

A. Yes.

Q. Did you attend that meeting?

A. I don't know. I don't remember.

Q. Well, do you know who any of the individuals besides yourself, of course, who are listed behind your name?

A. I know Mr. Sellhausen, I know Mr. Dewey. I don't remember the others.

Q. Who is Mr. Sellhausen?

A. Mr. Sellhausen worked at the time for the administrative agent from MAFCO Finance.

Q. What does that mean, "administrative agent from MAFCO Finance" -- oh, pursuant to the loan documents?

A. MS 308, MAFCO Finance Corp.,

Page 177

there is an administrative agent on page 1, Citibank. He, at the time, was the representative of Citibank from MAFCO Finance, for the administrative agent.

Q. So he worked for Citibank.

A. Yes.

Q. Okay. Well, I didn't understand that because you didn't use "Citibank" in your answer, I apologize.

A. I said "administrative agent", I was trying to be helpful.

Q. And you were.

A. Sorry.

Q. Finally, if you had said "administrative agent from Citibank", I wouldn't have asked the second question. I thought that's what it was.

All right. So Mr. Dewey, did he work for Citibank, as well?

A. I know Mr. Dewey at one point worked for Citibank. I don't know if on that date he worked for Citibank.

Q. Now, there is then at 3:01 p.m. a reference to "fourth floor conference re: Sunbeam stock hedging."

NOT A CERTIFIED COPY

020546

Page 178

Do you see that?
A. Yes.
Q. Did you attend a meeting about that time at the fourth floor conference room on the subject of Sunbeam stock hedging?
A. No.
Q. Did you attend any meeting on or about March 30th, 1998 on Sunbeam stock hedging?
A. No.
Q. Did you attend a meeting with Mr. Sellhausen and Mr. Dewey on March 30th, 1998?
A. It's possible. I don't recall.
Q. Do you --
A. But I don't -- my recollection -- they are not involved in hedging, Sellhausen is an administrative agent for a loan.
Q. Well, do you know what the reference -- do you know what the reference is to the "fourth floor conference re colon Sunbeam stock hedging" as shown on Mr. Maher's calendar for March

Page 179

30th, 1998?
A. No, I do not.
Q. So --
A. It looks to me as if Mr. Maher double-booked.
Q. Well, we will have to ask Mr. Maher.
A. You have to ask Mr. Maher.
Q. That's the best we can do today.
MR. BEMIS: Do you want to give me 86 back, please?
A. I also believe "WGN" must be Will Nesbitt --
Q. Will Nesbitt?
A. -- who worked for Mr. Maher. I see him on the next -- on the Tuesday, March 31st. I see the same reference, so there is a person that worked for Mr. Maher.
Q. I am going to hand you what we will mark as MS 195.
(Deposition Exhibit MS 195, document believed to be the calendar for Mr. Will Nesbitt, marked for identification, as of this date.)

Page 180

MR. BRODY: This is a new one?
MR. BEMIS: Yes.
MR. BRODY: But it hasn't been marked before?
MR. BEMIS: No, not to my knowledge.
MR. BRODY: Thank you.
Q. Okay. I have handed you what the court reporter has marked as MS 195. And this is, I believe, the calendar for Mr. Will Nesbitt.
And if you will turn to the last page of the document, the last three digits, 686, tell me when you are there.
A. I am there.
Q. There is an entry between the time frame of 3 and 3:30 p.m. reading: "Citibank meeting re: hedging Sunbeam stock fourth floor large conference room attendees colon" and then the first person is "TS". Is that you?
MR. BRODY: Object to form.
A. I don't know.
Q. Well, do you know any other "TS" who is either employed by Citibank or

Page 181

employed by MacAndrews & Forbes Holdings, Inc. such that we might be able to identify the person?
A. Not offhand.
I haven't given it any thought.
Q. The other people identified here are "JRM". Is that Mr. Maher?
MR. BRODY: Same objection.
A. I believe so.
Q. Okay. And Mr. Sellhausen, that would be the Mr. Sellhausen from Citibank we talked about earlier?
A. As far as I know, there is only one Mr. Sellhausen.
Q. And Mr. Dewey, likewise, from Citibank?
A. I don't remember whether -- I knew he worked at Citibank at some point, I don't know when he left Citibank.
Q. By reviewing this calendar entry, did you have a meeting -- does this in any way refresh your recollection whether you had a meeting on March 30th, 1998 with Citibank representatives about Sunbeam stock hedging either on March 30th

NOT A CERTIFIED COPY

020547

or somewhere very close to that?
A. No.
Q. So, do you have any recollection of discussing Sunbeam stock hedging other than at the breakfast meeting that you have told me about earlier?
A. Not that I can remember.
Q. Who was at the breakfast meeting where the Sunbeam stock hedging was discussed? Other than yourself, obviously.
A. Um -- Mr. Perelman, Mr. Gittis, Mr. Maher.
There may have been others, I don't remember.
Q. When did this meeting take place?
A. Either before or after March 30th, 1998.
Q. Can you be anymore precise than that?
For example, within a week of the closing or within a week after the closing?
A. Not really. I mean, I just

remember that the topic came up and that we talked about it.
Q. Do you recall anything that you talked about other than what you have already told me on the subject of hedging the Sunbeam stock?
A. No. I think I said I couldn't be -- I didn't think it could be done.
Q. Did you ask -- withdrawn. Did anyone at the breakfast meeting suggest receiving an opinion of legal counsel whether there could be a hedging of the Sunbeam stock?
MR. BRODY: Answer that "Yes" or "No".
A. Can you repeat the question?
Q. Sure. At the breakfast meeting --
MR. BRODY: I'm sorry, before you do. The reason for my objection is that I don't want you to disclose what might be a privileged communication. I understand Mr. Bemis just to be asking a "Yes" or "No" question, and if you answer

it that way we will find out if there is a privilege issue.
Sorry about that.
Q. Did anyone at the breakfast meeting we have been talking about suggest that MacAndrews & Forbes obtain a legal opinion concerning the ability to hedge the stock under the documentation of the merger or whatever legal requirements there were existing at that time?
A. I don't recall.
(Deposition Exhibit MS 295, document, the last page is entitled MAFCO Holdings Inc., marked for identification, as of this date.)
Q. Let me show you what's been marked as MS 295.
MR. BRODY: That's another new one?
MR. BEMIS: Yes, it is.
Q. Do you have Plaintiff's Exhibit 295 in front of you?
A. Yes.
Q. Turn to the last page, entitled MAFCO Holdings Inc., then it's Structured

equity products hedging techniques is the title.
Do you see that?
A. Yes.
Q. And there is -- it then says below there: Presented by acquisition finance and then lists the names of various individuals, several of which we have identified at Citibank; correct?
A. Yes.
Q. And it's also dated March 30th, 1998, the day we identified on two calendars; correct?
A. Yes.
Q. Now, having looked at this document, have you ever seen the presentation -- well, strike that. Have you ever seen this page of this document?
A. I don't remember.
Q. Have you ever seen a presentation by Citibank to MAFCO Holdings Inc. on the subject matter of structured equity project -- products hedging techniques, as this document is titled?
A. I don't remember.

NOT A CERTIFIED COPY

020548

Page 186

Q. Do you know who Dan Bendernagel, B-E-N-D-E-R-N-A-G-E-L, is?
A. No.
Q. Look at the first page of Exhibit 295, which has some business cards photocopied.
Tell me when you are there.
A. Yes.
Q. Do you recognize any of the individuals whose business cards are photocopied onto this page or the names which appear in handwriting at various locations on the same page?
A. No.
Q. The doc-- there is handwriting at the top, "Sunbeam hedging", and then "Goldman Sachs & Co." below.
Do you see that?
A. Yes.
Q. Did you attend any meetings with any representatives of Goldman Sachs & Co. concerning hedging of Sunbeam stock?
A. I don't remember meeting any of these people, recognizing any of their names, or attending any meetings.

Page 187

Q. Do you recall any internal discussion at MacAndrews & Forbes Holdings, Inc., whether at the breakfast meetings or at the office, about any meetings with Goldman Sachs & Co. about hedging Sunbeam stock?
A. No.
(Pause.)
MR. BEMIS: Let me just take a five-minute break here.
THE LEGAL VIDEO SPECIALIST: The time is 2:43 p.m., we are going off the record.
(Recess taken.)
THE LEGAL VIDEO SPECIALIST: The time is 2:51 p.m., we are back on the record.
MR. BEMIS: Ms. Reporter, will you mark, as Exhibit 297, a four-page document, entitled Hedging and monetization strategies.
(Deposition Exhibit MS 297, four-page document, entitled Hedging and monetization strategies, marked for identification, as of this date.)

Page 188

Q. Sir, please take a minute and look at MS 297, which you have in front of you, and let me know when you are done. And I will tell you that I think the document is not in the proper order, although it is now stapled the way we received it.
A. (Pause.)
Okay.
Q. Have you seen this document or any portion of it before?
A. I don't remember it.
Q. Let's look at the last page. Actually, let's look at the third page first, which is Bates numbered CPH 2010678.
Are you there?
A. Yes.
Q. Did you send this fax cover sheet and three additional pages then to Mr. Dickes?
I mispronounced his name again, sorry.
A. The -- it was sent under my name, yes. I didn't do the actual

Page 189

sending.
Q. Well -- okay.
Did you instruct someone to send it on your behalf?
A. I don't remember.
Q. Did you receive -- excuse me. Are the other pages -- or, strike that. Are the pages that were attached to the fax cover sheet the first two pages of MS 297 and the last page, which is a cover -- fax cover page it appears from Kate W. Cook, C-O-O-K.
A. What's the question?
Q. Did you send the three pages that are -- the balance of this exhibit, to Mr. Dickes?
A. I don't remember, I don't remember the document.
Q. Do you know Kate W. Cook?
A. Yes.
Q. The name appears on the fourth page.
A. Yes.
Q. Who is Ms. Cook?
A. She worked at the time for

NOT A CERTIFIED COPY

020549

Bankers Trust.
Q. Did you -- had you spoken to her before she apparently faxed to you the first two pages of Exhibit MS 297?
A. I don't remember speaking to her.
I mean, I talk to her all the time about lots of different things, but I don't remember talking to her about this.
Q. When you say "about this", let me ask you specifically, did you discuss with Ms. Cook possible hedging and monetization strategies as set forth in the first two pages of Exhibit MS 297?
A. I think I indicated I don't remember doing so.
Q. Did you see this document in your deposition preparation?
A. No.
Q. Were you asked by anyone at MacAndrews & Forbes Holdings Inc. to discuss with anyone outside of the company possible hedging strategies for the Sunbeam stock?
A. Not that I recall.

Q. Do you know where Ms. Kate W. Cook would have gotten the information that is set forth in the first two pages of MS 297, if not from you?
A. She could have talked to somebody else at MacAndrews & Forbes.
Q. Do you know if she did so?
A. I don't know.
Q. Do you know why she sent you MS 297, or at least three of the four pages?
A. No.
Q. Why did you -- did you send her fax to you to Mr. Dickes, as indicated on page 3 of MS 297?
A. It appears I did.
Q. Why did you do that?
A. Since I don't remember the document, I don't remember the conversation, I would have to speculate and I don't know.
Q. Well, recognizing that you can't recall, what would be the reason that you would send it to Mr. Dickes as opposed to somebody else, like Mr. Maher?

MR. BRODY: Object to form.
A. Perhaps Mr. Dickes asked Kate Cook for information.
Q. Did you --
A. And she certainly had my telephone number so, I mean, I don't remember.
Q. Did Mr. Dickes ever discuss with you MS 297 after you faxed Ms. Kate Cook's attachments to Mr. Dickes?
A. Not that I recall.
Q. You can set that aside.
MR. BEMIS: Ms. Reporter, would you mark, as MS 298, a communication from Shearman & Sterling, dated April 23rd, 1998, to the MAFCO Finance Lenders, initial caps, from Maura E. O'Sullivan.
(Deposition Exhibit MS 98, communication from Shearman & Sterling, dated April 23rd, 1998, to the MAFCO Finance Lenders, from Maura E. O'Sullivan, marked for identification, as of this date.)
Q. Do you have MS 298 in front of

you?
A. Yes.
Q. Did you -- please take a moment and look at it, and then tell me when you feel comfortable with a couple of questions.
And, obviously, you can look at it if I ask you anything real specific.
A. (Pause.)
Okay.
Q. My first question, sir, is, did you receive a copy of this, as is indicated on page 2 under the heading Distribution.
A. I don't remember the document.
Q. The Maura E. O'Sullivan, she is the attorney that we identified earlier who worked on the credit agreements and, in particular, the term sheet, I believe it was February 12th, of 1997. Do you recall her name?
A. She was a lawyer from Shearman & Sterling.
Q. And now, had you participated in any discussions with anyone up to April

NOT A CERTIFIED COPY

020550

Page 194

23rd, 1998, about modifying the MAFCO Finance Credit Agreements and the MAFCO Guaranty, initial caps on those, to permit MAFCO and its subsidiaries to enter an equity hedge with regard to the Sunbeam capital stock?
A. I don't recall that.
Q. Do you know why --
A. Did it actually go into effect?
Q. That's one question I have for you. I mean, that's why we are here asking questions, and I will ask you that in a second.
Did you -- withdrawn. Was there a working group within MacAndrews & Forbes Holdings Inc. assigned to investigating the hedging of the Sunbeam stock?
A. I don't know, I think I have answered that.
Q. Mr. Savas, Paul G. Savas, S-A-V-A-S, what was his position at the time of this document, April 23rd, 1998?
A. I believe he was a vice president.
Q. What was his area of

Page 195

responsibility as a vice president?
A. I don't recall. He didn't work for me.
Q. Do you know who he did work for?
A. He worked for Mr. Woodland.
Q. Mr. Woodland appears below your name, Gregory J. Woodland.
MR. BEMIS: Just like it sounds.
Q. What was his position at MacAndrews & Forbes Holdings Inc. in 1998 as -- let's say as of April 23rd, 1998.
A. He was a vice president, I believe.
Q. And in what area?
A. I don't know the specific area. He didn't work for me.
Q. Who did he work for?
A. Mr. Engleman.
Q. And Mr. Engleman, at this time, April 23rd, 1998, he was the CFO of MacAndrews & Forbes Holdings Inc.?
A. I think that's the timing, yes.
Q. And Mr. Dickes, as of April 23rd, 1998, what was his position, again?
A. He was an attorney.

Page 196

Q. At MacAndrews & Forbes?
A. Yes.
Q. And he reported to Mr. Schwartz then at this time?
A. Yes, he did.
Q. Okay. Now, turning to page 1 -- well, strike that. Did you have any meetings with any of the people on the distribution list within MacAndrews & Forbes about the proposed modification to the MAFCO Finance credit agreements?
A. I don't recall.
Q. Am I correct, sir, that the MAFCO credit -- excuse me. Am I correct -- withdrawn. Am I correct, sir, that the MAFCO Finance Credit Agreements, which are referred to on page 1 of MS 298, is a reference to the term credit agreement and the revolving credit agreement that we discussed earlier as MS 300 and 301?
MR. BRODY: Object to form.
A. I believe so. You lost me in some of the things, but I think it's the same.

Page 197

Q. And is the MAFCO Guaranty, initial caps, the guaranty that we discussed earlier as Exhibit 299?
A. Yes.
Q. Would you agree with me, sir, that -- strike that. Are the people who are listed below Distribution, on page 2, attorneys or bank representatives who -- let me withdraw the question and start over.
Are the banks that are identified in the list under Distribution, on page 2, are those banks that were lenders under the credit -- term credit agreement -- excuse me, or the revolving credit agreement?
A. The best of my recollection, yes.
Q. What was the -- strike that. Did you have any discussions with anyone, whether inside MAFCO or outside of MAFCO, concerning the proposed modifications Ms. Maura E. O'Sullivan sent on April 23rd, 1998? Assuming that all of them received it.

020551

NOT A CERTIFIED COPY

A. I don't remember being involved in the hedging discussion.
Q. If you received MS 298, and I recognize that you don't remember receiving it, if you weren't involved in the hedging discussions, would you have directed this document, MS 298, to somebody else in the company and say, for example: I have this document, but I am not involved in this?
MR. BRODY: Object to the form.
A. No.
Q. What would you have done with the document?
Would you have ignored it?
A. If it wasn't meant for me, yes.
Q. Did you call Ms. O'Sullivan, just as an example, and say: Ms. O'Sullivan, why are you sending me this document? I don't have anything to do with this?
A. I think we have gone over the point. I don't remember receiving the document, so that if all the other things that you want to ask after that really

isn't going to get any deeper into it. I mean, if I don't remember the document, I can't remember what I did with the document.
Q. Well, my question may not have been real clear to you, and I will try one more time, and then we will go on to something else.
If a lawyer from a law firm like Shearman & Sterling sent you something which is significant -- as significant as pledging or hedging -- excuse me, 14.1 million shares of Sunbeam stock, and you are not the intended recipient of the document, what steps would you ordinarily take in your business to see that the right person got the document?
A. Well, if you look at the distribution list, I am not the only person from MacAndrews & Forbes Holdings that got a copy of it. If I was the only person that had received a copy of it, then I would go to whoever else -- may go to Barry Schwartz and ask him: I received this, I don't know, what's it about. But

there are other people that received it, so if they -- if they are familiar with what was going on, then there was nothing else that I could add to it.
Q. All right. You can set the document aside.
MR. BEMIS: Let me see 298.
MR. BRODY: That was 298.
MR. BEMIS: That was 298, I'm sorry.
Q. Did you have any discussions at any time with anyone associated with Morgan Stanley concerning the Sunbeam/ Coleman merger transaction?
A. Prior to March 30th, 1998?
Q. Well, that's a fair question. Let me ask it again, and we will break it out for you.
Let's do before the signing of the merger agreements, which was February 28th, 1998, did you have any discussions with anyone at Morgan Stanley about the merger transaction?
A. No, not that I can recall.
Q. Did you receive any documents

from Morgan Stanley before that time about the merger transaction?
A. I don't remember if I was on the distribution list.
If I was on the distribution list, I am sure I got the copies of volumes of documents.
Q. What distribution list are you referring to?
A. You talked about the merger agreement.
Q. Right.
A. So it must have been -- that's what I am referring to, a distribution list for the merger agreement or any other documents from Morgan Stanley.
Q. I am not aware of any distribution list before possibly May of 1998 for the merger agreement where your name appears.
A. Okay.
Q. No, I am just saying, are you aware of any such document?
A. I am not aware of any document about the distribution list having a date.

NOT A CERTIFIED COPY

020552

Page 202

All I am aware of is, you asked me if I received a copy. I said if I -- I don't know if I received a copy. If I did receive a copy, it was because I would have been on a distribution list.
Q. Did you look at any documents yesterday in your preparation that came from Morgan Stanley?
A. I don't think so.
Q. Did you --
A. Well, the convert came from Morgan Stanley.
Q. The which now?
A. The convert.
Q. The convert?
A. The convertible debenture that was issued, the $2 billion.
Q. Oh, excuse me, the document that was marked as MS 166, is what you are referring to?
A. I don't know what it was.
Q. The zero coupons --
A. The ones that were issued in conjunction with the acquisition of the three companies on the same date.

Page 203

Q. That document's dated March 19th of 1998, and I was actually directing my questions now to before the signing of the merger agreements on February 27th -- let me just close out on this, and then we will go to the next one and, hopefully, we will be done.
Before March -- excuse me, before February 27th, 1998, did you have any communications of any kind with anyone from Morgan Stanley, be it writing, E-mail telephone, conference calls, face-to-face meetings, that you can recall that are in connection with what becomes the Coleman/Sunbeam merger?
A. No, not that I can recall.
Q. Okay. After February 28th, did you have any communications with anyone from Morgan Stanley? And, again, "communications" used in its broadest sense -- writings, E-mails, face-to-face meetings, telephone calls, conference calls -- on the subject matter of the Sunbeam/Coleman merger?
A. After March 30th, yes.

Page 204

Q. Okay. Fair enough.
What was -- who did you speak to after -- withdrawn. Who did you -- withdrawn. What communication did you have after March 30th, 1998 with anyone from Morgan Stanley?
A. There were bank meetings from June afterwards, from June of '98 on that included representatives from Morgan Stanley, First Union, and Bank of America. So I had repeated meetings, in person and telephone calls, with representatives of each institution, including -- I think his name is Mitch Petrick. There is a whole group of people from Morgan Stanley over the next year that I have -- that were assigned to the account. There was Bram Smith, there was Bill Reid, R-E-I-D, sorry, Bram is B-R-A-M. There was someone, his name was Michael Hart, H-A-R-T, I think, all involved in the restructuring of and workout on Sunbeam after the fraud came to light.
Q. Now, when you met with these people in connection with the bank

Page 205

meetings, this was in connection with the bank facility that Sunbeam closed in connection with the merger transaction borrowing, I think approximately $1.2 billion, if I recall correctly, from various -- the various banks you identified?
A. I think it was about 1.7 billion.
Q. Well, whatever the number is.
A. But it was in the conversations after the board of directors of Sunbeam had thrown out the senior managers of Sunbeam and asked if -- asked the MacAndrews people if they had any managers that they could use to manage Sunbeam in light of the problems with the financials.
Q. Did you -- so this would be after June 15th of 1998 when Mr. Dunlap was discharged?
A. It was after Mr. Dunlap had been discharged, and it was after the board of directors had asked the MacAndrews people to make available its -- some of its managers to help run the company because

NOT A CERTIFIED COPY

020553

Page 206

the company was in problems.
Q. Now, in all of these meetings that you had with the people that you have identified and associated with Morgan Stanley, did any of them make any statements to you that you considered to be evidence that Morgan Stanley had committed any fraud?
MR. BRODY: Object to the form.
A. I don't remember any of the Morgan Stanley people telling me that they committed fraud.
Q. Did they make any statements that would suggest to you in the course of -- well, strike that. Do you remember how much money Morgan Stanley Senior Funding loaned to Sunbeam in connection with the transaction?
A. I don't remember the exact amount.
Q. It was in excess of $650 million; wasn't it?
A. Approximately.
Q. Can you think of any reason why Morgan Stanley would want to participate

Page 207

in a fraud and loan $650 million to Sunbeam?
MR. BRODY: Object to the form.
A. Can you restate the question?
Q. Can you think of any reason why Morgan Stanley wanted -- would have wanted to participate in a fraud so that it could loan Sunbeam over $650 million?
MR. BRODY: Same objection.
THE WITNESS: Should I answer?
MR. BRODY: If you can.
A. Perhaps they -- perhaps Morgan Stanley had more to gain by closing the transaction than losing by not closing, I don't know.
Q. So do you know anything that Morgan Stanley had to gain that was greater than the 650-plus million dollars that it lost in the bankruptcy proceeding of Sunbeam?
Let me rephrase the question.
A. I don't believe Morgan Stanley lost $650 million in the bankruptcy proceeding. I believe that the banks did exchange some of their debt for equity and

Page 208

still retained some amount of debt outstanding and they took over ownership of the company with the other banks. That's what I remember.
Q. Do you recall -- are you aware of, quote, anything Morgan Stanley could gain, closed quote, by loaning $650 million to Sunbeam in connection with this "fraud", as you have called it?
A. I wasn't the only person that -- I referred to it as a "problem". There were -- I think it's been referred to by many people as a "fraud".
Q. I thought you had used the word "fraud" earlier in an answer, perhaps I misunderstood you, but we will call it the "problem" at Sunbeam.
Can you think of anything that Morgan Stanley had to gain by -- at Sunbeam, by loaning $650 million if it had knowledge of the problems at Sunbeam?
MR. BRODY: Same objection.
THE WITNESS: Am I instructed to answer?
MR. BRODY: You can answer if

Page 209

you want -- if you can, I am not instructing you not to answer, I am just making my objection for the record.
A. Perhaps at the time, prior to closing, they were not aware of the extent of the problems and they made a decision to proceed.
Q. Earlier, in -- when you say "to proceed", you mean proceed with the closing of the transaction, the merger transaction, and the financing of it?
A. Yes.
Q. Earlier in the deposition, I asked you a question that your attorney instructed you not to answer. It was about your compensation, I believe.
MR. BEMIS: And you said you would consider it again. Have you had an opportunity to do so?
MR. BRODY: I have, and I am not changing my instruction.
MR. BEMIS: Okay.
I have nothing further for today, and I thank you very much for

020554

NOT A CERTIFIED COPY

Page 210

your courtesies, and perhaps we will see each other again under more pleasant circumstances.

MR. BRODY: I have just a few questions, and I would like to examine about Exhibit 166.

I am not sure if you have a copy of that anymore, Mr. Slotkin --

MR. BEMIS: We will get you a copy, if it's not there.

MR. BRODY: It's the Sunbeam zero coupon offering.

BY MR. BRODY:

Q. Now, you were asked some questions about page F 27 and, in particular, about the long-term debt number from year-end 1997 of approximately $980 million.

Do you remember those questions?

A. Correct.

Q. Up at the top, this document, page F 27, is referred to as a Consolidated balance sheet. Do you know what it's a consolidated balance sheet of?

A. For CLN Holdings and its

Page 211

subsidiaries.

Q. Do you understand what subsidiary was consolidated within this balance sheet for purposes of this document?

A. The 82-plus percent of Coleman that we owned.

Q. So the public company, The Coleman Company, was consolidated into this balance sheet for this reporting purpose; is that correct?

MR. BEMIS: Objection, leading, form.

Q. You can answer.

A. Yes.

THE WITNESS: I don't have anybody to tell me whether I can answer. (Laughing.)

A. Sorry.

Q. That's okay. Of that $980 million listed on the consolidated balance sheet, do you know how much of that was owed by Coleman? That is, the public company.

A. No.

Page 212

MR. BEMIS: Objection.

A. No.

Q. Do you know how much of that was owed by CLN Holdings Inc. or some other company in which Mr. Perelman had an ownership interest?

A. No, not the exact number.

Q. If I were to tell you, sir, that approximately $450 million of that 980 million was owed by Coleman, the public company, let's use that as a assumption for this question, is that 450 million money that CLN Holdings or any other MAFCO entity had to pay?

MR. BEMIS: Objection, form.

A. No.

Q. As to --

A. It's the obligation of the operating company.

Q. That is, the public company to Coleman.

A. Yes.

Q. If the public company, Coleman, did not pay that 450 million, would there be any corresponding obligation to a

Page 213

company owned by Mr. Perelman, such as MAFCO?

MR. BEMIS: Objection, form, foundation.

A. No.

Q. Now, after the deal was done, and the merger that we have discussed today took place, and Coleman became an entity owned or controlled by Sunbeam or one of its subsidiaries, did that debt remain the obligation of Coleman Companies, the public company?

MR. BEMIS: Objection, form, foundation.

A. I am not sure I understand the question.

Q. Well, let me withdraw that, I will ask a different one.

Now, we have talked about the portion of the $980 million that was the responsibility of Coleman. I would now like to turn my attention to any portion of that debt that was the obligation of CLN Holdings.

Do you know if any of that debt

NOT A CERTIFIED COPY

020555

was the obli-- or what portion of that 980 million debt was the obligation of CLN Holdings?
A. No.
Q. Stating just for purposes of an assumption for this question, were we to assume that, let's say, 500 million or 525 million of that 980 million was debt issued by CLN Holdings Inc., do you know if that was debt that CLN Holdings or MAFCO had an obligation to pay?
A. The CLN Holdings had an obligation to pay, not MAFCO.
Q. All right. If CLN Holdings did not pay that debt, that 500, 525 million, would that obligation become an obligation of some other MacAndrews & Forbes entity?
A. No. The -- that obligation was collateralized solely by the shares of Coleman that were pledged to it, and if there was a deficit then there was no recourse to any MAFCO entity.
Q. Okay. When you say the debt was "collateralized by the shares", what do you mean by that?

A. The debt -- the shares were pledged to the holders of the debt for the debt and that was what the holders were looking to for repayment, solely.
Q. And if the shares were of insufficient value to satisfy the debt, did MAFCO have an obligation to make up the difference?
A. No.
Q. Is there a term in the finance field that is used to refer to that type of debt?
A. Either "non-recource" or "stand-alone debt".
MR. BRODY: Thank you, I have no further questions.
BY MR. BEMIS:
Q. Sir, turn to page F 39 of the same document, which is footnote 9 to the financial statements for CLN Holdings Inc. for the period ending December 31, 1997.
A. Yes.
Q. The long-term debt there, under footnote 9, is the same -- is a breakdown by the auditors and of the long-term debt

of $980,447,000; right?
A. Yes.
Q. Okay. Please read any one of those footnotes, A through -- A through G, that includes or -- includes Coleman Company, Inc. public debt -- or not, excuse me.
A. I'm sorry?
Q. Poor question. Please look at footnotes 9 A through -- 9 A through G, and tell me where there is any footnote where the auditors have identified any Coleman Company, Inc. debt, as you have termed it, to be included in the $980,447,000 of long-term debt of CLN Holdings Inc.
A. So you are trying to identify the debt of the public company? Is that --
Q. You have got it, that's what I want you to find it for me.
A. (Pause.)
D is a revolving credit facility which -- and, also, the term loan.
And offhand, I can't -- oh. A

is the private placement of $200 million in senior notes. I believe that's the -- (pause) -- I think A, B, and C are all private placements.
Q. Of Coleman Company notes?
A. I think so.
I think it's with the insurance companies.
Q. And is it your position that --
A. Must be, because it's un-- the first A and B, A is 200 million, B is $85 million -- and the C is also unsecured, 75, so those must have all been at the public company, Coleman.
Q. Were any of those obligations guarantied by any -- again, A, B, or C, as you have identified, guarantied by any MAFCO entity?
A. No.
Q. Any other provisions in the footnotes of Coleman debt? And, again, The Coleman Company, Inc. is what we are talking about.
A. I'm sorry, what's the question?
Q. Are there any other of the

NOT A CERTIFIED COPY

020556

footnotes in footnote 9 -- let me rephrase the question.

Are there any other paragraphs of footnote 9 that refer to The Coleman Company, Inc. debt as part of the $980 million of CLN Holdings' long-term debt.

A. No, but that would be 350, 400 -- about 460, if I counted correctly, at least on December 31st of 1997.

Q. And you are adding up, then, the debt in the Summary column that appears on page F 39?

A. Right, the 200 million, the 85 million, the 75 million, the 52 million, and the 64 million.

Q. Any other of the -- any other debt that is The Coleman Company, Inc. debt?

A. No -- I don't know what "other" is.

MR. BEMIS: All right. That's it, that's all I have. Thank you very much.

MR. BRODY: I just have a follow-up on that last point, sir.

I'm sorry to not let you put it away.

BY MR. BRODY:

Q. If you turn to page F 39 in footnotes A, B, C, and D, it describes the debt as debt of the company; is that correct?

A. Yes.

Q. And if I ask you to turn to page F 31 of the same document, do you see how the term "company" is defined?

A. As The Coleman Company, Inc., period.

Q. That being the public company?

A. Yes.

Q. All right. So, do you agree that on page F 39, items A through D, as you previously testified, are the obligations of The Coleman Company?

A. Yes.

MR. BRODY: Then I have nothing.

MR. BEMIS: That's all we have. Thank you very much, have a nice day.

THE LEGAL VIDEO SPECIALIST: The time is 3:33 p.m., on July 7th, 2004,

this is the end of tape number three, and this completes the videotaped deposition of Mr. Todd Slotkin.

(Continued on the following page.)

(Time noted: 3:33p.m.)

_____
TODD J. SLOTKIN

Subscribed and sworn to before me this ____ day of _____, 2004.

_____
Notary Public

020557

NOT A CERTIFIED COPY

CERTIFICATE

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, WENDY D. BOSKIND, an RPR and Notary Public within and for the State of New York, do hereby certify:

That TODD J. SLOTKIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true and accurate record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of July, 2004.

_____
WENDY D. BOSKIND

July 7, 2004

INDEX

WITNESS PAGE
Todd J. Slotkin

EXAMINATION
BY MR. BEMIS.....5:25
BY MR. BRODY..... 210:13
BY MR. BEMIS.....215:17
BY MR. BRODY.....219:2

----------EXHIBITS----------
MS 166, previously marked for identification..... 59:12
MS 241, previously marked for identification..... 60:13
210, previously marked for identification 63:10
MS 2, previously marked for identification 70:13

MS 123, memorandum from Mr. Schwartz, dated November 11th, 1998, re: document request in Shallal -v- Elson, and Mr. Slotkin is shown as a copy on this document..... 72:5
MS 124, one-page document, from Mr. Barry F. Schwartz, to the listees, dated June 19th, 2001..... 73:25
Morgan Stanley 5, previously marked for identification..... 76:14
MS 125, one-page document, dated November 6th, 2001, which is an E-mail from Eric Golden to distribution, including Mr. Slotkin..... 78:21
MS 126, memorandum, dated November 8th, 2001, from Mr. Eric Golden, and Mr. Slotkin is shown as one of the people receiving the document..... 81:3
MS 70, previously marked for identification..... 84:16
MS 299, document which is entitled Fifth amended and restated MAFCO guaranty, dated as of March 20th, 1997..... 99:23

MS 300, document titled the Fifth Amended and restated revolving credit agreement dated as of March 20th, 1997 among MAFCO Finance Corp. (formerly known as Marvel IV Holdings Inc.), as the borrower, and then a number of financial institutions listed thereafter..... 101:3
MS 310, document which is entitled 400 million, and then Amended and restated term credit agreement dated as of March 20th, 1997, among MAFCO Finance Corp. (formerly known as Marvel IV Holdings Inc.), as borrower, and then a number of financial institutions..... 103:2
MS 302, document entitled Third amended and restated pledge agreement, dated as of March 30th, 1998, from Coleman (Parent) Holdings Inc., as pledger, to Citibank, N.A., as collateral agent, Bates numbers beginning CPH 2006618 and ending at Bates numbers CPH 2006640..... 108:23
MS 308, document entitled MAFCO Finance Corp. summary of terms and conditions.... ..... 120:10

NOT A CERTIFIED COPY

020558

MS 311, document which is entitled Fifth Amended and restated Coleman guaranty dated as of March 30th, 1998 from Coleman (Parent) Holdings, Inc. as guarantor in favor of lenders, et cetera..... [redacted]
MS 291, document dated February 12, 1997, on the letterhead of Shearman & Sterling, with distribution to, among others, Mr. Slotkin..... 123:15
MS 241, previously marked for identification..... 131:16
MS 86, previously marked for identification..... 175:9
MS 195, document believed to be the calendar for Mr. Will Nesbitt..... 179:22
MS 295, document, the last page is entitled MAFCO Holdings Inc..... 184:12
MS 297, four-page document, entitled Hedging and monetization strategies..... ..... 187:22
MS 98, communication from Shearman & Sterling, dated April 23rd, 1998, to the MAFCO Finance Lenders, from Maura E. O'Sullivan..... 192:19

(Exhibits retained by counsel.)

(DIRECTION NOT TO ANSWER.)..... 50:25
(DIRECTION NOT TO ANSWER.)..... 54:9

ERRATA SHEET

STATE OF NEW YORK) Pg__of__Pgs
ss:
COUNTY OF NEW YORK)

I wish to make the following changes, for the following reasons:
PAGE LINE
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____
____ ____ CHANGE: _____
REASON: _____

NOT A CERTIFIED COPY

020559

OFFERING MEMORANDUM *STRICTLY CONFIDENTIAL*

$2,014,000,000

Sunbeam.

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED DEBENTURES DUE 2018

The Debentures are convertible at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock, $0.01 par value (the "Common Stock"), at a conversion rate of 6.575 shares per $1,000 principal amount at maturity. The conversion rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment in certain events. See "Description of Debentures—Conversion of Debentures." The Company's Common Stock is listed on the New York Stock Exchange under the symbol "SOC." The reported last sale price of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape on March 19, 1998 was $45⅝ per share.

The Debentures are being issued at an original price of $372.43 per $1,000 principal amount at maturity (the "Issue Price"), which represents an original issue discount of 62.757% from the principal amount thereof payable at maturity (the "Original Issue Discount"). The Issue Price represents a yield to maturity of 5.0% per annum (computed on a semi-annual bond equivalent basis).

Prior to March 25, 2003, the Debentures are not redeemable at the option of the Company. On or after such date, the Debentures are redeemable on at least 30 days' notice at the option of the Company, in whole or in part at any time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."

The Debentures may be purchased by the Company, at the option of the holder, as of March 25, 2003, March 25, 2008 and March 25, 2013 for purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. Subject to certain conditions, the Company may elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder." The Debentures may also be redeemed at the option of the holder if there is a Fundamental Change (as defined) at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances as described herein. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change." The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions (as defined), the Bank Financing (as defined), the offering of the Debentures and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the total indebtedness and other liabilities of the Company's subsidiaries would have been approximately $731 million.

The Debentures are eligible for trading in Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") Market.

SEE "RISK FACTORS" BEGINNING ON PAGE 12 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY PROSPECTIVE PURCHASERS.

THE DEBENTURES AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THE DEBENTURES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. ACCORDINGLY, THE DEBENTURES MAY BE OFFERED AND SOLD ONLY TO (i) "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A AND (ii) A LIMITED NUMBER OF OTHER INSTITUTIONAL "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT, PRIOR TO THEIR PURCHASE OF THE DEBENTURES, DELIVER TO THE INITIAL PURCHASER A LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS. FOR A DESCRIPTION OF CERTAIN RESTRICTIONS ON RESALE OR TRANSFER, SEE "TRANSFER RESTRICTIONS."

PRICE 37.243% AND ACCRUED ORIGINAL ISSUE DISCOUNT, IF ANY

The Company has granted Morgan Stanley & Co. Incorporated (the "Initial Purchaser") an option to purchase up to an additional $302,100,000 aggregate principal amount at maturity of Debentures to cover over-allotments, if any. See "Plan of Distribution."

The Debentures are offered, subject to prior sale, when, as and if accepted by the Initial Purchaser and subject to approval of certain legal matters by Davis Polk & Wardwell, counsel for the Initial Purchaser. It is expected that delivery of the Debentures will be made on or about March 25, 1998 at the office of Morgan Stanley & Co. Incorporated, New York, N.Y., against payment therefor in immediately available funds.

MORGAN STANLEY DEAN WITTER

March 19, 1998

NOT A FILED COPY

020561

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MS 166
5-12-04 WDB

MF 01732

CPH 1326487

16div-026319

THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFERING OR SOLICITATION. NEITHER THE DELIVERY OF THIS OFFERING MEMORANDUM NOR ANY SALE MADE HEREUNDER OF THE SECURITIES DESCRIBED HEREIN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF.

This Offering Memorandum is highly confidential and has been prepared by the Company solely for use in connection with the proposed private placement of the Debentures described herein. The Company and the Initial Purchaser reserve the right to reject any offer to purchase Debentures, in whole or in part, for any reason and to sell less than the principal amount at maturity of the Debentures offered hereby. This Offering Memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Debentures or the Common Stock issuable upon conversion of the Debentures. Distribution of this Offering Memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the Company is prohibited. Offerees represent that they are basing their investment decision solely on this Offering Memorandum and their own examination of the Company and the terms of the offering. Each prospective purchaser, by accepting delivery of this Offering Memorandum, agrees to the foregoing and, if the offeree does not purchase Debentures or this offering is terminated, to return this Offering Memorandum and all documents delivered herewith to: Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York, 10036, Attention: Syndicate Department.

Each person receiving this Offering Memorandum acknowledges that (i) such person has been afforded an opportunity to request from the Company and to review all additional information considered by it to be necessary to verify the accuracy of or to supplement the information herein, (ii) it has not relied on the Initial Purchaser or any person affiliated with the Initial Purchaser in connection with its investigation of the accuracy of such information or its investment decision and (iii) no person has been authorized to give any information or to make any representation concerning the Company or the Debentures or the Common Stock issuable upon conversion of the Debentures offered hereby other than as contained or incorporated by reference herein and information given by duly authorized officers and employees of the Company in connection with investors' examination of the Company and the terms of the offering, and, if given or made, such other information or representation should not be relied upon as having been authorized by the Company or the Initial Purchaser.

No representation or warranty, express or implied, is made as to the accuracy or completeness of the information contained or incorporated by reference herein, and nothing contained in this Offering Memorandum, or incorporated by reference herein, is, or shall be relied upon as, a promise or representation. The Initial Purchaser assumes no responsibility for the accuracy or completeness of such information.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE DEBENTURES AND COMMON STOCK OF THE COMPANY. SPECIFICALLY, THE INITIAL PURCHASER MAY OVERALLOT IN CONNECTION WITH THE OFFERING AND MAY BID FOR AND PURCHASE DEBENTURES AND SHARES OF COMMON STOCK IN THE OPEN MARKET. FOR A DISCUSSION OF THESE ACTIVITIES, SEE "PLAN OF DISTRIBUTION."

NOT A CERTIFIED COPY

020562

ME 01733

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326488

16div-026320

TABLE OF CONTENTS

	Page
Available Information	3
Incorporation of Certain Documents by Reference	4
Forward-looking Statements	4
Summary	5
Risk Factors	12
The Acquisitions	18
Financing Plan and Use of Proceeds	23
Price Range of Common Stock and Dividend Policy	24
Capitalization	25
Unaudited Pro Forma Condensed Financial Statements	26
Selected Historical Financial Data	31
Management's Discussion and Analysis of Financial Condition and Results of Operations	32
Business	37
Management	43
Security Ownership of Certain Beneficial Owners	45
Security Ownership of Management	46
Description of Other Indebtedness	47
Description of Debentures	48
Registration Rights	62
Description of Capital Stock	64
Certain United States Federal Income Tax Considerations	65
Plan of Distribution	67
Transfer Restrictions	68
Legal Matters	71
Independent Auditors	71
Index to Financial Statements	F-1
Appendix A—Accredited Investor Letter	A-1
Appendix B—Selling Securityholder Notice and Questionnaire	B-1

AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information filed with the Commission by the Company can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's regional offices located at 500 West Madison Street, Room 1400, Chicago, Illinois 60661 and at 7 World Trade Center, Suite 1300, New York, New York 10048. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 Fifth Street, Washington, D.C. 20549, at prescribed rates, or the Commission's site on the World Wide Web at http://www.sec.gov. Copies of other materials concerning the Company can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

The Company has entered into separate definitive agreements to acquire CLN Holdings Inc. ("CLN Holdings"), the parent of The Coleman Company, Inc. ("Coleman"), Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert"), subject to various customary closing conditions, including the receipt of required regulatory approvals. Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the Commission. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from such filings with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrant that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. Investors are referred to each of CLN Holdings', Coleman's, Signature Brands' and First Alert's complete filings with the Commission which are available from the sources described in the immediately preceding paragraph.

NOT A CERTIFIED COPY

020563

MF 01734

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326489

16div-026321

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following document has been filed by the Company with the Commission (File No. 1-52) pursuant to the Exchange Act and is incorporated herein by reference: the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 1997. All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Offering Memorandum but prior to the termination of the offering to which this Offering Memorandum relates shall be deemed to be incorporated by reference in this Offering Memorandum and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Offering Memorandum to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as modified or superseded, to constitute a part of this Offering Memorandum. The Company will provide without charge to each person, including any beneficial owner, to whom this Offering Memorandum is delivered, upon written or oral request of such person, a copy of any and all of the documents that have been or may be incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to Rich Goudis, at the principal executive offices of the Company in writing at Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 or by telephone at (561) 243-2100.

FORWARD-LOOKING STATEMENTS

This Offering Memorandum, including the documents incorporated by reference herein, contains forward-looking statements that involve risks and uncertainties. The statements contained in this Offering Memorandum or incorporated by reference herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including without limitation statements regarding the expectations, beliefs, intentions, plans or strategies of the Company, Coleman, Signature Brands and First Alert, or their directors or officers regarding the future. All forward-looking statements included in this document or incorporated by reference herein are based on information available to the Company on the date hereof or thereof, and the Company assumes no obligation to update any such forward-looking statements. Prospective investors are cautioned that any such forward looking statements are not guarantees of future performance and involve risks and uncertainties and that actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors. The information included in this Offering Memorandum, including without limitation the information set forth under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" identifies important factors that could cause such differences.

Except as otherwise indicated, (i) all references to the "Company" or "Sunbeam Corporation" refer to Sunbeam Corporation and its subsidiaries, unless the context otherwise requires, and (ii) all information in this Offering Memorandum assumes that the Initial Purchaser's over-allotment option will not be exercised.

NOT A CERTIFIED COPY

020564

MF 01735

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326490

16div-026322

SUMMARY

The following information does not purport to be complete and is qualified in its entirety by the more detailed financial and other information appearing elsewhere in this Offering Memorandum and in the documents incorporated by reference herein. The offering of the Debentures is referred to herein as the "Offering." For a discussion of certain important factors that should be considered by prospective purchasers of the Debentures, see "Risk Factors" beginning on page 12.

THE COMPANY

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately $1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation.

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The *Sunbeam*® and *Oster*® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as *Mixmaster*®, *Osterizer*® and *Grillmaster*®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over $56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand

NOT A CERTIFIED COPY

020565

MF 01736

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326491

16div-026323

distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Restructuring and Growth Plan

In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed Chairman and Chief Executive Officer Albert Dunlap. The restructuring, which was recently completed, included the redefinition of Sunbeam's core products, divestiture of non-core businesses, assembling a new management team, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also consolidated all purchasing functions, reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000 and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force (approximately 6,000 jobs). In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997.

The Acquisitions

Following the successful restructuring of the Company, the management team has extended its strategic focus to identify underperforming companies with strong brand names. The Company intends to capitalize on its proven capability in cost containment and operational improvement by acquiring such companies and their premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

On March 2, 1998, the Company announced that it had entered into separate agreements to acquire Coleman, Signature Brands and First Alert (collectively, the "Acquisitions"). The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions will give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman. With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.
- *Hardware:* This product category includes portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue and deliver approximately 21.3 million shares of Common Stock (with an aggregate value of approximately $1 billion based on current market prices) and to pay an aggregate of $221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately $2.2 billion (including the assumption of approximately $976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of $261 million in connection with the Coleman acquisition.

Signature Brands. With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution

NOT A FILED COPY

020566

MF 01737

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326492

16div-026324

in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers.

- *Consumer Products:* Signature Brands markets its consumer products under the *Mr. Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of *Mr. Coffee®* brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. In addition, *Mr. Coffee®* is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee®* brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. In addition, Signature Brands manufactures a comprehensive line of *Health o meter®* brand analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales. Capitalizing on the recently acquired rights to the *Borg®* and *Counselor®* brand names, Signature Brands intends to introduce in 1998 a new line of *Borg®* scales that are distinctly European in design for department and specialty stores. *Counselor®* scales, to be introduced in 1998, will represent opening price point scales for the mass market.
- *Professional Products:* Professional products include the *Pelouze®* and *Health o meter®* brands of office, foodservice and medical scales and *Mr. Coffee®* brand commercial coffeemakers. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze®* brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze®* foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications.

The Signature Brands transaction is valued at approximately $253 million, consisting of approximately $84 million in cash and the assumption of approximately $169 million of indebtedness.

First Alert. With 1997 net sales of approximately $187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert®* brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert®* brand name and its leading smoke detector market share to develop and market a broad range of residential safety products.

- *Smoke Detectors:* First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for these products. First Alert markets its smoke detectors under three principal brand names: the *First Alert®* premium brand name, which is featured in media and public relations promotional campaigns; the *Family Gard®* brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK®* brand name, which is sold to the wholesale electrical market.
- *Carbon Monoxide Detectors:* These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert®* and *Family Gard®* brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- *Fire Extinguishers:* First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert®* brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip®* brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The First Alert transaction is valued at approximately $178 million, consisting of approximately $133 million in cash and the assumption of approximately $45 million of indebtedness.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, including the receipt of required regulatory approvals, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, see "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

NOT A CERTIFIED COPY

020567

MF 01738

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326493

16div-026325

Financing Plan

In order to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert, the Company intends to negotiate a new bank credit facility (the "New Credit Facility") and to issue the Debentures offered hereby. See "Risk Factors—New Credit Facility Not Yet Committed." For a summary description of the expected terms of the New Credit Facility, see "Description of Other Indebtedness—New Credit Facility."

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering of the Debentures. See "Risk Factors—New Credit Facility Not Yet Committed," "Financing Plan and Use of Proceeds" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
	(In millions)		
New Credit Facility(a)	$1,294.3	Repayment of existing indebtedness(b)	$1,504.3
Debentures offered hereby	750.1	Cash Acquisition consideration(c)	477.6
		Fees and expenses(d)	62.5
Total	$2,044.4	Total	$2,044.4

(a) The New Credit Facility is expected to consist of a $1.5 billion term debt facility, and a $500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert of $202.2 million, $1,077.2 million, $179.9 million and $45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include $7.0 million, $100.3 million and $5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately $100 million and $60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of $261.1 million, $83.8 million and $132.8 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

Recent Announcement

On March 19, 1998 the Company issued a press release in which it stated that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of $285 million to $295 million, but that net sales are expected to exceed 1997 first quarter net sales of $253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Actual results could differ materially from the statements in the press release due to various factors including those set forth in "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business." See "Forward-Looking Information."

NOT A CERTIFIED COPY

020568

MF 01739

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326494

16div-026326

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The summary historical financial data of the Company for each of the fiscal years listed below have been derived from the Company's audited financial statements. The pro forma financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed financial statements, including the notes thereto, appearing elsewhere in this Offering Memorandum. The summary unaudited pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred had the Acquisitions, the initial borrowings under the New Credit Facility used to fund a portion of the Acquisitions (the "Bank Financing") and the Offering been consummated as of the dates indicated, nor is the summary unaudited pro forma financial information necessarily indicative of future operating results or financial position. This summary should be read in conjunction with the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum and the information set forth under "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Unaudited Pro Forma Condensed Financial Statements."

	Fiscal Year Ended					
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997	December 28, 1997 Pro Forma(b) (unaudited)
	(in millions, except percentage, ratio and per share data)					
Statement of Operations Data:						
Net sales	$ 927.5	$ 1,044.3	$ 1,016.9	$ 984.2	$ 1,168.2	$ 2,595.4
Operating earnings (loss)	134.0	151.0	70.3	(285.2)	199.4	207.0
Earnings (loss) from continuing operations	76.9	85.3	37.6	(196.7)	123.1	30.3
Net earnings (loss)	88.8	107.0	50.5	(228.3)	109.4	N/A
Diluted earnings (loss) per share of common stock(c)	1.01	1.30	0.61	(2.75)	1.25	0.28
Average number of common and common equivalent shares outstanding (c)	87.9	82.6	82.8	82.9	87.5	107.0
Other Data:						
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%	27.6%
Operating margin	14.4	14.5	6.9	N/A	17.1	8.0
Ratio of earnings to fixed charges(d)	16.2x	14.9x	5.3x	—	14.5x	2.5x

	As of December 28, 1997	
	Actual	Pro Forma(e) (unaudited)
Balance Sheet Data:		
Cash and cash equivalents	$ 52.4	$ 78.9
Working capital	459.9	949.6
Total assets	1,120.3	4,054.3
Total long-term debt	194.6	2,044.4
Stockholders' equity	531.9	1,278.5

(a) Includes special charges of $337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Gives pro forma effect to (i) the Acquisitions, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if they had occurred on December 30, 1996.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See Note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by $285.6 million.

(e) Gives pro forma effect to the Pro Forma Transactions as if they had occurred as of December 28, 1997.

NOT A CERTIFIED COPY

020569

MF 01740

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326495

16div-026327

THE OFFERING

Securities Offered	$2,014,000,000 principal amount at maturity (plus up to an additional $302,100,000 principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"). There will be no periodic interest payments on the Debentures. See "Description of Debentures—General."
Yield to Maturity of Debentures	5.0% per annum (computed on a semi-annual bond equivalent basis) calculated from March 25, 1998.
Conversion	The Debentures are convertible, at the option of the holder, at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased by the Company, into Common Stock at the rate of 6.575 shares per $1,000 principal amount at maturity of the Debentures (the "Conversion Rate"). The Conversion Rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment upon the occurrence of certain events. Upon conversion, the holder will not receive any cash payment representing accrued Original Issue Discount; such accrued Original Issue Discount will be deemed paid by the Common Stock received upon conversion. See "Description of Debentures—Conversion of Debentures."
Subordination	The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. The Debentures will rank *pari passu* with liabilities owed to trade creditors of the Company. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. See "Description of Debentures—Subordination of Debentures."
Original Issue Discount	The Debentures are being issued at an Original Issue Discount for Federal income tax purposes equal to the excess of the stated redemption price at maturity of the Debentures (which is expected to be the principal amount at maturity) over the amount of their issue price (which is expected to be the Issue Price). Prospective purchasers of Debentures should be aware that, although there will be no periodic payments of interest on the Debentures, accrued Original Issue Discount will be included periodically in a holder's gross income for Federal income tax purposes prior to conversion, redemption, other disposition or maturity of such holder's Debentures, whether or not such Debentures are ultimately converted, redeemed, sold (to the Company or

NOT A CERTIFIED COPY

020570

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01741

CPH 1326496

16div-026328

	otherwise) or paid at maturity. See "Certain United States Federal Income Tax Considerations."
Sinking Fund	None.
Redemption	The Debentures will not be redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures will be redeemable for cash on at least 30 days' notice, at the option of the Company, in whole at any time or in part from time to time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."
Fundamental Change	The Debentures may be redeemed for cash at the option of the holder if there is a Fundamental Change (as defined) at a price equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."
Purchase at the Option of the Holder	The Company will purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder."
Financing Plan and Use of Proceeds	The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions. "See Financing Plan and Use of Proceeds."
Registration Rights	The Company will, for the benefit of the holders, file with the Commission as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures, a shelf registration statement (the "Shelf Registration Statement") covering resales of the Debentures and the Common Stock issuable upon conversion of the Debentures (the "Registrable Securities"). The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days after such first date of original issuance, and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by non-affiliates of the Company under Rule 144(k) of the Securities Act, or any successor provision, subject to certain permitted exceptions. See "Registration Rights."
Transfer Restrictions	The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and are subject to restrictions on transfer. See "Transfer Restrictions."

NOT A CERTIFIED COPY

020571

MF 01742

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326497

16div-026329

RISK FACTORS

An investment in the Debentures offered hereby involves a high degree of risk. Prospective investors should carefully consider the following risk factors, in addition to the other information set forth in this Offering Memorandum, in connection with an investment in the Debentures offered hereby.

Substantial Leverage; Ability to Service Indebtedness. Following the Acquisitions, the Bank Financing and the Offering, the Company will be highly leveraged, with indebtedness that is very substantial in relation to its shareholders' equity. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997, the Company's aggregate outstanding indebtedness would have been $2,044 million and the Company's shareholders' equity would have been $1,278 million. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not restrict the ability of the Company to incur additional Indebtedness. See "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," "The Acquisitions," "Description of Other Indebtedness" and "Description of Debentures."

The Company's high degree of leverage could have important consequences to holders of the Debentures, including but not limited to the following: (i) the Company's ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired in the future; (ii) a substantial portion of the Company's cash flow from operations must be dedicated to the payment of principal and interest on its indebtedness, thereby reducing the funds available to the Company for its operations and other purposes; (iii) the Company may be substantially more leveraged than certain of its competitors, which may place the Company at a competitive disadvantage; (iv) the Company may be hindered in its ability to adjust rapidly to changing market conditions; and (v) the Company's substantial degree of leverage could make it more vulnerable in the event of a downturn in general economic conditions or its business.

The Company's ability to repay or to refinance its obligations with respect to its indebtedness will depend on its future financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to financial, business and other factors, many of which are beyond the Company's control. These factors could include operating difficulties, increased operating costs, product pricing pressures, the response of competitors, and delays in implementing strategic projects. The Company's ability to meet its debt service and other obligations will depend in significant part on the extent to which the Company can implement its business strategy and successfully integrate the Acquisitions. There can be no assurance that the Company will be able to implement its strategy fully, that the anticipated results of its strategy will be realized or that the Acquisitions will be successfully integrated.

If the Company's cash flow and capital resources are insufficient to fund its debt service obligations, the Company may be forced to reduce or delay capital expenditures, sell assets, or seek to obtain additional equity capital, or to refinance or restructure its debt. There can be no assurance that the Company's cash flow and capital resources will be sufficient for payment of principal of, and premium, if any, and interest on, its indebtedness in the future, or that any such alternative measures would be successful or would permit the Company to meet its scheduled debt service obligations. In addition, because the Company's obligations under the New Credit Facility will bear interest at floating rates, an increase in interest rates could adversely affect, among other things, the Company's ability to meet its debt service obligations.

Holding Company Structure; Subordination. The Debentures will be exclusively the obligations of Sunbeam Corporation and not of any of its subsidiaries. The Company is a holding company that conducts substantially all of its operations through its subsidiaries. As a holding company, the Company holds no significant assets other than its investments in and advances to its subsidiaries. The Company is, therefore, dependent upon its receipt of sufficient funds from its subsidiaries to meet its own obligations, including its obligation to pay the accreted value of the Debentures upon maturity or earlier redemption or repurchase. The ability of the Company's subsidiaries to pay dividends or to make other payments or advances to the Company will depend on the operating results of its subsidiaries and any restrictions on paying such dividends or making such payments as may be applicable to such subsidiaries, including those expected to be contained in the New Credit Facility.

NOT A CERTIFIED COPY

020572

The Debentures will be unsecured and subordinated in right of payment to all existing and future Senior Indebtedness of the Sunbeam Corporation. As a result of such subordination, in the event of bankruptcy, liquidation or reorganization of the Company and in certain other events, the assets of the Company will be available to pay its obligations with respect to the Debentures only after all Senior Indebtedness has been paid in full, and there may not be sufficient assets remaining to pay amounts due on any or all of the Debentures then outstanding. The Debentures will be expressly subordinated to borrowings under the New Credit Facility and will be also effectively subordinated to all existing and future indebtedness and other liabilities and commitments of the Company's subsidiaries. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not prohibit or limit the incurrence of Senior Indebtedness by the Company or the incurrence of other indebtedness and other liabilities by the Company or its subsidiaries, and the incurrence of additional indebtedness and other liabilities by the Company or its subsidiaries could adversely affect the Company's ability to pay its obligations with respect to the Debentures. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997 the Company would have had $1,294 million of Senior Indebtedness outstanding, and as of the same date the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Company anticipates that from time to time it will incur indebtedness, including Senior Indebtedness, and that it and its subsidiaries will from time to time incur other additional indebtedness and liabilities. See "Description of Debentures—Subordination of Debentures."

The Company expects that borrowings under the New Credit Facility will be, and the Company's and its subsidiaries' future indebtedness may be, secured by liens and other security interests over the assets of the Company's subsidiaries and the Company's equity interests in the Company's subsidiaries. Moreover, the Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. The ability of the Company, and therefore the holders of the Debentures to benefit from distributions of assets of the Company's subsidiaries may be limited to the extent that the outstanding shares of any of its subsidiaries and such subsidiary's assets are pledged to secure other debt of the Company or its subsidiaries. Any right of the Company to receive assets of any subsidiary upon such subsidiary's liquidation or reorganization will be structurally subordinated to the claims of that subsidiary's creditors.

Risks Associated with Acquisitions. The Company faces significant risks associated with the recently announced acquisitions of Coleman, Signature Brands and First Alert. The Company must, among other things, return these companies to profitable operations; realize synergies from combining these companies with the Company's current operations; integrate the products manufactured by these companies into its existing product lines; consolidate duplicate facilities, systems and personnel; improve the operating efficiencies of such companies; develop new products; and shorten the product development cycle of the acquired companies. This process will require substantial attention from the Company's management team. The diversion of the attention of management from the day-to-day operations of the Company or difficulties encountered in the integration process could have an adverse effect on the Company's business, financial condition and results of operations, which effect could be material. In addition, consummation of the Acquisitions will result in a substantial increase in the size of the Company's operations placing challenges on the Company to effectively use its employees, management, operational and financial resources to manage the expanded operations of the Company. Failure to use such resources effectively could have a material adverse effect on the Company. Other potential risks of the Acquisitions include the presence of unknown liabilities and the possibility of the incurrence of significant charges associated with write-downs of the recorded values of assets acquired or restructurings of the acquired companies. Accordingly, there can be no assurance that the Company will realize the desired benefits of these acquisitions.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

New Credit Facility Not Yet Committed. The Company has been advised by an affiliate of the Initial Purchaser that, subject to customary qualifications, it is highly confident that under current market and economic conditions the New Credit Facility can be successfully syndicated to financial institutions, and the Company is

NOT CERTIFIED COPY

020573

currently discussing the terms of the New Credit Facility with prospective lenders. While the Company is confident that it will be able to obtain the New Credit Facility on a timely basis to complete the Acquisitions, the Company has no commitments yet from lenders to provide the New Credit Facility. The offering of the Debentures is not conditioned upon the availability of the New Credit Facility and the Acquisitions are not conditioned on the availability of adequate financing. If the Company were unable to secure the New Credit Facility on a timely basis, the Company would be required to secure alternative financing sources to fund the Acquisitions or to delay the closing of the Acquisitions until funds became available.

Risks of International Operations and Expansion. The Company currently manufactures some products and has sales in countries such as Mexico and Venezuela whose economies have been unstable or hyperinflationary in recent years. The economies of other foreign countries important to the Company's expansion plans, including other countries in Latin America and Asia, could suffer similar instability in the future. Such factors as currency devaluation, new tariffs, changes in monetary policies, inflation, governmental instability and similar matters could negatively affect the Company's operations in foreign markets. Although the Company plans to take advantage of recent economic and currency fluctuations in certain Asian countries by increasing the Company's purchase of products from such countries at a lower price, there is no guarantee that such purchasing advantage will be fulfilled or will fully overcome any lost sales opportunities in those same countries. As a result, the economic conditions discussed above or any of these circumstances could have an adverse effect on future financial performance, which effect could be material.

The Company's goal is to substantially increase the amount of business conducted by it outside North America. If the Company fails to achieve anticipated market penetration in areas of the world into which the Company currently expects to expand its sales, such event is likely to have an adverse effect on the Company's future financial performance, which effect could be material. Expansion of the Company's sales in foreign markets depends upon many factors, including economic conditions in foreign countries, the strength of consumer demand in those countries for products which the Company sells (or expects to sell in those markets), the strength of competition from other global consumer product companies and other factors which may negatively affect the Company's anticipated performance in those markets. Although the recent financial instability in Asia has not currently had any material impact on the Company, if such conditions continue and/or worsen they could negatively impact the Company's ability to achieve anticipated sales growth in such countries, the effect of which could be material to the Company's future financial performance.

Risks Associated with New Product Development. The Company's plans to increase its revenues depend on its ability to develop new and innovative products. The Company anticipates that it will be able to rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its aggressive schedules for future product development. Failure to develop and manufacture new products that achieve market acceptance in the amounts and with the quality required by its customers would likely have an adverse effect on future financial performance, which effect could be material.

Dependence on Key Personnel. The Company depends heavily on the services of its senior management, including Albert J. Dunlap, the Company's Chairman and Chief Executive Officer, Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer; David C. Fannin, the Company's Executive Vice President, General Counsel and Secretary, and Donald R. Uzzi, the Company's Executive Vice President, Consumer Products Worldwide. The loss of any member of the Company's senior management, including Mr. Dunlap, Mr. Kersh, Mr. Fannin or Mr. Uzzi, could have an adverse effect on the Company, which effect could be material. On February 20, 1998, each of Mr. Dunlap, Mr. Kersh and Mr. Fannin signed new three year employment contracts with the Company which include substantial equity-based compensation.

Economic Conditions. The Company's performance should be expected to be affected by the strength of the retail economy, primarily in the United States, but also in Canada, Latin America and Asia and, subsequent to the consummation of the acquisition of Coleman, Europe. Weakness in consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results. In addition, the extended credit terms provided by the Company in connection with its "early buy" program increase the Company's risk of collection of related accounts receivable.

NOT A CERTIFIED COPY

020574

Competition. The Company operates in a highly competitive environment with numerous domestic and foreign competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated goals. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material. The Company's future success will depend to a significant extent upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution and order processing. There can be no assurance that the Company will be able to compete effectively in all such areas in the future.

The Company anticipates realizing price increases from time to time for certain of its products. The Company operates in a highly competitive industry, and its ability to realize price increases may be limited due to competitive pressures. If there is a material failure to realize anticipated price increases, margins likely will be lower than anticipated by the Company, and this will likely have an adverse effect on future financial performance, which effect could be material.

The Company's profitability may be negatively impacted by under-absorption of manufacturing costs resulting from underutilization of manufacturing capacity if the Company's sales growth is less than anticipated.

No Long Term Contracts with Customers. The Company markets its products through virtually every category of retailer including mass merchandisers, warehouse clubs, department stores, home centers and hardware stores. Due to the consolidation of the U.S. retail industry, the Company's customer base is relatively concentrated with its largest customer Wal-Mart Stores, Inc. accounting for 21%, and its five largest customers accounting for 36%, of 1997 net sales. The Company's customers, including all of its large retail customers, place orders for products on an as-needed basis and have no long term supply contracts with the Company. As a result, the Company relies on its ability to obtain a continuing flow of new orders from its large, high-volume retailing customers. While the Company has positioned itself to respond to the challenges of its markets by pursuing strategic relationships with large high-volume merchandisers, there can be no assurance that the Company will continue to be able to successfully meet the needs of its customers.

Raw Material Costs. A significant portion of the cost of goods manufactured by the Company in North America is the cost of raw materials and/or components. The Company has implemented changes in its purchasing function which have enabled the Company to purchase materials more efficiently and economically than it has in the past. The future success of the Company's purchasing initiatives may be affected by many factors beyond the Company's control, such as commodity pricing generally and higher prices for the specific materials required by the Company. Although there are numerous suppliers available for the materials and components sourced by the Company, any unanticipated change in suppliers could be disruptive and costly to the Company. In addition, the Company's future initiatives to reduce the cost of materials simply may not achieve savings in amounts comparable to those previously obtained by the Company. A significant failure by the Company to maintain material costs as anticipated would likely have an adverse effect on anticipated future financial performance, which effect could be material.

Dependence on Third-Party Suppliers and Service Providers. The Company currently manufactures approximately 70% of its products. One of the Company's goals for 1998 is to source approximately 50% of the Company's parts and/or products from third parties. The Company's ability to realize sales and operating profits at anticipated levels is dependent upon its ability to timely manufacture, source and deliver products which may be sold for a profit. Labor difficulties, delays in delivery or pricing of raw materials and/or sourced products, scheduling and transportation difficulties, management dislocation and delays in development and manufacture of new products can negatively affect operating profits. Although the Company will use its best efforts to select suppliers for sourced products which are reliable and dependable, the Company's planned increase in the percentage of sourced products will decrease the Company's immediate control of products and, if such suppliers fail to deliver products as anticipated, could have an adverse effect on future financial performance, which effect could be material.

The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary

NOT A CERTIFIED COPY

020575

computer systems. Failure of any of these third-party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

Seasonality. Sales of certain of the Company's products can be negatively impacted by unseasonable weather conditions during different seasons and quarters of the year. For instance, the Company's sales of warming blankets were negatively impacted in the fourth quarter of 1997 by moderate temperatures in the northern states. The Company has attempted to levelize production, marketing and other activities related to seasonal products by implementing an "early buy" program; such a program shifts certain of the weather related risks of negative sales impact for such seasonal products to later months of the season and, as result, could have a negative impact on future financial performance.

Litigation. As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits, product recall actions and/or by higher than anticipated rates of warranty returns or other returns of goods. Certain of the product lines to be acquired in the Acquisitions may increase the Company's potential exposure to litigation.

Limitations on Repurchases and Redemptions of Debentures. On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, outstanding Debentures, subject to certain conditions. In addition, upon a Fundamental Change, each holder of the Debentures will have the right, at the holder's option, to require the Company to redeem all or a portion of such holder's Debentures. There can be no assurance that the Company will have sufficient funds to pay the repurchase price on any Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the repurchase price at valuations based on then prevailing market prices) or, in the event of a Fundamental Change, the redemption price for all the Debentures tendered by the holders thereof. The New Credit Facility is expected to contain, and future agreements relating to other indebtedness (including Senior Indebtedness) to which the Company becomes a party may contain, restrictions or prohibitions on the repurchase or redemption of the Debentures. It is also expected that the New Credit Facility will prohibit the purchase of the Debentures by the Company in the event of a Fundamental Change, unless and until such time as the indebtedness under the New Credit Facility is paid in full. In addition, it is expected that the New Credit Facility will prohibit the Company's right to purchase Debentures on a Purchase Date for cash, but will not prohibit the purchase of Debentures with Common Stock. If a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures for cash or the Company is prohibited from redeeming the Debentures after the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to repurchase or redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures for cash or redeeming the Debentures. In such case, the Company's failure to repurchase or redeem Debentures required to be repurchased or redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the New Credit Facility and may also constitute a default under any other indebtedness of the Company outstanding at such time. In addition, it is expected that the occurrence of a Fundamental Change would constitute a default under the New Credit Facility and might constitute a default under other future indebtedness of the Company. In such circumstances, the subordination provisions in the Indenture would likely prohibit or restrict payments to the holders of Debentures. The inability to repay the indebtedness under the New Credit Facility, if accelerated, would have a material adverse effect on the Company and the holders of the Debentures. The term "Fundamental Change" is limited to certain specified transactions and does not include all events that could adversely affect the Company's financial condition or operating results. The requirement that the Company offer to redeem the Debentures upon a Fundamental Change will not necessarily protect holders of the Debentures in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."

Proposed Tax Legislation. On February 2, 1998, the Clinton Administration announced a legislative proposal (the "Administration Proposal") that would generally defer interest deductions for original issue discount on convertible debt, such as the Debentures, until such interest is paid in cash or other property. Payment would not include the conversion of such debt into equity of the issuer or the payment of an amount which is determined by reference to the value of the Common Stock. The Administration Proposal would be effective for convertible debt issued on or after the date of "first committee action." If enacted in its current form

NOT A FILED COPY

020576

and if "first committee action" is taken with respect to the Administration Proposal on or before the date on which the Debentures are issued, such legislation would apply to the Debentures and the original issue discount accruing in respect of the Debentures would not be deductible by the Company for federal income tax purposes. Nevertheless, it is not possible to predict when or if the Administration Proposal will be enacted, or, if enacted, what form it may take. The federal income tax treatment of holders of Debentures would not be affected by the Administration Proposal if enacted in its current form.

Certain Tax Consequences to the Company. Section 279 of the Internal Revenue Code of 1986, as amended (the "Code") limits the deductibility of interest paid or incurred with respect to certain convertible debt incurred to finance the acquisition of stock of another corporation if such debt constitutes "corporate acquisition indebtedness." It is possible that the Internal Revenue Service could take the position that, as a result of the Acquisitions, the Debentures should be treated as "corporate acquisition indebtedness," which position, if sustained, could limit the Company's ability to deduct all or a portion of the original issue discount on the Debentures. Although the issue is not free from doubt, the Company believes that section 279 of the Code should not limit the Company's ability to deduct original issue discount.

Absence of a Public Market. Prior to the Offering, there has been no trading market for the Debentures. Although the Initial Purchaser has advised the Company that it currently intends to make a market in the Debentures, it is not obligated to do so and may discontinue such market making at any time without notice. In addition, such market making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, there can be no assurance that any market for the Debentures will develop or, if one does develop, that it will be maintained. If an active market for the Debentures fails to develop or be sustained, the trading price of the Debentures could be adversely affected.

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and, unless and until so registered, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act and applicable state securities laws. See "Registration Rights," "Plan of Distribution" and "Transfer Restrictions."

Initial Ratings Risks. The Company believes it is likely that one or more rating agencies may rate the Debentures. There can be no assurance that any such agency or agencies will rate the Debentures or, if they do, what rating or ratings they will assign to the Debentures. If one or more rating agencies assign the Debentures a rating lower than generally expected by investors, such event would likely have an adverse effect on the market price of the Debentures.

Restrictions on Ability to Pay Dividends. The New Credit Facility is expected to restrict the payment of dividends unless certain financial ratios are achieved. In addition, the Company may in the future issue additional indebtedness which contains similar restrictions.

In addition to the limitations imposed on the payment of dividends by the New Credit Facility and any future agreements governing indebtedness of the Company, under Delaware law the Company is permitted to pay dividends on its capital stock only out of its surplus or, in the event that it has no surplus, out of its net profits for the year in which a dividend is declared or for the immediately preceding fiscal year. Surplus is defined as the excess of a company's total assets over the sum of its total liabilities plus the par value of its outstanding capital stock. In order to pay dividends in cash, the Company must have surplus or net profits equal to the full amount of cash dividend at the time such dividend is declared. In determining the Company's ability to pay dividends, Delaware law permits the board of directors of the Company to revalue the Company's assets and liabilities from time to time to their fair market values in order to create surplus. The Company cannot predict what the value of its assets or the amount of its liabilities will be in the future and, accordingly, there can be no assurance that the Company will be able to pay cash dividends on the Common Stock.

NOT CERTIFIED COPY

020577

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326503

16div-026335

THE ACQUISITIONS

On March 2, 1998, the Company announced the signing of separate definitive agreements to acquire Coleman, Signature Brands and First Alert. The three transactions are subject to customary conditions, including the receipt of required regulatory approvals, and are expected to close early this spring of 1998.

The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman

With 1997 net revenues of approximately $1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, and breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation:* This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gaz®* and *East Pak®*.

- *Hardware:* Following the divestiture of the safety and security products business anticipated in March 1998, this product category will include portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Outdoor Recreation	$ 859.7	74.5%	Domestic	$ 933.5	80.9%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.3)	(14.3)
Total	$1,154.3	100.0%	Total	$1,154.3	100.0%

Signature Brands

With net sales of approximately $276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands, founded in 1919, is one of the oldest and largest domestic manufacturers of scales for home and medical use.

- *Consumer Products:* Signature Brands markets its consumer products under the *Mr. Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of

NOT A CERTIFIED COPY

020578

MF 01749

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326504

16div-026336

Mr. Coffee® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Sales of automatic drip coffeemakers accounted for approximately 43% of Signature Brands' net revenues in 1997. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Under the *Health o meter*® brand name, Signature Brands manufactures a comprehensive line of analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales, and offers a range of health and wellness therapeutic products. Capitalizing on the recently acquired rights to the *Borg*® and *Counselor*® brand names, Signature Brands intends to introduce in 1998 a new line of *Borg*® scales that are distinctly European in design for department and specialty stores. *Counselor*® scales, to be introduced in 1998, will represent opening price point scales for the mass market. Sales of consumer scales accounted for approximately 19% of Signature Brands' net sales in fiscal 1997. Signature Brands offers its consumer products through a combination of direct sales and independent manufacturers' representatives to distributors and major retail outlets, including mass merchants, national hardware chains, drugstore chains, catalogue showrooms, warehouse clubs, retail grocery chains, specialty stores, department stores and various mail-order companies.

- *Professional Products:* Professional products include the *Pelouze*® and *Health o meter*® brands of office, foodservice and medical scales and *Mr. Coffee*® brand commercial coffeemakers. Signature Brands' reputation for quality and its *Health o meter*® brand name recognition have been based on its participation in the medical scale market for over 75 years. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze*® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Professional scale products are marketed through a combination of direct sales and independent manufacturers' representatives to distributors, dealers, office megastores, mail order companies and major buying groups.

The following table summarizes Signature Brands' net sales for its fiscal year ended September 28, 1997 by product category (in millions):

Product Category	Amount	%
Consumer Products	$236.0	85.6%
Professional Products	39.7	14.4
Total	$275.7	100.0%

First Alert

With 1997 net sales of approximately $187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert*® brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. The markets for residential smoke and carbon monoxide detectors outside the United States are in a much earlier stage of development than the United States. First Alert's market penetration is greatest in the United Kingdom and Canada. First Alert sells its products to mass merchants, home center and hardware chains, catalog showrooms, warehouse clubs, and electrical wholesale distributors. First Alert also supplies its products to its wholly-owned, non-U.S. subsidiaries and to independent foreign distributors.

NOT A CERTIFIED COPY

020579

- *Smoke Detectors:* First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for their products. First Alert markets its smoke detectors under three principal brand names: the *First Alert®* premium brand name which is featured in media and public relations promotional campaigns; the *Family Gard®* brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK®* brand name which is sold into the wholesale electrical market.

- *Carbon Monoxide Detectors:* These products include carbon monoxide detectors, first introduced by First Alert in 1993, with biomimetic sensors sold under the *First Alert®* and *Family Gard®* brand names. First Alert holds the leading market position in the carbon monoxide detector market.

- *Fire Extinguishers:* First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert®* brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip®* brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The following table summarizes First Alert's total sales for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Smoke Detectors	$101.6	54.4%	U.S.	$169.0	90.4%
CO Detectors	40.4	21.6	Europe	20.2	10.8
Fire Extinguishers	17.1	9.1	Other	17.8	9.5
Other	27.8	14.9	Eliminations	(20.1)	(10.7)
Total	$186.9	100.0%	Total	$186.9	100.0%

Acquisition Structures and Agreements

The Acquisitions will be accounted for by the Company using the purchase method of accounting.

Coleman. Pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), among the Company, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("LAC"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ("CLN Holdings"), LAC will be merged with and into CLN Holdings (the "Holdings Merger"). CLN Holdings is an indirect wholly owned subsidiary of Mafco Holdings, Inc., a corporation wholly owned by Ronald O. Perelman ("Mafco"), and is the indirect beneficial owner of 44,067,520 shares of common stock of Coleman, representing approximately 82.4% of the total number of outstanding shares of common stock of Coleman.

In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid and nonassessable shares of Common Stock of the Company and (ii) $159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of the Company and the Company will become the indirect owner of 82.4% of the outstanding common stock of Coleman.

At the same time that it entered into the Holdings Merger Agreement, the Company also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), with Coleman and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("CAC"). Pursuant to the Coleman Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with and into Coleman (the "Coleman Merger"), with Coleman continuing as the surviving corporation. In the Coleman Merger, each outstanding share of Coleman common stock (other than shares held indirectly by the Company and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Common Stock of the Company and (ii) $6.44 in cash, without interest thereon. Upon consummation of the Coleman Merger, Coleman will become an indirect wholly owned subsidiary of the Company.

NOT A CERTIFIED COPY

020580

MF 01751

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326506

16div-026338

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the satisfaction of certain other customary conditions. It is currently anticipated that the Holdings Merger will be completed in early this spring of 1998. Consummation of the Coleman Merger is subject to the completion of the Holdings Merger and the preparation and filing of definitive documents with the Commission. It is anticipated that the Coleman Merger will be consummated this spring of 1998. Parent Holdings (the direct holder of all outstanding stock of CLN Holdings) and Coleman Worldwide Corporation (the direct holder of 82.4% of the outstanding common stock of Coleman) have approved the Holdings Merger and the Coleman Merger, respectively, and no other stockholder approvals will be required in connection therewith.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue (and deliver from its treasury) approximately 21.3 million shares of Common Stock (with an aggregate value of approximately $1 billion based on current market prices) and to pay an aggregate of $221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately $2.2 billion (including the assumption of approximately $976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of $261 million in connection with the Coleman acquisition.

Signature Brands. Pursuant to the Agreement and Plan of Merger, dated as of February 28, 1998 (the "Signature Brands Merger Agreement"), among the Company, Java Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("Java Acquisition"), and Signature Brands, Java Acquisition commenced a tender offer (the "Signature Brands Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of Signature Brands (the "Signature Brands Common Stock") for $8.25 per share in cash. Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the Signature Brands Tender Offer that number of shares which when added to any shares owned by the Company or Java Acquisition represents at least 51% of the outstanding shares of Signature Brands Common Stock (assuming exercise of all outstanding options and warrants) on the date shares are accepted for payment. In addition, Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the Signature Brands Tender Offer and certain other customary conditions.

Pursuant to the Signature Brands Merger Agreement, following the expiration of the Signature Brands Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary Signature Brands stockholder approval and provided that Java Acquisition has purchased shares of Signature Brands Common Stock in the Signature Brands Tender Offer and certain other customary conditions are met, Java Acquisition will be merged with and into Signature Brands (the "Signature Brands Merger"), with Signature Brands as the surviving corporation. As a result of the Signature Brands Merger, Signature Brands will become a wholly owned subsidiary of the Company and each outstanding share of Signature Brands Common Stock, which is not owned by Signature Brands or any of its subsidiaries or the Company or any of its subsidiaries, other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive $8.25 in cash.

Timing of consummation of the Signature Brands Merger is dependent, among other things, upon whether the Signature Brands Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, Signature Brands stockholder approval of the Signature Brands Merger will be required. It is anticipated, however, that the Signature Brands Merger will be consummated early this spring of 1998.

First Alert. Pursuant to an Agreement and Plan of Merger, dated as of February 28, 1998 (the "First Alert Merger Agreement"), among the Company, Sentinel Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of the Company ("Sentinel Acquisition"), and First Alert, Sentinel Acquisition commenced a tender offer (the "First Alert Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of First Alert (the "First Alert Common Stock"), for $5.25 per share in cash.

NOT A CERTIFIED COPY

020581

Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the First Alert Tender Offer that number of shares which when added to any shares owned by the Company or Sentinal Acquisition represents at least a majority of the outstanding shares of First Alert Common Stock (assuming exercise of all outstanding options) on the date shares are accepted for payment. In addition, Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the First Alert Tender Offer and certain other customary conditions.

Pursuant to the First Alert Merger Agreement, following the expiration of the First Alert Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary First Alert stockholder approval, and provided that Sentinel Acquisition has purchased shares of First Alert Common Stock in the First Alert Tender Offer and certain other customary conditions are met, Sentinel Acquisition will be merged with and into First Alert (the "First Alert Merger"), with First Alert as the surviving corporation. As a result of the First Alert Merger, First Alert will become a wholly owned subsidiary of the Company and each outstanding share of First Alert Common Stock, which is not owned by First Alert or any of its subsidiaries or the Company or any of its subsidiaries, or other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive $5.25 in cash.

Timing of consummation of the First Alert Merger is dependent, among other things, upon whether the First Alert Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, First Alert stockholder approval will be required, which would require the preparation and filing of definitive documents with the Commission. It is anticipated, however, that the First Alert Merger will be consummated early this spring of 1998.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, See "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from filings by Coleman, Signature Brands and First Alert with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrants that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert, which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. See "Available Information."

NOT A CERTIFIED COPY

020582

MF 01753

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326508

16div-026340

FINANCING PLAN AND USE OF PROCEEDS

The net proceeds from the Offering are expected to be $726.6 million ($835.7 million if the Initial Purchaser's overallotment option is exercised in full), after deducting discounts and commissions and expenses related to the sale of the Debentures. The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions.

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
	(in millions)		
New Credit Facility(a)	$1,294.3	Repayment of existing indebtedness(b)	$1,504.3
Debentures offered hereby	750.1	Cash Acquisition consideration(c)	477.6
		Fees and expenses(d)	62.5
Total	$2,044.4	Total	$2,044.4

(a) The New Credit Facility is expected to consist of a $1.5 billion term debt facility and a $500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands, and First Alert in the amount of $202.2 million, $1,077.2 million, $179.9 million and $45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include $7.0 million, $100.3 million and $5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately $100 million and $60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of $261.1 million, $83.8 million and $132.7 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

For a description of the expected terms of the New Credit Facility and other indebtedness of the Company, see "Description of Other Indebtedness—New Credit Facility" and the Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum. See also "Risk Factors—New Credit Facility Not Yet Committed."

NOT A CERTIFIED COPY

020583

MF 01754

CPH 1326509

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026341

PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

The Company's Common Stock is listed and traded on the New York Stock Exchange (the "NYSE") under the symbol "SOC."

The following table sets forth the reported high and low sale prices per share for the Common Stock on the NYSE Composite Tape and the cash dividends declared on the Common Stock for the calendar quarters indicated:

	Price Range		Dividends Per Common Share
	High	Low	
1996			
First Quarter	$19¾	$15⅛	$.01
Second Quarter	17⅛	13½	.01
Third Quarter	24¾	12¼	.01
Fourth Quarter	29½	22¾	.01
1997			
First Quarter	$34½	$24⅝	$.01
Second Quarter	40¾	29¾	.01
Third Quarter	45¾	35⅜	.01
Fourth Quarter	50⅞	37	.01
1998			
First Quarter (through March 19, 1998)	$52	$36	—

On March 19, 1998, the last reported sale price of Common Stock on the NYSE was $45⅝ per share. On February 27, 1998, there were approximately 1,311 shareholders of record of Common Stock.

The Company presently intends to continue to pay cash dividends at a quarterly rate of $.01 per share; however, future payments of cash dividends will be at the discretion of the Company's Board of Directors and dependent upon the Company's results of operations, financial condition and other relevant factors, including restrictions expected to be contained in the New Credit Facility.

NOT A CERTIFIED COPY

020584

MF 01755

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326510

16div-026342

CAPITALIZATION

The following table sets forth the capitalization of the Company as of December 28, 1997 on a historical basis and on a pro forma basis after giving effect to (i) the Acquisitions, (ii) the initial borrowings under the New Credit Facility, (iii) the Offering and (iv) the use of the net proceeds from the Offering and from the initial borrowings under the New Credit Facility as described under "Financing Plan and Use of Proceeds." This table should be read in conjunction with "Financing Plan and Use of Proceeds," "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto of the Company, CLN Holdings, Signature Brands and First Alert included elsewhere in this Offering Memorandum.

	As of December 28, 1997	
	Actual	Pro Forma (unaudited)
	(In millions)	
Cash and cash equivalents	$ 52.4	$ 78.9
Short-term debt and current portion of long-term debt	$ 0.7	$ —
Long-term debt, net of current portion:		
New Credit Facility	$ —	$1,294.3
Existing Revolving Credit Facility(a)	109.3	—
Industrial Revenue Development Notes due 2009	75.0	—
Debentures offered hereby	—	750.1
Other	10.2	—
Total long-term debt	194.5	2,044.4
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized; none outstanding)	—	—
Common stock (200,000,000 shares authorized; actual shares—89,984,425; issued, unaudited pro forma shares—109,420,895)	0.9	1.1
Paid-in capital	483.4	1,229.7
Retained earnings	141.1	141.1
Other	(30.4)	(30.4)
	595.0	1,341.5
Treasury stock, common stock at cost (4,454,394 shares)	(63.0)	(63.0)
Total shareholders' equity	532.0	1,278.5
Total capitalization	$727.2	$3,322.9

(a) Excludes approximately $59 million from the sale of trade accounts receivable through a revolving trade accounts receivable securitization program. The proceeds from the sale were used to reduce borrowings under the Existing Revolving Credit Facility. The maximum amount of receivables that can be sold under the program is $70 million.

NOT A CERTIFIED COPY

020585

MF 01756

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326511

16div-026343

UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma condensed balance sheet as of December 28, 1997 was prepared to illustrate the estimated effects of (i) the Acquisitions, accounted for under the purchase method of accounting, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and from the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if the Pro Forma Transactions had occurred on December 28, 1997. The following unaudited pro forma statement of operations for the year ended December 28, 1997 was prepared to illustrate the estimated effects of the Pro Forma Transactions as if they had occurred as of December 30, 1996.

The fiscal year of the Company ended on December 28, 1997 and the fiscal years of CLN Holdings and First Alert ended on December 31, 1997. The fiscal year of Signature Brands ended on September 28, 1997. The unaudited pro forma condensed financial statements have been derived from the audited financial statements of the Company as of and for the year ended December 28, 1997, the audited financial statements of CLN Holdings and First Alert as of and for the year ended December 31, 1997 and the unaudited financial statements of Signature Brands as of and for the year ended December 31, 1997. The unaudited statement of operations of Signature Brands for the year ended December 31, 1997 has been derived from the audited statement of operations for the year ended September 28, 1997 and the unaudited statements of operations from the thirteen weeks ended December 31, 1997 and December 31, 1996 in order to present Signature Brands operating results on a basis consistent with the Company's fiscal year.

The pro forma condensed financial statements were prepared utilizing the accounting principles of the respective entities as outlined in each entity's historical financial statements. Certain reclassifications were made to sales, cost of sales and selling, general and administrative expenses as reported in the historical financial statements of CLN Holdings, First Alert and Signature Brands to conform to the classifications of the Company as follows:

	Decrease		
	Sales	Cost of Sales	Selling, General and Administrative
		(in thousands)	
CLN Holdings	$(71,488)	$(63,886)	$(7,602)
First Alert	(9,902)	(4,760)	(5,142)
Signature Brands	(23,171)	(3,725)	(19,446)

Included in the historical Statement of Operations of CLN Holdings are cash and non-cash restructuring and other charges totaling $36.4 million and related tax benefits of $13.9 million. These costs have been allocated to cost of goods sold and selling, general and administration expense in the amounts of $19.5 million and $16.9 million, respectively. These costs primarily relate to closing and relocating certain administrative and sales offices, closing several manufacturing facilities, write-down of inventory and fixed assets, as well as severance costs. Additionally, the expense of the early extinguishment of debt of $15.2 million shown on the CLN Holdings' historical statement of operations has been excluded from the unaudited pro forma condensed statement of operations.

The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable under the circumstances. For purposes of developing the unaudited pro forma condensed financial statements, the assets and liabilities of CLN Holdings, First Alert and Signature Brands have been recorded at historical cost. The allocation of purchase price for the Acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial increase in goodwill. The pro forma condensed financial statements do not include a one-time after-tax $30 million first quarter 1998 charge by the Company related to the execution of new employment contracts with the Company's Chairman and Chief Executive Officer and two other senior officers of the Company as further discussed in Note 14 of the Company's audited financial statements for the year ended December 28, 1997 or any adjustments for potential synergies or cost savings as a result of the Acquisitions.

The unaudited pro forma financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," the financial statements of each of the Company, CLN Holdings, First Alert and Signature Brands and the notes thereto, and the other financial information included elsewhere or incorporated by reference in this Offering Memorandum. This pro forma financial information is provided for informational purposes only and does not purport to be indicative of the results of operations or financial position which would have been obtained had the Pro Forma Transactions been completed on the dates indicated or the financial condition or results of operations for any future date or period.

NOT A CERTIFIED COPY

20580

MF 01757

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326512

16div-026344

UNAUDITED PRO FORMA CONDENSED BALANCE SHEET

As of December 28, 1997
(in thousands)

	The Company	The Acquisitions: First Alert	Signature Brands (unaudited)	CLN Holdings	Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(a)	Pro Forma
Cash and cash equivalents	$ 52,378	$ 2,996	$ 4,118	$ 19,362	$ —	$ —	$ 78,854
Receivables, net	295,550	53,678	67,998	179,756	—	(16,335)	580,647
Inventories	256,180	40,285	37,851	236,327	—	(17,624)	553,019
Prepaid expenses and other current assets	53,897	10,680	7,707	47,815	67,779 (b)	(1,655)	186,223
Total current assets	658,005	107,639	117,674	483,260	67,779	(35,614)	1,398,743
Property, plant and equipment, net	240,897	28,181	16,820	175,494	—	(10,746)	450,646
Other intangibles	169,622	6,496	—	—	(973)(d)	—	175,145
Goodwill	24,750	22,045	134,921	338,989	1,864,215 (e) (458,081)(d)	(37,874)	1,888,965
Other assets	27,010	—	5,663	100,126	52,281 (f) (44,722)(d)(e)	469	140,827
Total assets	$1,120,284	$164,361	$275,078	$1,097,869	$ 1,480,499	$ (83,765)	$4,054,326
Short-term debt and current portion of long-term debt	$ 668	$ 45,026	$ 5,000	$ 67,233	$ 117,847 (g)	$ 80	$ —
Other current liabilities	197,431	33,002	51,494	189,529	13,317 (c)	9,010	449,129
Total current liabilities	198,099	78,028	56,494	256,762	131,164	9,090	449,129
Long-term debt	194,580	—	164,060	980,447	1,250,050 (g) (2,044,438)(h)	89,037	2,044,438
Other long-term liabilities	195,668	4,933	6,539	117,309	42,150 (i)	—	282,299
Shareholders' equity	531,937	81,400	47,985	(256,649)	(112,902)(j) (746,523)(k)	(14,362)	1,278,460
Total liabilities and shareholders' equity	$1,120,284	$164,361	$275,078	$1,097,869	$(1,480,499)	$ 83,765	$4,054,326

See Notes to Unaudited Pro Forma Condensed Financial Statements.

NOT A CERTIFIED COPY

020586

020587

MF 01758

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326513

16div-026345

UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS

As of December 28, 1997
(in thousands, except per share data)

	The Company	The Acquisitions: First Alert	The Acquisitions: Signature Brands (unaudited)	The Acquisitions: CLN Holdings	Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(l)	Pro Forma
Net sales	$1,168,182	$ 177,039	$255,766	$1,082,806	$ —	$ 88,413	$2,595,380
Cost of goods sold	837,683	135,731	188,669	776,445	—	(59,886)	1,878,642
Amortization of goodwill and intangibles	7,829	704	3,925	14,704	46,605 (m) (19,366)(n)	(992)	53,409
Selling, general and administrative expense	123,227	49,071	44,646	259,033	—	(19,608)	456,369
Operating earnings (loss)	199,443	(8,467)	18,526	32,624	27,239	7,927	206,960
Interest expense, net and other expense	10,163	4,593	18,115	93,693	132,039 (o)(p) (125,171)(q)(i)	(4,344)	129,088
Earnings (loss) from continuing operations before income taxes	189,280	(13,060)	411	(61,069)	34,107	3,583	77,872
Income taxes (benefit)	66,152	(5,224)	1,889	(24,162)	10,240(r)	(1,362)	47,533
Earnings (loss) from continuing operations before extraordinary items	$ 123,128	$ (7,836)	$ (1,478)	$ (36,907)	$ 44,347	$ 2,221	$ 30,339
Earnings (loss) per share of common stock from continuing operations:							
Basic	$ 1.45						$ 0.29
Diluted	$ 1.41						$ 0.28
Weighted average common shares outstanding:							
Basic	84,945						104,381 (s)
Diluted	87,542						106,978 (s)

See Notes to Unaudited Pro Forma Condensed Financial Statements.

NOT A CERTIFIED COPY

020588

MF 01759

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326514

16div-026346

NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS
(in thousands, except percentages and as noted)

(a) Represents the elimination of the assets and liabilities related to the announced sale of CLN Holdings' Safety/Security Division as of December 31, 1997 and reflects the net proceeds from the sale as a reduction of long-term debt. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.

(b) Represents the tax benefit at 37.6% of (1) the cash out of stock options as a result of the Acquisitions and (2) the prepayment penalty on refinanced indebtedness of the Company, Coleman and Signature Brands.

(c) Represents the elimination of an intercompany tax receivable ($35,395) and payable on the financial statements of CLN Holdings relating to a tax sharing agreement with Mafco that will be cancelled in connection with the Holdings Merger. The net tax receivable will be assigned to Mafco in connection with the Holdings Merger.

(d) Represents the elimination of the historical goodwill and organizational costs of First Alert, Signature Brands and CLN Holdings in amounts of $23,018, $139,005 and $306,358, respectively.

(e) Represents the excess of cost over book value of the net assets acquired of First Alert, Signature Brands and CLN Holdings in the amounts of $73,457, $181,954 and $1,604,436, respectively and an additional $4,368 relating to the Company's debt prepayment penalty. No estimate has been made in these pro forma statements of the one-time expenses that will be incurred in the rationalization of the businesses that will result from these Acquisitions. The amount of goodwill will change once the Company completes the final allocation of purchase price.

(f) Represents the estimated capitalizable debt issuance costs.

(g) Represents the repayment of the existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert in the amount of $195,248, $958,563, $169,060 and $45,026, respectively.

(h) Represents the issuance of new long-term debt to fund the Acquisitions and the refinancing of outstanding indebtedness in the amounts of $202,248, $1,338,263, $263,531 and $177,896 for the Company, CLN Holdings, Signature Brands, and First Alert, respectively, and to fund approximately $62.5 million in transaction costs. This new debt will be funded by borrowings of $1,294,000 under the New Credit Facility at an assumed interest rate of LIBOR plus 1.25% (6.9325% at March 13, 1998) and the Debentures offered hereby at a yield to maturity of 5.0% (or approximately $2,014,000 principal amount at maturity).

(i) Represents the elimination of the minority interest of Coleman's equity held by the public shareholders. Amount also includes the elimination of the minority interest loss for the period ended December 31, 1997.

(j) Represents the elimination of the historical equity balances of First Alert, Signature Brands and CLN Holdings.

(k) Includes the issuance of 14,099,749 and 5,366,721 shares of the Company's Common Stock to Mafco and public shareholders, respectively, with a total equity value of $756.7 million less estimated transaction costs of approximately $10.2 million. This equity value was derived by using the average ending stock price as reported by the NYSE Composite Tape for the day before and day of the public announcement of the acquisition. Additionally, the shares held by Mafco have been discounted 15% due to the restrictive nature of the securities.

(l) Represents the elimination of the 1997 results of operations relating to the sale of CLN Holdings' Safety/Security Division. The Unaudited Pro Forma Condensed Statement of Operations reflects the sale of CLN Holdings' Safety/Security Division as of January 1, 1997. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.

(m) Represents amortization, on a straight-line basis, for goodwill (see Note (e)) over a period of forty years.

NOT A CERTIFIED COPY

020589

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS—(Continued)
(in thousands, except percentages and as noted)

(n) Represents the reduction in amortization expense resulting from the elimination of the historical goodwill and organizational costs as discussed in Note (d) above.

(o) Represents interest expense on $2,044,000 estimated borrowing under the New Credit Facility at the assumed rate set forth in Note (h) above and the Debentures in the aggregate amount of $132,039 ($89,797 with respect to the New Credit Facility and $37,504 with respect to the Debentures). Amount also includes estimated debt issuance costs aggregating $4,738 related to the New Credit Facility amortized on a straight-line basis over a period of seven-years and the Debentures amortized on a weighted average accreted basis over a twenty-year period.

(p) The interest rate on borrowings under the New Credit Facility may differ from the assumption set forth in Note (h) above. The effect on income of a ⅛ percent variance in interest rate is approximately $1.6 million with respect to the borrowings under the New Credit Facility.

(q) Represents the reduction in interest expense resulting from the debt refinancing as discussed in Note (g) above.

(r) Represents the incremental change in the consolidated entity's provision for income taxes at 37.6% as a result of the pre-tax earnings of First Alert, Signature Brands and Coleman, and all pro forma adjustments as described above.

(s) Represents basic and diluted weighted average shares outstanding of the Company as of December 28, 1997 plus the additional equity issued in connection with the acquisition of CLN Holdings as discussed in Note (k) above. The incremental shares relating to the Debentures have not been included, as they would be anti-dilutive.

NOT A CERTIFIED COPY

020590

MF 01761

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326516

16div-026348

SELECTED HISTORICAL FINANCIAL DATA

The selected historical financial data set forth below has been derived from the Company's Consolidated Financial Statements. The selected financial data should be read in conjunction with the Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

	Fiscal Year Ended				
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997
	(in millions, except percentage, ratio and per share data)				
Statement of Operations Data:					
Net sales	$927.5	$1,044.3	$1,016.9	$ 984.2	$1,168.2
Cost of goods sold	674.2	764.4	809.1	900.6	837.7
Selling, general and administrative expense	119.3	128.9	137.5	214.0	131.1
Restructuring, impairment and other costs	—	—	—	154.8	—
Operating earnings (loss)	$134.0	$ 151.0	$ 70.3	$ (285.2)	$ 199.4
Earnings (loss) from continuing operations	$ 76.9	$ 85.3	$ 37.6	$ (196.7)	$ 123.1
Earnings from discontinued operations, net of taxes(b)	11.9	21.7	12.9	0.8	—
Loss on sale of discontinued operations, net of taxes(b)	—	—	—	(32.4)	(13.7)
Net earnings (loss)	$ 88.8	$ 107.0	$ 50.5	$ (228.3)	$ 109.4
Earnings Per Share Data(c):					
Average common and common equivalent shares outstanding	87.9	82.6	82.8	82.9	87.5
Diluted earnings (loss) per share from continuing operations	$ 0.87	$ 1.03	$ 0.45	$ (2.37)	$ 1.41
Diluted earnings (loss) per share	1.01	1.30	0.61	(2.75)	1.25
Cash dividends declared per share	0.04	0.04	0.04	0.04	0.04
Other Data:					
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%
Operating margin	14.4	14.5	6.9	N/A	17.1
Ratio of earnings to fixed charges(d)	16.2x	14.9x	5.3x	—	14.5x
Balance Sheet Data (at end of period):					
Working capital	$261.4	$ 294.8	$ 411.7	$ 352.6	$ 459.9
Total assets	928.8	1,008.9	1,158.7	1,072.7	1,120.3
Long-term debt	133.4	124.0	161.6	201.1	194.6
Shareholder's equity	370.0	454.7	601.0	395.3	531.9

(a) Includes special charges of $337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Represents earnings from the Company's furniture business, net of taxes and the estimated loss on disposal. See Note 9 to Notes to Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by $285.6 million.

NOT A CERTIFIED COPY

020591

MF 01762

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326517

16div-026349

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Year Ended December 28, 1997 Compared to the Year Ended December 29, 1996

In November 1996, the Company initiated a major restructuring and growth plan designed to substantially reduce its cost structure and grow the business in order to restore higher levels of profitability for the Company. By July 1997, the Company completed the major phases of the restructuring plan. The $225.0 million of annualized cost savings anticipated from the restructuring results primarily from the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities (including a reduction in the number of production facilities from 26 to 8 and warehouses from 61 to 18), the elimination of over 6,000 positions (including 3,300 from the divestiture of non-core businesses described below and approximately 2,800 other positions), the centralization of the Company's procurement function and re-negotiation of supply contracts resulting in procurement savings for raw materials, components and sourced finished products and the reduction of the Company's product offerings and stock keeping units ("SKU's"). The restructuring and growth plan also included a redefinition of the Company's core product categories and the elimination of those businesses and product lines that did not fit the core categories. Sunbeam's core product categories are Appliances, Health at Home, Personal Care and Comfort, Outdoor Cooking and Away From Home. Product categories and businesses determined to be non-core were divested in 1997, including the Company's furniture business and its time and temperature, decorative bedding and Counselor® and Borg® scale product lines. In addition, the Company sold its textile mill in Biddeford, Maine in 1997.

Net sales from continuing operations for 1997 were $1,168.2 million, an increase of $183.9 million or 18.7% over 1996. Net sales on a normalized basis, after excluding divested product lines which are not classified as discontinued operations (time and temperature products, decorative bedding and Counselor® and Borg® branded scales), increased 22.4% during the year.

Global sales, on a normalized basis, increased during 1997 in all five of the Company's product categories primarily from new product introductions, improved distribution (particularly with the Company's top ten customers), international geographic expansion and improved price realization for certain products. Global sales growth on a normalized basis exceeded 25% in the Appliance, Outdoor Cooking and Away From Home categories with sales increases of 26.8%, 27.2% and 28.6%, respectively. Sales in the Health at Home category increased 10.7% on a normalized basis and sales in the Personal Care and Comfort category increased 3.4% during 1997.

The Company's Appliance category sales increases were driven by new products, such as re-designed blenders and mixers, coffeemakers, irons, deep fryers and toasters, and by increased distribution with large national mass retailers. Sales of Outdoor Cooking products increased in 1997 after three straight years of declines as a result of increased merchandising and advertising programs, new distribution and the introduction of an entirely new line of grills and accessories for the 1998 season that began to ship in the fourth quarter of 1997 under a new "early buy" marketing program that included, among other things, extended credit terms with due dates in the second quarter of 1998. The Company sold approximately $50.0 million of Outdoor Cooking Products under this program in the fourth quarter of 1997. The early buy program for Outdoor Cooking products is designed to improve customer service levels and production efficiencies with more level seasonal production and distribution activities that have historically peaked in the first half of each year and to drive additional retail sell-through of Outdoor Cooking products by reducing the likelihood of retail stock-outs during the important first and second quarter 1998 selling season.

Sales of Personal Care and Comfort products were up over 30% through September 1997, but suffered during the fourth quarter as a result of lower than expected retail sell-through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. The Company anticipates shifting to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Health at Home category sales increased as a result of new products and improved distribution in the drug channels. Away From Home sales increased in 1997 as a result of new products, including cordless clippers and titanium blades, coupled with increased distribution of commercially rated appliances. Also contributing to the Company's sales growth in 1997 were its new retail outlet stores, of which 22 were open by the end of 1997.

International sales, which represented 21% of total revenues in 1997, grew 31.2% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and the execution of 25 new international

NOT A CERTIFIED COPY

020592

distribution and license agreements. Revenue growth of approximately 34% was achieved both in Mexico and by the Company's Latin American export sales organization, and sales in Venezuela and Canada increased approximately 23% each. European sales fell slightly in 1997, however the Company expects that expanded electric blanket and clipper sales along with the help of additional new distribution agreements will benefit European sales in 1998.

The gross margin percentage for 1997 increased 19.8 percentage points to 28.3%. This increase reflects the results of many cost savings and margin enhancement initiatives undertaken as part of the Company's restructuring plan coupled with the incremental margin attributable to new products and higher revenues associated with the Company's growth plan. The Company initiated a manufacturing refinement program in the second quarter of 1997 targeted at aggressively improving factory productivity at all of its remaining operations, including the Neosho, Missouri Outdoor Cooking Products facility which suffered from poor productivity and operating inefficiencies during the 1997 grill season. The benefits of the refinement program began to favorably impact factory productivity in several factories during the third quarter of 1997. The refinement of the Neosho facility, which was completed prior to the initiation of production for the 1998 grill season in the fourth quarter, included a revised plant layout to improve material flow, increased usage of common parts in the manufacturing process and modifications to the paint system to increase capacity and throughput.

Operating earnings for 1997 were $199.4 million, an increase of $195.0 million over 1996, excluding the impact of the 1996 special charge. As a percentage of sales, the operating margin of 17.1% increased 16.6 percentage points above last year's operating margin, excluding 1996 special charges. The operating margin improvements for 1997 were the result of the improved gross margin discussed above and lower selling, general and administrative ("SG&A") costs in 1997 associated with the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, the outsourcing of certain administrative and distribution functions, a reduction in the number of warehouses, and Company wide cost control initiatives. In addition, SG&A during 1996 included incremental compensation costs associated with restricted stock awards and other costs related to the employment of a new senior management team, higher than normal expenditures for market research, packaging and other initiatives related to the launch of the Company's growth plan, and higher bad debt expenses associated with certain of the Company's customers. The cost reduction initiatives and one time items in 1996 coupled with increased sales in 1997 resulted in SG&A decreasing as a percentage of sales from 17.4% in 1996 (excluding the impact of special charges) to 11.2% for 1997.

Interest expense decreased from $13.6 million in 1996 to $11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997 due to improved cash flows.

The effective income tax rate of 35% for 1997 and 1996 for earnings (loss) from continuing operations was lower than the statutory federal and state rates as a result of lower foreign taxes from the utilization of foreign tax credits and loss carryforwards and lower state income taxes as a result of certain state income tax credits.

The Company's diluted earnings per share from continuing operations was $1.41 per share versus a loss per share from continuing operations in 1996 of $2.37. The Company's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock and common stock equivalents outstanding due to the exercise of stock options and a higher market value of the Company's common stock in 1997.

The Company's discontinued furniture operations, which were sold in March 1997, had revenues of $51.6 million in the first quarter of 1997 prior to the sale and break-even earnings. In 1996, the discontinued furniture operations had net income of $.8 million on revenues of $227.5 million and an estimated loss on disposal of the business of $32.4 million, net of applicable income tax benefits. The sale of the Company's furniture business assets (primarily inventory, property, plant and equipment) was completed in March 1997.

The Company received $69 million in cash and retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of $13.7 million, net of income tax benefits. See discussion of Restructuring, Impairment and Other Costs in Note 8 and Discontinued Operations and Assets Held For Sale in Note 9 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum for further information regarding the individual components of the 1996 special charge and details of the 1997 activity in the Company's restructuring accrual.

NOT A PART OF THE COPY

020593

MF 01764

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326519

16div-026351

Year Ended December 29, 1996 Compared to the Year Ended December 31, 1995

The Company's operating results for 1996 include the effects of a pre-tax special charge of $337.6 million recorded in conjunction with the implementation of its restructuring and growth plan announced in November 1996. Approximately 20% of the charge was for cash items primarily for severance costs and lease and other facility exit costs. The special charge to earnings in 1996 is included in the following categories on the consolidated statement of operations:

	Pre-tax Dollar Amount	After-tax Per Share Amount
	(in millions)	
Restructuring, impairment and other costs	$154.9	$(1.21)
Cost of sales	92.3	(0.72)
Selling, general and administrative	42.5	(0.33)
Estimated loss from discontinued operations	47.9	(0.39)
Total	$337.6	$(2.65)

Net sales from continuing operations of $984.2 million for 1996 represents a decrease of $32.7 million, or 3.2%, from 1995. The Company experienced a loss from continuing operations of $196.7 million or $2.37 per share for 1996 versus earnings from continuing operations of $37.6 million or $.45 per share (diluted) in 1995 primarily as a result of the restructuring activities discussed above. The net loss for 1996 was $228.3 million, or $2.75 per share, compared to net earnings of $50.5 million, or $0.61 per share (diluted), for 1995. Excluding the impact of special charge items for 1996, earnings from continuing operations before income taxes decreased from $60.6 million in 1995 to a loss of $12.9 million in 1996.

Domestic sales represented approximately 80% of total sales of the Company in 1996 and decreased $28.5 million or 3.4% from 1995. This sales decline was driven by lower sales of outdoor cooking products, which declined 7.3% and lower sales of bedding products which declined 9.0% from 1995, primarily as a result of lower decorative bedding sales (divested in December 1996). Domestic sales of appliance products were flat with sales increases from new products such as vegetable steamers and toaster ovens being offset by reduced pricing on breadmakers. Sales of other product categories such as health and personal care products and time and temperature products (divested in March 1997) were either flat or declined slightly from 1995 levels.

International sales decreased $4.2 million or 2.2% from 1995 primarily as a result of lower sales in Latin America due to political and/or economic instability in several countries such as Ecuador, Peru, Columbia and Venezuela (which suffered a bolivar devaluation in April 1996), a sales decline of 11.2% in Canada as a result of the bankruptcy filing of the Company's then largest Canadian customer offset by a 55.0% increase in sales in Mexico as a result of a more stable economic environment in 1996.

The Company's gross margin percentage, excluding the impact of special charges, was 17.9% of sales in 1996, down from 20.4% in 1995, primarily from the underabsorption of higher manufacturing costs and excess manufacturing capacity that has been realigned for 1997 and beyond by the Company's restructuring and growth plan cost reduction initiatives.

SG&A expenses, excluding the impact of special charges described above, were 17.6% of sales in 1996 primarily as a result of an inflated cost structure that has been realigned for 1997 and beyond. In addition, a $12.0 million fourth quarter 1996 media advertising campaign and one-time expenditures for market research, new packaging, and other growth plan initiatives resulted in higher than normal SG&A spending in 1996. Also included in 1996 SG&A costs were $7.7 million of compensation expense resulting from restricted stock awards made in connection with the employment of a new senior management team.

Interest expense for 1996 increased from $9.4 million in 1995 to $13.6 million as a result of increased indebtedness of the Company for working capital requirements and non-recurring capitalized interest in 1995 related to the construction of the Hattiesburg, Mississippi manufacturing and distribution center.

The effective income tax rate for 1996 decreased 3 percentage points from 1995 to 35.0% as a result of certain foreign and state operating losses for which no tax benefits were recorded and the non-deductibility of compensation expense related to restricted stock awards.

NOT A CERTIFIED COPY

020594

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01765

CPH 1326520

16div-026352

The Company's discontinued furniture operations had revenues of $227.5 million in 1996, up 22.6% from $185.6 million in 1995. This revenue growth was the result of the acquisition of the Samsonite® furniture business in November 1995. Excluding the impact of this acquisition, furniture business sales declined 2.1%. Earnings from the discontinued furniture operations, net of taxes, declined from $12.9 million in 1995 to $.8 million in 1996 primarily as a result of lower gross margins from reduced pricing, underabsorption of higher manufacturing costs and higher raw material costs. In addition, SG&A costs increased due to the inclusion of the Samsonite® furniture business, higher distribution and warehousing costs, particularly with resin furniture products and higher bad debt expenses.

Foreign Operations

During 1997 approximately 90% of the Company's business was conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1995, 1996 and 1997 and Mexico reverted to hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Such translation adjustments were not material to 1995, 1996 and 1997 operating results.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1995, 1996 and 1997. See Note 4 to the Company's consolidated financial statements.

Liquidity and Capital Resources

As of December 28, 1997, the Company had cash and cash equivalents of $52.4 million and total debt of $195.2 million. Cash used in operating activities during 1997 was $8.2 million compared to $14.2 million provided by operating activities in 1996. This decrease is primarily attributable to an increase in earnings before non-cash charges in 1997 and the utilization of tax benefits generated from the implementation of the Company's restructuring plan, offset by higher accounts receivable due to increased sales in 1997 and certain seasonal dating terms, increased inventory levels in 1997 necessary to support continued anticipated sales growth and the Company's initiatives to improve customer service levels and 1997 cash expenditures required to implement the restructuring plan. In addition, cash used in operating activities reflects $59 million of proceeds from the sale of trade accounts receivable under the Company's revolving trade accounts receivable securitization program entered into in December 1997 as more fully described in Note 3 to the Company's consolidated financial statements.

Capital spending totaled $58.3 million in 1997 and was primarily for new products, cost reduction and capacity expansion initiatives. Capital spending in 1996 was $75.3 million (including $14.5 million related to the discontinued furniture operations) and was primarily attributable to new product development, cost reduction initiatives and a $5.0 million warehouse expansion financed with a capital lease. Capital spending in 1995 reflected approximately $59.4 million associated with the Hattiesburg facility, $27.4 million related to new product development and $10.8 million attributable to the discontinued furniture business. The remaining 1995 capital spending was related to cost reduction projects, productivity initiatives and environmental compliance including $14.4 million for a powder coat paint system for Outdoor Cooking products. The Company anticipates 1998 capital spending to be approximately 5% of sales and primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by investing activities also reflects $91.0 million in proceeds from sales of businesses, assets and product categories determined to be non-core to the Company's ongoing operations in conjunction with the 1996 restructuring plan. Cash used in investing activities for 1995 includes the purchase of a portion of the Company's furniture business, which was subsequently divested in full in March 1997.

Cash provided by financing activities totaled $16.4 million in 1997 and reflects net borrowings of $5.0 million under the Company's revolving credit facility, $12.2 million of debt repayments related to the divested furniture operations and other assets sold and $26.6 million in cash proceeds from the exercise of stock

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01766

CPH 1326521

16div-026353

options, substantially all by former employees of the Company. In 1996, cash provided by financing activities of $45.3 million was primarily from increased revolving credit facility borrowings to support working capital and capital spending requirements, $11.5 million in new issuances of long-term debt and $4.6 million in proceeds from the sale of treasury shares to certain executives of the Company. In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from $500 million to $250 million.

The Company is a party to various environmental proceedings, substantially all related to previously divested operations. In connection with the Company's restructuring plan a comprehensive review of environmental exposures was undertaken and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. This review and change in strategy resulted in additional environmental reserves being recorded in 1996 as more fully described in Note 12 to the consolidated financial statements. In management's opinion, the ultimate resolution of these environmental matters will not have a material adverse effect upon the Company's financial condition.

On March 2, 1998, the Company announced the signing of definitive agreements to acquire Coleman, Signature Brands and First Alert which are subject to various customary conditions including regulatory approvals. The Company's ability to complete the Acquisitions, which is expected in the early spring of 1998, is contingent on acquisition debt issuances. In connection with the Acquisitions, the Company plans to refinance existing indebtedness of the acquired companies as well as all or substantially all of its existing long-term debt. The Company expects to finance the cash portion of the Acquisitions and all debt refinancings through a combination of the Bank Financing and the Offering. For additional information regarding the Acquisitions, see Note 14 to the Company's Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

The Company believes its cash flow from operations, existing cash and cash equivalent balances, its receivable securitization program, together with expected available borrowings under the revolving credit portion of the New Credit Facility, will be sufficient to support working capital needs, capital spending, debt service and acquisition related cash requirements for the foreseeable future.

The Company is currently discussing the terms of the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

New Accounting Standards

See Note 1 to the Company's consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 130, *Reporting Comprehensive Income* and SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, both of which are required to be adopted for fiscal years beginning after December 15, 1997. The adoption of these standards will not impact the Company's consolidated results of operations, financial position, or cash flows.

Year 2000

The Company has assessed and continues to assess the impact of the Year 2000 issue on its operations, including the development and implementation of project plans and cost estimates required to make its information systems infrastructure Year 2000 compliant. Based on existing information, the Company believes that anticipated spending necessary to become Year 2000 compliant will not have a material effect on the financial position, cash flows or results of operations of the Company, nor will the Year 2000 issues cause any material adverse effect on the future business operations of the Company.

Subsequent Events

For a discussion of the Acquisitions and the new three year employment contracts between the Company and each of Mr. Dunlap, Mr. Kersh and Mr. Fannin, see Note 14 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

NOT A CERTIFIED COPY

020596

MF 01767

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326522

16div-026354

BUSINESS

General

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately $1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company was organized in 1989 (as Sunbeam-Oster Company, Inc.) and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. (the "Predecessor"). In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation. See "Management—New Employment Contracts."

Restructuring and Growth Plan

In the Fall of 1996, under newly elected Chairman, Albert J. Dunlap, the Company announced a major restructuring and growth plan. The restructuring portion of the plan was completed during 1997, resulting in a significant reduction in employees, facilities and costs, all of which is anticipated to generate approximately $225 million in annual savings for the Company. As a part of the restructuring plan, the Company divested its non-core business and assets, including furniture, time and temperature, decorative bedding, gas heaters and logs, Counselor® and Borg® scale business and the Company's Biddeford, Maine textile mill.

The Company's restructuring plan included the closure of 18 factories, 43 warehouses and 5 headquarters, resulting in the consolidation of all corporate offices into a single headquarters office located in Delray Beach, Florida and an operations facility at its Hattiesburg, Mississippi manufacturing and distribution facility. The number of manufacturing facilities has been reduced from twenty-six to eight (four in the US and four international). See "—Properties" below.

The Company has also consolidated all purchasing functions, substantially reduced the number of stock keeping units maintained by the Company and outsourced certain administrative, manufacturing and distribution activities.

The Company has developed a comprehensive three year growth plan for its core business. Sunbeam's goal is for revenues to double, reaching $2 billion by 1999, with operating margins improving to 20% of sales. This revenue growth is anticipated to be derived, in large part, by the development of new innovative products and the globalization of the Company. Domestically, the goal is to introduce at least 30 new products each year; during 1997, the Company introduced 35 new domestic products and 54 new international products. In its international business, the Company has a goal to triple international sales to $600 million by 1999. During 1997, the

NOT A CERTIFIED COPY

020597

Company entered into 25 new international distribution/license agreements. The Company has also identified new channels of distribution as additional sales growth opportunities, including commercial organizations and "direct to the consumer" channels such as catalogs, the Internet and Sunbeam® factory outlet stores. The foregoing contains certain forward-looking statements that involve risks and uncertainties, see "Forward-Looking Statements" and "Risk Factors" for cautionary remarks concerning these statements.

Both international expansion and new product introductions will be supported by a significant investment in a major new advertising program that is geared to strengthen the Sunbeam®, Oster® and Grillmaster® brands in the marketplace.

Products

The Company's core product categories are as follows:

Appliances

Small kitchen appliances including Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, coffee makers, bread makers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, are sold primarily under the Sunbeam® and Oster® brand names. The Company holds the number one or two market positions in blenders, mixers and bread makers. The Appliance category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 32% of the Company's domestic net sales in 1997.

Health at Home

The Company markets its home health products under the Sunbeam®name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. This product category also includes the recently introduced AllergySmart™ air detector and air cleaner and the FreshSource™ power water filter. Sales of health care products accounted for approximately 10% of the Company's domestic net sales in 1997.

Personal Care and Comfort

The Company's Personal Care and Comfort products include a broad line of electric blankets, comforters and Cuddle-Up® heated throws, shower massagers, and hair clippers and trimmers for animals and humans which are sold through retail channels. The Company holds the number one market position in electric blankets, heated throws and retail hair clippers. Sales of Personal Care and Comfort products accounted for approximately 18% of the Company's domestic net sales in 1997.

Outdoor Cooking

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share position in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the Sunbeam® and Grillmaster® brand names. Sales of outdoor cooking products accounted for approximately 34% of the Company's domestic net sales in 1997.

Away from Home

The Company markets a line of professional barber, beauty and animal equipment, including the electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the market of its appliances, scales and Personal Care and Comfort products to institutional and commercial channels. Sales of Away from Home products described above accounted for approximately 6% of the Company's domestic net sales in 1997.

International

The Company markets a variety of products (primarily small kitchen appliances, Personal Care and Comfort products, grills, professional clippers and related products) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has manufacturing facilities in Mexico and Venezuela.

NOT A CERTIFIED COPY

020598

MF 01769

CPH 1326524

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026356

and sales offices in Canada, the United Kingdom, Hong Kong and Australia. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 21% of the Company's total net sales in 1997.

To date, the Company's activities outside the United States have been primarily focused in Mexico, Latin America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The Oster® brand has the leading market share in small appliances in a number of Latin American countries.

The Company's pending acquisitions of Coleman, Signature Brands and First Alert are anticipated to provide new opportunities for international expansion of the Company's activities. See "The Acquisitions."

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over $56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Customers

The rapid growth of large mass merchandisers and warehouse clubs and changes in customer shopping patterns have contributed to a significant consolidation of the U.S. retail industry and formation of dominant multi-category retailers. Sunbeam has positioned itself to respond to the challenges of this changing retail environment by pursuing strategic relationships with large, high-volume merchandisers. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, hardware stores, catalogues, television shopping channels, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange

NOT A CERTIFIED COPY

020599

services. The Company's largest customer, Wal-Mart Stores, Inc., accounted for approximately 21% of the sales in 1997.

Retailers are pursuing a number of strategies in their competition to deliver the highest-quality, lowest-cost brand name products. A growing trend among retailers is to purchase on a "just-in-time" basis in order to reduce inventory cost and increase returns on investment. This trend has required increased working capital investments for manufacturers and requires manufacturers to more closely monitor consumer buying patterns as retailers shorten their lead times for orders. Currently, most Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. However, one of the Company's goals for 1998 is to "source" approximately 50% of parts and/or products from others, including suppliers in Asia, in order to reduce capital investment in plants while growing sales volume and to improve operating margins. The Company intends to continue to support its retail partners' "just-in-time" inventory strategies through investments in, among other things, improved forecasting systems, more responsive manufacturing and distribution capabilities and electronic communications. Currently, Sunbeam has approximately 90% of its U.S. customer sales on electronic data interchange (EDI) systems.

The amount of backlog orders at any point in time is not a significant factor in the Company's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam® and Oster® trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, South and Central America and Europe, these registered trademarks, along with Osterizer®, Mixmaster®, Toast Logic®, Steammaster®, Oskar®, Grillmaster® and Blanket with a Brain® brands are important to the success of the Company's products. Other important trademarks within Sunbeam include Oster Designer® line, Cuddle-Up® and A5®.

Sunbeam holds numerous patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on the Company's business taken as a whole.

Employees

The Company currently has approximately 3,300 full-time domestic employees and 4,200 international employees. None of the Company's domestic full-time workforce has union representation. Sunbeam has had no material labor-related work stoppages and, in the opinion of management, relations with its employees are generally good.

Seasonality

On a consolidated basis, Sunbeam sales do not exhibit substantial seasonality. However, sales of outdoor cooking products are strong in the first half of the year, while sales of appliances and Personal Care and Comfort products are strongest in the second half of the year. In addition, sales of an number of Company's products, including warming blankets, vaporizers, humidifiers and grills may be impacted by unseasonable weather conditions. During 1997, the Company initiated early buy programs for highly seasonal products such as grill and warming blankets in order to more levelize promotion and distribution activities.

Raw Materials

The raw materials used in the manufacture of the Company's products are available from numerous suppliers in quantities sufficient to meet normal requirements. The Company's primary raw materials include aluminum, steel, resin, copper, and corrugated cardboard for cartons.

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations in addition to laws and regulations regarding labeling and packaging of products and the sale of products containing certain environmentally sensitive materials ("Environmental Laws"). The Company believes it is in substantial compliance with all Environmental Laws which are applicable to its operations. Compliance with Environmental Laws involves certain continuing costs; however, such costs of ongoing compliance have not resulted, and are not anticipated to result, in a material

NOT A CERTIFIED COPY

020600

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01771

CPH 1326526

16div-026358

increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

In addition to ongoing environmental compliance at its operations, the Company also is actively engaged in certain environmental remediation activities relating primarily to divested operations. As of December 31, 1997, the Company had been identified by the United States Environmental Protection Agency ("EPA") or a state environmental agency as a potentially responsible party ("PRP") in connection with seven (7) sites subject to the federal Superfund law and two (2) sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant.

The Superfund Act, and related state environmental remediation laws, generally authorize governmental authorities to remediate a Superfund site and to assess the costs against the PRPs or to order PRPs to remediate the site at their expense. Liability under the Superfund Law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRPs at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRPs established with respect to such sites. The Company currently is engaged in active remediation activities at nine (9) sites, four (4) of which are among the Environmental Sites referred to above, and five (5) of which have not been designated as Superfund sites under federal or state law.

In addition, the Company is engaged in environmental remediation activities at a site located in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing and implementing a plan for remediation of this site; which remediation is anticipated to be substantially completed in 1998.

The Company's costs for environmental remediation activities have not had a material adverse effect on the Company's results of operations, financial conditions or competitive position. The Company has established reserves to cover the anticipated probable costs of remediation, based upon periodic review of all sites for which the Company has, or may have, remediation responsibility. As of December 28, 1997, the amount of such reserves was approximately four percent (4%) of the Company's total liabilities as set forth in the consolidated financial statements. Such environmental reserves do not anticipate any offsets for potential insurance recoveries from certain of the Company's liability insurance carriers which the Company continues to pursue.

Due to uncertainty over the remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws, and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved at fiscal year end 1997. In addition, the Company may be required to incur costs relating to remediation of other properties currently or previously owned or leased, including the properties to be acquired in the Acquisitions, as well as properties at which the Company and each of Coleman, Signature Brands and First Alert have disposed of waste. However, the Company believes, based on existing information, that the costs of completing the environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

In December 1996, the Company reached a negotiated settlement with the EPA with regard to a notice of violation concerning the construction and operation of two paint lines at the Company's Neosho, MO facility prior to obtaining the necessary permits for construction and operation. The negotiated settlement amount of $829,825 was agreed upon in connection with the Company's implementation of the "supplemental environmental project" which consisted of the Company's installation of nominal emission powder coating lines to replace solvent paint lines. In October 1997, the Company executed a Consent Decree documenting the settlement and is awaiting the EPA's execution of the Consent Decree; the Company anticipates formal resolution of this matter by the second quarter of 1998.

NOT A CERTIFIED COPY

020601

MF 01772

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326527

16div-026359

The Company is not a party to any other administrative or judicial proceedings to which a governmental authority is a party and which involves potential monetary sanctions, exclusive of interest and costs, of $100,000 or more.

Properties

Active United States and International manufacturing, warehouse, and office locations are set forth below. In addition to the facilities set forth below, the Company leases warehouse space on a short-term basis when needed. Except as otherwise noted, each location is used for manufacturing, warehousing and related administrative office space.

United States	Square Feet	Title
Brownsville, Texas	48,000	Leased (a)
Delray Beach, Florida	51,073	Leased (b)
Del Rio, Texas	10,560	Leased (a)
Hattiesburg, Mississippi	725,000	Owned
Hattiesburg, Mississippi	300,000	Leased (a)
McMinnville, Tennessee	169,400	Leased
Neosho, Missouri	887,200	Owned/Leased
Waynesboro, Mississippi	853,714	Leased
Total	3,044,947	

International	Square Feet	Title
Acuna, Mexico	110,000	Owned
Barquisimeto, Venezuela	75,686	Owned
Caracas, Venezuela	9,867	Leased (c)
Hong Kong	20,550	Leased (d)
Matamoros, Mexico	91,542	Owned
Milton Keynes, England	2,000	Leased (c)
Mississauga, Canada	19,891	Leased (c)
Tlalnepantla, Mexico	297,927	Owned
Total	627,463	

(a) Warehouse only
(b) Corporate headquarters
(c) Administration
(d) Warehouse and administration

In addition, the Company has 17 United States and 5 Canadian retail outlet stores under lease totaling 103,000 square feet.

The Company believes that its existing facilities will adequately provide sufficient suitable capacity to implement its operating plans.

Legal Proceedings

The Company and its subsidiaries are involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

See "—Environmental Matters" for a description of certain legal proceedings related to environmental matters.

NOT A CERTIFIED COPY

020602

MF 01773

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326528

16div-026360

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information regarding the directors and executive officers of the Company as of February 1, 1998.

Name	Age	Position
Albert J. Dunlap	60	Chairman, Chief Executive Officer and Director
Russell A. Kersh	44	Vice Chairman and Chief Financial Officer
David C. Fannin	52	Executive Vice President, General Counsel and Secretary
Donald R. Uzzi	45	Executive Vice President, Consumer Products Worldwide
Charles M. Elson	38	Director
Howard G. Kristol	60	Director
Peter A. Langerman	42	Director
William T. Rutter	67	Director
Faith Whittlesey	59	Director

Albert J. Dunlap has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Russell A. Kersh has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

David C. Fannin has been Executive Vice President, General Counsel and Secretary since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

Donald R. Uzzi has been Executive Vice President, Consumer Products Worldwide since January 1997. From November 1996 to January 1997, he held the position of Senior Vice President, Global Marketing. Mr. Uzzi joined the Company in September 1996 as Vice President, Marketing and Product Development. From January 1993 to July 1996, Mr. Uzzi served as President of the Beverage Division of Quaker Oats. During 1990 to 1992, Mr. Uzzi was employed by Pepsi Cola as Senior Vice President for North America (1992) and Vice President and General Manager of the Mid-Atlantic Division (1990-1991).

Charles M. Elson has been a Director of the Company since his appointment to the Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and the Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talledega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October 1997.

Howard G. Kristol has been a Director of the Company since his appointment on August 6, 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.

Peter A. Langerman has been a Director of the Company since 1990 and served as the Chairman of the Board of Directors from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment

NOT A CERTIFIED COPY

020603

MF 01774

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326529

16div-026361

advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997.

William T. Rutter has been a Director of the Company since his appointment on April 8, 1997. Mr. Rutter is a Senior Vice President/Managing Director, Private Banking of First Union National Bank of Florida, a position he has held since 1986.

Faith Whittlesey has been a Director of the Company since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc. (a publishing and printing company).

New Employment Contracts

On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three-year employment contracts with the Company, which include substantial equity-based compensation. These employment contracts replaced previous employment contracts entered into in July 1996 that were scheduled to expire in July 1999.

The new employment contract with Mr. Dunlap provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2 to the Company's Consolidated Financial Statements, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5 to the Company's Consolidated Financial Statements. In addition, the new employment contract with Mr. Dunlap provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment contracts with Mr. Kersh and Mr. Fannin provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning on the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under their July 1996 employment contracts, new grants of ten-year options to purchase a total of 1,875,000 shares of Common Stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 employment contracts. In addition, the new employment contracts with Mr. Kersh and Mr. Fannin provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately $30 million.

NOT A CERTIFIED COPY

020604

MF 01775

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326530

16div-026362

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table sets forth information as of February 27, 1998, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

Name	Amount and Nature of Beneficial Ownership	Percentage of Common Stock
Franklin Mutual Series Fund Inc.	17,541,398(a)	20.3%
including:		
Mutual Shares Fund	11,260,174(a)	13.3%
Mutual Qualified Fund	4,800,554(a)	5.5 %
Franklin Mutual Advisers, Inc.	17,541,398(a)	20.3%
Franklin Resources, Inc.		
Charles B. Johnson		
Rupert H. Johnson, Jr.	17,541,398(a)	20.3%
AXA Assurances I.A.R.D. Mutuelle	8,598,784(b)	9.9 %
including:		
AXA Assurances Vie Mutuelle		
Alpha Assurances Vie Mutuelle		
AXA Courtage Assurance Mutuelle		
AXA-UAP and The Equitable Companies Incorporated		
Fred Alger Management, Inc.		
including:		
Fred M. Alger III	4,424,098(c)	5.1 %

(a) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively, the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Adviser, Inc. is 51 John F. Kennedy Parkway, Short Hills, NJ 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole stockholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal stockholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock. Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock. Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson, and Rupert H. Johnson, Jr. each disclaim beneficial ownership of these shares.

(b) Information reflected in this table and the notes thereto with respect to AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the "Mutuelles AXA Group"), AXA-UAP ("AXA-UAP") and The Equitable Companies Incorporated ("Equitable") is derived from the Schedule 13G/A, dated February 17, 1998, filed jointly by the Mutuelles AXA Group, AXA-UAP and Equitable. In the aggregate, Mutuelles AXA Group, AXA-UAP and Equitable own 8,598,784 shares of Common Stock. The members of the Mutuelles AXA Group, AXA-UAP and Equitable each have sole voting power over 5,670,794 of such shares, shared voting power over 1,373,600 such shares, sole dispositive power over 8,591,384 such shares and shared dispositive power over 7,400 such shares. The address of AXA Assurances I.A.R.D. Mutuelle and AXA Assurances Vie Mutuelle is 21 rue de Chateaudun, 75009 Paris, France. The address of Alpha Assurances Vie Mutuelle is 100-101 Terrasse Boieldieu, 92042 Paris La Defense, France. The address of AXA Courtage Assurance Mutuelle is 26, rue Louis le Grand, 75002 Paris, France. The address of AXA-UAP is 23, avenue Matignon, 75008 Paris, France. The address of The Equitable Companies, Incorporated is 1290 Avenue of the Americas, New York, NY 10104.

(c) Information reflected in this table and the notes thereto with respect to Fred Alger Management, Inc. and Fred M. Alger III is derived from the Schedule 13G, dated January 15, 1998, filed by and on behalf of Fred Alger Management, Inc. and Fred M. Alger III. Fred M. Alger III is the Chairman of Fred Alger Management, Inc. The address of Fred Alger Management, Inc. and Fred M. Alger III is 75 Maiden Lane, New York, NY 10038. Fred Alger Management, Inc. and Fred M. Alger III have sole dispositive power over 4,409,498 of the shares listed above, sole voting power over 38,413 of such shares and shared voting power over 4,112,985 of such shares.

NOT CERTIFIED COPY

020605

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of February 27, 1998, of the Company's Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director of the Company; (2) the four most highly compensated executive officers of the Company for the fiscal year ended December 28, 1997, other than the Chief Executive Officer (collectively, the "Named Executives"); and (3) the Directors and the current executive officers of the Company as a group.

Name	Amount and Nature of Beneficial Ownership(a)(b)	Percentage of Common Stock(b)
Directors		
Albert J. Dunlap	5,241,564	6.06%
Charles M. Elson	9,000(d)	*
Russell A. Kersh	1,045,400(c)	1.21%
Howard G. Kristol	9,000(d)(e)	*
Peter A. Langerman	0(f)	0
William T. Rutter	3,500(d)	*
Faith Whittlesey	5,390(d)	*
Named Executives(g)		
David C. Fannin	371,433(c)	*
Donald R. Uzzi	116,666	*
Lee Griffith	60,543	*
All Directors and current executive officers as a group (9 persons)	6,801,953(h)	7.9%

* Less than one percent.

(a) All Directors and Named Executives have the sole power to vote and to dispose of the shares of Common Stock listed above except as follows: (i) Mr. Dunlap holds 1,491,564 of the listed shares jointly with his wife; (ii) 151,600 shares listed as owned by Mr. Kersh are held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary (the power to vote and to dispose of such shares is held by Howard G. Kristol, Trustee of such Trust) and Mr. Kersh holds 5,000 of the listed shares jointly with his spouse and children; (iii) Mr. Fannin holds 20,433 shares jointly with his wife; and (iv) 5,000 of the shares listed as owned by Mr. Griffith are owned by Mr. Griffith's wife and minor children.

(b) Includes shares which Directors and Named Executives have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days). Includes 3,750,000, 781,250, 328,500, 116,666 and 50,000 shares which may be acquired by Messrs. Dunlap, Kersh, Fannin, Uzzi and Griffith, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table.

(c) Includes 112,500 and 22,500 restricted shares held by Messrs. Kersh and Fannin, respectively, that are subject to restrictions.

(d) Includes shares of restricted stock granted to each of Directors Elson, Kristol, Rutter and Whittlesey upon their respective elections, appointments and subsequent reelections to the Company's Board of Directors, all of which were immediately vested.

(e) Does not include shares owned by the Russell A. Kersh Irrevocable Trust (of which Mr. Kristol serves as Trustee) and as to which Mr. Kristol disclaims beneficial ownership.

(f) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "Security Ownership of Certain Beneficial Owners."

(g) Includes Russell A. Kersh listed above under Directors.

(h) Includes shares which all Directors and current executive officers of the Company have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

NOT A CERTIFIED COPY

020606

MF 01777

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326532

16div-026364

DESCRIPTION OF OTHER INDEBTEDNESS

New Credit Facility

The Company is currently negotiating the terms of the New Credit Facility with a group of banks which the Company expects will provide for borrowings by the Company or one or more of its subsidiaries in the aggregate principal amount of $2.0 billion. The New Credit Facility is being arranged by an affiliate of the Initial Purchaser who has advised the Company that it is, subject to customary qualifications, highly confident that under current market and economic conditions a $2.0 billion credit facility can be successfully syndicated to financial institutions. It is expected that the facility will provide for one or more term loans in the aggregate principal amount of $1.5 billion which, together with the net proceeds of the Offering, will be used to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the indebtedness of the Company and the acquired companies (see "Financing Plan and Use of Proceeds") and a $500 million revolving credit facility which will be available for general corporate purposes. It is expected that the term borrowings under the New Credit Facility will mature based on an amortization schedule to be negotiated, subject to certain mandatory earlier repayments customary for facilities of a similar nature, and that the revolving credit borrowings will mature seven years from the closing date of the New Credit Facility. It is expected that interest will accrue, at the Company's option, at LIBOR plus a spread margin to be negotiated or at the Agent's (as defined below) Base Rate (generally the higher of the Agent's prime rate or the Federal Funds Rate plus 1/2 of 1%) plus a spread to be negotiated. The Company does not yet have commitments from lenders to provide the New Credit Facility and, in any event, the New Credit Facility is subject to the negotiation and execution of definitive documentation and other customary conditions.

Securities and Guarantees. Borrowings under the New Credit Facility may be secured by (i) a pledge of the stock of each of the Company's subsidiaries and (ii) security interests in substantially all of the assets of the Company and its subsidiaries. The Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. To the extent borrowings are made by any subsidiaries of the Company, the obligations of such subsidiaries will be guaranteed by the Company.

Covenants. The Company expects that the definitive New Credit Facility will contain various covenants customary for facilities of this type, including (among others) covenants restricting the incurrence of indebtedness, the payment of dividends and other restricted payments, the incurrence of liens, dispositions of assets, mergers and acquisitions, capital expenditures and loans and investments. In addition, it is expected that the New Credit Facility will require the Company to maintain various financial ratios, including a maximum leverage ratio, a minimum interest coverage ratio and a maximum fixed charge coverage ratio.

Defaults. The Company expects that the New Credit Facility will provide for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, ERISA, judgments and change of ownership and control (including for this purpose a Fundamental Change.)

Other Debt

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Until such indebtedness is repaid, the Company will continue to be subject to the covenants and restrictions and limitations contained in the terms of such indebtedness. For additional information concerning outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert see the consolidated financial statements set forth elsewhere herein.

NOT A CERTIFIED COPY

020607

MF 01778

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326533

16div-026365

DESCRIPTION OF DEBENTURES

The Debentures are to be issued under an indenture to be dated as of March 25, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). A copy of the form of Indenture will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Debentures and the Indenture does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Debentures and the Indenture including the definitions therein of certain terms that are not otherwise defined in this Offering Memorandum. Wherever particular provisions or defined terms of the Indenture (or of the form of Debenture which is a part thereof) are referred to, such provisions or defined terms are incorporated herein by reference. As used in this "Description of Debentures," the "Company" refers to Sunbeam Corporation only and does not, unless the context otherwise indicates, include its subsidiaries.

Holders of the Debentures will also have the benefit of a Registration Rights Agreement between the Company and the Initial Purchaser. Under the Registration Rights Agreement, the Company will agree to file the Shelf Registration Statement with the Commission covering resales of the Debentures and the Common Stock issuable upon conversion thereof. See "Registration Rights."

General

The Debentures will be unsecured general obligations of the Company subordinate in right of payment to the New Credit Facility and certain other secured obligations of the Company as described under "Subordination of Debentures" and convertible into Common Stock as described under "Conversion of Debentures." The Debentures will be limited to $2,316,100,000 aggregate principal amount at maturity (including $302,100,000 aggregate principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) and will mature on March 25, 2018.

The Indenture does not contain any financial covenants or restrictions on the payment of dividends, the incurrence of indebtedness, including Senior Indebtedness (as defined below under "Subordination of Debentures"), or the issuance or repurchase of securities of the Company. The Indenture contains no covenants or other provisions to afford protection to holders of the Debentures in the event of a highly leveraged transaction or a change in control of the Company except to the extent described under "Redemption at Option of the Holder Upon a Fundamental Change."

The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). See "Certain United States Federal Income Tax Considerations." Maturity, conversion, purchase by the Company at the option of a holder or redemption of a Debenture will cause Original Issue Discount and interest, if any, to cease to accrue on such Debenture, under the terms and subject to the conditions of the Indenture. The Company may not reissue a Debenture that has matured or been converted, purchased by the Company at the option of a holder, redeemed or otherwise canceled (except for registration of transfer, exchange or replacement thereof).

The principal amount at maturity of each Debenture will be payable at the office or agency of the paying agent, initially the Trustee, in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose. Debentures may be presented for conversion into Common Stock at the office of the conversion agent and Debentures in definitive form may be presented for exchange for other Debentures or registration of transfer at the office of the registrar, each such agent initially being the Trustee. The Company will not charge a service charge for any registration of transfer or exchange of Debentures; however, the Company may require payment by a holder of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection therewith.

Form, Denomination and Registration

The Debentures will be issued in fully registered form, without coupons, in denominations of $1,000 principal amount at maturity and whole multiples thereof.

Global Debenture; Book-Entry Form. Debentures held by "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("QIBs"), will be evidenced by a global Debenture (the "Global Debenture"), which will be deposited with, or on behalf of, The Depository Trust Company, New York, New York ("DTC") and registered in the name of Cede & Co. ("Cede"), as DTC's nominee. Except as set forth

NOT A CERTIFIED COPY

020608

MF 01779

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326534

16div-026366

below, the Global Debenture may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

QIBs may hold their interests in the Global Debenture directly through DTC, or indirectly through organizations which are participants in DTC (the "Participants"). Transfers between Participants will be effected in the ordinary way in accordance with DTC rules. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests in the Global Debenture to such persons may be limited.

QIBs who are not Participants may beneficially own interests in the Global Debenture held by DTC only through Participants or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a Participant, either directly or indirectly ("Indirect Participants"). So long as Cede, as the nominee of DTC, is the registered owner of the Global Debenture, Cede for all purposes will be considered the sole holder of the Global Debenture. Except as provided below, owners of beneficial interests in the Global Debenture will not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form, and will not be considered the holders thereof.

Payment of the redemption price and the purchase price of the Global Debenture as well as any Liquidated Damages (as defined) due on the Global Debenture arising out of the Company's failure to meet its obligations under the Registration Rights Agreement will be made to Cede, the nominee for DTC, as the registered owner of the Global Debenture by wire transfer of immediately available funds. Neither the Company, the Trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Debenture or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company has been informed by DTC that, with respect to payment of Liquidated Damages (if any) on and the redemption price or the purchase price of the Global Debenture, DTC's practice is to credit Participants' accounts on the payment date therefor with payments in amounts proportionate to their respective beneficial interests in the Debentures represented by the Global Debenture as shown on the records of DTC (adjusted as necessary so that such payments are made with respect to whole Debentures only), unless DTC has reason to believe that it will not receive payment on such payment date. Payments by Participants to owners of beneficial interests in Debentures represented by the Global Debenture held through such Participants will be the responsibility of such Participants, as is now the case with securities held for the accounts of customers registered in "street name."

Holders who desire to convert their Debentures into Common Stock should contact their brokers or other Participants or Indirect Participants to obtain information on procedures, including proper forms and cut-off times, for submitting such request.

Because DTC can only act on behalf of Participants, who in turn act on behalf of Indirect Participants and certain banks, the ability of a person having a beneficial interest in the Debentures represented by the Global Debenture to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate evidencing such interest.

Neither the Company nor the Trustee (or any registrar, paying agent or conversion agent under the Indenture) will have any responsibility for the performance by DTC or its Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations. DTC has advised the Company that it will take any action permitted to be taken by a holder of Debentures (including, without limitation, the presentation of Debentures for conversion as described below) only at the direction of one or more Participants to whose account with DTC interests in the Global Debenture are credited and only in respect of the principal amount of the Debentures represented by the Global Debenture as to which such Participant or Participants has or have given such direction.

DTC has advised the Company as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its Participants and to facilitate the clearance and settlement of securities transactions between Participants through electronic book-entry changes to

NOT A CERTIFIED COPY

020609

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326535

16div-026367

accounts of its Participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations such as the Initial Purchaser. Certain of such Participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with a Participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Debenture among participants of DTC, DTC is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by the Company within 90 days, the Company will cause Debentures to be issued in definitive form in exchange for the Global Debenture.

Conveyance of notices and other communications by DTC to Participants, by Participants to Indirect Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements that may be in effect from time to time. Redemption notices shall be sent to Cede. If less than all of the Debentures are being redeemed, DTC will reduce the amount of the interest of each Participant in such Debentures in accordance with its procedures.

Certificated Debentures. Debentures sold to investors that are not QIBs will be issued in definitive registered form and may not be represented by the Global Debenture. QIBs may request that any Debentures they hold in definitive registered form be exchanged for interests in the Global Debenture. Certificated Debentures may be issued in exchange for Debentures represented by the Global Debenture if a depositary is unwilling or unable to continue as a depositary for the Global Debenture as set forth above under "Global Debenture; Book-Entry Form."

Restrictions on Transfer; Legends. The Debentures will be subject to certain transfer restrictions as described below under "Transfer Restrictions" and certificates evidencing the Debentures will bear a legend to such effect.

Conversion of Debentures

A holder of a Debenture may convert it into Common Stock of the Company at any time after 90 days following the latest date of original issuance of the Debentures through the close of business on March 25, 2018; provided that if a Debenture is called for redemption, the holder may convert it only until the close of business on the last trading day prior to the Redemption Date unless the Company defaults in the payment of the redemption price. A Debenture in respect of which a holder has delivered a Purchase Notice exercising the option of such holder to require the Company to purchase such Debenture may be converted only if such notice is withdrawn in accordance with the terms of the Indenture. Similarly, a Debenture in respect of which a holder is exercising its option to require redemption upon a Fundamental Change may be converted only if such holder withdraws its election to exercise its option in accordance with the terms of the Indenture. A holder may convert such holder's Debentures in part so long as such part is $1,000 principal amount at maturity or a whole multiple thereof.

The initial Conversion Rate is 6.575 shares of Common Stock per $1,000 principal amount at maturity of Debentures, subject to adjustment upon the occurrence of certain events, as described below. A holder entitled to a fractional share of Common Stock shall receive cash equal to the then current market value of such fractional share.

On conversion of a Debenture, a holder will not receive any cash payment representing accrued Original Issue Discount. The Company's delivery to the holder of the fixed number of shares of Common Stock into which the Debenture is convertible (together with the cash payment, if any, in lieu of fractional Common Stock) will be deemed to satisfy the Company's obligation to pay the principal amount of the Debenture including the accrued Original Issue Discount attributable to the period from the Issue Date to the Conversion Date. Thus, the accrued Original Issue Discount is deemed to be paid in full rather than canceled, extinguished or forfeited. The Conversion Rate will not be adjusted at any time during the term of the Debentures for such accrued Original Issue Discount.

To convert a certificated Debenture into Common Stock, a holder must (i) complete and manually sign the conversion notice on the back of the Debenture (or complete and manually sign a facsimile thereof) and deliver such notice to the conversion agent, (ii) surrender the Debenture to the conversion agent, (iii) if required, furnish appropriate endorsements and transfer documents, and (iv) if required, pay all transfer or similar taxes. The

NOT A CERTIFIED COPY

020610

procedure for converting a Global Debenture is described above under "Form, Denomination and Registration—Global Debenture; Book-Entry Form." Pursuant to the Indenture, the date on which all of the foregoing requirements have been satisfied is the Conversion Date.

The Common Stock issuable upon conversion of the Debentures has not been registered under the Securities Act and is subject to certain restrictions on transfer. See "Registration Rights" and "Transfer Restrictions."

The Conversion Rate is subject to adjustment under formulae as set forth in the Indenture in certain events, including: (i) the issuance of Common Stock of the Company as a dividend or distribution on the Common Stock; (ii) certain subdivisions and combinations of the Common Stock; (iii) the issuance to all holders of Common Stock of certain rights or warrants to purchase Common Stock; (iv) the distribution to all holders of Common Stock of capital stock (other than Common Stock), of evidences of indebtedness of the Company or of assets (including securities (other than Common Stock), but excluding those rights and warrants referred to in clause (iii) above or paid in cash); (v) distributions consisting of cash, excluding any quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock in any quarter does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require an adjustment of the Conversion Rate pursuant to this clause (v) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (y) 3.75 percent of the average of the last reported sales price of the Common Stock during the ten trading days immediately prior to the date of declaration of such dividend, and excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company; (vi) payment in respect of a tender offer or exchange offer by the Company or any Subsidiary of the Company for the Common Stock to the extent that the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price (as defined) per share of Common Stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; and (vii) payment in respect of a tender offer or exchange offer by a person other than the Company or any Subsidiary (as defined) of the Company in which, as of the closing date of the offer, the Board of Directors is not recommending rejection of the offer. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is a quarterly dividend, such adjustment would be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant to clause (v) above. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is not a quarterly dividend, such adjustment would be based upon the full amount of the distribution. The adjustment referred to in clause (vii) above will only be made if the tender offer or exchange offer is for an amount that increases the offeror's ownership of Common Stock to more than 25% of the total shares of Common Stock outstanding, and if the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price per share of Common Stock on the business day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer. The adjustment referred to in clause (vii) above will generally not be made, however, if as of the closing of such offer, the offering documents with respect to such offer disclose a plan or an intention to cause the Company to engage in a consolidation or merger of the Company or a sale of all or substantially all of the Company's assets.

No adjustment in the Conversion Rate will be required unless such adjustment would require a change of at least 1% in the rate then in effect; provided that any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated above, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

In the case of (i) any reclassification of the Common Stock, or (ii) a consolidation or merger involving the Company or a sale or conveyance to another corporation of the property and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall be entitled to receive stock, securities, other property or assets (including cash) with respect to or in exchange for such Common Stock, the holders of the Debentures then outstanding will be entitled thereafter to convert such Debentures into the kind and amount of shares of stock, securities or other property or assets (including cash) which they would have owned or been entitled to receive upon such reclassification, consolidation, merger, sale or conveyance had such Debentures been converted immediately prior to such reclassification, consolidation, merger, sale or conveyance assuming that a holder of Debentures would not have exercised any rights of election as to the stock, securities or other property or assets (including cash) receivable in connection therewith.

NOT A CERTIFIED COPY

020611

In the event of a taxable distribution to holders of Common Stock or in certain other circumstances requiring an adjustment to the Conversion Rate, the holders of Debentures may, in certain circumstances, be deemed to have received a distribution subject to United States income tax as a dividend; in certain other circumstances, the absence of such an adjustment may result in a taxable dividend to the holders of Common Stock. See "Certain United States Federal Income Tax Considerations."

The Company from time to time may, to the extent permitted by law, increase the Conversion Rate by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such increase, if the Company's Board of Directors has made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such increases in the Conversion Rate, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "Certain United States Federal Income Tax Considerations."

Redemption of Debentures at the Option of the Company

No sinking fund is provided for the Debentures. Prior to March 25, 2003, the Debentures will not be redeemable at the option of the Company. Beginning on March 25, 2003, the Company may (subject to applicable contractual restrictions including under agreements governing Senior Indebtedness) redeem the Debentures for cash as a whole at any time, or from time to time in part, upon not less than 30 days' nor more than 60 days' notice of redemption given by mail to holders of Debentures. The Debentures will be redeemable in whole multiples of $1,000 principal amount at maturity.

The table below shows Redemption Prices of a Debenture per $1,000 principal amount at maturity thereof, at March 25, 2003 and at each March 25, thereafter prior to maturity and at maturity on March 25, 2018, which prices reflect the accrued Original Issue Discount calculated to each such date. The Redemption Price of a Debenture redeemed between such dates would include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table to the actual Redemption Date.

Redemption Date	(1) Debenture Issue Price	(2) Accrued Original Issue Discount At 5.0%	(3) Redemption Price (1)+(2)
March 25, 2003	$ 372.43	$ 104.32	$ 476.75
March 25, 2004	372.43	128.45	500.88
March 25, 2005	372.43	153.81	526.24
March 25, 2006	372.43	180.45	552.88
March 25, 2007	372.43	208.44	580.87
March 25, 2008	372.43	237.84	610.27
March 25, 2009	372.43	268.74	641.17
March 25, 2010	372.43	301.20	673.63
March 25, 2011	372.43	335.30	707.73
March 25, 2012	372.43	371.13	743.56
March 25, 2013	372.43	408.77	781.20
March 25, 2014	372.43	448.32	820.75
March 25, 2015	372.43	489.87	862.30
March 25, 2016	372.43	533.52	905.95
March 25, 2017	372.43	579.39	951.82
March 25, 2018	372.43	627.57	1,000.00

NOT A CERTIFIED COPY

020612

MF 01783

CPH 1326538

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026370

If less than all of the outstanding Debentures held in certificated form are to be redeemed, the Trustee shall select the Debentures held in such form to be redeemed in principal amounts at maturity of $1,000 or whole multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate (as long as such method is not prohibited by the rules of any stock exchange on which the Debentures are then listed, if any). If a portion of a holder's certificated Debentures is selected for partial redemption and such holder converts a portion of such certificated Debentures, such converted portion shall be deemed to be the portion selected for redemption. Debentures registered in the name of DTC or its nominee will be redeemed pro rata as described under "—Form, Denomination and Registration—Global Debenture; Book-Entry Form."

Redemption at Option of the Holder Upon a Fundamental Change

If a Fundamental Change (as defined) occurs at any time prior to March 25, 2018, each holder of Debentures shall have the right, at the holder's option, to require the Company to redeem any or all of such holder's Debentures on the date (the "Repurchase Date") that is 45 days after the date of the Company's notice of such Fundamental Change. The Debentures will be redeemable in whole multiples of $1,000 principal amount at maturity at their accreted value on the Repurchase Date.

The Company shall redeem such Debentures at a price equal to the Issue Price plus accrued Original Issue Discount to, but excluding, the Repurchase Date, provided that if the Applicable Price (as defined) in connection with the Fundamental Change is less than the Reference Market Price (as defined), the Company shall redeem such Debentures at a price equal to the foregoing Redemption Price multiplied by the fraction obtained by dividing the Applicable Price by the Reference Market Price.

The Company shall mail to all holders of record of the Debentures a notice of the occurrence of a Fundamental Change and of the redemption right arising as a result thereof on or before the tenth day after the occurrence of such Fundamental Change. The Company shall deliver to the Trustee a copy of such notice. To exercise the redemption right, holders of Debentures must deliver, on or before the 30th day after the date of the Company's notice of a Fundamental Change (the "Fundamental Change Expiration Time"), the Debentures to be so redeemed, duly endorsed for transfer, together with the form entitled "Option to Elect Redemption Upon a Fundamental Change" on the reverse thereof duly completed, to the Company (or an agent designated by the Company for such purpose). Payment for Notes surrendered for redemption (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly following the Repurchase Date.

The term "Fundamental Change" means the occurrence of any transaction or event in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock of a company listed (or, upon consummation of or immediately following such transaction or event, which will be listed) on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

The term "Applicable Price" means (i) in the event of a Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by the holder of one share of Common Stock and (ii) in the event of any other Fundamental Change, the average of the reported last sale price for the Common Stock during the ten trading days prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets in connection with the Fundamental Change.

The term "Reference Market Price" shall initially mean $30.2083 (which is equal to 66⅔% of the last sale price of the Common Stock as reflected on the cover page of this Offering Memorandum) and in the event of any adjustment to the Conversion Rate pursuant to the provisions of the Indenture, the Reference Market Price shall also be adjusted so that the Reference Market Price shall be equal to the initial Reference Market Price multiplied by a fraction the numerator of which is the Conversion Rate specified on the cover of this Offering Memorandum (without regard to any adjustment thereto) and the denominator of which is the Conversion Rate following such adjustment.

NOT A CERTIFIED COPY

020613

The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable in connection with the redemption rights of Debenture holders in the event of a Fundamental Change.

The redemption rights of the holders of Debentures could discourage a potential acquiror of the Company. The Fundamental Change redemption feature, however, is not the result of management's knowledge of any specific effort to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions.

The term "Fundamental Change" is limited to certain specified transactions and may not include other events that might adversely affect the financial condition of the Company, nor would the requirement that the Company offer to repurchase the Debentures upon a Fundamental Change necessarily afford the holders of the Debentures protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company.

No Debentures may be redeemed at the option of holders upon a Fundamental Change if there has occurred and is continuing an Event of Default described under "—Events of Default; Notice and Waiver" below (other than a default in the payment of the Fundamental Change Redemption Price with respect to such Debentures). In the event of a Fundamental Change and exercise by holders of the Debentures of their associated rights to require the Company to redeem all or a portion of their Debentures, there can be no assurance that the Company would have sufficient funds to pay the redemption price for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will provide, and any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party also may provide, that a Fundamental Change would constitute an event of default thereunder permitting the lenders thereunder to accelerate the maturity thereof and thereby cause the subordination provisions in the Indenture to apply, preventing redemption of the Debentures until Senior Indebtedness thereunder is paid in full. Any such provisions could restrict or prohibit the redemption of the Debentures. If the Company is prohibited from redeeming the Debentures upon the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from redeeming the Debentures. In such case, the Company's failure to redeem Debentures required to be redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, or if a Fundamental Change would in and of itself constitute an event of default under agreements governing Senior Indebtedness then outstanding, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Purchase of Debentures at the Option of the Holder

On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, any outstanding Debenture for which a written Purchase Notice has been delivered by the holder to the office of the paying agent (initially the Trustee) at any time from the opening of business on the date that is 20 Business Days (as defined) prior to such Purchase Date until the close of business on such Purchase Date and for which such Purchase Notice has not been withdrawn, subject to certain additional conditions.

The Purchase Notice shall state (i) the certificate numbers of the Debentures to be delivered by the holder thereof for purchase by the Company; (ii) the portion of the principal amount at maturity of Debentures to be purchased, which portion must be $1,000 or a whole multiple thereof; (iii) that such Debentures are to be purchased by the Company pursuant to the applicable provisions of the Debentures; and (iv) in the event the Company elects, pursuant to the Company Notice (as defined), to pay the Purchase Price to be paid as of such Purchase Date in Common Stock, in whole or in part, but such Purchase Price is ultimately to be paid to such holder entirely in cash because any of the conditions to payment of the Purchase Price (or portion thereof) in Common Stock is not satisfied by the Purchase Date, as described below, whether such holder elects (x) to withdraw such Purchase Notice as to some or all of the Debentures to which it relates (stating the principal

NOT A CERTIFIED COPY

020614

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

amount at maturity and certificate numbers of the Debentures as to which such withdrawal shall relate), or (y) to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice. If the holder fails to indicate, in the Purchase Notice and in any written notice of withdrawal relating to such Purchase Notice, such holder's choice with respect to the election described in clause (iv) above, such holder shall be deemed to have elected to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice in such circumstances. For a discussion of the tax treatment of a holder receiving cash or Common Stock pursuant to its election to tender its Debentures to the Company on a Purchase Date, see "Certain United States Federal Income Tax Considerations."

Any Purchase Notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the Purchase Date. The notice of withdrawal shall state the principal amount at maturity and the certificate numbers of the Debentures as to which the withdrawal notice relates and the principal amount at maturity, if any, which remains subject to the Purchase Notice.

The Purchase Price payable in respect of a Debenture shall be equal to the Issue Price plus accrued Original Issue Discount to the Purchase Date. The table below shows the Purchase Prices of a Debenture as of the specified Purchase Dates. The Company may elect to pay the Purchase Price payable as of any Purchase Date in cash or Common Stock or any combination thereof.

Purchase Date	Purchase Price
March 25, 2003	$476.75
March 25, 2008	610.27
March 25, 2013	781.20

If the Company elects to pay the Purchase Price, in whole or in part, in Common Stock, the number of shares to be delivered in respect of the portion of the Purchase Price to be paid in Common Stock shall be equal to such portion of the Purchase Price divided by the Market Price (as defined) of the Common Stock. However, no fractional shares of Common Stock will be delivered upon any purchase by the Company of Debentures through the delivery of Common Stock in payment, in whole or in part, of the Purchase Price. Instead, the Company will pay cash based on the Market Price for all fractional shares of Common Stock.

The Company will give notice (the "Company Notice") not less than 20 Business Days prior to the Purchase Date (the "Company Notice Date") to all holders at their addresses shown in the register of the registrar (and to beneficial owners as required by applicable law) stating, among other things, whether the Company will pay the Purchase Price of the Debentures in cash or Common Stock, or any combination thereof (specifying the percentage of each) and, if the Company elects to pay in Common Stock, in whole or in part, the method of calculating the Market Price of the Common Stock.

The "Market Price" means the average of the Sale Prices (as defined) of the Common Stock for the five trading day period ending on the third Business Day prior to the applicable Purchase Date (if the third Business Day prior to the applicable Purchase Date is a trading day or, if it is not a trading day, then on the last trading day prior to such third Business Day), appropriately adjusted to take into account the occurrence during the period commencing on the first of such trading days during such five trading day period and ending on such Purchase Date of certain events that would result in an adjustment of the Conversion Rate under the Indenture with respect to the Common Stock. The "Sale Price" of the Common Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date as reported in the composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System. Because the Market Price of the Common Stock is determined prior to the applicable Purchase Date, holders of Debentures bear the market risk with respect to the value of the Common Stock to be received from the date of determination of such Market Price to such Purchase Date. The Company may elect to pay the Purchase Price in Common Stock only if the information necessary to calculate the Market Price is reported in a daily newspaper of national circulation.

NOT A CERTIFIED COPY

020615

Upon determination of the actual number of shares of Common Stock in accordance with the foregoing provisions, the Company will publish such determination in a daily newspaper of national circulation.

The Company's right to purchase Debentures with Common Stock is subject to the satisfaction of various conditions, including: (i) the registration of the Common Stock under the Securities Act, if required; and (ii) compliance with other applicable federal and state securities laws, if any. If such conditions are not satisfied by a Purchase Date, the Company will pay the Purchase Price of the Debentures to be purchased on such Purchase Date entirely in cash. See "Certain United States Federal Income Tax Considerations." The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable and will file a Schedule 13E-4 or any other schedule required thereunder in connection with any offer by the Company to purchase Debentures at the option of holders.

Payment of the Purchase Price for a Debenture for which a Purchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of such Debenture (together with necessary endorsements) to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose, at any time (whether prior to, on or after the Purchase Date) after delivery of such Purchase Notice. Payment of the Purchase Price for such Debenture will be made promptly following the later of the Purchase Date or the time of book-entry transfer or delivery of such Debenture. If the paying agent holds, in accordance with the terms of the Indenture, money or securities sufficient to pay the Purchase Price of such Debenture on the Business Day following the Purchase Date, then, on and after such date, such Debenture will cease to be outstanding and Original Issue Discount on such Debenture will cease to accrue whether or not book-entry transfer of such Debenture is made or such Debenture is delivered to the paying agent, and all other rights of the holder shall terminate (other than the right to receive the Purchase Price upon delivery of the Debenture).

No Debentures may be purchased at the option of the holder for cash if there has occurred (prior to, on or after the giving by the holders of such Debentures of the required Purchase Notice) and is continuing an Event of Default described under "Events of Default; Notice and Waiver" below (other than a default in the payment of the Purchase Price with respect to such Debentures).

If the Company becomes obligated to purchase any outstanding Debenture on a Purchase Date, there can be no assurance that the Company would have sufficient funds to pay the Purchase Price on that Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the Purchase Price at valuations based on then prevailing market prices) for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will prohibit the purchase of the Debentures for cash but will permit the purchase of Debentures with shares of Common Stock on a Purchase Date. There can be no assurance that any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party will not contain prohibitions on or defaults with respect to the repurchase of the Debentures or provide that prepayment or redemption would constitute an event of default. In the event a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures, the Company could seek the consent of its then existing lenders to repurchase the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures. The Company's failure to repurchase Debentures required to be repurchased under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Subordination of Debentures

The Indebtedness evidenced by the Debentures is subordinated to the extent provided in the Indenture to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all existing and future Senior Indebtedness. Such subordination will not prevent the occurrence of any Event of Default under the Indenture.

NOT A CERTIFIED COPY

020916

Upon any distribution of assets of the Company upon any dissolution, winding up, voluntary or involuntary bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, the holders of Senior Indebtedness will be entitled to receive payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all obligations due in respect of such Senior Indebtedness before the holders of Debentures will be entitled to receive any payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price, interest, if any, Liquidated Damages, if any, or any other payment in respect of the Debentures (a "Payment on the Debentures"), and until all obligations with respect to Senior Indebtedness are paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, any Payment on the Debentures to which the holders of Debentures would be entitled shall be made to the holders of Senior Indebtedness. By reason of the subordination, in the event of the Company's dissolution, winding up, bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, holders of Senior Indebtedness may receive more, ratably, and the holders of Debentures may receive less, ratably, than the other creditors of the Company.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

The Company also may not make any Payment on the Debentures if (i) a default in any payment obligations in respect of Senior Indebtedness occurs and is continuing, without regard to any applicable period of grace (whether at maturity or at a date fixed for payment or by declaration or otherwise) (each a "payment default") or (ii) any other default occurs and is continuing with respect to Designated Senior Indebtedness that permits holders of the Designated Senior Indebtedness as to which such default relates to accelerate its maturity and the Trustee receives a notice of such default (a "Payment Blockage Notice") from the Company or from a representative for any issue of Designated Senior Indebtedness. Payments on the Debentures may and shall be resumed (a) in case of a payment default, the earlier of the date on which such default is cured or waived in accordance with the terms of the governing instrument or ceases to exist and (b) in case of a nonpayment default, the earlier of the date on which such nonpayment default is cured or waived in accordance with the terms of the governing instrument or ceases to exist or 179 days after the date on which the applicable Payment Blockage Notice is received by the Trustee if the terms of the Indenture otherwise permit payment at that time. No new period of payment blockage may be commenced pursuant to a Payment Blockage Notice unless and until 365 days have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or shall be made, the basis for a subsequent Payment Blockage Notice unless such default shall have been cured or waived for a period of not less than 90 days (it being acknowledged that (x) any action of the Company or any of its subsidiaries occurring subsequent to delivery of a Payment Blockage Notice that would give rise to any event of default pursuant to any provision of Senior Indebtedness under which an event of default previously existed (or was continuing at the time of delivery of such Payment Blockage Notice) shall constitute a new event of default for this purpose and (y) any breach of a financial covenant giving rise to a nonpayment default for a period ending subsequent to the date of delivery of the respective Payment Blockage Notice shall constitute a new event of default for this purpose).

The term "Senior Indebtedness" means the principal of, premium, if any, interest (including all interest accruing subsequent to, or which would accrue but for, the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), original issue discount, rent and end of term payments payable on or in connection with, and, to the extent not included in the foregoing, all amounts payable as fees, costs, expenses, liquidated damages, indemnities, repurchase and other put obligations and other amounts to the extent accrued or due on or in connection with, Secured Indebtedness (as defined) of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals,

NOT A CERTIFIED COPY

020617

extensions or refundings of, or amendments, modifications or supplements to, the foregoing). Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) Indebtedness of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (ii) accounts payable or other indebtedness to trade creditors created or assumed by the Company in the ordinary course of business and (iii) any particular Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to, or is pari passu with, or is subordinated or junior to, the Debentures.

The term "Indebtedness" means, with respect to any Person (as defined) and without duplication: (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof); (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers' acceptances or similar facilities; (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person (i) required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, or (ii) required, in conformity with generally accepted accounting principles, to be accounted for as an operating lease, provided either (A) such operating lease requires, at the end of the term thereof, that such Person make any payment other than accrued periodic rent in the event that such Person does not acquire the leased real property and related fixtures subject to such lease or (B) such Person has an option to acquire the leased real property and related fixtures, whether such option is exercisable at any time or under specified circumstances; (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge or exchange agreement or other similar instrument or agreement; (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d); (f) any indebtedness or other obligations described in clauses (a) through (d) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

The term "Designated Senior Indebtedness" means (i) Senior Indebtedness incurred under the New Credit Facility or (ii) any other particular Senior Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of the Indenture; provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

The term "Secured Indebtedness" means, with respect to any Person, Indebtedness of such Person secured by any mortgage, pledge, lien or other encumbance existing on the property or assets which is owned or held by such Person.

The Debentures are obligations exclusively of the Company. Since the operations of the Company are conducted through subsidiaries, the cash flow and the consequent ability to service debt, including the Debentures, are dependent upon the earnings of its subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, the Company. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amount pursuant to the Debentures or to make any funds available therefor, whether by dividends, loans or other payments. In addition, the payment of dividends and making of loans and advances to the Company by its subsidiaries are subject to statutory or contractual restrictions, including those expected under the New Credit Facility, are contingent upon the earnings of those subsidiaries and are subject to various business considerations.

020618

NOT A CERTIFIED COPY

Any right of the Company to receive assets of any of its subsidiaries upon their liquidation or reorganization (and the consequent right of the holders of the Debentures to participate in those assets) will be effectively subordinated to the claims of that subsidiary's creditors (including trade creditors), except to the extent that the Company is itself recognized as a creditor of such subsidiary, in which case the claims of the Company would *still be subordinate to any security interests in the assets of such subsidiary and any indebtedness of such* subsidiary senior to that held by the Company.

At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately $1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately $731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been *effectively subordinated. The Debentures rank pari passu with all outstanding* indebtedness and other liabilities of the Company, including trade payables. Upon the consummation of the Offering, on a pro forma basis the Company will have no outstanding indebtedness or other liabilities other than trade payables. The Indenture will not limit the amount of additional indebtedness, including Senior Indebtedness, which the Company can create, incur, assume or guarantee, nor will the Indenture limit the amount of indebtedness which any subsidiary can create, incur, assume or guarantee.

In the event that, notwithstanding the foregoing, the Trustee or any holder of the Debentures receives any payment or distribution of assets of the Company of any kind in contravention of any of the subordination provisions of the Indenture, whether in cash, property or securities, including, without limitation, by way of set-off or otherwise, in respect of the Debentures before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, then such payment or distribution will be held by the *recipient in trust for the benefit of holders of Senior Indebtedness or their representatives to the extent necessary* to make payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of Senior Indebtedness.

The Company is obligated to pay reasonable compensation to the Trustee and to indemnify the Trustee against certain losses, liabilities or expenses incurred by it in connection with its duties relating to the Debentures. The Trustee's claims for such payments will generally be senior to those of holders of the Debentures in respect of all funds collected or held by the Trustee.

Events of Default; Notice and Waiver

The Indenture provides that, if an Event of Default specified therein shall have occurred and be continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding may declare the Issue Price of the Debentures plus the Original Issue Discount on the Debentures and any liquidated damages under the Registration Rights Agreement accrued to the date of such declaration to be immediately due and payable, but if the Company shall cure all defaults (except the nonpayment of Issue Price and accrued Original Issue Discount which shall have become due by acceleration) and certain other conditions are met, such declaration may be annulled and past defaults may be waived by the holders of a majority in principal amount at maturity of the Debentures then outstanding. In the case of certain events of bankruptcy or insolvency, the Issue Price of the Debentures plus the Original Issue Discount accrued thereon to the occurrence of such event shall automatically become and be immediately due and payable. Under certain circumstances, the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may rescind any such acceleration with respect to the Debentures and its consequences. Interest shall accrue at the rate of *5.0% per annum and be payable on demand upon a default in the payment of the Issue Price, accrued* Original Issue Discount, accrued liquidated damages, if any, or any Redemption Price, Purchase Price or Fundamental Change Redemption Price to the extent that payment of such interest shall be legally enforceable.

Under the Indenture, Events of Default are defined as: (i) default in payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, accrued Liquidated Damages, if any, Redemption Price, Purchase Price or Fundamental Change Redemption Price with respect to any Debenture when such becomes due and payable (whether or not payment is prohibited by the subordination provisions of the Indenture), provided

NOT A CERTIFIED COPY

020619

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

that in the case of any failure to pay Liquidated Damages, such failure continues for a period of 30 days; (ii) failure by the Company to comply with any of its other agreements in the Debentures or the Indenture upon the receipt by the Company of notice of such default by the Trustee or by holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding and the Company's failure to cure such default within 60 days after receipt by the Company of such notice; or (iii) certain events of bankruptcy or insolvency.

The Trustee shall give notice to holders of the Debentures of any continuing default known to the Trustee within 90 days after the occurrence thereof, provided that the Trustee may withhold such notice if it determines in good faith that withholding the notice is in the interests of the holders.

The holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that such direction shall not be in conflict with any law or the Indenture and subject to certain other limitations. Before proceeding to exercise any right or power under the Indenture at the direction of such holders, the Trustee shall be entitled to receive from such holders reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in complying with any such direction. No holder of any Debenture will have any right to pursue any remedy with respect to the Indenture or the Debentures, unless (i) such holder shall have previously given the Trustee written notice of a continuing Event of Default; (ii) the holders of at least 25% in aggregate principal amount at maturity of the outstanding Debentures shall have made a written request to the Trustee to pursue such remedy; (iii) such holder or holders have offered to the Trustee reasonable indemnity satisfactory to the Trustee; (iv) the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures have not given the Trustee a direction inconsistent with such request within 60 days after receipt of such request; and (v) the Trustee shall have failed to comply with the request within such 60-day period.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

However, the right of any holder (x) to receive payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price and any interest in respect of a default in the payment of any such amounts on a Debenture, on or after the due date expressed in such Debenture, (y) to institute suit for the enforcement of any such payments or conversion or (z) to convert Debentures shall not be impaired or adversely affected without such holder's consent. The holders of at least a majority in aggregate principal amount at maturity of the outstanding Debentures may waive an existing default and its consequences, other than (i) any default in any payment on the Debentures, (ii) any default with respect to the conversion rights of the Debentures or (iii) any default in respect of certain covenants or provisions in the Indenture which may not be modified without the consent of the holder of each Debenture as described in "Modification" below. The Company will be required to furnish to the Trustee annually a statement as to any default by the Company in the performance and observance of its obligations under the Indenture.

Mergers and Sales of Assets by the Company

The Company may not consolidate with or merge into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless, among other items, (i) the resulting, surviving or transferee person (if other than the Company) is organized and existing under the laws of the United States, any state thereof or the District of Columbia, (ii) such successor person assumes all obligations of the Company under the Debentures and the Indenture and (iii) the Company or such successor person shall not immediately thereafter be in default under the Indenture. Upon the assumption of the Company's obligations by such person in such circumstances, subject to certain exceptions, the Company shall be discharged from all obligations under the Debentures and the Indenture. Certain such transactions which would constitute a Fundamental Change would permit each holder to require the Company to redeem the Debentures of such holder as described under "Redemption at Option of the Holder Upon a Fundamental Change."

NOT A CERTIFIED COPY

020620

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026378

Modification

Modification and amendment of the Indenture or the Debentures may be effected by the Company and the Trustee with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the Debentures then outstanding. Notwithstanding the foregoing, no such amendment may, without the consent of each holder affected thereby: (i) reduce the principal amount at maturity, Issue Price, Purchase Price, Fundamental Change Redemption Price or Redemption Price, or extend the stated maturity of any Debenture or alter the manner or rate of accrual of Original Issue Discount or interest, or make any Debenture payable in money or securities other than that stated in the Debenture; (ii) make any change to the principal amount at maturity of Debentures whose holders must consent to an amendment or any waiver under the Indenture or modify the Indenture provisions relating to such amendments or waivers; (iii) make any change that adversely affects the right to convert any Debenture or the right to require the Company to purchase a Debenture or the right to require the Company to redeem a Debenture upon a Fundamental Change; (iv) modify the provisions of the Indenture relating to the subordination of the Debentures in a manner adverse to the holders of the Debentures in any material respect; or (v) impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Debentures. The Indenture also provides for certain modifications of its terms without the consent of the holders. No amendment may be made to the subordination provisions of the Indenture that adversely affects the rights of any holder of Senior Indebtedness then outstanding, unless the holders of such Senior Indebtedness (as required pursuant to the terms of such Senior Indebtedness) consent to such change.

Limitations of Claims in Bankruptcy

If a bankruptcy proceeding is commenced in respect of the Company, the claim of the holder of a Debenture is, under Title 11 of the United States Code, limited to the Issue Price of the Debenture plus that portion of the Original Issue Discount that has accrued from the date of issue to the commencement of the proceeding. In addition, the Debentures will be subordinated in right of payment to Senior Indebtedness to the extent set forth in the Indenture and effectively subordinated to the indebtedness and other obligations of the Company's subsidiaries. See "Subordination of Debentures" above.

Taxation of Debentures

See "Certain United States Federal Income Tax Considerations" for a discussion of certain tax considerations relevant to a holder of Debentures.

Rule 144A Information Requirement

The Company has agreed to furnish to the holders or beneficial holders of the Debentures or Common Stock issued upon conversion thereof and prospective purchasers of the Debentures or such Common Stock designated by such holders, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act until such time as such securities are no longer "restricted securities" within the meaning of Rule 144 under the Securities Act (assuming such securities have not been owned by an affiliate of the Company).

Information Concerning the Trustee

The Bank of New York, as Trustee under the Indenture, has been appointed by the Company as paying agent, conversion agent, registrar and custodian with regard to the Debentures. The Indenture provides that, except during the continuance of an Event of Default, the Trustee thereunder will exercise such rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The Indenture and provisions of the Trust Indenture Act of 1939, as amended ("TIA"), incorporated by reference therein contain limitations on the rights of the Trustee thereunder, should it become a creditor of the Company, to obtain payment of certain claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee is permitted to engage in other transactions; provided, however, that if it acquires any conflicting interest (within the meaning of the TIA) it must eliminate such conflicting interest or resign.

NOT A CERTIFIED COPY

020621

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

REGISTRATION RIGHTS

A copy of the Registration Rights Agreement will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Registration Rights Agreement, including the definitions of certain terms that are not otherwise defined in this Offering Memorandum. The Company will enter into a registration rights agreement with the Initial Purchaser (the "Registration Rights Agreement") pursuant to which the Company, at its expense, will, for the benefit of the holders, file with the Commission the Shelf Registration Statement covering resale of the Registrable Securities as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures. The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days of such first date of original issuance and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act, or any successor provision, subject to certain permitted exceptions. The Company will be permitted to suspend the use of the prospectus that is a part of the Shelf Registration Statement under certain circumstances relating to pending corporate developments, public filings with the Commission and similar events for a period not to exceed 30 days in any three-month period or not to exceed an aggregate of 90 days in any 12-month period; provided, however, that the Company will be permitted to suspend the use of the prospectus for a period not to exceed 60 days in any 3-month period or 90 days in any 12-month period under certain circumstances relating to probable acquisitions, acquisitions, financings or similar transactions. The Company will agree to pay predetermined liquidated damages as described herein ("Liquidated Damages") to holders of Debentures and holders of Common Stock issued upon conversion of the Debentures if the Shelf Registration Statement is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted above. Such Liquidated Damages shall accrue until such failure to file or become effective or unavailability is cured, (i) in respect of any Debenture, at a rate per annum equal to 0.25% for the first 90 day period after the occurrence of such event and 0.5% thereafter on an amount equal to the sum of the Issue Price of the Debenture plus accrued Original Issue Discount thereon and, (ii) in respect of each share of Common Stock, at a rate per annum equal to 0.25% for the first 90 day period and 0.5% thereafter on the then applicable conversion price for a share of Common Stock which equals the Issue Price of $1,000 principal amount at maturity of Debentures plus accrued Original Issue Discount thereon divided by the Conversion Rate in effect. A holder who sells Debentures and Common Stock issued upon conversion of the Debentures pursuant to the Shelf Registration Statement generally will be required to be named as a selling stockholder in the related prospectus, deliver a prospectus to purchasers of such Debentures and/or Common Stock issued upon conversion thereof and be bound by certain provisions of the Registration Rights Agreement that are applicable to such holder (including certain indemnification provisions). The Company will pay all expenses of the Shelf Registration Statement, provide to each registered holder copies of such prospectus, notify each registered holder when the Shelf Registration Statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the Debentures and the Common Stock issued upon conversion of the Debentures. The plan of distribution of the Shelf Registration Statement will permit resales of Registrable Securities by selling security holders through brokers and dealers.

Attached to this Offering Memorandum as Appendix B is a notice and questionnaire (the "Questionnaire") to be completed and delivered by a holder to the Company at least three business days prior to any intended distribution of Registrable Securities pursuant to the Shelf Registration Statement. Holders are required to complete and deliver the Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such holders may be named as selling stockholders in the related prospectus at the time of effectiveness. Upon receipt of such a completed Questionnaire, together with such other information as may be reasonably requested by the Company, from a holder following the effectiveness of the Shelf Registration Statement, the Company will, as

NOT A CERTIFIED COPY

020622

MF 01793

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326548

16div-026380

promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities (subject to the Company's right to suspend the use of the prospectus as described above). The Company has agreed to pay Liquidated Damages in the amount set forth above to such holder if the Company fails to make such filing in the time required or, if such filing is a post-effective amendment to the Shelf Registration Statement required to be declared effective under the Securities Act, if such amendment is not declared effective within 45 days of the filing thereof. Any holder that does not complete and deliver a Questionnaire or provide such other information will not be named as a selling stockholder in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement.

NOT A CERTIFIED COPY

020623

MF 01794

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326549

16div-026381

DESCRIPTION OF CAPITAL STOCK

The Company's authorized capital stock consists of 200,000,000 shares of Common Stock, par value $.01 per share and 2,000,000 shares of preferred stock, par value $.01 per share.

Common Stock

As of February 27, 1998, there were 86,457,201 shares of Common Stock outstanding. Each share of Common Stock has one vote on all matters upon which stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Common Stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of the Company, subject to prior distribution rights of any shares of preferred stock then outstanding. The Common Stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Common Stock. Holders of Common Stock are entitled to participate in dividends as and when declared by the Company's Board of Directors out of funds legally available therefor. The Company's ability to pay cash dividends is subject to certain restrictions. The Company expects that the New Credit Facility will contain limitations on the ability of the Company to pay dividends. The Company's Proxy Statement for its next annual meeting which is scheduled for May 13, 1998, includes an amendment to the Company's Restated Certificate of Incorporation increasing the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares.

The transfer agent and registrar for the Common Stock is The Bank of New York.

Preferred Stock

There are no shares of preferred stock currently outstanding. The Certificate of Incorporation provides that the Board of Directors of the Company may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Board may determine without any further action by the stockholders of the Company.

Delaware General Corporation Law Section 203

Section 203 of the Delaware General Corporation Law (the "DGCL") prohibits certain transactions between a Delaware corporation and an "interested stockholder," which is defined as a person who, together with any affiliate and/or associates of such person, beneficially owns, directly or indirectly, 15% or more of the outstanding voting shares of a Delaware corporation. This provision prohibits certain business combinations (defined broadly to include mergers, consolidations, sales or other dispositions of assets having an aggregate value in excess of 10% of the consolidated assets of the corporation or the aggregate value of all of the outstanding capital stock of the corporation, and certain transactions that would increase the interested stockholder's proportionate share ownership in the corporation) between an interested stockholder and a corporation for a period of three years after the date the interested stockholder acquired its stock, unless (i) the business combination is approved by the corporation's board of directors prior to the date the interested stockholder acquired shares, (ii) the interested stockholder acquired at least 85% of the voting stock of the corporation in the transaction in which it became an interested stockholder or (iii) the business combination is approved by a majority of the board of directors and by the affirmative vote of two-thirds of the votes entitled to be cast by disinterested stockholders at an annual or special meeting. Any future election to opt out of Section 203 can be effected only by an amendment to the Certificate of Incorporation or the Bylaws. Any such election would not be effective until 12 months after the adoption of such amendment and would not apply to a business combination with any interested stockholder who became such on or prior to the date of adoption.

NOT A CERTIFIED COPY

020624

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the Debentures and Common Stock to a holder of a Debenture or Common Stock that is, for U.S. federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust, the administration of which is subject to the primary supervision of a court within the United States and which has one or more United States persons with authority to control all substantial decisions. This summary is based on laws regulations, rulings and decisions now in effect, all of which are subject to change, possibly with retroactive effect. There can be no assurance that the Internal Revenue Service (the "IRS") will not challenge one or more of the tax consequences described herein, and the Company has not obtained, nor does it intend to obtain, a ruling from the IRS or an opinion of counsel as to any U.S. federal income tax consequences relating to the Debentures.

This summary deals only with holders of Debentures who purchase the Debentures pursuant to the Offering and hold the Debentures and any Common Stock into which the Debentures are converted as capital assets. This summary does not address tax considerations applicable to investors that may be subject to special tax rules (including, without limitation, banks, insurance companies, tax-exempt entities, regulated investment companies, common trust funds, dealers in securities, or persons who hold Debentures or Common Stock as part of a hedge conversion or constructive sale transaction, straddle or other risk reduction transaction). This discussion also does not address the tax consequences arising under the laws of any foreign, state or local jurisdiction.

INVESTORS CONSIDERING THE PURCHASE OF A DEBENTURE SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING, CONVERTING OR OTHERWISE DISPOSING OF THE DEBENTURES AND COMMON STOCK, INCLUDING THE EFFECT AND THE APPLICABILITY OF STATE, LOCAL OR FOREIGN TAX LAWS.

Original Issue Discount on the Debentures. The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). The issue price of the Debentures will equal the initial price at which a substantial amount of the Debentures is sold for cash (other than to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers), and the stated redemption price at maturity of a Debenture will be the sum of all payments due under the Debenture (which is expected to be the principal amount at maturity).

For U.S. federal income tax purposes, each holder of a Debenture must include in gross income a portion of the OID in each taxable year during which the Debenture is held in an amount equal to the OID that accrues on the Debenture during such period, determined by using a constant yield to maturity method. The OID included in income for each year will be calculated under a compounding formula that will result in the allocation of less OID to the earlier years of the term of the Debenture and more OID to later years. For the approximate cumulative total amount of OID accrued annually, see the chart under "Description of Debentures—Redemption of Debentures at the Option of the Company." Any amount included in income as OID will increase a holder's tax basis in the Debenture.

Sale, Exchange or Retirement of the Debentures. A holder's tax basis for determining gain or loss on the sale or other disposition of a Debenture will generally equal the holder's cost of the Debenture increased by any accrued OID includible in such holder's gross income and reduced by payments, if any. Except as described in the next paragraph, upon the sale, exchange or retirement of a Debenture, a holder will recognize gain or loss equal to the difference between the amount realized on the sale or other disposition of the Debenture and the

NOT A CERTIFIED COPY

020625

MF 01796

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326551

16div-026383

holder's tax basis in such Debenture. Gain or loss realized on the sale, exchange or retirement of a Debenture will generally be capital gain or loss and will be long-term capital gain or loss if the Debenture is held for more than one year.

If a holder elects to exercise its option to cause the Company to purchase its Debentures on a Purchase Date and the Company issues Common Stock in satisfaction of all of the Purchase Price, the exchange of the Debentures for Common Stock should generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received in such exchange of a Debenture should be the same as the holder's tax basis in the Debenture at the time of the conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received in such exchange should include the holding period of the Debenture exchanged. If the Purchase Price is paid with a combination of Common Stock and cash, gain (but not loss) realized by the holder should be recognized, but only to the extent of the cash received (including cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received should be the same as such holder's tax basis in the Debenture at the time of the conversion (except for any portion allocable to a fractional share of Common Stock), increased by the amount of gain recognized (other than with respect to a fractional share) and decreased by the amount of any cash received (except cash received in lieu of a fractional share). The holding period for Common Stock received in the exchange should include the holding period of the Debenture tendered to the Company in exchange therefor. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the amount of cash received for the fractional share and the holder's tax basis in the fractional share interest.

Conversion of Debentures. A holder's conversion of a Debenture into Common Stock will generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A tax basis in the Common Stock received on conversion of a Debenture will be the same as the holder's tax basis in the Debenture at the time of conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received on conversion will include the holding period of the Debenture converted, except that it is possible that the Internal Revenue Service may argue that the holding period of the Common Stock allocable to OID will commence on the date of the conversion and a holder would be required to hold such Common Stock for more than twelve months before long-term capital gain (or loss) treatment could be obtained upon a sale of such Common Stock. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the cash received for the fractional share interest and the holder's tax basis in the fractional share interest.

Dividends; Adjustment of Conversion Price. Dividends, if any, paid on the Common Stock generally will be includible in the income of a holder as ordinary income to the extent of the Company's current or accumulated earnings and profits.

If at any time the Company makes a distribution of property to shareholders that would be taxable to such shareholders as a dividend for federal income tax purposes (for example, distributions of evidences of indebtedness or assets of the Company, but generally not stock dividends or rights to subscribe for Common Stock) and, pursuant to the anti-dilution provisions of the Indenture, the Conversion Rate of the Debentures is increased, such increase may be deemed to be the payment of a taxable dividend to holders of Debentures. If the Conversion Rate is increased at the discretion of the Company or in certain other circumstances, such increase may also be deemed to be the payment of a taxable dividend to holders of Debentures. Moreover, in certain other circumstances, the absence of such an adjustment to the Conversion Rate of the Debentures may result in a taxable dividend to holders of the Common Stock.

Sale of Common Stock. Upon the sale or exchange of Common Stock, holders generally will recognize capital gain or capital loss equal to the difference between the amount realized on such sale or exchange and the holder's adjusted tax basis in such shares.

NOT A CERTIFIED COPY

020626

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PLAN OF DISTRIBUTION

Under the terms and subject to the conditions set forth in the Purchase Agreement between the Company and Morgan Stanley & Co. Incorporated (the "Initial Purchaser") dated March 19, 1998 (the "Purchase Agreement"), the Initial Purchaser has agreed to purchase, and the Company has agreed to sell to the Initial Purchaser, $2,014,000,000, aggregate principal amount at maturity of Debentures at a purchase price of 37.243% of the principal amount at maturity thereof. After the initial offering of the Debentures, the offering price and other selling terms may from time to time be varied by the Initial Purchaser.

The Purchase Agreement provides that the obligation of the Initial Purchaser to pay for and accept delivery of the Debentures is subject to approval of certain legal matters by its counsel and to certain other conditions. The Initial Purchaser is obligated to take and pay for all of the Debentures offered hereby if any are taken (other than the Debentures covered by the overallotment option described below).

The Company has granted to the Initial Purchaser an option, exercisable within 30 days of the date of the Purchase Agreement, to purchase up to an additional $302,100,000 aggregate principal amount at maturity of the Debentures solely for the purpose of covering over-allotments, if any.

The Purchase Agreement provides that the Company will indemnify the Initial Purchaser against certain liabilities, including liabilities under the Securities Act.

The Company has been advised by the Initial Purchaser that the Initial Purchaser proposes to resell the Debentures initially at the price set forth on the cover page hereof to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) in reliance on Rule 144A under the Securities Act and to a limited number of other institutional "accredited investors" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act, that agree in writing to comply with the transfer restrictions and other conditions set forth in the Purchase Agreement. See "Transfer Restrictions."

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as described in the immediately preceding paragraph.

The Debentures are eligible for trading in The Portal Market. The Initial Purchaser has advised the Company that it presently intends to make a market in the Debentures as permitted by applicable laws and regulations. The Initial Purchaser is not obligated, however, to make a market in the Debentures and any such market making may be discontinued at any time at the sole discretion of the Initial Purchaser. Accordingly, no assurance can be given as to the liquidity of, or trading markets for, the Debentures.

The Company and the directors and current executive officers referred to under "Security Ownership of Management" will agree that they will not (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (b) enter into any swap or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, for a 90-day period after the date of this Offering Memorandum, without the prior written consent of Morgan Stanley & Co. Incorporated, other than (i) the Debentures offered hereby, (ii) the Common Stock issuable upon conversion of the Debentures, (iii) securities of the Company (and the agreement to provide such securities) as full or partial consideration in connection with any future acquisitions or strategic investments by the Company or securities of the Company issuable upon exercise or conversion of the foregoing securities; *provided* that the market value of such securities does not exceed $500 million in the aggregate, (iv) options granted or stock issued upon the exercise of outstanding stock options or otherwise pursuant to the Company's stock option or employee stock purchase plans or other executive compensation arrangements existing at the date of this Offering Memorandum and (v) in connection with the acquisition of CLN Holdings and Coleman.

In order to facilitate the offering of the Debentures and the Common Stock, the Initial Purchaser may engage in transactions that stabilize, maintain or otherwise affect the price of the Debentures or the Common Stock.

NOT A CERTIFIED COPY

020627

MF 01798

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326553

16div-026385

Specifically, the Initial Purchaser may over-allot in connection with the offering, creating a short position in the Debentures for its own account. In addition, to cover over-allotments or stabilize the price of the Debentures and the Common Stock, the Initial Purchaser may bid for, and purchase, the Debentures or shares of the Common Stock in the open market. Finally, the Initial Purchaser may reclaim selling concessions allowed to dealers for distributing the Debentures in the offering, if the Initial Purchaser repurchases previously distributed Debentures in transactions to cover short positions established by the Initial Purchaser, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Debentures or the Common Stock above independent market levels. The Initial Purchaser is not required to engage in these activities, and may discontinue any of these activities at any time.

The Initial Purchaser has performed various investment banking and other services for the Company in the past, and may do so from time to time in the future. In particular, the Initial Purchaser is acting as the Company's financial advisor in connection with the Aquisitions. In addition, an affiliate of the Initial Purchaser is arranging the New Credit Facility and expects to be a lender thereunder.

TRANSFER RESTRICTIONS

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act. The Debentures and Common Stock issuable upon conversion of the Debentures may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except (i) in compliance with the registration requirements of the Securities Act and all other applicable securities laws, or (ii) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws. Accordingly, the Debentures are being offered and sold only (1) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) ("QIBs") in compliance with Rule 144A and (2) to a limited number of other institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) ("Institutional Accredited Investors") that, prior to their purchases of Debentures, deliver to the Initial Purchaser a letter attached hereto as Appendix A, which contains certain representations and agreements.

Each purchaser of Debentures will be deemed to (1) represent that it is purchasing the Debentures for its own account or an account with respect to which it exercises sole investment discretion and that it or such account is a QIB, or an institutional accredited investor, (2) acknowledge that the Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act, and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as set forth below, (3) agree that if it should resell or otherwise transfer the Debentures or the Common Stock issuable upon conversion of the Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), it will do so within the United States or to, or for the account or benefit of, U.S. persons only (a) to the Company or any subsidiary thereof, (b) to a QIB in compliance with Rule 144A, (c) to an institutional accredited investor that, prior to such transfer, furnishes to the Trustee, as registrar for the Debentures (or in the case of the Common Stock, the transfer agent for the Common Stock (the "Transfer Agent")), a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Debentures (or the Common Stock, as the case may be) (the form of which letter can be obtained from the Trustee for the Debentures or the Transfer Agent for the Common Stock), (d) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (e) pursuant to a registration statement which has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and (4) agree that it will give each person to whom it transfers such Debentures or Common Stock issuable on conversion of the Debentures notice of any restrictions on transfer of such Debentures and such Common Stock. Each institutional accredited investor (other than a QIB) that is an original purchaser of the Debentures will be required to sign an agreement to the foregoing effect in the form attached hereto as Appendix A. In the case of any certificated Debentures, prior to any proposed transfer of Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holders thereof must check the appropriate box set forth on the certificate representing the Debentures relating to the manner of such transfer and submit the certificate representing the Debentures to the Trustee. If (i) such transfer is to an institutional accredited investor or (ii) any holder proposes to transfer Common Stock issued upon conversion of Debentures

NOT A CERTIFIED COPY

020628

in either case prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holder (or beneficial holder, as the case may be) will be required to furnish to the Trustee (or, in the case of the Common Stock, the Transfer Agent) such certifications, legal opinions or other information as it may reasonably require to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Each certificate representing a Debenture will bear the following legend (unless such Debenture has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE DEBENTURE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT, PRIOR TO EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), RESELL OR OTHERWISE TRANSFER THE DEBENTURE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH DEBENTURES WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE DEBENTURE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRUSTEE OR A SUCCESSOR TRUSTEE, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (3) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (4) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE DEBENTURES EVIDENCED HEREBY ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR OR IS A PURCHASER WHO IS NOT A U.S. PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE DEBENTURE

NOT OFFERED OR SOLD

020629

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) ABOVE OR UPON ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

Each stock certificate representing Common Stock issued upon conversion of the Debenture will bear the following legend (unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRANSFER AGENT OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) ABOVE OR UPON ANY TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY AFTER THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

020630

NOT OFFERED FOR SALE

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LEGAL MATTERS

Certain legal matters will be passed upon for the Company by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York and for the Initial Purchaser by Davis Polk & Wardwell, New York, New York.

INDEPENDENT AUDITORS

The consolidated financial statements of Sunbeam Corporation and its subsidiaries, included in this Offering Memorandum, have been audited by Arthur Andersen LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Arthur Andersen LLP.

The consolidated financial statements of CLN Holdings and its subsidiaries, included in this Offering Memorandum, have been audited by Ernst & Young LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Ernst & Young LLP.

The consolidated financial statements of Signature Brands USA, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by KPMG Peat Marwick LLP, independent certified public accountants to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of KPMG Peat Marwick LLP, independent certified public accountants.

The consolidated financial statements of First Alert, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by Price Waterhouse LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Price Waterhouse LLP.

NOT A CERTIFIED COPY

020631

MF 01802

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326557

16div-026389

(This page intentionally left blank)

NOT A CERTIFIED COPY

020632

INDEX TO FINANCIAL STATEMENTS

	Page
Sunbeam Corporation	
Report of Independent Certified Public Accountants	F-2
Consolidated Statements of Operations for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-3
Consolidated Balance Sheets as of December 28, 1997 and December 29, 1996	F-4
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-5
Consolidated Statements of Cash Flows for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-6
Notes to Consolidated Financial Statements	F-7
CLN Holdings Inc.	
Report of Independent Auditors	F-26
Consolidated Balance Sheets as of December 31, 1997 and December 31, 1996	F-27
Consolidated Statements of Operations for the Years ended December 31, 1997, December 31, 1996 and December 31, 1995	F-28
Consolidated Statements of Stockholder's Deficit for the Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-29
Consolidated Statements of Cash Flows for the Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-30
Notes to Consolidated Financial Statements	F-31
Signature Brands USA, Inc.	
Independent Auditors' Report	F-55
Consolidated Balance Sheets as of September 28, 1997 and September 29, 1996	F-56
Consolidated Statements of Operations for the Years ended September 28, 1997, September 29, 1996 and October 1, 1995	F-57
Consolidated Statements of Stockholders' Equity for the Years Ended September 28, 1997, September 29, 1996 and October 1, 1995	F-58
Consolidated Statements of Cash Flows for the Years Ended September 28, 1997, September 29, 1996 and October 1, 1995	F-59
Notes to Consolidated Financial Statements	F-60
Unaudited Consolidated Balance Sheets as of December 28, 1997 and September 28, 1997	F-70
Unaudited Consolidated Statements of Operations for the thirteen weeks ended December 28, 1997 and December 29, 1996	F-71
Unaudited Consolidated Statements of Cash Flows for the thirteen weeks Ended December 28, 1997 and December 29, 1996	F-72
Notes to Unaudited Consolidated Financial Statements	F-73
First Alert, Inc.	
Report of Independent Accountants	F-75
Consolidated Balance Sheets as of December 31, 1997 and December 31, 1996	F-76
Consolidated Statements of Operations for the Fiscal Years ended December 31, 1997, December 31, 1996 and December 31, 1995	F-77
Consolidated Statements of Cash Flows for the Fiscal Year ended December 31, 1997, December 31, 1996 and December 31, 1995	F-78
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-79
Notes to Consolidated Financial Statements	F-80

NOT A CERTIFIED COPY

0206633

MF 01804

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326559

16div-026391

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

We have audited the accompanying consolidated balance sheets of Sunbeam Corporation (a Delaware corporation) and subsidiaries as of December 29, 1996 and December 28, 1997 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three fiscal years in the period ended December 28, 1997. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,
January 28, 1998, except with respect
to the matters discussed in Note 14,
as to which the date is March 2, 1998

NOT A CERTIFIED COPY

020634

MF 01805

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326560

16div-026392

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share amounts)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Net sales	$1,168,182	$ 984,236	$1,016,883
Cost of goods sold	837,683	900,573	809,130
Selling, general and administrative expense	131,056	214,029	137,508
Restructuring, impairment and other costs	—	154,869	—
Operating earnings (loss)	199,443	(285,235)	70,245
Interest expense	11,381	13,588	9,437
Other (income) expense, net	(1,218)	3,738	173
Earnings (loss) from continuing operations before income taxes	189,280	(302,561)	60,635
Income taxes (benefit):			
Current	8,369	(28,062)	(2,105)
Deferred	57,783	(77,828)	25,146
	66,152	(105,890)	23,041
Earnings (loss) from continuing operations	123,128	(196,671)	37,594
Earnings from discontinued operations, net of taxes	—	839	12,917
Loss on sale of discontinued operations, net of taxes	(13,713)	(32,430)	—
Net earnings (loss)	$ 109,415	$(228,262)	$ 50,511
Earnings (loss) per share of common stock from continuing operations:			
Basic	$ 1.45	$ (2.37)	$ 0.46
Diluted	1.41	(2.37)	0.45
Net earnings (loss) per share of common stock:			
Basic	$ 1.29	$ (2.75)	$ 0.62
Diluted	1.25	(2.75)	0.61
Weighted average common shares outstanding:			
Basic	84,945	82,925	81,626
Diluted	87,542	82,925	82,819

NOT A CERTIFIED COPY

020635

See Notes to Consolidated Financial Statements.

MF 01806

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326561

16div-026393

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	December 28, 1997	December 29, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$ 52,378	$ 11,526
Receivables, net	295,550	213,438
Inventories	256,180	162,252
Net assets of discontinued operations and other assets held for sale	—	102,847
Deferred income taxes	36,706	93,689
Prepaid expenses and other current assets	17,191	40,411
Total current assets	658,005	624,163
Property, plant and equipment, net	240,897	220,088
Trademarks and trade names, net	194,372	200,262
Other assets	27,010	28,196
	$1,120,284	$1,072,709
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	$ 668	$ 921
Accounts payable	105,580	107,319
Restructuring accrual	10,938	63,834
Other current liabilities	80,913	99,509
Total current liabilities	198,099	271,583
Long-term debt	194,580	201,115
Other long-term liabilities	141,109	152,451
Deferred income taxes	54,559	52,308
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (issued 89,984,425 and 88,441,479 shares)	900	884
Paid-in capital	483,384	447,948
Retained earnings	141,134	35,118
Other	(30,436)	(25,310)
	594,982	458,640
Treasury stock, at cost (4,454,394 and 4,478,814 shares)	(63,045)	(63,388)
Total shareholders' equity	531,937	395,252
	$1,120,284	$1,072,709

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

020636

MF 01807

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326562

16div-026394

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Dollars in thousands, except per share amounts)

	Common Stock	Paid-in Capital	Retained Earnings	Other (Note 2)	Treasury Stock
Balance at January 1, 1995	$932	$461,876	$285,990	$(20,118)	$(174,070)
Net earnings	—	—	50,511	—	—
Common dividends ($.04 per share)	—	—	(3,268)	—	—
Exercise of stock options	20	17,013	—	—	—
Amortization of unearned compensation	—	—	—	582	—
Retirement of treasury shares	(74)	(37,103)	(66,535)	—	103,712
Purchase of common stock for treasury	—	—	—	—	(13,091)
Minimum pension liability	—	—	—	(199)	—
Translation adjustments	—	—	—	(5,145)	—
Balance at December 31, 1995	878	441,786	266,698	(24,880)	(83,449)
Net loss	—	—	(228,262)	—	—
Common dividends ($.04 per share)	—	—	(3,318)	—	—
Exercise of stock options	6	7,313	—	—	—
Grant of restricted stock	—	(1,120)	—	(14,346)	15,466
Amortization of unearned compensation	—	—	—	7,707	—
Minimum pension liability	—	—	—	4,963	—
Retirement and sale of treasury shares	—	(31)	—	—	4,595
Translation adjustments	—	—	—	1,246	—
Balance at December 29, 1996	884	447,948	35,118	(25,310)	(63,388)
Net earnings	—	—	109,415	—	—
Common dividends ($.04 per share)	—	—	(3,399)	—	—
Exercise of stock options	16	34,680	—	—	—
Amortization of unearned compensation	—	—	—	5,322	—
Minimum pension liability	—	—	—	(9,709)	—
Other stock issuances	—	756	—	—	343
Translation adjustments	—	—	—	(739)	—
Balance at December 28, 1997	$900	$483,384	$141,134	$(30,436)	$ (63,045)

NOT A CERTIFIED COPY

020637

See Notes to Consolidated Financial Statements.

MF 01808

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326563

16div-026395

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Operating activities:			
Net earnings (loss)	$ 109,415	$ (228,262)	$ 50,511
Adjustments to reconcile net earnings (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	38,577	47,429	44,174
Restructuring, impairment and other costs	—	154,869	—
Other non-cash special charges	—	128,800	—
Loss on sale of discontinued operations, net of taxes	13,713	32,430	—
Deferred income taxes	57,783	(77,828)	25,146
Increase (decrease) in cash from changes in working capital:			
Receivables, net	(84,576)	(13,829)	(4,499)
Inventories	(100,810)	(11,651)	(4,874)
Accounts payable	(1,585)	14,735	9,245
Restructuring accrual	(43,378)	—	—
Prepaid expenses and other current assets and liabilities	(9,004)	2,737	(8,821)
Income taxes payable	52,844	(21,942)	(18,452)
Payment of other long-term and non-operating liabilities	(14,682)	(27,089)	(21,719)
Other, net	(26,546)	13,764	10,805
Net cash provided by (used in) operating activities	(8,249)	14,163	81,516
Investing activities:			
Capital expenditures	(58,258)	(75,336)	(140,053)
Decrease in investments restricted for plant construction	—	—	45,755
Proceeds from sale of divested operations and other assets	90,982	—	—
Purchase of businesses	—	—	(13,053)
Other, net	—	(860)	—
Net cash provided by (used in) investing activities	32,724	(76,196)	(107,351)
Financing activities:			
Net borrowings under revolving credit facility	5,000	30,000	40,000
Issuance of long-term debt	—	11,500	—
Payments of debt obligations	(12,157)	(1,794)	(5,417)
Proceeds from exercise of stock options	26,613	4,684	9,818
Purchase of common stock for treasury	—	—	(13,091)
Sale of treasury stock	—	4,578	—
Payments of dividends on common stock	(3,399)	(3,318)	(3,268)
Other financing activities	320	(364)	(264)
Net cash provided by financing activities	16,377	45,286	27,778
Net increase (decrease) in cash and cash equivalents	40,852	(16,747)	1,943
Cash and cash equivalents at beginning of year	11,526	28,273	26,330
Cash and cash equivalents at end of year	$ 52,378	$ 11,526	$ 28,273

See Notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

020638

MF 01809

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326564

16div-026396

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

Sunbeam Corporation ("Sunbeam" or the "Company") is a leading manufacturer and marketer of branded consumer products. The Sunbeam® and Oster® brands have been household names for generations, and the Company is a market share leader in many of its product categories.

The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogs, television shopping channels, Company-owned outlet stores, hardware stores, home centers, drug and grocery stores, pet supply retailers, as well as independent distributors and the military. The Company also sells its products to commercial end users such as hotels and other institutions.

Approximately 79% of total Company sales are generated in the United States. The remaining sales are generated primarily in Latin America, Mexico, Canada, Europe and Asia.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and all majority-owned subsidiaries that it controls. All material intercompany balances and transactions have been eliminated.

Presentation of Fiscal Periods

The Company's fiscal year ends on the Sunday nearest December 31. Fiscal years 1997, 1996 and 1995 ended on December 28, 1997, December 29, 1996, and December 31, 1995 respectively, which encompassed 52-week periods.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Significant accounting estimates include the establishment of the allowance for doubtful accounts, reserves for product warranty, product liability, excess and obsolete inventory, litigation and environmental exposures.

Concentrations of Credit Risk

Substantially all of the Company's trade receivables are due from retailers and distributors located throughout the United States, Latin America and Canada. Approximately 36% of the Company's sales in 1997 were to its five largest customers. The Company establishes its credit policies based on an ongoing evaluation of its customers' creditworthiness and competitive market conditions and establishes its allowance for doubtful accounts based on an assessment of exposures to credit losses at each balance sheet date. The Company believes its allowance for doubtful accounts is sufficient based on the credit exposures outstanding at December 28, 1997. However, certain retailers filed for bankruptcy protection in the last several years and it is possible that additional credit losses could be incurred if the trends of retail consolidation continue.

NOT A CERTIFIED COPY

020639

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326565

16div-026397

1. Operations and Significant Accounting Policies—(Continued)

Inventories

Inventories are stated at the lower of cost or market with cost being determined principally by the first-in, first-out method.

Property, Plant and Equipment

Property, plant and equipment is stated at cost. The Company provides for depreciation using primarily the straight-line method in amounts that allocate the cost of property, plant and equipment over the following useful lives:

Buildings and improvements	20 to 40 years
Machinery, equipment and tooling	3 to 15 years
Furniture and fixtures	3 to 10 years

Leasehold improvements are amortized on a straight-line basis over the shorter of its estimated useful life or the term of the lease.

Long-lived Assets

The Company accounts for long-lived assets pursuant to Statement of Financial Accounting Standards ("SFAS") No. 121, *Accounting for the Impairment of Long-lived Assets and for Long-lived Assets to Be Disposed Of.* See Notes 8 and 9 for a discussion of asset impairment charges in 1996.

Capitalized Interest

Interest costs for the construction of certain long-term assets are capitalized and amortized over the related assets' estimated useful lives. Total interest costs during 1997 and 1996 amounted to $12.3 million and $14.0 million respectively, of which $.9 million and $.4 million respectively, was capitalized into the construction cost of the long-term assets.

Amortization Periods

Trademarks and trade names are being amortized on a straight-line basis over 40 years.

Revenue Recognition

The Company recognizes revenues from product sales principally at the time of shipment to customers. In limited circumstances, at the customers request the Company may sell seasonal product on a bill and hold basis provided that the goods are completed, packaged and ready for shipment, such goods are segregated and the risks of ownership and legal title have passed to the customer. The amount of such bill and hold sales at December 29, 1997 was approximately 3% of consolidated revenues.

Net sales is comprised of gross sales less provisions for expected customer returns, discounts, promotional allowances and cooperative advertising.

Warranty Costs

The Company provides for warranty costs in amounts it estimates will be needed to cover future warranty obligations for products sold during the year. Estimates of warranty costs are periodically reviewed and adjusted, when necessary, to consider actual experience.

NOT A CERTIFIED COPY

020640

MF 01811

CPH 1326566

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026398

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

Media advertising costs included in "Selling, General and Administrative Expense," are expensed as incurred. Co-operative advertising costs are expensed ratably over the year in relation to revenues.

Foreign Currency Translation

The assets and liabilities of subsidiaries, other than those operating in highly inflationary environments, are translated into U.S. dollars at year-end exchange rates, with resulting translation gains and losses accumulated in a separate component of shareholders' equity. Income and expense items are converted into U.S. dollars at average rates of exchange prevailing during the year.

For subsidiaries operating in highly inflationary environments, (Venezuela and Mexico) inventories and property, plant and equipment are translated at the rate of exchange on the date the assets were acquired, while other assets and liabilities are translated at year-end exchange rates. Translation adjustments for those operations are included in "Other (income) expense, net" on the Accompanying Consolidated Statements of Operations.

Stock-Based Compensation Plans

SFAS No. 123, *Accounting for Stock-Based Compensation* allows either adoption of a fair value method for accounting for stock-based compensation plans or continuation of accounting under Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations with supplemental disclosures.

The Company has chosen to account for its stock options using the intrinsic value based method prescribed in APB Opinion No. 25 and, accordingly, does not recognize compensation expense for stock option grants made at an exercise price equal to or in excess of the fair market value of the stock at the date of grant. Pro forma net income and earnings per share amounts as if the fair value method had been adopted are presented in Note 5 herein. SFAS No. 123 does not impact the Company's results of operations, financial position or cash flows.

Earnings Per Share of Common Stock

In 1997, the Company adopted SFAS No. 128, *Earnings Per Share*. Basic earnings per common share calculations are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock. Diluted earnings per share are determined by dividing earnings available to common shareholders by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding (all related to outstanding stock options and restricted stock discussed in Note 5). The Company's reported primary earnings per share for 1995 has been restated to comply with the requirements of SFAS No. 128. SFAS No. 128 had no impact on the Company's reported loss per share for 1996 and no impact on the diluted earnings per share reported in 1995. The effect of this accounting change on previously reported earnings per share (EPS) for 1995 was as follows:

Earnings per share from continuing operations	
Primary EPS as reported	$0.45
Effect of SFAS No. 128	0.01
Basic EPS as restated	0.46
Earnings per share	
Primary EPS as reported	$0.61
Effect of SFAS No. 128	0.01
Basic EPS as restated	0.62

NOT A CERTIFIED COPY

020641

MF 01812

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326567

16div-026399

1. Operations and Significant Accounting Policies—(Continued)

Reclassification

Certain prior year amounts have been reclassified to conform with the 1997 presentation.

New Accounting Standards

In June 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 130, *Reporting Comprehensive Income*. SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required. The Company is in the process of determining its preferred format. The adoption of SFAS No. 130 will have no impact on the Company's consolidated results of operations, financial position or cash flows.

In June 1997, the FASB issued SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated. The Company is in the process of evaluating the disclosure requirements. The adoption of SFAS No. 131 will have no impact on consolidated results of operations, financial position or cash flow.

2. Shareholders' Equity

The Company has 200,000,000 shares of $.01 par value common stock authorized. At December 28, 1997 there were 9,404,068 shares of common stock reserved for issuance upon the exercise of outstanding stock options.

In June 1995, the Company retired 7,376,395 shares of common stock held in treasury, and such shares were returned to the status of authorized but unissued shares. As a result, $103.7 million assigned to treasury stock has been eliminated with a corresponding decrease to common stock, paid-in capital and retained earnings. In 1995, the Company repurchased 905,600 shares of its common stock at a total cost of $13.1 million.

In July 1996, the Company sold 321,786 shares of common stock for total proceeds of approximately $4.4 million, and granted 1,100,000 shares of restricted stock in connection with the employment of a new Chairman and Chief Executive Officer and certain other officers of the Company. Compensation expense attributable to the restricted stock awards is being amortized to expense beginning in 1996 over the periods in which the restrictions lapse (which in the case of 333,333 shares, was immediately upon the date of grant, in the case of 666,667 shares, is equally over two years from the date of grant and in the case of the remaining restricted shares, is equally over three years from the dates of grant).

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999. Refer to Note 14 for additional information regarding the new employment contracts, including the acceleration of vesting of restricted stock grants discussed above.

NOT A CERTIFIED COPY

020642

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

2. Shareholders' Equity—(Continued)

Information regarding other changes in shareholders' equity is summarized below (in thousands):

	Currency Translation Adjsutments	Minimum Pension Liability	Unearned Compensation	Total
Balance at January 1, 1995	$ (8,212)	$(10,927)	$ (979)	$(20,118)
Amortization of unearned compensation	—	—	582	582
Increase in minimum pension liability (net of tax of $127)	—	(199)	—	(199)
Translation adjustments	(5,145)	—	—	(5,145)
Balance at December 31, 1995	(13,357)	(11,126)	(397)	(24,880)
Grant of restricted stock	—	—	(14,346)	(14,346)
Amortization of unearned compensation	—	—	7,707	7,707
Decrease in minimum pension liability (net of tax of $2,672)	—	4,963	—	4,963
Translation adjustments	1,246	—	—	1,246
Balance at December 29, 1996	(12,111)	(6,163)	(7,036)	(25,310)
Amortization of unearned compensation	—	—	5,322	5,322
Increase in minimum pension liability (net of tax of $5,228)	—	(9,709)	—	(9,709)
Translation adjustments	(739)	—	—	(739)
Balance at December 28, 1997	$(12,850)	$(15,872)	$(1,714)	$(30,436)

3. Credit Facilities and Long-Term Debt

In 1994, the Mississippi Business Finance Corporation ("MBFC") issued $75 million of 7.85% Industrial Development Revenue Notes (the "Notes") maturing serially in eleven equal annual installments beginning June 1999 to certain institutional investors through a private placement. The MBFC loaned the proceeds of the Notes to a subsidiary of the Company under a non-recourse loan agreement (the "Hattiesburg Loan") restricting the use of such funds to the acquisition, design, construction and equipping of the Hattiesburg, Mississippi manufacturing and distribution center. The Notes are guaranteed by the Company and the Hattiesburg Loan is secured by the Hattiesburg facility.

In September 1996 (as subsequently amended), the Company entered into a $500 million syndicated unsecured five year revolving credit facility (the "Credit Agreement") which replaced a previous credit facility of $500 million. In July 1997, the Company reduced the amount of available borrowings under the facility to $250 million. Under the Credit Agreement, the Company can borrow under a competitive bid option, or at a spread above LIBOR (currently .5%) or at a bank base rate. In addition, the Company pays an annual facility fee (currently .25%). The Credit Agreement contains certain financial covenants.

During 1997, the Company repaid $12.2 million of long-term borrowings related to the divested furniture operations and other assets sold.

The aggregate annual principal payments on long-term debt, excluding amounts outstanding under the Credit Agreement, due in each of the years 1998-2002, are $.7 million, $7.5 million, $7.6 million, $7.6 million and $7.7 million, respectively.

NOT A CERTIFIED COPY

020643

MF 01814

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326569

16div-026401

3. Credit Facilities and Long-Term Debt—(Continued)

Long-term debt at the end of each fiscal year consists of the following (in thousands):

	1997	1996
Revolving credit facility, weighted average interest rate of 5.99% and 5.60% for 1997, and for 1996, respectively	$110,000	$105,000
Hattiesburg industrial revenue bond due 2009, fixed interest rate of 7.85%	75,000	75,000
Other long-term borrowings, due through 2012, weighted average interest rate of 3.92% and 4.95%, at December 28, 1997 and December 29, 1996, respectively	10,248	22,036
	$195,248	$202,036

In December 1997, the Company entered into a revolving trade accounts receivable securitization program to sell without recourse, through a wholly-owned subsidiary, certain trade accounts receivable. The maximum amount of receivables that can be sold through this program is $70 million. At December 28, 1997, the Company had received approximately $59 million from the sale of trade accounts receivable. The proceeds from the sale were used to reduce borrowings under the Company's revolving credit facility. Costs of the program, which primarily consist of the purchaser's financing cost of issuing commercial paper backed by the receivables, totaled $.2 million during 1997, and have been classified as interest expense in the accompanying Consolidated Statements of Operations. The Company, as agent for the purchaser of the receivables, retains collection and administrative responsibilities for the purchased receivables.

4. Financial Instruments

Fair Value of Financial Instruments

The carrying amounts of the Company's financial instruments as of December 28, 1997 approximate market values based upon the following methods and assumptions:

Cash and Cash Equivalents—The carrying amount of cash and cash equivalents is assumed to approximate fair value as cash equivalents include all highly liquid, short-term investments with original maturities of three months or less.

Short and Long Term Debt—The carrying value of the Company's various debt outstanding as of December 28, 1997 approximates market. The fair value of the Company's fixed rate debt is estimated using discounted cash flow analysis, based upon the market yield of public debt securities of comparable credit quality and maturity. The carrying value of the Company's variable rate debt is assumed to approximate market based upon periodic adjustments of the interest rate to the current market rate in accordance with the terms of the debt agreements.

Letters of Credit—The Company utilizes stand-by letters of credit to back certain financing instruments and insurance policies and commercial letters of credit guaranteeing various international trade activities. The contract amounts of the letters of credit approximate their fair value.

Derivative Financial Instruments

The Company selectively uses derivatives to manage interest rate and foreign exchange exposures that arise in the normal course of business. The use of derivatives did not have a material impact on the Company's results of operations in 1997, 1996 and 1995. No derivatives are entered into for trading or speculative purposes. Foreign exchange option and forward contracts are used to hedge a portion of the Company's underlying exposures denominated in foreign currency. Although the market value of derivative contracts at any single point in time

NOT A CERTIFIED COPY

020644

MF 01815

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326570

16div-026402

4. Financial Instruments—(Continued)

will vary with changes in interest and/or foreign exchange rates, the difference between the carrying value and fair value of such contracts at December 29, 1996 and December 31, 1995 is not considered to be material, either individually or in the aggregate. The Company had no derivative financial instruments outstanding at December 28, 1997. The Company enters into derivative contracts with counterparties that it believes to be creditworthy. The Company does not enter into any leveraged derivative transactions.

As of December 28, 1996, $10.0 million of the Company's outstanding floating rate debt was subject to interest rate swap agreements.

In order to mitigate the transaction exposures that may arise from changes in foreign exchange rates, the Company purchases foreign currency option contracts to hedge anticipated transactions. The option contracts typically expire within one year. Any realized gains on options are not deferred but are recognized in income in the period when the hedged exposure is recognized. The Company purchased options with a notional value of $16.6 million in 1997, $18.2 million in 1996 and $11.7 million in 1995. Options with notional value of $17.9 million, $25.4 million and $3.2 million expired in 1997, 1996 and 1995, respectively. The Company held purchased option contracts with a notional value of $1.4 million at December 29, 1996.

5. Employee Stock Options and Awards

The Company has one stock-based compensation plan, the Amended and Restated Sunbeam Corporation Stock Option Plan (the "Plan"). Under the Plan, all employees are eligible for grants of options to purchase up to an aggregate of 11,300,000 shares of the Company's common stock at an exercise price equal to or in excess of the fair market value of the stock on the date of grant. The term of each option commences on the date of grant and expires on the tenth anniversary of the date of grant. Options generally become exercisable over a three to five year period.

The Plan also provides for the grant of restricted stock awards of up to 200,000 shares, in the aggregate, to employees and non-employee directors. See Note 2 for a discussion of restricted stock awards made outside the Plan.

In July 1996, options to purchase an aggregate of 3,000,000 shares (of which 2,750,000 options were outstanding at December 28, 1997) were granted outside of the Plan at exercise prices equal to the fair market value of the Company's common stock on the dates of grant in connection with the employment of a new Chairman and Chief Executive Officer and certain other executive officers of the Company. These outstanding options have terms of ten years and, with respect to options for 2,500,000 shares, are exercisable in three annual installments beginning July 17, 1996. Options for the remaining 250,000 shares still outstanding are exercisable in three annual installments beginning on the first anniversary of the July 22, 1996 grant date. On February 20, 1998 the vesting provisions of the options granted outside the plan were accelerated as further described in Note 14.

The Company applies APB Opinion No. 25 and related interpretations in accounting for its stock options. Accordingly, no compensation cost has been recognized for outstanding stock options. Had compensation cost for the Company's outstanding stock options been determined based on the fair value at the grant dates for those options consistent with SFAS No. 123, the Company's net earnings (loss) and diluted earnings (loss) per share would have been reduced to the pro forma amounts indicated below (in thousands except per share amounts):

	1997	1996	1995
Net earnings/(loss)			
As reported	$109,415	$(228,262)	$50,511
Pro forma	$ 94,887	$(238,186)	$49,731
Diluted earnings/(loss) per share			
As reported	$ 1.25	$ (2.75)	$ 0.61
Pro forma	$ 1.08	$ (2.87)	$ 0.60

NOT A CERTIFIED COPY

020645

MF 01816

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326571

16div-026403

5. Employee Stock Options and Awards—(Continued)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	1997	1996	1995
Expected volatility	34.19%	36.78%	36.78%
Risk-free interest rate	6.36%	6.34%	6.34%
Dividend yield	.1%	.1%	.1%
Expected life	6 years	5 years	5 years

A summary of the status of the Company's outstanding stock options as of December 28, 1997, December 29, 1996 and December 31, 1995, and changes during the years ending on those dates is presented below:

	1997		1996		1995	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Plan Options						
Outstanding at beginning of year	6,271,837	$19.43	4,610,387	$16.67	5,230,221	$14.85
Granted	3,105,263	32.40	4,061,450	20.39	1,928,500	18.61
Exercised	(1,549,196)	17.20	(622,994)	7.51	(1,142,348)	6.32
Canceled	(1,173,836)	21.10	(1,777,006)	18.64	(1,405,986)	21.06
Outstanding at end of year	6,654,068	25.61	6,271,837	19.43	4,610,387	16.67
Options exercisable at year-end	1,547,198	$19.13	1,655,450	$16.13	1,539,836	$11.47
Weighted-average fair value of options granted during the year	$ 15.46		$ 14.76		$ 8.28	
Options Outside Plan						
Outstanding at beginning of year	2,750,000	$12.43	692,500	$16.70	750,000	$16.70
Granted	—		3,000,000	12.65	—	—
Exercised			—		(57,500)	16.70
Canceled	—		(942,500)	16.27	—	—
Outstanding at end of year	2,750,000	12.43	2,750,000	12.43	692,500	16.70
Options exercisable at year-end	1,750,000	$12.35	833,333	$12.25	505,000	$16.70
Weighted-average fair value of options granted during the year	$ —		$ 5.99		$ —	

NOT A CERTIFIED COPY

020616

MF 01817

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326572

16div-026404

5. Employee Stock Options and Awards—(Continued)

The following table summarizes information about stock options outstanding at December 28, 1997:

Range of Exercise Prices	Options Outstanding: Number Outstanding at 12/28/97	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
$ 5.00 to $14.99	3,514,556	8.2	$12.50
$15.00 to $19.99	485,240	7.4	16.30
$20.00 to $24.99	2,090,187	8.2	22.39
$25.00 to $29.99	1,786,007	9.0	25.99
$30.00 to $34.99	448,468	9.3	32.01
$35.00 to $39.99	336,820	9.5	38.77
$40.00 to $44.99	680,290	9.7	42.99
$45.00 and over	62,500	9.7	46.22
$ 5.00 to $49.71	9,404,068	8.5	$21.76

Range of Exercise Prices	Options Exercisable: Number Exercisable at 12/28/97	Weighted-Average Exercise Price
$ 5.00 to $14.99	2,108,255	$12.08
$15.00 to $19.99	219,466	16.50
$20.00 to $24.99	842,601	22.27
$25.00 and over	126,876	26.41
$ 5.00 to $27.36	3,297,198	$15.54

6. Employee Benefit Plans

Retirement Plans

The Company sponsors several defined benefit pension plans covering eligible U.S. salaried and hourly employees. Benefit accruals under such plans covering all U.S. salaried employees were frozen, effective December 31, 1990. Therefore no credit in the pension formula is given for service or compensation after that date. However, employees continue to earn service toward vesting in their interest in the frozen plans as of December 31, 1990. Employees of non-U.S. subsidiaries generally receive retirement benefits from Company sponsored plans or from statutory plans administered by governmental agencies in their countries.

The funded status of the Company's U.S. defined benefit pension plans at the end of each fiscal year follows (in thousands):

	1997	1996
Actuarial present value of benefit obligations:		
Vested	$126,941	$122,379
Non-vested	288	375
Accumulated benefit obligations	127,229	122,754
Plan assets at fair value	116,485	116,522
Accumulated benefit obligations in excess of plan assets	10,744	6,232
Unrecognized net loss	(25,192)	(19,537)
Additional minimum liability	25,192	10,255
Pension liability (prepaid) recognized on the balance sheet	$ 10,744	$ (3,050)

NOT A CERTIFIED COPY

020647

MF 01818

CPH 1326573

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026405

6. Employee Benefit Plans—(Continued)

Net periodic pension cost for the Company's U.S. defined benefit pension plans for each fiscal year include the following components (in thousands):

	1997	1996	1995
Service cost-benefits earned during the period	$ 157	$ 411	$ 331
Interest cost-accumulated benefit obligations	8,970	9,071	10,620
Actual return on plan assets	(12,511)	(816)	(20,985)
Net amortization and deferral	4,338	(7,518)	11,332
Net periodic pension cost	$ 954	$ 1,148	$ 1,298
Assumptions:			
Discount rate	7.25%	7.75%	7.25%
Long-term rate of return on assets	7.25%	7.75%	9.50%

The Company funds its pension plans in amounts consistent with applicable laws and regulations. Pension plan assets include corporate and U.S. government bonds and cash equivalents.

The assets, liabilities and pension costs of the Company's non-U.S. defined benefit retirement plans are not material to the consolidated financial statements.

Other Postretirement Benefits

The Company provides health care and life insurance benefits to certain former employees who retired from the Company prior to March 31, 1991. The Company has consistently followed a policy of funding the cost of postretirement health care and life insurance benefits on a pay-as-you-go basis.

Effective July 1993, various amendments to the Company's postretirement benefits program were adopted. The amendments included increases in retiree contribution levels for certain retiree groups and the discontinuation of medical and/or life insurance coverage for certain retirees who qualify for Medicare. These amendments resulted in an unrecognized reduction in prior service cost which is being amortized over future years.

The following table presents the funded status reconciled with the amounts recognized in the Company's consolidated balance sheet at the end of each fiscal year (in thousands):

	1997	1996
Accumulated postretirement benefit obligation	$14,220	$14,555
Plan assets	—	—
Accumulated postretirement benefit obligation in excess of plan assets	14,220	14,555
Unrecognized reduction in prior service cost	15,934	18,877
Unrecognized net gain	240	95
Accrued postretirement benefit obligation recognized on the balance sheet	$30,394	$33,527

Net periodic postretirement benefit cost for each fiscal year includes the following components (in thousands):

	1997	1996
Interest cost	$ 983	$ 1,042
Amortization of reduction in prior service cost	(2,943)	(2,943)
Net periodic postretirement benefit credit	$(1,960)	$(1,901)

NOT A CERTIFIED COPY

020648

MF 01819

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326574

16div-026406

6. Employee Benefit Plans—(Continued)

The assumed health care cost trend rate used in measuring the accumulated postretirement benefit obligation is 8.8% for 1998 and is assumed to decrease gradually to 6% by 2003 and remain at that level thereafter. A one percentage point increase in the assumed health care cost trend rate for each year would increase the accumulated postretirement benefit obligation as of December 28, 1997 and the net periodic postretirement benefit cost for 1997 by approximately 8%. The weighted average discount rate used in determining the accumulated postretirement benefit obligation was 7.25% at December 28, 1997 and December 29, 1996.

Defined Contribution Plans

The Company sponsors defined contribution profit sharing plans covering eligible employees. Company contributions to these plans include employer matching contributions as well as discretionary profit sharing contributions depending on the performance of the Company, in an amount up to 10% of eligible compensation. The Company provided $1.8 million in 1997, $1.7 million in 1996 and $4.1 million in 1995 for its defined contribution plans.

7. Supplementary Financial Statement Data

Supplementary Balance Sheet data at the end of each fiscal year is as follows (in thousands):

	1997	1996
Receivables:		
Trade	$305,219	$227,043
Sundry	7,794	2,412
	313,013	229,455
Valuations allowances	(17,463)	(16,017)
	$295,550	$213,438
Inventories:		
Finished goods	$142,976	$ 84,813
Work in process	26,237	25,167
Raw materials and supplies	86,967	52,272
	$256,180	$162,252
Property, plant and equipment:		
Land	$ 1,793	$ 2,524
Buildings and improvements	98,054	95,619
Machinery and equipment	245,824	258,199
	345,671	356,342
Accumulated depreciation and amortization	(104,774)	(136,254)
	$240,897	$220,088
Trademarks and trade names:		
Gross	$237,095	$245,307
Accumulated amortization	(42,723)	(45,045)
	$194,372	$200,262

NOT A CERTIFIED COPY

020649

MF 01820

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326575

16div-026407

7. Supplementary Financial Statement Data—(Continued)

Inventory and property, plant and equipment in 1996 exclude assets of discontinued operations and other assets held for sale.

	1997	1996
Other current liabilities:		
Payrolls, commissions and employee benefits	$ 14,051	$ 18,536
Advertising and sales promotion	27,524	23,816
Product warranty	24,154	23,883
Other	15,184	33,274
	$ 80,913	$ 99,509
Other long-term liabilities:		
Accrued postretirement benefit obligation	$ 30,394	$ 33,527
Accrued pension	10,744	—
Other	99,971	118,924
	$141,109	$152,451

Supplementary Statements of Operations and Cash Flows data for each fiscal year are summarized as follows (in thousands):

	1997	1996	1995
Other (income) expense, net:			
Interest income	$ (1,555)	$ (1,255)	$ (3,657)
Other	337	4,993	3,830
	$ (1,218)	$ 3,738	$ 173
Advertising and sales promotion	$ 56,448	$71,524	$57,274
Cash paid (received) during the period for:			
Interest (net of capitalization)	$ 13,058	$13,397	$12,555
Income taxes (net of refunds)	$(44,508)	$ (540)	$13,936

Non-cash Transactions

In connection with a warehouse expansion related to the electric blanket business, the Company entered into a $5 million capital lease obligation in 1996.

8. Restructuring, Impairment and Other Costs

In November 1996, the Company announced the details of its restructuring and growth plan. The cost reduction phase of the plan included the consolidation of administrative functions within the Company, the rationalization of manufacturing and warehouse facilities, the centralization of the Company's procurement function, and reduction of the Company's product offerings and stock keeping units ("SKU's"). The Company also announced plans to divest several lines of business which it determined are not core for Sunbeam (see Note 9).

In connection with the restructuring plan, the Company consolidated six divisional and regional headquarters functions into a single worldwide corporate headquarters in Delray Beach, Florida and outsourced certain back-office activities resulting in a 50% reduction in total back-office/administrative headcount. Overall, the restructuring plan calls for a reduction in the number of production facilities from 26 to 8 and the elimination of over 6,000 positions from the Company's workforce, including 3,300 from the disposition of non-core business operations and the elimination of approximately 2,800 other positions. The Company completed the major phases of the restructuring plan by January 1997.

In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately $337.6 million in the fourth quarter of 1996. This amount is

NOT A CERTIFIED COPY

020650

MF 01821

CPH 1326576

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026408

8. Restructuring, Impairment and Other Costs—(Continued)

allocated as follows in the accompanying Consolidated Statement of Operations: $154.9 million to Restructuring, Impairment and Other Costs as further described below; $92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKU's and costs of inventory liquidation programs; $42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Note 12) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately $47.9 million. During the first quarter of 1997, upon completion of the sale, the Company provided for additional losses on the disposal of the furniture business of $13.7 million, net of applicable income tax benefits as a result of lower than anticipated sales proceeds.

Amounts included in Restructuring, Impairment and Other Costs in 1996 in the accompanying Consolidated Statement of Operations include cash items such as severance and other employee costs of $43.0 million, lease obligations and other exit costs associated with facility closures of $12.6 million, $7.5 million of start-up costs on back-office outsourcing initiatives and other costs related to the implementation of the restructuring and growth plan. Non-cash Restructuring, Impairment and Other Costs in 1996 include $91.8 million related to asset write-downs to net realizable value for disposals of excess facilities and equipment and non-core product lines, write-offs of redundant computer systems from the administrative back-office consolidations and outsourcing initiatives and intangible, packaging and other asset write-downs related to exited product lines and SKU reductions. The following table sets forth the details and the cumulative activity in the restructuring accrual as of December 28, 1997 (in millions):

	Accrual Balance at December 29, 1996	Cash Reductions	Non-Cash Reductions	Accrual Balance at December 28, 1997
Severance and other employee costs	$36.9	$18.6	$9.5	$ 8.8
Closure and consolidation of facilities and related exit costs	26.9	24.8	—	2.1
Total	$63.8	$43.4	$9.5	$10.9

9. Discontinued Operations and Other Assets Held For Sale

As part of the restructuring plan and redefinition of its core businesses, the Company also announced the divestiture of the furniture business, by a sale of assets. In February 1997, the Company entered into an agreement to sell the business to U.S. Industries, Inc. which was completed on March 17, 1997. In connection with the sale of these assets (primarily inventory, property, plant and equipment), the Company received $69 million in cash. The Company retained accounts receivable related to the furniture business of approximately $50.0 million as of the closing date.

In connection with the furniture divestiture, the Company recorded a provision for estimated losses to be incurred on the sale of $32.4 million in 1996, net of applicable income tax benefits and an additional loss of $13.7 million, net of applicable income tax benefits in the first quarter of 1997 as a result of lower than anticipated sales proceeds. Earnings from the discontinued furniture business were $.8 million in 1996 and $12.9 million in 1995, net of applicable income taxes of $.5 million and $7.9 million, respectively. Earnings from the discontinued furniture business in 1997 were not material. Revenues for the discontinued furniture business were $51.6 million in 1997, $227.5 million in 1996 and $185.6 million in 1995. These revenues are not included in net sales as reported in the accompanying Consolidated Statements of Operations.

In addition to the furniture business divestiture, the Company also completed the sale of other non-core product lines and assets in 1997 as part of its restructuring plan, including time and temperature products, Counselor® and Borg® scales and a textile facility. Losses incurred on the disposal of these assets, which consist primarily of write-downs of assets to net realizable value, are included in Restructuring, Impairment and Other Costs in 1996 in the Consolidated Statements of Operations as described in Note 8.

NOT A CERTIFIED COPY

020651

MF 01822

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326577

16div-026409

10. Income Taxes

Earnings (loss) from continuing operations before income taxes for each fiscal year is summarized as follows (in thousands):

	1997	1996	1995
Domestic	$167,822	$(285,011)	$54,646
Foreign	21,458	(17,550)	5,989
	$189,280	$(302,561)	$60,635

Income tax provisions include current and deferred taxes (tax benefits) for each fiscal year as follows (in thousands):

	1997	1996	1995
Current:			
Federal	$ 3,420	$ (28,567)	$ (1,329)
State	3,266	(202)	(1,402)
Foreign	1,683	707	626
	8,369	(28,062)	(2,105)
Deferred:			
Federal	49,513	(65,833)	23,127
State	3,962	(11,050)	1,962
Foreign	4,308	(945)	57
	57,783	(77,828)	25,146
	$66,152	$(105,890)	$23,041

A reconciliation of income tax expense with the expected income tax computed by applying the federal statutory income tax rate to earnings (loss) from continuing operations before income taxes for each fiscal year is as follows (in thousands):

	1997	1996	1995
Income tax computed at the federal statutory tax rate	$66,248	$(105,896)	$21,222
State and local taxes (net of federal benefit)	4,698	(7,313)	364
Foreign earnings and dividends taxed at other rates	(3,611)	5,967	419
Other, net	(1,183)	1,352	1,036
	$66,152	$(105,890)	$23,041

The major components of the Company's net current deferred tax asset and net long-term deferred tax liability at the end of each fiscal year are as follows (in thousands):

	1997		1996	
	Current Deferred Tax Asset	Long-term Deferred Tax Liability	Current Deferred Tax Asset	Long-term Deferred Tax Liability
Operating reserves and accruals	$11,721	$ 29,966	$60,307	$ 28,447
Book/tax basis difference in trademarks and trade names	—	(70,881)	—	(72,587)
Book/tax basis difference in other assets	11,937	(22,645)	19,276	(13,406)
Reserves for non-operating assets and non-operating liabilities	3,062	21,849	8,905	24,043
Other	9,986	(12,848)	5,201	(18,805)
	$36,706	$(54,599)	$93,689	$(52,308)

NOT A CERTIFIED COPY

020652

MF 01823

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326578

16div-026410

10. Income Taxes—(Continued)

Deferred U.S. income taxes are not provided on the undistributed earnings of foreign subsidiaries, since such earnings are considered to be permanently reinvested. At December 28, 1997, the cumulative amount of undistributed earnings of foreign subsidiaries on which U.S. federal income taxes have not been provided was approximately $51.5 million. Determination of the amount of unrecognized deferred U.S. income tax liability is not practical because of the complexities associated with its hypothetical calculation; however, unrecognized foreign tax credit carryovers would be available to reduce some portion of the U.S. liability.

11. Customer and Geographic Data

Classes of products which contributed more than 10% to consolidated sales were outdoor home use durable products and indoor home use durable products. Sales of outdoor home use durable products amounted to $325.8 million in 1997, $256.9 million in 1996 and $269.0 million in 1995. Sales of indoor home use durable products were $769.6 million in 1997, $680.7 million in 1996 and $688.3 million in 1995.

The Company's largest customer accounted for approximately 21% of consolidated net sales in 1997 and 19% in 1996 and 1995.

The Company's operations are conducted in the United States and international markets, principally in Latin America, Canada and Mexico. Information about the Company's domestic and international operations for each fiscal year is as follows (in thousands):

	1997	1996	1995
Net sales:			
Domestic	$ 927,660	$ 800,969	$ 829,423
International (includes U.S. export sales)	240,522	183,267	187,460
	$1,168,182	$ 984,236	$1,016,883
Operating earnings (loss):			
Domestic	$ 175,858	$ (244,477)	$ 70,423
International (includes U.S. export sales)	53,641	(5,022)	24,301
	229,499	(249,499)	94,724
Unallocated expenses and eliminations	(30,056)	(35,736)	(24,479)
	$ 199,443	$ (285,235)	$ 70,245
Identifiable assets:			
Domestic	$ 923,527	$ 781,788	$1,040,591
International	131,359	73,430	67,563
	1,054,886	855,218	1,108,154
Corporate assets	65,398	217,491	50,530
	$1,120,284	$1,072,709	$1,158,684

Unallocated expenses and eliminations include corporate administrative expenses, intangible amortization, certain pension and postretirement benefit costs or credits, and eliminations of intercompany income and expense. Identifiable assets are those used directly in the operations, and exclude non-operating corporate and deferred tax assets. Sales between geographic areas are not material and are made primarily at cost plus a markup.

NOT A CERTIFIED COPY
020653
MF 01824
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326579
16div-026411

12. Commitments and Contingencies

Environmental Matters

The Company's operations, like those of comparable businesses, are subject to certain federal, state, local and foreign environmental laws and regulations. As of December 28, 1997, the Company had been identified as a potentially responsible party ("PRP") in connection with seven sites subject to the federal Superfund law and two sites subject to state Superfund laws comparable to the federal law (collectively the "Environmental Sites"), exclusive of sites at which the Company has been designated (or expects to be designated) as a de minimis (less than 1%) participant. Substantially all of these sites relate to divested operations of the Company.

The Company currently is engaged in active remediation activities at nine sites, four of which are among the Environmental Sites referred to above, and five of which have not been designated as Superfund sites under federal or state law. In addition, the Company is engaged in environmental remediation activities at a site in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing a plan for remediation of this site; which remediation is expected to be substantially completed during 1998.

The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of remediation, based upon periodic reviews of all sites for which the Company has, or may have remediation responsibility. As of December 28, 1997, the amount of such reserves was less than 5% of the Company's total liabilities as set forth in the consolidated financial statements. Liability under the Superfund law is joint and several and is imposed on a strict basis, without regard to degree of negligence or culpability. As a result, the Company recognizes its responsibility to determine whether other PRP's at a Superfund site are financially capable of paying their respective shares of the ultimate cost of remediation of the site. Whenever the Company has determined that a particular PRP is not financially responsible, it has assumed for purposes of establishing reserve amounts that such PRP will not pay its respective share of the costs of remediation. To minimize the Company's potential liability with respect to the Environmental Sites, the Company has actively participated in steering committees and other groups of PRP's established with respect to such sites. The Company continues to pursue the recovery of some environmental remediation costs from certain of its liability insurance carriers; however, such potential recoveries have not been offset against potential liabilities and have not been considered in determining the Company's environmental reserves.

Due to uncertainty over remedial measures to be adopted at some sites, the possibility of changes in environmental laws and regulations and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved as of December 28, 1997. In connection with the Company's restructuring plan, in the fourth quarter of 1996 a comprehensive review of all environmental exposures was performed, and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. As a result, the Company recorded additional environmental reserves of approximately $9.0 million in the fourth quarter of 1996. The Company believes, based on existing information, that the costs of completing environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Leases

The Company rents certain facilities, equipment and retail stores under operating leases. Rental expense for operating leases amounted to $7.4 million in 1997, $8.0 million for 1996 and $8.6 million for 1995. The minimum future rentals due under noncancelable operating leases as of December 28, 1997 aggregated $30.9 million. The amounts payable in each of the years 1998-2002 and thereafter are $4.8 million, $4.6 million, $4.2 million, $3.9 million, $3.4 million and $10.0 million, respectively.

NOT A CERTIFIED COPY

020654

MF 01825

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326580

16div-026412

12. Commitments and Contingencies—(Continued)

Certain Debt Obligations

Responsibility for servicing certain debt obligations of the Company's predecessor were assumed by third parties in connection with the acquisition of former businesses, although the Company's predecessor remained the primary obligor in accordance with the respective loan documents. Such obligations, which amounted to approximately $19.0 million at December 28, 1997, and the corresponding receivables from the third parties, are not included in the consolidated balance sheets since these transactions occurred prior to the issuance of SFAS No. 76, Extinguishment of Debt. Management believes that the third parties will continue to meet their obligations pursuant to the assumption agreements.

Letters of credit aggregating $28.6 million were outstanding as of December 28, 1997.

Litigation

The Company is involved in various lawsuits arising from time to time in the ordinary course of business and/or related to divested operations of the Company. The Company has established reserves, in accordance with SFAS No. 5, Accounting for Contingencies, to cover the anticipated probable costs of litigation matters, based upon periodic reviews of all cases.

The Company believes, based on existing information, that anticipated probable costs of litigation matters have been adequately reserved, and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

Product Liability Matters

The Company is party to various personal injury and property damage lawsuits relating to its products and incidental to its business. Annually, the Company sets its product liability insurance program based on the Company's current and historical claims experience and the availability and cost of insurance. The Company's program for 1997 was comprised of a self-insurance retention of $1 million per occurrence.

Cumulative amounts estimated to be payable by the Company with respect to pending and potential claims for all years in which the Company is liable under its self-insurance retention have been accrued as liabilities. Such accrued liabilities are necessarily based on estimates (which include actuarial determinations made by independent actuarial consultants as to liability exposure, taking into account prior experience, numbers of claims and other relevant factors); thus, the Company's ultimate liability may exceed or be less than the amounts accrued. The methods of making such estimates and establishing the resulting liability are reviewed continually and any adjustments resulting therefrom are reflected in current operating results.

Historically, product liability awards have rarely exceeded the Company's individual per occurrence self-insured retention. There can be no assurance, however, that the Company's future product liability experience will be consistent with its past experience. Based on existing information, the Company believes that the ultimate conclusion of the various pending product liability claims and lawsuits of the Company, individually or in the aggregate, will not have a materially adverse effect on the financial position or results of operations of the Company.

NOT A CERTIFIED COPY

020655

MF 01826
CPH 1326581
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
16div-026413

13. Unaudited Quarterly Financial Data

FISCAL 1997(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	$253.5	$287.6	$289.0	$338.1
Gross profit	67.7	74.5	88.8	99.5
Operating earnings	34.7	43.0	54.9	66.8
Earnings from continuing operations	20.6	26.2	34.6	41.7
Basic earnings per share from continuing operations	$ .24	$ .31	$ .41	$ .49
Diluted earnings per share from continuing operations	.24	.30	.39	.47
Earning from discontinued operations, net of taxes	—	—	—	—
Loss on sale of discontinued operations, net of taxes	(13.7)	—	—	—
Net earnings	6.8	26.2	34.6	41.8
Basic earnings per share(c)	.08	.31	.41	.49
Diluted earnings per share(c)	.08	.30	.39	.47
Market price for common stock				
—high	$ 34½	$ 40¼	$ 45¼	$ 50⁷/₁₆
—low	24⅝	29¾	35⅜	37
Dividends paid	$ .01	$ .01	$ .01	$ .01

FISCAL 1996(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	$229.7	$253.9	$231.8	$268.8
Gross profit (loss)	48.1	47.2	28.8	(40.5)
Operating earnings (loss)	15.5	9.2	(20.7)	(289.2)(b)
Earnings (loss) from continuing operations	6.7	2.8	(15.8)	(190.4)
Basic earnings (loss) per share from continuing operations	$ .08	$ .03	$ (.19)	$ (2.29)
Diluted earnings (loss) from continuing operations	.08	.03	(.19)	(2.29)
Earnings (loss) from discontinued operations, net of taxes	10.7	4.4	(2.3)	(12.0)
Loss on sale of discontinued operations, net of taxes	—	—	—	(32.4)
Net earnings (loss)	17.4	7.2	(18.1)	(234.8)
Basic earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Diluted earnings (loss) per share(c)	.21	.09	(.22)	(2.83)
Market price for common stock				
—high	$ 19¾	$ 17⅛	$ 24¾	$ 29½
—low	15⅛	13½	12¼	22¾
Dividends paid	$ .01	$ .01	$ .01	$ .01

(a) Each quarter consists of a 13-week period.
(b) Refer to Notes 8 and 9 regarding the Company's 1996 restructuring and growth plan.
(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share.*

14. Subsequent Events

New Employment Agreements

On February 20, 1998 the Company entered into new three-year employment agreements with its Chairman and Chief Executive Officer and two other senior officers of the Company. These agreements replaced previous employment agreements entered into in July 1996 that were scheduled to expire in July 1999.

NOT A CERTIFIED COPY

020656

MF 01827

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326582

16div-026414

14. Subsequent Events—(Continued)

The new employment agreement for the Company's Chairman provides for, among other items, the acceleration of vesting of 200,000 shares of restricted stock and the forfeiture of the remaining 133,333 shares of unvested restricted stock granted under the July 1996 agreement as further described in Note 2, a new equity grant of 300,000 shares of unrestricted stock, a new grant of a ten-year option to purchase 3,750,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in three equal annual installments beginning on the date of grant and the acceleration of vesting of 833,333 outstanding stock options granted under the July 1996 agreement as further described in Note 5. In addition, the new employment agreement with the Chairman and Chief Executive Officer provides for tax gross-ups with respect to any tax assessed on the equity grant and acceleration of vesting of restricted stock.

The new employment agreements with the two other senior officers provide for, among other items, the grant of a total of 180,000 shares of restricted stock that vest in four equal annual installments beginning the date of grant, the acceleration of vesting of 44,000 shares of restricted stock and the forfeiture of the remaining 29,332 shares of unvested restricted stock granted under the July 1996 agreements, new grants of ten-year options to purchase a total of 1,875,000 shares of the Company's common stock with an exercise price equal to the fair market value of the stock at the date of grant and exercisable in four equal annual installments beginning on the date of grant and the acceleration of vesting of 383,334 outstanding stock options granted under the July 1996 agreements. In addition, the new employment agreements provide for tax gross-ups with respect to any tax assessed on the restricted stock grants and acceleration of vesting of restricted stock.

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately $30.0 million.

Pending Acquisitions

On March 2, 1998, the Company announced the signing of three definitive agreements to acquire The Coleman Company, Inc., Signature Brands USA, Inc. and First Alert, Inc. Completion of the acquisitions, which is expected in the second quarter of 1998, is contingent on customary conditions, including regulatory approvals, and acquisition financings. Each of the acquisitions will be accounted for under the purchase method, whereby the purchase price will be allocated to the underlying assets acquired and liabilities assumed based upon their estimated fair values.

The acquisition of The Coleman Company, Inc., the global leader in outdoor recreational and hardware products is valued at approximately $2.0 billion, consisting of the Company's common stock valued at approximately $811 million, cash of approximately $260 million and assumed debt. Shareholders of The Coleman Company, Inc. will receive $6.44 in cash and .5677 shares of the Company's stock for each share of Coleman stock.

The acquisition of Signature Brands USA, Inc., the North American leader in coffeemakers marketed under the Mr. Coffee® brand and a leader in consumer health products marketed under the Health o Meter® brand is valued at approximately $250 million, consisting of cash of $8.25 per share of Signature Brand common stock and the assumption of existing debt.

The acquisition of First Alert, Inc., the worldwide leader in residential safety equipment, including smoke detectors and carbon monoxide detectors is valued at approximately $175 million, consisting of cash of $5.25 per share of First Alert common stock and the assumption of existing debt.

The Company plans on refinancing all or substantially all of the assumed debt of the acquired companies concurrent with the transactions closings.

NOT A CERTIFIED COPY

020657

MF 01828

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326583

16div-026415

REPORT OF INDEPENDENT AUDITORS

The Board of Directors and Stockholder
CLN Holdings Inc.

We have audited the accompanying consolidated balance sheets of CLN Holdings Inc. and subsidiaries as of December 31, 1997 and 1996, and the related consolidated statements of operations, stockholder's deficit, and cash flows for each of the three years in the period ended December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of CLN Holdings Inc. and subsidiaries at December 31, 1997 and 1996, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles.

/s/ Ernst & Young LLP

Wichita, Kansas
February 18, 1998

NOT A CERTIFIED COPY

020658

MF 01829

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326584

16div-026416

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	December 31, 1997	December 31, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	$ 13,031	$ 17,299
Short term investments in escrow	6,331	—
Accounts receivable, less allowance of $8,930 in 1997 and $11,512 in 1996	154,279	182,418
Notes receivable	25,477	27,524
Inventories	236,327	287,502
Deferred tax assets	26,378	40,466
Prepaid assets and other	21,437	14,943
Total current assets	483,260	570,152
Property, plant and equipment, net	175,494	199,182
Intangible assets related to businesses acquired, net	338,989	349,761
Note receivable—affiliate	35,395	54,739
Deferred tax assets and other	64,731	34,441
	$1,097,869	$1,208,275
LIABILITIES AND STOCKHOLDER'S DEFICIT		
Current liabilities:		
Current portion of long-term debt	$ 3,026	$ 747
Short-term borrowings	64,207	33,935
Accounts payable	91,846	98,628
Accounts payable—affiliates	2,825	278
Accrued expenses	94,858	113,040
Total current liabilities	256,762	246,628
Long-term debt	980,447	999,794
Income taxes payable—affiliate	13,317	18,528
Other liabilities	60,606	76,173
Minority interest	43,386	45,088
Commitments and contingencies		
Stockholder's deficit:		
Common stock, par value $1.00 per share; 1,000 shares issued and outstanding	1	1
Capital deficiency	(131,860)	(117,963)
Accumulated deficit	(114,740)	(62,594)
Currency translation adjustment	(9,287)	2,856
Minimum pension liability adjustment	(763)	(236)
Total stockholder's deficit	(256,649)	(177,936)
	$1,097,869	$1,208,275

See Notes to Consolidated Financial Statements

NOT A CERTIFIED COPY

020659

MF 01830

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326585

16div-026417

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands)

	Year Ended December 31,		
	1997	1996	1995
Net revenues	$1,154,294	$1,220,216	$933,574
Cost of sales	840,331	928,497	649,427
Gross profit	313,963	291,719	284,147
Selling, general and administrative expenses	266,635	292,012	175,036
Asset impairment charge	—	—	12,289
Interest expense, net	90,886	75,120	57,830
Amortization of goodwill and deferred charges	14,704	12,304	9,558
Other expense (income), net	1,867	(1,604)	283
(Loss) earnings before income taxes, minority interest and extraordinary item	(60,129)	(86,113)	29,151
Income tax (benefit) expense	(24,162)	(23,766)	11,701
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Minority interest in (loss) earnings of Coleman	(446)	(7,262)	6,696
(Loss) earnings before extraordinary item	(36,907)	(56,957)	10,754
Extraordinary loss on early extinguishment of debt, net of income tax benefit of $9,391 in 1997, $846 in 1996, and $503 in 1995	(15,239)	(1,244)	(787)
Net (loss) earnings	$ (52,146)	$ (58,201)	$ 9,967

NOT A CERTIFIED COPY

020660

See Notes to Consolidated Financial Statements

MF 01831

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326586

16div-026418

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT

(In thousands, except share data)

	Common Stock					
	Number of Shares	Amount	Capital Deficiency	Accumulated Deficit	Currency Translation Adjustment	Minimum Pension Liability
Balance at December 31, 1994	1,000	1	(112,669)	(3,300)	970	—
Net earnings	—	—	—	9,967	—	—
Currency translation adjustment	—	—	—	—	(617)	
Net distributions	—	—	(1,005)	(6,667)	—	—
Balance at December 31, 1995	1,000	1	(113,674)	—	353	—
Net loss	—	—	—	(58,201)	—	—
Currency translation adjustment	—	—	—	—	2,503	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(236)
Net distributions	—	—	(4,289)	(4,393)	—	—
Balance at December 31, 1996	1,000	1	(117,963)	(62,594)	2,856	(236)
Net loss	—	—	—	(52,146)	—	—
Currency translation adjustment	—	—	—	—	(12,143)	—
Minimum pension liability adjustment, net of tax	—	—	—	—	—	(527)
Net distributions	—	—	(13,897)	—	—	—
Balance at December 31, 1997	1,000	$ 1	$(131,860)	$(114,740)	$(9,287)	$ (763)

NOT A CERTIFIED COPY

020661

See Notes to Consolidated Financial Statements

MF 01832

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326587

16div-026419

CLN HOLDINGS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	1997	1996	1995
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net (loss) earnings	$(52,146)	$(58,201)	$ 9,967
Adjustments to reconcile net (loss) earnings to net cash flows from operating activities:			
Depreciation and amortization	41,343	38,189	28,335
Non-cash tax sharing agreement (benefit) provision	(23,980)	(4,376)	7,562
Minority interest in (loss) earnings of Coleman	(446)	(7,262)	6,696
Minority interest in earnings of Camping Gaz	1,386	1,872	—
Interest accretion	53,581	36,404	33,288
Non-cash gain on LYONs conversion	—	(2,755)	—
Non-cash restructuring and other charges	17,325	48,269	12,289
Extraordinary loss on early extinguishment of debt	24,630	2,090	1,290
Change in assets and liabilities:			
Increase in short term investments in escrow	(6,331)	—	—
Decrease (increase) in receivables	3,952	976	(37,833)
Decrease (increase) in inventories	35,250	(42,402)	(49,396)
Increase (decrease) in accounts payable	1,226	(12,308)	13,825
Other, net	(25,962)	(5,972)	(16,682)
	121,974	52,725	(626)
Net cash provided (used) by operating activities	69,828	(5,476)	9,341
CASH FLOWS FROM INVESTING ACTIVITIES:			
Capital expenditures	(26,973)	(41,334)	(29,053)
Purchases of businesses, net of cash acquired	(14,300)	(161,875)	(33,385)
Decrease (increase) in note receivable—affiliate	19,344	(4,054)	(6,742)
Proceeds from sale of fixed assets	5,728	2,924	928
Net cash used by investing activities	(16,201)	(204,339)	(68,252)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net change in short-term borrowings	37,071	(11,043)	3,106
Net payments of revolving credit agreement borrowings	(91,498)	(2,779)	(61,289)
Proceeds from issuance of long-term debt	470,007	235,000	200,000
Repayment of long-term debt	(455,339)	(6,778)	(74,782)
Debt issuance and refinancing costs	(16,516)	(3,902)	(3,569)
Purchases of Company common stock	—	(2,329)	(4,086)
Proceeds from stock options exercised including tax benefits	2,585	2,192	4,520
Contributions from parent	284	331	488
Net cash (used) provided by financing activities	(53,406)	210,692	64,388
Effect of exchange rate changes on cash	(4,489)	4,357	(1,731)
Net (decrease) increase in cash and cash equivalents	(4,268)	5,234	3,746
Cash and cash equivalents at beginning of the year	17,299	12,065	8,319
Cash and cash equivalents at end of the year	$ 13,031	$ 17,299	$ 12,065

See Notes to Consolidated Financial Statements

NOT A CERTIFIED COPY

299020

MF 01833

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326588

16div-026420

CLN HOLDINGS INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share data)

1. Significant Accounting Policies

Background:

CLN Holdings Inc. (formerly known as Coleman Escrow Corp. ("CLN Holdings")), is a holding company formed in May 1997 in connection with the offering of Senior Secured First Priority Discount Notes due 2001 (the "Old First Priority Notes") and Senior Secured Second Priority Discount Notes due 2001 (the "Old Second Priority Notes" and together with the Old First Priority Notes, the "Old Escrow Notes") to hold all of the outstanding shares of capital stock of Coleman Holdings Inc. ("Coleman Holdings"). Coleman Holdings was a holding company formed in July 1993 in connection with the offering of Senior Secured Discount Notes due 1998 (the "Holdings Notes") to hold all of the outstanding shares of capital stock of Coleman Worldwide Corporation ("Coleman Worldwide"). On July 15, 1997, Coleman Holdings was merged into CLN Holdings. Coleman Worldwide is a holding company formed in March 1993 in connection with the offering of Liquid Yield Option™ Notes due 2013 (the "LYONs"™). Coleman Worldwide also holds 44,067,520 shares of the common stock of The Coleman Company, Inc. ("Coleman" or the "Company") which represents approximately 82% of the outstanding Coleman common stock as of December 31, 1997. CLN Holdings and Coleman Worldwide are holding companies with no business operations of their own. In connection with an initial public offering ("IPO"), Coleman was formed in December 1991 to succeed to the assets and liabilities of the outdoor products business of New Coleman Holdings Inc. ("Holdings") an indirect wholly-owned subsidiary of Mafco Holdings Inc. ("Mafco"). Holdings (then named The Coleman Company, Inc.) was acquired in 1989 by MacAndrews & Forbes Holdings Inc. ("MacAndrews Holdings", and together with Mafco, "MacAndrews & Forbes"), a corporation wholly owned through Mafco by Ronald O. Perelman. Coleman is a subsidiary of Coleman Worldwide Corporation which is an indirect wholly-owned subsidiary of Holdings. In March 1992, the Company completed an IPO of its common stock.

Principles of Consolidation:

The consolidated financial statements include the accounts of CLN Holdings and its subsidiaries after elimination of all material intercompany accounts and transactions.

Cash and Cash Equivalents:

All highly liquid investments with a maturity of three months or less at the date of purchase are considered to be cash equivalents. The Company's cash equivalents consist primarily of investments in money market funds and commercial paper. The Company's cash equivalents are generally held until maturity and are carried at cost, which approximates fair value.

Inventories:

Inventories are stated at the lower of cost or market. Cost is determined by the first-in, first-out method.

Property, Plant and Equipment:

Property, plant and equipment is recorded at cost and depreciated on a straight-line basis over the estimated useful lives of such assets as follows: land improvements, 5 to 25 years; buildings and building improvements, 7 to 45 years; and machinery and equipment, 3 to 15 years. Leasehold improvements are amortized over their estimated useful lives or the terms of the leases, whichever is shorter. Repairs and maintenance are charged to operations as incurred, and significant expenditures for additions and improvements are capitalized.

NOT A CERTIFIED COPY

020663

MF 01834

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326589

16div-026421

1. Significant Accounting Policies—(Continued)

Intangible Assets:

Intangible assets primarily represent goodwill which is being amortized on a straight-line basis over periods not in excess of 40 years. The carrying amount of goodwill is reviewed if facts and circumstances suggest it may be impaired. If this review indicates goodwill will not be recoverable over the remaining amortization period, as determined based on the estimated undiscounted cash flows of the entity acquired, the carrying amount of the goodwill is reduced to estimated fair value based on market value or discounted cash flows, as appropriate. Accumulated amortization aggregated $48,148 and $39,520 at December 31, 1997 and 1996, respectively.

Revenue Recognition:

The Company recognizes revenues at the time title passes to the customer. Net revenues comprise gross revenues less provisions for estimated customer returns and allowances.

Research and Development:

Research and development expenditures are expensed as incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were $11,871, $11,082, and $6,548, respectively.

Advertising and Promotion Expense:

Production costs of future media advertising are deferred until the advertising occurs. All other advertising and promotion costs are expensed when incurred. The amounts charged against operations for the years ended December 31, 1997, 1996 and 1995 were $53,408, $58,823, and $37,544, respectively.

Insurance Programs:

The Company obtains insurance coverage for catastrophic exposures as well as those risks required to be insured by law or contract. It is the policy of the Company to retain a significant portion of certain losses related primarily to workers' compensation, employee health benefits, physical loss and property, and product and vehicle liability. Provisions for losses expected under these programs are recorded based upon the Company's estimates of the aggregate liability for claims incurred.

Foreign Currency Translation:

Assets and liabilities of foreign operations are generally translated into United States dollars at the rates of exchange in effect at the balance sheet date. Income and expense items are generally translated at the weighted average exchange rates prevailing during each period presented. Gains and losses resulting from foreign currency transactions are included in the results of operations. Gains and losses resulting from translation of financial statements of foreign subsidiaries and branches operating in non-highly inflationary economies are recorded as a component of stockholder's equity. Foreign subsidiaries and branches operating in highly inflationary economies translate nonmonetary assets and liabilities at historical rates and include translation adjustments in the results of operations.

Derivative Financial Instruments:

The Company uses derivative financial instruments to reduce interest rate and foreign exchange exposures. The Company maintains a control environment which includes policies and procedures for risk assessment and for the approval, reporting and monitoring of derivative financial instrument activities. The Company does not hold or issue derivative financial instruments for trading purposes.

NOT A CERTIFIED COPY

020694

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01835

CPH 1326590

16div-026422

1. Significant Accounting Policies—(Continued)

Amounts to be received or paid under interest rate swap and cap contracts designated as hedges are recognized over the life of the contracts as adjustments to interest expense. Gains and losses on terminations of interest rate swap and cap contracts designated as hedges are deferred and amortized as adjustments to interest expense over the remaining life of the terminated contracts. Unrealized gains and losses on outstanding interest rate contracts designated as hedges are not recognized.

Foreign currency forward contracts are marked to market and gains and losses on foreign currency forward contracts to hedge firm foreign currency commitments are deferred and accounted for as part of the related foreign currency transaction. Gains and losses on all other forward contracts to hedge third-party and intercompany transactions are recorded in operations as foreign exchange gains and losses. Gains and losses on purchased foreign currency option contracts are deferred and recognized as adjustments to cost of sales upon the sale of the related inventory to the third-party customers.

Credit Risk:

Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of trade receivables and derivative financial instruments. Credit risk on trade receivables is minimized as a result of the large and diversified nature of the Company's worldwide customer base. Although the Company has one significant customer (See Note 15), there have been no credit losses related to this customer. With respect to its derivative contracts, the Company is also subject to credit risk of non-performance by counterparties and its maximum potential loss may exceed the amount recognized in the financial statements. The Company controls its exposure to credit risk through credit approvals, credit limits and monitoring procedures. Collateral is generally not required for the Company's financial instruments.

Fair Value of Financial Instruments:

The following methods and assumptions were used by CLN Holdings in estimating its fair value disclosures for financial instruments:

Cash and cash equivalents: The carrying amount reported in the balance sheet for cash and cash equivalents approximates its fair value.

Long- and short-term debt: The carrying amounts of CLN Holdings' borrowings under its foreign bank lines of credit, revolving credit agreement and other variable rate debt approximate their fair value. The fair value of the Company's senior notes issues (see Note 9) are estimated using discounted cash flow analysis based on the Company's estimated current borrowing rate for similar types of borrowing arrangements. The fair value of the publicly traded LYONs debt and Escrow Notes is based on quoted market prices.

Foreign currency exchange contracts: The fair values of CLN Holdings' foreign currency contracts are estimated based on quoted market prices of comparable contracts, adjusted through interpolation where necessary for maturity differences.

The carrying amounts and fair values of CLN Holdings' financial instruments are as follows:

	December 31, 1997		December 31, 1996	
	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)	Carrying Amount of Asset/ (Liability)	Fair Value of Asset/ (Liability)
Cash and cash equivalents	$ 13,031	$ 13,031	$ 17,299	$ 17,299
Short-term debt	(64,207)	(64,207)	(33,935)	(33,935)
Long-term debt excluding capital leases	(983,173)	(929,157)	(999,947)	(972,821)
Foreign currency exchange contracts	128	128	940	1,629

NOT A CERTIFIED COPY

020665

MF 01836

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326591

16div-026423

1. Significant Accounting Policies—(Continued)

Stock-Based Compensation:

Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation," encourages, but does not require companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has chosen to account for stock-based compensation plans using the intrinsic value method prescribed in Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the quoted market price of Coleman's stock at the date of the grant over the amount an employee must pay to acquire the stock.

Reclassifications:

Certain prior year amounts in the financial statements have been reclassified to conform to the current year presentation.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from those estimates.

Recently Issued Accounting Standards:

In June 1997, the Financial Accounting Standards Board (the "FASB") issued SFAS No. 130 "Reporting Comprehensive Income". SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in the financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Reclassification of financial statements for earlier periods provided for comparative purposes is required.

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information". SFAS No. 131 establishes standards for the way public business enterprises report information about operating segments in annual financial statements and requires those enterprises report selected information about operating segments in interim financial reports. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

In February 1998, the FASB issued SFAS No. 132, "Employers' Disclosures about Pensions and Other Postretirement Benefits". SFAS No. 132 revises employers' disclosures about pension and other postretirement benefits to the extent practicable. It also requires additional information on changes in the benefit obligations and fair value of plan assets and eliminates certain other disclosures. SFAS No. 132 is effective for financial statements for fiscal years beginning after December 15, 1997. Financial statement disclosures for prior periods are required to be restated.

CLN Holdings has not yet determined the impact of adoption of these standards; however, the adoption of these standards will have no impact on CLN Holdings' consolidated results of operations, financial position or cash flows.

2. Acquisitions and Divestitures

On November 2, 1994, the Company purchased substantially all the assets of Eastpak, Inc. and all the capital stock of M.G. Industries, Inc. (collectively, "Eastpak"), a leading designer, manufacturer and distributor of

NOT A CERTIFIED COPY

020666

2. Acquisitions and Divestitures—(Continued)

branded daypacks, sports bags and related products. The Company also entered into an agreement with the predecessor owner of Eastpak to make additional payments based upon the achievement of certain annual sales levels of Eastpak products and other products substantially similar to the Eastpak products during the years ended December 31, 1995, 1996, and 1997. A total of $23,000 was earned by the predecessor owner of Eastpak under the terms of this agreement. This amount has been recorded as additional goodwill.

During 1995, the Company purchased all of the outstanding shares of capital stock of Sierra Corporation of Fort Smith, Inc., a manufacturer of portable outdoor and recreational folding furniture and accessories, and substantially all of the assets of Active Technologies, Inc. ("ATI"), a manufacturer of technologically advanced lightweight generators and battery charging equipment. The aggregate purchase price for these acquisitions was $19,516 including fees and expenses. These acquisitions were accounted for using the purchase method of accounting. The purchase price and expenses associated with these acquisitions exceeded the fair value of net assets acquired by $11,186 and the excess has been assigned to goodwill and is being amortized over 20 to 30 years on the straight-line method. In connection with the ATI purchase, the Company may also be required to make payments to the predecessor owner of ATI of up to $18,750 based on the Company's sales of ATI related products and royalties received by the Company for licensing arrangements related to ATI patents. As of December 31, 1997, the amounts recorded, as additional goodwill, under the terms of this agreement have been immaterial. The results of operations of these companies on a pro forma basis as if their acquisitions had occurred at the beginning of 1995 individually and in the aggregate were not significant to CLN Holdings.

On January 2, 1996, the Company purchased substantially all the assets and assumed certain liabilities of Seatt Corporation ("Seatt"), a leading designer, manufacturer and distributor of safety and security related electronic products for residential and commercial applications. The Seatt acquisition, which was accounted for under the purchase method, was completed for approximately $65,300 including fees and expenses. The results of operations of Seatt have been included in the consolidated financial statements from the date of acquisition. In connection with the purchase price allocation of the Seatt acquisition, the Company recorded goodwill of approximately $38,800. The Company is amortizing this amount over 40 years on the straight-line method.

On February 18, 1998, the Company announced an agreement was signed for the sale of Coleman Safety & Security Products, Inc., the successor to Seatt, to Ranco Incorporated, a U.S. subsidiary of Siebe plc, a United Kingdom diversified engineering group. The sale price is approximately $105,000 and is subject to adjustment upon closing which is expected to occur by the end of March 1998. Net assets of Coleman Safety & Security at December 31, 1997 were approximately $73,000.

On February 28, 1996, the Company purchased approximately 70% of the outstanding shares of Application des Gaz, S.A. ("ADG" or "Camping Gaz"), a leading manufacturer and distributor of camping appliances in Europe. The Company completed the necessary steps to acquire the remaining 30% of the outstanding shares during the second quarter of 1996. The cost of acquiring all the shares of ADG was approximately $100,000 including fees and expenses.

The acquisition of Camping Gaz was accounted for under the purchase method. In connection with the final allocation of purchase price to the fair values of assets acquired and liabilities assumed, the Company recorded goodwill of approximately $78,900, which is being amortized over 40 years on the straight-line method. At acquisition, the Company recognized liabilities in the amount of $21,898 representing severance and other termination benefits for certain production and administrative employees of Camping Gaz. As of December 31, 1997, the Company had paid termination costs of approximately $13,350 and anticipates all remaining termination costs will be paid during 1998.

The Company has included the results of operations of Camping Gaz in the consolidated financial statements from March 1, 1996, the date on which the Company obtained control of Camping Gaz, and has recognized minority interest related to the remaining shares for the period March 1, 1996 through June 30, 1996.

NOT A CERTIFIED COPY

199020

MF 01838

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326593

16div-026425

NOT A CERTIFIED COPY

020668

3. Restructuring and Other Charges—(Continued)

The components of the combined 1997 Restructuring Charges and 1996 Restructuring Charges and an analysis of the amounts charged against the reserve are outlined in the following table:

	1996 Original Reserve	Charges During Year Ended 12/31/96	Balance at 12/31/96	1997 Additional Reserves	Charges During Year Ended 12/31/97	Balance at 12/31/97
Impairment of fixed assets	$10,012	$ (1,789)	$ 8,223	$ 6,449	$ (6,530)	$ 8,142
Inventory and other asset impairments	38,257	(25,875)	12,382	10,961	(14,966)	8,377
Termination costs	2,018	(1,633)	385	12,146	(9,729)	2,802
Idle facilities, relocation and other exit costs	23,913	(12,429)	11,484	6,863	(9,656)	8,691
	$74,200	$(41,726)	$32,474	$36,419	$40,881	$28,012

The termination costs recognized in 1996 related to approximately 200 employees and the 1997 termination costs related to approximately 525 employees. As of December 31, 1997, $11,362 of termination costs were paid on behalf of the approximately 700 employees who were terminated as of that date.

During 1995, the Company recognized an asset impairment charge of $12,289 related to its Brazilian operations. The Brazilian operations had not performed to the Company's expectations since acquisition of this business in April of 1994, and in the fourth quarter of 1995, the Company initiated actions to reduce the operating losses in Brazil. These actions included replacing management, increasing prices, downsizing the manufacturing operations and reducing SG&A and other expenses. Because of these actions, the Company performed an impairment review and concluded recognition of an asset impairment charge was appropriate. The basis of the fair values used in the computation of the charge were appraisals for property and equipment and estimated discounted cash flows for goodwill. The charge has been included in the statement of operations under the caption "Asset Impairment Charge".

4. Inventories

Inventories consisted of the following:

	December 31, 1997	December 31, 1996
Raw material and supplies	$ 59,406	$ 82,399
Work-in-process	7,813	12,878
Finished goods	169,108	192,225
	$236,327	$287,502

NOT A CERTIFIED COPY

020669

MF 01840

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326595

16div-026427

5. Property, Plant and Equipment, Net

	December 31, 1997	December 31, 1996
Property, plant and equipment, net consisted of the following:		
Land and land improvements	$ 7,700	$ 8,772
Buildings and building improvements	79,101	78,760
Machinery and equipment	192,650	194,714
Construction-in-progress	10,076	15,519
	289,527	297,765
Accumulated depreciation	(114,033)	(98,583)
	$175,494	$199,182

Depreciation expense was $26,956, $25,770, and $19,142 for the years ended December 31, 1997, 1996 and 1995, respectively.

6. Accrued Expenses

Accrued expenses consisted of the following:

	December 31, 1997	December 31, 1996
Compensation and related benefits	$ 20,385	$ 29,331
Other	74,473	83,709
	$ 94,858	$113,040

7. Other Liabilities

Other liabilities consisted of the following:

	December 31, 1997	December 31, 1996
Pensions and other postretirement benefits	$ 49,121	$ 52,229
Other	11,485	23,944
	$ 60,606	$ 76,173

8. Short-Term Borrowings

The Company maintained short-term bank lines of credit at December 31, 1997 and 1996 aggregating approximately $115,249, and $119,101, respectively, of which approximately $64,207 and $33,935 were outstanding at December 31, 1997 and 1996, respectively. The weighted average interest rate on amounts borrowed under these short-term lines was approximately 2.7% and 2.4% at December 31, 1997 and 1996, respectively.

Outstanding letters of credit aggregated approximately $37,208 and $32,897 at December 31, 1997 and 1996, respectively.

NOT A CERTIFIED COPY

020670

MF 01841

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326596

16div-026428

9. Long-Term Debt

Long-term debt consisted of the following:

	December 31, 1997	December 31, 1996
7.26% Senior Notes due 2007 (a)	$200,000	$ 200,000
7.10% Senior Notes due 2006 (b)	85,000	85,000
7.25% Senior Notes due 2008 (c)	75,000	75,000
Revolving credit facility (d)	52,127	146,350
Term loan (d)	64,894	73,478
Senior Secured Discount Exchange Notes due 2001 (e)	503,171	—
Liquid Yield Option(TM)Notes due 2013 (f)	2,503	174,594
Series B Senior Secured Discount Notes due 1998 (g)	—	242,334
Other	778	3,785
	983,473	1,000,541
Less current portion	3,026	747
	$980,447	$ 999,794

(a) On August 8, 1995, the Company completed a private placement issuance and sale of $200,000 aggregate principal amount of 7.26% Senior Notes due 2007 (the "2007 Notes"). Interest on the 2007 Notes is payable semiannually, and the principal is payable in annual installments of $40,000 each commencing August 8, 2003, with a final installment payment of $40,000 due on August 8, 2007. If there is a default, the interest rate will be the greater of (i) 9.26% or (ii) 2.0% above the prime interest rate.

The 2007 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(b) On June 13, 1996, the Company completed a private placement issuance and sale of $85,000 aggregate principal amount of 7.10% Senior Notes due 2006 (the "2006 Notes"). Interest on the 2006 Notes is payable semiannually, and the principal is payable in annual installments of $12,143 each commencing June 13, 2000, with a final installment payment of $12,143 due on June 13, 2006. If there is a default, the interest rate will be the greater of (i) 9.10% or (ii) 2.0% above the prime interest rate.

The 2006 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(c) On June 13, 1996, the Company completed a private placement issuance and sale of $75,000 aggregate principal amount of 7.25% Senior Notes due 2008 (the "2008 Notes"). Interest on the 2008 Notes is payable semiannually, and the principal is payable in annual installments of $15,000 each commencing June 13, 2004, with a final installment payment of $15,000 due on June 13, 2008. If there is a default, the interest rate will be the greater of (i) 9.25% or (ii) 2.0% above the prime interest rate.

NOT A CERTIFIED COPY

020671

MF 01842

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326597

16div-026429

9. Long-Term Debt—(Continued)

The 2008 Notes are unsecured and are subject to various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios and levels of consolidated net worth and certain other provisions limiting the incurrence of additional debt and sale and leaseback transactions under the terms of the note purchase agreement.

(d) In April 1996, the Company amended its credit agreement to: a) provide a term loan of French Franc 385,125 ($64,894 at December 31, 1997 exchange rates) (the "Term Loan"), b) provide a $275,000 unsecured revolving credit facility line (the "Credit Facility"), c) allow for the Camping Gaz acquisition and d) extend the maturity of the credit agreement (as amended, the "Company Credit Agreement"). In connection with the Company recording the restructuring and other charges as discussed in Note 3 and lower than expected operating results, the Company further amended the Company Credit Agreement in October 1996 and again in March 1997.

The Company Credit Agreement is available to the Company until April 30, 2001. The outstanding loans under the Company Credit Agreement bear interest at either of the following rates, as selected by the Company from time to time: (i) the higher of the agent's base lending rate or the federal funds rate plus .50% or (ii) the London Inter-Bank Offered Rate ("LIBOR") plus a margin ranging from .25% to 2.125% based on the Company's financial performance. If there is a default, the interest rate otherwise in effect will be increased by 2% per annum. The Company Credit Agreement also bears an overall facility fee ranging from .15% to .375% based on the Company's financial performance.

In addition, the Company Credit Agreement provides, subject to certain exceptions, for the net cash proceeds from disposition of assets other than in the ordinary course of business, to be used to prepay any outstanding Term Loan balances with any remaining excess net cash proceeds to be applied to outstanding borrowings under the Credit Facility with a corresponding reduction in the overall amount of the Credit Facility line.

The Company Credit Agreement contains various restrictive covenants including, without limitation, requirements for the maintenance of specified financial ratios, levels of consolidated net worth and profits, and certain other provisions limiting the incurrence of additional debt, purchase or redemption of the Company's common stock, issuance of preferred stock of the Company, and also prohibits the Company from paying any dividends until on or after January 1, 1999 and limits the amount of dividends the Company may pay thereafter. The Company Credit Agreement also contains an event of default upon a change of control of the Company (as defined in the Company Credit Agreement) and other customary events of default. In addition, substantially all of the shares of the Company's common stock owned by Coleman Worldwide are pledged to secure indebtedness of Coleman Worldwide and of its parent, CLN Holdings Inc. The indentures governing this indebtedness contain various covenants including a covenant placing certain limitations on the Company's indebtedness.

(e) On May 20, 1997, CLN Holdings issued approximately $600,475 in principal amount at maturity of Old First Priority Notes and approximately $131,560 in principal amount at maturity of Old Second Priority Notes resulting in aggregate net proceeds of approximately $455,257 in a private placement offering. The Old First Priority Notes and Old Second Priority Notes were issued at a discount from their principal amount at maturity to yield 11 1/8% and 12 7/8%, respectively, per annum calculated from May 20, 1997. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old First Priority Notes for Senior Secured First Priority Discount Exchange Notes due 2001 (the "First Priority Notes") and to exchange the Old Second Priority Notes for Senior Secured Second Priority Discount Exchange Notes due 2001 (the "Second Priority Notes" and together with the First Priority Notes, the "Escrow Notes"). The indenture governing the Escrow Notes (the "Indenture") requires, subject to certain

NOT A CERTIFIED COPY

020672

MF 01843

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326598

16div-026430

9. Long-Term Debt—(Continued)

exceptions, that the retirement of the remaining outstanding LYONs be consummated no later than June 10, 1998. The Indenture requires CLN Holdings to hold, directly or indirectly, a majority of the voting power of the Company at all times, unless and until CLN Holdings exercises its right to substitute U.S. Government obligations for all of the pledged collateral. The Indenture, to which Coleman is not a party, also contains certain covenants that, among other things, generally prohibit the incurrence of additional debt by CLN Holdings and the issuance of additional debt and the issuance of preferred stock by Coleman Worldwide, and limit (i) the incurrence of additional debt and the issuance of preferred stock by the Company, (ii) the payment of dividends on the capital stock of CLN Holdings and its subsidiaries and the redemption or repurchase of the capital stock of CLN Holdings, (iii) the sale of assets and subsidiary stock, (iv) transactions with affiliates, (v) the creation of liens on the assets of CLN Holdings and Coleman Worldwide, and (vi) consolidations, mergers and transfers of all or substantially all of CLN Holdings' assets. The foregoing limitations and prohibitions, however, are subject to a number of qualifications. The Escrow Notes also contain customary events of defaults and a put right by the holders at a price specified in the Indenture in the event of a change of control of CLN Holdings (as defined in the Indenture).

Approximately $262,194 of the net proceeds of the Escrow Notes were contributed to Coleman Holdings, then a subsidiary of CLN Holdings, and used by it to redeem, on July 15, 1997, the Discount Notes (as defined below). Coleman Holdings recorded an extraordinary loss of $4,300, net of tax benefits of $2,315, relating to the excess of the redemption price over the accreted value of the Discount Notes and the write-off of deferred charges related to the Discount Notes. Approximately $191,278 of the net proceeds of the Escrow Notes were contributed to Coleman Worldwide and used by it to accept for exchange, $554,053 aggregate principal amount at maturity of LYONs, including redemption fees and expenses. Coleman Worldwide recorded an extraordinary loss of $10,939, net of tax benefits of $7,076, relating to the excess of the exchange offer price over the accreted value of the LYONs, the write-off of deferred charges related to the LYONs exchanged and redemption fees and expenses. The $7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. The Escrow Notes are secured by a pledge of all the shares of common stock of Coleman Worldwide and guaranteed pursuant to a non-recourse guaranty of Coleman Worldwide (the "Guaranty"), which Guaranty is currently secured by a pledge of 36,374,666 shares of Company common stock and will be secured by the shares currently securing the LYONs upon their redemption.

(f) On May 27, 1993, Coleman Worldwide issued and sold $500,000 principal amount at maturity of LYONs in an underwritten public offering. On June 7, 1993, an additional $75,000 principal amount at maturity of LYONs was sold upon exercise of the underwriter's overallotment option. During 1997, Coleman Worldwide redeemed $554,053 principal amount at maturity of LYONs as described above. The $7,500 principal amount at maturity of LYONs which remain outstanding are secured by a pledge of 7,692,854 shares of Coleman common stock owned by Coleman Worldwide. There are no periodic payments of interest on the LYONs. The aggregate principal amount of the LYONs represents a yield to maturity of 7.25% per annum (computed on a semi-annual bond equivalent basis) calculated from May 27, 1993. Coleman Worldwide plans to redeem the remaining $7,500 aggregate principal amount at maturity of LYONs no later than May 27, 1998 with the remaining proceeds from the issuance of the Escrow Notes which are being held in escrow. The LYONs, to which the Company is not a party, provide that it is an Additional Purchase Right Event (as defined below) if, among other things, the amount of debt incurred by the Company exceeds certain limitations. The Indenture governing the LYONs, to which the Company is not a party, provides the holders of LYONs with the option to require Coleman Worldwide to purchase the LYONs at a price specified in the Indenture after the occurrence of certain events ("Additional Purchase Right Events"). Additional Purchase Right Events occur, among other things, upon the Company's Consolidated Debt Ratio (as defined) exceeding 0.75 to 1.0 or the

NOT A CERTIFIED COPY

020673

MF 01844

CPH 1326599

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026431

9. Long-Term Debt—(Continued)

Consolidated Net Worth (as defined) of Coleman Worldwide as of the end of any fiscal quarter being less than a specified amount which is $70,000 at December 31, 1997.

(g) On July 22, 1993, Coleman Holdings issued and sold $281,281 principal amount at maturity of Old Notes in a private placement offering. Subsequent to the private placement offering, a registration statement on Form S-1 was filed to exchange the Old Notes for Series B Senior Secured Discount Notes (the "Discount Notes"). During 1997, Coleman Holdings redeemed the Discount Notes as described above.

The aggregate scheduled amounts of long-term debt maturities in the years 1998 through 2002 are $3,026, $78, $12,207 $632,376, and $12,159, respectively.

10. Derivative Financial Instruments

The Company periodically enters into a variety of foreign currency exchange contracts to reduce its foreign currency exposure resulting primarily from firm commitments, intercompany foreign sales transactions expected to occur within the next twelve months, and intercompany accounts receivable and payable.

At December 31, 1997 and December 31, 1996, the Company did not have any outstanding foreign currency exchange contracts related to firm commitments.

During the fourth quarter of 1995, the Company elected to adopt the provisions of the Emerging Issues Task Force Issue No. 95-2, "Determination of What Constitutes a Firm Commitment for Foreign Currency Transactions Not Involving a Third Party" ("EITF 95-2") which narrowed the scope of intercompany foreign currency commitments eligible to be hedged for financial reporting purposes. As a result of this change, the Company increased net income by $3,796 in the fourth quarter of 1995. Prior to the adoption of EITF 95-2, the gains and losses associated with these contracts were accounted for under the deferral method. At December 31, 1997, the Company did not have any outstanding foreign currency forward contracts related to intercompany foreign sales transactions. At December 31, 1996, the Company had forward exchange contracts to sell $8,500 in Canadian dollars maturing on February 28, 1997, for which the Company has recognized a net gain of $40 as a component of cost of sales.

At December 31, 1997, the Company did not have any outstanding option contracts. At December 31, 1996, the Company had outstanding option contracts for the sale of Japanese yen at fixed exchange rates totaling $20,038 for specified periods of time which expired during 1997. Net unrealized gains deferred at December 31, 1996 were $653.

With respect to intercompany accounts receivable and payable, at December 31, 1997, the Company had foreign currency forward contracts to sell $1,580 in foreign currencies, which contracts matured in February 1998, and had deferred a net gain of $128. At December 31, 1996, the Company had foreign currency forward contracts to sell $26,623 and to buy $3,898 in foreign currencies, which contracts matured at various dates in 1997, and had deferred a net gain of $185.

At December 31, 1997, $25,000 of the Company's outstanding long-term debt was subject to an interest rate swap agreement and $25,000 of the Company's outstanding long-term debt was subject to an interest rate cap. Under the interest rate swap agreement, the Company pays the counterparty interest at a fixed rate of 6.115%, and the counterparty pays the Company interest at a variable rate equal to the three month LIBOR for a seven-year period commencing January 2, 1996. The agreement is with a major financial institution which is expected to fully perform under the terms of the agreement, thereby mitigating the credit risk from the transaction. The interest rate cap agreement entitles the Company to receive from a major financial institution the amount, if any, by which the Company's interest payments on $25,000 of its variable rate debt exceed 7.35%. The $509 premium

NOT A CERTIFIED COPY

020674

MF 01845

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326600

16div-026432

10. Derivative Financial Instruments—(Continued)

paid for this interest rate cap agreement is included in other assets and was amortized to interest expense over the three-year term of the cap, which commenced January 3, 1995.

11. Taxes

CLN Holdings is included in the consolidated federal and certain consolidated state income tax returns of Mafco and/or its affiliates. CLN Holdings and Mafco and subsidiaries provide taxes as if they were a separate taxpayer. CLN Holdings will pay to Mafco amounts equal to the taxes that CLN Holdings would otherwise have to pay if it were to file separate tax returns for itself. To the extent that CLN Holdings is entitled to a tax benefit from Mafco as a result of its tax losses, such amounts are recorded as a reduction in the provision for income taxes and a distribution to its parent. During 1997 and 1996, respectively, CLN Holdings recorded a benefit of $18,769 and $9,013 for income taxes, and similar amounts were recorded as distributions to its parent. Coleman Worldwide and Mafco are parties to a tax sharing agreement (the "Tax Sharing Agreement"), pursuant to which Coleman Worldwide is required to pay to Mafco amounts equal to the taxes Coleman Worldwide would otherwise have to pay if it were to file separate consolidated federal, state or local income tax returns including only itself and its domestic subsidiaries. Pursuant to the LYONs indenture agreement, at any time the LYONs are outstanding, the amounts Coleman Worldwide would be required to pay to Mafco under the Tax Sharing Agreement, together with any remaining funds paid to Coleman Worldwide by the Company under the tax sharing agreement between Coleman Worldwide and the Company, may not be paid as tax sharing payments, but Coleman Worldwide may advance such funds to Mafco as long as the aggregate amount of such advances at any time does not exceed the issue price plus accrued OID of the LYONs. Such advances are evidenced by noninterest bearing unsecured demand promissory notes (the "Mafco Demand Notes") from Mafco in the amount of $35,395 at December 31, 1997. Following the redemption or retirement in full of the LYONs, expected to occur no later than May 27, 1998, the Mafco Demand Notes shall be canceled automatically without further action of any person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Notes. As a result of the restriction on the payment of the tax sharing amounts, income taxes provided pursuant to the Tax Sharing Agreement are reflected as a non-cash charge. For all periods presented, federal and state income taxes are provided as if Coleman Worldwide filed its own income tax returns. The accompanying consolidated balance sheet includes approximately $13,317 and $18,528 of federal and state income taxes payable to Mafco pursuant to the Tax Sharing Agreement at December 31, 1997 and 1996, respectively.

For financial reporting purposes, (loss) earnings before income taxes, minority interest and extraordinary item include the following components:

	Year Ended December 31,		
	1997	1996	1995
(Loss) earnings before income taxes, minority interest and extraordinary item:			
Domestic	$(67,881)	$(65,344)	$ 43,585
Foreign	7,752	(20,769)	(14,434)
	$(60,129)	$(86,113)	$ 29,151

NOT A CERTIFIED COPY

020675

MF 01846

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326601

16div-026433

11. Taxes—(Continued)

Significant components of the provision for income tax (benefit) expense were as follow:

	Year Ended December 31,		
	1997	1996	1995
Current:			
Federal	$(21,194)	$(12,945)	$ 6,360
State	—	(937)	3,102
Foreign	1,485	3,454	3,853
Total current	(19,709)	(10,428)	13,315
Deferred:			
Federal	(538)	(10,686)	(3,104)
State	(1,890)	(2,178)	(725)
Foreign	(2,025)	(474)	2,215
Total deferred	(4,453)	(13,338)	(1,614)
	$(24,162)	$(23,766)	$11,701

The effective tax rate on (loss) earnings before income taxes, minority interest and extraordinary item varies from the current statutory federal income tax rate as follows:

	Year Ended December 31,		
	1997	1996	1995
(Benefit) provision at statutory rate	(35.0)%	(35.0)%	35.0%
State taxes, net	(2.0)	(3.2)	4.0
Nondeductible amortization	4.1	3.0	6.8
Foreign operations	(7.0)	2.6	(0.4)
Valuation allowance	3.9	4.1	—
Change in tax rates	(2.2)	—	—
Puerto Rico operations	(1.4)	0.2	(5.7)
Other, net	(0.6)	0.7	0.4
Effective tax rate (benefit) provision	(40.2)%	(27.6)%	40.1%

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of CLN Holdings' deferred tax liabilities and assets are as follows:

	Year Ended December 31,	
	1997	1996
Deferred tax assets:		
Postretirement benefits other than pensions	$12,964	$12,370
Reserves for self-insurance and warranty costs	4,898	6,678
Pension liabilities	7,377	8,828
Inventory	6,626	8,245
Net operating loss carryforwards	73,628	47,013
Other, net	12,728	24,026
Total deferred tax assets	118,221	107,160
Valuation allowance	(39,990)	(39,639)
Net deferred tax assets	78,231	67,521
Deferred tax liabilities:		
Depreciation	19,872	18,248
Other, net	8,405	7,675
Total deferred tax liabilities	28,277	25,923
Net deferred tax assets	$49,954	$41,598

NOT A CERTIFIED COPY

020676

MF 01847

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326602

16div-026434

11. Taxes—(Continued)

The deferred tax account balance at December 31, 1997 differs from the account balance at December 31, 1996 due primarily to the 1997 deferred tax provision, the tax effects of the foreign exchange gain recorded as a component of stockholder's equity, the tax effects of adjustments related to the finalization of the purchase accounting related to the acquisition of Camping Gaz and the deferred tax asset recorded related to the acquisitions in 1997 of inactive companies which were recorded as a capital contribution (see Note 12).

During 1997, CLN Holdings increased the valuation allowance related to certain foreign deferred tax assets due to uncertainties over realization. At December 31, 1997, CLN Holdings had net operating loss carryforwards ("NOL's") of approximately $107,229 for certain foreign income tax purposes. These NOL's expire beginning in 1998.

CLN Holdings has not provided for taxes on undistributed foreign earnings of approximately $20,860 at December 31, 1997, as CLN Holdings intends to permanently reinvest these earnings in the future growth of the business. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable because of the complexities associated with its hypothetical calculation.

12. Related Party Transactions

Capital Contributions

As of March 31, 1997, the Company purchased an inactive subsidiary from an affiliate for net cash consideration of $1,031, including transaction costs. The Company expects to realize certain foreign tax benefits from this transaction in future years. Under certain circumstances, a portion of these tax benefits will be payable to the affiliate to the extent such tax benefits are realized by the Company. During the fourth quarter of 1997, the Company purchased an inactive subsidiary from an affiliate in a transaction in which the Company expects to realize certain foreign tax benefits in future years and for which the Company agreed to pay 50% of those realized benefits to the affiliate. The Company has recorded a liability to the affiliate in the amount of $219 which represents 50% of the estimated amount of future tax benefits. The Company has accounted for these transactions in a manner similar to a pooling-of-interests due to the Mafco Holdings Inc. common control over each of the parties involved in the transactions. The $2,799 excess value of estimated realizable tax benefits acquired over the total acquisition costs have been accounted for as a capital contribution.

Insurance Programs

The Company participates in certain of Holdings' insurance programs, including health and life insurance, workers compensation, and liability insurance. The Company's expense represents its expected costs for self-insured retentions and premiums for excess coverage insurance. The expense was $13,339, $13,923 and $9,875 for the years ended December 31, 1997, 1996 and 1995, respectively.

Services Agreement

From time to time, Coleman purchases, at negotiated rates, specialized accounting and other services provided by an affiliate. Coleman also provides, at negotiated rates, services to an affiliate. The net expense for such services was $394 during 1997 and was immaterial in prior years.

Management Agreement

The Company provided management services to certain affiliates pursuant to a management agreement through June 30, 1995. The consolidated financial statements reflect the management fees as a reduction in selling, general and administration expenses. For the year ended December 31, 1995, management fees earned by the Company were $2,400.

NOT A CERTIFIED COPY

0206771

MF 01848

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326603

16div-026435

12. Related Party Transactions—(Continued)

Licensing Agreement

During 1997, the Company engaged an affiliate of MacAndrews & Forbes to provide licensing services. The Company recorded expenses of $650 related to these services in 1997.

Other

In 1996, the Company entered into an agreement with an affiliate in which the Company realized approximately $1,800 of net tax benefits associated with certain foreign tax net operating loss carryforwards that had not previously been recognized.

The Company purchases and sells products from and to certain affiliates. These amounts are not, in the aggregate, material.

The Company subleases six thousand square feet of office space in New York City from an affiliate pursuant to a month-to-month occupancy memorandum (the "Lease") entered into during 1997. The rent paid by the Company during the year ended December 31, 1997 pursuant to the Lease was $158.

During 1997, Coleman used an airplane owned by a corporation of which a director of Coleman is a stockholder, for which Coleman paid approximately $158.

13. Employee Benefit Plans

Pension Plans

Holdings maintains pension and other retirement plans in various forms covering employees of the Company who meet eligibility requirements. The U.S. salaried retirement plan is a non-contributory defined benefit plan and provides benefits based on a formula of each participant's final average pay and years of service. The U.S. hourly pension plan is a non-contributory defined benefit plan and contains a flat benefit formula. The salaried and hourly plans provide reduced benefits for early retirement and the salaried plan takes into account offsets for Social Security benefits. The Company's policy is to contribute annually the minimum amount required pursuant to the Employee Retirement Income Security Act, as amended. Under certain circumstances, the Company may make additional contributions to the pension plans up to the maximum deductible amounts for income tax purposes.

NOT A CERTIFIED COPY

020678

MF 01849

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326604

16div-026436

13. Employee Benefit Plans—(Continued)

Holdings also has an unfunded excess benefit plan covering certain of the Company's U.S. employees whose benefits under the plans described above are limited by provisions of the Internal Revenue Code. The following table reconciles the funded status of the pension plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31,	
	1997	1996
Actuarial present value of benefit obligation:		
Accumulated benefit obligation, including vested benefits of $24,296 and $18,686	$(27,843)	$(21,933)
Projected benefit obligation for service rendered to date	$(43,246)	$(37,092)
Plan assets at fair value	23,102	16,197
Projected benefit obligation in excess of plan assets	(20,144)	(20,895)
Unrecognized prior service cost	130	50
Unrecognized net loss	6,259	7,999
Accrued pension cost	(13,755)	(12,846)
Amount reflected as an intangible asset	(143)	(288)
Amount reflected as minimum pension liability adjustment	(1,526)	(470)
Amount reflected as pension liability	$(15,424)	$(13,604)

The weighted-average discount rate used in determining the actuarial present value of the projected benefit obligation was 7.5% as of December 31, 1997 and 1996. The rate of increase in future compensation levels reflected in such determination was 5% as of December 31, 1997 and 1996. The expected long-term rate of return on assets was 9% as of December 31, 1997, 1996 and 1995. Plan assets consist primarily of common stock, mutual funds and fixed income securities stated at fair market value, and cash equivalents stated at cost, which approximates fair market value. Unrecognized items are being recognized over the estimated remaining service lives of active employees.

Net pension expense includes the following components:

	Year Ended December 31,		
	1997	1996	1995
Service cost-benefits attributed to service during the year	$3,081	$3,098	$2,125
Interest cost on projected benefit obligation	2,813	2,442	2,004
Curtailment loss	972	—	—
Actual return on plan assets	(2,908)	(1,490)	(1,347)
Net amortization and deferrals	1,537	844	834
Net pension expense	$5,495	$4,894	$3,616

Net pension expense for the year ended December 31, 1997 includes $972 curtailment loss associated with certain executive officer changes during the year.

NOT A CERTIFIED COPY

020679

MF 01850

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326605

16div-026437

13. Employee Benefit Plans—(Continued)

Savings Plan:

Holdings maintains an employee savings plan under Section 401(k) of the Internal Revenue Code. This plan covers substantially all of the Company's full-time U.S. employees and allows employees to contribute up to 10% of their salary to the plan. The Company matches, at a 34% rate, employee contributions of up to 6% of their salary. Amounts charged to expense for matching contributions were $1,401, $1,314, and $1,165 for the years ended December 31, 1997, 1996 and 1995, respectively.

Retiree Health Care and Life Insurance:

The Company, through Holdings, provides certain unfunded health and life insurance benefits for certain retired employees. Approximately 55% of the Company's U.S. employees may become eligible for these benefits if they reach retirement age while working for the Company.

The following table reconciles the funded status of the Company's allocable portion of Holdings' postretirement benefit plans with the amount recognized in CLN Holdings' consolidated balance sheets as of the dates indicated:

	December 31,	
	1997	1996
Accumulated postretirement benefit obligation:		
Retirees	$ (6,852)	$ (6,682)
Fully eligible active plan participants	(3,308)	(3,015)
Other active plan participants	(10,322)	(10,664)
Total accumulated postretirement benefit obligation	(20,482)	(20,361)
Unrecognized transition benefit	(3,707)	(3,973)
Unrecognized prior service cost	(404)	(492)
Unrecognized net gain	(2,415)	(976)
Net postretirement benefit liability	$(27,008)	$(25,802)

Net periodic postretirement benefit expense includes the following components:

	Year Ended December 31,		
	1997	1996	1995
Service cost-benefits attributed to service during the year	$ 927	$1,044	$ 756
Interest cost on accumulated postretirement benefit obligation	1,453	1,454	1,352
Amortization of transition benefit and other net gains	(358)	(354)	(455)
Net periodic postretirement benefit expense	$2,022	$2,144	$1,653

The discount rate used in determining the accumulated postretirement benefit obligation ("APBO") was 7.5% as of December 31, 1997 and 1996. At December 31, 1997, the assumed health care cost trend rate used in measuring the APBO was 7.5% starting in 1998 then gradually decreasing to 5% by the year 2003 and remaining at that level thereafter. The health care cost trend rate assumption has a significant effect on the pamount of the obligation and periodic benefit expense reported. An increase in the assumed health care cost trend rates by 1% in each year would increase the APBO as of December 31, 1997 by approximately 19% and the service and interest cost components of net periodic postretirement benefit expense by approximately 22%.

NOT A CERTIFIED COPY
020680
MF 01851
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326606
16div-026438

13. Employee Benefit Plans—(Continued)

Stock Option Plans:

The Company adopted The Coleman Company, Inc. 1992 Stock Option Plan (the "1992 Stock Option Plan") in 1992. During 1993, the shareholders approved the 1993 Stock Option Plan (the "1993 Stock Option Plan") and during 1996, the shareholders approved The Coleman Company, Inc. 1996 Stock Option Plan (the "1996 Stock Option Plan"). Under the terms of the 1992 Stock Option Plan, the 1993 Stock Option Plan and the 1996 Stock Option Plan (collectively the "Stock Option Plans"), incentive stock options ("ISOs"), non-qualified stock options ("NQSOs") and stock appreciation rights may be granted to key employees of the Company and any of its affiliates from time to time. Stock options have been granted under the Stock Option Plans with vesting terms and maximum terms of approximately five years and ten years, respectively. The aggregate number of shares of common stock as to which options and rights may be granted under the Stock Option Plans may not exceed 4,700,000.

The following table summarizes the stock option transactions under the Stock Option Plans:

	1997		1996		1995	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Outstanding—January 1,	3,017,630	$15.84	2,572,930	$15.25	2,310,888	$14.03
Granted:						
at market price	2,081,000	14.77	294,000	19.73	637,000	17.89
above market price	75,000	15.00	381,000	15.00	—	—
Exercised	(220,750)	11.42	(154,890)	12.17	(325,748)	12.09
Forfeited	(1,605,330)	16.49	(75,410)	14.19	(49,210)	13.14
Outstanding—December 31,	3,347,550	15.14	3,017,630	15.84	2,572,930	15.25
Exercisable—December 31,	927,000	14.02	513,440	13.25	413,526	12.84
Weighted-average fair value of options granted during the year:						
at market price	$ 7.43		$ 6.62		$ 7.13	
above market price	$ 5.28		$ 3.21		$ —	

The following table summarizes information concerning currently outstanding and exercisable options at December 31, 1997:

Options Outstanding				Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$12.25-$13.82	543,030	5.26 years	$12.96	425,230	$12.79
$13.83-$14.00	878,500	9.29	14.00	181,250	14.0
$14.01-$16.12	806,520	6.66	15.38	226,020	15.2
$16.13-$20.38	1,119,500	9.20	16.92	94,500	16.6
$12.25-$20.38	3,347,550	7.97	15.14	927,000	14.0

NOT A CERTIFIED COPY

020681

MF 01852

CPH 1326607

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026439

13. Employee Benefit Plans—(Continued)

As described in Note 1, the Company follows APB Opinion No. 25 in accounting for stock compensation arrangements. Pro forma financial information regarding net income and earnings per share has been determined as if the Company had accounted for its employee stock options under the fair value method of SFAS No. 123. The fair value of ISOs and NQSOs granted during 1997, 1996 and 1995 were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions: risk-free interest rates of 6.53%, 6.11% and 5.91 % for 1997, 1996 and 1995, respectively, dividend yield of 0.0%, volatility of the expected market price of the Company's common stock of 31.3%, 20.2% and 30.8% for 1997, 1996 and 1995, respectively, and a weighted-average expected life of the option of 7.7, 5.5 and 5.5 years for 1997, 1996 and 1995, respectively.

SFAS No. 123 requires the use of option valuation models, one of which is the Black-Scholes model, that were not developed for use valuing ISOs or NQSOs. Further, these option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. In management's opinion, based on the above, the existing models do not necessarily provide a reliable single measure of the fair value of its ISOs or NQSOs.

The following summarized, unaudited pro forma results of operations assume the estimated fair value of the ISOs and NQSOs granted during the years ended December 31, 1997, 1996 and 1995 is amortized to expense over the ISOs' and NQSOs' vesting period. SFAS No. 123 does not require disclosure of the effect of any grants of stock based compensation prior to 1995 and, therefore, the pro forma effect of SFAS No. 123 on net earnings is not representative of the pro forma effect on net earnings in future years.

	Year Ended December 31,		
	1997	1996	1995
Pro forma net (loss) earnings	$(55,045)	$(58,918)	$9,742

14. Commitments and Contingencies

Leases:

The Company leases manufacturing, administrative and sales facilities and various types of equipment under operating lease agreements expiring through 2007. Rental expense was $15,620, $14,164, and $11,526 for the years ended December 31, 1997, 1996 and 1995, respectively. Minimum rental commitments under all noncancellable operating leases with remaining lease terms in excess of one year from December 31, 1997, aggregated $31,506; such commitments for each of the five years subsequent to December 31, 1997 are $7,571, $6,683, $4,622, $2,848, and $3,560, respectively, and $6,222 thereafter.

The Company leases its former corporate office building in Denver, Colorado under agreements which give the Company the right, subject to certain qualifications, to renew or terminate the lease, or purchase the property. Upon termination, the Company has guaranteed the lessor certain residual values.

Environmental Matters:

Gilbert and Mosley Site. As a result of investigations undertaken in 1986, the Kansas Department of Health and Environment ("KDHE") discovered that groundwater in the downtown Wichita area (the "Gilbert and Mosley Site") was contaminated with volatile organic chemicals ("VOCs"). Coleman occupied a facility within the boundaries of the Gilbert and Mosley Site. Subsequent investigations in the area, including investigations in November 1988 by Coleman, indicated the groundwater beneath the Coleman property is contaminated with VOCs. Coleman is in the process of remediating the contamination on its property.

The City of Wichita has entered into a voluntary agreement with KDHE in which the City agreed to investigate and then remediate contamination in the Gilbert and Mosley Site. Coleman has entered into an agreement with KDHE in which Coleman agreed to perform a similar study for the Coleman property and to implement remedial activities at its property. In addition, Coleman entered into an agreement with the City of

NOT A CERTIFIED COPY

020682

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01853

CPH 1326608

16div-026440

14. Commitments and Contingencies—(Continued)

Wichita in which Coleman agreed to fund its proportionate share of the City's study and remediation of the Gilbert and Mosley site.

Maize Site. Coleman has undertaken a soil and groundwater investigation at its facility in Maize, Kansas (the "Maize Site"). Results indicate that limited VOC contamination is present in the groundwater under and to the southeast of the facility. The data has been reported to the KDHE, and Coleman has entered into an agreement with KDHE to implement appropriate remedial actions. The remediation system has been installed, and Coleman is in the process of remediating the contaminated groundwater.

Northeast Site. In 1990, Coleman undertook a soil and groundwater investigation of its facility in northeast Wichita (the "Northeast Site"). Results indicated the presence of VOCs in the groundwater and soils. Although some of the contamination may be a result of Coleman's operations at the facility, the data also indicated that contamination was migrating onto the Coleman property from up gradient sources. Coleman reported the initial results of its study to KDHE. Coleman has also provided copies of all data to the United States Environmental Protection Agency (the "EPA"), at its request. The EPA has not initiated any actions against the Company with respect to the Northeast Site. An agreement has been entered into with KDHE to undertake additional investigatory activities, and an interim remediation system has been installed.

The Company has not been named as a potentially responsible party ("PRP") by the EPA nor does it have joint and several liability with any other PRP for remediation at any of the above sites.

The Company has adopted an environmental policy designed to ensure the Company operates in full compliance with applicable environmental regulations and, where appropriate, the Company's own internal standards. Coleman has also undertaken an environmental compliance audit program. The Company makes expenditures it believes are necessary to comply with environmental management practices. Environmental expenditures that relate to current operations are expensed or capitalized as appropriate and were not significant in 1997 and are not expected to be significant in the foreseeable future. The Company accrues for losses associated with environmental remediation obligations when such losses are probable and reasonably estimable. Accruals for estimated losses from environmental remediation obligations generally are recognized no later than completion of the remedial feasibility study. Such accruals are adjusted as further information develops or circumstances change. Costs of future expenditures for environmental remediation obligations are not discounted to their present value. Recoveries of environmental remediation costs from other parties are recognized as assets when their receipt is deemed probable.

While it is possible the Company reserves may change in the near term, the Company believes the reserves established for environmental matters are adequate. This belief is based on estimates provided by the state governmental authorities referred to above, results of environmental investigations of the groundwater and soils at the manufacturing facilities operated by Coleman conducted by independent consultants specializing in environmental investigations and remediation and estimates provided by such independent consultants, together with estimates provided by Coleman's environmental engineering staff.

Other:

The Company and Holdings are involved in various claims and legal actions arising in the ordinary course of business. The Company believes the ultimate disposition of these matters is not expected to have a material adverse effect on CLN Holdings' consolidated financial condition or results of operations. The Company has entered into a cross-indemnification agreement with Holdings pursuant to which it will indemnify Holdings against all liabilities related to businesses transferred to the Company, and Holdings will indemnify the Company against all liabilities of Holdings other than liabilities related to the businesses transferred to the Company.

The Company is party to a license agreement which requires payments of minimum guaranteed royalties aggregating to $11,778 at December 31, 1997; such commitments for each of the five years remaining under the agreement subsequent to December 31, 1997 are $1,040, $1,745, $2,434, $3,010 and $3,549, respectively.

NOT A CERTIFIED COPY

020683

MF 01854

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326609

16div-026441

15. Significant Customers

The Company's U.S. and Canadian operations have one significant customer which accounted for approximately 13%, 15%, and 19% of net revenues in the years ended December 31, 1997, 1996 and 1995, respectively.

16. Cash Flow Reporting

CLN Holdings uses the indirect method to report cash flows from operating activities. Interest paid was $42,217, $37,608, and $23,976 and net income taxes paid were $3,206, $2,857, and $4,606 for the years ended December 31, 1997, 1996 and 1995, respectively. Certain non-cash transactions relating to acquisitions, the issuance of long-term debt and income taxes have been reported in Notes 2, 9 and 11.

17. Geographic Segments

CLN Holdings, through the Company, designs, manufactures and markets a wide variety of multiuse products and accessories, which are primarily marketed through independent retail markets for outdoor recreation and hardware consumers. CLN Holdings, through the Company, is a leading manufacturer and marketer of brand name consumer products for the camping and related outdoor recreation markets in the United States, Canada, Europe, and Japan.

Operating profit, as indicated below, represents net revenues less operating expenses and amortization of goodwill. Generally, sales between geographic areas are made at cost plus a share of operating profit. Identifiable assets are those used by each geographic segment. Corporate assets are principally cash, certain property and equipment, income tax refunds receivable—affiliate, and deferred charges.

Information related to CLN Holdings' geographic segments is as follows:

	Year Ended December 31,		
	1997	1996	1995
Net revenues:			
Domestic—U.S.	$ 855,365	$ 916,260	$716,018
—Export	78,120	91,125	90,434
Europe	217,863	168,780	52,233
Other foreign	167,119	219,350	169,836
Eliminations	(164,173)	(175,299)	(94,947)
	$1,154,294	$1,220,216	$933,574
Operating profit:			
Domestic (a)	$ 34,754	$ 19,915	$120,915
Europe (b)	1,299	(17,505)	(3,241)
Other foreign (c)	26,384	4,027	(10,540)
	62,437	6,437	107,134
Corporate expenses (d)	(31,680)	(17,430)	(20,153)
Interest expense	(90,886)	(75,120)	(57,830)
(Loss) earnings before income taxes, minority interest and extraordinary item	$ (60,129)	$ (86,113)	$ 29,151
Identifiable assets:			
Domestic	$ 681,325	$ 782,373	$696,681
Europe	216,816	247,412	70,478
Other foreign	91,192	83,033	59,107
Corporate	108,536	95,457	83,194
	$1,097,869	$1,208,275	$909,460

(a) Includes restructuring and other charges of $21,025 in 1997 and $49,257 in 1996.
(b) Includes restructuring and other charges of $114 in 1997 and $20,002 in 1996.
(c) Includes restructuring and other charges of $4,151 in 1997 and $4,941 in 1996; and $12,289 of asset impairment charges in 1995.
(d) Includes restructuring and other charges of $11,129 in 1997.

NOT A CERTIFIED COPY

020684

MF 01855

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326610

16div-026442

18. Quarterly Financial Summaries (Unaudited)

Summarized quarterly financial data for 1997 and 1996 are as follows:

	Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
1997				
Net revenues	$295,464	$383,514	$252,434	$222,882
Gross profit (a)	81,042	101,913	69,867	61,141
Loss before extraordinary item (a)	(5,959)	(350)	(16,530)	(14,068)
Net loss (a)	(5,959)	(11,279)	(20,830)	(14,078)
1996				
Net revenues	$273,560	$452,654	$269,607	$224,395
Gross profit (a)	80,966	137,538	39,894	33,321
Earnings (loss) before extraordinary item (a)	8,180	17,337	(46,325)	(36,149)
Net earnings (loss) (a)	7,598	16,680	(46,330)	(36,149)

(a) Includes restructuring and other charges (credits) as follows:

1997				
Gross profit	$ (425)	$ 11,402	$ 9,010	$ (314)
Earnings before extraordinary item	2,435	11,547	9,433	(914)
Net earnings	2,435	11,547	9,433	(914)
1996				
Gross profit	—	—	33,567	10,438
Earnings before extraordinary item	—	—	44,495	8,021
Net earnings	—	—	44,495	8,021

19. Impact of Year 2000 (Unaudited)

Some of the Company's older computer programs were written using two digits rather than four to represent the applicable year. As a result, those computer programs recognize a date represented by "00" as the year 1900 rather than the year 2000. This situation, known as the "Year 2000" issue, could cause a system failure or miscalculations causing disruptions of operations, including, among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

Based on ongoing assessments of the Company's operations, the Company has determined it will be required to modify or replace portions of its computer software so the computer systems will function properly with respect to dates in the year 2000 and thereafter. The Company believes that, in most instances, with minor modifications to existing software, the Year 2000 issue will not pose significant operational problems for its computer systems. The Company has identified one location with significant Year 2000 software issues. Failure to complete a timely conversion of this location to a Year 2000 compliant system could have a material impact on the operations of the Company; however, the Company has begun to replace the software at this location, and such replacement software is expected to be installed prior to December 31, 1999.

The Company has initiated formal communications with some of its significant suppliers and large customers to determine the extent to which the Company's interface systems are vulnerable to those third parties' failure to remediate their own Year 2000 issues. There can be no guarantee that the systems of other companies on which the Company's systems rely will be timely converted and would not have an adverse effect on the Company's systems.

In 1996, the Company began a project to select and install a Company-wide enterprise resource computer software system designed to improve operational efficiency. The selected system is Year 2000 compliant and complete installation of this software system is expected to take three years. The cost of the purchase of the

NOT A CERTIFIED COPY

020685

MF 01856

CPH 1326611

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026443

19. Impact of Year 2000 (Unaudited)—(Continued)

software and installation costs is expected to range from $20,000 to $25,000. The Company will capitalize a significant portion of these costs and does not believe the costs of this project will have a significant impact on the Company's financial condition or results of operations.

The costs of the project and the date on which the Company believes it will be Year 2000 compliant are based on management's best estimates, which were derived utilizing numerous assumptions of future events, including the continued availability of certain resources, third party modification plans and other factors. However, there can be no guarantee that these estimates will be achieved and actual results could differ materially from those anticipated. Specific factors that might cause such material differences include, but are not limited to, the availability and cost of personnel trained in this area, the ability to locate and correct all relevant computer codes, and similar uncertainties.

20. Subsequent Event (Unaudited)

On February 27, 1998, the Company, Sunbeam Corporation ("Sunbeam"), and a wholly owned subsidiary of Sunbeam ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Coleman Merger Agreement") providing that, among other things, Merger Sub will be merged (the "Coleman Merger") with the Company. Pursuant to the Coleman Merger Agreement, each share of the Company's Common Stock, issued and outstanding immediately prior to the effective time of the Coleman Merger (other than certain shares) will be converted into the right to receive (a) 0.5677 shares of Sunbeam common stock, with cash paid in lieu of fractional shares, and (b) $6.44 in cash, without interest.

Coincident with the execution of the Coleman Merger Agreement, CLN Holdings and Coleman (Parent) Holdings Inc., the parent company of CLN Holdings, entered into an Agreement and Plan of Merger (the "Holdings merger Agreement" and with the "Coleman Merger Agreement", collectively the "Merger Agreements"), with Sunbeam and a wholly owned subsidiary of Sunbeam ("Laser Merger Sub"). The Holdings Merger Agreement provides that, among other things, Laser Merger Sub will be merged (the "Holdings Merger") with CLN Holdings. Pursuant to the Holdings Merger Agreement, the shares of CLN Holdings' common stock issued and outstanding immediately prior to the effective time of the Holdings Merger (other than certain shares) will be converted into the right to receive in the aggregate 14,099,749 shares of Sunbeam's common stock and $159,957 in cash, without interest.

Following consummation of the Holdings Merger, CLN Holdings will be a direct wholly-owned subsidiary of Sunbeam. Following consummation of the Coleman Merger, the Company will be an indirect wholly-owned subsidiary of Sunbeam.

The Holdings Merger is subject to the expiration of antitrust waiting periods and certain other customary conditions. The Coleman Merger Agreement is subject to consummation of the Holdings Merger. These transactions will constitute a change in control as defined in the Company Credit Agreement, the Lyons and the Escrow Notes. Per the terms of the Merger Agreements, certain arrangements with related parties may be altered or terminated. In addition, outstanding, unvested stock Company options immediately vest upon consummation of the Holdings Merger.

NOT A CERTIFIED COPY

020686

MF 01857

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326612

16div-026444

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Signature Brands USA, Inc. and Subsidiary:

We have audited the accompanying consolidated balance sheets of Signature Brands USA, Inc. and subsidiary (formerly Health o meter Products, Inc.) as of September 28, 1997 and September 29, 1996, and the related consolidated statements of operations, stockholders' equity, and cash flows in the years ended September 28, 1997, September 29, 1996 and October 1, 1995. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Signature Brands USA, Inc. and subsidiary as of September 28, 1997 and September 29, 1996, and the results of their operations and their cash flows for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, in conformity with generally accepted accounting principles.

KPMG PEAT MARWICK LLP

December 9, 1997,
except as to
paragraph 6 of
Note 8, which is
as of December 24, 1997
Cleveland, Ohio

NOT A CERTIFIED COPY

020687

MF 01858

CPH 1326613

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026445

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF OPERATIONS

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands, except per share data)

	1997	1996	1995
Net sales	$275,708	$282,977	$267,887
Operating costs and expenses			
Cost of goods sold	190,083	193,117	184,454
Selling, general, and administrative expenses	62,578	59,635	56,642
Amortization of intangible assets	3,937	4,000	3,961
Unusual item	2,350	—	—
Total operating costs and expenses	258,948	256,752	245,057
Operating income	16,760	26,225	22,830
Interest expense	18,638	19,134	19,354
Other income	(454)	(357)	(195)
Income (loss) before income taxes	(1,424)	7,448	3,671
Income tax expense	788	4,727	2,687
Net income (loss)	$ (2,212)	$ 2,721	$ 984
Net income (loss) per share	$ (.24)	$ .30	$ .11
Weighted average shares outstanding	9,081	9,073	9,071

NOT A CERTIFIED COPY

020689

See accompanying notes to consolidated financial statements.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326615

16div-026446

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands)

	Common Stock				
	Shares Issued	Dollars	Paid-In Capital	Warrants	Accumulated Deficit
Balance at October 2, 1994, as previously reported	9,071	$91	$51,741	$1,773	$ (8,300)
Retroactive effect on prior years of change in accounting method	—	—	—	—	(397)
Balance at October 2, 1994, as restated	9,071	91	51,741	1,773	(8,697)
Net income	—	—	—	—	984
Balance at October 1, 1995	9,071	91	51,741	1,773	(7,713)
Net income	—	—	—	—	2,721
Issuance of common stock pursuant to exercise of stock options	9	—	31	—	—
Balance at September 29, 1996	9,080	91	51,772	1,773	(4,992)
Net loss	—	—	—	—	(2,212)
Issuance of common stock under option plans and awards	2	—	165	—	—
Balance at September 28, 1997	9,082	$91	$51,937	$1,773	$ (7,204)

NOT A CERTIFIED COPY

020690

See accompanying notes to consolidated financial statements.

MF 01861

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326616

16div-026447

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands)

	1997	1996	1995
Cash flows from operating activities			
Net income (loss)	$ (2,212)	$ 2,721	$ 984
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities			
Depreciation and amortization of plant and equipment	6,554	6,011	5,108
Loss on asset write-offs and disposals	64	63	119
Amortization of intangible assets	3,937	4,000	3,961
Amortization of deferred financing costs	856	858	823
Deferred tax expense (benefit)	(283)	349	2,547
Accretion of debt discount	223	223	223
Changes in			
Trade accounts receivable	5,624	(3,809)	(12,479)
Inventories	3,430	(1,674)	2,356
Refundable income taxes	(497)	—	—
Other assets	194	482	3,198
Accounts payable	(1,847)	(2,952)	(7,306)
Accrued liabilities	2,675	(286)	60
Noncurrent liabilities	857	(127)	(492)
Net cash provided by (used in) operating activities	19,575	5,859	(898)
Cash flows from investing activities			
Capital expenditures	(5,694)	(4,439)	(4,636)
Net cash used in investing activities	(5,694)	(4,439)	(4,636)
Cash flows from financing activities			
Proceeds from revolving credit facilities	66,100	76,700	80,600
Repayments of revolving credit facilities	(74,000)	(74,500)	(70,600)
Repayment of long-term debt	(5,992)	(3,750)	(5,000)
Proceeds from stock issuances under option plans and awards	165	31	—
Payment of financing fees	—	—	(315)
Net cash provided by (used in) financing activities	(13,727)	(1,519)	4,685
Increase (decrease) in cash	154	(99)	(849)
Cash at beginning of the period	736	835	1,684
Cash at end of the period	$ 890	$ 736	$ 835
Supplemental disclosures of cash flow information			
Cash paid during the period for			
Interest	$ 15,872	$ 18,092	$ 18,820
Income taxes	$ 1,891	$ 3,490	$ 280

See accompanying notes to consolidated financial statements.

NOT A CERTIFIED COPY

020691

MF 01862

CPH 1326617

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026448

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

September 28, 1997 and September 29, 1996
(Amounts in thousands, except share and per share data)

1. Summary of Significant Accounting Policies

(a) Description of Business

Signature Brands USA, Inc. (the Company) is a holding company which, through its wholly owned subsidiary, Signature Brands, Inc. (Signature Brands), designs, manufactures, markets, and distributes a comprehensive line of consumer and professional products. The Company's consumer products, marketed under the Mr. Coffee® and Health o meter® brand names, include automatic drip coffeemakers, iced and hot teamakers, coffee filters, water filtration products, accessories, and other kitchen countertop appliances as well as bath, kitchen, and gourmet scales and therapeutic devices. Professional products include the Pelouze® and Health o meter® brands of office, foodservice, and medical scales.

(b) Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

(c) Revenue Recognition

The Company recognizes revenue from product sales upon shipment to the customer. Costs or losses estimated to be incurred in connection with product returns and warranties are charged against revenues at the time of sale, based upon consideration of historical experience and information available from customers.

(d) Inventories

Inventories are stated at the lower of cost or market. Cost is determined using the first-in, first-out (FIFO) method.

(e) Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company calculates depreciation using the straight-line method over the estimated useful lives of the respective assets.

(f) Excess of Cost over Fair Value of Net Assets Acquired

The Company's excess of cost over the fair value of net assets acquired primarily represents the value of its brand names, created by advertising and product performance over many years, and is being amortized on the straight-line basis over a 40-year period. The Company assesses the recoverability of this intangible asset by determining whether the brand name dominance in terms of market share and the national distribution secured can generate sufficient revenues, growth, and cash flow to recover the intangible asset balance over its remaining life. Accumulated amortization amounted to $15,195 and $11,258 at September 28, 1997 and September 29, 1996, respectively.

(g) Deferred Financing and Stock Issuance Costs

Financing costs related to the issuance of debt are capitalized and amortized over the term of the debt. Accumulated amortization of financing costs amounted to $2,606 and $1,750 at September 28, 1997 and September 29, 1996, respectively. Issuance costs related to the sale of common stock reduce paid-in capital.

NOT A CERTIFIED COPY

020692

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1. Summary of Significant Accounting Policies—(Continued)

(h) Income Taxes

The Company accounts for income taxes under the asset and liability method whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amount of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using the tax rates in effect at the end of the period. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that the new tax rate is enacted.

(i) Product Liability Costs

Costs estimated to be incurred with respect to product liability claims are accrued based upon actuarially determined estimates derived from experience factors. The current portion represents product liability costs estimated to be paid within one year.

(j) Net Income (Loss) per Common Share

Net income per common share is calculated by dividing net income by the weighted average of outstanding common stock and common stock equivalents using the treasury stock method, except when the effect of common stock equivalents would be antidilutive or when dilution is less than 3 percent. Net loss per common share is based on the weighted average of outstanding common shares.

(k) Use of Estimates

Generally accepted accounting principles require management to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent liabilities, at the date of the financial statements, and the reported amounts of revenues and expenses during the period in preparing these financial statements. Actual results could differ from those estimates.

(l) Stock-Based Compensation

During 1995, the FASB issued Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, which provides a basis for measurement and recognition of all stock-based employee compensation plans. The disclosure requirements of this Statement are effective for fiscal years beginning after December 15, 1995. The Company chose to maintain its current accounting method for stock-based compensation and disclose the pro forma effects on net income and net income per share of the fair market value method, if material, as permitted by the Statement.

(m) Advertising Costs

The Company expenses reimbursement of customers' advertising costs at the time the related revenues are recognized. Advertising expense was $23,450, $20,087 and $18,458 for the years ended September 28, 1997, September 29, 1996 and October 1, 1995, respectively.

2. Name Change

On March 6, 1997, the stockholders of the Company approved an amendment to the Company's Certificate of Incorporation to change the name of the Company to "Signature Brands USA, Inc." In view of the Company's name change, on April 30, 1997, Health o meter, Inc., the Company's operating subsidiary, was merged with and into a wholly-owned subsidiary of the Company, Signature Brands, Inc., an Ohio corporation, formed by the Company solely for the purpose of changing the name of Health o meter, Inc. to "Signature Brands, Inc."

NOT A CERTIFIED COPY

0206693

MF 01864

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326619

16div-026450

3. Accounting Change

As of September 30, 1996, the Company changed its method of determining the cost of certain inventories from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method. Management believes that the change in accounting for inventories is preferable because it will more appropriately measure operating results and inventory value, better match revenues and expenses, and conform all inventories of the Company to the same accounting method.

The change in the method of valuing inventories has been applied retroactively by restating financial statements for prior years. The effect of this restatement was to reduce retained earnings as of September 29, 1996 by $363. The following summarizes the effect of changing the accounting method for certain inventories:

	1996	1995
Net income as previously reported	$2,959	$ 712
Effect of change in accounting method for inventories, net of income tax	(238)	272
Net income as restated	$2,721	$ 984
Net income per share as previously reported	$ .33	$ .08
Effect of change in accounting method for inventories, net of income tax	(.03)	.03
Net income per share as restated	$ .30	$ .11

4. Unusual Item

The Company charged $2,350 to operations in the year ended September 28, 1997 primarily for costs associated with the severance of several senior executive officers.

5. Inventories

The components of inventories are as follows:

	1997	1996
Raw materials and purchased parts	$11,233	$13,446
Finished goods	28,374	29,591
	$39,607	$43,037

Work-in-process inventories are not significant and are included with raw materials.

6. Property, Plant and Equipment

Property, plant and equipment are as follows:

	1997	1996
Land, buildings and building improvements	$ 6,241	$ 6,108
Machinery and equipment	9,477	7,862
Tools, dies and patterns	22,783	21,657
Furniture and fixtures	5,635	4,192
Leasehold improvements	578	413
Construction in progress	2,106	1,018
	46,820	41,250
Accumulated depreciation	(29,222)	(22,728)
Property, plant and equipment, net	$17,598	$18,522

NOT A CERTIFIED COPY

020694

MF 01865

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326620

16div-026451

7. Accrued Liabilities

The components of accrued liabilities are as follows:

	1997	1996
Product returns under warranties	$ 6,007	$ 6,200
Advertising and promotional costs	5,807	4,866
Accrued compensation	2,585	1,945
Interest	3,094	1,364
Product liability	965	965
Other	3,759	4,202
Accrued liabilities	$22,217	$19,542

8. Long-Term Debt

Debt is summarized as follows:

	1997	1996
Revolving Credit Facility dated August 17, 1994, bearing interest at prime plus 1% or the London Interbank Offered Rate (LIBOR) plus 2.5% (weighted average interest rate was 8.45% at September 28, 1997); due August 15, 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	$ 33,700	$ 41,600
Term Loan dated August 17, 1994, bearing interest at prime plus 1% or LIBOR plus 2.5% (weighted average interest rate was 8.38% at September 28, 1997); due August 15, 2001; principal payable on a quarterly basis in aggregate 12-month amounts of $8,750, $17,500, $15,000, and $19,000 during fiscal 1998 through fiscal 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	60,258	66,250
Senior Subordinated Notes, net of unamortized discount of $1,096 and $1,319 at September 28, 1997 and September 29, 1996, respectively, bearing interest at 13%, payable semiannually; due August 15, 2002.	68,904	68,681
	162,862	176,531
Current portion of long-term debt	(8,750)	(6,000)
Long-term debt	$154,112	$170,531

Bank Credit Agreement

Signature Brands' Bank Credit Agreement (the Agreement) includes a $60.0 million revolving credit facility (including an $18.0 million letter of credit subfacility) and a $75.0 million term loan facility. The revolving credit facility includes a charge of 0.5 percent on the unused line and 2.5 percent for letter of credit guarantees.

Signature Brands is required to make prepayments on the term loan and revolving credit facility with a percentage of Excess Cash Flow, as defined, and 100 percent of the proceeds from certain asset sales, issuances

NOT A CERTIFIED COPY
020695
MF 01866
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326621
16div-026452

8. Long-Term Debt—(Continued)

of debt and equity securities, and extraordinary items outside the ordinary course of business. There is no required prepayment for fiscal 1998. Signature Brands may also make optional prepayments, in full or in part, on the term loan.

Borrowing availability under the revolving credit facility at September 28, 1997 was $13.6 million after giving effect to outstanding letters of credit of $1.2 million, actual borrowings of $33.7 million, and sufficiency of collateral.

Signature Brands is subject to certain customary affirmative and negative covenants contained in the Agreement. These include, without limitation, covenants that restrict, subject to certain exceptions, incurrence of additional indebtedness; mergers, consolidations, or asset sales; changes in the nature of the business; granting of liens to secure any other indebtedness; and transactions with affiliates. In addition, the Agreement requires that the Company maintain certain specified financial ratios, including minimum interest and fixed charge coverage ratios, maximum leverage ratios, minimum net worth levels, and ceilings on leverage and capital expenditures. At September 28, 1997, the Company was in compliance with such covenants.

In December 1997, the Agreement was amended to increase the term loan facility by $1.0 million and to modify the amortization schedule such that the annual aggregate payments are $5.0 million, $8.75 million, $14.5 million, and $33.0 million during fiscal 1998 through fiscal 2001, respectively. A portion of the annual payment for fiscal 2001 may be accelerated into fiscal 2000 if certain EBITDA levels are not achieved in fiscal 1999. In addition, the revolving credit facility was reduced to $55.0 million, however, because the advance rate on collateral was increased, the Company's availability thereunder should not be materially impacted.

Senior Subordinated Notes

The Senior Subordinated Notes (the Notes) are general obligations of Signature Brands. Signature Brands' payment obligations under the Notes are unconditionally guaranteed by the Company. The Notes and the Company's guaranty are subordinated to the prior payment of the Company's amounts outstanding under the Agreement. The Indenture governing the Notes contains customary provisions restricting mergers, consolidations, or sales of assets; issuances of preferred stock or the incurrence of additional indebtedness; payment of dividends; creation of liens; and transactions with affiliates. Provided that certain financial tests are met, the Indenture does not limit the amount of additional indebtedness that Signature Brands and its subsidiaries may incur.

The Notes are generally not redeemable at the option of the Company until August 15, 1999. Under certain limited circumstances, the Company may be required to use a portion of the proceeds from asset sales to make an offer to purchase a portion of the Notes, at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest. In addition, in the event of a change in control of the Company, each holder will have the right to require Signature Brands to repurchase its Notes at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest thereon. Except for the foregoing circumstances, Signature Brands is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

The Agreement currently prohibits the Company from purchasing any Notes prior to the expiration thereof and also provides that certain change in control events with respect to the Company would constitute a default thereunder.

NOT A CERTIFIED COPY

020696

MF 01867

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326622

16div-026453

9. Warrants

The Company, in conjunction with the issuance of the Notes, issued 70,000 warrants. Each warrant entitles the holder thereof to purchase 10.96 shares of common stock at $6.25 per share, subject to adjustment under certain circumstances. The warrants expire on August 15, 2002.

10. Income Taxes

Income tax expense (benefit) for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, consisted of:

	1997	1996	1995
Current			
Federal	$856	$4,052	$ 100
State	215	326	40
Deferred	(283)	349	2,547
	$788	$4,727	$2,687

The principal items accounting for the difference in taxes on income computed at the U.S. statutory rate and as recorded for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, are as follows:

	1997	1996	1995
Tax expense (benefit) at statutory rate of 35%	$ (498)	$2,607	$1,285
State taxes, net of federal benefit	86	455	206
Goodwill amortization	1,241	1,302	1,255
Other	(41)	363	(59)
	$ 788	$4,727	$2,687

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at September 28, 1997 and September 29, 1996 are as follows:

	1997	1996
Deferred tax assets		
Compensation and vacation	$1,096	$ 340
Warranties and sales reserves	2,259	2,897
Advertising	676	683
Product liability	1,646	1,746
Above market rate lease	—	219
Bad debts	751	456
Other	455	741
Total gross deferred tax assets	$6,883	$7,082
Deferred tax liabilities		
Depreciation and amortization	(1,493)	(1,928)
Other	(232)	(279)
Total gross deferred tax liabilities	(1,725)	(2,207)
Net deferred tax asset	$5,158	$4,875

The realization of the Company's net deferred tax asset is dependent on the generation of future taxable income. Management believes that it is more likely than not that the Company will generate sufficient future

NOT ACERTIFIED COPY

020697

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01868

CPH 1326623

16div-026454

10. Income Taxes—(Continued)

taxable income to fully utilize the established net asset. Accordingly, no valuation allowance for the net deferred tax asset has been provided.

11. Lease Commitments

The Company leases various buildings and equipment under leases expiring at various dates. At September 28, 1997, minimum rental commitments under noncancelable leases are as follows:

Fiscal Year Ending	
1998	$ 2,031
1999	1,903
2000	1,800
2001	1,790
2002	1,750
Thereafter	18,400
	$27,674

Rental expense amounted to approximately $1,630, $1,438, and $1,447, for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

12. Contingencies

The Company is involved in various claims and items of litigation. Management believes that the ultimate outcome of such matters will not have a material adverse effect upon the operations or financial position of the Company.

13. Stock Incentive Plans

The Company has five stock-based compensation plans. Options granted under these plans have ten-year terms and generally have graded vesting schedules of either four or five years. Options scheduled over five years require achievement of company-wide performance goals in order for options to vest.

The Company applies APB Opinion 25 (APB 25) in accounting for its stock incentive plans and, accordingly, recognizes compensation costs only to the extent that the market price of shares granted exceeds the exercise price at the grant date. During 1995, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (SFAS 123), which permits the continued use of APB 25 and requires disclosure of the pro forma effects on net income and net income per share had the fair value method of accounting prescribed under SFAS 123 been used. Under SFAS 123, an option's fair value is estimated at the grant date using an option pricing model, the resulting fair value is then recognized as compensation cost over the vesting period of the related option. In the Company's case these pro forma disclosures are required to be applied only to options granted after October 1, 1995 (fiscal 1996). In estimating fair value, the Company has used the Black-Scholes option pricing model with the following weighted-average assumptions for 1997 and 1996, respectively; risk free interest rate of 6.21 percent and 6.10 percent, expected lives of 4.1 years and 4.7 years, and stock price volatility of 29.3 percent. The weighted

NOT A CERTIFIED COPY
869020
MF 01869
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326624
16div-026455

13. Stock Incentive Plans—(Continued)

average fair value of options granted during 1997 and 1996 was $1.18 and $1.70, respectively. The following chart depicts the pro forma affects on net income of applying the provisions of SFAS 123.

	1997	1996
Net income (loss)		
As reported	$(2,212)	$2,721
Pro forma	$(2,302)	$2,673
Net income (loss) per share		
As reported	$ (.24)	$ .30
Pro forma	$ (.25)	$ .29

The following is a summary with respect to options outstanding at September 28, 1997, September 29, 1996, and October 1, 1995, and the activity during those years:

	1997	1996	1995
Options unexercised at beginning of the year	919,853	813,853	502,353
Weighted average exercise price	$4.15	$3.86	$3.96
Options granted during the year	669,000	211,000	377,000
Weighted average exercise price	$3.99	$5.55	$4.44
Options exercised during the year	(1,250)	(9,125)	—
Weighted average exercise price	$3.44	$3.46	—
Options canceled during the year	(186,375)	(95,875)	(65,500)
Weighted average exercise price	$5.24	$4.82	$4.44
Options unexercised at end of year	1,401,228	919,853	813,853
Weighted average exercise price	$3.93	$4.15	$3.86
Options exercisable at end of year	567,728	443,478	398,353
Weighted average exercise price	$3.52	$3.15	$3.08

At September 28, 1997, the range of exercise prices and weighted average remaining contractual life of outstanding options was $2.61—$14.50 and 8.5 years.

1992 Incentive Stock Option Plan

In February 1992, the Company adopted a new incentive stock plan (1992 Plan). The 1992 Plan provides that incentive stock options and nonqualified stock options may be granted to such officers and key employees as the administrators of the 1992 Plan may select. The 1992 Plan is administered by a committee of the board of directors which selects the participants and determines (i) the type of options; (ii) the vesting schedule of options; (iii) the exercise price (which may not be less than fair market value on the date of grant); and (iv) the duration of the options (which cannot exceed 10 years). A total of 220,000 shares of common stock have been reserved for issuance under the 1992 Plan. No options may be granted under the 1992 Plan after December 31, 2001.

1994 Nonqualified Stock Option Grant

In August 1994, the Company granted an executive officer of the Company 362,353 nonqualified stock options at an exercise price of $2.61 per share in exchange for canceled options of Mr. Coffee. The difference between the aggregate exercise price of such new options and the fair value of the Company's stock was equal to the option spread for the canceled Mr. Coffee options. The options are exercisable immediately, but may not be exercised more than one year after termination or death while in the employ of the Company or more than 10 years from date of grant.

NOT A CERTIFIED COPY
020699
MF 01870
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CPH 1326625
16div-026456

13. Stock Incentive Plans—(Continued)

1995 Stock Option and Incentive Plan

In April 1995, the Company adopted a new stock option and incentive plan (1995 Plan). The 1995 Plan provides authority for the grant of stock options and stock appreciation rights to directors, employees, and consultants by the Compensation Committee (Committee) of the board of directors. The total number of shares of common stock that may be subject to awards granted under the 1995 Plan is equal to 750,000 shares of common stock, subject to certain adjustments. The Committee selects the participants and determines (i) the type of option; (ii) the vesting schedule of options; (iii) the exercise price; and (iv) the duration of the options. No options may be granted under the 1995 Plan after April 27, 2005.

1997 Stock Option and Incentive Plan

In March 1997, the Company adopted a new stock option and incentive plan (1997 Plan). The 1997 Plan provides the Compensation Committee (Committee) of the board of directors the authority to grant stock options and stock appreciation rights to directors, employees, and consultants. The Committee selects the participants and determines (i) the type of award; (ii) the vesting schedule of awards; (iii) the exercise price; and (iv) duration of the award. The total number of shares of common stock that may be subject to awards granted under the 1997 Plan is equal to 270,000 shares of common stock, subject to certain adjustments. No awards my be granted under the 1997 Plan after March 5, 2007.

1997 Nonqualified Stock Option Grant

In August 1997, the Company granted an executive officer of the Company 500,000 nonqualified stock options at an exercise price of $3.50 per share. One-half of the options become exercisable on September 30 of each year following the date of grant, but may not be exercised more than ten years from the date of grant.

14. Unaudited Quarterly Financial Data

	Quarter			
	First	Second	Third	Fourth
Year ended September 28, 1997 (1)				
Net sales	$87,136	$61,925	$64,194	$62,453
Gross profit	26,059	19,613	20,018	19,935
Interest expense	4,982	4,575	4,484	4,597
Net income (loss)	491	(267)	75	(2,511)
Net income (loss) per share	.05	(.03)	.01	(.28)
Weighted average shares outstanding (in thousands)	9,080	9,080	9,080	9,081
Year ended September 29, 1996 (2)				
Net sales	$97,407	56,275	59,339	69,956
Gross profit	30,544	17,737	19,011	22,568
Interest expense	5,097	4,717	4,637	4,683
Net income (loss)	1,977	10	(218)	952
Net income (loss) per share	.22	—	(.02)	.10
Weighted average shares outstanding (in thousands)	9,071	9,071	9,071	9,078

(1) The results for the fourth quarter include an unusual item of $2.4 million primarily for expenses associated with severance costs for several senior executive officers.

(2) Amounts for the fourth quarter have been restated for the effect of the Company's change from the LIFO method of accounting for certain inventories to the FIFO method. Amounts for the first, second and third quarters were not restated as the impact was not material to those quarters.

NOT A CERTIFIED COPY

020700

MF 01871

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326626

16div-026457

15. Business and Credit Concentrations

The Company distributes and sells its products through major retail outlets, including discounters/mass merchants, department stores, warehouse clubs, specialty stores, catalog showrooms, mail order catalog companies, and national hardware, drugstore, and retail grocery chains. Approximately 39 percent, 36 percent, and 33 percent of the Company's revenues were from two customers in the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively. The largest of these two customers accounted for 27 percent, 23 percent, and 23 percent of the Company's revenues in those same years, respectively.

16. Related Party Transactions

Signature Brands pays a management fee to a related party for certain administrative and professional services performed by the related party. Amounts paid to this related party for management fees, including reimbursed expenses, were $252, $263, and $305 for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

17. Financial Instruments

Management has determined that at September 28, 1997 and September 29, 1996, the fair value of financial instruments included in the balance sheets approximated their carrying values. With respect to cash, receivables, payables, and accrued liabilities, this determination was based on the short maturity of the instruments. With respect to debt, the assessment was based on management's judgment as to currently available rates on debt with similar maturities.

18. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at September 28, 1997 and September 29, 1996, and for the years ended September 28, 1997, September 29, 1996, and October 1, 1995 is as follows:

	September 28 1997	September 29 1996
Current assets	$100,992	$108,644
Noncurrent assets	158,718	164,483
Total assets	$259,710	$273,127
Current liabilities	$ 51,971	$ 48,393
Noncurrent liabilities	161,142	176,090
Intercompany payables	47,823	47,658
Total liabilities	$260,936	$272,141
Stockholder's equity		
Common stock—$1.00 stated value; authorized 850 shares; issued and outstanding 100 shares in 1997 and $.01 par value; authorized and outstanding 1,000,000 shares in 1996	—	10
Paid-in capital	2,821	2,811
Accumulated deficit	(4,047)	(1,835)
Total stockholder's equity	(1,226)	986
Total liabilities and stockholder's equity	$259,710	273,127

	Year Ended		
	September 28 1997	September 29 1996	October 1 1995
Net sales	$275,708	$282,977	$267,887
Gross profit	85,625	89,860	83,433
Net income (loss)	$ (2,212)	$ 2,721	$ 984

NOT A CERTIFIED COPY

020701

MF 01872

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326627

16div-026458

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	December 28, 1997 (Unaudited)	September 28, 1997
ASSETS		
Current assets		
Cash	$ 4,118	890
Trade accounts receivable, net	67,501	52,336
Inventories	37,851	39,607
Refundable income taxes	497	497
Deferred income taxes	6,329	6,329
Other current assets	1,378	1,333
Total current assets	117,674	100,992
Property, plant and equipment, net	16,820	17,598
Other assets		
Excess of cost over fair value of net assets acquired, net	134,921	135,893
Deferred financing costs, net	4,084	3,723
Other	1,579	1,504
Total other assets	140,584	141,120
Total assets	$275,078	259,710
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	$ 5,000	8,750
Accounts payable	21,849	21,004
Accrued liabilities	29,645	22,217
Total current liabilities	56,494	51,971
Long-term debt		
Revolving Credit Facility	40,100	33,700
Term Note	55,000	51,508
Senior Subordinated Notes	68,960	68,904
Total long-term debt	164,060	154,112
Product liability	2,813	3,212
Other	3,726	3,818
Total liabilities	$227,093	$213,113
Stockholders' equity		
Common stock, par value $.01 per share; authorized 20,000 shares; issued and outstanding 9,174 shares at December 28, 1997 and 9,082 shares at September 28, 1997	92	91
Paid-in capital	52,099	51,937
Warrants	1,773	1,773
Accumulated deficit	(5,979)	(7,204)
Total stockholders' equity	47,985	46,597
Total liabilities and stockholders' equity	$275,078	259,710

See accompanying notes to unaudited consolidated financial statements.

NOT A CERTIFIED COPY

020702

MF 01873

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326628

16div-026459

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(Amounts in thousands, except per share data)

	Thirteen weeks ended	
	December 28 1997	December 29 1996
Net sales	$90,365	$87,136
Operating costs and expenses		
Cost of goods sold	63,388	61,077
Selling, general and administrative expenses	18,219	19,055
Amortization of intangible assets	972	984
Total operating costs and expenses	82,579	81,116
Operating income	7,786	6,020
Interest expense	4,800	4,982
Other income	(76)	(189)
Income before income taxes	3,062	1,227
Income tax expense	1,837	736
Net income	$ 1,225	$ 491
Basic and diluted net income per share	$ 0.13	$ 0.05

NOT A CERTIFIED COPY

See accompanying notes to unaudited consolidated financial statements.

020703

MF 01874

CPH 1326629

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16div-026460

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Amounts in thousands)

	Thirteen Weeks Ended	
	December 28, 1997	December 29, 1996
Cash flows from operating activities		
Net income	$ 1,225	$ 491
Adjustments to reconcile net income to net cash used in operating activities		
Depreciation and amortization of plant and equipment	1,598	1,730
Amortization of intangible assets	972	984
Amortization of deferred financing costs	214	214
Accretion of debt discount	56	56
Changes in		
Accounts receivable	(15,165)	(8,163)
Inventories	1,756	(410)
Other assets	(120)	271
Accounts payable	845	(140)
Accrued liabilities	7,428	4,202
Noncurrent liabilities	(491)	22
Net cash used in operating activities	(1,682)	(743)
Cash flows from investing activities		
Capital expenditures	(820)	(728)
Net cash used in investing activities	(820)	(728)
Cash flows from financing activities		
Proceeds from revolving credit facility	32,100	19,900
Repayments of revolving credit facility	(25,700)	(15,600)
Repayment of long-term debt	(1,250)	(1,250)
Proceeds from Term Note	992	—
Proceeds from stock issuances under option plans and awards	163	—
Payment of financing fees	(575)	—
Net cash provided by financing activities	5,730	3,050
Increase in cash	3,228	1,579
Cash at the beginning of the period	890	736
Cash at the end of the period	$ 4,118	$ 2,315
Supplemental disclosures of cash flow information		
Cash paid during the period for		
Interest	$ 2,251	$ 2,375
Income taxes	—	$ 415

NOT A CERTIFIED COPY

020704

See accompanying notes to unaudited consolidated financial statements.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326630

16div-026461

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

(Amounts in thousands, except per share data)

1. Basis of Presentation

The consolidated financial statements include the accounts of Signature Brands USA, Inc. (the "Company") and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

In the opinion of management, the information furnished herein includes all adjustments of a normal recurring nature that are necessary for a fair presentation of results for the interim periods shown in accordance with generally accepted accounting principles. The unaudited interim consolidated financial statements have been prepared using the same accounting principles that were used in preparation of the Company's annual report on Form 10-K for the year ended September 28, 1997, and should be read in conjunction with the consolidated financial statements and notes thereto. Because of the seasonal nature of the small appliance and consumer scale industries, the results of operations for the interim period are not necessarily indicative of results for the full fiscal year.

2. Inventories

The components of inventories are as follows:

	December 28, 1997	September 28, 1997
Raw materials and purchased parts	$10,040	$11,233
Finished goods	27,811	28,374
	$37,851	$39,607

Work-in-process inventories are not significant and are included with raw materials.

3. Earnings per share

The Company adopted Statement of Financial Accounting Standards No. 128, Earnings per Share ("SFAS No. 128"), in the quarter ended December 28, 1997. SFAS No. 128 requires the Company to disclose two earnings per share amounts, basic and diluted. Basic earnings per share is based on net income available to common stockholders and weighted average common stock outstanding during the period. Diluted earnings per share includes the effect of all dilutive securities which are convertible to common stock of the Company such as stock options and warrants.

Below is a table which reconciles basic earnings per share with diluted earnings per share for the thirteen weeks ended December 28, 1997 and December 29, 1996.

	Net Income		Shares		Per Share Amounts	
	1997	1996	1997	1996	1997	1996
Basic Earnings Per Share						
Net income available to common stockholders	$1,225	$491	9,109	9,081	$0.13	$0.05
Effect of Dilutive Securities[1]						
Stock Options	—	—	298	268		
Diluted Earnings Per Share	$1,225	$491	9,407	9,349	$0.13	$0.05

[1] The Company's outstanding warrants and certain outstanding stock options have not been included as they are currently antidilutive.

NOT A CERTIFIED COPY

020705

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01876

CPH 1326631

16div-026462

4. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at December 28, 1997 and September 28, 1997, and for the thirteen week periods ended December 28, 1997 and December 29, 1996 is as follows:

	December 28, 1997	September 28, 1997
Current assets	$117,674	$100,992
Noncurrent assets	157,404	158,718
Total assets	$275,078	$259,710
Current liabilities	$ 56,494	$ 51,971
Noncurrent liabilities	170,599	161,142
Intercompany payables	47,986	47,823
Total liabilities	$275,079	$260,936
Stockholder's equity		
Common stock— $1.00 stated value; authorized 850 shares; issued and outstanding 100 shares	—	—
Paid-in capital	2,821	2,821
Accumulated deficit	(2,822)	(4,047)
Total stockholder's equity	(1)	(1,226)
Total liabilities and stockholder's equity	$275,078	$259,710

	Thirteen week period ended	
	December 28, 1997	December 29, 1996
Net sales	$ 90,365	$ 87,136
Gross profit	26,977	26,059
Net income	1,225	491

NOT A CERTIFIED COPY

020706

MF 01877

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326632

16div-026463

REPORT OF INDEPENDENT ACCOUNTANTS

Price Waterhouse LLP

To the Board of Directors and Stockholders of First Alert, Inc.

In our opinion, the accompanying consolidated balance sheet and related consolidated statements of operations, of cash flows and of stockholders' equity present fairly, in all material respects, the financial position of First Alert, Inc. and its subsidiaries at December 31, 1997 and 1996 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with generally accepted auditing standards which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

/s/ PRICE WATERHOUSE LLP

Chicago, Illinois
March 13, 1998

NOT A CERTIFIED COPY

020707

MF 01878

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326633

16div-026464

FIRST ALERT, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET
(In thousands, except share data)

	At December 31, 1997	1996
Assets		
Current assets:		
Cash and cash equivalents	$ 2,996	$ 6,846
Accounts receivable, less allowance for doubtful accounts of $3,837 at December 31, 1997, $3,820 at December 31, 1996	46,106	40,617
Income tax receivable	7,572	8,503
Inventories (Note 4)	40,285	58,222
Deferred taxes (Note 9)	6,646	10,510
Prepayments and other assets	4,034	3,249
Total current assets	107,639	127,947
Property, plant and equipment, net of accumulated depreciation of $22,994 at December 31, 1997, $22,763 at December 31, 1996 (Note 6)	28,181	29,803
Other Assets:		
Goodwill, net of accumulated amortization of $3,453 at December 31, 1997, $2,815 at December 31, 1996 (Note 5)	22,045	22,683
Other intangibles, net of accumulated amortization of $3,440 at December 31, 1997, $2,905 at December 31, 1996 (Note 5)	6,496	6,058
Total assets	$164,361	$186,491
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 15,897	$ 7,304
Accrued expenses (Note 7)	17,105	26,395
Short-term revolving credit facility (Note 8)	45,026	20,500
Total current liabilities	78,028	54,199
Long-term revolving credit facility (Note 8)	—	40,000
Other long-term liabilities	71	71
Deferred taxes (Note 9)	4,862	3,369
Contingencies (Note 13)	—	—
Total liabilities	82,961	97,639
Stockholders' equity:		
Common stock ($.01 par value, 30,000,000 shares authorized, 24,335,112 issued and outstanding at December 31, 1997; 24,183,116 issued and outstanding at December 31, 1996)	243	242
Preferred stock ($.01 par value, 1,000,000 shares authorized at December 31, 1997 and 1996, none issued and outstanding)	—	—
Paid-in capital	72,012	71,637
Stockholder loans	—	(8)
Retained earnings	9,145	16,981
Total stockholders' equity	81,400	88,852
Total liabilities and stockholders' equity	$164,361	$186,491

See accompanying notes to Consolidated Financial Statements.

NOT A CERTIFIED COPY

020708

MF 01879

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326634

16div-026465

FIRST ALERT, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF OPERATIONS
(In thousands, except per share data)

	Year Ended December 31,		
	1997	1996	1995
Net sales	$186,941	$205,607	$246,266
Operating expenses:			
Cost of sales, excluding depreciation	134,349	150,611	140,980
Selling, general and administrative	54,213	72,663	77,548
Restructuring charge (Note 3)	—	2,499	—
Depreciation and amortization	6,846	6,353	7,305
Operating income (loss)	(8,467)	(26,519)	20,433
Other expenses (income):			
Interest expense	3,555	3,803	1,487
Miscellaneous, net	1,038	628	(113)
Income (loss) before taxes	(13,060)	(30,950)	19,059
Income tax provision (benefit)	(5,224)	(12,248)	7,622
Net income (loss)	$ (7,836)	$ (18,702)	$ 11,437
Basic net income (loss) per share	$ (0.32)	$ (0.78)	$ 0.48
Diluted net income (loss) per share	(0.32)	(0.78)	0.46
Basic weighted average shares outstanding	24,242	24,119	24,043
Diluted weighted average shares outstanding	24,242	24,119	24,831

NOT A CERTIFIED COPY

See accompanying notes to Consolidated Financial Statements.

020709

MF 01880

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326635

16div-026466

FIRST ALERT, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CASH FLOWS
(In thousands)

	Year ended December 31,		
	1997	1996	1995
Operating Activities:			
Net income (loss)	$ (7,836)	$ (18,702)	$ 11,437
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	6,846	6,353	7,305
Restructuring charge	—	4,497	—
Changes in assets and liabilities:			
(Increase)/Decrease in accounts receivable	(5,489)	22,350	(4,351)
Decrease/(Increase) in income tax receivable	1,039	(6,910)	(1,340)
Decrease/(Increase) in inventories	17,937	8,731	(28,933)
Increase in prepayments and other assets	(785)	(770)	(1,028)
Decrease/(Increase) in net deferred taxes	5,357	(4,252)	3,028
Decrease in accounts payable/accrued expenses	(697)	(11,266)	(14,034)
Other changes, net	(18)	(41)	87
Net cash and cash equivalents provided by (used in) operating activities	16,354	(10)	(27,829)
Investing Activities:			
Capital expenditures	(3,992)	(5,274)	(10,648)
Disposal of property, plant and equipment	255	848	4,159
Other	(1,246)	554	(997)
Net cash and cash equivalents used in investing activities	(4,983)	(3,872)	(7,486)
Financing Activities:			
Borrowings under revolving credit facilities	38,645	59,300	65,550
Payments under revolving credit facilities	(54,119)	(51,000)	(29,050)
Payment of Former Credit Facility	(36,896)	—	—
Proceeds from Credit Facility	36,896	—	—
Proceeds from sale of stock	245	226	28
Proceeds from stockholder loans	8	8	43
Other	—	(193)	—
Net cash and cash equivalents (used in) provided by financing activities	(15,221)	8,341	36,571
Net (decrease) increase in cash and cash equivalents	(3,850)	4,459	1,256
Cash and cash equivalents at beginning of period	6,846	2,387	1,131
Cash and cash equivalents at end of period	$ 2,996	$ 6,846	$ 2,387
Interest paid	$ 4,108	$ 3,586	$ 1,701
Income taxes paid (refunded), net	(8,668)	1,274	12,559

NOT A CERTIFIED COPY

020710

See accompanying notes to Consolidated Financial Statements.

MF 01881

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326636

16div-026467

FIRST ALERT, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands, except share data)

	Common Stock		Paid in	Stockholder	Retained
	Shares	Par Value	Capital	Loans	Earnings
Balance December 31, 1994	24,025,616	$240	$70,986	$(59)	$ 24,246
Net income during the year ended December 31, 1995	—	—	—	—	$ 11,437
Stock options exercised	17,500	—	$ 28	—	—
Income tax benefit related to the exercise of stock options	—	—	112	—	—
Payment of stockholder loans, net	—	—	—	$ 43	—
Value of stock options granted	—	—	11	—	—
Balance December 31, 1995	24,043,116	$240	$71,137	$(16)	$ 35,683
Net loss during the year ended December 31, 1996	—	—	—	—	$(18,702)
Stock options exercised	140,000	$ 2	$ 224	—	—
Income tax benefit related to the exercise of stock options	—	—	253	—	—
Payment of stockholder loans, net	—	—	—	$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1996	24,183,116	$242	$71,637	$ (8)	$ 16,981
Net loss during the year ended December 31, 1997	—	—	—	—	$ (7,836)
Stock options exercised	151,996	$ 1	$ 244	—	—
Income tax benefit related to the exercise of stock options	—	—	108	—	—
Payment of stockholder loans, net	—	—	—	$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1997	24,335,112	$243	$72,012	$ —	$ 9,145

NOT A CERTIFIED COPY

See accompanying notes to Consolidated Financial Statements.

020711

MF 01882

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326637

16div-026468

Note 1—The Company

Effective July 31, 1992, THL-FA Operating Corp. acquired substantially all the net assets of the BRK Electronics Division and all the issued and outstanding shares of certain non-U.S. subsidiaries of the Fire Safety Group of Pittway Corporation (hereinafter referred to as the "Predecessor" or the "Division") for approximately $92,500 ("Acquisition"). THL-FA Operating Corp. is a wholly owned subsidiary of THL-FA Holding Corp. THL-FA Operating Corp. subsequently changed its name to BRK Brands, Inc. and THL-FA Holding Corp. subsequently changed its name to First Alert, Inc. ("Company" or "First Alert"). After this acquisition, the Company was owned by Thomas H. Lee Company and related entities, Pittway Intellectual Property Corporation, a subsidiary of Pittway Corporation ("Pittway") and management of the Company. On April 5, 1994, the Company completed an initial public offering ("IPO") of 5,180,000 shares of its common stock. An additional 3,100,000 shares of the Company's common stock were sold by Pittway as part of the same offering.

The Company, through its subsidiaries, manufactures and markets residential safety products including smoke and carbon monoxide detectors, fire extinguishers, motion sensing lighting control devices, timers, fire security safes and chests, fire escape ladders, child safety products and rechargeable flashlights. The Company's manufacturing operations are located in Juarez, Mexico and Aurora, Illinois.

While the Company has a number of customers in the retail and wholesale markets, a significant amount of its net sales are concentrated in three major U.S. national retail chains comprising 13%, 7% and 7% of consolidated net sales for the year ended December 31, 1997; 15%, 7% and 5% for the year ended December 31, 1996 and 13%, 8% and 6% for the year ended December 31, 1995.

Most of the components used in the Company's products are available from multiple sources; however, the Company has elected to purchase integrated circuit components used in the Company's smoke detectors and carbon monoxide detectors, and certain other components used in the Company's products, from single sources. The Company has developed an alternative source of supply for these integrated circuit components. However, there can be no assurance that the Company will be able to continue to obtain these components on a timely basis given the unpredictability of the demand for carbon monoxide detectors. In addition, the biomimetic sensor, which is the key component used in the Company's battery-powered carbon monoxide detector, is obtained by the Company pursuant to a license from Quantum Group, Inc. (Quantum), its sole supplier of this component. Commencing on January 1, 1997, Quantum was permitted to sell its sensors to other customers. There is no alternative supply for the biomimetic sensor. An extended interruption or termination in the supply of any of the components used in the Company's products, or a reduction in their quality or reliability, would have an adverse effect on the Company's business and results of operations.

Note 2—Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements of the Company include those assets, liabilities, revenue and expenses of the Company and its subsidiaries and its foreign operations after eliminating significant intercompany accounts and transactions. The financial statements include the operations in the United States, Canada, Europe, Mexico and Australia.

Revenue Recognition

Revenue is recorded at the time products are shipped to customers and title passes. Net sales include estimates for returns, warranties, discounts and volume rebates. The Company grants credit terms to its customers consistent with normal industry practices.

NOT A CERTIFIED COPY

020712

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326638

16div-026469

Note 2—Summary of Significant Accounting Policies—(Continued)

Cash and Cash Equivalents

Only highly liquid investments with initial maturities of less than three months are considered as cash and cash equivalents. Substantially all of the Company's cash is held by one bank at December 31, 1997. The Company does not believe that as a result of this concentration, it is subject to any unusual credit risk beyond the normal risk associated with commercial banking relationships.

Earnings per Share

In 1997, the Company adopted Financial Accounting Standards Board Statement No. 128 (SFAS 128), "Earnings per Share." This statement establishes standards for computing earnings per share (EPS) and simplifies the standards for computing EPS previously found in APB Opinion No. 15 (APB15), "Earnings per Share." It replaces the presentation of Primary EPS with a presentation of Basic EPS. It also requires dual presentation of Basic and Diluted EPS on the face of the income statement for all entities with complex capital structures. Basic EPS is based on the weighted average number of shares of common stock while Diluted EPS is based on the weighted average number of shares of common stock and dilutive potential shares of common stock outstanding during the periods. In accordance with the requirements of SFAS 128, the Company has restated all EPS data for prior periods.

A reconciliation of both the income and shares used in the calculation of Basic and Diluted EPS are as follows:

	1997	1996	1995
Basic EPS calculation:			
Numerator:			
Net income (loss)	$(7,836)	$(18,702)	$11,437
Denominator:			
Common shares outstanding	24,242	24,119	24,043
Basic EPS	$ (0.32)	$ (0.78)	$ 0.48
Diluted EPS calculation:			
Numerator:			
Net income (loss)	$(7,836)	$(18,702)	$11,437
Denominator:			
Common shares outstanding	24,242	24,119	24,043
Dilutive Options	0	0	788
Total shares	24,242	24,119	24,831
Diluted EPS	$ (0.32)	$ (0.78)	$ 0.46

Stock options were outstanding at December 31, 1997, 1996 and 1995, as discussed in Note 11.

Translation of Foreign Currencies

The functional currency of the foreign operations included in these financial statements is the U.S. dollar. Translation adjustments and transaction gains and losses are reflected in net income and consisted of a loss of $1,149 in the year ended December 31, 1997, a gain of $733 in the year ended December 31, 1996, and a loss of $39 in the year ended December 31, 1995.

NOT A CERTIFIED COPY

020713

MF 01884

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326639

16div-026470

Note 2—Summary of Significant Accounting Policies—(Continued)

Inventories

Company inventories are valued at the lower of cost, determined on the first-in, first-out (FIFO) basis, or market.

Property, Plant and Equipment

Properties are stated at cost. Depreciation of all assets is computed over their estimated useful lives using the straight-line method for financial reporting and accelerated methods for income tax reporting.

Upon sale or retirement of property, plant and equipment, a gain or loss is recognized. Expenditures for maintenance and repairs are charged to expense.

Useful lives for property, plant and equipment are as follows:

	Years
Buildings	Up to 40
Building improvements	20
Furniture and fixtures	10
Machinery and equipment	10
Tools, jigs and dies	3

Goodwill

Goodwill, representing the difference between the total purchase price and the fair value of assets (tangible and intangible) and liabilities at the date of acquisition, is being amortized on a straight-line basis over 40 years. Amortization expense totalled $638 for each of the three years in the period ended December 31, 1997.

Impairment of Assets

In 1996, the Company adopted Financial Accounting Standards Board Statement No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of." This statement requires that long-lived assets and certain identifiable intangibles be reviewed for impairment whenever events or changes in circumstance indicate that the carrying amount of an asset may not be recoverable. Under provisions of the statement, impairment losses are recognized when expected future cash flows are less than the assets' carrying value.

Patents, Trademarks and Other Intangibles

Patents, trademarks and other intangibles are carried at cost less accumulated amortization, which is calculated on a straight-line basis over the estimated useful lives of the assets, not to exceed 40 years (see Note 5). Amortization expense was $704, $682 and $1,054 for the years ended December 31, 1997, 1996 and 1995, respectively.

Fair Value of Financial Instruments

The carrying values of cash and cash equivalents, accounts receivable and payable and accrued liabilities approximate fair value due to the short-term maturities of these assets and liabilities. The aggregate fair value of the Credit Facility approximates its carrying amount because of the recent and frequent repricing based on market conditions.

NOT A CERTIFIED COPY

020714

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MF 01885

CPH 1326640

16div-026471

Stock Based Compensation

Effective January 1, 1996, the Company adopted the "disclosure method" provisions of Financial Accounting Standards Board Statement No. 123 "Accounting for Stock-Based Compensation." As permitted under this statement, the Company continues to recognize stock-based compensation costs under the intrinsic value based method of accounting as prescribed by Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees."

Income Taxes

Income taxes of the Company are accounted for using Financial Accounting Standards Board Statement No. 109, "Accounting for Income Taxes."

Advertising and Research and Development Costs

Advertising costs, including advertising allowances granted to customers, are accrued at the date of sale of certain products to reflect advertising commitments made to customers. Research and development costs are charged to expense as incurred. Expense charged to operations for the periods presented were as follows:

	Year Ended December 31,		
	1997	1996	1995
Advertising and product promotion	$12,796	$22,899	$33,258
Research and development	$ 2,012	$ 3,121	$ 2,866

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Impact of New Accounting Standards

Financial Accounting Standards Board Statement No. 130 (SFAS 130), "Reporting Comprehensive Income" and Financial Accounting Standards Board Statement No. 131 (SFAS 131), "Disclosures about Segments of an Enterprise and Related Information," were issued in June 1997 and are effective for the Company's fiscal year 1998. SFAS 130 establishes standards for the reporting and display of comprehensive income, which includes net income and changes in equity except those resulting from investments by, or distributions to, stockholders. SFAS 131 establishes standards for disclosures related to business operating segments. The Company is currently evaluating the impact that these statements will have on the consolidated financial statements.

Note 3— Restructuring Charge

During the fourth quarter of 1996, the Company adopted a plan to revitalize the Company's core product lines of smoke and carbon monoxide detectors and discontinue, reposition or outsource non-performing product lines, right-size and consolidate manufacturing operations, reduce the Company's selling, general and administrative cost structures and aggressively address inventory levels. As a result of this plan, the Company recorded a pre-tax restructuring charge of $4,497 including a provision of $1,998 for inventory write-downs which was appropriately charged to cost of sales, excluding depreciation. The remaining restructuring charge of $2,499 includes $1,789 for the write-down of the net book value of manufacturing equipment for product lines that will be outsourced or eliminated, $410 for severance costs for approximately 600 manufacturing and corporate office employees who were released from employment in the fourth quarter of 1996 and $300 for

NOT A CERTIFIED COPY

020715

MF 01886

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326641

16div-026472

Note 3 — Restructuring Charge—(Continued)

contractual plant restoration costs. The provision for inventory write-downs relates primarily to inventory for product lines that either have been or will be outsourced or eliminated. The following table sets forth the details of activity for 1997:

	Balance at December 31, 1996	1997 Charges	Balance at December 31, 1997
Manufacturing equipment write-down	$1,789	—	$1,789
Inventory write-down	1,998	$1,283	715
Severance	93	93	—
Plant restoration	300	135	165
Total	$4,180	$1,511	$2,669

Of the 1997 charges, $93 of severance was a cash charge with the remainder being non-cash charges.

During the fourth quarter of 1997, the Company released $1,005 of inventory write-down and plant restoration cost accruals which were determined by the Company's management as no longer being required. The release, reflected as a non-cash charge in the above table, was recorded through cost of sales, excluding depreciation. These accruals were deemed no longer necessary as the Company, in light of market conditions faced in 1997, reassessed its original cost estimates associated with repositioning certain product lines and consolidating its manufacturing operations.

Note 4 — Inventories

The components of inventory are as follows:

	At December 31,	
	1997	1996
Raw materials	$19,311	$25,575
Work-in-process	4,892	3,656
Finished goods	19,657	33,497
Reserves	(3,575)	(4,506)
Total	$40,285	$58,222

Note 5 — Goodwill and Other Intangibles

	At December 31,		Useful Lives (Years)
	1997	1996	
Goodwill	$25,498	$25,498	40
Trademarks	5,000	5,000	40
Patents	2,995	2,995	Various
Other	1,941	968	3-5
Less: accumulated amortization	(6,893)	(5,720)	
Total	$28,541	$28,741	

NOT A CERTIFIED COPY

020716

MF 01887

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326642

16div-026473

Note 6—Property, Plant and Equipment

	At December 31, 1997	At December 31, 1996
Land	$ 816	$ 816
Buildings	4,040	3,815
Machinery and equipment	30,392	29,686
Leasehold improvements	3,600	3,611
Tools, jigs and dies	12,327	14,638
Less: accumulated depreciation	(22,994)	(22,763)
Net property, plant and equipment	$28,181	$29,803

Note 7—Accrued Expenses

	At December 31, 1997	At December 31, 1996
Advertising/promotion	$ 3,634	$ 8,859
Warranty and product related	6,000	6,526
Other	7,471	11,010
Total	$17,105	$26,395

Note 8—Revolving Credit Facility

	At December 31, 1997	At December 31, 1996
Revolving credit facility (average rate of 7.85% at December 31, 1997, and 7.2% at December 31, 1996)	$45,026	$60,500
Less: Short-term portion	45,026	20,500
Long-term revolving credit facility	$ —	$40,000

On May 14, 1997, the Company entered into an $80.0 million revolving three-year credit facility (the "Credit Facility") with an agent financial institution, replacing its Former Credit Facility (as defined below). Advances under the Credit Facility are limited to (a) 85% of eligible accounts receivable plus (b) the lesser of 60% of eligible inventory or $35.0 million. During the period of May 1997 through October 1997, $10.0 million in additional borrowing was available and from June 1998 through September 1998, $5.0 million in additional borrowing will be available under the Credit Facility. All obligations under the Credit Facility are secured by first priority liens upon certain of the Company's assets. Amounts outstanding under the Credit Facility bear interest at prime rate plus ½% or the London Interbank Offered Rate (LIBOR) plus 2%. The Company is subject to a commitment fee of 0.375% per annum on the unused portion of the Credit Facility less $2.0 million. The Credit Facility agreement contains covenants for, among other things, total liabilities to tangible net worth and fixed charge ratios; maintenance of tangible net worth; and restrictions on additional indebtedness, capital expenditures and payment of dividends.

At December 31, 1997, the Company was not in compliance with the total liabilities to tangible net worth, fixed charge coverage ratio and minimum tangible net worth covenants set forth in the Credit Facility. While a waiver was obtained from the lender for the noncompliance with these covenants at December 31, 1997, it is not expected that the Company will be able to meet the restrictive covenants throughout 1998. Accordingly, the Credit Facility has been classified as a current liability. The Company is currently negotiating the terms of an extension of the Credit Facility, as well as a modification of the restrictive covenants and fully expects that a new agreement with its current lender will be in place by the second quarter of 1998.

NOT A CERTIFIED COPY

020117

MF 01888

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326643

16div-026474

Note 8—Revolving Credit Facility—(Continued)

At December 31, 1996, under the terms of the Company's former revolving credit facility (the "Former Credit Facility"), the Company was able to borrow up to $77.5 million until January 31, 1997, when the amount available was reduced to $70.0 million. In connection with a September 4, 1996 amendment, the Company granted a security interest in all of its assets which included the stock of wholly owned subsidiaries to secure the obligations to the lenders under the Former Credit Facility. Similarly, Electronica BRK de Mexico S.A. de C.V., a wholly owned subsidiary, agreed to pledge all of its assets to secure repayment of advances under the Former Credit Facility.

Under the Former Credit Facility, the Company was subject to a commitment fee of 0.35% per annum on the unused portion of the Former Credit Facility. The Former Credit Facility carried an interest rate of LIBOR plus 1.5% for amounts up to $70.0 million (LIBOR plus 2.0% for amounts in excess of $70.0 million) on the LIBOR based portion of the Former Credit Facility and the higher of the lender's corporate borrowing rate or the Federal Funds Rate plus 0.75% for amounts up to $70.0 million (Federal Funds Rate plus 1.25% for amounts in excess of $70.0 million) on the remaining balance. Additionally the Former Credit Facility contained covenants restricting, among other things, the payment of dividends, the sale of assets, mergers and acquisitions and required maintenance of interest coverage ratios, leverage ratios and a minimum tangible net worth. At December 31, 1996, the Company was not in compliance with the interest coverage ratio and the leverage ratio covenants. On May 14, 1997, proceeds from the Credit Facility were used to fully reduce the Company's indebtedness under the Former Credit Facility.

Note 9—Income Taxes

The domestic and foreign components of income (loss) before taxes are as follows:

	Year Ended December 31,		
	1997	1996	1995
Domestic	$(14,517)	$(31,578)	$19,563
Foreign	1,457	628	(504)
Total	$(13,060)	$(30,950)	$19,059

The elements of the income tax provision (benefit) of the Company are as follows:

	Year Ended December 31,		
	1997	1996	1995
Current income taxes:			
Federal	$ (8,982)	$ (6,467)	$3,232
State	(2,246)	(1,911)	813
Foreign	647	382	549
	$(10,581)	$ (7,996)	$4,594
Deferred income taxes:			
Federal	$ 4,318	$ (3,685)	$3,183
State	1,206	(393)	618
Foreign	(167)	(174)	(773)
	$ 5,357	$ (4,252)	$3,028
Income tax provision (benefit)	$ (5,224)	$(12,248)	$7,622

NOT A CERTIFIED COPY

020718

MF 01889

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326644

16div-026475

The tax effects of the significant temporary differences which comprise the deferred tax assets and liabilities are as follows:

	At December 31,	
	1997	1996
Assets:		
Foreign statutory operating losses	$ 2,028	$ 1,861
Advertising/promotion accruals	830	3,342
Warranty and product related accruals	1,788	1,997
Alternative minimum tax	1,125	—
Other	3,598	3,827
Gross deferred assets	$ 9,369	$11,027
Liabilities:		
Accelerated depreciation	$(5,092)	$(3,369)
Accounts receivable and other	(1,976)	—
Gross deferred liabilities	$(7,068)	$(3,369)
Valuation allowance	(517)	(517)
Net assets	$ 1,784	$ 7,141

Reconciliations of the differences between income taxes computed at the Federal statutory rate and consolidated income tax provision (benefit) are as follows:

	Year ended December 31,		
	1997	1996	1995
Income taxes computed at Federal statutory rate (35%)	$(4,571)	$(10,833)	$6,671
State taxes, net of Federal benefit	(678)	(1,497)	930
Foreign losses and rate differentials	(30)	(12)	(48)
Other, net	55	94	69
Income tax provision (benefit)	$(5,224)	$(12,248)	$7,622

Note 10—Retirement Plans

The Company has retirement plans covering substantially all U.S. employees of its subsidiaries. No other post-retirement benefits are offered to retirees.

Eligible U.S. employees may participate in the Company's defined contribution plans. Company contributions to the plans are based upon a percentage of the employee contribution and vest over a five-year period commencing with date of employment. Such contributions amounted to $182, $210, and $154 for the years 1997, 1996 and 1995, respectively.

There are two non-contributory defined benefit plans covering substantially all U.S. employees. Benefits are based on years of service and annual compensation as defined by such plans. Employees vest in plan benefits after five years of service.

Pursuant to the terms of the purchase agreement with Pittway, all retirement obligations earned by Company employees through July 31, 1992, were retained by Pittway. Obligations arising subsequent to that date are the responsibility of the Company. Pension costs recorded for the fiscal years 1997, 1996 and 1995 aggregated $307.

NOT A CERTIFIED COPY

020719

MF 01890

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326645

16div-026476

Note 10—Retirement Plans—(Continued)

$379 and $346, respectively. The components of net pension cost for the fiscal years 1997, 1996 and 1995 consist of:

	Year ended December 31,		
	1997	1996	1995
Service cost of benefits earned during the year	$ 346	$ 378	$ 328
Interest cost on projected benefit obligation	89	74	50
Return on plan assets	(289)	(188)	(172)
Net amortization and deferred gains and losses	161	115	140
Net pension cost	$ 307	$ 379	$ 346
Discount rate	7.0%	7.0%	7.0%
Rate of compensation increase	5.0%	5.0%	5.0%
Long-term rate of return on assets	7.0%	7.0%	7.0%

A reconciliation of the funded status of the plans is as follows:

	At December 31,	
	1997	1996
Actuarial present value of benefit obligations:		
Vested benefit obligation	$ 1,049	$ 878
Non-vested benefit obligation	244	197
Accumulated benefit obligation	1,293	1,075
Projected benefit obligation	1,659	1,500
Plan assets at fair value	1,905	1,498
Plan assets (in excess of) less than projected benefit obligation	(246)	2
Unrecognized net gain	531	145
Accrued pension cost included in the consolidated balance sheet	$ 285	$ 147

The cost of benefit plans covering non-U.S. employees is not significant.

Note 11—Stock Options

Following the Acquisition, the Company established the 1992 Time Accelerated Restricted Stock Option Plan ("1992 Plan") under which it is authorized to grant non-qualified options to purchase shares of Company common stock at a price equal to the market value of a share of such stock on the date of grant. Such options vest over a five-year period if certain provisions are met and are generally exercisable once vested, or, in the case of a terminated employee, become exercisable pursuant to the terms of the plan.

During 1994, the Company established the 1994 Stock Option Plan ("1994 Plan") which provides for the grant of options to purchase up to 1,226,666 shares of common stock. During 1997, the Company established the 1997 Stock Option Plan ("1997 Plan") which provides for the grant of options to purchase up to 1,300,000 shares of common stock. The 1994 and 1997 Plans allow for the issuance of incentive stock options and non-qualified options. Options granted under the 1994 and 1997 Plans are generally issued at an exercise price of not less than the current market price and vest over periods determined by the Board of Directors. Under the 1994 and 1997 Plans, no option shall be exercisable after ten years from the date on which it was granted.

NOT A CERTIFIED COPY

020720

MF 01891

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326646

16div-026477

Note 11—Stock Options—(Continued)

During 1996, the Company established the Nonqualified Stock Option Plan for Non-Employee Directors ("Non-Employee Director Plan") which provides for the grant of options for the purchase of an aggregate of 100,000 shares of common stock by all independent directors of the Company. Options to purchase 12,912 shares of common stock at an exercise price of $1.78 per share 6,456 of which have expired and 6,827 shares of common stock at an exercise price of $1.17 per share were granted in 1997 under the Non-Employee Director Plan. Options granted under the Non-Employee Director Plan are generally granted at an exercise price of one half of the market price of a share of common stock at the date of grant and become fully exercisable on the first anniversary of the date of grant. Under the Non-Employee Director Plan, options expire ten years after the date granted.

In February 1997, options for 314,000 shares of common stock were repriced to $3.19 per share, the market price of the Company's common stock on the date of repricing. Of these options, 114,000 shares have a time-based vesting schedule while 200,000 shares were only to become exercisable in the event of a change in control of the Company consummated on or before December 31, 1997. Options for those 314,000 shares were granted apart from any Company stock option plan. The option for 114,000 shares was outstanding at December 31, 1997, while the one for 200,000 shares expired by its terms on December 31, 1997.

In February 1997, 505,200 options under the 1994 Plan were repriced to $3.19 per share, the market price of the Company's common stock on the date of the repricing.

Stock option activity for fixed plans is as follows:

	Year ended December 31,		
	1997	1996	1995
Outstanding at beginning of period	1,587,224	1,541,864	1,238,364
Granted	1,322,939	814,194	324,000
Exercised	(151,996)	(140,000)	(17,500)
Cancelled	(1,013,505)	(628,834)	(3,000)
Outstanding at end of period	1,744,662	1,587,224	1,541,864
Options exercisable at end of year	483,346	643,457	725,963

The weighted average exercise price per share related to this stock option activity is as follows:

	At December 31,		
	1997	1996	1995
Outstanding at beginning of period	$5.55	$ 6.34	$ 4.25
Granted	3.11	6.83	14.12
Exercised	1.61	1.61	1.61
Cancelled	6.19	10.00	13.50
Outstanding at end of period	$3.67	$ 5.55	$ 6.34
Options exercisable at end of year	$4.12	$ 3.59	$ 2.74

The weighted average fair value of options granted under fixed plans was $1.42 per share in 1997, $3.13 per share in 1996 and $6.59 per share in 1995 using the Black-Scholes option pricing model.

NOT A CERTIFIED COPY

0207721

MF 01892

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326647

16div-026478

The following tables summarize information about employee stock options outstanding for fixed plans at December 31, 1997:

Range of Exercise Price	Shares Outstanding at December 31, 1997	Weighted-Average Remaining Life	Weighted-Average Exercise Price
$1.17-8.50	1,699,662	7.7 years	$ 3.33
13.50	45,000	7 years	13.50

Range of Exercise Price	Shares Exercisable at December 31, 1997	Weighted-Average Exercise Price
$1.17-8.50	460,846	$ 3.66
13.50	22,500	13.50

Shares of common stock have been reserved for future issuance under all of the foregoing options.

The Company applies APB Opinion No. 25 and related interpretations in accounting for the aforementioned stock option plans. Accordingly, no compensation cost has been recognized for its fixed stock option plans while compensation expense has been recognized for its compensatory plans. Had compensation cost for the Company's fixed stock option plans been determined based on the fair value based method, as defined in Statement No. 123, the Company's net earnings (loss) and earnings (loss) per share would not be significantly different from those reported and consequently pro forma amounts have not been disclosed.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants: expected volatility of 27.0% in 1997, 29.3% in 1996 and 28.0% in 1995; expected lives of seven years for 1997, 1996 and 1995 and risk free interest rate of 6.3% in 1997, 6.4% in 1996 and 7.8% in 1995. It has been assumed that no dividends will be paid for the expected term of the options.

Note 12—Lease Commitments

The Company leases certain warehouses, office space and equipment under noncancelable operating leases expiring at various dates through the year 2010. Minimum annual rental commitments under all noncancelable leases for the next five years beginning with 1998 are as follows:

1998	1999	2000	2001	2002	Thereafter
$2,879	$2,852	$2,483	$2,172	$2,165	$11,547

Total rent expense including taxes, insurance and maintenance when included in rent amounted to $3,223, $3,801 and $2,681 for the years ended December 31, 1997, 1996 and 1995, respectively.

Note 13—Contingencies

In November 1994, the Company and certain of its officers and directors were named as defendants in four purported class action lawsuits filed in the United States District Court for the Northern District of Illinois, Eastern Division. The plaintiffs in these actions, pursuant to a Court order, filed a consolidated and amended complaint resulting in the consolidation of the four actions. The consolidated case is entitled *Gilbert et al. vs. First Alert, Inc. et al. ("Gilbert")*. The amended complaint sought compensatory damages, costs and attorneys' fees on behalf of the purchasers of the Company's Common Stock during the period from October 12, 1994 through November 10, 1994. By order dated August 21, 1995, the Court certified the class. Subsequently, the plaintiff's motion to amend the complaint to expand the class period to September 20, 1994 through December 7, 1994, was granted and a second consolidated and amended complaint was filed on January 16, 1996. The new class was certified by the Court. The complaint alleges generally that the Company and other defendants disseminated false and misleading information to the investing public regarding the *First Alert®* Carbon Monoxide Detector in connection with an anticipated secondary public offering of the Company's Common Stock in late 1994 in violation of various provisions of the Securities Exchange Act of 1934 and the rules

NOT A CERTIFIED COPY

020722

MF 01893

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326648

16div-026479

Note 13—Contingencies—(Continued)

promulgated thereunder. The Registration Statement with respect to the proposed secondary public offering was declared effective by the Securities and Exchange Commission on November 9, 1994, but was subsequently withdrawn by the Company at the request of the selling stockholders. The public offering was solely to facilitate the sale of shares by certain selling stockholders and the Company would not have received any proceeds therefrom.

The Company vigorously contested all claims and denied liability. Nevertheless, to avoid further expense and the burdens of litigation, in November 1996, the Company agreed to a tentative settlement of the consolidated class actions. An executed settlement agreement was filed with the Court on February 11, 1997 and the Court entered an order on February 25, 1997, giving preliminary approval to the settlement.

Pursuant to the Court's February 25, 1997, order, members of the class had until May 12, 1997, to opt out of the class and until July 28, 1997, to file proofs of claim if they wished to receive a share of the settlement amount. The Court held a hearing on June 20, 1997, to consider the fairness of the settlement and, at that time, the Court approved the settlement.

Under the terms of the settlement agreement, defendants will pay a fixed amount per share to class members, depending on when they bought or sold their shares, with a maximum amount of $3.0 million (including attorney's fees and costs for class counsel) to be paid out in settlement. The majority of the settlement amount is being paid by the Company's directors and officers liability insurance carrier. The pendency of the *Gilbert* complaint has not had a material effect on the Company's financial results for any period and adequate reserves exist at December 31, 1997, for the Company's share of the settlement amount.

A purported class action entitled *Betley et al. vs. First Alert, Inc. et al. ("Betley")* was filed in the Circuit Court of Cook County, Illinois on January 3, 1995, against the Company and its wholly owned subsidiary, BRK Brands, Inc., alleging common law fraud, breach of warranties, and a statutory violation of the Illinois Consumer Fraud Act, all related to alleged defects in the original *First Alert®* Carbon Monoxide Detector (Model FACO) design and the manner in which the detector was marketed. The Company does not believe that the plaintiffs claim any personal injuries or property damage; nor do the plaintiffs claim that their detectors failed to detect dangerous levels of carbon monoxide. Instead, they claim (i) that the Company failed to disclose that the product alarms in non-life threatening conditions (which they state in their complaint to be a "nuisance"), (ii) that the Company falsely proclaims the product resets "automatically" when, in fact, the product can take several hours or days to reset after it has gone into alarm and (iii) that the Company falsely claims that the product met Underwriters Laboratories' listing criteria for residential carbon monoxide detectors in effect at the time the Model FACO was manufactured. The plaintiffs seek a refund of their purchase price, other out-of-pocket expenses, punitive damages, and attorneys' fees. The Company has raised numerous defenses to this claim and will continue to oppose it forcefully.

In February 1997, the Company and its wholly owned subsidiary, BRK Brands, Inc., were named as defendants in a purported class action lawsuit entitled *Houlihan et al. vs. First Alert, Inc. et al. ("Houlihan")* in the Circuit Court of Cook County, Illinois, alleging breach of express warranty and statutory violations of various states' consumer protection statutes due to alleged misrepresentations and product defects involving *First Alert®* Carbon Monoxide Detectors. The Company does not believe the plaintiff claimed any personal injuries or property damage; nor did he claim specifically that his detector failed to detect dangerous levels of carbon monoxide. Rather, the plaintiff sought "rescissionary damages" and attorneys' fees. The plaintiff's original complaint was stricken by the Court on April 9, 1997, but the Court gave the plaintiff leave to re-plead the case which was done. The Company filed a Motion to Dismiss the amended complaint and that motion was granted on August 22, 1997. The case has now been settled by refunding the plaintiff's purchase price of the detector.

On February 11, 1998, a jury returned a verdict against the Company's BRK Brands, Inc., subsidiary, awarding damages totaling $16.9 million in the case of *Mercer et al. vs. BRK Brands, Inc. et al.*, which was tried

NOT ACTUAL COPY

020723

MF 01894

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326649

16div-026480

Note 13—Contingencies—(Continued)

in the Iowa District Court for Scott County. The verdict includes $12.5 million of punitive damages. The case alleged negligence, breach of warranty and fraudulent nondisclosure in connection with a BRK® Electronics smoke detector that alarmed during a residential fire. The punitive damage award was based upon the jury finding a preponderance of clear, convincing and satisfactory evidence the Company's conduct constituted willful and wanton disregard for the rights or safety of others. Substantially all of the cost of defense and the damages assessed in this case are covered by the Company's insurance. The Company intends to continue to vigorously contest this case by pursuing a number of post-trial motions to overturn the verdict and appealing the decision, if necessary.

In addition to the *Gilbert, Betley* and *Mercer* actions, the Company and its subsidiaries, including BRK Brands, Inc., are parties to various product liability and other types of lawsuits and are from time to time subject to investigations by various governmental agencies, including investigations regarding environmental matters. Although the ultimate liabilities, if any, arising out of the *Gilbert, Betley, Mercer* and other pending legal actions or investigations cannot presently be determined, based on its past experience and assessment of such matters, the Company believes that the outcome of these matters will not have a material adverse effect on the Company's financial position.

Note 14—Related Party Transactions

Certain administrative fees were paid to Thomas H. Lee Company aggregating $214, $195 and $326, for the years ended December 31, 1997, 1996 and 1995, respectively.

The First Alert trademark is owned by the First Alert Trust in which the Company has a 75% beneficial interest. The Company entered into a license agreement with the First Alert Trust and Pittway which permits the Company in perpetuity and on an exclusive, royalty-free basis, to manufacture and market under the First Alert brand name any products other than products which are designed to be monitored by an alarm or building control system or to work in conjunction with a communications panel or other building control system ("Professional Products"). Pittway owns the remaining 25% beneficial interest in the First Alert Trust and is a party to such license agreement with the First Alert Trust under which Pittway has, in perpetuity, an exclusive, royalty-free license to manufacture and market Professional Products under the First Alert Professional® and First Alert Professional Security System® brand names. Either Pittway or the Company may terminate their further obligations and rights under the license by providing notice to the other party.

NOT A CERTIFIED COPY

020724

MF 01895

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326650

16div-026481

Note 15—Segment Information

The Company operates in one segment—residential safety products.

Presented below is information on the geographic areas in which the Company operates. Sales between geographic areas are made at approximate arms-length prices.

Geographic Areas

	Year Ended December 31, 1997		At December 31, 1997
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	$169,017	$ (7,891)	$144,978
Europe	20,243	1,418	7,396
Other	17,823	(1,973)	11,987
Elimination	(20,142)	(21)	—
Total	$186,941	$ (8,467)	$164,361

	Year Ended December 31, 1996		At December 31, 1996
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	$188,363	$(25,382)	$167,824
Europe	16,877	(278)	7,315
Other	18,120	(838)	11,352
Elimination	(17,753)	(21)	—
Total	$205,607	$(26,519)	$186,491

	Year Ended December 31, 1995		At December 31, 1995
	Net Sales	Operating Income (Loss)	Identifiable Assets
United States	$225,430	$ 20,511	$187,045
Europe	16,964	(1,840)	5,961
Other	23,661	1,807	13,987
Elimination	(19,789)	(45)	—
Total	$246,266	$ 20,433	$206,993

Operating income includes costs of goods sold, selling, general and administrative expenses, restructuring charge and depreciation and amortization expense.

NOT A CERTIFIED COPY

020725

MF 01896

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326651

16div-026482

Note 16—Quarterly Results (unaudited)

Quarterly Results of Operations for the years ended December 31, 1997 and 1996 are shown below:

	1997			
	Three Month Period Ended			
	March 30	June 29	September 28	December 31
Net sales	$37,413	$27,481	$50,774	$71,273
Gross profit	10,536	7,097	14,163	20,796
Net income (loss)	(3,274)	(4,404)	(1,543)	1,385
Basic net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Diluted net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Common stock price range—				
High	4.125	3.50	4.00	3.50
Low	2.688	1.875	2.75	1.875

	1996			
	Three Month Period Ended			
	March 31	June 30	September 30	December 31
Net sales	$55,489	$28,981	$60,860	$60,277
Gross profit	15,351	6,579	24,276	8,790
Net income (loss)	(4,501)	(5,937)	2,203	(10,467)
Basic net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Diluted net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Common stock price range—				
High	11.375	7.75	6.375	6.125
Low	6.375	4.00	4.375	3.00

Income per share amounts for each quarter are required to be computed independently and, therefore, may not equal the amount computed for the entire year.

Results of operations in the three month period ended December 31, 1997 include costs associated with inefficiencies incurred in manufacturing operations, premium freight out charges and key customer allowances which were partially offset by the release of $4.5 million of reserves established in prior years deemed no longer necessary. These reserves had been established over a period of years and their initial recording was not significant to any individual prior reporting period.

Results of operations during the three months ended December 31, 1996, include a pre-tax restructuring charge of $4,497, including inventory write-down, and a pre-tax charge to operations of $4,972. The pre-tax charge to operations includes additional inventory related costs, anticipated product allowances for sales made prior to December 31, 1996, severance and asset impairment costs.

Note 17—Subsequent Events

On March 2, 1998, the Company announced that it had entered into a definitive agreement with Sunbeam Corporation (the "Agreement") providing for the acquisition of the Company by Sunbeam in a transaction valued at approximately $175 million including the assumption of existing debt. The consummation of the offer is subject to certain customary conditions, including expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvement Act. The Agreement provides that the Company pay a fee of $3.75 million in the event that the acquisition is terminated.

NOT A CERTIFIED COPY

020726

MF 01897

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326652

16div-026483

APPENDIX A

ACCREDITED INVESTOR LETTER

Sunbeam Corporation
1615 S. Congress Avenue, Suite 200
Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Ladies and Gentleman:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than $100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

NOT A CERTIFIED COPY

020727

MF 01898

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326653

16div-026484

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate anc complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

_____
(Name of Purchaser)

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020728

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate anc complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

_____
(Name of Purchaser)

By: _____
Name:
Title:

NOT A CERTIFIED COPY

020729

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

APPENDIX B

SUNBEAM CORPORATION

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of Zero Coupon Convertible Senior Subordinated Debenture due 2018 (the "Debenture") of Sunbeam Corporation (the "Company" or "Registrant") or Common Stock, $0.01 par value (the "Common Stock" and, together with the Debentures, the "Registrable Securities") of the Company understands that the Registrant has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of March , 1998 (the "Registration Rights Agreement"), between the Company and the Initial Purchaser named therein. A copy of the Registration Rights Agreement is available from the Company upon requests at the address set forth below. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Registrable Securities pursuant to the Shelf Registration Statement, a beneficial owner of Registrable Securities generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers of Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below). **Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling securityholders in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement.** Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such beneficial owners may be named as selling securityholders in the related prospectus at the time of effectiveness. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement, the Company will, as promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities. The Company has agreed to pay liquidated damages pursuant to the Registration Rights Agreement under certain circumstances as set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Securityholder") of Registrable Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors, the Company's officers who sign the Company Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made in the Company's Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

NOT A CERTIFIED COPY

020730

MF 01901

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326656

16div-026487

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Securityholder:

   _____

   (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in (3) below are held:

   _____

   (c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in (3) below are held:

   _____

2. Address for Notices to Selling Securityholder:

   _____

   _____

   _____

   Telephone: _____

   Fax: _____

   Contact Person: _____

3. Beneficial Ownership of Registrable Securities:

   (a) Type and Principal Amount Registrable Securities beneficially owned:

   _____

   _____

   (b) CUSIP No(s). of such Registrable Securities beneficially owned:

   _____

   _____

4. Beneficial Ownership of Other Securities of the Company owned by the Selling Securityholder:

Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

   (a) Type and Amount of Other Securities beneficially owned by the Selling Securityholder:

   _____

   _____

   (b) CUSIP No(s). of such Other Securities beneficially owned:

   _____

   _____

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: _____

_____

NOT A CERTIFIED COPY

020731

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

6. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Registrable Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible for underwriting discounts or commissions or agent's commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging in positions they assume. The undersigned may also sell Registrable Securities short and deliver Registrable Securities to close out short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here: _____

_____

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Shelf Registration Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registrable Rights Agreement to indemnify and hold harmless certain persons as set forth herein.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Securityholder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

NOT A CERTIFIED COPY

020732

MF 01903

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326658

16div-026489

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

_____
(Beneficial Owner)

By: _____

Name: _____

Title: _____

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO SUNBEAM CORPORATION AT:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445

Attention: Rich Goudis

NOT A CERTIFIED COPY

020733

MF 01904

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326659

16div-026490

(This page intentionally left blank)

NOT A CERTIFIED COPY

020734

(This page intentionally left blank)

NOT A CERTIFIED COPY

020735

NOT A CERTIFIED COPY

020736

MF 01907

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1326662

16div-026493

WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE GEWERTZ
BERNARD W. NUSSBAUM
RICHARD D. KATCHER
DOUGLAS S. LIEBHAFSKY
STEVEN M. BARNA
CHARLES T. MEDERRICK
CHAIM J. FORTGANG
PETER C. CANELLOS
MICHAEL W. SCHWARTZ
ALLAN A. MARTIN
BARRY A. BRYER
LAWRENCE B. PEDOWITZ
ROBERT B. MAZUR
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
DAVID M. EINHORN
KENNETH B. FORREST
MEYER G. KOPLOW
THEODORE N. MIRVIS
EDWARD D. HERLIHY
RICHARD D. FEINTUCH
DANIEL A. NEFF
ERIC M. ROTH
WARREN R. STERN
ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
PAUL K. ROWE
MICHAEL B. DENNER
MARC WOLINSKY

DAVID GRUENSTEIN
PATRICIA A. VLAHAKIS
STEPHEN G. GELLMAN
SETH A. KAPLAN
BARBARA ROBBINS
STEVEN A. ROSENBLUM
PAMELA S. SEYMON
STEPHANIE J. SELIGMAN
ERIC S. ROBINSON
ELLIOTT V. STEIN
JOHN F. SAVARESE
SCOTT K. CHARLES
ANDREW C. HOUSTON
PHILIP MINDLIN
DAVID E. NEILL
JODI J. SCHWARTZ
ADAM O. EMMERICH
CRAIG M. WASSERMAN
ADAM D. CHINN
GEORGE T. CONWAY III
RALPH M. LEVENE
RICHARD G. MASON
KAREN G. KRUEGER
DOUGLAS K. MAYER
DAVID M. SILK
ROBIN PANOVKA
DAVID A. KATZ
MITCHELL S. PRESSER
ILENE KNABLE GOTTS
JEFFREY R. BOFFA
DAVID M. MURPHY
JEFFREY M. WINTNER

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

227 WEST MONROE STREET
CHICAGO, ILLINOIS 60606
TELEPHONE: (312) 236-8080
FACSIMILE: (312) 236-8595

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)

COUNSEL

WILLIAM T. ALLEN*
LAWRENCE P. KING
PETER G. MCKENNA
NORMAN REDLICH
JOHN M. RICHMAN
LEONARD M. ROSEN
AMY R. WOLF

MICHAEL S. KATZKE
DEBORAH L. PAUL
TREVOR S. NORWITZ
TONI P. REAMER
STEVEN M. ABRAMOWITZ
BRADLEY A. ROBINS
STUART C. BERMAN
YOCHEVED COHEN
BEN M. GERNAMA
DAVID R. LURIE
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEPHEN R. BLACKLOCKS
DAVID C. BRYAN
STEVEN A. COHEN
ERIC L. PRESS
GAVIN D. SOLOTAR
ADRIENNE ATKINSON
JUDITH G. FEDERBUSH
LAWRENCE GERSCHWER
DAVID C. KARP
BARBARA S. KOHL
MIRIAM P. LONGCHAMP
HOWARD A. MERCELRAMP III
EDWARD A. STELZER
ELIZABETH K. STEPP
KEITH H. WOFFORD
MARC D. ASHLEY
JOSHUA R. CAMMAKER
SETH GARDNER
MARK GORDON
BARRY R. KLEINER
JOSEPH D. LAWSON
LAWRENCE S. MAKOW
THAO P. MATLOCK
JEANNEMARIE O'BRIEN
MELANIE L. OXHORN
JARED M. RUSHMAN
EUGENE R. STEIN
SHEENA WRIGHT
LARA ADAMSONS
SCOTT L. BLACK
JAMES COLE, JR.
STEPHEN R. DIPRIMA
DAVID L. ELSBERG
DOUGLAS C. FREEMAN
NANCY B. GREENBAUM
SALIL KUMAR
FRANK L. MILLER
ARRIE R. PARK
JULIUS R. SCHWARZ
ALEXANDER SHARKES
KEVIN P. SHEEHAN
SARAH E. STRASSER
GARY M. SWIDLER
WAYNE W. YU
NICOLE E. CLARK
BRUCE H. GOLDBERGER
JEFFREY B. GOLDEN
RICHARD B. HARDEGREE
MICHAEL F. MASLANSKY

*OF DELAWARE BAR ONLY

May 7, 1998

VIA TELECOPIER AND FEDERAL EXPRESS

Susie Youn, Esq.
Staff Attorney
Division of Enforcement
United States Securities and
Exchange Commission
Central Regional Office
1801 California St., Suite 4800
Denver, Colorado 80202-2648

Re: Trading in the Securities of Coleman Co., Inc., Signature Brands USA, Inc. and First Alert, Inc. (MD-1200)

Dear Ms. Youn:

This letter supplements the information voluntarily provided to you on behalf of The Coleman Company, Inc. ("Coleman" or the "Company") on March 30, 1998 in response to your request for certain information relating to the March 2, 1998 announcement concerning Sunbeam Corporation and Coleman.

1. The chronology set forth in Exhibit A to the March 30 letter should be supplemented as follows:

NOT A CERTIFIED COPY

020738

MS 374
Rec 11/2/04

(i) the following entry should be added for November 6, 1997:

Representatives of Morgan Stanley (which, from time to time advises MacAndrews on a variety of business and financial matters), met with James R. Maher of MacAndrews to discuss potential business opportunities. Among the business opportunities identified by Morgan Stanley was the potential acquisition of Sunbeam by MacAndrews. Mr. Maher advised the Morgan Stanley representatives that MacAndrews was not interested in such a transaction.

(ii) Mr. Gittis should be included among the individuals identified as attending the February 18, 1998 meeting.

2. The list of individuals set forth in Exhibit B to the March 30 letter should be supplemented in the following respect:

(i) John W. Behringer, Esq. and Sean O'Brien, Esq., both of Fitzpatrick, Cella, Harper & Scinto, should be added to the list.

As noted in my letter to you of March 30, the information provided herewith represents a reconstruction of events and was compiled based upon a reasonable review of the documents in the possession of Coleman and reasonable inquiries made by Coleman of its personnel and certain of its legal and other advisors and representatives. The information is based in substantial part on the recollection of the individuals involved, as may of the events leading up to the March 2 announcement were not documented. Therefore, it is possible that further supplementation, correction, and/or modification by the Company may be needed in the future.

We request confidential treatment for this letter and the information contained herein pursuant to 18 U.S.C. § 1905, 17 C.F.R. § 200.83, and other applicable laws and regulations and further request that it not be made part of any public record and not be disclosed to any person.

The information contained in this letter is maintained in confidence and is not available to competitors or other parties. In addition, the information has been provided voluntarily in connection with the above-referenced inquiry. We believe that the disclosure of this information could have adverse affects on our client's competitive position and/or would constitute an unwarranted invasion of personal privacy. Accordingly, such information is exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(6) and (b)(7), and disclosure is prohibited pursuant to 18 U.S.C. § 1905.

NOT A CERTIFIED COPY

020739

If any person (including any government employee who is not an employee of the Securities and Exchange Commission) should request an opportunity to inspect or copy this letter, we request that we be immediately notified of any such request, be furnished with a copy of all documents pertaining to such requests (including, but not limited to, the request itself or any agency determinations with respect to such request) and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. If the Securities and Exchange Commission is not satisfied that the information set forth in this letter is exempt (or protected) from disclosure pursuant to the Freedom of Information Act, we stand ready to supply further particulars, and we would request in such event a hearing on this claim of exemption.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any such whatsoever which are made by or at the direction of any employee of the Securities and Exchange Commission (or any other governmental agency) which incorporate, include or relate to any of the confidential information contained in this letter.

If you have any questions about the foregoing, please contact the undersigned at 212-403-1000.

Very truly yours,

Paul K. Rowe

cc: Freedom of Information Act Officer
Joram C. Salig, Esq.
Steven R. Isko, Esq.

NOT A CERTIFIED COPY

020740

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION
EXHIBIT # 80
FOR ID TRN
Y-Boy

LASER CORPORATION

Key Assumptions

→ From discussion w/ Laura + Page.

Laser Specific

- Laser earnings projections based on I/B/E/S dated 1/21/98
  - 1998E EPS of $2.01 per share ($171.8MM net income)
  - Long-term earnings growth of 20.0% thereafter
  - Implies 1999E EPS of $2.41 per share ($206.2MM net income)
- Laser stock issue price of $41.000 as of market close 1/21/98
- Forward marginal tax rate of 38%

Camper Specific

- Camper earnings projections based on modified CS First Boston report 11/18/97
  - 1998E sales of $1,191.3MM
  - Old goodwill amortization of $11.0MM in 1998 held constant thereafter
  - 1998E operating income of $117.4MM (includes existing goodwill amortization of $11MM)
  - 1998E income from continuing operations of $57.9MM
  - 1998E EPS of $1.08 per share (based on 53.425MM shares)
- Camper long-term earnings growth of 17.5% based on I//B/E/S dated 1/21/98
- Current Camper stock price of $13.94 as of market close 1/21/98

Transaction Specific

- Assumes a 100% stock-financed transaction with purchase accounting
- Non-tax-deductible goodwill amortized over 40 years
- Base case synergies of $75.0MM (6.3% of 1998E Camper sales)
  - $50.0MM of synergies realized in 1998; $75.0MM realized thereafter
  - No impact on earnings from cost of savings
- Transaction costs financed with excess cash at 3.5%

NOT A CERTIFIED COPY

CP 038199
CONFIDENTIAL

CPH 1426289

020742

16div-026497

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Summary Information

($MM, except per share data)

ACQUIROR: Laser (1)

	EPS	P/E
1998E	$2.01	20.4x
1999P	$2.41	17.0x
2000P	$2.89	
2001P	$3.47	
2002P	$4.17	

I/B/E/S Growth Rate: 20.0%

TARGET: Camper (2)

	EPS	P/E
1998E	$1.08	12.9x
1999P	$1.27	10.9x
2000P	$1.50	
2001P	$1.76	
2002P	$2.07	

I/B/E/S Growth Rate: 17.5%

	Laser (1)	Camper (2)	Total (3)	Contribution % (Laser/Camper)
1998E Sales	$1,576.5	$1,191.3	$2,767.8	57%/43%
1998E EBITDA	385.4	160.4	545.8	71%/29%
1998E EBIT	320.4	117.4	437.8	73%/27%
1998E Net Income	171.8	57.9	229.7	75%/25%
1998 Synergies (p/t)	--	50.0	50.0	
EBIT Margin	20.3%	9.9%	15.8%	
EBIT Margin w/ Syn:	--	14.1%	17.6%	

vs. 178.4 in CSFB report.

vs. 154.4 in CSFB.

Camper Financial Estimates

	1998E	1999P	2000P
Sales			
CSFB Adj.	$1,191.3	--	--
EBITDA			
CSFB Adj.	$160.4	--	--
EBIT			
CSFB Adj.	$117.4	--	--
EPS			
CSFB Adj.	$1.08	$1.27	$1.50
I/B/E/S	0.99	1.16	1.37

NOT A CERTIFIED COPY

Notes: (1) Laser EPS estimates represent I/B/E/S median figures from 1/21/98; Other operating figures from Oppenheimer research dated 10/22/97; stock price as of 1/21/98.
(2) Laser financial estimates represent adjusted CSFB figures from 11/18/97 report and company estimates; stock price as of 1/21/98.
(3) Does not include accounting adjustments related to acquisition.

CP 038200
CONFIDENTIAL

CPH 1426290

020743

16div-026498

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Camper Valuation Matrix

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Cur. (3)	LTM High	LTM Low	Equity Value/ FY Earnings 1.12M	1997E (4)	1998E (4)	Aggregate Value/ LTM Sales	LTM EBITDA	LTM EBIT	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT
		(Camper Stat. (adj. CSFB).		$13.94	$19.13	$11.50	$6.0	$26.6	$57.9	$1,155.8	$91.0	$52.3	$1,152.5	$123.9	$83.9	$1,191.3	$160.4	$117.4
0.4146 x	$17.00	$911.7	$1,382.9	22.0 %	(11.1)%	47.8 %	N.M. x	34.3 x	15.7 x	1.2 x	15.2 x	26.5 x	1.2 x	11.2 x	16.5 x	1.2 x	8.6 x	11.8 x
0.4207	17.25	925.8	1,397.0	23.8	(9.8)	50.0	N.M.	34.8	16.0	1.2	15.4	26.7	1.2	11.3	16.7	1.2	8.7	11.9
0.4268	17.50	939.9	1,411.1	25.6	(8.5)	52.2	N.M.	35.3	16.2	1.2	15.5	27.0	1.2	11.4	16.8	1.2	8.8	12.0
0.4329	17.75	954.1	1,425.2	27.4	(7.2)	54.3	N.M.	35.9	16.5	1.2	15.7	27.3	1.2	11.5	17.0	1.2	8.9	12.1
0.4390	18.00	968.2	1,439.3	29.1	(5.9)	56.5	N.M.	36.4	16.7	1.2	15.8	27.5	1.2	11.6	17.2	1.2	9.0	12.3
0.4451	18.25	982.3	1,453.4	30.9	(4.6)	58.7	N.M.	36.9	17.0	1.3	16.0	27.8	1.3	11.7	17.3	1.2	9.1	12.4
0.4512	18.50	996.4	1,467.5	32.7	(3.3)	60.9	N.M.	37.5	17.2	1.3	16.1	28.1	1.3	11.8	17.5	1.2	9.1	12.5
0.4573	18.75	1,010.5	1,481.6	34.5	(2.0)	63.0	N.M.	38.0	17.5	1.3	16.3	28.4	1.3	12.0	17.7	1.2	9.2	12.6
0.4634	19.00	1,024.6	1,495.7	36.3	(0.7)	65.2	N.M.	38.5	17.7	1.3	16.4	28.6	1.3	12.1	17.8	1.3	9.3	12.7
0.4695	19.25	1,038.7	1,509.9	38.1	0.7	67.4	N.M.	39.0	17.9	1.3	16.6	28.9	1.3	12.2	18.0	1.3	9.4	12.9
0.4756	19.50	1,052.8	1,524.0	39.9	2.0	69.6	N.M.	39.6	18.2	1.3	16.8	29.2	1.3	12.3	18.2	1.3	9.5	13.0
0.4817	19.75	1,066.9	1,538.1	41.7	3.3	71.7	N.M.	40.1	18.4	1.3	16.9	29.4	1.3	12.4	18.3	1.3	9.6	13.1
0.4878	20.00	1,081.1	1,552.2	43.5	4.6	73.9	N.M.	40.6	18.7	1.3	17.1	29.7	1.3	12.5	18.5	1.3	9.7	13.2
0.4939	20.25	1,095.2	1,566.3	45.3	5.9	76.1	N.M.	41.2	18.9	1.4	17.2	30.0	1.4	12.6	18.7	1.3	9.8	13.3
0.5000	20.50	1,109.3	1,580.4	47.1	7.2	78.3	N.M.	41.7	19.2	1.4	17.4	30.2	1.4	12.8	18.8	1.3	9.9	13.5
0.5061	20.75	1,123.4	1,594.5	48.9	8.5	80.4	N.M.	42.2	19.4	1.4	17.5	30.5	1.4	12.9	19.0	1.3	9.9	13.6
0.5122	21.00	1,137.5	1,608.6	50.7	9.8	82.6	N.M.	42.8	19.6	1.4	17.7	30.8	1.4	13.0	19.2	1.4	10.0	13.7
0.5183	21.25	1,151.6	1,622.7	52.5	11.1	84.8	N.M.	43.3	19.9	1.4	17.8	31.1	1.4	13.1	19.3	1.4	10.1	13.8
0.5244	21.50	1,165.7	1,636.9	54.3	12.4	87.0	N.M.	43.8	20.1	1.4	18.0	31.3	1.4	13.2	19.5	1.4	10.2	13.9
0.5305	21.75	1,179.8	1,651.0	56.1	13.7	89.1	N.M.	44.4	20.4	1.4	18.1	31.6	1.4	13.3	19.7	1.4	10.3	14.1
0.5366	22.00	1,193.9	1,665.1	57.8	15.0	91.3	N.M.	44.9	20.6	1.4	18.3	31.9	1.4	13.4	19.8	1.4	10.4	14.2
0.5427	22.25	1,208.0	1,679.2	59.6	16.3	93.5	N.M.	45.4	20.9	1.5	18.5	32.1	1.5	13.6	20.0	1.4	10.5	14.3
0.5488	22.50	1,222.2	1,693.3	61.4	17.6	95.7	N.M.	45.9	21.1	1.5	18.6	32.4	1.5	13.7	20.2	1.4	10.6	14.4
0.5549	22.75	1,236.3	1,707.4	63.2	19.0	97.8	N.M.	46.5	21.4	1.5	18.8	32.7	1.5	13.8	20.4	1.4	10.6	14.5
0.5610	23.00	1,250.4	1,721.5	65.0	20.3	100.0	N.M.	47.0	21.6	1.5	18.9	32.9	1.5	13.9	20.5	1.4	10.7	14.7
0.5671	23.25	1,264.5	1,735.6	66.8	21.6	102.2	N.M.	47.5	21.8	1.5	19.1	33.2	1.5	14.0	20.7	1.5	10.8	14.8
0.5732	23.50	1,278.6	1,749.7	68.6	22.9	104.3	N.M.	48.1	22.1	1.5	19.2	33.5	1.5	14.1	20.9	1.5	10.9	14.9
0.5793	23.75	1,292.7	1,763.8	70.4	24.2	106.5	N.M.	48.6	22.3	1.5	19.4	33.8	1.5	14.2	21.0	1.5	11.0	15.0
0.5854	24.00	1,306.8	1,778.0	72.2	25.5	108.7	N.M.	49.1	22.6	1.5	19.5	34.0	1.5	14.3	21.2	1.5	11.1	15.1

Notes: (1) Based on 56.4 MM common shares outstanding on 9/30/97 from the 9/30/97 10-Q and 3.0 MM options outstanding with an average exercise price of $15.84, on 12/31/96 from the 12/31/96 10-K

(2) Includes Preferred Stock of $0 MM and Total Debt of $481 MM less Cash of $10 MM

(3) Based on the closing share prices on 1/21/98

(4) Estimates from adjusted CSFB equity report dated 11/18/97 on Camper

NOT A CERTIFIED COPY

CP 038201
CONFIDENTIAL

CPH 1426291

020744

16div-026499

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Jan 23, 1998 9:10

PRELIMINARY DRAFT

LASER CORPORATION

Potential Share Price Analysis - Purchase

($MM, except per share data)

Laser acquires Camper With Synergies

Morgan's Key Analysis

Potential Pricing Matrix - $50.0MM 1998 Synergies and $75.0MM 1999 Synergies

Price / Premium:	$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Pro Forma EPS:	$2.17	$2.70	$2.13	$2.66	$2.09	$2.61	$2.05	$2.57	$2.02	$2.53
1998 P/E Assumed: 12.9 x / P/E Blend (Camper/Laser): 100%/0%	$27.89		$27.39		$26.90		$26.43		$25.96	
15.0 x / 72%/28%	$32.53		$31.95		$31.38		$30.82		$30.28	
15.5 x / 65%/35%	$33.62		$33.01		$32.43		$31.85		$31.29	
16.0 x / 58%/42%	$34.70		$34.08		$33.47		$32.88		$32.30	
16.5 x / 52%/48%	$35.79		$35.14		$34.52		$33.91		$33.31	
17.0 x / 45%/55%	$36.87		$36.21		$35.56		$34.93		$34.32	
17.5 x / 38%/62%	$37.95		$37.27		$36.61		$35.96		$35.33	
18.0 x / 32%/68%	$39.04		$38.34		$37.66		$36.99		$36.34	
18.5 x / 25%/75%	$40.12		$39.40		$38.70		$38.02		$37.35	
19.0 x / 19%/81%	$41.21		$40.47		$39.75		$39.04		$38.35	
19.5 x / 12%/88%	$42.29		$41.53		$40.79		$40.07		$39.36	
20.0 x / 5%/95%	$43.38		$42.60		$41.84		$41.10		$40.37	
20.4 x / 0%/100%	$44.24		$43.45		$42.67		$41.92		$41.18	

Note: (1) Assumes a current Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

CP 038202
CONFIDENTIAL

MORGAN STANLEY

020745

CPH 1426292

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Synergy and Price Analysis - Purchase

($MM, except per share data)

Laser acquires Camper With Synergies

100% Stock Purchase Anlysis - Accretion / (Dilution) (1)

Price/(Premium)		$17.00 / 22.0%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.3%	
Implied Exch. Ratio		0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
Year:		1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed (% of CM LTM Sales)	$0.0 0.0%	-0.3%	0.2%	-2.2%	-1.6%	-4.1%	-3.4%	-5.9%	-5.1%	-7.7%	-6.8%	-9.4%	-8.4%	-11.1%	-10.0%	-12.7%	-11.6%
	$10.0 0.9%	2.6%	2.6%	0.6%	0.7%	-1.3%	-1.1%	-3.1%	-2.8%	-4.9%	-4.5%	-6.7%	-6.2%	-8.4%	-7.8%	-10.1%	-9.4%
	$20.0 1.7%	5.4%	5.0%	3.4%	3.1%	1.5%	1.3%	-0.4%	-0.3%	-2.2%	-2.2%	-4.0%	-3.9%	-5.7%	-5.6%	-7.5%	-7.2%
	$30.0 2.6%	8.3%	7.3%	6.3%	5.4%	4.3%	3.6%	2.4%	1.8%	0.5%	0.0%	-1.3%	-1.7%	-3.1%	-3.4%	-4.8%	-5.0%
	$40.0 3.5%	11.1%	9.7%	9.1%	7.8%	7.1%	5.9%	5.1%	4.1%	3.2%	2.3%	1.4%	0.6%	-0.4%	-1.1%	-2.2%	-2.8%
	$50.0 4.3%	14.0%	12.1%	11.9%	10.2%	9.9%	8.3%	7.9%	6.4%	6.0%	4.6%	4.1%	2.8%	2.2%	1.1%	0.4%	-0.6%
	$60.0 5.2%	16.9%	14.5%	14.7%	12.5%	12.7%	10.6%	10.7%	8.7%	8.7%	6.8%	6.8%	5.1%	4.9%	3.3%	3.1%	1.6%
	$70.0 6.1%	19.7%	16.9%	17.6%	14.9%	15.5%	12.9%	13.4%	11.0%	11.4%	9.1%	9.5%	7.3%	7.6%	5.5%	5.7%	3.8%
	$80.0 6.9%	22.6%	19.3%	20.4%	17.2%	18.3%	15.2%	16.2%	13.3%	14.1%	11.4%	12.2%	9.5%	10.2%	7.7%	8.3%	6.0%

Note. (1) Assumes a current Camper stock price of $13.94 and a Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

CP 038203
CONFIDENTIAL

020746

CPH 1426293

16div-026501

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PRELIMINARY DRAFT

LASER CORPORATION

Synergy and Price Analysis - Pooling

($MM, except per share data)

Laser acquires Cooper With Synergies

Irrelevant

100% Stock Pooling Analysis - Accretion / (Dilution) (1)

Price/(Premium):	$17.00 / 22.0%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
Implied Exch. Ratio:	0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
Year:	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed (% of CPH LTM Sales) $0.0 0.0%	6.0%	5.4%	4.7%	4.1%	3.4%	2.8%	2.1%	1.5%	0.8%	0.3%	-0.4%	-0.9%	-1.6%	-2.1%	-2.7%	-3.2%
$10.0 0.9%	8.9%	7.8%	7.5%	6.5%	6.1%	5.1%	4.8%	3.8%	3.6%	2.6%	2.3%	1.3%	1.1%	0.1%	-0.1%	-1.1%
$20.0 1.7%	11.7%	10.2%	10.3%	8.8%	8.9%	7.5%	7.6%	6.1%	6.3%	4.8%	5.0%	3.6%	3.8%	2.3%	2.5%	1.1%
$30.0 2.6%	14.6%	12.6%	13.1%	11.2%	11.7%	9.8%	10.4%	8.4%	9.0%	7.1%	7.7%	5.8%	6.4%	4.6%	5.2%	3.3%
$40.0 3.5%	17.5%	15.0%	16.0%	13.5%	14.5%	12.1%	13.1%	10.7%	11.7%	9.4%	10.4%	8.1%	9.1%	6.8%	7.8%	5.5%
$50.0 4.3%	20.3%	17.4%	18.8%	15.9%	17.3%	14.4%	15.9%	13.0%	14.5%	11.7%	13.1%	10.3%	11.7%	9.0%	10.4%	7.7%
$60.0 5.2%	23.2%	19.8%	21.6%	18.2%	20.1%	16.8%	18.6%	15.3%	17.2%	13.9%	15.8%	12.6%	14.4%	11.2%	13.0%	9.9%
$70.0 6.1%	26.1%	22.2%	24.5%	20.6%	22.9%	19.1%	21.4%	17.6%	19.9%	16.2%	18.5%	14.8%	17.1%	13.4%	15.7%	12.1%
$80.0 6.9%	28.9%	24.5%	27.3%	23.0%	25.7%	21.4%	24.1%	19.9%	22.6%	18.5%	21.2%	17.0%	19.7%	15.6%	18.3%	14.3%

Note (1) Assumes a current Cooper stock price of $13.94 and a Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

CP 038204
CONFIDENTIAL

MORGAN STANLEY

020747

CPH 1426294

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Transaction Structure Analysis

($MM, except per share data)

Laser acquires Camper With Synergie
'98 $50.0MM; $75.0MM after

100% Stock

Offer Price Per Share:		$16.000	$17.000	$18.000	$19.000	$20.000	$21.000	$22.000	$23.000	$24.000
Premium to Market ($13.938)		14.8 %	22.0 %	29.1 %	36.3 %	43.5 %	50.7 %	57.8 %	65.0 %	72.2 %
Exchange Ratio		0.3902 x	0.4146 x	0.4390 x	0.4634 x	0.4878 x	0.5122 x	0.5366 x	0.5610 x	0.5854 x
1998E P/E Paid		14.8 x	15.7 x	16.6 x	17.5 x	18.5 x	19.4 x	20.3 x	21.2 x	22.1 x
Equity Value		$855.3	$911.7	$968.2	$1,024.6	$1,081.1	$1,137.5	$1,193.9	$1,250.4	$1,306.8
Aggregate Value		1,324.8	1,381.3	1,437.7	1,494.2	1,550.6	1,607.0	1,663.5	1,719.9	1,776.4
Earnings Accretion (Dilution)	**Laser Statistic**									
CY1998E	$2.01	16.1 %	14.0 %	11.9 %	9.9 %	7.9 %	6.0 %	4.1 %	2.2 %	0.4 %
CY1999E	2.41	20.2 %	18.1 %	16.1 %	14.1 %	12.1 %	10.3 %	8.4 %	6.6 %	4.9 %
CY2000E	2.89	17.4 %	15.4 %	13.5 %	11.7 %	9.8 %	8.1 %	6.3 %	4.7 %	3.0 %
CY2001E	3.47	15.0 %	13.1 %	11.3 %	9.6 %	7.9 %	6.2 %	4.6 %	3.0 %	1.4 %
CY2002E	4.17	12.9 %	11.2 %	9.4 %	7.8 %	6.1 %	4.5 %	3.0 %	1.5 %	(0.0)%
1998 - 2002 CAGR	*20.0%*	*18.8 %*	*18.9 %*	*19.0 %*	*19.1 %*	*19.1 %*	*19.2 %*	*19.3 %*	*19.4 %*	*19.5 %*
Pro Forma Indicated DPS										
% Change to Camper Dividend		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
Laser Payout Ratio	2.0 %	1.7 %	1.7 %	1.8 %	1.8 %	1.8 %	1.9 %	1.9 %	1.9 %	2.0 %
Breakeven Analysis: 1998E										
Incr. Pre-Tax Synergies		$0	$0	$0	$0	$0	$0	$0	$0	$0
% of Combined Sales		0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %
Breakeven P/E Multiple		17.6 x	17.9 x	18.2 x	18.6 x	18.9 x	19.2 x	19.6 x	20.0 x	20.3 x
Pro Forma Credit Analysis:										
Total Debt / Adj. Book Cap.	28.7 %	33.4 %	32.5 %	31.7 %	30.9 %	30.1 %	29.4 %	28.7 %	28.0 %	27.4 %
EBIT / Gross Interest Exp.	19.6 x	4.6 x	4.5 x	4.5 x	4.5 x	4.4 x	4.4 x	4.4 x	4.3 x	4.3 x
Op. Cash Flow / Total Debt	32.8 %	21.0 %	21.0 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %
Primary Shares Issued (MM):	85.5	20.9	22.2	23.6	25.0	26.4	27.7	29.1	30.5	31.9
% Pre-existing		24.4 %	26.0 %	27.6 %	29.2 %	30.8 %	32.5 %	34.1 %	35.7 %	37.3 %
% Acquiree Interest		19.6 %	20.6 %	21.6 %	22.6 %	23.6 %	24.5 %	25.4 %	26.3 %	27.2 %
Pro Forma Cap. (MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,410	1,466	1,522	1,579	1,635	1,692	1,748	1,805
Adj. Book Cap.	$698	$2,033	$2,090	$2,146	$2,203	$2,259	$2,315	$2,372	$2,428	$2,485
Accounting:										
Goodwill Created		930.5	986.9	1,043.3	1,099.8	1,156.2	1,212.7	1,269.1	1,325.6	1,382.0
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions

Includes '98 Synergies of $50.0MM
Issue Price Per Share: $41.00
1998E P/E Issue Price: 20.4 x

Incl. Syn. % of Target Sales: 6.3%
LTM Target EBIT Margin: 4.5%
Holding Co. Debt Assumed: $0.0

Cost of Debt: 8.0%
Goodwill Amortized Over 40 Years
Goodwill Not Tax Deductible

Camper Primary Shares (000): 53425
Camper Options (000)*: 3018
* Ex. Price: $15.84

NOT A CERTIFIED COPY

CP 038205
CONFIDENTIAL

MORGAN STANLEY

CPH 1426295

020748

16div-026503

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

LASER CORPORATION

Laser acquires Camper With Synergies

Pro Forma Merger Analysis

($MM, except per share data)

Transaction Structure

Offer Terms		Consideration and Other		Cost of Capital		Accounting and Tax	
Price per Share	$20.000	Cash	0.0%	Cost of Cash (p/t)	3.5%	Accounting: Purchase (No Step-Up)	
Prem. to Mkt. ($13.94)	43.5%	Preferred Stock	0.0%	Cost of Debt (p/t)	8.0%	Goodwill Amortized Over 40 Years	
1998E P/E Paid	18.5 x	Common Stock	100.0%	Issue Price	$41.000	Goodwill Not Tax Deductible	
Equity Value	$1,081.1	Fees & Expenses (a/t)	$5.1	1998E P/E	20.4 x	Price/L12M Book	4.4 x
Aggregate Value	1,550.6	Excess Cash Used	$8.2	Exchange Ratio	0.4878 x	Marginal Tax Rate	38.0%

Pro Forma EPS Analysis

	1998	1999	Projected 2000	2001	2002	5 Year CAGR
Earnings Per Share						
Camper	$1.08	$1.27	$1.50	$1.76	$2.07	*17.5%*
Laser	$2.01	$2.41	$2.89	$3.47	$4.17	*20.0%*
Combined	2.17	2.70	3.18	3.75	4.42	*19.1%*
Accretion (Dilution)	7.9%	12.1%	9.8%	7.9%	6.1%	
Synergies Assumed (p/t)	$50.0	$75.0	$75.0	$75.0	$75.0	
Breakeven Analysis [a]						
Incr. Pre-Tax Synergies	$0.0	$0.0	$0.0	$0.0	$0.0	
Breakeven P/E Multiple	18.9 x	15.2 x	12.9 x	10.9 x		
Breakeven Year	NM					

[a] After any synergies assumed above.

Pro Forma Capitalization

	Combined		Laser		Camper	
Capital Structure						
Total Debt	$680.1	30.1%	$200.6	28.7%	$479.4	65.8%
Preferred Equity	0.0	0.0%	0.0	0.0%	0.0	0.0%
Common Equity	1,578.9	69.9%	497.8	71.3%	248.8	34.2%
Total Capitalization	$2,258.9	100.0%	$698.4	100.0%	$728.3	100.0%
Cash (Includes Excess Cash)	$24.5		$22.8		$9.9	
L12M Credit Ratios						
EBIT / Gross Interest Exp.	4.4 x		19.6 x		1.3 x	
Operating Cash Flow / Total Debt	20.9%		32.8%		9.6%	
EBIT Margin	9.5%		11.8%		4.5%	
Shares Outstanding (000)	Primary	111,838	Primary	85,471	Primary	53,425
	% Camper owned	*23.6%*	*% Issued*	*30.8%*	Fully-Diluted	56,442

MORGAN STANLEY

NOT A CERTIFIED COPY

CP 038206
CONFIDENTIAL

CPH 1426296

020749

16div-026504

DEPOSITION
EXHIBIT # 81
FOR ID TRN
4-8-04

PROJECT LASER

Proposed Summary Transaction Terms

Description:	• LASER acquires CAMPER (Operating company) Common Stock
Form of Consideration:	• LASER Common Stock and LASER Common Stock Warrants
Consideration:	A. LASER Common Stock [1] – 0.6017 LASER Common Shares per CAMPER Share [2] – Fixed Exchange Ratio – Implied price of $22.00 per CAMPER Share – 32.654MM LASER Common Shares issued – $1,193.9MM B. LASER Common Stock Warrants [1] – 0.1500 LASER Common Stock Warrants per CAMPER Share – 8.14MM LASER Common Stock Warrants issued – Fixed Exchange Ratio
LASER Common Stock Warrants:	• Warrants to buy LASER Common Stock at $50.00 with a 4-year maturity
Collars:	• None
Walkaway Rights:	• None
Termination Fee:	• $75MM paid to LASER by CAMPER if transaction terminated by CAMPER or CAMPER receives higher bid from third party • 4% of Aggregate Value
Board Representation:	• CAMPER receives one seat on the New LASER Board
Accounting Treatment:	• Purchase
Closing Conditions:	• LASER and CAMPER Shareholder Votes
Expected Closing:	• 2Q98
Shareholder Lockup	• RP agrees to hold shares for one year after combination • No-shop clause
Due Diligence:	• Execution of the Agreement upon satisfactory completion of due diligence.
Debt Refinancing:	• No cost to refinance existing CAMPER bank debt
Miscellaneous:	• No assumption of any holding company level debt. • Termination of affiliate (MAFCO) transactions

CP 033711
CONFIDENTIAL

[1] Calculated using the treasury shares method and assumes cashless exercise of options; assumes 53.425MM primary shares outstanding from the 9/30/97 10-Q and 3.018MM options outstanding at an average exercise price of $15.84 from the 12/31/96 10-K and options proceeds of $47.8MM resulting in treasury method shares outstanding of 54.269MM (2.173MM Camper shares repurchased at $22.00); fully diluted shares are 56.442MM shares.
[2] Assumes a Laser stock price of $36.563 as of 2/5/98.

F13\10273\02-06-98\3:12 PVPG1

MORGAN STANLEY

NOT A CERTIFIED COPY

020751

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Overview of Warrant Instruments

- Allows holders to participate in the **potential upside** of the company while limiting the downside risk
  - CAMPER shareholders have the opportunity to benefit from the **incremental synergies** of the combination
- Provides **significant value** if the full assessment of the synergies is realized
  - Returns to warrant holders increase as greater operational improvements are achieved
  - AD will continue to be focused on creating shareholder value; currently owns over 1 million shares
- Out-of-the-money options send a **strong signal** to the market about management's belief in the prospect of the combined company
- Warrant holders have the opportunity to reap the benefits from **future acquisitions**
  - **Accretive transactions** will continue to boost the stock price
  - Restructuring and consolidation of acquired companies will give rise to cost savings which will further increase earnings
- **Four year maturity** allows ample time to implement restructuring programs and extract synergies
- LASER is committed to realizing the full value of the combination
  - AD to sign a **three-year employment** agreement
- Warrants deliver value to CAMPER shareholders with **minimum negative impact** on short-term accretion

NOT A CERTIFIED COPY

CPH 1421815

020752

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Warrants Pricing and Consideration Analysis

Camper: Camper Mgmt. Case - 100% Stock Purchase

Camper Assumptions	1998	1999	2000	2001	2002	2003	2004	2005	2006
Sales	$1,196.3	$1,315.9	$1,447.5	$1,592.3	$1,751.5	$1,926.7	$2,119.3	$2,331.3	$2,564.4
% Growth	--	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*	*10.0%*
EBITDA	160.4	190.0	215.5	238.1	262.1	288.4	317.3	349.1	384.1
% Margin	*13.4%*	*14.4%*	*14.9%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*	*15.0%*
Operating Income	137.7	166.5	189.5	199.3	219.3	241.2	265.3	291.8	321.0
% Margin	*11.5%*	*12.6%*	*13.1%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*	*12.5%*
Net Income	64.0	86.2	104.5	114.5	131.7	150.2	169.2	189.3	211.4
% Margin	*5.3%*	*6.6%*	*7.2%*	*7.2%*	*7.5%*	*7.8%*	*8.0%*	*8.1%*	*8.2%*
Potential Synergies (P/T)	65.3	130.5	130.5	130.5	130.5	130.5	130.5	130.5	130.5

Projected Pro Forma Stock Price	1998	1999	2000	2001	2002	2003	2004	2005	2006
Pro Forma Net Income	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7
Pro Forma Basic Shares (MM) (Bef. Warrants)	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1
Net Shares Issued From New Warrants (MM) (1)	0.0	1.7	2.6	3.3	4.0	4.0	4.0	4.0	4.0
Diluted Shares Outstanding (MM)	118.1	119.8	120.7	121.5	122.1	122.1	122.1	122.1	122.1
Diluted E.P.S. (Cashless Exercise)	$2.18	$3.18	$3.74	$4.30	$4.97	$5.73	$6.53	$7.36	$8.20
Matured?	No	No	No	No	No	Yes	Yes	Yes	Yes
Forward P/E	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x	18.3 x
Implied Beginning of Year Laser Stock Price	$39.80	$58.10	$68.42	$78.55	$90.88	$104.67	$119.29	$134.49	$149.85
Average Laser Stock Price	$48.95	$63.26	$73.48	$84.71	$97.78	$111.98	$126.89	$142.16	$149.83

Projected Value of Consideration to Camper (2)	Today Stand Alone	At Closing	1998	1999	2000	2001	2002	2003	2004	2005
Stock	$22.00	$29.45	$38.06	$44.22	$50.97	$58.83	$67.38	$76.35	$85.54	$90.15
Warrants	0.00	0.00	1.99	3.52	5.21	7.17	9.30	11.53	13.82	14.97
Total	$22.00	$29.45	$40.05	$47.74	$56.18	$66.00	$76.68	$87.88	$99.36	$105.13

Warrant Value (3):

Cost of Equity Capital	13.2%	Stock Price @ Maturity	$97.78	Present Value per Warrant	$29.09
Discount Factor	1.6425	Strike Price	50.00	Warrant Exch. Ratio	0.1500 x
		Gain on Exercise	$47.78		
Value of Warrant per Camper Share	$4.36				

Note: (1) Assumes exercise of warrants in particular year shown; impact of warrants exercised does not accumulate year to year; assumes constant impact after maturity date.
(2) Pro forma value of consideration today calculated utilizing a pro forma 1998 EPS and a current Laser forward P/E multiple adjusted by the exchange ratio; value of consideration at closing calculated utilizing an average stock price from pro forma B.O.Y. 1998 and B.O.Y. 1999 to best approximate pro forma Laser stock price at time of closing adjusted by the exchange ratio; value of consideration thereafter calculated from average stock price of the year adjusted by the exchange ratio.
(3) Using an average stock price in 2001 to approximate a June 30 maturity date.

CP 033713
CONFIDENTIAL

NOT A CERTIFIED COPY

MORGAN STANLEY

020153

CPH 1421816

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PROJECT LASER

Pro Forma Income Statements

Laser: I/B/E/S Case; Camper: Camper Mgmt. Case - Base Case Synergies of $130.5MM - With Warrants

	Actual Pro Forma		Projected Pro Forma									CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	1996-1	2001-06
Sales	$2,204.4	$2,314.7	$2,643.9	$3,152.5	$3,622.5	$4,179.8	$4,833.1	$5,535.3	$6,272.7	$7,028.7	$7,783.1		
% Growth		5.0%	14.2%	19.2%	14.9%	15.4%	15.6%	14.5%	13.3%	12.1%	10.7%	14.4%	13.3%
Cost of Goods Sold	1,692.8	1,643.3	1,795.2	2,124.7	2,436.3	2,822.1	3,264.8	3,740.5	4,240.0	4,751.8	5,262.1		
% of Sales	76.8%	71.0%	67.9%	67.4%	67.2%	67.5%	67.6%	67.6%	67.6%	67.6%	67.6%	69.6%	67.6%
Gross Profit	511.7	671.4	848.7	1,027.8	1,186.2	1,357.7	1,568.3	1,794.7	2,032.7	2,276.9	2,521.0		
% of Sales	23.2%	29.0%	32.1%	32.6%	32.7%	32.5%	32.4%	32.4%	32.4%	32.4%	32.4%	30.4%	32.4%
SG&A Expense	365.2	316.4	353.3	415.8	475.7	546.2	628.6	717.3	810.8	907.0	1,003.8		
% of Sales	16.6%	13.7%	13.4%	13.2%	13.1%	13.1%	13.0%	13.0%	12.9%	12.9%	12.9%	13.8%	13.0%
Advertising & Promotion	58.8	55.3	59.8	65.8	72.4	79.6	87.6	96.3	106.9	116.5	128.2		
% of Sales	2.7%	2.4%	2.3%	2.1%	2.0%	1.9%	1.8%	1.7%	1.7%	1.7%	1.6%	2.2%	1.7%
Research & Development	11.1	10.4	11.3	12.4	13.7	15.0	16.5	18.2	20.0	22.0	24.2		
% of Sales	0.5%	0.4%	0.4%	0.4%	0.4%	0.4%	0.3%	0.3%	0.3%	0.3%	0.3%	0.4%	0.3%
Operating Income	76.5	289.3	424.4	533.8	624.5	716.8	835.6	962.9	1,096.0	1,231.3	1,364.8		
% of Sales	3.5%	12.5%	16.1%	16.9%	17.2%	17.1%	17.3%	17.4%	17.5%	17.5%	17.5%	13.9%	17.4%
% Growth		278.0%	46.7%	25.8%	17.0%	14.8%	16.6%	15.2%	13.8%	12.3%	10.8%	48.0%	13.8%
Net New Goodwill Amortization	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8		
Old Goodwill Amortization	10.5	11.5	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0		
Financing Fee Amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.0		
Advisory Fees Amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8		
Other Expense/(Income)	2.8	2.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		
% of Sales	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Pre-Tax Synergies	0.0	0.0	(65.3)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)	(130.5)		
% of Sales	0.0%	0.0%	2.5%	4.1%	3.6%	3.1%	2.7%	2.4%	2.1%	1.9%	1.7%		
EBIT	37.9	250.5	452.3	627.0	717.7	810.0	928.8	1,056.1	1,189.2	1,325.3	1,459.5		
% of Sales	1.7%	10.8%	17.1%	19.9%	19.8%	19.4%	19.2%	19.1%	19.0%	18.9%	18.8%	14.8%	19.0%
Depreciation & Amortization	109.1	103.9	114.9	132.5	150.3	171.8	197.9	227.2	259.5	294.3	330.2		
EBITDA	147.0	354.4	567.3	759.5	868.0	981.9	1,126.7	1,283.3	1,448.7	1,619.6	1,789.7		
Net Interest	46.9	44.4	37.5	22.0	3.5	(12.0)	(24.2)	(38.6)	(55.7)	(73.8)	(99.2)		
Earnings Before Taxes	(8.5)	206.1	414.8	605.0	714.3	822.0	953.0	1,094.7	1,244.9	1,401.1	1,558.7		
Tax Provision	10.0	84.7	157.6	224.2	262.4	300.1	346.0	395.6	448.1	502.8	558.0		
Effective Tax Rate	-154.0%	41.1%	38.0%	37.1%	36.7%	36.5%	36.3%	36.1%	36.0%	35.9%	35.8%		
Marginal Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%
Net Income	($16.5)	$121.4	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7		
% of Sales	-0.7%	5.2%	9.7%	12.1%	12.5%	12.5%	12.6%	12.6%	12.7%	12.8%	12.9%	8.5%	12.7%
Minority Interest	1.9	1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	($18.4)	$119.9	$257.2	$380.8	$451.8	$521.9	$607.0	$699.1	$796.7	$898.3	$1,000.7		
% of Sales	-0.8%	5.2%	9.7%	12.1%	12.5%	12.5%	12.6%	12.6%	12.7%	12.8%	12.9%	8.5%	12.7%
% Growth		-752.4%	114.5%	48.1%	18.6%	15.5%	16.3%	15.2%	14.0%	12.7%	11.4%	NM	0.6%
Basic E.P.S.	($0.16)	$1.01	$2.18	$3.23	$3.83	$4.42	$5.14	$5.92	$6.74	$7.60	$8.47		
Accretion/(Dilution)	-	-	8.9%	22.6%	21.2%	16.7%	13.1%	10.4%	8.4%	7.2%	6.4%		
% Growth		-752.4%	114.5%	48.1%	18.6%	15.5%	16.3%	15.2%	14.0%	12.7%	11.4%	NM	13.9%
Wtd Avg Shares Outstanding	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1	118.1		
Diluted E.P.S. (Cashless Ex.)	-	-	$2.18	$3.18	$3.74	$4.30	$4.97	$5.73	$6.53	$7.36	$8.20		
Accretion/(Dilution)	-	-	8.9%	20.8%	18.6%	15.5%	9.4%	6.8%	4.9%	3.7%	2.9%		
Primary Shares Outstanding	-	-	118.1	118.8	120.7	121.5	122.1	122.1	122.1	122.1	122.1		
F.D. E.P.S. (No Treas.)	($0.15)	$0.95	$2.04	$3.02	$3.58	$4.13	$4.81	$5.54	$6.31	$7.11	$7.93		
F.D. Shares Outstanding	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3	126.3		

NOT A CERTIFIED COPY

CP 033714
CONFIDENTIAL

MORGAN STANLEY

CPH 1421817

020754

MS DEPOSITION
EXHIBIT # 82
FOR ID TRN
4-5-04

Preliminary Draft

PROJECT LASER

Laser Stand Alone Income Statements

I/B/E/S Case

	Actual		Projections								CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	1999-2	2001-05
Sales	$904.3	$1,144.3	$1,446.8	$1,867.1	$2,240.5	$2,672.7	$3,182.7	$3,736.3	$4,338.2	$4,949.1	$5,396.5	
% Growth		26.5%	26.4%	29.0%	20.0%	19.0%	19.1%	17.4%	16.1%	14.1%	11.4%	22.9%	15.1%
Cost of Goods Sold	598.3	837.7	988.2	1,273.3	1,532.8	1,822.8	2,170.6	2,541.1	2,954.8	3,307.1	3,677.6		
% of Sales	66.1%	71.7%	68.3%	68.2%	68.2%	68.2%	68.2%	68.2%	68.1%	68.2%	68.2%	71.1%	68.2%
Gross Profit	306.0	330.5	458.6	593.7	714.3	849.9	1,012.1	1,185.0	1,383.4	1,642.0	1,718.9		
% of Sales	33.9%	28.3%	31.7%	31.8%	31.9%	31.8%	31.8%	31.8%	31.9%	31.8%	31.8%	28.9%	31.8%
SG&A Expense	173.6	191.1	272.2	220.3	265.1	315.4	375.6	439.7	506.0	572.2	633.6		
% of Sales	17.6%	13.2%	11.9%	11.8%	11.8%	11.8%	11.8%	11.8%	11.8%	11.8%	11.8%	12.7%	11.8%
Advertising & Promotion	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Research & Development	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Operating Income	2.3	139.4	186.5	273.4	449.3	534.5	636.5	745.3	857.6	969.8	1,077.3		
% of Sales	0.2%	12.1%	12.9%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	16.2%	20.0%
% Growth		5443.3%	43.7%	32.7%	20.5%	19.0%	19.1%	17.1%	15.1%	13.1%	11.1%	134.8%	15.1%
Goodwill Amortization	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other Expense/(Income)	1.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
% of Sales	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
EBIT	0.7	139.4	186.5	273.4	449.3	534.5	636.5	745.3	857.6	969.8	1,077.3		
% of Sales	0.1%	12.1%	12.9%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	16.2%	20.0%
Depreciation & Amortization	47.6	58.6	95.0	64.9	83.0	104.5	131.4	162.0	195.7	231.9	269.3		
EBITDA	48.3	198.0	281.5	338.3	532.3	639.1	768.0	907.3	1,053.4	1,201.7	1,346.6		
Net Interest	(3.6)	(0.2)	(4.2)	(1.1)	(9.2)	(8.6)	(16.4)	(22.0)	(26.0)	(29.6)	(30.2)		
Earnings Before Taxes	(2.9)	139.2	278.3	372.2	453.4	544.1	653.9	770.3	893.6	1,049.4	1,349.4		
Tax Provision	(4.7)	66.1	97.4	130.3	158.7	190.4	228.9	269.6	312.8	367.8	472.3		
Effective Tax Rate	36.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.1%	35.0%
Net Income	($4.3)	$113.1	$180.9	$241.9	$294.7	$353.7	$425.0	$500.7	$580.9	$682.6	$876.3		
% of Sales	-0.5%	10.5%	12.5%	13.0%	13.1%	13.2%	13.3%	13.4%	13.5%	13.7%	13.8%	10.3%	13.5%
Minority Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	($4.3)	$113.1	$180.9	$241.9	$294.7	$353.7	$425.0	$500.7	$580.9	$682.6	$876.3		
% of Sales	-0.5%	10.5%	12.5%	13.0%	13.1%	13.2%	13.3%	13.4%	13.5%	13.7%	13.8%	10.3%	13.5%
% Growth		2631.2%	60.0%	33.7%	21.8%	20.0%	20.0%	18.0%	16.0%	14.1%	12.2%	NM	0.0%
Basic E.P.S.	($0.10)	$1.65	$2.64	$3.53	$4.30	$5.16	$6.20	$7.30	$8.47	$9.53	$10.11		
% Growth		1568.3%	60.0%	33.7%	21.8%	20.0%	20.0%	18.0%	16.0%	14.1%	12.2%	NM	16.0%
Wtd Avg Shares Outstanding (1)	82.9	84.9	87.9	89.0	90.4	90.4	90.4	90.4	90.4	90.4	90.4		
% Growth		2.4%	3.5%	1.1%	1.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.8%	0.0%
Fully Diluted E.P.S.	($0.10)	$1.49	$2.60	$2.84	$3.17	$3.80	$4.56	$5.38	$6.24	$7.13	$7.99		
% Growth		1527.7%	74.5%	9.0%	11.8%	20.0%	20.0%	18.0%	16.0%	14.1%	12.2%	NM	16.0%
Wtd Avg Shares Outstanding (1)	82.9	87.5	90.1	91.8	93.0	93.0	93.0	93.0	93.0	93.0	93.0		
% Growth		5.5%	3.0%	1.9%	1.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.2%	0.0%

Note: (1) Assumes 90.4 MM diluted shares outstanding in 1999 growing to 93.0 MM diluted shares in 2001 and held constant thereafter; projected basic shares held at consistent spread to diluted shares.

REDACTED -

CP 016766
CONFIDENTIAL

REDACTED - PRIVILEGED

020756

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1406962

16div-026509

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DRAFT

DRAFT

PROJECT LASER

Camper Stand Alone Income Statements - Without Sale of Safety & Security

Management Case

	Actual	Est. (1)	Projections (2)									CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	1996-1	2001-06
Sales	$1,220.3	$1,164.5	$1,272.8	$1,400.1	$1,512.1	$1,602.8	$1,699.0	$1,800.9	$1,909.0	$2,023.5	$2,144.9		
% Growth		-4.6%	11.0%	10.0%	8.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.8%	6.0%
Cost of Goods Sold	884.5	805.6	863.1	949.4	1,025.4	1,086.9	1,152.1	1,221.2	1,294.5	1,372.2	1,454.5		
% of Sales	72.5%	78.3%	67.8%	67.8%	67.8%	67.8%	67.8%	67.8%	67.8%	67.8%	67.8%	69.0%	67.8%
Gross Profit	335.7	348.9	409.7	450.7	486.7	515.9	546.9	579.7	614.5	651.3	690.4		
% of Sales	27.5%	29.7%	32.2%	32.2%	32.2%	32.2%	32.2%	32.2%	32.2%	32.2%	32.2%	31.0%	32.2%
SG&A Expense	191.6	185.3	191.3	210.4	227.3	240.9	255.4	270.7	286.9	304.1	322.4		
% of Sales	15.7%	16.2%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.3%	15.0%
Advertising & Promotion	58.8	55.3	63.4	69.7	75.3	79.8	84.6	89.7	95.1	100.8	106.8		
% of Sales	4.8%	4.8%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	4.9%	5.0%
Research & Development	11.1	10.4	12.0	13.2	14.3	15.1	16.0	17.0	18.0	19.1	20.2		
% of Sales	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
Operating Income	74.3	89.9	143.0	157.3	169.9	180.1	190.9	202.3	214.5	227.3	241.0		
% of Sales	6.1%	7.8%	11.2%	11.2%	11.2%	11.2%	11.2%	11.2%	11.2%	11.2%	11.2%	9.8%	11.2%
% Growth		21.2%	59.1%	10.0%	8.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	20.2%	6.0%
Goodwill Amortization	10.5	11.5	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0		
Other Expense/(Income)	1.2	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0		
% of Sales	0.1%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
EBIT	62.5	76.4	129.0	143.3	155.9	166.1	176.9	188.3	200.5	213.3	227.0		
% of Sales	5.1%	6.7%	10.1%	10.2%	10.3%	10.4%	10.4%	10.5%	10.5%	10.5%	10.6%	8.8%	10.5%
Depreciation & Amortization	36.4	40.0	44.0	47.0	49.8	52.1	54.5	57.0	59.7	62.6	65.6		
EBITDA	98.9	116.4	173.0	190.3	205.7	218.1	231.4	245.4	260.2	275.9	292.6		
Net Interest	38.7	41.5	32.0	28.1	25.2	20.4	14.7	8.4	1.9	(3.1)	(7.0)		
Earnings Before Taxes	23.8	34.9	97.0	115.2	130.7	145.7	162.2	179.9	198.6	216.5	233.9		
Tax Provision	10.1	12.2	33.9	40.3	45.7	51.0	56.8	63.0	69.5	75.8	81.9		
Effective Tax Rate	35.4%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	36.7%	35.0%
Net Income	$13.8	$22.7	$63.0	$74.8	$84.9	$94.7	$105.4	$117.0	$129.1	$140.7	$152.1		
% of Sales	1.1%	2.0%	5.0%	5.3%	5.6%	5.9%	6.2%	6.5%	6.8%	7.0%	7.1%	4.1%	6.6%
Minority Interest	1.9	1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	$11.1	$21.2	$63.0	$74.8	$84.9	$94.7	$105.4	$117.0	$129.1	$140.7	$152.1		
% of Sales	0.9%	1.8%	5.0%	5.3%	5.6%	5.9%	6.2%	6.5%	6.8%	7.0%	7.1%	4.1%	6.6%
% Growth		90.7%	197.2%	18.8%	13.5%	11.5%	11.3%	10.9%	10.4%	9.0%	8.1%	44.0%	9.8%
E.P.S.	$0.21	$0.40	$1.18	$1.40	$1.59	$1.77	$1.97	$2.19	$2.42	$2.64	$2.85		
% Growth		90.1%	197.5%	18.8%	13.5%	11.5%	11.3%	10.9%	10.4%	9.0%	8.1%	53.7%	10.0%
Wtd Avg Shares Outstanding	53.2	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4		
% Growth		0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	-0.0%

Notes: (1) 1997E net sales decreased by $6 MM from CSFB estimate to account for decreased Korea and Powermate sales; SG&A expense increased by $1.5 MM for other housekeeping.
(2) 1998E net sales decreased by $5 MM to account for lost Korea sales and increased by $10 MM for Eastpak outperformance; COGS decreased by $5 MM to account for SE Asia sourcing benefits, and increased by $6 MM for restocking and other; SG&A adjusted for balance to achieve operating income of $143 MM

NOT A CERTIFIED COPY

CP 016767
CONFIDENTIAL

020757

CPH 1406963

16div-026510

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Pathname

Timestamp

DRAFT Highly Preliminary PROJECT LASER DRAFT

Camper Stand Alone Income Statements - Sale of Safety & Security

Management Case

	Actual	Est. (1)	Projections (2)									CAGR/Avg	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	1996-1	2001-06
Sales	$1,328.2	$1,146.5	$1,194.3	$1,315.9	$1,421.2	$1,506.5	$1,596.9	$1,692.7	$1,794.2	$1,901.9	$2,016.0		
% Growth		-4.0%	4.3%	10.0%	8.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	5.3%	6.0%
Cost of Goods Sold	884.5	805.6	814.8	896.3	968.0	1,026.1	1,087.6	1,152.9	1,222.1	1,295.4	1,373.1		
% of Sales	72.5%	70.3%	68.1%	68.1%	68.1%	68.1%	68.1%	68.1%	68.1%	68.1%	68.1%	69.2%	68.1%
Gross Profit	333.7	340.9	381.5	419.7	453.2	480.4	509.2	539.8	572.2	606.5	642.9		
% of Sales	27.5%	29.7%	31.9%	31.9%	31.9%	31.9%	31.9%	31.9%	31.9%	31.9%	31.9%	30.8%	31.9%
SG&A Expense	191.6	185.3	181.0	199.1	215.0	227.9	241.6	256.1	271.5	287.8	305.0		
% of Sales	15.7%	16.2%	15.1%	15.1%	15.1%	15.1%	15.1%	15.1%	15.1%	15.1%	15.1%	15.4%	15.1%
Advertising & Promotion	58.8	55.3	59.8	65.8	71.0	75.3	79.8	84.6	89.7	95.1	100.8		
% of Sales	4.8%	4.8%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	4.9%	5.0%
Research & Development	11.1	10.0	11.3	12.4	13.4	14.2	15.1	16.0	16.9	18.0	19.0		
% of Sales	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
Operating Income	74.2	89.9	129.4	142.3	153.7	163.0	172.7	183.1	194.1	205.7	218.1		
% of Sales	6.1%	7.8%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	10.8%	9.5%	10.8%
% Growth		21.2%	43.9%	10.0%	8.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	17.5%	6.0%
Goodwill Amortization	10.5	11.5	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0		
Other Expense/(Income)	1.2	2.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		
% of Sales	0.1%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%	0.1%
EBIT	62.5	76.4	117.4	130.3	141.7	151.0	160.7	171.1	182.1	193.7	206.1		
% of Sales	5.1%	6.7%	9.8%	9.9%	10.0%	10.0%	10.1%	10.1%	10.1%	10.2%	10.2%	8.6%	10.1%
Depreciation & Amortization	36.4	40.0	43.0	43.9	46.5	48.7	50.9	53.3	55.9	58.5	61.4		
EBITDA	98.9	116.4	160.4	174.2	188.3	199.6	211.6	224.4	237.9	252.3	267.5		
Net Interest	38.7	41.5	28.0	24.9	21.9	17.5	12.4	6.8	0.5	(6.6)	(8.2)		
Earnings Before Taxes	23.8	34.9	89.4	105.5	119.8	133.6	148.3	164.3	181.6	198.3	214.3		
Tax Provision	10.8	12.2	31.3	36.9	41.9	46.7	51.9	57.5	63.5	69.4	75.0		
Effective Tax Rate	45.4%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	36.7%	35.0%
Net Income	$13.0	$22.7	$58.1	$68.6	$77.9	$86.7	$96.4	$106.8	$118.0	$128.9	$139.3		
% of Sales	1.1%	2.0%	4.9%	5.2%	5.5%	5.8%	6.0%	6.3%	6.6%	6.8%	6.9%	4.1%	6.4%
Minority Interest	1.9	1.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Preferred Dividends	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Net Income Avail. to Common	$11.1	$21.2	$58.1	$68.6	$77.9	$86.7	$96.4	$106.8	$118.0	$128.9	$139.3		
% of Sales	0.9%	1.8%	4.9%	5.2%	5.5%	5.8%	6.0%	6.3%	6.6%	6.8%	6.9%	4.0%	6.4%
% Growth		90.7%	174.4%	18.0%	13.6%	11.3%	11.1%	10.8%	10.5%	9.2%	8.1%	43.2%	9.8%
E.P.S.	$0.21	$0.40	$1.09	$1.28	$1.46	$1.62	$1.81	$2.00	$2.21	$2.41	$2.61		
% Growth		90.1%	174.2%	18.0%	13.6%	11.3%	11.1%	10.8%	10.5%	9.2%	8.1%	50.6%	10.0%
Wtd Avg Shares Outstanding	53.2	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4	53.4		
% Growth		0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%

Notes: (1) 1997E net sales decreased by $6 MM from CSFB estimate to account for decreased Korea and Powermaster sales; SG&A expense increased by $1.5 MM for other housekeeping
(2) 1998E net sales decreased by $5 MM to account for lost Kmart sales and increased by $10 MM for Europe outperformance; COGS decreased by $5 MM to account for SE Asia sourcing benefits, and increased by $6 MM for restocking and other; SG&A adjusted for balance to achieve operating income of $143 MM
(3) Sale of Safety & Security reduces 1998E sales by $76.5MM, Operating Income by $13.7MM, Int. Exp. by $6MM, Amortization by $1MM and Other by $1MM

NOT ACCERTIFIED COPY

REDACTED - PRIVILEGED

CP 016768
CONFIDENTIAL

020758

CPH 1406964

16div-026511

DEPOSITION
EXHIBIT # 83
FOR ID TRN

10/15/97

- DRAFT -

PROJECT LASER

Proposed Summary Transaction Terms

Acquisition of CAMPER Holding Company and Acquisition of CAMPER Publicly Held Shares

Description:
- LASER acquires all of the outstanding stock of CAMPER Holding Company from MAFCO Affiliates. Following the acquisition of CAMPER Holding Company, the publicly held CAMPER shares acquired in reverse subsidiary merger using a newly formed, wholly-owned subsidiary of CAMPER Holding Company

Acquisition of Holding Company

Form of Consideration:
- LASER Common Stock or LASER Common Stock and LASER Convertible Preferred Stock

Consideration Package Choice:
- MAFCO Affiliates will have the right, 30 days prior to closing, to elect to receive either of Consideration Package I or Consideration Package II

Consideration Package I:

A. LASER Common Stock to MAFCO Affiliates[1]
- **18,503,379** LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

Consideration Package II:

A. LASER Common Stock to MAFCO Affiliates[1]
- **10,376,107** LASER Common Shares issued to MAFCO Affiliates
- Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share

B. LASER Convertible Preferred Shares to MAFCO Affiliates[1]
- **$300,000,000** Liquidation Value
- Fixed number of Convertible Preferred Shares, based on stated liquidation value per share
- $27.50 CAMPER Common Stock equivalent price
- See LASER Convertible Preferred Shares (Current Market Indicative Terms)

"Assumption" of Holding Company Debt:
- "Assumption" of CAMPER Holding Company Debt
  - $524.4MM of Discount Notes to be "assumed" by LASER, approximate accreted value as of the date of closing
  - All Early Redemption cost "assumed" by LASER

LASER Convertible Preferred Shares (Current Indicative Market Terms):
- 4.0% Coupon
- $48.125 Conversion Price (25% Conversion Premium over current LASER price)
- 10 year maturity
- One vote per share

Collars:
- None

Walkaway Rights:
- None

Tax Treatment:
- Expected to be tax free

Closing Conditions:
- Satisfaction of all merger conditions (other than purchase of CAMPER Holding Company), including LASER and CAMPER Shareholder Votes

1 See attached explanation of share calculations. Calculated using the treasury shares method and assumes cashless exercise of options; assumes 53.425MM primary shares outstanding from the 9/30/97 10-Q and 3.018MM options outstanding at an average exercise price of $15.84 from the 10/31/96 10-K and options proceeds of $47.8MM resulting in treasury method shares outstanding of 54.776MM (1.666MM CAMPER shares repurchased at $28.68); fully diluted shares are 56.442MM shares. Assumes CAMPER Holding Company owns 44.068MM shares of CAMPER (Operating Company) and that Public Shareholders own the remaining 10.708MM shares.

CP 039154
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1427250

NOT A CERTIFIED COPY

020760

16div-026512

-DRAFT-

PROJECT LASER

Proposed Summary Transaction Terms

Acquisition of CAMPER Holding Company and Acquisition of CAMPER Publicly Held Shares
(continued)

Expected Closing:	• 2Q98
Shareholder Lockup:	• MAFCO Affiliates agree to hold LASER Common Shares for one year after combination
Due Diligence:	• Execution of the Agreements upon completion of satisfactory due diligence
Miscellaneous:	• CAMPER Holding Company to vote its CAMPER shares in favor of the transaction • No Shop clause with no fiduciary out • Termination of affiliate (MAFCO) transactions

Acquisition of Publicly Held CAMPER Shares

Form of Transaction:	• Reverse subsidiary merger of newly formed, wholly-owned subsidiary of CAMPER Holding Company into CAMPER
Form of Consideration:	• LASER Common Stock[2]
Consideration:	A. LASER Common Stock to Public Shareholders[1] – **7,977,818** LASER Common Shares issued to Public Shareholders – Fixed number of shares, based on exchange ratio of .7450 LASER Common Shares per CAMPER Common Share B. CAMPER Common Shares held by CAMPER Holding Company to remain outstanding
Collars:	• None
Walkaway Rights:	• None
Termination Fee:	• $60MM payable to LASER by CAMPER if deal not consummated for any reason other than failure to obtain LASER shareholder approval or other LASER breach – Termination fee calculated as 3% of aggregate value
Accounting Treatment:	• Purchase
Tax Treatment:	• Expected to be tax free
Closing Conditions:	• CAMPER and LASER shareholder votes • Redemption of LYONS/Completion of CAMPER Escrow Corp./CAMPER Holding Company merger • Receipt of regulatory approvals • Other customary conditions
Expected Closing:	• 2Q98

[2] Need to address issue of potential disparate treatment

-DRAFT-

NOT A CERTIFIED COPY

020761

-DRAFT-

PROJECT LASER

Pricing Mechanism Overview

Transaction pricing assumes the following steps:

I. Assumed CAMPER Holding Company debt balance of $500,000,000 is offset by a portion of the existing Holding Company stock position in CAMPER at an assumed $26.00 per CAMPER share valuation. The economic cancellation of the existing CAMPER Holding Company debt reduces the CAMPER Holding Company's CAMPER stock ownership position by 19,230,769 shares ($500,000,000/$26.00=19,230,769 shares)

II. Each remaining CAMPER share owned by CAMPER Holding Company (44,067,520[1]-19,230,769=24,836,751 shares) as well as all CAMPER shares help by public shareholders (10,708,480[1] shares) are valued at 0.7450 LASER Common Shares, at an approximate implied value of $28.68 per CAMPER share as of February 19,1998. MAFCO Affiliates to receive 18,503,379 LASER Common Shares (24,836,751*0.7450=18,503,379). Public shareholders to receive 7,977,818 LASER Common Shares (10,708,480[1]*0.7450=7,977,818)

III. MAFCO Affiliates have the right, 30 days prior to closing, to elect to take $300,000,000 (at a $27.50 per CAMPER share exchange ratio) or 10,909,091 CAMPER Shares ($300,000,000/$27.50=10,909,091 shares) equivalent of the net consideration for CAMPER Holding Company's CAMPER shares in the form of LASER Convertible Preferred Shares. In this case, the remaining 13,927,660 CAMPER shares (24,836,751-10,909,091=13,927,660 shares) held by CAMPER Holding Company will be exchanged for 10,376,107 LASER Common Shares at the .7450 exchange ratio

See Exhibit A

NOT A CERTIFIED COPY

020762

[1] Exact number of shares subject to due diligence

F13\102838\02-20-98\5:24 PM\PG3 -DRAFT-

CP 039156
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

- DRAFT -

PROJECT LASER

Exhibit A: Transaction Pricing Calculations

NOT A CERTIFIED COPY

Deal Assumptions				
Price per LASER Share	$38.50			
Exchange Ratio	0.745			
	CAMPER Shares	**LASER Shares**	**Amount**	**Implied Price per CAMPER Share**
Holding Company CAMPER Shares	44,067,520 (a)			
Economic Cancellation of Shares: Debt	(19,230,769)			
Holding Company Pro Forma CAMPER Holdings	24,836,751	18,503,379	$712,380,104	$28.68
Preferred Stock Election (if exercised)	(10,909,091)			
Pro Forma CAMPER Holdings (if exercised)	13,927,660	10,376,107	$399,480,104	$28.68
Debt "Assumption"			$300,000,000	
Assumed Face Value	$500,000,000			
Assumed Price per Camper Share	$26.00			
	19,230,769			
Preferred Stock				
Face Value	$300,000,000			
Stock Price Equivalency	$27.50			
Preferred Shares (if election exercised)	10,909,091			
Total Treasury Method Shares	54,776,000 (a)	40,808,120	$1,571,112,620	$28.68
Holding Company Shares	(44,067,520)			
Public Shares	10,708,480 (a)	7,977,818	$307,145,978	$28.68

(a) Subject to due diligence

- DRAFT -

CP 039157
CONFIDENTIAL

CPH 1427253

020763

16div-026515

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED
MS 175 5-12-04 WDB
SB 247391
CPH0482090

01/28/98 09:55 FAX 212 781 0507 M.S.N.Y. 7TH FL 002

LASER CORPORATION

Key Assumptions

Laser Specific

- Laser earnings projections based on I/B/E/S dated 1/21/98
  - 1998E EPS of $2.01 per share ($171.8MM net income)
  - Long-term earnings growth of 20.0% thereafter
  - Implies 1999E EPS of $2.41 per share ($206.2MM net income)
- Laser stock issue price of $41.000 as of market close 1/21/98
- Forward marginal tax rate of 38%

Camper Specific

- Camper earnings projections based on modified CS First Boston report 11/18/97
  - 1998E sales of $1,191.3MM
  - Old goodwill amortization of $11.0MM in 1998 held constant thereafter
  - 1998E operating income of $117.4MM (includes existing goodwill amortization of $11MM)
  - 1998E income from continuing operations of $57.9MM
  - 1998E EPS of $1.08 per share (based on 53.425MM shares)
- Camper long-term earnings growth of 17.5% based on I/B/E/S dated 1/21/98
- Current Camper stock price of $13.94 as of market close 1/21/98

Transaction Specific

- Assumes a 100% stock-financed transaction with purchase accounting
- Non-tax-deductible goodwill amortized over 40 years
- Base case synergies of $75.0MM (6.3% of 1998E Camper sales)
  - $50.0MM of synergies realized in 1998; $75.0MM realized thereafter
  - No impact on earnings from cost of savings
- Transaction costs financed with excess cash at 3.5%

NOT A CERTIFIED COPY

F13\101790001-Z3-000 SO AP02

020765

16div-026516

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED

LASER CORPORATION

Summary Information

($MM, except per share data)

ACQUIROR: Laser (1)	EPS	P/E
1998E	$2.01	20.4x
1999P	$2.41	17.0x
2000P	$2.89	
2001P	$3.47	
2002P	$4.17	
I/B/E/S Growth Rate:	20.0%	

TARGET: Camper (2)	EPS	P/E
1998E	$1.08	12.9x
1999P	$1.27	10.9x
2000P	$1.50	
2001P	$1.76	
2002P	$2.07	
I/B/E/S Growth Rate:	17.5%	

	Laser (1)	Camper (2)	Total (3)	Contribution % (Laser/Camper)
1998E Sales	$1,576.5	$1,191.3	$2,767.8	57%/43%
1998E EBITDA	385.4	160.4	545.8	71%/29%
1998E EBIT	320.4	117.4	437.8	73%/27%
1998E Net Income	171.8	57.9	229.7	75%/25%
1998 Synergies (p/t)	-	50.0	50.0	
EBIT Margin	20.3%	9.9%	15.8%	
EBIT Margin w/ Syn:	-	14.1%	17.6%	

Camper Financial Estimates	1998E	1999P	2000P
Sales			
CSFB Adj.	$1,191.3	--	--
EBITDA			
CSFB Adj.	$160.4	--	--
EBIT			
CSFB Adj.	$117.4	-	-
EPS			
CSFB Adj.	$1.08	$1.27	$1.50
I/B/E/S	0.99	1.16	1.37

Notes: (1) Laser EPS estimates represent I/B/E/S median figures from 1/21/98; Other operating figures from Oppenheimer research dated 10/22/97; stock price as of 1/21/98.
(2) Laser financial estimates represent adjusted CSFB figures from 11/18/97 report and company estimates; stock price as of 1/21/98.
(3) Does not include accounting adjustments related to acquisition.

NOT A CERTIFIED COPY

SB 247392

CPH0482091

02076

16div-026517

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 247393

CPH0482092

01/28/98 09:58 FAX 212 781 0507 M.S.N.Y. 35TH FL 004

LASER CORPORATION

Camper Valuation Matrix

($MM, except per share data)

Exch. Ratio (1)	Impl. Price Per Share	Equity Value (1)	Aggregate Value (2)	Premium/(Discount) to: Curr. (3)	LTM High	LTM Low	Equity Value/ FY Earnings: LTM	1997E (4)	1998E (4)	Aggregate Value/ LTM Sales	LTM EBITDA	LTM EBIT	Aggregate Value/ 1997E (4) Sales	1997E (4) EBITDA	1997E (4) EBIT	Aggregate Value/ 1998E (4) Sales	1998E (4) EBITDA	1998E (4) EBIT
	Camper Stat. (adj. CSFB):			$13.94	$19.13	$11.50	$6.0	$26.6	$57.9	$1,155.8	$91.0	$52.3	$1,152.5	$123.9	$83.9	$1,191.3	$160.4	$117.6
0.4146 x	$17.00	$911.7	$1,312.9	22.0 %	(11.1)%	47.8 %	N.M. x	34.3 x	15.7 x	1.2 x	15.2 x	26.5 x	1.2 x	11.2 x	16.5 x	1.2 x	8.6 x	11.8 x
0.4207	17.25	925.8	1,397.0	23.8	(9.8)	50.0	N.M.	34.8	16.0	1.2	15.4	26.7	1.2	11.3	16.7	1.2	8.7	11.9
0.4268	17.50	939.9	1,411.1	25.6	(8.5)	52.2	N.M.	35.3	16.2	1.2	15.5	27.0	1.2	11.4	16.8	1.2	8.8	12.0
0.4329	17.75	954.1	1,425.2	27.4	(7.2)	54.3	N.M.	35.9	16.5	1.2	15.7	27.3	1.2	11.5	17.0	1.2	8.9	12.1
0.4390	18.00	968.2	1,439.3	29.1	(5.9)	56.5	N.M.	36.4	16.7	1.2	15.8	27.5	1.2	11.6	17.2	1.2	9.0	12.3
0.4451	18.25	982.3	1,453.4	30.9	(4.6)	58.7	N.M.	36.9	17.0	1.3	16.0	27.8	1.3	11.7	17.3	1.2	9.1	12.4
0.4512	18.50	996.4	1,467.5	32.7	(3.3)	60.9	N.M.	37.5	17.2	1.3	16.1	28.1	1.3	11.8	17.5	1.2	9.1	12.5
0.4573	18.75	1,010.5	1,481.6	34.5	(2.0)	63.0	N.M.	38.0	17.5	1.3	16.3	28.4	1.3	12.0	17.7	1.2	9.2	12.6
0.4634	19.00	1,024.6	1,495.7	36.3	(0.7)	65.2	N.M.	38.5	17.7	1.3	16.4	28.6	1.3	12.1	17.8	1.3	9.3	12.7
0.4695	19.25	1,038.7	1,509.9	38.1	0.7	67.4	N.M.	39.0	17.9	1.3	16.6	28.9	1.3	12.2	18.0	1.3	9.4	12.9
0.4756	19.50	1,052.8	1,524.0	39.9	2.0	69.6	N.M.	39.6	18.2	1.3	16.8	29.2	1.3	12.3	18.2	1.3	9.5	13.0
0.4817	19.75	1,066.9	1,538.1	41.7	3.3	71.7	N.M.	40.1	18.4	1.3	16.9	29.4	1.3	12.4	18.3	1.3	9.6	13.1
0.4878	20.00	1,081.1	1,552.2	43.5	4.6	73.9	N.M.	40.6	18.7	1.3	17.1	29.7	1.3	12.5	18.5	1.3	9.7	13.2
0.4939	20.25	1,095.2	1,566.3	45.3	5.9	76.1	N.M.	41.2	18.9	1.4	17.2	30.0	1.4	12.6	18.7	1.3	9.8	13.3
→ 0.5000	20.50	1,109.3	1,580.4	47.1	7.2	78.3	N.M.	41.7	19.2	1.4	17.4	30.2	1.4	12.8	18.8	1.3	9.9	13.5
0.5061	20.75	1,123.4	1,594.5	48.9	8.5	80.4	N.M.	42.2	19.4	1.4	17.5	30.5	1.4	12.9	19.0	1.3	9.9	13.6
0.5122	21.00	1,137.5	1,608.6	50.7	9.8	82.6	N.M.	42.8	19.6	1.4	17.7	30.8	1.4	13.0	19.2	1.4	10.0	13.7
0.5183	21.25	1,151.6	1,622.7	52.5	11.1	84.8	N.M.	43.3	19.9	1.4	17.8	31.1	1.4	13.1	19.3	1.4	10.1	13.8
0.5244	21.50	1,165.7	1,636.9	54.3	12.4	87.0	N.M.	43.8	20.1	1.4	18.0	31.3	1.4	13.2	19.5	1.4	10.2	13.9
0.5305	21.75	1,179.8	1,651.0	56.1	13.7	89.1	N.M.	44.4	20.4	1.4	18.1	31.6	1.4	13.3	19.7	1.4	10.3	14.1
0.5366	22.00	1,193.9	1,665.1	57.8	15.0	91.3	N.M.	44.9	20.6	1.4	18.3	31.9	1.4	13.4	19.8	1.4	10.4	14.2
0.5427	22.25	1,208.0	1,679.2	59.6	16.3	93.5	N.M.	45.4	20.9	1.5	18.5	32.1	1.5	13.6	20.0	1.4	10.5	14.3
0.5488	22.50	1,222.2	1,693.3	61.4	17.6	95.7	N.M.	45.9	21.1	1.5	18.6	32.4	1.5	13.7	20.2	1.4	10.6	14.4
0.5549	22.75	1,236.3	1,707.4	63.2	19.0	97.8	N.M.	46.5	21.4	1.5	18.8	32.7	1.5	13.8	20.4	1.4	10.6	14.5
0.5610	23.00	1,250.4	1,721.5	65.0	20.3	100.0	N.M.	47.0	21.6	1.5	18.9	32.9	1.5	13.9	20.5	1.4	10.7	14.7
0.5671	23.25	1,264.5	1,735.6	66.8	21.6	102.2	N.M.	47.5	21.8	1.5	19.1	33.2	1.5	14.0	20.7	1.5	10.8	14.8
0.5732	23.50	1,278.6	1,749.7	68.6	22.9	104.5	N.M.	48.1	22.1	1.5	19.2	33.5	1.5	14.1	20.9	1.5	10.9	14.9
0.5793	23.75	1,292.7	1,763.8	70.4	24.2	106.5	N.M.	48.6	22.3	1.5	19.4	33.8	1.5	14.2	21.0	1.5	11.0	15.0
0.5854	24.00	1,306.8	1,778.0	72.2	25.5	108.7	N.M.	49.1	22.6	1.5	19.5	34.0	1.5	14.3	21.2	1.5	11.1	15.1

Notes: (1) Based on 56.4 MM common shares outstanding on 9/30/97 from the 9/30/97 10-Q and 3.0 MM options outstanding with an average exercise price of $13.54, as 12/31/96 from the 12/31/96 10-K.

(2) Includes Preferred Stock of $0 MM and Total Debt of $481 MM less Cash of $10 MM.

(3) Based on the closing share prices on 1/21/98.

(4) Estimates from adjusted CSFB equity report dated 11/18/97 on Camper.

NOT A CERTIFIED COPY

I:\bdg\laser\coleman\summary\cln_sp2.wk4

020767

16div-026518

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 247394

CPH0482093

01/26/98 09:57 FAX 212 761 0507 M.S.N.Y. 35TH FL 005

Jan 23, 1998 9:30 PRELIMINARY DRAFT

LASER CORPORATION

Laser acquires Casper with Synergies

Potential Share Price Analysis - Purchase

($MM, except per share data)

Potential Pricing Matrix - $50.0MM 1998 Synergies and $75.0MM 1999 Synergies

Price / Premium:		$20.00 / 43.5%		$21.00 / 50.1%		$22.00 / 57.4%		$23.00 / 65.0%		$24.00 / 72.2%	
		1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Pro Forma EPS:		$2.17	$2.70	$2.13	$2.66	$2.09	$2.61	$2.05	$2.57	$2.02	$2.53
1998 P/E Assessed:	12.9 x	$27.89		$27.39		$26.90		$26.43		$25.96	
P/E Blend (Casper/Laser):	100%/0%										
	15.0 x	$32.53		$31.95		$31.38		$30.82		$30.28	
	72%/28%										
	15.5 x	$33.62		$33.01		$32.43		$31.85		$31.29	
	65%/35%										
	16.0 x	$34.70		$34.08		$33.47		$32.88		$32.30	
	58%/42%										
	16.5 x	$35.79		$35.14		$34.52		$33.91		$33.31	
	52%/48%										
	17.0 x	$36.87		$36.21		$35.56		$34.93		$34.32	
	45%/55%										
	17.5 x	$37.95		$37.27		$36.61		$35.96		$35.33	
	38%/62%										
	18.0 x	$39.04		$38.34		$37.66		$36.99		$36.34	
	32%/68%										
	18.5 x	$40.12		$39.40		$38.70		$38.02		$37.35	
	25%/75%										
	19.0 x	$41.21		$40.47		$39.75		$39.04		$38.35	
	19%/81%										
	19.5 x	$42.29		$41.53		$40.79		$40.07		$39.36	
	12%/88%										
→	20.0 x	$43.38		$42.60		$41.84		$41.10		$40.37	
	5%/95%										
	20.4 x	$44.24		$43.45		$42.67		$41.92		$41.18	
	0%/100%										

Note: (1) Assumes a current Laser stock issue price of $41.00.

NOT A CERTIFIED COPY

020768

020769

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 247395

CPH0482094
16div-026520

01/28/98 09:57 FAX 212 761 0507 W.S.N.Y. 35TH FL 006

Jan 21, 1998 9:43

Laser acquires Camper With Synergies

LASER CORPORATION

PRELIMINARY DRAFT

Synergy and Price Analysis - Purchase

($MM, except per share data)

100% Stock Purchase Analysis - Accretion / (Dilution) (1)

Price/(Premium):	$17.00 / 22.0%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
Implied Exch. Ratio:	0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
Year:	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed ($0.0 / 0.0% of CLN LTM Sales)	-0.3%	0.2%	-2.2%	-1.6%	-4.1%	-3.4%	-5.9%	-5.1%	-7.7%	-6.8%	-9.4%	-8.4%	-11.1%	-10.0%	-12.7%	-11.6%
$10.0 / 0.9%	2.6%	2.6%	0.6%	0.7%	-1.3%	-1.1%	-3.1%	-2.8%	-4.9%	-4.5%	-6.7%	-6.2%	-8.4%	-7.8%	-10.1%	-9.4%
$20.0 / 1.7%	5.4%	5.0%	3.4%	3.1%	1.5%	1.3%	-0.4%	-0.5%	-2.2%	-2.2%	-4.0%	-3.9%	-5.7%	-5.6%	-7.5%	-7.2%
$30.0 / 2.6%	8.3%	7.3%	6.3%	5.4%	4.3%	3.6%	2.4%	1.8%	0.5%	0.0%	-1.3%	-1.7%	-3.1%	-3.4%	-4.8%	-5.0%
$40.0 / 3.5%	11.1%	9.7%	9.1%	7.8%	7.1%	5.9%	5.1%	4.1%	3.2%	2.3%	1.4%	0.6%	-0.4%	-1.1%	-2.2%	-2.8%
$50.0 / 4.3%	14.0%	12.1%	11.9%	10.2%	9.9%	8.3%	7.9%	6.4%	6.0%	4.6%	4.1%	2.8%	2.2%	1.1%	0.4%	-0.6%
$60.0 / 5.2%	16.9%	14.5%	14.7%	12.5%	12.7%	10.6%	10.7%	8.7%	8.7%	6.8%	6.8%	5.1%	4.9%	3.3%	3.1%	1.6%
$70.0 / 6.1%	19.7%	16.9%	17.6%	14.9%	15.5%	12.9%	13.4%	11.0%	11.4%	9.1%	9.5%	7.3%	7.6%	5.5%	5.7%	3.8%
$80.0 / 6.9%	22.6%	19.3%	20.4%	17.2%	18.3%	15.2%	16.2%	13.3%	14.1%	11.4%	12.2%	9.5%	10.2%	7.7%	8.3%	6.0%

Note: (1) Assumes a current Camper stock price of $13.94 and a Laser stock issue price of $41.00.

020770

01/28/98 09:58 FAX 212 761 0507 M.S.N.Y. 35TH FL 007

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 247396

CPH0482095

16div-026521

NOT A CERTIFIED COPY

Jan 13, 1998 12:

LASER CORPORATION

Synergy and Price Analysis - Pooling

($MM, except per share data)

Laser acquires Camper With Synergies

100% Stock Pooling Analysis - Accretion / (Dilution) (1)

Price(Premium):	$17.00 / 21.9%		$18.00 / 29.1%		$19.00 / 36.3%		$20.00 / 43.5%		$21.00 / 50.7%		$22.00 / 57.8%		$23.00 / 65.0%		$24.00 / 72.2%	
Implied Exch. Ratio:	0.4146		0.4390		0.4634		0.4878		0.5122		0.5366		0.5610		0.5854	
Year:	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999	1998	1999
Synergies Assumed (% of CLN LTM Sales)																
$0.0 0.0%	6.0%	5.4%	4.7%	4.1%	3.4%	2.8%	2.1%	1.5%	0.8%	0.3%	-0.4%	-0.9%	-1.6%	-2.1%	-2.7%	-3.2%
$10.0 0.9%	8.9%	7.8%	7.5%	6.5%	6.1%	5.1%	4.8%	3.8%	3.6%	2.6%	2.3%	1.3%	1.1%	0.1%	-0.1%	-1.1%
$20.0 1.7%	11.7%	10.2%	10.3%	8.8%	8.9%	7.5%	7.6%	6.1%	6.3%	4.8%	5.0%	3.6%	3.8%	2.3%	2.5%	1.1%
$30.0 2.6%	14.6%	12.6%	13.1%	11.2%	11.7%	9.8%	10.4%	8.4%	9.0%	7.1%	7.7%	5.8%	6.4%	4.6%	5.2%	3.3%
$40.0 3.5%	17.5%	15.0%	16.0%	13.5%	14.5%	12.1%	13.1%	10.7%	11.7%	9.4%	10.4%	8.1%	9.1%	6.8%	7.8%	5.5%
$50.0 4.3%	20.3%	17.4%	18.8%	15.9%	17.3%	14.4%	15.9%	13.0%	14.5%	11.7%	13.1%	10.3%	11.7%	9.0%	10.4%	7.7%
$60.0 5.2%	23.2%	19.8%	21.6%	18.2%	20.1%	16.8%	18.6%	15.3%	17.2%	13.9%	15.8%	12.6%	14.4%	11.2%	13.0%	9.9%
$70.0 6.1%	26.1%	22.2%	24.5%	20.6%	22.9%	19.1%	21.4%	17.6%	19.9%	16.2%	18.5%	14.8%	17.1%	13.4%	15.7%	12.1%
$80.0 6.9%	28.9%	24.5%	27.3%	23.0%	25.7%	21.4%	24.1%	19.9%	22.6%	18.5%	21.2%	17.0%	19.7%	15.6%	18.3%	14.3%

Note: (1) Assumes a current Camper stock price of $13.94 and a Laser stock issue price of $41.00.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

SB 247397

CPH0482096

01/28/98 09:58 FAX 212 791 0507 M.S.N.Y. 35TH FL 008

Jan 23, 1998 9:41

PRELIMINARY DRAFT

LASER CORPORATION

Transaction Structure Analysis

($MM, except per share data)

Laser acquires Camper With Synergies
'98 $50.0MM; $75.0MM after

100% Stock

Offer Price Per Share:		$16.000	$17.000	$18.000	$19.000	$20.000	$21.000	$22.000	$23.000	$24.000
Premium to Market ($13.938)		14.8 %	22.0 %	29.1 %	36.3 %	43.5 %	50.7 %	57.8 %	65.0 %	72.2 %
Exchange Ratio		0.3902 x	0.4146 x	0.4390 x	0.4634 x	0.4878 x	0.5122 x	0.5366 x	0.5610 x	0.5854 x
1998E P/E Paid		14.8 x	15.7 x	16.6 x	17.5 x	18.5 x	19.4 x	20.3 x	21.2 x	22.1 x
Equity Value		$855.3	$911.7	$968.2	$1,024.6	$1,081.1	$1,137.5	$1,193.9	$1,250.4	$1,306.8
Aggregate Value		1,324.8	1,381.3	1,437.7	1,494.2	1,550.6	1,607.0	1,663.5	1,719.9	1,776.4
Earnings Accretion (Dilution)	Laser Statistic									
CY1998E	$2.01	16.1 %	14.0 %	11.9 %	9.9 %	7.9 %	6.0 %	4.1 %	2.2 %	0.4 %
CY1999E	2.41	20.2 %	18.1 %	16.1 %	14.1 %	12.1 %	10.3 %	8.4 %	6.6 %	4.9 %
CY2000E	2.89	17.4 %	15.4 %	13.5 %	11.7 %	9.8 %	8.1 %	6.2 %	4.7 %	3.0 %
CY2001E	3.47	15.0 %	13.1 %	11.3 %	9.6 %	7.9 %	6.2 %	4.6 %	3.0 %	1.4 %
CY2002E	4.17	12.9 %	11.2 %	9.4 %	7.8 %	6.1 %	4.5 %	3.0 %	1.5 %	(0.0)%
1998 - 2002 CAGR	*20.0%*	*18.8 %*	*18.9 %*	*19.0 %*	*19.1 %*	*19.1 %*	*19.2 %*	*19.3 %*	*19.4 %*	*19.5 %*
Pro Forma Indicated DPS										
% Change to Camper Dividend		NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %	NA %
Laser Payout Ratio	2.0 %	1.7 %	1.7 %	1.8 %	1.8 %	1.8 %	1.9 %	1.9 %	1.9 %	2.0 %
Breakeven Analysis: 1998E										
Incr. Pre-Tax Synergies		$0	$0	$0	$0	$0	$0	$0	$0	$0
% of Combined Sales		0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %	0.0 %
Breakeven P/E Multiple		17.6 x	17.9 x	18.2 x	18.6 x	18.9 x	19.2 x	19.6 x	20.0 x	20.3 x
Pro Forma Credit Analysis:										
Total Debt / Adj. Book Cap.	28.7 %	33.4 %	32.5 %	31.7 %	30.9 %	30.1 %	29.4 %	28.7 %	28.0 %	27.4 %
EBIT / Gross Interest Exp.	19.6 x	4.6 x	4.5 x	4.5 x	4.5 x	4.4 x	4.4 x	4.4 x	4.3 x	4.3 x
Op. Cash Flow / Total Debt	32.8 %	21.0 %	21.0 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %	20.9 %
Primary Shares Issued (MM):	85.5	20.9	22.2	23.6	25.0	26.4	27.7	29.1	30.5	31.9
% Pre-existing		24.4 %	26.0 %	27.6 %	29.2 %	30.8 %	32.5 %	34.1 %	35.7 %	37.3 %
% Acquires Interest		19.6 %	20.6 %	21.6 %	22.6 %	23.6 %	24.5 %	25.4 %	26.3 %	27.2 %
Pro Forma Cap. (MM)										
Total Debt	$201	$680	$680	$680	$680	$680	$680	$680	$680	$680
Preferred Stock	$0	0	0	0	0	0	0	0	0	0
Common Equity	498	1,353	1,410	1,466	1,522	1,579	1,635	1,692	1,748	1,805
Adj. Book Cap.	$698	$2,033	$2,090	$2,146	$2,203	$2,259	$2,315	$2,372	$2,428	$2,485
Accounting:										
Goodwill Created		930.5	986.9	1,043.3	1,099.8	1,156.2	1,212.7	1,269.1	1,325.6	1,382.0
Method		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase	Purchase

Assumptions					
	Includes '98 Synergies of $50.0MM	Incl. Syn. % of Target Sales: 6.3%	Cost of Debt: 8.0%	Camper Primary Shares (000): 53425
	Issue Price Per Share: $41.00	LTM Target EBIT Margin: 4.5%	Goodwill Amortized Over 40 Years	Camper Options (000)*: 3018
	1998E P/E Issue Price: 20.4 x	Holding Co. Debt Assumed: $0.0	Goodwill Not Tax Deductible	* Ex. Price: $15.84

NOT A CERTIFIED COPY

020771

16div-026522

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
CONFIDENTIAL TREATMENT UNDER F.O.I.A. REQUESTED
SB 247398
CPH0482097
16div-026523

NOT A CERTIFIED COPY

LASER CORPORATION

Pro Forma Merger Analysis

($MM, except per share data)

Laser acquires Camper With Synergies

Transaction Structure

Offer Terms		Consideration and Other		Cost of Capital		Accounting and Tax	
Price per Share	$20.000	Cash	0.0%	Cost of Cash (p/t)	3.5%	Accounting: Purchase (No Step-Up)	
Prem. to Mkt. ($13.94)	43.5%	Preferred Stock	0.0%	Cost of Debt (p/t)	8.0%	Goodwill Amortized Over 40 Years	
1998E P/E Paid	18.5 x	Common Stock	100.0%	Issue Price	$41.000	Goodwill Not Tax Deductible	
Equity Value	$1,081.1	Fees & Expenses (a/t)	$5.1	1998E P/E	20.4 x	Price/L12M Book	4.4 x
Aggregate Value	1,350.6	Excess Cash Used	$8.2	Exchange Ratio	0.4878 x	Marginal Tax Rate	38.0%

Pro Forma EPS Analysis

	1998	1999	Projected 2000	2001	2002	5 Year CAGR
Earnings Per Share						
Camper	$1.08	$1.27	$1.50	$1.76	$2.07	*17.5%*
Laser	$2.01	$2.41	$2.89	$3.47	$4.17	*20.0%*
Combined	2.17	2.70	3.18	3.75	4.42	*19.1%*
Accretion (Dilution)	7.9%	12.1%	9.8%	7.9%	6.1%	
Synergies Assumed (p/t)	$50.0	$75.0	$75.0	$75.0	$75.0	
Breakeven Analysis *						
Incr. Pre-Tax Synergies	$0.0	$0.0	$0.0	$0.0	$0.0	
Breakeven P/E Multiple	18.9 x	15.2 x	12.9 x	10.9 x		
Breakeven Year	NM					

* After any synergies assumed above.

Pro Forma Capitalization

	Combined		Laser		Camper	
Capital Structure						
Total Debt	$680.1	30.1%	$200.6	28.7%	$479.4	65.8%
Preferred Equity	0.0	0.0%	0.0	0.0%	0.0	0.0%
Common Equity	1,578.9	69.9%	497.8	71.3%	248.8	34.2%
Total Capitalization	$2,258.9	100.0%	$698.4	100.0%	$728.3	100.0%
Cash (Includes Excess Cash)	$24.5		$22.8		$9.9	
L12M Credit Ratios						
EBIT / Gross Interest Exp.	4.4 x		19.6 x		1.3 x	
Operating Cash Flow / Total Debt	20.9%		32.8%		9.6%	
EBIT Margin	9.5%		11.8%		4.5%	
Shares Outstanding (000)	Primary	111,838	Primary	85,471	Primary	53,425
	% Camper owned	*23.6%*	*% Issued*	*30.8%*	Fully-Diluted	56,442

020772

01/26/98 09:59 FAX 212 781 0507 M.S.N.Y. 35TH FL 009

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CONFIDENTIAL TREATMENT UNDER
F.O.I.A. REQUESTED

NOT A CERTIFIED COPY

PRELIMINARY DRAFT

LASER CORPORATION

Laser acquires Camper With Synergies

Pro Forma Net Income Reconciliation Analysis

($MM, except per share data)

	Projected				
	1998	1999	2000	2001	2002
Standalone EPS					
Laser EPS	$2.01	$2.41	$2.89	$3.47	$4.17
Camper EPS	1.68	1.27	1.50	1.76	2.07
Pro Forma Net Income					
Laser Net Income (1)	$171.8	$206.2	$247.4	$296.9	$356.2
Camper Net Income (2)	57.9	68.0	79.9	93.9	110.4
Cost of Capital					
Cost of Debt (a/t) (3)	$0.0	$0.0	$0.0	$0.0	$0.0
Cost of Cash (a/t) (4)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)
Cost of Preferred (5)	0.0	0.0	0.0	0.0	0.0
Change in Common Dividend (6)	(0.1)	(0.1)	(0.2)	(0.2)	(0.3)
Accounting Impact					
New Goodwill Amortization (7)	($28.9)	($28.9)	($28.9)	($28.9)	($28.9)
Old Goodwill Amortization	11.0	11.0	11.0	11.0	11.0
Change in Depreciation (a/t)	0.0	0.0	0.0	0.0	0.0
Synergies (a/t)	$31.0	$46.5	$46.5	$46.5	$46.5
Pro Forma Net Income	$242.6	$302.5	$355.6	$419.0	$494.8
Pro Forma EPS (8)	$2.17	$2.70	$3.18	$3.75	$4.42
% Accretion (Dilution)	7.9%	12.1%	9.8%	7.9%	6.7%

Notes:
(1) 85.5MM primary shares outstanding.
(2) 53.4MM primary shares outstanding.
(3) $0.0MM debt at 8.0% and marginal tax rate of 38.0%.
(4) $8.2MM cash at 3.5% and marginal tax rate of 38.0%.
(5) $0.0MM preferred stock at 5.0%.
(6) $1.1MM increase in total dividend payment financed at 8.0%, marginal tax rate of 38.0%, and accruing each year.
(7) $1156.2MM of goodwill created amortized over 40 years, not tax deductible.
(8) $111.8MM primary shares outstanding.

020773

01/28/98 09:58 FAX 212 761 0507 U.S.N.Y. 35TH FL. 010

SB 247399

CPH0482098

16div-026524

CP 022298
CONFIDENTIAL

2/23

Sunbeam®

Long Range Strategic Plan

020775

NOT A CERTIFIED COPY

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPH 1412533

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1. Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.).

2. Strengthen Sunbeam and Oster brands globally.

3. Continually introduce innovative and highly differentiated products globally.

4. Optimize worldwide supply chain.

5. Achieve industry leadership in customer service.

NOT A CERTIFIED COPY

CPH 1412534

CP 022299
CONFIDENTIAL

020776

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

1) Dominate core businesses globally (e.g., blenders, blankets, clippers, outdoor cooking, etc.)

- Leverage our brand halo to further strengthen our image and reputation with the consumer, customer and investor, worldwide.
- Develop comprehensive Go-To-Market plans to drive worldwide activity.
- Sharpen international market focus to Latin America, Mexico, Venezuela, Japan, UK and Canada and tailor product bundles to the individual markets.
- Continue to be the consumer's first choice for innovative and differentiated solutions in both the value and premium segments of our core businesses.
- Deliver product to market better and faster than the competition.

NOT A CERTIFIED COPY

CP 022300
CONFIDENTIAL

CPH 1412535

020777

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

2) Strengthen Sunbeam and Oster brands globally..

- Position and differentiate the Sunbeam and Oster brands globally with targeted marketing and advertising.

- Improve competitive positioning through core business focus on the consumer and technology:

  Sunbeam - Value and Innovation segments
  Oster - Quality and Performance segments

- Leverage Oster brand recognition in Latin America.

- Explore licensing opportunities.

NOT A CERTIFIED COPY

CP 022301
CONFIDENTIAL

CPH 1412536

020778

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

3) *Continually introduce innovative and highly differentiated products globally.*

- Continue to develop highly differentiated products.
- Focus development resources on "Home Runs" (e.g., air and water).
- Respond to and meet consumer needs better than the competition.
- Explore alternative uses for proprietary technology (i.e., utilize PTC wire technology to enter the heated carpet market).
- Continue to enhance the product development process and turn around.

NOT A CERTIFIED COPY

CP 022302
CONFIDENTIAL

CPH 1412537

020779

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES

4) Optimize worldwide supply chain.

- Shift make versus buy mix from 70/30 to 50/50.
- Balance proximity of supplier, plant and customer locations to minimize logistical requirements and associated costs and accelerate delivery.
- Exploit cost savings opportunities associated with Asia Pacific economies via joint ventures and acquisitions.
- Simplify and standardize processes and practices.

NOT A CERTIFIED COPY

CPH 1412538

CP 022303
CONFIDENTIAL

020780

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. LONG RANGE STRATEGIC OBJECTIVES

5) Achieve industry leadership in customer service.

- Define and monitor customer satisfaction from forecasting to invoicing through Project Full Time.
- Fill distribution voids and achieve new product sell-in leveraging Full Time performance.
- Achieve preferred supplier status with joint partnering and 98% on time and in full shipments to key customers.
- Implement systems to track and resolve total quality issues incorporating ISO 9000 requirements.

NOT ACERTIFIED COPY

CPH 1412539

020781

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam APPLIANCES

Strategic Headlines

1. Strengthen Sunbeam and Oster trademarks globally.

2. Continually introduce a constant stream of consumer-driven new products concentrated in three focus areas:
   - Blending and Mixing
   - Smart Cooking
   - Everyday Best

3. Broaden distribution with existing customers.

$MM	1997	1998	1999	2000
U.S. Sales	288	356	430	480
% Increase	16%	24%	21%	12%

NOT A CERTIFIED COPY

CP 022305
CONFIDENTIAL

CPH 1412540

020782

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam. HEALTH AT HOME

Strategic Headlines

1. Leverage Sunbeam brand equity to become the category expert.

2. Expand the business to healthy environment (i.e., air and water) and home safety (e.g., emergency carbon monoxide or smoke notification, security alarms, first aid monitoring.)

3. Fill distribution voids and extend product seasons.

4. Use Air & Water to launch our core Health at Home product lines globally.

$MM	1997	1998	1999	2000
U.S. Sales	93	189	240	300
% Increase	7%	103%	27%	25%

NOT A CERTIFIED COPY

CP 022306
CONFIDENTIAL

CPH 1412541

020783

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam PERSONAL CARE & COMFORT - Bedding

Strategic Headlines

1. Advance technology advantage with continuous development of new wire technology (lower EMF) and electronic controls (solid state controls).

2. Launch new products that address consumer's safety concerns and provide heating comfort in places other than the bedroom.

3. Globalize the business focusing on high potential countries.

4. Increase household penetration by introducing new packaging and promoting the "Blanket with a Brain" concept.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

CP 022307
CONFIDENTIAL

CPH 1412542

020784

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam PERSONAL CARE & COMFORT - Clippers and Other Personal Care

Strategic Headlines

1. Grow household penetration by focusing on high potential targets:
   - large and low income families
   - teens
   - African Americans
2. Introduce new products with better performance than the competition.
3. Grow business globally.
4. Enter new personal care categories leveraging our Sunbeam and Oster brand names.

$MM	1997	1998	1999	2000
U.S. Sales	169	227	260	300
% Increase	4%	34%	15%	15%

** Bedding & Clippers Together

NOT A CERTIFIED COPY

CP 022308
CONFIDENTIAL

CPH 1412543

020785

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OUTDOOR COOKING

Strategic Headlines

1. Continue to entrench GrillMaster as the dominant worldwide brand of grills and accessories/replacement parts.
2. Achieve category growth by promoting grilling in high-growth, high-profit segments. Address category negatives/barriers.
3. Dramatically increase the profit importance of GrillMaster and Outdoor Cooking to Sunbeam and the trade.
4. Develop outdoor cooking business globally, focusing on countries with high disposable income and high meat consumption.

NOT A CERTIFIED COPY

$MM	1997	1998	1999	2000
U.S. Sales	297	341	390	420
% Increase	25%	15%	14%	8%

CP 022309
CONFIDENTIAL

CPH 1412544

020786

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam OTHER CHANNELS

Strategic Headlines

1. Away From Home

   - Bundle existing products to effectively grow lodging.
   - Expand beyond lodging into commercial food service.

2. Outlet Stores

   - Continue to expand in "A" locations.
   - Continue to serve as more profitable alternative channel for excess inventory.

NOT A CERTIFIED COPY

$MM	1997	1998	1999	2000
U.S. Sales	65	111	135	150
% Increase	55%	71%	20%	15%

CP 022310
CONFIDENTIAL

CPH 1412545

020787

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam INTERNATIONAL

Strategic Headlines

1. Focus on high growth areas where we can leverage Sunbeam and Oster brand names, such as Latin America, Canada, Southeast Asia.

2. Tailor product bundles to the individual markets (i.e., pick and choose product lines in the rest of the world).

3. Continue to develop license and distributor arrangements.

4. Minimize capital investment.

5. Globalize core business successes (i.e., blenders, clippers and blankets).

$MM	1997	1998	1999	2000
Int'l. Sales	240	360	529	734
% Increase	25%	50%	47%	39%

NOT A CERTIFIED COPY

CP 022311
CONFIDENTIAL

CPH 1412546

020788

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam CHANGING COMPETITIVE DYNAMICS

- Reinvestable Returns Differentiates the Winners from the Losers.
  - Market Leaders are those who will invest in the business (i.e., New Products, Advertising, Working Capital).
    - Philips
    - KitchenAid
    - Sunbeam
    - Braun
    - Krups
    - Hamilton Beach / Proctor Silex
  - Other Companies will not remain competitive
    - Rival
    - National Presto
    - Mr. Coffee
    - Health O'Meter
    - Black & Decker
    - West Bend
- Sunbeam Maintains a Unique Global Position
  - No global competitor
  - No competitor in more than one category in the U.S./Abroad
  - Two strong global brands

NOT A CERTIFIED COPY

CP 022312
CONFIDENTIAL

CPH 1412547

020789

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - EARNINGS FROM CONTINUING OPERATIONS

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Sales	$ 1,168	$ 1,600	$ 2,000	$ 2,400
Gross Margin	$ 331	$ 511	$ 640	$ 773
	28%	32%	32%	32%
Selling, General and Administrative Expenses	$ 131	$ 193	$ 240	$ 288
	11%	12%	12%	12%
Operating Profit	$ 200	$ 318	$ 400	$ 485
	17%	20%	20%	20%
Other Income/Expense	$ 10	$ 12	$ 12	$ 12
Earnings From Continuing Operations	$ 190	$ 306	$ 388	$ 473
Income Taxes	$ 66	$ 107	$ 136	$ 165
Net Earnings From Continuing Operations	$ 124	$ 199	$ 252	$ 308
EPS	$ 1.41	$ 2.20	$ 2.75	$ 3.30

NOT A CERTIFIED COPY

CPH 1412548

020790

CP 022313
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED BALANCE SHEET

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Cash and Cash Equivalents	$ 52	$ 229	$ 396	$ 633
Receivables,Net	$ 296	$ 328	$ 400	$ 460
Inventories, Net	$ 256	$ 264	$ 309	$ 351
Other Current Assets	$ 54	$ 34	$ 39	$ 51
Total Current Assets	$ 658	$ 855	$ 1,144	$ 1,495
Property, Plant and Equipment, Net	$ 241	$ 274	$ 310	$ 355
Goodwill and Trademarks & Other	$ 221	$ 215	$ 208	$ 200
Total assets	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Current Liabilities	$ 198	$ 213	$ 252	$ 295
Long Term Debt	$ 195	$ 195	$ 195	$ 195
Other Long Term Liabilities	$ 195	$ 199	$ 221	$ 249
Shareholders Equity	$ 532	$ 737	$ 994	$ 1,311
Total Liabilities and Shareholders Equity	$ 1,120	$ 1,344	$ 1,662	$ 2,050
Net Debt	$ 143	$ (34)	$ (201)	$ (438)

NOT A CERTIFIED COPY

CP 022314
CONFIDENTIAL

CPH 1412549

161020

16div-026541

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam

LONG RANGE STRATEGIC OBJECTIVES - CONDENSED CONSOLIDATED STATEMENT OF CASH FLOW

	Actual	Long Range Strategic Plan		
	1997	1998	1999	2000
Net Income, Continuing	$124	$199	$252	$308
Depreciation and amortization	$39	$54	$71	$83
Deferred Income Taxes	$58	$0	$5	$15
Change in Working Capital	($237)	($7)	($73)	($61)
Cash Flow from Operations	($16)	$246	$255	$345
Proceeds from Asset Sales	$91	$0	$0	$0
Capital Expenditures	($58)	($81)	($100)	($120)
Dividends	($3)	($3)	($3)	($3)
Proceeds from Exercised Options	$27	$15	$15	$15
Cash Flow before Debt Repayment	$41	$177	$167	$237
Net Debt	$143	($34)	($201)	($438)

NOT A CERTIFIED COPY

CPH 1412550

020792

CP 022315
CONFIDENTIAL

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Sunbeam LONG RANGE STRATEGIC OBJECTIVES - NET SALES GROWTH ANALYSIS

	Long Range Strategic Plan		
	1998	1999	2000
Base Net Sales	$ 1,168	$ 1,600	$ 2,000
Domestic			
New Products	227	165	145
New and Existing Channels	65	51	30
Price	20	15	20
Total Domestic	312	231	195
International			
New Products	50	70	80
New Geography and Franchise Growth	70	99	125
Total International	120	169	205
Net Sales Plan	$ 1,600	2,000	$2,400

NOT A CERTIFIED COPY

CPH 1412551

020793

CP 022316
CONFIDENTIAL